

- f) The application, project plans, and related support materials submitted by the project applicant to Monterey County RMA-Planning for the proposed development are found in Project File PLN170428.

2. **FINDING:** **SITE SUITABILITY** – The site is physically suitable for the use proposed.

- EVIDENCE:**
- a) The project has been reviewed for site suitability by the following departments and agencies: RMA-Planning, RMA-Environmental Services, Carmel Highlands Fire Protection District (FPD), RMA-Public Works, Environmental Health Bureau, and Water Resources Agency. There has been no indication from these departments/agencies that the site is not suitable for the proposed development. Conditions recommended have been incorporated.
  - b) The subject parcel comprises a State Responsibility Area (SRA) ranked as high risk for fire damage. However, during review of the proposed project, Carmel Highlands FPD gave no indication the site would be unsuitable for implementation of the project.
  - c) The existing access to the parcel is via a shared winding paved driveway, from Highway 1. This will remain as access to the residence on the subject parcel without any changes.
  - d) The existing residential structure is to be demolished and remodeled with additional grading of approximately 240 cubic yards of cut and 22 cubic yards of fill for the newly constructed detached garage. In accordance with Carmel Area LUP Policy 2.2.3.7, the amount of excavation proposed for development is the minimal amount necessary for implementation of the proposed project.
  - e) The subject parcel does not drain into the Point Lobos Area of Special Biological Significance (ASBS). Notwithstanding, Condition #4 requests an engineered drainage plan that manages onsite impervious surface stormwater runoff. The drainage plan would be subject to review and approval by Monterey County Water Resources Agency.
  - f) Pursuant to Policy 2.7.4.3 of the Carmel Area LUP, a Geological report was required and was prepared by Brett Faust 6 November 2017 (File No. LIB180081). The report asserts the average bluff location appears consistent from the years 1949-2017 and any perceived change appears negligible. Therefore, the potential for bluff retreat to is considered low.
  - g) The existing structure on the subject parcel was constructed 50 or more years ago. Therefore, a Phase 1 Historic Review was requested and prepared by Kent L. Seavey (File No. LIB170179). The report indicates the structure meets none of the criteria for historical significance. Therefore, no further assessment is required.
  - h) Wastewater service for the single family dwelling will be served by the Carmel Area Wastewater District. Condition No. 28 has been incorporated to ensure the applicant demonstrates ability to hook-up into the wastewater system prior to issuance of construction permits.
  - hi) The application, project plans, and related support materials submitted by the project applicant to Monterey County RMA-

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**FINDING:**

**PUBLIC ACCESS** - The project is consistent with the ordinance related to public trust or public use, and is in conformance with the public access and public recreation policies of the Coastal Act and Local Coastal Program pursuant to 20.146.130 of Monterey County Code Title 20 Coastal Implementation Plan Part 4 for the Carmel Area Land Use Plan.

**EVIDENCE:**

- a) The subject parcel is located between the sea and the first through public road, State Highway 1. Therefore, in accordance with Section 20.70.050.B.4 of Title 20 Zoning Code for Monterey County Coastal Zone, the project is required to be in conformance with public access and public recreation policies of the Coastal Act.
- b) **20.70.050.B.4.a - Protection of Historic Access and/or Public Trust.** There is no established trail or use area, nor any beach subject to ocean waves seaward of the first line of vegetation. Therefore, implementation of the rebuilt single family dwelling would not interfere with any form of historic public use or trust rights.
- c) **20.70.050.B.4.b - Provision of Public Access.** There is an approximate 50 foot nearly vertical descent to the cove between the residence and Highway 1 and an approximate 30 foot nearly vertical ascent to the other side of the hill behind the residence westward. Therefore, the characteristic steepness of these potential access areas on the subject property would be inconsistent with public safety requirements pursuant to PRC Section 30212 of the California Coastal Act.
- d) **20.70.050.B.4.c(i) - Application of Access Requirements to Single Family Residential Development.** The characteristic steepness of potential shoreline access areas on the subject property pose a substantial adverse impact to the safety of public access. Therefore, public access shall not be required.

**12. FINDING:**

**APPEALABILITY** - The decision on this project may be appealed to the Board of Supervisors and to the California Coastal Commission (CCC).

- a) The subject parcel is located within 300 feet of the top of the seaward face of a coastal bluff. Therefore, in accordance with Section 20.86.080.A.1 of Title 20, a decision on this project may be appealed to the CCC.

**DECISION**

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

1. Adopt a Mitigated Negative Declaration;
2. Approve Combined Development Permit consisting of:
  - a) Coastal Administrative Permit and Design Approval for a 2,111 square foot two-story single family residence and 724 square foot detached garage, including:
    - i. Demolish existing 961 square foot single-story single-family residence
    - ii. Add 278 square feet of living area to the newly constructed first floor
    - iii. Add 872 square foot second story

- iv. Construct new 724 square foot detached two-car garage
- v. Construct 51 linear feet to existing retaining walls and planter
- vi. Plant garage roof with native vegetation
- vii. Grade approximately 240 cubic yards of cut and 22 cubic yards of fill, exporting 218 cy

b) Four Coastal Development Permits to allow development:

- i. Within 100 feet of environmentally sensitive habitat (ESHA);
- ii. Within 50 feet of a coastal bluff;
- iii. On slopes 30% or greater; and
- iv. Within 750 feet of known archaeological resources;

c) Three Variances including:

- i. New front setback variance reducing the main structure from 30 feet to 6-feet, 7-inches
- ii. New front setback variance reducing the non-habitable accessory structure (detached garage) from 50 feet to 5-feet, 5-inches;
- iii. Existing south side setback variance from 20 feet to 11 feet, 6 inches (Resolution No. BZ-67); and

3. Adopt a Mitigation Monitoring and Reporting Program.

All of which are in general conformance with the attached Plan set and subject to the twenty-one (21) Conditions of Approval and six (6) Mitigation Measures, all being attached hereto and incorporated herein by reference;

~~for Assessor's Parcel Number 241-182-020-000 (0.92 acres) in general conformance with the attached Plan set and subject to the twenty-one (21) Conditions of Approval and six (6) Mitigation Measures, all being attached hereto and incorporated herein by reference.~~

**PASSED AND ADOPTED** this 11<sup>th</sup> day of April 2018 upon motion of \_\_\_\_\_, seconded by \_\_\_\_\_, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

\_\_\_\_\_  
Jacqueline R. Onciano, Planning Commission Secretary

COPY OF THIS DECISION MAILED TO APPLICANT ON

THIS APPLICATION IS APPEALABLE TO THE BOARD OF SUPERVISORS.

IF ANYONE WISHES TO APPEAL THIS DECISION, AN APPEAL FORM MUST BE COMPLETED AND SUBMITTED TO THE SECRETARY OF THE PLANNING COMMISSION ALONG WITH THE APPROPRIATE FILING FEE ON OR BEFORE

This decision, if this is the final administrative decision, is subject to judicial review pursuant to California Code of Civil Procedure Sections 1094.5 and 1094.6. Any Petition for Writ of Mandate must be filed with the Court no later than the 90th day following the date on which this decision becomes final.



27. MM006 - NATIVE AMERICAN TRIBAL MONITOR ON-SITE DURING GROUND DISTURBANCE

Responsible Department: RMA-Planning

Condition/Mitigation  
Monitoring Measure:

The subject parcel is located in the aboriginal territory of Ohlone/Costanoan-Esselen Nation (OCEN). Pursuant to AB 52, tribal consultation took place regarding the proposed project. The outcome of the consultation with OCEN was a recommendation to have a Native American Monitor from OCEN, approved by the OCEN Tribal Council, be present onsite during project-related ground disturbance for the project. In order to ensure that Tribal Cultural Resources incur less than significant impacts, an OCEN-approved Monitor shall be onsite during project-related grading or excavation to no greater than 15 feet depth.

If the Monitor identifies a cultural resource, the applicant/owner shall immediately contact Monterey County RMA - Planning. When contacted, the project planner shall immediately visit the site to determine the extent of the resources and to develop proper mitigation measures required for recovery.

If human remains are accidentally discovered during construction, the following steps will be taken:

There shall be no further excavation or disturbance of the site or any nearby area reasonably suspected to overlie adjacent human remains until:

The coroner of the county in which the remains are discovered must be contacted to determine that no investigation of the cause of death is required, and

If the coroner determines the remains to be Native American:

- The coroner shall contact the Native American Heritage Commission and RMA - Planning within 24 hours.
- The Native American Heritage Commission shall identify the person or persons from a recognized local tribe of the Esselen, Salinan, Costanoans/ Ohlone and Chumash tribal groups, as appropriate, to be the most likely descendent.
- The most likely descendent may make recommendations to the landowner or the person responsible for the excavation work, for means of treating or disposing of, with appropriate dignity, the human remains and any associated grave goods as provided in Public Resources Code Section 5097.9 and 5097.993, or
- Where the following conditions occur, the landowner or his authorized representatives shall rebury the Native American human remains and associated grave goods with appropriate dignity on the property in a location not subject to further subsurface disturbance:

1. The Native American Heritage Commission is unable to identify a most likely descendent or the most likely descendent failed to make a recommendation within 48 hours after being notified by the commission.

2. The descendent identified fails to make a recommendation; or

3. The landowner or his authorized representative rejects the recommendation of the descendent, and the mediation by the Native American Heritage Commission fails to provide measures acceptable to the landowner.

(RMA - Planning)

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Compliance or  
Monitoring  
Action to be Performed:

Prior to issuance of construction permit for grading and/or building, Applicant/Owner shall submit to RMA-Planning a copy of a signed contract with an OCEN-approved onsite Cultural Resources Monitor. This Monitor shall be retained onsite for the duration of any project-related grading or excavation to a maximum depth of fifteen feet.

Owner/Applicant shall include requirements of this condition as a note on all grading and construction plans. The note shall state "Stop work within 50 meters (165 feet) of uncovered resource and immediately contact Monterey County RMA-Planning."

Owner/Applicant shall coordinate with the project planner and the Monitor to determine the extent of the resources and to develop proper mitigation measures required for recovery.

Prior to resuming any further project-related ground disturbance, Owner/Applicant shall coordinate with the project planner and the Monitor to determine a strategy for either return to the Tribe or reburial. Any artifacts found that are not associated with a skeletal finding shall be returned to the aboriginal tribe.

**28. PDSP003 – CONNECTION TO CARMEL AREA WASTEWATER DISTRICT**

Responsible Department: RMA-Planning

**Condition/Mitigation Monitoring Measure:** In accordance with the can and will serve letter for the project received by the Carmel Area Wastewater District (CAWD), the owner/applicant shall demonstrate the ability to hook-up into the wastewater system. Prior to final of building permit(s), the owner/applicant shall submit a letter prepared by the contractor of record and/or the Carmel Area Wastewater District verifying that the connection of wastewater service has been completed. (RMA-Planning)

**Compliance or Monitoring Action to be Performed:** Prior to issuance of building permit(s) for the single family dwelling, RMA-Planning shall verify that the owner/applicant has included information demonstrating a connection from the single family dwelling into the CAWD wastewater pipeline into their construction plans and/or application.

Prior to final of building permits(s) for the single family dwelling, the owner/applicant shall submit a letter, in writing, from the contractor of record and/or the CAWD demonstrating successful connection into the district's wastewater pipeline.

## 29. CC01 INDEMNIFICATION AGREEMENT

**Responsible Department:** County Counsel

**Condition/Mitigation  
Monitoring Measure:**

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

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

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

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