

EXHIBIT B
RECOMMENDED FINDINGS AND EVIDENCE
ENVIRONMENTAL IMPACT REPORT (PLN980516)

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

In the matter of the application of:

MOHSIN/SAMOSKE (PLN980516)

Resolution No. _____

Resolution of the Monterey County Board of
Supervisors:

1. Certifying EIR # 06-01 (SCH#: 2006051020),
2. Approving a Mitigation Monitoring and Reporting Plan and
3. Adopting a statement of overriding considerations.

The properties are located at 874, 884 and 870 River Road, (APN: 167-061-029-000, 167-061-033-000, and 167-061-032-000), Toro Area Plan.

The Environmental Impact Report (EIR) [SCH#2006051020] for the Mohsin-Samoske General Plan Amendment and project (PLN980516) came on for public hearing before the Monterey County Board of Supervisors on May 19, 2009. Having considered all the written and documentary evidence, the administrative record, the staff report, oral testimony, and other evidence presented, the Board of Supervisors hereby adopts the following findings and renders the decision set forth herein:

FINDINGS

1. **FINDING:** The County of Monterey has completed the Mohsin-Samoske General Plan Amendment Final EIR in compliance with CEQA, and the Final EIR reflects the County of Monterey's independent judgment and analysis.
EVIDENCE: a) The California Environmental Quality Act (CEQA) requires preparation of an environmental impact report if there is substantial evidence in light of the whole record that the project may have a significant effect on the environment.
b) On February 15, 2005, the Monterey County Board of Supervisors adopted a Mitigated Negative Declaration and approved a 14 lot subdivision and took related actions on properties now owned by Mohsin, Riehl, and Samoske. (Board of Supervisors Resolution Nos. 05-071 and 05-024.)
c) On September 19, 2005, Land Watch Monterey County and River Road Ranchers for Responsible Growth filed a petition for writ of mandate in the Monterey County Superior Court challenging the Board's actions as contained in Resolution Nos. 05-071 and 05-024. (Superior Court Case No. M73627.) On December 30, 2005, the Superior Court granted the petition for writ of mandate and ruled that there was substantial evidence supporting a fair argument that the project may have a

significant effect on the environment and thus an Environmental Impact Report rather than a Mitigated Negative Declaration was required under CEQA. The court entered judgment and issued a Peremptory Writ of Mandate on February 22, 2006. On March 28, 2006, in compliance with the peremptory writ, the Board of Supervisors set aside its decision, approvals, and findings of February 15, 2005, including Resolution Nos. 05-071 and 05-024 approving the project and the associated mitigated negative declaration.

- d) Following the court ruling, the County proceeded to prepare a Draft EIR in accordance with CEQA (Public Resources Code Section 21000 et seq.), and the State CEQA Guidelines for Implementation of CEQA (California Code of Regulations, Title 14, Section 15000 et seq.).
- e) Monterey County Planning Department filed a Notice of Preparation (NOP) with the County Clerk and distributed the NOP to all Responsible Agencies on March 30, 2006. Responses to the Notice of Preparation were considered in the preparation of the EIR.
- f) A Draft Environmental Impact Report (DEIR) was prepared to assess the potential adverse environmental impacts from the project and was circulated starting on February 8, 2008. (Draft EIR – Mohsin-Samoske General Plan Amendment (“DEIR”) prepared by LSA dated January 2008, on file with the RMA - Planning Department.) The project analyzed in the draft EIR was a subdivision that would create three parcels—one parcel of approximately 7 acres (ac) and two 5 ac parcels—from Joseph and Sandra Samoske’s 17 ac property (APN 167-061-029). It would also create 11 new 5 ac parcels from Mused and Terry Mohsin’s 245.51-ac parcel (APN 167-061-033). It also analyzed a Lot Line Adjustment between Robert and Nancy Riehl’s property (APN 167-061-032) to the Mohsin parcel (APN 167-061-033) to allow the clustering of 11 parcels on the 245.51 ac Mohsin parcel. Of the remaining approximately 194 ac, 157.7 ac (those portions that have a slope 30% or greater) would be deeded as a Scenic Easement to Monterey County to preserve viewshed and open space. Although the EIR is entitled “Mohsin Samoske General Plan Amendment Draft EIR,” the Draft EIR analyzed all components of the proposed project, including the lot line adjustment, proposed zone change, and the tentative subdivision map. Issues that were analyzed in the Draft EIR include aesthetic resources, agricultural resources, air quality, biological resources, geology and soils, hydrology and water quality, land use and planning, population and housing, public services, traffic and transportation and utilities and service systems.
- g) The draft EIR was duly noticed and circulated for public review, and public comments were received and considered. The County distributed a Notice of Completion with copies of the Draft EIR on February 4, 2008. The County published a Notice of Availability of the DEIR in the Salinas Californian.
- h) During the public review period for the DEIR (February 8, 2008 to March 24, 2008) the County received comment letters from the Monterey Bay Unified Air Pollution Control District, Landwatch Monterey County, Wittwer & Parkin, LLP, Pacific Engineering Group, Inc., Dale Hillard, Debbie Pedrazzi, Douglas Fay and the Native

- American Heritage Commission. .
- i) CEQA Guidelines Section 15088.5 requires re-circulation of an EIR if the lead agency determines that significant new information is added to the EIR after public review but before certification, and the EIR is changed in a way that deprives the public of a meaningful opportunity to comment upon a substantial adverse environmental impact.
 - j) In response to certain comments on the DEIR, the project was modified to add an amendment to the Toro Area Plan to creation of a Special Treatment Area (STA) overlay, and staff developed a revised design alternative to illustrate a clustered design concept.. Based on these modifications, the County revised and recirculated for public review four Chapters of the DEIR: Executive Summary, Project Description, Land Use and Planning, and Alternatives. (Recirculated Portion of Draft EIR - Mohsin-Samoske General Plan Amendment (“RDEIR”), prepared by LSA Associates, Inc. dated September 2008) and the County distributed a Notice of Completion with copies of the Recirculated portion of the Draft EIR on September 25, 2008. The County published a Notice of Availability of the RDEIR in the Salinas Californian. The public review period on the Recirculated Portion of the Draft EIR was from September 26 through November 10, 2008. The County requested that reviewers limit their comments to the portions of the DEIR that were being re-circulated. During the public review period for the RDEIR, the County received comments from Wittwer & Parkin, LLP and Pacific Engineering Group.
 - k) The DEIR and RDEIR contain extensive analysis of the proposed development, with and without mitigations, compared to alternatives, including a No Project Alternative, a Reduced Density Project Alternative, and a Redesigned Project Alternative.
 - l) The County prepared “Responses to Comments on the Mohsin-Samoske General Plan Amendment Draft EIR and Recirculated Draft EIR.” (“Response to Comments – Mohsin-Samoske General Plan Amendment Draft EIR and Recirculated Draft EIR,” prepared by LSA Associates and Monterey County RMA-Planning Department, dated January 2009.) The Responses to Comments responds to comments that relate to chapters of the DEIR that were not recirculated and responds to the comments received during the recirculation period that relate to the chapters that were revised and recirculated chapters. The Responses to Comments document was released to the public on January 16, 2009 and responds to all significant environmental points raised by persons and organizations that commented on the DEIR and RDEIR. The County has considered the comments received during the public review period for the draft EIR, and in the Responses document, provide responses to the comments received. Together, the DEIR, RDEIR and Responses to Comments constitute the final EIR on the project.. The February 12, 2009 memorandum from the Agricultural Commissioner regarding review and update of the agricultural viability report and the applicant’s revised buffer plan do not alter the environmental conclusions in the EIR.
 - m) If the County approves the project analyzed in the Mohsin-Samoske

General Plan Amendment EIR, the County will monitor the implementation of mitigation measures in accordance with the applicable Mitigation Monitoring Program.

- n) All feasible project changes required to avoid significant effects on the environment will be incorporated into the project and/or made conditions of approval. A Condition Compliance and Mitigation Monitoring and/or Reporting Plan has been prepared in accordance with Monterey County regulations and is designed to ensure compliance during project implementation (Resolution ###). The applicant must enter into an "Agreement to Implement a Mitigation Monitoring and/or Reporting Plan as a condition of project approval (**Condition 5**)
- o) Evidence that has been received and considered includes: the application, technical studies/reports, staff reports that reflect the County's independent judgment, and information and testimony presented during public hearings. The technical reports for the project include the following:
- *Agricultural Suitability and Land Capability Assessment* (i.e., Agricultural Viability Report) prepared by Rush, Marcroft and Associates.
 - *Memorandum from Bob Roach regarding review and update of the Agricultural Viability Report, Assistant Agricultural Commissioner's Office regarding the Agricultural Suitability and Land Capability Assessment* dated February 12, 2009.
 - *Air Quality Analysis* prepared by Jones and Stokes dated March 8, 2007.
 - *Geotechnical Soils-Foundation and Geologic Hazards Report* prepared by Grice Engineering, Inc. dated June 1998.
 - *Hydrogeologic Report* prepared by Grice Engineering, Inc. dated September 2003.
 - *Percolation and Groundwater Study* prepared by Grice Engineering dated June 31, 1998.
 - *Traffic Report* by Higgins Associates dated April 12, 2007.

These documents are on file in the RMA-Planning Department (PLN980516) and are hereby incorporated herein by reference.

- p) Staff analysis contained in the Initial Study and the record as a whole indicate the project could result in changes to the resources listed in Section 753.5(d) of the Department of Fish and Game (DFG) regulations. The site supports potential habitat for kit fox, burrowing owl, western spadefoot, and Congdon's tarplant. For purposes of the Fish and Game Code, the project will not have a significant adverse impact on the fish and wildlife resources upon which the wildlife depends. State Department of Fish and Game reviewed the EIR. Therefore, the project will be required to pay the State fee to the County Clerk.
- q) The Draft EIR, RDEIR, and Responses to Comments, which together comprise the Final EIR, were provided to the Planning Commission. The PC held hearings on the project on December 10, 2008, January 28, 2009 and March 11, 2009. Before making its recommendation on the certification of the Final EIR and on the project at its hearing on March

- 11, 2009, the Planning Commission reviewed and considered the information in the final EIR.
- r) Staff reviewed the development application and conducted numerous site visits.
 - s) On December 10, 2008, January 28, 2009 and March 11, 2009 the Planning Commission held duly noticed public hearings on the project. On March 11, 2009 the Planning Commission voted 5-2 with one abstention to recommend that the Board of Supervisors certify the EIR, approve a mitigation monitoring and reporting plan, and adopt statement of overriding considerations.
 - t) On April 1, public hearing notices for the April 21, 2009 Board of Supervisors meeting were mailed to property owners within 300 feet of the site. A public hearing notice for the Board of Supervisors meeting on April 21, 2009 was advertised in the Salinas Californian on April 4, 2009. On April 21, 2009, the Board of Supervisors continued the public hearing to May 5, 2009. On May 5, 2009, the Board of Supervisors continued the public hearing to May 19, 2009. The Board of Supervisors conducted a public hearing on the project on May 19, 2009. The Final EIR was presented to the Board of Supervisors, and the Board of Supervisors has reviewed and considered the information contained in the Final EIR and in the administrative records as a whole before taking action on the proposed Lot Line Adjustment, General Plan Amendments, rezonings and Combined Development Permit.
 - u) The Monterey County Resource Management Agency Planning Department, located at 168 West Alisal Street, 2nd Floor in Salinas, is the custodian of the documents that constitute the record of proceedings upon which the determination to adopt the EIR is based.

2. **FINDING: ENVIRONMENTAL IMPACTS MITIGATED TO LESS THAN SIGNIFICANT WITH THE EXCEPTION OF GROWTH INDUCING IMPACTS** – Mitigation measures reduce most impacts to a level of insignificance. However, the potential growth inducing development pressure to neighboring agriculture lands cannot be fully mitigated and therefore remains a significant unavoidable impact.
- a) Draft EIR – Mohsin-Samoske General Plan Amendment prepared by LSA dated January 2008.
 - b) Re-circulated Portion of Draft EIR - Mohsin-Samoske General Plan Amendment prepared by LSA Associates, Inc. dated September 2008.
 - c) Response to Comments – Mohsin-Samoske General Plan Amendment Draft EIR and Recirculated Draft EIR prepared by LSA Associates and Monterey County RMA-Planning Department dated January 2009.
 - d) The Mohsin-Samoske Mitigation Monitoring Program, proposed to be adopted in conjunction with this project approval.
 - e) Administrative record maintained at the Monterey County Resources Agency – Planning Department, 168 West Alisal Street, Salinas, California, including material in Planning Department file PLN980516.

3. **FINDING: IMPACT TO VISUAL CHARACTER WILL BE MITIGATED TO LESS THAN SIGNIFICANT** – Mitigation Measures AES-1 and AES-2 will reduce potentially significant visual impacts to a less than significant level. The mitigation measures are feasible to implement and are fully enforceable through permit conditions.

Effects on Project Site and Vicinity Visual Character (DEIR Chapter IV-A). The proposed project has the potential to significantly impact the visual character of the project site and the surrounding visual area. The proposed residential and street light sources have the potential to significantly impact the nighttime view from designated scenic highways.

- EVIDENCE:** a) Mitigation Measure AES-1. A conservation and scenic easement shall be conveyed to the County over those portions of the property not proposed for five-acre lots, excluding the existing home site on the remainder parcel. This amounts to about 150 acres to preserve hillside views and reduces potential impact to a less than significant level.
- b) Mitigation Measure AES-2. All exterior lighting shall be unobtrusive, down-lit, harmonious with the local area, and constructed or located so that only the intended area is illuminated and off-site glare is fully controlled. Exterior lights shall have recessed lighting elements. These measures reduce impacts from lighting to a less than significant level.

4. **FINDING: IMPACTS TO AGRICULTURAL RESOURCES WILL BE MITIGATED TO LESS THAN SIGNIFICANT LEVEL** – Mitigation Measure AG-1 will reduce impacts to agricultural resources to a less than significant level. A condition of approval of the project requires adherence to a more stringent revised agricultural buffer plan. *Effects on Agricultural Resources (DEIR Chapter IV.B). The proposed project has the potential to significantly impact neighboring lands currently used for agriculture.*

- EVIDENCE:** a) The Special Treatment Area and Mitigation Measure AG-1 require Agricultural Buffer Mitigation Plans for the Mohsin and Samoske properties to be approved by the Agricultural Commissioner to reduce impacts to neighboring agricultural operations. Agricultural buffers must be established where applicable taking into account conditions such as the type of adjacent agricultural use, topography and climate (e.g., prevailing winds) with the intent to protect agricultural operations from impacts of non-agricultural uses. Said setback areas must be labeled on the final map as “agricultural buffer easement. The easement deed must describe the easement on each parcel containing an agricultural buffer to exclude habitable structures. The applicant submitted a revised agricultural buffer plan that would provide a 200 foot buffer from the Pedrazzi property on the north, except at the southeast corner of the Pedrazzi property where the buffer varies from 75 feet to 200 feet; 75 feet from the Pizoni property on the north; 50 feet from the Jardini property on the south and 200 feet from River Road. This revised agricultural buffer plan creates a sufficient buffer to protect the neighboring properties from the adjacent residential use. The revised buffer plan is equally or more effective in mitigating impacts to

agricultural resources than the agricultural buffer mitigation plan analyzed in the Draft EIR and recommended by Mitigation Measure AG-1 because the revised plan creates larger buffers and retains physical barriers (i.e., fencing and landscaping). The revised buffers were reviewed and recommended for approval by the Agricultural Review Committee (AAC) on February 26, 2009. The AAC also reviewed a memorandum from the Deputy Agricultural Commissioner summarizing the results of an independent review of the agricultural viability report for the subject parcels. The AAC voted to reaffirm their opinion that the lands could be used for grapes and grazing, but not for row crops. Finally, the AAC voted to support the proposed conversion of agricultural land as designed. The AAC noted that the project was designed with 5-acre lots that could allow limited agriculturally-related uses such as limited equestrian/ livestock or small vineyards. They found this to be consistent with the existing 5-acre lots abutting the 55-acre portion of the Mohsin property. In addition, the AAC noted that approximately 200 acres would remain PG with $\frac{3}{4}$ (150 acres) of that land being placed in a permanent agricultural conservation easement.

- b) “*Agricultural Buffer Plan*” prepared by WWD Corporation for Joseph Samoske dated January 27, 2009.
- c) At the Planning Commission meeting on January 28, 2009, a neighbor expressed issues concerning conflicts in the Agricultural Viability Report. In response, the Deputy Agricultural Commissioner conducted an independent review of the agricultural viability for the subject parcels. The review and update of the Agricultural Viability Report confirmed the original conclusions, although the scores increased slightly. The Mohsin property has low suitability for agriculture. The review and update concluded that the Samoske property has marginal agricultural attributes. Under the rating system, “marginal” means that conversion to non-agricultural use may be allowed based on other factors to be considered by the jurisdiction’s decision-maker. Other factors not considered in the rating system, such as the shape of the parcel and the fact that it has an existing home site, detract from its agricultural viability. Wine grapes or perhaps citrus are crops that could potential be grown. This information clarifies and amplifies the Draft EIR’s agricultural resources impact analysis but does not alter its conclusions that the project will have less than significant impact on agricultural resources. The AAC reviewed the Deputy Agricultural Commissioner’s memorandum and voted to reaffirm their opinion that the lands could be used for grapes and grazing, but not for row crops.
- d) “*Review and Update of Agricultural Viability Report*” by Bob Roach, Deputy Agricultural Commissioner, dated February 12, 2009.

5. **FINDING: IMPACT TO BIOLOGICAL RESOURCES WILL BE MITIGATED TO LESS THAN SIGNIFICANT LEVEL** – Mitigation Measures BR-1 through BR-6 will reduce biological impacts to a less than significant level. The mitigation measures are feasible to implement and are fully enforceable through permit conditions.

Effects on Biological Resources (DEIR Chapter IV.D). The proposed

project could:

- a) result in the removal one coast live oak tree protected by the Monterey County Tree Ordinance;*
- b) impact nesting raptors and/or other birds;*
- c) impact burrowing owls;*
- d) impact the CTS and western spadefoot;*
- e) impact the Congdon's tarplant; and*
- f) impact wetlands and/or other waters of the U.S.*

- EVIDENCE:**
- a) Mitigation Measure BR-1 - Prior to final map approval, the applicant shall submit a landscape plan to the County RMA- Planning Department, which includes oak tree protective measures.
 - b) Mitigation Measure BR-2 - Measures implemented to mitigate for potential impacts to nesting birds reduce the potential impact to a less than significant level.
 - c) Mitigation Measure BR-3 - Measures implemented to mitigate for potential impacts to burrowing owls reduce the potential impact to a less than significant level.
 - d) Mitigation Measure BR-4 incorporates measures to mitigate for potential impacts to CTS and western spadefoot reduce the potential impact to a less than significant level. Following the Planning Commission meeting on March 11, 2009, Mitigation Measure BR-4 was revised to require the applicant to consult with the USFWS and the California Department of Fish and Game to determine whether the project requires incidental take permit(s) and a Habitat Conservation Plan for California Tiger Salamander (CTS). Previously, the mitigation measure required that a Habitat Restoration Plan be prepared even though no CTS has ever been actually recorded or observed on the project site. Representatives of the California Department of Fish and Game and USFWS reviewed the revised mitigation measure with Planning Department staff on April 15, 2009 and determined that it provided equal or greater mitigation compared to the previous mitigation measure.
 - e) Mitigation Measure BR-5 – Measures implemented to mitigate for potential impacts to Congdon's tarplant reduce the potential impact to a less than significant level.
 - f) Mitigation Measure BR-6 includes measures to mitigate for potential impacts to jurisdictional waters under Section 404 of the CWA and/or PCWQCA, depending on the jurisdiction determination made by the Corps. It should be noted that the wetlands/water features on the project site are expected to be non-jurisdictional under the CWA. As a result, it is expected that no authorization will be required from the Corps to fill the subject features and the project will not have a federal nexus with which to consult with the USFWS. In the event the Corps determines the wetlands on the northern part of the project site are non-jurisdictional under Section 404 of the CWA, it is likely the RWQCB will regulate these features as waters of the State under PCWQCA.

6. **FINDING: IMPACTS RELATED TO GEOLOGY AND SOILS WILL BE MITIGATED TO LESS THAN SIGNIFICANT.** Mitigation

Measure GEO-1 will reduce potentially significant impacts from geology and soils to a less than significant level. The mitigation measure is feasible to implement and is fully enforceable through permit conditions.

Potential Impacts Related to Geology and Soils (DEIR Chapter IV-E). Structures and buildings associated with the proposed project have the potential to be significantly impacted by ground-shaking commensurate with a maximum credible earthquake.

- EVIDENCE:** a) Mitigation Measure GEO-1. Project design assume that project facilities would be exposed to ground shaking commensurate with a maximum credible earthquake in order to reduce this potential impact to a less than significant level.
- b) Implementing Mitigation Measure GEO-1 that requires all structures to be designed and built in accordance with the requirements of the Uniform Building Code's current edition, Seismic Zone IV would ensure that impacts related to seismic ground shaking are reduced to a less than significant level. The project poses no other significant, unavoidable impacts resulting from geologic hazards.

7. **FINDING: IMPACTS TO HYDROLOGY AND WATER QUALITY –** Mitigation Measures HYD-1 through HYD-9 will reduce impacts to hydrology and water quality to a less than significant level.

Effects on Hydrology and Water Quality (DEIR Chapter IV.F). The proposed project has the potential to:

- a) *discharge pollutants via project runoff;.*
- b) *discharge pollutants during demolition, grading and construction operations;*
- c) *significantly impact storm water runoff and surface erosion;*
- d) *impact storm water detention facilities and surface runoff;*
- e) *significantly impact detention ponds and retention/infiltration systems including on and off-site drainage;*
- f) *significantly impact drainage conditions associated with roads at the project site;*
- g) *significantly impact drainage and flood control systems; and*
- h) *impact the demand for groundwater.*

- EVIDENCE:** a) Mitigation Measure HYD-1. Requires measures of Best Management Practices (BMPs) and erosion and sediment control.
- b) Mitigation Measure HYD-2. Measures to ensure that the project complies with the requirements of the State General Construction Activity NPDES Permit reduces potential erosion and runoff impacts to a less than significant level.
- c) Mitigation Measure HYD-3. Measures to ensure that the project complies with the requirements of the NPDES General Permit and Waste Discharge Requirements for the Storm Water Discharges from Small Municipal Separate Storm Sewer Systems Order No. 2003-0005-DWQ NPDES No. CAS000004 reduces potential erosion and runoff impacts to a less than significant level.
- d) Mitigation Measure HYD-4. Requires the applicant to provide a road improvement plan prepared by a registered civil engineer that includes dispersing storm water runoff onto a non-erodible surface.

- e) Mitigation Measure HYD-5. Requires the applicant to provide a drainage report that includes calculations certifying storm water detention facilities will be sized to store the difference between the 100-year post-development runoff and the 10-year pre-development runoff, while limiting discharge to the 10-year pre-development rate.
- f) Mitigation Measure HYD-6. Requires a note on the final map stating: “A detailed drainage plan shall be prepared for each lot, consistent with the preliminary drainage plan shown on the tentative map as reviewed by the Water Resources Agency, by a registered civil engineer or architect prior to issuance of any grading or building permits. Impervious surface stormwater runoff shall be directed to the stormwater drainage system for the subdivision. If runoff cannot be directed to the subdivision drainage improvements, on-site retention/detention facilities shall be constructed in accordance with plans approved by the Water Resources Agency.” Prior to recordation of the final map, the applicant shall provide the Water Resources Agency a copy of the map to be recorded.
- g) Mitigation Measure HYD-7. Includes measures for a Homeowner’s Association to be formed for the maintenance of roads, drainage facilities, and open spaces.
- h) Mitigation Measure HYD-8. Requires a Drainage and Flood Control Systems Agreement that includes a summary of required annual maintenance activities and provisions for the preparation of an annual drainage report.
- i) Mitigation Measure HYD-9. Landscaping plans are required to utilize xeriscape and/or native drought tolerant plantings to minimize the amount of groundwater needed to irrigate the rural residential parcels.
- j) These measures reduce potential erosion and runoff impacts to a less than significant level.

8. **FINDING:** **LAND USE AND PLANNING IMPACTS WILL BE MITIGATED TO LESS THAN SIGNIFICANT LEVELS.** Mitigation Measure LU-1 will reduce land use and planning impacts to a less than significant level.

Effects on L and Use and Planning (DEIR Chapter IV.G and RDEIR Chapter IV.G). The proposed project must comply with the requirements of the Inclusionary Housing Ordinance #3419 of the County of Monterey. Chapter IV.G Land Use and Planning was updated in the RDEIR to reflect the designation of the proposed project site as a Special Treatment Area (STA). Accordingly, the policy consistency discussion included as part of the CEQA Threshold 4G.2 analysis in the February 2008 DEIR was updated to reflect revised conclusions that the proposed project is consistent with all applicable General Plan policies. The policy consistency discussion provided in the February 2008 DEIR made clear that whether a project is consistent with a specific policy can be subjective and that a project’s inconsistency with a policy is only considered significant if such inconsistency would cause physical environmental impacts. The Land Use and Planning analysis contained in the DEIR concluded that the identified policy-related

inconsistencies would not result in a direct, identifiable physical environmental impact. Therefore, although the recirculated Land Use and Planning analysis interprets the land use policies differently, in all instances, the impact conclusions remain the same.

- EVIDENCE:** a) Mitigation Measure LU-1. Requires compliance with Monterey County's Inclusionary Housing Ordinance #3419 by paying, or securing, to the satisfaction of the Redevelopment and Housing Director, an in-lieu fee of \$164,313.
- b) The project is consistent with the 1982 General Plan, the Toro Area Plan, as proposed by the addition of Toro Area Plan Policy 30.1.1.2(T) adding a Special Treatment Area.

9. **FINDING: IMPACTS TO PUBLIC SERVICES WILL BE REDUCED TO LESS THAN SIGNIFICANT** – Mitigation Measure PS-1 will reduce potentially significant impacts to public services to a level of less than significant. The mitigation measure is feasible to implement and is fully enforceable through permit conditions.

Effects on Public Services (DEIR Chapter IV.I) - The proposed project has the potential for significantly impacting public services.

- EVIDENCE:** a) Mitigation Measure PS-1. The applicant shall comply with Section 19.12.010 - Recreation Requirements, of the Subdivision Ordinance, Title 19, Monterey County Code, by paying a fee in lieu of land dedication. The Parks Department shall determine the fee in accordance with provisions contained in Section 19.12.010(D).

10. **FINDING: IMPACTS TO TRAFFIC AND CIRCULATION WILL BE REDUCED TO LESS THAN SIGNIFICANT** – Mitigation Measures TRA-1 through TRA-4 will reduce potentially significant traffic and transportation impacts to a less than significant level. The mitigation measures are feasible to implement and are fully enforceable through permit conditions.

Effects on Traffic and Transportation (DEIR Chapter IV.J). The proposed project has the potential to impact:

- a) site distances and traffic safety along River Road;*
b) the intersection of SR-68 WB and Reservation-River Road;
c) the intersection of US 101 Northbound Ramps and Main Street; and
d) the regional road network.

- EVIDENCE:** a) Mitigation Measure TRA-1 – Any brush located within the project R.O.W. shall be cleaned and maintained by the project applicant so adequate sight distance at the project driveway is provided. Brush is growing on the west side of River Road, remove or trim brush to increase sight distance from 430 ft to 550 ft, meeting the minimum required sight distance of 512 ft.
- b) Mitigation Measure TRA-2 – The applicant shall contribute \$2,533 to the County as the project's fair share contribution toward future improvements to the Highway 68 westbound ramps/Reservation Road intersection.
- c) Mitigation Measure TRA-3 – The applicant shall contribute \$5,266 to the County as the project's fair share contribution toward future improvements to the northbound on and off ramps in Chualar.

- d) Mitigation Measure TRA-4 – Monterey County and cities within the county have recently adopted a regional development impact fee and are transmitting the fees to a newly formed Joint Powers Agency. The applicant shall pay the Regional Development Impact Fee (currently \$4,113.00 per dwelling unit). The fee shall be reduced by \$2,523.77 per lot to account for traffic mitigation fees previously paid by the subdivider.
- e) Payment of the fair share fees for direct impacts and a regional program reduces potential traffic impacts to a less than significant level.

11. **FINDING:**

ENVIRONMENTAL IMPACTS NOT MITIGATED TO LESS THAN SIGNIFICANT – The project would result in significant and unavoidable growth-inducing impacts that would not be mitigated to a less than significant level as described in this finding (see DEIR Chapter V.C). Specific economic, legal, social or technological considerations make infeasible a mitigation measure of alternative that would avoid or substantially lessen this impact.

EVIDENCE:

- a) The DEIR concludes that indirectly, by way of creating an example of what can be achieved on parcels with similar land use designations or on land located in similar environments in the Toro Area, the proposed project could encourage or facilitate conversion of other agriculturally zoned properties in the Toro Area. The DEIR (page V-3) states that the proposed project could have an indirect growth inducing impact in that it could create an example of what can be achieved on parcels with similar land use designations or lands located in similar environments in the Toro Area. However, the DEIR (page V-3) also notes that the older subdivision adjacent to and north of the proposed project does not appear to have spawned additional residential growth on surrounding agricultural lands since there have been no other conversions of agriculturally zoned land in the immediate area since the 1982 General Plan was adopted.
- b) Even though the EIR identified a potentially significant growth-inducing impact, various factors temper that impact. The Agricultural Advisory Committee (AAC) discussed the growth-inducing potential of the project and voted to support the proposed conversion of agricultural land. The AAC noted that the project was designed with 5-acre lots that could allow limited agriculturally-related uses such as limited equestrian/livestock or small vineyards. The AAC found this to be consistent with the existing 5-acre lots abutting the 55-acre portion of the Mohsin property. The AAC noted that approximately 200 acres would remain PG with $\frac{3}{4}$ (150 acres) of that land being placed in a permanent agricultural conservation easement. Geographic boundaries of parcels with similar land use designations or that are located in similar environments are primarily located west of River Road, east of the Sierra de Salinas Mountains, south of Pine Canyon Road and North of Limekiln Road and amount to a relatively small percentage of the entire Toro Area. Of the 38 lots located west of River Road near the project site, the majority (27 parcels) are under Williamson Act contracts. According to the Agricultural Commissioner, to date, there has not been a cancellation of a Williamson Act contract in Monterey County.

- c) The project includes the creation of a Special Treatment Area (see RDEIR, page 16) which limits development of the project site to 13 new residential lots clustered on the lower 72 acres with the upper portion remaining as permanent grazing with an agricultural conservation easement over at least 150 acres.
- d) Since this EIR includes reference to the draft 2007 General Plan (GPU5), it should be noted that additional protections are included in that draft plan, if adopted. The draft General Plan includes a new policy that requires development in the unincorporated areas of the County to be subject to a Development Evaluation System to provide a systematic, predictable, and quantitative method to evaluate residential development proposed for lands currently zoned for agricultural uses. The draft 2007 General Plan Policy LU-1.19 would mitigate any growth inducing impacts associated with the proposed project if adopted as drafted. Because the County is currently comprehensively updating its General Plan, it is not feasible to amend the 1982 General Plan in a piecemeal fashion to include only this one new policy. The proposed policy is part of an integrated approach in GPU5 directing new residential growth to already developed areas. Such a policy needs to be adopted in the context of a larger framework, such as is provided by GPU5.

12. **FINDING:** **CEQA ALTERNATIVES TO THE PROPOSED PROJECT** – The EIR considered several alternatives to the proposed project in compliance with CEQA Guidelines Section 15126.6 (see Chapter VI of the RDEIR). Specific economic, legal, social, technological or other considerations make infeasible the project alternatives identified in the EIR for the reasons described below.

- EVIDENCE:**
- a) No Project Alternative. The No Project Alternative would entail no subdivision of the subject Mohsin and Samoske properties as proposed, and, for purposes of this EIR analysis, the properties would remain as current uses of agriculture/grazing with associated residences. Overall, the No Project Alternative would have fewer impacts, or no impacts to the environmental issues and resources than the proposed project would impact. However, the No Project Alternative would not meet the project objective of providing 13 additional low-density rural residential opportunities with a minimum of 5-ac sites near the City of Salinas.
 - b) Reduced Density Alternative. The Reduced Density Project Alternative would subdivide the project site into fewer parcels than the 13 proposed in the proposed project, and would redesign the size and shape of the parcels with the intent to reduce any environmental effects considered significant or adverse. Under this alternative, the 17 ac Samoske parcel would be subdivided into three parcels of at least five ac in size (same as the proposed project for this part of the site primarily due to the narrow shape of the parcel and the negligible resource impacts) and the 249 ac Mohsin parcel would be subdivided into seven (7) homesite lots on 55 ac and a remainder parcel of 194 ac, which would be dedicated as permanent open space via conservation easement on all lands that have a slope 30% or greater, exclusive of the

existing dwelling area. The alternative would provide additional buffer area on four of the alternative lots thereby providing better protection for sensitive biological resources and reducing the potential indirect effects to those resources from residential development. In conclusion, it is not feasible to adopt this alternative because it would meet three of the four project objectives but would not meet the project objective to provide 13 low-density rural residential opportunities with minimum 5-acre sites near the City of Salinas.

- c) Redesigned Project Alternative. The Redesigned Project Alternative would subdivide the project site into the same number of new residential lots as the proposed project. However, the configuration of the majority of the newly subdivided lots (11) would be clustered with the intent to reduce potential biological effects. The proposed project would subdivide and rezone 55 ac of the 249 ac Mohsin property into 11 low density residential parcels. Under the Redesigned Project Alternative, the residential uses would be clustered on the southwestern portion of the proposed 55 ac parcel to be subdivided so that the 11 homesites (minimum 1 ac) would comprise approximately 25 ac of the 55 ac site (see RDEIR, Figure VI.2). This area is depicted as Lots 1, 2, 3, 4, and 5 on the proposed project Site Plan, RDEIR, Figure III.3. The remaining 30 ac parcel would be dedicated as permanent open space (keeping the underlying residential zoning) via conservation easement to avoid the sensitive biological resources on the project site including a freshwater marsh, seasonal wetland, a landmark coast live oak tree, and oak woodland habitat. In addition, under this alternative, the 17 ac Samoske parcel would be subdivided in a manner identical to that which is proposed in the proposed project for this part of the site (three parcels of at least five ac in size) primarily due to the narrow shape of the parcel and the negligible resource impacts. Overall, the Redesigned Project Alternative would have similar environmental effects as the proposed project in all areas except biological resources. The Redesigned Project Alternative would cluster 11 of the 13 proposed homesites into an area separated from the sensitive biological resources including the seasonal wetland, freshwater marsh, landmark coast live oak tree, and oak woodland habitat, thereby providing better protection for these resources and reducing the potential indirect effects to those resources from residential development. In conclusion, it is not feasible to adopt this alternative because it would meet three of the four project objectives but would not meet the project objective to provide 13 low-density rural residential opportunities with minimum 5-acre sites near the City of Salinas.
- d) Alternative Project Location. Per the CEQA Guidelines, Section 15126.6 (f)(2), an alternative project location need only be analyzed if the significant effects of the proposed project would be avoided or substantially lessened by putting the project in another location. The project is being proposed within the Toro Area of County where land uses are predominantly rural/agricultural. The primary potential impacts associated with the proposed project (e.g., aesthetics, biological resources, and agricultural resources) stem from the fact that the proposed project would develop what is currently undeveloped

land, with the exception of an existing house on the Samoske property. Because the predominant land use in the Toro Area is agricultural, none of the significant impacts associated with the proposed project would be avoided or lessened by developing the project in an alternate location within the Toro Area. Therefore, it was not feasible to analyze an alternative project location for the proposed project.

- e) Environmentally Superior Alternative. Each of the alternatives either avoided or minimized to a greater extent the impacts associated with the proposed project. When all the alternatives were considered, the No Project Alternative is considered to be the Environmentally Superior Alternative because only the No Project Alternative avoided all the impacts related to the proposed project. However, as mentioned previously, Section 15126.6(e) of CEQA requires that if the No Project Alternative is the environmentally superior alternative, than another alternative must be identified amongst the alternatives considered as the Environmentally Superior Alternative. Therefore, the Reduced Density Project Alternative is considered to be the Environmentally Superior Alternative because it meets most of the project objectives with incrementally less environmental impacts to aesthetics, air quality, biological resources, hydrology and water quality, population and housing, public services, traffic, and utilities than the proposed project, none of which remain significant after mitigation. The Reduced Density Project Alternative would not change the impacts associated with agricultural resources, and geology and soils. It is not feasible to adopt the Reduced Density Alternative because it would not meet the project objective to provide 13 low-density rural residential opportunities with minimum 5-acre sites near the City of Salinas.

13. **FINDING:** **STATEMENT OF OVERRIDING CONSIDERATIONS -** In accordance with Section 15093 of the CEQA Guidelines, the County has evaluated the economic, legal, social, technological, or other benefits of the project against its unavoidable significant environmental impacts in determining whether to approve the project, and has determined that the benefits of the project outweigh its unavoidable, adverse environmental impacts so that the one identified significant unavoidable impact may be considered acceptable.

- EVIDENCE:**
- a) In accordance with Section 15093 of the CEQA Guidelines, Monterey County has evaluated the economic, legal, social, technological, or other benefits of the proposed project against their unavoidable significant environmental impacts in determining whether to approve the proposed project, and has determined that the benefits of the project outweigh their unavoidable adverse environmental effects so that the adverse environmental effects may be considered “acceptable.” The EIR identified a significant unavoidable growth-inducing impact. The proposed project will result in development that will provide benefits described herein to the surrounding community and the County has a whole, and these benefits outweigh the impacts.
 - b) The upper 194 acres of the site will remain as permanent grazing with a habitat and scenic conservation easement over at least 150 acres, including areas where slopes are 30% or greater.

- c) Water system improvements and a large storage tank will improve fire suppression capabilities for the existing homes in this area as well as the proposed subdivision.
- d) As conditioned, the project would improve traffic safety on River Road. Any brush on the west side of River Road at the project driveway will be cleared and maintained so adequate sight distance is provided. According to the traffic report for the project, currently, sight distance to the south on River Road from the project driveway is approximately 430 feet. Some brush is growing on the west side of the road, and if the brush is removed, the sight distance will increase to approximately 550 feet.
- e) Road improvement requirements for the private road will benefit existing users, and the formation of a homeowner's association to contribute to road maintenance will spread maintenance costs.
- f) The project will provide 13 low-density rural residential opportunities near the City of Salinas.

14.FINDING:

RECIRCULATION OF THE EIR IS NOT REQUIRED - No significant new information was submitted after public notice of the availability of the Recirculated Portion of the Draft EIR was given. Recirculation of the EIR is not required pursuant to Section 15088.5 of the CEQA Guidelines. No new significant information has been added that alters the conclusions in the EIR

EVIDENCE:

- a) After the Planning Commission meeting on January 28, 2009, the Deputy Agricultural Commissioner conducted an independent Review of the Agricultural Viability Report, dated February 12, 2009. The review and update of the Agricultural Viability Report confirmed the original conclusions, although the scores increased slightly. The Mohsin property has low suitability for agriculture. The review and update concluded that the Samoske property has marginal agricultural attributes. Under the rating system, "marginal" means that conversion to non-agricultural use may be allowed based on other factors to be considered by the jurisdiction's decision-maker. Other factors not considered in the rating system, such as the shape of the parcel and the fact that it has an existing home site, detract from its agricultural viability. Wine grapes or perhaps citrus are crops that could potential be grown. This information clarifies and amplifies the Draft EIR's agricultural resources impact analysis but does not alter its conclusions that the project will have less than significant impact on agricultural resources. The AAC reviewed the Deputy Agricultural Commissioner's memorandum and voted to reaffirm their opinion that the lands could be used for grapes and grazing, but not for row crops.
- b) The applicant submitted a revised agricultural buffer plan that would provide a 200 foot buffer from the Pedrazzi property on the north, except at the southeast corner of the Pedrazzi property where the buffer varies from 75 feet to 200 feet; 75 feet from the Pizoni property on the north; 50 feet from the Jardini property on the south and 200 feet from River Road. This revised agricultural buffer plan creates a sufficient buffer to protect the neighboring properties from the adjacent residential use. The revised

buffer plan is equally or more effective in mitigating impacts to agricultural resources than the agricultural buffer mitigation plan analyzed in the Draft EIR and recommended by Mitigation Measure AG-1 because the revised plan creates larger buffers and retains physical barriers (i.e., fencing and landscaping). The revised buffers were reviewed and recommended for approval by the Agricultural Review Committee (AAC) on February 28, 2009.

- c) Following the Planning Commission meeting on March 11, 2009, Mitigation Measure BR-4 was revised to require the applicant to consult with the USFWS and the California Department of Fish and Game to determine whether the project requires incidental take permit(s) and a Habitat Conservation Plan for California Tiger Salamander (CTS). Previously, the mitigation measure required that a Habitat Restoration Plan be prepared even though no CTS has ever been actually recorded or observed on the project site. Representatives of the California Department of Fish and Game and USFWS reviewed the revised mitigation measure with Planning Department staff on April 15, 2009 and determined that it provided equal or greater mitigation compared to the previous mitigation measure.

DECISION

NOW, THEREFORE, based on the above findings and evidence, the Board of Supervisors does hereby:

- A. Certify the final environmental impact report (EIR#06-01, SCH#: 2006051020) for the Mohsin-Samoske project (PLN980516). The Draft EIR (dated January 2008), Recirculated Portion of Draft EIR (dated August 2008), and the Responses to Comments (dated January 2009) and constitute the complete EIR for this project; and
- B. Adopt the statement of overriding considerations set forth in Finding 13 above.

PASSED AND ADOPTED this 19th day of May, 2009 by the following vote:

AYES: Supervisors
NOES:
ABSENT:

By _____
Lou Calcagno, Chair
Monterey County Board of Supervisors

ATTEST:
Gail T. Borkowski
Clerk of the Board of Supervisors

By: _____
Deputy