



County of Monterey

Item No.

Board Report

Board of Supervisors
Chambers
168 W. Alisal St., 1st Floor
Salinas, CA 93901

Legistar File Number: A 22-552

November 08, 2022

Introduced: 10/18/2022

Current Status: Agenda Ready

Version: 1

Matter Type: BoS Agreement

- a. Approve Amendment No. 1 to the Subdivision Improvement Agreement for the Carmel One Subdivision (September Ranch) replacing the form of improvement security and authorize the Chair to execute the Amendment; Approve the release of a Certificate of Deposit (CD) in the amount of \$6,500,000 upon subdivider filing a replacement security with the department of Housing and Community Development.
- b. Approve the release of the second deed of trust benefiting the County in the amount of \$6,000,000 upon subdivider filing replacement security with the department of Housing and Community Development.
- c. Approve the release of a deed restriction recorded against the property prohibiting the sale of the entire property or any individual or lots created by the recordation of the final map contingent upon subdivider filing a replacement security with County Housing and Community Development.

RECOMMENDATION:

It is recommended that the Board of Supervisors:

- a. Approve Amendment No. 1 to the Subdivision Improvement Agreement for the Carmel One Subdivision (September Ranch) replacing the form of improvement security and authorize the Chair to execute the Amendment; Approve the release of a Certificate of Deposit (CD) in the amount of \$6,500,000 upon subdivider filing a replacement security with the department of Housing and Community Development.
- b. Approve the release of the second deed of trust benefiting the County in the amount of \$6,000,000 upon subdivider filing a replacement security with the department of Housing and Community Development.
- c. Approve the release of a deed restriction recorded against the property prohibiting the sale of the entire property or any individual or lots created by the recordation of the final map contingent upon subdivider filing a replacement security with County Housing and Community Development.

SUMMARY/DISCUSSION:

On December 18, 2020, the Board of Supervisors approved the Subdivision Improvement Agreement for Carmel One Subdivision (September Ranch) between the County of Monterey and Carmel Reserve LLC. The subdivider submitted improvement security in the form of a CD in the amount of \$6,500,000, a second deed of trust benefiting the County in the amount of \$6,000,000, and a deed restriction recorded against the property prohibiting the sale of the entire property or any individual lots created by the recordation of the final map so long as the second deed of trust remained in place. On September 20, 2022, the subdivider requested that the County's CD, second deed of trust, and deed restriction be replaced by a subdivision performance bond, Subdivision Labor &

Materials Bond, Subdivision Warranty Bond and a Subdivision Monument Bond. The request is authorized by paragraph 8(f) of the Agreement, which addresses replacement security. Further, applicant's request and staff's recommended actions are consistent with Monterey County Code section 19.13.015, which requires the subdivider to provide continuous and adequate security in accordance with the subdivision improvement agreement. Indeed, the County generally prefers a single bond as security; the arrangement in this case was an uncommon accommodation to applicant.

The CD is for the benefit of payee the County of Monterey. Under the terms and conditions of the CD East West bank shall be authorized to cash the CD at the instance and request of Carmel Reserve and to deliver such funds to Carmel Reserve only upon receipt of a written request from the County of Monterey relinquishing its claim and interest to this CD.

The process for such replacement security is summarized here and further described in Attachment C. The subdivider shall submit replacement security (bonds) with the Department of Housing and Community Development. Upon receipt of security replacement, the County would release the \$6,500,000 CD to the new surety, reconvey its interest in the second deed of trust to the owner and would release the deed restriction prohibiting the sale of the property on the subdivision site.

Additionally, Amendment No. 1 includes an indemnification provision, whereby Carmel Reserve LLC agrees to immediately indemnify, defend, and hold COUNTY harmless from and against any damage or liability, costs, or expenses whatsoever, in connection with any third party claim whatsoever (including reasonable attorneys' fees and court costs) in connection with the execution of this Amendment.

Staff recommends that the Board both adopts and authorizes the Chair to execute the Amendment. Release of the CD, second deed of trust, and the deed restriction shall be contingent upon subdivider filing replacement security with Housing and Community Development.

OTHER AGENCY INVOLVEMENT:

The Office of County Counsel has approved Amendment No. 1 as to form.

FINANCING:

Staff costs to prepare this report are included in the FY2022-23 Adopted Budget for HCD Appropriation Unit HCD002, Unit 8543. The cost of the subdivision improvement agreement amendment processing is funded with developer fees.

BOARD OF SUPERVISORS STRATEGIC INITIATIVES:


The recommended action supports the Board of Supervisors' Strategic Initiative for Economic Development, Infrastructure and Public Safety Processing this amendment results in increased property tax revenue and provides infrastructure to support affordable housing and market rate units. Additionally fair share traffic impact fees collected are designated to be used for transportation improvements identified by traffic studies or regional studies that establish the basis for a fee, providing funds for new transportation infrastructure in support of economic opportunity.

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- Economic Development
- Administration
- Health & Human Services
- Infrastructure
- Public Safety

Prepared by: Armando Fernandez, HCD-Engineering Services, Senior Civil Engineer

Reviewed by: Michael Goetz, PLS, PWFP County Surveyor

Approved by: Erik Lundquist, ACIP, HCD Director 

The following attachments are on file with the Clerk of the Board:

Attachment A - Amendment No. 1

Attachment B - Subdivision Improvement Agreement recorded 12/22/2020

Attachment C - Replacement of Security Request Letter 10/25/2022