

MONTEREY COUNTY PLANNING COMMISSION

Meeting: February 25, 2015	Agenda Item No.: 5
Project Description: Consider Amendments to the 2010 Monterey County General Plan to implement litigation settlement agreements with Land Watch Monterey County and The Open Monterey Project. The proposed amendments amend the following policies: PS. 3-1 (relating to long term sustainable water supply), OS-3.5 (relating to Agriculture and the conversion of uncultivated land on slopes greater than 25%), OS-3.1 (relating to Best Management Practices regarding erosion control), OS-3.9 (relating to a program to address cumulative hydrologic impact of the conversion of hillside rangeland to cultivated croplands), OS-5.16 (relating to biological report requirements), OS-5.24 (relating to wildlife corridor/linkages and the addition of an illustrative wildlife corridor map to the 2010 General Plan);and amend the Agricultural Winery Corridor Plan and Glossary.	
Project Location: Inland (Non-coastal) Area	APN: N/A
Planning File Number: REF150010	Owner: N/A Applicant: N/A Agent: N/A
Planning Area: Monterey County General Plan Area	Flagged and staked: N/A
Zoning Designation: : Multiple	
CEQA Action: Addendum No. 3 to EIR#07-01, SCH#2007121001	
Department: RMA Planning & County Counsel	

RECOMMENDATION:

Staff recommends that the Planning Commission adopt a resolution recommending to the Board of Supervisors that an Addendum No. 3 to the Final Environmental Impact Report for the 2010 Monterey County General Plan (#07-01, SCH#2007121001) (“FEIR”), be considered, and that the 2010 Monterey County General Plan (“General Plan”), be amended to implement settlements of litigation regarding the General Plan. An underline/~~strikeout~~ and summary of the proposed amendments is enclosed as **Exhibit A** and **B**, respectively. A draft resolution is enclosed as **Exhibit C**, and a draft Addendum No. 3 is enclosed as **Exhibit D**.

PROJECT OVERVIEW:

On October 26, 2010, by Resolution No.10-291, the Board of Supervisors adopted the General Plan, certified its accompanying FEIR, and adopted findings, a Statement of Overriding Considerations and a Mitigation, Monitoring and Reporting Program. Subsequently, a total of four lawsuits were filed challenging the adoption and certification. Two of those lawsuits were filed in the name of LandWatch Monterey County and The Open Monterey Project. The lawsuits challenged the adoption and certification of a variety of policies, including a 2013 amendment to the General Plan and its associated Addendum No. 1 to the Environmental Impact Report (EIR). Settlement agreements have been reached between the County and the litigant parties that require the County to consider further amendments to the 2010 General Plan. Copies of the settlement agreements, which are identical except for the names of the settling party, are enclosed as **Exhibit F** and **Exhibit G**.

DISCUSSION:

The proposed amendments affect policies: PS. 3-1 (relating to long term sustainable water supply), OS-3.5 (relating to Agriculture and the conversion of uncultivated land on slopes greater than 25%), OS-3.1 (relating to Best Management Practices regarding erosion control), OS-3.9 (relating to a program to address cumulative hydrologic impact of the conversion of hillside rangeland to cultivated croplands), OS-5.16 (relating to biological report requirements), OS-5.24

(relating to wildlife corridor/linkages and the addition of an illustrative wildlife corridor map to the 2010 General Plan); and amends the Agricultural Winery Corridor Plan and deletes definitions in the Glossary (See **Exhibit B** for details regarding the proposed amendments).

OTHER AGENCY INVOLVEMENT: The County Counsel's Office headed negotiations regarding the settlements. The Resource Management Agency (RMA); RMA-Planning Department; Monterey County Water Resources Agency and Environmental Health Bureau provided input into the settlements



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cc: Front Counter Copy; Planning Commission (10); Wendy Strimling, County Counsel ; RMA-Public Works Department; RMA-Environmental Services; Environmental Health Bureau; Water Resources Agency; Les Girard, Chief Assistant County Counsel; Carl Holm, Acting RMA Deputy Director; Mike Novo, Director of RMA Planning; Jacqueline R. Onciano, RMA Services Manager; Melanie Beretti, RMA Services Manager; The Open Monterey Project (Molly Erickson); LandWatch (Amy White); John H. Farrow; Janet Brennan; George Brehmer; Nancy Isakson; Pam Silkwood; Norm Groot; Darlene Din; Abby Taylor - Silva; Kevin Pearcey; Christine Kemp; Dale Ellis; Dick Cameron; Sasha Gennet; Rachel Saunders; Tanya Diamond; Planning File REF150010

Attachments: Exhibit A Underline/~~strikeout of Policies~~
Exhibit B Summary with Figure OS - 1: Draft Monterey Wildlife Corridors/Linkages Illustrative Map
Exhibit C Draft Resolution
Exhibit D Draft Addendum No. 3
Exhibit E CD of FEIR and related legislative documents (incorporated by reference)
Exhibit F Settlement Agreement LandWatch Monterey County
Exhibit G Settlement Agreement The Open Monterey Project

This report was reviewed by Leslie J. Girard, Chief Assistant County Counsel

EXHIBIT A
PROPOSED AMENDMENTS

EXHIBIT A

Proposed Amendment to the Monterey County 2010 General Plan shown as changes to the 2010 General Plan policies adopted on October 26, 2010 and amended February 12, 2013 (Board Resolution Nos. 10-291 and 13-028).

1. PS.3-1: Except as specifically set forth below, new development for which a discretionary permit is required, and that will use or require the use of water, shall be prohibited without proof, based on specific findings and supported by evidence, that there is a long-term, sustainable water supply, both in quality and quantity to serve the development.

This requirement shall not apply to:

- a. the first single family dwelling and non-habitable accessory uses on an existing lot of record; or
- b. specified development (a list to be developed by ordinance) designed to provide:
 - a) public infrastructure or b) private infrastructure that provides critical or necessary services to the public, and that will have a minor or insubstantial net use of water (e.g. water facilities, wastewater treatment facilities, road construction projects, recycling or solid waste transfer facilities); or
- c. development within Zone 2C of the Salinas Valley groundwater basin, provided the County prepares or causes to be prepared a study for the Board of Supervisors regarding Zone 2C, to be completed no earlier than October 31, 2017 and no later than March 31, 2018 that does the following:
 - 1) evaluates existing data for seawater intrusion and groundwater levels collected by Monterey County Water Resources Agency as of the date the study is commenced;
 - 2) evaluates the total water demand for all existing uses and future uses designated in the General Plan EIR for the year 2030;
 - 3) assesses and provides conclusions regarding the degree to which the total water demand for all uses designated in the General Plan for the year 2030 are likely to be reached or exceeded;
 - 4) evaluates on an annual basis during the study period groundwater elevations and the seawater intrusion boundary;
 - 5) based on historical data and the data produced by the study, evaluates and provides conclusions regarding future trends and any expected movement of groundwater elevations and the seawater intrusion boundary;
 - 6) should the study conclude that i) total water demand for all uses designated in the General Plan for the year 2030 is likely to be exceeded; or ii) groundwater elevations are likely to decline by the year 2030 and iii) the seawater intrusion boundary is likely to advance inland by the year 2030, the study shall make recommendations on measures the County could take to address any or all of those conditions; and

- 7) addresses such other matters as the Board of Supervisors determines are appropriate.

Within two months following the completion of the study, the Board of Supervisors shall hold an open and noticed public hearing on the results of the study. If the study reaches the conclusions for Zone 2C identified in subsection 6) i or 6) ii and 6) iii, the Board of Supervisors shall adopt one or more measures identified in the study, or other appropriate measures, to address the identified conditions. This exception for Zone 2C shall be a rebuttable presumption that a Long Term Sustainable Water Supply exists within Zone 2C, and the presumption shall remain in effect until and unless the study reaches the conclusion for Zone 2C identified in subsection 6) i or 6) ii and 6) iii. Development in Zone 2C shall be subject to all other policies of the General Plan and applicable Area Plan. The rebuttable presumption shall apply only to uses consistent with the 2010 General Plan as amended through October 1, 2014.

Unless the public hearing required by this policy is commenced and concluded within two months following the presentation of the study to the Board of Supervisors, then effective 60 days following the presentation of the study to the Board of Supervisors there shall no longer be a rebuttable presumption of a long term sustainable water supply for development in Zone 2C. This means that the exception in subsection c shall no longer apply, unless otherwise required by law, and the rebuttable presumption shall apply only to projects for which the County has determined the application to be complete and so advised the applicant and for which a public hearing has been noticed.

Within fourteen days of the conclusion of the public hearing required by this policy, or if there is no regularly scheduled meeting of the Board of Supervisors in that fourteen day period, at the next regularly scheduled meeting, the Board of Supervisors shall adopt findings based on substantial evidence as to whether any of the conditions identified in subsections 6.i, ii, and iii (the "Conditions") are likely to occur by 2030. Only if the Board of Supervisors finds that none of the Conditions are likely to occur by 2030, may it find that there is a rebuttable presumption that a long-term sustainable water supply exists within Zone 2C through 2030 and make the discretionary decision to continue to except development within Zone 2C from the requirement under this Policy to provide proof, based on specific findings supported by evidence, that there is a long-term sustainable water supply. If the Board of Supervisors finds that any of the Conditions are likely to occur by 2030, new development within Zone 2C shall not be excepted from the requirement to provide proof of a long-term sustainable water supply, and there shall no longer be a presumption of a long-term sustainable water supply for development in Zone 2C except as required by law.

Unless the Board of Supervisors finds that none of the Conditions are likely to occur by 2030, the Board shall within nine months of the conclusion of the public hearing adopt, or find that other agencies have adopted, a program ("Program") committing the County or those agencies to adopt measures that, based on substantial evidence, are sufficient to avoid and prevent by 2030 each of the Conditions that the Board of Supervisors has

found are likely to occur by 2030. Unless, at the time of the adoption of the Program identified in the prior sentence, the Board of Supervisors finds based on substantial evidence that capital projects will be funded and constructed in order to avoid and prevent by 2030 each of the Conditions that are found by the Board likely to occur by 2030, the County shall adopt, or find that other agencies have adopted, other sufficient measures (“Other Measures”) as authorized by law to avoid and prevent all those conditions by 2030.

As required and authorized by this General Plan and consistent with the intent and purposes of state law, including but not limited to the 2014 Sustainable Groundwater Management Act, the County shall take a proactive role in planning for a long-term sustainable water supply in Zone 2C. As required by Policy PS-3.7, and as may be required after the first 5-year assessment of Zone 2C water conditions in 2015 pursuant to Policy PS-3.15, the County shall by March 31, 2016 initiate, pursue, and support the identification and necessary planning for strategies, water supply projects, water management efforts, and multiple agency agreements that may be implemented as part of the Program or Other Measures. The County shall initiate this planning effort by March 31, 2016 and pursue and support it until completion of the study required by this policy to ensure that, should it be necessary to adopt a Program or Other Measures in response to the findings required by this Policy, the County and/or other agencies shall be able to define and adopt the Program or Other Measures, and to conduct necessary environmental review at the programmatic level within one year of those findings.

Following completion of the study described herein, and the adoption of measures as may be recommended in the study, if any, the County shall prepare a report to the Board of Supervisors every five (5) years for Zone 2C that examines the degree to which a) total water demand for all uses predicted in the General Plan EIR for year 2030 will be reached; or b) groundwater elevations, the seawater intrusion boundary have changed since the prior reporting period; and c) other sources of water supply are available.

Proposed Amendments to the Monterey County 2010 General Plan shown as changes from policies as adopted on October 26, 2010

Amend OS-3.5 (2) as follows:

2. OS-3.5

(2) Agricultural. Conversion of uncultivated land to cultivated land on slopes greater than 25% shall require a discretionary permit.

a) ~~The discretionary permit shall~~ Conversion of uncultivated land to cultivated land on slopes greater than 25% shall be prohibited, except as stated in subdivision b.

b) In the Agricultural and Winery Corridor Plan area ("AWCP") and the Cachagua Plan area ("Cachagua") only, conversion on slopes between 25% and 35% may be permitted pursuant to a permit. In order to avoid the degradation of on-site and off-site natural resources, the use permit process shall:

1. Evaluate possible alternatives that better meet the goals and policies of the general plan.

2. Identify and require an Agricultural Management Plan including development and design techniques for erosion control, slope stabilization, visual mitigation, drainage, and construction techniques, incorporating the Best Management Practices developed pursuant to Policy OS-3.1 and the Program developed pursuant to Policy OS-3.9.

3. Minimize development in areas where potentially unstable slopes, soil and geologic conditions, or sewage disposal pose substantial risk to public health and safety.

4. Limit such conversion permits as follows:

a. Maximum of 100 acres per year for both the AWCP and Cachagua combined, with no rollover of unconverted acres,

b. Maximum of fifteen (15) acres per permit per year per applicant, and

c. Land must be contiguous to already cultivated land.

c) Only lands cultivated and irrigated on slopes over 25% as of December 16, 2014 for which cultivation and irrigation were permitted or otherwise allowed by law may continue to be so cultivated and irrigated.

d) Conversion without a permit shall be considered a continuing public nuisance and may be enforced through a cause of action brought by any private party. The County retains and shall use its authority to enforce violations.

e) The County shall annually prepare and release to the public a map showing all new cultivation of slopes over 25% in the County and, separately indicated, all new cultivation of slopes over 35%. The County map shall show all new cultivation that is identifiable from publicly available crop and land cover data, such as the USDA's National Agricultural Statistics Service Cropscape Cropland Data Layer. The map also shall identify all permitted conversions and delineate the boundaries of each conversion permit, by permit number.

f) A ministerial permit process shall be developed by ordinance and implemented for conversion of lands that have not been cultivated for the previous 30 years on slopes (i) between 15 and 245 percent (15-245%) except land in the North County Area Plan and Cachagua Area Plan, and (ii) between 10 and 15 percent (10-15%) on highly erodible soils. The permit processes shall be designed to require that an erosion control plan be developed and implemented that addresses assures slope stabilization and prevents drainage and flood hazards, and to prevent potentially significant impacts to wildlife corridors and linkages.

g) Conversion of slopes between 15% and 25% (15-25%) in the North County Area Plan and Cachagua Area Plan shall require a use permit and an Agricultural Management Plan.

h) The County shall retain existing requirements for an Agricultural Management Plan for each use permit for conversions as currently set forth in County Code section 21.66.030 (as of Oct. 26, 2010).

i) The County shall not approve permits pursuant to this policy OS-3.5(2) until the County has adopted ordinance(s) implementing OS-5.16, OS-5.22, and OS-5.24, Figure OS-1, a Program developed pursuant to OS-3.9, and conforming amendments to Zoning Code section 21.66.030.

Amend OS-3.1 as follows:

3. OS – 3.1

Best Management Practices (BMPs) to prevent and repair erosion damage and to prevent and remediate other effects of erosion such as sedimentation and water quality impacts, shall be established and enforced by the County.

Amend OS-3.9 as follows:

4. OS-3.9

The County shall develop a Program to address the potential cumulative hydrologic impacts of the conversion of hillside rangeland areas slopes to cultivated croplands. The Program shall be designed to ~~avoid or minimize~~:

- a) avoid or minimize off-site soil erosion,
- b) avoid or minimize increased runoff, runoff-related stream stability impacts, and sedimentation impacts, and/or
- c) meet ~~potential violation of~~ adopted water quality standards.

The County shall convene a committee comprised of county staff, technical experts (including staff of the Natural Resources Conservation Service), and stakeholders to develop the Program, including implementation recommendations. This program shall be adopted within five (5) years of adoption of the General Plan.

Amend OS-5.16 as follows:

5. OS 5.16

A biological study shall be required for any development project requiring a discretionary permit and in the vicinity of a wildlife corridor/linkage as illustrated in Figure OS-1 or having the potential to substantially reduce the habitat of a fish or wildlife species, cause a fish or wildlife population to drop below self-sustaining levels, threaten to eliminate a plant or animal community, or substantially reduce the number or restrict the range of an endangered, rare, or threatened species, or degrade a wildlife movement corridor/linkage.

An ordinance establishing minimum standards for a biological study and biological surveys shall be enacted. A biological study shall include field reconnaissance performed at the appropriate time(s) of year. Based on the results of the biological study, biological corridor surveys may be necessary to identify, describe, and delineate the habitats, wildlife movement corridors or linkages, or species that potentially could be impacted.

The ordinance shall specify when a corridor survey is required and the minimum requirements for a corridor survey. The ordinance shall include design guidelines for development within corridors and linkages, including but not limited to: standards for design, landscaping, lighting, site layout including structures, and fencing. Said ordinance shall be adopted within 12 months of the adoption of this policy. Feasible measures to reduce significant impacts to a less than significant level shall be adopted as conditions of approval.

Amend OS-5.24 as follows:

6. OS-5.24

In order to preserve the functionality of existing wildlife corridors/linkages, and to promote and facilitate wildlife movement corridors/linkages, if Figure OS-1 or a biological study discloses evidence that a wildlife corridor or linkage exists in the vicinity of a project, a corridor survey shall be required to identify the boundaries of the movement corridor or linkage with respect to the project site. The corridor survey shall include mitigation recommendations from the ordinance required to be adopted pursuant to Policy OS-5.16 to retain a corridor or linkage of adequate size and quality to preserve the continued free movement of all wildlife based on the needs of the species occupying the habitat and using the corridor or linkage. The County shall require the use of wildlife friendly fencing to the extent allowed by law. ~~The County shall require discretionary projects to retain movement corridors of adequate size and habitat quality to allow for continued wildlife use based on the needs of the species occupying the habitat.~~ The County shall require that expansion of its roadways and public infrastructure projects provide movement opportunities for terrestrial wildlife and ensure that existing stream channels and riparian corridors continue to provide for wildlife movement and access.

Figure OS-1 shows the general location of some of the wildlife movement corridors/linkages in Monterey County. Figure OS-1 is illustrative only. The County shall engage a qualified wildlife consultant to make recommendations as to the implementing ordinances for OS-5.16, OS-5.22 and OS-5.24, and the conservation strategy required by OS-5.21, with regard to wildlife corridor/linkage issues. The County shall use the consultant's recommended protections as the primary basis of the implementing ordinances for OS-5.16, OS-5.22 and OS-5.24 and the conservation strategy required by OS-5.21, and the final ordinance language shall be the result of a collaborative process of the consultant and County staff.

Until the ordinance required by Policy OS-5.16 is adopted, if Figure OS-1 or a biological study discloses evidence that a wildlife corridor or linkage exists in the vicinity of a project, the corridor survey shall make recommendations for design based upon best practices related to the needs of the species occupying the habitat and species using the corridor or linkage, and the County's wildlife consultant shall review and research the application and make recommendations within the scopes of Policy OS-5.16 and this Policy OS-5.24, and such projects may only be approved if the contents of those recommendations are adopted as conditions of approval. Until Figure OS-1 is adopted, the County's wildlife consultant shall review and research each application and make recommendations. If the ordinance required by Policy OS-5.16 is not adopted within 12 months of adoption of this policy, no permits for projects requiring a corridor survey and mitigation recommendations shall be approved until the implementing ordinance is adopted.

This policy shall not apply retroactively to projects constructed legally.

Amend Agricultural Winery Corridor Plan as follows:

7. 3.0 DEVELOPMENT STANDARDS/DESIGN GUIDELINES

3.1 GENERAL REGULATIONS

The number of facilities allowed to be processed under this Plan shall be as follows:

- A. *Artisan Winery*: A maximum of 40 new artisan wineries as follows:
 - 1. River Road Segment; up to 24;
 - 2. Metz Road Segment; up to four (4); and
 - 3. Jolon Road Segment; up to 12.

- B. *Full-Scale Winery*: a maximum of 10 new full-scale wineries as follows:
 - 1. River Road Segment; up to five (5);
 - 2. Metz Road Segment; up to two (2); and
 - 3. Jolon Road Segment; up to three (3).

- C. *Winery Tasting Rooms*; a maximum of 10 new, stand-alone, facilities as follows:
 - 1. River Road Segment; up to five (5);
 - 2. Metz Road Segment; up to two (2); and
 - 3. Jolon Road Segment; up to three (3).

- D. ~~*Restaurant*. A total of three (3) new restaurants with no more than one restaurant per segment.~~

- E. *Delicatessen*. A total of five (5) new delicatessens on the same site as a winery with no more than three (3) delicatessens within the River Road Segment and no more than one (1) delicatessen within each of the remaining two segments.

- F. ~~*Inns*. A maximum of eight (8) new Inns as follows:~~
 - ~~1. River Road Segment; up to five (5);~~
 - ~~2. Metz Road Segment; one (1); and~~
 - ~~3. Jolon Road Segment; up to two (2).~~

- GE. *Business Cluster*. One consolidated area may be identified for an overlay designation where a cluster of wine industry related businesses (bottle and cork production, label design, etc.) may develop. This business center should be located near an urban area with adequate facilities. A business cluster within the AWCP overlay area shall be considered consistent with the General Plan; however, a zoning change may be required to achieve the appropriate zoning designation. Site specific development would be subject to the standard County requirements and CEQA and not part of the ministerial review process created under this Plan.

HF. *Visitor Centers.* Visitor centers that provide visitor information about the Corridor should be established within the vicinity of Highway 101/Arroyo Seco and/or near Highway 68.

3.2 ALLOWED USES

The following uses shall be allowed at facilities approved under the AWCP located within the designated corridor.

A. ~~*Winery Adjunct Uses.*~~

B. ~~*Industry-wide events.*~~

CB. *Winery-Related Events up to 150 people at any one venue at any one time.* Events include:

1. Advertised fund raising events.
2. Winemaker Dinners open to the general public.
3. Weddings.

DC. *Private Winery Events* such as:

1. Company Holiday Party.
2. Employee-Related Private Parties (e.g. harvest celebration).

3.3 PERMITTED USES, MINISTERIAL PERMIT REQUIRED IN EACH CASE

[No changes.]

3.4 PERMITTED USES, ADMINISTRATIVE PERMIT REQUIRED IN EACH CASE

This Section includes a list of uses that can be permitted with an Administrative Permit for properties within the designated Agricultural and Winery Corridor. These uses are subject to the General Regulations established in Section 3.1 and Development Standards established in Section 3.5 of this Agricultural and Winery Corridor Plan.

A. ~~*Restaurant or Delicatessen;*~~ subject to the following criteria:

- ~~1. Located within five (5) miles from an urban limit line, community area, or rural center or within one (1) mile of an arterial or collector.~~
- ~~2. Parking shall be provided as required by Chapter 21.58, Monterey County Code.~~

B. *Inn, on-site with a winery facility;* subject to the following criteria:

1. The Inn is clearly incidental, related, and subordinate to the primary operation of the winery as a production facility.
2. Separate structure(s) shall be built expressly for an Inn.
3. Includes no more than ten (10) guest rooms, and a family does not need to be in permanent residence within the Inn facility.

4. Design shall use a consistent style for all buildings on the same lot.
5. Parking shall be provided as required similar to a bed and breakfast use.

C. ~~Inn, stand alone~~; subject to the following criteria:

1. ~~The facility is located:~~
 - ~~a. more than 500 feet from a parcel on which any other Inn facility is located;~~
 - ~~b. no closer than 400 feet to any existing residence outside the ownership of the applicant.~~
2. ~~Parking shall be provided as required similar to a bed and breakfast use.~~

DB. *Winery, Full-scale*, including tasting facilities and a catering kitchen as part of the winery. Events included as part of the permit for a full-scale winery shall not be subject to other permit requirements of Sections 3.3E or 3.6.

3.5 DEVELOPMENT STANDARDS

The following standards shall apply for approved uses within the Winery Corridor only:

A. *Parcel Size*. Minimum five (5) acres:

1. Creation through subdivision of ~~a five-acre lot or any one~~ lot smaller than the zoning minimum parcel size, but of a minimum size of five (5) acres (a "Small Lot"), is permissible provided:

- a. ~~The remaining parcel still~~ All other parcels included as part of the subdivision conforms to the minimum parcel size of the underlying zoning district. In order to encourage utilization of existing substandard sized lots, An exception to subdivide lots (minimum 5 acres) from a legal non-conforming lot not meeting the minimum lot size for the land use designation (e.g., 10-acre lot with 40-acre minimum designation) may be allowed to subdivide one Small Lot from one legal non-conforming lot that is at least 10 acres in size but does not meet the minimum lot size for the zoning designation (e.g., a 20-acre lot in a 40-acre minimum designation could be divided to create one 5-acre lot and one 15-acre lot) based on substantial evidence that this action would:
 - 1) reduce the number of conforming agricultural lots from being subdivided because the parcel is located in an area where AWCP facilities would likely locate; and
 - 2) limit development in a manner to retain the rural character of the corridor. For purposes of this finding the rural character refers to parcels that conform to the minimum parcel size in the underlying zoning district and that contain agricultural uses.

- b. Development of the Small Lot must be in conformance with a Allowable Uses and Permitted Uses identified in this

Agricultural and Winery Corridor Plan only, which will be memorialized by a recorded deed restriction on the Small Lot.

c. The total number of Small Lots created does not exceed 66 lots within the AWCP as adopted. In addition, the number of Small Lots created within each segment shall not exceed the number of wineries and/or tasting rooms allowed for that segment (Section 3.1 AWCP).

d. Where a Small Lot is created by subdivision under this Plan, all lots and parcels included as part of that subdivision shall be restricted from further subdivision of Small Lots as described in this section.

2. Subdivision of parcels under Williamson Act contract shall be in conformance with Williamson Act regulations.

3. Creation of Small Lots through subdivision within the Corridor is permissible subject to the Subdivision Map Act and County Subdivision Ordinance.

Amend GLOSSARY as follows:

~~**AGRICULTURAL LAND USES** means those uses of an agricultural nature that occur on farmlands designated as prime, of statewide importance, unique, or of local importance. Agricultural land uses also include grazing and any other uses that occur on properties designated as agricultural on the General Plan and/or Area Plan land use map(s).~~

~~**WINERY** means an agricultural processing plant used for the commercial purpose of processing grapes, other fruit products, or vegetables to produce wine or similar spirits. Processing includes crushing, fermenting, blending, aging, storage, bottling, warehousing, wine tasting facility, administrative office functions including wholesale and retail sales of associated wine and wine related items, and events. Winery Adjunct Uses may also be considered as accessory to a winery when specifically requested and addressed as part of the discretionary permit application for the winery or as a subsequent permit application process.~~

~~**WINERY, ARTISAN** [No change.]~~

~~**WINERY, FULL-SCALE** [No change.]~~

~~**WINERY ADJUNCT USES** means uses not considered an inherent part of a winery, but frequently associated with wineries and the agricultural tourism industry. Winery Adjunct Uses include, but are not limited to, restaurants, delicatessens, events, and concerts. Such uses may be considered as accessory to a Winery or Winery Tasting Facility when specifically requested and addressed as part of the discretionary permit application for the Winery or as a subsequent permit application process.~~

~~**WINERY CORRIDOR** [No change.]~~

~~**WINERY TASTING FACILITY** means a bonded Winery Tasting Facility, also known as an "on or off winery premise," as provided by federal law under the jurisdiction of the Tax and Trade Bureau. A Winery Tasting Facility shall accommodate wine tasting, an administrative office, retail sales of associated wine and wine related items, events, warehousing, and storage. Winery Adjunct Uses may be considered as accessory to a Winery Tasting Facility when specifically requested and addressed as part of the discretionary permit application for the Winery Tasting Facility or as a subsequent permit application process.~~

EXHIBIT B
SUMMARY WITH FIGURE OS-1

EXHIBIT B

SUMMARY OF PROPOSED AMENDMENTS

1. PS-3.1 - LONG - TERM, SUSTAINABLE WATER SUPPLY

Policy PS-3.1 generally requires all development in Zone 2C to prove a long-term sustainable water supply and lists specified development, uses and conditions that would be exempted from that requirement. It further sets forth conditions under which a rebuttable presumption regarding a long term sustainable water supply shall exist and requires the County to undertake a 5-year study of Zone 2C. The proposed amendment generally requires the County to make a stronger commitment to address by 2030 certain conditions that may be concluded by the study, including groundwater elevations, seawater intrusion, and the balance of total water demand to 2030. The amended policy would require that, within two months (2) following the completion of the 5-year study the County would be required to hold a public hearing on the conclusion of the report and adopt appropriate measures to address the identified conditions. If the County does not hold public hearings within two (2) months following the presentation of the study results to the Board of Supervisor's, there shall no longer be a rebuttable presumption of a long term sustainable water supply for development in Zone 2C and all development shall need to prove long term sustainable water supply. Within fourteen days of the public hearing on the study results or at the next regularly scheduled meeting of the Board of Supervisors, the Board must adopt findings, based on substantial evidence, whether any of the conditions identified in the study would occur by 2030. If the board finds that the conditions will not occur by the year 2030 then the Board may find that there continues to be a rebuttable presumption of a long term sustainable water supply within Zone 2C and development applications can proceed to be processed. However, if the Board finds that some of the conditions may be reached by 2030, the Board shall adopt measures or a program, or find that another agency has adopted measures or a program, designed to address the identified conditions by 2030.

2. OS-3.5 (2) – AGRICULTURAL WINERY CORRIDOR PLAN AREA (“AWCP”) AND CACHAGUA PLAN AREA

The proposed amendment to Policy OS-3.5 (2) would prohibit the conversion of uncultivated land with slopes greater than 25% to cultivated land throughout the County except in the AWCP and the Cachagua Plan area. In the AWCP and Cachagua Plan areas conversion for agricultural uses on slopes between 25% and 35% shall be considered through a use permit. The use permit shall include the following:

1. Alternatives to the proposed development that better meet the goals and policies of the general plan;
2. The preparation of an Agricultural Management Plan (AMP) that incorporates Best Management Practices per policy OS-3-1 and address cumulative hydrologic impacts of the conversion of hillside rangeland areas to cultivated croplands in accordance with policy OS -3.9 to include the following:

- a. Design techniques that address drainage, on-site and off-site erosion control, slope stability, construction techniques and visual mitigation using Best Management Practices per policy OS-3.1;
- b. If applicable, address runoff-related stream stability impacts; and
- c. Water quality standards.

The proposed amendment would also limit the number of use permits that could be issued for such conversions as follows:

- a. Limits the amount of combined acreage converted in both the AWCP and Cachagua plan areas to 100 acres per year; and
- b. Limits applicants to 15 acres per year per.
- c. Land considered under the use permit shall be contiguous to land currently in cultivation.

Finally, only lands cultivated and irrigated that were permitted or have been allowed to be in production prior to December 16, 2014 may continue in cultivation and will be considered consistently cultivated per the amendment.

Annually, the County would be required to prepare a map showing all new cultivation on slopes over 25% and indicating lands with slopes greater than 25% that have been granted use permits, after December 16, 2014, for cultivation. Conversion without a permit would be designated a continuing public nuisance that may be enforced by a private right of action

Policy OS-3.5 (2) currently requires the development of a ministerial permit process to address slope stabilization, drainage and address potential impacts to wildlife corridors and linkages. The proposed amendment would require a use permit and an Agricultural Management Plan for conversions in the North County Plan Area and the Cachagua Plan Area on slopes between 15% and 25%.

Finally, the proposed amendment would mandate that no permits, either ministerial or discretionary, could be approved until the County has adopted the Conservation Strategy that would implement the following policies: OS - 5.16 (Biological Report Requirement), OS – 5.22 (Stream Setback Ordinance), OS – 5.24 (Wildlife Corridors) and an illustrative map of wildlife corridors in the County (Figure OS – 1, discussed below; along with OS – 3.9 (a program to address Hydrologic Impacts of Hillside rangeland conversion).

3. OS-3.1 - BEST MANAGEMENT PRACTICES (BMPS)

Policy OS-3.1 currently requires the County establish and enforce BMPs to prevent and repair erosion damage impacts. The proposed amendment would clarify that the BMPs would also address the prevention and remediation of other effects of erosion such as sedimentation and water quality impacts.

4. OS-3.9 – HYDROLIC IMPACTS OF CONVERSION OF HILLSIDE RANGELAND TO CULTIVATED CROPLANDS

Policy OS-3.9 requires the County to develop a program to address potential cumulative hydrolic impacts of hillside rangeland areas to cultivated croplands. The proposed amendment clarifies that the program is to be designed to avoid or minimize the cumulative impacts, and meet water quality standards.

5. OS-5.16 & OS-5.24 - WILDLIFE CORRIDORS AND LINKAGES, AND BIOLOGICAL REPORT REQUIRMENTS

Policy OS-5.16 describes when a biological studies and surveys are required for new development. Standards are to be developed by ordinance. Policy OS-5.24 currently requires new development to maintain movement corridors of adequate size to accommodate continued use of the corridor by wildlife. The proposed amendments to these policies would call for the inclusion of an Illustrative Map generally showing wildlife corridors and linkages in the County. The proposed map (Figure OS-1) is attached. The map delineates the general location of wildlife movement corridors and linkages. The map will be used in the development of the biological report requirements. The proposed amendment would require the development of design guidelines for new development in identified corridors or linkages such as landscaping, lighting, site layout including structure locations, and fencing. The ordinance implementing the biological report requirements would be required to be adopted within 12 months of the adoption of the policy amendment.

The proposed amendments would also require the County to work with a qualified wildlife consultant to prepare the Conservation Strategy that would implement the following policies: OS - 5.16 (Biological Report Requirement), OS – 5.22 (Stream Setback Ordinance), and OS – 5.24. The County has already retained such a consultant who has assisted in the preparation of proposed Figure OS-1.

The proposed amendments would also require that, until the adoption of the Conservation Strategy specified in OS-5.21 and the design guidelines specified in OS-5.16, all projects requiring either a ministerial or discretionary permit would be reviewed by the County's wildlife consultant and the consultant's recommendations would be incorporated as conditions of approval. If the ordinance required by Policy OS-5.16 is not adopted within 12 months of adoption of this policy, no permits for projects requiring a corridor survey and mitigation recommendations shall be approved until the implementing ordinance is adopted.

6. CHAPTER 9-J - AGRICULTURAL WINERY CORRIDOR PLAN (AWCP)

The proposed amendment modifies the allowed facilities and uses that could be developed using the streamlined procedures under the AWCP. It removes the three (3) stand-alone restaurants and eight (8) stand-alone inns from the AWCP process along with the adjunct winery uses.

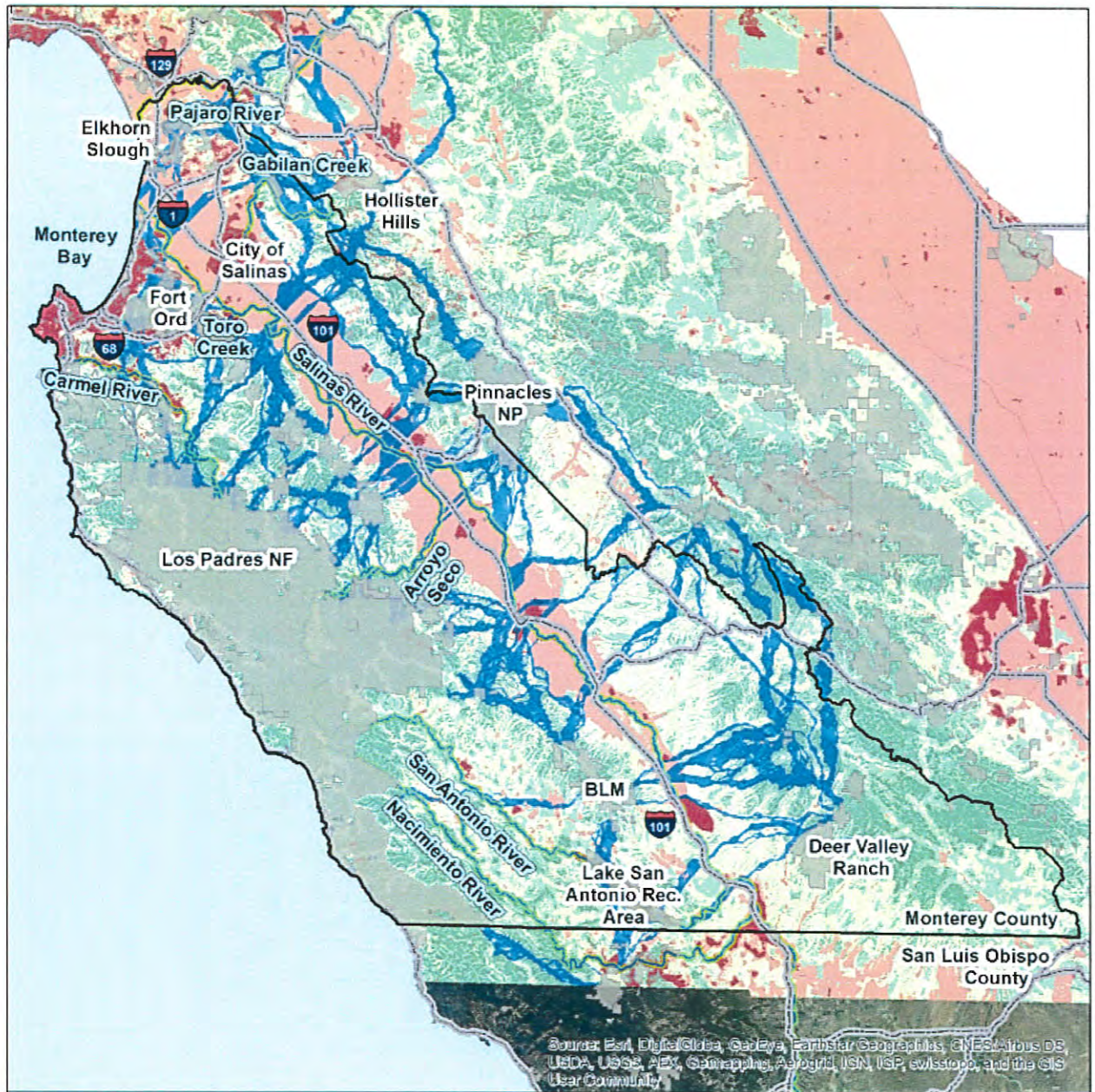
Additionally, it removes stand-alone restaurants and delicatessens and stand alone inns from the permitted use lists. With regard to development standards, language is clarified to prohibit the serial creation of so-called “small lots” that do not meet the minimum acreage of the AWCP, and places limits on how many of such small lots may be created by subdivision.

7. GLOSSARY

The proposed amendment would remove the definitions of Agricultural Land Uses and Winery Adjunct Use along with references to winery adjunct uses located in the winery tasting facility definitions, as these definitions would no longer be used in the General Plan.









FIGURE OS-1

Monterey Wildlife Corridors/Linkages



Legend

Habitat Suitability for Wildlife Movement

- | | |
|---|---|
|  Marginal Habitat |  Wildlife Corridors/Linkages |
|  Suboptimal Habitat |  Monterey County line |
|  Suitable Habitat | |
|  Highly Suitable Habitat | |
|  Optimal Habitat | |
|  Protected Lands CPAD 2014 | |

0 3.75 7.5 15 22.5 30 Miles



Map by: Pathways for Wildlife
 Data: Caltrans, Bay Area Critical Linkages,
 Pathways for Wildlife, EMC Planning
 Group, & CA Protected Areas Database.



This map shows the general location of some of the wildlife movement corridors/linkages in Monterey County. It is illustrative only.

EXHIBIT C
DRAFT RESOLUTION

EXHIBIT C

RESOLUTION RECOMMENDING APPROVAL OF GENERAL PLAN AMENDMENTS

**Before the Planning Commission
County of Monterey, State of California**

Resolution No. _____)
Resolution of the Planning Commission recommending)
that the Board of Supervisor’s consider Addendum No.)
3 to FEIR #07-01, SCH#2007121001, and amend)
Policies PS-3.1, OS-3.5, OS-3.1, OS-3.9, OS-5.16, OS-)
5.24; amend the Agricultural Winery Corridor Plan and)
Glossary of the 2010 Monterey County General Plan relating)
to Long –Term, Sustainable Water Supply, Agriculture and)
the conversion of uncultivated land , Best Management)
Practices regarding erosion control, Hydrologic impacts of)
the conversion of hillside rangeland to cultivated cropland,)
Biological Report Requirements, Wildlife)
Corridor/Linkages, uses in the Agricultural Winery Corridor)
Plan are and definitions relating to Agricultural Land Uses)

Proposed amendments to the 2010 Monterey County General Plan (“General Plan”) came on regularly for public hearing before the Planning Commission (“Planning Commission”) on February 25 and March 11, 2015. Having considered all written and documentary evidence, the staff report and attachments, oral testimony, and other evidence presented at the hearings, the Planning Commission makes this recommendation to the Monterey County Board of Supervisors (“Board of Supervisors”) with reference to the following facts and findings:

RECITALS

1. Section 65300 et seq. of the California Government Code requires each county to adopt a comprehensive, long-term General Plan for the physical development of each county.
2. On October 26, 2010, the Board of Supervisors adopted the General Plan and certified its accompanying Final Environmental Impact Report (#07-01, SCH#2007121001) (“FEIR”).
3. Subsequent to the adoption of the General Plan and certification of the FEIR, four lawsuits were commenced challenging those actions on a variety of grounds.
4. Two of those lawsuits were filed in the name of LandWatch Monterey County and The Open Monterey Project.
5. Pursuant to the requirement of the California Environmental Quality Act (“CEQA”), settlement negotiations were will all litigant groups. Following extended negotiations, settlement agreements have been reached with between the County and the litigant

parties that require the County to consider further amendments to the 2010 General Plan.

6. Pursuant to Government code sections 65350 et seq., the county of Monterey (“County”) may amend the adopted General Plan provided the County follows certain procedures, including that the Planning commission hold a noticed public hearing and make a written recommendation to the Board of Supervisors on the proposed amendments to the General.
7. While the California Government Code provides that any mandatory element of the General Plan may be amended no more than four (4) times during any calendar year. Policy LU-9.6 (d) in accordance with Chapter 21.91 (General Plan Amendments) provides that amendments to the County’s General Plan be considered no more than twice per calendar year. There had not been a package of General Plan amendment considered in 2015.
8. The proposed amendments to the General Plan affect Policies PS. 3-1 (Long –Term, Sustainable Water Supply), OS-3.5 (2) (Agricultural Winery Corridor Plan Area (AWCP”) and Cachagua Plan Area), OS-3.1 (Best Management Practices), OS-3.9 (Hydrologic Impact of the Conversion of Hillside Rangeland to Cultivated Croplands), OS-5.16 (Biological Report Requirements), OS-5.24 (Wildlife Corridor/Linkages and the addition of an illustrative wildlife corridor map to the 2010 General Plan); and Chapter 9-J Agricultural Winery Corridor Plan (“AWCP”) and Glossary.
9. All policies of the General Plan have been reviewed by the Planning Department staff and the County Counsel’s Office to ensure that the proposed amendments maintain the compatibility and internal consistency of the General Plan.
10. An Addendum to the certified FEIR (Addendum No. 3”) has been prepared pursuant to Section 15164 of the CEQA Guidelines because substantial evidence in the record show that he conditions requiring a Subsequent Environmental Impact Report (“EIR”) or Supplement to an EIR do not exist.
11. A public hearing was scheduled before the Planning Commission on February 25, 2015 at 10:30 to consider the proposed amendments and the Addendum No. 3, and make appropriate recommendations to the Board of Supervisors. At least 10 days before the public hearing, notices of the hearing before the Planning Commission were set to be published in the Herald and mailed to interested parties. On Thursday, February 18, 2015 the Herald disclosed that, although the notice to be published had been received properly, it had not published the notice and therefore the hearing of February 25, 2015 was opened and continued to March 11, 2015, for consideration.
12. Prior to making recommendations on the General Plan amendments, the Planning Commission reviewed and considered the Addendum No. 3.

II. FINDINGS

The Planning Commission finds as follows:

- A. The above recitals are true and correct.
- B. There are no substantial changes proposed to the General Plan that will require major revisions to the FEIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects.
- C. There are no substantial changes that will occur with respect to the circumstance under which the General Plan is undertaken which will require major revisions of the FEIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects.
- D. There is no new information of substantial importance that shows any of the following
 - i. that the General Plan will have one or more significant effect not discussed in the FEIR;
 - ii. Significant effects previously examined will be substantially more severe than shown in the FEIR;
 - iii. Mitigation measures or alternatives previously found not to be feasible would in fact be feasible and would substantially reduce one or more significant effect of the General Plan, but the County declines to adopt the mitigation measure or alternative; or
 - iv. Mitigation measures or alternatives which are considerably different from those analyzed in the FEIR would substantially reduce one or more significant effect on the environment, but the County declines to adopt the mitigation measure or alternative.

III. DECISION

NOW, THEREFORE, BE IT RESOLVED by the Monterey County Planning Commission that the Planning Commission recommends to the Monterey County Board of Supervisors:

- I. That the Board of Supervisors consider the Addendum No. 3 to FEIR #07-01, SCH#2007121001, attached hereto as Exhibit A: and

- II. That the Board of Supervisors adopt the amendment to the 2010 Monterey County General Plan set forth in Exhibit B, attached hereto.

PASSED AND ADOPTED this 11 day of March, 2015 upon motion of Commissioner _____, seconded by Commissioner _____, by the following vote, to-wit:

AYES:
NOES:
ABSENT:

By _____

EXHIBIT D
DRAFT ADDENDUM NO. 3

EXHIBIT D

Addendum No. 3 to Final Environmental Impact Report # 07-01, SCH#2007121001 Pursuant to California Environmental Quality Act Guidelines Article 11, Section 15164 and Addendum No. 1

1. Introduction

On October 26, 2010, by Resolution Nos.10-291 and 13-028, the Monterey County Board of Supervisors adopted the 2010 Monterey County General Plan (“General Plan”), certified the Final Environmental Impact Report #07-01, SCH #2007121001 (“FEIR), and adopted findings, a Statement of Overriding Considerations and a Mitigation, Monitoring and Reporting Program and. As part of litigation settlements regarding the adoption of the General Plan and certification of the FEIR, amendments to General Plan Policies PS. 3-1 (relating to long term sustainable water supply), OS-3.5 (relating to Agriculture and the conversion of uncultivated land on slopes greater that 25%), OS-3.1 (relating to Best Management Practices regarding erosion control), OS-3.9 (relating to a program to address cumulative hydrologic impact of the conversion of hillside rangeland to cultivated croplands), OS-5.16 (relating to biological report requirements), OS-5.24 (relating to wildlife corridor/linkages and the addition of an illustrative wildlife corridor map to the 2010 General Plan); the Agricultural Winery Corridor Plan and the Glossary are being considered. The proposed amendments are set forth and discussed n Exhibits A & B to the staff report for this matter.

This technical addendum has been prepared pursuant to Article 11, Section 15164 of the California Environmental Quality Act guidelines “Guidelines”) to make minor technical changes to the project analyzed in the FEIR. None of the conditions described the Guidelines Section 15162 or 15163, calling for preparation of a subsequent EIR or supplement to an EIR, have occurred.

2. Scope and Purpose of this Addendum

This Addendum No. 3 describes whether any changes or additions are necessary to the FEIR as a result of the proposed amendments to the General Plan, or if any of the conditions described in Guidelines Section 15162 exist. Please see the attached memorandum from ICF International, incorporated herein by reference, that assesses the potential environmental impact from the adoption of the proposed amendments, and whether any changes to the FEIR are required.

3. Conclusion

As the ICF memorandum discloses, the proposed changes to the General Plan Policies, Agricultural Winery Corridor Plan and Glossary will not result in additional impacts or increases in the severity of impacts: the identification of feasible mitigation measures or alternatives that were previously identified as infeasible; or the identification of considerably different mitigation measures or alternatives than those disclosed or discussed in the FEIR. Accordingly, none of the conditions described in Guidelines Section 15162, requiring a Subsequent EIR, exist. This Addendum No. 3 is considered sufficient because it discloses the proposed amendments to the Monterey County 2010 General Plan, and provides an analysis regarding the lack of environmental impacts

FEIR #07-01 has been included as an attachment to the staff report and is available on the County's web site at

http://www.co.monterey.ca.us/planning/gpu/GPU_2007/FEIR_Information/FEIR_Information.htm



**ATTORNEY-CLIENT PRIVILEGE
PRELIMINARY/WORK IN PROGRESS**

TO: Les Girard, Monterey County Counsel's Office

FROM: Rich Walter, ICF International

CC: Terry Rivasplata, ICF International

DATE: February 13, 2015

RE: Potential Changes to Monterey County General Plan Policies PS-3.1, OS-3.1, OS-3.5, OS-3.9, OS-5.16, OS-5.24, and the Agricultural Winery Corridor Plan

This memorandum presents ICF's review of the potential CEQA implications of potential changes to certain Monterey County 2010 General Plan policies. Our review is limited to the potential for changes in environmental impacts due to policy changes relevant to the impacts disclosed in the certified EIR for the 2010 General Plan. Our review is based on our understanding of CEQA, the General Plan and the General Plan EIR (GPEIR). Our review does not constitute legal advice.

The key conclusions for each policy are presented below in underline.

Policy PS-3.1 - Potential Changes

Revisions to PS-3.1 include more detailed requirements for the County to make findings that Zone 2C has a long-term sustainable water supply (LTWS) out to 2030 that will not cause groundwater elevations to decline further or seawater to intrude further inland by 2030. The revisions also limit the rebuttable presumption (that there is a LTWS in Zone 2C) to uses consistent with the 2010 General Plan as amended through October 1, 2014. If the new requirements are not met, then there would be no presumption that there is a LTWS in Zone 2C and individual projects would need to demonstrate that they have a LTWS separate from the findings in the GPEIR.

The GPEIR found that there was a LTWS for development within Zone 2C through 2030. Existing Policy PS-3.1 established an assurance mechanism requiring study of water supply conditions every 5 years to make sure that the GPEIR findings about water supply impacts for 2030 remained appropriate over time. The proposed revisions would establish additional procedural requirements of how the County is required to provide assurances that the GPEIR findings remain correct and appropriate. The expansion of the assurance mechanism procedural requirements would not change the GPEIR findings and would only be more precise in how the assurances are made over time and thus would not result in new impacts to water supply not disclosed in the GPEIR.

Policy OS-3.1 - Potential Changes

The proposed revisions would change Policy OS- 3.1 to also require prevention and remediation of other effects of erosion such as sedimentation and water quality. The original policy required the County to prevent and repair erosion damage. One could argue that prevention and repair of erosion damage would already require prevention and remediation of other effects of erosion such as sedimentation and water quality. If anything, the revisions to the policy would require a greater amount of environmental protection – not simply repair, but also remediation - than the original language. As a result, the proposed revisions would not result in any new or substantially more severe impacts related to erosion, sedimentation or water quality compared to that disclosed in the GPEIR.

Policy OS- 3.5 - Potential Changes

The approved 2010 General Plan did not have a slope percentage limit on agricultural conversions but required a discretionary permit for conversions over 25 percent with specific conditions concerning alternative analysis, certain development design techniques, and minimization of development in unstable areas or where sewage disposal risks exist.

The proposed revisions would prohibit agricultural conversions on slopes over 25 percent except in the AWCP and Cachagua areas. In these areas only, agricultural conversions would be allowed on slopes up to 35 percent, subject to a use permit and the original policy requirements on alternatives, design techniques, and unstable slopes/sewage disposal constraints. In addition, the revisions would require the development design techniques to be included in an Agricultural Management Plan incorporating the BMPs in Policy OS-3.1, and the Program pursuant to OS-3.9. In addition, conversion permits would be limited to 100 acres per year, 15 acres per permit per year, and that conversions must be contiguous to already cultivated land.

These proposed revisions would be more restrictive on agricultural conversions than the original policy, by limiting agricultural conversions above 25% except in the two plan areas and by limiting conversions in the two plan areas to 35% slope or less.

The GPEIR estimated that there would be approximately 10,253 acres of conversion by 2030 and possibly 39,148 acres by 2092 based on historic trends. The GPEIR (in text and in Table AG-1) described that the most likely areas of agricultural conversions in the near to medium term (to at least 2030 and likely for several decades beyond 2030) are on land on which agriculture is allowed, with suitable soils, with access to water (especially in Zone 2C), with slopes less than 25%, but that some conversions could occur on more steep slopes during this period. A total of 21,375 acres within Zone 2C was identified as the most likely initial area of agricultural conversions which is more than double the estimate amount of conversion by 2030 and would likely accommodate potential conversions for several decades beyond 2030 (at the historic trend pace) but not all the GPEIR-identified potential conversion by 2092.

The proposed revisions would lower the amount of agricultural conversions on steep slopes. Out to 2030, the total amount of agricultural conversions with the proposed revisions is not expected to be substantially lower than analyzed in the GPEIR due to the availability of suitable lands on slopes less than 25 percent, but in certain local areas, conversions could be somewhat less due to the proposed slope restrictions. The GPEIR described that the pressure for conversions on steeper slopes could be greater at some point beyond 2030 presuming that the more near-term agricultural conversions are likely to mostly occur on slopes under 25 percent (where there are usually more suitable soils) especially in Zone 2C. Depending on long-term agricultural trends in the decades after 2030, the proposed revisions may also result in potentially less conversions overall than identified in the GP EIR with the greater restrictions on conversions on steep slopes. At some point when agricultural conversions have used the suitable lands in Zone 2C, then further agricultural conversions may depend on water availability on suitable lands outside Zone 2C where water supplies are more limited. If the extent of agricultural conversions is less than expected in the GPEIR, then the proposed policy would have less conversion-related impacts on biological resources, erosion, water supply and water quality. At any rate, the proposed revisions would not result in a greater amount of agricultural conversions than disclosed in the EIR. As such, the proposed revision would not result in new significant impacts or substantially more severe environmental impacts compared to what is disclosed in the GPEIR.

The proposed revisions would also require that only lands cultivated and irrigated on slopes over 25% that as of December 16, 2014 were permitted or otherwise allowed could continue to be cultivated and irrigated and that conversion without a permit would be considered a public nuisance subject to County enforcement. The County would also be required to prepare maps of all new cultivated slopes over 25% and 35% and all new permitted cultivation areas on slopes over 25%. These revisions are procedural in nature and should not result in any new significant or substantially more severe environmental impacts than disclosed in the GPEIR.

The original policy included a ministerial permit process. The proposed revisions would exclude conversion on slopes between 15% and 25% in the North County Area Plan and the Cachagua Area Plan from the ministerial permit process and instead require a use permit and an Agricultural Management Plan. The proposed revisions also include language about not approving new use permits under this policy until ordinances implementing OS-5.16, OS-5.22, and OS-5.24 and related mapping and amendments are adopted. These revisions are procedural in nature and should not result in any new significant or substantially more severe environmental impacts than disclosed in the GPEIR. If anything, these changes might result in lower environmental impacts by requiring a discretionary permit in additional areas.

Policy OS- 3.9 - Potential Changes

The proposed revisions would only clarify the intent of the original policy language to address the potential cumulative hydrologic impacts of hillside agricultural conversions concerning erosion,

stream stability and water quality. As a result these revisions would not result in new significant impacts nor substantially more severe impacts than disclosed in the GPEIR.

Policy OS- 5.16 and OS-5.24 - Potential Changes

The proposed revisions to Policy OS-5.16 would require the biological study for discretionary projects with the potential to affect special-status species to also delineate wildlife corridor/linkages if the project is in the vicinity of a new Figure OS-1 showing general wildlife corridor/linkages (Figure OS-1 is also a revision). The proposed revisions to Policy OS-5.16 would also require the associated ordinance to include design guidelines for development within identified wildlife corridors and linkages. These revisions would require an increased amount of attention to potential discretionary project impacts on wildlife corridors/linkages including additional attention to feasible design guidelines and mitigation measures for potential significant impacts to wildlife corridors/linkages.

The proposed revisions to Policy OS-5.24 would add requirements for a corridor survey if a discretionary project was in the vicinity of the new Figure OS-1 or the biological study done in compliance with the revised Policy OS-5.16 indicates a wildlife corridor or linkage exists in the vicinity of the project. The corridor survey will be required to include mitigation recommendations per the ordinance required under Policy OS-5.16 to *"retain a corridor/linkage of adequate size and quality to preserve the continued free movement of all wildlife occupying the habitat and using the corridor/linkage."* The proposed revisions to Policy OS-5.24 also require the use of wildlife friendly fencing to the extent allowed by law. The proposed revisions to Policy OS-5.24 would also require the County to engage a qualified wildlife consultant to make recommendations relative to the ordinances for OS-5.16 (Biological Study), OS-5.22 (Stream Setback Ordinance), and OS-5.24 (Wildlife Corridors) and the conservation strategy under OS-5.21 (Conservation Strategy) with regard to wildlife corridor/linkage issues and those recommendations shall be used for implementing these policy requirements with the final ordinance language the result of a collaborative process of the consultant and County staff. Finally, the proposed revisions to Policy OS-5.24 would establish interim procedures until the ordinance required by Policy OS-5.16 is adopted in terms of discretionary projects and wildlife corridor/linkages.

The existing Policy OS-5.24 already required the County to require discretionary projects to *"retain movement corridors of adequate size and habitat quality to allow for continued wildlife use based on the needs of the species occupying the habitat."* The proposed revisions to Policy OS-5.16 and OS-5.24 provide more detailed requirements of how the County is to proceed in including requirements concerning wildlife movement corridors/linkages, but do not change the intent of the original policy language which is to allow for "continued wildlife use based on the needs of the species occupying the habitat." If anything, the additional detailed requirements and procedures will result in a higher level of care when considering wildlife corridor/linkages related to discretionary projects which could lower the level of impacts to identified wildlife corridor/linkages and to biological resources overall. Since the original GPEIR analysis already presumed that the County

would fully implement Policy OS-5.24, the additional surety provided by the proposed revisions would not change the conclusions in the GPEIR in regard to impacts to biological resources. Furthermore, since the original GPEIR analysis already presumed full implementation of Policy OS-5.24, the proposed revisions would not result in additional impacts to other resource areas beyond that disclosed in the GPEIR (including to land use or agriculture, for example), as the revisions are designed to make sure that the intent of the original Policy OS-5.24 is fully realized but do not change that intent and thus would not change the assumed environmental outcome in the GPEIR. As a result these revisions would not result in new significant impacts nor substantially more severe impacts than disclosed in the GPEIR.

Agricultural Winery Corridor Plan (AWCP), 3.1 General Regulations - Potential Changes

The proposed revisions would delete stand-alone restaurants and inns as allowed facilities under the AWCP. This would limit the type of development allowed in the AWCP, which if anything would result in less development and less associated environmental impacts, such as traffic and groundwater use. As a result these revisions would not result in new significant impacts nor substantially more severe impacts than disclosed in the GPEIR.

Agricultural Winery Corridor Plan, 3.2 Allowed Uses - Potential Changes

The proposed revisions would eliminate winery-adjunct uses within the AWCP. This would limit the type of development allowed in the AWCP, which if anything would result in less development and less associated environmental impacts. As a result, these revisions would not result in new significant impacts nor substantially more severe impacts than disclosed in the GPEIR.

Agricultural Winery Corridor Plan, 3.4, Permitted Uses, Administrative Permit Required - Potential Changes

The proposed revisions would delete stand-alone restaurants and inns as allowed facilities under the AWCP. This would limit the type of development allowed in the AWCP, which if anything would result in less development and less associated environmental impacts. As a result, these revisions would not result in new significant impacts nor substantially more severe impacts than disclosed in the GPEIR.

Agricultural Winery Corridor Plan, 3.5 Development Standards - Potential Changes

The proposed revisions would further limit the amount of subdivision of "Small" Lots that are smaller than the zoning minimum parcel size, but 5 acres or larger. The revisions would limit the use of the exception to once per property whereas the existing policy could be interpreted to allow for serial small lot creation. In addition, the proposed revisions would limit the overall amount of small lots within each segment of the AWCP to the number of wineries and/or tasting rooms allowed for that segment. The proposed revisions would only clarify the intent of the original

Mr. Les Girard, Monterey County
February 13, 2015
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policy language. As a result these revisions would not result in new significant impacts nor substantially more severe impacts than disclosed in the GPEIR.

Agricultural Winery Corridor Plan, Glossary - Potential Changes

The proposed revisions would delete the definitions of “agricultural land uses” and “winery, adjunct uses” because with the revisions to other parts of the AWCP, these definitions are not used anywhere in the amended AWCP. This would have no effect on environmental impacts. As a result these revisions would not result in new significant impacts nor substantially more severe impacts than disclosed in the GPEIR.

EXHIBIT E

**FEIR, APPROVING RESOLUTION, FINDINGS, STATEMENT OF
OVERRIDING CONSIDERATIONS, AND MITIGATION MONITORING
AND REPORTING PROGRAM**

ON-LINE AT

**[HTTP://www.co.monterey.ca.us/planning/gpu/GPU_2007/FEIR_Information/
FEIR_Information.htm](http://www.co.monterey.ca.us/planning/gpu/GPU_2007/FEIR_Information/FEIR_Information.htm)**

EXHIBIT F
SETTLEMENT AGREEMENT
LANDWATCH MONTEREY COUNTY

SETTLEMENT AGREEMENT

Landwatch Monterey County v. County of Monterey
(Monterey County Case No. M109434)

This Settlement Agreement ("Agreement") by and among Petitioner LandWatch Monterey County and Respondent County of Monterey ("County") (each a "Party" and collectively, the "Parties") is made effective on the date when all Parties have signed this Agreement ("Effective Date"). This Agreement is entered into by the Parties for the purpose of resolving the Case No. M109434 challenging the adoption by County of the 2010 Monterey County General Plan ("2010 General Plan") and certification of its associated environmental impact report ("EIR"), including a 2013 amendment to the 2010 General Plan and its associated Addendum No. 1 to the EIR.

RECITALS

- A. **WHEREAS**, Landwatch Monterey County is a non-profit corporation, organized and existing under the laws of, and qualified and doing business in, the State of California; and,
- B. **WHEREAS**, County is a public entity organized and existing under the laws of the State of California; and,
- C. **WHEREAS**, LandWatch Monterey County filed a Petition for Writ of Mandate and Complaint in the State of California Superior Court, County of Monterey against County on November 24, 2010 (Case No. M109434) (the "Litigation") generally challenging the adoption by County of the 2010 General Plan and certification of its associated EIR; and,
- D. **WHEREAS**, LandWatch Monterey County filed a supplemental petition to Case No. M109434 on March 21, 2013, generally challenging the adoption by County of an amendment to the 2010 General Plan and certification of its associated Addendum No. 1 to the EIR; and,
- E. **WHEREAS**, the Litigation is currently consolidated with the case *The Open Monterey Project v. Monterey County Board of Supervisors* (Case No. M109441, filed November 24, 2010) also generally concerning the adoption of the 2010 General Plan and 2013 amendment, and certification of the EIR and Addendum No. 1 (collectively, the "Consolidated Actions"); and,
- F. **WHEREAS**, the Parties to the Consolidated Actions have, through a series of stipulations, extended time to prepare and file the administrative record; and the parties have recently stipulated to suspend the briefing schedule and vacate the hearing date in order to engage in settlement negotiations; and,

SETTLEMENT AGREEMENT

LandWatch Monterey County v. County of Monterey
(Monterey County Case No. M109434)

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- G. **WHEREAS**, the County and LandWatch Monterey County have mutually agreed that settlement is the most efficient and practical way to resolve the Litigation, and now intend to settle the Litigation on the terms and conditions set forth in this Agreement; and,
- H. **WHEREAS**, the County and LandWatch Monterey County have negotiated in good faith and agreed to the terms of this Settlement Agreement, including the terms as set forth below and those set forth in Exhibit A to this Settlement Agreement in final form and with strikethrough and underline text to show changes from 2010 General Plan policies as adopted by the County on October 26, 2010, and as amended on February 12, 2013, and the terms set forth in Exhibit B to this Settlement Agreement;

SETTLEMENT PROVISIONS

NOW, THEREFORE, in consideration of the promises and mutual benefits of this Agreement and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1.0 General Provisions.

- 1.1 **No Admission of Liability.** This settlement is entered into by the Parties without any admission of fault, failing or liability by any Party.
- 1.2 **Recitals True and Correct.** The above recitals are true and correct and are incorporated by reference as a part of this Agreement.
- 1.3 **Mutual Consideration.** The Parties' commitments to abide by terms of this Agreement is mutual consideration.
- 1.4 **Term of Settlement.** This settlement shall be operative from its Effective Date until such time as the Parties fulfill their mutual obligations described in this Agreement.

2.0 Disposition of Litigation.

- 2.1 **Stay of Further Proceedings in Case No. M109434.** The Parties shall promptly request that the Monterey County Superior Court stay all further proceedings in Case No. M109434 and, pursuant to Code of Civil Procedure Section 664.6, that the Court retain jurisdiction over this case for the purpose of enforcing the obligations of the Parties in this Agreement. County shall prepare the appropriate pleadings for approval and signature by the Parties and make the filing with the Court.
- 2.2 **Conditional Settlement and Dismissal with Prejudice.** LandWatch Monterey County shall file a Notice of Conditional Settlement of Case No. M109434 in the Monterey

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County Superior Court immediately upon: (1) County's adoption no later than November 30, 2015 of the Agreed Amendments in Section 3; (2) County's preparation of a CEQA document containing the acknowledgments and recitations set forth in paragraph 1 of Exhibit B and its adoption of a resolution or ordinance containing the findings set forth in paragraph 1 of Exhibit B; and (3) expiration of a 45-day period from the County's posting of a Notice of Determination for the adoption of the Agreed Amendments without the filing of litigation by any party challenging the adoption of the Agreed Amendments or the findings set forth in paragraph 1 of Exhibit B, or, in the alternative, if such litigation is filed, entry of judgment in that litigation that is final for all purposes in favor of the County that upholds the validity of the Agreed Amendments and the findings set forth in paragraph 1 of Exhibit B (collectively, (1), (2) and (3) are the "Dismissal Conditions"). LandWatch Monterey County shall not be required to dismiss Case No. M109434 in the Monterey County Superior Court unless all of the Dismissal Conditions occur.

The Notice of Conditional Settlement shall advise the court that dismissal is expected to be filed within 60 days upon satisfaction of the condition that the County pay attorney fees and costs of suit.

Upon satisfaction of the Dismissal Conditions and the County's obligation to pay all of the attorney fees and costs of suit set out in paragraph 2.3.1 pursuant to the payment schedule set out in paragraph 2.3.2, LandWatch Monterey County shall promptly request that the court dismiss with prejudice Case No. M109434 in its entirety.

- 2.3 Attorney fees. County shall pay reasonable attorney fees and costs of suit to LandWatch Monterey County.
- 2.3.1 The Parties have determined that \$425,000 is a reasonable amount for attorney fees and costs. That amount shall be paid in accordance with the terms of this Agreement.
- 2.3.2 Attorney fees and costs shall be payable as follows:
- (a) County shall pay \$100,000 to the attorneys of record for LandWatch Monterey County within 60 days of the execution of this Settlement Agreement by the parties.
 - (b) If by the end of May 2015 the County has not adopted the Agreed Amendments and has not prepared and considered a CEQA document and adopted an ordinance or resolution in connection with the adoption of the Agreed Amendments each containing the acknowledgments, recitations, and findings

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set forth in paragraph 1 of Exhibit B, County shall pay to the attorneys of record for LandWatch Monterey County an additional \$100,000 no later than June 30, 2015.

- (c) If the Dismissal Conditions occur by January 15, 2016, LandWatch Monterey County shall file a Notice of Conditional Settlement pursuant to paragraph 2.2 and County shall pay to the attorneys of record for LandWatch Monterey County the remaining balance of the \$425,000 attorney fees and costs within 60 days of that filing.
- (d) If the first and second Dismissal Conditions in paragraph 2.2 occur but the third condition does not occur because litigation is filed challenging the adoption of the Agreed Amendments or the findings set forth in paragraph 1 of Exhibit B, and if that litigation is resolved with an entry of judgment that is final for all purposes in favor of the County that upholds the validity of the Agreed Amendments and the findings set forth in paragraph 1 of Exhibit B, or, in the alternative, if LandWatch Monterey County elects to dismiss Case No. M109434, then LandWatch Monterey County shall file a Notice of Conditional Settlement pursuant to paragraph 2.2 and County shall pay to the attorneys of record for LandWatch Monterey County the remaining balance of the \$425,000 attorney fees and costs within 60 days of that filing.

LandWatch Monterey County shall not be obligated to return any payments received pursuant to the payment schedule above and does not waive its entitlement to any payments in the event that the Dismissal Conditions do not occur.

- 2.3.3 The attorney fees stated in 2.3.1 represent a compromise amount. The County acknowledges that LandWatch Monterey County has asserted that its attorney fees significantly exceed this amount. Notwithstanding payment of the compromise attorney fees pursuant to this Agreement, LandWatch Monterey County does not waive or reduce its claim for full attorney fees and costs in this matter in the event that LandWatch Monterey County is not required to dismiss Case No. M109434 in the Monterey County Superior Court pursuant to paragraph 2.2.

3.0 Agreed Amendments and Other Actions.

- 3.1 County shall consider the amendments to the 2010 General Plan set out in Exhibit A (the "Agreed Amendments").

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- 3.1.1 The Agreed Amendments shall be processed in compliance with all applicable requirements in the California Public Resources Code, Government Code, Monterey County procedures and all other applicable laws for amending a general plan.
- 3.1.2 County shall consult with LandWatch Monterey County in good faith regarding the preparation of necessary legislative actions and environmental review for consideration of the Agreed Amendments. The final form and language for all proposed legislative actions shall be determined by County. Notwithstanding, LandWatch Monterey County shall have the right not to dismiss Case No. M109434 unless the Dismissal Conditions occur.
- 3.1.3 Environmental review for the Agreed Amendments shall be processed in compliance with CEQA.
- 3.1.4 It is the County's intent to consider the Agreed Amendments expeditiously and to take action by June 30, 2015. The County agrees to begin the process for considering the Agreed Amendments promptly following execution of this Agreement.
- 3.2 In addition to the adoption of the Agreed Amendments, County shall undertake and complete the actions set forth in Exhibit B (the "Other Actions").
- 3.3. Should any person or entity object to the Agreed Amendments or Other Actions or threaten to file litigation challenging the validity of the Agreed Amendments or Other Actions prior to the adoption of the Agreed Amendments, the Parties shall confer in good faith to determine effective responses to such objections and threats.
- 3.4 Should any person or entity file litigation, or should an administrative action be commenced by a federal or state administrative agency, challenging the validity of the Agreed Amendments or the Other Actions as may be adopted by the County pursuant to this Section 3, County shall use its best good faith efforts to defend against such litigation or administrative action. LandWatch Monterey County may request intervention in such litigation or administrative action.

In the event of such litigation, LandWatch Monterey County shall stipulate to hold Case No. M109434 in abeyance until such time as a final judgment is entered in superior court that does not uphold the validity of the Agreed Amendments and the findings set forth in paragraph 1 of Exhibit B.

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Should a final court or administrative order be entered nullifying or setting aside the adoption of the Agreed Amendments or the Other Actions, such act shall not constitute a default by any Party pursuant to this Agreement; however, the Parties shall confer in good faith to determine if different actions may be taken by County to implement the intent and purposes of this Agreement, including adopting General Plan amendments or taking other legislative or administrative action to effect the substance of the Agreed Amendments described in paragraph 3.1 and to implement the substance of the Other Actions. For example, if the Agreed Amendments are invalidated or set aside due to a judicial determination that the County failed to comply with CEQA in adopting them, the County shall consider readopting the amendments in compliance with CEQA.

4.0 Release of Claims.

- 4.1 Release by LandWatch Monterey County. LandWatch Monterey County intends and agrees that this Agreement shall, when fully implemented in accordance with the provisions hereof, be effective as a full and final accord and satisfaction and general release of and from all Released Claims, as described below. Upon occurrence of the Dismissal Conditions and the completion of the Other Actions, LandWatch Monterey County shall be conclusively deemed to have released the County, and its respective heirs, administrators, successors, assigns, agents, employees, officers, partners and directors (the "Released Parties") from all rights, actions, claims, debts, demands, costs, contracts, allegations, liabilities, obligations, demands, and causes of action, whether known, suspected, or unknown, at law or in equity, which LandWatch Monterey County now has or as of the Effective Date of this Agreement has against the Released Parties, or any of them, arising from or relating to certification of the Final EIR for the 2010 Monterey County General Plan and approval of the 2010 Monterey County General Plan as adopted by the Board of Supervisors on October 26, 2010, as amended on February 12, 2013, and as may be amended pursuant to Section 3 of this Agreement, including without limitation, all costs and attorney fees incurred by the Releasing Parties in, or arising from, such actions (collectively, the "Released Claims"). LandWatch Monterey County shall conclusively be deemed to have waived and relinquished to the fullest extent that it may lawfully do so, all rights and benefits afforded by Section 1542 of the Civil Code of the State of California ("Section 1542") which states as follows: "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR." This release does not extend

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to the right of each Party, including LandWatch Monterey County, to institute legal action to seek specific performance of the terms of this Agreement, or to cure, correct or remedy any Default, as set forth in Section 5.8. This release does not extend to the right of LandWatch Monterey County to institute an action at law or equity to set aside amendments to the County General Plan made subsequent to the Agreed Amendments or to set aside actions by the County to implement the County General Plan.

- 4.2 Understanding of Section 1542 Waiver. By executing this Agreement, LandWatch Monterey County assumes the risk that it is unaware of the subject matter of this Agreement, or is otherwise mistaken as to relevant facts, and acknowledge that it may discover facts in addition to or different from those that they now know or believe to be true concerning the Released Claims and other matters contained in or concerning this Agreement. Subject to Section 2.3, each Party nevertheless agrees and intends this Agreement to be a complete release of the Released Claims, and to settle all disputes and differences relating to the Released Claims, known or unknown, suspected or unsuspected, that have existed, now exist, or may now exist between or among LandWatch Monterey County and the Released Parties, unless as otherwise specifically set forth in this Agreement. Unless otherwise specifically set forth in this Agreement, LandWatch Monterey County waives any and all rights it has or may have under California Civil Code Section 1542 and/or any successor section to it with respect to the Released Claims. LandWatch Monterey County hereby acknowledges and represents that (a) it understands the significance and the consequences of such specific waiver of unknown claims and hereby assumes full responsibility for any injuries, damages, lawsuits or liabilities that they may incur, both now and hereafter, from the waiver of said unknown claims, (b) it may discover facts different from, or in addition to, those facts that it now knows or believes to be true, and agrees that this Agreement and the releases contained herein shall be and remain effective in all respects notwithstanding any such subsequent discovery of different or additional facts, (c) it has undertaken its own independent investigation of all of the facts relating to the matters being released herein and this Agreement, and in entering into this Agreement and granting the releases contained herein, are not relying on any representation, warranty, or statement of any other Party except as expressly set forth herein, and (d) this waiver is an essential and material term of this Agreement. Nevertheless, LandWatch Monterey County intends by this Agreement, and with and upon the advice of its own independently selected counsel, to release fully, finally and forever all Released Claims, unless as otherwise specifically set forth in this Agreement. In furtherance of such intention, the releases set forth in this Agreement shall be and shall remain in effect as full and complete releases notwithstanding the

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discovery or existence of any such additional or different claims or facts relevant hereto, unless as otherwise specifically set forth in this Agreement.

5.0 Enforcement, Default and Remedies.

- 5.1 Mutual Desire to Avoid Further Litigation and Jurisdiction to Enforce Settlement. The Parties have entered this Agreement for the purpose of avoiding litigation. Enforcement of this Agreement is to be brought solely through the procedures set forth in this section, which are designed to avoid resorting to court enforcement in the first instance, and, if resort to court is necessary, to provide simple, straightforward and predictable relief.
- 5.2 Court Retains Jurisdiction Over Settlement. The Parties shall stipulate that the Monterey County Superior Court retain jurisdiction of this case for the purpose of enforcing the mutual promises of this Agreement.
- 5.3 Default. Failure by any Party to perform any obligation hereunder within the time periods provided herein following notice and failure to cure as described hereafter, constitutes a "Default" under this Agreement. The Parties agree that time is of the essence in the performance by LandWatch Monterey County and the County of their respective obligations under Sections 2.0 and 3.0 hereof.
- 5.4 Opportunity to Cure Alleged Default. A Party alleging a Default shall give written notice of Default to the other Party specifying in reasonable detail the nature of the alleged Default and, where appropriate, the manner in which the alleged default satisfactorily may be cured; offer to meet and confer in a good faith effort to resolve the issue; and provide the other Party sixty (60) days to cure the alleged Default commencing at the time of receipt of the notice of a properly detailed written Default notice.
- 5.5 Mediation. If an alleged default in performance has not been cured during the 60-day period provided in Section 5.4, any Party may request that the dispute first be submitted to mediation prior to judicial enforcement. The Party requesting mediation will pay for the services of the mediator. If mediation is requested by any Party, all Parties shall make a good faith effort to first resolve through mediation any dispute about another Party's alleged default in performance. If the Parties cannot agree on the identity of the mediator, the judicial officer shall designate the mediator. The Parties will commence mediation within fifteen (15) days after notice of the mediation and designation of the mediator and shall conclude mediation within 45 days after commencement. Each Party shall bear its own fees and costs relating to the mediation.

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- 5.6 **Effect of Modification of County's Powers.** In addition to specific provisions of this Agreement, performance by the County hereunder shall not be deemed to be in Default if the County's powers are modified by state or federal legislation, or otherwise, in any way that precludes the County from performing its obligations under this Agreement as a matter of law, provided that the County did not instigate, promote, accommodate, encourage, request, or otherwise participate in the modification of the County's powers.
- 5.7 **Extraordinary Financial Situations.** The County's financial obligations under this Agreement, which include but are not limited to funding and carrying out environmental review, amending the general plan, undertaking the study pursuant to General Plan Policy PS-3.1 as amended, and paying attorney fees and costs under the terms of this Agreement, may be suspended in the extraordinary financial circumstances defined hereunder:
- 5.7.1 An extraordinary financial situation has been formally declared by the Board of Supervisors such that performing its obligations under this Agreement would necessarily result in a violation of the financial covenants the County has made to its creditors and lienholders in return for the extension of credit in the form of bonds, loans, letters of credit and other forms of financing necessary to maintain the County's overall financial stability.
- 5.7.2 "Extraordinary financial situation" as used in this Section means circumstances that include, but are not limited to, the type of financial circumstances that County may experience in a formally declared state of fiscal emergency following natural disasters such as a major earthquake or fire; or other extraordinary events.
- 5.7.3 Upon the conclusion of these extraordinary circumstances, the County will promptly resume performance of its financial obligations under this Agreement. The County shall pay interest on the unpaid amounts of attorney fees and costs. The interest shall be at the legal rate, and shall run from the date on which the payment was due under this Agreement.
- 5.8 **Institution of Legal Action.** In addition to any other rights or remedies and subject to the restrictions otherwise set forth in this Agreement, after expiration of the cure period provided in Section 5.4, any Party may institute an action at law or equity to seek specific performance of the terms of this Agreement, or to cure, correct or remedy any Default. The rights and obligations of any non-breaching Party shall not be affected by the institution of a legal action alleging breach against another Party. In the event of any action to enforce this Agreement, whether by judicial or non-judicial

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means, the prevailing party shall be entitled to recover from the other party its attorney fees, expenses, and any related court costs. Nothing in this Agreement shall bar LandWatch Monterey County from instituting an action at law or equity to set aside amendments to the County General Plan made subsequent to the Agreed Amendments or to set aside actions taken by the County to implement its General Plan.

- 6.0 Representations and Warranties:** Each of the Parties represents, warrants, and agrees only as to itself as follows:
- 6.1 Each individual signing this Agreement on behalf of a Party represents and warrants that the individual has the right, power, legal capacity, and authority to do so, and that no further approval or consent of any person, officer, board of directors or other person or entity is necessary.
 - 6.2 Each Party has received independent legal advice from its attorneys with respect to the advisability of making the settlement provided for herein, and with respect to the advisability of executing this Agreement. Each Party has been fully advised by its attorneys with respect to its rights and obligations under this Agreement and understands those rights and obligations.
 - 6.3 No Party (nor any director, officer, member, manager, partner, trustee, agent, employee, representative or attorney of or for any other Party) has made any statement or representation to the other Party regarding any fact such other Party relied upon in entering into this Agreement, and such other Party is not relying on any statement, representation or promise, written or oral, of any other Party (or of any director, officer, member, manager, partner, trustee, agent, employee, representative or attorney for any other Party) in executing this Agreement, or in making the settlement provided for herein, except as otherwise expressly stated in this Agreement.
 - 6.4 Prior to the execution of this Agreement, each Party and each Party's legal counsel have made such investigation of the facts and inquiries each Party deemed necessary or desirable pertaining to this settlement, this Agreement and all the matters pertaining thereto.
 - 6.5 Each Party or responsible director, officer, member, manager, partner, trustee or attorney thereof has read this Agreement and understands the contents hereof. Each director, officer, member, manager, partner, trustee or attorney executing this Agreement on behalf of each Party is empowered to do so and thereby to bind such Party.

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- 6.6 Except as otherwise expressly represented, warranted or provided in this Agreement, each Party assumes the risks that (i) it may hereafter discover facts in addition to or contrary to those it believed to exist or relied upon in entering into this Agreement, including, without limitation, unknown or unanticipated claims which, if known by such Party on the Effective Date may have materially affected such Party's decision to execute this Agreement, (ii) it may have mistakenly understood matters relevant to entering into this Agreement and (iii) another Party may have negligently misrepresented or negligently failed to disclose facts in connection with the entering into of this Agreement. Notwithstanding any such unknown or unanticipated claims, misunderstandings, mistakes, negligent misrepresentations or negligent nondisclosures, each Party intends that this Agreement thereafter shall continue in full force and effect and shall not be subject to rejection or rescission for any reason, provided that such Party reserves all rights provided for in this Agreement.
- 6.7 Each Party is aware that it may hereafter discover claims or facts in addition to or different from those it now knows or believes to be true with respect to the matters related herein. Nevertheless, it is the intention of each Party to assume the risk that claims or facts now known or thought to be true may later be found to be different and to fully, finally and forever settle and release all of the Released Claims, unless as otherwise specifically set forth in this Agreement. In furtherance of such intention, the releases given herein shall be and remain in effect as full and complete mutual releases of all such matters unless as otherwise specifically set forth in this Agreement, notwithstanding the discovery or existence of any additional or different claims or facts relative thereto. This settlement shall not be subject to termination, rescission or modification by reason of any such change in claims or facts or knowledge of claims or facts.
- 6.8 Each Party shall execute all such further and additional documents as shall be reasonable, convenient, necessary or desirable to carry out the provisions of this Agreement.
- 6.9 Each Party acknowledges it has carefully read and fully understands all of the provisions of this Agreement and that such Party is entering into this Agreement voluntarily.
- 6.10 Each Party acknowledges that it is within the contemplation of each of the Parties to this Agreement that each of them may have claims for relief or causes of action for malicious prosecution or abuse of process in connection with the filing of claims for relief, causes of action, counterclaims, or cross-complaints in the Litigation and matters undertaken in connection therewith; and that it is the intention of the Parties

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to this Agreement to release any such claims, to deny that any malicious prosecution of actions or abuse of process has occurred, and to represent and agree that the filing of all claims for relief, causes of action, counterclaims, or cross-complaints in the foregoing Litigation were done pursuant to the advice of legal counsel and upon probable cause.

7.0 General Provisions.

- 7.1 **Governing Law.** This Agreement shall be governed by and interpreted and construed in accordance with the laws of the State of California.
- 7.2 **Construction.** This Agreement shall in all cases be construed according to its fair and plain meaning, and not strictly for or against any of the Parties. As used in this Agreement, the masculine or neuter gender and single or plural numbers shall be deemed to include the others wherever the context so indicates or requires. Nothing in this Agreement shall be deemed to restrict the County's land use authority or police power in any way with respect to future legislative, administrative or other actions by the County.
- 7.3 **Entire Agreement.** This Agreement constitutes the entire agreement and ~~understanding of the Parties hereto with respect to the subject matter contained~~ herein. All prior agreements or understandings, oral or written, are merged into this Agreement and are of no further force or effect.
- 7.4 **Computation of Time.** The time in which any act is to be done under this Agreement is computed by excluding the first day, and including the last day, unless the last day is a holiday or Saturday or Sunday, and then that day is also excluded. The term "holiday" shall mean all holidays as specified in Sections 6700 and 6701 of the California Government Code. If any act is to be done by a particular time during a day, that time shall be Pacific Time Zone time.
- 7.5 **Counterparts.** This Agreement may be executed in counterparts and by facsimile or electronic signatures, and when joined together, all counterparts shall constitute one agreement, which shall be binding on all of the Parties, even though all signatures may not be on one original or the same counterpart.
- 7.6 **Amendment.** This Agreement may only be modified or amended by a written amendment thereto executed by all of the Parties. The Parties acknowledge that, due to the long term nature of the proposed general plan amendments represented by the policies contained in Exhibit A, it may be necessary and/or appropriate at some time in the future, or from time to time, for the Parties to execute additional documentation

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to clarify and implement the provisions of this Agreement. Each Party agrees to cooperate in good faith to negotiate and enter into such various additional documentation as may be determined to be reasonably necessary and/or appropriate by the Parties. Modifications to the terms of this Agreement are permissible, so long as such actions are agreed to by all of the Parties.

- 7.7 No Admission. Neither the acceptance nor execution of this Agreement constitutes an admission of liability by any Party, nor shall it be construed as such.
- 7.8 Notice. Any notice, request, claim, demand or other communication required hereunder ("Notice") shall be in writing and shall only be effective upon delivery in person, by overnight courier with receipt requested, by facsimile transmission with confirmation of transmission or by registered or certified mail (postage pre-paid, return receipt requested) to the Party designated for receipt of the Notice upon such Party's actual receipt of the Notice.

To County:

Charles J. McKee, County Counsel and
Leslie J. Girard, Chief Assistant County Counsel
168 W. Alisal St.
Salinas, CA 93901
(831) 755-5045
(831) 755-5365 (facsimile)

To LandWatch Monterey County:

John Farrow
M. R. Wolfe & Associates, P.C.
1 Sutter Street, Suite 300
San Francisco, CA 94104
(415) 369-9400
(415) 369-9405 (facsimile)

- 7.9 Successors and Assigns. This Agreement shall inure to the benefit of and be binding upon the Parties, and their respective heirs, administrators, successors, assigns, agents, employees, officers, partners and directors. Nothing in this Agreement, express or implied, is intended to confer upon any person, other than the Parties or their respective successors and assigns, any rights or benefits under or by reason of this Agreement.

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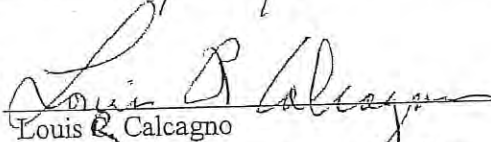
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- 7.10 No Waiver. The failure of any Party to enforce any of its rights arising by reason of any breach of covenant on the part of any other Party will not constitute a waiver of such breach. No custom or practice which exists or arises between or among the Parties in the course of administering this Agreement will be construed to waive any Party's rights to (1) insist upon the performance by any other Party of any covenant in this Agreement or (2) exercise any rights given it on the account of any breach of such covenant. A waiver of any particular breach will not be deemed to be a waiver of same or any other subsequent breach.
- 7.12 Exhibits. Exhibit A and Exhibit B, attached hereto, shall be incorporated in this Agreement as if set forth in full herein.
- 7.13 Headings. The descriptive headings used in this Agreement are for convenience only and shall not affect the meaning of any provision of this Agreement.
- 7.14 Cooperation. Each Party agrees to cooperate with the other in implementation of this Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date set forth above.

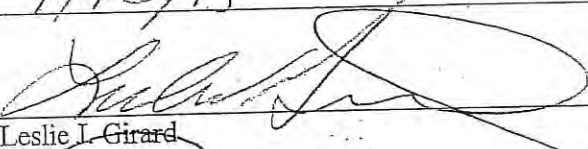
COUNTY OF MONTEREY

Date: 1/12/15

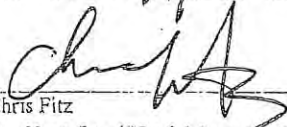
By: 
Louis R. Calcagno
Chair, Monterey County Board of Supervisors

APPROVED AS TO FORM

Date: 1/12/15

By: 
Leslie J. Girard
Chief Assistant County Counsel

LANDWATCH MONTEREY COUNTY

Date: 1/9/15
By: 
Chris Fitz
President, LandWatch Monterey County Board of Directors

APPROVED AS TO FORM

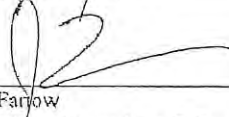
Date: 1/8/15
By: 
John H. Farlow
M.R. Wolfe and Associates, P.C.

Exhibit A to Settlement Agreement
Agreed Amendments

Amend PS-3.1 as follows:

PS.3-1: Except as specifically set forth below, new development for which a discretionary permit is required, and that will use or require the use of water, shall be prohibited without proof, based on specific findings and supported by evidence, that there is a long-term, sustainable water supply, both in quality and quantity to serve the development.

This requirement shall not apply to:

- a. the first single family dwelling and non-habitable accessory uses on an existing lot of record; or
- b. specified development (a list to be developed by ordinance) designed to provide: a) public infrastructure or b) private infrastructure that provides critical or necessary services to the public, and that will have a minor or insubstantial net use of water (e.g. water facilities, wastewater treatment facilities, road construction projects, recycling or solid waste transfer facilities); or
- c. development within Zone 2C of the Salinas Valley groundwater basin, provided the County prepares or causes to be prepared a study for the Board of Supervisors regarding Zone 2C, to be completed no earlier than October 31, 2017 and no later than March 31, 2018 that does the following:

- 1) evaluates existing data for seawater intrusion and groundwater levels collected by Monterey County Water Resources Agency as of the date the study is commenced;
- 2) evaluates the total water demand for all existing uses and future uses designated in the General Plan EIR for the year 2030;
- 3) assesses and provides conclusions regarding the degree to which the total water demand for all uses designated in the General Plan for the year 2030 are likely to be reached or exceeded;
- 4) evaluates on an annual basis during the study period groundwater elevations and the seawater intrusion boundary;

SETTLEMENT AGREEMENT – Exhibits A and B

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- 5) based on historical data and the data produced by the study, evaluates and provides conclusions regarding future trends and any expected movement of groundwater elevations and the seawater intrusion boundary;
- 6) should the study conclude that i) total water demand for all uses designated in the General Plan for the year 2030 is likely to be exceeded; or ii) groundwater elevations are likely to decline by the year 2030 and iii) the seawater intrusion boundary is likely to advance inland by the year 2030, the study shall make recommendations on measures the County could take to address any or all of those conditions; and
- 7) addresses such other matters as the Board of Supervisors determines are appropriate.

Within two months following the completion of the study, the Board of Supervisors shall hold an open and noticed public hearing on the results of the study. If the study reaches the conclusions for Zone 2C identified in subsection 6) i or 6) ii and 6) iii, the Board of Supervisors shall adopt one or more measures identified in the study, or other appropriate measures, to address the identified conditions. This exception for Zone 2C shall be a rebuttable presumption that a Long Term Sustainable Water Supply exists within Zone 2C, and the presumption shall remain in effect until and unless the study reaches the conclusion for Zone 2C identified in subsection 6) i or 6) ii and 6) iii. Development in Zone 2C shall be subject to all other policies of the General Plan and applicable Area Plan. The rebuttable presumption shall apply only to uses consistent with the 2010 General Plan as amended through October 1, 2014.

Unless the public hearing required by this policy is commenced and concluded within two months following the presentation of the study to the Board of Supervisors, then effective 60 days following the presentation of the study to the Board of Supervisors there shall no longer be a rebuttable presumption of a long term sustainable water supply for development in Zone 2C. This means that the exception in subsection c shall no longer apply, unless otherwise required by law, and the rebuttable presumption shall apply only to projects for which the County has determined the

SETTLEMENT AGREEMENT – Exhibits A and B

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application to be complete and so advised the applicant and for which a public hearing has been noticed.

Within fourteen days of the conclusion of the public hearing required by this policy, or if there is no regularly scheduled meeting of the Board of Supervisors in that fourteen day period, at the next regularly scheduled meeting, the Board of Supervisors shall adopt findings based on substantial evidence as to whether any of the conditions identified in subsections 6.i, ii, and iii (the “Conditions”) are likely to occur by 2030. Only if the Board of Supervisors finds that none of the Conditions are likely to occur by 2030, may it find that there is a rebuttable presumption that a long-term sustainable water supply exists within Zone 2C through 2030 and make the discretionary decision to continue to except development within Zone 2C from the requirement under this Policy to provide proof, based on specific findings supported by evidence, that there is a long-term sustainable water supply. If the Board of Supervisors finds that any of the Conditions are likely to occur by 2030, new development within Zone 2C shall not be excepted from the requirement to provide proof of a long-term sustainable water supply, and there shall no longer be a presumption of a long-term sustainable water supply for development in Zone 2C except as required by law.

Unless the Board of Supervisors finds that none of the Conditions are likely to occur by 2030, the Board shall within nine months of the conclusion of the public hearing adopt, or find that other agencies have adopted, a program (“Program”) committing the County or those agencies to adopt measures that, based on substantial evidence, are sufficient to avoid and prevent by 2030 each of the Conditions that the Board of Supervisors has found are likely to occur by 2030. Unless, at the time of the adoption of the Program identified in the prior sentence, the Board of Supervisors finds based on substantial evidence that capital projects will be funded and constructed in order to avoid and prevent by 2030 each of the Conditions that are found by the Board likely to occur by 2030, the County shall adopt, or find that other agencies have adopted, other sufficient measures (“Other Measures”) as authorized by law to avoid and prevent all those conditions by 2030. As required and authorized by this General Plan and consistent with the intent and purposes of state law, including but not limited to the 2014 Sustainable Groundwater Management Act, the County shall take a

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proactive role in planning for a long-term sustainable water supply in Zone 2C. As required by Policy PS-3.7, and as may be required after the first 5-year assessment of Zone 2C water conditions in 2015 pursuant to Policy PS-3.15, the County shall by March 31, 2016 initiate, pursue, and support the identification and necessary planning for strategies, water supply projects, water management efforts, and multiple agency agreements that may be implemented as part of the Program or Other Measures. The County shall initiate this planning effort by March 31, 2016 and pursue and support it until completion of the study required by this policy to ensure that, should it be necessary to adopt a Program or Other Measures in response to the findings required by this Policy, the County and/or other agencies shall be able to define and adopt the Program or Other Measures, and to conduct necessary environmental review at the programmatic level within one year of those findings.

Following completion of the study described herein, and the adoption of measures as may be recommended in the study, if any, the County shall prepare a report to the Board of Supervisors ~~every five (5) years~~ for Zone 2C that examines the degree to which a) total water demand for all uses predicted in the General Plan EIR for year 2030 will be reached; or b) groundwater elevations, the seawater intrusion boundary have changed since the prior reporting period; and c) other sources of water supply are available.

Amend OS-3.5 (2) as follows:

OS-3.5

(2) Agricultural. ~~Conversion of uncultivated land to cultivated land on slopes greater than 25% shall be prohibited except as follows:~~

a) Conversion of uncultivated land to cultivated land on slopes greater than 25% shall be prohibited, except as stated in subdivision b.

b) In the Agricultural and Winery Corridor Plan area (“AWCP”) and the Cachagua Plan area (“Cachagua”) only, conversion on slopes between 25% and 35% may be permitted pursuant to a use permit. In order to avoid the degradation of on-site and off-site natural resources, the use permit process shall:

1. Evaluate possible alternatives that better meet the goals and policies of the general plan.

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2. Identify and require an Agricultural Management Plan including development and design techniques for erosion control, slope stabilization, visual mitigation, drainage, and construction techniques, incorporating the Best Management Practices developed pursuant to Policy OS-3.1 and the Program developed pursuant to Policy OS-3.9.
3. Minimize development in areas where potentially unstable slopes, soil and geologic conditions, or sewage disposal pose substantial risk to public health and safety.
4. Limit such conversion permits as follows:
 - a. Maximum of 100 acres per year for both the AWCP and Cachagua combined, with no rollover of unconverted acres.
 - b. Maximum of fifteen (15) acres per permit per year per applicant, and
 - c. Land must be contiguous to already cultivated land.
- c) Only lands cultivated and irrigated on slopes over 25% as of December 16, 2014 for which cultivation and irrigation were permitted or otherwise allowed by law may continue to be so cultivated and irrigated.
- d) Conversion without a permit shall be considered a continuing public nuisance and may be enforced through a cause of action brought by any private party. The County retains and shall use its authority to enforce violations.
- e) The County shall annually prepare and release to the public a map showing all new cultivation of slopes over 25% in the County and, separately indicated, all new cultivation of slopes over 35%. The County map shall show all new cultivation that is identifiable from publicly available crop and land cover data, such as the USDA's National Agricultural Statistics Service Cropscape Cropland Data Layer. The map also shall identify all permitted conversions and delineate the boundaries of each conversion permit, by permit number.
- f) A ministerial permit process shall be developed by ordinance and implemented for conversion of lands that have not been cultivated for the previous 30 years on slopes (i) between 15 and 25 percent (15-25%) except land in the North County Area Plan and Cachagua Area Plan, and (ii) between 10 and 15 percent (10-15%) on highly erodible soils. The permit processes shall be designed to require that an erosion control plan be developed and implemented that assures slope stabilization and prevents

drainage and flood hazards, and to prevent potentially significant impacts to wildlife corridors and linkages.

g) Conversion of slopes between 15% and 25% (15-25%) in the North County Area Plan and Cachagua Area Plan shall require a use permit and an Agricultural Management Plan.

h) The County shall retain existing requirements for an Agricultural Management Plan for each use permit for conversions as currently set forth in County Code section 21.66.030 (as of Oct. 26, 2010).

i) The County shall not approve permits pursuant to this policy OS-3.5(2) until the County has adopted ordinance(s) implementing OS-5.16, OS-5.22, and OS-5.24, Figure OS-1, a Program developed pursuant to OS-3.9, and conforming amendments to Zoning Code section 21.66.030.

Amend OS-3.1 as follows:

Best Management Practices (BMPs) to prevent and repair erosion damage and to prevent and remediate other effects of erosion such as sedimentation and water quality impacts; shall be established and enforced by the County.

Amend OS-3.9 as follows:

The County shall develop a Program to address the potential cumulative hydrologic impacts of the conversion of hillside rangeland areas slopes to cultivated croplands. The Program shall be designed to ~~avoid or minimize:~~

- a) avoid or minimize off-site soil erosion,
- b) avoid or minimize increased runoff, runoff-related stream stability impacts, and sedimentation impacts, and
- c) meet adopted water quality standards.

The County shall convene a committee comprised of county staff, technical experts (including staff of the Natural Resources Conservation Service), and stakeholders to develop the Program, including implementation recommendations. This program shall be adopted within five (5) years of adoption of the General Plan.

Amend OS-5.16 as follows:

A biological study shall be required for any development project requiring a discretionary permit and in the vicinity of a wildlife corridor/linkage as illustrated in Figure OS-1 or having the potential to substantially reduce the habitat of a fish or wildlife species, cause a fish or wildlife population to drop below self-sustaining levels, threaten to eliminate a plant or animal community, or substantially reduce the number or restrict the range of an endangered, rare, or threatened species, or degrade a wildlife movement corridor/linkage. An ordinance establishing minimum standards for a biological study and biological surveys shall be enacted. A biological study shall include field reconnaissance performed at the appropriate time(s) of year. Based on the results of the biological study, corridor surveys may be necessary to identify, describe, and delineate the habitats, wildlife movement corridors or linkages, or species that potentially could be impacted. The ordinance shall specify when a corridor survey is required and the minimum requirements for a corridor survey. The ordinance shall include design guidelines for development within corridors and linkages, including but not limited to: standards for design, landscaping, lighting, site layout including structures, and fencing. Said ordinance shall be adopted within 12 months of the adoption of this policy. Feasible measures to reduce significant impacts to a less than significant level shall be adopted as conditions of approval.

Amend OS-5.24 as follows:

In order to preserve the functionality of existing wildlife corridors/linkages, and to promote and facilitate wildlife movement corridors/linkages, if Figure OS-1 or a biological study discloses evidence that a wildlife corridor or linkage exists in the vicinity of a project, a corridor survey shall be required to identify the boundaries of the movement corridor or linkage with respect to the project site. The corridor survey shall include mitigation recommendations from the ordinance required to be adopted pursuant to Policy OS-5.16 to retain a corridor or linkage of adequate size and quality to preserve the continued free movement of all wildlife based on the needs of the species occupying the habitat and using the corridor or linkage. The County shall require the use of wildlife friendly fencing to the extent allowed by law. The County shall require discretionary projects to retain movement corridors of adequate size and habitat quality to allow for

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~~continued wildlife use based on the needs of the species occupying the habitat. The County shall require that expansion of its roadways and public infrastructure projects provide movement opportunities for terrestrial wildlife and ensure that existing stream channels and riparian corridors continue to provide for wildlife movement and access.~~

Figure OS-1 shows the general location of some of the wildlife movement corridors/linkages in Monterey County. Figure OS-1 is illustrative only. The County shall engage a qualified wildlife consultant to make recommendations as to the implementing ordinances for OS-5.16, OS-5.22 and OS-5.24, and the conservation strategy required by OS-5.21, with regard to wildlife corridor/linkage issues. The County shall use the wildlife consultant's map as the basis of Figure OS-1 of the General Plan. The County shall use the consultant's recommended protections as the primary basis of the implementing ordinances for OS-5.16, OS-5.22 and OS-5.24 and the conservation strategy required by OS-5.21, and the final ordinance language shall be the result of a collaborative process of the consultant and County staff.

Until the ordinance required by Policy OS-5.16 is adopted, if Figure OS-1 or a biological study discloses evidence that a wildlife corridor or linkage exists in the vicinity of a project, the corridor survey shall make recommendations for design based upon best practices related to the needs of the species occupying the habitat and species using the corridor or linkage, and the County's wildlife consultant shall review and research the application and make recommendations within the scopes of Policy OS-5.16 and this Policy OS-5.24, and such projects may only be approved if the contents of those recommendations are adopted as conditions of approval. Until Figure OS-1 is adopted, the County's wildlife consultant shall review and research each application and make recommendations. If the ordinance required by Policy OS-5.16 is not adopted within 12 months of adoption of this policy, no permits for projects requiring a corridor survey and mitigation recommendations shall be approved until the implementing ordinance is adopted.

This policy shall not apply retroactively to projects constructed legally.

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Amend Agricultural Winery Corridor Plan as follows:

3.1 GENERAL REGULATIONS

The number of facilities allowed to be processed under this Plan shall be as follows:

- A. *Artisan Winery*: A maximum of 40 new artisan wineries as follows:
 - 1. River Road Segment; up to 24;
 - 2. Metz Road Segment; up to four (4); and
 - 3. Jolon Road Segment; up to 12.

- B. *Full-Scale Winery*: a maximum of 10 new full-scale wineries as follows:
 - 1. River Road Segment; up to five (5);
 - 2. Metz Road Segment; up to two (2); and
 - 3. Jolon Road Segment; up to three (3).

- C. *Winery Tasting Rooms*; a maximum of 10 new, stand-alone, facilities as follows:
 - 1. River Road Segment; up to five (5);
 - 2. Metz Road Segment; up to two (2); and
 - 3. Jolon Road Segment; up to three (3).

- D. ~~*Restaurant*. A total of three (3) new restaurants with no more than one restaurant per segment.~~

- E. *Delicatessen*. A total of five (5) new delicatessens on the same site as a winery with no more than three (3) delicatessens within the River Road Segment and no more than one (1) delicatessen within each of the remaining two segments.

- F. ~~*Inns*. A maximum of eight (8) new Inns as follows:
 - 1. River Road Segment; up to five (5);
 - 2. Metz Road Segment; one (1); and
 - 3. Jolon Road Segment; up to two (2).~~

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- ~~GE.~~ *Business Cluster.* One consolidated area may be identified for an overlay designation where a cluster of wine industry related businesses (bottle and cork production, label design, etc.) may develop. This business center should be located near an urban area with adequate facilities. A business cluster within the AWCP overlay area shall be considered consistent with the General Plan; however, a zoning change may be required to achieve the appropriate zoning designation. Site specific development would be subject to the standard County requirements and CEQA and not part of the ministerial review process created under this Plan.
- ~~HF.~~ *Visitor Centers.* Visitor centers that provide visitor information about the Corridor should be established within the vicinity of Highway 101/Arroyo Seco and/or near Highway 68.

3.2 ALLOWED USES

The following uses shall be allowed at facilities approved under the AWCP located within the designated corridor.

- ~~A.~~ *Winery Adjunct Uses.*
- ~~B.~~ *Industry-wide events.*
- ~~CB.~~ *Winery-Related Events up to 150 people at any one venue at any one time.*
Events include:
1. Advertised fund raising events.
 2. Winemaker Dinners open to the general public.
 3. Weddings.
- ~~DC.~~ *Private Winery Events* such as:
1. Company Holiday Party.
 2. Employee-Related Private Parties (e.g. harvest celebration).

3.3 PERMITTED USES, MINISTERIAL PERMIT REQUIRED IN EACH CASE

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[No changes.]

3.4 PERMITTED USES, ADMINISTRATIVE PERMIT REQUIRED IN EACH CASE

This Section includes a list of uses that can be permitted with an Administrative Permit for properties within the designated Agricultural and Winery Corridor. These uses are subject to the General Regulations established in Section 3.1 and Development Standards established in Section 3.5 of this Agricultural and Winery Corridor Plan.

A. ~~Restaurant or Delicatessen; subject to the following criteria:~~

- ~~1. Located within five (5) miles from an urban limit line, community area, or rural center or within one (1) mile of an arterial or collector.~~
- ~~2. Parking shall be provided as required by Chapter 21.58, Monterey County Code.~~

B. ~~Inn, on-site with a winery facility; subject to the following criteria:~~

1. The Inn is clearly incidental, related, and subordinate to the primary operation of the winery as a production facility.
2. Separate structure(s) shall be built expressly for an Inn.
3. Includes no more than ten (10) guest rooms, and a family does not need to be in permanent residence within the Inn facility.
4. Design shall use a consistent style for all buildings on the same lot.
5. Parking shall be provided as required similar to a bed and breakfast use.

C. ~~Inn, stand alone; subject to the following criteria:~~

- ~~1. The facility is located:
 - ~~a. more than 500 feet from a parcel on which any other Inn facility is located;~~
 - ~~b. no closer than 400 feet to any existing residence outside the ownership of the applicant.~~~~
- ~~2. Parking shall be provided as required similar to a bed and breakfast use.~~

DB. *Winery, Full-scale*, including tasting facilities and a catering kitchen as part of the winery. Events included as part of the permit for a full-scale winery shall not be subject to other permit requirements of Sections 3.3E or 3.6.

3.5 DEVELOPMENT STANDARDS

The following standards shall apply for approved uses within the Winery Corridor only:

A. *Parcel Size*. Minimum five (5) acres:

1. Creation through subdivision of ~~a five-acre lot or any one~~ lot smaller than the zoning minimum parcel size, but of a minimum size of five (5) acres (a “Small Lot”), is permissible provided:
 - a. ~~The remaining parcel still~~ All other parcels included as part of the subdivision conforms to the minimum parcel size of the underlying zoning district. In order to encourage utilization of existing substandard sized lots, An exception to subdivide lots (minimum 5 acres) from a legal non-conforming lot not meeting the minimum lot size for the land use designation (e.g. 10-acre lot with 40-acre minimum designation) may be allowed to subdivide one Small Lot from one legal non-conforming lot that is at least 10 acres in size but does not meet the minimum lot size for the zoning designation (e.g., a 20-acre lot in a 40-acre minimum designation could be divided to create one 5-acre lot and one 15-acre lot) based on substantial evidence that this action would:
 - 1) reduce the number of conforming agricultural lots from being subdivided because the parcel is located in an area where AWCP facilities would likely locate; and
 - 2) limit development in a manner to retain the rural character of the corridor. For purposes of this finding the rural character refers to parcels that conform to the minimum parcel size in the underlying zoning district and that contain agricultural uses.

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- b. Development of the Small Lot must be in conformance with Allowable Uses and Permitted Uses identified in this Agricultural and Winery Corridor Plan only, which will be memorialized by a recorded deed restriction on the Small Lot.
 - c. The total number of Small Lots created does not exceed 66 lots within the AWCP as adopted. In addition, the number of Small Lots created within each segment shall not exceed the number of wineries and/or tasting rooms allowed for that segment (Section 3.1 AWCP).
 - d. Where a Small Lot is created by subdivision under this Plan, all lots and parcels included as part of that subdivision shall be restricted from further subdivision of Small Lots as described in this section.
2. Subdivision of parcels under Williamson Act contract shall be in conformance with Williamson Act regulations.
 3. Creation of Small Lots through subdivision within the Corridor is permissible subject to the Subdivision Map Act and County Subdivision Ordinance.

Amend GLOSSARY as follows:

~~AGRICULTURAL LAND USES~~ means those uses of an agricultural nature that occur on farmlands designated as prime, of statewide importance, unique, or of local importance. ~~Agricultural land uses also include grazing and any other uses that occur on properties designated as agricultural on the General Plan and/or Area Plan land use map(s).~~

~~WINERY~~ means an agricultural processing plant used for the commercial purpose of processing grapes, other fruit products, or vegetables to produce wine or similar spirits. Processing includes crushing, fermenting, blending, aging, storage, bottling, warehousing, wine tasting facility, administrative office functions including wholesale and retail sales of associated wine and wine related items, and events. ~~Winery Adjunct Uses may also be considered as accessory to a winery when specifically requested and addressed as part of the discretionary permit application for the winery or as a subsequent permit application process.~~

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WINERY, ARTISAN [No change.]

WINERY, FULL-SCALE [No change.]

~~**WINERY ADJUNCT USES** means uses not considered an inherent part of a winery, but frequently associated with wineries and the agricultural tourism industry. Winery Adjunct Uses include, but are not limited to, restaurants, delicatessens, events, and concerts. Such uses may be considered as accessory to a Winery or Winery Tasting Facility when specifically requested and addressed as part of the discretionary permit application for the Winery or as a subsequent permit application process.~~

WINERY CORRIDOR [No change.]

~~**WINERY TASTING FACILITY** means a bonded Winery Tasting Facility, also known as an "on or off winery premise," as provided by federal law under the jurisdiction of the Tax and Trade Bureau. A Winery Tasting Facility shall accommodate wine tasting, an administrative office, retail sales of associated wine and wine related items, events, warehousing, and storage. Winery Adjunct Uses may be considered as accessory to a Winery Tasting Facility when specifically requested and addressed as part of the discretionary permit application for the Winery Tasting Facility or as a subsequent permit application process.~~

Exhibit B to Settlement Agreement

Other Actions

1. County shall consider making findings in the resolutions or ordinances adopting the Agreed Amendments, and acknowledging and reciting in the addendum or subsequent EIR to the 2010 General Plan EIR prepared in support of the adoption of the Agreed Amendments, that the County's adoption and timely compliance with each Agreed Amendment is necessary mitigation that is required to avoid or minimize significant impacts caused by the 2010 General Plan or to render impacts caused by the 2010 General Plan less than a considerable contribution to a significant cumulative impact.
2. LandWatch Monterey County and The Open Monterey Project each shall be entitled to be represented on the technical advisory committee for the study undertaken to fulfill the requirements of General Plan Policy PS-3.1 through qualified consultant(s).
3. ~~To make the determination required by General Plan Policy PS-3.1.c.6.i as~~ To make the determination required by General Plan Policy PS-3.1.c.6.i as to whether “total water demand for all uses designated in the General Plan for the year 2030 is likely to be exceeded,” the County shall determine whether the 2030 demand projected by the 2010 General Plan EIR is likely to be exceeded. In doing so, the County shall reassess the demand projections made in the 2010 General Plan EIR in light of any changes to or errors in the assumptions for baseline and future demand, including trends in land and water use. There shall be no presumption that the analysis in 2010 General Plan EIR was correct with respect to the 2030 demand projections.
4. The County shall require the following analyses to be included in the study undertaken in connection with implementation of General Plan Policy PS-3.1 and shall before April 1, 2015 ensure that the scope of work for its consultant(s) includes these analyses:
 - a. The study shall provide a quantitative assessment of climate change effects by using a basin characterization GIS Model approach (for example, <http://www.ecologicalprocesses.com/content/2/1/25>) that would use temperature, precipitation and other data from available global climate change models.

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b. The study shall reassess the 2030 demand projections made in the 2010 General Plan EIR, consistent with the mandate of Policy PS-3.1.

i. The County shall revise the language at pages B2, B4, B7, and B9 of the July 3, 2014 scope of work for Brown and Caldwell, or shall otherwise provide a revised scope of work, to clarify that 2030 land use assumptions to be used as model input will not simply be taken from the 2030 General Plan or its EIR but will instead be based on a reassessment of land use assumptions.

ii. In reassessing the General Plan EIR 2030 demand projections, and in developing 2030 land use assumptions for model input, the following determinations shall be made with respect to 2014 baseline data:

- A. urban population and per capita water use using the best available data;
- B. rural residential population and domestic per capita water use using the best available data;
- C. industrial and commercial water use using best available data; and
- D. agricultural irrigated acreage, crop types, rotations (number of crop cycles per year), fallowing, and water duty for crop types and rotations taking fallowing into account, all using the best available data.

iii. In reassessing the General Plan EIR 2030 demand projections, and in developing 2030 land use assumptions for model input, the study shall determine projected changes through 2030 to each of the variables listed above based on current population projections, current trend analysis (especially regarding changes to agricultural acreage, cropping, and water duty), and existing regulatory constraints. Agricultural trend analysis should reconcile inconsistent or incomplete data sources (e.g., incomplete pumping records, inconsistent reports of irrigated acreage) if the study relies on such incomplete or inconsistent sources.

iv. In reassessing the General Plan EIR 2030 demand projections, and in developing 2030 land use assumptions for model input, the study shall

consider recent land use mapping and demand estimate work completed by California Department of Water Resources on Monterey.

c.. The study shall develop and use a model that shall simulate the area, volume, and location of seawater intrusion over time using a 3-dimensional variable density groundwater flow and coastal seawater intrusion model such as SEAWAT or SWI2. The study and model shall at a minimum include the capability to evaluate the combined effect that increased groundwater pumpage and rising sea level would likely have on the location of the freshwater-seawater interface with time and to determine increases in seawater intrusion volume. The County shall revise the language applicable to Task 4 in Project 2 of the July 3, 2014 scope of work for Brown and Caldwell, or shall otherwise provide a revised scope of work, to ensure this.

d. The study process shall provide that the technical advisory committee shall be involved in advising the Water Resources Agency in connection with the assessment and selection of modeling tools. The County shall ~~revise the language applicable to Task 4 and Task 10 in Project 2 of the July 3, 2014 scope of work for Brown and Caldwell, or shall otherwise provide a revised scope of work, to ensure this.~~

5. It is the intent of the parties that the process for the study to be undertaken pursuant to General Plan Policy PS-3.1 be an open and transparent public process to the maximum extent practicable. All data collected and used, and all documents gathered, to be used during the course of the study shall be available for public inspection except where such data or documents are required to remain confidential pursuant to federal, state, or local law, or contract (“Confidential Information”). All finalized deliverables to the County and to the Monterey County Water Resources Agency will be available for public inspection except where such deliverables contain Confidential Information, in which case such Confidential Information may be redacted or removed for purposes of public inspection. Documents made available during the course of the study to the stakeholders group and the Technical Advisory Committee shall be available for public inspection. The County shall retain, and require the Water Resources Agency to retain, all records of comments to and from Brown and Caldwell, and any subsequent and additional consultant engaged for the PS-3.1 study, regarding the

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deliverables (as described in the Brown and Caldwell scope of work for Project 2) that are made before the deliverables are finalized. Such records of comments will be available upon request for public inspection once the deliverable has been finalized and delivered to the County. Any documents subject to the attorney-client privilege or the attorney work-product privilege shall remain exempt from public inspection.

6. No later than 90 days after the adoption of the Agreed Amendments, the County shall produce a County-wide baseline map, or other records or information as the parties may agree to, that shows cultivated cropland as of October 2010 as follows: (1) on slopes of 25 to 35%, and (2) on slopes over 35%. No later than 120 days after the adoption of the Agreed Amendments, the County shall produce maps as follows: (1) showing cultivated cropland on slopes of 25% to 35% as of October 2014; (2) showing cultivated cropland on slopes over 35% as of October 2014; (3) showing the new cultivated cropland on slopes of 25% to 35% as of October 2014 that was not cultivated as of October 2010; and (4) showing the new cultivated ~~cropland on slopes over 35% as of October 2014 that was not cultivated as~~ of October 2010. After that, no later than 60 days after data becomes available, the County shall annually produce maps showing cultivated land on slopes between 25% and 35% and, separately, on slopes over 35%, and showing changes from the prior year. The County shall indicate on the maps which specific new cultivation has received a permit from the County and delineate the boundaries of each conversion permit, by permit number. The intent is that these maps be reasonably useful and understandable to the lay person, and provide reasonably reliable information to assist the parties and the public in determining the current land uses and in identifying changes in land uses.
7. The County shall engage a qualified wildlife consultant to compile available data to make an illustrative map of wildlife corridors/linkages in the County. The County shall use the wildlife consultant's map as the primary basis of Figure OS-1, to be considered for inclusion in the General Plan at the same time as the proposed amendments set forth in Exhibit A.
8. The County has engaged a wildlife consultant acceptable to The Open Monterey Project and Landwatch Monterey County to perform the services

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discussed in this settlement agreement and Exhibits A and B to this settlement agreement, prior to full execution of the settlement agreement, and the County has confirmed that in a memorandum of understanding between the County, the consultant, The Open Monterey Project and Landwatch Monterey County. The County shall use that specific wildlife consultant unless the County terminates the consultant for good cause, in which case the County shall use a different wildlife corridor consultant acceptable to The Open Monterey Project and Landwatch Monterey County.

9. Applications for permits pursuant to AWCP section 3.3 shall be reviewed for completeness and compliance with County requirements by the County's head of current planning prior to approval of any such application. The head of current planning may designate qualified planners to act on behalf of the head of current planning when necessary.

10. To those who have requested notice of applications, including ministerial applications pursuant to AWCP section 3.3 and OS-3.5(2), the County shall provide email notice at the time of application and at the time of approval, and will either attach the application and approval, respectively, or will make the applications and approvals available without delay on a County website.

Exhibit A to Settlement Agreement
Agreed Amendments

Amend PS-3.1 as follows:

PS.3-1: Except as specifically set forth below, new development for which a discretionary permit is required, and that will use or require the use of water, shall be prohibited without proof, based on specific findings and supported by evidence, that there is a long-term, sustainable water supply, both in quality and quantity to serve the development.

This requirement shall not apply to:

- a. the first single family dwelling and non-habitable accessory uses on an existing lot of record; or
- b. specified development (a list to be developed by ordinance) designed to provide: a) public infrastructure or b) private infrastructure that provides critical or necessary services to the public, and that will have a minor or insubstantial net use of water (e.g. water facilities, wastewater treatment facilities, road construction projects, recycling or solid waste transfer facilities); or
- c. development within Zone 2C of the Salinas Valley groundwater basin, provided the County prepares or causes to be prepared a study for the Board of Supervisors regarding Zone 2C, to be completed no earlier than October 31, 2017 and no later than March 31, 2018 that does the following:

- 1) evaluates existing data for seawater intrusion and groundwater levels collected by Monterey County Water Resources Agency as of the date the study is commenced;
- 2) evaluates the total water demand for all existing uses and future uses designated in the General Plan EIR for the year 2030;
- 3) assesses and provides conclusions regarding the degree to which the total water demand for all uses designated in the General Plan for the year 2030 are likely to be reached or exceeded;
- 4) evaluates on an annual basis during the study period groundwater elevations and the seawater intrusion boundary;

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- 5) based on historical data and the data produced by the study, evaluates and provides conclusions regarding future trends and any expected movement of groundwater elevations and the seawater intrusion boundary;
- 6) should the study conclude that i) total water demand for all uses designated in the General Plan for the year 2030 is likely to be exceeded; or ii) groundwater elevations are likely to decline by the year 2030 and iii) the seawater intrusion boundary is likely to advance inland by the year 2030, the study shall make recommendations on measures the County could take to address any or all of those conditions; and
- 7) addresses such other matters as the Board of Supervisors determines are appropriate.

Within two months following the completion of the study, the Board of Supervisors shall hold an open and noticed public hearing on the results of the study. If the study reaches the conclusions for Zone 2C identified in subsection 6) i or 6) ii and 6) iii, the Board of Supervisors shall adopt one or more measures identified in the study, or other appropriate measures, to address the identified conditions. This exception for Zone 2C shall be a rebuttable presumption that a Long Term Sustainable Water Supply exists within Zone 2C, and the presumption shall remain in effect until and unless the study reaches the conclusion for Zone 2C identified in subsection 6) i or 6) ii and 6) iii. Development in Zone 2C shall be subject to all other policies of the General Plan and applicable Area Plan. The rebuttable presumption shall apply only to uses consistent with the 2010 General Plan as amended through October 1, 2014.

Unless the public hearing required by this policy is commenced and concluded within two months following the presentation of the study to the Board of Supervisors, then effective 60 days following the presentation of the study to the Board of Supervisors there shall no longer be a rebuttable presumption of a long term sustainable water supply for development in Zone 2C. This means that the exception in subsection c shall no longer apply, unless otherwise required by law, and the rebuttable presumption shall apply only to projects for which the County has determined the

application to be complete and so advised the applicant and for which a public hearing has been noticed.

Within fourteen days of the conclusion of the public hearing required by this policy, or if there is no regularly scheduled meeting of the Board of Supervisors in that fourteen day period, at the next regularly scheduled meeting, the Board of Supervisors shall adopt findings based on substantial evidence as to whether any of the conditions identified in subsections 6.i, ii, and iii (the “Conditions”) are likely to occur by 2030. Only if the Board of Supervisors finds that none of the Conditions are likely to occur by 2030, may it find that there is a rebuttable presumption that a long-term sustainable water supply exists within Zone 2C through 2030 and make the discretionary decision to continue to except development within Zone 2C from the requirement under this Policy to provide proof, based on specific findings supported by evidence, that there is a long-term sustainable water supply. If the Board of Supervisors finds that any of the Conditions are likely to occur by 2030, new development within Zone 2C shall not be excepted from the requirement to provide proof of a long-term sustainable water supply, and there shall no longer be a presumption of a long-term sustainable water supply for development in Zone 2C except as required by law.

Unless the Board of Supervisors finds that none of the Conditions are likely to occur by 2030, the Board shall within nine months of the conclusion of the public hearing adopt, or find that other agencies have adopted, a program (“Program”) committing the County or those agencies to adopt measures that, based on substantial evidence, are sufficient to avoid and prevent by 2030 each of the Conditions that the Board of Supervisors has found are likely to occur by 2030. Unless, at the time of the adoption of the Program identified in the prior sentence, the Board of Supervisors finds based on substantial evidence that capital projects will be funded and constructed in order to avoid and prevent by 2030 each of the Conditions that are found by the Board likely to occur by 2030, the County shall adopt, or find that other agencies have adopted, other sufficient measures (“Other Measures”) as authorized by law to avoid and prevent all those conditions by 2030. As required and authorized by this General Plan and consistent with the intent and purposes of state law, including but not limited to the 2014 Sustainable Groundwater Management Act, the County shall take a

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proactive role in planning for a long-term sustainable water supply in Zone 2C. As required by Policy PS-3.7, and as may be required after the first 5-year assessment of Zone 2C water conditions in 2015 pursuant to Policy PS-3.15, the County shall by March 31, 2016 initiate, pursue, and support the identification and necessary planning for strategies, water supply projects, water management efforts, and multiple agency agreements that may be implemented as part of the Program or Other Measures. The County shall initiate this planning effort by March 31, 2016 and pursue and support it until completion of the study required by this policy to ensure that, should it be necessary to adopt a Program or Other Measures in response to the findings required by this Policy, the County and/or other agencies shall be able to define and adopt the Program or Other Measures, and to conduct necessary environmental review at the programmatic level within one year of those findings.

Following completion of the study described herein, and the adoption of measures as may be recommended in the study, if any, the County shall prepare a report to the Board of Supervisors ~~every five (5) years~~ for Zone 2C that examines the degree to which a) total water demand for all uses predicted in the General Plan EIR for year 2030 will be reached; or b) groundwater elevations, the seawater intrusion boundary have changed since the prior reporting period; and c) other sources of water supply are available.

Amend OS-3.5 (2) as follows:

OS-3.5

~~(2) Agricultural. Conversion of uncultivated land to cultivated land on slopes greater than 25% shall be prohibited except as follows:~~

a) Conversion of uncultivated land to cultivated land on slopes greater than 25% shall be prohibited, except as stated in subdivision b.

b) In the Agricultural and Winery Corridor Plan area (“AWCP”) and the Cachagua Plan area (“Cachagua”) only, conversion on slopes between 25% and 35% may be permitted pursuant to a use permit. In order to avoid the degradation of on-site and off-site natural resources, the use permit process shall:

1. Evaluate possible alternatives that better meet the goals and policies of the general plan.

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2. Identify and require an Agricultural Management Plan including development and design techniques for erosion control, slope stabilization, visual mitigation, drainage, and construction techniques, incorporating the Best Management Practices developed pursuant to Policy OS-3.1 and the Program developed pursuant to Policy OS-3.9.
3. Minimize development in areas where potentially unstable slopes, soil and geologic conditions, or sewage disposal pose substantial risk to public health and safety.
4. Limit such conversion permits as follows:
 - a. Maximum of 100 acres per year for both the AWCP and Cachagua combined, with no rollover of unconverted acres,
 - b. Maximum of fifteen (15) acres per permit per year per applicant, and
 - c. Land must be contiguous to already cultivated land.
- c) Only lands cultivated and irrigated on slopes over 25% as of December 16, 2014 for which cultivation and irrigation were permitted or otherwise allowed by law may continue to be so cultivated and irrigated.
- d) Conversion without a permit shall be considered a continuing public nuisance and may be enforced through a cause of action brought by any private party. The County retains and shall use its authority to enforce violations.
- e) The County shall annually prepare and release to the public a map showing all new cultivation of slopes over 25% in the County and, separately indicated, all new cultivation of slopes over 35%. The County map shall show all new cultivation that is identifiable from publicly available crop and land cover data, such as the USDA's National Agricultural Statistics Service Cropscape Cropland Data Layer. The map also shall identify all permitted conversions and delineate the boundaries of each conversion permit, by permit number.
- f) A ministerial permit process shall be developed by ordinance and implemented for conversion of lands that have not been cultivated for the previous 30 years on slopes (i) between 15 and 25 percent (15-25%) except land in the North County Area Plan and Cachagua Area Plan, and (ii) between 10 and 15 percent (10-15%) on highly erodible soils. The permit processes shall be designed to require that an erosion control plan be developed and implemented that assures slope stabilization and prevents

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drainage and flood hazards, and to prevent potentially significant impacts to wildlife corridors and linkages.

g) Conversion of slopes between 15% and 25% (15-25%) in the North County Area Plan and Cachagua Area Plan shall require a use permit and an Agricultural Management Plan.

h) The County shall retain existing requirements for an Agricultural Management Plan for each use permit for conversions as currently set forth in County Code section 21.66.030 (as of Oct. 26, 2010).

i) The County shall not approve permits pursuant to this policy OS-3.5(2) until the County has adopted ordinance(s) implementing OS-5.16, OS-5.22, and OS-5.24, Figure OS-1, a Program developed pursuant to OS-3.9, and conforming amendments to Zoning Code section 21.66.030.

Amend OS-3.1 as follows:

Best Management Practices (BMPs) to prevent and repair erosion damage and to prevent and remediate other effects of erosion such as sedimentation and water quality impacts; shall be established and enforced by the County.

Amend OS-3.9 as follows:

The County shall develop a Program to address the potential cumulative hydrologic impacts of the conversion of hillside rangeland areas slopes to cultivated croplands. The Program shall be designed to ~~avoid or minimize:~~

- a) avoid or minimize off-site soil erosion,
- b) avoid or minimize increased runoff, runoff-related stream stability impacts, and sedimentation impacts, and
- c) meet adopted water quality standards.

The County shall convene a committee comprised of county staff, technical experts (including staff of the Natural Resources Conservation Service), and stakeholders to develop the Program, including implementation recommendations. This program shall be adopted within five (5) years of adoption of the General Plan.

Amend OS-5.16 as follows:

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A biological study shall be required for any development project requiring a discretionary permit and in the vicinity of a wildlife corridor/linkage as illustrated in Figure OS-1 or having the potential to substantially reduce the habitat of a fish or wildlife species, cause a fish or wildlife population to drop below self-sustaining levels, threaten to eliminate a plant or animal community, or substantially reduce the number or restrict the range of an endangered, rare, or threatened species, or degrade a wildlife movement corridor/linkage. An ordinance establishing minimum standards for a biological study and biological surveys shall be enacted. A biological study shall include field reconnaissance performed at the appropriate time(s) of year. Based on the results of the biological study, corridor surveys may be necessary to identify, describe, and delineate the habitats, wildlife movement corridors or linkages, or species that potentially could be impacted. The ordinance shall specify when a corridor survey is required and the minimum requirements for a corridor survey. The ordinance shall include design guidelines for development within corridors and linkages, including but not limited to: standards for design, landscaping, lighting, site layout including structures, and fencing. Said ordinance shall be adopted within 12 months of the adoption of this policy. Feasible measures to reduce significant impacts to a less than significant level shall be adopted as conditions of approval.

Amend OS-5.24 as follows:

In order to preserve the functionality of existing wildlife corridors/linkages, and to promote and facilitate wildlife movement corridors/linkages, if Figure OS-1 or a biological study discloses evidence that a wildlife corridor or linkage exists in the vicinity of a project, a corridor survey shall be required to identify the boundaries of the movement corridor or linkage with respect to the project site. The corridor survey shall include mitigation recommendations from the ordinance required to be adopted pursuant to Policy OS-5.16 to retain a corridor or linkage of adequate size and quality to preserve the continued free movement of all wildlife based on the needs of the species occupying the habitat and using the corridor or linkage. The County shall require the use of wildlife friendly fencing to the extent allowed by law. The County shall require discretionary projects to retain movement corridors of adequate size and habitat quality to allow for

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~~continued wildlife use based on the needs of the species occupying the habitat.~~ The County shall require that expansion of its roadways and public infrastructure projects provide movement opportunities for terrestrial wildlife and ensure that existing stream channels and riparian corridors continue to provide for wildlife movement and access.

Figure OS-1 shows the general location of some of the wildlife movement corridors/linkages in Monterey County. Figure OS-1 is illustrative only. The County shall engage a qualified wildlife consultant to make recommendations as to the implementing ordinances for OS-5.16, OS-5.22 and OS-5.24, and the conservation strategy required by OS-5.21, with regard to wildlife corridor/linkage issues. The County shall use the wildlife consultant's map as the basis of Figure OS-1 of the General Plan. The County shall use the consultant's recommended protections as the primary basis of the implementing ordinances for OS-5.16, OS-5.22 and OS-5.24 and the conservation strategy required by OS-5.21, and the final ordinance language shall be the result of a collaborative process of the consultant and County staff.

Until the ordinance required by Policy OS-5.16 is adopted, if Figure OS-1 or a biological study discloses evidence that a wildlife corridor or linkage exists in the vicinity of a project, the corridor survey shall make recommendations for design based upon best practices related to the needs of the species occupying the habitat and species using the corridor or linkage, and the County's wildlife consultant shall review and research the application and make recommendations within the scopes of Policy OS-5.16 and this Policy OS-5.24, and such projects may only be approved if the contents of those recommendations are adopted as conditions of approval. Until Figure OS-1 is adopted, the County's wildlife consultant shall review and research each application and make recommendations. If the ordinance required by Policy OS-5.16 is not adopted within 12 months of adoption of this policy, no permits for projects requiring a corridor survey and mitigation recommendations shall be approved until the implementing ordinance is adopted.

This policy shall not apply retroactively to projects constructed legally.

Amend Agricultural Winery Corridor Plan as follows:

3.1 GENERAL REGULATIONS

The number of facilities allowed to be processed under this Plan shall be as follows:

- A. *Artisan Winery*: A maximum of 40 new artisan wineries as follows:
 - 1. River Road Segment; up to 24;
 - 2. Metz Road Segment; up to four (4); and
 - 3. Jolon Road Segment; up to 12.

- B. *Full-Scale Winery*: a maximum of 10 new full-scale wineries as follows:
 - 1. River Road Segment; up to five (5);
 - 2. Metz Road Segment; up to two (2); and
 - 3. Jolon Road Segment; up to three (3).

- C. *Winery Tasting Rooms*; a maximum of 10 new, stand-alone, facilities as follows:
 - 1. River Road Segment; up to five (5);
 - 2. Metz Road Segment; up to two (2); and
 - 3. Jolon Road Segment; up to three (3).

- D. *Restaurant*. A total of three (3) new restaurants with no more than one restaurant per segment.

- E. *Delicatessen*. A total of five (5) new delicatessens on the same site as a winery with no more than three (3) delicatessens within the River Road Segment and no more than one (1) delicatessen within each of the remaining two segments.

- F. ~~*Inns*. A maximum of eight (8) new Inns as follows:~~
 - ~~1. River Road Segment; up to five (5);~~
 - ~~2. Metz Road Segment; one (1); and~~
 - ~~3. Jolon Road Segment; up to two (2).~~

- ~~GE.~~ *Business Cluster.* One consolidated area may be identified for an overlay designation where a cluster of wine industry related businesses (bottle and cork production, label design, etc.) may develop. This business center should be located near an urban area with adequate facilities. A business cluster within the AWCP overlay area shall be considered consistent with the General Plan; however, a zoning change may be required to achieve the appropriate zoning designation. Site specific development would be subject to the standard County requirements and CEQA and not part of the ministerial review process created under this Plan.
- ~~HF.~~ *Visitor Centers.* Visitor centers that provide visitor information about the Corridor should be established within the vicinity of Highway 101/Arroyo Seco and/or near Highway 68.

3.2 ALLOWED USES

The following uses shall be allowed at facilities approved under the AWCP located within the designated corridor.

- ~~A.~~ *Winery Adjunct Uses.*
- ~~B.~~ *Industry-wide events.*
- ~~CB.~~ *Winery-Related Events up to 150 people at any one venue at any one time.*
Events include:
1. Advertised fund raising events.
 2. Winemaker Dinners open to the general public.
 3. Weddings.
- ~~DC.~~ *Private Winery Events* such as:
1. Company Holiday Party.
 2. Employee-Related Private Parties (e.g. harvest celebration).

3.3 PERMITTED USES, MINISTERIAL PERMIT REQUIRED IN EACH CASE

[No changes.]

3.4 PERMITTED USES, ADMINISTRATIVE PERMIT REQUIRED IN EACH CASE

This Section includes a list of uses that can be permitted with an Administrative Permit for properties within the designated Agricultural and Winery Corridor. These uses are subject to the General Regulations established in Section 3.1 and Development Standards established in Section 3.5 of this Agricultural and Winery Corridor Plan.

A. ~~Restaurant or Delicatessen;~~ subject to the following criteria:

- ~~1. Located within five (5) miles from an urban limit line, community area, or rural center or within one (1) mile of an arterial or collector.~~
- ~~2. Parking shall be provided as required by Chapter 21.58, Monterey County Code.~~

B. ~~Inn, on-site with a winery facility;~~ subject to the following criteria:

1. The Inn is clearly incidental, related, and subordinate to the primary operation of the winery as a production facility.
2. Separate structure(s) shall be built expressly for an Inn.
3. Includes no more than ten (10) guest rooms, and a family does not need to be in permanent residence within the Inn facility.
4. Design shall use a consistent style for all buildings on the same lot.
5. Parking shall be provided as required similar to a bed and breakfast use.

C. ~~Inn, stand alone;~~ subject to the following criteria:

1. ~~The facility is located:~~
 - ~~a. more than 500 feet from a parcel on which any other Inn facility is located;~~
 - ~~b. no closer than 400 feet to any existing residence outside the ownership of the applicant.~~
2. ~~Parking shall be provided as required similar to a bed and breakfast use.~~

DB. *Winery, Full-scale*, including tasting facilities and a catering kitchen as part of the winery. Events included as part of the permit for a full-scale winery shall not be subject to other permit requirements of Sections 3.3E or 3.6.

3.5 DEVELOPMENT STANDARDS

The following standards shall apply for approved uses within the Winery Corridor only:

A. *Parcel Size*. Minimum five (5) acres:

1. Creation through subdivision of ~~a five-acre lot or any one~~ lot smaller than the zoning minimum parcel size, but of a minimum size of five (5) acres (a “Small Lot”), is permissible provided:
 - a. ~~The remaining parcel still~~ All other parcels included as part of the subdivision conforms to the minimum parcel size of the underlying zoning district. In order to encourage utilization of existing substandard sized lots, An exception to subdivide lots (minimum 5 acres) from a legal non-conforming lot not meeting the minimum lot size for the land use designation (e.g. 10-acre lot with 40-acre minimum designation) may be allowed to subdivide one Small Lot from one legal non-conforming lot that is at least 10 acres in size but does not meet the minimum lot size for the zoning designation (e.g., a 20-acre lot in a 40-acre minimum designation could be divided to create one 5-acre lot and one 15-acre lot) based on substantial evidence that this action would:
 - 1) reduce the number of conforming agricultural lots from being subdivided because the parcel is located in an area where AWCP facilities would likely locate; and
 - 2) limit development in a manner to retain the rural character of the corridor. For purposes of this finding the rural character refers to parcels that conform to the minimum parcel size in the underlying zoning district and that contain agricultural uses.

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- b. Development of the Small Lot must be in conformance with Allowable Uses and Permitted Uses identified in this Agricultural and Winery Corridor Plan only, which will be memorialized by a recorded deed restriction on the Small Lot.
 - c. The total number of Small Lots created does not exceed 66 lots within the AWCP as adopted. In addition, the number of Small Lots created within each segment shall not exceed the number of wineries and/or tasting rooms allowed for that segment (Section 3.1 AWCP).
 - d. Where a Small Lot is created by subdivision under this Plan, all lots and parcels included as part of that subdivision shall be restricted from further subdivision of Small Lots as described in this section.
2. Subdivision of parcels under Williamson Act contract shall be in conformance with Williamson Act regulations.
 3. Creation of Small Lots through subdivision within the Corridor is permissible subject to the Subdivision Map Act and County Subdivision Ordinance.

Amend GLOSSARY as follows:

~~AGRICULTURAL LAND USES~~ means those uses of an agricultural nature that occur on farmlands designated as prime, of statewide importance, unique, or of local importance. ~~Agricultural land uses also include grazing and any other uses that occur on properties designated as agricultural on the General Plan and/or Area Plan land use map(s).~~

~~WINERY~~ means an agricultural processing plant used for the commercial purpose of processing grapes, other fruit products, or vegetables to produce wine or similar spirits. Processing includes crushing, fermenting, blending, aging, storage, bottling, warehousing, wine tasting facility, administrative office functions including wholesale and retail sales of associated wine and wine related items, and events. ~~Winery Adjunct Uses may also be considered as accessory to a winery when specifically requested and addressed as part of the discretionary permit application for the winery or as a subsequent permit application process.~~

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WINERY, ARTISAN [No change.]

WINERY, FULL-SCALE [No change.]

~~**WINERY ADJUNCT USES** means uses not considered an inherent part of a winery, but frequently associated with wineries and the agricultural tourism industry. Winery Adjunct Uses include, but are not limited to, restaurants, delicatessens, events, and concerts. Such uses may be considered as accessory to a Winery or Winery Tasting Facility when specifically requested and addressed as part of the discretionary permit application for the Winery or as a subsequent permit application process.~~

WINERY CORRIDOR [No change.]

~~**WINERY TASTING FACILITY** means a bonded Winery Tasting Facility, also known as an "on or off winery premise," as provided by federal law under the jurisdiction of the Tax and Trade Bureau. A Winery Tasting Facility shall accommodate wine tasting, an administrative office, retail sales of associated wine and wine related items, events, warehousing, and storage. Winery Adjunct Uses may be considered as accessory to a Winery Tasting Facility when specifically requested and addressed as part of the discretionary permit application for the Winery Tasting Facility or as a subsequent permit application process.~~

EXHIBIT G
SETTLEMENT AGREEMENT
THE OPEN MONTEREY PROJECT

COPIY

SETTLEMENT AGREEMENT

The Open Monterey Project v. Monterey County Board of Supervisors, County of Monterey
(Monterey County Case No. M109441)

This Settlement Agreement ("Agreement") by and among Petitioner The Open Monterey Project and Respondents Monterey County Board of Supervisors and County of Monterey (collectively, "County") (each a "Party" and collectively, the "Parties") is made effective on the date when all Parties have signed this Agreement ("Effective Date"). This Agreement is entered into by the Parties for the purpose of resolving the Case No. M109441 challenging the adoption by County of the 2010 Monterey County General Plan ("2010 General Plan") and certification of its associated environmental impact report ("EIR"), including a 2013 amendment to the 2010 General Plan and its associated Addendum No. 1 to the EIR.

RECITALS

- A. **WHEREAS**, The Open Monterey Project is a California nonprofit association under California law; and,
- B. **WHEREAS**, County is a public entity organized and existing under the laws of the State of California; and,
- C. **WHEREAS**, The Open Monterey Project filed a Petition for Writ of Mandate and Complaint in the State of California Superior Court, County of Monterey against County on November 24, 2010 (Case No. M109441) (the "Litigation") generally challenging the adoption by County of the 2010 General Plan and certification of its associated EIR; and,
- D. **WHEREAS**, The Open Monterey Project filed a supplemental petition to Case No. M109441 on March 21, 2013, generally challenging the adoption by County of an amendment to the 2010 General Plan and certification of its associated Addendum No. 1 to the EIR; and,
- E. **WHEREAS**, the Litigation is currently consolidated with the case *Landwatch Monterey County v. Monterey County Board of Supervisors* (Case No. M109434, filed November 24, 2010) also generally concerning the adoption of the 2010 General Plan and 2013 amendment, and certification of the EIR and Addendum No. 1 (collectively, the "Consolidated Actions"); and,
- F. **WHEREAS**, the Parties to the Consolidated Actions have, through a series of stipulations, extended time to prepare and file the administrative record; and the parties have recently stipulated to suspend the briefing schedule and vacate the hearing date in order to engage in settlement negotiations; and,

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- G. **WHEREAS**, the County and The Open Monterey Project have mutually agreed that settlement is the most efficient and practical way to resolve the Litigation, and now intend to settle the Litigation on the terms and conditions set forth in this Agreement; and,
- H. **WHEREAS**, the County and The Open Monterey Project have negotiated in good faith and agreed to the terms of this Settlement Agreement, including the terms as set forth below and those set forth in Exhibit A to this Settlement Agreement in final form and with strikethrough and underline text to show changes from 2010 General Plan policies as adopted by the County on October 26, 2010, and as amended on February 12, 2013, and the terms set forth in Exhibit B to this Settlement Agreement;

SETTLEMENT PROVISIONS

NOW, THEREFORE, in consideration of the promises and mutual benefits of this Agreement and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1.0 General Provisions.

- 1.1 **No Admission of Liability.** This settlement is entered into by the Parties without any admission of fault, failing or liability by any Party.
- 1.2 **Recitals True and Correct.** The above recitals are true and correct and are incorporated by reference as a part of this Agreement.
- 1.3 **Mutual Consideration.** The Parties' commitments to abide by terms of this Agreement is mutual consideration.
- 1.4 **Term of Settlement.** This settlement shall be operative from its Effective Date until such time as the Parties fulfill their mutual obligations described in this Agreement.

2.0 Disposition of Litigation.

- 2.1 **Stay of Further Proceedings in Case No. M109441.** The Parties shall promptly request that the Monterey County Superior Court stay all further proceedings in Case No. M109441 and, pursuant to Code of Civil Procedure Section 664.6, that the Court retain jurisdiction over this case for the purpose of enforcing the obligations of the Parties in this Agreement. County shall prepare the appropriate pleadings for approval and signature by the Parties and make the filing with the Court.
- 2.2 **Conditional Settlement and Dismissal with Prejudice.** The Open Monterey Project shall file a Notice of Conditional Settlement of Case No. M109441 in the Monterey

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County Superior Court immediately upon: (1) County's adoption no later than November 30, 2015 of the Agreed Amendments in Exhibit A; (2) County's preparation of a CEQA document containing the acknowledgments and recitations set forth in paragraph 1 of Exhibit B and its adoption of a resolution or ordinance containing the findings set forth in paragraph 1 of Exhibit B; and (3) expiration of a 45-day period from the County's posting of a Notice of Determination for the adoption of the Agreed Amendments without the filing of litigation by any party challenging the adoption of the Agreed Amendments or the findings set forth in paragraph 1 of Exhibit B, or, in the alternative, if such litigation is filed, entry of judgment in that litigation that is final for all purposes in favor of the County that upholds the validity of the Agreed Amendments and the findings set forth in paragraph 1 of Exhibit B (collectively, (1), (2) and (3) are the "Dismissal Conditions"). The Open Monterey Project shall not be required to dismiss Case No. M109441 in the Monterey County Superior Court unless all of the Dismissal Conditions occur.

The Notice of Conditional Settlement shall advise the court that dismissal is expected to be filed within 60 days upon satisfaction of the condition that the County pay attorney fees and costs of suit.

Upon satisfaction of the Dismissal Conditions and the County's obligation to pay all of the attorney fees and costs of suit set out in paragraph 2.3.1 pursuant to the payment schedule set out in paragraph 2.3.2, The Open Monterey Project shall promptly request that the court dismiss with prejudice Case No. M109441 in its entirety.

2.3 Attorney fees. County shall pay reasonable attorney fees and costs of suit to The Open Monterey Project.

2.3.1 The Parties have determined that \$425,000 is a reasonable amount for attorney fees and costs. That amount shall be paid in accordance with the terms of this Agreement.

2.3.2 Attorney fees and costs shall be payable as follows:

- (a) County shall pay \$100,000 to the attorneys of record for The Open Monterey Project within 60 days of the execution of this Settlement Agreement by the parties.
- (b) If by the end of May 2015 the County has not adopted the Agreed Amendments and has not prepared and considered a CEQA document and adopted an ordinance or resolution in connection with the adoption of the Agreed Amendments each containing the acknowledgments, recitations, and findings

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set forth in paragraph 1 of Exhibit B, County shall pay to the attorneys of record for The Open Monterey Project an additional \$100,000 no later than June 30, 2015.

- (c) If the Dismissal Conditions occur by January 15, 2016, The Open Monterey Project shall file a Notice of Conditional Settlement pursuant to paragraph 2.2 and County shall pay to the attorneys of record for The Open Monterey Project the remaining balance of the \$425,000 attorney fees and costs within 60 days of that filing.
- (d) If the first and second Dismissal Conditions in paragraph 2.2 occur but the third condition does not occur because litigation is filed challenging the adoption of the Agreed Amendments or the findings set forth in paragraph 1 of Exhibit B, and if that litigation is resolved with an entry of judgment that is final for all purposes in favor of the County that upholds the validity of the Agreed Amendments and the findings set forth in paragraph 1 of Exhibit B, or, in the alternative, if The Open Monterey Project elects to dismiss Case No. M109441, then The Open Monterey Project shall file a Notice of Conditional Settlement pursuant to paragraph 2.2 and County shall pay to the attorneys of record for The Open Monterey Project the remaining balance of the \$425,000 attorney fees and costs within 60 days of that filing.

The Open Monterey Project shall not be obligated to return any payments received pursuant to the payment schedule above and does not waive its entitlement to any payments in the event that the Dismissal Conditions do not occur.

- 2.3.3 The attorney fees stated in 2.3.1 represent a compromise amount. The County acknowledges that The Open Monterey Project has asserted that its attorney fees significantly exceed this amount. Notwithstanding payment of the compromise attorney fees pursuant to this Agreement, The Open Monterey Project does not waive or reduce its claim for full attorney fees and costs in this matter in the event that The Open Monterey Project is not required to dismiss Case No. M109441 in the Monterey County Superior Court pursuant to paragraph 2.2.

3.0 Agreed Amendments and Other Actions.

- 3.1 County shall consider the amendments to the 2010 General Plan set out in Exhibit A (the "Agreed Amendments").

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- 3.1.1 The Agreed Amendments shall be processed in compliance with all applicable requirements in the California Public Resources Code, Government Code, Monterey County procedures and all other applicable laws for amending a general plan.
- 3.1.2 County shall consult with The Open Monterey Project in good faith regarding the preparation of necessary legislative actions and environmental review for consideration of the Agreed Amendments. The final form and language for all proposed legislative actions shall be determined by County. Notwithstanding, The Open Monterey Project shall have the right not to dismiss Case No. M109441 unless the Dismissal Conditions occur.
- 3.1.3 Environmental review for the Agreed Amendments shall be processed in compliance with CEQA.
- 3.1.4 It is the County's intent to consider the Agreed Amendments expeditiously and to take action by June 30, 2015. The County agrees to begin the process for considering the Agreed Amendments promptly following execution of this Agreement.
- 3.2 In addition to the adoption of the Agreed Amendments, County shall undertake and complete the actions set forth in Exhibit B (the "Other Actions").
- 3.3. Should any person or entity object to the Agreed Amendments or Other Actions or threaten to file litigation challenging the validity of the Agreed Amendments or Other Actions prior to the adoption of the Agreed Amendments, the Parties shall confer in good faith to determine effective responses to such objections and threats.
- 3.4 Should any person or entity file litigation, or should an administrative action be commenced by a federal or state administrative agency, challenging the validity of the Agreed Amendments or the Other Actions as may be adopted by the County pursuant to this Section 3, County shall use its best good faith efforts to defend against such litigation or administrative action. The Open Monterey Project may request intervention in such litigation or administrative action.

In the event of such litigation, The Open Monterey Project shall stipulate to hold Case No. M109441 in abeyance until such time as a final judgment is entered in superior court that does not uphold the validity of the Agreed Amendments and the findings set forth in paragraph 1 of Exhibit B.

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Should a final court or administrative order be entered nullifying or setting aside the adoption of the Agreed Amendments or the Other Actions, such act shall not constitute a default by any Party pursuant to this Agreement; however, the Parties shall confer in good faith to determine if different actions may be taken by County to implement the intent and purposes of this Agreement, including adopting General Plan amendments or taking other legislative or administrative action to effect the substance of the Agreed Amendments described in paragraph 3.1 and to implement the substance of the Other Actions. For example, if the Agreed Amendments are invalidated or set aside due to a judicial determination that the County failed to comply with CEQA in adopting them, the County shall consider readopting the amendments in compliance with CEQA.

4.0 Release of Claims.

- 4.1 Release by The Open Monterey Project. The Open Monterey Project intends and agrees that this Agreement shall, when fully implemented in accordance with the provisions hereof, be effective as a full and final accord and satisfaction and general release of and from all Released Claims, as described below. Upon occurrence of the Dismissal Conditions and the completion of the Other Actions, The Open Monterey Project shall be conclusively deemed to have released the County, and its respective heirs, administrators, successors, assigns, agents, employees, officers, partners and directors (the "Released Parties") from all rights, actions, claims, debts, demands, costs, contracts, allegations, liabilities, obligations, demands, and causes of action, whether known, suspected, or unknown, at law or in equity, which The Open Monterey Project now has or as of the Effective Date of this Agreement has against the Released Parties, or any of them, arising from or relating to certification of the Final EIR for the 2010 Monterey County General Plan and approval of the 2010 Monterey County General Plan as adopted by the Board of Supervisors on October 26, 2010, as amended on February 12, 2013, and as may be amended pursuant to Section 3 of this Agreement, including without limitation, all costs and attorney fees incurred by the Releasing Parties in, or arising from, such actions (collectively, the "Released Claims"). The Open Monterey Project shall conclusively be deemed to have waived and relinquished to the fullest extent that it may lawfully do so, all rights and benefits afforded by Section 1542 of the Civil Code of the State of California ("Section 1542") which states as follows: "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR." This release does not extend

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to the right of each Party, including The Open Monterey Project, to institute legal action to seek specific performance of the terms of this Agreement, or to cure, correct or remedy any Default, as set forth in Section 5.8. This release does not extend to the right of The Open Monterey Project to institute an action at law or equity to set aside amendments to the County General Plan made subsequent to the Agreed Amendments or to set aside actions by the County to implement the County General Plan.

- 4.2 Understanding of Section 1542 Waiver. By executing this Agreement, The Open Monterey Project assumes the risk that it is unaware of the subject matter of this Agreement, or is otherwise mistaken as to relevant facts, and acknowledge that it may discover facts in addition to or different from those that they now know or believe to be true concerning the Released Claims and other matters contained in or concerning this Agreement. Subject to Section 2.3, each Party nevertheless agrees and intends this Agreement to be a complete release of the Released Claims, and to settle all disputes and differences relating to the Released Claims, known or unknown, suspected or unsuspected, that have existed, now exist, or may now exist between or among The Open Monterey Project and the Released Parties, unless, as otherwise specifically set forth in this Agreement. Unless otherwise specifically set forth in this Agreement, The Open Monterey Project waives any and all rights it has or may have under California Civil Code Section 1542 and/or any successor section to it with respect to the Released Claims. The Open Monterey Project hereby acknowledges and represents that (a) it understands the significance and the consequences of such specific waiver of unknown claims and hereby assumes full responsibility for any injuries, damages, lawsuits or liabilities that they may incur, both now and hereafter, from the waiver of said unknown claims, (b) it may discover facts different from, or in addition to, those facts that it now knows or believes to be true, and agrees that this Agreement and the releases contained herein shall be and remain effective in all respects notwithstanding any such subsequent discovery of different or additional facts, (c) it has undertaken its own independent investigation of all of the facts relating to the matters being released herein and this Agreement, and in entering into this Agreement and granting the releases contained herein, are not relying on any representation, warranty, or statement of any other Party except as expressly set forth herein, and (d) this waiver is an essential and material term of this Agreement. Nevertheless, The Open Monterey Project intends by this Agreement, and with and upon the advice of its own independently selected counsel, to release fully, finally and forever all Released Claims, unless as otherwise specifically set forth in this Agreement. In furtherance of such intention, the releases set forth in this Agreement shall be and shall remain in effect as full and complete releases notwithstanding the discovery or existence of any

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such additional or different claims or facts relevant hereto, unless as otherwise specifically set forth in this Agreement.

5.0 Enforcement, Default and Remedies.

- 5.1 Mutual Desire to Avoid Further Litigation and Jurisdiction to Enforce Settlement. The Parties have entered this Agreement for the purpose of avoiding litigation. Enforcement of this Agreement is to be brought solely through the procedures set forth in this section, which are designed to avoid resorting to court enforcement in the first instance, and, if resort to court is necessary, to provide simple, straightforward and predictable relief.
- 5.2 Court Retains Jurisdiction Over Settlement. The Parties shall stipulate that the Monterey County Superior Court retain jurisdiction of this case for the purpose of enforcing the mutual promises of this Agreement.
- 5.3 Default. Failure by any Party to perform any obligation hereunder within the time periods provided herein following notice and failure to cure as described hereafter, constitutes a "Default" under this Agreement. The Parties agree that time is of the essence in the performance by The Open-Monterey-Project and the County of their respective obligations under Sections 2.0 and 3.0 hereof.
- 5.4 Opportunity to Cure Alleged Default. A Party alleging a Default shall give written notice of Default to the other Party specifying in reasonable detail the nature of the alleged Default and, where appropriate, the manner in which the alleged default satisfactorily may be cured; offer to meet and confer in a good faith effort to resolve the issue; and provide the other Party sixty (60) days to cure the alleged Default commencing at the time of receipt of the notice of a properly detailed written Default notice.
- 5.5 Mediation. If an alleged default in performance has not been cured during the 60-day period provided in Section 5.4, any Party may request that the dispute first be submitted to mediation prior to judicial enforcement. The Party requesting mediation will pay for the services of the mediator. If mediation is requested by any Party, all Parties shall make a good faith effort to first resolve through mediation any dispute about another Party's alleged default in performance. If the Parties cannot agree on the identity of the mediator, the judicial officer shall designate the mediator. The Parties will commence mediation within fifteen (15) days after notice of the mediation and designation of the mediator and shall conclude mediation within 45 days after commencement. Each Party shall bear its own fees and costs relating to the mediation.

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- 5.6 **Effect of Modification of County's Powers.** In addition to specific provisions of this Agreement, performance by the County hereunder shall not be deemed to be in Default if the County's powers are modified by state or federal legislation, or otherwise, in any way that precludes the County from performing its obligations under this Agreement as a matter of law, provided that the County did not instigate, promote, accommodate, encourage, request, or otherwise participate in the modification of the County's powers.
- 5.7 **Extraordinary Financial Situations.** The County's financial obligations under this Agreement, which include but are not limited to funding and carrying out environmental review, amending the general plan, undertaking the study pursuant to General Plan Policy PS-3.1 as amended, and paying attorney fees and costs under the terms of this Agreement, may be suspended in the extraordinary financial circumstances defined hereunder:
- 5.7.1 An extraordinary financial situation has been formally declared by the Board of Supervisors such that performing its obligations under this Agreement would necessarily result in a violation of the financial covenants the County has made to its creditors and lienholders in return for the extension of credit in the form of bonds, loans, letters of credit and other forms of financing necessary to maintain the County's overall financial stability.
- 5.7.2 "Extraordinary financial situation" as used in this Section means circumstances that include, but are not limited to, the type of financial circumstances that County may experience in a formally declared state of fiscal emergency following natural disasters such as a major earthquake or fire; or other extraordinary events.
- 5.7.3 Upon the conclusion of these extraordinary circumstances, the County will promptly resume performance of its financial obligations under this Agreement. The County shall pay interest on the unpaid amounts of attorney fees and costs. The interest shall be at the legal rate, and shall run from the date on which the payment was due under this Agreement.
- 5.8 **Institution of Legal Action.** In addition to any other rights or remedies and subject to the restrictions otherwise set forth in this Agreement, after expiration of the cure period provided in Section 5.4, any Party may institute an action at law or equity to seek specific performance of the terms of this Agreement, or to cure, correct or remedy any Default. The rights and obligations of any non-breaching Party shall not be affected by the institution of a legal action alleging breach against another Party. In the event of any action to enforce this Agreement, whether by judicial or non-judicial

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means, the prevailing party shall be entitled to recover from the other party its attorney fees, expenses, and any related court costs. Nothing in this Agreement shall bar The Open Monterey Project from instituting an action at law or equity to set aside amendments to the County General Plan made subsequent to the Agreed Amendments or to set aside actions taken by the County to implement its General Plan.

6.0 Representations and Warranties: Each of the Parties represents, warrants, and agrees only as to itself as follows:

- 6.1 Each individual signing this Agreement on behalf of a Party represents and warrants that the individual has the right, power, legal capacity, and authority to do so, and that no further approval or consent of any person, officer, board of directors or other person or entity is necessary.
- 6.2 Each Party has received independent legal advice from its attorneys with respect to the advisability of making the settlement provided for herein, and with respect to the advisability of executing this Agreement. Each Party has been fully advised by its attorneys with respect to its rights and obligations under this Agreement and understands those rights and obligations.
- 6.3 No Party (nor any director, officer, member, manager, partner, trustee, agent, employee, representative or attorney of or for any other Party) has made any statement or representation to the other Party regarding any fact such other Party relied upon in entering into this Agreement, and such other Party is not relying on any statement, representation or promise, written or oral, of any other Party (or of any director, officer, member, manager, partner, trustee, agent, employee, representative or attorney for any other Party) in executing this Agreement, or in making the settlement provided for herein, except as otherwise expressly stated in this Agreement.
- 6.4 Prior to the execution of this Agreement, each Party and each Party's legal counsel have made such investigation of the facts and inquiries each Party deemed necessary or desirable pertaining to this settlement, this Agreement and all the matters pertaining thereto.
- 6.5 Each Party or responsible director, officer, member, manager, partner, trustee or attorney thereof has read this Agreement and understands the contents hereof. Each director, officer, member, manager, partner, trustee or attorney executing this Agreement on behalf of each Party is empowered to do so and thereby to bind such Party.

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- 6.6 Except as otherwise expressly represented, warranted or provided in this Agreement, each Party assumes the risks that (i) it may hereafter discover facts in addition to or contrary to those it believed to exist or relied upon in entering into this Agreement, including, without limitation, unknown or unanticipated claims which, if known by such Party on the Effective Date may have materially affected such Party's decision to execute this Agreement, (ii) it may have mistakenly understood matters relevant to entering into this Agreement and (iii) another Party may have negligently misrepresented or negligently failed to disclose facts in connection with the entering into of this Agreement. Notwithstanding any such unknown or unanticipated claims, misunderstandings, mistakes, negligent misrepresentations or negligent nondisclosures, each Party intends that this Agreement thereafter shall continue in full force and effect and shall not be subject to rejection or rescission for any reason, provided that such Party reserves all rights provided for in this Agreement.
- 6.7 Each Party is aware that it may hereafter discover claims or facts in addition to or different from those it now knows or believes to be true with respect to the matters related herein. Nevertheless, it is the intention of each Party to assume the risk that claims or facts now known or thought to be true may later be found to be different and to fully, finally and forever settle and release all of the Released Claims, unless as otherwise specifically set forth in this Agreement. In furtherance of such intention, the releases given herein shall be and remain in effect as full and complete mutual releases of all such matters unless as otherwise specifically set forth in this Agreement, notwithstanding the discovery or existence of any additional or different claims or facts relative thereto. This settlement shall not be subject to termination, rescission or modification by reason of any such change in claims or facts or knowledge of claims or facts.
- 6.8 Each Party shall execute all such further and additional documents as shall be reasonable, convenient, necessary or desirable to carry out the provisions of this Agreement.
- 6.9 Each Party acknowledges it has carefully read and fully understands all of the provisions of this Agreement and that such Party is entering into this Agreement voluntarily.
- 6.10 Each Party acknowledges that it is within the contemplation of each of the Parties to this Agreement that each of them may have claims for relief or causes of action for malicious prosecution or abuse of process in connection with the filing of claims for relief, causes of action, counterclaims, or cross-complaints in the Litigation and matters undertaken in connection therewith; and that it is the intention of the Parties

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to this Agreement to release any such claims, to deny that any malicious prosecution of actions or abuse of process has occurred, and to represent and agree that the filing of all claims for relief, causes of action, counterclaims, or cross-complaints in the foregoing litigation were done pursuant to the advice of legal counsel and upon probable cause.

7.0 General Provisions.

- 7.1 **Governing Law.** This Agreement shall be governed by and interpreted and construed in accordance with the laws of the State of California.
- 7.2 **Construction.** This Agreement shall in all cases be construed according to its fair and plain meaning, and not strictly for or against any of the Parties. As used in this Agreement, the masculine or neuter gender and single or plural numbers shall be deemed to include the others wherever the context so indicates or requires. Nothing in this Agreement shall be deemed to restrict the County's land use authority or police power in any way with respect to future legislative, administrative or other actions by the County.
- 7.3 **Entire Agreement.** This Agreement constitutes the entire agreement and understanding of the Parties hereto with respect to the subject matter contained herein. All prior agreements or understandings, oral or written, are merged into this Agreement and are of no further force or effect.
- 7.4 **Computation of Time.** The time in which any act is to be done under this Agreement is computed by excluding the first day, and including the last day, unless the last day is a holiday or Saturday or Sunday, and then that day is also excluded. The term "holiday" shall mean all holidays as specified in Sections 6700 and 6701 of the California Government Code. If any act is to be done by a particular time during a day, that time shall be Pacific Time Zone time.
- 7.5 **Counterparts.** This Agreement may be executed in counterparts and by facsimile or electronic signatures, and when joined together, all counterparts shall constitute one agreement, which shall be binding on all of the Parties, even though all signatures may not be on one original or the same counterpart.
- 7.6 **Amendment.** This Agreement may only be modified or amended by a written amendment thereto executed by all of the Parties. The Parties acknowledge that, due to the long term nature of the proposed general plan amendments represented by the policies contained in Exhibit A, it may be necessary and/or appropriate at some time in the future, or from time to time, for the Parties to execute additional documentation

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to clarify and implement the provisions of this Agreement. Each Party agrees to cooperate in good faith to negotiate and enter into such various additional documentation as may be determined to be reasonably necessary and/or appropriate by the Parties. Modifications to the terms of this Agreement are permissible, so long as such actions are agreed to by all of the Parties.

- 7.7 No Admission. Neither the acceptance nor execution of this Agreement constitutes an admission of liability by any Party, nor shall it be construed as such.
- 7.8 Notice. Any notice, request, claim, demand or other communication required hereunder ("Notice") shall be in writing and shall only be effective upon delivery in person, by overnight courier with receipt requested, by facsimile transmission with confirmation of transmission or by registered or certified mail (postage pre-paid, return receipt requested) to the Party designated for receipt of the Notice upon such Party's actual receipt of the Notice.

To County:

Charles J. McKee, County Counsel and
Leslie J. Girard, Chief Assistant County Counsel
168 W. Alisal St.
Salinas, CA 93901
(831) 755-5045
(831) 755-5365 (facsimile)

To The Open Monterey Project:

Michael W. Stamp and
Molly Erickson
STAMP | ERICKSON
479 Pacific Street, Suite One
Monterey, CA 93940
(831) 373-1214
(831) 373-0242 (facsimile)

- 7.9 Successors and Assigns. This Agreement shall inure to the benefit of and be binding upon the Parties, and their respective heirs, administrators, successors, assigns, agents, employees, officers, partners and directors. Nothing in this Agreement, express or implied, is intended to confer upon any person, other than the Parties or their respective successors and assigns, any rights or benefits under or by reason of this Agreement.

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- 7.10 No Waiver. The failure of any Party to enforce any of its rights arising by reason of any breach of covenant on the part of any other Party will not constitute a waiver of such breach. No custom or practice which exists or arises between or among the Parties in the course of administering this Agreement will be construed to waive any Party's rights to (1) insist upon the performance by any other Party of any covenant in this Agreement or (2) exercise any rights given it on the account of any breach of such covenant. A waiver of any particular breach will not be deemed to be a waiver of same or any other subsequent breach.
- 7.12 Exhibits. Exhibit A and Exhibit B, attached hereto, shall be incorporated in this Agreement as if set forth in full herein.
- 7.13 Headings. The descriptive headings used in this Agreement are for convenience only and shall not affect the meaning of any provision of this Agreement.
- 7.14 Cooperation. Each Party agrees to cooperate with the other in implementation of this Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date set forth above.

~~MONTEREY COUNTY BOARD OF SUPERVISORS~~

Date: _____

By: _____

Louis C. Calsagno
Chair, Monterey County Board of Supervisors

APPROVED AS TO FORM

Date: _____

By: _____

Leslie J. Girard
Chief Assistant County Counsel

SIGNATURES ON NEXT PAGE

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COUNTY OF MONTEREY *et. al. et. al.*

Date: 1/12/15

By: *Louis Q. Calcagno*
Louis Q. Calcagno
Chair, Monterey County Board of Supervisors

APPROVED AS TO FORM

Date: 1/12/15

By: *Leslie J. Girard*
Leslie J. Girard
Chief Assistant County Counsel

THE OPEN MONTEREY PROJECT

Date: _____

By: _____
Gillian Taylor, authorized representative

APPROVED AS TO FORM

Date: _____

By: _____
Michael W. Stamp
STAMP | ERICKSON

SETTLEMENT AGREEMENT

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COUNTY OF MONTEREY

Date: _____

By: _____

Louis C. Calcagno
Chair, Monterey County Board of Supervisors

APPROVED AS TO FORM

Date: _____

By: _____

Leslie J. Girard
Chief Assistant County Counsel

THE OPEN MONTEREY PROJECT

Date: Jan. 8, 2015

By: Gillian Taylor

Gillian Taylor, authorized representative

APPROVED AS TO FORM

Date: January 8, 2015

By: [Signature]

Michael W. Stamp
STAMP | ERICKSON

SETTLEMENT AGREEMENT – Exhibits A and B

Landwatch Monterey County v. County of Monterey (Monterey County Case No. M109434)

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Exhibit A to Settlement Agreement
Agreed Amendments

Amend PS-3.1 as follows:

PS.3-1: Except as specifically set forth below, new development for which a discretionary permit is required, and that will use or require the use of water, shall be prohibited without proof, based on specific findings and supported by evidence, that there is a long-term, sustainable water supply, both in quality and quantity to serve the development.

This requirement shall not apply to:

- a. the first single family dwelling and non-habitable accessory uses on an existing lot of record; or
- b. specified development (a list to be developed by ordinance) designed to provide: a) public infrastructure or b) private infrastructure that provides critical or necessary services to the public, and that will have a minor or insubstantial net use of water (e.g. water facilities, wastewater treatment facilities, road construction projects, recycling or solid waste transfer facilities); or
- c. development within Zone 2C of the Salinas Valley groundwater basin, provided the County prepares or causes to be prepared a study for the Board of Supervisors regarding Zone 2C, to be completed no earlier than October 31, 2017 and no later than March 31, 2018 that does the following:

- 1) evaluates existing data for seawater intrusion and groundwater levels collected by Monterey County Water Resources Agency as of the date the study is commenced;
- 2) evaluates the total water demand for all existing uses and future uses designated in the General Plan EIR for the year 2030;
- 3) assesses and provides conclusions regarding the degree to which the total water demand for all uses designated in the General Plan for the year 2030 are likely to be reached or exceeded;
- 4) evaluates on an annual basis during the study period groundwater elevations and the seawater intrusion boundary;

SETTLEMENT AGREEMENT – Exhibits A and B

Landwatch Monterey County v. County of Monterey (Monterey County Case No. M109434)

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- 5) based on historical data and the data produced by the study, evaluates and provides conclusions regarding future trends and any expected movement of groundwater elevations and the seawater intrusion boundary;
- 6) should the study conclude that i) total water demand for all uses designated in the General Plan for the year 2030 is likely to be exceeded; or ii) groundwater elevations are likely to decline by the year 2030 and iii) the seawater intrusion boundary is likely to advance inland by the year 2030, the study shall make recommendations on measures the County could take to address any or all of those conditions; and
- 7) addresses such other matters as the Board of Supervisors determines are appropriate.

Within two months following the completion of the study, the Board of Supervisors shall hold an open and noticed public hearing on the results of the study. If the study reaches the conclusions for Zone 2C identified in subsection 6) i or 6) ii and 6) iii, the Board of Supervisors shall adopt one or more measures identified in the study, or other appropriate measures, to address the identified conditions. This exception for Zone 2C shall be a rebuttable presumption that a Long Term Sustainable Water Supply exists within Zone 2C, and the presumption shall remain in effect until and unless the study reaches the conclusion for Zone 2C identified in subsection 6) i or 6) ii and 6) iii. Development in Zone 2C shall be subject to all other policies of the General Plan and applicable Area Plan. The rebuttable presumption shall apply only to uses consistent with the 2010 General Plan as amended through October 1, 2014.

Unless the public hearing required by this policy is commenced and concluded within two months following the presentation of the study to the Board of Supervisors, then effective 60 days following the presentation of the study to the Board of Supervisors there shall no longer be a rebuttable presumption of a long term sustainable water supply for development in Zone 2C. This means that the exception in subsection c shall no longer apply, unless otherwise required by law, and the rebuttable presumption shall apply only to projects for which the County has determined the

SETTLEMENT AGREEMENT – Exhibits A and B

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application to be complete and so advised the applicant and for which a public hearing has been noticed.

Within fourteen days of the conclusion of the public hearing required by this policy, or if there is no regularly scheduled meeting of the Board of Supervisors in that fourteen day period, at the next regularly scheduled meeting, the Board of Supervisors shall adopt findings based on substantial evidence as to whether any of the conditions identified in subsections 6.i, ii, and iii (the “Conditions”) are likely to occur by 2030. Only if the Board of Supervisors finds that none of the Conditions are likely to occur by 2030, may it find that there is a rebuttable presumption that a long-term sustainable water supply exists within Zone 2C through 2030 and make the discretionary decision to continue to except development within Zone 2C from the requirement under this Policy to provide proof, based on specific findings supported by evidence, that there is a long-term sustainable water supply. If the Board of Supervisors finds that any of the Conditions are likely to occur by 2030, new development within Zone 2C shall not be excepted from the requirement to provide proof of a long-term sustainable water supply, and there shall no longer be a presumption of a long-term sustainable water supply for development in Zone 2C except as required by law.

Unless the Board of Supervisors finds that none of the Conditions are likely to occur by 2030, the Board shall within nine months of the conclusion of the public hearing adopt, or find that other agencies have adopted, a program (“Program”) committing the County or those agencies to adopt measures that, based on substantial evidence, are sufficient to avoid and prevent by 2030 each of the Conditions that the Board of Supervisors has found are likely to occur by 2030. Unless, at the time of the adoption of the Program identified in the prior sentence, the Board of Supervisors finds based on substantial evidence that capital projects will be funded and constructed in order to avoid and prevent by 2030 each of the Conditions that are found by the Board likely to occur by 2030, the County shall adopt, or find that other agencies have adopted, other sufficient measures (“Other Measures”) as authorized by law to avoid and prevent all those conditions by 2030. As required and authorized by this General Plan and consistent with the intent and purposes of state law, including but not limited to the 2014 Sustainable Groundwater Management Act, the County shall take a

proactive role in planning for a long-term sustainable water supply in Zone 2C. As required by Policy PS-3.7, and as may be required after the first 5-year assessment of Zone 2C water conditions in 2015 pursuant to Policy PS-3.15, the County shall by March 31, 2016 initiate, pursue, and support the identification and necessary planning for strategies, water supply projects, water management efforts, and multiple agency agreements that may be implemented as part of the Program or Other Measures. The County shall initiate this planning effort by March 31, 2016 and pursue and support it until completion of the study required by this policy to ensure that, should it be necessary to adopt a Program or Other Measures in response to the findings required by this Policy, the County and/or other agencies shall be able to define and adopt the Program or Other Measures, and to conduct necessary environmental review at the programmatic level within one year of those findings.

Following completion of the study described herein, and the adoption of measures as may be recommended in the study, if any, the County shall prepare a report to the Board of Supervisors every five (5) years for Zone 2C that examines the degree to which a) total water demand for all uses predicted in the General Plan EIR for year 2030 will be reached; or b) groundwater elevations, the seawater intrusion boundary have changed since the prior reporting period; and c) other sources of water supply are available.

Amend OS-3.5 (2) as follows:

OS-3.5

(2) Agricultural. Conversion of uncultivated land to cultivated land on slopes greater than 25% shall be prohibited except as follows:

- a) Conversion of uncultivated land to cultivated land on slopes greater than 25% shall be prohibited, except as stated in subdivision b.
- b) In the Agricultural and Winery Corridor Plan area (“AWCP”) and the Cachagua Plan area (“Cachagua”) only, conversion on slopes between 25% and 35% may be permitted pursuant to a use permit. In order to avoid the degradation of on-site and off-site natural resources, the use permit process shall:

1. Evaluate possible alternatives that better meet the goals and policies of the general plan.

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2. Identify and require an Agricultural Management Plan including development and design techniques for erosion control, slope stabilization, visual mitigation, drainage, and construction techniques, incorporating the Best Management Practices developed pursuant to Policy OS-3.1 and the Program developed pursuant to Policy OS-3.9.
3. Minimize development in areas where potentially unstable slopes, soil and geologic conditions, or sewage disposal pose substantial risk to public health and safety.
4. Limit such conversion permits as follows:
 - a. Maximum of 100 acres per year for both the AWCP and Cachagua combined, with no rollover of unconverted acres,
 - b. Maximum of fifteen (15) acres per permit per year per applicant, and
 - c. Land must be contiguous to already cultivated land.
- c) Only lands cultivated and irrigated on slopes over 25% as of December 16, 2014 for which cultivation and irrigation were permitted or otherwise allowed by law may continue to be so cultivated and irrigated.
- d) Conversion without a permit shall be considered a continuing public nuisance and may be enforced through a cause of action brought by any private party. The County retains and shall use its authority to enforce violations.
- e) The County shall annually prepare and release to the public a map showing all new cultivation of slopes over 25% in the County and, separately indicated, all new cultivation of slopes over 35%. The County map shall show all new cultivation that is identifiable from publicly available crop and land cover data, such as the USDA's National Agricultural Statistics Service Cropscape Cropland Data Layer. The map also shall identify all permitted conversions and delineate the boundaries of each conversion permit, by permit number.
- f) A ministerial permit process shall be developed by ordinance and implemented for conversion of lands that have not been cultivated for the previous 30 years on slopes (i) between 15 and 25 percent (15-25%) except land in the North County Area Plan and Cachagua Area Plan, and (ii) between 10 and 15 percent (10-15%) on highly erodible soils. The permit processes shall be designed to require that an erosion control plan be developed and implemented that assures slope stabilization and prevents

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drainage and flood hazards, and to prevent potentially significant impacts to wildlife corridors and linkages.

g) Conversion of slopes between 15% and 25% (15-25%) in the North County Area Plan and Cachagua Area Plan shall require a use permit and an Agricultural Management Plan.

h) The County shall retain existing requirements for an Agricultural Management Plan for each use permit for conversions as currently set forth in County Code section 21.66.030 (as of Oct. 26, 2010).

i) The County shall not approve permits pursuant to this policy OS-3.5(2) until the County has adopted ordinance(s) implementing OS-5.16, OS-5.22, and OS-5.24, Figure OS-1, a Program developed pursuant to OS-3.9, and conforming amendments to Zoning Code section 21.66.030.

Amend OS-3.1 as follows:

Best Management Practices (BMPs) to prevent and repair erosion damage and to prevent and remediate other effects of erosion such as sedimentation and water quality impacts, shall be established and enforced by the County.

Amend OS-3.9 as follows:

The County shall develop a Program to address the potential cumulative hydrologic impacts of the conversion of hillside rangeland areas slopes to cultivated croplands. The Program shall be designed to ~~avoid or minimize:~~

- a) avoid or minimize off-site soil erosion,
- b) avoid or minimize increased runoff, runoff-related stream stability impacts, and sedimentation impacts, and
- c) meet adopted water quality standards.

The County shall convene a committee comprised of county staff, technical experts (including staff of the Natural Resources Conservation Service), and stakeholders to develop the Program, including implementation recommendations. This program shall be adopted within five (5) years of adoption of the General Plan.

Amend OS-5.16 as follows:

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A biological study shall be required for any development project requiring a discretionary permit and in the vicinity of a wildlife corridor/linkage as illustrated in Figure OS-1 or having the potential to substantially reduce the habitat of a fish or wildlife species, cause a fish or wildlife population to drop below self-sustaining levels, threaten to eliminate a plant or animal community, or substantially reduce the number or restrict the range of an endangered, rare, or threatened species, or degrade a wildlife movement corridor/linkage. An ordinance establishing minimum standards for a biological study and biological surveys shall be enacted. A biological study shall include field reconnaissance performed at the appropriate time(s) of year. Based on the results of the biological study, corridor surveys may be necessary to identify, describe, and delineate the habitats, wildlife movement corridors or linkages, or species that potentially could be impacted. The ordinance shall specify when a corridor survey is required and the minimum requirements for a corridor survey. The ordinance shall include design guidelines for development within corridors and linkages, including but not limited to: standards for design, landscaping, lighting, site layout including structures, and fencing. ~~Said ordinance shall be adopted within 12 months of the adoption of this policy.~~ Feasible measures to reduce significant impacts to a less than significant level shall be adopted as conditions of approval.

Amend OS-5.24 as follows:

In order to preserve the functionality of existing wildlife corridors/linkages, and to promote and facilitate wildlife movement corridors/linkages, if Figure OS-1 or a biological study discloses evidence that a wildlife corridor or linkage exists in the vicinity of a project, a corridor survey shall be required to identify the boundaries of the movement corridor or linkage with respect to the project site. The corridor survey shall include mitigation recommendations from the ordinance required to be adopted pursuant to Policy OS-5.16 to retain a corridor or linkage of adequate size and quality to preserve the continued free movement of all wildlife based on the needs of the species occupying the habitat and using the corridor or linkage. The County shall require the use of wildlife friendly fencing to the extent allowed by law. The County shall require discretionary projects to retain movement corridors of adequate size and habitat quality to allow for

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~~continued wildlife use based on the needs of the species occupying the habitat.~~ The County shall require that expansion of its roadways and public infrastructure projects provide movement opportunities for terrestrial wildlife and ensure that existing stream channels and riparian corridors continue to provide for wildlife movement and access.

Figure OS-1 shows the general location of some of the wildlife movement corridors/linkages in Monterey County. Figure OS-1 is illustrative only. The County shall engage a qualified wildlife consultant to make recommendations as to the implementing ordinances for OS-5.16, OS-5.22 and OS-5.24, and the conservation strategy required by OS-5.21, with regard to wildlife corridor/linkage issues. The County shall use the wildlife consultant's map as the basis of Figure OS-1 of the General Plan. The County shall use the consultant's recommended protections as the primary basis of the implementing ordinances for OS-5.16, OS-5.22 and OS-5.24 and the conservation strategy required by OS-5.21, and the final ordinance language shall be the result of a collaborative process of the consultant and County staff.

Until the ordinance required by Policy OS-5.16 is adopted, if Figure OS-1 or a biological study discloses evidence that a wildlife corridor or linkage exists in the vicinity of a project, the corridor survey shall make recommendations for design based upon best practices related to the needs of the species occupying the habitat and species using the corridor or linkage, and the County's wildlife consultant shall review and research the application and make recommendations within the scopes of Policy OS-5.16 and this Policy OS-5.24, and such projects may only be approved if the contents of those recommendations are adopted as conditions of approval. Until Figure OS-1 is adopted, the County's wildlife consultant shall review and research each application and make recommendations. If the ordinance required by Policy OS-5.16 is not adopted within 12 months of adoption of this policy, no permits for projects requiring a corridor survey and mitigation recommendations shall be approved until the implementing ordinance is adopted.

This policy shall not apply retroactively to projects constructed legally.

Amend Agricultural Winery Corridor Plan as follows:

3.1 GENERAL REGULATIONS

The number of facilities allowed to be processed under this Plan shall be as follows:

- A. *Artisan Winery*: A maximum of 40 new artisan wineries as follows:
 - 1. River Road Segment; up to 24;
 - 2. Metz Road Segment; up to four (4); and
 - 3. Jolon Road Segment; up to 12.

- B. *Full-Scale Winery*: a maximum of 10 new full-scale wineries as follows:
 - 1. River Road Segment; up to five (5);
 - 2. Metz Road Segment; up to two (2); and
 - 3. Jolon Road Segment; up to three (3).

- C. *Winery Tasting Rooms*; a maximum of 10 new, stand-alone, facilities as follows:
 - 1. River Road Segment; up to five (5);
 - 2. Metz Road Segment; up to two (2); and
 - 3. Jolon Road Segment; up to three (3).

- D. ~~*Restaurant*. A total of three (3) new restaurants with no more than one restaurant per segment.~~

- E. *Delicatessen*. A total of five (5) new delicatessens on the same site as a winery with no more than three (3) delicatessens within the River Road Segment and no more than one (1) delicatessen within each of the remaining two segments.

- F. ~~*Inns*. A maximum of eight (8) new Inns as follows:~~
 - ~~1. River Road Segment; up to five (5);~~
 - ~~2. Metz Road Segment; one (1); and~~
 - ~~3. Jolon Road Segment; up to two (2).~~

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- GE. *Business Cluster.* One consolidated area may be identified for an overlay designation where a cluster of wine industry related businesses (bottle and cork production, label design, etc.) may develop. This business center should be located near an urban area with adequate facilities. A business cluster within the AWCP overlay area shall be considered consistent with the General Plan; however, a zoning change may be required to achieve the appropriate zoning designation. Site specific development would be subject to the standard County requirements and CEQA and not part of the ministerial review process created under this Plan.
- HF. *Visitor Centers.* Visitor centers that provide visitor information about the Corridor should be established within the vicinity of Highway 101/Arroyo Seco and/or near Highway 68.

3.2 ALLOWED USES

The following uses shall be allowed at facilities approved under the AWCP located within the designated corridor.

- A. ~~*Winery Adjunct Uses.*~~
- B. ~~*Industry-wide events.*~~
- CB. *Winery-Related Events up to 150 people at any one venue at any one time.*
Events include:
1. Advertised fund raising events.
 2. Winemaker Dinners open to the general public.
 3. Weddings.
- DC. *Private Winery Events* such as:
1. Company Holiday Party.
 2. Employee-Related Private Parties (e.g. harvest celebration).

3.3 PERMITTED USES, MINISTERIAL PERMIT REQUIRED IN EACH CASE

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[No changes.]

3.4 PERMITTED USES, ADMINISTRATIVE PERMIT REQUIRED IN EACH CASE

This Section includes a list of uses that can be permitted with an Administrative Permit for properties within the designated Agricultural and Winery Corridor. These uses are subject to the General Regulations established in Section 3.1 and Development Standards established in Section 3.5 of this Agricultural and Winery Corridor Plan.

A. ~~Restaurant or Delicatessen~~; subject to the following criteria:

- ~~1. Located within five (5) miles from an urban limit line, community area, or rural center or within one (1) mile of an arterial or collector.~~
- ~~2. Parking shall be provided as required by Chapter 21.58, Monterey County Code.~~

B. ~~Inn, on-site with a winery facility~~; subject to the following criteria:

1. The Inn is clearly incidental, related, and subordinate to the primary operation of the winery as a production facility.
2. Separate structure(s) shall be built expressly for an Inn.
3. Includes no more than ten (10) guest rooms, and a family does not need to be in permanent residence within the Inn facility.
4. Design shall use a consistent style for all buildings on the same lot.
5. Parking shall be provided as required similar to a bed and breakfast use.

C. ~~Inn, stand alone~~; subject to the following criteria:

1. The facility is located:
 - ~~a. more than 500 feet from a parcel on which any other Inn facility is located;~~
 - ~~b. no closer than 400 feet to any existing residence outside the ownership of the applicant.~~
2. ~~Parking shall be provided as required similar to a bed and breakfast use.~~

DB. *Winery, Full-scale*, including tasting facilities and a catering kitchen as part of the winery. Events included as part of the permit for a full-scale winery shall not be subject to other permit requirements of Sections 3.3E or 3.6.

3.5 DEVELOPMENT STANDARDS

The following standards shall apply for approved uses within the Winery Corridor only:

- A. *Parcel Size*. Minimum five (5) acres:
1. Creation through subdivision of a ~~five-acre lot or any one~~ lot smaller than the zoning minimum parcel size, but of a minimum size of five (5) acres (a “Small Lot”), is permissible provided:
 - a. ~~The remaining parcel still~~ All other parcels included as part of the subdivision conforms to the minimum parcel size of the underlying zoning district. In order to encourage utilization of existing substandard sized lots, An exception to subdivide lots (minimum 5 acres) from a legal non-conforming lot not meeting the minimum lot size for the land use designation (e.g. 10-acre lot with 40-acre minimum designation) may be allowed to subdivide one Small Lot from one legal non-conforming lot that is at least 10 acres in size but does not meet the minimum lot size for the zoning designation (e.g., a 20-acre lot in a 40-acre minimum designation could be divided to create one 5-acre lot and one 15-acre lot) based on substantial evidence that this action would:
 - 1) reduce the number of conforming agricultural lots from being subdivided because the parcel is located in an area where AWCP facilities would likely locate; and
 - 2) limit development in a manner to retain the rural character of the corridor. For purposes of this finding the rural character refers to parcels that conform to the minimum parcel size in the underlying zoning district and that contain agricultural uses.

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- b. Development of the Small Lot must be in conformance with allowable Uses and Permitted Uses identified in this Agricultural and Winery Corridor Plan only, which will be memorialized by a recorded deed restriction on the Small Lot.
 - c. The total number of Small Lots created does not exceed 66 lots within the AWCP as adopted. In addition, the number of Small Lots created within each segment shall not exceed the number of wineries and/or tasting rooms allowed for that segment (Section 3.1 AWCP).
 - d. Where a Small Lot is created by subdivision under this Plan, all lots and parcels included as part of that subdivision shall be restricted from further subdivision of Small Lots as described in this section.
2. Subdivision of parcels under Williamson Act contract shall be in conformance with Williamson Act regulations.
 3. Creation of Small Lots through subdivision within the Corridor is permissible subject to the Subdivision Map Act and County Subdivision Ordinance.

Amend GLOSSARY as follows:

~~**AGRICULTURAL LAND USES** means those uses of an agricultural nature that occur on farmlands designated as prime, of statewide importance, unique, or of local importance. Agricultural land uses also include grazing and any other uses that occur on properties designated as agricultural on the General Plan and/or Area Plan land use map(s).~~

WINERY means an agricultural processing plant used for the commercial purpose of processing grapes, other fruit products, or vegetables to produce wine or similar spirits. Processing includes crushing, fermenting, blending, aging, storage, bottling, warehousing, wine tasting facility, administrative office functions including wholesale and retail sales of associated wine and wine related items, and events. ~~Winery Adjunct Uses may also be considered as accessory to a winery when specifically requested and addressed as part of the discretionary permit application for the winery or as a subsequent permit application process.~~

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WINERY, ARTISAN [No change.]

WINERY, FULL-SCALE [No change.]

~~**WINERY ADJUNCT USES** means uses not considered an inherent part of a winery, but frequently associated with wineries and the agricultural tourism industry. Winery Adjunct Uses include, but are not limited to, restaurants, delicatessens, events, and concerts. Such uses may be considered as accessory to a Winery or Winery Tasting Facility when specifically requested and addressed as part of the discretionary permit application for the Winery or as a subsequent permit application process.~~

WINERY CORRIDOR [No change.]

~~**WINERY TASTING FACILITY** means a bonded Winery Tasting Facility, also known as an "on or off winery premise," as provided by federal law under the jurisdiction of the Tax and Trade Bureau. A Winery Tasting Facility shall accommodate wine tasting, an administrative office, retail sales of associated wine and wine related items, events, warehousing, and storage. Winery Adjunct Uses may be considered as accessory to a Winery Tasting Facility when specifically requested and addressed as part of the discretionary permit application for the Winery Tasting Facility or as a subsequent permit application process.~~

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Other Actions

1. County shall consider making findings in the resolutions or ordinances adopting the Agreed Amendments, and acknowledging and reciting in the addendum or subsequent EIR to the 2010 General Plan EIR prepared in support of the adoption of the Agreed Amendments, that the County's adoption and timely compliance with each Agreed Amendment is necessary mitigation that is required to avoid or minimize significant impacts caused by the 2010 General Plan or to render impacts caused by the 2010 General Plan less than a considerable contribution to a significant cumulative impact.
2. LandWatch Monterey County and The Open Monterey Project each shall be entitled to be represented on the technical advisory committee for the study undertaken to fulfill the requirements of General Plan Policy PS-3.1 through qualified consultant(s).
3. ~~To make the determination required by General Plan Policy PS-3.1.c.6.i as~~ to whether “total water demand for all uses designated in the General Plan for the year 2030 is likely to be exceeded,” the County shall determine whether the 2030 demand projected by the 2010 General Plan EIR is likely to be exceeded. In doing so, the County shall reassess the demand projections made in the 2010 General Plan EIR in light of any changes to or errors in the assumptions for baseline and future demand, including trends in land and water use. There shall be no presumption that the analysis in 2010 General Plan EIR was correct with respect to the 2030 demand projections.
4. The County shall require the following analyses to be included in the study undertaken in connection with implementation of General Plan Policy PS-3.1 and shall before April 1, 2015 ensure that the scope of work for its consultant(s) includes these analyses:
 - a. The study shall provide a quantitative assessment of climate change effects by using a basin characterization GIS Model approach (for example, <http://www.ecologicalprocesses.com/content/2/1/25>) that would use temperature, precipitation and other data from available global climate change models.

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b. The study shall reassess the 2030 demand projections made in the 2010 General Plan EIR, consistent with the mandate of Policy PS-3.1.

i. The County shall revise the language at pages B2, B4, B7, and B9 of the July 3, 2014 scope of work for Brown and Caldwell, or shall otherwise provide a revised scope of work, to clarify that 2030 land use assumptions to be used as model input will not simply be taken from the 2030 General Plan or its EIR but will instead be based on a reassessment of land use assumptions.

ii. In reassessing the General Plan EIR 2030 demand projections, and in developing 2030 land use assumptions for model input, the following determinations shall be made with respect to 2014 baseline data:

- A. urban population and per capita water use using the best available data;
- B. rural residential population and domestic per capita water use using the best available data;
- C. industrial and commercial water use using best available data; and
- D. agricultural irrigated acreage, crop types, rotations (number of crop cycles per year), fallowing, and water duty for crop types and rotations taking fallowing into account, all using the best available data.

iii. In reassessing the General Plan EIR 2030 demand projections, and in developing 2030 land use assumptions for model input, the study shall determine projected changes through 2030 to each of the variables listed above based on current population projections, current trend analysis (especially regarding changes to agricultural acreage, cropping, and water duty), and existing regulatory constraints. Agricultural trend analysis should reconcile inconsistent or incomplete data sources (e.g., incomplete pumping records, inconsistent reports of irrigated acreage) if the study relies on such incomplete or inconsistent sources.

iv. In reassessing the General Plan EIR 2030 demand projections, and in developing 2030 land use assumptions for model input, the study shall

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consider recent land use mapping and demand estimate work completed by California Department of Water Resources on Monterey.

c.. The study shall develop and use a model that shall simulate the area, volume, and location of seawater intrusion over time using a 3-dimensional variable density groundwater flow and coastal seawater intrusion model such as SEAWAT or SWI2. The study and model shall at a minimum include the capability to evaluate the combined effect that increased groundwater pumpage and rising sea level would likely have on the location of the freshwater-seawater interface with time and to determine increases in seawater intrusion volume. The County shall revise the language applicable to Task 4 in Project 2 of the July 3, 2014 scope of work for Brown and Caldwell, or shall otherwise provide a revised scope of work, to ensure this.

d. The study process shall provide that the technical advisory committee shall be involved in advising the Water Resources Agency in connection with the assessment and selection of modeling tools. The County shall revise the language applicable to Task 4 and Task 10 in Project 2 of the July 3, 2014 scope of work for Brown and Caldwell, or shall otherwise provide a revised scope of work, to ensure this.

5. It is the intent of the parties that the process for the study to be undertaken pursuant to General Plan Policy PS-3.1 be an open and transparent public process to the maximum extent practicable. All data collected and used, and all documents gathered, to be used during the course of the study shall be available for public inspection except where such data or documents are required to remain confidential pursuant to federal, state, or local law, or contract (“Confidential Information”). All finalized deliverables to the County and to the Monterey County Water Resources Agency will be available for public inspection except where such deliverables contain Confidential Information, in which case such Confidential Information may be redacted or removed for purposes of public inspection. Documents made available during the course of the study to the stakeholders group and the Technical Advisory Committee shall be available for public inspection. The County shall retain, and require the Water Resources Agency to retain, all records of comments to and from Brown and Caldwell, and any subsequent and additional consultant engaged for the PS-3.1 study, regarding the

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deliverables (as described in the Brown and Caldwell scope of work for Project 2) that are made before the deliverables are finalized. Such records of comments will be available upon request for public inspection once the deliverable has been finalized and delivered to the County. Any documents subject to the attorney-client privilege or the attorney work-product privilege shall remain exempt from public inspection.

6. No later than 90 days after the adoption of the Agreed Amendments, the County shall produce a County-wide baseline map, or other records or information as the parties may agree to, that shows cultivated cropland as of October 2010 as follows: (1) on slopes of 25 to 35%, and (2) on slopes over 35%. No later than 120 days after the adoption of the Agreed Amendments, the County shall produce maps as follows: (1) showing cultivated cropland on slopes of 25% to 35% as of October 2014; (2) showing cultivated cropland on slopes over 35% as of October 2014; (3) showing the new cultivated cropland on slopes of 25% to 35% as of October 2014 that was not cultivated as of October 2010; and (4) showing the new cultivated cropland on slopes over 35% as of October 2014 that was not cultivated as of October 2010. After that, no later than 60 days after data becomes available, the County shall annually produce maps showing cultivated land on slopes between 25% and 35% and, separately, on slopes over 35%, and showing changes from the prior year. The County shall indicate on the maps which specific new cultivation has received a permit from the County and delineate the boundaries of each conversion permit, by permit number. The intent is that these maps be reasonably useful and understandable to the lay person, and provide reasonably reliable information to assist the parties and the public in determining the current land uses and in identifying changes in land uses.
7. The County shall engage a qualified wildlife consultant to compile available data to make an illustrative map of wildlife corridors/linkages in the County. The County shall use the wildlife consultant's map as the primary basis of Figure OS-1, to be considered for inclusion in the General Plan at the same time as the proposed amendments set forth in Exhibit A.
8. The County has engaged a wildlife consultant acceptable to The Open Monterey Project and Landwatch Monterey County to perform the services

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discussed in this settlement agreement and Exhibits A and B to this settlement agreement, prior to full execution of the settlement agreement, and the County has confirmed that in a memorandum of understanding between the County, the consultant, The Open Monterey Project and Landwatch Monterey County. The County shall use that specific wildlife consultant unless the County terminates the consultant for good cause, in which case the County shall use a different wildlife corridor consultant acceptable to The Open Monterey Project and Landwatch Monterey County.

9. Applications for permits pursuant to AWCP section 3.3 shall be reviewed for completeness and compliance with County requirements by the County's head of current planning prior to approval of any such application. The head of current planning may designate qualified planners to act on behalf of the head of current planning when necessary.

10. To those who have requested notice of applications, including ministerial applications pursuant to AWCP section 3.3 and OS-3.5(2), the County shall ~~provide email notice at the time of application and at the time of approval,~~ and will either attach the application and approval, respectively, or will make the applications and approvals available without delay on a County website.