

***Before the Board of Supervisors
County of Monterey, State of California***

In the matter of the application of:

ISABELLA 2 LLC (PLN180523-AMD1)

RESOLUTION NO. 23 - 127

Resolution by the Monterey County Board of Supervisors:

- 1) Denying the appeal of The Open Monterey Project from the Zoning Administrator's approval of a minor and trivial amendment to a previously approved Combined Development Permit;
- 2) Considering a previously adopted Mitigated Negative Declaration (SCH No. 2020029094), and finding that the preparation of a subsequent environmental document is not required, pursuant to CEQA Guidelines section 15162 of the; and
- 3) Approving a Minor and Trivial Amendment to a previously approved Combined Development Permit (PLN180523, Board of Supervisors Resolution 21-273) consisting of:
 - a. A Coastal Administrative Permit and Design Approval to allow construction of a 1,837 square foot two-story single-family dwelling and associated site improvements;
 - b. A Coastal Development Permit to allow development within 750 feet of known archaeological resources;
 - c. A Coastal Development Permit to allow the modification of parking standards, including no covered parking and authorization to allow parking within the front setback to count toward the required parking;
 - d. A Coastal Development Permit to allow the removal of four Coast live oaks; and
 - e. A variance to increase the maximum allowed floor area ratio from 45 percent to 51 percent.

[26308 Isabella Avenue, Carmel, Carmel Area Land Use Plan, Coastal Zone (APN 009-451-015-000)]

The Appeal by The Open Monterey Project from the decision by the Monterey County Zoning Administrator came on for a public hearing before the Monterey County Board of Supervisors on April 18, 2023. Having considered all the written and documentary evidence, the administrative record, the staff report, oral testimony, and other evidence presented, the Board of Supervisors finds and decides as follows:

FINDINGS

1. **FINDING:** **PROCESS** - The County has received and processed an amendment to PLN180523.

- EVIDENCE:**
- a) On October 19, 2023, an application for a Minor and Trivial Amendment (PLN180523-AMD1) was submitted to HCD-Planning. This application was submitted in accordance with Monterey County Code (MCC) Section 20.76.115.
 - b) Background. On April 28, 2021, the Planning Commission considered a Combined Development Permit (PLN180523) consisting of 1) a Coastal Administrative Permit and Design Approval to allow construction of a 2,100 square foot two-story single-family dwelling, with 318 square feet of deck area; 2) a Coastal Development Permit to allow development within 750 feet of known archaeological resources; 3) a Coastal Development Permit to allow the modification of parking standards, including no covered parking and authorization to allow parking within the front setback to count toward the required parking; 4) a variance to allow an increase to the allowed floor area from 45 percent to 64.4 percent; and 5) a Coastal Development Permit to allow relocation of 4 Coast Live Oak trees. At the conclusion of the hearing, the Planning Commission continued the hearing to the May 26, 2021 and directed the applicant to reduce the overall site coverage and square footage of the proposed development.

On May 26, 2021, the Planning Commission considered a revised scope of work, which included removing the 1-car garage thus reducing site coverage by 133 square feet and floor area by 215 square feet. Removing the garage required additional modification to the parking standard to allow both required parking spaces within the front setback and no covered parking space. The revised scope of work also eliminated the variances for the front setback and site coverage reductions. The revised project additionally reduced the variance amount for floor area ratio from 64.4 percent to 58.4 percent. On May 26, 2021, at a duly-noticed public hearing at which all persons had the opportunity to be heard, the Planning Commission voted 8 - 0 to adopt a Mitigated Negative Declaration and approve the revised project scope consisting of a 2,100 square foot single family dwelling, 318 square feet of decks, 304 cubic yards of grading, development within 750 feet of a known archaeological resource, relocation of 4 Coast live oaks, and modification of parking standards (Planning Commission Resolution No. 21-015).

On June 17, 2021, The Open Monterey Project (Molly Erickson, representing Appellant), timely appealed the May 26, 2021 decision of the Planning Commission, pursuant to Monterey County Code (“MCC”) section 20.86.030.A. Appellant’s contentions related to the interior and exterior design of the proposed residence, neighborhood character, the amount of grading, potential impacts to tribal cultural resources, privacy of neighbors, the County’s history regarding variances, the adequacy of the initial study and mitigated negative declaration, and the precedents that the Variance sets for comparable lots at Carmel Point.

On August 24, 2021, the Board of Supervisors considered the appeal by The Open Monterey Project and the Planning Commission's decision to adopt a Mitigated Negative Declaration and approve a Combined Development Permit to allow construction of a 2,100 square foot single family dwelling and associated site improvements and variance to reduce the required Floor Area Ratio. The Board of Supervisors voted 5-0 to deny the appeal of The Open Monterey Project, adopt a Mitigated Negative Declaration, and approve the Combined Development Permit and variance (Board of Supervisors Resolution No. 21-273).

The County sent a Final Local Action Notice (FLAN) to the California Coastal Commission (CCC) on September 13, 2021 [FLAN No. 3-MCO-21-0855 (PLN180523/Isabella 2)]. The Open Monterey Project appealed the Board of Supervisor's decision to the California Coastal Commission on September 28, 2021 (Commission Appeal No. A-3-MCO-21-0064; Exhibit F of the February 9, 2023 Zoning Administrator Staff Report). Prior to the appeal being scheduled before the Coastal Commission, the Applicant notified the County and the Coastal Commission staff of their desire to modify certain portions of the project contested during the appeal including reducing the floor area ratio and grading quantities, and eliminating the internal stairway to the roof and a 6 foot chimney. As a result, in coordination with Coastal Commission staff, County staff withdrew the Final Local Action Notice on October 21, 2022. Withdrawal of the FLAN only affects the Coastal Commission appeal; it does not alter the County's prior decision or the associated CEQA determination. Withdrawal of the FLAN simply means that the County is not requesting the Coastal Commission consider the local action "final" at this time (as consideration of modifications are pending). A new FLAN will be sent to the CCC reflecting the revised design if and when the County approves the revised project. Therefore, the Board of Supervisors' action to adopt the Mitigated Negative Declaration on August 24, 2021, is final.

- c) Resolution No. 21-273 (PLN180523) was subject to 25 conditions of approval (inclusive of 4 mitigation measures, applied as Condition Nos. 22-25.). Nineteen previously approved conditions (Condition Nos. 1, 2, 3, 5, 6, 8, 9, 12-21, and 23-25), which are in a "Not Met" status, are still applicable to the proposed amendment and therefore have been carried forward and incorporated as Condition Nos. 1 through 19, respectively. The required actions of these 19 conditions shall be satisfied under the proposed amendment, PLN180523-AMD1. Three previously approved conditions (Condition Nos. 10, 11, and 22) are in a "Not Met" status and are not applicable to the proposed project as amended, and therefore have not been carried forward. Condition No. 10 (Permit Expiration) is not being carried forward as this amendment, once approved, will be the working entitlement and therefore changes the permit expiration date applied

to the previous project (PLN180523). Condition No. 11 (Utilities Underground) is also not being carried forward as Monterey County Code requires the undergrounding of utilities, and therefore application of this condition is repetitive. Finally, Condition No. 22 is not applicable because the project scope does not include tree relocation. Two previously approved conditions (Condition No. 4 and 7; Fish & Wildlife Neg. Dec. Filing Fee and Tree Relocation) are in a “Met” or “On-Going” status and therefore have not been carried forward to this amendment and have no outstanding actions needing to be satisfied.

- d) Land Use Advisory Committee – December 2, 2019. The previously proposed project (PLN180523), inclusive of a nearly 3,000 square foot residence and a subterranean garage, was referred to the Carmel Highlands/Unincorporated Land Use Advisory Committee (LUAC) for review. The LUAC, at a duly-noticed public meeting at which all persons had the opportunity to be heard, reviewed the originally-proposed project on December 2, 2019, and voted 5 – 0 (5 yes and 0 no; 1 absent) to support the project as proposed. This original proposal reviewed by the LUAC included a 1,242-square-foot basement level. No concerns were raised by the LUAC or interested members of the public.
- e) Land Use Advisory Committee – April 5, 2021. The previously proposed project (PLN180523), inclusive of a 2,315-square-foot residence, was referred to the Carmel Highlands/Unincorporated Land Use Advisory Committee (LUAC) for review. The LUAC, at a duly-noticed public meeting at which all persons had the opportunity to be heard, reviewed the revised project on April 5, 2021, and voted 4 – 0 (4 yes, 0 no, and 2 absent) to support the project with a recommendation to revise the plans to reduce the number of proposed variances. The LUAC and interested members of the public raised concerns related to privacy, tree relocation, drainage, and neighborhood character. The proposed amended includes a reduced scope of work when compared to the project design referred to the LUAC on April 5, 2021. The proposed amendment incorporates the LUAC’s recommendation to reduce the number of required variances. As such, the amendment was not referred back to the LUAC for review.
- f) A revised application was submitted to modify the prior County approval (PLN180523) to reduce the residence’s floor area by 48 square feet, thereby reducing the required floor area ratio variance from 58.4 percent to 51 percent and reducing the required grading from 304 cubic yards to 114 cubic yards, increase the decking from 318 to 484 square feet, and eliminate the previously proposed 6-foot chimney and internal staircase. The revisions are minor in nature with no new issues that were not considered in the previous approval. Pursuant to MCC section 20.70.105 a Minor & Trivial Amendment is required for the changes. Although MCC section 20.70.105.A authorizes the HCD Director to approve Minor & Trivial Amendments administratively, the project agent requested a public

hearing. Therefore, this Minor & Trivial Amendment (PLN180523-ADM1) was referred to a public hearing before the Monterey County Zoning Administrator.

- g) The Monterey County Zoning Administrator held a duly-noticed public hearing on the Isabella 2 LLC application amendment on February 9, 2023, at which all persons had the opportunity to be heard. Notices for the Zoning Administrator public hearing were published in the *Monterey County Weekly* on January 26, 2023; posted on and near the project site on January 31, 2022; and mailed to vicinity property owners and interested parties on January 25, 2023.
- h) On February 9, 2023, the Zoning Administrator found the project consistent with the previously adopted Mitigated Negative Declaration and approved the Minor and Trivial Amendment to a previously approved Combined Development Permit (PLN180523) (Monterey County Zoning Administrator Resolution No. 23-007). The Zoning Administrator resolution is included in April 18, 2023, staff report to the Board of Supervisors as Attachment H.
- i) The Open Monterey Project, represented by Molly Erickson, timely filed an appeal from the February 9, 2023 decision of the Zoning Administrator's environmental determination and approval of the Minor and Trivial Amendment. The appeal contends that the findings are not supported by the evidence, and that the decision is contrary to law. See Finding No. 11 for the text of the Appellants' contentions and the County response to the appeal.
- j) Pursuant to Monterey County Code (MCC) sections 20.86.030.C and E, an appeal shall be filed with the Clerk of the Board of Supervisors within 10 days after written notice of the decision of the Appropriate Authority (i.e., Zoning Administrator Resolution No. 23-007) has been mailed to the Applicant, and no appeal shall be accepted until the notice of decision has been given (i.e., mailed). The County mailed the written notice of the decision on February 10, 2023, and said appeal was filed with the Clerk of the Board of Supervisors on February 21, 2023, within the 10-day timeframe prescribed by MCC section 20.86.030.C. February 20, 2023 was recognized as a federal holiday (Presidents Day) and therefore February 21, 2023 was the 10th day. The appeal hearing is de novo. A complete copy of the appeal is on file with the Clerk of the Board, and is attached to the April 18, 2023 staff report to the Board of Supervisors as Attachment D.
- k) The appeal was timely brought to a duly-noticed public hearing before the Monterey County Board of Supervisors on April 18, 2023, 2021. Notice of the hearing was published on April 6, 2023, in the *Monterey County Weekly*; notices were mailed on April 4, 2023, to all property owners and occupants within 300 feet of the project site, and to persons who requested notice; and at least three (3) notices were posted at and near the project site on April 6, 2023.

- l) The findings and evidence from PLN180523 (Planning Commission Resolution No. 21-015 and Board of Supervisors Resolution No. 21-273) have been carried forward to this permit amendment, PLN180523-AMD1. Once approved, the proposed Amendment (PLN180523-AMD1) will be the operating entitlement for the subject property.
- m) The application, plans, and supporting materials submitted by the project applicant to Monterey County HCD-Planning for the proposed development found in Project File No. PLN180523 and PLN180523-AMD1.

2. FINDING:

CONSISTENCY - The project, as conditioned, is consistent with the applicable plans and policies which designate this area as appropriate for development.

The project and/or use, as conditioned and/or mitigated, is consistent with the policies of the Monterey County 1982 General Plan, Carmel Area Land Use Plan, and other County health, safety, and welfare ordinances related to land use development.

EVIDENCE

- a) During the course of review of this application, the project has been reviewed for consistency with the text, policies, and regulations in the:
 - 1982 Monterey County General Plan;
 - Carmel Area Land Use Plan;
 - Monterey County Coastal Implementation Plan – Part 4; and
 - Monterey County Zoning Ordinance - Coastal (Title 20).

No conflicts were found to exist. Communications were received during the course of review of the project indicating inconsistencies with the text, policies, and/or regulations of the applicable Monterey County Code (MCC), however, the County finds that the project is consistent with the text, policies, and regulations in the applicable documents. See Finding 11 and supporting evidence. The project is located within the Coastal zone and, therefore, the 2010 Monterey County General Plan does not apply to this project.

- b) The project involves the construction of a 1,837 square-foot two-story single-family dwelling and site improvements including 484 square feet of decks and the removal of four Coast live oak trees. The project also involves development within an area of known archaeological resources, modification of parking standards, and a variance to increase the allowed floor ratio from 45 percent to 51 percent. Associated grading consists of approximately 114 cubic yards of cut and fill.
- c) Allowed Uses. The property is located at 26308 Isabella Avenue, Carmel (Carmel Point neighborhood) [Assessor's Parcel Number 009-451-015-000], Carmel Area Land Use Plan, Coastal Zone. The parcel is zoned Medium Density Residential, 2 units per acre; with a Design Control Overlay and 18-foot height limit (Coastal Zone) [MDR/2-D (18)(CZ)], which allows main dwellings with the granting of a Coastal Administrative Permit. Therefore, as proposed, the project

involves allowed land uses for this site. Development within 750 feet of known archaeological resources, removal of native trees, and modification of parking standards are also allowed subject to the granting of a Coastal Development Permit. The Design Control zoning overlay requires the granting of a Design Approval for the proposed development (see subsequent Evidence “h”).

- d) Minor and Trivial Amendment. In comparison to the previously proposed project (PLN180523), the proposed amendment reduces the residence’s floor area by 48 square feet, thereby reducing the required floor area ratio variance from 58.4 percent to 51 percent (45 percent is allowed) and minimizes grading (114 cubic yards compared to 304 cubic yards). Additionally, the proposed amendment increases the square footage of decking from 318 to 484 and eliminates the previously proposed 6-foot chimney. All other project components are the same: development with 750 feet of a known archaeological resource, removal of 4 Coast live oaks, modification to required parking standards to allow both required parking spaces within the front setback and no covered parking. Therefore, in accordance with MCC section 20.70.105.A, the proposed project is of a minor or trivial nature, with no impacts not already assessed in the original permit action, and generally in keeping with the action of the appropriate authority, and therefore the Housing and Community Development Chief of Planning is the appropriate authority. However, in light of anticipated public objection, the project agent, Rob Carver, requested a public hearing pursuant to MCC section 20.76.060. Therefore, this item was considered by the Monterey County Zoning Administrator on February 9, 2023.
- e) Lot Legality. The subject 0.08253-acre property (Assessor’s Parcel Number 009-451-015-000) is identified in its current configuration as Lot 23, within Block 8, on the Final Map for Addition No. 7, Carmel-by-the-Sea, recorded May 4, 1910, filed at Volume 2, Cities and Towns, Page 24. The County has previously recognized the legality of lots created by the subject 1910 final map. The County and property owners have also relied on the 1910 final map to direct development of lots within the subdivision, including utilities. The lots and streets, as identified on the final map, conform to the surrounding topography and the siting of lots and improvements on the final map indicate evidence of design. Therefore, the County recognizes the subject property as a legal lot of record.
- f) Public Access. As proposed and conditioned, the development is consistent with applicable public access policies of the Carmel Area LUP. See Finding No. 6 and supporting evidence.
- g) Development Standards. Development standards for the MDR zoning district are identified in MCC section 20.12.060. Required setbacks in this MDR district are 20 feet (front), 10 feet (rear), and 5 feet (sides). As proposed, the development would have a front setback of 22 feet, a rear setback of 11 feet, and side setbacks of 5.5 and 8 feet (south and north, respectively). The maximum allowed height in this MDR zoning district is 18 feet above average natural

grade. The proposed dwelling would have a height of approximately 18 feet above average natural grade and would conform to the maximum allowed height limit. The County has applied a standard condition of approval (Condition No. 12 – Height Verification) to ensure conformance to the allowed height standard.

The site coverage maximum in this MDR district is 35 percent, and the floor area ratio maximum is 45 percent. The property is 3,595 square feet, which would allow site coverage of 1,258 square feet and floor area of 1,618 square feet. As proposed, the development would result in site coverage of 1,216 square feet (33.8 percent), and floor area of 1,837 square feet (51 percent or 219 square feet over the allowed maximum). Pursuant to MCC and as proposed, the project would conform to applicable development standards regarding front, side and rear setbacks, height and site coverage. However, the proposed floor area ratio does not conform to MDR district requirements. Therefore, the applicant has applied for a variance to increase the allowed floor area ratio (see Finding Nos. 8, 9, and 10, and supporting evidence).

- h) Design. 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 grey metacrylics (solid membrane) roofing, Carmel stone veneer and cedar siding, and bronze aluminum windows and doors. 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. As proposed, the project assures protection of the public viewshed, is consistent with neighborhood character, and assures visual integrity.

- i) Visual Resources and Public Viewshed. 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 September 29, 2020, 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.

- j) Tree Removal. Forest resource policies of the Carmel Area LUP and development standards contained in Section 20.146.060 of the Coastal Implementation Plan provide for protection of native forest areas and require development to be sited to minimize the amount of tree removal to the greatest extent feasible. As proposed, the project minimizes tree removal in accordance with the applicable goals, policies, and regulations of the Carmel Area LUP (Forest Resources) and the associated Coastal Implementation Plan. The small project parcel has 11 oak trees located primarily around the perimeter of the lot. The proposed project includes the removal of four Coast live oaks and therefore requires the granting of a Coastal Development Permit. In accordance with CIP Section 20.146.060.D.3, all four trees proposed for removal are within the development footprint. Per the arborist report prepared for the project (LIB180395), the trees proposed for removal are the minimum number necessary for the project. Although relocation was previously proposed in PLN180523, the Applicant no longer proposes relocation. Removal of four Coast live oaks will not involve a risk of adverse environmental impacts. The remaining seven oaks have been integrated into the project design with the development sited to avoid further tree impacts. Condition No. 5 requires the Applicant/Owner to install protective measures to ensure all nearby trees not proposed for removal are protected during construction activities. Additionally, Condition No. 20 requires the Applicant/Owner to replant four Coast live oaks on the subject property.
- k) Modification of Parking Standards. As revised, the project includes application for modification of parking standards to allow two uncovered parking spaces within the front setback to count toward the amount of required parking, and to not require a covered parking space. In accordance with the applicable policies of the Carmel Area Land Use Plan and MCC section 20.58.050.C, a Coastal Development Permit is required and the criteria to grant said permit have been met.

Per MCC section 20.58.050.F, main residential dwellings in MDR zoning districts are required to provide 2 off-street parking spaces, with at least one space covered (e.g., either a carport or garage). As proposed, the project would provide two uncovered parking spaces within the front setback, and would not provide a covered parking space within a garage or carport.

MCC section 20.58.050.C allows the modification of parking standards where appropriate due to the unusual characteristics of a use or its immediate vicinity, etc. The presence of documented cultural resources within the area of the project site presents an obstacle to excavating a subterranean garage. Therefore, modification of the parking standards better achieves the goals and

objectives of the Carmel Area Land Use Plan in that it results in the avoidance and preservation of cultural resources. The County has approved other modifications to parking standards in the vicinity of Carmel Point for similar reasons; including PLN160649/Carmel Pointe Properties LLC, PLN120519/Bearman, PC07062/Hughes, ZA94002/Snyder, and ZA7274/Aurner.

Moreover, many of the properties in the Carmel Point vicinity have minimal on-site parking, and parallel parking along the street is common. Continuation of this pattern would not change the existing conditions within the neighborhood. Staff confirmed this pattern during a site visit on September 29, 2020, during which staff noted many other properties with parking spaces clearly located within the front setback, including at least 6 properties along Isabella Avenue and San Antonio Avenue South.

- l) The project planner reviewed the project via the County's GIS records, and conducted a site visit on September 29, 2020, to verify that the proposed project conforms to the applicable plans and Monterey County Code.
- m) Cultural Resources. County records identify that the project site is within an area of high sensitivity for cultural resources, and the project includes a Coastal Development Permit to allow development within 750 feet of known archaeological resources, including areas of known archaeological resources.

Archaeological survey and testing reports (LIB180439, LIB190047, and LIB190293) prepared for the project determined 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 reports recommended the presence of both archaeological and tribal monitors during all excavation activities. No significant archaeological resources were found during testing; yet given the site's location in Carmel Point and within the assumed boundary of CA-MNT-16, the potential for resources to be uncovered during construction could not be ruled out. The County prepared an Initial Study and mitigation measures were applied to minimize potential impacts to resources if discovered during construction (see Finding No. 4 and supporting evidence). Therefore, the proposed project has been tested and mitigated to minimize or avoid impacts to known archaeological resources. Adherence to required conditions and mitigation measures will reduce potential impacts to unknown archaeological and/or cultural resources to less than significant.

- n) Public Comment. One letter, submitted by Molly Erickson, was received prior to the February 9, 2023 Zoning Administrator hearing. The letter contends the County's should not act on the amendment because the original action has been appealed to the California Coastal Commission, citing Monterey County Code Section 20.86.090. The letter also objected to the project's exceedance of the allowable floor area ratio for the Carmel Area LUP and states that the

public hearing notice for the February 9, 2023 Zoning Administrator hearing was improperly posted in accordance with Brown Act requirements (specifically, online posting requirements). The February 9, 2023 Zoning Administrator hearing was noticed in accordance with Brown Act requirements. The February 9, 2023 Zoning Administrator agenda was posted on the County’s public website, outside of the Monterey County Government Center (168 W. Alisal Street, Salinas, CA), and emailed to all members of the public residing within 300 feet of the property as well as interested parties, which included The Monterey Open Project, more than 72 hours of the meeting date. Responses to the remaining objections are addressed in Finding No. 11, and supporting evidence.

- o) The application, plans, and supporting materials submitted by the project applicant to Monterey County HCD-Planning for the proposed development found in project file PLN180523 and PLN180523-AMD1.

3. FINDING: SITE SUITABILITY – The site is physically suitable for the proposed use.

EVIDENCE: a) The project has been reviewed for site suitability by HCD-Planning, HCD-Engineering Services, HCD-Environmental Services, Environmental Health Bureau, and the Cypress Fire Protection District. County staff reviewed the application materials and plans, as well as the County’s GIS database, to verify that the project conforms to the applicable plans, and that the subject property is suitable for the proposed development.

- b) The following technical reports have been prepared:
 - Tree Resource Assessment (LIB180395) prepared by Frank Ono, Certified Arborist, Pacific Grove, California, October 26, 2018;
 - Biological Resource Analysis (LIB180396) prepared by Fred Ballerini Biological and Horticultural Services, Pacific Grove, California, October 26, 2018;
 - Geologic Evaluation (LIB180397) prepared by Craig S. Harwood, Consulting Engineering Geologist, Ben Lomond, California, June 8, 2019;
 - Geotechnical Investigation (LIB180440) prepared by Soils Survey Group, Inc., Salinas, California, November 8, 2018;
 - Preliminary Archaeological Assessment (LIB180439) prepared by Archaeological Consulting, Salinas, California, February 23, 2018;
 - Cultural Resources Auger Testing (LIB190047) prepared by Susan Morley, M.A., Marina, California, January 2019; and
 - Archaeological Presence/Absence Testing (LIB190293) prepared by PaeloWest Archaeology and Byram Archaeological Consulting, Walnut Creek and Berkeley, respectively, California October 31, 2019, including an Addendum prepared February 26, 2020.

- c) County staff independently reviewed these reports and concurs with their conclusions. There are no physical or environmental constraints that would indicate that the property is not suitable for the use proposed.
- d) The project planner reviewed submitted plans and conducted a site visit on September 29, 2020, to verify that the project conforms to the plans listed above and that the project area is suitable for this use.
- e) The application, plans, and supporting materials submitted by the project applicant to Monterey County HCD-Planning for the proposed development found in project file PLN180523 and PLN180523-AMD1.

4. FINDING:

HEALTH AND SAFETY - The establishment, maintenance, or operation of the project applied for will not under the circumstances of this particular case be detrimental to the health, safety, peace, morals, comfort, and general welfare of persons residing or working in the neighborhood of such proposed use, or be detrimental or injurious to property and improvements in the neighborhood or to the general welfare of the County.

EVIDENCE:

- a) The project was reviewed by HCD-Planning, HCD-Engineering Services, HCD-Environmental Services, Environmental Health Bureau, and the Cypress Fire Protection District. Conditions have been recommended, where appropriate, to ensure that the project will not have an adverse effect on the health, safety, and welfare of persons either residing or working in the neighborhood.
- b) All necessary public facilities are available to the project site. Public sewer service will be provided by the Carmel Area Wastewater District (CAWD), and the CAWD wastewater collection and treatment system/facility has adequate remaining capacity for sewage disposal. Potable water service will be provided by a California American Water Company connection (see subsequent Evidence "c"). The proposed development would also include any required stormwater drainage facilities. The Environmental Health Bureau reviewed the project application, and did not require any conditions.
- c) The applicant purchased 0.25-acre feet of potable water credits for the proposed development on the "Benefited Property identified as Assessor's Parcel Number 009-451-015-000" per Water Use Permit No. 687 issued by the Monterey Peninsula Water Management District on August 2, 2017 (assignment of a Portion of Monterey Peninsula Water Management District Ordinance No. 165, and District Rules 23.1 and 23.7, Mal Paso Water Company Water Entitlement.)
- d) The project planner reviewed submitted plans and conducted a site visit on September 29, 2020, to verify that the project, as proposed and conditioned/mitigated, would not impact public health and safety.
- e) The application, plans, and supporting materials submitted by the project applicant to Monterey County HCD-Planning for the proposed development found in project file PLN180523 and PLN180523-AMD1.

5. FINDING: **CEQA (Previous Mitigated Negative Declaration)** – A Mitigated Negative Declaration was previously adopted for the project, and in accordance with CEQA Guidelines section 15162 the changes from this amendment would not require any further environmental documentation.

- EVIDENCE:**
- a) Pursuant to the California Environmental Quality Act (CEQA) Guidelines section 15162, when an EIR has been certified or a negative declaration has been adopted, no subsequent EIR or negative declaration shall be prepared for the project unless the agency determines that substantial changes are proposed, or substantial changes occur with respect to the circumstances under which the project is undertaken. In this case, no new information has been presented to warrant further environmental review. None of the conditions described in Section 15162 calling for preparation of a subsequent EIR or negative declaration have occurred, and therefore the County of Monterey, as the Lead Agency, has decided that no further documentation is required.
 - b) On August 24, 2021, the Monterey County Board of Supervisors adopted a Mitigated Negative Declaration for the construction of the Isabella 2 LLC residence (SCH No. 2020029094), pursuant to Board of Supervisors Resolution No. 21-273.
 - c) The adopted Mitigated Negative Declaration (SCH No. 2020029094) contemplated the construction of a 2,315 square foot two-story single-family residence. The contemplated project also included development within 750 feet of known archaeological resources and modifying the Monterey County development standards to allow a required parking space within the front setback, reduce the front setback from 20 feet to 14 feet to accommodate the grade-level garage, and increase the allowed site coverage from 35 percent to 37.5 percent and floor area from 45 percent to 64.4 percent. Associated site improvements included relocation of four Coast live oaks and approximately 300 cubic yards of grading. The Mitigated Negative Declaration identified potentially significant impacts to biological resources, cultural resources, geology and soils, land use and planning, and tribal cultural resources. Four mitigation measures were adopted to reduce the identified impacts to a level of less than significant.
 - d) As amended, the proposed project involves the construction of a 1,837 square foot two-story single-family dwelling and site improvements including 484 square feet of decks and the removal of four Coast live oak trees. The project also involves development within an area of known archaeological resources, modification of parking standards, and a variance to increase the allowed floor ratio from 45 percent to 51 percent. Associated grading consists of approximately 114 cubic yards of cut and fill. In comparison to the project description analyzed in SCH No. 2020029094, the minor and trival amendment proposes a reduction to the residence’s floor area by 478 square feet and required grading by 190 cubic yards, an

increase in decking by 166 square feet, and eliminates a 6-foot chimney and internal staircase. The proposed revisions lessen the severity of impacts identified in the adopted Mitigated Negative Declaration. Pursuant to CEQA Guidelines section 15164, no changes or additions to the adopted Mitigation Negative Declaration are needed to make the environmental document adequate to the proposed project. In the aggregate, the proposed project description remains stable with the scope analyzed in the adopted Mitigated Negative Declaration - the development of a single-family dwelling.

- e) No substantial changes have occurred with respect to the circumstances under which the project is undertaken which would involve new significant environmental effects or a substantial increase in the severity of previously identified significant effects.
- f) No new information of substantial importance has been identified which was not known at the time the Mitigated Negative Declaration was adopted which would indicate that: the project would have significant effects which have not been evaluated, an increase in severity for any potential environmental effects, or the modification of any of the adopted mitigation measures. Mitigation Measure No. 1 (Tree Relocation; applied to PLN180523 as Condition No. 22) does not apply to the proposed project as relocation of four Coast live oaks is no longer incorporated into the project scope. Therefore, only Mitigation Measures 2, 3 and 4 have been carried forward to this Amendment. Mitigation Measure No. 2 required an onsite archaeological monitor at both the project site as well as the tree receiver site (26346 Valley View, Carmel). Since tree relocation is no longer proposed, the 26346 Valley View address listed in Mitigation Measure No. 2 is not applicable. Consideration of the proposed amendment does not delete or alter Mitigation Measure No. 1 or No. 2 from the adopted Mitigated Negative Declaration.
- g) No adverse environmental effects were identified during staff review of the development application during and during a site visit on September 29, 2020, and January 12, 2023.
- h) The application, project plans, and related support materials submitted by the project applicant to Monterey County HCD-Planning found in Project Files PLN180523 & PLN180523-AMD1.

6. FINDING: PUBLIC ACCESS – The project is in conformance with the public access and recreation policies of the Coastal Act (specifically Chapter 3 of the Coastal Act of 1976, commencing with section 30200 of the Public Resources Code) and the Local Coastal Program (LCP), and does not interfere with any form of historic public use or trust rights.

- EVIDENCE:**
- a) No access is required as part of the project as no substantial adverse impact on access, either individually or cumulatively, as described in Section 20.146.130 of the Monterey County Coastal Implementation Plan (Part 4) can be demonstrated.
 - b) The subject property is not described as an area where the Local Coastal Program requires public access (Figure 3, Public Access, in the Carmel Area Land Use Plan).

- c) No evidence or documentation has been submitted or found showing the existence of historic public use or trust rights over this property.
- d) As proposed, the project would not obstruct public views of the shoreline from surrounding roadways, nor obstruct public visual access to the shoreline from major public viewing corridors (Carmel Land Use Plan Policy 5.3.3.4.a).
- e) The project planner conducted a site visit on September 29, 2020, to verify that the project, as proposed and conditioned/mitigated, would not impact public access. Based on this site inspection, the proposed project would not be visible from Highway 1 or any common public viewing area. The project will not result in adverse impacts to the public viewshed or scenic character in the project vicinity, and is consistent with the applicable visual resource and public access policies of the Carmel Area Land Use Plan. See also Finding No. 1, Evidence i above.
- f) The application, plans and supporting materials submitted by the project applicant to Monterey County HCD-Planning for the proposed development found in project file PLN180523 and PLN180523-AMD1.

7. FINDING: NO VIOLATIONS - The subject property is in compliance with all rules and regulations pertaining to zoning uses, subdivision, and any other applicable provisions of the County's zoning ordinance. No violations exist on the property.

- EVIDENCE:**
- a) County staff reviewed Monterey County HCD-Planning and HCD-Building Services records, and is not aware of any violations existing on the subject property.
 - b) Staff conducted a site inspection on September 29, 2020 and January 12, 2023, to assess and confirm that no violations exist on the subject property.
 - c) The application, plans and supporting materials submitted by the project applicant to Monterey County HCD-Planning for the proposed development found in project file PLN180523 and PLN180523-AMD1.

8. FINDING: VARIANCE (AUTHORIZED USE) – The variance is not being granted for a use or activity which is not otherwise expressly authorized by the zoning regulation governing the parcel of property.

- EVIDENCE:**
- a) The property has a zoning designation of Medium Density Residential, 2 units per acre, with a Design Control zoning overlay and an 18-foot height limit (Coastal Zone) [MDR/2-D (18) (CZ)].
 - b) Development of the first single-family dwelling on a lot is identified as allowed uses pursuant to Monterey County Code Sections 20.12.040.A, subject to the granting of applicable coastal development permits. Therefore, the proposed dwelling is a use expressly authorized within the project site's residential zoning district. See also Finding No. 2, Evidence "c".
 - c) The project planner conducted a site inspection on September 29, 2020, to verify the circumstances related to the property.

- d) The application, plans and supporting materials submitted by the project applicant to Monterey County HCD-Planning for the proposed development found in project file PLN180523 and PLN180523-AMD1.

9. FINDING:

VARIANCE (SPECIAL CIRCUMSTANCES) – Because of special circumstances applicable to the subject property, including the size, shape, topography, location of the lot, or the surrounding area, the strict application of development standards in the Monterey County Code (MCC) is found to deprive the subject property of privileges enjoyed by other property owners in the vicinity under identical zoning classification.

EVIDENCE:

- a) Development standards for the MDR zoning district are identified in MCC section 20.12.060. Required setbacks in this MDR district are 20 feet (front), 10 feet (rear), and 5 feet (sides). The allowed site coverage maximum in this MDR district is 35 percent, and the floor area ratio maximum is 45 percent. The property is 3,595 square feet, which would allow maximum site coverage of 1,258 square feet (35 percent) and floor area of 1,618 square feet (45 percent). In accordance with MCC, and as proposed, the project would conform to applicable development standards regarding front, side and rear setbacks, site coverage, and height. However, the proposed development would result in a nonconforming floor area ratio. As proposed, the development would increase floor area by 6 percent or 219 square feet above the maximum allowed (from 45 percent to 51 percent).
- b) At 3,595 square feet, the project parcel is the smallest property on Isabella Avenue. The other lots along the project site’s side of Isabella Avenue range in size from 3,716 square feet to 32,000 square feet, with an average lot size of 11,207 square feet. Allowed floor area ranges from 1,672 to 14,400 square feet, with an average of 5,043 square feet. Existing development on these lots ranges from 865 to 6,520 square feet, with an average floor area of 2,798 square feet. The lots on the opposite side of Isabella Avenue are similar in range of size and existing development.
- c) Based on the small size of the property, zoning limitations would require a smaller house than other properties in the immediate vicinity and with the same zoning classification which would deprive the subject property of privileges enjoyed by other property owners in the vicinity.
- d) The project planner conducted a site inspection on September 29, 2020 and January 12, 2023, to verify circumstances related to the subject property, as well as to other properties in the vicinity and in the same zoning district.
- e) The application, plans, and supporting materials submitted by the project applicant to Monterey County HCD-Planning for the proposed development found in project file PLN180523 and PLN180523-AMD1.

10. FINDING: **VARIANCE (SPECIAL PRIVILEGES)** – The variance does not constitute a grant of privileges inconsistent with the limitations upon other property owners in the vicinity and zone in which such property is situated.

- EVIDENCE:**
- a) The project planner conducted a site inspection on September 29, 2020, and January 12, 2023 to verify that the variance would not constitute a grant of special privileges inconsistent with the limitations upon other property owners in the vicinity and zone in which the subject property is situated.
 - b) Staff researched County records to assess whether similar variances were granted in the vicinity and under the identical zoning classification. Other property owners in the vicinity and under identical zoning classification have been granted Variances for Floor Area Ratio.
 - c) Based on the zoning limitations and the small size of the property, other property owners in the vicinity and zone enjoy an average floor area of approximately 2,800 square feet, or 1,000 square feet more than that proposed development. Therefore, as proposed, the project would not constitute a grant of special privileges. The following projects (this is not an exhaustive listing for either Carmel Point or the County), all located in the immediate and general vicinity of Carmel Point, and all under identical zoning classification, include approved variances to increase the floor area ratio, or a combination with another site development variance: ZA093062/Depree (coverage/floor area), PC07841/Berner (floor area), PLN970555/Eckles (floor area), PLN020284/Johnson (floor area/coverage), PLN040559/Cooper (coverage and floor area), and PLN120101/DeYoung (floor area). Additionally, per the staff site inspection on September 29, 2020, staff noted many other garages and parking spaces located within the front setback, including at least 6 properties along Isabella Avenue and San Antonio Avenue South.
 - d) The application, plans, and supporting materials submitted by the project applicant to Monterey County HCD-Planning for the proposed development found in project file PLN180523 and PLN180523-ADM1.

11. FINDING: **APPEAL** - The Appellant contends that the Zoning Administrator's decision was not supported by the evidence and is contrary to law. Upon consideration of the documentary information in the files, the staff reports, the oral and written testimony, all other evidence presented before the Board of Supervisors, and the administrative record as a whole, the Board responds as follows to the Appellants' contentions:

- EVIDENCE:**
- a) Appellant (The Open Monterey Project), pursuant to Monterey County Code (MCC) section 20.86.030.C, timely appealed the April 29, 2021, decision of the Zoning Administrator. The appeal challenges the Zoning Administrator's approval of the Minor and Trivial Amendment, on the contention that the findings are not supported by the evidence, and that the decision is contrary to law.

See also Finding No. 1, evidence “j”. The text of the Appellant’s contentions and the County’s responses to those contentions are set forth in Evidences “b” through “f” below.

- b) Appellant Contention No. 1: *“County Board took final action. TOMP [The Open Monterey Project] appealed the action [Board decision to approve the project was appealed to the California Coastal Commission (CCC)]. TOMP has not withdrawn its appeal. The code/regulations do not authorize the County to withdraw a FLAN where an appeal has been filed. Zoning Administrator does not have authority to amend a Board appeal that has been designated a final action and that has been suspended. The MND should not have been relied on because the MND and project are on appeal to the CCC and the appeal has not been withdrawn” and “County may not amend an approval whose effectiveness has been suspended by an appeal by a third party.”*
- Response No. 1: Coastal Act section 30625 states that the California Coastal Commission (CCC) may approve, modify, or deny a proposed development on appeal to the Commission. It has been the Coastal Commission's practice to encourage property owners to incorporate modifications into project designs that address Coastal Commission staff concerns. In this case, to resolve the appeal contentions raised to the Coastal Commission, the Applicant made minor revisions to the project that address some appeal contentions raised during review in the prior action. CCC’s “Frequently Asked Questions: The Coastal Commission Permit Appeal Process” document, *“Sometimes applicants can make project changes that result in the withdrawal of the appeal if the changes are incorporated into the local permit approval.”* To process an application reflecting the proposed modifications, staff withdrew the Final Local Action Notice (FLAN) sent to the Coastal Commission after the Board approved the previous project and began processing an Amendment to the original permit locally. The CCC is responsible for notifying the appellant that the County has withdrawn its FLAN. Here, the CCC informed staff and the Appellant that it inadvertently did not notify The Open Monterey Project of the withdrawn FLAN and subsequent withdrawn appeal status of PLN180523. Withdrawal of the FLAN only affects the Coastal Commission appeal; it does not alter the County's prior decision or the associated CEQA determination. Withdraw of the FLAN simply means that the County is not requesting the Coastal Commission consider the local action “final” at this time (as consideration of modifications are pending). A new FLAN will be sent to the CCC reflecting the revised design if and when the County approves the revised project. Therefore, the Board of Supervisors’ action to adopt the Mitigated Negative Declaration on August 24, 2021, is final. No County regulation nor Coastal Act section prohibits this process, and Appellant has presented no authority to the contrary to County staff.
- c) Appellant Contention No. 2: *“The variance allowing a 51% FAR in the Carmel Area where the max FAR is 45% is not supported and would have significant unanalyzed and unmitigated proejct [sic.] and*

cumulative effects in light of the many nonconforming parcels/lots...[and] would set precedent...All property owners get 45% and no other variance for new construction has been allowed. The other variances cited in Findings 9/10 [of Resolution No. 23-007] were for decreases to nonconforming existing structures.”

Response No. 2: Special circumstances that warrant approval of the requested variance include the following: At 3,595 square feet in size, the project parcel is the smallest property on Isabella Avenue. Other lots along the same side of Isabella Avenue range in size from 3,716 square feet to 32,000 square feet, with an average lot size of 11,207 square feet. Allowed floor area in this area based on lot size ranges from 1,672 to 14,400 square feet, with an average of 5,043 square feet. Existing development on these lots ranges from 865 to 6,520 square feet, with an average floor area of 2,798 square feet. The lots on the opposite side of Isabella Avenue are similar in range of size and existing development.

The adopted IS/MND (SCH No. 2020029094) found that the original project, which included variances to reduce the front setback from 20 feet to 14 feet, increase the allowed site coverage from 35 percent to 37.5 percent, and increase the floor area ratio from 45 percent to 64.4 percent, would not result in a significant impact and would not contribute to cumulative environmental changes that may occur due to planned and pending development. As detailed in Finding No. 5, the proposed amendment represents a reduced scope of work which remains stable with the project description analyzed in the adopted IS/MND and none of the conditions described in Section 15162 calling for preparation of a subsequent EIR or negative declaration have occurred. Therefore, the proposed amendment will not result in additional impacts not analyzed in the adopted IS/MND and potential impacts of the original project and the proposed amendment would not be cumulatively considerable. The Appellant asserts that the similar variances cited in Finding Nos. 9 and 10 of Resolution No. 23-007 were only for existing structures that were proposing to reduce their nonconforming floor area ratio. The variances cited in Finding No. 10 are not an exhaustive list of floor area ratio variances approved on Medium Density Residential properties within the Carmel Area Land Use Plan area. Findings No. 9 and 10 confirm that the subject property shares similar limitations with other properties in the vicinity and which are also zoned Medium Density Residential. County’s history of considering Variances in this area include both denials and grants of such requests since each such request is treated on a case-by-case basis. The Board of Supervisors has weighed the unique circumstances of this case in assessing whether to grant a Variance to floor area ration and finds that the proposed variance does not grant a special privilegedge.

12. FINDING: **APPEALABILITY** - The decision on this project may be appealed to the California Coastal Commission.

EVIDENCE: a) California Coastal Commission. Pursuant to section 20.86.080.A of the Monterey County Zoning Ordinance (Title 20), the project is subject to appeal by/to the California Coastal Commission because it involves development permitted in the underlying zone as a conditional use (i.e.; development within 750 feet of known archaeological resources).

DECISION

NOW, THEREFORE BE IT RESOLVED, based on the above findings and evidence, and the administrative record as a whole, that the Board of Supervisors does hereby:

- 1) Denying the appeal of The Open Monterey Project from the Zoning Administrator's approval of a minor and trivial amendment to a previously approved Combined Development Permit;
- 2) Considering a previously adopted Mitigated Negative Declaration (SCH No. 2020029094), and finding that the preparation of a subsequent environmental document is not required, pursuant to CEQA Guidelines section 15162 of the; and
- 3) Approving a Minor and Trivial Amendment to a previously approved Combined Development Permit (PLN180523, Board of Supervisors Resolution 21-273) consisting of:
 - a. A Coastal Administrative Permit and Design Approval to allow construction of a 1,837 square foot two-story single-family dwelling and associated site improvements;
 - b. A Coastal Development Permit to allow development within 750 feet of known archaeological resources;
 - c. A Coastal Development Permit to allow the modification of parking standards, including no covered parking and authorization to allow parking within the front setback to count toward the required parking;
 - d. A Coastal Development Permit to allow the removal of four Coast live oaks; and
 - e. A variance to increase the maximum allowed floor area ratio from 45 percent to 51 percent.

All in general conformance with the attached plans and subject to the attached conditions, all being attached hereto and incorporated herein by reference.

PASSED AND ADOPTED on this 18th day of April 2023, by roll call vote:

AYES: Supervisors Alejo, Church, Lopez, Askew, and Adams

NOES: None

ABSENT: None

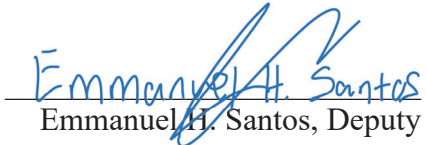
I, Valerie Ralph, Clerk of the Board of Supervisors of the County of Monterey, State of California, hereby certify that the foregoing is a true copy of an original order of said Board of Supervisors duly made and entered in the minutes thereof of Minute Book 82 for the meeting on April 18, 2023.

Dated: April 25, 2023

File ID: RES 23-063

Agenda Item No. 20

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


Emmanuel H. Santos, Deputy