

# MONTEREY COUNTY

## HOUSING AND COMMUNITY DEVELOPMENT

Erik V. Lundquist, AICP, Director



HOUSING, PLANNING, BUILDING, ENGINEERING, ENVIRONMENTAL SERVICES

1441 Schilling Place, South 2nd Floor  
Salinas, California 93901-4527

(831)755-5025  
www.co.monterey.ca.us

### MEMORANDUM

**Date:** July 15, 2021

**To:** Responsible Agencies and Interested Parties on the Rancho Cañada Village Second Revised Environmental Impact Report

**From:** Mary Israel, Project Planner

**Subject:** Errata to the Rancho Cañada Village Second Revised Environmental Impact Report (RCV Second Final EIR)

**cc:** HCD-Planning Project File No. PLN040061-AMD1

The purpose of this errata is to make two clarifications to Mitigation Measure BIO-18, to be incorporated into the Second Final Environmental Impact Report for the Rancho Cañada Village Project. Subsequent to the publication of the Second Final EIR on April 16, 2021, Monterey Peninsula Water Management District submitted a comment letter requesting refinement of Mitigation Measure BIO-18 and text in the EIR chapters (June 11, 2021 letter attached hereto). Then, MPWMD conferred with the applicant and provided a second letter expressing that most of the concerns were allayed but the district still requested minor revisions to Mitigation Measure BIO-18 to indicate that MPWMD will not be involved in actions to rescue steelhead if stranded. (June 30, 2021 letter attached hereto). The first revision reflects this clarification. The second revision is to clarify that applicant must provide proof of arrangements and does not necessarily need to provide proof of a permit if the arrangements are made with a permitted organization. The revisions are shown below in strikeout and double-underline. County has determined that this revision is a minor clarification that does not raise a new environmental impact or increase the severity of an environmental impact.

In Chapter 3.3, the following revision has been made specifically to Mitigation Measure BIO-18:

#### **Mitigation Measure BIO-18: Rescue Steelhead, if Stranded in Site Basin During High-Flow Events**

The Applicant or successor(s) in interest will apply to the NOAA Fisheries and to the DFW for permission to rescue steelhead if they become trapped in the new site basin. The Applicant or successor(s) in interest will be responsible for arranging the inspection of the basin after any storm event that results in temporary filling from the Carmel River. Steelhead will be rescued from the basin and either returned to the Carmel River immediately and/or be held at an appropriate facility ~~(such as the MPWMD Sleepy Hollow facility)~~ until it is safe to return them to the river. The Applicant or successor(s) in interest may choose to effect this mitigation through arrangement with organizations that are already involved with fish rescue on the Carmel River such as ~~MPWMD and the Carmel River Steelhead Association.~~

The Applicant or successor(s) in interest will obtain all necessary approvals and make all implementation arrangements for steelhead rescue prior to the construction of the new site basin and will provide proof of such permits and/or arrangements to the County.

Attachments:

- MPWMD Comment Letter on SFEIR, June 11, 2021
- MPWMD Comment Letter on SFEIR, June 30, 2021



June 11, 2021

Mr. Erik V. Lundquist, AICP, Chief of Planning  
County of Monterey Housing & Community  
Development Department – Planning Department  
1441 Schilling Place, South 2<sup>nd</sup> Floor  
Salinas, California 93901

**Subject: Monterey Peninsula Water Management District Comments on County of Monterey’s Second Final Environmental Impact Report for Rancho Cañada Village Project, Carmel Valley Road, Carmel Valley, SCH#2006081150 (APNs: 015-162-009, 017, 025, 026, 040, 018, 019, and portions of 015-062-043 and 015-162-051)**

Dear Mr. Lundquist:

This letter conveys the Monterey Peninsula Water Management District (District) comments on the County of Monterey’s Second Final Environmental Impact Report (SFEIR) dated April 2021, for the Rancho Cañada Village Project in Carmel Valley. The District would like to raise several concerns:

- 1) new proposed well and infrastructure
- 2) conversion of water rights and the proposed change in land use
- 3) effects along the Carmel River Riparian Corridor
- 4) the project must comply with the District’s water efficiency requirements

The proposed project would develop an approximately 76-acre area within a portion of the former West Course at Rancho Cañada Golf Club. The project Site<sup>1</sup> consists of a mix of residential and recreational uses, including an approximately 25-acre, 130-unit residential neighborhood, a 1.5-acre community park, 11 acres of common areas and approximately 40 acres of permanent open space within the site. The District is submitting these comments based on current rules and policies which are subject to revision at any time by action of the Board of Directors. The District has the following comments:

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<sup>1</sup> Capitalized terms are defined in District Rule 11.

### Proposed New Well

SFEIR, p. 2-20 at lines 37-38: “A pipeline from the existing or new well to the nearby Cal-Am water distribution system would be constructed.” This statement is not entirely accurate.

The SFEIR is not clear in describing the Cal-Am system and what would be necessary to wheel water through that system. The Cal-Am well on the former east course is hooked to a raw water line that travels east along Carmel Valley Road to the Begonia Iron Treatment Plant at mid-Valley where it is treated before going into the potable water distribution system.

A new well on the Rancho Cañada Village site would require two water lines – one to convey raw water from the well to the Cal-Am raw water line and one to convey flow from the Cal-Am distribution line to the project site.

### Water Rights

The SFEIR states in lines 4-7, p. ES-7: “The Project Applicant’s water rights have been confirmed by the appropriate authorities...”

Also, in lines 12-15, p. 3.10-14: “TPL [Trust for Public Lands], in a letter to the County (TPL 2016) identified that there is a pre-existing contractual allocation of water rights between the different property owners and that 180 AFY is allocated to the developer of the Rancho Cañada Village project for use at their discretion.”

The characterization of water rights in the Executive Summary and other portions of the SFEIR can lead the reader to believe that the project is entitled to up to 180 AFY through a combination of pre-1914, riparian, appropriative rights, and a water sharing agreement among the former golf course landowners. There has been no formal recognition of water rights for this project, such as from a court opinion or permits from agencies with authority over water use. In addition, while an agreement between property owners to share water in principle may be valid, it has no validity in formally establishing water rights or in determining a legal amount of water use for each parcel subject to the agreement.

There are three authorities in the State with jurisdiction over water use from the Carmel River – the courts and the State Water Resources Control Board (SWRCB) have concurrent jurisdiction, and the District also has authority granted by the State Legislature to sets limits to diversion from the CVAA. None of these entities have confirmed water rights for this project.

A pre-1914 right to appropriate water and export it must be affirmed either by the courts, or by the SWRCB, although such seldom happens. The SWRCB does not issue permits for riparian water use, although in limited circumstances the SWRCB will recognize rights to riparian use. The District can issue a permit for water use based on findings of riparian water rights and a sustainable supply. It is possible that riparian rights have remained with the project property; however, the District reserves the right to evaluate documentation of such rights during the permit review process. The project applicant makes an unsubstantiated claim that there are both riparian and

appropriative water rights available for the project. It seems highly unusual that this would be the case.<sup>2</sup>

Recent production history maintained by the District demonstrates nominal water use since the closure of the golf course. This production may become part of the baseline for the District to set a future production limit for the project. In determining a baseline and limit of water use for the project, the District notes the following:

- 1) At Monterey County's urging and consistent with 2010 General Plan Update Policy PS-3.2 concerning sustainable water supplies, the District enacted Ordinance 175 for sustainable water use from the Carmel River by future developments. Compliance with that ordinance involves setting a baseline of consumptive water use (as opposed to nominal water use as reported by well pumping records). It must be understood that any nominal water rights recognized or granted for the project is not what the District uses as the starting point for setting a water use limit on new development. It is the past consumptive use<sup>3</sup> that is the starting point.
- 2) Presuming that riparian rights have not been severed or otherwise subrogated, an appropriate baseline for this project is the consumptive use on the 76-acre project area – not the entire former west golf course as described in the consumptive use analysis presented in Appendix H. Also, the District prefers to use the most recent 10-year period of water production data prior to application for a Water Distribution System Permit. The District has determined that a ten-year period prior to land conversion is an appropriate environmental baseline under CEQA for purposes of making findings for issuing a permit.

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<sup>2</sup> As noted in the SFEIR, the Rancho Cañada properties have probably retained riparian rights. In 1992, the property owner(s) submitted Application A03111 to the SWRCB for an appropriative right to divert water from the Carmel River based on previous water use on the golf course properties. The District objected to the application in 1992 based on injury to prior rights and environmental concerns. The SWRCB subsequently determined that the District's rights were junior to the property owners who were granted Table 13 reservations in Water Rights Decision 1632, including the Rancho Cañada property. However, the environmental objection has not been resolved and the project applicant has made no attempt to resolve the objection.

Normally, accepting an appropriative permit from the SWRCB extinguishes the riparian right on a property to the extent said property is reducing its on-site use. This prevents "double dipping" of the water resource. In response to Application A03111, SWRCB proposed an appropriative water right permit in 2011 based on a Table 13 reservation with conditions including meeting instream flow requirements seasonally. The project applicant has not accepted the proposed permit conditions as drafted. Moreover, if accepted by the project applicant, that proposed permit would most likely be associated with an interruptible supply that cannot be relied on for this project. Because of the unique character of water appropriated from the Carmel River under current instream flow requirements (it is available only during wet conditions when there is limited demand and must be stored for later use in dry periods), this type of water is difficult to use and its actual yield on an annual basis is far lower than the nominal amount assigned to a permit. The District does not believe there will be a demand in the foreseeable future for water that could be developed under the proposed appropriative right.

<sup>3</sup> Consumptive use = the difference between what is pumped and what is returned to the aquifer

However, the recent forbearance agreement between the Rancho Cañada Village partners and Cal-Am complicates the baseline usage period. At the time of application, the District will discuss with the applicant what an appropriate baseline period should be. It may be possible to exclude production data for the years covered by the forbearance agreement.

The District is supportive of dedicating water rights that are not needed for the project or by adjacent parcels to instream beneficial uses (i.e., directly under District Ordinance 175, or through forbearance agreements); however, given the degraded condition of the Carmel River, the District does not support exportation of water out of the basin unless those exports have no effect on the environment of the river. The proposal for an appropriate “export” right should be better supported based on net consumptive use impacts, which will also translate to environmental impact. An argument that a small impact from such an appropriation would be “less than significant or not measurable” is not proved in the SFEIR.

#### Effects along the Carmel River Riparian Corridor

the District regulates activities in the area along the Carmel River that is subject to the 10-year magnitude flow as described in the 1983 FEMA Flood Insurance Study. This includes most of the floodplain areas adjacent to the main stem along the project site.

#### **Detention Ponds**

Page 3.2-27: “Proposed basins at the southern end of the property were created to offset the proposed earthwork within FEMA Zone AE. The volume of those basins equates to 3,023,758 cubic feet. One of the infiltration/detention areas is incorporated into the volume of these basins. The required retention/detention volume for this area equals 8,483 cubic feet. This results in an excess retention volume of 3,015,275 cubic feet for the Project (L&S Engineering and Surveying, Inc. 2014).”

Just over 3 million cubic feet of excavation is equal to just under 70 acre-feet. To put this volume into perspective, it would be about 1/6 of the Carmel River lagoon volume when Monterey County takes action to avert a flood around the lagoon. It is difficult to assess the exact vertical relationship between the proposed pond bottom and adjacent riverbed; however, it appears the pond bottoms are at or below the grade of the riverbed. Alluvial material along the Carmel River Riparian Corridor is highly permeable and presents no barrier to flow. It should be noted that during higher sustained flows on the Carmel River, water passes through sand and gravel berms (what is known as aquifer hydraulic conductivity) and will fill low spots by bubbling up through the ground. If the excavated basin is too low, water will travel from higher stages of the river through pore space in the sands and gravels and fill the basin from below to approximately the same height as the river stage. As river stage drops this water will slowly recede. This may attract wildlife such as California Red-legged Frog to the excavated basin. This relationship should be evaluated when setting the low point of the basin with respect to the low flow channel of the river and different river stages.

In general, excavating a pond at or near riverbed level risks capture of the area through river migration processes. Past floods have shown that the Carmel River main stem can migrate up to a kilometer (3,280 feet) in a single event. At the Rancho Cañada golf course, the river migrated about 200 feet during the February 1998 flood event along the east course. The District would prefer to see evidence that the basin excavation is for stormwater detention, rather than a location to obtain fill for the project. At a minimum, pond elevations must be no lower than bankfull stage (about the 1.5-year flood magnitude) adjacent to the pond areas.

The District is not supportive of creating pond areas along the river corridor. This part of the project proposal will need to be modified in order to obtain a valid River Work Permit from the District for work in the Riparian Corridor.

### Page 3.3-71: **Mitigation Measure BIO-18: Rescue Steelhead, if Stranded in Site Basin During High-Flow Events**

In Mitigation Measure BIO-18, the SFEIR suggests any steelhead that become stranded in the detention ponds could be rescued by the District and transported to the the District Sleepy Hollow Steelhead Rearing Facility. **The District requests removal of County Use Permit condition language that would require or involve District actions in any condition related to steelhead stranding.** The District believes rescuing fish out of a 5 to 8 foot deep pond is not feasible. The District will also not commit to rearing steelhead rescued out of the system at times other than low flow periods when rescue is required to mitigate for Carmel River diversions.

Page 3.3-48, Lines 38 and 39. Riparian trees such as arroyo willow and black cottonwood will be removed for the project. It is well known that cut branches greater than two inches in diameter and about 3 feet long when placed in moist soil, will sprout into new trees. Portions of the removed trees could be placed in areas that are designated to be restored if irrigation is present during the summer. If the project managers can keep the removed portions of trees moist through the summer, they could contribute as restoration plantings as opposed to being chipped up. In addition, large wood from the trunks of the trees could be used as habitat structures in restoration efforts upstream.

### Water Demand and Use of High Efficiency Water Fixtures

The District Rule 142 requires installation and maintenance of water efficient plumbing fixtures, appliances, and landscape. The current estimates provided in the SFEIR Table 3.10-5, *Water Demand by Housing Type*, need to be updated to comply with MPWMD Rule 142, including very low water use dishwashers as a water efficiency measure. Please refer to the District's August 5, 2016, comment letter on the re-circulated Draft Environmental Impact Report for reference regarding other Water Permit requirements. Current MPWMD Rules and Regulations can be found at [www.mpwmd.net](http://www.mpwmd.net), including the District's Water Efficiency Landscape Regulation XIV-142.1, which exceeds the State's Model Water Efficient Landscape Ordinance.

If you have any questions or would like to discuss our comments, please contact the following staff:

County of Monterey

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- Water demand and efficiency requirements – Stephanie Locke at [Locke@mpwmd.net](mailto:Locke@mpwmd.net)
- Wells, water rights, and consumptive use – Jon Lear at [jlear@mpwmd.net](mailto:jlear@mpwmd.net)
- Carmel River Riparian Corridor – Thomas Christensen at [thomas@mpwmd.net](mailto:thomas@mpwmd.net)

Sincerely,



David J. Stoldt, General Manager



June 30, 2021

Mr. Erik V. Lundquist, AICP, Chief of Planning  
County Monterey Housing & Community Development  
Department – Planning Department 1441 Schilling  
Place, South 2<sup>nd</sup> Floor  
Salinas, California 93901

**Subject: Monterey Peninsula Water Management District Comments on County of Monterey’s Second Final Environmental Impact Report for Rancho Cañada Village Project, Carmel Valley Road, Carmel Valley, SCH#2006081150 (APNs: 015-162-009, 017, 025, 026, 040, 018, 019, and portions of 015-062-043 and 015-162-051)**

Dear Mr. Lundquist:

On June 11, 2021 the Monterey Peninsula Water Management District (District) provided comments on the County of Monterey’s Second Final Environmental Impact Report (SFEIR) dated April 2021, for the Rancho Cañada Village Project in Carmel Valley. Since then, the District has met with the project proponents and reviewed additional material. As a result, the District has modified or allayed its concerns in the following four categories:

- 1) new proposed well and infrastructure
- 2) conversion of water rights and the proposed change in land use
- 3) effects along the Carmel River Riparian Corridor, and
- 4) the project must comply with the District’s water efficiency requirements

#### Proposed New Well

The District has reviewed site plans and well locations and agree that the new well and conveyance facilities are appropriate.

#### Water Rights

In consultation with the project proponents, the District is confident they understand the water rights situation, despite the description in the Second Final EIR. Further, we have discussed with them the District’s Ordinance 175 for sustainable water use from the Carmel River by future developments, adopted at Monterey County’s urging and consistent with 2010 General Plan Update Policy PS-3.2 concerning sustainable water supplies. Compliance with that ordinance involves setting a baseline of consumptive water use (as opposed to nominal water use as reported by well pumping records). The project proponents understand that any nominal water rights recognized or granted for the project is not what the District uses as the starting point for setting a water use limit on new development. It is the past consumptive use that is the starting point. The District believes there is adequate water supply to serve the Project, so long as the riparian rights travel with the deed to

Mr. Erik V. Lundquist

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each residential unit, which the District understands to be the case based on conversation with the project proponents.

#### Effects along the Carmel River Riparian Corridor

The District remains uniquely interested in the proposed basins at the southern end of the property created to offset the proposed earthwork within FEMA Zone AE. We understand now that the proposed grading plan for the basins was developed with input from state and federal fisheries regulatory agencies, as well as developed to work in an integrated fashion with the Carmel River FREE and County flood control proposals. If that is the case, the District can be supportive.

The District remains concerned about potential stranding and rescue of threatened species, but is willing to work with project developers to ensure Carmel River concerns are addressed. One method to do so would be draft condition of approval, Condition #72, which has a compliance action, to be modified to include the District such that it would read:

“Prior to issuance of grading and/or building permits, the Applicant/Owner shall submit proof that a management plan for the conservation area has (sic) be developed and approved by the **MPWMD**, USFWS and/or DFW. The management plan shall be reviewed and approved by HCD-Planning.”

The District will need to be satisfied regarding this part of the project proposal in order to authorize a valid River Work Permit from the District for work in the Riparian Corridor.

Additionally, as mentioned in our previous letter, in Mitigation Measure BIO-18, the SFEIR suggests any steelhead that become stranded in the detention ponds would be rescued by the District and transported to the District Sleepy Hollow Steelhead Rearing Facility. **The District requests removal of County Use Permit condition language that would require or involve District actions in any condition related to steelhead stranding.** However, the District does not foreclose developing an agreement to provide such services. The project developers should develop a plan with some third-party entity on provision of this Mitigation Measure.

#### District Water Efficiency Requirements

The project proponents recognize the District’s water efficiency requirements and these do not present any additional concern to either party.

The District believes there are no major hurdles to proceeding with this project, so long as our understandings with the project proponents are and remain correct.

Sincerely,



David Stoldt  
General Manager

Monterey Peninsula Water Management District