

Exhibit A

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DISCUSSION

SCOPE & LAND USE

The project proposes the demolition of an existing 1,439 square foot single-family residence, and construction of a new single-family residence in substantially the same footprint. The proposed residence would be 1,378 square feet and would also include a 493 square foot Junior Accessory Dwelling Unit (JADU), and a 341 square foot 1-car garage. The project would include associated site improvements, consisting of exterior decks, connection of the new home to existing utilities, and re-landscaping of the site with native species. As part of the re-landscaping, nine of the eleven existing trees would be removed, however, all of these are non-native landscaping trees.

The property is zoned Medium Density Residential with a Density of 2 units an acre, a height limit of 18 feet, and a Design Control Overlay (coastal zone) [MDR/2-D(18)(CZ)], which allows development of single-family dwellings, non-habitable accessory structures such as garages, and accessory dwelling units are all allowed as principally allowable uses subject to approval of a Coastal Administrative Permit. (Title 20 Sections 20.12.040.A., 20.12.040.H., and 20.64.030.C.)

DEVELOPMENT STANDARDS

The site development standards for the base MDR zoning district in the coastal zone are found in Title 20 Section 20.12. The project is consistent with the building height, building site coverage, and floor area requirements of this zoning district:

- In the MDR zoning, where the zoning sectional district maps indicate a maximum allowable height, that shall be the maximum allowable height for all structures. In this case the district maps indicate a maximum height of 18 feet, and the proposed home is 17 feet and 4 ½ inches. The chimney exceeds the maximum height, however, this is allowable per the structure height exception in Title 20 Section 20.62.030.A.
- The maximum allowable building site coverage is 35% (2,450 square feet) and the proposed building site coverage is 34.9% (2,444 square feet).
- The maximum allowable floor area is 45% (3,150 square feet), and the proposed floor area is 31.6% (2,212 square feet).

Setbacks

The project proposes a 1 foot and 10 ¼ inch setback from the north property line and a 16 foot 6 ¼ inch front setback to the east property line. The project includes rebuilding the structure in a manner that will maintain a legal non-conforming front and side yard setback. The existing dwelling proposed for demolition was built in the late 1920's. At the time, the home was built approximately 16 feet from the front property line (20 feet required today) and approximately 2 feet from the side property line on the north (5 feet required today). As designed, the existing dwelling will be demolished and replaced with a new single-family dwelling in substantially the same location as the existing dwelling. This includes rebuilding portions of the home that are in the front and side yard setbacks. The portion of the home within the setbacks is proposed to be constructed as a junior accessory dwelling unit. Application of State Planning and Zoning Law for Accessory Dwelling Units and Junior Accessory Dwelling Units appears to supersede County regulations regarding setbacks in this case.

California Government Code Section 65852.2(e)(1)(A)(i) indicates that one accessory dwelling unit or junior accessory dwelling unit shall be approved if it is “*within the proposed space of a single-family dwelling or existing space of a single-family dwelling...*” The Government Code

Section pertaining to junior accessory dwelling units 65852.22 also indicates that the local agency shall require that the junior accessory dwelling unit be within the existing or proposed wall of a single-family residence, with no mention of setbacks. 65852.2(a)(1)(D)(vii) has similar but more detailed verbiage indicating that, *“No setback shall be required for an existing living area or accessory structure or a structure constructed in the same location and to the same dimensions as an existing structure that is converted to an accessory dwelling unit or to a portion of an accessory dwelling unit.”* In this case the proposed junior accessory dwelling unit is entirely within the confines of the existing residence: the setback matches that of the existing residence and the applicants modified their design to reduce the proposed roof height to match that of the existing residence.

65852.2(e)(1)(A)(iii) does go on to say that for statewide exemption accessory dwelling units and junior accessory dwelling units, *“the side and rear setback shall be sufficient for fire and safety...”* Therefore, if the setback presented a fire or safety concern, the County may be able to require a larger setback. Whether this setback could be greater than four feet for side and rear property lines is unclear based on the text of the law. Planning staff reached out to HCD-Building Services and Fire Cypress FPD regarding this issue. Building staff indicated that the building code would not preclude this setback, but any wall within three feet of the property line would need to be fire rated in accordance with the California Building Code. Fire Cypress FPD also indicating that while a greater setback such as four feet would provide fire-fighters more room to perform their duties in that space, the proposed setback was acceptable and that they would be signing off on the building permit. Therefore, the side and rear setbacks are sufficient for fire and safety.

The proposed 26-foot rear setback complies with the 10 foot rear setback requirement, and the south side setback complies with the 5 foot side setback within the zoning district.

Parking – Junior Accessory Dwelling Unit

Title 20, Section 20.58 requires a parking requirement of 2 spaces per single-family residential unit and 1 space per for an accessory dwelling unit. Section 20.58 further indicates that all parking shall be outside of the setback unless a Coastal Administrative Permit is first secured. Therefore, under the zoning ordinance the project would require 3 spaces, all outside of the setback. The project proposes 2 spaces; a covered 1 car and an uncovered space in the driveway that is within the required setback. A Coastal Administrative Permit is required to count the uncovered space in the driveway toward the required parking. Even with granting of a Coastal Administrative Permit to allow the space within the driveway to count toward required parking, the project will have only 2 spaces which is 1 space short of the 3 spaces required for the house and JADU.

State Planning and Zoning Law Section 65852.22(b)(1) indicates that additional parking may not be required as a condition of a junior accessory dwelling unit, and 65852.2(d)(3) indicates that parking shall not be required for accessory dwelling units which are part of a proposed primary residence or an accessory structure.

In discussions surrounding the County’s pending ordinance regulating accessory dwelling units, the California Coastal Commission staff have expressed a desire to see regulations requiring

parking in the Carmel Point area, as on street parking for residents may impact parking availability in the area for public access to Carmel Beach. A local ordinance governing accessory dwelling units in compliance with the current state ADU law has not been certified in the unincorporated coastal areas of Monterey County. As such state ADU law requires consideration of applications for ADUs in accordance with the provisions in the law. Provisions in the state ADU law clearly exempt ADUs from parking requirements. Even if the County were to consider impacts on public access from modification of parking standards in this case, draft revisions to the County's ADU ordinance provided by the Coastal Commission staff suggest that this project site is outside the boundaries of the area where on-site parking is needed. The subject property is located on the inland side of Bay View Avenue. Preliminary lines drawn for the parking exclusion area encompass lots on the west side of Bay View Avenue and along Scenic Road to the west.

Parking – Primary Residence

In accordance with Title 20 Section 20.58.050.E., counting the driveway space which is in the setback toward the overall parking requirement requires a Coastal Administrative Permit. The Coastal Administrative Permit is supportable as:

- The proposed project would comply with the minimum number of spaces required for a single-family home, 2 spaces total, with 1 covered and 1 uncovered;
- While the plans identify an existing garage underneath the deck, it is presently inaccessible from the street and the deck has dilapidated to such a degree that it is no longer usable. Functionally, the current site has no available parking spaces, so inclusion of the 2 spaces will improve parking conditions within the vicinity of the site; and
- The proposed garage location better achieved the objectives of the Carmel Area Land Use Plan, by siting the garage and driveway in a way that minimizes site disturbance and earthwork in a highly sensitive archaeological area.

VISUAL RESOURCES & DESIGN

The neighborhood consists of an eclectic mixture of one and two story homes in a variety of styles. Many of the homes utilize natural materials such as stone or wood, and have muted finish palettes including tans, greys, and browns. There are a variety of roof forms, with examples of hip, gable, and mansard roofs. Homes in the area are also partially screened with landscaping and wood or stone fences.

The project is subject to the Visual Resources protection policies of the Carmel Area Land Use Plan (CA LUP), the applicable implementing regulations of those policies in the Monterey County Coastal Implementation Plan (CIP), and the Design Control "D" zoning overlay district, which requires a design review of structures and fences to assure protection of the public viewshed and neighborhood character. The project is consistent with these policies, regulations, and the surrounding neighborhood character:

- In accordance with CIP Section 20.146.030.C.1.c the main finish palette of the project consists of a light tan integral plaster, a Carmel Stone feature wall, and wood doors, giving the appearance of natural materials;
- The difference in height between the existing and proposed residence was also depicted with orange netting, demonstrating that the structure would be in scale with surrounding residences;

- The project features articulated hip and gable roofs in keeping with neighborhood character; and
- Landscape screening will be used to minimize visibility pursuant to CIP Section 20.146.030.C.1.c, and plants will be native or native compatible species as required by 20.146.030.C.1.e.

The site is approximately 150 feet southeast of Scenic Road and 220 feet southeast of Carmel Beach, both nearby recreational destinations that serve as public viewing areas. However, due to existing homes on Scenic Drive the home is not visible from these vantage points and could therefore not cause an adverse visual impact when viewed from a common public viewing area.



Figure 2: Photo showing staking and flagging in comparison to neighboring residence



Figure 3: Color and Materials Rendering



Figure 4: Color and Material Board



Figure 5: Photo taken from Scenic Road oriented to project site



Figure 6: Google Street View image from Scenic Road oriented toward project site (accessed September 2022)

ARCHAEOLOGICAL & TRIBAL CULTURAL RESOURCES

Archaeological Evaluation

The site is in an area identified in County records as having high archaeological sensitivity. In accordance with the regulations for development within the Carmel Area Land Use Plan (Coastal Implementation Plan Section 20.146.090.B), an archaeological report was prepared to analyze the potential of the project to impact archaeological resources. A report was prepared by Dana E. Supernowicz, M.A., RPA, Principal Archaeologist of Historic Resource Associates in May 2021. The report describes results of a records search at the Northwest Information Center (NWIC) of the project site and sites in a 0.75-mile radius; discussion of the surface reconnaissance performed by archaeologists Gail Bellenger and Philip Clarkson in 2021; and subsurface auger testing for the potential presence of archaeological or cultural resources. The subsurface auger testing consisted of conducting seven “shovel test units” at various locations on the project site, which included hand boring the onsite soils to an average depth of 2 feet and examining the soils for evidence of cultural resources such as shell fragments or lithic/stone materials. These tests were also compared to the results of the seven geotechnical borings performed by the geotechnical engineer for their report.



Figure 8: Locations of subsurface archaeological reconnaissance

The archival search identified known resources in the vicinity indicating a potential for impacts to known or unknown resources from development. The surface reconnaissance identified abalone shells of unknown date; and the subsurface testing did not reveal any indicators of archaeological or cultural resources such as shell or stone fragments.

As neither the archaeological subsurface testing or geotechnical bores produced evidence of potential cultural resources, the project archaeologist concluded that the potential for buried or subsurface archaeological resources on the project site was extremely low. Their analysis also indicated that the abalone shell fragments observed by Bellenger and Clarkson were likely contemporaneous with the residence and deposited by previous occupants or property owners.

Based on this, impacts to archaeological resources were determined to be less than significant. County's standard Condition No. 3(B) is recommended, which would require the applicant to stop work if any cultural resources or human remains are identified. Nevertheless, due to the sensitivity of the area for tribal cultural resources, as identified through the tribal consultation process, a tribal cultural monitor and cultural sensitivity training are identified as mitigation measures for the project. While there is significant overlap in the analysis, CEQA differentiates between archaeological resources and tribal cultural resources. The tribal consultation process is further discussed in the subsection below.

Tribal Cultural Resources

The project is within the culturally affiliated territory of the following tribes which has requested project notification:

- Ohlone/Costanoan-Esselen Nation (OCEN);
- Kakoon Ta Ruk Band of the Ohlone-Costanoan; and
- The Esselen Tribe of Monterey County

The County provided written notification to each of these tribes on April 4, 2022 OCEN and the Esselen Tribe of Monterey County requested consultations which were conducted on April 5 and April 6, 2022, respectively. Although neither tribe indicated that there were specific known resources on the project site, both tribes discussed the general sensitivity of the Carmel Point area. Based on results of consultation with the tribes and the known sensitivity of the area, staff is recommending Mitigation Measures No. 1 and 2, which would require cultural sensitivity training for construction personnel and an onsite tribal monitor during demolition and earthwork activities. The incorporation of these mitigation measures would reduce potential impacts to tribal cultural resources to a less than significant level by ensuring that construction crews are able to identify any tribal cultural resources should they be uncovered during excavation, and ensuring that they are treated with appropriate dignity and respect.

More detailed discussion of the tribal consultations is included in the attached Initial Study and Mitigated Negative Declaration (**Exhibit D**). In addition, after circulation of the Initial Study associated with the project and during the public review period, Vice-Chairperson and Tribal Cultural Specialist of the Kakoon Ta Rook Band of the Ohlone-Costanoan submitted a comment letter on the project. In summary it indicated that the project is within their aboriginal territory, that they had concerns regarding the potential of the project to impact cultural resources, and requested a copy of the Environmental Impact Report and any detailed project information. County staff reached out to the tribal representatives and sent them the proposed project plans, a copy of the Initial Study, and included them on the distribution list for this report. Response to this comment is also included in the CEQA Section of the draft resolution attached to this staff report (**Exhibit B**).