Introduced: 4/1/2025
Version: 1

Current Status: Agenda Ready
Matter Type: BoS Resolution

PLN230127 - MCDOUGALL AMY E.
Public hearing to:
a. Consider the appeal of Amy McDougall and Rene Peinado of the Planning Commission's denial of a Combined Development Permit; and
b. Consider a Combined Development Permit to allow construction of a six-story single-family dwelling with an attached garage, attached accessory dwelling unit, attached junior accessory dwelling unit, covered and uncovered decks, patios, and exterior staircases, and associated site improvements including the removal of Coast live oaks, drilling a domestic well, development on slopes in excess of 25 percent, and a reduction of the required front, side, and rear setbacks from 5 feet to 0 feet, without a variance.
Project Location: 10196 Oakwood Circle, Carmel
Proposed CEQA action: Find that remanding the project to the Planning Commission is exempt from CEQA review because the remand is not a project under CEQA and because disapproval of a proposed project is statutorily exempt under CEQA Guidelines section 15270.

RECOMMENDATION
It is recommended that Board of Supervisors adopt a resolution:
1) Finding that remanding the project to the Planning Commission is exempt from CEQA review because the act is not a project under CEQA and because disapproval of a proposed project is statutorily exempt, pursuant to CEQA Guidelines section 15270; and
2) Rejecting the appeal and remanding the Combined Development Permit back to the Planning Commission for consideration following submittal revised application materials and necessary information.

Staff recommends that the Combined Development Permit be remanded back to the Planning Commission. Upon submittal and review of revised application materials and information necessary to consider the application **(Exhibit B)**, staff will bring this project back to the Planning Commission for a hearing. Should the Board of Supervisors wish to act (approval or denial) on the project and its appeal, Staff will return as directed.

PROJECT INFORMATION
Agent: Laura Strazzo, Patterson & O'Neill
Property Owner: Amy McDougall (c/o Rene Peinado)
APN: 416-542-011-000
Parcel Size: 0.081 acres (3,252 square feet)
Zoning: Medium Density Residential, 5 units per acre, Design Control overlay, Site Plan Review

overlay, Residential Allocation Zoning overlay (MDR/5-D-S-RAZ)
Plan Area: Carmel Valley Master Plan
Flagged and Staked: No. Visual simulations incorporated into project plans.
Project Planner: Fionna Jensen, Principal Planner (Working out of Class)
JensenF1@countyofmonterey.gov, 831-796-6407

SUMMARY

The subject property is approximately 0.4 miles south of Carmel Valley Road, within the Oakshire Subdivision near Carmel Valley Ranch. Single-family dwellings are developed on lots immediately to the north of the property, while lots immediately to the west, east, and south are vacant and zoned Open Space. The 0.08-acre subject property is vacant and contains slopes exceeding 25 percent and Coast live oaks.

On August 1, 2023, Rene Peinado, on behalf of the owner, Amy McDougall, applied for a Combined Development Permit (PLN230127) for the construction of a six-story single-family dwelling with an attached garage, attached accessory dwelling unit (ADU), attached junior accessory dwelling unit (JADU), outdoor decks and patios, and associated site improvements, including the removal of Coast live oaks and drilling a domestic well ("Project) (**Attachment D**). Materials submitted with the application for the Project indicate that the Applicant was not proposing any part of the project as affordable housing (Page 2 of **Attachment E**). Similarly, when the application was deemed complete under the Permit Streamlining Act, the project did not include an affordability component. The affordability component of the application, or lack thereof, is an important factor here, as the appeal relies on statements from the Applicant that rely upon such an affordable housing component, which would trigger the Housing Accountability Act and Builder's Remedy laws, both of which would have impacted the Planning Commission's decision.

Under the relevant provisions of the law, an applicant may modify a housing development project to include affordable housing, which could qualify the proposal for the Builder's Remedy laws without having to reapply or submit a new preliminary application. Here however, Mr. Peinado has not clearly stated that he wishes to modify his project. Mr. Peinado has already submitted a second application (PLN240139) using the State's Builder's Remedy application form, which includes substantially the same project plans with a deed restriction on the Junior Accessory Dwelling Unit for rent at to a low-income household. This second application was filed after staff informed the applicant that the Project (PLN230127) did not comply with objective zoning standards, so staff could not support that Project as designed.

The Project, without the affordability component, was scheduled for review by the Planning Commission on August 28, 2024. That hearing was continued to September 25, 2024, because the Applicant/Owner was unable to attend and the project was not properly noticed. Though the item was noticed properly in the local newspaper and mailed to interested parties 10 days in advance of the August 28, 2024, Planning Commission hearing, the Applicant/Owner failed to post notices on or near the project site. To ensure all noticing requirements were met for the September 25, 2024 hearing, staff posted notices near the subject property on September 17, 2024. On September 20, 2024, the Applicant/Owner informed staff that they removed the notices posted on-site and requested that the

September 25 hearing be continued to a future date, when he would be available to attend. On September 23, 2024, the Applicant/Owner submitted a letter requesting the Planning Commission continue the item to a later date, claiming to be available "during the entire month of December 2024 so I can accommodate almost any date that month for a hearing". At the September 25, 2024 hearing, the Planning Commission continued the item to a date uncertain. Following this September Planning Commission hearing, County staff met with the Applicant/Owner who agreed to a December 11, 2024, or January 8, 2025 hearing date.

After noticing the project in accordance with Title 21, Chapter 21.78 for the December 11, 2024 Planning Commission hearing, the Applicant/Owner submitted a letter to HCD-Planning on December 5, 2025. In this letter, the Applicant/Owner claimed that staff had agreed to a six-month continuance of PLN230127, admitted to removing the required postings from the property, and, for the first time, declared that the project qualifies as a "Builder's Remedy" project because "at least 20% of the total units, more specifically the proposed JADU, shall be rented to lower income households as defined in Section 50079.5 of the Health and Safety Code" (**Attachment B**). On December 10, 2025, HCD-Planning staff responded to the Applicant/Owner's letter, refuting the claim that staff had agreed to the requested six-month continuance. Staff's response letter also reminded the Applicant/Owner that the application materials did not indicate that an affordable dwelling unit was proposed (see **Attachment A**), and the project scope scheduled for consideration by the Planning Commission did not include an affordable JADU. This response letter clarified that if the Applicant/Owner's intention was to revise the project scope, the Applicant/Owner would need to submit revised project materials and necessary supplemental information, thus restarting the Permit Streamline Act review process.

Revised project materials were not submitted. Consequently, on December 11, 2024, the Planning Commission considered a Combined Development Permit for a project that did not include an affordability component. During the Applicant/Owner's presentation, Ms. Strazzo (Applicant's attorney) testified that the application materials did not require the Applicant to inform the County that the project included an affordable unit and therefore the Applicant/Owner never informed staff prior to December 5, 2025 - over a year after initial submittal of the application. After staff presentation, public comment, and deliberation, the Planning Commission adopted a resolution finding that denial of a project is statutorily exempt under CEQA guidelines and denying the project due to inconsistencies with Monterey County Code and lack of evidence demonstrating the site is suitable and there will be no public health and safety concerns. (Resolution No. 24-039; **Attachment C**).

The Appellants/Owners, Amy McDougall and Rene Peinado, timely appealed the December 11, 2024 Planning Commission decision to deny a Combined Development Permit (**Attachment B**). The Appellants contends that the Planning Commission's decision was contrary to the law, the Planning Commission's hearing was not fair or impartial, and the Planning Commission's decision and findings are not supported by evidence.

Per Monterey County Code section 20.86.070, the Board of Supervisor hearing on the appeal is de novo. Staff has reviewed the appeal and concluded that the appeal is not ready for consideration by the Board at this time, particularly given many layers of obfuscation with respect to the Project description. As such, staff recommends that the Board of Supervisors reject the appeal and require that the Combined Development Permit be remanded back to the Planning Commission for it to

review the Project based on new information. Should the Board do so, staff would work with the Applicant to clarify the Project description and gather any application materials necessary for the review of the revised project.

DISCUSSION

The Applicant/Owner has submitted two applications to HCD-Planning: PLN230137 and PLN240139. PLN240139 proposes a similar scope as PLN230127, but has minor changes to the interior layout and is being processed in accordance with Senate Bill 330, the Housing Crisis Act of 2019, which included the "Builder's Remedy", Government Code section 65589.5(d). The Applicant/Owner expressly proposed PLN240139 to include a JADU that would be deed restricted for affordability. PLN230127 has never included such a JADU. Indeed, the Applicant/Owner has not clarified whether he wishes the County to modify PLN230127 to include a similar JADU. PLN240139 is currently in an "Incomplete" status. PLN230137 is being reviewed on its own merits, independent of PLN240139. PLN240139 is subject to a public hearing process and will be scheduled and considered by the appropriate authority once the application is deemed complete and undergoes the necessary California Environmental Quality Act review.

Applicant/Owner's appeal relies on his statements, first made in its December 5, 2024 letter, that the Project (PLN230127) is subject to the Builder's Remedy because it involves affordable housing. This assertion contradicts the materials submitted with the application and fails to explain exactly what modification to the project is proposed. The appeal also appears to reference PLN240139, causing more confusion. For example, Ms. Strazzo, Appellant's counsel, claims, "Several months later [after deeming PLN230127 complete], after the case planner learned this application is subject to affordable housing and builders remedy processing, Planning Staff claimed an additional geological report is required." This statement is both incorrect and creates ambiguity as to which application the Applicant/Owner is referencing throughout the appeal. Staff did not "learn" PLN230127 was subject to Builder's Remedy after deeming it complete. As described above and in detail in **Attachment A**, PLN230127 was never submitted as a Builder's Remedy application and was never revised to be subject to the Builder's Remedy. PLN230127 was deemed complete on June 14, 2024. On June 27, 2024, the Applicant/Owner submitted a separate housing development application for PLN240139 under the Builder's Remedy. In July 2024, PLN240139 was deemed incomplete and staff requested, amongst other items, a geological report, due to the property being in known seismic hazard areas. Although required by Title 21 and the Safety Element of the County's General Plan, a geological report was not requested to process PLN230127 due to the project's other inconsistencies with Monterey County Code and staff's recommendation of denial. Here, the Applicant/Owner's desire to revise their "complete" application (PLN230127) to be a Builder's Remedy project simply destabilizes the project's description and undermines the County's ability to do a comprehensive review of the proposed project.

Staff suggests that the Applicant/Owner be given the opportunity to modify the project scope to be subject to the Housing Accountability Act, specifically to the Builder's Remedy provisions. Assuming this is Applicant/Owner's wish, and to clarify confusion over this application, staff suggests that Applicant/Owner be required to provide the following materials and information to confirm the new project scope:

- Evidence demonstrating that the project qualifies for Builder's Remedy;
- A written statement indicating that an affordable unit is being proposed and describing which

unit(s) is/are to be provided; and

- Revised information declaring both what level of affordability is being proposed and how the Applicant/Owner intends to comply with Government Code section 65589.5(h)(3), which requires that the affordable unit be subject to a recorded deed restriction for 55 years for rental units and 45 years for owner-occupied units.

Staff has communicated this need to the applicant in the past, however, he refuses to accept that a change in the project description would warrant additional review. Staff disagrees, as different standards and different decisions may have been made in the processing of the application had the project included an affordable unit from the start. Specifically, staff may not have deemed the project "complete" in anticipation of recommending denial of the project due to the multiple inconsistencies with General Plan and Zoning standards and other factors like geological hazards, water availability, and affordable housing deed restrictions. Therefore, should the Applicant/Owner revise the project to be subject Builder's Remedy, staff also recommends that the Board require that the Applicant/Owner submit the necessary information to review the new project scope. This includes, but is not limited to:

- Accurate project plans;
- A Geological Report prepared in accordance with applicable Title 21 and General Plan policies;
- Evidence of adequate long-term water supply; and
- Evidence demonstrating compatibility with the property's "Sanitary Sewer Easement"

Title 21 section 21.80.090(B), states "If relevant new evidence that was not known and could not have been known at the original hearing is presented at the appeal hearing the application may be returned to the Appropriate Authority for reconsideration." The Planning Commission's decision on this project was made based on the original application scope, which did not include an affordable unit. If the application is modified, as suggested in the appeal, this would be new information warranting a return to the Planning Commission. Further, pursuant to Title 21 section 21.80.090(C), the Board of Supervisors may reject an appeal for failure of the appellant to present all the evidence available to him or her at the time of the original hearing. As Ms. Strazzo indicated during the December 11, 2024 Planning Commission hearing, and made clear in the appeal, the Applicant/Owner withheld that it was their understanding that the project scope included an affordable unit because they believed that the application materials did not request that information. However, as detailed in **Attachment A** and shown in **Attachment E**, the Applicant/Owner signed an application form clearly indicating that PLN230127 did not propose an affordable unit. Accordingly, because Applicant/Owner failed to present relevant information and evidence, staff recommend the Board of Supervisors reject the appeal and remand the item back to the Planning Commission, following submittal of revised application materials and the necessary information to process and review the new project scope.

Alternatively, should the Board of Supervisors wish to act on the project and its appeal, Staff will return as directed with a draft resolution.

APPEAL

Applicant/Owner filed an appeal with multiple contentions **(Attachment B)**, which staff has

summarized below:
1. The Planning Commission's decision improperly determined the project was not subject to the Builders Remedy and thus improperly denied the project based on inconsistencies with zoning and general plan, and failed to make the necessary public health and safety findings under Builders Remedy;
2. The Applicant was not required to declare that the project was affordable;
3. The County of Monterey's Inclusionary Housing Ordinance does not apply to the project;
4. The project was deemed compliant as a matter of law on July 13, 2024;
5. The Planning Commission's decision violated the Housing Accountability Act by applying subjective design standards;
6. The Planning Commission incorrectly interpreted "Natural Grade";
7. The Planning Commission's hearing was impartial and not fair;
8. The Planning Commission's finding that the project was inconsistent with "Plans and Policies for Development" was not supported by evidence;
9. The Planning Commission's finding that the project would be detrimental to health and safety was not supported by evidence; and
10. The Planning Commission's decision disregarded the Applicant's arborist report and determined without evidence that trees on adjacent properties would be removed;

The appeal's contentions are largely based on the Applicant/Owner's incorrect assertion about the project scope, namely its affordability, and how that influenced the application processing and the decision of the Planning Commission. Staff's response to these contentions is outlined in **Attachment A**, Discussion. In summary, the contentions have been found to have no merit and/or have been prematurely raised.

During its review, HCD-Planning staff received numerous letters opposing the proposed project (**Attachment J**). These letters were primarily submitted by residents of the subject subdivision and its HOA. Members of the public object to the proposed height, colors materials, and size of the residence, citing its inconsistency with the Carmel Valley Master Plan and Carmel Valley Ranch Specific Plan, and lack of compatibility with the surrounding neighborhood. Additional neighbor concerns included the project's potential impact on aesthetics, specifically nighttime light pollution, neighborhood safety, slope stability, drainage, nearby trees, and property values.

ENVIRONMENTAL REVIEW

Public Resources Code Section 21080(b)(5) and CEQA Guidelines section 15270 state that the California Environmental Quality Act does not apply to projects that a public agency rejects or disapproves. Staff recommends the Board of Supervisors reject the raised appeal and remand the item back to the Planning Commission.

OTHER AGENCY INVOLVEMENT

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

Environmental Health Bureau
HCD-Engineering
HCD-Environmental Services

Monterey Regional Fire Protection Department

LUAC

The proposed project was referred to the Carmel Valley Land Use Advisory Committee for review on June 17, 2024. There, members of the public raised concerns relating to setbacks, the size and internal circulation of the ADU, impacts on public and private views, neighborhood compatibility, development on steep slopes, erosion control, and parking. Members of the LUAC raised similar concerns and noted that the proposed amount of glass could cause light pollution. After public testimony, the LUAC voted 4-0 to not support the project as proposed (**Attachment L**).

FINANCING:

Funding for staff time associated with this project is included in the FY2024-25 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:
X Administration
__Economic Development
__Health & Human Services
__Infrastructure
__Public Safety

Prepared by: Fionna Jensen, Principal Planner (WOC)
Reviewed and Approved by: Craig Spencer, HCD Director

The following attachments are on file with the HCD:
Attachment A - Discussion
Attachment B - Appeal
Attachment C - Planning Commission Resolution No. 24-039
Attachment D - Project Plans
Attachment E - Application Form
Attachment F - Neighborhood Photos
Attachment G - Arborist Report
Attachment H - Arborist Meeting Minute Notes
Attachment I - Monterey Bay Engineers Letter
Attachment J - Public Comment
Attachment K - Applicant Requested Continuances
Attachment L - LUAC Minutes (June 17, 2024)
Attachment M - Site Visit Photos
Attachment N - Final Map

cc: Front Counter Copy; Planning Commission; Fionna Jensen, Acting Principal Planner, , Melanie Beretti, AICP, Chief of Planning; Anna Bornstein, EMC Planning Group, Agent; Amy McDougal, Owner; Rene Peinado, Applicant; The Open Monterey Project (Molly Erickson); LandWatch (Executive Director); Christina McGinnis, Keep Big Sur Wild; Laborers International Union of North America (Lozeau Drury LLP); Interested Party List; Project File PLN230127