

Attachment D

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SETTLEMENT AND RELEASE AGREEMENT

This Settlement and Release Agreement ("Agreement") by and among Petitioner and Plaintiff, Carmel Rio Road, LLC ("Petitioner" or "applicant") and Respondent and Defendant, County of Monterey ("County") (each a "Party" and collectively, the "Parties") is made effective on the date when all Parties have signed this Agreement ("Effective Date"). This Agreement is entered into by the Parties for the purpose of resolving Carmel Rio Road, LLC v. County of Monterey, Monterey County Superior Court Case No. M118773, challenging the decision to deny Petitioner's subdivision project (the "Subdivision Project").

RECITALS

- A. Petitioner is a limited liability company, organized and existing under the laws of, and qualified and doing business in, the State of California;
- B. The County is a political subdivision of the State of California;
- C. Petitioner is the owner of the real property located along Val Verde Drive in Carmel Valley (APN 015-021-015, 015-021-020, and 015-021-021; "Property");
- D. Petitioner filed a Petition for Writ of Mandate and Complaint in the State of California Superior Court, County of Monterey against Respondent on May 30, 2012, (Case No. M118773) (the "Action") generally challenging the denial of the Subdivision Project by County;
- E. County and Petitioner have mutually agreed to settle the Action on the terms and conditions set forth in this Agreement; and
- F. County and Petitioner have negotiated in good faith and agreed to the terms of this Settlement Agreement, as reflected in Exhibit A to this Agreement.

SETTLEMENT PROVISIONS

NOW, THEREFORE, in consideration of the promises and mutual benefits of this Agreement and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. General Provisions.

No Admission of Liability. This settlement is entered into by the Parties without any admission of fault, failing or liability by any Party.

Recitals True and Correct. The above recitals are true and correct and are incorporated by reference as a part of this Agreement.

Mutual Consideration. The Parties' commitments to abide by terms of this Agreement are mutual consideration.

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2. **Dismissal.** Petitioner shall file a Notice of Conditional Settlement with the Superior Court within five (5) days of the Effective Date of this Agreement. Petitioner shall dismiss with prejudice Monterey County Superior Court Case No. M118773 within forty-five (45) days of the date of the County Board of Supervisors' final approval, through a Board Resolution, of a 31 unit subdivision project on Petitioner's Property and certification of the project Environmental Impact Report ("EIR") ("Final Approval"), as long as the Amended Project is brought to hearing before the County Board of Supervisors within the Contract Processing Timeline, unless the timing is waived by Petitioner pursuant to **Paragraph 13** of this Agreement. In the event that a 31 unit project is not approved and its EIR not certified or the County unreasonably delays in processing the 31 unit project through no fault of Petitioner in violation of **Paragraph 12** of this Agreement, Petitioner may reinstitute all or any portion of the Action.

3. **Timing.** The twelve month period referenced in paragraph 2 above commences on the Application Date. The "**Application Date**" is the date that the applicant submits to RMA -Planning all of the following for the Amended Project: a revised tentative or vesting tentative map; fully executed EIR funding agreement; the deposit for County staff costs to process the EIR; and the technical reports that the applicant wishes for the County or its EIR consultant to consider.

The "**Contract Processing Timeline**" is 365 days from the "Application Date." The parties may agree in writing to extend the Contract Processing Timeline.

4. **Rescind Action.** Within 30 working days of the Effective Date of this Agreement, the County Board of Supervisors shall rescind its action denying the Subdivision Project.

5. **Amended Project.** The "Amended Project" means a reduction of the prior 42-unit Subdivision Project to a 31-unit subdivision project, comprised of 24 market rate units and 7 affordable units consisting of 6 inclusionary units and 1 workforce unit. Petitioner agrees to propose the following fixed project description for the Amended Project:

Standard Subdivision (tentative or vesting tentative map) of 7.92 acres into 24 Market Rate lots and one Inclusionary Housing lot, the latter containing 6 inclusionary units with one (1) very low and two (2) low and three (3) moderate inclusionary housing units and one (1) workforce unit, and in-lieu fee of \$206,544, in accordance with General Plan Policy and the County's Inclusionary Housing Ordinance.

Zoning amendment to allow the units not to be clustered; and

Administrative Permit and Design Approval for development in the "D" (Design Control) and "S" (Site Review) Zoning Districts.

5.1 County staff shall, in good faith, consider all documents previously submitted and previously reviewed by County staff for the 42-unit Subdivision Project in processing the Amended Project for approval.

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- 5.2 Only for the purpose of processing the application for the Amended Project, Petitioner waives the Permit Streamlining Act and CEQA timelines and agrees to the timelines set forth in **Paragraphs 10 and 13** of this Agreement.
6. **Planner.** County will immediately assign a planner to the Amended Project who the Monterey County Planning Department believes is in the best position to process the Amended Project as quickly and competently as possible.
7. **Waive Application Fees.** County shall waive all application fees for the Amended Project (e.g., application fees for subdivision and zoning amendment), except the consultant's cost of preparing the EIR and County staff's cost of processing the EIR, as discussed in **Paragraph 10** of this Agreement, up to the time of the County Board of Supervisors' final decision on the Amended Project. Thereafter, if the Amended Project is approved, in addition to the consultant's cost of preparing the EIR and County staff's cost of processing the EIR, Petitioner shall pay all fees subsequent to final approval, including (a) development fees (e.g., traffic, encroachment permits, building permits) and (b) Mitigation Monitoring Fee, which is based on actual time (with initial deposit) pursuant to the Monterey County Land Use Fees effective July 7, 2013, which relevant part is attached hereto and incorporated herein as **Exhibit B**.
8. **Zoning Amendment.** As part of the Amended Project, Petitioner agrees to propose a zoning amendment to amend Section 21.24.050.A of the Monterey County Code. The zoning amendment will be processed as part of the application for the Amended Project and analyzed in the Amended Project's EIR. Petitioner acknowledges that the proposed Amended Project and zoning amendment will be brought to hearing at the Planning Commission for recommendation to the Board of Supervisors prior to the hearing at the Board of Supervisors.
9. **Affordable Housing Distribution Re-Allocation.** This settlement agreement does not preclude Petitioner from proposing, subject to HAC review and recommendation, re-allocation of the six (6) inclusionary housing units referred to in **Paragraph 5** of this Agreement among very-low, low and moderate income units if unusual or unforeseen circumstances can be shown. Any such reallocation would be subject to all required review processes, including HAC review and recommendation, Planning Commission recommendation and Board approval.
10. **EIR.** The parties agree that an EIR is to be prepared and processed as expeditiously as possible. County shall select an EIR consultant from three potential consultants using the County process, with Petitioner provided an opportunity to disqualify one of three consultants at its discretion.
- 10.1 The EIR consultant will be retained by the County to (a) review all existing technical documents listed in **Exhibit C** ("Previously Submitted Documents"), where feasible, and (b) procure such data and information as the consultant deems necessary ("New Documents") to expeditiously and competently prepare the necessary EIR for the Board's consideration within the Contract Processing Timeline. New documents required by the EIR consultant for the Amended Project shall not include any architectural design plans such as design elements and elevation of individual units.

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- 10.2 Within ten (10) days of this Agreement, Petitioner shall pay an initial deposit of Ten Thousand Dollars (\$10,000) for County staff costs to process the EIR; applicant shall be responsible to pay for the costs of staff's actual time to process the EIR, and applicant shall replenish the deposit as necessary. County staff will separately track time on the EIR versus processing the application. Within 8 weeks of the Effective Date of this Agreement, applicant shall execute the County's standard funding agreement to pay for the consultant's costs to prepare the EIR. Applicant agrees to fully fund the EIR consultant cost.
11. **Processing.** Applicant will submit its application packet with the revised tentative map or vesting tentative map for the 31 unit project and such technical reports that the applicant desires to submit with the application to the County Resource Management Agency-Planning Department.
12. **No Unreasonable Delay.** The Parties shall promptly act in accordance with this Agreement, shall respond to requests for information and documents and shall not cause any unreasonable delay or hindrance. County shall diligently use its best faith efforts to process the 31 unit project and shall not delay in processing of the same.
- 12.1 County shall notify Petitioner through a written notice of any unreasonable delay or hindrance caused by Petitioner ("Notice"). Petitioner shall cure the delay or hindrance within thirty (30) days of the Notice ("Cure"). If the Cure is outside the control of Petitioner, Petitioner may request County for extension of time to Cure, which extension shall not be unreasonably withheld by County. The actual time taken by Petitioner to Cure the delay or hindrance will be considered an extension of time for County to process the Amended Project.
- 12.2 Petitioner shall be deemed to have waived any right to reinstitute the Action if Carmel Rio unreasonably delays, hinders or impedes the processing of the re-submitted project after receiving Notice and having been provided an opportunity to Cure ("Unreasonable Delay"). In the event of Carmel Rio's Unreasonable Delay, County may move for dismissal of the Action as provided in this Agreement.
- 12.3 The Court shall grant County's motion for dismissal of the action upon a showing by County by a preponderance of the evidence that County was either (i) delayed, hindered or impeded by Carmel Rio (or its agents or anyone acting by or through Carmel Rio), or (ii) unable through no fault of County to evaluate, process or approve the re-submitted project, under the terms of this Agreement.
13. **Consideration for Approval and Timing.** Within the Contract Processing Timeline, the Amended Project and consideration of certification of the EIR shall be brought to hearing before the County Board of Supervisors. The County Board of Supervisors' action on the Amended Project is subject to all public proceedings, the Board's ability to make all legally required findings and/or to condition project approval.

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14. **Indemnity and Defense.** Upon Final Approval of the 31 unit Amended Project, Petitioner shall execute the County's standard indemnification agreement as a condition of approval. Should any person or entity file litigation challenging the validity of the County's Final Approval, as may be adopted by the County pursuant to **Paragraph 13**, Petitioner shall use its best, good faith efforts to defend against such litigation. County may participate in such litigation to aid in the defense. Should a final court order be entered nullifying or setting aside the approved Amended Project or the EIR, such act shall not constitute a default by any Party pursuant to this Agreement; however, the Parties shall confer in good faith to determine if other actions may be taken by County to implement the intent and purposes of this Agreement.

15. **Attorneys' Fees.** County shall pay the sum of eighty thousand dollars (\$80,000) to Petitioner within thirty (30) days of the Effective Date of this Agreement. The check shall be made payable to Carmel Rio Road, LLC and delivered to the law offices of Horan Lloyd located at 26385 Carmel Rancho Blvd., Suite 200, Carmel, California. The Parties agree that Petitioner is not obligated to return any payment hereunder in the event this Agreement cannot go into effect for any reason beyond the control of Petitioner, including denial of the Amended Project by Respondent. Conversely, Carmel Rio agrees that if County is unable to approve the Amended Project (or to bring the Amended Project to hearing within the 12 months called for by this Agreement, as it may be extended by mutual agreement) through no fault of County; or if Petitioner causes Unreasonable Delay; or if the Amended Project is set aside after Final Approval, County may seek dismissal of the action upon motion according to **Paragraph 12.2 or 12.3** of this Agreement.

16. **Tolling.** The County hereby agrees that any and all applicable statute(s) of limitations governing Petitioner's causes of action arising out of or in connection with the Action shall be tolled as of the Effective Date of this Agreement and shall remain tolled and extended by the duration of this Agreement.

17. **Release of Claims.**

17.1 **Release.** The Parties intend and agree that this Agreement shall be a full and final accord and satisfaction and general release of and from all Released Claims. The Parties on behalf of themselves, their members, owners, directors, officers, employees, agents and representatives (the "Releasing Parties") do hereby release all other Parties and their respective heirs, administrators, successors, assigns, agents, members, employees, officers, agents, representatives, partners and directors (the "Released Parties") from all rights, actions, claims, debts, demands, costs, contracts, allegations, liabilities, obligations, demands, and causes of action, whether known, suspected, or unknown, at law or in equity, which each of the Parties, or any of them, had, now has or as of the Effective Date of this Agreement has against the other Parties, including without limitation, all costs and fees incurred by the each Party in, or arising from the Action except as set forth in **Paragraph 14** of this Agreement (collectively, the "Released Claims"). The Parties shall conclusively be deemed to have waived and relinquished to the fullest extent that it may lawfully do so, all rights and benefits afforded by Section 1542 of the Civil Code of the State of California ("Section 1542") which states as follows:

“A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.”

This release does not extend to the right of each Party, including members of Petitioner, to institute legal action to seek specific performance of this Agreement.

- 17.2 **Understanding of Section 1542 Waiver.** By executing this Agreement, the Parties assume the risk that they are unaware of the subject matter of this Agreement, or are otherwise mistaken as to relevant facts, and acknowledge that they may discover facts in addition to or different from those that they now know or believe to be true concerning the Released Claims and other matters contained in or concerning this Agreement. Each Party nevertheless agrees and intends this Agreement to be a complete release of the Released Claims, and to settle all disputes and differences relating to the Released Claims, known or unknown, suspected or unsuspected, that have existed, now exist, or may now exist between or among the Parties, unless as otherwise specifically set forth in this Agreement. Unless otherwise specifically set forth in this Agreement, the Parties waive any and all rights they have or may have under California Civil Code Section 1542 and/or any successor section to it with respect to the Released Claims. The Parties hereby acknowledge and represent that (a) they understand the significance and the consequences of such specific waiver of unknown claims and hereby assume full responsibility for any injuries, damages, lawsuits or liabilities that they may incur, both now and hereafter, from the waiver of said unknown claims, (b) they may discover facts different from, or in addition to, those facts that they now know or believe to be true, and agree that this Agreement and the releases contained herein shall be and remain effective in all respects notwithstanding any such subsequent discovery of different or additional facts, (c) they have undertaken their own independent investigation of all of the facts relating to the matters being released herein and this Agreement, and in entering into this Agreement and granting the releases contained herein, are not relying on any representation, warranty, or statement of any other Party except as expressly set forth herein, and (d) this waiver is an essential and material term of this Agreement. Nevertheless, the Parties intend by this Agreement, and with and upon the advice of their own independently selected counsel, to release fully, finally and forever all Released Claims, unless as otherwise specifically set forth in this Agreement. In furtherance of such intention, the releases set forth in this Agreement shall be and shall remain in effect as full and complete releases notwithstanding the discovery or existence of any such additional or different claims or facts relevant hereto, unless as otherwise specifically set forth in this Agreement.

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18. Enforcement, Default and Remedies.

- 18.1 **Court Retains Jurisdiction Over Settlement.** If any party to this Agreement is required to initiate proceedings to enforce the terms of this Agreement, the Parties agree that the terms of the Agreement may be enforced by motion pursuant to Code of Civil Procedure Section 664.6 and that the court retains jurisdiction over the parties to enforce these terms of settlement. The court shall award attorneys' fees and costs to the prevailing party should such motion be filed.
- 18.2 **Opportunity to Cure Alleged Default.** Failure by any Party to perform any obligation hereunder within the time periods provided herein following notice and failure to cure as described hereafter, constitutes a "Default" under this Agreement. A Party alleging a Default shall give written notice of Default to the other Party specifying in reasonable detail the nature of the alleged Default and, where appropriate, the manner in which the alleged default satisfactorily may be cured; offer to meet and confer in a good faith effort to resolve the issue; and provide the other Party thirty (30) days to cure the alleged Default commencing at the time of receipt of the notice of a properly detailed written Default notice. The Parties agree that time is of the essence in the performance by Petitioners and the County of the approval of the Amended Project. Nothing in this Agreement precludes limits or conditions the right of County to move for dismissal of this action under **Paragraph 11.b.i** of this Agreement.
- 18.3 **Institution of Legal Action.** If any legal action is necessary to enforce or interpret the terms of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees, costs and necessary disbursements in addition to any other relief to which that party may be entitled.
- 18.4 **Effect of Material Default.** In the event of a material Default of this Agreement by County, in addition to any other remedy provided in this Agreement, pursuant to the retained court jurisdiction set forth in **Paragraph 17.1**, Petitioner may request the court to set aside this Agreement and reinstitute all or any portion of the Action. In the event of a material Default of this Agreement by Carmel Rio, the Court shall dismiss the Action in its entirety (including each cause of action) against all parties, and award costs and attorney's fees to the County accrued as of the Effective Date of this Agreement.

19. Representations and Warranties. Each of the Parties represents, warrants, and agrees as to itself ("Such Party") as follows:

- 19.1 Each individual signing this Agreement on behalf of an entity represents and warrants that the individual has the right, power, legal capacity, and authority to do so, and that no further approval or consent of any person, officer, board of directors or other person or entity is necessary.

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- 19.2 Such Party has received independent legal advice from its attorneys with respect to the advisability of making the settlement provided for herein, and with respect to the advisability of executing this Agreement. Such Party has been fully advised by its attorneys with respect to its rights and obligations under this Agreement and understands those rights and obligations.
- 19.3 No other Party (nor any director, officer, member, manager, partner, trustee, agent, employee, representative or attorney of or for any other Party) has made any statement or representation to Such Party regarding any fact Such Party relied upon in entering into this Agreement, and Such Party is not relying on any statement, representation or promise, written or oral, of any other Party (or of any director, officer, member, manager, partner, trustee, agent, employee, representative or attorney for any other Party) in executing this Agreement, or in making the settlement provided for herein, except as otherwise expressly stated in this Agreement.
- 19.4 Prior to the execution of this Agreement, Such Party and Such Party's legal counsel have made such investigation of the facts and inquiries Such Party deemed necessary or desirable pertaining to this settlement, this Agreement and all the matters pertaining thereto.
- 19.5 Such Party or responsible director, officer, member, manager, partner, trustee or attorney thereof has read this Agreement and understands the contents hereof. Each director, officer, member, manager, partner, trustee or attorney executing this Agreement on behalf of Such Party is empowered to do so and thereby to bind Such Party.
- 19.6 Except as otherwise expressly represented, warranted or provided in this Agreement, Such Party assumes the risks that: (i) it may hereafter discover facts in addition to or contrary to those it believed to exist or relied upon in entering into this Agreement, including, without limitation, unknown or unanticipated claims which, if known by Such Party on the Effective Date may have materially affected Such Party's decision to execute this Agreement; (ii) it may have mistakenly understood matters relevant to entering into this Agreement; and (iii) another Party may have negligently misrepresented or negligently failed to disclose facts in connection with the entering into of this Agreement. Notwithstanding any such unknown or unanticipated claims, misunderstandings, mistakes, negligent misrepresentations or negligent nondisclosures, Such Party intends that this Agreement thereafter shall continue in full force and effect and shall not be subject to rejection or rescission for any reason, provided that such Party reserves all rights provided for in this Agreement.
- 19.7 Such Party is aware that it may hereafter discover claims or facts in addition to or different from those it now knows or believes to be true with respect to the matters related herein. Nevertheless, it is the intention of Such Party to assume the risk that claims or facts now known or thought to be true may later be found to be different and to fully, finally and forever settle and release all of Such Party's Released Claims,

unless as otherwise specifically set forth in this Agreement. In furtherance of such intention, the releases given herein shall be and remain in effect as full and complete mutual releases of all such matters unless as otherwise specifically set forth in this Agreement, notwithstanding the discovery or existence of any additional or different claims or facts relative thereto. This settlement shall not be subject to termination, rescission or modification by reason of any such change in claims or facts or knowledge of claims or facts.

- 19.8 Such Party shall execute all such further and additional documents as shall be reasonable, convenient, necessary or desirable to carry out the provisions of this Agreement.
- 19.9 Such Party acknowledges it has carefully read and fully understands all of the provisions of this Agreement and that Such Party is entering into this Agreement voluntarily.

20. General Provisions.

- 20.1 **Governing Law.** This Agreement shall be governed by and interpreted and construed in accordance with the laws of the State of California.
- 20.2 **Construction.** This Agreement (including all attached Exhibits) shall in all cases be construed according to its fair and plain meaning, and not strictly for or against any of the Parties. As used in this Agreement, the masculine or neuter gender and single or plural numbers shall be deemed to include the others wherever the context so indicates or requires. Nothing in this Agreement shall be deemed to restrict the County's land use authority or police power in any way with respect to future legislative, administrative or other actions by the County.
- 20.3 **Entire Agreement.** This Agreement constitutes the entire agreement and understanding of the Parties hereto with respect to the subject matter contained herein. All prior agreements or understandings, oral or written, are merged into this Agreement and are of no further force or effect.
- 20.4 **Computation of Time.** The time in which any act is to be done under this Agreement is computed by excluding the first day, and including the last day, unless the last day is a holiday or Saturday or Sunday, and then that day is also excluded. The term "holiday" shall mean all holidays as specified in Sections 6700 and 6701 of the California Government Code. If any act is to be done by a particular time during a day, that time shall be Pacific Time Zone time.
- 20.5 **Counterparts.** This Agreement may be executed in counterparts and by facsimile or electronic signatures, and when joined together, all counterparts shall constitute one agreement, which shall be binding on all of the Parties, even though all signatures may not be on one original or the same counterpart.

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- 20.6 **Amendment.** This Agreement may only be modified or amended by a written amendment thereto executed by all of the Parties.
- 20.7 **No Admission.** Neither the acceptance nor execution of this Agreement constitutes an admission of liability by any Party, nor shall it be construed as such.
- 20.8 **Notice.** Any notice, request, claim, demand or other communication required hereunder ("Notice") shall be in writing and shall only be effective upon delivery in person, by overnight courier with receipt requested, by facsimile transmission with confirmation of transmission or by registered or certified mail (postage pre-paid, return receipt requested) to the Party designated for receipt of the Notice upon such Party's actual receipt of the Notice.

To County:

Charles J. McKee, County Counsel
Jesse J. Avila, Deputy County Counsel
168 W. Alisal Street, Third Floor
Salinas, CA 93901
(831) 755-5045
(831) 755-5283 (facsimile)

To Petitioner:

Pamela H. Silkwood
Horan Lloyd, A Professional Corporation
28365 Carmel Rancho Blvd.
Carmel, CA 93923
(831) 373-4131
(831) 373-8302 (facsimile)

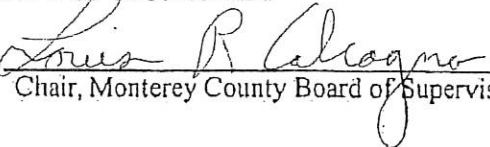
- 20.9 **Successors and Assigns.** This Agreement shall inure to the benefit of and be binding upon the Parties, and their respective heirs, administrators, successors, assigns, agents, employees, officers, partners and directors. Nothing in this Agreement, express or implied, is intended to confer upon any person, other than the Parties or their respective successors and assigns, any rights or benefits under or by reason of this Agreement.
- 20.10 **No Waiver.** The failure of any Party to enforce any of its rights arising by reason of any breach of covenant on the part of any other Party will not constitute a waiver of such breach. No custom or practice which exists or arises between or among the Parties in the course of administering this Agreement will be construed to waive any Party's rights to (i) insist upon the performance by any other Party of any covenant in this Agreement or (ii) exercise any rights given it on the account of any breach of such covenant. A waiver of any particular breach will not be deemed to be a waiver of same or any other subsequent breach.

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- 20.11 **Headings.** The descriptive headings used in this Agreement are for convenience only and shall not affect the meaning of any provision of this Agreement.
- 20.12 **Cooperation.** Each Party agrees to cooperate with the other in implementation of this Agreement.


Date: 1/28/14

COUNTY OF MONTEREY

By: 
Chair, Monterey County Board of Supervisors


Date: 1/27/14

APPROVED AS TO FORM:
CHARLES J. MCKEE, MONTEREY COUNTY COUNSEL

By: 
Jesse J. Avila
Deputy County Counsel

Date: 1/27/14

CARMEL RIO ROAD, LLC

By: 
Brian Clark
Member

Date: 1/27/14

APPROVED AS TO FORM:
HORAN LLOYD, A PROFESSIONAL CORPORATION

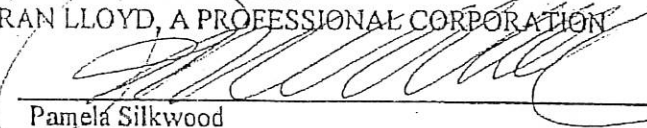
By: 
Pamela Silkwood
Attorneys for Petitioner/Plaintiff
Carmel Rio Road, LLC

Exhibit A

EXHIBIT
A

MEMORANDUM

OFFICE OF THE COUNTY COUNSEL
COUNTY OF MONTEREY

DRAFT CONFIDENTIAL SETTLEMENT COMMUNICATION

DATE: October 8, 2013

SUBJECT: Offer to Settle
Existing Litigation—*Carmel Rio Road, LLC, v. County of Monterey*,
Monterey County Superior Court Case No. M 118773

The Board has authorized settlement of the litigation consistent with the following terms:

1. Carmel Rio's principals must accept these terms in writing without waiver, condition, or equivocation. Any counter offer (whether couched as a "clarification" or otherwise) is deemed a rejection.
2. Carmel Rio accepts this offer in writing delivered to the County Counsel's office (Attention Deputy Jesse Avila) no later than noon on Thursday, October 10, 2013.
3. Have signed and finalized settlement agreement by 10/31/13
4. Board will consider approval of 31 unit subdivision on-site without a general plan amendment (maximum 24 market rate + 7 affordable + 0.75 in-lieu fee, per general plan policy and inclusionary housing ordinance)
 - a. Inclusionary Housing Ordinance requires a 20% mix of very low, low and moderate income housing (VL1-1; LI-2; Mod-3). Staff is open to a proposal to re-allocate the required affordable housing distribution, if unusual or unforeseen circumstances can be shown (subject to HAC review and recommendation)
 - b. Per General Plan policy CV-1.10 (requires minimum 25% affordable in order to qualify for density of up to 4 units per acre), one of the seven affordable units could be workforce housing.
 - c. If project proposes more than 28 units (but no more than 31 units), then either (i) no zoning amendment needed if the units are "clustered" and the project includes 8 or more lots, per Sections 21.14.050.A and 21.14.060.A of the Monterey County Code and General Plan Policy LU-1.7; or, (ii) zoning amendment, amending section 21.24.050.A of the Monterey County Code, needed if the units are not clustered. The General Plan Glossary defines "cluster development/subdivision" as "a development/subdivision design where the structures or lots or structures and lots are located on a portion of the land to be developed rather than spread throughout the land."
5. Board to consider certification of EIR and approval of project 12 months from date settlement agreement approved and applicant provides fixed project description

- a. EIR to be prepared and processed as expeditiously as possible. Agreement will require consultant to review and use previously submitted documents where feasible, without delaying processing, and to procure such data and information as consultant deems necessary to expeditiously and competently prepare environmental documents
 - b. Applicant to pay EIR consultant costs: \$50,000 that Applicant previously deposited was consumed by processing and not received for EIR fee
 - c. If County is to adhere to this timeline, Applicant must agree in the settlement agreement to promptly respond to requests for information and documents, and that applicant will not delay or hinder processing.
6. Lawsuit held in abeyance/ suspended and dismissed without prejudice if the County approves a 31 unit project. If Board is able to make findings and approves a project in accord with these terms, suit dismissed with prejudice within 45 days; otherwise, Carmel can resume litigation
 7. If applicant limits the project to 31 units and agrees to the within settlement terms, then County will pay \$80,000 as reasonable attorney's fees
 8. Cannot agree ahead of time which planner will be assigned: will pick planner who Planning believes is in best position to process the project as quickly and competently as possible
 9. No commitment to amend 190 unit cap
 10. County waives application fees, except for cost of processing the EIR, up to time of Resolution approving the project; if project is approved, thereafter applicant will pay fees for condition compliance and monitoring, based on either an hourly fee or the Board-adopted fee in effect at the time of execution of the mitigation monitoring agreement
 11. County selects the EIR consultant per County process (applicant can disqualify one of three potential consultants), having in mind which available consultant is in the best position to deliver appropriate FEIR on time; Applicant enters into reimbursement agreement to pay the cost of the EIR consultant; County will provide the technical reports submitted by Applicant to EIR consultant, and require in its agreement that consultant consider and use where feasible.
 12. County agrees to use applicable forms and information submitted to date; assign a new project number; applicant waives Permit Streamlining Act and CEQA timelines and agrees to timeline(s) in settlement agreement.
 13. No guarantee that the Board will approve any legislative action or approve the project. Board action subject to all public proceedings, Board ability to make all legally required findings, and /or to condition project approval on matters such as:
 - a. Project has adequate access under GP policy CV-3.6,
 - b. Applicant has secured sufficient water to serve the project.

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14. Upon final approval of the settlement agreement, Board rescinds its action denying the project
15. Standard County defense and Indemnity agreement is condition of project approval.

Accepted conditioned upon executed
settlement agreement:



Brian Clark
Member, Carmel Rio Road LLC

Exhibit B

EXHIBIT
B

MONTEREY COUNTY LAND USE FEES
(effective 07/07/2013)

Permit Type	PLAN (1) (2) (0) (12)	File Storage Fee	Technology Fee (13)	PWD Fee (14)	CC	GNU (7)	Total FY13	Notes
Adult Act Application	1,201.16	12.91	77.47	0.00	102.01	44.22	1,928.87	Total includes fee of \$158.86 for Public Dept
Adult Act Contract Public Hearing	64.58	6.46	38.23	0.00	73.16	41.32	1,403.76	
Minor and Major Amendment (no public hearing)	1,936.75	19.37	116.21	0.00	91.46	60.05	2,224.64	
Minor Subdivision Tentative Map (existing sewers)	645.82	64.56	387.26	2,387.58	1,646.24	466.66	16,405.17	
Minor Subdivision Tentative Map (new septic or system)	645.82	64.56	387.26	2,387.58	1,646.24	466.66	17,114.46	
Minor Subdivision Vesting Tentative Map (existing sewers)	9,603.71	96.04	591.02	2,387.58	1,896.24	561.50	19,955.87	
Minor Subdivision Vesting Tentative Map (new septic or system)	9,603.71	96.04	591.02	2,387.58	1,896.24	561.50	20,665.15	
Minor Subdivision Vesting Tentative Map Extension (existing sewers)	3,227.91	32.28	193.67	434.59	731.66	162.53	5,005.51	
Minor Subdivision Vesting Tentative Map Extension (new septic or system)	3,227.91	32.28	193.67	434.59	731.66	162.53	5,005.89	
Minor Subdivision Extension (new septic or system)	3,227.91	32.28	193.67	434.59	731.66	162.53	5,004.25	
Minor Subdivision Amendment or Revision (existing sewers)	3,227.91	32.28	193.67	1,005.65	731.66	202.78	7,197.88	
Minor Subdivision Amendment or Revision (new septic or system)	3,227.91	32.28	193.67	1,005.65	731.66	202.78	7,197.88	
Mitigation Monitoring - 1 to 10 measures (11)	0.00	0.00	0.00	0.00	0.00	0.00	0.00	DEPOSIT
Mitigation Monitoring - 11 to 30 measures (11)	0.00	0.00	0.00	0.00	0.00	0.00	0.00	DEPOSIT
Mitigation Monitoring - over 30 measures (11)	0.00	0.00	0.00	0.00	0.00	0.00	0.00	DEPOSIT
Monterey Peninsula Water Mgmt Dist Allocation Tracking	3,227.91	32.28	193.67	0.00	183.91	15.17	543.47	
Oak Woodland Guidelines Consistency Certification	806.98	8.07	48.42	0.00	1,097.49	57.13	2,016.08	CC: 1-2 lots
Parcel Legality Determination - each additional lot > 2 (14)	484.13	4.84	29.95	0.00	265.83	25.59	809.41	CC: per each additional lot
Parcel Map Processing (includes Amended Parcel Map)	3,227.91	32.28	193.67	1,005.65	731.66	0.00	1,470.59	
Plan check fee for building permit	0.00	0.00	0.00	0.00	0.00	0.00	0.00	
Pre/Post Application Conference (\$)	484.20	4.84	29.95	336.04	429.39	411.13	1,686.30	Deposit reflects 3 hr min; \$364.74 WPA, fee for a first fee
Public Service Easement/Amendment	0.00	0.00	0.00	2,171.30	0.00	0.00	2,171.30	
Record of Survey	0.00	0.00	0.00	454.69	0.00	0.00	454.69	
Research (1)	3,227.91	32.28	193.67	1,005.65	731.66	12.91	467.91	DEPOSIT: PWD: \$100.00/hr
Restoration Plan (1)	1,936.80	19.37	116.21	0.00	0.00	56.10	2,130.48	DEPOSIT
Revolving or Code Text Amendments (1)	0.00	0.00	0.00	0.00	0.00	0.00	0.00	See Extraordinary Development Application fee
Road Amendment	495.89	8.07	48.42	2,719.59	365.83	116.69	4,650.46	
Road Name	0.00	0.00	0.00	1,005.65	0.00	0.00	1,005.65	
Signage Easement/Amendment	1,615.26	16.14	96.84	0.00	365.83	50.39	2,152.16	

Exhibit C

Exhibit C
Previously Submitted Documents

- Biological Assessment and Updated Biological Assessment by Rana Creek
- Bierman Hydrologic:
 - Hydrogeological Report
 - 72-Hour Constant Rate Well Pumping, and Aquifer Recovery Test and Pumping Impact Assessment for Dyer Well by Bierman Hydrogeologic
 - Two, 8-Hour Constant Rate Well Pumping and Aquifer Recovery Tests with Pumping Impact Assessment for Travers & Gamboa Wells
- Archeological Report by Archaeological Consulting
- Historic Preservation Museum Interpretation by Kent L. Seavey
- Topographic Survey by Rasmussen Land Surveying
- Bestor Engineers Plans (site, utility, grading & erosion control, aerial)
- Geotechnical Engineering Report and Liquefaction Study by Buena Geotechnical Services, LLC
- Will Serve Letter by Carmel Area Waste Water District
- Mapping and Soil Pesticide Testing by Earth Systems
- Siting, Design & Lighting by Ellsworth Associates Architect and/or Jerrold Lomax, AIA
- Carmel Rio Road LLC Conceptual Site Plan by Design ARC Architecture & Interiors
- Val Verde Mutual Water company WWD Engineering:
 - Exhibit A – Bierman Hydrogeologic Report
 - Exhibit B – Engineer's Technical Report
 - Exhibit C – Project Costs and Financial Capacity Study
 - Exhibit D – Grant Deeds (Proof of Ownership)
 - Exhibit E – Utility Site Plan – Val Verde Subdivision
 - Exhibit F – Confirmed Water Rights
 - Exhibit G – Organizational Chart
 - Exhibit H – Description of Responsibilities
 - Exhibit I – Licensing and Training
 - Map – Val Verde Mutual Water Facilities Plan
- Preliminary Water Use Calculations by Anita Kane, Landscape Architect
- Val Verde Residential Development Traffic Study by Hexagon Traffic Consultants
- Subdivider's Statement with Enclosures:
 - Sub-dividers Statement
 - Project Consultants List
 - Statutory Local & State Wide Disclosures
 - Ownership Info
 - Legal Descriptions
 - Plat Map
 - Aerial Map
- CEQA Compliance Forms by Consultants covering:
 - Aesthetics
 - Agriculture Recourses
 - Air Quality

- Biological Resources
- Cultural Resources
- Geology/Soils
- Hazards & Hazardous Materials
- Hydrology/Water Quality
- Land Use/Planning
- Mineral Resources
- Noise
- Population/Housing
- Public Services
- Recreation
- Transportation/Traffic
- Utilities/Service Systems
- Mandatory Findings of Significance
- MPWMD-related information:
 - Horan Legal Letter (Silkwood) to MPWMD (Ms. Stern) dated 3/10/06 re: water rights and historical amounts
 - DeLay & Laredo MPWMD legal counsel letter dated August 15, 2006 "Historical Water Use Baseline for Alluvial Wells"
 - Clark letter to Ms. Stern, MPWMD, dated 2/9/11 re: Incomplete Water Distribution Application
- Recorded instruments:
 - Ownership deeds
 - Val Verde Easements
- Consistency Analysis of Val Verde Drive Sub-division with Draft 2007 Carmel Valley Master Plan File # GPZ090004 – March 2010
- Other:
 - Ten (10) CD's delivered to RMA Planning (Mr. Mike Novo) 4th quarter of 2013 contents of which are Carmel Rio Road consultant work products
 - Draft Environmental Impact by Carmel Rio Road (Volumes 1, 2 & 3)