

# Exhibit B

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## **EXHIBIT B DISCUSSION**

### History:

On March 29, 2012, the Zoning Administrator approved a Combined Development Permit (PLN110247-Martinez) which significantly improved an existing 4,453 square foot, two-story single family dwelling in Pebble Beach. Another entitlement included development within 100 feet of environmentally sensitive habitat. Since the date of approval, the project has undergone several changes and has been managed by several firms and contractors. A Design Approval, PLN140268, was approved on June 30, 2014 but did not request significant expansion of impervious coverage, nor did it add to the overall structural coverage. In fact, the Design Approval decreased the scope of the project (reducing the first-floor additions by 456 square feet and eliminating a second-story balcony and the approved conversion of an existing bedroom into a bathroom). On August 4, 2014, building plans submitted by the applicant in May of 2014 were approved by the Building Department. The scope of work for 12CP01394 included the following: Addition of 1,074 square feet to include new dining area 134 square feet, 490 square feet covered entry patio, extend garage 470 square feet & 470 square feet living space above, new roof sleepers, roof insulation and new roof sheathing, new roof framing at new building extension, and re-cladding of exterior siding. Because of the seeming disconnect between Planning and Building Departments, certain design changes have not been adequately identified or accounted for. This Amendment (PLN110217-AMD1) includes all revisions and modifications made since the approval of PLN140268 in June 2014.

On November 21, 2017, a code enforcement case (17CE00449) was opened on the Martinez property (APN: 008-201-013) for non-compliance with conditions of approval. The proposed Amendment (as described in the staff report) will serve to clear the code enforcement case on the property and bring the applicant into compliance.

### Current Proposal:

This is an Amendment request to capture increased impervious surface coverage (namely in driveway and courtyard), reclassify the caretaker's unit, modify conditions of approval, and adopt an Addendum to the Mitigated Negative Declaration.

### Project Issues:

**Impervious Site Coverage**-The subject lot had non-conforming surface coverage (structural and impervious site coverage), which exceeded the 9,000-square foot total site coverage limitation for development within the Pescadero Watershed area by approximately 1,900 square feet (per DMF LUP Policy No. 77). The approved permit (PLN110247) would have reduced the non-conforming impervious coverage from 6,448.6 square feet to 1,389.1 square feet (new 5,059.5 square foot pervious driveway and a new 1,812.4 square foot pervious courtyard). A Design Approval (PLN140268) allowed the applicant to increase the previously approved 1,389.1 square feet of impervious site coverage to 1,961 square feet (reducing the non-conforming impervious coverage from 6,448.6 square feet to 1,961 square feet instead of 1,389.1 square feet). However, an on-site visit by staff on August 9, 2017 revealed inconsistencies between approved plans (prepared by C.O.D.G.) and what was actually on site. Specifically, the constructed driveway appeared to be larger and shaped differently. In addition, staff observed that the courtyard was

not pervious as the approved project description indicated. After extensive research and receipt of a revised site plan, staff confirmed that the project had increased its impervious coverage from an approved 5,842.1 square feet to the present 8,291 square feet for a total increase of 2,448.9 square feet. While the project still meets the coverage allowance for the Pescadero Watershed (less than 9,000 square feet), the increased impervious coverage has other potential implications with respect to identified biological resources and stipulations made in the Initial Study.

**Biological Resources-**The new driveway proposed under PLN110247 was approved with the condition that it would be redesigned to avoid three (3) Yadon's rein orchids (Condition No. 18/Mitigation Measure No. 1). The driveway was not redesigned and the Yadon's piperia were removed. Because Condition Number 18 has language consistent with the recommendations made in the Initial Study (prepared by the Lead Agency on February 9, 2012) with the intent to avoid the federally protected plants, the condition requires modification. The project was also conditioned to convey 5,458.5 square feet in a Scenic and Conservation Easement Deed to the County of Monterey to protect approximately fifty (50) Yadon's rein orchids observed in the northern area of the Martinez property. A Biological Report (**Exhibit G**) prepared by Ed Mercurio on July 12, 2011 (preceding the Initial Study) found the conservation area sufficient and appropriate to serve as mitigation to offset development impacts. In this report, the biologist noted that transplantation of the three Yadon's rein orchids would not yield the best results ("observed success rate for transplantation of Yadon's rein orchids is not high"). An updated letter from the same biologist written on January 6, 2018 (**Exhibit I**) reiterates this sentiment in light of the removal of the three (3) Yadon's rein orchids. In the Initial Study, the project planner identified an alternative to avoiding the Yadon's piperia -a scenario in which the applicant could petition the United States Fish and Wildlife Service for a take permit to remove the plants; however, when staff consulted with a representative from U.S. Fish and Wildlife Service, he explained that their department did not have jurisdiction on private property. Over 90% of the identified Yadon's piperia (approximately 53) are protected in the conservation easement and occur in a continuous cluster, whereas the three (3) orchids near the driveway would have fallen outside of the conservation area and were outliers. Finally, staff finds that requiring the applicant to remove and realign the existing driveway would cause greater impacts than having it remain. Therefore, staff finds the conservation easement protecting the greater portion of Yadon's piperia to be an appropriate mitigation measure, replacing the need for the avoidance of the three orchids.

Therefore, staff is recommending condition number 18 be modified to omit text regarding the driveway and avoidance of the three (3) Yadon's rein orchids, as shown in strikeout form below:

Condition Number 18/Monitoring Action #1A:

Monitoring inspections on the Martinez Family Trust Property shall be done by a qualified biologist, once within two weeks of the transplantation of Hooker's or shaggy-bark manzanita and once within the three months following the recordation of the conservation and scenic easement, and once per year, in the spring season, for the following five years. Each year during the five-year period, a qualified biologist will submit a report to the Chief of Planning verifying the condition of the newly planted manzanita and shall submit a replanting plan and schedule with success criteria to replace any plants fail to survive the first year of the five-year monitoring period.

Yadon's rein orchid. Of the approximately 50 Yadon's piperia plants identified, 3 are within the footprint of the proposed driveway for a total proposed removal of 3 plants. Figure 1 (Site Plan) and Figure 2 (Flagged Yadon's rein orchids) illustrate the distribution of identified locations of piperia at the site. The distribution is such that development as proposed cannot be provided without impacting some plants. As a legal lot of record zoned for residential use, some inherent right to reasonable development must be presumed however in this case the structure and driveway already exists, and the proposed driveway changes could be altered to avoid the removal of the federally protected Yadon's piperia. The County requested that the Applicant redesign the driveway alignment in order to avoid the disturbance or removal (take) of a federally listed species. Figures 3 and 4 show the re-aligned driveway to avoid the Yadon's piperia. Therefore, the project is consistent with the LUP policies for the preservation and protection of environmentally sensitive habitat.

Comment Log should read: Per Resolution No. \_\_\_\_\_, the Zoning Administrator approved an Amendment to this condition. The applicant, in violation of this condition (17CE00449), did not redesign the driveway and removed 3 federally protected plants (Yadon's piperia). A conservation easement was recorded on February 13, 2018, DOC NO. \_\_\_\_\_ to serve as mitigation. -END-

The scenic and conservation easement deed was accepted by the Board of Supervisors on February 13, 2018.

**Landscape Plan (Exhibit C)**- On July 22, 2014, a Landscape Plan for the Martinez project, PLN110247, was approved by RMA-Planning. The plan was also approved by the Monterey Peninsula Water Management District on March 18, 2013. A new planting proposal was submitted to RMA-Planning on October 6, 2017, which included non-native and ornamental species. The new Landscape Plan was not consistent with Condition No. 20/Mitigation Measure #3 which required the new landscaping adjacent to the home and driveway be compatible with the identified sensitive species and only include native plants. A second site visit conducted by staff on October 20, 2017, confirmed the presence of blue agave (*agave tequilana*), especially concentrated on the western part of the lot. Because this area is relatively close to the conservation area, staff was concerned with the non-native plants becoming dominant and displacing native/protected species. On November 6, 2017, RMA-Planning received a memo from BFS Landscape Architects, an updated site plan, and an updated Planting Plan.

The Planting Plan was updated with the following:

- The proposed olive tree was removed from the plan
- All existing agaves on the east side of the driveway were removed
- 44 existing Agaves on the west side of the home are shown to be removed and potted in containers; 'Emerald Carpet' to be at the base of the containers. Meyer Lemon trees are also shown to be planted in raised containers.

Following a discussion between the Director of the Resource Management Agency, the Chief of Planning, and staff, the proposed Landscape Plan dated November 6, 2017 is approved with the condition that the Blue Agave and Meyer Lemon trees (on the western portion of property) are potted. Blue Agave and ornamental plants (i.e. prickly pear) in the courtyard area can be planted in the ground. Staff finds it necessary to modify the language in Condition No. 20/Mitigation Measure No. 3 to provide flexibility in the landscaping scheme and to specify what is allowed near the conservation area. Staff has also received a recommendation from the biologist (Ed

Mercurio) to have the applicant maintain the new Monterey Cypress hedge, specifically to keep branches from shading the conservation area because the understory needs sunlight.

**Caretaker's Unit**-PLN110247 converted an existing guesthouse into a caretaker's unit. The applicant would like to reclassify the caretaker's unit into a wine cellar/wine storage because it does not meet Building Code for habitable space (the existing height is 6'10," where habitable spaces should be 7'6"). Staff finds the wine cellar meets development regulations for a non-habitable accessory structure and would support this reclassification.

**Addendum to MND**- An Addendum to the Mitigated Negative Declaration (MND) was prepared pursuant to CEQA Section 15164 (**Exhibit D**). The proposed project will have the same or fewer impacts than the previous project. There were four mitigation measures with the original project (three of which are currently being proposed for modification under this Amendment):

- Mitigation Measure #1 – The condition text specifically addresses the replacement of Hooker's Manzanita (3:1) in the event that removal is unavoidable. In the Action or compliance section of this condition, however, a paragraph on Yadon's rein orchids discusses the imminent removal of three Yadon's piperia and in the following sentences also describes how the proposed driveway could be altered to avoid their removal. The amended language would just reflect the replacement ratio specific to Hooker's Manzanita.
- Mitigation Measure #2 – The condition requires the applicant to protect Yadon's rein orchids, Hooker's manzanitas, Shaggy-barked manzanitas and other healthy native trees and shrubs near construction/staging areas. The applicant complied with the first monitoring action by submitting photographic evidence showing the sensitive habitat areas flagged. The Amendment would clarify the third monitoring action (#2C) which requires the applicant to submit photos of the protective fencing on the property after construction to document that plant and tree protection was successful (Yadon's piperia were removed).
- Mitigation Measure #3 – This condition addresses new landscaping which "shall only include native plants." The language in this condition does not have the flexibility to accommodate the applicant's current proposal. The new landscape plan (**Exhibit C**) includes non-native and ornamental species which were vetted by a biologist and approved by RMA-Planning. The condition would be modified to include certain approved plant species and how they are to be maintained onsite (i.e. agave tequilana to remain potted on western portion of lot).