

- c. Authorize the Chair to execute the amended Conservation and Scenic Easement Deed and Map; and
- d. Direct the Clerk of the Board to submit the amended Conservation and Scenic Easement Deed and Map to the County Recorder for recording with all applicable recording fees paid by the applicant.

The amended Conservation and Scenic Easement Deed and Map is appended to this Board Report as **Attachment B**.

PROJECT INFORMATION:

Agent: Lombardo and Associates

Owner: Richard D. MacDonald Family Partnership

APN: 243-331-003-000

Parcel Size: 2.01 acres

Plan Area: Big Sur Coast Land Use Plan

SUMMARY:

The subject property is within the Otter Cove subdivision, west of Highway 1 and south of Yankee Point. In 1977, the property was improved with the construction of a single-family dwelling. In 1984, a conservation easement was conveyed over portions of the property in accordance with after-the-fact permitting actions taken by the California Coastal Commission (CCC) (**Attachment D**). In 2014, RMA-Code Compliance cited the property owner for demolishing the single family dwelling without a permit. Several years later, the property owner applied for a Coastal Development Permit (PLN190351). In June 2020 the Zoning Administrator approved the after-the-fact permit. During review of the application, staff discovered boundaries required by the 1984 easement did not align with some of the improvements remaining on site, most notably the driveway and motor court. As part of its approval, the Zoning Administrator included a condition of approval requiring the property owner to amend the Scenic Easement to accurately reflect the boundaries of the protected area relevant to on-site improvements. The amended easement for consideration by the Board of Supervisors would modify the conservation easement boundaries to ensure that the correct portions of this property are protected in perpetuity.

DISCUSSION:

After a single-family home was built on this property in 1977, additions were built without a permit. An after-the-fact Coastal Development Permit (No. 3-84-140) was ultimately approved by the CCC for an addition and garage conversion. The permit incorporated Special Condition No. 1, requiring recordation of an easement for the protection of the site's scenic, archaeological, and biological resources.

In 1984, in compliance with the CCC condition, the property owner made an Irrevocable Offer to Dedicate an Open-Space Easement and Declarations of Restrictions (Instrument No. G 47897, Reel 1779, Pages 50-71 of the Official Records in the Office of Recorder, County of Monterey). In 2005, the County of Monterey accepted the Irrevocable Offer (Certificate of Acceptance Document No. 2005092766).

In 2014, RMA-Code Compliance cited the property owner for remodeling the interior of the single-family dwelling without a permit. RMA subsequently issued a building permit to the property owner to abate this violation. However, prior to finalization of the building permit, the property owner tore down the home. Consequently, RMA-Code Compliance again cited the property owner for demolishing the single-family dwelling without a permit.

In 2019, the property owner applied for a Coastal Development Permit to legalize the work that was done on the property (PLN190351). During staff's review of the after-the-fact Combined Development Permit, staff identified slight discrepancies between the metes-and-bounds description of the area conveyed in conservation and scenic easement and the area of the subject property containing improvements. CCC Special Condition

No. 1 states that the easement shall be conveyed “*covering those portions of the subject site which are outside of the areas permitted for development by this permit.*” Page 7 of the CCC staff report (**Attachment D**) includes a site plan that depicts an existing driveway turnaround; a portion of this turnaround area was inadvertently placed within the conservation area. As such, the Zoning Administrator chose to require the easement be amended to realign the boundaries and remove the existing asphalt parking/turnaround out of the easement area. Therefore, on June 11, 2020, the Monterey County Zoning Administrator adopted Resolution No. 20-023 (**Attachment C**), thereby approving an after-the-fact Combined Development Permit for the demolition of a single-family dwelling with an attached garage and development within 100-feet of environmentally sensitive areas (ESHA), which included Condition No. 5, requiring an amendment of the existing conservation and scenic easement deed to accurately reflect the boundaries.

Staff has also identified a potential for misunderstanding provisions and restrictions outlined in CCC Condition No.1 due to the chain of documents creating and accepting the easement.

The CCC Condition No. 1 and the Irrevocable Offer to Dedicate (page 2, lines 15-18) contain the following language:

“This easement shall include provisions to prohibit development; to prevent disturbance of native groundcover and wildlife; to prevent damage by livestock; to preclude disturbance of archaeological materials except under the supervision of the State Historic Preservation Office; to provide for maintenance needs; and to specify conditions under which diseased or dangerous vegetation may be removed and non-native species controlled.”

However, the County acceptance does not contain any of the easement language. Instead, the acceptance refers back to the Irrevocable Offer To clarify the provisions and restrictions, and to conform to today’s standard deed language, the amendment clearly identifies restrictions and exceptions for certain actions within the easement area. The language specifies that construction, alteration, relocation, and maintenance of public roads, public and private pedestrian trails, public and private utilities requiring land disturbance, and restoration of environmentally sensitive habitat areas shall occur in consultation with a qualified biologist and a qualified archaeologist, in accordance with policies set forth in the Big Sur Coast Land Use Plan and shall further require, without limitation, obtaining any necessary permits.

In accordance with Condition No. 5 from the Zoning Administrator Decision, and to rectify the inconsistencies identified by staff, the applicant has submitted the amended Conservation and Scenic Easement deed with the metes and bounds legal description and map showing the general location of the easement on the property (**Attachment B**).

This amendment maintains the preservation and conservation of the resources onsite, meets the intent of CCC Condition No. 1, satisfies Condition No. 5 from the Zoning Administrator approval, and provides clarity for use and restrictions on the property for any future owners. The preservation of this area would allow for the protection of special status species and habitat areas. Further, the easement would allow the area to be protected in perpetuity and for residents to enjoy the open space of the area. Therefore, staff recommends the Board accept, execute, and consent to the recordation of the Conservation and Scenic Easement Deed.

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA):

The project is categorically exempt from environmental review pursuant to section 15317 of the CEQA Guidelines. This exemption applies to easements that maintain open space character of an area. The acceptance of the amended Conservation and Scenic Easement Deed is consistent with this exemption. None of the exceptions under CEQA Guidelines section 15300.2 apply to this project. The project is not located on a hazardous waste site, near a scenic highway, is not likely to effect cultural resources and will

not have a significant effect on the environment. Therefore, the project is categorically exempt.

OTHER AGENCY INVOLVEMENT:

The Office of County Counsel has approved the amended Conservation and Scenic Easement Deed and Map as to form.

FINANCING:

Funding for staff time associated with this project is included in the FY2020-21 Adopted Budget for RMA-Planning. All costs associated with maintenance of the easement will be borne by the project applicant (Grantor) of the easement, not the County (Grantee).

BOARD OF SUPERVISORS STRATEGIC INITIATIVES:

This action represents effective and timely response to our RMA customers. Processing this application in accordance with all applicable policies and regulations also provides the County accountability for proper management of our land resources.

- Economic Development
- Administration
- Health & Human Services
- Infrastructure
- Public Safety

Prepared by: Anna V. Quenga, Senior Planner, Ext. 5175

Reviewed by: Brandon Swanson, RMA Planning Services Manager

Approved by: Carl P. Holm, AICP, RMA Director

The following attachments are on file with the Clerk of the Board:

Attachment A - Memorandum to the Clerk of the Board

Attachment B - Amended Conservation and Scenic Easement Deed, including:

- Legal description
- Map

Attachment C - Zoning Administrator Resolution No. 20-023

Attachment D - California Coastal Commission Permit No. 3-84-140

cc: Front Counter Copy; California Coastal Commission; Brandon Swanson, RMA Planning Services Manager; Lombardo and Associates, Agent; Richard D. MacDonald Family Partnership, Owner; The Open Monterey Project (Molly Erickson); LandWatch (Executive Director); Project File PLN190351.