

**EXHIBIT A**  
**DISCUSSION OF PROPOSED PROJECT**

PLN090253 – Jagers

Board of Supervisors  
July 27, 2010

# **EXHIBIT A**

## **DISCUSSION OF PROPOSED PROJECT**

### **I. INTRODUCTION & BACKGROUND**

In November 2009, Kurt and Sue Jagers (“Applicants”) filed an application (PLN090253) with the Monterey County RMA - Planning Department for a discretionary permit to allow the demolition of an existing residence and the construction of a new residence, including a request for a Variance to exceed the 18-foot height limit by approximately 3.7 feet, on the parcel located at 2741 Calle la Cruz, Carmel Meadows (Assessor’s Parcel Number 243-031-033-000, hereafter “the Property”).

On February 25, 2010, after review of the application and submitted documents, and a duly noticed public hearing, the Zoning Administrator continued the hearing on the application to March 25, 2010, and directed staff to provide additional information to demonstrate whether or not granting of a Variance entitlement would allow a special privilege to the applicant inconsistent with the limitations upon other property owners in the vicinity and zone. Staff prepared and submitted additional evidence relating to the Variance to the Zoning Administrator for consideration.

On March 25, 2010, the Zoning Administrator adopted a motion of intent to deny the request for a Variance and continued the hearing on the application to April 8, 2010. On April 8, 2010, the Zoning Administrator approved the construction of a single family dwelling on the property. However, the Zoning Administrator denied the request for a Variance from the 18-foot height limit to allow a height above average natural grade of approximately 21.7 feet, and required the dwelling to conform to the 18-foot height limit.

On April 22, 2010, Kurt and Sue Jagers (“Appellants”) timely filed an appeal of the Zoning Administrator’s discretionary decision to partially approve the request for a Combined Development Permit. The appeal is brought on the basis that the decision and findings are not supported by the evidence, contending that special circumstances do exist on the Property and that the granting of the Variance would not constitute a special privilege.

### **II. PROJECT ANALYSIS**

#### **A. Consistency with Zoning and Site Development Standards:**

The property is located in the Carmel Meadows neighborhood, within the Carmel Area Land Use Plan. The Carmel Meadows residential subdivision is located between the Carmel River State Beach and Point Lobos State Reserve. The parcel is zoned Medium Density Residential, 2 units per acre, with a Design Control District Overlay and an 18-foot height limit, Coastal Zone [“MDR/2-D (18) (CZ)”], which allows the construction of single family residences with a Coastal Administrative Permit, development within 750 feet of a known archaeological resource as a conditional use with the approval of a Coastal Development Permit, and development on slope greater than 30 percent as a conditional use with the approval of a Coastal Development Permit. Therefore, the proposed project uses on the site are consistent with the applicable zoning.

The applicant proposes to demolish an existing 4,095 square foot single family dwelling with 248 square feet of deck and a 429 square foot attached garage, and construct a new 5,080 square

foot single family dwelling with an attached 670 square foot garage and 644 square feet of deck. The property is approximately 17,749 square feet or .41 acres. The proposed structure will increase site coverage by approximately 361 square feet (4,319 proposed versus 3,958 existing). The floor area will increase by approximately 1,661 square feet (5,583 proposed versus 3,922 existing). The proposed design places most of this increase on the lower level below the street level. The proposed site coverage (4,319 square feet or 24.3%) and floor area ratio (5,583 square feet or 31.5%) are substantially less than the allowed maximums (6,212 or 35%, and 7,987 or 45%, respectively). Overall, the structural and eaves coverage decreases by approximately 35 square feet. The total increase in site coverage of approximately 361 square feet is due to increased deck coverage of approximately 396 square feet. However, the proposed height is not consistent with the 18-foot limit, so the project requires a Variance or must be redesigned to meet the 18-foot height limit.

Per Title 20, Section 20.12.060.C.1, the required side setback is 5 feet. The existing residence has a side setback of only 2.7 feet on the west side of the property. The proposed residence will have a setback of 13.3 feet on the west side and will correct this nonconforming setback.

The project also includes grading consisting of approximately 1,010 cubic yards of cut and 200 cubic yards of fill, resulting in a net export of approximately 810 cubic yards. The RMA - Public Works Department applied a standard condition to require the applicant to submit a Construction Management Plan (CMP) for review and approval prior to issuance of building or grading permits. The CMP condition requires inclusion of measures to minimize traffic impacts during the grading and construction phases of the project. The applicant intends to minimize truck travel on Highway 1 by identifying sites near the project that could accept the export. The availability of sites will depend on the timing of the grading phase of the project. If other sites are not available, then the material will be transported to the Marina landfill for disposition.

County records identify the project site is within an area of high sensitivity for prehistoric cultural resources, and the project includes a Coastal Development Permit to allow development within 750 feet of a known archaeological resource. An archaeological survey prepared for the project site concluded that there is no surface evidence of potentially significant archaeological resources. The potential for inadvertent impacts to cultural resources is limited and will be controlled by the use of the County's standard project condition.

**B. Health & Safety:**

The project was reviewed by the RMA - Planning Department, Carmel Highlands Fire Protection District, RMA - Public Works Department, Environmental Health Division, and Water Resources Agency. The respective departments/agencies have recommended conditions, where appropriate, to ensure that the project will not have an adverse effect on the health, safety, and welfare of persons either residing or working in the neighborhood. Necessary public facilities are available. The existing residence has public water and sewer connections (Cal Am and Carmel Area Wastewater District, respectively). The proposed residence will continue to use these same connections, and the project will not result in intensification of water use. The Environmental Health Division reviewed the project application, and did not require any conditions of approval.

**C. Development on Slope Greater Than 30%:**

Development on slopes that exceeds 30% is prohibited unless there is no feasible alternative that would allow development to occur on slopes of less than 30%, or the proposed development better achieves the goals, policies and objectives of the Monterey County General Plan and

applicable area plan than other development alternatives (Monterey County Zoning Ordinance, Title 20.64.230.E).

The project application includes a Coastal Development Permit for development on slopes exceeding 30%. The existing residence was built on a steep slope, and there are no alternative building sites on the subject property. The existing slope areas of the property have been previously disturbed by structural development, retaining walls, deck supports, landscaping, driveway, and miscellaneous site improvements. The proposed development will not increase the area previously disturbed. Policy 2.7.4.1 of the Carmel Area Land Use Plan states that all development shall be sited and designed to conform to site topography and to minimize grading and other site preparation activities. The topography of the parcel significantly limits the available building area. Staff has reviewed the project plans and visited the site to analyze possible development alternatives. The parcel is essentially split in two by an area of 30% slope, and development of the existing residence resulted in development on slope greater than 30%. The upper portion of the parcel would significantly limit the building area, and result in greater impacts to visual resources. The lower portion of the parcel would place development closer to environmentally sensitive habitat. The proposed placement of the new structure reduces visual impacts and avoids encroachment into areas of sensitive habitat. Furthermore, the proposed residence was designed to avoid additional impacts to slopes in excess of 30%, adhere to the site development standards, and blend with the surrounding topography and environment. Based on the site limitations and plans provided, there is no feasible alternative which would allow development to occur on slopes of less than 30%. In addition, due to the potential for impacts to either visual resources or sensitive habitat by shifting the building footprint, the proposed siting better achieves the goals, policies, and objectives of the Monterey County Local Coastal Program than other development alternatives.

**D. Visual Resources & Public Viewshed:**

The property is located in an area identified as within the general viewshed on the Carmel Area Land Use Plan (LUP) General Viewshed Map (Map A of the LUP). The property is visible from the following common public viewing areas: Highway 1, Scenic Drive, and Carmel River State Beach. The policies of the Carmel Area LUP direct that development within the viewshed must harmonize and be clearly subordinate to the natural scenic character of the area (LUP Key Policy 2.2.2). In addition, the proposed development must conform to applicable LUP Policies 2.2.3.1, 2.2.3.3, 2.2.3.6, and 2.2.4.10.c. These policies direct 1) that the design and siting of structures shall not detract from the natural beauty of the public viewshed; 2) that new development on slopes within the public viewshed shall be sited in areas where existing topography can ensure that structures will not be visible from major public viewpoints and viewing corridors; 3) that structures shall be subordinate to and blended into the environment; 4) that structures located in the viewshed be designed so that they blend into the site and surroundings; and 5) the height and bulk of buildings shall be modified as necessary to protect the viewshed. Staff conducted site visits on August 6, 2009, and February 1, 2010, to assess the potential viewshed impacts of the project. Based on these site visits, and the submitted plans, the project is consistent with the Visual Resource policies of the Carmel Area LUP.

The entire parcel, from at least one of the viewing areas listed above, is visible within the public viewshed. Therefore, no building area on the parcel would ensure that structures would not be visible from major public viewpoints and viewing corridors. Also, the topography of the parcel significantly limits the available building area with regard to visual resources. However, the applicant has designed the proposed residence to minimize impacts and has used the site

topography to blend the structure into the slope and surrounding environment to the greatest extent feasible.

Staff has reviewed the project plans and visited the site to analyze possible development alternatives. Based on this review, and per the applicable policies, it is determined that the design and siting does not detract from the natural beauty of the surrounding viewshed. The proposed development also blends with the surrounding topography and environment, harmonizes and is subordinate to the natural scenic character of the area. Moreover, the project will not result in an increase in bulk or mass visible within the public viewshed, nor result in any new penetration of the natural skyline. The total increase in site coverage is approximately 361 square feet, all of which is attributed to an increase in deck coverage. The area of coverage of the actual residence will decrease by approximately 35 square feet. The proposed colors (green and natural stone) will blend with the natural scenic character of the area. The project, as proposed and conditioned, is consistent with the policies of the Carmel Area Land Use Plan dealing with visual resources and will have no significant impact on the public viewshed.

#### **E. CEQA:**

The California Environmental Quality Act (CEQA) Guidelines Section 15302 (Class 2) categorically exempts the replacement or reconstruction of existing structures and facilities where the new structure will be located on the same site as the structure replaced and will have substantially the same purpose and capacity as the structure replaced. The project, as proposed, is consistent with the Class 2 categorical exemption. In addition, no adverse environmental effects were identified during staff review of the development application during site visits on August 6, 2009, and February 1, 2010.

Exceptions to exemptions listed in Section 15300.2.a-f are inapplicable. The project does not involve: a designated historical resource, a hazardous waste site, unusual circumstances that would result in a significant effect, development that would result in a cumulatively significant impact, nor development in a particularly sensitive environment. The project site is located within view of a scenic highway; however, the development proposed is consistent with the existing development on the site and in the area, and will not result in a significant impact to visual resources.

#### **F. Carmel Highlands Land Use Advisory Committee:**

The project was referred to the Carmel Highlands Land Use Advisory Committee (LUAC) for review. Based on the LUAC Procedure guidelines adopted by the Monterey County Board of Supervisors per Resolution No. 08-338, this application did warrant referral to the LUAC because it involves a Variance and a Design Approval subject to review by the Zoning Administrator. The Carmel Highlands LUAC continued the item at a public meeting held on January 4, 2010, and voted 4 – 2 to not support the project as proposed at a public meeting held on February 1, 2010. Neighbors raised concerns regarding private views and potential impacts to the neighborhood character. Specifically, neighbors stated that the proposed residence is “too big” for the area. No concerns were expressed about potential impacts to the public viewshed. However, the Carmel Area LUP does not protect private views, and staff determined the project is consistent with the existing character of the neighborhood. Staff identified that three of four adjacent properties all have residences of a similar or larger footprint than that proposed by the project applicant. The fourth property, which is only .3 acres, has a residence of 4,475 square feet. This would equate to a residence of 6,116 square feet on the applicant’s parcel of .41 acres. Yet, the applicant is proposing a residence approximately 1,000 square feet below this amount. The LUAC members also commented during the public meeting that the proposed residence is well-designed to minimize visual impacts. The site coverage and floor area ratio proposed by the

applicant remain significantly below the allowed maximums and most of the increase in floor area will be on the lower level. The applicant also reduced the height by approximately .5 feet in order to address the neighbor's concerns.

#### **G. Variance:**

The property has a zoning designation of Medium Density Residential, 2 units per acre, with a Design Control District Overlay and an 18-foot height limit, Coastal Zone ["MDR/2-D (18) (CZ)"]. The intent of the 18-foot height limit for main structures in the Carmel Meadows area is to preserve the public viewshed. The project application includes a request for a Variance to exceed the 18-foot height limit to allow a height above average natural grade of approximately 21.7 feet (3.7 feet); resulting in a net reduction of approximately 1.6 feet from the existing residence.

The granting of a Variance requires three findings: 1) it is an authorized use for the zoning regulations governing the parcel; 2) due to special circumstances applicable to the subject property (i.e.; size, shape, topography, location of the lot, and the surrounding area), the strict application of development standards in the Monterey County Codes is found to deprive the subject property of privileges enjoyed by other property owners in the vicinity under identical zoning classification; and 3) the Variance shall not constitute a grant of privileges inconsistent with the limitations upon other property owners in the vicinity and zone in which such property is situated. Staff recommended grant of the Variance when the project was before the Zoning Administrator.

The Zoning Administrator concurred with staff regarding the first finding of authorized use. The property has a residential zoning designation of Medium Density Residential, and a single family dwelling is a principal allowed use in the MDR zone (Section 20.12.040.A of the Monterey County Zoning Ordinance [Title 20]). Therefore, the project meets the authorized use requirement.

However, the Zoning Administrator did not grant the Variance because she determined that the evidence did not support the second and third required findings regarding special circumstances and grant of privilege (see Zoning Administrator Resolution No. 10-018, Exhibit G). These remaining issues and discussion are addressed in Staff Response to Appellants' Contentions.

### **III. STAFF RESPONSE TO APPELLANTS' CONTENTIONS**

The Appellants contend that the Zoning Administrator's decision to deny the Variance was not supported by the evidence for the reasons outlined below. Staff's response to each contention follows:

**Appellants' Contention 1 (Special Circumstances)** - The Appellants contend that special circumstances exist on the property, and that Evidences b and d of Finding No. 9 of the Zoning Administrator's Resolution 10-018 are not supported by the facts of the site.

*Evidence b states "There are no special circumstances on the site that warrant a variance to allow exceedance of the height limit provided there is no special privilege and it is an authorized use." The Appellants present the following regarding Evidence b:*

*(a) The property is bisected by slopes in excess of 30%, contains sensitive habitat areas and is visible from a number of public viewing areas. Therefore, buildable areas are*

*significantly limited. Exceeding the 18 foot height limit allows the structure to blend with the natural topography of the site while eliminating the need for unwarranted grading and further disturbance of slopes greater than 30%. The proposed project will decrease the height of the existing structure by 1.6 feet and will retain a one story elevation on Calle la Cruz Street. Therefore, the design as presented reduces visual, aesthetic, and environmental impacts.*

*(b) This evidence directly contradicts the original findings and evidence as presented in the March 25, 2010 staff report which recommended approval of the Variance.*

*Evidence d states "The proposed residence may be architecturally re-designed to reduce the proposed height to meet the 18-foot height limit." The Appellants present the following regarding Evidence d:*

*(a) Because the parcel is bisected by steep slopes and environmentally sensitive habitat areas, marginally increasing the height better meets the goals and policies of the Carmel Area Land Use Plan. Reducing the height of the structure would require a larger footprint which in turn will cause greater impacts to slopes, environmentally sensitive habitat, and the public viewshed.*

*(b) This evidence directly contradicts the original findings and evidence as presented in the March 25, 2010 staff report which recommended approval of the Variance.*

#### **Staff's Response to Contention 1 –**

The determination of whether the finding can be made is a factual determination for the Board of Supervisors. Staff and the Zoning Administrator arrived at different conclusions based on the evidence. This report presents both views, and staff seeks direction from the Board of Supervisors.

Based on review of the proposed plans and the site, staff recommended that the Zoning Administrator find that due to special circumstances applicable to the subject property (i.e.; topography and the surrounding area), the strict application of development standards in the Monterey County Codes is found to deprive the subject property of privileges enjoyed by other property owners in the vicinity under identical zoning classification (see Exhibit H of this staff report). Staff had concluded that special circumstances do exist on the site that warrants a Variance to allow exceedance of the height limit. The topography of the parcel limits the available building area. The site is restricted with a steep slope that essentially splits the more level areas of the property in two. The upper portion of the parcel significantly limits the building area, and could result in greater impacts to visual resources. The lower portion of the parcel would place development closer to environmentally sensitive habitat. The proposed placement and design of the new structure reduces visual impacts and avoids encroachment into areas of sensitive habitat. Due to these special circumstances, the proposed siting and height better achieve the goals, policies, and objectives of the Monterey County Local Coastal Program.

However, the Zoning Administrator found that the evidence did not support the Variance finding for the following reason: The proposed height is due to an architectural feature that could be reduced in order to conform to the height limitation. The feature used is a clerestory (or clearstory) wall which rises above the lower roofline and is lined with windows. The purpose of the clerestory is to supply natural light to the inner space of a building. The clerestory is commonly used on sloping sites as a means of importing natural light to the rear of a structure.

The reduction in height could be accomplished by reducing or eliminating this architectural feature, which is not essential to lighting the interior of the proposed residence. Therefore, in this view of the evidence, even though special circumstances related to topography do exist on the property, the strict application of the height limit does not deprive the subject property of privileges enjoyed by other property owners in the vicinity under identical zoning classification.

**Appellants' Contention 2 (Grant of Privilege)** - The Appellants contend that granting the Variance does not constitute a special privilege inconsistent with the limitations upon other property owners in the vicinity and zone in which such property is situated, and that Evidences a and d of Finding No. 10 of the Zoning Administrator's Resolution 10-018 are not supported by the facts of the site.

*Evidence a states "However, although this is a 1.6 foot reduction in the height of the existing residence, approval of the new residence at the 21.7 foot height above average natural grade would result in an increase of visual impacts to the public viewshed." The Appellants present the following regarding Evidence a:*

- (a) The project as proposed will decrease the existing height of the residence by 1.6 feet and maintain a one story elevation at Calle la Cruz Street. Therefore, existing visual impacts will be reduced. The residence was purposefully designed to blend in with the topography of the parcel while avoiding slopes and sensitive habitat areas. Based upon the LUAC meeting minutes, the applicant also agreed to reduce the height by approximately .5 feet to address neighboring property owner concerns.*
- (b) This evidence directly contradicts the original findings and evidence as presented in the March 25, 2010 staff report which recommended approval of the Variance.*

*Evidence d states "The adjacent property has been granted a Variance (Kessler/PLN970312) to exceed height by approximately 5.5 feet or 23.5 feet above average natural grade. This Variance increased the previously approved height by an additional 2 feet. Similar to this project, the subject project proposes to exceed the limit above average natural grade by approximately 3.7 feet. However, the Kessler project does not apply in this particular situation because of key differences. Beside site topography, the Kessler property and building area is restricted by a public access easement and an irregular shape lot. The Appellants present the following regarding Evidence d:*

- (a) The Jagers parcel is constrained by slope, environmentally sensitive habitat areas and presence within the public viewshed. The project was purposefully designed to reduce impacts to these elements. The key difference between these projects is the fact that the Jagers proposal includes a 1.6 foot net reduction in height while the Kessler project, proposed on a vacant parcel, exceeded the already approved Variance by an additional two feet.*
- (b) This evidence directly contradicts the original findings and evidence as presented in the March 25, 2010 staff report which recommended approval of the Variance.*

*Evidence d (Continued) states "Although the proposed Jagers residence would result in a net height reduction from the existing residence of approximately 1.6 feet, it could be lowered further to meet the 18-foot height limit. The Appellants present the following regarding Evidence d:*

- (a) Because the parcel is bisected by steep slopes and environmentally sensitive habitat areas, marginally increasing the height better meets the goals and policies of the Carmel Area Land Use Plan. Reducing the height of the structure would require a larger*



*footprint which in turn will cause greater impacts to slopes, environmentally sensitive habitat, and the public viewshed.*

*(b) This evidence directly contradicts the original findings and evidence as presented in the March 25, 2010 staff report which recommended approval of the Variance.*

*Evidence d (Continued) states "...although other property owners in the area enjoy similar heights, these homes were all constructed prior to the application of the 18-foot height limit. The Appellants present the following regarding Evidence d: The 18-foot height limit was adopted to ensure impacts to the public viewshed would be minimized. The project as proposed includes a net reduction in height of 1.6 feet thereby decreasing an existing impact. As noted in the LUAC meeting minutes, no concerns were expressed about potential impacts to the public viewshed, the very issue the height limit was designed to address. In fact, LUAC members commented on how well the residence was designed so visual impacts were minimized.*

**Staff's Response to Contention 2 –**

The determination of whether the finding can be made is a factual determination for the Board of Supervisors. Staff and the Zoning Administrator arrived at different conclusions based on the evidence. This report presents both views, and staff seeks direction from the Board of Supervisors.

Based on review of the proposed plans and surrounding area, staff had concluded that the proposed height would not constitute a grant of privileges inconsistent with the limitations upon other property owners in the vicinity and zone in which such property is situated (see Exhibit H of this staff report). The evidence in support of the finding follows: One property owner in the vicinity and under identical zoning classification has been afforded the same privilege sought by the property owner of this application. The adjacent property was granted a similar entitlement by the Board of Supervisors (Kessler/PLN970312), which approved a Variance to exceed the height limit by approximately 5.5 feet or 23.5 feet above average natural grade (ANG). The Kessler Variance increased the previously approved height by an additional 2 feet. Staff had recommended denial of the Kessler Variance. Similar to this project, the subject project proposes to exceed the limit above average natural grade by approximately 3.7 feet. However, a key difference is that the subject project will result in a net height reduction from the existing residence of approximately 1.6 feet. In addition, the proposed height remains lower than the height of several adjacent residences due to the drop in elevation from adjacent properties, and it retains a one story elevation on Calle la Cruz. Other property owners in the Carmel Meadows vicinity enjoy an identical, legal nonconforming privilege. The following list is a sampling of residences in the neighborhood constructed prior to the height limit change: 2737 Calle la Cruz, approximately 23.5 feet above ANG; 2729 Calle la Cruz, approximately 22 feet above ANG; 2675 Ribera Road, approximately 20 feet above ANG; 2665 Ribera Road, approximately 23.5 feet above ANG; and 2655 Ribera Road, approximately 22.25 feet above ANG.

On the other hand, the Zoning Administrator concluded that the evidence did not support the Variance finding for the same reasons identified above for Contention 1. The proposed height is due to an architectural feature that could be reduced in order to conform to the height limitation. The reduction in height could be accomplished by reducing or eliminating the clearstory architectural feature, which is not essential to lighting the interior of the proposed residence. Although the proposed height represents a 1.6-foot reduction in height from the existing residence, granting of the Variance for the new residence would still result in a structure that is approximately 3.7 feet above the 18-foot height limit. Therefore, the Zoning Administrator concluded that approving the Variance would constitute granting a privilege inconsistent with the

limitations upon other property owners in the vicinity and zone in which such property is situated.

Staff is not making a recommendation to the Board of Supervisors at this time. Because the determination involves weighing the evidence, staff requests the Board continue the item to a date certain, and provide direction to staff to return with findings and evidence reflecting the Board's view of the evidence.