

## EXHIBIT A PROJECT DISCUSSION

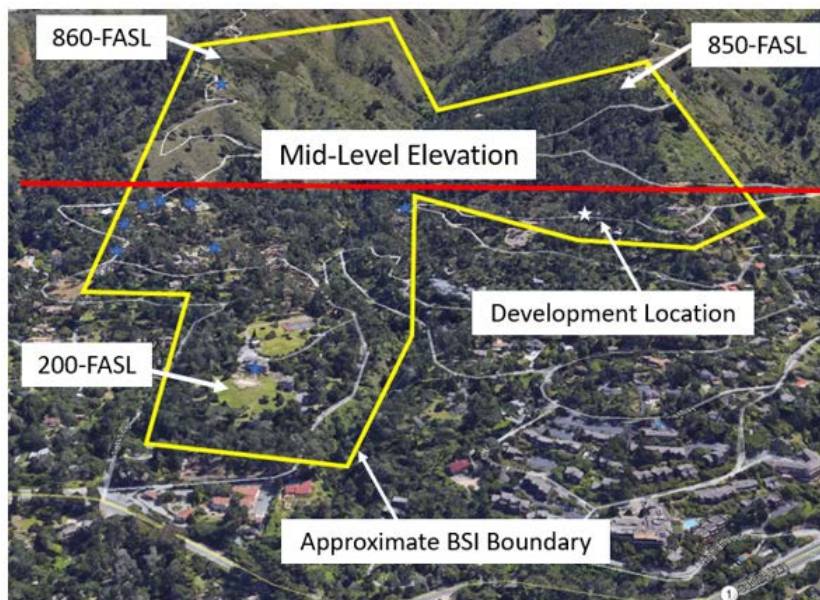
As stated in the cover report, this discussion will summarize background information, public input and concerns, staff's analysis and recommendation to the Planning Commission, and the Planning Commission's recommendation to the Board of Supervisors. In an effort to simplify and avoid redundancies, this discussion will provide general statements and refer to a previous Planning Commission staff report (**Attachment C**, hereafter referred to as "PC staff report") and resolution (**Attachment D**, hereafter referred to as "PC resolution") for key information.

### Existing Site Conditions

The subject property is located in the Carmel Highlands area, northeast of Yankee Point and southeast of Point Lobos State Reserve. Vegetation is comprised of Central Maritime Chaparral and Monterey Pine Forest. Existing improvements include almost 3,000 linear-feet of road right of way (Mt. Devon Road) along and bisecting the parcel and a permitted 100,000 gallon CalAm water tank<sup>1</sup>, pad, and access stairs. The subject property is surrounded by residentially zoned properties, many of which contain single family dwellings.

### Background Information

Figure 2-Special Treatment Areas of the Carmel Area Land Use Plan (CAR LUP) indicates that the subject property encompasses the southernmost portion of the Behavioral Health Institute (BSI) property. Because of this, development of the property is subject to Policy 4.4.3E.6 of the CAR LUP. However, the underlying zoning of the property clearly restricts residential development. As pointed out in the PC staff report (Exhibit B of **Attachment C**), the objectives of this policy are to allow a maximum number of residential units while placing restrictions to prevent units from being visible from Highway 1. Unfortunately, interpretation of the restriction that the "upper steeper portion shall remain in open space" can be subjective.



**Figure 1. Elevations of BSI**

The two highest peaks of the BSI property are 860-feet above sea level (FASL) and 850-FASL while the flatlands are at 200-FASL resulting in a mid-level elevation of approximately 650-FASL. The average elevation of existing development is 525-FASL and the proposed development is at 520-FASL.

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<sup>1</sup> A Coastal Development Permit and Design Approval (Planning File No. PLN970487) was approved by the Planning Commission (Resolution 98007) to allow the replacement of a 50,000 gallon wooden water tank built in 1957 (no permit on file) with a 100,000 gallon metal tank and the removal of 4 Monterey pine trees.

In an attempt to quantify what could be meant by “upper steeper slopes”, staff plotted high points, low points, and existing residential development within the BSI property (see **Figure 1**) using Google Earth imagery. From this analysis, it appears that the proposed development would be consistent with the BSI development policy as well as existing residential development. From this, it was determined that a more thorough analysis of how the property was zoned with development restrictions was necessary.

Approximately 16 years prior to the adoption of the CAR LUP and subsequent rezoning of the property from Agriculture/Residential to Resource Conservation (Exhibit B of **Attachment C**), a conservation easement<sup>2</sup> was placed on the property. Public testimony expressed during the project review and public hearing process shed light behind the purpose of this easement; which was for the memorialization of the life, heroic acts, and ultimate sacrifice of a local resident: Major Charles (A.K.A Frank) Francis De Amaral Jr. Prior to losing his life in battle during the Vietnam War, Major De Amaral grew up in Carmel Highlands, was an avid outdoorsman, riding his horse and enjoying the natural environment of the area.

#### Public Input

Correspondence relative to concerns with short and long-term impacts were received (Exhibit G of **Attachment C** and **Attachment E**) for the Collins project. Neighbors located below the subject property were concerned with potential geological hazards resulting from grading and construction on slopes in excess of 30%, and property owners who utilize Mt. Devon Road along the project site were concerned with temporary construction impacts which could result in blocking ingress and egress to and from their property. Other members of the public who profess to have institutional knowledge of the subject property’s history based on either living in the Mt. Devon area for over 50 years, having family ties to the De Amaral family, and/or both, were concerned with how the proposed development would be inconsistent with the long-term protection of the site afforded by the conservation easement and its Resource Conservation zoning designation.

#### Summary of Hearings and Planning Commission Recommendation to the Board of Supervisors

As demonstrated in the project discussion and draft findings and evidence provided to the Planning Commission (Exhibits B and C of **Attachment C**), staff found sufficient evidence that could support the rezone and allow residential development on the property. Prior to establishment of the conservation scenic easement deed, the subject property was zoned Agricultural/Residential which would have allowed residential uses. The easement was placed on the property for Major Frank De Amaral, a local hero who’s sacrifice was to be honored and memorialized, not as a requirement for implementation of Monterey County policies and/or as a

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<sup>2</sup> In 1967, the Monterey County Foundation granted a Conservation and Scenic Easement over the entire property over to the County of Monterey (Reel 495, page 586 of Official Records) which restricted development, for public benefit, to preserve the natural condition and present state of uses. In 1990, a Notice of Termination of Conservation and Scenic Easement Deed was filed by the property owners, Walter Warren and Loretta Warren, with the County (Reel 2590, page 780 of Official Records). See Exhibit C of **Attachment C**, Finding 4, Evidence “e”. Correspondence received on August 24, 2017 from an attorney representing Gwen De Amaral suggests that the Notice of Termination of the easement deed was invalid, stating that “the Warrens never sought an administrative or judicial determination that the alleged termination was valid or effective.” See **Attachment E**.

condition of approval or mitigation resulting from permitted development. However, the easement deed does refer to the protection of the natural scenic beauty for the “public benefit”.

When the Carmel Area Land Use Plan was adopted in 1983, the property was zoned Resource Conservation, Coastal Zone, prohibiting residential development. The Coastal Act was established to enhance public access to the shoreline, protect coastal natural resources, and balance development and conservation and includes specific policies addressing issues such as shoreline public access and recreation, lower cost visitor accommodations, terrestrial and marine habitat protection, visual resources, and landform alteration. It was within this context that staff analyzed the proposed rezone, meaning, did the resulting Resource Conservation zoning intend to preserve “public resources” under the Coastal Act? Staff recommending finding the rezone consistent with the Coastal Act (Finding No. 4 of the PC staff report (Exhibit C of **Attachment C**). Based on observation by staff, staking of the proposed structure could not be seen from Highway 1 or Point Lobos State Reserve. Therefore, there would be no significant impact to the public viewshed. The proposed area of development is approximately 2,100-linear feet from and at an elevation over 400-feet above Highway 1. Therefore, the property does not provide public access to the shoreline. Furthermore, there are no existing trail easements through adjoining private properties or publicly owned lands that would provide public access through the site, other than Mt. Devon Road. The location of development is consistent with the restrictions contained within the BSI Policy 4.4.E.6 of the CAR LUP. In addition, draft findings of the Monterey County informal LCP Periodic Review by the California Coastal Commission staff in 2003 included Map LU-12.6 showing that the Collins property was a remaining developable parcel with (1) maximum allowable unit (Exhibit J of **Attachment C**).

Although staff provided a recommendation of approval, the Planning Commission found that the existing zoning was intended to preserve the property in open space and prohibit residential development, that the “upper steeper portion” referenced in the Carmel Area Land Use Plan policy referred to the subject property, and that public policy supports preservation of the subject property. Therefore, the Commission recommended the Board of Supervisors deny the applicant’s request to rezone the property (**Attachment D**).

#### Decision Before the Board of Supervisors

In summary, the decision before the Board of Supervisor’s is one of policy interpretation. It is the charge of RMA-Planning to analyze proposed land use projects for consistency with applicable policies and regulations and provide that analysis to inform the appropriate hearing body. Land use decisions often require balancing between competing policies and/or balancing between the rights of property owners and the protection of resources. Due to the unique facts of this particular case, one’s interpretation of the intended purpose behind the current regulations and past actions on the property affects whether or not the request by the applicant should be granted. A denial of the rezone would not be appealable to California Coastal Commission.

If the Board of Supervisors finds the applicant’s request for the LCP amendment acceptable, staff would recommend the Board continue the hearing to a date certain to enable staff to prepare the appropriate findings and return to the Board for consideration of a resolution to adopt the Mitigated Negative Declaration and a resolution of intent to approve the rezone. This resolution

would be transmitted to the California Coastal Commission for certification the LCP amendment.

Establishment of a residential use (consisting of a 2,400 square foot tri-level single family dwelling, with a 500 square foot attached garage located at the lowest level) is inconsistent with the property's Resource Conservation zoning designation. Therefore, consideration of the applicant's request for a Combined Development Permit would be premature pending action on the rezone, and the Planning Commission adopted Resolution No. 17-038 continuing the hearing on the development project to a date uncertain.