

NO. 010008

A.P.# 241-182-001-000

In the matter of the application of  
**Richard and Patricia Stoltz (PLN010008)**

**FINDINGS & DECISION**

for a Coastal Development Permit in accordance with Title 20 (Monterey County Coastal Implementation Plan Ordinance) Chapter 20.70 (Coastal Development Permits) of the Monterey County Code, for the construction of a 5 ft., 6 inch tall 160 ft. long natural weathered cedar fence, located on a private drive west of State Hwy 1, located approximately 400 feet south of the intersection of Highlands Drive and Hwy 1, Carmel Highlands area, Coastal Zone, came on regularly for hearing before the Zoning Administrator on March 29, 2001.

Said Zoning Administrator, having considered the application and the evidence presented relating thereto,

**1. FINDING:** The Coastal Development Permit (PLN010008), as conditioned, for the construction of a 5 ft., 6 in. tall 160 ft. long natural weathered cedar fence is consistent with the policies of the Carmel Area Land Use Plan and the development standards of the Coastal Implementation Plan. The permit is to allow an accessory structure prior to the establishment of a main use.

**EVIDENCE:** 1) California Coastal Act of 1976  
2) The Carmel Area Land Use Plan;  
3) Regulations for Development in the Low Density Residential or "LDR (CZ)" Zoning District found in Chapter 20.14 of the Monterey County Coastal Implementation Plan.  
4) The application, plans and support materials submitted for the proposed development in Planning File No. PLN010008  
5) The on-site inspection of the proposed development site by staff on September 13, 2000, pursuant to Section 20.146.030 of the Monterey County Coastal Implementation Plan.

**2. FINDING:** The project, as conditioned, is consistent with visual resource policies of the Carmel Area Land Use Plan and will not have a significant impact on the public viewshed. The proposed project was evaluated in terms of the potential impact to the public viewshed. Staff concludes that the project will not result in ridgeline development. A portion of the parcel (A.P.N.241-182-001-000) is located in the viewshed, as defined in Sections 20.146.020Z and 20.146.030 of the Coastal Implementation Plan, Part 4. A small portion of the fence will be visible from a public turnout area on Highway One; however, in keeping with Policy 2.2.3.6 which states "structures shall be subordinate to and blend into the environment, using appropriate materials that will achieve that effect.." the subject materials consist of a natural weathered Cedar with a back drop of vegetation, thus, blending in with the surrounding environment.

**EVIDENCE:** The on-site investigation by the project planner, pursuant to Chapter 20.145.030 of the Monterey County Coastal Implementation Plan.

**EVIDENCE:** The application, plans and support materials submitted for the proposed development in Planning File No. PLN010008.

3. **FINDING:** The proposed development is consistent with policies of the Carmel Area Coastal Implementation Plan dealing with development adjacent to environmentally sensitive habitats. The location of the 160 ft. long portion of the fence will not intrude into the Intertidal Habitat.
- EVIDENCE:** The application, plans and support materials submitted for the proposed development in Planning File No. PLN010008.
- EVIDENCE:** The on-site inspection of the proposed development site by staff on September 13, 2000, pursuant to Section 20.146.030 of the Monterey County Coastal Implementation Plan.
4. **FINDING:** The proposed development is consistent with the policies of the Carmel Area Coastal Implementation Plan dealing with development in hazardous areas. The location of the 160 ft. long portion of the fence will end at the edge of the coastal bluff. A geologic report is not required due to the type of development.
- EVIDENCE:** Appendix 2c, Resource Maps, of the Monterey County Carmel Area Land Use Plan.
- EVIDENCE:** The application, plans and support materials submitted for the proposed development in Planning File No. PLN010008.
5. **FINDING:** The proposed project, as conditioned, is consistent with policies of the Carmel Area Coastal Implementation Plan dealing with development in archaeologically sensitive areas.
- EVIDENCE:** Appendix 2c, Resource Maps, of the Monterey County Coastal Implementation Plan.
- EVIDENCE:** Condition No. 5.
6. **FINDING:** The subject parcel is in a Design Control or "D" District. The Director of Planning and Building Inspection may approve, in lieu of the Appropriate Authority, plans and submittals in 'D' districts for small structures such as structure additions, accessory structures and similar minor structures and minor modifications to approved designs," pursuant to Chapter 20.44.040 of the Monterey County Coastal Implementation Plan. On August 23, 2000 a design application was approved administratively. On August 31, 2000 and September 1, 2000, appeals were submitted by Lombardo and Gilles on behalf of Skip Keyzer and Oldfield and Creely, LLP on behalf of Ali Habibi and Bayesteh Ghaffary, neighboring property owners, addressing various issues, one of which was the granting of the design approval. On January 2, 2001, the Monterey County Board of Supervisors "Tabled" the item in order to allow the applicants, Richard & Patricia Stoltz, an opportunity to secure a Coastal Development Permit for the 160 ft. long portion of the fence. Upon approval of this application, the Board of Supervisors will take a final action on the Design Approval (DA000240)
- EVIDENCE:** The Carmel Unincorporated/Highlands Land Use Advisory Committee recommended, approval with conditions, of the design application on July 3, 2000 (Vote: 4 ayes to 0 noes) and considered this Coastal Development Permit application on February 5, 2001 (Vote: 6 ayes, 0 noes and 1 abstained).
7. **FINDING:** On November 15, 2001 staff received a letter from Oldfield and Creely, LLP on behalf of Ali Habibi and Bayesteh Ghaffary, neighboring property owners, with drawing the appeal filed on September 1, 2000. Additionally, a letter from Mr. Claude S. Keyzers was received on February 5, 2001 withdrawing the appeal filed on August 31, 2000. Therefore, approval of the Coastal Development Permit by the Zoning Administrator thereby incorporates approval of the Design Approval (DA000240).

**EVIDENCE:** Letters dated November 15, 2001 received from Oldfield and Creely, LLP on behalf of Ali Habibi and Bayesteh Ghaffary, neighboring property owners and a letter dated February 2, 2001 from Mr. Claude S. Keyzers contained in Planning File no. DA000240.

**EVIDENCE:** Zoning Administrator Resolution No. 010008.

8. **FINDING:** Monterey County Coastal Implementation Plan, Part 4, Section 20.146.130.E. f. 1 states: "new development shall not be located, sited or designed so as to interfere with, encroach upon, or prevent development or use of existing or future public access routes or create other use conflicts." On August 23, 2000, pursuant to Title 20 (Zoning Ordinance), Section 20.44.040 D, a Design Approval was approved administratively. Subsequent to the granting of the Design Approval, information was introduced that indicated a potential for a prescriptive public access right. Upon investigation of the inquiry through the California Coastal Commission, no evidence existed that supported that an official or historic access right was established. In the event that a prescriptive public access right is pursued, the determination shall be made by an ultimate trier of fact (court of law). If public access is granted, by a court of law, staff recommends that a gate be constructed at the northwest end of the 160 ft. portion of the Cedar fence to allow ingress and egress.
- EVIDENCE:** "Implied Dedication and Prescriptive Rights Manual Relating to California Coastal Commission Matters," Office of the Attorney General, Department of Justice, State of California, 1989.
- EVIDENCE:** The application, plans and support materials submitted for the proposed development contained in Planning File Nos. DA000240 and PLN010008.
9. **FINDING:** The proposed project will not have a significant environmental impact.
- EVIDENCE:** Section 15303(e) of the California Environmental Quality Act (CEQA) Guidelines categorically exempts the proposed development from environmental review. No adverse environmental impacts were identified during review of the proposed development application.
- EVIDENCE:** The application, plans and support materials submitted for the proposed development in Planning File No. PLN010008.
10. **FINDING:** The establishment, maintenance, or operation of the use 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:** The project, as conditioned and described in the application and accompanying materials, was reviewed by the Planning and Building Inspection Department, Environmental Health Division, Public Works Department, Water Resources Agency, Parks Department, and the Carmel Highlands Fire Protection District. These departments have recommended conditions, where appropriate, to ensure that the project will not have an adverse effect on the health, safety, and welfare of persons either residing or working in the neighborhood, or the county in general.
11. **FINDING:** The project, as approved by the Zoning Administrator, is appealable to the Board of Supervisors and the California Coastal Commission.
- EVIDENCE:** Section 20.86.070 and 20.86.080 of the Monterey County Coastal Implementation Plan, Part 1 (Title 20).

DECISION

THEREFORE, it is the decision of said Zoning Administrator that said application for a Coastal Development Permit be granted as shown on the attached sketch, subject to the following conditions:

1. This permit consists of a Coastal Development Permit (PLN010008) for the construction of a 5 ft., 6 in. tall 160 ft. long natural weathered cedar fence to be located on Assessor's Parcel Number 241-182-001-000. 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 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 constructions other than that specified by this permit is allowed unless additional permits are approved by the appropriate authorities (Planning and Building Inspection Department)
2. Where gates are to be located, Carmel Highlands Fire Protection District requires that a Knox Security System be installed for immediate access for emergency equipment. (Carmel Highlands Fire Protection District)
3. The fence shall be placed a minimum of 2 feet, not to exceed 4 ft., from the edge of the property line for a distance of 130 feet north from the edge of the paved area labeled "parking" on the site plan and may be placed on the property line in other areas as shown on the site plan to cease at the edge of the coastal bluff. (Planning and Building Inspection Department)
4. If public access is established, by a court of law, on Assessors Parcel Number 241-182-001-000, a gate shall be constructed at the northwest end of the 160 ft. portion of the Cedar fence to allow ingress and egress. (Planning and Building Inspection Department)

Continuous Permit Conditions:


5. If during the course of construction activity on the subject property, 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 it can be evaluated by a qualified professional archaeologist. 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 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 Department)
6. No lighting shall be allowed on the fence. (Planning and Building Inspection Department)
7. The existing landscaping in the area between the fence and the property line shall be maintained and enhanced with drought resistant plant materials native to the area. Non-native plant materials shall be removed. (Planning and Building Inspection Department)

8. All landscaped areas and planted trees in the area between the fence and the property line shall be continuously maintained by the applicant and all plant material shall be continuously maintained in a litter-free, weed-free, healthy, growing condition. (Planning and Building Inspection Department)
9. All irrigated runoff of the landscaped area, located between the fence and the paved access road shall be contained on site and shall not be allowed to runoff into the Monterey Bay Sanctuary. (Planning and Building Inspection Department)

**Prior to the Issuance of Building Permits (Electrical Permit):**

10. Before construction begins, temporary or permanent address numbers shall be posted. Permanent address numbers shall be posted prior to requesting final clearance. All address numbers (permanent & temporary) shall be posted on the property so as to be clearly visible from the road. Address numbers shall be a minimum numbers height of 3 inches with a 3/8 - inch stroke, and contrasting with the background colors of the sign. (Carmel Highlands Fire Protection District)
11. 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 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. (Planning and Building Inspection Department)
12. The applicant shall record a notice which states: "A permit (Resolution 010008) was approved by the Zoning Administrator for Assessor's Parcel Number 241-182-001-000 on March 29, 2001. The permit was granted subject to 12 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 issuance of building permits or commencement of the use. (Planning and Building Inspection Department)

**PASSED AND ADOPTED** this 29th day of **March**, 2001.

  
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DALE ELLIS, AICP  
ZONING ADMINISTRATOR

COPY OF THIS DECISION MAILED TO APPLICANT ON **APR 17 2001**

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 **APR 27 2001**

THIS PROJECT IS LOCATED IN THE COASTAL ZONE AND IS APPEALABLE TO THE BOARD OF SUPERVISORS. IT IS NOT APPEALABLE TO THE COASTAL COMMISSION.

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

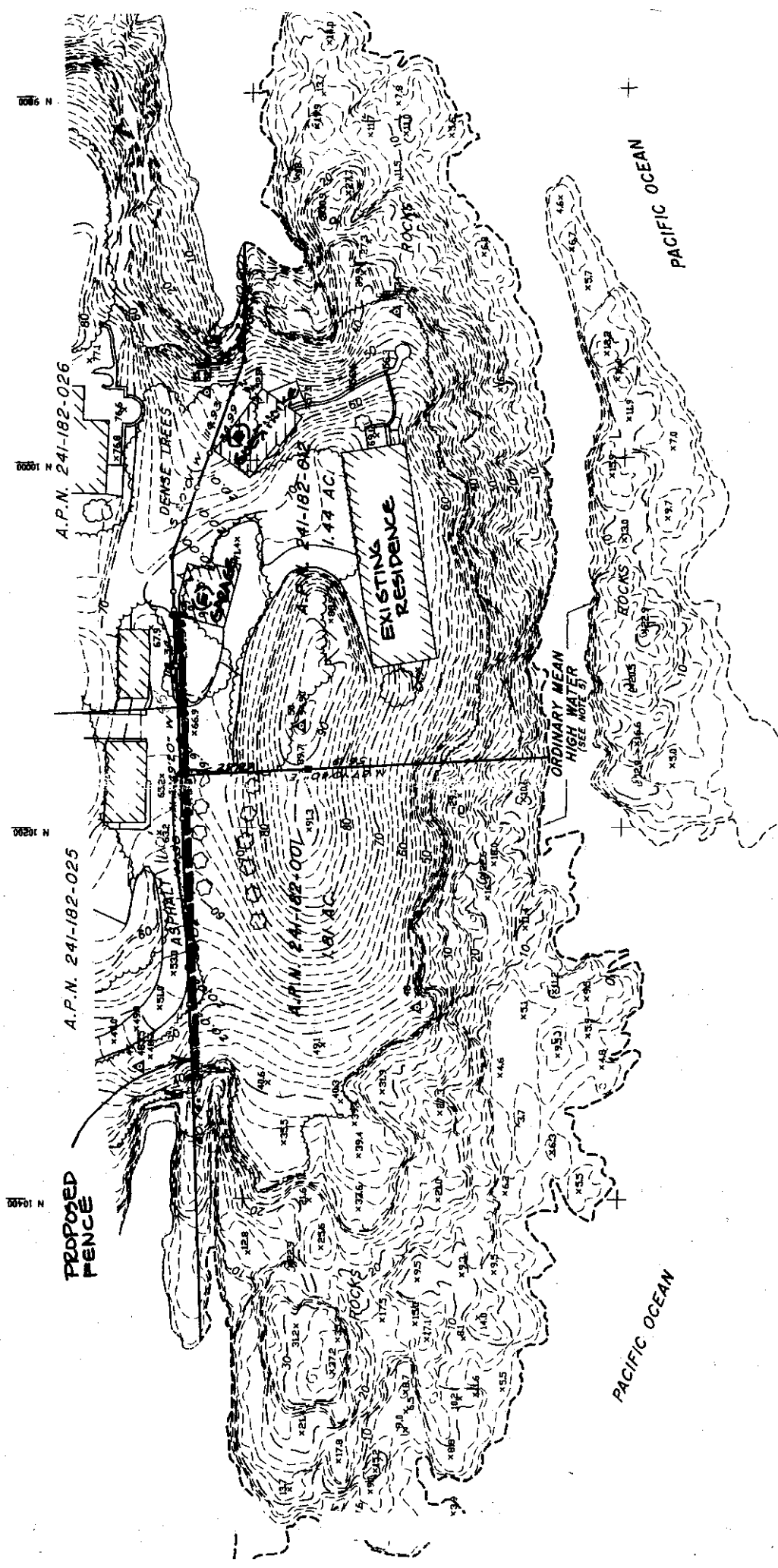
**NOTES**

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 Salinas.

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



**SITE PLAN**  
**STOLTZ RESIDENCE**  
**CARMEL HIGHLANDS**  
**APN 241-182-012 & 241-182-001**

