



# Monterey County

**Item No.**

## Board Report

Board of Supervisors  
Chambers  
168 W. Alisal St., 1st Floor  
Salinas, CA 93901

**Legistar File Number: RES 22-061**

**March 08, 2022**

**Introduced:** 2/24/2022

**Current Status:** Agenda Ready

**Version:** 1

**Matter Type:** BoS Resolution

### **PLN130339 - COLLINS**

Public hearing to consider:

- a. Finding that the project involves rezoning within the Coastal Zone, which qualifies as a Statutory Exemption pursuant to section 15625 of the CEQA Guidelines; and
- b. Adopting a resolution of intent to amend the Local Coastal Program to rezone a 21-acre parcel from Resource Conservation, Coastal Zone ["RC(CZ)"] to Watershed and Scenic Conservation, 40 acres per unit, Design Control Overlay, Special Treatment, Coastal Zone ["WSC/40-D-SpTr(CZ)"]

**Project Location:** 83 Mt. Devon Road, Carmel (APN: 241-021-007-000)

**Proposed CEQA Action:** Find the project Statutorily Exempt per Section 15625 of the CEQA Guidelines and subject to the requirements of Public Resources Code § 21080.5

### RECOMMENDATION:

It is recommended that the Monterey County Board of Supervisors:

- 1) Find the project involves rezoning within the Coastal Zone, which qualifies as a Statutory Exemption pursuant to section 15625 of the CEQA Guidelines; and
- 2) Adopt a resolution of intent to approve the Local Coastal Program Amendment to rezone the property from Resource Conservation, Coastal Zone ["RC(CZ)"] to Watershed and Scenic Conservation, 40 acres per unit, Design Control Overlay, Special Treatment, Coastal Zone ["WSC/40-D-SpTr(CZ)"].

The attached resolution includes findings and evidence for consideration (**Exhibit B**). The draft Local Coast Program Amendment is attached to this Board Report as **Exhibit C**.

### PROJECT INFORMATION:

**Agent:** Robert Carver

**Property Owner:** James G & Sook Collins

**APN:** 241-021-007-000

**Parcel Size:** 21.07 acres

**Zoning:** "RC(CZ)" Resource Conservation, Coastal Zone.

**Plan Area:** Carmel Area Land Use Plan

**Flagged and Staked:** No

### SUMMARY:

The subject property is a 21-acre parcel located in the Carmel Highlands area, approximately 1/3 of a mile east of the Highlands Inn (Vicinity Map, **Exhibit D**). Point Lobos State Park is approximately 1-mile northwest and Yankee Point Drive is less than 1-mile to the southwest. Elevations of the

property range between 450 and 860 feet above sea level. Mount Devon Road, a public road right of way, runs along the parcel's western property line, traverses through the property in a north-south direction, then switches back along the eastern property line. Vegetation is comprised of mainly Monterey pine forest and Central Maritime Chaparral. Existing development on the site consists of 50,000-gallon water tank for California American Water and a set of stairs to provide access to the tank.

The property's land use designation, as illustrated in the Carmel Area Land Use Plan (CAR LUP) map, is Resource Conservation - Forest & Upland Habitat and zoning is Resource Conservation, Coastal Zone or "RC(CZ)." The purpose of the designation and zoning district is to protect, preserve, enhance, and restore sensitive resource areas. Of specific concern are areas containing viewshed, watershed, plant and wildlife habitat, streams, beaches, dunes, tidal areas, estuaries, sloughs, forests, public open space areas and riparian corridors. Implementation of RC zoning regulations are intended to result in development that can be achieved without adverse effect while remaining subordinate to the resources of the particular site and area. This district does not list residential development as an allowed use.

Figure 2 - Special Treatment Areas of the CAR LUP demonstrates that the subject property is part of a special treatment area known as the Behavioral Science Institute or "BSI" property (**Exhibit D**). An accompanying residential development policy (Policy 4.4.3E.6 of the CAR LUP) specifies that the BSI property may be developed for residential use, provided the units are outside of the view from Highway 1 and that the "upper steeper portion" remain in open space. Other parcels within the BSI boundary have been designated with zoning districts and/or a Special Treatment overlay that allow development of single-family dwellings. In 2003, the Coastal Commission conducted a Periodic Review of the CAR LUP that included a map illustrating that the Collins property as a remaining developable parcel with (1) maximum allowable unit (Map LU-12b, **Exhibit F**). Pursuant to Policy 4.6 of the CAR LUP, a density of 1 unit per 40 acres is required for properties below 1000-foot elevation. The subject property's elevation is less than 1000 feet above sea level and therefore the 40 acre per unit restriction would be applicable to the subject property. The applicant indicates that these documents and regulations are the premise for the proposed request: amend the Local Coastal Program to allow rezoning the property from RC(CZ) to Watershed and Scenic Conservation, 40 acres per unit, Design Control overlay, Special Treatment, Coastal Zone or "WSC/40-D-SpTr(CZ)".

On August 30, 2017, the Planning Commission considered a similar request by the same applicant to rezone the subject property from Resource Conservation, Coastal Zone [RC(CZ)] to Watershed and Scenic Conservation, Special Treatment, Coastal Zone [WSC/SpTr(CZ)] and to grant a Combined Development Permit for the construction of a single family dwelling, garage, establishment of one domestic well, removal of two Monterey Pines, and development with 100 feet of environmentally sensitive habitat area (ESHA) and on slopes exceeding 30%. The Planning Commission adopted a motion of intent to deny the rezoning request based on finding sufficient evidence that there was an intent to preserve the entire property in perpetuity by prohibiting residential development and that the current RC(CZ) zoning was placed on the property to forward this intent. In addition, with regard to the development project, the Commission cited that the overwhelming public interest suggests that continuance of this project is appropriate until the rezone has been determined. This item was continued to September 27, 2017 in order to allow preparation of the resolutions based on the motion

of intent. At this hearing, the Planning Commission adopted a resolution recommended that the Board of Supervisors deny of the project's mitigated negative declaration and rezoning ordinance but continue the Combined Development Permit aspect of this project to a date uncertain, which would occur subsequently to the Board of Supervisors' hearing regarding the rezoning (Resolution 17-037, **Exhibit E**).

On July 24, 2018, the Collins application to rezone a 21 acre property from the Resource Conservation, Coastal Zone ["RC(CZ)"] to Watershed and Scenic Conservation, Special Treatment, Coastal Zone ["WSC/SpTr(CZ)"] zoning classification was heard before the Board of Supervisors. After review and consideration of the facts before the Board and public testimony given, the Board adopted a motion of intent to deny the applicant's request to rezone the property without prejudice to the applicant and continued the hearing to September 25, 2018 for staff to prepare the resolution. The main factor in the Board's denial of the request was the uncertainty surrounding the status of a Conservation and Scenic Easement Deed on the property. The applicant contended that the easement had been legally terminated by a previous owner. Conversely, project opponents and Coastal Commission staff contended that the easement was not properly terminated, and therefore was still in effect. This denial without prejudice allowed the applicant to seek a quiet title action (judicial judgement) by a court to determine whether or not the Conservation and Scenic Easement Deed was previously terminated. On April 21, 2021, the U.S. District Court for the Northern District of California determined that the easement was validly terminated based on the terms of Article 7 in the Easement Deed.

Since denial of the original request, the applicant has changed the scope of work to only propose the rezone of the 21-acre property from Resource Conservation, Coastal Zone ["RC(CZ)"] to Watershed and Scenic Conservation, 40 acres per unit, Design Control Overlay, Special Treatment, Coastal Zone ["WSC/40-D-SpTr(CZ)"]. No development is proposed in this project.

Staff has provided an analysis and interpretation of historical background (going back over 55-years) for both the subject property and the BSI property in **Exhibit A** (Discussion). Staff finds that there is compelling evidence to indicate the parcel was intended to allow one residence. Although no development is proposed in this project, Staff has analyzed potential impacts of future development based on known site constraints such as steep slopes, biological resources, and visual resources. Staff recommends applying the Watershed and Scenic Conservation, 40 acre per unit, designation as it allows rural residential development in the more remote or mountainous areas in the Coastal Zone, while protecting significant resources such as viewshed, watershed, and plant and wildlife habitat. Only future development applications that can be achieved without adverse effect and are subordinate to these resources would be allowed.

Staff received one public comment during Planning review which objected to the proposed rezone due to the need for protecting open space in perpetuity and raised concerns regarding setting precedent for termination of other local easements (**Exhibit H**). Staff has resolved and addressed these comments in the project discussion found in **Exhibit A** and within CEQA findings contained in the draft resolution attached as **Exhibit B**.

DISCUSSION:

Detailed discussion is provided in **Exhibit B**.

OTHER AGENCY INVOLVEMENT:

The Office of the County Counsel has reviewed and approved the proposed ordinance as to from.

FINANCING:

Funding for staff time associated with this project is included in the FY2021-22 Adopted Budget within Community Development General Fund 001, Appropriation Unit HCD002, Unit 8543.

BOARD OF SUPERVISORS STRATEGIC INITIATIVES:

This action represents effective and timely response to our HCD customers. Processing this application in accordance with all applicable policies and regulations also provides the County accountability for proper management of our land resources.

Check the related Board of Supervisors Strategic Initiatives:

- Administration
- Economic Development
- Health & Human Services
- Infrastructure
- Public Safety

Prepared by: Fionna Jensen, Associate Planner

Reviewed by: Craig Spencer, Chief of Planning

Reviewed by: Lori Woodle, Finance Manager I

Approved by: Erik Lundquist, AICP, Director of Housing and Community Development



The following attachments are on file with the Clerk of the Board:

- Exhibit A - Discussion
- Exhibit B - Draft Resolution including:
  - Draft Rezone Ordinance
  - Proposed Amended Zoning Map Section 20.16
- Exhibit C - Vicinity Map
- Exhibit D - Figure 2 - Special Treatment Areas of the CAR LUP
- Exhibit E - Planning Commission Resolution 17-037
- Exhibit F - LCP Periodic Review Update (Excerpt)
- Exhibit G - Carmel Area Land Use Plan Findings of Approval (Excerpt)
- Exhibit H - Public Comment

cc: Front Counter Copy; Planning Commission; California Coastal Commission; Robert Carver, Agent; James G. Collins, Applicant/Owner; Fionna Jensen, Associate Planner; Anna V. Quenga, AICP, Principal Planner; Craig Spencer, Chief of Planning; Erik Lundquist, HCD Director; The Open Monterey Project (Molly Erickson); LandWatch (Executive Director); Celia Bosworth; Interested Party; Project File PLN130339.