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CALIFORNIA COASTAL COMMISSION

CENTRAL COAST DISTRICT OFFICE
725 FRONT STREET, SUITE 300
SANTA CRUZ, CA 95060
PHONE: (831) 427-4863
FAX: (831) 427-4877
WEB: WWW.COASTAL.CA.GOV

ADOPTED

W20d

Prepared April 21, 2017 for May 10, 2017 Hearing

To: Commissioners and Interested Persons

From: Susan Craig, Central Coast District Manager
Kevin Kahn, Central Coast District Supervisor

Subject: Monterey County Local Coastal Program (LCP) Amendment No. LCP-3-MCO-16-0070-2 (Monterey Cypress Habitat Development Standards)

SUMMARY OF STAFF RECOMMENDATION

Monterey County proposes to amend the LCP's standards for development within native Monterey cypress habitat in the Del Monte Forest area, which is located along a narrow oceanfront strip along 17-Mile Drive between Cypress Point and Pescadero Point. The existing LCP includes a well-defined policy framework designed to protect this important resource while also allowing for residential development in this residentially-zoned area. These policies emanate from the Commission's original approval of the LCP Land Use Plan (LUP) in the mid-1980s, as well as from refinements to those policies during the Del Monte Forest LCP update in 2012. The proposed amendment as suggested to be modified generally maintains and strengthens this framework, including adding additional specificity of terms, requirements, and findings. Notably, the proposed modified amendment helps to better differentiate between the standards for developed and undeveloped properties, and provides numerous improvements to ensure protection – and enhancement – of this special resource area (including through restoration and conservation easement requirements).

Staff has extensive experience addressing development issues in the native Monterey cypress area, and believes that the amendment helps to strengthen existing standards in order to better protect this resource. The amendment as modified responds to lessons learned in that respect, and is best understood in that context, including helping to foster resource-positive projects on existing developed properties.

Commission staff worked collaboratively and extensively with both County staff and interested members of the public to develop an LCP amendment, as suggested to be modified, that ensures development appropriately reflects native Monterey cypress habitat needs, consistent with the Coastal Act and the existing LCP. As such, staff recommends that the Commission approve the LCP amendment with those modifications. The motions and resolutions (there are four required

motions/resolutions, two for the LUP component and two for the Implementation Plan (IP) component) to implement the staff recommendation are found on page 3 below.

Staff Note: LCP Amendment Action Deadline

This proposed LCP amendment was filed as complete on April 10, 2017. The proposed amendment affects the LCP’s LUP and IP, and the 90-day action deadline is July 9, 2017 (See Coastal Act Sections 30512(a) and 30514(b)). Thus, unless the Commission votes to extend the action deadline (it may be extended by up to one year, per Coastal Act Section 30517) the Commission has until July 9, 2017 to take a final action on this LCP amendment.

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EXHIBITS

- Exhibit 1: Proposed LCP Amendment
- Exhibit 2: Coastal Commission Suggested Modifications
- Exhibit 3: Del Monte Forest LCP Figure 2a
- Exhibit 4: Area Site Photos

I. MOTIONS AND RESOLUTIONS

Staff recommends that the Commission, after public hearing, approve the proposed LCP amendment if modified. The Commission needs to make four separate motions in order to act on this recommendation.

A. Deny the LUP Amendment as Submitted

Staff recommends a **NO** vote on the motion below. Failure of the motion will result in denial of the LUP amendment as submitted and the adoption of the following resolution and findings. The motion passes only by an affirmative vote of a majority of the appointed Commissioners.

***Motion:** I move that the Commission certify Land Use Plan Amendment Number LCP-3-MCO-16-0070-2 as submitted by Monterey County, and I recommend a **no** vote.*

***Resolution:** The Commission hereby denies Land Use Plan Amendment Number LCP-3-MCO-16-0070-2 as submitted by Monterey County and adopts the findings set forth below on the grounds that the amendment does not conform with the policies of Chapter 3 of the Coastal Act. Certification of the Land Use Plan amendment would not comply with the California Environmental Quality Act because there are feasible mitigation measures and/or alternatives which could substantially lessen any significant adverse effect which the Land Use Plan may have on the environment.*

B. Approve the LUP Amendment with Suggested Modifications

Staff recommends a **YES** vote on the motion below. Passage of the motion will result in certification of the LUP amendment with suggested modifications and the adoption of the following resolution and findings. The motion passes only by an affirmative vote of a majority of the appointed Commissioners.

***Motion:** I move that the Commission certify Land Use Plan Amendment Number LCP-3-MCO-16-0070-2 if it is modified as suggested in this staff report, and I recommend a **yes** vote.*

***Resolution:** The Commission hereby certifies Land Use Plan Amendment Number LCP-3-MCO-16-0070-2 for Monterey County if modified as suggested and adopts the findings set forth below on the grounds that the amendment with suggested modifications will meet the requirements of and be in conformity with the policies of Chapter 3 of the Coastal Act. Certification of the Land Use Plan amendment if modified as suggested complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the plan on the environment, or 2) there are no further feasible mitigation measures and/or alternatives which could substantially lessen any significant adverse effect which the Land Use Plan may have on the environment.*

C. Deny the IP Amendment As Submitted

Staff recommends a **YES** vote on the following motion. Following the staff recommendation will result in rejection of the IP and the adoption of the following resolution and findings. The motion passes only by an affirmative vote of a majority of the Commissioners present.

Motion: *I move that the Commission **reject** Implementation Plan Amendment LCP-3-MCO-16-0070-2 as submitted by Monterey County. I recommend a yes vote.*

Resolution: *The Commission hereby denies certification of the Implementation Plan submitted for Monterey County and adopts the findings set forth below on grounds that the Implementation Plan as submitted does not conform with, and is inadequate to carry out, the provisions of the certified land use plan as amended. Certification of the Implementation Plan would not meet the requirements of the California Environmental Quality Act as there are feasible alternatives and mitigation measures that would substantially lessen the significant adverse impacts on the environment that will result from certification of the Implementation Plan as submitted.*

D. Approval of the IP with Suggested Modifications

Staff recommends a **YES** vote on the following motion. Passage of this motion will result in certification of the IP with suggested modifications and the adoption of the following resolution and findings. The motion passes only by an affirmative vote of a majority of the Commissioners present.

Motion: *I move that the Commission **certify** Implementation Plan Amendment LCP-3-MCO-16-0070-2 for Monterey County if it is modified as suggested in this staff report. I recommend a yes vote.*

Resolution: *The Commission hereby certifies the Implementation Plan for Monterey County if modified as suggested and adopts the findings set forth below on grounds that the Implementation Plan with the suggested modifications conforms with, and is adequate to carry out, the provisions of the certified Land Use Plan as amended. Certification of the Implementation Plan if modified as suggested complies with the California Environmental Quality Act, because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the Implementation Plan on the environment, or 2) there are no further feasible alternatives and mitigation measures that would substantially lessen any significant adverse impacts on the environment.*

II. SUGGESTED MODIFICATIONS

The Commission hereby suggests the following modifications to the proposed LCP amendment, which are necessary to make the requisite Coastal Act and LUP consistency findings. If Monterey County accepts the suggested modifications within six months of Commission action (i.e., by November 10, 2017), by formal resolution of the Board of Supervisors, the modified amendment will become effective upon Commission concurrence with the Executive Director's finding that this acceptance has been properly accomplished. (See California Code of Regulations Title 14 Sections 13537(b), 13542(b), and 13544) Where applicable, text in ~~cross-out~~ format and text in underline format denotes proposed text to be deleted/added by the Commission.

1. Amend the proposed LCP amendment as shown in **Exhibit 2**.

III. FINDINGS AND DECLARATIONS

A. DESCRIPTION OF PROPOSED LCP AMENDMENT

Background on Native Monterey Cypress Habitat

Native Monterey cypress trees are found along a narrow oceanfront strip along 17-Mile Drive between Cypress Point and Pescadero Point in the Del Monte Forest area of Monterey County. This area is the subject of this LCP amendment (see **Exhibit 4** for photos of this area). Because of the importance of this habitat resource, as well as the fact that much of this area is and has historically been (i.e., pre-Coastal Act) zoned for residential use, and, to protect the habitat from significant disruption of its habitat values, the Del Monte Forest LCP¹ identifies native Monterey cypress habitat as an environmentally sensitive habitat area and includes an extensive and restrictive policy framework. Del Monte Forest LUP Figure 2a (**Exhibit 3**) shows the general location of native Monterey cypress habitat. Included in this area are 11 undeveloped and 62 developed residentially-zoned parcels, almost all of which are designated Low-Density Residential (LDR).² To ensure that residential development and redevelopment on these parcels protects Monterey cypress habitat, the existing LCP: 1) requires all use and development to be compatible with the objective of protecting and avoiding adverse impacts to individual Monterey cypress trees and associated habitat; 2) does not allow development within the perimeter of the “identified habitat area” (i.e., the most critical Monterey cypress habitat protection area)³; 3) requires all development for developed properties to be located within existing hardscape areas; and, 4) requires the remaining undeveloped areas of a developed parcel to be protected via a conservation and scenic easement.

Proposed Amendment

The proposed amendment generally maintains the existing standards specified above, but moves most of the requirements from the LUP to the IP. Specifically, LUP Policy 20, as revised, requires development to “avoid adverse impacts and potential damage or degradation to both individual Monterey cypress trees and Monterey cypress habitat” and cross-references IP Section 20.147.040(D) for the specific development standards to implement and accomplish such requirements. Within the proposed revised IP section, the amendment augments Monterey cypress habitat protection requirements by differentiating between developed versus undeveloped parcels. For undeveloped parcels, the proposal indicates that development must be located outside of the “critical root zone,” which is defined primarily as a buffer around the dripline of each Monterey cypress tree on the site, but may also include other areas where development may damage or degrade Monterey cypress trees. In other words, as proposed the critical root zone constitutes the most sensitive Monterey cypress habitat area on a parcel, and thus this zone is off limits to development. All otherwise allowable development (e.g., residential structures, driveways, decks, patios, etc.) must be located within a “development envelope.” The development envelope must be located outside of the critical root zone and is allowed to be no

¹ The Monterey County LCP is divided into four segments, each with its own LUP and IP: North County, Del Monte Forest, Carmel Area, and Big Sur.

² This zoning designation allows for residential development at a maximum of 2.5 units per acre.

³ The “identified habitat area” is defined as, at a minimum, the driplines of the outermost Monterey cypress trees on the site. Exceptions to the prohibition on development within this area include habitat restoration, as well as driveways and fences on parcels located on the inland side of 17-Mile Drive.

larger than the maximum allowable building site coverage for the applicable zoning district.⁴ All areas outside of the development envelope must be restored as high-value and self-functioning Monterey cypress habitat and protected via conservation easement, and all areas of new coverage are to be offset through off-site restoration (or payment of a commensurate mitigation fee) at a ratio of 2:1. For developed parcels, the standards are generally the same, including that the proposed development must be located within existing hardscape areas (e.g., within an area currently serving as a paved driveway or deck) and outside the critical root zone. However, the amendment allows development to encroach outside of such areas when a number of findings and requirements are met, including that no Monterey cypress trees are harmed or removed, there is an overall net reduction in hardscape, that the rest of the property is restored to Monterey cypress habitat and protected via conservation easement, and that any new coverage areas are offset at a 2:1 ratio off-site (or payment of a commensurate mitigation fee is made).

See **Exhibit 1** for the proposed LCP amendment text.

B. CONSISTENCY ANALYSIS

Standard of Review

The proposed amendment affects both the LUP and IP components of the Monterey County LCP. The standard of review for LUP amendments is that they must be in conformance with the requirements of Chapter 3 of the Coastal Act. The standard of review for IP amendments is that they must be consistent with and adequate to carry out the policies of the certified LUP. (See Coastal Act Sections 30512(c), 30513, and 30514(b))

LUP Consistency Analysis

Applicable Coastal Act Policies

***Section 30240.** (a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas.*

(b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.

***Section 30250(a).** New residential, commercial, or industrial development, except as otherwise provided in this division, shall be located within, contiguous with, or in close proximity to, existing developed areas able to accommodate it or, where such areas are not able to accommodate it, in other areas with adequate public services and where it will not have significant adverse effects, either individually or cumulatively, on coastal resources. In*

⁴ As described earlier, almost all of the parcels identified in Figure 2a are zoned LDR, which has a maximum building site coverage of 15%. Thus, a minimum of 85% of the parcel must remain as Monterey cypress habitat that is protected via a conservation easement. Of course, the specified building site coverage is a maximum, not an entitlement, that is to be reduced in order to meet LCP resource protection requirements as necessary.

addition, land divisions, other than leases for agricultural uses, outside existing developed areas shall be permitted only where 50 percent of the usable parcels in the area have been developed and the created parcels would be no smaller than the average size of surrounding parcels.

***Section 30251.** The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas such as those designated in the California Coastline Preservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinate to the character of its setting.*

These Coastal Act policies require environmentally sensitive habitat areas to be protected against any significant disruption of habitat values, require new development to be located in areas where it will not have significant adverse effects on coastal resources, and also require that development be visually compatible with the character of the surrounding area. These policies thus require the protection of the area's Monterey cypress habitat, including because cypress habitat is a significant coastal resource and is one of the predominant character-defining features of the Monterey peninsula.

Analysis

As described earlier, while the proposed LUP amendment maintains the existing overarching Policy 20 requirement that development avoid adverse impacts and potential damage or degradation to both individual Monterey cypress trees and Monterey cypress habitat, it generally moves the details associated with such standards to the IP. As proposed, revised Policy 20 does not contain adequate detail to effectively implement applicable Coastal Act coastal resource protection policies, including to avoid significant disruption of Monterey cypress' habitat values. Suggested modifications (see **Exhibit 2**) are thus needed to reinstate much of the existing certified LUP language, as well as to insert some of the detailed proposed IP language that further articulates requirements and standards that all seek to protect and enhance Monterey cypress habitat values. For example, as modified, the amendment replaces the term "identified habitat area" with "critical habitat area" so as to better articulate its intended function as defining where development is to be avoided, and extends the distance of this off-limits area by requiring a minimum 10-foot buffer from the driplines of all Monterey cypress trees on and adjacent to the site (under the existing LCP, the identified habitat area is at a minimum only the dripline of all Monterey cypress trees on the site). In all cases, the habitat sensitivity of the property in question must be evaluated in relative terms, wherein the most sensitive portions of the site are to be identified and avoided, and all development must be sited and designed to best protect and enhance Monterey cypress habitat, both on and off site. All of the suggested modifications reflect recommendations from the Commission's Staff Ecologist Dr. Laurie Koteen, and ensure that the LUP maintains a protective foundation framework for Monterey cypress habitat protection, helping to provide consistency with the above-cited Coastal Act policies that require protection of this important and character-defining coastal resource. As modified, the proposed LUP can be

found consistent with applicable Coastal Act policies, and should be even better suited to protecting the special Monterey cypress habitat in the Del Monte Forest.

IP Amendment Consistency Analysis

*Applicable Land Use Plan Policy (as modified in **Exhibit 2**):*

Del Monte Forest Land Use Plan Policy 20. *Indigenous Monterey cypress habitat is an environmentally sensitive habitat area within the Del Monte Forest, and is presumed present within and adjacent to the area mapped in Figure 2a and all proposed development shall be carefully sited and designed to avoid potential damage or degradation of Monterey cypress habitat, including the microhabitat of individual cypress trees. All proposed development in this area shall be accompanied by coordinated biological and arborist reports in consultation with the Del Monte Forest Conservancy and consistent with Policies 12 and 16, a primary purpose of which shall be to determine: the “critical habitat area” for the site (i.e., the portion of the site that is to be avoided to protect against potential damage or degradation of Monterey cypress habitat, including the microhabitat of individual cypress trees); the relative habitat sensitivity of all parts of the site, ranked from the highest sensitivity to the lowest sensitivity in terms of potential adverse impacts from development; the ways in which the critical habitat area and the relative habitat sensitivity rankings relate to adjacent and surrounding habitat areas; and the measures to best protect Monterey cypress habitat on the site and overall (including in terms of on-site (and potentially off-site) restoration and enhancement measures). The critical habitat area shall at a minimum be defined by a 10-foot buffer applied to the outermost driplines (i.e., the tree canopies) of all of the Monterey cypress trees on and adjacent to the site, but shall also include any other areas that are deemed critical to preservation of existing cypress trees on and off site, or that are to be avoided due to high habitat sensitivity and/or cypress habitat preservation purposes for other reasons.*

All development in and adjacent to the Monterey cypress habitat mapped in Figure 2a shall be carefully sited and designed to avoid potential damage or degradation of Monterey cypress habitat, including the microhabitat of individual cypress trees, and shall be required to include measures that will enhance Monterey cypress habitat values. All use and development in or adjacent to indigenous Monterey cypress habitat areas shall be compatible with the objective of protecting this environmentally sensitive coastal resource. All improvements (such as structures and driveways, etc.) shall be carefully sited and designed to avoid potential damage and/or degradation of Monterey cypress habitat, including the microhabitat of individual cypress trees. Open space conservation and scenic easements are required for all undeveloped areas of a site within the Monterey cypress habitat area, and such easements shall be secured consistent with Policy 13.

Analysis

As previously described, the proposed IP amendment offers additional clarification and specification of the existing Monterey cypress habitat protection framework, including by clearly articulating between developed and undeveloped properties and the required standards for both. Suggested modifications (see **Exhibit 2**) are intended to further clarify terms and requirements, including how to calculate the critical habitat area (e.g., by not relying solely on the British

Standards Institute method for the required biological report but instead relying on the best available biological/arborist information), clarifying that development on existing developed parcels may only extend into non-hardscaped area if *all* structural development is located within the maximum-allowable development envelope (i.e., if all development is confined to a development envelope that is no larger than the applicable maximum building site coverage, or 15% for parcels in the LDR district), that all habitat on the parcel located outside of the development envelope (i.e., at least 85% of LDR district parcels) be restored to Monterey cypress habitat and protected via conservation and scenic easement, and generally reflecting the same LUP modifications identified above (e.g., requiring increased buffers around individual trees, avoiding the most sensitive portions of sites, siting and designing all development to best protect and enhance Monterey cypress habitat both on and off site, etc.).

As modified, the proposed IP amendment is consistent with and adequate to carry out Policy 20 of the LUP, as amended.

C. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

Section 21080.9 of the California Public Resources Code (within CEQA) exempts local government from the requirement of preparing environmental review documentation under CEQA in connection with its activities and approvals necessary for the preparation and adoption of a local coastal program. Therefore, local governments are not required to prepare any CEQA environmental review document in support of their proposed LCP amendments, although the Commission can and does use any environmental information that the local government submits in support of its proposed LCPA in carrying out its duties under CEQA and the Coastal Act when evaluating the LCPA. The Commission's LCP review and approval program has been found by the Resources Agency to be the functional equivalent of the environmental review required by CEQA, pursuant to CEQA Section 21080.5. (See CEQA Guidelines Section 15251(f).) Therefore the Commission's review and analysis of the LCPA in this Staff Report satisfies CEQA environmental review requirements.

Nevertheless, the Commission is required, in approving an LCP amendment submittal, to find that the approval of the proposed LCP, as modified, does conform with certain CEQA provisions, including the requirement in Section 21080.5(d)(2)(A) that the amended LCP will not be approved or adopted as proposed if there are feasible alternative or feasible mitigation measures available that would substantially lessen any significant adverse impact which the activity may have on the environment. See also, CEQA Guidelines Sections 13542(a), 13540(f), and 13555(b).

The County's LCP amendment consists of a Land Use Plan (LUP) and Implementation Plan (IP) amendment. As part of its local action on the subject LCP amendment, the County of Monterey found that the amendment was statutorily exempt from environmental review pursuant to Section 21080.9 of the Public Resources Code. The Commission incorporates its findings on Coastal Act conformity into this CEQA finding as if it is set forth in full. As discussed herein, the Land Use Plan amendment as originally submitted does not conform with the policies of Chapter 3 of the Coastal Act. The Commission, therefore, has suggested modifications to bring the Land Use Plan amendment into full conformance with the Coastal Act, which will have the effect of substantially lessening any significant adverse impact which the Land Use Plan amendment may have on the environment. Additionally, as discussed herein, the Implementation Plan as

originally submitted does not conform with and is not adequate to carry out the Land Use Plan amendment, as amended. The Commission, therefore, has suggested modifications to bring the Implementation Plan into full conformance with the Land Use Plan so that the Implementation Plan can carry out the Land Use Plan and which will also have the effect of substantially lessening any significant adverse impact which the Implementation Plan amendment may have on the environment.

As modified, the Commission finds that approval of the LCP amendment will not result in significant adverse environmental impacts within the meaning of CEQA. Absent the incorporation of these suggested modifications to effectively mitigate potential resource impacts, such a finding could not be made.

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CENTRAL COAST DISTRICT OFFICE
725 FRONT STREET, SUITE 300
SANTA CRUZ, CA 95060
PHONE: (831) 427-4863
FAX: (831) 427-4877
WEB: WWW.COASTAL.CA.GOV



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LCP-3-MCO-16-0070-2

**(NATIVE MONTEREY CYPRESS HABITAT
DEVELOPMENT STANDARDS)**

MAY 10, 2017

EXHIBITS

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Exhibit 1: Proposed LCP Amendment

Exhibit 2: Coastal Commission Suggested Modifications

Exhibit 3: Del Monte Forest LCP Figure 2a

Exhibit 4: Area Site Photos

DRAFT TEXT AMENDMENT TO DMF LUP POLICY 20

Policy 20 of the Del Monte Forest Land Use Plan shall be amended as follows:

Strikethrough/Underline:

Indigenous Monterey cypress habitat is an environmentally sensitive habitat area within the Del Monte Forest, and is presumed present within the area mapped in Figure 2a. Within their indigenous range (see LUP Figure 2a), Monterey cypress trees and habitat shall be protected to the maximum extent possible. ~~All proposed development in this area shall be accompanied by the biological reports described in Policies 12 and 16. All use and development in or adjacent to indigenous Monterey cypress habitat areas shall be compatible with the objective of protecting this environmentally sensitive coastal resource. All development improvements (such as structures and driveways, etc.) that could impact Monterey cypress trees and/or Monterey cypress habitat mapped in this area shall be carefully sited and designed to avoid adverse impacts and potential damage or degradation to both individual cypress trees and of Monterey cypress habitat, and shall be required to include measures that will enhance Monterey cypress habitat values, including the microhabitat of individual cypress trees, and must be located within existing landscaped areas and outside of the dripline of individual cypress trees.~~ All development shall be consistent with the limitations and standards provided in Del Monte Forest Implementation Plan Section 20.147.040(D) to ensure no Monterey cypress trees are harmed, and that Monterey cypress habitat is increased, restored as high-value and self-functioning Monterey cypress habitat, and placed under a Conservation Easement. ~~Within the perimeter of the identified habitat area for a site, including at a minimum as defined by the driplines of the outermost indigenous Monterey cypress trees on the site, removal of native trees or other indigenous vegetation, grading, paving, building construction activity, landscape alterations and summer watering shall be prohibited. On the inland side of 17 Mile Drive, driveways shall be allowed in this area where the driveway does not come within the dripline of individual Cypress trees. Underground residential utilities and fences shall be allowed in this area on the inland side of 17 Mile Drive. Open space conservation and scenic easements are required for all undeveloped areas of a parcel within the Monterey cypress habitat area, and such easements shall be secured consistent with Policy 13.~~

Clean:

Indigenous Monterey cypress habitat is an environmentally sensitive habitat area within the Del Monte Forest and is presumed present within the area mapped in LUP Figure 2a. Within their indigenous range (see LUP Figure 2a), Monterey cypress trees and habitat shall be protected to the maximum extent possible. All development that could impact Monterey cypress trees and/or Monterey cypress habitat mapped in this area shall be carefully sited and designed to avoid adverse impacts and potential damage or degradation to both individual cypress trees and cypress habitat, and shall be required to include measures that will enhance Monterey cypress habitat values. All development shall be consistent with the limitations and standards provided in Del Monte Forest Implementation Plan Section 20.147.040(D) to ensure no Monterey cypress trees are harmed, and that Monterey cypress habitat is increased, restored as high-value and self-functioning Monterey cypress habitat, and placed under a Conservation Easement.

ORDINANCE NO. _____

AN ORDINANCE OF THE COUNTY OF MONTEREY, STATE OF CALIFORNIA, AMENDING SECTION 20.147.040.D.2 OF TITLE 20 (MONTEREY COUNTY COASTAL IMPLEMENTATION PLAN) OF THE MONTEREY COUNTY CODE RELATING TO REGULATIONS FOR DEVELOPMENT IN THE DEL MONTE FOREST LAND USE PLAN AREA.

County Counsel Summary

This ordinance amends the standards for development within Monterey cypress habitat in the Del Monte Forest Land Use Plan area of the coastal zone of the County of Monterey. Specifically, the ordinance amends Subsection 2 of Subsection D of Section 20.147.040 of Part 5, Regulations for Development in the Del Monte Forest Land Use Plan Area, of Title 20 (Monterey County Coastal Implementation Plan) of the Monterey County Code. The amendment establishes new procedures and requirements for development in and adjacent to Monterey cypress trees and habitat.

The Board of Supervisors of the County of Monterey ordains as follows:

SECTION 1. Subsection 2 of Subsection D of Section 20.147.040 of Part 5, Regulations for Development in the Del Monte Forest Land Use Plan Area, of Title 20 (Monterey County Coastal Implementation Plan) of the Monterey County Code is amended to read as follows:

2. Monterey Cypress Habitat

(a) Indigenous Monterey cypress habitat is an environmentally sensitive habitat area within the Del Monte Forest, and is presumed present within the area mapped in LUP Figure 2a. All proposed development in this area shall be accompanied by coordinated a-biologist and arborist reports in consultation with the Del Monte Forest Conservancy pursuant to Section 20.147.040.A., a purpose of which is to determine: the “critical root zone” for the site; the relative habitat sensitivity of all parts of the site, ranked from the highest sensitivity to the lowest sensitivity in terms of potential adverse impacts from development; the ways in which the critical root zone and the relative habitat sensitivity rankings relate to adjacent and surrounding habitat areas; and the measures to best protect Monterey cypress habitat on the site and overall (including in terms of on-site (and potentially offsite) restoration and enhancement measures). The arborist report shall calculate the critical root zone for each Monterey cypress tree on the site based on the British Standards Institute (BSI) method developed in 1991 and as modified by N. Matheny and J. Clark, *Trees and Development: A Technical Guide to Preservation of Trees During Land Development* (1998), to reflect species tolerance, tree architecture, existing site constraints including room for future growth, trunk diameter, tree age and vigor to determine the distance from the trunk that comprises the critical root zone. The critical root zone may not always represent a simple radius around the tree and may also include other areas where proposed development may damage or degrade Monterey cypress trees (this

analysis may include the need to preserve associated coarse root and feeder root zones, as well as soil type and condition). The County may also elect to define the critical root zone as a buffer around the dripline of each Monterey cypress tree on the site.

(b) General Development Parameters. Within their indigenous range (see LUP Figure 2a), Monterey cypress trees shall be protected to the maximum extent possible. All allowable development in and adjacent to the that would impact Monterey cypress trees and/or Monterey cypress habitat mapped in Figure 2a in this area shall be sited and designed to avoid adverse impacts and potential damage or degradation to individual cypress and cypress habitat, and shall be required to include measures, performance standards, and monitoring recommendations to prohibit all irrigation of Monterey cypress habitat areas, improve growing conditions to provide a bare, mineral soil necessary for seed germination, and increase sunlight to prevent soil borne fungi from inhabiting seedlings that will enhance Monterey cypress habitat values. Trees identified by the arborist as at risk during construction shall be surrounded by sturdy exclusionary fencing (welded wire or chain link) and supported by either metal or wood posts securely embedded in the ground. Trees within 30 feet of site disturbance must be protected by a row of straw bales secured with rebar through the bale and into the ground either just inside or outside the protection fences. Grading, demolition, and construction permits shall not be issued until an applicant has demonstrated proper installation of all tree protection measures and completion of a preconstruction cypress habitat protection meeting.

(c) Undeveloped Parcels. All use and development in or adjacent to indigenous Monterey cypress habitat area shall be compatible with the objective of protecting this environmentally sensitive coastal resource. On undeveloped parcels (i.e., those without an existing legally established residence), development (including removal of native trees or other indigenous vegetation, grading, paving, building construction activity, landscape alterations, and summer watering) within the perimeter of the critical root zone for a site shall be prohibited, other than: development associated with cypress habitat enhancement and/or restoration; and on the inland side of 17-Mile Drive only, driveways, underground residential utilities and fences if this area cannot possibly be avoided and if such development does not come within the critical root zone of, and does not harm, individual cypress trees. All otherwise allowable development shall be sited, designed, and limited as necessary to protect cypress habitat as much as possible, and all such development (e.g., residential structures and hardscape (such as decks, patios, driveways, paths, etc.)) shall be confined within a defined "development envelope". With the exceptions specified above, the development envelope shall contain all improvements and structural development (i.e., all uses that are not Monterey cypress habitat), be located entirely outside of the critical root zone, and shall be no larger than the allowable building site coverage for the applicable zoning district. Open space conservation and scenic easements are required for all undeveloped areas of a parcel (i.e., all areas outside of the defined development envelope) within the Monterey cypress habitat area mapped in Figure 2a, and such easements shall be secured consistent with Policy 13. The restoration requirements specified in Sections 20.147.040(D)(2)(d)(3) - (4) and the alternative construction methods specified in Section 20.147.040(D)(2)(d)(5) below, shall apply.

(d) Developed Parcels. All improvements (such as structures and driveways, etc.) shall be carefully sited and designed to avoid potential damage or degradation of Monterey cypress habitat, including the micro-habitat of individual trees, and must be located within existing landscaped areas and outside of the dripline of individual cypress trees. ~~On developed~~

parcels (i.e., those with a legally established residence), new and/or modified development shall be located within the development envelope, which shall consist of all existing legally established structural and/or hardscaped coverage (i.e., all areas of the site covered with a structure, or other pervious or impervious hardscape areas (such as decks, patios, driveways, and paths, but not including landscaped areas, fence areas, or underground or over ground utility areas)), and outside the critical root zone of individual cypress trees unless each of the following findings can be made:

(1) Construction, use, and maintenance of the new and/or modified development will accommodate the health and vitality, and will not harm, any existing individual Monterey cypress tree regardless of size (this determination will be made based on the type of development, the particulars of its siting and design, and its location in relation to individual trees, the critical root zone, higher sensitivity portions of the site, and adjacent and surrounding habitat areas);

(2) The new and/or modified development will be confined within a development envelope that reduces structural/hardscaped coverage as compared to the existing legally established baseline amount of coverage (i.e., the new development envelope consists of a lesser amount of structural and/or hardscape coverage as the existing development envelope), and that is sited in such a way as to be located within the least environmentally sensitive location (as determined by the coordinated biologist and arborist reports), and maximizes Monterey cypress habitat values, including in relation to adjacent and surrounding areas (e.g., clustering new and/or modified development on the site near to existing and/or adjacent residential developments so as to provide as much of a contiguous, undisturbed, and unfragmented habitat area as possible on and off site);

(3) All areas outside of the approved development envelope will be: restored to and/or enhanced as high value and self-functioning Monterey cypress habitat by taking into consideration removal of exotics species, consolidation of fragmented Monterey cypress habitat, improving growing conditions to provide a bare, mineral soil necessary for seed germination, increasing sunlight to prevent soil borne fungi from inhabiting seedlings, and strategic planting of native Monterey cypress to promote future germination with all initial restoration/enhancement implemented prior to occupancy of any approved development; and placed within an open space conservation and scenic easement secured consistent with Policy 13;

(4) All areas of new coverage (i.e., areas that would be covered with structures and/or hardscape that are not so covered in the existing legally established baseline condition) shall be offset through restoration and/or enhancement (as high value and self-functioning Monterey cypress habitat) of an off-site area (including within any right-of-way) located within the Monterey cypress habitat area mapped in Figure 2a at a ratio of 2:1 (and/or payment of a mitigation fee, commensurate with the cost to restore/enhance such an area, to an acceptable public agency or private group effectively able to both manage such a fee (including through established interest bearing and earmarked accounts, etc.) and to implement such measures). Such off-site restoration/enhancement areas shall be selected for their potential to result in the greatest amount of overall benefit to the native Monterey cypress habitat in the Del Monte Forest, and all initial restoration/enhancement of the offsite area shall be implemented prior to occupancy of any approved development or, in the case of a fee, the fee paid prior to issuance of the construction permit; and

(5) The new and/or modified development has been sited and designed in such a way as to avoid the critical root zone and the most sensitive habitat parts of the site as much as possible, to result in greater cypress habitat value on the site (and in relation to adjacent and surrounding habitat areas) than the existing baseline habitat value, and to enhance overall Monterey cypress habitat values. If development is proposed within a Monterey cypress critical root zone, the arborist must provide alternative construction methods or preconstruction treatments to avoid impacts. The alternative methods can include supplemental irrigation, hand digging or grading, root pruning or modification to traditional construction methods, such as spanning roots, pier and above grade beams or cantilevering structures. However, in no case shall Monterey cypress trees be removed unless they are dead or declining, and the arborist and biologist reports conclude removal will further enhance Monterey cypress habitat values or avoid adverse impacts or potential damage or degradation to both healthy individual cypress trees and cypress habitat.

~~(e) Removal of native trees or other indigenous vegetation, grading, paving, building construction activity, landscape alterations and summer watering are all prohibited within the perimeter of the identified cypress habitat area for a site, including at a minimum as defined by the driplines of the outermost indigenous Monterey cypress trees on a site.~~

~~(f) On the inland side of 17 Mile Drive within the indigenous Monterey cypress habitat area, driveways are allowed only where the driveway does not come within the dripline of individual cypress trees.~~

~~(g) Within the indigenous Monterey cypress habitat area:~~

~~(1) Underground residential utilities are allowed on the inland side of 17 Mile Drive.~~

~~(2) Fences shall be designed with see-through materials or spaced in a manner to protect views of the natural habitat from 17 Mile Drive (e.g., wrought iron with openings).~~

~~(h) Open space conservation and scenic easements are required for all undeveloped areas of a parcel within the Monterey cypress habitat area.~~

~~(ei) The Del Monte Forest Foundation Conservancy shall be encouraged to maintain an interpretive and educational program at Crocker Grove. Said program shall be under careful supervision and designed for the protection of the indigenous Monterey cypress habitat. The type and intensity of access to Crocker Grove shall be carefully regulated.~~

Del Monte Forest Monterey Cypress Habitat Development Standards Suggested Modifications

DMF LUP Policy 20: Indigenous Monterey cypress habitat is an environmentally sensitive habitat area within the Del Monte Forest, and is presumed present within and adjacent to the area mapped in Figure 2a. All proposed development in this area shall be accompanied by ~~the biological reports described in~~ a coordinated biological/arborist report prepared in consultation with the Del Monte Forest Conservancy and consistent with Policies 12 and 16, a primary purpose of which shall be to determine: the Monterey cypress habitat portion of the site; the “critical habitat area” for the site (i.e., the portion of Monterey cypress habitat on the site that is to be avoided to protect against potential damage or degradation of cypress habitat, including the microhabitat of individual cypress trees); the relative habitat sensitivity of all parts of the site, ranked from the highest sensitivity to the lowest sensitivity in terms of potential adverse impacts from development; the ways in which the cypress habitat portion of the site, the critical habitat area and the relative habitat sensitivity rankings relate to adjacent and surrounding habitat areas; and the measures to best protect Monterey cypress habitat on the site and overall, including on-site (and potentially off-site) restoration and enhancement measures. The critical habitat area shall at a minimum be defined by a 10-foot buffer applied to the outermost driplines (i.e., the tree canopies) of all of the Monterey cypress trees on and adjacent to the site, but shall also include any other areas on site that are deemed critical to preservation of existing cypress trees on and off site, or that are to be avoided due to high habitat sensitivity and/or cypress habitat preservation purposes for other reasons.

All development in and adjacent to the Monterey cypress habitat mapped in Figure 2a shall be carefully sited and designed to avoid potential damage or degradation of Monterey cypress habitat, including the microhabitat of individual cypress trees, and shall be required to include measures that will enhance Monterey cypress habitat values. All use and development in or adjacent to indigenous Monterey cypress habitat areas shall be compatible with the objective of protecting this environmentally sensitive coastal resource. All improvements (such as structures and driveways, etc.) shall be carefully sited and designed to avoid potential damage and/or degradation of Monterey cypress habitat, including the microhabitat of individual cypress trees, ~~and must be located within existing landscaped areas and outside of the dripline of individual cypress trees. Within the perimeter of the identified habitat area for a site, including at a minimum as defined by the driplines of the outermost indigenous Monterey cypress trees on the site, removal of native trees or other indigenous vegetation, grading, paving, building construction activity, landscape alterations and summer watering shall be prohibited. On the inland side of 17 Mile Drive, driveways shall be allowed in this area where the driveway does not come within the dripline of individual Cypress trees. Underground residential utilities and fences shall be allowed in this area on the inland side of 17 Mile Drive. Open space conservation and scenic easements are required for all undeveloped areas of a site within the Monterey cypress habitat area, and such easements shall be secured consistent with Policy 13.~~

DMF IP Section 20.147.040(D):

2. Monterey Cypress Habitat

- (a) Indigenous Monterey cypress habitat is an environmentally sensitive habitat area within the Del Monte Forest, and is presumed present within and adjacent to the area mapped in LUP Figure 2a. All proposed development in this area shall be accompanied by a coordinated biological/arborist report in consultation with the Del Monte Forest Conservancy and consistent with a biological report pursuant to Section 20.147.040.A, a primary purpose of which shall be to determine: the Monterey cypress habitat portion of the site; the “critical habitat area” for the site (i.e., the portion of Monterey cypress habitat on the site that is to be avoided to protect against potential damage or degradation of cypress habitat, including the microhabitat of individual cypress trees); the relative habitat sensitivity of all parts of the site, ranked from the highest sensitivity to the lowest sensitivity in terms of potential adverse impacts from development; the ways in which the cypress habitat portion of the site, the critical habitat area and the relative habitat sensitivity rankings relate to adjacent and surrounding habitat areas; and the measures to best protect Monterey cypress habitat on the site and overall, including on-site (and potentially off-site) restoration and enhancement measures. The critical habitat area shall at a minimum be defined by a 10-foot buffer applied to the outermost driplines (i.e., the tree canopies) of all of the Monterey cypress trees on and adjacent to the site, but shall also include any other areas on site that are deemed critical to preservation of existing cypress trees on and off site, or that are to be avoided due to high habitat sensitivity and/or cypress habitat preservation purposes for other reasons.
- (b) Within and adjacent to their indigenous range (see LUP Figure 2a), indigenous Monterey cypress habitat trees shall be protected to the maximum extent possible. All development in and adjacent to the Monterey cypress habitat mapped in LUP Figure 2a shall be carefully sited and designed to avoid adverse impacts and potential damage or degradation of Monterey cypress habitat, including the microhabitat of individual cypress trees, and shall be required to include measures identified pursuant to the biological/arborist report that will protect and enhance Monterey cypress habitat values. These measures may include, but are not limited to: siting development in any non-Monterey cypress portions of the site to the maximum degree possible; prohibiting all irrigation of Monterey cypress habitat areas; improving growing conditions to provide a bare, mineral soil necessary for seed germination; and increasing sunlight to prevent soil borne fungi from inhabiting seedlings. Trees identified by the biological/arborist report as at risk from construction shall be surrounded by exclusionary fencing located outside of the critical habitat area. Grading, demolition, and construction permits shall not be issued and construction shall not commence until it is confirmed in writing by the project biologist/arborist that all tree protection measures have been installed, and that a preconstruction cypress habitat protection meeting (with the project general contractor, demolition and grading subcontractors, the project civil engineer, and the biologist/arborist, as applicable) has been completed. All use and development in or adjacent to indigenous identified Monterey cypress habitat areas shall be compatible with the objective of protecting this environmentally sensitive coastal resource.

~~(d)(c)~~ All improvements (such as structures and driveways, etc.) shall be carefully sited and designed to avoid potential damage and/or degradation of Monterey cypress habitat, including the micro-habitat of individual trees, including as described below and must be located within existing hardscaped areas and outside of the dripline of individual cypress trees.

(1e) On undeveloped lots (i.e., those without an existing legally established residence), within the perimeter of the critical habitat area for a site, development (including ~~Removal of native trees or other indigenous vegetation, grading, paving, building construction activity, landscape alterations, and summer watering~~) shall be ~~are all~~ prohibited, other than: development associated with cypress habitat enhancement and/or restoration; within the perimeter of the identified cypress habitat area for a site, including at a minimum as defined by the driplines of the outermost indigenous Monterey cypress trees on a site. (f) ~~On the inland side of 17-Mile Drive only; within the indigenous Monterey cypress habitat area, driveways, are allowed only where the driveway does not come within the dripline of individual cypress trees. (g) Within the indigenous Monterey cypress habitat area: (1) Underground residential utilities, and are allowed on the inland side of 17 Mile Drive. (2) Fences (which shall be designed with see-through materials or spaced in a manner to protect views of the natural habitat from 17-Mile Drive (e.g., wrought iron with openings)), and only if this area cannot possibly be avoided and if such development does not harm individual cypress trees. All otherwise allowable development shall be sited, designed, and limited as necessary to protect cypress trees and habitat as much as possible, including being sited in the non-cypress habitat portions of the site (if there are any) to the maximum degree possible, and all such development (e.g., residential structures, hardscape (such as decks, patios, driveways, paths, etc.), and landscaping) shall be confined within a defined and surveyed "development envelope". With the exceptions specified above, the development envelope shall contain all improvements and structural development (i.e., all uses that are not Monterey cypress habitat), shall be located entirely outside of the critical habitat area, and, within the Monterey cypress habitat portion of the site, shall be no larger than 15% of the cypress habitat area. (h) Open space conservation and scenic easements are required for all undeveloped areas of the Monterey cypress habitat area a parcel (i.e., all Monterey cypress habitat outside of the defined development envelope), within the Monterey cypress habitat area and such easements shall be secured consistent with LUP Policy 13. In addition to the above described requirements, for all development on undeveloped lots containing cypress habitat, including for development approved pursuant to Section 20.02.060(B), the restoration and siting requirements specified in Sections 20.147.040(D)(2)(c)(2) (c), (d), and (e) shall also apply.~~

(2) On developed lots (i.e., those with an existing legally established residence), new and/or modified development shall be located within the existing legally established structural and/or hardscaped area (i.e., all areas of the site covered with a structure, or covered by pervious or impervious hardscape (such as decks, patios, driveways, and paths, but not including landscaped areas, fence areas, or underground or over

ground utility areas)) and outside the critical habitat area.

New and or modified development outside of such areas is prohibited unless each of the following findings can be made:

- (a) Construction, use, and maintenance of the new and/or modified development will accommodate the health and vitality, and will not harm, any existing individual Monterey cypress tree regardless of size. This determination will be made based on the type of development, the particulars of its siting and design, and its location in relation to individual trees, the critical habitat area, higher sensitivity portions of the site, and adjacent and surrounding habitat areas;
- (b) The new and/or modified development will be confined within a defined and surveyed development envelope. The development envelope shall contain all improvements and structural development (i.e., all uses and development that are not Monterey cypress habitat), and shall, within the Monterey cypress habitat area portion of the site, be no larger than 15% of the cypress habitat area; however, limited additional coverage above 15% may be allowed for a driveway only if an existing driveway cannot be reconfigured to achieve full compliance with this standard, in which case the existing driveway shall be reduced in width, length, and overall coverage as much as possible. All development on the site shall significantly reduce hardscape, shall be sited in the non-cypress habitat portions of the site (if there are any) to the maximum degree possible, and shall be sited in such a way as to maximize Monterey cypress habitat values, including in relation to adjacent and surrounding areas (e.g., clustering new and/or modified development on the site near to existing and/or adjacent residential developments so as to provide as much of a contiguous, undisturbed, and unfragmented habitat area as possible on and off site);
- (c) All Monterey cypress habitat area outside of the approved development envelope shall be: restored to and/or enhanced as high value and self-functioning Monterey cypress habitat (including through measures identified pursuant to the biological/arborist report, such as removal of exotic species, improving growing conditions to provide a bare, mineral soil necessary for seed germination, and increasing sunlight to prevent soil borne fungi from inhabiting seedlings), with all initial restoration/enhancement initialized prior to occupancy of any approved development; and placed within an open space conservation and scenic easement secured consistent with LUP Policy 13;
- (d) All areas of new coverage (i.e., areas that would be covered with structures and/or hardscape and/or other non-cypress habitat restoration and enhancement that are not already so covered in the existing legally established baseline condition) shall be offset through restoration and/or enhancement (as high value and self-functioning Monterey cypress habitat) of an off-site area located within the Monterey cypress habitat area mapped in Figure 2a at a ratio of 2:1 (and/or payment of a mitigation fee, commensurate with the cost to restore/enhance such

an area, to a public agency or private group acceptable to the County effectively able to administer such a fee and to implement such measures). Such off-site restoration/enhancement areas shall be selected for their potential to result in the greatest amount of overall benefit to the native Monterey cypress habitat in the Del Monte Forest, and all initial restoration/enhancement of the off-site area shall be initialized prior to occupancy of any approved development or, in the case of a fee, the fee paid prior to issuance of any demolition, grading, or construction permits;

(e) The new and/or modified development has been sited and designed to avoid the critical habitat area and the most sensitive habitat parts of the site as much as possible (including through required siting in the non-cypress habitat portions of the site (if there are any) to the maximum degree possible), and to minimize any incursion into this area as much as possible. If any non-habitat related development is proposed within the defined critical habitat area, the biological/arborist report must identify all possible alternatives to avoid such siting, and must provide alternative construction methods or preconstruction treatments to avoid impacts in the case such development ultimately proves unavoidable. The alternative methods and treatments can include supplemental irrigation, hand digging or grading, root pruning or modification to traditional construction methods, such as spanning roots, pier and above grade beams or cantilevering structures. However, in no case shall Monterey cypress trees be removed unless they are dead or declining, and the biological/arborist report and the approving body conclude removal will further enhance Monterey cypress habitat values or avoid adverse impacts, potential damage, or degradation to both healthy individual cypress trees and cypress habitat; and

(f) The project results in greater cypress habitat value on the site (and in relation to adjacent and surrounding habitat areas) than the existing baseline habitat value, and the project enhances Monterey cypress habitat values overall.

(d) The Del Monte Forest ~~Foundation~~ Conservancy shall be encouraged to maintain an interpretive and educational program at Crocker Grove. Said program shall be under careful supervision and designed for the protection of the indigenous Monterey cypress habitat. The type and intensity of access to Crocker Grove shall be carefully regulated by the Del Monte Forest Conservancy.



DEL MONTE FOREST



Indigenous Monterey Cypress Habitat

Area of Indigenous Monterey Cypress Habitat*

Parcel

See LUP text for map sources.

0 1,000 Feet

Cypress Point

Sunset Point

Pacific Ocean

Midway Point

Pescadero Point

*Precise determination of the extent of Indigenous Monterey Cypress habitat shall depend on site specific biologic survey.

Figure 2a

Native Monterey Cypress at Crocker Grove



Lone Cypress

