

EXHIBIT A

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Via Electronic and U.S. Mail

Carl Holm, Director
Monterey County Resource Management Agency
1441 Schilling Place
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RE: Rancho Cañada Venture, LLC's comments on the Second Revised Draft
EIR for Rancho Cañada Village

Dear Mr. Holm,

On behalf of the project applicant, Rancho Cañada Venture, LLC (RCV), we submit the following comments on the Second Revised Draft EIR (SRDEIR) for Rancho Cañada Village (Project). RCV has reviewed the changes made to the Revised Draft EIR (RDEIR), originally published in May 2016, in response to the Monterey County Superior Court's judgment and peremptory writ of mandate (peremptory writ) issued in Case No. 17CV000131. Accordingly, RCV comments focus on the changes made in the SRDEIR, and address comments raised by others. These comments also clarify RCV's plan for water supply for the Project.

RCV maintains that the Board of Supervisors (Board) did not abuse its discretion in certifying the Final EIR and approving the Project and entitlements requested by RCV in 2016. As stated in the SRDEIR, RCV is currently appealing the trial court's ruling as it applies to the Board's 2016 approvals. Nevertheless, as explained in the SRDEIR, the County is free to comply with the court's ruling while RCV appeals it, and RCV is likewise free to actively participate in the County's effort. (See *Save Our Residential Environment v. City of West Hollywood* (1992) 9 Cal.App.4th 1745, 1750-1751; *Protect Niles v. City of Freemont* (2018) 25 Cal.App.5th 1129, 1140.) The peremptory writ required the County to revise the Project Description chapter to discuss only the 130-unit proposal, which was referred to as the 130-unit Alternative in 2016, and to revise the Alternatives Analysis chapter to analyze a range of feasible alternatives to the 130-unit proposal. Because the County has made the changes required by the peremptory writ, the Board can reconsider the Project and approve either the 130-unit proposal, or, as

discussed below, an alternative that the Board finds to be “actually feasible.” RCV believes that, of the potentially alternatives analyzed in the SRDEIR, Alternative 5 is both feasible and the best option from an environmental and policy standpoint. Alternative 5 is very similar to the proposed 130-unit project but is better suited to deal with recently enacted solar power requirements for new homes.

A. The Project will benefit Carmel Valley by providing housing to underserved portions of the population, including tradespeople and those in public service.

First, in response to comments accusing RCV of profiting at the expense of working families and the general public, RCV is compelled to explain its purpose in proposing and working with the County to develop Rancho Cañada Village. From the beginning of RCV’s involvement with the Project, the focus has been on providing opportunities for working-class and moderate-income families to live in Monterey County and specifically in Carmel Valley. RCV and the County have long recognized that many of the people who work in Carmel Valley as tradespeople and in public service, including nurses and firefighters, do not live in the Valley because of a lack of housing affordable to them.

To address the shortage of housing affordable to moderate and middle-income families and first-time buyers, RCV’s plan is to construct 25 moderate-income condominiums and to sell the remaining 105 lots at an average price of \$450,000 per lot, which is significantly less than “market rate” for similarly sized lots¹ in Carmel Valley. RCV believes that selling lots at that price, though less profitable, serves the important purpose of ensuring that Carmel Valley can be home for those that work in and serve the Carmel Valley community. Moreover, by constructing the moderate-income condominiums and selling lots, the Project provides ongoing employment opportunities for tradespeople in the Valley.

RCV’s goals for the Project are reflected in the Project Objectives in the SRDEIR. The Project Objectives include “Implement[ing] smart growth principles through infill development close to shopping facilities, schools, parks, churches, and major transit corridors,” “Assist[ing] the County in addressing the statewide housing and affordability

¹ The SRDEIR refers to the lots as “market rate” in contrast to the moderate-income residential units, because there are no legal requirements capping the price that RCV seeks for the lots. As stated above, RCV has committed to this price point voluntarily, to ensure that the Project is affordable to the underserved working- and middle-class families that serve the Carmel Valley community.

crisis,” and “Provid[ing] employment opportunities for the local workforce.” The Project has been designed to obtain these objectives and to achieve RCV’s goal of providing housing opportunities to working-, middle-class, and moderate-income families in Carmel Valley. Though Project financial information is not an issue under the California Environmental Quality Act (CEQA) in terms of EIR adequacy, the Project’s benefits, including RCV’s commitment to making the condominiums and lots affordable to moderate-income and working-class families and first-time buyers, are relevant to the Board’s consideration of the Project.

Additionally, RCV has retained an expert economics firm, Economic & Planning Systems, Inc. (EPS), to perform a financial feasibility analysis of the Project as proposed in comparison to several alternative affordable housing scenarios. The forthcoming analysis prepared by EPS will show that, even as proposed, the Project’s return on investment (ROI) would be significantly below industry standards for similar development projects. Thus, RCV is not motivated by “profit over people” as some commenters allege, and intends this Project to benefit the people of Carmel Valley by providing housing opportunities to working families that serve the local community, even though doing so significantly reduces the financial compensation that RCV could otherwise receive.

B. The Peremptory Writ and the Doctrine of Res Judicata limit the scope of the SRDEIR and the scope of comments that the County must respond to under CEQA.

1. *The peremptory writ requires only limited changes to the RDEIR.*

As stated in the SRDEIR, the Superior Court issued a peremptory writ of mandate in the litigation over the County’s prior approval of Rancho Cañada Village in 2016. Among other mandates, the peremptory writ directs the County “[t]o comply with the Court’s Intended Decision entered on June 7, 2018 [Statement of Decision], and this Court’s judgment entered herein, and to follow all applicable law, statutes, and regulations, including but not limited to [CEQA], the CEQA Guidelines, and planning and zoning laws. If you undertake reconsideration of any of the actions required to be set aside,[²] such reconsideration shall be required to be in accordance with this Court’s

² The court directed the County to set aside the resolution adopted by the Board (No. 16-334), which certified the Final EIR, amended the 2010 General Plan, approved a Combined Development Permit, adopted a Mitigation Monitoring and Reporting Plan (MMRP), and adopted an ordinance rezoning part of the Project site. These steps have not been taken due to the continuing pendency of an appeal of the court’s decision.

Statement of Decision and this Court's Judgment." As explained in the SRDEIR, the County has decided, despite the pending appeal, to revise the EIR and reconsider the approvals set aside by the peremptory writ in accordance with the Statement of Decision and judgment.

The Statement of Decision concluded that CEQA required the County to revise the Project Description by removing the discussion of the 281-unit Project and treating the 130-unit Alternative as the "proposed project" discussed and analyzed in the EIR. Additionally, the Statement of Decision required the County to revise the EIR to analyze a range of reasonable alternatives to the 130-unit proposal rather than the 281-unit Project. Because the court found no other errors in the EIR, no other changes to the EIR are required by the peremptory writ and judgment before the County reconsiders certification of the EIR. Most importantly, the court did not find the RDEIR's analysis of the potential environmental impacts of the 130-unit Alternative (now, the 130-unit proposal) to be inadequate by the court, so no changes to that analysis are required.³

2. Res Judicata prevents legal challenges to the unchanged portions of the SRDEIR.

As explained in the SRDEIR, the legal doctrine of Res Judicata (or claim preclusion) generally bars plaintiff(s)/petitioner(s) (and those in privity with them) in one legal action against defendant(s)/respondent(s), from raising issues in new or continued litigation that were or could have been raised in the original lawsuit. In the CEQA and Planning and Zoning Law context, where petitioners sue government agencies on behalf of the public in general and to enforce public rights, the public in general has been found to be in privity with the petitioners, and would be equally barred from raising issues in subsequent litigation that were or could have been raised in the original litigation. Hence, where a petitioner sues an agency to enforce public rights, anyone who could have sued to enforce those same rights (i.e., any member of the public) but did not, can be held to be in privity with the petitioner for the purposes of claim preclusion.

³ Similarly, because the court found no abuse of discretion in the Board's approval of all but one of the Project's other entitlements—including the amendment of the 2010 General Plan, approval of the Combined Development Permit, adoption of the MMRP, and adoption of the rezoning ordinance—no changes are required to those entitlements by the peremptory writ and judgment either. The only abuse of discretion found by the court was that the Board's finding to amend the requirements of the Inclusionary Housing ordinance was not supported by substantial evidence.

Applying Res Judicata to these circumstances means that the unchallenged or upheld portions of the RDEIR (and other entitlements that were unchallenged or upheld) are not subject to legal challenge in either a newly filed lawsuit or a continuation of Case No. 17CV000131. This is because the Carmel Valley Association (CVA), in 2017, took it upon itself to represent the public at large in enforcing the public rights protected by CEQA and the Planning and Zoning Law through the lawsuit challenging the adequacy of the Board's approval of the Project, including the certification of the EIR and approval/adoption of the other entitlements. Additionally, because the unchallenged or upheld portions of the RDEIR were facts in existence when the original lawsuit was filed, and have not changed, any challenge to those portions of the EIR either were, or could have been, raised in CVA's prior lawsuit. Such is also the case for the other entitlements for the Project that were not challenged, or were upheld, in the original litigation.

3. Limits on public comments on the legal adequacy of the SRDIER

Because the RDEIR analyzed and proposed mitigation for the potential environmental impacts of the 130-unit Alternative (now, the 130-unit proposal), and because no changes were made to that analysis or required by the peremptory writ and judgment, any comments on that analysis do not qualify as "raising significant environmental issues" under CEQA Guidelines section 15088, and therefore do not require a written response from the County as part of the upcoming Second Final EIR.⁴ Only comments on the changes in the SRDEIR (i.e., the revisions to the Project Description and the new analysis of project alternatives) would require written responses from the County.

Commenters are not precluded, however, from bringing any "significant new information"—as defined in CEQA Guidelines section 15088.5, subdivision (a)—to the County's attention regarding the proposed project or alternatives. Under that provision, "Significant new information" includes "a disclosure showing that: [¶] (1) A new significant environmental impact would result from the project or from a new mitigation measure proposed to be implemented. [¶] (2) A substantial increase in the severity of an environmental impact would result unless mitigation measures are adopted to reduce the impact to a level of insignificance. [¶] (3) A feasible project alternative or mitigation measure considerably different from others previously analyzed would clearly lessen the environmental impacts of the project, but the project's proponents decline to adopt it. [¶]"

⁴ The County has the discretion to respond to comments, however, even if not required to do so under CEQA. (See *Residents Against Specific Plan 380 v. County of Riverside* (2017) 9 Cal.App.5th 941,972.)

(4) The draft EIR was fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment were precluded.”

RCV is unaware of any “significant new information” that would require recirculation of the SRDEIR.

C. The alternatives analysis in the SRDEIR complies with the Court’s ruling and is legally adequate.

The trial court determined that, to be sufficient, the alternatives analysis in the 2016 EIR needed to analyze alternatives to the 130-unit Alternative (now, the 130-unit proposal). Further, CEQA requires the SRDEIR to “describe a range of reasonable alternatives to the project, or to the location of the project, which would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project, and evaluate the comparative merits of the alternatives.” (Cal. Code Regs., tit. 14, div. 6, ch. 3 (“CEQA Guidelines”), § 15126.6, subd. (a).) As discussed above, the Project Description chapter has been revised to describe only the 130-unit proposal, including revised Project Objectives. Accordingly, the alternatives analysis in the SRDEIR includes a range of potentially feasible alternatives to the 130-unit proposal that would avoid or substantially lessen the Project’s significant effects, but that would attain most of the basic project objectives.

It is important to note that, at the Draft EIR stage, the County need only determine whether the alternatives are “*potentially feasible*,” while the Board will ultimately decide whether the alternatives are “*actually feasible*.” (See, e.g., *California Native Plant Society v. City of Santa Cruz* (2009) 177 Cal.App.4th 957, 999-1001 (CNPS); *San Diego Citizenry Group v. County of San Diego* (2013) 219 Cal.App.4th 1, 18 (*San Diego*); and *Mira Mar Mobile Community v. City of Oceanside* (2004) 119 Cal.App.4th 477, 489.) The Board has the authority to reject any of the alternatives as actually infeasible, including for policy reasons and the failure to obtain project objectives. (See *City of Del Mar v. City of San Diego* (1982) 133 Cal.App.3d 410, 417 [“‘feasibility’ under CEQA encompasses ‘desirability’ to the extent that desirability is based on a reasonable balancing of the relevant economic, environmental, social, and technological factors”]; *CNPS, supra*, 177 Cal.App.4th at p. 1001[same]; and *San Diego, supra*, 219 Cal.App.4th at p. 17 [same]; *Sierra Club v. County of Napa* (2004) 121 Cal.App.4th 1490, 1506-1509 [upholding CEQA findings rejecting alternatives in reliance on applicant’s project objectives]; *Citizens for Open Government v. City of Lodi* (2012) 296 Cal.App.4th 296, 314-315 [court upholds agency action where alternative selected “entirely fulfill” a particular project objective and “would be ‘substantially less effective’ in meeting”

the lead agency's "goals"]; and *In re Bay-Delta Programmatic Environmental Impact Report Coordinated Proceedings* (2008) 43 Cal.4th 1143, 1165, 1166 (*Bay-Delta*) ["feasibility is strongly linked to achievement of each of the primary program objectives"; "a lead agency may structure its EIR alternative analysis around a reasonable definition of underlying purpose and need not study alternatives that cannot achieve that basic goal"].) Thus, while each of the alternatives analyzed in the SRDEIR was correctly determined to be potentially feasible, that analysis does not foreclose the Board from ultimately rejecting any of them as infeasible.

1. The Action Alternatives are all potentially feasible and would avoid or substantially lessen the environmental effects of the 130-unit proposal.

Alternative 1, the "No Project" Alternative, need not, as a legal matter, be potentially feasible, as, in most instances, this option of "doing nothing" would typically fail to meet most basic project objectives. The requirement that alternatives be "potentially feasible" only applies to the other – "action" – alternatives in an EIR. (Compare CEQA Guidelines, § 15126.6, subd. (a), with *id.*, subd. (e).) Importantly, however, inclusion of the "No Project" Alternative satisfies an express requirement of the CEQA Guidelines, and also complies with the peremptory writ. The No Project Alternative must reflect "the existing conditions at the time the notice of preparation is published, or if no notice of preparation is published, at the time environmental analysis is commenced, as well as what would be reasonably expected to occur in the foreseeable future if the project were not approved, based on current plans and consistent with available infrastructure and community services." (*Id.*, subd. (e)(2).) Here, the "no project" scenario would involve continued on-site cattle grazing with the reasonably foreseeable development of five estate homes on existing legal parcels.

Alternative 2, the Hotel Alternative, is potentially feasible, in that the proposed site and surrounding infrastructure could support hotel uses, and the 2013 Carmel Valley Master Plan (CVMP) allows development of up to 175 hotel rooms on the site. The Hotel Alternative would also meet most project objectives (see SRDEIR, p. 5-15) and substantially lessen some of the 130-unit proposal's significant impacts, including a reduction in peak hour traffic impacts. While CEQA's approach to transportation impacts has changed since the 2008 Draft EIR and 2016 RDEIR were published, the SRDEIR's analysis of the Project's and alternatives' impacts on Level of Service (LOS) remains valid for two reasons. First, the transportation and traffic analysis was not challenged in 2016 and is therefore presumed to be valid under the principles of res judicata, discussed above. Second, Senate Bill 743 (2013), through Public Resources Code section 21099 and CEQA Guidelines section 15064.3, excludes EIRs prepared

before July 1, 2020, from the requirement to analyze transportation impacts in terms of Vehicle Miles Traveled (VMT) instead of LOS. The SRDEIR was published on June 22, 2020, and, as discussed above, did not change the transportation and traffic analysis in 2016 RDEIR. The Hotel Alternative thus complies with CEQA and the peremptory writ.

Alternative 3 and 4 are both low density alternatives, with Alternative 3 proposing 90 units and Alternative 4 proposing 40 units. Both alternatives are potentially feasible, in that it is physically possible to develop the site with fewer units than the 130-unit proposal and the existing infrastructure could support those fewer housing units. Both alternatives would meet most of the project objectives (see SRDEIR, pp. 5-21, 5-25) and would substantially lessen some of the 130-unit proposal's significant impacts. On the latter point, both alternatives, for example, would reduce impacts to traffic, Greenhouse Gas emissions (GHGs), and Air Quality. Although, as required by CEQA Guidelines section 15126.6, subdivision (e)(2), the 40-unit low density alternative (Alternative 4) has been identified as the "environmentally superior alternative," that designation by no means mandates its approval by the Board. As noted in the SRDEIR, lower density on the project site may reduce localized impacts, but, due to continuing unmet housing demand, may lead to more development and environmental impacts in other parts of the County or Carmel Valley. Thus, the "environmentally superior alternative" designation, though required by CEQA, does not limit the Board's consideration of the Project or other alternatives in deciding what to approve, even when it comes to environmental policy. Nevertheless, both low density alternatives meet the requirements of CEQA and the peremptory writ.

Alternative 5, the "Energy Efficient Clustered Residential" Alternative, is potentially feasible, in that it proposes the same intensity of use, including the same number and mix of units, as the 130-unit proposal, but alters the design and layout of the site to "cluster" the proposed moderate-income units. This alternative would meet project objectives. (SRDEIR, p. 5-30.) Realigning the proposed uses on the site is physically possible, and would not increase the work needed to improve the site or connect to the existing infrastructure. Alternative 5 would also lessen some of the 130-unit proposal's significant impacts, including aesthetic impacts. As the SRDEIR notes, Alternative 5 is a reasonable evolution of the 130-unit proposal as developed in 2016. Since that time, changes in the California Building Code—including requirements that new single and multi-family homes be constructed with solar photovoltaic systems—have occurred that will apply to the construction of the moderate-income units. Alternative 5 proposes improvements to the design and layout of the Project site, including the clustering of the moderate-income units, to better integrate solar photovoltaic electricity generation into Project, increasing energy efficiency.

Of the alternatives analyzed in the SRDEIR, Alternative 5 is RCV's preferred alternative. If the Board were to approve this—or any other—alternative, that approval would be compliant with both CEQA and the peremptory writ. As explained above, the trial court determined that the 2016 EIR needed to revise the Project Description chapter to describe only the 130-unit proposal, and revise the Alternatives chapter to analyze a range of reasonable alternatives to the 130-unit proposal. The Statement of Decision specifically noted, however, that the Board had the authority to approve the Project or any of the alternatives, had it chosen to do so. Thus, because the SRDEIR complies with the trial court's direction in the peremptory writ and judgment, the Board is free to exercise its discretion to approve the 130-unit proposal, or an alternative analyzed in the SRDEIR, including Alternative 5.

Alternative 6, the "160-Unit Medium Density Residential" Alternative, is also potentially feasible, in that it proposes the same clustered development pattern included in Alternative 5 and the same number of moderate-income condominiums and lots. This alternative is physically possible to develop on the site and it could be connected to existing infrastructure. It also meets most project objectives. (SRDEIR, p. 5-18.) Additionally, Alternative 6 conservatively assumes that up to 30 of the lots would be developed with single family homes and accessory dwelling units (ADUs). Recent changes in state law allow homeowners to add ADUs to their property without performing CEQA review. (Gov. Code, § 65852.2, subd. (e).) Thus, it is physically and legally possible that future homeowners could exercise these rights and add ADUs to their developed lots. The assumption of 30 lot owners eventually doing so represents a reasonable, worst-case scenario. Though not legally required to do so, Alternative 6 analyzes the possibility of up to 30 future homeowners choosing to exercise their rights under state law to develop ADUs on their property. (See *Save Round Valley Alliance v. County of Inyo* (2007) 157 Cal.App.4th 1437, 1450-1451.) It should be noted, however, that this alternative was included and analyzed for informational purposes only, and does not represent a distinct policy choice for the Board.

2. Though potentially feasible, as required by CEQA, each of the action alternatives could be rejected by the Board as actually infeasible.

As stated above, the Board has the authority to reject alternatives as actually infeasible, including for policy reasons, such as the failure to obtain project objectives. In making that decision, the Board is free to favor certain objectives over others, as the "weight" of project objectives is matter of policy. It is RCV's opinion that, in weighing the project objectives here, the Board should give special consideration to the project

objective that aligns with the State's and County's goals of addressing the housing and affordability crisis. That objective also aligns with CEQA's requirement that "the guiding criterion in public decisions" be ensuring "the long-term protection of the environment, consistent with the provision of a decent home and suitable living environment for every Californian." (Pub. Resources Code, § 21001, subd. (d).)

As mentioned above, one project objective in the SRDEIR is to "[a]ssist the County in addressing the statewide housing and affordability crisis." This objective reflects both RCV's and the County's intent to develop a project that helps the County take steps towards remediating the statewide housing shortage, which impacts both the County as a whole and Carmel Valley specifically. (See Gov. Code, § 65589.5, subd. (a)(1)(A) - (D).) Additionally, the Legislature has recently recognized that the lack of working- and middle-class housing is "a critical problem" with environmental consequences, which the State and local agencies, including the County, must work to address. (See Gov. Code, § 65589.5, subd. (a)(1)(A) & (a)(2)(I).) As discussed above, RCV has intended Rancho Cañada Village to help address that "critical problem" in Carmel Valley from the outset of RCV's involvement in the Project.

In applying these policy considerations to the 130-unit proposal and alternatives for the Board's consideration⁵ here, RCV believes that the Board should reject the low-density alternatives (Alternative 3 and 4) as infeasible. To meaningfully address the housing crisis, the County needs every unit proposed in this Project. This is particularly true in areas like Carmel Valley, where there is a shortage of the "critical" working- and middle-class housing, and existing policy limits the total amount of housing that can be built in the Valley. The 40-unit and 90-unit alternatives would not do enough to address the "critical problem" of the lack of working- and middle-class housing in Carmel Valley.

Additionally, the low-density alternatives would foreclose the possibility of additional units being developed on the site, which is sized and adequately connected to infrastructure to support greater density. Finding a similar site that is appropriate for development of housing affordable middle- and working-class, at the scale needed in Carmel Valley, would be difficult at best. The low-density alternatives should be rejected as incompatible with the State and County's goals of addressing the housing crisis, and

⁵ As stated above, Alternative 6 is included for informational purposes only. It reflects what might occur if a substantial number of future lot owners under Alternative 5 exercised their statutory right to seek ADUs on those lots. (SRDEIR, p. 5-34.) The Board therefore need not address the feasibility of Alternative 6 separate from the feasibility of Alternative 5.

particularly the “critical problem” of working- and middle-class affordable housing in Carmel Valley. The 130-unit proposal (and Alternative 5, discussed below) would better attain the objectives to “[i]mplement smart growth” and “[p]rovide employment opportunities for the local workforce” than either of the low-density alternatives. Thus, though the low-density alternatives are potentially feasible as required by CEQA, the Board should find the low-density alternatives to be actually infeasible, as a matter of policy.

Similarly, the “No Project” and Hotel Alternatives would do even less to address the statewide housing crisis and the particular shortage in Carmel Valley. As discussed above, the “No Project” Alternative would entail the development of five, likely very expensive, estate homes that would do little to address housing or affordability. Likewise, though the Hotel Alternative would be far preferable to the “No Project” Alternative from RCV’s perspective, building a hotel on site would add no housing, affordable or otherwise. The “No Project” and Hotel Alternatives, like the low-density alternatives, would provide fewer “employment opportunities for the local workforce” than the 130-unit proposal, and the “No Project” Alternative would not “[i]mplement smart growth principles” to the same extent as the 130-unit proposal. Thus, the Board should reject these potentially feasible alternatives as actually infeasible for policy reasons as well.

Of all of the actionable alternatives, Alternative 5 would be the most similar to the 130-unit proposal, both in terms of environmental impacts (though Alternative 5 would still lessen some of the Project’s impacts) and attaining project objectives. As discussed above, the Board has the discretion to approve or reject alternatives on policy grounds, including Alternative 5. RCV believes, however, that Alternative 5 would attain all the project objectives, including addressing the “critical problem” of housing affordable to middle- and working-class families. Additionally, Alternative 5 has some policy benefits in comparison to the 130-unit proposal, in that the site would be reconfigured to allow clustered development of the moderate-income units and greater efficiency of the solar photovoltaic systems required by state law. Thus, Alternative 5 does more to “[i]mplement smart growth principles” than even the 130-unit proposal.

D. The Development Evaluation System (DES), even if adopted prior to the Board’s consideration of the Project, would not apply.

Several commenters have claimed that the Project will be subject to the draft DES ordinance if and when the Board adopts it, and that the County therefore must evaluate and score the Project under the DES. This contention is incorrect for several reasons. First, the DES ordinance is currently in draft form and has not yet been adopted by the

Board, so no projects are required to comply with the draft DES ordinance. Moreover, as currently drafted, the DES ordinance does not address projects that are already in the County's approval process. The draft DES ordinance discusses three milestones at which projects that would be subject to the DES ordinance would be evaluated and scored: first, at a pre-application meeting; second, after the application is formally submitted and deemed complete; and third, after CEQA evaluation is complete but prior to the approving agency's consideration of the proposed project. Here, the Project application was filed with the County in 2004 and was deemed complete on August 10, 2005, so the Project could not, in any scenario, undergo the first two DES evaluations. Subjecting the Project to only the third and final "post CEQA" evaluation, if the DES ordinance were adopted at that stage of review, would "score" the Project, but would not provide any opportunity to make changes to the Project to revise that score.

Second, and more importantly, the Subdivision Map Act bars the application of ordinances adopted after an application is deemed complete by the County. Government Code section 66474.2, subdivision (a), states, in pertinent part, that "in determining whether to approve or disapprove an application for a tentative map, the local agency shall apply only those ordinances, policies, and standards in effect at the date the local agency has determined that the application is complete...." Here, the County deemed the Project application complete on August 10, 2005, and the DES ordinance was not "in effect" on that date. Thus, even if the Board were to adopt the proposed DES ordinance prior to the Board's consideration of the Project, the Subdivision Map Act will bar the County from applying the new ordinance to the Project.

E. The Board's reasons for amending CVMP Policy CV-1.27 to reduce the affordable housing requirement to 20 percent in 2016 remain valid today.

Several commenters have argued that the Board should not amend the 2010 General Plan to reduce the affordable housing requirement in CVMP Policy CV-1.27 from 50 percent to 20 percent, as requested by RCV. According to those commenters, doing so would allow RCV to back out of an "agreement" made with the County to allow development on the project site in exchange for 50 percent affordable housing. The commenters mischaracterize CVMP Policy CV-1.27, as well as RCV's request in amending that Policy.

Policy CV-1.27 created a 300-acre Special Treatment Area (STA) that encompasses the Project site. Within that area, up to 40 acres may be developed with residential housing (up to 10 dwelling units per acre for 40 acres) with a requirement that 50 percent of the units be affordable/workforce. Thus, once development on the 40-acre

project site occurs (even if at less than 10 units per acre) the remaining land in the STA cannot be developed. The parameters of the STA and its affordable housing component, including the allowable density and acreage, were tied to the original 281-unit proposed project, however. The Board rejected that proposal in 2016, and the Superior Court held that it is no longer a viable “project” and had to be purged from the original EIR for the proposal.

When the County moved forward with the 130-unit proposal, which represented a more than 50 percent reduction in proposed units, RCV asked for a corresponding reduction in the affordable housing requirement to 20 percent, because it was not financially feasible to develop the site with only 130 units and 50 percent affordable housing. The Board recognized that it would be unfair to hold the Project to the 50 percent affordable housing requirement, given the lengthy delay in the County’s review of the project—caused, in part, by the adoption of the 2010 general plan and subsequent lawsuit—and the intervening factors that reduced the proposal to 130 units. The same equitable and policy rationale supporting the Board’s 2016 decision to amend the Policy apply with equal force today, and the Board is free to make that decision again. Moreover, as discussed below, should the Board amend Policy CV-1.27 again, CVA and its privities would be barred from challenging it in new or continued litigation under the doctrine of res judicata.

1. Legal challenges to the amendment of Policy CV-1.27 to reduce the affordable housing requirement to 20 percent are barred by res judicata.

The Board exercised its discretion to amend Policy CV-1.27 and reduce the affordable housing requirement to 20 percent in 2016, and that decision was not challenged in CVA’s lawsuit. Under the doctrine of res judicata, discussed above, CVA and its privities cannot now challenge that decision in continued litigation or a new lawsuit. While the trial court found that the Board prejudicially abused its discretion and required the County to set aside all of the entitlements, including the EIR and General Plan amendment, res judicata applies to all the unchallenged aspects of the Board’s decision, where the material facts have not changed.

As discussed above, the only errors that the Court found with the Board’s decision to certify the EIR were that the Project Description chapter and Alternatives Analysis chapter needed to be revised so that the 130-unit proposal was described and analyzed as the proposed project. The County has revised those chapters in compliance with the peremptory writ in the SRDEIR. As discussed in the SRDEIR and above, res judicata

bars CVA and its privities (including, potentially, the general public) from challenging the unchanged portions of the EIR in new or continued litigation.

Similarly, of the Board's other approvals, the only abuse of discretion found by the trial court was the lack of substantial evidence supporting the Board's finding amending the requirements of the Inclusionary Housing ordinance. It is RCV's understanding that the County intends to comply with the peremptory writ and judgment in this respect as well. RCV therefore intends, in later correspondence transmitting the previously-referenced work by EPS, to provide the Board with additional substantial evidence to support Board action once again revising the inclusionary housing requirements as it applies to the Project.⁶ Like the unchallenged—and therefore upheld—components of the County's CEQA compliance, CVA and its privities are barred from challenging the other entitlements approved in 2016, if the Board approves them again, unless the material facts have changed. (See *Atwell v. City of Rohnert Park* (2018) 27 Cal.App.5th 692, 701.)

In the context of RCV's request to amend Policy CV-1.27, the provisions of the Policy have remained the same and none of the material facts have changed since the Board adopted the amendment in 2016. For example, as stated in the December 13, 2016, Staff Report to the Board, it remains the case that "[w]hen the Special Treatment Area was adopted, all of the[] criteria [in Policy CV-1.27] had been tailored to accommodate the 281-unit RCV Project, as it was then proposed." Similarly, while the "[t]otal area of the STA is about 300 acres ... application is limited to a maximum of 40 acres. This 40-acre limit was based on the housing development footprint in the original 281-unit RCV Project." Further, just as the Board found in 2016, the imposition of the 190-unit cap on residential development in the 2013 CVMP led to a "significant reduction in residences, from 281 to 130." These facts justified the Board's decision to revise the affordable housing requirement to 20 percent in 2016 and have not changed. Moreover, nothing in what the commenters have stated in their letters and emails changes the material facts here. Thus, *res judicata* bars CVA and its privities from challenging the amendment to Policy CV-1.27, should the Board adopt it again.

⁶ As with the County's compliance with the trial court's CEQA ruling, RCV is free to both appeal the trial court's ruling and to participate in the County's undertaking to comply with the peremptory writ and judgment.

F. RCV Intends to Have the Cal American Water Company Provide Water Service to the Project Site.

RCV has determined that, in light of recent changes to state law (Senate Bill 1263, Stats. 2016, ch. 843) and current policies of the State Water Resources Control Board, water service for the Project should be provided by a reliable existing public system subject to regulation by the California Public Utility Commission (CPUC). RCV therefore has been working with the California-American Water Company (Cal Am) to make Cal Am the water provider for the Project. A general description of how this would occur, and evidence of Cal Am's willingness to serve the Project, is provided as Exhibit A to this comment letter (an April 25, 2018, Letter to Alan Williams from Eric Sabolsice, Cal Am Director of Operations). Cal-Am currently has a potable water supply well located on the golf course property east of the Project site. (SRDEIR, p. 3.10-6.)

The SRDEIR currently addresses water supply issues in both Chapter 2 (Project Description) and in Chapter 3.10 (Public Services, Utilities, and Recreation). On page 2-24, the Project Description chapter states that "[w]ater use for domestic and municipal purposes would be diverted from an existing well or rehabilitated well(s) located onsite. A pipeline from the existing or new well to the nearby Cal-Am water distribution system would be constructed. The water use proposed under this alternative would require approval from the State Water Resources Control Board and Monterey Peninsula Water Management District."

Chapter 3.10 provides more detail. On page 3.10-29, the text states that "[t]he water source for the Project would be the on-site wells using water rights held by the property, ... *or a connection to Cal-Am facilitated by dedication of an appropriate amount of the Project Applicant's water right to Cal-Am.*" (Italics added.) On page 3.10-33, the SRDEIR explains that "[w]ater for the new homes would be supplied either through the Cal-Am distribution system by assigning a portion of water rights associated with the project property to Cal-Am for delivery back to the development, *or through the creation of independent community services (private or public), contract or dedication to use the existing wells on the project property to pump, treat, and purvey the amount of water necessary for the Project. Reduction in water use would be documented through the meters on the wells which are already in place as required by ordinance with [the Monterey Peninsula Water Management District].*" (Italics added.)

Through this comment letter, RCV is informing the County that it intends to pursue the Cal-Am option. RCV therefore asks that the text quoted above be modified in the Second Final EIR to reflect this refinement in RCV's approach. This refined approach represents an environmentally benign or neutral change from what was assumed in the 2016 Revised Draft EIR for the Project and in the current text of the

SRDEIR. This clarification to the Project thus does not trigger recirculation of the SRDEIR, as the change does not create any new significant environmental effects or any substantial increase in the severity of a previously identified significant effect. (See CEQA Guidelines, § 15088.5, subds. (a)(1), (a)(2).)

As noted above, the SRDEIR currently addresses a scenario in which RCV would add a new treatment facility so that the water from his existing well can be made potable. The construction of such a facility, using water from the existing well, represented a worst-case scenario from a CEQA standpoint, provided that any well drilled on site uses no more water than is assumed in the SRDEIR. As is explained on pages ES-9 and ES-10 and in Chapter 3.10 (see pages 3.10-11 through 3.10-14, and 3.10.28 through 3.10-33), RCV's water rights have been confirmed, and RCV intends to transfer 60 acre-feet (AF) to Cal Am to be used for municipal purposes and to dedicate 50 AF for instream uses. This instream dedication creates a hydrological benefit compared with baseline conditions. (SRDEIR, p. 3.10-33.) The current well site can be seen on various graphics in the alternatives chapter. (See pages 5-16, 5-20, 5-26, 5-31, and 5-35.) Using the graphic configuration for Alternative 5 on page 5-31, one can see that the current well site is located just north of the bridge over the Carmel River in the lower part of the graphic. An alternative well site is shown just to the west of the upper part of Parcel 8.

Cal Am could serve the Project from its existing well on the golf course property near the Project site. But even if Cal Am were to drill a new well on Parcel 8 as shown on the above-referenced graphics, no new or worsened significant environmental effects would occur. Importantly, the SRDEIR already assumes surface disturbances for the entire Project site. Because well drilling generally has minimal surface impacts, any impacts due to the drilling of a new well on Parcel 8 would be within the level of surface impact already assumed in the SRDEIR. And hydrological impacts would not increase at all, as RCV remains committed to transferring no more than 60 AF to Cal Am and to dedicating 50 AF for instream uses.

In short, RCV believes that this EIR "covers" the drilling of a new onsite well by the Project or Cal Am (should one be necessary), as long as overall pumping does not increase and the instream dedication would still occur (which will not be the case). Under CEQA, normally the foremost concern associated with drilling a new well would be the potential hydrological (and perhaps related instream biological) effects that might occur from increased demands on groundwater supplies. Here, however, no such effects will occur due to RCV's commitments to a limited water transfer and a new dedicated instream supply.

Even so, and despite the absence of any new or worsened significant surface or hydrological impacts, RCV nevertheless believes that the Second Final EIR should reflect

Carl Holm, Director
Monterey County Resource Management Agency
August 10, 2020
Page 17

RCV's refined approach, so that there can be no doubt regarding RCV's intentions with respect to water supply.

G. Conclusion

RCV thanks the County for providing this opportunity to comment and will continue to work with the County in its efforts to comply with the peremptory writ. As discussed above, RCV believes that the SRDEIR complies with the trial court's ruling and that the Board should approve Alternative 5 as a feasible alternative to the 130-unit proposal, which lessens environmental impacts but feasibly attains the project objectives. RCV reiterates its commitment to developing a Project that is affordable to working- and middle-class families and believes Alternative 5 is the best option for doing that. Additionally, the DES ordinance, even if adopted prior to the Board's reconsideration of the Project, would not apply because it is barred by the Subdivision Map Act. Lastly, the equitable and policy considerations that supported the Board's decision to amend CVMP Policy CV-1.27 in 2016 have not changed. Should the Board amend the Policy and reduce the affordable housing requirement to 20 percent, CVA and its privities will be barred from challenging it in either new or continued litigation.

Very truly yours,

A handwritten signature in dark ink, appearing to read "J. Moose", is written over a light blue horizontal line.

James G. Moose

Cc: Board of Supervisors
Alan Williams

Enclosure

EXHIBIT A



California American Water – Monterey
511 Forest Lodge Rd, Suite 100
Pacific Grove, CA 93950
amwater.com

April 25, 2018

Mr. R. Alan Williams
Rancho Canada Venture, LLC
P. O. Box 450
Carmel, California 93921

Re: Cal-Am Water Service to Rancho Canada Village Subdivision

Dear Mr. Williams:

This letter responds to your request for water service to be provided to the Rancho Canada Subdivision 130-unit Alternative project (the "Project"), and describes the requirements and processes to establish such service. This letter also serves as notice that the Project site is located entirely within the California-American Water Company ("Cal-Am") service area, a public utility operating under the jurisdiction of the California Public Utilities Commission ("CPUC").

In accordance with the State Water Resources Control Board's ("SWRCB") March 30, 2018 letter confirming that wheeling the Project property's riparian water through the Cal-Am water system to serve the Project does not violate Condition 2 of SWRCB Order 2009-0060, Cal-Am will provide water service to the Project pursuant to and conditioned upon the terms and conditions of a wheeling agreement to be developed by Cal-Am and Rancho Canada Venture, LLC, the Project developer; the rules, regulations, and tariffs of the CPUC; and all applicable federal, state and local laws, regulations, rules, ordinances and restrictions, including those of the County of Monterey, the Monterey Peninsula Water Management District ("MPWMD"), and the SWRCB.

Cal-Am's water mains typically are located in the road or open space adjacent to each service address, and any necessary new mains must be constructed by the subdivider before initiation of water service to the individual service addresses. Each owner of a unit in the Project will be responsible for constructing all necessary improvements to extend Cal-Am's water service to his or her unit, and for installing all necessary appurtenances required for proper water service.

Any person wishing to initiate water service must comply with all Cal-Am Tariff Schedules that are on file with the CPUC, as they exist now and as they may be amended from time to time. Among other things, the Tariff Schedules require that the person seeking water service must submit an application to Cal-Am, obtain all required permits (which may include a water permit from

MPWMD), and pay all required fees as a condition of initiation of service. Cal-Am's Tariff Schedules are available upon request.

If you have any further questions, please let me know.

Sincerely,

A handwritten signature in black ink, appearing to read 'Eric Sabolsice', with a stylized, flowing script.

Eric Sabolsice
Director/Operations

EXHIBIT B



State Water Resources Control Board

March 30, 2018

Mr. Alan Lilly
Bartkiewicz, Kronick & Shanahan
1011 22nd Street
Sacramento, CA 95816-4907
Abl@bkslawfirm.com

Dear Mr. Lilly:

PROPOSED DISTRIBUTION OF DRINKING WATER TO 130 HOME DEVELOPMENT UNDER RANCHO CANADA RIPARIAN WATER RIGHT CLAIM

Thank you for bringing the proposed Rancho Canada land conversion and redevelopment proposal to the attention of the State Water Resources Control Board (State Water Board). We understand the proposal is part of a large-scale effort to reduce water use and restore natural habitat along the lower Carmel River, and includes a transfer of land (formerly two golf courses) from the Trust for Public Land to the Monterey Peninsula Regional Park District, as well as approximately \$7.5 million in grant funding for habitat restoration and wildlife improvement efforts from the California Natural Resources Agency, Wildlife Conservation Board, and California Department of Fish and Wildlife.

At question is whether the wheeling of water from the Eastwood/Canada well¹ into the California-American Water Company (Cal-Am) drinking water treatment and distribution system would violate Condition 2 of the State Water Board's active Cease and Desist Order (CDO) on Cal-Am's illegal diversions from the Carmel River, State Water Board Order WR 2009-0060.

Condition 2 states, in pertinent part:

Cal-Am shall not divert water from the Carmel River for new service connections or for any increased use of water at existing service addresses resulting from a change in zoning or use.

Division of Water Rights (Division) staff have reviewed the proposal to wheel water from Rancho Canada's claimed riparian right through Cal-Am's treatment and distribution system to a proposed 130-unit residential development within the footprint of the former Rancho Canada golf courses. The proposal calls for water to be diverted through the Eastwood/Canada well (or a replacement for that well) into Cal-Am's system, where that water will be treated to appropriate Title 22 drinking water standards and delivered to the new housing units. The development and sale of the units will be used to partially subsidize the land purchase,

¹ With emergency back-up at either the Rancho Canada Well #3 or at Cal-Am's diversion facilities on the Carmel River

conversion of the former golf courses to natural habitat, and other habitat improvements along the Carmel River.

Project proponents note that, while wheeling the water through Cal-Am's existing system is preferable, the property could construct its own water treatment and delivery system after securing the proper permits. Using the existing Cal-Am system would be more efficient and would further the state policy that favors obtaining service from larger water supply systems over creation of multiple small providers.

The conversion of most of the land from two riparian golf courses to natural habitat will result in a net environmental benefit to the lower Carmel River. The project calls for restoration of riparian habitat along the lower Carmel River, restoration of the natural flood plain, and flood mitigation improvements along the northern bank of the river. The project proponents note that the Rancho Canada property, has received on the order of 4 acre-feet per annum (afa) from Cal-Am, while relying on its own, separate irrigation wells for golf course irrigation. Project proponents note that the irrigation wells averaged 381 afa from 2005 to 2015. Under agreements splitting the property and setting forth the overall development and restoration plans, the property for which the housing development is proposed claims a water right of 180 afa. When completed, the housing development anticipates using on the order of 115 to 130 afa after build-out, with consumptive use savings of between 7 and 75 afa, the largest savings being in dry years.

Under a forbearance agreement with Cal-Am, the Rancho Canada properties have ceased using the riparian water claim for the past three years, adding approximately 300 afa of water to the Carmel River that would otherwise have been consumptively used. There are no pumps downstream of the proposed point of diversion, so additions to instream flows have the potential to directly benefit salmon migration and habitat in the lower river and within the Carmel River estuary without risk of subsequent diversion and consumptive use. Project proponents indicated that efforts are underway to extend the forbearance agreement for between 100 and 200 afa until 2021, when the State Water Board's CDO requires Cal-Am to completely cease their illegal diversions. It is anticipated that the majority of the riparian water right claim associated with the trust land, as well as approximately 1/3 of the pro-rata share from the development will be permanently dedicated to instream flows. State Water Board Order WR 2016-0016, which amended the compliance schedule for the Cal-Am CDO, recognized the relationship between adding water to the Carmel River and reducing the impact of unlawful diversion by allowing up to 50% of instream-flow agreements to count as "credits" against exceedances of diversion levels set in the compliance schedule.

The Division has previously noted the tension in interpreting the CDO's Condition 2. (See Division of Water Rights Decision 2015-0001-DWR.) While the text of the ordering provision itself applies only to Cal-Am's diversions from the Carmel River, the rationale for the CDO and other provisions make clear that new water sources distributed in the Cal-Am system are also subject to limitation based on overcoming prior dependence on unlawful diversions. Previously, the Division has interpreted this tension to find that Condition 2 does not bar Cal-Am from wheeling water for a project that (1) contributed some supply to reduction of unlawful diversions from the Carmel River, and (2) provided net environmental benefits to the Carmel River and its fishery that mitigate the environmental harm caused by unlawful diversion. Here, the addition of significant instream flows of the overall Rancho Canada development project are two orders of magnitude above the amounts of Cal-Am delivery attributable to unlawful diversions. Additionally, focusing only on the development parcels, the reduction in consumptive use also offsets the unlawful diversion amounts received for the entire property.

Mr. Alan Lilly

- 3 -

March 30, 2018

Given the restoration activities, forbearance periods, reduction in consumptive use, flood protection, and other improvements to the Carmel River and estuary, the Division finds that wheeling the riparian water through the Cal-AM water system, in this instance, it does not violate Condition 2 of the Cal-AM CDO.

If you have any additional questions concerning this letter, please feel free to contact me at Jule.Rizzardo@waterboards.ca.gov, or at (916)-341-5368.

Sincerely,

ORIGINAL SIGNED BY:

Jule Rizzardo
Assistant Deputy Director
Permitting and Enforcement Branch
Division of Water Rights

EXHIBIT C



California American Water – Monterey
511 Forest Lodge Rd, Suite 100
Pacific Grove, CA 93950
amwater.com

April 25, 2018

Mr. R. Alan Williams
Rancho Canada Venture, LLC
P. O. Box 450
Carmel, California 93921

Re: Cal-Am Water Service to Rancho Canada Village Subdivision

Dear Mr. Williams:

This letter responds to your request for water service to be provided to the Rancho Canada Subdivision 130-unit Alternative project (the "Project"), and describes the requirements and processes to establish such service. This letter also serves as notice that the Project site is located entirely within the California-American Water Company ("Cal-Am") service area, a public utility operating under the jurisdiction of the California Public Utilities Commission ("CPUC").

In accordance with the State Water Resources Control Board's ("SWRCB") March 30, 2018 letter confirming that wheeling the Project property's riparian water through the Cal-Am water system to serve the Project does not violate Condition 2 of SWRCB Order 2009-0060, Cal-Am will provide water service to the Project pursuant to and conditioned upon the terms and conditions of a wheeling agreement to be developed by Cal-Am and Rancho Canada Venture, LLC, the Project developer; the rules, regulations, and tariffs of the CPUC; and all applicable federal, state and local laws, regulations, rules, ordinances and restrictions, including those of the County of Monterey, the Monterey Peninsula Water Management District ("MPWMD"), and the SWRCB.

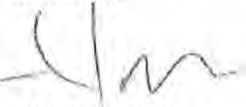
Cal-Am's water mains typically are located in the road or open space adjacent to each service address, and any necessary new mains must be constructed by the subdivider before initiation of water service to the individual service addresses. Each owner of a unit in the Project will be responsible for constructing all necessary improvements to extend Cal-Am's water service to his or her unit, and for installing all necessary appurtenances required for proper water service.

Any person wishing to initiate water service must comply with all Cal-Am Tariff Schedules that are on file with the CPUC, as they exist now and as they may be amended from time to time. Among other things, the Tariff Schedules require that the person seeking water service must submit an application to Cal-Am, obtain all required permits (which may include a water permit from

MPWMD), and pay all required fees as a condition of initiation of service. Cal-Am's Tariff Schedules are available upon request.

If you have any further questions, please let me know.

Sincerely,

A handwritten signature in black ink, appearing to read 'Eric Saholsice', written over the printed name.

Eric Saholsice
Director/Operations

Alan Williams

From: Michael Waxer A.I.A.
Sent: Wednesday, July 29, 2020 5:03 PM
To: Alan Williams
Cc: Michael Waxer A.I.A.; kiwisallie1@aol.com
Subject: FW: Rancho Canada Village Subdivision
Attachments: RCV CAW Will Serve Ltr 2018.4.23.pdf; ATT00001.htm

Here is the Calam letter for RCV.
-- Michael

From: Michael Waxer A.I.A.
Sent: Wednesday, April 25, 2018 12:34 PM
To: Jacqueline Zischke; Alan Williams
Subject: Fwd: Rancho Canada Village Subdivision

Sent from my iPhone

Begin forwarded message:

From: Eric Sabolsice <Eric.Sabolsice@amwater.com>
Date: April 25, 2018 at 9:56:43 AM PDT
To: Alan Williams <rawilliams@carmeldevelopment.com>
Cc: Michael Waxer A.I.A. <michael@carmeldevelopment.com>, Kathryn Horning <Kathryn.Horning@amwater.com>, Rose Little <Rose.Little@amwater.com>, Garry M Hofer <Garry.Hofer@amwater.com>, Richard C Svindland <Richard.Svindland@amwater.com>
Subject: Rancho Canada Village Subdivision

Alan,

Glad to finally get this finalized and signed – see attached. Cal Am is available to support you in any discussion with Monterey County regarding water service to RCV.
Let me know if there is anything further that we can assist with. - I'm looking forward to drilling that new well.

Thanks,
Eric

This email and any files transmitted with it are confidential and intended solely for the use of the individual or entity to whom they are addressed. If you have received this email in error, please notify the sender. Please note that any views or opinions presented in this email are solely those of the author and do not necessarily represent those of American Water Works Company Inc. or its affiliates. The recipient should check this email and any attachments for the presence of viruses. American Water accepts no liability for any damages caused by any virus transmitted by this email. American Water Works Company Inc., 1025 Laurel Oak Road, Voorhees, NJ 08043 www.amwater.com

EXHIBIT D

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

In the matter of the application of:

RANCHO CANADA VENTURES LLC (PLN040061-AMD1)

RESOLUTION NO. 21-307

Resolution by the Monterey County Board of
Supervisors to:

- 1) Certify the Rancho Cañada Village
Environmental Impact Report;
- 2) Adopt CEQA Findings for Project approval;
- 3) Adopt a Statement of Overriding
Considerations.

[Carmel Valley, located on the south side of
Carmel Valley Road approximately 0.6 miles
east of Highway 1

APNs: 015-162-009-000, 015-162-017-000,
015-162-025-000, 015-162-026-000, 015-162-
040-000, 015-162-048-000, 015-162-049-000;
and portions of 015-162-043-000 and 015-162-
051-000.]

The Rancho Cañada Village application (PLN040061-AMD1), related proposed entitlements for the project, and the Second Final Environmental Impact Report prepared for the application came on for public hearing before the Monterey County Board of Supervisors on July 27, 2021. Having considered all the written and documentary evidence, the administrative record, the staff report, oral testimony, and other evidence presented, the Board finds and decides as follows:

FINDINGS

- 1. FINDING:** **PROJECT DESCRIPTION**– A Second Final Environmental Impact Report (SFEIR) was prepared for the Rancho Cañada Village (RCV) Project in compliance with the California Environmental Quality Act (CEQA).

- EVIDENCE:** a) The Project includes a General Plan amendment, ordinance rezoning the property, and Combined Development Permit for a residential subdivision that would allow for 145 residential units, 40 of which would be affordable (hereafter the “Project” or “the 2021 Proposal”). The Combined Development Permit includes a Vesting Tentative Map (VTM) to subdivide 77 acres into 106 residential lots to allow for 93 single family homes and 12 townhouse lots on approximately 25 acres, and 40 affordable rental units on a proposed 5 acre parcel and entitlements to develop the lots. Of the 106 residential lots to be created by the subdivision, 105 lots are for market rate single family

dwellings and townhouse units, and one lot is the proposed 5-acre parcel where the affordable units would be located. The proposed project is the Increased Unit, Greater Affordability Alternative (Alternative 6b) in the Second Final Environmental Impact Report for the Rancho Canada Environmental Impact Report (SFEIR), refined to specify 40 affordable units at the following distribution of affordability: twenty-eight units of moderate income housing, six units of Workforce I and six units of Workforce II housing. The Project occupies an approximately 77-acre area of the former West Course of the Rancho Canada Golf Club ("Project"). To develop the Project, the applicant, Rancho Canada Ventures LLC, will require approval of a Combined Development Permit, which includes the Vesting Tentative Map and use permits and administrative permits for development in the Carmel River Floodplain, tree removal (up to 37 native trees would be removed), Site Plan Approvals of the new houses, community park and common areas, grading (no imported fill material is proposed), and infrastructure installation. Residential lots and roadways are to make up approximately 28.5 acres of the site; approximately 48 acres of the site are proposed as open space in the form of habitat conservation, a park and common areas. The Vesting Tentative Map includes these 106 residential lots and fifteen parcels for roadway, open space and common area purposes serving the residential subdivision.

The entire Project site is designated Public/Quasi-Public (P/Q-P) by the *Monterey County 2010 General Plan*, with a Special Treatment Area designation allowing for residential development pursuant to Carmel Valley Master Plan (CVMP) Policy CV-1.27. The subject site is in the P/Q-P Zoning District, consistent with its General Plan land use designation and the site's long-time past use as a public golf course. Approval of the Project requires a General Plan Amendment (amending CVMP Policy CV-1.27 addressing affordable housing unit requirements) and rezoning for consistency of the proposed densities and uses of the Project parcels with the General Plan and zoning. On December 13, 2016, the Board of Supervisors certified a Final Environmental Impact Report, approved a General Plan amendment, adopted Ordinance No. 5281 to rezone the former site of the Rancho Canada West Golf Course, and approved a Combined Development Permit for the Rancho Canada Village subdivision, including a Vesting Tentative Map for 130 units (Planning File PLN040061) (the 2016 Approvals). Litigation challenging the 2016 certification of the EIR was filed, and on May 19, 2021, the California Court of Appeal upheld the County's certification of the EIR. When the Court of Appeal decision becomes final as expected, the General Plan Amendment adopted in 2016 by the Board of Supervisors will go into effect, and no further amendment of the General Plan would be needed for the Project to be consistent with the General Plan; however, because the Monterey County Superior Court has not yet entered judgment pursuant to the Court of Appeal decision, the Board of Supervisors is also considering adoption of the General Plan

amendment again, concurrently with the action herewith. The Board of Supervisors is also concurrently considering a zoning ordinance to rezone the Project site; if the zoning ordinance is adopted, the zoning will be consistent with the Special Treatment designation in the General Plan, and the Project will be consistent with zoning. The Board of Supervisors is also concurrently herewith considering a separate resolution to approve the Combined Development Permit.

- b) The Project area is located on the south side of Carmel Valley Road, approximately 0.6 miles east of State Highway 1, on the former West Course of the Rancho Canada Golf Club, Carmel Valley. The Project site consists of or includes portions of Assessor Parcel Numbers (APNs): 015-162-009-000, 015-162-017-000, 015-162-025-000, 015-162-026-000, 015-162-040-000, 015-162-048-000, 015-162-049-000, 015-162-043-000 and 015-162-051-000. The site is within the Carmel Valley Master Plan area. The owner of the real property on which the proposed development is located is Lombardo Land Group 1. The applicant for the development is Rancho Canada Venture LLC ("RCV"). The proposed Vesting Tentative Map proposes to adjust the common lot boundary between the proposed development site and park land owned by the Monterey Peninsula Regional Park District (MPRPD) to the east of the development site. Accordingly, MPRPD is an applicant only as relates to the reconfiguration of the boundary line.
- c) The Planning Commission held a public hearing on the Project on May 5, 2021 and June 9, 2021. The Planning Commission unanimously recommended certification of the SFEIR, adoption of the General Plan amendment and zoning ordinance, and approval of the 145-unit refinement of the Increased Unit, Greater Affordability Alternative (Alternative 6b) with 40 units of affordable housing (vote of 9 to 0, 1 absent) (Planning Commission Resolution Nos. 21-023 and 21-024). On July 27, 2021, the Board of Supervisors held a duly noticed public hearing on the FEIR, the General Plan amendment, the zoning ordinance, and the Project entitlements and Mitigation Monitoring Program. (See Finding 18.)
- d) The application, project plans, and related support materials submitted by the project applicant to Monterey County HCD-Planning for the proposed development found in Project Files PLN040061 and PLN040061-AMD1; files of the Clerk of the Board of Supervisors related to the Board's public hearing on the Project.

2. **FINDING:** **CEQA-CERTIFICATION OF THE SECOND FINAL EIR** – The Board of Supervisors hereby certifies that a) the Second Final EIR (SFEIR) has been completed in compliance with CEQA, b) the SFEIR was presented to the Board of Supervisors of the County of Monterey and the Board of Supervisors reviewed and considered the information

contained in the SFEIR prior to approving the project, c) the SFEIR reflects the County of Monterey's independent judgment and analysis.

- EVIDENCE:**
- a) CEQA requires preparation of an environmental impact report if there is substantial evidence in light of the whole record that the Project may have a significant effect on the environment.
 - b) On December 13, 2016, the Board of Supervisors certified an EIR for the Rancho Canada Village subdivision, approved the 130-unit project alternative, adopted the GP/CVMP amendment to CV 1.27 which reduced the affordable housing requirement, and adopted a rezoning ordinance to rezone the property corresponding to the Vesting Tentative Map for the 130-unit project, with such rezoning to be operative if and when the final map for that project was approved and recorded.
 - c) The Carmel Valley Association (CVA) brought a lawsuit challenging the Board's 2016 certification of the EIR and project approval. (*Carmel Valley Association v. County of Monterey* (Monterey Superior Court Case No. 17CV000131).) The trial court held that the EIR's project description was legally inadequate because the EIR had characterized the 281-unit project as the "project" but the 130-unit project was the "true project." As such, the court held that the EIR did not contain a reasonable range of alternatives to the 130-unit project. RCV appealed from the trial court's CEQA determination and the trial court's determination about County's "unusual circumstances" finding for the inclusionary housing contribution, while the County appealed and CVA cross-appealed on issues related to County's implementation of two General Plan policies. (Court of Appeal Case No. H046187.)

At the same time as appealing the trial court decision, the applicant requested that the County prepare a revised EIR to address the specific legal inadequacies identified by the superior court.

On May 19, 2021, the Court of Appeal issued its decision, ruling in the County's favor on all issues and reversing the superior court decision. County expects the Court of Appeal decision to become final and the trial court to issue a judgment in accordance with the Court of Appeal decision, at which point the applicant could proceed under the 2016 approvals. Because the applicant could elect to proceed with development under the 2016 approvals, the applicant has requested that the County continue to consider certification of the SFEIR and approval of the Project but requests that if the County approves the Project and related entitlements, such approval would be conditional on the occurrence of two conditions subsequent: (a) the passage of 95 days after the posting by the Monterey County Clerk of a Notice of Determination (NOD) for the approval of the entitlements for the 2021 Proposal without the filing of any litigation challenging those County approvals under any law, including without limitation, either CEQA or Planning and Zoning Law (Gov. Code, § 65000 et

seq.); and (b) written notification from the applicant to the County Housing and Community Development Director, within 100 days of posting of the NOD, of RCV's intention to proceed with the approvals of the 2021 Proposal.

- d) The Second Revised Draft EIR (SRDEIR) for the Rancho Cañada Village Project application (HCD-Planning File No. PLN040061-AMD1) was prepared in accordance with CEQA. The SRDEIR was circulated for public review from June 22 through August 11, 2020 (SCH#: 2006081150). The project description in the SRDEIR is the 130-unit project, which is the same as the 130-unit "alternative" in the 2016 EIR with minor modifications. The 145-unit Project which is the subject of this resolution and the Project approval being considered concurrently by separate resolution is Alternative 6b from the Second Final EIR (SFEIR), refined to specify that the project includes a total of 145 units, of which forty are affordable, with the affordable units consisting of 28 moderate income units, 6 Workforce I units, and 6 Workforce II units.
- e) Issues that were analyzed in the SFEIR include Aesthetics; Air Quality; Biological Resources; Cultural Resources; Geology, Seismicity, and Soils; Greenhouse Gas Emissions and Climate Change; Hazards and Hazardous Materials; Hydrology and Water Quality; Land Use; Noise; Population and Housing; Public Services, Utilities, and Recreation; and Transportation and Traffic. The EIR identified potential impacts that are either less than significant or can be mitigated to less than significant levels associated with Aesthetics; Air Quality; Biological Resources; Cultural Resources; Geology, Seismicity, and Soils; Greenhouse Gas Emissions and Climate Change; Hazards and Hazardous Materials; Hydrology and Water Quality; Land Use; Noise; Population and Housing; Public Services, Utilities, and Recreation; and Transportation and Traffic. The SFEIR also identified unavoidable significant impacts associated with Land Use and Transportation and Traffic that cannot be mitigated to less than significant levels. As described in these findings and in the SFEIR, the mitigation measures avoid or substantially lessen the significant environmental effects to less than significant levels (see Finding No. 6), or, for impacts identified as significant and unavoidable, all feasible mitigation measures have been incorporated, but even with such mitigation, the impacts remain significant.
- f) Public review of the SRDEIR generated comments from the public and public agencies. The County prepared the Second Final EIR (SFEIR), in which County responded to environmental issues raised in the comments and made clarifications and corrections to text of the SRDEIR. None of the revisions require recirculation of the SRDEIR. (See Finding 8.) The County made the SFEIR available to the public and the agencies who commented on the SRDEIR on April 19, 2021. An errata memo from the County Housing and Community Development Department (HCD) dated July 15, 2021 was also

distributed to the public and the agencies who commented on the SRDEIR. Together, the SRDEIR, the revisions to the SRDEIR, the comments of persons and organizations on the SRDEIR, the April 19, 2021 SFEIR containing responses to the comments, and the July 15, 2021 errata memo from HCD constitute the SFEIR on the Project.

- g) Tribal consultation under Assembly Bill 52 (AB 52) was not required for this Project because the Notice of Preparation (NOP) for this project was issued on August 30, 2006. The requirement for tribal consultation pursuant to AB 52 is for projects that had an NOP issued on or after July 1, 2015. However, consultation offers were made for the project to California American Native Tribes on July 16, 2008 pursuant to state law requiring tribal consultation for proposed General Plan amendments.
- h) All project changes required to avoid significant effects on the environment have been incorporated into the Project and/or are made conditions of approval. A Condition Compliance and Mitigation Monitoring and Reporting Plan (MMRP) has been prepared in accordance with Monterey County regulations and is designed to ensure compliance during Project implementation. Concurrent herewith, the Board of Supervisors is considering a resolution for approval of the Project, which would include adoption of the MMRP and would require the owner/ applicant to enter an "Agreement to Implement a Mitigation Monitoring and/or Reporting Plan" as a condition of Project approval.
- i) Pursuant to CEQA Guidelines Section 15088(b), upon finalizing the SFEIR and at least 10 days prior to the Board of Supervisors' certification of the SFEIR, the County notified those public agencies that submitted comments on the SRDEIR that a SFEIR is available for review and provides the proposed responses to the public agency comments. Staff did so by email on April 23, 2021 and by mail to those without email contact addresses on April 26, 2021. An errata memo was distributed on July 15, 2021.
- j) In response to such notification and in result of the continued dialogue with the applicant about conditions of approval recommended by the Planning Commission at the June 9th hearing (Planning Commission Resolution No. 21-023), a modification was made to a mitigation measure for the project. Subsequent to the Planning Commission hearings, HCD received letters from Monterey Peninsula Water Management District (June 11 and 30, 2021) which requested that references to the District be removed from BIO-18. The only modifications to mitigation measures are included in the evidence of Finding 8, are shown in the FEIR Errata Memorandum distributed on July 15, 2021, and pertain only to mitigation measure BIO-18.
- k) The SFEIR reflects the County's independent judgment and analysis. Evidence that has been received and considered includes the

application, technical studies/reports, the Planning Commission recommendations, the staff reports, information and testimony presented during public hearings, the SRDEIR and SFEIR, and the administrative record as a whole.

- l) The County of Monterey, including Monterey County HCD-Planning, located at 1441 Schilling Place South, 2nd Floor, Salinas, California, 93901 (see HCD-Planning No. PLN040061-AMD1), as well as the Clerk of the Board of Supervisors, located at 168 West Alisal Street, First floor, Salinas California, 93901 (files related to the Board of Supervisors' public hearing on the Project), is the custodian of documents and other materials that constitute the record of proceedings upon which the decision to certify the SFEIR is based.

3. **FINDING:**

POTENTIALLY SIGNIFICANT ENVIRONMENTAL IMPACTS IDENTIFIED IN THE SFEIR THAT ARE REDUCED TO A LEVEL OF "LESS THAN SIGNIFICANT" BY THE MITIGATION MEASURES IDENTIFIED IN THE SFEIR TO BE ADOPTED FOR THE PROJECT – The Project would result in significant and potentially significant impacts that will be mitigated to a less than significant level due to incorporation of mitigation measures from the SFEIR into the conditions of Project approval. By separate resolution considered concurrently herewith for Project approval, changes or alterations have been required in, or incorporated into, the Project which mitigate or avoid the significant effects on the environment as identified in the draft FEIR. The Project approval resolution incorporates all the mitigation measures, identified in the Rancho Cañada Village Project SFEIR, and makes them conditions of approval of the Project. All resource areas that could result in a potentially significant environmental impact can be mitigated through the measures cited in the SFEIR to a level of less than significant, with the exception of cumulative land use and transportation and traffic impacts which are significant and unavoidable impacts.

- EVIDENCE:**
- a) The SFEIR identified potentially significant impacts that require mitigation to Aesthetics; Air Quality; Biological Resources; Cultural Resources; Geology, Seismicity, and Soils; Greenhouse Gas Emissions and Climate Change; Hazards and Hazardous Materials; Hydrology and Water Quality; Land Use; Noise; Public Services, Utilities, and Recreation; and Transportation and Traffic, which could result from all components of the Project. These impacts will be mitigated to less than significant with incorporation of mitigation measures from the SFEIR into the conditions of Project approval.
 - b) Aesthetics. The Proposed Project would potentially have an adverse environmental effect on aesthetics but the impact is mitigated to a less than significant level with incorporation of mitigation measures into the conditions of Project approval.

IMPACT AES-2: Changes in Visual Quality Due to Changes in Views from Adjacent Land Uses Due to the Proposed Residential Use. Development within the new subdivision would be visible from a number of adjacent land uses including public roads and private residences to the north, a future public roadway and private residences to the west, and Carmel Middle School and the Community Church to the north and northeast. Mitigation Measure AES-1 from the SFEIR provides that the developer implement measures to reduce light and glare, and visual intrusion to surrounding land uses and other public viewpoints. The project mitigates visual intrusion by retaining mature trees and existing woody vegetation to the maximum extent feasible. Furthermore AES-1 requires that the developer plant a vegetative buffer with native tree/shrub/scrub cover with locally derived stock around the periphery of the project site: on the northern edge of the Rio Road extension, on the western edge of the project north of Rio Road, and the project boundary with Carmel Middle School. A Homeowner's Association or similar entity will be responsible for common landscaping areas outside of residential units shall ensure that all required planting shall be permanently maintained in good growing condition and, whenever necessary, replaced with new plant materials to ensure continued compliance. This mitigation measure also requires the use of non-reflective building materials to minimize glare and obtrusiveness.

IMPACT AES-4: Create a New Source of Light and Glare. The proposed project would introduce new sources of lighting that could adversely affect the existing visual resources in the area. County code requirements for lighting would require submittal of a lighting plan with the construction permit application to comply with County policies that require controlled lighting, that light sources not be observable from common public viewing areas, and lighting must be proposed in compliance with the California Energy Code, Title 24, Part 6 of the California Code of Regulations, which controls lighting design and operations for Lighting Zone 2. However, compliance with the County's lighting requirements would not reduce the potential for some glare associated with new buildings on sunny days. Therefore, this impact would be *potentially significant*. Implementation of Mitigation Measure AES-1 would reduce the impact to a *less-than-significant* level.

IMPACT AES-C1: While mitigation is required for the Project to reduce project-level impacts on visual resources to less-than-significant levels, development in the overall region could still result in a significant cumulative impact. However, the residential element of the Project would have a less-than-considerable contribution to this impact with Mitigation Measure AES-1, described above.

- c) Air Quality. The Proposed Project would potentially have an adverse effect on air quality, but the impact is mitigated to a less than

significant level with incorporation of mitigation measures into the conditions of Project approval.

IMPACT AIR-2: Result in a Long-Term Increase in ROG, NO_x, CO, and PM₁₀ Emissions from Vehicular Traffic and Area Sources. The Proposed Project would emit criteria air pollutants from construction activities in excess of air district standards. Mitigation Measure AIR-1 from the SFEIR requires that fireplaces are prohibited in the design of all residential units within the subdivision.

All other potential air quality impacts were analyzed in the SREIR and found to be less than significant.

- d) Biological Resources. The Proposed Project would potentially have an adverse effect on biological resources, but the impact is mitigated to a less than significant level with incorporation of mitigation measures into the conditions of Project approval.

IMPACT BIO-4: Loss of Riparian Forest and Woodland Habitat. Construction would remove riparian forest along Intermittent Drainages 1 and 2 in association with the extension of Rio Road to the east and west and in association with the installation of new storm drain lines to the Carmel River. Removed riparian trees would include 24 mature cottonwoods, 5 arroyo willows, and 2 western sycamores. In addition, riparian woodland downstream of the Rio Road west extension may be degraded due to the diversion of flows currently entering this drainage from a culvert upstream. Construction of the Proposed Project would involve routing these flows through a new storm drain line emptying through a culvert into the Carmel River. In the worst-case, the riparian understory could be changed but the overstory riparian vegetation would not. Four mitigation measures in the SFEIR reduce this impact to a *less-than-significant* level. They are:

Mitigation Measure BIO-1: Provide Funding Assurances and Reporting Concerning Restoration Progress and Success. This mitigation measure ensures that a restoration plan is fully implemented, monitored, funded, and that contingency planning would be realized. The Applicant or successor(s) in interest will provide funding assurances to the County to guarantee the completion of the proposed restoration prior to issuance of the first building permit for the site (to ensure completion of the restoration regardless of the completion of the residential development), provide annual monitoring of restoration progress to the County until the 10-year success criteria are met, and provide contingency funding guarantees.

Mitigation Measure BIO-2: Restore Riparian Forest/Woodland Concurrent with Impact to Compensate for the Permanent Loss of Riparian Forest Habitat. The Applicant or successor(s) in interest will compensate for habitat loss by onsite restoration/creation of forested riparian habitat in accordance with the newly developed and approved

restoration plan for the Project. The restoration will be done on a minimum 3:1 ratio to compensate for the temporary reduction in habitat while the restored habitat vegetation grows to maturity.

Mitigation Measure BIO-3: Minimize Disturbance of Riparian Forest and Woodland. Riparian forest and woodland outside of the construction footprint will be protected from disturbance. Prior to construction, the applicant or successor(s) in interest will secure the services of a qualified botanist who will erect orange construction barrier fencing around riparian forest and woodland areas near the construction area to identify and protect these sensitive resources.

Mitigation Measure BIO-4: Conduct Mandatory Contractor/Worker Awareness Training for Construction Personnel. A qualified biologist will conduct mandatory contractor/worker awareness training for construction personnel. The awareness training will be provided to all construction personnel to brief them on the need to minimize impacts on riparian woodland. Documentation of this measure, such as a training attendance sheet signed by construction personnel, will be kept on file by the applicant to demonstrate to the County that the measure has been implemented. This measure is not required for construction on individual residential lots after vegetation clearance and initial grading.

IMPACT BIO-6: Loss of Wetlands and Other Waters of the United States and State of California. Construction of roads and houses associated with the Proposed Project would result in the loss of one California bulrush marsh and three ponds in the project area. The wetland and ponds are considered potential waters of the United States. In addition, construction activities and residential development could result in temporary and long-term increased inputs of fine sediment and toxic materials to the Carmel River, Intermittent Drainages 1 and 2, and the restored riparian woodland and created wetlands in the proposed habitat preserve. This impact would be *potentially significant*, but would be reduced to a *less-than-significant* level by implementation of Mitigation Measures BIO-1, BIO-2, BIO-4, described above, as well as Mitigation Measures HYD-1 through HYD-5, described under *Hydrology*, below. In addition, Mitigation Measure BIO-5, Restore or Create Wetland and Pond Habitat to Mitigate Permanent Loss of Waters of the United States and State, would require compensation for the loss of pond and wetland habitat through onsite and/or offsite creation of both pond and wetland habitat.

IMPACT BIO-7: Loss of Protected Trees. A total of 37 protected trees are anticipated to be removed by the Project.

Mitigation Measure BIO-6 from the SFEIR provides that, prior to the recordation of the Final Map, the applicant or successor in interest would identify the final number of native tree removal, the required

replacement planting pursuant to the Restoration Plan, and monitoring and remedial planting for five years.

Condition of Approval PD011 provides that, during construction, the applicant or successor(s) in interest will implement best management practices to protect trees including temporary protection barriers that protect tree canopy and important tree roots.

IMPACT BIO-8: Loss or Disturbance of California Red-Legged Frog and/or Foothill Yellow-Legged Frog Aquatic and Upland Habitat and Potential Loss of Adults, Larvae, or Eggs. The Proposed Project would result in the filling of the California bullrush wetland, which would result in potential for the loss of breeding habitat and the temporary loss of aquatic and upland habitat and potential substantial disturbance or mortality of California Red-legged Frog (CRLF) and Foothill Yellow-legged Frog (FYLF). This impact would be minimized and reduced to a less-than-significant level by implementation of Mitigation Measures BIO-2 through BIO-4, described above, as well as the following measures:

Mitigation Measure BIO-7 will require the Applicant or successor(s) in interest retain qualified biologists to conduct a formal site assessment of the Project site for CRLF and FYLF according to FWS' Revised Guidance on Site Assessments and Field Surveys for the California Red-legged Frog (August 2005). If CRLF and/or FYLF are found, the U.S. Fish and Wildlife Service (FWS) and/or CDFW otherwise determines that the site is CRLF and/or FYLF habitat, or it is assumed that CRLF and/or FYLF are present, Mitigation Measures BIO-8 through BIO-10 will be implemented. BIO-8 will require actions that would minimize mortality of CRLF and/or FYLF eggs, larvae, and adults. BIO-9 requires a pre-construction survey for CRLF and/or FYLF to avoid affecting frogs during construction. BIO-10 will require the applicant or successor(s) in interest or their contractor to retain the services of a qualified FWS and/or CDFW-approved biologist to monitor initial ground-disturbing construction activities within CRLF and/or FYLF upland habitat.

Mitigation Measure BIO-8 will restrict the filling of ponds/wetlands and initial ground-disturbing activities in CRLF and/or FYLF habitat to the dry season (May 1 to October 15).

Mitigation Measure BIO-9 requires a qualified biologist to conduct a preconstruction survey two weeks prior to the onset of work for CRLF and/or FYLF.

Mitigation Measure BIO-10 requires that a qualified biologist monitor initial ground-disturbing construction activities within CRLF and/or FYLF upland habitat.

Mitigation Measure BIO-11 requires that the Applicant or successor(s) in interest compensate for the permanent loss of suitable breeding habitat for CRLF and/or FYLF by creating or preserving suitable aquatic habitat within a FWS-approved conservation area (and preserving adjacent upland habitat). At the request of MPWMD, (June 30, 2021 letter) MPWMD was added as one of the entities to review and approve the management plan for the conservation area.

IMPACT BIO-9: Loss or Disturbance of Southwestern Pond Turtle Aquatic Habitat and Potential Loss or Disturbance of Southwestern Pond Turtles. Construction of the Proposed Project would result in the filling of the California bulrush wetland which provides potential aquatic habitat for southwestern pond turtle. If southwestern pond turtles are present in the wetland, filling of this area would result in the loss of aquatic habitat and the potential mortality of adult or juvenile turtles. Because the habitat preserve would be constructed adjacent to the Carmel River, the conversion of golf turf to natural habitat would replace and provide additional upland and nesting habitat along the river for turtles, which would compensate for the loss of upland habitat. However, the Project would result in loss of pond habitat, which is a *significant* impact. Mitigation Measure BIO-12 requires the Applicant or successor(s) in interest to retain a qualified wildlife biologist to conduct a preconstruction survey for southwestern pond turtles no more than 48 hours before the start of construction within suitable aquatic habitat (as discussed above) and upland habitat (along the Carmel River and Intermittent Drainages 1 and 2). This measure would reduce Impact BIO-9 to a *less-than-significant* level.

IMPACT BIO-11: Potential Loss or Disturbance of Tricolored Blackbirds and Their Breeding Habitat. Potential breeding habitat for tricolored blackbirds is present within the California bulrush wetland (0.3 acre) in the project site. Although the potential for tricolored blackbird to nest in these areas is low, if tricolored blackbirds were breeding in this area, filling of this wetland would result in the removal of breeding habitat and the potential loss of tricolored blackbird adults, young, or eggs. Mitigation Measure BIO-13 requires the Applicant or successor(s) in interest to conduct surveys for nesting tricolored blackbirds. If a tricolored blackbird nesting colony are found, Mitigation Measure BIO-14 requires the nesting habitat to be incorporated into the Restoration Plan (Mitigation Measure BIO-1). These mitigation measures would reduce Impact BIO-11 to a *less-than-significant* level.

IMPACT BIO-12: Potential Loss or Disturbance of Monterey Dusky-Footed Woodrat or Their Nests. Construction activities within riparian woodland and forest along the Carmel River and intermittent drainages could destroy Monterey dusky-footed woodrat middens (nests) and injure or kill individuals, and remove suitable habitat. Loss of individuals within the project area could diminish the local population and lower reproductive potential, which could result in a local decline of this subspecies. Mitigation Measure BIO-15 from the SFEIR provides that, prior to ground disturbing activities or vegetation removal, the Applicant or successor in interest would have the project biologist examine the impact area to locate dusky footed woodrat nests. Any such nests would be protected with a 25-foot buffer for avoidance during construction. Where it is not feasible to avoid a nest, the biologist would dismantle and relocate the nests by

hand as described in the mitigation measure. This measure would reduce Impact BIO-12 to a *less-than-significant* level.

IMPACT BIO-13: Potential Loss or Disturbance of Tree and Shrub Nesting Migratory Birds and Raptors. The Project could result in the loss or disturbance of Coyote brush scrub, Monterey pine stands, and riparian forest, which suitable nesting habitat for special-status birds including white-tailed kite, purple martin, and yellow warbler. Because the habitat preserve would be constructed adjacent to the Carmel River, the conversion of golf turf to natural habitat would replace shrubs and trees that would be lost during construction. Mitigation Measure BIO-2, discussed above, would reduce temporary impacts. Mitigation Measure BIO-16 would require construction contractors to remove trees and shrubs only during the nonbreeding season for migratory birds. The mitigation measure also provides that, if noise generation, ground disturbance, vegetation removal, or other construction activities commence during the bird nesting season, the Applicant /owner or successor(s) in interest would have their biologist conduct a pre-construction survey for nesting birds one week prior to disturbance activities. If nests are discovered, a plan for avoidance would be prepared to establish a temporary protective buffer area around each nest and the biologist would monitor periodically, as described in the mitigation measure. This mitigation measure also provides limits to disturbance of migratory birds and raptors prior to the breeding season. With this mitigation, Impact BIO-13 would be reduced to a *less-than-significant* level.

IMPACT BIO-14: Potential Loss or Disturbance of Pallid Bat and Non-Special-Status Bats Species. The Project may result in some permanent loss of suitable roosting habitat for bats if trees with suitable cavities are removed. Mitigation Measure BIO-17 from the SFEIR provides that, prior to vegetation removal, the Applicant or successor(s) in interest would have a bat biologist conduct pre-construction surveys for bats, and if any are found which use is documented, the trees will not be removed until the Applicant or successor(s) in interest coordinate with CDFW for guidance on measures to be taken. This measure would reduce Impact BIO-14 to a *less-than-significant* level.

IMPACT BIO-15: Temporary and Permanent Impact on Steelhead Trout and other Carmel River Fish. The Proposed Project could result in five different potential impacts on steelhead and other fish in the Carmel River: construction-related impacts, stormwater runoff from residential development, changes in habitat due to changes in water use levels, changes in habitat due to changes in stream morphology, and potential fish stranding during high-flow events.

Several mitigation measures will be implemented to avoid impacts to the Carmel River from potential erosion and sedimentation. They include HYD-1 through HYD-6, discussed under *Hydrology*, and

BIO-18. In order to avoid impacts to steelhead in the event that they risk stranding in high river flow events, Mitigation Measure BIO-18 will require the Applicant or successor(s) in interest to show evidence that NOAA Fisheries and CDFW find the new detention basins locations acceptable and for the applicant to rescue steelhead if they become trapped in the new site basin. The Applicant or successor(s) in interest will be responsible for arranging the inspection and rescue after any storm event that results in temporary filling from the Carmel River.

IMPACT BIO-16: Potential Adverse Impact on Wildlife Movement, Wildlife Corridors, and Nursery Sites. The Project is expected to potentially impede movement of special-status species (including CRLF and southwestern pond turtle), if they are present, from the Carmel River to the pond/wetland and adjacent areas on the CMS habitat area and this would be a significant impact. This impact is mitigated to less than significant by the implementation of Mitigation Measures BIO-1 through BIO-5, as listed above. This includes: funding assurances for restoration, restoration of oak woodland and riparian forest, minimization of disturbance of such forests, restoration or creation of wetlands and ponds, and mandatory contractor/worker awareness training.

IMPACT BIO-17: Potential Conflict with Local Policies/Ordinances. This impact is identified in the SFEIR in relation to the loss of riparian forest and woodland habitat. Mitigation Measure BIO-6 would reduce the impact to a level of less than significant.

IMPACT BIO-18: Potential Adverse Impact on Wildlife due to Increased Presence of Dogs and Cats Associated with Residential Development. Mitigation Measure BIO-19 from the SFEIR provides that, prior to issuance of occupancy, the Applicant or successor(s) in interest and/or the HOA/CSD/other entity would install signs throughout the habitat preserve that contain information restricting the potential impacts of dogs and cats. The measure gives specific wording for the signs.

IMPACT BIO-C1: Cumulative Loss of Biological Resources Including Habitats and Special Status Species. The cumulative impact of the development is mitigated by Mitigation Measures BIO-1 through BIO-19 to a level of less than considerable.

- e) Cultural Resources. The Proposed Project would potentially have an adverse effect on cultural resources, but the impact is mitigated to a less than significant level with incorporation of mitigation measures into the conditions of Project approval.

IMPACT CR-2: Ground Disturbing Activities, Such As Grading, Trenching, or Excavation. The Proposed Project has the potential to demolish, destroy, relocate or adversely affect the integrity of buried

cultural deposits during construction activities. Four mitigation measures were identified in the SFEIR that would reduce the potential impact to less than significant.

Mitigation Measure CR-1 provides that the Applicant to successor(s) in interest cause there to be a stop work ordered if cultural resources are inadvertently discovered. The onsite archaeologist would then contact the project planner and a qualified tribal cultural representative. Mitigation Measure CR-2 from the SFEIR provides that, prior to recordation of the Final Map or issuance of permits for subdivision improvements, the applicant shall submit a written agreement with a qualified archaeologist for the observation of all grading and ground disturbance. Mitigation Measure CR-3 requires a stop work order for the discovery of human remains. CR-4 requires a stop work order for the discovery of vertebrate remains (a body). Although these mitigation measures pre-date the AB-52 consultation, onsite monitors and County Planning will make every effort to involve tribal cultural representatives and follow their recommendations.

IMPACT CR-3: Erosion or Usage of the Project Area That Could Expose Buried Archaeological Resources Due to Long-Term Use of the Area. If archaeological resources are uncovered as a result of long-term use of the project area, Mitigation Measure CR-5 requires that the Applicant or successor(s) in interest consult with a qualified archaeologist to identify the resource, assess the potential significance of the discovery, and assess and mitigate the impacts as appropriate to the resources and level of impacts. This ensures that future discoveries of currently unknown resources will be mitigated.

IMPACT CR-C1: Mitigation Measures CR-1 through CR-5 will reduce the Project's contribution to any cumulative impacts on unknown cultural resources to a less than considerable level.

- f) Geology, Seismicity, and Soils. The proposed project would potentially have an adverse effect on geological and soil resources. but the impact is mitigated to a less than significant level with incorporation of mitigation measures into the conditions of Project approval.

IMPACT GEO-3: Substantial Adverse Effects Resulting from Seismic-Related Ground Settlement. Seismic ground shaking at the site may occur during the next major earthquake on any of the area's principal active faults. Such shaking can cause ground settlement and severe damage to or collapse of buildings or other project facilities and may expose people to injury or death.

Mitigation Measure GEO-1: would require that all structures be designed in accordance with the requirements of the California Building Code, current edition, and that the Applicant or successor in interest hire a structural engineer to provide a seismic design report, including recommendations from earlier studies on the site.

Recommendations contained in the site-specific Geologic and Geotechnical Reports must be implemented under this measure.

IMPACT GEO-5: Substantial Adverse Effects Resulting from Land sliding. Implementation of the Proposed Project may result in potential permanent structural damage and associated human safety hazards resulting from localized slope failure if the slopes are improperly designed or implemented. Mitigation Measure GEO-2, Implement Recommended Grading and Slope Design Criteria of the Site-Specific Geotechnical Reports, as described in the SFEIR, would provide sufficient mitigation for this potential impact.

IMPACT GEO-6: Accelerated Soil Erosion and Sedimentation. Implementation of the Proposed Project may result in potential accelerated soil erosion and sedimentation. Mitigation Measure GEO-3 from the SREIR requires the Applicant or successor(s) in interest or a qualified consultant acting on their behalf to prepare and implement an erosion and sediment control plan. The plan would be prepared in accordance with the requirements of the County's erosion and sediment control ordinances and be reviewed by HCD - Development Services. This mitigation measure would reduce the potential impact to a level of *less-than-significant*.

IMPACT GEO-7: Substantial Adverse Effects Resulting from Expansive Soils. The project site has a low shrink-swell/expansion potential overall, but the presence of slightly more expansive soils may be encountered as the golf course mounds and swales are disturbed during grading. Mitigation Measure GEO-1 from the SREIR, as described above, would mitigate for this potential impact. Mitigation Measure GEO-4, remove localized zones of overly loose materials, would add to the mitigation for this potential impact and reduce the level to *less-than-significant*.

IMPACT GEO-C2: The Proposed Project's contribution to cumulative effects of accelerated runoff, erosion, and sedimentation are reduced to less than considerable through the implementation of Mitigation Measures GEO-1 through GEO-4. These measures ensure that the proposed project is designed to minimize these impacts and that construction activities include safeguards against these impacts such as compliance with County erosion control ordinances.

- g) Greenhouse Gas Emissions and Climate Change. The proposed Project would have potentially significant climate change impacts, but the impacts are mitigated to a less than significant level with incorporation of mitigation measures into the conditions of Project approval.

IMPACT GHG-1: Result in Project-Related Greenhouse Gas Emissions, during Construction and Operation, that Could Contribute to Climate Change Impacts and be Inconsistent with the Goals of

Assembly Bill 32. The Project's GHG emissions would contribute cumulatively to Monterey County, California, and global emissions that would result in significant changes to the local, state, national, and global physical environment. Mitigation Measure GHG-1 would require the Project's contractor to include specific BMPs in the Project's construction specifications. To ensure that the BMPs are enforced, the Applicant or successor(s) in interest would provide the County with proof that the BMPs are included in the specifications before the County will issue grading or building permits. Mitigation Measure GHG-2 would require the applicant or successor(s) in interest to use a wide variety of techniques to reduce project emissions. The techniques are listed in the mitigation measure and include on-site facilities, design, and operational features that reduce emissions as part of a County-approved GHG Reduction Plan. These measures would reduce Impact GHG-1 to a *less-than-significant* level.

- h) Hazards and Hazardous Materials. The Proposed Project would potentially have an adverse effect on hazards and hazardous materials, but the impact is mitigated to a less than significant level with incorporation of mitigation measures into the conditions of Project approval.

IMPACT HAZ-1: Upset and Accident Conditions Involving the Release of Hazardous Materials into the Environment. Construction activities associated with the Project could expose construction workers, the public, or environment to hazardous materials through a reasonably foreseeable upset and accident conditions involving the release of hazardous materials. Additionally, the presence of unknown underground utility lines on the project site could present a potential hazard to construction workers and environment during the construction phase. Mitigation Measure HAZ-1 will require that contractors transport, store, and handle hazardous materials required for construction in a manner consistent with relevant regulations and guidelines, including those recommended and enforced by the Cypress Fire Protection District. Mitigation Measure HAZ-2 requires the site contractor to immediately contain spills, excavate spill-contaminated soil, and dispose of contaminated soil at an approved facility. Mitigation Measure HAZ-3 will require the Applicant or successor(s) in interest to develop plans to prevent the pollution of surface water and groundwater and to promote the health and safety of workers and other people in the project vicinity. These programs will include an operation and maintenance plan, a site-specific safety plan, and a fire prevention plan, in addition to the Storm Water Control Plan required for hydrology impacts. In addition, the County will require the Applicant or successor(s) in interest to develop and implement a hazardous materials management plan that addresses public health and safety issues by providing safety measures including release prevention measures, employee training, notification, and emergency response protocols and cleanup procedures. The County will also

require the Applicant or successor(s) in interest and its designated contactors to comply with Cal OSHA, as well as federal standards, for the storage and handling of fuels, flammable materials, and common construction-related hazardous materials and for fire prevention. Mitigation Measure PSU-2 will require the contractor to coordinate with appropriate utilities to avoid damaging underground lines. Mitigation Measure PSU-2, described under *Public Services, Utilities, and Recreation*, outlining procedures to avoid unintentional utility service disruptions during construction, would also contribute to the reduction of Impact HAZ-1.

IMPACT HAZ-2: Routine Transport, Use, or Disposal of Hazardous Materials. The Proposed Project has the potential to create a hazard to the environment through the routine transport, use, or disposal of hazardous materials, in the form of household hazardous wastes. Mitigation Measure HAZ-4 will require future residents of Rancho Cañada Village to participate in the Monterey Regional Waste Management District's Household Hazardous Waste Collection Program to ensure that household hazardous wastes are disposed of properly.

IMPACT HAZ-3: Hazardous Emissions or Hazardous Materials, Substances, or Waste Handling Within One-Quarter Mile of a School. Hazardous emissions, use, and transport associated with the construction and operation of the Proposed Project could have a potentially significant impact on the nearby school. Implementation of Mitigation Measures HAZ-1, HAZ-2, HAZ-3, and HAZ-4, described above, would reduce this potential impact to a less-than-significant level.

IMPACT HAZ-C1: The Proposed Project's contribution to cumulative effects related to hazards and hazardous materials are reduced to less than considerable through the implementation of Mitigation Measures HAZ-1 through HAZ-4.

- i) Hydrology and Water Quality. The Proposed Project would potentially have an adverse effect on hydrology and water quality, but the impact is mitigated to a less than significant level with incorporation of mitigation measures into the conditions of Project approval.

IMPACT HYD-1: Alteration of Surface Drainage Patterns That Results in Increased Erosion or Siltation. During grading and construction activities, erosion of exposed soils may occur and pollutants generated by site development activities may result in water quality impacts if erosion control measures are not implemented. Mitigation Measure HYD-1 requires the Applicant or successor(s) in interest to submit to HCD - Development Services a Stormwater Control Plan prepared by a registered professional engineer, addressing Post-Construction Stormwater Management Requirements

(PCRs) for Development Projects in the Central Coast region in compliance with a Tier 4 Permit. Mitigation Measure HYD-2 requires an Operations and Management (O&M) Plan with O&M for each Stormwater Control Measure identified in Mitigation Measure HYD-1. Mitigation Measure HYD-3 requires that the applicant or successor(s) in interest enter into a maintenance agreement for Stormwater control measures with Monterey County. These measures would reduce Impact HYD-1 to a *less-than-significant* level.

IMPACT HYD-2: Result in Increased Stormwater Runoff Due to an Increase in Impervious Surfaces and Topographic Alterations Resulting in Drainage or Flooding Impacts. Implementation of the Proposed Project would alter the existing drainage pattern and increase the amount of impervious surfaces on the project site due to construction of the residences, roadways, driveways, and other amenities. Also, increased stormwater runoff may result from the topographic alterations. Mitigation Measures HYD-1 through HYD-3 from the SFEIR, as described above, would mitigate this potential impact to a level of *less-than-significant*.

IMPACT HYD-3: Degrade Surface Water Quality during Construction and from Operation. The Proposed Project would result in an increase in surface runoff that may contain urban contaminants that would have an adverse impact on surface water quality. Mitigation Measures HYD-1 through HYD-3, described above, and Mitigation Measure GEO-3, described under *Geology and Soils*, would mitigate for this potential impact. In addition, Mitigation Measure HYD-4 requires that the Applicant or successor(s) in interest develop and implement a spill prevention and control program to minimize the potential for, and effects from, spills of hazardous, toxic, or petroleum substances during construction activities for all contractors. Mitigation Measure HYD-5 requires measures to be implemented in the event of an appreciable spill. With these measures, Impact HYD-3 would be reduced to a *less-than-significant* level.

IMPACT HYD-5: Place Housing or Structures Within a 100-Year Flood Hazard Area and Expose People or Structures to a Significant Risk of Loss, Injury, or Death Involving Flooding. This potential impact is due to development in the 100-year floodplain. It is described in the SFEIR as potentially significant with mitigation to less than significant level through implementation of Mitigation Measure HYD-6, to protect the eastern slope of the excavated basin. This involves slope protection measures that could include rock or turf-reinforced mats. The Applicant or successor(s) in interest are responsible for installation of the excavated basin shall provide plans to HCD-Development Services prior to issuance of grading permits showing slope protection design.

IMPACT HYD-C1: The Project would contribute to cumulative impacts to hydrology and water quality. Those contributions are

reduced to a less than considerable level by the mitigation measures described in Chapter 3.2 Hydrology of the SFEIR, specifically Mitigation Measures HYD-1 through HYD-6, and GEO-3.

- j) Noise. The Proposed Project would potentially have an adverse effect on noise levels in the area, but the impact is mitigated to a less than significant level with incorporation of mitigation measures into the conditions of Project approval.

IMPACT NOI-1: Exposure of Onsite Noise-Sensitive Land Use to Noise. Operation of the Proposed Project would result in an increase in noise levels at the project site. The Project could expose future onsite noise sensitive land uses to excessive noise levels from nearby uses, and expose existing noise-sensitive land uses to construction noise. Mitigation Measure NOI-1 will require the Applicant or successor(s) in interest to retain a qualified acoustical consultant to identify specific outdoor and indoor residential areas that could be exposed to noise exceeding 60 CNEL exterior and 45 CNEL interior. The consultant will prepare a report which identifies specific treatments to be implemented that will reduce exterior and interior noise to less than 60 CNEL and 45 CNEL, respectively. The report will be subject to review and approval by the County prior to the issuance of building permits.

IMPACT NOI-3: Exposure of Sensitive Land Uses to Vibration from Construction Activity. Construction activities associated with the Proposed Project will result in elevated ambient noise levels in the vicinity of construction. Existing plus Project noise along Carmel Valley Road, between Carmel Middle School and Rio Road, is anticipated to be 69.5 CNEL at 50 feet from the roadway based on the traffic modeling conducted for the Project (see Chapter 3.9 of the SFEIR). Construction activities are expected to occur for more than one building season (typically eight to ten months out of the year and contingent upon local weather conditions) and will likely occur during normal daytime working hours. Mitigation Measure NOI-2 requires the Applicant or successor(s) in interest to implement noise reducing construction practices such that noise from construction will comply with the Monterey County Health and Safety Noise Control Ordinance. This will ensure that noise levels will be *less-than-significant*.

- k) Public Services, Utilities, and Recreation. The proposed project would potentially have an adverse effect on public services, utilities and recreation, but the impact is mitigated to a less than significant level with incorporation of mitigation measures into the conditions of Project approval.

IMPACT PSU-5: Increased Water Supply Demand. The Proposed Project would result in an overall reduction in water use. As such, this impact would be less than significant provided the Project would

result in no more than the amount of consumptive water described in Chapter 3.10-30 of the SREIR. Mitigation Measure PSU-1 requires the Project to meet the water budgets described in the SFEIR. Specifically, the measure requires that the Applicant permanently wheel an average of 60 AFY of the riparian water rights associated with the Project to Cal-Am for use solely for the on-site residential development. The measure additionally requires that the Project employ efficiency measures, and report on the actual on-site water use. If monitoring/reporting indicates that the Project is exceeding the estimated water budget on average over two or more years or the "high use" estimate in any one year, landscaping and irrigation practices must be modified, and/or add additional water efficiency measures implemented, to reduce the water use to the average yearly consumptive use shown in the SFEIR.

IMPACT PSU-5: Increased Demand for Water and Sewer Infrastructure. Water for the Project stemming from the new on-site well would require treatment for iron and manganese prior to distribution. Mitigation Measure PSU-2 from the SFEIR, Test Well Supply, Identify Water Treatment and Distribution Facilities, and Avoid Impacts on Biological Resources, would provide sufficient mitigation for the potential impact of increased demand for water and sewer infrastructure. The measure requires the Project Applicant to provide the design for the new on-site Cal-Am well and associated facilities to Monterey County for review, confirming its placement within the former golf course and/or other non-habitat disturbed areas (such as existing roads or golf paths). Under no circumstances may the new facilities result in permanent loss of native vegetation, ponds, or wetlands. All biological mitigation described for the Project construction-related impacts of the project would apply to any potential impacts of new well and associated facilities, including Mitigation Measures BIO-1 through BIO-19. With these measures, Impact PSU-5 would be reduced to a *less-than-significant* level.

IMPACT PSU-8: Construction-Related Service Disruptions. Project development, installation of the infrastructure noted above, and road improvements could disrupt existing utility lines. Mitigation Measure PSU-3 requires that prior to construction, the Applicant or successor(s) in interest or their contractor will coordinate with the appropriate utility service providers and related agencies to avoid or reduce service interruptions. This will reduce the impact to a *less-than-significant* level.

IMPACT PSU-C1: The Project has the potential to have significant cumulative impacts on the cumulative increase in demand for public services and utility infrastructure and capacities. Mitigation Measures PSU-2 and PSU-3, discussed above, would reduce the potential impacts to less than considerable.

- l) Land Use. The Project would have potentially significant environmental impacts related to land use within the project area, but land use compatibility impacts are mitigated to a less than significant level with incorporation of mitigation measures into the conditions of Project approval.

IMPACT LU-1: Land Use Compatibility. The new residential and open space uses would not create any fundamental incompatibilities with the surrounding land uses that would cause physical changes that might result in significant physical impacts to the environment, but would change current land uses from a former golf course to uses that could have a significant impact on views from adjacent areas and the visual character of the area. Mitigation Measure AES-1, to implement measures to reduce light and glare, and visual intrusion to surrounding land uses and other public viewpoints will mitigate the impacts to a level of *less-than-significant*.

- m) These forty-three impacts will be mitigated to a less than significant level with incorporation of mitigation measures from the SFEIR into the conditions of Project approval.
- n) The SFEIR, plans and supporting materials submitted by the Project applicant to Monterey County HCD-Planning for the proposed development found in Project File PLN040061-AMD1.

4. **FINDING:** **SIGNIFICANT UNAVOIDABLE ADVERSE IMPACTS – (POTENTIALLY SIGNIFICANT ENVIRONMENTAL IMPACTS IDENTIFIED IN THE EIR THAT ARE NOT REDUCED TO A LEVEL OF “LESS THAN SIGNIFICANT” BY THE MITIGATION MEASURES)** – The Project will result in significant and unavoidable impacts to Land Use and Transportation and Traffic that will not be mitigated to a less than significant level even with the incorporation of mitigation measures from the EIR into the conditions of Project approval. Specific economic, legal, social, technological, and other considerations, including considerations for the provision of affordable housing opportunities for workers, make infeasible additional mitigation.

- EVIDENCE:** a) The EIR identified potentially significant impacts to both Land Use and Transportation and Traffic, which could result from the Project. Mitigation measures have been identified which reduce some of these impacts, but not to a level of insignificance; therefore, these impacts are significant and unavoidable and cannot be mitigated to a less than significant level.
- b) Land Use. The SFEIR identified significant and unavoidable impacts to land use plan/policy consistency and cumulative unavoidable local land use impacts, as evidenced by the analysis of land use impacts provided in Chapter 3.5 of the SFEIR, conflicts with Land Use Plans, Policies, or Regulations. The Project would be inconsistent with

CVMP Policy CV-1.27 and General Plan Policy LU-2.13, regarding affordable housing requirements for new development projects. This General Plan inconsistency is resolved with the amendment to Policy CV-1.27, and that amendment will be in effect when the Court of Appeal decision becomes final and is also being proposed for adoption again. However, the impacts related to the inconsistency without the amendment are significant and unavoidable, inasmuch as the Project has less than 50% affordable housing and the affordable housing does not include very low and low income housing. This inconsistency would result in longer employee commutes and would contribute to traffic congestion along Carmel Valley Road and other roadway segments above the level of service standards. All but the "No Project Alternative" has impacts to land use regarding this General Plan Policy. This impact is not reduced to less than significant but is mitigated by the selection of the 145-unit Increased Unit, Greater Affordability Alternative 6b. This alternative, the Project being considered for approval, results in 28 units designated for moderate income households, as compared to the 25 moderate income units proposed in the 130-unit project. The 145-unit Project also includes six Workforce I units, affordable to households earning between 120% and 150% of County median income, and six Workforce II units, affordable to households earning between 150% and 180% of County median income. Therefore, the 145-unit Project will provide the opportunity for more people working on the Monterey Peninsula to live closer to their jobs and to shorten their commutes. Increased affordable housing units in the proposed location where many jobs are within a mile of the site would be less of an inconsistency than the 130-unit project.

- c) Transportation and Traffic. The SFEIR identified significant and unavoidable impacts to Transportation and Traffic. Full description and analysis of transportation and traffic impacts is provided in Chapter 3.7 of the SFEIR. The specific significant unavoidable impacts are as follows:
- **LOS at Unsignalized Intersections.** The Project would contribute to temporary exceedances in LOS standards before improvements are fully funded through the CVTIP Traffic Impact Fee. Mitigation Measure TR-1 requires the Project to contribute its fair share to the fee to fund interchange improvements of Laureles Grade and Carmel Valley Road.
 - **Peak Hour LOS on State Route 1.** The Project would add traffic to deficient segments of SR 1. No mitigation is available, as existing fee programs do not include widening of SR 1 north of Carmel Valley Road or south of Ribera Road to address this traffic issue.
 - **Construction traffic** associated with the Project is not expected to lower LOS levels on any affected roadway. However, given that there are failing operations under existing conditions at certain locations, such as along SR 1 and at the Laureles Grade/SR 68 intersection, the addition of construction traffic would result in a

significant impact. Mitigation Measure TRA-2 would reduce construction impacts, but would not avoid all contributions to locations with existing failing traffic operations.

- d) Caltrans District 5 did not comment on the SRDEIR during the comment period but sent a letter to the County in response to the release of the SFEIR on April 16, 2021. The letter offered support for development that is consistent with smart growth principles including improvements from their Transportation Demand Strategies, such as pedestrian, bicycle, and transit infrastructure improvements. The Project includes walkable and bike-able paths in the direction of jobs, shopping and public transit as well as into the Palo Corona Regional Park. The letter also urged the use of Vehicle Miles Traveled for assessment of transportation impacts in EIRs, effective July 2020. County commends the use of VMT in environmental analysis going forward from that date. The Second Revised Draft EIR was circulated for public review in June 2020 and pre-dates the requirement for VMT as the measure of transportation impacts. Caltrans requested no changes to the transportation section.
- e) The SFEIR, plans and supporting materials submitted by the Project applicant to Monterey County HCD-Planning for the proposed development found in Project File PLN040061-AMD1.

5. FINDING:

ALTERNATIVES TO THE PROPOSED PROJECT - The EIR evaluated a reasonable range of potentially feasible alternatives to the Proposed Project (130-unit) in compliance with CEQA Guidelines section 15126.6. Specific economic, legal, social, technological, or other considerations make infeasible the Project alternatives identified in the SFEIR, except for Alternative 6b. The Project which County is approving is the Increased Unit, Greater Affordability Alternative (Alternative 6b), refined to specify 145 total residential units, of which 40 units would be restricted to be affordable. The other alternatives identified in the EIR and the reasons they are infeasible are described below.

- EVIDENCE:**
- a) Per the CEQA Guidelines, Section 15126.6 (f)(2), an alternative project location need only be analyzed if the significant effects of the Proposed Project would be avoided or substantially lessened by putting the Project in another location. An alternative location was not considered for the Proposed Project, due to limitations related to off-site property ownership, available developable parcels of similar size that could reasonably accommodate a similarly-sized development as the Project, and lack of anticipated reduction of significant and unavoidable impacts at off-site properties.
 - b) The following project objectives were established for the Project:
 - Implement smart growth principles through infill development close to shopping facilities, schools, parks, churches, and major transit corridors.

- Integrate open spaces within infill development with surrounding native habitats.
- Assist the County in addressing the statewide housing and affordability crisis.
- Provide employment opportunities for the local workforce.
- Create opportunities allowing for County implementation of regional drainage control solutions.
- Facilitate the construction of a needed traffic light on Carmel Valley road under an accelerated time frame.

Pursuant to CEQA Guidelines Section 15126.6(c), the range of alternative shall include those that can feasibly accomplish most of the basic project objectives.

- c) In addition to the 130-unit Proposed Project, six alternatives to the Project (with two variants of Alternative 6) were considered in the SFEIR, they are: 1) No Project Alternative; 2) Hotel Alternative; 3) 90-Unit Low-Density Alternative; 4) 40-Unit Low-Density Alternative; 5) Energy Efficient Clustered Residential Alternative; 6a) 160-Unit Medium-Density Residential Alternative; and 6b) Increased Unit, Greater Affordability Alternative.

The County is choosing Alternative 6b over the 130-unit project because Alternative 6b best meets the project objective of “assist[ing] the County in addressing the statewide housing and affordability crisis” as well as best serving the project objective of implementing smart growth principles. Alternative 6b does so providing 145 residential units, of which 40 units would be affordable, and all of which would be near shopping, schools, and the Palo Corona Regional Park. The 130-unit Project would meet the project objectives but not to the same extent as the 145-unit project alternative. Alternative 6b provides 28 units of moderate income housing and 12 Workforce Housing units (which equates to 20% inclusionary plus more than 8% Workforce), as compared to only 25 moderate units (20% inclusionary) in the 130-unit project. The 145-unit project comports with recommendations of the County’s Housing Advisory Committee which recommended consideration of an alternative that would result in an increased number and proportion of affordable units, with a greater number of total units to address the financial feasibility of providing more affordable housing. Additionally, the Planning Commission unanimously recommended this alternative, recognizing that it allow for an increased affordable housing component, achieves the 20% inclusionary housing requirement, and adds additional income-restricted Workforce housing. The Carmel Valley Association publicly supported this alternative at the Planning Commission hearing on the project. As compared to the 130-unit project and the other alternatives considered in the EIR, the 145-unit project also best serves the County’s Housing Element Policy H-3.7 of the Housing Element, to “work to achieve balanced housing production proportional to the job-based housing demand in each region of the

unincorporated area.” (See Evidence (a)(i) and (ii) in the Statement of Overriding Considerations.) Lastly, the applicant has indicated that if the Board does not approve the 145-unit project with twenty-eight moderate income units and twelve Workforce units, applicant may instead may instead choose to proceed under the 2016 approval of the 130-unit project, which has now been upheld by the Court of Appeal. However, increasing the number of affordable units in the project, as does the 145-unit project, better attains the project objectives. For these reasons, the Board is selecting the 145-unit project as the most feasible.

The No Project Alternative (Alternative 1) would result in just that, no project, with the site continuing the current cattle grazing use of the site, per the current conditions of the site. The No Project Alternative is also assumed to accommodate future development that is consistent with the existing zoning and land use designation of the site, which would allow for the construction of five estate homes with no discretionary approval. All impacts would be lower under the No Project Alternative than the Proposed Project. Significant and unavoidable land use impacts would not occur under the No Project Alternative; however, the significant and unavoidable transportation and traffic impacts would remain, as any increase in daily vehicle trips would be considered a significant and unavoidable impact. While this alternative could avoid or substantially lessen significant effects of the Proposed Project at the site, the No Project Alternative is not feasible because it would not meet project objective to “assist the County in addressing the statewide housing and affordability crisis.” The Board recognizes the value of building a residential project, with 40 income restricted units to serve the needs of the County residents. The No Project alternative would also not meet the objective of providing a significant amount of residential housing near shopping, schools and parks. The No Project alternative misses the opportunity to provide residential housing in a location near shopping, services, and a regional park. The project site is near a commercial center at the mouth of the Carmel Valley and next to Carmel Middle School and Palo Corona Regional Park. Therefore, the Board finds the No Project Alternative is not feasible.

The Hotel Alternative (Alternative 2) considered developing a 175-unit hotel or timeshare, 20 employee housing units, reconfiguration of the west golf course, clubhouse and restaurant, tennis clubhouse and four tennis courts, health club spa, meeting rooms, and administrative offices. The Hotel Alternative is considered technically feasible; however, this alternative would not meet the project objective to assist the County in addressing the statewide housing and affordability crisis. Impacts related to land use, transportation and traffic, and population and housing would be less than for the Proposed Project; however, impacts related to geology and soils, hydrology and water quality, aesthetics, hazards and hazardous materials, air quality, noise, water supply, and greenhouse gas emissions would be greater than the

Proposed Project. The remaining impacts to biological resources and cultural resources would be similar to the Proposed Project. Significant and unavoidable land use impacts would not occur under the Hotel Alternative; however, the significant and unavoidable transportation and traffic impacts would remain. Alternative 2 would not assist the County in addressing the statewide housing and affordability crisis by not adding 40 affordable housing units as well as 105 units of market rate housing. The hotel also would not take advantage of locating housing near services. Although the Hotel Alternative would meet other Project objectives, the Board rejects the Housing Alternative as infeasible because it does not provide the amount of housing as the 145-unit project.

The 90-Unit Low-Density and 40-Unit Low-Density Alternatives (Alternatives 3 and 4, respectively) consider residential projects at densities less than the proposed Project at the Project location, including a reduction in total residential units to 73 market-rate and 17 affordable units for the 90-Unit Low-Density Alternative, and 32 market-rate and 8 affordable units for the 40-Unit Low-Density Alternative. These alternatives are technically feasible and would meet all project objectives to a lesser extent than the Proposed Project. Both Low-Density Alternatives would result in lesser impacts than the Proposed Project in relation to geology and soils, hydrology and water quality, biological resources, aesthetics, hazards and hazardous materials, transportation and traffic, air quality, noise, public services, recreation, utilities, cultural resources, population and housing, and greenhouse gas emissions. Impacts to land use would be similar to the Proposed Project. Significant and unavoidable land use and transportation and traffic impacts would continue to occur under both the 90-Unit Low-Density Alternative and the 40-Unit Low-Density Alternative. These alternatives would meet the Project's objectives, but not to the same extent as the 145-unit project. By providing fewer housing units than the other project alternatives, these alternatives would be less effective in meeting the objective of assisting the County in addressing the statewide housing crisis. The Board rejects Alternatives 3 and 4 because they underutilize the potential area for housing, and particularly affordable housing, and because the lower densities do not implement smart growth principles as much as feasible at the project site.

The Energy Efficient Clustered Residential Alternative (Alternative 5) would develop 130 residential units, similar to the 130-unit Project, with clustering of 25 condominium units to allow for easier use of solar infrastructure. The configuration of these condominium units would include a "solar village" comprised of 18-condominiums on the front parcel and seven condominium units (two tri-plexes and one half plex) on the west side of the project site. Similar to the 130-unit project, the 130-units under this alternative would also be of moderate and market rate housing, but this Alternative provide less affordable housing than the 145-unit project. While the most recent Building

Energy Efficiency Standards of the California Building Code, Title 24, Part 6, would be required for the 130-unit Project, this alternative would allow for more efficiency in developing the required solar infrastructure, as fewer solar panel systems could be installed to power all condominium units. This alternative is technically feasible and would meet all objectives of the 130-unit project, and to the same degree as the 145-unit Project. However, the 145-unit project is preferred since it achieves State and local housing needs through the creation of additional affordable units. With the recently adopted 2019 California Building Standards Code, the energy efficiency of the 145-unit project is comparable to the 130-unit project since photovoltaic requirements minimize proportionately the energy demand. The 145-unit project also includes a clustered energy efficient component (i.e., 12 townhouses with an associated photovoltaic system). The Energy Efficient Clustered Residential Alternative would result in lesser impacts than the 145-unit project related to aesthetics. All other impacts would be similar to the 145-unit project. Significant and unavoidable land use and transportation and traffic impacts would continue to occur under the Energy Efficient Clustered Residential Alternative, to the same degree as the 130-unit Project. Alternative 5 would meet all the project objectives, as it integrates smart growth principles and open space and supplies needed housing. Although Alternative 5 would assist the County in addressing the statewide housing crisis through the provision of 130 moderate and market rate housing units, providing employment opportunities, clustered energy efficiency, adhering to smart growth principles and including open space similar to the Project, Alternative 6b maximizes both the affordable housing and the energy efficiency.

The 160-Unit Medium-Density Residential Alternative (Alternative 6a) would develop 130 units, similar to the 130-unit and the 145-unit projects, with the assumption that as many as 30 homeowners would construct accessory dwelling units (ADUs), consistent with recent changes in California law. Thus, this alternative assumes the construction of 160 residential units, 30 of which would be ADUs. Under this alternative, the Board of Supervisors is not asked to approve 160 units on 160 future legal parcels. Rather, for this alternative to come to fruition, the Board would have to approve either the 130-unit Project or Alternative 5, both of which would result in 130 parcels for single family dwellings (including 25 moderate rental units), and then, after those dwellings are built, 30 owners of individual lots would have to seek ministerial approvals from the County for the construction of ADUs. This alternative is considered technically feasible and would meet all objectives of the Project, but to a lesser extent than the 145-unit project. This alternative would provide market-rate housing to a greater extent than the 130-unit and the 145-unit Project if owners chose to construct ADUs. The 160-Unit Medium-Density Residential Alternative would result in greater impacts than the 130-unit and the 145-unit projects in relation to geology and soils, hydrology and water quality, aesthetics, hazards

and hazardous materials, transportation and traffic, air quality, noise, public services, utilities, recreation, cultural resources, and greenhouse gas emissions, primarily due to the potential 23% increase in residents. However, these greater impacts would not be associated with new significant and unavoidable impacts. Potential effects to biological resources and land use would be similar to the 130-unit and 145-unit projects. Significant and unavoidable impacts would not be reduced as a result of this alternative. Significant and unavoidable land use and transportation and traffic impacts would continue to occur under the 160-Unit Medium-Density Residential Alternative, with the significant and unavoidable transportation and traffic impacts slightly worsened due to the increase in residents and thus daily vehicle trips. Alternative 6a would meet all the objectives of the Proposed Project, as it is infill development that integrates smart growth principles and integrates open space. Further, it would meet the objective of assisting the County in addressing the statewide housing through the provision of more housing units than the Proposed Project. This alternative does not guarantee that the ADUs would be rented to households that qualify for income-restricted housing, however. Alternative 6b has higher density housing and includes restrictions to ensure 40 units are affordable, with 28 units restricted to households of moderate income, and 6 for Workforce I and 6 for Workforce II income levels. Also, under Alternative 6a, the Board would not be approving 160 units, because the 30 assumed ADUs would be constructed only if the individual lot owners chose to apply for them. Thus, under Alternative 6a, there is no assurance of 160 units of residential housing. Therefore, the Board does not find Alternative 6a to better meet the objective of addressing the statewide housing crisis as it pertains to affordable housing.

The Increased Unit, Greater Affordability Alternative (Alternative 6b) proposes development ranging from 145 to 155 units in the same footprint. This alternative assumes the construction of 40 to 50 units of which would be affordable housing. The Project the Board is considering approving by separate resolution concurrently herewith and which these CEQA findings address is Alternative 6b, as refined to specify that the Project would include a total of 145 units, of which 40 would be affordable (twenty-eight units restricted to households of moderate income, and six for Workforce I and six for Workforce II income levels.) This alternative is considered technically feasible and would meet all objectives of the Project, to a greater extent than the 130-unit project. This alternative would provide more affordable housing, which was strongly desired by many public commenters on the SRDEIR, the Carmel Valley Land Use Advisory Committee, the County's Housing Advisory Committee, and the Monterey County Planning Commission. The Increased Unit, Greater Affordability Alternative would result in greater impacts than the 130-unit Project in relation to geology and soils, hydrology and water quality, aesthetics, hazards and hazardous materials, transportation and traffic, air quality, noise, public services, utilities, recreation, cultural resources,

population and housing, and greenhouse gas emissions, primarily due to the increase in residents. However, these greater impacts would not be associated with new significant and unavoidable impacts. Potential effects to biological resources and land use would be similar to the Proposed Project. No impacts would be reduced as a result of this alternative. Significant and unavoidable land use and transportation and traffic impacts would continue to occur under the Increased Unit, Greater Affordability Alternative, with the significant and unavoidable transportation and traffic impacts slightly worsened due to the increase in residents and thus daily vehicle trips; however, by providing more affordable housing, the 145-unit project may enable more persons who work on the Monterey Peninsula to live closer to their jobs. As discussed more fully above, the Board is selecting this Alternative as the Alternative which best fulfills the project objective of "assist[ing] the County in addressing the statewide housing and affordability crisis."

6. FINDING:

STATEMENT OF OVERRIDING CONSIDERATIONS - Per Public Resources Code section 21081(b) and section 15093 of the CEQA Guidelines, with respect to the identified significant unavoidable environmental effects of the project, the Board of Supervisors has weighed the economic, legal, social, technological, and other benefits, including region-wide and statewide environmental benefits, of the project against its unavoidable significant environmental impacts in determining whether to approve the Project. The Board of Supervisors find that the benefits of the Project outweigh its unavoidable, adverse environmental impacts such that the adverse environmental effects may be considered acceptable. Each benefit set forth below constitutes an overriding consideration warranting approval of the Project, independent of other benefits, despite each and every unavoidable impact.

EVIDENCE: a)

- The Project will result in development that will provide benefits described herein to the surrounding community and the County as a whole. In balancing the public good in approving this project against the unavoidable significant impacts identified, the Board finds that any one of the facts listed below would be sufficient to find that the benefits of the project outweigh the unavoidable adverse environmental effects. The project would provide the following benefits to the public:
- i. The Project provides housing in an area of limited new home construction and provides a range of housing types, such as small-lot single-family and townhouses that are not typical of the Carmel Valley area and are relatively more affordable in comparison to the typical large-lot single-family residences that characterize Carmel Valley (affordable by design). Carmel Valley, like much of the Monterey Peninsula, is an area of the County where there has been little success in providing affordable housing. The project proposes to provide 40 units of rental

affordable housing on a 5-acre parcel within the development. The 40 units would include 28 units for households of moderate income, and 6 for Workforce I and 6 for Workforce II income levels, all of which would help fulfill the County's need for housing on the Monterey Peninsula at these income levels. The 2015 – 2023 County of Monterey Housing Element Update, adopted by the Board of Supervisors on January 26, 2016, identifies a shortage of affordable housing in the unincorporated areas of the County. Rents in the Greater Monterey Peninsula Planning area are higher than elsewhere in the County, resulting in housing which is not affordable to many of the people who work on the Monterey Peninsula. This project will provide 40 units of housing deed-restricted to be affordable, as well as provide small lots for market rate housing that may be more affordable than other large lot market rate housing in Carmel valley.

- ii. This project helps achieve Policy H-3.7 of the Housing Element, to "work to achieve balanced housing production proportional to the job-based housing demand in each region of the unincorporated area." This project will assist in providing the jobs/housing balance by providing housing at various income levels at the Mouth of the Carmel Valley, where many jobs exist and/ or are nearby. The Project provides housing opportunities for targeted Workforce and moderate-income housing groups who may not otherwise get into the Carmel Valley/Monterey Peninsula housing market. The Applicant may provide a preference to persons working in areas near the Project site, which would help assist with jobs/housing balance and enable some people who currently have long commutes to live much closer to their jobs, thereby improving their quality of live and reducing the environmental impacts of long commutes.(See Condition No. 112 of the MMRP.)
- iii. The Project will permanently preserve approximately 38 acres of conservation-oriented open space on the project site and another 9 acres of common area open space within the residential portion. The open space would consist of naturally-landscaped areas and ponds/drainage basins adjacent to the Carmel River. Several conditions of approval of this project require the preservation and active management of this area.
- iv. The Project will install new trails open to the public and strengthen connections to existing open space areas, including Palo Corona Regional Park.
- v. The Project will create economic benefits to the County and the economy through the creation of jobs for construction (temporary). Given the intent of applicant to see to individual property owner to build the subdivision out over time (except for the affordable units, which applicant will cause to be built within a prescribed time frame), the subdivision may also result in employment of local contractors and trade persons over time.

- vi. The Project supports the creation of new property tax revenue through higher property valuation, given that the former golf course use has ceased.
- v. The Project proposes a dedication of water to the Carmel River for instream purposes that is not imposed through mitigation measures or other regulatory requirements. The applicant/owner has riparian water rights of 180 acre feet/year (AFY). The State Water Regional Control Board (SWRCB) is considering an application to allow transfer of approximately 60 AFY for new connections (subscriber uses) outside the project area. Because the applicant's riparian right is limited to areas near the Carmel River and thus currently cannot be used in these areas, SWRCB must grant an appropriative right allowing for such a use of the riparian water. If approved, the water use would be offsite anywhere within the Cal-Am service area. The applicant has proposed to dedicate for beneficial uses in the Carmel River the remainder of the 180 AFY after the dedication of Project use and transfer (if granted), which is estimated to be +/- 50 AFY. By not using this riparian water right for development, the potential for long-term sustainability of the Carmel River ecosystem is given a small boost.
- vi. The Project includes flood control and drainage improvements that provide benefits to the area and are derived from the preliminary recommendations of the Final Lower Carmel River Stormwater Management and Flood Control Report for County Service Area (CSA) 50 (2014). The principal feature is a below-grade pipe oriented in a north-south direction along the site's western boundary. This pipe would connect to a future County drainage project, immediately to the north, that would direct storm water from Carmel Valley Road to the Carmel River, greatly lessening storm water-related flood impacts in the area. A culvert is proposed to go under the Rio Road (west) emergency access route to accommodate riverine flooding. The Project also includes proposed installation of a floodwall and pump in the same southwestern corner location that would limit high-level event flooding of the neighborhood to the west. These improvements, which are more extensive than required through the CEQA process as mitigations, are expected to lessen both riverine and storm water-related flooding for properties at the mouth of the Valley.

7. **FINDING:**

RECIRCULATION NOT REQUIRED – No new significant information has been added to the EIR since circulation of the SRDEIR that would require recirculation of the EIR. Per Section 15088.5 of the CEQA Guidelines, the County of Monterey would be required to recirculate an EIR when significant new information is added to the EIR after public notice is given of the availability of the EIR for public review but before certification. "Significant new

information” requiring recirculation may include, for example, a disclosure showing:

- 1) A new significant environmental impact resulting from the project or from a new mitigation measure proposed to be implemented;
- 2) A substantial increase in the severity of an environmental impact unless mitigation measures are adopted that reduce the impact to a level of insignificance;
- 3) A feasible project or mitigation measure, considerably different from others previously analyzed, that clearly would lessen the significant environmental impacts of the project, but that the project's proponents decline to adopt; or
- 4) The draft EIR was so fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment were precluded.

No such significant new information has been added, as further explained below

- EVIDENCE:**
- a) Per Section 15088.5(b) of the CEQA Guidelines, recirculation of the SRDEIR is not required where the new information merely clarifies, amplifies, or makes minor modifications to an adequate EIR. The information provided since the draft EIR meets those criteria.
 - b) All the text revisions to the SRDEIR and revisions to mitigation measures since the SRDEIR was published provide clarification and additional detail, as described in detail in findings (c) through (g) below and depicted in the SFEIR. The changes do not result in a new significant impact or substantial increase in the severity of an environmental impact and therefore recirculation is not required.
 - c) The EIR was modified to include the 2018 Restoration Plan. This 2018 Restoration Plan is responsive to Mitigation Measure BIO-8 from the 2016 EIR, which required preparation of a restoration plan prior to implementation of the 130-Unit Alternative. The 2018 Restoration Plan meets this requirement; therefore, the original Mitigation Measure BIO-8 is no longer required, and implementation of the Restoration Plan has been incorporated into the SRDEIR as appropriate. It should be noted that Mitigation Measure BIO-1 (current numbering) is still required by the EIR and provides a mechanism to ensure implementation of the 2018 Restoration Plan for the Project. The addition of the 2018 Restoration Plan into the SRDEIR analysis does not constitute “significant new information.” Modifications to the analysis, other than clarifying the completion of the 2018 Restoration Plan and incorporating details from it as necessary, were not required.
 - d) The applicant has specified that the Project would utilize the water supply connection to Cal-Am. This specification clarifies the text previously included in the 2016 EIR, which analyzed the connection to Cal-Am through dedication of an appropriate amount of the Project

Applicant's water right to Cal-Am as one water supply option (which could require the use of groundwater from a new Cal-Am well located on the project site), and the use of an on-site wells using water rights held by the property as a second water supply option. Both options were fully analyzed, and the clarification of the water supply source does not constitute "significant new information" but rather a clarification of which of the two options would be implemented. Modifications to the environmental impact analysis were not required because of this refinement.

- e) Since publication of the SRDEIR, an additional alternative, considered to be substantially similar in its potential impacts to the former Alternative 6, was added to the SFEIR. The new alternative is labeled as Alternative 6b, Increased Unit, Greater Affordability Alternative, and would result in the development of between 145 and 155 residential units, between 40 and 50 of which would be affordable units. The potential effects of such an alternative were adequately covered in the SRDEIR under the former Alternative 6 (renamed Alternative 6a), which analyzed the potential environmental effects of developing 160 units on the project site, as compared with the Proposed 130-unit Project. This alternative was included to provide analysis of a greater affordability alternative. The addition of Alternative 6b into the SRDEIR analysis does not constitute "significant new information." Modifications to the analysis, other than demonstrating no substantially increased environmental effects as compared to the Proposed Project beyond those disclosed for Alternative 6a (formerly Alternative 6), which was already covered in the SRDEIR, were not required.
- f) A letter from the NOAA National Marine Fisheries Service (NOAA Fisheries) was received on May 5, 2021. The letter shared concern with the drainage plan design pertaining to potential impacts to steelhead (*Oncorhynchus mykiss*), a species of fish listed as threatened under the Endangered Species Act. NOAA Fisheries had written a similar letter during the public review period. The SRDEIR found that potential impacts from changes in water use were determined to be less than significant, based on the benefits to steelhead of reduced withdrawals from the Carmel River. The SFEIR noted that stranding events would be infrequent and would not be expected to result in stranding of large numbers of steelhead that might affect population levels. However, slight edits to Condition 72 have been made to clarify the steps taken to protect steelhead (See Condition No. 79). They are within the "Actions Needed for Resolution" part of the condition, which is not part of BIO-18 in the FEIR text. Changes are shown as strike-through and underline below:
"Prior to Recordation of a Final Map, this mitigation measure and its requirements shall be shown as a Note on the Map.
Prior to issuance of construction permits the Applicant/Owner shall submit proof show evidence that the proposed new detention basins/ponds locations are acceptable to NOAA Fisheries and CDFW

and that the agents of the Applicant/owner are authorized to implement BIO-18 or the CRSA is permitted to implement BIO-18 and intercede as part of their ongoing steelhead rescue permits has-granted permission to rescue steelhead. The project applicant shall submit proof that all required approvals and permits have been obtained."

Condition No. 42, while not a mitigation measure, was also edited to strengthen the protection of steelhead. Staff added: "NOAA National Marine Fisheries Service (NOAA Fisheries) will review the plan and make recommendations to better achieve protections of protected species" to the body of the condition; staff also added "Evidence must be provided that the drainage study and improvement plans were submitted to NOAA Fisheries for input to minimize potential harm to protected species" to the actions of the condition. The applicants agreed to these amplifications.

- g) A letter from the Monterey Peninsula Water Management District (MPWMD) requesting refinement of Mitigation Measure BIO-18 and text in the EIR chapters was received on June 14, 2021 (dated June 11). MPWMD conferred with the applicant and provided a second letter June 30, 2021 expressing that most of the concerns were allayed but the district still requested minor revisions to Mitigation Measure BIO-18 to indicate that MPWMD will not be involved in actions to rescue steelhead if stranded. At MPWMD's request, the Mitigation Measure BIO-18 has been modified to omit the parenthetical expression "(such as the MPWMD Sleepy Hollow facility)" and acronym "MPWMD." In discussion with the applicant, staff found that another edit was needed to clarify that evidence of permits for the applicant to handle steelhead would not be needed if the mitigation were to be completed through arrangement with organizations that are already involved with fish rescue on the Carmel River. Therefore, the follow edit was made: "The Applicant or successor(s) in interest will obtain all necessary approvals and make all implementation arrangements for steelhead rescue prior to the construction of the new site basin and will provide proof of such permits and/or arrangements to the County." The changes are clarification and do not trigger recirculation. Because the changes were made after the FEIR was printed and distributed to responsible agencies and decision makers, an FEIR Errata Memorandum (dated July 15, 2021) was sent to all responsible agencies ten days prior to the public hearing, posted on the website made available at the HCD Counter, is attached to the staff report of this Resolution. MPWMD did not comment on the Second Revised EIR during the SRDEIR public review period.
- h) Mitigation Measures BIO-7, BIO-8, BIO-9, BIO-10, and BIO-11 were modified to specifically include foothill yellow-legged frog (FYLF) and California Department of Fish and Wildlife (DFW) protocols and consultation. FYLF was not designated as a candidate for listing as a threatened or endangered species under California Endangered Species Act (CESA) until July 7, 2017, after publication of the 2016

EIR. These modifications to the California red-legged frog (CRLF) mitigations are minor, and do not constitute “significant new information” but rather a clarification of the existing mitigation to ensure effects to special-status amphibian species are adequately mitigated. Substantial modifications to the analysis were not required because of this refinement. Instead, basic information about FYLF was added to the EIR, and minor modifications to existing mitigation measures were made.

- i) Mitigation Measures PSU-2 was modified to adjust for the well that might have been the water source for the project in prior versions becoming a well to be maintained by Cal Am. This is explained in the SFEIR. The modification to the mitigation is minor, and does not constitute “significant new information” but rather a clarification of the existing mitigation to ensure effects to protected species are adequately mitigated. Substantial modifications to the analysis were not required because of this refinement. Instead, new wording for the mitigation measure was added to the EIR.
- j) A letter about the RCV conditions of approval from the applicant was received on June 8, 2021. In the letter, Remy Moose Manley requested on behalf of the applicant that several conditions be reworded (Condition Nos. 4, 47, 52, 55, 112) and, in one case, be deleted (Condition No. 38). Minor revisions have been made to some of these conditions which do not result in new significant impacts or increase in severity of identified environmental impacts.
- k) Other minor modifications to the EIR include acreage and Assessor Parcel Number clarifications, including minor adjustments to total project site size, open space and habitat acreages, and housing footprint, and clarifying that the Project does not have a Pattern Book; in lieu of the Pattern Book, the proposed zoning ordinance includes special setback, height, lot coverage, and floor area ratio regulations for development in the Rancho Cañada Village Subdivision.

11. FINDING: **FISH AND GAME FEE** – For purposes of the Fish and Game Code, the Project will have a significant adverse impact on the fish and wildlife resources upon which the wildlife depends.

EVIDENCE: a) The California Department of Fish and Wildlife (CDFW) reviewed the SRDEIR. Analysis contained in the EIR and the record as a whole indicate the Project could result in changes to the resources listed in CDFW regulations. All land development projects that are subject to environmental review are subject to a State filing fee plus the County recording fee, unless CDFW determines that the Project will have no effect on fish and wildlife resources. The site supports biological and forest resources. For purposes of the Fish and Game Code, the Project will have a significant adverse impact on the fish and wildlife resources upon which the wildlife depends. Therefore, the Project will be required to pay the State fee in effect at the time of the recordation of

the Notice of Determination (NOD) to the Monterey County Clerk/Recorder for processing said fee and posting the NOD.

- b) The application, plans, and supporting materials submitted by the Project applicant to Monterey County HCD-Planning for the proposed development found in Project File PLN040061-AMD1.

17. FINDING: **RECORD OF PROCEEDINGS.** Pursuant to Public Resources Code Section 21081.6(a)(2) and CEQA Guidelines Section 15091(e), The County is the custodian of the documents and other material that constitute the record of proceedings upon which the Board of Supervisors' action is based.

- EVIDENCE:**
- a) Planning files PLN040061 and PLN040061-AMD1, staff reports, minutes, and files of the Clerk of the Board of Supervisors related to the Board's public hearing on the Project, and other documents and materials constitute the record of proceedings upon which the Board of Supervisors bases the actions contained herein.
 - b) The documents and other material that constitute the record of proceedings are located at Monterey County HCD - Planning, 1441 Schilling Place, 2nd Floor, Salinas, CA 93901 (Planning files PLN040061 and PLN040061-AMD1) and 168 West Alisal Street, 1st Floor, Salinas California, 93901 (files related to the Board of Supervisors' public hearing on the Project).

18. FINDING: **NOTICE:** The Board of Supervisors held a duly noticed public hearing on the SFEIR, General Plan amendment, rezoning, and project application on July 27, 2021. Prior to this hearing, the Planning Commission held a public hearing on this matter on May 5, 2021 and June 9, 2021 and made a recommendation to the Board of Supervisors. (Resolution Nos. 21-023 and 21-024). At all these hearings, all persons had the opportunity to be heard.

- EVIDENCE**
- a) Public notice for the July 27, 2021 Board of Supervisors' hearing was provided through publication of notice in the *Monterey County Weekly* on July 15, 2021, mailed to residents within 300 feet of the Project site on July 15, 2021, posted at the site on July 16, 2021, and mailed to interested parties who had previously asked to receive notice on July 15, 2020.

DECISION

NOW, THEREFORE, based on the above findings and evidence and the administrative record as a whole, the Board of Supervisors take the following actions:

1. Certify that the foregoing recitals are true and correct;
2. Certify that: a) the Rancho Cañada Village Second Final Environmental Impact Report (SCH#: 20006081150) (SFEIR) has been completed in compliance with CEQA; b) the SFEIR was presented to the Board of Supervisors and the Board reviewed and considered the information contained in the SFEIR prior to approving the Project; and c) the SFEIR reflects the County's independent judgment and analysis;

Submitted by Applicant

Legistar File ID No. RES 21-140 Agenda Item No. 19

3. Adopt the above CEQA findings for approval of the Project; and
4. Adopt the Statement of Overriding Considerations.

PASSED AND ADOPTED on this 27th day of July 2021, by roll call vote:

AYES: Supervisors Alejo, Phillips, Lopez, Askew and Adams

NOES: None

ABSENT: None

(Government Code 54953)

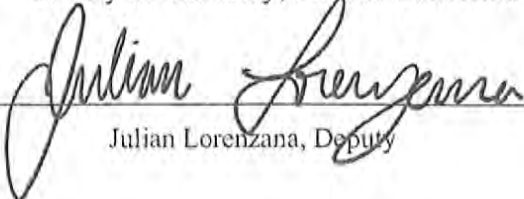
I, Valerie Ralph, Clerk of the Board of Supervisors of the County of Monterey, State of California, hereby certify that the foregoing is a true copy of an original order of said Board of Supervisors duly made and entered in the minutes thereof of Minute Book 82 for the meeting July 27, 2021.

Dated: October 20, 2021

File ID: RES 21-140

Agenda Item No.: 19

Valerie Ralph, Clerk of the Board of Supervisors
County of Monterey, State of California



Julian Lorenzana, Deputy

COPY OF THIS DECISION MAILED TO APPLICANT ON OCTOBER 20, 2021.

This Water Distribution System amendment application is made for the purpose of adding the recently approved Rancho Canada Village subdivision site to the existing Cal-Am system. Cal-Am will wheel an average of 60 acre feet of Rancho Canada Village's riparian right through Cal-Am's system, for delivery to the subdivision site. This is consistent with Condition of Approval 106 imposed by the County of Monterey on the Project, which is attached in this Attachment 11.

This is the breakdown of each existing parcel to be included in the water distribution system, and the acreage of each parcel:

015-162-049-000 -Lombardo Land Group I Lp- 39.27 acres

015-162-048-000- Lombardo Land Group I Lp- 8.32 acres

015-162-040-000- Lombardo Land Group I Lp- 2.25 acres

015-162-026-000- Lombardo Land Group I Lp- 3.29 acres

015-162-025-000- Lombardo Land Group I Lp- 1.73 acres

015-162-017-000- Lombardo Land Group I Lp- 17.05 acres

015-162-009-000- Lombardo Land Group Llp- 2.62 acres

Total Acreage: 74.53

**New APNs are being issued for
parcels post-subdivision*

Responsible Department: RMA-Planning

Condition/Mitigation Monitoring Measure: PSU-1: Dedicate Water Rights for the Project; Design for, Meter, and Monitor Water to meet Water Budgets; Implement Remedial Action if Water Budgets Exceeded

The Applicant, the Homeowner's Association (HOA), Community Services District (CSD), individual property owners, and any other parties responsible for water use for the project shall implement the following measures to ensure that the overall project consumptive use of water does not exceed the amounts estimated in the FEIR:

- (1) The Applicant shall permanently wheel an average of 60 AFY of the riparian water rights associated with the project site that reserves its use solely for the on-site residential development (including the park and preserve). This shall not be available for any other use or transfer for use outside the Project site. These amounts are based on the estimated net demand during a very high use year as indicated in Table 3.10-6. The 60 AFY wheeled to Cal-Am shall come from the 120 AFY of riparian water rights that would remain if the Applicant is successful in obtaining an appropriative right to transfer an additional 60 AFY to Cal-Am for use outside the Project area. Notably, this 120 AFY of riparian water is also the source of the minimum 50 AFY that the Applicant would dedicate for instream beneficial uses in the Carmel River. This leaves an additional 10 AFY of riparian water that can be used either by Cal-Am to serve the Project or for instream beneficial uses, depending on Project demand in light of hydrological conditions (i.e., water year type – dry or wet).
- (2) The Applicant (if they build parts or all of the development), individual homeowners (for lot development not built by the Applicant), or other parties proposing water uses on-site shall demonstrate to MPWMD and the County at the final design phase (prior to issuance of a building permit or any water use permits) that the project employs all MPWMD mandated efficiency measures, will meter the new development as required by MPWMD and will require reporting on actual water use on-site monthly and annually to MPWMD and the County HCD Planning. All water use on-site shall be conditioned that MPWMD shall retain the ability to mandate feasible and reasonable reductions in water use in the future as necessary to constrain water use to the established water budgets.
- (3) MPWMD and the County shall track building permit and water use permit approvals to assure that the development overall will remain within the water budgets in the FEIR. If tracking indicates that the project overall trend would result in an exceedance of the established water budgets upon full buildout, then MPWMD and the County shall require conditioning of all future building and water use permits with reductions in water use in order to restore the trend to compliance with the established water budgets. This limitation may ultimately include limitations on residential improvements (such as numbers of fixtures, swimming pools, or other limits), changes in landscaping amounts, types, or irrigation practices, a limit on overall amount of landscaping or other measures.
- (4) If monitoring/reporting indicates that the project is exceeding the estimated water budget on average over two or more years or the "high use" estimate in any one year, MPWMD and the County shall require responsible parties (HOA, CSD, individual property owners, and/or any other entity responsible for water use on the project) to modify landscaping & irrigation practices and/or add additional water efficiency measures to the project as necessary to reduce the water use to the average yearly consumptive use shown in the FEIR. If triggered, the responsible parties for water use shall implement remedial measures within one year of the exceedance.