

Attachment F

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**Before the Planning Commission
in and for the County of Monterey, State of California**

In the matter of the applications of:

WALNUT COVE LLC (PLN190097 and PLN190098)

RESOLUTION NO. 20 - 037

Resolution by the Monterey County Planning Commission to state and issue a final determination that the Planning Commission had an unbreakable tie vote and neither approved nor denied the following applications:

1. Combined Development Permit (PLN190097) consisting of:
 - a. Coastal Administrative Permit and Design Approval to allow the construction of a 2,423 square foot two-story single-family dwelling with an attached 440 square foot garage;
 - b. Coastal Development Permit to allow the removal of two (2) trees (Coast Live oaks);
 - c. Coastal Development Permit to allow development within 100 feet of environmentally sensitive habitat; and
 - d. Coastal Development Permit to allow approximately 529 square feet of development on slopes exceeding 30 percent; and
2. Combined Development Permit (PLN190098) consisting of:
 - a. Coastal Administrative Permit and Design Approval to allow the construction of a 3,455 square foot two-story single-family dwelling with an attached 462 square foot garage;
 - b. Coastal Development Permit to allow the removal of two (2) trees (Monterey pine and Coast Live oak);
 - c. Coastal Development Permit to allow development within 100 feet of environmentally sensitive habitat; and
 - d. Coastal Development Permit to allow approximately 80 square feet of development on slopes exceeding 30 percent.

24418 and 24424 San Juan Road, Carmel Woods,
Carmel Area Land Use Plan, Coastal Zone (APNs
009-013-011-000 and 009-013-012-000)

The WALNUT COVE LLC applications (PLN190097 and PLN190098) came on for a public hearing before the Monterey County Planning Commission on October 9, 2019, and October 28, 2020. Having considered all the written and documentary evidence, the administrative record, the staff report, oral testimony, and other evidence presented, the Monterey County Planning Commission finds and decides as follows:

FINDINGS

1. **FINDING:** **PROJECT DESCRIPTIONS** – The projects and/or uses are Combined Development Permits to allow construction of single-family dwellings with attached garages on separate legal lots of record, tree removal, development within 100 feet of environmentally sensitive habitat; and development on slopes exceeding 30 percent.
- EVIDENCE:** a) Project File No. PLN190097. The subject 9,340 square foot (0.214-acre) property is located at 24418 San Juan Road, Carmel Woods (Assessor's Parcel Number 009-013-011-000), Carmel Area Land Use Plan, Coastal Zone. The subject parcel is zoned Medium Density Residential, with maximum gross density of 2 units per acre and a Design Control overlay (Coastal Zone) [MDR/2-D (CZ)].

This project involves the construction of a 2,423 square foot two-story single-family dwelling with an attached 440 square foot two-car garage; the removal of two (2) trees (Coast Live oaks); development within 100 feet of environmentally sensitive habitat; and approximately 529 square feet of development on slopes exceeding 30 percent. This project also involves construction of 946 square feet of deck area, approximately 220 cubic yards of associated grading (20 cubic yards cut and 200 cubic yards fill), approximately 320 linear feet of 4-foot high retaining and privacy walls, and a 1,615 square foot permeable driveway.

- b) Project File No. PLN190098. The subject 9,965 square foot (0.228-acre) property is located at 24424 San Juan Road, Carmel Woods (Assessor's Parcel Number 009-013-012-000), Carmel Area Land Use Plan, Coastal Zone. The subject parcel is zoned Medium Density Residential, with maximum gross density of 2 units per acre and a Design Control overlay (Coastal Zone) [MDR/2-D (CZ)].

This project involves the construction of a 3,455 square foot two-story single-family dwelling with an attached 462 square foot two-car garage; the removal of two (2) trees (one Monterey pine and one Coast Live oak); development within 100 feet of environmentally sensitive habitat; and approximately 80 square feet of development on slopes exceeding 30 percent. This project also involves construction of 479 square feet of deck and covered patio area, approximately 990 cubic yards of associated grading (760 cubic yards cut and 230 cubic yards fill), approximately 407 linear feet of 4 to 6-

foot high retaining and privacy walls, and a 2,581 square foot permeable driveway.

- c) The application, plans, and supporting materials submitted by the project applicant to Monterey County Planning for the development found in Project Files PLN190097 and PLN190098.

2. **FINDING:** **PROCESS** – The County processed the subject Combined Development Permit applications (Planning File Nos. PLN190097 and PLN190098/Walnut Cove LLC)(“projects”) in compliance with all applicable procedural requirements.

- EVIDENCE:**
- a) On June 4, 2019, pursuant to Monterey County Code (MCC) Sections 20.12, 20.44, and 20.82, Walnut Cove LLC (Applicant) filed applications for discretionary permits to allow construction of single-family dwellings with attached garages on separate legal lots of record, tree removal, development within 100 feet of environmentally sensitive habitat; and development on slopes exceeding 30 percent.
 - b) The County referred the projects to the Carmel Unincorporated/Highlands Land Use Advisory Committee (LUAC) for review. The LUAC reviewed the proposed projects at duly-noticed public meetings on July 1 and July 15, 2019, and on October 5 and October 19, 2020, at which all persons had the opportunity to be heard.

The LUAC continued the applications at the meetings held on July 1 and July 15, 2019, and requested the applicant to remove a fallen tree from a neighboring property, provide color samples, lower the overall roof plate height, and re-stake the proposed development. Between these 2019 LUAC meetings, the applicant submitted revised plans to reduce the main structures heights from 30 feet to 28 feet (PLN190097) and 26 feet (PLN190098) above average natural grade, and re-staked the proposed development. After the LUAC meeting on July 15, 2019, the applicant reduced the height of PLN190098 another 2 feet from 26 feet to 24 feet.

Following a Monterey County Planning Commission public hearing on October 9, 2019 (see Evidence c below), the applicant submitted revised plans for both projects which the County again referred to the LUAC for review. At the LUAC meeting on October 5, 2020, the LUAC continued the projects because the applicant did not participate in the meeting. The County later determined that the agenda was mailed to an obsolete or incorrect address for the applicant’s agent.

At the LUAC meeting on October 19, 2020, the LUAC voted to not support approval of either project. For PLN190097, the LUAC voted 3 – 0 – 4 (3 ayes, 0 noes, and 4 abstentions). For PLN190098, the LUAC voted 5 – 1 – 1 (5 ayes, 1 no, and 1 abstention). The LUAC

also stated and approved their intent to submit a letter to the Planning Commission regarding their concerns about the development regulations in this and similar areas of the County. In the LUAC recommendation motions, the LUAC did not offer project-specific modifications for either project.

- c) On October 9, 2019, the Planning Commission held a duly-noticed public hearing on the Walnut Cove LLC applications. Notices for the Planning Commission public hearing were published in the Monterey County Weekly on September 26, 2019; posted at and near the project site on September 27, 2019; and mailed to vicinity property owners and interested parties on September 25, 2019.
- d) At the Planning Commission public hearing on October 9, 2019, the Planning Commission first considered the proposed residence at 24424 San Juan Road (Planning File No. PLN190098), and provided two options for staff and the applicant. The Commission directed staff to return with a resolution for denial of the project as proposed, or directed the applicant to revise the project to reduce the amount of development on slopes exceeding 30 percent and to reduce the mass of the proposed residence. After the Planning Commission continued PLN190098, the applicant requested a continuance of Planning File No. PLN190097, and opted to revise both projects per Planning Commission direction.
- e) The applicant revised the proposed project at 24418 San Juan Road, Planning File No. PLN190097, to reduce the amount of development on slopes exceeding 30 percent by approximately 1,400 square feet - from approximately 1,900 square feet to the revised amount of 529 square feet. Revisions included cantilevering a portion of the deck and residence, thereby avoiding development on slope exceeding 30 percent on the lower half of the property and resulting in elimination of the 17-foot high retaining wall initially proposed in the same general area. Additionally, the amount of fill was reduced by approximately 500 cubic yards - from 720 to 200 cubic yards.
- f) The applicant revised the proposed project at 24424 San Juan Road, Planning File No. PLN190098, to reduce the total floor area from 4,355 square feet to 3,917 square feet, a net reduction of 438 square feet; reduce the structural coverage from 3,319 square feet to 2,900 square feet, a net reduction of 419 square feet; reduce the side to side structural width of the single-family dwelling by 5 linear feet; reduce the overall front to rear structural length by 9 linear feet; and reduce the front setback from 36 feet to 20 feet to avoid development on slope exceeding 30 percent on the lower half of the property, resulting in a reduction of approximately 520 square feet of development on slopes exceeding 30 percent from 600 square feet to 80 square feet.
- g) On October 28, 2020, the Planning Commission held a duly-noticed public hearing on the revised Walnut Cove LLC applications. Notices

for the Planning Commission public hearing were published in the Monterey County Weekly on October 15, 2020; posted at and near the project site on October 14, 2020; and mailed to vicinity property owners and interested parties on October 13, 2020.

- h) In the staff report prepared for the Planning Commission public hearing on October 28, 2020, County staff recommended the Planning Commission approve the projects as revised, and also recommended the Planning Commission find the projects categorically exempt pursuant to Section 15303 of the California Environmental Quality Act (CEQA) Guidelines. See Finding Nos. 5 of the draft resolutions included as Exhibits E and F in the October 28, 2020, staff report to the Planning Commission.
- i) On October 28, 2020, after review of the revised applications and submitted documents, and a duly-noticed public hearing at which all persons had the opportunity to be heard, the Planning Commission considered and voted on a series of motions; however, the Planning Commission could not reach a decision nor achieve a majority vote for either approval or denial of the subject projects. See Evidence j below.
- j) Series of Planning Commission Motions - The Planning Commission considered the following sequence of motions:
 - Motion of intent to deny both projects.
 - Substitute motion to approve both projects. The vote was taken first on the substitute motion, with individual votes on each proposed project.
 - For the proposed project at 24418 San Juan Road (Planning File No. PLN190097), the Planning Commission voted 4 – 4 (4 yes and 4 no), with two absent, which resulted in a failed motion.
 - For the proposed project at 24424 San Juan Road (Planning File No. PLN190098), the Planning Commission voted 3 – 5 (3 yes and 5 no), with two absent, which again resulted in a failed motion.
 - After failure of the substitute motion, the vote was taken on the original motion of intent to deny the projects, with individual votes on each proposed project.
 - For the proposed project at 24418 San Juan Road (Planning File No. PLN190097), the Planning Commission voted 4 – 4 (4 yes and 4 no), with two absent, which resulted in a failed motion.
 - For the proposed project at 24424 San Juan Road (Planning File No. PLN190098), the Planning Commission voted 5 – 3 (5 yes and 3 no), with two absent, resulting in adoption of a motion of intent to deny this

specific Combined Development Permit. The Planning Commission discussed, but did not vote on, direction to staff to return on December 2, 2020, with a revised resolution to deny the project.

- Motion to reconsider the previous adopted motion of intent to deny the projects. After further deliberation, the Planning Commission voted 8 – 0 (8 yes and 0 no), with two absent, to reconsider the previous adopted motion of intent to deny the projects.
 - After further deliberation, the Planning Commission considered a motion of intent to deny both proposed projects without prejudice (i.e., the applicant could re-submit the project(s) without having to wait one year) and to continue the hearing on the projects to December 2, 2020, for staff to return on that date with draft resolutions to deny the projects. The Planning Commission voted 4 – 4 (4 yes and 4 no), with two absent, which resulted in a failed motion.
 - Motion to state that the Planning Commission is split and unable to achieve a majority vote for either approval or denial of the proposed projects, pursuant to Rule 10.1 of the Monterey County Planning Commission Rules for the Transaction of Business. The Planning Commission voted 8 – 0 (8 yes and 0 no), with two absent, to state that the Planning Commission had an unbreakable tie vote and directed staff to prepare a resolution to memorialize that the Planning Commission was split and unable to reach a majority vote on a substantive decision regarding the proposed projects (see Evidence k below).
- k) Per Rule 10.1 of the Monterey County Planning Commission Rules for the Transaction of Business, in the case of a tie vote, the Chair of the Planning Commission may solicit findings for both sides for the record. The findings for approval and denial, based on comments made by the Planning Commissioners, are summarized below:

Findings for denial of the projects:

- Potential impacts caused by construction of the single-family dwellings on slopes exceeding 30 percent;
- Potential impacts of the proposed development on an adjacent drainage easement;
- Compatibility of the proposed development with the neighborhood character (e.g.; exterior design and colors, and size);
- Consistency of the proposed projects with applicable Carmel Land Use Plan policies and zoning regulations;

- Applicability of the CEQA categorical exemption; and
- Affordability of the proposed development.

Findings for approval of the projects:

- The applicant revised the proposed development per the Planning Commission’s direction in October 2019 (i.e., reduced the amount of development on slopes exceeding 30 percent and reduced the size of the proposed structures);
- The proposed structures would be consistent with the County’s development standards as identified in the applicable zoning ordinance; and
- The proposed development would be consistent with the neighborhood character (e.g.; exterior design and colors, and size).

3. **FINDING:** **CEQA (Exempt)** – The projects are statutorily exempt from environmental review.
EVIDENCE: a) California Environmental Quality Act (CEQA) Guidelines Section 15270 statutorily exempts projects which a public agency rejects or disapproves.
b) The Planning Commission, at a public hearing on October 28, 2020, failed to achieve a majority vote for either approval or denial of the subject projects, and could not reach a decision due to an unbreakable tie vote. See Finding No. 2 and supporting evidence.

4. **FINDING:** **APPEALABILITY** – The decision on this project may be appealed to the Board of Supervisors.
EVIDENCE: a) Board of Supervisors. Pursuant to Title 20, Section 20.86.030, an appeal may be made to the Board of Supervisors by any public agency or person aggrieved by a decision of an Appropriate Authority other than the Board of Supervisors. The Planning Commission’s determination indicating a tie vote, is a final determination on the project applications and thus is appealable to the Board of Supervisors.
b) California Coastal Commission. The Planning Commission decision is not appealable to the California Coastal Commission because the tie vote is effectively a denial of the project. If, as a result on an appeal to the Board of Supervisors, the projects were approved, then pursuant to Title 20, Section 20.86.080.A, the projects would be subject to appeal by/to the California Coastal Commission because they involve development located between the sea and the first through public road paralleling the sea (i.e., San Juan Road), and development that is permitted in the underlying zone as a conditional use (i.e.; tree removal, development on slopes exceeding 30 percent, and development within 100 feet of environmentally sensitive habitat area).


DECISION

NOW, THEREFORE, based on the above findings and evidence, the Monterey County Planning Commission does hereby adopt this resolution to state and issue a final determination that the Planning Commission had an unbreakable tie vote and neither approved nor denied the following applications:

1. Combined Development Permit (PLN190097) consisting of:
 - a. Coastal Administrative Permit and Design Approval to allow the construction of a 2,423 square foot two-story single-family dwelling with an attached 440 square foot garage;
 - b. Coastal Development Permit to allow the removal of two (2) trees (Coast Live oaks);
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 - d. Coastal Development Permit to allow approximately 529 square feet of development on slopes exceeding 30 percent; and
2. Combined Development Permit (PLN190098) consisting of:
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 - b. Coastal Development Permit to allow the removal of two (2) trees (Monterey pine and Coast Live oak);
 - c. Coastal Development Permit to allow development within 100 feet of environmentally sensitive habitat; and
 - d. Coastal Development Permit to allow approximately 80 square feet of development on slopes exceeding 30 percent.

PASSED AND ADOPTED this 28th day of October, 2020, upon motion of Commissioner Roberts, seconded by Commissioner Monsalve, by the following vote:

AYES: Roberts, Monsalve, Daniels, Diehl, Duflock, Getzelman, Mendoza, Coffelt
NOES: None
ABSENT: Ambriz, Gonzales
ABSTAIN: None



Brandon Swanson, Planning Commission Secretary

COPY OF THIS DECISION MAILED TO APPLICANT ON DECEMBER 18, 2020.

THIS APPLICATION IS APPEALABLE TO THE BOARD OF SUPERVISORS.

IF ANYONE WISHES TO APPEAL THIS DECISION, AN APPEAL FORM MUST BE COMPLETED AND SUBMITTED TO THE CLERK TO THE BOARD ALONG WITH THE APPROPRIATE FILING FEE ON OR BEFORE JANUARY 4, 2021.

THIS PROJECT IS LOCATED IN THE COASTAL ZONE AND IS APPEALABLE TO THE COASTAL COMMISSION. UPON RECEIPT OF NOTIFICATION OF THE FINAL LOCAL ACTION NOTICE (FLAN) STATING THE DECISION BY THE FINAL DECISION MAKING BODY, THE COMMISSION ESTABLISHES A 10 WORKING DAY APPEAL PERIOD. AN

APPEAL FORM MUST BE FILED WITH THE COASTAL COMMISSION. FOR FURTHER INFORMATION, CONTACT THE COASTAL COMMISSION AT (831) 427-4863 OR AT 725 FRONT STREET, SUITE 300, SANTA CRUZ, CA.

This decision, if this is the final administrative decision, is subject to judicial review pursuant to California Code of Civil Procedure Sections 1094.5 and 1094.6. Any Petition for Writ of Mandate must be filed with the Court no later than the 90th day following the date on which this decision becomes final.

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