

## CALIFORNIA COASTAL COMMISSION

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W15a



Appeal Filed:	08/29/2008
49 <sup>th</sup> Day:	10/17/2008
Staff Report Prepared:	09/25/2008
Staff Report Prepared By:	Katie Morange
Staff Report Approved By:	Dan Carl
Hearing date:	10/15/2008

## APPEAL STAFF REPORT

### SUBSTANTIAL ISSUE DETERMINATION ONLY

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**Appeal number** .....A-3-MCO-08-045, Skeen and Chang Single Family Dwelling

**Applicants** .....Dale Skeen and Jo Mei Chang

**Appellant**.....David Sabih

**Local government** .....Monterey County

**Local decision** .....Approved with conditions by the Monterey County Board of Supervisors on July 22, 2008 (Monterey County Coastal Development Permit (CDP) No. PLN060735)

**Project location** .....26327 Scenic Road, in the Carmel Point area downcoast of the City of Carmel in Monterey County (APN 009-442-013)

**Project description** .....Construction of a 2,950 square-foot single family dwelling (SFD) with a 545 square foot attached garage

**File documents**.....Monterey County Certified Local Coastal Program (LCP), including the LCP's Carmel Area Land Use Plan (LUP) and the Coastal Implementation Plan (CIP); Final Local Action Notice for Monterey County Coastal Development Permit (CDP) No. PLN060735

**Staff recommendation** ...No Substantial Issue

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### A. Staff Recommendation

#### 1. Summary of Staff Recommendation

On July 22, 2008 the Monterey County Board of Supervisors approved a combined coastal development permit (CDP) for a new three-story (one below grade) 2,950 square-foot single family dwelling (SFD) with a 545 square foot attached garage at 26327 Scenic Road (PLN060735). The SFD would have two aboveground stories and one below-grade basement. Grading for the garage, driveway, basement, as well as new finished grades requires excavation of 1,130 cubic yards of material. The vacant 4,700



California Coastal Commission

W15a-10-2008

square foot parcel is located along Scenic Road between Stewart Road and Ocean Avenue, approximately 200 feet from the Pacific Ocean.

The Appellant contends that the project will result in significant risk and hazards as a result of the amount and depth of excavation, the nature of soils at the site, and the proximity to neighboring structures. The geotechnical and structural engineering information from both the Applicant and Appellant identifies the risk to neighboring structures during excavation and construction. The County approval requires mitigation during construction to sufficiently abate it, including temporary structural shoring during construction. The Appellant also contends that the project will have significant impacts on public use of Scenic Road as a result of construction activities and the project itself. However, the project represents a typical, temporary construction activity that would not require closure of Scenic Road and would not otherwise unduly impact public access along this corridor, and the development of a new residence at this infill lot should have insignificant long-term effects on traffic and public access. Finally, the Appellant raises various procedural contentions that do not materially affect the CDP issuance and/or have already been addressed in the County approval.

Thus, the appeal contentions do not raise a substantial issue with respect to the project's conformance with the certified Monterey County LCP. Staff recommends that the Commission find that no substantial issue exists with respect to the grounds on which the appeal was filed, and that the Commission decline to take jurisdiction over the CDP for the project.

## 2. Staff Recommendation on Substantial Issue

Staff recommends that the Commission determine that no substantial issue exists with respect to the grounds on which the appeal was filed. A finding of no substantial issue would mean that the County's decision in this matter would be final (conversely, a finding of substantial issue would bring the project under the jurisdiction of the Commission for hearing and action).

**Motion.** I move that the Commission determine that Appeal Number A-3-MCO-08-045 raises no substantial issue with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act.

**Staff Recommendation of No Substantial Issue.** Staff recommends a **YES** vote. Passage of this motion will result in a finding of No Substantial Issue and adoption of the following resolution and findings. If the Commission finds No Substantial Issue, the Commission will not hear the application de novo and the local action will become final and effective. The motion passes only by an affirmative vote by a majority of the Commissioners present.

**Resolution to Find No Substantial Issue.** The Commission hereby finds that Appeal Number A-3-MCO-08-045 does not present a substantial issue with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act regarding consistency with the certified Local Coastal Program and/or the public access policies of the Coastal Act.



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## B. Findings and Declarations

The Commission finds and declares as follows:

### 1. Project Background and Local Government Action

On March 16, 2007, the Applicants, Dale Skeen and Jo Mei Chang, submitted an application to the Monterey County Planning Department for a permit to allow the construction of a new 2,950 square-foot SFD with a 545 square foot attached garage and the then-estimated 990 cubic yards of grading. Monterey County prepared and circulated an Initial Study/Mitigated Negative Declaration (IS/MND) from September 24, 2007 through October 24, 2007. On November 8, 2007 the County's Zoning Administrator conducted a public hearing on the proposed project. This hearing was continued to December 13, 2007 with direction to planning staff to revise the IS/MND to incorporate comments on grading quantities, impacts due to the depth of cut, groundwater levels, Best Management Practices (BMPs), size and aesthetics of the proposed residence, and water availability received during the comment period and during the hearing. Staff recirculated the IS/MND from December 7, 2007 to January 7, 2007. Staff requested a continuance from the December 13, 2007 hearing to January 31, 2008 in order to allow for the recirculation of the IS/MND. On January 31, 2008, the Zoning Administrator adopted the revised IS/MND and approved the CDP. David Sabih, the current Appellant



in this matter before the Commission, filed a timely appeal of the Zoning Administrator's decision and the appeal was heard by the Monterey County Board of Supervisors on April 15, 2008. The Board of Supervisors adopted a motion to continue the hearing for 30 days with intent to approve the project, pending submittal and review of drainage analysis from the site to verify that the contours of the street facilitate flow of runoff to drains; a construction management plan to address circulation and safety; and detailed information on pin piling. The IS/MND was subsequently revised and recirculated from May 5, 2008 to June 5, 2008 to include additional information relating to drainage, utilities, shoring, and transportation.

On May 13, 2008, the Board continued the item to July 8, 2008, and on July 8, the Board of Supervisors adopted the revised IS/MND, denied the appeal from the Zoning Administrator's approval, and approved a CDP for a new 2,950 square-foot single family dwelling with a 545 square foot attached garage and 1,130 cubic yards of grading. See Exhibit C for the Board of Supervisor's adopted staff report, findings, and conditions.

Notice of the County's final action was received in the Commission's Central Coast office on August 15, 2008. The Commission's ten working day appeal period commenced on August 18, 2008 and concluded at 5:00 PM on August 29, 2008. One valid appeal was received during the appeal period (see below).

## 2. Appeal Procedures

Coastal Act Section 30603 provides for the appeal to the Coastal Commission of certain CDP decisions in jurisdictions with certified LCPs. The following categories of local CDP decisions are appealable: (a) approval of CDPs for development that is located (1) between the sea and the first public road paralleling the sea or within 300 feet of the inland extent of any beach or of the mean high tide line of the sea where there is no beach, whichever is the greater distance, (2) on tidelands, submerged lands, public trust lands, within 100 feet of any wetland, estuary, or stream, or within 300 feet of the top of the seaward face of any coastal bluff, and (3) in a sensitive coastal resource area; or (b) for counties, approval of CDPs for development that is not designated as the principal permitted use under the LCP. In addition, any local action (approval or denial) on a CDP for a major public works project (including a publicly financed recreational facility and/or a special district development) or an energy facility is appealable to the Commission. This project is appealable because it is located within 750 feet of archaeological resources, which makes it a conditional use (and thus not principally permitted) under the LCP.

The grounds for appeal under Section 30603 are limited to allegations that the development does not conform to the certified LCP or to the public access policies of the Coastal Act. Section 30625(b) of the Coastal Act requires the Commission to conduct a de novo CDP hearing on an appealed project unless a majority of the Commission finds that "no substantial issue" is raised by such allegations. Under Section 30604(b), if the Commission conducts a de novo hearing and ultimately approves a CDP for a project, the Commission must find that the proposed development is in conformity with the certified LCP. If a CDP is approved for a project that is located between the nearest public road and the sea or the shoreline



of any body of water located within the coastal zone, Section 30604(c) also requires an additional specific finding that the development is in conformity with the public access and recreation policies of Chapter 3 of the Coastal Act. This project is not located between the nearest public road and the sea, and thus this additional finding does not need to be made if the Commission approves the project following a de novo hearing.

The only persons qualified to testify before the Commission on the substantial issue question are the applicant, persons who made their views known before the local government (or their representatives), and the local government. Testimony from other persons regarding substantial issue must be submitted in writing. Any person may testify during the de novo stage of an appeal.

### C. Summary of Appellant's Contentions

The Appellant, David Sabih, contends that the project will result in hazards and risks associated with design and siting because of the amount and depth of excavation, the nature of the soils, and the proximity to neighboring structures. The Appellant also contends that the project will have significant impacts, including cumulative impacts, on public use of and public access on Scenic Road as a result of truck trips for construction, and also partly as a result of the project itself. Finally, the Appellant raises various other LCP-related procedural issues and non-LCP related contentions, including process issues related to hazards and access; that the County failed to require an Environmental Impact Report (EIR) for the project; that the project approval relies on an illegal paper water credit; that the County failed to identify and discuss impacts of the amount of grading, truck trips, offsite disposal location and whether or not it would be in the Coastal Zone; and that the County did not include specific water quality mitigation measures suggested by the Regional Water Quality Control Board (RWQCB). Please see Exhibit F for the full text of the appeal.

### D. County-Approved Project Location and Description

The project site is a vacant 4,700 square-foot lot in a developed residential neighborhood at Carmel Point, zoned Medium Density Residential (MDR/2-D(18)(CZ)). The parcel is surrounded on the north, south, and east by residential development, and borders Scenic Road and more residential development across Scenic Road to the west. The site is located approximately 200 feet from the Pacific Ocean, which is located beyond Scenic Road and the row of residences to the west. The parcel gently slopes from east to west and consists of mowed grasses and brush. See Exhibits A and B for project location maps and Exhibit E for a site photo.

The County-approved project consists of a new 2,950 square-foot SFD with a 545 square foot attached garage. The proposed residence includes two levels aboveground and one basement level. Grading for the garage, driveway, and basement as well as the new finished grades requires excavation of 1,130 cubic yards of cut that would be exported from the site. Cut slopes would be supported by 3 to 8.5-foot tall retaining walls along the driveway and near the property lines. The development meets all of the



LCP-required setbacks and height limits, including an 18-foot height limitation for the Carmel Point area. See Exhibit D for project plans and elevations.

## E. Substantial Issue Determination

### 1. Geologic Hazards

The appeal contends that significant unacceptable risks exist due to siting and design related to depth of proposed construction, the nature of the soils at the site, and the proximity of the excavation to the neighboring structure to the south owned by the appellant. The Appellant states that the County made no effort to minimize the grading of 1,130 cubic yards, which he contends is equivalent to removing the top 6.5 feet of the entire lot. The Appellant also contends that the County recognized and acknowledged these significant risks when it required the project contractors to carry liability insurance of at least \$4 million per occurrence, including coverage for claims of bodily injury and property damage to the site and surrounding properties, and in doing so, conceded a significant risk of damage exists. The Appellant claims inconsistencies with LCP policies that require development to be sited and designed to conform to site topography, to minimize grading and other site preparation activities, and to minimize risks from geologic hazards (LUP Policies 2.7.3.1. and 2.7.4.1). Please see Exhibit F for the complete text of the cited policies.

The project geological and geotechnical report (prepared by Grice Engineering, January 24, 2007) determined that the site does not present unusual risks for this area for seismic hazards, including ground shaking, liquefaction, ground rupture, ground failure, and landslides. The report concluded that the site is suitable, from a soil-engineering standpoint, to support the proposed development provided that structures be designed and built in accordance with the requirements of the Uniform Building Code's (UBC) current edition, Seismic Zone IV; all buildings be founded on undisturbed native soils and/or acceptable, certified engineered fill; and that grading and excavation work be performed under the direction of a qualified soils engineer with inspections prior to placement of construction reinforcement and again prior to placement of concrete. These measures were incorporated into the County approval as Condition # 10 (see Exhibit C).

During the County review and public hearing processes, the Appellant raised concerns about construction-related impacts to neighboring structures. A subsequent geotechnical review was prepared by Haro, Kasunich and Associates (dated November 27, 2007) that supported the original geotechnical report and stated that temporary shoring would absolutely be necessary for construction of the basement and any cut excavations of the proposed development that are proximal to existing improvements. This report provided detailed recommendations for temporary shoring and concluded that if the contractor and designers follow these and other BMPs, the neighboring properties would not be impacted. The project structural engineer, Steve Mayone, prepared and submitted calculations (dated April 15, 2008) for the temporary construction shoring mechanism. The Appellant subsequently provided structural engineering peer review (Sezen Structural Engineering, letter dated May 23, 2008) that questioned the calculations prepared by Mr. Mayone. The project geotechnical and structural engineering team



reviewed the Sezen calculations, and subsequently agreed (in a letter dated July 1, 2008) to incorporate the Sezen suggestions into the temporary shoring system design. Grice Engineering also subsequently clarified, in a letter dated July 24, 2007, that BMPs, including temporary shoring and permanent retaining structures for the basement, would ensure that no significant impact would be incurred to adjacent properties from the proposed construction. The recommended measures in these letter reports were included in Conditions #10 and #25 as a requirement of County approval. In addition, the project structural engineer, Steve Mayone, as well as the project geotechnical engineers, testified at the January 31, 2008 Zoning Administrator hearing and April 15, 2008 and July 22, 2008 Board of Supervisors hearings and demonstrated the proposed method of temporary shoring and provided additional calculations and drawings. These recommendations were attached to the revised IS/MND which was adopted with the project.

The Appellant provided further geotechnical peer review in the form of two letter reports the day of the July 22, 2008 Board of Supervisors hearing (Rockridge Geotechnical, dated July 21, 2008 and Narwhal Enterprises, Inc., dated July 21, 2008) that supported the earlier conclusions that the shoring be carefully designed, reviewed, and monitored to minimize the potential for failure that could result in damage to the Sabih property. Both the Rockridge Geotechnical report and Narwhal Enterprises report provided more technical comments on the proposed shoring system that questioned various calculations and assumptions provided by the project engineers. These recommendations were discussed at the hearing, and the project engineers testified that the temporary shoring system was already more than adequate to protect the neighboring structure during construction. The County agreed with the Applicant's engineers and did not require further review of and revisions to the temporary shoring calculations. Nevertheless, the Applicant verbally agreed to allow the Appellant an additional peer review opportunity at the building permit stage. As mentioned above, County condition #25 requires a final temporary shoring plan prior to issuance of building and grading permits.

The County's action clearly includes consideration of the Appellant's geology and hazards contentions, including several iterations of geotechnical recommendation refinements. While there appear to be some minor competing judgments among geotechnical experts, it is clear that geotechnical concerns were a large part of the County's proceedings in this matter, and their resolution is a fundamental part of the County's action. In sum, the geotechnical information in the record indicates that the site has been adequately evaluated and that the project has been designed, sited, and mitigated in such a way as to be geologically safe as required by the LCP. In particular, the temporary shoring requirement will ensure that the project minimizes risks from geologic hazards and will not impact surrounding structures. The evidence in the record does not suggest that the project represents extraordinary risks that cannot be mitigated, or that the project has not been sited appropriately to minimize risks.

The appeal also raises several procedural contentions with respect to the geotechnical aspects of the project. The appeal asserts that the County did not require a deed restriction to describe the hazard, geotechnical mitigations, and long-term maintenance requirements, as required by LUP Policy 2.7.3.4 for locations determined to have significant hazards. The County determined that the soils at the site are capable of supporting the proposed development, and they did not determine this to be a location with significant geological hazards, and therefore, did not require the applicant to record the deed restriction



described under Policy 2.7.3.4. Instead, the County required compliance with LUP Policy 2.7.4.6, which states that “where geotechnical evaluation determines that the hazard is unlikely to lead to property damage or injury, construction is permissible if certified by a registered geologist/soils engineer that the project will not result in an unacceptable risk of injury or structural damage.” This policy requires such certification to be recorded with a copy of the deed at the County recorder’s office, and this requirement is memorialized in County condition #15. In light of the record as it relates to geotechnical hazards, the County’s application of LUP Policy 2.7.4.6 as opposed to LUP Policy 2.7.3.4 appears to be appropriate for this project. (Please see Exhibit F for the complete text of the cited policies.)

The appeal also asserts that the County building official did not concur with the determination that the hazard is unlikely to lead to property damage or injury (also required by LUP Policy 2.7.4.6) and that the County did not request that the disputed geotechnical reports be reviewed by a registered geologist from either the U.S. Geological Survey (USGS) or the California Division of Mines and Geology (required by LUP Policy 2.7.4.8). Building official concurrence occurs prior to issuance of the building and grading permits; as such, the County approval complies with this requirement. The County also did not seek review by the USGS or the California Division of Mines and Geology because they determined that no substantial evidence existed to suggest inadequacy of the geotechnical reports and recommendations.

In sum, the record indicates that the County has addressed and resolved relevant geologic and structural stability concerns as required by the LCP. Thus, the Appellant’s contentions do not raise a substantial issue with respect to the project’s conformance with the geologic hazards policies of the certified LCP.

## 2. Public Access and Recreation

The Appellant contends that project construction would have a significant impact (including cumulatively) on public use of Scenic Road because of the construction of an underground story that requires a significant amount of excavation and retaining walls. The appeal also claims that these impacts are exacerbated by the County’s failure to implement specific public access recommendations in the LUP for the Carmel Point area, and that the County did not acknowledge Scenic Road as a LCP-designated public trail/accessway. The appeal cites existing conditions descriptions in the LUP for Carmel Point that indicate varying and inadequate road width on Scenic Road, high traffic volumes, lack of a separated pedestrian path, parking constraints, and conflicts with residential uses, and cites specific policies in the LUP that call for retention of the Scenic Road corridor for long-term public use and consideration of public safety wherever shoreline access is provided (LUP Policy 5.3.3). Please see Exhibit F for the cited LCP policies and text.

The LCP identifies Scenic Road as a lateral public accessway, and LUP Policy 5.3.3.1.a specifically identifies the Scenic Road corridor along Carmel Point to be one of the most important major access areas to be retained for long-term public use. In addition to providing vehicular access to both residents and visitors, Scenic Road also provides public pedestrian and bicycle access. The problems identified in the LUP for this stretch are indeed real, and are exacerbated by heavy use by vehicles, pedestrians, and





bicycles. Despite this heavy use and importance of Scenic Road as a public accessway, the project would involve typical construction activities that would not preclude access or otherwise impede recreational activity along this corridor. Construction of the residence would not require closure of Scenic Road, and any delays as a result of construction activities would be temporary and do not represent a significant risk to public safety. County Condition #14 requires a construction management plan that limits construction activities to 8:00 AM to 4:00 PM on weekdays, prohibits construction on weekends, provides a specific truck route, and specific locations for parking and staging areas.

In terms of the post-construction, permanent project, the project parcel is not situated in such a way that regular residential use, including vehicles entering and exiting, would cause unusual impacts to public use of Scenic Road, particularly in this neighborhood which is almost entirely built out. A new single family dwelling in a developed residential neighborhood would not cause long term traffic or public safety impacts, and does not raise inconsistencies with LCP policies that require the retention of this corridor for long term public use. And although the County may have failed to identify Scenic Road as an LCP-designated public access route, it did acknowledge pedestrian use of Scenic Road, and this procedural oversight does not materially affect the analysis of public safety and use of the roadway.

The appeal also asserts that critical LUP management and improvement recommendations to protect public access and safety on Carmel Point have not been implemented by Monterey County, but the County did not review the project in this context. In other words, the County is required by the LCP to implement improvements along Scenic Road, but they have not done so and instead, in this case, approved residential development that may have the potential to make the problems worse. The LUP recommendations that have not been implemented include development of a separated pedestrian pathway and implementation of no parking requirements along Scenic Road. Although this is a valid observation and important in the overall planning context for this area, the project parcel is only one of a limited number of vacant lots remaining in this residential neighborhood, and development of this and those other remaining lots with single family residences should not be expected to significantly worsen congestion and safety problems at Scenic Point. Although the Commission is supportive of future public recreational access improvements to this stretch of Scenic Road, the proposed project does not require such improvements in order for it to be approvable. Construction-related concerns are addressed through the construction management plan, and the traffic generated by one single family residence is less than significant in the public access context.

In sum, the Appellant raises valid public access and safety concerns, but the project as approved adequately addresses these concerns and the issues do not rise to the level of substantial issue with respect to the project's conformance with the public access and recreation policies of the certified LCP.

### 3. Procedures and Other Issues

The Appellant's procedural contentions include that the County failed to require an Environmental Impact Report (EIR) for the project; that the project approval relies on an illegal paper water credit; that the County failed to identify and discuss impacts of the amount of grading, truck trips, offsite disposal location and whether or not it would be in the Coastal Zone; and that the County did not include specific



water quality mitigation measures suggested by the Regional Water Quality Control Board (RWQCB).

Monterey County, as the lead agency for the project under the California Environmental Quality Act (CEQA), determined that a Mitigated Negative Declaration (MND) was the appropriate level of CEQA review required for the project. The County's decision to adopt a MND and not an EIR is not an LCP issue per se. The LCP question is not what type of CEQA document was prepared, but rather whether or not the approval was based on adequate information in the record, and whether it is consistent with LCP requirements. As discussed above, the County's approval includes significant information and evaluation of the issues raised, and includes appropriate mitigations and project modifications to address LCP issues.

In addition, the Appellant contends that the County relied on an invalid paper water credit as the water source for the project. Although the appeal does not cite any specific LCP policies with which this is inconsistent, the LCP does include requirements that the County reserve limited water supplies for coastal-priority visitor serving uses except for infilling of existing vacant lots (LUP Policy 3.2.3.1 and IP Section 20.146.110). The County went to great lengths to provide evidence that the Robles del Rio subject water credit is indeed valid for the project, and the evidence in the record supports the County's finding that the Applicant's predecessor-in-interest obtained a water credit within the allowed timeframe and met the preconditions for release of the water.

The Appellant also contends that the County did not identify an offsite location for the disposal of excavated material. The LCP does not include any policies or implementing ordinances that require this information. The LCP issue here is really whether an ultimate disposal site is an inappropriate destination for spoils. The construction management plan, required by Condition #14, requires identification of a truck route and truck traffic (that, as discussed above, should not significantly impact public roadways or other public activities). The plan will, as a result, identify a disposal site. To the extent such site is atypical (and is not a landfill, corporation yard, or similar location), it is located in the Coastal Zone, and disposal at such site impacts coastal resources, a separate coastal permit would be required. There is nothing in the record to indicate, though, that disposal of excavated materials will be anything but that normally and typically associated with an infill residential project like this, and thus its identification as part of the construction management plan process is not a significant issue.

Finally, the appeal contends that the County failed to require mitigations recommended by the RWQCB in a letter dated May 12, 2008. The RWQCB letter recommends standard BMPs for erosion control and post-construction design, and did not recommend anything specific or unique for this project. County Conditions #6, 7, and 17 already require these standard measures.

Thus, these procedural and non-LCP related contentions raised by the appeal do not rise to the level of a substantial issue requiring Commission intervention.

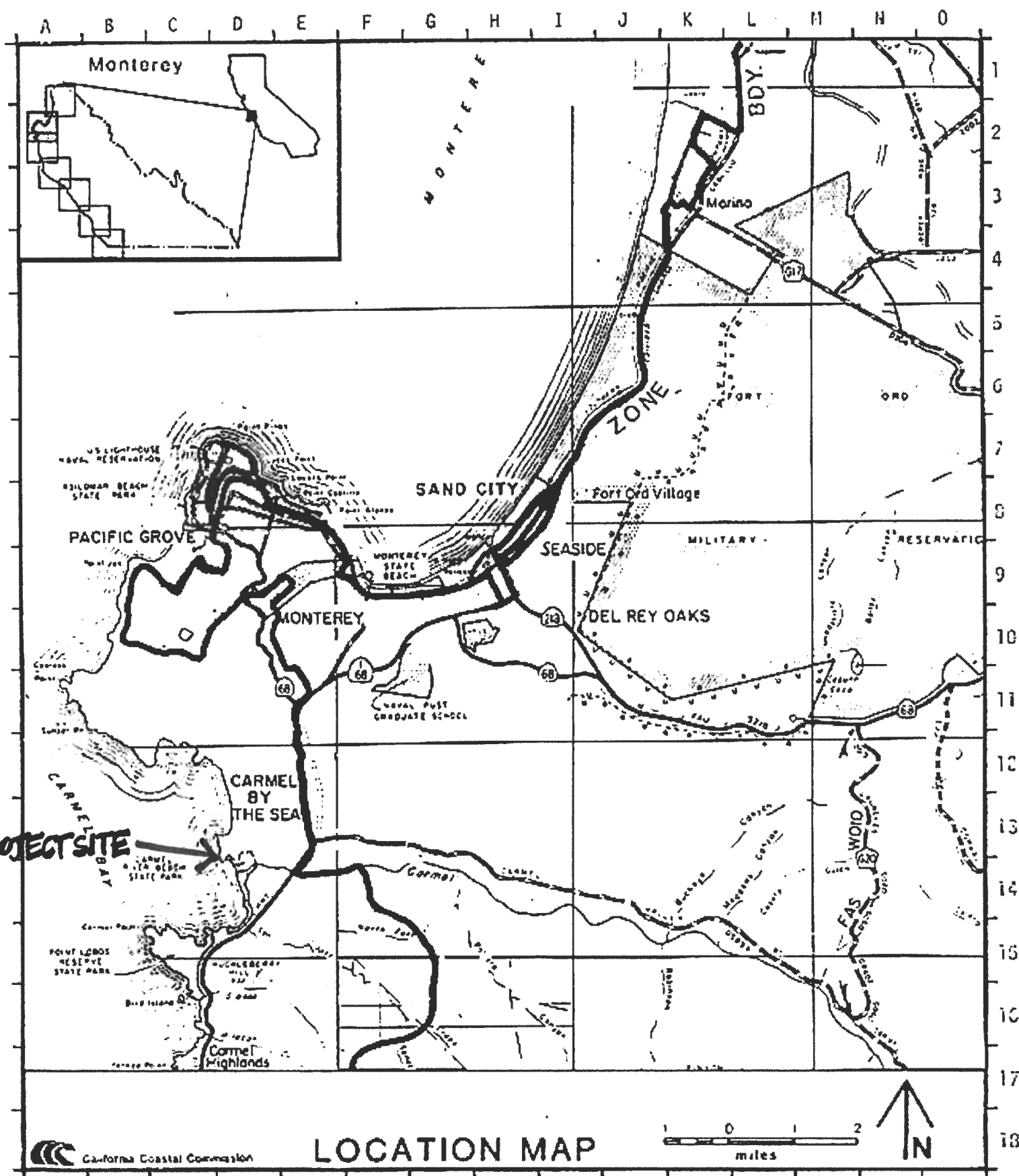
#### 4. Conclusion

The Appellant has raised some valid issues to which the LCP applies, but the appeal does not rise to the level of a substantial issue. The County's CDP approval appears to adequately respond to the applicable



fact set, and adequately implement the LCP. The site has been professionally evaluated for stability and geologic hazards, and appropriate mitigations are incorporated into the County's action. The infill residential project should not significantly impact public recreational access or other coastal resources, and the County's action also adequately addresses LCP requirements in that regard. The Commission finds that no substantial issue exists with respect to the grounds on which the appeal was filed, and declines to take jurisdiction over the CDP for this project.





County of Monterey

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CCC Exhibit: A  
(page 1 of 1 pages)

# CARMEL AREA

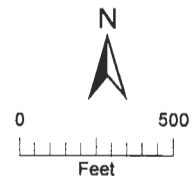


APPLICANT: SKEEN

APN: 009-442-013-000

FILE # PLN060735

300' Limit 2500' Limit City Limits



Source: Monterey County Planning Department

**CCC Exhibit 13**  
(page 1 of 1 pages)

PLANNER: SPENCER

# MONTEREY COUNTY

RESOURCE MANAGEMENT AGENCY

RECEIVED



PLANNING DEPARTMENT, Mike Novo, Director

AUG 15 2008

168 W. Alisal St., 2<sup>nd</sup> Floor  
Salinas, CA 93901

CALIFORNIA  
COASTAL COMMISSION  
CENTRAL COAST AREA

(831) 755-5025  
FAX (831) 757-9516

## FINAL LOCAL ACTION NOTICE

**Date:** August 13, 2008  
**To:** California Coastal Commission, Central Coast District Office  
Applicant/Representative: *Skeen & Chang*  
**From:** Monterey County Planning and Building Inspection Department  
**Subject:** Final Local Action on Coastal Permit  
Ash / PLN060735

### FINAL LOCAL ACTION NOTICE

REFERENCE # 3-MCO-08-237  
APPEAL PERIOD 8/18/08-8/29/08

Please note the following **Final Monterey County Action** for the following coastal development permit type:

- ☒ CDP/CAP    ☐ CDP Amendment    ☐ Extension    ☐ Emergency CDP  
☐ Exemption    ☐ Exclusion    ☐ Other:  
☐ all local appeals processes have been exhausted for this matter  
☐ The project includes an amendment to the LCP

### Project Information

**Application #:** PLN060735  
**Project Applicant:** SKEEN & CHANG  
**Applicant's Rep:** International Design Group  
Attention: Anatoly Ostretsov  
721 Lighthouse Avenue  
Pacific Grove, CA 93950

**Project Location:** 2327 Scenic Drive, Carmel

**Assessor's Parcel Numbers:** 009-442-013-000

**Project Description:** The project consist of:

COMBINED DEVELOPMENT PERMIT CONSISTING OF; 1) A COASTAL ADMINISTATIVE PERMIT TO ALLOW THE CONSTRUCTION OF A NEW THREE-STORY 2,950 SQUARE FOOT SINGLE FAMILY DWELLING WITH A 545 SQUARE FOOT ATTACHED GARAGE, 1,130 CUBIC YARDS OF CUT, AND ; 2) A COASTAL DEVELOPMENT PERMIT TO ALLOW DEVELOPMENT WITHIN 750 FEET OF A KNOWN ARCHAEOLOGICAL RESOURCES; AND 3) DESIGN APPROVAL. THE PROPERTY IS LOCATED AT 26327 SCENIC ROAD, CARMEL (ASSESSOR'S PARCEL NUMBER 009-442-013-000), COASTAL ZONE.

**CCC Exhibit** C  
(page 1 of 42 pages)

## Final Action Information

Final Action Date:

Final Action: ☒ Approved w/conditions ☐ Approved w/o conditions ☐ Denied

Final Action Body: ☐ Zoning Administrator ☐ Planning Commission ☒ Minor Subdivision Committee  
Board of Supervisors

For Coastal Commission Use Only

# MCO

Reference #:

FLAN received:

Appeal period:

## Final Local Action Notice Attachments Included

Required Materials Supporting the Final Action	Enclosed	Previously Sent (date)	Notes/Comments
Adopted Staff Report	√		
Adopted Findings	√		
Adopted Conditions	√		
Site Plans	√		
Elevations	√		
Location/Vicinity Map	√		
Additional Materials Supporting the Final Action	Enclosed	Previously Sent (date)	Notes/Comments
CEQA Document(s)	√		There was no evidence that the proposed project as designed, conditioned and mitigated will have A significant effect on the environment.
Other: Erosion Control Planning	√		Report dated, January 24, 2006
Other: Geotechnical Reports	√		Reports dated, January 24, 2006, July 24, 2007 and January, 2007
Other: Archaeological Reports	√		Reports dated, March 19, 2007 and Sept. 29, 1999

## Coastal Commission Appeal Information

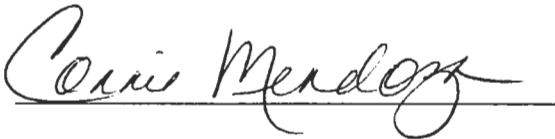
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Monterey County has determined that this Final Local Action is:

- ☐ **NOT APPEALABLE** to the California Coastal Commission. The Final Monterey County Action is now effective.
- ✓ **APPEALABLE** to the California Coastal Commission. The Coastal Commission's 10-working day appeal period begins the first working day after the Coastal Commission receives adequate notice of this Final Monterey County Action. The Final Monterey County Action is not effective until after the Coastal Commission's appeal period has expired and no appeal has been filed. Any such appeal must be made directly to the California Coastal Commission Central Coast District Office in Santa Cruz; there is no fee for such an appeal. Should you have any questions regarding the Coastal Commission appeal period or process, please contact the Central Coast District Office at 725 Front Street, Suite 300, Santa Cruz, CA 95060, (831) 427-4863.

### Submitted by

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Signature: 

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**Before the Board of Supervisors in and for the  
County of Monterey, State of California**

**Resolution No: 08 – 251**

- a. Adopt the Revised Mitigated Negative Declaration with an associated Mitigation Monitoring and Reporting Program; )
- b. Deny the appeal from the Zoning Administrator's approval of a Combined Development Permit; and )
- c. Approve the application (PLN060735; Skeen & Chang), ) for a Combined Development Permit consisting of: 1) A Coastal Development Permit to allow the construction of a new 2,950 square foot single family dwelling with a 545 square foot attached garage, 1,130 cubic yards of cut, and retaining walls; 2) A Coastal Development Permit to allow development within 750 feet of archaeological resources; ) and 3) A Design Approval. )

The appeal of David Sabih from the Zoning Administrator's approval of a Combined Development Permit to allow the construction of a new 2,950 square foot single family dwelling with a 545 square foot attached garage, 1,130 cubic yards of cut, and retaining walls came on for public hearing before the Board of Supervisors of the County of Monterey. Having considered all the written and documentary evidence, the administrative record, the staff report, oral testimony, and all other evidence presented, the Board of Supervisors hereby finds and decides as follows:

**I. FINDINGS**

- 1. FINDING: PROCESS** – The subject Combined Development Permit (PLN060735/Skeen & Chang) complies with all applicable procedural requirements.

- EVIDENCE:** (a) On March 16, 2007, pursuant to Monterey County Code Section 20.12.040.A, International Design Group, Inc. filed on behalf of the owners Dale Skeen & JoMei Chang, an application for a discretionary permit to allow the construction of a new 2,950 square foot single family dwelling with a 545 square foot attached garage, 1,130 cubic yards of grading, and new retaining walls on a parcel located at 26327 Scenic Rd, Carmel (Assessor's Parcel Number 009-442-013-000).
- (b) On January 31, 2008, the Zoning Administrator approved the discretionary permit application.
- (c) David Sabih (Appellant), pursuant to Monterey County Code Section 20.86.030.A, filed an appeal of the January 31, 2008, discretionary decision of the Zoning Administrator to approve a discretionary permit to allow construction of a new single family dwelling.
- (d) Said appeal was filed with the Clerk of the Board of Supervisors on February 17, 2008, within the 10-day time prescribed by Monterey County Code Section 20.86.030. C. A complete copy of the appeal is on file with the Clerk to the Board and is attached to the July 22, 2008, staff report as Exhibit C.
- (e) Said appeal was timely brought to a duly noticed public hearing before the Monterey County Board of Supervisors on April 15, 2008. Notice of the hearing was Published in the Monterey Herald; notices were mailed on to all property owners and tenants within 300 feet of the project site; and 3 notices were posted at and near the project site on April 4, 2008. The project was

continued for 30 days from the April 15 hearing to address specific concerns regarding drainage, shoring, and the construction management plan. At the May 13, 2008 hearing, upon staff's request, the Board continued the hearing to July 8, 2008 to allow for re-circulation of the Initial Study. On July 8, 2008, said appeal was brought back to a duly noticed public hearing before the Board of Supervisors. On July 8, 2008 staff requested, and was granted, a continuance to July 22, 2008. On July 22, 2008, the Board of Supervisors held the continued public hearing and rendered the decision herein.

(f) Supporting materials in Project File PLN060735.

- 2. FINDING: CONSISTENCY** – The project as described in Condition No. 1, and as conditioned, is consistent with the policies, requirements, and standards of the Carmel Area Land Use Plan (LUP), Carmel Area Coastal Implementation Plan (CIP)(Part 4), Part 6 of the Coastal Implementation Plan, and the Monterey County Zoning Ordinance (Title 20), which designates this area as appropriate for residential development.

- EVIDENCE:** (a) Plan Conformance The text, policies, and regulations in the above referenced documents have been evaluated during the course of review of applications. No conflicts were found to exist. Communications were received during the course of review of the project alleging possible inconsistencies with the text, policies, and regulations in these documents. These comments were considered and the project was found to be consistent with the above mentioned criteria given the evidence in the record (see the following evidences for more analysis).
- (c) Zoning Consistency. The project is located on a 4,700 square foot vacant lot located at 26327 Scenic Road, Carmel (Assessor's Parcel Number 009-442-013-000), Carmel Land Use Plan area, Coastal Zone. Zoning for this lot is MDR/2-D(18)(CZ), which allows the first single family dwelling per legal lot of record (Section 20.12.040.A) subject to a Coastal Administrative Permit in each case. Therefore, the property is suitable for development of a new single family home. Site development standards including setbacks, height, building site coverage, and floor area ratio are all met.
- (c) Site Visit The project planner conducted a site inspection on August 1, 2007 and June 11, 2008 to verify that the project on the subject parcel conforms to the project plans. The current plans and project design are attached hereto as Exhibit G.
- (d) Visual Resources As designed, conditioned, and mitigated the project is consistent with the Carmel Area LUP and the Coastal Implementation Plan policies (CIP part 4). The project will harmonize with the existing character of the neighborhood and scenery using natural earth toned colors (Policy 2.2.3.6 LUP). Condition 9 is a standard condition to require visually sensitive exterior lighting (Policy 2.2.3.10.d LUP). The project building site is not located on the crest of a hill and would not result in ridgeline development (Policy 2.2.3.10.a LUP). The project is consistent with CIP policy 20.146.030 CIP part 4 relating to viewshed from Scenic Road. Surrounding properties are developed with dwellings of similar size and character making up much of the view on the eastern side of Scenic Road. The proposed dwelling is within the 18 foot height limit from average natural grade (determined to be the 38.89 elevation) required by the parcel's zoning. Although the new dwelling will be visible

from Carmel State beach and Scenic Road, it is within a setting consisting of established residential dwellings of similar character.

- (e) Geology & Soils A geological and geotechnical investigation was prepared for the project by Grice Engineering pursuant to Carmel Land Use Plan Policy 2.7.3.1 LUP. The reports discussed the potential for seismic related ground shaking and foundation engineering which are discussed in the Initial Study. Follow up letters were provided to address potential impacts to neighboring properties due to close proximity of retaining walls to the property lines. A separate report was submitted, prepared by Haro, Kasunich, and Associates, Inc to address concerns and requirements not addressed in the Grice Report. The depth of grading and the small lot size required mitigation for potential impacts to neighboring structures. Reports submitted found that compliance with the recommendations contained in the reports and the implementation of mitigation for temporary shoring would adequately protect the residence of the proposed structure and neighboring structures. Conditions and Mitigation requiring compliance with the recommendations in these reports and temporary shoring have been incorporated (Condition #'s 10, 15, & 25). Additionally, at the Board of Supervisors hearing on April 15, 2008, information and materials were submitted by structural engineer Steve Mayone demonstrating the proposed method of shoring (see Finding 9 Evidence b).
- (f) Drainage & Erosion Control Geotechnical and Geological Reports submitted for the proposed residence indicate that due to the depth of the cut required for the basement and garage, ground water may be encountered during construction activities. A drainage plan was submitted for the proposed project prepared by a registered Civil Engineer that requires groundwater encountered in the excavated area be pumped to a sediment trap then through an energy dissipater consisting of cobble stone and ultimately to Scenic Road. Stormwater drainage onto Scenic Road will not substantially impact the integrity or use of Scenic Road (See letter from Civil Engineer Exhibit K.2). Drainage leaving the site will be clean water filtered by sedimentation. If standing water is encountered during basement excavation the foundation can still be poured using the Tremmie process that displaces the water. Excavated dirt will be exported from the site to a location permitted to receive fill material. The County Resource Management Agency Planning and Building Departments and conditions of approval require compliance with the approved drainage plans (Condition #'s 7 & 17). See Finding 9 Evidence c for more detail.
- (g) Archaeological Resources An archaeological survey was required for development due to its location in a high archaeological sensitivity zone as mapped on current county resource maps (Section 20.146.090 CIP). A Preliminary Cultural Resources Reconnaissance prepared by Archaeological Consulting, dated March 25, 1999, concluded that the project area contains potentially significant archaeological resources. An updated Archaeological Report, dated January 17, 2007, by Archaeological Consulting indicates, based on testing performed in 1999 (which did not reveal significant resources), that construction should be allowed to proceed without further archaeological investigation; however, a possibility still exists that, during construction, previously unidentified or unexpected resources may be discovered. Mitigation measures reduce potential impacts to archaeological resources to a less than

significant level by requiring an archaeological monitor during earth disturbing (Condition #'s 3 & 24).

- (h) Water Availability Water for the subject property was purchased from Robles Del Rio. Exhibit 'A' of the settlement agreement resulting from the Robles Del Rio water credit auction lists the subject property (Assessor's Parcel Number 009-442-013-000) as a transferee of .5005 acre/feet (net). Pursuant to the settlement agreement the County Water Resource Agency previously approved the water release for the subject parcel under Archer/ PLN990220 and has also approved the water release form for this project. See Finding and Evidence 9 (e) for more detail.
- (i) LUAC The project was referred to the Carmel Unincorporated/Highlands Land Use Advisory Committee (LUAC) for review. On May 21, 2007 the LUAC reviewed and recommended approval (5-0 vote) of the Combined Development Permit raising minor concerns with the appearance of the retaining walls. The retaining walls will be finished with stucco consistent with the color and material samples submitted for the proposed dwelling.
- (j) See Finding 9, Evidence g, responding to Appellant's contentions.
- (k) Application The application, project plans, and related materials found in Project File PLN060735.

**3. 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 the 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) Technical reports by outside archaeological and geological consultants indicated that there are not physical or environmental constraints that would indicate that the site is not suitable for the use proposed. County staff concurs. The following reports have been prepared:

- *"Preliminary Cultural Resources Reconnaissance" (LIB070152) prepared by Archaeological Consulting, Salinas, CA, March 25, 1999 and follow up reports dated September 29, 1999 and January 17, 2007.*
- *"Geotechnical and Geological Hazards Report" (LIB070151) prepared by Grice Engineering, Inc., Salinas, CA, dated January 2007 and follow up letter dated July 24, 2007.*
- *"Geotechnical Response to Four Specific County Questions" (LIB070652) prepared by Haro, Kasunich and Associates, Inc. dated November 27, 2007.*
- *"Temporary Shoring/Pin-Piling" prepared by Stephen Mayone, Monterey, CA, dated April 15, 2008.*
- *"Construction Management Plan" prepared by Myrone Etienne and James Somerville (as amended).*
- *"Drainage Plans" prepared by Avi Benjamini and Associates Inc. dated Nov. 2007.*
- *"Drainage Impact letter" prepared by Avi Benjamini and Associated Inc. dated March 11, 2008.*

- *"Response to Sezen Letter" prepared by Haro, Kasunich, and Associated dated July 1, 2008.*

- (c) Conditions are included that require submittal and approval of information to, and by, the appropriate agencies involved prior to the issuance of building or grading permits. These documents include:

- Erosion Control Plans and Schedule (Condition 7)
- Landscape Plans (Non-Standard) (Condition 8)

Plans Already Submitted:

- Construction Management Plans (Non-Standard) (Condition 14)
- Drainage Plans (Condition 17) and
- Shoring Plans (Mitigation Measure 3, Condition 25)

- (d) Staff conducted a site inspection on August 1, 2007 and June 11, 2008 to verify that the site is suitable for this use.

- (e) The Skeen & Chang property (APN: 009-442-013-000) is a legal lot of record created by Carmel-By-The-Sea Addition Number 7 in 1908 and is zoned for residential use.

- (f) Materials in Project File PLN060735.

- 4. FINDING: CEQA INITIAL STUDY/MITIGATED NEGATIVE DECLARATION:** - On the basis of the whole record before the Monterey County Board of Supervisors, there is no substantial evidence that the proposed project as designed, conditioned, and mitigated will have a significant effect on the environment. The Mitigated Negative Declaration reflects the independent judgment and analysis of the County.

**EVIDENCE:** (a) Initial Study. The Resource Management Agency – Planning Department prepared an initial study pursuant to CEQA that reflects the independent judgment and analysis of the County. This Initial Study identified the potential for impacts to archaeological resources, air quality, geology and soils, hydrology/water quality, land use/planning, transportation/traffic, and utilities/service systems on the site. The applicant has agreed to mitigation measures that avoid or mitigate the effects to a less than significant level. Therefore, a Mitigated Negative Declaration was prepared.

- (b) Proposed Mitigated Negative Declaration A Mitigated Negative Declaration was filed with the County Clerk on September 24, 2007 and circulated to the State Clearing House from September 24, 2007 to October 24, 2007. Following the comment period and the Zoning Administrator hearing on November 8, 2007, changes were made to the Mitigated Negative Declaration. The MND was re-circulated pursuant to Section 15073.5 of CEQA. On December 5, 2007 a revised Mitigated Negative Declaration was filed with the County Clerk and circulated to the State Clearing House from December 7, 2007 to January 7, 2008. The revised Mitigated Negative Declaration was considered by the Board of Supervisors on April 15, 2008. New comments were received on the revised MND and at the hearing. Following the Board hearing, staff again revised the Mitigated Negative Declaration. The April 2008 Mitigated Negative Declaration was filed with the County Clerk on May 5, 2008 and circulated to the State Clearing House and the public from May 5, 2008 to June 5, 2008. Among the studies, data, and reports analyzed as part of the environmental determination are the following:

1. Preliminary Cultural Resources Reconnaissance of Assessor's Parcel Number 009-442-013-000, Carmel, by Mary Doane B.A and Trudy Haverst, RPA (March 25, 1999), Including follow up letters prepared by Gary Breshini, Ph.D. (September 29, 1999 and January 17, 2007).
2. Geotechnical and Geological Hazards Report for the proposed residence, 26327 Scenic Road, by Grice Engineering and Geology Inc. (January 2007).
3. Response to Four Specific Questions, prepared by Haro, Kasunich, & Associates Inc. dated November 27, 2007.
4. Civil Improvements, prepared by Benjamini Associates, Inc. dated November 2007 (As amended).
5. Temporary Shoring/Pin-Piling, prepared by Steve Mayone, dated April 15, 2008.
6. Construction Management Plan, prepared by Myron Etienne, dated April 29, 2008

The County of Monterey is the custodian of these documents, which are located at the Resource Management Agency – Planning Department 168 West Alisal 2<sup>nd</sup> floor, Salinas, California. Analysis of impacts in the Initial Study determined that although the project could have significant impacts, by incorporating standard conditions of approval required by County Code and recommended mitigation measures, potential impacts of the proposed project are reduced to a level of insignificance.

- (d) Comments were received from neighbors and the Monterey Bay Unified Air Pollution Control District (MBUAPCD). The neighbor to the north, Mr. Ingemanson, expressed concerns regarding potential impacts to his property regarding ground water/drainage and grading near the property line. Mr. Ingemanson requested that a generator be installed to pump water during power outages, and that the grading be done gradually, so that there is not a sudden drop right at the property line. The applicant has agreed to these suggestions. Many of the comments on the Initial Study duplicate issues raised in the appeal, and these are discussed further in Finding 9. Additionally, staff's evaluation of the new issues raised are set forth below:

#### Stability of Adjacent Structures

Appellant contends that the Initial Study fails to adequately address the fundamental concern regarding the stability of the neighboring homes. A comment letter with three specific engineering questions was submitted along with the Sabih comments.

Staff Response: The Initial Study identified a potential impact to stability of adjacent structures and provided adequate mitigation for those impacts based on substantial evidence in the record from the project engineers. Specific shoring, with engineering calculations, were attached to the Initial Study. The project engineers have certified that the project can be constructed without impact to neighboring structures and have responded to the three specific questions in the Sezen letter. Those responses are contained in the project file (See Finding 9, Evidence (b) for more information).

#### Construction Management Plan

Appellant contends the Construction Management Plan is inadequate because it does not contain a staging area and did not address conflicts with the

drainage basin and grading areas. Appellant notes that the author of the CMP is not "on the document."

Staff Response: The Initial Study correctly indicates that staging can occur within the front setback of the subject property. The area from the edge of the pavement of Scenic Road to the official front property line consists of an approximately 8 foot wide area. Vehicles can be parked within this 8 foot buffer. Beyond the front property line is a 20 foot setback to the proposed structure. This area will be excavated for the driveway access and a temporary drainage basin; however, the driveway and basin will occupy an area of approximately 30 feet in width of the over 60 foot wide parcel, still leaving sufficient area for staging of equipment and materials.

The author of the Construction Management Plan (Attachment 5 of Initial Study) is provided in the table of contents to the attachments (page 35 of the Initial Study).

#### Impacts to Recreation and Traffic on Scenic Road

Appellant argues that "the Initial Study does not adequately address the impacts to recreation identified by the public and by the Board on April 15", and "The IS/MND fails to acknowledge that Scenic Road is a designated public access corridor under the Land Use Plan, or to respond to other comments by the Coastal Commission..."

Staff Response: The Construction Management Plan addresses the issue of congestion along Scenic Road. It limits large trucks to a 50 foot stretch of Scenic Road between the project site and Stewart Road. Appellants point to the Initial Study's use of the word "blocking," but misunderstand the point. The point is that, access to Scenic Road and from Scenic Road to the beach for vehicles and pedestrians will remain open during and after construction. Potentially insignificant delays may occur while trucks turn around. Waiting for trucks to turn around, during the construction process is a temporary, minor inconvenience, not a significant environmental issue. Grading activities are expected to last a period of approximately 1 week. An estimated 91 truck trips, consisting of 6 trucks each making 4 trips a day, will occur to export the soils from the site over this 1 week period. The remaining construction related large truck trips will occur over the course of the remaining construction for building materials (wood, windows, doors, rebar, siding, roofing, cabinets, etc...). These truck trips are conditioned to follow a specific truck route that limits the large trucks to a minimum distance on Scenic Road. As described in the Initial Study, the proposed project is for a single residential dwelling and will not create measurable impacts to traffic or access.

Additionally the Initial Study did reference the pedestrian use of Scenic Road and was correct in indicating that the trail designation found in the Carmel Land Use Plan. The Public Access Map, Figure 3 of the Carmel Land Use Plan, shows an area along the coast near the subject property as designated lateral access. The Lateral Access standard applies to parcels containing beachfront or usable recreational shoreline (Carmel CIP 20.146.130.C.1.a). The subject application is for a new single family residence on a 4,700 square foot parcel, located on the eastern side of Scenic Road. It is not located between the road and the shoreline. The parcel does not contain any shoreline or beachfront and will not block access to the beach or shoreline. Temporary construction related traffic may require a fair amount of space when accessing



the site and loading and unloading materials but the duration of such impacts would be a matter of minutes. The project has been conditioned to minimize interruption along Scenic Road from large truck trips through the use of Stewart Road. Temporary and minor delays may occur for through access along Scenic Road due to truck access. These truck trips have also been limited to the times specified in the Construction Management Plan, as described in the Initial Study, to include Monday through Friday from 8:00 AM to 4:00. These are normal business hours when traffic and recreational use can be expected to be less since many people are at work. Again the inconvenience of having to wait a matter of seconds for trucks to turn around over the course of one week is not a significant environmental impact.

#### Condition of Scenic Road

The Appellant contests the Initial Study's conclusion that the road is in relatively good shape in front of the subject property and alleges that the project will have impacts on Scenic Road because of "year-round discharge of water onto the public roadway"

Staff Response: the project Civil Engineer concluded that the treated and dissipated drainage onto Scenic Road will have little to no impact on the integrity of Scenic Road (letter from Avi Benjamini dated March 11, 2008). Monterey County Water Resources Agency has indicated that the stormwater facilities are adequate to receive the additional runoff. Therefore, requiring the owner to make repairs to a public roadway would not be roughly proportional to the minimal, if any, impact of the project.

#### Air Quality

Appellant contends that the analysis of air quality impacts "fails to identify at least two sensitive receptors on the truck route – River School and Mission School – or to research the existence of other sensitive receptors on the truck route or on site." The June 2, 2008 letter of Mr. Greg D'Ambrosio, submitted by Appellant, asserts that the truck route is "problematic" because of other vehicles, pedestrians, blind curves, hill grades, and three sensitive receptor locations. The Air District commented on the truck route and construction management plan as it relates to sensitive receptors (the two schools), cumulative effects from other projects in the area, and the Anti-Idling Regulation.

Staff Response: The Applicant has revised the proposed Truck Route. In the revised route, trucks will take Stewart Road to Isabella Road, over to San Antonio Road, go right onto Santa Lucia Avenue from San Antonio Road, go right on Rio Road from Santa Lucia, and connect to Highway 1 from Rio Road. This route avoids the schools and alleviates concerns regarding the sensitive receptors including the two schools, coastal recreational users along and near the beach, the mission ranch, and the Carmel Mission. The Monterey Bay Unified Air Pollution Control District (MBUAPCD) has reviewed the revised truck route and indicated that the District's concerns have been alleviated and the project is consistent with the Air Quality Management Plan (AQMP) (see email from MBUAPCD to Liz Gonzales dated June 30, 2008; found in project file PLN060735 at the RMA – Planning Department). The new route is equally or more effective in addressing any potential impacts caused by the construction trucks and will not itself have significant



unavoidable impacts because there are fewer potential sensitive receptors, or potential hazards along the revised route.

#### Cumulative Impacts

Appellant contends that the Initial Study did not discuss the cumulative effect of the project plus other nearby projects. The Air District raised a concern about the potential cumulative impacts of the Moellentine and Himonas projects.

Staff Response: The Initial Study acknowledges that several projects are proposed to be constructed in the immediate vicinity of the project and concludes that construction impacts are temporary and not cumulatively significant. This conclusion is supported by substantial evidence. The reasonably foreseeable projects on Scenic Road are Weiss (PLN070535) and Moellentine (PLN040581). Weiss was approved at the Zoning Administrator on June 26, 2008 (Appeal Period for Public and Coastal Commission pending). It consists of a remodel/addition that will require approximately 272 cubic yards of grading and approximately 30 truck trips to remove that dirt. The Moellentine project, a house remodel, is on appeal at the Board of Supervisors and, at the applicants' request, the Board of Supervisors continued the hearing to a date uncertain. Thus, it would be purely speculative to conclude that construction would be occurring on the Moellentine or Weiss homes at the same time as construction on the Skeen and Chang project. The Air District mentioned the Himonas (PLN070155) project, which consists of the demolition and construction of a new single family dwelling on the corner of Stewart Road and Ocean View Ave. The project is estimating 660 cubic yards of cut that will be exported from the site. Himonas has building and grading permit approval and can be expected to begin construction in the near future, prior to construction on the Skeen and Chang project (Skeen and Chang have not yet applied for grading or building permits, so the earliest estimate of the time of the beginning of construction is 2-3 months from approval of the project). These projects are all residential in-fill projects within a residential neighborhood and the grading portions of these projects, with associated truck trips, are temporary and short term. It would be purely speculative and not supported by the evidence to conclude that the temporary impacts of these projects would occur at the same time because these projects are at different stages in the permit process. It is highly unlikely that these projects on Carmel Point will be grading and removing excavated dirt at the same time. Even if construction did occur at the same time, the cumulative effect of construction or remodel of 3 single family homes does not rise to the level of significant impact.

As far as air quality impacts, cumulative air quality issues are addressed in the Air Quality Management Plan (AQMP), as described in the Initial Study. The project is consistent with the AQMP and so cumulative air impacts are found to be less than significant (See email from MBUAPCD to Liz Gonzales, June 30, 2008; found in project file PLN060735 at the RMA - Planning Department).

#### Neighbor's House

Appellant alleges that "The revised Initial Study/Mitigated Negative Declaration contains biased and incorrect information that misleads the public and decision makers. For example, the document states multiple times that 'the

neighbor to the south who has improved their lot with a structure within about one foot of the property line.'

Staff Response: The Initial Study is not biased or misleading and was prepared with a good-faith effort at full disclosure. In regard to the neighbor's house, the statement regarding the location of the neighbor's house is supported by the evidence. The survey prepared by Base Line Surveyors shows that the existing retaining wall straddles the property line and the corner of the roof eave extends 0.47 feet over the line (See the Survey from Base Line Surveyor's attached to the July 2, 2008 Noland Hamerly Etienne & Hoss letter, found in the project file PLN060735 at the RMA – Planning Department). The structure appears to be approximately 2-3 feet from the retaining wall. (The Initial Study used the word "about" in recognition that it was based on site inspection, not a measurement. The required side setback for the residence is 5 feet (Monterey County Code Section 20.12.060.C.1.). Cornices, eaves, canopies may extend into any required setback by only up to 2 ½ feet (Monterey County Code Section 20.62.040.C). The roof eave is visibly not more than 5 feet in length. These facts lead to the conclusion that the Sabih home is in the setback.

Specifically in response to the four points contained in the June 4, 2008 Ray Parks letter, staff responds as follows:

1. "there is a retaining wall which is located approximately within one foot of the property line, built by a prior owner of the Sabih property."

Response: The Survey contained in the project file from Base Line Surveyors indicates that the retaining wall is partially on the Skeen & Chang property. By whom the structure was built has not been mentioned until now and is not a significant detail, as no blame is placed or implied. Already in the record is a statement by staff that the structure(s) were permitted and inspected by the County.

2. "the proposed project has not staked the property lines at this point and until the property lines are staked by a licensed surveyor it will remain unclear where the property lines are precisely located."

Response: Again the file and record contain a Survey from licensed surveyors illustrating the property line and its relation to the structures in question. It should be pointed out that this second alleged fact conflicts with the first alleged fact from Ray Parks as he himself has made the statement of distance from the property line to the structure(s).

3. "the existing Sabih residential structural walls are built to comply with the existing setbacks requirements."

Response: Staff is not clear on the exact distance of the structural wall of the house and the property line; however this statement again conflicts with points 2 and 4.

4. "the existing Sabih roof may be close or over the property line by some inches, and that roof projection cannot be accurately determined until the property lines are staked"

Response: The roof eave projection is shown on the Base Line Survey plan with a dimension of 0.47 feet on the Skeen and Chang property. This point again conflicts with the alleged facts in points 1 and 3.

The information about the neighbor's house is included in the Initial Study not to "paint Mr. Sabih, the project appellant, in an unfavorable light," as appellant alleges, but rather to provide information relevant to the project setting.

Identification of Applicant Submittals

Appellant contends that "several of the documents in the IS/MND violate Board Resolution 01-093, which requires that all applicant and other outside submittals shall be clearly marked as to their source/author."

Staff Response: Appellant cites only two examples, Attachments 4.1 and 5 of the Initial Study. The Initial Study identifies the author of these documents. The cover page for Attachment 4.1 labels the document as a "Scenic Road Drainage Impact letter Prepared by Avi Benjamini." The letter attached as Attachment 4.1 is on letterhead stationery of engineers Benjamini Associates, Inc. In regard to the second page of Attachment 4.1, the first page of the attachment, the letter, makes explicit reference to information "shown on our conceptual Grading and Drainage Plan"; it is obvious that the "sketch" which is the second page of Attachment 4.1 is part of the letter and is the conceptual plan to which the first page of the letter refers. The source of the sketch, BAI, is identified on the face of the sketch. As the second page of the letter, there is no ambiguity that BAI stands for Benjamini Associates, Inc. The source of Attachment 5, the Traffic Management Plan, is identified in the table of contents to the Attachments, on page 35 of the Initial Study, as Myron Etienne.

Water Use

Appellant contends that "the IS/MND fails to analyze adequately whether the project will be limited to the amount of water approved for the previous Archer project or whether it can use the full amount purchased in 1998."

Staff Response: The Initial Study, page 32, states "A residential water release form has been submitted with the project materials indicating that the dwelling will require 35.70 fixture units, which translates to approximately 0.3570 acre feet of water. This amount is less than the amount purchased. The water required for the proposed project is also generally the same amount applied for and evaluated under a project previously approved at the site consisting of a new single family dwelling (Archer/PLN990220) which originally requested 37.65 fixture units or 0.3765 acre/feet. That project was found to be categorically exempt from CEQA." This quote shows that the information was contained in the Initial Study. This quote was found under a no-impact heading. More information on water availability can be found in Section E, Response to Contention 1.

Stormwater Runoff

A separate letter has been submitted to Monterey County from the Regional Water Quality Control Board (RWQCB). The letter was not directly addressed or aimed at the Skeen & Chang project or Initial Study specifically. Rather it was a letter to Monterey County regarding the need to address County drainage into the Carmel Bay Area of Special Biological Significance (ASBS). Monterey County is currently in the process of responding to that letter, by applying for an exemption, as directed by the RWQCB. This letter supports the discussion in the Initial Study regarding the responsible party (Monterey County) for the stormwater drainage facility by requiring the County to apply for and address the drainage into the bay. The conclusion in the Initial Study, that there will be a less than significant impact from the incremental increase of runoff from the subject property, remains valid. Currently, the stormwater system drains surface water from other properties and the roadways themselves

to the bay. The subject project includes measures to clean and dissipate water before it is directed to the County maintained system and is an infill project in a residential zone. No new lots will be created as a result of this project.

- (e) The Initial Study identified potential impacts to Aesthetics, Air Quality, Cultural Resources, Geology and Soils, Hydrology/Water Quality, Land Use/Planning, Transportation/Traffic, and Utilities/Service Systems. All impacts are found to be less than significant or were mitigated to a level of insignificance.

- Aesthetics – The project meets all site development standards and proposes a new single family dwelling on a vacant lot within a residential neighborhood. Impacts were found to be less than significant. (see also finding #2d)
- Air Quality – The main source of pollution for the proposed project is from use of heavy equipment during construction and vehicular traffic related to the residential use of the property. The project is within the population projections from the AQMP. Impacts were found to be less than significant.
- Cultural Resources – The site is within an archaeologically sensitive area. Reports have been submitted and testing was preformed at the site. Mitigations have been included to reduce the potential impacts to a less than significant level. (see finding 2)
- Geology & Soils – Proximity to a potentially active fault line, support of adjacent structures, and drainage were discussed. Mitigations were incorporated to protect adjacent structures from damage during construction and reduce potential impacts to a less than significant level. (see also finding 1e and finding 9)
- Hydrology/Water Quality – Drainage from the site will be increased from existing levels. Drainage plans have been prepared that clean and dissipate stormwater before it is released to the road. Impacts were found to be less than significant and consistent with other improvements in the area. (see also finding 9 evidence c)
- Land Use/Planning – Potential conflicts with the Carmel Land Use Plan (LUP) and Implementation Plan (CIP) were identified regarding retention verses release of stormwater. The proposed drainage plan has been developed to adequately clean and dissipate stormwater before directing it to the County maintained facilities. This is consistent with other improvements in the area and was found to be a less than significant impact as conditioned. (see also finding 1)
- Transportation/Traffic – Issues were raised regarding potential congestion of construction equipment and traffic along Scenic Road which is narrow in spots and frequently used by pedestrians. A Construction Management Plan was prepared to specify hours of operation and truck routes to alleviate congestion. The truck route has since been revised in response to comments submitted on the Mitigated Negative Declaration. With the Construction Management Plan, potential impacts to traffic are less than significant. (see also finding 9 evidence e)
- Utilities/Service Systems – Drainage from the subject property will be directed to Scenic Road which is a County maintained public road. The

current roadway contains only slopes with a small V-ditch to direct stormwater to the drains. Erosion from private property drainage systems on the surface of Scenic Road can occur. The drainage plan prepared for the development includes dissipation of the water before it reaches Scenic Road. As designed, potential impacts to Scenic Road were found to be less than significant.

- (f) Mitigation Substitution The construction management plan, specifically the proposed truck route, has been revised to address comments submitted on the Initial Study. The revised Construction Management Plan is equivalent or more effective in mitigating or avoiding potential significant effects and it in itself will not cause any potentially significant effect on the environment. The new truck route still relieves congestion along Scenic Road and will now avoid driving past elementary schools within the Carmel Point neighborhood. The new Construction Management Plan will have no more potential impact on its own than would the previous plan.
- (g) Recirculation not Required Responses to comments received on the revised Initial Study (see Finding 4 Evidence (d) above) contains information clarifying and amplifying information in the Mitigated Negative Declaration. No new significant impacts have been identified. Recirculation of the Initial Study is not required because the new information merely clarifies and amplifies information in the Initial Study. The substitution of a more effective truck route as part of the Construction Management Plan also does not necessitate recirculating the Initial Study (see CEQA guidelines 15073.5(c).)
- (h) Conclusion There is no fair argument supported by substantial evidence the project would have a significant effect on the environment or that the mitigations suggested are inadequate to reduce potential impacts to a less than significant level. Potential impacts that were identified were mitigated or conditioned to reduce impacts to a less than significant level. Therefore, an EIR is not required.

**5. FINDING: FISH AND GAME ENVIRONMENTAL DOCUMENT FEES –**

Pursuant to Senate Bill (SB) 1535 all land development projects that are subject to environmental review are now subject to the filing fees, unless the Department of Fish and Game determines that the project will have no effect on fish and wildlife resources. The project is required to pay the fee.

**EVIDENCE:**(a) SB 1535 has eliminated the provision for a determination of “de minimis” effect by the lead agency; consequently, all land development projects that are subject to environmental review are now subject to the filing fees, unless the Department of Fish and Game determines that the project will have no effect on fish and wildlife resources. The project was previously issued a “No Effect” letter from the Department of Fish and Game, however the Initial Study was revised and a new No Effect letter has not been obtained.

**6. FINDING: NO VIOLATIONS –** The subject property is in compliance with all rules and regulations pertaining to zoning uses, subdivision, and other applicable provisions of the County’s zoning ordinance (Title 20). Zoning violation abatement costs, if any, have been paid.

**EVIDENCE:** Staff verification of the Monterey County RMA - Planning Department and Building Services Department records indicate that no violations exist on subject property.

- 7. FINDING: PUBLIC ACCESS** - The project is in conformance with the public access and public recreation policies of the Coastal Act and Local Coastal Program, and does not interfere with any form of historic public use or trust rights. No access is required as part of the project, as no substantial adverse impact on 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) The subject property is not described as an area where the Local Coastal Program requires access.
  - (b) The subject property is not indicated as part of any designated trails or shoreline access as shown in Figure 3, of the Public Access Map and complies with the Carmel Area Land Use Plan.
  - (c) No evidence or documentation has been submitted or found showing the existence of historic public use or trust rights over this property.
  - (d) Scenic Road is a public County right-of-way serving through traffic. No designated trails are located within the project area; however, pedestrians frequently walk, jog, or ride along Carmel State Beach. The proposed project, construction of one single family dwelling, as conditioned, will not significantly affect pedestrian or vehicular traffic along Scenic Road. (See also Finding 9, Evidence f)
  - (e) Staff site visit on August 1, 2007 and June 11, 2008.

- 8. FINDING: HEALTH AND SAFETY** – The establishment, maintenance, and operation of the proposed development applied for will not under the circumstances of the particular case, be detrimental to the health, safety, peace, morals, comfort, and general welfare of persons residing or working in the neighborhood or to the general welfare of the County.

**EVIDENCE:** Preceding findings and supporting evidence.

- 9. FINDING: APPEAL** – The Appellants contend that the Zoning Administrator's decision was not supported by the evidence and is contrary to law. Upon consideration of the documentary information in the files, the staff reports, the oral and written testimony, and all other evidence presented before the Board of Supervisors, the Board responds as follows to the Appellants' contentions:

- EVIDENCE:** (a) Appellant's Contention 1: "Robles Del Rio water credit not available to this project." "Such credit was not intended to be "banked" for future projects." "No information in Initial Study or staff report as to how much water is required or purportedly available for this project." "Even if available, EIR would be required under circumstances."

Response No.1: The project has a valid water supply. It will be served by Cal Am based on the project applicant's valid entitlement to a water credit from the Robles del Rio Lodge. Staff also reviewed the terms of a settlement agreement and other documents governing the water credit. The documents show that the applicants have the right to utilize up to .5005 acre feet of water to be supplied by Cal Am. The proposed project will use .357 acre feet. (April 22, 2008 letter from Myron Etienne.) The documents and facts establishing applicants' right to water from Cal Am in this amount are the following:

1. On or about June 6, 2000, Daniel Archer, Skeen and Chang's predecessor in interest, obtained approval for a Coastal Development Permit and Design Approval to build a house and garage on the subject property. The project was found to be categorically exempt from environmental review under

CEQA (Board of Supervisors Resolution No. 00-258). The project provided for use of .3765 acre feet of water. (April 22, 2008 letter from Myron Etienne.)

2. On or about August 31, 2000, Jo Mei Chang and Dale Skeen entered into a Water Credit Purchase Agreement with the Robles del Rio Lodge in which they purchased a water credit for the property.

3. On October 3, 2000, the Board of Supervisors approved Resolution No. 00-373, which authorized the transfer of certain water credits from the Robles del Rio Lodge to certain identified transferees, provided, among other conditions, that the County "shall not release water from said allocations to the respective Transferee Properties until the owner of the respective property receives approval of a project for the property which has been determined to be exempt from CEQA and/or not to have the potential to have a significant adverse impact on the environment." The Board resolution further stated that "such approval shall be obtained by the Transferee Property owner within 1 year of this Resolution." The resolution defined "approval" to mean County's "initial approval" from the County's designated Appropriate Authority. If "such initial approval" was not obtained within the 1 year timeframe, the water credit allocation expired and was revoked. The Transferee Properties were listed in Exhibit A to the Board resolution. The list includes APN 009-442-013, the subject property, and "Skeen/Chang", project applicants, among the 19 Transferees, with a credit of .5005 acre feet of water.

4. In or about January 2002, Ed Leeper and Save Our Peninsula Committee (SOPC) and the County of Monterey entered into a Settlement Agreement in the litigation entitled SOPC et al v. County of Monterey (Monterey Superior Court Case no. M51217) ("Settlement Agreement"), which was made a part of the Stipulation for Entry of Judgment and Judgment in that litigation. The Settlement Agreement resulted from litigation challenging the above-described Board of Supervisors' Resolution Number 00-373. The Settlement Agreement provides: "The parties agree that the County shall, in accordance with this paragraph, release to the nineteen (19) transferees listed in Exhibit A of Board of Supervisors Resolution 00-373, and as further described as Exhibit A to this agreement, the water allocation rights afforded to the transferees by County Board of Supervisors Resolution 00-373, provided the respective transferee's project has been initially approved (as described in the Resolution) by the County on or before one year after the date of this Agreement." The "Exhibit A" referenced in the Settlement Agreement is the same as the Exhibit A to the Board resolution, and it lists "Skeen/Chang," project applicants, among the 19 "transferees." Initial approval was obtained by applicant's predecessor in interest, within the required time frame, for the site in question (Board of Supervisors' Resolution Number 00-258/Archer), and the CEQA condition of the original Board resolution was satisfied because that initial approval was based on a categorical exemption.

5. The Settlement Agreement also required, as a condition precedent to County issuance of the water release form, that the applicant provide the County with a copy of a fully executed water use monitoring agreement. The Applicant executed the Water Use Monitoring Agreement. (See Water Use Monitoring Agreement by and between SOPC and Glen Gurrries and Robles del Rio Lodge and certain Transferees, dated January 18, 2002.) Therefore, the settlement agreement's preconditions for release of the water were



satisfied, and the County released the water to Assessor's Parcel Number 009-442-013-000 per the Settlement Agreement.

6. Appellant contends the water was not intended to be "banked." However, the Settlement Agreement nowhere precludes the transferees from utilizing the water once it was allocated to them. The Transferees are entitled only to the amount of water allocated to them, but the Settlement Agreement does not prohibit the Transferees from altering their project. If the Applicants are viewed as successors in interest to Archer, the documents also do not preclude use of the water by successors in interest. To the contrary, the Water Use Monitoring Agreement acknowledges the transferee's entitlement to water under the terms of the Settlement Agreement and provides that the covenants and obligations run with the land and inure to the benefit of, as well as bind, successors in interest. Paragraph 8 of the Water Use Monitoring Agreement states, "This instrument and all the covenants and obligations of the Transferees herein shall run with the respective executing Transferee properties listed in Exhibit "A" and shall insure to the benefit of and be binding upon all successors in interest to said Transferee properties." Because the benefits and burdens run with the land, the applicant has a valid right to the allocated water and equally assumes the burdens and obligations of the Water Use Monitoring Agreement.

Information about the amount of water to be used by this project is included in the Initial Study and in documents presented to the decision-maker. The Revised Mitigated Negative Declaration Section VI.16 (pg 32) explains the finding of no impact on utilities/services and indicates that the lot has been allocated .5005 acre feet of water, purchased from Robles Del Rio in 1998. The Settlement Agreement, which is part of the administrative record, identifies the Skeen & Chang property as a transferee on said settlement and indicates a water allocation right of .5005 acre/feet. A residential water release form has been submitted with the project materials indicating that the dwelling will require 35.70 fixture units, which translates to approximately .3570 acre feet of water. This amount is less than the amount purchased. The water required for the proposed project is also generally the same amount applied for and evaluated under a project previously approved at the site consisting of a new single family dwelling (Archer/PLN990220) which originally requested 37.65 fixture units or .3765 acre/feet. That project was found to be categorically exempt from CEQA.

An EIR is not required based on water supply or other impacts. As described in the Revised Initial Study/MND and as further discussed in this report and in the findings, there is no substantial evidence based on the record as a whole that the project as designed, conditioned, and mitigated will have a significant unavoidable environmental impact.

This environmental determination also does not violate the terms of the Settlement Agreement. Appellant cites a letter from Richard Rosenthal which addressed "how water credits were limited to residential properties that did not have the potential to have any significant adverse environmental impacts."

Under the Settlement Agreement, if the respective transferee's project was approved as described in Board of Supervisors' Resolution No. 00-373 within one year of the date of the Settlement Agreement, the County was required to release the water allocation rights. This release was contingent on the CEQA determination made prior to that release, and the CEQA determination made



prior to the release of water to the Archer project was that the Archer project was categorically exempt. The Agreement, strictly speaking, does not contain a requirement with regard to the CEQA determination for subsequent projects on the site. In any event, new environmental review has been conducted for this project, and the County has determined in regard to the current project that the project will not have significant adverse environmental impacts. Thus, even if the Agreement does not strictly require that subsequent projects using the water credit be found not to have an adverse impact, this project does not have significant unavoidable impacts.

- (b) Appellant's Contention 2: *"There are significant risks of ground movement and drainage problems both on-site and on adjacent properties, both during construction and after construction is completed. Shoring and drainage issues still need to be addressed and should be addressed prior to project approval because of significant risks" (Pacific Crest Engineering letter dated January 18, 2008). "It is highly likely that damage will be done to Sabih residence. The proposed deep excavation has potential impacts that have not been considered, including damage to Sabih residence" (Sezen Engineering letter dated January 29, 2008).*

Response No.2: The soils investigation submitted for the project prepared by Grice Engineering and Geology Inc dated January 2007 and the follow up report prepared by Haro & Kasunich dated November 27, 2007, both conclude that the project can be constructed without impacts to the neighboring structures. These geotechnical engineers are experts in soils and foundation construction and there is no engineering report that contradicts their conclusions. These engineers testified to this at the Zoning Administrator hearing, and at the Board of Supervisors hearing on April 15, 2008. There has been no substantial evidence submitted or testified to that would support a fair argument that the project will have an adverse impact on stability of the neighboring structures. Both reports indicate that the project can be constructed with no physical impact to neighboring properties provided Best Management Practices (including temporary shoring during construction) are incorporated. Mr. John Kasunich and Mr. Avi Benjamini attended the Zoning Administrator hearing on January 31, 2008. Their comments at the hearing were in support of this conclusion. Mr. Kasunich addressed the engineer's letters submitted by the appellant. There is no disagreement between the appellant's engineers and the applicant's engineers. They all agree that care needs to be taken relative to support of adjacent structures and that drainage plans and measures are required. For example the Sezen structural engineering letter submitted by the appellant contains the language "highly likely that damage will be done to Sabih residence"; however, this statement is at the end of a sentence that starts with "Unless extreme care is taken in engineering, planning, and execution of the underpinning, shoring and retaining wall, it is..." Conditions of approval require this extreme care, adherence to plans and reports, and other measures to ensure no impact.

At the Board of Supervisors hearing on April 15, 2008, structural engineer Steve Mayone demonstrated the proposed method of shoring that was developed in conjunction with the soils engineer John Kasunich. Mr. Mayone used the over head to demonstrate and explain how the proposed pin-piling shoring method is constructed using a site plan and details. Mr. Mayone left the illustrations used at that hearing for the record. That information was

attached to the revised Initial Study. No evidence has been presented to rebut the conclusions and ability to adequately shore neighboring structures. Additionally the project structural and geotechnical engineers have signed a document, to be recorded, certifying that the project is unlikely to lead to property damage or injury and the proposed development will not result in an unacceptable risk of injury or structural damage, consistent with LUP Policy 2.7.4.6 (see Condition #15).

The shoring must be constructed by a licensed contractor under the supervision of a geotechnical engineer (Condition #25). These measures ensure no significant impact to neighboring structures. Staff agrees with the recommendation and conclusions of the project's engineers based on review of all the technical documents submitted and verbal testimony given at the Zoning Administrator hearing and the Board of Supervisors hearing. No evidence has been presented to rebut the conclusions and ability to adequately shore neighboring structures.

- (c) Appellant's Contention 3: *Appellants contend "Improper control of drainage at the site could present problems regarding working conditions during construction, soil run-off, impacts to Scenic Road, and ultimately the Carmel Bay." The geotechnical evaluation indicates that standing groundwater was encountered at a depth of approximately 14 feet which could rise during a wet weather season and argues that ground water can create erosion and runoff hazards and an unstable situation for the foundation system.*

Response No. 3: A drainage plan and erosion control measures are required to address drainage and erosion issues during and after construction. The first phase is the construction phase when temporary drainage and erosion control measures are required to prevent soil run-off and maintain adequate working conditions. Drainage during construction of the subject property will require pumping of ground water during basement excavation into an onsite basin which allows settlement of soils, then filters through dissipaters to slow the clean water which then is directed to Scenic Road. Straw bales are also commonly used during the construction phase to catch, filter, and slow surface water. These are standard drainage and erosion control measures that are reviewed in concept by Monterey County RMA- Building Department, Grading Division, prior to issuance of grading permits and then regularly inspected by the Grading Division for compliance. Properly controlled run-off and drainage from the subject property during construction will be consistent with the analysis in the Initial Study and measures applied in other development projects in the area. Because the runoff is treated through sedimentation and dissipation prior to release to Scenic Road, it is not considered to be a significant impact to the site, neighbors, Scenic Road or Carmel Bay. Separately the County is currently in the process of applying for an exemption to allow drainage into the Carmel Bay Area of Special Biological Significance pursuant to the Regional Water Quality Control Board direction and requirements. Permanent drainage and erosion control is handled in essentially the same fashion. Following construction, roof and surface drainage will be controlled on the site. Roof drainage will be controlled using gutters and downspout that will connect to the drainage piping that is to be installed per the engineered drainage plans. These engineered drainage plans must be approved by the Water Resources Agency and the RMA-Building Department, Grading Division (Condition #17). Foundation and wall drains

will also be connected to this same system. The system will filter into a permanent drain box, which will replace the temporary catch basin used during construction and then filtered and dissipated using cobbles or rip-rap. Slow moving clean water that does not filter back into the ground will be released to Scenic Road. Drainage on to Scenic Road is not unique to this project and has been the standard drainage process for all structures along Scenic.

Consistent with the Carmel Land Use Plan (policy 2.4.4.C.5) provisions have been made to conduct surface water to storm drains or suitable water courses to prevent erosion. The project Civil Engineer has evaluated potential off-site impacts and concluded that the incremental increase of drainage onto Scenic Road does not represent a significant effect on Scenic Road or public safety and will have little to no impact on the integrity of Scenic Road (see letter from Avi Benjamin dated March 11, 2008). Run-off from the site will be clean water that is filtered by sedimentation and additional measures to clean runoff are suggested including the use of landscaping and vegetative strips to naturally clean, dissipate, and increase infiltration of storm water (Condition #8). The incremental increase in the amount of runoff when compared to the current amount of surface water passing through the drainage system is insignificant. The proposed project represents the infill of an existing, residentially zoned parcel and no new lots are being created as a result of this project. Therefore the project does not result in significant environmental impacts on Scenic Road or the Carmel Bay.

According to the Haro & Kasunich report, temporary and permanent runoff and erosion and sediment control at the site can satisfactorily be accommodated by following the requirements in the Monterey County Grading and Erosion Control Ordinances. The report also indicates that "If water is encountered in foundation excavations, concrete can still be poured via the Tremmie process, which being heavier, displaces and purges the water out of the excavation. Engineered drainage plans prepared by Benjamini Associates, Inc dated November 2007 (As amended) have been submitted to the Planning Department. Condition #17 requires drainage systems to be constructed in accordance with approved drainage plans.

- (d) Appellant's Contention 4: Mr. Parks indicated that grading plans were not included in the plans submitted for review and, using the information provided, grading quantities were higher than the applicant's estimates (990 cubic yards). The contention is that the cut would exceed 1,000 cubic yards up to as high as 1,500 cubic yards requiring a Coastal Development Permit.

Response No. 4: Estimated grading quantities were provided by the project architect and engineer for planning review. Typically planning review relies on these estimates. However, following the hearing on November 8, the applicant commissioned Benjamin Associates, Inc (Civil engineers) to produce a grading and drainage plan. The Civil Plans indicate that earthwork will be 1,130 cubic yards of cut and 0 fill. The April 2008 Initial Study and the new project description reflect the revised grading quantity estimates. The revised Initial Study included the revised estimate and analyzed its potential impacts.

- (e) Appellant's Contention 5: "Construction activities are likely to pose serious short term risks to public safety." The project "will seriously impact public safety, traffic, parking and coastal recreational users." The project will cause "damage to roads due to discharge of water from private property." The

*project is "likely to cause significant long term impacts on coastal activities, public infrastructure, health and safety."*

Response 5: Scenic Road is a County maintained street with two way traffic. The proposed project consists of the construction of a single family dwelling on a vacant lot on the east side of Scenic Road, an area that currently supports residential use. Construction activities including parking for employees and trucks requiring access to and from the site do not pose a significant safety hazard. Trucks coming and going from the site will be traveling at very low speeds giving motorists and pedestrians ample time to move or wait for trucks to back up. This condition is not unique, as practically all dwellings along Scenic Road obtain access to and from Scenic Road and residences frequently must back their vehicles onto Scenic Road. With best management practices, meaning exercising care when driving trucks and equipment, there is no significant risk to public safety. The new dwelling will be no different with respect to access and safety than most other residences along Scenic Road. Construction activities will not prohibit pedestrian or vehicle access along Scenic Road. A construction management plan has been prepared showing a length of approximately 50 feet of Scenic Road that will be used by heavy construction equipment. This plan has been developed to help avoid congestion along Scenic Road during the temporary construction phase. With the CMP in place potential construction related impacts to traffic (pedestrian, and vehicular) will be less than significant.

Engineered Drainage plans have been prepared as described in Contention 3 above. Generally all of the dwellings along Scenic Road drain their storm water and site runoff to Scenic Road. The drainage plans prepared for the project filter the water, reduce the amount through percolation, and slow water velocity before it reaches Scenic Road. Drainage along Scenic Road is maintained by the County. The proposed project will not contribute runoff which would exceed the capacity of the stormwater drainage systems along Scenic Road and would not substantially impact the integrity of Scenic Road as designed. A letter from the project Civil Engineer states that "the development will have little to no impact on Scenic Road."

The permanent house proposal meets the parking requirements set forth in the Zoning ordinances. The project will not impede lateral beach access. Once constructed, a new single family dwelling on a 4,700 square foot lot within a residential neighborhood will not cause long term impacts to coastal activities, infrastructure, or health and safety in the area. A construction management plan has been submitted for the proposed project. The plan describes hours of operation and specific routes for truck trips to minimize congestion (Condition #14). As described above and as conditioned the project does not pose a potentially significant effect to health, safety, traffic, or coastal recreational users.

- (f) Appellant's Contention 6: *The appellant contends that the project is inconsistent with the Carmel Land Use Plan policies 2.7.2, 2.4.3.2, 2.4.3.3, and 2.4.4.C.5.*

Response 6: The project was reviewed for consistency with the Carmel Land Use Plan and the Coastal Implementation Plan (Part 4). The following addresses the specific policies quoted by the appellants. LUP Key Policy 2.7.2 states "Land uses and development in areas of high geological, flood, and fire hazard shall be carefully regulated through the best available planning

practices in order to minimize risks to life and property and damage to the natural environment." The proposed project is located in an established residential neighborhood on a 4,700 square foot lot. Siting of structures on a 4,700 square foot lot is confined to meeting the required setbacks on this small property. Reports for the project have indicated that construction of the dwelling does not pose an unacceptable risk to life and safety at the site. Staff finds that the project is adequately sited and conforms to policy 2.7.2.

Policy 2.4.3.2 in the last sentence states "Runoff volumes and rates should be maintained at pre-development levels, unless provisions to implement this result in greater environmental damage." The project will require discharge of stormwater run-off to Scenic Road. Any development of impervious surfaces at the site will increase stormwater runoff. The runoff cannot be contained on site as indicated by the soils engineers (Exhibits I & J), as the soils at the site are not conducive to onsite retention of stormwater. Onsite retention could create undesirable situations including standing water, saturated soils and potentially other environmental damages.

Policy 2.4.3.3 states "Point and non-point sources of pollution shall be controlled and minimized." Drainage will be treated and controlled appropriately as described in Response 3 above. The drainage will be collected on Scenic Road and released out storm drains to the west of Scenic Road, as is the case with most of the development along Scenic Road. Controlled runoff from the subject property will not create a potentially significant impact to the Carmel Bay Area of Special Biological Significance.

Policy 2.4.4.C.5 states Onsite drainage devices shall be designed to accommodate increased run-off from site modification. Where appropriate, on-site retention of stormwater should be required. Onsite retention of stormwater is not appropriate in this case (see Exhibits I & J). Drainage plans have been prepared to accommodate increased run-off resulting from site modifications. As conditioned and mitigated the project is consistent with the Policies of the Carmel Land Use Plan and Coastal Implementation Plan Part 4.

(g) Appellant's Contention 7: "The Initial Study is inadequate and an Environmental Impact Report is required."

Response 7: See Findings 4 and 9 and associated Evidence above.

(h) Conclusion: Based on all the facts in the record the Board finds that the Zoning Administrator's decision was supported by the evidence and is not contrary to law. The Mitigated Negative Declaration prepared for the project is sufficient in detail to describe potential impacts and mitigate identified impacts to a less than significant level. There is no fair argument based on substantial evidence that the project will have a significant environmental impact. No Environmental Impact report is required.

## II. DECISION

NOW, THEREFORE, BASED ON THE ABOVE FINDINGS AND EVIDENCE AND THE RECORD AS A WHOLE, BE IT RESOLVED that the Board of Supervisors hereby: a) Adopts the Revised Mitigated Negative Declaration and associated Mitigation Monitoring and Reporting Plan; b) Denies the appeal from the Zoning Administrator's approval of the Combined Development

Permit (PLN060735/Skeen & Chang); and c) Approves the application (PLN060735/Skeen & Chang) for a Combined Development Permit consisting of: 1) A Coastal Development Permit to allow the construction of a new 2,950 square foot single family dwelling with a 545 square foot attached garage, 1,130 cubic yards of cut, and retaining walls; 2) A Coastal Development Permit to allow development within 750 feet of archaeological resources; and 3) A Design Approval, located at 26325 Scenic Road, Carmel, Assessor's Parcel Number 009-442-013-000, subject to conditions attached hereto as **Table 1**, and incorporated herein by reference.

PASSED AND ADOPTED on this 22<sup>nd</sup> day of July, 2008, upon motion of Supervisor Potter, seconded by Supervisor Armenta, by the following vote, to-wit:

AYES: Supervisors Armenta, Calcagno, Salinas, Mettee-McCutchon, Potter

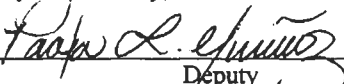
NOES:

ABSENT:

I, Annette D'Adamo, Acting Clerk of the Board of Supervisors of the County of Monterey, State of California, hereby certify that the foregoing is a true copy of an original order of said Board of Supervisors duly made and entered in the minutes thereof of Minute Book 74 for the meeting on July 22, 2008.

Dated: July 25, 2008

Annette D'Adamo, Acting Clerk of the Board of Supervisors  
County of Monterey, State of California

By   
Deputy

<p align="center"><b>RESOLUTION 08-251 - TABLE 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></p>	<p><b>Project Name:</b> Dale Skeen &amp; JoMei Chang  <b>File No:</b> PLN060735  <b>APN:</b> 009-442-013-000  <b>Approval by:</b> Board of Supervisors  <b>Date:</b> July 22, 2008</p>
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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	Mitigation 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 developed	Responsible Party for Compliance	Timing of Compliance (Frequency)
1.		<p><b>PD001 - SPECIFIC USES ONLY</b>            This Combined Development permit (PLN060735) consists of 1) A Coastal Administrative Permit to allow the construction of a new 2,950 square feet three-story single family dwelling with a 545 square feet attached garage, grading totaling 1,130 cubic yards of cut and construction of approximately 300 linear feet of retaining walls; 2) a Coastal Development Permit for development within 750 feet of a known archaeological resource; and 3) Design Approval. The property is located at 2327 Scenic Drive, Carmel (Assessor's Parcel Number 009-442-013-000), Carmel Area Land Use Plan, Coastal Zone. This permit was approved in accordance with County ordinances and land use regulations subject to the following terms and conditions. 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 RMA - Planning Department. 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. [Resource Management Agency (RMA) - Planning Department]</p>	Adhere to conditions and uses specified in the permit.	Owner/ Applicant	Ongoing unless otherwise stated

Permit Condition Number	Conditions of Approval and/or Mitigation Measures and Responsible Land Use Department	Compliance or Monitoring to be performed, if applicable (or action to be taken)	Authority for Permit Issuance	Timing of Compliance (if immediate)
2.	<p><b>PD002 - NOTICE-PERMIT APPROVAL</b></p> <p>The applicant shall record a notice which states: "A permit (Resolution No. ) was approved by the Board of Supervisors for Assessor's Parcel Number 009-442-013-000 on July 22, 2008. The permit was granted subject to 26 conditions of approval, which run with the land. A copy of the permit is on file with the Monterey County RMA - Planning Department." Proof of recordation of this notice shall be furnished to the Director of RMA - Planning Department prior to issuance of building permits or commencement of the use.</p> <p><b>(RMA - Planning Department)</b></p>	Proof of recordation of this notice shall be furnished to RMA - PD	Owner/ Applicant	Prior to Issuance of test well permit.



Permit Cond. Number	Permit Title Number	Conditions of Approval and/or Mitigation Measures and Responsible Land Use Department	Compliance or Violation - Actions to be taken if permit application or a certified professional is required for action to be accepted	Responsible Party to Compliance (name & title)	Timing of Compliance (month & year)
3.	1.	<p><b>PD003(B) – CULTURAL RESOURCES – POSITIVE ARCHAEOLOGICAL REPORT</b></p> <p>If archaeological resources or human remains are accidentally discovered during construction, the following steps will be taken:</p> <p>There shall be no further excavation or disturbance of the site or any nearby area reasonably suspected to overlie adjacent human remains until:</p> <p>The coroner of the county in which the remains are discovered must be contacted to determine that no investigation of the cause of death is required, and</p> <p>If the coroner determines the remains to be Native American:</p> <ul style="list-style-type: none"> <li>- The coroner shall contact the Native American Heritage Commission and the RMA – Planning Department within 24 hours.</li> <li>- The Native American Heritage Commission shall identify the person or persons from a recognized local tribe of the Esselen, Salinan, Costanoans/ Ohlone and Chumash tribal groups, as appropriate, to be the most likely descendent.</li> <li>- The most likely descendent may make recommendations to the landowner or the person responsible for the excavation work, for means of treating or disposing of, with</li> </ul>	<p>The applicant shall submit the contracts with a Registered Professional Archeologist and a Registered Professional Anthropologist to the Director of the RMA – Planning Department for approval.</p>	Owner/ Applicant per archaeolo- gist or anthropol- ogist	Prior to the issuance of grading or building permits

Permit Cond. Number	Conditions of Approval and/or Mitigation Measures and Responsible Land Use Department	Compliance and Monitoring to be performed by applicant or contractor to be notified	Owner/ Applicant	Prior to the issuance of grading or building permits	Permit Expiration (immediate)
	<p>appropriate dignity, the human remains and any associated grave goods as provided in Public Resources Code Section 5097.9 and 5097.993, or</p> <ul style="list-style-type: none"> <li>- Where the following conditions occur, the landowner or his authorized representatives shall rebury the Native American human remains and associated grave goods with appropriate dignity on the property in a location not subject to further subsurface disturbance:</li> </ul> <ol style="list-style-type: none"> <li>1. The Native American Heritage Commission is unable to identify a most likely descendent or the most likely descendent failed to make a recommendation within 24 hours after being notified by the commission.</li> <li>2. The descendent identified fails to make a recommendation; or</li> <li>3. The landowner or his authorized representative rejects the recommendation of the descendent, and the mediation by the Native American Heritage Commission fails to provide measures acceptable to the landowner.</li> </ol> <p>(RMA - Planning Department)</p>	The requirements of this condition shall be included as a note on all grading and building plans.	Owner/ Applicant	Prior to the issuance of grading or building permits	
4.	<p><b>PD004 - INDEMNIFICATION AGREEMENT</b></p> <p>The property owner agrees as a condition and in consideration of the approval of this discretionary development permit that it will, pursuant to agreement and/or statutory provisions as applicable, including but not limited to Government Code Section 66474.9, defend, indemnify and hold</p>	<p>Submit signed and notarized Indemnification Agreement to the Director of RMA – Planning Department for review and signature by the County.</p> <p>Proof of recordation of the Indemnification Agreement, as outlined,</p>	Owner / Applicant	Concurrent with the issuance of building permits.	

Permit Condition Number	Conditions of Approval and/or Mitigation Measures and Responsible Land Use Department	Compliance or Violation by Failure to be performed. Where compliance is a certified professional's required for action to be accepted.	Responsible Party to Comply	Completion of Compliance (name/date)
	harmless the County of Monterey or its agents, officers and employees from any claim, action or proceeding against the County or its agents, officers or employees to attack, set aside, void or annul this approval, which action is brought within the time period provided for under law, including but not limited to, Government Code Section 66499.37, as applicable. The property owner will reimburse the county for any court costs and attorney's fees which the County may be required by a court to pay as a result of such action. County may, at its sole discretion, participate in the defense of such action; but such participation shall not relieve applicant of his obligations under this condition. An agreement to this effect shall be recorded upon demand of County Counsel or concurrent with the issuance of building permits, use of the property, filing of the final map, whichever occurs first and as applicable. The County shall promptly notify the property owner of any such claim, action or proceeding and the County shall cooperate fully in the defense thereof. If the County fails to promptly notify the property owner of any such claim, action or proceeding or fails to cooperate fully in the defense thereof, the property owner shall not thereafter be responsible to defend, indemnify or hold the county harmless. <b>(RMA - Planning Department)</b>	shall be submitted to the RMA - Planning Department.		
5.	<b>PD006 - MITIGATION MONITORING PROGRAM</b> The applicant shall enter into an agreement with the County to implement a Mitigation Monitoring and/or Reporting Plan in accordance with Section 21081.6 of the California Public Resources Code and Section 15097 of Title 14, Chapter 3 of the California Code of Regulations. Compliance with the fee schedule	1) Enter into agreement with the County to implement a Mitigation Monitoring Program.  2) Fees shall be submitted at the time the property owner submits the signed mitigation monitoring agreement	Owner / Applicant	Within 60 days after project approval or prior to the issuance of grading

Permit Cond. Number	Conditions of Approval and/or Mitigation Measures and Responsible Party/Department	Comments by City to the Applicant to be provided to the Applicant to be provided to the Applicant for information (optional)	Comments by City to the Applicant to be provided to the Applicant to be provided to the Applicant for information (optional)	Comments by City to the Applicant to be provided to the Applicant to be provided to the Applicant for information (optional)
	adopted by the Board of Supervisors for mitigation monitoring shall be required and payment made to the County of Monterey at the time the property owner submits the signed mitigation monitoring agreement. (RMA - Planning Department)			and building permits, whichever occurs first.
6.	<b>PD007 - GRADING-WINTER RESTRICTION</b> No land clearing or grading shall occur on the subject parcel between October 15 and April 15 unless authorized by the Director of RMA - Building Services Department. (RMA - Planning Department and Building Services Department)	Obtain authorization from the Director of RMA - Building Services Department to conduct land clearing or grading between October 15 and April 15.	Owner/ Applicant	Ongoing
7.	<b>PD010 - EROSION CONTROL PLAN AND SCHEDULE</b> The approved development shall incorporate the recommendations of the Erosion Control Plan as reviewed by the Director of RMA - Planning and Director of Building Services. All cut and/or fill slopes exposed during the course of construction shall be covered, seeded, or otherwise treated to control erosion during the course of construction, subject to the approval of the Director of RMA - Planning and Director of RMA - Building Services. The improvement and grading plans shall include an implementation schedule of measures for the prevention and control of erosion, siltation and dust during and immediately following construction and until erosion control planting becomes established. This program shall be approved by the Director of RMA - Planning and Director of RMA - Building Services. This plan shall specifically include a catch basin and related drainage control to contain sediment onsite during construction activity (RMA - Planning Department and RMA - Building Services Department.)	Evidence of compliance with the Erosion Control Plan shall be submitted to the RMA - Planning Department and the RMA - Building Services Department prior to issuance of building and grading permits.  Comply with the recommendations of the RMA - Building Services approved Erosion Control Plan during the course of construction until project completion.  Evidence of compliance with the Implementation Schedule shall be submitted to the RMA - Planning Department and the RMA - Building Services Department  Submit photos of the trees on the property to the RMA - Planning Department after construction to document that tree protection has been	Owner/ Applicant  Owner/ Applicant  Owner/ Applicant  Owner/ Applicant	Prior to the issuance of grading and building permits  Ongoing  Prior to final inspection  Prior to final inspection

Permit Cond. Number	Conditions of Approval and/or Mitigation Measures and Responsible Land Use Department	Compliance or Monitoring - What to be performed, when, by whom, or certified professional is required for action to be accepted.	Responsibility for Review or Completion	Timeline (date)
8.	<p><b>PD012(A) - LANDSCAPE PLAN AND MAINTENANCE (SINGLE FAMILY DWELLING ONLY)</b></p> <p>The site shall be landscaped. At least three (3) weeks prior to occupancy, three (3) copies of a landscaping plan shall be submitted to the Director of the RMA - Planning Department. A landscape plan review fee is required for this project. Fees shall be paid at the time of landscape plan submittal. The landscaping plan shall be in sufficient detail to identify the location, species, and size of the proposed landscaping materials and shall include an irrigation plan. The landscape plan shall also be carefully designed to prevent erosion and runoff from the project site. The plan shall be accompanied by a nursery or contractor's estimate of the cost of installation of the plan. Before occupancy, landscaping shall be either installed or a certificate of deposit or other form of surety made payable to Monterey County for that cost estimate shall be submitted to the Monterey County RMA - Planning Department. All landscaped areas and fences shall be continuously maintained by the applicant; all plant material shall be continuously maintained in a litter-free, weed-free, healthy, growing condition. (RMA - Planning Department)</p>	<p>successful or if follow-up remediation or additional permits are required.</p> <p>Submit landscape plans and contractor's estimate to the RMA - Planning Department for review and approval.</p> <p>All landscaped areas and fences shall be continuously maintained by the applicant; all plant material shall be continuously maintained in a litter-free, weed-free, healthy, growing condition, and in a manner that prevents erosion and runoff from the site. This specification should be called out in the plans and approved by the Director.</p>	<p>Owner/ Applicant/ Licensed Landscape Contractor/ Licensed Landscape Architect</p> <p>Owner/ Applicant</p>	<p>At least three (3) weeks prior to final inspection or occupancy</p> <p>Ongoing</p>

Permit Code Number	Conditions of Approval and/or Mitigation Measure and Responsible Party Department	Compliance with the RMA to be maintained until the required permits are received for the project to be completed (date)	Timing of Compliance (date)
9.	<p><b>PD014(B) – LIGHTING – EXTERIOR LIGHTING PLAN (VISUAL SENSITIVITY DISTRICT/ RIDGELINE DEVELOPMENT)</b></p> <p>All exterior lighting shall be unobtrusive, down-lit, harmonious with the local area, and constructed or located so that only the intended area is illuminated and off-site glare is fully controlled. Exterior lights shall have recessed lighting elements. Exterior light sources that would be directly visible from when viewed from a common public viewing area, as defined in Section 21.06.195, are prohibited. The applicant shall submit 3 copies of an exterior lighting plan which shall indicate the location, type, and wattage of all light fixtures and include catalog sheets for each fixture. The lighting shall comply with the requirements of the California Energy Code set forth in California Code of Regulations, Title 24, Part 6. The exterior lighting plan shall be subject to approval by the Director of the RMA – Planning Department, prior to the issuance of building permits. (RMA – Planning Department)</p>	<p>Submit three copies of the lighting plans to the RMA – Planning Department for review and approval. Approved lighting plans shall be incorporated into final building plans.</p> <p>The lighting shall be installed and maintained in accordance with the approved plan.</p>	<p>Prior to the issuance of building permits.</p> <p>Ongoing</p>
10.	<p><b>PD016 – NOTICE OF REPORTS (GEOLOGY)</b></p> <p>Prior to issuance of building or grading permits, a notice shall be recorded with the Monterey County Recorder which states: "A Geotechnical and Geological Hazards Report has been prepared for this parcel by Grice Engineering and Geology, Inc., dated January 2007 Library No. LIB070151 with a supplement letter prepared by Grice Engineering and Geology Inc., dated July 24, 2007 and a Geotechnical response to Four Specific Questions, prepared by Haro, Kasunich, and Assoc. Inc. dated November 27, 2007 (LIB070652). All development shall be in accordance with these reports." (RMA – Planning</p>	<p>Proof of recordation of this notice shall be furnished to the RMA – Planning Department.</p>	<p>Prior to the issuance of grading and building permits.</p>



Permit Cond. Number	Permit Title 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 initiated.	Responsible Party for Compliance	Verification of Compliance (date)
		Department)			
11.		<b>PD016 – NOTICE OF REPORTS (ARCHAEOLOGY)</b> Prior to issuance of building or grading permits, a notice shall be recorded with the Monterey County Recorder which states: "An Archaeology Report has been prepared for this parcel by Archaeological Consulting, dated January, 17 2007 Library No. LIB070152. All development shall be in accordance with this report." (RMA – Planning Department)	Proof of recordation of this notice shall be furnished to the RMA – Planning Department.	Owner/ Applicant	Prior to the issuance of grading and building permits.
12.		<b>PD035 – UTILITIES – UNDERGROUND</b> All new utility and distribution lines shall be placed underground. (RMA – Planning Department; Public Works)	Install and maintain utility and distribution lines underground.	Owner/ Applicant	Ongoing
13.		<b>PD041 – HEIGHT VERIFICATION</b> The applicant shall have a benchmark placed upon the property and identify the benchmark on the building plans. The benchmark shall remain visible onsite until final building inspection. The applicant shall provide evidence from a licensed civil engineer or surveyor, to the Director of the RMA-Building Services Department for review and approval, that the height of the structure(s) from the benchmark is consistent with what was approved on the building permit associated with this project. (RMA – Planning Department and Building	1) The applicant shall have a benchmark placed upon the property and identify the benchmark on the building plans. The benchmark shall act as a point of reference to determine the structures building height (not to exceed 18 feet) from the average natural grade determined to be at the 38.89 elevation based on the project survey grade elevations. The benchmark shall remain visible onsite until final building inspection	Owner/ Applicant	Prior to the issuance of grading or building permits

Permit Condition Number	Conditions of Approval and/or Mitigation of Grading and Related Activities Department	Compliance Monitoring and Reporting Department	Responsible Party
	Services Department)	2) The applicant shall provide evidence from a licensed civil engineer or Building Services Department for review and approval, that the height of the structure(s) from the benchmark is consistent with what was approved on the building permit.	Owner/ Applicant/ Engineer
14.	<b>PDSP001 - CONSTRUCTION MANAGEMENT PLAN (NON-STANDARD)</b> Prior to issuance of Grading Permits or Building Permits, applicant shall submit a Construction Management Plan (CMP) to the RMA-Planning Department and the Department of Public Works for review and approval. The CMP shall include measures to minimize traffic impacts during the construction/grading phase of the project and shall limit construction hours of operation to 8:00 AM to 4:00 PM on weekdays only. The CMP shall also provide for, truck routes that would have trucks coming and leaving the site from Stewart Road, on to Rio Road via Isabella, San Antonio Ave and Santa Lucia Ave., parking areas for both equipment and workers, and locations of truck staging areas. Measures included in the CMP shall be implemented by the applicant during the construction/grading phase of the project. ( <b>Public Works &amp; RMA - Planning Department</b> )	Applicant shall prepare a CMP and submit the CMP to the RMA-Planning Department for review and approval  Implement approved measures during the construction/grading phase of the project.  Submit a construction activity report including photographs and activity logs where applicable that document how Best Management Practices were implemented and followed during construction and grading activities.	Prior to the final inspection  Prior to issuance of the Grading Permit or Building Permit.  During Construction activities  Prior to final inspection or occupancy



Permit Cond. Number	Conditions of Approval/Conditional Mitigation Measures and Responsible Land Use Department	Compliance Monitoring to be performed with the applicant to certify proper construction and for action to be taken when	Responsibility to Party to Compliance	Verification to Party to Compliance (if available)
15	<b>PDSP002 – GEOTECHNICAL CERTIFICATION (NON-STANDARD)</b> Prior to issuance of building or grading permits, a notice shall be recorded with the Monterey County Recorder certified by a registered geologist/soils engineer that the proposed development will not result in an unacceptable risk of injury or structural damage. ( <b>RMA – Planning Department</b> )	Proof of recordation of this notice shall be furnished to the RMA – Planning Department.	Owner/ Applicant	Prior to issuance of the Grading Permit or Building Permit.
16	<b>PW0005 – ENCROACHMENT (STD DRIVEWAY)</b> Obtain an encroachment permit from the Department of Public Works and construct a standard driveway connection to Scenic Road. ( <b>Public Works</b> )	Applicant shall obtain an encroachment permit from DPW prior to issuance of building permits and complete improvement prior to occupancy or commencement of use. Applicant is responsible to obtain all permits and environmental clearances.	Owner/ Applicant	Prior to Building/ Grading Permits Issuance
17	<b>WR1 – DRAINAGE PLAN</b> The applicant shall provide the Water Resources Agency a drainage plan prepared by a registered civil engineer or architect addressing on-site and off-site impacts. Drainage improvements shall be constructed in accordance with plans approved by the Water Resources Agency. ( <b>Water Resources Agency</b> )	Submit 3 copies of the engineered drainage plan to the Water Resources Agency for review and approval.	Owner/ Applicant/ Engineer	Prior to issuance of any grading or building permits
18	<b>WR40 – WATER CONSERVATION MEASURES</b> The applicant shall comply with Ordinance No. 3932, or as subsequently amended, of the Monterey County Water Resources Agency pertaining to mandatory water conservation regulations. The regulations for new construction require, but are not limited to:	Compliance to be verified by building inspector at final inspection.	Owner/ Applicant	Prior to final building inspect- ion/ occupancy

Permit Cond. Number	Mitig. Number	Conditions of Approval and/or Mitigation Measures and Responsible Land Use Department	Completion of Work to the Land to be Permitted. (Date completion of work to be submitted for review)	Responsible Party (Name/Date)
		<p>a. All toilets shall be ultra-low flush toilets with a maximum tank size or flush capacity of 1.6 gallons, all shower heads shall have a maximum flow capacity of 2.5 gallons per minute, and all hot water faucets that have more than ten feet of pipe between the faucet and the hot water heater serving such faucet shall be equipped with a hot water recirculating system.</p> <p>b. Landscape plans shall apply xeriscape principles, including such techniques and materials as native or low water use plants and low precipitation sprinkler heads, bubblers, drip irrigation systems and timing devices. (Water Resources Agency)</p>		
19		<p><b>WR43 – WATER AVAILABILITY CERTIFICATION</b></p> <p>The applicant shall obtain from the Monterey County Water Resources Agency, proof of water availability on the property, in the form of an approved Monterey Peninsula Water Management District Water Release Form. (Water Resources Agency)</p>	Submit the Water Release Form to the Water Resources Agency for review and approval.	Owner/ Applicant
				Prior to issuance of any building permits

Permit Cond. Number	Conditions of Approval and/or Mitigation Measure and Responsible Land Use Department	Compliance Monitoring Actions to be performed where applicable by a certified professional as required for action to be accepted	Responsible Party	Prior to issuance of building permit.
20	<p><b>FIRE011 – ADDRESSES FOR BUILDINGS</b></p> <p>All buildings shall be issued an address in accordance with Monterey County Ordinance No. 1241. Each occupancy, except accessory buildings, shall have its own permanently posted address. When multiple occupancies exist within a single building, each individual occupancy shall be separately identified by its own address. Letters, numbers and symbols for addresses shall be a minimum of 4-inch height, 1/2-inch stroke, contrasting with the background color of the sign, and shall be Arabic. The sign and numbers shall be reflective and made of a noncombustible material. Address signs shall be placed at each driveway entrance and at each driveway split. Address signs shall be and visible from both directions of travel along the road. In all cases, the address shall be posted at the beginning of construction and shall be maintained thereafter. Address signs along one-way roads shall be visible from both directions of travel. Where multiple addresses are required at a single driveway, they shall be mounted on a single sign. Where a roadway provides access solely to a single commercial occupancy, the address sign shall be placed at the nearest road intersection providing access to that site. Permanent address numbers shall be posted prior to requesting final clearance. (<i>Carmel Highlands Fire District</i>)</p>	<p>Applicant shall incorporate specification into design and enumerate as "Fire Dept. Notes" on plans.</p>	Applicant or owner	Prior to issuance of building permit.
21	<p><b>FIRE019 – DEFENSIBLE SPACE REQUIREMENTS – (STANDARD)</b></p> <p>Remove combustible vegetation from within a minimum of 30 feet of structures. Limb trees 6 feet up from ground. Remove limbs within 10 feet of chimneys. Additional and/or alternate fire</p>	<p>Applicant shall schedule fire dept. clearance inspection</p>	Applicant or owner	Prior to final building inspection
		<p>Applicant shall incorporate specification into design and enumerate as "Fire Dept. Notes" on plans.</p>	Applicant or owner	Prior to issuance of grading and/or building permit.

Permit Condition Number	Conditions of Approval, Provisions, Measure, and Responsible Department	Compliance or Enforcement to be performed by the applicant as certified by the applicant for approval by the department	Applicant or owner	Prior to final building inspection	Completion of Compliance (date)
	protection or firebreaks approved by the fire authority may be required to provide reasonable fire safety. Environmentally sensitive areas may require alternative fire protection, to be determined by Reviewing Authority and the Director of Planning and Building Inspection. ( <i>Carmel Highlands Fire District</i> )	Applicant shall schedule fire dept. clearance inspection	Applicant or owner	Prior to final building inspection	
22	<b>FIRE021 – FIRE PROTECTION EQUIPMENT &amp; SYSTEMS – FIRE SPRINKLER SYSTEM (STANDARD)</b> The building(s) and attached garage(s) shall be fully protected with automatic fire sprinkler system(s). Installation shall be in accordance with the applicable NFPA standard. A minimum of four (4) sets of plans for fire sprinkler systems must be submitted by a California licensed C-16 contractor and approved prior to installation. This requirement is not intended to delay issuance of a building permit. A rough sprinkler inspection must be scheduled by the installing contractor and completed prior to requesting a framing inspection. ( <i>Carmel Highlands Fire District</i> )	Applicant shall enumerate as "Fire Dept. Notes" on plans.	Applicant or owner	Prior to issuance of building permit.	
		Applicant shall schedule fire dept. rough sprinkler inspection	Applicant or owner	Prior to framing inspection	
		Applicant shall schedule fire dept. final sprinkler inspection	Applicant or owner	Prior to final building inspection	
23	<b>FIRE029 – ROOF CONSTRUCTION – (CYPRESS FPD &amp; PEBBLE BEACH CSD)</b> All new structures, and all existing structures receiving new roofing over 25 percent or more of the existing roof surface within a one-year period, shall require a minimum of ICBO Class A roof construction. ( <i>Carmel Highlands Fire District</i> )	Applicant shall enumerate as "Fire Dept. Notes" on plans.	Applicant or owner	Prior to issuance of building permit.	

Permit Cond. Number	Mitig. Number	Conditions of Approval and/or Mitigation Measures and Responsible Land Use Department	Compliance to Monitoring Actions to be performed. Where applicable, a certified professional's signature for action to be taken.	Responsibility to Party for Compliance	Timing of Compliance (name/date)	Verification of Compliance (name/date)
24	2	<b>PDSP002 – ARCHAEOLOGICAL MONITORING (MITIGATION)</b> The contractor shall sign and record an agreement created by an Archaeologist informing them of the potential for incidental impacts and requirements to contract the archaeologist for monitoring during earth disturbing activities associated with new construction on the parcel, such as grading, foundation excavations, etc. The monitor shall have the authority to temporarily halt work in order to examine any potentially significant cultural materials or features. (RMA – Planning Department)	The applicant shall provide the Director of Planning with a copy of a recorded agreement containing recommendations for protection of incidental impacts to potentially significant resources including any measures necessary to be in place and in good order through construction and the requirement of an Archaeological monitor on site during earth disturbing activities.  The applicant shall provide evidence of the presence of the Archaeologist on-site during demolition of existing structures and earth disturbing activities.	Owner/ Contractor / Archaeologist	Prior to issuance of grading or building permits	
25	3	<b>PDSP003 – TEMPORARY SHORING (MITIGATION)</b> In order to reduce potential impacts to neighboring structures temporary shoring shall be installed by a licensed contractor according to plans approved by the RMA - Building Department and under the direct supervision of a licensed geotechnical engineer, along with supervision from the archaeological monitor required in condition 23. The engineer shall have the ability to make adjustments as necessary to provide maximum protection of life and surrounding structures. The shoring shall remain in place in working order during foundation excavation and construction. (RMA – Planning Department and RMA – Building Services Department)	Prior to issuance of grading or building permits the owner or applicant shall submit temporary shoring plans, designed by a licensed geotechnical engineer, to the RMA Building Department for review and approval.  During construction of the temporary shoring, a licensed engineer shall observe and make recommendations where necessary to ensure proper construction of the shoring and support of adjacent structures [combined with observation from a registered archaeologist (see mitigation	Owner/ Contractor / Engineer	Prior to issuance of grading or building permits.	
				Owner/ Contractor / Archaeologist	During construction of the temporary shoring	

Permit Condition Number	Conditions of Approval/Mitigation Measures and a Specific Enforcement Department	Compliance To be implemented within a specified time period (Date to be specified)	Responsible Party (Name/Title)	Completion Date (Month/Day)
		measure 1)].		
		Upon completion of the shoring and prior to foundation excavation the owner or applicant shall submit a letter to the RMA-Planning Department from the licensed engineer certifying that the shoring has been adequately constructed.	Owner/ Contractor / Engineer	Prior to foundation excavation
26	<b>PDSP004 – LIABILITY INSURANCE (NON-STANDARD)</b> The Owner/Applicant must demonstrate to the satisfaction of the RMA-Planning Department and County Counsel that the contractors for the proposed development, including any general and sub-contractors involved in the shoring, excavation, and foundation construction, are appropriately licensed for the work and will maintain liability insurance of not less than \$4,000,000 per occurrence including coverage for any claims for bodily injury or damage to property, including owner's and adjacent properties, arising from contractors' or subcontractors' work performed on the project. Such insurance shall name the neighbor to the south (APN: 009-442-012-000) as an additional insured. The insurance shall be maintained from commencement of construction to issuance of certificate of	Prior to the issuance of building or grading permits, the Owner/applicant shall provide to the RMA-Planning Department certificates of insurance and such other documentation as the County may require to demonstrate that the contractors and subcontractors have in effect the insurance required by this condition. The insurance shall be maintained in force from commencement of construction to issuance of certificate of occupancy or final building inspection. If any change is made in the insurance policy during this period, the Owner/applicant shall notify the RMA-Planning Department within	Owner/ Contractor	Prior to Issuance of building or grading permits and as stated in the Condition.

Permit Cond. Number	Mitig. Number	Conditions of Approval and/or Mitigation Measures and Responsible Fund Est. Department	Compliance or Monitoring to be performed. When applicable, a certified professional is required for action to be accepted.	Responsibility Party for Compliance	Timing of Compliance (date/date)
		occupancy or final building inspection. All such insurance shall be with a company acceptable to the County and issued and executed by an admitted insurer authorized to transact insurance business in the state of California. (RMA – Planning Department)	five calendar days of such change.		



<p> <b>PROPERTY OWNER:</b>              Paul Smith, Jr. and Cheryl              Smith              10000 15th Avenue, Suite 409B              Denver, CO 80202              (303) 759-1002           </p> <p> <b>PROJECT ADDRESS:</b>              2157 E. 10TH AVE              DENVER, CO 80202           </p> <p> <b>PROJECT SCOPE:</b>              NEW BUILT FAMILY RESIDENCE              WITH ATTACHED 2-CAR GARAGE           </p> <p> <b>PROJECT CODES:</b>              OCCUPANCY: RES. U. 1              CASH: TYPE: VAC           </p> <p> <b>APR #:</b>              009-441-01-200           </p> <p> <b>LOCAL DESC.:</b>              LOT: 10 BLOCK: 80           </p> <p> <b>TIME:</b>              6:00 PM TO 11:00 (12)           </p> <p> <b>MAX. READ. MIN.:</b>              18 FT           </p> <p> <b>GRADING:</b>              SEE REMARKS: NONE           </p> <p> <b>TOPOGRAPHY:</b>              SLOPE           </p> <p> <b>PROJECT CODE COMPLIANCE:</b>              1. 200 - C.O. CHS. CHS. C.C.              2. 200 - California District Code              3. 200 - California Electric Code           </p> <p> <b>LOT AREA:</b>              1700 S.F.           </p> <p> <b>LOT CONFORMANCE CALCULATIONS:</b>              BUILDING (FLOORPLAN)              OVERLAY              TOTAL TERRACE              TOTAL COVERAGE              TOTAL AREA           </p>	<p>             1.43 S.F.              746 S.F.              207 S.F.              1.43 S.F.           </p>
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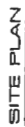
PROJECT DATA  
SITE PLAN

DATE: 04-04-07

CLIENT REVIEW

REVISIONS:

NO.	DESCRIPTION	DATE
1	ISSUED FOR PERMIT	07-14-07
2	ISSUED FOR PERMIT	11-09-07
3	ISSUED FOR PERMIT	12-14-07
4	ISSUED FOR PERMIT	01-14-08
5	ISSUED FOR PERMIT	02-14-08
6	ISSUED FOR PERMIT	03-14-08
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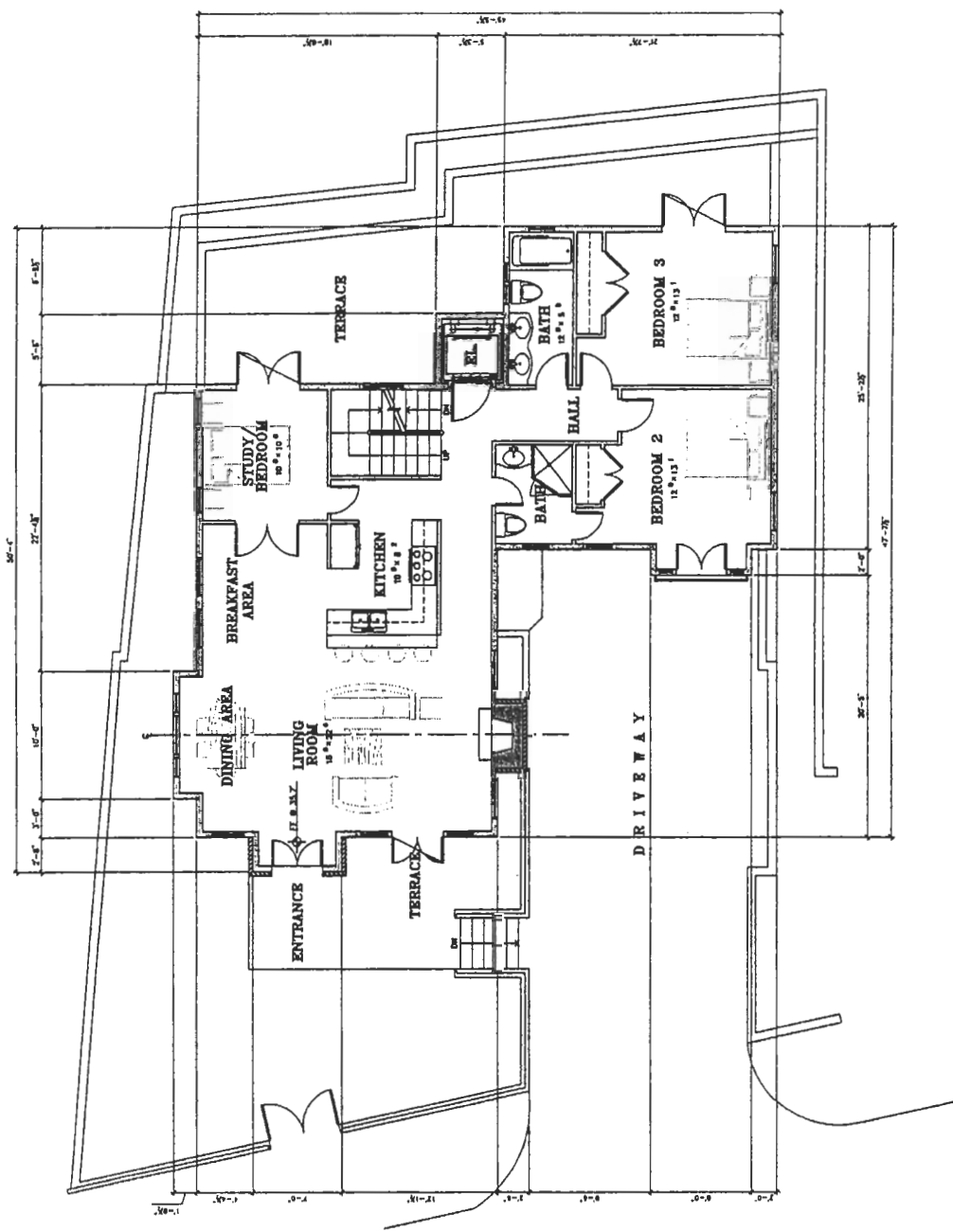
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PROPOSED NEW RESIDENCE AT  
26327 SCENIC ROAD  
CARMEL, CA  
26327 SCENIC ROAD

INTERNATIONAL DESIGN GROUP  
ARCHITECTURE • INTERIOR DESIGN  
JOHN S. MATTANAH  
JULIA A. BILLAND, AIA  
221 LIGHTHOUSE AVENUE & PACIFIC GROVE, CA 93950  
TEL: (831) 921-1811 FAX: (831) 921-1800 E-MAIL: jsm@idgdesign.com

MAIN LEVEL  
PLAN

DATE: 04-04-07  
SHEET NUMBER  
A2.0



WALL LEGEND  
2" STUO FRAMED WALL  
CONCRETE STONE VENEER

MAIN LEVEL PLAN

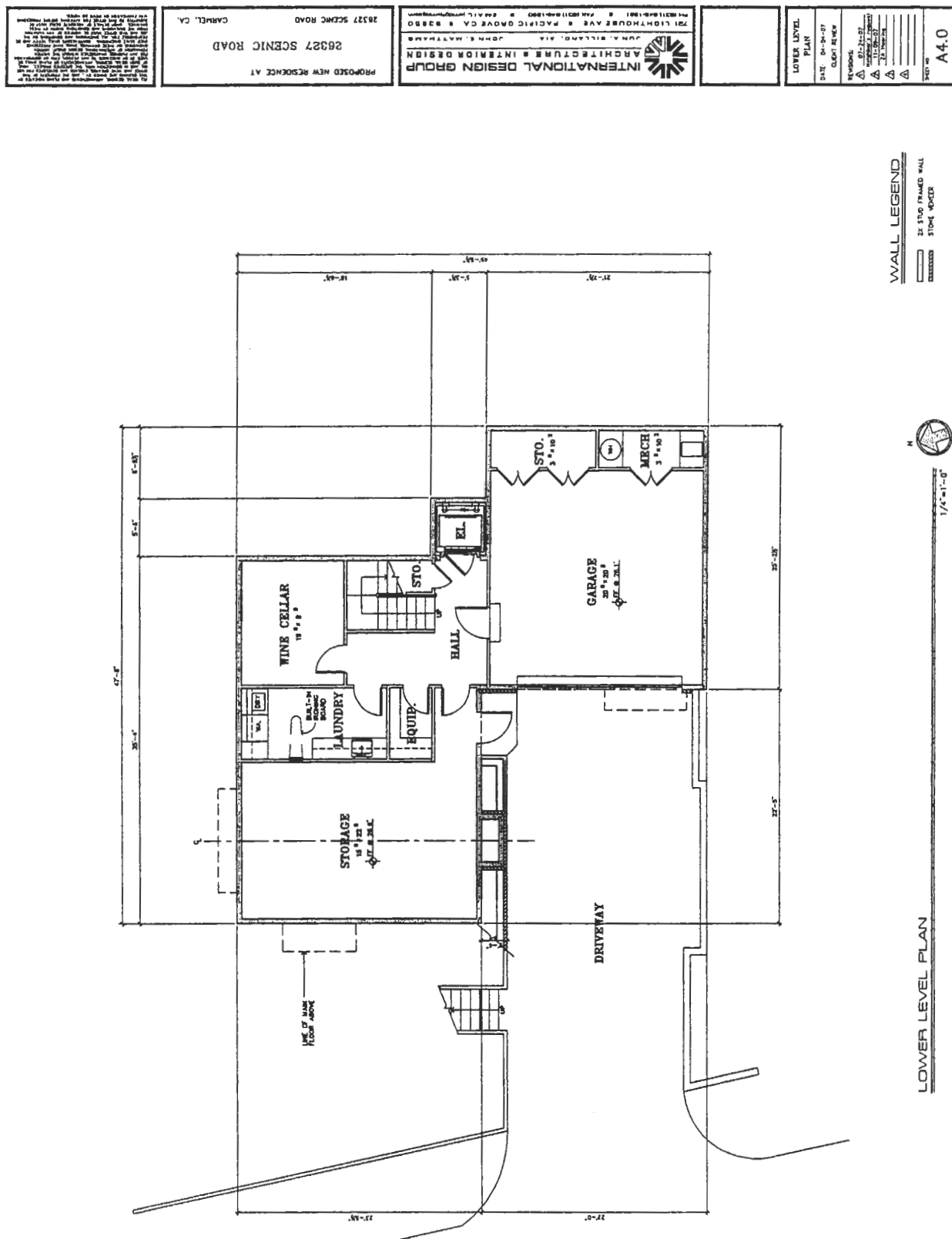
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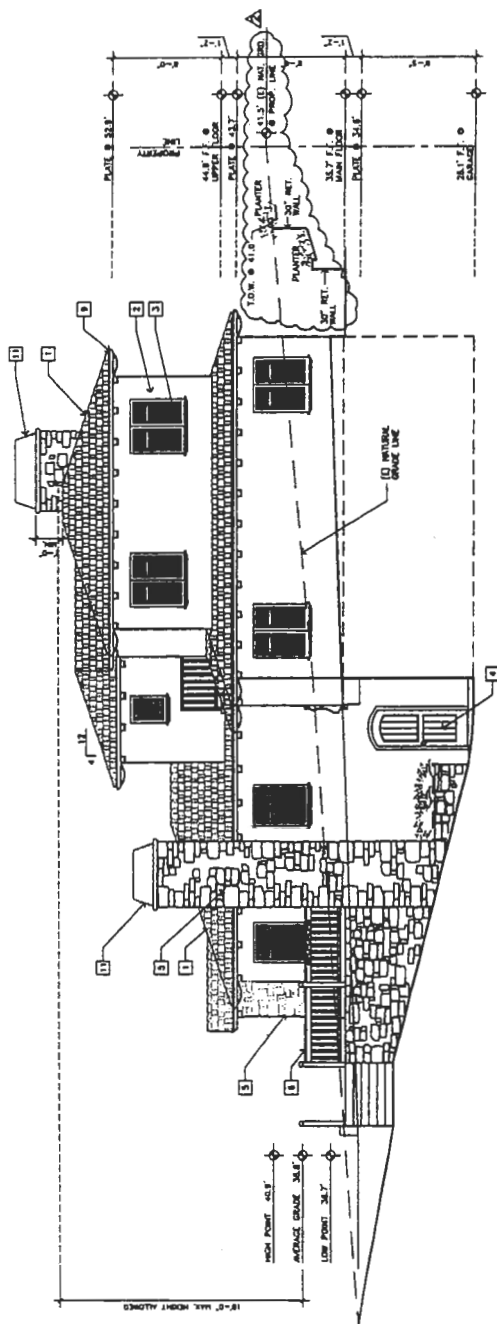
PROPOSED NEW RESIDENCE AT  
28327 SCENIC ROAD  
CARMEL, CA  
28327 SCENIC ROAD

INTERNATIONAL DESIGN GROUP  
ARCHITECTURE & INTERIOR DESIGN  
JOHN A. WILLIAMS, AIA  
JENNIFER M. MATTHEWS  
221 LIGHTHOUSE AVE. & PACIFIC GROVE CA 93920  
TEL (805) 466-1887 FAX (805) 466-1880  
WWW.IDGARCHITECTURE.COM

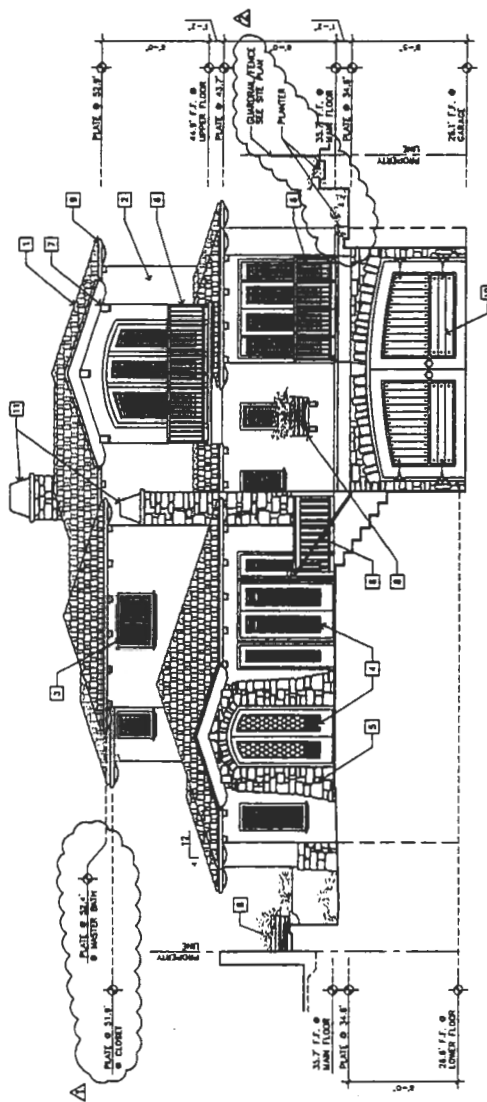


UPPER LEVEL PLAN	
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CLIENT:	RENEE
REVISIONS:	
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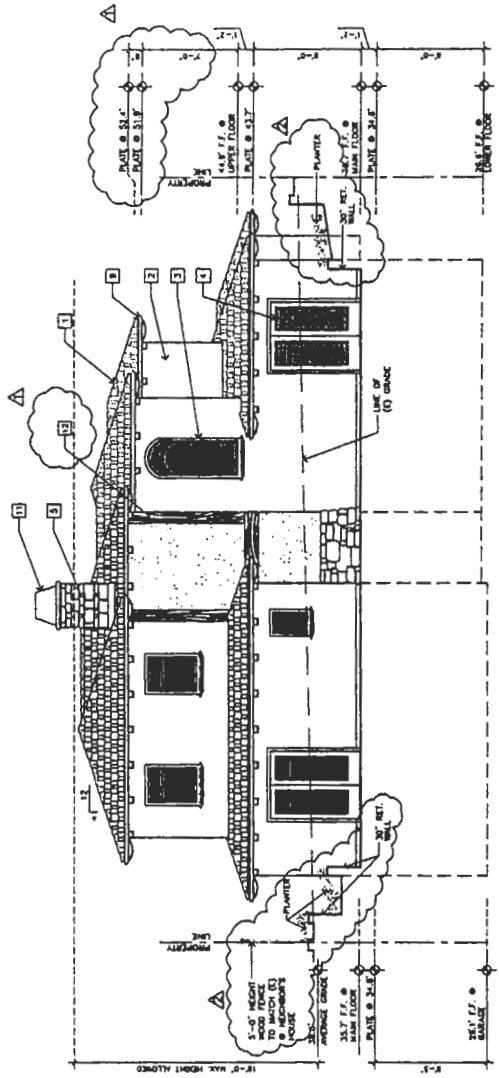
SOUTH ELEVATION



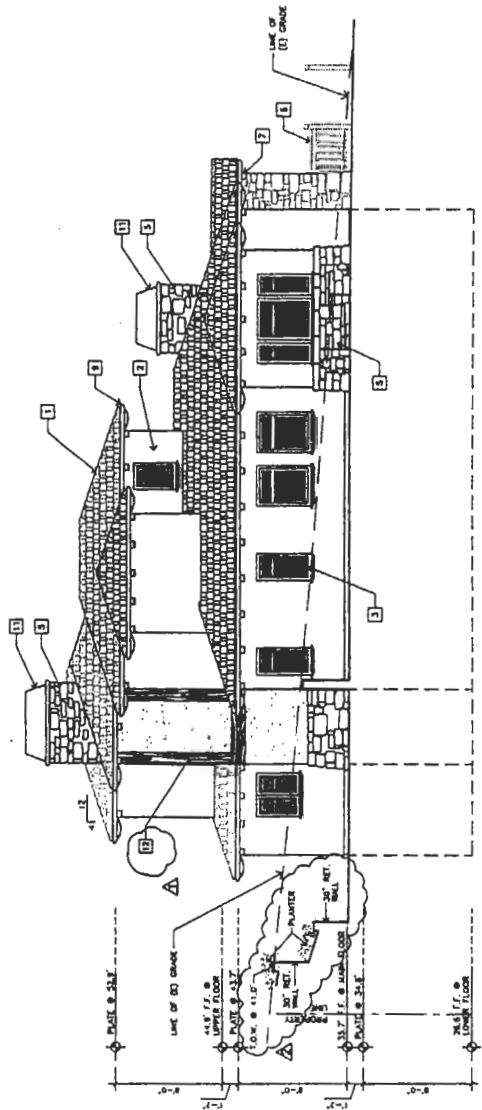
WEST ELEVATION

EXTERIOR FINISH LEGEND	
1	WOOD SHINGLE ROOF - CLASS 'A'
2	EXTERIOR STUCCO
3	WOOD SHINGLES
4	METAL CLAD WOOD WINDOWS
5	METAL CLAD WOOD DOORS
6	STONE VENEER - CARVEL STONE
7	POWDER COATED METAL HANDRAILS
8	PAINT FINISH
9	STAINED WOOD BUTTERS
10	DECORATIVE WOOD PLANTER
11	COPPER LINING
12	COPPER GUTTER AND DOWNSPOUT
13	STAINED WOOD GARAGE DOOR
14	COPPER CHIMNEY CAP
15	DECORATIVE WOOD

ELEVATIONS	DATE: 04-04-07 CLIENT: ALVIMEX	REVISIONS: 07-24-07 MIGUEL A. ROCHA 11-09-07 J.A. MIGUEL   	A6.0
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EAST ELEVATION



NORTH ELEVATION

- ### EXTERIOR FINISH LEGEND
- |    |                               |
|----|-------------------------------|
| 1  | WOOD SHINGLE ROOF - CLASS 'A' |
| 2  | EXTERIOR STUCCO               |
| 3  | METAL CLAD WOOD WINDOWS       |
| 4  | METAL CLAD WOOD DOORS         |
| 5  | STONE VENEER - CARNEL STONE   |
| 6  | POWDER COATED METAL HANDRAILS |
| 7  | PAINT FINISH                  |
| 8  | STAINED WOOD RATTLES          |
| 9  | DECORATIVE WOOD PLANTER       |
| 10 | W/ COPPER LINING              |
| 11 | COPPER GUTTER AND DOWNSPOUT   |
| 12 | STAINED WOOD GARAGE DOOR      |
| 13 | COPPER CHIMNEY CAP            |
| 14 | DECORATIVE WOOD               |



## CALIFORNIA COASTAL COMMISSION

CENTRAL COAST DISTRICT OFFICE  
725 FRONT STREET, SUITE 300  
SANTA CRUZ, CA 95060-4508  
VOICE (831) 427-4863 FAX (831) 427-4877



## APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT

Please Review Attached Appeal Information Sheet Prior To Completing This Form.

SECTION I. Appellant(s)

Name: David Sabih

Mailing Address: c/o Law Offices of Michael W. Stamp, 479 Pacific Street, Suite One

City: Monterey

Zip Code: CA

Phone: 831-373-1214

SECTION II. Decision Being Appealed

1. Name of local/port government:

County of Monterey

2. Brief description of development being appealed:

Three-story 3,495-s.f. single-family residence/garage on Scenic Road on Carmel Point requiring 1,130 cubic yards of excavation and 14-foot deep excavation.

3. Development's location (street address, assessor's parcel no., cross street, etc.):

26327 Scenic Road, Carmel Point.

APN 009-442-013-000

Cross-street: Stewart Way.

4. Description of decision being appealed (check one.):

- ☐ Approval; no special conditions  
☒ Approval with special conditions:  
☐ Denial

RECEIVED

AUG 28 2008

CALIFORNIA  
COASTAL COMMISSION  
CENTRAL COAST AREA

**Note:** For jurisdictions with a total LCP, denial decisions by a local government cannot be appealed unless the development is a major energy or public works project. Denial decisions by port governments are not appealable.

TO BE COMPLETED BY COMMISSION:

APPEAL NO: A-3-HCO-08-045

DATE FILED: August 29, 2008

DISTRICT: Central Coast

CCC Exhibit F  
(page 1 of 12 pages)

**APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 2)**

5. Decision being appealed was made by (check one):

- ☐ Planning Director/Zoning Administrator  
☒ City Council/Board of Supervisors  
☐ Planning Commission  
☐ Other

6. Date of local government's decision: July 22, 2008 (FLAN filed Aug. 15)

7. Local government's file number (if any): PLN060735

**SECTION III. Identification of Other Interested Persons**

Give the names and addresses of the following parties. (Use additional paper as necessary.)

a. Name and mailing address of permit applicant:

Dale Skeen & Jo Mei Chang, P. O. Box 7507, Menlo Park, CA 94026

County files also contain the names of two representatives of the applicants:

Skeen & Chang c/o Myron Etienne, Noland Hamerly Etienne & Hoss, P.O. Box 2510, Salinas, CA, 93902-2510

Skeen & Chang c/o International Design Group, 721 Lighthouse Ave., Pacific Grove, CA 93950

b. Names and mailing addresses as available of those who testified (either verbally or in writing) at the city/county/port hearing(s). Include other parties which you know to be interested and should receive notice of this appeal.

(1) Several applicants' consultants testified orally and in writing. Several experts provided written comments on behalf of appellant David Sabih. Please advise if the Coastal Commission would like us to provide those names.

(2) Neighbor who wrote letter to County during County review process:

Craig and Sandy Thush

P.O. Box 4677

Carmel, CA 93921

(3) Neighbor who wrote letter to County during County review process:

Paul Ingemanson

26321 Scenic Road

Carmel, CA 93923

(4) Comments on the Revised Initial Study were also made by:

Monterey Bay Air Pollution Control District (Attn.: Jean Getchell), 24580 Silver Cloud Court, Monterey, CA 93940

California Regional Water Quality Control Board (Attn.: Roger Briggs), Central Coast Region, 895 Aerovista Place, Suite 101, San Luis Obispo, CA 93401-7906



**APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 3)**

**SECTION IV. Reasons Supporting This Appeal**

**PLEASE NOTE:**

- Appeals of local government coastal permit decisions are limited by a variety of factors and requirements of the Coastal Act. Please review the appeal information sheet for assistance in completing this section.
- State briefly **your reasons for this appeal**. Include a summary description of Local Coastal Program, Land Use Plan, or Port Master Plan policies and requirements in which you believe the project is inconsistent and the reasons the decision warrants a new hearing. (Use additional paper as necessary.)
- This need not be a complete or exhaustive statement of your reasons of appeal; however, there must be sufficient discussion for staff to determine that the appeal is allowed by law. The appellant, subsequent to filing the appeal, may submit additional information to the staff and/or Commission to support the appeal request.

**Issues:**

- 1) The proposed project does not conform to the Coastal Act policies for public access.
- 1) The proposed project is inconsistent with the Carmel Area Land Use Plan.

See attached sheets stating reasons for this appeal.

**APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 4)**

**SECTION V. Certification**

The information and facts stated above are correct to the best of my/our knowledge.



\_\_\_\_\_  
Signature of Appellant(s) or Authorized Agent

Date:

August 26, 2008

**Note:** If signed by agent, appellant(s) must also sign below.

**Section VI. Agent Authorization**

I/We hereby authorize LAW OFFICES OF MICHAEL W. STAMP  
to act as my/our representative and to bind me/us in all matters concerning this appeal.



\_\_\_\_\_  
Signature of Appellant(s)

Date:

22 August 2008

**Proposed Skeen/Chang project on Scenic Road in Carmel does not conform to public access policies in Carmel Area Land Use Plan and Coastal Act:**

The County failed to adequately address the issues raised in the April 14, 2008 letter from the California Coastal Commission coastal planner, which was submitted to the County. That letter pointed out as follows:

- The Carmel Area Land Use Plan (LUP) characterizes Scenic Road as a public access corridor;
- LUP Figure 3 identifies the Scenic Road corridor as a lateral public accessway;
- LUP Chapter 5, Public Access, includes numerous references to and policies regarding this accessway.

The letter specifically noted that the LUP identifies the Scenic Road along Carmel Point to be one of the most important major access areas to be retained for long-term public use. The letter also noted that Scenic Road provides public vehicular access, public pedestrian access, and bicycle access.

The County did not acknowledge the Coastal Commission's letter in its discussion of Public Access in Board resolution 08-251 approving the project. The County insisted that "no designated trails are located within the project area," and instead addressed public use "along Carmel State Beach." (County Board Resolution No. 08-251, Finding 7, p. 14.) Carmel State Beach is located to the south of Carmel Point, and is not located at Carmel Point. The proposed project is at Carmel Point. The County discussion of Public Access ignored or inadequately discussed the public use of Scenic Road in the unincorporated County area of Carmel Point, as described in the adopted LUP.

Additionally, expert Greg D'Ambrosio pointed out that the project would cause significant unmitigated impacts on recreation, safety, and traffic. (See D'Ambrosio letters of January 29, 2008 (attached as Exhibit A), June 2, 2008 (Exhibit B), and July 21, 2008 (Exhibit E).)

**The proposed project is not in conformance with the following Carmel Area Land Use Plan policies:**

**Unacceptable risk and hazards due to its design and siting:**

LUP Policy 2.7.3.1 All development shall be sited and designed to minimize risk from geologic, flood, or fire hazards. Areas of a parcel which are subject to high hazard(s) shall generally be considered unsuitable for development. For any development proposed in high hazard

areas, an environmental or geotechnical report shall be required prior to County review of the project. These reports must include a demonstration that all the criteria in the applicable following policies are complied with and recommendations for mitigation measures (if mitigation is possible) consistent with the following policies. All recommended mitigation measures contained in the reports are to be County requirements (i.e., conditions of Coastal permits).

LUP Policy 2.7.3.4. In locations determined to have significant hazards, development permits shall include a special condition requiring the owner to record a deed restriction describing the nature of the hazard(s), geotechnical, and/or fire suppression mitigations and, where appropriate, long-term maintenance requirements.

LUP Policy 2.7.4.1. All development shall be sited and designed to conform to site topography and to minimize grading and other site preparation activities. . . . Mitigation measures shall be required as necessary.

Discussion: The proposed project is not in conformity with these policies because expert opinion states that there are significant risks due to site and design of the project. Specific issues are the depth of proposed construction, the nature of the soils, and the proximity of the excavation to the neighboring structure to the south owned by appellant David Sabih. (See reports from geotechnical engineer Craig Shields and structural engineer Tsuyoshi Ty Bunden, attached to Exhibit E).

The County recognized and acknowledged these significant risks when it required, as a special condition of approval, the project contractors to carry liability insurance of at least \$4 million per occurrence, including coverage for claims of bodily injury and property damage to the site and to adjacent properties. The County further required that such extraordinary insurance coverage specifically name Mr. Sabih, the adjacent neighbor, as an additional named insured. (Resolution No. 08-251, Condition 26.) In so doing, the County conceded there is a significant risk of damage. However, no deed restriction was required in accordance with LUP Policy 2.7.3.4.

Separately, the County did not follow LUP Policy 2.7.4.1 because the County made no effort to minimize the grading of 1,130 cubic yards (CY). 1,130 CY of grading is equivalent to removing the top 6.5 feet of the entire lot, from property line to property line. The proposed excavation is for a 1,423-square-foot underground level.

The grading will require at least 110 to 161 one-way trips by trucks loaded with excavated material, according to expert testimony (June 2, 2008 D'Ambrosio letter, attached as part of Exhibit B). When the one-way empty truck trips are calculated for the necessary round trip, the total is 220 to 322 truck trips. The County ignored that testimony and the environmental impacts of that truck traffic when in its approvals the

County relied on the applicant's representation that the grading will take only 91 truck trips over a single week (Res. 08-251, p. 7).

The County could have mitigated these impacts by requiring a smaller project that would require far less grading. In 2002, the County approved a single family residential project for the same site that required approximately 267 CY of grading. In 2008, during its review of this project, the County did not consider a smaller project or any project that would involve less grading.

No concurrence by the County Building Official that proposed development will not result in an unacceptable risk of injury or structural damage:

LUP Policy 2.7.4.6. Where geotechnical evaluation determines that the hazard is unlikely to lead to property damage or injury, construction is permissible if certified by a registered geologist/soils engineer that the proposed development will not result in an unacceptable risk of injury or structural damage and the County building official and Environmental Review Section concurs. Such certification will be recorded with a copy of the deed at the County Recorder's Office.

Discussion: The proposed project is not in conformity with this policy because (1) expert opinion by geotechnical engineer Craig Shields and structural engineer Tsuyoshi Ty Bunden states that damage is likely given the current project proposal (see reports attached to Exhibit D), and (2) the County building official has not concurred with the applicant's engineer's statement that there is "not an unacceptable risk of injury or structural damage." It is unclear what the County's "Environmental Review Section" is, or what their position is.

Critically, this policy appears meant to apply to the applicant only – where the applicant's geologist/soils engineer claims that the development will result in an unacceptable risk to the applicant or to the applicant's project. It should not apply where the risks are to neighbors and to neighboring property owned by others. Under the circumstances, the project applicant or his representatives should not be able to force on Mr. Sabih their determination what is an "acceptable risk" to Mr. Sabih or to his home. Only Mr. Sabih and his experts should make that determination.

The County's extraordinary requirement of \$4 million in liability insurance for the project contractors shows that even the County found that the project would cause an unacceptable risk of injury or structural damage. However, the extraordinary insurance neither reduces the risk of actual harm nor reduces the likelihood of property damage or injury which LUP Policy 2.7.4.6 is intended to address.

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No required review of disputed geotechnical report:

LUP Policy 2.7.4.68      Where there is a dispute over the adequacy of a geotechnical report, the County will request that the report be reviewed by a registered geologist from either the U. S. Geological Survey or the California Division of Mines and Geology. The costs of such review are to be borne by the applicant.

Discussion: The proposed project is not in conformity with this policy because although there was a dispute by experts (Craig Shields and Tsuyoshi Ty Bunden; see reports attached to Exhibit E) over the adequacy of the applicant's geotechnical engineering evaluation and the analysis of the structural impacts to the site and adjacent properties, the County did not "request that the report be reviewed by a registered geologist from either the U. S. Geological Survey or the California Division of Mines and Geology." At the time the County adopted this policy, there was significant controversy about resolving disputes over geotechnical issues. This policy was intended to address those issues.

Inadequate review and analysis of existing conditions, access, LUP recommendations:

LUP Section 4.1.3, Recreational Uses, states:

"Within the Carmel area, recreational activity is concentrated along the coastal strip. Point Lobos State Reserve, Carmel River State Beach, the Scenic Road corridor along Carmel Point are the major recreation destinations." [This project is located on the Scenic Road corridor along Carmel Point.]

"There is presently little data on visitor use levels at Carmel Point. However, the average daily traffic volume of more than 1,900 vehicles per day along this narrow, residential road indicates both the high use levels it receives as well as its primary use by visitors, i.e., scenic driving."

LUP Policy 4.4.2.7. All development and use of the land, whether public or private, must conform to the policies of this plan and must meet the same resource protection standards set forth in the plan. Where conflicts occur between one or more provisions of the plan, such conflicts shall be resolved in a manner which on the whole is the most protective of significant coastal resources.

## LUP Section 5.2.1, Existing Shoreline Access Conditions, Carmel Point

Poor traffic conditions and large traffic volumes along Scenic Road. Varying and inadequate road width and configuration restricts two-way vehicle movement. When combined with high traffic volumes and the lack of a separated pedestrian path, the resulting situation is one of conflicts among motorists and between motorists and pedestrians. A major point of conflict between Pedestrian and motorists and pedestrians. A major point of conflict between pedestrian and motorist exists in the vicinity of the hairpin curve and Scenic Road. Inadequate parking capacity and lack of suitable parking sites. Existing parking facilities do not satisfy the demand during peak use periods. The need for additional parking areas is indicated by the illegal though short-term parking that continually occurs at points along Scenic Road where the pavement is wider, where anything resembling a shoulder can be found, and in front of private residences. This illegal parking results in conflicts between residential and recreational uses, in damage to natural vegetation and erosion of the shoreline, and in accidents and congestion along the roadway. However, any substantial increase in parking capacity would likely be precluded by the constraints posed by the lack of suitable land, the presence of sensitive habitats, and surrounding residential use. Lack of improved accessways . . . . . Conflicts with residential use. The high recreational use levels along the Scenic Road corridor, the lack of parking and other support facilities, and the lack of separation between public lands and private property on the ocean-side of Scenic Road conflicts with the area's residential use. An augmented level of recreation management and regulation enforcement is needed if such conflict is to be alleviated.

## LUP 5.3.3 Specific Policies

### 1. Access Priorities

- a. The most important major access areas to be retained for long-term public use are: The Scenic Road corridor along Carmel Point, Carmel River State Beach and Point Lobos State Reserve.

### 2. Public Safety

- a. Public safety should be considered wherever shoreline access is provided. . . .
- b. In hazardous areas where safe access to the shoreline is not feasible, visual access should be emphasized as an appropriate response to the needs of the public.

#### LUP Section 5.3.4

[This section lists site-specific recommendations for Carmel Point. The recommendations are intended to address some of the public use issues on Carmel Point.]

Discussion: The proposed project is not in conformity with these policies because (1) the County failed to describe existing conditions adequately, and (2) the project will have significant unanalyzed impacts on public use on Scenic Road, exacerbated by the County's failure to implement specific LUP recommendations. The impacts will be caused primarily by construction impacts, which would be very significant due to the proposed construction of an underground story, requiring a significant amount of excavation and retaining walls.

The County also failed to analyze the cumulative impacts on access, recreation, and traffic. Expert Greg D'Ambrosio provided opinions about the unanalyzed and unmitigated impacts to public access, traffic, and recreational users on Scenic Road due to project-related traffic and construction impacts. (See Exhibits A, B, and E.)

Critical LUP management recommendations and improvement recommendations – to protect public access and safety on Carmel Point – have not been implemented by Monterey County. It is not reasonable that the County be able to protect itself from adequate analysis of projects under the LUP through the County's own failure to implement the LUP recommendations.

#### **The County failed to require an Environmental Impact Report:**

Under CEQA, the County should have required an acceptable EIR prior to approving the project. An EIR is required under the California Public Resources Code because of the conflicts with adopted land use plans and policies described above, the fair argument presented by experts that the project would have unmitigated and unaddressed impacts in multiple areas, and numerous other reasons.

The County failed to require an EIR, and instead approved the project on a third version of a mitigated negative declaration.

#### **Other Issues:**

Appellant believes that this project is not subject to the holdings of *McAllister v. County of Monterey* (2007) 147 Cal.App.4th 253 because the County approvals in *McAllister* were challenged on Coastal Act and LCP issues only. In contrast, the PLN060735 project here violates CEQA statutes that are not covered in the Coastal Act or the LCP, and violates other non-CEQA statutes that are not part of the Coastal Act or the LCP

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because the purported water right claimed by the project is not valid. Further, the PLN060735 project impacts are located partially in the Coastal Zone, but partially outside the Coastal Zone, and include off-site impacts at locations not identified by the County in its environmental review, and that likely are not ascertainable by the Coastal Commission in its review. Therefore the analysis of these issues may not be included in the environmental review under the Coastal Commission's certified regulatory program.

Some or many of these issues may be outside the jurisdiction of the Coastal Commission. In order to exhaust administrative remedies, Sabih raises the issues, if the Commission chooses to review them. These issues include:

- The County's failure to adequately identify, quantify and discuss project and cumulative impacts of grading, truck trips, mitigation measures, alternatives, including off-site destination locations of the grading for this project and other current and reasonably foreseeable projects. (See Exhibits A, B, C, and D.) Because the County failed to identify receiving sites for excavated materials from this project or the other projects, it is unknown whether or not those are in the Coastal Zone. These receiving locations were not identified by the County in its environmental review, and likely are not ascertainable by the Coastal Commission in its review. The County's pattern and practice includes failing to provide reasonable public notice of grading and grading-related issues.
- The County's failure to require the water quality mitigations recommended by the Regional Water Quality Control Board (RWQCB). The RWQCB is an agency with specific expertise and authority in water quality. The RWQCB May 12, 2008 response (Exhibit R to the July 22, 2008 County staff report) to the County's third mitigated negative declaration recommended project-specific mitigations, but the County did not discuss or include those mitigations in its project approvals.
- The illegal use of a paper water credit claimed as the water source for the PLN060735 project under the County policies. Despite the Monterey Peninsula's water crisis, including the State Water Resources Control Board Order 95-10 against California-American Water, the County relied on a water transfer scheme and policies to approve the use of a paper water credit, purportedly using Cal-Am water, for the PLN060735 project.

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Exhibits:

- A. January 29, 2008 letter from expert Greg D'Ambrosio.
- B. June 2, 2008 letter from expert Greg D'Ambrosio.
- C. June 5, 2008 Stamp Law Offices comment letter on third mitigated negative declaration.
- D. July 10, 2008 Stamp Law Offices letter on Freeman project.
- E. July 22, 2008 Stamp Law Offices letter to the County, with attachments:
  - (A) chart showing cumulative grading issues;
  - (B) expert report by geotechnical engineer (Shields);
  - (C) expert report by structural engineer (Bunden);
  - (D) expert report on recreation, traffic, construction, and related issues (D'Ambrosio).

Exhibits to appeal are available  
by request at the Central Coast  
District Office of the Coastal  
Commission.