

***Before the Board of Supervisors in and for the  
County of Monterey, State of California***

In the matter of the application of:

**COLLINS (PLN130339)**

**RESOLUTION NO. 22-125**

Resolution by the Monterey County Board of  
Supervisors:

- 1) Find the denial of the project statutorily exempt per Section 21080(b)(5) of the Public Resources Code and Section 15270(a) of the CEQA Guidelines; and
- 2) Deny the applicant's request to amend the Local Coastal Program to rezone the property from Resource Conservation [RC(CZ)] to Watershed and Scenic Conservation, 40 acres per unit, Design Control, Special Treatment, Coastal Zone [WSC/40-D-SpTr(CZ)].

[PLN130339, James G. Collins, 83 Mount Devon Road, Carmel, Carmel Area Land Use Plan (APN: 241-021-007-000)]

**I. RECITALS**

**WHEREAS**, on November 21, 2021, James G. Collins and Sook Collins, hereinafter referred to as the "Applicant," made an application to rezone a 21-acre parcel located at 83 Mount Devon Road, Carmel (Assessor's Parcel Number: 241-021-007-000) (hereafter "the subject property") from Resource Conservation, Coastal Zone [RC(CZ)] to Watershed and Scenic Conservation, 40 acres per unit, Design Control, Special Treatment, Coastal Zone [WSC/40-D-SpTr(CZ)], (hereafter referred to as "Rezone");

**WHEREAS**, in 1983, the County adopted the Carmel Area Land Use Plan, which is a part of the County's certified Local Coastal Program under the Coastal Act. At that time, the property was subject to the Conservation and Scenic Easement and the Carmel Area Land Use Plan designated the property "Resource Conservation—Forest & Upland Habitat." The Carmel Area Land Use Plan notes that the designation was applied to the "Point Lobos Reserve and the DeAmaral Preserve." The County zoned the property Resource Conservation, Coastal Zone (RC (CZ)) in keeping with the Land Use Plan designation. The purpose of RC zoning is "to provide a district to protect, preserve, enhance, and restore sensitive resource areas in the County of Monterey." (Monterey County Code, Title 20 (coastal zoning), Section 20.36.010.) The Resource Conservation Zoning District of Title 20 does not allow residential development (Monterey County Code, Title 20, Chapter 20.36);

**WHEREAS**, in April 2021, the U.S. District 4 Court of California found that the subject property's conservation and scenic easement was effectively terminated in 2019 as a result of

meeting the conditions present for unilateral termination under Article 7 of the Deed. Article 7 of the Easement Deed allows the Grantor to terminate the Easement under specific conditions. By its terms, the Easement allows the Foundation, or its successors in interest – such as James Collins - to terminate the Easement when California or Monterey County passes conservation legislation which restricts, or would by agreement restrict, the use of the Property for "scenic and recreational uses or for the use of natural resources or for the production of food and fiber." The Court found that the rezoning from Agriculture/Residential, which allowed two residential units, to Resource Conservation, which does not allow residential units, restricts the use of the Property, and therefore triggers the condition in Article 7 of the Easement deed required for unilateral termination. As a result of the land use and zoning designations in the Carmel Land Use Plan that restrict the use of the property for scenic and recreational uses, the conservation and scenic easement is no longer in effect;

**WHEREAS**, on March 08, 2022, the Board of Supervisors, at a duly noticed public hearing adopted a resolution of intent to deny the proposed Rezone by a vote of 3 ayes and 2 noes and continued the hearing to a date uncertain with direction to Staff to return with a resolution containing findings for denial of the Rezone;

**WHEREAS**, on April 19, 2022, the Board of Supervisors held a public hearing to consider taking action on the Rezone;

**WHEREAS**, the Board of Supervisors reference to the following facts and findings with respect to the Rezone:

1. The Carmel Area Land Use Plan (CAR LUP) delineates the subject property as part of the Behavioral Science Institute lands as shown on Figure 2 – Special Treatment Areas of the Land Use Plan. Policy 4.4.3.E.6 of the CAR LUP provides that “the BSI lands may be developed for residential use. A maximum of 25 units may be approved; all units shall be sited outside of the view of Highway 1... The upper steeper portion shall remain in open space.” The entire property contains slopes exceeding 30%, has the highest elevation of all BSI properties, and is visible from Highway 1 and Point Lobos, and therefore the Rezone is inconsistent with the BSI development standards.
2. The CAR LUP designates the property as “Resource Conservation – Forest & Upland Habitat.” Pursuant to Chapter 4.5.A of the CAR LUP, the Resource Conservation Forest and Upland Habitat designation is applied to ESHA and open space areas set aside for resource preservation. Implementation of the land use designation in April 1983 resulted in the rezoning the subject property from Agriculture/Residential, Mobile Home Exclusion, 20-acre minimum building site [“K-V-B-5 20-acre min.”] to Resource Conservation, Coastal Zone [“RC (CZ)”]. The purpose of the RC zoning district is “to provide a district to protect, preserve, enhance, and restore sensitive resource areas in the County of Monterey.” (Monterey County Code, Title 20 (Coastal Zoning), Section 20.36.010.) Additionally, Policy 4.4.3 of the CAR LUP states, “[d]evelopment that would threaten rare and endangered plant and animal species in the Resource Conservation areas shall not be allowed.” The property contains Environmentally Sensitive Habitat Areas (“ESHA”) and special status species, and therefore reasonably foreseeable development resulting from the Rezone (1 main residential unit) has the potential to impact the sensitive resources.

3. Although the conservation easement has been terminated, the Resource Conservation zoning district is consistent with the original intent of the easement and is consistent with requirement of properties designated Forest and Upland Habitat.
4. Public policy supports preservation of the subject property, and no public policy reasons have been advanced to support the proposed rezoning of the property.
5. The Applicant knew or should have known restrictions applicable to the property at the time the property was purchased on February 8, 1994. Potential uses of the property consistent with the CAR LUP and Zoning may be considered under separate permitting.
6. The Applicant retains economically viable use of the subject property in that the existing zoning, Resource Conservation, allows for uses including but not limited to resource dependent education and scientific research facilities, low intensity day use recreation uses, and restoration and management programs for physical resources;

**WHEREAS**, pursuant to Appendix 13 of the Coastal Implementation Plan, Local Coastal Program Amendments which are denied by the Board of Supervisors are not appealable to the California Coastal Commission, making the Board of Supervisors decision final.

## II. DECISION

**NOW, THEREFORE**, be it resolved, based on the above findings, the written and documentary evidence, the staff reports, oral testimony, and the administrative record as a whole, that the Board of Supervisors does hereby:

1. Find that the denial of the proposed rezoning is statutorily exempt under the California Environmental Quality Act pursuant to Section 21080(b)(5) of the Public Resources Code and Section 15270(a) of the CEQA Guidelines; and
2. Deny the request to amend the Local Coastal Program to rezone a 21-acre parcel located at 83 Mount Devon Road, Carmel (Assessor's Parcel Number: 241-021-007-000) from Resource Conservation, Coastal Zone [RC(CZ)] to Watershed and Scenic Conservation, 40 acres per unit, Design Control, Special Treatment, Coastal Zone [WSC/40-D- SpTr(CZ)]

**PASSED AND ADOPTED** on this 19<sup>th</sup> day of April 2022, by roll call vote:

AYES: Supervisors Alejo, Lopez, Askew and Adams

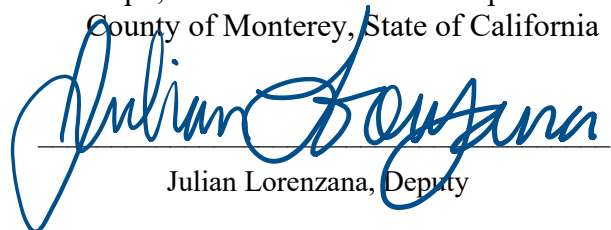
NOES: None

ABSENT: Supervisor Phillips  
(Government Code 54953)

I, Valerie Ralph, Clerk of the Board of Supervisors of the County of Monterey, State of California, hereby certify that the foregoing is a true copy of an original order of said Board of Supervisors duly made and entered in the minutes thereof of Minute Book 82 for the meeting April 19, 2022.

Dated: April 21, 2021  
File ID: RES 22-078  
Agenda Item No.: 40

Valerie Ralph, Clerk of the Board of Supervisors  
County of Monterey, State of California

  
Julian Lorenzana, Deputy