

Attachment C

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ORDINANCE NO. _ _____

**AN ORDINANCE OF THE COUNTY OF MONTEREY, STATE OF CALIFORNIA,
AMENDING SECTION 20.147.040.D.2 OF TITLE 20 (MONTEREY COUNTY
COASTAL IMPLEMENTATION PLAN) OF THE MONTEREY COUNTY CODE
RELATING TO REGULATIONS FOR DEVELOPMENT IN THE DEL MONTE
FOREST LAND USE PLAN AREA.**

County Counsel Summary

This ordinance amends the standards for development within Monterey cypress habitat in the Del Monte Forest Land Use Plan area of the coastal zone of the County of Monterey. Specifically, the ordinance amends Subsection 2 of Subsection D of Section 20.147.040 of Part 5, Regulations for Development in the Del Monte Forest Land Use Plan Area, of Title 20 (Monterey County Coastal Implementation Plan) of the Monterey County Code. The amendment establishes new procedures and requirements for development in and adjacent to Monterey cypress trees and habitat.

The Board of Supervisors of the County of Monterey ordains as follows:

SECTION 1. Subsection 2 of Subsection D of Section 20.147.040 of Part 5, Regulations for Development in the Del Monte Forest Land Use Plan Area, of Title 20 (Monterey County Coastal Implementation Plan) of the Monterey County Code is amended to read as follows:

2. Monterey Cypress Habitat

(a) Indigenous Monterey cypress habitat is an environmentally sensitive habitat area within the Del Monte Forest, and is presumed present within and adjacent to the area mapped in LUP Figure 2a. All proposed development in this area shall be accompanied by a coordinated biological/arborist report in consultation with the Del Monte Forest Conservancy and consistent with Section 20.147.040.A, a primary purpose of which shall be to determine: the Monterey cypress habitat portion of the site; the “critical habitat area” for the site (i.e., the portion of Monterey cypress habitat on the site that is to be avoided to protect against potential damage or degradation of cypress habitat, including the microhabitat of individual cypress trees); the relative habitat sensitivity of all parts of the site, ranked from the highest sensitivity to the lowest sensitivity in terms of potential adverse impacts from development; the ways in which the cypress habitat portion of the site, the critical habitat area and the relative habitat sensitivity rankings relate to adjacent and surrounding habitat areas; and the measures to best protect Monterey cypress habitat on the site and overall, including on-site (and potentially offsite) restoration and enhancement measures. The critical habitat area shall at a minimum be defined by a 10-foot buffer applied to the outermost driplines (i.e., the tree canopies) of all of the Monterey cypress trees on and adjacent to the site, but shall also include any other areas on site that are deemed critical to preservation of existing cypress trees on and off site, or that are to be

avoided due to high habitat sensitivity and/or cypress habitat preservation purposes for other reasons.

(b) Within and adjacent to their indigenous range (see LUP Figure 2a), indigenous Monterey cypress habitat shall be protected to the maximum extent possible. All development in and adjacent to the Monterey cypress habitat mapped in Figure 2a shall be carefully sited and designed to avoid adverse impacts and potential damage or degradation of Monterey cypress habitat, including the microhabitat of individual cypress trees, and shall be required to include measures identified pursuant to the biological/arborist report that will protect and enhance Monterey cypress habitat values. These measures may include, but are not limited to: siting development in any non-Monterey cypress portions of the site to the maximum degree possible; prohibiting all irrigation of Monterey cypress habitat areas; improving growing conditions to provide a bare, mineral soil necessary for seed germination; and increasing sunlight to prevent soil borne fungi from inhabiting seedlings. Trees identified by the biological/arborist as at risk from construction shall be surrounded by exclusionary fencing located outside of the critical habitat area. Grading, demolition, and construction permits shall not be issued and construction shall not commence until it is confirmed in writing by the project biologist/arborist that all tree protection measures have been installed, and that a preconstruction cypress habitat protection meeting (with the project general contractor, demolition and grading subcontractors, the project civil engineer, and the biologist/arborist, as applicable) has been completed. All use and development in or adjacent to identified Monterey cypress habitat areas shall be compatible with the objective of protecting this environmentally sensitive coastal resource.

(c) All improvements (such as structures and driveways, etc.) shall be carefully sited and designed to avoid potential damage and/or degradation of Monterey cypress habitat, including the micro-habitat of individual trees, including as described below.

(1) On undeveloped lots (i.e., those without an existing legally established residence), within the perimeter of the critical habitat area for a site, development (including removal of native trees or other indigenous vegetation, grading, paving, building construction activity, landscape alterations, and summer watering) shall be prohibited, other than: development associated with cypress habitat enhancement and/or restoration; and on the inland side of 17-Mile Drive only: driveways, underground residential utilities and fences (which shall be designed with see-through materials or spaced in a manner to protect views of the natural habitat from 17-Mile Drive (e.g., wrought iron with openings)), and only if this area cannot possibly be avoided and if such development does not harm individual cypress trees. All otherwise allowable development shall be sited, designed, and limited as necessary to protect cypress trees and habitat as much as possible, including being sited in the non-cypress habitat portions of the site (if there are any) to the maximum degree possible, and all such development (e.g., residential structures, hardscape (such as decks, patios, driveways, paths, etc.), and landscaping) shall be confined within a defined and surveyed “development envelope”. With the exceptions specified above, the development envelope shall contain all improvements and structural development (i.e., all uses that are not Monterey cypress habitat), shall be located entirely outside of the critical habitat area, and, within the Monterey cypress habitat portion of the site, shall be no larger than 15% of the cypress habitat area. Open space

conservation and scenic easements are required for all undeveloped areas of the Monterey cypress habitat area (i.e., all Monterey cypress habitat outside of the defined development envelope), and such easements shall be secured consistent with LUP Policy 13. In addition to the above described requirements, for all development on undeveloped lots containing cypress habitat, including for development approved pursuant to Section 20.02.060(B), the restoration and siting requirements specified in Sections 20.147.040(D)(2)(c)(2)(d), (e), and (f) shall also apply.

(2) On developed lots (i.e., those with an existing legally established residence), new and/or modified development shall be located within the existing legally established structural and/or hardscape area (i.e., all areas of the site covered with a structure, or covered by pervious or impervious hardscape (such as decks, patios, driveways, and paths, but not including landscaped areas, fence areas, or underground or over ground utility areas)) and outside the critical habitat area.

New and/or modified development outside of such areas is prohibited unless each of the following findings can be made:

(a) Construction, use, and maintenance of the new and/or modified development shall significantly reduce existing hardscape;

(b) Construction, use, and maintenance of the new and/or modified development will accommodate the health and vitality, and will not harm, any existing individual Monterey cypress tree regardless of size. This determination will be made based on the type of development, the particulars of its siting and design, and its location in relation to individual trees, the critical habitat area, higher sensitivity portions of the site, and adjacent and surrounding habitat areas);

(c) The new and/or modified development will be confined within a defined and surveyed development envelope. The development envelope shall contain all improvements and structural development (i.e., all uses and development that are not Monterey cypress habitat), and shall, within the Monterey cypress habitat area portion of the site, be no larger than 15% of the cypress habitat area; however, limited additional coverage above 15% may be allowed for a driveway only if an existing driveway cannot be reconfigured to achieve full compliance with this standard, in which case the existing driveway shall be reduced in width, length, and overall coverage as much as possible. All development on the site:

(1) Shall significantly reduce hardscape;

(2) Shall be sited in the non-cypress habitat portions of the site (if there are any) to the maximum degree possible; and

(3) Shall be sited in such a way as to maximize Monterey cypress habitat values, including in relation to adjacent and surrounding areas (e.g., clustering new and/or modified development on the site near to existing and/or adjacent residential developments so as to provide as much of a contiguous, undisturbed, and unfragmented habitat area as possible on and off site);

(d) All Monterey cypress habitat area outside of the approved development envelope shall be: restored to and/or enhanced as high value and self-functioning Monterey cypress habitat (including through measures identified pursuant to the biological/arborist report, such as removal of exotics species, improving growing conditions to provide a bare, mineral soil necessary for seed germination, and increasing

sunlight to prevent soil borne fungi from inhabiting seedlings), with all initial restoration/enhancement initialized prior to occupancy of any approved development; and placed within an open space conservation and scenic easement secured consistent with LUP Policy 13;

(e) All areas of new coverage (i.e., areas that would be covered with structures and/or hardscape and/or other non-cypress habitat restoration and enhancement that are not already so covered in the existing legally established baseline condition) shall be offset through restoration and/or enhancement (as high value and self-functioning Monterey cypress habitat) of an off-site area located within the Monterey cypress habitat area mapped in Figure 2a at a ratio of 2:1 (and/or payment of a mitigation fee, commensurate with the cost to restore/enhance such an area, to a public agency or private group acceptable to the County effectively able to administer such a fee and to implement such measures). Such off-site restoration/enhancement areas shall be selected for their potential to result in the greatest amount of overall benefit to the native Monterey cypress habitat in the Del Monte Forest, and all initial restoration/enhancement of the offsite area shall be initialized prior to occupancy of any approved development or, in the case of a fee, the fee paid prior to issuance of any demolition, grading, or construction permits;

(f) The new and/or modified development has been sited and designed to avoid the critical habitat area and the most sensitive habitat parts of the site as much as possible (including through required siting in the non-cypress habitat portions of the site (if there are any) to the maximum degree possible), and to minimize any incursion into this area as much as possible. If any non-habitat related development is proposed within the defined critical habitat area, the biological/arborist report must identify all possible alternatives to avoid such siting, and must provide alternative construction methods or preconstruction treatments to avoid impacts in the case such development ultimately proves unavoidable. The alternative methods and treatments can include supplemental irrigation, hand digging or grading, root pruning or modification to traditional construction methods, such as spanning roots, pier and above grade beams or cantilevering structures. However, in no case shall Monterey cypress trees be removed unless they are dead or declining, and the biological/arborist report and the approving body conclude removal will further enhance Monterey cypress habitat values or avoid adverse impacts, potential damage, or degradation to both healthy individual cypress trees and cypress habitat; and

(g) The project results in greater cypress habitat value on the site (and in relation to adjacent and surrounding habitat areas) than the existing baseline habitat value, and the project enhances Monterey cypress habitat values overall.

(d) The Del Monte Forest Conservancy shall be encouraged to maintain an interpretive and educational program at Crocker Grove. Said program shall be under careful supervision and designed for the protection of the indigenous Monterey cypress habitat. The type and intensity of access to Crocker Grove shall be carefully regulated by the Del Monte Forest Conservancy.

SECTION 2. SEVERABILITY. If any section, subsection, sentence, clause or phrase

of this Ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this Ordinance. The Board of Supervisors hereby declares that it would have passed this Ordinance and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared invalid.

SECTION 3. EFFECTIVE DATE. This Ordinance shall become effective on the 31st day following its adoption or the day certification by the California Coastal Commission becomes final and effective, whichever occurs later.

PASSED AND ADOPTED this ____ day of _____, _____, by the following vote:

AYES:

NOES:

ABSENT:

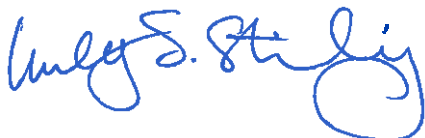
ABSTAIN:

Mary L. Adams, Chair
Monterey County Board of Supervisors

A T T E S T:

GAIL T. BORKOWSKI,
Clerk of the Board of Supervisors

By: _____
Deputy

APPROVED AS TO FORM

WENDY S. STRIMLING
Senior Deputy County Counsel

ORDINANCE NO. _____

AN ORDINANCE OF THE COUNTY OF MONTEREY, STATE OF CALIFORNIA, AMENDING SECTION 20.147.040.D.2 OF TITLE 20 (MONTEREY COUNTY COASTAL IMPLEMENTATION PLAN) OF THE MONTEREY COUNTY CODE RELATING TO REGULATIONS FOR DEVELOPMENT IN THE DEL MONTE FOREST LAND USE PLAN AREA.

County Counsel Summary

This ordinance amends the standards for development within Monterey cypress habitat in the Del Monte Forest Land Use Plan area of the coastal zone of the County of Monterey. Specifically, the ordinance amends Subsection 2 of Subsection D of Section 20.147.040 of Part 5, Regulations for Development in the Del Monte Forest Land Use Plan Area, of Title 20 (Monterey County Coastal Implementation Plan) of the Monterey County Code. The amendment establishes new procedures and requirements for development in and adjacent to Monterey cypress trees and habitat.

The Board of Supervisors of the County of Monterey ordains as follows:

SECTION 1. Subsection 2 of Subsection D of Section 20.147.040 of Part 5, Regulations for Development in the Del Monte Forest Land Use Plan Area, of Title 20 (Monterey County Coastal Implementation Plan) of the Monterey County Code is amended to read as follows:

2. Monterey Cypress Habitat

(a) Indigenous Monterey cypress habitat is an environmentally sensitive habitat area within the Del Monte Forest, and is presumed present within and adjacent to the area mapped in LUP Figure 2a. All proposed development in this area shall be accompanied by a coordinated biological/arborist report in consultation with the Del Monte Forest Conservancy and consistent with a biological report pursuant to Section 20.147.040.A., a primary purpose of which shall be to determine: the Monterey cypress habitat portion of the site; the “critical habitat area” for the site (i.e., the portion of Monterey cypress habitat on the site that is to be avoided to protect against potential damage or degradation of cypress habitat, including the microhabitat of individual cypress trees); the relative habitat sensitivity of all parts of the site, ranked from the highest sensitivity to the lowest sensitivity in terms of potential adverse impacts from development; the ways in which the cypress habitat portion of the site, the critical habitat area and the relative habitat sensitivity rankings relate to adjacent and surrounding habitat areas; and the measures to best protect Monterey cypress habitat on the site and overall, including on-site (and potentially offsite) restoration and enhancement measures. The critical habitat area shall at a minimum be defined by a 10-foot buffer applied to the outermost driplines (i.e., the tree canopies) of all of the Monterey cypress trees on and adjacent to the site, but shall also include any other areas on site that are deemed critical to preservation of existing cypress trees on and

off site, or that are to be avoided due to high habitat sensitivity and/or cypress habitat preservation purposes for other reasons.

(b) Within and adjacent to their indigenous range (see LUP Figure 2a), indigenous Monterey cypress habitat trees shall be protected to the maximum extent possible. All development in and adjacent to the that would impact Monterey cypress ~~trees and/or Monterey cypress~~ habitat mapped in Figure 2a in this area shall be carefully sited and designed to avoid adverse impacts and potential damage or degradation of to individual cypress and Monterey cypress habitat, including the microhabitat of individual cypress trees, and shall be required to include measures identified pursuant to the biological/arborist report that will protect and enhance Monterey cypress habitat values. These measures may include, but are not limited to: siting development in any non-Monterey cypress portions of the site to the maximum degree possible; prohibiting all irrigation of Monterey cypress habitat areas; improving growing conditions to provide a bare, mineral soil necessary for seed germination; and increasing sunlight to prevent soil borne fungi from inhabiting seedlings. Trees identified by the biological/arborist as at risk from construction shall be surrounded by exclusionary fencing located outside of the critical habitat area. Grading, demolition, and construction permits shall not be issued and construction shall not commence until it is confirmed in writing by the project biologist/arborist that all tree protection measures have been installed, and that a preconstruction cypress habitat protection meeting (with the project general contractor, demolition and grading subcontractors, the project civil engineer, and the biologist/arborist, as applicable) has been completed. ~~(e)~~ All use and development in or adjacent to indigenous identified Monterey cypress habitat areas shall be compatible with the objective of protecting this environmentally sensitive coastal resource.

~~(d)~~(c) All improvements (such as structures and driveways, etc.) shall be carefully sited and designed to avoid potential damage and/or degradation of Monterey cypress habitat, including the micro-habitat of individual trees, including as described below and must be located within existing hardscaped areas and outside of the dripline of individual cypress trees.

(1) On undeveloped lots (i.e., those without an existing legally established residence), within the perimeter of the critical habitat area for a site, development (including removal of native trees or other indigenous vegetation, grading, paving, building construction activity, landscape alterations, and summer watering) shall be prohibited, other than: development associated with cypress habitat enhancement and/or restoration; and on the inland side of 17-Mile Drive only: driveways, underground residential utilities and fences (which shall be designed with see-through materials or spaced in a manner to protect views of the natural habitat from 17-Mile Drive (e.g., wrought iron with openings)), and only if this area cannot possibly be avoided and if such development does not harm individual cypress trees. All otherwise allowable development shall be sited, designed, and limited as necessary to protect cypress trees and habitat as much as possible, including being sited in the non-cypress habitat portions of the site (if there are any) to the maximum degree possible, and all such development (e.g., residential structures, hardscape (such as decks, patios, driveways, paths, etc.), and landscaping) shall be confined within a defined and surveyed “development envelope”. With the exceptions specified above, the development envelope shall contain all improvements and structural development (i.e., all uses that are not Monterey cypress habitat), shall be located entirely outside of the critical habitat area, and, within the Monterey cypress

habitat portion of the site, shall be no larger than 15% of the cypress habitat area. Open space conservation and scenic easements are required for all undeveloped areas of the Monterey cypress habitat area (i.e., all Monterey cypress habitat outside of the defined development envelope), and such easements shall be secured consistent with LUP Policy 13. In addition to the above described requirements, for all development on undeveloped lots containing cypress habitat, including for development approved pursuant to Section 20.02.060(B), the restoration and siting requirements specified in Sections 20.147.040(D)(2)(c)(2)(d), (e), and (f) shall also apply.

(2) On developed lots (i.e., those with an existing legally established residence), new and/or modified development shall be located within the existing legally established structural and/or hardscape area (i.e., all areas of the site covered with a structure, or covered by pervious or impervious hardscape (such as decks, patios, driveways, and paths, but not including landscaped areas, fence areas, or underground or over ground utility areas)) and outside the critical habitat area.

New and/or modified development outside of such areas is prohibited unless each of the following findings can be made:

(a) Construction, use, and maintenance of the new and/or modified development shall significantly reduce existing hardscape;

(b) Construction, use, and maintenance of the new and/or modified development will accommodate the health and vitality, and will not harm, any existing individual Monterey cypress tree regardless of size. This determination will be made based on the type of development, the particulars of its siting and design, and its location in relation to individual trees, the critical habitat area, higher sensitivity portions of the site, and adjacent and surrounding habitat areas);

(c) The new and/or modified development will be confined within a defined and surveyed development envelope. The development envelope shall contain all improvements and structural development (i.e., all uses and development that are not Monterey cypress habitat), and shall, within the Monterey cypress habitat area portion of the site, be no larger than 15% of the cypress habitat area; however, limited additional coverage above 15% may be allowed for a driveway only if an existing driveway cannot be reconfigured to achieve full compliance with this standard, in which case the existing driveway shall be reduced in width, length, and overall coverage as much as possible. All development on the site:

(1) Shall significantly reduce hardscape;

(2) Shall be sited in the non-cypress habitat portions of the site (if there are any) to the maximum degree possible; and

(3) Shall be sited in such a way as to maximize Monterey cypress habitat values, including in relation to adjacent and surrounding areas (e.g., clustering new and/or modified development on the site near to existing and/or adjacent residential developments so as to provide as much of a contiguous, undisturbed, and unfragmented habitat area as possible on and off site);

(d) All Monterey cypress habitat area outside of the approved development envelope shall be: restored to and/or enhanced as high value and self-functioning Monterey cypress habitat (including through measures identified pursuant to the

biological/arborist report, such as removal of exotics species, improving growing conditions to provide a bare, mineral soil necessary for seed germination, and increasing sunlight to prevent soil borne fungi from inhabiting seedlings), with all initial restoration/enhancement initialized prior to occupancy of any approved development; and placed within an open space conservation and scenic easement secured consistent with LUP Policy 13;

(e) All areas of new coverage (i.e., areas that would be covered with structures and/or hardscape and/or other non-cypress habitat restoration and enhancement that are not already so covered in the existing legally established baseline condition) shall be offset through restoration and/or enhancement (as high value and self-functioning Monterey cypress habitat) of an off-site area located within the Monterey cypress habitat area mapped in Figure 2a at a ratio of 2:1 (and/or payment of a mitigation fee, commensurate with the cost to restore/enhance such an area, to a public agency or private group acceptable to the County effectively able to administer such a fee and to implement such measures). Such off-site restoration/enhancement areas shall be selected for their potential to result in the greatest amount of overall benefit to the native Monterey cypress habitat in the Del Monte Forest, and all initial restoration/enhancement of the offsite area shall be initialized prior to occupancy of any approved development or, in the case of a fee, the fee paid prior to issuance of any demolition, grading, or construction permits;

(f) The new and/or modified development has been sited and designed to avoid the critical habitat area and the most sensitive habitat parts of the site as much as possible (including through required siting in the non-cypress habitat portions of the site (if there are any) to the maximum degree possible), and to minimize any incursion into this area as much as possible. If any non-habitat related development is proposed within the defined critical habitat area, the biological/arborist report must identify all possible alternatives to avoid such siting, and must provide alternative construction methods or preconstruction treatments to avoid impacts in the case such development ultimately proves unavoidable. The alternative methods and treatments can include supplemental irrigation, hand digging or grading, root pruning or modification to traditional construction methods, such as spanning roots, pier and above grade beams or cantilevering structures. However, in no case shall Monterey cypress trees be removed unless they are dead or declining, and the biological/arborist report and the approving body conclude removal will further enhance Monterey cypress habitat values or avoid adverse impacts, potential damage, or degradation to both healthy individual cypress trees and cypress habitat; and

(g) The project results in greater cypress habitat value on the site (and in relation to adjacent and surrounding habitat areas) than the existing baseline habitat value, and the project enhances Monterey cypress habitat values overall.

~~(e) Removal of native trees or other indigenous vegetation, grading, paving, building construction activity, landscape alterations and summer watering are all prohibited within the perimeter of the identified cypress habitat area for a site, including at a minimum as defined by the driplines of the outermost indigenous Monterey cypress trees on a site.~~

~~(f) On the inland side of 17 Mile Drive within the indigenous Monterey cypress habitat area, driveways are allowed only where the driveway does not come within the dripline of individual cypress trees.~~

~~(g) Within the indigenous Monterey cypress habitat area:~~

~~(1) Underground residential utilities are allowed on the inland side of 17 Mile Drive.~~

~~(1) Fences shall be designed with see-through materials or spaced in a manner to protect views of the natural habitat from 17 Mile Drive (e.g., wrought iron with openings).~~

~~(h) Open space conservation and scenic easements are required for all undeveloped areas of a parcel within the Monterey cypress habitat area.~~

~~(i)(d)~~ The Del Monte Forest Foundation Conservancy shall be encouraged to maintain an interpretive and educational program at Crocker Grove. Said program shall be under careful supervision and designed for the protection of the indigenous Monterey cypress habitat. The type and intensity of access to Crocker Grove shall be carefully regulated by the Del Monte Forest Conservancy.

SECTION 2. SEVERABILITY. If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this Ordinance. The Board of Supervisors hereby declares that it would have passed this Ordinance and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared invalid.

SECTION 3. EFFECTIVE DATE. This Ordinance shall become effective on the 31st day following its adoption or the day certification by the California Coastal Commission becomes final and effective, whichever occurs later.

PASSED AND ADOPTED this ____ day of _____, _____, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Chair, Monterey County Board of Supervisors

A T T E S T:

GAIL T. BORKOWSKI,
Clerk of the Board of Supervisors

By: _____
Deputy

APPROVED AS TO FORM

WENDY S. STRIMLING
Senior Deputy County Counsel