

Exhibit I
Planning Commission
Resolution No. 11-006
PLN070376 - Merrill

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:
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 I*).
 - 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

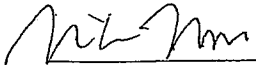
DECISION

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.



VICINITY MAP
SCALE 1" = 1 MILE



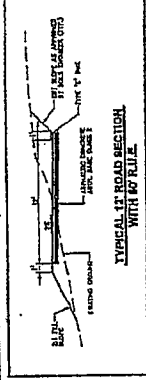
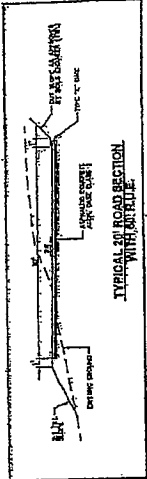
PLAN 070376
PROPOSED
**VESTING
TENTATIVE
PARCEL MAP**

OF
A.P.N. 475-082-008-000
MONTEREY COUNTY, CALIFORNIA

PREPARED BY:

WHITSON ENGINEERS
CIVIL ENGINEERS
20111118

RECEIVED
MONTEREY COMMUNITY
PLANNING & BUILDING
INSPECTION DEPT.
APPROVED FOR THE CITY OF MONTEREY
DATE: 7/20/07
BY: [Signature]



GENERAL NOTES

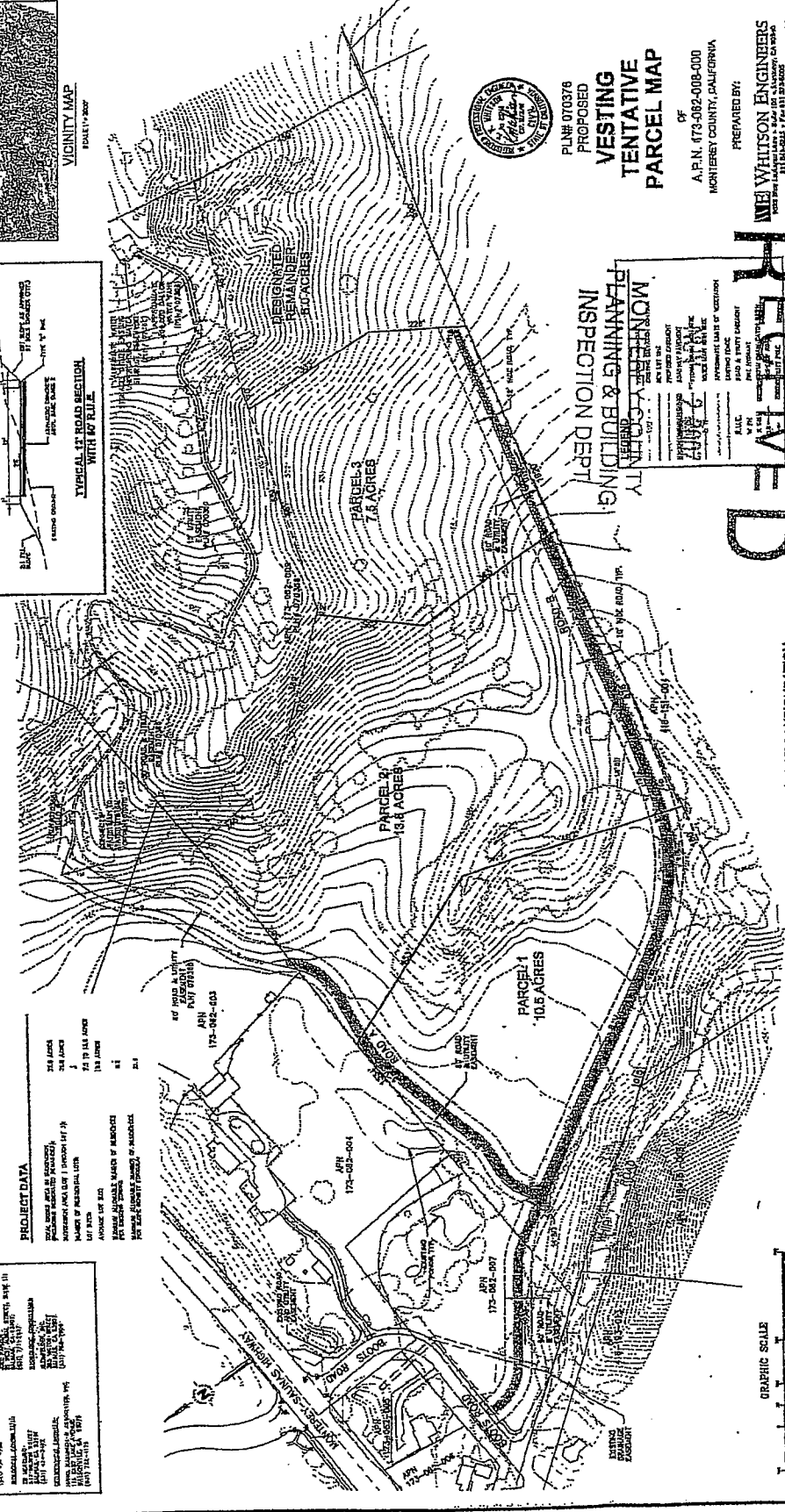
1. ALL DISTANCES ARE TO CENTERLINE UNLESS OTHERWISE NOTED.
2. SEE SHEET 070376-01 FOR THE REMAINDER OF THE PARCEL MAP.
3. THE REMAINDER OF THE PARCEL MAP IS SUBJECT TO THE CITY OF MONTEREY'S REVIEW AND APPROVAL.
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10. THE REMAINDER OF THE PARCEL MAP IS SUBJECT TO THE CITY OF MONTEREY'S REVIEW AND APPROVAL.

SUBDIVIDER'S STATEMENT

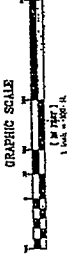
- A. I, JAMES A. WHITSON, REGISTERED PROFESSIONAL ENGINEER, STATE OF CALIFORNIA, LICENSE NO. 73187, HAVE EXAMINED THE RECORD DRAWINGS FOR THE PROPOSED PARCEL MAP AND CERTIFY THAT THE SAME COMPLY WITH THE REQUIREMENTS OF THE SUBDIVISION MAP ACT AND THE SUBDIVISION MAP REGULATIONS.
- B. I HAVE EXAMINED THE RECORD DRAWINGS FOR THE PROPOSED PARCEL MAP AND CERTIFY THAT THE SAME COMPLY WITH THE REQUIREMENTS OF THE SUBDIVISION MAP ACT AND THE SUBDIVISION MAP REGULATIONS.
- C. I HAVE EXAMINED THE RECORD DRAWINGS FOR THE PROPOSED PARCEL MAP AND CERTIFY THAT THE SAME COMPLY WITH THE REQUIREMENTS OF THE SUBDIVISION MAP ACT AND THE SUBDIVISION MAP REGULATIONS.
- D. I HAVE EXAMINED THE RECORD DRAWINGS FOR THE PROPOSED PARCEL MAP AND CERTIFY THAT THE SAME COMPLY WITH THE REQUIREMENTS OF THE SUBDIVISION MAP ACT AND THE SUBDIVISION MAP REGULATIONS.
- E. I HAVE EXAMINED THE RECORD DRAWINGS FOR THE PROPOSED PARCEL MAP AND CERTIFY THAT THE SAME COMPLY WITH THE REQUIREMENTS OF THE SUBDIVISION MAP ACT AND THE SUBDIVISION MAP REGULATIONS.
- F. I HAVE EXAMINED THE RECORD DRAWINGS FOR THE PROPOSED PARCEL MAP AND CERTIFY THAT THE SAME COMPLY WITH THE REQUIREMENTS OF THE SUBDIVISION MAP ACT AND THE SUBDIVISION MAP REGULATIONS.
- G. I HAVE EXAMINED THE RECORD DRAWINGS FOR THE PROPOSED PARCEL MAP AND CERTIFY THAT THE SAME COMPLY WITH THE REQUIREMENTS OF THE SUBDIVISION MAP ACT AND THE SUBDIVISION MAP REGULATIONS.
- H. I HAVE EXAMINED THE RECORD DRAWINGS FOR THE PROPOSED PARCEL MAP AND CERTIFY THAT THE SAME COMPLY WITH THE REQUIREMENTS OF THE SUBDIVISION MAP ACT AND THE SUBDIVISION MAP REGULATIONS.
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- J. I HAVE EXAMINED THE RECORD DRAWINGS FOR THE PROPOSED PARCEL MAP AND CERTIFY THAT THE SAME COMPLY WITH THE REQUIREMENTS OF THE SUBDIVISION MAP ACT AND THE SUBDIVISION MAP REGULATIONS.

PROJECT DATA

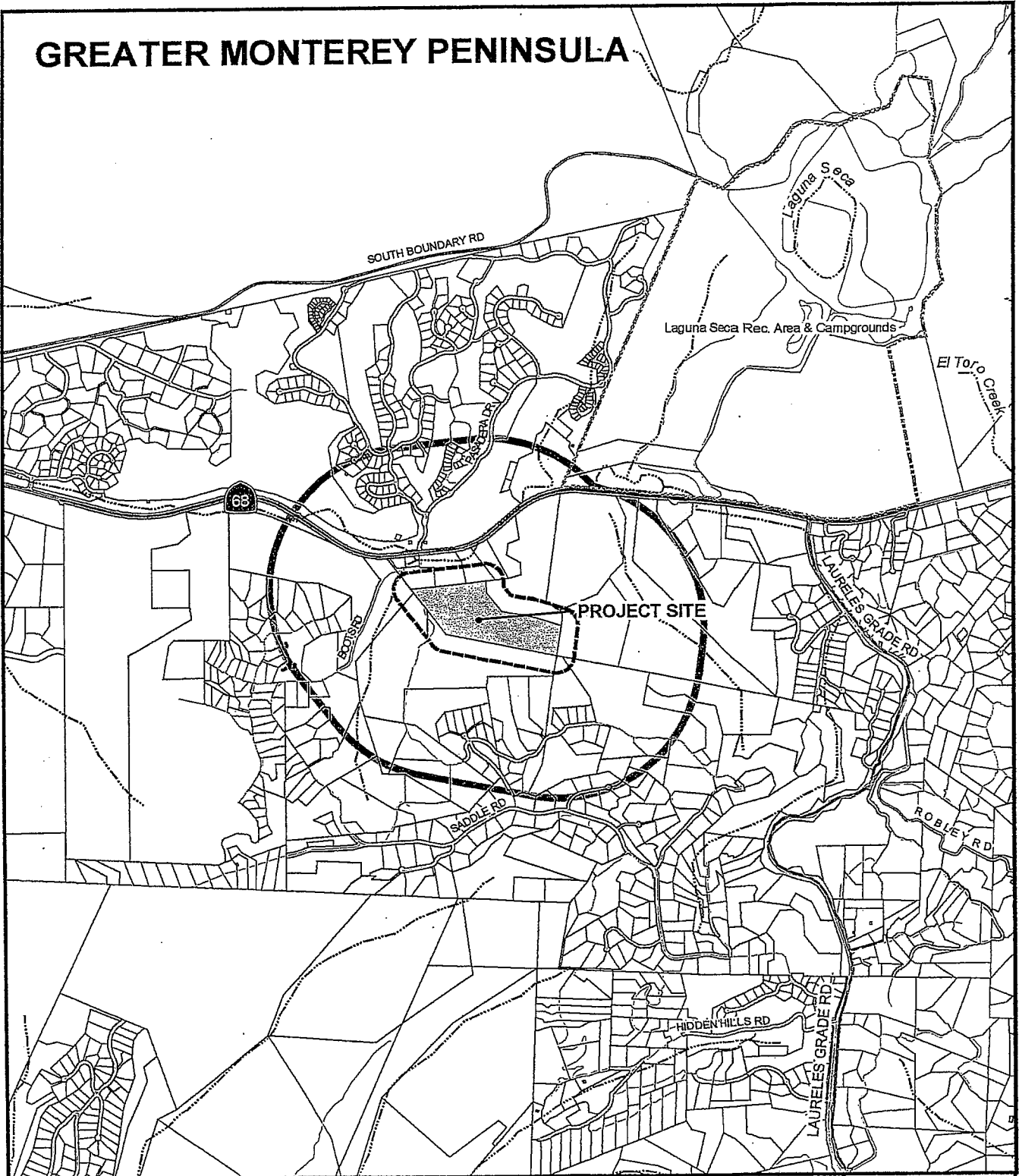
| | |
|----------------------------------|--|
| PROJECT NAME | 40' ROAD SECTION WITH 8' CURB |
| PROJECT NO. | 070376-01 |
| DATE | 7/20/07 |
| LOCATION | MONTEREY, CALIFORNIA |
| OWNER | MONTEREY COMMUNITY |
| DESIGNER | JAMES A. WHITSON |
| REGISTERED PROFESSIONAL ENGINEER | STATE OF CALIFORNIA, LICENSE NO. 73187 |
| DATE OF PREPARATION | 7/20/07 |
| SCALE | AS SHOWN |
| BY | JAW |
| CHECKED BY | JAW |
| DATE OF CHECK | 7/20/07 |
| APPROVED BY | JAW |
| DATE OF APPROVAL | 7/20/07 |



PROPOSED LOT CONFIGURATION



GREATER MONTEREY PENINSULA



APPLICANT: MERRILL

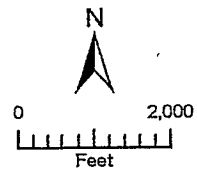
APN: 173-062-008-000

FILE # PLN070376

300' Limit

2500' Limit

City Limits



PLANNER: AMADOR