

Attachment A

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ATTACHMENT A DISCUSSION

LOCAL COASTAL PROGRAM AMENDMENT (PLN150149)

DEL MONTE FOREST LAND USE PLAN POLICY 20 & COASTAL IMPLEMENTATION PLAN (TITLE 20) PART 5, SECTION 20.147.040.D.2

Local Coastal Program Amendment Description and Background

Policy 20 within the Del Monte Forest Area Land Use Plan (LUP) identifies the indigenous Monterey cypress habitat as environmentally sensitive habitat area (ESHA) and regulates use and development in or adjacent to areas of indigenous Monterey cypress habitat. The policy requires development to be compatible with the objective of protecting this environmentally sensitive coastal resource. The current text of Policy 20 was adopted by the Board of Supervisors on January 24, 2012, and certified by the California Coastal Commission (CCC) on May 9, 2012. The CCC certification was acknowledged on May 22, 2012, by the Board of Supervisors with the amendment of the Del Monte Forest LCP. The amended LCP became effective on June 22, 2012.

The original 1984 Policy 20 (previously identified as Policy 21 in the LUP adopted in 1984) language stated, “[w]ithin the perimeter of the habitat area as defined by the driplines of the outermost indigenous Monterey cypress trees on the site, removal of native trees or other indigenous vegetation, grading, paving, building construction activity, landscape alterations and summer water shall be prohibited.” This text effectively prohibited all development (or any changes to existing development) west of 17-Mile Drive between Pescadero Point and Cypress Point.

The practical application of this policy by both the County and the Coastal Commission allowed projects on developed parcels to proceed so long as the proposed development did not increase hardscape coverage or harm any cypress trees. This “No Net Loss” interpretation was the standard applied to approve numerous demolition and rebuild projects within the Monterey cypress habitat; including Roberts (PLN040662), Barrett (PLN040727), Blackstock (PLN070289), and Byrne (PLN100579).

In the 2012 LCP Amendment, Policy 20 was modified to maintain the same prohibition on development within the driplines of indigenous Monterey cypress trees, but also suggests that the only remodels in native cypress habitat area that can be approved are those which stay within existing hardscape footprints. The undesired consequence of this language change is a lack of flexibility to consider projects which may modify existing encroachments into native cypress habitat but would materially benefit the overall habitat. This limits the County and Coastal Commission ability to approve projects which would have a net benefit, but would modify the existing hardscape footprint. The Planning Commission has already approved three projects based upon their ability to materially benefit the overall Cypress habitat despite some change in their existing legal hardscape footprint. One of these projects (Lundquist/PLN110114) was appealed by the California Coastal Commission, while the two other projects (3196 LLC/PLN150548 and El Why Square LLC/PLN160117) are subject to potential appeal based upon consistency with the

existing Policy 20.

The LCP's primary objective is to, “[p]rotect, maintain, and, where feasible, enhance and restore the overall quality of the coastal zone environment and its natural and artificial resources.” Under this policy there is room to allow modifications to the footprint of development where there is a material enhancement of the overall habitat value. The proposed modification to Policy 20 and the associated Coastal Implementation Plan would establish the criteria to evaluate such projects and codify best management practices to achieve these restoration objectives.

Amendment and Coastal Commission Modifications

The LCP Amendment would amend Policy 20 of the LUP (**Exhibit 1 to Attachment B**) and Section 20.147.040.D.2 (**Attachment C**) of Part 5 of the Monterey County Coastal Implementation Plan (CIP) regulating development within the indigenous Monterey cypress habitat (see Vicinity Map at **Attachment G**). Changes to the text would further focus the LUP as a policy document, and expand and clarify the implementing detail in the CIP to make the development standards and requirements clear.

On December 6, 2016, the Board of Supervisors adopted a Resolution of Intent to approve the amendments (**Attachment F**), and directed County staff to further refine the text of this amendment to address written comments from the CCC staff. On May 10, 2017, the CCC approved the LCP amendment with modifications coordinated with County staff (**Attachment E**).

Substantive modifications requested by the CCC to address their prior November 8, 2016 comments to the Board of Supervisors include the following:

- increasing the protection area of each individual Cypress tree from just the existing dripline canopy to the existing dripline canopy plus an additional 10-foot buffer;
- where feasible, limiting total site coverage (comprising structural and hardscape/softscape coverage) to 15 percent of the cypress habitat area; and
- expanding the definition of the existing 15 percent structural coverage limitation to also include hardscape and softscape coverage.

The proposed CIP amendment provides additional clarification and specification of the existing Monterey cypress habitat protection framework by codifying and clearly articulating best management practices which are already being incorporated into project approvals within the native Monterey Cypress habitat area. Specifically, the amended text would:

- Require submittal of coordinated arborist and biological technical reports in consultation with the Del Monte Forest Conservancy which identify critical habitat area, rank habitat sensitivity, and recommend the best measures to restore and enhance the habitat value of the entire site.
- Expand the existing dripline tree protection area to include an additional 10-foot buffer beyond the canopy dripline.
- Improve tree protection measures through prescribed alternative construction methods, where recommended, to avoid individual Cypress tree impacts.
- Require a pre-construction habitat protection meeting to make sure tree protection requirements are properly implemented.
- Direct development to the least sensitive area on the parcel.

- On developed lots, require new and/or modified development to be located within the existing legally established structural and/or hardscaped area and outside the critical habitat area, unless specific findings can be made.
- Require restoration and enhancement of Monterey cypress habitat which promotes germination as opposed to just removing exotic plant species.
- Only recognize existing legal hardscape as opposed to unpermitted hardscape.

The intent of the CIP is to provide the policy-implementing instructions in a manner that clearly defines the requirements and expectations of property owners, consultants, and the County. The proposed amendment ensures that sensitive Monterey cypress growing within its indigenous range, as mapped in Figure 2a of the Del Monte Forest LUP, will be protected and preserved, while allowing residential development, including limited modifications to legally-established development which will materially enhance the Cypress habitat. These objectives will be accomplished by carefully siting and designing development within the Monterey cypress habitat to avoid adverse impacts, and potential damage and degradation to both individual Monterey cypress trees and cypress habitat. The proposed amendment will over the long-term increase the protection, preservation, and restoration requirements for undeveloped and previously developed parcels located within the Del Monte Forest native Monterey cypress habitat area.

On October 25, 2017, the Planning Commission voted unanimously (6 - 0) to recommend the Board approve the amendments with the modifications suggested by the CCC (**Attachment D**). The Planning Commission also recommended a minor change to emphasize the following text of the ordinance under Section 20.147.040(D)(2)(c)(2)(a) to highlight the importance of reducing the existing hardscape on developed lots:

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

This added reference to reduction of hardscape is consistent with the CCC-approved wording, and is retained in Section 20.147.040(D)(2)(c)(2)(c)(1). CCC staff confirmed that the change recommended by the Planning Commission is a non-substantive change that CCC staff believes satisfies the CCC's certification order.

Affected Projects

There are several projects that were previously approved by the Planning Commission, but are dependent on the amendment to Policy 20 to avoid appeal by the California Coastal Commission. These projects include two acres of native Monterey cypress habitat restoration. Coastal Commission staff supported these projects as "good projects" provided that the amendment to Policy 20 is adopted.

Lundquist (PLN110114) was approved by the Planning Commission in March 2013, because of the project's significant habitat restoration opportunities, but was appealed by the Coastal Commission based upon compliance with existing Policy 20 and public viewshed protection policies. Following amendments to the original Lundquist approval, Coastal Commission staff supports resolution of this appeal as soon as the amendment to Policy 20 is adopted.

3196 LLC (PLN150548) was approved by the Planning Commission on February 22, 2017 as consistent with the current Policy 20 text based upon significant habitat restoration and conservation easement expansions. However, Coastal Commission staff notified the applicant that this approval will be subject to Coastal Commission appeal without an amendment to Policy 20.

El Why Square LLC (PLN160117) was recently approved by the Planning Commission in recognition of the project's potential to meaningfully restore 1.6 acres of Cypress habitat. However, despite the restoration potential, this project would be subject to the same appeal as 3196 LLC.

Coastal Act Consistency Analysis of the Proposed LCP Amendment

The relevant analysis for the proposed LCPA is the consistency of the LCP with the Coastal Act. The standard of review for the Land Use Plan (LUP) Amendment is the Coastal Act itself. The standard of review for proposed modifications to the Coastal Implementation Plan (CIP)/Title 20 is that they must be consistent with and adequate to carry out the policies of the LUP. In general, Coastal Act policies set broad statewide directions that are generally refined by local government LUP policies, giving local guidance regarding the kinds, locations, and intensities of coastal development. Typically, CIP and zoning standards then further refine LUP policies to provide guidance.

The proposed LCP Amendment has been designed so that its implementation is consistent with the past practices of the County and Coastal Commission. Overall, the proposed LCP Amendment is more protective of the natural resources of the Del Monte Forest than the existing LCP, specifically with regard to the protection, enhancement, restoration, and maintenance of Monterey cypress habitat. The LCP Amendment ensures a planned and balanced approach to development and preservation within the indigenous Monterey cypress habitat area in the Del Monte Forest.

The following provides a consistency analysis of the proposed DMF LCP Amendment with the Coastal Act:

- Coastal Act, Chapter 3, Article 2, Public Access: "Development does not interfere with the public's access to the sea." Consistent: As proposed, the LCP Amendment will not have any impact on existing access policies or development regulations. The amendment does not include construction or land alterations that affect scenic vistas, and will not degrade the visual access to the shoreline.
- Coastal Act, Chapter 3, Article 3, Recreation: "Coastal areas suited for recreation shall be protected." Consistent: As proposed, the LCP Amendment will not have any impact on existing recreation policies or development regulations. The proposed amendment does not include construction or land alterations that will increase the use of existing neighborhood and regional parks, or require the construction of new recreational facilities.
- Coastal Act, Chapter 3, Article 4, Marine Environment: "Marine resources shall be maintained, enhanced and restored." Consistent: DMF LUP policies and CIP regulations relative to the protection of marine resources are not affected by the proposed amendment. Moreover, the proposed amendment would result in the protection of additional Monterey cypress forest, which would provide increased area for natural water infiltration. Preserving more of the native Monterey cypress habitat area will not violate water quality or waste discharge requirements, deplete groundwater supplies, alter the drainage pattern of the area, create run off, or degrade water quality.
- Coastal Act, Chapter 3, Article 5, Land Resources: "Environmentally sensitive habitat shall be protected." Consistent: The proposed amendment ensures that sensitive Monterey cypress habitat growing within its indigenous range will be protected and preserved. The proposed amendment will increase the protection, preservation, and restoration requirements for undeveloped and previously developed parcels located within the Del Monte Forest indigenous Monterey

cypress habitat area.

- Coastal Act, Chapter 3, Article 6, Development: “New development shall be located within or near existing developed areas. Scenic resources are to be preserved.” Consistent: The proposed amendment ensures a planned and balanced approach to development within the indigenous Monterey cypress habitat area. The amendment is intended to protect the habitat to the maximum extent feasible. Careful siting and design will avoid adverse impacts to Monterey cypress habitat and individual Monterey cypress, while allowing residential development, including existing modifications to prior legally established developments, on legal parcels within the mapped area.

The California Coastal Commission certified the amendments to the Land Use Plan and the Coastal Implementation Plan with modifications that meet the requirements of and are in conformity with the policies of Chapter 3 of the Coastal Act.

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