

Exhibit B

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EXHIBIT B

PROJECT DISCUSSION

As stated in the cover staff report, several factors have been analyzed and are presented for consideration by the Planning Commission. In terms of regulation hierarchy, in this particular case, policy objectives of the Carmel Area Land Use Plan (CAR LUP) should be considered, followed by implementation of those policies, including zoning regulations. The Collins' project includes an atypical situation, where there appears to be evidence, that when interpreted, could support or dispute the proposed development.

In an attempt to lessen the complexity of the project's circumstances, staff has divided this exhibit into a 4-part discussion in order allow the Planning Commission to weigh the facts relative to support or denial of rezoning the subject property as well as consider potential impacts resulting from the zone change. Below is a summary of the 4 parts of the discussion:

- **PART 1 – BACKGROUND INFORMATION:**
 - Background information discussing history of the subject property, the Behavioral Science Institute (BSI) property and its designation as a special treatment area, and previous BSI property developments. This information is presented first to understand how the property was meant to be treated as part of an overall special treatment area.
- **PART 2 – ESTABLISHMENT OF RESIDENTIAL DEVELOPMENT:**
 - Discussion of anticipated physical changes on the site resulting from establishment of a residential use.
- **PART 3 – PROJECT ISSUES:**
 - Project issues that were identified through project review and staff's approach to resolving those issues.
- **PART 4 – CEQA:**
 - Discussion of the outcome of the project's environmental review.

PART 1 – BACKGROUND INFORMATION

Historical Account of Subject Property

The subject property originated as part of a larger property found on Map 3 of Carmel Highlands, recorded on May 2, 1925. Subsequently, and in accordance with the Subdivision Map Act, the current configuration of the property was memorialized in the 1964 Assessor's Parcel Book. After which, the following occurred:

- 1966 – Monterey County adopts the Monterey Peninsula Area Plan and the property is zoned Agriculture/Residential, Mobile Home Exclusion, 20-acre minimum building site or "K-V-B-5 20-acre min."
- February 24, 1967 – The Monterey County Foundation, property owner, grants to the County, a Conservation and Scenic Easement Deed over the entire property.

- February 28, 1977 – The Monterey County Foundation grants the property to the Behavioral Science Institute Foundation.
- April 14, 1983 – Monterey County adopts the Carmel Area Land Use Plan and the property is rezoned to Resource Conservation, Coastal Zone or “RC(CZ).”
- August 16, 1989 – The Behavioral Science Institute Foundation grants the property to Walter Warren and Loretta Warren.
- December 21, 1990 – Walter Warren and Loretta Warren files a Notice of Termination of Conservation and Scenic Easement Deed.
- October 16, 1991 – Highland Partners, by KRWG, Inc. files a Quitclaim Deed to clear the property’s title, canceling the covenants, conditions, restrictions, and reservations contained in the Mount Devon Road Maintenance Agreement and Declaration.
- November 23, 1996 – Walter Warren and Loretta Warren grants the property to Jack Kakis and Mira Eva Kakis.
- February 8, 1994 – Jack Kakis and Mira Eva Kakis grants the property to James G. Collins and Sook Collins.
- January 28, 1998 – Monterey County Planning Commission approves a Coastal Development Permit (PLN970487) to replace a 50,000 gallon water tank and install a 100amp electrical meter for California American Water.
- July 7, 1998 – Building permit (BP980368M) issued to replace 50,000 gallon water tank and install a 100amp electrical meter for California American Water. The permit was finalized February 8, 2005.
- December 2003 – California Coastal Commission distributes draft findings of the Monterey County LCP Periodic Review. Map LU-12.6 shows the Collins property as a remaining developable parcel with (1) maximum allowable unit.
- August 18, 2014 – Robert Carver, on behalf of Gary Collins, files an application for the proposed project.

BSI – Special Treatment

The purpose of identifying a special treatment area is to facilitate a comprehensive planned approach for development, allowing a mix of permitted uses while addressing unique natural and scenic resources or significant recreational/visitor-serving opportunities. When the CAR LUP was adopted, policies specifying provisions for development within the BSI property were included and a visual representation of its boundaries were delineated in Figure 2 – Special Treatment Areas of the plan.

The subject property encompasses the southernmost portion of BSI. Although an overall management plan was never prepared for BSI, findings of approval for adoption of the CAR LUP (see **Exhibit I**) demonstrated that the property was allocated 25 residential units for development, resulting net density of 1 unit per acre. This calculation was based on BSI comprising of 6 parcels totaling 140-acres, 113-acres of which were zoned RC and does not allow for residential development.

While one could infer that residential development of BSI was meant to be clustered based on the finding above, specific language of Policy 4.4.3E.6 of the CAR LUP below is ambiguous, leaving room for interpretation.

“The BSI property may be developed for residential use. A maximum of 25 units may be approved; all units shall be sited outside of the view from Highway 1. These units may be used in conjunction with the institutional use. The upper steeper portion shall remain in open space.”



Figure 1. BSI Boundary and Project Site

The three main qualifying statements of the policy are that development: 1) shall be within the unit cap, 2) outside of view from Highway 1, and 3) not located within the upper steeper portion of the BSI property. While the first two qualifiers are clear, there is no definition or identified elevation above sea level of what was meant by “upper steeper portion.” Therefore, staff’s analysis relied on the overall topography of the BSI property and the elevation of existing BSI development to determine what should be the appropriate elevation of “upper steeper.”

As illustrated in Figure 1 (prior page), the BSI property contains two peaks of mountainous terrain to the north and south and flatlands to the west. The highest elevation of the northern peak is approximately 860-feet above sea level and the elevation of the southern peak is approximately 850-feet above sea level, while the lowest elevation of BSI is just under 200-feet above sea level. As discussed below, existing development at the highest elevation is approximately 845-feet above sea level (Assessor’s Parcel Number 241-011-009-000).

Development of BSI Properties

Currently there are 12 lots that make up the BSI property, 8 of which are developed with a total of 9 residential units. The table below identifies each developed lot listed by parcel number and owner name and includes the approximate elevation of developed area measured in feet above sea level (FASL), current zoning, and a brief description.

APN/Owner	Elevation	Zoning	Description of Development
241-011-002-000 Janet Bush	540-FASL	LDR/1-D(CZ)	1,993 sq ft SFD & 289 sq ft garage built in 1959. No original permit on file.
241-011-009-000* Donald Fricke	845-FASL	RC/D-SpTr(CZ), LDR/1-D(CZ), WSC/80-D(CZ)	3,648 sq ft SFD & 869 sq ft garage, grading of 1,229 yds ³ cut & 150 yds ³ fill, Variance to reduce front yard setback, tree removal, ESHA.
241-021-012-000 Donald Yan	425-FASL	RC/D-SpTr(CZ), LDR/1-D(CZ)	4,232 sq ft SFD & 576 sq ft attached garage, grading, removal of 18 trees, and development on 30% slopes. Subsequent permit for storage building included grading and removal of 5 trees.
241-021-016-000* Ronald Garren	450-FASL	RC/D-SpTr(CZ), LDR/1-D(CZ), LDR/3.5-D-SpTr(CZ)	4,645 sq ft SFD with 862 sq ft garage. Subsequent permits for the removal of 8 dead/hazardous Monterey pines. ESHA
241-021-017-000* KDR Construction	380-FASL	LDR/3.5-D-SpTr(CZ)	4,180 sq ft SFD, 755 sq ft deck, & 648 sq ft detached garage; 1,504 sq ft SFD, 306 sq ft deck, & 576 sq ft detached garage; removal of 10 trees. Subsequent permits for the removal of 9 trees and SFD addition.
241-021-018-000 Paul Goldman	430-FASL	LDR/1-D(CZ)	912 sq ft SFD & 384 sq ft attached garage built in 1960. No original permit on file. Subsequent permit for 720 sq ft detached garage.
241-081-002-000	320-FASL	LDR/1-D(CZ)	3,700 sq ft SFD. No original permit on file.

Paul Hariri Trust			
241-081-003-000 Alan Silvestri	260-FASL	LDR/1-D- SpTr(CZ)	4,681 sq ft SFD & 579 sq ft garage built in 1921. No original permit on file. Subsequent permits for construction of swimming pool, tennis courts, grading, and tree removal.

Other development activities that occurred on the BSI property include adjustments to parcels. In 1992, a Lot Line Adjustment between three parcels was approved (File No. LL92015 Gushman). Also in 1992, the 27.08-acre parcel resulting from the Lot Line Adjustment was rezoned from RC/SpTr(CZ) & LDR/1/SpTr(CZ) to RC/SpTr(CZ) & LDR/3.5/SpTr(CZ), increasing the LDR acreage by 1.1-acres (File No. PC92243Garren). Then in 1994, an application was submitted to subdivide that same 27.08-acre parcel into one 16.4-acre parcel and one 10.6-acre parcel.

PART 2 – ESTABLISHMENT OF RESIDENTIAL DEVELOPMENT

The subject property is a 30-acre parcel located on a western-facing slope. Existing development on the site consists of over 700-linear feet of the Mount Devon Road right of way and a 100,000 gallon Cal Am municipal water storage tank, meter, and maintenance access. Vegetation within the proposed development area is comprised of Central Maritime Chaparral and Monterey Pine Forest. The building area, as shown on **Figure 2**, slopes up from Mount Devon Road with an average slope of approximately 34%. The steepest portion located close to the road.

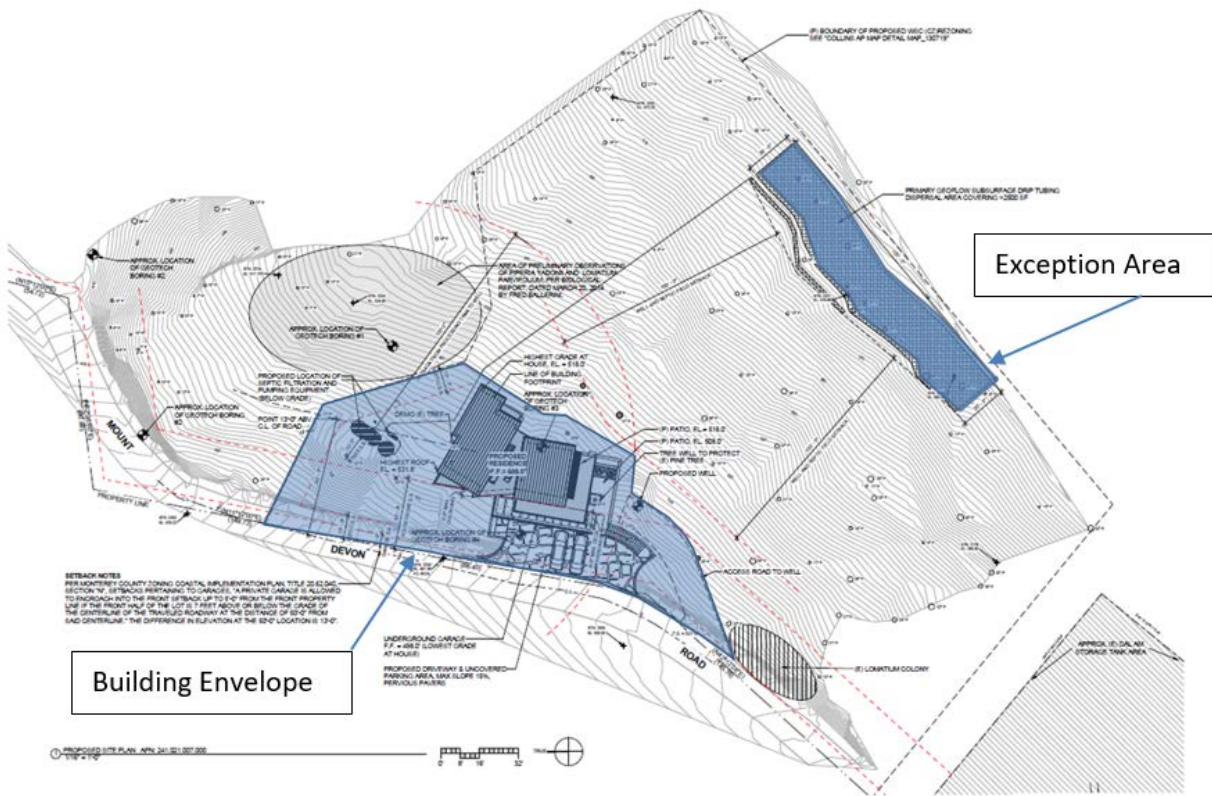


Figure 2. Illustration of Building Envelope and Exception Area

As discussed later, areas outside of the building envelope will be required to be placed within an easement, prohibiting development. However, an exception has been made to allow for future maintenance of the leachfield area.

Proposed Development

Construction of the 2,397 square foot single family dwelling, 409 square foot garage, and 143 square foot mechanical room will require approval of a Coastal Administrative Permit and Design Approval, Coastal Administrative Permit to establish a domestic well; Coastal Development Permit to allow the removal of 2 Monterey pine trees, and a Coastal Development Permit to allow development on slopes in excess of 30%.

In order to reduce the footprint of the structure, the applicant proposes to grade into the hillside east of Mount Devon Road to construct a 3-story structure with the garage and mechanical room almost completely below existing grades, the first floor partially below grade, and the second floor entirely above so that the only portion visible when looking downhill is the top level (see **Figure 3** below).

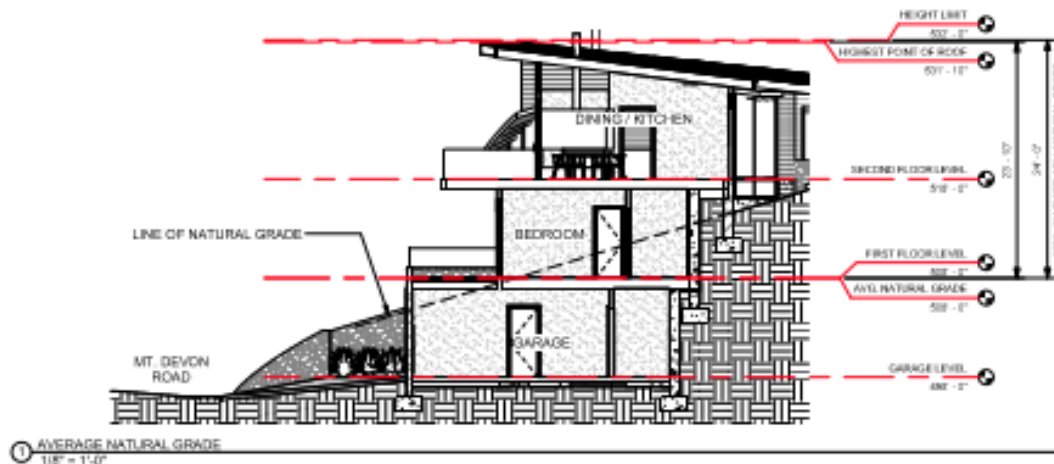


Figure 3. Section View of Proposed Structure.

Grading will consist of 943 cubic yards of cut and 79 cubic yards of fill, requiring 864 cubic yards of dirt to be hauled off-site. Domestic water will be provided by the proposed well to the south of the dwelling. Installation of the well will require grading of an access road and the use of heavy equipment. The project has been conditioned (Condition No. 25, Mitigation Measure No. 2) to ensure impacts resulting from well drilling activities are reduced to less than significant (see CEQA discussion below). Wastewater will be served by an onsite septic facility consisting of an underground septic filtration tank and pumping equipment north of the dwelling and a 2,500 square foot geoflow subsurface dispersal area. Due to the vegetation and topography of the dispersal area, tubing will either be installed by hand trenching or using a specialized tubing injector tool, resulting in minimal amount of disturbance.

A 14-inch Monterey pine tree is located adjacent to the northern portion of the structure. Excavation and construction activities would impact structural roots of this tree; therefore, the applicant proposes its removal. A second 18-inch Monterey pine tree is located in the proposed

patio area, south of the structure. The applicant proposed to retain this tree by constructing a tree well around it. Grading and construction would have to potential damage this tree and reduce its life expectancy. Considering these impacts, staff has analyzed the project to include its removal. Consistent with Part 4 of the Coastal Implementation Plan (CIP), a standard condition of approval (Condition No. 10) has been incorporated requiring the owner/applicant to replace these trees on a 1 to 1 ratio.

The proposed location of the residence has been reviewed for compliance with the site development standards of the WSC zoning district. The project meets all setbacks, height limitation, and maximum lot coverage requirements. In order to reduce the amount of required grading and development on slopes in excess of 30%, the applicant has located the structure 20-feet from the edge of the Mount Devon road right-of-way. Section 20.62.040.N – Height and Setback Exceptions, of the Monterey County Zoning Ordinance (Title 20) states that if in cases where the elevation of the front half of the lot, at a point 50-feet from the centerline of the traveled roadway, is 7-feet above or below the grade of said centerline, a parking space, private garage or carport, attached or detached, may encroach into the front yard setback requirement up to 5 feet from the front line of the lot. The project meets this exception and is therefore consistent.

Section 20.44.020.C.2 of Title 20 states that regulations contained within the Design Control (“D”) district apply to all areas within the Carmel Area Land Use Plan. Therefore, design review of the proposed location, size, configuration, materials, and colors of structure is required to assure protection of the public viewshed, neighborhood character, and to assure the visual integrity of certain developments without imposing undue restrictions on the property. The architectural design of the proposed residence is a contemporary take on the Prairie style of architecture, utilizing horizontal lines and sharp angles as the most prominent feature. To add interest, the atrium includes a curved roof with exposed rafters. Materials include a stone veneer retaining wall, exterior horizontal wood siding, large-paned wood clad glass windows and doors, glass handrails at patios, and a metal standing seam roof with skylights. Proposed colors consist of warm shades of browns and grays (see **Figure 4**).

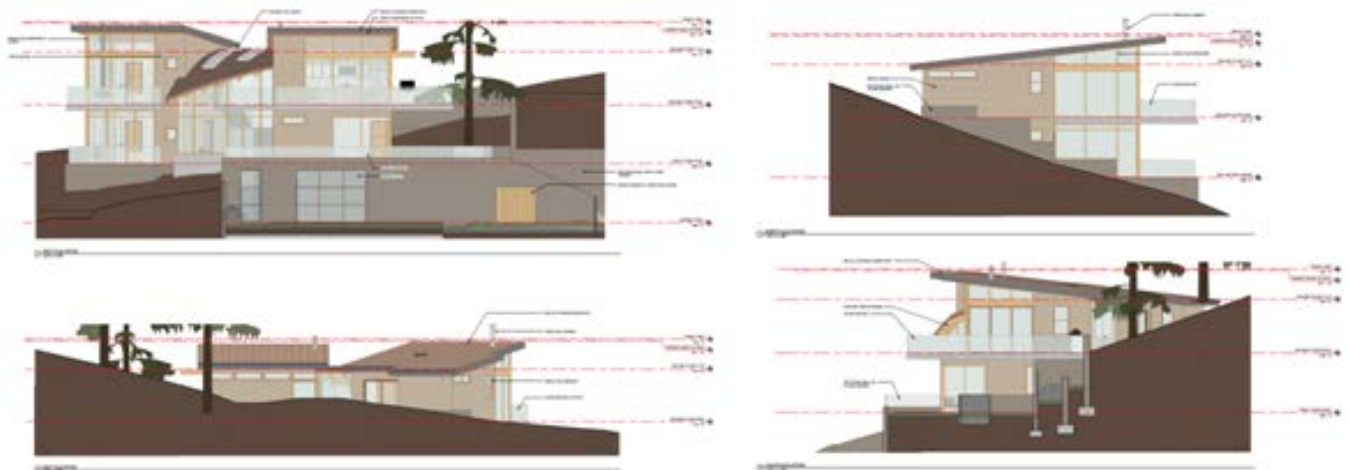


Figure 4. Exterior Elevations.

The overall appearance of the neighborhood is eclectic. Residential developments range in size (18 properties were queried resulting in an average of 2,500 square feet) as well architectural style (e.g. single-storied rustic cabins, multiple-storied A-frames, and single-storied and multiple-storied ranch style dwellings). Therefore, the proposed mass and style of the dwelling would not be out of character for the area. View of the structure would have the greatest impact from Mount Devon Road, however; this would not create an impact to the critical viewshed and is consistent with policies for the protection of scenic resources.

PART 3 – PROJECT ISSUES

Potential issues were identified by staff as well as members of the public. The big picture issue is determining development potential on the site using mainly a qualitative analysis as the BSI development policy is not entirely clear and an overall management plan for BSI does not exist. Next to consider would be site development related issues relative to construction related activities. In addition, the applicant has cited the United States Constitution and identified a potential for the taking of the applicant's right to reasonably use their property if the application is denied (**Exhibit H**).

LCP Amendment – Rezone from RC to WSC

Issue with the proposed rezone goes hand in hand with determining if the residential development is consistent with CAR LUP Policy 4.4.3.E.6 – development of BSI lands. There have been 4 approved developments on BSI since adoption of the CAR LUP that range in elevation from 380-feet to 845-feet. Do these previous developments serve as empirical evidence of what was meant by “upper steeper slopes?” The proposed project is within the unit cap, is not visible from Highway 1, and the elevation of the development area is in the mid-range of the overall BSI property. Therefore, it could be determined to be considered consistent with the BSI development policy. Furthermore, despite the current RC zoning which prohibits residential development, the California Coastal Commission identified the subject property as a “Remaining Developable Parcel” with one allowable unit (**Exhibit J**).

On the other hand, there is the question of the previous conservation and scenic easement and the current RC zoning on the property. Staff could not find documentation of a nexus based on policy (i.e. required as a Condition of Approval) for why the easement was conveyed. There was, however, an origin statement of the conservation easement supplied by a member of the public. This raises the question about the prohibition of development being linked to the BSI development policy?

Evidence supporting the rezone is based on the plain language of Policy 4.4.3.E.6. As described above, there are 9 residential units on BSI property and establishment of the proposed unit would result in a total of 10, which is below the maximum allowance of 25. Map A – General Viewshed, of the CAR LUP indicates that the subject property is outside of the General Viewshed and as demonstrated in the discussion on potential viewshed below, the project staking was not visible from Highway 1, Highway 1 turnouts, or the Pt. Lobos State Reserve. The project has been conditioned to ensure establishment of the structure would not create an impact on the night sky. Therefore, the development would be outside of view from Highway 1 and would not result in an impact to the public viewshed. Data contained within the project plans and obtained

from Google Earth indicates that the proposed development will occur at approximately 520-feet above sea level. When compared to the overall elevation of the BSI property, this falls just above the mid-range level. The subject property is comprised of 30-acres and the proposed location is near the lowest elevation found on the site. Considering other developments on BSI, the proposed location is consistent within their allowed elevation range. In summary, this evidence supports the conclusion that the proposed project is consistent with the CAR LUP policy for BSI development; which begs the next question: “Is project consistency adequate reason to support the rezone?”

Another key piece of evidence relative to the rezone is the previous conservation deed. The subject property was zoned Agriculture/Residential at time of conveyance, which would have allowed establishment of two residential units. Background information on the easement, obtained by submittal of public comment, revealed that the conveyance was pursued as a way to conserve the property received by the Monterey County Foundation as a gift from the D'Ambrogio family in memory of Major Charles (A.K.A Frank) Francis De Amaral, Jr., after he lost his life in battle during the Vietnam War. Correspondence from the family of Major Amaral stated that he grew up in the area and rode his horse on the property as a child; therefore, the purpose of the easement was to “preserve the natural scenic beauty and existing openness.” Staff was not able to find documentation corroborating the family’s claims, but also has no reason to find their statements inaccurate.

Ten years to the day after establishing the easement, Monterey County Foundation granted the subject property to BSI. Approximately 6-years later, the property was rezoned from Agricultural/Residential to Resource Conservation. Similar to the establishment of the conservation easement, staff found no documentation showing that the rezone was a result from implementation of a required condition of approval or mitigation measure for a previous development of the larger BSI property for the protection of sensitive areas (e.g. steep slopes, critical viewshed, and/or environmentally sensitive habitats). Based on available documentation, the logical conclusion would be that the Resource Conservation zoning designation was due to the conservation easement placed on the property at the time; and although the subject property is part of BSI, the zoning, or easement, was not part of the overall management plan.

If the designation of the conservation easement and RC zoning were in accordance with meeting policy objectives the CAR LUP, then the proposed rezone could not be supported. However, if the conservation easement was a result from the conscious act of private citizens to use their private property as they see fit, then there would be no policy basis¹ to deny the rezone. In conclusion, it is staff’s determination that there is sufficient evidence, in this case, to support approval of the proposed rezone.

Potential Impacts Resulting from Construction Activities

During analysis and environmental review of the proposed project, several potential impacts were identified, including: development on slopes in excess of 30%, grading and drainage, impacts on the surrounding area during construction, viewshed, and biological resources. These impacts have been considered, and where appropriate, conditions have been applied in

¹ This would be similar to situations where the County lacks jurisdictional power to enforce CCR’s or to protect views from private properties outside of the public viewshed and/or a common public viewing area.

accordance with requires set forth in policy guidance. Relative to environmental impacts, mitigations have been identified to reduce those impacts to a less than significant level.

Development on Slopes in Excess of 30%

The 2-acre area proposed for rezoning contains an average slope of 45%, the location of the proposed dwelling and driveway contains an average slope of 36% (with the steepest area located closest to the road), and the location of the proposed wastewater dispersal area contains an average slope of 47%. Comments received relative of this development identify concerns with the prohibition of this development and approval of such would set a precedent for additional slope development to occur. Pursuant to Section 20.64.230.E.1 of the Monterey County Coastal Implementation Plan, Part 1 (Title 20 Zoning Ordinance), the Planning Commission must find that: 1) *there is no feasible alternative which would allow development to occur on slopes of less than 30%*; or 2) *that the proposed development better achieves the goals, policies and objectives of the Monterey County Local Coastal Program than other development alternatives*. Therefore, there is no outright policy prohibiting such development and approval would not set a precedent as any project on slopes in excess of 30% would require a case by case analysis for meeting the required finding.

In regard to the Collins project, the applicant has selected the proposed development location as it is close to the existing roadway, thus requiring less grading and less disruption of slopes and environmentally sensitive habitats. For example, there is an area northeast of the proposed location that is large enough to support the dwelling that contains an average slope of 22%. However, this area is setback approximately 80-feet from the roadway and access to this location would require development on slopes in excess of 30%. This area is also in proximity to the edge of a ravine and is the only location where Yadon's rein orchid (*Piperia yadonii*), a Federally Listed Endangered plant, is found onsite.

During staff's conversation with a member of the public, the potential for an alternative location was suggested. This location would be further along Mount Devon Road and is at an elevation around 750-above sea level. Based on the development policy for BSI, this area would be considered as the upper steeper area where residential development is prohibited.

The proposed project is consistent with CAR LUP Policy 2.7.4.11 and CIP Section 21.146.080.D.1.k. The soil type found in the subject property is "sheridan coarse sandy loam," and pursuant to the above, developments located on this soil type are restricted to only the building site area and road, and vegetation cover shall be maintained. Based on the evidence above, as well as the discussion below, the proposed development better meets the goals, policies, and objectives for the CAR LUP as it minimizes overall site disturbance, compared to alternative locations.

Grading and Drainage

Grading to allow construction of the driveway and dwelling will primarily be for excavation as the proposed improvements are designed to be partially constructed within the hillside. Staff identified potential impacts caused by soil erosion caused by grading activities and drainage resulting in new impervious surfaces. A neighboring property owner expressed concerns with the potential for landslides due to the disruption of drainage patterns, stating that previous landslide

activity involving a property approximately 1,000-feet west of the project site severely affected his property (see Comment No. 3 found in **Exhibit G**).

The following discussion summarizes the review of the application materials for conformance with application regulations and demonstrates how staff, based on review of the project and applied conditions, finds that potential impacts relative to grading and drainage have been resolved and no issues remain.

A Geotechnical Report was prepared for the proposed project and was submitted as part of the application. The report identified that the site's potential for liquefaction² is low and the potential for landslides is minimal. In addition, the Geotechnical Engineer found no evidence of previous landslides on the site. The report concluded that the site was suitable for the proposed development, provided recommendations for general grading; specific site development, grading pads, and foundation excavations; slope construction; utility trenches; and structural design for foundations and retaining walls were adhered to. Findings of the report were based on the assumption that the Geotechnical Engineer would review building and grading plans and be onsite to observe and test during site preparation, grading, placing of engineered fill, and construction of the foundation. Condition No. 14 has been incorporated requiring the applicant to provide certification by a licensed practitioner that the development occurred in accordance with the Geotechnical Report.

Monterey County RMA-Environmental Services and the Water Resources Agency reviewed the preliminary project application for compliance with regulations for erosion control, grading, and drainage. Both departments found no issues and recommended approval of the project upon the condition that an erosion control plan (Condition No. 13), grading plan (Condition No. 15), and drainage plan (Condition No. 22) are submitted for review and approval prior to the issuance of construction permits.

Pursuant to County requirements contained in Monterey County Code (MCC) Chapter 16.08, the grading plan shall include detailed technical information demonstrating that the nature and extent of grading is in conformance with County requirements. In addition, MCC 16.08.060 states that a grading permit shall not be issued if the Building Official determines that the proposed grading will be hazardous (by reason of flood, geological hazard, seismic hazard or unstable soils); liable to endanger any other property; result in the disposition of debris on public way, property, or drainage course; or otherwise create a nuisance.

Compliance with MCC Chapter 16.12, requires the erosion control plan to delineate the proposed methods that will be utilized to control runoff, erosion, and sediment movement during site disturbance (Condition No. 13). This Chapter also requires County inspections prior to land disturbance (Condition No. 16) to determine potential erosion, during active construction (Condition No. 17) to determine ongoing compliance, and following active construction (Condition No. 18) to ensure compliance with the approved plans and specifications.

² Liquefaction can occur when loose soil is saturated and substantially loses strength and stiffness due to earthquake induced vibrations, causing the soil to behave like a liquid, putting structures in danger of settling or sinking.

As specified in Condition No. 22, the drainage plan shall be prepared by a licensed architect and demonstrate how dispersal of stormwater runoff from impervious surfaces will not be conveyed to one concentrated location and impact slopes.

Temporary Impacts During Construction

As previously stated, the majority of grading would be for excavation. Due to the topography and vegetation on the site, it would not be feasible to balance the cut and fill on-site. Therefore, approximately 864 cubic yards of dirt will be required to be hauled off-site. In addition, site improvements will require construction personnel to travel to and from the site, park along Mount Devon Road, and add construction related traffic. Given the site's location and condition of access roadways, staff identified temporary impacts during construction. Neighboring property owners also expressed concerns with potential impacts to the local roadways resulting from grading and construction activities. There are 4 residential properties that require access past the project site.

Mount Devon Road ranges in width between 12 to 16-feet along the development location and off street parking is not readily available as there is a significant slope found on both sides. As demonstrated in **Figures 5 and 6** below, parking in the area is constricted.

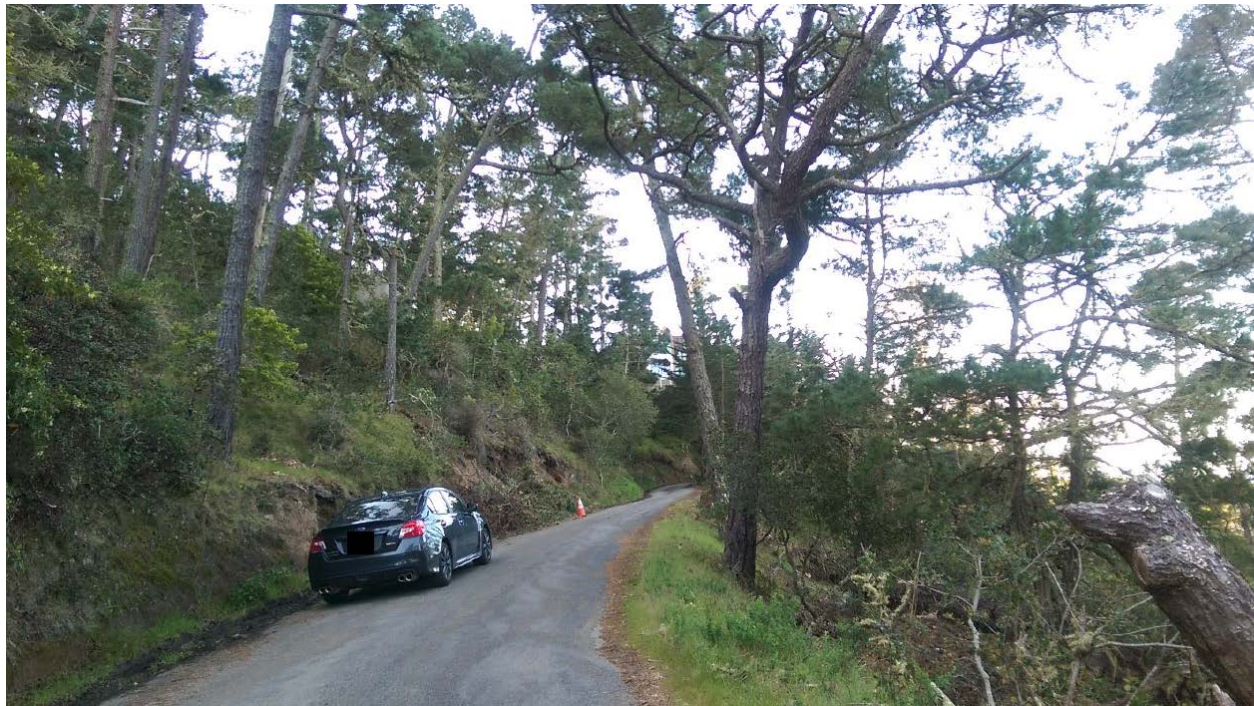


Figure 5. Parking Demonstration

In order to prevent blocking of the roadway for residents of the area, members of the public, and emergency services, a conscious and continuous effort to manage both traffic and parking will be necessary. Monterey County RMA-Public Works has reviewed the project and applied Condition No. 21, requiring submittal of a construction management plan (CMP) for review and approval prior to issuance of construction permits. The CMP shall include information indicating duration of construction, hours of operation, number of estimated truck trips, number of construction

workers, and delineation of parking and truck staging areas. This information will ensure that measures developed to minimize traffic impacts during construction are part of the CMP and will be successful.

In addition to grading and construction for the proposed dwelling, the project also includes drilling of a domestic well. This will also require truck trips, excavation, and production of soil debris. However, an access “road” approximately 70-feet in length and 12-feet in length will be created specifically for the creation and maintenance of the domestic well. While this area appears to have sufficient room for well construction activities, implementation of Mitigation Measure No. 2 (Condition No. 25) will ensure that well drilling will not significantly impact the roadway.



Figure 6. Construction Parking Observed Along Mount Devon Road (Not of the Subject Property).

Ensuring compliance with the above mentioned conditions will ensure the temporary impacts resulting construction activities are kept to a minimum. Therefore, staff finds that there are no remaining issues.

Viewshed

During staff’s site visit, staking and flagging was observed to determine if the project could be seen from Highway 1, turnouts along Highway 1, or Pt. Lobos State Reserve; thus, creating an impact to the protected viewshed by grading and removal of vegetation, creation of the driveway, placement of the structure, and disruption caused by night lighting. The project staking could not be seen from Highway 1, with and without unaided vision.



Figure 7. View of Staking from Road



Figure 8. View from Behind Staking

When viewed from the Mount Devon Road (**Figure 7**), behind the proposed structure is a substantial amount of vegetation and the property rises in elevation by approximately 300-feet. When viewed from behind and slightly above the project staking (**Figure 8**), Highway 1 cannot be seen. In addition, when viewed from the opposite side of Mount Devon Road, views of Highway 1 are also obscured. The project has been conditioned (Condition No. 9) requiring the applicant to submit and exterior lighting plan to ensure exterior lights are downlit and the transmittance of interior light illuminating through the structures' glass windows are reduced. Placement of the proposed structure is located within 20-feet from the road right of way to reduce the amount of grading and development in slopes necessary and installation of the geoflow tubing for wastewater dispersal will not result in a visible change in the proposed area. Therefore, the project as proposed and conditioned, includes siting and design that would not result in a viewshed impact.

In order to anticipate deviation of the proposed project in the future resulting from change of ownership and/or project modification, a mitigation measure (Condition No. 27, Mitigation Measure No. 4) has been incorporated requiring dedication of a conservation scenic easement for all areas outside of the development footprint (see **Figure 2** above). This would restrict development to only the area that has clearly been established to have no impact on the viewshed.

Biology

Information contained in the Monterey County Geographic Information System (GIS) and Map B, Environmentally Sensitive Habitats – Known Locations, of the Carmel Area Land Use Plan (CAR LUP), indicates a potential for environmentally sensitive habitat areas (ESHA) to be onsite. Based on this data and pursuant to Section 20.146.040.A of the Monterey County Coastal Implementation Plan, Part 4 (CIP), a biological survey (*A Biological Assessment of Gary Collins Property*, dated July 15, 2016, prepared by Fred Ballerini Horticultural Services) was submitted with the project application. This assessment evaluated and documented biological resources present on the subject property, as well as identified potential impacts and mitigation measures to reduce those impacts to a less than significant level.

The 30-acre property is almost exclusively native habitat with non-native species present on less than 1% of the area proposed for development. Two distinct overlapping co-dominant vegetation types were found on the subject property: Central Maritime Chaparral and endemic Monterey Pine Forest. Four special status species or habitat were identified on the subject property:

Monterey Pine Forest, Monterey pine (*pinus radiate*), Yadon's rein orchid (*Piperia yadonii*), and Central Maritime Chaparral. In addition, small-leaved lomatium (*Lomatium parvifolium*) was found on the subject property. Although this plant is not considered a special status species (California Rare Plant Rank of 4.2, plants of limited distribution), the biologist felt it necessary to identify potential impacts to this plant as well as include protection measures. No special status animal species or wildlife habitat was observed on the property.

Key Policy 2.3.2 of the CAR LUP states that ESHA of the Carmel Coastal Segment are unique, limited, and fragile resources of statewide significance and shall be protected, maintained, and where possible, enhanced and restored. CAR LUP and CIP EHSA Policies and regulations require total avoidance of ESHA for new subdivisions, even on parcels totally within sensitive habitat areas. However, it was anticipated that there would be potential for existing lots to fully contain ESHA and complete avoidance would not be feasible in order to allow reasonable development. Therefore, project within these areas would be considered compatible with the long term maintenance of the resource if: site improvements and vegetation removal were restricted to only the amount needed for reasonable development, thereby reducing ESHA impacts to the greatest extent feasible and the proposal incorporates necessary site planning and design features which protect the habitat and do not set a precedent for continued land development with the potential to degrade the resource. A public comment identified project consistency with Section 20.146.140(C)(1)(d) [sic 20.146.40(C)(1)(d)] of the CIP, stating that construction on slopes exceeding 30% within "chaparral habitat" is prohibited. However, subsection C.1 (and reference Policy 2.3.4) relates to specific development standards for "Terrestrial Plant Habitats." Map B – Environmentally Sensitive Habitats – Known Locations of the CAR LUP does not list Central Maritime Chaparral within this category. It does, however, list Dwarf Coastal Chaparral, or Chamise-Monterey Manzanita Dwarf Coastal Prairie, as a terrestrial plant habitat. Therefore, this regulation is not considered applicable.

The proposed site improvements will require both development in (Monterey Pine Forest and Central Maritime Chaparral) and near (Yadon's rein orchid) ESHA and the domestic well will occur adjacent to small-leaved lomatium, a plant species recommended for monitoring by the California Native Plant Society. In addition, the project includes the removal of a 14-inch Monterey pine and staff identified the potential need to remove an 18- inch Monterey pine, both of which are protected trees under the CAR LUP.

The proposed location of the development is sited closest to the existing roadway, reducing the amount of driveway, grading, and vegetation removal needed. In addition, the tiered approach in the structure's design reduces the amount of structural coverage to 1,624 square feet, the minimum amount necessary in this case. During staff's analysis of the Coastal Commission's LCP Periodic Review (**Exhibit J**), it was noted that the Commission found the permit process to be less successful in fully achieving LCP policy objectives. This was attributed by approving large "trophy homes" with an average of over 5,000 square feet that required newly graded access roads or driveways, land clearing, and impacts to ESHA and the public viewshed. The proposed development is consolidated and requires the minimum amount of ESHA disturbance; especially when compared to the larger developments identified above.

Mitigation measures have been incorporated to ensure impacts caused by land disturbance are reduced to a less than significant level. Compliance with these mitigations require the applicant to develop, in consultation with a qualified biologist, a Biological Resources Protection Plan (Condition No. 24, Mitigation Measure No. 1), Well Drilling Plan (Condition No. 25, Mitigation Measure No. 2), and Restoration Plan (Condition No. 26, Mitigation Measure No. 3); which will be submitted to RMA-Planning for review and approval. The Biological Resources Protection Plan shall specify logistics relative to flagging of sensitive plant species location and identification for the protection of ESHA during grading and construction of the driveway, structures, and domestic well access road as well as the installation of the geoflow subsurface drip tubing for wastewater treatment. Specifics of the plan shall call out installation of temporary protection fencing, delineate the length of time protection measures will remain in place and when no longer necessary, how removal will occur, and include a biological resources training program component for construction personnel. The Well Drilling Plan is intended to reduce impacts to sensitive plants species during the well drilling process are minimized. The protection measures include retention of well discharge tailings and preventing water from migrating off-site. The Restoration Plan requires replanting and 5-year monitoring of small-leaved lomatium if impacts occur. Implementation and monitoring of this mitigation will ensure the applicant contracts with a project biologist to ensure their involvement prior to land disturbance and during grading and construction, as verification of success of the protection of ESHA.

Since the remaining vegetation on the 30-acre site consists of Central Maritime Chaparral habitat and Monterey Pine Forest, replacement is not a viable option to ensure long-term protection of the site's ESHA. However, in accordance with CAR LUP Policy 2.3.3.6 and Section 20.146.040.B.7 of the CIP, Condition No. 27, Mitigation Measure No. 4, has been incorporated requiring the area outside of the building envelope to be placed within a Conservation and Scenic Easement Deed and that no development, with the exception of required maintenance of the geoflow tubing, shall occur. This deed shall specifically note that the purpose of the easement is for the long-term preservation of the ESHA and Viewshed in accordance with CAR LUP protection policies and as a direct result of approval of the proposed project.

Removal of the 2 protected Monterey pine trees requires the Planning Commission find that: 1) tree removal would not result in exposure of structures within the critical viewshed; 2) removal is limited to that which is necessary for the proposed development; and 3) native trees to be removed, 12-inches or greater, shall be replaced on the parcel. As previously discussed, the proposed development will not create an impact to the viewshed and designed and located to require the minimum amount of disturbance, including tree removal. In addition, Condition No. 10 has been incorporated requiring the applicant to plant 2 replacement Monterey pine trees.

For discretionary projects involving tree removal, it is Monterey County's regulatory standard to incorporate a condition of approval in accordance with the Migratory Bird Treaty Act. Condition No. 12 requires the applicant to retain a County qualified biologist to perform a nest survey within the project site or within 300-feet of proposed tree removal if the activity occurs during the typical bird nesting season. If nesting birds are found on the project site, an appropriate buffer plan shall be established by the project biologist.

In conclusion, staff finds that all identified impacts to biology would be reduced to a less than significant impact with mitigation and conditions incorporated. These actions will ensure immediate impacts caused by construction are reduced as well as the long-term maintenance of ESHA is carried out.

PART 4 – CEQA

During the course of staff's review, potential impacts to aesthetics, biology, and land use/planning caused by the rezone to allow establishment of a residential use and site disturbance resulting from project implementation was identified. Therefore, an Initial Study/Mitigated Negative Declaration (IS/MND) was prepared pursuant to CEQA and circulated for public review from March 29, 2017 to April 28, 2017 (**Exhibit F**).

Staff received several comments (**Exhibit G**) before the public review period ended. The comments received included concerns relative to: impacts caused by previous development in the area, allowing development on a property that was previously encumbered by a conservation and scenic easement deed, setting a precedent by approval of a rezone and development on slopes in excess of 30%, miscalculation of grading quantities, impacts to Mount Devon Road during construction, prohibition of development within Central Maritime Chaparral habitat, and that the CAR LUP development policy for BSI does not provide an exception to allow the rezone, development on slopes in excess of 30%, and/or a Variance to the front setback.

As previously discussed, the project meets the height and setback exception and a Variance to the front setback is not required. In addition, this will not require the structure to be located further into the hillside, causing additional vegetation removal and a substantially larger amount of the grading. There is no prohibition on development within Central Maritime Chaparral and the code section quoted by the commenter is specific to a terrestrial plant habitat, the Dwarf Coastal Chaparral. Comments relative to these issues have been resolved.

The project has been conditioned requiring review, approval, monitoring, and verification of plans and construction, for grading and foundation design, by a Geotechnical Engineer. This will ensure the project meets the California Building Code and, to the furthest extent as possible, prevent slope failure to occur as a result from project implementation.

Also discussed earlier, approval of the project would not set a precedent for similar development. Findings to support approval are based the specific facts of this case, the project location, and background information. Approval does not mean that any project, either located in BSI or not, containing ESHA, slopes in excess of 30%, and/or tree removal can and will be supported in the future.

In conclusion, staff finds that all potential impacts to aesthetics, biology, and land use/planning have clearly been identified and that the implementation of the listed mitigation measures will effectively reduce those impacts to a less than significant level.

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