

Attachment A

DISCUSSION

BACKGROUND AND DESCRIPTION:

The subject property is located at 1496 Bonifacio Road, Pebble Beach, within the Del Monte Forest Land Use Plan, Coastal Zone. Zoning on the property is Low Density Residential, 1.5 acres per unit, with a Design Control Overlay in the Coastal Zone, or “LDR/1.5-D (CZ).” Existing development on the site consists of a two-story single family dwelling. Vegetation consists of sparse trees and grasses. The surrounding areas contains primarily low density residential uses.

The property is subject to the policies and regulations contained in the 1982 Monterey County General Plan (General Plan), the Del Monte Forest Land Use Plan (DMF LUP) and Coastal Implementation Plan, Part 5 (CIP) and the Monterey County Zoning Ordinance (Title 20). Pursuant to Section 20.14.040.F, a Coastal Administrative Permit is required for the construction of accessory structures, in this case, a patio. Further, the property is located in a Design Control Zoning District (“D” zoning overlay) which regulates the location, size, materials and colors of the structures to assure protection of the public viewshed and neighborhood character. The patio and driveway are not visible from off-site and the driveway surface will be composed of pavers and granite materials that would be subordinate to the surrounding environment. The stone patio consists of earth tone colors such as light brown and tan. Portions of the driveway will be replaced and with gravel and turf block. The turf block section of the driveway will not be visible from off-site. The materials, location and nature of the project are consistent with the neighborhood character and will not detract the visual integrity of the site.

Figure 2b of the DMF LUP identifies the property to be within the Pescadero Watershed that drains into the Carmel Bay Area of Special Biological Significance (ASBS). Freshwater and Marine Resource Policies of the DMF LUP and Section 20.147.030 of the CIP states that development within these areas shall be sited and designed to minimize runoff, site disturbance, erosion and sedimentation, and have a maximum of 9,000 square feet of impervious surfaces.

The project is an after-the-fact Coastal Administrative Permit and Design Approval to address the unpermitted impervious site coverage including construction of a 660 square foot rear yard patio without proper permits, installation of a new gas line and onsite drainage improvements. The primary issues that staff has identified through analysis of the project application included exceeding the impervious coverage limitation of 9,000 square feet and violation of a condition of approval from a previously approved permit, PLN000489 (**Attachment E**). The project proposes to replace 4,600 square feet of impervious driveway surfaces with permeable material, which results in an overall impervious coverage of 8,500 square feet at the site. Further, the project requires the site to come into compliance with the condition of approval from the previously approved permit by installing 551 square feet of permeable turf block material, which is included in the total replacement of 4,600 square feet of impervious surfaces. The project would not only reduce the amount of impervious coverage, thereby reducing the overall stormwater run-off but the subject property would also come into compliance with the DMF LUP and CIP regarding policies within the Pescadero Watershed.

Since appellant filed the appeal, the applicant obtained a survey from a licensed professional to identify the square footage of the existing impervious surfaces on the property (See plans in **Attachment B**). The project has been conditioned for the applicant to provide an as-built survey of the impervious and pervious square footages to confirm the proposed project was completed accordingly. Further, the project has been conditioned by RMA-Environmental Services for the applicant to submit final stormwater control (drainage) and erosion control plans to ensure compliance with the DMF LUP and CIP. The Zoning Administrator found that the project was consistent with all applicable regulations and adopted a resolution to approve the project. The appeal is from the Zoning Administrator's decision.

APPEAL:

On October 8, 2019, the County received an appeal from Anthony Lombardo & Associates on behalf of Chris and Sara Bardis (neighbors). The appeal contends that the finding of consistency with Policy 77 of the DMF LUP and Section 20.147.030 of the CIP is not supported by adequate evidence. Further objections outlined within the appeal and County responses are detailed below.

Appellant's Contention No. 1:

A finding of consistency with 20.147.030 is not supported by the evidence. Protection of the water quality and biological value of the Del Monte Forest's coastal streams, wetlands, open coastal waters, and the Carmel Bay through the application of adequate buffers and setbacks, maintaining hydrologic inputs, protecting riparian and wetland vegetation, carefully controlling grading to minimize erosion and sedimentation, and effective collection, filtration, and treatment of runoff cannot be confirmed based on the inadequate plans provided with the application. Deferral of a full drainage plan describing the existing and post-project drainage layout to a date post-approval does not support the finding and approval. The project plans propose to modify the driveway surface from impervious to pervious in order to comply with conditions of a prior coastal permit (existing violation of that prior permit). As part of this change, a drainage plan was prepared noting several updates and/or additions of catch basins in the driveway for storm-water capture and dispersal. As part of this change, a drainage plan was prepared noting several updates and/or additions of catch basins in the driveway for storm-water capture and dispersal. The drainage plan is incomplete as:

- 1) It does not explain where the storm-water goes after entering the catch basins.*
- 2) It does not describe existing drainage conditions (inclusive of all captured storm water on the property from structures and impervious coverage areas.*
- 3) It does not provide drainage calculations to verify the capability of the system to manage the existing stormwater capture plus areas being added to the system.*
- 4) It does not describe the method or point of discharge for all captured stormwater (i.e. Dispersion trench).*
- 5) It does not verify retention of all captured storm-water on-site in compliance with the requirements of the Pebble Beach Community Services District and RWQCB standards.*

Internal correspondence from the county staff notes a prior drainage plan from 2001 showing transfer of storm-water runoff to "the bottom of an existing ravine" as being adequate and implies "off-site" dispersal. The discharge pipe(s) are in fact installed improperly outside the property boundaries and are discharging improperly to a tributary to the Carmel Bay. The

current engineer notes “no need for a drainage design” due to “a net decrease in impervious area.” This is incorrect and inadequate.

- 1) Drainage off-site is inconsistent with Pebble Beach and RWQCB standards. Modifications to an existing condition must be compliant with current regulations.*
- 2) Any modifications to a portion of the drainage does require a review and design for the system in its entirety. As water is in fact being collected from what is now proposed to be “pervious”, that water does contribute to the load of the entire system; and it must be reviewed for consistency with regulations.*
- 3) As the previous coastal permit concluded that the driveway would be “pervious” to achieve the 9000 sq. ft. limitation, and other impervious areas were in fact added to the site without permits since that time, there is an increased load to the drainage system.*
- 4) We note that the existing system is in fact transferring all storm-water via an illegally placed large pipe(s) off-site onto the property of our client, which is improper and illegal. In addition, the area is in fact part of a conservation easement dedication in favor of the Coastal Commission, to which this dispersal of drainage would be a trespass and violation. As cited by Ms. Alford’s representation to the County and the Coastal Commission in other projects, this ravine is considered an area of biological significance to which discharge of collected stormwater is improper and in violation of CEQA.*

County’s Response No. 1:

Section 20.147.030.A of the CIP requires development within the Pescadero Watershed that drains into the Carmel Bay ASBS to be sited and designed to minimize run-off, site disturbance erosion and sedimentation, and have a maximum of 9,000 square feet of impervious surfaces. The project proposes to permit a 660 square foot rear patio (new impervious area) and replace 4,600 square feet of impervious driveway surfaces to pervious materials, reducing the overall impervious site coverage from 13,100 square feet to 8,500 square feet, thereby complying with the 9,000 square foot impervious site coverage limitation. The project includes approval of two catch basins for stormwater run-off for all stormwater not absorbed naturally through pervious surfaces at the site. A preliminary stormwater control plan (drainage plan) was required and provided only for the scope of the project being considered, not for the existing house. RMA-Environmental Services conditioned the project to require the applicant to submit a final drainage plan that complies with Section 20.147.030 of the CIP, which would identify the dispersal of stormwater run-off that is captured through these catch basins. From Staff’s site visit on July 20, 2018 and February 20, 2019, there are drainage pipes that are not entirely on the subject property. The drainage improvements will require the applicant to have a drainage system and supporting infrastructure for the proposed project that is entirely on subject property. A non-standard Condition of Approval has been applied to the project for the drainage system and infrastructure must be screened by vegetation to ensure non-visibility (See Condition No. 8). RMA-Environmental Services has not approved or received a final drainage plan with the requirements detailed above. The engineered drainage plans are required following consideration of the planning entitlements addressed herein. The conditioned of approval states that the drainage plan must minimize run-off, site disturbance erosion and sedimentation through the use of permeable materials (See Condition No. 9 of **Attachment B**).

County staff has confirmed with the Coastal Commission staff that a special condition has been applied to Application Number A-3-MCO-17-0038, that went before the Coastal Commission on

July 12, 2018 for the neighboring property as identified above, 1525 Riata Road, Pebble Beach. The special condition to dedicate a conservation easement (**Attachment F**) stated, “No development, as defined in Section 30106 of the Coastal Act, shall occur within the open space conservation area, which shall include that portion of the property shown on Exhibit 7, except for removal of non-native, diseased, or dead vegetation; habitat restoration; and necessary drainage and utility work (and where such drainage/utility work cannot be located elsewhere, is the minimum amount necessary, and does not impair Monterey pine forest habitat values).” The natural ravine is on both the applicant’s property and the appellant’s property; however, the conservation easement is for an area on the appellant’s property. The previous 2001 approved drainage plan allowed for dispersal to the bottom of the ravine that is on the applicant’s property. A Condition of Approval has been added to the project that requires submittal of a final engineered drainage plan. The drainage plan is required to minimize run-off through use of permeable surfaces on the driveway (See Condition No. 9 of **Attachment B**). With replacement of driveway surfaces with pervious materials, the property will have 8,500 square feet of impervious surface coverage which is consistent with the CIP maximum of 9,000 square feet of impervious surfaces.

In addition, the applicant must also submit an erosion control plan (See Condition No. 10 in **Attachment B**) that complies with Monterey County Code Chapter 16.12, which eliminates and prevents conditions of accelerated erosion that have led to, or could lead to, degradation of water quality, loss of fish habitat, damage to property, loss of topsoil or vegetation cover, disruption of water supply, and/or increased danger from flooding. In accordance with Chapter 16.12, an erosion control plan must be provided prior to the issuance of a construction permit. Further, the subject property is not located within an area that is subject to the Municipal General Permit (Phase II Small MS4 General Permit); therefore, the Regional Water Quality Control Board (RWQCB) post-construction requirements do not apply. The County does not enforce Pebble Beach Community Services District requirements.

Appellant’s Contention No. 2:

The project is not CEQA exempt. An exemption to CEQA cannot be supported if (c): Significant Effect. A categorical exemption shall not be used for an activity where there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances. The deferral of the drainage plan until after the coastal permit and CEQA determination is made is improper given the existing and proposed increased discharge of stormwater on to the property of another and into an area of biological significance. Section 15604 (d) states that: In evaluating the significance of the environmental effect of a project, the lead agency shall consider direct physical changes in the environment which may be caused by the project and reasonably foreseeable indirect physical changes in the environment which may be caused by the project.

Given uncertainty regarding the accuracy of the existing coverage numbers provided in this application versus prior representations, policies relevant to Pescadero watershed could not have been verified. Also, “the ravine” noted in file correspondence as the point of dispersal in a past drainage plan for collected storm-water is an environmentally sensitive area. Failure to address this improper drainage system is not compliant with CEQA. We note also again that the

point of dispersal is off-site onto property of another which is improper, illegal, and a violation of coastal commission conversation easement dedication.

County's Response No. 2:

As discussed in Response No. 1, the project proposes to permit a 660 square foot impervious patio and to replace 4,600 of impervious driveway surfaces to pervious materials, reducing the overall impervious site coverage from 13,100 square feet to 8,500 square feet. Previous permits on the property required replacement of approximately 535 square feet of impervious driveway surfaces with turf block. This approval does not rely on the square footage of previously approved replacement of pervious surfaces; rather it relies on licensed surveyor information that demonstrates that the site will be in compliance with the pervious surface limitations of the Pescadero Watershed within the CIP as proposed herein regardless of previous approvals and actions. Since the appellant filed the appeal, the applicant obtained a survey from a licensed professional for accurate square footages of the impervious areas of the property as it exists today. The survey concluded there was a total of 13,100 square feet. The areas are itemized by structure or area. Based on this information, the applicant was able to revise the plans than what was initially approved by the Monterey County Zoning Administrator, to provide accurate square footages for the impervious areas and proposed pervious areas, which are shown are reflected within the recommendation and shown on the attached plans. The project has been conditioned for the applicant to provide a survey to verify the impervious and pervious square footages were installed in accordance with the attached plans (See Condition No. 7 of **Attachment B**).

Reduction in the impervious surfaces would result in a decrease in the amount of stormwater run-off that is currently being dispersed through the catch basins. As discussed in Response No. 1, the project has been conditioned for a final engineered drainage plan to be submitted by the applicant. Areas of stormwater run-off dispersal would be identified and modified to ensure stormwater run-off is minimized through use of permeable surfaces on the driveway. With replacement of driveway surfaces with pervious materials, the property will have 8,500 square feet of impervious surface coverage which is consistent with the CIP maximum of 9,000 square feet of impervious surfaces. The Condition of Approval applied by RMA-Environmental Services would require the drainage system and infrastructures to be entirely on the subject property. The drainage system and infrastructures must be screened by vegetation to ensure non-visibility (See Condition No. 8 of **Attachment B**). Engineered drainage plans meeting Monterey County standards in Chapter 16.12 of the Monterey County Code are required at the Building Permit stage. Therefore, the proposed project does not present unusual circumstances, and there is no substantial evidence of a reasonable possibility of a significant effect on the environment, as the project reduces the amount of stormwater run-off, complying with the 9,000 square foot impervious coverage limitation.

The project does not present unusual circumstances that would render the categorical exemption inapplicable: stormwater run-off and release of stormwater into natural drainage systems is a regular part of residential development. Additionally, there is no substantial evidence that the project would result in stormwater run-off that has a significant environmental impact. The project will comply with the impervious surface limitations for the area provided in the certified Land Use Plan for Del Monte Forest and the project will not alter any existing drainage patterns

on or off the site. Treatment of stormwater run-off water quality is addressed in accordance with standard conditions.

Appellant’s Contention No. 3:

The finding of consistency with Policy 77 of the DMF LUP and Section 20.147.030 of the DMF CIP is premature, in that inconsistencies in existing and proposed impervious coverages were adequately verified. In the prior coastal permit action, the project plans attesting to coverage totals for structures, driveways, patios, et al (pervious and impervious) were provided to and accepted by the County. The planning approval and conditions applied to the previous permit were based on those square footage totals, which indicated that that the final total impervious coverage after conversion of the driveway to pervious would be exactly 9000 sq. ft. In addition to the noncompliance with the original permit conditions (to modify the driveway to a pervious surface), the owners have since added additional impervious areas (rear patio, etc.) after the fact without planning approval or permits. In the current application and plans, numerous “square footages” have mysteriously changed without explanation from the prior project plans. We have questioned the new numbers, and how the simple action of complying with the original project condition for the driveway will make the site compliant with the 9000 sq. ft. impervious coverage limitation, even though other impervious areas have been added since the last project that was determined to hit the maximum. We noted objection and concern as to what conclusive evidence was given to establish that the new numbers are correct. We suggested that a survey by a licensed surveyor is necessary to verify the calculations, but this has yet to be required. Deferral of the requirement for a full survey until after the approval is inappropriate.

County’s Response No. 3:

Since the appellant filed the appeal, the applicant has obtained a survey of the impervious areas of the property and submitted the calculations to County staff (See plans in **Attachment B**). The survey noted a current “as built” total of 13,100 square feet of impervious surfaces. Based on this information, the applicant was able to revise the plans to provide accurate square footages for the impervious areas and proposed pervious areas. As proposed, 4,600 square feet of existing impervious surface will be removed and replaced with pervious materials, resulting in a total impervious surface of 8,500 square feet. The proposed project is conditioned for the applicant to obtain a survey of the impervious and pervious square footages prior to the final of a construction permit. Further, the project site was not in compliance with a condition from a previously approved permit (**Attachment E**). A Condition of Approval from a previously approved permit required the project to install a portion of the driveway with permeable turf block material. Although the condition was met through the recordation of a deed restriction, the permeable turf block material was never installed. To come into compliance with this condition of approval, the project includes installation of 551 square feet of permeable turf block material on a portion of the driveway as shown in the attached plans in **Attachment B** (See Response No. 2). The proposed project would have a total of 4,600 square feet of existing impervious surface to be replaced with pervious materials, resulting in a decrease from 13,100 square feet to 8,500 square feet of impervious site coverage for the subject property.

Conclusion:

The proposed project for an after-the-fact Coastal Administrative Permit and Design Approval to permit the construction of a 660 square foot rear patio and replace 4,600 square feet of

impervious driveway surfaces to pervious materials would reduce the impervious coverage from 13,100 square feet to 8,500 square feet. The proposed project would comply with the maximum 9,000 square foot impervious site coverage. Approval of the project would permit the 660 square foot rear yard patio, grill and fireplace, allow for installation of new on-site drainage improvements and address the impervious site coverage, which are currently the subject of Code Enforcement violation 17CE00253. The patio is developed on an area that has been previously disturbed. If the applicant came in prior to constructing the patio, the County would require portions of the site to be replaced with pervious materials to allow for the patio as is the case here. The project, with replacement of the impervious driveway surface with pervious materials, is in conformance to the County's zoning ordinance. The County has evaluated the project as though the work has not already occurred. The project has been conditioned for the applicant to submit a final engineered drainage plan and erosion control plan that are subject to Monterey County Code Chapter 16.12. The drainage plan condition would require the applicant to have a drainage system and the supporting infrastructure maintained entirely on the subject property. The drainage system and infrastructures must be screened by vegetation to ensure non-visibility. Therefore, the proposed project is consistent with the General Plan, DMF LUP, the CIP, and Title 20, and qualifies for a Categorical exemption from CEQA.

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