



CITY OF CARMEL-BY-THE-SEA CITY COUNCIL AGENDA

Mayor Dave Potter, Councilmembers Jeff Baron,
Alissandra Dramov, Karen Ferlito, and Bobby
Richards
Contact: 831.620.2000 www.ci.carmel.ca.us

All meetings are held in the City Council Chambers
East Side of Monte Verde Street
Between Ocean and 7th Avenues

REGULAR MEETING Tuesday, December 5, 2023

HYBRID MEETING ATTENDANCE OPTIONS

This meeting will be held in person and via teleconference ("hybrid"). The public is welcome to attend the meeting in person or remotely via Zoom, however, the meeting will proceed as normal even if there are technical difficulties accessing Zoom. The City will do its best to resolve any technical issues as quickly as possible. To view or listen to the meeting from home, you may also watch the live stream on the City's YouTube page at: <https://www.youtube.com/@CityofCarmelbytheSea/streams>. To participate in the meeting via Zoom, copy and paste the link below into your browser.

**<https://ci-carmel-ca-us.zoom.us/j/86721067021> Webinar ID: 867 2106 7021 Passcode:
022734 Dial in: 253 215 8782**

HOW TO OFFER PUBLIC COMMENT

The public may give public comment at this meeting in person, or using the Zoom teleconference module, provided that there is access to Zoom during the meeting. Zoom comments will be taken after the in-person comments. The public can also email comments to cityclerk@ci.carmel.ca.us. Comments must be received at least 2 hours before the meeting in order to be provided to the legislative body. Comments received after that time and up to the beginning of the meeting will be made part of the record.

OPEN SESSION 4:30 PM

CALL TO ORDER AND ROLL CALL

PLEDGE OF ALLEGIANCE

EXTRAORDINARY BUSINESS

- A. Annual Update from Monterey Salinas Transit
- B. Carmel High School Report Out

PUBLIC APPEARANCES - Members of the public are entitled to speak on matters of municipal concern not on the agenda during Public Appearances. Each person's comments shall be limited to 3 minutes, or as otherwise established by the Chair.

Persons are not required to provide their names, however, it is helpful for speakers to state their names so they may be identified in the minutes of the meeting.

Under the Brown Act, public comment for matters on the agenda must relate to that agenda item and public comments for matters not on the agenda must relate to the subject matter jurisdiction of this legislative body. Hateful, violent, and threatening speech is impermissible public comment as it disrupts the conduct of the public meeting. This is a warning that if a member of the public attending this meeting remotely violates the Brown Act by failing to comply with these requirements of the Brown Act the meeting, then that speaker will be muted.

ANNOUNCEMENTS

- A.** City Administrator Announcements
- B.** City Attorney Announcements
- C.** Councilmember Announcements

ORDERS OF BUSINESS

Orders of Business are agenda items that require City Council, Board or Commission discussion, debate, direction to staff, and/or action.

- 1.** Resolution 2023-107 approving Policy C2023-01 establishing Guidelines for Carmel Beach Cleanup Operations
- 2.** Receive a Presentation regarding the 2023 Storm Drain Master Plan Update
- 3.** Consider a recommendation from the City's Traffic Safety Committee to convert a total of three (3) public street parking spaces to "no parking" zones in front of two (2) existing bus stops. The subject bus stops are on Junipero Avenue, northeast of 4th Avenue in front of the gas station (2 spaces) and on San Carlos Street, northeast of 10th Avenue in front of the Sunset Center (1 space).

PUBLIC HEARINGS

- 4. MA 23-117 (Griffin):** Consideration of a Mills Act Contract application MA 23-117 (Griffin) for the historic "Agnes Shorting House" located on 3rd Avenue 2 northwest of Junipero Avenue in the Single-Family Residential (R-1) District. APN 010-108-007
- 5. MA 23-116 (Esperanza Carmel, LLC):** Consideration of a Mills Act Contract application MA 23-116 (Esperanza Carmel LLC) for the historic "Mrs. Clinton Walker House" located at 26336 Scenic Road in the Single-Family Residential (R-1) District. APN 009-423-001
- 6. MA 23-146 (Lopez 5 NW, LLC):** Consideration of a Mills Act Contract application MA 23-146 (Lopez 5 NW, LLC) for the historic "Cosmas House" located on Lopez Avenue 5 northwest of 4th Avenue in the Single-Family Residential (R-1) District. APN 010-232-028 - **Recommended for Continuance to a future meeting**
- 7. MA 23-103 (Cypress Inn):** Consideration of a Mills Act Contract application MA 23-103 (Cypress Inn) for the historic "La Ribera Hotel" located on the northeast corner of Lincoln Street and 7th Avenue in the Residential-Commercial (R-C) District. APN 010-147-008 - **Recommended for Continuance to a future meeting**

FUTURE AGENDA ITEMS

ADJOURNMENT

This agenda was posted at City Hall, Monte Verde Street between Ocean Avenue and 7th Avenue, Harrison Memorial Library, located on the NE corner of Ocean Avenue and Lincoln Street, the Carmel-by-the-Sea Post Office, 5th Avenue between Dolores Street and San Carlos Street, and the City's webpage <http://www.ci.carmel.ca.us> in accordance with applicable legal requirements.

SUPPLEMENTAL MATERIAL RECEIVED AFTER THE POSTING OF THE AGENDA

Any supplemental writings or documents distributed to a majority of the City Council regarding any item on this agenda, received after the posting of the agenda will be available for public review at City Hall located on Monte Verde Street between Ocean and Seventh Avenues during regular business hours.

SPECIAL NOTICES TO PUBLIC

In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact the City Clerk's Office at 831-620-2000 at least 48 hours prior to the meeting to ensure that reasonable arrangements can be made to provide accessibility to the meeting (28CFR 35.102-35.104 ADA Title II).



CITY OF CARMEL-BY-THE-SEA CITY COUNCIL Staff Report

December 5, 2023
EXTRAORDINARY BUSINESS

TO: Honorable Mayor and City Council Members

SUBMITTED BY: Chip Rerig, City Administrator

APPROVED BY: Chip Rerig, City Administrator

SUBJECT: Annual Update from Monterey Salinas Transit

RECOMMENDATION:

Receive an update presentation from Monterey Salinas Transit.

BACKGROUND/SUMMARY:

FISCAL IMPACT:

PRIOR CITY COUNCIL ACTION:

ATTACHMENTS:

Attachment 1) Presentation - MST Overview for Carmel-by-the-Sea



Monterey-Salinas Transit

Update 2023

Presented to: City of Carmel-by-the-Sea

Presented by: Michelle Overmeyer, Director of Planning & Innovation

Date: December 5, 2023



MST District Board of Directors

Jurisdiction	Board member
Carmel-by-the Sea	Jeff Baron
Del Rey Oaks	Kim Shirley
Gonzales	Lorraine Worthy
Greenfield	Arianna Rodriguez
King City	Mayor Mike LeBarre
Marina	Liesbeth Visscher
Pacific Grove	Joe Amelio
Monterey	Ed Smith
Sand City	Mayor Mary Anne Carbone, Vice Chair
Salinas	Tony Barrera
Seaside	David Pacheco
Soledad	Mayor Anna Velazquez, Chair
County of Monterey	Luis Alejo

MST Mission, Vision, and Values

- Mission: What do we do?

Advocating and delivering quality public transportation as a leader within our community and within our industry.

- Vision: Why do we exist?

Connecting communities. Creating opportunity. Being kind to our planet.

- Values: What do we believe?
 - **Safety:** Caring for others, in all we do.
 - **Friendliness:** Welcoming, helpful, and understanding.
 - **Dependability:** Earning your trust, every day.
 - **Diversity:** Valuing our differences.
 - **Achievement:** Aspiring to be better.



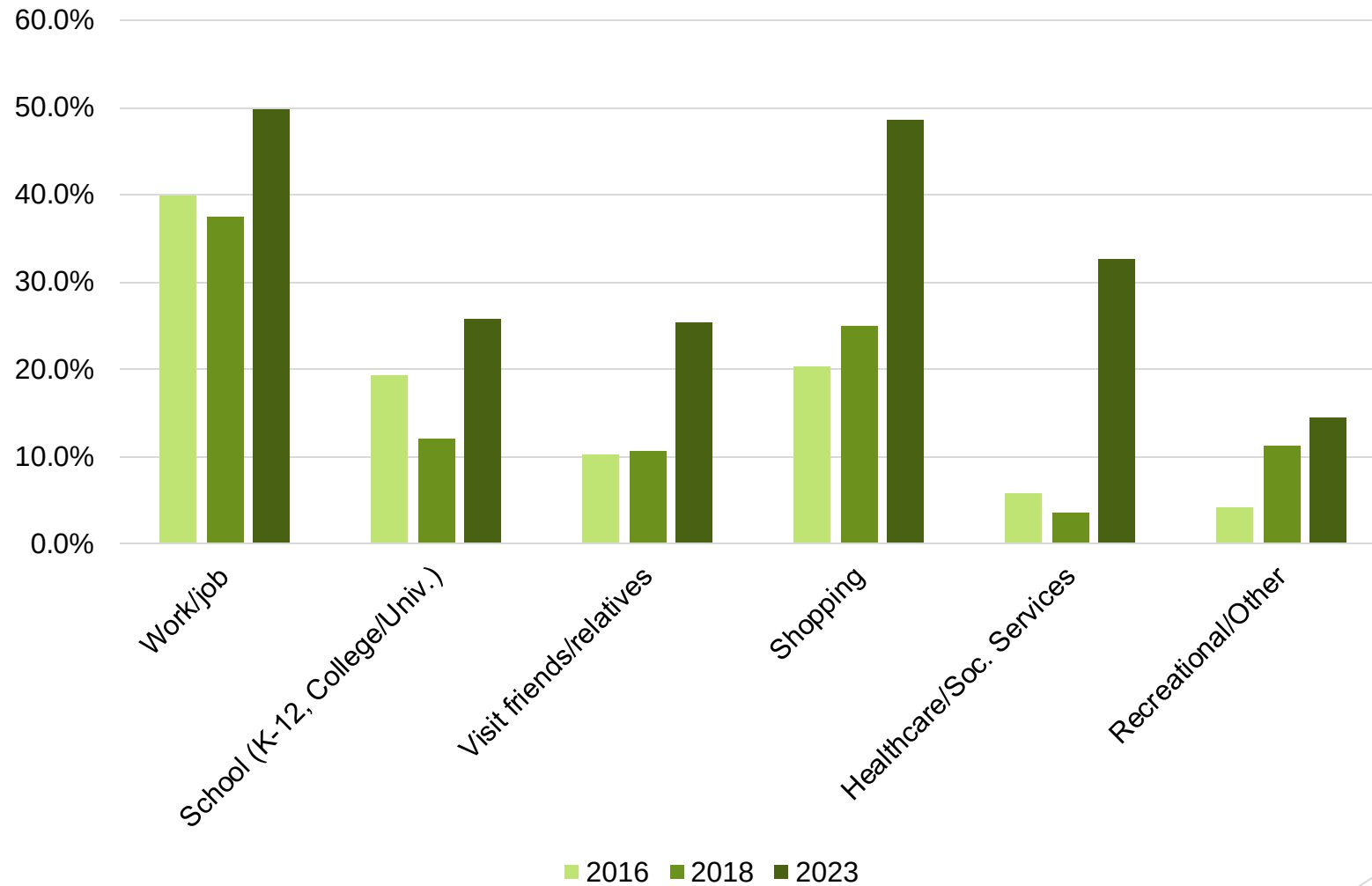
Monterey-Salinas Transit in 2023

- ✓ 2.2 million passengers
 - ✓ 19.4% increase over 2022
- ✓ 76% population historically underrepresented, non-white
- ✓ 77% annual household income under \$40k
- ✓ 25% of trips start within a disadvantaged community
- ✓ 20% have a disability, dependent on others for mobility



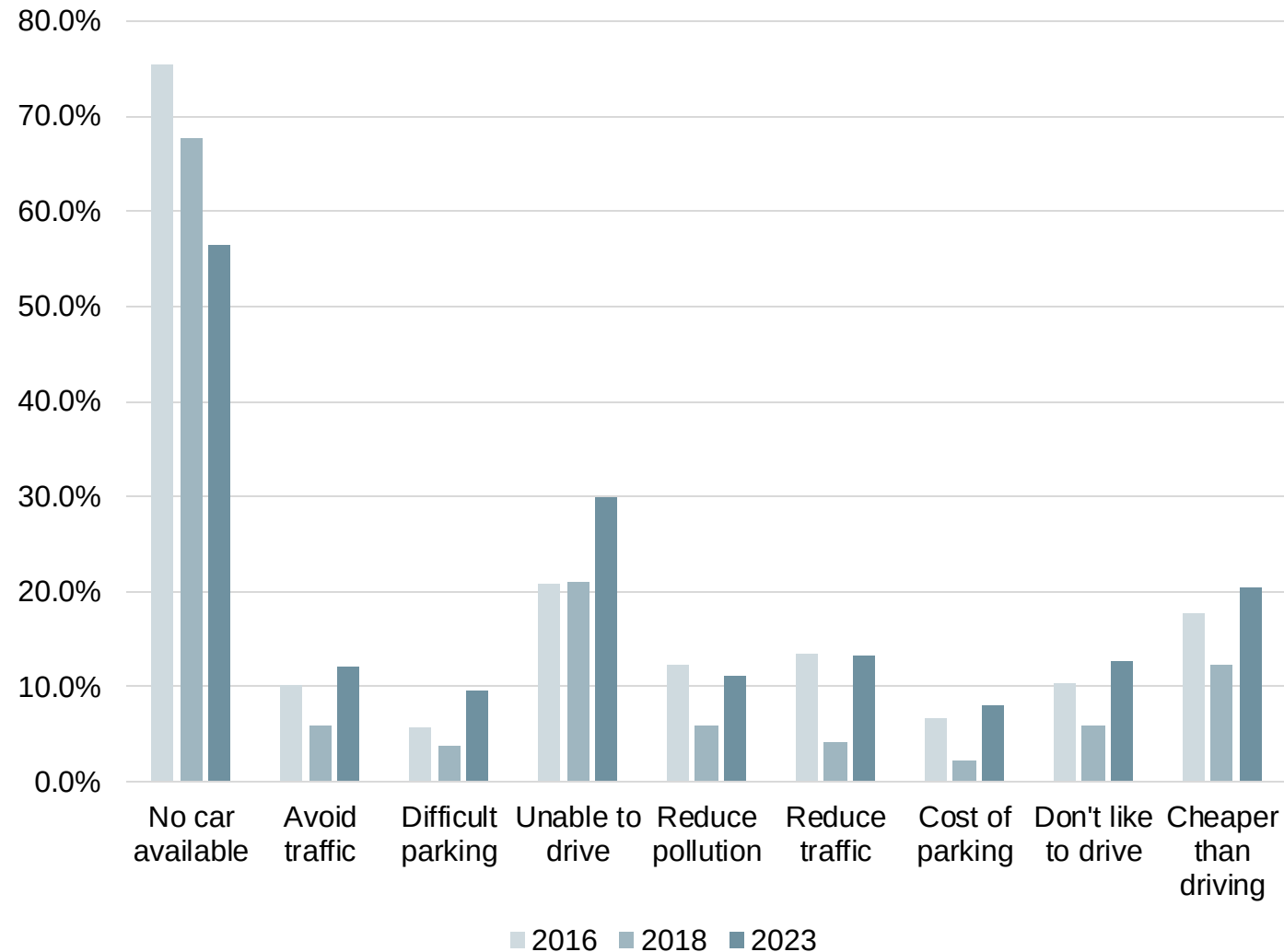
Monterey-Salinas Transit in 2023

WHERE RIDERS GO



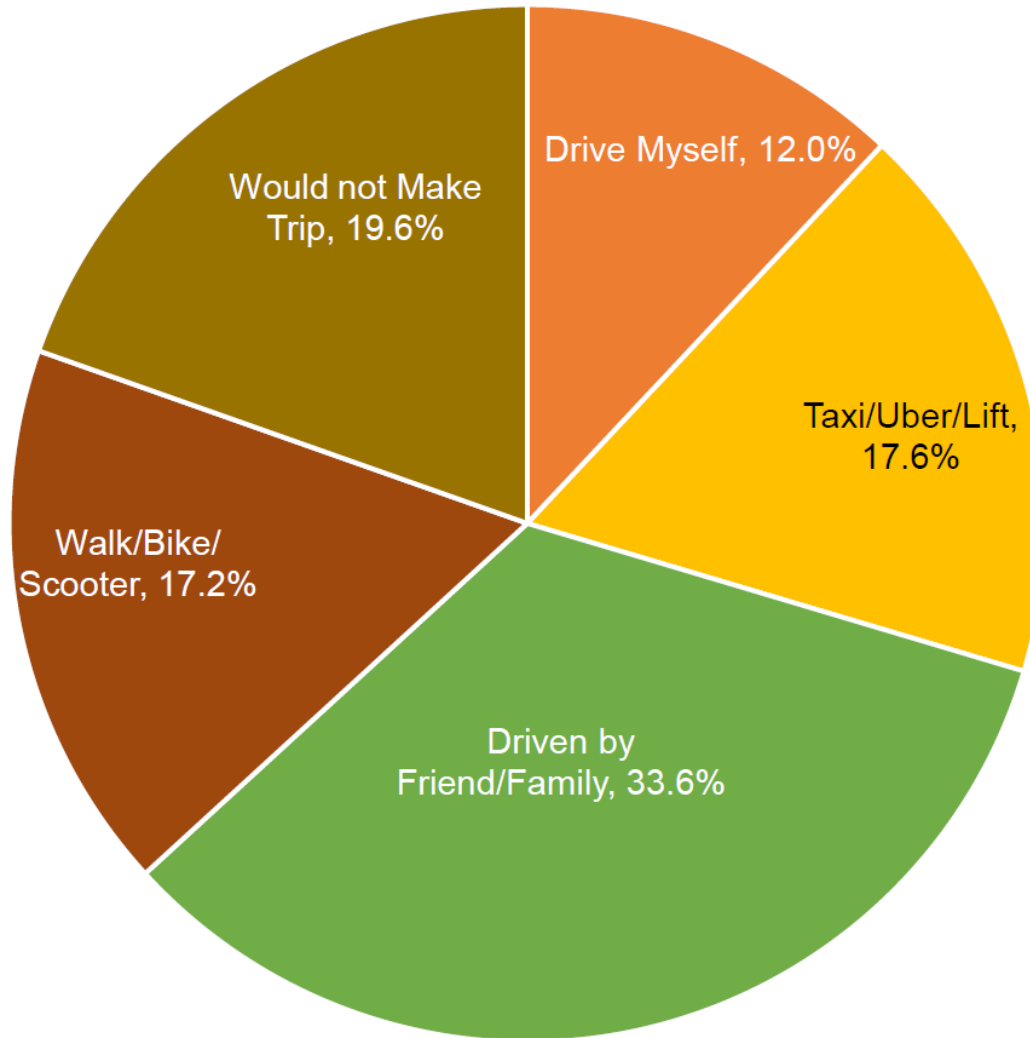
Monterey-Salinas Transit in 2023

WHY RIDERS USE TRANSIT



Monterey-Salinas Transit in 2023

A DAY WITHOUT TRANSIT

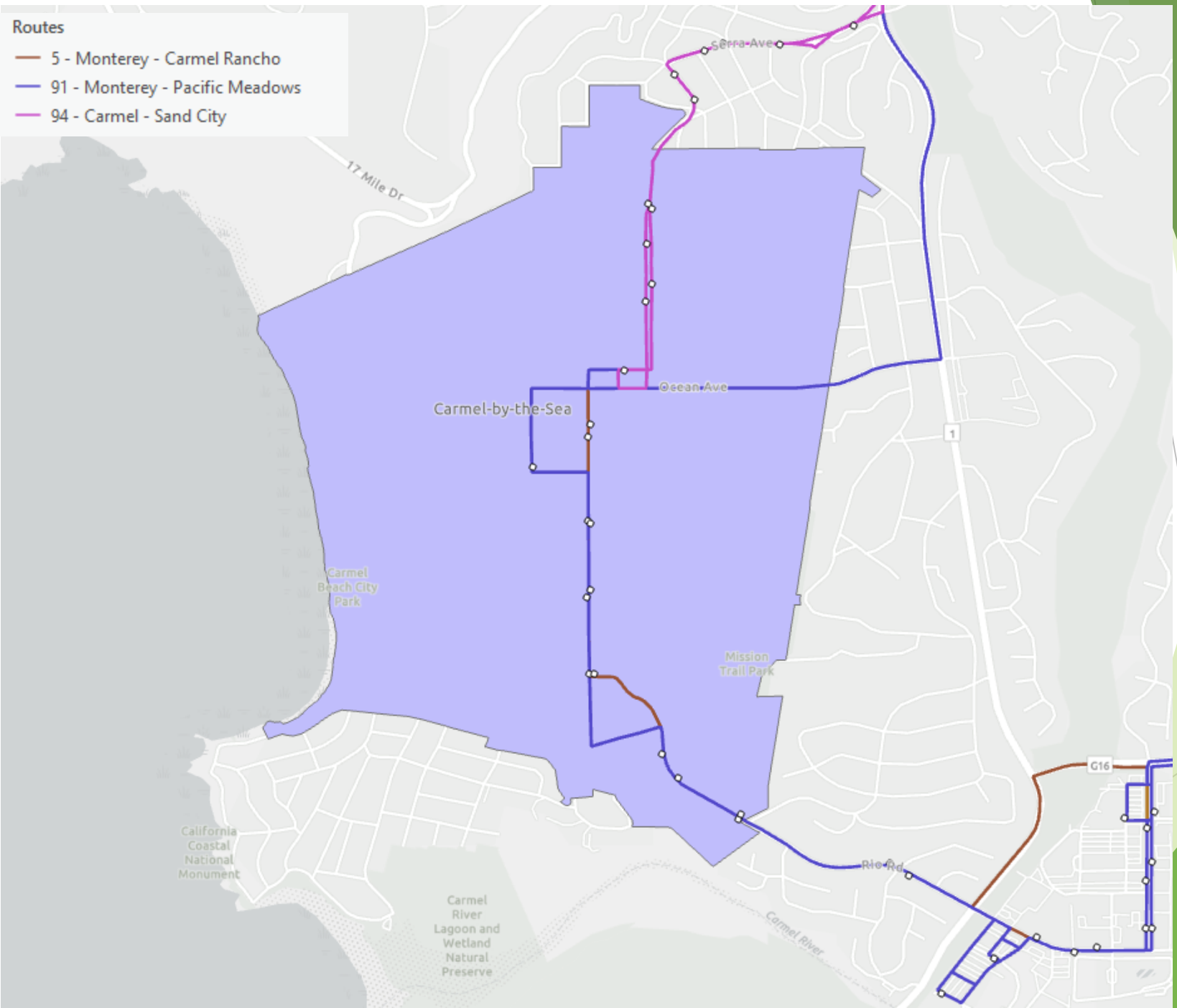


PEOPLE



MST

MONTEREY-SALINAS TRANSIT



Carmel-by-the-Sea 2023 Ridership

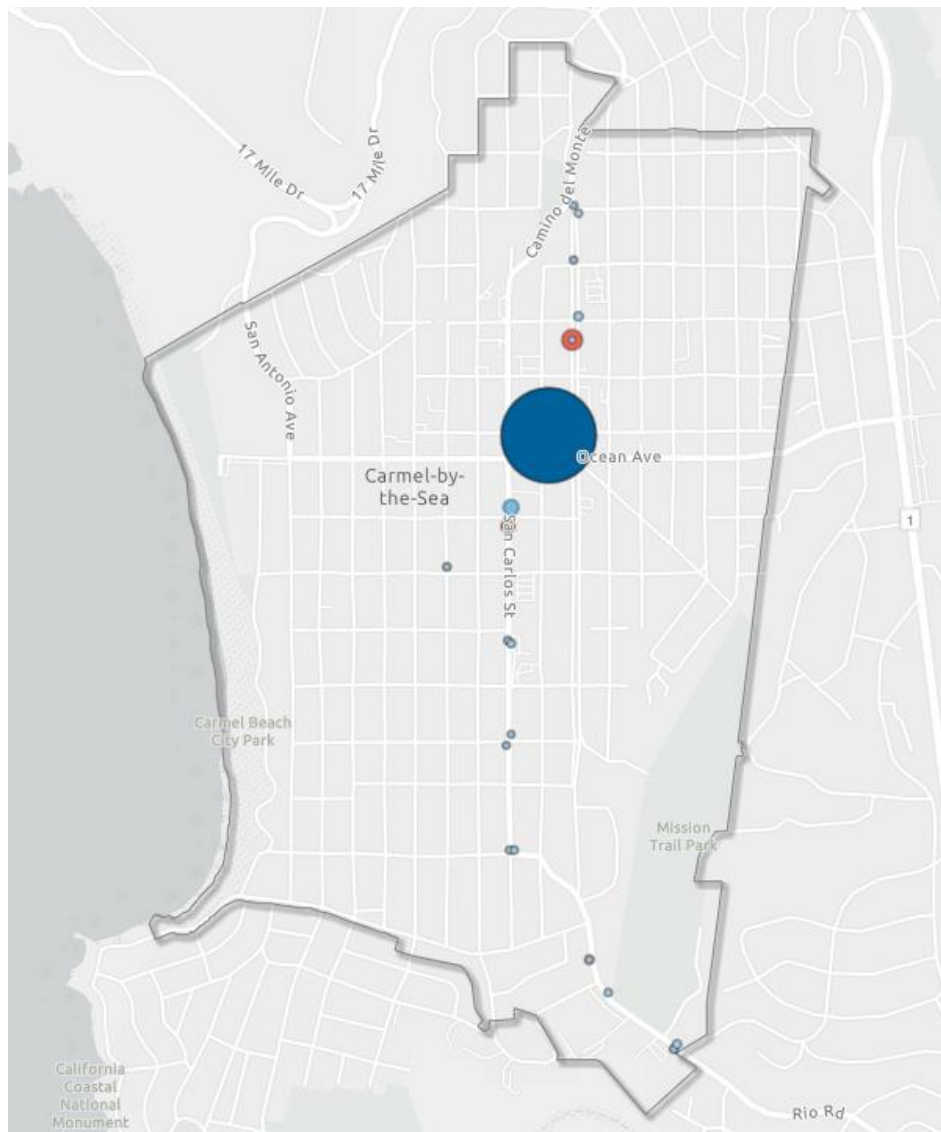
January 1, 2023 – September 30, 2023

- ▶ Carmel-by-the-Sea ridership:
 - ▶ **FIXED ROUTE:** 25,702 or 94 passenger boardings/day
 - ▶ **RIDES:** 239 or 1 passengers/day
- ▶ 6th highest monthly ridership compared to all jurisdictions
- ▶ <1% of residents take public transit to work
- ▶ 100% of residents are within ½ mile of transit
- ▶ Top most frequented bus stops:
 1. 6th/Mission #0006: 73 people/day board and 84 people/day alight
 2. Junipero/ 4th & 5th (SB) #5257: 1 person/day board and 13 people/day alight
 3. San Carlos/7th (NB) #5243: 8 people/day board and 3 people/day alight



Top Boarding and Alighting Locations

January-September 2023



Stop Name	Boardings	Avg/Day
0006 - 6th / Mission Street	19,938	73
5243 - San Carlos / 7th	2,100	8
5204 - San Carlos / 7th	863	3
5259 - Junipero / 4th	597	2
5228 - Rio Road / Atherton	473	2

Stop Name	Alightings	Avg/Day
0006 - 6th / Mission Street	22,877	84
5257 - Junipero / 4th & 5th	3,664	13
5204 - San Carlos / 7th	2,034	7
5243 - San Carlos / 7th	836	3
5216 - Rio Road / Lasuen	685	3

Monterey-Salinas Transit in 2023

PLANET



100% of heavy-duty
fleet are renewable
biofuel or renewable
electric

12 zero-emissions
electric buses
scheduled for order
Winter 2023/2024

MST services remove
equivalent of 110k
single occupancy
vehicle trips from
area roadways
monthly

MST reduces GHG
emissions by 220
annual acres of forest
sequestered monthly

74% of passengers
agree reducing GHG is
important

MST

MONTEREY-SALINAS TRANSIT



Monterey-Salinas Transit in 2023

159 square miles service area

33 transit lines

Bus Operator Driving - Good/Excellent

➤ **MST – 91%** National Avg. – 73%

MST Services - Good/Excellent

➤ **MST – 87%** National Avg. – 58%

Bus Cleanliness – Good/Excellent

➤ **MST – 82%** National Avg. – 38%



Monterey-Salinas Transit in 2023

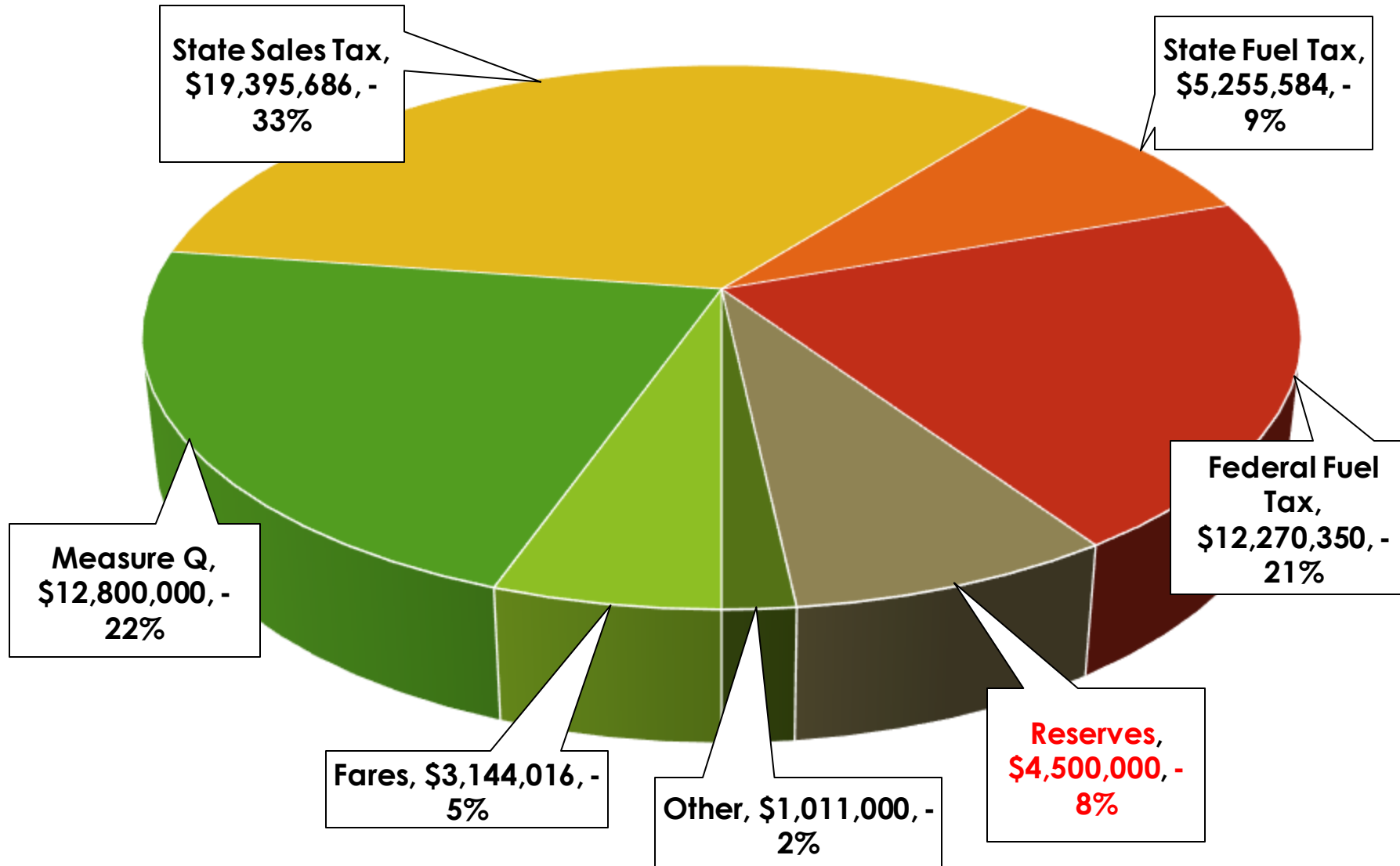
Community Survey of 409 residents who don't use transit:

- **95%** of residents feel that MST's services are valuable to the community
- **87%** of residents think it's important for the entire County to support and fund improved public transportation
- **83%** of residents think there should be greater levels of funding for transit over the next 5 years
- **70%** of residents are familiar with the services provided by MST



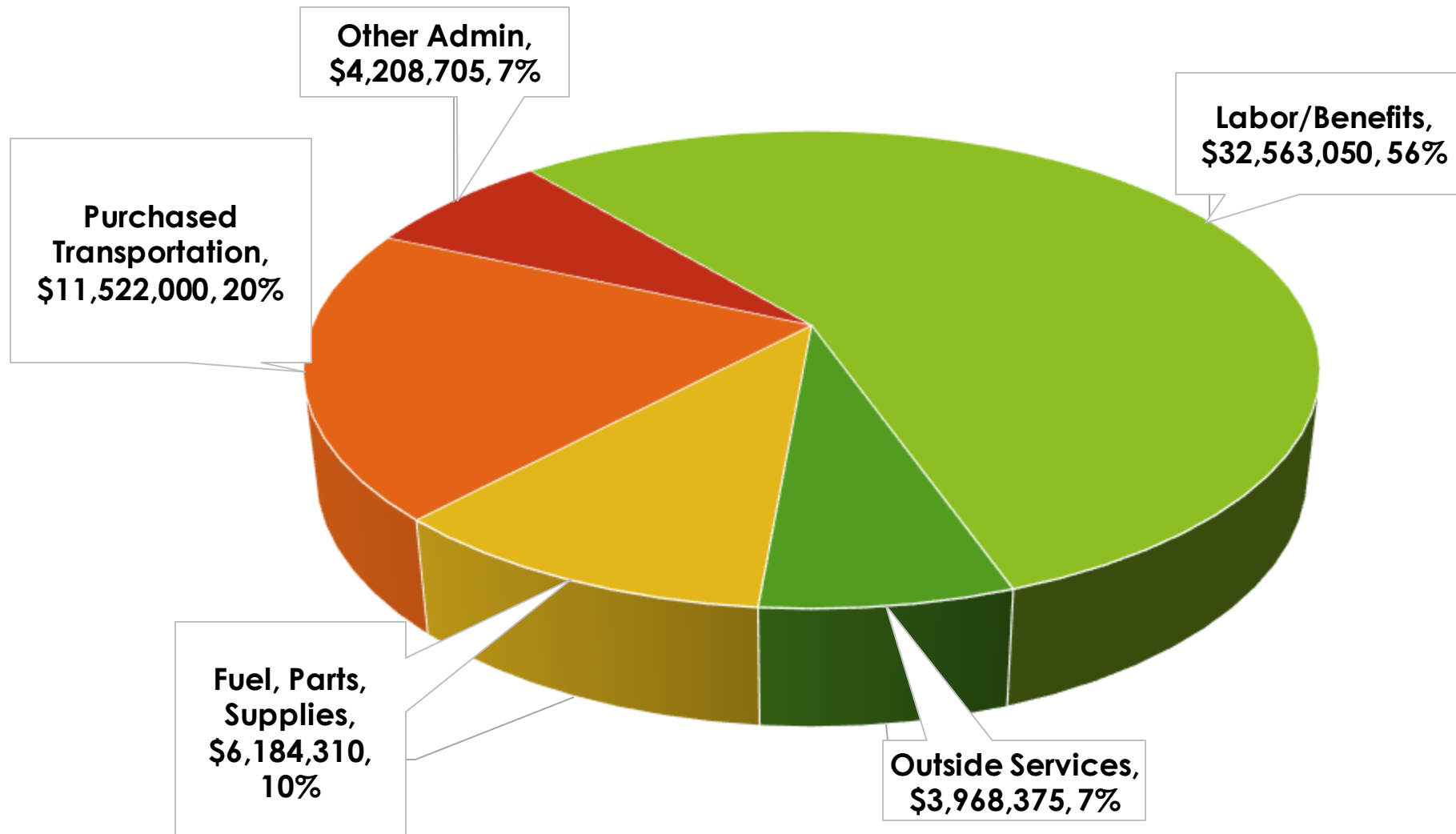
FY 2024 Budget - \$58M

Revenue By Source



FY 2024 Budget - \$58M

Expenses by Category



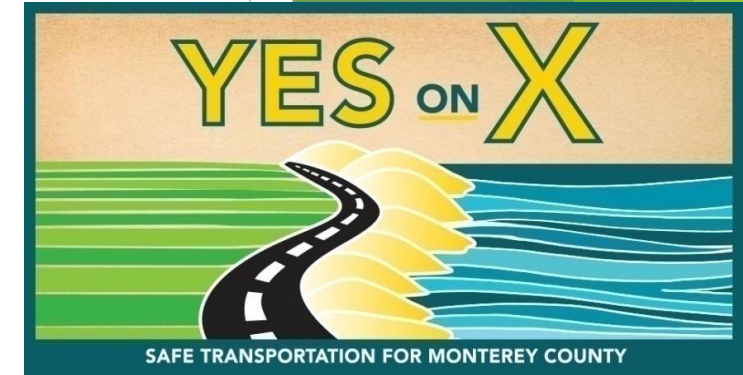
MST Measure Q

- ▶ First county-wide sales tax for transportation to pass
- ▶ November 2014 won with 72.6% overall voter support
- ▶ 15-Year, 1/8 of one-percent retail sales tax
- ▶ Est. dollars raised over the life of the tax: \$100 Million (2012 \$)
- ▶ 100% of funds go to MST supporting services for veterans, seniors and persons with disabilities including:
 - ✓ MST RIDES ADA Services
 - ✓ Senior Shuttle Routes
 - ✓ Taxi Vouchers
 - ✓ Travel Training, Navigator Volunteers
 - ✓ Travel Reimbursement Incentive Program



Transportation Agency for Monterey County Measure X

- Second county-wide sales tax for transportation
- November 2016 won with 67.7% overall voter support
- 30-Year, 3/8 of one-percent sales tax
- Est. dollars raised over the life of the tax: \$600 Million (2015 \$)
- Funding distribution:
 - 60% for local streets and roads for Cities and County
 - 27% regional road safety and congestion projects
 - 13% for pedestrian and bicycle safety and mobility projects
- Approx. 7% to MST for Hwy 1 rapid bus corridor, Salinas Valley transit centers



Recent Accomplishments

- Nationally Recognized COVID Response and Recovery
- New South County Operations and Maintenance facility in King City, fall 2021
- University and College Transit Pass Partnerships
- **Contactless Credit/Debit/eWallet Fare Payment and Capping**
- Subsidized Vanpool Program
- **Better Bus Network**





MST Contactless Fare Payment

- First project in the State, in the Country, and in a Small Urban/Rural Area
- Daily/Weekly/Monthly Fare Capping
- First in the world to synch discount with a Government-issued ID
- Cards available to those without a bank account or credit card
- 95,000 contactless trips made to date





The Better Bus Network



Save Time



Save Money



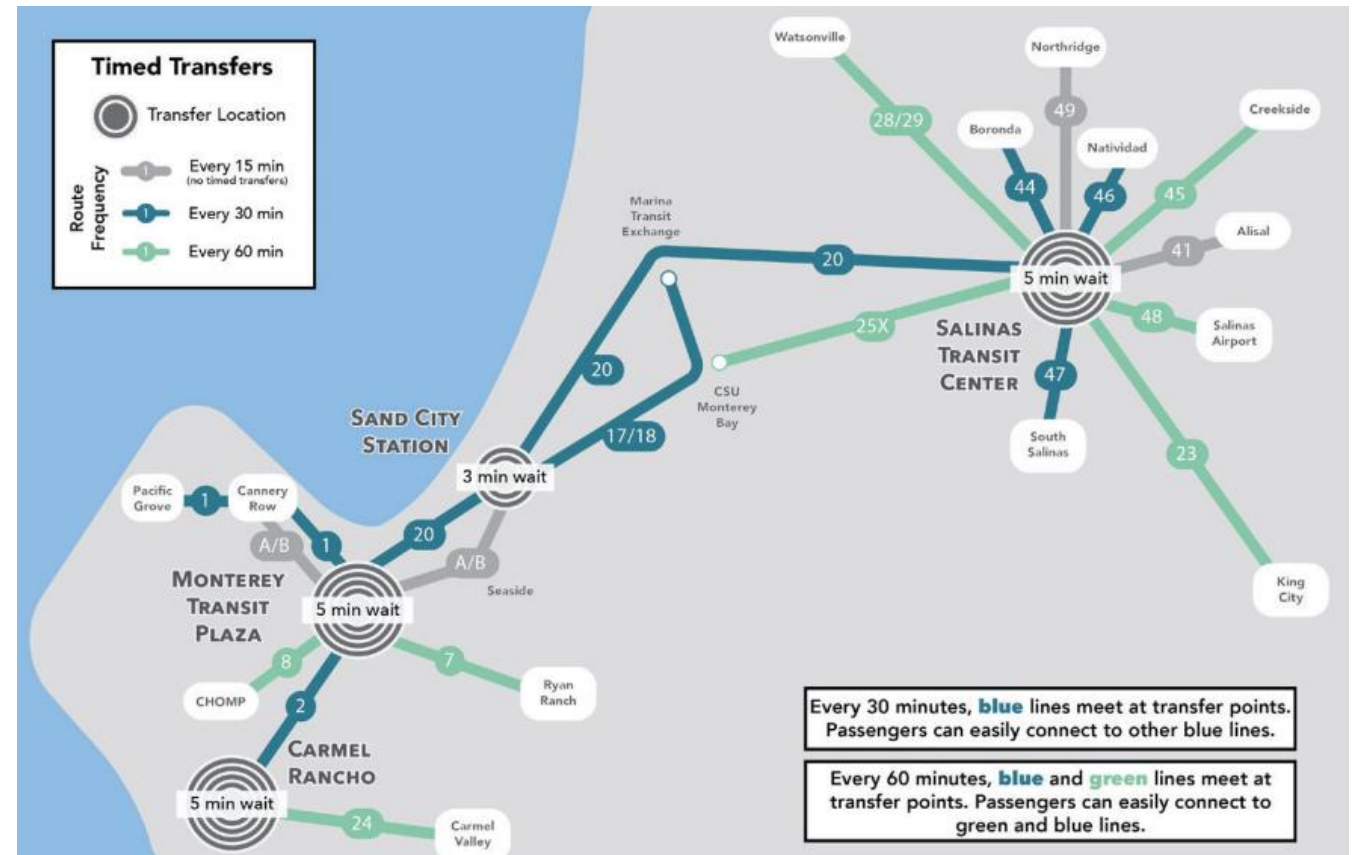
Save Our Planet

DEC
10
2022

More information
mst.org



- ✓ Service location:
 - 40% Monterey-Seaside
 - 40% Greater Salinas
 - 20% Regional
- ✓ Focus on high demand, high need areas
- ✓ More direct routes
- ✓ Avg. 30 min. decrease in travel time
- ✓ 20% increase in residents and jobs near service with 30 min. frequency or better
- ✓ Lower fares (\$2/2 hours)
- ✓ Subsidized vanpools



The Future of MST.....



MST Major Projects

- ▶ SURF! Busway and Bus Rapid Transit, \$77M
- ▶ Salinas Operations and Maintenance Facilities, \$25M
- ▶ Salinas Alisal Bus Rapid Transit (BRT) and Transit Center Study, \$500K
- ▶ 100% Zero-Emissions Fleet Rollout, \$100M
- ▶ Battery Electric and Fuel Cell Infrastructure, \$20M



Our Newest
Busway & Rapid
Transit Project



SURF!

Busway and Bus Rapid Transit Project



Kimley»Horn



SURF! Project Benefits

- ✓ Congestion relief and better connectivity
- ✓ Frequent, reliable transit
- ✓ Zero-emissions vehicles only
- ✓ New Transit Station at 5th Street
- ✓ Preserves rail corridor for future generations and train service



SURF! Project Rendering



MST Major Challenges and Opportunities

- ▶ Restoration of local economy and employee recruitment
- ▶ Coach operator shortage
- ▶ Federal government dysfunction, ongoing
- ▶ Zero-emissions bus regulations, workforce development
- ▶ Land use decisions – TOD Planning Study, bus stops
- ▶ Changing demographics of region
- ▶ SB 125 challenge

Questions?

MST

MONTEREY-SALINAS TRANSIT



CITY OF CARMEL-BY-THE-SEA

CITY COUNCIL

Staff Report

December 5, 2023
ORDERS OF BUSINESS

TO:	Honorable Mayor and City Council Members
SUBMITTED BY:	Mary Bilse, Environmental Programs Manager
APPROVED BY:	Chip Rerig, City Administrator
SUBJECT:	Resolution 2023-107 approving Policy C2023-01 establishing Guidelines for Carmel Beach Cleanup Operations

RECOMMENDATION:

Adopt Resolution 2023-107 approving Policy C2023-01 establishing Guidelines for Carmel Beach Cleanup Operations to remove all human-sourced waste and to protect natural resources and wildlife.

BACKGROUND/SUMMARY:

The purpose of establishing beach cleanup guidelines is to increase public awareness on the important role that Carmel Beach and its natural resources serve, and to promote consistency in how beach cleanups are conducted while ensuring its environmental integrity is protected. The purpose of this report is to create a Policy to incorporate the Guidelines for Carmel Beach Cleanup Operations.

The Monterey Bay National Marine Sanctuary (MBNMS) covers over 6,000 square miles, stretching from Marin to Cambria, and includes the average high tide on the shore and as far as 53 miles offshore. This federal and state protected area contains rich species and ecosystem diversity which offers many cultural, economic, ecological, and recreational benefits.

Regulations

Carmel Beach lies entirely within the MBNMS as well as the Carmel Bay State Marine Conservation Area (SMCA) and the Carmel Bay Area of Special Biological Significance (ASBS) where it is unlawful to injure, damage, take, or possess any living, geological, or cultural marine resource (except finfish) (California Code of Regulations Title 14 Section 632). Marine living resources are defined in the California Fish and Game Code Chapter 2 Section 96 and includes all wild mammals, birds, reptiles, fish, and plants that normally occur in or are associated with salt water, and the marine habitats upon which they depend. The Code of Federal Regulations CFR15 section 922.11 defines a Sanctuary resource as *“any living or non-living resource of a national marine sanctuary that contributes to the conservation, recreational, ecological, historical, educational, cultural, archeological, scientific, or aesthetic value of the national marine sanctuary.”* (CFR 15 section 922.11). These designations further protect these natural areas with federal and state regulations enforced by the National Oceanic and Atmospheric Administration (NOAA), California Department of Fish and Wildlife (CDFW), and the State Water Resources Control Board (SWRCB). Therefore, proper care and maintenance of Carmel Beach is critical to its long-term health and viability, and

directly affects the many benefits it provides.

The California Coastal Act (CCA) finds and declares that the beach, as part of the coastal zone: “*is a distinct and valuable natural resource of vital and enduring interest to all the people and exists as a delicately balanced ecosystem*” (CCA 30001 a). To do so, the legislature finds and declares that the basic goals of the State for the coastal zone, which Carmel Beach lies within, are to “*protect, maintain and where feasible, enhance and restore the overall quality of the coastal zone environment and its natural and artificial resources* (CCA 30001.5, a), and “*assure orderly, balanced utilization and conservation of coastal zone resources taking into account the social and economic needs of the people of the state*” (CCA 30001.5, b).

The City’s Coastal Access and Recreation Element of its General Plan has a Policy (4-23) that restricts the removal of driftwood logs that can provide seating, stating “*Do not install formal picnic tables or benches. Rather, provide driftwood logs for seating. Picnicking on the beach should be conducted in a traditional manner with blankets, etc.*” The General Plan does not address smaller-sized driftwood. The City’s Zoning Code (17.20.200.I.) includes a rule on the Disturbance of Natural Resources. This Code prohibits digging and removing beach sand (with the exception of recreational activities such as sand castle building or similar sand structures utilizing natural resources found on the beach, as well as maintenance activities related to the City’s sand movement program described in the Shoreline Management Plan).

Beach Wrack

Beach wrack is the scientific term for washed up kelp, seaweed, seagrasses, driftwood, and other organic coastal materials provides important food, habitat, and shelter for various insects and crustaceans like kelp flies and beach hoppers, which in turn provides food for several shorebirds that feed on them (i.e., the endangered Western snowy plover). Marine microorganisms live among beach wrack and are too small to see with the unaided human eye without magnification. Local and migrating birds feed on the creatures found in wrack that depend on this food source to fuel their long-distance journeys. The subject of leaving beach wrack on the beach has come up in recent discussions with residents and support groups in the City similar to many other California coastal communities.

Beach Grooming

Beach grooming typically refers to the practice of removing trash and beach wrack from sandy beaches. Beach grooming may improve aesthetics for beachgoers; however, recent studies have shown that beach grooming activities like wrack removal can have a negative impact on beach and shoreline ecology by reducing biodiversity and biomass found on sandy beaches. California State Parks does not remove beach wrack because of its ecological value and because it provides a base for sand dune formation which is needed to protect coasts from strong storm events. Piles of wrack collect windblown sand, providing nutrients and a more stable place for beach plants to grow. Leaving wrack leads to a healthier beach for native animals and plants. These ecological services are proof of how essential beach wrack is for the biodiversity, health, and services of Carmel Beach.

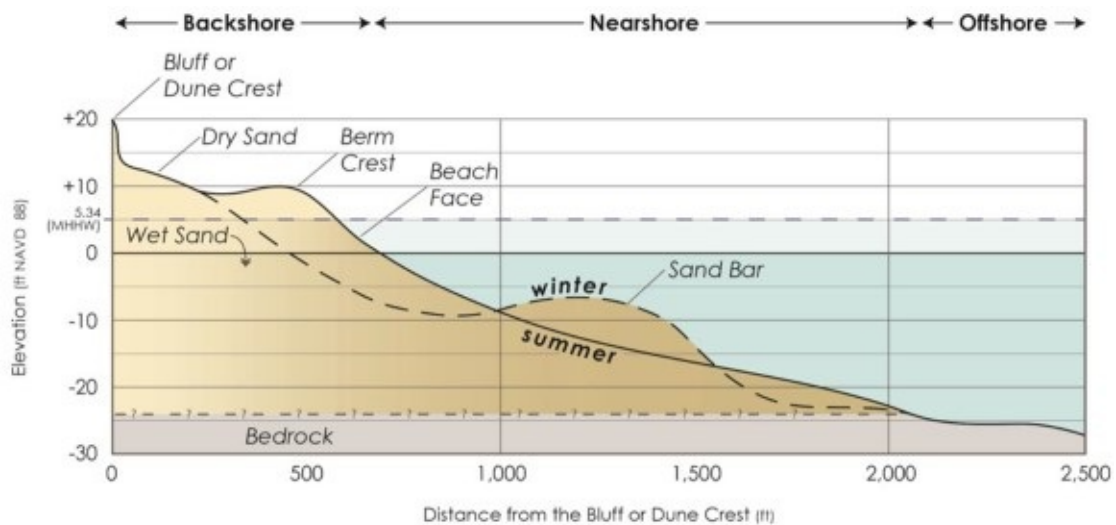
Concern has been expressed that large driftwood logs have the potential to create dangerous situations and damage the beach’s infrastructure (stairs and seawalls), and that small driftwood may be sharp and dangerous. Public education and outreach on the aforementioned health hazard concerns is also prudent. Kelp flies, beach hoppers, isopods, and most other macrofauna found within wrack do not pose health risks to humans, while other anthropogenic items that can be found on a beach, like dog waste, litter, and cigarette butts do.

Mean High Tide Line (MHTL)

The MHTL is the average of all high tides observed over a nineteen-year period. NOAA determines the elevation of the MHTL on Carmel Beach by using the mean high-water elevation from published tide station

datum in Monterey Bay. Beach elevations change seasonally and the MHTL migrates inland in winter (with the loss of sand) due to storms, strong waves, and winds. Powerful waves erode the beach face and the backshore, picking up sand and sediment from the beach. The sediment is transported off the beach as the waves carry it away from the shore and onto nearshore sand bars. In the spring, weather patterns become milder with reduced storm activity. As wave energy decreases, sediment that was transported offshore during the winter begins to move back toward the shore in spring/summer during the recovery process. Below is an example of a cross-shore profile showing seasonal change for Carmel Beach. Sediment transport will also be influenced by long-term factors, such as sea level rise, increased storminess, and changes in the underlying geology (Source: Integral, Seasonal and Long-Term Beach and Shoreline Change Analysis, Nov 2023).

In the exhibit below, the solid black bold line represents a typical summer profile, with a beach berm forming in spring and summer and a widening of the dry sand beach by as much as 200 ft. The hatched line represents a typical winter profile, with the beach face retreating and a longshore bar developing in the nearshore.



Source: Image adapted from *Waves and Beaches* by Willard Bascom, 1964 (updated in 2020 by Kim McCoy).

The subject of having two beach cleanup policies was suggested during public comment at the Forest and Beach Commission meeting: one Policy for above the MHTL which has less regulatory restrictions, and one Policy for below the MHTL which is clearly under state and federal regulations. Having two policies will only lead to further inconsistencies in beach cleanups and taking of beach wrack above a theoretical moving line that cannot be accurately identified on the beach. Therefore, staff recommends adopting one consistent Policy because changes to the beach elevation is a dynamic and ongoing process, and it is difficult to determine the exact location of the MHTL.

Beach Cleanup Policy

The purpose of establishing a new Policy is to identify what can be removed from the beach and what natural resources and wildlife need to remain on Carmel Beach. The Policy as drafted prohibits the removal of kelp, seaweed, driftwood of all sizes, and more. The draft Policy also clarifies that the City's Public Works Department, Police Department and Fire Department are responsible for responding to public safety hazards (including hazardous logs) and the removal of hazardous materials from Carmel Beach. Furthermore, the new Policy will support the City's Climate Action and Adaptation Plans by addressing Adaptation Goal Number 2: "*a natural environment resilient to climate hazards.*" The Vulnerability Assessment that was conducted to support these plans identifies Carmel Beach as a Priority Natural Asset that is already experiencing observable impacts from stronger storms and is threatened by sea level rise. Enforcing protections on natural resources found within these identified natural assets, such as Carmel Beach, is therefore of utmost importance.

Staff has proposed a Beach Cleanup Policy with supporting guidelines on what should be removed and what must be left alone on Carmel Beach, as exhibited in **Attachment 2**. This attachment was designed to be a user-friendly, color coded handout that can be easily distributed to all contractors, support groups, and city staff who clean up the beach. These guidelines were also reviewed by the Community Planning and Building Department.

At the September 14, 2023 Forest and Beach Commission meeting, staff introduced guidelines for the proposed Carmel Beach Cleanup Policy to establish a consistent set up guidelines for cleaning up Carmel Beach. The item was continued to the October 12, 2023 Forest and Beach Commission meeting to allow staff to conduct additional research on beach wrack and driftwood. At the October 12, 2023 meeting, the Commission approved a motion to recommend Council's approval of the proposed Policy, and recommended that the staff continue to seek out additional research on driftwood, bringing in constituents and governing bodies, before taking the final Policy to the City Council.

Concern has been expressed regarding health hazards that wrack poses. Kelp flies, beach hoppers, isopods, and most other macrofauna found within wrack do not pose health risks to humans, while other anthropogenic items that can be found on a beach, like dog waste, litter, and cigarette butts do. This Policy outlines items that should or should not be removed during a Carmel Beach cleanup with consideration of health hazards and conserving beach health. Upon City Council approval of this Policy, outreach will likely include posting on the City website, sharing in Friday Letters, and publishing in the Carmel Pine Cone. Public education and outreach on the expressed health concerns is also prudent.

The City's Environmental Programs staff researched the rules and regulations governing Carmel Beach and contacted numerous federal and state regulatory agencies in preparation of drafting up the Carmel Beach Cleanup Policy. Regulatory staff at the CDFW, CCC, and the MBNMS reviewed the draft Carmel Beach Cleanup Policy and verified it follows their regulations. Regulatory agency staff confirmed that nothing natural, including driftwood and beach wrack (seaweed, rocks, shells), can be removed below the MHTL. Coastal staff stated that removal of large driftwood logs with a bulldozer would require Coastal Act authorization via a Coastal Development Permit. Relevant correspondence with regulatory staff is attached in **Attachment 3**. Again, staff recommends the City adopt one Policy to promote consistency in how beach cleanups are conducted while ensuring its environmental integrity is protected. Commission and public comments have been considered in the Carmel Beach Cleanup Policy that is before the City Council.

Unless or until the City-adopted Policy becomes part of the Carmel Municipal Code, enforcement will be in the form of warnings. However, City contractors, volunteer support groups, and City staff must abide by all City policies.

At the December 5, 2023 City Council Meeting, staff will present the proposed Policy and a video regarding the importance of beach wrack.

Environmental Evaluation

This action does not constitute a project within the meaning of the California Environmental Quality Act under Public Resources Code Section 21065. It has no potential to cause either a direct physical change in the environment or a reasonably foreseeable indirect physical change in the environment and, therefore, does not require environmental review.

FISCAL IMPACT:

No direct fiscal impact for this action.

PRIOR CITY COUNCIL ACTION:

No prior City Council Actions have been taken on this Policy.

ATTACHMENTS:

Attachment 1) Resolution 2023-107

Attachment 2) Carmel Beach Cleanup Policy and Guidelines

Attachment 3) Correspondence with Resource Agencies

**CITY OF CARMEL-BY-THE-SEA
CITY COUNCIL**

RESOLUTION NO. 2023-107

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CARMEL-BY-THE-SEA APPROVING
POLICY C2023-01 ESTABLISHING GUIDELINES FOR CARMEL BEACH CLEANUP OPERATIONS**

WHEREAS, Carmel Beach lies entirely within the Monterey Bay National Marine Sanctuary as well as the Carmel Bay State Marine Conservation Area (SMCA) and the Carmel Bay Area of Special Biological Significance (ASBS) where it is unlawful to injure, damage, take, or possess any living, geological, or cultural marine resource (except finfish) below the mean high tide line; and

WHEREAS, beach grooming activities like wrack removal can have a negative impact on beach and shoreline ecology by reducing biodiversity and biomass found on sandy beaches; and

WHEREAS, the beach elevation is a dynamic and ongoing process, and it is difficult to determine the exact location of the Mean High Tide Line; and

WHEREAS, the City's volunteer groups, contractors, and staff have been cleaning up Carmel Beach in an inconsistent manner; and

WHEREAS, the California Department of Fish and Wildlife, California Coastal Commission, and Monterey Bay National Marine Sanctuary reviewed the draft Carmel Beach Cleanup Policy and verified it follows their regulations; and

WHEREAS, at the September 2023 Forest and Beach Commission meeting, the proposed guidelines for Carmel Beach cleanups were introduced to remove all human-sourced waste and to protect natural resources and wildlife; and

WHEREAS, on October 12, 2023, the Forest and Beach Commission approved a motion to recommend Council's approved of the Policy, and recommended that the staff continue to seek out additional research on driftwood, bringing in constituents and governing bodies; and

WHEREAS, with all research completed, Policy No C2023-01 provides guidance on beach cleanups in accordance with the regulatory agencies.

NOW THEREFORE, BE IT RESOLVED THAT THE CITY COUNCIL OF THE CITY OF CARMEL-BY-THE-SEA DOES HEREBY:

Approve Policy C2023-01 establishing Guidelines for the Carmel Beach Cleanup Operations.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF CARMEL-BY-THE-SEA this 5th day of December, 2023, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

APPROVED:

ATTEST:

Dave Potter
Mayor

Nova Romero, MMC
City Clerk

**CITY OF CARMEL-BY-THE-SEA
POLICY AND PROCEDURE**

Subject: Guidelines for Carmel Beach Cleanup Operations	Policy/Procedure No: C2023-01
--	--------------------------------------

Effective Date: December 6, 2023	Authority: Resolution No. 2023-109
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Purpose:

To provide guidelines for Carmel Beach cleanups in order to remove all human-sourced waste and to protect natural resources and wildlife.

Policy/Procedure:

Carmel Beach lies within the Monterey Bay National Marine Sanctuary (MBNMS), a federally-protected area that contains rich species and ecosystem diversity that offers many cultural, economic, ecological, and recreational benefits. Carmel Beach is also within the Carmel Bay State Marine Conservation Area and the Carmel Bay Area of Special Biological Significance. These designations further protect these natural areas with regulations enforced by the National Oceanic and Atmospheric Administration, the California Department of Fish and Wildlife, the State Water Resources Control Board, and the City of Carmel.

Attached is a list of materials that should be removed from Carmel Beach, which further specifies items that should be recycled, disposed of in the trash, or treated as hazardous waste. In addition, this list specifies natural items that must be left alone. In the event any natural material poses a safety concern, such as large logs during a storm event, the Public Works, Police, and Fire Departments may remove the material. The attachment also provides the steps to follow if you come across a live or deceased wild animal. Finally, the table identifies examples of valuables for lost and found items to be provided to the Police Department.

Responsible Party:

Public Works Director

Department of Origin:

Public Works

Revision Dates:**Rescinded Date:**

Carmel Beach Cleanup Guidelines

Attachment 2

The Monterey Bay National Marine Sanctuary (MBNMS) is a federally-protected area that contains rich species and ecosystem diversity that offers many cultural, economic, ecological, and recreational benefits. Carmel Beach lies within the MBNMS as well as the Carmel Bay State Marine Conservation Area and the Carmel Bay Area of Special Biological Significance. These designations further protect these natural areas with regulations enforced by the National Oceanic and Atmospheric Administration, California Department of Fish and Wildlife, the State Water Resources Control Board, and the City of Carmel. Below is a list of materials that should be removed from Carmel Beach, as well as items that must be left alone.

Carmel Beach List of Items to Remove/Leave on the Beach					
REMOVE				LEAVE	
Remove all human-sourced waste, including but not limited to:				Leave all naturally occurring material on the beach, including but not limited to:	
TRASH	Balloons	RECYCLING	Aluminum and metal cans and containers	NATURAL MATERIALS	Algae
	Burned firewood and charcoal				Coral, reef
	Cigarette butts		Clean paper and cardboard		Cultural, archaeological, and historical items
	Construction debris, wood, and nails		Glass bottles and jars		Natural driftwood of ALL sizes****
	Dog waste/dog waste bags		Plastic bottles, caps, containers (Plastic # 1, 2, 5)		Feathers
	Old clothes, shoes, and other textiles				Ocean water
	Fishing items (lines, nets, hooks, etc.)				Rocks*
	Food (discard in organics bin if available)	HAZARDOUS WASTE***	Batteries		Sand*
	Food wrappers and packaging		Electronic waste		Seaweed/Kelp/Eelgrass*
	Plastic bags, straws, and foodware (Plastic # 3, 4, 6, 7)		Pressure treated wood		Shells
	Rope		Propane tanks		Wildlife including sand crabs, hermit crabs, and other invertebrates; mammals; birds, nests, and eggs; fish; amphibians; and reptiles**
	Styrofoam		Syringes		
	Toys (buckets, shovels, balls, etc.)		Aerosol cans		
			Drugs or other medical substances		

* Unless authorized permits are granted for scientific collecting.

** Do **not** remove any wildlife, including terrestrial and marine plants and macroalgae (kelp), and living or non-living animals such as fish, marine mammals, invertebrates, reptiles, sea turtles, or birds.

*** Hazardous waste can be dropped off at ReGen Monterey in Marina; Call 831-264-6386

**** In the event any natural material poses a safety concern, such as large logs during a storm event, the Public Works, Police, and Fire Departments may remove the material.

Carmel Beach Cleanup Guidelines

Attachment 2

Steps to Follow if You Come Across a Live or Deceased Bird, Seal, Sea Lion, Sea Otter, Dolphin, or Whale		
Determine if the animal is truly stranded while maintaining a distance of at least 150 feet away from the animal.		
Call the respective organization according to the table. Provide them with the following information to the best of your knowledge:		
a. Species or description of the animal b. Location (GPS, regional descriptions, landmarks, etc.) c. Date and time the animal was last seen d. Approximate size of the animal e. Condition of the animal (alive, dead, wounded, entangled, etc.) f. Human interactions? (evidence of ship strike, entanglement, shooting, etc.) g. Your name and contact information		
Ensure you and others around you (including dogs) stay at least 150 feet away from the animal, and that all bystanders remain as quiet as possible.		
Animal	Organization	Contact
Bird – Alive	SPCA Monterey County	831-373-2631
Bird – Deceased, banded/tagged	US Fish and Wildlife Service	www.reportband.gov
Bird – Deceased, not banded/tagged	City of Carmel-by-the-Sea Public Works	831-620-2070
Cetacean (Whale, Dolphin) – Alive	Marine Mammal Center, or Marine Life Studies	415-289-7325; 831-901-3833
Cetacean – Deceased	Moss Landing Marine Laboratories	831-771-4422
Pinniped (Seal, Sea Lion) – Alive	Marine Mammal Center	415-289-7325
Pinniped – Deceased	City of Carmel-by-the-Sea Public Works, or Moss Landing Marine Laboratories	831-620-2070; 831-771-4422
Sea Otter – Alive or Deceased	Monterey Bay Aquarium	831-648-4840

Lost and Found Items Should Be Delivered to the Carmel Police Department
Phone Number: 831-624-6403
Location: SE Junipero Street and Fourth Avenue
Examples of items to be turned in to the Lost and Found:
a. Cell phones b. Jewelry c. Wallets d. Keys e. Other valuable lost items

Highlighted Correspondence with Resource Agencies:

From: **Calla Allison** <calla@mpacollaborative.org>
Date: Tue, Sep 12, 2023 at 10:05 AM
Subject: Re: Written Landowner Approval Needed for Sign Installation
To: Mary Bilse <mbilse@ci.carmel.ca.us>, Katelyn Sprofera
<katelyn@californiamsf.org>
Cc: Nicole Palma <nicole@mpacollaborative.org>, Jessica Juico
<jjuico@ci.carmel.ca.us>

Hi Mary,

Happy to weigh in here. Within the Carmel Bay SMCA, nothing can be taken below the mean high tide except for finfish as Katelyn states below. That means all driftwood and beach wrack below the mean high tide cannot be taken. Anything above the mean high tide is the jurisdiction of the City. Monterey Bay National Marine Sanctuary does not regulate this type of take so best to reference the MPA regulations to support your beach wrack policy.

Let me know if you have any other questions.

Best,
Calla

Calla Allison

Director, MPA Collaborative Network

(858) 735-5945

calla@mpacollaborative.org

www.mpacollaborative.org

From: **Van Diggelen, Amanda@Wildlife** <Amanda.VanDiggelen@wildlife.ca.gov>
Date: Tue, Oct 3, 2023 at 4:33 PM
Subject: Questions on beach wrack
To: kellyfrancisbiz@gmail.com <kellyfrancisbiz@gmail.com>
Cc: Wildlife Ask Marine <AskMarine@wildlife.ca.gov>

Hi Kelly,

Great talking to you, and please continue to reach out with any further questions you may have. As I mentioned on the call I can only provide guidance regarding CDFW authority.

Depending upon your location, which I believe is the Carmel area, there are [marine protected areas](#) (MPAs) to be aware of, specifically the [Carmel Bay State Marine Conservation Area](#). Within MPAs no take of living, geological, or cultural marine resources is allowed, unless specifically exempted in the individual MPA regulations. In Carmel Bay SMCA: the **recreational** take of finfish is allowed, and **commercial** take of giant kelp and bull kelp by hand is allowed. All MPA regulations can be found in [California Code of Regulations Title 14 Section 632](#).

Marine living resources are defined in [California Fish and Game Code Chapter 2 Section 96](#) and includes all wild mammals, birds, reptiles, fish, and plants that normally occur in or are associated with salt water, and the marine habitats upon which these animals and plants depend for their continued viability.

To be clear the item does not need to be alive at the time you find it to be considered a marine living resource. It simply needs to occur in or be associated with salt water. So kelp or algae washed up on a beach would be a marine living resource. Driftwood is not a living marine resource, however it may have living marine resources growing on or attached to it.

Again if you have any more questions please reach back out, always happy to help,
Amanda

Amanda Van Diggelen

Senior Environmental Scientist, Supervisor

Marine Region Outreach Project

3030 Old Ranch Parkway, Suite 400

Seal Beach, CA 90740

Mobile: (562) 522-3901

amanda.vandiggelen@wildlife.ca.gov

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From: Karen Grimmer - NOAA Federal <karen.grimmer@noaa.gov>

Sent: Tuesday, October 10, 2023 1:53 PM

To: Kelly Francis <kellyfrancisbiz@gmail.com>

Cc: Wertz, Stephen@Wildlife <Stephen.Wertz@wildlife.ca.gov>

Subject: Re: Forwarded Email from Fish & Wildlife

Hi Kelly,

I'm following up on our conversation yesterday, and sending you the information we discussed. I'm copying Steve Wertz with CDFW as I understand you've been corresponding as well.

CFR15 section 922.11 has definitions and a **Sanctuary resource** means any living or **non-living resource of a national marine sanctuary**, or the parts or products thereof, that contributes to the conservation, recreational, ecological, historical, educational, cultural, archeological, scientific, or **aesthetic value** of the national marine sanctuary, including, but not limited to, waters of the sanctuary, the seabed or submerged lands of the sanctuary, other submerged features and the surrounding seabed, carbonate rock, corals and other bottom formations, coralline algae and other marine plants and algae, marine invertebrates, brine-seep biota, phytoplankton, zooplankton, fish, birds, sea turtles and other marine reptiles, marine mammals, and maritime heritage, cultural, archeological, and historical resources.

Driftwood could be considered a sanctuary resource based on this definition. If it lies below Mean High Water, including in an intertidal zone, then it would be considered a sanctuary resource and potential habitat. MBNMS jurisdiction is from MHW and seaward to our offshore boundaries. Similar to empty sea shells or any other sanctuary resources below mean high water, we advise not collecting it. Amanda's email also explains why, as the driftwood could be providing habitat to living marine resources. So, it appears that federal and state regulations are in alignment.

Can you pls forward a link or copy of the draft City ordinance to be discussed at Thursday's meeting, assuming it's available to the public as a meeting material?

Thank you. We can follow up on the dead marine mammal item when it's discussed at a later time.

Best,
Karen

Karen Grimmer
Resource Protection/Emergency Response Coordinator
NOAA's Monterey Bay National Marine Sanctuary

From: Karen Grimmer - NOAA Federal <karen.grimmer@noaa.gov>
Sent: Wednesday, October 11, 2023 2:46 PM
To: Mary Bilse <mbilse@ci.carmel.ca.us>
Cc: Wertz, Stephen@Wildlife <Stephen.Wertz@wildlife.ca.gov>; Jessica Juico <jjjuico@ci.carmel.ca.us>; Van Diggelen, Amanda@Wildlife <Amanda.VanDiggelen@wildlife.ca.gov>
Subject: Re: Beach: Driftwood Law & Policy, Fish & Game (Amanda)

Hi Mary,

Thanks for keeping us in the loop. I cannot attend thursday evening due to a prior commitment, yet I would say that you have successfully incorporated the regulatory information from both CDFW and MBNMS into your very clear and amended guidelines for Carmel Beach clean up. Thank you for taking the time for coordinate.

Best,
Karen

Karen Grimmer
Resource Protection/Emergency Response Coordinator
NOAA's Monterey Bay National Marine Sanctuary

From: **Wertz, Stephen@Wildlife** <Stephen.Wertz@wildlife.ca.gov>
Date: Thu, Oct 12, 2023 at 9:30 AM
Subject: RE: Beach: Driftwood Law & Policy, Fish & Game (Amanda)
To: Karen Grimmer - NOAA Federal <karen.grimmer@noaa.gov>, Mary Bilse <mbilse@ci.carmel.ca.us>
Cc: Jessica Juico <jjuico@ci.carmel.ca.us>, Van Diggelen, Amanda@Wildlife <Amanda.VanDiggelen@wildlife.ca.gov>

Hello Mary,

Yesterday afternoon I spoke with Kelly Francis about this issue. She seems to have a better understanding of the state and federal laws and regulations governing the Carmel Bay SMCA but is finding it hard to accept. At least that's my perception. I let her know I was available today if she had follow-up questions.

CDFW staff are not available to attend the meeting tonight. I agree with Karen that over the last week, our correspondence has provided a clear description of the laws and regulations governing the collection of driftwood below the mean high tide line. Thank you for coordinating with us.

Regards,

Steve

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Stephen Wertz

Senior Environmental Scientist (Supervisor)
Marine Protected Areas Management Project
California Department of Fish and Wildlife | Marine Region
3030 Old Ranch Parkway, Suite 400 | Seal Beach, CA 90740

From: **Oliver, Ellie@Coastal** <ellie.oliver@coastal.ca.gov>
Date: Mon, Oct 16, 2023 at 10:13 AM
Subject: Re: Notice of Possible Future Violation at Carmel Beach
To: Mary Bilse <mbilse@ci.carmel.ca.us>, Karen Grimmer - NOAA Federal <karen.grimmer@noaa.gov>
Cc: centralenforcementdistrict@wildlife.ca.gov <centralenforcementdistrict@wildlife.ca.gov>

[ov>](#), Robert Harary <bob@ci.carmel.ca.us>, Butler, Katie@Coastal <Katie.Butler@coastal.ca.gov>, Filip, Mariana@Coastal <mariana.filip@coastal.ca.gov>

Hi Mary,

It sounds like this activity would require Coastal Act authorization via a Coastal Development Permit. Thank you for letting us know and for informing the group that they are not authorized to carry out that work at this time. Please let me know if more enforcement becomes necessary in the future.

If the City would like to discuss Coastal Act permitting requirements regarding driftwood removal, please reach out to Katie Butler and Mariana Filip in our office (both of whom are cced here).

Thank you,
Ellie

Ellie Oliver (she/her)

Enforcement Officer, Central Coast District
California Coastal Commission
725 Front Street, Suite 300
Santa Cruz, CA 95060
(831) 427-4881

From: **Karen Grimmer - NOAA Federal** <karen.grimmer@noaa.gov>

Date: Fri, Oct 27, 2023 at 10:59 AM

Subject: Re: Notice of Possible Future Violation at Carmel Beach

To: Mary Bilse <mbilse@ci.carmel.ca.us>

Cc: Oliver, Ellie@Coastal

<ellie.oliver@coastal.ca.gov>, centralenforcementdistrict@wildlife.ca.gov <centralenforcementdistrict@wildlife.ca.gov>, Robert Harary <bob@ci.carmel.ca.us>, Butler, Katie@Coastal <Katie.Butler@coastal.ca.gov>, Mariana@Coastal Filip <mariana.filip@coastal.ca.gov>, Stephen@Wildlife Wertz <Stephen.Wertz@wildlife.ca.gov>

Hi Mary,

Thanks for the quick response and update!

It seems as if MBNMS, CDFW and Coastal Commission have provided pretty clear information on the variety of regulations and authorities around removal of driftwood or any “natural resource” below the mean high tide or mean high water to Carmel Cares. **MBNMS and other agencies do have the ability to issue a permit for a prohibited activity (with lots of exceptions)**, and we could provide information on this potential pathway. For MBNMS permit information, you can click on [this link](#).

If the City deems a situation unsafe for the public and wants to take action, is there a process for approval and doing so? Is that included in the new Policy?

Best,
Karen

Karen Grimmer
Resource Protection/Emergency Response Coordinator
NOAA's Monterey Bay National Marine Sanctuary



CITY OF CARMEL-BY-THE-SEA CITY COUNCIL Staff Report

**December 5, 2023
ORDERS OF BUSINESS**

TO:	Honorable Mayor and City Council Members
SUBMITTED BY:	Robert Harary, P.E, Director of Public Works
APPROVED BY:	Chip Rerig, City Administrator
SUBJECT:	Receive a Presentation regarding the 2023 Storm Drain Master Plan Update

RECOMMENDATION:

Receive a Presentation from the Public Works Director regarding the 2023 Storm Drain Master Plan Update.

BACKGROUND/SUMMARY:

In September 2019, the City Council adopted Resolution 2019-064 awarding a Professional Services Agreement (PSA) to Schaaf & Wheeler Consulting Civil Engineers to prepare the City's first Storm Drain Master Plan (SDMP) for a not-to-exceed fee of \$174,910. This Capital Improvement Project was successfully completed on budget in September 2020.

The Public Works Director presented the results of the SDMP to the Climate Committee in December 2020 and to the City Council in February 2021. The purpose of the SDMP was to provide an examination of flooding and drainage risks within the City limits and recommend actions necessary to accomplish appropriate level-of-service and reliability for the City's storm drain system.

Those presentations reviewed the unknowns and concerns prior to development of the SDMP, provided examples of physical deficiencies found in the system during the Study's condition assessment survey, discussed the hydrology and hydraulic models performed to evaluate the existing drainage system, and identified high priority repairs and capacity improvement recommendations. The SDMP estimated that \$7.5 million would be needed to complete the highest and moderate priority repairs to accommodate 10-year storm events.

As discussed at these meetings, a majority of the City's existing storm drainage system was designed to handle a once in 10-year storm event, rather than a 20-year storm event that is more common in other municipalities. Coupled with increased storm events anticipated due to Climate Change, Council and the Climate Committee requested that future drainage upgrades and repairs be sized for 20-year storms while also recognizing that repairs and upgrades will require significant funding over a longer period of time to minimize the potential of flooding.

In June 2022, Council adopted Resolution 2022-048 approving 25 new Fiscal Year (FY) 2022/23 Capital Improvement Projects, including the Citywide Drainage System Repair Phase II Project. This project carried over \$100,000 from the FY 2021/22 Phase I Project and allocated an additional \$500,000 to continue the development of drainage system improvements to address the highest priority drainage projects. This combined \$600,000 budget was programmed to: a) update the SDMP based on 20-year storm events, b) design several of the high priority repairs, and, c) as requested by Council, reallocate some of the budget for physical construction projects.

In October 2022, Council adopted Resolution 2022-088 awarding a new PSA to Schaaf & Wheeler to update the SDMP for a fee, including a supplemental services budget, of \$50,000. In addition to modeling the City-wide drainage system for 20-year storm events, the scope of work for the SDMP Update included two additional special studies to potentially save millions of construction dollars in the long term.

The SDMP Update was completed in June 2023 and is available for review at https://ci.carmel.ca.us/sites/main/files/file-attachments/sdmp_report_update_051223_v3.pdf?1694451144

At the December 5, 2023 meeting, the Public Works Director will recap the key findings of the original SDMP and present the results of the SDMP Update. The presentation will include:

- As shown in **Attachment 1** – Chapter 5, Evaluation of Storm Drain Systems
 - Capacity limitations for 20 year storms
 - Nuisance areas and observed problem areas
 - Existing condition deficiencies
 - Prioritized capital projects
 - Brief project descriptions
- As shown in **Attachment 2** - Chapter 6, Capital Improvement Plan
 - Prioritized capital improvement projects with preliminary cost estimates
- Findings of the two special studies
 - Installing new, parallel pipes may be viable in under-capacity locations which may save cost versus removing existing pipes and replacing with larger pipes.
 - Discharging all flows from the northeast portion of the City, through the Mission Trail Nature Preserve creek, and through box culverts under Rio Road and ball fields, cannot be achieved for either 10 or 20 year storms. For 20 year events, a future retention pond near the south boundary of the MTNP may be the best approach to avoid flooding over Rio Road and up into the MTNP.
 - Installing an underground water storage tank below Devendorf Park, in conjunction with a major park renovation project, would reduce downstream drainage improvement costs.

FISCAL IMPACT:

There is no fiscal impact to receive this report.

The SDMP Update recommends investing \$14.7 million for 23 priority projects to make repairs to the structural integrity of the drainage system and improve system capacity to appropriately convey 20-year storm events. These projects have been prioritized in the SDMP Update. Three of the highest priority projects, plus a high priority nuisance project, are currently in design as part of the FY 2023/24 Capital Improvement Program. The remaining 20 recommended projects will be included in future year Capital Improvement Programs as funding permits.

PRIOR CITY COUNCIL ACTION:

In September 2019, Council adopted Resolution 2019-064 awarding a PSA to Schaaf & Wheeler for the SDMP project. In February 2021, the Public Works Director presented an overview of the completed SDMP to the City Council. This presentation was also given to the Climate Committee at their December 2020 meeting.

In June 2022, Council adopted Resolution 2022-048 approving 25 new FY 2022/23 Capital Improvement Projects, including the Citywide Drainage System Repair Design, Phase II. In October 2022, Council adopted Resolution 2022-088, awarding a new PSA to Schaaf & Wheeler to update the SDMP to include modeling for 20-year storm events, as recommended by the Climate Committee.

ATTACHMENTS:

Attachment #1 - Evaluation of Storm Drain System

Attachment #2 - Capital Improvement Plan



Carmel-by-the-Sea Storm Drain Master Plan Updated Final Report 2023

Job # CBTS.02



PREPARED FOR:
City of Carmel-by-the-Sea
P.O. Box CC
Carmel-by-the-Sea, CA 93921



PREPARED BY:
Schaaf & Wheeler
870 Market Street, Suite 1278
San Francisco, CA 94102



5 Evaluation of Storm Drain Systems

5.1 Overview

A performance and condition analysis of the City's storm drain system is the primary focus of the SDMP. This chapter:

- Describes the City's storm drainage facilities and known drainage system issues;
- Shows 20-year flooding depths predicted by the one-dimensional model;
- Details observed condition-related issues;
- Identifies and prioritizes improvement projects that alleviate or minimize flooding; and
- Identifies and prioritizes projects to fix condition-related issues and improve system reliability.

5.2 Prioritizing Deficiencies and Needed Capital Improvements

Storm drain systems in the City (both City-owned systems and those owned by others) convey the majority of storm water runoff toward the ocean through storm drain systems consisting of gutters, catch basins, pipes and channels.

Recommended improvements have been prioritized based on the results of the above process, combined with consideration of the anticipated severity of flooding at each location and the benefit/cost relationship of proposed improvements. The following color code is used to highlight project prioritization:

Priority	Description
High Priority	Projects under this category eliminate areas of 20-year flooding with significant depths, or address areas where City staff has indicated frequent and/or significant historical flooding issues. These projects improve conditions at locations with the deepest and longest-duration flooding situations.
Moderate Priority	These improvements are intended to contain most of the 20-year flooding within the street right-of-way. The duration and depth of flooding corrected by a moderate priority improvement is less than that of a high priority improvement.
Low Priority	Low priority improvements are aimed at containing the remaining 20-year flooding in the street right-of-way. The areas of flooding addressed by low priority projects are much smaller than those of moderate and high priority projects.

This chapter summarizes improvements to City-owned systems needed to achieve a level-of-service characterized by flooding no greater than street level for a 20-year event. Improvements have been grouped together to reflect projects that could feasibly be undertaken simultaneously. Project naming conventions use major street names where possible. Project names and unique numerical IDs assigned to each project identify improvements in maps and tables included in this SDMP.

5.3 Evaluation of Storm Drain Capacity

The conveyance capacity of Carmel's storm drain system was analyzed with current land use conditions during the 20-year design storm.

- Areas of notable flooding based on historic occurrences and results of the MU models are discussed.
- Improvement projects are recommended based on required additional flow capacity.
- Projects have been developed by upsizing existing pipes in the MU model until flooding is contained within the street right-of-way for the 20-year event.

It is impossible to entirely remedy every drainage issue throughout the City, due to local topography (for example, at minor "bathtub" areas that can occur in parking lots where private systems are not modeled). However, the majority of model-predicted flooding due to storm drain pipe system surcharge can be mitigated with the capital improvements proposed.

Figure 5-1 below shows the existing conditions for the City's storm drain pipes for the 20-year storm event as modeled in MU. Appendix A contains system profiles and more detailed model results.

5.3.1 Design Criteria

Based on initial discussion with the City, storm drain system improvements are designed in this SDMP such that the 20-year storm runoff would not be higher than the rim elevation at any location. Similar standards are common practice to prevent flooding during more frequent storm events and utilize street conveyance capacity and storage in large, less frequent events. This standard will form the basis of the SDMP effort and development of a CIP. It is important to note the lack of curb-and-gutter on many City streets reduces the system's ability to convey runoff.

While specifying a design standard such as conveyance of 20-year runoff is the most important element in governing the sizing of a system, a minimum pipe diameter and slope may also be established to reduce maintenance requirements through the life of the system. Where feasible, reinforced concrete pipe (RCP) with a minimum pipe size of 18 inches should be used. Setting such requirements helps to ensure that pipes remain clean and clear of blockage to the greatest extent possible.

A citywide model was developed to analyze the 20-year event for existing land use conditions and recorded soil conditions. The model revealed that a portion of the City's storm drain system does not meet the 20-year criteria while the 2020 SDMP showed the system did not have 10-year capacity throughout. While containing the 20-year below the street surface forms the foundation of this analysis in general, at certain project locations this standard is not necessarily economically feasible to achieve.

This does not necessarily mean that a standard should not be enforced on future construction. However, a CIP may deviate from the standard for several reasons (for example, utility conflicts that make meeting a standard prohibitively expensive).

5.3.2 System Evaluation

This SDMP focuses on the major conveyance components within the City. Therefore, not all of the City drainage infrastructure is in the models. The modeled drainage area is approximately

1.2 square miles. The modeled collection system within City limits consists of 271 pipe segments, 264 nodes, and 22 outlets. The project area has a total of 30,000 linear feet (5.7 miles) of modeled storm drain pipe. The CIPs identified from the system evaluation and summary of associated cost estimates are presented in Chapter 6.

5.3.3 Modeling Results

Based on modeling results (Figure 5-1), the following areas with potential inadequacies in the storm drain network were identified.

1. Area around Ocean Avenue and Junipero Avenue
2. Area near 5th Avenue and Torres Street
3. Area near 2nd Avenue and Torres Street
4. Rio Road and Mission Trails Park
5. Ocean Avenue and Mission Street
6. 2nd Avenue and Monte Verde

For each of the areas identified to have a potential deficiency in the storm drain network, a possible CIP was developed and verified using hydraulic modeling (Figure 5-2).

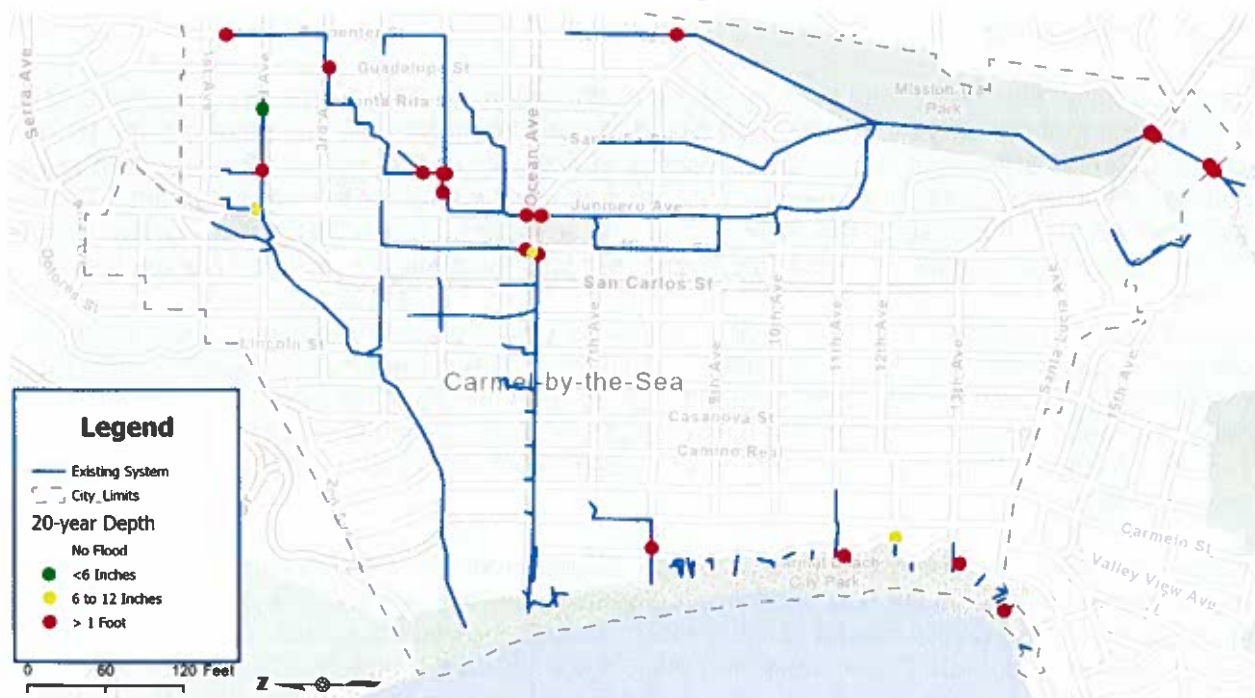


Figure 5-1: 20-year Existing Conditions Model Results



Figure 5-2: Capacity Projects

5.4 Known Nuisance Drainage Problem Areas

City staff and citizens have raised drainage concerns throughout the City (Figure 5-3). Appendix E contains detailed documentation. Locations of concern identified by City staff include:

1. Runoff overtops berm near 4th Avenue and Lincoln Street
2. Runoff overtops berm near 7th Avenue and Santa Rita Street
3. Runoff overtops berm and erodes beach in parking lot at the bottom of Ocean Avenue
4. Runoff bypasses inlets at 8th Avenue and Mission Street and ponds along Mission south of 8th Avenue
5. Runoff enters driveway on west side of Monte Verde Street near 3rd Avenue
6. Runoff bypasses inlets at 11th Avenue and San Antonio Avenue and overtops berm
7. Ponding and mud in driveway near 13th Avenue and Camino Real
8. Heavy street flow along Santa Fe Street south of Mountain View Avenue
9. Heavy street flow, ponding, and sediment along Lasuen Drive
10. Channel erosion in Forest Hill Park
11. Carpenter Street, 2nd to 3rd Avenues

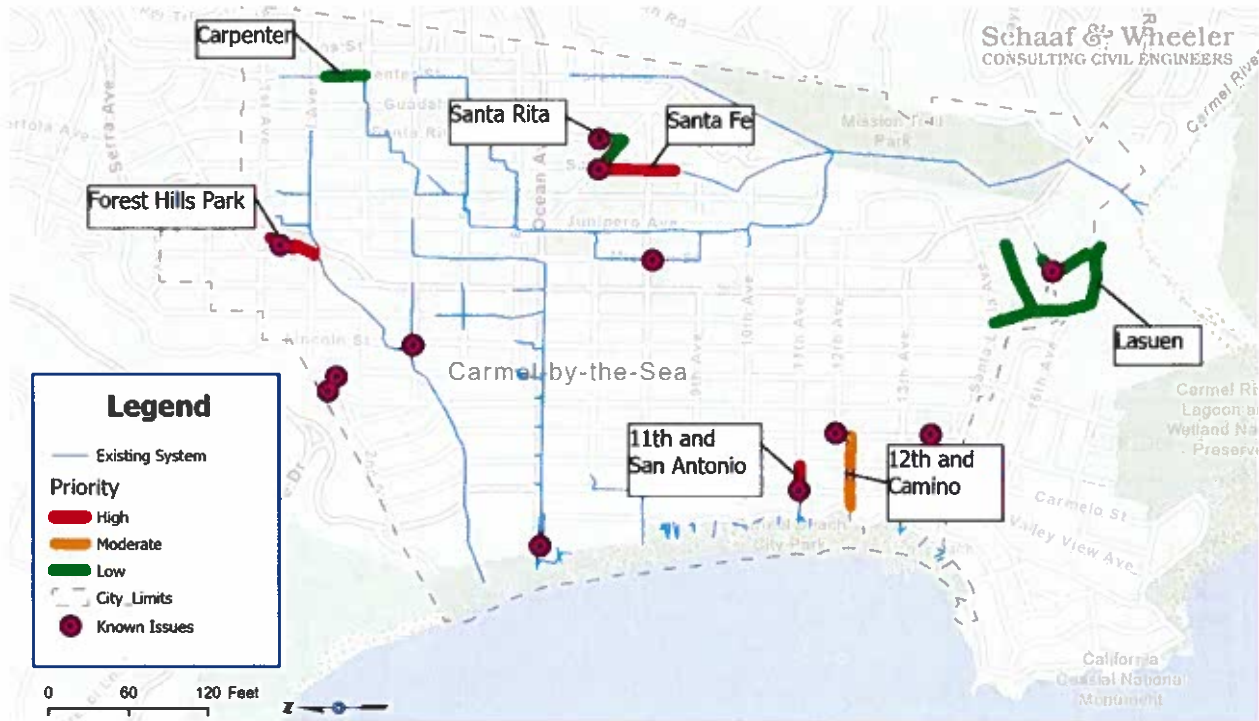


Figure 5-3: Known Nuisance Drainage Problem Areas and CIPs

5.5 Condition Assessment

5.5.1 Observations

Based on the field visits and CCTV most pipes were found to be in satisfactory condition except for a few lined pipes and some pipes with sedimentation detailed in Figure 5-4 and Table 5-1.

In the pipes and manholes that were not immediately upstream of an outlet, very little buildup of sediments or noticeable physical damage was observed. However, several inlets were blocked with sediment, particularly along Ocean Avenue. Some low-lying outlets were observed to contain a significant amount of sediment which reduces conveyance capacity.

Photographs of selected locations are presented in Appendix F. CCTV data shows several pipes with failing liners, standing water, debris, and sedimentation, and in a few locations damaged concrete.

5.5.2 Condition Improvements

Each pipe segment with noticeable condition related issues was assigned a repair priority. In most cases, cleaning and re-inspection is recommended. Select pipes will require more extensive improvements including spot repairs, lining, shoring and replacement. Capital projects related to condition are detailed in Chapter 6.



Figure 5-4: Observed Condition Issues

Table 5-1: Condition Issues

Location	Condition Problem	Priority
Santa Rita 1	Structural	High
Santa Rita 2	Damaged Liner	Moderate
Camino del Monte	Damaged Liner	Low
Ocean Avenue	Structural	Moderate
Dolores	Cracks	Low
Rio Rd	Sediment	Low

5.6 Prioritized Improvements

Six high priority projects (Figure 5-5) are aimed at reducing significant flooding in problematic areas and at carrying out short term condition improvements.

Eight moderate priority projects aim to reduce most flooding at the 20-year level of service and perform condition improvements at selected locations. Extending the City's system to alleviate drainage issues in certain neighborhoods is also included. The City may need to progressively re-prioritize moderate priority projects based on funding, other utility improvements, land use changes, and condition assessments.

Eight low priority projects are recommended to alleviate minor flooding and reliability issues. These projects are not likely to be constructed before the next SDMP update.

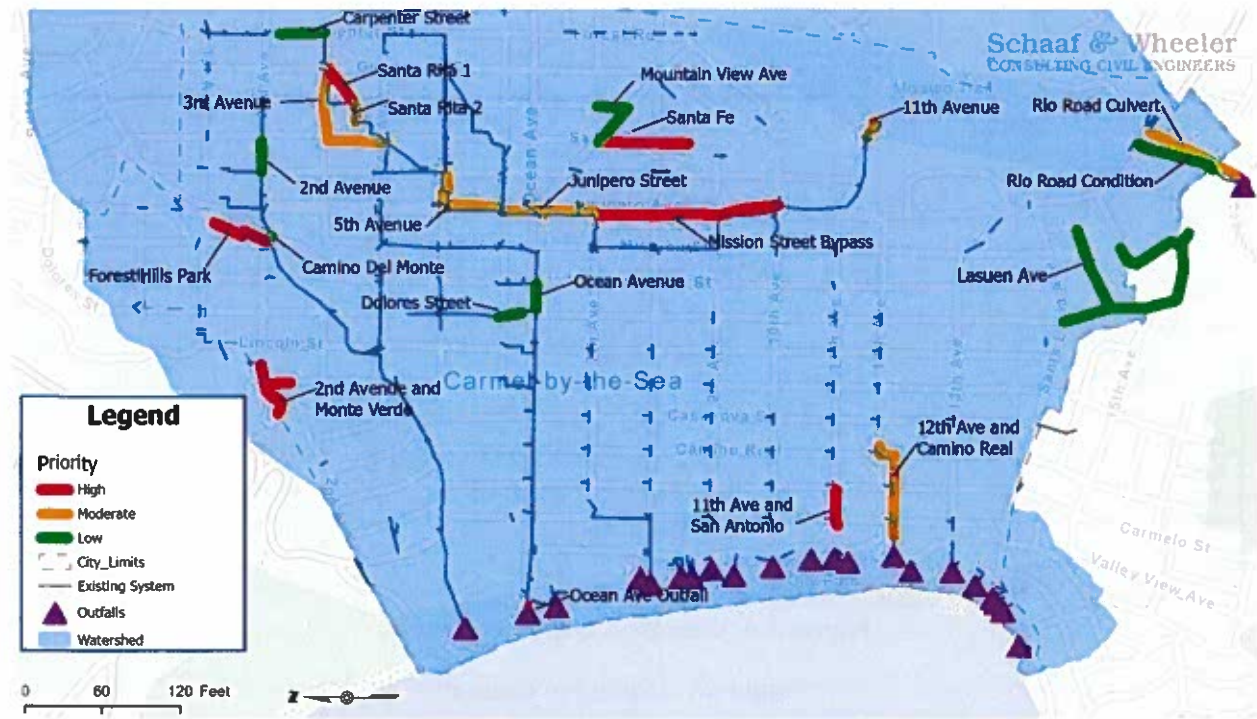


Figure 5-5: Prioritized CIP Projects

5.6.1 Annual Inspection of Pipes

CMPs typically are more susceptible to corrosion and damage compared to concrete pipes. Observations made during field inspections identified several CMPs in the City's storm drain system with visible damage and deformities. Several other pipes had varying levels of sedimentation. This project recommends performing continued CCTV video inspections. The CCTV inspections could potentially result in additional capital projects to repair the system.

5.6.2 Six High Priority Projects

The highest priority projects (Figure 5-5) are a combination of nuisance, condition, and capacity CIPs.

Mission Street Bypass – 7th to 10th Avenues

Modeling results indicate inadequacies along Junipero Avenue north of Ocean Avenue. There has also been observed flooding near 8th Avenue and Mission Street. This improvement adds a 36-inch RCHP bypass pipe and inlets along Junipero between 7th and 9th Avenues to provide more capacity and capture local runoff. Between 9th and 10th Avenue, the system will also need to be upsized with a parallel 24-inch pipe.

Santa Rita 1

The existing concrete box in an easement between Guadalupe Street and Santa Rita Street (between 3rd and 4th Avenue) has been bifurcated from the City system but may still convey local runoff. The CCTV inspection shows damage to the concrete in various locations, and there is concern the box could collapse. The alignment, based on GIS, indicates the box may be

under existing buildings and collapse could cause extensive damage. The proposed project will further identify the box alignment and reinforce the structure to minimize failure risks.

Forest Hill Park – Emergency Repair

The existing drainage channel through Forest Hill Park is becoming eroded in sections due to runoff scouring, threatening adjacent trees, and exposing a utility line. The City will need to develop a project to armor the channel, particularly surrounding the exposed utility line. Due to the exposed utility line, undermined trees, and biological significance, this is a high priority project and should be designed, permitted, and constructed immediately.

A separate moderate priority project to realign the channel through the park and into a detention basin will reduce downstream peak flows and better stabilize the channel.

2nd Avenue and Monte Verde Street

There are several drainage issues at the western end of 2nd Avenue near Monte Verde Street. This project will add a new 18-inch drainage system along 2nd Avenue with inlets at key locations. The system will connect to an existing outfall adjacent to 2507 2nd Avenue. A survey and condition assessment of the exiting outfall may be necessary. This project works in conjunction with the already proposed 1st and Lincoln drainage project and should be constructed simultaneously if practicable.

Santa Fe Avenue – Mountain View to Mission Trails Park

This project will add a new system along Santa Fe Street from Mountain View to Mission Trails Park. The new 18-inch system and inlets will reduce drainage issues at several locations.

11th Avenue and San Antonio Street

The existing system at 11th Avenue and San Antonio Street has limited inlet capacity. This project will extend the existing system along 11th Avenue to Carmelo Street with additional inlets. The project will reduce the overland flow at San Antonio and reduce drainage issues.

5.6.3 Nine Moderate Priority Projects

The moderate priority projects (Figure 5-5) are a combination of nuisance, condition, and capacity CIPs.

Rio Road New Culvert

The drainage system from Mission Trails Park out to the Carmel River is undersized for the 20-year event. Though this portion of the City is not densely urbanized, and the risk of damage is low, Rio Road is a key thoroughfare for the south end of the City. The proposed project would create a new 6-foot by 4-foot box culvert out to the Carmel River, and the culvert under Rio Road would be upsized to a 10-foot by 4-foot culvert. This project will likely require permitting for outfall changes.

Junipero – 5th to 7th Avenues

Modeling results indicate possible inadequacies around Junipero and Ocean. This improvement adds a parallel 30-inch system on the east side of Junipero Street between 5th Avenue and 7th Avenue. The proposed pipes provide more capacity for upstream flows and lowers the peak hydraulic grade lines (HGL). This project could be completed in conjunction with the Mission Street Bypass and 5th Avenue projects.

5th Avenue – Torres to Junipero Streets

Modeling results indicate possible inadequacies in the area near the intersection of 5th Avenue and Torres Street. This improvement adds a parallel 24-inch pipe to provide more capacity.

12th Avenue and Camino Real

The existing system at 12th Avenue and Camino Real has limited inlet capacity. This project will extend the existing system along Camino Real and down 12th Avenue with additional inlets. The project will reduce the overland flows and drainage issues.

11th Avenue at Mission Trails Park

Modeling results indicate possible inadequacies near the system outfall on 11th Avenue. This CIP will replace the existing open channel with a new 4-foot by 4-foot box culvert. The existing CDS unit and diversion weir will also need replacing.

Santa Rita 2

This section of the drainage network is HDPE CPP pipe and has several significant joint offsets and tares in the liner. This project will line the roughly 100-foot section.

Ocean Avenue Outfall

The Ocean Avenue outfall pipe is severely deformed and should be replaced. This project will replace the roughly 100-foot section with a new 24-inch fused HDPE line and upgrade the existing outfall. The existing CDS unit should also be replaced with a larger device. Newer trash removal technologies, such as nutrient separating baffle boxes (NSBB), may be more cost effective and easier to maintain than CDS units and should be vetted during the selection process. This project could be constructed in concert with water quality projects proposed by the City and will likely require permitting for outfall changes.

Forest Hill Park – Channel Realignment

The drainage channel through Forest Hills Park is unstable and very erosive. This project would realign the channel through the park. The existing low-lying field at the southern end of the park that floods regularly would be graded to better detain flows, capture sediment, and improve water quality. The new channel should be an enhancement to the park and work with the overall park plan. Public education, habitat enhancement, and recreation activities can be incorporated into the project design. Multipurpose projects have higher potential for grant funding and public approval.

3rd Avenue – Guadalupe to Santa Fe

This project would add an 18-inch bypass system along 3rd Avenue and Santa Fe Street. This would allow the existing system through private parcels to be abandoned in place. Additional inlets should be added at roadway sags and intersections.

5.6.4 Eight Low Priority Projects

The low priority projects (Figure 5-5) are a combination of condition and capacity CIPs that can be addressed as funding allows.

Carpenter Avenue – 2nd to 3rd Avenues

This project will add a new pipe along Carpenter Avenue between 2nd and 3rd Avenues where flows are currently conveyed overland.

Rio Road Condition

Heavy sediment under Rio Road has reduced the conveyance capacity of the outfall from Mission Trails Park to the Carmel River. This project will remove the sediment from both culverts and repair the bottom of the box culvert under Rio Road.

2nd Avenue at Torres Street

Modeling results indicate possible inadequacies in the area near the intersection of 2nd Avenue and Torres Street. This improvement replaces the street (gutter) flow on 2nd Avenue, between Torres and Santa Fe, with a new pipe. Additional inlets would also be added.

Lasuen Avenue System

Drainage along Lasuen Avenue near the Carmel Mission often creates nuisance ponding. There is no formal underground drainage network in this neighborhood and runoff is routed via roadside swales to the Carmel River. This project would add an 18-inch RCP line and inlets along Lasuen Avenue. Coordination with Monterey County may be necessary.

Camino del Monte Repair

The liner in the existing 30-inch HDPE CPP pipe at 2nd and Camino del Monte is separating. There are joint offsets along the 21-foot reach that should be repaired. Relining the pipe is advised.

Dolores Street and 6th Avenue

The existing 24-inch RCP pipe at Dolores Street and 6th Avenue has several cracks that require spot repairs.

Mountain View Avenue – Santa Rita to Santa Fe Streets

This project would add a new 18-inch pipe along Mountain View Avenue from Santa Rita Street to Santa Fe Street. Inlets would be added at both intersections. This project would connect to the proposed Santa Fe Street project and should be constructed at the same time if funding allows.

Ocean Avenue – Dolores to San Carlos Streets

The existing 18-inch RCP pipe on Ocean Avenue between Dolores Street and San Carlos Street needs to be upsized to a 21-inch pipe.

5.6.5 Ongoing Activities

Continued CCTV, Inspections, and Cleaning

The City should continue inspecting and cleaning the drainage system on a periodic basis. The locations of sediment and debris should be noted and tracked using GIS to identify long term trends. CCTV of the system should continue a regular basis with the entire system being inspected on a 15-year cycle.

5.6.6 Devendorf Park Detention Alternative

Adding underground detention storage at Devendorf Park has the potential to reduce downstream flows and reduce CIP project sizing and costs. The park's existing lawn area is roughly 10,000 square-feet. Assuming this area is available for underground storage units, there is the potential to store roughly 1-acre-foot of water underground. High flows at the intersection of Junipero Street and 6th Avenue would divert to the storage cells and then metered back to the system at the intersection of Junipero Street and Ocean Ave. Modeling shows an 8 cfs

reduction in the 20-year flows along Junipero Street. This could allow for the elimination of the proposed 24-inch pipes along Junipero Street between 9th and 10th Avenues. This would also allow for the reduction of proposed pipe size along Junipero Street between Ocean and 7th Avenues to 24-inch (from 30-inch).

We estimate CIP savings of roughly \$450,000. Underground storage units range from \$300,000 to \$400,000 per acre-foot not including site work. The estimated cost of the park storage, without significant park enhancements, is roughly \$600,000. The cost-to-benefit ratio for this alternative does not make it attractive. However, if there are any future park projects, underground storage should be considered.

5.7 Other System Components

5.7.1 Surface Drainage Systems

A large portion of the south side of Carmel lacks underground drainage networks. Rainfall runoff is mostly conveyed by asphalt swales and berms. At intersections, the flows are captured in cross-culverts to reduce ponding in the roadway. This system configuration is common in communities with lower density development wanting to maintain a semi-rural aesthetic.

Figure 5-6 maps the streets served by surface systems. Over time, these systems can experience a reduction in capacity and steepening of the swale from roadway surface overlays. The cross-culverts can pose a safety hazard to cyclists and pedestrians, and the steep swales can cause damage to parked vehicles. The flows at the downstream end of these systems can be quite large and difficult to capture into a drainage network.

Possible solutions for these systems are:

- Develop underground drain networks
- Reconfigure swale and berm shapes
- Incorporate Green Infrastructure practices
- Place grates over steep swales (Figure 5-7)
- Develop and implement new cross-culvert systems

6 Capital Improvement Plans

6.1 Summary of Findings

While there are many areas within the City that provide adequate stormwater conveyance for a 20-year event, there are also areas that would benefit from improvements to enhance stormwater conveyance capacity. There are also regions of the City that lack a formal drainage system and require improvements. There are approximately 30,000 feet of pipe in the City's storm drain system that should be periodically inspected via CCTV for condition assessment.

Improvements are recommended for the City's storm drain system's performance to ensure level-of-service during a 20-year storm. The improvements recommended in this SDMP should be considered a comprehensive CIP within the study area.

6.2 Overview

Chapter 5 discusses the City's storm drain collection system and recommends prioritized capital improvements to address known and modeled deficiencies. This chapter provides a CIP that recognizes these priorities. The CIP provides an overall guideline for the City to use as a tool in preparing annual budgets. Exigent circumstances and future in-field experiences may necessitate deviations from the Storm Drain CIP. An SDMP is intended to be a tool for planning. Capital improvement priorities are not intended to be hard and fast.

The CIP assumes that the discussed capital improvements are not partially funded or planned for implementation. The CIP also does not include the cost of new facilities related to new development (e.g., pipeline extensions to serve areas that are currently undeveloped). These new facilities may be constructed as part of the new developments and are not included in the CIP.

6.3 Capital Improvements Priorities

Assuming that the continued CCTV video inspection of the system will be carried out over five years, the annual cost for video inspection is estimated to be \$16,000.

The remaining proposed CIP for storm drainage in Carmel-by-the-Sea is broken into three priority levels for the purpose of funding and implementation. The total cost summary for CIP projects is shown for each priority level in Table 6-1.

Table 6-1: Summary of CIP Costs Based on Priority Level (Total Project Cost)

Priority Level	Cost
High Priority Capital Improvements	\$3,690,000
Moderate Priority Capital Improvements	\$7,680,000
Low Priority Capital Improvements	\$3,330,000
Total Capital Improvement Program	\$14,700,000

The above costs include a 20% contingency for design, administration, and 20% for construction contingencies.

6.4 Cost Basis for Improvements

Costs have been estimated using information from other projects, other master plans, and engineering judgment. The cost per linear foot of improvement used for the pipe cost estimates are given in Table 6-2, and most projects assume replacement pipe is installed using the open trench method (note that these costs do not include the cost of design, administration, permitting, land acquisition, and other unforeseen special circumstances).

Costs are likely to vary greatly depending on site specific circumstances and the economic climate at the time of bidding; in some cases, it may be more practical to use trenchless methods or a parallel pipe for construction. These cost estimates are also based on larger scaled projects. Therefore, the replacement of shorter lengths of pipe as individual projects may incur significantly higher costs due to the nature of construction work.

Cost estimate of replacing connections (manhole or catch basin) depend on connecting pipe diameters and range from \$22,100 (18-inch pipe) to \$23,500 (36-inch pipe). CCTV video inspection costs were estimated to be \$2500 per day. Since most of these improvement projects are expected to qualify for negative declarations from permitting agencies, these costs do not include permitting or any environmental documentation. Unit costs for pipes and connections assuming four feet of pipe cover are shown in Table 6-2.

Table 6-2: Storm Drain Replacement Unit Costs for Pipes and Connections

Diameter (inches)	2023 Rate	
	Per linear foot of Pipe ¹	Per Connection ¹
18	\$490	\$22,100
24	\$610	\$22,600
30	\$770	\$23,000
36	\$910	\$23,500
4' x 4' Concrete Box	\$2,000	
10' x 5' Box Culvert	\$10,000	

¹Dollar amounts rounded to the nearest ten. Includes construction contingencies (40%).

Note: These costs do not include increases for design, administration, and unforeseen special circumstances. Unit costs are based on an average of 4-feet of ground cover over the pipe. Greater cover will raise estimated costs.

6.5 Capital Improvement Program

6.5.1 Annual Inspection of Pipes

The City should CCTV the nearly 30,000 feet of storm drain. Portions of the system could be inspected every few years with the entire system being inspected over a 20-year span.

6.5.2 Annual System Maintenance

The City currently consulted cleaning for the drainage system and permit compliance. This work includes removing debris from the four (4) CDS units and numerous inlets. The City should continue these efforts along with the additional locations identified under this study.

6.5.3 Storm Drain Improvement CIP

The CIP costs priority levels are summarized in Table 6-1. Detailed project sheets with required replacement pipe for high and moderate priority CIPs are included in Appendix D.

Table 6-3: CIP Projects for the City of Carmel-by-the-Sea

Priority	Asset Name	Estimated Cost ¹
High Priority	Mission Street Bypass – 7th to 10th Avenue	\$1,630,000
	Santa Rita 1	\$280,000
	Forest Hill Park – Emergency Repair	\$130,000
	2nd and Monte Verde	\$980,000
	Santa Fe Street – Mountain View to Mission Trails Park	\$410,000
	11th and San Antonio	\$260,000
High Priority Total		\$3,690,000
Medium Priority	Rio Road Culvert	\$2,970,000
	Junipero Street – 5th to 7th Avenues	\$910,000
	5th Avenue – Torres to Junipero Streets	\$560,000
	12th Avenue and Camino Real	\$480,000
	11th Avenue at Mission Trails Park	\$630,000
	Santa Rita 2	\$200,000
	Ocean Ave Outfall	\$320,000
	Forest Hills Park - Realignment	\$700,000
	3rd Avenue – Guadalupe to Santa Fe Streets	\$910,000
Medium Priority Total		\$7,680,000
Low Priority	Carpenter Avenue – 2nd to 3rd Avenues	\$260,000
	Rio Road Cleaning	\$210,000
	2nd Avenue at Torres Street	\$340,000
	Lasuen System	\$1,730,000
	Camino del Monte Repair	\$50,000
	Dolores and 6th Avenue	\$50,000
	Ocean and Mission	\$280,000
	Mountain View - Santa Fe to Santa Rita Streets	\$410,000
Low Priority Total		\$3,330,000
Grand Total		\$14,700,000

¹Includes Contingencies (40%). 2023 Construction cost only. Construction cost includes mobilization, traffic control, trench, and surface restoration. Does not include costs associated with permitting, land acquisition, or other unforeseen special circumstances.



CITY OF CARMEL-BY-THE-SEA CITY COUNCIL Staff Report

December 5, 2023
ORDERS OF BUSINESS

TO: Honorable Mayor and City Council Members

SUBMITTED BY: Brandon Swanson, Community Planning & Building Director

APPROVED BY: Chip Rerig, City Administrator

SUBJECT: Consider a recommendation from the City's Traffic Safety Committee to convert a total of three (3) public street parking spaces to "no parking" zones in front of two (2) existing bus stops. The subject bus stops are on Junipero Avenue, northeast of 4th Avenue in front of the gas station (2 spaces) and on San Carlos Street, northeast of 10th Avenue in front of the Sunset Center (1 space).

RECOMMENDATION:

Approve a recommendation from the City's Traffic Safety Committee to convert a total of three (3) public street parking spaces to "no parking" zones in front of two (2) existing Monterey Salinas Transit (MST) bus stops. The subject bus stops are on Junipero Avenue, northeast of 4th Avenue in front of the gas station (2 spaces) and on San Carlos Street, northeast of 10th Avenue in front of the Sunset Center (1 space)

BACKGROUND/SUMMARY:

Earlier this year, the City of Carmel-by-the-Sea's Public Works Department was approached by Monterey Salinas Transit (MST) with a request to convert existing parking spaces in front of two existing bus stops to "no parking zones". MST's request was to convert two (2) spaces on Junipero Avenue, northeast of 4th Avenue for the bus stop in front of the gas station, and two (2) spaces on San Carlos Street, northeast of 10th Avenue at the bus stop in front of the Sunset Center (**Attachment 1**). The reason for the request is to allow buses to fully leave the roadway when stopping to pick up passengers. Currently, buses have to double park alongside parked cars, which presents potential dangers for both motorists and pedestrians.

The City's Traffic Safety Committee reviewed this request at two separate meetings, one of which included a site visit for MST to provide a demonstration with a 30-foot bus. The main reason for the bus demonstration was that both locations are immediately adjacent to driveways into the adjoining uses, which could be impacted by the bus stopping to pick up riders. Following the site visit and discussions at the public meeting, the Traffic Safety Committee recommended approval of converting the two (2) parking spaces on Junipero, but only one (1) parking space in front of the Sunset Center. The primary reason for not recommending the conversion of two (2) spaces in front of the Sunset Center, even though it may temporarily block part of the driveway, is a combination of three unique factors:

1. The short duration of stopping time for the bus;

2. The limited amount of traffic into the Sunset Center during the daytime;
3. The scarcity of street parking in this part of town.

City staff has confirmed with MST staff that there are no laws prohibiting a bus from temporarily blocking a driveway to pick up riders. However, MST staff did note that keeping buses fully outside of driveway entrances was a best practice, and was their reason for requesting two spaces in front of the Sunset Center.

If Council approves any spaces to be converted to “no parking”, they will be painted in-house by Public Works staff. Council has the option to approve all, none, or a mix of the spaced requested by MST. No resolution is required for this decision, only a simple majority vote.

FISCAL IMPACT:

Staff time associated with processing this request and any subsequent painting work, is covered in the City's adopted FY 2023-24 budget.

PRIOR CITY COUNCIL ACTION:

None

ATTACHMENTS:

Attachment 1 - Bus Stop Locations



CITY OF CARMEL-BY-THE-SEA

City Council Report – MST Bus Stops

December 5, 2023

Attachment 1 – Bus Stop Locations



Fig 1.a – gas station



Fig 1.b – gas station



Fig 1.c – gas station



Fig 2.a – Sunset Center



Fig 2.b – Sunset Center



Fig 2.c – Sunset Center



CITY OF CARMEL-BY-THE-SEA CITY COUNCIL Staff Report

December 5, 2023
PUBLIC HEARINGS

TO:	Honorable Mayor and City Council Members
SUBMITTED BY:	Marnie R. Waffle, AICP, Principal Planner
APPROVED BY:	Chip Rerig, City Administrator
SUBJECT:	MA 23-117 (Griffin): Consideration of a Mills Act Contract application MA 23-117 (Griffin) for the historic "Agnes Shorting House" located on 3rd Avenue 2 northwest of Junipero Avenue in the Single-Family Residential (R-1) District. APN 010-108-007

RECOMMENDATION:

Accept the recommendation of the Historic Resources Board and approve the Mills Act Historical Property Contract MA 23-117 (Griffin) for the historic "Agnes Shorting House" located on 3rd Avenue 2 northwest of Junipero Avenue (APN 010-108-007) and authorize the City Administrator to execute the contract (**Attachment 1**).

BACKGROUND/SUMMARY:

The property is located on 3rd Avenue 2 northwest of Junipero Avenue in the Single-Family Residential (R-1) District (**Attachment 2, Exhibit A**). The residence was designed and built in 1927 by Frederick Bigland, a well-known Carmel designer/builder. The property is significant in the area of Architecture, as an English Cottage-style Bigland-designed residence.

A Department of Parks and Recreation (DPR) Form 523 was completed for the property in 2004 by Kent Seavey (**Attachment 3, Exhibit B**) and the resource was added to the Carmel Inventory on May 25, 2005. The DPR form notes that in addition to significance as a Bigland-designed cottage, the property "may" potentially be significant for a detached garage built of Thermotite, a unique locally manufactured building material (also used at Flanders Mansion). A Resolution Designating a Historic Resource for the property on 3rd Avenue 2 northwest of Junipero Avenue was recorded with the County Recorder on January 4, 2007 (Document #2007001180).

On April 20, 2023, Christopher Barlow, Architect, submitted an application for a Mills Act Historical Property Contract on behalf of the property owner (Michael Griffin and Kimberly S. Griffin Trust). In order to qualify for a Mills Act contract, a property must be included on the Carmel Inventory and added to the Carmel Register of Historic Resources. On August 21, 2023, the Historic Resources Board adopted Resolution 2023-012-HRB (**Attachment 5**), adding the property to the Carmel Register and recommending that the City Council enter into a Mills Act Contract with Michael Griffin and Kimberly S. Griffin Trust for the historic "Agnes Shorting House."

Contract Value

The Monterey County Assessor's Office is responsible for determining the value of a property under Mills Act Contract in accordance with sections 439 through 439.4 of the Revenue and Taxation Code. Properties with a Mills Act Contract are not valued based on sales data; rather they are valued by a prescribed income capitalization method (**Attachment 6**). After a Contract is approved, it is forwarded to the Monterey County Assessor who then determines the Mills Act value.

Contract Summary

A Mills Act contract under State law is an agreement between the City of Carmel and a property owner of a historic building listed on the Carmel Register. In exchange for reduced property taxes, the property owner is contractually obligated to perform annual maintenance on the building. The property owner benefits from a reduction in property taxes. The City benefits from assurance, via contract, that the historic building is rehabilitated, maintained, and preserved with a portion of those property taxes that the city is giving up.

The primary purpose for offering Mills Act contracts in the City of Carmel-by-the-Sea is to assist in and ensure the rehabilitation or restoration and long-term maintenance of historic resources. All properties listed on the City's Historic Register in all districts that have been preserved in their historical size, form, and design without significant alterations are eligible for Mills Act contracts.

All Mills Act contracts have a term of 10 years, and one year is added to this term annually upon each anniversary date of the contract unless one or both parties (City and property owner) have taken action to terminate the contract. The City Administrator is authorized to initiate contract termination on behalf of the City based on recommendations of the Community Planning & Building Department. The contract rights and obligations are binding upon all successive owners of the property during the life of the contract. The property retains the lower Mills Act tax rate when sold. To end a contract, either party may submit a notice of non-renewal to the other party. Such notices shall cause the contract to terminate at the end of the then-current 10-year contract period. Cancellation of a contract by the City due to non-compliance requires a public hearing and, if canceled, results in the immediate termination of the contract and a penalty equal to 12.5 percent of the assessed market value of the property.

The contract requires that the historical elements of the property are maintained in good condition. This includes a plan for rehabilitation and maintenance and may include a program to restore deteriorated features. All recipients of Mills Act contracts are required to implement a rehabilitation/restoration and maintenance plan prepared by a qualified professional. An annual report is submitted to the Community Planning & Building Department specifying all work that has been done to maintain and preserve the historic resource over the year in compliance with the approved rehabilitation/restoration and maintenance plan. All rehabilitation/restoration and maintenance work must be completed in conformance with the Secretary of Interior's Standards for Rehabilitation and all proposed projects are subject to a Design Study review prior to commencement of the work. Minor alterations, as defined in CMC section 17.32.150, may be approved by staff; however, major alterations, as defined in CMC section 17.32.160 would be reviewed by a qualified professional and presented to the Historic Resources Board for review. All Mills Act contracts must specify that the rehabilitation/restoration and maintenance plan shall be updated at least every ten years by a qualified professional and approved by both parties.

The Historic Resources Board considers each application for a Mills Act contract and provides a recommendation to the City Council to approve, approve with conditions, or deny the application.

The City Council considers the recommendations from the Historic Resources Board at a public hearing and resolves to approve, approve with conditions, or deny the proposed contract with sufficient time for action by the City Clerk so that recordation of approved contracts occurs before December 31st of the year in which the application is received.

STAFF ANALYSIS:

Findings

Carmel Municipal Code Section 17.32.100.B.6(c) sets forth findings that the Historic Resources Board and City Council shall make in order to grant approval of a Mills Act Contract. The required findings are listed below followed by a staff response on how the application meets the requirements.

1. *The building is designated as a historic resource by the City and is listed on the Carmel Register.*

Staff Response: The residence was the subject of a historic evaluation in 2004 by Kent Seavey and was placed on the Carmel Inventory of Historic Resources in 2005. The Historic Resources Board added the resource to the Carmel Register on August 21, 2023. The application meets this finding.

2. *The proposed rehabilitation/restoration and maintenance plan is appropriate in scope and sufficient in detail to guide long-term rehabilitation/restoration and maintenance. Required maintenance and rehabilitation should be more significant than just routine maintenance that would be expected for any property.*

Staff Response: The applicant submitted a rehabilitation and maintenance plan (**Attachment 4, Exhibit C**). The plan covers a period of 10 years from 2024-2033 and estimates \$282,750 in work projects. The plan, compiled by Christopher Barlow, Architect (and qualified professional), includes rehabilitation and maintenance work including: foundation inspection and repairs as needed; plumbing repairs including sewer lateral; exterior painting; chimney inspection; rehabilitation and installation of original window shutters; exterior door and window assessment and repair; in-kind roof and gutter repair; stone repair at the property line and throughout; insulation repair and replacement; and termite testing and repairs. All rehabilitation and maintenance work will be performed in conformance with the Secretary of Interior's Standards for Rehabilitation. All exterior work is subject to Design Study approval and a determination of consistency with the Secretary of the Interior's Standards for Rehabilitation. The proposed plan meets this finding.

3. *Alterations to the historic resource have been in the past, and will continue to be in the future, limited to interior work and to exterior rehabilitation and alterations that:*
 - (A) *Comply with the Secretary's Standards (future additions only); and*
 - (B) *Do not significantly alter, damage or diminish any primary elevation or character-defining feature; and*
 - (C) *Do not increase floor area on the property by more than 15 percent beyond the amount established in the documented original or historic design of the resource; and*
 - (D) *Do not result in any second-story addition to a single-story historic resource.*

Staff Response: The resource retains physical integrity; a 1937 addition extended the building footprint seven feet to the south and is consistent with the architectural character of the building. The 1937 addition itself meets the 50-year threshold and was documented in the DPR Form 523 as compatible with the original building.

As noted above, planned rehabilitation and maintenance work will be performed in conformance with the Secretary of Interior's Standards for Rehabilitation. Any future alterations are required to be consistent with conditions A-D above. Minor alterations, as defined in CMC Section 17.32.150, may be approved by staff; however, major alterations (CMC Section 17.32.160) would be reviewed by a qualified professional and

presented to the Historic Resources Board for review. The application meets this finding.

4. *The Mills Act contract will aid in offsetting the costs of rehabilitating and maintaining the historic resource.*

Staff Response: Approval of the contract would assist in offsetting the rehabilitation and maintenance costs of preserving the “Agnes Shorting House” by reducing the tax liability on the property thereby freeing up funds for the rehabilitation. Some of the more notable work that is proposed to be accomplished within the first few years would include: plumbing repairs, rehabilitating and installing original window shutters, and termite testing/repairs. The application meets this finding.

5. *Approval of the Mills Act contract will represent an equitable balance of public and private interests and will not result in substantial adverse financial impact on the City.*

Staff Response: Approval of the Mills Act Contract will be consistent with Goal 1-5 and Objective 1-16 of the Land Use & Community Character Element of the General Plan which encourages providing incentives for property owners to preserve and rehabilitate historic resources. Although the adoption of a Mills Act Contract will decrease property tax revenue to the City, this contract represents an equitable balance of public and private interests:

- 1) The City Council adopted Resolution 2016-068 on September 13, 2016, limiting the number of Mills Act contracts that can be approved to fifteen (15) in any three-year calendar period. No applications were approved in 2020 or 2021, four applications were approved in 2022, one application has already been approved in 2023 (L'Auberge), and four total applications are currently in review in 2023.
- 2) Carmel currently has 292 historic resources, and since the adoption of the Mills Act program in 2004, the City has entered into a total of fifteen Mills Act Contracts.
- 3) The City would continue to receive a portion of the property tax revenue and the investment in rehabilitation and maintenance supports local tourism, which benefits both private and public interests.
- 4) The value of preserving a historic resource offsets the loss of revenue.

Next Steps: If the City Council enters into a Mills Act Contract for this property, the contract will be recorded with the Monterey County Recorder and will take effect January 1, 2024.

FISCAL IMPACT:

The City will have a diminished tax base from the property at 3rd Avenue 2 northwest of Junipero Avenue for the term of the contract. The amount is unknown at this point.

PRIOR CITY COUNCIL ACTION:

On March 3, 2020, the City Council adopted standard contract language for Mills Act Contracts. On April 4, 2023, the City Council reviewed the City's Mills Act Policy and opted not to make any changes. On November 7, 2023, the City Council directed the City Attorney to prepare an Urgency Ordinance establishing a moratorium on accepting any new Mills Act contract applications until the policy could be reevaluated. The Urgency Ordinance is on the Council's December 5th agenda for action.

ATTACHMENTS:

Attachment 1) Standard Mills Act Contract

Attachment 2) Exhibit A - Legal Description

Attachment 3) Exhibit B - DPR 523 Form "Agnes Shorting House"

Attachment 4) Exhibit C - Rehabilitation/Maintenance Plan

Attachment 5) Resolution 2023-012-HRB

Attachment 6) Guidelines for the Assessment of Enforceably Restricted Historical Property

RECORDING REQUESTED BY
CITY OF CARMEL-BY-THE-SEA

AND WHEN RECORDED MAIL TO

Carmel City Hall
Attn: Community Planning & Building
P.O. Box CC
Carmel-By-The-Sea, CA 93921

This space reserved for the Recorder's use only

**CITY OF CARMEL-BY-THE-SEA
MILLS ACT HISTORIC PROPERTY PRESERVATION CONTRACT**

THIS AGREEMENT is made and entered by and between the CITY OF CARMEL-BY-THE-SEA a municipal corporation (hereinafter referred to as "City"), and the Michael Griffin and Kimberly S. Griffin Trust (hereinafter referred to as "Owner").

RECITALS

- (i) California Government Code Section 50280, et seq. (known as the Mills Act) authorizes cities to enter into contracts with the owners of qualified historic properties to provide for their appropriate use, maintenance and restoration such that these historic properties retain their historic characteristics;
- (ii) The Owner possesses fee title in and to that certain real property, together with associated structures and improvements thereon, located on 3rd Avenue 2 northwest of Junipero Avenue (APN: 010-108-007), Carmel-By-The-Sea, California, (hereinafter referred to as the "Historic Property"). A legal description of the Historic Property is attached hereto, marked as **"Exhibit A"** and is incorporated herein by reference;
- (iii) The property is identified as a historic resource on the City of Carmel-By-The-Sea's Historic Inventory and Register of Historic Resources and is further described in the DPR 523 Form attached hereto, marked as **"Exhibit B"** and is incorporated herein by reference;
- (iv) City and Owner, for their mutual benefit, now desire to enter into this Agreement both to protect and preserve the characteristics of historical significance of the Historic Property, as it exists at the date of this contract and as described in the City's Register of Historic Resources and the National Register of Historic Places, and to qualify the Historic Property for an assessment of valuation pursuant to the provisions of Article 1.9 (commencing with section 439) of Chapter 3 of Part 2 of Division 1 of the California Revenue and Taxation Code.

NOW, THEREFORE, City and Owner, in consideration of the mutual covenants and conditions contained herein, do hereby agree as follows:

1. **INCORPORATION OF RECITALS.** All recitals are incorporated into this Agreement.
2. **EFFECTIVE DATE AND TERM.** This Agreement shall be effective and commence on the date the Agreement is signed by the City, unless otherwise indicated by the County of Monterey, and shall remain in effect for a minimum term of ten (10) years thereafter.
3. **AUTOMATIC RENEWAL.** Each year, upon the anniversary of the effective date of this Agreement (hereinafter referred to as “annual renewal date”), one (1) year shall be added automatically to the term of this Agreement, unless timely notice of nonrenewal is given as provided in paragraph 4 of this Agreement. The total length of the contract shall not exceed twenty (20) years.
4. **NOTICE OF NONRENEWAL.** If City or Owner desires in any year not to renew this Agreement, that party shall serve written notice of nonrenewal in advance of the annual renewal date of this Agreement as follows: Owner must serve written notice of nonrenewal at least ninety (90) days prior to the annual renewal date; City must serve written notice of the nonrenewal at least sixty (60) days prior to the annual renewal date. If notice is not received, the Agreement shall automatically be renewed for another year. Upon receipt by Owner of a notice of nonrenewal from the City, Owner may make a written protest. At any time prior to the annual renewal date, City may withdraw its notice of nonrenewal.
5. **EFFECT OF NOTICE OF NONRENEWAL.** If either City or Owner serves timely notice of nonrenewal in any year, and this contract is not renewed, this Agreement shall remain in effect shall remain in effect for the balance of the period remaining since the original execution or the last annual renewal date.
6. **FEES.** The City may require that the Owner(s) of the Historic Property pay a fee that shall not exceed the reasonable cost of providing services, such as inspections, pursuant to Government Code Section 50281.1 (Article 12 of Chapter 1 of Part 1 of Division 1 of Title 5 of the Government Code), for which the fee is charged.
7. **VALUATION OF PROPERTY.** During the term of this Agreement, Owner is entitled to seek assessment of valuation of the Historic Property pursuant to the provisions of Chapter 3 of Part 2 of Division 1 of the California Revenue and Taxation Code.
8. **PRESERVATION OF PROPERTY.** Owner shall preserve and maintain the characteristics of historical significance of the Historic Property and agrees to complete rehabilitation and/or maintenance activities as defined in the Rehabilitation/Restoration and Maintenance Plan attached as “Exhibit C”. Requests for revisions to the Maintenance and

Rehabilitation plan shall be reviewed by the Historic Resources Board prior to implementation. In addition, Owner shall comply with the terms of the City's Historic Preservation Ordinance (CMC 17.32). Owners shall not be permitted to further impede any view corridor with any new structure, including but not limited to walls, fences, or shrubbery, so as to prevent the viewing of the Historic Property from the public right-of-way.

9. **RESTORATION OF PROPERTY.** Owner shall, where necessary, restore and rehabilitate the Historic Property to conform to the rules and regulations of the Office of Historic Preservation of the State Department of Parks and Recreation, U. S. Secretary of the Interior's Standards for Rehabilitation, the State Historical Building Code, and the City of Carmel-by-the-Sea, all as amended.
10. **INSPECTIONS.** Owner shall allow periodic examinations, at least every five (5) years, with reasonable notice thereof, of the interior and exterior of the Historic Property by representatives of the County of Monterey Assessor and the City of Carmel-By-The-Sea as may be necessary to determine Owner's compliance with the terms and provisions of this Agreement. The City will coordinate inspections by such other agencies that have jurisdiction and will keep them to the minimum necessary to determinate such compliance.
11. **PROVISION OF INFORMATION.** Owner shall furnish City with any and all information required by City, in order to determine the eligibility of the Historic Property, and that City deems necessary or advisable to determine compliance with the terms and provisions of this Agreement.
12. **ANNUAL REPORT.** Owner shall submit an annual report at least 90 days prior to each annual renewal date (October 1st) to the Department of Planning and Building specifying all work that has been done to maintain and preserve the historic resource over the preceding year in compliance with the approved maintenance plan.
13. **CANCELLATION.** The City has the right to cancel the contract if the owner allows the property to deteriorate to the point that it no longer meets the standards for a qualified historical property. The City also has the right to cancel this contract if the owner(s) breaches the provisions of paragraph's # 8, 9, 10 or 12 of this Agreement after the City has provided reasonable notice of any failure to comply with the agreement, and a public hearing. Notice of the hearing shall be mailed to the last known address of each owner of the property, with the notice conforming to the provisions of Government Code section 6061., If after notice and a hearing, the contract is cancelled, termination of the Agreement is immediate, and the owner shall pay a cancellation fee equal to 12.5 percent of the current fair market value of the property, as determined by the Monterey County Assessor as though the property were free of the contractual restriction. The cancellation fee shall be paid to the Assessor, at the time and in the manner that the Assessor shall prescribe. City's right to cancel this Agreement pursuant to this paragraph

shall in no way limit or restrict its rights or legal remedies arising from City's Historic Preservation Ordinance and Municipal Code.

14. **ENFORCEMENT OF AGREEMENT.** In lieu of and/or in addition to any provisions to cancel this Agreement as referenced herein, City may specifically enforce, or enjoin the breach of, the terms of this Agreement.
15. **WAIVER.** City does not waive any claim or default by Owner if City does not enforce or cancel this Agreement. All remedies at law or in equity, which are not otherwise provided for this Agreement or in City's regulations governing historic properties are available to City to pursue in the event there is a breach of this Agreement. No waiver by City of any breach or default under this Agreement shall be deemed to be a waiver of any other subsequent breach thereof or default hereunder.
16. **BINDING EFFECT OF AGREEMENT.** Owner hereby subjects the Historic Property to the covenants, reservations and restrictions set forth in this Agreement. City and Owner hereby declare their specific intent that the covenants, reservations, and restrictions as set forth herein shall be deemed covenants running with the land and shall pass to and be binding upon Owner's successors and assigns in title or interest to the Historic Property. A successor in interest shall have the same rights and obligations under this Agreement as the original owner who executed the Agreement.
Each and every contract, deed or other instrument hereinafter executed, governing or conveying the Historic Property, or any portion thereof, shall conclusively be held to have been executed, delivered and accepted subject to the covenants, reservations and restrictions expressed in this Agreement regardless of whether such covenants, reservations and restrictions are set forth in such contract, deed or other instrument. City and Owner hereby declare their understanding and intent that the burden of the covenants, reservations and restrictions set forth herein touch and concern the land in that it restricts development of the Historic Property. City and Owner hereby further declare their understanding and intent that the benefit of such covenants, reservations and restrictions touch and concern the land by enhancing and maintaining the cultural and historic characteristics and significance of the Historic Property for the benefit of the public and Owner.
17. **NOTICE.** Any notice required to be given by the terms of this Agreement shall be provided at the address of the respective parties as specified below, by personal delivery or United States mail, postage prepaid, addressed as follows:

City: Carmel-By-The-Sea
Community Planning & Building Department
Attn: Community Planning & Building Director
P.O. Box CC
Carmel-By-The-Sea, CA 93921

Owner: Michael Griffin and Kimberly S. Griffin Trust
1165 Altschul Avenue
Menlo Park, CA, 94025

Notice to successors in interest to either party shall be sent to the appropriate address. In the case of future Owner(s) of the Historic Property, notice shall be sent to the address on file with the county property tax office in power at the time.

18. **RECORDATION.** No later than twenty (20) days after the parties execute and enter into this Agreement, the City shall cause this Agreement to be recorded in the Office of the County Recorder of the County of Monterey. From and after the time of the recordation, this Agreement shall impart a notice thereof to all persons as is afforded under state law.
19. **STATE LAW.** The Owner or agent of Owner shall provide written notice of this Agreement to the State Office of Historic Preservation within six (6) months of the date of this Agreement.
20. **GOVERNING LAW; VENUE.** This Agreement shall be constructed and governed in accordance with the laws of the State of California. Should either party to this agreement bring legal action against the other, the case shall be handled in Monterey County, California and the party prevailing in such action shall be entitled to a reasonable attorney fee which shall be fixed by the judge hearing the case and such fee shall be included in the judgment together with all costs.
21. **AMENDMENTS.** This agreement may be amended in whole or in part, only by a written-recorded instrument executed by the parties hereto.
22. **DESTRUCTION OF PROPERTY; EMINENT DOMAIN; CANCELLATION.** If the Historic Property is destroyed by earthquake, fire, flood, or other natural disaster such that in the opinion of the City Building Official more than sixty percent (60%) of the original fabric of the structure must be preplaced, this Agreement shall be cancelled because the historic value of the structure will have been destroyed. If the Historic Property is acquired in whole or in part by eminent domain or other acquisition by any entity authorized to exercise the power of eminent domain, and the acquisition is determined by the City Council to frustrate the purpose of this Agreement, this Agreement shall be cancelled. No cancellation fee pursuant to Government Code Section 50286 shall be imposed if the Agreement is cancelled pursuant to this paragraph. Such Agreement shall be null and void for all purposes of determining the value of the property so acquired.
23. **INDEMNIFICATION.** Owner shall defend, indemnify, and hold harmless City and its elected officials, officers, agents and employees from any actual or alleged claims, demands, causes of action, liability, loss, damage, or injury to property or persons, including wrongful death, whether imposed by a court of law or by administrative action of any

federal, state or local government agency, arising out of or incident to the direct or indirect use, operation, or maintenance of the Historic Property by Owner or any contractor, subcontractor, employee, agent, lessee, licensee, invitee, or any other person; (ii) Owner's activities in connection with the Historic Property; and (iii) any restriction on the use of development of the Historic Property, from application or enforcement of the City's Municipal Code, or from the enforcement of this Agreement. This indemnification includes, without limitation, the payment of all penalties, fines, judgments, awards, decrees, attorneys' fees, and related costs or expenses, and the reimbursement of the City, its elected officials, employees, and/or agents for all legal expenses and costs incurred by each of them. Owner's obligation to indemnify shall survive the termination, cancellation, or expiration of this Agreement and shall not be restricted to insurance proceeds, if any, received by City, its elected officials, employees, or agents.

24. **SEVERABILITY.** In the event that any of the provisions of this Agreement are held to be unenforceable or invalid by any court of competent jurisdiction, or by subsequent preemptive legislation, the validity and enforceability of the remaining provisions, or portions thereof, shall not be affected thereby.

IN WITNESS THEREOF, the City and Owners have executed this Agreement on the day and year written above.

CITY OF CARMEL-BY-THE-SEA:

By: _____

Date: _____

Name: Richard L. Rerig ("Chip")

Title: City Administrator

PROPERTY OWNER(S):

By: _____

Date: _____

Name: Michael Griffin, on behalf of Michael Griffin and Kimberly S. Griffin Trust

Title: Property Owner

By: _____

Date: _____

Name: Kimberly Griffin, on behalf of Michael Griffin and Kimberly S. Griffin Trust

Title: Property Owner

EXHIBIT A
LEGAL DESCRIPTION

EXHIBIT B
DPR 523 FORM

EXHIBIT C
REHABILITATION AND MAINTENANCE PLAN

DRAFT

A PORTION OF LOTS 17, 18, 19 AND 20 IN BLOCK 27, AS SAID LOTS AND BLOCK ARE SHOWN ON THAT CERTAIN MAP ENTITLED "MAP OF ADDITION NO. 4, CARMEL-BY-THE-SEA, MONTEREY COUNTY, CALIFORNIA, SURVEYED SEPT. 1907 BY H.B. FISHER, SURVEYOR & C.E.", FILED MARCH 6, 1908 IN THE OFFICE OF THE COUNTY RECORDER OF THE COUNTY OF MONTEREY, STATE OF CALIFORNIA, IN VOLUME 1 OF MAPS, "CITIES AND TOWNS", AT PAGE 46-1/2, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE NORTHERLY LINE OF THIRD AVENUE, DISTANT WESTERLY 80 FEET FROM THE INTERSECTION OF THE WESTERLY LINE OF JUNIPERO STREET, WITH THE NORTHERLY LINE OF THIRD AVENUE; THENCE RUNNING WESTERLY ALONG THE NORTHERLY LINE OF THIRD AVENUE 40 FEET, THENCE NORTHERLY PARALLEL WITH JUNIPERO STREET, 80 FEET; THENCE EASTERLY PARALLEL WITH THIRD AVENUE, 40 FEET; THENCE SOUTHERLY PARALLEL WITH JUNIPERO STREET, 80 FEET TO THE POINT OF BEGINNING.

PRIMARY RECORD

Primary # _____
HRI # _____ Attachment 3
Trinomial _____
NRHP Status Code Looking north towards the south side-elev.,

Other Listings

Review Code _____ Reviewer _____ Date _____

Page 1 of

Resource Name or #: (Assigned by recorder) Agnes Shorting House

P1. Other Identifier:

P2. Location: ☐ Not for Publication ☐ Unrestricted a. County Monterey

and (P2b and P2c or P2d. Attach a Location Map as necessary.)

b. USGS 7.5' Quad _____ Date _____ T _____ ; R _____ ; 1/4 of _____ 1/4 of Sec _____ ; B.M. _____

c. Address: _____ City Carmel-by-the-Sea Zip 93921

d. UTM: (Give more than one for large and/linear resources) _____ ; _____ mE/ _____ mN

e. Other Locational Data (Enter Parcel #, legal description, directions to resource, elevation, etc., as appropriate)

2 W of Junipero, N/side 3rd (Blk 27, Lots Wpt. 17 & 19 Ept. 18 & 20)

Parcel No. 010-108-007

P3. Description (Describe resource and its major elements. Include design, materials, condition, alterations, size, setting, and boundaries)

A one-story, wood-framed English Cottage style residence, irregular in plan, resting on a concrete foundation. The exterior wall cladding is a textured cement stucco. The intersecting pyramidal roof system has rolled eaves, as does the roof on the detached garage. There is one Carmel stone exterior eave wall chimney present. It is located about midway along the west (rear) elevation. All roofing is composition shingle. Fenestration is irregular, with a combination of 4/4 double-hung wood sash, fixed multi-paned wood windows, and multi-paned wood casement type. The principal entry is located on the east (front) elevation at the inside junction of an ell, formed by the main building block and a lower bay, projecting toward the south. This feature was extended seven feet in a 1937 addition. The work was consistent with the architectural character of the building and would clearly meet the current Secretary of the Interior's Standards for the Treatment of Historic Buildings. There is a detached one-car garage at the SW cr. of the parcel, designed in the style of the residence, and using a locally produced cement building block called Thermotite. The house is well set back from the street on a wooded parcel in an informal landscape setting of low shrubbery and flowering plants. It is located in a residential neighborhood of one and two-story residences of varying ages & styles, fronting on several new commercial properties along the south side of 3rd Avenue.

b. Resource Attributes: (List attributes and codes)

P4. Resources Present ☐ Building ☐ Structure ☐ Object ☐ Site ☐ District ☐ Element of District ☐ Other (Isolates, etc.)

P5a. Photograph or Drawing (Photograph required for buildings, structures, and objects)



P5b. Description of Photo: (View, date, accession #)
(View toward _____). Photo No: 5046-.

P6. Date Constructed/Age and Sources:

☐ Prehistoric ☒ Historic ☐ Both

1927 Carmel bldg. records

P7. Owner and Address

Charles & Lynda Dunbar
2094 University Park D
Sacramento, CA 95825

P8. Recorded by: (Name, affiliation, and address)

Kent L. Seavey, Preservation Consultant, 310
Lighthouse Ave., Pacific Grove, CA 93950

P9. Date Recorded: 9/7/2004

P10. Survey Type: (Describe)
Intensive-Carmel Historic Resource
Inventory-ongoing

I. Report Citation: (Cite survey report and other sources, or enter "none")

none

Attachments

☐ NONE ☐ Continuation Sheet ☐ District Record ☐ Rock Art Record ☐ Other: (List)
☐ Location Map ☐ Building, Structure, and Object Record ☐ Linear Feature Record ☐ Artifact Record
☐ Sketch Map ☐ Archaeological Record ☐ Milling Station Record ☐ Photograph Record

BUILDING, STRUCTURE, AND OBJECT RECORD

HRI #

Primary #

Attachment 3

Page 2 of

NRHP Status Code

Resource Name or #: (Assigned by recorder) *Agnes Shorting House*

B1. Historic Name:

B2. Common Name:

B3. Original Use: *residence*

B4. Present Use: *residence*

B5. Architectural Style: *Tudor Revival (English Cottage substyle)*

B6. Construction History: (Construction date, alterations, and date of alterations)

Constructed 1927 (CBP# 1956); small addition to the south 1937 (CBP# 220)

B7. Moved? ☐ No ☐ Yes ☐ Unknown Date:

Original Location:

B8. Related Features: *Masonry one-car garage 1927 (CBP# 1956)*

B9a. Architect: *Designer-Frederick Bigland*

b. Builder: *Frederick Bigland*

B10. Significance: Theme: *Architectural Development*

Area: *Carmel by-the-Sea*

Period of Significance: *1903-1940*

Property Type: *single family residence*

Applicable Criteria: *CR 3*

(Discuss importance in terms of historical or architectural context as defined by theme, period and geographic scope. Also address integrity.)

The Agnes Shorting House is significant under California Criterion 3, in the area of architecture, as a good example of the residential design of well known Carmel designer-builder Frederick Bigland. It may also be significant for its use of Thermotite masonry in its detached garage. The use of a pyramidal roof system, with rolled eaves to suggest thatching is typical of the English Cottage substyle of the Tudor Revival architectural mode. The textured stucco wall cladding, and abundance of small, multi-paned wood windows is also consistent with the style. All are present on the Shorting house. The banded windows that are part of the 1937 minor addition to the lower south bay are more typically found in Craftsman style houses, but both the Tudor and Craftsman styles evolve from medieval building forms. The use of wide bands of windows in Carmel, to connect the outside with the inside, is integral to the building traditions of the village.

Frederick Bigland, the designer/builder was a native of England, who came to Carmel in 1926 seeking relief from asthma. He constructed a home on Mtn. View and several residences and rental properties in the village. Most of his work was in the Tudor Revival style, with which he was quite familiar. However, he also designed several Spanish Eclectic style homes, including a remodeling of the Marble Ranch in Robinson Canyon on the south side of Carmel Valley. Bigland was a well respected craftsman who left the village for a warmer climate about 1931.

Bigland's masonry block garage for the Shorting House was built of Thermotite, a locally manufactured building material that was advertised as, fireproof, waterproof, warm and practically everlasting". Mr. Albert Otey fabricated the masonry block in a plant on Santa Fe, just south of 3rd Avenue. This is one of the few residential applications of the building material identified in Carmel. The Shorting House reflects the findings of, and is consistent with the 1997 Carmel Historic Context Statement under the theme of architectural development.

B11. Additional Resource Attributes: (List attributes and codes) *HP2 - Single Family Property*

B12. References:

*Carmel bldg. records, Carmel Planning Dept., City Hall, Carmel
Carmel Historic Context Statement 1997
Carmel Pine Cone, "Homes Make of Carmel a Place of Distinction",
8/30/29, pp. 23-24*

_____ Mrs. A. P. Shorting (Obit.) 2/28/50

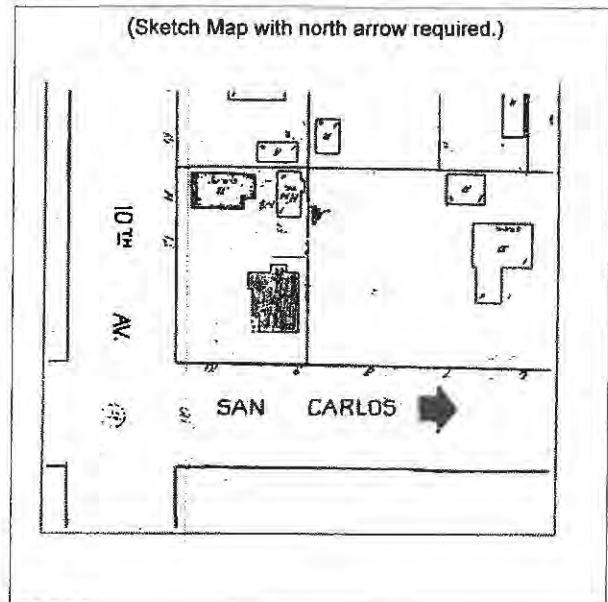
B13. Remarks: *Zoning R-1
CHCS (AD)*

B14. Evaluator: *Kent L. Seavey*

Date of Evaluation: *9/7/2004*

(This space reserved for official comments.)

(Sketch Map with north arrow required.)



Primary #

HRI #

Trinomial

Attachment 3

CONTINUATION SHEET

Name of Resource Name or #: (Assigned by recorder)
Recorded by: Kent L. Seavey

Agnes Shorting House

Date 9/7/2004

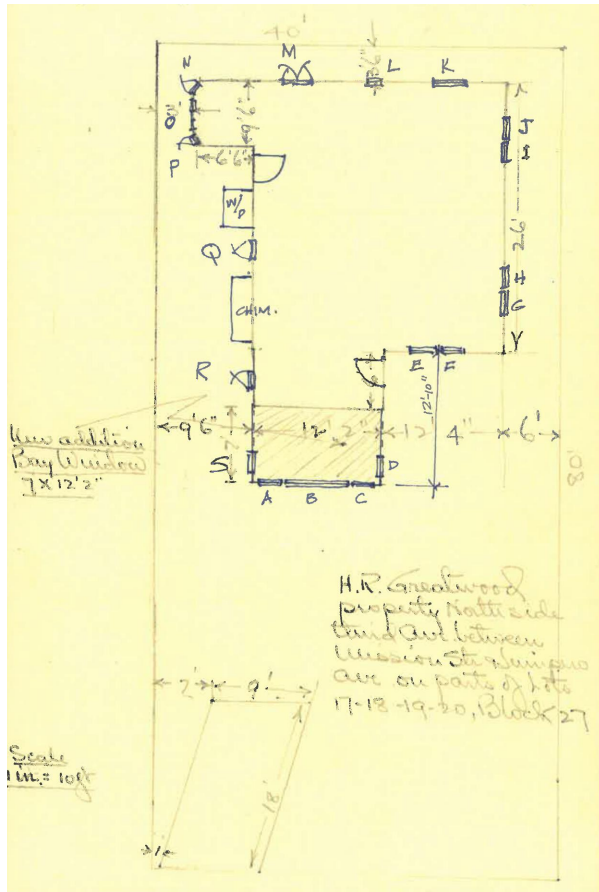
☐ Continuation ☐ Update

City of Carmel	
Mills Act Rehabilitation and Maintenance Plan	
Property Address:	Monte Verde St. at Seventh Ave.
Owner Name:	Kim Griffin
Owner Telephone No.:	(831) 917-2322
Plan Prepared by: Christopher Barlow AIA, LEED AP, NCARB	

Agnes Shorting House (a.k.a. the Bird House) Third Street 2 NW of Junipero Street, Carmel CA											
Mills Act Rehabilitation and Maintenance Plan											
Work Item	Anticipated Year of Completion										Cost Estimate
(Maintenance/Rehabilitation)	2024	2025	2026	2027	2028	2029	2030	2031	2032	2033	(net per item)
	STRUCTURAL UPGRADES										
Foundation insp. & repairs as needed (Maintenance)								\$20,000			\$20,000
	BUILDING SYSTEM UPGRADES										
Plumbing repairs incl. sewer lateral (Rehabilitation)	\$20,000										\$20,000
	EXTERIOR FEATURES, MATERIALS, AND FINISHES										
Paint all Exterior of all walls every 6 years (Maintenance)		\$15,000					\$20,000				\$35,000
Inspect Chimney/Flues and fireplace (Maint.)	\$1,000	\$1,000	\$1,000	\$1,000	\$1,000	\$1,000	\$1,000	\$1,000	\$1,000	\$1,000	\$10,000
Rehabilitate and install original window shutters (Rehab.)	\$20,000										\$20,000
Exterior door and window assessment and repair (Rehab.)	\$250	\$8,000	\$250	\$250	\$5,000	\$250	\$250	\$5,000	\$250	\$250	\$19,750
In kind' Roof and gutter replacement (Rehabilitation)			\$60,000								\$60,000
Repairs to stone steps, wall and fence at property line (Rehab)	\$500	\$500	\$500	\$500	\$500	\$500	\$500	\$500	\$500	\$500	\$5,000
Insulation repairs and replacement (Rehabilitation)							\$10,000				\$10,000
Termite testing and repairs (Maintenance)	\$15,000									\$15,000	\$30,000
	HARDSCAPE AND LANDSCAPE										
Replace cracked walkways (Rehabilitation)				\$45,000							\$45,000
Restore stone planter at front of property (Rehabilitation)					\$8,000						\$8,000
ANNUAL TOTAL	\$56,750	\$24,500	\$61,750	\$46,750	\$14,500	\$1,750	\$31,750	\$26,500	\$1,750	\$16,750	CUMULATIVE TOTAL
RUNNING TOTAL	\$56,750	\$81,250	\$143,000	\$189,750	\$204,250	\$206,000	\$237,750	\$264,250	\$266,000	\$282,750	

Notes: Frequency of repairs continues beyond 2032 based on interval proposed. Dollar amounts will be reviewed at 10 year intervals and adjusted for inflation as appropriate

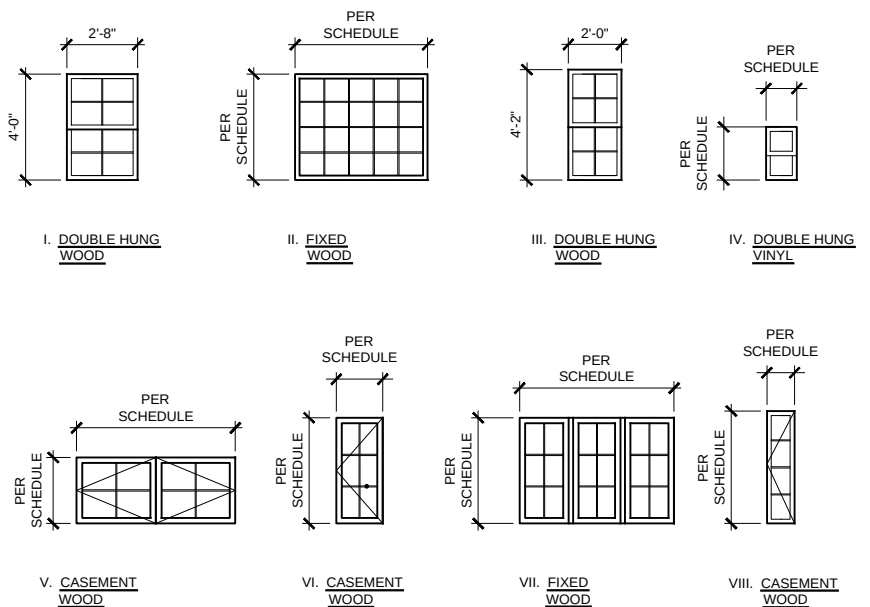
EXISTING WINDOW LOCATIONS



EXISTING WINDOW SCHEDULE

LETTER/ LOCATION	WINDOW TYPE	MATERIAL		SIZE		DETAIL REFERENCE			R.O.HEAD HEIGHT	TEMPERED	REPAIRS NEEDED - (SEE NOTES)	NOTES
		VINYL	WOOD	WIDTH	HEIGHT	REFER TO SHT.						
						HEAD	JAMB	SILL				
A	I		●	2'-8"	4'-0"	1	-	-	+/- 7'-0"		NO	ELIMINATE EXTERIOR SCREENS ADD INTERIOR SCREENS
B	II		●	5'-0"	4'-0"	1	-	-	+/- 7'-0"		NO	
C	I		●	2'-8"	4'-0"	1	-	-	+/- 7'-0"		NO	ELIMINATE EXTERIOR SCREEN ADD INTERIOR SCREEN
D	III		●	2'-0"	4'-2"	1	-	-	+/- 7'-0"		NO	ELIMINATE EXTERIOR SCREEN ADD INTERIOR SCREEN
E	III		●	2'-0"	4'-2"	1	-	-	+/- 7'-0"		NO	ELIMINATE EXTERIOR SCREEN ADD INTERIOR SCREEN
F	III		●	2'-0"	4'-2"	1	-	-	+/- 7'-0"		NO	ELIMINATE EXTERIOR SCREEN ADD INTERIOR SCREEN
G	III		●	2'-0"	4'-2"	1	-	-	+/- 7'-0"		NO	ELIMINATE EXTERIOR SCREEN ADD INTERIOR SCREEN
H	III		●	2'-0"	4'-2"	1	-	-	+/- 7'-0"		NO	ELIMINATE EXTERIOR SCREEN ADD INTERIOR SCREEN
I	III		●	2'-0"	4'-2"	1	-	-	+/- 7'-0"		NO	ELIMINATE EXTERIOR SCREEN ADD INTERIOR SCREEN
J	III		●	2'-0"	4'-2"	1	-	-	+/- 7'-0"		NO	ELIMINATE EXTERIOR SCREEN ADD INTERIOR SCREEN
K	I		●	2'-8"	4'-2"	1	-	-	+/- 7'-0"		NO	ELIMINATE EXTERIOR SCREEN ADD INTERIOR SCREEN
L	IV	●		1'-2"	2'-0"	1	-	-	+/- 7'-0"		NO	NON-HISTORIC, IN REAR OF HOUSE
M	V		●	3'-0"	2'-6"	1	-	-	+/- 7'-0"		YES	REPAIR DRY ROT DAMAGED PORTIONS OF WINDOW
N	VI		●	1'-9"	4'-0"	1	-	-	+/- 7'-0"		YES	REPAIR DRY ROT DAMAGED PORTIONS OF WINDOW
O	VII		●	5'-10"	4'-0"	1	-	-	+/- 7'-0"		YES	REPAIR DRY ROT DAMAGED PORTIONS OF WINDOW
P	VI		●	1'-9"	4'-0"	1	-	-	+/- 7'-0"		YES	(OPPOSITE HAND) REPAIR DRY ROT DAMAGED PORTIONS OF WINDOW
Q	VIII		●	1'-4"	4'-3"	1	-	-	+/- 7'-0"		YES	REPAIR DRY ROT DAMAGED PORTIONS OF WINDOW
R	VIII		●	1'-4"	4'-3"	1	-	-	+/- 7'-0"		YES	(OPPOSITE HAND) REPAIR DRY ROT DAMAGED PORTIONS OF WINDOW
S	III		●	2'-0"	4'-2"	1	-	-	+/- 7'-0"		NO	ELIMINATE EXTERIOR SCREEN ADD INTERIOR SCREEN

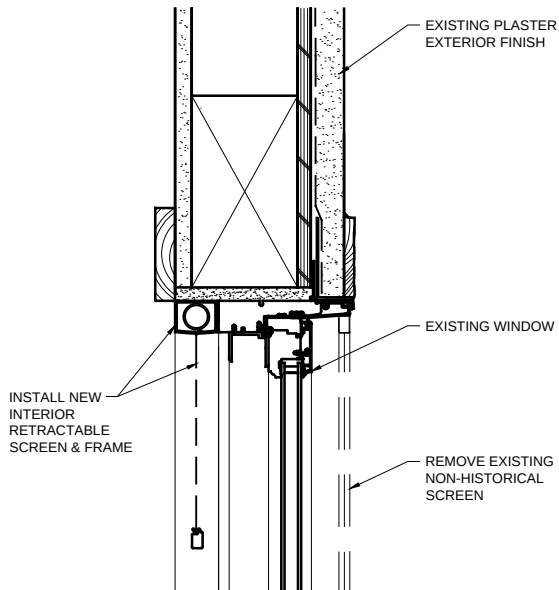
EXISTING WINDOW TYPES



1

EXISTING WINDOW HEAD

SCALE: NOT TO SCALE



CITY OF CARMEL-BY-THE-SEA
HISTORIC RESOURCES BOARD

HISTORIC RESOURCES BOARD RESOLUTION NO. 2023-012-HRB

A RESOLUTION OF THE HISTORIC RESOURCES BOARD OF THE CITY OF CARMEL-BY-THE-SEA
ADDING A HISTORIC RESOURCE TO THE CARMEL REGISTER AND RECOMMENDING THAT THE CITY
COUNCIL ENTER INTO A MILLS ACT CONTRACT WITH THE MICHAEL AND KIMBERLY S. GRIFFIN
TRUST FOR THE PROPERTY LOCATED ON 3RD AVENUE 2 NORTHWEST OF JUNIPERO STREET (APN
010-108-007)

WHEREAS, on April 20, 2023, Christopher Barlow, Architect (“Applicant”) submitted an application on behalf of the Michael Griffin and Kimberly S. Griffin Trust (“Owner”) requesting to add the historic “Agnes Shorting House” to the Carmel Register of Historic Resources and enter into a Mills Act contract (MA 23-117, Griffin) described herein as (“Application”); and

WHEREAS, the Application has been submitted for the property located on 3rd Avenue 2 northwest of Junipero Street, in the Single Family Residential (R-1) District (Block 27, Lots parts of 17, 19); and

WHEREAS, the Applicant is requesting to add the historic “Agnes Shorting House” to the Carmel Register of Historic Resources; and

WHEREAS, in accordance with Carmel Municipal Code (CMC) Section 17.32.090 (Carmel Register of Historic Resources) the City shall maintain a Register of Historic Resources designated by the City for public recognition and benefits; and

WHEREAS, historic resources identified as significant at a local or regional level shall be eligible for listing in the Register at the request of the property owner and upon approval by the Historic Resources Board; and

WHEREAS, one of the benefits of being included on the Register is the ability to enter into a Mills Act Historical Property Contract with the City; and

WHEREAS, the Applicant is also requesting to enter into a Mills Act contract with the City and in accordance with Carmel Municipal Code (CMC) Section 17.32.100.B.6 (Review Process), the Historic Resources Board shall consider the application and make a recommendation to the City Council to approve, approve with conditions, or deny the application; and

WHEREAS, on August 11, 2023, notice of the August 21, 2023 public hearing was published in the Carmel Pine Cone in compliance with State law (California Government Code 65091), and mailed to owners of real property within a 300-foot radius of the project indicating the date and time of the public hearing; and

WHEREAS, on or before August 11, 2023 the Applicant posted the public notice on the project site and hand-delivered a copy of the public notice to each property within a 100-foot radius of the project site indicating the date and time of the public hearing; and

WHEREAS, on or before August 18, 2023 the meeting agenda was posted in three locations in compliance with State law indicating the date and time of the public hearing; and

WHEREAS, on August 21, 2023, the Historic Resources Board held a public meeting to consider adding the historic "Agnes Shorting House" to the Carmel Register and to consider the application for a Mills Act contract, including without limitation, information provided to the Historic Resources Board by City staff and through public testimony; and

WHEREAS, this Resolution and its findings are made based upon the evidence presented to the Historic Resources Board at the August 21, 2023 meeting including, without limitation, the staff report and attachments submitted by the Community Planning and Building Department; and

WHEREAS, the Historic Resources Board did hear and consider all said reports, attachments, recommendations and testimony herein above set forth and used their independent judgment to evaluate the project; and

WHEREAS, the facts set forth in the recitals are true and correct and are incorporated herein by reference.

NOW, THEREFORE, BE IT RESOLVED, that the Historic Resources Board of the City of Carmel-By-The-Sea does hereby make the following findings and determinations regarding the Mills Act Contract:

<u>FINDINGS REQUIRED FOR A MILLS ACT CONTRACT</u>		
For each of the required findings listed below, staff has indicated whether the application supports the adoption of the findings. For all findings checked "no" the staff report discusses the issues to facilitate the Historic Resources Board's decision-making. Findings checked "yes" may or may not be discussed in the report depending on the issues.		
CMC 17.32.100.B.6.c	YES	NO
i. The building is designated as an historic resource by the City and is listed on the Carmel Register.	✓	
ii. The proposed rehabilitation/restoration and maintenance plan is appropriate in scope and sufficient in detail to guide long-term rehabilitation/restoration and maintenance. Required maintenance and rehabilitation should be more significant than just routine maintenance that would be expected for any property. <i>On August 21, 2023, the Historic Resources Board directed the applicant to revise the maintenance plan to include an evaluation of the historic status, material, and condition of each window and to specify the removal of the contemporary window screens. The applicant shall revise the estimated rehabilitation costs if necessary.</i>	✓	
iii. Alterations to the historic resource have been in the past, and will continue to be in the future, limited to interior work and to exterior rehabilitation and alterations that: (A) Comply with the Secretary's Standards (future additions only); and	✓	

(B) Do not significantly alter, damage or diminish any primary elevation or character-defining feature; and (C) Do not increase floor area on the property by more than 15 percent beyond the amount established in the documented original or historic design of the resource; and (D) Do not result in any second-story addition to a single-story historic resource.		
iv. The Mills Act contract will aid in offsetting the costs of rehabilitating and maintaining the historic resource.	✓	
v. Approval of the Mills Act contract will represent an equitable balance of public and private interests and will not result in substantial adverse financial impact on the City.	✓	

BE IT FURTHER RESOLVED that the Historic Resources Board of the City of Carmel-by-the-Sea does hereby add the historic "Agnes Shorting House" to the Carmel Register of Historic Resources and recommend that the City Council enter into a Mills Act Contract (MA 23-117, Griffin) for the property located at 3rd Avenue 2 northwest of Junipero Street (APN 010-108-007).

PASSED, APPROVED AND ADOPTED BY THE HISTORIC RESOURCES BOARD OF THE CITY OF CARMEL-BY-THE-SEA this 21st day of August, 2023, by the following vote:

AYES: Chroman, Dyar, Goodhue, Pomeroy, Hall

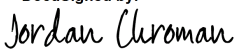
NOES:

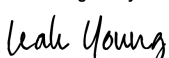
ABSENT:

ABSTAIN:

APPROVED:

ATTEST:

DocuSigned by:

 B0C3DE0052B8494...
 Jordan Chroman
 Chair

DocuSigned by:

 2960DA9BEC1C495...
 Leah Young
 Historic Resources Board Secretary

STATE BOARD OF EQUALIZATION
PROPERTY AND SPECIAL TAXES DEPARTMENT
450 N STREET, SACRAMENTO, CALIFORNIA
PO BOX 942879, SACRAMENTO, CALIFORNIA 94279-0064
916 445-4982 • FAX 916 323-8765
www.boe.ca.gov

BETTY T. YEE
Acting Member
First District, San Francisco

BILL LEONARD
Second District, Sacramento/Ontario

CLAUDE PARRISH
Third District, Long Beach

JOHN CHIANG
Fourth District, Los Angeles

STEVE WESTLY
State Controller, Sacramento

RAMON J. HIRSIG
Executive Director

June 2, 2005

No. 2005/035

TO COUNTY ASSESSORS AND INTERESTED PARTIES:

NOTICE OF BOARD ACTION

**GUIDELINES FOR THE ASSESSMENT OF
ENFORCEABLY RESTRICTED HISTORICAL PROPERTY**

On May 25, 2005, the Board of Equalization approved the following guidelines pertaining to the assessment of enforceably restricted historical property. These guidelines supersede Letter To Assessors No. 77/174 (dated December 19, 1977).

On June 8, 1976, the voters of California approved Proposition 7 which amended section 8 of article XIII of the California Constitution. This amendment requires that enforceably restricted historical property be valued on a basis that is consistent with its restrictions and uses. Sections 439 through 439.4 were added to the Revenue and Taxation Code to implement Proposition 7. These statutes, in particular section 439.2, prohibit a valuation of enforceably restricted historical property based on sales data and instead require that such property be valued by a prescribed income capitalization method.

Staff drafted these guidelines in consultation with interested parties and, after discussions, no issues remained unresolved. The guidelines discuss the enforceably restricted historical property requirements, the income to be capitalized, the capitalization rate, the effect of Proposition 13 upon enforceably restricted historical properties that undergo change in ownership or new construction, and the valuation of property under notice of nonrenewal.

The guidelines are posted on the Board's website at www.boe.ca.gov/proptaxes/guideproc.htm. We hope this information proves useful and promotes uniformity of assessment for these properties. If you have any questions, please contact our Real Property Technical Services Unit at 916-445-4982.

Sincerely,

/s/ David J. Gau

David J. Gau
Deputy Director
Property and Special Taxes Department

DJG:grs
Enclosure

GUIDELINES FOR THE ASSESSMENT OF ENFORCEABLY RESTRICTED HISTORICAL PROPERTY

HISTORY

Effective March 7, 1973, Chapter 1442 of the Statutes of 1972 (also known as the Mills Act) added sections 50280 through 50289 to the Government Code to allow an owner of qualified historical property to enter into a preservation contract with local government. When property is placed under such a contract, the owner agrees to restore the property if necessary, maintain its historic character, and use it in a manner compatible with its historic characteristics.

Prior to the passage of Proposition 7 in 1976, these agreements (i.e., Mills Act contracts) constituted enforceable restrictions on the use of land within the meaning of Revenue and Taxation Code section 402.1¹ (Property Tax Rule 60, repealed January 10, 1978). However, Proposition 7 added the second paragraph to section 8 of article XIII of the California Constitution:

To promote the preservation of property of historical significance, the Legislature may define such property and shall provide that when it is enforceably restricted, in a manner specified by the Legislature, it shall be valued for property tax purposes only on a basis that is consistent with its restrictions and uses.

To implement Proposition 7, Chapter 1040 of the Statutes of 1977 (Senate Bill 380) added sections 439 through 439.4 to the Revenue and Taxation Code. These statutes, in particular section 439.2, prohibit a valuation of enforceably restricted historical property based on sales data and instead require that such property be valued by a prescribed income capitalization method.

ENFORCEABLY RESTRICTED HISTORICAL PROPERTY

Under section 439, historical property is "enforceably restricted" if it meets the definition of a "qualified historical property" as defined in Government Code section 50280.1 and is subject to a historical property contract executed pursuant to Government Code section 50280 and following. A qualified historical property includes qualified historical improvements and the land on which the improvements are situated, as specified in the historical property contract. If the contract does not specify the land to be included, the qualified historical property includes only a land area of reasonable size to situate the improvements.

A qualified historical property is privately-owned property that is not exempt from property taxation and that also meets either of the following criteria:

- The property is listed in the National Register of Historic Places, or is located within a registered historic district; or

¹ Unless otherwise noted, all statutory references are to the Revenue and Taxation Code.

- The property is listed in any official state, county, city, or city and county official register of historical or architecturally significant sites, places or landmarks, including the California Register of Historical Resources, California Historical Landmarks, State Points of Historical Interest, local landmarks, and local survey listings of historical properties.

The historical property contract must have a minimum term of ten years, and, as applicable, must contain certain other elements, including the following:

- A provision relating to the preservation of the qualified historical property and, when necessary, the restoration and rehabilitation of the property in conformance with state historic preservation guidelines;
- A requirement for the periodic examination of the property to ensure compliance with the agreement;
- A requirement that the historical property agreement be binding upon successor owners of the qualified historical property; and
- A provision for an automatic one-year extension of the contract, with an additional year added to the initial contract term on each anniversary of the contract, unless either party provides notice of nonrenewal. If a notice of nonrenewal is given, the contract runs for its remaining term.

Once a contract is signed, accepted, and recorded, the property subject to the contract must be assessed under section 439.2 on the ensuing lien date. For example, if a contract were recorded in August 2004, the property should have been valued pursuant to section 439.2 for lien date January 1, 2005.

Local authorities may cancel a historical property agreement for breach of contract or failure to protect the historical property. Alternatively, the local entity may take legal action to enforce the contract.

ASSESSMENT

The assessment of an enforceably restricted historical property involves the following aspects: (1) valuing the restricted historical property; (2) properly applying certain assessment provisions relating to article XIII A of the California Constitution (Prop 13); (3) valuing the restricted historical property following a notice of nonrenewal; and (4) valuing the restricted historical property following cancellation of the contract.

Valuing the Restricted Historical Property

Section 439.2 prohibits the assessor from using sales data relating to similar properties, whether or not enforceably restricted, to value an enforceably restricted historical property. Instead, the assessor must annually value a restricted historical property using an income approach that

follows the specific provisions of section 439.2. These provisions explicitly address (1) the determination of the income to be capitalized, (2) the development of the capitalization rate, (3) the capitalization technique to be used, and (4) the determination of the restricted historical property's taxable value on each lien date.

Income to be Capitalized

As provided in section 439.2(a), the income to be capitalized when valuing a restricted historical property is the property's fair rent less allowed expenditures, or allowed expenses. In general, section 439.2(a) follows Property Tax Rule 8(c), with fair rent in section 439.2 corresponding to gross return in Rule 8(c); allowed expenditures, or allowed expenses, in section 439.2 corresponding to gross outgo in Rule 8(c); and the income to be capitalized in section 439.2 corresponding to net return in Rule 8(c). In addition, for the purposes here, "gross income" is synonymous with fair rent, and "net operating income" is synonymous with the income to be capitalized.

The parties to a historical property agreement may stipulate a minimum annual income to be capitalized, in which case the income to be capitalized may not be less than the stipulated amount.

Fair rent, or gross income. The gross income of a restricted historical property is the fair rent for the property considering the restrictions on the property's use. When establishing the fair rent for a restricted historical property, the appraiser should consider the actual rent and typical rents in the area for similar properties in similar use, where the owner pays the property taxes.

The actual rent received by the owner of the subject restricted historical property is relevant to an estimate of fair market rent only if the actual rent is the same rent that would be expected if the existing lease were renegotiated in light of current market conditions, including the subject property's enforceable restrictions on use. With respect to rents from similar, or comparable, properties, if such rents are from properties outside the geographic or market area of the subject property, or from properties that are otherwise dissimilar to the subject property, the rents may not be relevant to an estimate of the subject property's fair rent.

Comparable rental data for single-family residences can be obtained from real estate brokers, rental agencies, and newspaper ads. Many assessors offices maintain rental data for commercial properties, and this data may be helpful when establishing the fair rent for restricted historical property when the contract allows a commercial use. Rental data for commercial property also can be obtained from commercial real estate brokers. For the purpose of estimating anticipated market fair rent and expenditures for use in calculating the subject property's value, rental and expense data for existing restricted historical properties, including the subject historical property, can be obtained through an annual questionnaire sent to property owners.

If sufficient rental data are not available, or such data are unreliable, the appraiser must impute a gross income for the subject restricted historical property. The imputed income should be based on what an informed investor would reasonably expect the property to yield under prudent management, given the provisions under which the property is enforceably restricted.

Allowed expenditures. Section 439.2(a)(3) defines allowed expenditures, or allowed expenses, as expenses necessary for the maintenance of the property's income. Allowed expenses are the same as those permitted in Property Tax Rule 8(c).

Typical expenses include the cost of utilities, maintenance and repair, insurance and property management. Allowed expenses also may include amounts owing for special assessments and special taxes. Expenses related to debt service, general property taxes, and depreciation should not be deducted.

In general, to arrive at the net income to be capitalized, allowed expenses are subtracted from the estimated rental income. However, in order to properly process the income, the appraiser must be aware of the structure of the lease with regard to how expenses are shared between the landlord-owner and the tenant.

The proper perspective from which to view the processing of income and expenses is that of the landlord-owner. The objective is to estimate the net income to the landlord-owner—this is the amount that should be capitalized—and the correct question to ask is the following: What, if any, allowed expenses must the landlord-owner pay out of the rental income that he or she receives?

In a gross lease, almost all of the allowed expenses must be paid out of the gross rent and, therefore, must be subtracted from the gross rent to arrive at the net income to be capitalized. In a net lease, relatively few allowed expenses must be paid by the landlord-owner out of the net rent (because the tenant pays most expenses) and only these expenses should be subtracted from the net rent to arrive at the net income to be capitalized. Frequently, there is a hybrid arrangement—some expenses are paid by the landlord-owner and some by the tenant. How expenses are shared often depends upon the property type together with local conventions.

Income to be capitalized, or net operating income. The income to be capitalized, or net operating income, is simply the fair rent, or gross income, described above less the allowed expenditures described above.

Capitalization Rate

The method of developing the capitalization rate to be used when valuing restricted historical property is prescribed by statute; a capitalization rate derived from sales data or the band of investment is not permitted.

Section 439.2 prescribes two types of capitalization rates for restricted historical property: (1) a capitalization rate to be used when valuing restricted historical property that is an owner-occupied single-family residence and (2) a capitalization rate to be used when valuing all other restricted historical property. Both types of capitalization rates include components for interest (i.e., yield), risk, property taxes, and amortization of improvements; in fact, the two rates are identical except for the amount of the risk component. The capitalization rate contains the following components:

- An interest component annually determined by the State Board of Equalization and based on the effective rate on conventional mortgages as determined by the Federal Housing Finance Board. The interest component is announced annually, in a Letter To Assessors, by October 1 of the preceding assessment year.
- A historical property risk component determined by property type. For owner-occupied single-family residences, the rate is 4 percent; for all other types of restricted historical property, the rate is 2 percent.
- An amortization component for improvements defined as a percentage equal to the reciprocal of the remaining life of the improvements (e.g., if the remaining economic life of the improvements were 20 years, the amortization component would be 5 percent). Since the amortization component applies only to improvements, not to land, which is a non-depreciating asset, it is necessary to adjust the amortization component described in the statute. We recommend the following method of adjustment:
 1. Based upon market data, estimate the percentage of total property value attributable to improvements.
 2. Multiply this percentage by the amortization component described in the statute (i.e., by the reciprocal of the remaining life of the improvements). For example, if the remaining life of the improvements was 20 years, yielding a reciprocal percentage of 5 percent, and if 70 percent of the total property value was attributable to the improvements, the adjusted amortization factor would be 3.5 percent ($0.05 \times 0.70 = 0.035$).
 3. Add the adjusted amortization component to the other capitalization rate components to arrive at the total capitalization rate.
- A property taxes component equal to the percentage of the estimated total tax rate applicable to the property for the assessment year multiplied by the assessment ratio. Typically, the property tax component includes the basic tax rate of 1 percent plus an additional ad valorem rate related to any bonded indebtedness pertaining to the tax rate area in which the property is located. Special district assessments and special taxes are not included in the property tax component. As noted above, they should be treated as allowed expenses.

Capitalization Technique

The capitalization technique to be used when valuing a restricted historical property is prescribed by statute and is formulaic. Section 439.2(e) provides that the restricted value shall be the income to be capitalized, or net operating income, developed as prescribed by statute, divided by one of the two types of capitalization rates prescribed by statute. In other words, the restricted value is the simple quotient of the prescribed income to be capitalized and the prescribed capitalization rate.

Determination of Taxable Value on Each Lien Date

Section 439.2(d) provides that a historical property's restricted value may not be enrolled if it exceeds either (1) the value of the subject property as determined under section 110 (i.e., current market value) or (2) the value of the subject property as determined under section 110.1 (i.e., factored base year value). In other words, section 439.2 states that the taxable value of a restricted historical property on each lien date shall be the lowest of its restricted value, current market value, or factored base year value. The factored base year value for an enforceably restricted historical property is the value that was established for the 1975 lien date² or as of the date of the most recent change in ownership, whichever is later, adjusted by the annual inflation factor.

Article XIII A (Prop 13) Considerations

This section discusses how three important elements relating to implementation of article XIII A—change in ownership, new construction, and supplemental assessment—relate to the assessment of restricted historical property. Also discussed is the case in which only a portion of a property is subject to the historical property agreement—that is, the case in which a single property unit contains both restricted and unrestricted portions.

Change in Ownership

When a property subject to a historical property contract undergoes a change in ownership, a new base year value should be established for the property as of the date of change in ownership, as provided in section 110.1. Typically, a restricted historical property's base year value will be greater than its restricted value determined under section 439.2 and hence will not be enrolled as the property's taxable value. However, the establishment of a new base year value enables the assessor to perform the three-way value comparison prescribed by section 439.2(d) and described above. The establishment of a base year value is also necessary in order to calculate the assessed values of historical property should the historical property agreement enter nonrenewal status.

New Construction

Section IV of National Register Bulletin #15 defines a "building" as follows:

A building, such as a house, barn, church, hotel, or similar construction, is created principally to shelter any form of human activity. "Building" may also be used to refer to a historically and functionally related unit, such as a courthouse and jail or a house and barn.

Section IV further specifies that "[b]uildings eligible for the National Register must include all of their basic structural elements. Parts of buildings, such as interiors, facades, or wings, are not eligible independent of the rest of the existing building. The whole building must be considered,

² Sections 110.1(d) and 405.5 do not apply to historical properties under contract as of lien date 1975 because the constitutional amendment which placed the valuation of historical property under article XIII rather than article XIII A had not yet been passed and, thus, was not in effect for the 1975 lien date.

and its significant features must be identified." Thus, eligibility for the National Register is determined by the extent to which the basic structural elements of an existing building are intact. In general, a newly constructed building would not be eligible because it is not an existing building with basic structural elements.³

Also, a newly constructed building is not a historic resource, and, thus, is not a qualified historical property within the meaning of Government Code section 50280.1. For example, a newly constructed detached garage (assuming it is not a reconstruction of a historical garage) clearly would not be eligible because it has no significance in American history or architecture, nor does it meet any of the other requisite criteria.

Bulletin 15, however, does list one type of newly constructed property that may be eligible for inclusion under the Mills Act. A reconstructed historic building is eligible for the National Register if the reconstruction is "accurately executed in a suitable environment and presented in a dignified manner as part of a restoration master plan, and when no other building or structure with the same association has survived."

The historical property contract typically specifies the scope and type of any work to be performed on the historical improvements. Improvements existing as of the date of the contract would be subject to the provisions of section 439.2 unless specifically excluded by the contract. Any new construction made to the historical structure after the issuing date of the contract would not be subject to the provisions of section 439.2 unless specifically included in the contract or an amendment to the contract. Any questions regarding new construction to enforceably restricted historical structures should be directed to the counsel of the legislative body of the city, county, or city and county that contracted with the property owner.

Assuming that the newly constructed property is subject to the historical property contract, a base year value should be established for the newly constructed portion and this value added to the factored base year value of the existing restricted property.

In some cases, an existing historical property may include a portion that is restricted (i.e., subject to a historical property contract) and a portion that is unrestricted. In this case, separate factored base year values should be maintained for the restricted and unrestricted portions and the base year value of any newly constructed property added to the appropriate portion. The assessment treatment of this type of property is discussed further below.

Supplemental Assessment

Although the assessor is required to establish a new base year value upon a change in ownership or completed new construction involving restricted historical property, such property is not subject to supplemental assessment. As provided in Revenue and Taxation Code section 75.14:

Supplemental assessment; limitation. A supplemental assessment pursuant to this chapter shall not be made for any property not subject to the assessment

³ National Register Bulletin 15, "How to Apply the National Register Criteria for Evaluation," U.S. Department of the Interior, National Park Service (www.cr.nps.gov/nr/publications/).

limitations of Article XIII A of the California Constitution. All property subject to the assessment limitations of Article XIII A of the California Constitution shall be subject to the provisions of this chapter, except as otherwise provided in this article.

As discussed above, the assessment of enforceably restricted historical property is subject to the provisions of article XIII, section 8 of the California Constitution, not article XIII A. Thus, section 75.14 precludes the assessor from enrolling supplemental assessments for enforceably restricted historical property.

Historical property not yet under contract that undergoes a change in ownership or new construction is subject to supplemental assessment, even if the property owner later executes a historical property contract in the same fiscal year. Also, any new construction involving a historical property that does not come under the existing historical property contract (e.g., a detached garage added to a restricted historical property) would be subject to supplemental assessment.

When a Property Contains Both Restricted and Unrestricted Portions

When only a portion of a property that would normally be considered a single appraisal unit is restricted by a historical property contract, the assessed value should be determined by making a comparison of three values, determined as follows. First, the portion under contract should be valued using the capitalization method prescribed by section 439.2. Added to this figure should be the lower of the unrestricted portion's fair market value or factored base year value. The resulting sum should be compared to both the fair market value and the factored base year value of the entire property (i.e., both restricted and unrestricted portions) and the lowest of the three figures should be enrolled.

Valuing Property Under Notice of Nonrenewal

As provided in Government Code section 50282, either the owner of a restricted historical property or the local government entity may serve notice that it does not intend to renew the historical property contract. If such notice is not given, another year is automatically added to the term of the initial contract, thus creating a "rolling" contract term that is always equal to the initial contract term.

Section 439.3 prescribes the valuation method for a restricted historical property in nonrenewal status; this valuation method applies until the end of the restricted period (i.e., until the existing contract expires). In essence, the method results in a restricted value that gradually approaches the historical property's factored base year value as the remaining term under the contract decreases. For a property in nonrenewal status, the assessor must annually value the property as follows:

1. Determine the full cash value (i.e., factored base year value) of the property in accordance with section 110.1. (Alternatively, if the property will not be subject to section 110.1 when the historical property agreement expires, determine its fair market value in accordance with

section 110, as if the property were free of the agreement's restrictions; or, if the property will be subject to another type of restricted value standard when the historical property agreement expires, determine the property's value as if it were subject to the new restrictions.)

2. Determine the restricted value of the property by the capitalization of income method provided in section 439.2.
3. Subtract the restricted value determined in Step 2 from the factored base year (or other) value determined in Step 1.
4. Using the amount for the interest rate component (section 439.2(b)(1)) announced by the Board, discount the amount obtained in Step 3 for the number of years remaining until the termination of the contract.
5. Determine the restricted value of the property in nonrenewal status by adding the value determined in Step 2 to the amount obtained in Step 4.

The historical property's restricted value in nonrenewal status—that is, the value determined above, in accordance with section 439.3—should be compared with the historical property's factor base year and current market values, and the lowest of these three values should be enrolled as the property's taxable value.

Cancellation of Contract

The government entity party to a historical property contract may cancel the contract, after notice and a public hearing, if it determines that either the owner has breached the agreement or the property has deteriorated to the extent that it no longer meets the standards of a historical property. If the contract is cancelled, the property owner must pay a cancellation fee equal to 12½ percent of the property's current fair market value as though free of the contractual restriction, such value to be determined by the county assessor. After a contract is cancelled, the lower of the property's factored base year value or current market value should be enrolled for the ensuing lien date.

SUMMARY

The key points contained in these guidelines can be summarized as follows:

1. An owner of qualified historical property may enter into a preservation contract with local government. When property is placed under such a contract, the owner agrees to restore the property if necessary, maintain its historic character, and use it in a manner compatible with its historic characteristics. Such property receives the special valuation treatment prescribed under Revenue and Taxation Code sections 439 through 439.4.
2. Enforceably restricted historical property is to be annually valued by the income capitalization method prescribed in section 439.2, which contains specific instructions with

regard to the income to be capitalized, the capitalization rate, and the capitalization technique to be used. The restricted value must be compared to the property's current market value and factored base year value, with the lowest of these three values enrolled as the property's taxable value.

3. When assessing restricted historical property, the appraiser should consider how three important elements of article XIII A—change in ownership, new construction, and supplemental assessment—relate to the assessment. The appraiser should consider how a property should be assessed when only a portion of it is subject to a historical property agreement.
4. Restricted historical property under a notice of nonrenewal should be valued in accordance with section 439.3.
5. The government entity party to a historical property contract may cancel the contract. The cancellation fee is 12½ percent of the property's current fair market value as though free of the contractual restriction, with such value to be determined by the local assessor.

Additional information about Mills Act contracts may be obtained from the state Office of Historic Preservation, either by telephone at 916-653-6624, or from their website (www.ohp.parks.ca.gov).

(Note: Please see the assessment examples following.)

EXAMPLE 1 (OWNER-OCCUPIED SINGLE-FAMILY RESIDENCE)**Subject Restricted Historical Property**

Restored, 105-year-old, Victorian single-family residence. Excellent condition. Under Mills Act contract since 1985 and not in nonrenewal status. Owner-occupied.

Determination of Restricted Value (current lien date)

Gross income (Fair rent)		
\$1,500 per month x 12 months =		\$18,000
Less: Anticipated vacancy and collection loss		
\$18,000 x 5%		<u>- 900</u>
Effective gross income		\$17,100
Less: Anticipated operating expenses		
Grounds maintenance	\$600	
Fire insurance	400	
Management Fee	360	
Water and garbage	240	
Building maintenance	+ 500	<u>- 2,100</u>
Net Operating Income		\$15,000

Restricted Capitalization Rate

Rate Components:

Interest rate	.080	
Risk (owner-occupied SFR)	.040	
Property tax (ad valorem)	.015	
Amortization (50-year remaining life; improvements constitute 70% of total property market value; $0.02 \times 0.70 = 0.014$)	+ .014	<u>.149</u>

Restricted Value	
\$15,000 ÷ .149	= <u>\$100,671</u>

Taxable Value—Three-Way Value Comparison

Restricted value	\$100,671
Factored base year value (based on prior change in ownership)	\$357,000
Current market value (based on comparable sales)	\$450,000

The lowest of the three possible values is the restricted value. Thus, the net taxable value would be \$93,671 (\$100,671 restricted value less the homeowners' exemption of \$7,000).

Note 1: If this property had been a non-owner-occupied SFR, the only difference in the determination of the restricted value would have been the use of a risk rate component of 2% rather than 4% in the capitalization rate.

Note 2: In this and the following examples, the gross income, or fair rent, is presented on a gross rent basis, that is, under the assumption that the landlord-owner pays all operating expenses out of the gross income.

EXAMPLE 2 (OFFICE USE)**Subject Restricted Historical Property**

Multi-tenant, restored historical office building in a downtown commercial district. Under Mills Act contract since 1985 and not in nonrenewal status.

Determination of Restricted Value (current lien date)

Gross Income (Fair rent):

Offices	140,000 sf @ \$1.75/sf = <u>\$245,000</u>	
	x 12 months	= \$2,940,000

Less: Anticipated vacancy and collection loss

\$2,940,000 x 5%	<u>- 147,000</u>
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Effective gross income	\$2,793,000
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Less: Anticipated operating expenses

Management	\$290,000	
Maintenance	95,000	
Insurance	75,000	
Utilities	360,000	
Janitorial	+ 140,000	- 960,000

Net Operating Income	\$1,833,000
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Restricted Capitalization Rate

Rate Components:

Interest component	.08
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Risk	.02
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Property tax (ad valorem)	.011
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Amortization (50-year remaining life; improvements constitute 75% of total property market value

0.02 x 0.75 = 0.015)	+ .015	<u>.126</u>
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Restricted Value

(\$1,833,000 ÷ .126)	= \$14,547,619
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Taxable Value—Three-Way Value Comparison

Restricted value	\$14,547,619
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Factored base year value (based on prior change in ownership)	\$18,191,077
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Current market value (based on comparable sales)	\$21,000,000
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The lowest of the three possible values is the restricted value. Thus, the taxable value would be \$14,547,619

EXAMPLE 3 (MIXED USE—RESIDENTIAL AND OFFICE)**Subject Restricted Historical Property**

Two-story, restored historical property in a downtown district. Upper level is residential unit occupied by owner. Lower level contains three office spaces subject to short-term rental agreements. The income stream for the upstairs unit must be calculated separately from the downstairs unit because the risk rate is different for the owner-occupied unit.

Determination of Restricted Value

Separate restricted values for the upper-level residence and the lower-level office space must be determined, because the risk components are different for the two types of use. The total restricted value is sum of these two values.

Upper-Level Unit

Gross income (Fair rent) based upon comparable rent data

\$975 per month x 12 months = \$11,700

Less: Anticipated vacancy and collection loss

\$11,700 x 5% - 585

Effective gross income \$11,115

Less: Anticipated operating expenses

Grounds maintenance \$300

Fire insurance 200

Management Fee 180

Water and garbage 120

Building maintenance + 250 - 1,050

Upper-Level Net Operating Income \$10,065

Restricted Capitalization Rate (owner-occupied SFR)

Rate components:

Interest rate .080

Risk .040

Property tax .010

Amortization (50-year remaining life; improvements

constitute 70% of total property market value;

0.02 x 0.70 = 0.014) + .014 .144

Upper-level Restricted Value (\$10,065 ÷ .144) = \$69,895

Lower-Level Offices

Gross income (Fair rent)

1000 sf @ \$1.60/sf = \$1,600 x 12 months \$19,200

Less: Anticipated vacancy and collection loss

\$19,200 x 5% - 960

Effective gross income \$18,240

Less: Anticipated operating expenses		
Grounds maintenance	\$300	
Fire insurance	200	
Management Fee	180	
Water and garbage	120	
Building maintenance	+ 250	- 1,050
Lower-Level Net Operating Income		\$17,190

Restricted Capitalization Rate		
Rate components:		
Interest component	.080	
Risk	.020	
Property tax	.010	
Amortization (50-year remaining life; improvements constitute 70% of total property market value; $0.02 \times 0.70 = 0.014$)	+ .014	.124
Lower Level Restricted Value ($\$17,190 \div .124$)		\$138,629
Add: Upper Level Restricted Value		+ \$69,895
Total Restricted Value		\$208,524

Taxable Value—Three-Way Value Comparison

Restricted Value	\$208,524
Factored base year value (based upon prior change in ownership)	\$364,140
Current market value (based upon comparable sales data)	\$400,000

The lowest of the three possible values is the restricted value. Thus, the net taxable value would be \$201,524 (\$208,524 less the homeowners' exemption of \$7,000).

EXAMPLE 4 (MIXED VALUATION—PART RESTRICTED AND PART UNRESTRICTED)**Description of Subject Property (Comprises Both Restricted and Unrestricted Portions)**

The subject property is a 10-acre parcel with a farmhouse and barn situated on 2 acres; the remaining 8 acres are farmland. The farmhouse and barn are used as an owner-occupied single-family residence; this portion of the property is restricted under a Mills Act contract. The remaining 8 acres of farmland are unrestricted.

Value of Restricted Portion (current lien date)

Gross income (Fair rent) for farmhouse and barn		
\$2,000 per month x 12 months =		\$24,000
Less: Anticipated vacancy and collection loss		
\$24,000 x 5%		<u>- 1,200</u>
Effective gross income		\$22,800
Less: Anticipated operating expenses		
Grounds maintenance	\$600	
Fire insurance	400	
Management Fee	360	
Water and garbage	240	
Building maintenance	+ 500	<u>- 2,100</u>
Net Operating Income		= \$20,700

Restricted Capitalization Rate

Rate components:

Interest component .080

Risk (owner-occupied) .040

Property tax (ad valorem) .010

Amortization (50-year remaining life; improvements

constitute 70% of total property market value

0.02 x 0.70 = 0.014)

+ .014 .144

Restricted Value (\$20,700 ÷ .144) = \$143,750

Taxable Value—Three-Way Comparison

Total Property Restricted Value (sum of restricted value above and lower of FBYV or current market value of unrestricted portion)

Restricted Value (portion under contract)	\$143,750
FBYV (unrestricted portion)	+ <u>\$102,000</u>
Restricted Value (total property)	\$245,750

Factored base year values (based upon a prior change in ownership of the entire property, allocated between restricted and unrestricted portions):

Farmhouse, barn, and 2 acres (restricted portion)	\$204,000
8 acres (unrestricted portion)	+ <u>\$102,000</u>
Total FBYV (total property)	\$306,000

Current market values (based upon comparable sales data):

Farmhouse, barn, and 2 acres (restricted portion)	\$230,000
8 acres (unrestricted portion)	+ <u>\$120,000</u>
Total Current Market Value (total property)	\$350,000

The lowest of the three values is the Restricted Value (total property), \$245,750. Thus, the net taxable value would be \$238,750 (\$245,750 less \$7,000 homeowners' exemption).

EXAMPLE 5 (PROPERTY IN NONRENEWAL STATUS)**Description of Subject Restricted Historical Property**

The same property as in Example 2, except the property owner has served notice of renewal. The Mills Act contract covering the property was originally executed in September 1995, and the owner served notice of nonrenewal in June 2004. Value the property for the 2005 lien date, reflecting its nonrenewal status. Assume that the property's restricted, current market, and factored base year values from Example 2, provided below, also refer to January 1, 2005.

Restricted value	\$14,547,619
Current market value	\$21,000,000
Factored base year value	\$18,191,077

Restricted Value in Nonrenewal Status

Value as if unrestricted (factored base year value)	\$18,191,077
Restricted value	<u>- 14,547,619</u>
Difference	\$ 3,643,458
Present worth of difference	
PW1 @ 6.00 %, 9 years (interest component for lien date 2005)	<u>x .591898</u>
	= \$ 2,156,555
Plus restricted value	<u>+ \$14,547,619</u>
Restricted value in nonrenewal status—lien date January 1, 2005	\$16,704,174

Taxable Value

Since the restricted value in nonrenewal status, \$16,704,174, is less than either the property's current market value or its factored base year value, this is the taxable value.



CITY OF CARMEL-BY-THE-SEA CITY COUNCIL Staff Report

December 5, 2023
PUBLIC HEARINGS

TO:	Honorable Mayor and City Council Members
SUBMITTED BY:	Marnie R. Waffle, AICP, Principal Planner
APPROVED BY:	Chip Rerig, City Administrator
SUBJECT:	MA 23-116 (Esperanza Carmel, LLC): Consideration of a Mills Act Contract application MA 23-116 (Esperanza Carmel LLC) for the historic "Mrs. Clinton Walker House" located at 26336 Scenic Road in the Single-Family Residential (R-1) District. APN 009-423-001

RECOMMENDATION:

Accept the recommendation of the Historic Resources Board and approve the Mills Act Historical Property Contract MA 23-116 (Esperanza Carmel, LLC) for the historic "Mrs. Clinton Walker House" located at 26336 Scenic Road (APN 009-423-001) and authorize the City Administrator to execute the contract (**Attachment 1**).

BACKGROUND/SUMMARY:

The property is located at 26336 Scenic Road in the Single Family Residential (R-1) Zoning District (**Attachment 2, Exhibit A**). The existing residence is known as the "Mrs. Clinton Walker House," and is also known as "Cabin on the Rocks." The low, one-story, concrete and Carmel stone building projects out on a granite outcropping over Carmel Bay. The residence was designed by architect Frank Lloyd Wright in 1948 and was constructed by Miles Bain and Walter Olds in 1951-1952 for the original owner, Mrs. Clinton Walker.

A Department of Parks and Recreation (DPR) Form 523 was completed for the "Mrs. Clinton Walker House" in 2001 by Richard N. Janick (**Attachment 3, Exhibit B**) and the resource was added to the Carmel Inventory on May 25, 2005. A Resolution Designating a Historic Resource for APN 009-423-001 was recorded with the County Recorder on January 4, 2007 (Document #2007001115).

In order to qualify for a Mills Act contract, a property must first be included on the Carmel Inventory and then added to the Carmel Register of Historic Resources. As noted above, the property was added to the Carmel Inventory in 2005. The property was also listed on the National Register (reference #16000634), and on the California Register on September 19, 2016. CMC Section 17.32.090.A.1 states, "*Resources identified as significant at a State or national level in the inventory shall be automatically listed in the register.*" The resource was therefore automatically added to the Carmel Register.

On May 28, 2019, then-property owner Charles Henderson submitted an application for a Mills Act

Historical Property Contract. The Historic Resources Board recommended approval of the contract on June 17, 2019, and on December 8, 2020, the City Council voted to enter into a Mills Act Historical Property Contract with the property owner. However, before the contract was finalized and recorded with the County, the property owner withdrew the application.

The property was sold on February 17, 2023 to Esperanza Carmel, LLC. On April 20, 2023, Christopher Mitchell, Managing Director of Esperanza Carmel, LLC, submitted a Mills Act application (MA 23-116) on behalf of the current property owner. On August 21, 2023, the Historic Resources Board adopted Resolution 2023-011-HRB (**Attachment 5**), recommending that the City Council enter into a Mills Act Contract with Esperanza Carmel, LLC for the historic "Mrs. Clinton Walker House."

Contract Value

The Monterey County Assessor's Office is responsible for determining the value of a property under Mills Act Contract in accordance with Revenue and Taxation Code sections 439 through 439.4. Properties with a Mills Act Contract are not valued based on sales data; rather they are valued by a prescribed income capitalization method (**Attachment 6**). After a Contract is approved, it is forwarded to the Monterey County Assessor who then determines the Mills Act value.

Contract Summary

A Mills Act contract under State law is an agreement between the City of Carmel and a property owner of a historic building listed on the Carmel Register. In exchange for reduced property taxes, the property owner is contractually obligated to perform annual maintenance on the building. The property owner benefits from a reduction in property taxes. The City benefits from assurance, via contract, that the historic building is rehabilitated, maintained, and preserved with a portion of those property taxes that the city is giving up.

The primary purpose for offering Mills Act contracts in the City of Carmel-by-the-Sea is to assist in and ensure the rehabilitation or restoration and long-term maintenance of historic resources. All properties listed on the City's Historic Register in all districts that have been preserved in their historical size, form, and design without significant alterations are eligible for Mills Act contracts.

All Mills Act contracts have a term of 10 years, and one year is added to this term annually upon each anniversary date of the contract unless one or both parties (City and property owner) have taken action to terminate the contract. The City Administrator is authorized to initiate contract termination on behalf of the City based on recommendations of the Community Planning & Building Department. The contract rights and obligations are binding upon all successive owners of the property during the life of the contract. The property retains the lower Mills Act tax rate when sold. To end a contract, either party may submit a notice of non-renewal to the other party. Such notices shall cause the contract to terminate at the end of the then-current 10-year contract period. Cancellation of a contract by the City due to non-compliance requires a public hearing and, if canceled, results in the immediate termination of the contract and a penalty equal to 12.5 percent of the assessed market value of the property.

The contract requires that the historical elements of the property are maintained in good condition. This includes a plan for rehabilitation and maintenance and may include a program to restore deteriorated features. All recipients of Mills Act contracts are required to implement a rehabilitation/restoration and maintenance plan prepared by a qualified professional. An annual report is submitted to the Community Planning & Building Department specifying all work that has been done to maintain and preserve the historic resource over the year in compliance with the approved rehabilitation/restoration and maintenance plan. All rehabilitation/restoration and maintenance work must be completed in conformance with the Secretary of Interior's Standards for Rehabilitation and all proposed projects are subject to a Design Study review prior to commencement of the work. Minor alterations, as defined in CMC section 17.32.150, may be approved by staff; however, major alterations, as defined in CMC section 17.32.160 would be reviewed by a qualified

professional and presented to the Historic Resources Board for review. All Mills Act contracts must specify that the rehabilitation/restoration and maintenance plan shall be updated at least every ten years by a qualified professional and approved by both parties.

The Historic Resources Board considers each application for a Mills Act contract and provides a recommendation to the City Council to approve, approve with conditions, or deny the application.

The City Council considers the recommendations from the Historic Resources Board at a public hearing and resolves to approve, approve with conditions, or deny the proposed contract with sufficient time for action by the City Clerk so that recordation of approved contracts occurs before December 31st of the year in which the application is received.

STAFF ANALYSIS

Findings

Carmel Municipal Code Section 17.32.100.B.6(c) sets forth findings that the Historic Resources Board and City Council shall make in order to grant approval of a Mills Act Contract. The required findings are listed below followed by a staff response on how the application meets the requirements.

1. *The building is designated as a historic resource by the City and is listed on the Carmel Register.*

Staff Response: A DPR 523 form was prepared by Richard N. Janick in 2001 (Attachment 1, Exhibit B), evaluating the property for historical significance and finding the property meets the criteria for listing as a local historic resource. The City added the property to the Carmel Inventory on May 25, 2005. A Resolution Designating a Historic Resource for APN 009-423-001 was recorded with the County Recorder on January 4, 2007 (Document #2007001115). The property was also listed on the National Register (reference #16000634), and on the California Register on September 19, 2016. CMC Section 17.32.090.A.1 states, “Resources identified as significant at a State or national level in the inventory shall be automatically listed in the register.” The resource was therefore automatically added to the Carmel Register. The application meets this finding.

2. *The proposed rehabilitation/restoration and maintenance plan is appropriate in scope and sufficient in detail to guide long-term rehabilitation/restoration and maintenance. Required maintenance and rehabilitation should be more significant than just routine maintenance that would be expected for any property.*

Staff Response: The applicant submitted a rehabilitation and maintenance plan (**Attachment 4, Exhibit C**). The plan covers a period of 10 years from 2024-2033 and estimates \$1,343,654 in work projects. The plan was compiled by Christopher Barlow, Architect (and qualified professional), on behalf of the applicant. The plan includes routine maintenance (such as exterior painting) as well as more substantial repairs including replacing the roof, electrical and plumbing upgrades, window rehabilitation and replacement (if deteriorated beyond repair); and replacing the interior boiler. All rehabilitation and maintenance work will be performed in conformance with the Secretary of Interior’s Standards for Rehabilitation. All exterior work is subject to Design Study approval and a determination of consistency with the Secretary of the Interior’s Standards for Rehabilitation. The proposed plan meets this finding.

3. *Alterations to the historic resource have been in the past, and will continue to be in the future, limited to interior work and to exterior rehabilitation and alterations that:*

(A) *Comply with the Secretary’s Standards (future additions only); and*

- (B) *Do not significantly alter, damage or diminish any primary elevation or character-defining feature; and*
- (C) *Do not increase floor area on the property by more than 15 percent beyond the amount established in the documented original or historic design of the resource; and*
- (D) *Do not result in any second-story addition to a single-story historic resource.*

Staff Response: Past exterior rehabilitation has not significantly altered, damaged, or diminished any primary elevation or character-defining feature or resulted in a second-story addition. An addition constructed in 1960-1961 by Sandy Walker, AIA, was based on a design by Frank Lloyd Wright and is considered part of the historic resource. As noted above, planned rehabilitation and maintenance work will be performed in conformance with the Secretary of Interior's Standards for Rehabilitation. Any future alterations are required to be consistent with conditions A-D above. Minor alterations, as defined in CMC section 17.32.150, may be approved by staff; however, major alterations, as defined in CMC section 17.32.160 would be reviewed by a qualified professional and presented to the Historic Resources Board for review. The application meets this finding.

- 4. *The Mills Act contract will aid in offsetting the costs of rehabilitating and maintaining the historic resource.*

Staff Response: Approval of the contract would assist in offsetting the rehabilitation and maintenance costs of preserving the "Mrs. Clinton Walker House" by reducing the tax liability on the property thereby freeing up funds for the rehabilitation. Some of the more notable work that is proposed to be accomplished within the first few years would include electrical and plumbing upgrades, boiler replacement, window repair (where possible) and in-kind replacement (where deteriorated beyond repair), and façade brickwork maintenance. The application meets this finding.

- 5. *Approval of the Mills Act contract will represent an equitable balance of public and private interests and will not result in substantial adverse financial impact on the City.*

Staff Response: Approval of the Mills Act Contract will be consistent with Goal 1-5 and Objective 1-16 of the Land Use & Community Character Element of the General Plan which encourages providing incentives for property owners to preserve and rehabilitate historic resources. Although the adoption of a Mills Act Contract will decrease property tax revenue to the City, this contract represents an equitable balance of public and private interests:

- 1) The City Council adopted Resolution 2016-068 on September 13, 2016, limiting the number of Mills Act contracts that can be approved to fifteen (15) in any three-year calendar period. No applications were approved in 2020 or 2021, four applications were approved in 2022, one application has already been approved in 2023 (L'Auberge), and four total applications are currently in review in 2023.
- 2) Carmel currently has 292 historic resources, and since the adoption of the Mills Act program in 2004, the City has entered into a total of fifteen Mills Act Contracts.
- 3) The City would continue to receive a portion of the property tax revenue (which has increased following the February 2023 sale of the property) and the investment in rehabilitation and maintenance supports local tourism, which benefits both private and public interests. The value of preserving a historic resource offsets the loss of revenue.
- 4) The value of preserving a historic resource offsets the loss of revenue.

Next Steps: If the City Council enters into a Mills Act Contract for this property, the contract will be recorded with the Monterey County Recorder and will take effect January 1, 2024.

FISCAL IMPACT:

The City will have a diminished tax base from the property at 26336 Scenic Road for the term of the contract. The amount is unknown at this point.

PRIOR CITY COUNCIL ACTION:

Prior City Council Action:

On December 8, 2020, the City Council voted to enter into a Mills Act Historical Property Contract with the then-property owner. However, before the contract was finalized and recorded with the County, the property owner withdrew the application.

On March 3, 2020, the City Council adopted standard contract language for Mills Act Contracts. On April 4, 2023, the City Council reviewed the City's Mills Act Policy and opted not to make any changes. On November 7, 2023, the City Council directed the City Attorney to prepare an Urgency Ordinance establishing a moratorium on accepting any new Mills Act contract applications until the policy could be reevaluated. The Urgency Ordinance is on the Council's December 5th agenda for action.

ATTACHMENTS:

Attachment 1) Standard Mills Act Contract

Attachment 2) Exhibit A - Legal Description

Attachment 3) Exhibit B - DPR 523 Form "Mrs. Clinton Walker House"

Attachment 4) Exhibit C - Rehabilitation/Maintenance Plan

Attachment 5) Resolution 2023-011-HRB

Attachment 6) Guidelines for the Assessment of Enforceably Restricted Historical Property

RECORDING REQUESTED BY
CITY OF CARMEL-BY-THE-SEA

AND WHEN RECORDED MAIL TO

Carmel City Hall
Attn: Community Planning & Building
P.O. Box CC
Carmel-By-The-Sea, CA 93921

This space reserved for the Recorder's use only

CITY OF CARMEL-BY-THE-SEA
MILLS ACT HISTORIC PROPERTY PRESERVATION CONTRACT

THIS AGREEMENT is made and entered by and between the CITY OF CARMEL-BY-THE-SEA a municipal corporation (hereinafter referred to as "City"), and Esperanza Carmel, LLC (hereinafter referred to as "Owner").

RECITALS

- (i) California Government Code Section 50280, et seq. (known as the Mills Act) authorizes cities to enter into contracts with the owners of qualified historic properties to provide for their appropriate use, maintenance and restoration such that these historic properties retain their historic characteristics;
- (ii) The Owner possesses fee title in and to that certain real property, together with associated structures and improvements thereon, located at 26336 Scenic Road (APN: 009-423-001), Carmel-By-The-Sea, California, (hereinafter referred to as the "Historic Property"). A legal description of the Historic Property is attached hereto, marked as "**Exhibit A**" and is incorporated herein by reference;
- (iii) The property is identified as a historic resource on the City of Carmel-By-The-Sea's Historic Inventory and Register of Historic Resources and is further described in the DPR 523 Form attached hereto, marked as "**Exhibit B**" and is incorporated herein by reference;
- (iv) City and Owner, for their mutual benefit, now desire to enter into this Agreement both to protect and preserve the characteristics of historical significance of the Historic Property, as it exists at the date of this contract and as described in the City's Register of Historic Resources and the National Register of Historic Places, and to qualify the Historic Property for an assessment of valuation pursuant to the provisions of Article 1.9 (commencing with section 439) of Chapter 3 of Part 2 of Division 1 of the California Revenue and Taxation Code.

NOW, THEREFORE, City and Owner, in consideration of the mutual covenants and conditions contained herein, do hereby agree as follows:

1. **INCORPORATION OF RECITALS.** All recitals are incorporated into this Agreement.
2. **EFFECTIVE DATE AND TERM.** This Agreement shall be effective and commence on the date the Agreement is signed by the City, unless otherwise indicated by the County of Monterey, and shall remain in effect for a minimum term of ten (10) years thereafter.
3. **AUTOMATIC RENEWAL.** Each year, upon the anniversary of the effective date of this Agreement (hereinafter referred to as “annual renewal date”), one (1) year shall be added automatically to the term of this Agreement, unless timely notice of nonrenewal is given as provided in paragraph 4 of this Agreement. The total length of the contract shall not exceed twenty (20) years.
4. **NOTICE OF NONRENEWAL.** If City or Owner desires in any year not to renew this Agreement, that party shall serve written notice of nonrenewal in advance of the annual renewal date of this Agreement as follows: Owner must serve written notice of nonrenewal at least ninety (90) days prior to the annual renewal date; City must serve written notice of the nonrenewal at least sixty (60) days prior to the annual renewal date. If notice is not received, the Agreement shall automatically be renewed for another year. Upon receipt by Owner of a notice of nonrenewal from the City, Owner may make a written protest. At any time prior to the annual renewal date, City may withdraw its notice of nonrenewal.
5. **EFFECT OF NOTICE OF NONRENEWAL.** If either City or Owner serves timely notice of nonrenewal in any year, and this contract is not renewed, this Agreement shall remain in effect shall remain in effect for the balance of the period remaining since the original execution or the last annual renewal date.
6. **FEES.** The City may require that the Owner(s) of the Historic Property pay a fee that shall not exceed the reasonable cost of providing services, such as inspections, pursuant to Government Code Section 50281.1 (Article 12 of Chapter 1 of Part 1 of Division 1 of Title 5 of the Government Code), for which the fee is charged.
7. **VALUATION OF PROPERTY.** During the term of this Agreement, Owner is entitled to seek assessment of valuation of the Historic Property pursuant to the provisions of Chapter 3 of Part 2 of Division 1 of the California Revenue and Taxation Code.
8. **PRESERVATION OF PROPERTY.** Owner shall preserve and maintain the characteristics of historical significance of the Historic Property and agrees to complete rehabilitation and/or maintenance activities as defined in the Rehabilitation/Restoration and Maintenance Plan attached as “**Exhibit C**”. Requests for revisions to the Maintenance and

Rehabilitation plan shall be reviewed by the Historic Resources Board prior to implementation. In addition, Owner shall comply with the terms of the City's Historic Preservation Ordinance (CMC 17.32). Owners shall not be permitted to further impede any view corridor with any new structure, including but not limited to walls, fences, or shrubbery, so as to prevent the viewing of the Historic Property from the public right-of-way.

9. **RESTORATION OF PROPERTY.** Owner shall, where necessary, restore and rehabilitate the Historic Property to conform to the rules and regulations of the Office of Historic Preservation of the State Department of Parks and Recreation, U. S. Secretary of the Interior's Standards for Rehabilitation, the State Historical Building Code, and the City of Carmel-by-the-Sea, all as amended.
10. **INSPECTIONS.** Owner shall allow periodic examinations, at least every five (5) years, with reasonable notice thereof, of the interior and exterior of the Historic Property by representatives of the County of Monterey Assessor and the City of Carmel-By-The-Sea as may be necessary to determine Owner's compliance with the terms and provisions of this Agreement. The City will coordinate inspections by such other agencies that have jurisdiction and will keep them to the minimum necessary to determinate such compliance.
11. **PROVISION OF INFORMATION.** Owner shall furnish City with any and all information required by City, in order to determine the eligibility of the Historic Property, and that City deems necessary or advisable to determine compliance with the terms and provisions of this Agreement.
12. **ANNUAL REPORT.** Owner shall submit an annual report at least 90 days prior to each annual renewal date (October 1st) to the Department of Planning and Building specifying all work that has been done to maintain and preserve the historic resource over the preceding year in compliance with the approved maintenance plan.
13. **CANCELLATION.** The City has the right to cancel the contract if the owner allows the property to deteriorate to the point that it no longer meets the standards for a qualified historical property. The City also has the right to cancel this contract if the owner(s) breaches the provisions of paragraph's # 8, 9, 10 or 12 of this Agreement after the City has provided reasonable notice of any failure to comply with the agreement, and a public hearing. Notice of the hearing shall be mailed to the last known address of each owner of the property, with the notice conforming to the provisions of Government Code section 6061., If after notice and a hearing, the contract is cancelled, termination of the Agreement is immediate, and the owner shall pay a cancellation fee equal to 12.5 percent of the current fair market value of the property, as determined by the Monterey County Assessor as though the property were free of the contractual restriction. The cancellation fee shall be paid to the Assessor, at the time and in the manner that the Assessor shall prescribe. City's right to cancel this Agreement pursuant to this paragraph

shall in no way limit or restrict its rights or legal remedies arising from City's Historic Preservation Ordinance and Municipal Code.

14. **ENFORCEMENT OF AGREEMENT.** In lieu of and/or in addition to any provisions to cancel this Agreement as referenced herein, City may specifically enforce, or enjoin the breach of, the terms of this Agreement.
15. **WAIVER.** City does not waive any claim or default by Owner if City does not enforce or cancel this Agreement. All remedies at law or in equity, which are not otherwise provided for this Agreement or in City's regulations governing historic properties are available to City to pursue in the event there is a breach of this Agreement. No waiver by City of any breach or default under this Agreement shall be deemed to be a waiver of any other subsequent breach thereof or default hereunder.
16. **BINDING EFFECT OF AGREEMENT.** Owner hereby subjects the Historic Property to the covenants, reservations and restrictions set forth in this Agreement. City and Owner hereby declare their specific intent that the covenants, reservations, and restrictions as set forth herein shall be deemed covenants running with the land and shall pass to and be binding upon Owner's successors and assigns in title or interest to the Historic Property. A successor in interest shall have the same rights and obligations under this Agreement as the original owner who executed the Agreement.
Each and every contract, deed or other instrument hereinafter executed, governing or conveying the Historic Property, or any portion thereof, shall conclusively be held to have been executed, delivered and accepted subject to the covenants, reservations and restrictions expressed in this Agreement regardless of whether such covenants, reservations and restrictions are set forth in such contract, deed or other instrument. City and Owner hereby declare their understanding and intent that the burden of the covenants, reservations and restrictions set forth herein touch and concern the land in that it restricts development of the Historic Property. City and Owner hereby further declare their understanding and intent that the benefit of such covenants, reservations and restrictions touch and concern the land by enhancing and maintaining the cultural and historic characteristics and significance of the Historic Property for the benefit of the public and Owner.
17. **NOTICE.** Any notice required to be given by the terms of this Agreement shall be provided at the address of the respective parties as specified below, by personal delivery or United States mail, postage prepaid, addressed as follows:

City: Carmel-By-The-Sea
Community Planning & Building Department
Attn: Community Planning & Building Director
P.O. Box CC
Carmel-By-The-Sea, CA 93921

Owner: Esperanza Carmel, LLC
PO Box 134
Carmel by the Sea, CA, 93921

Notice to successors in interest to either party shall be sent to the appropriate address. In the case of future Owner(s) of the Historic Property, notice shall be sent to the address on file with the county property tax office in power at the time.

18. **RECORDATION.** No later than twenty (20) days after the parties execute and enter into this Agreement, the City shall cause this Agreement to be recorded in the Office of the County Recorder of the County of Monterey. From and after the time of the recordation, this Agreement shall impart a notice thereof to all persons as is afforded under state law.
19. **STATE LAW.** The Owner or agent of Owner shall provide written notice of this Agreement to the State Office of Historic Preservation within six (6) months of the date of this Agreement.
20. **GOVERNING LAW; VENUE.** This Agreement shall be constructed and governed in accordance with the laws of the State of California. Should either party to this agreement bring legal action against the other, the case shall be handled in Monterey County, California and the party prevailing in such action shall be entitled to a reasonable attorney fee which shall be fixed by the judge hearing the case and such fee shall be included in the judgment together with all costs.
21. **AMENDMENTS.** This agreement may be amended in whole or in part, only by a written-recorded instrument executed by the parties hereto.
22. **DESTRUCTION OF PROPERTY; EMINENT DOMAIN; CANCELLATION.** If the Historic Property is destroyed by earthquake, fire, flood, or other natural disaster such that in the opinion of the City Building Official more than sixty percent (60%) of the original fabric of the structure must be preplaced, this Agreement shall be cancelled because the historic value of the structure will have been destroyed. If the Historic Property is acquired in whole or in part by eminent domain or other acquisition by any entity authorized to exercise the power of eminent domain, and the acquisition is determined by the City Council to frustrate the purpose of this Agreement, this Agreement shall be cancelled. No cancellation fee pursuant to Government Code Section 50286 shall be imposed if the Agreement is cancelled pursuant to this paragraph. Such Agreement shall be null and void for all purposes of determining the value of the property so acquired.
23. **INDEMNIFICATION.** Owner shall defend, indemnify, and hold harmless City and its elected officials, officers, agents and employees from any actual or alleged claims, demands, causes of action, liability, loss, damage, or injury to property or persons, including wrongful death, whether imposed by a court of law or by administrative action of any

federal, state or local government agency, arising out of or incident to the direct or indirect use, operation, or maintenance of the Historic Property by Owner or any contractor, subcontractor, employee, agent, lessee, licensee, invitee, or any other person; (ii) Owner's activities in connection with the Historic Property; and (iii) any restriction on the use of development of the Historic Property, from application or enforcement of the City's Municipal Code, or from the enforcement of this Agreement. This indemnification includes, without limitation, the payment of all penalties, fines, judgments, awards, decrees, attorneys' fees, and related costs or expenses, and the reimbursement of the City, its elected officials, employees, and/or agents for all legal expenses and costs incurred by each of them. Owner's obligation to indemnify shall survive the termination, cancellation, or expiration of this Agreement and shall not be restricted to insurance proceeds, if any, received by City, its elected officials, employees, or agents.

24. **SEVERABILITY.** In the event that any of the provisions of this Agreement are held to be unenforceable or invalid by any court of competent jurisdiction, or by subsequent preemptive legislation, the validity and enforceability of the remaining provisions, or portions thereof, shall not be affected thereby.

IN WITNESS THEREOF, the City and Owners have executed this Agreement on the day and year written above.

CITY OF CARMEL-BY-THE-SEA:

By: _____

Date: _____

Name: Richard L. Rerig ("Chip")

Title: City Administrator

PROPERTY OWNER(S):

By: _____

Date: _____

Name: Christopher Mitchell on behalf of Esperanza

Carmel, LLC

Title: Managing Director

EXHIBIT A
LEGAL DESCRIPTION

EXHIBIT B
DPR 523 FORM

EXHIBIT C
REHABILITATION AND MAINTENANCE PLAN

DRAFT

All of Block "B-18", as show on that certain map of Addition No. 7 Carmel-by-the-Sea, in the City of Carmel-by-the-Sea, County of Monterey, State of California, filed for record May 4, 1910 in the Office of the County Recorder of said county in Volume 2 of Maps, "Cities and Towns", at page 24;
Also that certain strip of land lying between said block "B-18" and the shore line of the Pacific Ocean and bounded on its easterly end by a line running N. 20° 17' W., from the most easterly point of said Block "B-18"; and bounded on its westerly end by the common line between lots 16 and 18 in Block "B-16", as show on said map, projected northerly to the shore line of the Pacific Ocean.

State of California — The Resources Agency
DEPARTMENT OF PARKS AND RECREATION
PRIMARY RECORD

Primary # _____ Attachment 3

HRI# _____

Trinomial _____

NRHP Status Code _____

Other Listings _____

Review Code _____

Reviewer _____

Date _____

Page 1 of 5

*Resource Name or #: (Assigned by recorder) Mrs. Clinton Walker House

P1. Other Identifier: Cabin on the Rocks

*P2. Location: ☐ Not for Publication ☒ Unrestricted

*a. County Monterey

and (P2b and P2c or P2d. Attach a Location Map as necessary.)

*b. USGS 7.5' Quad _____ Date _____ T _____ R _____ ¼ of _____ ¼ of Sec _____ B.M.

c. Address N.S. Santa Lucia bet. Martin Way & Bay City Carmel By The Sea Zip 93921

d. UTM: (Give more than one for large and/or linear resources) Zone View mE/ _____ mN

e. Other Locational Data: (e.g., parcel #, directions to resource, elevation, etc., as appropriate)

Monterey County Assessor's Parcel #9-423-1 (Block B, Lot 18)

*P3a. Description: (Describe resource and its major elements. Include design, materials, condition, alterations, size, setting, and boundaries)

See Continuation Sheet.

*P3b. Resource Attributes: (List attributes and codes) HP-2 Single Family Residence

*P4. Resources Present: ☒ Building ☐ Structure ☐ Object ☐ Site ☐ District ☐ Element of District ☐ Other (Isolates, etc.)



P5b. Description of Photo: (View, date, accession #) West Facade
8/14/01 #1857-18

*P6. Date Constructed/Age and Sources: ☒ Historic

☐ Prehistoric ☐ Both
1951-52 "The Cabin on the Rocks" (1994)

*P7. Owner and Address:

Henderson Family Trust
77 New Place Road
Hillsborough, CA 94010

*P8. Recorded by: (Name, affiliation, and address)

Richard N. Janick
MART

*P9. Date Recorded: 7/20/01

*P10. Survey Type: (Describe)

Carmel HRI
2001

*P11. Report Citation: (Cite survey report and other sources, or enter "none.") Carmel By-The-Sea Survey 1989-1996

*Attachments: NONE ☐ Location Map ☐ Sketch Map ☒ Continuation Sheet ☒ Building, Structure, and Object Record
☐ Archaeological Record ☐ District Record ☐ Linear Feature Record ☐ Milling Station Record ☐ Rock Art Record
☐ Artifact Record ☐ Photograph Record ☐ Other (List) _____

BUILDING, STRUCTURE, AND OBJECT RECORD

Page 2 of 5

*NRHP Status Code 3S

*Resource Name or # (Assigned by recorder) Mrs. Clinton Walker House

B1. Historic Name: Mrs. Clinton Walker House

B2. Common Name: _____

B3. Original Use: Single Family Residence B4. Present Use: Vacation House

*B5. Architectural Style: Frank Lloyd Wright - Organic Architecture

*B6. Construction History: (Construction date, alterations, and date of alterations)

See Continuation Sheet.

*B7. Moved? ☒ No ☐ Yes ☐ Unknown Date: _____ Original Location: _____

*B8. Related Features:

1. The stone work was done by the DeMaria Bros. and was Mrs. Walker's contribution to the design when the "Desert Masonry" proved ineffective. 2. A kitchen door was also fabricated by Mrs. Walker's insistence against Wright's plan.

B9a. Architect: Frank Lloyd Wright

b. Builder: Miles Bain (Local) and

*B10. Significance: Theme "Organic Architecture"

Area Walter Olds (Bay Area)

Period of Significance Post WW II

Property Type S.F.R.

Applicable Criteria CR3

(Discuss importance in terms of historical or architectural context as defined by theme, period, and geographic scope. Also address integrity.)

See Continuation Sheet.

B11. Additional Resource Attributes: (List attributes and codes) HP-2 Single Family Residence

*B12. References:

See Continuation Sheet.

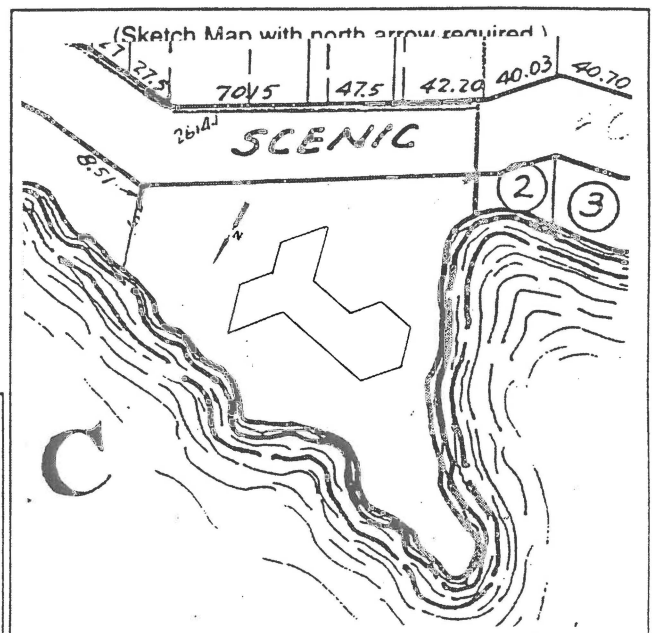
B13. Remarks:

Zoning R-1

*B14. Evaluator: Richard N. Janick, MARI

*Date of Evaluation: Carmel HRI, Summer 2001

(This space reserved for official comments.)



CONTINUATION SHEET

Primary # _____ Attachment 3

HRI# _____

Trinomial _____

Page 3 of 5

*Resource Name or # (Assigned by recorder) Mrs. Clinton Walker House

*Recorded by Richard N. Janick

*Date Summer 2001 ☐ Continuation ☐ Update

P3a. Description:

A low one-story concrete and "Carmel Stone" house that projects out on a granite outcropping into Carmel Bay. The plan features a hexagonal living room covered by a hexagonal low hipped roof sheathed in weathered copper. The gabled roof bedroom wing extends into a hipped roof carport that features an open window to a Thomas Church-landscaped garden and the ocean. The waves of Carmel Bay break against a triangular ship-like prow of concrete and "Carmel Stone" forming a terrace beyond the panoramic glazed living room. Inverse stepped windows framed in Cherokee-red painted steel enclose and surround the living room. The bedroom wing features a loggia of redwood French doors that open out into the garden and diagonal redwood screens that shield the wind. The master bedroom, the studio addition of 1960-61, features a fireplace and extends at an angle opposite the carport giving the plan a footprint of a "fish" form when seen from above. The stepped in window treatment is used in the master bedroom and two smaller guest bedrooms. A glass and steel screen shields a private patio off the master bedroom accessible through redwood and glass French doors. A long redwood fence and overgrown cypress trees shield the property from Scenic Road and a trapezoidal shaped redwood gate extends from the fence to a concrete and "Carmel Stone" triangular support post that originally contained a circular planter filled with blue-green tinted glass spheres illuminated by recessed lighting. The house sits on a concrete slab foundation and red-tinted concrete floor inscribed by hexagonal patterns and containing copper tubes for radiant heating. From the west, the terrace and living room form a distinct ship cutting through the waves. From the east, the terrace disappears and the long-low roof line and ribboned windows of the guest bedrooms form a natural extension of the rock outcrop that anchors the house to the site.

B6. Construction History:

1. First Rendering and Plans – 1948 – Carport facing southwest copper roof.
2. Revised Rendering and Plans – 1949 – Carport facing southeast copper roof.
3. Working Drawings – Specifications – 1950 – Based on Revised 1949 Plan.
4. Monterey County Zoning Permit Application #C-46, 4/24/50. Architect: Frank Lloyd Wright. Contractor: Miles Bain. Building 2,000 sq. ft. – 9,170 sq. ft. lot. Initial Projected Cost: \$35,000.
5. Construction Period (April 1951 to November 1952):
 - a. "Desert Masonry" changed to "Carmel Stone." Supervising Architects: Aaron Green and Walter Olds.
 - b. Concrete floor instead of "Green Slate."
 - c. "Kitchen door" added – against Wright's scheme.
 - d. Fireplace in bedroom – main fireplace problems (Pole wood).
 - e. Loggia doors and screens on west versus east.
 - f. Copper roof changed to "Ludowichi-Celadon" roof. Triangular ceramic glazed interlocking metal panels in blue-green color pattern. Architectural porcelain construction – Oakland – Roos Roofing Co. Final cost \$55,000.
 - g. Tommy Church Landscape.

CONTINUATION SHEET

Primary # _____ Attachment 3

HRI# _____

Trlnomial _____

Page 4 of 5

*Resource Name or # (Assigned by recorder) Mrs. Clinton Walker House

*Recorded by Richard N. Janick

*Date Summer 2001 ☐ Continuation ☐ Update

B6. Construction History (Continued):

- h. Roof leaks (May 1956). Replaced with copper panels of original design – P.M.C. Roofing Co., Pacheco, California
- i. Studio Addition design to bedroom – November 1956 – later carried out in 1960–61 by Sandy Walker, A.I.A., nephew of Mrs. Walker (Wright died in April 1959. Became Master Bedroom.
- j. Mermaid Sculpture on deck – Mrs. Walker acquisition.
- k. Permit #97-102 – May 1997 – new copper roof by P.M.C. Roofing, Pacheco, California - \$50,000 – original contractors in 1956.
- l. New Gate – 1999 – Built to original specifications.
- m. Permit # R.E. 00-41 – New fence built to exact specifications of old fence – October 2000 (completed 2001) (horizontal redwood board and batten – 5 ft. high).
- 6. 1996 – “Frank Lloyd Wright Conservancy” – detailed “as-is” analysis of the house, identifying future maintenance.

B10. Significance:

This house qualifies as both a State Historical Resource and National Historic Resource under Criteria #3 as the only house designed and constructed by Frank Lloyd Wright in Carmel that also relates directly to its seaside location and environment. It has been internationally photographed and published and was even featured in the 1960 motion picture “A Summer Place.” The house, originally designed as a vacation home, has been willed to the Henderson Family Trust (Harriet Henderson is Mrs. Clinton Walker’s daughter), and continues to be utilized with its original intent. Wright also designed three other houses on coastal sites in the Carmel-Pebble Beach area

- 1. The John Nesbitt House – “Sea Garden” 1941 – Pebble Beach.
 - 2. The Stuart Haldorn House – “The Wave” 1945 – Carmel Point.
 - 3. The George Clark House – “Sunbonnet” 1952 – Carmel Beach.
- that were not built.

The Clark House was adapted to the Arizona Desert for Georgine Boomer in 1955–1956. The Nesbitt and the Haldorn Houses were featured in a color portfolio of Wright’s renderings published in the 1960s.

The Walker House fully embodies Wright’s concept of “organic” architecture. The *hexagonal plan* derives from the Paul Hanna House. At Stanford University (1937) and the stepped recessed window pattern is seen in the Haldorn House of 1945 and was also utilized at “Kentuck-Nob,” S.W. Pennsylvania in the mid-1950s. The walls of native “Carmel Stone” and the natural redwood and Douglas fir trim speak to Wright’s use of “natural” materials. Radiant heating and the steel-framed inverse pyramid windows express Wright’s innovative use of new technology. The unique siting, it’s the only house in complete public view within Carmel City limits on the ocean side, is a masterpiece, as each façade emphasizes its harmony with nature. This house is one of the trademarks within Wright’s vast architectural spectrum and universally recognized throughout the world.

CONTINUATION SHEET

Trinomial _____

Page 5 of 5

*Resource Name or # (Assigned by recorder) Mrs. Clinton Walker House

*Recorded by Richard N. Janick

*Date Summer 2001 ☐ Continuation ☐ Update

B10. Significance (Continued):

THOMAS D. CHURCH

Church was born in 1902 and graduated from the University of California, Berkeley, in 1921. In 1925, he received the degree of Master of Arts in Landscape Architecture from Harvard University. Since 1928, he has practiced in the San Francisco Bay Area and has made a major contribution to the field of modern landscape design, principally in the decades 1930–1960.

The Walker family are descended from the Walker Art Center in Minneapolis, Minnesota, and the Henderson Family Trust also owns houses designed by William Wilson Wurster in Hillsborough, California, and Joseph Frederick in Lake Tahoe, California.

B12. References:

"The Cabin on the Rocks," Chronology of Mrs. Clinton Walker's House, correspondence from Tahesin Archives, compiled by Richard N. Janick, Carmel, California, 1994.

Homes Illustrated: Carmel By The Sea, Home for Mrs. Clinton Walker. Photography by George Seidenech. List of Contractors.

Mills Act Application - Frank Lloyd Wright House 'Cabin on the Rocks'
10 Year Rehabilitation and Maintenance Plan

MAINTENANCE TABLE											
Work Item	2024	2025	2026	2027	2028	2029	2030	2031	2032	2033	Totals
Year	1	2	3	4	5	6	7	8	9	10	
Front Gate Repair & Maintenance (incl. front pedestal light)	\$10,000.00	\$5,000.00	\$500.00	\$515.00	\$530.45	\$546.36	\$562.75	\$579.64	\$597.03	\$614.94	\$19,446.17
Replace Roof						\$600,000.00					\$600,000.00
Roof & Roof Drainage Maintenance Programme	\$1,000.00	\$1,030.00	\$1,060.90	\$1,092.73	\$1,125.51	\$1,159.27	\$1,194.05	\$1,229.87	\$1,266.77	\$1,304.77	\$11,463.88
Electrical Upgrade & Maintenance Programme	\$4,000.00	\$20,000.00	\$1,500.00	\$1,545.00	\$1,591.35	\$1,639.09	\$1,688.26	\$1,738.91	\$1,791.08	\$1,844.81	\$37,338.50
Plumbing Upgrade & Maintenance Programme	\$3,000.00	\$3,090.00	\$10,000.00	\$3,278.18	\$3,376.53	\$3,477.82	\$3,582.16	\$3,689.62	\$3,800.31	\$3,914.32	\$41,208.94
Replace Interior Boiler		\$18,000.00									\$18,000.00
Exterior Window Rehabilitation / Repair & Maintenance	\$1,000.00	\$1,030.00	\$50,000.00	\$1,092.73	\$1,125.51	\$55,000.00	\$1,194.05	\$1,229.87	\$60,000.00	\$1,304.77	\$172,976.94
Brickwork / Façade Maintenance Programme	\$2,000.00	\$2,060.00	\$20,000.00	\$2,185.45	\$2,251.02	\$2,318.55	\$2,388.10	\$25,000.00	\$2,533.54	\$2,609.55	\$63,346.21
Ongoing Patio Restoration & Maintenance Programme	\$16,000.00	\$16,000.00	\$16,000.00	\$16,000.00	\$16,000.00	\$16,000.00	\$16,000.00	\$16,000.00	\$16,000.00	\$16,000.00	\$160,000.00
Exterior Painting Programme		\$3,000.00		\$3,180.00		\$3,370.80		\$3,573.05		\$3,787.43	\$16,911.28
Interior Stonework Repair, Cleaning and Restoration	\$3,000.00	\$3,000.00	\$3,000.00	\$3,000.00	\$3,000.00	\$3,000.00	\$3,000.00	\$3,000.00	\$3,000.00	\$3,000.00	\$30,000.00
Interior Wood Panel Restoration Programme		\$5,000.00	\$5,000.00	\$5,000.00	\$5,000.00	\$5,000.00	\$5,796.37				\$30,796.37
Historic Fireplace Maintenance Programme		\$1,030.00		\$1,092.73		\$1,159.27		\$1,229.87		\$1,304.77	\$5,816.65
Exterior Lighting Maintenance / Replacement Programme			\$3,182.70			\$3,477.82			\$3,800.31		\$10,460.83
Repair Upper Level of existing Stone Steps		\$8,000.00									\$8,000.00
Ongoing Maintenance: House	\$5,000.00	\$5,150.00	\$5,304.50	\$5,463.64	\$5,627.54	\$5,796.37	\$5,970.26	\$6,149.37	\$6,333.85	\$6,523.87	\$57,319.40
Ongoing Maintenance: Grounds	\$5,000.00	\$5,150.00	\$5,304.50	\$5,463.64	\$5,627.54	\$5,796.37	\$5,970.26	\$6,149.37	\$6,333.85	\$6,523.87	\$57,319.40
Administrative budget for new 10 year budget										\$3,250.00	\$3,250.00
Totals	\$50,000.00	\$96,540.00	\$120,852.60	\$48,909.09	\$45,255.45	\$707,741.74	\$47,346.28	\$69,569.58	\$105,456.74	\$51,983.10	\$1,343,654.56

**CITY OF CARMEL-BY-THE-SEA
HISTORIC RESOURCES BOARD**

HISTORIC RESOURCES BOARD RESOLUTION NO. 2023-011-HRB

**A RESOLUTION OF THE HISTORIC RESOURCES BOARD OF THE CITY OF CARMEL-BY-THE-SEA
RECOMMENDING THAT THE CITY COUNCIL ENTER INTO A MILLS ACT CONTRACT WITH ESPERANZA
CARMEL, LLC FOR THE PROPERTY LOCATED AT 26336 SCENIC ROAD IN THE SINGLE-FAMILY
RESIDENTIAL DISTRICT (APN 009-423-001).**

WHEREAS, on April 20, 2023, Christopher Mitchell, Managing Director of Esperanza Carmel, LLC (“Applicant”) submitted an application on behalf of Esperanza Carmel, LLC (“Owner”) requesting to enter into a Mills Act contract (MA 23-116, Esperanza Carmel, LLC) described herein as (“Application”) for the historic “Mrs. Clinton Walker House”; and

WHEREAS, the Application has been submitted for the property located at 26336 Scenic Road, in the Single Family Residential (R-1) District (Block B, Lot 18); and

WHEREAS, the historic “Mrs. Clinton Walker House” is listed on the Carmel Inventory and the Carmel Register of Historic Resources; and

WHEREAS, one of the benefits of being included on the Register is the ability to enter into a Mills Act Historical Property Contract with the City; and

WHEREAS, the Applicant is requesting to enter into a Mills Act contract with the City and in accordance with Carmel Municipal Code (CMC) Section 17.32.100.B.6 (Review Process), the Historic Resources Board shall consider the application and make a recommendation to the City Council to approve, approve with conditions, or deny the application; and

WHEREAS, on August 11, 2023, notice of the August 21, 2023 public hearing was published in the Carmel Pine Cone, in compliance with State law (California Government Code 65091), and mailed to owners of real property within a 300-foot radius of the project indicating the date and time of the public hearing; and

WHEREAS, on or before August 11, 2023 the Applicant posted the public notice on the project site and hand-delivered a copy of the public notice to each property within a 100-foot radius of the project site indicating the date and time of the public hearing; and

WHEREAS, on or before August 18, 2023 the meeting agenda was posted in three locations in compliance with State law indicating the date and time of the public hearing; and

WHEREAS, on August 21, 2023, the Historic Resources Board held a public meeting to consider the application for a Mills Act contract, including without limitation, information provided to the Historic Resources Board by City staff and through public testimony; and

WHEREAS, this Resolution and its findings are made based upon evidence presented to the Historic Resources Board at the August 21, 2023 meeting including, without limitation, the staff report and attachments submitted by the Community Planning and Building Department; and

WHEREAS, the Historic Resources Board did hear and consider all said reports, attachments, recommendations and testimony herein above set forth and used their independent judgement to evaluate the project; and

WHEREAS, the facts set forth in the recitals are true and correct and are incorporated herein by reference.

NOW, THEREFORE, BE IT RESOLVED, that the Historic Resources Board of the City of Carmel-By-The-Sea does hereby make the following findings and determinations regarding the **Mills Act Contract**:

<u>FINDINGS REQUIRED FOR A MILLS ACT CONTRACT</u>		
For each of the required findings listed below, staff has indicated whether the application supports the adoption of the findings. For all findings checked "no" the staff report discusses the issues to facilitate the Historic Resources Board's decision-making. Findings checked "yes" may or may not be discussed in the report depending on the issues.		
CMC 17.32.100.B.6.c	YES	NO
i. The building is designated as an historic resource by the City and is listed on the Carmel Register.	✓	
ii. The proposed rehabilitation/restoration and maintenance plan is appropriate in scope and sufficient in detail to guide long-term rehabilitation/restoration and maintenance. Required maintenance and rehabilitation should be more significant than just routine maintenance that would be expected for any property.	✓	
iii. Alterations to the historic resource have been in the past, and will continue to be in the future, limited to interior work and to exterior rehabilitation and alterations that: (A) Comply with the Secretary's Standards (future additions only); and (B) Do not significantly alter, damage or diminish any primary elevation or character-defining feature; and (C) Do not increase floor area on the property by more than 15 percent beyond the amount established in the documented original or historic design of the resource; and (D) Do not result in any second-story addition to a single-story historic resource.	✓	
iv. The Mills Act contract will aid in offsetting the costs of rehabilitating and maintaining the historic resource.	✓	

v. Approval of the Mills Act contract will represent an equitable balance of public and private interests and will not result in substantial adverse financial impact on the City.	✓	
--	---	--

BE IT FURTHER RESOLVED that the Historic Resources Board of the City of Carmel-by-the-Sea does hereby recommend that the City Council enter into a Mills Act Contract (MA 23-116, Esperanza Carmel, LLC) for the historic “Mrs. Clinton Walker House” located at 26336 Scenic Road (APN 009-423-001).

PASSED, APPROVED AND ADOPTED BY THE HISTORIC RESOURCES BOARD OF THE CITY OF CARMEL-BY-THE-SEA this 21th day of August, 2023, by the following vote:

AYES: Chroman, Dyar, Pomeroy, Goodhue, Hall

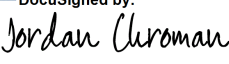
NOES:

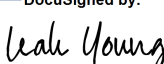
ABSENT:

ABSTAIN:

APPROVED:

ATTEST:

DocuSigned by:

 B0C3DE9052B8494...
 Jordan Chroman
 Chair

DocuSigned by:

 2960DA9BEC1C495...
 Leah Young
 Historic Resources Board Secretary

STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION
PROPERTY AND SPECIAL TAXES DEPARTMENT
450 N STREET, SACRAMENTO, CALIFORNIA
PO BOX 942879, SACRAMENTO, CALIFORNIA 94279-0064
916 445-4982 • FAX 916 323-8765
www.boe.ca.gov

BETTY T. YEE
Acting Member
First District, San Francisco

BILL LEONARD
Second District, Sacramento/Ontario

CLAUDE PARRISH
Third District, Long Beach

JOHN CHIANG
Fourth District, Los Angeles

STEVE WESTLY
State Controller, Sacramento

RAMON J. HIRSIG
Executive Director

June 2, 2005

No. 2005/035

TO COUNTY ASSESSORS AND INTERESTED PARTIES:

NOTICE OF BOARD ACTION

**GUIDELINES FOR THE ASSESSMENT OF
ENFORCEABLY RESTRICTED HISTORICAL PROPERTY**

On May 25, 2005, the Board of Equalization approved the following guidelines pertaining to the assessment of enforceably restricted historical property. These guidelines supersede Letter To Assessors No. 77/174 (dated December 19, 1977).

On June 8, 1976, the voters of California approved Proposition 7 which amended section 8 of article XIII of the California Constitution. This amendment requires that enforceably restricted historical property be valued on a basis that is consistent with its restrictions and uses. Sections 439 through 439.4 were added to the Revenue and Taxation Code to implement Proposition 7. These statutes, in particular section 439.2, prohibit a valuation of enforceably restricted historical property based on sales data and instead require that such property be valued by a prescribed income capitalization method.

Staff drafted these guidelines in consultation with interested parties and, after discussions, no issues remained unresolved. The guidelines discuss the enforceably restricted historical property requirements, the income to be capitalized, the capitalization rate, the effect of Proposition 13 upon enforceably restricted historical properties that undergo change in ownership or new construction, and the valuation of property under notice of nonrenewal.

The guidelines are posted on the Board's website at www.boe.ca.gov/proptaxes/guideproc.htm. We hope this information proves useful and promotes uniformity of assessment for these properties. If you have any questions, please contact our Real Property Technical Services Unit at 916-445-4982.

Sincerely,

/s/ David J. Gau

David J. Gau
Deputy Director
Property and Special Taxes Department

DJG:grs
Enclosure

GUIDELINES FOR THE ASSESSMENT OF ENFORCEABLY RESTRICTED HISTORICAL PROPERTY

HISTORY

Effective March 7, 1973, Chapter 1442 of the Statutes of 1972 (also known as the Mills Act) added sections 50280 through 50289 to the Government Code to allow an owner of qualified historical property to enter into a preservation contract with local government. When property is placed under such a contract, the owner agrees to restore the property if necessary, maintain its historic character, and use it in a manner compatible with its historic characteristics.

Prior to the passage of Proposition 7 in 1976, these agreements (i.e., Mills Act contracts) constituted enforceable restrictions on the use of land within the meaning of Revenue and Taxation Code section 402.1¹ (Property Tax Rule 60, repealed January 10, 1978). However, Proposition 7 added the second paragraph to section 8 of article XIII of the California Constitution:

To promote the preservation of property of historical significance, the Legislature may define such property and shall provide that when it is enforceably restricted, in a manner specified by the Legislature, it shall be valued for property tax purposes only on a basis that is consistent with its restrictions and uses.

To implement Proposition 7, Chapter 1040 of the Statutes of 1977 (Senate Bill 380) added sections 439 through 439.4 to the Revenue and Taxation Code. These statutes, in particular section 439.2, prohibit a valuation of enforceably restricted historical property based on sales data and instead require that such property be valued by a prescribed income capitalization method.

ENFORCEABLY RESTRICTED HISTORICAL PROPERTY

Under section 439, historical property is "enforceably restricted" if it meets the definition of a "qualified historical property" as defined in Government Code section 50280.1 and is subject to a historical property contract executed pursuant to Government Code section 50280 and following. A qualified historical property includes qualified historical improvements and the land on which the improvements are situated, as specified in the historical property contract. If the contract does not specify the land to be included, the qualified historical property includes only a land area of reasonable size to situate the improvements.

A qualified historical property is privately-owned property that is not exempt from property taxation and that also meets either of the following criteria:

- The property is listed in the National Register of Historic Places, or is located within a registered historic district; or

¹ Unless otherwise noted, all statutory references are to the Revenue and Taxation Code.

- The property is listed in any official state, county, city, or city and county official register of historical or architecturally significant sites, places or landmarks, including the California Register of Historical Resources, California Historical Landmarks, State Points of Historical Interest, local landmarks, and local survey listings of historical properties.

The historical property contract must have a minimum term of ten years, and, as applicable, must contain certain other elements, including the following:

- A provision relating to the preservation of the qualified historical property and, when necessary, the restoration and rehabilitation of the property in conformance with state historic preservation guidelines;
- A requirement for the periodic examination of the property to ensure compliance with the agreement;
- A requirement that the historical property agreement be binding upon successor owners of the qualified historical property; and
- A provision for an automatic one-year extension of the contract, with an additional year added to the initial contract term on each anniversary of the contract, unless either party provides notice of nonrenewal. If a notice of nonrenewal is given, the contract runs for its remaining term.

Once a contract is signed, accepted, and recorded, the property subject to the contract must be assessed under section 439.2 on the ensuing lien date. For example, if a contract were recorded in August 2004, the property should have been valued pursuant to section 439.2 for lien date January 1, 2005.

Local authorities may cancel a historical property agreement for breach of contract or failure to protect the historical property. Alternatively, the local entity may take legal action to enforce the contract.

ASSESSMENT

The assessment of an enforceably restricted historical property involves the following aspects: (1) valuing the restricted historical property; (2) properly applying certain assessment provisions relating to article XIII A of the California Constitution (Prop 13); (3) valuing the restricted historical property following a notice of nonrenewal; and (4) valuing the restricted historical property following cancellation of the contract.

Valuing the Restricted Historical Property

Section 439.2 prohibits the assessor from using sales data relating to similar properties, whether or not enforceably restricted, to value an enforceably restricted historical property. Instead, the assessor must annually value a restricted historical property using an income approach that

follows the specific provisions of section 439.2. These provisions explicitly address (1) the determination of the income to be capitalized, (2) the development of the capitalization rate, (3) the capitalization technique to be used, and (4) the determination of the restricted historical property's taxable value on each lien date.

Income to be Capitalized

As provided in section 439.2(a), the income to be capitalized when valuing a restricted historical property is the property's fair rent less allowed expenditures, or allowed expenses. In general, section 439.2(a) follows Property Tax Rule 8(c), with fair rent in section 439.2 corresponding to gross return in Rule 8(c); allowed expenditures, or allowed expenses, in section 439.2 corresponding to gross outgo in Rule 8(c); and the income to be capitalized in section 439.2 corresponding to net return in Rule 8(c). In addition, for the purposes here, "gross income" is synonymous with fair rent, and "net operating income" is synonymous with the income to be capitalized.

The parties to a historical property agreement may stipulate a minimum annual income to be capitalized, in which case the income to be capitalized may not be less than the stipulated amount.

Fair rent, or gross income. The gross income of a restricted historical property is the fair rent for the property considering the restrictions on the property's use. When establishing the fair rent for a restricted historical property, the appraiser should consider the actual rent and typical rents in the area for similar properties in similar use, where the owner pays the property taxes.

The actual rent received by the owner of the subject restricted historical property is relevant to an estimate of fair market rent only if the actual rent is the same rent that would be expected if the existing lease were renegotiated in light of current market conditions, including the subject property's enforceable restrictions on use. With respect to rents from similar, or comparable, properties, if such rents are from properties outside the geographic or market area of the subject property, or from properties that are otherwise dissimilar to the subject property, the rents may not be relevant to an estimate of the subject property's fair rent.

Comparable rental data for single-family residences can be obtained from real estate brokers, rental agencies, and newspaper ads. Many assessors offices maintain rental data for commercial properties, and this data may be helpful when establishing the fair rent for restricted historical property when the contract allows a commercial use. Rental data for commercial property also can be obtained from commercial real estate brokers. For the purpose of estimating anticipated market fair rent and expenditures for use in calculating the subject property's value, rental and expense data for existing restricted historical properties, including the subject historical property, can be obtained through an annual questionnaire sent to property owners.

If sufficient rental data are not available, or such data are unreliable, the appraiser must impute a gross income for the subject restricted historical property. The imputed income should be based on what an informed investor would reasonably expect the property to yield under prudent management, given the provisions under which the property is enforceably restricted.

Allowed expenditures. Section 439.2(a)(3) defines allowed expenditures, or allowed expenses, as expenses necessary for the maintenance of the property's income. Allowed expenses are the same as those permitted in Property Tax Rule 8(c).

Typical expenses include the cost of utilities, maintenance and repair, insurance and property management. Allowed expenses also may include amounts owing for special assessments and special taxes. Expenses related to debt service, general property taxes, and depreciation should not be deducted.

In general, to arrive at the net income to be capitalized, allowed expenses are subtracted from the estimated rental income. However, in order to properly process the income, the appraiser must be aware of the structure of the lease with regard to how expenses are shared between the landlord-owner and the tenant.

The proper perspective from which to view the processing of income and expenses is that of the landlord-owner. The objective is to estimate the net income to the landlord-owner—this is the amount that should be capitalized—and the correct question to ask is the following: What, if any, allowed expenses must the landlord-owner pay out of the rental income that he or she receives?

In a gross lease, almost all of the allowed expenses must be paid out of the gross rent and, therefore, must be subtracted from the gross rent to arrive at the net income to be capitalized. In a net lease, relatively few allowed expenses must be paid by the landlord-owner out of the net rent (because the tenant pays most expenses) and only these expenses should be subtracted from the net rent to arrive at the net income to be capitalized. Frequently, there is a hybrid arrangement—some expenses are paid by the landlord-owner and some by the tenant. How expenses are shared often depends upon the property type together with local conventions.

Income to be capitalized, or net operating income. The income to be capitalized, or net operating income, is simply the fair rent, or gross income, described above less the allowed expenditures described above.

Capitalization Rate

The method of developing the capitalization rate to be used when valuing restricted historical property is prescribed by statute; a capitalization rate derived from sales data or the band of investment is not permitted.

Section 439.2 prescribes two types of capitalization rates for restricted historical property: (1) a capitalization rate to be used when valuing restricted historical property that is an owner-occupied single-family residence and (2) a capitalization rate to be used when valuing all other restricted historical property. Both types of capitalization rates include components for interest (i.e., yield), risk, property taxes, and amortization of improvements; in fact, the two rates are identical except for the amount of the risk component. The capitalization rate contains the following components:

- An interest component annually determined by the State Board of Equalization and based on the effective rate on conventional mortgages as determined by the Federal Housing Finance Board. The interest component is announced annually, in a Letter To Assessors, by October 1 of the preceding assessment year.
- A historical property risk component determined by property type. For owner-occupied single-family residences, the rate is 4 percent; for all other types of restricted historical property, the rate is 2 percent.
- An amortization component for improvements defined as a percentage equal to the reciprocal of the remaining life of the improvements (e.g., if the remaining economic life of the improvements were 20 years, the amortization component would be 5 percent). Since the amortization component applies only to improvements, not to land, which is a non-depreciating asset, it is necessary to adjust the amortization component described in the statute. We recommend the following method of adjustment:
 1. Based upon market data, estimate the percentage of total property value attributable to improvements.
 2. Multiply this percentage by the amortization component described in the statute (i.e., by the reciprocal of the remaining life of the improvements). For example, if the remaining life of the improvements was 20 years, yielding a reciprocal percentage of 5 percent, and if 70 percent of the total property value was attributable to the improvements, the adjusted amortization factor would be 3.5 percent ($0.05 \times 0.70 = 0.035$).
 3. Add the adjusted amortization component to the other capitalization rate components to arrive at the total capitalization rate.
- A property taxes component equal to the percentage of the estimated total tax rate applicable to the property for the assessment year multiplied by the assessment ratio. Typically, the property tax component includes the basic tax rate of 1 percent plus an additional ad valorem rate related to any bonded indebtedness pertaining to the tax rate area in which the property is located. Special district assessments and special taxes are not included in the property tax component. As noted above, they should be treated as allowed expenses.

Capitalization Technique

The capitalization technique to be used when valuing a restricted historical property is prescribed by statute and is formulaic. Section 439.2(e) provides that the restricted value shall be the income to be capitalized, or net operating income, developed as prescribed by statute, divided by one of the two types of capitalization rates prescribed by statute. In other words, the restricted value is the simple quotient of the prescribed income to be capitalized and the prescribed capitalization rate.

Determination of Taxable Value on Each Lien Date

Section 439.2(d) provides that a historical property's restricted value may not be enrolled if it exceeds either (1) the value of the subject property as determined under section 110 (i.e., current market value) or (2) the value of the subject property as determined under section 110.1 (i.e., factored base year value). In other words, section 439.2 states that the taxable value of a restricted historical property on each lien date shall be the lowest of its restricted value, current market value, or factored base year value. The factored base year value for an enforceably restricted historical property is the value that was established for the 1975 lien date² or as of the date of the most recent change in ownership, whichever is later, adjusted by the annual inflation factor.

Article XIII A (Prop 13) Considerations

This section discusses how three important elements relating to implementation of article XIII A—change in ownership, new construction, and supplemental assessment—relate to the assessment of restricted historical property. Also discussed is the case in which only a portion of a property is subject to the historical property agreement—that is, the case in which a single property unit contains both restricted and unrestricted portions.

Change in Ownership

When a property subject to a historical property contract undergoes a change in ownership, a new base year value should be established for the property as of the date of change in ownership, as provided in section 110.1. Typically, a restricted historical property's base year value will be greater than its restricted value determined under section 439.2 and hence will not be enrolled as the property's taxable value. However, the establishment of a new base year value enables the assessor to perform the three-way value comparison prescribed by section 439.2(d) and described above. The establishment of a base year value is also necessary in order to calculate the assessed values of historical property should the historical property agreement enter nonrenewal status.

New Construction

Section IV of National Register Bulletin #15 defines a "building" as follows:

A building, such as a house, barn, church, hotel, or similar construction, is created principally to shelter any form of human activity. "Building" may also be used to refer to a historically and functionally related unit, such as a courthouse and jail or a house and barn.

Section IV further specifies that "[b]uildings eligible for the National Register must include all of their basic structural elements. Parts of buildings, such as interiors, facades, or wings, are not eligible independent of the rest of the existing building. The whole building must be considered,

² Sections 110.1(d) and 405.5 do not apply to historical properties under contract as of lien date 1975 because the constitutional amendment which placed the valuation of historical property under article XIII rather than article XIII A had not yet been passed and, thus, was not in effect for the 1975 lien date.

and its significant features must be identified." Thus, eligibility for the National Register is determined by the extent to which the basic structural elements of an existing building are intact. In general, a newly constructed building would not be eligible because it is not an existing building with basic structural elements.³

Also, a newly constructed building is not a historic resource, and, thus, is not a qualified historical property within the meaning of Government Code section 50280.1. For example, a newly constructed detached garage (assuming it is not a reconstruction of a historical garage) clearly would not be eligible because it has no significance in American history or architecture, nor does it meet any of the other requisite criteria.

Bulletin 15, however, does list one type of newly constructed property that may be eligible for inclusion under the Mills Act. A reconstructed historic building is eligible for the National Register if the reconstruction is "accurately executed in a suitable environment and presented in a dignified manner as part of a restoration master plan, and when no other building or structure with the same association has survived."

The historical property contract typically specifies the scope and type of any work to be performed on the historical improvements. Improvements existing as of the date of the contract would be subject to the provisions of section 439.2 unless specifically excluded by the contract. Any new construction made to the historical structure after the issuing date of the contract would not be subject to the provisions of section 439.2 unless specifically included in the contract or an amendment to the contract. Any questions regarding new construction to enforceably restricted historical structures should be directed to the counsel of the legislative body of the city, county, or city and county that contracted with the property owner.

Assuming that the newly constructed property is subject to the historical property contract, a base year value should be established for the newly constructed portion and this value added to the factored base year value of the existing restricted property.

In some cases, an existing historical property may include a portion that is restricted (i.e., subject to a historical property contract) and a portion that is unrestricted. In this case, separate factored base year values should be maintained for the restricted and unrestricted portions and the base year value of any newly constructed property added to the appropriate portion. The assessment treatment of this type of property is discussed further below.

Supplemental Assessment

Although the assessor is required to establish a new base year value upon a change in ownership or completed new construction involving restricted historical property, such property is not subject to supplemental assessment. As provided in Revenue and Taxation Code section 75.14:

Supplemental assessment; limitation. A supplemental assessment pursuant to this chapter shall not be made for any property not subject to the assessment

³ National Register Bulletin 15, "How to Apply the National Register Criteria for Evaluation," U.S. Department of the Interior, National Park Service (www.cr.nps.gov/nr/publications/).

limitations of Article XIII A of the California Constitution. All property subject to the assessment limitations of Article XIII A of the California Constitution shall be subject to the provisions of this chapter, except as otherwise provided in this article.

As discussed above, the assessment of enforceably restricted historical property is subject to the provisions of article XIII, section 8 of the California Constitution, not article XIII A. Thus, section 75.14 precludes the assessor from enrolling supplemental assessments for enforceably restricted historical property.

Historical property not yet under contract that undergoes a change in ownership or new construction is subject to supplemental assessment, even if the property owner later executes a historical property contract in the same fiscal year. Also, any new construction involving a historical property that does not come under the existing historical property contract (e.g., a detached garage added to a restricted historical property) would be subject to supplemental assessment.

When a Property Contains Both Restricted and Unrestricted Portions

When only a portion of a property that would normally be considered a single appraisal unit is restricted by a historical property contract, the assessed value should be determined by making a comparison of three values, determined as follows. First, the portion under contract should be valued using the capitalization method prescribed by section 439.2. Added to this figure should be the lower of the unrestricted portion's fair market value or factored base year value. The resulting sum should be compared to both the fair market value and the factored base year value of the entire property (i.e., both restricted and unrestricted portions) and the lowest of the three figures should be enrolled.

Valuing Property Under Notice of Nonrenewal

As provided in Government Code section 50282, either the owner of a restricted historical property or the local government entity may serve notice that it does not intend to renew the historical property contract. If such notice is not given, another year is automatically added to the term of the initial contract, thus creating a "rolling" contract term that is always equal to the initial contract term.

Section 439.3 prescribes the valuation method for a restricted historical property in nonrenewal status; this valuation method applies until the end of the restricted period (i.e., until the existing contract expires). In essence, the method results in a restricted value that gradually approaches the historical property's factored base year value as the remaining term under the contract decreases. For a property in nonrenewal status, the assessor must annually value the property as follows:

1. Determine the full cash value (i.e., factored base year value) of the property in accordance with section 110.1. (Alternatively, if the property will not be subject to section 110.1 when the historical property agreement expires, determine its fair market value in accordance with

section 110, as if the property were free of the agreement's restrictions; or, if the property will be subject to another type of restricted value standard when the historical property agreement expires, determine the property's value as if it were subject to the new restrictions.)

2. Determine the restricted value of the property by the capitalization of income method provided in section 439.2.
3. Subtract the restricted value determined in Step 2 from the factored base year (or other) value determined in Step 1.
4. Using the amount for the interest rate component (section 439.2(b)(1)) announced by the Board, discount the amount obtained in Step 3 for the number of years remaining until the termination of the contract.
5. Determine the restricted value of the property in nonrenewal status by adding the value determined in Step 2 to the amount obtained in Step 4.

The historical property's restricted value in nonrenewal status—that is, the value determined above, in accordance with section 439.3—should be compared with the historical property's factor base year and current market values, and the lowest of these three values should be enrolled as the property's taxable value.

Cancellation of Contract

The government entity party to a historical property contract may cancel the contract, after notice and a public hearing, if it determines that either the owner has breached the agreement or the property has deteriorated to the extent that it no longer meets the standards of a historical property. If the contract is cancelled, the property owner must pay a cancellation fee equal to 12½ percent of the property's current fair market value as though free of the contractual restriction, such value to be determined by the county assessor. After a contract is cancelled, the lower of the property's factored base year value or current market value should be enrolled for the ensuing lien date.

SUMMARY

The key points contained in these guidelines can be summarized as follows:

1. An owner of qualified historical property may enter into a preservation contract with local government. When property is placed under such a contract, the owner agrees to restore the property if necessary, maintain its historic character, and use it in a manner compatible with its historic characteristics. Such property receives the special valuation treatment prescribed under Revenue and Taxation Code sections 439 through 439.4.
2. Enforceably restricted historical property is to be annually valued by the income capitalization method prescribed in section 439.2, which contains specific instructions with

regard to the income to be capitalized, the capitalization rate, and the capitalization technique to be used. The restricted value must be compared to the property's current market value and factored base year value, with the lowest of these three values enrolled as the property's taxable value.

3. When assessing restricted historical property, the appraiser should consider how three important elements of article XIII A—change in ownership, new construction, and supplemental assessment—relate to the assessment. The appraiser should consider how a property should be assessed when only a portion of it is subject to a historical property agreement.
4. Restricted historical property under a notice of nonrenewal should be valued in accordance with section 439.3.
5. The government entity party to a historical property contract may cancel the contract. The cancellation fee is 12½ percent of the property's current fair market value as though free of the contractual restriction, with such value to be determined by the local assessor.

Additional information about Mills Act contracts may be obtained from the state Office of Historic Preservation, either by telephone at 916-653-6624, or from their website (www.ohp.parks.ca.gov).

(Note: Please see the assessment examples following.)

EXAMPLE 1 (OWNER-OCCUPIED SINGLE-FAMILY RESIDENCE)**Subject Restricted Historical Property**

Restored, 105-year-old, Victorian single-family residence. Excellent condition. Under Mills Act contract since 1985 and not in nonrenewal status. Owner-occupied.

Determination of Restricted Value (current lien date)

Gross income (Fair rent)		
\$1,500 per month x 12 months =		\$18,000
Less: Anticipated vacancy and collection loss		
\$18,000 x 5%		<u>- 900</u>
Effective gross income		\$17,100
Less: Anticipated operating expenses		
Grounds maintenance	\$600	
Fire insurance	400	
Management Fee	360	
Water and garbage	240	
Building maintenance	+ 500	<u>- 2,100</u>
Net Operating Income		\$15,000

Restricted Capitalization Rate**Rate Components:**

Interest rate	.080	
Risk (owner-occupied SFR)	.040	
Property tax (ad valorem)	.015	
Amortization (50-year remaining life; improvements constitute 70% of total property market value; $0.02 \times 0.70 = 0.014$)	+ .014	<u>.149</u>

Restricted Value	
\$15,000 ÷ .149	= <u>\$100,671</u>

Taxable Value—Three-Way Value Comparison

Restricted value	\$100,671
Factored base year value (based on prior change in ownership)	\$357,000
Current market value (based on comparable sales)	\$450,000

The lowest of the three possible values is the restricted value. Thus, the net taxable value would be \$93,671 (\$100,671 restricted value less the homeowners' exemption of \$7,000).

Note 1: If this property had been a non-owner-occupied SFR, the only difference in the determination of the restricted value would have been the use of a risk rate component of 2% rather than 4% in the capitalization rate.

Note 2: In this and the following examples, the gross income, or fair rent, is presented on a gross rent basis, that is, under the assumption that the landlord-owner pays all operating expenses out of the gross income.

EXAMPLE 2 (OFFICE USE)**Subject Restricted Historical Property**

Multi-tenant, restored historical office building in a downtown commercial district. Under Mills Act contract since 1985 and not in nonrenewal status.

Determination of Restricted Value (current lien date)

Gross Income (Fair rent):

Offices	140,000 sf @ \$1.75/sf = <u>\$245,000</u>	
	x 12 months	= \$2,940,000

Less: Anticipated vacancy and collection loss

\$2,940,000 x 5%	<u>- 147,000</u>
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Effective gross income	\$2,793,000
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Less: Anticipated operating expenses

Management	\$290,000	
Maintenance	95,000	
Insurance	75,000	
Utilities	360,000	
Janitorial	+ 140,000	- 960,000

Net Operating Income	\$1,833,000
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Restricted Capitalization Rate

Rate Components:

Interest component	.08
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Risk	.02
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Property tax (ad valorem)	.011
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Amortization (50-year remaining life; improvements
constitute 75% of total property market value

0.02 x 0.75 = 0.015)	+ .015	<u>.126</u>
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Restricted Value

(\$1,833,000 ÷ .126)	= \$14,547,619
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Taxable Value—Three-Way Value Comparison

Restricted value	\$14,547,619
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Factored base year value (based on prior change in ownership)	\$18,191,077
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Current market value (based on comparable sales)	\$21,000,000
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The lowest of the three possible values is the restricted value. Thus, the taxable value would be \$14,547,619

EXAMPLE 3 (MIXED USE—RESIDENTIAL AND OFFICE)**Subject Restricted Historical Property**

Two-story, restored historical property in a downtown district. Upper level is residential unit occupied by owner. Lower level contains three office spaces subject to short-term rental agreements. The income stream for the upstairs unit must be calculated separately from the downstairs unit because the risk rate is different for the owner-occupied unit.

Determination of Restricted Value

Separate restricted values for the upper-level residence and the lower-level office space must be determined, because the risk components are different for the two types of use. The total restricted value is sum of these two values.

Upper-Level Unit

Gross income (Fair rent) based upon comparable rent data

\$975 per month x 12 months = \$11,700

Less: Anticipated vacancy and collection loss

\$11,700 x 5% - 585

Effective gross income \$11,115

Less: Anticipated operating expenses

Grounds maintenance \$300

Fire insurance 200

Management Fee 180

Water and garbage 120

Building maintenance + 250 - 1,050

Upper-Level Net Operating Income \$10,065

Restricted Capitalization Rate (owner-occupied SFR)

Rate components:

Interest rate .080

Risk .040

Property tax .010

Amortization (50-year remaining life; improvements
constitute 70% of total property market value;

0.02 x 0.70 = 0.014) + .014 .144

Upper-level Restricted Value (\$10,065 ÷ .144) = \$69,895

Lower-Level Offices

Gross income (Fair rent)

1000 sf @ \$1.60/sf = \$1,600 x 12 months \$19,200

Less: Anticipated vacancy and collection loss

\$19,200 x 5% - 960

Effective gross income \$18,240

Less: Anticipated operating expenses		
Grounds maintenance	\$300	
Fire insurance	200	
Management Fee	180	
Water and garbage	120	
Building maintenance	+ 250	- 1,050
Lower-Level Net Operating Income		\$17,190

Restricted Capitalization Rate		
Rate components:		
Interest component	.080	
Risk	.020	
Property tax	.010	
Amortization (50-year remaining life; improvements constitute 70% of total property market value; $0.02 \times 0.70 = 0.014$)	+ .014	.124
Lower Level Restricted Value ($\$17,190 \div .124$)		\$138,629
Add: Upper Level Restricted Value		+ \$69,895
Total Restricted Value		\$208,524

Taxable Value—Three-Way Value Comparison

Restricted Value	\$208,524
Factored base year value (based upon prior change in ownership)	\$364,140
Current market value (based upon comparable sales data)	\$400,000

The lowest of the three possible values is the restricted value. Thus, the net taxable value would be \$201,524 (\$208,524 less the homeowners' exemption of \$7,000).

EXAMPLE 4 (MIXED VALUATION—PART RESTRICTED AND PART UNRESTRICTED)**Description of Subject Property (Comprises Both Restricted and Unrestricted Portions)**

The subject property is a 10-acre parcel with a farmhouse and barn situated on 2 acres; the remaining 8 acres are farmland. The farmhouse and barn are used as an owner-occupied single-family residence; this portion of the property is restricted under a Mills Act contract. The remaining 8 acres of farmland are unrestricted.

Value of Restricted Portion (current lien date)

Gross income (Fair rent) for farmhouse and barn		
\$2,000 per month x 12 months =		\$24,000
Less: Anticipated vacancy and collection loss		
\$24,000 x 5%		<u>- 1,200</u>
Effective gross income		\$22,800
Less: Anticipated operating expenses		
Grounds maintenance	\$600	
Fire insurance	400	
Management Fee	360	
Water and garbage	240	
Building maintenance	+ 500	<u>- 2,100</u>
Net Operating Income		= \$20,700

Restricted Capitalization Rate

Rate components:		
Interest component	.080	
Risk (owner-occupied)	.040	
Property tax (ad valorem)	.010	
Amortization (50-year remaining life; improvements constitute 70% of total property market value		
0.02 x 0.70 = 0.014)	+ .014	<u>.144</u>
Restricted Value (\$20,700 ÷ .144)		= \$143,750

Taxable Value—Three-Way Comparison

Total Property Restricted Value (sum of restricted value above and lower of FBYV or current market value of unrestricted portion)

Restricted Value (portion under contract)	\$143,750
FBYV (unrestricted portion)	+ <u>\$102,000</u>
Restricted Value (total property)	\$245,750

Factored base year values (based upon a prior change in ownership of the entire property, allocated between restricted and unrestricted portions):

Farmhouse, barn, and 2 acres (restricted portion)	\$204,000
8 acres (unrestricted portion)	+ <u>\$102,000</u>
Total FBYV (total property)	\$306,000

Current market values (based upon comparable sales data):

Farmhouse, barn, and 2 acres (restricted portion)	\$230,000
8 acres (unrestricted portion)	+ <u>\$120,000</u>
Total Current Market Value (total property)	\$350,000

The lowest of the three values is the Restricted Value (total property), \$245,750. Thus, the net taxable value would be \$238,750 (\$245,750 less \$7,000 homeowners' exemption).

EXAMPLE 5 (PROPERTY IN NONRENEWAL STATUS)**Description of Subject Restricted Historical Property**

The same property as in Example 2, except the property owner has served notice of renewal. The Mills Act contract covering the property was originally executed in September 1995, and the owner served notice of nonrenewal in June 2004. Value the property for the 2005 lien date, reflecting its nonrenewal status. Assume that the property's restricted, current market, and factored base year values from Example 2, provided below, also refer to January 1, 2005.

Restricted value	\$14,547,619
Current market value	\$21,000,000
Factored base year value	\$18,191,077

Restricted Value in Nonrenewal Status

Value as if unrestricted (factored base year value)	\$18,191,077
Restricted value	<u>- 14,547,619</u>
Difference	\$ 3,643,458
Present worth of difference	
PW1 @ 6.00 %, 9 years (interest component for lien date 2005)	<u>x .591898</u>
	= \$ 2,156,555
Plus restricted value	<u>+ \$14,547,619</u>
Restricted value in nonrenewal status—lien date January 1, 2005	\$16,704,174

Taxable Value

Since the restricted value in nonrenewal status, \$16,704,174, is less than either the property's current market value or its factored base year value, this is the taxable value.



CITY OF CARMEL-BY-THE-SEA CITY COUNCIL Staff Report

December 5, 2023
PUBLIC HEARINGS

TO:	Honorable Mayor and City Council Members
SUBMITTED BY:	Marnie R. Waffle, AICP, Principal Planner
APPROVED BY:	Chip Rerig, City Administrator
SUBJECT:	MA 23-146 (Lopez 5 NW, LLC): Consideration of a Mills Act Contract application MA 23-146 (Lopez 5 NW, LLC) for the historic "Cosmas House" located on Lopez Avenue 5 northwest of 4th Avenue in the Single-Family Residential (R-1) District. APN 010-232-028 - Recommended for Continuance to a future meeting

RECOMMENDATION:

Staff recommends this item be continued to a future meeting.

BACKGROUND/SUMMARY:

FISCAL IMPACT:

PRIOR CITY COUNCIL ACTION:

ATTACHMENTS:



CITY OF CARMEL-BY-THE-SEA CITY COUNCIL Staff Report

December 5, 2023
PUBLIC HEARINGS

TO:	Honorable Mayor and City Council Members
SUBMITTED BY:	Marnie R. Waffle, AICP, Principal Planner
APPROVED BY:	Chip Rerig, City Administrator
SUBJECT:	MA 23-103 (Cypress Inn): Consideration of a Mills Act Contract application MA 23-103 (Cypress Inn) for the historic "La Ribera Hotel" located on the northeast corner of Lincoln Street and 7th Avenue in the Residential-Commercial (R-C) District. APN 010-147-008 - Recommended for Continuance to a future meeting

RECOMMENDATION:

Staff recommends this item be continued to a future meeting.

BACKGROUND/SUMMARY:

FISCAL IMPACT:

PRIOR CITY COUNCIL ACTION:

ATTACHMENTS: