



# MEMORANDUM

## RMA - PLANNING DEPARTMENT

County of Monterey

**Date:** May 26, 2009

**To:** Board of Supervisors

**From:** Carl P. Holm, AICP, Assistant Director of Planning  
Bob Schubert, AICP, Senior Planner

**Subject:** **PLN9805016/MOHSIN-SAMOSKE**  
**June 2, 2009, Agenda Item S-6**

This item was continued from May 19 due to an error with the report attachments. Prior to the May 19<sup>th</sup> hearing, staff received comments on the project. These comments challenge certain aspects of the project analysis. The following is a response to these comments:

1. “Special Treatment” cannot Supersede General Plan Policy: Comments were submitted that challenge the use of a Special Treatment Area (STA) and its consistency with General Plan policy. For purposes of this discussion, the appropriate general plan for comparison is the 1982 General Plan.

*Special Treatment Area (STA):* The proposed Special Treatment Area (STA) for the Mohsin-Samoske project is consistent with the 1982 GP, which is the General Plan under which the project is being processed and evaluated. STA is a general plan land use designation established as part of the 1982 General Plan. There are 12 existing STA designations in the 1982 GP. The STA designation in this case addresses allowed land uses, density, agricultural buffers, and easements consistent with policies in the 1982 general plan.

Under the 1982 GP, the STA has traditionally functioned similar to a land use designation (e.g. LDR, PG, HC, etc), with certain sites designated with “STA” on the land use map. The land use map then refers to a policy that describes how the land use for that STA- designated site is to be defined. Typically, after the GP STA designation was adopted for particular sites, an appropriate zoning designation was be established to implement the land use policy in the GP. For example,

In order to make sure the zoning clearly follows the GP, staff recommends from a technical planning standpoint that the STA be established as an “overlay,” with an underlying land use designation. The STA overlay then refers to a specific GP policy that has the defining policy language for limits of the STA. It is the Board's discretion when, where, and how STA is used, as it is general plan policy as with any land use designation, provided that the General Plan and its parts remain internally consistent and compatible. The proposed STA is compatible with the 1982 General Plan and does not create an internal inconsistency because the general plan allows special treatment of unique areas, allows rural residential development in areas of less productive agricultural lands.

For the Mohsin-Samoske project, the STA would work as follows:

- A. General Plan Amendments include:
- Establish STA overlay,
  - Add Policy 30.1.1.2 to the Toro Area Plan that provides the detailed STA policy language. This language generally allows conversion of 72 acres of agricultural land for residential uses and retains 194 acres as permanent grazing, with at least 150 of those acres in conservation easement, and requires a buffer plan on the new residential development to protect existing agricultural operations.
  - Change the land use from Permanent Grazing to Low Density Residential on the lower 55 acres of Mohsin,
  - Change the 17 acre of Samoske from Farmland to Low Density Residential
- B. If the GP Amendment is approved, then the Zoning is proposed to be changed to be consistent. The zoning establishes the density limits, and staff has also proposed adding a Visual Sensitivity overlay rather than simply having a Design overlay, as follows:
- Change designation on the lower 55 acres of Mohsin from PG/40-D to LDR/5-VS
  - Change designation on the 17 acres of Samoske from F/40-D to LDR/5-VS

*General Plan Consistency:* The 1982 General Plan is designed to encourage city-centered growth in order to retain agricultural operations throughout the valley. There are already 14 single family home lots approved through an earlier land use change (PG to LDR) and subdivision(s) near the proposed project. This already existing subdivision is part of the reason why the EIR for this project identified potential growth inducing impacts on surrounding agricultural lands. The STA addresses and limits this potential growth inducing impact. Although most of the surrounding land is under Williamson Act contract, establishing a STA for this area better restricts future expansion of residential uses by limiting residential development to the STA. By requiring approval of an agricultural buffer plan and requiring 194 acres to remain in permanent grazing, a substantial portion of which must be put into conservation easement, the STA also ensures that the residential development will not create an incompatibility with the adjacent agricultural uses. An alternative for underlying land use designation that the Board could consider would be Rural Density Residential (RDR) rather than the proposed Low Density Residential (LDR). The RDR designation would limit density at 5 acres per unit on the higher end versus the LDR where the 5 acre per unit is the lower end and thereby creating possible future change to a higher density (e.g. LDR/1). As designed, the project would be consistent with the RDR land use designation.

The comments alleging inadequacy of the 1982 General Plan misconstrue the staff report's discussion of GPU5. The draft 2007 General Plan (GPU 5) proposes a Development Evaluation System to evaluate residential development proposed for lands currently designated

agricultural uses. As part of the proposed CEQA findings as to why adoption of the Development Evaluation System is infeasible as part of the Mohsin project now before the Board, staff indicated that the Development Evaluation System is part of an overall growth strategy in GPU5, and that therefore, importing just one component, the evaluation system, into the 1982 Plan is not feasible. This statement does not mean that the 1982 Plan is inadequate to provide guidance for current land use decisions. The statement is merely an observation that the 1982 Plan employs different policy preferences in regard to the distribution and extent of allowable rural residential growth than does the proposed GPU5, and therefore the Development Evaluation System by itself may not fit within the framework of the 1982 Plan. The 1982 Plan has served to provide a coherent and internally consistent framework for growth in the County, and the proposed STA is consistent with that framework.

2. Code Violation: Comments were received that allege there is a violation on the project site that prevents Board action and requires new CEQA review.

*Overview*: Staff reviewed all of the evidence and found no violation on the property. The ponds and roads appear to have been created as part of a historical cattle operation prior to the time when a County permit would have been required. While we found evidence of recent grading work near Pond #1 (southern/upper pond), our assessment is that the work was done as maintenance for the pre-existing road and therefore no permit was required. These conditions existed at the time of application and notice for the environmental review, so are considered baseline relative to CEQA, and no new CEQA review is required.

*Discussion*: Staff has conducted site visits and reviewed data to assess if an alleged violation occurred on the upper portion of the Mohsin property (APN: 167-061-033-000). Data considered in this assessment includes:

- Aerial maps/photos from 1972, 1983, 1992, 2007, and 2009.
- Site visit(s).
- General Plan/Zoning History. The first general plan was adopted in 1965. A comprehensive update was adopted in 1982 with the Toro Area Plan adopted in 1983 and updated in 1990.
- Memo from Building Services Department (dated May 7, 2009) regarding timing of grading permit requirements. Grading permits were not required prior to June 1979.
- Letter from George Pedrazzi dated May 5, 2009.

There are two stock ponds and ranch roads that traverse the upper portion of the Mohsin property. There are a number of blue-line drainage channels that traverse through the hills on the upper portion of the property. Pond #1 (a.k.a. Southern Pond, Upper Pond) consists of an earthen dam 15+ feet tall across a deep cut canyon. Pond #2 (a.k.a. Northern Pond, Lower Pond) consists of an earthen berm located in an area with steep slopes and oak tree cover but near the top of a watershed. On our site visits, we accessed these ponds using a ranch road cut along steep (greater than 30%) roads with sharp, switch-back curves.

The letter from George Pedrazzi indicates Pond #1 was initially created between 1972 and 1975. Policy restricting development on slopes exceeding 30% was initiated in the 1982 General Plan; therefore, no Use Permit was required when the ponds were established. Aerial photography was used, but is difficult to assess with great detail due to the elevation and tree cover for the site, and therefore is insufficient proof of a violation. With the ponds being established 1972-1975, there would have been at least jeep roads to access these ponds. On many jeep/truck roads on cattle ranches in the County, tire tracks would not be visible from that level of aerial view because the center of the road would have vegetation.

When comparing a current aerial map with an older aerial photo in the DEIR for the Mohsin project, it appeared that grading work had recently occurred near Pond #1. During our site visit, we found evidence of recent grading work along the road south of the dam for Pond #1. Based on vegetation and soil type, staff estimates the work was done 2-3 years ago. The work was done along a steep switch-back turn in the road where a cattle easement exits over the Mohsin property in favor of the Pedrazzi family/property. The road was cut into a steep hillside that showed signs of sliding. The County has not required permits for maintaining pre-existing ranch facilities such as this. Current work consists of maintenance of these pre-existing facilities.

Under today's policies and Codes, permits would be required for creating the ponds and road. Based on the information to date, staff finds that the ponds and roads appear to have been created as part of a historical cattle operation prior to the time when any County permit would have been required for that work. Therefore, our conclusion based on the available information is that no violation has occurred on the subject property.

The County and the state Department of Fish and Game (DFG) recognize that the condition could be improved if the property owner wants to voluntarily install a culvert 2-3 feet above the ground level at Pond #1, extending through the dam and under the road with rip rap for dissipating the water where it re-enters the drainage channel below the road. Permits (County and DFG) would be required for installing this culvert at Pond #1. While we strongly recommend and encourage the owner install this improvement, that action would be separate from the violation case, and the pending project application. This work could be done later, but any work within a stream cannot occur during the rain months between October 15 and April 15, without prior approval from DFG. No change would be necessary for Pond #2.

3. Objections to the Proposed Project: A number of objections to the project have been submitted.

*Ag Buffers*: Comments refer to the Zoning Code requirement of 200 feet for agricultural buffers, and that the project does not meet this 200 foot standard. Policy 30.0.2 of the 1982 General Plan simply requires well-defined buffers that are adequate to protect agricultural operations. The STA requires an Agricultural Buffer Plan on the proposed residential areas in order to protect neighboring agricultural operations from non-ag uses. The STA (general plan policy) is consistent with the existing general plan policy 30.0.2. Consistency with the general

plan is paramount over consistency with zoning (see Monterey County Code sec. 21.02.060). Therefore, buffers of less than 200 feet are not prohibited, so long as the buffers comply with the STA policy.

In order to illustrate the intent of this project, an Agricultural Buffer Plan has been included a part of the review process. This review has included recommendations to the Planning Commission from the Agricultural Advisory Committee (AAC). The AAC expressed initial concern for lower 17-acre part of the project. In response the Agricultural Buffer Plan was revised and although there remained a split opinion, the majority opinion was to recommend approval of the revised Agricultural Buffer Plan (current configuration). Based on the AAC recommendations, the Planning Commission voted to recommend approval.

*Ag Viability:* Comments include a contention that staff has overlooked “Farmlands of Local Importance.” Monterey County has never designated any “farmlands of local importance” so the site cannot be that; there are none in the County. The authoritative source is the Farmland Mapping and Monitoring Program of the California Department of Conservation. The FMMP designates part of the Mohsin property as grazing land and labels the rest (including Samoske property) “other land.” None of it is in any of the important farmland categories.

An agricultural viability report was prepared for the project. In response to comments, the Agricultural Commissioners Office performed an independent review/audit. While the scoring results changed slightly, the conclusions remained the same. The AAC reviewed both reports, and each time unanimously found that the information was accurate and the conclusions were appropriate.

*Remainder/Clustering/Alternatives:* Comments contend the project is not clustering lots and would allow future subdivision of the remainder lot. Under the Subdivision Map Act, a remainder parcel could be developed or subdivided at a later time. However, the STA designation limits development to 13 new residential lots, clustered on the lower 72 acres (lower 55 acres Mohsin + 17 acres Samoske). The STA does not allow further subdivision on the upper 194 acres without amending the General Plan. In addition, a permanent habitat and scenic conservation easement is required to be placed over 150+ acres of the 194-acre remainder parcel. The 44 acres not under easement has a designation of PG/40.

The intent of the lot configuration and proposed land use is to be consistent with the existing residential lots located immediately north of the Mohsin property. Staff has considered this to be the Board’s direction, based on prior Board action that approved a designation of LDR/5 for these properties. There are about 14, 5-acre, lots with a Low Density Residential (LDR) designation. Alternative projects have been evaluated for this project including limiting all residential development to the upper portion (55 acres of Mohsin property), which could result in lots smaller than 5 acres (14 lots on 55 acres) or fewer total number of lots (11 lots on 55 acres only, no additional lots on lower 17 acres)

Another alternative would be to change the underlying land use designation proposed in the General Plan amendment to Rural Density Residential (RDR) rather than Low Density Residential (LDR). The allowed uses in the RDR are more limiting and permissive for agricultural uses than the LDR. As this change would be more restrictive, there would be no new impact not evaluated as part of the EIR. To the contrary, this designation change coupled with the limiting conditions of the STA could help reduce the growth inducing impact identified as a significant impact in the EIR.

This impact could be further reduced if the Board wanted to direct staff to consider applying the STA and RDR designation to the existing residential lots that are not a part of this project. If that is the Board direction, staff would recommend that such action be processed separately from this project.

*Impacts:* Comments contend that water supply and wastewater issues have been “brushed over.” In addition, there are comments relative to traffic and visual impacts. The project included review of water supply, traffic, visual, and wastewater conditions by the County Environmental Health Department, Public Works Department, Planning Department, and Water Resources Agency. The professional analysis of these agencies, professional technical reports, and assessment by an independent EIR consultant for the project conclude that there would be no significant impact on these resources.

*Overriding Considerations:* Comments argue against adopting findings of overriding considerations to convert this “important agricultural area.” Finding 13 of Exhibit B includes the statement of overriding considerations, including citing the benefit that 194 acres of Mohsin’s 249 acre parcel will remain as permanent grazing, including at least 150 acres in permanent habitat and scenic conservation easement.