

MONTEREY COUNTY PLANNING COMMISSION

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| Meeting: August 31, 2011 Time: 9:00 a.m. | | Agenda Item No.: 1 |
| Project Description: Staff recommends that the Planning Commission: | | |
| <ol style="list-style-type: none"> 1) Consider proposed LCP Amendments to the Carmel Area Land Use Plan and Coastal Implementation Plan, Chapter 20.146.120 (Land Use and Development Standards); and 2) Consider the proposed infill/redevelopment of a 46 unit residential condominium project and related Environmental Impact Report; and 3) Make recommendation to the Board of Supervisors | | |
| Project Location: 24945 Valley Way, Northwest corner of Highway One and Valley Way, Carmel | | APN: 009-061-002-000, 009-061-003-000, and 009-061-005-000 |
| Planning File Number: PLN070497 | | Owner: Rigoulette, LLC Agent: Ed Shagen, Kevin Kane (The Widewaters Group, Inc.) Representative: Jacqueline Zischke |
| Planning Area: Carmel Area Land Use Plan | | Flagged and staked: Yes |
| Zoning Designation: "MDR/2-D (CZ)" [Medium Density Residential, 2 units per acre, Design Control District in the Coastal Zone] | | |
| CEQA Action: Statutory Exempt per CEQA Section 15265 | | |
| Department: RMA - Planning Department | | |

RECOMMENDATION:

Staff recommends that the Planning Commission:

- 1) Consider proposed LCP Amendments to the Carmel Area Land Use Plan and Coastal Implementation Plan, Chapter 20.146.120 (Land Use and Development Standards); and
- 2) Consider the proposed infill/redevelopment of a 46 unit residential condominium project and related Environmental Impact Report; and
- 3) Make recommendation to the Board of Supervisors.

PROJECT OVERVIEW:

The application proposes a 46 unit project on a 3.68-acre site located in the unincorporated Coastal Zone of Monterey County, bordering the City of Carmel-by-the-Sea. Development of the property, as proposed, would require amendments to the Local Coastal Program (LCP), specifically the Carmel Area Land Use Plan (LUP) and Coastal Implementation Plan (CIP). In order to accommodate the proposed density, the Carmel Area LUP and CIP must be amended to establish a high density land use classification for the Carmel Area and amend the land use map to reflect this change.

On August 10, 2011, following a series of hearings and actions, the Planning Commission continued the hearing on the LCP Amendments and the application for a Combined Development Permit. The matter was continued to August 31 with direction for staff to:

- 1) Return with the June 29, 2011 staff report, including recommendations and draft resolutions.
- 2) Address the connection of density with inclusionary housing.
- 3) Clarify the project description as it relates to affordable housing.

- 4) Respond to the June 29, 2011 letter from the Monterey Peninsula Water Management District (MPWMD).
- 5) Assess the project applicability with the 1982 General Plan.

See Exhibit A for further discussion.

OTHER AGENCY INVOLVEMENT: The following agencies and departments reviewed this project:

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| ✓ | Water Resources Agency | | California Coastal Commission |
| ✓ | Environmental Health Bureau | ✓ | Cypress Fire Protection District |
| ✓ | Public Works Department | | Monterey County Sheriff's Office |
| ✓ | Parks Department | | Monterey Peninsula Water Management District |
| ✓ | Redevelopment & Housing Office | | |



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 August 19, 2011

cc: Front Counter Copy; Planning Commission; Cypress Fire Protection District; Public Works Department; Parks Department; Environmental Health Bureau; Water Resources Agency; Housing & Redevelopment; City of Carmel-by-the-Sea; Planning File PLN070497; Rigoulette, LLC (owners); The Widewaters Group, Inc. (Applicants); Jacqueline Zischke, Applicants' Representative; Molly Erickson, Attorney; Save Our Neighborhood Coalition; and Mark Bayne.

This report was reviewed by Carl Holm, AICP, Acting Deputy Director of the Resource Management Agency.

- Exhibit A Discussion
- Exhibit B June 29, 2011 Planning Commission staff report
- Exhibit C July 27, 2011 Planning Commission staff report
- Exhibit D Carmel Area Vacant Parcels Map
- Exhibit E Applicants' Proposed Amendments to Local Coastal Program dated June 27, 2011
- Exhibit F Applicant's proposal to Housing Advisory Committee (HAC) dated July 14, 2010 and RMA Redevelopment & Housing Memo dated November 19, 2010.
- Exhibit G WATER LETTERS: MPWMD Letter dated June 29, 2011, Stamp Letter dated August 16, 2011, Stamp Letter dated July 8, 2011, SWRCB Letter dated August 10, 2011 and Jacqueline Zischke Letter dated August 25, 2011.
- Exhibit H Appendix A Monterey County Growth Management Policy
- Exhibit I Revised Site Plan with recommended changes previously discussed

EXHIBIT A DISCUSSION

BACKGROUND:

- June 29, 2011 Staff presented the project and Final EIR. The staff report recommended: 1) Approval of the LCP Amendments from MDR to HDR, 2) Certification of the EIR, and 3) conditional approval of the project (Combined Development Permit), with no on-site affordable housing. The June 29, 2011 staff report is attached as *Exhibit B*.
Motion passed (5-4 vote) adopting an intent to deny the LCP Amendments.
Motion passed (9-1 vote) continuing the hearing on the application for a Combined Development Permit until such time that the LCP Amendment process is completed.
The matter was continued to July 27 for staff to return with appropriate findings and evidence supporting the Commission action relative to the LCP Amendments.
- July 27, 2011 Motion failed (4-5 vote) to adopt a resolution recommending that the Board of Supervisors deny the LCP Amendments. July 27, 2011 staff report is attached as *Exhibit C*.
Motion passed (5-4 vote) to continue the hearing on the LCP Amendments to August 10.
Staff was requested to place an item on the August 10 agenda to consider rescinding the June 29, 2011 motion continuing the hearing on the application for the Combined Development Permit.
- August 10, 2011 Motion passed (6-4 vote) to rescind the June 29, 2011 continuance of the Combined Development Permit.
Motion passed (9-1 vote) continuing the hearing to August 31 on the LCP Amendments and the application for a Combined Development Permit, with the following direction:
1) Return with the June 29, 2011 staff report, including recommendations and draft resolutions.
2) Address the connection of density with inclusionary housing.
3) Clarify the project description as it relates to affordable housing.
4) Respond to the June 29, 2011 letter from the Monterey Peninsula Water Management District (MPWMD).
5) Assess project applicability with the 1982 General Plan.

The Commission also requested to see options related to development of the site.

DISCUSSION:

2. Address the connection of density with inclusionary housing. The current designation is medium density residential and the designation being considered is high density residential.

Questions have been raised as to the appropriate land use/density for this location, and how the proposed density fits with the overall land use plan for the area. The Commission wanted to see the connection between a high density proposal and affordable housing in the LCP Amendments.

Land Use. The project is located in the Coastal Zone. The Local Coastal Program is made up of four Land Use Plans: Big Sur Coast, Del Monte Forest, Carmel Area and the North County Coastal. The High Density Residential land use designation is located only in the North County Land Use Plan. However, North County parcels are predominantly served by wells and septic systems. Currently, there is an overdraft situation in the North County coastal areas that prohibits intensification of use. Del Monte Forest and Carmel both provide existing public water and public sewer to its users. There are currently condominiums located in the Del Monte Forest area that are zoned Medium Density Residential/2.7 units per acre. The area, including the Carmel Land Use Plan area, is subject to a Cease and Desist Order against Cal-Am Water. The proposed development has existing available infrastructure.

The parcels surrounding the subject property have zoning designations of Medium Density Residential/2 units per acre (unincorporated area) and Residential/1 in the City of Carmel. However, actual average density on the ground is as follows:

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| City of Carmel (west) | 11 dwelling units per acre |
| Apartments (east of Villas) | 13 dwelling units per acre |
| Carmel Woods (north) | 8 to 10 dwelling units per acre |
| Handley/Upper Trail (northwest) | 5 to 6 dwelling units per acre |
| Hatton Fields area (south) | 4 dwelling units per acre |

The size, density, and character of this residential area vary, but in general, residential parcels in this area average from 4,000 square feet to approximately 9,000 square feet. This is an urbanized area located within the Sphere of Influence boundary for the City of Carmel-by-the-Sea with access to commercial services located in the City of Carmel-by-the-Sea or at the mouth of Carmel Valley.

A map is attached showing all vacant lots in the Carmel Area Land Use Plan that are located near existing public utilities (*Exhibit D*). The proposed project site is an infill, urban area with existing public services and facilities. It is the largest available property in this area that can provide affordable housing. Staff recommends redevelopment of the site to an efficient land use in a manner that minimizes impacts.

LCP Amendments. The Local Coastal Program (LCP) applicable to this project consists of the Carmel Area Land Use Plan (LUP), Carmel Area Coastal Implementation Plan (Part 4), and Part 1 of the Coastal Implementation Plan (Title 20 Zoning Ordinance). Development of the proposed project requires amendment of the Local Coastal Program (LCP) to amend the:

- 1) Carmel Area Land Use Plan to include High Density Residential (HDR) designation. The HDR designation is appropriate for a broad range of higher intensity residential uses at a higher density (from 5-20 units/acre) and a blend of housing types. Staff has developed proposed language that limits the density to 12.5 units/acre and defines the location of the HDR to be where urban services - i.e., public water, sewer, roads, public transit, fire protection, etc. - are available;

- 2) Carmel Area Coastal Implementation Plan (CIP) to add a zoning designation category of High Density Residential District to the CIP, Chapter 20.146.120 (Land Use and Development Standards);
- 3) 3.98 acres on the zoning map and Land Use Plan map, located at 24945 Valley Way, Carmel (Assessor's Parcel Numbers 009-061-002-000, 009-061-003-000, and 009-061-005-000) from the existing designation of MDR/2 (Medium Density Residential/2 units per acre) to HDR/12.5 (High Density Residential/12.5 units per acre).

Although the HDR designation would be established, proposed amendments to the LUP and CIP have been designed to limit application to this site so that future projects requesting a HDR designation would need their own LCP amendment. As such, staff finds that adding the HDR designation would not be growth inducing. The applicants have proposed revised LCP Amendment language (*Exhibit E*).

3. Clarify the project description as it relates to affordable housing. The in-lieu fee for Inclusionary housing for this project has been a topic of interest for the Planning Commission and public. A proposal for a LCP Amendment to allow higher density residential zoning in the Carmel Area Land Use Plan could create an opportunity to provide affordable housing on-site. Given that this property is unique in that it has existing infrastructure and available water, this property has the ability to provide on-site affordable housing. However, the Housing Advisory Committee (HAC) is recommending that payment of an in-lieu fee is appropriate in this case (*see Exhibit F*), as explained at the earlier Planning Commission hearings on this project.

Affordable Housing. The Monterey County Inclusionary Housing Ordinance (Chapter 18.40 of the Monterey County Code) requires subdivision projects to comply with affordable housing regulations by providing affordable housing equal to 20% of the total number of units proposed (6% very low, 6% low and 8% moderate income units). The decision-maker may approve a modification of this requirement based on a written finding, supported by substantial evidence, "that as a result of unusual or unforeseen circumstances, it would not be appropriate to apply, or would be appropriate to modify, the requirements of this chapter."

The Inclusionary Housing Ordinance provides specific underwriting criteria for setting the initial sales prices for Inclusionary Units. This involves setting the sales price based on affordable "monthly housing costs" for each of the required income levels. Included is the assumed household size based on the number of bedrooms in the unit, an assumed conservative interest rate and down payment amount, and an estimate of monthly costs for taxes, insurance, utilities, and homeowner's association (HOA) dues. When the estimated HOA dues are significant the sales prices are reduced to specifically take these costs into account. However, the future resale values are set based on the initial sales price of a unit and initial estimates of HOA dues. Future increases in HOA dues, which are beyond the control of the County, could impact the Inclusionary Unit owner's future housing costs. This could be very problematic for low and moderate income owners and could force an Inclusionary owner to have to sell their unit because they could no longer afford the HOA dues.

The Housing Advisory Committee is an advisory body appointed by the Board of Supervisors to provide input and recommendations on affordable housing issues. The HAC attempts to work

with the applicants to come up with a feasible compliance form that addresses county or planning area affordable housing needs. Since the project application is requesting a modification to the Inclusionary Ordinance requirement for on-site compliance, the HAC is responsible to review, evaluate and forward a detailed recommendation to the Planning Commission and Board of Supervisors. Compliance with the ordinance is subject to recommendation of the HAC to the decision making body. Final project approval would be conditioned by the Monterey County Board of Supervisors upon recommendation by the Planning Commission.

4. WATER: Response to the June 29, 2011 letter from the Monterey Peninsula Water Management District (MPWMD). This letter, in part, questions the ability for sub-meters on this site in light of the Cease and Desist Order against California American Water.

Issue 1: The Monterey Peninsula Water Management District stated they should have had ten days to review the proposed response to its comments on the EIR per Section 15088 of the CEQA Guidelines.

Response: The commenter was referring to CEQA Guidelines Section 15088(b) which states: "The lead agency shall provide a written response to a public agency on comments made by that public agency at least 10 days prior to certifying the environmental impact report." A response to their comment is located in the FEIR. A Notice of Availability of the FEIR was received by the commenter on June 20, 2011. A date for the certification for the FEIR has not been established. Therefore, sufficient time has been provided. Additionally, the EIR preparers and the County have been communicating frequently with MPWMD staff and appreciate their input on this process.

Issue 2: The FEIR indicates that the project will utilize sub-water meters with a master meter and thus will not include new connections. However, the use of sub-water meters is not allowed under MPWMD's Rule 23-B-2-a, unless a Variance is granted. The MPWMD indicated that this is not their approach and requests that the Final EIR be clarified and corrected. Also, sub-metering is not supported by California American Water. Based on information provided by the General Manager of California American Water at the May 16, 2011, MPWMD Board meeting, the Cease and Desist Order against California American Water may impact the setting of water meters for this project. (See FEIR pages 5-22, RDEIR Response F-5, 5-154, RDEIR Response BB-32, 6-31, Mitigation Measures 4.14-6 and 4.14-7)

Response: The comment is noted and a clarification is required. The referenced sections in the FEIR will note the correction stated by MPWMD. MPWMD rules do require each user to install a separate water meter for each unit. The proposed project consists of 46 residential units. The changes to the FEIR will also cause the revision of the conditions of approval/mitigations to indicate this. In a conversation with MPWMD on August 16, 2011, MPWMD staff explained that a variance to District Rule 23 would need to be obtained before a master meter and sub-meters would be allowed on the property. Either the applicant must ask for and receive a variance from the requirement for individual meters under the District's Rules and Regulations (through Board action at the MPWMD) or the applicant will be required to install individual meters at each unit (note landscaping is already going to be done through individual meters). As noted in the letter from MPWMD, should individual meters be required, "the Cease and Desist

Order against California American Water may impact the setting of water meters for this project”. However, as noted by the MPWMD, this determination is not under their jurisdiction and would be officially decided by the State Water Resources Control Board.

Mitigation Measures 4.14-6 and 4.14-7 are hereby revised to indicate that either a variance is obtained for the project under Rules and Regulations of the MPWMD to allow sub-metering with approval received by Cal-Am to use this metering approach, or that individual meters be provided and confirmation from Cal-Am that Cal-Am can serve the project without violating the Cease & Desist Order.

Staff also received a letter from Michael Stamp’s office dated August 16, 2011, stating that “if Cal-Am were to serve the new 46-unit residential condominiums with water from the Carmel River, Cal-Am would likely violate Condition 2 of the Cease and Desist Order.” The Cease and Desist Order also states that “Multi residential, commercial or industrial sites may currently be served by a single water meter. The installation of additional meters at an existing service will not be viewed as a new service connection provided that the additional metering does not result in an increase in water use.”

The applicant’s attorney, Jacqueline Zischke, submitted a letter dated August 25, 2011 in response to water service questions related to the Villas de Carmelo project. The State Water Resources Control Board’s (SWRCB) legal department confirmed that the use of either additional meters or sub-meters for the proposed condominium units does not raise any problems under the State’s Cease and Desist Order for the Villas de Carmelo project. The SWRCB legal department also confirmed that the State’s staff letter dated August 10th did not include review by the legal department prior to being released, and that this staff letter does not constitute a determination by the State that water service to the proposed project would result in any violation of the Cease and Desist Order.

The County is required to analyze the project under CEQA and has made the determination that a long term water supply exists under the Regional Water Supply Project. *(See Recirculated Draft EIR R4-4.14-32-34)*. The County also found no evidence to substantiate biological impacts on the Carmel River system *(See FEIR page 3-17(5-D) and page 3-56 (15-G))*. Therefore, it is the professional opinion of the County that this is a procedural issue between MPWMD and Cal-Am and the County’s process should not be delayed. Staff has determined that there is evidence of historic water credits, and has conditioned the project to require confirmation from Cal-Am that Cal-Am can serve the project without violating the Cease and Desist Order. All the letters are attached as *Exhibit G*.

5. Consistency with applicable 1982 General Plan with regard to Monterey County Growth Management Policy reference as Appendix A. Specifically questions were raised with regard to the Monterey County Growth Management Policy referenced as Appendix A that states affordable housing should be made part of projects that involve increases in land use density. *(See Exhibit H)*

The proposed project is subject to the 1982 General Plan. Policy 26.1.15 of the General Plan states, “Only very low density development shall be allowed outside of urban service areas, areas of development concentration designated in accordance with the County’s adopted *Growth*

Management Policy (Appendix A), and outside of the County's existing unincorporated communities.

Appendix A, Monterey County Growth Management Policy, declares that managed growth and orderly development are essential to the proper utilization of land in Monterey County, including the following:

1. *Establishment of Growth Areas:* Growth areas shall be designated only where there is provision of an adequate level of service and facilities such as water, sewer, fire protection, and drainage and be coordinated with school authorities.
2. *Development of Cities and Areas Around Cities:* Urban development should be discouraged in areas lying outside the boundaries of urban service areas in order to discourage premature and unnecessary conversion of open space outside the urban service areas.
4. *Priorities for Growth:* Priority for growth will be given first to infilling within existing urban areas. The next priority will be for development on lands adjacent to existing and densely settled urban areas where the necessary services and facilities are available, except where this impacts prime and productive agricultural lands. Growth areas adjoining urban areas shall be within the spheres of influence of the cities and coincide with the area to which the cities are providing services or in areas immediately surrounding high density concentrations within the County.

Staff's reading of Appendix A is that it does not discourage growth, but encourages managed growth near urban service areas. Therefore the proposed project is consistent with the principals of the Monterey County Growth Management Policy.

Options. The Commission has a wide range of options. Staff has identified four for possible consideration:

- 1) The Commission could recommend approval of the LUP/CIP Amendments with the requirement of 20% affordable housing, or
- 2) Establish a new level of affordable housing by way of a "Special Treatment" overlay; or
- 3) Apply the "Affordable Housing" overlay similar to the principles of the 2010 General Plan; or
- 4) Accept the applicant's originally proposed moderate income housing consisting of 46 condominium units with a mix of market rate and affordable housing. New housing would include 37 market rate condominiums with 9 moderate income housing units.

The "overlays" would not require high density residential zoning, but would still require LUP/CIP Amendments. These four options only provide a framework; other options are available.

The Carmel Area Land Use Plan already includes "special treatment" areas (Policy 4.4.3.F Carmel Area Land Use Plan). The "special treatment" overlay is intended to be used in conjunction with the underlying land use designation. Its purpose is to facilitate a comprehensive planned approach for specifically designated properties where a mix of uses are permitted and/or where there are unique natural and scenic resources or significant recreational/visitor serving opportunities. Particular attention is to be given towards siting and planning development to be compatible with existing resources and adjacent land uses.

Properties already designated for “special treatment” include the Mission Ranch property, the Odello property, the frontal slopes of the Palo Corona Ranch comprising 388 acres, the Sawyer property consisting of 466 acres, and Point Lobos Ranch which covers roughly 1,600 acres.

Pursuant to Carmel Land Use Plan Policy 4.4.3.H, the County shall encourage the expansion of housing opportunities in the Carmel area for low and moderate income households. Accordingly, these areas are subject to low and moderate income housing policies. Applying the “Special Treatment” overlay would give the Commission the ability to define a unique opportunity (public utilities, historic preservation, transportation) and to establish the level of affordable housing required.

These options have the potential to provide for sustainable land use principles such as:

- 1) urban infill development; utilizing urban lots to the greatest extent feasible;
- 2) consistency with the General Plan principles by reducing sprawl;
- 3) providing higher density affordable housing; and
- 4) preservation of a Historic Resource.