

SETTLEMENT AGREEMENT

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

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

RECITALS

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

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

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

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

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

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

SETTLEMENT PROVISIONS

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

1. General Provisions

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

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

2. Disposition of Litigation

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

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

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

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

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

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

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

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

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4. Release of Claims.

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

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

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

5. Enforcement, Default and Remedies

- 5.1. Mutual Desire to Avoid Further Litigation and Jurisdiction to Enforce Settlement.** The Parties have entered this Agreement for the purpose of avoiding litigation. Enforcement of this Agreement is to be brought solely through the procedures set forth in this section, which are designed to avoid resorting to court enforcement in the first instance, and, if resort to court is necessary, to provide simple, straightforward and predictable relief.
- 5.2. Court Retains Jurisdiction Over Settlement.** The Parties shall request that the Monterey County Superior Court retain jurisdiction of the Litigation solely for the limited purpose of enforcing the mutual promises of this Agreement pursuant to the procedure set forth in this section.
- 5.3. Opportunity to Cure Alleged Default.** Failure by any Party to perform any obligation hereunder within the time periods provided herein following notice and failure to cure as described hereafter, constitutes a "Default" under this Agreement. A Party alleging a Default shall give written notice of Default to the other Party specifying in reasonable detail the nature of the alleged Default and, where

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

5.4. Mediation. If an alleged default in performance has not been cured during the 60-day period provided in Section 5.3 above, any Party may request that the dispute first be submitted to mediation prior to judicial enforcement. The Party requesting mediation will pay for the services of the mediator. If mediation is requested by any Party, all Parties shall make a good faith effort to first resolve through mediation any dispute about another Party's alleged default in performance. If the Parties cannot agree on the identity of the mediator, the judicial officer shall designate the mediator. The Parties will commence mediation within 15 days after notice of the mediation and designation of the mediator and shall conclude mediation within 45 days after commencement. Each Party shall bear its own fees and costs relating to the mediation.

5.5. Effect of Modification of County's Powers. In addition to specific provisions of this Agreement, performance by the County hereunder shall not be deemed to be in Default, if the County's powers are modified, by state or federal legislation or otherwise, in any way that precludes the County from performing its obligations under this Agreement as a matter of law.

5.6. Extraordinary Financial Situations. The County's financial obligations under this Agreement, which include but are not limited to paying attorney fees and costs under the terms of this Agreement, shall be suspended in the extraordinary financial circumstances defined hereunder:

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

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

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

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

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

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

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

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

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

7. General Provisions

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

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

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

To County:

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

To CVA:

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

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

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

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Dated: September 21, 2012

Dated: September __, 2012

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

CARMEL VALLEY ASSOCIATION, INC.

By 
Dave Potter, Chair

By _____
Mibs McCarthy
President

APPROVED AS TO FORM

APPROVED AS TO FORM

CHARLES J. MCKEE, County Counsel

By 
Leslie J. Girard
Chief Assistant County Counsel

Ron DeHoff, Esq.

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Dated: September __, 2012

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

By _____
Dave Potter, Chair

APPROVED AS TO FORM
CHARLES J. MCKEE, County Counsel

By _____
Leslie J. Girard
Chief Assistant County Counsel

Dated: September 24, 2012

CARMEL VALLEY ASSOCIATION, INC.

By Mibs McCarthy
Mibs McCarthy
President

APPROVED AS TO FORM



Ron DeHoff, Esq.

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

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

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

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

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

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

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

EXHIBIT A

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

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

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

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

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

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

EXHIBIT A

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

a. Evaluates the conditions of Carmel Valley Road and identifies projects designed to maintain the adopted LOS standards for this roadway as follows:

1. In order to preserve the rural character of Carmel Valley, improvements shall be designed to avoid creating more than three through lanes along Carmel Valley Road.
2. Higher priority shall be given to projects that address safety issues and manage congestion.
3. The project list may include projects previously identified for inclusion in the CVTIP or their functional equivalent.
4. Priorities shall be established through community input via a Carmel Valley Road Committee, which shall be established by the Board of Supervisors and shall review and comment on proposed projects in the CVTIP, and review and comment on the annual report described in *Policy CV-2.17 (b)*.
5. At a minimum, the project list shall be updated every five years unless a subsequent traffic analysis identifies that different projects are necessary.

b. Validates and refines the specific scope of all projects proposed by the CVTIP through preparation of a Project Study Report (PSR). The PSR will be reviewed and commented on by the Carmel Valley Road Committee prior to commencement of project design.

c. Establishes a fee program to fund the CVTIP. All projects within the Carmel Valley Master Plan (CVMP) area, and within the "Expanded Area" that contribute to traffic within the CVMP area, shall contribute a fair-share traffic impact fee to fund necessary improvements identified in the CVTIP, as updated at the time of building permit issuance. Fees will be updated annually as specified by the CVTIP to account for changes in construction costs and land values. The County shall adopt a CVTIP within one year of approval of the 2010 General Plan. The CVTIP does not apply to any roadways (including SR-1) that are located outside the CVMP area.

EXHIBIT A

Carmel Valley Association v. Board of Supervisors
Settlement Agreement

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

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

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

Carmel Valley Non-Agricultural Slope Development

Add CV-3.22:

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

Delete CV-6.5:

CV-3.11

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

Amend CV-1.6

CV-1.6 New residential subdivision in Carmel Valley shall be limited to creation of ~~266~~ 190 new units as follows:

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

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

Amend CV-2.17

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

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

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

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

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

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

annual monitoring and reporting.

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

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

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

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

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

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

Amend CV-2.18

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

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

Amend CV-3.11

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

Add CV-3.22

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

Delete CV-6.5

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