

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

In the matter of the application of:

CARMEL PRESBYTERIAN CHURCH (PLN090070)

RESOLUTION NO. 09038

Resolution by the Monterey County Planning
Commission to:

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

(PLN090070) Carmel Presbyterian Church,
Terminus Of Rio Road and East Of Val Verde Drive,
Carmel Valley, Carmel Valley Master Plan Area
(APN: 015-021-004-000)

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

FINDINGS

1. **FINDING: BACKGROUND**

a) **Planning Permit History**

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

On July 27, 2000, Planning Department staff met with representatives for Carmel Presbyterian Church, to clarify questions related to the approval of the Combined Development Permit (PLN965481) for the Community Life Center. During this meeting, the Church inquired as to what would be required to "vest the approved Use Permit". On August 23, 2000, the Planning Department mailed written correspondence to the

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

Church's representative, Ms. Derinda Messenger, giving specific directives on how to "vest the permit" (**Exhibit C**), including the following:

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

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

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

b) Grading Permit History/Timeline

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

- On March 24, 2006, a pre-construction meeting was held on site with the applicant and staff from the Building Department. Staff addressed the following:
 - 1) Required inspections and paperwork;
 - 2) Project schedule; and
 - 3) Required erosion control measures. (**Exhibit E-page 1**)
- On September 18, 2006, the grading department conducted an "Erosion Control" inspection, verifying that proper erosion control measures were in place. (**Exhibit E – page 2**)
- Between September 2006 and July 2007, the grading permit record shows no additional work and/or inspections.
- On July 17, 2007, the applicant contacted the Building Department via telephone indicating that work on the retention pond would commence within 30 days. (**Exhibit E – Page 3**)
- On August 4, 2007, the grading department conducted an "Erosion Control" inspection, again verifying that proper measures were in place. (**Exhibit E – Page 4**)
- Between October 2007 and July 2008, the grading permit record shows no additional work and/or inspections.
- On July 2, 2008, with the grading permit close to expiration, the Church "re-applied" for the grading permit, which was subsequently "re-issued" on the same date, making the permit valid for an additional 180 days? (**Exhibit D**)
- On September 18, 2008, the Building Department conducted an inspection for "Fills", verifying soil activities were conducted per recommendation from the soil engineer. (**Exhibit E – Page 5**)
- On October 15, 2008, the grading department conducted a third "Erosion Control" inspection to verify installed erosion control measures. (**Exhibit E – Page 6**)
- On April 9, 2009, six days prior to permit expiration, the Building Department performed a "Drainage/Terracing" inspection, to verify that the retention pond had

been graded per plan. **(Exhibit E – Page 7)** This inspection extended the validity of the grading permit until October 9, 2009, and in effect extended the life of the approved Combined Development Permit.

c) Building Permit History

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

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

d) Condition Compliance History

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

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

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

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

e) Application for Vesting Rights Determination

Upon expiration of the grading permit on October 9, 2009, the Combined Development Permit would also expire, unless either of the following occurs: 1) Applicant applies for an extension to the Combined Development Permit; or 2) the Combined Development

has vested. One of the findings required for a vested right is that the permittee has performed substantial work and incurred substantial financial liabilities in good faith reliance upon a building permit, or the functional equivalent of the building permit, issued by the County. Applicant has not satisfied the "prior to issuance of building permit" conditions and has not obtained a valid building permit.

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

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

Instead, the Church has made an application for determination of vested rights at this time. For the County to make/support a claim for vested rights, five specific findings (4-8) are required to be made, pursuant to Section 21.64.240(C)(6)(a-e), as listed below. For the reasons set forth therein, applicant has failed to demonstrate a vested right, and the findings cannot be made.

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

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

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

- EVIDENCE:**
- a) *Name of claimant, address, telephone number.*
Applicant information, address, and telephone were submitted with application.
 - b) *Name, address, and telephone number of claimant's representatives, if any.*
Agent name, address, and telephone number were submitted with application.
 - c) *Description of the development claimed to be exempt, including all incidental improvements such as utilities, road, and other infrastructure, and a description of the specific parcel of land on, and*

including a description of the specific boundaries within which such development or use exists for which the claim of exemption is made. A site plan, development plan, grading plan, and construction or architectural plans may be attached as appropriate.

Description of development, including incidental improvements such as utilities, road, and other infrastructure, and a description of the specific parcel of land including specific boundaries within which such development or use exists is contained in previous application materials (PLN965481 / PLN010125). A vicinity map (**Exhibit B**) and site plan (**Exhibit J**) has been attached.

- d) *A list of all governmental approvals which have been obtained, including those from State or Federal agencies, and the date of each final approval. Copies of all approvals shall be attached.*
On March 23, 2009, May 11, 2009, and July 16, 2009, staff requested information relative to this requirement. As of date of report, applicant has not supplied this information. (**Exhibit L**)
- e) *A list of any governmental approvals which have not yet been obtained and anticipated dates of approval.*
On March 23, 2009, May 11, 2009, and July 16, 2009, staff requested information relative to this requirement. As of date of report, applicant has not supplied this information.
- f) *A list of any conditions to which the approvals are subject and date on which the conditions were satisfied or are expected to be satisfied.*
On March 23, 2009, May 11, 2009, and July 16, 2009, staff requested information relative to this requirement. The applicant submitted a list of all conditions and status on April 23, 2009. (**Exhibit K**)
- g) *A specification of the nature and extent of the work or use in progress or completed, including 1) date of each portion commenced (e.g., grading, foundation work, structural work, etc.); 2) any governmental approval pursuant to which the portion was commenced; 3) portions completed and date on which completed, if applicable; 4) status of each portion on date of claim; 5) amounts of money expended on portions of work completed or in progress (dates and amounts of expenditures shall be itemized).*
On March 23, 2009, May 11, 2009, and July 16, 2009, staff requested information relative to this requirement. As of date of report, applicant has not supplied this information.
- h) *A description of those portions of the development or use continuing and remaining to be completed.*
On March 23, 2009, May 11, 2009, and July 16, 2009, staff requested information relative to this requirement. As of date of report, applicant has not supplied this information.
- i) *A list of the amount and nature of any liabilities incurred that are not covered above and dates incurred, and a list of any remaining liabilities to be incurred and date when these are anticipated to be incurred.*
On March 23, 2009, May 11, 2009, and July 16, 2009, staff requested information relative to this requirement. As of date of report, applicant has not supplied this information.
- j) *A statement of the expected total cost of the development or use.*

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

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

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

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

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

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

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

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

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

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

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

b) See Findings 4-8, below.

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

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

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

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

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

EVIDENCE: a) All development on the project site has been undertaken in reliance upon County-issued permits. In March of 1999 the applicant received approval of a Combined Development Permit (File No. PLN965481) to allow the construction of 29,424 square foot Community Life Center,

subject to 52 conditions of approval (Board of Supervisors Resolution No. 99-135). In September of 2001, the applicant was granted a 5 year extension by the Planning Commission subject to the original 52 conditions of approval (Planning Commission Resolution No. 01055).

- b) A grading permit (GP060055) was issued in March 2006, allowing preliminary ground work in preparation for development of the project. On July 2, 2008, an extension to the grading permit was granted, moving the expiration date of the permit to April 13, 2009.
- c) On April 9, 2009, four days prior to permit expiration of the grading permit, the Monterey County Building Department performed an inspection of the grading work completed to date. The inspection confirmed the construction-to-code of a stormwater drainage/retention facility approved under the permit. Based on the 1997 Uniform Administrative Code (Section 303.4), adopted by the County of Monterey, this inspection extended the expiration date of the permit to October 9, 2009.

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

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

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

- EVIDENCE:**
- a) The project was originally approved in March 1999 (Board of Supervisors Resolution 99-135) subject to 52 conditions of approval. In September of 2001, a 5 year extension (PLN010125) was approved by the Planning Commission subject to the 52 original conditions of approval, extending the expiration of the Combined Development Permit to March 30, 2006.
 - b) A grading permit application (GP060055) was submitted on February 10, 2006. After confirming that any applicable “prior to issuance of grading permit” conditions of the Combined Development Permit had been satisfied, the Planning Department approved issuance of the grading permit, which was subsequently issued on March 23, 2006. Over the course of approximately three years, various inspections have been conducted relative to the limited earthwork/grading activities included under the grading permit (building pad and retention pond)

(Exhibit E).

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

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

- EVIDENCE:**
- a) The project has not been abandoned per se, as both the grading permit (GP060055) and Combined Development Permit (Board of Supervisors Resolution No. 99-135 and Planning Commission Resolution No. 01055) remain valid until October 9, 2009.
 - b) A determination that applicant does not a vested right does not preclude applicant from applying for an extension of the Combined Development Permit. Per Monterey County Code, Section 21.76.110, applicant has the option of applying for an extension of this Combined Development

Permit, provided such request is made in writing at least 30 days prior to October 9, 2009.

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

10. **FINDING: FEE WAIVER REQUEST**

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

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

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

Government Code 65928 defines a development project as:

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

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

Therefore, the Director of Planning determined the Vested Rights application did not meet the required criteria, and forwarded the Fee Waiver Request to the Planning Commission for consideration. (**Exhibit I**) A fee waiver by the Planning Commission is

not warranted because a vested right determination does is not a development application per se; does not involve development, enhancement, expansion, or modification of facilities; is not of obvious public benefit; and requires significant time and resources.

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

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

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

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

DECISION

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

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

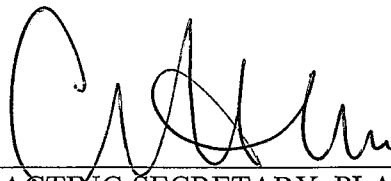
PASSED AND ADOPTED this 29th day of July, 2009, by the following vote:

AYES: Brown, Isakson, Salazar, Vandever, Sanchez, Diehl, Rochester, Ottone

NOES: None

ABSTAIN: None

ABSENT: Pessagno, Padilla



CARL HOLM, ACTING SECRETARY, PLANNING COMMISSION

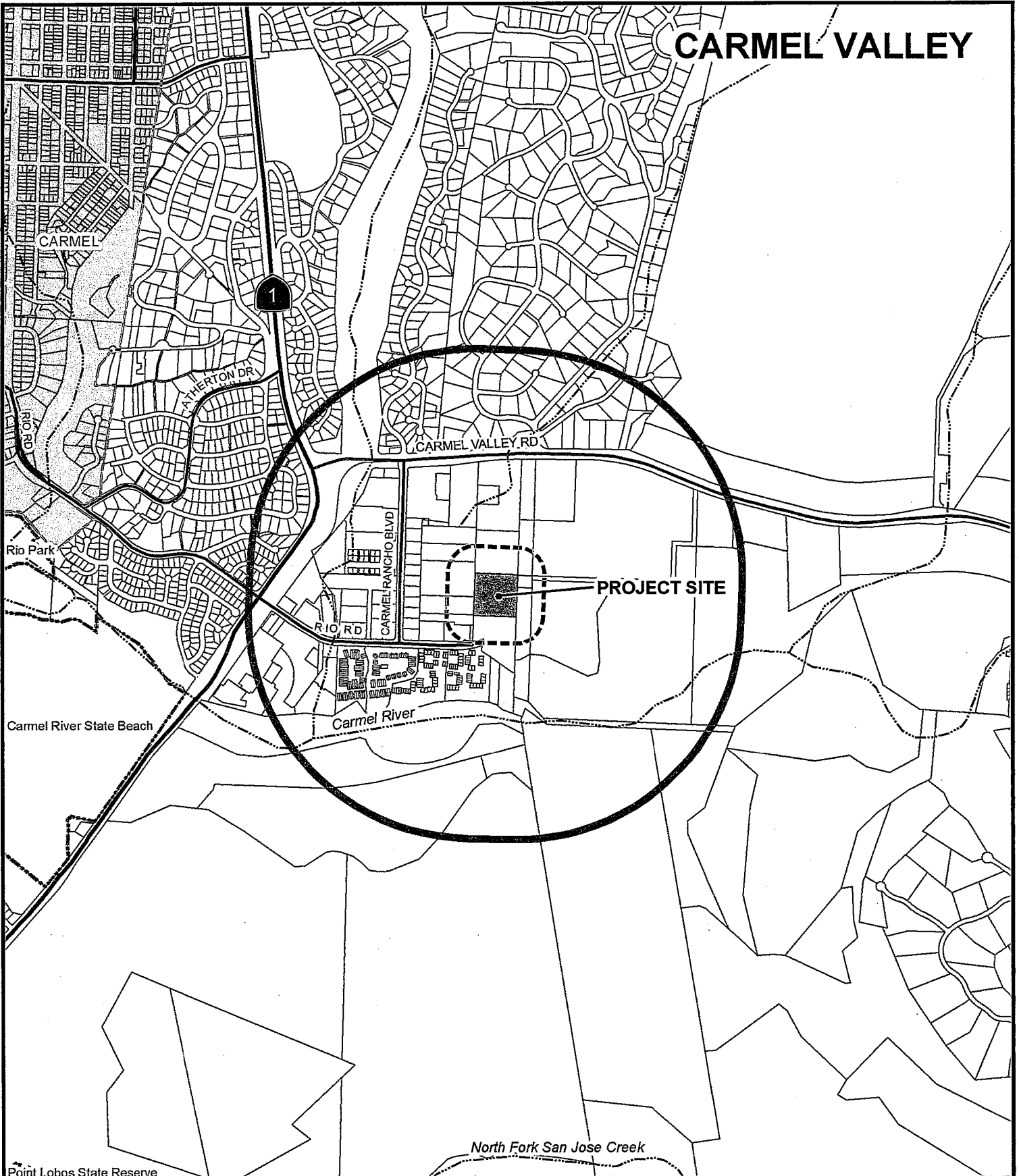
COPY OF THIS DECISION MAILED TO APPLICANT ON **JUL 31 2009**

THIS DETERMINATION IS APPEALABLE TO THE BOARD OF SUPERVISORS.

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

AUG 10 2009




CARMEL VALLEY



APPLICANT: CARMEL PRESBYTERIAN CHURCH

APN: 015-021-004-000

FILE # PLN090070

 300' Limit  2500' Limit  City Limits

