

**PLANNING COMMISSION
COUNTY OF MONTEREY, STATE OF CALIFORNIA**

RESOLUTION NO. 04029

A. P. # 241-122-004-000

In the matter of the application of
Carmel Area Wastewater District (PLN030325)

FINDINGS & DECISION

to allow a Combined Development Permit in accordance with Chapter 20.82 (Combined Development Permits) of the Monterey County Code, consisting of a Coastal Development Permit for development on slopes of 30% or greater; a Coastal Development Permit for development with a positive archaeological report; a Coastal Development Permit for the removal of protected trees (up to 16 Monterey pines); and a Coastal Development Permit for development within 100 feet of environmentally sensitive habitat (to include San Jose and Gibson Creeks) and Design Approval; Grading (approximately 2,908 cu. yds. of cut & 2,611 cu. yds. of fill) and retaining walls. Properties for which construction is proposed are located at and around the Highlands Inn and the Tickle Pink Inn, and the CalTrans right-of-way along Highway 1 from Highlands Inn to the Point Lobos entrance and from the intersection of Ribera Road with Highway 1, westerly along Ribera Road to an existing pump station near Calle la Cruz, in the Carmel Highlands, Point Lobos, and Carmel Meadows areas of the Carmel Area Land Use Plan, Coastal Zone, came on regularly for hearing before the Planning Commission on June 30, 2004.

Said Planning Commission, having considered the application and the evidence presented relating thereto,

- 1. FINDING: CONSISTENCY, SITE SUITABILITY, & PUBLIC ACCESS** – The subject Combined Development Permit, as described in Condition 1 of the attached Exhibit “D,” and as conditioned, conforms to the plans, policies, requirements, and standards of the certified Monterey County Local Coastal Program (LCP). The LCP for the project consists of the *Carmel Area Land Use Plan*, the *Regulations for Development in the Carmel Area Land Use Plan* (Part 4), Part 6 of the Coastal Implementation Plan (Appendices), and the Monterey County Zoning Ordinance (Title 20). Properties for which construction is proposed are located at and around the Highlands Inn and the Tickle Pink Inn (Assessor's Parcel Numbers 241-181-006-000, 241-181-011-000 to 241-181-013-000, 241-351-004-000 & 241-351-005-000), and the CalTrans right-of-way along Highway 1 from the Highlands Inn to the Point Lobos entrance and from the intersection of Ribera Road with Highway 1, westerly along Ribera Road to an existing pump station near Calle La Cruz, in the Carmel Highlands, Point Lobos, and Carmel Meadows areas of the Carmel unincorporated area. The parcels are zoned “LDR/1-D (CZ)” and “VSC-D (CZ)”; i.e., “*Low Density Residential, 1 unit per acre*,” and “*Visitor Serving Commercial*,” within a Design Control District and within the Coastal Zone. The sites are physically suitable for the use proposed. The project is in conformance with the public access and public recreation policies of the Coastal Act and Local Coastal Program, and do not interfere with any form of historic public use or trust rights (see Section 20.70.050.B.4 of Title 20). No access is required as part of the project as no substantial adverse impact on public coastal access, either individually or cumulatively, as described in Section 20.70.050.B.4.c of the Monterey County Coastal Implementation Plan, can be demonstrated.

- EVIDENCE:**
- (a) Planning and Building Inspection Department (PBID) staff have reviewed the project as contained in the application and accompanying materials for conformity with the certified Monterey County Local Coastal Program and have determined that the project is consistent as conditioned. Permit application, plans, and materials contained in Project File No. PLN030325.
 - (b) The project planner conducted an onsite inspection on June 8, 2004, to verify that the project on the subject parcel conforms to the certified Monterey County Local Coastal Program.
 - (c) The requested Combined Development Permit involves development on slopes of 30% or greater, development with a positive archaeological report, the removal of protected trees (up to 3 Monterey pines), and development within 100 feet of environmentally sensitive habitat. All of these activities are conditionally allowable for the subject properties pursuant to Chapters 20.14 (LDR [CZ] District) and 20.22 (VSC [CZ] District) of the Zoning Ordinance (Title 20).
 - (d) LAND USE ADVISORY COMMITTEE: The Carmel Area Land Use Advisory Committee recommended approval of the project by a unanimous vote of 7 to 0; LUAC meeting minutes dated April 19, 2003.
 - (e) The application, plans, and support materials submitted by the project applicant to the Monterey County Planning and Building Inspection Department for the proposed development, found in Project File No. PLN030325.
 - (f) There has been no testimony received either written or oral, during the course of public hearings to indicate that the site is not suitable for the project. Necessary public facilities are available for the use proposed. The project has been reviewed by the Monterey County Planning and Building Inspection Department, Water Resources Agency, the applicable Fire Department, Public Works Department and Environmental Health Division. There has been no indication from those agencies that the site is not suitable. There are no physical or environmental constraints such as geologic or seismic hazard areas, environmentally sensitive habitats, or similar areas that would indicate the site is not suitable for the use proposed.
 - (g) As conditioned, the new development required for the subject project is compatible with the protection and maintenance of the adjacent environmentally sensitive resources, to include native Monterey pine forest and the riparian habitats of San José and Gibson Creeks, as well as another unnamed drainage. In addition, as conditioned, the removal of indigenous vegetation and land disturbance adjacent to these environmentally sensitive habitats are restricted to only those amounts necessary for the required infrastructure improvements (Conditions 5, 12, 13, 14, 15, 16, 17, 18, 19, 20, & 21).
 - (h) The prohibition against development on 30% slopes can be waived for the subject project since there is no feasible alternative which would allow development to occur on slopes of less than 30% and since the proposed development better achieves the goals, policies, and objectives of the Monterey County Local Coastal Program since the project will improve the wastewater treatment infrastructure for the Highlands & Tickle Pink Inns and the Highlands Sanitary Association; see project plans in File No. PLN030325.
 - (i) The project as proposed is consistent with policies of the *Carmel Area Land Use Plan* dealing with development in archaeologically sensitive areas. An archaeological report, dated October 30, 2003, has been prepared by Archaeological Consulting, Inc., for the proposed project, the results of which were positive (report contained in the project file PLN030325). The subject project will pass through two registered archaeological sites and close to a third. However, the first two sites have already been impacted by the

construction of Highway 1, and the subject project will place new sewer lines in existing fill material along the shoulder of the highway that lies above the archaeological material. In this way, impacts will be minimized if not avoided. The subject project is not expected to impact the third archaeological site due to its location in relation to the project. Condition 24 has been added to require that work be stopped in the event that any archaeological resources are found during construction. Pursuant to Section 20.146.090.D of the *Regulations for Development in the Carmel Area Land Use Plan*, the mitigation measures recommended by the archaeological report prepared for the project are required as a condition of approval (Conditions 22, 23, & 24), preservation measures recommended by the mitigation plan prepared by the project archaeologist for resources discovered during construction shall be undertaken concurrent with grading or other soil disturbing activities (Condition 6), and a report on any preservation activities undertaken pursuant to the mitigation plan prepared by the project archaeologist shall be submitted to the County prior to final inspection (Conditions 7 & 23). The LCP requirements that the archaeological site shall be placed in an archaeological easement and that the property owner shall request that the “parcel” be rezoned to include the “HR” designation are deemed unfeasible since these areas are not located on parcels but within the CalTrans right-of-way. (Exhibit “C”)

- (j) In order to comply with General Policy 2.8.3.4 of the *Carmel Area Land Use Plan*, Condition 11 requires that the project design substantially minimize if not completely avoid impacts to the perimeter wall of the historic “R. L. James” residence (a.k.a., “Seaward”).
- (k) The subject property is not adjacent to the seashore and is not described as an area where the Local Coastal Program requires public coastal access, according to Sections 20.70.050.B.4.c.i and ii of the Zoning Ordinance (Title 20).

2. FINDING: TREE REMOVAL – The subject project, as designed and conditioned, minimizes tree removal in accordance with the applicable goals and policies of the *Carmel Area Land Use Plan* and with the *Regulations for Development in the Carmel Area Land Use Plan*. Three (3) native Monterey pine trees are proposed for removal, one of which is a 34” landmark tree. The landmark tree is not visually or historically significant, exemplary of its species, or more than 1,000 years old. Alternatives to its removal, or that of the other two, are not possible because they lay directly in the required path of the sewer alignment.

EVIDENCE: (a) The project plans depict how the sewer alignment crisscrosses Highway 1 at several points in an attempt to reduce impacts to the greatest number of trees possible (as well as to archaeological and historic resources). Three (3) Monterey pines will be removed from the Highlands Inn area (one 34”, one 16”, and one 7” pine) and at least 11 other native trees will require specific mitigation measures to ensure that any impact to them remain at less-than-significant levels (Conditions 12, 17, 18, 19, & 20).

(b) As found in the Mitigated Negative Declaration adopted by the Board of Directors of the Carmel Area Wastewater District on June 17th, 2004, “*the pipe near station 4+15 needed to be placed near the 34” Monterey pine because the pipe for this portion of the alignment is an 'at grade' sewer and is based on the existing topography. The pipe transitions from an 'at grade' sewer to a 'below grade' sewer near the pine, which means there will be excavation on the downslope side of the tree. The excavation will likely destabilize the tree in the future and cause it to unexpectedly fall down. Removal is prudent to assure the safety of the public and property owners. The project area in question is primarily a rock outcropping, which limits the choice of pipe alignment. The*

designed route was chosen to avoid large rocks and to avoid a previous landslide area. In order to maintain gravity flow, the pipeline could have been sited further uphill, but that would have put it into the landslide area and could have threatened the existing structures. Going further down slope would not have allowed the necessary grade to be made for a gravity line. The current alignment also avoids other trees, including a 24" Monterey pine. It is clear that other alternatives were evaluated but that no feasible alternatives exist whereby the removal of the 34" Monterey pine could be avoided."

- (c) *Forester's Preliminary Report on Potential Tree Impacts Associated with Trenching and Pipe Installation for the Highlands Sewer Connection Project*, Stephen R. Staub, forester and environmental consultant, June 12, 2003.
- (d) *Biotic Report for the Highlands Sanitary Sewer Connection Project*, Denise Duffy & Associates, April 2004.
- (e) Initial Study, Mitigated Negative Declaration, and Mitigation Monitoring and Reporting Program prepared by Denise Duffy & Associates, and adopted by the Board of Directors of the Carmel Area Wastewater District on June 17th, 2004.
- (f) Project plans as contained in File No. PLN030325

3. FINDING: CEQA - Pursuant to Section 15096 (Process for a Responsible Agency) of the CEQA guidelines, the County, as a Responsible Agency, has followed the process set forth in this section and as such has considered the Mitigated Negative Declaration prepared and adopted by the Carmel Area Wastewater District as Lead Agency. The County finds that there is no substantial evidence, based on the record as a whole that would support a fair argument that the project, as designed and mitigated, may have a significant environmental impact.

EVIDENCE: The Carmel Area Wastewater District (CAWD), as lead agency, oversaw the preparation of an Initial Study for the project in compliance with the California Environmental Quality Act (CEQA) and its Guidelines. The Initial Study provides substantial evidence that the project, with the addition of Mitigation Measures, would not have significant environmental impacts. A Notice of Intent to Adopt a Mitigated Negative Declaration was filed with the County Clerk on April 15, 2004, noticed for public review, and circulated to the State Clearinghouse. All comments received on the Initial Study were considered and addressed by the CAWD. Among the studies, data, and reports analyzed as part of the environmental determination by both the CAWD and the Planning and Building Inspection Department are the following reports:

- 1. *Forester's Preliminary Report on Potential Tree Impacts Associated with Trenching and Pipe Installation for the Highlands Sewer Connection Project*, Stephen R. Staub, forester and environmental consultant, June 12, 2003;
- 2. *Historic Property Survey Report*, Archaeological Consulting, Inc., October 2003;
- 3. *Geotechnical Investigation*, D&M Consulting Engineers, Inc., March 1, 2004; and
- 4. *Biotic Report for the Highlands Sanitary Sewer Connection Project*, Denise Duffy & Associates, April 2004.

3. FINDING: NO VIOLATIONS – The subject properties are 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 properties, and all zoning violation abatement cost, if any, have been paid.

EVIDENCE: Staff reviewed Monterey County Planning and Building Inspection Department records and is not aware of any violations that exist on subject properties.

- 4. 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: Preceding findings and supporting evidence.

- 5. FINDING: APPEALABILITY** – The project, as approved by the Planning Commission, is appealable to the Board of Supervisors and the California Coastal Commission.

EVIDENCE: Sections 20.86.030 and 20.86.080 of the Monterey County Coastal Implementation Plan.

DECISION

It is the decision of the Planning Commission to adopt the Mitigated Negative Declaration and approve said application for a Combined Development Permit as shown on the attached sketch and subject to the attached conditions.

PASSED AND ADOPTED this 30th day of June, 2004, by the following vote:

AYES: Errea, Padilla, Vandever, Parsons, Diehl, Salazar, Hawkins

NOES: None

ABSENT: Sanchez, Rochester, Wilmot

JEFF MAIN, SECRETARY

COPY OF THIS DECISION MAILED TO APPLICANT ON

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 OF THE BOARD OF SUPERVISORS ALONG WITH THE APPROPRIATE FILING FEE ON OR BEFORE

THIS APPLICATION IS ALSO APPEALABLE TO THE COASTAL COMMISSION. UPON RECEIPT OF NOTIFICATION OF THE DECISION BY THE BOARD OF SUPERVISORS, THE COMMISSION ESTABLISHES A 10 WORKING DAY APPEAL PERIOD. AN APPEAL FORM MUST BE FILED WITH THE COASTAL COMMISSION. FOR FURTHER INFORMATION, CONTACT THE COASTAL COMMISSION AT (831) 427-4863 OR AT 725 FRONT STREET, SUITE 300, SANTA CRUZ, CA

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 and Building Inspection Department office in Marina.

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