

Exhibit A

This page intentionally left blank.

DISCUSSION

Staff reviewed the application and found the project, as proposed, consistent with the applicable LUP and CIP. Also, the project conforms to applicable zoning development standards. Although there was a worker cabin on the site over a century ago, this after-the-fact development is the first single family dwelling on the lot. The improvements generally minimized impacts and, where cut to a slope was not required for the establishment of the homestead, the slope shall be stabilized and replanted (restored except for returning the removed soil) pursuant to Title 20 Section 20.90.130. Where development is within 100 feet of ESHA, a qualified professional found the impacts were minimal and could be further reduced through an adaptive management partial restoration plan for a total of 2,820 square feet. Although one protected tree was removed without benefit of permit, it could be replaced and staff noted that the owner already planted several Redwood saplings in the development area. The Design Approval can be supported, as well, as the materials and colors and architectural style are subtle and suitable for the neighborhood.

Development Standards

Development standards for the RDR zoning district are identified in Title 20 Section 20.16.060. Required setbacks in this RDR district are 30 feet front, 20 feet sides and 30 feet rear. As built, the main structure (i.e., the single-family dwelling) has a front setback of 152 feet, the closest side setback is 279 feet, and the rear setback is 392 feet. The setback requirements for non-habitable accessory structures are 50 feet (front), 6 feet side (in front half of property) and 1 foot rear. The accessory structure (shed) front setback is 255 feet, the nearest side setback is 198 feet, and the rear setback is 342 feet. Setbacks for the accessory platform deck are similar, with nearest side setback as 154 feet. Additionally, the distance between the main dwelling and accessory structures exceeds the required 10 feet minimum. The requirement for 6 feet setback between two accessory structures shall be met through the construction of a proposed roof connection between the two sheds (see **Exhibit B**, Plans, sheet 6). When connected into one non-habitable accessory structure, the accessory structure setbacks are met. Main structure setbacks are met.

Pursuant to Title 20 Section 20.16.060, maximum allowed height for main structures in the RDR zoning district is 30 feet above average natural grade (ANG); for non-habitable accessory structures it is 15 feet from ANG. The main dwelling top ridge height is approximately 26 feet and four inches above average natural grade. The proposed shed height with new roof connection is approximately 12 feet above ANG. Height maximums for the zoning district are met.

Pursuant to Title 20 Section 20.16.060, the site coverage maximum in the RDR zoning district is 25 percent. The property is 13.97 acres (608,533 square feet) in size, which would allow site coverage of 152,133 square feet. As proposed, the development would result in site coverage of 2,306 square feet (0.3 percent). The RDR zoning district has no maximum floor area ratio.

Design Approval

Pursuant to Title 20 Chapter 20.44, the project parcel and surrounding area are designated as a Design Control Zoning District (“D” zoning overlay), which regulates the location, size, configuration, materials, and colors of structures and fences to assure the protection of the public

viewshed and neighborhood character. The Applicant has built with exterior colors and materials that include beige siding and dark green trim with green metal rooves. The existing exterior colors blend with the surrounding environment and are consistent with the surrounding residences. The residence is also consistent with the size and scale of surrounding residences, and the bulk and mass does not contrast with the neighborhood character. A 215 square foot deck is natural wood and not visible from public viewing areas. It was built adjacent to a parked travel trailer which was used for camping during the construction of the dwelling. The applicant has stated that the trailer will be removed, but the deck will be retained. As proposed, the project assures protection of the public viewshed, is consistent with neighborhood character, and assures visual integrity.

Disturbance on Slopes in excess of 30 percent (After-the-Fact and Proposed) and Hazards

The project includes new development on slopes exceeding 30 percent, which is primarily related to the driveway area. The Appropriate Authority to consider Coastal Development Permit pursuant to Title 20, Section 20.64.230(1) is the Monterey County Planning Commission. By granting a Coastal Development Permit for this development, the Planning Commission allows the owner to improve the existing driveway to meet fire safety regulations (approx. 61 cubic yards of cut and 65 cubic yards of fill on 3,230 square feet of area).

The project includes after-the-fact cut to slopes in excess of 30 percent in four areas around the development. Sheet C2 of 6 illustrates the existing slopes on the site. Most of the parcel is sloped in excess of 30 percent. The locations of the cut to slope to the west-northwest of the main dwelling is indicated on slope greater than 30 percent, as is the cut north of the main dwelling. A 30-inch plastic culvert was installed without benefit of permit to accommodate drainage from an unnamed intermittent stream northeast of the main dwelling south to the Palo Colorado stream; it crosses from slopes greater than 30 percent across the level area and then reenters an area of slope greater than 30 percent. Additionally, soil was excavated at the cliff edge behind the current location of the shed. The soil was distributed on a slope in excess of 30 percent to the south of the dwelling, apparently to lessen the grade. The engineering team for the project recommended an earthen berm be installed at the base of the larger area of cut slope, which was approximately 815 square feet in area, to protect the homestead from potential minor landslide issues (the cut slope is only approximate 22 feet high, shown in the photograph taken by the N. Nedeff, below). The project proposes to stabilize the cut and filled areas on slopes (disturbed slope in excess of 30 percent (approximately 890 square feet in total) by using net and blanket stapled into place with stakes and fiber rolls on the contour and hydroseeding (see Sheet C5 of the Plans in **Exhibit B**). The fourth location of development on slopes in excess of 30 percent is

the previously graded driveway (approximately 50 square feet).



A Geotechnical Report was prepared for the project by Damien Georis, CMAG Engineering, Inc., Aptos, California, November 8, 2019 with an Addendum prepared by Adrian Garner, also CMAG, September 10, 2021, HCD Library Doc. No. LIB220220). The structures are not located on slopes because of the historical leveling of the area (circa 1910). The engineers who prepared the Geotechnical Report found the subject site may be affected by seismic shaking and slope instability. Although they found the as-built habitable structure has the capacity to effectively resist direct potential damage due to seismic activity, the engineers recommend that the deck footings be inspected and perhaps reinforced during construction permit review. The engineers opined that damage to the structures and human safety could occur as a result of landslide related to the cut slopes on the north side of the dwelling (shown above) and the fill to the south. Analysis included modeling of the site with impact from a magnitude 7.5 earthquake on the San Gregorio Fault, at a distance of 2.73 miles away. The results indicated that the fill on slope on the south should be stabilized. The engineers recommended the addition of an earthen berm along the base of the steep slope to the north of the dwelling to isolate potential threat of landslide. The project plans include stabilization of the fill area and addition of an earthen berm per the engineers' recommendation. Fire safety code (pursuant to County Ordinance No. 22-050) is guiding the proposed improvements to the driveway such as resurfacing with concrete or asphalt; Fire District recommendation also informed the addition of a new 5,000 gallon water tank near the existing structures. In these ways, the project does not increase hazards at the site or in the neighborhood.

Development on slopes that exceed 30 percent is prohibited unless there is no feasible alternative that would allow development to occur on slopes of less than 30 percent, or the proposed development better achieves the goals, policies and objectives of the LUP than other development alternatives (Title 20 Section 20.64.230.E.1). In this case, the applicant has sited this development to utilize the previously graded area where possible and avoid new cut on steeper slopes within the structural footprint, entirely. The expansion of previous cut on nearby slopes was not necessary for the development but the best remedy for such cut is to stabilize it and revegetate it, in this case. The engineers did not recommend the hill be fully reconstructed or for the fill on slopes in excess of 30 percent to be removed. Therefore, it is inferred that it would be a greater hazard to do so. LUP goals and policies related to geologic hazards and drainage protections are better achieved by the proposed stabilizations than an attempt to reconstruct the hill. LUP Policy 3.7.3.A.1 requires all development to be sited to conform to site topography and to minimize grading and reduce geologic and seismic hazards and erosion. LUP Policy 3.3.3.A.3 requires development adjacent to stream courses to be low intensity and constructed to minimize erosion, runoff, and water pollution. As designed, the stabilization measures proposed as part of the project are found, based on the recommendations of the project engineers, to better meet these LUP policies. In the case of the proposed driveway regrading, there is no feasible alternative to avoid development on slopes. The driveway route is already established through the Redwood Forest within the parcel. An alternative driveway alignment would impact the protected trees which are part of ESHA. The proposed development is sited and designed to achieve compliance with LUP Forest Resources resource protection objectives (the primary use of forested land in Big Sur shall be for recreational and aesthetic enjoyment and for educational, scientific, watershed, and habitat protection activities). In this case, the aesthetic value of the Redwood Forest is not impacted by the project and watershed and habitat protection are enhanced by the adaptive management restoration plan. The plan is outlined below and included in **Exhibit E**.

Environmentally Sensitive Habitat Areas and Tree Removal

The location of the single family dwelling, a 30-inch plastic culvert for stormwater capture and modifications to a pre-existing parking pad are within 100 feet of the intermittent stream known as Palo Colorado and a stand of Redwood trees. A biological report prepared for the project investigated the potential impacts of the project to these resources (Nedeff, Consulting Ecologist, March 21, 2023 HCD Library Doc. No. LIB230318). After research including on-site inspections, desktop research of local maps, literature references, internet data searches and place-based knowledge, the biologist concluded that no sensitive species are found on the parcel. Nedeff reported that in summer 2016, nearly the entire property burned during the Soberanes Fire. CalFire crews staged engines on the parking pad below the home site and pumped water from Palo Colorado Creek to successfully defend the residence, shed and deck where a travel trailer has been stored. During the winter of 2017, heavy rains on burned hills above the residence resulted in the erosion of a culvert that directed seasonal flow through a portion of the property. The erosional gully was remediated with the installation of a 30-inch plastic culvert that directs water from an unnamed, seasonal drainage towards Palo Colorado Creek (without benefit of permit). The biologist concluded that no Redwood trees were disturbed during the replacement of the damaged culvert. They did not find the culvert was adversely affecting Palo Colorado Creek.

The biologist classified the current state of the area near the dwelling and the separate deck and to the west of the dwelling as ruderal (disturbed and weedy); they also mapped Redwood Forest and intermittent stream within 100 feet of the structure to the east and additional Redwood Forest to the northeast. LUP Policies 3.3.2.1 and 3.3.2.4 and CIP section 20.145.040.B.3 are directed at limiting vegetation removal and grading to that needed for the structural improvements themselves within sensitive habitats. No special-status plant species were observed or found to have the potential to occur within the area of the existing driveway. Development in the form of additional grading and resurfacing of the existing driveway is part of the project occurring within the Redwood Forest, which is also containing the intermittent stream, Palo Colorado Creek. The proposed additional grading of the driveway and addition of a hammerhead for fire truck turn around as well as the proposed 5,000-gallon water tank was recommended by the Fire District to meet fire safety codes of CA Title 14. The hammerhead driveway turn around is to be located on the ruderal vegetation and shall not impact Redwood Forest. LUP Policy 3.3.3.A.8 requires new development to minimize impacts to Redwood Forest and trees, requires a biological report and modifications, where necessary, to minimize impacts to Redwood trees. This policy is better met by retaining the same driveway route as has historically been used. The driveway is routed through Redwood Forest, and the proposed regrading has the potential to impact the Redwood branches and/or roots. To ensure there are no impacts to trees, a standard condition of approval has been applied that requires an Arborist to oversee tree and root protections prior to issuance of the grading permit (Condition No. 13).

LUP Policy 3.3.3.A.3 requires development adjacent to stream courses to be low intensity and constructed to minimize erosion, runoff, and water pollution. Policy 3.3.3.A.4 requires a 150 foot setback on each side of the streambank to protect riparian communities unless the biological report concludes that another setback is sufficient (CIP Section 20.145.040.C.1[d]). The project Biological Assessment identified the intermittent stream Palo Colorado to be within 100 feet of the main structure. A few riparian community plants were identified. The report stated that the stream channel “flows through a very steep, narrow canyon over large, granitic boulders in a series of cascades and small pools. Areas along the channel where sediment has collected support horsetail (*Equisetum arvense*), chain ferns (*Woodwardia fimbriata*) and thick patches of bracken ferns (*Pteridium aquilinum*). Two different willow species, sitka willow (*Salix sitchensis*) and arroyo willow (*Salix lasiolepis*) can be found in discontinuous patches.” Pursuant to the recommendations included in the Biological Assessment, the project includes stabilization of the area nearest to the stream and planting native Redwood Forest understory. In granting the Coastal Development Permit for this existing development within 100 feet of the stream, the findings of the Planning Commission are that:

1. *The establishment, maintenance, or operation of the use or structure applied for will not, under the circumstances of the particular case, be detrimental to health, safety, peace, morals, comfort, and general welfare of persons residing or working in the neighborhood of such proposed use, or be detrimental or injurious to property and improvement in the neighborhood, or to the general welfare of the County.* This finding is based on the evidence of the Biological Assessment which did not recommend the structures be relocated. Nedeff’s report did not find the stream bed to have been negatively impacted by the development (see that it is not listed as one of the impacted natural communities in Table 1, below). As partial restoration, the area between the structures and the stream shall be stabilized and replanted with native Redwood

Forest understory plants. No persons expressed prior to the hearing that the development as sited within 100 feet of the stream is detrimental to health, safety, peace, morals, comfort or general welfare of the public.

2. *The subject property is in compliance with all rules and regulations pertaining to zoning uses, subdivision, and any other applicable provisions of this Title and any zoning violation abatement costs have been paid.* In this case, the subject structures meet the zoning uses and setbacks of RDR/40-D (CZ). Pursuant to Title 20, Sections 20.90.070 and 140, the zoning violation abatement costs required are for the applicant pay double fees to HCD-Planning for the Combined Development Permit (CDP) and to pay violation abatement fees to Code Enforcement. Double fees for the CDP have been paid. Furthermore, the project includes a proposed partial restoration of the areas which were impacted that could have had an adverse impact on the stream in the case of a flood or earthquake event.

3. *The subject project is in conformance with the Monterey County Local Coastal Program.* In most regards, such as Water Resources policies, Forest Resources policies, ESHA policies, Scenic Resources and viewshed protection, the project is in conformance with the LUP. These are discussed throughout this report. Therefore, County entitles the owner to continue this use within 100 feet of the Palo Colorado stream because, in this case, these findings are made..

The biologist found that the owner's expansion of terraces impacted approximately 660 square feet of shrub-dominated Northern Coastal Scrub vegetation and 540 square feet of understory habitat beneath the canopy of Mixed Evergreen Forest. In some of these areas, the owner has replanted Redwood trees and a mix of native and horticultural plants. The biologist also found that approximately 700 square feet of Mixed Evergreen Forest understory (not trees) was removed when material was excavated from the slope cut which the owner expanded near the shed. (This area is shown on sheet 4 of the Plans, **Exhibit B.**) The placement of the shed caused the removal of approximately 75 square feet of Mixed Evergreen Forest understory habitat. The installation of two 2,500-gallon water tanks above the homestead caused the removal of 250 square feet of coastal scrub. The installation of a solar array caused 178 square feet of coastal scrub to be removed. Finally, the expansion and re-surfacing of a parking pad on a lower terrace caused 400 square feet of Redwood Forest understory to be removed. The biologist proposed a restoration plan which the owner has agreed to follow to restore these understory habitats and return the site to functional native ecosystem to the greatest extent feasible. The following table shows the disturbance of natural communities by development areas of the site.

Table 1. Disturbance to Habitats

<u>Disturbance source</u>	<u>Vegetation</u>	<u>Area (square feet)</u>
Cabin terrace	Coastal scrub	675
Cabin terrace (including a 30-inch plastic culvert)	Mixed Evergreen Forest understory (MEF u)	540
Slope cut	MEF u	700
Shed terrace	MEF u	75
Water tanks	Coastal scrub	250
Solar Array	Coastal scrub	178
Lower terrace parking pad	Redwood Forest understory	400

The overarching goal of LUP Chapter 3.3, ESHA, is that all practical efforts shall be made to maintain, restore, and if possible, enhance Big Sur's environmentally sensitive habitats. The development of all categories of land use, both public and private, should be subordinate to the protection of these critical areas. LUP Policy 3.3.2.7 requires that land uses adjacent to ESHA shall be compatible with the long-term maintenance of the resource and incorporate all site planning and design features needed to prevent significant habitat impacts, and where they do not establish a precedent for continued land development which, on a cumulative basis, could degrade the adjoining habitat. The owner has made a practical effort to avoid impacts to the ESHA found on the property by strategically placing the dwelling and platform deck on ruderal vegetation areas. The driveway was already in place as part of the historical forestry in the area. Although the homestead is adjacent to the Palo Colorado intermittent stream and Redwood Forest, and 400 square feet of the development was placed in Redwood Forest understory, there is substantial evidence that the construction and use of the homestead is not disrupting the habitats. The biologist did not conclude that there is a significant adverse effect on either type of ESHA that would require formal mitigation. Nor did the biologist conclude that the long-term health of the intermittent stream or Redwood Forest has the potential to be harmed by proposed development when undertaken in concert with the proposed adaptive management restoration plan. In this case, development within 100 feet of ESHA can be supported.

The siting, location, size and design of the project minimizes tree removal in accordance with Big Sur Coast LUP policies and the removal will not impact the overall health and long-term maintenance of the forests (Redwood and Mixed Evergreen Forest) found on the property. The project includes application for an after-the-fact permit for the removal of one Madrone tree. In accordance with the applicable policies of LUP and CIP Section 20.145.060.A, a Coastal Development is required for the removal of the living tree and the criteria to grant said permit have been met. A qualified ecologist visited the site and reviewed historical photographs and other information about the development site. The removal of the Madrone was included in a biological assessment that was prepared for the proposed project. The madrone tree was removed many years ago from the location where the single family dwelling was placed. Therefore, it was not feasible for an arborist to report on the health, structure, and preservation suitability of the subject tree and no other trees are adjacent to the development. A minimum of one-to-one onsite tree replacement for the impacted tree is proposed and is incorporated in this permit as Condition No.11. The project has been designed and sited to minimize the removal of protected trees to the greatest extent possible. An existing clearing was utilized for the structures. The driveway was designed to avoid trees. The specific choice of location for the structural development within the parcel avoided slopes and more removal of protected trees. The proposed new 5,000-gallon water tank shall be located on ruderal vegetation. No significant long-term effects on the forest natural communities are anticipated. The project as proposed will not significantly reduce the availability of wildlife habitat over the long term as the site has surrounding forested areas which will be managed for long term health, including the addition of understory areas, coastal scrub, and tree planting. To ensure there are no impacts to trees, a standard condition of approval has been applied that requires an Arborist to oversee tree and root protections prior to issuance of the grading permit (Condition No. 13).

CEQA decision

County staff considered the possibility of reviewing the project with an Initial Study. Staff found that all potential impacts in a checklist are either “no impact” or “less than significant” and the potential impact is addressd through adherence with the LUP, CIP and Title 20 zoning code regulations. None of the reports prepared for the project required “mitigation measures,” either. The County Codes provide a regulatory pathway for the development and restoration to be completed without environmental impacts. As demonstrated through case-law (*Fat v. County of Sacramento* (2002) 97 Cal.App.4th 1270, the court found, (citing *Riverwatch v. County of San Diego* (1999) 76 Cal.App.4th 1428), Lead Agencies must evaluate impacts against actual conditions existing at the time of CEQA review and are not required to evaluate impacts compared to a baseline condition that predates the unpermitted activity. In this case, it could be appropriate to consider the current conditions of the site as developed. However, as demonstrated in Finding 9 of the Project Resolution, the project as proposed and conditioned qualifies for a CEQA exemption.