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Superior Court of California,
County of Monterey
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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF MONTEREY

Carmel Valley Association, Inc., a
California nonprofit corporation,

Case No. 17CV000131

Petitioner,

PETITION FOR WRIT OF
MANDAMUS

vs.

County of Monterey, Board of Supervisors
of the County of Monterey, and DOES 1
THROUGH 15,

[CEQA CASE]

Respondents,

Rancho Canada Venture, LLC, Carmel
Development Company, R. Alan
Williams, and DOES 16 THROUGH 30,

Real Parties in Interest.

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**I
INTRODUCTION**

1. On December 13, 2016, County of Monterey (“County”), by and through the Board of Supervisors of the County of Monterey (collectively “Respondents”) approved the Rancho Canada Village Subdivision (“Project”). The Project subdivides 81.7 acres into 130 residential lots in the Carmel Valley. The County also certified the Rancho Canada Village Final Environmental Impact Report (“FEIR”); amended the text of General Plan Policy CV-1.27; approved a Combined Development Permit for 130 residential lots; and, adopted an ordinance rezoning approximately 37.7 acres of Public/Quasi-Public zoned property to Medium-Density Residential as well as rezoning Lot 130 from Public/Quasi-Public zoned property to Low-Density Residential. The County also adopted a Statement of Overriding Considerations for the Project. The Project is proposed by Real Parties in Interest Rancho Canada Venture, LLC, Carmel Development Company, and R. Alan Williams (“Real Parties”).

2. Petitioner Carmel Valley Association, Inc. (“Petitioner”) is concerned with the Respondents’ failure to comply with the General Plan, the Project’s noncompliance with the General Plan, as well as the Project’s failure to comply with the California Environmental Quality Act (“CEQA”).

3. Petitioner therefore challenges approval of the Project on the grounds that the County is currently non-compliant with the Monterey County General Plan and approval of the Project violates local planning and zoning laws such as the Monterey County General Plan and the Monterey County Code. Additionally, Petitioner challenges the Project’s failure to comply with requirements set forth under CEQA because the Project lacks a finite project description and because the Project failed to adequately analyze environmental impacts as is required under CEQA. Certification of an EIR and approval of the Project was therefore an abuse of discretion and must be reversed.

**II
PARTIES**

4. Petitioner hereby incorporates by reference paragraph 1 through 3 as if fully set

1 forth herein.

2 5. Petitioner, Carmel Valley Association, Inc. is the oldest and largest civic
3 association in the Carmel Valley. Petitioner was established in 1949 and has hundreds of loyal
4 members residing in Carmel Valley, where the Project is located.

5 6. Respondent County of Monterey, through Respondent Board of Supervisors
6 (collectively "Respondents"), is a political subdivision of the State of California, and has
7 certified a Final Environmental Impact Report (FEIR) for the Project and approved the Project.
8 Respondent Board of Supervisors adopted a Resolution in which it certified the FEIR, amended
9 the General Plan, adopted an ordinance rezoning an approximately 37.7 acre site from
10 Public/Quasi-Public to Medium-Density Residential and Lot 130 from Public/Quasi-Public to
11 Low-Density Residential, and approved a Combined Development Permit for the Project.

12 7. The true names and capacities, whether individual, corporate or otherwise, of
13 Does 1 through 15, are unknown to Petitioner who therefore sues said Respondents by such
14 fictitious names and will seek leave to amend this Petition and Complaint when their identities
15 have been ascertained.

16 8. Petitioner is informed and believes, and on that basis alleges, that Respondents
17 and each of them were the agents and employees of each of the remaining Respondents and while
18 doing the things herein alleged, were acting within the course and scope of such agency and
19 employment.

20 9. Real Party in Interest, Rancho Canada Venture, LLC, is the owner of the property
21 where the Project is being proposed and is an applicant.

22 10. Petitioner is informed and believes, and on that basis alleges that Real Party in
23 Interest, Carmel Development Company, is an owner or developer of the Project.

24 11. Petitioner is informed and believes, and on that basis alleges that Real Party in
25 Interest, R. Alan Williams, is an owner or developer of the Project.

26 12. The true names and capacities, whether individual, corporate or otherwise, of
27 Does 16 through 30, are unknown to Petitioner who therefore sues said Real Parties in Interest by
28 such fictitious names and will seek leave to amend this Petition when they have been ascertained.

1 13. Petitioner is informed and believes, and on that basis alleges, that the remaining
2 Real Parties in Interest and each of them is the agent and employee of each of the remaining Real
3 Parties in Interest and while doing the things herein alleged, were acting within the course and
4 scope of such agency and employment.
5

6 **III**
7 **STANDING**

8 14. Petitioner hereby incorporates by reference paragraphs 1 through 13 as if fully set
9 forth herein.

10 15. Approval of the Project will adversely affect the interest of Petitioner. Petitioner
11 is a California nonprofit corporation dedicated to preserving the environment of the Carmel
12 Valley and ensuring that the County complies with the General Plan and all applicable state and
13 local laws, including CEQA. Approval of the Project and certification of the EIR will adversely
14 affect those interests of Petitioner. Petitioner has expressed its concerns and commented on the
15 Project during all stages of administrative review. Therefore, Petitioner has exhausted its
16 administrative remedies and has standing pursuant to Public Resources Code Section 21177(c).
17 The claims asserted and relief requested are broad-based, so that participation in the litigation by
18 the members is not required. Accordingly, Petitioner is an “aggrieved person” within the
19 meaning of Public Resources Code Section 21177.

20 16. Jurisdiction of this court is invoked pursuant to California Code of Civil Procedure
21 Sections 1085 and 1094.5; California Public Resources Code Section 21167; CEQA Guidelines
22 Section 15112; the Constitution of the State of California; the Constitution of the United States;
23 and all other applicable law.
24

25 **IV**
26 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

27 17. Petitioner hereby incorporates by reference paragraphs 1 through 16 as if fully
28 set forth herein.

18. Petitioner has performed all conditions precedent to the filing of this petition by

1 raising each and every issue known to it before the Respondents, in compliance with Public
2 Resources Code § 21177, and Code of Civil Procedure §§1085 and 1094.5.

3 19. Notice of the filing of this action, as required by Public Resources Code §
4 21167.5 was mailed to the Respondents on January 12, 2017 (*See*, Letter and Proof of Service
5 attached hereto as **Exhibit “A”**).

6
7 **V**
8 **FIRST CAUSE OF ACTION**
9 **Respondents’ Failure to Comply with the Monterey County General Plan**

10 20. Petitioner hereby incorporates by reference paragraphs 1 through 19 as if fully
11 set forth herein.

12 21. The 2010 Monterey County General Plan, Land Use Policy 1.19 mandates:
13 Community Areas, Rural Centers and Affordable Housing Overlay districts are the top
14 priority for development in the unincorporated areas of the County. Outside of those
15 areas, a Development Evaluation System shall be established to provide a systematic,
16 consistent, predictable, and quantitative method for decision-makers to evaluate
17 developments of five or more lots or units and developments of equivalent or greater
18 traffic, water, or wastewater intensity.

19 In addition, the General Plan requires: “This Development Evaluation System shall be
20 established within 12 months of adopting this General Plan.” General Plan LU-1.19. The
21 General Plan was adopted on October 26, 2010. The County was required to establish the
22 Development Evaluation System by October 26, 2011. The County has not yet established a
23 Development Evaluation System and thus is in violation of its own General Plan and has failed
24 to proceed in a manner required by law.

25 22. The 2010 Monterey County General Plan states:

26 The County shall assure consistent application of an Affordable Housing Ordinance that
27 requires 25% of new housing units be affordable to very low, low, moderate, and
28 workforce income households. The Affordable Housing Ordinance shall include the
29 following minimum requirements:

- 30 a) 6% of the units affordable to very low-income households
- 31 b) 6% of the units affordable to low-income households
- 32 c) 8% of the units affordable to moderate-income households
- 33 d) 5% of the units affordable Workforce I income households

34 General Plan LU-2.13. The General Plan requires that the County’s Affordable Housing
35 Ordinance reflect the range of affordable units as described above. However, the County has not

1 yet amended Chapter 18.40, the County’s Affordable Housing Ordinance, to reflect the
2 percentage of affordable units required for new housing units. Currently, the County’s
3 ordinance only requires 20% of the units be affordable: “To satisfy its inclusionary requirement
4 on-site, a residential development must construct inclusionary units in an amount equal to or
5 greater than twenty (20) percent of the total number of units approved for the residential
6 development.” County Code Section 18.40.070(A). Thus, the County’s Affordable Housing
7 Ordinance is non-compliant with the General Plan and must be amended to reflect the diversity
8 of affordable units required of any new housing development. General Plan Policy LU-9.8 also
9 requires that: “The County shall periodically review and update various regulations and codes
10 consistent with amendments to the general plan.” Failure to amend the Affordable Housing
11 Ordinance pursuant to the requirements set forth under the General Plan constitutes a failure to
12 proceed in a manner required by law.

13
14 **VI**
15 **SECOND CAUSE OF ACTION**
16 **Approval of Project Violates Planning and Zoning Laws**

17 23. Petitioner hereby incorporates by reference paragraphs 1 through 22 as if fully
18 set forth herein.

19 24. This Project is not located in a Community Area, Rural Center or Affordable
20 Housing Overlay district. Therefore, the Project is subject to review pursuant to the
21 Development Evaluation System set forth under General Plan Policy LU-1.19. As discussed
22 above, the Respondents are currently in violation of their own General Plan due to its failure to
23 establish a Development Evaluation System within 12 months of adopting the 2010 General
24 Plan. Because there is currently no Development Evaluation System in place, it constitutes a
25 failure to proceed in a manner required by law if the Project is approved without being first
26 evaluated pursuant to criterion established by the Development Evaluation System.

27 25. The Project is a new housing subdivision proposal. Thus, it is subject to General
28 Plan Policy LU-2.13 requiring 25% of new housing units be affordable to very low, low,
moderate, and workforce income households. The language of LU-2.13 is mandatory, not

1 permissive: “The County shall assure consistent application of an Affordable Housing
2 Ordinance that requires 25% of new housing units be affordable...” The Project fails to comply
3 with this Policy because the County is reducing the affordable housing provided by this Project
4 from 50% to 20% affordable units and thus does not even satisfy the minimum affordability
5 requirement of 25%, required by the General Plan. Furthermore, all of the affordable units
6 would be moderate income units, with no low or very low units provided by the Project.
7 Approval of a Project which fails to comply with Policy LU-2.13 is a failure to proceed in a
8 manner required by law.

9 26. The Project is also subject to General Plan Policy CV-1.27 governing the Carmel
10 Valley. This Policy treats the Project’s area, Rancho Canada Village, as a Special Treatment
11 Area. CV-1.27 mandates that within this Special Treatment Area: “Residential development
12 may be allowed with a density of up to 10 units/acre in this area and shall provide a minimum of
13 50% Affordable/Workforce Housing.” The Project approval amended the text of Policy CV-1.27
14 reducing the affordability requirements from 50% to 20% and struck the language requiring
15 workforce housing as well. This amendment renders the Project non-compliant with Policy
16 LU-2.13 which requires that the County consistently apply the requirement that 25% of new
17 housing units be affordable.

18 27. Furthermore, General Plan Policy LU-9.7 requires:

19 The County shall develop criteria for consistently evaluating amendments. Amendments
20 should be considered if:

- 21 a. There is demonstrable error or oversight in the adopted plan; or,
- 22 b. There is a clear change of facts or circumstances; or,
- 23 c. The amendment better carries out the overall goals and policies of the general plan
24 and the amendment is in the public interest.

25 Under this Policy, there is no valid justification for considering an amendment to Policy
26 CV-1.27 to reduce the affordable housing requirements for the Rancho Canada Village Special
27 Treatment Area.

28 28. The Project is also non-compliant with the existing County ordinance
concerning affordable housing. The current Affordable Housing Ordinance requires that the
20% affordability requirement for new development be dispersed over a range of household

1 income levels: (8% moderate-income; 6% low-income; 6% very low-income). County Code
2 Section 18.40.110(B). The Project is only providing 25 affordable units. 25 units is less than
3 20% of 130 units and thus fails to meet the minimum 20% affordability requirement as set forth
4 under the existing County ordinance. Furthermore, this Project is providing only moderate-
5 income rental units in direct contravention of the existing Affordable Housing Ordinance
6 requiring affordable units be dispersed over a range of household income levels. Approval of the
7 Project constitutes an abuse of discretion pursuant to current County Code governing affordable
8 unit requirements for new housing developments, even though the County ordinance itself is
9 currently non-compliant with the General Plan's requirement for 25% affordable housing.

10
11 **VI**
12 **THIRD CAUSE OF ACTION**
13 **VIOLATION OF CALIFORNIA ENVIRONMENTAL QUALITY ACT**
14 **[Public Resources Code section 21000 et seq.]**

15 29. Petitioner hereby incorporates by reference paragraphs 1 through 28 as if fully
16 set forth herein.

17 30. Real Parties and Respondents have continued to assert the approved Project is an
18 "alternative" to a 281-unit proposal that was originally submitted to the County in 2004 and then
19 abandoned in 2008. The Draft Environmental Impact Report (DEIR) for the 281-unit proposal
20 was circulated in 2008, over eight years ago. At that time, the 281-unit proposal was subject to
21 the provisions and policies of the 1982 General Plan and even then, the proposal was
22 fundamentally inconsistent with the site's land use designation. More importantly, the current
23 Project, challenged here, was neither contemplated nor considered at that time. In 2014, the
24 Real Parties proposed the 130-unit Project at issue after the 2010 General Plan and after the
25 2013 Carmel Valley Master Plan went into effect. This 130-unit Project was never
26 contemplated as an alternative when the 2008 DEIR was circulated. The County's approval of
27 this Project as an "alternative" is unlawful because the approved Project is the actual proposed
28 Project, not an alternative one. The approval fails to adequately assess the true environmental

1 impacts of the Project because as an initial matter, the County fails to provide an accurate
2 description of the actual Project.

3 31. By conflating the actual proposed Project of 130-units with a former application
4 that was abandoned, the Project here did not contain an “ ‘accurate, stable and finite project
5 description’ which is the ‘*sine qua non* of an informative and legally sufficient EIR.”” *City of*
6 *Santee v. County of San Diego* (1989) 214 Cal.App.3d 1438, 1454, *citing County of Inyo v. City*
7 *of Los Angeles* (1985) 71 Cal.App.3d 185, 192-193.

8 32. The County must prepare an EIR with an accurate and finite description which
9 recognizes the 130-unit Project as the actual project being proposed. Failure to do so skews the
10 environmental analysis in a manner that violates CEQA. As it stands, the alternatives analysis in
11 the EIR is deficient and fatally flawed because it is not evaluating and comparing alternatives to
12 the actual 130-unit Project. Not surprisingly, the EIR concludes that the 130-unit Project is the
13 environmentally superior alternative. However, if the 130-unit subdivision was properly
14 considered as the actual Project, as required, there may have been other environmentally
15 superior alternatives.

16 33. The EIR also fails to comply with other provisions of CEQA by failing to
17 provide adequate analysis of environmental impacts, including but not limited to, water, flood
18 control and traffic. Furthermore, the EIR is inconsistent with the current Affordable Housing
19 Ordinance as well as the General Plan.

20 34. The County abused its discretion in certifying a fatally flawed EIR which fails
21 to provide a finite project description, adequate alternatives analysis, adequate analysis of
22 environmental impacts, and is inconsistent with County Code and the County’s General Plan.
23

24 **VII**
25 **INJUNCTION**

26 35. Petitioner hereby incorporates by reference paragraphs 1 through 34 herein as if
27 fully set forth herein.

28 36. An actual controversy has arisen concerning Respondents’ failure to comply with
the Monterey County General Plan, the Monterey County Code, and Public Resources Code

1 Section 21000 *et seq.*, as set forth above.

2 37. As a result of the above-alleged violations of planning and zoning laws and
3 CEQA, Respondents have failed to proceed in a manner required by law and conduct adequate
4 environmental review as required by law.

5 38. At all times mentioned herein, Respondents have been able to require adequate
6 environmental review for approval of the Project, and to comply with planning and zoning laws
7 and CEQA. Notwithstanding such ability, the Respondents fail and continue to fail to perform
8 its duty to require and perform sufficient environmental review.

9 39. Petitioner is informed and believes and thereon alleges that Real Parties are
10 threatening to proceed with development of the Project in the near future. Said implementation
11 will irreparably harm the environment, and will result in significant environmental impacts.

12 40. Petitioner possesses no speedy, adequate remedy at law, in that implementation
13 and development in connection with the Project and approval of environmental review will
14 permanently and forever harm, injure, degrade and impact the environmental values of the
15 County. Petitioner and its members will suffer irreparable and permanent injuries if
16 Respondents' actions herein are not set aside.

17 41. A stay and/or restraining order and preliminary and permanent injunction should
18 issue restraining Respondents and Real Parties from proceeding with development of the
19 Project.

20 42. In order to preserve the status quo, a stay and/or restraining order and preliminary
21 and permanent injunction should issue staying the Respondents' approval of the Project and
22 certification of the EIR.

23
24 **VIII**
ATTORNEYS' FEES

25 43. Petitioner hereby incorporates by reference paragraphs 1 through 42 as if fully
26 set forth herein.

27 44. In pursuing this action, Petitioner will confer a substantial benefit on the People
28 of the State of California and therefore is entitled to recover from Respondents and Real Parties

1 reasonable attorneys' fees and costs pursuant to section 1021.5 of the Code of Civil Procedure,
2 and other provisions of law.

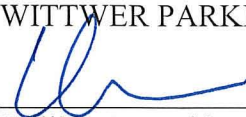
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4 **PRAYER**

5 WHEREFORE, Petitioner prays for judgment as follows:

- 6 1. For Alternative and Peremptory Writs of Mandate ordering Respondents to set
7 aside the December 13, 2016 approval of (1) the Combined Development Permit (PLN040061)
8 to subdivide 81.7 acres into 130 residential lots and for development in the Carmel River
9 Floodplain; (2) certification of the Rancho Canada Village EIR; (3) amendment of the text of the
10 General Plan Policy CV-1.27; and, (4) the rezoning of 37.7 acres from Public/Quasi-Public to
11 Medium and Low-Density Residential zoning, and to follow California regulations and statutes
12 in complying with CEQA, the Monterey County Code, and the Monterey County General Plan;
- 13 2. For an order staying the Real Parties from engaging in any activity pursuant to the
14 Project, until the environmental review and the Project complies with California regulations and
15 statutes, including but not limited to the requirements of CEQA and the Monterey County
16 General Plan;
- 17 3. For reasonable attorneys' fees under California Code of Civil Procedure section
18 1021.5 and any other provisions of law;
- 19 4. For costs of suit; and
- 20 5. For such other and further relief as the Court deems proper.

21
22 Respectfully submitted,
WITTWER PARKIN LLP

23 Dated: January 12, 2017

24 By: 
25 William P. Parkin
26 Attorneys for Petitioner
27 Carmel Valley Association, Inc.
28

VERIFICATION

I, WILLIAM P. PARKIN, say:

I am Attorney of Record for Carmel Valley Association, Inc., a party to this action.

I have read the Petition for a Writ of Mandamus and know the contents thereof. I am informed and believe that the matters therein are true and on that ground allege that the matters stated therein are true. This verification was not signed by a party to this action because Carmel Valley Association, Inc. is absent from the county where I have my office at the time this Petition for Writ of Mandamus was drafted and ready for filing. This verification was executed on January 12, 2017, at Santa Cruz, California.



William P. Parkin

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EXHIBIT A

Notice of Intent to Commence Litigation

January 12, 2017

Board of Supervisors
County of Monterey
PO Box 1728
Salinas, CA 93902

RE: Notice of Intent to Commence Litigation

Pursuant to the requirements of Public Resources Code Section 21167.5, this letter will serve as notice that Carmel Valley Association, Inc. will commence litigation against the County of Monterey.

The litigation challenges the Monterey County Board of Supervisors' (1) approval of a Combined Development Permit for PLN040061 to subdivide 81.7 acres into 130 residential lots in the Carmel Valley; (2) certification of the Rancho Canada Village Final Environmental Impact Report; (3) an amendment to the text of General Plan Policy CV-1.27; and, (4) adoption of an ordinance to rezone approximately 37.7 acres of Public/Quasi-Public zoned property to Medium-Density Residential as well as rezoning Lot 130 from Public/Quasi-Public zoned property to Low-Density Residential. The applicants and Real Parties in Interest are Rancho Canada Venture, LLC, Carmel Development Company, R. and R. Alan Williams.

The litigation has been commenced because the actions listed in the preceding paragraph do not comply with the requirements of the California Environmental Quality Act, and California planning and zoning Laws.

Very truly yours,
WITTWER PARKIN LLP



William P. Parkin

1 **PROOF OF SERVICE BY U.S. MAIL**

2
3 I certify and declare as follows: I am over the age of 18, and not a party to this action.
4 My business address is Wittwer Parkin LLP, 147 South River Street, Suite 221, Santa Cruz,
5 California 95060, which is located in Santa Cruz County where the mailing described below took
6 place.

7 I am familiar with the business practice at my place of business for the collection and
8 processing of correspondence for mailing with the United States Postal Service. Correspondence
9 so collected and processed is deposited with the United States Postal Service that same day in the
10 ordinary course of business.

11 On January 12, 2017, the following document:

12 **1. NOTICE OF INTENT TO COMMENCE LITIGATION**

13 was placed for deposit in the United States Postal Service in a sealed envelope, with postage fully
14 paid to:

15 Board of Supervisors
16 County of Monterey
17 PO Box 1728
Salinas, CA 93902

18 I certify and declare under penalty of perjury that the forgoing is true and correct.

19
20 Dated: January 12, 2017



21 Ashley McCarroll
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