

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

In the matter of the application of:

(PLN150453/Schwenk)

RESOLUTION NO. 16-011

Resolution by the Monterey County Planning
Commission:

- 1) Adopting the Mitigated Negative Declaration;
- 2) Approving a Coastal Development Permit and Design Approval to allow a new exterior stairwell and excavation under the foundation to increase ceiling height of an existing 144 square foot room within 750 feet of a known archaeological resource , based on the findings and evidence and subject to nine (9) conditions of approval (**Exhibit B**); and
- 3) Adopting a Mitigation Monitoring and Reporting Plan

[2486 17th Avenue, Carmel, Carmel Area Land Use
Plan (APN: 009-471-020-000)]

The Schwenk application (PLN150453) came on for a public hearing before the Monterey County Planning Commission on May 11, 2016. Having considered all the written and documentary evidence, the administrative record, the staff report, oral testimony, and other evidence presented, the Planning Commission finds and decides as follows:

FINDINGS

- 1. FINDING:** **PROJECT DESCRIPTION** – The proposed project is a Coastal Development Permit and Design Approval to allow a new exterior stairwell and excavation under the foundation to increase ceiling height of an existing 144 square foot room within 750 feet of a known archaeological resource.

EVIDENCE: The application, project plans, and related support materials submitted by the project applicant to Monterey County RMA-Planning for the proposed development are found in Project File PLN150453.
- 2. FINDING:** **CONSISTENCY** – The Project, as conditioned, is consistent with the applicable plans and policies which designate this area as appropriate for 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;
- Monterey County Zoning Ordinance (Title 20);

No conflicts were found to exist. No communications were received during the course of review of the project indicating any inconsistencies with the text, policies, and regulations in these documents.

- b) The property is located at 2486 17th Avenue, Carmel (Assessor's Parcel Number 009-471-020-000), Carmel Area Land Use Plan. The parcel is zoned MDR/2-D(18)(CZ) [Medium Density Residential, 2 acre per unit with Design Control Overlay (18' Maximum Height)(Coastal Zone)], The existing single family residence is a permitted use. The proposed modifications are consistent with the land use and zoning. Development within 750 feet of known archaeological resource is allowed with approval of a Coastal Development Permit. Implementations of the proposed new additions require approval of a Design Approval. Approval of this application satisfies these requirements.
- c) Pursuant to policies found within the Carmel Area Land use Plan:
 - 2.8.4 (5): *No development proposals in archaeologically sensitive areas shall be categorically exempt from environmental review.*
 - 2.8.4 (6) *When other site planning constraints do not permit avoidance of construction on archaeological or other types of a cultural sites, adequate preservation measures shall be required. Mitigation shall be designed in accord with guidelines of the State Office of Historic Preservation and the State of California Native American Heritage Commission.*

Based on analyses by a County-approved consulting archaeological consultant, it is unlikely that cultural resources are present as test borings have encountered only midden, shell fragments and similar detritus.

- d) The project is located within a "Design Review" ("D") district, and as such must be designed so as to assure protection of the public view shed and neighborhood character. The proposed exterior stairwell will be no taller than 4 feet above average natural grade, will only be visible from the backyard of the single family dwelling and will not be visible from any public viewing area. The colors and

materials of the stairwell will match those of the existing single family dwelling.

- e) Public Resources Code section 21080.3.1 requires that the lead agency provide formal notification to the designated contact of, or a tribal representative of, traditionally and culturally affiliated California Native American tribes that have requested notice. Accordingly, Staff has consulted, in-person, with the Ohlone/Costanoan-Esselen Nation (OCEN) Chairperson regarding the project on November 16, 2015 and May 10, 2016. There is no evidence submitted of the existence of tribal cultural resources on this property.
- f) The project planner conducted a site inspection on June 30, 2015, to verify that the project on the subject parcel conforms to the plans listed above.
- g) The application, project plans, and related support materials submitted by the project applicant to Monterey County RMA-Planning for the proposed development are found in Project File PLN150453.

3. FINDING:

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

EVIDENCE:

- a) The project has been reviewed for site suitability by the following departments and agencies: RMA- Planning, Cypress Fire Protection District, RMA-Public Works, RMA-Environmental Services, Environmental Health Bureau, and Water Resources Agency. There has been no indication from these departments/agencies that the site is not suitable for the proposed development. Conditions recommended have been incorporated.
- b) Based on the age of the structure, staff identified potential impacts to Historical Resources. The following report has been prepared:
“Limited Historical Assessment for 2486 17th Ave., Carmel CA APN. 009-471-020-000” (LIB150343) prepared by Bergstein, Seth A., (PAST Consultants), Pacific Grove, CA, July 29, 2015. The above-mentioned technical report concluded that there are no physical or environmental features that would indicate historical significance. County staff has independently reviewed this report and concurs with conclusions.
- c) The project site is located in a highly archaeologically-sensitive area. Accordingly, the following reports have been prepared:
 - “Preliminary Archaeological Assessment of APN 009-471-020, Carmel, Monterey County, California” (LIB150212) prepared by Doane, Mary & Breschini,

Gary (Archaeological Consulting), Salinas, CA,
May 11, 2015.

- "Additional Archaeological Investigations at 2486
17th Avenue (APN 009-471-020), Carmel, Monterey
County, California" (LIB160042) prepared by
Breschini, Gary (Archaeological Consulting),
Salinas, CA, January 21, 2016.

These reports indicate that the project can proceed with
mitigations, to include, primarily, on-site monitoring by a
qualified archaeological monitor and a Native American
monitor.

- d) Staff conducted a site inspection on June 30, 2015, to verify
that the site is suitable for this use.
- e) The application, project plans, and related support materials
submitted by the project applicant to the Monterey County
RMA - Planning for the proposed development are found in
Project File PLN150453.

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 the RMA - Planning, Cypress
Fire Protection District, Public Works, Environmental Health
Bureau, RMA- Environmental Services and Water Resources
Agency. The respective agencies have recommended
conditions, 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) Necessary public facilities are available. Water will be
supplied by Cal-Am Water Company and sewer will be
provided by Carmel Area Wastewater District.
- c) Staff conducted a site inspection on June 30, 2015, to verify
that the site is suitable for this use.
- d) The application, project plans, and related support materials
submitted by the project applicant to the Monterey County
RMA - Planning for the proposed development are found in
Project File PLN150453.

5. 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) Staff reviewed Monterey County RMA - Planning and Building Services Department records and is not aware of any violations existing on subject property.
 - b) Staff conducted a site inspection on June 30, 2015, and researched County records to assess if any violation exists on the subject property and concluded that there are no known violations on the subject parcel.
 - c) The application, plans and supporting materials submitted by the project applicant to Monterey County RMA-Planning for the proposed development are found in Project File PLN150453.

6. FINDING: **CEQA (Mitigated Negative Declaration)** - On the basis of the whole record before the Monterey County Planning Commission, there is no substantial evidence that the proposed project as designed, conditioned and mitigated, will have a significant effect on the environment. The Mitigated Negative Declaration prepared for the project reflects the independent judgment and analysis of the County.

- EVIDENCE:**
- a) Monterey County RMA-Planning prepared an Initial Study pursuant to CEQA. The Initial Study is on file in the offices of RMA-Planning and is hereby incorporated by reference (PLN150453).
 - b) The Initial Study identified potential effects to cultural resources, however, the applicant has agreed to comply with mitigation measures that avoid the effects or mitigate the effects to a point where no significant effects would occur.
 - c) A Condition Compliance and Mitigation Monitoring and Reporting Plan has been prepared in accordance with Monterey County regulations, designed to ensure compliance during project implementation, and is hereby incorporated by reference. The applicant must enter into an "Agreement to Implement a Mitigation Monitoring and/or Reporting Plan as a condition of project approval.
 - d) The Draft Mitigated Negative Declaration ("MND") for PLN150453 was prepared in accordance with CEQA and circulated for public review from March 27, 2016 through April 28, 2016.
 - e) Issues that were analyzed in the Mitigated Negative Declaration include cultural resources.
 - f) Due to the possibility that cultural artifacts may be uncovered during the excavation required for the proposed construction, the following mitigation measures are required

of the project:

1. A qualified archaeological monitor and a Native American monitor of Ohlone/Costanoan-Esselen Nation shall be present during all project excavations. The monitors shall recover significant cultural materials that may be found in the excavated soil. The monitors shall selectively screen midden soil through 1/8" mesh to facilitate data recovery. All materials remaining in the screen should be provided to the Chairperson of the Ohlone/Costanoan-Esselen Nation.
 2. If, at any time, potentially significant archaeological resources or intact features are discovered, the monitors shall be authorized to temporarily halt work until the find can be evaluated. If the find is determined to be significant, work shall remain halted until mitigation measures have been formulated, by the County of Monterey, and implemented.
 3. If, at any time, human remains are identified, the Monterey County Coroner must be notified and, if it is determined that the remains are likely to be Native American, the Native American Heritage Commission must be notified, as required by law. The designated Most Likely Descendant will be authorized to provide recommendations for the disposition of the Native American human remains.
 4. Mitigation shall include professional analysis of archaeological materials, based on the types and adequate quantities of those materials recovered. At least two single-specimen radiocarbon dates shall be obtained on shells.
 5. A *Final Technical Report* detailing the results of all analyses shall be completed within six months following the completion of fieldwork. This report shall be submitted to the Lead Agency and to the Northwest Information Center, Sonoma State University.
- g) California Assembly Bill 52 requires notice and meaningful consultation with local tribal representatives to ensure that Tribal Cultural Resources (TCR's) will not be impacted by a proposed project. Tribal cultural resources can include a site feature, place or cultural landscape, sacred place or object which is of cultural value to a tribe. The County consulted with the Ohlone/Costanoan-Esselen Nation (OCEN) Chairperson on November 16, 2015 and May 10, 2016. The project site has an existing house built in the 1930's. The existing house and site landscape improvements have so modified the site that there is no potential for tribal cultural

resources to exist at this location. Consultation with the OCEN chair confirmed that no tribal cultural resources exist on site.

- h) The Initial Study and the record as a whole indicate the project would not result in changes to the resources listed in Section 753.5(d) of the California Department of Fish and Wildlife (CDFW) regulations, however, land development projects that are subject to environmental review are subject to a State filing fee plus the County recording fee, unless the Department of Fish and Wildlife determines that the project will have no effect on fish and wildlife resources.
- i) No comments from the public were received during the circulation period.
- j) Monterey County RMA-Planning, located at 168 W. Alisal, 2nd Floor, Salinas, California, 93901, is the custodian of documents and other materials that constitute the record of proceedings upon which the decision to adopt the negative declaration is based.

7. 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 Local Coastal Program, 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 the Monterey County Coastal Implementation Plan can be demonstrated.
- b) No evidence or documentation has been submitted or found showing the existence of historic public use or trust rights over this property.
- c) The application, plans and supporting materials submitted by the project applicant to the Monterey County Planning Department for the proposed development are found in Project File PLN150453.
- d) The project planner conducted a site inspection on June 30, 2015.

8. FINDING:

APPEALABILITY - The decision on this project may be appealed to the Board of Supervisors.

EVIDENCE:

- a) Section 20.86.070 Monterey County Zoning Ordinance (Action by the Board of Supervisors on Appeal).

DECISION

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

1. Adopt a Mitigated Negative Declaration; and
2. Approve a Coastal Development Permit and Design Approval to allow a new exterior stairwell and excavation under the foundation to increase ceiling height of an existing 144 square foot room within 750 feet of a known archaeological resource, according to the project plans and nine (9) conditions/mitigations, all being attached hereto and incorporated herein by reference; and
3. Adopt the attached Mitigation Monitoring and Reporting Program.

PASSED AND ADOPTED this 11th day of May, 2016 upon motion of Commissioner Rochester, seconded by Commissioner Ambriz, by the following vote:

AYES: Ambriz, Diehl, Duflock, Getzelman, Hert, Mendez, Padilla, Roberts, Rochester, Vandevere
NOES: None
ABSENT: None
ABSTAIN: None



Carl P. Holm, AICP, Planning Commission Secretary

COPY OF THIS DECISION MAILED TO APPLICANT ON **MAY 12 2016**.
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 **MAY 23 2016**

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.

Monterey County RMA Planning

Conditions of Approval/Implementation Plan/Mitigation Monitoring and Reporting Plan

PLN150453

1. PD001 - SPECIFIC USES ONLY

Responsible Department: RMA-Planning

Condition/Mitigation Monitoring Measure: This Coastal Administrative Permit and Design Approval (PLN150453) allows construction of a new exterior stairwell and excavation to increase clearance of an existing 144 square foot room to 8', within 750 feet of a known archaeological resource. The property is located at 2486 17th Avenue, Carmel (Assessor's Parcel Number 009-471-020-000), Carmel Area Land Use Plan. This permit was approved in accordance with County ordinances and land use regulations subject to the terms and conditions described in the project file. Neither the uses nor the construction allowed by this permit shall commence unless and until all of the conditions of this permit are met to the satisfaction of the Director of RMA - Planning. Any use or construction not in substantial conformance with the terms and conditions of this permit is a violation of County regulations and may result in modification or revocation of this permit and subsequent legal action. No use or construction other than that specified by this permit is allowed unless additional permits are approved by the appropriate authorities. To the extent that the County has delegated any condition compliance or mitigation monitoring to the Monterey County Water Resources Agency, the Water Resources Agency shall provide all information requested by the County and the County shall bear ultimate responsibility to ensure that conditions and mitigation measures are properly fulfilled. (RMA - Planning)

Compliance or Monitoring Action to be Performed: The Owner/Applicant shall adhere to conditions and uses specified in the permit on an ongoing basis unless otherwise stated.

2. PD002 - NOTICE PERMIT APPROVAL

Responsible Department: RMA-Planning

Condition/Mitigation Monitoring Measure: The applicant shall record a Permit Approval Notice. This notice shall state:
"A Combined Development Permit (Resolution Number 16-011) was approved by the Planning Commission for Assessor's Parcel Number 009-471-020-000 on May 11, 2016. The permit was granted subject to six (6) conditions of approval and three (3) mitigation measures which run with the land. A copy of the permit is on file with Monterey County RMA - Planning."

Proof of recordation of this notice shall be furnished to the Director of RMA - Planning prior to issuance of grading and building permits, Certificates of Compliance, or commencement of use, whichever occurs first and as applicable. (RMA - Planning)

Compliance or Monitoring Action to be Performed: Prior to the issuance of grading and building permits, certificates of compliance, or commencement of use, whichever occurs first and as applicable, the Owner/Applicant shall provide proof of recordation of this notice to the RMA - Planning.

3. PD003(B) - CULTURAL RESOURCES POSITIVE ARCHAEOLOGICAL REPORT

Responsible Department: RMA-Planning

Condition/Mitigation Monitoring Measure: If archaeological resources or human remains are accidentally discovered during construction, the following steps will be taken:

There shall be no further excavation or disturbance of the site or any nearby area reasonably suspected to overlie adjacent human remains until the coroner of the county in which the remain are discovered must be contacted to determine that no investigation of the cause of death is required.

If the coroner determines the remains to be Native American:

- The coroner shall contact the Native American Heritage Commission and RMA - Planning within 24 hours.
- The Native American Heritage Commission shall identify the person or persons from a recognized local tribe of the Esselen, Salinan, Costonoans/Ohlone and Chumash tribal groups, as appropriate, to be the most likely descendant.
- The most likely descendant may make recommendations to the landowner or the person responsible for the excavation work, for means of treating or disposing of, with appropriate dignity, the human remains and any associated grave goods as provided in Public Resources Code Section 5097.9 and 5097.993, Or

Where the following conditions occur, the landowner or his authorized representatives shall rebury the Native American human remains and associated grave goods with appropriate dignity on the property in a location not subject to further subsurface disturbance:

1. The Native American Heritage Commission is unable to identify a most likely descendant or the most likely descendant failed to make a recommendation within 24 hours after being notified by the commission.
2. The descendant identified fails to make a recommendation; or
3. The landowner or his authorized representative rejects the recommendation of the descendant, and the mediation by the Native American Heritage Commission fails to provide measures acceptable to the landowner.

(RMA - Planning)

Compliance or Monitoring Action to be Performed:

Prior to the issuance of grading or building permits or approval of Subdivision Improvement Plans, whichever occurs first, the Owner/Applicant, per the archaeologist, shall submit the contract with a Registered Professional Archaeologist for on-call archaeological services should resources be discovered during construction activities. Submit the letter to the Director of the RMA – Planning for approval.

Prior to the issuance of grading or building permits and/or prior to the recordation of the final/parcel map, whichever occurs first, the Owner/Applicant shall include requirements of this condition as a note on all grading and building plans, on the Subdivision Improvement Plans, in the CC&Rs, and shall be included as a note on an additional sheet of the final/parcel map.

Prior to Final, the Owner/Applicant, per the Archaeologist, shall submit a report or letter from the archaeologist summarizing their methods, findings, and recommendations if their services are needed during construction or if no resources were found.

4. PD006 - CONDITION OF APPROVAL / MITIGATION MONITORING PLAN

Responsible Department: RMA-Planning

**Condition/Mitigation
Monitoring Measure:**

The applicant shall enter into an agreement with the County to implement a Condition of Approval/Mitigation Monitoring and/or Reporting Plan (Agreement) in accordance with Section 21081.6 of the California Public Resources Code and Section 15097 of Title 14, Chapter 3 of the California Code of Regulations. Compliance with the fee schedule adopted by the Board of Supervisors for mitigation monitoring shall be required and payment made to the County of Monterey at the time the property owner submits the signed Agreement. The agreement shall be recorded. (RMA - Planning)

**Compliance or
Monitoring
Action to be Performed:**

Within sixty (60) days after project approval or prior to the issuance of building and grading permits, whichever occurs first, the Owner/Applicant shall:

- 1) Enter into an agreement with the County to implement a Condition of Approval/Mitigation Monitoring Plan.
- 2) Fees shall be submitted at the time the property owner submits the signed Agreement.
- 3) Proof of recordation of the Agreement shall be submitted to RMA-Planning.

5. PD032(A) - PERMIT EXPIRATION

Responsible Department: RMA-Planning

**Condition/Mitigation
Monitoring Measure:**

The permit shall be granted for a time period of three (3) years, to expire on May 11, 2019, unless use of the property or actual construction has begun within this period. (RMA-Planning)

**Compliance or
Monitoring
Action to be Performed:**

Prior to the expiration date stated in the condition, the Owner/Applicant shall obtain a valid grading or building permit and/or commence the authorized use to the satisfaction of the RMA-Director of Planning. Any request for extension must be received by RMA-Planning at least 30 days prior to the expiration date.

6. MM001 - ON-SITE MONITORING

Responsible Department: RMA-Planning

**Condition/Mitigation
Monitoring Measure:**

A qualified archaeological monitor and a Native American monitor of Ohlone/Costanoan-Esselen Nation shall be present during all project excavations. The monitors shall recover significant cultural materials that may be found in the excavated soil. The monitors shall selectively screen midden soil through 1/8" mesh to facilitate data recovery. All materials remaining in the screen should be provided to the Chairperson of the Ohlone/Costanoan-Esselen Nation.

**Compliance or
Monitoring
Action to be Performed:**

As described in MM-001.

7. MM002 - CARBON-DATING

Responsible Department: RMA-Planning

Condition/Mitigation Monitoring Measure: Mitigation shall include professional analysis of archaeological materials, based on the types and adequate quantities of those materials recovered. At least two single-specimen radiocarbon dates shall be obtained on shells.

Compliance or Monitoring Action to be Performed: Prior to Final Inspection:
A report detailing at least two single-specimen radiocarbon dates shall be obtained on shells. Said report shall be provided to the RMA- Planning Department.

8. MM003 - FINAL TECHNICAL REPORT

Responsible Department: RMA-Planning

Condition/Mitigation Monitoring Measure: A Final Technical Report detailing the results of all analyses shall be completed within six months following the completion of fieldwork. This report shall be submitted to the Lead Agency and to the Northwest Information Center, Sonoma State University.

Compliance or Monitoring Action to be Performed: As described in MM003.

9. CC01 INDEMNIFICATION AGREEMENT

Responsible Department: County Counsel

**Condition/Mitigation
Monitoring Measure:**

The property owner agrees as a condition and in consideration of approval of this discretionary development permit that it will, pursuant to agreement and/or statutory provisions as applicable, including but not limited to Government Code Section 66474.9, defend, indemnify and hold harmless the County of Monterey or its agents, officers and employees from any claim, action or proceeding against the County or its agents, officers or employees to attack, set aside, void or annul this approval, which action is brought within the time period provided for under law, including but not limited to, Government Code Section 66499.37, as applicable. The property owner will reimburse the County for any court costs and attorney's fees which the County may be required by a court to pay as a result of such action. The County may, at its sole discretion, participate in the defense of such action; but such participation shall not relieve applicant of his/her/its obligations under this condition. An agreement to this effect shall be recorded upon demand of County Counsel or concurrent with the issuance of building permits, use of property, filing of the final map, recordation of the certificates of compliance whichever occurs first and as applicable. The County shall promptly notify the property owner of any such claim, action or proceeding and the County shall cooperate fully in the defense thereof. If the County fails to promptly notify the property owner of any such claim, action or proceeding or fails to cooperate fully in the defense thereof, the property owner shall not thereafter be responsible to defend, indemnify or hold the County harmless. (County Counsel)

**Compliance or
Monitoring
Action to be Performed:**

Upon demand of County Counsel or concurrent with the issuance of building permits, use of the property, recording of the final/parcel map, or recordation of Certificates of Compliance, whichever occurs first and as applicable, the Owner/Applicant shall submit a signed and notarized Indemnification Agreement to the County Counsel for review and signature by the County.

Proof of recordation of the Indemnification Agreement, as outlined, shall be submitted to the Office of County Counsel.

REVISIONS	BY

