

## MONTEREY COUNTY ZONING ADMINISTRATOR

<b>Meeting:</b> April 30, 2009	<b>Time:</b> 1:45 P.M	<b>Agenda Item No.:</b> 4
<b>Project Description:</b> Coastal Development Permit to allow the removal of one 15-inch diameter Monterey pine tree to allow realignment and improvements to an existing driveway and Design Approval for a Keystone Retaining wall		
<b>Project Location:</b> 10 Mal Paso Road, Carmel		<b>APN:</b> 243-194-020-000, 243-194-021-000
<b>Planning File Number:</b> PLN080513		<b>Owner:</b> Scott Emsley <b>Owner:</b> Judy Feisthamel
<b>Planning Area:</b> Carmel Area Land Use Plan		<b>Flagged and staked:</b> No
<b>Zoning Designation:</b> : LDR/5-D (CZ) (Low Density Residential, 5 Acres per unit with Design Control in the Coastal Zone		
<b>CEQA Action:</b> Categorically Exempt per Section 15304		
<b>Department:</b> RMA - Planning Department		

### RECOMMENDATION:

Staff recommends that the Zoning Administrator adopt a resolution (**Exhibit B**) to

Approve PLN080513, based on the findings and evidence and subject to the conditions of approval (**Exhibit B**):

### PROJECT OVERVIEW:

The subject request is to allow realignment of an existing driveway. Currently access to 10 Mal Paso Road (APN 243-194-020) is provided by an access easement across the property at 8 Mal Paso Road (APN 243-194-021). Unfortunately, a portion of the existing driveway is outside of the prescribed easement. The applicant would like to move the driveway over so that it is completely within the easement. The requirement to widen the driveway extends from a 2006 permit to construct a garage. The Fire Department required a minimum 12-foot wide access. In order to accomplish this, some minor grading is needed to provide sufficient driveway width. The limits of the necessary grading will be at the base of a 15-inch diameter Monterey pine. This grading would result in some large roots of the tree to be cut, compromising the health and safety of the tree. The applicant requests approval to remove the tree in order to grade the access.

A Forest Management Plan has been prepared for the project, identifying the 15-inch Monterey pine as being in poor condition. The arborist also recommends removing an 8-inch Monterey pine for the benefit of an adjacent Monterey pine, and also removal of a red eucalyptus because it is a non-native and is in proximity to the driveway. These additional removals do not require a permit as they are not protected trees.

The Carmel Land Use Plan allows tree removal subject to approval of a Coastal Development Permit. The policies of the Carmel Area Coastal Implementation Plan call for removal of a minimum number of trees to accommodate proposed development. There is only 14 feet between the edge of the easement, and the tree in question. It is not possible to do the necessary grading and not adversely impact the tree. The access is a requirement of a previously approved permit. This project is in conformance with the Policies of the Land Use Plan.

This area is in a high archaeologically sensitive zone. An archaeologist has surveyed the site and determined that the project should not be held up for archaeological reasons.

The area of the subject grading contains a 30% slope. Section 20.64.230 requires approval of a Coastal Development Permit on slopes in excess of 30% except on man made slopes when:

1. The proposed excavation does not exceed 100 cubic yards, and
2. the excavation does not exceed 2 feet in depth, and
3. the excavated slope is not steeper than 1-1/2 horizontal to 1 vertical.

In this particular case the slope is man made, the result of the previous grading for the driveway, the amount of soil to be removed is approximately 6 cubic yards, and the depth of soil being removed is generally less than two feet, and the result will be a small 20-inch tall retaining wall with a minor amount of grading along the top of the wall to feather the grade to the top of the wall. The resultant excavated slope will be far less than 1-1/2 to 1. Thus a Coastal Development Permit is not required for the grading associated with the driveway.

**OTHER AGENCY INVOLVEMENT:** The following agencies and departments reviewed this project:

RMA - Public Works Department  
Environmental Health Division  
Water Resources Agency  
Carmel Highlands Fire Protection District  
California Coastal Commission

Agencies that submitted comments are noted with a check mark (“√”). No conditions of approval have been recommended by other agencies.

*The proposed project was reviewed by the Carmel Land Use Advisory Committee. They did not have any concerns associated with the proposed project and recommended approval with a 6-0 vote.*

Note: The decision on this project is appealable to the Board of Supervisors. This project is appealable to the California Coastal Commission

/s/ John Ford  
John Ford, Senior Planner  
(831) 796-6049, fordjh@co.monterey.ca.us  
April 15, 2009

cc: Front Counter Copy; Zoning Administrator; Carmel Highlands Fire Protection District; Public Works Department; Environmental Health Division; Water Resources Agency; California Coastal Commission; Laura Lawrence, Planning Services Manager; John Ford, Project Planner; Carol Allen, Senior Secretary; Scott Emsley, Owner; Judy Feisthamel, owner; Planning File PLN080513

Attachments: Exhibit A Project Data Sheet  
Exhibit B Draft Resolution, including:  
1. Conditions of Approval  
2. Site Plan,  
Exhibit C Vicinity Map  
Exhibit D Advisory Committee Minutes (LUAC)  
Exhibit E Forest Management Plan

**EXHIBIT B  
DRAFT RESOLUTION**

**Before the Zoning Administrator in and for the  
County of Monterey, State of California**

In the matter of the application of:

**Scott Emsley (PLN080513)**

**RESOLUTION NO. ----**

Resolution by the Monterey County Zoning  
Administrator:

Approving a Coastal Development Permit to allow the removal of one 15-inch diameter Monterey pine tree to allow realignment and improvements to an existing driveway and Design Approval for a Keystone Retaining wall.

(PLN080513, Scott Emsley, 10 Mal Paso Road, Carmel, Carmel Area Land Use Plan (APN: 243-194-020-000, 243-194-021-000)

**The Emsley application (PLN080513) came on for public hearing before the Monterey County Zoning Administrator on April 30, 2009. Having considered all the written and documentary evidence, the administrative record, the staff report, oral testimony, and other evidence presented, the Zoning Administrator finds and decides as follows:**

**FINDINGS**

1. **FINDING:** **CONSISTENCY** – The Project, as conditioned, is consistent with the applicable plans and policies which designate this area as appropriate for development.  
**EVIDENCE:** a) During the course of review of this application, the project has been reviewed for consistency with the text, policies, and regulations in:
  - the Monterey County General Plan,
  - Carmel Area Land Use Plan,
  - Carmel Area Land Use Plan, Coastal Implementation Plan,
  - Monterey County Zoning Ordinance (Title 20)No conflicts were found to exist. No communications were received during the course of review of the project indicating any inconsistencies with the text, policies, and regulations in these documents.
  - b) The property is located at 10 Mal Paso Road, Carmel (Assessor’s Parcel Number 243-194-020-000, 243-194-021-000), Carmel Area Land Use Plan. The parcel is zoned LDR/5-D (CZ) (Low Density Residential, 5 acres per unit with Design Control in the Coastal Zone, which allows the existing residential use of the property. Therefore, the project is an allowed land use for this site.
  - c) Section 20.146.060.A of the Carmel Area Coastal Implementation Plan requires a Coastal Development Permit for the removal of a 15-

inch diameter Monterey pine. The tree removal is necessary to improve the access to 10 Mal Paso Road in compliance with Fire access requirements within the limits of the access easement across the property at 8 Mal Paso Road.

- d) The project planner conducted a site inspection on December 9, 2008 to verify that the project on the subject parcel conforms to the plans listed above.
- e) TREE REMOVAL, The project minimizes tree removal in accordance with applicable goals and policies of the Carmel Area Land Use Plan. (see Finding 6)
- f) The area of the subject grading contains a 30% slope. Section 20.64.230 requires approval of a Coastal Development Permit on slopes in excess of 30% except on man made slopes when:
  - The proposed excavation does not exceed 100 cubic yards, and
  - the excavation does not exceed 2 feet in depth, and
  - the excavated slope is not steeper than 1-1/2 horizontal to 1 vertical.

In this particular case, the slope is man made, the amount of soil to be removed is approximately 6 cubic yards, and the depth is generally less than two feet, and the result will be a small 20-inch tall retaining wall with a minor amount of grading along the top of the wall to feather the grade to the top of the wall. The resultant excavated slope will be far less than 1-1/2 to 1. Thus a Coastal Development Permit is not required for the grading associated with the driveway.

- g) The applicant is proposing to use either an Keylock concrete block retaining wall with an exposed aggregate finish, or a granite block wall. Both wall designs and materials are in keeping with the surrounding environment and type of development.
- h) The project was referred to the Carmel Area Land Use Advisory Committee (LUAC) for review. Based on the LUAC Procedure guidelines adopted by the Monterey County Board of Supervisors per Resolution No. 08-338, this application did warrant referral to the LUAC because it is a project requiring Design Approval and is subject to a public hearing. The LUAC had no concerns with the proposed project and recommended approval with a 6-0 vote.
- i) The application, project plans, and related support materials submitted by the project applicant to the Monterey County RMA - Planning Department for the proposed development found in Project File PLN080513.

2. **FINDING:** **SITE SUITABILITY** – The site is physically suitable for the use proposed.

- EVIDENCE:**
- a) The project has been reviewed for site suitability by the following departments and agencies: RMA - Planning Department, Carmel Highlands, Fire Protection District, Public Works, Environmental Health Division, and Water Resources Agency. There has been no indication from these departments/agencies that the site is not suitable for the proposed development. Conditions recommended have been incorporated.
  - b) Staff identified potential impacts to Forest Resources and Cultural

Resources. Technical reports by outside consultants indicated that there are no physical or environmental constraints that would indicate that the site is not suitable for the use proposed. County staff independently reviewed these reports and concurs with their conclusions. The following reports have been prepared:

- "Updated Arborist/Forester Report for PLN080513, Stephen Staub, Felton, CA February 17, 2009 (LIB080604)
  - Preliminary Cultural Resources Reconnaissance, Susan Morley, Marina, CA, February 2009. (LIB090186)
- c) Staff conducted a site inspection on December 9, 2008 to verify that the site is suitable for this use.
- d) The application, project plans, and related support materials submitted by the project applicant to the Monterey County RMA - Planning Department for the proposed development found in Project File PLN080513.

3. **FINDING:** **HEALTH AND SAFETY** - The establishment, maintenance, or operation of the project applied for will not under the circumstances of this particular case be detrimental to the health, safety, peace, morals, comfort, and general welfare of persons residing or working in the neighborhood of such proposed use, or be detrimental or injurious to property and improvements in the neighborhood or to the general welfare of the County.

- EVIDENCE:**
- a) The project was reviewed by RMA - Planning Department, Carmel Highlands, Fire Protection District, Public Works, Environmental Health Division, and Water Resources Agency. No conditions have been recommended for this project.
- b) Preceding findings and supporting evidence for PLN080513. The subject residence has existed at this location with this basic configuration for an extended period of time. The only change will be to place the access to the parcel completely within the access easement. This will not change any condition such that it would be a detriment to the public health or safety. It will maintain orderly development.

4. **FINDING:** **NO VIOLATIONS** - The subject property is in compliance with all rules and regulations pertaining to zoning uses, subdivision, and any other applicable provisions of the County's zoning ordinance. No violations exist on the property.

- EVIDENCE:**
- a) Staff reviewed Monterey County RMA - Planning Department and Building Services Department Monterey County records and is not aware of any violations existing on subject property.
- b) Staff conducted a site inspection on December 9, 2008 and researched County records to assess if any violation exists on the subject property.
- c) There are no known violations on the subject parcel.
- d) The application, plans and supporting materials submitted by the project applicant to the Monterey County Planning Department for the proposed development are found in Project File PLN080513

5. **FINDING:** **CEQA (Exempt):** - The project is categorically exempt from environmental review and no unusual circumstances were identified to

exist for the proposed project.

- EVIDENCE:**
- a) California Environmental Quality Act (CEQA) Guidelines Section 15304, categorically exempts minor alterations in the condition of land, water and/or vegetation which do not involve the removal of healthy mature, scenic trees.
  - b) The project proposes to do minor grading to provide the required Fire Department access. The grading move approximately 6 cubic yards of dirt, and will result in damage to an existing 15-inch diameter Monterey pine. The Monterey pine will be removed to allow the grading. A Forestry Management Plan has been prepared indicating that this tree is in poor health and is infected with insects. Thus the tree is not healthy, mature or scenic and the project complies with the provisions of this exemption.
  - c) No adverse environmental effects were identified during staff review of the development application during a site visit on December 9, 2008.
  - d) There are not any unique circumstances associated with this site that would result in significant adverse environmental impacts. An archaeological survey has been prepared finding no evidence of cultural resources; the site does not contain steep slopes or environmentally sensitive habitat.
  - e) See preceding and following findings and supporting evidence.

6. **FINDING:** **TREE REMOVAL** – The subject project minimizes tree removal in accordance with the applicable goals and policies of the applicable land use plan and the Coastal Implementation Plan.

- EVIDENCE**
- a) The project includes application for the removal of one 15-inch diameter Monterey pine tree. In accordance with the applicable policies of the Carmel Area Land Use Plan and the Monterey County Zoning Ordinance (Title 20), a Coastal Development Permit is required and the authority to grant said permit has been met.
  - b) Section 20.146.060.A.1 of the *Carmel Area Coastal Implementation Plan* states: “A coastal development permit must be obtained for the removal of trees and other major vegetation...” The exception to this is trees that are dead, a hazard or less than 12 inches in diameter. Removal of the subject tree requires approval of a Coastal development Permit.
  - c) Section 20.146.D.3 states: “Removal of native trees shall be limited to that which is necessary for the proposed development”. The subject tree is approximately 14 feet from the edge of the access easement. It is not possible to provide a graded 12 foot wide access meeting Fire Department requirements without conducting grading that result in the need to remove the tree.
  - d) Forest Management Plan and supplemental reports were prepared by Staub Forestry and Environmental Consulting.
  - e) The removal will not involve a risk of adverse environmental impacts. The removal is to allow necessary grading and a corresponding 22-inch tall by 40-foot long retaining wall. This retaining wall will prevent any soil or slope instability. The amount of grading is very minor (6 cubic yards.).
  - f) Staff conducted a site inspection on December 9, 2008 to verify that the

tree removal is the minimum necessary for the project and to identify any potential adverse environmental impacts related to the proposed tree removal.

- g) The application, plans and supporting materials submitted by the project applicant to the Monterey County Planning Department for the proposed development are found in Project File PLN080513.

6. **FINDING:** **APPEALABILITY** - The decision on this project may be appealed to the Board of Supervisors and to the California Coastal Commission
- EVIDENCE:** a) Section 20/21.86.030.A of the Monterey County Zoning Ordinance allows appeals of the Decision by the Zoning Administrator to be appealed to the Board of Supervisors.
- b) Section 20.86.080.A.3 of the Monterey County Zoning Ordinance states that any project involving development that is permitted in the underlying zone as a conditional use may be appealed to the California Coastal Commission. This project requires a Coastal Development Permit and thus meets this criterion to be eligible for appeal to the Coastal Commission.

### **DECISION**

**NOW, THEREFORE**, based on the above findings and evidence, the Zoning Administrator does hereby:

Approve the Coastal Development Permit to allow the removal of one 15-inch diameter Monterey pine tree to allow realignment and improvements to an existing driveway and Design Approval for a Keystone Retaining wall, in general conformance with the attached sketch (**Exhibit 2**) and subject to the conditions (**Exhibit 1**), both exhibits being attached hereto and incorporated herein by reference.

**PASSED AND ADOPTED** this 30<sup>th</sup> day of April, 2009.

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Mike Novo, Zoning Administrator

COPY OF THIS DECISION MAILED TO APPLICANT ON **DATE**

THIS APPLICATION IS APPEALABLE TO THE BOARD OF SUPERVISORS.

IF ANYONE WISHES TO APPEAL THIS DECISION, AN APPEAL FORM MUST BE COMPLETED AND SUBMITTED TO THE CLERK TO THE BOARD ALONG WITH THE APPROPRIATE FILING FEE ON OR BEFORE **DATE**

THIS PROJECT IS LOCATED IN THE COASTAL ZONE AND IS NOT APPEALABLE TO THE COASTAL COMMISSION.

This decision, if this is the final administrative decision, is subject to judicial review pursuant to California Code of Civil Procedure Sections 1094.5 and 1094.6. Any Petition for Writ of Mandate must be filed with the Court no later than the 90th day following the date on which this decision becomes final.

## NOTES

1. You will need a building permit and must comply with the Monterey County Building Ordinance in every respect.

Additionally, the Zoning Ordinance provides that no building permit shall be issued, nor any use conducted, otherwise than in accordance with the conditions and terms of the permit granted or until ten days after the mailing of notice of the granting of the permit by the appropriate authority, or after granting of the permit by the Board of Supervisors in the event of appeal.

Do not start any construction or occupy any building until you have obtained the necessary permits and use clearances from the Monterey County Planning Department and Building Services Department office in Salinas.

2. This permit expires 2 years after the above date of granting thereof unless construction or use is started within this period.



<b>RESOLUTION ### - EXHIBIT 1</b> <b>Monterey County Resource Management Agency</b> <b>Planning Department</b> <b>Condition Compliance and/or Mitigation Monitoring</b> <b>Reporting Plan</b>	<b>Project Name:</b> <u>Emsley</u> <b>File No:</b> <u>PLN080513</u> <b>APNs:</b> <u>243-194-020-000,</u> <u>243-194-021-000</u> <b>Approved by:</b> <u>Zoning Administrator</u> <b>Date:</b> <u>April 30, 2009</u>
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*\*Monitoring or Reporting refers to projects with an EIR or adopted Mitigated Negative Declaration per Section 21081.6 of the Public Resources Code.*

Permit Cond. Number	Mitig. Number	Conditions of Approval and/or Mitigation Measures and Responsible Land Use Department	Compliance or Monitoring Actions to be performed. Where applicable, a certified professional is required for action to be accepted.	Responsible Party for Compliance	Timing	Verification of Compliance (name/date)
<b>RMA – Planning Department</b>						
1.		<b>PD001 - SPECIFIC USES ONLY</b> This Coastal Development Permit (PLN080513) allows the removal of one 15 – inch diameter Monterey pine tree to allow realignment and improvements to an existing driveway and Design Approval for a Keystone Retaining wall. The property is located at 10 Mal Paso Road, Carmel (Assessor’s Parcel Number 243-194-020-000, 243-194-021-000), Carmel Area Land Use Plan. This permit was approved in accordance with County ordinances and land use regulations subject to the following terms and conditions. Any use or construction not in substantial conformance with the terms and conditions of this permit is a violation of County regulations and may result in modification or revocation of this permit and subsequent legal action. No use or construction other than that specified by this permit is allowed unless additional permits are approved by the appropriate authorities.	Adhere to conditions and uses specified in the permit.  Neither the uses nor the construction allowed by this permit shall commence unless and until all of the conditions of this permit are met to the satisfaction of the Director of the RMA - Planning Department.  To the extent that the County has delegated any condition compliance or mitigation monitoring to the Monterey County Water Resources Agency, the Water Resources Agency shall provide all information requested by the County and the County shall bear ultimate responsibility to ensure that conditions and mitigation measures are properly fulfilled.	Owner/ Applicant  RMA - Planning  WRA  RMA - Planning	Ongoing unless otherwise stated	

<i>Permit Cond. Number</i>	<i>Mitig. Number</i>	<i>Conditions of Approval and/or Mitigation Measures and Responsible Land Use Department</i>	<i>Compliance or Monitoring Actions to be performed. Where applicable, a certified professional is required for action to be accepted.</i>	<i>Responsible Party for Compliance</i>	<i>Timing</i>	<i>Verification of Compliance (name/date)</i>
2.		<b>PD002 - NOTICE-PERMIT APPROVAL</b> The applicant shall record a notice which states: "A permit (Resolution [REDACTED]) was approved by the <b>Zoning Administrator</b> for Assessor's Parcel Number 243-194-020-000, 243-194-021-000 on April 30, 2009. The permit was granted subject to 6 conditions of approval which run with the land. A copy of the permit is on file with the Monterey County RMA - Planning Department."	Obtain appropriate form from the RMA-Planning Department.  The applicant shall complete the form and furnish proof of recordation of this notice to the RMA - Planning Department.	Owner/ Applicant  RMA- Planning	Prior to the issuance of grading and building permits	
3.		<b>PD032 - PERMIT TIME/YEAR &amp; DATE</b> The permit shall be granted for a time period of 2 years, to expire on April 29, 2011.	The applicant shall obtain a valid grading or building permit and/or commence the authorized use to the satisfaction of the Director of Planning.  Any request for extension must be received by the Planning Department at least 30 days prior to the expiration date.	Owner/ Applicant	As stated in the conditions of approval	
4.		<b>PD003(A) – CULTURAL RESOURCES – NEGATIVE ARCHAEOLOGICAL REPORT</b> If, during the course of construction, cultural, archaeological, historical or paleontological resources are uncovered at the site (surface or subsurface resources) work shall be halted immediately within 50 meters (165 feet) of the find until a qualified professional archaeologist can evaluate it. The Monterey County RMA - Planning Department and a qualified archaeologist (i.e., an archaeologist registered with the Society of Professional Archaeologists) shall be immediately contacted by the responsible individual present on-site. When contacted, the project planner and the archaeologist shall immediately visit the site to determine the extent of the resources and to develop proper mitigation measures required for the discovery. ( <b>RMA - Planning Department</b> )	Stop work within 50 meters (165 feet) of uncovered resource and contact the Monterey County RMA - Planning Department and a qualified archaeologist immediately if cultural, archaeological, historical or paleontological resources are uncovered. When contacted, the project planner and the archaeologist shall immediately visit the site to determine the extent of the resources and to develop proper mitigation measures required for the discovery.	Owner/ Applicant/ Archaeo- logist	Ongoing	

<i>Permit Cond. Number</i>	<i>Mitig. Number</i>	<i>Conditions of Approval and/or Mitigation Measures and Responsible Land Use Department</i>	<i>Compliance or Monitoring Actions to be performed. Where applicable, a certified professional is required for action to be accepted.</i>	<i>Responsible Party for Compliance</i>	<i>Timing</i>	<i>Verification of Compliance (name/date)</i>
5.		<p><b>PDSP001 – FOREST MANAGEMENT PLAN – (NON-STANDARD)</b> The provisions contained within the Forest Management Plan prepared by Staub Forestry and Environmental Consulting dated February 17, 2009 shall be complied with as part of the implementation of this project. The specific elements include:</p> <ul style="list-style-type: none"> <li>• The native shrubs and toyons shall be retained. All grading and pruning shall be done under the supervision of a certified arborist.</li> <li>• Tree #10 (8”Monterey Pine is approved for removal.</li> <li>• Tree #18 (3” Coast Live Oak) is approved for removal)</li> <li>• Tree 14 (8” Red Eucalyptus) is approved for removal)</li> </ul> <p>All tree removal, pruning, and all grading around remaining trees and native shrubs shall be done under the supervision of a certified arborist.  <b>RMA – Planning Department.</b></p>	The arborist shall submit a follow up report with photos documenting the work which was done and the protective measures taken to protect the trees and native shrubs.	Owner/ Applicant	As stated in the conditions of approval	
6.		<p><b>PDSP002 TREE REPLACEMENT (NON-STANDARD)</b> The applicant shall plant one 15 gallon Monterey pine chosen from native stock or two 5 gallon Monterey pines chosen from native stock.</p>	The Applicant shall submit photo verification of planting to the RMA-Planning Department for review and approval.	Owner/ Applicant	As stated in the conditions of approval	

**END OF CONDITIONS**

Rev. 03/01/2009