Exhibit A
Discussion

Villas De Carmelo
(Rigoulette)
PLN070497

Board of Supervisors
October 11, 2011
I. BACKGROUND

The project application proposed by The Wideswaters Group, Inc. ("applicant") proposes a Local Coastal Plan Amendment that must be certified by the Coastal Commission (CCC) before the County can take final action on the project. The project (Modified Design Alternative) also includes an application for a Combined Development Permit consisting of: 1) Standard Subdivision for a Vesting Tentative Map to subdivide 3.68 acres in to 46 condominium parcels and common open space; 2) Coastal Development Permit to allow alterations to two historic structures including: a) converting the former convalescent hospital into nine condominium units with underground parking, recreation room, storage, and a gym; and b) converting an existing garage/shop building into three condominium units; 3) Coastal Administrative Permit to demolish one existing structure and construct eight new buildings consisting of 34 units for a total of 46 condominium units; 4) Coastal Development Permit to allow development on slopes of 30% or greater; 5) Coastal Development Permit to allow the removal of up to 97 trees (21 coast live oak and 76 Monterey pines); 6) Design Approval and approximately 13,500 cubic yards of grading.

If the proposed LCP Amendment is certified, the Modified Design Alternative would be consistent with the Local Coastal Program. If the LCP Amendment is not certified (current conditions), a density greater than seven units exceeds the allowed density; and therefore, the project would be inconsistent with the LCP and could not be approved. For this reason, staff recommends that the Board act first on the LCP Amendment and await action on the permit until after the LCP Amendment process is concluded.

The process thus far has been as follows:

- **Subdivision Committee.** The project came before the Standard Subdivision Committee on January 13, 2011 and February 24, 2011 to evaluate the proposed project with the technical analysis provided in the EIR. On February 24, 2011, Committee members individually stated that they found no issues with the technical aspects of the project, i.e., water, wastewater, traffic. Although the Subdivision Committee expressed interest to see modified plans by staff, the applicant would not agree to a continuance to revise plans. Therefore, the Committee voted to move the project forward without a recommendation. Since that time, the applicants have submitted revisions to the plans that address staff’s recommendations.

- **Planning Commission.** The Planning Commission hearing on the project took four meetings. Below is a summary of events that occurred at those meetings:

  **June 29, 2011:** Staff presented the project and Final EIR. The staff report recommended: 1) Approval of the LCP Amendments from MDR to HDR, 2) Certification of the EIR, and 3) conditional approval of the project (Combined Development Permit), with payment of the inclusionary housing ordinance in-lieu fee rather than on-site affordable housing. Motion passed (5-4 vote) adopting an Intent to recommend denial of the LCP Amendments, and Motion passed (9-1 vote) continuing the hearing on the application for a Combined Development Permit until such time that the LCP Amendment process is completed. The matter was continued to July 27 for staff to return with appropriate findings and evidence supporting the Commission action relative to the LCP Amendments.

  **July 27, 2011:** Motion failed (4-5 vote) to adopt a resolution recommending that the Board of Supervisors deny the LCP Amendments. Motion passed (5-4 vote) to continue the hearing on the LCP Amendments to August 10. Staff was requested to
place an item on the August 10 agenda to consider rescinding the June 29, 2011 motion continuing the hearing on the application for the Combined Development Permit.

August 10, 2011: Motion passed (6-4 vote) to rescind the June 29, 2011 continuance of the Combined Development Permit. Motion passed (9-1 vote) continuing the hearing to August 31 on the LCP Amendments and on the application for a Combined Development Permit, with the direction to return with the June 29, 2011 staff report, including recommendations and draft resolutions; address the connection of density as it relates to affordable housing and the applicability with the 1982 General Plan, and respond to the June 29, 2011 letter from the Monterey Peninsula Water Management District (MPWMD).

August 31, 2011: The Planning Commission voted (6-4) to adopt the resolution initially presented in the June 29, 2011 staff report recommending that the Board of Supervisors approve proposed LCP Amendments to the Carmel Area Land Use Plan and Coastal Implementation Plan. The PC also adopted a resolution recommending the Board certify the EIR, to include EIR errata, and approve the proposed project to include on-site inclusionary housing with clarifications/corrections with regard to water and traffic (Exhibit E).

II. **Board of Supervisors/California Coastal Commission PROCESS**

Staff is processing the project concurrently with the EIR to the Board of Supervisors where action on the project must wait final action until the LCP amendment process is completed. These are the multiple actions required for approval:

- **Board of Supervisors.** The Board must first consider the LCP Amendment. If the Board agrees with the proposed Amendment, the Board would adopt a Resolution of Intent to approve the Amendment and submit the amendment to the Coastal Commission for certification (limit 3 applications per year). If the Board does not agree with the proposed Amendment, then there is no action for the Coastal Commission to consider, and the project would not be approved. In this event, staff would recommend that the Board adopt a resolution of intent to deny the project and continue the hearing to a date certain for staff to return with findings and evidence for denial.

- **Coastal Commission.** If the Board adopts a Resolution of Intent to approve the LCP Amendment, it would be submitted to the Coastal Commission to consider if the amendment should be certified as part of Monterey County’s Local Coastal Plan.

- **Board of Supervisors.** If the LCP Amendment is certified by the Coastal Commission, the Board must accept the Commission’s action before the amendment is certified. At that point the Board may adopt the LCP Amendment and take action on the proposed project.

- **EIR.** An EIR has been prepared. If the Board is acting only on the LCP Amendment, it should consider the environmental information in the EIR but it need not certify the EIR at this juncture. Per Public Resources Code Section 21080.9, the County is not required to act on the EIR when it is acting only on an Amendment to the LCP, although the County must provide environmental information to the Coastal Commission sufficient for a thorough review by the Coastal Commission. Before approving the Combined Development Permit, the Board would be required to certify the EIR. The applicant has requested that the Board certify the EIR now. If the Board desires to certify the EIR at this juncture, staff would need to prepare the appropriate findings for certification.

III. **LAND USE/LCP AMENDMENT**

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The project is located in the Coastal Zone. The Local Coastal Program is made up of four Land Use Plans: Big Sur Coast, Del Monte Forest, Carmel Area and the North County. The High Density Residential land use designation is located only in the North County Land Use Plan. However, North County parcels are predominantly served by wells and septic systems. Currently, there is an overdraft situation in the North County coastal areas that prohibits intensification of use. Del Monte Forest and Carmel both provide existing public water and public sewer to its users. Currently, there are condominiums located in the Del Monte Forest area that are zoned Medium Density Residential/2.7 units per acre. The proposed development has existing available infrastructure.

The project site is currently designated as Medium Density Residential (MDR) and zoned for Medium Density Residential, 2 units per acre in a design control overlay district in the Coastal Zone (MDR/2-D (CZ)). A hospital on the project site was permitted through a Use Permit. At the time of application for the proposed project, the County of Monterey established that the Use Permit was still valid since the site had not been fully abandoned because certain buildings on the site are currently being used.

The Local Coastal Program (LCP) applicable to this project consists of the Carmel Area Land Use Plan (LUP), Part 1 of the Coastal Implementation Plan (CIP) (Title 20 Zoning Ordinance), and Part 4 of the CIP (Regulations for Development in the Carmel Area Land Use Plan – Chapter 20.146). Development of the proposed project requires amendment of the Local Coastal Program (LCP) to amend the:

1) Carmel Area Land Use Plan to include High Density Residential (HDR) designation. The HDR designation is appropriate for a broad range of higher intensity residential uses at a higher density (from 5-20 units/acre) and a blend of housing types. Staff has developed proposed language that limits the density to 12.5 units/acre and defines the location of the HDR to be where urban services - i.e., public water, sewer, roads, public transit, fire protection, etc. - are available,

2) Carmel Area Coastal Implementation Plan (CIP) to add High Density Residential Zoning District to the CIP, and set forth HDR development standards; and Chapter 20.146.120 (Land Use and Development Standards),

3) Amend the land use designation and zoning for the 3.98 acres located at 24945 Valley Way, Carmel (Assessor's Parcel Numbers 009-061-002-000, 009-061-003-000, and 009-061-005-000) in the Carmel Area Land Use Map from the existing designation and zoning of MDR/2 (Medium Density Residential/2 units per acre) to HDR/12.5 (High Density Residential/12.5 units per acre).

The County Resource Management Agency staff determined that the HDR designation is appropriate to allow affordable housing by design (density) in certain areas. Although the HDR designation would be established, proposed amendments to the LUP and CIP have been designed to limit application to this one project so that future projects requesting a HDR designation would need their own LCP amendment (Exhibit B). As such, staff finds that adding the HDR designation would not be growth-inducing.

The applicants have also submitted recommended LCP Amendments (Exhibit C). Originally, the applicants submitted an LCP amendment proposal to designate the parcels with a “Special Treatment” overlay. However, they are now proposing a similar amendment to the County's amendment but with more of a focus on the proposed project.
During the course of the public review period of the EIR, comments were received by residents that live within the surrounding residential area of the proposed project site. A majority of these comments express concern that the proposed project conflicts with its neighboring land uses.

Density
The LUP amendment requests a redesignation and rezoning from the existing designation of MDR/2 (Medium Density Residential/2 units per acre) to proposed HDR/12.5 (High Density Residential/12.5 units per acre), which would allow a maximum of 46 residential units on the 3.68 acre project site. This number of units would result in adding between 82 and 145 persons to this area. In comparison:
- The minimum building site which may be created in the MDR zone is 6,000 square feet unless otherwise approved as part of a condominium, planned unit development or similar clustered residential subdivision. Apartments are located on neighboring property to the west along Highway 1 where the property is designated as MDR/2. The design of these apartments visually appears denser than the two units per acre zoning designation.
- MDR/2 zoning would allow for 7.36 units (13 to 23 persons) on the subject site.
- For other surrounding sites (north), the MDR designation has developed in a manner consistent with detached, single family homes.
- Properties in the surrounding area within the City of Carmel-by-the-Sea are designated as “R-1.” The City uses two primary land use designations. Single-Family Residential is intended to provide for single-family residential development at densities ranging from two (2) units per acre to eleven (11) units per acre. Multi-Family Residential area is intended to provide for multiple family residences at a maximum density of thirty-three (33) units per acre or forty-four (44) units per acre when affordable housing is provided. Therefore, staff finds that the proposed density of HDR/12.5 units per acre for the project site is less intense than the City’s R-1 designation.

Aesthetically, nine (22%) of the proposed units would be located within the existing historic building and three units within an existing historic outbuilding on site so there would be no visual change from those units. Based on an aerial photo outlining existing development patterns, staff finds that the site design is consistent with the urbanized setting. In addition, having existing public services and facilities makes this a suitable potential location for planning higher density housing. As such, staff finds that the proposed density would be appropriate and would not significantly conflict with neighboring land uses.

The parcels surrounding the subject property have zoning designations of Medium Density Residential/2 units per acre (unincorporated area) and R-1 in the City of Carmel. However, actual average density on the ground is as follows:
- City of Carmel (west) 11 dwelling units per acre
- Apartments (east of Villas) 13 dwelling units per acre
- Carmel Woods (north) 8 to 10 dwelling units per acre
- Handley/Upper Trail (northwest) 5 to 6 dwelling units per acre
- Hatton Fields area (south) 4 dwelling units per acre

The size, density, and character of this residential area vary, but in general, residential parcels in this area average from 3,000 square feet to approximately 9,000 square feet.

There was some concern with the size of proposed project as it relates to neighboring development. In the City of Carmel, a 3,000 square foot lot with allowable 60% maximum
coverage (1,800 square feet) equals 14.19 dwelling units/ per acre. Using the same calculation for the 3.68 acres at 60% lot coverage (currently allowed in High Density zoning) equals 52.20 dwelling units per acre or 93,960 square feet maximum lot coverage. The applicant’s proposal is 76,600 square feet lot coverage. Staff has determined the size of the project is in proportion to the neighboring City of Carmel.

A map is attached showing all vacant lots in the Carmel Area Land Use Plan that are located near existing public utilities (Exhibit D). This is an urbanized area located within the Sphere of Influence boundary for the City of Carmel-by-the-Sea with access to commercial services located in the City of Carmel-by-the-Sea or at the mouth of Carmel Valley. The proposed project site is an infill, urban area with existing public services and facilities (see IV. water discussion). It is the largest available property in this area that can provide affordable housing. Staff recommends redevelopment of the site to an efficient land use in a manner that minimizes impacts.

General Plan Consistency
Specific questions were raised with regard to the Monterey County Growth Management Policy (Appendix A of the 1982 Monterey County General Plan) that states affordable housing should be made part of projects that involve increases in land use density (See Exhibit G).

The proposed project is subject to the certified Local Coastal Program (LCP) and the 1982 General Plan to the extent the LCP does not address certain policy topics (eg, noise). Policy 26.1.15 of the General Plan states, “Only very low density development shall be allowed outside of urban service areas, areas of development concentration designated in accordance with the County’s adopted Growth Management Policy (Appendix A), and outside of the County’s existing unincorporated communities.

Appendix A, Monterey County Growth Management Policy, declares that managed growth and orderly development are essential to the proper utilization of land in Monterey County, including the following:

1. Establishment of Growth Areas: Growth areas shall be designated only where there is provision of an adequate level of service and facilities such as water, sewer, fire protection, and drainage and be coordinated with school authorities.
2. Development of Cities and Areas Around Cities: Urban development should be discouraged in areas lying outside the boundaries of urban service areas in order to discourage premature and unnecessary conversion of open space outside the urban service areas.
3. Establishment of New Areas of Development Concentration: This section is specific to ADC zoned areas and does not apply to this project.
4. Priorities for Growth: Priority for growth will be given first to infilling within existing urban areas. The next priority will be for development on lands adjacent to existing and densely settled urban areas where the necessary services and facilities are available, except where this impacts prime and productive agricultural lands. Growth areas adjoining urban areas shall be within the spheres of influence of the cities and coincide with the area to which the cities are providing services or in areas immediately surrounding high density concentrations within the County.
5. Low and Moderate Income Housing: A managed growth program must consider, and provide for, the housing needs of all economic segments of the community. Toward this
goal, it is the County’s intent to increase residential densities in designated growth areas over those indicated as land use designations of the County General Plan.

Staff’s reading of Appendix A is that it does not discourage growth, but encourages managed growth near urban service areas. Thus, if Appendix A applies, this project is consistent with it because the project is infill development, located within the sphere of influence of the City of Carmel-by-the-Sea, and could potentially provide affordable housing.

Although the proposed project is consistent with the principles of the Monterey County Growth Management Policy, staff’s analysis is that the Growth Management Plan no longer applies. When the Carmel Area Land Use Plan (LUP) was adopted in 1983, the LUP - not the 1982 General Plan - defined land use and development standards; the General Plan applies on matters addressed in the 1982 General Plan that are not addressed in the Carmel Area Land Use Plan, for example noise.

Policy 4.4.3.H.2.A of the Carmel Area Land Use Plan states, “The County shall encourage the expansion of housing opportunities in the Carmel area for low and moderate income households. The County will adopt an updated housing element with appropriate incentives which will help attain affordable units. This element will be the adopted standard for low and moderate income housing in the Carmel area.”

Per this policy, we look to the County’s Housing Element. The certified 2009-2014 Housing Element is implemented in part by the County’s Inclusionary Housing Ordinance (Monterey County Code Chapter 18.40). The Inclusionary Housing Ordinance allows for modifications to the requirements to provide affordable housing (see discussion in Section III of this staff report), which would allow for the applicants’ proposal of nine moderate income housing units, provided the Board makes findings supporting the modification per Monterey County Code Section 18.40.050.B.2.

III. AFFORDABLE HOUSING
The current land use designation of the site is Medium Density Residential, and the designation being considered is high density residential. Questions have been raised as to the appropriate land use/density for this location, and how the proposed density fits with the overall land use plan for the area.

A proposal for an LCP Amendment to allow higher density residential zoning in the Carmel Area Land Use Plan could create an opportunity to provide affordable housing on-site. Given that this property is unique in that it has existing infrastructure and available water (provided Cal Am can serve the site), this property has the ability to provide on-site affordable housing.

The Monterey County Inclusionary Housing Ordinance (Chapter 18.40 of the Monterey County Code) requires subdivision projects to comply with affordable housing regulations by providing affordable housing equal to 20% of the total number of units proposed (6% very low, 6% low and 8% moderate income units). The decision-maker may approve a modification of this requirement based on a written finding, supported by substantial evidence, “that as a result of unusual or unforeseen circumstances, it would not be appropriate to apply, or would be appropriate to modify, the requirements of this chapter” (Section 18.40.050.B.2).

The Housing Advisory Committee is an advisory body appointed by the Board of Supervisors to provide input and recommendations on affordable housing issues. The HAC attempts to work
with the applicants to come up with a feasible form of compliance that addresses county or planning area affordable housing needs. Since the project application is requesting a modification to the Inclusionary Ordinance requirement for on-site compliance, the HAC is responsible to review, evaluate, and forward a recommendation to the Planning Commission and Board of Supervisors whether the exception meets the criteria in the Inclusionary Housing Ordinance. The HAC’s recommendation is advisory only. Final project approval would be conditioned by the Monterey County Board of Supervisors upon recommendation by the Planning Commission.

The Inclusionary Housing Ordinance provides specific underwriting criteria for setting the initial sales prices for Inclusionary Units. This involves setting the sales price based on affordable “monthly housing costs” for each of the required income levels. Included is the assumed household size based on the number of bedrooms in the unit, an assumed conservative interest rate and down payment amount, and an estimate of monthly costs for taxes, insurance, utilities, and homeowner’s association (HOA) dues. When the estimated HOA dues are significant, the sales prices are reduced to specifically take these costs into account. However, the future resale values are set based on the initial sales price of a unit and initial estimates of HOA dues. Future increases in HOA dues, which are beyond the control of the County, could impact the Inclusionary Unit owner’s future housing costs. This could be very problematic for low and moderate income owners and could force an Inclusionary owner to have to sell their unit because they could no longer afford the HOA dues.

Therefore, on July 14, 2010, the Housing Advisory Committee (HAC) recommended that payment of an in-lieu fee as appropriate in this case. However, in the course of the Planning Commission hearings, the applicants reaffirmed their original proposal of moderate income housing consisting of 46 condominium units with a mix of market rate and affordable housing. New housing would include 37 market rate condominiums with 9 moderate income housing units on-site. The PC recommended approval of the project with the inclusion of the on-site moderate income units.

State law has been updated to require that local agencies encourage affordable housing by design. The County’s Housing Element requires the County to identify areas where there is an allowed density of 30 units per acre to achieve this goal. There currently is no such density in the coastal zone. As such, inclusionary housing is an important tool to provide affordable housing in the unincorporated coastal areas.

IV: WATER
Supply
The proposed project site is currently serviced by public utilities with existing infrastructure. In order to obtain regulatory information regarding water service on the property, Staff contacted service providers and relevant regulatory agencies, including the Monterey Peninsula Water Management District (MPWMD or “the District”) and Monterey County Water Resources Agency (MCWRA). Water is proposed to be supplied by Cal-Am (the primary water purveyor in the Carmel area). The sources of supply for the subject parcel are the Carmel Valley Alluvial Aquifer (CVAA) and the Monterey Peninsula Water Resource System, components of the Cal-Am distribution system. For further discussion of water supply, see the discussion below of the SWRCB Cease and Desist Order.

Water Demand
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The project proposes redevelopment of a former convalescent hospital site into 46 units, as well as development of a 2,100 square foot gym. Although the project area is already developed, the proposed project would increase the developed floor area and convert the use to residential. Based on the proposed project and the applicable water demand factors for fixture counts per the MPWMD Residential Water Release Form, the estimated water demand for the proposed residential project is approximately 6.154 AF/Y.

All properties that modify or add water fixtures on a property within the MPWMD must obtain written authorization from the District prior to taking action. In accordance with the regulations of the MPWMD, the applicants are proposing to use water credits under Rule 25.5 that allows the property to use their water credit for the existing buildings and former use on the site. Therefore, the applicants propose to abandon use as a hospital under the regulations set forth by MPWMD Rule 25.5 and use their credits assigned under Rule 25.5. The water credit under Rule 25.5 and demand calculations were reviewed by Monterey County Water Resource Agency, Monterey County Planning, and MPWMD. The District has determined that upon application for water credits (based upon demolition of building use or removal of the Property's water meters), the District rules allow for the issuance of 8.226 AF/Y of on-site water credits. Since this is not a new connection, but rather use of historic water credits, it was considered equivalent to a can and will serve letter at the time the application was deemed complete. Confirmation of historic water credits has been analyzed in the EIR.

Obtaining a water credit from MPWMD requires formal application and processing by the District. Upon application, the MPWMD Rules and Regulations, including the process for calculating Water Use Credits (Rule 25.5), will be used to verify the final water use credit for the site. The District will also require verification by the District of permanent abandonment of use and final determination of the water use credit for the site. The project is considered consistent with the applicable regulations under MPWMD Rule 25.5 based on the proposed project’s application; however, final consistency with Rule 25.5 must be verified by the MPWMD per the regulations of the District.

**Draft EIR Comments**

Concerns were raised during the public review period on the Draft EIR related to water service delivery, lack of documentation of actual historic use, and potential impacts of water delivery in light of a Cease and Desist Order issued per Order WR 95-10 by the State Water Resources Control Board (SWRCB). The Draft EIR identified the existence of a water credit of 8.226 AF/Y based on an estimated use assuming the applicable MPWMD Rule 25.5, termed the “water credit.” Several comment letters cited the water credit as “hypothetical” water use on the site and questioned the validity of the MPWMD water use credit to determine past water use on the site (i.e., Rule 25.5 of the MPWMD which allows for water credits use on a site with an historic record of use).

Following release of the Draft EIR, historic records for the site were obtained identifying actual historic water use. The water records show that the water use varied during operation of the hospital, and if all years were averaged from Water Years 2001 to 2008, the average water demand during this period is 8.3 AF/Y. During a four year period of operations prior to the hospital ceasing operation in 2005 (Water Year 2001 to WY 2004), the property’s water use averaged 13.68 AF/Y of consumption based upon available Cal-Am records. During the four year period after the hospital ceased operations at the site (WY 2005 to WY 2008), only nominal water use was recorded (ranging from a low of 0.18 AF/Y for WY 2008 to 2.90 AF/Y for WY 2005).
Chapter 18.46 (Ordinance 3310, 1988) applies to the unincorporated portion of Monterey County within the service area of the California-American Water Service Company. The purpose is to not intensify land use over that existing at the time the provisions of this Chapter became effective (Section 18.46.040.A MCC). This Chapter does not apply to or prohibit development projects that include subdivisions, where the applicant demonstrates to the satisfaction of the Director of Planning that water conservation measures proposed on or off the site will result in a minimum 10 percent decrease in the overall water use (Section 18.46.040.B.6 MCC).

The Planning Department interprets that the 10% reduction is measured against the water use of the site when Ordinance 3310 went into effect, which was 1988. County received documentation relative to the historical water use for the property based on actual water records between 2001 and 2008, and this data was included in the Recirculated Draft EIR (RDEIR). Between 2001 and 2005, the water use ranged from 12.65 AF in 2002 to 14.67 AF in 2004, which averages to 13.688 AF/Y over the five year period. Without specific records for 1988, we presume that there was similar water use while the hospital was in operation. Using the lowest, single year, "historical" value (12.65 AF) and applying the requirement to reduce water by 10% from the time Ordinance 3310 became effective (1988), we interpret that the project complies with Chapter 18.46 if they demonstrate the project would use less than 11.385 AF/Y.

Until we received the historical data, 8.226 was the only figure we had to apply Chapter 18.46 to. Since "historical" data has been received, the 10% reduction is not measured against the baseline 8.226 AF/Y figure provided by the MPWMD. Since the MPWMD credit factor of 8.226 is less than the average historical use factor, staff applied the MPWMD credit factor. Therefore, as long as the overall project (structural + landscaping) remains within the 8.226 AF/Y, the project complies with Chapter 18.46.

In addition, the EIR concludes that proposed project would not exceed available water supplies and resources; supplies and resources to serve the project are available to the site. The EIR concludes that the project would not result in construction of new water treatment facility (or facilities) or cause an expansion of existing facilities or construction of facilities that may cause significant environmental effects. The project will not result in a new or expanded entitlement for water; in fact, the project will use water within available water use credit from the MPWMD and within historic water use. The project will use water through the water use credit program (Rule 25.5) requiring that water use on the site be within MPWMD demand factors. Implementation of the mitigation measures would require monitoring to ensure project demand is not exceeded and to require conservation measures for water fixtures on site.

The County is required to analyze the project under CEQA and has made the determination that a long term water supply exists under the Regional Water Supply Project. (See Recirculated Draft EIR 4-4.14-32-34). The County also found no evidence to substantiate biological impacts on the Carmel River system (See FEIR page 3-17(S-D) and page 3-56 (15-G). Therefore, the EIR concludes that impacts are less than significant because the project proposes no intensification of use over the baseline.

**Water Meters**

Staff received a letter dated June 29, 2011 from the Monterey Peninsula Water Management District (MPWMD), questioning the ability for sub-meters on this site in light of the Cease and Desist Order against California American Water.
The FEIR indicates that the project will utilize sub-water meters with a master meter and thus will not include new connections. The MPWMD indicated that this is not their approach and requests that the Final EIR be clarified and corrected. The use of sub-water meters is not allowed under MPWMD’s Rule 23-B-2-a, unless a Variance is granted. Also, sub-metering is not supported by California American Water. Based on information provided by the General Manager of California American Water at the May 16, 2011 MPWMD Board meeting, the Cease and Desist Order against California American Water may impact the setting of water meters for this project. (See FEIR pages 5-22, RDEIR Response F-5, 5-154, RDEIR Response BB-32, 6-31, Mitigation Measures 4.14-6 and 4.14-7)

The comment is noted and has been clarified. The referenced sections in the FEIR will note the correction stated by MPWMD. MPWMD rules do require each user to install a separate water meter for each unit. The proposed project consists of 46 residential units. The conditions of approval/mitigations will be revised accordingly. In a conversation with MPWMD on August 16, 2011, MPWMD staff explained that a variance to District Rule 23 would need to be obtained before a master meter and sub-meters would be allowed on the property. Either the applicant must ask for and receive a variance from the requirement for individual meters under the District’s Rules and Regulations (through Board action at the MPWMD) or the applicant will be required to install individual meters at each unit (note landscaping is already going to be done through individual meters). As noted in the letter from MPWMD, should individual meters be required, “the Cease and Desist Order against California American Water may impact the setting of water meters for this project”. However, as noted by the MPWMD, this determination is not under their jurisdiction and would be officially decided by the State Water Resources Control Board.

Mitigation Measures 4.14-6 and 4.14-7 have been revised to indicate that either a variance is obtained for the project under Rules and Regulations of the MPWMD to allow sub-metering with approval received by Cal-Am to use this metering approach, or that individual meters be provided.

**Cease and Desist Order**

Title 19 of the Monterey County Code requires that there be proof of water in quantity and quality prior to determining that an application is complete and can go to hearing. The Health Department is the lead agency in determining the adequacy of the project’s water supply (Section 19.03.015.L.2). The decision-maker, upon recommendation of the Health Officer, must find that the source capacity and water quality for all the lots proposed in the subdivision meet all applicable health and safety regulations prior to approval of the tentative map (Section 19.03.025.D). Initially, a Can and Will Serve letter dated August 24, 2009 was issued by Cal Am satisfying the requirement of Title 19.03.015.L.2.D. On August 16, 2011, Molly Erickson, attorney for Save Our Carmel Neighborhoods Coalition, submitted a letter, dated August 10, 2011, from a staff member of the State Water Resources Control Board (SWRCB). The letter from the SWRCB stated “if Cal- Am were to serve the new 46-unit residential condominiums with water from the Carmel River, Cal-Am would likely violate Condition 2 of the Cease and Desist Order.”

Condition 2 of the SWRCB’s Cease and Desist Order (Order WR2009-0060) issued to the California American Water Company, states “Cal-Am shall not divert water from the Carmel River for new service connections or for any increased use of water at existing service addresses resulting from a change in zoning or use. Cal-Am may supply water from the river for new service connections or for any increased use at existing service addresses resulting from a change in zoning or use after October 20, 2009, provided that any such service had obtained all
necessary written approvals required for project construction and connection to Cal-Am’s water system prior to that date.” A footnote adds: “multifamily residential, commercial or industrial sites may currently be served by a single water meter. The installation of additional meters at an existing service will not be viewed as a new service connection provided that the additional metering does not result in an increase in water use. Metering each unit of a multifamily building tends to increase accountability in the use of water and the effectiveness of water conservation requirements.”

A letter dated August 25, 2011, from the applicants’ attorney, states, “The State Water Resources Control Board’s (SWRCB) legal department confirmed that the use of either additional meters or sub-meters for the proposed condominium units does not raise any problems under the State’s Cease and Desist Order for the Villas de Carmelo project. The SWRCB legal department also confirmed that the letter issued by SWRCB staff, dated August 10, 2011, did not include review by the legal department prior to being released, and that this letter does not constitute a determination by the SWRCB that water service to the proposed project would result in any violation of the Cease and Desist Order.”

A letter dated August 30, 2011 was sent from the SWRCB to clarify the August 10, 2011 letter. The August 30th letter stated that “The August 10, 2011 letter, however, does not represent a final determination by the State Water Board that the use of water for the proposed condominium project would be a violation of State Water Board Cease and Desist Order WR 2009-0060.” The letter goes on to state that “Prior to reaching a final determination in the matter, the State Water Board would...further evaluate historical use data ...and review... water use information for any project proposed at the site.”

The Can and Will Serve letter was used as evidence that water is available to serve the proposed project in accordance with Section 19.03.015; however, the letters from the SWRCB indicate that the SWRCB has not made a determination as to whether Cal-Am may serve the project under the terms of its Cease and Desist Order (Order WR2009-0060). Under these circumstances, the Can and Will serve letter no longer definitively establishes that water is available for this project. Accordingly, it is staff’s recommendation that the Board not approve the Combined Development Permit until the County has updated evidence of a water supply for the project. All the letters are attached as Exhibit F.

V: OPTIONS PRESENTED TO THE PLANNING COMMISSION
The in-lieu fee for Inclusionary housing for this project was an issue for the Planning Commission. The Planning Commission felt a proposal for an LCP Amendment to allow higher density residential zoning in the Carmel Area Land Use Plan could create an opportunity to provide affordable on-site housing. The Commission recognized resource constraints in the Carmel Area Land Use Plan. However, given that this property is unique in that it has existing infrastructure and may have available water, this property has the ability to provide on-site affordable housing. Staff identified four options for the Planning Commission to consider:

1) Recommend approval of the LUP/CIP Amendments with the requirement of 20% affordable housing, or
2) Establish a new level of affordable housing by way of a “Special Treatment” overlay; or
3) Apply the “Affordable Housing” overlay similar to the principles of the 2010 General Plan; or
4) Accept the applicant’s originally proposed moderate income housing consisting of 46
condominium units with a mix of market rate and affordable housing. New housing would include 37 market-rate condominiums with 9 moderate income housing units.

The “overlays” would not require high density residential zoning, but would still require LUP/CIP Amendments. These four options only provide a framework; other options are available.

The Carmel Area Land Use Plan already includes “special treatment” areas (Policy 4.4.3.F Carmel Area Land Use Plan). The “special treatment” overlay is intended to be used in conjunction with the underlying land use designation. The purpose of the special treatment area is to facilitate a comprehensive planned approach for specifically-designated properties where a mix of uses are permitted and/or where there are unique natural and scenic resources or significant recreational/visitor serving opportunities exist. Particular attention is to be given towards siting and planning development to be compatible with existing resources and adjacent land uses. Properties already designated for “special treatment” include the Mission Ranch property, the Odello property, the frontal slopes of the Palo Corona Ranch comprising 388 acres, the Sawyer property consisting of 466 acres, and Point Lobos Ranch which covers roughly 1,600 acres.

Pursuant to Carmel Land Use Plan Policy 4.4.3.H, the County shall encourage the expansion of housing opportunities in the Carmel area for low and moderate income households. Accordingly, these areas are subject to low and moderate income housing policies. Applying the “special treatment” overlay would give the Board the ability to define a unique opportunity (public utilities, historic preservation, and transportation) and to establish the level of affordable housing required.

The above-mentioned options have the potential to provide for sustainable land use principles such as:

- urban infill development; utilizing urban lots to the greatest extent feasible;
- consistency with the General Plan principles by reducing sprawl;
- providing higher density affordable housing; and
- preservation of a Historic Resource.

Therefore, staff supports the LCP Amendments for high density residential zoning as it has the opportunity for a public benefit.

**CONCLUSION:**
The applicants would like the Board to certify the EIR. Certification of the EIR is not necessary for the LCP Amendments to go to the Coastal Commission. The Coastal Commission will receive the EIR along with the application for the LCP Amendments as a technical document for the analysis of the LCP Amendments. However, staff is recommending the following:

1) Adopt a Resolution of Intent to approve the LCP Amendments and direct staff to submit them to the California Coastal Commission (CCC);
2) Await certification of the EIR until after the California Coastal Commission acts on the LCP Amendments; and
3) Continue the hearing on the project until after the California Coastal Commission acts on the LCP Amendments.