

MONTEREY COUNTY PLANNING COMMISSION

Meeting: November 14, 2012 Time: 9:00 a.m.	Agenda Item No.: 2
Project Description: Consider Amendments to the 2010 Monterey County General Plan (Carmel Valley Master Plan) Implementing a Litigation Settlement with the Carmel Valley Association.	
Project Location: Carmel Valley Master Plan Area	APN: N/A
Planning File Number: REF120079	Owner: N/A Agent:
Planning Area: Carmel Valley Master Plan	Flagged and staked: N/A
Zoning Designation : Multiple	
CEQA Action: Addendum No. 2 to EIR #07-01, SCH #2007121001	
Department: County Counsel; RMA - Planning Department	

RECOMMENDATION:

Staff recommends that the Planning Commission adopt a resolution recommending to the Board of Supervisors that an Addendum No. 2 to the Final Environmental Impact Report for the 2010 Monterey County General Plan (#07-01, SCH #2007121001) ("FEIR"), be considered, and that the 2010 Monterey County General Plan ("General Plan"), and specifically the Carmel Valley Master Plan ("CVMP"), be amended to implement a settlement of litigation regarding the General Plan and CVMP. An underline/strikeout and summary of the proposed amendments is enclosed as **Exhibits A and B**, respectively. A draft resolution is enclosed as **Exhibit C**, and a draft Addendum No. 2 is enclosed as **Exhibit D**.

The proposed Addendum No. 2 must be considered with the FEIR (consisting of the draft environmental impact report, comments, responses to comments, and supplemental materials) and the proposed Addendum No. 1 in the companion item regarding a settlement with the Salinas Valley Water Coalition et al. litigation (REF120078). A CD of the FEIR, its approving resolution (No. 10-290), the Finding, Statement of Overriding Considerations, and the Mitigation, Monitoring and Reporting Program has been enclosed to the members of the Planning Commission as **Exhibit E** to the report on the companion item (a hard copy will be provided upon request). Those materials are incorporated herein by reference.

For members of the public, those materials are available on the County's website at http://www.co.monterey.ca.us/planning/gpu/GPU_2007/FEIR_Information/FEIR_Information.htm and will be available at the Planning Department counter, located on the second floor at 168 W. Alisal St., Salinas, CA.

PROJECT OVERVIEW:

On October 26, 2010, by Resolution Nos. 10-290 and 10-291, the Board of Supervisors adopted the General Plan, certified its accompanying FEIR, and adopted findings, a Statement of Overriding Considerations, and a Mitigation Monitoring and Reporting Program. Subsequently, a total of four lawsuits were timely filed challenging the adoption and certification. One of those lawsuits was filed in the name of the Carmel Valley Association. The lawsuit, a copy of which is enclosed as **Exhibit F**, challenged the adoption and certification on a variety of grounds.

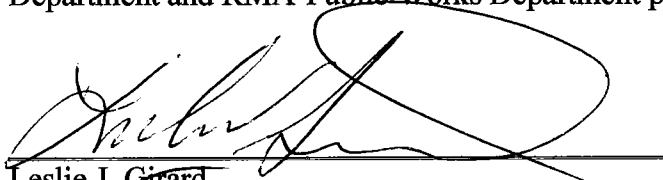
Pursuant to the requirements of the California Environmental Quality Act, settlement negotiations were begun with all litigant groups. Following extended negotiations, an agreement was reached with the Association which requires the County to consider amendments to the General Plan, and the Board of Supervisors approved the settlement. A copy of the settlement agreement is enclosed as **Exhibit G**.

DISCUSSION:

The proposed amendments contemplated in the settlement affect policies in the CVMP only. Those amendments primarily affect the way traffic is counted along Carmel Valley Road, and certain consequences of increasing traffic counts and degrading levels of service. The amendments would also reduce the cap on new units in the CVMP area from 266 to 190, provide for detailed limitations on the removal of oak, madrone and redwood trees, and relocate a policy on non-agricultural development on certain slopes. The amendments are more fully described in Exhibits A and B.

On October 15, 2012, the proposed amendments were presented to the Carmel Valley Land Use Advisory Committee ("LUAC"), which voted unanimously in support of a recommendation to the Board of Supervisors to adopt the amendments. In addition, but not as part of the litigation settlement, the LUAC recommended that the term "unit" as used in Policy CV-1.6 be clarified so that there is no ambiguity about the application of the new residential unit cap set forth in that policy. Staff is recommending clarifying language, which is set forth in Exhibit A and discussed in Exhibit B.

OTHER AGENCY INVOLVEMENT: On October 15, 2012, the Carmel Valley Land Use Advisory Committee voted unanimously in support of the proposed amendments (**Exhibit H**). The County Counsel's Office headed negotiations regarding the settlement. The RMA-Planning Department and RMA-Public Works Department provided input into the settlement.



Leslie J. Girard
Chief Assistant County Counsel
(831) 755-5045 or girardlj@co.monterey.ca.us
November 6, 2012

cc: Front Counter Copy; Planning Commission; County Counsel; Public Works Department; Jacqueline Onciano, Project Planner; Planning Files PLN 070525 and REF120079; Carmel Valley Association; Open Monterey Project; Landwatch Monterey County.

- Attachments: Exhibit A Underline/strikeout of Policies
- Exhibit B Summary
- Exhibit C Draft Resolution
- Exhibit D Draft Addendum No. 2
- Exhibit E CD of FEIR and related legislative documents (incorporated by reference)
- Exhibit F Lawsuit
- Exhibit G Settlement Agreement
- Exhibit H Carmel Valley LUAC Minutes

EXHIBIT A



EXHIBIT A

Proposed Amendment to Monterey County 2010 General Plan (Carmel Valley Master Plan) shown as changes from 2010 Master Plan policies as adopted on October 26, 2010

- CV-1.6 New residential subdivision in Carmel Valley shall be limited to creation of ~~266~~ 190 new units as follows:
- a. There shall be preference to projects including at least 50% affordable housing units.
 - b. Lots developed with affordable housing under the Inclusionary Housing Ordinance or an Affordable Housing Overlay (Policy LU-2.12) may have more than one unit per lot. Each unit counts as part of the total unit cap.
 - c. Existing lots with five (5) acres or more may have the first single family dwelling plus one auxiliary accessory dwelling unit. Units added on qualifying existing lots shall not count as part of the total unit cap. New auxiliary accessory dwelling units or single family dwellings beyond the first single family dwelling shall be prohibited on lots with less than five (5) acres, except that this provision shall not apply to projects that have already been approved, environmental review for auxiliary such units has already been conducted, and in which traffic mitigation fees have been paid for such auxiliary units prior to adoption of this Carmel Valley Master Plan.
 - d. New lots shall be limited to the first single family dwelling. Auxiliary Accessory dwelling units and single family dwellings beyond the first single family dwelling shall be prohibited.
 - e. Of the ~~266~~ 190 new units, 24 are reserved for consideration of the Delfino property (30 acres consisting of APN: 187-521-014-000, 187-521-015-000, 187-512-016-000, 187-512-017-000, 187-512-018-000, and 187-502-001-000) in Carmel Valley Village (former Carmel Valley Airport site) to enable subdivision of the property into 18 single family residential lots and one lot dedicated for six affordable/inclusionary units, provided the design of the subdivision includes at least 14 acres available for community open space use subject to also being used for subdivision related water, wastewater, and other infrastructure facilities.
 - f. New units or lots shall be debited from the unit count when an entitlement is granted or a building permit is issued, whichever occurs first.
 - g. At five year intervals, the County shall also examine any other factors that might warrant a downward adjustment to the residential unit cap.
- The County shall develop a tracking system and shall present, before the Planning Commission, an annual report of units remaining ~~before the Planning Commission~~. For purposes of the new residential unit cap set forth in this policy, the term "unit" or "units" means lots created by subdivision (including condominiums), accessory dwelling units, single family dwellings beyond the first single family dwelling on a lot, and apartments.

Amend CV-2.17

- CV-2.17 To implement traffic standards to provide adequate streets and highways in Carmel Valley, the County shall conduct and implement the following:
- a) Twice yearly monitoring by Public Works (in June and October) of peak hour traffic volumes and daily traffic volumes at the following six (6) locations indicated in bold (at least one of the yearly monitoring periods will occur when local schools are in session) in the following list noted in bold type:

	<i>Carmel Valley Road</i>	<i>ADT threshold</i>
1.	Holman Road to CVMP boundary	<u>8487</u>
2.	Holman Road to Esquiline Road	<u>6835</u>
3.	Esquiline Road to Ford Road	<u>9065</u>
4.	Ford Road to Laureles Grade	<u>11,600</u>
5.	Laureles Grade to Robinson Canyon Road	<u>12,752</u>
6.	Robinson Canyon Road to Schulte Road	<u>15,499</u>
7.	Schulte Road to Rancho San Carlos Road	<u>16,340</u>
8.	Rancho San Carlos Road to Rio Road	<u>48,487</u>
9.	Rio Road to Carmel Rancho Boulevard	<u>51,401</u>
10.	Carmel Rancho Boulevard to SR1	<u>27,839</u>
	<i>Other Locations</i>	
11.	Carmel Rancho Boulevard between Carmel Valley Road and Rio Road	<u>33,495</u>
12.	Rio Road between its eastern terminus at Val Verde Drive and <u>Carmel Rancho Boulevard SR1</u>	<u>6,416</u>
13.	<u>Rio Road between Carmel Rancho Boulevard and SR1</u>	<u>33,928</u>

b) A yearly evaluation report shall be prepared jointly by the Public Works Department in December to evaluate the peak hour level of service (LOS) for that shall report on traffic along the six (6) monitoring locations and determine if any of those segments are approaching a peak hour traffic volume that would lower levels of service below the LOS standards established below under Policy CV-2-17(e) indicated segments. The report shall evaluate traffic using the PTSF methodology (or such other methodology as may be appropriate for a given segment in the opinion of the Public Works Department), and the ADT methodology. ADT thresholds for each segment are listed above, and the Public Works Department shall annually establish appropriate PTSF or other methodology thresholds for each of the six (6) segments listed above will summarize peak hour data and Percent Time Following (PTSF) analysis in an Average Daily Trips (ADT) format.

- c) A Public hearings before the Board of Supervisors shall be held in

January immediately following the December report when only 100 or fewer ADT 10 or less peak hour trips remain before the ADT count for a segment will equal or exceed the indicated threshold, or where the PTSF (or such other methodology as may be appropriate for a given segment in the opinion of the Public Works Department) for a segment exceeds or is within one percent (1%) of the value that would cause a decrease in the LOS an unacceptable level of service (as defined by Policy CV-2-17C) would be reached for any of the six (6) segments described above.

d) At five year intervals the County shall monitor all segments listed in Policy CV-2.17(a) and the annual report described in Policy CV-2.17(b) shall include a report on all segments. If such periodic monitoring and reporting shows that any segment not previously part of the annual report is within twenty percent (20%) of the listed ADT threshold, that segment shall thereafter be subject to the annual monitoring and reporting.

e) Also At five year intervals the County shall examine the degree to which estimates of changes in Levels of Service ("LOS") in the Carmel Valley Master Plan Area may be occurring earlier than predicted in the General Plan Environmental Impact Report. If the examination indicates that LOS are likely to fall to a lower letter grade than predicted for 2030, then the County shall consider adjustments to the cap on new residential units established in Policy CV-1.6 and/or the cap on new visitor serving units established in Policy CV-1.15 or other measures that may reduce the impacts, including, but not limited to, deferral of development that would seriously impact traffic conditions.

- f) The traffic LOS standards (LOS as measured by peak hour conditions) for the CVMP Area shall be as follows:
- 1) Signalized Intersections – LOS of "C" is the acceptable condition.
 - 2) Unsignalized Intersections – LOS of "F" or meeting of any traffic signal warrant are defined as unacceptable conditions.
 - 3) Carmel Valley Road Segment Operations:
 - a) LOS of "C" and ADT below its threshold specified in Policy CV-2.17(a) for Segments 1, 2, 8, 9, and 10, 11, 12 and 13 is an acceptable condition;
 - b) LOS of "D" and ADT below its threshold specified in Policy CV-2.17(a) for Segments 3, 4, 5, 6, and 7 is an acceptable condition.

During review of development applications that require a discretionary permit, if traffic analysis of the proposed project indicates that the project would result in traffic conditions that would exceed the standards described above in Policy CV 2.17(fe), after the analysis takes into consideration the Carmel Valley Traffic Improvement Program to be funded by the Carmel Valley Road Traffic

Mitigation Fee, then approval of the project shall be conditioned on the prior (e.g., prior to project-generated traffic) construction of additional roadway improvements or an Environmental Impact Report shall be prepared for the project, which will include evaluation of traffic impacts based on the ADT methodology. Such additional roadway improvements must be sufficient, when combined with the projects programmed for completion prior to the project-generated traffic in the Carmel Valley Traffic Improvement Program, to allow County to find that the affected roadway segments or intersections would meet the acceptable standard upon completion of the programmed plus additional improvements. Any EIR required by this policy shall assess cumulative traffic impacts outside the CVMP area arising from development within the CVMP area.

This policy does not apply to the first single family residence on a legal lot of record. The use of the ADT methodology as set forth in this Policy CV-2.17 shall be limited to the purposes described in the Policy, and the County may utilize any traffic evaluation methodology it deems appropriate for other purposes, including but not limited to, road and intersection design. This policy shall also not apply to commercial development in any Light Commercial Zoning ("LC") district within the CVMP area where the Director of Planning has determined that the requirement for a General Development Plan, or amendment to a General Development Plan, may be waived pursuant to Monterey County Code section 21.18.030 (E).

Amend CV-2.18

- CV-2.18 The County shall adopt a Carmel Valley Traffic Improvement Program (CVTIP) that:
- a. Evaluates the conditions of Carmel Valley Road and identifies projects designed to maintain the adopted LOS standards for this roadway as follows:
 1. In order to preserve the rural character of Carmel Valley, improvements shall be designed to avoid creating more than three through lanes along Carmel Valley Road.
 2. Higher priority shall be given to projects that address safety issues and manage congestion.
 3. The project list may include projects previously identified for inclusion in the CVTIP or their functional equivalent.
 4. Priorities shall be established through community input via a Carmel Valley Road Committee, which shall be established by the Board of Supervisors and shall review and comment on proposed projects in the CVTIP, and review and comment on the annual report described in Policy CV-2.17 (b).

5. At a minimum, the project list shall be updated every five years unless a subsequent traffic analysis identifies that different projects are necessary.
- b. Validates and refines the specific scope of all projects proposed by the CVTIP through preparation of a Project Study Report (PSR). The PSR will be reviewed and commented on by the Carmel Valley Road Committee prior to commencement of project design.
- c. Establishes a fee program to fund the CVTIP. All projects within the Carmel Valley Master Plan (CVMP) area, and within the “Expanded Area” that contribute to traffic within the CVMP area, shall contribute a fair-share traffic impact fee to fund necessary improvements identified in the CVTIP, as updated at the time of building permit issuance. Fees will be updated annually as specified by the CVTIP to account for changes in construction costs and land values. The County shall adopt a CVTIP within one year of approval of the 2010 General Plan. The CVTIP does not apply to any roadways (including SR1) that are located outside the CVMP area.

Amend CV-3.11

CV-3.11 The County shall discourage the removal of healthy native oak and madrone and redwood trees in the Carmel Valley Master Plan Area. A permit shall be required for the removal of any of these trees with a trunk diameter in excess of six inches, measured two feet above ground level. Where feasible, trees removed will be replaced by nursery-grown trees of the same species and not less than one gallon in size. A minimum fine, equivalent to the retail value of the wood removed, shall be imposed for each violation. In the case of emergency caused by the hazardous or dangerous condition of a tree and requiring immediate action for the safety of life or property, a tree may be removed without the above permit, provided the County is notified of the action within ten working days. Exemptions to the above permit requirement shall include tree removal by public utilities, as specified in the California Public Utility Commission’s General Order 95, and by governmental agencies. Removal of healthy, native oak, madrone, and redwood trees in the Carmel Valley Planning Area shall be discouraged. An ordinance shall be developed to identify required procedures for removal of these trees. Said ordinance shall take into account fuel modification needed for fire prevention in the vicinity of structures and shall include:

- a. ~~Permit requirements.~~
- b. ~~Replacement criteria~~
- c. ~~Exceptions for emergencies and governmental agencies~~

Add CV-3.22

CV-3.22 Notwithstanding policy OS-3.5(1), non-agricultural development that is both on

slopes in excess of twenty five percent (25%) and on highly erodible soils shall be prohibited. Non-agricultural development on slopes in excess of twenty five (25%) percent that is not on highly erodible soils shall be subject to Policy OS-3.5(1).

Delete CV-6.5

~~CV 6.5 — Notwithstanding *Policy OS 3.5*, new development shall be prohibited on slopes: 1) with highly erodible soils, and 2) in excess of twenty five percent (25%).~~

EXHIBIT B

EXHIBIT B

SUMMARY OF PROPOSED 2010 CVMP POLICY REVISIONS

1. CV-1.6; NEW RESIDENTIAL SUBDIVISION CAP

Policy CV-1.6 of the 2010 CVMP set a 266 unit cap on new residential subdivisions (the term "unit" is used to capture a variety of dwellings as well as lots). The proposed policy revision would reduce that cap to 190 units. Not as part of the litigation settlement, but at the request of the Carmel Valley LUAC, a sentence clarifying the term "units" as used in the policy is added at the end, and the term "auxiliary unit", which does not have a definition, has been replaced by other terms to make the policy more clear.

2. CV-2.17; TRAFFIC METHODOLOGY

Prior to the adoption of the 2010 CVMP, traffic was counted along Carmel Valley Road using the Average Daily Trip ("ADT") method, which counted the volume of traffic along various segments of the road. Levels of Service ("LOS") were determined based upon historical data set forth in a report prepared by Keith Higgins.

The 2010 CVMP initially proposed changing the method for calculating LOS to Percent Time Spent Following ("PTSF"), although as adopted the data would be reported in both ADT and PTSF. LOS standards were set for each of 12 segments of the road, and traffic would be monitored twice a year at six of those segments. If traffic along any monitored segment was approaching its LOS standard, a public hearing would be held regarding traffic conditions. The 2010 CVMP also provided that the County would assess how rapidly changes in LOS are occurring, compared to predictions, and if changes were occurring more rapidly the County would consider changes to land use policies including the new subdivision unit cap in CV-1.6.

The proposed policy revision would list ADT thresholds for each of 13 segments of the road (an additional segment on Rio Road from Val Verde to Carmel Rancho would be added), and that the annual report will evaluate traffic along the six monitored segments using both ADT and PTSF. The plan would be clarified to provide for monitoring at least once while school is in session. A hearing, specifically before the Board of Supervisors, would be held if any segment, based on either PTSF or ADT, approaches its threshold.

The proposed policy revision further provides that the County would monitor all segments every five years, and a segment not annually monitored approaching its threshold would be added to the annual monitoring list. LOS standards would be indicated both in PTSF and ADT. Any EIR required for a project in the Master Plan area

would be required to include an evaluation of traffic using ADT, and to assess cumulative traffic impacts outside the CVMP area from development occurring within the CVMP. Finally, the County may use PTSF, or any other methodology for the purpose of road or intersection design, and the revised policy will not apply to commercial development in the Light Commercial ("LC") zone designation under certain circumstances.

3. CV-2.18; CARMEL VALLEY ROAD COMMITTEE

The 2010 CVMP calls for the creation by the Board of Supervisors of a Carmel Valley Road Committee, that will have various functions related to the review of traffic conditions along Carmel Valley Road. The revised policy would provide that the Committee specifically review and comment upon proposed projects in the Carmel Valley Traffic Improvement Program ("CVTIP"), review and comment on the annual traffic report described in CV-2.17 and discussed above; and comment on any Project Study Report ("PSR") for a traffic improvement project in the CVTIP prior to project design.

4. CV-3.11; TREE PROTECTION

The 2010 CVMP revised detailed language regarding the protection of oak, madrone, and redwood trees with more general language that called for the creation of an ordinance that would call-out specific protections. The revised policy would return the specific tree protection language previously set forth in the Master Plan.

5. CV-6.5/3.22; NON-AGRICULTURAL DEVELOPMENT ON SLOPES

While the 2010 CVMP set forth a policy limiting non-agricultural development on slopes in excess of 25% and on highly erodible soils (Policy CV-6.5), it was identified that the policy was in the wrong chapter of the CVMP (the Agriculture Chapter). For consistency, the proposed policy revisions would make clarifying language changes and relocate the policy to the Conservation/Open Space Chapter where it more logically belongs.

EXHIBIT C

EXHIBIT C

RESOLUTION RECOMMENDING APPROVAL OF GENERAL PLAN AMENDMENTS

**Before the Planning Commission
County of Monterey, State of California**

Resolution No. _____

Resolution of the Planning Commission)
recommending that the Board of)
Supervisors consider Addendum No. 2 to)
FEIR #07-01, SCH #2007121001, and)
amend Policies CV 1.6, 2.17, 2.18, 3.11,)
3.22 and 6.5 of the 2010 Monterey County)
General Plan/Carmel Valley Master Plan)
relating to the New Residential Unit Cap,)
Traffic Methodology, Carmel Valley Road)
Committee, Tree Protection, and Non-)
agricultural Development on Slopes.)

Proposed amendments to the 2010 Monterey County General Plan (“General Plan)/Carmel Valley Master Plan (“CVMP”) came on regularly for public hearing before the Monterey County Planning Commission on November 14, 2012. Having considered all the written and documentary evidence, the staff report and its attachments, oral testimony, and other evidence presented, the Planning Commission makes this recommendation to the Monterey County Board of Supervisors (“Board of Supervisors”) with reference to the following facts and findings:

RECITALS

1. Section 65300 et seq. of the California Government Code requires each county to adopt a comprehensive, long-term General Plan for the physical development of each county.
2. On October 26, 2010, the Board of Supervisors adopted the General Plan, which included the CVMP, and certified its accompanying Final Environmental Impact Report (#07-01, SCH #2007121001) (“FEIR”).
3. Subsequent to the adoption of the General Plan and certification of the FEIR, four lawsuits were commenced challenging those actions on a variety of grounds.
4. One of those lawsuits was filed in the name of the Carmel Valley Association (“CVA”).
5. Pursuant to the requirements of the California Environmental Quality Act (“CEQA”), settlement negotiations were begun with all litigant groups. Following extended negotiations, an agreement was reached with the CVA which requires the County to consider amendments to the General Plan/CVMP, and the Board of Supervisors approved the settlement.
6. Pursuant to Government Code sections 65350 et seq., the County of Monterey (“County”) may amend the adopted General Plan provided the County follows certain procedures, including that the Planning Commission hold a noticed public hearing and

make a written recommendation to the Board of Supervisors on the proposed amendment of the General Plan.

7. While the California Government Code provides that any mandatory element of the General Plan may be amended no more than four (4) times during any calendar year, Policy LU-9.6 (d) of the General Plan provides that amendments to the County's General Plan be considered no more than twice per calendar year. There has been one prior package of General Plan amendments considered in 2012.
8. The proposed amendments to the General Plan affect CVMP Policies CV-1.6 (New Residential Unit Cap), CV-2.17 (Traffic Methodology), CV-2.18 (Carmel Valley Road Committee), CV-3.11 (Tree Protection), and CV-6.5/3.22 (Non-agricultural Development on Slopes).
9. All policies of the General Plan have been reviewed by the Planning Department staff and the County Counsel's Office to ensure that the proposed amendments maintain the compatibility and internal consistency of the General Plan.
10. An Addendum to the certified FEIR ("Addendum No. 2") has been prepared pursuant to Section 15164 of the CEQA Guidelines because substantial evidence in the record shows that the conditions requiring a Subsequent Environmental Impact Report ("EIR") or Supplement to an EIR do not exist.
11. A public hearing was scheduled before the Planning Commission on November 14, 2012, at 9 a.m. to consider the proposed amendments and the Addendum No. 2, and make appropriate recommendations to the Board of Supervisors. At least 10 days before the public hearing, notice of the hearing before the Planning Commission was published in the Salinas Californian and mailed to interested parties.
12. At the hearing on November 14, 2012, the Planning Commission also considered Addendum No. 1 to the FEIR and recommended that the Board of Supervisors adopt amendments to the General Plan to implement a litigation settlement with one of the other litigant groups, the Salinas Valley Water Coalition, et al. (Planning Commission File No. REF120078).
13. Prior to making recommendations on the General Plan amendments, the Planning Commission reviewed and considered the Addendum Nos. 1 and 2.

II. FINDINGS

The Planning Commission finds as follows:

- A. The above recitals are true and correct.
- B. There are no substantial changes proposed to the General Plan/CVMP that will require major revisions to the certified FEIR (#07-01, SCH #2007121001) due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects.
- C. There are no substantial changes that will occur with respect to the circumstances under which the General Plan/CVMP is undertaken which will require major revisions of the

FEIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects.

D. There is no new information of substantial importance that shows any of the following:

- i. that the General Plan/CVMP will have one or more significant effect not discussed in the FEIR;
- ii. significant effects previously examined will be substantially more severe than shown in the FEIR;
- iii. mitigation measures or alternatives previously found not to be feasible would in fact be feasible and would substantially reduce one or more significant effects of the General Plan/CVMP, but the County declines to adopt the mitigation measure or alternative; or
- iv. mitigation measures or alternatives which are considerably different from those analyzed in the FEIR would substantially reduce one or more significant effects on the environment, but the County declines to adopt the mitigation measure or alternative.

III. DECISION

NOW, THEREFORE, BE IT RESOLVED by the Monterey County Planning Commission that the Planning Commission recommends to the Monterey County Board of Supervisors ("Board") as follows:

- I. That the Board consider the Addendum Nos. 1 and 2 to FEIR #07-01 (SCH #2007121001), attached hereto as Exhibit A; and
- II. That the Board adopt the amendments to the 2010 Monterey County General Plan/Carmel Valley Master Plan set forth in Exhibit B, attached hereto.

PASSED AND ADOPTED on this 14th day of November, 2012, upon motion of Commissioner _____, seconded by Commissioner _____, by the following vote, to-wit:

AYES:

NOES:

ABSENT:

By _____

EXHIBIT D

EXHIBIT D

Addendum No. 2 to Final Environmental Impact Report #07-01, SCH #2007121001 Pursuant to California Environmental Quality Act Guidelines Article 11, Section 15164

2010 MONTEREY COUNTY GENERAL PLAN/CARMEL VALLEY MASTER PLAN Planning File No. REF120079 Amendment of General Plan/Camel Valley Master Plan

1. Introduction

On October 26, 2010, by Resolution Nos. 10-290 and 10-291 the Monterey County Board of Supervisors certified Final Environmental Impact Report #07-01, SCH #2007121001 ("FEIR"), and adopted findings, a Statement of Overriding Considerations, a Mitigation Monitoring and Reporting Program, and the 2010 Monterey County General Plan ("General Plan), including the Carmel Valley Master Plan ("CVMP"). As part of a settlement of litigation regarding the adoption of the General Plan and CVMP, and certification of the FEIR, amendments to CVMP Policies CV-1.6 (relating to the new residential unit cap in the CVMP area), CV-2.17 (relating to traffic counting methodology along Carmel Valley Road), CV-2.18 (relating to the Carmel Valley Road Committee), CV-3.11 (relating to tree protection), and CV-3.22 and 6.5 (relating to non-agricultural development on slopes) are being considered. The proposed amendments are set forth and discussed in Exhibits A and B to the staff report for this matter.

This technical addendum has been prepared pursuant to Article 11, Section 15164 of the California Environmental Quality Act guidelines ("Guidelines") to make minor technical changes to the project analyzed in the FEIR. None of the conditions described in Guidelines Section 15162 or 15163, calling for preparation of a subsequent EIR or supplement to an EIR, have occurred.

2. Scope and Purpose of this Addendum

This Addendum No. 2 describes whether any changes or additions are necessary to the FEIR as a result of the proposed amendments to the General Plan/CVMP, or if any of the conditions described in Guidelines Section 15162 exist. Please see the attached memorandum from ICF International, incorporated herein by reference, that assesses the potential environmental impacts from the adoption of the proposed amendments, and whether any changes to the FEIR are required.

3. Conclusion

As the ICF memorandum discloses, the proposed changes to the CVMP Policies will not result in additional impacts or an increase in the severity of impacts; the identification of feasible mitigation measures or alternatives that were previously identified as infeasible; or the identification of considerably different mitigation measures or alternatives than those disclosed or discussed in the FEIR. Accordingly, none of the conditions described in Guidelines Section 15162, requiring a Subsequent EIR, exist. This Addendum No. 2 is considered sufficient because it discloses the proposed amendments to the CVMP Policies, and provides an analysis regarding the lack of environmental impacts.

FEIR #07-01 has been included as an attachment to the staff report and is available on the County's web site at

http://www.co.monterey.ca.us/planning/gpu/GPU_2007/FEIR_Information/FEIR_Information.htm.

Addendum No. 1, related to other amendments to the General Plan as a litigation settlement, is being considered as a companion item to this Addendum No. 2.



TO: Mike Novo, Monterey County Planning Director

FROM: Rich Walter, ICF International

CC: Les Girard, Monterey County Counsel
Terry Rivasplata, ICF International

DATE: November 5, 2012

RE: Potential Changes to Monterey County 2010 Carmel Valley Master Plan Policies

This memorandum presents ICF's review of the potential CEQA implications of potential changes to Monterey County 2010 Carmel Valley Master Plan (CVMP) policies concerning development potential, traffic, tree removal, and development of slopes. ICF also reviewed an Addendum (Addendum No. 2) to the final EIR prepared by the County for the 2010 General Plan prepared concerning the proposed policy changes to the CVMP.

Our review is limited to the potential for changes in environmental impacts due to policy changes relevant to the impacts disclosed in the certified EIR for the 2010 General Plan. Our review is based on our understanding of CEQA, the General Plan/CVMP and the General Plan EIR. Our review does not constitute legal advice.

A prior Addendum (Addendum No. 1) was also prepared by the County concerning certain proposed changes in Public Services policies. That addendum does not concern issues addressed in this memo.

Policy CV-1.6 - Potential Policy Changes Regarding Development Potential

The proposed changes include the following: (1) limiting new residential subdivision units to 190, which is a reduction in buildout potential from 266 units; and (2) addition of clarifying language about accessory units and how the term "units" is defined.

The reduction in buildout level in the CVMP area will result in slightly lower environmental impacts of buildout within the CVMP area. Relative to the CVMP area, the reduction in environmental impact would not result in any new significant impacts or substantial more severe impacts than those disclosed in the 2010 GP EIR. In theory, if housing demand is fixed at any point in time then the reduction in allowable units in CVMP will make it slightly more likely that development would occur in locations outside CVMP for any fixed point in time. However, the change does not increase the allowable units in any other part of the County and thus the 76 units eliminated in the CVMP

would not be added to buildout totals in other parts of the County. As such, no new impacts in areas at buildout outside the CVMP buildout above those disclosed in the 2010 GP EIR would be expected. In theory, one could argue that traffic levels (and development) outside the CVMP could be higher in the interim between the present and buildout due to the accommodation of the 76 units (or some portion thereof) in other parts of the County. However, it would be speculative to attempt to identify exactly where these 76 units (or portion thereof) might be distributed. Given the limited amount of units, this is unlikely to substantially change traffic conditions or environmental impacts in the interim on a County-level scale compared to that disclosed in the 2010 GP EIR.

Regarding the clarifying language replacing the term “auxiliary unit” with the term “accessory dwelling unit” and the clarifying language regarding defining the term “units” in Policy CV-1.6, the proposed edits only clarify the intent of the prior language, neither increasing nor decreasing the development potential of the policy. As such, there is no increase in environmental impact due to these proposed clarifications compared to the environmental impacts disclosed in the 2010 GP EIR.

Policy CV-2.17 - Potential Policy Changes Concerning Traffic

The proposed changes include the following:

- Splitting of Rio Road monitoring segment into two segments: 1) from Rio Road at its eastern terminus to Carmel Rancho Blvd. and 2) between Carmel Rancho Blvd and SR1;
- addition of requirement for traffic analysis using the Average Daily Traffic (ADT) methodology, new ADT threshold triggers for evaluation and additional monitoring; new ADT traffic standards;
- mandating of use of the PTSF methodology;
- change of peak hour “trigger” for monitoring roadways from 10 or less peak trips in favor of 1% of the PTSF value necessary to cause a decrease in LOS;
- addition of requirement to annually establish PTSF or other methodology thresholds;
- addition of requirement for ADT analysis in EIRs for new development and analysis of cumulative traffic impacts outside the CVMP from development within the CVMP area; and
- exclusion of application of Policy CV-2.17 to commercial development in any light commercial zoning where a requirement for General Development Plan or amendment may be waived pursuant to Monterey County Code section 21.18.030(E).

Addition of ADT Fixed Volume Thresholds/Standards

The fundamental change proposed is the addition and application of thresholds, triggers, and standards using fixed ADT volumes. The specific fixed ADT volumes for Carmel Valley Road are those derived using the ADT approach to determine the existing capacity of the roadways as they are designed presently. Use of a fixed ADT volume threshold eliminates the ability to take into account any future capacity improvements including additional lanes or new passing lanes.

Mr. Mike Novo, Monterey County
November 5, 2012
Page 3 of 6

As shown in the attached tables, current conditions are under the proposed new ADT standards for 2005, 2008, 2009, 2010 and 2011 traffic volumes with one exception (Segment 7 exceeded the ADT threshold in 2005). The 2010 GP EIR identified that cumulative 2030 traffic conditions would exceed the LOS standards in CV-2.17 for Carmel Valley Road Segments 5, 6 and 7 using the LOS standards based on PTSF methodology. The 2010 GP EIR concluded that impacts to Segments 5, 6 and 7 could be mitigated to a less than significant level by mitigation included in the proposed CVTIP, which consisted of adding passing lanes to these segments. Using the ADT fixed volume LOS standards included in the proposed settlement agreement, 2030 cumulative traffic conditions could exceed the ADT standards for Carmel Valley Road Segments 2, 3, 4, 5, 6 and 7 (as well as Segment 10 if the 2-lane standard is applied to the 4-lane roadway). The actual traffic amounts would not change (and may be slightly less due to the reduction to 190 new subdivision units), however if the ADT fixed volume standards were used as the CEQA significance thresholds, then there would be new significant impacts to Carmel Valley Road Segments 2, 3 and 4 (and possibly Segment 10). The significance would result from the addition of new significance thresholds, not a substantial change in actual traffic or physical impact. The County has identified to ICF that the ADT thresholds in the policy are not intended to be used as CEQA thresholds for either future projects or for the traffic analysis for the 2010 General Plan EIR and thus that the thresholds used in the prior General Plan EIR remain unchanged. As such, since the policy revisions would not increase traffic (and may actually lower it slightly), they would not result in an increase of actual physical environmental impacts compared to those disclosed in the 2010 General Plan EIR.

As shown in the attached Table 2, based on a projection forward from 2011 conditions to predicted 2030 conditions, Segment 7 may exceed its ADT fixed volume threshold as soon as 2015 following by Segments 3, 4, 5 and 6 by perhaps around 2020. There are practically no options in the CVMP area for building new diversionary roads that could route traffic away from roadways that exceed their ADT threshold and adding roadway capacity will not reduce volumes. Thus the use of the ADT standard eliminates the ability to mitigate traffic impacts short of denying permits to projects that generate new trips above the ADT threshold. This will have a substantial impact on CEQA compliance for all discretionary approvals that result in new trips for projects other than light commercial projects for which an exclusion is provided in the policy revision. Thus, starting perhaps as soon as 2015, the approval of any discretionary project that contributes trips to the road system would require preparation and consideration of an EIR.

The proposed ADT fixed volume threshold/standard of 27,839 for Segment 10 (Carmel Rancho Blvd. to SR1) is inconsistent with the other thresholds and should be clarified. For example, the threshold for Segment 9 is 51,401. It appears that the proposed Segment 10 threshold is for two-lanes only but this is not clarified anywhere in the new policy. It is likely that this threshold is an old ADT threshold from before this segment was expanded to 4 lanes. It would be clearer to establish a 4-lane threshold for Segment 10 than the proposed 2-lane threshold.

Monitoring Trigger Changes

The proposed changes do not eliminate the existing CV-2.17 required monitoring or use of PTSF triggers or standards, but change the trigger for public hearing from 10 peak trips to 1% of the PTSF value that would cause a decrease in LOS. We did not analyze what the 1% PTSF trigger would mean in terms of volumes; thus this change could be more or less stringent than the prior trigger. As the trigger only requires a public hearing and not actual action, this change would not result in more environmental impacts than disclosed in the 2010 GP EIR.

The proposed changes add an 80 percent of ADT volume threshold trigger for converting five-year monitoring into annual monitoring for a particular segment. As of 2011, Segments 3, 4, 5, 6, 7 and 8 have exceeded this threshold and thus annual monitoring will be required for these segments, which is an addition of one segment (Segment 8) over that required by existing policy. It should be noted that Segment 10 is at 79% of its ADT threshold in 2011 (and was over the threshold in 2005, 2008 and 2009) and will likely exceed its threshold shortly, triggering annual monitoring for this segment as well. Additional annual monitoring does not result in any environmental impact greater than that disclosed in the 2010 GP EIR.

Mandating PTSF Methodology

The existing policy requires monitoring and reporting using both ADT and PTSF methodology. Revised Policy CV-2.17b specified use of PTSF methodology or other methodologies determined appropriate by Public Works, leaving it open to use of other accepted methodologies. However, revised Policy CV-2.17c specified the use of a PTSF trigger for public hearings. This was probably an oversight. It is recommended that no reference be made to use of PTSF in the policy. It is suggested that references to non-ADT methodologies should be to a "professionally accepted traffic analysis methodology as determined by the Public Works Department" instead. This would allow change over time to reflect changes over time in professional practice.

Splitting of Rio Road into Two Segments

The existing Policy CV-2.17 included Rio Road between Carmel Rancho Blvd. and SR1, but the proposed policy changes would split this road into two segments by adding a new segment from Val Verde Road to Carmel Rancho Blvd. Traffic along this segment would be affected by new development, if approved, along Val Verde Drive and/or at Rancho Canada Village. It is unclear where the 6,416 fixed volume ADT threshold was derived from, since this segment was never included in prior CVMP traffic segments (the focus on Rio Road was always west of Carmel Rancho Blvd.). In the traffic study included in the Draft EIR for Rancho Canada Village (Hexagon Transportation Consultants 2007), the predicted future volumes with Rancho Canada Village (281 units) if access westward to Rio Road would be approximately 3,200 ADT (assuming 10 times predicted PM peak levels) compared to approximately 1,000 ADT at present. As the proposed changes limit overall new subdivision units to 190, of which 24 are reserved for the Delfino property, the maximum units that could be allowed at Rancho Canada Village (or a combination of

Mr. Mike Novo, Monterey County
November 5, 2012
Page 5 of 6

Rancho Canada village and development along Val Verde Drive) would be 166 units. Assuming a proportional reduction in traffic from 281 units to 166 units, then with project-volumes would be less than that above. At any rate, it would appear that future volumes with Rancho Canada Village may be well below the proposed ADT standard of 6,416 for Rio Road west of Val Verde Drive.

However, as noted above, cumulative traffic along certain segments of Carmel Valley Road will likely exceed the proposed ADT fixed volume standards perhaps as soon as 2015; thus any CEQA documents for Rancho Canada Village or other development projects would need to disclose potential contributions to cumulative traffic impacts, which are likely to be found significant and unavoidable and require preparation of an EIR and adoption of a statement of overriding considerations.

Exclusion for Light Commercial Development

The exclusion of application of Policy CV-2.17 to commercial development in any light commercial zoned area where a requirement for General Development Plan or amendment may be waived pursuant to Monterey County Code section 21.18.030(E) would not result in new traffic impacts over those disclosed in the 2010 GP EIR because Section 21.18.030(E) states that a waiver can only be provided if there are no potential significant adverse impacts from the proposed development. Thus any such development would still need to be assessed for traffic impacts in order to support the finding in Section 21.18.030 (E), but would not necessarily need to use the LOS standards and methodology in the revised Policy CV-2.17. This leaves open the possibility that such development could be analyzed using standard HCM methodologies instead of the ADT methodology proposed for all other development.

Policy CV-2.18 - Potential Policy Changes Concerning Traffic

The proposed changes include the following:

- addition of requirement that the Carmel Valley Road Committee to review and comment on proposed projects in the CVTIP and the annual monitoring reports; and
- addition of a requirement that the Carmel Valley Road Committee comment on the PSR for the CVTIP.

The addition of requirements that the committee comment on the CVTIP, monitoring reports, or the PSR would not change impacts in CVMP in regards to traffic or any other impact. The requirements are only that the committee is to comment; the changes do not make the committee the decision-maker for deciding what projects are included in the CVTIP which remains the County.

Policy CV-3.11 - Potential Policy Changes Concerning Tree Removal

The proposed changes include the following:

- required permit for removal of healthy native oak, madrone, and redwood trees in the CVMP area;
- required replacement by one-gallon or greater nursery-grown trees where feasible;
- adds a minimum fine for violations;
- allows for emergency exemptions; and
- exempts tree removal where specified in CPUC General Order No. 95 and by government agencies.

The changes are more specific than the existing policy and more stringent by mandating a permit, replacement, and establishing fines. Essentially, the changed policy provides the detail that would have been expected from the ordinance called for in existing policy. The emergency and government agency exemptions were called for in existing policy. A utility exemption was not called out in the existing policy, but is a specification of state CPUC regulations and thus would have applied in any case. As such, the revisions regarding tree removal would not result in any new significant or substantially more severe environmental impacts than that disclosed in the 2010 GP EIR.

Policy CV-3.22 and CV-6.5 - Potential Policy Changes Concerning Development on Slopes

The proposed changes include the following:

- deletes CV-6.5 and replaces with new policy CV-3.22 that narrows slope prohibition to “non-agricultural” development instead of “new development; and
- provides that non-agricultural development on slopes above 25% that is not on highly erodible soils is subject to General Plan OS-3.5(1).

The existing policy CV-6.5 was not intended to refer to agriculture when it referred to development; thus the new language clarifying that the policy applies to “non-agricultural” development does not limit the development potential as it was understood at the time of the 2010 GP EIR. Since the existing policy CV-6.5 only applied to slopes that both had highly erodible soils and were in excess of 25%, the reference to development on slopes of greater than 25% without highly erodible soils being subject to General Plan Policy OS-3.5(1) is only a clarification. Agricultural conversions will remain subject to General Plan Policy OS-3.5(2). As such, the revisions regarding development on slopes would not result in any new significant or substantially more severe environmental impacts than that disclosed in the 2010 GP EIR.

Table 1: Comparison of Settlement Agreement ADT Standards to Actual Counts (2005 - 2010)

Seg #	Carmel Valley Road Segment	Standard ADT	Capacity ADT	2005 ADT	2008 ADT	2009 ADT	2010 ADT	2011 ADT	2011 percent of Standard ADT
1	East of Holman Rd.	8,487	9,600	3,774	3,235	2,966	3,050	2,932	35%
2	Holman Road to Esquiline Road	6,835	9,600	4,260	3,673	3,323	3,441	3,338	49%
3	Esquiline Road to Ford Road	9,065	11,680	8,651	8,658	8,011	7,930	7,766	86%
4	Ford Road to Laureles Grade	11,600	11,680	11,589	10,608	10,543	10,421	10,328	89%
5	Laureles Grade to Robinson Canyon Road (1)	12,752	11,680	11,739	11,521	10,924	10,915	10,855	86%
6	Robinson Canyon Road to Schulte Road	15,499	14,600	14,736	14,163	13,757	13,442	13,519	87%
7	Schulte Road to Rancho San Carlos Road	16,340	11,680	15,984	15,984	15,532	15,242	15,308	94%
8	Rancho San Carlos Road to Rio Road	48,487	14,600	21,010	19,655	19,532	19,634	18,964	39%
9	Rio Road to Carmel Rancho Blvd.	51,401	30,900	25,484	24,655	24,265	23,645	23,502	46%
10	Carmel Rancho Blvd. to SR-1	27,839 (2)	30,900	23,847	23,160	22,416	21,839	22,034	79%
11	Carmel Rancho Blvd between CVR and Rio Road	33,465	N/A	N/A	11,015	9,616	9,486	9,205	28%
12	Rio Road between Val Verde and Carmel Rancho	6,416	N/A	N/A	N/A	N/A	N/A	820	13%
13	Rio Road between Carmel Rancho and SR1	33,928	N/A	N/A	12,270	11,289	10,990	10,863	32%
Bold = Exceeds Standard		Settlement	KHA 2008	Mont. County 2006	Mont. County	Monterey County, 2011	Monterey County, 2012	Mont. County 2012	Calculated

Notes:

- (1) KHA studied Laureles Grade to Miramonte Road and Miramonte Road to Robinson Canyon Road. Results are shown for Miramonte Road which had higher volumes.
- (2) Threshold is for 2-lanes

Sources:

Kimley-Horn Associates, 2008. Traffic Analysis of Carmel Valley Road. Unpublished data.
 DKS Associates, 2007. Carmel Valley Master Plan Traffic Study, July. Released as Appendix F to Carmel Valley Traffic Improvement Program Draft Subsequent EIR, August 2007.
 Monterey County, 2011, 2012. Annual Monitoring Data for Carmel Valley to 2008, 2009, 2010 and 2012

Table 2: Comparison of Settlement Agreement ADT Standards to predicted 2030 Conditions

Seg #	Carmel Valley Road Segment	Type of Roadway	2011 Conditions			2030 Cumulative (KH 2008)			CVMP 2030 Cumulative (DKS 2007)		
			Standard ADT	ADT	Capacity	ADT	% of Standard	year > STD	2-way PM peak	ADT (1)	year > STD
1	East of Holman Road	2-Lane (Undivided)	8,487	2,932	9,600	4,600	54%	2074	679	6,790	2038
2	Holman Road to Esquiline Road	2-Lane (Undivided)	6,635	3,338	9,600	4,500	66%	2088	721		
3	Esquiline Road to Ford Road	2-Lane (Undivided)	9,065	7,766	11,680				1,023		
4	Ford Road to Laureles Grade	2-Lane (Undivided)	11,600	10,328	11,680				1,478		
5	Laureles Grade to Robinson Canyon Rd (2)	2-Lane (Undivided)	12,752	10,865	11,680				1,578		
6	Robinson Canyon Rd to Schulte Road	2-Lane (Undivided)	15,498	13,519	14,600				1,893		
7	Schulte Road to Rancho San Carlos Road	2-Lane (Undivided)	18,340	15,308	14,600				2,027		
8	Rancho San Carlos Rd to Rio Road	4-Lane (Divided)	48,467	18,964	14,600	23,900	49%	2125	2,625	26,250	2088
9	Rio Road to Carmel Rancho Blvd.	4-Lane (Divided)	51,401	23,502	30,900	29,400	57%	2101	3,062	30,620	2085
10	Carmel Rancho Blvd to SR-1	4-Lane (Divided)	27,859 (3)	22,034	30,900				2,462	24,620	2051
11	Carmel Rancho Blvd between CVR and Rio Road	4-Lane (Divided)	33,465	9,205	N/A	N/A	N/A	N/A	N/A	N/A	N/A
12	Rio Road between Val Verde and Carmel Ranch	2-Lane (Undivided)	6,416	820	N/A	N/A	N/A	N/A	N/A	N/A	N/A
13	Rio Road between Carmel Rancho and SR1	4-Lane (Divided and Undivided)	33,928	10,963	N/A	N/A	N/A	N/A	N/A	N/A	N/A
			Settlement	2012	KHA 2008	KHA 2008	Calculated	Calculated	DKS 2007	Calculated as 10 X peak	Calculated

Notes:
 (1) DKS did not estimate average daily volumes. Rough calculation of 10 times PM peak volume may overestimate or underestimate 2030 volumes.
 (2) KHA studied Laureles Grade to Mirramonte Road and Mirramonte Road to Robinson Canyon Road. Results are shown for Mirramonte Road to Robinson Canyon Road which had higher volumes.
 (3) Threshold is for 2 lanes

Sources:
 Kinley-Horn Associates, 2008. Traffic Analysis of Carmel Valley Road. Unpublished data.
 DKS Associates, 2007. Carmel Valley Master Plan Traffic Study, July. Released as Appendix F to Carmel Valley Traffic Improvement Program Draft Subsequent EIR, August 2007.
 Monterey County, 2012. 2011 Annual Monitoring Report for CVR.

EXHIBIT E

**CD OF FEIR, APPROVING RESOLUTION, FINDINGS, STATEMENT OF
OVERRIDING CONSIDERATIONS, AND MITIGATION MONITORING AND
REPORTING PROGRAM PROVIDED TO PLANNING COMMISSION**

ON-LINE AT

http://www.co.monterey.ca.us/planning/gpu/GPU_2007/FEIR_Information/FEIR_Information.htm



EXHIBIT F

FILED

RECEIVED
MONTEREY COUNTY

NOV 24 2010

2010 DEC -1 AM 8:08
JENNIE MAZZEI
CLERK OF THE SUPERIOR COURT
CLERK OF THE BOARD
M. OLIVEREZ DEPUTY

1 Ron DeHoff (SBN #252883)
2 Attorney at Law
3 2100 Garden Road, Suite C
4 Monterey, CA 93940
5 Tel: (831) 372-2800
6 Fax: (831) 372-3113
7 Email: ron@rld.com

DEPUTY

5 Attorney for Petitioner
6 CARMEL VALLEY ASSOCIATION, INC.

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF MONTEREY

10 CARMEL VALLEY ASSOCIATION,
11 INC.
12 a non-profit California corporation,

13 Petitioner,

14 vs.

15 BOARD OF SUPERVISORS OF THE
16 COUNTY OF MONTEREY,
17 COUNTY OF MONTEREY, and
18 DOES 1 - 50, inclusive,

19 Respondents

Case No.: M109442

PETITION FOR WRIT OF
MANDATE AND TO ENFORCE
THE CALIFORNIA
ENVIRONMENTAL QUALITY
ACT

20 Petitioner CARMEL VALLEY ASSOCIATION, INC. alleges:

21 GENERAL ALLEGATIONS

22 1. Petitioner Carmel Valley Association is, and at all times mentioned herein has been, a
23 non-profit California corporation whose headquarters are located in Carmel Valley, CA.
24 Established in 1949 and with over 600 members, the Carmel Valley Association is the oldest and
25 largest residents and homeowners association in Carmel Valley. The Carmel Valley Association
26 operates to promote the social welfare of Carmel Valley, to protect the Valley's rural character,
27 to advocate for growth that carefully considers impacts to traffic, water, and code compliance,
28 and to read reviews and submit informed comments on Environmental Impact Reports

1 concerning development projects in Carmel Valley. The Carmel Valley Association has a clear,
2 present, and beneficial interest in the continued rural character of Carmel Valley and in the
3 enforcement of environmental quality laws affecting the traffic and land development within
4 Carmel Valley. The Carmel Valley Association was fully involved in the proceedings described
5 herein. The Carmel Valley Association has participated and submitted written and oral
6 comments in the public debates about the 2010 Monterey County General Plan (hereinafter,
7 "2010 General Plan") in regard to road capacity, traffic improvement, modeling, monitoring,
8 mitigation, and the effect of land development and traffic volume increases on Carmel Valley
9 Road, Carmel Valley, and other issues affected by the 2010 General Plan and its included
10 Carmel Valley Master Plan. The Carmel Valley Association has standing in this action.

11 2. Respondent Board of Supervisors of the County of Monterey ("Board") is the legislative
12 body of the County of Monterey and has taken action to certify an environmental impact report
13 ("EIR") and approve the 2010 General Plan.

14 3. Respondent County of Monterey ("County" or "Monterey County") is a public entity and
15 political subdivision of the State of California. It is responsible for authoring, enforcing and
16 implementing the County's General Plan, master plans including the Carmel Valley Master Plan,
17 its ordinances, and the California Environmental Quality Act (CEQA) in regard to land use and
18 planning decisions within its jurisdiction.

19 4. The project at issue in this litigation is the 2010 General Plan. The County is the lead
20 agency responsible under the California Environmental Quality Act (CEQA) for evaluating the
21 environmental impacts of the project. The General Plan is atop the hierarchy of local
22 government law regulating land use. It has been analogized to "a constitution" for all future
23 development.

24 5. Petitioner does not know the true names and capacities of the respondents named herein
25 as DOES 1 through 50, and therefore sues said parties under fictitious names. Petitioner will
26 amend this Petition to allege their true names and capacities when ascertained. Petitioner is
27 informed and believes and thereon alleges that the fictitiously named respondents are in some
28 manner responsible for the events alleged herein.

1 6. The 2010 General Plan affects Monterey County. Respondents are responsible for,
2 among other things, managing resources and development in Monterey County.

3 7. On or about October 26, 2010, the Board voted to certify an EIR for the 2010 General
4 Plan and approve the project. Respondents filed a Notice of Determination on October 27, 2010.

5 8. Petitioner has provided notice to respondents of petitioner's intention to file suit in this
6 matter through a letter served on the respondents on November 23, 2010, a true and correct copy
7 of which is attached as Exhibit A and incorporated herein by reference.

8 BACKGROUND OF RESPONDENTS' ACTIONS

9 9. Pursuant to Government Code section 65300, each city and county must adopt "a
10 comprehensive, long term general plan for the physical development of the county and city."
11 The County last comprehensively updated its general plan when it adopted the 1982 General
12 Plan on September 30, 1982 (the "1982 General Plan").

13 10. The 1982 General Plan contains countywide policies to address all aspects of future
14 growth, development, and conservation within the County. Subsequent amendments to the 1982
15 General Plan enacted "Area Plans" for specific geographic areas of the County within the
16 unincorporated inland area of the County, including the Carmel Valley Master Plan (December
17 16, 1986 and amended November 5, 1996) (hereinafter "current CVMP"). The current CVMP
18 was designed to "be substantially influenced by the current residents and property owners of the
19 valley. . . and to reflect a comprehensive cross-section of local attitudes toward the future of the
20 valley as a living environment." It provided "clear-cut criteria to those responsible for its
21 implementation, so that they may relate individual development proposals to [its] goals and
22 policies."

23 11. By the late 1990's, the 1982 General Plan was not being followed by the County and had
24 become woefully inadequate for policy implementation because of the evolution of the County's
25 demographics and land use. Pursuant to Government Code section 65358, the Board may amend
26 all or part of the adopted general plan if deemed to be in the public interest. The Board then set
27 out to create a comprehensive update of the 1982 General Plan and Area Plans.

28 12. The 2010 General Plan is the culmination of more than a decade of effort to prepare a

1 complete update of the 1982 General Plan. Beginning in November 1999 through the middle of
2 2007, the Board and various agencies of Monterey County held public hearings, prepared draft
3 plans and environmental impact reports, made a variety of directions, and adopted various
4 resolutions of approval. Petitioner appeared, gave testimony, and made objections at many of
5 these public hearings.

6 13. Beginning in 2001, traffic on Carmel Valley Road began exceeding its trigger thresholds
7 as specified in the current CVMP. In 2005, the County commissioned a new traffic study of the
8 current roadway and intersection conditions to identify potential improvements to the roadway to
9 cure unacceptable traffic conditions. The Carmel Valley Traffic Improvement Program
10 ("CVTIP") traffic study and the accompanying Draft Subsequent EIR ("CVTIP DSEIR") were
11 completed and released for public comment in August 2007. The DSEIR has not been certified
12 by the Board. Among others, the DSEIR recommended changes to the way the level of service
13 was defined, calculated, and measured. (Level of service (hereinafter, "LOS") is a method of
14 reporting one or more selected numerical performance measures ("metrics") using a system of
15 easily understandable letter grades ["A" - "F"]. LOS "A" represents free flow conditions and
16 LOS "F" represents severe traffic congestion.) Petitioner gave testimony and made objections
17 during the comment period.

18 14. On June 5, 2007, the County electorate participated in a public referendum. In that
19 referendum, the electorate did not support any of the County's proposed plans or approvals. As a
20 result of the uncertainty created by the outcome of the June 5, 2007 electoral referendum on two
21 competing versions of a draft General Plan, the Board prepared a new draft general plan that was
22 released to the public on about December 21, 2007, entitled the "draft 2007 Monterey County
23 General Plan," which was also known as "GPU5."

24 15. The County held an EIR scoping meeting on December 12, 2007 to provide information
25 about the GPU5, the potential environmental impacts and the CEQA review process. Petitioner
26 participated in the hearings and provided input as to the scope and content of the environmental
27 information to be addressed in the EIR.

28 16. The County published the Draft EIR for GPU5 (hereinafter, "DEIR") for a public review

1 period beginning on September 5, 2008. Because DEIR Appendix C (traffic data) had been
2 inadvertently omitted from the first publication of the DEIR, the public comment period was
3 extended to October 28, 2008. As a result additional concerns over the availability of reference
4 documents, including petitioner's concerns, the County again extended the review period to
5 February 2, 2009. Petitioner submitted its comments and objections during this period.

6 17. During the preparation of the DEIR's analysis of transportation and circulation impacts,
7 the County decided to treat Carmel Valley differently from the rest of the County's geographic
8 areas. The County had previously developed new definitions and methodologies for level of
9 service calculations for the CVTIP and CVTIP DSEIR. The County adopted these changed
10 metrics to the DEIR for GPU5 but only as to the Carmel Valley traffic analysis. The remainder
11 of the County was evaluated using the original metrics established in the 1982 General Plan.
12 Using the changed definitions, methodology, and triggers, the DEIR evaluated the proposed
13 CVMP to conclude that, with one exception, the impact of the proposed policies would be less
14 than significant.

15 18. On September 10, 2008, during the comment period on the DEIR, petitioner attended a
16 workshop to receive a presentation from the County on GPU5, errata to the draft Plan, and
17 mitigation measures proposed by the DEIR. Petitioner participated in public hearings and gave
18 testimony on February 11 and 25, 2009. Petitioner participated in public hearings on the DEIR,
19 on May 27, June 10, July 8, and July 29, 2009 to consider draft General Plan policies and
20 mitigation measures proposed by the DEIR and possible revisions to policies and mitigation
21 measures.

22 19. On or about March 8, 2010, the final EIR for GPU5 and a slightly revised GPU5 was
23 released to the public. At this time, the GPU5 document was retitled as the "2010 draft
24 Monterey County General Plan" (hereinafter, "2010 draft Plan") and the Final EIR for GPU 5
25 was retitled "Monterey County General Plan Final Environmental Impact Report, dated March
26 2010" (hereinafter, "FEIR").

27 20. Petitioner participated in a workshop on the 2010 draft Plan and FEIR on March 31,
28 2010, gave testimony and made objections. Subsequently, petitioner participated, gave testimony

1 and made objections in a Planning Commission hearing beginning on April 14, 2010 and
2 continuing on April 28, 2010, May 12, 2010, May 26, 2010, June 9, 2010, June 30, 2010, July
3 14, 2010, July 21, 2010, July 28, 2010, and August 11, 2010.

4 21. On August 11, 2010, the Planning Commission recommended that the Board certify the
5 FEIR and approve the 2010 draft Plan with the exception of the "Long Term Sustainable Water
6 Supply" definition.

7 22. Pursuant to Government Code section 65355, the Board commenced a public hearing on
8 the FEIR and 2010 draft Plan on August 31, 2010, and continued the public hearing to
9 September 14, 21, and 28, and October 12 and 26, 2010. At a number of these hearings, new
10 policies, plan provisions, and supporting data were presented with little or no time for public
11 review and comment. During these hearings, the petitioner gave testimony and made objections
12 concerning the lack of sufficient analysis and time to review the newly proposed information.

13 23. On October 26, 2010, the Board resolved to certify the adequacy of the FEIR under
14 CEQA (Public Resources Code §§21000-21177). On October 26, 2010, respondents approved
15 the 2010 draft Plan as amended ("2010 General Plan"). A notice of determination to carry out
16 the project was filed by respondents on October 27, 2010.

17 24. Petitioner, other agencies, interested groups, and individuals made oral and written
18 comments on the various drafts of the EIR and associated findings and raised each of the legal
19 deficiencies asserted in this petition.

20 25. Petitioner performed all conditions precedent to filing this action by complying with the
21 requirements of Public Resources Code §21167.5 in filing notice of this action on November 23,
22 2010, a true and correct copy of which is attached as Exhibit A and incorporated herein by
23 reference, and filing this lawsuit within 30 days of the filing of the Board's Notice of
24 Determination.

25 26. Respondents' actions in certifying the FEIR and adopting findings constitute a prejudicial
26 abuse of discretion in that respondents failed to proceed in the manner required by law, did not
27 satisfy the procedural and substantive requirements of CEQA, did not engage in a legally
28 sufficient fact-finding, did not adequately identify and mitigate impacts, and its decision is not

1 supported by substantial evidence.

2 **VIOLATIONS OF THE CALIFORNIA ENVIRONMENTAL QUALITY ACT**

3 27. The respondents' violations of the California Environmental Quality Act include a
4 materially incomplete and inadequate presentation of the County-wide project description,
5 project environmental setting and regulatory baseline in the project documents. Respondents
6 failed to perform a complete and integrated environmental review by inadequately investigating
7 and disclosing the project's inconsistency with previously adopted plans. They failed to
8 adequately investigate and disclose the horizontal and vertical inconsistencies of the 2010
9 General Plan and its elements. The environmental review was improperly piecemealed,
10 separately conducted, and deferred to the last minute to prevent a complete and adequate review.
11 Respondents ignored or failed to adopt reasonable mitigation measures that would substantially
12 reduce the environmental impacts of the project. The FEIR failed to propose effective
13 mitigations. Adopted mitigations do not have adequate metrics or performance standards or are
14 measured from fuzzy or inaccurate baselines. The environmental impact analysis is based on
15 flawed or inadequately disclosed assumptions, assumptions that are inadequately explained, or
16 have influence or effects that are inadequately investigated. The FEIR failed to adequately
17 address alternatives within the range of activities included in the project.

18 28. The FEIR did not adequately respond to comments under CEQA. Respondents failed to
19 adopt legally adequate findings as required by law. Respondents failed to adopt a legally
20 adequate statement of overriding considerations. Respondents and the FEIR failed to comply
21 with CEQA requirements for consideration and evaluation of information. The County failed to
22 comply with the mandatory requirement to re-circulate the DEIR after introduction of substantial
23 and material new information after the close of the public comment period. The FEIR fails as an
24 informational document as required by CEQA. There are unanalyzed potentially significant
25 impacts. Respondents failed to proceed as required by law.

26 29. Respondents adopted mitigations that are unlikely to be implemented because of the lack
27 of present or future funding. Respondents deferred critical general plan policies, standards,
28 criteria, and interpretations to the ordinance stage. The impact of these policies, standards,

1 criteria and interpretations could be significant, but cannot and were not adequately evaluated in
2 the FEIR because of the lack of detail in the project documentation. Respondents' actions
3 constitute impermissible deferral and piecemealing. For example, the FEIR and the 2010
4 General Plan include the term "long term sustainable water supply" without a complete or
5 adequate definition. Without definition, the involved agencies and public cannot appreciate,
6 analyze, plan, or make an informed decision regarding this part of the 2010 General Plan.

7 30. The FEIR fails to adequately analyze the 2010 General Plan's significant impact on traffic
8 in Carmel Valley. The current and proposed CVMP have specific standards for traffic policy
9 triggers based upon the level of service ("LOS") letter grade. In the current CVMP, the LOS
10 letter grade is calculated using the Average Daily Traffic ("ADT") volume. An ADT-based LOS
11 letter grade is also used for general planning and EIR preparation in all other areas of the County
12 and in many other counties. The proposed CVMP abandons the ADT-based LOS letter grade. It
13 proposes a different method of calculating the LOS letter grade adopted solely for use in Carmel
14 Valley. The proposed LOS letter grade calculation is based upon an alternate measure of traffic,
15 Percent Time Spent Following ("PTSF") during peak hours. Using PTSF rather than ADT to
16 calculate an LOS letter grade allows substantially increased traffic volumes at each LOS grade
17 level. For example, on several of the Carmel Valley Road segments, a LOS letter grade of E is
18 obtained when daily trips exceed 10,800 under the ADT-based LOS calculation. However, more
19 than 19,000 daily trips are required for a LOS letter grade of E under the FEIR's PTSF-based
20 calculation method. Thus, almost twice as much traffic (around 80% more) is allowed in the
21 proposed CVMP without degrading the LOS letter grade. Because the policy triggers for
22 mitigation are based solely on the LOS letter grade, 80% more traffic is allowed by the proposed
23 CVMP before the policy triggers are activated. The FEIR did not adequately analyze the impact
24 of the increased traffic allowed by the change in the calculation method and did not adequately
25 disclose the impact of the use of the different metric for Carmel Valley. As a result, the FEIR
26 violates CEQA's goals of informed decision making.

27 31. The FEIR failed to describe and adequately evaluate potential cumulative impacts of the
28 2010 General Plan, including the use of PTSF-based LOS calculations on circulation within

1 Carmel Valley and throughout the County. The 2010 General Plan policy C-1.1 sets the
2 acceptable level of service for all county roads and intersections at LOS letter grade D, without
3 guidance as to the method of calculation. The County's use of a PTSF-based calculation method
4 for LOS letter grades in Carmel Valley sets a precedent for their adoption for use throughout the
5 County. This changed methodology would significantly and materially increase the traffic
6 volume allowed before policy triggers were reached - as discussed above. The FEIR provides
7 inadequate investigation, disclosure and analysis of the potential cumulative impacts of PTSF-
8 based LOS calculations used as the basis of policy triggers. The use of PTSF-based calculation
9 for area or general plans is new to the County and would be a significant and material change
10 from the former and existing County policies. The County did not disclose this new approach
11 toward measuring traffic in the FEIR's project description.

12 32. The level of service letter grades for traffic are used for planning and monitoring
13 purposes and for comparison with earlier policies, impact analyses, and studies. The FEIR must
14 analyze impacts compared to the setting and regulatory baselines established by the 1982
15 General Plan and the current CVMP. Because the County's original and proposed LOS
16 calculation methods are substantially and materially different, any comparison between original
17 and proposed CVMP policies, based simply upon the LOS letter grade, is flawed and misleading.
18 Through the use of an apples-to-oranges comparison of the LOS letter grades calculated by
19 different methods, the FEIR attempted to falsely justify its impact findings for the proposed
20 CVMP traffic plan. The FEIR does not include an adequate analysis of the proposed CVMP
21 changes using the original ADT-based calculation method, and failed to inform the public and
22 decision makers of the significance of the changed metrics. Therefore, the FEIR's analysis of the
23 2010 General Plan is fatally flawed.

24 33. The FEIR failed to describe and adequately investigate or consider reasonable mitigation
25 measures that could eliminate or substantially lessen significant environmental impacts of the
26 project, including development restrictions triggered by excessive traffic volume. Currently, if
27 traffic volume increases so that the level of service using the ADT-base calculation falls below
28 the baseline LOS letter grade, there is a significant impact. If these impacts are caused by a

1 project and cannot be mitigated, the County must defer project approval or make statements of
2 overriding considerations. In the proposed CVMP, there would be no triggers that prevent the
3 unacceptable reduction in the LOS caused by development. The proposed CVMP also conflicts
4 with the Board's January 22, 2002 resolution (Resolution 02-024) that limited further subdivision
5 in Carmel Valley until specified road improvements are constructed. That resolution is part of
6 the existing regulatory baseline, which the FEIR did not adequately disclose. The FEIR did not
7 adequately disclose the elimination of Resolution 02-024. The FEIR did not adequately evaluate
8 the mitigation alternative of keeping Resolution 02-024 in place under the existing ADT-based
9 traffic triggers. The FEIR also fails to adequately investigate or analyze the effects of the
10 additional development allowed under these policy changes.

11 34. The FEIR failed to respond adequately to comments on the DEIR. As one example, the
12 FEIR did not respond as required under CEQA to petitioner's comments regarding the County's
13 unreasonable substitution of the traffic volume calculation methodology and the failure to
14 properly analyze the impact of the County's measurement alterations. During the history of the
15 general plan update, petitioner has continually criticized the proposal to change longstanding
16 traffic triggers for Carmel Valley. The FEIR and responses to comments on the DEIR failed to
17 adequately address these concerns and even went as far as to ignore the significance and
18 materiality of the changes. The County FEIR response to comments calls the changes
19 "inconsequential." The FEIR even attempted to portray the changes as standard practice and not
20 a change in the actual methodology. All of these arguments are false. They were constructed to
21 mask the intent by the respondents to minimize the impact of the policy changes in the 2010
22 General Plan.

23 35. The FEIR failed to properly analyze the significant impact of the wholesale elimination
24 and alteration of policies specified in the current CVMP. The 2010 General Plan eliminates
25 specific and identifiable numerical standards that exist in the current CVMP. The 2010 General
26 Plan defers these critical issues to a future unspecified date, when ordinances will be developed.
27 The current CVMP Policy 11.1.1.1 (CV), protects rare and endangered plant species. Policy
28 11.1.1.2 (CV) calls for the County to maintain records of locations of these plants. These

1 policies are completely eliminated from the current CVMP. Whether the overarching 2010
2 General Plan adequately replaces these and other policies specific to Carmel Valley is not
3 adequately analyzed in the FEIR. The public and the decision makers were not adequately
4 informed of the potential impacts of the 2010 General Plan on Carmel Valley, specifically with
5 regard to the elimination of existing CVMP policies.

6 36. The 2010 General Plan eliminated the rare tree species protection policy containing
7 detailed and quantitative standards. In the current CVMP, Policy 7.2.2.5 (CV) defines protected
8 tree species using a trunk diameter measurement standard that is clearly spelled out. However,
9 the proposed CVMP Policy CV-3.11 eliminates the numeric standard and merely states that an
10 ordinance shall be developed to identify required procedures for removal of these trees. The
11 FEIR must analyze the impact of changing the standard, and must recommend specific
12 mitigations to be incorporated. It did not do so. Without delineation of the new standards and
13 procedures no meaningful analysis of the impact of the change can be made. The proposed
14 policy is fatally flawed because it cannot be analyzed in a meaningful manner.

15 37. The 2010 General Plan eliminated the current steep slope development policy's detailed
16 and quantitative standards for Carmel Valley. Current CVMP Policy 26.1.10.1 (CV) prohibits
17 development on slopes greater than 30%. However, the proposed CVMP Policy CV-3.4 deletes
18 this prohibition. The new policy is vague and undefined and will clearly allow development on
19 slopes in excess of 30%. The FEIR failed to adequately analyze the impact of the proposed
20 changes in relation to the existing regulatory environment and land use policies.

21 Respondents thereby violated its duties to certify an FEIR and adopt findings conforming
22 to the requirements of CEQA and the CEQA Guidelines. Accordingly, the certification of the
23 FEIR and the resolution approving the 2010 General Plan must be set aside.

24 **WHEREFORE**, petitioner demands entry of judgment as follows:

25 1. For a peremptory writ of mandate directing:

26 (a) Respondents to vacate and set aside its certification of the FEIR for the project
27 and the approval of the 2010 General Plan.

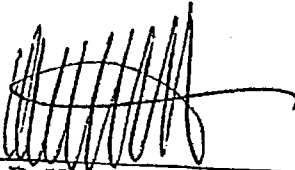
28 (b) Respondents to suspend all activity under the 2010 General Plan that could result

1 in any change or alteration in the physical environment until respondents have taken actions that
2 may be necessary to bring the certification of the FEIR into compliance with CEQA.

3 (c) Respondents to prepare, circulate, and consider a new and legally adequate EIR
4 and otherwise to comply with CEQA in any subsequent action taken to approve the project.

- 5 2. For petitioner's costs of suit.
6 3. For an award of attorney fees.
7 4. For all other equitable or legal relief that the Court considers just and proper.
8

9
10
11 Date:

12 
13 _____
14 Ron DeHoff
15 Attorney for the
16 Carmel Valley Association
17
18
19
20
21
22
23
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

VERIFICATION

I am President of petitioner, Carmel Valley Association, Inc. and am authorized to execute this verification on behalf of the petitioner. I have read the foregoing petition and am familiar with its contents. The facts recited in the petition are true of my personal knowledge.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

Christine Williams
Christine Williams, President
Carmel Valley Association, Inc.

EXHIBIT A

Ron De Hoff

Attorney at Law
2100 Garden Road, Suite C
Monterey, CA 93940
Telephone: (831) 372-2800
Facsimile: (831) 372-3113
Email: ron@RLD.com

November 23, 2010

VIA U. S. MAIL AND FACSIMILE (831) 755-5888

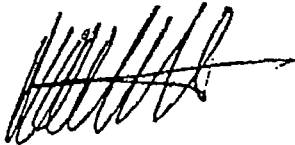
Gail Borkowski
Clerk to the Board
Monterey County
168 West Alisal, 1st Floor
Salinas, CA 93901

Re: 2010 Monterey County General Plan

Dear Ms. Borkowski,

PLEASE TAKE NOTICE that the Carmel Valley Association, Inc. intends to file a petition under the provisions of the California Environmental Quality Act against the County of Monterey and the Board of Supervisors of the County of Monterey challenging its certification of the Final Environmental Impact Report (SCH# 2007121001), the October 26, 2010 approval of the 2010 Monterey County General Plan, and to take other actions relating to that project. Please see Public Resources Code section 21167.5.

Yours truly,



Ron DeHoff
Attorney at Law

1 Ron DeHoff (SBN #252883)
2 Attorney at Law
3 2100 Garden Road, Suite C
4 Monterey, CA 93940
5 Tel: (831) 372-2800
6 Fax: (831) 372-3113
7 Email: ron@rld.com

RECEIVED
MONTEREY COUNTY
2010 DEC -1 AM 8:09
CLERK OF THE BOARD

5 Attorney for Petitioner
6 CARMEL VALLEY ASSOCIATION, INC.

DEPUTY

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF MONTEREY

10 **CARMEL VALLEY ASSOCIATION,**
11 **INC.**

12 a non-profit California corporation,

13 Petitioner,

14 vs.

15 **BOARD OF SUPERVISORS OF THE**
16 **COUNTY OF MONTEREY,**
17 **COUNTY OF MONTEREY, and**
18 **DOES 1 - 50, inclusive,**

19 Respondents

Case No.: M109442

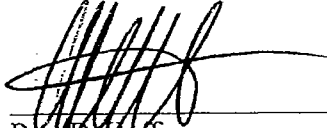
**NOTICE TO THE ATTORNEY
GENERAL**

20 To the Attorney General of the State of California:

21 **PLEASE TAKE NOTICE**, under Public Resources Code §21167.7 and Code of Civil
22 Procedure §388, that on November 24, 2010, the CARMEL VALLEY ASSOCIATION, INC.
23 filed a petition for writ of mandate against the BOARD OF SUPERVISORS OF THE COUNTY
24 OF MONTEREY, COUNTY OF MONTEREY, and DOES 1 - 50, inclusive, in Monterey
25 County Superior Court. The petition alleges that respondents violated the California
26 Environmental Quality Act by improperly certifying the Monterey County General Plan Final
27 Environmental Impact Report in connection with the approval of 2010 Monterey County General
28 Plan. A copy of the petition is attached to this notice.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Date: November 30, 2010



Ron Derloff
Attorney for the
Carmel Valley Association, Inc.

EXHIBIT G

SETTLEMENT AGREEMENT

Carmel Valley Association, Inc. v. Board of Supervisors, et al.
(Monterey County Case No. M109442)

This Settlement Agreement (“Agreement”) by and among CVA Carmel Valley Association, Inc. (“CVA”), and County Board of Supervisors of the County of Monterey, et al. (“County”) (each a “Party” and collectively, the “Parties”) is made effective on the date when all Parties have signed this Agreement (“Effective Date”). This Agreement is entered into by the Parties for the purpose of resolving the Case No. M109442 challenging the certification by County of the environmental impact report for the 2010 Monterey County General Plan (“2010 General Plan”).

RECITALS

WHEREAS, CVA is a non-profit corporation, organized under the laws of, and qualified and doing business in, the State of California; and

WHEREAS, County are a public entity organized and existing under the laws of State of California, and the legislative body of that public entity; and

WHEREAS, CVA filed a Petition for Writ of Mandate against County on November 24, 2010 (Case No. M109442) (the “Litigation”) generally alleging violations of the California Environmental Quality Act (“CEQA”) including failure to validly certify a Final Environmental Impact Report for the 2010 General Plan Update and adopt findings conforming to the requirements of CEQA and the CEQA Guidelines. County disputes that they violated CEQA; and

WHEREAS, the Litigation is currently consolidated with lawsuits filed by other parties also concerning the 2010 General Plan (the “Consolidated Actions”); and

WHEREAS, between January 2011 and August 2012, the Parties have conducted settlement discussions in an attempt to amicably resolve the issues; and

WHEREAS, the Parties have reached agreement with respect to the essential terms for a settlement of the Litigation, and desire to set forth such essential terms in a comprehensive settlement agreement; NOW, THEREFORE,

SETTLEMENT PROVISIONS

In consideration of the promises and mutual benefits of this Agreement and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. General Provisions

- 1.1. **No Admission of Liability.** This settlement is entered into by the Parties without any admission of fault, failing or liability by any Party.

SETTLEMENT AGREEMENT

Carmel Valley Association, Inc. v. Board of Supervisors, et al.

(Monterey County Case No. M109442)

Page 2 of 12

- 1.2. **Recitals True and Correct.** The above recitals are true and correct and are incorporated by reference as a part of this Agreement.
- 1.3. **Mutual Consideration.** The Parties' commitments to abide by terms of this Agreement is mutual consideration.
- 1.4. **Term of Settlement.** This settlement shall be operative from its Effective date until such time as the Parties fulfill their mutual obligations described in this Agreement.

2. Disposition of Litigation

- 2.1. **Separation from the Consolidated Actions.** Within 30 days of execution of this Agreement, the Parties shall request that the Monterey County Superior Court bifurcate Case No. M109442 from the Consolidated Actions, and stay all judicial and/or administrative proceedings related to all claims associated with said case pending the implementation of this Agreement. Pursuant to Code of Civil Procedure Section 664.6, that the Court retain jurisdiction over this case solely for the purpose of enforcing the mutual obligations incurred by the Parties in this Agreement. County shall prepare the appropriate pleadings for signature by the Parties and make the filing with the Court.
- 2.2. **Dismissal with Prejudice.** CVA shall file a motion in the Monterey County Superior Court requesting the court to dismiss with prejudice all of CVA' causes of action in Case No. M109442, such filing to be made immediately upon County's adoption of the 2010 General Plan amendments described in Section 3 (the "Agreed Amendments"). Such dismissal shall be subject to the Material Default provisions of Section 5.8.
- 2.3. **Subsequent Amendments; Material Default.** Following adoption of the Agreed Amendments, should County adopt any further amendment to the 2010 General Plan that obviates or nullifies the effect of the Agreed Amendments without CVA's written approval, such action shall constitute a Material Default of this agreement, unless such action was taken in response to a final court order, or final administrative order or action by a federal or state agency, in which case such action shall not constitute a Material Default, or a default of any kind, of this Agreement.
- 2.4. **Attorneys' fees.** Respondent shall pay reasonable attorneys' fees and costs of suit to CVA.
 - 2.4.1. The Parties have determined that the sum of sixty thousand dollars (\$60,000) is a reasonable sum for attorneys' fees and costs to be paid as set forth in section 2.4.2.

SETTLEMENT AGREEMENT

Carmel Valley Association, Inc. v. Board of Supervisors, et al.

(Monterey County Case No. M109442)

Page 3 of 12

2.4.2. County shall pay the sum of (1) thirty-six thousand dollars (\$36,000), payable to Carmel Valley Association, Inc., within 60 days of full execution of this Agreement and (2) twenty-four thousand dollars (\$24,000), payable to Carmel Valley Association, Inc., within 60 days of completion of the tasks identified in sections 2.1 and 2.2. The Parties specifically agree that CVA is not obligated to return any payments hereunder in the event this Agreement cannot go into effect for any reason beyond the control of CVA. Notwithstanding the forgoing, CVA shall return payment to County in the event that CVA breaches its obligations under this Agreement.

3. Agreed Amendments. County shall consider amendments to the 2010 General Plan in substantial conformance with the provisions of Exhibit A.

3.1. The Agreed Amendments shall be processed in compliance with all applicable requirements in the California Public Resources Code, Government Code, Monterey County procedures and all other applicable laws for amending a general plan.

3.1.1. County shall consult with CVA in good faith regarding the preparation of necessary legislative actions for consideration of the Agreed Amendments; however, the final form and language for all proposed legislative actions shall be determined by County.

3.2.2. Environmental review for the Agreed Amendments shall be processed in compliance with CEQA. The final versions of the Agreed Amendments may vary from the language of the proposed policies as set forth in Exhibit A if required by environmental review.

3.2.3. County agrees to begin the process for considering the Agreed Amendments within 45 days following the Effective Date of this Agreement

3.2. Should any person or entity file litigation, or should an administrative action be commenced by a federal or state administrative agency, challenging the validity of the Agreed Amendments, as may be adopted by the County pursuant to this Section 3, County shall use its best, good faith efforts to defend against such litigation or administrative action. CVA shall request intervention in such litigation or administrative action to aid in the defense. Should a final court or administrative order be entered nullifying or setting aside the adoption of the Agreed Amendments, such act shall not constitute a default by any Party pursuant to this Agreement; however, the Parties shall confer in good faith to determine if other actions may be taken by County to implement the intent and purposes of this Agreement.

SETTLEMENT AGREEMENT

Carmel Valley Association, Inc. v. Board of Supervisors, et al.

(Monterey County Case No. M109442)

Page 4 of 12

4. Release of Claims.

4.1. **Release by CVA.** CVA intends and agrees that this Agreement shall, when fully implemented in accordance with the provisions hereof, be effective as a full and final accord and satisfaction and general release of and from all Released Claims, as described below. Upon adoption of the Agreed Amendments as set forth in Section 2.2, CVA shall be conclusively deemed to have released the Board of Supervisors of the County of Monterey, the County of Monterey and Does 1 through 50, and their respective heirs, administrators, successors, assigns, agents, employees, officers, partners and directors (the "Released Parties") from all rights, actions, claims, debts, demands, costs, contracts, allegations, liabilities, obligations, demands, and causes of action, whether known, suspected, or unknown, at law or in equity, which CVA had, now has or as of the Effective Date of this Agreement has against the Released Parties, or any of them, arising from or relating to certification of the Final EIR for the 2010 Monterey County General Plan and approval of the 2010 Monterey County General Plan as adopted by the Board of Supervisors on October 26, 2010 and as may be amended pursuant to Section 3 of this Agreement, including without limitation, all costs and fees incurred by CVA in, or arising from, such actions (collectively, the "Released Claims"). CVA shall conclusively be deemed to have waived and relinquished to the fullest extent that it may lawfully do so, all rights and benefits afforded by Section 1542 of the Civil Code of the State of California ("Section 1542") which states as follows: "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR." This release does not extend to the right of CVA to institute legal action to seek specific performance of this Agreement, as set forth in Section 5.7.

4.2. **Understanding of Section 1542 Waiver.** By executing this Agreement, CVA assumes the risk that it is unaware of the subject matter of this Agreement, or is otherwise mistaken as to relevant facts, and acknowledge that it may discover facts in addition to or different from those that it now knows or believes to be true concerning the Released Claims and other matters contained in or concerning this Agreement. Subject to Section 2.2, each Party nevertheless agrees and intends this Agreement to be a complete release of the Released Claims, and to settle all disputes and differences relating to the Released Claims, known or unknown, suspected or unsuspected, that have existed, now exist, or may now exist between or among CVA and the Released Parties, unless as otherwise specifically set forth in this Agreement. Unless otherwise specifically set forth in this Agreement, CVA waives any and all rights it has or may

SETTLEMENT AGREEMENT

Carmel Valley Association, Inc. v. Board of Supervisors, et al.

(Monterey County Case No. M109442)

Page 5 of 12

have under California Civil Code Section 1542 and/or any successor section to it with respect to the Released Claims. CVA hereby acknowledges and represents that (a) it understands the significance and the consequences of such specific waiver of unknown claims and hereby assumes full responsibility for any injuries, damages, lawsuits or liabilities that it may incur, both now and hereafter, from the waiver of said unknown claims, (b) it may discover facts different from, or in addition to, those facts that it now knows or believes to be true, and agrees that this Agreement and the releases contained herein shall be and remain effective in all respects notwithstanding any such subsequent discovery of different or additional facts, (c) it has undertaken its own independent investigation of all of the facts relating to the matters being released herein and this Agreement, and in entering into this Agreement and granting the releases contained herein, are not relying on any representation, warranty, or statement of any other Party except as expressly set forth herein, and (d) this waiver is an essential and material term of this Agreement. Nevertheless, CVA intends by this Agreement, and with and upon the advice of its own independently selected counsel, to release fully, finally and forever all Released Claims, unless as otherwise specifically set forth in this Agreement. In furtherance of such intention, the releases set forth in this Agreement shall be and shall remain in effect as full and complete releases notwithstanding the discovery or existence of any such additional or different claims or facts relevant hereto, unless as otherwise specifically set forth in this Agreement.

5. Enforcement, Default and Remedies

5.1. Mutual Desire to Avoid Further Litigation and Jurisdiction to Enforce

Settlement. The Parties have entered this Agreement for the purpose of avoiding litigation. Enforcement of this Agreement is to be brought solely through the procedures set forth in this section, which are designed to avoid resorting to court enforcement in the first instance, and, if resort to court is necessary, to provide simple, straightforward and predictable relief.

5.2. Court Retains Jurisdiction Over Settlement. The Parties shall request that the Monterey County Superior Court retain jurisdiction of the Litigation solely for the limited purpose of enforcing the mutual promises of this Agreement pursuant to the procedure set forth in this section.

5.3. Opportunity to Cure Alleged Default. Failure by any Party to perform any obligation hereunder within the time periods provided herein following notice and failure to cure as described hereafter, constitutes a "Default" under this Agreement. A Party alleging a Default shall give written notice of Default to the other Party specifying in reasonable detail the nature of the alleged Default and, where

SETTLEMENT AGREEMENT

Carmel Valley Association, Inc. v. Board of Supervisors, et al.

(Monterey County Case No. M109442)

Page 6 of 12

appropriate, the manner in which the alleged default satisfactorily may be cured; offer to meet and confer in a good faith effort to resolve the issue; and provide the other Party sixty (60) days to cure the alleged Default commencing at the time of receipt of the notice of a properly detailed written Default notice. The Parties agree that time is of the essence in the performance by CVA and the County of their respective obligations under Sections 2.0 and 3.0 hereof.

- 5.4. **Mediation.** If an alleged default in performance has not been cured during the 60-day period provided in Section 5.3 above, any Party may request that the dispute first be submitted to mediation prior to judicial enforcement. The Party requesting mediation will pay for the services of the mediator. If mediation is requested by any Party, all Parties shall make a good faith effort to first resolve through mediation any dispute about another Party's alleged default in performance. If the Parties cannot agree on the identity of the mediator, the judicial officer shall designate the mediator. The Parties will commence mediation within 15 days after notice of the mediation and designation of the mediator and shall conclude mediation within 45 days after commencement. Each Party shall bear its own fees and costs relating to the mediation.
- 5.5. **Effect of Modification of County's Powers.** In addition to specific provisions of this Agreement, performance by the County hereunder shall not be deemed to be in Default, if the County's powers are modified, by state or federal legislation or otherwise, in any way that precludes the County from performing its obligations under this Agreement as a matter of law.
- 5.6. **Extraordinary Financial Situations.** The County's financial obligations under this Agreement, which include but are not limited to paying attorney fees and costs under the terms of this Agreement, shall be suspended in the extraordinary financial circumstances defined hereunder:

5.6.1. An extraordinary financial situation has been formally declared by the Board of Supervisors such that performing its obligations under this Agreement would necessarily result in a violation of the financial covenants the County has made to its creditors and lienholders in return for the extension of credit in the form of bonds, loans, letters of credit and other forms of financing necessary to maintain the County's overall financial stability.

5.6.2. "Extraordinary financial situation" as used in this Section means circumstances that include, but are not limited to, the type of financial circumstances that County may experience in a formally declared state of fiscal emergency following natural disasters such as a major earthquake or fire; or other extraordinary events.

SETTLEMENT AGREEMENT

Carmel Valley Association, Inc. v. Board of Supervisors, et al.

(Monterey County Case No. M109442)

Page 7 of 12

5.6.3. Upon the conclusion of these extraordinary circumstances, the County will promptly resume performance of its financial obligations under this Agreement.

5.7. **Institution of Legal Action.** In addition to any other rights or remedies and subject to the restrictions otherwise set forth in this Agreement, after expiration of the cure period provided in Section 5.3 above, any Party may institute a legal action to seek specific performance of the terms of this Agreement, or to cure, correct or remedy any Default. The rights and obligations of any non-breaching Party shall not be affected by the institution of a legal action alleging breach against another Party. In the event of any action to enforce this Agreement, whether by judicial or non-judicial means, the prevailing party shall be entitled to recover from the other party its attorney fees, expenses, and any related court costs.

5.8. **Effect of Material Default.** In the event of a Material Default as described in Section 2.3, in addition to any other remedy provided in this Agreement, pursuant to the retained court jurisdiction set forth in Section 5.2, CVA may request the court to set aside this Agreement and reinstitute all or any portion of the Litigation.

6. **Representations and Warranties:** Each of the Parties represents, warrants, and agrees as to itself ("Such Party") as follows:

- 6.1. Each individual signing this Agreement on behalf of an entity represents and warrants that the individual has the right, power, legal capacity, and authority to do so, and that no further approval or consent of any person, officer, board of directors or other person or entity is necessary.
- 6.2. Such Party has received independent legal advice from its attorneys with respect to the advisability of making the settlement provided for herein, and with respect to the advisability of executing this Agreement. Such Party has been fully advised by its attorneys with respect to its rights and obligations under this Agreement and understands those rights and obligations.
- 6.3. No other Party (nor any director, officer, member, manager, partner, trustee, agent, employee, representative or attorney of or for any other Party) has made any statement or representation to Such Party regarding any fact Such Party relied upon in entering into this Agreement, and Such Party is not relying on any statement, representation or promise, written or oral, of any other Party (or of any director, officer, member, manager, partner, trustee, agent, employee, representative or attorney for any other Party) in executing this Agreement, or in making the settlement provided for herein, except as otherwise expressly stated in this Agreement.

SETTLEMENT AGREEMENT

Carmel Valley Association, Inc. v. Board of Supervisors, et al.

(Monterey County Case No. M109442)

Page 8 of 12

- 6.4. Prior to the execution of this Agreement, Such Party and Such Party's legal counsel have made such investigation of the facts and inquiries Such Party deemed necessary or desirable pertaining to this settlement, this Agreement and all the matters pertaining thereto.
- 6.5. Such Party or responsible director, officer, member, manager, partner, trustee or attorney thereof has read this Agreement and understands the contents hereof. Each director, officer, member, manager, partner, trustee or attorney executing this Agreement on behalf of Such Party is empowered to do so and thereby to bind Such Party.
- 6.6. Except as otherwise expressly represented, warranted or provided in this Agreement, Such Party assumes the risks that (i) it may hereafter discover facts in addition to or contrary to those it believed to exist or relied upon in entering into this Agreement, including, without limitation, unknown or unanticipated claims which, if known by Such Party on the Effective Date may have materially affected Such Party's decision to execute this Agreement, (ii) it may have mistakenly understood matters relevant to entering into this Agreement and (iii) another Party may have negligently misrepresented or negligently failed to disclose facts in connection with the entering into of this Agreement. Notwithstanding any such unknown or unanticipated claims, misunderstandings, mistakes, negligent misrepresentations or negligent nondisclosures, Such Party intends that this Agreement thereafter shall continue in full force and effect and shall not be subject to rejection or rescission for any reason, provided that such Party reserves all rights provided for in this Agreement.
- 6.7. Such Party is aware that it may hereafter discover claims or facts in addition to or different from those it now knows or believes to be true with respect to the matters related herein. Nevertheless, it is the intention of Such Party to assume the risk that claims or facts now known or thought to be true may later be found to be different and to fully, finally and forever settle and release all of Such Party's Released Claims, unless as otherwise specifically set forth in this Agreement. In furtherance of such intention, the releases given herein shall be and remain in effect as full and complete mutual releases of all such matters unless as otherwise specifically set forth in this Agreement, notwithstanding the discovery or existence of any additional or different claims or facts relative thereto. This settlement shall not be subject to termination, rescission or modification by reason of any such change in claims or facts or knowledge of claims or facts.

SETTLEMENT AGREEMENT

Carmel Valley Association, Inc. v. Board of Supervisors, et al.

(Monterey County Case No. M109442)

Page 9 of 12

- 6.8. Such Party shall execute all such further and additional documents as shall be reasonable, convenient, necessary or desirable to carry out the provisions of this Agreement.
- 6.9. Such Party acknowledges it has carefully read and fully understands all of the provisions of this Agreement and that Such Party is entering into this Agreement voluntarily.
- 6.10. Such Party acknowledges that it is within the contemplation of each of the Parties to this Agreement that each of them may have claims for relief or causes of action for malicious prosecution or abuse of process in connection with the filing of claims for relief, causes of action, counterclaims, or cross-complaints in the Litigation and matters undertaken in connection therewith; and that it is the intention of the Parties to this Agreement to release any such claims, to deny that any malicious prosecution of actions or abuse of process has occurred, and to represent and agree that the filing of all claims for relief, causes of action, counterclaims, or cross-complaints in the foregoing Litigation were done pursuant to the advice of legal counsel and upon probable cause.

7. General Provisions

- 7.1. **Governing Law.** This Agreement shall be governed by and interpreted and construed in accordance with the laws of the State of California.
- 7.2. **Construction.** This Agreement shall in all cases be construed according to its fair and plain meaning, and not strictly for or against any of the Parties. As used in this Agreement, the masculine or neuter gender and single or plural numbers shall be deemed to include the others wherever the context so indicates or requires. Nothing in this Agreement shall be deemed to restrict the County's land use authority or police power in any way with respect to future legislative, administrative or other actions by the County.
- 7.3. **Entire Agreement.** This Agreement constitutes the entire agreement and understanding of the Parties hereto with respect to the subject matter contained herein. All prior agreements or understandings, oral or written, are merged into this Agreement and are of no further force or effect.
- 7.4. **Computation of Time.** The time in which any act is to be done under this Agreement is computed by excluding the first day, and including the last day, unless the last day is a holiday or Saturday or Sunday, and then that day is also excluded. The term "holiday" shall mean all holidays as specified in Section 6700 and 6701 of the

SETTLEMENT AGREEMENT

Carmel Valley Association, Inc. v. Board of Supervisors, et al.

(Monterey County Case No. M109442)

Page 10 of 12

California Government Code. If any act is to be done by a particular time during a day, that time shall be Pacific Time Zone time.

- 7.5. **Counterparts.** This Agreement may be executed in counterparts and by facsimile or electronic signatures, and when joined together, all counterparts shall constitute one agreement, which shall be binding on all of the Parties, even though all signatures may not be on one original or the same counterpart.
- 7.6. **Amendment.** This Agreement may only be modified or amended by a written amendment thereto executed by all of the Parties. The Parties acknowledge that, due to the long term nature of the proposed general plan amendment represented by the policies contained in Exhibit A, it may be necessary and/or appropriate at some time in the future, or from time to time, for the Parties to execute additional documentation to clarify and implement the provisions of this Agreement. Each Party agrees to cooperate in good faith to negotiate and enter into such various additional documentation as may be determined to be reasonably necessary and/or appropriate by the Parties. Modifications to the terms of this Agreement are permissible, so long as such actions are agreed to by all of the Parties and do not materially or substantially change or modify the general plan amendments described in Exhibit A and as they may be modified for adoption following environmental review.
- 7.7. **No Admission.** Neither the acceptance nor execution of this Agreement constitutes an admission of liability by any Party, nor shall it be construed as such.
- 7.8. **Notice.** Any notice, request, claim, demand or other communication required hereunder ("Notice") shall be in writing and shall only be effective upon delivery in person, by overnight courier with receipt requested, by facsimile transmission with confirmation of transmission or by registered or certified mail (postage pre-paid, return receipt requested) to the Party designated for receipt of the Notice upon such Party's actual receipt of the Notice.

To County:

Charles J. McKee, County Counsel and
Leslie J. Girard, Chief Assistant County Counsel
168 W. Alisal St.
Salinas, CA 93901
(831) 755-5045
(831) 755-5365 (facsimile)

To CVA:

SETTLEMENT AGREEMENT

Carmel Valley Association, Inc. v. Board of Supervisors, et al.

(Monterey County Case No. M109442)

Page 11 of 12

Ron DeHoff, Esq.
2100 Garden Road, Suite C
Monterey, CA 93940
(831) 372-2800
(831) 372-3113 (facsimile)

- 7.9. **Successors and Assigns.** This Agreement shall inure to the benefit of and be binding upon the Parties, and their respective heirs, administrators, successors, assigns, agents, employees, officers, partners and directors. Nothing in this Agreement, express or implied, is intended to confer upon any person, other than the Parties or their respective successors and assigns, any rights or benefits under or by reason of this Agreement.
- 7.10. **No Waiver.** The failure of any Party to enforce any of its rights arising by reason of any breach of covenant on the part of any other Party will not constitute a waiver of such breach. No custom or practice which exists or arises between or among the Parties in the course of administering this Agreement will be construed to waive any Party's rights to (i) insist upon the performance by any other Party of any covenant in this Agreement or (ii) exercise any rights given it on the account of any breach of such covenant. A waiver of any particular breach will not be deemed to be a waiver of same or any other subsequent breach.
- 7.11. **Exhibits.** Exhibit A, attached hereto, shall be incorporated in this Agreement as if set forth in full herein.
- 7.12. **Headings.** The descriptive headings used in this Agreement are for convenience only and shall not affect the meaning of any provision of this Agreement.
- 7.13. **Cooperation.** Each Party agrees to cooperate with the other in implementation of this Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement as follows:

SETTLEMENT AGREEMENT

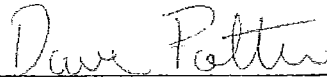
Carmel Valley Association, Inc. v. Board of Supervisors, et al.

(Monterey County Case No. M109442)

Page 12 of 12

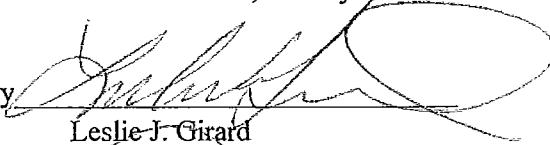
Dated: September 21, 2012

BOARD OF SUPERVISORS OF THE
COUNTY OF MONTEREY, ET AL.

By 
Dave Potter, Chair

APPROVED AS TO FORM

CHARLES J. MCKEE, County Counsel

By 
Leslie J. Girard
Chief Assistant County Counsel

Dated: September ___, 2012

CARMEL VALLEY ASSOCIATION, INC.

By _____
Mibs McCarthy
President

APPROVED AS TO FORM

Ron DeHoff, Esq.

SETTLEMENT AGREEMENT

Carmel Valley Association, Inc. v. Board of Supervisors, et al.
(Monterey County Case No. M109442)
Page 12 of 12

Dated: September __, 2012

BOARD OF SUPERVISORS OF THE
COUNTY OF MONTEREY, ET AL.

By _____
Dave Potter, Chair

APPROVED AS TO FORM

CHARLES J. MCKEE, County Counsel

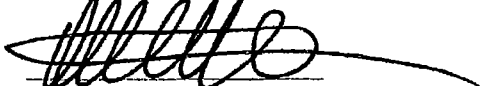
By _____
Leslie J. Girard
Chief Assistant County Counsel

Dated: September 24, 2012

CARMEL VALLEY ASSOCIATION, INC.

By Mibs McCarthy
Mibs McCarthy
President

APPROVED AS TO FORM


Ron DeHoff, Esq.

**AMENDED SECTIONS OF THE CARMEL VALLEY MASTER PLAN
2010 GENERAL PLAN UPDATE
(June 28, 2012)**

CV-2.17 To implement traffic standards to provide adequate streets and highways in Carmel Valley, the County shall conduct and implement the following:

a) Twice yearly monitoring by Public Works (in June and October) of peak hour traffic volumes and daily traffic volumes at the following six (6) locations indicated in bold (at least one of the yearly monitoring periods will occur when local schools are in session):

	<i>ADT threshold</i>
<i>Carmel Valley Road</i>	
1. Holman Road to CVMP boundary	8,487
2. Holman Road to Esquiline Road	6,835
3. Esquiline Road to Ford Road	9056
4. Ford Road to Laureles Grade	11,600
5. Laureles Grade to Robinson Canyon Road	12,752
6. Robinson Canyon Road to Schulte Road	15,499
7. Schulte Road to Rancho San Carlos Road	16,340
8. Rancho San Carlos Road to Rio Road	48,487
9. Rio Road to Carmel Rancho Boulevard	51,401
<i>Other Locations</i>	
10. Carmel Rancho Boulevard to SRI	27,839
11. Carmel Rancho Boulevard between Carmel Valley Road and Rio Road	33,495
12. Rio Road between its eastern terminus at Val Verde Drive and Carmel Rancho Boulevard	6,416
13. Rio Road between Carmel Rancho Boulevard and SRI	33,928

b) A yearly evaluation report shall be prepared by the Public Works Department in December that shall report on traffic along the six (6) indicated segments. The report shall evaluate traffic using the PTSF methodology (or such other methodology as may be appropriate for a given segment in the opinion of the Public Works Department), and the ADT methodology. ADT thresholds for each segment are listed above, and The Public Works Department shall annually establish appropriate PTSF or other methodology thresholds for each of six (6) indicated the-segments listed above.

c) A public hearing before the Board of Supervisors shall be held in January immediately following the December report when only 100 or fewer ADT remain before the ADT count for a segment will equal or exceed the indicated threshold, or where the PTSF for a segment exceeds or is within one percent (1%) of the value that would cause a decrease in the LOS.

d) At five year intervals; the County shall monitor all segments listed in Policy CV-2.17(a) and the annual report described in Policy CV-2.17(b) shall include a report on all segments. If such periodic monitoring and reporting shows that any segment not previously part of the annual report is within twenty percent (20%) of the listed ADT threshold, that segment shall thereafter be subject to the annual monitoring and reporting.

EXHIBIT A

Carmel Valley Association v. Board of Supervisors
Settlement Agreement

e) Also at five year intervals the County shall examine the degree to which estimates of changes in Levels of Service ("LOS") in the Carmel Valley Master Plan Area may be occurring earlier than predicted in the General Plan Environmental Impact Report. If the examination indicates that LOS are likely to fall to a lower letter grade than predicted for 2030, then the County shall consider adjustments to the cap on new residential units established in (*Policy CV-1.6*) and/or the cap on new visitor serving units established in (*Policy CV-1.15*) or other measures that may reduce the impacts, including, but not limited to, deferral of development that would seriously impact traffic conditions.

(f) The traffic standards (LOS as measured by peak hour conditions) for the CVMP Area shall be as follows:

- 1) Signalized Intersections - LOS of "C" is the acceptable condition.
- 2) Unsignalized Intersections - LOS of "F" or meeting of any traffic signal warrant are defined as unacceptable conditions.
- 3) Carmel Valley Road Segment Operations:
 - a) LOS of "C" and ADT below its threshold specified in *Policy CV-2.17(a)* for Segments 1, 2, 8, 9, 10, 11, 12 and 13 is an acceptable condition;
 - b) LOS of "D" and ADT below its threshold specified in *Policy CV-2.17(a)* for Segments 3, 4, 5, 6, and 7 is an acceptable condition.

During review of development applications that require a discretionary permit, if traffic analysis of the proposed project indicates that the project would result in traffic conditions that would exceed the standards described above in *Policy CV 2-17(f)*, after the analysis takes into consideration the Carmel Valley Traffic Improvement Program to be funded by the Carmel Valley Road Traffic Mitigation Fee, then approval of the project shall be conditioned on the prior (e.g., prior to project-generated traffic) construction of additional roadway improvements or an Environmental Impact Report shall be prepared for the project, which will include evaluation of traffic impacts based on the ADT methodology. Such additional roadway improvements must be sufficient, when combined with the projects programmed for completion prior to the project-generated traffic in the Carmel Valley Traffic Improvement Program, to allow County to find that the affected roadway segments or intersections would meet the acceptable standard upon completion of the programmed plus additional improvements. Any EIR required by this policy shall assess cumulative traffic impacts outside the CVMP area arising from development within the CVMP area.

This policy does not apply to the first single family residence on a legal lot of record. The use of the ADT methodology as set forth in this *Policy CV-2.17* shall be limited to the purposes described in the Policy, and the County may utilize any traffic evaluation methodology it deems appropriate for other purposes, including but not limited to, road and intersection design. This policy shall also not apply to commercial development in any Light Commercial Zoning ("LC") district within the CVMP area where the Director of Planning has determined that the requirement for a General Development Plan, or amendment to a General Development Plan, may be waived pursuant to Monterey County Code section 21.18.030 (E).

EXHIBIT A

Carmel Valley Association v. Board of Supervisors
Settlement Agreement

CV-2.18 The County shall adopt a Carmel Valley Traffic Improvement Program (CVTIP) that:

- a. Evaluates the conditions of Carmel Valley Road and identifies projects designed to maintain the adopted LOS standards for this roadway as follows:
 1. In order to preserve the rural character of Carmel Valley, improvements shall be designed to avoid creating more than three through lanes along Carmel Valley Road.
 2. Higher priority shall be given to projects that address safety issues and manage congestion.
 3. The project list may include projects previously identified for inclusion in the CVTIP or their functional equivalent.
 4. Priorities shall be established through community input via a Carmel Valley Road Committee, which shall be established by the Board of Supervisors and shall review and comment on proposed projects in the CVTIP, and review and comment on the annual report described in *Policy CV-2.17 (b)*.
 5. At a minimum, the project list shall be updated every five years unless a subsequent traffic analysis identifies that different projects are necessary.
- b. Validates and refines the specific scope of all projects proposed by the CVTIP through preparation of a Project Study Report (PSR). The PSR will be reviewed and commented on by the Carmel Valley Road Committee prior to commencement of project design.
- c. Establishes a fee program to fund the CVTIP. All projects within the Carmel Valley Master Plan (CVMP) area, and within the "Expanded Area" that contribute to traffic within the CVMP area, shall contribute a fair-share traffic impact fee to fund necessary improvements identified in the CVTIP, as updated at the time of building permit issuance. Fees will be updated annually as specified by the CVTIP to account for changes in construction costs and land values. The County shall adopt a CVTIP within one year of approval of the 2010 General Plan. The CVTIP does not apply to any roadways (including SR-1) that are located outside the CVMP area.

CVA Proposed Final Language
2012-06-28 (Continued)

CV-1.6 New residential subdivision in Carmel Valley shall be limited to creation of 190 new units as follows:

- a. There shall be preference to projects including at least 50% affordable housing units.
- b. Lots developed with affordable housing under the Inclusionary Housing Ordinance or an Affordable Housing Overlay (*Policy LU- 2.12*) may have more than one unit per lot. Each unit counts as part of the total unit cap.
- c. Existing lots with five (5) acres or more may have the first single family dwelling plus one auxiliary unit. Units added on qualifying existing lots shall not count as part of the total unit cap. New auxiliary units shall be prohibited on lots with less than five (5) acres, except that this provision shall not apply to projects that have already been approved, environmental review for auxiliary units has already been conducted, and in which traffic mitigation fees have been paid for such auxiliary units prior to adoption of this Carmel Valley Master Plan.
- d. New lots shall be limited to the first single family dwelling. Auxiliary units shall be prohibited.
- e. Of the 190 new units, 24 are reserved for consideration of the Delfino property (30 acres consisting of APN: 187-521-014-000, 187-521-015-000, 187-512-016-000, 187-512-017-000, 187-512- 018-000, and 187-502-001-000) in Carmel Valley Village (former Carmel Valley Airport site) to enable subdivision of the property into 18 single family residential lots and one lot dedicated for six affordable/inclusionary units, provided the design of the subdivision includes at least 14 acres available for community open space use subject to also being used for subdivision related water, wastewater, and other infrastructure facilities.
- f. New units or lots shall be debited from the unit count when an entitlement is granted or a building permit is issued, whichever occurs first
- g. At five year intervals, the County shall also examine any other factors that might warrant a downward adjustment to the residential unit cap.

The County shall develop a tracking system and shall present, before the Planning Commission, an annual report of units remaining.

Carmel Valley Non-Agricultural Slope Development

Add CV-3.22:

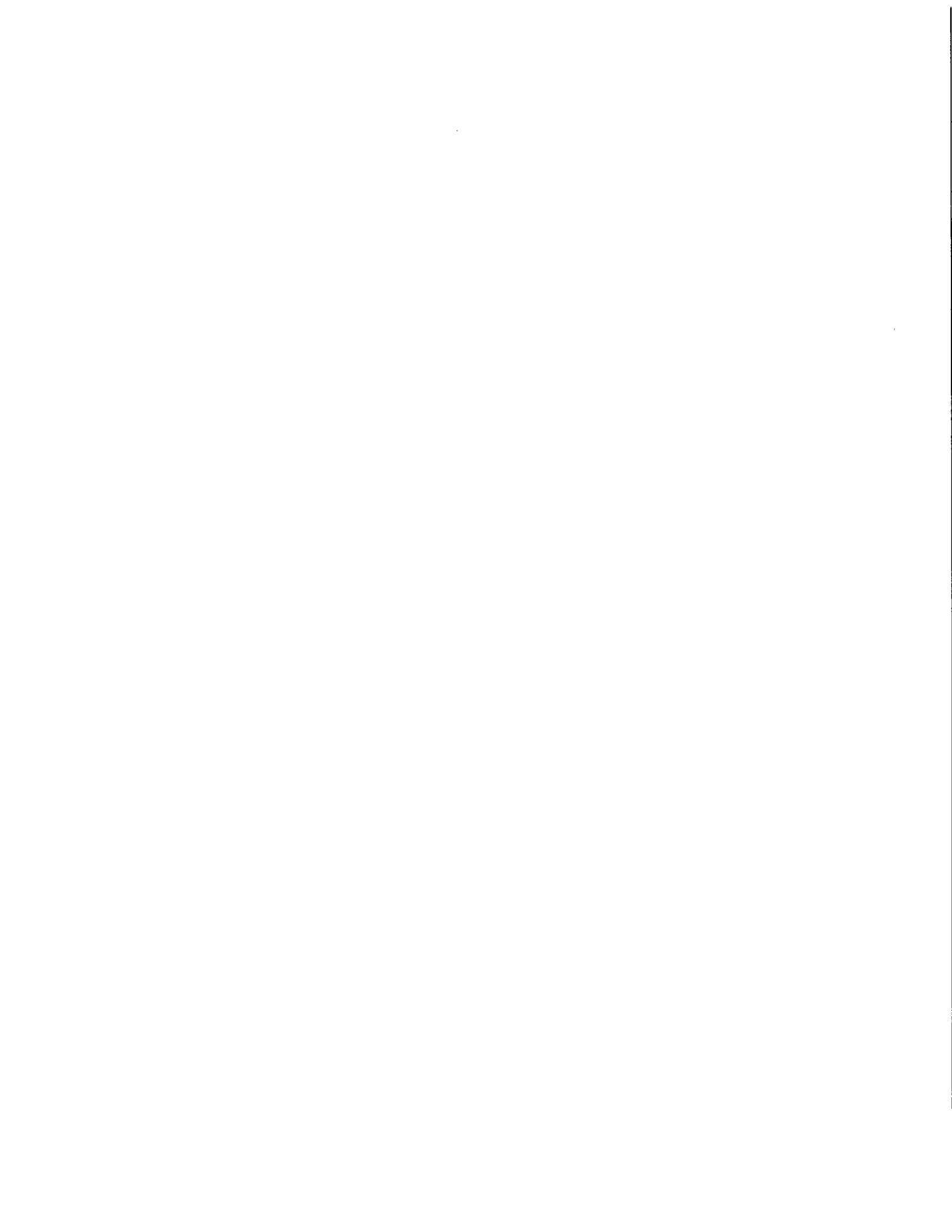
CV-3.22 Notwithstanding policy OS 3.5(1), non-agricultural development that is both on slopes in excess of twenty five percent (25%) and on highly erodible soils shall be prohibited. Non-agricultural development on slopes in excess of twenty five percent that is not on highly erodible soils shall be subject to Policy OS 3.5(1).

Delete CV-6.5:

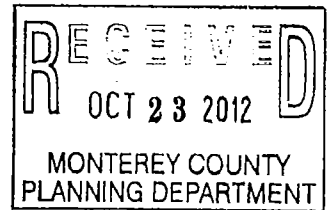
CV-3.11

The County shall discourage the removal of healthy native oak and madrone and redwood trees in the Carmel Valley Master Plan Area. A permit shall be required for the removal of any of these trees with a trunk diameter in excess of six inches, measured two feet above ground level. Where feasible, trees removed will be replaced by nursery-grown trees of the same species and not less than one gallon in size. A minimum fine, equivalent to the retail value of the wood removed, shall be imposed for each violation. In the case of emergency caused by the hazardous or dangerous condition of a tree and requiring immediate action for the safety of life or property, a tree may be removed without the above permit, provided the County is notified of the action within ten working days. Exemptions to the above permit requirement shall include tree removal by public utilities, as specified in the California Public Utility Commission's General Order 95, and by governmental agencies.

EXHIBIT H



MINUTES
Carmel Valley Land Use Advisory Committee
Monday, October 15, 2012



1. **Site visit at 4:00 PM at 31 TEHAMA CARMEL (BROWN)**

ATTENDEES: John Anzini, Judy MacClelland, Neil Agron, Doug Pease, Jay Auburn, David Dunnigan

2. **Meeting called to order by** Janet Brennan **at** 6:30 **pm**

3. **Roll Call**

Members Present: Neil Agron, John Anzini, Janet Brennan, David Burbidge, Judy MacClelland, Doug Pease

Members Absent: Charles Franklin

4. **Approval of Minutes:**

A. September 17, 2012 minutes

Motion: Neil Agron (LUAC Member's Name)

Second: Doug Pease (LUAC Member's Name)

Ayes: 6 (Anzini, Agron, Brennan, Burbidge, MacClelland, Pease)

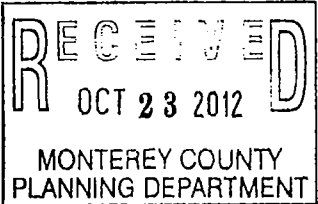
Noes: 0

Absent: 1 (Franklin)

Abstain: 0

5. **Public Comments:** The Committee will receive public comment on non-agenda items that are within the purview of the Committee at this time. The length of individual presentations may be limited by the Chair.

None



6. **Scheduled Item(s)**

7. **Other Items:**

- A) Consideration of amendments to the 2010 General Plan and Carmel Valley Master Plan to implement a litigation settlement with the Carmel Valley Association

Les Girard, Assistant County Counsel, spoke on issues stemming from the lawsuit settlement agreement. Ron DeHoff submitted paperwork to Janet Brennan for the record, and the presentation he was to deliver to the committee was omitted. Janet Brennan asked if the 190 new units included lots as well as units. Les Girard said the cap includes both units and lots. Janet requested that this be clarified to refer to 190 new units/lots. Mr. Girard agreed to that change.

A motion was moved, seconded and carried to recommend approval of the General Plan/Carmel Valley Master Plan Amendments and recommend that the settlement agreement be approved by the Board of Supervisors.

- B) Preliminary Courtesy Presentations by Applicants Regarding Potential Projects

None

- C) Announcements

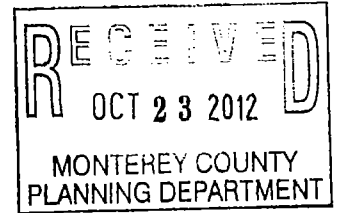
None

8. Meeting Adjourned: 7:04 pm

Minutes taken by: John Anzini

Action by Land Use Advisory Committee Project Referral Sheet

Monterey County Planning Department
168 W Alisal St 2nd Floor
Salinas CA 93901
(831) 755-5025



Advisory Committee: **Carmel Valley**

Please submit your recommendations for this application by: **October 15, 2012**

Project Title: BROWN FREDERICK & CHRISTINE P TRS

File Number: PLN120538

File Type: PC

Planner: GONZALES

Location: 31 TEHAMA CARMEL

Project Description:

Combined Development Permit consisting of: 1) an Administrative Permit to allow for the construction of a 3,521 square foot one bedroom single family dwelling, 584 square foot attached garage, a 378 square foot mechanical room, a two bedroom, 1 bath 600 square foot detached guesthouse located in the "S" (Site) Zoning District; and 2) Use Permit for the removal of 11 Coast live oak trees (6 to 16 inches in diameter); and Design Approval; grading of approximately 720 cubic yards of cut & 500 cubic yards of fill. The property is located at 31 Tehama, Carmel (Assessor's Parcel Number 169-421-010-000), Carmel Valley Master Plan.

Was the Owner/Applicant/Representative Present at Meeting? Yes No

Was a County Staff/Representative present at meeting? Liz Gonzales (Name)

PUBLIC COMMENT:

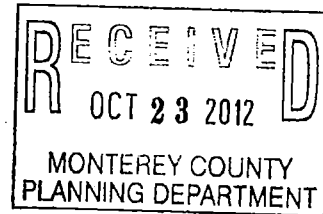
Name	Site Neighbor?		Issues / Concerns (suggested changes)
	YES	NO	
None			

LUAC AREAS OF CONCERN

Concerns / Issues (e.g. site layout, neighborhood compatibility; visual impact, etc)	Policy/Ordinance Reference (If Known)	Suggested Changes - to address concerns (e.g. relocate; reduce height; move road access, etc)
That the sky light be shaded to reduce the night sky illumination		
That the site lighting have no up lighting and that the sigh lighting be the color or hue closest to that of an incandescent bulb as approved by the Tehama review committee.		
The tha Oak trees removed be replaced two for one		

ADDITIONAL LUAC COMMENTS

None



RECOMMENDATION : Approve

Motion by: John Anzini (LUAC Member's Name)

Second by: Doug Pease (LUAC Member's Name)

Support Project as proposed

Recommend Changes (as noted above)

Continue the Item

Reason for Continuance: _____

Continued to what date: _____

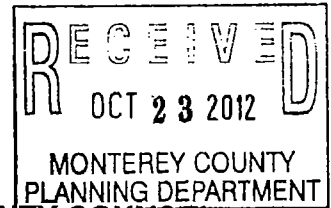
AYES: 6 (Anzini, Agron, Brennan, Burbidge, MacClelland, Pease)

NOES: 0

ABSENT: 1 (Franklin)

ABSTAIN: 0

REVISED
OCT 09 2012



MEMORANDUM

OFFICE OF THE COUNTY COUNSEL
COUNTY OF MONTEREY

DATE: October 8, 2012
TO: Carmel Valley Land Use Advisory Committee ("CVLUAC")
FROM: Leslie J. Girard, Chief Assistant County Counsel
SUBJECT: 2010 General Plan/Carmel Valley Master Plan Amendments

INTRODUCTION

Following the adoption of the 2010 Monterey County General Plan and the updated Carmel Valley Master Plan ("2010 CVMP") in the fall of 2010, four lawsuits were filed challenging the certification of the environmental impact report on various theories. One of those lawsuits was by the Carmel Valley Association ("CVA"), which challenged the environmental analysis of certain provisions of the 2010 CVMP, in particular those relating to traffic and the methodology for determining traffic counts and levels of service along Carmel Valley Road.

The County and CVA have reached a settlement of the litigation whereby the County will consider certain amendments to the 2010 CVMP. Pursuant to CVMP Section 1.28, we are informing the CVLUAC of the proposed amendments, and requesting its recommendation that the amendments be adopted. Some of the amendments refine language and are not substantive in nature; the discussion below sets forth the proposed substantive changes to the 2010 CVMP. An underline/strikeout version of the proposed amendments is enclosed for your review.

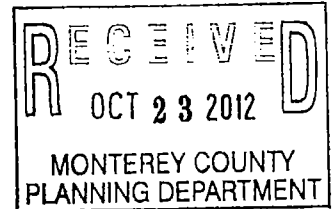
1. CV-1.6; NEW RESIDENTIAL SUBDIVISION CAP

Section CV-1.6 of the 2010 CVMP set a 266 unit cap on new residential subdivisions (the term "unit" is used to account for condominiums as well as lots). The settlement provides that the County will consider reducing that cap to 190 units.

2. CV-2.17; TRAFFIC METHODOLOGY

Prior to the adoption of the 2010 CVMP, traffic was counted along Carmel Valley Road using the Average Daily Trip ("ADT") method, which counted the volume of traffic along various segments of the road. Levels of Service ("LOS") were determined based upon historical data set forth in a report prepared by Keith Higgins.

The 2010 CVMP initially proposed changing the method for calculating LOS to "Percent Time Spent Following", although as adopted the data would be reported in both ADT and PTSF. LOS standards were set for each of 12 segments of the road, and traffic would be monitored twice a year at six of those segments. If traffic along any monitored



CVLUAC
Re: 2010 General Plan/Carmel Valley Master Plan Amendments
Page 2

segment was approaching its LOS standard, a public hearing would be held regarding traffic conditions. The 2010 CVMP also provided that the County would assess how rapidly changes in LOS are occurring, compared to predictions, and if changes were occurring more rapidly the County would consider changes to land use policies including the new subdivision unit cap in CV-1.6.

The settlement provides that the County will consider listing the ADT thresholds for each of 13 segments of the road (an additional segment on Rio Road from Val Verde to Carmel Rancho was added), and that the annual report will evaluate traffic along the six monitored segments using both ADT and PTSF. The plan would be clarified to provide for monitoring at least once while school is in session. A hearing, specifically before the Board of Supervisors, will be held if any segment, based on either PTSF or ADT, approaches its threshold.

The County will monitor all segments every five years, and a segment not annually monitored approaching its threshold would be added to the annual monitoring list. LOS standards would be indicated both in PTSF and ADT. The plan would also be clarified to require any EIR to evaluate traffic using ADT, and to assess cumulative traffic impacts outside the CVMP area from development occurring within the CVMP. Finally, the County may use PTSF, or any other methodology for the purpose of road or intersection design, and the policy will not apply to commercial development in the Light Commercial ("LC") zone designation under certain circumstances.

3. CV-2.18; CARMEL VALLEY ROAD COMMITTEE

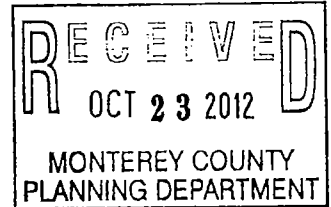
The 2010 CVMP calls for the creation by the Board of Supervisors of a Carmel Valley Road Committee, that would have various functions related to the review of traffic conditions along Carmel Valley Road. The proposed amendments would provide that the Committee would specifically review and comment upon proposed projects in the Carmel Valley Traffic Improvement Program ("CVTIP"), review and comment on the annual traffic report described in CV-2.17 and discussed above; and comment on any Project Study Report ("PSR") for a traffic improvement project in the CVTIP prior to project design.

4. CV-3.11; TREE PROTECTION

The 2010 CVMP revised detailed language regarding the protection of oak, madrone, and redwood trees with more general language that called for the creation of an ordinance that would call-out specific protections. The proposed amendments would return the specific tree protection language that previously was in the plan.

5. CV-6.5/3.22; NON-AGRICULTURAL DEVELOPMENT ON SLOPES

While the 2010 CVMP set forth a policy limiting non-agricultural development on slopes in excess of 25% and on highly erodible soils (Policy CV-6.5), it was identified that the



CVLUAC
Re: 2010 General Plan/Carmel Valley Master Plan Amendments
Page 3

policy was in the wrong chapter of the plan (the "Agriculture" Chapter). For consistency, the proposed amendments would make clarifying language changes and relocate the policy to the "Conservation/Open Space" Chapter where it more logically belongs.

CONCLUSION

The County believes these proposed amendments to the 2010 CVMP represent a reasonable compromise over the issues raised in the litigation. The amendment process includes the preparation of an appropriate environmental analysis (currently underway); a hearing before the Planning Commission, which will make a recommendation to the Board of Supervisors; and, finally consideration by the Board of Supervisors.

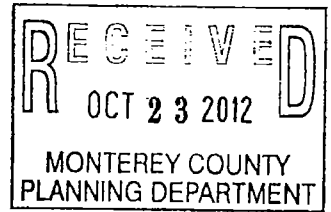
Staff recommends that the CVLUAC both approves the proposed amendments and recommends to the Planning Commission and Board of Supervisors that the County adopt them.

Dated: October 8, 2012



LESLIE J. GIRARD
Chief Assistant County Counsel

LJG:lfg:so
Enclosure



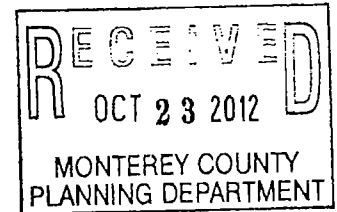
Amend CV-1.6

- CV-1.6 New residential subdivision in Carmel Valley shall be limited to creation of 266 190 new units as follows:
- a. There shall be preference to projects including at least 50% affordable housing units.
 - b. Lots developed with affordable housing under the Inclusionary Housing Ordinance or an Affordable Housing Overlay (Policy LU-2.12) may have more than one unit per lot. Each unit counts as part of the total unit cap.
 - c. Existing lots with five (5) acres or more may have the first single family dwelling plus one auxiliary unit. Units added on qualifying existing lots shall not count as part of the total unit cap. New auxiliary units shall be prohibited on lots with less than five (5) acres, except that this provision shall not apply to projects that have already been approved, environmental review for auxiliary units has already been conducted, and in which traffic mitigation fees have been paid for such auxiliary units prior to adoption of this Carmel Valley Master Plan.
 - d. New lots shall be limited to the first single family dwelling. Auxiliary units shall be prohibited.
 - e. Of the 266 190 new units, 24 are reserved for consideration of the Delfino property (30 acres consisting of APN: 187-521-014-000, 187-521-015-000, 187-512-016-000, 187-512-017-000, 187-512-018-000, and 187-502-001-000) in Carmel Valley Village (former Carmel Valley Airport site) to enable subdivision of the property into 18 single family residential lots and one lot dedicated for six affordable/inclusionary units, provided the design of the subdivision includes at least 14 acres available for community open space use subject to also being used for subdivision related water, wastewater, and other infrastructure facilities.
 - f. New units or lots shall be debited from the unit count when an entitlement is granted or a building permit is issued, whichever occurs first.
 - g. At five year intervals, the County shall also examine any other factors that might warrant a downward adjustment to the residential unit cap.

The County shall develop a tracking system and shall present before the Planning Commission, an annual report of units remaining ~~before the Planning Commission~~.

Amend CV-2.17

- CV-2.17 To implement traffic standards to provide adequate streets and highways in Carmel Valley, the County shall conduct and implement the following:
- a) Twice yearly monitoring by Public Works (in June and October) of peak hour traffic volumes and daily traffic volumes at the following six (6) locations indicated in bold (at least one of the yearly monitoring periods will occur when local schools are in session) in the following list noted in bold type:

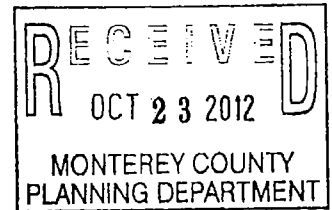


	<i>Carmel Valley Road</i>	<i>ADT threshold</i>
1.	Holman Road to CVMP boundary	8487
2.	Holman Road to Esquiline Road	6835
3.	Esquiline Road to Ford Road	9065
4.	Ford Road to Laureles Grade	11,600
5.	Laureles Grade to Robinson Canyon Road	12,752
6.	Robinson Canyon Road to Schulte Road	15,499
7.	Schulte Road to Rancho San Carlos Road	16,340
8.	Rancho San Carlos Road to Rio Road	48,487
9.	Rio Road to Carmel Rancho Boulevard	51,401
10.	Carmel Rancho Boulevard to SR1	27,839
	<i>Other Locations</i>	
11.	Carmel Rancho Boulevard between Carmel Valley Road and Rio Road	33,495
12.	Rio Road between its eastern terminus at Val Verde Drive and Carmel Rancho Boulevard SR1	6,416
13.	<u>Rio Road between Carmel Rancho Boulevard and SR1</u>	<u>33,928</u>

b) ~~A yearly evaluation report shall be prepared jointly by the Public Works Department in December to evaluate the peak hour level of service (LOS) for that shall report on traffic along the six (6) monitoring locations and determine if any of those segments are approaching a peak hour traffic volume that would lower levels of service below the LOS standards established below under Policy CV 2-17(e) indicated segments. The report shall evaluate traffic using the PTSF methodology (or such other methodology as may be appropriate for a given segment in the opinion of the Public Works Department), and the ADT methodology. ADT thresholds for each segment are listed above, and The Public Works Department shall annually establish appropriate PTSF or other methodology thresholds for each of the six (6) segments listed above will summarize peak hour data and Percent Time Following (PTSF) analysis in an Average Daily Trips (ADT) format.~~

c) ~~A public hearings before the Board of Supervisors shall be held in January immediately following the December report when only 100 or fewer ADT 10 or less peak hour trips remain before the ADT count for a segment will equal or exceed the indicated threshold, or where the PTSF for a segment exceeds or is within one percent (1%) of the value that would cause a decrease in the LOS an unacceptable level of service (as defined by Policy CV 2-17c) would be reached for any of the six (6) segments described above.~~

d) At five year intervals the County shall monitor all segments listed in Policy CV-2.17(a) and the annual report described in Policy CV-2.17(b) shall include a report on all segments. If such periodic monitoring and reporting shows that any segment not previously part of the annual report is within twenty percent (20%) of the listed ADT threshold, that segment shall thereafter be subject to the



annual monitoring and reporting.

e) Also At five year intervals the County shall examine the degree to which estimates of changes in Levels of Service ("LOS") in the Carmel Valley Master Plan Area may be occurring earlier than predicted in the General Plan Environmental Impact Report. If the examination indicates that LOS are likely to fall to a lower letter grade than predicted for 2030, then the County shall consider adjustments to the cap on new residential units established in Policy CV-1.6 and/or the cap on new visitor serving units established in Policy CV-1.15 or other measures that may reduce the impacts, including, but not limited to, deferral of development that would seriously impact traffic conditions.

f) The traffic LOS standards (~~LOS~~ as measured by peak hour conditions) for the CVMP Area shall be as follows:

- 1) Signalized Intersections – LOS of "C" is the acceptable condition.
- 2) Unsignalized Intersections – LOS of "F" or meeting of any traffic signal warrant are defined as unacceptable conditions.
- 3) Carmel Valley Road Segment Operations:
 - a) LOS of "C" and ADT below its threshold specified in Policy CV-2.17(a) for Segments 1, 2, 8, 9, and 10, 11, 12 and 13 is an acceptable condition;
 - b) LOS of "D" and ADT below its threshold specified in Policy CV-2.17(a) for Segments 3, 4, 5, 6, and 7 is an acceptable condition.

During review of development applications that require a discretionary permit, if traffic analysis of the proposed project indicates that the project would result in traffic conditions that would exceed the standards described above in Policy CV 2-17(~~fe~~), after the analysis takes into consideration the Carmel Valley Traffic Improvement Program to be funded by the Carmel Valley Road Traffic Mitigation Fee, then approval of the project shall be conditioned on the prior (e.g., prior to project-generated traffic) construction of additional roadway improvements or an Environmental Impact Report shall be prepared for the project, which will include evaluation of traffic impacts based on the ADT methodology. Such additional roadway improvements must be sufficient, when combined with the projects programmed for completion prior to the project-generated traffic in the Carmel Valley Traffic Improvement Program, to allow County to find that the affected roadway segments or intersections would meet the acceptable standard upon completion of the programmed plus additional improvements. Any EIR required by this policy shall assess cumulative traffic impacts outside the CVMP area arising from development within the CVMP area.

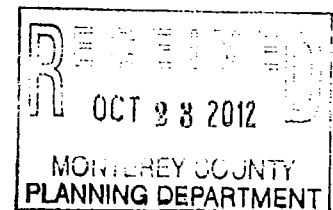
This policy does not apply to the first single family residence on a legal lot of record. The use of the ADT methodology as set forth in this Policy CV-2.17 shall be limited to the purposes described in the Policy, and the County may utilize any traffic evaluation methodology it deems appropriate for other purposes, including

but not limited to, road and intersection design. This policy shall also not apply to commercial development in any Light Commercial Zoning ("LC") district within the CVMP area where the Director of Planning has determined that the requirement for a General Development Plan, or amendment to a General Development Plan, may be waived pursuant to Monterey County Code section 21.18.030 (E).

Amend CV-2.18

- CV-2.18 The County shall adopt a Carmel Valley Traffic Improvement Program (CVTIP) that:
- a. Evaluates the conditions of Carmel Valley Road and identifies projects designed to maintain the adopted LOS standards for this roadway as follows:
 1. In order to preserve the rural character of Carmel Valley, improvements shall be designed to avoid creating more than three through lanes along Carmel Valley Road.
 2. Higher priority shall be given to projects that address safety issues and manage congestion.
 3. The project list may include projects previously identified for inclusion in the CVTIP or their functional equivalent.
 4. Priorities shall be established through community input via a Carmel Valley Road Committee, which shall be established by the Board of Supervisors and shall review and comment on proposed projects in the CVTIP, and review and comment on the annual report described in Policy CV-2.17 (b).
 5. At a minimum, the project list shall be updated every five years unless a subsequent traffic analysis identifies that different projects are necessary.
 - b. Validates and refines the specific scope of all projects proposed by the CVTIP through preparation of a Project Study Report (PSR). The PSR will be reviewed and commented on by the Carmel Valley Road Committee prior to commencement of project design.
 - c. Establishes a fee program to fund the CVTIP. All projects within the Carmel Valley Master Plan (CVMP) area, and within the "Expanded Area" that contribute to traffic within the CVMP area, shall contribute a fair-share traffic impact fee to fund necessary improvements identified in the CVTIP, as updated at the time of building permit issuance. Fees will be updated annually as specified by the CVTIP to account for changes in construction costs and land values. The County shall adopt a CVTIP within one year of approval of the 2010 General Plan. The CVTIP does not apply to any roadways (including SR1) that are located outside the CVMP area.

Amend CV-3.11



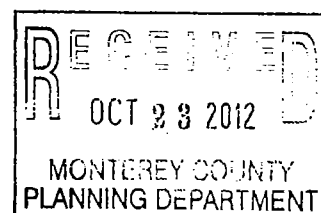
- CV-3.11 The County shall discourage the removal of healthy native oak and madrone and redwood trees in the Carmel Valley Master Plan Area. A permit shall be required for the removal of any of these trees with a trunk diameter in excess of six inches, measured two feet above ground level. Where feasible, trees removed will be replaced by nursery-grown trees of the same species and not less than one gallon in size. A minimum fine, equivalent to the retail value of the wood removed, shall be imposed for each violation. In the case of emergency caused by the hazardous or dangerous condition of a tree and requiring immediate action for the safety of life or property, a tree may be removed without the above permit, provided the County is notified of the action within ten working days. Exemptions to the above permit requirement shall include tree removal by public utilities, as specified in the California Public Utility Commission's General Order 95, and by governmental agencies. Removal of healthy, native oak, madrone, and redwood trees in the Carmel Valley Planning Area shall be discouraged. An ordinance shall be developed to identify required procedures for removal of these trees. Said ordinance shall take into account fuel modification needed for fire prevention in the vicinity of structures and shall include:
- a. ~~Permit requirements.~~
 - b. ~~Replacement criteria~~
 - c. ~~Exceptions for emergencies and governmental agencies~~

Add CV-3.22

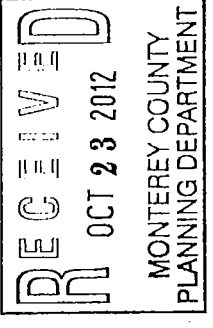
- CV-3.22 Notwithstanding policy OS-3.5(1), non-agricultural development that is both on slopes in excess of twenty five percent (25%) and on highly erodible soils shall be prohibited. Non-agricultural development on slopes in excess of twenty five (25%) percent that is not on highly erodible soils shall be subject to Policy OS-3.5(1).

Delete CV-6.5

- ~~CV-6.5 Notwithstanding Policy OS-3.5, new development shall be prohibited on slopes: 1) with highly erodible soils, and 2) in excess of twenty five percent (25%).~~



Submitted to Carmel Valley
UAC by Ron DeHoff @ 10/15/12
mtg



Proposed Amendments to the 2010 General Plan Update (2010 GPU)

Carmel Valley Master Plan





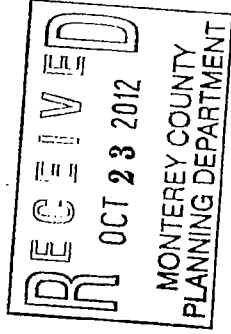
Background

- 1982 General Plan adopted September 30, 1982
- Carmel Valley Master Plan (December 16, 1986 and November 5, 1996)
- 2010 General Plan Update (2010 GPU) and Final Environmental Impact Report (FEIR) certified October 26, 2010
- Carmel Valley Association (“CVA”) filed Petition for Writ of Mandate on November 24, 2010 in Case Number M109442
- Settlement discussions between County and CVA – January 2011 through September 2012
- Proposed settlement and revisions to 2010 GPU (CVMP) – September 24, 2012

Disputed Issues with 2010 GPU (CVMP)

- Traffic Monitoring & Mitigation
 - Changed method for calculating Level of Service (“LOS”)
 - Little EIR consideration of impact of proposed changes
 - Rare Tree Species
 - Replace specific permit requirements with an ordinance to be determined later
 - Non-Ag Development on Slopes
 - No special restriction on non-ag development on slopes > 25% and non-highly erodible soils
-

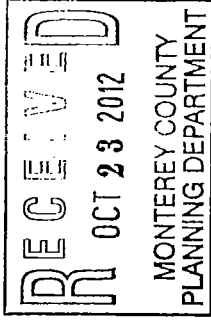
Traffic Monitoring



- CV-2.17 - Changes
- Update Carmel Valley Road (CVR) segments for monitoring
 - Add one segment – Split Rio Road into two sections
- Added Average Daily Trips (ADT) threshold for each segment
 - Based upon traffic studies and CVA input
- Traffic Triggers – Annual Study of Six Impacted Segments
 - If measured ADT within 100 trips of threshold OR PTSF with 1% of maximum
- Annually, if traffic thresholds exceeded:
 - Public hearing before the Board of Supervisors
- 5-Year Monitoring
 - Identify Impacted Segments if within 20% of ADT threshold
 - Mitigation possibilities if conditions worse than expected
 - Adjustments to cap on residential or visitor units
 - Deferral of development impacting traffic
- ADT shall be used in mitigation planning for new development

Proposed Monitoring Process

- Twice annually – traffic measured on Impacted Segments
- Public Works issues annual report (December)
 - ADT calculation and PW's LOS calculation
 - Identify if ADT or LOS thresholds exceeded
- If traffic thresholds exceeded
 - Hearing held before BoS (January)
 - Road Committee reviews report & provide input to BoS
- If traffic analysis of discretionary project indicates that traffic will be impacted (as measured by ADT or LOS)
 - Approval conditioned on prior roadway improvement and prior completed CVTIP projects mitigating traffic impact OR
 - EIR including evaluation of impacts based on ADT



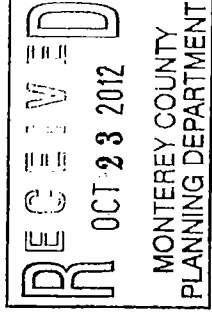
Proposed Monitoring Process

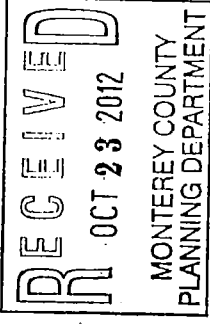
(Continued)

- **Full Segment Monitoring (Every 5 years)**
 - All 13 segments measured and included in annual report
 - New Impacted Segments designated for annual measurement
 - With 20% of ADT threshold or 1% of PTSF limit (LOS)
- **Evaluation of Traffic Trends (Every 5 years)**
 - Level of Service degrading faster than envisioned
 - County (with Road Committee input) will consider:
 - Lower caps on new residential or visitor units
 - Deferral of development or other measures

Road Committee / Development Caps

- CV-2.18 – Changes
 - Road Committee will review and comment on proposed projects in the CVTIP
 - Road Committee will review and comment on the annual report described in Policy CV-2.17.
- CV-1.6 Changes
 - Creation of new residential subdivisions in Carmel Valley reduced to 190 new units from 266





Steep Slope & Rare Species

- CV-3.22 Changes
 - Non-agricultural development on slopes in excess of twenty five percent that is not on highly erodible soils shall be subject to Policy OS 3.5(1).
 - CV-3.11 Changes (Back to 1982 language)
 - A permit for trees with a trunk diameter in excess of six inches, measured two feet above ground level.
 - Trees removed will be replaced by nursery-grown trees of the same species and not less than one gallon in size.
 - A minimum fine, equivalent to the retail value of the wood removed, shall be imposed for each violation.
-