

**MINOR SUBDIVISION COMMITTEE
COUNTY OF MONTEREY, STATE OF CALIFORNIA**

RESOLUTION NO. 05007

APN#'s 009-422-024-000 and
009-422-025-000

In the matter of the application of
KILDUFF MARSHALL MADISON ET AL (PLN030586)

FINDINGS & DECISION

to allow a Combined Development Permit in accordance with Chapter 20.82 (Combined Development Permits) of the Monterey County Code, consisting of: 1) a Coastal Development Permit for a lot line adjustment to reconfigure two legal lots of record by reducing the Scenic Road lot (Assessor's Parcel Number 009-422-025-000) from 5,841 sq. ft. to 4,204 sq. ft. and increasing the Bay View Avenue lot (Assessor's Parcel Number 009-422-024-000) from 2,500 sq. ft. to 4,137 sq. ft.; 2) a Coastal Development Permit to allow development within 750 feet of an archaeological site; and 3) Design Approval to allow demolition of 174 sq. ft. of the existing single family residence on the Scenic Road lot. The properties are located at 26149 Scenic Road and 2365 Bay View Avenue, Carmel, Coastal Zone. The project came on regularly for meeting before the Minor Subdivision Committee, March 31, 2005.

WHEREAS: Said Minor Subdivision Committee, having considered the application and the evidence presented relating thereto,

FINDING: CONSISTENCY – The Kilduff Combined Development Permit (PLN030586), as described in Condition #1, and as conditioned, is consistent with the plans, policies, requirements and standards of the Local Coastal Program (LCP). The LCP for this site consists of the Carmel Area Land Use Plan, Carmel Area Coastal Implementation Plan (Part 4), Part 6 of the Coastal Implementation Plan, Part 1 of the Coastal Implementation Plan (Title 20 Zoning Ordinance) and Monterey County Coastal Subdivision Ordinance (Title 19).

EVIDENCE: (a) Plans/Regulations – The Planning and Building Inspection staff reviewed the project, as contained in the application and accompanying materials, for conformity with:

- 1) Carmel Area Land Use Plan
- 2) Carmel Area Coastal Implementation Plan (Part 4)
- 3) Part 6 of the Coastal Implementation Plan
- 4) Part 1 of the Coastal Implementation Plan (Title 20 Zoning Ordinance)
- 5) Monterey County Coastal Subdivision Ordinance (Title 19)

There would be no conflict or inconsistencies with these policies or regulations. Staff's record of review is provided in project file PLN030586.

(b) Land Use Designation – The parcels are zoned Medium Density Residential, 2 units per acre, Design Control, 18 foot height limit, Coastal Zone (“MDR/2-D (18’) (CZ)”). The lot line adjustment is an allowed use in accordance with Section 20.12.050.Y. See Finding No. 8 regarding parcel conformity to Title 20 Zoning Ordinance.

(c) Site Description – The parcels are located at 26149 Scenic Road and 2365 Bay View Avenue, Carmel. Both parcels are currently developed with single family residences within a built-out residential area. No new building sites will be created as a result of the lot line adjustment.

(d) Environmentally Sensitive Habitats – The project is consistent with policies of the Carmel Area Land Use Plan dealing with environmentally sensitive habitats (Chapter 2.3). Staff's site visit did not observe environmentally sensitive habitats that could be impacted by the proposed lot line adjustment.

(e) Visual Resources – The project is consistent with policies of the Carmel Area Land Use Plan dealing with visual resources (Chapter 2.2). The project planner conducted a site visit on July 13, 2004 to verify that the proposed project will not have a significant adverse effect on the public viewshed. The lot line adjustment will not result in building sites occurring on undeveloped skylines and ridgelines.

(f) Archaeological Resources – The project is consistent with policies of the Carmel Area Land Use Plan dealing with archaeological resources (Chapter 2.8). A Preliminary Archaeological Reconnaissance of Assessor's Parcels 009-422-024 and 009-422-025 was prepared by Archaeological Consulting (February 17, 2004 and Amended November 2, 2004) for the current project as well as for probable future projects on-site. According to the report, the parcels are located within a positive archaeological site. However, field research of the subject parcels did not find evidence of potentially significant materials from the historic period of occupation. Due to the widely scattered nature of midden components in the area, and the fact that baseline archaeological data has previously been obtained from other nearby parcels, it was concluded that the proposed and potential future development would not cause a significant impact to the area's archaeological resources. Conditions of approval will require the presence of an archaeological monitor during demolition work, adherence to report recommendations and the halting of construction work in the event that archaeological resources are discovered.

(g) Historic Resources – The project is consistent with policies of the Carmel Area Land Use Plan dealing with historic resources (Chapter 2.8). A Historic Report was prepared by Kent Seavey (January 24, 2004) for the project. According to the report, the two existing single family dwellings on 26149 Scenic Road and 2365 Bay View Avenue are not eligible for listing in the California Register under any of the Register's applicable criteria, and therefore do not qualify as a historic resource under CEQA.

(h) Site Visit – The project planner conducted a site visit on July 13, 2004 to verify that the proposed project complies with the LCP. Staff's memo regarding the site visit is in project file PLN030586.

(i) Land Use Advisory Committee – The Carmel Unincorporated/Highlands Land Use Advisory Committee reviewed and recommended denial (4 - 2 vote) of the Combined Development Permit on January 3, 2005 due to potential problems with any future new development on the adjusted parcels. Specifically, they were concerned with whether future new residences could be built and still be able to conform to the County's Site Development Standards for the area. County staff's analysis determined that it would be possible for potential future new single family dwellings to conform to the County's Site Development Standards. Any future single family dwelling applications would be required to show conformance to these standards.

(j) Application Materials – The application and plans submitted for the Combined Development Permit in project file PLN030586 at the Monterey County Planning and Building Inspection Department.

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

EVIDENCE: (a) The project has been reviewed for suitability by the Monterey County Planning and Building Inspection Department, Coastal Commission, Carmel Highlands Fire Protection District, Monterey County Water Resources Agency, Monterey County Public Works Department, Monterey County Parks Department, and Monterey County Health Department. There has been no indication from these agencies that the site is not suitable. Conditions recommended by these agencies have been incorporated as project conditions.
(b) The project planner conducted a site visit on July 13, 2004 to verify that the site is suitable for this use.
(c) Necessary public facilities are available and will be provided.

FINDING: PUBLIC ACCESS – The project is in conformance with the public access and public recreation policies of the Coastal Act and the 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 impacts 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 properties are not described as an area where the Local Coastal Program requires access and is not indicated as part of any designated trails or shoreline access. No evidence or documentation has been submitted or found showing the existence of historic public use or trust rights over this property.
(b) Staff site visit on July 13, 2004.

FINDING: CEQA (Negative Declaration) – The project is subject to environmental review pursuant to the requirements of the California Environmental Quality Act (CEQA). On the basis of the whole record before the Minor Subdivision Committee, there is no substantial evidence that the proposed project as designed and conditioned will have a significant effect on the environment. The Negative Declaration reflects the independent judgment and analysis of the County.

EVIDENCE: (a) The proposed project is not exempt from environmental review due to the potential to cause a substantial adverse change to an archaeological resource pursuant to CEQA Section 15064.5 and/or the potential to disturb any human remains.
(b) Potentially adverse environmental effects were identified during staff review of the development application.
(c) The Planning and Building Inspection Department prepared an Initial Study pursuant to CEQA. The Initial Study found that the proposed project would not have a significant effect on the environment due to the findings contained in the Archaeological Report, which lead to the conclusion that the project site lies in an area considered to be a non-unique archaeological resource since it does not meet the criteria for unique archaeological resources contained in CEQA Section 21083.2(g). The Initial Study is on file in the office of the Planning and Building Inspection Department and is hereby incorporated by reference (File No. PLN030586).
(d) Evidence that has been received and considered include the application, plans, materials, and technical reports, which are listed under Section IX (References) of the Initial Study and contained in project file PLN030586.
(e) The Negative Declaration was circulated for public review from December 9, 2004 to January 8, 2005. No comments were received from local or state agencies during the public review period.

(f) During the Negative Declaration public review period, County staff received correspondence from neighbors with project-related concerns. These concerns include: 1) the size of the adjusted parcels being too small to accommodate appropriate new single family dwellings; 2) the potential for new structures to impact views from adjoining residences; and 3) the potential for future development to undermine the structural integrity of adjoining residences. County staff reviewed the first concern and determined that it would be possible for potential future new single family dwellings to be built on the adjusted parcels in conformance with the County's site development standards for the area. With regards to the second concern, the County does not have regulations in place for the Carmel Unincorporated area which protects private views. However, this area does have an 18 foot height limit for all new structures, which could help alleviate this concern. With regards to the third concern, the County enforces the Uniform Building Code for all new structures and requires frequent inspections during the construction process. Such enforcement would ensure that future development would not undermine the structural integrity of adjoining residences.

(g) The Monterey County Department of Planning and Building Inspection, (located at 2620 First Avenue, Marina, CA, 93933) is the custodian of documents and other materials that constitute the record of proceedings upon which the decision to adopt the Negative Declaration is based.

FINDING: FISH AND GAME FEE – Considering the record as a whole, there is no evidence that the project will have any potential for an adverse effect either individually or cumulatively on wildlife resources as defined under Section 753.5 (d) of the Fish and Game Code.

EVIDENCE: The project is proposed within a built-out residential area. Staff's site visit did not observe environmentally sensitive habitats that could be impacted by the project. The proposed project will not result in changes to the resources listed under Section 753.5. Therefore payment of the fee is not required.

FINDING: EXISTING PARCELS – The lot line adjustment is between two existing adjoining parcels.

EVIDENCE: The application and plans submitted for the lot line adjustment in project file PLN030586 at the Monterey County Planning and Building Inspection Department.

FINDING: NO NEW PARCELS – A greater number of parcels than originally existed will not be created as a result of the lot line adjustment.

EVIDENCE: (a) Two contiguous separate legal lots of record will be adjusted and two contiguous separate legal lots of record will result from the adjustment.

(b) The application and plans submitted for the lot line adjustment in project file PLN030586 at the Monterey County Planning and Building Inspection Department.

FINDING: PARCEL CONFORMITY – The parcels resulting from the project will increase in conformity to Title 20 Zoning Ordinance.

EVIDENCE: (a) The project is in compliance with the Site Development Standards for the Medium Density Residential Zoning District in accordance with Section 20.12.060 and regulations pertaining to Legal Nonconforming Structure Locations and Height in accordance with Section 20.68.040. The proposed realignment of the rear lot line and partial demolition of the single family dwelling on the Scenic Road lot will bring the existing structures on the two affected parcels into greater conformity with the Site Development Standards than what currently exists. The project will cause the single family dwellings to conform to the

minimum 10 foot rear setback requirement and the maximum 35 percent building site coverage requirement. The project will also cause the single family dwellings to be located entirely within their parcel boundaries. All other existing legal nonconforming structure conditions will not be affected by the proposed project.

(b) The zoning designation requires that the parcels have a minimum building site of 6,000 sq. ft. Currently, the Scenic Road lot is 5,841 sq. ft. and the Bay View Avenue lot is 2,500 sq. ft. Both parcels are legal non-conforming as to size. The proposed project will result in the Scenic Road lot being reduced to 4,204 sq. ft. and the Bay View Avenue lot being increased to 4,137 sq. ft. Staff analysis has determined that there is no method in which to adjust the lot lines so that the resulting lots become conforming as to size. However, the proposed project will result in parcels that better conform to the objectives and policies of zoning and the applicable plans. The existing parcels currently have 13 legal non-conforming conditions between the two of them. These include non-conformance with minimum building site, rear setback, east side setback, west side setback, front setback, setback between main structures, building site coverage, maximum height, covered parking and number of dwellings per lot requirements. The project will reduce these legal non-conforming conditions to 9 by achieving conformance with rear setback, east side setback, setback between main structures, building site coverage and number of dwellings per lot requirements.

FINDING: NO VIOLATIONS – The subject properties are in compliance with all rules and regulations pertaining to zoning uses, subdivisions and other applicable provisions of Title 20. Zoning violation abatement costs, if any, have been paid.

EVIDENCE: Sections 20.12.020, 20.44.020 and 20.68.020 of the Monterey County Zoning Ordinance. Staff verification of the Monterey County Planning and Building Inspection Department records indicates that no violations exist on subject property.

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.

FINDING: APPEALABILITY – The decision on this project is appealable to the Board of Supervisors and the Coastal Commission.

EVIDENCE: Sections 20.86.030 and 20.86.080 of the Monterey County Zoning Ordinance (Title 20).

DECISION

It is the decision of the Minor Subdivision Committee of the County of Monterey to adopt the Negative Declaration and approve said application for a Combined Development Permit as shown on the attached sketch and subject to the attached conditions.

PASSED AND ADOPTED this 31st day of March, 2005 by the following vote:

AYES: McPharlin, Hawkins, Mulholland, Hori, Hodges, Mounday

NOES: None

ABSTAIN: None

ABSENT: None

LYNNE MOUNDAY, SECRETARY

COPY OF THIS DECISION MAILED TO APPLICANT ON

THIS APPLICATION IS APPEALABLE TO THE BOARD OF SUPERVISORS. IF ANYONE WISHES TO APPEAL THIS DECISION, AN APPEAL FORM MUST BE COMPLETED AND SUBMITTED TO THE CLERK OF THE BOARD OF SUPERVISORS ALONG WITH THE APPROPRIATE FILING FEE ON OR BEFORE

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

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

NOTES

1. You will need a building permit and must comply with the Monterey County Building Ordinance in every respect.
Additionally, the Zoning Ordinance provides that no building permit shall be issued, nor any use conducted, otherwise than in accordance with the conditions and terms of the permit granted or until ten days after the mailing of notice of the granting of the permit by the appropriate authority, or after granting of the permit by the Board of Supervisors in the event of appeal.
Do not start any construction or occupy any building until you have obtained the necessary permits and use clearances from the Monterey County Planning and Building Inspection Department office in Marina.
2. This permit expires 2 years after the above date of granting thereof unless construction or use is started within this period.

<i>Permit Cond. Number</i>	<i>Mitig. Number</i>	<i>Impact Addressed, and Responsible Land Use Department</i>	<i>Compliance or Monitoring Actions to be performed. Where applicable, a certified professional is required for action to be accepted.</i>	<i>Responsible Party for Clearing Condition</i>	<i>Timing</i>	<i>Verification of compliance</i>
		Director of Planning and Building Inspection. 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. (Planning and Building Inspection)				
2		PBD025 - NOTICE-PERMIT APPROVAL The applicant shall record a notice which states: "A permit (Resolution No. 05007) was approved by the Minor Subdivision Committee for Assessor's Parcel Numbers 009-422-025-000 and 009-422-024-000 on March 31, 2005. The permit was granted subject to 10 conditions of approval which run with the land. A copy of the permit is on file with the Monterey County Planning and Building Inspection Department." Proof of recordation of this notice shall be furnished to the Director of Planning and Building Inspection prior to recordation of record of survey, issuance of demolition permit or commencement of the use. (Planning and Building Inspection)	Proof of recordation of this notice shall be furnished to PBI.	Owner/ Applicant	Prior to recordation of record of survey, issuance of demolition permit or commencement of use	
3		ARCHAEOLOGICAL MONITOR The applicant shall provide evidence in the form of a signed contract/agreement that they have arranged for a qualified archaeological monitor to be present during construction activities that involve soil exposure or disturbance, such as demolition of foundations or	Submit evidence in the form of a signed contract/agreement to PBI for review and approval.	Owner/ Applicant	Prior to issuance of demolition permit	

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		pavements, grading or excavation for new foundations, etc. If intact cultural features or human remains are discovered, work shall be halted on the parcel until the find can be reported to the lead agency and evaluated for significance, and appropriate mitigation measures are formulated and implemented. Cultural materials recovered during monitoring will be curated in the public domain at a suitable research facility. (Planning and Building Inspection)				
4		ARCHAEOLOGICAL RECOMMENDATIONS Within 60 days following completion of demolition work, a letter from a County-approved archaeological consultant shall be submitted to the Director of Planning and Building Inspection which states that the project followed the recommendations contained in the Preliminary Archaeological Reconnaissance prepared by Archaeological Consulting, dated February 17, 2004 and amended November 2, 2004. (Planning and Building Inspection)	Submit letter to PBI for review and approval.	Owner/ Applicant	Within 60 days following completion of demolition work	
5		PBD030 - STOP WORK - RESOURCES FOUND If cultural, archaeological, historical or paleontological resources are uncovered at the site (surface or subsurface resources) work shall be halted immediately within 50 meters (165 feet) of the find until a qualified professional archaeologist can evaluate it. The Monterey County Planning and Building Inspection Department and a qualified archaeologist (i.e., an archaeologist registered with the Society of Professional Archaeologists) shall be immediately contacted by the	Stop work within 50 meters (165 feet) of uncovered resource and contact the Monterey County Planning and Building Inspection Department and a qualified archaeologist immediately if cultural, archaeological, historical or paleontological resources are uncovered. When contacted, the project planner and the archaeologist shall immediately	Owner/ Applicant/ Archaeologist	Ongoing	

Permit Cond. Number	Mitig. Number	Impact Addressed, and Responsible Land Use Department	Compliance or Monitoring Actions to be performed. Where applicable, a certified professional is required for action to be accepted.	Responsible Party for Clearing Condition	Timing	Verification of compliance
		responsible individual present on-site. When contacted, the project planner and the archaeologist shall immediately visit the site to determine the extent of the resources and to develop proper mitigation measures required for the discovery. (Planning and Building Inspection)	visit the site to determine the extent of the resources and to develop proper mitigation measures required for the discovery.			
6		PBD018(A) - LANDSCAPE MAINTENANCE (SINGLE FAMILY DWELLING ONLY) 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. (Planning and Building Inspection)	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.	Owner/ Applicant	Ongoing	
7		WR43 - WATER AVAILABILITY CERTIFICATION 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)	Submit the Water Release Form to the Water Resources Agency for review and approval.	Owner/ Applicant	Prior to issuance of any building permits	
8		WR40 - WATER CONSERVATION MEASURES 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: 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	Compliance to be verified by building inspector at final inspection.	Owner/ Applicant	Prior to final building inspection/occupancy	

<i>Permit Cond. Number</i>	<i>Mitig. Number</i>	<i>Impact Addressed, and Responsible Land Use Department</i>	<i>Compliance or Monitoring Actions to be performed. Where applicable, a certified professional is required for action to be accepted.</i>	<i>Responsible Party for Clearing Condition</i>	<i>Timing</i>	<i>Verif- ication of comp- liance</i>
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		<p>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>				
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9		<p>PW0034 – LOT LINE ADJUSTMENT Obtain a survey of the new line and have the line monumented. (Public Works)</p>	<p>Owner shall have a surveyor monument the new lines. Evidence of completion of monumentation shall be submitted to DPW for review and approval.</p>	<p>Owner/ Applicant/ Surveyor</p>	<p>Prior to recordation of record of survey</p>	
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10		<p>PW0035 – RECORD OF SURVEY File a Record of Survey showing the new line and its monumentation. (Public Works)</p>	<p>Owner's Surveyor to prepare record of survey and submit to DPW for review and approval.</p>	<p>Owner/ Surveyor</p>	<p>Prior to recordation of record of survey</p>	
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