

MONTEREY COUNTY PLANNING COMMISSION

Meeting: October 30, 2013 Time: 9:00 A.M		Agenda Item No.: 6
Project Description: (CONTINUED FROM SEPTEMBER 11, 2013) Combined Development Permit consisting of: 1) Minor Subdivision Vesting Tentative Map to allow the division of a 37.8 acre parcel into three parcels of 10.5 acres, 13.8 acres, 7.5 acres and a remainder parcel of 6.0 acres; and 2) Use Permit for development in a visually sensitive area ("VS" District); and grading of approximately 3,100 cubic yards (combination of cut/fill), individual septic systems and 60 foot wide road and utility easement. The project will be served by an existing well and a proposed mutual water company. The project will not involve any tree removal or development in areas in excess of 25 percent slopes.		
Project Location: 24915 Boots Road, Monterey (PLN070376-Merrill)		APN: 173-062-008-000 (PLN070376-Merrill)
Planning File Number: PLN070376 (Merrill)		Owner: Merrill Thomas Trust et al (PLN070376) Agent: Maureen Wruck Planning Consultants, LLC (Joel Panzer)
Planning Area: Greater Monterey Peninsula Area Plan		Flagged and staked: No
Zoning Designation: : RDR/5.1-VS (Rural Density Residential, 5.1 acre per lot minimum, with Visual Sensitivity Overlay)		
CEQA Action: Statutorily exempt from CEQA per 15270		
Department: RMA - Planning Department		

RECOMMENDATION:

Staff recommends that the Planning Commission adopt a resolution to:

- 1) Find PLN070376 (Merrill Minor Subdivision) Statutorily Exempt per Section 15270(a) of the California Environmental Quality Act Guidelines;
- 2) Deny PLN070376 (Merrill Minor Subdivision), based on the findings and evidence (Exhibit C).

PROJECT OVERVIEW:

The project site is located adjacent to Highway 68 about 4 miles north of Monterey, across from the exiting Bishop Ranch/Pasadera development. The project involves the minor subdivision of an existing parcel. The Merrill parcel (37.8 acres) is proposed to be subdivided into three separate parcels of 10.5 acres, 13.8 acres, 7.5 acres and a remainder parcel of 6.0 acres. The subdivision would convert one existing parcel into three separate parcels and one remainder lot (4 lots total), on lands located adjacent to State Route 68 (a designated Scenic Highway) and zoned LDR/5.1-VS (Low Density Residential, with Visual Sensitivity Overlay), and considered "Highly Sensitive" in Figure 14 (Scenic Highway Corridors & Visual Sensitivity) of the 2010 Monterey County General Plan.

Project History

On November 15, 2007, the Thomas Merrill Trust et al, filed an application with Monterey County RMA – Planning Department for a Combined Development Permit (PLN070376) for a Minor Subdivision. Staff thoroughly analyzed issues related to water quantity, water quality, general plan conformance and sewage disposal; and due to significant concerns regarding these issues brought the matter forward to the Planning Commission with a recommendation for denial.

The project was brought to public hearing before the Monterey County Planning Commission on January 26, 2011. The Planning Commission denied the application by a 7-1 vote (2 members absent) (PC Resolution No. 11-006) (Exhibit E).

One of the key issues was water quality. Water quality tests for the project, submitted to the Monterey County Environmental Health Bureau (“EBH”) indicated arsenic concentrations above the maximum contaminant level (“MCL”) of 10 parts per billion (ppb). Testing data for the existing well compiled between August 2007 and September 2010 showed that arsenic concentration levels range from 6 ppb to as high as 17 ppb, with the overall average being 10.08 ppb. These results did not demonstrate that the well could reliably stay in compliance with adopted thresholds. Based upon this evidence, the Planning Commission found that the project does not have a reliable long-term sustainable water source, in regard to water quality, and therefore does not comply with 2010 General Plan policies nor required health and safety standards.

On February 9, 2011, the applicant timely appealed the Planning Commission’s decision. The appellants requested that the Board grant the appeal and approve the Combined Development Permit for PLN070376 (Merrill).

The appeal was scheduled for public hearing before the Monterey County Board of Supervisors on March 29, 2011; continued to May 3, 2011; and again continued to January 10, 2012, to allow the applicants to perform further water sampling.

Prior to the Board hearing on January 10, 2012, the applicant conducted additional water sampling tests in each of the months of May through December 2011. Each of the tests showed arsenic levels acceptable to the EHB and in compliance with state law relative to the MCL. Although it appeared that the water quality may have finally been acceptable to EHB, issues relative to conformance with the 2010 General Plan, traffic impacts, and other potential environmental impacts remained unresolved. Staff recommended denial of the subject appeal and the Merrill Combined Development Permit because the map could not be found in conformance with the 2010 General Plan.

On January 10, 2012, the project was continued to February 7, 2012 to allow the full Board to be present for the appeal hearing.

On February 7, 2012, the Board remanded the project back to the Planning Commission for “further project review and environmental analysis, with a focus on the stability of arsenic levels, water quality and quantity, identification of specific building envelopes and impacts to view issues and landscape as a whole” (Exhibit F).

On February 29, 2012, RMA-Planning issued a letter to the applicant (Merrill) and representative (Mr. Brian Finnegan) detailing that additional information would be required to conduct adequate and thorough environmental analysis for the proposed minor subdivision, as well as allow staff to evaluate the project relative to the policies within the 2010 General Plan (Exhibit G).

The February 29, 2012 letter specifically requested the following information be submitted:

- Submittal of revised parcel map delineating anticipated building envelopes and access;
- Flagging and Staking for each proposed lot, remainder parcel, and proposed roadways;
- New Slope Density Analysis Maps depicting the slope areas for all proposed parcels, including the remainder parcel:

- 0 – 20%
- 20.1 – 25.0%
- 25% and higher
- Septic Feasibility Report for any proposed remainder lot(s);
- Updated Traffic Report for the proposed minor subdivision analyzing impacts of added traffic to the regional system and impacts to intersections at level of service (LOS) “F”; and
- Biological Report(s) determining any impacts to the surrounding flora and/or fauna on the proposed subdivision.

Additionally, the February 27, 2012 letter requested all be submitted by April 27, 2012 to allow the processing of the required environmental review and return the Planning Commission.

Subsequent to the February 27, 2012 letter, RMA-Planning received a letter from the Law Office of Brian Finnegan, dated April 19, 2012, which stated that materials and responses would not be available by the requested date, but would be submitted “at the earliest possible time” (Exhibit H). No additional information or correspondence was submitted to RMA-Planning.

One year later, on April 18, 2013, RMA-Planning issued a second letter requesting all additional information and application materials, as detailed in the February 27, 2012 letter. At this time, the applicant and their representatives were informed that should information not be submitted by May 10, 2013, the application would be scheduled for Planning Commission consideration with a staff recommendation for denial (Exhibit I).

On July 9, 2013, RMA-Planning notified the applicant, and their representatives, that the project would be scheduled on the August 28, 2013 Planning Commission agenda (Exhibit J). That date was later amended to September 11, 2013 due to scheduling conflicts.

As of the preparation of this report, no additional information, including revised a revised map showing anticipated building envelopes, additional water data, traffic data, or slope data, has been submitted to the RMA-Planning Department.

Project Issues

Additional discussion related to potential project issues resulting from the proposed minor subdivision are discussed in Exhibit B – Project Discussion.

OTHER AGENCY INVOLVEMENT: The following agencies and departments reviewed this project:

- √ RMA - Public Works Department
- √ Environmental Health Bureau
- √ Water Resources Agency
- √ Monterey County Regional Fire Protection District
Parks Department
Regional Water Quality Control Board, District 3

Agencies that submitted comments are noted with a check mark (“√”).

The Merrill Minor Subdivision (PLN070376) was referred to the Greater Monterey Peninsula Land Use Advisory Committee (LUAC) for review, on December 19, 2007. The GMPLUAC recommended approval by a 4-0 vote (1 absent). The minutes and recommendation of the LUAC have been attached as Exhibit E.

Note: The decision on this project is appealable to the Board of Supervisors.



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October 22, 2013

cc: Front Counter Copy; Planning Commission; Monterey County Regional Fire Protection District; Public Works Department; Parks Department; Environmental Health Bureau; Water Resources Agency; John H. Ford, Senior Planner; David J. R. Mack, Project Planner; Carol Allen, Senior Secretary; Tom and Susan Merrill, Owner (PLN070376); Maureen Wruck Planning Consultants LLC (Joel Panzer), Agent; Whitney "Tinker" Stolich, Neighbor; Michael Weaver, Neighbor; Planning File PLN070376 (Merrill); LandWatch; The Open Monterey Peninsula (TOMP).

Attachments:	Exhibit A	Project Data Sheet
	Exhibit B	Project Discussion
	Exhibit C	Draft Planning Commission Resolution
	Exhibit D	Vicinity Map
	Exhibit E	Planning Commission Resolution No. 11-006
	Exhibit F	Board of Supervisors Board Order remanding Merrill Project back to Planning Commission (Item S-4), dated February 10, 2012.
	Exhibit G	Letter to applicant/agent, dated February 29, 2012.
	Exhibit H	Letter to RMA-Planning from Law Office of Brian Finegan, dated April 19, 2012.
	Exhibit I	Letter to applicant/agent, dated April 18, 2013.
	Exhibit J	Email to applicant/agent, dated July 9, 2013.

This report was reviewed by John H. Ford, Senior Planner



Exhibit A

Project Data Sheet for PLN070376

Project Title: Merrill Minor Subdivision
Location: 24915 Boots Road,
Monterey
Primary APN: 173-062-008-000

Applicable Plan: Greater Monterey
Peninsula Area Plan
Coastal Zone: NO

Permit Type: Combined Development
Permit
Zoning: RDR/5.1-VS(20'')

Environmental Status: Exempt – CEQA
15270(a)
Plan Designation: Rural Density Residential

Advisory Committee: Greater Monterey
Peninsula
Final Action Deadline (884):

Project Site Data:

Lot Size: 37.8 Acres
Coverage Allowed: 25%
Coverage Proposed: 0%

Existing Structures (SF): 0
Height Allowed: 20 Feet
Height Proposed: 0

Proposed Structures (SF): 0
Floor Area Ratio Allowed: N/A
Floor Area Ratio Proposed: N/A

Total SF: 0

Resource Zones and Reports:

Environmentally Sensitive Habitat: N/A
Biological Report #: LIB080571
Forest Management Rpt. #: N/A
Erosion Hazard Zone: HIGH
Soils Report #: LIB110032 / LIB110033

Archaeological Sensitivity Zone: Moderate
Archaeological Report #: LIB070657
Geologic Hazard Zone: IV
Geologic Report #: LIB110031

Fire Hazard Zone: Very High
Traffic Report #: LIB070658

Other Information:

Water Source: Mutual Water System -
proposed
Sewage Disposal (method): Septic

Water Dist/Co: N/A
Sewer District Name: N/A

Fire District: Monterey County Regional
Fire Protection District
Total Grading (cubic yds.): 3100 (cut and fill)

Tree Removal: N/A

EXHIBIT B PROJECT DISCUSSION

PROJECT ISSUES

Two main issues exist for the proposed Minor Subdivision: Water Quality (long-term sustainable water supply) and consistency with the 2010 General Plan; with water quality being the primary issue.

Water Quantity

The proposed water supply for the project is from a well (off-site) that lies within the Seaside Groundwater Basin Court Adjudicated area (in the Laguna Seca sub-basin). The Court's decision in the adjudication of the Laguna Seca sub-basin states that 5 acre-feet or less of annual water use is considered diminimus. Under the Decision, the County of Monterey (as a party to the Decision) is precluded from performing environmental review regarding the impact of taking water from the Seaside basin as long as the proposed project's water use is less than the 5 acre feet; therefore Staff determined that the applicant had a long-term water *source* related to quantity.

Water Quality

Title 22 of the California Code of Regulations sets forth the maximum contaminant level ("MCL") for arsenic at .010 mg/l or commonly expressed as 10 ppb. When a public water system (15 connections or more) as defined in Title 22 exceeds a quarterly annual average of 10 ppb then that public water system must either provide treatment or secure another water source so that the water delivered to the consumer meets the MCL for arsenic.

Monterey County Code Section 15.04.050.a.2 requires that a small water system (5-14 connections) must show "adequate capability to assure the delivery of pure and wholesome water for human consumption". Monterey County Code Section 19.03.015.L.2.C.6 (applicable through section 19.04.15) requires evidence demonstrating how technical, managerial, and financial capacity ("TMF") shall be achieved. The Monterey County Environmental Health Bureau ("EHB") and California Department of Public Health staff are continually confronting the challenges that small systems face locally and throughout the state in addressing arsenic exceedences as well as other regulatory issues through regulatory interaction with small water systems. These small systems do not have the TMF to maintain and operate treatment plants. Based on local/state experience and United States Environmental Protection Agency documentation of small water systems, EHB has determined that creation of new water systems for subdivisions that are less than 15 connections and that must employ treatment technology do not have the TMF to "assure the delivery of pure and wholesome water for human consumption". The 1982 General Plan and the new 2010 General Plan both encourage consolidation of water systems acknowledging the larger water systems (15 connections or more) have the TMF to operate and maintain water systems so as to be able to provide pure and wholesome water.

According to the submitted test data for the Merrill application, the arsenic levels have been fluctuating above and below the MCL of 10 ppb with a high of 17¹ ppb and a low of 6 ppb. Prior to the Planning Commission hearing of January 26, 2011, the annual quarterly average for arsenic was 10.08 ppb. This average represents the test data between October 7, 2005 and June 30, 2010 (See attached table of results). It is EHB's opinion that a calendar quarterly average of 10 ppb does not allow any safety margin for fluctuations of arsenic concentration that would

¹ The June 5, 2008 data point of 17 ppb was considered anomalous by the Environmental Health Bureau (EHB) and was not used in calculating 2nd quarter averages for purposes of the over (2005-2011) average.

require treatment. Given the sampling results showing that the arsenic has fluctuated above and below the MCL, EHB could not, at that time, recommend a finding of a long-term sustainable water supply in regards to water quality.

EHB was asked by the Planning Commission what concentration of arsenic would be acceptable in order to consider recommending approval relative to potable water. Richard LeWarne, Assistant Director of EHB, stated that an annual quarterly average of 8 ppb would provide a safety margin considering the fluctuations that have been documented.

Based on the water quality data known at the time of the January 26, 2011 Planning Commission hearing, the Planning Commission found that adequate water *quality* did not exist and denied the Merrill Minor Subdivision with a 7-1 vote (2 members absent) (PC Resolution No. 11-006) (Exhibit E).

The applicant appealed decision of the Planning Commission and continued to collect and test water samples from the well. Those additional tests are included in the table below. The sampling duration was October 7, 2005 through April 1, 2011, and the recalculated annual quarterly average is 9.04 ppb.

On May 3, 2011, a public hearing was held before the Board of Supervisors on the appeal. At the applicant's request, the Board continued the matter to January 10, 2012, to allow the applicants to continue conducting water sampling. During this time the applicants conducted additional tests in the months of May through December 2011. Each test showed arsenic levels that appear to be in compliance with state law relative to the MCL. These additional tests have been included in the referenced table.

On February 7, 2012, the Board of Supervisors remanded the proposed minor subdivision back to the Planning Commission, directing "further project review and environmental analysis, with a focus on the stability of arsenic levels, water quality and quantity, identification of specific building envelopes and impacts to view issues and landscape as a whole." Since this time, over a period of 20 months (February 2012 – October 2013) the RMA- Planning Department has requested updated information on two separate occasions (February 27, 2012 and April 18, 2013 – Exhibits H and I); no additional water quality data has been submitted to RMA-Planning, which would demonstrate that water quality and the stability of arsenic levels have improved or stabilized. The last data point submitted for consideration is dated December 2011 and is spot-on the stated arsenic threshold level of 8ppb (see data chart below).

Although the Board remanded the project back to the Planning Commission for "further project review and environmental analysis, with a *focus on the stability of arsenic levels, water quality and quantity*, identification of specific building envelopes and impacts to view issues and landscape as a whole" (Exhibit F), the applicant has been unwilling to submit new information. In the absence of additional information, RMA-Planning Staff was been unable to adequately continue processing the application, and prepare the required environmental review/documentation, as directed by the Board of Supervisors.

Should the Planning Commission wish to further consider the Merrill Minor Subdivision, additional water quality sampling data should be submitted to support the claim that a sustainable long-term source of water exists, in both quantity and quality, before the RMA-Planning Department can complete the required environmental review and show compliance with General Plan Policies PS-3.1 and PS-3.2. The applicant has stated that should the Planning Commission request this additional data, they might be willing to undertake additional testing and sampling.

Merrill Wayland Subdivision Water System Arsenic Sampling Results by Calendar Quarter (ppb)					
Calendar Quarter					Annual Quarterly Average
Date	1	2	3	4	
10/7/05				9	
8/16/07			6		
6/5/08		17*			
8/4/08			6		
9/24/09			10		
10/29/09				9	
2005 - 2009 Quarterly Averages		(17*)	7.3	9	8.15 (11.1*)
1/27/10	11				
6/7/10		11			
6/30/10		11			
9/6/10			6		
12/26/10				8	
2010 Quarterly Averages	11.00	11.00	6.00	8.00	9.00
2/28/11	7				
4/1/11		7			
5/18/11		6			
6/14/11		6			
7/18/11			6		
8/24/11			6		
9/14/11			6		
10/25/11				6	
11/15/11				6	
12/15/11				8	
2011 Quarterly Averages	7.00	6.33	6.00	6.66	6.50

					2005 - 2011 Annual Quarterly Average
2005 - 2011 Quarterly Averages	9	8.7 (9.67*)	6.4	7.9	8.0 (8.24*)

* 6/5/08 Result considered anomalous, not used in calculating 2nd Quarterly averages; averages shown in () are with the 17ppb included.

NOTE: Only 1 sample each quarter can be used; therefore during periods of multiple samples in the same quarter, the samples were averaged for that quarter.

2010 General Plan Consistency

The Merrill Minor Subdivision applications were evaluated for consistency objectives and policies within the 2010 General Plan; specifically policies related to visual sensitivity along State Route 68 (GMP 3.3-Figure 14), sustainable long-term water (GMP 3.14, PS-3.1, PS-3.2, and PS-3.9) and development on slopes in excess of 25% (OS-3.5). The analysis concluded that the project was not consistent with the objectives and policies contained within the General Plan. Detailed analysis of each evaluation can be found in Finding and Evidence No. 1 – Inconsistency.

Sewage Feasibility

The applicant prepared Sewage Feasibility reports for the Merrill Minor Subdivision and were reviewed by the Monterey County Environmental Health Bureau. After comprehensive review of the reports for the Merrill property it was determined the site contained soil compositions having generally acceptable rate of percolation, suitable for the installation of conventional septic disposal systems.

OPTIONS

If the Planning Commission chooses to accept past water quality data and pursue approval of the Merrill Minor Subdivision, additional project review and environmental analysis are still required. Although it appears that the arsenic levels in 2011 are in compliance with state arsenic standards, no additional tests have been conducted in nearly 20 months. At the time that the Board of Supervisors remanded the project back to the Planning Commission, the Board expressed concerns over fluctuating arsenic levels in the past, and directed staff to further analyze the project “with a focus on the stability of arsenic levels, water quality and quantity, identification of specific building envelopes and impacts to view issues and landscape as a whole.” This analysis cannot be completed without updated water quality tests and samples. In addition, issues relative to conformance with the 2010 General Plan, traffic impacts, and other potential environmental impacts also remain unresolved. These impacts would need to be analyzed in an initial study. For example:

Traffic. A traffic analysis was prepared for the project, analyzing the potential impacts to the adjacent intersection (Boots Rd/State Route 68). Denial of this application would result in no impacts to the Boots Road/SR-68 intersection. However, approval of the application would create impacts to the Highway-68 corridor as a whole, including numerous intersections which operate at unacceptable levels of service, which would require additional analysis and potential mitigation.

Affordable Housing. The project was reviewed by the Housing and Redevelopment Office relative to the County’s Inclusionary Housing Ordinance No. 04185, as codified in Chapter 18.40 of the Monterey County Code. Ordinance No. 04185 requires that all new development consisting of three or more lots or residential units contribute to the Inclusionary Housing Program. The project would be subject to this requirement, as the Merrill property would result in the creation of 3 developable lots and 1 remainder (4 lots total). However because Staff is recommending denial of the subdivision, the requirements do not apply. Approval of the application would require review of the appropriate mechanism for compliance with the requirement.

Parks and Recreation. The project was reviewed by the Monterey County Parks Department relative to County recreation requirements and/or payment of recreation fees. The project would both subject to this requirement, as the Merrill property would result in the creation of 3 developable lots and 1 remainder (4 lots total). However because Staff is recommending denial

of the subdivision, the requirements do not apply. Approval of the application would require review of the appropriate mechanism for compliance with the requirement.

Scenic Resources. 2010 General Plan Policy GMP 3.3 refers to the Greater Monterey Peninsula Scenic Highway Corridors and Visual Sensitivity Map (Figure 14) to designate visually “sensitive” and “highly sensitive” areas generally visible from designated Scenic Highways. The subject property is designated as “highly sensitive” in Figure 14. Subsection (d) of GMP 3.3 states that new development shall not be sited on those portions of property that have been mapped “highly sensitive”, unless such development maximizes the goals, objectives, and policies of the Greater Monterey Peninsula Area Plan. The proposed minor subdivision would result in the creation of two new residential parcels (and one remainder lot) located within the designated “highly sensitive” area. This would not maximize the goals, objective, and policies of the Greater Monterey Peninsula Area Plan.

**EXHIBIT C
DRAFT RESOLUTION**

**Before the Planning Commission in and for the
County of Monterey, State of California**

In the matter of the application of:

Merrill Minor Subdivision (PLN070376)

RESOLUTION NO. ----

Resolution by the Monterey County Planning
Commission to:

- 1) Find the project statutorily exempt from CEQA per Section 15270(a);
- 2) Deny the Combined Development Permit consisting of: Minor Subdivision Vesting Tentative Map to allow the division of a 37.8 acre parcel into three (3) parcels of 10.5 acres, 13.8 acres, 7.5 acres and a remainder parcel of 6.0 acres; Use Permit for development in a visually sensitive area (“VS” District); and grading of approximately 3,100 cubic yards of grading (combination of cut/fill), individual septic systems and 60 foot wide road and utility easements. The project will be served by an existing well and a proposed mutual water company. The project will not involve any tree removal or development in areas in excess of 30 percent slopes.

(PLN070376, Merrill Thomas Trust, 24915 Boots Road, Monterey, Greater Monterey Peninsula Area Plan, APN: 173-062-008-000)

The Merrill Minor Subdivision application (PLN070376) came on for public hearing before the Monterey County Planning Commission on October 30, 2013. Having considered all the written and documentary evidence, the administrative record, the staff report, oral testimony, and other evidence presented, the Planning Commission finds and decides as follows:

FINDINGS

1. **FINDING:** **INCONSISTENCY** – The Project, as designed is inconsistent with the applicable plans and policies which designate this area as appropriate for development.

EVIDENCE: a) During the course of review of this application, the project has been reviewed for consistency with the text, policies, and regulations in:

- 2010 Monterey County General Plan,
- Greater Monterey Peninsula Area Plan,
- Monterey County Zoning Ordinance (Title 21)
- Monterey County Subdivision Ordinance (Title 19)

Conflicts were found to exist during the course of review of the project indicating inconsistencies with the text, policies, and regulations in

- these documents.
- b) The property is located at 24915 Boots Road, Monterey (Assessor's Parcel Number: 173-062-008-000), Greater Monterey Peninsula Area Plan. The parcel is zoned RDR/5.1-VS (Rural Density Residential, 5.1 acre per lot minimum, with Visual Sensitivity Overlay), which allows residential development of a rural density and intensity. Therefore, the project is an allowed land use for this site.
 - c) 2010 General Plan Policy GMP 3.3 refers to the Greater Monterey Peninsula Scenic Highway Corridors and Visual Sensitivity Map (Figure 14) to designate visually "sensitive" and "highly sensitive" areas generally visible from designated Scenic Highways. The subject property is designated as "highly sensitive" in Figure 14. Subsection (d) of GMP 3.3 states that new development shall not be sited on those portions of property that have been mapped "highly sensitive", unless such development maximizes the goals, objectives, and policies of the Greater Monterey Peninsula Area Plan. The proposed minor subdivision would result in the creation of two new residential parcels (and one remainder lot) located within the designated "highly sensitive" area. This would not maximize the goals, objectives, and policies of the Greater Monterey Peninsula Area Plan; therefore the project is inconsistent with 2010 General Plan Policy GMP 3.3.
 - d) 2010 General Plan Policy GMP 3.14 requires development projects to be served by water from public utilities or mutual water companies, and consider the cumulative effects of the developments water use on wildlife, fish, plant communities, and the supply available to existing users. The project will not be served by water from a public utility, and the project proposal is a small water system using a well with inadequate water quality (See Finding and Evidence No. 2 – Water Supply).
 - e) 2010 General Plan Policy PS-3.1 and PS-3.2 establish requirements for the proof of a sustainable long-term water source for developments for which a discretionary permit is required, and that will use or require the use of water. On February 7, 2012 the Board of Supervisors remanded the project back to the Planning Commission for "further project review and environmental analysis, with a *focus on the stability of arsenic levels, water quality and quantity*, identification of specific building envelopes and impacts to view issues and landscape as a whole" (Exhibit F), the applicant has been unwilling to submit new water quality information. Evidence is not available to prove beyond a reasonable doubt that a long-term sustainable water supply exists. The project has not proven a reliable source of long-term water; therefore the project is inconsistent with 2010 General Plan Policy PS-3.1 and PS-3.2 (See Finding and Evidence No. 2 – Water Supply).
 - f) 2010 General Plan Policy PS-3.9 states that a tentative subdivision map and/or vesting tentative subdivision map for either a standard or minor subdivision shall not be approved until the applicant provides evidence of long-term sustainable water in terms of yield and quality for all lots to be created. The project has not proven a reliable source of long-term water; therefore the project is inconsistent with 2010 General Plan Policy PS-3.9. (See Finding and Evidence No. 2 – Water Supply)

2. **FINDING:** **SUBDIVISION** – Section 66474 of the California Government Code (Subdivision Map Act) and Title 19 (Subdivision Ordinance) of the Monterey County Code requires that a request for subdivision be denied if any of the following findings are made:
1. That the proposed map is not consistent with the applicable general plan and specific plans.
 2. That the design or improvement of the proposed subdivision is not consistent with the applicable general plan and specific plans.
 3. That the site is not physically suitable for the type of development.
 4. That the site is not physically suitable for the proposed density of development.
 5. That the design of the subdivision or the proposed improvements is likely to cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat.
 6. That the design of the subdivision or type of improvements is likely to cause serious public health problems.
 7. That the design of the subdivision or the type of improvements will conflict with easements, acquired by the public at large, for access through or use of property within the proposed subdivision.

- EVIDENCE:**
- a) **Inconsistency.** The project as designed and conditioned is inconsistent with the 2010 Monterey County General Plan, and Greater Monterey Peninsula Area Plan, and Monterey County Subdivision Ordinance (Title 19) (*Finding 1*).
 - b) **Design.** The lot design is consistent with the Lot Design Standards of Section 19.10.030 County Codes.
 - c) **Site Suitability.** The project has been reviewed for site suitability by the following departments and agencies: RMA - Planning Department, Monterey County Regional Fire Protection District, Housing and Redevelopment Office, Parks, Public Works, Environmental Health Bureau, and Water Resources Agency. The site is physically suitable for the proposed use.
 - d) Staff identified potential impacts to Biological Resources, Archaeological Resources, and on-site wastewater treatment feasibility. Technical reports by outside consultants indicated that there are physical or environmental constraints that would indicate that the site is suitable for the use proposed. County staff independently reviewed these reports and concurs with their conclusions. The following reports have been prepared:
 - “*Preliminary Archaeological Reconnaissance of Assessor’s Parcel 173-062-008*” (LIB070657) prepared by Archaeological Consulting, Salinas, California, November 8, 2007.
 - “*Traffic Analysis for Susan and Tom Merrill Subdivision*” (LIB070658) prepared by Higgins Associates Civil & Traffic Engineers, Gilroy, California, October 29, 2007.
 - “*Feasibility Level Geotechnical Investigation for Merrill Property*” (LIB070659) prepared by Haro, Kasunich and Associates, Inc., Watsonville, California, November 2007.
 - “*Biological survey report for the Tom and Susan Merrill Property*” (LIB080571) prepared by Ed Mercurio Biological Consultant, Salinas, California, October 31, 2007.
 - “*Preliminary Geologic Investigation – Merrill Property*”

(LIB110031) prepared by Rogers E. Johnson & Associates, Watsonville, California, November 2, 2007.

- *“Percolation & Groundwater Study for Parcels 1 & 2 – Merrill Subdivision” (LIB110032) prepared by Grice Engineering and Geology, Inc., Salinas, California, April 2009.*
- *“Second Evaluation Septic Report of Parcel 1 – Merrill Subdivision” (LIB110033) prepared by Grice Engineering and Geology, Inc., Salinas, California, August 2009.*

- e) **Health and Safety.** The proposed project as designed will, under the circumstances of the particular application, be detrimental to the health, safety, peace, morals, comfort and general welfare of persons residing or working in the neighborhood or to the general welfare of the County. Arsenic levels in the water supply have fluctuated above and below the maximum contaminant level (MCL) of 10.0 ppb since 2005-2011. The exposure of people to potentially high levels of arsenic will be detrimental to the health safety, peace, morals, comfort and general welfare of person residing in the proposed subdivision.
- f) Necessary public facilities are not available and are not provided for the proposed project. A source of sustainable long-term water does not exist. See Water Supply sections below.
- g) **Easements.** The subdivision or the type of improvements will not conflict with easements. The project, as designed, would require the creation and conveyance of easements necessary for drainage, utilities, the off-site well, and development and construction of roadways.
- h) **Water Supply.** Section 19.10.070 MCC requires that provisions shall be made for such domestic water supply as may be necessary to protect public health, safety, or welfare, that the source of supply is adequate and potable, and that there is proof of a long term water supply with the proposed project. Sections 19.03.015.L MCC requires Water Supply and Nitrate Loading Information in order to assess these conditions. Proof that the well is capable of supplying a sustainable long-term source of potable water has not been demonstrated, as water quality sampling data has consistently shown the presence of arsenic, which has fluctuated above and below the maximum contaminant level (MCL) of 10 parts per billion (ppb). Testing data compiled between October 2005 and December 2011 have shown that arsenic concentration ranges from 6 ppb to as high as 17 ppb, with the overall average being 8.0 ppb; indicating the well’s reliability of staying in compliance is questionable. Based on this average the Monterey County Environmental Health Bureau can not make a finding that the project has a reliable source of water; as no room for public health protection exists if any subsequent samples show the slightest increase and bring the average over 10 ppb. Since December 2011, no additional water sampling data has been submitted to demonstrate if arsenic levels have stabilized or continue to fluctuate from year to year. The installation of an arsenic treatment system for the off-site well is not a feasible solution, due to cost of infrastructure and installation. Technical, managerial, and financial (TMF) capability is a requirement for new water systems to assure delivery of safe water to the consumers of the system. Water systems with less than 15 connections do not have the TMF to maintain the complexity, ongoing reliability, and expense of treatment plants;

therefore the proposed water source does not protect the public health and safety or meet minimum water quality standards

- i) **Sewage Disposal** (Section 19.03.015.K MCC).
The percolation and groundwater studies for the proposed Merrill Property demonstrates adequate feasibility for the installation of septic systems and associated leach fields, to the satisfaction of the Environmental Health Bureau (EHB) and Monterey County Code 15.20, based upon soil make-up and percolation rates. Specific design requirements for individual septic systems are contained within the technical reports prepared for the project.
- j) **Traffic**. A traffic analysis was prepared for the project, analyzing the potential impacts to the adjacent intersection (Boots Rd/State Route 68). Denial of this application would result in no impacts to the Boots Road/SR-68 intersection or intersections along State Route 68. Approval of the application would create impacts to the Highway-68 corridor as a whole, including numerous intersections which operate at unacceptable levels of service, which would require additional analysis and potential mitigation.
- k) **Affordable Housing**. The project was reviewed by the Housing and Redevelopment Office relative to the County's Inclusionary Housing Ordinance No. 04185, as codified in Section 18.40.060 of County Code. Ordinance No. 04185 requires that all new development consisting of three or more lots or residential units contribute to the Inclusionary Housing Program. The project would be subject to this requirement, as it is developing 4 new lots.
- l) **Parks and Recreation**. The project as reviewed by the Monterey County Parks department relative to County recreation requirements and/or payment of recreation fees. The project would be subject to this requirement, due to the creation of 4 new lots.
- m) The application, tentative map and supporting materials submitted by the project applicant to the Monterey County Planning Department for the proposed development are found in Project File PLN070366.
- n) The project planner conducted a site inspection on August 9, 2007 and December 28, 2010.

3. **FINDING:** **CEQA (Exempt):** - The project is statutorily exempt from environmental review and no unusual circumstances were identified to exist for the proposed project.

EVIDENCE: a) California Environmental Quality Act (CEQA) Guidelines Section 15270(a) statutorily exempts projects which a public agency rejects or disapproves.

4. **FINDING:** **APPEALABILITY** - The decision on this project may be appealed to the Board of Supervisors.

EVIDENCE: a) Section 21.80.040(D) Monterey County Zoning Ordinance

DECISION

NOW, THEREFORE, based on the above findings and evidence, the Planning Commission does hereby:

- A. Find PLN070376 statutorily exempt per Section 15270(a) of the California Environmental Quality Act Guidelines; and
- B. Deny the PLN070376 (Merrill Minor Subdivision) based on the findings and evidence (**Exhibit C**).

PASSED AND ADOPTED this 30th day of October, 2013 upon motion of _____, seconded by _____, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

Mike Novo, Secretary, Planning Commission

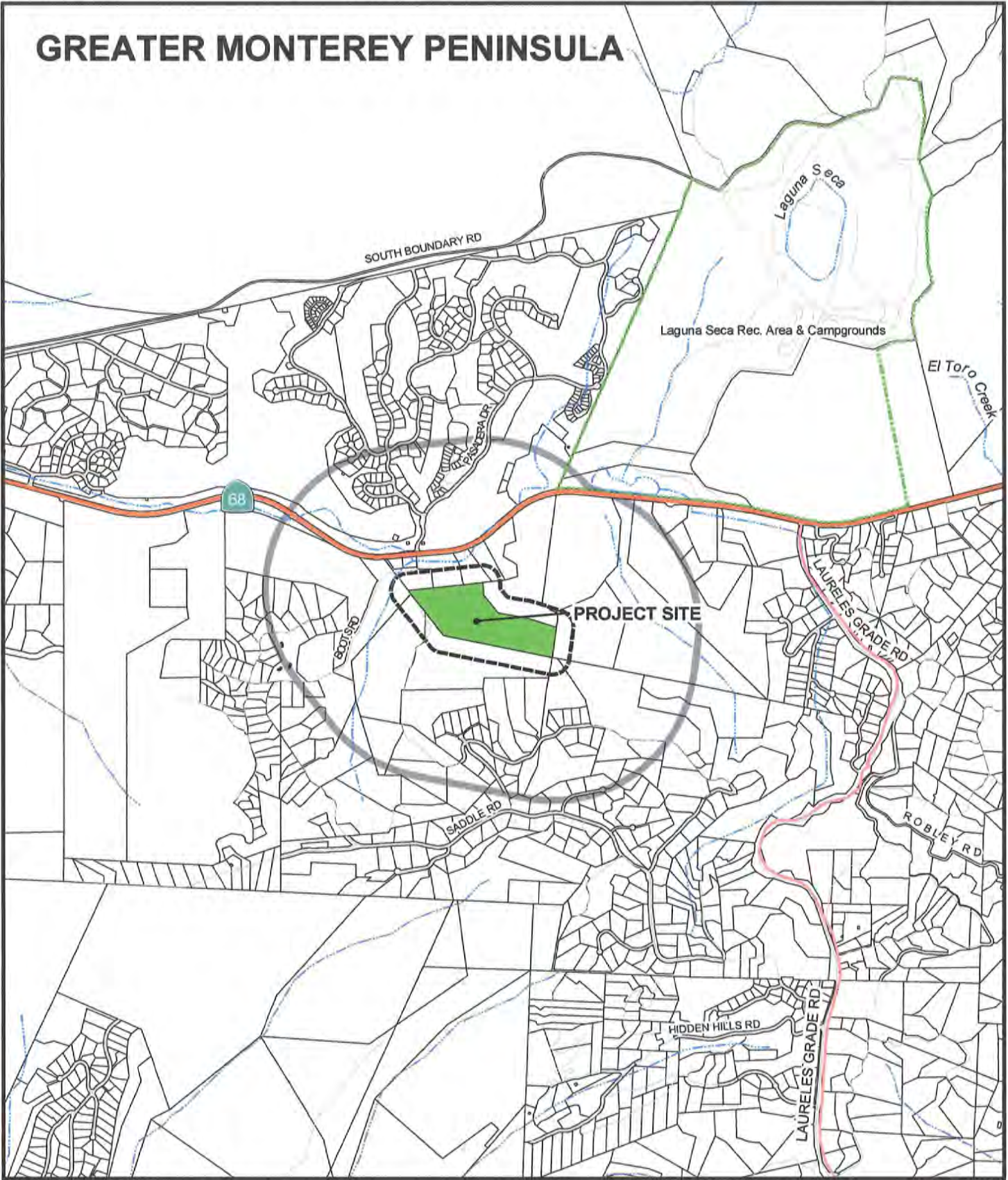
COPY OF THIS DECISION MAILED TO APPLICANT ON _____

THIS APPLICATION IS APPEALABLE TO THE BOARD OF SUPERVISORS.

IF ANYONE WISHES TO APPEAL THIS DECISION, AN APPEAL FORM MUST BE COMPLETED AND SUBMITTED TO THE CLERK TO THE BOARD ALONG WITH THE APPROPRIATE FILING FEE ON OR BEFORE _____

This decision, if this is the final administrative decision, is subject to judicial review pursuant to California Code of Civil Procedure Sections 1094.5 and 1094.6. Any Petition for Writ of Mandate must be filed with the Court no later than the 90th day following the date on which this decision becomes final.

GREATER MONTEREY PENINSULA



APPLICANT: MERRILL

APN: 173-062-008-000

FILE # PLN070376



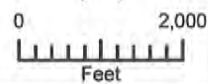
300' Limit



2500' Limit



City Limits



PLANNER: AMADOR

EXHIBIT D

EXHIBIT E

Before the Planning Commission in and for the County of Monterey, State of California

In the matter of the application of:

Merrill Minor Subdivision (PLN070376)

RESOLUTION NO. 11-006

Resolution by the Monterey County Planning
Commission:

- 1) Finding the project statutorily exempt from CEQA per Section 15270(a);
- 2) Deny the Combined Development Permit consisting of: Minor Subdivision Vesting Tentative Map to allow the division of a 37.8 acre parcel into three (3) parcels of 10.5 acres, 13.8 acres, 7.5 acres and a remainder parcel of 6.0 acres; Use Permit for development in a visually sensitive area ("VS" District); and grading of approximately 3,100 cubic yards of grading (combination of cut/fill), individual septic systems and 60 foot wide road and utility easements. The project will be served by an existing well and a proposed mutual water company. The project will not involve any tree removal or development in areas in excess of 25 percent slopes.

(PLN070376, Merrill Thomas Trust, 24915 Boots Road, Monterey, Greater Monterey Peninsula Area Plan, APN: 173-062-008-000)

The Merrill Minor Subdivision application (PLN070376) came on for public hearing before the Monterey County Planning Commission on January 26, 2011. Having considered all the written and documentary evidence, the administrative record, the staff report, oral testimony, and other evidence presented, the Planning Commission finds and decides as follows:

FINDINGS

1. **FINDING:** **INCONSISTENCY** – The Project, as designed is inconsistent with the applicable plans and policies which designate this area as appropriate for development.

EVIDENCE: a) During the course of review of this application, the project has been reviewed for consistency with the text, policies, and regulations in:

- 2010 Monterey County General Plan,
- Greater Monterey Peninsula Area Plan,
- Monterey County Zoning Ordinance (Title 21)
- Monterey County Subdivision Ordinance (Title 19)

Conflicts were found to exist during the course of review of the project

indicating inconsistencies with the text, policies, and regulations in these documents.

- b) The property is located at 24915 Boots Road, Monterey (Assessor's Parcel Number: 173-062-008-000), Greater Monterey Peninsula Area Plan. The parcel is zoned RDR/5.1-VS (Rural Density Residential, 5.1 acre per lot minimum, with Visual Sensitivity Overlay), which allows residential development of a rural density and intensity. Therefore, the project is an allowed land use for this site.
- c) 2010 General Plan Policy GMP 3.3 refers to the Greater Monterey Peninsula Scenic Highway Corridors and Visual Sensitivity Map (Figure 14) to designate visually "sensitive" and "highly sensitive" areas generally visible from designated Scenic Highways. The subject property is designated as "highly sensitive" in Figure 14. Subsection (d) of GMP 3.3 states that new development shall not be sited on those portions of property that have been mapped "highly sensitive", unless such development maximizes the goals, objectives, and policies of the Greater Monterey Peninsula Area Plan. The proposed minor subdivision would result in the creation of two new residential parcels (and one remainder lot) located within the designated "highly sensitive" area. This would not maximize the goals, objective, and policies of the Greater Monterey Peninsula Area Plan; therefore the project is inconsistent with 2010 General Plan Policy GMP 3.3.
- d) 2010 General Plan Policy GMP 3.14 requires development projects to be served by water from public utilities or mutual water companies, and consider the cumulative effects of the developments water use on wildlife, fish, plant communities, and the supply available to existing users. The project will not be served by water from a public utility, and the project proposal is a small water system using a well with in adequate water quality (See Finding and Evidence No. 2 – Water Supply).
- e) 2010 General Plan Policies PS-3.1 and PS-3.2 establish requirements for the proof of a sustainable long-term water source for developments for which a discretionary permit is required, and that will use or require the use of water. The project has not proven a reliable source of long-term water; therefore the project is inconsistent with 2010 General Plan Policy PS-3.1 and PS-3.2. (See Finding and Evidence No. 2 – Water Supply)
- f) 2010 General Plan Policy PS-3.9 states that a tentative subdivision map and/or vesting tentative subdivision map for either a standard or minor subdivision shall not be approved until the applicant provides evidence of long-term sustainable water in terms of yield and quality for all lots to be created. The project has not proven a reliable source of long-term water; therefore the project is inconsistent with 2010 General Plan Policy PS-3.9. (See Finding and Evidence No. 2 – Water Supply)

2. **FINDING:** **SUBDIVISION** – Section 66474 of the California Government Code (Subdivision Map Act) and Title 19 (Subdivision Ordinance) of the Monterey County Code requires that a request for subdivision be denied if

any of the following findings are made:

1. That the proposed map is not consistent with the applicable general plan and specific plans.
2. That the design or improvement of the proposed subdivision is not consistent with the applicable general plan and specific plans.
3. That the site is not physically suitable for the type of development.
4. That the site is not physically suitable for the proposed density of development.
5. That the design of the subdivision or the proposed improvements is likely to cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat.
6. That the design of the subdivision or type of improvements is likely to cause serious public health problems.
7. That the design of the subdivision or the type of improvements will conflict with easements, acquired by the public at large, for access through or use of property within the proposed subdivision.

- EVIDENCE:** a) **Inconsistency**. The project as designed and conditioned is inconsistent with the 2010 Monterey County General Plan, and Greater Monterey Peninsula Area Plan, and Monterey County Subdivision Ordinance (Title 19) (*Finding 1*).
- b) **Design**. The lot design is consistent with the Lot Design Standards of Section 19.10.030 County Codes.
- c) **Site Suitability**. The project has been reviewed for site suitability by the following departments and agencies: RMA - Planning Department, Monterey County Regional Fire Protection District, Housing and Redevelopment Office, Parks, Public Works, Environmental Health Bureau, and Water Resources Agency. The site is physically suitable for the proposed use.
- d) Staff identified potential impacts to Biological Resources, Archaeological Resources, and on-site wastewater treatment feasibility. Technical reports by outside consultants indicated that there are physical or environmental constraints that would indicate that the site is suitable for the use proposed. County staff independently reviewed these reports and concurs with their conclusions. The following reports have been prepared:
- *“Preliminary Archaeological Reconnaissance of Assessor’s Parcel 173-062-008” (LIB070657) prepared by Archaeological Consulting, Salinas, California, November 8, 2007.*
 - *“Traffic Analysis for Susan and Tom Merrill Subdivision” (LIB070658) prepared by Higgins Associates Civil & Traffic Engineers, Gilroy, California, October 29, 2007.*
 - *“Feasibility Level Geotechnical Investigation for Merrill Property” (LIB070659) prepared by Haro, Kasunich and Associates, Inc., Watsonville, California, November 2007.*
 - *“Biological survey report for the Tom and Susan Merrill Property” (LIB080571) prepared by Ed Mercurio Biological Consultant, Salinas, California, October 31, 2007.*

- *“Preliminary Geologic Investigation – Merrill Property” (LIB110031) prepared by Rogers E. Johnson & Associates, Watsonville, California, November 2, 2007.*
 - *“Percolation & Groundwater Study for Parcels 1 & 2 – Merrill Subdivision” (LIB110032) prepared by Grice Engineering and Geology, Inc., Salinas, California, April 2009.*
 - *“Second Evaluation Septic Report of Parcel 1 – Merrill Subdivision” (LIB110033) prepared by Grice Engineering and Geology, Inc., Salinas, California, August 2009.*
- e) **Health and Safety.** The proposed project as designed will, under the circumstances of the particular application, be detrimental to the health, safety, peace, morals, comfort and general welfare of persons residing or working in the neighborhood or to the general welfare of the County.
- f) Necessary public facilities are not available and are not provided for the proposed project. A source of sustainable long-term water does not exist. See Water Supply sections below.
- g) **Easements.** The subdivision or the type of improvements will not conflict with easements. The project, as designed, would require the creation and conveyance of easements necessary for drainage, utilities, the off-site well, and development and construction of roadways.
- h) **Water Supply.** Section 19.10.070 MCC requires that provisions shall be made for such domestic water supply as may be necessary to protect public health, safety, or welfare, that the source of supply is adequate and potable, and that there is proof of a long term water supply with the proposed project. Sections 19.03.015.L MCC requires Water Supply and Nitrate Loading Information in order to assess these conditions. Proof that the well is capable of supplying a sustainable long-term source of potable water has not been demonstrated, as water quality sampling data has consistently shown the presence of arsenic, which has fluctuated above and below the maximum contaminant level (MCL) of 10 parts per billion (ppb). Testing data compiled between August 2007 and September 2010 have shown that arsenic concentration ranges from 6 ppb to as high as 17 ppb, with the overall average being 10.08 ppb; indicating the well’s reliability of staying in compliance is questionable. Based on this average the Monterey County Environmental Health Bureau can not make a finding that the project has a reliable source of water; as no room for public health protection exists if any subsequent samples show the slightest increase and bring the average over 10 ppb. The installation of an arsenic treatment system for the off-site well is not a feasible solution, due to cost of infrastructure and installation. Technical, managerial, and financial (TMF) capability is a requirement for new water systems to assure delivery of safe water to the consumers of the system. Water systems with less than 15 connections do not have the TMF to maintain the complexity, ongoing reliability, and expense of treatment plants; therefore the proposed water source does not protect the public health and safety or meet minimum water quality standards
- i) **Sewage Disposal** (Section 19.03.015.K MCC).

The percolation and groundwater studies for the proposed Merrill Property demonstrates adequate feasibility for the installation of septic systems and associated leach fields, to the satisfaction of the Environmental Health Bureau (EHB) and Monterey County Code 15.20, based upon soil make-up and percolation rates. Specific design requirements for individual septic systems are contained within the technical reports prepared for the project.

- j) **Traffic.** A traffic analysis was prepared for the project, analyzing the potential impacts to the adjacent intersection (Boots Rd/State Route 68). Denial of this application would result in no impacts to the Boots Road/SR-68 intersection or intersections along State Route 68.
- k) **Affordable Housing.** The project was reviewed by the Housing and Redevelopment Office relative to the County's Inclusionary Housing Ordinance No. 04185, as codified in Section 18.40.060 of County Code. Ordinance No. 04185 requires that all new development consisting of three or more lots or residential units contribute to the Inclusionary Housing Program. The project would be subject to this requirement, as it is developing 4 new lots.
- l) **Parks and Recreation.** The project as reviewed by the Monterey County Parks department relative to County recreation requirements and/or payment of recreation fees. The project would be subject to this requirement, due to the creation of 4 new lots.
- m) The application, tentative map and supporting materials submitted by the project applicant to the Monterey County Planning Department for the proposed development are found in Project File PLN070376.
- n) The project planner conducted a site inspection on August 9, 2007 and December 28, 2010.

3. **FINDING:** **CEQA (Exempt):** - The project is statutorily exempt from environmental review and no unusual circumstances were identified to exist for the proposed project.

EVIDENCE: a) California Environmental Quality Act (CEQA) Guidelines Section 15270(a) statutorily exempts projects which a public agency rejects or disapproves.

4. **FINDING:** **APPEALABILITY** - The decision on this project may be appealed to the Board of Supervisors.

EVIDENCE: Section 21.80.040(D) Monterey County Zoning Ordinance

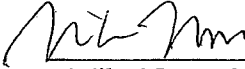
DECISION

NOW, THEREFORE, based on the above findings and evidence, the Planning Commission does hereby:

- A. Find PLN070376 statutorily exempt per Section 15270(a) of the California Environmental Quality Act Guidelines; and
- B. Deny the PLN070376 (Merrill Minor Subdivision) based on the findings and evidence.

PASSED AND ADOPTED this 26th day of January, 2011 upon motion of Commissioner Diehl, seconded by Commissioner Padilla, by the following vote:

AYES: Getzelman, Vandevere, Roberts, Salazar, Mendez, Diehl, Padilla
NOES: Brown
ABSENT: Rochester, Ottone
ABSTAIN: None


Mike Novo, Secretary

COPY OF THIS DECISION MAILED TO APPLICANT ON **JAN 31 2011**

THIS APPLICATION IS APPEALABLE TO THE BOARD OF SUPERVISORS.

IF ANYONE WISHES TO APPEAL THIS DECISION, AN APPEAL FORM MUST BE COMPLETED AND SUBMITTED TO THE CLERK TO THE BOARD ALONG WITH THE APPROPRIATE FILING FEE ON OR BEFORE **FEB 10 2011**

This decision, if this is the final administrative decision, is subject to judicial review pursuant to California Code of Civil Procedure Sections 1094.5 and 1094.6. Any Petition for Writ of Mandate must be filed with the Court no later than the 90th day following the date on which this decision becomes final.

PROJECT TEAM

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 ENGINEER & SURVEYOR
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 SAN JOSE, CA 95128
 (415) 921-1234

ARCHITECT
 BROWN & CALDWELL
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 SAN JOSE, CA 95128
 (415) 921-1234

CIVIL ENGINEER
 BROWN & CALDWELL
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 (415) 921-1234

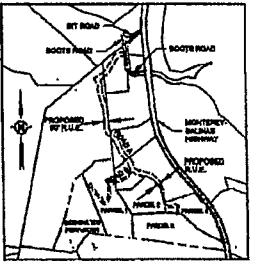
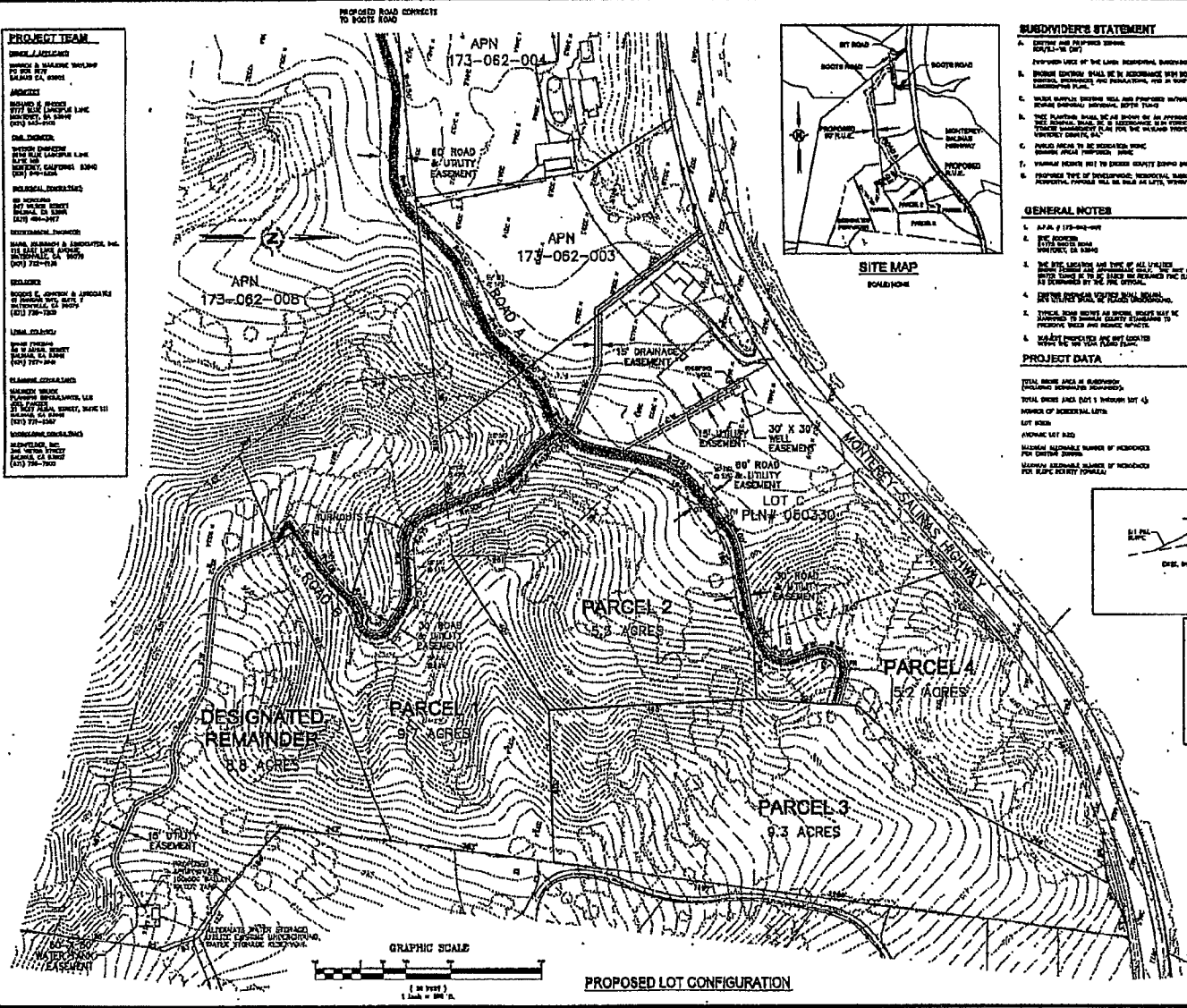
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LEGAL COUNSEL
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PLANNING CONSULTANT
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 1737 W. 10TH ST.
 SAN JOSE, CA 95128
 (415) 921-1234



SITE MAP
BOUNDARIES

SUBDIVIDER'S STATEMENT

- EXISTING AND PROPOSED LOTS SHALL BE AS SHOWN ON THIS MAP.
- THESE LOTS SHALL BE IN ACCORDANCE WITH EXISTING COUNTY ZONING ORDINANCES AND REGULATIONS, AND IN ACCORDANCE WITH ALL APPLICABLE FEDERAL, STATE AND LOCAL LAWS.
- THESE LOTS SHALL BE IN ACCORDANCE WITH EXISTING COUNTY ZONING ORDINANCES AND REGULATIONS, AND IN ACCORDANCE WITH ALL APPLICABLE FEDERAL, STATE AND LOCAL LAWS.
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GENERAL NOTES

- APN 173-062-004
- APN 173-062-003
- APN 173-062-008
- APN 173-062-004
- APN 173-062-003
- APN 173-062-008
- APN 173-062-004
- APN 173-062-003
- APN 173-062-008

PROJECT DATA

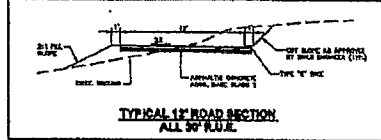
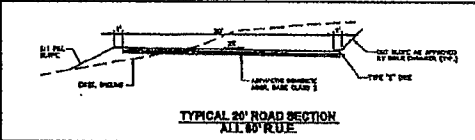
TOTAL AREA (ACRES)	24.8 ACRES
TOTAL AREA (DUTY) (ACRES)	24.8 ACRES
NUMBER OF LOTS	4
LOT AREA	6.2 ACRES
PROPOSED LOT AREA	24.8 ACRES
NUMBER OF LOTS	4
NUMBER OF LOTS	4
NUMBER OF LOTS	4



VICINITY MAP
SCALE 1"=1/2 MILE

LEGEND

PROPERTY BOUNDARY	EXISTING EASEMENT	PROPOSED EASEMENT	PROPOSED LOT	PROPOSED ROAD	PROPOSED UTILITY	PROPOSED DRAINAGE	PROPOSED WELLS	PROPOSED WELLS	PROPOSED WELLS
---	---	---	---	---	---	---	---	---	---



PLAN# 070366
 PROPOSED
**VESTING
 TENTATIVE
 PARCEL MAP**

FOR
 A.P.N. 173-062-009-000
 MONTEREY COUNTY, CALIFORNIA

PREPARED BY:
DR. J. WHITSON ENGINEERS
 1000 Hill Country Lane • Suite 100 • San Jose, CA 95128
 408-248-8888 • Fax 408-248-8888
 CIVIL ENGINEERING & LAND SURVEYING • PROJECT MEASUREMENT
 8/27/2013, 2013

PROPOSED LOT CONFIGURATION

Before the Board of Supervisors in and for the
County of Monterey, State of California

Appeal by Susan Merrill from the Planning)
 Commission's decision denying the application for)
 a Combined Development Permit)
 (Merrill/PLN070376) consisting of:)
 1) a Minor Subdivision Vesting Tentative Map to)
 allow the division of a 37.8 acre parcel into three)
 parcels of 10.5 acres (Parcel 1), 13.8 acres (Parcel)
 2), 7.5 acres (Parcel 3) and a remainder parcel of)
 6.0 acres; and;)
 2) Use Permit for development in a visually)
 sensitive area ("VS" District). (Appeal,)
 PLN070366/Wayland Minor Subdivision, 24975)
 Boots Road, Monterey).....)

Upon motion of Supervisor Salinas, seconded by Supervisor Armenta, and carried by those members present, the Board of Supervisors hereby:

Remanded the Merrill project back to the Planning Commission for further project review and environmental analysis, with a focus on the stability of arsenic levels, water quality and quantity, identification of specific building envelopes and impacts to view issues and landscape as a whole.

PASSED AND ADOPTED on this 7th day of February, 2012, by the following vote, to-wit:

AYES: Supervisors Armenta, Supervisor Calcagno, Salinas, Potter
 NOES: Supervisor Parker
 ABSENT: None

I, Gail T. Borkowski, Clerk of the Board of Supervisors of the County of Monterey, State of California, hereby certify that the foregoing is a true copy of an original order of said Board of Supervisors duly made and entered in the minutes thereof of Minute Book 76 for the meeting on February 7, 2012.

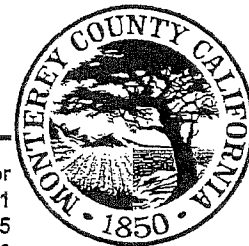
Dated: February 10, 2012

Gail T. Borkowski, Clerk of the Board of Supervisors
County of Monterey, State of California

By Denise Hancock
 Deputy

MONTEREY COUNTY RESOURCE MANAGEMENT AGENCY

EXHIBIT G



Planning Department

Mike Novo, AICP, Director of Planning

168 West Alisal Street, 2nd Floor
Salinas, CA 93901
(831) 755-5025
Fax: (831) 757-9516
www.co.monterey.ca.us/rma

February 29, 2012

Law Office of Brian Finegan
c/o Brian Finegan
P.O. Box 2058
Salinas, California 93902

Re: Board Direction on PLN070376 – Merrill Minor Subdivision

Dear Mr. Finegan

On February 7, 2012, the Monterey County Board of Supervisors took action on the Merrill Appeal (PLN110079), filed by Susan Merrill, to the Planning Commission's January 10, 2010 decision to deny the Merrill Minor Subdivision (PLN070376). At the conclusion of the Board hearing, the Board of Supervisors, by a 3-2 vote, granted the Appeal and remanded the Minor Subdivision application back to the Planning Commission for further consideration, and affirmed that the project shall be measured against the 2010 General Plan, not the 1982 General as contended in the appeal filing.

In order to conduct an adequate/thorough environmental analysis the following information is requested:

- 1) Additional evaluation of the history of the fluctuating arsenic levels;
- 2) Evaluate the map relative to 2010 General Plan Policy GMP-3.3 - Figure 14 (Greater Monterey Peninsula Scenic Highway Corridors and Visual Sensitivity Map, which designated the entire Merrill property as "highly sensitive";
- 3) Revision of the parcel map to include building envelopes on each proposed legal lot to help determine any visual/scenic and biological impacts as viewed from State Route 68 (Scenic Highway);
- 4) Evaluate potential traffic impacts resulting from the generation of additional vehicle trips on State Route 68;
- 5) Evaluate potential environmental impacts to the flora and fauna existing on the subject parcel;
- 6) Conduct California Environmental Quality Act (CEQA) analysis in the preparation of an Initial Study document; and
- 7) Reschedule the project for consideration before the Monterey County Planning Commission at the conclusion of the aforementioned evaluations.


Therefore, Staff is requesting the following:

- 1) Submittal of revised parcel map delineating anticipated building envelopes and access;
- 2) Flagging and Staking for each proposed lots, remainder lot, and all proposed roadways;
- 3) New Slope Density Analysis Maps depicting the following slope areas for all proposed lots, including the remainder parcel:
 - a. 0 - 20.0%
 - b. 20.1-25.0%,
 - c. 25% and higher
- 4) Septic Feasibility Report on any proposed remainder lot(s);
- 5) Updated Traffic Report for the proposed minor subdivision analyzing the impacts of added traffic to the regional system and impacts to intersections currently at LOS "F"; and
- 6) Biological Report(s) determining any impacts to the surrounding flora and/or fauna on the proposed subdivision.

The Merrill Property is zoned "RDR/5.1-VS" (Rural Density Residential, 5.1 acre per lot minimum, with Visual Sensitivity Overlay). Prior to submittal of any information, please re-review the policies and regulations for the "RDR" and "VS" zoning districts, which regulate the development of the subject parcel, specifically Section 21.46.060(C)(1-4) of the Monterey County Zoning Code, which provides Development Standards for new subdivisions and access roads in the "VS" designated districts. The project will also be weighed against the Monterey County Subdivision Ordinance (Title 19), and all applicable standards for a minor subdivision.

In an effort to timely process the project application, allow the preparation of the required environmental documentation, and return the project to the Planning Commission, please submit requested information as a complete packet to me directly by approximately April 27, 2012. This will allow the most efficient processing of the application based upon my current workload and schedule.

Kind Regards,



David J. R. Mack
Associate Planner – Advanced Planning Team
RMA – Planning Department
168 W. Alisal Street, 2nd Floor
Salinas, CA 93901
(831) 755-5096
mackd@co.monterey.ca.us

EXHIBIT H

BRIAN FINEGAN
A PROFESSIONAL CORPORATION
ATTORNEY AT LAW
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POST OFFICE BOX 2058
SALINAS, CALIFORNIA 93902

AREA CODE 831
SALINAS TELEPHONE 757-3641
MONTEREY TELEPHONE 375-9652
FACSIMILE 757-9329
E-MAIL brian@bfinegan.com

April 19, 2012



David J. R. Mack
Associate Planner
Monterey County Planning Department
168 West Alisal Street, 2nd Floor
Salinas, California 93901

Re: PLN070376 – Merrill Minor Subdivision

Dear David:

We are working to compile the materials and responses for Susan Merrill's minor subdivision as requested in your letter of February 29, 2012. We are not able to have all of the information assembled by April 27. We will get it to you at the earliest possible time.

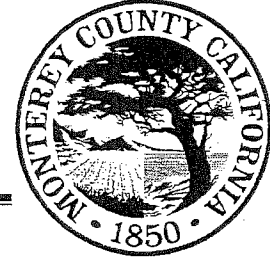
Very truly yours,


Brian Finegan

cc: Susan Merrill
Joel Panzer

MONTEREY COUNTY RESOURCE MANAGEMENT AGENCY

Benny J. Young, Director



Michael A. Rodriguez, C.B.O., Chief Building Official
Michael Novo, AICP, Director of Planning
Robert K. Murdoch, P.E., Director of Public Works

168 W. Alisal Street, 2nd Floor
Salinas, CA 93901
<http://www.co.monterey.ca.us/rma>

April 18, 2013

Law Office of Brian Finnegan
c/o Brian Finnegan
P.O. Box 2058
Salinas, CA 93902

Re: Application Status of PLN070376 – Merrill Minor Subdivision

Dear Mr. Finnegan,

On February 7, 2012, the Monterey County Board of Supervisors took action on the Merrill Appeal (PLN110079), filed by Susan Merrill, to the Planning Commission's January 26, 2011 decision to deny the Merrill Minor Subdivision (PLN070376). At the conclusion of the Board hearing, the Board of Supervisors, by a 3-2 vote, granted a portion of the Appeal and remanded the Minor Subdivision application back to the Planning Commission for further consideration, and reaffirmed that the project shall be measured against the 2010 General Plan, not the 1982 General Plan as contended in the appeal filing.

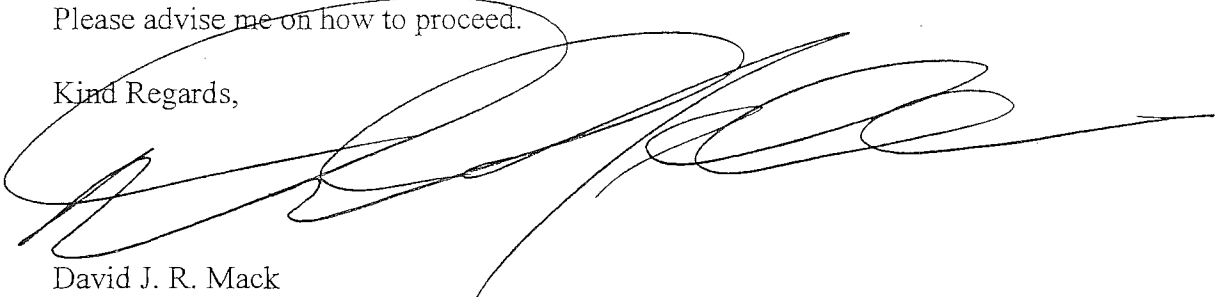
On February 29, 2012, the RMA-Planning Department sent your office a letter stating that additional information would be required to continue the processing of the subject application and bring the application back to the Planning Commission. The February 29, 2012 letter has been attached for your reference.

At this time, all information was requested to be submitted to the Planning Department no later than April 27, 2012. Subsequent to this letter, the RMA-Planning Department received a letter from your office, dated April 19, 2012, which stated that materials and responses were being compiled for this application; however the requested information would not be assembled and available by the stated deadline of April 27, 2012. It was also stated that information would be submitted "at the earliest possible time."

Since your April 19, 2012 letter, the RMA-Planning Department has not received any additional correspondence or the requested information. Therefore, if information if the previously requested information is not submitted by **May 10, 2013**, the project will be scheduled for the Planning Commission for the next available hearing date, with a staff recommendation for denial. Should you wish to withdraw the application, please submit that request, in writing, to the RMA-Planning Department.

Please advise me on how to proceed.

Kind Regards,

A large, stylized handwritten signature in black ink, appearing to read 'D. Mack', written over the 'Kind Regards,' text.

David J. R. Mack
Associate Planner – Current Planning Team
RMA- Planning Department
168 W. Alisal Street, 2nd Floor
Salinas, CA 93901
(831) 755-5096
mackd@co.monterey.ca.us

cc: Susan Merrill, Property Owner.

EXHIBIT J

Mack, David x5096

From: Mack, David x5096
Sent: Tuesday, July 09, 2013 4:19 PM
To: 'Joel Panzer'; 'Brian Finegan'
Cc: Mack, David x5096; Fowler, Nicole E. x4584; Faulk, Janna L. x4549; Lawrence, Laura x5148
Subject: PLN070376 - Merrill Minor Subdivision Application
Attachments: LTR_Application Status_PLN070376_041813.pdf

Mr. Panzer and Mr. Finnegan:

On April 18, 2013 Planning Department Staff sent out the attached letter relative to the Merrill Minor Subdivision. This letter gave a deadline of May 10, 2013 for the submittal of additional information as detailed in a February 29, 2012 letter (attached to the April 18, 2013 correspondence).

Since the mailing of the April 18, 2013 correspondence, discussions on this project have been had with various County departments; however as of July 9, 2013, no additional information has been submitted to further the processing of this application.

The February 29, 2012, letter requested that additional information be submitted no later than April 27, 2012. On April 19, 2012, staff received notice that materials and responses were being compiled and would be submitted "at the earliest possible time".

The April 18, 2013 letter again requested the additional information and stated a deadline of May 10, 2013; again no information was submitted and it is nearly two months past the deadline.

In light of these developments, the Merrill Minor Subdivision Application (PLN070376) has been scheduled for the August 28, 2013 Planning Commission with a recommendation of Denial.

David J. R. Mack

Associate Planner - Advanced Planning Team

RMA - Planning Department

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