



# Monterey County Board of Supervisors

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## Board Order

Upon motion of Supervisor Alejo, seconded by Supervisor Parker and carried by those members present, the Board of Supervisors hereby:

Public hearing held (continued from September 12, 2017) and adopted Resolution 17-355 denying the request to amend Sections 21.14.050.A, 21.14.060.A, and 21.14.060.B of Title 21 (non coastal zoning) of the Monterey County Code to allow certain exceptions in the Low Density Residential zoning district and denying a Combined Development Permit to subdivide three existing lots totaling approximately 7.92 acres into 25 lots, including 24 lots that could accommodate one unit on each lot and one lot that could accommodate up to seven affordable units (31 units total). Project Location: 26500 Val Verde Drive, Carmel Valley Master Plan Proposed CEQA Action: Find that denial of the project is Statutorily Exempt pursuant to Public Resources Code Section 21080(b)(5) and CEQA Guidelines Section 15270(a).

PLN140089 CARMEL RIO ROAD LLC (CLARK)

PASSED AND ADOPTED this 10th day of October 2017, by the following vote, to wit:

AYES: Supervisors Alejo, Phillips, Salinas, Parker and Adams  
NOES: None  
ABSENT: None

I, Gail T. Borkowski, Clerk of the Board of Supervisors of the County of Monterey, State of California, hereby certify that the foregoing is a true copy of an original order of said Board of Supervisors duly made and entered in the minutes thereof of Minute Book 80 for the meeting October 10, 2017.

Dated: October 11, 2017  
File ID: RES 17-165

Gail T. Borkowski, Clerk of the Board of Supervisors  
County of Monterey, State of California

By Denise Hancock  
Deputy

Before the Board of Supervisors in and for the County of Monterey, State of California

Carmel Rio Road LLC (PLN140089)

Resolution No. 17-355

Resolution of the Monterey County Board of Supervisors:

- 1. Finding the project categorically exempt from CEQA pursuant to Public Resources Code Section 21080(b)(5) and CEQA Guidelines Section 15270(a); and
2. Denying a request to adopt an ordinance amending Title 21 of the Monterey County Code to allow the certain exceptions in the Low Density Residential (LDR) zoning district if done both to receive a density bonus allowed by Policy CV-1.10 in the Carmel Valley Master Plan and to provide affordable housing meeting criteria established in Policy LU-2.13 of the General Plan; and
3. Denying a Combined Development Permit consisting of: a Tentative Map for a standard subdivision of three parcels totaling 7.92 acres into 25 lots with 31 units as follows: a) 24 lots that could accommodate a maximum of one unit on each lot and b) one lot that could accommodate up to seven units; and a Use Permit pursuant to Section 21.14.050.A to allow seven affordable units on Lot 25 (six inclusionary units and one workforce unit).

[PLN140089, Carmel Rio Road LLC, 26500 Val Verde Drive, Carmel Valley Master Plan (APN: 015-021-020-000, 015-021-021-000 and 015-021-015-000)].....

WHEREAS, On April 1, 2014, Carmel Rio Road, LLC ("Applicant") through its representative Brian Clark submitted an application (Project) for a Tentative Map to subdivide three parcels totaling 7.92 acres into 24 single-family lots and one parcel to accommodate seven affordable units (six inclusionary and one Workforce I), 31 units total (PLN140089). The proposed project requires the following entitlements:

- 1. Zoning Ordinance to amend Title 21 (inland zoning) of the Monterey County Code to allow the following exceptions in the Low Density Residential zoning district if done both to receive a density bonus allowed by Policy CV-1.10 in the Carmel Valley Master Plan and to provide affordable housing meeting criteria established in Policy LU-2.13 of the General Plan: a) amend Section 21.14.050.A to allow the number of residential units

- to exceed 4 units on a lot and to exceed the zoning density of the lot; b) amend Section 21.14.060.A to allow building sites under the one acre minimum; and c) amend Section 21.14.060.B to allow exceedance of the maximum development density; and
2. A Combined Development Permit consisting of a Tentative Map to subdivide three parcels totaling 7.92 acres into 25 lots, including 24 single-family lots and one parcel to accommodate seven affordable units (six inclusionary and one Workforce I); and a Use Permit pursuant to Section 21.12.050.A of the Monterey County Code to allow seven units on Lot 25.

**WHEREAS**, the property is located at 26500 Val Verde Drive, Carmel (Assessor's Parcel Numbers 015-021-020-000, 015-021-021-000 & 015-021-015-000), Carmel Valley Master Plan. Zoning for this property is LDR/1-D-S-RAZ (Low Density Residential/with a maximum gross density of 1 one acre/unit-Design-Site Control-Residential Allocation Zoning).

**WHEREAS**, on April 21, 2014, the Carmel Valley LUAC reviewed plans for the proposed project. The committee expressed concerns regarding traffic, water, floodplain encroachment, inconsistency with the rural character of adjacent homes and excessive density. The item was continued to a date uncertain to return for further review following completion of the Draft EIR.

**WHEREAS**, the proposed project was reviewed a second time by the Carmel Valley LUAC on April 17, 2017. The LUAC recommended denial of the project by a vote of 7-0 due to non-conformance with several policies in the Carmel Valley Master Plan and the rural character of the area.

**WHEREAS**, on May 10, 2017, the Planning Commission held a public hearing on the proposed rezoning ordinance and Project and found that the project location was appropriate but found the Project was inconsistent with General Plan and Carmel Valley Master Plan policies because it failed to provide 35% affordable housing in the Carmel Valley Master Plan area, where the stated goal for affordable housing is 50% and the proposed project allocates the majority of the remaining units available for development. Following an inquiry from the Commission, the applicant stated that he would not accept a continuance to consider 35% affordable units because that would not be financially feasible. Therefore, the Planning Commission voted 8 to 1 to recommend that the Board of Supervisors not certify the EIR and not approve the zoning amendments and Combined Development Permit. (Resolution No. 17-019)

**WHEREAS**, the Board of Supervisors held a duly noticed public hearing on the rezoning ordinance and Project on June 27, September 12, and October 10, 2017. Having considered all the written and documentary evidence, the administrative record, the staff report, oral testimony, and other evidence presented, the Monterey County Board of Supervisors hereby finds and decides as follows:

#### **FINDINGS:**

1. **FINDING:** **GENERAL PLAN INCONSISTENCY** – The project is not consistent with the 2010 General Plan and Carmel Valley Master Plan.  
**EVIDENCE:** a) During the course of review of this application, the project has been reviewed for consistency with the 2010 Monterey County General Plan, which includes the Carmel Valley Master Plan, and for consistency with County's Inclusionary Housing Ordinance (Chapter 18.40 of the

Monterey County Code). The Board finds that the project is not consistent with the 2010 General Plan and Carmel Valley Master Plan. General Plan Policy LU-1.19 calls for the establishment of a Development Evaluation System (DES) for areas of the County outside of Community Areas, Rural Centers and Affordable Housing Overlay Districts. The project is not in a Community Area, Rural Center or Affordable Housing Overlay District and therefore is subject to the DES. Pending adoption of a program to implement the DES, the County has been applying General Plan Policy LU-1.19 to projects through application of the criteria set forth in Policy LU-1.19. General Plan Policy LU-1.19 states that residential development shall incorporate a minimum of 35% affordable/workforce housing (25% inclusionary; 10% Workforce). Under the particular facts and circumstances of this project, which is located in Carmel Valley, the proposed project is inconsistent with General Plan Policy LU-1.19 because it does not provide 35% affordable/workforce housing or farmworker inclusionary housing. For this project, the 35% affordable/workforce housing criterion is essential to finding General Plan consistency because these are among the last units remaining under the unit cap in the Carmel Valley Master Plan area. (See evidence below.) Given the preference stated in Policy CV 1.6 for projects that include at least 50% affordable housing and given that the project would commit most of the remaining units, having at least 35% affordable housing per Policy LU 1.19 is essential to comply with the policies and goals of the General Plan and Carmel Valley Master Plan.

**EVIDENCE:** b) Carmel Valley Master Plan Policy CV-1.6 establishes a building cap of 190 new residential units as a way to control development, and thereby traffic, throughout Carmel Valley. If approved, the proposed project would commit 28 new units of the 34 units currently remaining under unit cap. General Plan Policy CV-1.6.a states that there shall be preference to projects including at least 50% affordable housing units. Although this policy does not require a minimum 50% affordable housing, there is clearly a preference for projects that are approved under the building cap that provide more than the minimum required amount of affordable housing. With a limited number of units remaining, there would be no other opportunity for affordable housing in Carmel Valley beyond this project.

**EVIDENCE:** c) The Board of Supervisors determined that, in Carmel Valley, it is imperative to get at least the 35% required by Policy LU-1.19. This is because Carmel Valley Master Plan Policy CV-1.6 establishes a building cap of 190 new units in Carmel Valley and there are only 34 new units/lots available under the cap. The Board indicated a willingness to consider the project in this location if the amount of affordable housing was increased to at least 35%. The applicant has not proposed such an alternative.

**EVIDENCE:** d) General Plan Policy LU 2.13 requires a minimum of 25% affordable housing (6% very low, 6% low, 8% moderate, and 5% Workforce I). The Inclusionary Housing Ordinance requires a minimum of 20%

inclusionary housing (very low, low, and moderate.) Carmel Valley Master Plan Policy CV-1.10 requires a minimum of 25% inclusionary units in order to receive a density increase from one (1) unit per acre to up to four (4) units per acre. Of the 31 units proposed, the project includes seven (7) affordable units plus an in-lieu fee. The site consists of three existing lots that could each have one unit built. Consistent with the method for applying 2010 General Plan affordability policies to other projects, the first unit on an existing lot of record does not count toward the unit total. Accordingly, the proposed project provides 25% affordable units (25% of 28 units is 7 units). The seven (7) affordable units include one (1) very low, two (2) low, three (3) moderate and one (1) workforce unit. In addition, the project applicant has agreed to provide an in-lieu fee of \$206,544 under the terms of a Settlement and Release Agreement between the County and Carmel Rio Road LLC.

- e) Denial of the project (PLN140089) does not preclude the applicant from pursuing another project at the same location. Several options exist under Policy CV-1.10 for a project that would be consistent with the policies in the General Plan including CV-1.10 and would remove development from the 100-year Special Flood Hazard Area.
- EVIDENCE:** f) Monterey County 2010 General Plan and Carmel Valley Master Plan policies and maps; Chapter 18.40 of the Monterey County Code; and the application, project plans, and related support materials submitted by the project applicant to Monterey County RMA-Planning for the proposed development are found in Project File PLN140089.

2. **FINDING:** **ZONING ORDINANCE INCONSISTENCY** - The project is not consistent with the Zoning Ordinance.

- EVIDENCE:** a) During the course of review of this application, the project has been reviewed for consistency with the Monterey County Zoning Ordinance (Title 21). The project is inconsistent with zoning unless an ordinance is adopted to amend the zoning. The application includes a request for adoption of an ordinance amending Title 21 of the Monterey County Code to modify the list of uses allowed with a use permit and the site development standards in the Low Density Residential (LDR) zoning district if done to achieve a density bonus pursuant to Policy CV-1.10 in the Carmel Valley Master Plan and to provide affordable housing meeting criteria established in Policy LU-2.13 in the General Plan. Accordingly, an ordinance was prepared and presented to the Board of Supervisors which included the following proposed amendments to zoning if a project receives both a density bonus allowed by Policy CV-1.10 in the Carmel Valley Master Plan and provides affordable housing that meets the criteria established in Policy LU-2.13 of the General Plan:

1. Amend Section 21.14.050.A to allow exceedance of 4 units/acre on a lot;
2. Amend Section 21.14.060.A to allow creation of lots under the minimum one acre building site size; and

3. Amend Section 21.14.060.B to allow the maximum development density to exceed the acres/unit shown for the specific "LDR" District as shown on the zoning map.

**EVIDENCE:** b) Without the proposed amendments to the Zoning Ordinance, the project is inconsistent with zoning. One of the proposed Zoning Ordinance Amendments (i.e., Section 21.14.060.B) is required to make the Zoning Ordinance consistent with the General Plan (i.e., Policy CV-1.10 in the Carmel Valley Master Plan). However, the other two proposed Zoning Ordinance Amendments are required based on the design of the project.

**EVIDENCE:** c) The Board of Supervisors does not support and declines to adopt these amendments because the exceptions to the LDR zoning standards are not justified for a project that does not provide a greater percentage of affordable housing. In addition, the Amendment to Section 21.14.050.A would result in the placement of all of the affordable units on one lot rather than dispersing the units throughout the project.

**EVIDENCE:** d) Title 21 of the Monterey County Code (Zoning Ordinance) and the application, tentative map and supporting materials submitted by the project applicant to RMA-Planning found in Project File PLN140089.

3. **FINDING:** **SUBDIVISION** – Section 66474 of the California Government Code (Subdivision Map Act) and Title 19 (Subdivision Ordinance) of the Monterey County Code requires that a request for subdivision be denied if any of the following findings are made:

- i. That the proposed map is not consistent with the applicable general plan and specific plans.
- ii. That the design or improvement of the proposed subdivision is not consistent with the applicable general plan and specific plans.
- iii. That the site is not physically suitable for the type of development.
- iv. That the site is not physically suitable for the proposed density of development.
- v. That the design of the subdivision or the proposed improvements is likely to cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat.
- vi. That the design of the subdivision or type of improvements is likely to cause serious public health problems.
- vii. That the design of the subdivision or the type of improvements will conflict with easements, acquired by the public at large, for access through or use of property within the proposed subdivision.

Substantial evidence supports such findings and therefore require denial of the subdivision.

**EVIDENCE:** a) i. **Consistency:** The proposed project is inconsistent with the 2010 General Plan and Carmel Valley Master Plan (see Finding

- 1). Without the proposed amendments to the Zoning Ordinance, the project is inconsistent with zoning (see Finding 2).
- ii. **Site Suitability.** The site may be suitable for this type and density of development depending on the project. The site is served by public sewer and can be served by public water.
- iii. **Substantial Environmental Damage.** The EIR concluded that the project would have significant unavoidable impacts on transportation and circulation. These impacts are significant and unavoidable and will not be mitigated to a less than significant level.
- iv. **Public Health.** The Monterey County land use departments/ agency have reviewed the application and have not identified any potential for the subdivision or improvements to cause serious health problems.
- v. **Conflict with Easements.** Val Verde Drive is a private road. General Plan Policy C-3.6 requires proof of access as part of any development application when the proposed use is not identified in the provisions of the applicable agreement. The applicant has provided proof of access in the form of court judgments as part of the project application consistent with this policy. The Monterey County land use departments/agency have reviewed the application and have not identified any conflicts with easements.

**EVIDENCE:** b) The application, tentative map and supporting materials submitted by the project applicant to RMA-Planning found in Project File PLN140089.

4. **FINDING:** **DISAPPROVAL OF HOUSING DEVELOPMENT** – Denial of this project does not trigger the requirements under the Housing Accountability Act (Government Code Section 65589.5) because the project is inconsistent with the General Plan and zoning, as discussed in Findings 1 and 2 above. In addition, the County has adopted an updated Housing Element that has been certified by the State Department of Housing and Community Development (County of Monterey 2015 – 2023 Housing Element, adopted by the Board of Supervisors on January 26, 2016 and certified by HCD on May 10, 2016). The certified Housing Element does not identify the project site as a site that is suitable for very low, low or moderate income households. This site is not part of the County’s plan for meeting its Regional Housing Needs Allocation. The project does not meet the affordability thresholds for very low, low, and moderate income households under Government Code section 65589.5(h)(3). To the extent, however, that it is determined that the provisions of the Housing Accountability Act Government Code Section 65589.5(j)) do apply to this project, the Board makes the following finding:

**FINDING**  
**4.a:** The housing development project would have a specific, adverse impact upon the public health or safety unless the project is disapproved or approved upon the condition the project be developed at a lower

density. There is no feasible method to satisfactorily mitigate or avoid the adverse impact, other than the disapproval of the housing development project or the approval of the project upon the condition that it be developed at a lower density.

**EVIDENCE:** a) The specific, adverse impact is based on a significant, quantifiable, direct, and unavoidable impact relating to increased flooding potential. The lower southwest portion of the site (APN 015-021-021-000) falls within the 100-year Special Flood Hazard Area. As a result, the proposed project includes the addition of approximately 11,000 cubic yards of fill secured by a retaining wall intended to raise the elevation of several lots by 2 to 3 feet. This would result in an adverse impact upon the public health or safety due to the potential for increased flooding downstream in an area of the County that has experienced past flooding. There is no feasible method to satisfactorily mitigate the increased downstream flooding other than the disapproval of the project or the approval of the project at a lower density with the housing units removed from the 100-year Special Flood Hazard Area. The reduced density alternative (Alternative 4) in the Draft EIR would place housing within the 100-year Special Flood Hazard Area. As indicated in documents submitted by the public, additional analysis and project redesign would be needed to address the impact of the project on flooding.

**EVIDENCE:** b) The application, tentative map and supporting materials submitted by the project applicant; letter from Molly Erickson dated September 10, 2017; and letter from Schaaf & Wheeler, Consulting Civil Engineers, dated September 1, 2017 found in Project File PLN140089.

5. **FINDING:** **CEQA (Exempt)** - The project is statutorily exempt from environmental review because the Board of Supervisors is denying the application. The Board of Supervisors did not certify the EIR prepared for this project.

**EVIDENCE:** a) RMA-Planning filed a Notice of Preparation (NOP) with the County Clerk and distributed the NOP to all Responsible Agencies for the required 30-day period from on July 20, 2015 to August 19, 2015. Responses to the Notice of Preparation were considered in the preparation of the EIR.

**EVIDENCE:** b) An EIR Scoping Meeting was held at St. Phillips Lutheran Church in Carmel Valley on July 30, 2015 to receive comments on the scope of the Draft EIR. The intent of the scoping meeting was to provide interested individuals, groups, public agencies and others a forum to provide input to the County verbally in an effort to assist in further refining the intended scope and focus of the EIR.

**EVIDENCE:** c) A Draft EIR was prepared to assess the potential adverse environmental impacts from the project (Carmel Rio Road Project Draft Environmental Impact Report prepared by Rincon Consultants dated November 2016; SCH#2015071046). The public review period on the Draft EIR was from December 2, 2016 to January 23, 2017. The project analyzed in the Draft EIR was a mixed income residential



subdivision on 7.9 acres of land located at 26500 Val Verde Drive, within the Carmel Valley Master Plan Area, in unincorporated Monterey County, California. The Draft EIR analyzed all components of the project including the tentative subdivision map, Zoning Ordinance Amendment, Use Permit, Administrative Permit and Design Approval. Issues that were analyzed in the Draft EIR include aesthetics, air quality, biological resources, climate change, cultural resources, geology and soils, hazards, hydrology and water quality, land use, noise, population and housing, public services, recreation, transportation and circulation, utilities and service systems.

- EVIDENCE: d)** The Draft EIR was duly noticed and circulated for public review, and public comments were received and considered. The County distributed a Notice of Availability to Responsible Agencies and Interested Parties on December 1, 2016. The County sent a Notice of Completion and CDs of the Draft EIR to the State Clearinghouse on December 1, 2016. The County placed the Notice in the County Clerk's office for 30 days (Public Resources Code Section 21092) and sent a copy of the Notice to anyone requesting it (*State CEQA Guidelines* Section 15087). Additionally, the NOA was distributed to property owners and occupants within 300 feet of the site, consistent with CEQA Guidelines Section 15087(a)(3).
- EVIDENCE: e)** During the review period on the Draft EIR (December 2, 2016 through January 23, 2017) the County received comment letters from Brian Clark (Applicant), Stan & Bozena Kluz, LandWatch Monterey County, Glenn Robinson, Arroyo Carmel Home Owners Association, Bob Byrne, Margaret Robbins, Richard Stott, Karen Wood, Neil & Stephanie Johnston, Lea Magee, Carmel Valley Association, Monterey Bay Air Resources District, Monterey Peninsula Water Management District, Molly Erickson and Peter Neumeier. A Final EIR was prepared which included written responses to the significant issues raise. The Final EIR was made available to the public on May 3, 2017 and provided to the Board of Supervisors for its consideration.
- EVIDENCE: f)** The Draft EIR contains extensive analysis of the proposed development, with and without mitigations, compared to No Project/No Development, No Project/Existing Zoning, Modified Subdivision, Reduced Density and Clustered Design. The Final EIR included a second reduced density alternative.
- EVIDENCE: g)** The information contained in and the conclusions reached in the EIR reflect the County of Monterey's independent judgement and analysis.
- EVIDENCE: h)** The Board of Supervisors did not certify the EIR prepared for this project because it would be premature to certify the EIR if the project is redesigned, for example, to take housing out of the floodplain, address flood impacts and/or to accommodate 35% affordability. In addition, the EIR concluded that there would be a significant unavoidable impact to transportation and traffic. There is no substantial evidence to support a finding that specific economic, legal, social, technological or other benefits outweigh the identified unavoidable adverse environmental impacts of the project.

**EVIDENCE:** i) Projects which are disapproved by the lead agency are statutorily exempt from CEQA pursuant to Public Resources Code Section 21080(b)(5) and CEQA Guidelines Section 15270(a).

6. **FINDING:** **PUBLIC HEARING** – The Board of Supervisors conducted a fair and impartial public hearing on the project.

**EVIDENCE:** a) On June 27, 2017, September 12, 2017, and October 10, 2017, the Board of Supervisors held a duly noticed public hearing where the applicant and members of the public were given the opportunity to be heard.

**EVIDENCE:** b) On June 14, 2017 notice of the June 27, 2017 Board of Supervisors hearing were mailed to property owners within 300 feet of the site.

**EVIDENCE:** c) A public hearing notice of the June 27, 2017 Board of Supervisors hearing was published in the Monterey County Coast Weekly newspaper on June 15, 2017.

**EVIDENCE:** d) On June 14, 2017 public hearing notices of the June 27, 2017 Board of Supervisors hearing were sent to those persons on the County's interested parties distribution list for this project.

**EVIDENCE:** e) On June 27, 2017, at applicant's request, the Board of Supervisors continued the public hearing to September 12, 2017. At the hearing on September 12, 2017, the applicant and all members of the public wishing to be heard had an opportunity to testify orally and submit written testimony. Following the close of public comment, the Board of Supervisors adopted a motion of intent to deny the project and not certify the EIR and continued the hearing to October 10 to enable staff to bring back a resolution with findings.

### **DECISION**

**NOW, THEREFORE, BE IT RESOLVED**, based on the above findings and evidence, written and documentary evidence, the administrative record, the staff report, oral testimony, and other evidence presented, that the Board of Supervisors does hereby:

- a. Find the project statutorily exempt from CEQA pursuant to Public Resources Code Section 21080(b)(5) and CEQA Guidelines Section 15270(a);
- b. Deny a request to adopt an ordinance amending Title 21 of the Monterey County Code to allow the following exceptions in the Low Density Residential (LDR) zoning district if done both to receive a density bonus allowed by Policy CV-1.10 in the Carmel Valley Master Plan and to provide affordable housing meeting criteria established in Policy LU-2.13 of the General Plan: a) amend Section 21.14.050.A to allow the number of residential units to exceed 4 units on a lot and to exceed the zoning density of the lot; b) amend Section 21.14.060.A to allow building sites under the one acre minimum; and c) amend Section 21.14.060.B to allow exceedance of the maximum development density; and

- c. Deny a Combined Development Permit consisting of: a Tentative Map for a standard subdivision of three parcels totaling 7.92 acres into 25 lots with 31 units as follows: a) 24 lots that could accommodate a maximum of one unit on each lot and b) one lot that could accommodate up to seven units; and a Use Permit pursuant to Section 21.14.050.A to allow seven affordable units on Lot 25 (six inclusionary units and one workforce unit).

**PASSED AND ADOPTED** upon motion of Supervisor Alejo, seconded by Supervisor Parker and carried this 10th day of October 2017, by the following vote, to wit:

AYES: Supervisors Alejo, Phillips, Salinas, Parker and Adams

NOES: None

ABSENT: None

I, Gail T. Borkowski, Clerk of the Board of Supervisors of the County of Monterey, State of California, hereby certify that the foregoing is a true copy of an original order of said Board of Supervisors duly made and entered in the minutes thereof of Minute Book 80 for the meeting on October 10, 2017.

Dated: October 11, 2017  
File Number: RES 17-165

Gail T. Borkowski, Clerk of the Board of Supervisors  
County of Monterey, State of California

By Denise Hancock  
Deputy