

Attachment A

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DISCUSSION

OVERVIEW

The subject parcel is zoned Low Density Residential with a Design Control overlay in the Coastal Zone (LDR-1-D (CZ) which allows for construction of a test well as a principally permitted use subject to a Coastal Administrative Permit in each case. On May 2, 2002, the Environmental Health Bureau issued a well construction permit for the construction of a test well on the property and the well was drilled shortly thereafter. A code enforcement case (CE020247) was opened for the construction of a test well without the benefit of a Coastal Administrative Permit as required in Monterey County Code. This Combined Development Permit would clear a code enforcement case CE020247 and permit construction of a test well on the property. An additional Coastal Development Permit is required for the well construction because the property is located within 750 feet of a known archaeological resource.

BACKGROUND

In 2002, a well was constructed on the property under a well construction permit but without proper planning approvals. A code enforcement case was opened due to the well construction (CE020247). In response to the code enforcement, the applicant partially destroyed the well by filling it with concrete and the case remained dormant until 2014. In 2014, the Spindrift View Partners, LLC applied for a permit for the destruction of the existing well and construction of a new test well in a different location on the property. At the direction of staff, the applicants submitted the following reports with their application for a permit:

- Archaeological report prepared by Gary S. Breschini, Ph.D., Archaeological Consulting (LIB150293);
- Biological Resource Analysis (LIB150294) prepared 12 August 2014 by Fred Ballerini, Pacific Grove, CA
- Secondary Biological Resource Analysis (LIB150295) prepared 4 May 2015 by Fred Ballerini, Pacific Grove, CA
- Arborist Assessment (LIB150297) prepared 19 May 2015 by Rob Thompson, Monterey, CA

During the course of review, Pamela Silkwood, on behalf of Highlands Covenants Group, submitted a letter to RMA-Planning, dated July 17, 2015, along with an alternative arborist report (LIB150292) prepared 14 July 2015 by Maureen Hamb, Santa Cruz, CA. The letter submitted by Mrs. Silkwood includes, in summary, the following contentions:

- A 1998 [predating the 2002 activity that is the subject of this report] mudslide occurred which emanated from the subject property and was exacerbated by soils left from well drilling activities. Assurances were requested that spoils from the new well would be properly managed to avoid the potential for mudslides and erosion downslope;
- The site was extensively cleared as part of the well drilling activity leading to intrusion of invasive species and impacts to environmentally sensitive habitat (specifically Monterey Cypress habitat) at the site. Within the letter, it was the expressed opinion that impacts of vegetation clearing and tree trimming within environmentally sensitive habitat violated the County Code and the Coastal Act and must be remedied; and
- As proposed, well drilling activities will individually impact cypress trees and by

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extension cypress habitat. It was recommended that the proposed well location be moved to the north of the proposed site near the location where a well already exists.

Staff worked with the applicant to address concerns raised by Highlands Covenants Group (HCG) including providing additional clarity in the plans for disposal of soils from well construction and additional tree protection measures. An updated tree protection report (LIB150296) prepared 11 August 2016 by Rob Thompson, Monterey, CA was submitted providing additional clarity regarding tree protection. With regard to the alleged Cypress habitat, native cypress habitat is found only in portions of the Del Monte Forest and Point Lobos. Cypress trees outside these areas have been introduced by human activity and are therefore not considered to be environmentally sensitive habitat by themselves.

The project was scheduled for a Zoning Administrator hearing August 27, 2015. On August 21, 2015, in advance of the Zoning Administrator hearing, Pamela Silkwood, again on behalf of Highlands Covenants Group submitted a letter alleging the possibility of a “wetland” on the property. The project was continued by the Zoning Administrator to allow time for the applicant and staff to address the wetland allegations.

Following the continuance by the Zoning Administrator, the applicant commissioned Zander Associates to prepare a wetlands assessment (LIB170123). The assessment found vegetative evidence of wetland conditions along the south and eastern boundaries of the site. In compliance with Coastal zone wetland delineation requirements, the area containing the vegetative wetland indicators was mapped. Based on this information, the applicant amended their project to include a permit to re-open the test well previously drilled at the site only (consistent with the request contained in the July 17, 2015 by Pamela Silkwood). The previously drilled well is generally located at the northern end of the property, more than 100 feet from the mapped wetland area. With the change in location of the well, the applicant prepared additional updated technical reports based on the revised project location. Additional technical studies included:

- Tree protection (LIB150296) prepared 11 August 2016 by Rob Thompson, Monterey, CA;
- An updated Biological Resource Analysis (LIB160374) prepared 1 September 2016 by Fred Ballerini, Pacific Grove, CA;
- An updated Tree Protection report (LIB160373) prepared 20 September 2016 by Rob Thompson, Monterey, CA.

On April 13, 2017 the Zoning Administrator adopted a resolution approving the revised project (Resolution No. 17-025) based on the evidence in the record. A timely appeal of the Zoning Administrator’s decision was filed by Pamela Silkwood on behalf of Highlands Covenants Group contending that there was a lack of a fair and impartial hearing, the decision was not supported by the evidence, and the decision was contrary to the law. Attached to the written appeal was an additional report prepared by Jeffery Froke, Ph.D. regarding biological conditions at the site. Since the appeal was submitted, the applicant has submitted additional technical reports including:

- A description of the methodology and criteria used by Zander Associates for the Wetland

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Assessment prepared by Michael Zander dated May 18, 2017; and

- A Biological Resource Analysis letter responding to the appeal contentions prepared by Fred Ballerini dated May 9, 2017.

The project is now before the Board of Supervisors as the appropriate authority designated to consider appeals of the Zoning Administrators decisions in the Coastal zone. The Board of Supervisors hearing is “de novo” or “from the beginning”, so all of the reports and letters referenced herein are attached to the staff report. However, it should be noted that some of the reports predating the wetland analysis and change in the project (pre August 21, 2016) were based on the previous well location and may not be relevant to the current proposal.

APPEAL CONTENTIONS AND RESPONSES

On April 27, 2017, the Clerk of the Board received an appeal of the decision made by the Zoning Administrator (Attachment C). The appeal contained several contentions supporting the claim that there was a lack of a fair and impartial hearing, the decision was not supported by the evidence, and the decision was contrary to the law. Also in support of the appellant’s contentions, a biological review prepared by Jeffery Froke Ph.D. was attached to the written appeal. A summary of the contentions and staff responses to those contentions are described in below. Staff has independently reviewed the information contained in the technical reports submitted by the applicant, together with information submitted by the appellant and determined that no substantive issue remain with respect to the project.

Contention 1: Wetlands – California Coastal Commission definition

The appellant states the “wetland delineation report prepared by Zander and Associates...is incomplete and flawed.”

Staff Response to comment regarding Wetlands

Zander and Associates followed appropriate protocols and requirements including monitoring 14 test points on the property all of which were negative for evidence of surface or near surface waters that would indicate a “wetland.” Despite lack of water in the soil, application of the strict definition of wetland in the Coastal zone resulted in areas where the predominant vegetative cover of the facultative wetland plant, poison hemlock, qualified a portion of the property as wetland. That area was mapped and the test well location was revised to be more than 100 feet from the mapped wetland area. Dr. Froke’s analysis alludes to the possibility of oversights or omissions from the wetland analysis but contains little documentary evidence to this effect. Specifically, poison hemlock, an aggressive colonizer of wet or dry disturbed sites, is listed as an indicator facultative wetland plant; however, presence of poison hemlock alone does not warrant wetland delineation (Ballerini, May 2017; Froke, April 2017).

Wetland indicators are typically developed over long periods of time and remnants of these indicators would be observed, even during drought conditions. While the history of disturbance on the site has obscured the site’s “normal vegetative signature, at least some hardy remnant wetland plants (e.g. willows, rushes, sedges) would be expected to recover or at least present a

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few scattered representatives in the face of surface disturbance.”

Therefore, the evidence supports the conclusion that the project will not impact wetlands.

Contention #2: California State ASBS

Appellant states a concern that the parcel drains into the State Area of Special Biological Significance (ASBS).

Staff Response to comment regarding California State ASBS

Figure 1 (below) shows the location of 161 B Spindrift and that of the Carmel Bay ASBS and Point Lobos ASBS. The culverts do not drain and the parcels do not run off into the Carmel Bay ASBS nor the Point Lobos ASBS from this area of Carmel Highlands.

Contention #3: Septic System in an Area of Inundation Would Result in Waste Discharge to ASBS

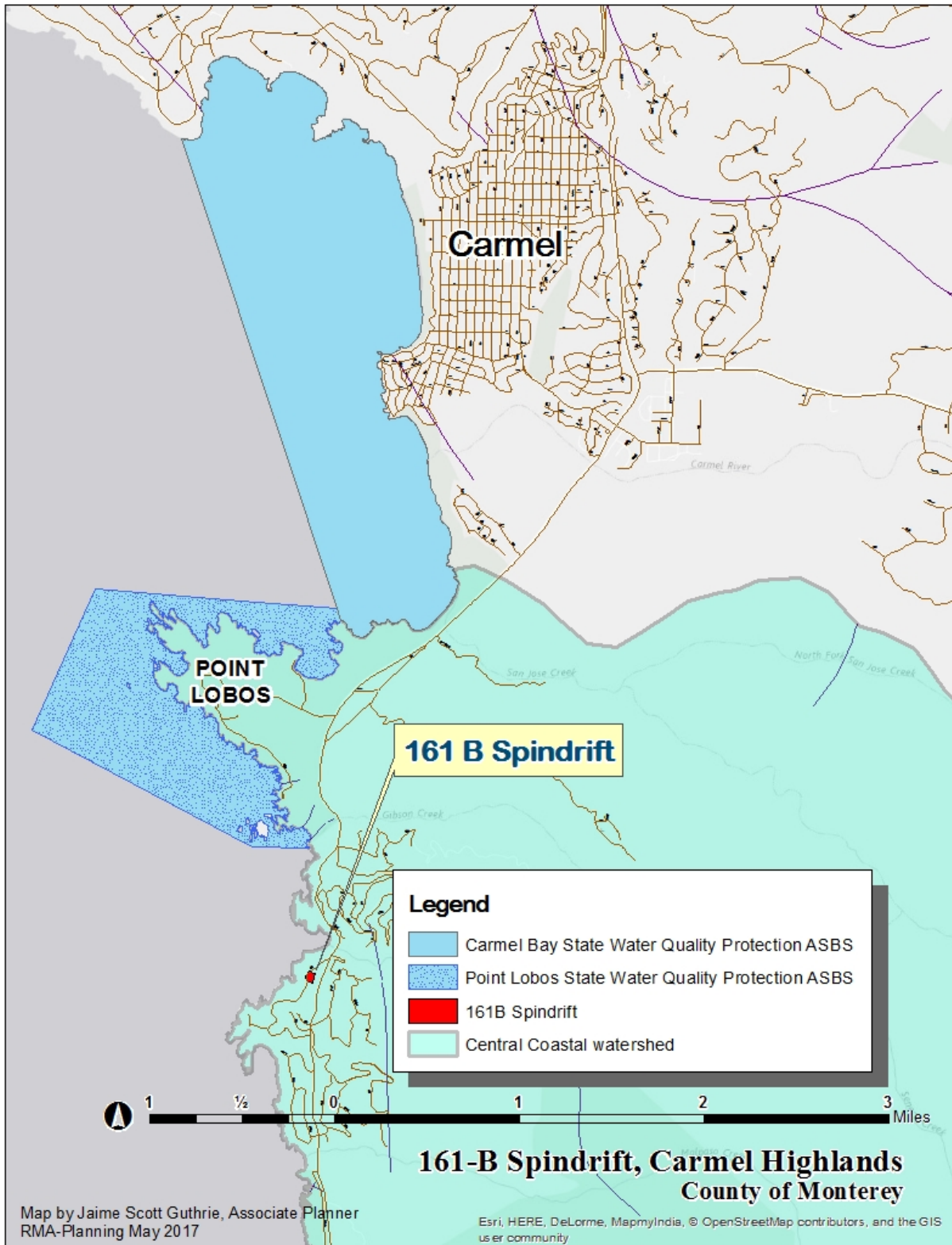
The appellant states concern that illegal discharge of waste to the ASBS would result from the septic system placement as currently shown on the plans.

Response to comment regarding Waste Discharge

The septic system is not a component of this project and its location is strictly conceptual.

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Figure 1. Map of 161 B Spindrift Road and Carmel Bay ASBS Watershed Protection Overlay.



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Contention #4: Setback from Riparian Habitat/Woodland

The appellant states that the northern waterway corridor is a stream and that the vegetative population is riparian woodland.

Staff Response to comment regarding Setback from Riparian Habitat/Woodland

This waterway corridor originates from a Highway 1 drainage culvert east of the parcel and exhibits no evidence that it functions as a perennial stream. There are no native plant constituents to support a Riparian Woodland vegetation classification (Ballerini, May 2017). Nowhere on the site, including in the seasonal drainage course along the northern boundary, were obligate wetland (or even typical riparian) plant species observed (Zander, May 2017).

Especially noteworthy after experiencing a record rainfall year, there is currently no overland flow within the incised northern drainage corridor. This characteristic clearly classifies this particular corridor as intermittent drainage and therefore, not subject to 150-foot buffer setback:

Riparian plant communities shall be protected by establishing setbacks consisting of a 150-foot open space buffer zone on each side of the bank of perennial streams and **50 feet on each side of the bank of intermittent streams**, or the extent of riparian vegetation, whichever is greater (*Carmel Area Land Use Plan* “Riparian Corridors and Other Terrestrial Wildlife Habitats,” Policy 2.3.4.1)

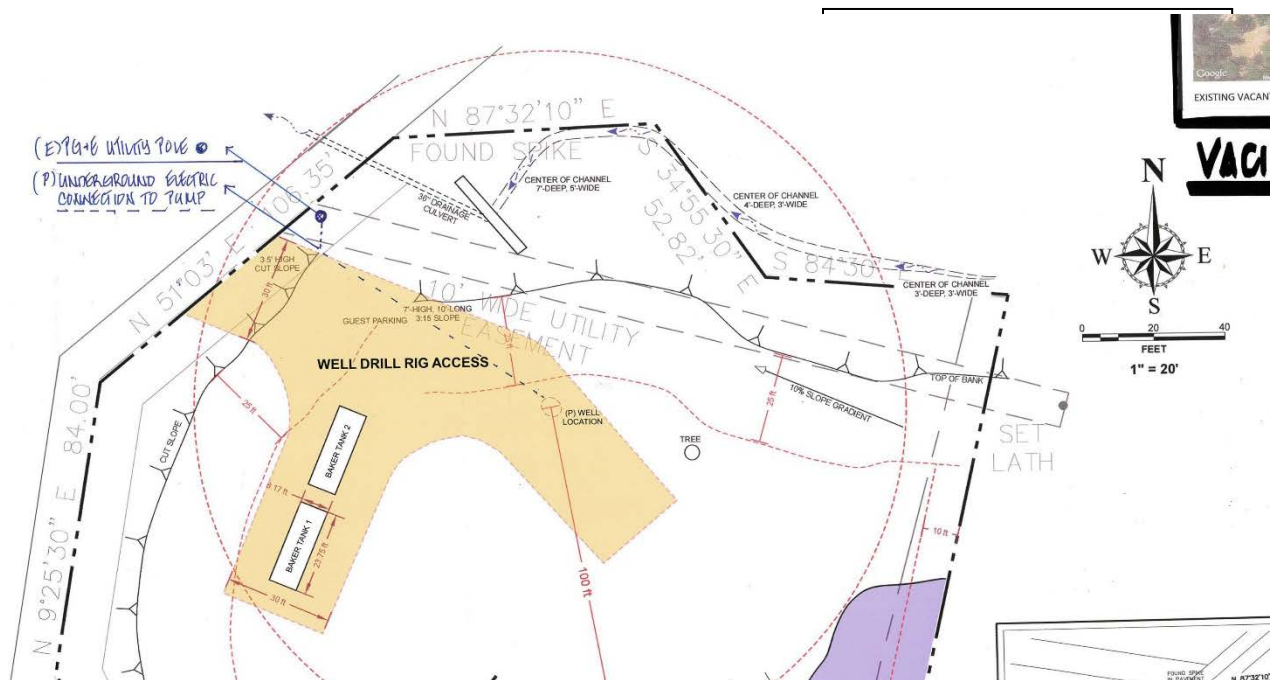


Figure 2. Setback distance from the bank of the observed drainage corridor along the northern edge of the subject property to the proposed well-drilling location is over 60 feet.

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Figure 2 shows setback from the bank of the observed drainage corridor along the northern edge of the subject property is over 60 feet to the proposed well-drilling location. Therefore, the proposed project is consistent with the *Carmel Area Land Use Plan* Policy 2.3.4.1.

Contention #5: Species of Special Concern Identified on the Property

The appellant asserts that Yellow Warblers and Coast Range Newts were identified on the subject property by Dr. Froke and the presence of the species necessitate further biological review. Dr. Froke claims sighting of two breeding pairs of Yellow Warbler (*Setophaga petechia*) on 11 April 2017 at “the central portion of the property, effectively the totality of the wattle” where there “is an occupied nesting habitat.” (Froke, 11 April 2017)

Staff Response to comment regarding Species of Special Concern

The yellow warbler is a broadleaf riparian-obligate species requiring riparian forests dominated by cottonwood and sycamore as well as dense willow thicket and generally major riparian corridors. Nesting occurrences of the Yellow Warbler at the subject parcel is highly unlikely because their nesting habitat does not occur on the property. Observations of this species are likely a result of the species taking a temporary refuge on site during its northern spring migration to another major riparian corridor (Ballerini, 9 May 2017)

The Coast Range Newt (*Taricha torosa*) habitat along the coastal front of the Santa Lucia Range comprises aquatic and adjacent riparian cover provided by intermittent streams. This habitat, reported along the northern boundary of the parcel, will be more than 60 feet from well drilling activities and protected from the construction activities through implementation of the Erosion Control and Grading Restoration Plan (Froke, 11 April 2017; Plan Sheet C1-A, 1 June 2016, rev. 1).

Neither of these species are designated as rare, endangered, or threatened. They are a species of concern meaning they should be monitored to determine if listing is warranted. Despite the status of these species, nesting bird habitat is protected under the Migratory Bird Treaty Act and project Condition #15 requires a pre-construction nesting survey prior to any work that may occur at the site during the nesting season to ensure compliance with this statute.

Based on the evidence in the record, and as conditions, project related activities are not likely to impact special status species.

Contention #6: CEQA Compliance

The appellant asserts there is a reasonable possibility of a significant effect on the environment because of unusual circumstances due to the presence of ESHA and discharge into ASBS. The appellant further asserts that the approval of these permits violates Title 14 of the California Code of Regulations § 15378(a) because the “whole of the action” is residential development of the property.

Staff Response to comment regarding Environmental Review Under CEQA

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The project includes only the construction of a test well with associated temporary access and staging for well construction activities only. Without affirmative results that water is available at the site and without an application for additional development, future activities at the site are speculative at this time. Access and staging will occur in an area of the site that is recognized as “highly disturbed” by both the applicant and appellant’s biologist. The area of disturbance contains only non-native, invasive plant species, and is more than 100 feet from filed identified environmentally sensitive habitat. Construction of a test well on the residentially zoned property will not have the potential to have significant adverse impacts on the environment as proposed and conditioned. While potentially unusual circumstances may exist in the vicinity of the proposed project, there are no special circumstances applicable to this development. As stated above, there is no discharge into California State ASBS, the well is located more than 100 feet from coastal wetlands, the project will not impact riparian habitat (weather present or not), and there will be no impact to special status species.

CONCLUSION

While much information is considered in evaluation of this project, the fact remains that the project includes only temporary access and staging of equipment within a highly-disturbed area and re-drilling a well that was previously drilled at the site without permits. It is staff’s opinion that, based on the evidence in the record, the project is appropriately designed to avoid impacts to coastal or environmental resources in compliance with policies and regulations contained in the Carmel Area Land Use Plan and Coastal Implementation Plans. Issues and concerns raised by the appellant have been substantially addressed. For these reasons, staff recommends that the appeal of the Zoning Administrator’s approval be denied, the project be found categorically exempt from CEQA, and the project be approved as proposed with the recommended conditions of approval.