

Attachment A

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ATTACHMENT A
PROJECT DISCUSSION
FIRST BAPTIST CHURCH – PLN140863

Additional Information about the Project and Setting

Each habitable unit is served by a dedicated septic tank, and water is provided by an existing on-site well and water storage tanks. In addition, the subject property is granted water from a neighboring parcel's 15,000 gallon water tank for additional fire suppression protection. Proposed parking for the church would be located at the southern edge of the site, along Cachagua Road, and would provide 31 standard parking spaces and 2 ADA-accessible spaces (33 total parking spaces). After completion of the proposed site improvements, the use would require a minimum of 17 parking spaces for standard activities and 33 parking spaces for major activities.

Cachagua Creek bisects the property, with the accessory dwelling unit located to the west of the creek and the main residence/proposed church to the east. A Conservation and Scenic Easement for the preservation of open space is dedicated on two areas on the property, and covers approximately 1/3 of the parcel. Vegetation on the site is primarily comprised of mixed oak woodland, Coastal scrub, and chaparral with riparian woodland along the creek area.

The property is located at 19345 Cachagua Road, Carmel Valley (Assessor's Parcel Number 418-441-006-000), Cachagua Area Plan. The parcel is zoned Resource Conservation, 20 acres per unit (RC/20), which allows Public/Quasi-Public uses with the granting of a Use Permit. Therefore, the proposed project is an allowed land use for this site. The surrounding parcels are primarily zoned Farmland, Resource Conservation, and Permanent Grazing. Uses in the immediate project vicinity include homes on large rural lots and agricultural activities.

Planning Commission /Public Comments/Appeal

The questions raised by the Planning Commission and through public comments are discussed in more detail than the cover report below under **Project Analysis** (see Rural/Residential Character, Water and Wastewater, and Hydrology and Water Quality). Specific contentions raised by the Appellant are also addressed below in further detail under **Appeal**.

Project Analysis

The County received public comment expressing opposition to a proposed church at this location. Public comments received were generally related to traffic and site access, biological resources, water and wastewater, noise, exterior lighting, and rural/residential character. Each general group of comments is addressed below, along with County staff analysis of the project.

Traffic, Site Access, and Parking

Concerns raised regarded road conditions in and around the project area, increased traffic from project implementation, and site access. The subject property has existing access from Cachagua Road, a relatively low-traffic county road, and access to the project site would remain

unchanged. Monterey County RMA-Public Works reviewed the proposed project and the traffic report prepared for the project by Pinnacle Traffic Engineering (LIB150304), and concurred with the conclusions that the proposed use would not generate a significant number of new vehicle trips above the existing baseline, and would not result in a change in roadway level of service.

Policy C-1.1 of the 2010 Monterey County General Plan Circulation Element states that the acceptable level of service (LOS) for County roads and intersections shall be at LOS D unless otherwise established by an area plan. Policy CACH-2.6 of the Cachagua Area Plan establishes LOS C as the acceptable level of service for County roads and intersections within the Cachagua planning area. For Cachagua Road, LOS C would equate to 10,800 average daily trips (ADTs). RMA-Public Works performed traffic counts for Cachagua Road on August 4, 2015, resulting in a traffic count of 709 vehicles per day. The traffic report submitted for the project concluded that project implementation would increase the traffic counts by 112 ADTs. The combined existing and projected traffic trips would equal to 821 ADTs, well below 10,800 ADTs.

The roadways in the project area are not at degraded levels of service, and the proposed use would not cause any roadway or intersection level of service to be degraded. Consistent with Monterey County and the Transportation Agency for Monterey County regulations, the applicant would be required to pay fair-share traffic impact fees prior to issuance of construction permits (Condition Nos. 24 and 25). There are no changes proposed to the existing road or transportation circulation patterns in the project area, and implementation of the project would not impact emergency access.

The proposed parking for both existing and future church operations would be adequate pursuant to Monterey County Code (MCC) parking regulations. The parking area located at the southern edge of the site would provide 31 standard parking spaces and 2 ADA-accessible spaces (33 total parking spaces). After completion of the proposed site improvements, the use would require a minimum of 17 parking spaces for standard activities and 33 parking spaces for major activities.

RMA-Public Works provided data for traffic collisions reported on Cachagua Road, between Nason and Tassajara Roads. Five collisions were reported within this road segment from January 1, 2011 to December 31, 2016 (traffic data for 2017 is not yet available). All five reported accidents were attributed to improper/unsafe driver action, not road conditions. In addition, all of the collisions occurred closer to Tassajara Road, approximately 2.5 miles from the site of the proposed church.

Biological Resources

Concerns raised primarily regarded potential impacts to Cachagua Creek, which flows through the subject property. The County's environmental review analyzed potential biological impacts to Cachagua Creek from the proposed use and concluded that the project would not result in impacts to biological resources. The 2010 Monterey County General Plan Policies OS-5.3 and 5.4 require careful planning for the conservation and maintenance of critical habitat and that development avoid, minimize, and mitigate impacts to listed species and critical habitat to the extent feasible. The U.S. Fish and Wildlife Service designates the Carmel River watershed (Cachagua Creek is a tributary of the Carmel River) as critical habitat for the California red-legged frog (CRLF), California Tiger Salamander (CTS), and South-Central Coast Steelhead (steelhead). This designation indicates the potential presence of CRLF, CTS, and steelhead in

the larger watershed area. In the biological report prepared for the project (LIB150306), the biologist stated that there is limited riparian vegetation along the creek area of the property, no special status species were found on site, and project implementation would have no impact on critical habitat or special status species. Although there are no identified potential impacts, the biologist recommended as a precautionary measure that a pre-construction survey be conducted to ensure that CRLF or CTS are not present prior to excavation of the proposed basement level (Condition No. 13). Incorporating this recommendation as a condition of approval is consistent with General Plan Policy OS-5.3 to avoid or minimize potential impacts to riparian habitat and listed species.

Water Quality and Wastewater

Concerns were expressed regarding adequate water and wastewater capacity for the proposed use. Monterey County Environmental Health Bureau (EHB) and Water Resources Agency (WRA) reviewed the proposed use to determine consistency with applicable regulations and to identify any potential issues related to water and wastewater treatment. EHB and WRA concluded, based on a Preliminary Water Demand Estimate prepared for the project (LIB150305), that a sufficient water supply would be available after project implementation. The hydro-geologist who prepared the estimate concluded that water demand for the proposed project would be slightly less than the existing water demand. County staff determined the transient nature of a church use to be less intensive than a dwelling, and concurs with the conclusion that the project would not result in intensification of water use over the existing baseline residential use of the property.

Water quality analysis of the on-site well that serves the property indicates fluoride levels that exceed the allowed Maximum Contaminant Level (MCL). The Applicant submitted a water treatment feasibility analysis and preliminary information of the technical, managerial and financial (TMF) capability for a point of entry water treatment system. EHB reviewed this information and determined it to be sufficient foundational information demonstrating TMF capability. EHB has recommended Condition No. 15 to require installation of point of entry water treatment systems, and verification the treatment systems are working and producing potable water prior to commencement of use. EHB has also recommended Condition No. 14 to require the Applicant to establish a local small water system due to public accessibility. Ongoing treatment monitoring will be completed by the water system and regulated by EHB through the annual water system permit.

EHB also determined there are no issues regarding wastewater treatment requirements; however, project implementation would require expansion of the existing wastewater leach field area. Due to the limited area available for separation of wastewater leach fields from the groundwater source, the project has been conditioned (Condition No. 9) to comply with the recommendations of the percolation and geological reports (LIB150307 and LIB150308). Additionally, to ensure that wastewater flow can be absorbed by the on-site wastewater system, the permit sets limits on the number of persons on site at any given time (Condition No. 30).

Noise

Concerns raised regarded the potential for increased noise from the proposed use. Policy S-7.6 of the 2010 Monterey County General Plan requires submittal of an acoustical analysis for projects requiring environmental review if there would be a potential for the project to expose

sensitive receptors to new noise generators. Implementation of the proposed project would introduce increased noise levels associated with typical church activities such as singing, playing of acoustical instruments, and gathering of people both indoors and outdoors. However, the Noise Assessment Study (LIB160304) prepared for the project to assess potential noise impacts concluded that the projected noise generated at the site would remain within normally acceptable levels and result in less than significant impacts. Although not a significant impact, since the Applicant proposes to conduct outside services, County staff recommends a condition to not allow amplified music or sound on the exterior or grounds of the proposed church building (Condition No. 29).

Exterior Lighting

Concerns were raised regarding the potential impact of exterior lighting on surrounding parcels. The project would be subject to applicable policies of the Cachagua Area Plan and would be required to comply with the County's exterior lighting ordinance. Policy CACH-1.6 refers generally to allowing exterior lighting only to the level required to assure safety, and RMA-Planning recommends Condition No. 8, Exterior Lighting Plan, to ensure all proposed exterior lighting complies with MCC. The County's environmental review analyzed potential visual impacts, and concluded that the project would not result in impacts to visual resources. The site is not located in a designated visually sensitive area, and application of the exterior lighting condition would ensure exterior lighting is unobtrusive, down-lit, harmonious with the local area, and constructed or located so that only the intended area is illuminated and off-site glare is fully controlled.

Rural / Residential Character (Scope of Use)

Concerns were raised regarding the compatibility of the proposed use with applicable policies, and potential impacts to the rural/residential character of the surrounding area. Based on County staff review of the project application materials, no conflicts were found to exist with applicable plans and/or policies. The environmental analysis also concluded that the project would not result in impacts or that the potential impacts would be less than significant.

In response to Planning Commission questions about project scope, County staff analyzed the proposed scope of use in the environmental review document prepared for the project (see the Negative Declaration and Initial Study at **Attachment G**). The types of activities proposed by the Applicant were listed on page 3 of the Initial Study, and included activities typically associated with a church use. In the environmental analysis, County staff identified site constraints, such as on-site wastewater treatment capacity and available parking area, that could limit the scope or level of use for health and safety. County staff recommended Condition No. 30 to address the question regarding scope of use, including types of activities and a maximum capacity of 65 persons for standard weekly activities based on site constraints; with the proposed revision to this condition, major activities of up to 125 persons would be allowed within strict limits.

County staff also added a reference to the scope of use in the draft resolution (see Finding No. 2, Evidence a). In addition, RMA-Planning has recommended a condition to not allow amplified music or other forms of amplified sound on the exterior or grounds of the proposed church building (Condition No. 29) to facilitate retention of the existing rural character.

Hydrology, Erosion and Water Quality (Related to Parking Area Drainage)

The subject property contains highly erodible soils, and implementation of the project would result in an increase of impervious surface area and create the potential for sediment deposits within Cachagua Creek. RMA-Environmental Services reviewed the proposed project and recommended conditions requiring an erosion control plan, grading plan, geotechnical certification, and construction inspections (Condition Nos. 17, 18, 19, 20, 21, and 22) to ensure the effectiveness of drainage and erosion control measures. The project, as proposed and conditioned, would result in less than significant potential impacts to Cachagua Creek.

In addition, two conditions have been recommended by the Water Resources Agency to address a concern raised regarding the parking area drainage. Condition No. 27 would require the applicant to incorporate measures to minimize runoff and maximize stormwater infiltration, and Condition No. 28 would require an inspection of installed measures prior to final inspection of the construction permit. Although the project would not result in increased site runoff, the incorporation of bio-swales and gravel/mulch to the parking area surface is consistent with General Plan Policy OS-5.3 to avoid or minimize potential impacts to riparian habitat. The Applicant has also revised the parking plan to ensure all proposed parking spaces and driving lanes are at least 100 feet away from Cachagua Creek.

Environmental Review

Monterey County, as Lead Agency, prepared an Initial Study and Negative Declaration for this project (**Attachment G**). The Negative Declaration was filed with the County Clerk on September 16, 2016, and circulated for public review and comment from September 19 through October 19, 2016 (SCH No. 2016091045). The County received no comments from state or local agencies during the 31-day circulation period, but did receive seven comment letters from interested parties. The comment letters and the County responses to the submitted comments are at **Attachment H**. Based on staff review, the comments did not alter the conclusions in the Initial Study and Negative Declaration, and accordingly, staff recommends adoption of the Negative Declaration. Potential environmental impacts have been considered and analyzed, and determined to be less than significant. In addition, County staff has determined that due to intermittent use of the facility, major activities involving up to 125 persons on a limited basis would not result in intensification of water use over the existing baseline. Therefore, draft revisions made to Condition No. 30 allowing a higher level of use on a limited basis is consistent with the Initial Study prepared for the project, and would not trigger the need for additional environmental review.

Prior Project Recommendations and Decisions

Cachagua Land Use Advisory Committee.

County staff referred the project to the Cachagua Land Use Advisory Committee (LUAC) for review. The LUAC, at a duly-noticed public meeting on October 28, 2015, voted unanimously (5 – 0) to support the project as proposed (**Attachment F**). The LUAC also recommended the County condition the project to ensure it maintains the rural character of the community, and to address potential traffic and noise generated by the proposed use. The Initial Study analyzed potential traffic and noise impacts of the proposed use, and concluded that the project would not

result in impacts to traffic and that potential noise impacts would be less than significant. The County has applied two conditions of approval to require the applicant to pay the applicable traffic fees for the new use (Condition Nos. 24 and 25). The LUAC suggested the possible limitation of hours of operation and warning signage along Cachagua Road. However, the Initial Study concluded that potential noise impacts of the proposed use would be less than significant, so limiting hours of operation based on noise concerns was not warranted. Also, the environmental analysis concluded that the project would not result in impacts to traffic; therefore, warning signage is not warranted at this time.

Monterey County Planning Commission.

The Monterey County Planning Commission, at a duly-noticed public hearing on August 9, 2017, adopted a Negative Declaration and approved a Use Permit to allow the conversion of a single-family dwelling into a church, subject to 30 conditions of approval (Monterey County Planning Commission Resolution No. 17-030; **Attachment D**).

Appeal

The Appellant (First Baptist Church), pursuant to MCC Section 21.80.050.A, timely filed an appeal from the August 9, 2017, decision of the Planning Commission. The appeal challenges the Planning Commission's application of Condition No. 10, limiting the permit length to two (2) years, and Condition No. 30, limiting the maximum number of persons to 65. The appeal contends that the application of these two conditions occurred because there was a lack of a fair or impartial hearing, and that the findings or decision or conditions are not supported by the evidence (see **Attachment C** for the full text of the Appellant's contentions and supporting information). The text of the Appellant's specific contentions follow below, with a staff-proposed response for consideration by the Board.

- A. Appellant's Contention: "Condition 10: The Church believes Condition 10 should be deleted in its entirety. Condition 10 causes the Use Permit to expire in two years. This condition would require that the Church install a water system and make other improvements and then in less than two years apply for an entirely new Use Permit. That application would include new application fees (the application fee for this permit was \$16,420), may require additional studies, and would require public hearings and undoubtedly appeals, with their associated costs. This would all be with no assurance that the subsequent use permit would be approved. Such a condition is unprecedented in the County and places a substantial burden on the Church."**

The County's application of time limits or other restrictions on discretionary permits is not unprecedented, have been applied specifically to non-residential (e.g., public/quasi-public) uses proposed in residential or agricultural neighborhoods, and is well within the County's authority to assure public health and safety. In addition, at the Planning Commission's hearing on the application, the Applicant volunteered the idea of a review by the Planning Commission at the two year mark, although the Applicant did not agree to limiting the permit to two years in duration.

The County has imposed time limits, or other types of restrictions and limitations, on a proposed use when on-going review is deemed necessary to assure the proposed use is not detrimental to the area, and to review the adequacy of the conditions. See, e.g., Carmel Cottages/REF100047 (aka

Gamboa/PLN000357), a Use Permit for an assisted living facility. Examples of various types of limits and restrictions may also be found in various chapters of Monterey County Code (MCC) regarding land use, such as Chapter 21.64.095 (Cottage Industries), Chapter 21.64.100 (Bed and Breakfast Facilities), and 21.64.280 (Transient Use of Residential Property (Short-Term Rental)).

In the past, the County has granted numerous Use Permits and Special Permits for churches. Following are examples from applicable County land use records:

First Southern Baptist Church of Prunedale, File No. 9-2560, Resolution No. 5198, 1963
Pajaro Church, File No. B-508, 1963
Northside Pentecostal Church, File No. B-542, 1963
Community Baptist Church, File No. 9-2533, Resolution No. 5155, 1963
St. Phillips Lutheran Church, File and Resolution No. ZA-18, 1966
Prunedale Assembly of God, File and Resolution No. ZA-242, 1967
Moon Church, File No. PC0997, Resolution No. 70-319, 1970
Community Church of the Monterey Peninsula, File and Resolution No. ZA-5609, 1983
Believer's Church, File and Resolution No. ZA-6531, 1986 (Initial Study prepared)
New Harvest Christian Fellowship, File No. PC09325, Resolution No. 93-087, 1993

These permits were granted subject to various conditions of approval related to parking, access improvements, wastewater treatment system improvements, water system improvements, exterior lighting, drainage and erosion control, landscaping and fencing, and signage. However, based on research of County land use records, staff did not find any previously-approved permits for churches that applied a clearly-defined expiration date on the use. In addition, based on County staff review of the application materials and environmental analysis, the facts of this proposed use do not warrant the application of a 2-year permit expiration timeframe, yet do warrant a 3-year review with the ability of the Planning Commission to modify conditions to assure that the use is not detrimental to the area. Therefore, staff has prepared a draft revision to Condition No. 10 (**Attachment K**) removing the 2-year expiration timeframe, and replacing it with a requirement for Planning Commission review of the use and conditions in three years with the option to revise, modify, or change the conditions, or take other measures as deemed necessary, to assure that continuation of the use is not detrimental to the area.

B. Appellant's Contention: "Condition 30: The Church asks that Condition 30 be amended to add "...the maximum capacity shall not exceed a weekly average of 65 persons per day." The key factors for the Church's water, wastewater and traffic impacts were based on average daily or annual use. They were not measured by the maximum use for a single day. To limit use of the Church to a single day maximum of 65 persons places a limit on the use of the Church inconsistent with use permits that were found for other churches and is contrary to the nature of the typical operation and use of churches."

The granting of a Use Permit by the County is a discretionary action, and subject to conditions of approval based on site constraints to ensure that 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. In furtherance of this governmental interest, the scope or level of intensity of permitted activities has been limited based on identified property constraints and the associated environmental review.

In the environmental analysis, County staff identified site constraints, such as on-site wastewater treatment capacity and available parking area, that could limit the scope or level of use for health and safety. County staff included draft Condition No. 30 at the August 9th Planning Commission hearing to address the question regarding scope of use, including types of activities and a maximum capacity of 65 persons based on site constraints. The maximum capacity of 65 persons was based on the estimated amount of wastewater generated per user, per day. As proposed, the on-site wastewater treatment system (OWTS) would have a capacity of approximately 300 gallons per day, which equates to approximately 65 persons at just under 5 gallons per person per day. Hence, the maximum of 65 persons allowed on-site at any given time is based on the capacity of the OWTS. Based on established health and safety regulations, the original Condition No. 30 applied a reasonable limit on the scope of activities to assure the use was not detrimental to persons residing or working in the area of the proposed use. The limit was also reasonable by the Applicant's/Appellant's own estimate of current and future regular members or attendees, supported by documentation submitted by the Applicant to the County. The church currently has approximately 15 – 25 regular members/attendees, and would not likely increase to 65 regular members/attendees in the foreseeable future.

However, based on additional information provided by the Environmental Health Bureau (EHB), the OWTS could absorb additional flow on a periodic basis, provided the system is allowed sufficient recovery time between the periods of additional wastewater flow. Pursuant to this additional analysis, staff has prepared a draft revision to Condition No. 30 (**Attachment K**). The revised Condition No. 30 incorporates the additional information from EHB, combined with the proposed parking capacity, to allow major activities involving up to, but not exceeding, 125 persons on-site at any given time within specific limits. These major activities shall be limited to not more than two days per month, with at least six days between each major activity to ensure sufficient recovery time for the OWTS. If more frequent major activities were to be proposed, intensification of water would need to be evaluated and an updated initial study may be required.

The 125-person limit would also allow all parking to remain on-site and not overflow onto Cachagua Road. County staff has determined that this higher level of use on a periodic basis is consistent with the Initial Study prepared for the project, and would not trigger the need for additional environmental review. County staff also added a reference to the scope of use in the draft resolution (see Evidence a of Finding No. 1, Consistency), and recommended Condition No. 29 to prohibit amplified music or other forms of amplified sound on the exterior of buildings or grounds.