

MONTEREY COUNTY BOARD OF SUPERVISORS

MEETING: February 7, 2012 1:30 PM **AGENDA NO:**

SUBJECT: Public hearing to consider:

a. Appeal by Warren Wayland from the Planning Commission’s decision denying the application for a Combined Development Permit (Wayland/PLN070366) consisting of: 1) a 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

b. Appeal by Susan Merrill from the Planning Commission’s decision denying the application for a Combined Development Permit (Merrill/PLN070376) consisting of: 1) a Minor Subdivision Vesting Tentative Map to allow the division of a 37.8 acre parcel into three parcels of 10.5 acres (Parcel 1), 13.8 acres (Parcel 2), 7.5 acres (Parcel 3) and a remainder parcel of 6.0 acres; and 2) Use Permit for development in a visually sensitive area ("VS" District).

(Appeal, PLN070366/Wayland Minor Subdivision, 24975 Boots Road, Monterey)

(Appeal, PLN070376/Merrill Minor Subdivision, 24915 Boots Road, Monterey)

[Continued from January 10, 2012 hearing]

Project Location:	24975 Boots Road, Monterey (Wayland) 24915 Boots Road, Monterey (Merrill)	APN:	173-062-009-000 (Wayland) 173-062-008-000 (Merrill)
Planning Number:	PLN110079 (Wayland Minor Subdivision) PLN110078 (Merrill Minor Subdivision)	Name:	Wayland Warren Trust Merrill Thomas Trust
Plan Area:	Greater Monterey Peninsula Area Plan	Flagged and Staked: NO	
Zoning Designation:	RDR/5.1-VS (Rural Density Residential, 5.1 acre per lot minimum, with Visual Sensitivity Overlay)		
CEQA Action:	Statutorily exempt from CEQA per 15270		
DEPARTMENT:	RMA – Planning Department		

RECOMMENDATION:

It is recommended that the Board of Supervisors:

- a. Adopt a Resolution (**Exhibit B**) 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) a 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;
- b. Adopt a Resolution (**Exhibit C**) to:
 - 1. Deny the appeal by Susan Merrill from the Planning Commission’s decision denying the application for a Combined Development Permit (Merrill/PLN070376); and

2. Deny the application for a Combined Development Permit (Merrill/PLN070376) consisting of: 1) a Minor Subdivision Vesting Tentative Map to allow the division of a 37.8 acre parcel into three parcels of 10.5 acres (Parcel 1), 13.8 acres (Parcel 2), 7.5 acres (Parcel 3) and a remainder parcel of 6.0 acres; and 2) Use Permit for development in a visually sensitive area ("VS" District); and grading of approximately 3,100 cubic yards of grading, individual septic systems and 60 foot wide road and utility easements.

SUMMARY:

On November 2, 2007 and November 15, 2007, the Warren Wayland Trust et al and Thomas Merrill Trust et al, respectively, filed applications with the Monterey County RMA – Planning Department for Combined Development Permits (PLN070366 and PLN070376) for adjacent Minor Subdivisions. Staff thoroughly analyzed issues related to water quantity, water quality and sewage disposal, and due to significant concerns regarding these issues brought the matter forward to the Planning Commission with a recommendation for denial.

The projects were brought to public hearing before the Monterey County Planning Commission on January 26, 2011. The Planning Commission denied the applications by a 7-1 vote (2 members absent) (PC Resolution No. 11-005 and 11-006) (**Exhibits H and I**).

One of the key issues was water quality. Water quality tests for both projects, submitted to the Monterey County Environmental Health Bureau ("EBH") indicated arsenic concentrations above the maximum contaminant level ("MCL") of 10 parts per billion (ppb). Testing data for the existing well compiled between August 2007 and September 2010 showed that arsenic concentration levels range from 6 ppb to as high as 17 ppb, with the overall average being 10.08 ppb. These results did not demonstrate that the well could reliably stay in compliance with adopted thresholds. Based upon this evidence, the Planning Commission found that neither project has a reliable long-term sustainable water source, in regard to water quality, and therefore do not comply with 2010 General Plan policies nor required health and safety standards.

On February 9, 2011, applicants timely appealed the Planning Commission's decision (**Exhibits F and G**). The appellants request that the Board grant the appeal and approve the Combined Development Permits for PLN070366 (Wayland) and PLN070376 (Merrill). The bases of the appeals are: a lack of fair or impartial hearing; the findings, decision or conditions are not supported by the evidence; and the decision is contrary to law. A more detailed discussion of these contentions for each appeal can be found in **Exhibit A**.

The appeals were scheduled for public hearing before the Monterey County Board of Supervisors on March 29, 2011. In a letter dated, March 17, 2011, the applicant's representative, Brian Finegan, requested a continuance to April 12, 2011; however, during the March 29, 2011 Board hearing, at the request of Staff, the Board continued the matter to May 3, 2011, due to scheduling conflicts on the April 12, 2011 agenda. On May 3, 2011, a public hearing was held; however, the Board continued the matter to January 10, 2012, to allow the applicants to perform further water sampling. On January 10, 2012 the Board continued the matter to February 7, 2012 at the request of the applicant, to allow the full Board to be present.

Since May 3, 2011, the applicants have conducted additional water sampling tests in each of the months of May through November 2011. Each of the tests showed arsenic levels acceptable to the EHB and in compliance with state law relative to the MCL. An arsenic concentration test is also expected in December 2011; however, the results were unavailable as of the preparation of this report.

Although it appears that the water quality may finally be acceptable, issues relative to conformance with the 2010 General Plan, traffic impacts, sewage/septic impacts, and other potential environmental impacts remain unresolved.

Staff recommends denial of both the Wayland Combined Development Permit (PLN110079) and Merrill Combined Development Permit (PLN110078) because neither map can be found in conformance with the 2010 General Plan. However, if the Board of Supervisors chooses to grant the appeal the Board cannot approve the minor subdivisions for Wayland and Merrill because additional project review and environmental analysis will be required (See the discussion in **Exhibit A** under "Options" on page 10). The matter should therefore be remanded for further project review and environmental analysis, and consideration by the Planning Commission in light of the new water quality data and the further project review.

DISCUSSION:

Detailed discussion is provided in **Exhibit A**.

CEQA:

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. However, should one or both of the projects (Wayland and/or Merrill) move toward approval, that particular project would be subject to environmental review and would require the preparation of an Initial Study. Environmental impacts resulting from each application would need to be considered, including but not limited to: aesthetics, geologic/geology, traffic/circulation, water/water quality/hydrogeology, noise, and cumulative impacts.

OTHER AGENCY INVOLVEMENT:

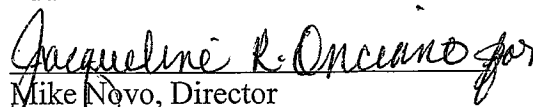
The following agencies have reviewed the project and those that are checked ("✓") have comments and/or recommended conditions:

<input type="checkbox"/>	Environmental Health Division
<input type="checkbox"/>	Public Works Department
<input type="checkbox"/>	Water Resources Agency
<input type="checkbox"/>	Monterey County Regional Fire Protection District
<input type="checkbox"/>	Greater Monterey Peninsula Land Use Advisory Committee
<input type="checkbox"/>	Parks Department
<input type="checkbox"/>	Regional Water Quality Control Board, District 3

FINANCING:

Funding for staff time associated with this project has been provided through payment of all appropriate appeal fees.

Prepared by: 
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 January 24, 2012

Approved by: 
 Mike Novo, Director
 RMA - Planning Department

This report was reviewed by Jacqueline R. Onofano & Laura Lawrence, Planning Services Managers.
 Wayland Minor Subdivision Appeal (PLN110079)
 Merrill Minor Subdivision Appeal (PLN110078)

cc: Front Counter Copy; Board of Supervisor's (14); County Counsel; Environmental Health Division; Public Works; Monterey County Water Resources Agency; Monterey County Regional Fire Protection District; Monterey County Parks Department; Regional Water Quality Control Board (District 3); Mike Novo, Director-RMA Planning Department; Carl Holm, Asst. Director Resource Management Agency; Jacqueline R. Onciano, Planning Services Manager; Warren Wayland Trust, Owner (PLN070366); Tom and Susan Merrill, Owner (PLN070376); Maureen Wruck Planning Consultants LLC (Joel Panzer), Agent; Brian Finegan, Attorney; Whitney "Tinker" Stolich, Neighbor; Michael Weaver, Neighbor; Law Office of Michael Stamp (Molly Erikson), Interested Party; Land Watch Monterey County (Amy White), Interested Party; Planning File PLN070366 (Wayland) & PLN070376 (Merrill)

Attachments: Exhibit A Discussion of Proposed Projects

The following attachments are on file with the Clerk of the Board:

Exhibit B	Draft Board Resolution - PLN070366 – Wayland
Exhibit C	Draft Board Resolution - PLN070376 – Merrill
Exhibit D	Project Location Map – PLN070366 – Wayland
Exhibit E	Project Location Map – PLN070376 – Merrill
Exhibit F	Notice of Appeal (2/09/11) – PLN070366 – Wayland
Exhibit G	Notice of Appeal (2/09/11) – PLN070376 – Merrill
Exhibit H	Planning Commission Resolution No. 11-005 - PLN070366 – Wayland
Exhibit I	Planning Commission Resolution No. 11-006 - PLN070376 – Merrill
Exhibit J	Planning Commission Staff Report from January 26, 2011.
Exhibit K	Greater Monterey Peninsula LUAC Meeting Minutes – PLN070366 – Wayland
Exhibit L	Greater Monterey Peninsula LUAC Meeting Minutes – PLN070376 – Merrill
Exhibit M	Letter from Environmental Health Bureau (Janna Faulk), dated March 18, 2010
Exhibit N	Board of Supervisors Board Order from October 16, 2007