Exhibit No. 4
Notice of Appeal
Submitted on
February 3, 2012

Carmel Rio Road, LLC
GPZ090004

Board of Supervisors
March 27, 2012

Exhibit No.4

NOTICE OF APPEAL

Monterey County Code
Title 19 (Subdivisions)
Title 20 (Zoning)
Title 21 (Zoning)

No appeal will be accepted until a written decision is given. If you wish to file an appeal, you must do so on or before __ (10 days after written notice of the decision has been mailed to the applicant).*
Date of decision * 1/25/2012

1. Please give the following information:
   a) Your name Brian Clark
   b) Address 430 Ortiz Ave #B City Sand City Zip 93955
   c) Phone Number (831) 899 6666

2. Indicate your interest in the decision by checking the appropriate box:
   ☒ Applicant
   ☐ Neighbor
   ☐ Other (please state) _____

3. If you are not the applicant, please give the applicant's name:
   _____

4. Indicate the file number of the application that is the subject of the appeal and the decision making body.

5.

	File Number	Type of Application	Area
a) Planning Commission:	GPZ090004	Sub-division	Carmel
b) Zoning Administrator:			
c) Subdivision Committee:			
d) Administrative Permit:			

5. What is the nature of your appeal?

a) Are you appealing the approval ☐ or the denial ☒ of an application? (Check appropriate box)

b) If you are appealing one or more conditions of approval, list the condition number and state the condition(s) you are appealing. (Attach extra sheets if necessary).

6. Check the appropriate box(es) to indicate which of the following reasons form the basis for your appeal:

☒ There was a lack of fair or impartial hearing; or

☒ The findings or decision or conditions are not supported by the evidence; or

☒ The decision was contrary to law.

You must next give a brief and specific statement in support of each of the bases for appeal that you have checked above. The Board of Supervisors will ***not*** accept an application for appeal that is stated in generalities, legal or otherwise. If you are appealing specific conditions, you must list the number of each condition and the basis for your appeal. (Attach extra sheets if necessary).

C-3.6 Proof of Access

* Please See Attachment - 5 PAGES

7. As part of the application approval or denial process, findings were made by the decision making body (Planning Commission, Zoning Administrator, Subdivision Committee or Director of Planning and Building Inspection). In order to file a valid appeal, you must give specific reasons why you disagree with the findings made. (Attach extra sheets if necessary).

* Please See Attachment - 5 PAGES

8. You are required to submit stamped addressed envelopes for use in notifying interested persons that a public hearing has been set for the appeal. The Resource Management Agency - Planning Department will provide you with a mailing list.

9. Your appeal is accepted when the Clerk to the Board's Office accepts the appeal as complete on its face, receives the filing fee $_____ and stamped addressed envelopes.

APPELLANT SIGNATURE Brian Clark DATE 2/3/12

ACCEPTED Dennis Hanack DATE 2/3/12

(Clerk to the Board)

2/3/12

APPEAL of Planning Commission 1/25/12 Findings
Denial of Minor Sub-division Application - Inconsistency with Proof of Access Ordinance C-3.6

TO: Board of Supervisors & Mike Novo, Planning Director, Monterey Resources Agency
FR: Brian Clark, Applicant - Val Verde Rio Road & Val Verde, Carmel
File Number: GPZ090004 (formerly PLN060647) Minor Sub-division Application
RE: Val Verde Application - Consistency Analysis, Processing & Time Limits
CC: Pam Silkwood, Attorney at Law
CC: Bob Schubert, Planner

Appealing: Monterey County Planning Commission January 25th, 2012 denial upholding one finding of inconsistency related to the sub-division application therefore denying the application.

Appellant would like to reserve the right to "amend" this appeal language as appellant has not seen the formal findings of denial as of this date.

Issue: Planner Schubert, PC Staff Report, Page 10 & 11, Evidence: a) Proof of Access, recommended denial of the minor sub-division application based upon this subjective policy and the Planning Commission upheld the Planners findings i.e., denied the application for being "inconsistency" with Proof of Access ordinance C-3.6

Applicant is requesting the Planning Commission to find the application consistent with C 3.6 and direct the Planning Staff to do an independent judgment of the tiered draft EIR submitted to Planning on Nov., 9th, 2011.

Applicant Response - Proof of Access:

To briefly recap, the Planning staff has determined the following general plan inconsistency for our project: (1) access. The report refers to "back up well" issues but this was not a line item exhibit for recommending denial. Regardless, a back up well permit has been applied for and the well issue will be resolved shortly.

As to access, the ordinance implementing the General Plan policy is being deliberated at the Planning Commission level, and the Commissioners have asked the Planning Staff to come back with various options for their consideration. It will take months before the Planning Commission and the Board of Supervisors adopt an access ordinance, and we do not know the form the ordinance will take.

General Plan Policy C-3.6 requires the County to "establish regulations" for new development that would intensify use of a private road or access easement, and no such ordinance is in place; thus, it is premature for the County staff to determine that the project is inconsistent with this General Plan Policy.

In interpreting the General Plan Policy C-3.6, the September 29th, 2011 letter of inconsistency from Monterey County to applicant sets forth the following qualifying language - the agreement or court order is only required for a project that proposes a density "beyond the density that is anticipated in the General Plan."

Density is set forth in Camel Valley Master Plan Policy CV-1.10, which is specific to development on Val Verde Drive. Policy CV-1.10 allows for certain density if the project proposes 25% affordable housing, for which the Project exceeds. Moreover, the Housing Element of the General Plan references the application (and future County enacting ordinance) of two state laws, SB 1818 and SB 435, that allow for state density bonus, which is also applicable to this Project. In summary, the density of the Project is not beyond that anticipated in the General Plan, and thus, the Project is consistent with this policy.

RMA staff has already determined that the density proposed for the Project is consistent with the General Plan. This has not been refuted. Thus, the project does not propose a density beyond the density that is anticipated in the General Plan and no agreement or court order is required for the project to be consistent with this access policy.

Over the last several months, the Planning Commission heard two distinguishable proof of access ordinances drafts that contain differing interpretations of the same General Plan policy. The Planning Staff, under the direction of the Planning Commission, is now proposing a third interpretation of the same General Plan policy. This "ordinance," and more importantly the interpretation of the General Plan policy, is a moving target.

Until the regulation is adopted, which may be months from now, the County staff and discretionary bodies must rely on the requirements of the Subdivision Map Act and the express language in the easement of record to avoid an ad-hoc and legally invalid legislatively action.

Rather than wait until the final ordinance, the Planning Commission has denied the minor sub-division application based on an interpretation of C 3.6 yet there are three differing interpretations under review.

Issue: Planner Schubert in Exhibit B also states this RMA procedural process is:

- Statutorily exempt per Public Resources Code Section 21080 (b)(5) and Section 15270(a) of the CEQA Guidelines

Specific to the CEQA action for failing to complete the EIR within the 1-year timeframe set forth under CEQA, the County has claimed our project description has not been finalized (thus, preparing an EIR premature) because there has not been a final determination on the project's consistency with the General Plan, and therefore application may require a General Plan amendment.

Applicant Response - CEQA:

Applicant respectfully disagrees. The initial CEQA review, at the very least, and draft EIR should have been completed before bringing this matter before the Planning Commission.

Planning Department has scheduled hearings before the decision-making body when it was known that the environmental report would not be prepared as of the hearing date. The RMA department has relied upon Section 21080(b)(5) of the Public Resources Code, a provision contained in CEQA, as authority for this practice.

Section 15270(a) of the State CEQA Guidelines reiterates this provision and provides in Section 15270(b) as follows:

This section is intended to allow an initial screening of projects on the merits for ***quick disapproval*** prior to the initiation of the CEQA process where the agency can determine that the project cannot be approved. This application has been in the Planning Department for over TWO years and under active processing for over FIVE years.

Section 15270 should not be used as a basis to schedule a matter before a "decision making body" in contemplation of a project disapproval but in ***anticipation of a project approval at a later time by an administrative appellate body***. This interpretation is also set forth in the Interim Ordinance that clearly states that the merits of the development application must be considered in conjunction with the consistency analysis.

Section 4.C of the Interim Ordinance states in relevant part, "the Appropriate Authority shall make the determination as to General Plan consistency and shall make an appropriate finding as part of the determination on the development application."

Section 21061 mandates the following: "An environmental impact report is an informational document which, when its preparation is required by this division, shall be considered by every public agency prior to its approval or disapproval of a project.

The project application was deemed complete on Dec., 9, 2010, and Public Resources Code section 21151.5 requires the lead agency to complete and certify an EIR within one year of the date the application was deemed complete. The Planning Department began the EIR process by providing us three names of EIR consultants and discussing the selection process as well as the contents of the reimbursement agreement. The discussion stopped when we notified the County of the 1-year deadline.

Local agencies are required to establish time limits by which EIR's for projects involving the issuance of a permit by that agency must be completed and certified. (*Sunset Drive Corporation v. City of Redlands* (1999) 73 Cal.App.4th 215, 220.) Those time limits must not exceed one year and must "be measured from the date on which an application requesting approval of the project is received and accepted as complete by the local agency. (ibid.) In Sunset Drive case, the appellate court ruled that the City's refusal to complete the EIR for a project is contrary to the maximum time limits prescribed by CEQA, and that the trial court was not only authorized, but required, to issue a writ of mandate ordering the City to take corrective action. (ibid at p. 222.) Accordingly, Monterey County has violated its duties to complete that process within one year of its acceptance of the application. (See id. at p. 221.)

The Project Applicant requests the Board of Supervisors to direct the RMA to use the tiered environmental document submitted by the applicant to Planning on Nov., 9th, 2011 directing the Planning Staff to do an independent peer review and judgment of the tiered draft EIR submitted. CEQA Guidelines section 15084 makes clear that the County, as the lead agency, "must consider all information" provided to it. Section 15084(c) states,

"Any person, ***including the applicant***, may submit information or comments to the lead agency to assist in the preparation of the draft EIR. The submittal may be presented ***in any format***, including the form of a draft EIR. The lead agency must consider all information and comments received. The information or comments may be included in the draft EIR in whole or in part. The lead agency must consider all information and comments received. The information or comments may be included in the draft EIR in whole or in part."

Monterey County's refusal to exercise discretion to prepare an EIR is itself an abuse of discretion. (*Sunset Drive Corporation v. City of Redlands, supra,* 73 Cal.App.4th at p. 2222.)

In closing, the RMA staff report ignores section 4.C of the Interim Ordinance that makes clear that the merits of the development application must be made as part of the consistency analysis. Section 4.C states in relevant part, "the Appropriate Authority shall make the determination as to General Plan consistency and shall make an appropriate finding as part of the determination on the development application."

Applicant is requesting the Board of Supervisors rescind (overturn) the Planning Commission application denial finding the application consistent with C 3.6 and direct the Planning Staff to do an independent peer review and judgment of the tiered draft EIR submitted to Planning on Nov., 9th, 2011.

Exhibits:

Proof of Access Details:

1. The deeds associated with the project's three lots and, for that matter, all deeds for the properties on Val Verde Drive state:

"A non-exclusive right of way appurtenant for all purposes of a road over, upon and across the following described parcel of land..."

The Val Verde Drive easement is 60' wide or 10' wider than the Carmel Valley Road easement, which indicates that the original grantor intended more intensified vehicular use of the easement beyond a rural road/horse trail.

The property deeds specific language and 60' wide easement meet the standard for the subdivision project.

2. Under the Subdivision Map Act section 66474(g), "easements of record" are sufficient to demonstrate access for the subdivision. The recorded deeds are sufficient to demonstrate proof of access under this Act.

The County has approved road usage of Val Verde Drive that "intensifies" usage on three occasions in the recent past; thus, setting forth the County's interpretation of the easement. Specific to the easement, the Hatton heirs created the 60' wide easement in 1957 with express language that would give them not only an easement with a width that could accommodate any type of future development but with deed language that was as broad as possible, "for all purposes of a road" - providing the Hatton's with the broadest - least restrictive - possible future use of this easement.

As a relative matter the easement for Val Verde Drive is 60' vs. 50' wide easement for Carmel Valley Road - Val Verde Drive easement is 10' wider than this main arterial roadway in and out of CV.

Applicant has provided RMA with all recorded title work including:

- deeds (3)
- title reports (3)
- plat maps
- surveys
- legal opinions/land use attorneys review of the legal status of the deeds in light of our proposed application

Recent Monterey County approved uses of Val Verde Drive easement:

- access for Pres. Community Center development
- fire road - emergency access for Cottages of Carmel

Exhibit 2 - While Planner Schubert recommendations denial specifically based upon C 3.6 - proof of access - comments on Specifics of Staff Report refer to:

Back-up well (PS 3.1, 3.2, 3.9 & 3.13):

Applicant is drilling a new back-up replacement well which will address each of these categories. Each regulation had previously been satisfactorily met with the exception of one condition - several years into the process it was determined we may not be able to comply with one 50' well control zone.

Brian Clark 2/3/12