

Attachment A

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PROJECT DISCUSSION

ISABELLA 2 LLC - PLANNING FILE NO. PLN180523

Project Description, Setting, and Background

The proposed project involves the construction of a 2,100 square foot two-story single-family dwelling, with 318 square feet of deck area. The project also involves development within an area of known archaeological resources, relocation of 4 Coast Live oak trees, modification of parking standards to allow both required parking spaces within the front setback and no covered parking space, a variance to increase the allowed floor area from 45 percent to 58.4 percent, and associated grading of approximately 300 cubic yards of cut and fill.

The subject property is a vacant lot located on Isabella Avenue, near the intersection of Isabella Avenue and 16th Avenue in the unincorporated area of Carmel Point. The project site is within an established residential neighborhood (see Vicinity Map at Attachment C), and the surrounding residential properties are developed with dwellings and accessory structures similar to those proposed by the Applicant. The subject property is zoned MDR/2-D (18) or Medium Density Residential, 2 units per acre with a Design Control overlay and an 18-foot height restriction and is governed by regulations and policies in the 1982 General Plan, the Carmel Area Land Use Plan (LUP), the Carmel Coastal Implementation Plan (CIP), and the Monterey County Coastal Zoning Ordinance (Title 20).

The Applicant submitted the original project application on November 13, 2018. The County deemed this application complete on January 4, 2019. The original proposal included a 1,250 square foot basement level and approximately 900 cubic yards of excavation and grading for the project's subterranean elements.

On July 9, 2020, the California Coastal Commission (CCC) determined that the amount of grading associated with basement levels in the Carmel Point area is inconsistent with applicable Land Use Plan policies regarding avoidance of cultural resources, and raises a "... substantial issue of conformance with County Local Coastal Program policies related primarily to archaeological resource protection, grading minimization, landform protection, and conservation objectives."

Subsequently, the Applicant revised the project from the original proposal to eliminate the basement level with garage, reduce the overall floor area of the residence and garage by 653 square feet (from 2,968 to 2,315 square feet), modify the parking standards to allow a required parking space within the front setback, reduce the front setback to accommodate an above grade garage, and increase the allowed site coverage and floor area to accommodate the garage and an upper level bedroom relocated from the previously-proposed basement level.

On April 28, 2021, the Planning Commission conducted a public hearing on the project, and continued the hearing to May 26, 2021, with direction to reduce the overall site coverage and square footage of the proposed development. On May 6, 2021, the Applicant submitted revised plans incorporating the Planning Commission's direction. As considered and approved by the Planning Commission on May 26, 2021, the revised project:

- Replaced the 289 square foot garage with a 74 square foot storage and mechanical closet, resulting in a net reduction of 215 square feet of floor area and 133 square feet of site coverage;
- Modified parking standards to allow both required parking spaces within the front setback, and no covered parking space;

- Eliminated a Variance for a front setback reduction;
- Eliminated a Variance for the site coverage (reduced from 1,350 square feet or 37.5 percent to 1,217 square feet or 33.8 percent);
- Reduced the Variance amount for floor area (reduced from 2,315 square feet or 64.4 percent to 2,100 square feet or 58.4 percent).

Since the original application, these revisions yielded a net reduction of 868 square feet of floor area (from 2,968 to 2,100 square feet). The Applicant's elimination of the garage prompted it to request modification of parking standards to allow two uncovered parking spaces within the front setback. Granting this request would eliminate the need for variances to allow a reduced front setback and increased site coverage. Although the house would be smaller than originally proposed, the County Code exempts areas entirely below grade (basements) from the floor area ratio calculations. The requested Variances would have accommodated an above-grade garage and an upper-level bedroom that were previously located in the basement level. Putting them above grade means they would be included in floor area ratio and coverage calculations.

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 (8 yes, 0 no, and 2 absent) to adopt a Mitigated Negative Declaration and approve the project, per the revised plans submitted by the Applicant on May 6, 2021 (Monterey County Planning Commission Resolution No. 21-015, as corrected on June 7, 2021).

Appeal Contentions and Responses

The Open Monterey Project (Appellant), represented by Molly Erickson, timely appealed the May 26, 2021, decision of the Planning Commission pursuant to MCC Section 20.86.030.C. In her appeal, Ms. Erickson challenged the Planning Commission's environmental determination and approval of the Combined Development Permit, and contended that the Planning Commission's findings, decision and conditions are not supported by the evidence and that they are contrary to applicable law. The full text of the Appellant's contentions is in the Notice of Appeal at **Attachment C**. The full text of the County's responses to those contentions are set forth in the Draft Resolution at **Attachment B**. County staff summarized the contentions and responses below.

Summarized County Staff Responses to the Contentions

Contention A: The Appellant contends that because the original plans showed a roof deck, with an interior staircase and extra-high chimney, there is a foreseeable use of the rooftop as a deck that would adversely impact neighbors. Specifically, the Appellant contends: "*The County should require the elimination of the interior stairway from the second floor to the flat roof, and the reduction in height of the chimney to six feet or less above the roof.*"

Response: The Applicant revised the plans to remove a proposed elevator and roof deck. Stairs and a retractable skylight provide maintenance access for solar panels that are proposed to be mounted on the roof. Use of the roof as a deck would require the addition of pedestrian railing, which would not be allowed pursuant to County development standards regarding the height limit for the zoning district.

Regarding height, a chimney is considered an appurtenance, so it is not subject to the 18-foot height limit and must maintain a minimum 3-foot distance separation from the roof. As currently proposed, the chimney would rise approximately 10.5 feet above the roof, including the chimney cap/spark arrestor, yet would be consistent with other chimneys in the surrounding vicinity and consequently, would not result in an adverse visual or aesthetic impact.

Contention B: The Appellant contends: *“That is a large amount of unnecessary cut that is not consistent with the LCP statements about changing existing land forms and the recent specific CCC direction on minimizing grading at Carmel Point in order to respect and protect tribal cultural resources and archaeological resources.”*

Response: The Appellant does not provide information refuting the conclusions or recommendations of the project’s geotechnical engineer. The amount of grading and excavation required for this development is both project specific and consistent with the geotechnical engineer’s site analysis. Other sites may have different soil conditions that warrant different soil engineering recommendations. The removal of the originally proposed basement level reduced the estimated amount of grading/excavation from approximately 900 cubic yards to 300 cubic yards, a net reduction of approximately 600 cubic yards. Per the geotechnical engineer, the excavation of 304 cubic yards of cut is the minimum necessary to adequately prepare the site for the proposed development.

Contention C: The Appellant specifically contends: *“The County failed to provide draft mitigation language to tribal representatives as required....”*

Response: Applicable state laws require that the County consult tribal representatives as to possible mitigation measures, but do not mandate that tribal representatives review and approve the specific language of such mitigation measures. (Pub. Resources Code, § 21080.3.2(b).). During consultation, County staff discussed the project with the tribal representative and identified potential impacts that may require mitigation. The tribal representative requested tribal monitoring during all excavation work on the site. Per this request, and due to the known presence of cultural resources within the area, the County required, as mitigation, the presence of a tribal monitor to observe all excavation and/or soil disturbing activities. Consultation on this specific project did not include review of draft mitigation measures with the tribal representative; however, County staff has discussed specific tribal monitor mitigation language with OCEN in the past and has applied similar mitigation language to multiple projects.

Contention D: The Appellant contends: *“The project as proposed would intrude on the privacy of adjacent and nearby neighbors due to the floor-to-ceiling class (sic) windows on the first and second floors of the house on this lot, and due to the foreseeable use of the easily accessible flat roof as a deck.”*

Response: Privacy and private views are neither regulated nor protected under either the Carmel Area Land Use Plan or applicable Monterey County Code sections. Additionally, the roof is not proposed to be used as a deck.

Contention E: The Appellant contends: *“The design is not consistent with neighborhood character. The record does not show other two-story flat-roof houses at Carmel Point in the immediate vicinity of the proposed project especially of this size on a small lot.”*

Response: This site and the surroundings are subject to an 18-foot height limit. Other projects in the vicinity have been approved at the maximum height limit and several included basements. In some cases, the County has approved homes with 2 and 3 stories, inclusive of basements. The form and mass of the structure will be the same or smaller than many other homes nearby because the design meets all required setbacks, complies with the height limit, meets site coverage limitations, and the square footage is similar or smaller to other homes in the area. Floor area is based on a percentage of the lot size and in this case, the lot is slightly smaller than other lots in the vicinity. Based on its review of the application materials and technical reports,

staff concluded that the size and scale of the proposed development is consistent with surrounding residences. The proposed exterior colors and finishes are earth tone colors that give the general appearance of natural materials and would blend with the surrounding environment. Additionally, the residences in the Carmel Point area represent a variety of architectural styles, including two-story flat roof single-family dwellings. The proposed structural design, combined with the proposed exterior colors and finishes, will blend with the surrounding environment pursuant to Carmel LUP Policy 2.2.3.6. Additionally, this project has been recommended for approval by the Carmel Highlands/Unincorporated Land Use Advisory Committee and was approved by the Planning Commission.

Contention F: The Appellant contends: “*The County records show that ‘the County has a history ... of denying ... Variances to FAR in this vicinity’ of Carmel Point for new construction.*”

Response: Ms. Erickson’s quote is from a 16-year-old project (2005). Regardless, the County’s history of considering Variances in this area includes both denials and grants of such requests since each such request is treated on a case-by-case basis. For example, the County has previously approved Variances to floor area limits in the Carmel Point vicinity, including to allow construction of new second story additions (see *Variance* discussion below). At 3,595 square feet, the project parcel is the smallest property on Isabella Avenue. Other property owners in the vicinity and zone enjoy an average floor area of approximately 2,800 square feet, or 700 square feet more than that proposed development. Therefore, as proposed, the project would not constitute a grant of special privileges. Additionally, the County has, in limited circumstances, approved Variances when the modification to building standards is warranted to minimize environmental impacts (such as cultural resources in this case). For example, a Variance was approved by the Planning Commission for file number PLN060533 to reduce the required setback for a caretaker unit because the reduction in the setback minimized impacts to trees. The Board can weigh the unique circumstances of this case, including the small lot size and minimization of impacts to archaeological resources by elimination of a basement in assessing whether to grant a Variance to site development standards.

Contention G: The Appellant contends: “*The initial study and MND is not appropriate and not accurate in light of the potential inconsistencies with, and/or impacts, of grading, land form changes, neighborhood consistency, and to tribal cultural resources (including the failure to provide conditions to the tribal representative). (E.g., finding 4.) The potential cumulative impacts – on neighborhood character, public views, grading, cultural resources, and more – have not been considered and mitigated in the CEQA document for this project.*”

Response: The Appellant does not provide evidence that the project may have a significant, or cumulatively significant, effect on the environment. Based on the specific circumstances of the project and the record, staff concluded that there is no substantial evidence that the project would have a significant effect on the environment. The Initial Study identified several potentially significant impacts, but the Applicant has agreed to proposed mitigation measures that either avoid the effects entirely or mitigate the effects to a point where no significant impacts would occur. The project has been redesigned to reduce grading by elimination of the basement. Neighborhood character is addressed in staff’s response to Contention E. Tribal resources are addressed in staff’s response to Contention C. As such, no further environmental review is required.

Contention H: The Appellant contends: “*Comparisons with other lots at Carmel Point should be limited to Carmel Point proper.*”

Response: Comment noted. References or comparisons used by County staff included properties considered to be located within the Carmel Point neighborhood and/or vicinity.

Project Analysis

Staff reviewed the application and determined that the project, as proposed, was consistent with the Carmel Area Land Use Plan (LUP) and Coastal Implementation Plan (Part 4). Also, as revised, the project conforms to applicable zoning development standards, with the exception of the requested variance to increase allowed floor area. The proposed variance provides design flexibility for this application, necessary given Applicant's redesign to remove the basement to conform with the recent Coastal Commission decision on this issue (see discussion above at page 1).

Applicable Zoning Development Standards

As noted above, the project conforms to applicable zoning development standards, apart from floor area. Development standards for the MDR zoning district are identified in Monterey County Code (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.

The maximum allowed height in this MDR zoning district is 18 feet above average natural grade. The proposed dwelling would have a height of 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 1,258 square feet (35 percent), and floor area of 2,100 square feet (58.4 percent or 482 square feet over the allowed maximum). The Applicant applied for a variance to exceed the amount of allowed floor area (see *Variance* below).

Variance

The proposed development would result in a floor area ratio that does not conform to the allowed development standards in Title 20 Section 20.12.060. The proposed development would result in floor area of 2,100 square feet (58.4 percent or 482 square feet over the allowed maximum). Floor area ratio (FAR) is standard zoning metric used to control the bulk and mass of structures on a lot. It is based on the total square footage of the site divided by the area of all floors contained in all buildings onsite. Notably, area contained entirely below grade is not counted in the floor area ratio calculation. The Applicant revised the initial application to eliminate a proposed basement level and garage (which were not included in the FAR), thereby reducing the total amount of excavation by approximately 600 cubic yards. The Applicant also reduced the overall size of the proposed development by 868 square feet. However, even with these revisions and reductions, the project would still require approval to allow an increase to allowed floor area.

Pursuant to MCC section 20.78.040, the granting of a variance requires three findings: 1) the variance is for an authorized use for the zoning regulations governing the parcel; 2) due to special circumstances applicable to the subject property (i.e.; size, shape, topography, location of the lot, and the surrounding area), the strict application of development standards in the Monterey County Code is found to deprive the subject property of privileges enjoyed by other property owners in the vicinity under identical zoning classification; and 3) the variance shall 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.

The subject property is zoned Medium Density Residential, which allows main dwellings and accessory structures with the granting of a Coastal Administrative Permit pursuant to MCC sections 20.12.040.A and H. Therefore, the project involves an authorized or allowed land use for this site.

Special circumstances exist that may warrant approval of the requested variance. At 3,595 square feet, the project parcel is the smallest property on Isabella Avenue, and is well below the zoning district standard of 6,000 square feet. The non-conforming size of the lot constrains the allowed development compared to other lots in the vicinity. The 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 site coverage for these other lots ranges from 1,301 to 11,200 square feet, with an average of 3,922 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. Based on the small size of the property and inability to construct a basement as originally proposed, zoning limitations would constrain development on this lot when compared to other properties in the immediate vicinity and with the same zoning classification. The lots on the opposite side of Isabella Avenue are similar in range of size and existing development.

Staff also researched County records to assess if any similar variances were granted in the vicinity and under identical zoning classification. The results of this records search demonstrate that other property owners in the vicinity and under identical zoning classification have been afforded the same privilege sought by the property owner of this revised application. 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 allowed floor area:

<u>Project File No.</u>	<u>Variance(s) Granted</u>
ZA093062/Depree	Floor Area and Coverage
PC07841/Berner	Floor Area and Height
PLN970555/Eckles	Floor Area and Height (included a 2 nd story addition)
PLN020284/Johnson	Floor Area (65%), Coverage, and Height (included an 88 square foot 2 nd story addition)
PLN040559/Cooper	Floor Area (53%) and Coverage (included a 500 square foot basement addition)
PLN120101/DeYoung	Floor Area (58.3%)
PLN120165/Fash	Floor Area (51%)

These variances granted by the County were generally for reductions to existing, non-conforming structures built prior to the adoption of the current zoning development standards and not for new construction. The County granted these variances to allow the owners to modify and update the structures, and to include additions that were offset by reductions. However, as noted above, at least two of these variances included new second story additions and square footage.

The County has also previously approved basement levels in the Carmel Point vicinity. Other County approvals for basement level additions on Isabella Avenue include PLN040204/Stewart and PLN150556/Morwood. Also on Isabella Avenue, the County approved the installation of a

52,332-gallon cistern below a driveway, which included 1,400 cubic yards of grading (PLN090387/Redlich). These approvals represent a small sample of the many basement levels in the Carmel Point neighborhood. Additionally, per the staff site inspection on September 29, 2020, staff noted at least 6 other basement levels on properties located along Isabella Avenue. This Variance is unique to this property and its circumstances.

Modifications of Parking Standards

As proposed, the project includes application for modification of parking standards to allow two parking spaces within the front setback to count toward the amount of required parking, and to not require one of those spaces to be covered. Per MCC section 20.58.50.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 no covered parking space within a garage or carport.

MCC section 20.58.050 grants the Board discretion to modify parking standards due to the unusual characteristics of a use or those of its immediate vicinity. The presence of documented cultural resources within the project site area complicates excavation of a subterranean garage, as initially proposed by the Applicant. Additionally, requiring a garage would exacerbate the coverage, floor area, and setback constraints at issue. Therefore, modification of the parking standards better achieves the goals and objectives of the Carmel Area Land Use Plan because it avoids impacts to, and preserves, cultural resources. The County has approved other modifications to parking standards near 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 parking within the front setback 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. Additionally, along this segment of Isabella Avenue, the amount of space between the property line and the edge of pavement varies from 3 to 6 feet. This additional space provides increased safety for the public traveling on Isabella Avenue.

Tree Relocation

Forest resource policies of the Carmel Area LUP and development standards contained in section 20.146.060 of the Coastal Implementation Plan protect 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.

Eleven Coast Live oak trees are present on the project site, four of which are proposed to be removed and relocated to another property located at 26346 Valley View, approximately 300 feet southeast of the project site. The oak trees are planted primarily around the perimeter of the lot, and the trees proposed for relocation are within the development footprint. Per the arborist report prepared for the project (LIB180395; Frank Ono, Certified Arborist and Forester), the trees proposed for relocation are the minimum number necessary for the project (MCC section 20.146.060.D.3), and relocation will not involve a risk of adverse environmental impacts. None

of the trees proposed for relocation are considered landmark trees, as they range in diameter two feet above ground level from 10 to 16 inches. The trees are also considered in fair condition and able to survive the relocation process, and the movement of the trees will be completed by a company experienced in large landscape tree relocation. The remaining oaks have been integrated into the project with the development sited to avoid further tree impacts. According to the arborist report, relocation of trees is preferable to replacement given the small size of the project site. Per Condition No. 9, relocation and subsequent monitoring shall be completed in accordance with the arborist's report, and tree replacement will be required in case of tree mortality (Condition No. 22/Mitigation Measure No. 1). Implementation of Mitigation Measure No. 1 would only be required in the event of tree death after relocation.

Public Viewshed and Design

The project, as proposed, is consistent with the Carmel Area LUP policies regarding Visual Resources (Chapter 2.2) and will have no impact on the public viewshed. The project planner conducted a site inspection on September 29, 2020, to verify that the proposed development would not impact the public viewshed. The project site is in a residential neighborhood, and the adjacent parcels have been developed with single-family dwellings.

Pursuant to MCC Chapter 20.44, the proposed project 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 protection of the public viewshed and neighborhood character. The Applicant proposes exterior colors and materials 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 and are consistent with both the surrounding residential neighborhood character and 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. Further, the proposed bulk and mass would not contrast with the neighborhood character and would, in fact, be less than the average size of the surrounding homes on Isabella Avenue. Therefore, as proposed, the project assures protection of the public viewshed, is consistent with neighborhood character, and assures visual integrity.

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 site is low; however, given the parcel's location in the archaeologically sensitive Carmel Point area, the reports recommended the presence of a monitor during all excavation activities. No significant archaeological resources were found during auger and ground penetrating radar testing, yet given the site's location in Carmel Point and within the 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 included to minimize potential impacts to resources if discovered during construction, including a requirement for the presence of both an archaeological monitor and a tribal monitor during excavation activities at both the project site and the replanting site (Condition Nos. 23 and 25/Mitigation Measures 2 and 4, respectively).