

**PLANNING COMMISSION  
COUNTY OF MONTEREY, STATE OF CALIFORNIA**

RESOLUTION NO. 03019

A. P. # 015-021-036-000

**FINDINGS AND DECISION**

In the matter of the application of  
**Elvira Gamboa (PLN000357)**

WHEREAS: The Planning Commission, pursuant to regulations established by local ordinance and state law, has considered, at public hearing, a Combined Development Permit, a 4.5 acre vacant parcel located at the southwest corner of Carmel Valley Road and Val Verde Drive, east of Carmel Rancho Boulevard in the Carmel Valley Master Plan area, came on regularly for hearing before the Planning Commission on April 9, 2003.

WHEREAS: Said proposal includes:

- 1) Use Permit to allow a quasi-public use in the low density residential zone including site plan and Design Review to allow development of a 64-suite, 78-bed, assisted care living facility consisting of a 3-building complex totaling 43,400 square feet, 35 space parking lot including 4 handicap-accessible spaces, grading totaling 3,000 cubic yards of cut and 3,000 cubic yards of fill, improvements to Val Verde Drive (private right of way) from Rio Road to Carmel Valley Road, and two on-site water detention ponds; and
- 2) Use Permit to allow development on slopes exceeding 30%

WHEREAS: Said Planning Commission, having considered the application and the evidence presented relating thereto,

**FINDINGS OF FACT**

1. **FINDING – INCONSISTENT WITH PLANS/POLICIES:** The proposed Combined Development Permit for an assisted care living facility (PLN000357-Gamboa) is not consistent with all of the applicable goals, policies, and objectives of the Carmel Valley Master Plan (CVMP) and the adopted Monterey County General Plan, which designate the site as “Low Density Residential”.

**EVIDENCE:** The Planning Commission reviewed the project, as contained in the application and accompanying materials, for conformity with:

- a) Monterey County General Plan.
- b) Carmel Valley Master Plan (CVMP).

**EVIDENCE: Land Use.** Carmel Valley Master Plan (CVMP) Policy 31.1.3.1 states that “facilities, classified as either Public Quasi-Public or Special Use (such as schools, churches, hospitals, convalescent homes, rehabilitation centers, hospice facilities, emergency facilities and public facilities such as community halls) may be considered in any land use category provided that they meet the following criteria:

- Low visibility
- Safe and unobtrusive access away from pedestrian traffic areas.
- Low noise impact on surrounding uses.
- Development should follow a rural architectural theme with design review.
- Conform to all other Plan requirements.

The applicant has not sufficiently demonstrated that the project meets all of these criteria including conformance with all other Carmel Valley Master Plan policies, including CVMP Policy 27.3.8B.

**EVIDENCE: Access.** Val Verde Drive is currently a 1-lane, private road with a 60-foot wide right-of-way. CMVP Policies 37.4.1 and 39.2.2.5 encourage land use patterns and design to reduce the need to travel. The project increases vehicle traffic on a private, rural, residential road above levels that would be consistent with a rural residential neighborhood.

**EVIDENCE. Character/Design.** An up scale, 78-bed quasi-public facility is neither rural residential in character, nor is it compatible with the character of the surrounding neighborhood (CVMP Policies 26.1.21 and 26.1.26). The applicant has not sufficiently demonstrated that the proposed project will blend in with the surrounding environment (CVMP Policy 26.1.23). Three large buildings will be highly visible from Carmel Valley Road (CVMP Policy 26.1.28). Possible use of a 60,000-gallon graywater storage system has not been included in the proposed design. In addition, views of the hillside above Carmel Valley Road from the south would be disrupted by the proposed facility (CVMP Policy 26.1.32).

**EVIDENCE: Water.** CVMP Policies 26.1.22 and 54.1.7 require reducing impacts to resources especially water supply. Findings #4 and 5 address water supply and demand. The Monterey Peninsula Water Management District submitted a letter dated March 18, 2003 that questions the effectiveness of the proposed conservation devices (CVMP Policy 6.1.5). On January 14, 2003, the Board acknowledged its intent to allocate 4.8 acre feet of water for this project pending final action pursuant to Finding #4. The applicant has not provided sufficient information to assure that the project will not exceed this water allocation. The applicant proposes to possibly use a graywater system to irrigate exterior landscaping, but has not proven how the design fits in with the proposed facility if it were installed.

**EVIDENCE. Area Development.** The project exceeds densities listed in the residential policies of the Carmel Valley Master Plan. The density and nature of the proposed quasi-public use is not consistent with the residential land use densities designated by the Carmel Valley Master Plan (CVMP Policies 26.1.33 and 27.3.8B). Carmel Valley Master Plan Policies 27.3.8B and 27.3.9 establish density limits for residential development on Val Verde Drive to a maximum of four units per acre for senior housing that does not meet affordable limits. The project proposes to develop 64 units on 4.5 acres (14.2 units/acre).

**EVIDENCE: Transportation.** The Planning Commission finds that there is fair argument that the traffic report for the proposed project does not adequately address all potential traffic impacts and, accordingly, whether the applicant has sufficiently demonstrated that the proposed project meets the policies that emphasize reduced congestion in this area.

**EVIDENCE: Floodplain.** CVMP Policy 16.2.11 restricts new development in the flood prone area. CVMP Policy 16.2.12 encourages transferring development away from the floodway fringe. The proposed project includes development in the 100-year floodplain and has not adequately demonstrated that there will not be drainage impacts to downhill properties where there has been historical evidence of flooding.

**EVIDENCE: 30% Slope.** Policy 26.1.10.1 (CVMP) prohibits development on 30% slopes except where said development would further the goals and policies of the Carmel Valley Master Plan.

1. **FINDING –NON-COMPLIANCE WITH REGULATIONS:** The proposed application (PLN000357-Gamboa) does not comply with all applicable requirements of Title 21 of the Monterey County Codes (MCC).

**EVIDENCE:** Materials in file PLN00357-Gamboa.

**EVIDENCE: Project Site.** The project site consists of a 4.5-acre, undeveloped parcel located at the southwest corner of Carmel Valley Road and Val Verde Drive, east of Carmel Rancho Boulevard (Assessor's Parcel Number 015-021-036-000). The project area includes the Val Verde Drive right-of-way from Carmel Valley Road to Rio Road.

**EVIDENCE: Codes.** The Planning Commission reviewed the project, as contained in the application and accompanying materials, for conformity with the requirements and standards of Chapters 21.14, 21.40, 21.44, 21.45, 21.58, 21.60, 21.62, 21.64.130, 21.64.230, 21.64.260, 21.74, 21.76, 21.78 and 21.80 of the Monterey County Zoning Ordinance (Title 21).

**EVIDENCE: Zoning.** The project site is zoned “LDR/B-6-D-S” or Low Density Residential, design and site plan review required. This parcel is currently restricted from further subdivision and is located within the Carmel Valley Master Plan area.

**EVIDENCE: Project Description.** This project (Gamboa/PLN000357) consists of a Combined Development Permit including multiple Use Permits, Site Plan Review, and Design Review to allow development of a 64-suite, 78-bed, assisted care living facility consisting of: a 3-building complex totaling 43,400 square feet; 36 space parking lot including four handicap-accessible spaces; 3,000 cubic yards of cut and 3,000 cubic yards of fill; improvements to Val Verde Drive (private right of way) from Rio Road to Carmel Valley Road; use of a graywater system for landscaping; two on-site water detention ponds; and development in areas exceeding 30%. A total of 30 employees would work at the facility.

**EVIDENCE: Land Use.** Section 21.14.050.B MCC allows quasi-public uses in the LDR zone with a Use Permit. Chapter 21.40 establishes regulations for quasi-public uses. Section 21.40.10 states that the purpose of public/quasi-public uses is to “serve the public at large”. Assisted care facilities are not listed, and the Planning Commission finds that the nature of the proposed project does not qualify as a public/quasi-public use that “serves the public at large” because it is a commercial facility affordable only to a segment of the population. Therefore, this assisted care facility is not “similar in nature” to the types of uses listed in these Sections.

**EVIDENCE: Floodplain.** The Federal Emergency Management Agency (FEMA) map for this area is Panel 180 of 1025, Community-Panel Number 060195 180E, which was amended August 5, 1986. Based on this map, the subject property is located mostly in a Zone B (500-year flood) and partly in Zone A8 (100-year flood). The base flood elevation shown on the FEMA map is 34-35 feet within Zone A8. The plans note the flood elevation line to be 35.2 feet, which would include the southwest corner of the site. Section 21.14.050.J MCC allows development in the Carmel Valley Floodplain, pursuant to Section 21.64.130 MCC. Section 21.64.130 MCC defines the applicable area for requiring a Use Permit for development in the floodplain. The subject property does not fall within the applicable area that requires a Use Permit.

**EVIDENCE. 30% Slope.** There is an area at the southern end of the site where the slope exceeds 30%. An exception to allow development in this area requires a separate use permit in accordance with Section 21.64.230 MCC. Section 21.64.230.E.1 MCC establishes required findings for development on slopes of 30% or more. The Planning Commission does not address these findings because it recommends denial on other grounds.

**EVIDENCE: Oak Trees.** Section 21.64.260 MCC requires a tree removal permit for any oak tree over 6-inches in diameter measured two feet above the ground. Improvements to Val Verde Drive have been designed to avoid the oak trees located within the right-of-way.

**EVIDENCE: Design & Site Plan Review.** Development within the “D” Design Control zoning district is subject to visual control pursuant to Chapter 21.44 MCC. Development within the “S” Site Plan Review zoning district is subject to reviewing the location of development pursuant to Chapter 21.45 MCC. The proposed development will be visible from Carmel Valley Road as well as other public roads in the area. The proposed project is not compatible with the rural character of development along Val Verde Drive.

2. **FINDING – SITE SUITABILITY:** The site is not physically suitable for the proposed use.

**EVIDENCE:** Planning staff conducted on-site inspections in July, September, and November 2002 plus January 2003.

**EVIDENCE: Land Use.** The Val Verde Drive neighborhood is inter-mixed with single family homes and agricultural uses. The nature and intensity of the proposed assisted care living facility is not consistent with, or suitable for, this area.

**EVIDENCE: Drainage.** Long time residents in this area have shown photographs and provided testimony of historical flooding problems along Val Verde Drive. Although the subject property is not included as part of Community Service Area #50, Philip Williams & Associates completed a report for flooding impacts that include the lower part of Val Verde Drive. This report identifies the need for flood improvements in this area, but the plan has not been approved. The proposed Site Plan includes a storm drain line that runs to point where no line currently exists. Without having a drainage plan that shows the proposed improvement at this time, the Planning Commission cannot determine that no flooding impacts will occur.

**EVIDENCE: Water.** Questions and concerns have been identified relative to the quantity of water available for such uses and the ability of a project this size to operate within the limits of water availability. See Findings

#4 and 5 and the supporting evidence. No additional water is available if the project cannot operate within 4.8 acre feet of water per year. The applicant has not provided sufficient evidence that the project can operate within the water allocation limit.

**EVIDENCE: Traffic.** This neighborhood, including the subject property is accessed via Val Verde Drive, which is currently a 1-lane, private, dirt road. Access to Val Verde Road is provided via Rio Road and the subject project would create an increase in traffic that would impact traffic on a local, neighborhood, residential street. This additional traffic includes visitor traffic, delivery of goods and services, plus emergency (ambulance) response to the site.

**EVIDENCE:** Public testimony on record for the March 26, 2003 Planning Commission hearing.

3. **FINDING – WATER ALLOCATION:** The applicant has not demonstrated that there is sufficient water allocated for the proposed project, based on the allocation system established by Monterey County and the Monterey Peninsula Water Management District.

**EVIDENCE:** Development of properties located in the Monterey Peninsula Water Management District (“District”) depends in large part, on the availability of water pursuant to an allotment system established by the District based on pro-rationing of the known water supply for each of the jurisdictions served by the California-American Water Service Company.

**EVIDENCE:** In 1993, the Board of Supervisors adopted a water allocation plan (63.71 acre feet) for the unincorporated areas of Monterey County based upon the Monterey Peninsula Water Management District’s water allotment system within its jurisdiction.

**EVIDENCE:** In response to the Gamboa project (PLN000357), the Board of Supervisors adopted Resolution No. 01-497 (December 11, 2001) amending the water allocation plan’s list of priority land uses to include assisted care facilities as follows:

4. Remodels/additions to single family units and commercial projects.
5. First units on existing residential and commercial lots of record.
6. Affordable Housing.
7. Senior Citizen/Caretaker Units.
8. Assisted Care Living Facilities.
9. Special Projects.

This action did not approve any particular project or proposal; however, it made it possible for this type of project (assisted care facility) to potentially receive all or part of the 4.8 acre feet originally allocated to the Carmel Greens project in 1994.

**EVIDENCE:** Historically, 4.8 acre feet of water was set aside from pre-moratorium (“pre-Paralta”) water. On January 14, 2003, Monterey County Board of Supervisors expressed their intent to allocate this 4.8 acre feet of water to the subject project.

1. **FINDING – WATER QUANTITY:** Necessary public facilities (e.g. water quantity) are not available to the project site.

**EVIDENCE:** The standard water demand factor used by the Monterey Peninsula Water Management District (District) for this type of use is 0.085 acre-feet/bed/year. With 78 beds, this would require 6.63 acre feet of water per year (excluding hair salons, spas and landscape).

**EVIDENCE:** The applicant submitted a report prepared by Axiom Engineers (January 2003) that analyzes the expected water use for the proposed facility. This analysis identifies conservation methods that could reduce the demand for water from this facility. A letter from the Monterey Peninsula Water Management District dated March 18, 2003 raises questions as to the effectiveness of the proposed conservation devices.

**EVIDENCE:** The Axiom report uses a 0.085 water use factor as their starting point of reference. The March 18, 2003 letter from the Water Management District states that the District is reviewing this Assisted Living facility water use factor and will not have a result for several months. Therefore, the District cannot determine the actual water demand for this type of use at this time.

**EVIDENCE:** The Water Management District Board would be required to make a finding of “special circumstances” to allow a water connection permit to be issued using an annual allocation of 4.8 acre-feet. The District will not address the “special circumstances” until the applicant provides assurance that the County has allocated water for the project. The District has a standard condition that would require the County to agree that the District is authorized to automatically debit the County’s water allocation should the project use more than the 4.8 acre foot allocation. Therefore, if a special circumstance is authorized, the County Board of Supervisors must agree to allow the District to impose this condition.

**EVIDENCE:** At this point, there is no additional water to allocate should the project exceed the 4.8 acre foot limit. According to the County’s Water Resources Agency, the County has no additional water available above what has been assigned to previously approved projects. Therefore, if implementing the Gamboa project (PLN000357) resulted in a demand of more than 4.8 acre feet, it would take water away from other currently approved projects.

**EVIDENCE:** Based on the fixed supply of water and a questionable demand level that may very well exceed that supply, there is a question that has been presented by technical experts (Water District and Water Resources Agency) whether there is substantial evidence that a long term sustainable water supply exists for this project.

2. **FINDING- HEALTH, SAFETY, AND WELFARE:** The establishment, maintenance, or operation of the use and buildings will, under the circumstances of the particular case, be detrimental to the health, safety, peace, morals, comfort, and general welfare of the persons residing or working in the neighborhood, or to the general welfare of the County.

**EVIDENCE:** The increased traffic added to Val Verde Drive will impact the safety, peace, comfort and general welfare of the other property owners on Val Verde Drive and how they currently use this private road (e.g. equestrian activities).

**EVIDENCE:** The Planning Commission is concerned that allocating the last remaining water and requiring road improvements that will require increased maintenance costs to neighboring residents is an impact to the general welfare of the neighborhood.

**EVIDENCE:** Preceding findings and supporting evidence (1-6).

3. **FINDING - CEQA:** The California Environmental Quality Act (CEQA) does not apply to this project because the Monterey County Planning Commission is denying the project.

**EVIDENCE:** Public Resources Code Section 21080(b)(5); CEQA Guidelines Section 15270.

4. **FINDING –APPEAL:** The Planning Commission’s recommendation will be forwarded to the Board of Supervisors for the Board’s April 22, 2003 continued public hearing on the appeal from an earlier Planning Commission decision on the project.

**EVIDENCE:** Section 21.80.040 of the Monterey County Zoning Ordinance (Board of Supervisors).

**EVIDENCE:** The Planning Commission denied the project on November 13, 2002, and the applicant filed an appeal from the decision to the Board of Supervisors on November 21, 2002. On January 14, 2003, at the public hearing on the appeal, the Board of Supervisors continued the hearing, directed staff to address multiple issues, and remanded the project application to the Planning Commission so that the Planning Commission could consider new information and provide a recommendation to the Board. This item, appeal, together with the Planning Commission’s action on April 9, 2003 to recommend denial, is scheduled to return to the Board of Supervisors on April 22, 2003. No new appeal application or fee is required; however, the applicant may amend its appeal that is on file with the County Clerk.

**DECISION**

THEREFORE, it is the decision of the Planning Commission of the County of Monterey to recommend to the Board of Supervisors that the Combined Development Permit be denied.

**PASSED AND ADOPTED** this 9th day of April, 2003 by the following vote:

AYES:	Errea, Sanchez, Padilla, Brennan, Parsons, Diehl, Gonzalves, Rochester, Wilmot
NOES:	Hawkins
ABSENT:	None

Original Signed By:

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SCOTT HENNESSY, SECRETARY PRO-TEM

Copy of this decision mailed to applicant on