



# County of Monterey

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

## Board Report

---

**File #:** RES 12-0033, **Version:** 1

---

Adopt Resolution to: deny an appeal by Mr. Brian Clark on the behalf of Carmel Rio Road LLC, from the Planning Commission's decision denying Carmel Rio's application for a Combined Development Permit; and deny Carmel Rio's 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.  
(Appeal of denial of a Combined Development Permit - GPZ090004/Carmel Rio Road, LLC, 15 and 26500 Val Verde Drive, Carmel Valley Master Plan)

### RECOMMENDATION:

It is recommended that the Board of Supervisors: adopt the attached resolution (**Exhibit 1**) with findings and evidence to deny the appeal and deny the Combined Development Permit application for a 42-lot subdivision on 7.92 acres on Val Verde Drive in Carmel Valley (GPZ090004).

**PROJECT OVERVIEW:** On January 25, 2012, the Planning Commission denied an application for a Combined Development Permit (Carmel Rio Road, LLC, GPZ090004) for a 42-lot subdivision on 7.92 acres on Val Verde Drive in Carmel Valley citing inconsistency with the adopted General Plan as findings for the denial. On February 3, 2012, the applicant (Brian Clark for Carmel Rio Road, LLC) appealed the Planning Commission's action to the Board of Supervisors. On March 27, 2012, the Board of Supervisors held a public hearing to consider the appeal and the application for the Combined Development Permit (GPZ090004) and 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.

Specifically, 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 under 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. The project is inconsistent with CV-1.10 because, at 42 units, it exceeds the density under any of the above options. In addition, the project as designed does not constitute clustering as defined by the General Plan.

Since the Board of Supervisors meeting on March 27, 2012, the applicant submitted three e-mail messages (see **Exhibit 2**). Below is a summary of the applicant's comments contained in the e-mail messages and staff's responses.

Applicant's Comment 1: Pursuant to Government Code Section 65915, we are requesting a meeting to review a request for two concessions as follows:

- Concession #1: zoning density waiver
- Concession #2: units per acre waiver (Title 21)

Staff Response: If the applicant proposes a project that is consistent with the General Plan and meets the affordability thresholds for eligibility for a density bonus under state law, then we would discuss possible concessions pursuant to the State Density Bonus Law. See Finding #4.f in the attached Resolution (**Exhibit 1**).

Applicant's Comment 2. We did not ask to do affordable housing when we came to Planning to review options. We came in to do a standard subdivision. Planning instructed us that without an affordable housing component of at least 25% and preferably 35% our project would never get approved. We were very clear we did not want to pursue a variance or General Plan amendment process. The first time density ratios or units per acre "none compliance" status determination appeared on the "radar" was at the Board of Supervisors meeting on March 27<sup>th</sup>.

Staff Response: While the Redevelopment and Housing Office interpreted General Plan Policy CV-1.10 to allow up to 42 units inclusive of the state density bonus, the Planning Department staff interpreted Policy CV-1.10 to allow fewer units. The Board of Supervisors is the legislative body with final authority for interpreting General Plan policy. The issue was presented to the Board at the March 27 hearing, at which the applicant had an opportunity to present his point of view. The Board determined that 42 units is inconsistent with this General Plan policy and directed staff to prepare a resolution for denial based on General Plan inconsistency. See Findings #1.d, 2 and 4 in the attached resolution (**Exhibit 1**).

Applicant's Comment 3. The word "stacking" is not in the GPU5 document or State affordable housing regulations for density bonuses. The County did propose to use 42 gross units (34 market rate homes and 8 inclusionary units) in 2010 and 2011.

Staff Response: See response above; see also discussion in the Staff Report for the March 27, 2012 Board of Supervisors' hearing.

Applicant's Comment 4. Reference was made that since GPU5 there may be some new interpretation of CV 1.10 and density bonus on Val Verde Drive from the previous General Plan - if you could let us know those changes are so we can more accurately derive affordable to market rate homes ratios going forward it would be appreciated.

Staff Response: Section 27.3.8B of the Carmel Valley Master Plan was subsequently carried forward in the 2010 General Plan as Policy CV-1.10. Section 27.3.8B reads as follows:

*"The Val Verde Drive area is planned for residential use at a basic density of one unit per acre. With suitable clustering, up to 2 units per acre may be allowed. However, a density of up to 4 units per acre may be allowed provided that 25% of the units are developed for individuals of low and moderate income and are contracted for with the County Housing Authority or for senior citizen units."*

Policy CV-1.10 in the 2010 General Plan 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 underlined wording is new and the Board of Supervisors interprets it to mean that the density bonus allowed under CV-1.10 is not meant to be used in conjunction with, or stacked, with other density bonuses.

Applicant's Comment 5. We discovered errors in the Staff Report to the Supervisors that we'd like corrected.

Staff Response:

Page 2 - paragraph 1 - The exact wording of the easement is quoted in the attached resolution. See Finding 1.i in the attached resolution (**Exhibit 1**).

Page 2 - paragraph 2 - Comment noted. The staff report and resolution acknowledge that the applicant applied for a second well in January 2012.

Exhibit 1 page 3 of 6: Proof of Long Term Sustainable Water Supply - Comment noted. See response above.

Applicant's Comment 6. The one remaining item we were denied on was "access" and we were given two options to become compliant - agreement with all easement holders on Val Verde or court interpretation. So we initiated the judicial action. We have over 50% support of the easement holders on Val Verde to use the road for the project but there is no ordinance that says if you have over 50% approval of the easement holders that suffices.

Staff Response: As detailed in the attached Resolution (**Exhibit 1**), the project is inconsistent with the General Plan policy regardless of the outcome of the lawsuit concerning the Val Verde Drive easement.

Comment 7. The updated biological report was completed on March 23<sup>rd</sup> and is hereby being transmitted to the County. Planning recommended for the EIR we redo/update the report.

Staff Response: Staff did not recommend that the biology report be updated. The updated report has been placed in the project file.

**OTHER AGENCY INVOLVEMENT:** The following agencies have reviewed the project and those that are checked ("✓") have comments and/or recommended conditions:

✓	RMA - Public Works Department
✓	RMA-Office of Redevelopment and Housing
✓	Environmental Health Bureau
✓	Water Resources Agency
✓	Cypress Fire Protection District
✓	Parks Department
✓	Monterey County Sheriff's Department

**FINANCING:** The applicant has paid fees associated with processing a development application and the appeal. Therefore, funding for staff time associated with this project is included in the FY11-12 Final Budget for the Planning Department.

Prepared by: Bob Schubert, Senior Planner, 755-5183

Approved by: Mike Novo, Director of Planning; 831-755-5192  
Benny Young, Director Resource Management Agency

**Attachments:**

Exhibit No. 1 Draft Resolution

Exhibit No. 2 Three E-mail Messages dated March 30, 2012 from Brian Clark