

CALIFORNIA COASTAL COMMISSION

CENTRAL COAST DISTRICT OFFICE
 725 FRONT STREET, SUITE 300
 SANTA CRUZ, CA 95060-4508
 VOICE (831) 427-4863 FAX (831) 427-4877

**APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT**

Please Review Attached Appeal Information Sheet Prior To Completing This Form.

SECTION I. Appellant(s)

Name: LandWatch Monterey County

Mailing Address: Box 1876

City: Salinas

Zip Code: 93902

Phone: 831-422-9390

SECTION II. Decision Being Appealed

1. Name of local/port government:

County of Monterey

2. Brief description of development being appealed:

Approval of Sunridge Views Combined Development Permit (PLN990391), including a Standard Subdivision to allow for the division of a 25 acre parcel into 10 parcels ranging in size from 1 to 7.8 acres, and a Coastal Development Permit to allow for the construction of three 20,000-gallon water tanks, a mutual water system, demolition of a barn, 2,000 cubic yards of grading, the removal of a landmark 30" Cypress tree and the conversion of an existing mobile home to a senior citizens unit, and pre grading authorization.

3. Development's location (street address, assessor's parcel no., cross street, etc.):

The site is located on and westerly of Maher Road, 250 Maher Road, APN: 127-252-009-0000, Prunedale Area, Coastal Zone.

4. Description of decision being appealed (check one.):

- Approval; no special conditions
 Approval with special conditions:
 Denial

Note: For jurisdictions with a total LCP, denial decisions by a local government cannot be appealed unless the development is a major energy or public works project. Denial decisions by port governments are not appealable.

TO BE COMPLETED BY COMMISSION:

APPEAL NO: _____

DATE FILED: _____

DISTRICT: _____

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5. Decision being appealed was made by (check one):

- Planning Director/Zoning Administrator
- City Council/Board of Supervisors
- Planning Commission
- Other

6. Date of local government's decision: July 13, 2004

7. Local government's file number (if any): PLN990391

SECTION III. Identification of Other Interested Persons

Give the names and addresses of the following parties. (Use additional paper as necessary.)

a. Name and mailing address of permit applicant:

Steve Bradshaw, Applicant, 250 Maher Road, Royal Oaks, CA 95076
John Bridges, Attorney for Applicant, Fenton & Keller, P O Box 791, Monterey, CA 93942-0791

b. Names and mailing addresses as available of those who testified (either verbally or in writing) at the city/county/port hearing(s). Include other parties which you know to be interested and should receive notice of this appeal.

(1) See Attached List.

(2) See Attached List.

(3) See Attached List.

(4) See Attached List.

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SECTION IV. Reasons Supporting This Appeal

PLEASE NOTE:

- Appeals of local government coastal permit decisions are limited by a variety of factors and requirements of the Coastal Act. Please review the appeal information sheet for assistance in completing this section.
- State briefly **your reasons for this appeal**. Include a summary description of Local Coastal Program, Land Use Plan, or Port Master Plan policies and requirements in which you believe the project is inconsistent and the reasons the decision warrants a new hearing. (Use additional paper as necessary.)
- This need not be a complete or exhaustive statement of your reasons of appeal; however, there must be sufficient discussion for staff to determine that the appeal is allowed by law. The appellant, subsequent to filing the appeal, may submit additional information to the staff and/or Commission to support the appeal request.

This appeal is allowed by law under subdivision (4) of section 30603 of the Public Resources Code (the Coastal Act). The Sunridge Views project is a development project approved by the Monterey County Board of Supervisors, that was designated LDR-2.5 (CZ). Within LDR-2.5 (CZ), subdivisions are not designated as the principal permitted use under Monterey County Zoning, Coastal Implementation Plan ("CIP"), Title 20, section 20.14.040; and is listed as a conditional use CIP, section 20.14.050.AA.

LandWatch hereby states the following reasons for this appeal.

The Monterey County Board of Supervisors made its final determination approving the Sunridge Views Subdivision project and certifying the Final Environmental Impact Report on July 13, 2004. The Sunridge Subdivision project is a combined development permit to allow the subdivision of a 25-acre parcel into 10 parcels ranging in size from 1 to 7.8 acres, and a coastal development permit to allow for the construction of three water tanks, a mutual water system, demolition of a barn, 2,000 cubic yards of grading, the removal of a landmark 30" Cypress tree and the conversion of an existing mobile home to a senior citizens unit, and pre grading authorization.

The Monterey County Board of Supervisors approvals are inconsistent with the North Monterey County Land Use Plan/Local Coastal Program ("North County LUP/LCP") for the following reasons:

1. THERE IS INADEQUATE WATER TO ACCOMMODATE THE SUBDIVISION.

The Sunridge Views project is located within the North County Hydrological Study Area. The North County Hydrological Study Area is in a state of severe groundwater overdraft and salt-water intrusion. The North County LUP/LCP states at Policy 2.5.1:

"The water quality of the North County groundwater aquifers shall be protected, and new development shall be controlled to a level that can be served by identifiable, available, long-term water supplies."

According to the certified LCP, proof of assured long-term water supply must be made prior to

the project application being deemed complete. This policy is also found within the certified North Monterey County Subdivision Ordinance, a component of the CIP; Title 19, 19.03.15(L).

The project applicant failed to provide the required proof of assured long-term water supply prior to the application being deemed complete by the County.

The County concluded in its Final EIR, that because the Sunridge Views project will be taking land out of agricultural production for urban use, that there will be an overall savings of water over time because of a perceived "de-intensification" of water use.

Additionally, the County inappropriately relied on the Salinas Valley Water Project Engineering Report, January 2003, and a report delivered to the Board of Supervisors on December 9, 2003, from Mr. Curtis Weeks, the General Manager of the Monterey County Water Resources Agency, who believes that there were likely benefits from the implementation of the Salinas Valley Water Project to adjacent sub-basins. Mr. Weeks also determined that future projects that would not intensify use would meet the test of having a long-term water supply and would therefore be consistent with the North Monterey County LCP/LUP. The County further relied upon the Revised Basin Management Plan finding that the RBMP can be relied upon for "future" assurance of long-term water supply.

The Sunridge Views project is also inconsistent with North County LUP/LCP General Policy 2.5.2.3 requiring new development to "be phased so that the existing water supplies are not committed beyond their safe long term yields. Development levels that generate water demand exceeding safe yield of local aquifers shall only be allowed once additional water supplies are secured."

North County LUP/LCP Specific Policy 2.5.3.A2 provides further that:

"The County's long-term policy shall be to limit ground water use to the safe-yield level. The first phase of new development shall be limited to a level not exceeding 50% of the remaining buildout as specified in the LP. This maximum may be further reduced by the County if such reductions appear necessary based on new information or if required in order to protect agricultural water supplies. Additional development beyond the first phase shall be permitted only after safe-yields have been established or other water supplies are determined to be available by an approved LCP amendment. Any amendment request shall be based upon definitive water studies, and shall include appropriate water management programs."

The Final EIR removes the determination that the project is inconsistent with North County LUP/LCP Water Resources 2.5.2. General Policy 3, and Water Resources 2.5.3., Specific Policy A2. See pages 4-1 through 4-4 of the final EIR. There is abundant evidence that the North County area in which this subdivision is proposed does not have "proven adequate water supplies," and it is absolutely clear that no additional water supplies have been "secured" for this area. The long-term impacts on existing property owners, homeowners, and the coastal environment will be severe if this and similar projects are constructed. The Sunridge Views

Project, however, remains inconsistent with these provisions concerning proof of assured long-term water availability.

2. THE SUNRIDGE VIEWS PROJECT IS INCONSISTENT WITH THE COASTAL IMPLEMENTATION PLAN.

The County, in its Draft EIR, initially concluded that the Sunridge Views project was inconsistent with section 20.144.070 of the CIP.

The intent of Section 20.144.070 of the CIP is:

“. . . to provide development standards which will protect the water quality of the North County surface water resources and groundwater aquifers, control new development to a level that can be served by identifiable, available, and long-term water supplies, and protect North County streams, estuaries, and wetlands from excessive sedimentation resulting from land use and development practices in the watershed areas. (Ref. Policy 2.5.1.)”

Section 2.5.1. of the North County LUP/LCP is the key policy for water resources and states:

“The water quality of the North County groundwater aquifers shall be protected, and new development shall be controlled to a level that can be served by identifiable, available, long term water supplies. The estuaries and wetlands of North County shall be protected from excessive sedimentation resulting from land use and development practices in the watershed areas.”

The FEIR changed the County’s initial conclusion and determined that the Sunridge Views project was consistent with this section because of a perceived net reduction based on the change of use from agriculture to urban development over a 30 year period. Additionally, the County determined that the Revised Basin Management Plan would allow for safe-yield groundwater withdrawals for all planned uses.

Despite the County’s new conclusion, the Sunridge Views project makes a new and long-term committed draw on the groundwater aquifer for urban development the County failed to require proof of long-term water supplies and is inconsistent with CIP, section 20.144.070 and the North County LUP/LCP, Key Policy 2.5.1.

3. THE SUNRIDGE VIEWS PROJECT WILL HAVE SIGNIFICANT ADVERSE ENVIRONMENTAL IMPACT TO MARITIME CHAPARRAL - ENVIRONMENTALLY SENSITIVE HABITAT AREA (ESHA)

The Sunridge Views project is inconsistent with North County LUP/LCP Policy 2.3.2.1. prohibiting the development, "including vegetation removal, excavation, grading, filling, and the construction of roads and structures" from ESHA.”

Additionally section 2.3.2.2. of the North County LUP/LCP requires development adjacent to ESHA to be “compatible with the long-term maintenance of the resource” and that new land

uses “not establish a precedent for continued land development which, on a cumulative basis, could degrade the resource. Also, section 2.3.2.3 of the North Monterey LUP/LCP specifically prohibits new subdivisions that may result in significant impacts to ESHA. The North County LUP/LCP, section 2.3.2.4 defines known threats to maritime chaparral as residential development and requires new residential development to be sited to protect the maximum amount of chaparral.

The Sunridge Views project site, contains maritime chaparral, considered ESHA. The Sunridge Views project proposes to plant fire-resistant landscaping within 30 feet of the main structures. The Sunridge Views project will also place three 20,000-gallon water tanks adjacent to sensitive maritime chaparral habitat. (See DEIR, p. 2-14; FEIR, Response to Comments, p. 2-32.) As mitigation, the EIR proposes a mere 25-foot setback from the ESHA. Additionally, the FEIR fails to disclose where the distribution lines will be placed or how ESHA will be protected during the development of those 20,000-gallon water tanks.

Section 20.144.040B.2. of the CIP states specifically:

“Development on parcels containing or within 100 feet of environmentally sensitive habitats, as identified on the current North County Environmentally Sensitive Habitat resource map, other resource information, planner’s on-site investigation, shall not be permitted to adversely impact the habitat’s long-term maintenance, as determined through the biological survey prepared for the project. Proposals shall be modified for siting, location, bulk, size, design, grading vegetation removal, and/or other methods where such modifications will reduce impacts to an insignificant level and assure the habitat’s long-term maintenance. . . .”

The Coastal Act also recognizes the importance of protecting ESHA as stated within the Public Resources Code as follows:

"Development in the areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas."

(Pub. Resources Code, section 30240, subd. (b).)

Accordingly, the Project's allowance of non-native landscaping within 30 feet of development sites and the placing three 20,000-gallon water tanks adjacent to the maritime chaparral violates the CIP, section 20.144.040; North County LUP/LCP Policies 2.3.2.1, 2.3.2.2., 2.3.2.3., and 2.3.3.A.2; as well as the Coastal Act.

As an additional note, the North County LUP/LCP is out of date. The North County LUP/LCP was initially certified in 1982. In 1987, additional amendments were adopted by the Monterey County Board of Supervisors and certified by the California Coastal Commission in 1987. Additional amendments were made to the North County LUP/LCP regarding water resources, however, those amendments have not been certified by the Coastal Commission.

The North County LUP/LCP ESHA policies must be amended to provide additional protections to ESHA.

The North County ESHA policies should be strengthened as encouraged in subdivision (K) of the Elkhorn Slough at the Crossroads report as follows:

(K) Strengthen County policies that: (a) discourage conversion of any naturally vegetated area within Elkhorn Highlands into new cultivated agriculture, (b) encourage landowners to retire agriculture on slopes exceeding 20%, to stabilize fallow fields from erosion and over time to restore habitats, (c) encourage landowners to control invasive non-native species throughout their property, and (d) discourage development within 100 meters of maritime chaparral to avoid conflicts between management and habitat protection.

The Elkhorn Slough at the Crossroads report indicates that the proliferation of non-native vegetation has contributed to the loss or fragmentation of sensitive native habitat. (See attached hereto as Exhibit A, Elkhorn Slough at the Crossroads report, at p. 2. Please note, the entire Elkhorn Slough at the Crossroads report is not attached hereto. Appellant has attached the cover of the Report, as well as the specific pages referenced herein.)

Additionally, the Elkhorn Slough at the Crossroads report states:

"The health of Elkhorn Slough's aquatic habitats is intertwined with central maritime chaparral. This is due to the fact that the sandy soils beneath maritime chaparral are highly erosive, and, if not carefully managed, can be washed away by winter runoff and greatly impact downstream wetlands. Residential development within or adjacent to central maritime chaparral is problematic due to the fact that the habitat is naturally dependent on fire for regeneration. Manzanita, of all the California chaparral plants, may be the most explosively flammable. Residents are not only at risk due to fire, but state fire codes which require extensive landscape clearing are in direct conflict with federal laws which protect rare and endangered species." (Exhibit A, Appendix F, Elkhorn Slough at the Crossroads: Natural Resources and Conservation Strategies for the Elkhorn Slough Watershed report.)

4. THE COUNTY'S APPROVAL OF THE PLACEMENT OF WATER TANKS ON THE RIDGELINES VIOLATES THE NORTH COUNTY LUP/LCP.

In Response to a comment submitted by Friends Artists and Neighbors of Elkhorn Slough (FANS) on the Draft EIR regarding how many water tanks would be placed, and where the water tanks would be placed, the County amended the Final EIR to describe for the first time, that three 20,000-gallon water tanks would be placed on Lot 8 near the high point of the ridge. A key policy of the North County LUP/LCP at 2.2.1, states: "Only low intensity development that can be sited, screened or designed to minimize visual impacts, shall be allowed on scenic hills, slopes and ridgelines." Additionally General Policy 2.2.2.4. of the North County LUP/LCP states "Structures should be located where existing topography and vegetation provide natural screening." There is no information in the Final EIR as to whether the tanks will be visible, or how the County plans to mitigate the visual impacts by placing

three large water tanks on the high point of the ridge without violating the North County LUP/LCP's key and general policies.

5. THE APPROVED SUBDIVISION IS INCONSISTENT WITH ZONING.

The Sunridge Views project is zoned "LDR-2.5 (CZ) District" within the Monterey County Zoning CIP.

The County's FEIR ignores the CIP's Low Density Residential Requirements as well as the the North County LUP/LCP. The project is inconsistent with the CIP and North County LUP/LCP's minimum parcel size requirement for Low Density Residential areas, within the Coastal Zone. The DEIR incorrectly relies on the Zoning Code's Building Site Requirement. The North County LUP/LCP requires "[d]evelopment densities from 1 unit to 10 or more acres to a maximum of 1 unit per 2-1/2 acres would be allowed according to site evaluation of resource and public facility constraints." (North County LUP/LCP, 4.3.1.H) Table 1 of the DEIR demonstrates of the ten proposed subdivision lots, eight are less than the maximum allowable density of 2.5. acres.

The FEIR inappropriately states in the Introduction that the proposed project's "average" lot size is 2-1/2 acre. This interpretation of the minimum parcel size requirement is invalid. Apparently, County staff interpret the CIP, to allow the creation of new parcels under 2.5-acres within a Low Density Residential land Use area if the lot sizes for the entire subdivision averages at least 2.5 acres, so long as the lot is no smaller than the minimum building site set forth in section 20.14.060. This is both a misinterpretation and a misapplication of the Zoning Code by County staff. The minimum building site of one acre applies within each legal 2.5-acre LDR lot, unless the parcel is part of a clustered residential development.

The County, in its Response to Comments, claims that the Sunridge Views project "incorporates a clustering concept, (lot 8 at the top of the ridge comprises nearly one third of the project site) that allows adequate room on that lot for development while avoiding the chaparral and ridgeline development. Seven of the ten lots are small than the average lot size and are located in less sensitive areas." (FEIR, p. 2-41.) The County, however, misapplies clustering. The County's clustering concept frustrates one of its objectives by placing three 20,000-gallon water tanks adjacent to ESHA. North County LUP/LCP section 2.3.2.4, requires clustering to prevent habitat impacts, not create them.

Additionally, even if the Coastal Commission was to allow an amendment to the Coastal plans, the allowable density of the subdivisison must be based on an evaluation of site conditions and cumulative impacts are required by CIP section 20.144.140.B.3.d.1. As provided in the foregoing, the approval of a 10-lot subdivision is inconsistent with this requirement because the density exceeds available water supply and it will have adverse environmental impacts to ESHA and ridgelines.

6. THE BOARD'S PROJECT APPROVAL WAS INCONSISTENT WITH THE ADMINISTRATIVE PROCEDURES UNDER THE COASTAL IMPLEMENTATION PLAN.

The Sunridge Views project was a combined development permit. The CIP under section 20.82 for Combined Development Permits requires the Planning Commission to "act as the recommending body to the Board of Supervisors when said Board is the Appropriate Authority for the Combined Development Permit. Said Board shall not act on a Combined Development Permit without prior review and recommendation of the Planning Commission on both the environmental and land use issues. The Planning Commission recommendation shall be made only after public hearing by the Planning Commission." (CIP, section 20.82.030.B.)

Initially, a Negative Declaration had been proposed on the Sunridge Views project. The Planning Commission had recommended that the Board deny the project and not certify the Negative Declaration. The Board of Supervisors ordered the preparation of an Environmental Impact Report. The EIR was circulated for review and comment in December of 2003. The FEIR was released in June of 2004. The public hearing on the determination of the proposed project as well as certification of the FEIR went immediately to the Board of Supervisors, without first having been reviewed by the Planning Commission. Despite FANS request that the Board send the matter first to the Planning Commission to first make its recommendation to the Board, the Board decided at the July 13, 2004, public hearing to go forward with its final determination on the Sunridge Views subdivision project and FEIR. (Attached hereto is a copy of LandWatch's July 7, 2004 letter, sent prior to the Board's hearing, and making this point, and including references to other grounds upon which the Coastal Commission should reverse the approval of the Sunridge Views project by the Monterey County Board of Supervisors.

CONCLUSION

For the foregoing reasons, the Sunridge Views project is inconsistent with the North County LUP/LCP regarding water supply, development on ridgelines, development adjacent to or within ESHA and Zoning. Additionally, the Sunridge Views project is inconsistent with Monterey County Zoning Coastal Implementation Plan - Title 20 in terms of zoning as well as administrative error in failing to first have its recommending body make its recommendation to the Board. The California Coastal Commission should therefore, reverse the decision of the Monterey County Board of Supervisor's determination of the Project's Applicant's Sunridge Views Subdivision Project and deny the Project Applicant's coastal development permit.

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 4)

SECTION V. Certification

The information and facts stated above are correct to the best of my/our knowledge.

Signature of Appellant(s) or Authorized Agent

Date: August 4, 2004

Note: If signed by agent, appellant(s) must also sign below.

Section VI. Agent Authorization

I/We hereby authorize _____
to act as my/our representative and to bind me/us in all matters concerning this appeal.

Signature of Appellant(s)

Date: _____