

Attachment A

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Attachment A Detailed Discussion

Overview and Analysis:

As approved by the Planning Commission on March 28, 2018 (Resolution No. 18-013; **Attachment I**), the original proposal involved construction of 2,717 square feet of single-family dwelling additions with an attached garage, and development within 100 feet of environmentally sensitive habitat area (indigenous Monterey cypress habitat). The County had previously determined that a portion of the property fell within the area of the Del Monte Forest delineated as indigenous Monterey cypress habitat, while the rest of property was outside the mapped boundaries. Ultimately, based on a biological report prepared by Califauna (Jeffrey B. Froke, Ph.D.; LIB170360), the County determined the proposed development as approved on March 28, 2018 (PLN160608) was fully outside of the Monterey cypress habitat.

Following the Planning Commission's approval of the project and the passing of the County's appeal period, and pursuant to Section 30603 (d) of the Coastal Act and established practice, County staff prepared and sent a Final Local Action Notice (FLAN) for Planning File No. PLN160608 to the California Coastal Commission (CCC) to notify them of the subject Combined Development Permit approval. Upon receipt of the FLAN, the CCC staff informed County staff that the CCC would appeal the Planning Commission's decision based on their view that the entire undeveloped area of the parcel was comprised of Monterey cypress habitat versus the mapped area shown on Figure 2a of the Del Monte Forest Land Use Plan. The mapped habitat area on Figure 2a only included approximately one-third of the subject parcel nearest 17-Mile Drive. The project biologist confirmed this delineation; however, a CCC biologist had a different interpretation. To avoid a CCC appeal, CCC staff gave the applicant the option to reduce the development footprint to those areas of existing structures and hardscape. County staff also withdrew the FLAN pending completion of discussions between the applicant and CCC staff. Following discussions with CCC staff, the applicant agreed to revise the proposed development per CCC staff recommendations and submitted the application for a Minor and Trivial Amendment to the County. This approach is consistent with past CCC staff and County practice to resolve potential appeal hearings. The proposed minor amendment is consistent with the original permit action in that both involve the construction of additions to a single-family dwelling, including an attached garage. Pursuant to Monterey County Code Sections 20.70.105.A and 20.76.115.A, the proposed minor amendment is in keeping with the previous action of the Planning Commission and is minor and trivial in nature.

However, the California Coastal Commission (CCC) staff, based on information from their own biologist, informed County staff that the CCC would appeal the Planning Commission's decision based on their view that the entire undeveloped area of the parcel was comprised of Monterey cypress habitat versus the mapped area shown on Figure 2a of the Del Monte Forest Land Use Plan. To avoid a CCC appeal, CCC staff gave the applicant the option to reduce the development footprint to those areas of existing structures and hardscape to avoid potential impacts to the Monterey cypress habitat. The applicant agreed to reduce the project to existing hardscape and structural footprint areas and submitted revised plans to the County for processing of a minor amendment to resolve the CCC appeal. CCC staff concurs with the proposed revisions and would accept a revised FLAN upon approval of the development as amended. As stated above, this approach is consistent with past CCC and County practice to resolve potential CCC appeals.

The proposed Minor and Trivial amendment would reduce the total square footage of the ground footprint by 1,088 square feet, from 3,852 square feet to 2,764 square feet. With this reduction in footprint size and limiting the development to existing hardscape and structural areas on the parcel, the amendment would not result in new impacts not previously considered in the original approval. Therefore, County staff determined the amendment is of a minor and trivial nature. The original project carried seven (7) mitigation measures to mitigate potential impacts to the adjacent environmentally sensitive habitat area (ESHA) to a less than significant level. Therefore, the revised proposal reduces the potential impacts to biological resources, remains consistent with the mitigation measures for ESHA, and these mitigation measures will be carried over to this minor and trivial amendment.

Historic Resources:

As part of the original application, the applicant submitted a Phase Two Historic Assessment (prepared by PAST Consultants, LLC; LIB170209). A preliminary Phase One Historic Assessment concluded that the single-family residence (constructed in 1924) is eligible for inclusion on the Monterey County Register of Historic Resources for its Spanish Revival/Monterey Colonial Style from the Samuel Morse and the Del Monte Properties Company period (1919-1945). The Phase Two Historic Assessment Report was then prepared to outline the remaining character-defining features of the home. According to the historian's evaluation of the proposed alterations, the proposed project would meet the *Secretary of the Interior's Standards for Rehabilitation* of historic structures and allow the residence to maintain its historic integrity. County staff referred both the original and revised projects to the Monterey County Historic Resources Review Board (HRRB) for review (see below).

Appeal:

The Appellant, Lidia Woytak, filed an appeal raising four (4) contentions (**Attachment C**). The contentions are summarized as follows:

- A) The project does not constitute a minor and trivial amendment. It requires a new Coastal Development Permit application properly processed through the County quasi-judicial bodies;
- B) The proposes prohibitive development within the environmentally sensitive habitat area inconsistent with the Coastal Act;
- C) The project requires further environmental review under CEQA; and
- D) The project fails to adequately address cultural resources.

County Staff Responses to the Contentions:

Contention A: The project does not constitute a minor and trivial amendment.

As described above, the revised project reduces the total ground footprint square footage by 1,088 square feet, thereby reducing and avoiding potential impacts to environmentally sensitive habitat area. The amended project is consistent with the original permit action in that both involve the construction of single-family dwelling additions with an attached garage within the existing developed footprint and hardscape on the site. The applicant modified the attached accessory structure from a one-story to a two-story structure; however, the revised structure conforms to applicable development standards for the zoning district and is consistent with other structures in the vicinity. Therefore, pursuant to Monterey County Code Sections 20.70.105.A and 20.76.115.A, the

proposed minor amendment is in keeping with the previous action of the Planning Commission and is minor and trivial in nature.

Contention B: The project proposes prohibitive development within ESHA.

The project, as amended and mitigated, would not involve any development prohibited under the Coastal Act nor inconsistent with applicable policies and regulations. Coastal Implementation Plan Section 20.147.040.D.2 specifically allows new and/or modified development on existing developed lots to be located within the existing legally established structural and/or hardscape area. Coastal Commission staff has concurred that the proposed revisions would not impact the Monterey cypress/habitat on the site.

Contention C: The project requires further environmental review under CEQA.

The amended project would reduce the footprint of the proposed development and limit the development to existing hardscape and structural areas on the parcel. As previously approved, the original project carried seven (7) mitigation measures to mitigate potential impacts to the adjacent environmentally sensitive habitat area (ESHA) to a less than significant level, and this amendment would not result in new impacts not previously considered in the original approval. Therefore, the amended project reduces the potential impacts to biological resources, remains consistent with the mitigation measures for ESHA, and these mitigation measures will be brought forward to this minor amendment. Pursuant to the CEQA Guidelines, a project does not require subsequent CEQA review if there are no substantial changes requiring subsequent environmental review, and there is no new information of substantial importance nor substantial evidence supporting a fair argument of a new significant environmental impact.

Contention D: The project fails to adequately address cultural resources.

Regarding cultural resources, the applicant submitted an archaeological assessment (LIB170212) which concluded that there is no surface evidence of potentially significant archaeological resources on the project parcel. Pursuant to current State law (Public Resources Code Section 21080.3.1 et seq.), upon initiation of environmental review the County requested a consultation with a member of the Ohlone/Costanoan-Essalen Nation (OCEN) to review the project's potential impact on tribal cultural resources prior to the release of a mitigated negative declaration. Subsequent consultation resulted in the OCEN Chairperson submitting a letter to County staff objecting to all excavation in known cultural lands, even when they are described as previously disturbed and of no archaeological value. Therefore, staff incorporated a mitigation measure to require a tribal monitor on site during excavation activities. Based on discussion during public hearing, the Planning Commission determined the requirement for a tribal monitor was without substantiated merit. The Planning Commission found that there was no specific evidence presented alongside the negative archaeological report to show that this site in particular contained significant cultural resources that would require an on-site tribal monitor. Therefore, the mitigation measure was found to be unwarranted. Pursuant to Section 15074.1 of the CEQA Guidelines, prior to approving a project, the lead agency may, in accordance with this section, delete mitigation measures and substitute for them other measures which the lead agency determines are equivalent or more effective. The County's standard condition (Condition No. 3) for incidental discovery of archaeological resources was and has been applied to the project to manage any potential for discovery of archaeological and/or tribal cultural resources.

In summary, staff reviewed the contentions and has determined that the revised project is adequately designed and mitigated to minimize and/or avoid potential impacts to resources at the site. Detailed responses to the contentions are included in the Draft Resolution (**Attachment B**).