

Exhibit B
Draft Board Resolution
PLN070366 – Wayland

Merrill (PLN110078)
Wayland (PLN110079)

Board of Supervisors
February 7, 2012

Exhibit B
Draft Resolution – Wayland

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

Resolution No.

Resolution by the Monterey County Board of Supervisors)
to:)

1. Deny the appeal by Warren Wayland from the)
Planning Commission’s decision denying the)
application for a Combined Development Permit)
(Wayland/PLN070366); and)
2. Deny the application for a Combined Development)
Permit (Wayland/PLN070366) consisting of: 1))
Minor Subdivision Vesting Tentative Map to allow)
the division of a 38-acre parcel into four parcels of)
9.7 acres (Parcel 1), 5.3 acres (Parcel 2), 9.3 acres)
(Parcel 3), 5.2 acres (Parcel 4) and a remainder)
parcel of 8.8 acres; 2) Use Permit for development)
of areas in excess of 25 percent for roadway)
improvements; 3) Use Permit for development in a)
visually sensitive area (“VS” District); and 4) Use)
Permit to allow the removal of approximately 39)
oak trees; and grading of approximately 3,800 cubic)
yards of cut and 3,800 cubic yards of fill, 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 appeal by Warren Wayland from the Planning Commission’s denial of the Wayland Combined Development Permit and Minor Subdivision Vesting Tentative Map (PLN070366) came on for public hearing before the Board of Supervisors of the County of Monterey. Having considered all the written and documentary evidence, the administrative record, the staff report, oral testimony, and all other evidence presented, the Board of Supervisors hereby 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, including the Greater Monterey Peninsula Area Plan,
 - Monterey County Zoning Ordinance (Title 21)
 - Monterey County Subdivision Ordinance (Title 19)
 - Monterey County Public Service Ordinance (Title 15)

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 proposed project is a Combined Development Permit consisting of:
 - 1) Minor Subdivision Vesting Tentative Map to allow the division of a 38-acre parcel into four parcels of 9.7 acres (Parcel 1), 5.3 acres (Parcel 2), 9.3 acres (Parcel 3), 5.2 acres (Parcel 4) and a remainder parcel of 8.8 acres; 2) Use Permit for development of areas in excess of 25 percent for roadway improvements; 3) Use Permit for development in a visually sensitive area (“VS” District); and 4) Use Permit to allow the removal of approximately 39 oak trees; and grading of approximately 3,800 cubic yards of cut and 3,800 cubic yards of fill, 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.
- c) The property is located at 24975 Boots Road, Monterey (Assessor’s Parcel Number: 173-062-009-000), Greater Monterey Peninsula (GMP) 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. Residences are an allowed land use for this site.
- d) 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, objectives, and policies of the Greater Monterey Peninsula Area Plan; therefore the project is inconsistent with 2010 General Plan Policy GMP 3.3.
- e) 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 with this policy.
- f) The project includes application for a Use Permit for the removal of 39 oak trees and a Use Permit for development in a Visually Sensitive (VS)

zone. The requirements for issuance of said Use Permits have not been addressed at this time, as the project is denied for other reasons. (See Finding 2).

- g) Title 19 inconsistency – See Finding and Evidence 2 below.
- h) The project was referred to the Greater Monterey Peninsula Land Use Advisory Committee (LUAC) for review on December 5, 2007. 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. The GMPLUAC recommended approval of the project by a 3-0 vote (1 absent, 1 abstain). It should be noted however, that at the time of the recommendation, the 2010 General Plan had not been implemented, and substantial issues relative to septic feasibility and water quality had yet to be discovered.
- i) The project planner conducted a site inspection on August 9, 2007 and December 28, 2010.
- j) 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) (*See Finding 1*).
 - b) **Design.** The lot design is consistent with the Lot Design Standards of Section 19.10.030 of the Monterey County Code.
 - 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 due to septic feasibility concerns and inconsistency with adopted policies of the 2010 General Plan (GMP-3.3, OS-3.5).

- d) Staff identified potential impacts to Biological Resources, Archaeological Resources, Soil/Slope Stability, and on-site wastewater treatment feasibility. Technical reports by outside consultants indicate that there are physical or environmental constraints rendering the site 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 report prepared by the applicant’s consultant 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 Chapter 15.20. The study identified soil make-up consisting of clay and silts, which form impermeable layers, resulting in sheet flow of subsurface water, requiring complex engineering (curtain drains and berms) to collect and divert subsurface water before it would infiltrate and hydraulically overload the wastewater system. In addition, the percolation data suggests the upper soils are not suitable and would require deep trenches to allow for slow percolation; which allow little or no air filtration for the aerobic treatment of effluent. According to the Environmental Health Bureau, the combination of soil characteristics, evidence of subsurface sheeting water and moderate to failing percolation test results would result in a rapid failure of the septic disposal system, despite the

engineering mitigations that are proposed. The lack of reliable onsite wastewater treatment systems for the proposed minor subdivision makes the site unsuitable for such development, unless it is hooked to a sanitary sewer system.

- f) **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 and working in the neighborhood and the general welfare of the County.
- g) Necessary public facilities are not available and are not provided for the proposed project. On-site wastewater systems have been determined to not be feasible on the subject property. See Sewage Disposal sections below.
- h) **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.
- i) **Water Supply.** Monterey County Code (MCC) Section 19.10.070 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. Section 19.03.015.L MCC, applicable through section 19.04.15, requires Water Supply and Nitrate Loading Information in order to assess these conditions. The proposed water supply for the project is a common well, located off-site on an adjacent parcel. Title 22 of the California Code of Regulations sets forth the maximum contaminant level (“MCL”) for arsenic at .010 mg/l or commonly expressed as 10 parts per billion (ppb). Water sources exceeding the MCL require treatment of the water supply prior to delivery to the consumers so that the MCL is not exceeded. Monterey County Code Chapter 15.04 requires that a state small water system “has adequate financial, managerial, and technical capability to assure the delivery of pure and wholesome water for human consumption”. (Section 15.04.050.a.2.) Monterey County Code Chapters 19.03 and 19.04 require evidence demonstrating how technical, managerial, and financial capacity (“TMF”) will be achieved. (Section 19.03.15.L.2.C.6, applicable through section 19.04.015.) Based on local/state experience and United States Environmental Protection Agency documentation of small water systems, EHB had determined that creation of new water systems for subdivisions that are less than 15 connections and must employ treatment technology do not have the TMF to “assure the delivery of pure and wholesome water for human consumption”. Testing data compiled between October 2005 and September 2010 have shown that arsenic concentration levels range from 6 ppb to as high as 17 ppb. At the time of the Planning Commission hearing the quarterly average of arsenic was 10.08 ppb indicating that an exceedance of the MCL would most likely occur and treatment technology would be required. While the appeal period was pending the applicant supplied more water quality test results for arsenic. The time period that includes these samples is October 7, 2005 – April 1, 2011, and the

recalculated annual quarterly average is 9.04 ppb indicating that the exceedance would most likely to occur and treatment technology would be required. On May 3, 2011, a public hearing was held, which resulted in the Board continuing the matter to January 10, 2012, to allow the applicants to continue conducting water sampling. Since that time, the applicants have conducted additional tests in the months of May through November 2011. The recalculated annual quarterly average (October 7, 2005 to November 15, 2011) is 7.9 ppb. Based on the recalculated annual quarterly average of 7.9 ppb, this allows sufficient safety margin to determine that a long-term sustainable water supply exists in regards to water quality. The project has proven a reliable source of long-term sustainable water that meets water quality standards; therefore the project is consistent with 2010 General Plan Policy PS-3.9.

j) **Sewage Disposal** (Section 19.03.015.K MCC).

The soil composition and percolation rates of the Wayland property do not comply with standards for septic disposal (Monterey County Code Chapter 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 test holes failed according to Monterey County Code Chapter 15.20. The percolation data suggests that the upper soils are not suitable for septic dispersal. Deep trenches would be needed to function primarily to dispose of effluent. With this approach there would 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. Normally 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) design.

k) 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.

l) 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.

EVIDENCE: a) Public Resources Code Section 21080(b)(5) and California Environmental Quality Act (CEQA) Guidelines Section 15270(a) statutorily exempt projects which a public agency rejects or disapproves.

4. **FINDING:** **PROCEDURAL BACKGROUND** – The project has been processed in compliance with Chapter 21.76 for Combined Development Permits.

EVIDENCE: a) On November 2, 2007 the Warren Wayland Trust et al filed an application with the Monterey County RMA – Planning Department for a Combined Development Permit (PLN070366) for a Minor Subdivision.

- b) The Combined Development Permit (PLN070366) was deemed complete on October 9, 2008.
- c) Action on the project required policy level decisions and the project was referred to the Planning Commission. The project was brought to public hearing before the Monterey County Planning Commission on January 26, 2011. The Planning Commission denied the application by a 7-1 vote (2 members absent) (PC Resolution No. 11-005).
- d) An appeal was timely filed by Warren Wayland, the property owner (“appellant”) for PLN070366 (Wayland) on February 9, 2011.
- e) The appeal was brought to public hearing before the Board of Supervisors on March 29, 2011; continued to May 3, 2011; continued to January 10, 2012; and again continued to February 7, 2012. At least 10 days prior to the public hearing, notices of the public hearing before the Board of Supervisors were published in the Monterey County Herald and were posted on and near the property and mailed to the property owners within 300 feet of the subject property as well as interested parties.
- f) Staff report, minutes of the Board of Supervisors, information and documents in Planning file PLN110079.

5. FINDING: APPEAL AND APPLICANT CONTENTIONS

The appellant requests that the Board grant the appeal, and approve the Combined Development Permit and Minor Subdivision Application (PLN070366). The appeal alleges: there was a lack of fair or impartial hearing; the findings or decision or conditions are not supported by the evidence; and the decision was contrary to law. The contentions are contained in the notice of appeal (**Exhibit F**) and listed below with responses from staff. The Board of Supervisors makes the following findings regarding the appellant’s contentions:

Contention 1 – Lack of Fair or Impartial Hearing

The appellant contends that the following are examples of the lack of a fair and impartial hearing:

- a) *Application of 2010 General Plan policies to a subdivision map application filed in 2007 and found complete in 2008.*

Government Code section 66474.2 (part of the state Subdivision Map Act) provides that, “*Except as otherwise provided in subdivision (b) or (c), in determining whether to approve or disapprove an application for a tentative map, the local agency shall apply only those ordinances, policies, and standards in effect at the date the local agency has determined the application complete.*” (Government Code § 66474.2(a), emphasis added.) The application in this case comes under the exception. The exception provided in subdivision (b) of section 66474.2 states that if a local agency has “initiated proceedings by way of ordinance, resolution, or motion” and also published a notice containing a description sufficient to notify the public of the nature of the proposed change in the general plan, then the local agency “may apply any ordinances, policies, or standards enacted or instituted as a result of those proceedings which are in effect on the date the local agency approves or disapproves the tentative map.” (Gov’t Code sec. 66474.2(b).)

The County has met the requirements of the exception set out in Government Code section 66474.2(b). Prior to October 16, 2007, a public hearing notice on the draft General Plan was published, and the Board initiated public hearings on the draft General Plan beginning September 25, 2007 and continuing on October 16 and November 6, 2007 and completed the public hearings in

2010. In the course of those hearings, on October 17, 2007, the Board adopted a motion “informing the public that any subdivision applications deemed complete after October 16, 2007 will be subject to the plans, policies, ordinances, and standards that result from the current General Plan Update proceedings and that are in effect at the time the application is considered for approval.” (See Board order dated October 16, 2007.) Additionally, on October 23, 2007, the Board adopted Ordinance No. 5090, which extended for one year the relevant provisions of Interim Ordinance No. 5080 related to processing of applications during the General Plan update, and the ordinance provided that subdivision applications that were not deemed complete as of October 16, 2007 but which may be processed under that ordinance would be subject to the standards that, as a result of the General Plan Update, may be in effect at the time the County takes action on the application. Finally, pursuant to Government Code section 66474.2(b), the County elected to apply the 2010 General Plan to subdivision applications deemed complete after October 16, 2007 through the adoption of Policy LU-9.3 of the General Plan. Policy LU-9.3 provides, in relevant part, “Applications for standard and minor subdivisions that were deemed complete on or before October 16, 2007 shall be governed by the plans, policies, ordinances and standards in effect at the time the application was deemed complete. Applications for standard and minor subdivision maps that were deemed complete after October 16, 2007 shall be subject to this General Plan and the ordinances, policies, and standards that are enacted and in effect as a result of this General Plan.”

The Wayland application was deemed complete on October 9, 2008 after October 16, 2007. Therefore, pursuant to Government Code section 66474.2(b) and General Plan Policy LU-9.3, the application is subject to the policies of the 2010 General Plan.

b) Departure from adopted standard MCL for the presence of arsenic in water.

The January 26, 2011 Planning Commission decision to deny the application did not represent a departure from adopted standard MCL for the presence of arsenic in water. Title 22 of the California Code of Regulations sets forth the MCL for arsenic at .010 mg/l or commonly expressed as 10 ppb. Water sources exceeding the MCL require treatment of the water supply prior to delivery to the consumers so that the MCL is not exceeded. Monterey County Code Chapter 15.04 requires that a state small water system “has adequate financial, managerial, and technical capability to assure the delivery of pure and wholesome water for human consumption”. (Section 15.04.050.a.2) Monterey County Code Chapters 19.03 and 19.04 require evidence demonstrating how technical, managerial, and financial capacity (TMF) shall be achieved (Section 19.03.015.L.2.C.6 applicable through section 19.04.015.) Environmental Health has determined that creation of new water systems with less than 15 connections (i.e local small and state small water systems) and must employ treatment technology do not have the TMF to “assure the delivery of pure and wholesome water for human consumption” and thus do not effectively protect the public health and safety.

Testing data compiled between August 2007 and September 2010 has shown that arsenic concentration levels range from 6 ppb to as high as 17 ppb. At the time of the Planning Commission hearing the quarterly average of arsenic was 10.08 ppb. Arsenic levels can fluctuate based on season (wet/dry), groundwater level (dry years vs. wet years), and amount of rainfall, as is demonstrated in the fluctuating levels of arsenic in this well. The professional opinion of Environmental Health staff is that an MCL of 10 ppb does not allow any safety margin for fluctuations of arsenic concentration. If the project was approved and conditions change such that the MCL level continues to exceed the acceptable threshold, there would not be sufficient TMF to treat the water and protect public health and safety. The Planning Commission did not find it an acceptable practice to approve a project with a water source that does not comply with state public health and safety thresholds and where if

MCL concentrations were to increase in the future there would be no way to treat the water. Thus the project could not be found to have a long-term sustainable water supply based on the information available as of the time of the Planning Commission decision.

The applicants have conducted additional tests in the months of May through November 2011. The recalculated annual quarterly average (October 7, 2005 to November 15, 2011) is 7.9 ppb. Based on the recalculated annual quarterly average of 7.9 ppb, this allows sufficient safety margin to determine that a long term sustainable water supply exists in regards to water quality. The project has proven a reliable source of long-term sustainable water that meets water quality standards; therefore the project is consistent with 2010 General Plan Policy PS-3.9.

c) Departure from adopted standard for septic percolation tests;

The January 26, 2011 Planning Commission decision to deny the application did not represent a departure from adopted standard(s) for septic percolation tests. At the request of the Environmental Health Bureau (EHB), the applicant prepared a Septic Feasibility Report, which stated that the Wayland property contained marginal soil composition and percolation rates required for the installation of conventional septic systems. The report prepared by the applicant's consultant identified an engineering option for the subdivision, but this solution is not a preferred method, is prone to failure and would require extensive maintenance, which is often not provided on single family lots. A letter from EHB containing detailed information relative to the Wayland soil composition and percolation rates is attached to the staff report (**Exhibit M of May 3, 2011 Board of Supervisors Staff Report**). After reviewing all relevant composition and percolation rate data supplied for the Wayland Application, Staff did not have the level of confidence necessary to support the subdivision utilizing the proposed Onsite Wastewater Treatment System (OWTS) design; therefore staff recommended connection to a sanitary sewer system.

d) Disregard of LUAC recommendation for project approval.

The January 26, 2011 Planning Commission decision to deny this application did not represent a disregard of the Greater Monterey Peninsula Land Use Advisory Committee (LUAC) recommendation for project approval. The LUAC reviewed each project relative to visual aesthetics from State Route 68, locations of proposed residences and nearby land uses. The issues of septic feasibility and water quality were not known by the LUAC, in addition, the 2010 General Plan had yet to be adopted; therefore these issues and 2010 General Plan consistency were not addressed or discussed during at the time of LUAC review. The minutes, notes and comments from the December 5, 2007 LUAC meeting were attached to the January 26, 2011 Planning Commission Staff Report for review and consideration by the Planning Commission. The LUAC recommendations are advisory only and did not limit the discretion of the Planning Commission.

Contention 2 – Findings and Decision Not Supported by the Evidence

The appellant contends that the following are examples Findings and Decision not supported by the evidence:

- a) Numerous citations of "evidence" are actually conclusory findings not supported by evidence (e.g. Finding #2 [c], [e], [f], and [g]).*

Evidence provided in Finding No. 2 in the January 26, 2011 Planning Commission resolution for the Wayland Combined Development Permit (PLN070366) are factual statements supported by the information in the record. Factual evidence taken directly from reports and tests prepared by the

applicants consultants has been provided relative to marginal soil composition and uneven percolation rates relative to septic feasibility (Evidence [e]) and the lack of a proven sustainable long-term water source relative to water quality (Evidence [f]).

The appellant was afforded due process. The Planning Commission received presentations from both staff and the applicant, followed by testimony from the public. The applicant was given the staff report with attached recommended Findings and Evidence for each project, and granted the opportunity for rebuttal. Upon the close of the public hearing, staff and counsel responded to questions from the Commission. Following staff's responses, the Commission publicly discussed the facts and merits of all evidence presented. Subsequently, a motion to deny the Wayland Combined Development Permit (PLN070366) was moved and seconded, followed by a 7-1 vote, with 2 members absent.

b) The evidence cited in support of Finding #2 is the 2010 General Plan which is inapplicable to this application.

The 2010 General Plan does apply to these applications. See Response 1a above.

c) Finding #2 (1) and (2) the proposed project is not consistent with applicable general plan is not supported by substantial evidence (see Contention 1a above).

Finding No. 2 contains the required findings for subdivisions; items (1) and (2) of that finding require the project to be evaluated for consistency with policies in the applicable general plan and specific plans. No specific plan has been developed for the Toro area; the applicable general plan for this Application is the 2010 General Plan; therefore the project was analyzed in relation to the policies of the appropriate document. See Response 1a above.

d) Finding #2 (3) and (4) that site is not suitable for the type and density of development proposed is not supported by substantial evidence in the record.

Finding No. 2 contains the required findings for subdivisions; items (3) and (4) of that finding require that the decision making body determine whether the site is suitable for the type and density of development proposed. This specific threshold of site suitability can not be supported. The projects were reviewed by numerous County departments; the Environmental Health Bureau and RMA – Planning Department expressed concerns relative to septic feasibility and long-term sustainable water supply (water quality). Evidence demonstrating that the site is physically unsuitable for the type and density of the development is contained in subsections [j - Water Supply) and [k – Sewage Disposal] of Finding No. 2 of the January 26, 2011 Wayland Planning Commission resolution.

Sewage disposal could be served by a connection to the Pasadera/ Laguna Seca/York wastewater treatment facility. The Pasadera/ Laguna Seca/York wastewater treatment facility operated by Cal Am has a permitted capacity of 110,000 gallons per day (GPD) and is presently running at about 60,000 GPD with 385 connections. A representative from Cal Am indicated that the company is always looking for more connections for the treatment plant.

The applicants have conducted additional tests in the months of May through November 2011. The recalculated annual quarterly average (October 7, 2005 to November 15, 2011) is 7.9 ppb. Based on the recalculated annual quarterly average of 7.9 ppb, this allows sufficient safety margin to

determine that a long term sustainable water supply exists in regards to water quality. The project has proven a reliable source of long-term water that meets water quality standards; therefore the project is consistent with 2010 General Plan Policy PS-3.9.

- e) *Finding #2 (5) that the design of the project is likely to cause substantial environmental damage and substantially and avoidably injure fish or wildlife or their habitat is not supported by substantial evidence.*

Finding No. 2 contains the required findings for subdivision, item (5) is related to subdivision improvements causing adverse environmental damage. This specific threshold point was not addressed in the January 26, 2011 Planning Commission staff report, as this was not a factor in the Planning Commission's decision.

- f) *Citations to the 2010 General Plan are not substantial evidence to support Finding #2 (See Contention 1a above).*

See Response 1a above.

Contention 3 – The Decision was Contrary to Law

The appellant contends that the following are examples of the decision being contrary to law:

- a) *Application of 2010 General Plan policies to subdivision map application filed in 2007 and found complete in 2008 is contrary to Government Code §66474.2.*

Application of the 2010 General Plan does not violate Government Code §66474.2. See Response 1a above.

- b) *Departure from adopted standard (MCL) for the presence of arsenic in water is arbitrary and capricious.*

See Response 1b above.

- c) *Departure from adopted standard for septic percolation tests is arbitrary and capricious.*

See Response 1c above.

- d) *Citing as evidence conclusory statements not supported by evidence (e.g. Finding #2, [c], [e], [f], and [g]) is contrary to law.*

See Response 2a above.

Contention 4 – Disagreement with Findings.

The appellant states they disagree with findings based on the following:

- a) *Numerous citations of "evidence" are actually conclusory findings not supported by evidence (e.g. Finding #2 [c], [e], [f], and [g]).*

See Response 2a above.

- b) *The evidence cited in support of Finding #2 is the 2010 General Plan which is inapplicable to this application.*

See Response 1a above

- c) *Finding #2 (1) and (2) the proposed project is not consistent with applicable general plan is not supported by substantial evidence (see Contention 1a above).*

See Response 2c and 1a above.

- d) *Finding #2 (3) and (4) that site is not suitable for the type and density of development proposed is not supported by substantial evidence in the record.*

See Response 2d above.

- e) *Finding #2 (5) that the design of the project is likely to cause substantial environmental damage and substantially and avoidably injure fish or wildlife or their habitat is not supported by substantial evidence.*

See Response to 2e above.

II. DECISION

NOW, THEREFORE, BASED ON THE ABOVE FINDINGS AND EVIDENCE, BE IT RESOLVED, that the Board of Supervisors does hereby:

1. Deny the appeal by Warren Wayland from the Planning Commission's decision denying the application for a Combined Development Permit (Wayland/PLN070366); and
2. Deny the application for a Combined Development Permit (Wayland/PLN070366) consisting of: 1) Minor Subdivision Vesting Tentative Map to allow the division of a 38-acre parcel into four parcels of 9.7 acres (Parcel 1), 5.3 acres (Parcel 2), 9.3 acres (Parcel 3), 5.2 acres (Parcel 4) and a remainder parcel of 8.8 acres; 2) Use Permit for development on slopes in excess of 25 percent for roadway improvements; 3) Use Permit for development in a visually sensitive area ("VS" District); and 4) Use Permit to allow the removal of approximately 39 oak trees; and grading of approximately 3,800 cubic yards of cut and 3,800 cubic yards of fill, installation of 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

PASSED AND ADOPTED on this 7th day of February, 2012, by the following vote, to-wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

I, Gail T. Borkowski, Clerk of the Board of Supervisors of the County of Monterey, State of California, hereby certify that the foregoing is a true copy of an original order of said Board of Supervisors duly made and entered in the minutes thereof of Minute Book ___ for the meeting on _____.

Dated:

Gail T. Borkowski, Clerk of the Board of Supervisors
County of Monterey, State of California

By _____
Deputy