

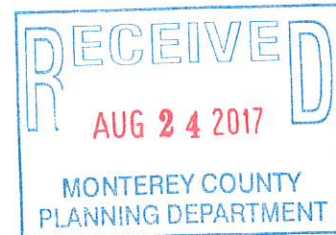
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Via Email and U.S. Mail

August 7, 2017

County of Monterey  
Resource Management Agency – Planning  
Attn: Anna V. Quegna, Associate Planner  
168 West Alisal, 2<sup>nd</sup> Floor  
Salinas, CA 93901



Re: PLN130339 (Collins) – Legal Issues Created by the 1967  
Conservation Easement and the De Amaral Preserve

Ms. Quenga:

It has taken me longer to collect the historic documents and other information that I needed for this letter than I anticipated when I spoke with you several weeks ago. In any event, the purpose of this letter is to make you and the Office of the County Counsel aware of various legal issues that will arise if the Planning Commission or the Board of Supervisors were to authorize the proposed development at 83 Mt. Devon Road in Carmel without addressing the current legal status of the Conservation and Scenic Easement that governs the use of this property.

While it is not mentioned anywhere in the proposed Mitigated Negative Declaration prepared by your office, a Conservation easement was established on this property by the Monterey County Foundation for Conservation on February 23, 1967. The easement - which prohibits any of the development proposed in the current application - was accepted by the Monterey County Board of Supervisors and recorded on March 3, 1967.

Comments submitted by other citizen groups demonstrate the unprecedented nature of the pending application - which requires both a change in zoning and variances from slope and setback requirements established by the Carmel Area Land Use Plan. In addition, however, the land on which the proposed construction would take place is within the De Amaral Preserve, a 30-acre parcel of open-space land that was created by the 1967 easement as a permanent memorial to Major Frank De Amaral, who was a U.S. Army pilot who died in combat in Viet Nam in 1965.<sup>1</sup>

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<sup>1</sup> The De Amaral Preserve open space is explicitly recognized as a scenic easement and open space in the Carmel Area Land Use Plan ("CALUP"). It has been part of the CALUP since its

As described in greater detail below, I believe that the easement remains in full force and effect. If that is correct, it would be a violation of the California Open-Space Easement Act of 1974 and Government Code section 51086 if Monterey County were to issue a building permit for any of the structures proposed in the current application.

A. The 1967 Conservation and Scenic Easement and  
Establishment of the De Amaral Preserve

The current application proposes to construct a residence on extremely steep slopes located in a 30-acre parcel (APN 241-021-007) that the applicant acquired in 1994. In December 1966, those 30 acres of land were donated to the Monterey County Foundation for Conservation by Mr. N.J. D'Ambrogio, a local landowner, in memory of Major De Amaral. The event was commemorated in a photograph and story (below) that appeared in the Monterey County Herald on February 6, 1967.



adoption in 1983. Specific references to the DeAmaral Preserve appear in the CALUP on pages 71 (fn.) and 93. The family name is inconsistently spelled in the CALUP as "DeAmaral" and "deAmaral." The preferred spelling is "De Amaral."

Shortly after the luncheon described in the photograph, on February 24, 1967, the Foundation for Conservation formalized the dedication to Major De Amaral by executing a Conservation and Scenic Easement Deed on the property and conveying the easement to Monterey County. The Board of Supervisors accepted the easement on February 24<sup>th</sup> and caused both the Deed and the Resolution of Acceptance to be recorded.<sup>2</sup>

At the time the easement was created, the property was completely undeveloped. It is clear from the terms of the deed that the parties intended that the land would remain that way and would become permanent open space. The easement deed makes specific reference to the "natural beauty and existing openness" of the property and states that *both* the Foundation and the County of Monterey "desire to preserve and conserve for the public benefit the natural condition [of the property] and *present state of use*." Exhibit 1, pg. 1 (emphasis added).

The language of the deed also makes it clear that the intent of the parties in creating a conservation and scenic easement and conveying it to the County was to *protect* the land as open space and prohibit all development not specifically authorized by the terms of the easement. Thus, the easement deed recites:

Grantor is willing to grant to the County of Monterey the scenic use as hereinafter expressed of the said land, and thereby protect, maintain, and enhance the present scenic beauty and existing openness by the restricted use and enjoyment of said property by the Grantor because of the imposition of the conditions hereinafter expressed. Exhibit 1, pg. 1.

In addition to general language barring any future use of the property that would "materially alter the landscape," the easement deed contains at least two specific prohibitions that preclude the development proposed by the applicant in PLN 130339. *First*, is a prohibition against the erection of buildings or structures of any kind on the land not directly related to utility purposes or the enhancement of the land as "an undeveloped scenic area."

[N]o structures of any kind will be placed or erected upon said described premises, except structures, lines and other facilities necessary to maintain a water, drainage or sewer system, utilities consisting of telephone, power, and cable television lines, utility roads necessary to serve same, under, on or over

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<sup>2</sup> A copy of the Conservation and Scenic Easement Deed is attached as Exhibit 1 to this letter. The easement was recorded on March 3, 1967. Monterey County Recorder's Office document G38428 (Reel 495, page 586). The Resolution authorizing acceptance of the easement stated that "this Deed is accepted with the understanding that the area described therein will not be used for credit as open space for an adjoining development." Monterey County Board of Supervisors Resolution No. 67-73, February 28, 1967. A copy of the resolution was recorded along with the Deed. A copy of the Resolution appears at Reel 495, page 594.

said land, bridges, fences, and other structures reasonably necessary and incidental to the construction, maintenance, and operation of an undeveloped scenic area, including but not limited to roads, riding and hiking trails, fireplaces and picnic areas. Exhibit 1, pg. 2, ¶1.

Plainly, the house and garage proposed in PLN 130339 are structures which are prohibited by the terms of the easement.

*Second*, the proposed development also violates the prohibition against excavation and topographical changes to the land. Thus, the easement deed provides,

[E]xcept for the construction, alteration, relocation and maintenance of roads and riding and hiking trails, the general topography of the landscape shall be maintained in its present condition and no excavation or topographic changes shall be made, except to prevent erosion or damage to the land. Exhibit 1, pg.3, ¶3.

Once again, there can be no question that the extensive excavation proposed in PLN 130339 violates the terms of the 1967 easement.

The 30 acres which comprise the De Amaral Preserve has remained as undeveloped, open-space for more than 50 years. In view of this history, it is difficult to comprehend why the County of Monterey which has protected the De Amaral Preserve as open space throughout that period would even consider, much less approve, an application that directly violates the terms of the easement and is fundamentally inconsistent with the zoning, slope and set back provisions of the Carmel Area Land Use Plan.

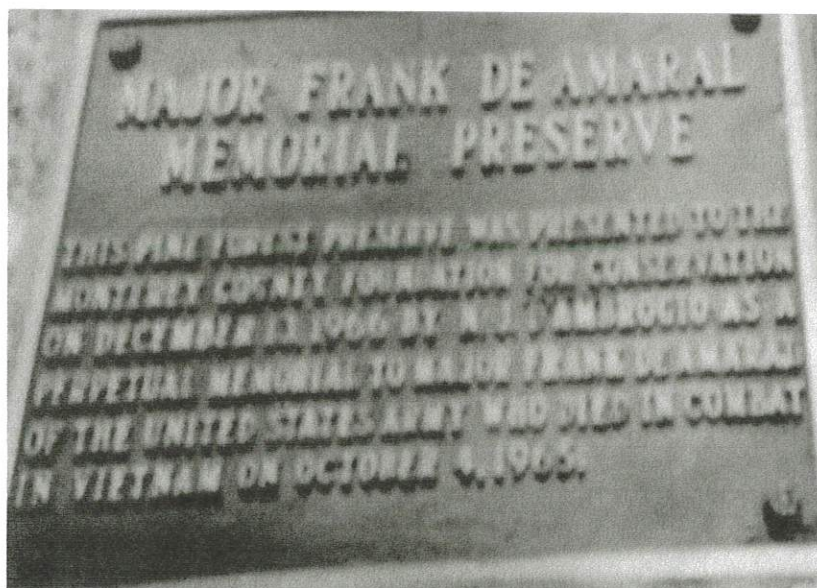
#### B. Subsequent Changes in the Ownership of the De Amaral Preserve

The Monterey County Foundation for Conservation held title to the land which makes up the De Amaral Preserve for ten years. During that period, Major De Amaral's family constructed a large stone bench on the property adjacent to Mt. Devon road and installed a bronze plaque identifying the land as the "Major Frank De Amaral Memorial Preserve." A recent photograph of the stone bench and a photograph of the bronze plaque that was taken in the 1970's appear on the following page.



De Amaral Preserve Bench – August 2017

While the bronze plaque was later stolen, the following is a copy of a photograph of the plaque taken in the 1970's:



The inscription on the plaque described the preserve and its purpose as follows:

This pine forest preserve was presented to the Monterey County Foundation for Conservation on December 13, 1966 by N.J. D'Ambrogio as a perpetual memorial to Major Frank De Amaral of the United States Army who died in combat in Vietnam on October 4, 1965.

Mr. D'Ambrogio died in 1972.<sup>3</sup> According to records obtained from the California Secretary of State's Office, the Foundation for Conservation was dissolved in 1984. In March 1977, the Foundation for Conservation transferred title to the De Amaral Preserve to the BSI Foundation, a non-profit corporation that was associated with the Behavioral Sciences Institute.<sup>4</sup> The BSI Foundation owned the Preserve property until 1989. The Behavioral Sciences Institute, itself, never owned any of the land in the De Amaral Preserve. Neither the Institute, nor the BSI Foundation, ever proposed to develop the property in the De Amaral Preserve in any way.<sup>5</sup>

In August 1989, the BSI Foundation sold the land underlying the De Amaral Preserve to Walter and Loretta Warren.<sup>6</sup> The circumstances (including the amount paid for the property) surrounding the transfer from the BSI Foundation to the Warrens are unclear. However, it seems that the Behavioral Sciences Institute was insolvent at the time and had been for several years. The Warrens held the property for a little more than four years. They sold the Preserve property to an entity called the Kakis Family

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<sup>3</sup> Stanford News, *Endowed Professorships Announced*, July 21, 2004, at <http://news.stanford.edu/news/2004/july21/med-professorships-721.html> .

<sup>4</sup> The deed transferring title to the land to the BSI Foundation is dated February 28, 1977. It was recorded on March 23, 1977. Monterey County Recorder's Office document G12597 (Reel 1129, page 471).

<sup>5</sup> In August 1977, the Behavioral Sciences Institute purchased approximately 110 acres in the Carmel Highlands from Stanford University. The Institute sought to develop a portion of the 110 acres as an "international educational conference center." See Santa Cruz Sentinel, *Ronald Zeller Named Director of Foundation*, November 24, 1975, page 4, available at <https://www.newspapers.com/newspage/62485286/> . In 1986, the Institute defaulted on a deed of trust that secured loans the Institute had used to finance the purchase of the 110 acres and the land was acquired by the lender in a foreclosure sale. See Trustee's Deed executed December 3, 1987, recorded on January 22, 1988. Monterey County Recorder's Office document 03729 (Reel 2190, page 1141).

<sup>6</sup> The deed transferring title to the Warrens was signed on August 16, 1989. It was recorded on August 18, 1989. Monterey County Recorder's Office document 45369 (Reel 2399, page 1205).

Revocable Trust in November 1993 for \$108,000.<sup>7</sup> Three months later, in February 1994, the Kakis Family Revocable Trust sold the property to the current owners, James G. and Sook Collins for \$129,000.<sup>8</sup>

C. Purported Termination of the Conservation and Scenic Easement in 1990

During the 48 years between the creation of the De Amaral Preserve in 1966 and August 2014, when the current application was initially filed, no one had ever proposed to develop this property or otherwise violate any of the provisions of the Conservation and Scenic Easement. However, in December 1990, a year and a half after they acquired the property from the BSI Foundation, Walter and Loretta Warren executed an instrument purporting to “terminate” the Conservation and Scenic Easement that the Foundation for Conservation had given to Monterey County in 1967. A copy of the Notice of Termination is attached as Exhibit 2.<sup>9</sup>

Whatever their motivation, the Warrens never sought an administrative or judicial determination that the alleged termination was valid or effective. They never sought (and certainly never obtained) consent from Monterey County to termination of the easement. They did not file any legal opinion as part of the Notice of Termination, and they never sought judicial confirmation of the termination via a suit to *quiet title* on the land. Instead, the Warrens sold the property and left it to subsequent owners to find out whether the Notice of Termination had any legal effect.

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<sup>7</sup> The Warren to Kakis deed is dated November 23, 1993. It was recorded on December 2, 1993. Monterey County Recorder’s Office document 85648 (Reel 3032, page 897).

<sup>8</sup> The Kakis to Collins deed is dated February 8, 1994. It was recorded on February 22, 1994. Monterey County Recorder’s Office document 13941 (Reel 3069, page 778).

<sup>9</sup> The Notice of Termination is dated December 21, 1990. It was recorded on December 24, 1990. Monterey County Recorder’s Office document 74179 (Reel 2590, page 780). As recorded, the Notice of Termination included the easement, itself, but did not include the notarization, the property description or the Board of Supervisors Resolution accepting the easement that was recorded in 1967.

D. Requirements for Termination Established in  
Paragraph 7 of the Easement Deed

In the Notice of Termination that they recorded in December 1990, the Warrens cited "Article 7" of the Conservation and Scenic Easement Deed and the passage of the California Coastal Act of 1976<sup>10</sup> as support for their action. Paragraph 7 of the 1967 Deed of Easement (Exhibit 1) establishes two preconditions for termination of the easement:

- a. That the Legislature pass a statute pursuant to Article XXVIII of the state Constitution or a statute similar to the Land Conservation Act of 1965; *and*
- b. In order to qualify, the statute passed by the legislature must restrict the property to "scenic and recreational uses" or the production of food, fiber or natural resources.

As the text of the Deed of Easement made clear in 1967, both the Grantor (the Foundation for Conservation) and the Grantee (Monterey County) intended that the land in the De Amaral Preserve would remain as open-space ("preserve and conserve for the public benefit the natural condition and present state of use") in perpetuity. See discussion at page 3, *supra*.

The easement wasn't drafted to allow the Grantor to walk away from the restrictive provisions any time he, or his successors, felt like doing so.<sup>11</sup> Instead, Paragraph 7 was drafted merely to allow the Grantor to take advantage of subsequent legislation that could provide the same degree of protection for the land, but might offer property tax advantages or other benefits that were not available in 1967 for non-agricultural land such as the De Amaral Preserve.

The text of the relevant portion of paragraph 7 is as follows:

In the event that the State of California, or any political subdivision thereof, should pass legislation pursuant to Article XXVIII of the Constitution of the State of California, or should pass legislation such as the California Land Conservation Act of 1965, or other legislation for the purpose of restricting

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<sup>10</sup> Public Resources Code §§30000-30900.

<sup>11</sup> Had that been the Grantor's intent, Paragraph 7 would have been shorter and much more specific.

the use of real property to conserve and maintain natural scenic beauty, open space lands, natural resources and agricultural land for plan and animal production, which legislation shall restrict, or would by agreement of Grantor, or its successors in interest restrict, the use of said property for scenic or and recreational uses or for the use of natural resources or for the production of food and fiber, the Grantor, or its successors in interest, shall have the option to have the property described in Exhibit A, or a portion thereof, subjected to the restrictions created by such legislation, free from the restrictions imposed by this conveyance. Should Grantor, or its successors in interest, desire to exercise the option to restrict the use of a portion of or all of said real property pursuant to such legislation, Grantor, or its successors in interest, shall give notice to the Grantee of the exercise of said option. Upon the giving of such notice, this conveyance, as to the portion of the property subjected to such legislation or which will be subject to such legislation by the agreement of the Grantor, or its successors in interest, shall immediately cease and determine and revert to and vest in the Grantor, or its successors in interest, upon becoming subject to such legislation; the intent of this clause being that in the event that the subject property, or a portion thereof, shall become restricted pursuant to such legislation, that the restrictions placed upon Grantor, or its successors in title, on said real property shall become null and void and of no further force and effect.

Conservation and Scenic Easement (Exhibit 1, ¶7) (emphasis added).

The language of Paragraph 7 requires both subsequent legislation similar to the Williamson Act and statutory provisions in that legislation (or which could be drafted in response to the legislation) that would significantly restrict the use of the land. There is nothing in the language to suggest that it was intended to allow a subsequent landowner to eviscerate the terms of the easement and develop the land in a manner fundamentally at odds with the original intent.

E. The Notice of Termination is Invalid Because It Is  
Contrary to the Requirements of Paragraph 7

The Notice of Termination claims, without any analysis, that (a) the California Coastal Act<sup>12</sup> (“Coastal Act”) constitutes “the qualifying legislation” which authorizes termination of the easement. The Notice does not explain how the Coastal Act “restricts the use of the property for scenic and recreational uses.” Nor does the Notice identify the goals of the Grantor when it created the easement, much less how the Coastal Act “fully

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<sup>12</sup> PUB. RES. CODE §§30000 *et seq.*

meets all of the goals and objectives of the Grantor.” Notice of Termination (Exhibit 4, ¶2). In truth, the Notice of Termination was nothing but a transparent ploy to remove deed restrictions that impaired the resale value of the Warren’s land.

Because the Easement Deed was recorded, along with the County’s resolution of acceptance, the Warrens were in no position to claim that they were ignorant of the restrictions when they acquired the property. Nor is there any evidence what they paid for the property, if anything, when they acquired it from the BSI Foundation.<sup>13</sup>

1. The California Coastal Act Does Not Meet the Requirements  
for Qualifying Legislation Established in Paragraph 7

The first sentence of paragraph 7 identifies two, closely-related examples of legislation that could provide the basis for terminating the Conservation and Scenic Easement. Both deal with property tax relief. The first reference is to the passage “of legislation pursuant to Article XXVIII of the Constitution of the State of California.” The second reference is to “legislation such as the California Land Conservation Act of 1965” – a statute known today, more commonly, as the “Williamson Act.”

Article XXVIII of the California Constitution was proposed by the Legislature and approved by the electorate as Proposition 3 in 1966.<sup>14</sup> It was added to the state Constitution to resolve doubts about the constitutionality of the Williamson Act (which had been enacted in 1965) and to free that statute and other open space legislation from the mandatory, market value assessment provisions of the California Constitution. *See Sierra Club v. City of Hayward* (1981) 28 Cal.3d 840, 851 (171 Cal. Rptr. 619); *Dorcich v. Johnson* (1980) 110 Cal. App.3d 487, 493 (167 Cal. Rptr. 897); *see also* THOMAS BARRETT, *THE CONSERVATION EASEMENT IN CALIFORNIA* 36 (Island Press 1983).

As enacted, Article XXVIII provided,

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<sup>13</sup> According to records obtained from the California Attorney General’s Office the land was transferred about the time the BSI Foundation dissolved. The land could have been transferred in satisfaction of an antecedent debt to the Warrens. Otherwise, the land should have been transferred to another charitable or non-profit foundation as required by the BSI Foundation Articles of Incorporation and California law.

<sup>14</sup> In 1974, the substance of Article XXVIII was moved to Article XIII, Section 8 of the Constitution.

Notwithstanding any other provision of this constitution, the Legislature may by law define open space lands and provide that when such lands are subject to enforceable restriction, as specified by the Legislature, to the use thereof solely for recreation, for the enjoyment of scenic beauty, for the use of natural resources, or for production of food or fiber, such lands shall be valued for assessment purposes on such basis as the Legislature shall determine to be consistent with such restriction and use.

Whatever else might be said about the Coastal Act, it was not “passed pursuant to Article XXVIII of the Constitution of the State of California,” nor did the constitutionality of the Coastal Act depend on Article XXVIII. The Coastal Act does not mandate that property be maintained as “open space.” Nor does the Coastal Act specify how “such lands shall be valued for assessment purposes.” Plainly, the California Coastal Act is not the kind of legislation the Foundation for Conservation had in mind in the first example cited in Paragraph 7.

That is equally true of the second statutory example cited in Paragraph 7. The Coastal Act bears no resemblance to the California Land Conservation Act of 1965 (the “Williamson Act”). The Williamson Act was enacted to deter the rapid and irreversible loss of agricultural land by preserving agricultural land throughout California in exchange for reduced property taxes for the owners of that land. *Sierra Club v. City of Hayward* (1981) 28 Cal.3d 840,850 [171 Cal. Rptr. 619]; *De Vita v County of Napa* (1995) 9 Cal.4<sup>th</sup> 763, 791 [38 Cal. Rptr.2d 699].

The Coastal Act is a procedural statute designed to create a “comprehensive scheme to govern land use planning for the entire coastal zone of California.” *Yost v. Thomas* (1984) 36 Cal.3d 561, 565 [205 Cal. Rptr. 801]. The Coastal Act establishes “minimum standards and policies for localities to follow in developing land use plans” but gives “wide discretion to local government to determine the contents of such plans.” *Id.* 36 Cal.3d at 572-573; *McAllister v County of Monterey* (2007) 147 Cal. App.4<sup>th</sup> 253, \_\_\_ [54 Cal. Rptr.3d 116, 127].

The structure of the Coastal Act isn’t based on the Williamson Act and it does not “restrict . . . the use of said property [i.e., the De Amaral Preserve] for scenic and recreational uses” as required by Paragraph 7 required if the statute was to be the legislative predicate for termination of the 1967 easement.

2. Examples of Subsequent Legislation that Could Have  
Been Used If the Warrens Wanted to Protect the Land

If the land in the De Amaral Preserve had been “devoted to agricultural use” in 1966 or land located in an area that Monterey County had designated as an “agricultural preserve,” the California Land Conservation Act of 1965 would have been a vehicle that the Foundation for Conservation could have used to protect the status of the 30 acres that were set aside as the De Amaral Preserve.<sup>15,16</sup> However, in 1967 it was certainly possible that the California legislature would enact legislation to protect and preserve open space land based on the Williamson Act and extend property tax relief to open space and other types of conservation lands. In fact, during the next few years, that is exactly what occurred.<sup>17</sup>

In 1969 the Legislature enacted the Open-Space Easement Act of 1969.<sup>18</sup> This statute extended the use of contract mechanism contained in the Williamson Act to include lands devoted to recreational use and open space. The Open-Space Easement Act authorized local governments to accept and enforce open-space easements on private land

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<sup>15</sup> The Williamson Act (Government Code section 51242) specifies that “[n]o city or county may contract with respect to any land pursuant to this chapter unless the land: (a) is devoted to agricultural; [or] (b) is located with an area designated by a city or county as an agricultural preserve.”

<sup>16</sup> If the land had otherwise qualified, the Williamson Act would have required the Foundation for Conservation to enter into an annually renewable contract with Monterey County that would have prevented any development on the land for a period of at least 10 years and would have imposed substantial penalties and a 10-year notice period to cancel or terminate the contract. *See, e.g., County of Humboldt v. McKee* (2008) 165 Cal. App.4<sup>th</sup> 1476, 1487-1489 [82 Cal. Rptr.3d 38]. A useful short summary of how the Williamson Act works appears in Michael Patrick Durkee, David H Blackwell and Thomas P Tunny, *A Modern Perspective on the Williamson Act*, CALIFORNIA REAL PROPERTY JOURNAL, Vol. 22 pages 5-7, available at <http://www.allenmatkins.com/~media/E3848D439DA54E15BB5E7ABD91726B96.pdf>.

<sup>17</sup> One of California’s early efforts to provide legislative protection for open-space land was the Scenic Deed Easement Act which was enacted in 1959. *See* Gov’t Code §§6950-6954. In fact, that statute was a response to requests by landowners in Monterey County to protect their coastline from impending development. *See* THOMAS BARRETT, *THE CONSERVATION EASEMENT IN CALIFORNIA*, *supra*, at 11.

<sup>18</sup> Stat. (1969) Ch.762, §1.

and withhold building permits for construction of any improvements not authorized by the terms of the easement. *See* THOMAS BARRETT, *THE CONSERVATION EASEMENT IN CALIFORNIA*, *supra*, 16. In return for relinquishing such rights landowners would be eligible for the same use-related, assessment valuation provided for in the Williamson Act and authorized by Article XXVIII of the state Constitution. *Id.* at 16-17.<sup>19</sup>

The Open-Space Easement Act of 1969 is a perfect example of the type of legislation contemplated in Paragraph 7. Four years later, the legislature passed a similar statute that also would have qualified as a basis for invoking the termination provision in Paragraph 7.

The Open-Space Easement Act of 1969 specified that qualifying open-space easements had to extend for a period of at least 20 years in comparison to the 10-year, annually renewable contracts specified in the Williamson Act.<sup>20</sup> Nonetheless, the two statutes were clearly built on the same model for a similar purpose – i.e., encouraging land preservation through long-term contracts and property tax relief. In 1974, the Legislature enacted the Open-Space Easement Act of 1974<sup>21</sup> to bring the statute even more in line with the provisions of the Williamson Act. The 1974 Act reduced the minimum duration for qualifying easements to 10 years<sup>22</sup> and added a mechanism by which landowners could petition for early termination of an open-space easement.<sup>23</sup>

Both Open-Space Easement statutes (1969 and 1974) are examples of legislation that meets the requirements established in Paragraph 7 of the 1967 Conservation and Scenic Easement. In addition, both statutes were very similar in purpose, structure and effect to the Williamson Act. Both would have meet the requirement that “the legislation shall restrict, or would by agreement of Grantor, or its successors in interest restrict the use of said property for scenic and recreational uses . . .” See Exhibit 1, ¶7 (emphasis added).

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<sup>19</sup> The statute specifically mentions Article XXVIII of the Constitution. *See* GOV'T CODE §51056(b)(8).

<sup>20</sup> *See* California Government Code section 51053 and compare with section 51244.

<sup>21</sup> Stat. (1974) Ch.1003, §2.

<sup>22</sup> GOV'T CODE §§51081.

<sup>23</sup> GOV'T CODE §§51090-51094.

In 1990, both of the Open-Space Easement statutes were available to the Warrens if they had wanted to terminate the easement and, at the same time, ensure that the De Amaral Preserve would be protected from future development. Both statutes would have made it possible to preserve the undeveloped status that the Foundation for Conservation envisioned when it created the easement in the first place. Plainly, that isn't what Mr. and Mrs. Warren had in mind.

F. The Planning Commission Is Required to Enforce the Easement

If the Notice of Termination was invalid in 1990, it is equally invalid today. The fact that 27 years have passed since the Notice of Termination was recorded, does not improve the validity of an improper and unlawful attempt to terminate the easement in violation of its terms.

Read in context, the language used in Paragraph 7 of the 1967 Easement Deed is clear and unambiguous in explaining the circumstances that would allow the Grantor (or a subsequent land owner) to convert the restrictions created by a private easement to restrictions enforced pursuant to a subsequent statute. If there is any ambiguity in the language, the historic record and the apparent intent of both the Grantor and Grantee of the easement to create a permanent, open-space memorial for Major De Amaral supplies any parol evidence required to demonstrate that the 1990 Notice of Termination was contrary to that intent. If the language used in a statute or written agreement is clear, it should be enforced according to its terms. *See County of Sacramento v. Pacific Gas & Elec. Co.* (1987) 193 Cal. App.3d 300, 308-310 [238 Cal. Rptr. 305]; *Von Klompenburg v. Berghold* (2005) 126 Cal. App.4<sup>th</sup> 345, 349 [23 Cal. Rptr.3d 799, 802-802]; CALIFORNIA CIVIL CODE §815.2(d) ("The particular characteristics of a conservation easement shall be those granted or specified in the instrument creating or transferring the easement.").

There has been no prior application to develop any of the property in the De Amaral Preserve or otherwise within the scope of the 1967 easement prior. Neither the Warrens, nor any subsequent land owner, has ever petitioned Monterey County to modify the terms of the easement. Nor has anyone sought a judicial determination of the legal validity of the Notice of Termination or its consistency with the language of Paragraph 7.

A. The Planning Commission is Required to Enforce the Easement

When the Board of Supervisors accepted the Conservation and Scenic Easement in 1967 it assumed a responsibility to enforce the easement and protect the land. Today

that obligation is codified in section 51086 of the California Government Code which provides, in pertinent part,

From and after the time when an open-space easement has been accepted by the county or city and its acceptance endorsed thereon, no building permit may be issued for any structure which would violate the easement and the county or city shall seek by appropriate proceedings an injunction against any threatened construction or other development or activity on the land which would violate the easement and shall seek a mandatory injunction requiring the removal of any structure erected in violation of the easement.

Open-space land is a valuable and increasingly scarce, public resource. That is especially true of coastal land in Monterey County. There is no good reason, under any circumstances, for the Planning Commission to grant an application such as PLN130339 which is so completely at odds with the County's zoning and land use laws. But it is entirely inexplicable for the Planning Commission to proceed with this application in view of the evidence that the proposed development violates the provisions of an open-space easement that the County has held and protected for fifty years.

Please deny the application and protect the 30 acres of pristine, open-space land within the De Amaral Preserve.

Respectfully submitted,



Gary L. Fontana

cc: Mr. Gwyn De Amaral

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EXHIBIT 1

Conservation and Scenic Easement Deed

February 24, 1967

RECORDED AT REQUEST OF

COUNTY OF MONTEREY

MAR 3 8 57 AM '67

CONSERVATION AND SCENIC EASEMENT DEEDCOUNTY OF MONTEREY  
SAN LUIS OBISPO, CALIFORNIA

REEL 495 PAGE 586

THIS DEED made this 24th day of February, 1967,

by and between the MONTEREY COUNTY FOUNDATION FOR CONSERVATION, a non-profit corporation, as Grantor, and the COUNTY OF MONTEREY, a political subdivision of the State of California, as Grantee.

W I T N E S S E T H:

WHEREAS, the said Grantor is the owner in fee of the real property hereinafter described, situate in the County of Monterey, State of California; and

WHEREAS, the said land of said Grantor has certain natural scenic beauty and existing openness; and

WHEREAS, the Board of Supervisors of the County of Monterey has recognized said natural beauty and existing openness and has suggested that Grantor preserve the same for the public benefit, and, therefore, Grantor and Grantee desire to preserve and conserve for the public benefit the natural condition and present state of use; and

WHEREAS, the said Grantor is willing to grant to the County of Monterey the scenic use as hereinafter expressed of the said land, and thereby protect, maintain, and enhance the present scenic beauty and existing openness by the restricted use and enjoyment of said property by the Grantor because of the imposition of the conditions hereinafter expressed.

NOW, THEREFORE, for and in consideration of the premises, the Grantor does hereby grant and convey unto the COUNTY OF MONTEREY an estate, interest and conservation and scenic easement in the real property described in Exhibit A, which is attached hereto and made a part hereof, of the nature and character and to the extent

hereinafter expressed, to be and to constitute a servitude upon said real estate of the Grantor, which estate, interest, easement and servitude will result from the restrictions hereby imposed upon the use of said property by said Grantor, and to that end and for the purpose of accomplishing the intent of the parties hereto, said Grantor covenants on behalf of itself, its heirs, successors, and assigns with the said Grantee, its successors or assigns, to do and refrain from doing severally and collectively upon the Grantor's said property the various acts hereinafter mentioned.

Grantor reserves the right to make full use of said real property subject to the provisions of this scenic easement for all purposes which do not interfere with, impair, destroy, or detract from the scenic values preserved and conserved by this scenic easement, and Grantor specifically reserves the right to maintain and repair any facility which Grantor has heretofor constructed on said real property.

The restrictions hereby imposed upon the use of said property of the Grantor and the acts which said Grantor shall refrain from doing upon their said property in connection therewith are, and shall be, as follows:

1. That no structures of any kind will be placed or erected upon said described premises, except structures, lines and other facilities necessary to maintain a water, drainage or sewer system, utilities consisting of telephone, power, and cable television lines, utility roads necessary to serve same, under, on or over said land, bridges, fences, and other structures reasonably necessary and incidental to the construction, maintenance, and operation of an undeveloped scenic area, including but not limited to roads, riding and hiking trails, fireplaces and picnic areas.

2. That no advertising of any kind or nature shall be located on or within said property except that which may be located on said premises at the time of the execution of this deed.

3. That except for the construction, alteration, relocation and maintenance of roads and riding and hiking trails, the general topography of the landscape shall be maintained in its present condition and no excavation or topographic changes shall be made, except to prevent erosion or damage to the land.

4. Grantor reserves the right to enter upon the real property described in Exhibit A and to bring upon the land all necessary equipment and persons reasonably necessary to fire control, to construct fire roads and other improvements for the purpose of fire protection, and to take any actions reasonably necessary for fire protection; Grantor further reserves the right to enter upon the property and engage in fire prevention and brush control practices.

5. That no use of said described property which will or does materially alter the landscape or other attractive scenic features of said land other than those specified above shall be done or suffered.

6. If at any time the property herein described, or any portion thereof, shall be selected for condemnation by any public utility or any public agency, including the Grantee, then and in that event this conveyance, insofar as it affects the property to be condemned, shall become null and void. Selection of said property shall be determined upon the filing of any action for taking or condemnation of said property, or any portion thereof, in a Court of competent jurisdiction. Upon the filing of any such action, this

conveyance, insofar as it affects the property so selected for condemnation, shall immediately cease and determine and revert to and vest in the Grantor, its successors in interest, or assigns; the intent of this clause being that in the event of condemnation of the subject property, or any portion thereof, Grantor, or its successors in interest or assigns, are to be compensated in accordance with the market value of said property, said market value to be determined by the highest and best use of said property without reference to this conveyance.

7. In the event that the State of California, or any political subdivision thereof, should pass legislation pursuant to Article XXVIII of the Constitution of the State of California, or should pass legislation such as the California Land Conservation Act of 1965, or other legislation for the purpose of restricting the use of real property to conserve and maintain natural scenic beauty, open space lands, natural resources and agricultural land for plant and animal production, which said legislation shall restrict, or would by agreement of Grantor or its successors in interest restrict, the use of said property for scenic and recreational uses or for the use of natural resources or for the production of food and fiber, the Grantor, or its successors in interest, shall have the option to have the property described in Exhibit A, or a portion thereof, subjected to the restrictions created by such legislation, free from the restrictions imposed by this conveyance. Should Grantor, or its successors in interest, desire to exercise the option to restrict the use of a portion of or all of said real property pursuant to such legislation, Grantor, or its successors in interest, shall give written notice to Grantee of the exercise of said option.

Upon the giving of such notice, this conveyance, as to the portion of the property subjected to such legislation or which will be subject to such legislation by the agreement of Grantor, or its successors in interest, shall immediately cease and determine and revert to and vest in the Grantor, or its successors in title, upon becoming subject to such legislation; the intent of this clause being that in the event that the subject property, or a portion thereof, shall become restricted pursuant to such legislation, that the restrictions placed upon Grantor, or its successors in title, on said real property shall become null and void and of no further force and effect.

To have and to hold unto the said County of Monterey, its successors and assigns forever. This grant shall be binding upon the heirs and assigns of the said Grantor and shall constitute a servitude upon the property described in Exhibit A hereto. The parties, or their successors in interest, however, reserve the right to modify, upon terms mutually satisfactory, the provisions of this agreement and Grantee shall have the right to reconvey to Grantor, or its successors in interest, the interest herein granted in whole or in part.

IN WITNESS WHEREOF, the parties hereto have set their hands and seal the day and year first hereinabove written.

MONTEREY COUNTY FOUNDATION FOR CONSERVATION

BY *[Signature]*  
President  
BY *Saylad D. Butler*  
Secretary

"Grantor"



COUNTY OF MONTEREY

BY *Warren Church*  
Chairman of the Board of Supervisors

"Grantee"

## STATE OF CALIFORNIA

Monterey

County of

On this 24th day of February in the year one thousand nine hundred and sixty-seven

before me,

Peter T. Hoss

Notary Public in and for the

County of Monterey

State of California, residing therein,

duly commissioned and sworn, personally appeared Dudley Swim and

Bayford O. Butler

known to me to be the President and Secretary

of the corporation described in and that executed the within instrument, and also known to me to be the person who executed the within instrument on behalf of the corporation therein named, and acknowledged to me that such corporation executed the within instrument pursuant to its by-laws or a resolution of its board of directors.

IN WITNESS WHEREOF I have hereunto set my hand and affixed my official seal in the

County of Monterey

certificate for above written.

the day and year in this

Notary Public in and for the

County of

Monterey

State of California.

My Commission Expires

CORPORATION

ATTORNEYS PRINTING SUPPLY FORM NO. 7

STATE OF CALIFORNIA

COUNTY OF MONTEREY

ss

On this 28th day of February, 1967, before me, EMMET G. McMENAMIN, County Clerk in and for said County and State, personally appeared Warren Church known to me to be the Chairman of the Board of Supervisors of the County of Monterey and known to me to be the person who executed the within instrument on behalf of said public corporation, agency or political subdivision, and acknowledged to me that said political subdivision executed the same.

EMMET G. McMENAMIN, Clerk

By Debra H. Feiring  
Deputy

## EXHIBIT "A"

All that certain real property situate in the County of Monterey, State of California, to-wit:

BEING portions of the lands generally known as "Carmel Highlands Property" (reference being made to "Map of a part of Carmel Highlands Property, showing survey lines of a part of Rancho San Jose Y Sur Chiquito, Monterey Co., Calif.," recorded May 15, 1918 in Volume 1 of Surveys, page 93, in the office of the Recorder of Monterey County, California, and to "Map No. 3 of a part of Carmel Highlands Property, showing survey lines of a part of Rancho San Jose Y Sur Chiquito, Monterey County, California", recorded May 2nd, 1925 in Volume 3 of Surveys, page 103, in the office of the Recorder of Monterey County, California), described as follows:

PARCEL 1:

BEGINNING at a point in the Easterly line of that tract of land, conveyed by Carmel Development Company, a corporation, to Margaret H. Kilpatrick by deed dated November 21, 1927 and recorded January 30, 1928 in Volume 137 Official Records at Page 434, Monterey County Records, at point from which Station K-39 bears North  $6^{\circ} 33'$  East, 1032.33 feet; thence from said point of beginning running

S.  $6^{\circ} 33'$  E., 29.67 feet to a station, thence

S.  $58^{\circ} 53'$  W., 115.82 feet to a station, thence

S.  $22^{\circ} 18'$  W., 174.19 feet to a station, thence

S.  $32^{\circ} 52\frac{1}{2}'$  W., 128.91 feet to a station, thence

S.  $12^{\circ} 28'$  W., 198.36 feet to a station, thence

S.  $34^{\circ} 50'$  W., 91.11 feet to a station, thence

S.  $62^{\circ} 11'$  W., 190.12 feet to a station, thence

S.  $1^{\circ} 59'$  W., 73.92 feet to a station, thence

S.  $54^{\circ} 48'$  W., 173.06 feet to the northernmost corner of that

certain tract of land conveyed to William Charles Butcher, and Marietta Search Butcher, his wife, dated March 29, 1923 and recorded April 11, 1923 in Volume 16 Official Records of Monterey County, Page 12, thence following the northwesterly line of said Butcher property,

S.  $61^{\circ} 30'$  W., 96.95 feet,

S.  $54^{\circ} 36'$  W., 57.62 feet, and

S.  $48^{\circ} 57'$  W., 200.63 feet to Station in road; thence

N.  $12^{\circ} 38'$  W., 153.80 feet, thence

N.  $6^{\circ} 50'$  E., 199.48 feet to the southeasterly corner of that

certain tract of land conveyed to Preston W. Search, by Deed dated May 26, 1927 and recorded August 23, 1927 in Volume 124 Official Records, Monterey County, Page 59, thence following the boundary of the said Search property.

N.  $28^{\circ} 24'$  W., 84.03 feet,

N.  $33^{\circ} 21'$  E., 78.05 feet,

N.  $63^{\circ} 21'$  W., 137.00 feet, and

N.  $33^{\circ} 49'$  W., 87.15 feet to the most Northerly corner of said Search property, thence

N. 35° 32' E., 98.57 feet to the southeasterly corner of that certain tract of land conveyed to Claire M. Puffer, by Deed dated August 12, 1923 and recorded August 28, 1923 in Volume 21 of Official Records, Monterey County, Page 452, thence N. 41° 48' E., 146.09 feet, thence

N. 9° 56' E., 86.40 feet, thence

N. 11° 12' E., 149.73 feet, thence

N. 82° 31' E., 80.99 feet, thence

N. 15° 12' E., 54.72 feet, thence

N. 63° 02' E., 77.20 feet, thence

N. 3° 55' E., 92.10 feet, thence

N. 37° 11' E., 70.22 feet, thence

N. 86° 27' E., 127.90 feet, thence

N. 32° 34' E., 211.36 feet to a Station R-16, as shown on said Map No. 3 thence

N. 60° 08' E., 199.76 feet to Station T-21, thence along the T-Survey

N. 73° 11' E., 214.79 feet to Station T-20; thence

N. 83° 29' E., 92.72 feet to Station T-19; thence

N. 44° 52' E., 43.13 feet to Station T-18; thence

S. 87° 45' E., to a point on the East line of said tract conveyed to Margaret H. Kilpatrick by deed recorded in Volume 137 Official Records at Page 434 above referred to and from which point said Station K-39 bears N. 6° 33' E., thence along the said East line S. 6° 33' W., to the point of beginning.

Subject to the right of way for road purposes as reserved in the deed from Carmel Development Company, a corporation, to Margaret H. Kilpatrick dated November 21, 1927 and recorded January 30, 1928 in Volume 137 Official Records at Page 434, Monterey County Records.

#### PARCEL 2:

BEGINNING at the most southerly corner of that certain tract of land conveyed to Preston W. Search, by the Carmel Development Company, a corporation, by deed dated May 26, 1927 and recorded August 23, 1927 in Volume 124 of Official Records, Monterey County, California, at Page 59; running thence S. 0° 55' E., 128.77 feet; thence S. 19° 04' E., 226.73 feet; thence N. 87° 25' E., 58.14 feet; thence N. 11° 34' W., 71.70 feet; thence N. 12° 38' W., 151.80 feet; thence N. 6° 50' E., 199.48 feet; thence S. 55° 52' W., 141.26 feet; to the point of beginning.

SUBJECT to right of way for road purposes over strips of land 12½ feet wide adjoining the Easterly and Westerly sides of said land which were reserved for road purposes in deed from Carmel Development Company to Margaret H. Kilpatrick, recorded in Volume 139 Official Records, at Page 279, Monterey County Records.

*Before the Board of Supervisors in and for the  
County of Monterey, State of California*

Resolution No. 67-73 -- )  
Conservation and Scenic Easement Deed )  
(Monterey County Foundation for )  
Conservation) Accepted; Chairman )  
Authorized to Execute Deed . . . . . )

BE IT RESOLVED that the deed dated February 24,  
1967, executed by Monterey County Foundation for Con-  
servation, as Grantor, is hereby accepted and the  
Chairman is hereby authorized to execute said Deed.

BE IT FURTHER RESOLVED that this Deed is accepted  
with the understanding that the area described therein  
will not be used for credit as open space for an  
adjoining development.

PASSED AND ADOPTED this 28th day of February,  
1967, upon motion of Supervisor Hudson, seconded by  
Supervisor Atteridge, and carried by the following vote,  
to-wit:

AYES: Supervisors Church, Atteridge, Wood,  
Anderson and Hudson.

NOES: None.

ABSENT: None.

COUNTY OF MONTEREY, }  
STATE OF CALIFORNIA, }

I, EMMET G. McMENAMIN, County Clerk and ex-officio Clerk of the Board of Supervisors of the County of Mon-  
terey, State of California, hereby certify that the foregoing is a full, true and correct copy of an original order of said  
Board of Supervisors duly made and entered in the minutes thereof at page \_\_\_\_\_ of Minute Book 21, on the  
28th day of February, 1967, and now remaining of record in my office.

Witness my hand and the seal of said Board of Supervisors this 28th day of February, 1967.

EMMET G. McMENAMIN,  
County Clerk and ex-officio Clerk of the Board  
of Supervisors, County of Monterey, State of  
California.

By Elizabeth A. Moran  
Deputy.

"END OF DOCUMENT"

EXHIBIT 2

Notice of Termination

December 21, 1990

RECORDING REQUESTED BY and  
WHEN RECORDED RETURN TO

Mr. and Mrs. Walter Warren  
P. O. Box 552  
Carmel, California 93921

R	11
M	1
RF	9
I	21

WALTER WARREN  
Dec 24 8 14 AM '90  
OFFICE OF RECORDER  
COUNTY OF MONTEREY  
SANTA MONICA, CALIFORNIA

74179

REEL 2590 PAGE 780

NOTICE OF TERMINATION OF CONSERVATION  
AND SCENIC EASEMENT DEED

The undersigned, as successor in interest to the Grantor under that certain Conservation and Scenic Easement Deed to Monterey County, dated February 24, 1967, recorded on Reel 495 at Page 586 of the Official Records of Monterey County ("Said Easement Deed"), a copy of which is attached hereto and incorporated herein as Exhibit "A", does hereby give notice pursuant to Article 7 of Said Easement Deed, that it exercises its option to terminate Said Easement Deed in its entirety, effective as of this date, and Said Easement Deed, in accordance with its terms, is hereby rendered null and void and of no further force or effect.

This Notice of Termination is based upon the enactment of the California Coastal Act (Public Resources Code §§30,000 - 30,900), the qualifying legislation, which fully meets all of the goals and objectives of the Grantor, and authorizes termination of Said Easement Deed as expressly set forth therein.

Dated: December 21, 1990

Walter L. Warren  
Walter Warren

Loretta Warren  
Loretta Warren

State of California )  
County of Monterey ) ss.



On this 21st day of December, 1990, before me the undersigned, a Notary Public in and for said County and State, personally appeared WALTER WARREN and LORETTA WARREN, personally known to me or proved to me on the basis of satisfactory evidence to be the persons whose name is subscribed to the within instrument and acknowledged that he executed the same.

Frances Bishop  
NOTARY PUBLIC

G 38428 495 MCL 586

RECORDED AT PERMITS

COUNTY OF MONTEREY

MAR 3 8 57 AM '67

CONSERVATION AND SCENIC EASEMENT DEED

MCL 495 MCL 586

THIS DEED made this 21st day of February, 1967,

by and between the MONTEREY COUNTY FOUNDATION FOR CONSERVATION, a non-profit corporation, as Grantor, and the COUNTY OF MONTEREY, a political subdivision of the State of California, as Grantee,

W I T N E S S E T H

WHEREAS, the said Grantor is the owner in fee of the real property hereinafter described, situate in the County of Monterey, State of California; and

WHEREAS, the said land of said Grantor has certain natural scenic beauty and existing openness; and

WHEREAS, the Board of Supervisors of the County of Monterey has recognized said natural beauty and existing openness and has suggested that Grantor preserve the same for the public benefit, and, therefore, Grantor and Grantee desire to preserve and conserve for the public benefit the natural condition and present state of use; and

WHEREAS, the said Grantor is willing to grant to the County of Monterey the scenic use as hereinafter expressed of the said land, and thereby protect, maintain, and enhance the present scenic beauty and existing openness by the restricted use and enjoyment of said property by the Grantor because of the imposition of the conditions hereinafter expressed,

NOW, THEREFORE, for and in consideration of the premises, the Grantor does hereby grant and convey unto the COUNTY OF MONTEREY as estate, interest and conservation and scenic easement in the real property described in Exhibit A, which is attached hereto and made a part hereof, of the nature and character and to the extent

hereinafter expressed, to be and to constitute a servitude upon said real estate of the Grantor, which estate, interest, easement and servitude will result from the restrictions hereby imposed upon the use of said property by said Grantor, and to that end and for the purpose of accomplishing the intent of the parties hereto, said Grantor covenants on behalf of itself, its heirs, successors, and assigns with the said Grantee, its successors or assigns, to do and refrain from doing severally and collectively upon the Grantor's said property the various acts hereinafter mentioned.

Grantor reserves the right to make full use of said real property subject to the provisions of this scenic easement for all purposes which do not interfere with, impair, destroy, or detract from the scenic values preserved and conserved by this scenic easement, and Grantor specifically reserves the right to maintain and repair any facility which Grantor has heretofor constructed on said real property.

The restrictions hereby imposed upon the use of said property of the Grantor and the acts which said Grantor shall refrain from doing upon their said property in connection therewith are, and shall be, as follows:

1. That no structures of any kind will be placed or erected upon said described premises, except structures, lines and other facilities necessary to maintain a water, drainage or sewer system, utilities consisting of telephone, power, and cable television lines, utility roads necessary to serve same, under, on or over said land, bridges, fences, and other structures reasonably necessary and incidental to the construction, maintenance, and operation of an undeveloped scenic area, including but not limited to roads, riding and hiking trails, fireplaces and picnic areas.

REEL 495 HAS 588

2. That no advertising of any kind or nature shall be located on or within said property except that which may be located on said premises at the time of the execution of this deed.

3. That except for the construction, alteration, relocation and maintenance of roads and riding and hiking trails, the general topography of the landscape shall be maintained in its present condition and no excavation or topographic changes shall be made, except to prevent erosion or damage to the land.

4. Grantor reserves the right to enter upon the real property described in Exhibit A and to bring upon the land all necessary equipment and persons reasonably necessary to fire control, to construct fire roads and other improvements for the purpose of fire protection, and to take any actions reasonably necessary for fire protection; Grantor further reserves the right to enter upon the property and engage in fire prevention and brush control practices.

5. That no use of said described property which will or does materially alter the landscape or other attractive scenic features of said land other than those specified above shall be done or suffered.

6. If at any time the property herein described, or any portion thereof, shall be selected for condemnation by any public utility or any public agency, including the Grantee, then and in that event this conveyance, insofar as it affects the property to be condemned, shall become null and void. Selection of said property shall be determined upon the filing of any action for taking or condemnation of said property, or any portion thereof, in a court of competent jurisdiction. Upon the filing of any such action, this

EX 495 ME 589

conveyance, insofar as it affects the property so selected for condemnation, shall immediately cease and determine and revert to and vest in the grantor, its successors in interest, or assigns; the intent of this clause being that in the event of condemnation of the subject property, or any portion thereof, grantor, or its successors in interest or assigns, are to be compensated in accordance with the market value of said property, said market value to be determined by the highest and best use of said property without reference to this conveyance.

7. In the event that the State of California, or any political subdivision thereof, should pass legislation pursuant to Article XXVIII of the Constitution of the State of California, or should pass legislation such as the California Land Conservation Act of 1965, or other legislation for the purpose of restricting the use of real property to conserve and maintain natural scenic beauty, open space lands, natural resources and agricultural land for plant and animal production, which said legislation shall restrict, or would by agreement of grantor or its successors in interest restrict, the use of said property for scenic and recreational uses or for the use of natural resources or for the production of food and fiber, the grantor, or its successors in interest, shall have the option to have the property described in Exhibit A, or a portion thereof, subjected to the restrictions created by such legislation, free from the restrictions imposed by this conveyance. Should grantor, or its successors in interest, desire to exercise the option to restrict the use of a portion of or all of said real property pursuant to such legislation, grantor, or its successors in interest, shall give written notice to grantee of the exercise of said option.

WIT 485 MAY 590

Upon the giving of such notice, this conveyance, as to the portion of the property subjected to such legislation or which will be subject to such legislation by the consent of Grantor, or its successors in interest, shall immediately cease and determine and revert to and vest in the Grantor, or its successors in title, upon becoming subject to such legislation; the intent of this clause being that in the event that the subject property, or a portion thereof, shall become restricted pursuant to such legislation, that the restrictions placed upon Grantor, or its successors in title, on said real property shall become null and void and of no further force and effect.

To have and to hold unto the said County of Monterey, its successors and assigns forever. This grant shall be binding upon the heirs and assigns of the said Grantor and shall constitute a servitude upon the property described in Exhibit A hereto. The parties, or their successors in interest, however, reserve the right to modify, upon terms mutually satisfactory, the provisions of this agreement and Grantee shall have the right to reconvey to Grantor, or its successors in interest, the interest herein granted in whole or in part.

IN WITNESS WHEREOF, the parties hereto have set their hands and seal the day and year first hereinabove written,

MONTEREY COUNTY FOUNDATION FOR CONSERVATION

BY [Signature]  
President  
BY [Signature]  
Secretary  
"Grantor"



COUNTY OF MONTEREY

BY [Signature]  
Chairman of the Board of Supervisors  
"Grantee"

# **MONTEREY COUNTY PLANNING COMMISSION**

**AUGUST 30, 2017  
AGENDA ITEM NO. 5**



## **Additional Correspondence**

August 22, 2017 8:00 a.m. through August 29, 2017 4:00 p.m.

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**Collins – PLN130339**

**Contact Info:**

**Anna Quenga, Associate Planner  
Monterey County Resource Management Agency  
Land Use Division, Planning  
1441 Schilling Place - South, 2nd Floor, Salinas CA, 93901  
831-755-5175 or [quengaav@co.monterey.ca.us](mailto:quengaav@co.monterey.ca.us)**

**McDougal, Melissa x5146**

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**From:** Quenga, Anna V. x5175  
**Sent:** Tuesday, August 22, 2017 9:30 AM  
**To:** McDougal, Melissa x5146  
**Subject:** FW: PLN 130339/ APN 241 021 007 000


Dear Melissa,

Could you please make sure the Planning Commission receives a copy of this email.

Thank you,

Anna V. Quenga, Associate Planner  
Current Planning  
Monterey County RMA-Planning  
1441 Schilling Place ~ South Building Second Floor  
Salinas, CA 93901  
(831) 755-5175 work (831) 757-9516 fax  
[www.co.monterey.ca.us/pbi](http://www.co.monterey.ca.us/pbi)

<b>HEARING SUBMITTAL</b>	
PROJECT NO./AGENDA NO.	PLN 130339 #5
DATE RECEIVED	8/22/17
SUBMITTED BY VIA	Public email
DISTRIBUTION TO DATE	PC 8/23/17
DATE OF HEARING	8/30/17

 Please consider the environment before printing this e-mail

**From:** califwayoflife@aol.com [mailto:califwayoflife@aol.com]  
**Sent:** Tuesday, August 22, 2017 9:17 AM  
**To:** Friedrich, Michele x5189 <friedrichm@co.monterey.ca.us>  
**Cc:** Quenga, Anna V. x5175 <QuengaAV@co.monterey.ca.us>  
**Subject:** PLN 130339/ APN 241 021 007 000

Michelle ,

I was made aware that the Zoning Administrators will be hearing the Project application for Collins at 83 Mt Devon Road, Carmel Highlands APN 241 021 007 000 (plan130339) on August 31 st . I was never notified as I requested back on May 04,2017.

Furthermore , I requested to come to Salinas to discuss this with the planner Anna V. Quenga and was never given the opportunity .

I wish to confirm that the Emails & Fax (containing a copy of The Conservation and Scenic Easement , APN map & Monterey Herald Article 1967 showing dedication), that I sent to the Planning Commission prior to May 04, 2017 will be part of the file presented by staff at next weeks meeting .

Other materials would be from Zane De Amaral & Meghan De Amaral . Please also include this email in the file for plan 130339.

We oppose this application and believe that the Conservation and Scenic Easement of 1967 should be upheld .

Thank you  
Gwyn De Amral

## McDougal, Melissa x5146

**From:** Quenga, Anna V. x5175  
**Sent:** Tuesday, August 22, 2017 9:30 AM  
**To:** McDougal, Melissa x5146  
**Subject:** FW: PLN130339 - Legal Issues re Conservation Easement  
**Attachments:** Letter to Anna Quenga re Easement 8-21-17.pdf

Melissa,

Could you please make sure the Planning Commission receives a copy of this letter.

Thank you,

Anna V. Quenga, Associate Planner  
Current Planning  
Monterey County RMA-Planning  
1441 Schilling Place ~ South Building Second Floor  
Salinas, CA 93901  
(831) 755-5175 work (831) 757-9516 fax  
[www.co.monterey.ca.us/pbi](http://www.co.monterey.ca.us/pbi)

<b>HEARING SUBMITTAL</b>
PROJECT NO./AGENDA NO. <u>PLN130339 #5</u>
DATE RECEIVED: <u>8/22/17</u>
SUBMITTED BY/VIA: <u>Public</u> / <u>email</u>
DISTRIBUTION TO/DATE: <u>PC</u> / <u>8/23/17</u>
DATE OF HEARING: <u>8/30/17</u>



Please consider the environment before printing this e-mail

**From:** Gary Fontana [mailto:gary@garyfontana.com]  
**Sent:** Monday, August 21, 2017 4:43 PM  
**To:** Quenga, Anna V. x5175 <QuengaAV@co.monterey.ca.us>  
**Cc:** Onciano, Jacqueline x5193 <oncianoj@co.monterey.ca.us>; Rochester, Don <RochesterD@co.monterey.ca.us>; Mendez, Jose <MendezJ@co.monterey.ca.us>; ambrizana@gmail.com; Padilla, Cosme <PadillaC1@co.monterey.ca.us>; Getzelman, Paul C. <GetzelmanPC@co.monterey.ca.us>; mduflock@gmail.com; amydroberts@gmail.com; Hert, Luther <HertL1@co.monterey.ca.us>; Vandever, Keith <VandeverK@co.monterey.ca.us>; Martha Diehl <mvdiehl@mindspring.com>; Gwyn De Amaral (califwayoflife@aol.com) <califwayoflife@aol.com>  
**Subject:** PLN130339 - Legal Issues re Conservation Easement

Anna:

Attached is a letter that describes various legal issues arising from the Conservation and Scenic Easement that was placed on the property that is the subject of the application in PLN130339 in 1967. As indicated in the letter, I believe that the easement, which was accepted by the Board of Supervisors of Monterey County in February 1967, remains in full force and effect. If that is true, it would be a violation of the Government Code for the Planning Commission to approve the application or any of the building permits associated with it. At a minimum, because the terms of the easement prohibit the proposed development, I believe that the issues related to the validity of the easement should be addressed before the Planning Commission proceeds with consideration of the substance of the application.

Mr. De Amaral (as a representative of the De Amaral family) and I would be happy to meet with you and attorneys from the Office of the County Counsel to discuss these issues and to make available the materials that I have collected regarding the land transactions that resulted in this property - which was given to the Monterey Foundation for Conservation in 1966 - ending up in private hands.

If a decision is made to proceed with the hearing on PLN130339 on August 30<sup>th</sup> without first addressing the Conservation Easement, I ask that the material in the attached letter and the exhibits be made a part of the record. I

have attempted to copy all of the members of the Planning Commission on this email, but will rely on your to insure that everyone is made aware of this issue.

Thanks again for your assistance throughout the past several months. As we both are now aware, having to go back fifty years to search for records and correspondence about this property had made this application particularly difficult. Nonetheless, I think that we now have enough of the historical materials for the Planning Commission to be able to understand and resolve the easement issues.

Gary Fontana



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Via Email and U.S. Mail

August 7, 2017

County of Monterey  
Resource Management Agency - Planning  
Attn: Anna V. Quegna, Associate Planner  
168 West Alisal, 2<sup>nd</sup> Floor  
Salinas, CA 93901

Re: PLN130339 (Collins) - Legal Issues Created by the 1967  
Conservation Easement and the De Amaral Preserve

Ms. Quenga:

It has taken me longer to collect the historic documents and other information that I needed for this letter than I anticipated when I spoke with you several weeks ago. In any event, the purpose of this letter is to make you and the Office of the County Counsel aware of various legal issues that will arise if the Planning Commission or the Board of Supervisors were to authorize the proposed development at 83 Mt. Devon Road in Carmel without addressing the current legal status of the Conservation and Scenic Easement that governs the use of this property.

While it is not mentioned anywhere in the proposed Mitigated Negative Declaration prepared by your office, a Conservation easement was established on this property by the Monterey County Foundation for Conservation on February 23, 1967. The easement - which prohibits any of the development proposed in the current application - was accepted by the Monterey County Board of Supervisors and recorded on March 3, 1967.

Comments submitted by other citizen groups demonstrate the unprecedented nature of the pending application - which requires both a change in zoning and variances from slope and setback requirements established by the Carmel Area Land Use Plan. In addition, however, the land on which the proposed construction would take place is within the De Amaral Preserve, a 30-acre parcel of open-space land that was created by the 1967 easement as a permanent memorial to Major Frank De Amaral, who was a U.S. Army pilot who died in combat in Viet Nam in 1965.<sup>1</sup>

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<sup>1</sup> The De Amaral Preserve open space is explicitly recognized as a scenic easement and open space in the Carmel Area Land Use Plan ("CALUP"). It has been part of the CALUP since its

As described in greater detail below, I believe that the easement remains in full force and effect. If that is correct, it would be a violation of the California Open-Space Easement Act of 1974 and Government Code section 51086 if Monterey County were to issue a building permit for any of the structures proposed in the current application.

A. The 1967 Conservation and Scenic Easement and Establishment of the De Amaral Preserve

The current application proposes to construct a residence on extremely steep slopes located in a 30-acre parcel (APN 241-021-007) that the applicant acquired in 1994. In December 1966, those 30 acres of land were donated to the Monterey County Foundation for Conservation by Mr. N.J. D'Ambrogio, a local landowner, in memory of Major De Amaral. The event was commemorated in a photograph and story (below) that appeared in the Monterey County Herald on February 6, 1967.



adoption in 1983. Specific references to the DeAmaral Preserve appear in the CALUP on pages 71 (fn.) and 93. The family name is inconsistently spelled in the CALUP as "DeAmaral" and "deAmaral." The preferred spelling is "De Amaral."

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Shortly after the luncheon described in the photograph, on February 24, 1967, the Foundation for Conservation formalized the dedication to Major De Amaral by executing a Conservation and Scenic Easement Deed on the property and conveying the easement to Monterey County. The Board of Supervisors accepted the easement on February 24<sup>th</sup> and caused both the Deed and the Resolution of Acceptance to be recorded.<sup>2</sup>

At the time the easement was created, the property was completely undeveloped. It is clear from the terms of the deed that the parties intended that the land would remain that way and would become permanent open space. The easement deed makes specific reference to the "natural beauty and existing openness" of the property and states that *both* the Foundation and the County of Monterey "desire to preserve and conserve for the public benefit the natural condition [of the property] and *present state of use*." Exhibit 1, pg. 1 (emphasis added).

The language of the deed also makes it clear that the intent of the parties in creating a conservation and scenic easement and conveying it to the County was to *protect* the land as open space and prohibit all development not specifically authorized by the terms of the easement. Thus, the easement deed recites:

Grantor is willing to grant to the County of Monterey the scenic use as hereinafter expressed of the said land, and thereby protect, maintain, and enhance the present scenic beauty and existing openness by the restricted use and enjoyment of said property by the Grantor because of the imposition of the conditions hereinafter expressed. Exhibit 1, pg. 1.

In addition to general language barring any future use of the property that would "materially alter the landscape," the easement deed contains at least two specific prohibitions that preclude the development proposed by the applicant in PLN 130339. *First*, is a prohibition against the erection of buildings or structures of any kind on the land not directly related to utility purposes or the enhancement of the land as "an undeveloped scenic area."

[N]o structures of any kind will be placed or erected upon said described premises, except structures, lines and other facilities necessary to maintain a water, drainage or sewer system, utilities consisting of telephone, power, and cable television lines, utility roads necessary to serve same, under, on or over

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<sup>2</sup> A copy of the Conservation and Scenic Easement Deed is attached as Exhibit 1 to this letter. The easement was recorded on March 3, 1967. Monterey County Recorder's Office document G38428 (Reel 495, page 586). The Resolution authorizing acceptance of the easement stated that "this Deed is accepted with the understanding that the area described therein will not be used for credit as open space for an adjoining development." Monterey County Board of Supervisors Resolution No. 67-73, February 28, 1967. A copy of the resolution was recorded along with the Deed. A copy of the Resolution appears at Reel 495, page 594.

said land, bridges, fences, and other structures reasonably necessary and incidental to the construction, maintenance, and operation of an undeveloped scenic area, including but not limited to roads, riding and hiking trails, fireplaces and picnic areas. Exhibit 1, pg. 2, ¶1.

Plainly, the house and garage proposed in PLN 130339 are structures which are prohibited by the terms of the easement.

*Second*, the proposed development also violates the prohibition against excavation and topographical changes to the land. Thus, the easement deed provides,

[E]xcept for the construction, alteration, relocation and maintenance of roads and riding and hiking trails, the general topography of the landscape shall be maintained in its present condition and no excavation or topographic changes shall be made, except to prevent erosion or damage to the land. Exhibit 1, pg.3, ¶3.

Once again, there can be no question that the extensive excavation proposed in PLN 130339 violates the terms of the 1967 easement.

The 30 acres which comprise the De Amaral Preserve has remained as undeveloped, open-space for more than 50 years. In view of this history, it is difficult to comprehend why the County of Monterey which has protected the De Amaral Preserve as open space throughout that period would even consider, much less approve, an application that directly violates the terms of the easement and is fundamentally inconsistent with the zoning, slope and set back provisions of the Carmel Area Land Use Plan.

B. Subsequent Changes in the Ownership of the De Amaral Preserve

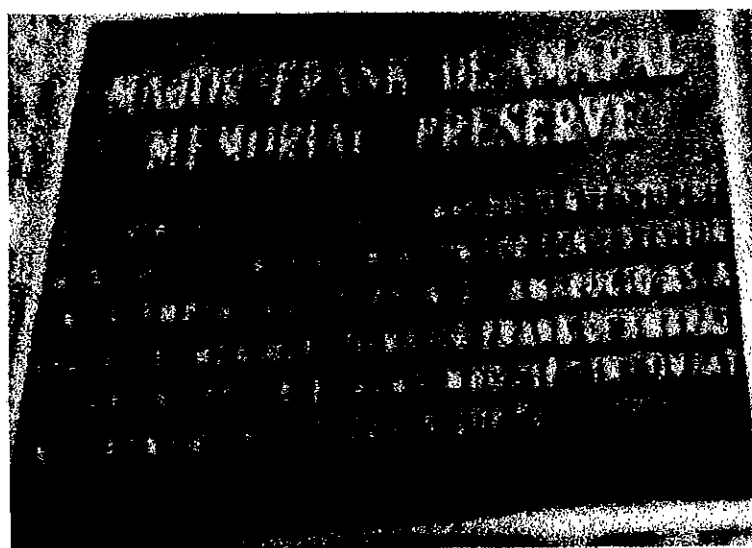
The Monterey County Foundation for Conservation held title to the land which makes up the De Amaral Preserve for ten years. During that period, Major De Amaral's family constructed a large stone bench on the property adjacent to Mt. Devon road and installed a bronze plaque identifying the land as the "Major Frank De Amaral Memorial Preserve." A recent photograph of the stone bench and a photograph of the bronze plaque that was taken in the 1970's appear on the following page.

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De Amaral Preserve Bench – August 2017

While the bronze plaque was later stolen, the following is a copy of a photograph of the plaque taken in the 1970's:



The inscription on the plaque described the preserve and its purpose as follows:

This pine forest preserve was presented to the Monterey County Foundation for Conservation on December 13, 1966 by N.J. D'Ambrogio as a perpetual memorial to Major Frank De Amaral of the United States Army who died in combat in Vietnam on October 4, 1965.

Mr. D'Ambrogio died in 1972.<sup>3</sup> According to records obtained from the California Secretary of State's Office, the Foundation for Conservation was dissolved in 1984. In March 1977, the Foundation for Conservation transferred title to the De Amaral Preserve to the BSI Foundation, a non-profit corporation that was associated with the Behavioral Sciences Institute.<sup>4</sup> The BSI Foundation owned the Preserve property until 1989. The Behavioral Sciences Institute, itself, never owned any of the land in the De Amaral Preserve. Neither the Institute, nor the BSI Foundation, ever proposed to develop the property in the De Amaral Preserve in any way.<sup>5</sup>

In August 1989, the BSI Foundation sold the land underlying the De Amaral Preserve to Walter and Loretta Warren.<sup>6</sup> The circumstances (including the amount paid for the property) surrounding the transfer from the BSI Foundation to the Warrens are unclear. However, it seems that the Behavioral Sciences Institute was insolvent at the time and had been for several years. The Warrens held the property for a little more than four years. They sold the Preserve property to an entity called the Kakis Family

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<sup>3</sup> Stanford News, *Endowed Professorships Announced*, July 21, 2004, at <http://news.stanford.edu/news/2004/july21/med-professorships-721.html>.

<sup>4</sup> The deed transferring title to the land to the BSI Foundation is dated February 28, 1977. It was recorded on March 23, 1977. Monterey County Recorder's Office document G12597 (Reel 1129, page 471).

<sup>5</sup> In August 1977, the Behavioral Sciences Institute purchased approximately 110 acres in the Carmel Highlands from Stanford University. The Institute sought to develop a portion of the 110 acres as an "international educational conference center." See Santa Cruz Sentinel, *Ronald Zeller Named Director of Foundation*, November 24, 1975, page 4, available at <https://www.newspapers.com/newspage/62485286/>. In 1986, the Institute defaulted on a deed of trust that secured loans the Institute had used to finance the purchase of the 110 acres and the land was acquired by the lender in a foreclosure sale. See Trustee's Deed executed December 3, 1987, recorded on January 22, 1988. Monterey County Recorder's Office document 03729 (Reel 2190, page 1141).

<sup>6</sup> The deed transferring title to the Warrens was signed on August 16, 1989. It was recorded on August 18, 1989. Monterey County Recorder's Office document 45369 (Reel 2399, page 1205).

Revocable Trust in November 1993 for \$108,000.<sup>7</sup> Three months later, in February 1994, the Kakis Family Revocable Trust sold the property to the current owners, James G. and Sook Collins for \$129,000.<sup>8</sup>

C. Purported Termination of the Conservation and Scenic Easement in 1990

During the 48 years between the creation of the De Amaral Preserve in 1966 and August 2014, when the current application was initially filed, no one had ever proposed to develop this property or otherwise violate any of the provisions of the Conservation and Scenic Easement. However, in December 1990, a year and a half after they acquired the property from the BSI Foundation, Walter and Loretta Warren executed an instrument purporting to "terminate" the Conservation and Scenic Easement that the Foundation for Conservation had given to Monterey County in 1967. A copy of the Notice of Termination is attached as Exhibit 2.<sup>9</sup>

Whatever their motivation, the Warrens never sought an administrative or judicial determination that the alleged termination was valid or effective. They never sought (and certainly never obtained) consent from Monterey County to termination of the easement. They did not file any legal opinion as part of the Notice of Termination, and they never sought judicial confirmation of the termination via a suit to *quiet title* on the land. Instead, the Warrens sold the property and left it to subsequent owners to find out whether the Notice of Termination had any legal effect.

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<sup>7</sup> The Warren to Kakis deed is dated November 23, 1993. It was recorded on December 2, 1993. Monterey County Recorder's Office document 85648 (Reel 3032, page 897).

<sup>8</sup> The Kakis to Collins deed is dated February 8, 1994. It was recorded on February 22, 1994. Monterey County Recorder's Office document 13941 (Reel 3069, page 778).

<sup>9</sup> The Notice of Termination is dated December 21, 1990. It was recorded on December 24, 1990. Monterey County Recorder's Office document 74179 (Reel 2590, page 780). As recorded, the Notice of Termination included the easement, itself, but did not include the notarization, the property description or the Board of Supervisors Resolution accepting the easement that was recorded in 1967.

D. Requirements for Termination Established in  
Paragraph 7 of the Easement Deed

In the Notice of Termination that they recorded in December 1990, the Warrens cited "Article 7" of the Conservation and Scenic Easement Deed and the passage of the California Coastal Act of 1976<sup>10</sup> as support for their action. Paragraph 7 of the 1967 Deed of Easement (Exhibit 1) establishes two preconditions for termination of the easement:

- a. That the Legislature pass a statute pursuant to Article XXVIII of the state Constitution or a statute similar to the Land Conservation Act of 1965; *and*
- b. In order to qualify, the statute passed by the legislature must restrict the property to "scenic and recreational uses" or the production of food, fiber or natural resources.

As the text of the Deed of Easement made clear in 1967, both the Grantor (the Foundation for Conservation) and the Grantee (Monterey County) intended that the land in the De Amaral Preserve would remain as open-space ("preserve and conserve for the public benefit the natural condition and present state of use") in perpetuity. See discussion at page 3, *supra*.

The easement wasn't drafted to allow the Grantor to walk away from the restrictive provisions any time he, or his successors, felt like doing so.<sup>11</sup> Instead, Paragraph 7 was drafted merely to allow the Grantor to take advantage of subsequent legislation that could provide the same degree of protection for the land, but might offer property tax advantages or other benefits that were not available in 1967 for non-agricultural land such as the De Amaral Preserve.

The text of the relevant portion of paragraph 7 is as follows:

In the event that the State of California, or any political subdivision thereof, should pass legislation pursuant to Article XXVIII of the Constitution of the State of California, or should pass legislation such as the California Land Conservation Act of 1965, or other legislation for the purpose of restricting

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<sup>10</sup> Public Resources Code §§30000-30900.

<sup>11</sup> Had that been the Grantor's intent, Paragraph 7 would have been shorter and much more specific.

the use of real property to conserve and maintain natural scenic beauty, open space lands, natural resources and agricultural land for plan and animal production, which legislation shall restrict, or would by agreement of Grantor, or its successors in interest restrict, the use of said property for scenic or and recreational uses or for the use of natural resources or for the production of food and fiber, the Grantor, or its successors in interest, shall have the option to have the property described in Exhibit A, or a portion thereof, subjected to the restrictions created by such legislation, free from the restrictions imposed by this conveyance. Should Grantor, or its successors in interest, desire to exercise the option to restrict the use of a portion of or all of said real property pursuant to such legislation, Grantor, or its successors in interest, shall give notice to the Grantee of the exercise of said option. Upon the giving of such notice, this conveyance, as to the portion of the property subjected to such legislation or which will be subject to such legislation by the agreement of the Grantor, or its successors in interest, shall immediately cease and determine and revert to and vest in the Grantor, or its successors in interest, upon becoming subject to such legislation; the intent of this clause being that in the event that the subject property, or a portion thereof, shall become restricted pursuant to such legislation, that the restrictions placed upon Grantor, or its successors in title, on said real property shall become null and void and of no further force and effect.

Conservation and Scenic Easement (Exhibit 1, ¶7) (emphasis added).

The language of Paragraph 7 requires both subsequent legislation similar to the Williamson Act and statutory provisions in that legislation (or which could be drafted in response to the legislation) that would significantly restrict the use of the land. There is nothing in the language to suggest that it was intended to allow a subsequent landowner to eviscerate the terms of the easement and develop the land in a manner fundamentally at odds with the original intent.

E. The Notice of Termination is Invalid Because It Is  
Contrary to the Requirements of Paragraph 7

The Notice of Termination claims, without any analysis, that (a) the California Coastal Act<sup>12</sup> ("Coastal Act") constitutes "the qualifying legislation" which authorizes termination of the easement. The Notice does not explain how the Coastal Act "restricts the use of the property for scenic and recreational uses." Nor does the Notice identify the goals of the Grantor when it created the easement, much less how the Coastal Act "fully

<sup>12</sup> PUB. RES. CODE §§30000 *et seq.*

meets all of the goals and objectives of the Grantor." Notice of Termination (Exhibit 4, ¶2). In truth, the Notice of Termination was nothing but a transparent ploy to remove deed restrictions that impaired the resale value of the Warren's land.

Because the Easement Deed was recorded, along with the County's resolution of acceptance, the Warrens were in no position to claim that they were ignorant of the restrictions when they acquired the property. Nor is there any evidence what they paid for the property, if anything, when they acquired it from the BSI Foundation.<sup>13</sup>

1. The California Coastal Act Does Not Meet the Requirements for Qualifying Legislation Established in Paragraph 7

The first sentence of paragraph 7 identifies two, closely-related examples of legislation that could provide the basis for terminating the Conservation and Scenic Easement. Both deal with property tax relief. The first reference is to the passage "of legislation pursuant to Article XXVIII of the Constitution of the State of California." The second reference is to "legislation such as the California Land Conservation Act of 1965" – a statute known today, more commonly, as the "Williamson Act."

Article XXVIII of the California Constitution was proposed by the Legislature and approved by the electorate as Proposition 3 in 1966.<sup>14</sup> It was added to the state Constitution to resolve doubts about the constitutionality of the Williamson Act (which had been enacted in 1965) and to free that statute and other open space legislation from the mandatory, market value assessment provisions of the California Constitution. See *Sierra Club v. City of Hayward* (1981) 28 Cal.3d 840, 851 (171 Cal. Rptr. 619); *Dorcich v. Johnson* (1980) 110 Cal. App.3d 487, 493 (167 Cal. Rptr. 897); see also THOMAS BARRETT, *THE CONSERVATION EASEMENT IN CALIFORNIA* 36 (Island Press 1983).

As enacted, Article XXVIII provided,

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<sup>13</sup> According to records obtained from the California Attorney General's Office the land was transferred about the time the BSI Foundation dissolved. The land could have been transferred in satisfaction of an antecedent debt to the Warrens. Otherwise, the land should have been transferred to another charitable or non-profit foundation as required by the BSI Foundation Articles of Incorporation and California law.

<sup>14</sup> In 1974, the substance of Article XXVIII was moved to Article XIII, Section 8 of the Constitution.

Notwithstanding any other provision of this constitution, the Legislature may by law define open space lands and provide that when such lands are subject to enforceable restriction, as specified by the Legislature, to the use thereof solely for recreation, for the enjoyment of scenic beauty, for the use of natural resources, or for production of food or fiber, such lands shall be valued for assessment purposes on such basis as the Legislature shall determine to be consistent with such restriction and use.

Whatever else might be said about the Coastal Act, it was not "passed pursuant to Article XXVIII of the Constitution of the State of California," nor did the constitutionality of the Coastal Act depend on Article XXVIII. The Coastal Act does not mandate that property be maintained as "open space." Nor does the Coastal Act specify how "such lands shall be valued for assessment purposes." Plainly, the California Coastal Act is not the kind of legislation the Foundation for Conservation had in mind in the first example cited in Paragraph 7.

That is equally true of the second statutory example cited in Paragraph 7. The Coastal Act bears no resemblance to the California Land Conservation Act of 1965 (the "Williamson Act"). The Williamson Act was enacted to deter the rapid and irreversible loss of agricultural land by preserving agricultural land throughout California in exchange for reduced property taxes for the owners of that land. *Sierra Club v. City of Hayward* (1981) 28 Cal.3d 840, 850 [171 Cal. Rptr. 619]; *De Vita v. County of Napa* (1995) 9 Cal.4th 763, 791 [38 Cal. Rptr.2d 699].

The Coastal Act is a procedural statute designed to create a "comprehensive scheme to govern land use planning for the entire coastal zone of California." *Yost v. Thomas* (1984) 36 Cal.3d 561, 565 [205 Cal. Rptr. 801]. The Coastal Act establishes "minimum standards and policies for localities to follow in developing land use plans" but gives "wide discretion to local government to determine the contents of such plans." *Id.* 36 Cal.3d at 572-573; *McAllister v. County of Monterey* (2007) 147 Cal. App.4th 253, \_\_\_ [54 Cal. Rptr.3d 116, 127].

The structure of the Coastal Act isn't based on the Williamson Act and it does not "restrict . . . the use of said property [i.e., the De Amaral Preserve] for scenic and recreational uses" as required by Paragraph 7 required if the statute was to be the legislative predicate for termination of the 1967 easement.

2. Examples of Subsequent Legislation that Could Have  
Been Used If the Warrens Wanted to Protect the Land

If the land in the De Amaral Preserve had been "devoted to agricultural use" in 1966 or land located in an area that Monterey County had designated as an "agricultural preserve," the California Land Conservation Act of 1965 would have been a vehicle that the Foundation for Conservation could have used to protect the status of the 30 acres that were set aside as the De Amaral Preserve.<sup>15,16</sup> However, in 1967 it was certainly possible that the California legislature would enact legislation to protect and preserve open space land based on the Williamson Act and extend property tax relief to open space and other types of conservation lands. In fact, during the next few years, that is exactly what occurred.<sup>17</sup>

In 1969 the Legislature enacted the Open-Space Easement Act of 1969.<sup>18</sup> This statute extended the use of contract mechanism contained in the Williamson Act to include lands devoted to recreational use and open space. The Open-Space Easement Act authorized local governments to accept and enforce open-space easements on private land

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<sup>15</sup> The Williamson Act (Government Code section 51242) specifies that "[n]o city or county may contract with respect to any land pursuant to this chapter unless the land: (a) is devoted to agricultural; [or] (b) is located with an area designated by a city or county as an agricultural preserve."

<sup>16</sup> If the land had otherwise qualified, the Williamson Act would have required the Foundation for Conservation to enter into an annually renewable contract with Monterey County that would have prevented any development on the land for a period of at least 10 years and would have imposed substantial penalties and a 10-year notice period to cancel or terminate the contract. See, e.g., *County of Humboldt v. McKee* (2008) 165 Cal. App.4<sup>th</sup> 1476, 1487-1489 [82 Cal. Rptr.3d 38]. A useful short summary of how the Williamson Act works appears in Michael Patrick Durkee, David H Blackwell and Thomas P Tunny, *A Modern Perspective on the Williamson Act*, CALIFORNIA REAL PROPERTY JOURNAL, Vol. 22 pages 5-7, available at <http://www.allenmatkins.com/~media/E3848D439DA54E15BB5E7ABD91726B96.pdf>.

<sup>17</sup> One of California's early efforts to provide legislative protection for open-space land was the Scenic Deed Easement Act which was enacted in 1959. See Gov't Code §§6950-6954. In fact, that statute was a response to requests by landowners in Monterey County to protect their coastline from impending development. See THOMAS BARRETT, *THE CONSERVATION EASEMENT IN CALIFORNIA*, *supra*, at 11.

<sup>18</sup> Stat. (1969) Ch.762, §1.

and withhold building permits for construction of any improvements not authorized by the terms of the easement. *See* THOMAS BARRETT, *THE CONSERVATION EASEMENT IN CALIFORNIA*, *supra*, 16. In return for relinquishing such rights landowners would be eligible for the same use-related, assessment valuation provided for in the Williamson Act and authorized by Article XXVIII of the state Constitution. *Id.* at 16-17.<sup>19</sup>

The Open-Space Easement Act of 1969 is a perfect example of the type of legislation contemplated in Paragraph 7. Four years later, the legislature passed a similar statute that also would have qualified as a basis for invoking the termination provision in Paragraph 7.

The Open-Space Easement Act of 1969 specified that qualifying open-space easements had to extend for a period of at least 20 years in comparison to the 10-year, annually renewable contracts specified in the Williamson Act.<sup>20</sup> Nonetheless, the two statutes were clearly built on the same model for a similar purpose -- i.e., encouraging land preservation through long-term contracts and property tax relief. In 1974, the Legislature enacted the Open-Space Easement Act of 1974<sup>21</sup> to bring the statute even more in line with the provisions of the Williamson Act. The 1974 Act reduced the minimum duration for qualifying easements to 10 years<sup>22</sup> and added a mechanism by which landowners could petition for early termination of an open-space easement.<sup>23</sup>

Both Open-Space Easement statutes (1969 and 1974) are examples of legislation that meets the requirements established in Paragraph 7 of the 1967 Conservation and Scenic Easement. In addition, both statutes were very similar in purpose, structure and effect to the Williamson Act. Both would have met the requirement that "the legislation shall restrict, or would by agreement of Grantor, or its successors in interest restrict the use of said property for scenic and recreational uses . . ." *See* Exhibit 1, ¶7 (emphasis added).

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<sup>19</sup> The statute specifically mentions Article XXVIII of the Constitution. *See* GOV'T CODE §51056(b)(8).

<sup>20</sup> *See* California Government Code section 51053 and compare with section 51244.

<sup>21</sup> Stat. (1974) Ch.1003, §2.

<sup>22</sup> GOV'T CODE §§51081.

<sup>23</sup> GOV'T CODE §§51090-51094.

In 1990, both of the Open-Space Easement statutes were available to the Warrens if they had wanted to terminate the easement and, at the same time, ensure that the De Amaral Preserve would be protected from future development. Both statutes would have made it possible to preserve the undeveloped status that the Foundation for Conservation envisioned when it created the easement in the first place. Plainly, that isn't what Mr. and Mrs. Warren had in mind.

F. The Planning Commission Is Required to Enforce the Easement

If the Notice of Termination was invalid in 1990, it is equally invalid today. The fact that 27 years have passed since the Notice of Termination was recorded, does not improve the validity of an improper and unlawful attempt to terminate the easement in violation of its terms.

Read in context, the language used in Paragraph 7 of the 1967 Easement Deed is clear and unambiguous in explaining the circumstances that would allow the Grantor (or a subsequent land owner) to convert the restrictions created by a private easement to restrictions enforced pursuant to a subsequent statute. If there is any ambiguity in the language, the historic record and the apparent intent of both the Grantor and Grantee of the easement to create a permanent, open-space memorial for Major De Amaral supplies any parol evidence required to demonstrate that the 1990 Notice of Termination was contrary to that intent. If the language used in a statute or written agreement is clear, it should be enforced according to its terms. *See County of Sacramento v. Pacific Gas & Elec. Co.* (1987) 193 Cal. App.3d 300, 308-310 [238 Cal. Rptr. 305]; *Von Klompenburg v. Berghold* (2005) 126 Cal. App.4th 345, 349 [23 Cal. Rptr.3d 799, 802-802]; CALIFORNIA CIVIL CODE §815.2(d) ("The particular characteristics of a conservation easement shall be those granted or specified in the instrument creating or transferring the easement.").

There has been no prior application to develop any of the property in the De Amaral Preserve or otherwise within the scope of the 1967 easement prior. Neither the Warrens, nor any subsequent land owner, has ever petitioned Monterey County to modify the terms of the easement. Nor has anyone sought a judicial determination of the legal validity of the Notice of Termination or its consistency with the language of Paragraph 7.

A. The Planning Commission Is Required to Enforce the Easement

When the Board of Supervisors accepted the Conservation and Scenic Easement in 1967 it assumed a responsibility to enforce the easement and protect the land. Today

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that obligation is codified in section 51086 of the California Government Code which provides, in pertinent part,

From and after the time when an open-space easement has been accepted by the county or city and its acceptance endorsed thereon, no building permit may be issued for any structure which would violate the easement and the county or city shall seek by appropriate proceedings an injunction against any threatened construction or other development or activity on the land which would violate the easement and shall seek a mandatory injunction requiring the removal of any structure erected in violation of the easement.

Open-space land is a valuable and increasingly scarce, public resource. That is especially true of coastal land in Monterey County. There is no good reason, under any circumstances, for the Planning Commission to grant an application such as PLN130339 which is so completely at odds with the County's zoning and land use laws. But it is entirely inexplicable for the Planning Commission to proceed with this application in view of the evidence that the proposed development violates the provisions of an open-space easement that the County has held and protected for fifty years.

Please deny the application and protect the 30 acres of pristine, open-space land within the De Amaral Preserve.

Respectfully submitted,



Gary L. Fontana

cc: Mr. Gwyn De Amaral

**Planning Commission Members**

Don Rochester ([rochesterd@co.monterey.ca.us](mailto:rochesterd@co.monterey.ca.us))  
Jose Mendez ([mendezj@co.monterey.ca.us](mailto:mendezj@co.monterey.ca.us))  
Ana Abbriz ([ambrizana@gmail.com](mailto:ambrizana@gmail.com))  
Cosme Padilla ([padillacl@co.monterey.ca.us](mailto:padillacl@co.monterey.ca.us))  
Paul C. Getzelman ([getzelmanpc@co.monterey.ca.us](mailto:getzelmanpc@co.monterey.ca.us))  
Melissa Duflock ([mduflock@gmail.com](mailto:mduflock@gmail.com))  
Amy D. Roberts ([amvdroberts@gmail.com](mailto:amvdroberts@gmail.com))  
Luther Hert ([hertl1@co.monterey.ca.us](mailto:hertl1@co.monterey.ca.us))  
Keith Vandevere ([vandeverek@co.monterey.ca.us](mailto:vandeverek@co.monterey.ca.us))  
Martha Diehl ([mvdiehl@mindspring.com](mailto:mvdiehl@mindspring.com))

EXHIBIT 1

Conservation and Scenic Easement Deed

February 24, 1967

G 38428 495 PAGE 586

RECORDED AT REQUEST OF

COUNTY OF MONTEREY

MAR 3 8 57 AM '67

CONSERVATION AND SCENIC EASEMENT DEED

MONTEREY  
CALIFORNIA

REL 495 PAGE 586

THIS DEED made this 24th day of February, 1967

by and between the MONTEREY COUNTY FOUNDATION FOR CONSERVATION, a non-profit corporation, as Grantor, and the COUNTY OF MONTEREY, a political subdivision of the State of California, as Grantee.

W I T N E S S E T H:

WHEREAS, the said Grantor is the owner in fee of the real property hereinafter described, situate in the County of Monterey, State of California; and

WHEREAS, the said land of said Grantor has certain natural scenic beauty and existing openness; and

WHEREAS, the Board of Supervisors of the County of Monterey has recognized said natural beauty and existing openness and has suggested that Grantor preserve the same for the public benefit, and, therefore, Grantor and Grantee desire to preserve and conserve for the public benefit the natural condition and present state of use; and

WHEREAS, the said Grantor is willing to grant to the County of Monterey the scenic use as hereinafter expressed of the said land, and thereby protect, maintain, and enhance the present scenic beauty and existing openness by the restricted use and enjoyment of said property by the Grantor because of the imposition of the conditions hereinafter expressed.

NOW, THEREFORE, for and in consideration of the premises, the Grantor does hereby grant and convey unto the COUNTY OF MONTEREY an estate, interest and conservation and scenic easement in the real property described in Exhibit A, which is attached hereto and made a part hereof, of the nature and character and to the extent

11-38428

hereinafter expressed, to be and to constitute a servitude upon said real estate of the Grantor, which estate, interest, easement and servitude will result from the restrictions hereby imposed upon the use of said property by said Grantor, and to that end and for the purpose of accomplishing the intent of the parties hereto, said Grantor covenants on behalf of itself, its heirs, successors, and assigns with the said Grantee, its successors or assigns, to do and refrain from doing severally and collectively upon the Grantor's said property the various acts hereinafter mentioned.

Grantor reserves the right to make full use of said real property subject to the provisions of this scenic easement for all purposes which do not interfere with, impair, destroy, or detract from the scenic values preserved and conserved by this scenic easement, and Grantor specifically reserves the right to maintain and repair any facility which Grantor has heretofor constructed on said real property.

The restrictions hereby imposed upon the use of said property of the Grantor and the acts which said Grantor shall refrain from doing upon their said property in connection therewith are, and shall be, as follows:

1. That no structures of any kind will be placed or erected upon said described premises, except structures, lines and other facilities necessary to maintain a water, drainage or sewer system, utilities consisting of telephone, power, and cable television lines, utility roads necessary to serve same, under, on or over said land, bridges, fences, and other structures reasonably necessary and incidental to the construction, maintenance, and operation of an undeveloped scenic area, including but not limited to roads, riding and hiking trails, fireplaces and picnic areas.

2. That no advertising of any kind or nature shall be located on or within said property except that which may be located on said premises at the time of the execution of this deed.

3. That except for the construction, alteration, relocation and maintenance of roads and riding and hiking trails, the general topography of the landscape shall be maintained in its present condition and no excavation or topographic changes shall be made, except to prevent erosion or damage to the land.

4. Grantor reserves the right to enter upon the real property described in Exhibit A and to bring upon the land all necessary equipment and persons reasonably necessary to fire control, to construct fire roads and other improvements for the purpose of fire protection, and to take any actions reasonably necessary for fire protection; Grantor further reserves the right to enter upon the property and engage in fire prevention and brush control practices.

5. That no use of said described property which will or does materially alter the landscape or other attractive scenic features of said land other than those specified above shall be done or suffered.

6. If at any time the property herein described, or any portion thereof, shall be selected for condemnation by any public utility or any public agency, including the Grantee, then and in that event this conveyance, insofar as it affects the property to be condemned, shall become null and void. Selection of said property shall be determined upon the filing of any action for taking or condemnation of said property, or any portion thereof, in a Court of competent jurisdiction. Upon the filing of any such action, this

conveyance, insofar as it affects the property so selected for condemnation, shall immediately cease and determine and revert to and vest in the Grantor, its successors in interest, or assigns; the intent of this clause being that in the event of condemnation of the subject property, or any portion thereof, Grantor, or its successors in interest or assigns, are to be compensated in accordance with the market value of said property, said market value to be determined by the highest and best use of said property without reference to this conveyance.

7. In the event that the State of California, or any political subdivision thereof, should pass legislation pursuant to Article XXVIII of the Constitution of the State of California, or should pass legislation such as the California Land Conservation Act of 1965, or other legislation for the purpose of restricting the use of real property to conserve and maintain natural scenic beauty, open space lands, natural resources and agricultural land for plant and animal production, which said legislation shall restrict, or would by agreement of Grantor or its successors in interest restrict, the use of said property for scenic and recreational uses or for the use of natural resources or for the production of food and fiber, the Grantor, or its successors in interest, shall have the option to have the property described in Exhibit A, or a portion thereof, subjected to the restrictions created by such legislation, free from the restrictions imposed by this conveyance. Should Grantor, or its successors in interest, desire to exercise the option to, restrict the use of a portion of or all of said real property pursuant to such legislation, Grantor, or its successors in interest, shall give written notice to Grantee of the exercise of said option.

Upon the giving of such notice, this conveyance, as to the portion of the property subjected to such legislation or which will be subject to such legislation by the agreement of Grantor, or its successors in interest, shall immediately cease and determine and revert to and vest in the Grantor, or its successors in title, upon becoming subject to such legislation; the intent of this clause being that in the event that the subject property, or a portion thereof, shall become restricted pursuant to such legislation, that the restrictions placed upon Grantor, or its successors in title, on said real property shall become null and void and of no further force and effect.

To have and to hold unto the said County of Monterey, its successors and assigns forever. This grant shall be binding upon the heirs and assigns of the said Grantor and shall constitute a servitude upon the property described in Exhibit A hereto. The parties, or their successors in interest, however, reserve the right to modify, upon terms mutually satisfactory, the provisions of this agreement and Grantee shall have the right to reconvey to Grantor, or its successors in interest, the interest herein granted in whole or in part.

IN WITNESS WHEREOF, the parties hereto have set their hands and seal the day and year first hereinabove written.

MONTEREY COUNTY FOUNDATION FOR CONSERVATION

BY [Signature]  
President

BY [Signature]  
Secretary

"Grantor"



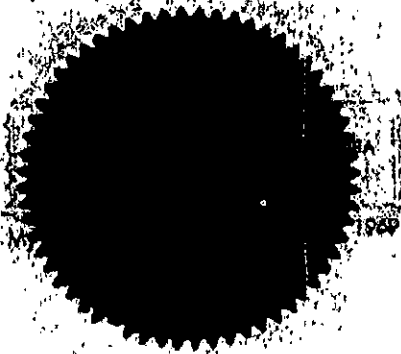
COUNTY OF MONTEREY

BY [Signature]  
Chairman of the Board of Supervisors

"Grantee"

STATE OF CALIFORNIA  
Monterey

County of \_\_\_\_\_  
On this 24th day of February in the year one thousand nine hundred and sixty-seven  
before me, Peter T. Hoss Notary Public in and for the \_\_\_\_\_



County of Monterey State of California, residing therein,  
duly commissioned and sworn, personally appeared Dwight Swin and  
Bayford O. Butler

known to me to be the President and Secretary

of the corporation described in and that executed the within instrument, and also known to me to be  
the person who executed the within instrument on behalf of the corporation therein named,  
and acknowledged to me that such corporation executed the within instrument pursuant to its  
by-laws or a resolution of its Board of Directors.

IN WITNESS WHEREOF I have hereunto set my hand and affixed my official seal in the

County of Monterey the day and year in this  
certificate first above written.

Notary Public in and for the \_\_\_\_\_ County of Monterey State of California.

My Commission Expires \_\_\_\_\_

CORPORATION  
ATTORNEYE PRINTING SUPPLY FORM NO. 7

STATE OF CALIFORNIA  
COUNTY OF MONTEREY

ss

On this 28th day of February, 1967, before me,  
EMMET G. McMENAMIN, County Clerk in and for said County and  
State, personally appeared Warren Church  
known to me to be the Chairman of the Board of Supervisors  
of the County of Monterey and known to me to be the person who  
executed the within instrument on behalf of said public  
corporation, agency or political subdivision, and acknowledged  
to me that said political subdivision executed the same.



EMMET G. McMENAMIN, Clerk

By Allen H. Fanning  
Deputy

## EXHIBIT "A"

All that certain real property situate in the County of Monterey, State of California, to-wit:

BEING portions of the lands generally known as "Carmel Highlands Property" (reference being made to "Map of a part of Carmel Highlands Property, showing survey lines of a part of Rancho San Jose Y Sur Chiquito, Monterey Co., Calif.," recorded May 15, 1918 in Volume 1 of Surveys, page 93, in the office of the Recorder of Monterey County, California, and to "Map No. 3 of a part of Carmel Highlands Property, showing survey lines of a part of Rancho San Jose Y Sur Chiquito, Monterey County, California", recorded May 2nd, 1925 in Volume 3 of Surveys, page 103, in the office of the Recorder of Monterey County, California), described as follows:

PARCEL 1:

BEGINNING at a point in the Easterly line of that tract of land, conveyed by Carmel Development Company, a corporation, to Margaret H. Kilpatrick by deed dated November 21, 1927 and recorded January 30, 1928 in Volume 137 Official Records at Page 434, Monterey County Records, at point from which Station K-39 bears North 6° 33' East, 1032.33 feet; thence from said point of beginning running

S. 6° 33' E., 29.67 feet to a station, thence

S. 58° 53' W., 115.81 feet to a station, thence

S. 22° 18' W., 174.19 feet to a station, thence

S. 32° 52' W., 128.91 feet to a station, thence

S. 12° 28' W., 198.36 feet to a station, thence

S. 34° 50' W., 91.11 feet to a station, thence

S. 62° 11' W., 190.12 feet to a station, thence

S. 1° 59' W., 73.92 feet to a station, thence

S. 54° 48' W., 173.06 feet to the northernmost corner of that

certain tract of land conveyed to William Charles Butcher, and Marietta Search Butcher, his wife, dated March 29, 1923 and recorded April 11, 1923 in Volume 16 Official Records of Monterey County, Page 12, thence following the northwesterly line of said Butcher property,

S. 61° 30' W., 96.95 feet,

S. 54° 36' W., 57.82 feet, and

S. 48° 57' W., 200.63 feet to station in road; thence

N. 12° 38' W., 153.80 feet, thence

N. 6° 50' E., 199.48 feet to the southeasterly corner of that

certain tract of land conveyed to Preston W. Search, by Deed dated May 26, 1927 and recorded August 23, 1927 in Volume 124 Official Records, Monterey County, Page 59, thence following the boundary of the said Search property.

N. 28° 26' W., 84.03 feet,

N. 23° 21' E., 78.05 feet,

N. 63° 21' W., 137.00 feet, and

N. 33° 49' W., 87.15 feet to the most Northerly corner of said

Search property, thence

N. 35° 33' E., 98.57 feet to the southeasterly corner of that certain tract of land conveyed to Claire M. Puffer, by Deed dated August 12, 1923 and recorded August 28, 1923 in Volume 21 of Official Records, Monterey County, Page 452, thence N. 41° 48' E., 146.09 feet, thence

N. 9° 56' E., 86.40 feet, thence

N. 11° 12' E., 149.73 feet, thence

N. 82° 31' E., 80.99 feet, thence

N. 15° 12' E., 54.72 feet, thence

N. 63° 02' E., 77.20 feet, thence

N. 3° 55' E., 92.10 feet, thence

N. 37° 11' E., 70.22 feet, thence

N. 86° 27' E., 127.90 feet, thence

N. 32° 34' E., 211.36 feet to a Station R-16, as shown on said

Map No. 3 thence

N. 60° 08' E., 199.76 feet to Station T-21, thence along the

T-Survey

N. 73° 11' E., 214.78 feet to Station T-20; thence

N. 83° 29' E., 92.72 feet to Station T-19; thence

N. 44° 52' E., 43.13 feet to Station T-18; thence

S. 87° 45' E., to a point on the East line of said tract conveyed

to Margaret H. Kilpatrick by deed recorded in Volume 137 Official Records at Page 434 above referred to and from which point said Station K-39 bears N. 6° 33' E., thence along the said East line S. 6° 33' W., to the point of beginning.

Subject to the right of way for road purposes as reserved in the deed from Carmel Development Company, a corporation, to Margaret H. Kilpatrick dated November 21, 1927 and recorded January 30, 1928 in Volume 137 Official Records at Page 434, Monterey County Records.

#### PARCEL 2:

BEGINNING at the most southerly corner of that certain tract of land conveyed to Preston W. Search, by the Carmel Development Company, a corporation, by deed dated May 26, 1927 and recorded August 23, 1927 in Volume 124 of Official Records, Monterey County, California, at Page 59; running thence S. 0° 55' E., 128.77 feet; thence S. 19° 04' E., 226.73 feet; thence N. 87° 25' E., 58.14 feet; thence N. 11° 34' W., 71.70 feet; thence N. 12° 38' W., 151.80 feet; thence N. 6° 50' E., 199.48 feet; thence S. 55° 52' W., 141.26 feet; to the point of beginning.

SUBJECT to right of way for road purposes over strips of land 12½ feet wide adjoining the Easterly and Westerly sides of said land which were reserved for road purposes in deed from Carmel Development Company to Margaret H. Kilpatrick, recorded in Volume 139 Official Records, at Page 279, Monterey County Records.

*Before the Board of Supervisors in and for the  
County of Monterey, State of California*

Resolution No. 67-73 --  
Conservation and Soano Easement Deed  
(Monterey County Foundation for  
Conservation) Accepted; Chairman  
Authorized to Execute Deed . . . . .

BE IT RESOLVED that the deed dated February 24,  
1967, executed by Monterey County Foundation for Con-  
servation, as Grantor, is hereby accepted and the  
Chairman is hereby authorized to execute said Deed.

BE IT FURTHER RESOLVED that this Deed is accepted  
with the understanding that the area described therein  
will not be used for credit as open space for an  
adjoining development.

PASSED AND ADOPTED this 28th day of February,  
1967, upon motion of Supervisor Hudson, seconded by  
Supervisor Atteridge, and carried by the following vote,  
to-wit:

AYES: Supervisors Church, Atteridge, Wood,  
Anderson and Hudson.

NOES: None.

ABSENT: None.

COUNTY OF MONTEREY,  
STATE OF CALIFORNIA.

I, ERNEST G. McMERAMIN, County Clerk and ex-officio Clerk of the Board of Supervisors of the County of Mon-  
terey, State of California, hereby certify that the foregoing is a full, true and correct copy of an original order of said  
Board of Supervisors duly made and entered in the minutes thereof at page \_\_\_\_\_ of Minute Book \_\_\_\_\_, on the  
28th day of February, 1967, and now remaining of record in my office.

Witness my hand and the seal of said Board of Supervisors this 28th day of February, 1967.

ERNEST G. McMERAMIN,  
County Clerk and ex-officio Clerk of the Board  
of Supervisors, County of Monterey, State of  
California.

By Elizabeth A. Green  
Deputy.

"END OF DOCUMENT"

EXHIBIT 2

Notice of Termination

December 21, 1990

RECORDING REQUESTED BY and  
WHEN RECORDED RETURN TO

Mr. and Mrs. Walter Warren  
P. O. Box 533  
Carmel, California 93921

13	11
M	1
3F	9
12	1

74179

WALTER WARREN  
Dec 24 8 34 AM '90  
OFFICE OF RECORDER  
COUNTY OF MONTEREY  
SALINAS, CALIFORNIA

REEL 2590 PAGE 780

NOTICE OF TERMINATION OF CONSERVATION  
AND SCENIC EASEMENT DEED

The undersigned, as successor in interest to the Grantor under that certain Conservation and Scenic Easement Deed to Monterey County, dated February 24, 1967, recorded on Reel 495 at Page 586 of the Official Records of Monterey County ("Said Easement Deed"), a copy of which is attached hereto and incorporated herein as Exhibit "A", does hereby give notice pursuant to Article 7 of Said Easement Deed, that it exercises its option to terminate Said Easement Deed in its entirety, effective as of this date, and Said Easement Deed, in accordance with its terms, is hereby rendered null and void and of no further force or effect.

This Notice of Termination is based upon the enactment of the California Coastal Act (Public Resources Code §§10,000 - 10,900), the qualifying legislation, which fully meets all of the goals and objectives of the Grantor, and authorizes termination of Said Easement Deed as expressly set forth therein.

Dated: December 21, 1990

Walter Warren  
Walter Warren

Loretta Warren  
Loretta Warren

State of California )  
County of Monterey ) ss.



On this 21st day of December, 1990, before me the undersigned, a Notary Public in and for said County and State, personally appeared WALTER WARREN and LORETTA WARREN, personally known to me or proved to me on the basis of satisfactory evidence to be the persons whose name is subscribed to the within instrument and acknowledged that he executed the same.

Charles Bishop  
NOTARY PUBLIC

Q 36428 495 ME 586

(111111) 1111111111

COUNTY OF MONTEREY

Mar 3 8 57 AM '67

CONSERVATION AND SCENIC PRESERVATION DEED

Q 36428 495 ME 586

THIS DEED made this 21th day of February, 1967,

by and between the MONTEREY COUNTY FOUNDATION FOR CONSERVATION, a non-profit corporation, as Grantor, and the COUNTY OF MONTEREY, a political subdivision of the State of California, as Grantee.

WITNESSETH:

WHEREAS, the said Grantor is the owner in fee of the real property hereinafter described, situate in the County of Monterey, State of California; and

WHEREAS, the said land of said Grantor has certain natural scenic beauty and existing openness; and

WHEREAS, the Board of Supervisors of the County of Monterey has recognized said natural beauty and existing openness and has suggested that Grantor preserve the same for the public benefit; and, therefore, Grantor and Grantee desire to preserve and conserve for the public benefit the natural condition and present state of use; and

WHEREAS, the said Grantor is willing to grant to the County of Monterey the scenic use as hereinafter expressed of the said land, and thereby protect, maintain, and enhance the present scenic beauty and existing openness by the restricted use and enjoyment of said property by the Grantor because of the imposition of the conditions hereinafter expressed;

NOW, THEREFORE, for and in consideration of the premises the Grantor does hereby grant and convey unto the COUNTY OF MONTEREY as estate, interest and conservation and scenic easement in the real property described in Exhibit A, which is attached hereto and made a part hereof, of the nature and character and to the extent

NR 493 NW 587

hereinafter expressed, to be and to constitute a servitude upon said real estate of the grantor, which estate, interest, easement and servitude will result from the restrictions hereby imposed upon the use of said property by said grantor, and so that and for the purpose of accomplishing the intent of the parties hereto, said grantor covenants on behalf of itself, its heirs, successors, and assigns with the said grantee, its successors or assigns, to do and refrain from doing severally and collectively upon the grantor's said property the various acts hereinafter mentioned.

Grantor reserves the right to make full use of said real property subject to the provisions of this scenic agreement for all purposes which do not interfere with, impede, destroy, or detract from the scenic values preserved and conserved by this scenic agreement, and grantor specifically reserves the right to maintain and repair any facility which grantor has heretofore constructed on said real property.

The restrictions hereby imposed upon the use of said property of the grantor and the acts which said grantor shall refrain from doing upon their said property in connection therewith are, and shall be, as follows:

1. That no structures of any kind will be placed or erected upon said described premises, except structures, lines and other facilities necessary to maintain a water, drainage or power system, utilities consisting of telephone, power, and cable television lines, utility roads necessary to serve same, under, on or over said land, bridges, fences, and other structures reasonably necessary and incidental to the construction, maintenance, and operation of an undeveloped scenic area, including but not limited to roads, riding and hiking trails, fireplaces and picnic areas.

EN 485-24 588

2. That no advertising of any kind or nature shall be located on or within said property except that which may be located on said premises at the time of the execution of this deed.

3. That except for the construction, alteration, relocation and maintenance of roads and riding and hiking trails, the general topography of the landscape shall be maintained in its present condition and no excavation or topographic changes shall be made, except to prevent erosion or damage to the land.

4. Grantor reserves the right to enter upon the real property described in Exhibit A and to bring upon the land all necessary equipment and persons reasonably necessary to fire control, to construct fire roads and other improvements for the purpose of fire protection; and to take any actions reasonably necessary for fire protection; Grantor further reserves the right to enter upon the property and engage in fire prevention and brush control practices.

5. That no use of said described property which will or does materially alter the landscape or other attractive scenic features of said land other than those specified above shall be done or suffered.

6. If at any time the property herein described, or any portion thereof, shall be selected for condemnation by any public utility or any public agency, including the State, then and in that event this conveyance, insofar as it affects the property to be condemned, shall become null and void. Selection of said property shall be determined upon the filing of any action for taking or condemnation of said property, or any portion thereof, in a court of competent jurisdiction. Upon the filing of any such action, this

EXH 483 VOL 369

conveyance, insofar as it affects the property so selected for condemnation, shall immediately cease and determine and revert to and vest in the grantor, its successors in interest, or assigns; the intent of this clause being that in the event of condemnation of the subject property, or any portion thereof, grantor, or its successors in interest or assigns, are to be compensated in accordance with the market value of said property, said market value to be determined by the highest and best use of said property without reference to this conveyance.

7. In the event that the State of California, or any political subdivision thereof, should pass legislation pursuant to Article XXVIII of the Constitution of the State of California, or should pass legislation such as the California Land Conservation Act of 1966, or other legislation for the purpose of restricting the use of real property to conserve and maintain natural scenic beauty, open space lands, natural resources and agricultural land for plant and animal production, which said legislation shall restrict, or would by agreement of grantor or its successors in interest restrict, the use of said property for scenic and recreational uses or for the use of natural resources or for the production of food and fiber, the grantor, or its successors in interest, shall have the option to have the property described in Exhibit A, or a portion thereof, subjected to the restrictions created by such legislation, free from the restrictions imposed by this conveyance. Should grantor, or its successors in interest, desire to exercise the option to restrict the use of a portion of or all of said real property pursuant to such legislation, grantor, or its successors in interest, shall give written notice to Grantee of the exercise of said option.

MR 485742 580

Upon the giving of such notice, this conveyance, as to the portion of the property subjected to such legislation or which will be subject to such legislation by the consent of grantor, or its successors in interest, shall immediately cease and determine and revert to and vest in the grantor, or its successors in title, upon becoming subject to such legislation the intent of this clause being that in the event that the subject property, or a portion thereof, shall become restricted pursuant to such legislation, that the restrictions placed upon grantor, or its successors in title, on said real property shall become null and void and of no further force and effect.

To have and to hold unto the said County of Monterey, its successors and assigns forever. This grant shall be binding upon the heirs and assigns of the said grantor and shall constitute a servitude upon the property described in Exhibit A hereto. The parties, or their successors in interest, however, reserve the right to modify, upon terms mutually satisfactory, the provisions of this agreement and grantee shall have the right to reconvey to grantor, or its successors in interest, the interest herein granted in whole or in part.

IN WITNESS WHEREOF, the parties hereto have set their hands and seal the day and year first hereinabove written.

MONTEREY COUNTY FOUNDATION FOR CONSERVATION

BY [Signature]  
President  
BY [Signature]  
Secretary

"GRANTOR"



COUNTY OF MONTEREY

BY [Signature]  
Chairman of the Board of Supervisors

"GRANTEE"

**McDougal, Melissa x5146**

---


**From:** Quenga, Anna V. x5175  
**Sent:** Tuesday, August 22, 2017 12:47 PM  
**To:** McDougal, Melissa x5146  
**Subject:** FW: Please do not allow development on the De Amaral Preserve

Please add this email to the Collins PC correspondence.

Thanks,

Anna V. Quenga, Associate Planner  
Current Planning  
Monterey County RMA-Planning  
1441 Schilling Place ~ South Building Second Floor  
Salinas, CA 93901  
(831) 755-5175 work (831) 757-9516 fax  
[www.co.monterey.ca.us/pbj](http://www.co.monterey.ca.us/pbj)

HEARING SUBMITTAL	
PROJECT NO. AGENDA	FW130839 #15
DATE RECEIVED	8/22/17
SUBMITTED BY	Public Email
DISTRIBUTION TO DATE	PC 8/22/17
DATE OF HEARING	8/30/17

 Please consider the environment before printing this e-mail

**From:** Robert Danziger [mailto:bobdanziger@mac.com]  
**Sent:** Tuesday, August 22, 2017 12:44 PM  
**To:** Rochester, Don <RochesterD@co.monterey.ca.us>; Quenga, Anna V. x5175 <QuengaAV@co.monterey.ca.us>; Martha V Diehl <mvdiehl@mindspring.com>; Vandevere, Keith <VandevereK@co.monterey.ca.us>; Hert, Luther <HertL1@co.monterey.ca.us>; amydroberts@gmail.com; mduflock@gmail.com; Getzelman, Paul C. <GetzelmanPC@co.monterey.ca.us>; Padilla, Cosme <PadillaC1@co.monterey.ca.us>; ambrizana@gmail.com; Mendez, Jose <MendezJ@co.monterey.ca.us>  
**Cc:** Gwyn De Amaral <califwayoflife@aol.com>  
**Subject:** Please do not allow development on the De Amaral Preserve

I join Gwyn de Amaral in opposing the Development Application and hope that you deny the application and start working in accordance with the Local Coastal Plan on this and other matters such as Short-term rentals and Special Events.

Thank you,

Bob Danziger  
Carmel Highlands

The current application proposes to construct a residence on extremely steep slopes located in a 30-acre parcel (APN 241-021-007) that the applicant acquired in 1994. In December 1966, those 30 acres of land were donated to the Monterey County Foundation for Conservation by Mr. N.J. D'Ambrogio, a local landowner, in memory of my father Carmel Highlands residence Major Frank De Amaral who died in Vietnam October 4, 1965.

**McDougal, Melissa x5146**

**From:** Quenga, Anna V. x5175  
**Sent:** Tuesday, August 22, 2017 2:23 PM  
**To:** McDougal, Melissa x5146  
**Subject:** FW: PLN 130339 Collins

HEARING SUBMITTAL	
PROJECT NO. / AGENDA NO.	PLN 130339 #65
DATE RECEIVED	8/22/17
SUBMITTED BY VIA	Public email
DISTRIBUTION TO DATE	PC 8/23/17
DATE OF HEARING	8/30/17

Please add this to the PC comments.

Thanks,

Anna V. Quenga, Associate Planner  
Current Planning  
Monterey County RMA-Planning  
1441 Schilling Place ~ South Building Second Floor  
Salinas, CA 93901  
(831) 755-5175 work (831) 757-9516 fax  
[www.co.monterey.ca.us/pbi](http://www.co.monterey.ca.us/pbi)



Please consider the environment before printing this e-mail

**From:** Annie [mailto:annmarieborelli@gmail.com]  
**Sent:** Tuesday, August 22, 2017 2:21 PM  
**To:** Quenga, Anna V. x5175 <QuengaAV@co.monterey.ca.us>  
**Cc:** John J Borelli <johnjborelli@gmail.com>; Ann-Marie Borelli <annmarieborelli@gmail.com>  
**Subject:** PLN 130339 Collins

To Whom it May Concern,

We have grave concerns about the proposed development of 83 Mount Devon Road.

We are opposed to the proposed rezoning and development of the De Amaral Preserve.

Our concerns are:

1. Rezoning the land: There is no good reason to permit this rezoning on land that was specifically set aside, and preserved, as an open space memorial for more than 50 years.
2. Granting Variances: The count would have to grant both slope and set-back variances. That will create a dangerous precedent for future construction and excavation in the Carmel Highlands area that will result in long-lasting environmental
3. Logistics: The effects of dump trucks hauling hundreds of tons of excavated material down Mt Devon, Fern Canyon and other narrow roads creates a hazardous situation for residents and will likely result in damaging the these residential roads

Please feel free to contact us with any questions.

John and Ann-Marie Borelli  
43 Mount Devon Road


## McDougal, Melissa x5146

**From:** Quenga, Anna V. x5175  
**Sent:** Wednesday, August 23, 2017 1:13 PM  
**To:** McDougal, Melissa x5146  
**Subject:** FW: PLN 130339

Please add this email to the PC comments for Collins.

Thanks,

Anna V. Quenga, Associate Planner  
Current Planning  
Monterey County RMA-Planning  
1441 Schilling Place ~ South Building Second Floor  
Salinas, CA 93901  
(831) 755-5175 work (831) 757-9516 fax  
[www.co.monterey.ca.us/pbi](http://www.co.monterey.ca.us/pbi)

 Please consider the environment before printing this e-mail

HEARING SUBMITTAL	
PROJECT NO / AGENDA	PLN 130339 #5
DATE RECEIVED	8/23/17
SUBMITTED BY VIA	Public email
DISTRIBUTION TO DATE	8/24/17
DATE OF HEARING	8/30/17

**From:** linda uffenheimer [mailto:l.uffenheimer@gmail.com]  
**Sent:** Wednesday, August 23, 2017 1:06 PM  
**To:** Quenga, Anna V. x5175 <QuengaAV@co.monterey.ca.us>  
**Subject:** PLN 130339

Dear Ms. Quenga,

As residents of 35 Mount Devon Road, Carmel Highlands, CA, we are alarmed to hear of the proposed development to the property at 83 Mount Devon Road, on many different levels.

Most distressing is the intended violation of the original easement to create a permanent preserve for benefit to the public, in memory of Major Frank DeAmaral. This preserve is an honor to an American who died serving his country in the Vietnam War. Having very recently visited South East Asia, including both the northern and southern areas of Vietnam, and witnessing the destruction of cultures that the US sought to preserve by entering this conflict, the heroism of Major DeAmaral is of great consequence to us.

We are in receipt of a letter sent to you from the law offices of Mr. Gary L. Fontana, dated August 7, 2017, which outlines the intent of the creation of this space. It also delineates the history of this parcel since its placement in trust to the County of Monterey. We feel it is the responsibility of our county administrators to hold dear the intended use of such gifts, and to honor the memory of a fallen hero.

Additional concerns, are current to ourselves and the residents of this neighborhood. Should development of this parcel be permitted, excavation to the property will most likely be required. Mount Devon Road is a narrow, winding road that is ill suited to traffic involving oversized vehicles. The presence of such equipment maneuvering through these roads is a hazard to the safety of the residents, especially in an area where fire danger is so severe. Moreover, the roads in this area have already suffered significant damage due to the heavy rains of last winter. Added stress due to movement of heavy equipment may result in the necessity of extremely costly road repair.

Further, excavation to the steep slopes to facilitate the proposed building, could result in instability to the hill sides. This could place properties of some of our neighbors in direct danger due to land slides and/or water damage from diversion of natural run-off.

We ask that you please take our concerns to heart, when considering the future of the DeAmaral Preserve, 83 Mount Devon Road.

Sincere regards,

Ken and Linda Uffenheimer  
35 Mount Devon Road  
Carmel, CA 93923

August 23, 2017

County of Monterey  
Resource Management Agency - Planning  
Attn: Anna V. Quengaa, Associate Planner  
168 West Alisal, 2<sup>nd</sup> Floor  
Salinas, CA 93901

HEARING SUBMITTAL	
PROJECT / COUNTY	PLN130339, #5
DATE	8/23/17
SUBMITTED VIA	Public, email
DISTRICT / DEPT	PC, 8/24/17
DATE OF HEARING	8/30/17

RE: PLN130339 - Neighbor Comment

Dear Ms. Quenga,

I am writing to you today to voice my strong opposition to the proposed single-family development at 83 Mount Devon Road, Carmel, CA. We reside immediately adjacent to the proposed development at 85 Mount Devon Road.

Our opposition is based on what appear to be very obvious restrictions against such a development. All of these restrictions were enacted by the county or appropriate legislature for meaningful and still enforceable reasons.

First and foremost, the land is not zoned for this type of structure.

Second, it appears this site has extreme slope and there are restrictions against building in such precipitous slopes.

Finally, we understand this land to be part of a tract of land that was deeded to a Conservation Easement during the 1960's strictly prohibiting any kind of development.

Any of these issues alone should strictly prevent any development at this location, taken as a whole I am not even sure how the project is being considered. Each of them are valid, reasonable, and to the best of our knowledge currently active restrictions to the planned development. It would be inexplicable for the Planning Commission to consider waiving even one of the above three issues, let alone all three, and I therefore strongly recommend the Planning Commission deny this application.

Thank you for your consideration.

Respectfully,

*Craig Descalzi*

Craig Descalzi  
85 Mount Devon Road

**McDougal, Melissa x5146**

---

**From:** Quenga, Anna V. x5175  
**Sent:** Thursday, August 24, 2017 3:12 PM  
**To:** McDougal, Melissa x5146  
**Subject:** FW: 83 Mount Devon Road

<b>HEARING SUBMITTAL</b>	
PROJECT NO / AGENDA	<u>PAU130829 #5</u>
DATE RECEIVED	<u>8/24/17</u>
SUBMITTED BY VIA	<u>Public email</u>
DISTRIBUTION TO DATE	<u>PC 8/26/17</u>
DATE OF HEARING	<u>8/30/17</u>

Please add this email to the PC Comments for Collins.

Thanks,

Anna V. Quenga, Associate Planner  
Current Planning  
Monterey County RMA-Planning  
1441 Schilling Place ~ South Building Second Floor  
Salinas, CA 93901  
(831) 755-5175 work (831) 757-9516 fax  
[www.co.monterey.ca.us/pbi](http://www.co.monterey.ca.us/pbi)



Please consider the environment before printing this e-mail

**From:** Paul Reps [mailto:preps@sbcglobal.net]  
**Sent:** Thursday, August 24, 2017 3:11 PM  
**To:** Quenga, Anna V. x5175 <QuengaAV@co.monterey.ca.us>  
**Cc:** Paul <preps@sbcglobal.net>  
**Subject:** 83 Mount Devon Road

Ms. Quenga,

Mr. Gary Fontana's letter justifies the reason this property should not be developed.

But as a neighbor who has suffered from down hill flooding and considerable damage to our house and property, I am truly concerned about the effects this will have on the entire neighborhood. I urge you to visit the site, look at our very narrow roads and see what dangers are presented with the amount of heavy machinery, trucks and when fully loaded, the damage that will be caused to our weak infrastructure.

When we approach another on coming car, one of us must yield to allow a vehicle to pass, if we were to encounter one of these trucks, we will have a real problem.

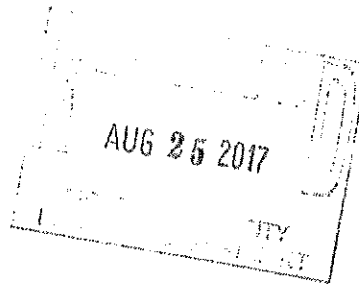
Please come out and personally assess this project while also reflecting on Mr. Fontana's letter to you.

Respectfully,

Paul M. Reps  
131 Cypress Way  
Carmel Highlands, CA 93923  
831-917-0999  
[preps@sbcglobal.net](mailto:preps@sbcglobal.net)

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August 22, 2017



County Of Monterey  
RMA- Planning  
Att : Anna Quenga ,Associate Planner  
168 West Alisal , 2 nd Floor  
Salinas Ca 93901

PUN130339

Ms Quenga & Monterey Planning Department ,

I strongly oppose development at 83 Mt. Devon Road ,Carmel Highlands. APN - 241 021 007.

This 30 acre preserve was left in Memory of my late husband, Major Frank De Amaral who was killed in action on October 4, 1965.

The 30 acre preserve was donated to Monterey County Foundation for Conservation by our friends Mr & Mrs N.J. D'Ambrogia on February 23, 1967. The Conservation and Scenic Easement was recorded and approved by the Monterey County Board of Supervisors and remains "intact" to this day. The "intent" was to preserve this Open Space land in recognition of the ultimate sacrifice my late husband gave to this country. The preserve was special to him as a child growing up in Carmel Highlands.

I strongly request that the planning board deny this project and continue to uphold the Conservation Scenic Easement. I would appreciate confirmation of this Email and would like to have my letter included with the Zoning Administration Packet for the meeting scheduled for Wednesday August 30, 2017.

(PLN 130339)

Thank you,

*Patricia De Amaral King*

Patricia De Amaral -King  
afgionti@aol.com,

<b>HEARING SUBMITTAL</b>	
PROJECT NO./AGENDA	PUN130339 #5
DATE RECEIVED	8/25/17
SUBMITTED BY VIA	Public Fax
DISTRIBUTION TO DATE	PC 8/25
DATE OF HEARING	8/30/17

HEARING SUBMITTAL	
PROJECT NO./AGENDA	PLN 130339 #5
DATE RECEIVED	8/25/17
SUBMITTED BY VIA	PLN 130339 US MAIL
DISTRIBUTION TO/DATE	PC 8/25/17
DATE OF HEARING	8/30/17

August 23, 2017

Opposition to Project: PLN 130339

Location: 83 Mt Devon Rd, Carmel Highlands

Parcel number: 241-021-007-000

Dear Anna Overge, Associate Planner and the Planning Commission,  
I am opposed to the above project.

I have lived in my home on Boyd Way (off Mt. Devon) for 47+ years with my husband. Al passed away in 2016. One reason I like living here is the peace and quiet I have. This will certainly be challenged with the traffic from building and dirt removal. Sound travel down hill right off the mountain. Someone talking at 83 Mt. Devon will sound like they are in my backyard.

I am very concerned that the quality of our lives will be hampered with this parcel being developed.

I have always believed that this property is the De Anaral Preserve in memory of Major Frank De Anaral who lost his life in Viet Nam in 1965. I often sit on his memorial bench and enjoy the peacefulness of where I am and feel grateful for his life, his service, and his family's gift.

I fear that if this property is developed, then many houses will be built. This seems totally against a family donating property as a memorial and then the land being exploited.

To me, this is very sad and not morally right.  
Please, don't set a precedent!

I am also concerned about emergency vehicles being able to get to their destinations quickly. During the Sobrano Fire, the fire trucks stopped using Mt. Devor because it is windy and narrow. Add increased traffic and the delays could cost a life.

During the heavy rains in the early nineties we experienced mudslides from Mt. Devor (up high) coming down onto properties on the lower part of Mt. Devor. If the lower part of Mt. Devor gets blocked, we have no exit. Removing a huge amount of dirt from a slope could cause more problems.

As you are probably aware there is a one-way section at the beginning of Mt. Devor. Having heavy dump trucks traveling up and down narrow Mt. Devor to a one-way stretch would become a public safety issue. On this one-way section of Mt. Devor oncoming traffic is obscured. Traffic coming down Mt. Devor can have a long way to back up to let traffic coming up to pass. Maybe the California Highway Patrol should weigh in on this issue.

I do not want to see the property rezoned or slope and set-back variances granted. They are in place for a reason.

Thank - you for hearing my concerns.  
I love where I am fortunate to live.

Sincerely,

Suzanne Weber  
145 Boyd Way  
Carmel, CA. 93923  
(831) 624-5963

My husband, Al Weber, was on the LUAC committee  
for many years.

## McDougal, Melissa x5146

**From:** Quenga, Anna V. x5175  
**Sent:** Friday, August 25, 2017 2:51 PM  
**To:** McDougal, Melissa x5146  
**Subject:** FW: My Devon Proposed Project

Please add this comment to the PC packet for Collins.

Thank you,

Anna V. Quenga, Associate Planner  
Current Planning  
Monterey County RMA-Planning  
1441 Schilling Place ~ South Building Second Floor  
Salinas, CA 93901  
(831) 755-5175 work (831) 757-9516 fax  
[www.co.monterey.ca.us/pbi](http://www.co.monterey.ca.us/pbi)



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HEARING SUBMITTAL	
PROJECT NO./AGEND	PN130389 / #5
DATE RECEIVED	8/25/17
SUBMITTED BY VIA	Public / email
DISTRIBUTION TO DATE	PC 8/25/17
DATE OF HEARING	8/30/17

**From:** Ronny Proler [mailto:[ronny.proler@gmail.com](mailto:ronny.proler@gmail.com)]  
**Sent:** Friday, August 25, 2017 6:33 AM  
**To:** Quenga, Anna V. x5175 <[QuengaAV@co.monterey.ca.us](mailto:QuengaAV@co.monterey.ca.us)>  
**Subject:** My Devon Proposed Project

I'm Ronny Proler, my wife Shauna and are Homeowners at 86 Mt Devon. We oppose this project! 1.Rezoning Issues  
2.Building on more than 30 degree slopes. 3. The proposed site was set aside and preserved for more than 50 years as  
an open space memorial . 4. Construction equipment and crews would hinder ingress and egress up and down an  
already very narrow one lane mountain switchback road stopping potential fire and emergency assistance to persons  
and property in need of immediate help .5 Massive excavation of Granite could certainly exacerbate landslide and  
watershed possibly issues to persons and property in lower neighboring areas.

PS. Please Don't Let Development Ruin Our Beautiful Mountain!

Ronny & Shauna Proler

--

- RP

713.875.7270

## **McDougal, Melissa x5146**

**From:** Nickerson, Jacquelyn x5240  
**Sent:** Monday, August 28, 2017 1:33 PM  
**To:** McDougal, Melissa x5146  
**Subject:** RE: Please see attached PDF regarding opposing plan130339/Maj Frank De Amaral Preserve

Ok, please cc me when you send things out to Planning Commissioners.

**From:** McDougal, Melissa x5146  
**Sent:** Monday, August 28, 2017 12:44 PM  
**To:** Nickerson, Jacquelyn x5240 <NickersonJ@co.monterey.ca.us>  
**Subject:** RE: Please see attached PDF regarding opposing plan130339/Maj Frank De Amaral Preserve

Yes, I have this to be sent the Planning Commissioners today with the stack I have received from this weekend and today.

Thank you,

Melissa McDougal  
Senior Secretary  
Monterey County  
Resource Management Agency  
1441 Schilling Place  
Salinas CA 93901  
Direct Line: (831) 755-5146  
Fax: (831) 757-9516

HEARING SUBMITTAL	
PROJECT NO. & NAME	PLAN 130339, #5
DATE RECEIVED	8/27/17
SUBMITTED BY VIA	Public email
DISTRIBUTION TO DATE	PC 8/28/17
DATE OF HEARING	8/30/17

**From:** Nickerson, Jacquelyn x5240  
**Sent:** Monday, August 28, 2017 11:25 AM  
**To:** McDougal, Melissa x5146 <McDougalM@co.monterey.ca.us>  
**Subject:** FW: Please see attached PDF regarding opposing plan130339/Maj Frank De Amaral Preserve

Did this get forward to PC? If not, please provide to them.

Thank you.

**From:** Holm, Carl P. x5103  
**Sent:** Sunday, August 27, 2017 7:07 AM  
**To:** Onciano, Jacqueline x5193 <oncianoj@co.monterey.ca.us>; Swanson, Brandon xx5334 <SwansonB@co.monterey.ca.us>; Quenga, Anna V. x5175 <QuengaAV@co.monterey.ca.us>  
**Cc:** Nickerson, Jacquelyn x5240 <NickersonJ@co.monterey.ca.us>; Strimling, Wendy <strimlingw@co.monterey.ca.us>  
**Subject:** Fw: Please see attached PDF regarding opposing plan130339/Maj Frank De Amaral Preserve

FYI, file, and PC distribution.

There is a question about how land dedicated entirely for open space got sold to a private individual. I know first hand how wording things can lead a new owner to change from what was expected historically (Mo's gas

station and Indian Springs Ranch subdivision), so make sure presentation highlights this side of the story (I do not recall this being part of presentation prep Thursday). Maybe you include this when you are talking about CCC table for BSI properties, conflicting information. PC needs to decide what direction to go, or maybe to allow less area (1 acre). Note when this applicant purchased the property and if there is anything in the title/deed restricting use to open space.

Maybe include a point in the presentation where Wendy can address legal implications: Is there a potential taking in this case if we do not allow the zone change for a SFR, or did the applicant have knowledge of the restriction whereby there should not have been any financial backed expectation? I think county staff has been clear all along that a SFR is not allowed as zoned...right? If not, and staff at gave information they could build a home prior to buying the property, we could have exposure for their costs to design and apply.

---

**From:** Califwayoflife <[califwayoflife@aol.com](mailto:califwayoflife@aol.com)>

**Sent:** Saturday, August 26, 2017 8:12 AM

**To:** Mark O'Shea

**Subject:** Please see attached PDF regarding opposing plan130339/Maj Frank De Amaral Preserve

Moi

## McDougal, Melissa x5146

**From:** Quenga, Anna V. x5175  
**Sent:** Monday, August 28, 2017 9:45 AM  
**To:** McDougal, Melissa x5146  
**Subject:** FW: Frank De Amaral Highlands preserve  
**Attachments:** De Amaral land preserve.docx

<b>HEARING SUBMITTAL</b>	
PROJECT NO./AGENDA	PN13039, #5
DATE RECEIVED	8/27/17
SUBMITTED BY/VIA	Public / email
DISTRIBUTION TO/DATE	PC 8/28/17
DATE OF HEARING	8/30/17

Please add this to the Planning Commission's comments for Collins.

Thank you,

Anna V. Quenga, Associate Planner  
Current Planning  
Monterey County RMA-Planning  
1441 Schilling Place ~ South Building Second Floor  
Salinas, CA 93901  
(831) 755-5175 work (831) 757-9516 fax  
[www.co.monterey.ca.us/phi](http://www.co.monterey.ca.us/phi)



Please consider the environment before printing this e-mail

**From:** M'Liz DEAMARAL [mailto:mdeamaral@hotmail.com]  
**Sent:** Sunday, August 27, 2017 9:12 PM  
**To:** Quenga, Anna V. x5175 <QuengaAV@co.monterey.ca.us>  
**Cc:** Rochester, Don <RochesterD@co.monterey.ca.us>; Mendez, Jose <MendezJ@co.monterey.ca.us>; ambrizana <ambrizana@gmail.com>; Padilla, Cosme <PadillaC1@co.monterey.ca.us>; Getzelman, Paul C. <GetzelmanPC@co.monterey.ca.us>; mduflock <mduflock@gmail.com>; amydroberts <amydroberts@gmail.com>; Hert, Luther <HertL1@co.monterey.ca.us>; Vandever, Keith <VandeverK@co.monterey.ca.us>; Martha Diehl <mvdiehl@mindspring.com>  
**Subject:** Frank De Amaral Highlands preserve

Dear Anna Quenga/ or whom it may Concern,

My father, Major Charles Frank De Amaral Jr., gave his life serving in the Vietnam War. In his honor, thirty acres of open land near Devon Road in the Highlands was gifted by the D'Ambrogio family to create a perpetual memorial in his name. "Frankie" grew up very near that land and it was a sweet reminder of his boyhood adventures and horseback rides throughout the Highlands.

I also have many sweet memories of riding horseback and hiking through the highlands with my brothers and stopping at this memorial site... sitting on the stone bench, reading the memorial plaque in his honor and remembering our father.

It is clear that protecting this perpetual memorial is both the legal and moral responsibility of Monterey County. Allowing desire for financial gain, apathy or lack of knowledge to potentially cause the loss of this land is unacceptable. As the land issues are clarified for everyone, I trust that no future attempts will be made to destroy this preserve and that our father's memory will continue to be honored and we may all enjoy the natural beauty of this scenic memorial area.

Sincerely,

Mary Elizabeth De Amaral

p.s. Please include my letter in the staff report and also confirm receipt of this email. Thank you. (Regarding PLN 130339 & APN is 241-021-007-000)

Dear Anna Quenga/ or whom it may Concern,

My father, Major Charles Frank De Amaral Jr., gave his life serving in the Vietnam War. In his honor, thirty acres of open land near Devon Road in the Highlands was gifted by the D'Ambrogio family to create a perpetual memorial in his name. "Frankie" grew up very near that land and it was a sweet reminder of his boyhood adventures and horseback rides throughout the Highlands.

I also have many sweet memories of riding horseback and hiking through the highlands with my brothers and stopping at this memorial site... sitting on the stone bench, reading the memorial plaque in his honor and remembering our father.

It is clear that protecting this perpetual memorial is both the legal and moral responsibility of Monterey County. Allowing desire for financial gain, apathy or lack of knowledge to potentially cause the loss of this land is unacceptable. As the land issues are clarified for everyone, I trust that no future attempts will be made to destroy this preserve and that our father's memory will continue to be honored and we may all enjoy the natural beauty of this scenic memorial area.

Sincerely,

Mary Elizabeth De Amaral

p.s. Please include my letter in the staff report and also confirm receipt of this email. Thank you.  
(Regarding PLN 130339 & APN is 241-021-007-000)

**McDougal, Melissa x5146**

---

**From:** Quenga, Anna V. x5175  
**Sent:** Monday, August 28, 2017 9:46 AM  
**To:** McDougal, Melissa x5146  
**Subject:** FW: PLN-130399 - Request for Procedural Clarification

Please add this to the Planning Commission comments for Collins.

Thank you,

Anna V. Quenga, Associate Planner  
Current Planning  
Monterey County RMA-Planning  
1441 Schilling Place ~ South Building Second Floor  
Salinas, CA 93901  
(831) 755-5175 work (831) 757-9516 fax  
[www.co.monterey.ca.us/pbl](http://www.co.monterey.ca.us/pbl)

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<b>HEARING SUBMITTAL</b>	
PROJECT NO./AGENDA	PLN130399 #5
DATE RECEIVED	8/28/17
SUBMITTED BY/VIA:	Rubio email
DISTRIBUTION TO/DATE:	PC 8/28/17
DATE OF HEARING:	8/30/17

**From:** Gary Fontana [mailto:gary@garyfontana.com]  
**Sent:** Sunday, August 27, 2017 6:50 PM  
**To:** Rochester, Don <RochesterD@co.monterey.ca.us>  
**Cc:** Vandevere, Keith <VandevereK@co.monterey.ca.us>; Onciano, Jacqueline x5193 <oncianoj@co.monterey.ca.us>; Quenga, Anna V. x5175 <QuengaAV@co.monterey.ca.us>; Gwyn De Amaral (califwayoflife@aol.com) <califwayoflife@aol.com>  
**Subject:** PLN-130399 - Request for Procedural Clarification

Dear Chairman Rochester:

I am writing to seek clarification regarding the procedures that the Planning Commission intends to follow in attempting to resolve the various factual and legal issues that have arisen with regard to the above application. In particular, I am concerned that the inquiry into the status of the Conservation and Scenic Easement which created the De Amaral Preserve in 1967 will require examination of deeds, statutory materials and other historic documents going back to the late 1960's. In order to make a decision on whether to issue the requested permits, the Planning Commission will have to interpret the easement and, likely, determine the intent of the Monterey County Foundation on Conservation when it drafted its terms. In addition, the Commission will be required to determine whether the purported Notice of Termination issued by a subsequent landowner, in 1990's, complied with the requirements established by the easement's terms.

The nature of the documents and the volume of material potentially involved is such that I would think the Planning Commission might wish to appoint a subcommittee to conduct a preliminary review of the documentation with the expectation that the subcommittee would prepare and submit its recommendations to the full Planning Commission at a later date. You may have other ideas about how best to address these issues, but it does not seem to me that anyone will benefit by a precipitous attempt to resolve the legal and factual issues surrounding the easement during the public hearing presently scheduled for Wednesday.

As I indicated in the email and letter that I sent to the Planning Department (Anna Quenga) last week, and copied to you and the other members of the Planning Commission, I understand the difficulty that the Planning Commission faces in attempting to resolve legal issues that go back 50 years. On behalf of my clients, the De Amaral Family, I am willing to assist the Commission (and its members) by making all of the documentation that we have collected available for

discussion and review and will do so in whatever manner you and the Commission believe is most appropriate. That said, if the objective is to make an informed, factually-correct decision, I do not believe that the Commission will be well served by having the scores of documents and statutory records identified in my letter of August 21<sup>st</sup> introduced at a public hearing without some sort of preliminary review.

Thank you for your consideration.

Gary Fontana



**GARY L. FONTANA**  
Attorney at Law

215 West Franklin Street, Suite 305  
Monterey, CA 93940  
Tel: (831) 204-8215  
Fax: (831) 851-9933  
Email: [gary@garyfontana.com](mailto:gary@garyfontana.com)

**McDougal, Melissa x5146**

---

**From:** Quenga, Anna V. x5175  
**Sent:** Monday, August 28, 2017 9:48 AM  
**To:** McDougal, Melissa x5146  
**Subject:** FW: Sierra Club opposition to PLN130339  
**Attachments:** County 8.2017.pdf

<b>HEARING SUBMITTAL</b>	
PROJECT NO./AGENDA	PLN130339, #5
DATE RECEIVED:	8/25/17
SUBMITTED BY/VIA:	Rita Dalessio email
DISTRIBUTION TO/DATE:	PC 8/28/17
DATE OF HEARING:	8/30/17

Please add this to the PC comments for Collins.

Thank you,

Anna V. Quenga, Associate Planner  
Current Planning  
Monterey County RMA-Planning  
1441 Schilling Place ~ South Building Second Floor  
Salinas, CA 93901  
(831) 755-5175 work (831) 757-9516 fax  
[www.co.monterey.ca.us/pbi](http://www.co.monterey.ca.us/pbi)



Please consider the environment before printing this e-mail

**From:** Rita Dalessio [mailto:puffin46@gmail.com]  
**Sent:** Friday, August 25, 2017 3:56 PM  
**To:** Quenga, Anna V. x5175 <QuengaAV@co.monterey.ca.us>  
**Cc:** Joel Weinstein <joelweinstein@sbcglobal.net>; Rita Dalessio <puffin46@gmail.com>; Gwyn De Amaral <preservcarmelhighlands@gmail.com>  
**Subject:** Sierra Club opposition to PLN130339

Dear Ms. Quenga,

Please forward the Sierra Club Ventana Chapter letter (attached) to the Planning Commission regarding PLN 130339 (Collins) scheduled for Wednesday, August 30.

Please note that we oppose this project which is proposed for a protected Conservation/Scenic easement in the California Coastal Zone in Carmel.

Thank you for your consideration of our request.

Best wishes,  
Rita Dalessio  
Conservation chair



SIERRA  
CLUB

FOUNDED 1892

VENTANA  
CHAPTER

FOUNDED 1963

County of Monterey  
Resource Management Agency-Planning  
Anna V. Quegna, Associate Planner  
168 West Alisal Street 2nd Floor  
Salinas, CA 93901

August 25, 2017

Dear Ms. Quenga,

**Re: PLN130339 (Collins)-Legal Issues Created by 1967 Conservation  
Easement and De Amaral Preserve**

Sierra Club Ventana Chapter represents 7,000 members on the central coast and has been working to protect wildlife, natural resources and habitat in Monterey County since our founding in 1963. We are writing this letter to express our opposition to the application to "RE-ZONE" the Major Frank De Amaral Preserve in Carmel Highlands. This beautiful parkland of Monterey Pine Forest was given to the Monterey County Foundation for Conservation in 1967 by Mr. & Mrs. N.J D'Ambrogia in memory of Major Frank De Amaral who died in combat in the Vietnam War.

The Conservation/Scenic Easement that has been in place for 50 years is quite specific. It was accepted by the Monterey County Board of supervisors on March 3, 1967 and it prohibits any development. The easement deed makes reference to the "natural beauty and existing openness."

This Scenic California Coastal Resource must be protected. Please DENY the application and protect the 30 acres of its natural, open space land as intended by law for future generations.

Thank you for your consideration of our request.

Sincerely,

*Joel Weinstein*  
Joel Weinstein  
Chapter chair

*To explore, enjoy, preserve and protect the nation's forests, waters, wildlife and wilderness*

**McDougal, Melissa x5146**

**From:** Quenga, Anna V. x5175  
**Sent:** Friday, August 25, 2017 3:41 PM  
**To:** McDougal, Melissa x5146  
**Subject:** FW: PLN130339

<b>HEARING SUBMITTAL</b>	
PROJECT NO./AGENDA	PLN130339 #5
DATE RECEIVED	8/25/17
SUBMITTED BY VIA	Public Email
DISTRIBUTION TO/DATE:	PC 8/28
DATE OF HEARING:	8/30/17

Please add this to the PC comments for Collins.

Thank you,

Anna V. Quenga, Associate Planner  
Current Planning  
Monterey County RMA-Planning  
1441 Schilling Place ~ South Building Second Floor  
Salinas, CA 93901  
(831) 755-5175 work (831) 757-9516 fax  
[www.co.monterey.ca.us/pbl](http://www.co.monterey.ca.us/pbl)



Please consider the environment before printing this e-mail

**From:** Michelle Alway [mailto:michellealway@gmail.com]  
**Sent:** Friday, August 25, 2017 3:39 PM  
**To:** Quenga, Anna V. x5175 <QuengaAV@co.monterey.ca.us>  
**Subject:** Fwd: PLN130339

**Cc:** Martha V Diehl <mvdiehl@mindspring.com>, vandeveerek@co.monterey.ca.us, rochesterd@co.monterey.ca.us, MendezJ@co.monterey.ca.us, ambriza1@co.monterey.ca.us, padillac1@co.monterey.ca.us, getzelmanpc@co.monterey.ca.us, mduflock@gmail.com, amydroberts@gmail.com, hertl1@co.monterey.ca.us

Re: PLN130339/83 Corona Road, Carmel Highlands

Dear Ms. Quenga,

I am a thirty-year resident of Carmel Highlands and have just become aware of the above referenced project at 83 Mt. Devon Road, Carmel Highlands.

I am adamantly opposed to any change of zoning or conservation status. This property should remain protected as open space, as was originally intended by the formation of the Major Frank DeAmaral Preserve, which includes protection of plants and wildlife. Such preserved land is invaluable, and should not be developed. It is important to preserve in perpetuity the special natural qualities of this open space.

I urge the County to protect our open-space land and not make further changes to the beauty and naturalness of Carmel Highlands and Monterey County.

Regards,  
Michelle Alway  
172 Sonoma Lane  
Carmel Highlands, CA 93923



SIERRA  
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VENTANA  
CHAPTER

FOUNDED 1963

County of Monterey  
Resource Management Agency-Planning  
Anna V. Quegna, Associate Planner  
168 West Alisal Street 2nd Floor  
Salinas, CA 93901

HEARING SUBMITTAL	
PROJECT NO (AGENDA)	PLN130339, #5
DATE RECEIVED	8/25/17
SUBMITTED BY VIA	Public email
DISTRIBUTION TO DATE	PC 8/28
DATE OF HEARING	8/30/17

August 25, 2017

Dear Ms. Quenga,

**Re: PLN130339 (Collins)-Legal Issues Created by 1967 Conservation  
Easement and De Amaral Preserve**

Sierra Club Ventana Chapter represents 7,000 members on the central coast and has been working to protect wildlife, natural resources and habitat in Monterey County since our founding in 1963. We are writing this letter to express our opposition to the application to "RE-ZONE" the Major Frank De Amaral Preserve in Carmel Highlands. This beautiful parkland of Monterey Pine Forest was given to the Monterey County Foundation for Conservation in 1967 by Mr. & Mrs. N.J D'Ambrogia in memory of Major Frank De Amaral who died in combat in the Vietnam War.

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Thank you for your consideration of our request.

Sincerely,

*Joel Weinstein*  
Joel Weinstein  
Chapter chair

*To explore, enjoy, preserve and protect the nation's forests, waters, wildlife and wilderness*

**McDougal, Melissa x5146**

---

**From:** Quenga, Anna V. x5175  
**Sent:** Tuesday, August 29, 2017 12:39 PM  
**To:** McDougal, Melissa x5146  
**Subject:** FW: Proposed change of Conservation & Scenic Deed from 1967 [83 Mount Devon Road ( APN 241-021-007-000)] // 130339  
**Attachments:** MAJ Frank De Amaral Preserve Mem Plaque 2.jpg

Please add this to the PC comments for Collins.

Thank you,

Anna V. Quenga, Associate Planner  
Current Planning  
Monterey County RMA-Planning  
1441 Schilling Place ~ South Building Second Floor  
Salinas, CA 93901  
(831) 755-5175 work (831) 757-9516 fax  
[www.co.monterey.ca.us/pbj](http://www.co.monterey.ca.us/pbj)

<b>HEARING SUBMITTAL</b>	
PROJECT NO / AGENDA	<u>Public Hearing #5</u>
DATE RECEIVED	<u>8/29/17</u>
SUBMITTED BY/VIA	<u>Public Email</u>
DISTRIBUTION TO/DATE	<u>PC 8/29</u>
DATE OF HEARING	<u>8/30/17</u>



Please consider the environment before printing this e-mail

**From:** Zane De Amaral [mailto:zanedeamaral@hotmail.com]  
**Sent:** Tuesday, August 29, 2017 12:13 PM  
**To:** Quenga, Anna V. x5175 <QuengaAV@co.monterey.ca.us>; ceqacomment <ceqacomment@co.monterey.ca.us>  
**Cc:** Gwyn De Amaral <califwayoflife@aol.com>; Meghan De Amaral <meghdeamaral@gmail.com>; Frank and Martha De Amaral <madfd@suddenlink.net>; M'Liz De Amaral <mdeamaral@hotmail.com>  
**Subject:** Fw: Proposed change of Conservation & Scenic Deed from 1967 [83 Mount Devon Road ( APN 241-021-007-000)] // 130339

Ms. Quenga,

I understand that a hearing is set regarding the recent land scheme. I want to strongly reaffirm my opposition to the effort to misuse the land in the Carmel Highlands donated by the D'Ambrogio's in the late 1960s as a "perpetual memorial" to my father who was killed in Vietnam as indicated in my previous email (28 APR 2017)

The land in question would have long ago been sold and developed had this been the intent, or a legal option to others, over the past in the fifty years. It was/is disappointing that someone is even attempting this dishonest/illegal effort. While this memorial could never offset the loss of my father it does bring some amount of comfort to me and others. I hope/trust that justice will prevail.

Monterey County Supervisor ,District 4 Jane Parker  
Mayor Steve Dallas, Carmel Ca  
Monterey County Military Affairs - 1000 S Main St # 107,  
Salinas, CA 93901  
Carl Holm, Acting Director Monterey County Resource  
Management

# MAJOR FRANK DE AMARAL MEMORIAL PRESERVE

THIS PINE FOREST PRESERVE WAS TRANSFERRED TO THE  
MONTEREY COUNTY FOUNDATION FOR CONSERVATION  
ON DECEMBER 13, 1966, BY N. J. DAMBOGIONE'S A  
VIRTUAL MEMORIAL TO MAJOR FRANK DE AMARAL  
OF THE UNITED STATES ARMY WHO DIED IN COMBAT  
IN VIETNAM ON OCTOBER 4, 1963.

**McDougal, Melissa x5146**

---

**From:** Quenga, Anna V. x5175  
**Sent:** Tuesday, August 29, 2017 2:50 PM  
**To:** McDougal, Melissa x5146  
**Subject:** FW: Re Frank De Amaral Preserve  
**Attachments:** Frank DeAmaral.pdf

<b>HEARING SUBMITTAL</b>	
PROJECT NO / AGENDA	PN 130339 #5
DATE RECEIVED:	8/29/17
SUBMITTED BY/VIA:	Public email
DISTRIBUTION TO/DATE:	PC 8/29/17
DATE OF HEARING:	8/30/17

Please add these comments to the Collins project.

Thanks,

Anna V. Quenga, Associate Planner  
Current Planning  
Monterey County RMA-Planning  
1441 Schilling Place ~ South Building Second Floor  
Salinas, CA 93901  
(831) 755-5175 work (831) 757-9516 fax  
[www.co.monterey.ca.us/pbi](http://www.co.monterey.ca.us/pbi)



Please consider the environment before printing this e-mail

**From:** Maura V. Kelley [mailto:maurakelley@gmail.com]  
**Sent:** Tuesday, August 29, 2017 2:34 PM  
**To:** Quenga, Anna V. x5175 <QuengaAV@co.monterey.ca.us>  
**Cc:** Rochester, Don <RochesterD@co.monterey.ca.us>; Mendez, Jose <MendezJ@co.monterey.ca.us>; Ana Abbriz <abbrizana@gmail.com>; Padilla, Cosme <PadillaC1@co.monterey.ca.us>; Getzelman, Paul C. <GetzelmanPC@co.monterey.ca.us>; Melissa Duflock <mduflock@gmail.com>; Amy D. Roberts <amydroberts@gmail.com>; Hert, Luther <HertL1@co.monterey.ca.us>; Vandever, Keith <VandeverK@co.monterey.ca.us>; Martha Diehl <mvdiehl@mindspring.com>  
**Subject:** Re Frank De Amaral Preserve

I submit the attached letter on behalf of my mother, Mary W. Kelley.

On a personal note, while Major De Amaral died in Vietnam long before I was born, my father never missed an opportunity to share a "Frankie" story.

A bit of history: My father (Richard Kelley) and grandmother moved to Carmel-by-the-Sea while my grandfather was stationed at Fort Ord. During the Pacific Theater, Frankie and the entire De Amaral family took my father and grandmother under their wing while my grandfather served overseas. As an only child, my father was treated as another member of the De Amaral family and considered Frankie the closest thing he had to a brother.

After the war, the Kelleys returned to New York. Dad developed polio in the fall of 1948 and as the son of a decorated Army general, was devastated to not be able to attend West Point and serve. Although they were divided by geography, Frankie and Dad continued to be great friends. Without a doubt, I know that Dad looked to Frankie as his own personal hero. Frankie was the California rancher-cowboy and soldier my New Yorker father always wanted to become. Frankie's tragic death in 1965 affected my father in a profound way. (My Mom never fails to remind us, not the birth of any of his five kids but, that only Frankie's death could make Dad cry.)

Throughout my life, Dad would share stories about Frankie and the De Amaral family. The stories of the De Amaral legacy in the Highlands and Frankie's service and dedication to this land should be memorialized in more than just our families shared memories. This land donation was not ever intended for residential or commercial development but to honor the memory of a man, for the public to enjoy (the way Frankie did) for generations to come.

I strongly urge the commission to deny this permit, and recommit to keeping the Frank De Amaral Preserve in the spirit with which this donation was originally made.

Thank you,  
Maura V. Kelley

p.s. - I ask that both my mother's letter and my note be part of the documents presented for the hearing tonight. We wish we could be there but my mother is 83 and her current health makes it difficult to make the journey down from the Bay Area.

Also if you would be so kind to, please confirm receipt of this email. I would greatly appreciate it.

=====

Maura V. Kelley  
(925) 270-9987

Re: Frank DeAmaral Preserve

This 30-acre parcel of land given as a donation to the people of Monterey County is a beautiful and lasting memento for a fellow citizen who gave his life for this country.

My name is Mary Kelley and I knew Frank when we were young and hopeful. I first met Frank while we were newlyweds (back in the 50's!) My husband, Richard (Dick) Kelley, grew up in Carmel and Frank DeAmaral was his childhood best friend. Growing up in the Highlands, Frank and Dick would roam the hills as young kids do. All who knew Frank, knew him as an avid outdoorsman; he was hunter and fisherman and would ride his horse all over this land.

To now turn this beautiful land into what amounts to a moneymaking scheme is a slur on the good people of Monterey and the memory of a man who stood tall when his country needed him.

Thank you for your time and thoughtful consideration on this matter.

  
Mary W. Kelley