

September 9, 2010

**Via Hand Delivery and E-mail**

Board of Supervisors  
County of Monterey  
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**Re: 2007 Monterey County General Plan EIR  
PLN070525, SCH2007121001**

Dear Chairman Salinas and Members of the Board:

On August 26, 2010, LandWatch Monterey County suggested to the Board of Supervisors that it amend the proposed slope development policy, OS 3.5, to better effect the announced intention to control erosion and sedimentation. In its August 26, 2010 letter, LandWatch provided proposed language to modify the provisions of OS 3.5.

The purpose of this letter is to provide the Board with a version of OS 3.5 that incorporates changes to its agricultural provisions that are essential, but does not alter the currently proposed provisions related to non-agricultural development proposed by the Planning Commission in its draft dated August 11, 2010.

LandWatch continues to oppose relaxation of the current ban on new cultivation of slopes over 25%. As we have explained in previous letters to the Planning Commission, and as Dr. Curry's expert analysis demonstrates, relaxing this ban will make a considerable contribution to the already significant cumulative sedimentation impacts to the County's streams and rivers. The Regional Water Quality Control Board has classified numerous streams as impaired by sedimentation and other agricultural pollutants, and the General Plan EIR acknowledges that failure to meet water quality standards is a significant impact. It makes no sense to aggravate these conditions.

Furthermore, the language we propose for OS 3.5 better identifies previously cultivated land than the language proposed in the revised Glossary. The revised Glossary identifies previously cultivated lands as "areas that have not been cultivated during the past 30 years." LandWatch's definition, embodied in its proposed OS 3.5, identifies previously cultivated land as land that was cultivated prior to the 1992 ban on new cultivation of steeply sloped land and that has been farmed without a break of more than 5 consecutive years. LandWatch's definition is more appropriate for two reasons.

First, to permit new cultivation of land that may have been abandoned for agricultural cultivation for 30 years creates substantial enforcement problems, because it would be difficult to verify claims of previous cultivation.

Second, the Glossary's definition of previously cultivated land would permit an unknown increase in steep-slope cultivation over the baseline conditions for the General Plan EIR. This would vitiate the EIR's characterization of baseline conditions, and further undercut its assessment of potential impacts. The EIR makes no effort to identify the extent of steeply sloped lands that could be farmed on the basis of the claim that they were farmed 30 years ago, and its assessment of sedimentation impacts does not take into account this potential source of new erosion. However, land that meets LandWatch's definition of previously cultivated land is presumably included in the baseline conditions because its cultivation has not been abandoned.

For these reasons, and the reasons set forth in previous comments by LandWatch and Dr. Curry, LandWatch proposes the following revision to Policy OS 3.5 and also proposes that the Glossary definition of "previously cultivated land" be stricken.

**OS-3.5** The County shall regulate activity on slopes to reduce impacts to water quality and biological resources:

1) Non-Agricultural.

- a) Development on slopes in excess of twenty five percent (25%) shall be prohibited except as stated below; however, such development may be allowed pursuant to a discretionary permit if one or both of the following findings are made, based upon substantial evidence:
  1. there is no feasible alternative which would allow development to occur on slopes of less than 25%;
  2. the proposed development better achieves the resource protection objectives and policies contained in the Monterey County General Plan, accompanying Area Plans, and all applicable master plans.
- b) Development on slopes greater than 25-percent (25%) or that contain geologic hazards and constraints shown on the County's GIS Geologic (*Policy S-1.2*) or Hydrologic (*Policy PS-2.6*) Hazard Databases shall require adequate special erosion control and construction techniques and the discretionary permit shall:
  1. evaluate possible building site alternatives that better meet the goals and policies of the general plan;
  2. identify development and design techniques for erosion control, slope stabilization, visual mitigation, drainage, and construction techniques; and
  3. minimize development in areas where potentially unstable slopes, soil and geologic conditions, or sewage disposal pose substantial risk to public health or safety.
- c) Where proposed development impacting slopes in excess of twenty five percent (25%) does not exceed ten percent (10%), or 500 square feet of the total

development footprint (whichever is less), a discretionary permit shall not be required.

- d) It is the general policy of the County to require dedication of a scenic easement on a slope exceeding twenty five percent (25%).

2) Agricultural. ~~Conversion of uncultivated land to cultivated land on slopes greater than 25% shall require a discretionary permit.~~

- a) ~~The discretionary permit shall:~~

- ~~1. Evaluate possible alternatives that better meet the goals and policies of the general plan.~~
- ~~2. Identify development and design techniques for erosion control, slope stabilization, visual mitigation, drainage, and construction techniques.~~
- ~~3. Minimize development in areas where potentially unstable slopes, soil and geologic conditions, or sewage disposal pose substantial risk to public health or safety.~~

The County shall prohibit cultivation of slopes greater than 25%.

The sole exception to this prohibition is for slopes greater than 25% that were cultivated prior to 1992 and on which that cultivation use has not been abandoned. Abandonment of such cultivated slopes shall be presumed if those slopes were not used for crop production, viticulture, or planted trees for a period of five consecutive years after 1991.

For the purposes of this policy, slopes shall be considered "cultivated" only if they were prepared by grading, plowing, harrowing, disking, ridging, listing, leveling, or tilling. Slopes shall be considered cultivated only if they were prepared for the purpose of crop production, viticulture, or planting trees. Slopes shall not be considered cultivated if they were prepared only for the purpose of grazing or livestock use.

Cultivation of slopes greater than 25% shall not be intensified. Intensification shall include initiating irrigation on land not irrigated as of 1991 or increasing water use above water use as of 1991.

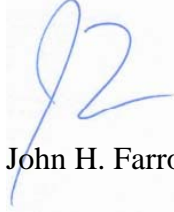
- b) A ministerial permit process shall be developed and implemented for conversion of ~~previously uncultivated lands~~ ~~lands that have not been cultivated for the previous 30 years~~ on slopes between 15 and 24 percent (15-24%), and on such lands on slopes between 10 and 15 percent (10-15%) on highly erodible soils. The permit processes shall be designed to require that an erosion control plan be developed and implemented that addresses slope stabilization, and drainage and flood hazards.

September 9, 2010  
Page 4

Thank you for your consideration of these comments.

Yours sincerely,

M. R. WOLFE & ASSOCIATES, P.C.

A handwritten signature in blue ink, appearing to be 'JH Farrow', written over a light blue rectangular background.

John H. Farrow

JHF: am