

Attachment A

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ATTACHMENT A

DISCUSSION

INTRODUCTION

The project consists of constructing a single-family residence and associated site improvements on a vacant, highly constrained lot in the Carmel Highlands. The residence would be 3,525 square feet, inclusive of a 244 square foot single-car garage. Associated site improvement include a driveway and flatwork, tiered retaining walls, an emergency fire access stairway, and paving of the access road leading to the site. Utility improvements consist of installation of a septic tank, centralized water quality treatment for Highway 1 Water Distribution System #12, and an approximately 400 lineal feet sewer line running along the access driveway leading to the site. The project also involves approximately 3,095 square feet of development on slopes in excess of 30% (500 square feet for the residence, and 2,095 for the associated site improvements), removal of four protected trees (three Monterey cypress and one Monterey pine), development within 50 feet of a coastal bluff, and development within 750 feet of known archaeological resources. Earthwork associated with the project involves approximately 700 cubic yards of cut and 390 cubic yards of fill.

The project was considered by the County of Monterey Planning Commission on October 30, 2024 and again on May 28, 2025. Between the two hearings, the project was substantially re-designed to address Planning Commission comments from the October 2024 hearing, and on May 28, 2025, and the commission unanimously adopted a resolution approving the project with the revised design. On June 9, 2025, the County received a timely appeal by Rutan and Tucker, LLP, representing the owners of the property at 230 Highway 1. The appeal contends that the project does not conform to key provisions of the Carmel Area Land Use Plan (LUP) and Monterey County Coastal Implementation plan (CIP) regarding development on slopes in excess of 30 percent, retention of native vegetation and trees, and scenic resources. It also contends that there is a fair argument of significant environmental impacts necessitating preparation of an Environmental Impact Report (EIR), and that the Planning Commission did not approve or justify Variances that would be needed for the project. The Notice of Appeal also incorporates by reference previous comments sent by Rutan and Tucker, LLP on August 12, 2024 and May 26, 2025. Staff have reviewed the contentions of the Notice of Appeal and have provided responses, as detailed below.

DEVELOPMENT ON SLOPES

The Notice of Appeal contends that *“The project does not conform with key provisions of the Carmel Area Land Use Plan and Monterey County Coastal Implementation Plan pertaining to (1) restriction on developments on slopes exceeding 30 percent-the project involves approximately 3,095 square feet of development on slopes exceeding 30 percent,”*

The project includes 3,095 square feet of development on slopes in excess of 30%. As shown in **Figure 1** approximately 500 square feet of the development on slopes is for the residence (hatched purple) and 2,595 for the associated site improvements (retaining walls in blue, utility areas in yellow, flatwork in orange, and graded landscape areas in green). However, the development on slopes is consistent with the applicable policies Carmel Area Land Use Plan (LUP) and regulations of the Monterey County Coastal Implementation Plan (CIP) regarding development on slopes in excess of 30 percent.

LUP Policy 2.2.4.10.a and CIP section 20.146.030.C.1.a both state that buildings should not be located on slopes exceeding 30 percent. However, CIP section 20.146.030.C.1.a allows an exception to this where there is no alternative which would allow development to occur on slopes of less than 30 percent. Title 20 section 20.64.230 also prohibits development on slopes in excess of 30 percent unless a finding can be made, either that there is no feasible alternative that would allow development to occur on slopes of less than 30 percent, or that the proposed development would better achieve the goals, policies and objectives of the County of Monterey Local Coastal Program than development alternatives. In this case, there is no alternative to avoid development on slopes.

The only contiguous area of the site not on slopes in excess of 30 percent is a narrow pad graded in the 1960's (approximately 1,875 square feet). Remaining areas to the east and west are highly constrained by a coastal bluff and steep slopes. This extremely constrained site, combined with the narrow width, makes it unavoidable to construct a residence and associated site improvements without developing on slopes in excess of 30 percent. Alternative designs have been considered in the course of review. The project has been re-designed to minimize development on slopes to the extent feasible. Between the project scope considered at the October 2024 Planning Commission meeting and the proposed project, development on slopes was reduced from approximately 6,758 square feet to 3,095 square feet, a reduction of 3,663 square feet or approximately 54%.

The residence itself has been both sited and designed to be on the flattest portion of the lot. The footprint of the proposed residence is 30 feet and 6 inches wide, which is wide enough for an entryway and two parking spaces (a single-car garage and a covered carport). The two parking spaces are required to meet the minimum off-street parking requirements of the zoning ordinance. The remaining 2,595 square feet of development on slopes would be for associated site improvements. A color-coded diagram in **Figure 2** (below) shows these different site improvements. These improvements would be necessary for the development of the site with a residence, regardless of the scale of the home, and are described in further detail below:

- The red hatched area is required for a fire truck turnaround.
- The purple area is a turnaround access easement for the water system well south of the property. To ensure public health and safety, all wells must be accessible by the required equipment and trucks needed for installation, maintenance, and repair.
- From south to north, the three yellow rectangles are a propane tank, a utility and trash enclosure, and a septic tank. The propane tank is underneath the area that would be required to be graded flat for a fire truck turnaround. The utility enclosure includes an electrical service panel and trash enclosure which are necessary to provide utility services to the project. The septic tank is required to provide wastewater service and has been sited to meet minimum setback requirements in Monterey County Code Chapter 15.20 Sewage Disposal: 5 feet between the tank and structures (retaining wall) and 100 feet from the tank to a body of water (the Pacific Ocean), which necessitates it being located on slopes.
- The orange area is a fire department-required access stair leading to Highway 1. The access stairway provides a second means of egress for emergency responders, as the only other way to access the site is through the fifteen-foot-wide driveway to the south, which has a hairpin turn leading to the site.

- The blue areas are the autocourt, which encompasses the fire truck turnaround and access easement to the well site. Additionally, this area needs to be wide enough to accommodate access to the residence and space for two-parking spaces, which is the minimum requirement of the zoning ordinance.
- The green and blue areas are necessary grading and retaining walls that are needed to keep the areas level for the other site improvements discussed above.

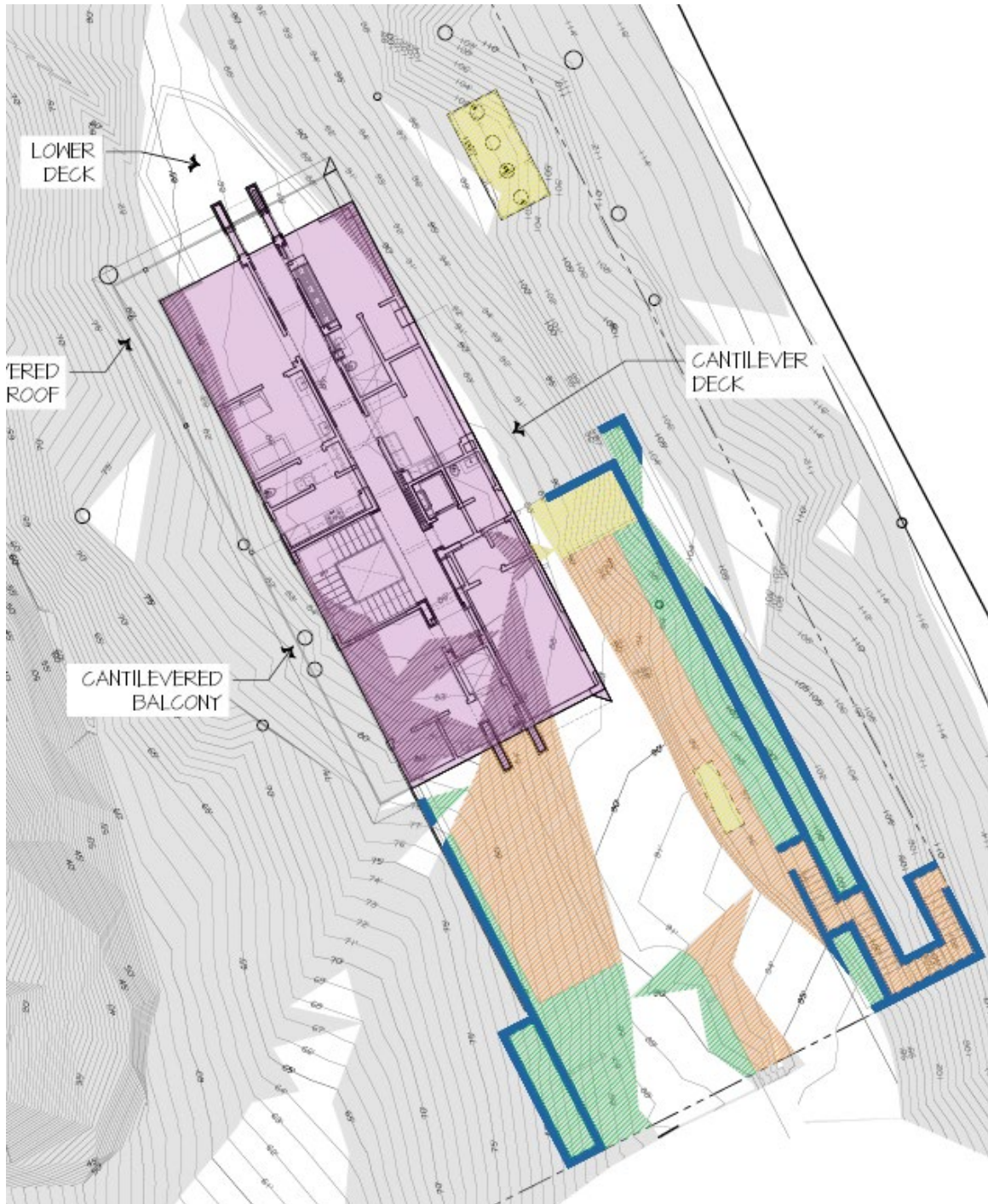


Figure 1: Revised April 10, 2025 Development on Slopes Site Plan.



Figure 2: Color Coded Site Improvements Diagram of the proposed project.

Another section of the CIP pertaining to development on slopes is section 20.146.120.A.6, which states that as a condition of development approval, all areas of a parcel containing slopes of 30 percent and greater shall be required to be placed in a scenic easement. In accordance with this policy, Condition No. 12 is recommended, which would place a conservation and scenic easement over those portions of the property exceeding 30 percent. The intent is that the

easement area include steep slopes west and northwest of the proposed residence, and exclude areas east of the residence the house and Highway 1, and exclude areas between the residence and south and southeasterly property lines. The approximate location of the easement is shown in teal in the site plan attached to **Attachment B**.

TREE AND VEGETATION REMOVAL

The Notice of Appeal contends that *“The project does not conform with key provisions of the Carmel Area Land Use Plan and Monterey County Coastal Implementation Plan pertaining to... (2) retention of existing trees and native vegetation to the maximum extent possible—the project results in the removal of four protected trees (three Monterey Cypress and one Monterey Pine),”*

The project includes the removal of five trees. Removal of trees native trees is limited to the amount necessary for a proposed development and development must be reviewed and adjusted for siting, location, size and design as necessary to minimize tree removal in the Carmel Land Use Plan area. The project has been reviewed according to the policies and can be found consistent with the requirement of the Carmel Area Land Use Plan (LUP) and it’s implementing regulations in the Monterey County Coastal Implementation Plan (CIP). One tree is a non-native Acacia that doesn’t require a permit to remove. The other four are native trees that would require a Coastal Development Permit to remove, including three landmark Monterey cypress trees and one Monterey pine.

LUP policy 2.2.3.7 states that structures shall be located and designed to minimize tree removal and grading for building sites and access roads. CIP section 20.146.060.D.3 also dictates that the removal of native trees be limited to those necessary for the proposed development, and that development shall be required to be adjusted for siting, location, size, and design as necessary to minimize tree removal. Here, the proposed removal is the minimum under the circumstances. During development review, the project was re-sited and re-designed to reduce tree removal, resulting in the preservation of two Monterey cypress trees, #53 and #58. The remaining four trees are in the immediate footprint of the proposed residence. Siting of the proposed development is constrained by slopes, access, and other limitations. The Forest Management Plan states that the trees are generally in poor condition due to crown fragmentation, limb dieback, or uprooting, and would not be safe to retain when any development occurs near them. Therefore, alternatives such as re-siting, re-design, and reduction in development would not save these trees.

CIP section 20.146.060.D.6 requires replanting on a 1:1 basis of all trees greater than 12 inches in diameter. Therefore Condition No. 13 is recommended, which would require replanting of three Monterey cypress and one Monterey pine. To ensure that trees not being removed are protected through the construction process, and protected in accordance with the forester’s recommendations, Condition No. 14 is recommended. This Condition would require the applicant install and implement tree protection measures recommended in the Forest Management Plan, provide photos documenting that the tree protection has been installed prior to commencement grading or construction permits, and verify if tree protection has been successful or if follow-up remediation measures or additional permits are required after construction.

SCENIC RESOURCES

The Notice of Appeal contends that *“The project does not conform with key provisions of the Carmel Area Land Use Plan and Monterey County Coastal Implementation Plan pertaining to... (3) prohibition on development being visible from scenic vantage points—the Project is visible from Highway 1 and the Vista Point across from the Highland Inn.”*

This contention appears to interpret the text of the first sentence of LUP Policy 2.2.3.3, “New development on slopes and ridges within the public viewshed shall be sited within existing forested areas or in areas where existing topography can ensure that structures and roads will not be visible from major public viewpoints and viewing corridors,” to be a strict prohibition on visible development from public viewing areas.

I Here, however, the development will not be on a ridge. The Policy does not specify whether it intends that new development on slopes not be visible, or that new development on slopes where the slopes are within the public viewshed not be visible. However, the standard of review in the Carmel Area Land Use Plan is one of minimization, rather than total prohibition on visible development (such as the Big Sur Coast Land Use Plan Critical Viewshed). This reading is supported by the rest of the policy, the context of the LUP, and the existing pattern of development. Policy 2.2.3.3 continues, “New development in the areas of Carmel Highlands and Carmel Meadows must be carefully sited and designed to minimize visibility,” which the project is consistent with. Additionally, if the policy were to be interpreted to prohibit development that is visible, an exception to this policy would be applicable, as provided Section 20.02.060 of the CIP (Part 1), because the application of such policy would preclude reasonable use of the property. The project’s consistency with other scenic resource protection policies and regulations is further detailed below. Additionally, if the policy were to be interpreted to prohibit development that is visible, an exception to this policy would be applicable, as provided Section 20.02.060 of the CIP (Part 1), because the application of such policy would preclude reasonable use of the property. Therefore, staff do not believe this contention has merit.

Background

The project is subject to the Visual Resources and Visual Public Access protection policies of the Carmel Area Land Use Plan (LUP), it’s implementing regulations in the Monterey County Coastal Implementation Plan (CIP, Parts 1 and 4).

The Key Visual Resources policy of the LUP states that to protect the scenic resources of the Carmel area in perpetuity, all future development within the viewshed must harmonize and be clearly subordinate to the natural scenic character of the area. All categories of public and private land use and development, including all structures, the construction of public and private roads, utilities, and lighting, must conform to the basic viewshed policy of minimum visibility except where otherwise stated in the LUP. Within the LUP area, the “public viewshed” is the composite area visible from major public use areas, including 17-Mile Drive views of Pescadero Canyon, Scenic Road, Highway 1, and Point Lobos Reserve. The property is in the Carmel Highlands area with a dominant visual character of dramatic rocky granitic cliffs and the Pacific Ocean. The primary built environment features are Highway 1, access roads, and an eclectic mixture of one and two-story custom single-family residences. The property is approximately 140 feet southwest of a visual access point identified in LUP Figure 3 (Local Coastal Program Public Access) and LUP

Section 5.3.4 as an existing bluff top vista point adjacent to the Highland Inn and is adjacent to Scenic Highway 1. Small portions of the project are visible from Highway 1 and the Vista Point. From the highway looking west, the top of the roof would be visible, with a vegetated hillside and another residence visible behind it. From the vista point looking north, the northwestern roof corner and a small portion of the glass balcony would be visible.

Highway 1 and Vista Point

LUP Policy 2.2.3.3 requires that new development on slopes within the public viewshed be sited within existing forested areas or in areas where existing topography can ensure that it would not be visible from major public viewpoints and viewing corridors, that new development in the Carmel Highlands be carefully sited and designed to minimize visibility, and that structures shall not be sited on non-forested slopes or silhouetted ridgelines. How this policy should be appropriately interpreted and applied to the project was one of the questions discussed at the October 2024 Planning Commission hearing, as the applicants were, and continue to, propose the planting of three screening trees along the northwest area of the site.

Staff's analysis is that development is required to be sited and designed in such a way that it is minimally visible within the existing natural landscape (rather than through alterations to the topography or planted screening). This idea of designing a project to be compatible with the existing land, rather than altering the land to conform to the demands of a project, is supported by various resource protection policies within the LUP. Using the LUP's key Visual Resource policy as an analytical lens, "development must harmonize and clearly subordinate to the natural character of the area." The introduction Section 1.4 of the LUP offers some additional context: "The area's charm includes structural features...but the natural grandeur of the area predominates." The CIP also allows landscaping screening where appropriate; CIP section 20.146.030.C.1.e states that native vegetation must be retained to the maximum extent possible, and landscaping screening may be used wherever a moderate extension of native forest areas is appropriate. When landscaping may be appropriate, CIP section 20.146.030.C.2 further clarifies that landscaping should only be used as a secondary protection of scenic quality and visual access. Based on the staff's analysis, the proposed project is consistent with LUP policies and CIP regulations pertaining to the protection, enhancement, and maintenance of visual resources.

The project is sited among trees but it would not be considered a forest. West of the proposed residence along the bluff edge, a 24-inch Monterey cypress would remain (Tree #53), and along the north and east of the site there would be several existing Monterey cypress trees of varying sizes (#55-58, along with others not numbered in the forest management plan) that would also be retained. The proposed project involves the planting of four native trees. Three of these trees will be planted to extend the continuity of the property's Cypress trees, which predominantly line the northern property line. However, these plantings aren't being relied upon to support the necessary finding that the project is subordinate to the surrounding area, as required by CIP sections 20.146.030.C.1.e and 20.146.030.C.2. As detailed below, the proposed residence is not on a ridgeline and has been carefully sited and designed to minimize visibility within the Carmel Highlands, from both the Highway 1 corridor and nearby vista point.

Along Highway 1, the project site slopes steeply down from the highway westward. The edge of Highway 1 is at an elevation of approximately 117 feet. The design presented at the October 2024

Planning Commission hearing had a ridge height of 108.5 feet, which would make it briefly visible to northbound motorists on Highway 1 (See below Figure 7). The proposed ridge height has been reduced by 2.5 feet (an elevation of 106 feet with a structure height of 22 feet from average natural grade), further reducing potential visibility from the highway. Similarly, the proposed residence has been re-sited and re-designed to pull the northwestern roof overhang and balcony (the only elements of the residence visible from the vista point) inland and minimize its visibility. In comparison to the project design presented at the October 2024 hearing, the northwestern corner of the proposed residence's roof would be sited 16 feet east and 7 feet and 10 inches south. This design change results in almost no visibility of the residence from the overlook. Additionally, the preservation of Tree #53 (landmark Cypress) behind the residence would assist in integrating the project into the surrounding vegetation.

LUP Visual Access Policies 5.3.3.4.a and 5.3.3.4.c require that visual access to the shoreline from major viewing corridors be protected for visitors and residents alike, and that structures and landscaping installed west of Highway 1 be sited and designed to retain public views of the shoreline and roads. The proposed residence would not obstruct views of the rocky promontories and bluffs along the shoreline that are currently visible from the vista point and Highway 1. The proposed natural, earth-toned colors and materials are compatible with the distant rocky cliffs, which help the residence be compatible with the natural landscape. Although the proposed structure would be heavily obscured from view by existing trees, it would be partially visible from the overlook. However, from the same overlook/vista point, when looking southwest beyond the proposed project, trees, access roads in the neighborhood, and other residences would all be prominently visible. Thus, the proposed project would be consistent with the existing natural and built environment, would not degrade the surrounding visual character of the area, and would not detract from the natural beauty of the scenic shoreline (LUP Policy 2.2.3.1).



Figure 3: Revised Photo-simulation View from Highway 1.



Figure 4: Photo-simulation View from Vista Point to the North.

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

The Notice of Appeal states that *“Additionally, there is a fair argument of significant environmental impacts related to these and other environmental resources requiring an environmental impact report pursuant to the California Environmental Quality Act (CEQA).”* The Notice of Appeal is referring to development on slopes, tree and vegetation removal, and scenic resources, all of which are addressed above.

The Notice of Appeal also attaches an August 12, 2024 letter previously submitted and considered by the County. Pg. 7, section 4 of the August letter contend that there is a fair argument that the project would have significant environmental impacts to Aesthetics, Biological Resources, Cultural Resources, Geology, Greenhouse Gas Emissions, Hazards, Hydrology, Land Use, Noise, and Tribal Cultural Resources. Without repeating all of the analysis in the Initial Study and Mitigated Negative Declaration (**Attachment C**) or draft resolution (**Attachment B**), County staff believe that the environmental analysis conducted for these subject areas is sound, and there is no substantial evidence in the record that supports a fair argument that the project may have a significant effect on the environment.

VARIANCES

The Notice of Appeal states *“The Planning Commission approved the project without approving requisite variances or making the findings needed to approve such variances.”* The project includes a fence and two access gates, as well as terraced retaining walls within the front setbacks. Both the fences and these walls have been designed to be less than six feet in height.

Title 20 section 20.06.1200 defines “structures” to exclude fences under six feet, so they are not subject to setbacks. The December 28, 2006, HCD Monterey County Code (MCC) Interpretation, “County Setbacks for Structures Below Grade,” states that as a matter of practice, retaining walls have been treated similarly to fences, making ones less than six feet not subject to setbacks. Based on this analysis, encroachment of both of these improvements into the setback is permissible.

The May 27 letter attached to the Notice of Appeal disagrees with this interpretation, as the MCC defines a structure as anything “constructed or erected, except fences under six feet in height, the use of which requires location on the ground or attachment to something having location on the ground, but not including any trailer or tent” (Title 20 section 20.06.1200). Further, interpreting retaining walls to be similar to fences would impermissibly add word to the language of the ordinance. (See *People v. Leal* (2004) 33 Cal.4th 999, 1008.)

While the MCC definition of a structure includes anything constructed or erected upon the ground or attached to something on the ground, and that the zoning ordinance generally provides that setbacks are established between structures and either property lines or rights of way, retaining walls less than six feet tall have generally not been considered “structures” for purposes of setbacks. Reading the definition as applicant suggests would lead to absurd results and contravene the policy underpinnings of the County Zoning Code, in violation of standard statutory interpretation principles. (*Weber v. Superior Court* (2024) 101 Cal.App.5th 342, 364, citation omitted.) While there are setback exceptions detailed in Title 20 Chapter 20.62, they are not sufficiently comprehensive enough to capture every conceivable situation. Otherwise, site improvements such as driveways, landscape exterior lighting fixtures, landscaping irrigation lines, walking paths connecting to sidewalks, mailboxes, and utility lines would be subject to minimum setbacks and impermissible without a variance. Requiring such improvements to either adhere to minimum setbacks or secure a variance does not serve the purposes of the zoning ordinance to protect the character of residential areas while assuring orderly and beneficial development. These structures or improvements often must be located close to property lines to serve their intended purpose. For example, a driveway could not function if it was 30 feet from the road right of way at the closest point.

Retaining walls that are less than six feet in height are an example of this. Practically, as here, retaining walls are often required to support driveways or other improvements necessary to develop a property. The retaining walls support an auto-court, which must connect to the access easement to the south of the property so that vehicles can enter it, and be large enough to both accommodate a fire truck turnaround and maintain vehicular access for an access to the well site on the property to the south. That said, large retaining walls such as the approximately 26-foot-tall retaining wall considered at the October 24, 2024 Planning Commission (and is no longer part of the project) would both meet the technical definition of a structure and have the potential to adversely impact adjoining property owners, so requiring that it adhere to setbacks or justify a variance would be appropriate. The re-design removes this large retaining wall, making it consistent with the County’s existing interpretation regarding retaining walls less than six feet in height. This interpretation is consistent with how these regulations have been applied for nearly twenty years, and is appropriately justified. Therefore, staff do not believe this contention has merit.

ADDITIONAL CONTENTIONS

The Notice of Appeal also contends “*The findings for approval are: not supported by substantial evidence; conflict with the LUP, CIP, and County Code; and violate CEQA and the State Planning & Zoning Law. Additional details concerning the invalidity of the findings and the Planning Commission’s approval of the project can be found in the August 14, 2024 and May 27, 2025 letters attached hereto and incorporated herein by reference.*” Responses regarding the LUP, CIP, and CEQA are in the sections above. The State Planning and Zoning Law reference appears to be in reference to variances not being supportable in this case; however the project does not include or would require a variance as described in the previous section. The approval findings are also supported by substantial evidence, as detailed in the draft resolution

Attachment B.

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