



Board Report

File #: RES 18-152, **Version:** 1

PLN170624 - GREER (GLASS)

Public hearing to consider an appeal by Andres Czerwiak from the August 9, 2018 Zoning Administrator decision approving a Coastal Administrative Permit to allow the conversion of an existing test well to a permanent, single connection well and a Design Approval for related appurtenant components.

Project Location: 124 Fern Canyon, Carmel, Carmel Area Land Use Plan

Proposed CEQA Action: Categorical Exemption pursuant to Section 15301(b) of the CEQA Guidelines.

RECOMMENDATION:

It is recommended that the Board of Supervisors adopt a resolution to:

- a. Deny the appeal of Andres Czerwiak from the August 9, 2018 Zoning Administrator decision approving an application (RMA Planning File PLN170624/Greer (Glass)) for a Coastal Administrative Permit for the conversion of an existing test well to a permanent, single connection well and Design Approval for related appurtenant components.
- b. Find that the project, the conversion of a test well to a permanent well, is categorically exempt pursuant to Section 15301(b) of the CEQA Guidelines; and
- c. Approve a Coastal Administrative Permit to allow the conversion of an existing test well to a permanent, single connection well; and; Approve a Design Approval as it applies to the appurtenant components: An electric powered pump, two (2) 119-gallon bladder tanks and water filtration system, and a 5,000-gallon polyurethane water storage tank.

A draft resolution, including findings and evidence, is attached for consideration (**Attachment B**).

Staff recommends approval subject to six (6) conditions.

PROJECT INFORMATION:

Project Owner: Timothy John Glass and Constance Glass

APN: 241-131-024-000

Agent: Nancy Isakson; Lloyd Lowery, Esq.

Zoning: Low Density Residential, 1 unit per acre, Design Control Overlay (Coastal Zone) [LDR/1-D (CZ)]

Parcel Size: 0.6215 acre (27,072.54 square feet)

Flagged and Staked: N/A

SUMMARY:

The proposed project involves the conversion of an existing test well to a permanent well. Based on water quantity testing, the permanent well has sufficient capacity for a single connection that could provide potable water and fire protection for a single-family residence; however, the owner has not applied for a single-family dwelling, and any such future single-family dwelling would be subject to a future application and review. The well conversion also includes appurtenant devices: an electric powered pump, two (2) 119-gallon bladder storage tanks to regulate water pressure, a water filtration system that removes iron and manganese from the

water, and a 5,000-gallon polyurethane water storage tank installed on a gravel pad. Based on staff review of the planning application materials, the property complies with all rules and regulations pertaining to zoning uses and other applicable provisions of the 1982 Monterey County General Plan, Carmel Area Land Use Plan, and applicable sections of the Monterey County coastal zoning ordinance (Title 20). The Greer Trust was the initial applicant, but the property has since been sold to Timothy John Glass and Constance Glass, who have assumed the application. The project was approved by the Zoning Administrator on August 9, 2018. It was then appealed by the neighbor, Andres Czerwiak, with the main contentions revolving around a private Water Agreement and CEQA. The specifics of the contentions are covered in detail below in the discussion section and in the draft resolution.

DISCUSSION:

County staff scheduled and duly noticed the project for public hearing before the Zoning Administrator on August 9, 2018. On August 9, 2018, after public hearing at which all persons had the opportunity to be heard, the Zoning Administrator found the project to be categorically exempt from CEQA and approved a Coastal Administrative Permit and Design Approval to allow the conversion of the existing test well to a permanent well with appurtenant devices (Monterey County Zoning Administrator Resolution No. 18-046; **Attachment E**).

The Appellant, Andres Czerwiak, represented by John Bridges of Fenton & Keller, then timely filed an appeal from the August 9, 2018, decision of the Zoning Administrator. The appeal contends that the findings or decision or conditions are not supported by the evidence, and the decision was contrary to law. Many of the contentions of the appellant concern a Water Agreement, recorded February 25, 2008. The Water Agreement is a civil matter between private parties and does not preclude the County from determining the conversion of the test well to a permanent well that meets various County development regulations found in the MCC, specifically Title 20 (County Zoning) and Title 15 (County Domestic Water Systems). The specific contentions raised by the Appellant are addressed below.

The Appeal was internally scheduled to appear before the Board of Supervisors on October 9, 2018, later tentatively scheduled for the October 16 meeting. In both instances this item was not noticed. The Applicant and Appellant then both requested a continuance of the appeal hearing date to allow time for the parties to attempt to reach a mutually acceptable agreement to satisfy the Appellants' concerns. Therefore, a hearing was duly noticed for November 6, 2018; as of the date of this report, the parties have not reached an agreement.

The hearing on the project at the Board is de novo. Staff is recommending denial of the appeal. Staff has prepared a draft resolution denying the appeal, and categorically exempting and approving the project. If the Board desires to take a different action, the Board could adopt a motion of intent and continue the hearing to a date certain for the staff to prepare a resolution with modified findings.

Project Background:

The test well was approved by the Zoning Administrator on July 7, 2004, PLN030642 (Resolution 04-307). In addition to the test well, the approval included a septic system and authorized the removal of 10 oaks trees to gain access to the site and accommodate the septic system leach fields. A driveway was constructed to access the site and to allow for access for the drilling rig. This application was appealed to the Board of Supervisors, by a different, unrelated appellant, and presented to the Board on September 14, 2004. The Appeal was denied and the test well was approved (Resolution No. 04-307).

The test well was installed as approved, which included a pump, concrete pad and tank. The septic system was not installed and is not part of this well conversion proposal. Staff requested that the proposed septic system be divorced from the well conversion application because the current application does not include a proposed single-family residence, therefore, it cannot be determined what the appropriate size and location of a septic system would be for a future residence. The water tank and concrete pad associated with the test well have subsequently been removed; it is unknown when these features were removed or who removed them.

The Monterey County Environmental Health Bureau (EHB) reviewed the test well results, and has imposed a condition which would require the applicant to record a deed restriction relating to potential future availability of water based on the geologic surroundings, since the area is known to contain fractured rock (Condition No. 5). As stated in the condition, well yields in fractured rock or non-alluvial aquifer systems have been shown to decline significantly over time due to their inability to store and transmit water. Therefore, with uncertainties regarding the long-term sustainability of an on-site well proposed to provide a source of domestic potable water on this parcel, any future owners of the property are notified that additional water sources may be required in the future. EHB further concluded that the quantity of water delivered by the test well was not sufficient to provide water for two (2) single-family residences. The test well has been given a credit of 4.98 gallons per minute which is adequate capacity to serve only one future single-family residential development of the property.

The present application, PLN170624, was filed July 24, 2017 and deemed complete April 12, 2018. The project was scheduled for a June 20, 2018 Administrative Hearing before the RMA Chief of Planning. On June 15, 2018, an interested party requested a public hearing before the Zoning Administrator, and staff scheduled a hearing before the Zoning Administrator for August 9, 2018.

Appellant Contentions:

The Appellant (Andres Czerwiak), pursuant to Monterey County Code (MCC) Section 20.86.030.C, timely filed an appeal which raised 6 specific contentions:

- a. That the applicant did not present proof of legal right to the water sourced from the well.
- b. That by not including a single-family residence, the application constitutes a piecemeal approach to development, counter to CEQA guidelines which stipulate that development should be considered as a whole.
- c. The August 9, 2018 Zoning Administrator Resolution (18-046) states that there were no communications received during review of the project questioning the application of various County development standards and regulations.
- d. There is no legal right to an adequate water quantity to serve a future residential use that would not imperil the water rights of the Appellant or neighboring properties.
- e. That the project is not Categorical exempt from CEQA because the determination that there is enough water to serve one (1) future single-family residence is in error.
- f. If the project were processed with the future single-family residence, proper CEQA analysis could be undertaken, potentially significant environmental impacts could be identified and the proper permit would have been a Coastal Development Permit, appealable to the Coastal Commission.

County staff has provided detail in the responses to each of the contentions below, as well as in the draft resolution. Staff's analysis has concluded that these contentions are without merit because they are not supported by evidence and/or are not relevant under Monterey County Code and/or raise concerns not subject to County Zoning. The text of the Appellant's specific contentions follow below, with proposed responses for consideration by the Board:

Appellant's Contention A:

"...MCC Section 15.04.040[C.2] requires proof of legal right to use the water prior to approval of any water system serving 14 or fewer connections and substantial evidence in the record shows the applicant did not present such proof and, in fact, does not have such right. The applicant only has the legal right to half the water from the well. The well tested at 4.98 gpm. Half that amount is 2.495 gpm. A minimum of 3 gpm is required for a domestic connection. The project therefore cannot be found consistent with the MCC or the LUP."

The application included a copy of the Title Report, dated December 17, 2017, that named the Greer Trust, predecessor in interest to the current owner Glass, known as 124 Fern Canyon Road. Appellant submitted a Water Agreement between Parcel A and Parcel B; Parcel A is the Glass property and Parcel B is appellant's property. The Water Agreement (recorded Feb. 25, 2008) is a private matter to which County is not a party. The ultimate use of the well is not before the Board, and in any event, whether the use would be in conflict with the Water Agreement is a civil matter between the parties to the Water Agreement. The Environmental Health Bureau determined that the well produces enough water to serve one (1) single-family dwelling for domestic use, potable water for drinking and bathing, and fire protection. The existing test well is located on the applicant's property, and there are no known connections to the Appellant's property or any other property in the neighborhood. The applicant applied for a permit to convert an existing test well to a permanent well. The permit application did not include, describe, or propose a water system to serve multiple properties.

Appellant's Contention B:

"The ZA also intimated several times that the project should come forward as a whole [residence, septic system, well conversion]. He [ZA] characterized the separate application approach being pursued by the applicant as "inefficient." It is also illegal. CEQA requires the whole of a project be considered together" and that the approach pursued by the applicant is a piecemeal approach and prohibited under CEQA. Furthermore, the Health Bureau stated that septic testing had not been done and that the location of any septic system and the well must be analyzed; the Zoning Administrator noted concerns about potential tree impacts associated with development of the parcel. The various impacts should be considered comprehensively as a whole and not independent of each other."

The application is limited in scope to the conversion of an existing test well to a permanent well for delivering potable water. Any future development of the site would require an application to the RMA for the appropriate permit request. The analysis is not piecemeal because no development on the property is proposed at this time, and thus, any analysis of future development would be speculative.

Appellant's Contention C:

"The staff report was premised on the assumption that the parcel has "no association with the neighboring properties, other than common property boundaries," and the resolution says, "no communications were received during the course of review of the project indicating any inconsistencies with the text, policies, and regulations in these documents." This is false. Evidence was introduced

proving these statements erroneous. There is a recorded water rights agreement conferring right to half the water to the appellant's adjoining property. This is certainly a critical "association" between properties such that the application must be denied for lack of sufficient water under the code.

A common property line separates the applicants' parcel and the appellant's parcel. There are no easements between the two parcels; access to each parcel is from separate access points. There are no distribution lines between the parcels. Well quantity tests document water delivery of 4.98 gallons per minute, sufficient quantity to provide water and fire protection for one single-family dwelling. A Water Agreement was presented to Staff the day before the Zoning Administrator hearing, Staff reported the correspondence at the hearing of August 9. The Water Agreement is a civil matter between the applicant and the appellant. (See response to appellant contention (a) above.) For the reasons explained above, the Water Agreement does not demonstrate a lack of consistency with County plans and regulations.

Appellant's Contention D:

"...there is no legal right to adequate water quantity to serve a residential use on the property. Moreover, if the connection for domestic use was (or is in the future) approved such would be absolutely detrimental and injurious to the welfare of neighboring properties and to the water rights owned by Mr. Czerwiak."

The test well is located on the Applicant's property. The County Environmental Health Bureau tested the well for water quantity and water quality. The Bureau determined that the well tests at 4.98 gallons per minute. The Bureau stipulates that 3 gallons per minute is the minimum quantity of water able to serve one single-family residence on one lot. Thus, the well currently produces sufficient water quantity to provide potable water for a future single-family dwelling on this particular lot. Whether and how the appellant's parcel would be served by the well under the Water Agreement is a subject for the parties of the Water Agreement to resolve. The only question before the County in this project is whether this test well on the subject site can be converted to a permanent well. Based on the testing of water quantity, the well has capacity to serve a single-family residence.

Appellant's Contention E:

Because the CEQA categorical exemption was premised on the conclusion that there was adequate water for a single-family unit (which as explained above is erroneous) the project is not categorically exempt and preparation of an Initial Study is required.

The Health Bureau has determined that the test well produces adequate water quantity, 4.98 gallons per minute, to serve the needs of one single-family residence on the property, including enough water for fire protection. See Contention E, D, and C above. One (1) single-family residence on a given property would be exempt from CEQA pursuant to Sections 15303; however, no application for a single-family residence on the property has been made. An Initial Study is not required in this case. See also response to Contention B above.

Appellant's Contention F(i):

"...because of the size of the lot and constraining setbacks related to property boundaries, well and septic systems, if the project were properly processed "as a whole" rather than piecemealed, potentially significant impacts to sensitive and/or landmark trees on the property exist [could be evaluated]."

The project as submitted is only for conversion of the test well to a permanent well. Approval of this project does not preclude a full and robust review of a future single-family residential application. The test well was located without the benefit of knowing the precise location of a future residence, but is located towards the

perimeter of the parcel.

Appellant's Contention F(ii):

“In addition to triggering CEQA review this potential impact [to the trees noted above] also calls into question the propriety of relying on a coastal administrative permit process. Additionally, a full Coastal Development Permit should have been required pursuant to MCC § 20.14.050.S as the proposed water facilities are clearly “Accessory structures and uses prior to establishment of main use or structure,” and consequently should be appealable to the Coastal Commission per § 20.86.080.A.3.”

Pursuant to CEQA Section 15301, existing facilities, in this case a test well, is exempt from environmental review. Furthermore, this exemption applies to small facilities involving negligible or no expansion of use beyond that existing at the time of the lead agency's determination. In this instance, a test well was installed and County EHB determined that the well produces potable water in a such a quantity that can serve one single-family residence. Furthermore, MCC § 20.14.040.J states that water system facilities including wells and storage tanks serving up to 14 or fewer service connections, pursuant to Title 15.04, MCC...is considered a principal use subject to a Coastal Administrative Permit. A Coastal Development Permit possibly would be required if tree removal would be required to accommodate the well and support facilities. In this instance, a CDP would be appealable to the Coastal Commission. However, there is no tree removal proposed or required to convert the test well to a permanent well or to accommodate the support facilities.

CEQA:

California Environmental Quality Act (CEQA) Guidelines Section 15301(b), Class 1, categorically exempts operation and minor alterations of existing facilities. The proposed project involves the conversion of a test well to a permanent well to deliver potable water to a future single-family residential dwelling, which is not part of the application. Therefore, the project qualifies, as and is consistent with the parameters of the Class 1 categorical exemption. No evidence of significant adverse environmental effects were identified during staff review of the development application pursuant to Section 15300.2 of the CEQA Guidelines.

OTHER AGENCY INVOLVEMENT:

The following County agencies or departments reviewed this project:

- RMA-Public Works
- RMA-Environmental Services
- Environmental Health Bureau
- Carmel Highlands FPD (Fire Protection District)
- Water Resources Agency

FINANCING:

Funding for staff time associated with this project has been included in the Adopted Budget for RMA-Planning, Appropriation Unit RMA001.

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.

Check the related Board of Supervisors Strategic Initiatives:

☐ Economic Development
☒ Administration

☐ Health & Human Services
☐ Infrastructure
☐ Public Safety

LUAC

The project, PLN170624, was not referred to the Carmel Unincorporated/Highlands Land Use Advisory Committee (LUAC) for review. This application was not required to be presented to the LUAC because the project is exempt from environmental review, does not involve a Lot Line Adjustment, Variance, or Design approval requiring a public hearing. Additionally, it was not controversial at the time, and had no adverse impacts to the site, so staff did not refer it for review under their own discretion.

Prepared by: R. Craig Smith, Associate Planner, x6408

Reviewed by: Brandon Swanson, RMA Planning Services Manager

Approved by: John M. Dugan, FAICP, RMA Deputy Director of Land Use and
Development Services

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

Attachment A - Project Data Sheet

Attachment B - Draft Resolution, including:

- Recommended Conditions of Approval
- Site Plan

Attachment C - Notice of Appeal

Attachment D - Letter from Fenton & Keller

Attachment E - Letter, Noland, Hamerly, Etienne, Hoss

Attachment F - ZA Resolution 18-046

Attachment G - Vicinity Map

cc: Front Counter Copy; Carmel Highlands FPD (Fire Protection District); RMA-Public Works; RMA-Environmental Services; Environmental Health Bureau; Water Resources Agency; R. Craig Smith, Associate Planner; Brandon Swanson, RMA Services Manager; Timothy and Constance Glass, Property Owners; Nancy Isakson, Agent; Lloyd Lowery, Agent, The Open Monterey Project (Molly Erickson); LandWatch; Project File PLN170624