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

JOHN & TAMMY LEWIS/LB HOMEBUYERS, INC, (CC200010 and CC200011)
RESOLUTION NO. 21-365

Resolution of the Monterey County Board of Supervisors:
a. Finding that the project is statutorily exempt per California Environmental Quality Act (CEQA) Guidelines Section 15270 (a).
b. Denying the appeal of the administrative decision of the Director of Housing and Community Development (HCD) to deny the request for two (2) Unconditional Certificates of Compliance for Assessor's Parcel Number (APN) 416-022-006-000 (Subject Property); and
c. Authorizing the Director of HCD to issue a single Unconditional Certificate of Compliance (UCoC) for the Subject Property and record the UCOC with the County Recorder subject to the submittal of the appropriate recording fee by the property owner.

Project Name: JOHN & TAMMY LEWIS/LB HOMEBUYERS LLC.

HCD Planning File Numbers: CC200010 and CC200010

APN: 416-022-006-000

Project Location: 27612 Schulte, Carmel, California, CA

Proposed CEQA Action: Statutorily Exempt per California Environmental Quality Act (CEQA) Guidelines section 15270 – (a) - CEQA does not apply to projects which a public agency rejects or disapproves.

WHEREAS, staff has evaluated whether or not past conveyances have demonstrated the grantors' intent to create separate lots for development (i.e., a land division) or whether or not past conveyances were intended as an exchange of property, similar to an LLA, between the respective property owners, and whether or not the request for two UCoCs would be consistent with state and local regulations. Staff reviewed the chain of title for the original 4.16 acre area and did not conclude that the conveyance history resulted in the creation of two separate parcels for development. In 1949, an exchange of property occurred between a 4.16 acre parcel and an adjoining 4.06 acre parcel, which resulted in one of the adjusted parcels being 0.36 acres in size. This 1949 conveyance reduced the previously adjusted 0.36 acre area to 0.35 acres. In 1962, another conveyance created the Subject Property in its current configuration consisting of 2.03 acres.

WHEREAS, the conveyance established a parcel not in compliance with the County Ordinance since the conveyance reduced the land in a non-conforming manner. In this case, a conditional certificate would be proper pursuant to Section 19.14.055 MCC not unconditional certificates of compliance. Moreover, there would be no such violation of if the conveyance history is understood as a boundary or lot line adjustment (LLA). In 1962, neither the SMA nor local ordinance regulated or even contained the concept of an LLA. SMA Section 66412 was not amended until 1976 (effective January 1, 1977) to add LLAs as an exclusion to the SMA.

WHEREAS, prior to 1977, there was no codified process regarding LLAs. Boundaries that needed to be changed could be adjusted simply by one neighbor deeding a sliver, strip, or parcel to an adjoining neighbor. These slivers, strips, or parcels were not intended by the parties to be developed separately but were understood to be made a part of, or merged with, the adjoining neighbor's land holding. Although these conveyances often did not meet the minimum lot size required by County Zoning Ordinance, they were not considered to be illegal lots by the County but rather as a portion being merged with a neighboring lot. In most cases, the County Assessor reassigned new APNs to the merged parcel.

WHEREAS, staff has summarized the Parcel Transfer History as follows:

• 1944 - Powers to Gribben & Parks (V 843 OR 336).

• 1949 – Gribben & Parks to Clarabut (V 1143 OR 352) resulting into 4.16 acres.

• 1949 – Clarabut to Powers (V 1152 OR 124) reducing the parcel by 0.17 acres, being now 3.99

acres.

• 1952 – Patton to Clarabut (V 1381 OR 118) an adjoining parcel 0.36 acres.

• 1961 – Clarabut to Cook & Peterson (V 2146 OR 549) 3.99 acres and 0.36 acres.

• 1962 – Cook & Peterson to Coast Counties Title (R 83 OR 442) 3.99 acres and 0.36 acres.

• 1962 – Coast Counties Title to Cook (R 83 OR 444) 3.99 acres and 0.36 acres, except 2.322 NE'ly portion of property. This exception area was a portion of both of the 3.99 acres and 0.36 acres.

WHEREAS, staff has reviewed the available permit history which supports the conclusion that the 1962 deed to Cook (R 83 OR 444) conveyance was understood by the respective owners and their successors in interest to be what is now commonly known as a Lot Line Adjustment (LLA). Site plans submitted for development applications consistently indicate one parcel with one APN. All evidence demonstrates that this parcel fits the pattern of a LLA (i.e., neighbor to neighbor transfer, the transfer parcel does not meet the minimum size to be a legal lot, the grantee neighbor had built or eventually builds over the former lot line, and the property is shown as one parcel on permit applications). Therefore, Parcels I and II described in the deed, as excepted, are considered one legal lot of record.

WHEREAS, the applicant has requested that the County issue a UCoC for the 0.35 acre area and a second UCoC for the remaining 1.68 acre area within the 2.03 acre parcel. If in 1962, the 0.36 acre area was recognized as a separate legal lot, this conveyance would have resulted in a violation of the SMA, which was then a part of the California Business and Professions (B&P) Code. Specifically, B&P Section 11540.1 allowed a county to regulate divisions of land with respect to the minimum area. At the time of the 1962 conveyance, the County's Zoning Ordinance (Ordinance 1964) as applicable to the K-G-B-4, Zoning District required a minimum building site of one acre. Since the 1962 conveyance reduced the 0.36 acre area by 0.01 acres to 0.35 acres, the 1962 conveyance did not comply with the local Zoning Ordinance as applicable to the K-G-B-4, Zoning District in effect at the time of the 1962 conveyance.

WHEREAS, Monterey County Code (MCC) Section 19.14.050(A)(1)(d) provides that a parcel "qualifies for an Unconditional Certificate of Compliance" if:

> At the time the contract, deed, or other document creating the subject parcel was signed, the subject parcel complied with the applicable County ordinances then in effect, including the parcel size required by the then applicable zone district.

WHEREAS, in 1949, neither the SMA nor local ordinance regulated or even contained the concept of an LLA. Government Code Section 66412 of the SMA was not amended until 1976 (effective January 1, 1977) to add LLAs as an exclusion to the SMA. Further, the 1962 conveyance which reduced the 0.36 acre area to 0.35 acres resulted in a parcel which was not in compliance with the County Ordinance and applicable Zoning because the conveyance further reduced the area of a non-conforming parcel in violation of the SMA and the local Zoning Ordinance as applicable to the corresponding K-G-B-4, Zoning District, which required a one acre minimum, in effect at the time of the 1962 conveyance.

WHEREAS, prior to 1977, there was no codified process regarding LLAs. Boundaries that needed to be changed could be adjusted simply by one neighbor deeding a sliver, strip, or parcel to an adjoining neighbor. These slivers, strips, or parcels were not intended to be developed separately but were understood to be made a part of, or merged with, the adjoining neighbor's land. Although these conveyances did not always meet the minimum lot size required by the County Zoning Ordinance and corresponding minimum acreage in effect at the time, the resulting reconfigured areas were not considered to be illegal lots by the County. Instead, these conveyances between neighbors were considered as an area of property being merged with a neighboring lot.

WHEREAS, Civil Code Section 1093 does not apply to fractional parcels. Although the legal description for the 2.03 acre parcel contains two separately described parcels, it also contains an area excepting a portion of both parcels. The effect of this exception results in fractional parcels, with neither parcel being truly separately described. Therefore, "separate and distinct legal descriptions" do not exist in order to qualify for the anti-merger provision of Civil Code Section 1093 which provides as follows:

> Civil Code Section 1093.
> Absent the express written statement of the grantor contained therein, the consolidation of separate and distinct legal descriptions of real property contained in one or more deeds, mortgages, patents, deeds of trust, contracts of sale, or other instruments of conveyance or security documents, into a subsequent single deed, mortgage, patent, deed of trust, contract of sale, or other instrument of conveyance or security document (whether by means of an individual listing of the legal descriptions in a subsequent single instrument of conveyance or security document, or by means of a consolidated legal description comprised of more than one previously separate and distinct legal description), does not operate in any manner to alter or affect the separate and distinct nature of the real property so described in the subsequent single instrument of conveyance or security document containing either the listing of or the consolidated legal description of the parcels so conveyed or secured thereby.
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> This section does not constitute a change in, but is declaratory of, the existing law.
> (Added by Stats. 1985, Ch. 911, Sec. 1.)

WHEREAS, in *The PEOPLE ex rel. Edmund G. BROWN, Jr., as Attorney General, etc. et al., Plaintiffs and Appellants, v. TEHAMA COUNTY BOARD OF SUPERVISORS et al.*, Defendants and Appellants., No. C049048.*Brown v. Tehama*, 56 Cal. Rptr. 3d 558, 149 Cal. App. 4th 422, Court of Appeal, Third District, California (March 16, 2007, As Modified April 11, 2007) the Court stated:

> Civil Code section 1093 was not enacted until 1985 (Stats. 1985, ch. 911, § 1, p. 2905), long after the conveyances at issue here; however, the Legislature declared that the statute did "not constitute a change in, but is declaratory of, the existing law." (Civ. Code, § 1093.) No party disputes the accuracy of this declaration. As will be seen, while we have reason to question the declaration's accuracy, there is no need here to actually determine whether section 1093 accurately expresses the law as it was before 1986. Accordingly, we will assume for purposes of this case that it does.
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> In the construction of boundaries, the intention of the parties is the controlling consideration. [Citation.] Whenever possible, a court should place itself in the position of the parties and ascertain their intent, as in the case of any contract. As stated in *Miller & Lux, Inc., v. Secara*, 193 Cal. 755 [227 Pac. 171], `Intention, whether express or shown by surrounding circumstances, is all controlling . . .'" (*Machado v. Title Guarantee and T. Co.* (1940) 15 Cal.2d 180, 186.)
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> [E]xtrinsic evidence is always admissible to explain the calls of a deed for the purpose of their application to the subject-matter, and thus to give effect to the deed. [Citation.] In construing a doubtful description in a grant, the court must assume as nearly as possible the position of the contracting parties, and consider the circumstances of the transaction between them, and then read and interpret the words used in the light of these circumstances. (*Thompson v. Motor Road Co.* (1890) 82 Cal. 497, 500.)

WHEREAS, in *Brown v. Tehama (2007)* 149 Cal. App. 4th 122 (March 16, 2007), the California Court of Appeals ruled that the anti-merger rule in Civil Code section 1093 does not apply to fractional parcels.

> Moreover, we are particularly reluctant to extend the rule stated in Civil Code section 1093 to situations beyond the scope of the statutory language because, notwithstanding the Legislature's assertion in the statute, we have reason to question whether the rule stated in the statute actually existed before the statute was enacted. No one has cited, nor have we found, any authority (other than Civil Code section 1093 itself) supporting the assertion that before 1986, a consolidated legal description used in a deed to convey two or more parcels that had previously been separately and distinctly described in one or more instruments of conveyance or security documents could not be deemed to merge the preexisting parcels absent an express written statement of the grantor contained in the later deed. In other words, we have found no evidence that the rule stated in Civil Code section 1093 was the law before the statute was enacted. As far as we can determine, historically the law that governs the interpretation of deeds has been that "the intention of the parties is the controlling consideration" (Machado v. Title Guarantee and T. Co., supra, 15 Cal.2d at p. 186), and "[i]n construing a doubtful description in a grant, the court must assume as nearly as possible the position of the contracting parties, and consider the circumstances of the transaction between them, and then read and interpret the words used in the light of these circumstances" (Thompson v. Motor Road Co., supra, 82 Cal. at p. 501). This law did not make an express statement of merger by the grantor an absolute prerequisite to finding an intent to merge two or more previously separate parcels. (Emphasis Added).

> The Legislature's assertion that a statute is declaratory of existing law does not make it so, if the law found in the code books and case books does not in fact support that assertion. Nevertheless, because the validity of Civil Code section 1093, as it applies to the situations specifically described in the statute, has no bearing on the outcome of this case (as will be shown), we need not actually determine whether the Legislature's assertion in the statute was accurate. We do, however, conclude the apparent absence of any law consistent with the antimerger rule in Civil Code section 1093 prior to the statute's enactment is further reason for us to decline the county defendants' request that we recognize an analogous antimerger rule that applies to fractional parcels that have never before been separately and distinctly described, and that we apply that rule to transactions that occurred more than 100 years ago. (Emphasis Added).

WHEREAS, when a request is made to a local agency by a property owner for a determination of whether a property complies with the provisions of the SMA and local ordinances, the local agency must issue either an Unconditional Certificate of Compliance (UCoC) or a Conditional Certificate of Compliance (CCoC) pursuant to California Government Code Section 66499.35 of the SMA and local ordinances. Chapter 19.14 of the Monterey County Subdivision Ordinance sets forth the process for parcel legality status determinations and the criteria for issuance of certificates of compliance. The criteria for issuance of UCoCs is set forth in MCC Section 19.14.050. The criteria for CCoCs is set forth in MCC Section 19.14.055.

WHEREAS, issuance of a UCoC or CoC does not guarantee that a parcel is either usable or buildable. At the time of the 1962 conveyance, the County's Zoning Ordinance (Ordinance 1964) as applicable to the K-G-B-4, Zoning District required a minimum building site of one acre. Since the 1962 conveyance reduced the 0.36 acre area by 0.01 acres to 0.35 acres, the 1962 conveyance did not comply with the local Zoning Ordinance as applicable to the K-G-B-4, Zoning District in effect at the time of the 1962 conveyance. Therefore, the subject request for two (2) UCoCs is subject to Government Code Section 66499.35 (b) which provides as follows:

> Government Code Section 66499.35 (b)
>
> (b) If a local agency determines that the real property does not comply with the provisions of this division or of local ordinances enacted pursuant to this division, it shall issue a conditional certificate of compliance. A local agency may, as a condition to granting a conditional certificate of compliance, impose any conditions that would have been applicable to the division of the property at the time the applicant acquired his or her interest therein, and that had been established at that time by this division or local ordinance enacted pursuant to this division…. (Emphasis Added).
>
> Compliance with these conditions shall not be required until the time that a permit or other grant of approval for development of the property is issued by the local agency.

WHEREAS, Government Code Section 66499.35 of the SMA states that conditions, "…which would have been applicable to the division of the property at the time applicant acquired his or her interest therein…" should be applied. This provision of State law has been implemented by MCC section 19.14.055 (A)(1) which states:

> If applicant was not the owner at the time of the initial violation, the County shall issue and record a Conditional Certificate of compliance imposing such conditions as would

have been applicable to the division of the property at the time applicant acquired his or her interest therein.

WHEREAS, the current owner acquired their ownership interest in the Subject Property consisting of 2.03 acres on December 12, 2019; therefore, conditions which would have been applicable to the division of the property in 2019 apply to the Subject Property. Therefore, a UCoC should be issued for the Subject Property with conditions which would have been applicable to the division of the property on December 12, 2019.

WHEREAS, extrinsic evidence can be used to illustrate the intent of the parties and Government Code Section 66499.35 (c) provides that, "A certificate of compliance shall be issued for any real property that has been approved for development pursuant to Section 66499.34." MCC Section 19.14.050. Unconditional Certificates of Compliance Section A.2. mirrors Government Code Section 66499.35 (c).

WHEREAS, MCC Section 19.14.050.A.2 provides as follows:

2. The parcel in question has been "approved for development" pursuant to Government Section 66499.34:

a. By issuance of a permit or grant of approval for development of the parcel in question; or

b. By improvement that have been completed prior to the time a permit or grant of approval for development was required by the County Ordinances in effect at the time of the improvement; or

c. By improvements that have been completed in reliance upon a permit or grant of approval for development; or

WHEREAS, Monterey County Assessor-Recorder records indicate that the Clarabut House was constructed in 1951. The Clarabut Property was "approved for development" at the time it was improved with a single family dwelling (SFD) which was constructed over the former property line and/or at the time a building permit was issued, if issued, for said SFD in 1951. In 1951, the Clarabut property consisted of 4.35 acres. The construction of the Clarabut House over the former property line between the Powers and Clarabut properties in 1951 provides extrinsic evidence regarding the intent of the parties; meaning, the parties did not intend that the former property line should remain in existence after the slivers of property, consisting of 0.36 acres (conveyed from Powers to Clarabut) and 0.17 acres (conveyed from Clarabut to Powers) were conveyed on August 12, 1949, pursuant to a property exchange between the adjoining properties, similar to an LLA.

WHEREAS, the California Environmental Quality Act (CEQA) Guidelines Section 15270 (a) provides that, "CEQA does not apply to projects which a public agency rejects or disapproves." Therefore, the project is statutorily exempt per CEQA Guidelines Section 15270 (a).

WHEREAS, based on the documents and information found in HCD Planning File No. CC200010 and CC200010 (JOHN & TAMMY LEWIS/LB HOMEBUYERS LLC.; APN 416-022-006-000) and based on the administrative record of proceedings as a whole, the Board finds and determines as follows:

FINDINGS

1. FINDING: **PROCESS -** The County has received a request to issue two (2) Unconditional Certificates of Compliance ("UCoC") for a 0.35-acre parcel and a 1.68-acre parcel (HCD Planning File Nos. CC200010 and CC200011) within Assessor's Parcel Number (APN) 416-022-006-000 (Subject Property).

EVIDENCE:

a) The applicant has requested that the County issue two (2) UCoCs for a 0.35-acre parcel and a 1.68-acre parcel (HCD Planning File Nos. CC200010 and CC200011) within Assessor's Parcel Number (APN) 416-022-006-000 (Subject Property). A letter denying the request for two UCoCs was issued by the Director of Housing and Community Development on August 17, 2021.

b) On August 27, 2021, the applicant submitted an appeal of the administrative determination of the Director of Housing and Community Development to deny the request.

2. FINDING: **MONTEREY COUNTY CODE SUBDIVISION ORDINANCE** – Title 19 – Subdivision Ordinance of the Monterey County Code (MCC) and the Subdivision Map Act (SMA)establish the provisions and procedures to determine whether a particular parcel is legal. MCC Title 19, Chapter 19.14, Section 19.14.045 (B) states in part that "An interested person may apply for a Parcel Legality Status Determination by application pursuant to the procedures set forth in this Chapter." Further, this Section establishes that if a parcel is determined to be legal, an unconditional or conditional certificate of compliance must be issued. MCC Title 19, Chapter 19.14, Section 19.14.045 (B) is consistent with the provisions of the SMA.

EVIDENCE: MCC Chapter 19.14.050, Title 19-Subdivision Ordinance.

3. FINDING: **INCONSISTENT -** The 1962 conveyance of an area less than 1.0 acres, which reduced a 0.36 acre area to a 0.35 acre area, has been found inconsistent with the then applicable Zoning designation of K-G-B-4 (one acre minimum); therefore, said conveyance has been determined inconsistent with the then applicable provisions of Title 19-Subdivision Ordinance and the California Government Code which became the SMA.

EVIDENCE:

a) Pursuant to the requirements of MCC Section 19.14.045 (Parcel Legality Status Determination) and MCC Section 19.14.055 (Unconditional Certificates of Compliance), the Applicant has requested (2) UCoCs for APN 416-022-006-000.

b) The subject property is located at 27612 Schulte, Carmel (APN 416-022-006-000), Carmel Valley Area Plan. The property is zoned (Low-Density Residential, 2.5 acres per unit with Design Control, Site Plan Review, and Residential Allocation Zoning Overlays) LDR/B-6-D-S-RAZ, which allows for conditional/unconditional certificates of compliances prior to granting parcel legality.

c) The subject property is under common ownership within APN 416-022-006-000.

d) During the course of the review of this application, conflicts were found to exist with the SMA and MCC. Issuance of a UCoC relies on a determination concerning a 1962 conveyance of the subject property area. In 1962, if this conveyance were done with the intent to create a separate lot for development, it would have been a violation of the SMA and County Zoning Ordinance 911, as amended by Ordinance 990, and the areas conveyed, which were less than one acre, would have been considered illegal lots. Parcels conveyed or created via grant deed in 1962 were required to meet certain minimum requirements. The areas of property conveyed between adjoining properties, consisting of slivers which were less than one acre, did not meet the minimum acreage requirements pursuant to the applicable one acre minimum K-G-B-4 Zoning designation for the subject property at the time; therefore, the areas conveyed did not comply with the applicable MCC and Government Code requirements which were in effect at that time.

e) The subject property (i.e., APN 416-022-006-000) has consistently been described separately in applicable grant deeds; however, describing parcels separately would only validate individual parcels if both parcels were legally created. Separately describing an illegally created parcel does not make it legal. Additionally, no separate address has ever been requested for or assigned to APN 416-022-006-000. Further, following the 1949 conveyance, the Clarabut house, was built over the former property line in 1951. The fact that the Clarabut house was built over the former property line in 1951 provides extrinsic evidence of the intent of the parties that the former property line was not intended to remain in existence after the 1949 conveyance of the slivers, consisting of less than one acre, to the adjoining property. Further, the address book maintained by PWFP lists the address for the subject property as 27612 Schulte Road, Carmel.

f) All development for the subject property has been connected to APN 416-022-006-000 which consists of 4.16 acres. For every permit issued, either graphically or in written form, the subject property has been represented as one parcel. All the permit history facts support the conclusion that the property described in the 1962 conveyance was understood by the respective owners and their successors in interest to be the result of a conveyance in 1949 that changed the boundary line between two neighboring parcels, similar to what is now commonly known as a lot line adjustment.

g) As described in Evidence d) above, staff reviewed the chain of title for the original 4.16-acre area and did not conclude that the conveyance history resulted in the creation of two (2) separate parcels for development. However, what is now known as a lot line adjustment would have been a legal conveyance. Prior to 1977, parcel boundaries could be adjusted by one owner deeding a sliver, strip, or property area to an adjoining owner. These property area transfers were not necessarily intended by the parties to be separately developed but were added to the adjoining owner's land holdings. Although these conveyances often did not meet the minimum lot size, they were not considered an illegal lot by the County but rather an addition to an adjoining lot, similar to what is commonly known as a lot line adjustment today. The 1949 property

transfers, consisting of the transfer of slivers which were less than one acre, fit the pattern of a lot line adjustment.

h) Based on the preceding information and evidence, the County has determined that the 1949 property transfers did not create separate developable lots or a legal lot of record for those portions or slivers which were transferred between adjoining properties. The County has also determined that the appropriate process to create two (2) separate developable lots would be for the owner to apply for a minor subdivision. Therefore, the County views APNs 416-022-006-000 as one (1) legal lot of record.

i) County staff has reviewed Monterey County HCD-Planning and Public Works Facilities and Parks (PWFP) records and is not aware of any current or active building violations existing on the subject property; therefore, upon application of the owner, the County may issue a single UCoC for the subject 2.03 acre property identified as APN 416-022-006-000.

j) The project was not referred to the Carmel Valley Land Use Advisory Committee (LUAC) for review. Based on the LUAC Procedure guidelines adopted by the Monterey County Board of Supervisors, this application did not warrant referral to the LUAC.

k) The application, project plans, and related support materials submitted by the project applicant to Monterey County HCD-Planning for the proposed development found in Project File CC200010 and CC200010.

4. FINDING: **CEQA (Exempt) -** The project is statutorily exempt from environmental review.

EVIDENCE: a) California Environmental Quality Act (CEQA) Guidelines Section 15270(a) statutorily exempts projects which a public agency rejects or disapproves.

b) The application, project plans, and related support materials submitted by the project applicant to Monterey County HCD-Planning for the proposed development found in Project File CC200010 and CC200010.

DECISION

NOW THEREFORE, BE IT RESOLVED THAT that the Board of Supervisors does hereby:

a. Find that the project is statutorily exempt per California Environmental Quality Act (CEQA) Guidelines Section 15270 (a).

b. Deny the appeal of the administrative decision of the Director of Housing and Community Development (HCD) to deny the request for two (2) Unconditional Certificates of Compliance for Assessor's Parcel Number (APN) 416-022-006-000 (Subject Property); and

c. Authorize the Director of HCD to issue a single Unconditional Certificate of Compliance (UCoC) for the Subject Property and record the UCOC with the County Recorder subject to the submittal of the appropriate recording fee by the property owner.

PASSED AND ADOPTED on this 19th day of October 2021, by roll call vote:

AYES: Supervisors Alejo, Phillips, Lopez, Askew and Adams
NOES: None
ABSENT: None
(Government Code 54953)

I, Valerie Ralph, 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 82 for the meeting October 19, 2021.

Dated: November 5, 2021
File ID: RES 21-179
Agenda Item No.: 27

Valerie Ralph, Clerk of the Board of Supervisors
County of Monterey, State of California

Julian Lorenzana, Deputy