

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

In the matter of the application of:

Merrill Minor Subdivision (PLN070376)

RESOLUTION NO. 11-006

Resolution by the Monterey County Planning
Commission:

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

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

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

FINDINGS

1. **FINDING:** **INCONSISTENCY** – The Project, as designed is inconsistent with the applicable plans and policies which designate this area as appropriate for development.
EVIDENCE: a) During the course of review of this application, the project has been reviewed for consistency with the text, policies, and regulations in:
 - 2010 Monterey County General Plan,
 - Greater Monterey Peninsula Area Plan,
 - Monterey County Zoning Ordinance (Title 21)
 - Monterey County Subdivision Ordinance (Title 19)Conflicts were found to exist during the course of review of the project

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

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

any of the following findings are made:

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

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

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

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

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

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

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

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

EVIDENCE: Section 21.80.040(D) Monterey County Zoning Ordinance


DECISION

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

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

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

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


Mike Novo, Secretary

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

THIS APPLICATION IS APPEALABLE TO THE BOARD OF SUPERVISORS.

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

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

PROJECT TEAM

OWNER: J. J. JACOBSON
 10000 S. 100TH ST.
 SUITE 100
 SANDY, UT 84070
 (801) 781-1000

ARCHITECT:
 J. J. JACOBSON
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 SUITE 100
 SANDY, UT 84070
 (801) 781-1000

CIVIL ENGINEER:
 WALTER S. JACOBSON
 10000 S. 100TH ST.
 SUITE 100
 SANDY, UT 84070
 (801) 781-1000

PLANNING ENGINEER:
 WALTER S. JACOBSON
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 SUITE 100
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 (801) 781-1000

LANDSCAPE ARCHITECT:
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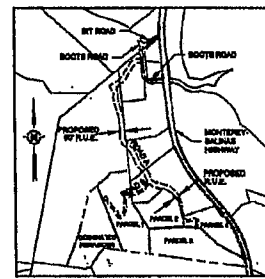
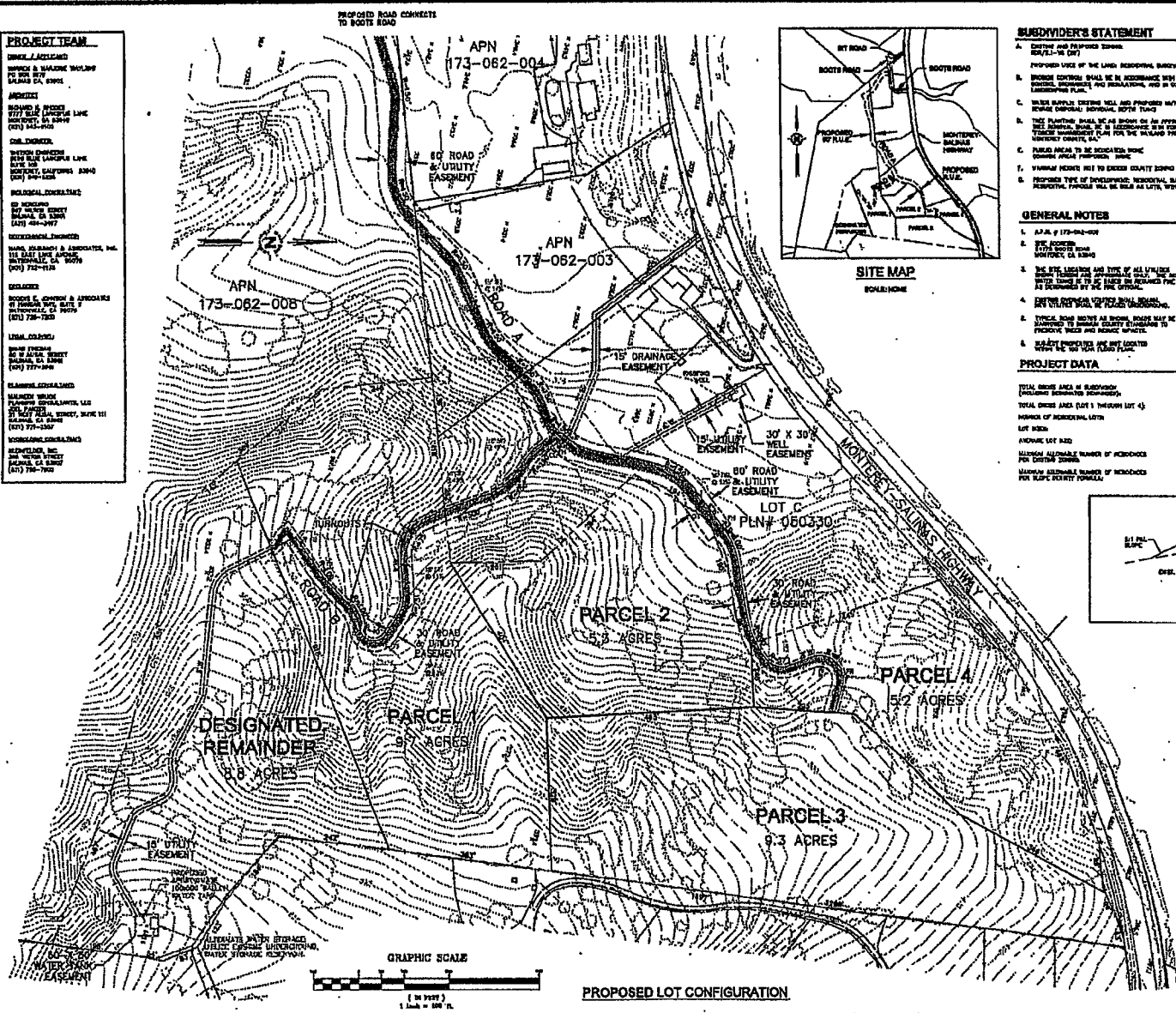
GENERAL CONTRACTOR:
 WALTER S. JACOBSON
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GEOTECHNICAL ENGINEER:
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SOILS ENGINEER:
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WATER ENGINEER:
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 SUITE 100
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WATER TREATMENT ENGINEER:
 WALTER S. JACOBSON
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SITE MAP
SCALE: 1" = 100'

SUBDIVIDER'S STATEMENT

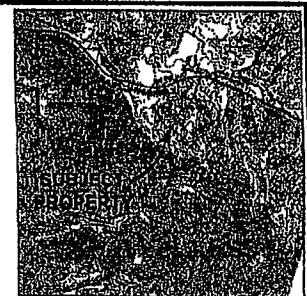
1. I, the undersigned, being duly sworn, depose and say that I am the owner of the above described property and that I am the owner of the same.
2. I have caused the above described property to be surveyed and the same to be divided into the lots and parcels hereinafter described.
3. I have caused the above described property to be surveyed and the same to be divided into the lots and parcels hereinafter described.
4. I have caused the above described property to be surveyed and the same to be divided into the lots and parcels hereinafter described.
5. I have caused the above described property to be surveyed and the same to be divided into the lots and parcels hereinafter described.
6. I have caused the above described property to be surveyed and the same to be divided into the lots and parcels hereinafter described.
7. I have caused the above described property to be surveyed and the same to be divided into the lots and parcels hereinafter described.
8. I have caused the above described property to be surveyed and the same to be divided into the lots and parcels hereinafter described.
9. I have caused the above described property to be surveyed and the same to be divided into the lots and parcels hereinafter described.
10. I have caused the above described property to be surveyed and the same to be divided into the lots and parcels hereinafter described.

GENERAL NOTES

1. ALL LOTS ARE TO BE 60' WIDE.
2. THE LOTS ARE TO BE 60' WIDE.
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PROJECT DATA

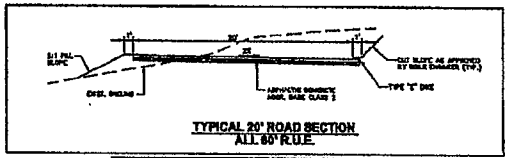
TOTAL GROSS AREA IN SUBDIVISION (INCLUDING UNDEVELOPED RESERVE)	36.3 ACRES
TOTAL GROSS AREA (LOT 1 THROUGH LOT 4)	36.3 ACRES
NUMBER OF INDIVIDUAL LOTS	4
LOT AREA	9.3 TO 9.8 ACRES
AVERAGE LOT SIZE	9.3 ACRES
MINIMUM FEASIBLE NUMBER OF HOMES	16
MAXIMUM FEASIBLE NUMBER OF HOMES	167



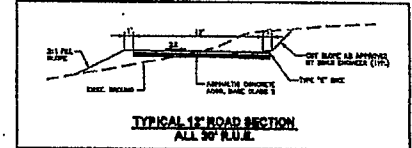
VICINITY MAP
SCALE: 1" = 100'

LEGEND

---	PROPERTY BOUNDARY
---	EXISTING ELEVATION CONTOUR
---	NEW LOT LINE
---	PROPOSED EASEMENT
---	PROPOSED ROAD
---	PROPOSED UTILITY
---	PROPOSED DRAINAGE
---	PROPOSED WELLS
---	PROPOSED WATER STORAGE
---	PROPOSED WASTEWATER STORAGE
---	PROPOSED FENCE
---	PROPOSED SIGN
---	PROPOSED LIGHT
---	PROPOSED SIGN
---	PROPOSED LIGHT



TYPICAL 20' ROAD SECTION
ALL 60' R.O.U.E.



TYPICAL 12' ROAD SECTION
ALL 60' R.O.U.E.



PLN# 070388
 PROPOSED
**VESTING
 TENTATIVE
 PARCEL MAP**

FOR
 A.P.N. 173-062-008-000
 MONTEREY COUNTY, CALIFORNIA

PREPARED BY:
W.E. WHITSON ENGINEERS
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 (801) 781-1000 • FAX (801) 781-1000
 CIVIL ENGINEERING • LAND DEVELOPMENT • PROJECT MANAGEMENT
 SEPTEMBER 8, 2007 JOB #173-000

PROPOSED LOT CONFIGURATION

PROJECT TEAM

CLIENT:
DERRA HOLDINGS
1100 EASTERN BLVD
MONTREY, CA 94038
(415) 741-0100

DESIGNER:
DERRA HOLDINGS
1100 EASTERN BLVD
MONTREY, CA 94038
(415) 741-0100

ENGINEER:
WEL WHITSON ENGINEERS
1000 BAY STREET
SANTA MONICA, CA 90405
(310) 312-5555

CONTRACTOR:
CIVIL ENGINEERING
1100 EASTERN BLVD
MONTREY, CA 94038
(415) 741-0100

PLANNING & BUILDING DEPT.
MONTREY COUNTY

INSPECTION DEPT.
MONTREY COUNTY

SUBDIVIDER'S STATEMENT

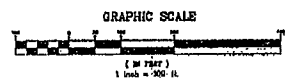
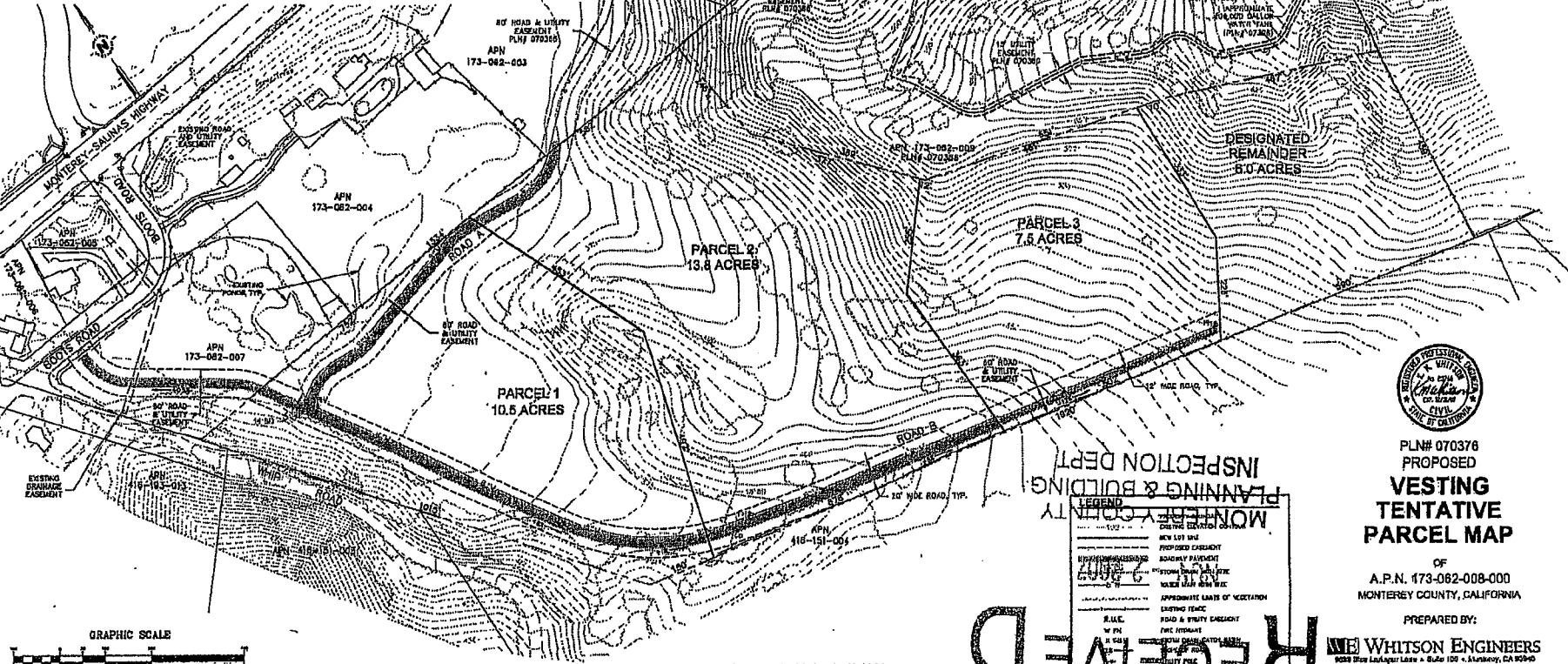
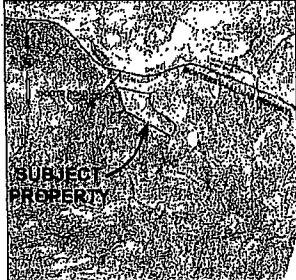
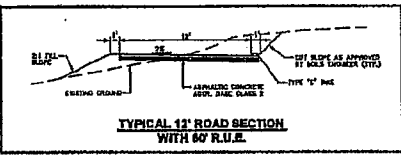
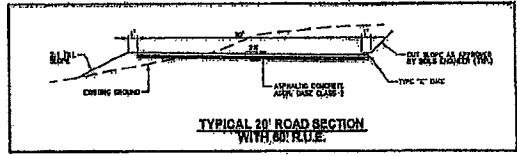
- I, SUBDIVIDER, HEREBY CERTIFY THAT THE INFORMATION CONTAINED HEREIN IS TRUE AND ACCURATE AND THAT THE MAP IS A TRUE AND ACCURATE COPY OF THE RECORD COPY AS DEPOSITED IN THE COUNTY CLERK'S OFFICE.
- I HEREBY CERTIFY THAT I AM THE OWNER OF THE LAND DESCRIBED IN THE MAP AND THAT I HAVE THE AUTHORITY TO SUBDIVIDE THE SAME.
- I HEREBY CERTIFY THAT I HAVE OBTAINED ALL NECESSARY PERMITS AND APPROVALS FROM THE APPROPRIATE AGENCIES AND THAT THE MAP IS IN CONFORMANCE WITH ALL APPLICABLE LAWS, ORDINANCES, REGULATIONS AND REQUIREMENTS.
- I HEREBY CERTIFY THAT I HAVE OBTAINED ALL NECESSARY PERMITS AND APPROVALS FROM THE APPROPRIATE AGENCIES AND THAT THE MAP IS IN CONFORMANCE WITH ALL APPLICABLE LAWS, ORDINANCES, REGULATIONS AND REQUIREMENTS.

PROJECT DATA

TOTAL GROSS AREA OF UNDEVELOPED PORTION OF TRACT	37.6 ACRES
UNDEVELOPED AREA (NET) DEDICATED LOT 2B	30.8 ACRES
NUMBER OF PARCELS	3
LOT AREA	7.5 TO 13.8 ACRES
AVOIDANCE LOT SIZE	13.8 ACRES
MINIMUM ALLOWABLE MARGIN OF BUREAU OF LAND MANAGEMENT	100'
MINIMUM ALLOWABLE MARGIN OF BUREAU OF LAND MANAGEMENT FOR EACH TRACT	100'

GENERAL NOTES

- APN # 173-082-008
- THE APN # IS 173-082-008
- THE SITE LOCATION AND USE OF ALL UTILITIES SHALL BE AS SHOWN ON THE MAP. THE USE OF ALL UTILITIES SHALL BE AS SHOWN ON THE MAP.
- EXISTING AND PROPOSED UTILITIES SHALL BE AS SHOWN ON THE MAP.
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PROPOSED LOT CONFIGURATION

RECEIVED

PLANNING & BUILDING INSPECTION DEPT.

MONTREY COUNTY

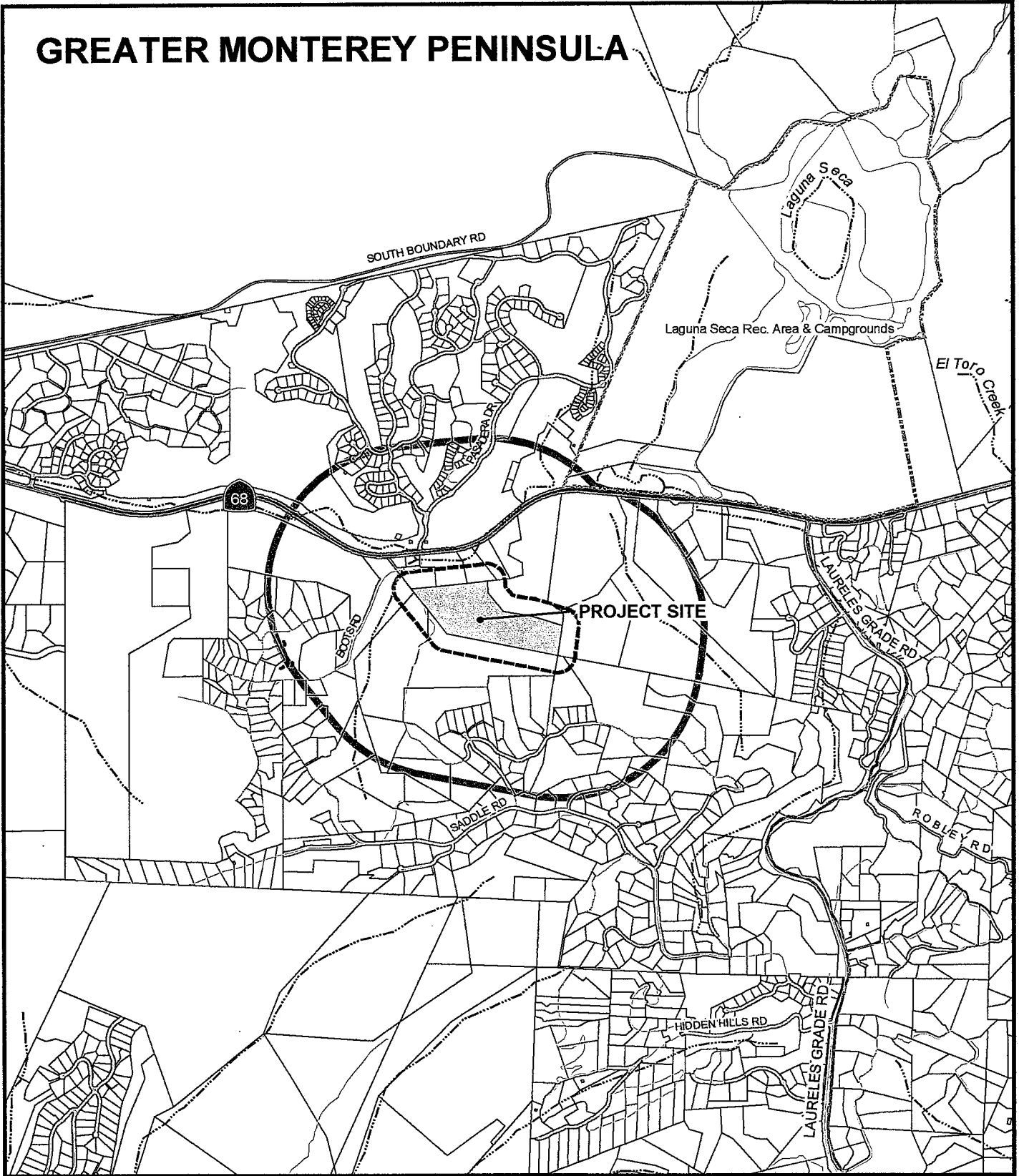
LEGEND

- SOLID LINE: EXISTING ROAD CENTER LINE
- DASHED LINE: PROPOSED ROAD CENTER LINE
- DOTTED LINE: EXISTING UTILITY EASEMENT
- DASHED-DOTTED LINE: PROPOSED UTILITY EASEMENT
- SOLID LINE WITH DASHES: EXISTING AND PROPOSED UTILITY EASEMENT
- SOLID LINE WITH SPACES: APPROXIMATE LIMITS OF VEGETATION
- DOTTED LINE WITH SPACES: EXISTING TRAIL
- SOLID LINE WITH SPACES: ROAD & UTILITY EASEMENT
- SOLID LINE WITH SPACES: FIRE HYDRANT
- SOLID LINE WITH SPACES: 6 INCH WATER MAIN
- SOLID LINE WITH SPACES: 18 INCH WATER MAIN
- SOLID LINE WITH SPACES: 24 INCH WATER MAIN
- SOLID LINE WITH SPACES: 36 INCH WATER MAIN
- SOLID LINE WITH SPACES: 48 INCH WATER MAIN
- SOLID LINE WITH SPACES: 60 INCH WATER MAIN
- SOLID LINE WITH SPACES: 72 INCH WATER MAIN
- SOLID LINE WITH SPACES: 84 INCH WATER MAIN
- SOLID LINE WITH SPACES: 96 INCH WATER MAIN
- SOLID LINE WITH SPACES: 108 INCH WATER MAIN
- SOLID LINE WITH SPACES: 120 INCH WATER MAIN

PLN# 070376
PROPOSED
**VESTING
TENTATIVE
PARCEL MAP**
OF
A.P.N. 173-082-008-000
MONTREY COUNTY, CALIFORNIA

PREPARED BY:
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916 843-0215 • FAX 916 373-8005
CIVIL ENGINEERING & LAND DEVELOPMENT & PROJECT MANAGEMENT
SINCE 1945

GREATER MONTEREY PENINSULA

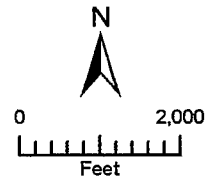


APPLICANT: MERRILL

APN: 173-062-008-000

FILE # PLN070376

 300' Limit  2500' Limit  City Limits



PLANNER: AMADOR