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**Before the Planning Commission
in and for the County of Monterey, State of California**

In the matter of the application of:

MCDOUGALL AMY E. (PLN230127)

RESOLUTION NO. 24-039

Resolution by the Monterey County Planning
Commission:

- 1) Finding that denial of a project qualifies for a Statutory Exemption pursuant to CEQA Guidelines section 15270; and
- 2) Denying a Combined Development Permit consisting of:
 - a. An Administrative Permit and Design Approval to allow construction of a 12,469.5 square foot six-story single-family dwelling with an attached 934 square foot garage, an attached 2,124 square foot Accessory Dwelling Unit, an attached 483 square foot Junior Accessory Dwelling Unit, and 3,419.5 square feet of covered and uncovered decks, patios, and exterior staircases, and associated site improvements including drilling a domestic well;
 - b. Use Permit to allow the removal of up to seven Coast live oaks;
 - c. A Use Permit to allow development on slopes in excess of 25 percent; and
 - d. A reduction of the required front, side, and rear setbacks from 5 feet to 0 feet without seeking a variance.

[PLN230127, McDougall Amy E., 10196 Oakwood Circle, Carmel, Carmel Valley Master Plan, (APN: 416-542-011-000)]

The MCDOUGALL AMY E. application (PLN230127) came on for a public hearing before the Monterey County Planning Commission on August 28, 2024, September 25, 2024, and December 11, 2024. Having considered all the written and documentary evidence, the administrative record, the staff report, oral testimony, and other evidence presented, including the project plans, the Monterey County Planning Commission finds and decides as follows:

FINDINGS

1. **FINDING: INCONSISTENCY AND SITE SUITABILITY**– The Project, as proposed and designed, is not consistent with the applicable plans and policies which designate this area as appropriate for development.

Additionally, without additional evidence, the site is not physically suitable for the use proposed.

- EVIDENCE:** a) During review of this application, staff reviewed the project for consistency with the text, policies, and regulations in:
- the 2010 Monterey County General Plan;
 - Carmel Valley Master Plan;
 - Carmel Valley Ranch Specific Plan; and
 - The Monterey County Zoning Ordinance (Title 21 of the Monterey County Code).

Conflicts were found. Communications were also received during review of the project indicating any inconsistencies with the text, policies, and regulations in these documents.

- b) Based on the Project Data table of the attached plans, the project proposes construction of a 7,112 square foot, six-story single-family dwelling (inclusive of stairs, entry, and elevator) with an attached 832 square foot garage, an attached 1,600 square foot Accessory Dwelling Unit (ADU), an attached 483 square foot Junior Accessory Dwelling Unit (JADU), and 2,347 square feet of covered and uncovered decks, for a total of 12,374 square feet. However, the project plans provide misleading and factually incorrect information, namely inaccurate floor area calculations and misstatements as to current topographic conditions. Per HCD-Planning staff's calculations, the proposed project includes construction of a 12,469.5 square foot six-story single-family dwelling with an attached 934 square foot garage, an attached 2,124 square foot ADU, an attached 483 square foot JADU, and 3,419.5 square feet of covered and uncovered decks, patios, and exterior staircases, for a total of 19,430 square feet. Staff's floor area calculations were measured from the exterior face of the enclosing walls, as required by Title 21, and relied upon the provided scale (0.25 inches to 1 foot). Associated site modifications include development on slopes in excess of 25 percent, removal of Coast live oaks, and drilling of a domestic well. Although the residential structure is designed to encroach into the required 5-foot setbacks on all sides, the Project does not request a variance to modify this requirement.
- c) Existing Conditions. The property is currently vacant. Most of the subject property (0.08 acres) contains slopes exceeding 25 percent. Three Coast live oak trees are present. The Applicant/Owner asserts that the project site and the surrounding hillside were significantly altered after the Oakshire subdivision was approved in 1986. Accordingly, the Applicant/Owner has submitted two topographic surveys (dated 2016 and 2023), which are the basis for the two terrain lines illustrated on Sheet A13. The Applicant/Owner's claimed "historical" grade is labeled on Sheet A13 as the "Elevation Line of Natural Terrain". Below this terrain line is another grade labeled as the "Line of Terrain after Oakshire Ph. (II-III) Development" and is claimed by the Applicant/Owner to be current conditions. Though the 2016 and 2023 topographic surveys look nearly the same (same contours, road configuration, lot boundaries, tree trunks, private easements, etc.), the listed elevations differ by approximately 27 feet. The 2016 survey illustrates the subject property as having elevations ranging between 172

feet and 191 feet; these elevations were used to create the “Elevation Line of Natural Terrain” on Sheet A13. The 2023 survey illustrates the subject property as having elevations of approximately 199 feet to 221 feet; these elevations were used to create the “Line of Terrain after Oakshire Ph. (II-III) Development”.

Monterey Bay Engineers prepared both surveys and confirmed that both surveys represent today’s conditions. Accordingly, there is no “historic” (pre-subdivision) grade. The elevations differ by 27 feet because the 2016 survey elevations are based on an assumed datum with a project benchmark elevation of 200 feet, whereas the 2023 survey elevations are based on an assigned datum (North American Vertical Datum of 1988 [NAVD-88]) with a project benchmark elevation of 227.12 feet (identified with use of a GPS). GPS technology combined with NAVD-88 is a standardized reference point for elevation measurements across North America and is the most used vertical datum for surveying and mapping activities in the United States. Monterey Bay Engineers’ letter states “[the June 8, 2023 updated topographic survey] supersedes the May 6, 2016 map” (See Exhibit I of the December 11, 2023 staff report). Additionally, elevations derived from USGS mapping, which are based on the NAVD-88 datum, are consistent with the elevations of the 2023 survey. By claiming the 2023 survey elevations as a “historical” grade, the project plans are misleading; they could be interpreted as proposing a residential structure with 3.5 subterranean levels that would require 35 to 45 feet deep of excavation and approximately 4,864 cubic yards of cut. However, there is no “historic” grade. Consequently, the project plans erroneously use outdated elevations that should be adjusted upwards of 27.12 feet.

- d) The property is located at 10196 Oakwood Circle, Carmel, Carmel Valley Master Plan, (Assessor’s Parcel Number [APN]: 416-542-011-000). The subject property is zoned Medium Density Residential (MDR/5-D-S-RAZ), which allows for the establishment of the first single-family dwelling as an allowed use, subject to no discretionary permits. However, pursuant to Title 21 sections 21.44.030.A and 21.45.040.B, all new development located in the Design Control (“D”) and Site Plan Review (S) zoning overlay districts require a Design Approval and Administrative Permit, respectively. ADUs and JADUs compliant with Title 21 section 21.64.030 are ministerial projects. However, the proposed ADU and JADU do not satisfy Title 21 section 21.64.030, and the proposed single-family dwelling, inclusive of an internal ADU and JADU, requires development on slopes in excess of 25 percent and tree removal, and therefore requires the appropriate discretionary permits before the accessory units can be constructed. As discussed in this Finding, and for reasons elucidated in subsequent Findings and Evidence, the proposed project is inconsistent with applicable policies, goals, and text of the 2010 Monterey County General Plan, Carmel Valley Master Plan, Carmel Valley Ranch Specific Plan, and Monterey County Zoning Ordinance (Title 21). The proposed single-family dwelling, inclusive of an internal ADU and JADU, is referenced throughout this Resolution as the “residential structure.”

- e) Lot Legality. The subject property is comprised of a residential lot (3,528 square feet, 0.081 acres in size) and a garage lot (479 square feet; 0.011 acres in size), which are respectively identified as Lots 10 and G10 on the recorded final map for Tract 1045 of the Oakshire Phase II-III Subdivision (Volume 16, Cities and Towns Map, Page 8). Therefore, the County recognized the subject property as a legal lot of record.
- f) Design/Neighborhood and Community Character. The proposed project is inconsistent with applicable design-related policies of the Carmel Valley Master Plan and Carmel Valley Specific Plan, as well as Title 21, Chapter 21.44. See Finding No. 2 and supporting evidence.
- g) Development Standards (Height). The development standards for the MDR zoning district are provided by Title 21 section 21.12.060. As a Planned Unit Development, the subject property is not subject to lot coverage or floor area ratio limitations. The maximum allowed height in the MDR zoning district for main structures and attached accessory structures is 30 feet from the average natural grade. The project plans illustrate the proposed residential structure as having a height of 26 feet, 5 inches above average natural grade. This height is calculated from the “Elevation Line of Natural Terrain” (Applicant/Owner claimed “historical” grade but is recognized by the County as current conditions), which relies on a project benchmark of 227.12 feet conditions. However, since the project plans are based on the 2016 survey elevations, it is inappropriate to use the 2023 survey elevations to calculate the residential structure’s height above average natural grade due to the conflicting datums (assumed vs. assigned) and benchmark heights (200 feet vs. 227.12 feet). Therefore, to measure the project’s height above average natural grade, the 2016 survey elevations or the “Line of Terrain after Oakshire Ph. (II-III) Development” should be used since they are also based on an assumed datum/benchmark of 200 feet. Based on these elevations, the proposed project would have a height above average natural grade of approximately 56.5 feet, almost twice the height allowed. Therefore, as proposed, the project is inconsistent with the subject zoning district’s maximum allowed height.
- h) Development Standards (Setbacks). Required setbacks for main structures and attached accessory structures in this zoning district are 20 feet (front), 5 feet (sides), and 10 feet (rear), unless otherwise noted on the recorded final map. The recorded final map for Tract 1045 of the Oakshire Phase II-III Subdivision, illustrates the subject property (Lot 10 and G10) as being subject to 5-foot setbacks on all sides, except for the garage lot, which does not have setbacks. The proposed residential structure’s footprint abuts the front, rear, and western (side) property lines, and is therefore inconsistent with the required setback requirement. While the residential structure’s footprint does not encroach into the eastern side setback, its uncovered and covered patios encroach into the required setback by approximately 4 feet. Pursuant to Title 21 section 21.62.040, uncovered patios (greater than 24 inches above average natural grade) may extend three feet into the required side setback and covered patios (greater than 24 inches above average natural grade) may extend up to 2.5 feet into the required setback. The proposed uncovered and covered decks and patios are

inconsistent with the setback exceptions. The granting of a variance would be required to modify the subject setback requirement, pursuant to Title 21 Chapter 21.72. The Applicant/Owner did not request such a variance. Therefore, as proposed and designed, the residential structure and site improvements do not comply with the required setback site development standard of the MDR zoning district or the applicable exceptions.

- i) Development on Slopes in Excess of 25 Percent. The Proposed Project included development on slopes in excess of 25 percent. The criteria to grant the required Use Permit have not been satisfied. See Finding No. 6 and supporting evidence.
- j) Tree Removal. The Proposed Project seeks the removal of up to seven Coast live oak trees. The project is inconsistent with Title 21 sections 21.64.020D(4) and 21.64.020D(5) and Carmel Valley Master Plan Policy CV-3.11, because it does not minimize tree removal and fails to provide adequate on-site replanting. See Finding No. 5 and supporting evidence.
- k) Accessory Dwelling Unit. As proposed, the project includes construction of an Accessory Dwelling Unit (ADU) and Junior Accessory Dwelling Unit (JADU). The proposed ADU would be inconsistent with Title 21 sections 21.06.372 and 21.64.030. See Finding No. 7 and supporting evidence.
- l) Alteration of Landforms. 2010 General Plan Policy OS-1.2 states “Development in designated visually sensitive areas shall be subordinate to the natural features of the area.” The project site is in a visual sensitivity area identified as “Highly Sensitive”, per Figure 14 of the 2010 Monterey County General Plan, and therefore, Policy OS-1.2 applies. Further, Carmel Valley Master Plan Policy CV-3.4 requires that alterations of hillsides and natural landforms be minimized. The proposed design of the residence would not minimize alteration of the property’s hillside and existing topography. As designed, 1.5 levels of the proposed six-story residential structure would be sited below grade. The entire property would be excavated 8.5 to 20 feet down to accommodate the proposed subterranean levels. In addition to the grading for the lower levels, the proposed residential structure would maximize alteration of the subject property’s hillside by encroaching into the required setbacks on all sides. The proposed project is inconsistent with General Plan Policy OS-1.2 and CVMP Policy CV-3.4 because it would not be subordinate to the natural features of the property and instead, would alter the environment to conform to the Applicant/Owner’s desired design.
- m) Geologic and Seismic Hazards. General Plan Policy S-1.5 discourages development within 50 feet of active faults unless measures recommended by a registered engineering geologist are implemented to reduce the hazard to an acceptable level. Further, General Plan Policies S-1.6 and S-1.7 require that a geological report be prepared when development is proposed within a known geologic or seismic hazard area, and/or is in a State- or County- designated Earthquake Fault Zone. Areas of known geologic or seismic hazards are defined by the General Plan as areas with moderate to high landslide susceptibility; high

erosion susceptibility; moderate or high liquefaction; seacliff retreat; or tsunami run-up hazards. Additionally, Title 21 section 21.66.040.C requires the submittal of a geological report when development involves development on slopes greater than 30% or is within a 1/8th mile of an active or potentially active fault. Based on Monterey County GIS, the subject property contains slopes steeper than 30 percent, has a high erosion hazard potential, and is within 1/8th mile of an active or potentially active fault. Thus, a geological report is required. Although requested by staff and required by the Monterey County Code, the Applicant/Owner refused to submit a geological report. Without a site-specific geological report, the proposed project conflicts with General Plan Policies S-1.5 through 1.7, poses a potentially significant threat to its occupants and the surrounding neighborhood's health, safety, and general welfare, and does not incorporate recommendations from a licensed geologist to ensure that the site is suitable for the proposed development. See Finding No. 3, Evidence "F".

- n) Staff identified potential impacts to soils, geological, and forest resources. The Applicant commissioned the following reports:
- "Arborist Report" (LIB230212) prepared by Andrew Tope, Carmel, CA, August 14, 2016, amended October 2, 2023.
 - "Geotechnical Investigation (Design Phase)" (LIB230213) prepared by Greg Bloom, Freedom, CA, June 22, 2022, supplemented with a letter entitled "Foundation Observation", dated June 6, 2024.

County staff independently reviewed these reports and partially disagrees with their conclusions. Staff cannot rely on these reports to determine whether the project site is suitable for the proposed use (see Finding No. 3, Evidence "f" and Finding No. 5 and supporting evidence").

- o) Land Use Advisory Committee (LUAC) Review. The proposed project was referred to the Carmel Valley Land Use Advisory Committee for review on June 17, 2024. At this meeting, members of the public raised concerns relating to setbacks, the size and internal circulation of the ADU, impacts on public and private views, neighborhood compatibility, development on steep slopes, erosion control, and parking. Members of the LUAC raised similar concerns and noted that the proposed amount of glass could cause light pollution. After public testimony, the LUAC voted 4-0 to oppose the project as proposed.
- p) Public Comment. Members of the public objected to the proposed height, colors, materials, and size of the residence, citing its inconsistency with the Carmel Valley Master Plan and Carmel Valley Ranch Specific Plan, and lack of compatibility with the surrounding neighborhood. Additional concerns included the project's potential impact on aesthetics, specifically nighttime light pollution, neighborhood safety, slope stability, drainage, nearby trees, and property values.
- q) The project planner conducted a site inspection on August 1, 2024, to verify that the project on the subject parcel conforms to the plans listed above. Discrepancies in the project plans were identified. See Finding No. 1, Evidence "b" and "c".

- r) The application, project plans, and related support materials submitted by the project applicant to County of Monterey HCD-Planning found in Project File PLN230127.

2. FINDING:

DESIGN – The size, materials, and design of the proposed project are inconsistent with the applicable policies and regulations of the Carmel Valley Master Plan, Carmel Valley Ranch Specific Plan, and Title 21 (Zoning Ordinance).

EVIDENCE

- a) Carmel Valley Master Plan (CVMP) Policy CV-1.1 requires that development follow a rural architectural theme to ensure preservation of Carmel Valley’s rural character. Further, CVMP Policy CV-1.20 requires that new development proposals be reviewed for consistency with the following guidelines:
- Proposed development encourages and furthers the letter and spirit of the Master Plan
 - Development either shall be visually compatible with the character of the valley and immediate surrounding areas or shall enhance the quality of areas that have been degraded by existing development.
 - Materials and colors used in construction shall be selected for compatibility with the structural system of the building and with the appearance of the building’s natural and man-made surroundings.
 - Structures should be controlled in height and bulk to retain an appropriate scale.
 - Development, including road cuts as well as structures, should be located to minimize disruption of views from existing homes.
 - Minimize erosion and/or modification of landforms.
 - Minimize grading through step and pole foundations.
- b) The Carmel Valley Ranch Specific Plan (CVRSP) (CVMP Policy CV-1.22) is a designated special treatment area that establishes specific regulations for the various land uses within the Carmel Valley Ranch. The subject property and surrounding Oakshire Subdivision are within the CVRSP area. Housing within the CVRSP area is subject to four main design-related criteria: Architectural Style, Height and Form, Colors and Building Materials, and Development Character. These criteria require:
1. Architectural Style shall be in keeping with the Carmel Valley setting and tradition. Compatible architectural styles include barn, ranch, and an adaptation of early Monterey.
 2. The height and form of structures shall reflect and complement the character of the landscape setting. Building size and placement shall respect the natural lines of vegetation and topography.
 3. Natural materials indigenous to the area (i.e., wood, stone, adobe) shall be used in the construction and enhancement of structures. Colors shall harmoniously blend with the immediate surroundings and shall be confined to earth and vegetation colors (i.e., browns, siennas, beiges, olive greens). Construction that

breaks up the form of buildings and creates surface interest shall be utilized.

4. Residential building shall be located to reduce visual and physical impact on the land and planned to fit into the natural environment.
- c) Pursuant to Title 21 Chapter 21.44, the proposed project site and surrounding area are designated as a Design Control Combining District (D District), which regulates the location, size, configuration, materials, and colors of structures and fences to assure the protection of the public view shed and neighborhood character.
- d) Architectural Style & Colors and Materials. As designed, the project incorporates a modern-contemporary architectural style that utilizes horizontal dark brown wood siding, grey stone exterior, and large glass windows with black aluminum framing. The proposed architectural style is not compatible with the neighborhood character or Carmel Valley's rural setting. Additionally, it does not incorporate rural architectural features (e.g., board and batten siding, gable, hipped, or low-pitched rooflines, one to two stories, etc.) required by the Carmel Valley Master Plan and Carmel Valley Ranch Specific Plan. While the proposed materials, like stone and wood, are in keeping with the natural materials indigenous to the area, the proposed colors of such materials, flat roof, large expanses of glass windows, and multiple material transitions are neither compatible with the neighborhood character nor Carmel Valley's rural setting, nor do they blend in with the surrounding natural environment. Further, the geometric, stacked cube-like design of the structure does not break up the form of the building and increases the perceived massing. Consequently, the proposed development is inconsistent with CVMP Policy CV-1.1 and the CVRSP, which recommend that designs conform to rural architectural themes.
- e) Height and Form. The proposed six-story residential structure is approximately 56.5 feet from the average natural grade (see Finding No. 1, Evidence "g"). The proposed structure would conflict with the maximum allowed height of 30 feet. The proposed height and 1.5 subterranean levels do not reflect or complement the character of the landscape setting and instead significantly alter the natural terrain. Consequently, the proposed building size does not respect the natural lines of the property and is inconsistent with the CVRSP.
- f) Development Character. As detailed in the preceding evidence, the proposed project and associated ground disturbance significantly alter the physical landscape and do not conform to the natural environment.
- g) Neighborhood Character. The project planner conducted a site inspection on August 1, 2024, to determine the existing neighborhood character of the subject subdivision. Many residences in the Oakshire Subdivision were constructed in the late 1990s and consist of rural architectural types (e.g., split-level ranch or farmhouse) with horizontal board and batten. Colors of the existing neighborhood are limited to muted earth tones (i.e., brown, beige, yellow, and olive green, etc.). Existing residences do not exceed two floors of habitable space. The 21 developed residential lots within the Oakshire Subdivision range between approximately 3,136 and 5,837 square feet. The average

residential lot (excluding the garage lot) is 3,860 square feet (0.88 acres). Based on staff's review of previously approved planning permits within this subdivision, the average single-family dwelling (not including the garage) is approximately 3,427 square feet, with individual residences ranging between 2,400 and 4,650 square feet (excluding garage square footage). The average residence's square footage to lot size ratio is 0.9:1, but individually, they range between 0.59:1 to 1.3:1. As currently proposed, the 15,076 square foot residence (including the proposed ADU and JADU, but excluding the garage and covered and uncovered decks, patios, and exterior staircases) is four times larger than the average residence in the Oakshire subdivision, amounting to a residential square footage to lot size ratio of 4.27:1. The proposed height and bulk are not of an appropriate scale. Although the proposed residential structure would be six stories high, only three levels will be visible from Oakwood Circle Road because most of the structure would be below the road grade or subterranean. Other residences in the Oakshire Subdivision only have one to two levels visible from the front property line. Based on a review of the previously approved planning permits within the subject subdivision, no residential development has been approved above a garage on a garage lot. Here, the proposed JADU would be situated above the garage (on the garage lot) and would thus increase the visible bulk and mass and further distinguish the proposed residence from the surrounding neighborhood. The proposed residence's architectural style, height, and form (bulk and mass), colors and materials colors, and impact on the land are out of character with the surrounding residential neighborhood. Consequently, the proposed development is inconsistent with both CVMP Policy CV-1.20 and the CVRSP.

- h) CVMP Policy CV-1.20. Based on preceding Evidence "d" through "g", the proposed project's colors, materials, height and form, land disturbance, and architectural style are not visually compatible with the character of Carmel Valley or the immediate neighborhood and maximum modification of landforms. Consequently, the proposed development is inconsistent with CVMP Policy CV-1.20.
- i) Visual Resources. The project site is in a visual sensitivity area identified as "Highly Sensitive", as designated on Figure 14 (Greater Monterey Peninsula Scenic Highway Corridors and Visual Sensitivity Map) of the 2010 Monterey County General Plan. With a height of approximately 56.5 feet above average natural grade (see Finding No. 1, Evidence "g"), the top one to two stories will be visible from Carmel Valley Road (0.4 miles north). The proposed residence's visibility from Carmel Valley Road is comparable to the visibility of other residences within the area.
- j) The application, project plans, and related support materials submitted by the project applicant to County of Monterey HCD-Planning found in Project File PLN230127.

3. FINDING: HEALTH AND SAFETY – The establishment, maintenance, or operation of the project applied for may 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 Monterey County Regional Fire Protection District.
 - b) Sewer. California American Water Company (CalAm) provides sewer service to the subject subdivision, including the subject property. As illustrated on the recorded final map for Tract 1045 of the Oakshire Phase II-III Subdivision, a 5-foot “Sanitary Sewer Easement” is conveyed over the eastern portion of the subject property and corresponds with the property’s 5-foot side setback. A sewer main runs through this easement. It connects to manholes just north and south of the property. Per Volume 16, Cities and Towns Map, Page 8 (recorded map for the subject subdivision), the Sanitary Sewer Easements “are to be kept open and free from buildings and structures not serving the purposes of the easements”. The Applicant/Owner has proposed covered decks, exterior stairs, and a tiled terrace within the eastern side setback (see Finding No. 1, Evidence “h”). Based on the information provided, it is unclear how much excavation would be required to install the tiled terrace. Sewer mains are typically only 18-30 inches below the ground and thus could be adversely impacted should excavation exceed this amount. Construction of the lower-level terrace appears to conflict with the plain language of the sanitary sewer easement. Additionally, the Applicant/Owner has replanted two five-gallon Coast live oak trees in this easement area. CalAm opposes the planting of trees within the sewer easement, citing potential adverse impacts on the sewer system. Staff requested that the Applicant/Owner submit evidence demonstrating CalAm’s agreement to the re-planted trees, however, the Applicant/Owner has failed to provide evidence of such agreement as of the date of this Resolution. Without additional information, the proposed hardscape (inclusive of the associated grading) and re-planted trees appear to conflict with the allowances of the sewer easement and could result in a potential public hazard should construction or tree roots impact the sewer main.
 - c) Water. Potable water would be partially provided by CalAm using a 0.30-acre-foot water entitlement that the Applicant/Owner purchased from the Malpas Water Company (Water Use Permit No. 582). This water permit would serve approximately 30 fixture units. Based on the project plans, more than 40 fixture units are proposed and thus the purchased water entitlement would not provide sufficient water supply. However, the proposed project includes drilling a domestic well to supplement the public water supply (see subsequent Evidence “d” and “e”).
 - d) On-site Well Setbacks. Monterey County Code Chapter 18.05 (Plumbing Code) incorporates by reference the 2022 California Plumbing Code, Code of Regulations, Title 24, Part 5. Additionally, Monterey County Code Title 15 section 15.08.110 requires the construction, repair, reconstruction of, or deconstruction of wells to

conform with the standards set forth in the California Department of Water Resources Bulletin No. 74-81. California Plumbing Code Table 721.1 and Section 8 of California Well Standard Bulletin 74-81 & 74-90 require that water supply wells have a minimum horizontal distance of 50 feet from any sewer infrastructure to minimize potential exposure to contaminants. The proposed well, sited within the southwest corner of the lowest basement floor, would be within 50 feet of the sewer line that runs through the eastern portion of the property. Therefore, the proposed project is inconsistent with Monterey County Code Chapters 18.05 and 15.08, which enforce California Plumbing Code Table 721.1, and Section 8 of California Well Standard Bulletins 74-81 & 74-90.

- e) Carmel Valley Alluvial Aquifer. CVMP Policy CV-3.20 requires new wells within or near the Carmel Valley Alluvial Aquifer (CVAA) to offset any increase in extractions from this aquifer. Per Monterey County GIS, the proposed well is approximately 100 feet from the CVAA. Based on this proximity, the proposed well could draw water from or have hydrogeological connectivity with the CVAA. Although the Monterey Peninsula Water Management District (MPWMD) does not restrict water usage of private wells located outside of the CVAA, the District would require that the proposed well demonstrate a lack of hydrogeological connectivity to the Monterey Peninsula Water Resource System (defined as the surface water in the Carmel River and its tributaries, groundwater of the Carmel Valley Alluvial Aquifer, and groundwater of the Seaside Groundwater Basis) before it could be utilized. If the proposed well were to draw water from the CVAA, the Applicant/Owner would have to prove water rights to the extracted water. The subject property does not currently draw water from the CVAA, and therefore the proposed well would not be allowed to extract water from this aquifer, pursuant to MPWMD Rule 21-1 and System Capacity Limited Rule 40-A.
- f) Geologic and Seismic Hazards. The Applicant/Owner argues that the fault locations shown in Figure 2.6, Section 2 (Environmental Setting) of the 1975 Carmel Valley Ranch Specific Plan Environmental Impact Report should be used to comply with applicable Title 21 and General Plan requirements and to address concerns relative to geological hazards.

Monterey County GIS (Parcel Report), the USGS Fault Map, and the Department of Conservation's Fault Activity Map of California rely on data derived from a 1997 Geological Map prepared by Clark, J.C., Dupre, W.R., and Rosenberg, L.I and published by USGS. The fault locations identified in this 1997 Geological Map are accepted by the County, State, and Nation as the most accurate information available as of date. The 1997 Geological Map illustrates a trace of the Tularcitos fault traversing through the middle of the subject property. Additionally, in 2002, the California Department of Conservation published a map entitled "Geological Map of the Monterey 30'x60' Quadrangle and Adjacent Areas, California". This map's fault locations match the 1997 USGS Geological Map. Neither the 1997 USGS Geological Map nor 2002 Geological Map were used in the 1975 EIR, as neither had yet

been produced or published. The 1975 EIR instead used unknown data to illustrate the Tularcitos fault as being approximately 370 feet southwest of the subject property. Given the changes in the environmental setting as a result of updated fault mapping (1997 and 2002 vs 1975), the Planning Commission finds that the 1975 EIR is stale and outdated and shall not be used in lieu of the required geological report. Without a project-specific geological report, there is substantial evidence in the record, namely State and Federal mapping, that indicates the proposed project would be constructed on an active or potentially active fault. Should development occur on this site, there is no evidence that the property's geological hazard has been reduced to an acceptable level. Therefore, without a site-specific geological report, the proposed project poses a potentially significant threat to its occupants and the surrounding neighborhood's health, safety, and general welfare.

Further, a Geotechnical Investigation (Design Phase) was submitted (County of Monterey Library No. LIB230213) in accordance with General Plan Policy S-1.7. This report makes routine recommendations, such as complying with California Building Code and recompacting the soils to 90%, but does not address the project site's potential geological and seismic hazards. Accordingly, the submitted report does not satisfy the geological report requirements established in Title 21 and the General Plan. Therefore, the application, project plans, and related support materials for PLN230127 do not fully demonstrate that the site is physically suitable, the development will neither create nor significantly contribute to geologic instability or geologic hazards, or that the potential geological hazard has been reduced to an acceptable level.

- g) The application, project plans, and related support materials submitted by the project applicant to County of Monterey HCD-Planning found in Project File PLN230127.

4. FINDING: **NO VIOLATIONS** – The subject property complies with applicable provisions of the County's zoning ordinance. No violations exist on the property.

- EVIDENCE:**
- a) Staff conducted a site inspection on August 1, 2024. Moreover, staff researched County records to determine whether any code violation exists on the subject property, and did not find any.
 - b) In 2017, HCD-Planning issued Tree Removal Permit No. TRM170241 to allow the removal of two dead Coast live oaks (8-inch and 22-inch), subject to one condition of approval. Condition No. 1 (Tree Replacement) required each tree to be replaced on a 1:1 ratio within the same general location as the trees removed. This condition also required that 1) evidence be provided to HCD-Planning demonstrating that the replacement trees had been replanted within 60 days of permit approval; and 2) within one year of replanting, that an arborist submit a letter to HCD-Planning reporting on the health of the replacement trees and opining as to whether additional replanting is required. Applicant/Owner did not timely submit evidence of compliance with Evidence complying with Condition No. 1. However, on September 12,

2024, staff received photographic evidence that two Coast live oak trees were planted on-site, within the sewer easement area. Condition No. 1 is now “Partially Met” and will be “Met” upon submittal of a one-year follow-up letter confirming the trees are healthy.

- c) As described in Finding No. 5 and supporting evidence, the attached project plans illustrate a hardscape in the eastern 5-foot setback. Excavation to accommodate the proposed project, as well as installation of the tile terrace, would require the removal of the two re-planted trees. Should these trees be removed, Condition No. 1 of TRM170241 would no longer be partially met. Pursuant to Title 21 section 21.84.050, the violation of any condition imposed by the Planning Commission, Board of Supervisors, Director of Planning, or Zoning Administrator in connection with the granting of a permit constitutes a violation of Title 21 (Zoning Ordinance) and is declared to be a public nuisance. Should removal of these replanted trees occur, County staff may recognize non-compliance with Condition No. 1 as a violation of Title 21.
- d) No active violations are known to exist.
- e) The application, project plans, and related support materials submitted by the project applicant to County of Monterey HCD-Planning found in Project File PLN230127.

- 5. FINDING:** a) **TREE REMOVAL – INLAND.** The proposed tree removal is not the minimum required under the circumstances, which violates applicable land use policies and the Zoning Ordinance.
- EVIDENCE:** b) Three Coast live oaks inhabit the subject property. Numerous other Coast live oak trees surround the subject property and are within a few feet of the property line, including one Coast live oak that nearly straddles the western property line. The prepared Arborist Report recommends the removal of the property’s three Coast live oak trees. However, as detailed in Finding No. 1, Evidence “m”, the prepared Arborist Report did not consider the project’s excavation, nearby trees, or the tree replanted in September 2024 (see Finding No. 4, Evidence “b”). Therefore, the arborist report underestimates the number of trees that would need to be removed to build the project as proposed. Based on the staff’s site visit on August 1, 2024, at least one to two additional trees would be impacted and removed because of construction and grading activities. Further, the two recently re-planted trees would be impacted and removed because of the tiled terrain on the eastern side. The estimated tree removal does not account for remedial measures to reinforce the proposed 8.5 to 20-foot-deep excavation necessary to accommodate the subterranean levels.
- c) In accordance with the applicable policies of the CVMP and the Monterey County Zoning Ordinance (Title 21), a Tree Removal Permit is required to allow the removal of three or fewer protected trees, or a Use Permit is required to allow the removal of more than three protected trees. CVMP Policy 3.11 identifies Coast live oak trees as being protected within the planning area. Title 21 section 21.64.260.D(2) requires the following finding be made to grant either a Tree Removal Permit or a Use Permit: 1) the tree removal is the minimum necessary under the circumstances of the case; and 2) the tree

removal will not cause an adverse environmental impact. The criteria to grant said permit have not been met here.

- d) The proposed tree removal (up to seven trees) is not the minimum necessary because the proposed project encroaches into the required 5-foot setbacks. If the project were to conform to the required setbacks, only two protected trees would need to be removed. However, the trees replanted in September 2024 may still be impacted but could potentially be protected in place. The removal of two trees would allow for a residential structure that would meet the required setbacks to be constructed on the subject lot. Therefore, the removal of two trees is the minimum necessary in this case and thus, the proposed removal of up to seven trees is inconsistent with Title 21 section 21.64.260.D(2).
- e) Carmel Valley Master Plan Policy CV-3.11 requires on-site replanting of native trees on a 1:1 ratio. As proposed, the project (structure and decks/terraces) encroaches into the required 5-foot setbacks on all sides. Consequently, on-site re-planting of up to seven Coast live oaks cannot be accommodated, and the project therefore conflicts with Carmel Valley Master Plan Policy CV-3.11.
- f) The application, project plans, and related support materials submitted by the project applicant to County of Monterey HCD-Planning found in Project File PLN230127.

6. FINDING: DEVELOPMENT ON SLOPES –The proposed development does not better achieve the goals, policies and objectives of the Monterey County General Plan, Carmel Valley Master Plan, and the Monterey County Zoning Ordinance (Title 21) than other development alternatives.

- EVIDENCE:**
- a) Most of the subject property (0.08 acres) is on slopes exceeding 25 percent. Accordingly, the project includes application for development on slopes exceeding 25 percent.
 - b) In accordance with the applicable policies of the CVMP and Monterey County General Plan Policy OS-3.5, a Use Permit is required to develop projects on slopes in excess of 25 percent. Here, the criteria to grant said permit have not been met.
 - c) Given the steepness of the entire property, there is no feasible alternative that would allow the entirety of the proposed structure to be sited on less steep slopes. However, the current proposal, as designed and sited, maximizes the amount of development on steeper slopes. The proposed project maximizes the amount of development on steep slopes by encroaching into required setbacks and grading 8.5 to 20 feet down to accommodate the proposed 1.5 subterranean levels. The proposed development includes a concrete stepped foundation to accommodate the partially below-grade levels. In contrast, many of the other residential properties in the surrounding neighborhood that contain steeper slopes have been developed with pier foundation systems, which minimize the amount of grading and excavation necessary for the piers.
 - d) Conforming to the required setbacks is a feasible development alternative that would minimize the amount of disturbance on slopes greater than 25 percent by only siting necessary development on such

steep slopes. Further, conforming with the required setbacks would preserve up to five protected trees, which are currently slated for removal. Finally, siting floor levels entirely above grade is a feasible alternative that would minimize the amount of excavation of slopes in excess of 25 percent.

- e) Reducing the number of subterranean levels is a feasible alternative that would minimize the amount of excavation of slopes in excess of 25 percent. Additionally, reducing the amount of excavation would control the amount of potential sedimentation of soils and erosion caused by the land-clearing events, as required by Chapter 16.12 of the Monterey County Code (Erosion Control).
- f) Compliance with the required setbacks, reducing the number of subterranean levels, and removing only those trees deemed necessary better conforms with the resource protection goals, policies, and text of the CVMP and 2010 General Plan including Policies CV-3.11, CV-3.4, and OS-1.2, which aim to protect native trees and minimize landform alternation (see Finding No. 5 and supporting evidence, and Finding No. 1, Evidence “h”). Here, the project would not comply with the required setbacks, proposes 1.5 subterranean levels, and removal of up to seven protected trees. Therefore, as proposed, the project does not conform with the resource protection goals, policies, and text of the Carmel Valley Master Plan and 2010 General Plan and is also inconsistent with Policy OS-3.5.
- g) The application, project plans, and related support materials submitted by the project applicant to County of Monterey HCD-Planning found in Project File PLN230127.

7. **FINDING:** **ACCESSORY DWELLING UNIT AND JUNIOR ACCESSORY DWELLING UNIT-** The project does not meet the established regulations and standards in Title 21 section 21.64.030.

- EVIDENCE:**
- a) Title 21 section 20.64.030 establishes regulations and standards for which accessory dwelling units (accessory dwelling unit and junior accessory dwelling unit), accessory to the main residence on a lot, may be permitted. The project proposes the construction of an approximately 2,124-square-foot Accessory Dwelling Unit (ADU) and 483 square foot Junior Accessory Dwelling Unit (JADU).
 - b) Title 21 section 21.06.372 defines an Accessory Dwelling Unit as an “attached or detached residential dwelling unit which meets all of the following requirements: does not exceed one thousand two hundred (1,200) square feet; is located on a lot with a proposed or existing primary dwelling; provides complete independent living facilities for one or more persons; and includes permanent provision for living, sleeping, eating, cooking, and sanitation on the same parcel as the proposed or existing single family dwelling or multiple family dwelling is situated.” Accordingly, ADUs are intended to function as independent living quarters and thus require separate access (no internal circulation) and living facilities independent from the main residence’s sleeping, eating, and cooking provisions.
 - c) Based on HCD-Planning staff’s calculations, the proposed ADU is approximately 2,124 square feet (approximately 924 square feet larger

than allowed). Per the project plans, the ADU is 1,600 square feet (400 square feet larger than allowed). The proposed ADU greatly exceeds the allowable size of 1,200 square feet.

- d) Although the proposed ADU has exterior access via a series of staircases, the ADU also has internal circulation with the main residence (see Sheet A5). Additionally, the lower-level basement and well room are only accessible via the ADU. Consequently, the proposed ADU is inconsistent with the requirement that ADUs be independent living quarters that lack internal circulation with the main residence.
- e) Since the proposed ADU does not meet the definition of an “Accessory Dwelling Unit,” its habitable area and living provisions are considered part of the main residence. Accordingly, the proposed single-family dwelling contains two kitchens, which is inconsistent with the definition of a “Dwelling Unit”, which limits a residential structure to one kitchen (Title 21 section 21.06.370).
- f) The proposed JADU meets applicable requirements of Title 21 section 20.64.030, including size and shared internal access with the main residence.
- g) The application, project plans, and related support materials submitted by the project applicant to County of Monterey HCD-Planning found in Project File PLN230127.

8. FINDING: CEQA (Exempt) – Denial of the project is statutorily exempt from environmental review.

- EVIDENCE:**
- a) California Environmental Quality Act (CEQA) Guidelines section 15270 statutorily exempts projects which a public agency rejects or disapproves.
 - b) The Planning Commission’s action to deny the project fits within this exemption. The County is a public agency disapproving a project.
 - c) Statutory exemptions from CEQA are not qualified by the exceptions applicable to categorical exemptions in CEQA Guidelines section 15300.2.

9. FINDING: APPEALABILITY – The decision on this project may be appealed to the Board of Supervisors.

EVIDENCE: Board of Supervisors. Pursuant to Title 21 section 21.80.040(D), the Board of Supervisors is the appropriate authority to consider appeals made by any public agency or person aggrieved by a decision of the Planning Commission.

DECISION

NOW, THEREFORE, based on the above findings and evidence, the HCD Commission does hereby:

- 1) Find that denial of a project qualifies for a Statutory Exemption pursuant to CEQA Guidelines section 15270; and
- 2) Deny a Combined Development Permit consisting of:
 - a. An Administrative Permit and Design Approval to allow construction of a 12,469.5 square foot six-story single-family dwelling with an attached 934 square foot garage, an attached 2,124 square foot Accessory Dwelling Unit, an attached 483 square foot Junior Accessory Dwelling Unit, and 3,419.5 square feet of covered and uncovered decks, patios, and exterior staircases, and associated site improvements including drilling a domestic well;
 - b. Use Permit to allow the removal of up to seven Coast live oaks;
 - c. A Use Permit to allow development on slopes in excess of 25 percent; and
 - d. A reduction of the required front, side, and rear setbacks from 5 feet to 0 feet without seeking a variance.

PASSED AND ADOPTED this 11th day of December 2024, upon motion of Commissioner Roberts, seconded by Commissioner Getzelman, by the following vote:

AYES: Getzelman, Work, Gonzalez, Monsalve, Gomez, Diehl, Roberts, Daniels, Shaw

NOES: None

ABSENT: Mendoza

ABSTAIN: None

DocuSigned by:
Melanie Beretti
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Melanie Beretti, AICP
Planning Commission Secretary

COPY OF THIS DECISION MAILED TO APPLICANT ON **12/20/24**

THIS APPLICATION IS APPEALABLE TO THE BOARD OF SUPERVISORS. IF ANYONE WISHES TO APPEAL THIS DECISION, AN APPEAL FORM MUST BE COMPLETED AND SUBMITTED TO THE CLERK TO THE BOARD ALONG WITH THE APPROPRIATE FILING FEE ON OR BEFORE **1/2/25**

This decision, if this is the final administrative decision, is subject to judicial review pursuant to California Code of Civil Procedure Sections 1094.5 and 1094.6. Any Petition for Writ of Mandate must be filed with the Court no later than the 90th day following the date on which this decision becomes final.

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