

Exhibit H
Planning Commission
Resolution No. 11-005
PLN070366 - Wayland

Wayland Minor Subdivision Appeal
(PLN110079)
Merrill Minor Subdivision Appeal
(PLN110078)

Board of Supervisors
January 10, 2012

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

In the matter of the application of:
Wayland Minor Subdivision (PLN070366)

RESOLUTION NO. 11-005

Resolution by the Monterey County Planning Commission

- 1) Finding the project statutorily exempt from CEQA per Section 15270.
- 2) Denying the Combined Development Permit consisting of Minor Subdivision Vesting Tentative Map to allow the division of a 38-acre parcel into 4 parcels of 9.7 acres, 5.3 acres, 9.3 acres, 5.2 acres and a remainder parcel of 8.8 acres; Use Permit for development of areas in excess of 25 percent for roadway improvements; Use Permit for development in a visually sensitive area ("VS" District); and Use Permit to allow the removal of an estimated 39 oak trees; and grading of approximately 3,800 cubic yards of cut and 3,800 cubic yards of fill. The project proposes individual septic systems, a 50 foot by 50 foot water tank easement with a 100,000 gallon water tank and 15 foot wide utility easement, a 60-foot wide road and utility easement and a 30-foot wide road and utility easement. The project will be served by an existing well and a proposed mutual water company.

(PLN070366, Wayland Warren Trust, 24975 Boots Road, Monterey, Greater Monterey Peninsula Area Plan (APN: 173-062-009-000))

The Wayland Minor Subdivision (PLN070366) application 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 24975 Boots Road, Monterey (Assessor's Parcel Number: 173-062-009-000), 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 three 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)
- g) 2010 General Plan Policy OS-3.5 prohibits development on slopes in excess of twenty-five percent (25%) unless no feasible alternative exists or the development better achieves the resource protection objectives and polices contained in the General Plan and accompanying Area Plans. The proposed project involves the subdivision of an existing parcel into four new lots (and one remainder), requiring the construction

of roads on slopes in excess of 25%; this would not be consistent with 2010 General Plan Policy OS-3.5 and would not achieve the resource protection objective of either the General Plan or Greater Monterey Peninsula Area Plan. Feasible alternatives do exist, as the existing 38 acre parcel could be developed for residential use, without development on slopes in excess of 25%; which would be consistent this policy.

- h) Title 19 inconsistency – See Finding and Evidence 2 below.
- i) The project was referred to the Greater Monterey Peninsula Land Use Advisory Committee (LUAC) for review. Based on the LUAC Procedure guidelines adopted by the Monterey County Board of Supervisors per Resolution No. 08-338, this application did warrant referral to the LUAC because the project is subject to CEQA review and involves a discretionary permit application and land use matter which raises significant land use issues.
- j) The project planner conducted a site inspection on August 9, 2007 and December 28, 2010.
- k) The application, project plans, and related support materials submitted by the project applicant to the Monterey County RMA - Planning Department for the proposed development found in Project File PLN070366.

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 unsuitable for the proposed use.

- d) Staff identified potential impacts to Biological Resources, Archaeological Resources, Soil/Slope Stability, 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 not 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 173-062-009" (LIB070622) prepared by Archaeological Consulting, Salinas, California, November 26, 2007.*
 - *"Biological survey report for the Warren and Marjorie Wayland Property" (LIB070623) prepared by Ed Mercurio Biological Consultant, Salinas, California, October 31, 2007.*
 - *"Feasibility Level Geotechnical Investigation for Wayland Property" (LIB070625) prepared by Haro, Kasunich and Associates, Inc., Watsonville, California, October 2007.*
 - *"Preliminary Geologic Investigation – Wayland Property" (LIB070626) prepared by Rogers E. Johnson & Associates, Watsonville, California, October 16, 2007.*
 - *"Forest Management Plan for the Wayland Property" (LIB070627) prepared by Ralph Osterling Consultants, Inc., San Mateo, California, October 30, 2007.*
 - *"Traffic Analysis for Warren and Marjorie Wayland Subdivision" (LIB070628) prepared by Higgins Associates Civil & Traffic Engineers, Gilroy, California, October 29, 2007.*
 - *"Septic Report for Parcels 2, 3, and 4 – Wayland Subdivision" (LIB110030) prepared by Grice Engineering and Geology, Inc., Salinas, California, February 2010.*
- e) The percolation and groundwater study for the proposed Wayland Property did not demonstrate 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 marginal and varying percolation rates. See Sewage Disposal section below.
- f) The project has not proven a sustainable long-term water source relative to water quality. The off-site well being utilized to serve the minor subdivision tested above the maximum contaminant level (MCL) for arsenic. See Water Supply section below.
- g) **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.
- h) Necessary public facilities are not available and are not provided for the proposed project. A source of sustainable long-term water does not exist, and on-site wastewater systems have not been determined to be

feasible on the subject property. See Water Supply and Sewage Disposal sections below.

- i) **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.
- j) **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
- k) **Sewage Disposal** (Section 19.03.015.K MCC).
The soil composition and percolation rates of the Wayland property, do not adequately comply with Monterey County Code 15.20. The rate of percolation varied greatly at different depths and locations on each lot. Some percolation holes performed at rates that are within the acceptable range and while other rates failed according to Monterey County Code 15.20. The percolation data suggests that the upper soils are not suitable for septic dispersal. Deep trenches would function primarily as disposal of effluent; there will be little to no air in the soil/sidewalls of the trench to allow growth of aerobic bacteria that would provide additional treatment of the effluent. Shallow trenches in permeable soils are preferred over deep trenches to provide for as much aerobic treatment as possible. Due to the low permeability of the upper soils a shallow system is infeasible for this project. There is not a consistent rate of percolation within and among all of the lots to support the subdivision utilizing the proposed Onsite Wastewater Treatment System

(OWTS) designs. It is not good practice to create new lots with OWTS that have a high potential for failure due to existing environmental and geologic conditions.

- l) **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.
- m) **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.
- n) **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.
- o) The application, tentative map and supporting materials submitted by the project applicant to the Monterey County Planning Department for the proposed development are found in Project File PLN070366.
- p) The project planner conducted a site inspection on August 9, 2007 and December 28, 2010.

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

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

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

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

DECISION

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

- A) Find PLN070366 statutorily exempt per Section 15270(a) of the California Environmental Quality Act Guidelines; and
- B) Deny PLN070366 (Wayland Minor Subdivision) based on the findings and evidence:

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

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



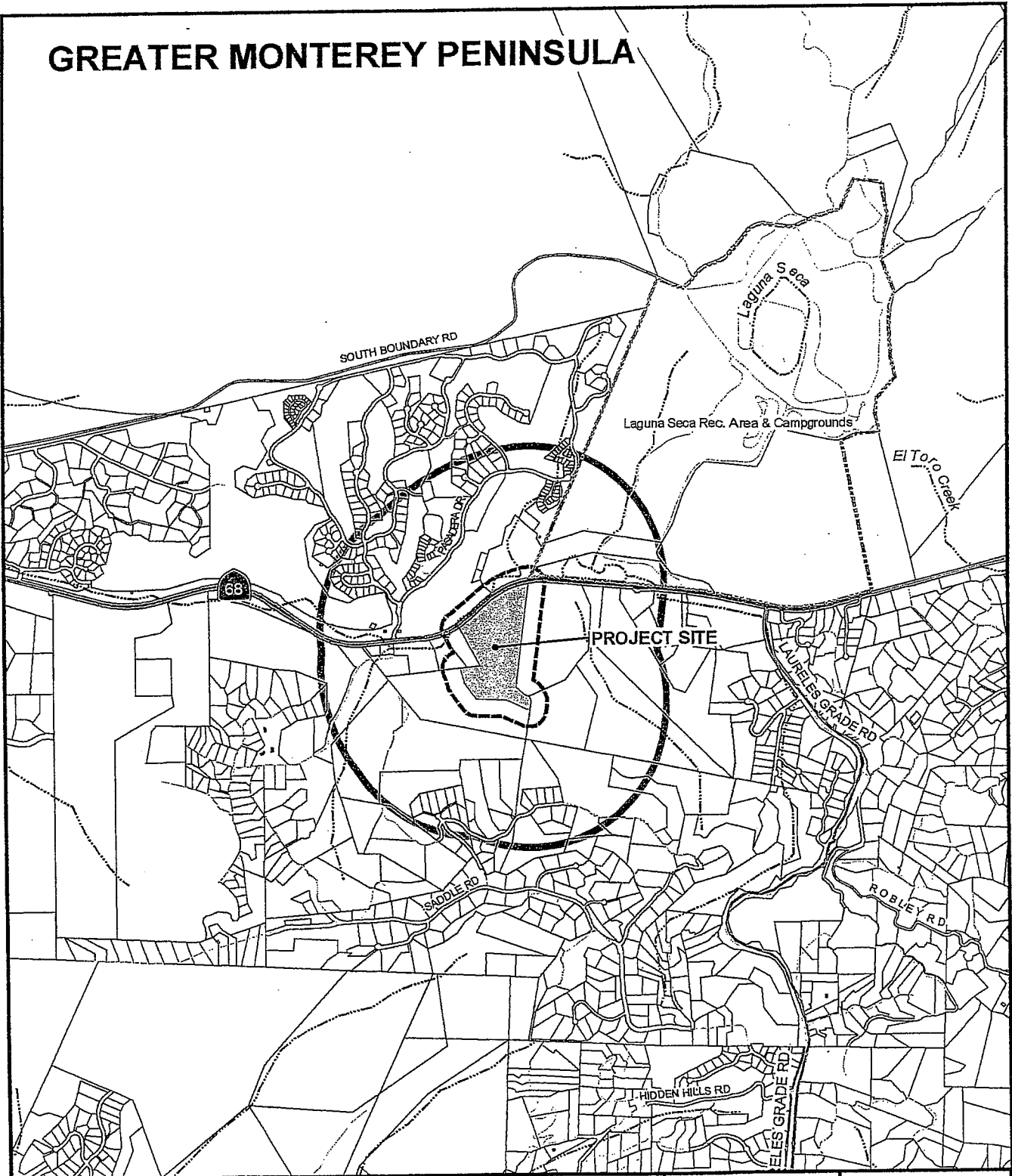
Mike Novo, Secretary, Planning Commission

COPY OF THIS DECISION MAILED TO APPLICANT ON ~~JAN 31 2011~~
THIS APPLICATION IS APPEALABLE TO THE PLANNING COMMISSION.

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.


GREATER MONTEREY PENINSULA




APPLICANT: WAYLAND

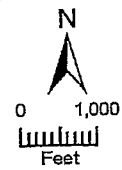
APN: 173-062-009-000

FILE # PLN070366

 300' Limit

 2500' Limit

 City Limits



PLANNER: AMADOR