

Attachment A

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ATTACHMENT A
PROJECT DISCUSSION
HALEY & MCGOURTY TRS
RMA-PLANNING FILE NO. PLN180434

Project Description and Setting

The Applicant proposes a lot line adjustment (including a lot merger, between three legal lots of record, resulting in two lots), demolition of an existing single-family dwelling and construction of a one-story single-family dwelling, remodel of an existing 865 square foot one-story single-family dwelling (including the construction of a 225 square foot trellis carport addition), and development within 750 feet of known archaeological resources. The properties are located at the intersection of Isabella Avenue and San Antonio Drive in the unincorporated area of Carmel Point. The project site is within an established residential neighborhood located on the northern portion of the Carmel Point area (see the Vicinity Map at **Attachment D**). The property is west of Highway 1 and 675 feet south of the city of Carmel-by-the-Sea on San Antonio Avenue. The subject properties are zoned MDR/2-D (18) or Medium Density Residential, 2 units per acre with a Design Control overlay and an 18-foot height restriction and is governed by regulations and policies in the 1982 General Plan, the Carmel Area Land Use Plan (LUP), the Carmel Coastal Implementation Plan (CIP), the Monterey County Coastal Zoning Ordinance (Title 20), and the Monterey County Subdivision Ordinance – Coastal (Title 19).

Project Analysis

Staff reviewed the application and found the project, as proposed, consistent with Title 19 (for the Lot Line Adjustment); and the LUP, General Plan, CIP, and Title 20 (for the proposed structural development). As a residential use in a residential zone, the primary focus of review has been on potential impacts to cultural resources. In 2001, in association with review of a permit to construct a guesthouse (on Parcel B), a Phase I preliminary archaeological investigation was prepared and Phase II archaeological testing was conducted (LIB180383, Breschini April 2001; and LIB180382, Doane and Haversat, September 2000). No significant archaeological resources were found during testing, but the potential for resources to be uncovered during construction could not be ruled out. Therefore, consistent with the recommendations of the archaeologist, an Initial Study was prepared for that project and mitigation measures were suggested to minimize potential impacts to resources if discovered during construction including a requirement for a monitor during construction. The County was not made aware of any impacts to archaeological resources during this construction in 2001.

For the proposed project, new Cultural Resource Auger Testing was conducted on the proposed Lot A, where demolition and new construction for this project are proposed (LIB180401, Morley November 2018). No significant archaeological resources were found during testing, but the potential for resources to be uncovered during construction could again not be ruled out. Therefore, the County prepared an Initial Study and mitigation measures were recommended to minimize potential impacts to resources if discovered during construction, including a requirement for archaeological and tribal monitors during construction.

Additional investigation in March 2020 confirmed these negative findings. PaleoWest Archaeology documented a ground penetrating radar (GPR) survey of the project area. Byram Archaeological Consulting, on behalf of PaleoWest, surveyed eleven GPR grids over the design footprint for the project's excavation areas plus the estimated 5-foot over-excavation buffer. The

survey grids provided accurate radar data to a depth of up to 4.26 feet (1.3 meters). The GPR survey identified eight anomalies for further investigation. Geoprobe borings were then drilled at the locations of the anomalies to a depth of 4 feet (1.22 meters) below ground surface. All GPR survey and geoprobe boring investigative efforts resulted in no evidence of cultural materials, as well as no evidence of cultural soils or sediments within the project area.

The archaeologists concluded that the potential for impacts to archaeological resources on this particular site is low. However, given the parcel's location in the archaeologically sensitive Carmel Point area, the archaeologists recommended the presence of an archaeological monitor during all excavation activities. The County therefore is applying conditions of approval, including mitigation measures, to require archaeological and tribal monitors. These mitigation measures were clarified and amplified during the Planning Commission hearing.

Formal notification was made to the Ohlone/Costanoan-Esselen Nation (OCEN) and the Esselen Tribe, pursuant to Public Resources Code Section 21080.3.1 *et seq.* Both OCEN and the Esselen Tribe provided responses that indicated they concurred with the recommendations of the archaeologist to have a tribal monitor and an archaeological monitor on-site during ground-disturbing activities. The Draft Mitigation Monitoring and Reporting Program reflects mitigations for cultural resources and tribal cultural resources.

Applicable Zoning Development Standards.

The structures meet or exceed all required setbacks, and are also within the corresponding maximum structure heights. Required setbacks for a main structure (single family residence in this case) in this MDR district are 20 feet (front), 10 feet (rear), and 5 feet (sides). The proposed structure on Lot A would have a front setback of 20 feet, a rear setback of 10 feet, and side setbacks of 5 and 34 feet. The structure, including the addition, on Lot B would have a front setback of 20 feet, and rear and side setbacks of 24 feet and 10 feet respectively. In the case of Lot B, corner lot setback exceptions apply which allow for a reduced front setback (MCC Section 20.62.040.J). As proposed, the structures meet or exceed all required setbacks.

The maximum allowed height in this MDR zoning district is 18 feet above average natural grade for main dwelling units. The proposed dwelling on Lot A would have a height of approximately 16 feet above average natural grade, and the existing dwelling on Lot B has a height of approximately 14.5 feet above average natural grade; therefore, both structures would conform to the maximum allowed height limit.

The site coverage maximum in this MDR district is 35 percent, and the floor area ratio maximum is 45 percent. The adjusted lots would be 9,369 square feet and 8,587 square feet, which would allow site coverage of 3,279 square feet and 3,005 square feet, respectively. The allowed floor area on the adjusted lots would be 4,216 square feet and 3,864 square feet, respectively. The proposed single-family dwelling and attached garage on Lot A would result in site coverage and floor area of 3,218 square feet (34.3 percent). The existing dwelling and proposed carport on Lot B would result in site coverage and floor area of 1,153 square feet (13.4 percent).

The development standard for minimum lot size in the MDR zoning district is 6,000 square feet (MCC Section 20.12.060.A). The three existing legal lots of record have a total combined area of 17,956 square feet. As proposed, the lot line adjustment would result in lots of 9,369 and 8,587 square feet. Therefore, the lots would conform to the minimum lot size.

Public Viewshed and Design.

The project, as proposed, is consistent with the Carmel Area LUP policies regarding Visual Resources (Chapter 2.2) and will have no impact on the public viewshed. The project planner

conducted a site inspection on November 12, 2019, to verify that the project minimizes development within the public viewshed. The project site is also located in a residential neighborhood, and the adjacent parcels have been developed with single-family dwellings.

Pursuant to MCC Chapter 20.44, the proposed project parcels and surrounding area are designated as a Design Control Zoning District (“D” zoning overlay), which regulates the location, size, configuration, materials, and colors of structures and fences to assure the protection of the public viewshed and neighborhood character. The Applicant proposes exterior colors and materials that are consistent with the residential setting. The primary colors and materials include brown metal roofing and steamed rolled cedar shingle roofing with a natural finish, stone exterior, grayed green powder-coated steel sash windows and painted wood windows, warm sand stucco, and stained wood doors and trim. The proposed exterior colors and finishes would blend with the surrounding environment, are consistent with the surrounding residential neighborhood character, and are consistent with other dwellings in the neighborhood. Also, per Carmel LUP Policy 2.2.3.6, the proposed structure would be subordinate to and blend into the environment, using appropriate exterior materials and earth tone colors that give the general appearance of natural materials. The proposed residence is also consistent with the size and scale of surrounding residences, and the proposed bulk and mass would not contrast with the neighborhood character. Therefore, the existing and proposed structure exterior finishes blend with the surrounding environment, are consistent with the surrounding residential neighborhood character, and are consistent with other dwellings in the neighborhood. As proposed, the project assures protection of the public viewshed, is consistent with neighborhood character, and assures visual integrity.

Carmel Highlands/Unincorporated Land Use Advisory Committee (LUAC)

The County referred the project to the Carmel Highlands/Unincorporated LUAC for review. The LUAC, at a duly-noticed public meeting at which all persons had the opportunity to be heard, reviewed the proposed project on November 5, 2018, and voted 4-1 (4 ayes and 1 nay) to support the project with recommended alterations of the project proposal. The LUAC’s discussion included comments about retaining the open park-like feel of the property, and opinions that the current residence is aesthetically beautiful. The discussion resulted in a motion to recommend the lots be combined/merged into a single lot, and a variance granted to allow the second unit to remain as an accessory dwelling unit. The Applicant chose to move forward with the project as initially proposed, and did not revise the project per the LUAC’s recommendations. See the LUAC Minutes at **Attachment E**).

Planning Commission

On January 29, 2020, after review of the application and submitted documents, and a duly-noticed public hearing at which all persons had the opportunity to be heard, the Planning Commission voted 8 – 0 (8 ayes and 0 nays; 2 absent) to adopt a Mitigated Negative Declaration and approve a Combined Development Permit to allow the proposed development (Monterey County Planning Commission Resolution No. 20-002; corrected on February 26, 2020; **Attachment G**). At the hearing, the Planning Commission requested changes to evidence in the resolution and to mitigation measures for archaeological and tribal cultural monitors that clarified and amplified the mitigations. Those revisions are reflected in the corrected resolution.

Appeal Contentions and Responses

The Open Monterey Project filed an appeal of the Planning Commission decision to approve the project pursuant to Monterey County Code Section 20.86.030.C. The appeal raised 13 contentions, which staff has summarized below. The full text of the Appellant’s contentions and the full text of the County’s responses to those contentions are set forth in the Draft Resolution at

Attachment B. The full text of the Appellant’s contentions may also be found in the Notice of Appeal at **Attachment C.**

In summary, the Appellant’s contentions relate to the adequacy of the mitigation measures, cumulative impacts of the project within the greater Carmel Point area, and the adequacy of County practices and processes. County staff grouped and summarized the contentions as follows:

- A) The mitigations proposing monitors are inadequate because there is no accountability for failure to have one or both monitors;
- B) The current conditions are ambiguous or ineffective on the issue of monitors being present for patio or flat work;
- C) The plans intended to be approved are inadequately identified in the approval resolution;
- D) All work on all projects within 50 meters should be stopped – on the project parcel as well as on all parcels within the 50 meter radius;
- E) The positive archeological report means further research is required;
- F) The amount of grading is not adequately quantified or capped, which could allow the applicant to excavate an undetermined amount;
- G) The mitigations require action only if “intact” cultural features are discovered, and incentivizes destruction of resources;
- H) The Carmel Point is a significant historic resource, and the County should complete additional environmental review before approving any new projects in the area;
- I) The County has failed to consider the cumulative impacts of this project and other known projects;
- J) The proposed mitigations are ambiguous, inequitable with other Carmel Point projects, and do not mitigate the impacts to less than significant;
- K) The initial study is not consistent in the discussion of excavation;
- L) That the County should require redesign of the project to avoid any potential impacts to archeological and/or tribal cultural resources; and
- M) The mitigations and conditions should be dated on each page as to the version of the approval documents, and the approval resolution should clearly describe the date of the attached mitigation and condition document.

The County’s summarized response follows:

Carmel Point has been substantially developed with single family residences on relatively small lots. Due to known resources in the vicinity, the County collects site-specific evidence for each development and exercises independent judgment based on the facts and circumstances of each case. The extensive site testing completed on this property indicates that resources are not present and unlikely to be present. Mitigation measures address the potential situation if resources are found due to the sensitivity of the surrounding area, and the wording of the mitigation measures has been amplified and clarified.

Mitigation Measures 1 and 2 are feasible, and supported by facts and analysis. They clearly state the requirements, timing of those requirements, responsible parties, and the compliance actions to be performed consistent with the requirements of CEQA Guidelines Section 15064.5. Per Planning Commission direction, the mitigation measures were amplified and clarified. As revised, the mitigation measures require the on-site presence of archaeological and tribal monitors during demolition that involves soil disturbance and during foundation excavation. The measures also authorize the monitors to halt work if potentially significant archaeological or cultural resources are discovered.

The Appellant speculates that the applicant will violate the conditions of approval. The applicant has agreed to the proposed mitigations, and the conditions of approval require the applicant to record an Agreement to Implement a Mitigation Monitoring and/or Reporting Plan before building permits will be issued. Not having a required monitor on-site during excavation work would be a violation of the conditions of approval. If a violation occurs, then the County would issue a "Stop Work" order, and would determine the actions required to resolve the violation. There is no evidence supporting an allegation that this applicant would violate the conditions of approval. The Appellant's allegations concern a different site, project, and applicant under different circumstances, none of which is evidence about the project before the Board. The amount of fines for a violation of a condition of approval is not the subject matter under consideration in this application. The amount of County fines for a violation is determined by the Monterey County Code as adopted by the Board of Supervisors in accordance with state law, and any code enforcement matter is subject to the prosecutorial discretion of the Resource Management Agency on a case by case basis. The Board is separately considering the issue of penalties/fines related to archaeological conditions in Carmel Point per a Board referral. Furthermore, the conditions of approval, including mitigation measures, only apply to the specific entitlement and properties identified in the resolution. Application of conditions to a parcel that is not included in the project application, or is owned separately, would be contrary to law.

Regarding County practices and processes, the approved plans are attached to the resolution and are specifically referenced in the resolution. The plans attached to the resolution are kept and maintained by the Resource Management Agency (RMA) both electronically and physically. It is the practice of the RMA to review all subsequent permits (i.e., Building Permits) for consistency with the approved plans. Changes made after approval of the plans can, and do, trigger additional permitting requirements. The mitigations and conditions approved by the hearing body are attached to the final resolution that is signed and mailed to the applicant and requesting parties. Also, each page of the final mitigations and conditions is dated. Therefore, identification of the approved mitigations and conditions is positive and definitive.

There is no evidence, based upon the record as a whole, that the project may have a significant, or cumulatively significant, effect on the environment. Based on the specific circumstances of the project as proposed, tested, conditioned, and mitigated, the County finds that the potential cumulative impacts are less than significant.

Per the Soils Engineering Investigation (LIB180362) prepared by LandSet Engineers, Inc., the amount of proposed excavation is the minimum necessary to adequately prepare the site for development, and the minimum required for adequate building safety design and standards according to the geotechnical engineer. Other sites may have different soil conditions that warrant different soil engineering recommendations. The initial study (pages 13, 39, and 65) identifies the amount of grading and/or excavation as noted in the application. Plans submitted at this stage are conceptual for planning purposes, and there can be adjustments during final design. County staff reviews plans/documents submitted with the building permit to confirm that the amounts are substantially consistent with those analyzed and approved. Also, inspections occur during the construction phase to ensure the permitted amounts are not exceeded, and remain in substantial conformance with the approved amounts.

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