

Exhibit S
Notice of Appeal

The Redevelopment Agency of
Monterey County
The Monterey-Salinas Bus
Maintenance and
Administrative Facility and
Whispering Oaks Business Park
PLN090071

Appeal PLN110231
Board of Supervisors
June 14, 2011

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MONTEREY COUNTY

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CLERK OF THE BOARD

NOTICE OF APPEAL



Monterey County Code

Title 19 (Subdivisions)

Title 20 (Zoning)

Title 21 (Zoning)

DEPUTY

No appeal will be accepted until a written decision is given. If you wish to file an appeal, you must do so on or before April 24, 2011 (10 days after written notice of the decision has been mailed to the applicant). Date of decision April 13, 2011.

1. Please give the following information:

- a) Your name Monterey Salinas Transit / Redevelopment Agency of the County of Monterey
- b) Address MST: One Ryan Ranch Rd. Monterey, Ca 93940 / RDA: 168 W. Alisals St. 3d Floor, Salinas, CA 93901
- c) Phone Number MST: (831) 393-8129 / RDA: (831) 755-5390

2. Indicate your interest in the decision by checking the appropriate box:

- Applicant
- Neighbor
- Other (please state) _____

3. If you are not the applicant, please give the applicant's name:

4. Indicate the file number of the application that is the subject of the appeal and the decision making body. PLN090071; appeal from Planning Commission

5.

	File Number	Type of Application	Area
a)	<u>PLN090071</u>	<u>Comb.Dev. Permit / Subdivision</u>	<u>Fort Ord Master Plan</u>
b)	_____	_____	_____
c)	_____	_____	_____
d)	_____	_____	_____

5. What is the nature of your appeal?

a) Are you appealing the approval or the denial of an application? (Check appropriate box)

b) If you are appealing one or more conditions of approval, list the condition number and state the condition(s) you are appealing. (Attach extra sheets if necessary).

6. Check the appropriate box(es) to indicate which of the following reasons form the basis for your appeal:

There was a lack of fair or impartial hearing; or

The findings or decision or conditions are not supported by the evidence; or

The decision was contrary to law.

You must next give a brief and specific statement in support of each of the bases for appeal that you have checked above. The Board of Supervisors will not accept an application for appeal that is stated in generalities, legal or otherwise. If you are appealing specific conditions, you must list the number of each condition and the basis for your appeal. (Attach extra sheets if necessary).

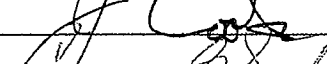
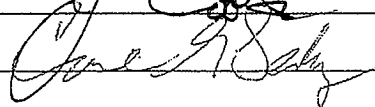
Please see attached.

7. As part of the application approval or denial process, findings were made by the decision making body (Planning Commission, Zoning Administrator, Subdivision Committee or Director of Planning and Building Inspection). In order to file a valid appeal, you must give specific reasons why you disagree with the findings made. (Attach extra sheets if necessary).

Please see attached.

8. You are required to submit stamped addressed envelopes for use in notifying interested persons that a public hearing has been set for the appeal. The Resource Management Agency - Planning Department will provide you with a mailing list.

9. Your appeal is accepted when the Clerk to the Board's Office accepts the appeal as complete on its face, receives the filing fee (\$4,903.64) and stamped addressed envelopes. Please see fee waiver

APPELLANT SIGNATURE  DATE 4/22/2011
APPELLANT SIGNATURE  DATE 4/22/2011
ACCEPTED _____ DATE _____
(Clerk to the Board)

Appeal for MST/Whispering Oaks Project (PLN090071)

Continued from Notice of Appeal form

6. Check the appropriate box(es) to indicate which of the following reasons form the basis for your appeal:

There was a lack of fair or impartial hearing; or

The findings or decision or conditions are not supported by the evidence; or

The decision was contrary to law.

You must next give a brief and specific statement in support of each of the bases for appeal that you have checked above. The Board of Supervisors will not accept an application for appeal that is stated in generalities, legal or otherwise. If you are appealing specific conditions, you must list the number of each condition and the basis for your appeal. (Attach extra sheets if necessary).

After considering testimony and the evidence in the public record, the Planning Commission voted to issue a resolution of intent to deny the Project based on the number of trees removed and the possibility of alternative sites. The Planning Commission's decision, however, is not supported by substantial evidence demonstrated by a comprehensive review all the available technical and supporting documentation included in the EIR and corresponding appendices. Included in this documentation are two significant documents that were prepared for the proposed project. These include the Forest Management Plan for the MST site (August 2009) and the Forest Evaluation Plan for the Whispering Oaks site (August 2009). Both of these documents provide detailed clarification as to the total number of trees identified onsite, general health and condition of the trees, and strategy for preservation/retention of healthy trees, including landmark trees. Each of these documents was included as Appendix D of the EIR.

In addition, the Draft General Development Plan prepared for the Whispering Oaks site (10/19/09) included in the Planning Commission package sets forth specific development standards and design guidelines related to the protection of native oak trees. The intent and effect of these design standards is to protect and maintain the forest cover within the identified buffer areas, setbacks and in areas between the lots and the property lines. The landscaping section (3.2.3) specifically requires preparation of a landscape plan that seeks to preserve as many oak trees as possible as individual lots are developed. Section 3.2.6 of the General Development Plan specifies a comprehensive strategy for Oak Preservation including the maintaining of oaks within the 20-foot landscape buffer along Inter-Garrison Road and the preservation of either landmark trees, or groupings of trees that are critical to maintain the oak woodland corridor along Inter-Garrison Road; emphasizing the preservation of younger and healthier trees within the site, as well as trees located along the edges of the lot and/or property lines; and a requirement to implement best practices as identified in the Forest Resource Evaluation as development of individual lots are proposed.

Finally, Section 3.2.7 of the General Development Plan identifies specific oak replacement strategies, including in-lieu fees. The Youth Camp parcel was identified as a site suitable for replanting of oaks lost to development on the Project site. A qualified biologist assisted in determining both the location and potential planting density that would be suitable on the Youth Camp parcel.

Additionally, although there were no comments or objections to the Project's EIR analysis of alternatives, the Planning Commission denied the Project on the mere theory that there "may be" other alternative sites available on Fort Ord to accommodate the proposed Project. This determination was made despite evidence showing the integral nature of the Project to the Fort Ord Base Reuse Plan, and the site's location as part of the developmental footprint of the Base.

7. As part of the application approval or denial process, findings were made by the decision making body (Planning Commission, Zoning Administrator, Subdivision Committee or Director of Planning and Building Inspection). In order to file a valid appeal, you must give specific reasons why you disagree with the findings made. (Attach extra sheets if necessary).

Resolutions #11-017A and #11-017B provide for the denial of the above mentioned project based on findings that (a) the Project is not consistent with applicable plans and policies; (b) the Site is not "physically suitable" for the proposed Project, including subdivision; and (c) the proposed tree removal is not the minimum required under the circumstances. Initial responses to those findings follow.

Response to Finding of Inconsistency

The Project does conform to the 2010 Monterey County General Plan and the Zoning Ordinance Titles 19 and 21.

- a) **2010 County General Plan.** The Project is designated for "planned development – mixed use" by the Fort Ord Reuse Plan, which has been incorporated into the 2010 County General Plan. Therefore, the Project is consistent with the designation in the County General Plan. Further, the proposed Project is consistent with the tree preservation goals of the General Plan.
- b) **Zoning Ordinance Title 19.** The Project was reviewed for consistency with Title 19 and found to be consistent by the Standard Subdivision Committee. The form and content of the Vesting Tentative Map complies with the standards outlined in Title 19, and a Final EIR was prepared. The Planning Commission did not find that the Project did not conform to Title 19 of the Zoning Code.
- c) **Zoning Ordinance Title 21.** The Project includes a request to amend the zoning for portions of the site to Heavy Commercial with the D and S overlays remaining (HC-D-S). The Project includes a General Development Plan (GDP) and Use Permit for the bus maintenance and operations facility and a GDP for a business park. These uses would be allowed within the HC zoning district. The Project also includes a proposed Use Permit for tree removal which conforms to Section 21.24.260.D (discussed below).

Response to Findings of Unsuitability

The resolution states that the site is not physically suitable for the proposed Project and is not suitable for subdivision. The only ground for that determination was the existence of oak woodlands. The Planning Commission called for "a development type that provides flexibility in the grading and tree preservation efforts" as "more suitable." Such a determination ignores the effect of the General Development Plan and the Forest Management Plan portions of the Project, as well as the environmental analysis and proposed mitigation measures, which provides flexibility in grading and tree preservation efforts. The Project is physically suitable for subdivision and for the proposed development. Measures are incorporated into the Project that will provide for matching any grading to the particular characteristics of the land, as well as the preservation of as many trees as possible under the circumstances. The environmental impact of the Project was the subject of a Final EIR that determined that tree removal impacts had been reduced to a "less than significant" level.

Response to Finding re Tree Removal

The resolution states that a Use Permit is required for tree removal and that this requirement has not been met. A Use Permit is requested as part of the proposed Project. Therefore, approval of the Project will include a Use Permit.

Further, and contrary to the findings of Resolution 11-017A, the Project includes measures to minimize the loss of oak trees to the minimum required under the circumstances, as analyzed in the Environmental Impact Report (EIR). It therefore complies with Section 21.64.260.D of the Zoning Ordinance.

- a) Multiple oak tree evaluations have been conducted to date, including but not limited to
 - Biological assessment prepared by Denise Duffy & Associates, Inc. (DDA) in August 2009
 - Forest management plan and survey prepared by Forester for MST in August 2009
 - Forest evaluation plan and tree inventory prepared by Forester for Whispering Oaks in August 2009

- b) The Project's analysis was based upon "worst case," maximum estimates of possible tree removal. As provided for in the General Development Plan, a continuous tree preservation and landscape buffer area along Inter-Garrison Road will be created that provides at least a 20-foot deep Oak corridor; existing trees will also be retained along the proposed streets within the Project site and between the newly created lots. And additional trees will be retained on a site-by-site basis when individual lots are developed.

- c) The General Development Plan requires future development to implement best practices as identified in the Forest Resource Evaluation and monitoring to ensure successful establishment in accordance with Section 21.64.260 of the Monterey County Zoning Ordinance. The GDP also provides measures for replacing oak trees removed from the site.

- d) The Applicant has identified measures that go above and beyond the requirements of the Zoning Ordinance and County General Plan for replacement/replanting of oak trees removed from the site by requiring at least a 1:1 replacement. The General Development Plan identifies the Youth Camp as an off-site location for replanting of up to 2,325 trees. The Youth Camp site provides a suitable site for oak tree habitat enhancement and additional connectivity to the oak tree corridors identified in the Base Reuse Plan and was fully analyzed in the Final EIR.

- e) Grading and tree removal will be identified on a lot-by-lot basis; no mass grading is sought or would be permitted. Each lot will conform to the requirement that the minimum number of trees be removed under the circumstances of the proposed development for the lot, and in conformance with the provisions of the General Development Plan to preserve as many trees as possible.

Out of the 308-acre landfill parcel, the Project proposes to establish 20 parcels with 16 buildable lots with a total maximum development acreage of 57.1 acres, or less than 20% of the landfill parcel. The Project would also establish conservation easements on over 59 acres, explicitly prohibiting subsequent development over that area. The Project conforms to and promotes the Base Reuse Plan and County General Plan and will help to correct the current job/housing imbalance on the Base. It represents a significant investment of resources and jobs that will only benefit the County and surrounding areas.

MONTEREY COUNTY RESOURCE MANAGEMENT AGENCY



PLANNING DEPARTMENT

168. Alisal St., Second Floor, Salinas CA. 93901
 (831) 755-5025; (831) 757-9516
<http://www.co.monterey.ca.us/planning>

FEE WAIVER REQUEST

Property Owner: Redevelopment Agency of the County of Monterey
Address: 168 W Alisal Street 3rd Floor
City/State/Zip: Salinas CA 93901
Phone: (831) 755-5390
Email: cookj@co.monterey.ca.us

Agent: _____
Address: _____
City/State/Zip: _____
Phone: _____
Email: _____

Assessors Parcel Number: 031-101-041-000 and 031-101-056-000
Description of Project: Monterey-Salinas Transit and Whispering Oaks Business Park
(PLN090071)
Fee Waiver Justification: Governmental Agencies

(attach additional information if needed)

Department use only	
Given out: <u>4/20/11</u>	By: <u>Mike Nove</u>
Received:	By:
Referred to other agencies: <u>NO</u>	
Fee waived by Director? <u>Mike Nove</u> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Date: <u>4/20/11</u>
Basis for Waiver <u>Government Agency</u>	
Amount of Fees Waived: Planning & Building \$ <u>3768.82</u>	
Health	\$ <u>232.71</u>
WRA	\$ <u>348.55</u>
PWD	\$ <u>414.15</u>
CC	\$ <u>1391.42</u>
	<u>4903.65</u>