



County of Monterey

Board of Supervisors
Chambers
168 W. Alisal St., 1st Floor
Salinas, CA 93901

Board Report

File #: RES 22-014, **Version:** 1

PLN190252 - KOSTIGEN GREGORY A & DONNA STARKS TRS

Public hearing to consider:

- a. Finding that the project involves construction of three retaining walls, installation of drainage culvert improvements, and acceptance of an amended Conservation and Scenic Easement Deed, which qualifies as a Class 3 and Class 17 Categorical Exemption pursuant to section 15303 and 15317 of the CEQA Guidelines and no exceptions under section 15300.2 apply;
- b. Accepting the Amended Conservation and Scenic Easement Deed for the Kostigen & Starks TRS property;
- c. Authorize the Chair to execute the amended Conservation and Scenic Easement Deed;
- d. Directing 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; and
- e. Approving an after-the-fact Coastal Development Permit and Design Approval to partially clear Code Enforcement violation (19CE00007) to allow development on slopes exceeding 30% for the construction of three retaining walls and installation of drainage culvert improvements.

Project Location: 24956 Lincoln Street, Carmel, Carmel Area Land Use Plan, Coastal Zone.

Proposed CEQA action: Find the project Categorically Exempt per section 15303 and 15317 of the CEQA Guidelines

RECOMMENDATION:

It is recommended that the Monterey County Board of Supervisors:

- a. Find that the project is subject to two Categorical Exemptions under CEQA: 1) a Class 3 categorical exemption pursuant to Section 15303 construction of three retaining walls and installation of drainage culvert improvements; and 2) a Class 17 Categorical Exemption pursuant to section 15317 of the CEQA Guidelines based on the County's acceptance of an amended Conservation and Scenic Easement Deed;
- b. Find that no exceptions to Categorical Exemptions set forth in CEQA Guidelines section 15300.2 apply;
- c. Authorize the Chair to execute the amended Conservation and Scenic Easement Deed;
- 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; and
- e. Approve an after-the-fact Coastal Development Permit and Design Approval to partially clear Code Enforcement violation (19CE00007) to allow development on slopes exceeding 30% for the construction of three retaining walls and installation of drainage culvert improvements.

A draft resolution, including findings and evidence, is attached for consideration (**Attachment A**). Staff recommends approval subject to four (4) conditions. The amended Conservation and Scenic Easement Deed is attached to this Board Report as **Attachment B.1**.

PROJECT INFORMATION:

Agent: Thomas Rettenwender

Owner: Gregory and Donna Kostigen

APN: 009-122-026-000

Parcel Size: 0.17 acres

Plan Area: Carmel Area Land Use Plan

SUMMARY:

The proposed project includes after-the fact permitting of retaining walls and improvements within a drainage culvert that is located within a Conservation and Scenic Easement. An amendment to the Conservation and Scenic Easement is required to authorize the drainage improvements within the easement and to allow ongoing maintenance of the drainage. The Board of Supervisors is the appropriate authority to consider amendments to recorded easements so both the after-the-fact Coastal Development Permit for drainage improvements and the amended easement are before the Board for consideration. On December 1, 2021, the Planning Commission adopted a resolution (Resolution No. 21-041; **Attachment E**) recommending that the Board of Supervisors approve the project as proposed.

The subject parcel is located on Lincoln Street between 1st and 2nd Avenue in Carmel and sits approximately 0.66 miles west of Highway 1. Residences surround the subject property on all sides. The eastern portion of the property contains a single-family dwelling and a single retaining wall located approximately 1 foot north of the development. The western half of the property contains a Conservation and Scenic Easement (**Attachment B.2**), which was conveyed to the County of Monterey in 1982 to protect habitat areas and restrict development on slopes exceeding 30 percent as most of the property consists of steep slope. The subject lot also contains a natural drainage culvert that collects stormwater from a City of Carmel storm drain and conveys the runoff towards Pescadero Canyon. This drainage culvert runs north to west on the subject property and is located primarily in the Conservation and Scenic Easement. The drainage culvert is approximately 2.5 feet to 3.5 feet north of the existing single-family dwelling. The existing retaining wall separates the single-family dwelling from the drainage culvert.

In September 2017, the applicants constructed three retaining walls to help stabilize the foundation and installed a 24” double wall pipe with rock gabion energy dissipations systems to help control and slow the flow of the stormwater runoff. This work was unpermitted. Installation of the retaining walls and the 24” pipe did not adversely change the drainage course of the culvert as the new pipe still conveys and releases stormwater into the natural culvert as it descends west on the subject property.

In May 2019, the Resource Management Agency (now Housing and Community Development) Code Compliance Division cited the property for development on slopes exceeding 30 percent and for construction of retaining walls without a Coastal Development Permit and Design Approval, as required by Monterey County Code. This after-the-fact Coastal Development Permit and Design Approval will partially abate the code violation (19CE00007) on the property regarding the Planning permits required. Once this permit is approved, and together with the subsequent issuance and final of a building permit, the property will comply with all zoning and building regulations and the violation case will be closed. Abatement costs were paid, but double fees were not invoiced because the drainage culvert improvements enhance the neighborhood’s drainage system.

This item was brought before the Planning Commission on September 8, 2021. The matter was continued to a date uncertain after a neighbor objected to improvements that extend over the property line. This issue has been resolved between the parties, and the Kostigens’ have removed a portion of the improvements that crossed the property line. With that change incorporated the Planning Commission adopted a resolution (Resolution No. 21

-041; **Attachment E**) recommending that the Board of Supervisors approve the project.

DISCUSSION:

In 2019, the subject property was cited (Case No. 19CE00007) for construction of unpermitted retaining walls and for development on slopes exceeding 30 percent. In accordance with the Monterey County Code, a Notice of Violation was issued, and the applicant incurred the appropriate enforcement penalties, such as payment of administrative costs and the County holding permits until the violation is abated. Corrective actions include obtaining necessary permits from County of Monterey - Housing and Community Development (HCD) for the unpermitted development, or restoring the site to its pre-violation state. However, the site cannot be restored to its pre-violation state due to drainage and slope erosion issues. Consequently, the applicants seek approval of an after-the-fact Combined Development Permit and Design Approval.

The subject property is zoned Medium Density Residential, 2 units per acre with a Design Control Overlay within the Coastal Zone or “MDR/2-D(CZ).” The subject lot contains a single-family dwelling, which was built in 1994. The subject parcel was created as a result of a minor subdivision (MS 82-5) of Lot 13, Block 150 of Carmel Woods; Rancho El Pescadero. MS 82-5 involved a Coastal Development Permit to allow the division of a 13,936 square foot legal lot of record into two legal lots of record containing 6,920 square feet (Parcel A; subject lot) and 7,016 square feet (Parcel B). A negative declaration was prepared for this minor subdivision, which identified potentially significant impacts to biological resources and geology/soils. Therefore, and in accordance with the Carmel Area Land Use Plan and Carmel CIP, the applicant was required to convey a Conservation and Scenic Easement over a portion of both parcels to the County to protect nearby stands of Monterey Pines and to reduce the risk of geologic and erosion hazards by restricting development on slopes exceeding 30%.

In June 1982, the Board of Supervisors approved the minor subdivision and adopted a Negative Declaration under CEQA (Resolution No. 82-43; **Attachment F**). As a condition of approval, the applicant was required to submit evidence to the Planning Department that the Coastal Commission had approved the minor subdivision. In November 1982, the California Coastal Commission approved the Coastal Development Permit for a minor subdivision (Resolution No. 82-48; **Attachment G**). The tentative map associated with this minor subdivision was subsequently recorded in July 1983.

During planning review, staff discovered that a portion of the unpermitted retaining walls and drainage culvert improvements are located within the Conservation and Scenic Easement area. The recorded Conservation and Scenic Easement deed states that no structures shall be allowed or constructed within the easement boundaries. Therefore, the un-permitted retaining walls (3) and drainage culvert improvements are not allowed without amending this restriction. The existing single-family dwelling, approved in 1994 under Planning Commission Resolution No. 94156, included the removal of three Monterey Pines, a permit to allow parking within the front setback, development on slopes exceeding 30 percent, and a single retaining wall (“deflection wall”). This deflection wall (not included in the Code Violation Case) is approximately 32 linear feet, parallels the drainage culvert, and was constructed in conjunction with the single-family dwelling. Although this deflection wall was allowed under the previously approved Combined Development Permit (Resolution No. 94156), HCD staff discovered that a portion of the structure (approximately 7.5 feet) is located within the Conversation and Scenic

Easement area. Approval of the proposed amended Conservation and Scenic Easement Deed will partially abate the code violation (19CE00007) and allow the existing retaining wall to remain as is. The amended easement for consideration by the Board of Supervisors would change the deed language to allow *“repairs and maintenance to the drainage culvert for slope stability and conveyance of stormwater, subject to approval of an appropriate discretionary permit in each case.”*

The existing retaining (deflection) wall separates the single-family dwelling from the drainage culvert. This separation provides erosion control measures by deflecting the runoff away from the single-family dwelling and by providing stability to the single-family dwelling’s foundation. Without this deflection wall, the runoff has the potential to be directed towards the single-family dwelling rather than away from it. Therefore, the existing deflection wall meets the structure exception notated in the proposed amended easement deed (**Attachment B.1**). As indicated in the prepared geotechnical report (**Exhibit H**), the unpermitted retaining walls constructed below the existing deflection wall, are providing support to the deflection wall and the foundation of the single-family dwelling and improve protections from erosion. Therefore, the three retaining walls also meet the exception requirements of the proposed amended easement.

The residence to the west of the subject property has a similar drainage system to the one included in this project; it consists of a 24-inch pipe to control and collect the runoff. The pre-violation condition of this culvert consisted of bricks, broken cinder blocks, and various rocks. The erosion and sediment that was conveyed down this natural culvert often blocked the neighbor’s drainage pipe and hence, resulted in flooding of the property and public safety concerns. According to the applicant, installation of the subject property’s pipe and gabion systems has solved this issue. For this reason, restoration of the property to its pre-violation condition is not feasible.

A biological assessment, dated July 2021, was prepared by Rob Thompson to determine if the unpermitted development impacted any environmentally sensitive habitat areas. Although the subject property is in a Monterey Pine-dominated residential community, the report indicates that there are no sensitive habitat and/or protected special status species occurring on the property. Non-native acacia trees are the dominant tree species on the property. The report also states that the drainage pipe and the gabion systems were properly installed in the seasonal ephemeral drainage. Finally, the biological assessment concludes that no Environmentally Sensitive Habitat Areas or protected special status species were adversely affected during construction. Therefore, amending the Conservation and Scenic Easement Deed to allow the un-permitted retaining walls and drainage culvert improvements, and the existing deflection wall will not reduce the easement's effectiveness of protecting the parcel’s natural habitat.

This amended easement deed maintains the preservation and conservation of the resources onsite and meets the intent of the Board of Supervisors condition (Condition No. 3 of Resolution No. 82-43), which required the establishment of the easement. The amended easement deed provides clarity for use and restrictions on the property for any future owners. The preservation of this area would protect habitat areas and restrict development to only projects that provide slope stability and/or maintenance to the drainage culvert. Further, the easement would protect the area in perpetuity.

The project was scheduled for the September 8, 2021 Planning Commission but was continued to a date uncertain due to public concern received by Staff prior to the public hearing. Staff received correspondence from the neighbor, Mr. Boghosian, who owns the adjacent property. Mr. Boghosian's concerns revealed that a portion of the development was not constructed on the Kostigen's property (APN: 009-122-026-000). Approximately 3 square feet of the inlet riprap (cemented rocks) were constructed on the neighbor's property. Mr. Boghosian did not approve of the development on his property (APN: 009-122-023-000) and therefore, the applicants were required to remove the portion of riprap on the neighbor's property as determined by a boundary survey. Staff received a letter from Grice Engineering, dated September 7, 2021 (**Attachment J**), concluding that removal of the riprap, which Grice Engineering refers to as the 'inlet apron,' encroaching onto the neighbor's property would not cause "significant change to the function of the improvements." On October 25, 2021, the applicants removed the portion of riprap on Mr. Boghosian's property. The project planner conducted a second site visit on October 28, 2021, to verify the improvements on the neighbors property were removed.

On December 1, 2021, the Planning Commission adopted a resolution (Resolution No. 21-041; **Attachment E**) recommending that the Board of Supervisors approve the project.

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA):

The project is categorically exempt from environmental review pursuant to section 15303 and 15317 of the CEQA Guidelines. This exemption applies to construction of new, small structures and easements that maintain open space character of an area. The approval of the after-the-fact Coastal Development Permit and Design Approval and 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, will not affect cultural resources and will not have a significant effect on the environment. Therefore, the project is categorically exempt.

OTHER AGENCY INVOLVEMENT

The following agencies have reviewed the project, have comments, and/or have recommended conditions:

- Environmental Health Bureau
- PWF&P-Public Works
- HCD-Environmental Services
- Cypress Fire Protection District
- City of Carmel-by-the-Sea Planning Department

LUAC

The project was referred to the Carmel Highlands Land Use Advisory Committee (LUAC) for review. The LUAC, at a duly-noticed public meeting on June 7, 2021, voted 5 - 0, with one absent member and one abstaining member, to support the project with changes. (**Attachment D**).

FINANCING:

Funding for staff time associated with this project is included in the FY2021-22 Adopted Budget within Community Development General Fund 001, Appropriation Unit HCD002, Unit 8543.

BOARD OF SUPERVISORS STRATEGIC INITIATIVES:

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

Check the related Board of Supervisors Strategic Initiatives:

Administration

Economic Development

Health & Human Services

Infrastructure

Public Safety

Prepared by: Fionna Jensen, Assistant Planner

Reviewed by: Craig Spencer, Chief of Planning

Reviewed by: Lori Woodle, Finance Manager I

Approved by: Erik Lundquist, AICP, Director of Housing and Community Development

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

Attachment A - Draft Resolution, including

- A.1 Conditions of Approval
- A.2 Site Plan and Elevations

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

- B.1 Amended Conservation and Scenic Easement Deed
- B.2 Recorded 1983 Final Map

Attachment C - Vicinity Map

Attachment D - Carmel Highland/Unincorporated LUAC Minutes (June 7, 2021)

Attachment E - Planning Commission Resolution No. 21-041 (December 1, 2021)

Attachment F - Board of Supervisor Resolution No. 82-43

Attachment G - California Coastal Commission Resolution No. 82-48

Attachment H - Geotechnical Report, prepared by Grice Engineering (March 2021)

Attachment J - Geotechnical Letter, prepared by Grice Engineering (September 2021)

cc: Front Counter Copy; Coastal Commission; Carmel Fire Protection District; Monterey County - Public Works, Parks and Facilities; HCD-Environmental Services; Environmental Health Bureau; Fionna Jensen, Associate Planner; Craig Spencer, HCD Chief of Planning; Gregory Kostigen and Donna Starks, Property Owners; Thomas Rettenwender, Agent; Nicholas Boghosian, Interested Party; The Open Monterey Project (Molly Erickson); LandWatch; Project File PLN190252