

Attachment A

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Attachment A
DRAFT RESOLUTION

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

In the matter of the application of:

COLLINS (PLN130339)

RESOLUTION NO. ----

Resolution by the Monterey County Board of
Supervisors:

- 1) Find the denial of the project statutorily exempt per Section 21080(b)(5) of the Public Resources Code and Section 15270(a) of the CEQA Guidelines; and
- 2) Deny the applicant's request to amend the Local Coastal Program to rezone the property from Resource Conservation [RC(CZ)] to Watershed and Scenic Conservation, Special Treatment, Coastal Zone [WSC/SpTr(CZ)], without prejudice to applicant to reapply for the rezone following a judicial determination that the Conservation and Scenic Easement Deed is no longer in effect.

[PLN130339, James G. Collins, 83 Mount Devon Road, Carmel, Carmel Area Land Use Plan (APN: 241-021-007-000)]

WHEREAS, on August 20, 2014, James G and Sook Collins, hereinafter referred to as the "Applicant," made an application for the rezone of a portion of a 30-acre parcel located at 83 Mount Devon Road, Carmel (Assessor's Parcel Number: 241-021-007-000) (hereafter "the subject property") from Resource Conservation, Coastal Zone [RC(CZ)] to Watershed and Scenic Conservation, Special Treatment, Coastal Zone [WSC/SpTr(CZ)], (hereafter referred to as "Rezone") and for a Combined Development Permit consisting of a Coastal Administrative Permit and Design Approval to allow construction of a 2,397 square foot two-story single family dwelling with a 409 square foot attached garage and 143 square foot mechanical room; a Coastal Administrative Permit to establish a domestic well; a Coastal Development Permit to allow the removal of one 14-inch and one 18-inch Monterey pine tree; a Coastal Development Permit to allow development within 100-feet of an environmentally sensitive area; and a Coastal Development Permit to allow development on slopes in excess of 30%, hereinafter referred to as "Combined Development Permit" (collectively: the "Collins application");

WHEREAS, on October 30, 2015, the Collins application (PLN130339) for the Rezone and Combined Development Permit was deemed complete;

WHEREAS, from March 29, 2017 through April 28, 2017, a draft Initial Study/Mitigated Negative Declaration (IS/MND) prepared for the Collins application circulated for public review (SCH#: 2017031068). The IS/MND identified potential impacts to cultural, tribal, scenic, and biological resources as well as land use and planning. Mitigation measures were identified to reduce these impacts to a less than significant level;

WHEREAS, over the course of processing of the application and during hearings on the project, a dispute arose as to the validity of termination of a Conservation and Scenic Easement Deed (Easement) that was previously recorded on the subject property. Evidence submitted in the record shows the following facts relating to the Easement:

1. In 1966, the then owner of the 30 acres, Mr. D'Ambrogio, donated the land to the Monterey County Foundation for Conservation in memory of Major Frank De Amaral, Jr., an Army major who was killed while serving in Viet Nam. In 1967, the Monterey County Foundation for Conservation granted a Conservation and Scenic Easement Deed to the County over the land. The Board of Supervisors accepted the easement on February 28, 1967, and the easement was recorded. (Recorded in the Office of the Recorder of the County of Monterey on March 3, 1967, at Reel 495, page 586.) The easement prohibited structures and uses in order to preserve "the natural beauty and existing openness." The easement authorized the Grantor to terminate the easement upon certain conditions, including providing that, if state legislation was passed "for the purpose of restricting the use of real property to conserve and maintain the natural scenic beauty, open space lands, natural resources and agricultural land of plant and animal production" which would restrict the use of the land for said purposes, the Grantor would have the option to terminate the easement by giving written notice to the County. The Easement further provided that, upon the Grantor giving such notice, the conveyance "shall immediately cease and determine and revert to and vest in the Grantor," the intent being that the restrictions on use would be pursuant to the legislation.
2. In 1977, the Monterey County Foundation granted the property to the Behavioral Sciences Institute (BSI) Foundation.
3. In 1983, the County adopted the Carmel Area Land Use Plan, a part of the County's certified Local Coastal Program under the Coastal Act. At that time, while the property was subject to the Conservation and Scenic Easement, the Carmel Area Land Use Plan designated the property "Resource Conservation—Forest & Upland Habitat." The Carmel Area Land Use Plan notes that the designation was applied to the "DeAmaral Preserve." The County zoned the property Resource Conservation, Coastal Zone (RC (CZ)). The purpose of RC zoning is "to provide a district to protect, preserve, enhance, and restore sensitive resource areas in the County of Monterey." (Monterey County Code, Title 20 (coastal zoning), Section 20.36.010.) The Resource Conservation Zoning District of Title 20 does not allow residential development. (Monterey County Code, Title 20, Chapter 20.36.).
4. The Carmel Area Land Use Plan (CAR LUP) delineates the subject property as part of the Behavioral Science Institute lands as shown on Figure 2 – Special Treatment

Areas of the Land Use Plan. Policy 4.4.3.E.6 of the CAR LUP provides that “the BSI lands may be developed for residential use. A maximum of 25 units may be approved; ...The upper steeper portion shall remain in open space.”

5. In 1989, the BSI Foundation sold the property to Walter and Loretta Warren. On December 24, 1990, Walter and Loretta Warren recorded a Notice of Termination of the Conservation and Scenic Easement Deed. (Recorded in the Office of the Recorder of the County of Monterey on December 24, 1990, at Reel 2590, page 780.) The Notice states that the Warrens, as successors in interest to the Grantor, are exercising the option pursuant to the easement “to terminate said Easement Deed in its entirety,” effective immediately, “based upon the enactment of the California Coastal Act ..., 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.”
6. In November 1993, the Warrens sold the property to the Kakis Family Revocable Trust. On February 8, 1994, the Kakis Trust sold the property to James and Sook Collins, the current applicant.
7. The property is currently vacant and undeveloped except for California American Water Company water tank which the County permitted.

WHEREAS, the proposed ordinance rezoning the property would amend the County’s Local Coastal Program, and such rezoning must be certified by the California Coastal Commission before going into effect;

WHEREAS, on August 30, 2017, the Planning Commission held a duly noticed public hearing to consider: adoption of the Mitigated Negative Declaration; recommendation to the Board of Supervisors to adopt an ordinance amending the Local Coastal Program to rezone the entire 30 acre property from the Resource Conservation, Coastal Zone [“RC(CZ)”] zoning classification to the Watershed and Scenic Conservation, Special Treatment, Coastal Zone [“WSC/SpTr(CZ)”] zoning classification; and approval of the Combined Development Permit, subject to approval of the rezone, consisting of a Coastal Administrative Permit and Design Approval to allow construction of a 2,397 square foot two-story single family dwelling with a 409 square foot attached garage and 143 square foot mechanical room; a Coastal Administrative Permit to establish a domestic well; a Coastal Development Permit to allow the removal of one 14-inch and one 18-inch Monterey pine tree; a Coastal Development Permit to allow development within 100-feet of an environmentally sensitive area; and a Coastal Development Permit to allow development on slopes in excess of 30%; and adoption of a Mitigation Monitoring and Reporting Program;

WHEREAS, on August 30, 2017, the Planning Commission adopted a motion of intent to recommend that the Board of Supervisors not adopt the Mitigated Declaration and not adopt the rezone, adopted a motion of intent to continue the hearing on the Combined Development until a final determination on the rezone had been made; and continued the hearing until September 27, 2017 for staff to return with resolutions based on these motions;

WHEREAS, on September 27, 2017, the Planning Commission adopted a resolution recommending that the Board of Supervisors not adopt the ordinance to rezone the property from

Resource Conservation, Coastal Zone [RC(CZ)] to Watershed and Scenic Conservation, Special Treatment, Coastal Zone [WSC/SpTr(CZ)] (Planning Commission Resolution No. 17-037), finding that:

1. The subject property is delineated as part of the Behavioral Science Institute (BSI) lands as shown on Figure 2 – Special Treatment Areas of the Carmel Area Land Use Plan (CAR LUP). Policy 4.4.3E.6 of the CAR LUP states that the BSI lands may be developed for residential use; however, the upper steeper portion shall remain in open space. The Planning Commission found that the subject property was included within this “upper steeper portion”: and
2. Public policy supports preservation of the subject property, and no public policy reasons have been advanced to support the proposed rezoning of the property.

WHEREAS, on September 27, 2017, the Planning Commission considered the Initial Study/Mitigated Negative Declaration (MND) and recommended the Board not adopt the MND because the Commission does not agree fully with the analysis, and adoption of the MND is not necessary because denial of a project is exempt from CEQA pursuant to Public Resources Code section 21080(b)(5) and CEQA Guidelines section 15270 (Planning Commission Resolution No. 17-037);

WHEREAS, the Planning Commission also continued the hearing on the Combined Development Permit to a date uncertain so as to postpone action on the permit until a final determination on the rezone request because the Combined Development Permit is contingent on the rezone (Planning Commission Resolution No. 17-038);

WHEREAS, a public hearing on the rezone was duly noticed for April 17, 2018 before the Board of Supervisors. Upon request of members of the public to which the applicant did not object, the Board of Supervisors continued the hearing to a date uncertain to allow members of the public additional time to prepare comments on the Collins application;

WHEREAS, on July 24, 2018, the Board of Supervisors held a duly noticed public hearing on the proposed rezoning at which the applicant and all member of the public had the opportunity to testify and be heard;

WHEREAS, additional evidence and testimony presented to the Board of Supervisors about the validity of the termination of the easement included the following:

1. correspondence from the California Coastal Commission staff dated May 22, 2018 and June 5, 2018 states that Coastal Commission staff does not support the Collins request to rezone. The May 22, 2018 letter takes the position that the 1990 termination of the Easement was invalid because relying on the Coastal Act as the qualifying legislation the Warrens cited to terminate the easement “does not meet the goals and objectives of the Easement Deed” and because “the action (recordation of the Notice of Termination) was not codified via the coastal development permit (CDP) process.” RMA-Planning staff’s response, among other things, requested clarification of a map contained in the Coastal Commission’s draft findings of the Monterey County LCP Periodic Review which shows the Collins property as a “Remaining Developable Parcel with a maximum of (1)

allowable unit. (May 25, 2018 letter from Quenga to Watson.) The CCC staff responded that the Periodic Review was never approved by the CCC, that it is not clear why the Collins property was identified as allowing a residential unit; and the CCC staff had no knowledge of the Easement being recorded on title at the time of the preparation of that map.

2. Applicant and applicant's attorney testified that, among other things, the applicant purchased the property after the Notice of Termination was recorded, that the Easement was not referenced in the deed's legal description, that the maps received at purchase did not indicate an easement overlay, that County Assessor Maps issued between 1967 and 1990 show an easement overlay but Assessor Maps after 1990 do not show the overlay, that the Easement did not show up the Title Insurance Policy as an exception to title at the time of applicant's purchase of the property, and that applicant first learned of the terminated easement in 1996, more than two years after purchasing the property. (July 23, 2018 Declaration of James Collins, submitted to Luis Alejo, Chairman of the Board of Supervisors; testimony of Applicant's attorney.)
3. An attorney representing Gwyn De Amaral and unnamed other residents of the Carmel Highlands presented information and argument to support their contention that the termination of the Easement was invalid and ineffective and urged the Board to "suspend further action on the rezoning request unless and until Mr. Collins obtains a judicial determination that the 1967 Conservation and Scenic Easement Deed is no longer in effect." (July 3, 2018 letter from Fontana to Board of Supervisors; testimony of Gary Fontana.)
4. Other than the recorded Notice of Termination, staff did not locate any evidence of notification to the Board of Supervisors of termination of the Easement.

WHEREAS, the status of the Easement is a legal issue which can only be resolved by a court pursuant to an action such as a quiet title action, which Applicant has standing to bring;

WHEREAS, a determination of the status of the Easement is a necessary prerequisite to the Board making a decision on the rezone because the Coastal Commission, which must certify any such rezone, is unlikely to certify the rezone in light of the letters from Coastal Commission staff which opposes the rezone based on the Easement;

WHEREAS, the validity of the Easement affects the Board's decision on the rezone inasmuch as the Easement, if found to be valid, would preclude residential development and may render the rezone moot, whereas if the Easement were judicially determined not to encumber the property, the Board would have discretion to render a decision on the rezone on its merits;

WHEREAS, after the close of the public hearing on July 24, 2018, the Board of Supervisors by a vote of 4-1 adopted a motion of intent to deny applicant's request for the rezoning without prejudice to applicant to reapply for the rezone following a judicial determination that the Conservation and Scenic Easement Deed is no longer in effect, and the Board continued the hearing to September 25, 2018 with direction to staff to return with a resolution with findings for this action, and staff presented this resolution at a continued public hearing on September 25, 2018; and;

WHEREAS, this denial is without prejudice in that it is intended to enable judicial resolution of the Easement dispute prior to a determination on the merits of the rezone, which could be considered at a future time if the applicant were to reapply for the rezone following a judicial determination that the Conservation and Scenic Easement Deed is no longer in effect.

DECISION

NOW, THEREFORE, be it resolved, based on the above findings, the written and documentary evidence, the staff reports, oral testimony, and the administrative record as a whole, that the Board of Supervisors does hereby:

1. Certify that the foregoing recitals and findings are true and correct;
2. Find that the denial of the proposed rezoning is statutorily exempt under the California Environmental Quality Act pursuant to Section 21080(b)(5) of the Public Resources Code and Section 15270(a) of the CEQA Guidelines; and
3. Deny applicant's request to amend the Local Coastal Program to rezone a 30-acre parcel located at 83 Mount Devon Road, Carmel (Assessor's Parcel Number: 241-021-007-000) from Resource Conservation, Coastal Zone [RC(CZ)] to Watershed and Scenic Conservation, Special Treatment, Coastal Zone [WSC/SpTr(CZ)], without prejudice to applicant to reapply for the rezone following a judicial determination that the Conservation and Scenic Easement Deed is no longer in effect.

PASSED AND ADOPTED upon motion of Supervisor _____, seconded by Supervisor _____, and carried this 25th day of September, 2018 by the following vote to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

I, Valerie Ralph, Clerk of the Board of Supervisors of the County of Monterey, State of California, hereby certify that the foregoing is a true copy of an original order of said Board of Supervisors duly made and entered in the minutes thereof of Minute Book____ for the meeting on _____.

Dated:

Valerie Ralph, Clerk of the Board of Supervisors
County of Monterey, State of California

By _____
Deputy