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May 3, 2004

Supervisor Lou Calcagno, Chair
Monterey County Board of Supervisors
240 Church Street
Salinas, CA 93901

RE: May 4, 2004 Board Meeting – Agenda Item S-11 (11:00 a.m.)
Cathrein Estates Combined Development Permit (PLN990330)

Dear Chairperson Calcagno and Board Members:

Your hearing on May 4th is a "de novo" hearing. That means your Board is considering this matter "as new." Whatever happened in the planning process over the last five years isn't controlling today. What the Planning Commission did on February 25th isn't controlling. What your staff recommends isn't controlling. It's your decision, today. You will decide.

This Proposed Project Raises Two Basic Issues

1. Will This Board Stand Up For The Integrity of the County General Plan?

The County General Plan says that the County's goal, in the area of "Water Resources," is to "PROMOTE ADEQUATE, REPLENISHABLE WATER SUPPLIES OF SUITABLE QUALITY TO MEET THE COUNTY'S VARIOUS NEEDS [Goal 6, Page 22]." Objective 6.1, carrying out this goal is to "Eliminate long-term groundwater overdrafting in the County as soon as practically possible." Objective 53.1.3 says that "The County shall not allow water consuming development in areas which do not have proven adequate water supplies [Page 157, emphasis added]."

The North County Area Plan states, in Policy 6.1.4(NC) [Page 49], that "New development shall be phased until a safe, long-term yield of water supply can be demonstrated and maintained. Development levels that generate water demand exceeding safe yields of local aquifers shall only be allowed once additional water supplies are secured [Emphasis added]."

These General Plan policies were adopted in the 1980's, long before Mr. Chapin made his application for the proposed Cathrein Estates subdivision. As General Plan policies, these provisions have the effect of law, where land use planning decisions are concerned. These General Plan policies prevail over any local ordinance or practice or policy of the County. The County General Plan is the "Constitution for land use" in Monterey County.

Furthermore, the County's Subdivision Ordinance recognizes that the General Plan prevails over every other policy or local ordinance or rule. County Code Section 19.05.055 (1) states that that a vesting tentative map "shall be denied" if the proposed map is "not consistent with the general plan [or] area plan."

Will this Board stand up for the integrity of the County General Plan? That's the basic question before you today. This proposed development will, by the County's own statements, "generate water demand exceeding safe yields of local aquifers." And there is abundant evidence in your agenda packet that the North County area in which this subdivision is proposed does not have "proven adequate water supplies." It is absolutely clear that no additional water supplies have been "secured" for this area. I am submitting today additional evidence, mostly from County documents, demonstrating that there are not "proven adequate water supplies" in this area, and that no additional water supplies have been "secured."

As also shown by the documents I have filed, the County has denied other developments where these General Plan policies could not be met. Is there something special about Mr. Chapin and his development? Doesn't he have to follow the same rules as everyone else?

If you were to approve Mr. Chapin's subdivision, presumably you'd have to apply the same rule to other pending development projects in North County, where all the aquifers are overdrafted.

I've submitted a list of "pending projects" from the County's website (dated as of April 26th), which doesn't, interestingly enough, list the Cathrein Estates project. If you approve Mr. Chapin's project, there are 17 other pending subdivision requests in North County, with a total of 432 new subdivision lots proposed. How's that for a potential "cumulative impact?" Of course, since no Environmental Impact Report was ever prepared, this possible cumulative impact has never been explored.

If the Board decides that the General Plan language doesn't mean what it says, you will be sending a message that any "pending" project can expect to be approved, even if it is in an area of groundwater overdraft. LandWatch urges you not to send that signal.

2. Will Monterey County Do What CEQA Says It Is Supposed To Do?

The California Environmental Quality Act (CEQA) requires that an Environmental Impact Report be prepared whenever there might be a significant adverse impact on the environment. Monterey County has a pattern and practice of CEQA avoidance. The typical project application in Monterey County is handled exactly the way this one was:

- The project is submitted.
- An initial analysis indicates that there might be one or more significant adverse environmental impacts.
- The applicant and the County staff then work together (sometimes over years, and sometimes involving very expensive studies by the applicant) to "redesign" the project with the aim of eliminating the need to do an EIR. All of the studies and proposals for project changes are the result of "private" discussions between the applicant and County

staff, and are not circulated for public review or comment. Because no comments can be made on these studies, reports, and project proposals, no responses to any comments that might have been made will be prepared, and hence they will not be considered by the decision makers.

This process is not the process spelled out in CEQA. The whole purpose of CEQA is to allow full public participation in the consideration of potential environmental impacts. The process used here (which is the pattern and practice in Monterey County) cuts off effective public participation, and impoverishes the information provided to the decision makers. This is precisely what CEQA was enacted to avoid.

It is not too late for the Board, should it wish to consider an approval of the proposed project, to direct that a full EIR be prepared, as required by law. LandWatch believes that the proposed project is fundamentally inconsistent with the General Plan, and thus must be denied, but if the Board believes this is not true, then LandWatch urges the Board to comply with CEQA, and to require a full EIR prior to its decision.

Here are just a few of the topics that a full EIR could and should explore:

- Alternatives to the project that could save oak trees
- The cumulative impacts that might be expected if the General Plan were construed to allow new subdivisions to be approved in areas of known groundwater overdraft.
- The biological impacts that might be expected from the project (beyond the oak trees).
- The specific impacts that this project will have on the intersection of Highway 101 and Crazy Horse Canyon Road, where there is not only a current LOS F, but where there is a very significant traffic danger.
- Whether these housing units will be marketed and sold to persons working to the North of the site, which would relate to the traffic issue.
- What sort of actual groundwater recharge might be expected from the proposed recharge ponds.
- What is the real water well situation in the immediate vicinity of the project?
- What sort of nitrate and other water quality problems are likely to be experienced at the site.

Responses To Staff And Applicant Statements

The County staff and the applicant have responded to the points made in LandWatch's written appeal. Here are brief responses to a number of the points made by either County staff or the applicant. In highlighting these particular points, LandWatch does not intend to abandon any of the other points it has made in its appeal to the Board:

1. Water Impact Fee Ordinance – Whatever the recited "purpose" of the water impact fee ordinance, requiring a project to pay a fee, to help finance studies of water overdraft and possible solutions, does not excuse the project from compliance with County's General Plan requirements, and is not the kind of "mitigation" that CEQA requires. Under CEQA,

doing "studies" is not a legally satisfactory mitigation for an actual and identified impact. Yet that is what County seems to be claiming. In fact, this ordinance is not, really, about "mitigation" at all. It's about collecting money to do needed studies. County government has no authority to collect a fee from developers unless there is a "nexus" between the fee and some impact that the project will have. These ordinances, by their terms, are enacted to permit the County to collect fees to do studies. The fees don't "mitigate" the impacts of the development projects that pay the fees, and paying the fees does not change the General Plan requirement that the County "shall not allow" water consuming development in areas which do not have proven adequate water supplies.

2. The fact that the fee ordinance was in effect when the Cathrein Estates subdivision application was "deemed complete" does not mean that the County can act like this fee ordinance repealed the General Plan requirement. Furthermore, as I understand the situation from the materials in the agenda packet, the fee ordinance requirement is no longer in effect, since Ordinance 04005 extended the collection date only until January 1, 2001. Therefore, although the proposed resolution of approval for the project says (in Finding 4) that the subdivision is "subject to" the fee, I do not believe, legally, that the County can collect a fee from the applicant if the ordinance under which the fee is purported to be collected is not, in fact, still in force when the subdivision is approved. If there is no fee legally chargeable to the applicant at this time, which seems to be the case, this simply reinforces the fact that this fee cannot be considered "mitigation" for the identified impact of the proposed project.

3. The County staff notes that Mr. Chapin got special treatment from the County with respect to the water system approved on his adjacent project. According to the staff, "normally, additional connections to a water system are not approved until after the subdivision has received final approval [Exhibit D, Page 5]." Why did Mr. Chapin get such special treatment? This is not disclosed. However, the special treatment that Mr. Chapin got sometime ago cannot properly be parleyed into more special treatment now. The General Plan is clear that when a proposed subdivision would increase overdraft, if must be denied. "Normally," the County wouldn't even consider approving a water system until after the subdivision was approved. Here, however, the County is saying that the prior approval of a water system that could serve the new subdivision is a good reason to ignore the new water consumption that the subdivision would cause. This is fallacious. This proposed subdivision needs to be judged as though Mr. Chapin didn't get special treatment earlier. And if it's judged on that basis, it can't be approved.

4. Government Code Section 65943 says that the County can't apply policies that were adopted after the subdivision application was "deemed complete." The General Plan policies that rule out this proposed subdivision were in force long before Mr. Chapin applied.

5. The staff seems to think that the General Plan provisions relating to transportation can also be disregarded, just like the provisions relating to water. In fact, the provisions of the General Plan are clear: "transportation demands of proposed development shall not exceed an acceptable level of service for existing transportation facilities." In this case, level of service F is not "acceptable." The intersection involved (Highway 101 and Crazy Horse Canyon Road) is a dangerous intersection which would probably be used by most of the new housing that would be constructed if the proposed subdivision were approved. The proposed subdivision does not "provide for" the appropriate increase in capacity of the intersection, although it does make a contribution to a solution. That's not good

enough to comply with the General Plan. The project should not be approved until the necessary improvement is in place. Or, if the subdivision approval were conditioned to require an upfront payment of the fee, with the actual construction of the subdivision to be held in abeyance until the needed roadwork was done, then that would be consistent with the General Plan. But that is not what the condition says. It says, "pay a fee, and build your new subdivision." The result of that approach would be to defer (indefinitely) the actual improvement needed. This means that everyone's traffic will get even worse—and if lives are put in jeopardy while we're waiting for CALTRANS to improve the intersection, that's just the way it goes. Again, this is not the meaning of the General Plan policy.

6. The "Informal Transcript" of the remarks of Curtis Weeks, at the Board of Supervisors meeting on December 9, 2003, do not constitute evidence that "additional water supplies are secured." It's nice that Mr. Weeks is hopeful that the Salinas Valley Water Project will make a difference for the Granite Ridge area. Maybe, sometime, his hopes will be realized, and if they are, then Mr. Chapin's subdivision could be approved. However, the transcript put into the record by County staff shows, within the transcript itself, that the Salinas Water Project has definitely not "secured" additional water supplies for the Granite Ridge area in which the proposed subdivision is located.

   First, Mr. Weeks honestly notes "we don't think drilling wells in the fractured granite, or granite, and using them to develop water supplies is wise." That is precisely what is involved with wells in the Granite Ridge area. He also states, near the end of the transcript, "there are significant infrastructure challenges in North Monterey County, and this report in no way, in fact the projects in no way, fix all of those. There are also water quality problems in North County that need to be addressed."

   Second, Mark Sherman, also quoted in the "Informal Transcript," is arguably more knowledgeable about the area than Mr. Weeks, since Mr. Sherman is the head of the Prunedale Mutual Water Company, an agency that actually delivers water to customers in the area. He says that we should start counting on water from the Salinas Valley Water Project when you can actually begin seeing it show up in wells in the area. Rather a reasonable point! He also notes that the "recharge" ideas that are part of this proposed subdivision also have a significant possibility of degrading current water quality, and thus limiting even existing supplies.

   Finally, County Administrative Officer Sally Reed notes that "this item today is an information item. We are just asking you to accept the report. We will be looking at policies in this area. …we are only accepting information today, not making a policy change."

   It appears that the County staff, in submitting this transcript, intends to use it to make a "policy change," and to tell you that the problems have been solved, and that additional water is "secured." The transcript provides no such evidence at all!

7. The applicant's attorney, John Bridges, notes the length of the permit process, and how many costly studies the applicant has completed. LandWatch agrees with his implicit critique of the process. Attached is an excerpt from the LandWatch publication, Land Use and the General Plan, that points out exactly how "unfair" the process is from both the applicant's and the public's perspective. If the County had consulted its General Plan

policies when Mr. Chapin first walked in the door, as it should have, then the County could have saved him all the time, and expense, by telling him that the project he proposed could not be approved, unless and until additional water supplies were "secured" for this part of the county—something that the county has been working on, but has not yet accomplished. Had the County also complied with CEQA, and done all those costly studies as part of an Environmental Impact Report, then the process would have been "fair" to the public, which it wasn't, since members of the public didn't really get a practical opportunity to know about this proposed project until quite late in the process, and never got a chance to put the various studies to the public review process that CEQA mandates.

In fact, however, the past is past, and the hearing before the Board today is a "de novo" hearing. Past actions are not very relevant to your decision. You should approve this project only if you find that it complies with the County General Plan, and other applicable laws, and if you decide that you have followed the requirements of CEQA.

8. The applicant's attorney claims that "there is a long-term water supply for this project." That is simply not true, as can be seen from the materials presented to the Board. All the record shows in favor of the project is that there is a well that can deliver water to the proposed new subdivision, and we know this, in fact, only because of some special treatment given to Mr. Chapin at an earlier time. But the fact that the wells of the Hidden Valley water system puts out water doesn't mean that there isn't water overdraft in this part of North County. In fact, all the evidence demonstrates that there is—and that's what's relevant to the General Plan policy, and why this project cannot legally be approved.

9. As Mr. Bridges notes, the July 28, 2000 memorandum from the Planning and Building Inspection Department, submitted by LandWatch as part of its appeal, attaches what was, in fact, the Initial Study originally prepared for the Cathrein Estates project. The memo says, "North Monterey County is experiencing severe overdraft conditions resulting in falling water levels and seawater intrusion. The current water use is estimated to exceed the average recharge by more than 100 percent. In addition, nitrate contamination levels are increasing and have also had a significant impact on domestic water supply in North County….ANY subdivision in this area, which would intensify water use, has the potential to result in a significant cumulative, as well as a project specific, impact to water quality and quantity." This statement, in and of itself, requires the preparation of a full EIR under CEQA. It also makes clear why the project cannot be approved, consistent with the General Plan.

10. While Fish and Game Code Section 711.4 is definitely related to a revenue-raising scheme for the State Department of Fish and Game, the fee cannot properly be collected when there project has a "de minimis … effect on fish and wildlife." This project does have such an impact, which is not only why the fee is being collected, but why it's not true that the proposed project will not have any significant adverse impact on the environment.

11. Mr. Bridges claims that no evidence of inadequacy of the current General Plan has been provided. I am, with this letter, submitting a full copy of the "Existing Conditions" report prepared in October 1999, in connection with the current General Plan Update. (Incidentally, while this report is labeled as a "Draft," it is in fact the full report utilized by the County, and may also be found on the County website as of today's date, at:

http://www.co.monterey.ca.us/gpu/reports/Existing%20Conditions/Web%20Page%20Conditions%20Report.pdf.

The report documents a number of major inadequacies in the current (1982) General Plan. While the time to challenge the 1982 General Plan directly has long since passed, it remains a requirement of the state law that the County not approve any project unless it is "consistent" with the County General Plan, and this means with an internally-consistent and adequate general plan. This finding cannot be made, with respect to the County's 1982 document.

Materials Submitted

LandWatch is attaching the following materials, to support and demonstrate the claims we made in our appeal:

1. A list of "pending projects" for North Monterey County, showing the large number of proposed subdivision lots proposed for this area of groundwater overdraft.

2. Provisions from the Draft Environmental Impact Report on the County General Plan Update covering the following topics: "Hydrology," "Water Quality," and "Water Supply and Demand," demonstrating the significant groundwater problems in North Monterey County.

3. A map showing the Hydro-Geologic Basins of North County, prepared by Monterey County, and maps of the Salinas Valley Hydrologic Subareas, prepared by the Monterey County Water Resources Agency, to make clear what a number of the items in the administrative record are talking about.

4. Rainfall data from the Monterey County Water Resources Agency, making clear that annual rainfall in the Prunedale Area is approximately 13 inches per year (not the 18 inches per year cited in reports relied upon by the County in evaluating Mr. Chapin's project). One point of this data is to illustrate why a full EIR process is required, in which claims in the report can be challenged through public comment, with a response to those public comments received available for consideration by the decision makers.

5. A copy of the chapter on "Permit Process Reform" from Land Use and the General Plan.

6. The October 12, 1999 "Existing Conditions Report," prepared in connection with work on the Monterey County General Plan Update, and demonstrating inadequacies in the County's 1982 General Plan.

7. A map showing that the main access to the site of the proposed subdivision is by way of the intersection of Highway 101 with Crazy Horse Canyon Road, an extremely dangerous intersection at level of service (LOS) F.

8. A February 25, 2004 letter from Doug Kasunich, documenting water supply and water quality problems in the immediate vicinity of the proposed subdivision.

9. Email communications from County staff, from the Cathrein Estates file, indicating the questionable nature of the proposed recharge facilities, and demonstrating, impliedly, that the applicant was anxious to avoid the preparation of an environmental impact report.

10. Information from the County's General Plan Update website, showing the water supply and water quality problems in North Monterey County.

11. A survey of water resources prepared by Denise Duffy& Associates, for the Association of Monterey Bay Area Governments, also showing the extent of North County water supply and water quality problems.

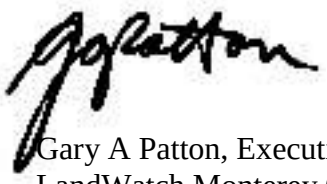
12. A copy of the findings made by the County Planning Commission on February 12, 2003 in turning down a proposed development in North County (Blackie Meadow Estates) based on findings that are similar to those that could be made with respect to the Cathrein Estates proposal.

13. A copy of the staff report for the Monterey County Minor Subdivision Committee, recommending denial of a proposed North County subdivision on the basis of findings and evidence that are similar to those that could be made with respect to the Cathrein Estates proposal.

Conclusion

We believe that it is clear that the proposed subdivision should not be approved; indeed, cannot legally be approved, and we urge the Board to uphold the appeal, and to deny approval for the proposed Combined Development Permit.

Respectfully submitted,



Gary A Patton, Executive Director
LandWatch Monterey County

cc: County Planning Commission
County Counsel