

MONTEREY COUNTY PLANNING COMMISSION

Meeting: July 29, 2009	Time: 09:30 A.M	Agenda Item No.: 2
Project Description: Consider request for a Vested Rights Determination for a previously approved Combined Development Permit for a Community Life Center and applicant's request for waiver of the application fee. CONTINUED FROM MAY 27, 2009 AND JUNE 24, 2009		
Project Location: Terminus of Rio Road and east Of Val Verde Drive, Carmel Valley		APN: 015-021-004-000
Planning File Number: PLN090070		Owner: Carmel Presbyterian Church Agent: Derinda L. Messenger & Associates (Todd Bessire)
Planning Area: Carmel Valley Master Plan Area		Flagged and staked: No
Zoning Designation: "LDR/1-D-S" Or Low Density Residential, 1 Acre minimum with Design Control And Site Plan Review Overlays.		
CEQA Action: Not subject to California Environmental Quality Act per 15061(b)(3)		
Department: RMA - Planning Department		

RECOMMENDATION:

Staff recommends that the Planning Commission adopt a resolution (**Exhibit A**) to:

- 1) Determine that applicant's activities to date do not establish a vested right in its Combined Development Permit (Resolution No. 99-135) and that, if the applicant does not perform substantial work and incur substantial liabilities prior to October 10, 2009, the Combined Development Permit will expire, absent an extension; and
- 2) Deny applicant's request for waiver of application fees.

PROJECT OVERVIEW AND BACKGROUND:

In 1996, the Carmel Presbyterian Church (applicant) applied for a Combined Development Permit consisting of a Use Permit for a Community Center, Use Permit for development in a floodplain, Administrative Permit for site development, and Design Approval (File No. PLN965481). On October 28, 1998, the Combined Development Permit was approved by the Planning Commission. The approval was appealed to the Board of Supervisors. After hearings on January 19, 1999, February 23, 1999, and March 30, 1999, the Board of Supervisors upheld the Planning Commission decision, approving the project subject to 52 conditions (Resolution No. 99-135) (**Exhibit F**). The conditions of permit approval require the applicant to make significant road infrastructure improvements in the vicinity of the project, and pay significant traffic impact fees, prior to issuance of building permits for construction of the facilities.

In 2001, the applicant applied for a five-year extension of the Combined Development Permit. On September 12, 2001, the extension request was heard and approved by the Planning Commission, subject to the original 52 conditions of approval contained in Board of Supervisors Resolution 99-135 (Planning Commission Resolution No. 01055). The Combined Development Permit was set to expire on March 30, 2006.

On March 23, 2006, the applicant was issued a grading permit (GP060055) to begin preliminary ground work in preparation for the development of the project. Per County practice, when a grading or building permit is issued, it extends the life of the Use Permit until the expiration of the grading or building permit. The permit was re-issued on July 2, 2008, and will expire on October 9, 2009, assuming no further work or inspections are secured. With the expiration of the grading permit, the Combined Development Permit will expire unless: 1) the applicant applies

for and obtains an extension of the Combined Development Permit; or 2) has vested rights in the Combined Development Permit.

The Church applied for a Vested Rights Determination on February 24, 2009, pursuant to Section 21.64.240 of Title 21 (Inland Zoning Ordinance) (**Exhibit M**). Applicant's lack of finances, the inability to complete and/or satisfy all "prior to issuance of building permit" conditions, and decision to not pursue an extension of the Combined Development Permit has prompted the applicant to make an application for Determination of Vested Rights.

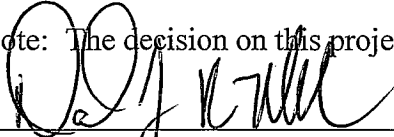
Under Section 21.64.240, the applicant may apply for a determination of vested rights (See Exhibit M). Under the procedure established by section 21.64.240, the Planning Commission makes the determination, which is appealable to the Board of Supervisors, at a noticed public hearing. The applicant bears the burden of proof. The key issue presented by applicant's request is whether applicant has "performed substantial work and incurred substantial liabilities in good faith reliance upon a building permit" or the functional equivalent of a building permit. (Monterey County Code, Section 21.64.240.C.6.d) Staff informed the applicant that the determination is premature because the Combined Development Permit will not expire until the grading permit expires on October 9, 2009; however, applicant's agent expressed the desire to proceed. Therefore, staff recommends that the Planning Commission find that applicant's activities to date do not establish a vested right in its Combined Development Permit (Resolution No. 99-135) and that, if the applicant does not perform substantial work and incur substantial liabilities prior to October 10, 2009, the Combined Development Permit will expire, absent an extension.

The project was scheduled for consideration by the Planning Commission on May 27, 2009. However, due to a request from the applicant, the project was continued to the June 24, 2009 Planning Commission date. On June 24, 2009, Planning Department staff was notified that the applicant had not posted notices of public hearing as legally required by County Code, resulting in the need for a second continuance request to the July 29, 2009 Planning Commission hearing. In order to ensure that the notices of public hearing were posted, staff posted the notices for the July 29, 2009 hearing date.

A Fee Waiver Request, to waive fees for the processing of the application for Determination of Vested Rights was submitted by the applicant on March 11, 2009. Staff recommends that the Planning Commission deny applicant's request for waiver of the application fees, as the request does comply with the criteria established under the Monterey County Master Fee Resolution (Board of Supervisors Resolution 2000-342) (**Exhibit H**), in that the vested rights determination request is not a development project per se, and the processing of the vested rights request has required a substantial amount of staff time.

OTHER AGENCY INVOLVEMENT: This project was not routed to any outside agencies or departments for review.

Note: The decision on this project is appealable to the Board of Supervisors.



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July 20, 2009

cc: Front Counter Copy; Planning Commission; Luis A. Osorio, Planning Services Manager; David J. R. Mack, Project Planner; Carol Allen, Senior Secretary; Carmel Presbyterian Church, Owner; Derinda L. Messenger & Associates (Todd Bessire), Agent; DeeAnne Howe, Neighbor; Planning File PLN090070.

Attachments: Exhibit A Draft Resolution
Exhibit B Vicinity Map
Exhibit C Letter to applicant, dated August 23, 2000, addressing requirements for Vesting Rights.
Exhibit D Grading Permit Application Information
Exhibit E History of Grading Permit Inspections/Events
Exhibit F Board of Supervisors Resolution 99-135
Exhibit G Planning Commission Resolution 01055 (5 year extension – PLN010125)
Exhibit H Board of Supervisors Resolution 2000-342 (Fee Waivers)
Exhibit I Fee Waiver Request Application
Exhibit J Approved Site Plan (PLN965481/PLN010125)
Exhibit K Condition Status Letter from Applicant – dated April 23, 2009.
Exhibit L Letter from Staff requesting required information – dated May 11, 2009.
Exhibit M Section 21.64.240 County Zoning Ordinance (Title 21)

This report was reviewed by Luis A. Osorio, Planning Services Manager.

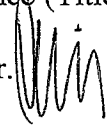


EXHIBIT – A

DRAFT
RESOLUTION

**EXHIBIT A
DRAFT RESOLUTION**

**Before the Planning Commission in and for the
County of Monterey, State of California**

In the matter of the application of:
CARMEL PRESBYTERIAN CHURCH (PLN090070)

RESOLUTION NO. _____
Resolution by the Monterey County Planning
Commission to:

- 1) Determine that applicant's activities to date do not establish a vested right in its Combined Development Permit (Resolution No. 99-135) and that, if the applicant does not perform substantial work and incur substantial liabilities prior to October 10, 2009, the Combined Development Permit will expire, absent an extension; and
- 2) Deny applicant's request for waiver of application fees.
(PLN090070) Carmel Presbyterian Church,
Terminus Of Rio Road and East Of Val Verde Drive,
Carmel Valley, Carmel Valley Master Plan Area
(APN: 015-021-004-000)

The Carmel Presbyterian Church vested rights application (PLN090070) came on for public hearing before the Monterey County Planning Commission on July 29, 2009. Having considered all the written and documentary evidence, the administrative record, the staff report, oral testimony, and other evidence presented, the Planning Commission finds and decides as follows:

FINDINGS

1. **FINDING: BACKGROUND**
a) **Planning Permit History**

The Community Life Center was originally applied for in 1996 (file number PLN965481) and received approval from the Planning Commission on October 28, 1998. Following approval, an appeal was filed and scheduled for a de novo hearing on January 19, 1999. After numerous hearings on January 19, 1999, on February 23, 1999, and again on March 30, 1999, the Board of Supervisors upheld the Planning Commission decision, approving the project subject to 52 conditions of project approval (Resolution No. 99-135). (**Exhibit F**)*

On July 27, 2000, Planning Department staff met with representatives for Carmel Presbyterian Church, to clarify questions related to the approval of the Combined

* Hereafter, references to Exhibits are to Exhibits attached the July 29, 2009 staff report to the Planning Commission. The exhibits are incorporated herein by reference.

Development Permit (PLN965481) for the Community Life Center. During this meeting, the Church inquired as to what would be required to “vest the approved Use Permit”. On August 23, 2000, the Planning Department mailed written correspondence to the Church’s representative, Ms. Derinda Messenger, giving specific directives on how to “vest the permit” **(Exhibit C)**, including the following:

- 1) That all conditions of approval be met prior to issuance of building or grading permits;
- 2) That the grading and building permits must be issued; and
- 3) That the construction must have been initiated prior to March 30, 2001 (two years after the Board of Supervisors approved the Use Permit on March 20, 1999).

The Church did not respond to the correspondence from the Planning Department.

On March 23, 2001, the Church applied for a five-year extension of the Combined Development Permit. On September 12, 2001, the extension request was approved by the Planning Commission, subject to the original 52 conditions of approval contained in Board of Supervisors Resolution 99-135 (Planning Commission Resolution No. 01055). **(Exhibit G)** The Combined Development Permit was set to expire on March 30, 2006.

b) Grading Permit History/Timeline

On February 10, 2006, approximately five years after the approval of the permit extension (PLN010125), the applicant applied for a grading permit (GP060055). On March 23, 2006, after confirming that any applicable “prior to issuance of grading permit” conditions had been satisfied, the Planning Department approved the issuance of the grading permit, allowing preliminary ground work to begin on the site. The grading permit record shows the following inspections being held, over a course of three years:

- On March 24, 2006, a pre-construction meeting was held on site with the applicant and staff from the Building Department. Staff addressed the following:
 - 1) Required inspections and paperwork;
 - 2) Project schedule; and
 - 3) Required erosion control measures. **(Exhibit E-page 1)**
- On September 18, 2006, the grading department conducted an “Erosion Control” inspection, verifying that proper erosion control measures were in place. **(Exhibit E – page 2)**
- Between September 2006 and July 2007, the grading permit record shows no additional work and/or inspections.
- On July 17, 2007, the applicant contacted the Building Department via telephone indicating that work on the retention pond would commence within 30 days. **(Exhibit E – Page 3)**
- On August 4, 2007, the grading department conducted an “Erosion Control” inspection, again verifying that proper measures were in place. **(Exhibit E – Page 4)**
- Between October 2007 and July 2008, the grading permit record shows no additional work and/or inspections.
- On July 2, 2008, with the grading permit close to expiration, the Church “re-applied” for the grading permit, which was subsequently “re-issued” on the same date, making the permit valid for an additional 180 days? **(Exhibit D)**
- On September 18, 2008, the Building Department conducted an inspection for “Fills”, verifying soil activities were conducted per recommendation from the soil engineer. **(Exhibit E – Page 5)**

- On October 15, 2008, the grading department conducted a third “Erosion Control” inspection to verify installed erosion control measures. **(Exhibit E – Page 6)**
- On April 9, 2009, six days prior to permit expiration, the Building Department performed a “Drainage/Terracing” inspection, to verify that the retention pond had been graded per plan. **(Exhibit E – Page 7)** This inspection extended the validity of the grading permit until October 9, 2009, and in effect extended the life of the approved Combined Development Permit.

c) Building Permit History

The Building Department has determined that no additional inspections and/or work can be conducted under the scope of the grading permit, until such time that a building permit is issued for construction of the approved buildings, as described in Board of Supervisors Resolution No. 99-135 and Planning Commission Resolution No. 01055.

As of the date of this report, no building permit application has been submitted to the Building Department, and 19 of the 20 conditions required “prior to issuance of building permits” remain unsatisfied. The most critical conditions are listed below.

d) Condition Compliance History

The project received the initial approval from the Board of Supervisors on March 30, 1999 (Resolution 99-135), subject to 52 conditions of approval. **(Exhibit F)** In September of 2001, the Planning Commission granted a 5 year extension, to expire on March 30, 2006, subject to the same 52 conditions. **(Exhibit G)**

As of the date of this report, the applicant has completed/complied with only three of the required 52 conditions. Nineteen of the remaining outstanding conditions are required to be complied with “prior to issuance of building permits”, including but not limited to the following infrastructure improvements and/or payment of fees:

- Provide improvement plans and improve Val Verde Drive from Rio Road to the northerly boundary of property to the width of 32 ft. including curb, gutter, sidewalk, and street lighting on the easterly side. (Condition 27)
- The project shall contribute a proportional share of the cost for retiming the traffic signals along Rio Road and Highway 1/Carmel Valley Road intersection. (Condition 28)
- Dedicate to County the area within the Official Plan Line for Rio Road Extension, including a 1 foot non-access strip. (Condition 30)
- The project will be responsible for Carmel Valley Traffic Impact Fees (CVTIF). The traffic impact fees of \$4.20 per square foot generates a fee of \$127, 045 for a gross floor area of 30, 250 square feet. (Condition 31)
- Install a traffic signal at Rio Road/Carmel Rancho Blvd intersection. The proposed project will generate 85 PM peak hour trips; therefore, the project shall contribute 20.7% of 411 vehicles per hour in the cumulate traffic in the PM peak hour volumes, or \$24,840 of the total cost (\$120,000) for installing a traffic signal at this intersection. (Condition 32)

Thirty conditions of approval can not be satisfied until such time a building permit is issued and construction has commenced and/or completed, as their compliance timing is either prior to framing inspection, prior to building permit final, or prior to occupancy.

e) **Application for Vesting Rights Determination**

Upon expiration of the grading permit on October 9, 2009, the Combined Development Permit would also expire, unless either of the following occurs: 1) Applicant applies for an extension to the Combined Development Permit; or 2) the Combined Development has vested. One of the findings required for a vested right is that the permittee has performed substantial work and incurred substantial financial liabilities in good faith reliance upon a building permit, or the functional equivalent of the building permit, issued by the County. Applicant has not satisfied the "prior to issuance of building permit" conditions and has not obtained a valid building permit.

The applicant has stated that due to a lack of finances, they are not able to complete/satisfy the remainder of the "prior to issuance of building permit" conditions which would allow for the applicant to obtain a building permit, prior to the expiration of the grading permit.

The applicant has opted to not apply for an extension to their Use Permit. However, this option remains available to the applicant, subject to the applicable renewal fees and associated processing procedures.

Instead, the Church has made an application for determination of vested rights at this time. For the County to make/support a claim for vested rights, five specific findings (5-9) are required to be made, pursuant to Section 21.64.240(C)(6)(a-e), as listed below. For the reasons set forth therein, applicant has failed to demonstrate a vested right, and the findings cannot be made.

f) **Information and documents on file in the Planning Department and Building Services Department**

PLN965481 (Board of Supervisors Resolution No. 99-135) – Original Application - 1996
PLN010125 (Planning Commission Resolution No. 01055) – 5 year extension – 2001
GP060055 – Grading Permit Application – March 2006 (issued)
PLN090070 – Vested Rights Determination Application – February 2009

2. **FINDING: VESTED RIGHT (Burden of Proof)** – Pursuant to Monterey County Code, Section 21.64.240, "any person claiming a vested right in a development, which right is disputed by a department head of the County, and who wishes to be exempt from any County land use or development permit requirements, shall substantiate the claim in a proceeding before the Planning Commission. In such a proceeding, the claimant shall have the burden of proof as to each finding necessary to establish a vested right." The claimant is required to provide all information set forth in Section 21.64.240(C)(4)(a-n) as listed below. The applicant has not provided all of the required information and has not met its burden of proof.

- EVIDENCE:** a) *Name of claimant, address, telephone number.*
Applicant information, address, and telephone were submitted with application.
- b) *Name, address, and telephone number of claimant's representatives, if any.*
Agent name, address, and telephone number were submitted with

application.

- c) *Description of the development claimed to be exempt, including all incidental improvements such as utilities, road, and other infrastructure, and a description of the specific parcel of land on, and including a description of the specific boundaries within which such development or use exists for which the claim of exemption is made. A site plan, development plan, grading plan, and construction or architectural plans may be attached as appropriate.*
Description of development, including incidental improvements such as utilities, road, and other infrastructure, and a description of the specific parcel of land including specific boundaries within which such development or use exists is contained in previous application materials (PLN965481 / PLN010125). A vicinity map (**Exhibit B**) and site plan (**Exhibit J**) has been attached.
- d) *A list of all governmental approvals which have been obtained, including those from State or Federal agencies, and the date of each final approval. Copies of all approvals shall be attached.*
On March 23, 2009, May 11, 2009, and July 16, 2009, staff requested information relative to this requirement. As of date of report, applicant has not supplied this information. (**Exhibit L**)
- e) *A list of any governmental approvals which have not yet been obtained and anticipated dates of approval.*
On March 23, 2009, May 11, 2009, and July 16, 2009, staff requested information relative to this requirement. As of date of report, applicant has not supplied this information.
- f) *A list of any conditions to which the approvals are subject and date on which the conditions were satisfied or are expected to be satisfied.*
On March 23, 2009, May 11, 2009, and July 16, 2009, staff requested information relative to this requirement. The applicant submitted a list of all conditions and status on April 23, 2009. (**Exhibit K**)
- g) *A specification of the nature and extent of the work or use in progress or completed, including 1) date of each portion commenced (e.g., grading, foundation work, structural work, etc.); 2) any governmental approval pursuant to which the portion was commenced; 3) portions completed and date on which completed, if applicable; 4) status of each portion on date of claim; 5) amounts of money expended on portions of work completed or in progress (dates and amounts of expenditures shall be itemized).*
On March 23, 2009, May 11, 2009, and July 16, 2009, staff requested information relative to this requirement. As of date of report, applicant has not supplied this information.
- h) *A description of those portions of the development or use continuing and remaining to be completed.*
On March 23, 2009, May 11, 2009, and July 16, 2009, staff requested information relative to this requirement. As of date of report, applicant has not supplied this information.
- i) *A list of the amount and nature of any liabilities incurred that are not covered above and dates incurred, and a list of any remaining liabilities to be incurred and date when these are anticipated to be incurred.*

On March 23, 2009, May 11, 2009, and July 16, 2009, staff requested information relative to this requirement. As of date of report, applicant has not supplied this information.

j) *A statement of the expected total cost of the development or use.*

On March 23, 2009, May 11, 2009, and July 16, 2009, staff requested information relative to this requirement. As of date of report, applicant has not supplied this information.

k) *A statement on whether the development or use is planned as a series of phases or segments, and if so, a description of the phases or segments involved.*

On March 23, 2009, May 11, 2009, and July 16, 2009, staff requested information relative to this requirement. As of date of report, applicant has not supplied this information.

l) *A statement of the date when it is anticipated that the total development or use will be completed.*

On March 23, 2009, May 11, 2009, and July 16, 2009, staff requested information relative to this requirement. As of date of report, applicant has not supplied this information.

m) *A written authorization of any agent acting on behalf of the applicant.*

A written authorization of the agent acting on behalf of the applicant was submitted with the application.

n) *A certification by applicant or agent as to all contents of documents submitted in support of the claim of vested right.*

Applicant's agent submitted written verification relative to item (f) on April 23, 2009.

3. **FINDING:** As of the date of this determination, the findings required to substantiate a claim of vested right cannot all be made.

EVIDENCE: a) Monterey County Code, Section 21.64.240.C.6

b) See Findings 4-8, below.

c) The determination that the applicant does not have vested rights in the Combined Development Permit is predicated upon the activities undertaken by the applicant as of the date of this determination.

4. **FINDING:** **VESTED RIGHT (Established Use)** – The project has been established with respect to a specific parcel of land or within specifically described boundaries, or for a specifically described development or use.

EVIDENCE: a) The project was approved for a specific parcel of land and for a specifically described development in March 1999 and received a 5 year extension in September 2001 (Board of Supervisors Resolution No. 99-135 and Planning Commission Resolution No. 01055).

b) A Grading Permit (GP060055) was issued for a specifically described use on March 26, 2006, authorizing preliminary grading and the development of on-site drainage facilities. Through the procurement of additional extensions and subsequent inspections, the grading permit remains valid until October, 9, 2009.

5. **FINDING:** **VESTED RIGHT (Procurement of Permit)** – The development or use was done in reliance upon a County-issued permit or was established prior to enactment of County regulations requiring such permit.

- EVIDENCE:** a) All development on the project site has been undertaken in reliance upon County-issued permits. In March of 1999 the applicant received approval of a Combined Development Permit (File No. PLN965481) to allow the construction of 29,424 square foot Community Life Center, subject to 52 conditions of approval (Board of Supervisors Resolution No. 99-135). In September of 2001, the applicant was granted a 5 year extension by the Planning Commission subject to the original 52 conditions of approval (Planning Commission Resolution No. 01055).
- b) A grading permit (GP060055) was issued in March 2006, allowing preliminary ground work in preparation for development of the project. On July 2, 2008, an extension to the grading permit was granted, moving the expiration date of the permit to April 13, 2009.
- c) On April 9, 2009, four days prior to permit expiration of the grading permit, the Monterey County Building Department performed an inspection of the grading work completed to date. The inspection confirmed the construction-to-code of a stormwater drainage/retention facility approved under the permit. Based on the 1997 Uniform Administrative Code (Section 303.4), adopted by the County of Monterey, this inspection extended the expiration date of the permit to October 9, 2009.

6. **FINDING: VESTED RIGHT (Scope/Extent of Work)** – The development or use does not exceed either the scope authorized by the terms and conditions of the County-issued permit relied upon, or the extent of the development or use as of the effective date of County ordinances or regulations regulating the development or use.

- EVIDENCE:** a) The extent of the development and/or use of the property do not exceed the scope of work as authorized by the terms and conditions of the County-issued permits. Preliminary ground work (grading) and the development of an on-site storm water retention pond has been per the issued grading permit (GP060055).
- b) As of the date of this report, no building permits have been issued, and 19 of the 20 “prior to issuance of building permit” conditions of the Combined Development Permit have not been completed and/or satisfied.

7. **FINDING: VESTED RIGHT (Substantial Work/Financial Liabilities)** – The applicant has not to date performed substantial work nor incurred substantial financial liabilities in good faith reliance upon a building permit issued by the County as required under existing law.

- EVIDENCE:** a) The project was originally approved in March 1999 (Board of Supervisors Resolution 99-135) subject to 52 conditions of approval. In September of 2001, a 5 year extension (PLN010125) was approved by the Planning Commission subject to the 52 original conditions of approval, extending the expiration of the Combined Development Permit to March 30, 2006.
- b) A grading permit application (GP060055) was submitted on February 10, 2006. After confirming that any applicable “prior to issuance of grading permit” conditions of the Combined Development Permit had been satisfied, the Planning Department approved issuance of the

grading permit, which was subsequently issued on March 23, 2006. Over the course of approximately three years, various inspections have been conducted relative to the limited earthwork/grading activities included under the grading permit (building pad and retention pond) **(Exhibit E)**.

- c) The grading permit record shows at least two periods of time during which no additional work nor inspections were conducted. The lack of inspections resulted in the need for the reapplication and reissuance of the grading permit on July 2, 2008 **(Exhibit D)**.
- d) The Building Services Department has determined that no additional inspections and/or work can be conducted under the scope of the grading permit, until such time that a building permit is issued.
- e) The applicant has not performed substantial work in good faith reliance on a building permit or its functional equivalent. The overall scope of the project involves grading of a building pad, grading of an on-site stormwater drainage basin, construction of a 29,424 square foot community center facility, as well as off-site road infrastructure and safety improvements (conditions of approval). The grading conducted to date is minimal given the overall scope of the project. Work completed to date consists of soil compaction and preliminary grading of the building pad, and grading of an on-site stormwater drainage basin. Building permit applications have yet to be submitted to the Building Department for any work, including the construction of any substantial portions of the project. As of the date of this report, 19 of the 20 "prior to issuance of building permit" conditions remain unsatisfied.
- f) The applicant has not incurred substantial financial liabilities in good faith reliance on a building permit, relative to satisfying numerous conditions or constructing infrastructure improvements required to be completed prior to obtaining building permits and commencing construction. Board of Supervisors Resolution 99-135, Condition 35, specifically requires that prior to issuance of building permits, infrastructure improvements be completed, including but not limited to: payment of traffic fees (Condition 31); development of roads, curbs, sidewalks, and streetlights on Val Verde Drive (Condition 27); payment of fees to re-time traffic lights (Condition 28); payment of fees to installation traffic lights (Condition 32); and dedication of land for the Rio Road extension (Condition 30) **(Exhibit F)**. None of these conditions have been fulfilled.
- g) Applicant has supplied no evidence of good faith intent to presently commence upon the proposed use or begin actual construction.

8. **FINDING:** **VESTED RIGHT (Project Abandonment)** – The development or use has not been abandoned, to and including the effective date of the regulation from which a Vested Right exemption is sought.

EVIDENCE: a) The project has not been abandoned per se, as both the grading permit (GP060055) and Combined Development Permit (Board of Supervisors Resolution No. 99-135 and Planning Commission Resolution No. 01055) remain valid until October 9, 2009.

- b) A determination that applicant does not have a vested right does not preclude applicant from applying for an extension of the Combined Development Permit. Per Monterey County Code, Section 21.76.110, applicant has the option of applying for an extension of this Combined Development Permit, provided such request is made in writing at least 30 days prior to October 9, 2009.

9. **FINDING:** No Vested Rights have been demonstrated as of the date of this hearing.
- EVIDENCE:**
- a) Any vested rights determination made at this time is based on activities to date. This determination does not preclude subsequent vesting of rights if the applicant performs substantial work and incurs substantial liabilities in good faith reliance on a building permit or its functional equivalent prior to the expiration of the Combined Development Permit.
 - b) Per County's practice, the Combined Development Permit will not expire until the expiration of the currently outstanding grading permit. The grading permit will expire on October 9, 2009.
 - c) The applicant retains development and construction rights in the project until the grading permit expires on October 9, 2009.

10. **FINDING: FEE WAIVER REQUEST**

On March 11, 2009, the applicant submitted a Fee Waiver Request, requesting waiver of fees for the processing of the application for Vested Rights Determination. Staff evaluated the request based on the Monterey County Master Fee Resolution (Board of Supervisor's Resolution 2000-342) (**Exhibit H**).

Pursuant to this resolution, the Director of Planning may waive fees for *discretionary permits for development, enhancement, expansion or modification of needed community facilities by non-profit organizations and community groups meeting the following criteria:*

- 1) *The proposed project is available for use the general public; and*
- 2) *Provides a scope of benefit beyond the residents of the immediate vicinity; and*
- 3) *Is of obvious public benefit. Evidence of public benefit includes, but is not limited to, projects that:*
 - a) *Meet the public need previously identified or recognized by the Board of Supervisors;*
 - b) *Provide a public facility not presently available in the community;*
 - c) *Have generated obvious, substantial community support; or*
 - d) *Would either reduce County costs or increase County revenue.*

Government Code 65928 defines a development project as:

"Any project undertaken for the purpose of development. Development project includes a project involving the issuance of a permit for construction or reconstruction but not a permit to operate."

Although a request for Vested Rights requires a discretionary action, the request is not a development project application per se. The Vested Rights application does not involve *development, enhancement, expansion, or modification* of facilities, but rather is a determination of development rights relative to a previously approved application. In addition, the processing of the request has required a substantial amount of staff time.

Therefore, the Director of Planning determined the Vested Rights application did not meet the required criteria, and forwarded the Fee Waiver Request to the Planning Commission for consideration. **(Exhibit I)** A fee waiver by the Planning Commission is not warranted because a vested right determination does is not a development application per se; does not involve development, enhancement, expansion, or modification of facilities; is not of obvious public benefit; and requires significant time and resources.

11. **FINDING:** The vested rights determination was scheduled to be heard by the Monterey County Planning Commission on May 27, 2009. At least 10 days prior to the public hearing, notices of the hearing before the Planning Commission were published in the Monterey County Herald and were posted on and near the property and mailed to the property owners within 300 feet of the subject property as well as interested parties. Due to a request from the applicant, the project was continued to the June 24, 2009 Planning Commission date. On June 24, 2009, Planning Department staff was notified that the applicant had not posted notices of public hearing as legally required by County Code, resulting in the need for a second continuance request to the July 29, 2009 Planning Commission hearing. In order to ensure that the notices of public hearing were posted, staff posted the notices for the July 29, 2009 hearing date. The Monterey County Planning Commission held the public hearing and took testimony on July 29, 2009.

EVIDENCE: a) Staff reports, minutes of the Planning Commission, information and documents in Planning file PLN090070.

12. **FINDING:** **APPEALABILITY** – The decision on this project is may be appealed to the Board of Supervisors.

EVIDENCE: b) Monterey County Zoning Ordinance (Title 21) Section 21.64.240(C)(8) and 21.80.040(D).

DECISION

NOW, THEREFORE, based on the above findings and evidence, the Planning Commission does hereby:

- 1) Determine that applicant's activities to date do not establish a vested right in its Combined Development Permit (Resolution No. 99-135) and that, if the applicant does not perform substantial work and incur substantial liabilities prior to October 10, 2009, the Combined Development Permit will expire, absent an extension; and
- 2) Deny applicant's request for waiver of application fees.
(PLN090070) Carmel Presbyterian Church, Terminus Of Rio Road and East Of Val Verde Drive, Carmel Valley, Carmel Valley Master Plan Area (APN: 015-021-004-000)

PASSED AND ADOPTED this _____ day of _____, 2009.

Mike Novo, Secretary, Planning Commission

COPY OF THIS DECISION MAILED TO APPLICANT ON _____.

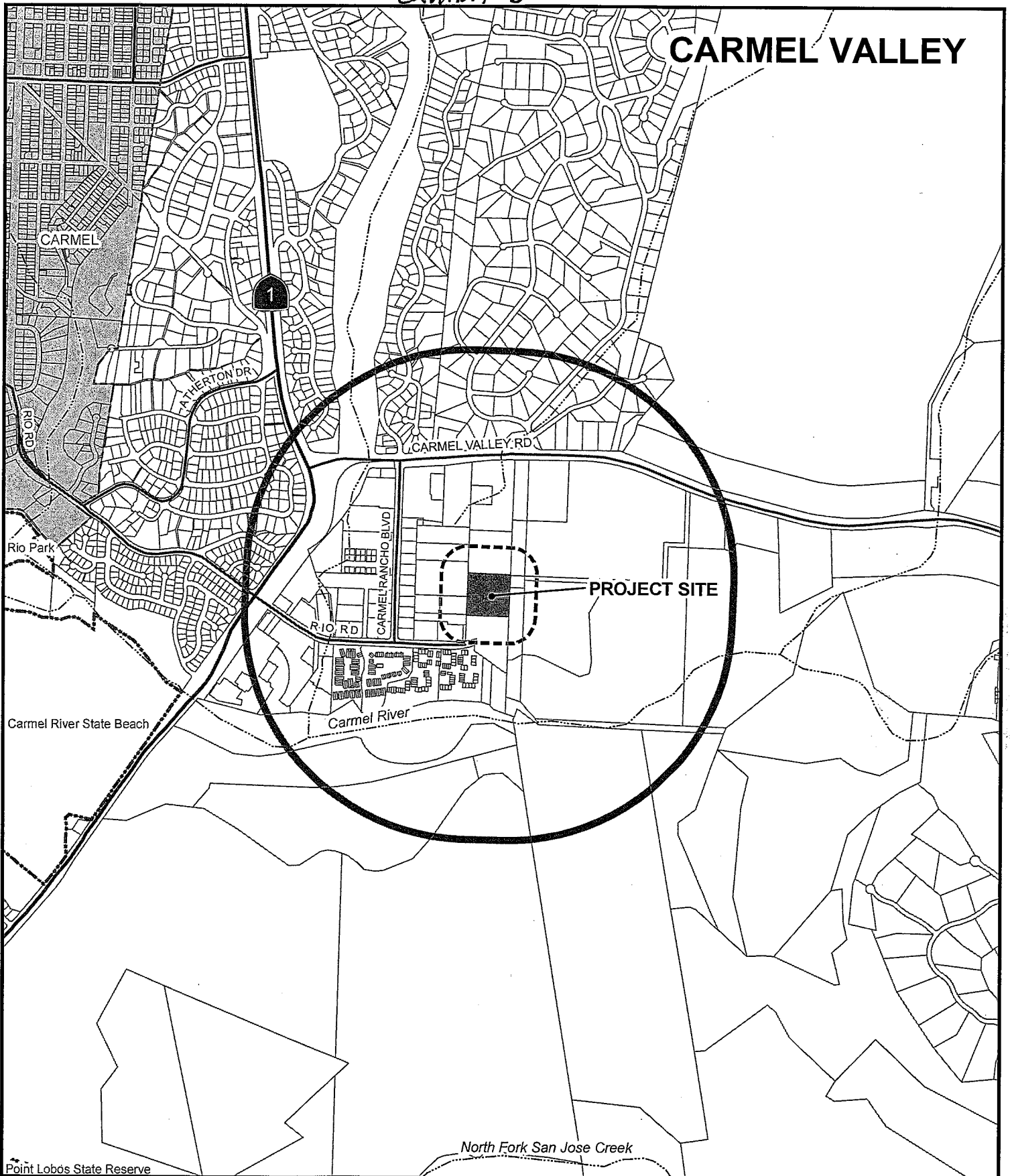
THIS DETERMINATION IS APPEALABLE TO THE BOARD OF SUPERVISORS.

IF ANYONE WISHES TO APPEAL THIS DECISION, AN APPEAL FORM MUST BE COMPLETED AND SUBMITTED TO THE CLERK TO THE BOARD ALONG WITH THE APPROPRIATE FILING FEE ON OR BEFORE _____.

EXHIBIT- B

VICINITY MAP

CARMEL VALLEY



APPLICANT: CARMEL PRESBYTERIAN CHURCH

APN: 015-021-004-000

FILE # PLN090070

 300' Limit
 2500' Limit
 City Limits

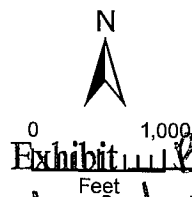


EXHIBIT- C

LETTER TO
APPLICANT, DATED
AUGUST 23, 2000,
ADDRESSING
REQUIREMENTS FOR
VESTING RIGHTS

MONTEREY COUNTY



PLANNING AND BUILDING INSPECTION DEPARTMENT

- 240 CHURCH ST. RM 116, SALINAS, CA 93901 PLANNING: (831) 755-5025 BUILDING: (831) 755-5027 FAX: (831) 755-5487
MAILING ADDRESS: P. O. BOX 1208, SALINAS, CA 93902
- MONTEREY COURTHOUSE, 1200 AGUAJITO ROAD, RM 003, MONTEREY, CA 93940 (831) 647-7620 FAX: (831) 647-7877

August 23, 2000

Ms. Derinda Messenger, Attorney
Lombardo and Gilles
P. O. Box 2119
Salinas, California 93902-2119

COPY

Dear Ms. Messenger;

On July 27, 2000 I met with you; Darrell Hawkins, architect; Gene Blattman, Community Life Center; and Don Spencer, Carmel Presbyterian Church. The purpose of the meeting was to clarify two questions related to the approval of the Combined Development Permit (PLN965481) for the Carmel Community Life Center.

The first question was, "Does the permit allow for weekly church services on Sunday mornings at 8:30 and 10:30am?"

The answer is: The permit may allow church services if they are accessory uses to the primary uses allowed in the Life Center per Section 21.14.030.F. Church services are considered to be a specific type of "meeting." The approval of the permit by the Board of Supervisors on March 30, 1999 (Board Resolution 99-135) included a "major Use Permit to allow a 29,424 square-foot Community Center Facility consisting of multi-purpose classroom and meeting space, with 233 parking spaces. Evidence for Finding number six (6) of approval states "A quasi-public use, such as a church or church sponsored community center may be approved by Use Permit in a Low Density Residential Zone, with appropriate mitigation and conditions of approval." Although the original use permit did not contemplate an expansion of the use to include church services, none of the 52 conditions of approval preclude church services on Sunday. Staff interprets the regulations to allow limited meetings such as two church services a week, as accessory uses to the primary use.

I now understand that the proposal is not only to hold Sunday services, but also to close the Presbyterian Church at its current Carmel location, sell the property and move all the church activities to the location of the Carmel Community Life Center. This was not the presentation that I heard on July 27, but rather comes from a letter distributed to the congregation July 30, 2000. I was not consulted about any approvals needed for moving the entire Church operation to Carmel Valley. I have concluded that there is more involved in this move than just holding services on Sunday, and that this proposal is of a larger scope and scale than I understood it to be on July 27, 2000. Based on this new information and statements made to the Board of

Exhibit C

Ms. Derinda Messenger
August 23, 2000
Page 2

Supervisors at the original public hearing, and concerns expressed by the citizens in the neighborhood over traffic, I have concluded that moving the church to the Life Center does not constitute an accessory use and will require an amendment to the Use Permit granted by Board Resolution 99-135. This amendment to the existing Use Permit will be processed as a new item and be considered at a public hearing before the Planning Commission. Submission of a new application must include a new description of all proposed activities and their traffic generation, water use, and other potential impacts. The cost for an amendment to an approved Use Permit is \$1,255.00. Potentially, a revision to the Mitigated Negative Declaration may also be appropriate which carries a fee of \$1,167.00.

The second question asked of me on July 27, 2000 was "What is required to vest our approved Use Permit?"

My answer is: (1) that all conditions of approval be met prior to issuance of building or grading permits, (2) that the grading and or building permits must be issued, and (3) that the construction must have been initiated prior to March 30, 2001 (this is two years after the Board of Supervisors approved the Use Permit on March 30, 1999).

If you have any further questions or comments, please don't hesitate to call me at (831) 755-5884.

Sincerely,

LH Mounday, For

Lynne H. Mounday,
Planning Services Manager

cc: Supervisor Potter
Darrell Hawkins
Gene Blattman
Don Spencer
Lynne Mounday
Jeff Main

Exhibit C
Page 2 of 2 Pages

EXHIBIT- D

GRADING PERMIT APPLICATION INFORMATION

General Application Information



Status: **ISSUED** APN: **015-021-004-000** Office: **MARINA** Update → Exit Back

Address: _____ Insp. Area: **SALINAS**

Site Address: **9999** X-St: **RIO**

GP Ext. (Y/N): Disaster Permit: Disaster Event: _____

Owner: **CARMEL PRESBYTERIAN CHU** Permit Title: **CARMEL PRESBYTERIAN CHU** **Cut/Fill Amounts**

Applicant: **DONALD ROEK** Engineer: **CONSTRUCTION TESTING & E** Cut (CY): **5.069**

Contractor: **ROEK CONSTRUCTION** Permit Type: **COM** Fill (CY): **4.539**

Description: **GRADING FOR CARMEL LIFE COMMUNITY CENT** Area Disturbed (Sq. Ft): **0**

Planner: **KINISON BROWN** Associated Bldg Permit #: **PLN010125** Area Disturbed (Acres): **0.00**

Gate Code: _____

Grading Fees

Grading Issuance Fee: <input checked="" type="checkbox"/>	\$62.00	Pln Rev (Not w/BP): <input type="checkbox"/>	\$0.00	Additional Inspect Fee:	\$0.00
Grading Permit Fee: <input checked="" type="checkbox"/>	\$329.00	Env Rev. Fee: <input type="checkbox"/>	\$0.00	Additional Pln Chk Fee:	\$0.00
Plan Review Fee: <input checked="" type="checkbox"/>	\$111.25	WRA Plan Review:	\$0.00	Investigation Fee: <input type="checkbox"/>	\$0.00
Scanning 8 1/2 x 11 (Qty): 111	\$55.50	WRA NPDES:	\$0.00	Pendency Fee:	\$0.00
Scanning large plans (Qty): 8	\$10.40	Technology Fee:	\$0.00	General Plan:	\$0.00

Key Dates

Applied: **02/10/2006**

Approved: **03/21/2006**

Issued: **03/23/2006**

Finald: **/ /**

Voided: **/ /**

Extended: **/ /**

Reapplied: **07/02/2008**

Reissued: **07/02/2008**

Expires: **04/13/2009**

Intld: **02/10/2006**

Soil Report/Subdivision Info

Major Sub: _____

Minor Sub: _____

Soil Rpt. No: **25-0013G**

Report Author: **CTE**

Soil Rpt Date: **12/22/2005**

Permit Renewal Fee: **\$0.00**

HAMMERSMITH (enter fee)

Required to Issue

Own/Bld Verify (Y/N): Planning (Y/N):

External Pln Rev (Y/N): Health (Y/N):

Internal Pln Rev (Y/N): Public Works (Y/N):

Fire (Y/N): Water Resources (Y/N):

Grading Bond (Y/N):

FEE SUMMARY

Total Fees: **\$797.23**

Total Payments: **\$797.23**

Balance Due: **\$0.00**

EXHIBIT- E

HISTORY OF GRADING PERMIT INSPECTION/EVENTS

Inspections		Guide Sheet							
Sec	Item Id	Description	Appr	Req	Items	Action	Inheri		
	432	Hold Final Water Resources	No	R	0		N	Add Item	
	410	Pre-Construction Meeting	Yes	R	1	AP	N	Insert Item	
*	424	Erosion Control	Yes	R	3	PA	N	Remove Item	
*	408	Status Call	No	R	1	GEN	N		
	422	Fills	No	R	1	PA	N		
	428	Miscellaneous	No	R	1	GEN	N		
	423	Drainage/Terracing	No	R	1	CO	N		

Security allows access: Display Updateable Items Only

Print

Entries for Item: 410 - Pre-Construction Meeting

Action	Comments	By	Date	ique_Ke
AP	CONDUCTED GRADING	HERRINGTO	03/24/2006	0087354

Add Entry

Action: By: Date:

Begin Time: End Time: OR Elapsed Time:

Start Miles: End Miles: OR Total Mileage:

Vehicle Id: Violations:

Select Comment: **CONDUCTED GRADING PRECONSTRUCTION MEETING. ITEMS DISCUSSED INCLUDE THE FOLLOWING:
A) REQUIRED INSPECTIONS ALONG WITH REQUIRED**

Entered Date: Entered By:

Update Entry
 Delete Entry
 Refresh
 Print

ToolBar Order:

Select Multiple for Insp Document: Select Multiple:

Inspection Items for GP060055

Inspections		Guide Sheet						
Sec	Item Id	Description	Appr	Req	Items	Action	Inher	
	432	Hold Final Water Resources	No	R	0		N	
	410	Pre-Construction Meeting	Yes	R	1	AP	N	
▶	* 424	Erosion Control	Yes	R	3	PA	N	
	* 408	Status Call	No	R	1	GEN	N	
	422	Fills	No	R	1	PA	N	
	428	Miscellaneous	No	R	1	GEN	N	
	423	Drainage/Terracing	No	R	1	CO	N	

- Add Item
- Insert Item
- Remove Item



Security allows access Display Updateable Items Only

Entries for Item: 424 - Erosion Control

Action	Comments	By	Date	ique_Ke
▶ PA	OBSERVED EROSION CONTROL	RILEYKA	09/18/2006	3043085
AP	EROSION CONTROL MEASURES IN PLACE.	SMITHT	10/04/2007	3055480
PA	SITE GRADED FOR DRAINAGE INTO	RILEYKA	10/15/2008	3064892

- Add Entry
- Update Entry
- Delete Entry
- Refresh
- Print

Action: By: Date:

Begin Time: End Time: OR Elapsed Time:

Start Miles: End Miles: OR Total Mileage:

Vehicle Id: Violations:

Select Comment:

Entered Date: Entered By:

ToolBar Order:

Select Multiple for Insp Document Select Multiple



Inspections | **Guide Sheet**

Sec	Item Id	Description	Appr	Req	Items	Action	Inher
	432	Hold Final Water Resources	No	R	0		N
	410	Pre-Construction Meeting	Yes	R	1	AP	N
*	424	Erosion Control	Yes	R	3	PA	N
▶	408	Status Call	No	R	1	GEN	N
	422	Fills	No	R	1	PA	N
	428	Miscellaneous	No	R	1	GEN	N
	423	Drainage/Terracing	No	R	1	CO	N

- Add Item
- Insert Item
- Remove Item



* = Security allows access

Display Updateable Items Only

Entries for Item: 408 - Status Call

Action	Comments	By	Date	ique_Ke
▶ GEN	RECEIVED STATUS REPORT THAT WORK	RILEYKA	07/17/2007	3052728



Action: By: Date:

Begin Time: End Time: OR Elapsed Time:

Start Miles: End Miles: OR Total Mileage:

Vehicle Id: Violations:

Select Comment: **RECEIVED STATUS REPORT THAT WORK WILL BEGIN ON THE RETENTION PONT WITHIN 30 DAYS.**

Entered Date: Entered By:

ToolBar Order

More

Select Multiple

Select Multiple for Insp Document

Time Log (F8)

Doc

Back

Exit

Inspection Items for GP060055



Inspections | Guide Sheet

Sec	Item Id	Description	Appr	Req	Items	Action	Inheri
	432	Hold Final Water Resources	No	R	0		N
	410	Pre-Construction Meeting	Yes	R	1	AP	N
▶	* 424	Erosion Control	Yes	R	3	PA	N
	* 408	Status Call	No	R	1	GEN	N
	422	Fills	No	R	1	PA	N
	428	Miscellaneous	No	R	1	GEN	N
	423	Drainage/Terracing	No	R	1	CO	N

- Add Item
- Insert Item
- Remove Item

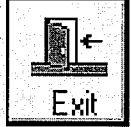


Add Entry

Update Entry

Delete Entry

Refresh



Security allows access

Display Updateable Items Only

Entries for Item: 424 - Erosion Control

Action	Comments	By	Date	ique_Ke
PA	OBSERVED EROSION CONTROL	RILEYKA	09/18/2006	0043085
▶ AP	EROSION CONTROL MEASURES IN PLACE	SMITHT	10/04/2007	0055480
PA	SITE GRADED FOR DRAINAGE INTO	RILEYKA	10/15/2008	0064892

Action: By: Date:

Begin Time: End Time: OR Elapsed Time:

Start Miles: End Miles: OR Total Mileage:

Vehicle Id: Violations:

Select Comment:

Entered Date: Entered By:

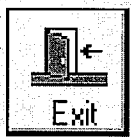
ToolBar Order



Select Multiple for Insp Document

Select Multiple

Time Log (F8)

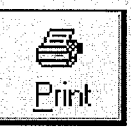


Inspection Items for GP060055

Inspections | **Guide Sheet**

Sec	Item Id	Description	Appr	Req	Items	Action	Inher
	432	Hold Final Water Resources	No	R	0		N
	410	Pre-Construction Meeting	Yes	R	1	AP	N
*	424	Erosion Control	Yes	R	3	PA	N
*	408	Status Call	No	R	1	GEN	N
	422	Fills	No	R	1	PA	N
	428	Miscellaneous	No	R	1	GEN	N
	423	Drainage/Terracing	No	R	1	CO	N

- Add Item
- Insert Item
- Remove Item



Security allows access Display Updateable Items Only

Entries for Item: 422 - Fills

Action	Comments	By	Date	ique_Ke
PA	KEYWAY INSTALLED PER SOIL ENGINEER	SMITHT	09/18/2008	0064107



Action: By: Date:

Begin Time: End Time: OR Elapsed Time:

Start Miles: End Miles: OR Total Mileage:

Vehicle Id: Violations:

Select Comment

Entered Date: Entered By:

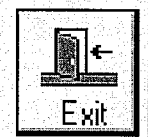
ToolBar Order



Select Multiple for Insp Document

Select Multiple

Time Log (F8)



Inspection Items for GP060055



Inspections

Guide Sheet

Sec	Item Id	Description	Appr	Req	Items	Action	Inheri
	432	Hold Final Water Resources	No	R	0		N
	410	Pre-Construction Meeting	Yes	R	1	AP	N
	424	Erosion Control	Yes	R	3	PA	N
*	408	Status Call	No	R	1	GEN	N
	422	Fills	No	R	1	PA	N
	428	Miscellaneous	No	R	1	GEN	N
	423	Drainage/Terracing	No	R	1	CO	N

- Add Item
- Insert Item
- Remove Item



* = Security allows access

Display Updateable Items Only

Entries for Item: 424 - Erosion Control

Action	Comments	By	Date	ique_Ke
PA	OBSERVED EROSION CONTROL	RILEYKA	09/18/2006	0043085
AP	EROSION CONTROL MEASURES IN PLACE.	SMITHT	10/04/2007	0055480
PA	SITE GRADED FOR DRAINAGE INTO	RILEYKA	10/15/2008	0064892

- Add Entry
- Update Entry
- Delete Entry
- Refresh
- Print

Action: By: Date:

Begin Time: End Time: OR Elapsed Time:

Start Miles: End Miles: OR Total Mileage:

Vehicle Id: Violations:

Select Comment: **SITE GRADED FOR DRAINAGE INTO SITE-OK FOR WET WEATHER EROSION CONTROL. DUST CONTROL NEEDED FOR WIND EROSION. ADVISED MIKE, MPE @ 384-4081. MIKE**

Entered Date: Entered By:

ToolBar Order

Select Multiple

Select Multiple for Insp Document



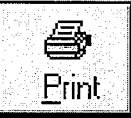
Inspection Items for GP060055



Inspections | **Guide Sheet**

Sec	Item Id	Description	Appr	Req	Items	Action	Inheri
	432	Hold Final Water Resources	No	R	0		N
	410	Pre-Construction Meeting	Yes	R	1	AP	N
*	424	Erosion Control	Yes	R	3	PA	N
*	408	Status Call	No	R	1	GEN	N
	422	Fills	No	R	1	PA	N
	428	Miscellaneous	No	R	1	GEN	N
	423	Drainage/Terracing	No	R	1	CO	N

- Add Item
- Insert Item
- Remove Item



Security allows access

Display Updateable Items Only

Entries for Item: 428 - Miscellaneous

Action	Comments	By	Date	ique_Ke
GEN	RECEIVED COPIES OF SOIL REPORTS	SMITHT	12/11/2008	0065814



Action: By: Date:

Begin Time: End Time: OR Elapsed Time:

Start Miles: End Miles: OR Total Mileage:

Vehicle Id: Violations:

Select Comment: **RECEIVED COPIES OF SOIL REPORTS FROM CLEARY CONSULTANTS, INC. VIA FED DATED 9/19/08 - 10/03/08 THEY OBSERVED THE FINISH BUILDING PAD MET THEIR**

Entered Date: Entered By:

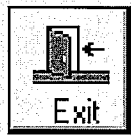
ToolBar Order



Select Multiple for Insp Document

Select Multiple

Time Log (F8)



Inspection Items for GP060055

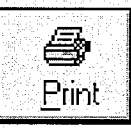


Inspections | **Guide Sheet**

Sec	Item Id	Description	Appr	Req	Items	Action	Inher
	432	Hold Final Water Resources	No	R	0		N
	410	Pre-Construction Meeting	Yes	R	1	AP	N
*	424	Erosion Control	Yes	R	3	PA	N
*	408	Status Call	No	R	1	GEN	N
	422	Fills	No	R	1	PA	N
	428	Miscellaneous	No	R	1	GEN	N
	423	Drainage/Terracing	No	R	1	CO	N

- Add Item
- Insert Item
- Remove Item

Security allows access: Display Updateable Items Only



Entries for Item: 423 - Drainage/Terracing

Action	Comments	By	Date	ique_Ke
CO	NEED DISSIPATOR DEATAL AT END OF	BOWLINGJ	04/09/2009	0067859



Action: By: Date:

Begin Time: End Time: OR Elapsed Time:

Start Miles: End Miles: OR Total Mileage:

Vehicle Id: Violations:

- Update Entry
- Delete Entry

Select Comment: **NEED DISSIPATOR DEATAL AT END OF OVERFLOW PIPE AT RETENTION POND**

- Refresh
- Print

Entered Date: Entered By:

ToolBar Order

Select Multiple for Insp Document

Select Multiple



EXHIBIT- F

**BOARD OF
SUPERVISORSS
RESOLUTION 99-135**

v

— —

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

Resolution No. 99-135

Resolution by the Monterey County)
Board of Supervisors adopting the)
Negative Declaration, Findings and)
Evidence, and approving the Combined)
Development Permit consisting of a)
major Use Permit for a community)
center, Use Permit for development in)
a floodplain, Administrative Permit for)
site development and Design Approval)
for the Carmel Presbyterian Church,)
File No. 965481; APN 015-021-004-000)
located at the terminus of Rio Rd. in)
Lower Carmel Valley.)

FINDINGS AND DECISION

This matter came before the Board of Supervisors on appeal of the decision by the Planning Commission for approval of the Combined Development Permit for the Carmel Presbyterian Church.

WHEREAS, the Board of Supervisors, pursuant to regulations established by local ordinance and State law, considered at a public hearing, said Combined Development Permit for property located at the terminus of Rio Rd., east of Val Verde Dr., (APN 015-021-004-000) on January 19, 1999, on February 23, 1999 and again on March 30, 1999, and

WHEREAS, said Combined Development Permit consists of a major Use Permit to allow a 29,424 sq. ft. community center facility, a Use Permit for development in the Carmel Valley Floodplain, and Administrative Permit for the site development and Design Approval on an approximately 5 acre site, and

WHEREAS, the Board of Supervisors, having considered the application and the evidence presented relating thereto, approves said Combined Development Permit, and makes the following findings in support of its decision:

SECTION 1. The Board of Supervisors finds:

1. FINDING: That the Combined Development Permit includes a Use Permit to allow the construction of a 29, 424 sq. ft. community center facility consisting of multi-purpose classroom and meeting room space and a high school-sized basketball court which doubles as seating space for a small stage area, with 233 total parking spaces, a Use Permit to allow development of a

Exhibit F

Page 1 of 13 Pages

- portion of the site located in a 100 year flood plain, an Administrative Permit for development of the Site and a Design Approval.
- EVIDENCE: Application material contained in File No. 965481; testimony at public hearing.
2. FINDING: The site of the proposed project is physically suitable for the type of development proposed.
- EVIDENCE: The subject area is generally flat and located adjacent to improved areas of lower Carmel Valley where public and private utilities and services are available. There are no geologic constraints, endangered species or archaeological resources in the vicinity of this site.
- EVIDENCE: Materials contained in File No. 965481.
3. FINDING: That the establishment, maintenance, or operation of the proposed building and use would not, under the circumstances of this particular case, be detrimental to the health, safety, peace, morals, comfort, and general welfare of persons residing or working in the area, or be detrimental or injurious to property and improvements in the neighborhood or to the general welfare of the County.
- EVIDENCE: Review of the application by the County Health Department, Public Works Department, Water Resources Agency, Planning and Building Inspection Department and Fire Department found no substantial physical limitation to the proposed project with standard and specific conditions imposed on the development of the site.
- EVIDENCE: The conditions of approval ensure that this project will conform to all applicable County standards, that site improvements conform to all applicable codes and regulations, and that the project will not create a negative impact on the surrounding area. Public Works recommends dedication of rights-of-way, roadway improvements and traffic impact fees; the Health Department recommends that any amplified events shall be held indoors with windows and doors closed; the Planning and Building Inspection Department recommends proof of compliance with all conditions of approval prior to final building permit issuance and regulation of hours of operation.
4. FINDING: That the subject property is in compliance with all rules and regulations pertaining to zoning uses, subdivision, and any other applicable provisions of this Title and any zoning violation abatement costs have been paid.
- EVIDENCE: Staff verification of Planning and Building Inspection records.
5. FINDING: That for purposes of meeting Carmel Valley Floodplain regulations, this project will conform to Section 21.64.130 of Title 21, Zoning Ordinance.
- EVIDENCE: A portion of the site is located within the floodway but not within any riparian corridor, and it will not alter the natural course of the river, or impact visibility of the river, and the project is designed, or conditioned, to minimize, or eliminate infiltration of flood waters into the septic system or discharge from the system into flood waters.

Exhibit F

6. FINDINGS: The proposed community center use is consistent with the Carmel Valley Master Plan which designates the property as "Low Density Residential" and with the policies of the Land Use, Area Plan and the Monterey County General Plan.

EVIDENCE: The text and policies of the Carmel Valley Master Plan, and the County General Plan, were evaluated during the review of the application. No conflict or inconsistencies with the Plan, or with the text or policies, were found. No testimony, either written or oral, was received during the public hearing to indicate that there is any inconsistency with these plans.

EVIDENCE: A quasi-public use, such as a church or church sponsored community center may be approved by Use Permit in a Low Density Residential Zone, with appropriate mitigation and conditions of approval.

7. FINDING: An Initial Study has been prepared and a Negative Declaration filed on August 13, 1998 for this project. No significant impacts were identified, including geology, water useage, availability of public services, noise levels, or aesthetics. Potentially significant traffic impacts have been mitigated to a level of less than significant with the mitigation incorporated in the recommended Conditions of Approval Nos. 27-33. Recommended Condition of Approval No. 34 ensures that these impacts are mitigated to a level of insignificance. In addition, a revised water drainage plan, dated October 19, 1998, was recommended by staff at the Planning Commission meeting on October 28, 1998. The Planning Commission accepted this plan as the preferred mitigation for any potential drainage impacts associated with this project.

EVIDENCE: Staff analysis of the site and surrounding conditions; Initial Study prepared for this project; reports prepared for project; review of County documents and other material contained in File No. 965481.

8. FINDING: Recent growth in population, housing units, commerce and industry, in the County within the Carmel Valley Master Plan area and surrounding environs, including the Greater Carmel Valley Area has led to significant reductions in existing traffic levels of service, traffic congestion, and other attendant land use and environmental problems for the area. Recent traffic studies conducted by the Monterey County Department of Public Works in connection with its review of applications for discretionary permits reveal that the level of service on Carmel Valley Road has deteriorated to an unacceptable level as defined in Policy 39.3.2.1. of the Carmel Valley Master Plan.

EVIDENCE: Ordinance #3649 of the County of Monterey establishes a fee structure for certain types of development in a defined area of the Greater Carmel Valley to assist in funding certain safety improvements to Carmel Valley Road to mitigate traffic impacts.

9. FINDING: Considering the record as a whole, there is no evidence that the project will have potential for adverse effect either individually or cumulatively on wildlife resources as defined under Section 759.2 and 711.2 of the Fish and Game Code.

Exhibit F

Page 3 of 13 Pages

EVIDENCE: The administrative record as a whole, which must and does contain the following information supports the above Finding:

- a. Name and Address of Project Proponent
- b. Brief description of project and its location
- c. An Initial Study has been prepared so as to evaluate the potential for adverse environmental impact
- d. When considering the record as a whole, there is no evidence that the proposed project will have potential for an adverse effect on wildlife resources or the habitat upon which the wildlife depends
- e. The presumption of the project's adverse effect on fish and wildlife resources or the habitat upon which the wildlife depends, has been rebutted on the basis of substantial evidence

10. FINDING: The subject parcel is in a Design Control or "D" District requiring the Carmel Valley Land Use Advisory Committee to review the proposed project. The CVLUAC has reviewed the project and any recommended changes in the plans deemed necessary have been made, with revised plans provided and recommended for approval to the appropriate authority.

EVIDENCE: Design Approval request and project application plans recommended for approval by the Carmel Valley Land Use Advisory Committee are contained in File No. 965481.

11. FINDING: The standard parking requirements have been analyzed and found not to be appropriate for the proposed use due to the particular type of activities and varied hours of operation. Therefore, parking standards have been reduced.

EVIDENCE: Materials contained in File No. 965481; public testimony.

FINDINGS FOR APPEAL FILED BY ALEX SABBETH, SCOTT MacCLELLAND and MARGARET ROBBINS

12. FINDING: A written request for an appeal of the Planning Commission action on October 28, 1998 was filed in a timely manner before the Clerk of the Board pursuant to Chapter 21.80, Monterey County Zoning Ordinance.

EVIDENCE: Correspondence included in File No. 965481.

13. FINDING: The Clerk of the Board accepted the Appeal and scheduled a de Novo hearing on January 19, 1999.

EVIDENCE: Public administrative record and correspondence in File No. 965481.

14. FINDING: The Appeal is deemed complete.

EVIDENCE: Public administrative record and correspondence in File No. 965481.

15. FINDING: The Board of Supervisors has reviewed, evaluated, and considered the appellant's letter and each issue therein and responds as follows:

neighborhoods and subdivision and the flagrant exacerbation of that gridlock assured by this facility."

Response: The conclusions of the traffic study relating to existing intersection levels of service (LOS) were based on traffic count data collected on two days during September 1997. Based on traffic counts carried out by Caltrans and the Public Works Department on Highway 1 in the project vicinity, the traffic levels during the study period were about 1% higher than the annual average. Therefore, the data upon which the traffic analysis is based is a fair representation of typical traffic conditions at the studied intersections.

Using procedures set forth in the 1994 Highway Capacity Manual, the traffic study identified the existing daily morning and afternoon LOS for each study area intersection. The study concluded that the existing LOS at these intersections are LOS "C" or better (an acceptable level) during the afternoon peak hour, with the exception of Highway 1/Carmel Valley Road intersection, which currently operates at LOS "F" during the afternoon commute hours. Public Works has confirmed the methodology used in the study as generally consistent with the department's own information with the possible exception of Rio Rd. at Highway 1. This intersection is not easily analyzed because the backup of traffic from the Highway 1, two-lane "Carmel Hill" section of the road directly impacts Highway 1 and Carmel Valley Road.

The traffic study relied on a thorough assessment of each activity by hour and day of the week and projected the amount of traffic generated. Projected traffic was distributed within the subject street network according to anticipated origins and destination. Public Works Department staff has reviewed this information and confirms its accuracy as a basis of analysis. The study concludes that trips generated by the project, combined with trips generated by approved (but not constructed) projects, will reduce the LOS at one study intersection, but also increase LOS at the balance of other roadway segments and intersections in the study area.

To reduce the project impacts, the study recommends improvements warranted for existing conditions (which are in the process of being carried out by the County) and specific monetary contributions totally \$329,000.

The Board of Supervisors has considered these same traffic issues on other occasions and determined that, rather than imposing a moratorium on development, the County should require *fair share* contributions from new development for traffic improvements. The applicant will contribute to the County's "deficiency plan" which includes the alternatives of construction of Hatton Canyon Parkway or the "interim improvement plans" to Highway 1.

2. "While the applicant presented the results of a traffic study during the commute periods, from 3:30 pm to 6:30 pm, their results were presented in numerical values which were based on a definition of Rio Rd. as an 'arterial highway' which it clearly is not."

Response: The traffic study defines Rio Rd. as an "arterial street" not as an "arterial highway" (reference traffic study, pg. 2). The 1994 Transportation Research Board Highway Capacity Manual (HCM) defines an arterial street as an "undivided street with two or more lanes which may allow parking along the street, usually has left turn lanes, has 4 to 10 signals per mile, has a speed limit of 30 - 40 mph and is adjacent to medium to moderate development." The traffic study states that Rio Rd. is a four-lane street with left turn channelization, no parking, and three traffic signals all within 800 feet. This characterization is the proper basis to analyze traffic conditions and project impacts since it is the most applicable section of the HCM for Rio Road.

3. *"Clearly this will add additional vehicle trips per day directly into this quagmire."*

Response: The traffic study included the Kline-Mockett Mixed Use project in its "Existing Plus Approved" project scenario (reference traffic study, pg. 7).

4. In reference to a Caltrans letter regarding the September Ranch project:

"It is the Department's position that the addition of even one peak hour trip in a LOS F environment represents a significant impact. Therefore, as indicated in our letter to you dated August 28, 1996, this project should not be completed until the completion of the Hatton Canyon Parkway" and "I hope this letter makes clear Caltrans position with respect to the September Ranch or any other project that will impact this corridor."

And further, in reference to the Planning Commission hearing:

"Those five commissioners who voted to approve the project appeared to have been swayed by the opinion expressed by one of them that this was an existing problem which the project applicant did not create."

Response: The appellants are opposed to this project because of existing traffic "gridlock" occurring Monday through Saturday during afternoon peak hours. The County acknowledges the traffic situation and is aware of the conditions which cause "gridlock." It is also true that no individual project can resolve the existing traffic situation. For this reason, it has been the County's policy to require mitigation in the form of fair share contributions toward overall traffic improvements.

All project approved in Carmel Valley in recent years, including the Canada Woods Subdivision, Mills College Subdivision, Rancho San Carlos, Rio Road Chevron Station, Carmel Valley Ranch Spa and others, have been required to contribute a fair share toward traffic improvements.

SECTION 2. Therefore, it is the decision of the Board of Supervisors that the Negative Declaration for the project be adopted and that said Combined Development Permit be approved as shown on the attached maps and drawings, subject to the following conditions:

1. This Combined Development Permit consists of a Use Permit to allow the construction of a 29, 424 sq. ft. community center facility consisting of multi-purpose classroom and meeting room space and a high school-sized basketball court which doubles as seating space for a small stage area, with 233 total parking spaces, a Use Permit to allow development of a portion of the site located in a 100 year flood plain, an Administrative Permit for development of the Site and a Design Approval, to be constructed in accordance with County ordinances and land use regulations subject to the following terms and conditions. Neither the uses nor the construction allowed by this permit shall commence unless and until all of the conditions of this permit are met to the satisfaction of the Director of Planning and Building Inspection. Any use or construction not in substantial conformance with the terms and conditions of this permit is a violation of County regulations and may result in modification or revocation of this permit and subsequent legal action. No use or construction other than that specified by this permit is allowed unless additional permits are approved by the appropriate authorities.

WATER RESOURCES AGENCY

2. A drainage plan shall be prepared by a registered civil engineer or architect to address on-site and off-site impacts, and necessary improvements shall be constructed in accordance with approved plans.
3. Natural drainage shall be routed around proposed development and in a way that it does not impact downslope development, in accordance with plans by a registered civil engineer or architect.
4. Lowest floor and attendant utilities shall be constructed at least 36 feet above mean sea level (NGVD 1929). To provide for the floodproofing and certification of the lowest floor elevation, a reference marker set to the elevation of the lowest floor shall be established at the building site by a licensed land surveyor prior to start of construction. An elevation certificate for the finished floor shall be completed by a registered civil engineer or licensed surveyor and provided to the County Water Resources Agency prior to the inspection and approval of the building foundation by the building inspector.
5. Prior to the issuance of a building permit, the applicant shall obtain from the Monterey County Water Resources Agency (MCWRA), proof of water availability on the property, in the form of an approved Water Release Form.
6. The applicant shall comply with Ordinance No. 3539, or as subsequently amended, of the Monterey County Water Resources Agency pertaining to mandatory water conservation regulations. The regulations for new construction require, but are not limited to:

Exhibit F
Page 9 of 13 Pages
a. All toilets shall be ultra-low flush toilets with a maximum tank size or flush capacity of 1.6 gallons, all shower heads shall have a maximum flow capacity of 2.5 gallons per minute, and all hot water faucets that have more than ten feet of

- pipe between the faucet and the hot water heater serving such faucet shall be equipped with a hot water recirculating system.
- b. Landscape plans shall apply xeriscape principles, including such techniques and materials as native or low water use plants and low precipitation sprinkler heads, bubblers, drip irrigation systems and timing devices.
7. The applicant shall provide to the Water Resources Agency information on the water system to serve the project, including the location of all water wells on the property, any well logs available, and the number of current hookups.

FIRE DISTRICT

8. Size of letters, numbers and symbols for addresses shall be a minimum of 3 inch letter height, 3/8 inch stroke, contrasting with the background color of the sign.
9. All buildings shall have a permanently posted address, which shall be placed at each driveway entrance and visible from both directions of travel along the road. In all cases, the address shall be posted at the beginning of construction and shall be maintained thereafter, and the address shall be visible and legible from the road on which the address is located.
10. The building(s) shall be fully protected with automatic fire sprinkler system(s). The following notation is required on the plans when a building permit is applied for:
- "The building shall be fully protected with an automatic fire sprinkler system. Installation, approval and maintenance shall be in compliance with applicable National Fire Protection Association and/or Uniform Building Code Standards, the editions of which shall be determined by the enforcing jurisdiction. Four (4) sets of plans for fire sprinkler systems must be submitted and approved prior to installation. Rough-in inspections must be completed prior to requesting a framing inspection."**
11. The building(s) shall be fully protected with an approved central station, proprietary station, or remote station automatic fire alarm system as defined by National Fire Protection Association Standard 72 - 1993 Edition. Plans and specifications for the fire alarm system must be submitted and approved by the enforcing jurisdiction prior to requesting a framing inspection. All fire alarm system inspections and acceptance testing shall be in accordance with Chapter 7 of NFPA 72 - 1993.
12. A Jones style fire hydrant with two 4 inch discharge outlets and one 2-1/2 inch outlet shall be installed at the intersection of Rio Road and Val Verde Drive.
13. The kitchen shall have a hood and duct extinguishing system for the cooking area, interconnected with the alarm system.
14. Posting of occupant load shall be required in all assembly or meeting rooms.
15. That there shall be a Knox Box safe for building keys on the premises.

Exhibit F

locations to be determined.

17. That a reduced drawing be submitted to the Fire District for pre-fire plan preparation.

ENVIRONMENTAL HEALTH

18. Obtain a new water system permit from the Division of Environmental Health for a non-community water system.
19. Design the water system improvements to meet the standards as set forth in Chapters 15, 16 and 17 of Title 22 of the California Code of Regulations and as found in the Residential Subdivision Water Supply Standards. Submit engineered plans for the water system improvements and any associated fees to the Director of Environmental Health and Cal-Am Water Co. for review and approval prior to installing (or bonding) the water system improvements. Backflow improvements shall be included as required by Chapter 17 and Cal-Am.
20. Design the water system improvements to meet fire flow standards as required and approved by the local fire protection agency. Submit evidence to the Division of Environmental Health that the proposed water system improvements have been approved by the local fire protection agency and Cal-Am prior to installation.
21. The developer shall install the water system improvements and any appurtenances needed prior to occupancy. The water improvements shall only be installed after the engineered designs have been approved by the Health Department and Cal-Am.
22. The applicant shall submit evidence, satisfactory to the Directors of Health and Water Resources, that the applicant has legal right to the use of the water and land that he proposes to use, in and for his proposed water system, which may include a title search or other legal documentation, as necessary.
23. That the applicant shall file a deed notification stating that: "The water supply for this property may require on-site water treatment in order to meet Secondary (aesthetic) drinking water standards. Water treatment units shall be regenerated off site unless otherwise approved by the Director of Environmental Health."
24. The sewer service for this project shall be connected to and provided by the Carmel Area Wastewater District. Provide evidence that the sewer improvements have been reviewed and approved by the CAWD prior to installation.
25. The use of portable or temporary sound equipment shall not be permitted. The facility's permanent internal sound amplification system shall be used for amplified sound events. The sound system shall be inspected, tested and maximum sound level settings approved by the Director of Environmental Health to ensure compliance with the County's General Plan Noise Element.

26. Amplified sound events shall be limited to the hours between 9 am and 9 pm. The building doors and windows shall be closed during amplified events. Both amplified noise events and/or events with large assemblages of people shall conclude at or prior to 9 pm.

PUBLIC WORKS

27. Provide improvement plans and improve Val Verde Drive from Rio Road to the northerly boundary of property to a width of 32 ft. including curb, gutter, sidewalk and street lighting on the easterly side.
28. The project shall contribute a proportional share of the cost for retiming the traffic signals along Rio Road and Highway 1/Carmel Valley Road intersection.
29. The project is subject to the Carmel Valley Traffic Impact Fee.
30. Dedicate to County the area within the Official Plan Line for Rio Road Extension, including a 1 foot non-access strip.
31. The project will be responsible for Carmel Valley Traffic Impact Fees (CVTIF). The traffic impact fees of \$4.20 per square foot generates a fee of \$127,045 for a gross floor area of 30,250 sq. feet.
32. Install a traffic signal at the Rio Road/Carmel Rancho Blvd. intersection. The proposed project will generate 85 PM peak hour trips, therefore, the project shall contribute 20.7% of 411 vehicles per hour in the cumulative traffic growth in the PM peak hour volumes, or \$24,840 of the total cost (\$120,000) for installing a traffic signal at this intersection.
33. Because the project traffic generation, impacts and contributions to cumulative mitigation may be conservatively high, the applicant/developer may perform follow-up traffic counts, subsequent to the completion of construction, for purposes of verifying the estimates in the traffic analysis. The County may adjust contribution requirements based on subsequent traffic counts, to a lower amount, if necessary.
34. The project shall contribute to cumulative impact mitigation as described in the following Cumulative Mitigation Measures:
- a. The project will generate 25 PM peak hour trips or 0.7% of 3,763 vehicles per hours of existing, plus approved, plus project, plus cumulative PM peak hour volumes. The project shall contribute 0.7% (\$34,300) of the total cost (\$4,900,000) for the improvements listed in *Appendix L* of the County/Caltrans program of short-range improvements to address LOS deficiencies.
- b. The project will generate 55 PM peak hour trips or 14.9% of 370 vehicles per hours in cumulative traffic growth in the PM peak hour volumes along Rio Road. The project shall contribute 14.9% (\$745) of the total cost (approx. \$5,000) towards the retiming of signals along Rio Road.

c. The project will generate 18 PM peak hour northbound right turn trips, or 9.8% of 184 vehicles per hour, in cumulative traffic growth in the PM peak hour, for northbound right turn volumes. The project shall pay 9.8% (\$9,800) of the total cost (approx. \$100,000) for providing a second northbound, right turn lane at Carmel Valley Road/Carmel Rancho Blvd. intersection.

d. The project will generate 55 PM peak hour trips, or 14.9% of 370 vehicles per hour in cumulative traffic growth in the PM peak hour volumes along Rio Road. The project shall pay 14.9% (approx. \$8,940) of the cost of a bus turnout and shelter (approx. \$60,000) at a location east of Crossroads Blvd. and on the north side of Rio Road, to reduce the potential for traffic blocked by bus movements at the bus stop.

PLANNING AND BUILDING INSPECTION

35. Prior to the issuance of a building permit, applicant shall submit written verification of compliance with conditions #26-33 from the Director of the Public Works Department.
36. If archaeological resources or human remains are accidentally discovered during construction, work shall be halted within 150 feet of the find until it can be evaluated by a qualified professional archaeologist. If the find is determined to be significant, appropriate mitigation measures shall be formulated and implemented in conjunction with the Planning and Building Inspection Department.
37. That there be no flags, banners, pennants, or other attention getting devices, other than approved signs, on the property.
38. The site shall be landscaped. At least three weeks prior to occupancy, three copies of a landscaping plan shall be submitted to the Director of Planning and Building Inspection for approval. A \$115.00 landscape plan review fee is required for this project. Fees shall be paid at the time of landscape plan submittal. The landscaping plan shall be in sufficient detail to identify the location, species, and size of the proposed landscaping materials and shall be accompanied by a nursery or contractor's estimate of the cost of installation of the plan. Before occupancy, landscaping shall be either installed or a certificate of deposit or other form of surety made payable to Monterey County for that cost estimate shall be submitted to the Monterey County Planning and Building Inspection Department.
39. That all landscaped areas and/or fences shall be continuously maintained by the applicant and all plant material shall be continuously maintained in a litter-free, weed-free, healthy, growing condition.
40. That all exterior lighting shall be unobtrusive, harmonious with the local area, and constructed or located so that only the intended area is illuminated and off-site glare is fully controlled. That the applicant shall submit 3 copies of an exterior lighting plan which shall indicate the location, type, and wattage of all light fixtures and include catalog sheets for each fixture. The exterior lighting plan shall be subject to approval by the Director of Planning and Building Inspection, prior to the issuance of building permits.

Exhibit F

41. That the parking layout and circulation shall be reviewed by the Director of Public Works and be approved by the Director of Planning and Building Inspection prior to the issuance of building permits or commencement of the approved use.
42. That new utility and distribution lines shall be placed underground.
43. That a Grading Permit shall be required pursuant to the Monterey County Code relative to Grading, Chapter 16.08.
44. That no land clearing or grading shall occur on the subject parcel between October 15 and April 15 unless authorized by the Director of Planning and Building Inspection.
45. That the improvement and grading plans include an implementation schedule of measures for the prevention and control of erosion, siltation and dust during and immediately following construction and until erosion control planting becomes established. This program shall be approved by the Director of Planning and Building Inspection.
46. Hours of operation shall be 7 days a week, from 7:30 am to 10:00 pm. An exception may be made for a special or holiday event with prior approval by the Director of Planning and Building Inspection.
47. That prior to final inspection, the geologic consultant provide certification that all development has been in accordance with the geotechnical report by Terratech, Inc., dated Sept. 13, 1996.
48. The applicant shall incorporate the three recommendations contained in the Drainage Evaluation prepared by Grice Engineering, dated February 18, 1999, into the final improvement plans for the project prior to building permit approval.
49. The applicant shall limit evening events to four (4) per month and all such events shall begin after 6:30 pm.
50. The applicant shall acquire easements as necessary to construct the underground drainage pipe within the tie-back levee easement prior to building permit approval.
51. The property owner agrees as a condition of approval of the Combined Development Permit to defend at his sole expense any action brought against the County because of the approval of this permit. The property owner will reimburse the County for any court costs and attorney's fees which the County may be required by a court to pay as a result of such action. County may, at its sole discretion, participate in the defense of any such action; but such participation shall not relieve applicant of his obligations under this condition. Said indemnification agreement shall be recorded upon demand of County Counsel or prior to the issuance of building permits or use of the property, whichever occurs first.
52. Applicant shall record a notice which states: "A Combined Development Permit (Resolution No. 99-135) was approved by the Monterey County Board of Supervisors for APN 015-021-004-000. This Combined Development Permit was granted subject to

52 conditions of approval which run with the land. A copy of the permit is on file with the Monterey County Planning and Building Inspection Department." Proof of recordation of this notice shall be furnished to the Director of Planning and Building Inspection upon demand of County Counsel or prior to the issuance of building permits or commencement of the use, whichever occurs first.

NOW, THEREFORE, BE IT RESOLVED, that upon motion of Supervisor Johnsen, seconded by Supervisor Salinas, that the foregoing Findings and Decision are passed and adopted on this 30th day of March, 1999 by the following vote, to wit:

AYES: Supervisors Salinas, Pennycook, Calcagno, Johnsen
NOES: Potter
ABSENT: None

A copy of this decision was mailed to the applicant on _____.

THIS DECISION IS SUBJECT TO REVIEW PURSUANT TO THE CODE OF CIVIL PROCEDURE SECTION 1094.5. THE TIME WITHIN JUDICIAL REVIEW OF THIS DECISION MUST BE SOUGHT IS GOVERNED BY CODE OF CIVIL PROCEDURE SECTION 1094.6. ANY PARTY SEEKING JUDICIAL REVIEW OF THIS FINAL DECISION MUST COMPLY WITH THE TIME LIMITS SET FORTH IN CALIFORNIA CODE OF CIVIL PROCEDURE SECTION 1094.6.

I, Sally R. Reed, 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 decision of the Board of Supervisors duly made and entered in the minutes thereof at page of Minute Book 09, on 3/30/99

Dated: March 30, 1999

SALLY R. REED, Clerk of the Board of Supervisors,
County of Monterey, State of California

by Carrie Wilkinson
Deputy Carrie Wilkinson

EXHIBIT-G

**BOARD OF
SUPERVISORS
RESOLUTION #010555
(5 YEAR EXTENSION-
PLN010125)**

PLANNING COMMISSION
COUNTY OF MONTEREY, STATE OF CALIFORNIA

RESOLUTION NO. 01055

A.P. # 015-021-004-000

FINDINGS AND DECISION

In the matter of the application of
Carmel Presbyterian Church (PLN010125)

for a five-year permit extension for Community Life Center (PLN 010125) to extend the previously approved Combined Development Permit (PLN965481), located at the terminus of Rio Road in the Carmel Valley area, Carmel Valley Master Plan, came on regularly for hearing before the Planning Commission on September 12, 2001.

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

FINDINGS OF FACT

1. FINDING: That the proposed extension request is consistent with the Carmel Valley Master Plan which designates the property as "Low Density Residential" and with the policies of the Land Use, Area Plan and the Monterey County General Plan.
EVIDENCE: The text and policies of the Carmel Valley Master Plan, and the County General Plan were evaluated during the review of the application. No conflict or inconsistencies with the Plan, or with the text or policies, were found. No testimony, either written or oral, was received during the public hearing to indicate that there is any inconsistency with these plans.
EVIDENCE: A quasi-public use, such as a church or church sponsored community center may be approved by Use Permit in a Low Density Residential Zone, with appropriate mitigation and conditions of approval.
2. FINDING: Circumstances have not changed since the original approval of the Combined Development Permit, PLN965481, and the requested extension request is in substantial compliance with the original approval.
EVIDENCE: The design is in compliance with the original approved plans.
EVIDENCE: Potential impacts identified in the Initial Study prepared and subsequent Negative Declaration (August 13, 1998) remain the same. No new impacts have been identified. Potential impacts originally identified are adequately mitigated by conditions of approval applied to the approval of the project, as contained in Board of Supervisors Resolution 99-135.
EVIDENCE: Staff reviewed the General Plan, Carmel Valley Master Plan, and County Code, and determined that no changes to these documents that would affect this project have occurred since its approval of March 30, 1999.

Exhibit 6

3. FINDING: That the establishment, maintenance, or operation of the proposed building and use would not, under the circumstances of this particular case, be detrimental to the health, safety, peace, morals, comfort, and general welfare of persons residing or working in the area, or be detrimental or injurious to property and improvements in the neighborhood or to the general welfare of the county.

EVIDENCE: Review of the application by the county Health Department, Public Works Department, Water Resources Agency, Planning and Building Inspection Department and Fire Department found no substantial physical limitation to the proposed project with standard and specific conditions imposed on the development of the site.

EVIDENCE: The conditions of approval ensure that this project will conform to all applicable county standards, that site improvements conform to all applicable codes and regulations, and that the project will not create a negative impact on the surrounding area.

DECISION

THEREFORE, it is the decision of said Planning Commission that said application be granted as shown on the attached sketch, subject to the following conditions:

1. That the extension of the Combined Development Permit be subject to the 52 conditions of approval contained in Board of Supervisors Resolution 99-135 adopted March 30, 1999.
2. That the permit shall expire March 30, 2006.

PASSED AND ADOPTED this 12th day of September, 2001, by the following vote:

AYES: Errea, Sanchez, Hawkins, Pitt-Derdivanis, Wilmot
 NOES: Parsons, Brennan, Diehl
 ABSENT: Hernandez, Lacy



 DALE ELLIS, SECRETARY

Copy of this decision mailed to applicant on NOV 30 2001

IF ANYONE WISHES TO APPEAL THIS DECISION, AN APPEAL FORM MUST BE COMPLETED AND SUBMITTED TO THE CLERK OF THE BOARD OF SUPERVISORS ALONG WITH THE APPROPRIATE FILING FEE ON OR BEFORE DEC 10 2001

This decision, if this is the final administrative decision, is subject to judicial review pursuant to California Code of Civil Procedure Sections 1094.5 and 1094.6. Any Petition for Writ of Mandate must be filed with the Court no later than the 90th day following the date on which this decision becomes final.

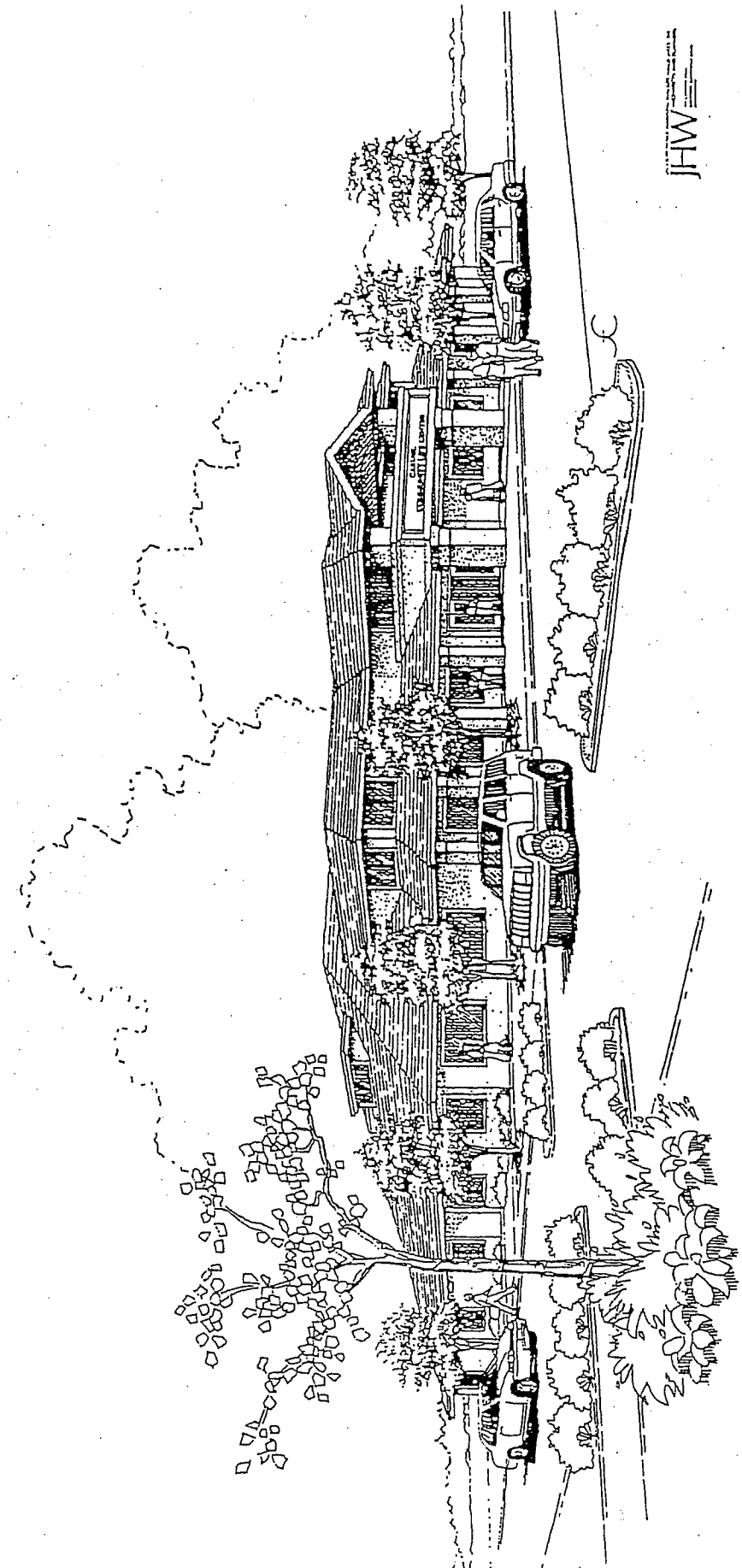
Exhibit 6

EXHIBIT "D"

BOS 1-19-99

NEW PLN 010125
2001

JHW



APPLICANT SUBMITTAL

Exhibit B

Page 3 of 7 Pages

APPLICANT SUBMITTALS

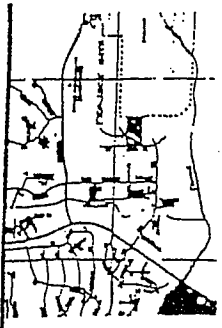
WILLIAMSON WALKER AND ASSOCIATES, INC.
JHW
11100 UNIVERSITY BOULEVARD
SUITE 100
DALLAS, TEXAS 75243
(214) 343-1100

CARME
COMMUNITY
CENTER

NO ROAD AT VAL VERDE ROAD
CORNER, DALLAS

SITE PLAN

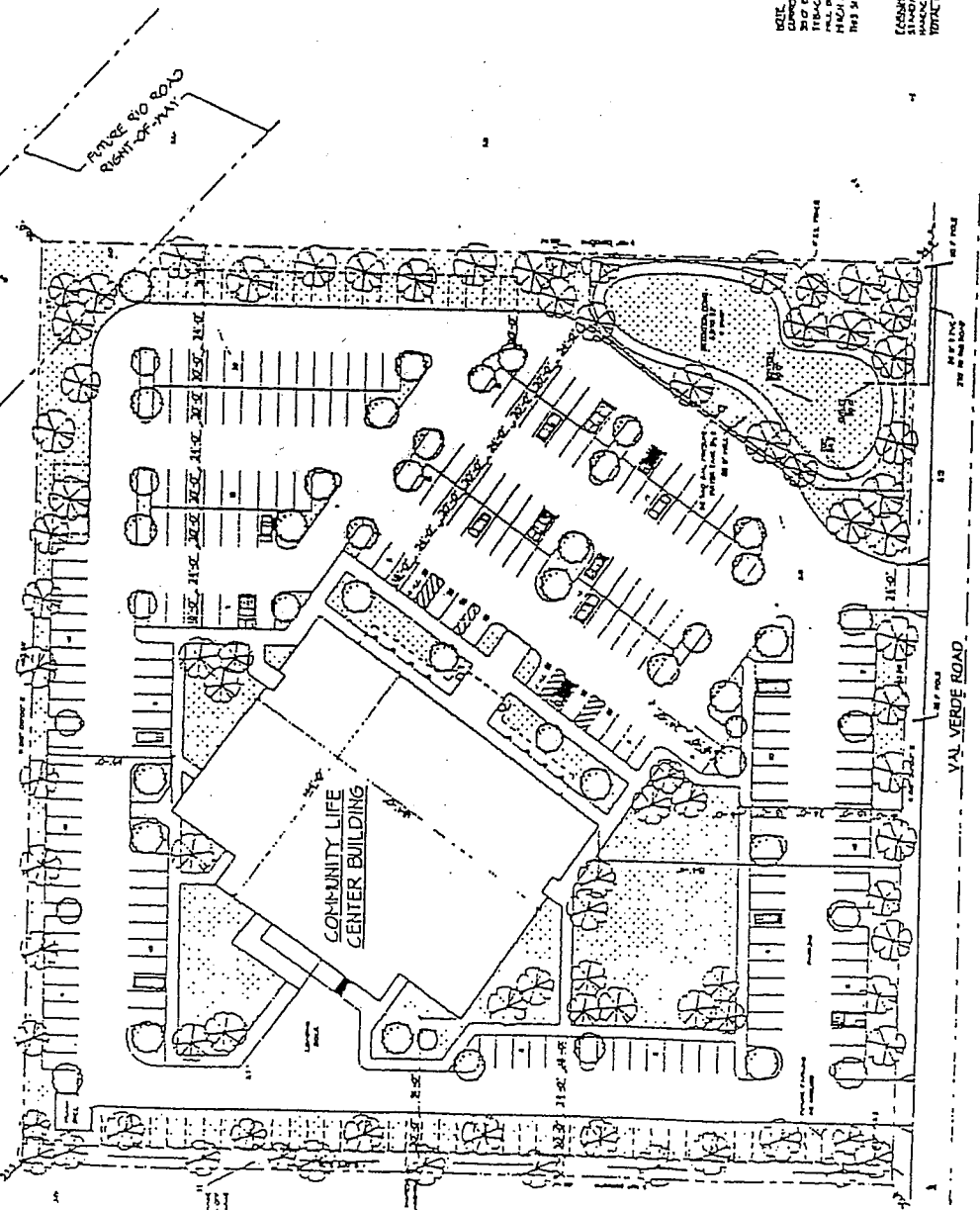
A-1



VICINITY MAP

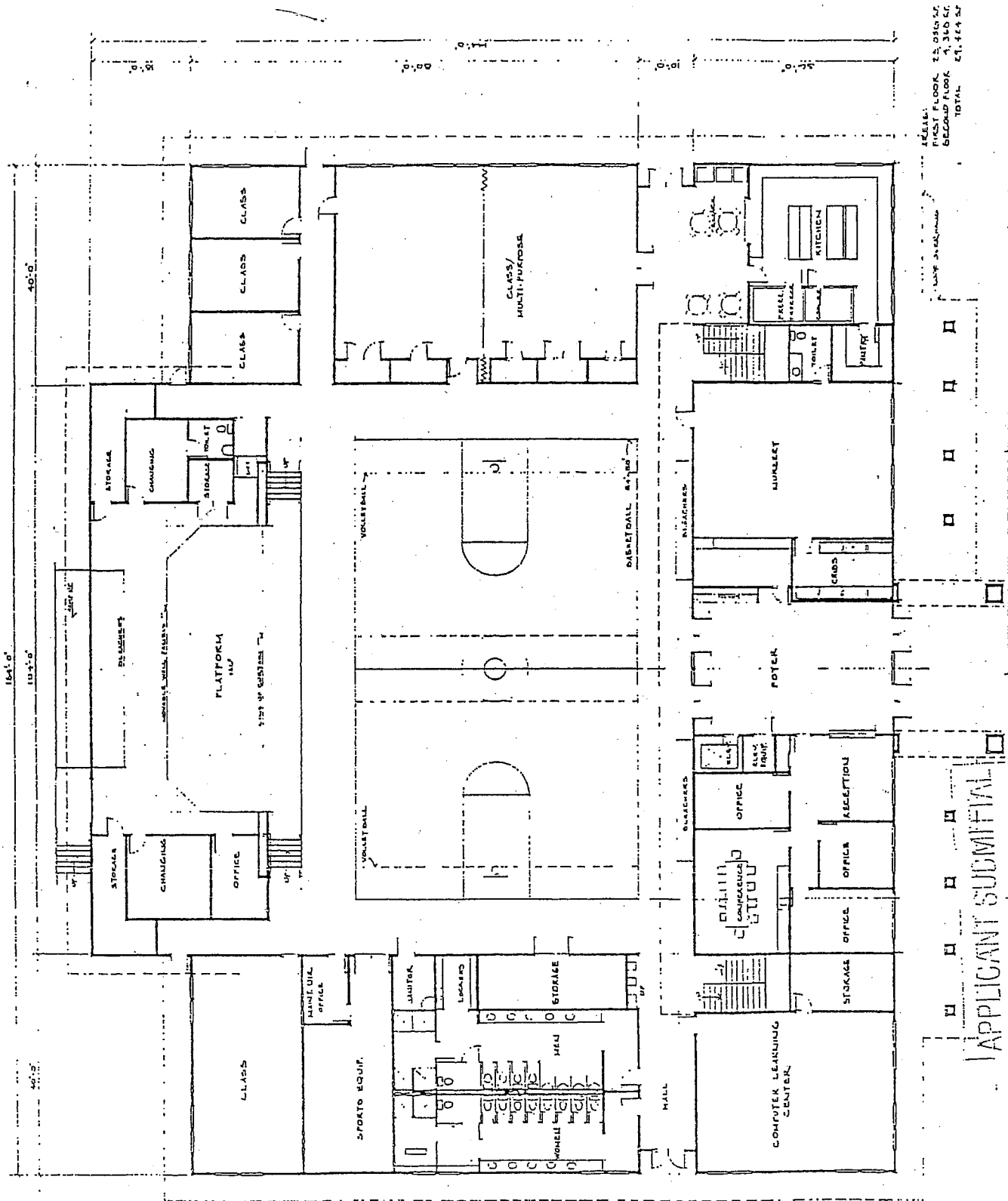
NOTE: ALL DIMENSIONS ARE IN FEET AND INCHES. ALL DIMENSIONS SHALL BE TO FACE UNLESS OTHERWISE NOTED. ALL DIMENSIONS SHALL BE TO FACE UNLESS OTHERWISE NOTED. ALL DIMENSIONS SHALL BE TO FACE UNLESS OTHERWISE NOTED.

STANDARD CAR - 225
HANDICAP CAR - 25
TOTAL COUNT - 250



SEE SHEET B-1044 / SHEET FOR
ADDITIONAL NOTES AND DIMENSIONS

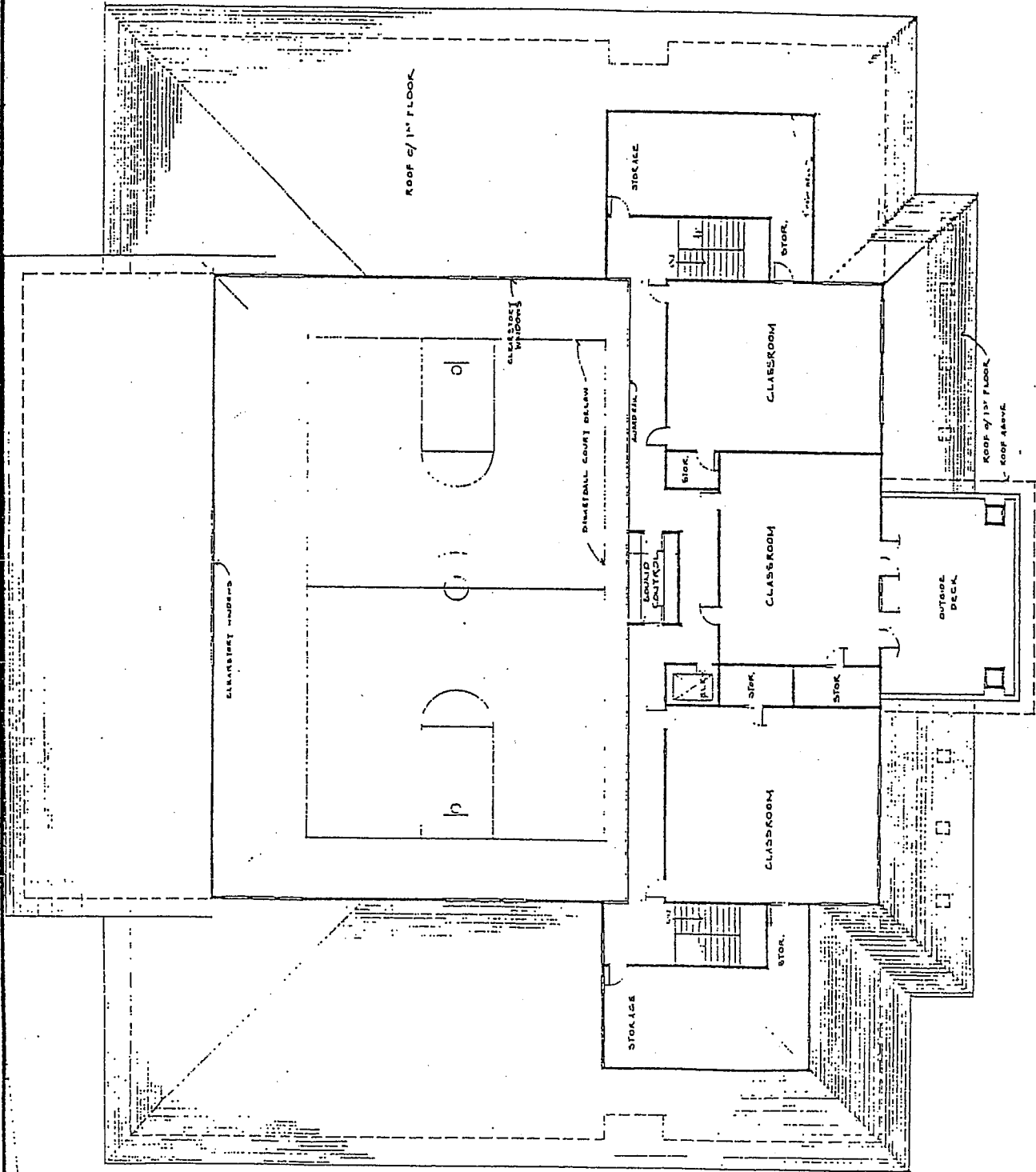
Exhibit 6



AREAS:
 FIRST FLOOR 25,050 SF
 SECOND FLOOR 1,360 SF
 TOTAL 26,410 SF

APPLICANT SUBMITTAL

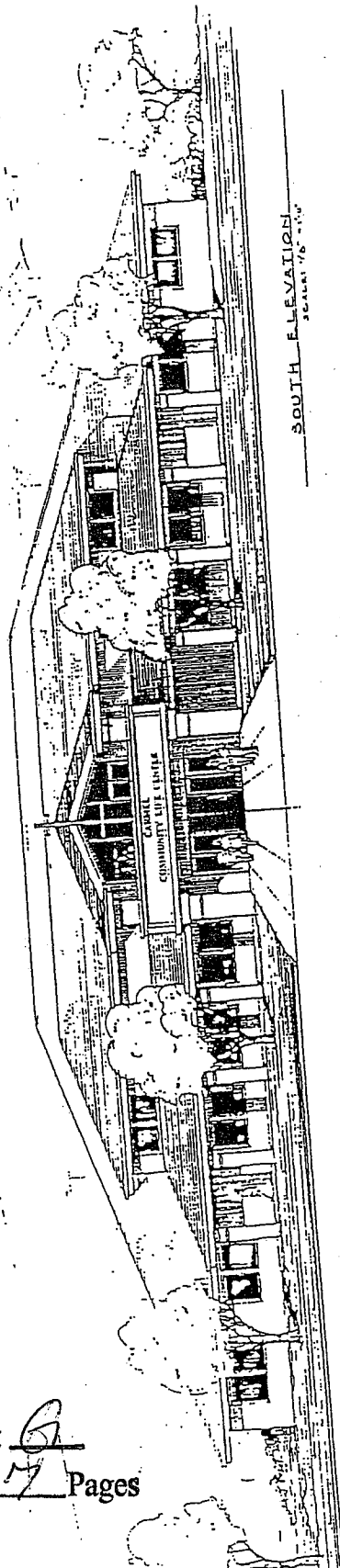
Exhibit 8



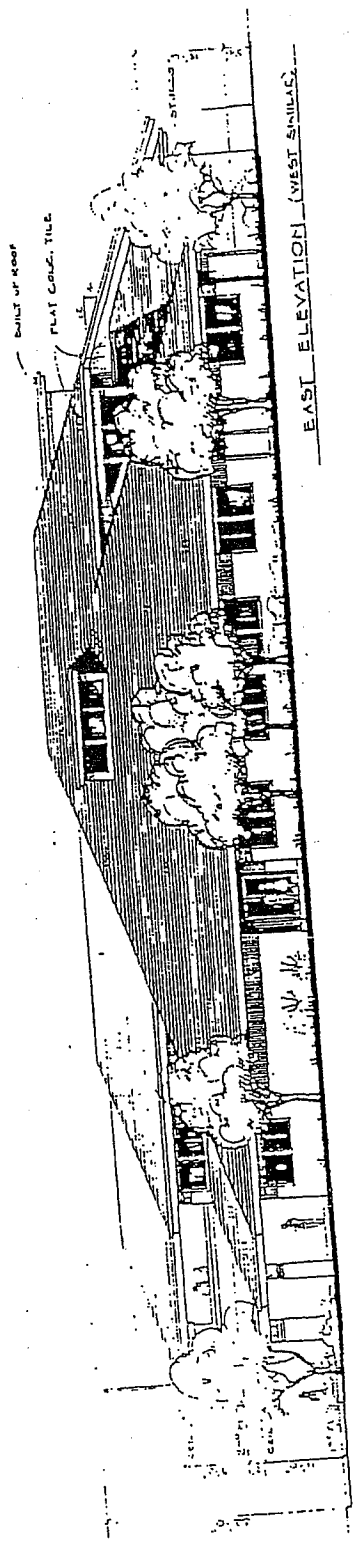
APPLICANT SUBMITTAL

JACOBUSKY HAWKINS
 WATER ARCHITECTS INC
JHW
 2900 SHERMAN BLVD
 MONTEBELLO, CALIF 94038
 TEL: (415) 461-0072

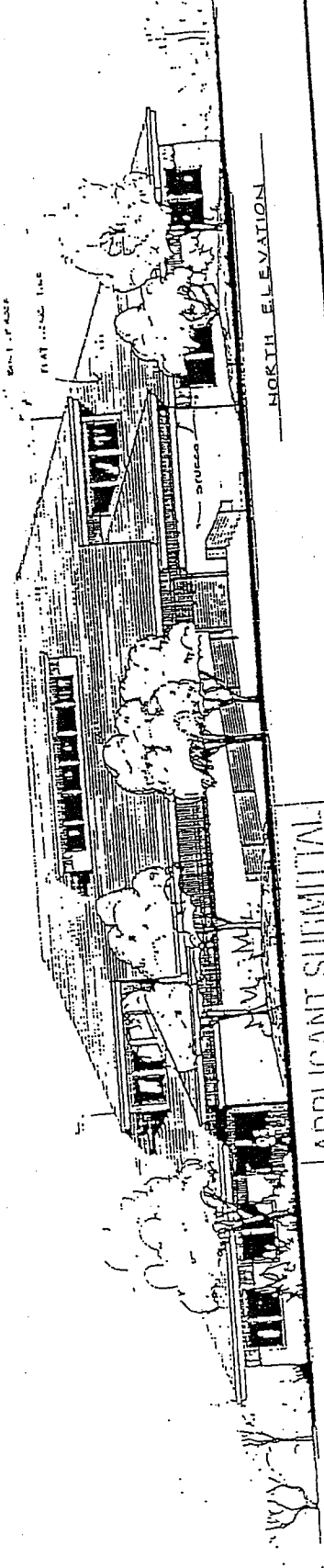
CARNIEL
 COMMUNITY LIFE
 CENTER
 RIO ROAD AT
 VAL VERDE ROAD
 CARNIEL, CALIF.



SOUTH ELEVATION
 SCALE: 1/8" = 1'-0"



EAST ELEVATION (WEST SIDE)



NORTH ELEVATION

APPLICANT SUBMITTAL

DATE: 11/11/73
 DRAWN BY: J. K. K. K.
 CHECKED BY: J. K. K. K.

A-4

EXHIBIT- H

BOARD OF
SUPERVISORS
RESOLUTION 2000-342
(FEE WAIVERS)

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

Resolution 2000- 342

Resolution Amending the Monterey)
County Master Fee Resolution to)
Clarify the Fee for Appeals on)
Land Use Issues and Establish)
Criteria for the Waiver of Fees in)
Specific Circumstances.)

Whereas: Chapter 1.40 of the Monterey County Code establishes the Monterey County Master Fee Resolution (the Resolution) as the vehicle for setting and amending fees; and,

Whereas: The Board wishes to clarify the appeal fee for land use issues and to establish criteria and authority for the Director of Planning and Building Inspection to waive fees in specific cases; and,

Whereas: The Board has received a report and recommendations from the County Administrative Office and Planning and Building Inspection; and,

Whereas: The Board has held a public hearing as required by law and heard from all interested parties;

NOW, therefore, be it resolved that the Board clarifies that the appeal fee for appeals to the Planning Commission or Board of Supervisors on land use issues is \$671.00.

Be it further resolved that the Director of Planning and Building Inspection may waive application and appeal fees for discretionary permit and building permit applications for:

1. Small day care centers (less than twelve children).
2. Inclusionary portions of proposed residential developments.
 - a. Special Handling affordable housing projects, as detailed in the adopted Special Handling criteria (25% affordable housing). Amount of fees waived is based on the percentage of affordable housing provided, and may include additional fees beyond the original application fees.
 - b. Persons age 62 or over on a fixed, very low income as defined by Housing and Urban Development.

- c. Reclassification applications to bring property into consistency with existing General Plan land use designations.
 - d. County or other government agencies.
 - e. Permit fees for the repair or reconstruction of property and structures damaged or destroyed by an act or event that has been declared a disaster by the Board of Supervisors where insurance is inadequate to pay the applicable fees.
8. Development, enhancement, expansion or modification of needed community facilities by non-profit organizations and community groups meeting the following criteria:
- a. The proposed project is available for use by the general public; and
 - b. Provides a scope of benefit beyond the residents of the immediate vicinity; and,
 - c. Is of obvious public benefit. Evidence of public benefit includes, but is not limited to, projects that:
 - i. Meet a public need previously identified or recognized by the Board of Supervisors;
 - ii. Provide a public facility not presently available in the community;
 - iii. Have generated obvious, substantial community support; or,
 - iv. Would either reduce County costs or increase County revenue.
9. General Plan amendments for parcels with inappropriate or inaccurate land use designations provided the property has been field checked and verified that it is inaccurately or inappropriately designated.

Requests Not Conforming to Policy:

The Planning Commission shall consider all requests for fee waivers not meeting the above criteria.

Appeal of Director's Decision:

The Planning Commission shall consider all appeals of decisions of the Director on fee waiver requests.

Payment of Fees:

All fees shall be paid at the time of the filing an application or an appeal. Should the fees subsequently be waived, the fees shall be refunded.

On motion of Supervisor PENNYCOOK, seconded by Supervisor SALINAS, and carried by those members present, the Board hereby adopts this resolution amending the Monterey County Master Fee Resolution to clarify the fee for appeals on land use issues and establish criteria for the waiver of fees in specific circumstances.

PASSED AND ADOPTED this 29th day of September, 2000, by the following vote, to-wit:

AYES: Supervisors Salinas, Pennycook and Calcagno.

NOES: None.

ABSENT: Supervisors Johnsen and Potter.

I, SALLY R. REED, 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 at page -- of Minute Book 70, on August 29, 2000.

DATED: August 29, 2000

SALLY R. REED, Clerk of the Board
of Supervisors, County of Monterey, State of
California

By: Nancy Luker Hill
Deputy

EXHIBIT- I

FEE WAIVER
REQUEST
APPLICATION



FEE WAIVER REQUEST

Monterey County Planning & Building Inspection Department
168 West Alisal, Salinas, CA 93901
(831) 755-5025

Property owner: The Carmel Presbyterian Church
Address:
City/State/Zip:
Phone:
Email:

Agent: Todd Bessire, Derinda L Messenger & Assoc
Address: 480 Lincoln Ave, Suite 103
City/State/Zip: Salinas, CA 93901
Phone: 831-754-4911
Email:

Assessor's Parcel Number: 015-021-004-008

Description of Project: Applicant submitted payment for a determination of Vested Rights

Fee Waiver Justification: See Attached letter

(attach additional information if needed)

Table with 2 columns and multiple rows. Header: Department use only. Rows include: Given out: 3/11/2009, By: MACK, David; Received: 3/11/2009, By: MACK, David; Referred to other agencies: NO (no other agency involvement); Fees waived by Director? No (circled), Date 4/13/09; Basis for Waiver - Denied. Does not conform to policy. Can request waiver from Planning Commission per Reso 2000-242.; Amount of Fees waived: P&BI; Health N/A; WRA N/A; PWD N/A.

MONTEREY COUNTY
RESOURCE MANAGEMENT AGENCY – PLANNING DEPARTMENT



MEMORANDUM

Date: March 31, 2009
To: Mike Novo, Director RMA – Planning Department
From: David J. R. Mack, Assistant Planner
Subject: Fee Waiver Request – PLN090070 – Carmel Presbyterian Church Determination of Vested Rights

The Community Life Center was originally applied for in 1996 under file number PC965481, receiving approval from the Planning Commission on October 28, 1998. Following this approval, an appeal was filed and accepted, and scheduled for a de Novo hearing on January 19, 1999. After numerous hearings on January 19, 1999, on February 23, 1999, and again on March 30, 1999, the Board of Supervisors upheld the Planning Commission decision, approving the project with Resolution Number 99-135 (attached), subject to 52 conditions of project approval.

On 2001, the Church applied for a five-year extension. On September 12, 2001, the extension request was heard and approved by the Planning Commission, subject to the original 52 conditions of approval contained in Board of Supervisors Resolution 99-135.

The Church was issued a grading permit to begin preliminary ground work in preparation for continued work on the site, on March 23, 2006. The permit was re-issued on July 2, 2008, and is set to expire on April 15, 2009, assuming no further work or inspections are secured. This pending expiration date prompted the Church to apply for a Vested Rights Determination.

On February 24, 2009, Carmel Presbyterian Church submitted an application for Vested Rights determination relative to their approved Combined Development Permit (PC965481/PLN010125) for a Community Life Center. The submittal of the application was followed by a fee waiver request on March 11, 2009.

Pursuant to Board of Supervisors Resolution 2000-342, the Director of Planning may waive fees for *discretionary permits for development, enhancement, expansion or modification of needed community facilities by non-profit organizations and community groups meeting the following criteria:*

- 1) *The proposed project is available for use by the general public; and*
- 2) *Provides a scope of benefit beyond the residents of the immediate vicinity; and*
- 3) *Is of obvious public benefit. Evidence of public benefit includes, but is not limited to, project that's:*
 - a) *Meet a public need previously identified or recognized by the Board of Supervisors;*
 - b) *Provide a public facility not presently available in the community;*
 - c) *Have generated obvious, substantial community support; or*
 - d) *Would either reduce County costs or increase County revenue.*

Although a request for Vested Rights would require a discretionary action, the request is not a project application per se. The Vested Rights application does not involve *development, enhancement, expansion or modification* of facilities, but rather is more of a determination of development rights relative to a previously approved application. Therefore, staff believes that the current application does not qualify for a Waiver of Fees, under the cited section of Resolution 2000-342.

Exhibit 7

DERINDA L. MESSENGER & ASSOCIATES

A PROFESSIONAL CORPORATION

Todd Bessire
todd@messengerlawfirm.com

File No. 435.000

March 11, 2009

VIA HAND DELIVERY

David Mack
Assistant Planner - Inland Team
RMA - Planning Department
168 W. Alisal Street, 2nd Floor
Salinas, CA 93901

Re: Carmel Presbyterian Community Life Center Fee Waiver Request

Dear David:

This firm submitted the application for determination of vested rights for Carmel Presbyterian Community Life Center on February 24, 2009, and indicating that a request for a fee waiver would be submitted following your return to the office on March 2, 2009. The following information supports a conclusion that Carmel Presbyterian Community Life Center conforms with Monterey County Board of Supervisors Resolution 2000-342 which states, in pertinent part, that fees may be waived and where applicant is a non-profit entity.

- a. The Community Life Center is operated by a non-profit organization available for use by the general public;
- b. The Church expends more than three hundred thousand dollars (\$300,000.00) each year for the benefit of international programs all over the world clearly providing a scope of benefit beyond the residents of the immediate vicinity; and
- c. The Church provides the following services at no cost to the public and is therefore an obvious public benefit:
 - i. moral and theological education;
 - ii. regular public education;
 - iii. four different youth programs available each Sunday and one time per week;
 - iv. quarterly lecture program (i.e. the next lecture will be on adolescence child rearing)

Exhibit F

Page 3 of 4 Pages

450 LINCOLN AVENUE, SUITE 103 ■ SALINAS, CA 93901
831.754.4911 ■ 831.754.4915 FAX

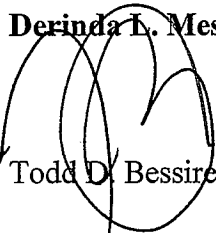
David Mack, RMA - Planning Department
March 2, 2009
Page 2

- v. the church provides grand funding in excess of \$250,000 per year to numerous Peninsula non-profit organizations; and
- vi. a variety of classes open to the general public, including a twelve step program and general education programs during the week during non-peak traffic hours for the general working public.

For the above reasons, the Carmel Presbyterian Community Life Center clearly conforms to Monterey County Board of Supervisors Resolution 2000-342 provided with this letter. Accordingly, you as the staff member have the authority to waive the fees upon receipt of this letter.

Sincerely,

Derinda L. Messenger & Associates, PC



Todd D. Bessire

TDB/lt

Enclosures

cc: Mike Novo, Director of Planning

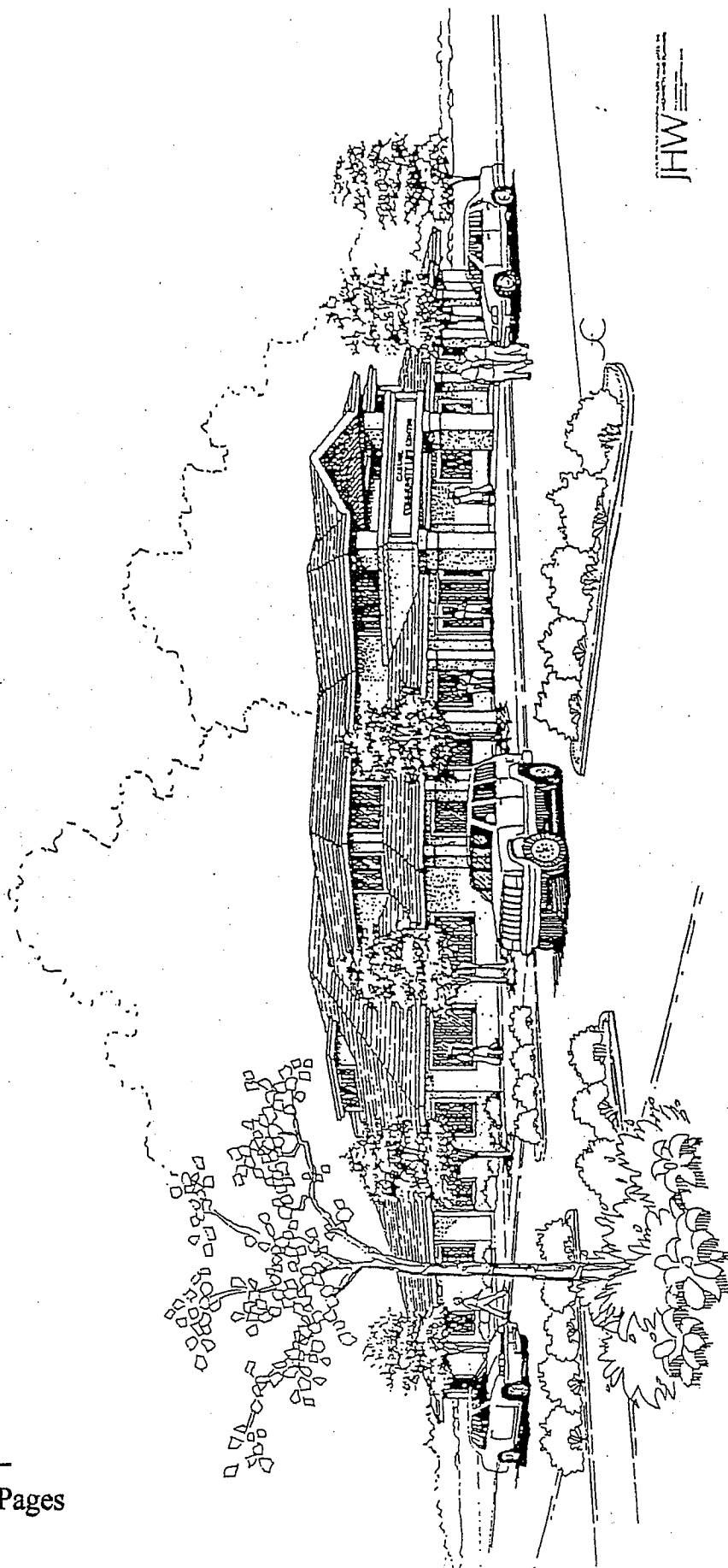
EXHIBIT- J

APPROVAL SITE PLAN
(PLN965481/ PLN010125)

BOS 1-19-99

NEW PLN 010125
2001

JHW



APPLICANT SUBMITTAL

APPLICANT SUBMITTED

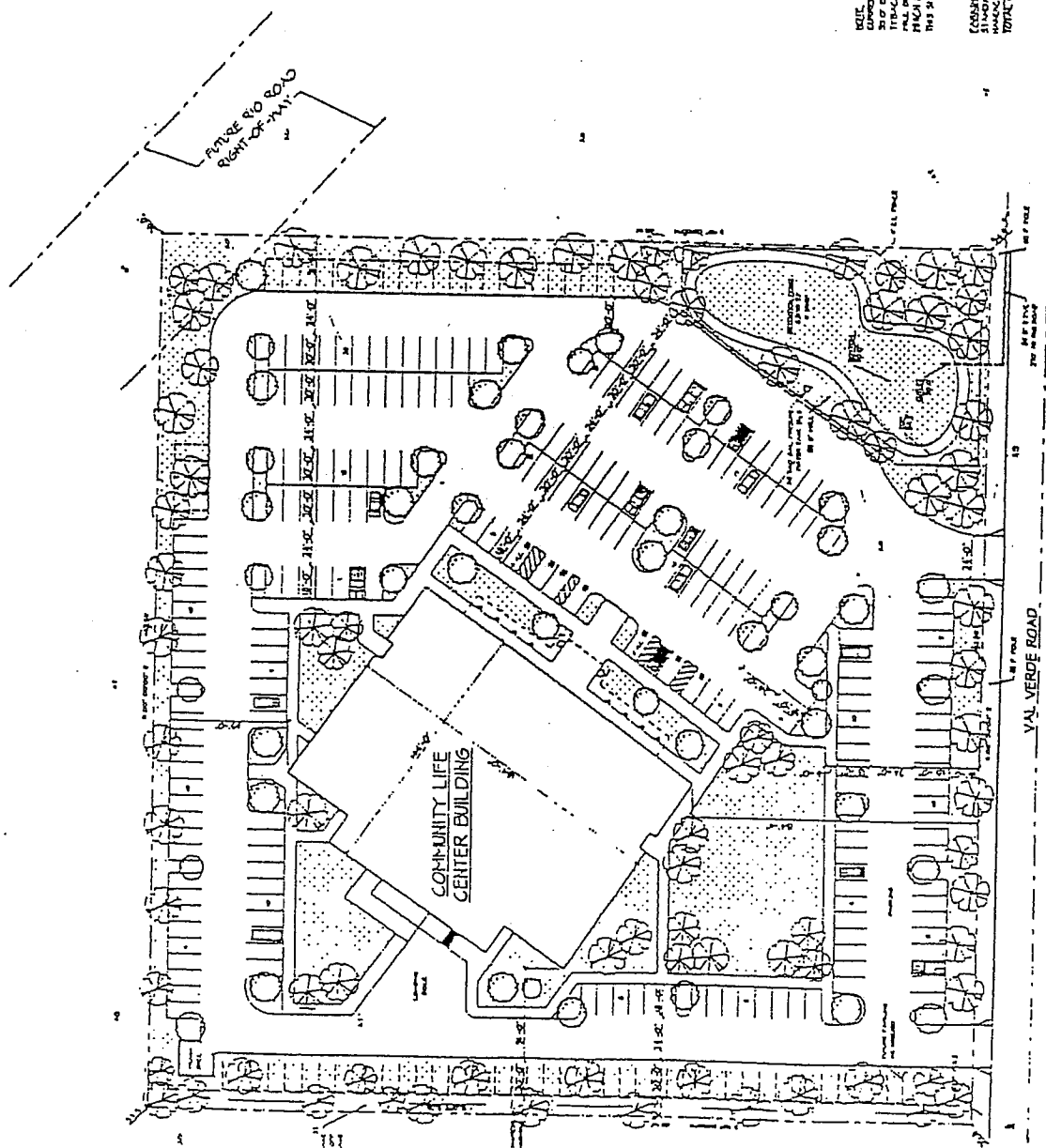
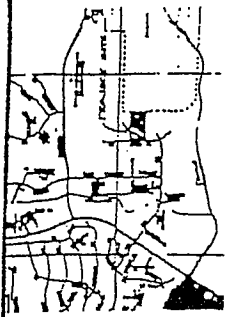
ACCOUNTANT HANCOCK
WALDEN ARCHITECTS, INC.
JHW
PROJECT ARCHITECT
1000 17th Street, N.W.
Atlanta, GA 30333
Tel: (404) 525-1111

CARMIE
COMMUNITY
CENTER

NO FLOOD PLANNING REQUIRED
ON THIS PROJECT

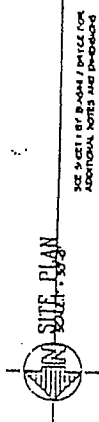
SITE PLAN

A-1



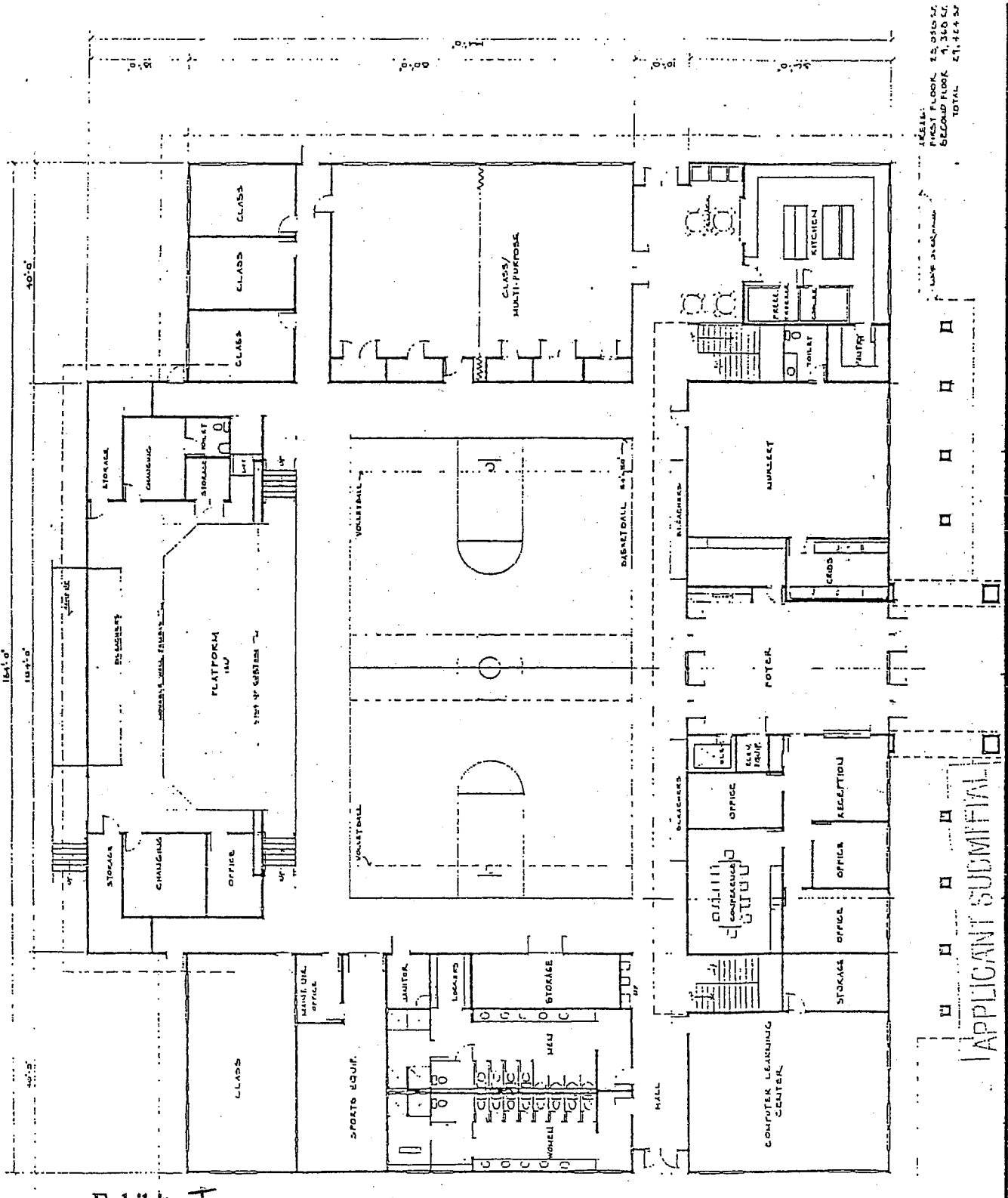
NOTE: ELEVATION 100 FEET FLOOD PLANNING IS AT 20' ELEVATION ON THE GROUND. THEREFORE, THE ELEVATION OF THE FLOOD PLANNING IS 120 FEET. THE TOTAL ELEVATION OF THE FLOOD PLANNING IS 120 FEET.

CONCRETE
STANDARD CARDS - 200
MANHOLE CARDS - 1
TOTAL CARDS - 201



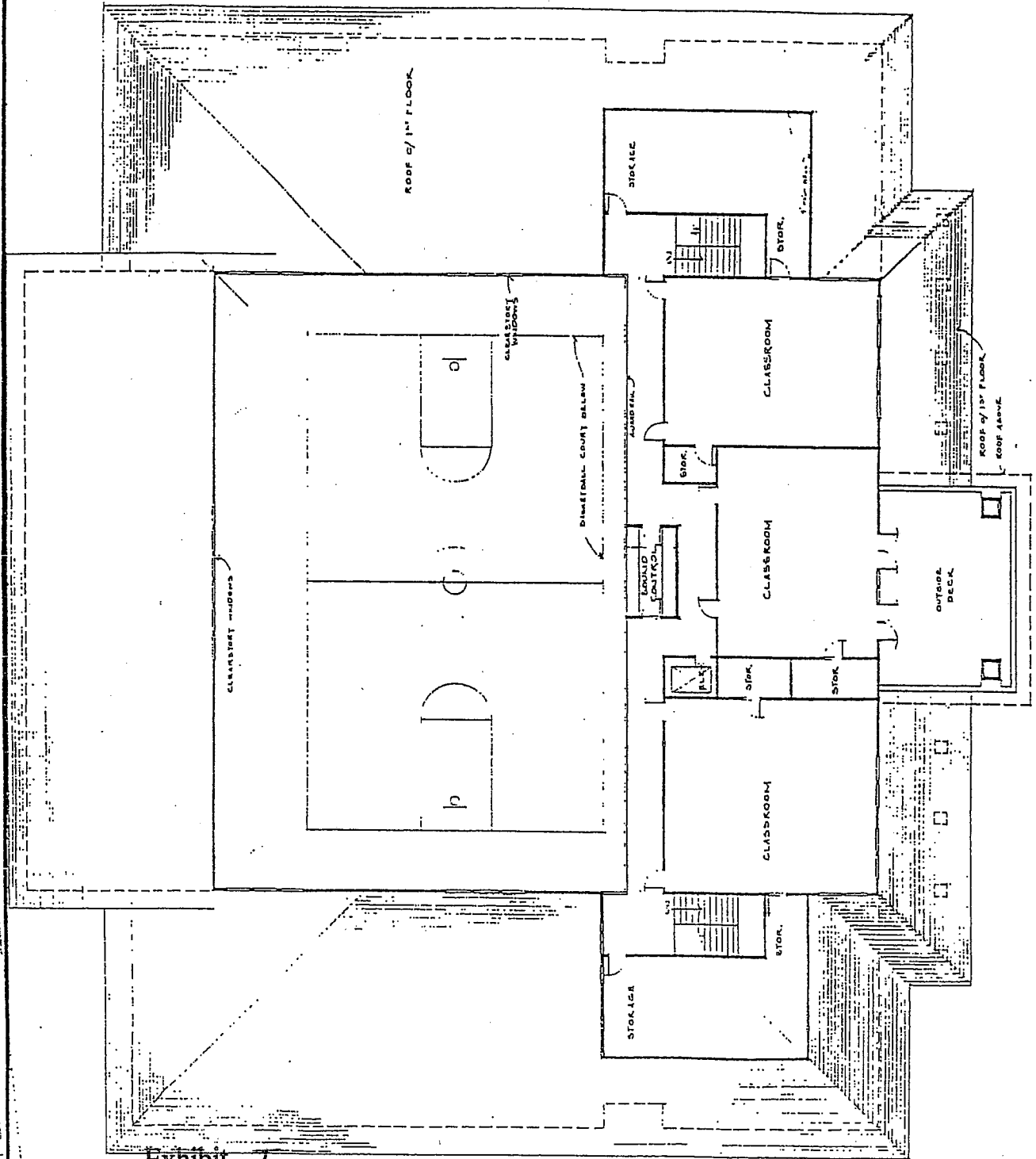
SEE SHEET 1 OF 5-DRAWING / PRINTS FOR
ADDITIONAL NOTES AND DIMENSIONS

Exhibit J



RECEIVED: 10/25/92
FIRST FLOOR: 23,550 SQ. FT.
SECOND FLOOR: 21,350 SQ. FT.
TOTAL: 44,900 SQ. FT.

APPLICANT SUBMITTAL



APPLICANT SUBMITTAL

Exhibit 2

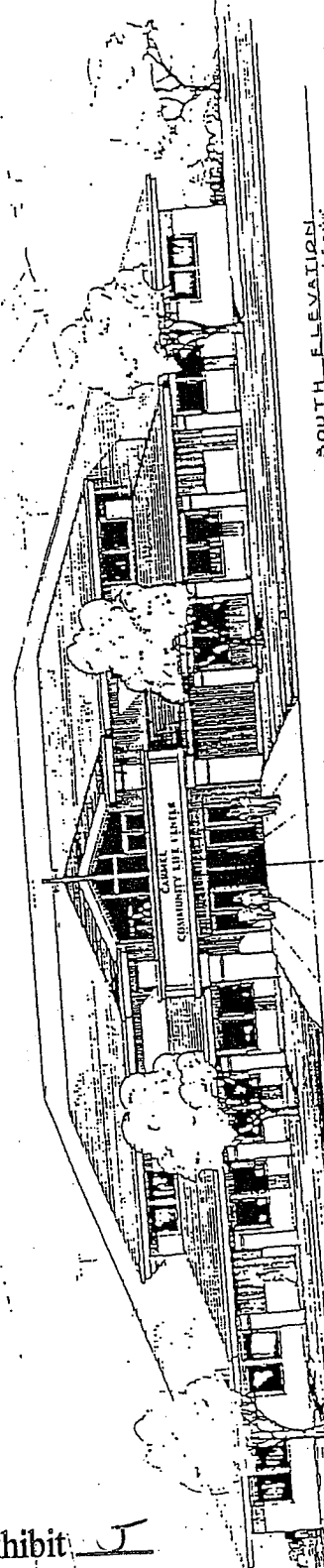
CARMEL
COMMUNITY LIFE
CENTER

RIO ROAD XT
VAL VERDE ROAD
CARMEL CALIF.

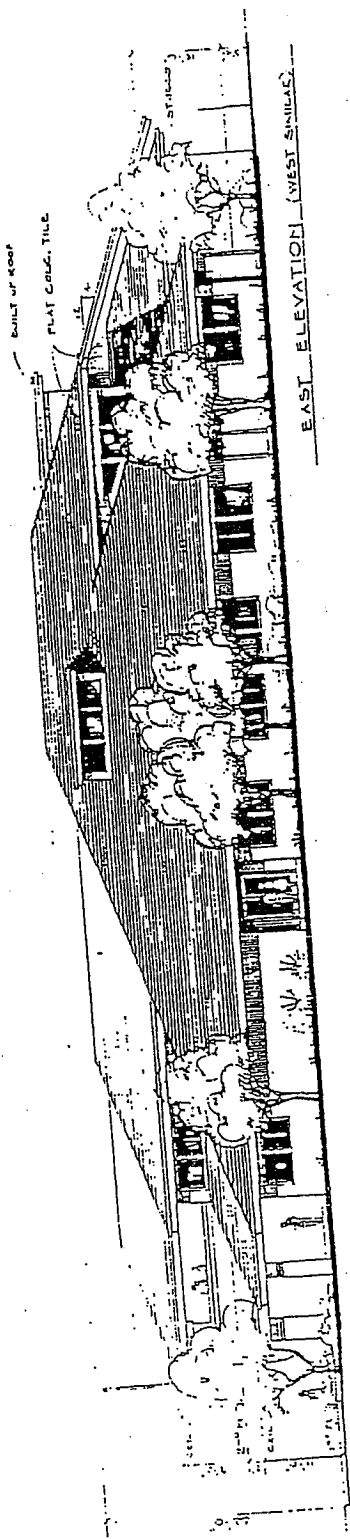
DATE: 01-15-82
DRAWN BY: J.E. 18
CHECKED BY: J.E. 18
SCALE: AS SHOWN

ARCHITECT
ELEVATIONS

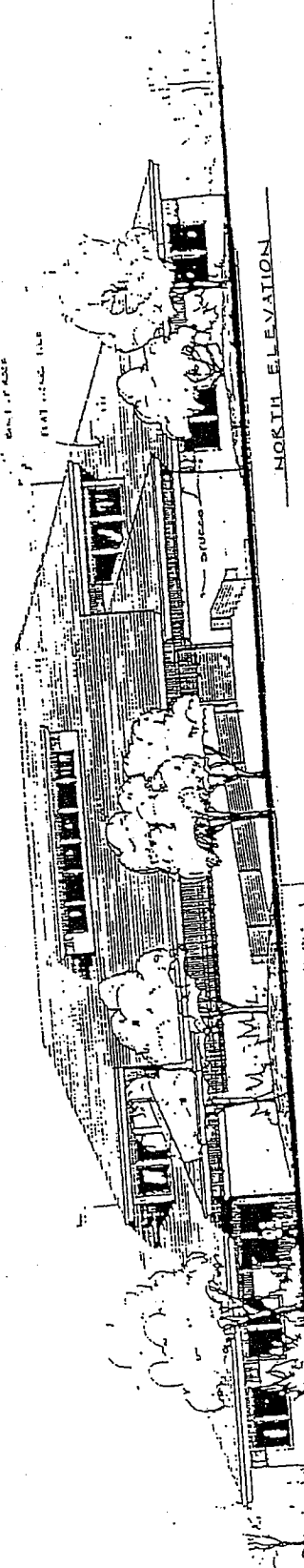
A-4



SOUTH ELEVATION
SCALE: 1/8" = 1'-0"



EAST ELEVATION (WEST SILLIAS)



NORTH ELEVATION

APPLICANT SUBMITTAL

EXHIBIT- K

CONDITION STATUS
LETTER FROM
APPLICANT – DATED
APRIL 23, 2009

DERINDA L. MESSENGER & ASSOCIATES
A PROFESSIONAL CORPORATION

Todd D. Bessire, Esq.
todd@messengerlawfirm.com

File No. 435.000

April 23, 2009
VIA HAND DELIVERY

David Mack
Assistant Planner - Inland Team
RMA - Planning Department
168 W. Alisal Street, 2nd Floor
Salinas, CA 93901

Re: Carmel Presbyterian Community Life Center Vested Rights Application

Dear David:

Pursuant to your request for a status of the conditions for the Carmel Presbyterian Community Life Center (PLN 965481) we have prepared the following:

Condition No. 1 (Project Description)

This requires no work from the applicant.

**WATER RESOURCES AGENCY
CONDITIONS 2-7**

Condition No. 2 (Drainage Plan)

The applicant has prepared a preliminary drainage plan and is working with the Monterey County Water Resources Agency on a final plan. (See March 8, 2006 memorandum from Michael Tripani of the Monterey County Water Resources Agency enclosed herewith)

Condition No. 3 (Route of Natural Drainage)

The applicant is working with the Monterey County Water Resources Agency to develop an off-site drainage plan that best satisfies the drainage needs of the site and conforms to the Carmel Valley Master Drainage Plan.

Exhibit K

Page 1 of 10 Pages

450 LINCOLN AVENUE, SUITE 103 ■ SALINAS, CA 93901
831.754.4911 ■ 831.754.4915 FAX

Condition No. 4 (Finished Floor Elevation)

This condition will be satisfied at the time of constructing the building. The finished floor elevation is 38.17 feet above sea level and the FEMA Base Flood Elevation is 35.5 feet above sea level (Per General Contractors discussion with Mike Tripani of the Monterey County Water Resources Agency).

Condition No. 5 (Water Release Form)

Satisfied-See March 08, 2006 memorandum from Michael Tripani.

Condition No. 6. (Water Conservation)

The applicant will install water conserving appliances and use xeriscape principles with their landscape. As such, the applicant will comply with this condition when they construct the interior of the building and landscape the property.

Condition No. 7 (Water system information)

The applicant will provide the Monterey County Water Resources Agency a site plan showing the water system improvements prior to issuance of a building permit for the structure.

FIRE DEPARTMENT
CONDITIONS 8-17

Condition No. 8 (Address Letter Sizes)

The applicant will obtain an address from the Department of Public Works and post the address in the manner proscribed by this condition prior to construction of the building.

Condition No. 9 (Address Posting)

The applicant will post the address in the manner proscribed by this condition prior to construction of the building.

Condition No. 10. (Fire Sprinklers)

Exhibit K

The appropriate notes will be placed on the working drawings for the building when they are submitted to the Building Division and the appropriate fire sprinklers will be installed when the building is constructed.

Condition No. 11 (Fire Alarm System)

Plans and specifications for the fire alarm system will be submitted to the Fire Department prior to a framing inspection for the building.

Condition No. 12 (Fire Hydrant)

The appropriate Fire Hydrant will be installed at the appropriate location prior to a final inspection of the building.

Condition No. 13 (Kitchen Hood/Alarm System)

The kitchen hood will be constructed so that the hood and duct extinguishing system for the cooking area is interconnected with the alarm system.

Condition No. 14 (Posting of Occupancy Load)

The appropriate signage will be installed prior to occupancy of the building.

Condition No. 15 (Knox Box)

A Knox Box safe for building keys will be placed on the premises prior to occupancy of the building.

Condition No. 16 (Portable Fire Extinguishers)

Portable Fire Extinguishers will be placed throughout the building in appropriate locations prior to occupancy of the building.

Condition No. 17. (Reduced Drawings)

A reduced pre-fire preparation plan will be submitted to the Fire Department prior to construction of the building.

**ENVIRONMENTAL HEALTH DEPARTMENT
CONDITIONS 18 -26**

Condition No. 18 -23(Water System Permit)

Exhibit K

Prior to obtaining a final occupancy for the building, applicant will secure the necessary permits for a non-community water system and install the water system in accordance to the standards set forth by the permits.

Condition No. 24 (Sewer Connection)

The applicant will obtain approval from the Carmel Area Wastewater District to connect to the sewer main prior to construction of the building.

Condition No. 25 (Temporary Sound System)

The applicant has agreed not to use portable or temporary sound equipment and that the facility's permanent internal sound amplification system shall be used for amplified sound events. Prior to occupancy of the building the sound system will be inspected, tested and maximum sound level settings approved by the Director of Environmental Health to ensure compliance with the County's General Plan Noise Element.

Condition No. 26 (Amplified Sound Events)

The applicant has agreed that amplified sound events shall be limited to the hours between 9 am and 9 pm, that the doors and windows be closed during amplified events and that both amplified noise events and/or events with large assemblages of people will conclude at or prior to 9 pm.

**PUBLIC WORKS
CONDITIONS 27-34**

Condition No. 27 (Improvement Plans)

Improvement Plans for the improvement of Val Verde Drive from Rio Road to the northerly boundary of the property to a width of 32 ft. including curb, gutter, sidewalk and street lighting on the easterly side have been prepared and will be submitted and approved by the Department of Public Works prior to construction of the building.

Condition No. 28 (Pro Rata Share of retiming traffic signals)

Prior to issuance of a building permit the applicant and the Department of Public Works shall agree on an appropriate fair share payment of the cost to retime the traffic signals along Rio Road and Highway 1/Carmel Valley Road intersection.

Condition No. 29 (Carmel Valley Traffic Impact Fee)

This condition states that the applicant is subject to the Carmel Valley Traffic Impact Fee. No further work by the applicant is necessary to comply with this condition other than complying with the Carmel Valley Traffic Impact Fee. See Condition No. 31.

Condition No. 30 (Property Dedication)

The applicant will dedicate the appropriate portion of their property within the Official Plan Line for Rio Road to Monterey County prior to completion of the structure.

Condition No. 31 (Carmel Valley Traffic Impact Fees)

The applicant will pay \$125,045 prior to the issuance of a building permit.

Condition No. 32 (Pro Rata share of Traffic Signal at Rio Road/ Carmel Rancho Blvd intersection)

The applicant will pay \$120,000 prior to the issuance of a building permit.

Condition No. 33 (Traffic Study to reduce cost to Applicant)

The applicant has the option of performing follow-up traffic counts to lower their pro rata share of traffic improvements. The applicant has not yet hired a traffic engineer to prepare the follow-up traffic counts.

Condition No. 34 (Cumulative Impact Fees)

Prior to the issuance of a building permit applicant will pay the appropriate cumulative impact fees for the long term improvements listed in this condition. Payment of fees shall not be redundant of those to be paid for the above improvements, including but not limited to retiming of lights on Rio Road.

**PLANNING AND BUILDING INSPECTION
CONDITIONS 35-52**

Condition No. 35 (Public Works Condition Compliance)

Prior to the issuance of a building permit the applicant will obtain written verification from the Department of Public Works that they have satisfied conditions 26 -33.

Condition No. 36 (Archeological Remains)

This is an ongoing condition that requires the applicant to stop work in the event of an archaeological discovery during construction.

Condition No. 37 (Flags, Banners, Pennants)

The applicant has agreed that there be no flags, banners, pennants, or other attention getting devices, other than approved signs, on the property. This condition is ongoing and requires no immediate or future work of the applicant.

Condition No. 38 (Landscape Plan)

Three weeks prior to occupancy of the building the applicant will submit a landscape plan as required by this condition.

Condition No. 39 (Landscape Maintenance)

The applicant agrees that the landscape shall be continuously maintained and all plant material shall be continuously maintained in a litter-free, weed-free, healthy growing condition. This condition does not require the applicant to perform any work at this time.

Condition No. 40 (Exterior Lighting)

Prior to issuance of a permit for construction of the building the applicant will submit an exterior lighting plan.

Condition No. 41 (Parking layout)

Prior to issuance of a permit for construction of the building the applicant will obtain approval of a parking plan from the Department of Public Works.

Condition No. 42 (Underground Utilities)

The applicant agrees that any new utility and distribution lines will be placed underground. The applicant will comply with this condition at the time utilities are delivered to the building.

Condition No. 43 (Grading Permit)

The applicant has obtained the grading permit and is currently completing the work necessary to complete the site grading.

Condition No. 44 (Winter Grading)

The applicant has agreed not to do any grading between October 15th and April 15th without the appropriate authorization.

Condition No. 45 (Erosion Control)

The applicant continues to provide the necessary measures to control erosion.

Condition No. 46 (Hours of Operation)

This is an on-going condition that requires no work from the applicant at this time.

Condition No. 47 (Geologic Certification)

Prior to a final inspection of the building the applicant will have a geologic consultant provide certification that all development has been in accordance with the geotechnical report by Terratect, Inc., dated Sept. 13, 1996.

Condition No. 48 (Drainage)

The applicant incorporated the three recommendations contained in the Drainage Evaluation prepared by Grice Engineering, dated February 18, 1999, into the final improvement plans for the project.

Condition No. 49 (Evening Events)

The applicant agrees to limit evening events to four per month and that all such events shall begin after 6:30 pm. No work is required by the applicant to satisfy this condition.

Condition No. 50 (Required Drainage Easements)

If necessary, the applicant will acquire the appropriate easements to facilitate their off-site drainage.

Condition No. 51 (Indemnity Agreement)

The applicant will record an Indemnity Agreement prior to issuance of the building permit.

Condition No. 52 (Permit Approval Notice)

The applicant will record a permit approval notice prior to issuance of the building permit.

Derinda L. Messenger & Associates, PC

Todd D. Bessire

TDB/br
Exhibit K

DERINDA L. MESSENGER & ASSOCIATES

450 Lincoln Avenue, Suite 103

Salinas, California 93902

Telephone (831) 754-4911

Facsimile: (831) 754-4915

Email: todd@messengerlawfirm.com

FAX COVER SHEET

TO: DAVID MACK
MONTEREY COUNTY RMA, PLANNING DEPARTMENT

Phone: 755-5096

FAX: 757-9516

Date: 4/27/2009

FROM: TODD D. BESSIRE, ESQ.

Transmitted by: lib

TOTAL NUMBER OF PAGES TRANSMITTED

COVER SHEET: 1

LEGAL SIZE: 0

LETTER SIZE: 2

TOTAL SENT: 3

Client/Matter No.: 435.000

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MESSAGE

David -- To follow is a copy of the Memorandum from Water Resources Agency (dated March 8, 2006) referenced in my April 21st letter delivered to you last week. This copy was inadvertently left out of the package. Please attach the enclosed Memorandum to your copy of my April 21st letter, which addresses the Water Resource Agency's Conditions 2-7.

I apologize for any inconvenience this may have caused you.

-Todd

HARD COPY

Will follow by mail

Will follow by overnight mail

Will not follow

Exhibit K

Page 8 of 10 Pages



COPY

WATER RESOURCES AGENCY

MEMORANDUM

Monterey County

DATE: 03/08/2006

TO: Taven Kinison Brown, Associate Planner
FROM: Michael Trapani, Water Resources Technician *MPT*
SUBJECT: Carmel Presbyterian Church PC 010125
(Previously Submitted PC 965481) (APN 015-021-004 -000)
RE: Status of Agency Conditions

Cond. No.2: **Drainage Plan**

PENDING The Agency received a preliminary drainage plan prepared by, Hawkins & Associates Engineering, dated February 08, 2006, that includes 12" stormdrain lines, catch basins, and a detention pond with a capacity of .59 acre feet. This condition will be cleared when the Agency receives additional supporting documentation including calculations and construction details for detention pond.

Cond. No.3: **Routing of Drainage**

PENDING This condition will be cleared when the Agency receives an acceptable drainage plan that includes routing natural drainage around the proposed development in a way that mitigates impacts to downslope properties.

Cond. No.4: **Lowest Floor Certification**

PENDING Lowest floor and attendant utilities shall be constructed at least 36 feet above mean sea level (NGVD 1929). Prior to issuance of grading and/or building permits the applicant shall provide Water Resources Agency the floodproofing and certification of the lowest floor elevation, a reference marker set to the elevation of the lowest floor shall be established at the building site by a licensed land surveyor. Prior to the foundation pre-pour inspection, the applicant shall provide the Water Resources Agency a FEMA Elevation Certificate completed by a registered civil engineer or licensed land surveyor, certifying the forms have been set at a height that will ensure the minimum lowest floor elevation requirement. Prior to final inspection the applicant shall provide an elevation certificate for the finished floor, completed by a registered civil engineer or licensed surveyor.

Exhibit K

Carmel Presbyterian Church, PC 010125, cont...

Cond. No.5: **Water Availability**

CLEAR Upon review by the Monterey County Water Resources Agency it is found that this project will result in a net increase of zero acre-feet of water.

Cond. No.6: **Water Conservation Measures**

ONGOING This is an ongoing condition that can be cleared by the building inspector at final inspection.

Cond. No.7: **Well Information**

PENDING This condition will be cleared when the applicant provides Water Resources Agency information on the well to serve the project including a map showing the well location and any available well logs/e-logs.

THE APPLICANT IS CLEARED FOR ANY NECESSARY GRADING PERMITS.
HOLD ISSUANCE OF ANY NECESSARY BUILDING PERMITS PENDING
CLEARANCE OF CONDITIONS NO. 2, 3, 4, & 7. HOLD FINAL INSPECTION OF
GRADING PERMIT PENDING CLEARANCE OF CONDITIONS NO. 2 & 3.

h:\data\dev_rvw\docs\2006\1a-1\carmelpresbyterianchurchME.doc

Exhibit 1K

Page 10 of 10 Pages

EXHIBIT- L

LETTER FROM STAFF
REQUESTING
REQUIRED
INFORMATION –
DATED MAY 11, 2009

MONTEREY COUNTY
RESOURCE MANAGEMENT AGENCY



PLANNING DEPARTMENT, Mike Novo, Director

168 W. Alisal St., 2nd Floor
Salinas, CA 93901

(831) 755-5025
FAX (831) 757-9516

May 11, 2009

Derinda L. Messenger & Associates
c/o Todd Bessire
450 Lincoln Ave, Ste. 103
Salinas, CA 93901

Re: PLN090070 – Carmel Presbyterian Community Life Center Vested Rights Application

Dear Todd:

Pursuant to Section 21.64.240.C.3, “any person claiming a vested right in a development...shall substantiate the claim in a proceeding before the Planning Commission...the claimant shall have the burden of proof as to each finding necessary to establish a vested right....”

On March 23, 2009, staff required additional information, pursuant to Section 21.64.240.C.4(a-n), which states, “the claimant shall provide the following information together with any other relevant information required by the Director of Planning”:

- a. *Name of claimant, address, telephone number.* – **Submitted with application.**
- b. *Name, address, and telephone number of claimant's representative, if any.* – **Submitted with application.**
- c. *Description of the development claimed to be exempt, including all incidental improvements such as utilities, road and other infrastructure, and a description of the specific parcel of land on, and including a description of the specific boundaries within which such development or use exists for which the claim of exemption is made. A site plan, development plan, grading plan, and construction or architectural plans may be attached as appropriate.* – **Submitted with application.**
- d. *A list of all governmental approvals which have been obtained, including those from State or Federal agencies, and the date of each final approval. Copies of all approvals shall be attached.*
- e. *A list of any governmental approvals which have not yet been obtained and anticipated dates of approval.*
- f. *A list of any conditions to which the approvals are subject and date on which the conditions were satisfied or are expected to be satisfied.* – **List/status of conditions submitted to staff via April 23, 2009 letter.**
- g. *A specification of the nature and extent of the work or use in progress or completed, including (1) date of each portion commenced (e.g., grading, foundation work, structural work, etc.); (2) any governmental approval pursuant to which the portion was*

Exhibit 2

commenced; (3) portions completed and date on which completed, if applicable; (4) status of each portion on date of claim; (5) amounts of money expended on portions of work completed or in progress (dates and amounts of expenditures shall be itemized).

- h. A description of those portions of the development or use continuing and remaining to be completed.
- i. A list of the amount and nature of any liabilities incurred that are not covered above and dates incurred, and a list of any remaining liabilities to be incurred and date when these are anticipated to be incurred.
- j. A statement of the expected total cost of the development or use.
- k. A statement on whether the development or use is planned as a series of phases or segments, and if so, a description of the phases or segments involved.
- l. A statement of the date when it is anticipated that the total development or use will be completed.
- m. A written authorization of any agent acting on behalf of the applicant.- **Submitted with application.**
- n. A certification by applicant or agent as to all contents of documents submitted in support of the claim of vested right.

On April 23, 2009, staff received information relative to the status of the 52 conditions of approval for the project. As of this date, staff has not received all requested information. Please submit a comprehensive list of all required information and remaining outstanding information (items d, e, g, h, i, j, k, l, and n) to staff no later than May 15, 2009, for inclusion in the Planning Commission staff report.



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EXHIBIT- M

SECTION 21.64.240 COUNTY ZONING ORDINANCE (TITLE 21)

MONTEREY COUNTY ZONING ORDINANCE - TITLE 21

21.64.240 DETERMINATION OF VESTED RIGHTS.**A. Purpose.**

1. The purpose of this Section is to establish regulations, procedures, and standards to be used in the determination of vested land use rights as those rights are defined under existing law. This Section is not intended to make a change in common law or statutory vested rights standards in existence as of the date of adoption hereof.

2. This Section is not intended to address the following:

- a. Legal non-conforming uses or structures which are regulated in Chapter 21.68 of Title 21.
- b. Questions regarding permit enforcement which are regulated in Chapter 21.84 of Title 21.
- c. Vesting tentative maps which are regulated in Title 19.
- d. Development or uses in accordance with binding development agreements.

3. This Section is not intended to and does not limit nor restrict any other rights which may exist in law or equity, including the right to have a development application evaluated under the laws, policies, and/or regulations in effect at the time the application is determined to be complete by the Monterey County Planning and Building Inspection Department.

B. Applicability. The provisions of this Section are applicable in all zoning districts.

C. Regulations.

1. No person who has obtained a vested right in a development prior to the effective date of all applicable County ordinances or regulations or who has obtained a permit from the County in compliance with all applicable County ordinances or regulations in effect at the time said permit was granted shall be required to secure approval for said development; provided, however, that no significant or substantial change may be made in any such development without prior approval having been obtained from the County pursuant to other applicable County ordinances and regulations.

2. Any person claiming a vested right in a development, which right is disputed by a department head of the County, and who wishes to be exempt from any County land use or development permit requirements, shall substantiate the claim in a proceeding before the Planning Commission pursuant to this section. In such a proceeding the claimant shall have the burden of proof as to each finding necessary to establish a vested right as set forth in subsection 6 following.

3. Any person who claims that a development is exempt from the County's permit requirements by reason of a vested right, and whose such claim is disputed by a department head of the County, shall initiate such claim by filing a claim of vested rights with the Planning and Building Inspection Department.

4. For each claim, claimant shall provide the following information together with any other relevant information required by the Director of Planning and Building Inspection:

a. Name of claimant, address, telephone number.

b. Name, address, and telephone number of claimant's representative, if any.

c. Description of the development claimed to be exempt, including all incidental improvements such as utilities, road and other infrastructure, and a description of the specific parcel of land on, and including a description of the specific boundaries within which such development or use exists for which the claim of exemption is made. A site plan, development plan, grading plan, and construction or architectural plans may be attached as appropriate.

d. A list of all governmental approvals which have been obtained, including those from State or Federal agencies, and the date of each final approval. Copies of all approvals shall be attached.

e. A list of any governmental approvals which have not yet been obtained and anticipated dates of approval.

f. A list of any conditions to which the approvals are subject and date on which the conditions were satisfied or are expected to be satisfied.

g. A specification of the nature and extent of the work or use in progress or completed, including (1) date of each portion commenced (e.g., grading, foundation work, structural work, etc.); (2) any governmental approval pursuant to which the portion was commenced; (3) portions completed and date on which completed, if applicable; (4) status of each portion on date of claim; (5) amounts of money expended on portions of work completed or in progress (dates and amounts of expenditures shall be itemized).

h. A description of those portions of the development or use continuing and remaining to be completed.

i. A list of the amount and nature of any liabilities incurred that are not covered above and dates incurred, and a list of any remaining liabilities to be incurred and date when these are anticipated to be incurred.

j. A statement of the expected total cost of the development or use.

k. A statement on whether the development or use is planned as a series of phases or segments,

Exhibit W

and if so, a description of the phases or segments involved.

1. A statement of the date when it is anticipated that the total development or use will be completed.

m. A written authorization of any agent acting on behalf of the applicant.

n. A certification by applicant or agent as to all contents of documents submitted in support of the claim of vested right.

5. As soon as practicable after an application for a determination of a claim of vested rights is found to be complete by the Planning and Building Inspection Department, and in no event later than 90 days from such date, the Planning Director shall notice a hearing before the Planning Commission pursuant to Chapter 21.78 of the Monterey County Code, to determine the claim of vested rights. Notice shall also be given to any person who has requested such notice in writing. The Director of Planning and Building Inspection Department shall make a written recommendation to the Planning Commission for consideration of the claim of vested rights. At such hearing, the Director of Planning and Building Inspection shall introduce into evidence all evidence submitted by the claimant and all evidence submitted either supporting or in opposition to the claim.

6. Action by the Planning Commission on a claim of vested right shall be supported by written findings of fact. The required findings to substantiate a claim of vested right shall be as follows:

a. That the vested right has been established with respect to a specific parcel of land or within specifically described boundaries, or for a specifically described development or use;

b. That each development or use as to which a vested right is sought was done in reliance upon a County-issued permit or was established prior to enactment of County regulations requiring such a permit;

c. That each development or use as to which a vested right is sought does not exceed either:

1) The scope authorized by the terms and conditions of the County-issued permit relied upon (if any); or

2) The extent of the development or use as of the effective date of County ordinances or regulations regulating the development or use.

d. That the person claiming a vested right performed substantial work and incurred substantial financial liabilities in good faith reliance upon a building permit issued by the County as required under existing law, or did the same prior to the effective date of the regulation from which a vested right exemption is sought; and

e. That each development or use as to which a vested right is sought has not been abandoned to and including the effective date of the regulation from which a vested right exemption is sought.

7. Each claim of vested rights is substantiated pursuant to Paragraph 6 of this Subsection C shall be acknowledged by the Planning Commission to the extent it has been substantiated. If the claim is not substantiated, it shall be denied by the Planning Commission. However, if the circumstances suggest that a claimant may be able to provide additional information to substantiate the claim or that

Exhibit M

other evidence is pertinent to the claim, the matter may be continued so that claimant may submit additional evidence.

8. Appeals from a decision of the Planning Commission granting or denying a claim of vested rights may be made to the Board of Supervisors by any public agency or person aggrieved by the decision pursuant to Chapter 21.80 of the Monterey County Code.

9. A final determination by the Planning Commission recognizing a claim of vested rights shall constitute acknowledgment that the development does not require any additional permit under County regulations provided that no substantial change may be made in the development except in accordance with the permit requirements of the County. If any approval upon which the acknowledgment is based lapse either by its own terms or pursuant to any provision of law, the acknowledgment made under this section shall automatically and without further action be null and void and the development or use shall become subject to the permit requirements of the County.

D. Filing Fee.

The application fee for a determination of vested land use rights shall be as established from time to time by the Board of Supervisors, and no part of such fee shall be refundable unless said refund is requested in writing concurrently with the withdrawal of the request and provided that the applicant has not been sent written notice of the application's completeness or incompleteness. In the latter case, 50% of the filing fee shall be refunded.

Exhibit M
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