

Exhibit A

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EXHIBIT A DISCUSSION

INTRODUCTION

The 2.7-acre oceanfront parcel is located at 3270 17-Mile Drive, at the intersection of Cypress Drive and Cabrillo Road, and about 350 yards north by northwest of the Pescadero Point viewing area (See Vicinity Map – **Exhibit C**). The site is developed with a single-family home and a detached caretaker's unit. The neighborhood consists of large-scale homes possessing a variety of traditional materials, styles, and roof profiles. The surrounding landscape is heavily forested, with unfiltered and filtered views of the Pacific Ocean and coastal bluffs as viewed from 17-Mile Drive.

This project proposes:

- Exterior and interior modifications to the existing 8,747 square foot single family dwelling (SFD), to include the construction of a 182 square foot second story deck.
- Conversion of the existing caretaker's unit into a 1,103 square foot accessory dwelling unit (ADU), with minor exterior modifications.
- Construction of a new 643 square-foot enclosed pavilion structure on the site of an existing concrete view patio.
- Site improvements to include an outdoor seating area, replacement hardscape (walkways and driveway), internal grape staking fencing (3.5 feet height), and a replacement stucco property line wall to match the existing wall.

Modifications to the existing SFD would include:

- Two new powder rooms and pantry on first floor
- New laundry room and roof terrace on second floor
- Stairway reconstruction for compliance with current building codes
- Exterior trellising
- Replacement of all exterior doors and windows and partial re-roofing

Conversion of the caretaker unit to an ADU would include:

- Two bedrooms with bathrooms and a shared entryway/kitchen
- New roofing to match the main house
- Replacement of all doors and windows

See the project plan set (**Exhibit B2**) and the applicant's project description and justification letter (**Exhibit D**) for additional details.

The parcel is within the Del Monte Forest Land Use Plan area. The zoning designation is Low Density Residential, 2 acres per unit, with a Design Control Overlay (Coastal Zone) [LDR/2-D (CZ)], which allows exterior modifications to existing structures, accessory structures, site improvements, and development near known archaeological resources and Environmentally Sensitive Habitat (ESHA), subject to Coastal Administrative Permits, Coastal Development Permits, and Design Approvals. (Title 20 Sections 20.14.030.E, 20.14.030.F, 20.14.040.F and 20.44).

CULTURAL RESOURCES A key policy of the Del Monte Forest Land Use Plan requires that cultural resources be maintained, preserved, and protected for their intrinsic values, with new

development incorporating design features necessary to avoid, minimize, and mitigate impacts.

Historical Resources

DMF LUP Policy 57 encourages timely identification and evaluation of archaeological and historical resources so that they may be given full consideration during the conceptual design phase of projects. Accordingly, a Phase One Historic Assessment (LIB240193) was prepared to determine any historical, architectural, or cultural significance of the property and structures. The report notes that the SFD and ADU were designed by noted local architect Lewis P. Hobart and constructed in 1919, though a series of extensive remodels which continued through the 1950's have long since removed any architectural significance that the buildings may have possessed. In addition, no historically significant persons or events were found to be associated with the property.

Archaeological Resources

Pursuant to DMF LUP Policy 58, a Phase I and II Archaeological Assessment and Evaluation (LIB 240189) was commissioned to evaluate the potential of the project to impact resources. The report notes that no previously recorded resources have been reported on the subject parcel. The report procedures included archival research, field reconnaissance, and subsurface testing for cultural resources. Fragmentary evidence (sparse marine shell pieces), which do not qualify as a significant resource pursuant to CEQA or the California Register of Historical Resources (CRHR), were uncovered during the site investigation. It was determined that nearby (known) archaeological resources will not be affected by the proposed project: "...the proposed Project area of potential effect [...] (is) outside of the previously unrecorded resource boundary, and the resource will not be affected by the proposed Project as designed."

Condition No. 3 has been applied to the project to protect any archeological and/or tribal cultural resources that might be unearthed. Grading, in the amount of 430 cubic yards of cut and 80 cubic yards of fill, will be conducted primarily in previously disturbed areas for replacing existing driveways and walkways. (See **Exhibit B2** – Sheet C4.0). All proposed structural modifications will occur entirely within existing building and patio footprints, and the pavilion would be constructed on an existing concrete patio, thereby minimizing potential impacts.

COASTAL HAZARDS

The property borders a coastal bluff and is therefore susceptible to wave erosion and bluff recession. A Coastal Development Permit is required to allow development within 50 feet of a Coastal bluff, however, the development proposed herein is not within this buffer.

The Del Monte Forest Land Use Plan (DMF LUP) contains policies governing development within potentially hazardous areas, with pertinent regulations also found in the Monterey County Coastal Implementation Plan (CIP). In accordance with DMF LUP Hazards Policy 46, a geotechnical report and a geological report (LIB240191 and LIB240192) have been commissioned to evaluate the suitability of the site. These reports conclude that the area is suitable for development, given that the recommendations within them are followed. These recommendations address on-site grading, foundation design, and surface drainage. Title 16 section 16.08.110 requires that all recommendations contained in the prepared geotechnical and geological report be incorporated into the final construction plans.

The geological report has concluded, based on historical erosion information, that bluff retreat at the site will be approximately 6.5 feet over the next 75 years. In accounting for a potential sea level rise of 4.6 feet over 75 years (pursuant to the document "State of California – Sea-Level Rise Guidance 2024" as published by the California State Ocean Protection Council), the bluff retreat is estimated to be as much as 10 feet over this period. All structures, proposed and existing, are safely outside (inland) of this potential retreat area. In summary, the project has been sited and designed to minimize risks to life, property, and the natural environment, as required per DMF LUP's "Hazards" Key Policy.

ENVIRONMENTALLY SENSITIVE HABITAT AREAS

The area proposed for development is located within 100 feet of ESHA. The DMF LUP recognizes that sensitive habitats within the area are a unique, limited, and fragile resources that enrich the Del Monte Forest. Accordingly, the Plan calls for these resources to be protected, maintained, and, where possible, enhanced and restored.

No trees (dead or alive) are proposed to be removed, and conditions are incorporated to ensure that sensitive habitat is protected throughout construction. Areas of non-native vegetation will be restored to their natural state, including the replanting of native vegetation to replace non-native vegetation, most notably large swaths of ice plant (*Carpobrotus edulis*), which are found throughout the property.

In accordance with CIP section 20.147.040.D.2.(a), a Biological Assessment (LIB240190 – **Exhibit H**) and a Forest Management Plan (LIB220026) were prepared to assess the potential of the project to impact sensitive habitat areas and species. These reports identified two distinct environmentally sensitive habitat areas on the property: Indigenous Monterey cypress forest and Coastal bluff scrub.

Indigenous Monterey Cypress Forest

The majority of the parcel is comprised of Indigenous Monterey cypress habitat, which is protected specifically by DMF LUP Policy 20 and development standards detailed in CIP section 20.147.040.D.2 (**Exhibit F**).

Projects on a developed lot – such as proposed herein – are addressed in CIP policy 20.147.040.D.2(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.”*

The project, as conditioned, will strictly adhere to the seven specific requirements (“a” through “g”) of this policy (20.147.040.D.2(2) (a-g)), as detailed in the project Resolution “Finding 4 - Environmentally Sensitive Habitat Area - Evidence c.” (**Exhibit B**). In summary:

- All of the proposed structural modifications, excepting the proposed outdoor fire pit area and hardscape improvements (driveway and walking path), will occur within existing building footprints, thereby minimizing potential impact to habitat areas.
- A net reduction of 4,617 square feet of impervious surface will result from the project.
- The project is designed to promote the health and vitality of the property's Monterey cypress habitat.
- No trees are proposed for removal.
- The proposed development does not exceed 15% of the total Monterey cypress habitat area.
- The biological report (LIB240190) concludes that no impacts to special status plant or animal species are anticipated.
- All Monterey cypress habitat outside of the existing and proposed development areas will be restored and/or enhanced to high-value, self-functioning habitat. At least ten replacement Monterey cypress trees (15-gallon size minimum) will be planted as part of the restoration activities. These trees will not be planted in a manner that significantly obstruct ocean views. Nonnative vegetation and an irrigated lawn will be removed and replaced with native vegetation.
- An open space conservation and scenic easement will be placed over the entirety of the Monterey cypress habitat on the parcel (i.e., all non-developed areas).
- An approximately 2,289 square-foot area (previously disturbed but still considered Monterey cypress habitat) adjacent to the existing SFD will be developed with walking paths and a gravel seating/fire pit area. Accordingly, mitigation options available to the applicant include either restoration of off-site Monterey cypress habitat at a 2:1 ratio (4,578 square feet, in this case [2,289 SF x 2]) or an "in-lieu" mitigation fee commensurate with the cost to restore 4,578 square feet of habitat to be paid to the Del Monte Forest Conservancy. The applicant has indicated that they will satisfy this requirement by paying the in-lieu fee option.
- All proposed development has been sited and designed to avoid the designated "critical habitat" area and the most sensitive habitat parts of the site.
- Under the supervision of the project biologist, tree trunks will be wrapped with protective material, and exclusionary fencing areas will be established throughout the construction period.
- A certified biologist will perform site inspections for five years post-construction, to monitor the health and long-term survivability of all Monterey cypress trees and other ESHA on the property.
- With fulfillment of the conditions of approval (**Ex. B1**), the project should result in improved cypress habitat value over the existing baseline habitat value at the site.

Coastal Bluff Scrub

Coastal bluff scrub habitat is especially significant as it often accommodates Sea-cliff Buckwheat, which is a host plant for the federally endangered Smith's Blue Butterfly. The biological report refers to this area as "the narrow band between the Monterey Cypress Forestland and the High tide line" and estimates that it comprises no more than 5% of the parcel. No development is proposed in the immediate area of this habitat, although a timeworn grape stake fence will be removed and replaced around existing the habitat area to discourage pedestrian traffic.

VISUAL RESOURCES

As with Environmentally Sensitive Habitats, the Del Monte Forest Land Use Plan recognizes that local visual resources are truly unique and that ocean views, in particular, are a limited asset. Accordingly, the LUP emphasizes that these resources are to be preserved and protected. The subject property is located on 17 Mile Drive, adjacent to the intersection of Cypress Drive. The “Visual Resources of the DMF LUP” map (Figure 3 of the DMFLUP) (**Exhibit G**) denotes the front third of the project site as within the viewsheds from 17-Mile Drive and Point Lobos. Figure 3 also discloses that it's only illustrative in purpose and that a site visit is required to confirm visibility. As confirmed via multiple site visits, the subject property and proposed pavilion are visible from 17-Mile Drive.

The project is subject to the Visual Resources protection policies of the Del Monte Forest Land Use Plan (DMF LUP), their implementing regulations in Part 5 of the Monterey County Coastal Implementation Plan (CIP), and the tenets of the Design Control “D” zoning overlay district which requires aesthetic review of structures to assure protection of public viewsheds and neighborhood character. The proposed single-family dwelling modifications and caretaker unit/ADU conversion components of the project are consistent with these policies, regulations, and the surrounding neighborhood character. The following discussion focuses on the proposed pavilion structure.

The DMF LUP encourages that development be sited in the least visible portion of the property (Policy 54). Staff has consistently encouraged the Applicant/Owner/Representative to consider design alternatives for the proposed pavilion that would better protect public views, as seen from 17-Mile Drive. However, such modifications were not made prior to the March 26, 2025, hearing date. Accordingly, staff’s recommendation at that time was that the proposed structure was designed and sited in a manner that was inconsistent with the policies that expand on and support the Del Monte Forest Land Use Plan’s key policy that requires all new development to protect, preserve, and, if possible, enhance these important public views. The California Coastal Commission had reviewed the initial application and concurred with staff’s analysis regarding conflicts with the DMF LUP, specifically those policies protecting visual resources.

Staff had recommended denial of the “view pavilion” structure at the March 26, 2025, Planning Commission hearing, due to potential impacts to visual resources. The structure, as proposed at that time, included 1,171 square feet of floor area and a rear wall of 50 feet 8 inches in length and 13 feet in height, comprising a rear wall surface area of 658 square feet (red outline shown in Figure 1). This rear-wall surface area constituted the area of blocked viewshed between 17-Mile Drive and the ocean. On January 25, 2025, staff suggested that the Applicant/Representative reduce the project scale to a size that would not significantly impact public views or visual access. Figure 1, below, shows the approximate size (10.5 feet in height, 40 feet in width; 420 square feet) that staff encouraged the Applicant/Representative to consider, as staff determined such size could be potentially consistent with the DMF LUP’s visual resource policies while still balancing the site’s other constraints, namely ESHA. However, this recommendation was dismissed by the applicant at that time, and the project proceeded to the hearing. The applicant has subsequently reconsidered and, in conjunction with staff, has submitted a series of redesigns culminating in the current version for which staff is recommending approval.



Figure 1. As viewed from 17 Mile Drive - Approximate dimensions of the original pavilion structure design outlined in red – approximate dimensions of final design outlined in green.

As proposed, the pavilion would have a length of 35.5 feet and a height of 11 feet 4 inches, with a total floor area of 643 square feet. The rear wall's surface area would be approximately 401.6 square feet. The proposed pavilion structure would be located within a cluster of Monterey cypress trees. Shifting of the building to the northwest, as recommended by staff, has maximized the use of existing tree cover and subsequently minimized blockage of the direct view of the ocean from 17 Mile Drive. The overall reduction in pavilion size (1,171 square feet to 643 square feet) has reduced the visible development area (surface area blocking public views) from 658 to 401 square feet, or 39%. This reduction was primarily accomplished by eliminating the portion of the structure that obstructed the largest, continuous views of the ocean and reducing the ceiling height to align with the surrounding canopy coverage height. Materials and colors of the proposed structure are compatible with the surrounding natural environment and would not detract from the public viewshed.

The following policies support the outcome of the negotiations between staff and the applicant, resulting in a project that now complies with the applicable visual resource policies of the LUP (emphasis added):

Del Monte Forest Land Use Plan:

- Chapter 2: Resource Management Element
 - **Del Monte Forest LUP Key Policy - Scenic and Visual Resources:** *"The Del Monte Forest and 17-Mile Drive are significant and important visitor destinations. It is the objective of this LUP to protect the area's magnificent scenic and visual resources, to avoid incompatible development, and to encourage improvements and facilities that complement the Forest's natural scenic assets and enhance the public's enjoyment of them. To protect the scenic and visual resources of the Del Monte Forest area, only development that does*

not block significant public views and does not significantly adversely impact public views and scenic character, including with specific attention to the 17-Mile Drive corridor and designated public access areas/vista points, shall be allowed.”

○ **Scenic and Visual Resources**

- **Policy 47:** *Views from designated public access areas and vista points, from Highway 68 and 17-Mile Drive corridors, and of ridgelines as seen from the public viewing areas identified on Figure 3, shall be protected as resources of public importance, and development that could adversely impact such views shall only be allowed where it protects, preserves, and if feasible enhances, such scenic resources. Conservation and scenic easements shall be required as one means of protecting such views in perpetuity.*
- **Policy 48:** *Development within visually prominent settings, including those identified on Figure 3, shall be sited and designed to avoid blocking or having a significant adverse impact on significant public views, including by situating lots, access roads, and/or buildings to maximize the effectiveness of screening vegetation and related viewshed mitigation. Lots, access roads, and/or buildings should also be sited to minimize tree removal and visually obtrusive grading. (Note that the project site is located within a “visually prominent setting” pursuant to “Figure 3” [Ex. G])*
- **Policy 52:** *Development within the viewshed of visually prominent settings, including those identified on Figure 3, shall include adequate structural setbacks (generally a minimum of 50 feet) from such settings and shall require siting and design of structures to minimize the need for tree removal and alterations to natural landforms. New structures shall be sited and designed to harmonize with the natural setting and not be visually intrusive.*
- **Policy 53:** *Design and siting of structures in public views of scenic areas should not detract from scenic values of the forest, stream courses, ridgelines, or shoreline. Structures, including fences, shall be subordinate to and blended into the environment, including by using appropriate materials that will achieve that effect. Where necessary, modifications shall be required for siting, structural design, shape, lighting, color, texture, building materials, access, and screening to protect such public views.*
- **Policy 56:** *New development, including ancillary structures such as fences constructed between 17-Mile Drive and the sea (Pacific Grove gate to Carmel gate portion), shall be designed and sited to minimize obstructions of and degradation to views from the road to the sea. Examples of methods to reduce obstruction include but are not limited to the following: height limits, use of see-through materials for fences, and limitations on landscape materials that would block views, whether immediately or at maturity.*

• **Chapter 4: Land Use Support Element**

- **Public Access**

- **Policy 123:** *Public viewsheds are an important component of shoreline access and public recreational use. Development shall not block significant public views and shall not significantly adversely impact public views and scenic character, including with specific attention to the 17-Mile Drive corridor and designated public access areas/vista points.*
- **Policy 137:** *Future development shall be compatible with the goal of retaining and enhancing public visual access. Development shall not block significant public views and shall not significantly adversely impact public views and scenic character, including with specific attention to the 17-Mile Drive corridor and designated public access areas/vista points, and shall be sited and designed to be compatible with the existing scenic character of the area.*

California Coastal Act

- **Section 30251- Scenic and visual qualities of coastal areas protected**

The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas such as those designated in the California Coastline Preservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinate to the character of its setting. (Emphasis added)

PUBLIC COMMENT

At the March 26 hearing, the project was continued to a later date by the Planning Commission, with the direction that staff address numerous assertions raised by the applicant's representative, Mr. Lundquist. The following discussion addresses the comments and contentions.

Visual Resources

The Applicant/Representative contended that 1) "No definition indicating blue water, open ocean, filtered or unfiltered views are visually significant can be found in the DMF LUP or CIP", 2) "The policies and regulations do not speak to the Pacific Ocean or open ocean in general terms. Instead, the policies and regulations speak to protecting the beaches and shoreline as a visual resource." and 3) "By definition the Public Viewshed does not include the Pacific Ocean or open ocean but rather certain elements of the ocean (i.e., the beach)."

The DMF LUP identifies views from 17 Mile Drive as an important public resource and only allows development that does not block or significantly adversely affect public views and scenic character from this corridor. Title 20 section 20.06.1275 defines a "Substantial adverse visual impact" as a "visual impact which, considering the condition of the existing viewshed, the proximity and duration of view when observed with normal unaided vision, causes an existing visual experience to be materially degraded." The Del Monte Forest CIP defines "Public Viewshed" as "areas visible from public use areas such as significant roads/streets (e.g. 17-Mile

Drive), portions of parks accessible to the general public (e.g., picnic areas, but not trails), beaches, designated vista points (e.g., Cypress Point).” Areas visible from 17 Mile Drive include forest resources, the Pacific Ocean, beaches, shorelines, and Point Lobos. Accordingly, and contrary to the Applicant/Representative’s interpretation, views of the ocean, including filtered and unfiltered blue water, open ocean views, are protected as a visual resource within the DMF LUP area.

The existing legally established residence blocks most of the subject property’s ocean views from 17 Mile Drive. As initially designed and sited, the proposed pavilion would have further blocked some of the only remaining open-ocean and partially filtered ocean views from this section of 17 Mile Drive. Prior to the subsequent downsizing, it was the opinion of staff that the proposed design and siting of the accessory structure would have had the potential to materially degrade the existing viewshed - a viewshed that is recognized as being of public importance - by eliminating open ocean views and introducing a structure that is not subordinate to the scenic and natural environment. Inconsistent with the above-mentioned policies, the ancillary structure had been sited and designed in a manner that did not avoid blocking public (ocean) views and constituted a significant impact on public views. This determination was supported by the plain language of the policies.

The applicant’s representative had contended that the previously proposed pavilion (1,171 square feet) would have a less than significant impact on visual resources because the majority of the structure would be screened by trees, ocean views are not protected by the DMF LUP, the pavilion will be setback over 100 feet from 17 Mile Drive, and it would have minimal visibility to the average visitor to the area. The applicant’s representative claimed that County staff have an erroneous understanding of the applicable policies and regulations and specifically objected to staff’s assertion that public views of the “Pacific Ocean” or “open ocean” are protected. Contrary to the Representative’s interpretation of the DMF LUP and CIP that only certain elements of the ocean are protected, like the shoreline and its beaches, the plain language of DMF LUP Policy 56 clearly states, *“New development, including ancillary structures such as fences constructed between 17-Mile Drive and the sea (Pacific Grove gate to Carmel gate portion), shall be designed and sited to minimize obstructions of and degradation to views from the road [17 Mile Drive and other scenic corridors] to the sea [Pacific Ocean].”* Accordingly, views of the ocean, as well as other resources including forest, stream courses, and ridgelines, are protected and regulated by the applicable land use planning documents. This is further supported by the California Coastal Act, which states that development shall “...protect views to and along the ocean and scenic coastal areas...” (section 30251).

Secondly, the Applicant/Representative claimed that staff had improperly interpreted applicable Monterey County Code sections by stating “the blocking of any open ocean view (not heavily screened ocean views) from 17 Mile Drive conflicts with applicable Del Monte Forest LUP and CIP policies and is considered a significant impact on public/visual access.” But this statement is an excerpt from a longer discourse between staff and the Applicant/Representative regarding the proposed project, which clarified and contextualized this analysis. Regardless, even if only the excerpt were to be considered, it is not a formal administrative interpretation that binds staff. It is not an administrative interpretation. The plain language of the Del Monte Forest LUP and CIP (see above-mentioned policies) prohibits new structures from blocking or significantly impacting

public views, including those of the ocean. The DMF LUP and CIP also place special emphasis on public views from 17 Mile Drive (CIP section 20.147.070(B)(2) and (C)(5)). Moreover, a project's impact on public views and visual resources is dependent on multiple factors, including the extent of its unaided visibility from public viewing areas, its design, siting, and massing, and its consistency with applicable visual resource policies that are in place to protect views and avoid introducing structures that result in adverse visual impact. If development were to be inconsistent with the Del Monte Forest LUP's visual resource policies, it would also have a significant impact on public views and visual access; these two conclusions cannot be made independent of each other. Similarly, if development were to comply with applicable visual resource policies, all of which require minimizing impacts on public views and compatibility with the scenic character, the development would have a less-than-significant impact on public views.

Staff encouraged the applicant's representative and architect to seek alternative designs that would better protect public views; however, the applicant initially objected to the need for such modifications. It was noted in the March 26, 2025, staff report that if the Applicant/Owner were to revise the project to be consistent with the purpose, intent, and plain language of the DMF LUP's visual resource policies, the staff's determination that the project would have a significant visual impact could also change.

Staff recognize that development has occurred throughout Pebble Beach that blocks ocean views. However, County records, as researched by staff and provided by the applicant's representative, indicated that only new single-family dwellings have been allowed to block ocean views. Many properties along Pebble Beach's coastline have ocean views seen from 17 Mile Drive. The strict application of DMF LUP and CIP visual resource policies could prohibit any development on these lots. However, Title 20 section 20.02.060.B allows exceptions to be made if it is found that strict application of the applicable land use plan policies and development standards would deny all reasonable use of the subject property. Accordingly, single-family dwellings of appropriate siting, scale, and design, consistent with other applicable policies and requirements, have been allowed within the public viewshed of 17-Mile Drive. The subject property also benefits from this exception as the existing residence is within the public viewshed and may continue to be modified and maintained appropriately, as is proposed by this project. Since the subject lot is a development with a main dwelling unit and an accessory dwelling unit, the proposed ancillary structure must be reviewed for strict consistency with the DMF LUP and CIP.

CEQA

The Applicant/Representative also argued that County staff had prematurely and inappropriately determined that disapproval of the proposed pavilion is statutorily exempt pursuant to CEQA Guidelines section 15270, stating "Staff cannot lawfully deny an application without proper environmental review when there is not a prima facie conflict with the code or when a legislative action is not associated with the project."

CEQA Guidelines section 15270 applies to "projects which a public agency rejects or disapproves". This exemption is intended to allow quick disapprovals from an agency before the CEQA process begins unnecessarily (Public Resources Code section 21080(b)(5), CEQA Guidelines section 15270(a)). County staff had determined that the previously proposed pavilion

conflicted with goals, policies, and text of the DMF LUP and CIP. Accordingly, staff recommended that the Planning Commission find that specific portion of the project statutorily exempt pursuant to CEQA Guidelines section 15270. Given that the proposed (redesigned) pavilion is supported by staff, staff believes a Class 3 Categorical Exemption is now the appropriate outcome for this project.

At the March 26 hearing, the project was continued to a later date by the Planning Commission, with the direction that staff address numerous assertions raised at that time by the applicant's representative - Mr. Lundquist:

Administrative Interpretation

As described above, based on the plain language of the DMF LUP, staff informed the Applicant that the blocking of any open view would be a significant visual impact. The Applicant/Representative claims that this position is an "illegal" administrative interpretation of the County Code, stating "Staff's Interpretation is Illegal Per Board Policy (defines significant as the blocking of any open view)".

Although no specific Board Policy was cited, staff is aware that there are established procedures for Administrative Interpretations (prepared by HCD-Director in 2017), which involve receiving a written request for an administrative interpretation, adequate public noticing, informing the Planning Commission of the administrative interpretation, and being subject to a local appeal period. However, no administrative interpretation was requested by the applicant, nor made by staff, and therefore, these procedures do not apply.

The Applicant/Representative also argued that "Staff's Interpretation limits case-by-case analysis (DMF CIP section 20.147.070) - Interpretation is objective, not subjective. No objective standards have been formally adopted." This DMF CIP section states:

20.147.070 SCENIC AND VISUAL RESOURCES

A. Public Viewshed Determination

1. *The project planner shall make an on-site investigation in order to determine whether the project is within the public viewshed or affects visual access from public viewing areas...*

2. *The standard for review is the objective determination of whether any portion of the proposed development is visible from any public viewing area or affects visual access from public viewing areas. Visibility will be considered in terms of normal, unaided vision in any direction for any amount of time at any season.*

There is no question whether the subject property or the proposed development is visible from 17 Mile Drive. Accordingly, the public viewshed determination was completed objectively and in accordance with DMF CIP section 20.147.070(A). Staff's recommendation to deny the original project scope was the result of analyzing the plain language of the DMF LUP and was not a formal ministerial action (e.g., Administrative Interpretation), as it appears to have been construed within the applicant's complaints.

Alleged Precent & Past Development within the Public Viewshed along 17-Mile Drive

The following six projects were cited by the applicant's representative as examples of previously projects on 17-Mile Drive that impacted views but were approved by the appropriate authority.

The applicant's representative used these examples to support their claims that: 1) the denial of the previously proposed pavilion would be precedent-setting; and 2) the development along 17-Mile Drive that blocks ocean views was unlawfully approved. It is important to note that all six of the following projects involved the construction of a single-family dwelling on a vacant, residentially zoned property. The applicant's representative failed to provide evidence of an accessory structure that blocked ocean views and was approved by the County. Further, many of the resolutions approving the below-cited project were designed to enhance public views, instead of reducing them. Finally, in all cases, the appropriate authority made the necessary findings to approve such development. Key points to this effect in the project summaries below are underlined.

1. **PLN160117 (3168 17 Mile Dr)** - Combined Development Permit consisting of a Coastal Administrative Permit and Design Approval to allow the demolition of an existing 6,871 square foot single family dwelling with a 1,550 square foot attached garage and construction of a 13,130 square foot single family dwelling with a 754 square foot attached garage.
 - Staff Report: "A significant redevelopment project like this presents an opportunity to improve visibility along the coastline. The applicant proposes to replace the existing fence with an open-slatted fence south of the existing accessory dwelling unit to create more open views of the ocean. Based on staking and topography, staff finds that the proposed main house would not be visible from Seventeen Mile Drive. The existing accessory dwelling unit would be visible, but no changes are proposed for this structure."
 - Planning Commission Resolution No. 17-032: "Consistent with these policies, the project proposal includes replacing the existing grapestake fence with an open-slatted fencing south of the accessory dwelling unit to the south property line to create more open views to the sea and more closed-slatted fencing along the accessory dwelling unit to the north property line where views are hindered by existing development."
2. **PLN140353 (3180 17 Mile Dr)** - Combined Development Permit consisting of a Coastal Administrative Permit and Design Approval for the construction of a 10,776 square foot tri-level single family residence with a 802 square foot attached garage and a Coastal Administrative Permit and Design Approval to allow the construction of a 999 square foot attached Accessory Dwelling Unit;
 - Staff Report: "In response to protection of aesthetic, as well as biological resources, the dwelling has been sited to avoid disruption of the existing views and take advantage of the topography and Monterey cypress forest to create natural vegetated screening."
 - Planning Commission Resolution No. 18-028: "In accordance with the aforementioned policies, the structure is been setback more than 150 feet from 17-Mile Drive, within an existing gap in the cypress tree canopy at an elevation 15-feet lower than the elevation at 17-Mile Drive" and "The elevation of the site drops from east to west, and because of this topography feature, views of the rocky coastline cannot be seen from 17-Mile Drive."

3. **PLN160179 (3188 17 Mile Dr)** - Coastal Administrative Permit and Design Approval to allow the demolition of an existing 5,392 square foot one-story single-family dwelling and construction of an 8,303 square foot two-story single family dwelling; Staff Report: “The project will increase Cypress habitat by approximately 5,300 square feet by reducing the total development footprint.” As evidenced in the below photo - with flagging and staking - oceanward views from 17 Mile Drive were already compromised to a considerable degree by the existing single-family dwelling, fencing and trees.



Figure 2. Flagging and staking for project PLN160179 as viewed from 17 Mile Drive.

4. **PLN150548 (3196 17 Mile Dr)** - Combined Development Permit consisting of a Coastal Administrative Permit to allow demolition of a 10,891 square foot single family dwelling with a 718 square foot attached garage, and construction of a 10,773 square foot two-story single family dwelling with basement and a 500 square foot detached garage; 2) a Coastal Administrative Permit to allow construction of a 390 square foot accessory dwelling unit above the detached garage.
- Staff Report: “The proposed structures would be constructed within the same approximate development footprint and visual alignment as the existing structure.”
 - Planning Commission Resolution No. 17-006 “The design and siting of the proposed single-family dwelling would not increase the visual impacts over the existing baseline, and the design and siting of the proposed accessory dwelling unit (i.e., above the proposed detached garage) allows the unit to blend with the bulk and mass of the proposed single-family dwelling in the background.”
5. **PLN200046 (3252 17 Mile Dr)** - Minor and Trivial Amendment to a previously approved permit to include interior reconfigurations, an addition of 242 square feet to the kitchen and family room & an addition of 743 square feet to lower-level east wing wine room.
- Chief of Planning Resolution No. 21-006: “Both proposed additions will not be visible from public view. The residence is designed with natural materials and

colors to blend into the environment and will not be visible from 17-Mile Drive, Midway Point, or Pescadero Point, consistent with the Del Monte Forest Land Use Plan, Chapter 2, Policies 48, 52, and 53.”

6. **PLN210276 (3256 17 Mile Dr)** - Combined Development Permit consisting of a Coastal Administrative Permit and Design Approval to allow the demolition of an existing 17,992 square foot single family dwelling with an attached two-car garage, a detached 3,797 square foot gym, a 972 square foot covered walkway and sheds totaling 433 square feet; and the construction of a 7,767 square foot single family dwelling with an attached two-car garage, 882 square foot basement, 712 square foot pool house, 1,114 square foot pool, and a 319 square foot spa.

- Staff report: “In this case, the naturalistic colors and materials, reduced height and massing of the new home, and incorporation of open viewshed fencing ensure protection of the public viewshed and increase ocean views from 17-Mile Drive.”
- Planning Commission Resolution No. 23-004: “The substantial reduction in height and massing from the existing home, from 32 feet and 7 inches to 19 feet and 6 inches, helps subordinate the design to the surrounding forest.”

Note that the replacement SFD was significantly smaller than the original SFD, and that the 712 square foot pool house was constructed over the footprint of a previous structure.

The applicant’s representative cited *Nollan v. California Coastal Commission* (1987) 483 U.S. 825 at the March 26 hearing in support of their argument against the prior “denial” recommendation. The case is summarized at the US Supreme Court Center website as follows:

The Nollans sought a permit to build a home on their beachfront property, but the California Coastal Commission was concerned that their home would impede the public view of the beach. As a result, the Commission imposed certain conditions on the Nollans, including the granting of an easement to the public that would allow others to move along their property to public beaches in the vicinity. The Nollans argued that this condition violated their Fifth Amendment rights by depriving them of property without due process. While they succeeded in obtaining an injunction against the condition in the lower court, the appeals court reinstated it.

This complaint is meritless as it not only doesn’t support the Applicant/Representative’s argument, but there is also language within that court case that supports staff’s original position.

Nollan deals with a condition of approval that required a landowner of a beachfront lot to convey an access easement across their property. The Court held that the permit condition constituted a taking of private property without just compensation, violating the Takings Clause of the Fifth Amendment, because there was not a clear nexus between the impact (visual access) and the requirement (physical access). *Nollan v. California Coastal Commission* established an important constitutional standard in land use law. It confirmed that while governments can impose conditions on development to protect public interests, those conditions must be directly tied to the project’s specific impacts.

Here, staff determined that the original project had a significant impact on public coastal views.

To address this, staff recommended modifications including minor relocation and a reduction in size to minimize obstruction of public ocean views. These changes were intended to avoid adverse effects on the public viewshed. The recommended redesign served a legitimate public purpose and was directly tied to the project's identified impacts, aligning with the constitutional principles established in *Nollan*.

In addition, denial of the originally proposed accessory structure would not constitute a regulatory taking. As originally proposed, the applicant had not submitted a design that complied with the applicable provisions of the Monterey County Code, and the property was already developed with a single-family residence that retains full economic use. Therefore, denial of the accessory structure would not deprive the property owner of all beneficial use and thus would not amount to a regulatory taking under established legal standards.

Importantly, staff now recommends approval of the redesigned accessory structure, which has been revised to comply with applicable policies, goals, and text of Monterey County Code. This outcome further supports the conclusion that staff's initial recommendation to deny an inconsistent structure was reasonable, lawful, and within the County's discretion to ensure compliance with adopted land use regulations.

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