EXHIBIT NO. 1
Before the Board of Supervisors in and for the
County of Monterey, State of California

Resolution No.
Resolution of the Monterey County Board of Supervisors denying an appeal by Mr. Brian Clark on the behalf of Carmel Rio Road, LLC from the Planning Commission decision, and denying an application for a Combined Development Permit consisting of:
1) Standard Subdivision of a 7.92 acre property into 31 Market Rate lots and one Inclusionary Housing lot containing 11 Inclusionary units (2 very low, 5 low and 4 moderate); and 2) Administrative Permit and Design Approval for development in the "D" (Design Control) and "S" (Site Review) Zoning Districts. (**GPZ090004, Carmel Rio Road, LLC**)

An appeal by Mr. Brian Clark on the behalf of Carmel Rio Road LLC from the Planning Commission's denial of an application for a Combined Development Permit for a 42-unit subdivision on 7.92 acres on Val Verde Drive in Carmel Valley came on for public hearing before the Monterey County Board of Supervisors on March 27, 2012. 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:** **BACKGROUND** – The project application (GPZ090004), submitted by Brian Clark on behalf of the Carmel Rio Road, LLC ("*applicant*"), consists of a Combined Development Permit consisting of:
1) Tentative Subdivision Map dividing a 7.92 acre property into 31 Market Rate lots and one Inclusionary Housing lot containing 11 Inclusionary units (2 very low, 5 low and 4 moderate); and 2) Administrative Permit and Design Approval for development in the "D" (Design Control) and "S" (Site Review) Zoning Districts.

EVIDENCE:
a) The application was deemed complete as of December 9, 2010, which is 30 days from November 9, 2010, the date the applicant submitted the last of the materials requested on the County's checklist.
b) Monterey County adopted the 2010 General Plan on October 26, 2010. Said plan went into effect on November 27, 2010. Pursuant to Board of Supervisor's action on October 16, 2007 and General Plan Policy LU-9.3, subdivision applications deemed complete after October 16, 2007 are subject to the 2010 General Plan. This application has been considered for consistency with the 2010 General Plan. The 2010 General Plan includes area plans, including the Carmel Valley Master Plan.

c) Interim Ordinance No. 5171, as modified and extended by Ordinance No. 5172 and Ordinance No. 5193, establishes a process for determining General Plan consistency for discretionary projects pending the adoption of applicable programs and ordinances to implement the 2010 General Plan. The ordinance provides that staff shall make a recommendation regarding General Plan consistency to the decision-making body. If a project is found to be inconsistent with the General Plan, the applicant is afforded a reasonable time to revise the proposed development to attain consistency. If the applicant fails to submit a revised development project within the allotted time, the application shall be denied. No permit shall be issued if the proposed development does not conform to General Plan policies.

d) Six letters from County staff dated between September 17, 2009 and October 14, 2011 identified various General Plan/Carmel Valley Master Plan policies with which the project was inconsistent, as determined by staff. A letter dated September 17, 2009 noted that the project was inconsistent with the 1982 General Plan and the then present draft of the General Plan Update #5 (GPU5) including Section 27.3.8B of the Carmel Valley Master Plan. Section 27.3.8B of the Carmel Valley Master Plan was subsequently carried forward in the 2010 General Plan as Policy CV-1.10. The letter also noted that the project required General Plan Amendment and Zone Change requests and that staff strongly recommended that the application be withdrawn. A letter dated April 1, 2010 reiterated that the project was inconsistent with the 1982 General Plan and the present draft of GPU5 and that inconsistency with any of the policies "*would necessitate a recommendation of denial by County Planning staff*." Letters dated June 10, 2010 and August 25, 2010 reiterated that the project required a General Plan Amendment and Rezoning to proceed as designed and gave the applicant several options, including withdrawal of the application. A letter dated September 29, 2011 stated that the proposed project was inconsistent with the 2010 General Plan Policies C-3.6 (Proof of Access), PS-3.1 and PS-3.2 (Long Term Sustainable Water Supply), PS-3.9 and PS-3.13 (Water Yield and Quality), CV-5.3 (Water Reclamation and Conservation) and CV-5.4 (Limit Development to Vacant Lots of Record). In response to a letter dated October 6, 2011 from the applicant's attorney, Pamela Silkwood, a letter from the Planning Department dated October 14, 2011 reiterated that the project was inconsistent with General Plan Policies C-3.6 (Proof of Access), PS-3.13 (Water Yield and Quality) and CV-5.3 (Water Reclamation and Conservation). The letter also noted that, at the request of the applicant, the Environmental Health Bureau deemed the application complete with a recommendation for denial because the applicant had not submitted the information that had been requested to determine consistency with General Plan Policies PS-3.1 and PS-3.2 (Long Term Sustainable Water Supply) and PS-3.9 and PS3.13 (Water Yield and Quality). A memorandum from Monterey County's Redevelopment and Housing Office (dated December 17, 2010) provided an analysis for how to calculate the State density bonus with

the proposed project. In letters dated September 17, 2009, April 1, 2010, June 10, 2010, August 25, 2010, February 28, 2011 and July 5, 2011, County staff notified the applicant that staff could not support the project as proposed and provided options for the applicant to consider.

e) On November 9, 2011, per the process set forth in the Interim Ordinance, the Planning Commission held a public hearing to consider consistency of the proposed project with 2010 General Plan policies. The Planning Commission considered water, access, and land use (e.g. density, clustering) and determined that the project was not consistent with the 2010 General Plan and afforded the applicant 60 days to request a General Plan Amendment or work with staff to revise the application to attain consistency.

f) At the Planning Commission hearing on November 9, 2011, the applicant submitted materials that he contended constituted a Draft EIR for the project. Staff reviewed the materials submitted at the Planning Commission public hearing on November 9, 2011 and determined that they do not meet County standards for a Draft EIR and do not reflect the County's independent judgment. (See Finding 3 below.)

g) The applicant waived the 60-day period in order to be heard as soon as possible by the Planning Commission (e-mail message from the applicant dated December 9, 2011). On January 6, 2012 the applicant submitted an application to the Environmental Health Bureau to replace the Travers well.

h) On January 25, 2012, the Planning Commission denied the Combined Development Permit finding the project to be inconsistent with the 2010 Monterey County General Plan, specifically Policy C-3.6 (Proof of Access) which states: "*The County shall establish regulations for new development that would intensify use of a private road or access easement. Proof of access shall be required as part of any development application when the proposed use is not identified in the provisions of the applicable agreement.*"

i) The applicant provided an easement document showing a non-exclusive, private easement for access and utilities. The easement document describes the easement as follows: "*None [sic] – exclusive right-of-way for all purposes of a road.*" However, other parties to the easement have contested the applicant's rights under the easement to provide access to a more intensive land use than the LDR/1 density. Per Policy C-3.6 of the 2010 General Plan, the County requires resolution that the easement allows the addition of new lots on Val Verde Drive beyond the density that was allowed when the easement was created. To demonstrate consistency with General Plan Policy C-3.6, documentation is required, such as an agreement among all of the easement holders or a final legal determination (e.g. from mediation, arbitration, or court order). On March 2, 2012, while this land use appeal was pending, the applicant filed a complaint in Superior Court seeking a judgment that the Val Verde Drive easement can be used to provide access to the proposed 42 lot subdivision or any other residential or commercial development on the site. No judgment has been issued as of this date.

j) The application, tentative map and supporting materials submitted by the project applicant to the Monterey County Planning Department for the proposed development found in Project File GPZ090004.

2. **FINDING:** **PUBLIC HEARING ON THE APPEAL** – The January 25, 2012 decision of the Planning Commission denying the Carmel Rio Road LLC Combined Development Permit (GPZ090004) was mailed on January 30, 2012. Brian Clark on behalf of Carmel Rio Road LLC timely filed an appeal of the January 25, 2012 Planning Commission decision on February 3, 2012. The appeal was timely brought to public hearing before the Board of Supervisors on March 27, 2012.

EVIDENCE: a) The appeal was filed on the basis that the application is consistent with General Plan and that staff should be directed to do an independent judgment of the Draft EIR that was submitted on November 9, 2011. The appeal has the effect of setting aside the decision of the Planning Commission. (Monterey County Code (MCC), section 21.80.030.)

b) The public hearing before the Board of Supervisors on the appeal is de novo (MCC, Section 21.80.070.B). As part of the de novo hearing, staff brought forward General Plan consistency issues (including land use and density) for consideration by the Board of Supervisors. While the Redevelopment and Housing Office interpreted the General Plan Policy CV 1.10 to allow up to 42 units, the Planning Department interpreted CV-1.10 to allow only up to 28 units. (See discussion in March 27, 2012 staff report to the Board of Supervisors.) The Board of Supervisors is the legislative body with final authority for interpreting General Plan policy, and therefore, the question of interpretation of Policy CV 1.10 was presented to and considered by the Board of Supervisors.

c) On March 7, 2012, the applicant requested a six month continuance of the public hearing on the appeal because "*additional time is needed by the applicant in order to conform to the Planning Staff and Planning Commission's requirement to seek a court judgment for the Val Verde easement*."

d) On March 27, 2011, the Board of Supervisors conducted a duly noticed, timely, fair and impartial public hearing on the appeal. The Board determined that:

- The increased density which may be allowed pursuant to the terms of Policy CV-1.10 is an alternative to state density bonus; the applicant may avail itself of the state density bonus or may seek increased density under the terms of Policy CV -1.10, but the latter is to be a stand-alone density bonus that is not to be applied in conjunction with any other density bonus provision (e.g. Policy CV-1.11 and the State density bonus). (See Finding 4 below.)
- The project as designed does not constitute clustering, which is defined by the General Plan 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*." The project proposes subdivision of the entire project area into individual lots ("spread throughout the

land").

The Board adopted a Resolution of Intention to deny the application and directed staff to bring back a resolution with the appropriate findings for denial of the application and the appeal, on Tuesday, April 24, 2012 on the Consent Calendar.

e) The application, tentative map and supporting materials submitted to the Monterey County RMA-Planning Department for the proposed development found in Project File GPZ090004.

3. **FINDING:** **CEQA (Exempt) -** The project is statutorily exempt from environmental review because the County is denying the application.

EVIDENCE:

a) 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).

b) The Board of Supervisors voted to deny the project. As such, the County action on this project is statutorily exempt.

c) At the November 9, 2011 Planning Commission meeting, the applicant submitted materials which he contended constituted a Draft EIR for the project.

d) CEQA allows the lead agency to choose one of several arrangements for the preparation of a Draft EIR. On option is to accept "*a draft prepared by the applicant, a consultant retained by the applicant or any other person*" (CEQA Guidelines Section 15084(d)(3). However, CEQA requires that *"[b]efore using a draft prepared by another person, the lead agency shall subject the draft to the agency's own review and analysis*" (CEQA Guidelines Section 15084(e)). The Draft EIR that is circulated to the public "*must reflect the independent judgment of the lead agency*" and "*the lead agency is responsible for the adequacy and objectivity of the Draft EIR*." (Ibid.)

e) Staff review of the document submitted by the applicant at the November 9, 2011 Planning Commission meeting found that it does not meet Monterey County standards for a Draft EIR, and it does not reflect the County's independent judgment. The document consists of a compilation and summary of technical reports that have been previously submitted by the applicant, and these reports were prepared for the applicant by consultants without consultation with County staff. The Initial Study in the Appendix does not identify any potentially significant impacts and concludes that a Mitigated Negative Declaration (not an EIR) is required. The information contained in the document is not clearly referenced. Rather, several references are listed at the end of each chapter so the source of the specific information that is summarized in each chapter is unclear. Much of the information that CEQA requires to be contained in a Draft EIR is absent from the document such as an analysis of the alternatives that are identified and the identification of the "Environmentally Superior Alternative." Therefore, the materials submitted at the Planning Commission public hearing on November 9, 2011 do not constitute a Draft EIR. Because the Board is denying the project, an EIR is not required.

4. **FINDING:** **CONSISTENCY** – The project is not consistent with the 2012 General Plan.

EVIDENCE: a) During the course of review of this application, the project has been reviewed for consistency with the text, policies, and regulations in:

- 2010 Monterey County General Plan;
- Carmel Valley Master Plan;
- Monterey County Zoning Ordinance (Title 21); and
- Monterey County Subdivision Ordinance (Title 19).

Conflicts were found to exist. Several communications during the course of review of the project indicated inconsistencies with the text, policies and regulations in these documents. Letters from Planning Department dated September 17, 2009, April 1, 2010, June 10, 2010, August 25, 2010, September 29, 2011 and October 14, 2011 retained as part of the project file (GPZ090004).

b) **General Plan.** The application is inconsistent with the 2010 General Plan. The General Plan was adopted on October 26, 2010 and went into effect on November 27, 2010. Pursuant to Board of Supervisor's action on October 16, 2007 and General Plan Policy LU-9.3, subdivision applications that are deemed complete after October 16, 2007 are subject to the ordinances, policies and standards that are enacted and in effect as a result of the 2010 General Plan. The subject application was submitted on September 3, 2009 and deemed complete as of December 9, 2010 and is subject to the 2010 General Plan.

c) **Land Use.** The underlying land use designation of the site is LDR/1, which allows one unit per acre. Current zoning overlays also apply design review (D), site plan review (S), and a residential allocation zone (RAZ). For the subject project, the land use designation would allow a maximum of seven (7) units.

d) **CVMP**. Carmel Valley Master Plan (CVMP) is a part of the adopted General Plan. Policy CV-1.10 states: "*The Val Verde Drive area is planned for residential use at a basic density of one (1) unit per acre. With suitable clustering, up to two (2) units per acre may be allowed. However, a density of up to four (4) units per acre may be allowed provided that at least 25% of the units are developed for individuals of low and moderate income or for workforce housing. This policy is independent from Policy CV-1.11, and not counted in conjunction with the density bonus identified in that policy*."

The maximum allowable density under this policy is one unit per acre. The Board of Supervisors interprets General Plan Policy CV-1.10 to mean the applicant may obtain increased density under one of the following: the State density bonus applied to the underlying land use designation (LDR/1 in this case); up to 2 units/acre for CV-1.10's density bonus for a clustered project or up to 4 units/acre for qualified low-moderate income projects; or CV-1.11 allowing up to two times the density for qualified projects may be allowed. Furthermore, the Board interprets the phrase "*may be allowed*" in the second and third sentences of Policy CV-1.10 as being at the discretion of the County – not an allowed use.

Low and Moderate Income or Workforce Housing. If the County decides to permit the density bonus allowed if at least 25% of the

units are developed for individuals of low and moderate income or for workforce housing, up to 28 units would be the total number of units permissible under Policy CV-1.10 (4 units/acre provided at least 25% of the units are for individuals of low and moderate income or for workforce housing) and designed as one acre (minimum) lots with a maximum of 4 units/lot pursuant to Section 21.14.050.A of Title 21 (Zoning Ordinance) of the Monterey County Code.

e) **Clustering**. Policy CV-1.10 allows up to 2 units/acre with suitable clustering (up to 15 units). Pursuant to Section 21.14.060.A of the Zoning Ordinance, the minimum lot size in the LDR District is one acre unless otherwise approved as part of a clustered development. Clustering is defined by the General Plan 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*." The Planning Commission and Board of Supervisors determined that the project, as designed, does not qualify as a clustered development. Proposed sizes of the single family lots range from 0.14 acre (6,098 square feet) to 0.37 acre (16,117 square feet). In order to qualify as clustered development, the site would need to be designed to preserve a certain amount of area in some type of open space or agricultural easement.

f) **State Density Bonus.** Section 65915 of the State Government Code allows for an increase in density above the otherwise maximum allowable residential density under existing zoning and general plan designations for qualified projects. In order to qualify for a density bonus under Section 65915, the project must supply certain levels of very low and low income housing (or moderate income in specific circumstances) within the proposed development. The amount of increased density allowed is based on a sliding scale ranging from 20% to 35% above maximum allowable density, depending on the percentage of units that are at the different affordability levels. Under the Board of Supervisors interpretation of Policy CV-1.10, applying the State Density Bonus to the maximum allowable density would result in a total of 10 units.

g) **Stacking Density.** The project applicant requests an increase in the density pursuant to Policy CV-1.10 of the Carmel Valley Master Plan (CVMP) plus a separate and additional density bonus pursuant to Section 65915 of the California Government Code (State Density Bonus Provisions), in other words, to cumulate or stack the density bonus of CV-1.10 and state density bonus. The applicant's proposal is not consistent with Policy CV-1.10 as interpreted by the County. The County's interpretation is consistent with the legislative history of the policy. Policies CV-1.10 and CV-1.11 came, respectively, from Policy 27.3.8B (CV) and Policy 27.3.9 (CV) of the former Carmel Valley Master Plan. The allowance of four units per acre is discretionary, not an allowed use, and per the last sentence of Policy CV 1.10 is meant as an alternative to other available density bonuses. The increased density alternatives under Policy CV-1.10 are not meant to be used in conjunction, or stacked, with other density bonuses such as the State Density Bonus Provisions. The State Density Bonus would only apply to the maximum allowable density

under the base land use designation of one unit per acre (7 units). In other words, depending on the affordability of the units, the applicant would be entitled to 35% more density, or up to 10 units (e.g., seven one acre minimum single family lots with one lot containing three units). Alternatively, under the increase in density under Policy CV-1.10 the applicant would be entitled to up to 28 units, depending on the affordability levels and clustering.

h) The application, tentative map and supporting materials submitted to the Monterey County Planning Department for the proposed development found in Project File GPZ090004.

5. **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:

1. That the proposed map is not consistent with the applicable general plan and specific plans.
2. That the design or improvement of the proposed subdivision is not consistent with the applicable general plan and specific plans.
3. That the site is not physically suitable for the type of development.
4. That the site is not physically suitable for the proposed density of development.
5. 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.
6. That the design of the subdivision or type of improvements is likely to cause serious public health problems.
7. 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.

Several of these findings for denial are made and supported by substantial evidence.

EVIDENCE: a) **Consistency** – The project, as designed, is not consistent with the 2010 Monterey County General Plan nor the Carmel Valley Master Plan (*see Finding 4*).

EVIDENCE: b) **Design** – The subdivision design is not consistent with the lot design standards of Section 21.14.060.A of the Zoning Ordinance (*see Finding 4*).

EVIDENCE: c) **Site Suitability** – The site is not suitable for the proposed project including the type and density of development (*see Findings 4.a and 4.b*). The proposed density exceeds the allowable density for the site. The proposed density results in development which is incompatible with the surrounding single-family residential use.

d) **Public Health –** The project proposes to establish a water system for the water supply. Pursuant to California Code of Regulations, Title 22, Article 2. Water Works Standards Section 64334, the water system proposed for this project must have two water sources that meet all of the required regulations. Although there are two existing wells on the property, one of the wells (Travers) does not meet the well control zone requirements due to the lack of an easement with the neighboring property and the sewer main location in Val Verde

Drive. On January 6, 2012, the applicant submitted a well permit application to the County Environmental Health Bureau to replace the Travers well. On March 3, 2012, the Environmental Health Bureau issued a permit for the replacement well. Pursuant to Article 3, Water Sources Section 64560.a.2, each well requires a minimum 50 foot radius well control zone for reasons of public health and safety. To provide the required well control zone, the subdivision would need to be redesigned to provide access for water system operation and maintenance. The subdivision as proposed would not provide the required 50 foot radius well control zone, and therefore, as proposed, the project does not meet public health standards.

EVIDENCE: e) The application, tentative map and supporting materials submitted by the project applicant to the Monterey County Planning Department for the proposed development found in Project File GPZ090004.

6. **FINDING:** **DISAPPROVAL OF HOUSING DEVELOPMENT** – Denial of this project does not violate the Housing Accountability Act (Government Code Section 65589.5).

EVIDENCE: a) The proposed project does not meet the definition of "*housing for very low, low or moderate income households*" as defined by Government Code Section 65589.5 because less than 20% of the proposed units are for lower income households. The project consists predominately of market rate units (31 market rate units, 2 very low, 5 low and 4 moderate).

b) The project is inconsistent with the General Plan and zoning, as discussed above, and the County has adopted an updated Housing Element that has been certified by the State Department of Housing and Community Development. (Monterey County 2009-2014 Housing Element, adopted by the Board of Supervisors on June 15, 2010.).

c) The certified Housing Element does not identify the project site as a site that is suitable or available 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. (Implementation Action H-3.c of the Housing Element).

DECISION

NOW, THEREFORE, based on all of the above findings and evidence and the administrative record as a whole, the Board of Supervisors does hereby: deny the appeal by Brian Clark on behalf of Carmel Rio Road, LLC from the Planning Commission's denial of the application by Carmel Rio Road LLC for a Combined Development Permit (GPZ090004); and deny the application by Carmel Rio Road, LLC for a Combined Development Permit (GPZ090004) consisting of: 1) Standard Subdivision of a 7.92 acre property into 31 Market Rate lots and one Inclusionary Housing lot containing 11 Inclusionary units (2 very low, 5 low and 4 moderate); and 2) Administrative Permit and Design Approval for development in the "D" (Design Control) and "S" (Site Review) Zoning Districts.

PASSED AND ADOPTED on this 24th day of April 2012, by the following vote, to-wit:

AYES:

NOES:
ABSENT:

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___ for the meeting on _____.

Dated:

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

By _____
Deputy

NOTICE IS HEREBY PROVIDED that the time within which judicial review must be sought of this final decision is governed by section 1094.6(f) of the California Code of Civil Procedure and is 90 days from the date of mailing of this resolution.