

Attachment B

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Attachment B-1

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NOTICE OF APPEAL

Monterey County Code
Title 19 (Subdivisions)
Title 20 (Zoning)
Title 21 (Zoning)

RECEIVED
MONTEREY COUNTY

FEB -8 2023

CLERK OF THE BOARD
-DEPUTY

No appeal will be accepted until written notice of the decision has been given. If you wish to do so on or before February 9, 2023 (10 days after written notice of the decision has been mailed to the applicant).

Date of decision: January 25, 2023

1. Appellant Name: Samuel Reeves C/O Anthony Lombardo

Address: 144 West Gabilan, Salinas CA 93901

Telephone: 831-751-2330

2. Indicate your interest in the decision by placing a check mark below:

Applicant

Neighbor

Other (please state) _____

3. If you are not the applicant, please give the applicant's name:

Massy Mehdi pour/Signal Hill, LLC

4. Fill in the file number of the application that is the subject of this appeal below:

- | | Type of Application | Area |
|----|-----------------------------------------|-----------------------------------------|
| a) | Planning Commission: PC- P L=N 10=03 38 | Signal Hill, Pebble Beach, Coastal Zone |
| b) | Zoning Administrator: ZA- | _____ |
| c) | Administrative Permit: AP- | _____ |

Notice of Appeal

5. What is the nature of your appeal?

a) Are you appealing the approval or denial of an application? Am, ro, al

b) If you are appealing one or more conditions of approval, list the condition number and state the condition(s) you are appealing. (Attach extra sheet if necessary)

6. Place a check mark beside the reason(s) for your appeal:

There was a lack of fair or impartial hearing -----

The findings or decision or conditions are not supported by the evidence -----

The decision was contrary to law _____

7. Give a brief and specific statement in support of each of the reasons for your appeal checked above. The Board of Supervisors will not accept an application for an appeal that is stated in generalities, legal or otherwise. If you are appealing specific conditions, you must list the number of each condition and the basis for your appeal. (Attach extra sheets if necessary)

See attached Points of Appeal

8. As part of the application approval or denial process, findings were made by the decision-making body (Planning Commission, Zoning Administrator, or Chief of Planning). In order to file a valid appeal, you must give specific reasons why you disagree with the findings made. (Attach extra sheets if necessary)

See attached Points of Appeal

9. You must pay the required filing fee of \$3,572.00 (make check payable to "County of Monterey") at the time you file your appeal. (Please note that appeals of projects in the Coastal Zone are not subject to the filing fee.)

10. Your appeal is accepted when the Clerk to the Board accepts the appeal as complete and receives the required filing fee. Once the appeal has been accepted, the Clerk to the Board will set a date for the public hearing on the appeal before the Board of Supervisors.

The appeal and applicable filing fee must be delivered to the Clerk to the Board or mailed and postmarked by the filing deadline to PO Box 1728, Salinas CA 93902. A facsimile copy of the appeal will be accepted only if the hard copy of the appeal and applicable filing fee are mailed and postmarked by the deadline.

APPELLANT SIGNATURE _____ U ;. _____ ' -flla/e: -t.fA /-Z.; ;

RECEIVED SIGNATURE _____ Date: _____

APPEAL OF SAM REEVES TO THE DECISION OF THE PLANNING COMMISSION
APPROVING A COMBINED DEVELOPMENT PERMIT (PLN100338)
SIGNAL fill, LLC/MASSY MEJIDIPOUR

THERE WAS A LACK OF FAIR AND IMPARTIAL HEARING

- The applicant was allowed to speak for approximately 40 minutes during which time, incorrect statements regarding material facts and as well as numerous personal attacks were made. The staff made no effort to correct those statements.
- The applicant was allowed to interrupt speakers and argue points made by other speakers during the public comment period without allowing the speakers a chance to respond to or correct the applicant's statements.
- The Chair, despite allowing the applicant to speak for 40 minutes, allowed only three minutes each for other speakers, thereby not allowing those speakers a sufficient opportunity to present evidence or to respond and correct the applicant's many erroneous statements regarding the true facts of the history, circumstances of this application.

THE FINDINGS ARE NOT SUPPORTED BY THE EVIDENCE

The findings are replete with statements that are not supported by substantial evidence as defined by the California Environmental Quality Act. For example:

- The Del Monte Forest Land Use Advisory Committee has not reviewed the recommended project or the significant information in the FEIR. The LUAC heard this application in 2011, over 11 years ago and made no recommendation (Finding 1, evidence p). The project and facts have changed in that time and the current LUAC did not have benefit of the FEIR for their discussions.
- The site is *not suitable* for the project. The project site is environmentally sensitive habitat (ESHA). The project will expand the building site further into the habitat contrary to the policies of the Del Monte Forest Land Use Plan, Del Monte Forest Coastal Implementation Plan and the Coastal Act. (Finding 2).
- There have been continual violations on this property since at least 2009. There have been many inspections of the property, all of which have confirmed ongoing violations and continuing deterioration of the property due to the applicant's failure to carry out the corrections and maintenance measures of the stipulated agreement between the applicant and the County to protect and preserve the Connell House from further deterioration. Penalties and fees remain unpaid. (Finding 4 evidence (a)).
- The evidence does not disclose that despite a stipulated agreement and multiple inspections by the County, the violations have continued to exist, the property has not been maintained and the terms of the stipulated agreement have been routinely violated. The applicant has allowed the house to be lived in and additional construction work to be done despite the stipulated agreement's orders to the contrary. (Finding 4, evidence (b)).
- The findings state "Preservation of the Connell House has been considered but was found to be "practically infeasible." The FEIR, which was certified by the Planning Commission, identifies multiple feasible alternatives for the preservation of the Connell

House. There is no evidence in the record as to why any or all of the feasible alternatives found in the certified FEIR are now considered to be "practically infeasible." (Finding 7, evidence (b).) Essentially, staff is concluding that restoration is not feasible is because of the on-going violations and the damage and deterioration caused by Ms. Mehdipour.

The Preservation Alternative (Alternative 1) and presumably the other feasible alternatives were not rejected because they were not feasible. The alternatives were rejected because ..the property owner has clearly expressed that they will not actually implement this alternative. Should a project be approved that does not involve demolition of the existing structure, it is likely that the near-term impacts would be similar to the "No Project" alternative..... Additionally, while no exact numbers are available, the Preservation alternative would likely cost as much as demolition and new construction, but result in a smaller house that is undesirable to the property owner...." (Finding 4, evidence (b)).

The findings do not disclose, nor was the Planning Commission advised, that the staff advised the Historic Resources Review Board that "From a legal perspective, denial of the proposed rebuild, and approval of a project alternative that does not include demolition of the existing structure, will also likely lead to lawsuits from the property owner....". That statement, we believe, influenced the staff and HRRB recommendations.

- The findings state "The EIR evaluated a reasonable range of potentially feasible alternatives to the Full Height Project in compliance with CEQA Guidelines section 15126.6." The FEIR identified several alternatives and determined they were feasible or not feasible. There were no alternatives identified as "potentially feasible" (Finding 8).
- The "evidence" provided for overriding consideration cannot be considered to be substantial evidence as required by CEQA. They are generic statements, with no evidence, which would be applicable to any project built on this site or any other site in the County. The "findings and evidence provide no information or substantial evidence as to how the substantial adverse impacts are outweighed by economic, legal, social, technological or other benefits of the project as required by CEQA Guidelines Section 15093." (Finding 9).

THE DECISION WAS CONTRARY TO LAW

- The findings are not supported by substantial and in some case complete or correct evidence.
- The project is in conflict with the requirements of the Coastal Act and State law. The court's decision in the Balsa Chica case was clear that the only uses allowed in ESHA, even when it is disturbed and degraded ESHA, are resource dependent uses. The construction of a 15,000 SF house expanding into ESHA is not a resource dependent use.
- The project is inconsistent with the Del Monte Forest Land Use Plan, Del Monte Forest Coastal Implementation Plan, Title 20, the Coastal Act and the General Plan in that it:

- o Approves conversion of environmentally sensitive habitat for residential use when ample opportunities for reasonable development exist within the existing buildable area;
- o Approves ridgeline development when there are clear and reasonable alternatives that would not be ridgeline development; and,
- o Approves a house three times the average size of homes in the Signal Hill neighborhood in direct conflict with the Design Control District (Monterey County Code Section 20,44.010) and Policies 47 and 53 of the Del Monte Forest Land Use **Plan** which call for new development to be compatible with the neighborhood and for protection of the public viewshed.

Disagreements in the details of the application history and interactions between the appellant, their representatives are evident. Staff will allow the record of Accela to illustrate the steps involving County which projects for the subject parcel have taken. A County-produced timeline was created in 2014 and is referred to in this response. This is normal

ATTACHMENT B-1b

APPEAL AND COUNTY RESPONSES

Anthony Lombardo, as representative of the appellant, Samuel Reeves, asserts the following bases for the appeal with respect to the January 25, 2023 Planning Commission hearing dynamics and the findings of Resolution 23-005 for PLN100338. Appellant contends that there was a lack of fair and impartial hearing, the findings made by the Planning Commission are not supported by the evidence, and the decision was contrary to law. The comments raised by the appellant that relate to the evidence for the findings were raised in their comment letter to the Planning Commission prior to the decision hearing on date. The County has provided substantial evidence in the record for the findings of the project resolution and has made a good faith effort to disclose both the foreseeable environmental effects of the project and the reasoning supporting a statement of overriding considerations. Other contentions refer to testimony provided by the applicant during her project presentation to the Planning Commission (Contention Nos. 1 – 3). It is important to understand that disagreement among neighbors does not invalidate a project's resolution and findings. Staff's response to each contention is included immediately following each appellant contention.

Appellant's Contention No. 1: The applicant was allowed to speak for approximately 40 minutes, during which time, incorrect statements regarding material facts and as well as numerous personal attacks were made. The staff made no effort to correct those statements.

County Response No. 1: This comment is, in part, directed at the Planning Commission Chair for allowing a longer presentation of the proposed project than normal. The project has had a long history and is complicated. The Chair allowed the applicant sufficient time to fully present both the project and her experiences. There is no rule of order that limits applicant presentation time, so the Chair's decision was within its sound discretion. This comment also puts undue responsibility on staff to control the hearing's testimony. Material facts were stated during the staff presentation. Whenever a fact was extrapolated upon by the applicant to describe her personal experience with the appellant and their representatives or the consultants who accepted contracts both with her and the appellant, it was not feasible for staff to timely correct the record for a few reasons. First, many of the interactions that the applicant described did not involve the County. Second, the Planning Commission did not direct staff to qualify the veracity of the statements. Had it done so, staff would have requested additional time to do any necessary research.

Appellant's Contention No. 2: The applicant was allowed to interrupt speakers and argue points made by other speakers during the public comment period without allowing the speakers a chance to respond to or correct the applicant's statements.

County Response No. 2: This comment challenges the Planning Commission Chair's management

of the hearing. After listening to the video recording of the hearing, staff has determined that the Chair handled the hearing as well as could be expected and was equally polite with all parties. He was not required to allow members of the public to speak for more than three minutes in comment on the agenda item. He allowed the applicant to respond to remarks by the public without limiting their time, just as Planning Commission leadership has in previous meetings.

Appellant's Contention No. 3: The Chair, despite allowing the applicant to speak for 40 minutes, allowed only three minutes each for other speakers, thereby not allowing those speakers a sufficient opportunity to present evidence or to respond and correct the applicant's many erroneous statements regarding the true facts of the history, circumstances of this application.

County Response No. 3: This comment is related to the appellant's second contention (Contention No. 2, above). The appellant was frustrated by his experience at the Planning Commission hearing. County staff who were present found that the hearing was not run any differently than other development project review hearings – project applicants are given ample time to share their perspectives and the hearings are not set up for counterpoints by attending public.

Appellant's Contention No. 4: The Del Monte Forest Land Use Advisory Committee has not reviewed the recommended project or the significant information in the FEIR. The LUAC heard this application in 2011, over 11 years ago and made no recommendation (Finding 1, evidence p). The project and facts have changed in that time and the current LUAC did not have benefit of the FEIR for their discussions.

County Response No. 4: This comment was raised in the appellant's letter to the Planning Commission dated January 23, 2023 (two days prior to the hearing). Staff customarily routes projects to the Land Use Advisory Committees for review and recommendation during the inter-departmental review of the applications. Here, there was a motion taken, but the vote was split. This information may not be a recommendation, but it indicates useful information to the decision makers. If the LUAC requested to review the project again after the public draft EIR was released, staff would have scheduled another review. It made no such request. Furthermore, The HRRB held an open public meeting within a month of the Planning Commission hearing and a notice of the item was circulated in the paper and to all neighbors within 300 feet, as well as interested parties for PLN100338 (the subject project) and it was emailed to the HRRB distribution list. Therefore, the public was given ample opportunity to comment on the recommended project after the Final EIR was available for review - both in the HRRB special meeting to review the project on January 12, 2023 and in the Planning Commission hearing on January 25, 2023. LUAC members were not restricted from expressing their opinions in those forums.

Appellant's Contention No. 5: The site is not suitable for the project. The project site is environmentally sensitive habitat (ESHA). The project will expand the building site further into the

habitat contrary to the policies of the Del Monte Forest Land Use Plan, Del Monte Forest Coastal Implementation Plan and the Coastal Act. (Finding 2).

County Response No. 5: This comment was originally raised in appellant's letter to the Planning Commission dated January 23, 2023. However, the appellant did not include this concern in his comment letter on the Draft EIR (dated October 12, 2018). The County has prepared an EIR for the project which includes an analysis of all impacts. The EIR discussed this potential impact in section 4.2.5.2, *Environmentally Sensitive Habitat Area*, and BIO Impact 3. Mitigation Measures were provided to reduce the impacts to ESHA to less than significant level, including major restoration on the parcel with deed restrictions and the requirement to form a Conservation and Scenic Easement on 1.67 acres of the parcel, as well as onsite biological monitoring during construction and restoration. Staff has concluded that appropriate mitigation measures are proposed, which, if implemented, would enhance the sand dune habitat on the rest of the parcel and to contribute to offsite habitat restoration such that the impacts would be fully mitigated.

Sand dunes in the Del Monte Forest Land Use Plan (LUP) area are considered ESHA by the LUP and, in turn, regulations for the treatment of the ESHA are described in the Del Monte Forest Coastal Implementation Plan (CIP) section 20.147.040. The intent of these ESHA regulations is that the areas be protected, maintained, and where possible, enhanced and restored. The County does not dispute that the proposed project expands development footprint into an area that is disturbed sand dune with iceplant and landscaping vegetation and patios from the previous owners which is classified as ESHA because it is on sand dune substrate which has the potential to function as habitat. The Biological Report for the project did not find protected species or species of special concern in the area where construction is proposed. However, special circumstances exist in the case of the subject parcel because it was formed by a subdivision that was executed prior to the adoption of the California Coastal Initiative (Proposition 20 in 1972) and the Coastal Act (1976), including Coastal Act Section 30240, the purpose of which is to protect ESHA. When the lot was formed within the residential zoning, there is a well-established pattern of residential development within the dune area. Several other projects have been approved by the County with expansion of footprint into areas categorized as ESHA in the last decade without appeal. The County concurs, in principle, with the Coastal Commission staff letter to the Planning Commission on this project (dated January 24, 2023) that an LCP amendment, rather than enforcement of a strict adherence with the Local Coastal Act ESHA policies in the subject parcel, is the appropriate path forward. This is because the site is one of many which are on lots subdivided prior to the Coastal Act and have expanded footprint in ESHA and which provide some form of restoration of sand dune habitat in exchange. In this case, the applicant has agreed to restore and maintain 1.67 acres of sand dune habitat. In sum, the site is suitable for the Project and appropriate steps have been taken pursuant to the LUP to allow the Project to proceed. See also County staff's response to Appellant Contention No. 12.

Appellant's Contention No. 6: There have been continual violations on this property since at least 2009. There have been many inspections of the property, all of which have confirmed ongoing violations and continuing deterioration of the property due to the applicant's failure to carry out the corrections and maintenance measures of the stipulated agreement between the applicant and the County to protect and preserve the Connell House from further deterioration. Penalties and fees

remain unpaid. (Finding 4 evidence (a)).

County Response No. 6: This comment exaggerates the violations on the property as “continual” when they were, in fact, occasional and partially remedied. The PLN100338 permit would remedy the vestiges of these violations. The first violation was for unpermitted tree removal and disturbance of the ESHA sand dune. The violations were corrected through conditions of approval imposed on PLN100418; fees were paid on this permit. One Cypress tree that was replanted repeatedly died. The final report was not submitted. Therefore, staff withheld a portion of the restoration bond that was collected for PLN100418 and rolled the replacement of the final tree into the PLN100338 Cypress Tree Protection, Replacement, Maintenance, and Monitoring Plan. The applicant agreed to the amendment to the conditions of approval. Furthermore, evidence from Code Enforcement records confirmed that penalties and fees related to previous code violations and stipulated agreement related fees are paid. Finding 4 evidence (a) related information about unclosed code violations on the property but in no way suggested that fees are outstanding.

Appellant’s Contention No. 7: The evidence does not disclose that despite a stipulated agreement and multiple inspections by the County, the violations have continued to exist, the property has not been maintained and the terms of the stipulated agreement have been routinely violated. The applicant has allowed the house to be lived in and additional construction work to be done despite the stipulated agreement's orders to the contrary. (Finding 4, evidence (b)).

County Response No. 7: Evidence of the issues that have arisen with the condition of the house were discussed with the applicant and steps were taken, over the years, through Code Enforcement and engagement with the Sheriff’s Office, to remedy these issues. For example, to comply with the Mothball Protection Plan, the applicant covered the windows to be covered and fenced the entry. Later, these were vandalized. They were repaired, then vandalized again. Oral testimony in the HRRB and Planning Commission hearings disclosed the difficulties that the applicant has had in meeting the requirements of the Stipulated Agreement. The applicant allowed a caretaker to stay in an RV on the site in compliance with the 2017 updated Stipulated Agreement.

Appellant’s Contention No. 8: The findings state "Preservation of the Connell House has been considered but was found to be "practically infeasible." The FEIR, which was certified by the Planning Commission, identifies multiple feasible alternatives for the preservation of the Connell House. There is no evidence in the record as to why any or all of the feasible alternatives found in the certified FEIR are now considered to be "practically infeasible." (Finding 7, evidence (b).) Essentially, staff is concluding that restoration is not feasible is because of the on-going violations and the damage and deterioration caused by Ms. Mehdipour. The Preservation Alternative (Alternative 1) and presumably the other feasible alternatives were not rejected because they were not feasible. The alternatives were rejected because ..the property owner has clearly expressed that they will not actually implement this alternative. Should a project be approved that does not involve demolition of the existing structure, it is likely that the near-term impacts would be similar to the "No Project" alternative. Additionally, while no exact numbers are available, the Preservation alternative would likely cost as much as demolition and new construction, but result in a smaller house that is undesirable to the property

owner" (Finding 4, evidence (b)). The findings do not disclose, nor was the Planning Commission advised, that the staff advised the Historic Resources Review Board that "From a legal perspective, denial of the proposed rebuild, and approval of a project alternative that does not include demolition of the existing structure, will also likely lead to lawsuits from the property owner". That statement, we believe, influenced the staff and HRRB recommendations.

County Response No. 8: During EIR preparation, the applicant caused a physical and economic feasibility analysis report to be done by Simpson Gumpertz & Heger (September 19, 2016). It was attached to the FEIR as Appendix F. It remains true that one outcome of a public hearing on the Signal Hill LLC project could be a resolution permitting preservation of the existing structure. The objective of the report was to determine the building's structural condition, its safety, and to opine whether the structure can be practically repaired and restored or moved to another site. (At the time of the report, all ten project alternatives were on the table. The Simpson Gumpertz & Heger report helped eliminate Alternative 5, Relocation and Preservation.) In the report, section 5.2 discussed Reconstruction. The report stated that it would entail an effort comparable to the structure's original construction. Testimony by a County expert in construction expanded on this statement at the January 25, 2023 Planning Commission hearing on the project to describe how expensive the full rebuild would be in terms of materials and labor. Much like the conclusion of the author of the Simpson Gumpertz & Heger report, the County concluded that abatement of the structure though demolition is the most feasible option at this time. Testimony was received in the duly noticed public meeting of the HRRB on January 12, 2023 as to the impracticality of requiring an applicant to rebuild a dwelling as a replica. The rejection of alternatives in Finding 4 are supported by evidence in the record, namely the Simpson Gumpertz & Heger report, recordings of HRRB discussions on the matter, meeting minutes, and testimony received at the Planning Commission meeting. In Contention No. 8, the appellant cited a cover report to the HRRB that was rejected as the hearing did not have a quorum and was not held. The meeting that had a quorum was January 12, 2023, and that meeting's staff report did not contain information about lawsuits. Therefore, the HRRB recommendation was not influenced by that statement.

Appellant's Contention No. 9: The findings state "The EIR evaluated a reasonable range of potentially feasible alternatives to the Full Height Project in compliance with CEQA Guidelines section 15126.6." The FEIR identified several alternatives and determined they were feasible or not feasible. There were no alternatives identified as "potentially feasible" (Finding 8).

County Response No. 9: This comment takes issue with the draft resolution's inclusion of a qualifier to the term "feasible." The adjective is not necessary and, therefore, staff has removed the word "potentially" from the Resolution as presented to the Board of Supervisors.

Appellant's Contention No. 10: The "evidence" provided for overriding consideration cannot be considered to be substantial evidence as required by CEQA. They are generic statements, with no evidence, which would be applicable to any project built on this site or any other site in the County. The "findings and evidence provide no information or substantial evidence as to

how the substantial adverse impacts are outweighed by economic, legal, social, technological or other benefits of the project as required by CEQA Guidelines Section 15093." (Finding 9).

County Response No. 10: County provided clear reasoning in Finding 9, which is the statement of overriding considerations, and in oral testimony at the Planning Commission hearing. The findings which require "substantial evidence," which is defined in CEQA Guidelines section 15384, are the findings made on one or more of the project's significant environmental effects (CEQA Guidelines section 15091). These findings were made, specifically they are Findings 6, 7, 12, 13, 14, and 15. In each finding, changes to the project in the form of mitigation measures and redesign are presented. In Finding 8, the Resolution also discussed how specific economic, legal, social, technological, and other considerations made infeasible many of the project alternatives identified in the EIR. However, per the Guidelines, a statement of overriding considerations may be supported by economic considerations (CEQA Guidelines section 15093). Finally, no commissioner challenged the sufficiency of the evidence.

Appellant's Contention No. 11: The findings are not supported by substantial and in some case complete or correct evidence.

County Response No. 11: This comment is generic and therefore it is difficult to respond specifically. The findings are supported by substantial evidence. For example, the statements made in Finding 8, evidence (d) review each Alternative in relation to the project objectives and explain which objective is met or not met by the Alternative. Then, evidence is presented as summary statements of the numerous statements made by the applicant in the public hearing that they wish to build their Legorreta designed house and that they see no reason to build a replica of a Neutra house which they do not feel merits preservation.

Appellant's Contention No. 12: The project is in conflict with the requirements of the Coastal Act and State law. The court's decision in the Balsa Chica case was clear that the only uses allowed in ESHA, even when it is disturbed and degraded ESHA, are resource dependent uses. The construction of a 15,000 SF house expanding into ESHA is not a resource dependent use.

County Response No. 12: This comment was originally raised in Comment Letter A-2 to the Draft EIR, which stated that the proposed project would allow for the development of a non-resources-dependent use that would lead to the permanent destruction of ESHA, prohibited by LUP Policy 8. The EIR disclosed that the construction of the proposed residence and adjacent landscaping would result in the permanent loss of 0.39 acre of disturbed sand dune habitat, which is considered ESHA, potentially inconsistent with LUP Policy 8. However, the project would also restore and permanently conserve 1.67 acres of ESHA and mitigation has been identified to ensure the loss of 0.39 acre of ESHA would not disrupt or significantly degrade the habitat values of the remaining ESHA at the project site. Because of the currently degraded quality of the ESHA to be disturbed, and the benefit of permanent dune restoration activities that would occur on the remainder of the project parcel, which would benefit the quality of ESHA at the site in the short and long term, the EIR determined

that the overall impact on ESHA would be less than significant with mitigation. Special circumstances exist in the case of the subject parcel which was formed by a subdivision that was executed prior to the adoption of the California Coastal Initiative (Proposition 20 in 1972) and the Coastal Act (1976), including Coastal Act section 30240, the purpose of which is to protect ESHA. When the lot was formed within the residential zoning, there was a well-established pattern of residential development within the dune area. The most recent California Coastal Commission comment letter on the project, addressed to the Planning Commission and dated January 24, 2023, corroborated this point and recommended County staff work with Coastal Commission staff on LCP amendments to clarify this information and, in turn, be able to lean on the LUP when approving reasonable development in lots formed in the sand dune and other ESHA areas prior to 1972/1976. Staff has begun these discussions. However, several other entitlements have been granted that include expansion onto sand dune ESHA in the Pebble Beach area in prior years, including the Abercrombie project (PLN100612) in 2012 (Planning Commission Resolution No. 12-047) and the Yelamenchili project (PLN210192) in 2022. County HCD holds “equitable treatment and respect of all constituents” as a key value.

The statement that the house is 15,000 square feet is misleading. The impact to ESHA relates to the impervious surface area, not the floor area. Impervious surface area is anticipated to increase by 7,840 square feet. Furthermore, the proposed dwelling plans incorporate tiered levels that capture the 11,933 square foot floor area with less bulk than a typically boxy design of similar size. Neither is as high as 15,000 square feet, which is an exaggeration.

Appellant’s Contention No. 13: The project is inconsistent with the Del Monte Forest Land Use Plan, Del Monte Forest Coastal Implementation Plan, Title 20, the Coastal Act and the General Plan in that it:

- o Approves conversion of environmentally sensitive habitat for residential use when ample opportunities for reasonable development exist within the existing buildable area;
- o Approves ridgeline development when there are clear and reasonable alternatives that would not be ridgeline development; and,
- o Approves a house three times the average size of homes in the Signal Hill neighborhood in direct conflict with the Design Control District (Monterey County Code Section 20,44.010) and Policies 47 and 53 of the Del Monte Forest Land Use Plan which call for new development to be compatible with the neighborhood and for protection of the public viewshed.

County Response No. 13: The proposed project is well below the maximum site coverage for the zoning district in Title 20. The proposed project has been sited and designed to maximize the use of the currently developed/disturbed portions of the parcel and to minimize disturbance of native dune habitat and the loss of ESHA. The proposed residence would result in the loss of 0.39 acre of disturbed sand dune habitat that is considered ESHA per applicable plans and policies. However, this area of ESHA is moderately to heavily disturbed and development of the project would not significantly degrade or interfere with the continuance of restored ESHA in nearby and offsite areas,

consistent with LUP Policy 14. Whether the project as proposed or an alternative is “reasonable development” within the meaning of policy is a determination for the decision maker, not an EIR.

Ridgeline Development was discussed in the EIR in relation to the full height project and the reduced height alternative (the project proposed to the Planning Commission and now to the Board). As discussed in the FEIR, the ridgeline effect that would potentially occur under the reduced height alternative project is very slight. From most angles, the constructed Reduced Height Project would not silhouette against the sky or the ocean.

The neighborhood of Signal Hill Road is small; the appellants constrained their appraisal of home sizes to this subset of Pebble Beach, which supports the conclusion which best suits their argument. A regular member of the public would behold the constructed Reduced Height Project as one of many large custom estates in the Signal Hill area – as demonstrated in the photograph taken on Fanshell Beach, below. Also, the proposed layout of the structure incorporates tiered levels that capture the 11,933 square foot floor area with less bulk than a typical design of similar size. The architect of the subject single-family dwelling, Ricardo Legorreta, purportedly visited the site on more than one occasion to ensure that his design was suited to the dunes siting in angles, textures, and colors.



(Above: photograph of Signal Hill neighborhood taken from Fanshell Beach.)

Attachment B-2

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NOTICE OF APPEAL

Monterey County Code
Title 19 (Subdivisions)
Title 20 (Zoning)
Title 21 (Zoning)

RECEIVED
MONTEREY COUNTY

FEB - 8 2023

CLERK OF THE BOARD

Emmanuel H. Santos DEPUTY

No appeal will be accepted until written notice of the decision has been given. If you wish to file an appeal, you must do so on or before 2/9/2023 (10 days after written notice of the decision has been mailed to the applicant).

Date of decision: 1/25/2023

1. Appellant Name: NEUTRA INSTITUTE FOR SURVIVAL THROUGH DESIGN
Address: 651 SINEX AVE K115
Telephone: 510 375 3451 (DR. R NEUTRA PRESIDENT)

2. Indicate your interest in the decision by placing a check mark below:

Applicant

Neighbor

Other (please state) ADVOCATE

3. If you are not the applicant, please give the applicant's name:

NABSY MENDIPOUR

4. Fill in the file number of the application that is the subject of this appeal below:

	Type of Application	Area
a)	Planning Commission: PC- <u>PLN100338</u>	<u>DEL MONTE FOREST</u>
b)	Zoning Administrator: ZA- _____	_____
c)	Administrative Permit: AP- _____	_____

Notice of Appeal

5. What is the nature of your appeal?

a) Are you appealing the approval or denial of an application? APPROVAL

b) If you are appealing one or more conditions of approval, list the condition number and state the condition(s) you are appealing. (Attach extra sheet if necessary)

N/A

6. Place a check mark beside the reason(s) for your appeal:

- There was a lack of fair or impartial hearing
- The findings or decision or conditions are not supported by the evidence
- The decision was contrary to law

7. Give a brief and specific statement in support of each of the reasons for your appeal checked above. The Board of Supervisors will not accept an application for an appeal that is stated in generalities, legal or otherwise. If you are appealing specific conditions, you must list the number of each condition and the basis for your appeal. (Attach extra sheets if necessary)

HEARING: NO TIME TO REBUT APPLICANT'S FALSE STATEMENTS ETC

FINDINGS: NOT TRUE THAT PROJECT IS CONSISTENT WITH POLICIES
NO PROOF THAT HISTORIC BLDG COULD NOT BE RESTORED

LAW: CEQA DOES NOT ALLOW TAX REVENUE TO BE CONSIDERED

8. As part of the application approval or denial process, findings were made by the decision-making body (Planning Commission, Zoning Administrator, or Chief of Planning). In order to file a valid appeal, you must give specific reasons why you disagree with the findings made. (Attach extra sheets if necessary)

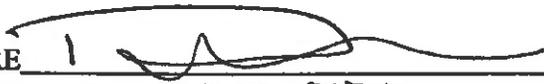
SEE DETAILED MATERIALS ATTACHED

9. You must pay the required filing fee of \$3,572.00 (make check payable to "County of Monterey") at the time you file your appeal. (Please note that appeals of projects in the Coastal Zone are not subject to the filing fee.)

10. Your appeal is accepted when the Clerk to the Board accepts the appeal as complete and receives the required filing fee. Once the appeal has been accepted, the Clerk to the Board will set a date for the public hearing on the appeal before the Board of Supervisors.

The appeal and applicable filing fee must be delivered to the Clerk to the Board or mailed and postmarked by the filing deadline to PO Box 1728, Salinas CA 93902. A facsimile copy of the appeal will be accepted only if the hard copy of the appeal and applicable filing fee are mailed and postmarked by the deadline.

APPELLANT SIGNATURE


RAYMOND NEURA

Date: 2/8/2023

RECEIVED SIGNATURE

Date: _____

NOTICE OF APPEAL

Appeal of Planning Commission decision of 1.25.23

The Planning Commission hearing was not fair or impartial.

- The applicant was granted much more time to present her case than the Commission typically grants. The applicant also spoke several more times, interrupting commenters, while others were not given the opportunity to speak again.
- The applicant made false statements after the public comment period, but no time was allowed for rebuttal.
- The neighbor's attorney was granted much less time than typically allowed.
- The letter from Anthony Lombardo and Associates cited numerous issues with the staff report, but insufficient time was allowed for the presentation. (see Attachment 1)
- Several Commissioners stated that they relied on the recommendation of the Historic Resources Review Board (HRRB). However, they did not seem to be knowledgeable about that decision, which removed any mention of overriding considerations.

The findings are NOT supported by the evidence.

Finding: The project, as conditioned, is consistent with the applicable plans and policies which designate this area as appropriate for development.

- The project is NOT consistent with the Del Monte Forest Land Use Plan, confirmed by the Pebble Beach Company's letter of 1/24/23. (See

attachment 2). The applicant has not applied for review and approval from the Pebble Beach Architectural Review Board, which is a requirement noted in all deeds in Del Monte Forest.

- The project is NOT consistent with the Monterey County Coastal Implementation Plan as confirmed by the California Coastal Commission in letters from 2015, 2018 and 2023. The project intrudes further into ESHA and is detrimental to the public viewshed (see attachments 3-5).
- The project is NOT consistent with the Monterey County Zoning Ordinance (Title 20). Demolition of a National Register-eligible property cannot be mitigated to a less than significant impact. The condition of the home after the application was made should not be considered. This issue is addressed in letters from the California Preservation Foundation. (See attachments 6-7)
- The project is NOT consistent with Goal 52 of the Monterey County General Plan (1982): To designate, protect, preserve, enhance, and perpetuate those structures and areas of historical, architectural, and engineering significance which contribute to the historical heritage of Monterey County..."

Finding: Preservation of the Connell House was considered but was found to be infeasible. Reasonable mitigation is proposed that would require documentation of the house...

- No evidence has been presented to demonstrate that all preservation options are infeasible. Poor condition does not mean that preservation is not feasible (see attachment 7).
- Documentation is not reasonable mitigation for the demolition of a significant historic resource.
- There is no economic hardship preventing restoration of the damage incurred under the current ownership. The applicant purchased an

occupied house, rented it out for 3 years after the purchase, and then allowed it to deteriorate to its present condition.

- Alternative 1 (the environmentally preferable alternative) would avoid negative impacts to the historic resource _ and complies with all land use policies, codes and laws.
- Reconstruction is an acceptable preservation treatment under the Secretary of the Interior's Standards; the building plans and the information needed to do this are available.

Finding: "...the benefits of the project outweigh its unavoidable significant environmental impact. Each benefit set forth below constitutes an overriding consideration warranting approval of the project despite the identified unavoidable impact.

"The project would result in a custom-built estate home within a setting that is known to support this type of development and represents consistent application of development policies absent the historic resource considerations."

- The proposed project is significantly higher and larger than neighboring houses.
- The demolition of the historic resource does not benefit the community or the county as a whole.

Finding: The project will create economic benefits to the County and the community...through the creation of new property tax revenue through higher property valuation."

- CEQA does not allow an increase in tax revenue to be considered.

The decision was contrary to law for the reasons cited above and the fact that the Statement of Overriding Consideration is not consistent with CEQA.

a Mothballing Plan (Resolution No. 15CP01861). On January 5, 2023, the HRRB reviewed the project and made a recommendation to the Planning Commission to approve the Reduced Height Alternative, Alternative 9 of the EIR (voted 3 ayes and 1 no with 1 abstaining, 2 recused). See Finding 13 for more detail on historic resources.

13. **FINDING:** **VIEWSHED/RIDGELINE DEVELOPMENT:** The RH Project will not create a substantial adverse visual impact when viewed from a common public viewing area and no alternative location exists on the subject site which would allow a reasonable development without the potential for ridgeline development.
- EVIDENCE:** a) The proposed house is located on a ridgeline off 17 Mile Drive. The existing house is one story and blends well with the site and the hills and trees in the background when viewed from 17 Mile Drive and viewpoints off 17 Mile Drive. Views from 17 Mile Drive and viewpoints along 17 Mil Drive are an important resource and are protected pursuant to the Del Monte Forest LUP. The Project will be a maximum of 25 feet above average natural grade. The Project (Reduced Height Project, Alternative 9 in the EIR) is taller than the existing structure on the property and the EIR found it to present an exposed face appearing approximately three times larger than that of the existing structure (Alternatives Analysis, Chapter 5 of the Final EIR). The increase in height will increase the visibility of the structure when viewed from 17 Mile Drive and Fanshell Reach.
6. **FINDING:** **POTENTIALLY SIGNIFICANT ENVIRONMENTAL IMPACTS IDENTIFIED IN THE EIR THAT ARE REDUCED TO A LEVEL OF “LESS THAN SIGNIFICANT” BY THE MITIGATION MEASURES IDENTIFIED IN THE EIR AND ADOPTED FOR THE PROJECT** – The Project would result in significant and potentially significant impacts that will be mitigated to a less than significant level due to incorporation of mitigation measures from the EIR into the conditions of Project approval. Changes or alterations have been required in, or incorporated into, the Project which mitigate or avoid the significant effects on the environment as identified in the draft FEIR. This Resolution incorporates all the mitigation measures that were identified in the Signal Hill LLC Final EIR and makes them conditions of approval of the Project. All potentially significant environmental impacts can be mitigated through the measures cited in the Final EIR, except for impacts to the existing historic residence.

9. FINDING: STATEMENT OF OVERRIDING CONSIDERATIONS -
 The Planning Commission has weighed the project's economic, legal, social, technological, and other benefits, including region-wide and statewide environmental benefits against its unavoidable significant environmental impacts. The Planning Commission finds that the benefits of the project outweigh its unavoidable, adverse environmental impact. Each benefit set forth below constitutes an overriding consideration warranting approval of the project despite the identified unavoidable impact. Additionally, each benefit, standing on its own, is sufficient to support this Statement of Overriding Considerations.

EVIDENCE: a) The RH Project will have a significant unavoidable impact on historic resources from the demolition of the Connell House.

Signal Hill LLC (PLN100338) Page 24

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However, the RH Project will result in development that will provide benefits described herein to both the surrounding community and the County as a whole. In balancing the public good in approving this project against the unavoidable significant impacts identified, the Commission finds that that the benefits of the project outweigh the unavoidable adverse environmental effects. The project would provide the following benefits to the public:

- i. The Project would result in a custom-built estate home within a setting that is known to support this type of development and represents consistent application of development policies absent the historic resources considerations.
- ii. The Project will permanently preserve approximately 1.67 acres of sand dune habitat and open space on the project site. Mitigation Measures and monitoring activities of this project require the preservation and long-term management of this area.
- iii. The Project will include offsite restoration of coastal dune, either through direct implementation or through in lieu fee. Offsite restoration is anticipated to take place through in lieu fee in the Asilomar Dune Complex, thereby improving the long-term viability of the ecosystem beyond this parcel. As outlined in Finding 8, evidence d, the applicant would be unlikely to participate in the restoration of coastal dune offsite if they are granted an entitlement that does not include demolition and new construction.

construction.

- iv. The Project will create economic benefits to the County and the economy through the creation of jobs for construction (temporary), and the creation of new property tax revenue through higher property valuation.
- v. The Project includes demolition of a dilapidated structure. By granting the demolition permit, hazardous and unsafe conditions of the existing structure could be corrected. Although technically feasible, preservation of the Connell House would require at least some degree of tear down and reconstruction due to the unstable structural conditions of the existing building. The applicant has repeatedly expressed to staff that they do not wish to live in the Neutra designed house. A best-case outcome of not granting the demolition permit is that the applicant would invest the large amount of time and money required to preserve the house and clear the violation, then resell the property. Another outcome could be that they would sell the property without improving the structure because the Preservation Project entitlement would clear the violation. It is difficult to predict a buyer for the property with Preservation as the active permit would step forward. The worst-case outcome would be that the

ial Hill LLC (PLN100338)

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applicant is granted the entitlement only for the Preservation Alternative and would not comply with the requirements. In that case, the Aesthetics and Historic Resources impacts would be similar to the No Project Alternative, which the EIR concluded were worse than Preservation.

- e) Historic Resources Review Board. The originally proposed project was referred to the Historic Resources Review Board (HRRB) for review on three occasions. On August 4, 2011, the proposed demolition of the existing house was discussed and the HRRB voted unanimously to deem the residence significant under State of California Criterion 3. On March 6, 2014, the HRRB reviewed a referral from the State Historic Preservation Officer (SHPO) and voted in favor of listing the Connell house on the State and National Registers of Historic Resources. On August 6, 2014, August 24, 2015, and September 3, 2015, the HRRB considered plans to address damage and neglect of the existing house and voted to approve

RAYMOND RICHARD NEUTRA M.D. Dr. PH

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February 7, 2023

Monterey County Board of Supervisors

P.O. Box 1728

Salinas CA 93902

cob@co.monterey.ca.us

SUBJECT: SIGNAL HILL RESOLUTION- PLN100338

Honorable Supervisors:

I am writing to appeal the January 25 2023 decision of the Monterey Planning Commission to allow destruction of Richard Neutra's historic Connell House just above 17 Mile Drive in Pebble Beach. As has been outlined by the Association of Monterey Area Preservationists, the procedures to allow adequate time to opponents were grossly inadequate and the reasons justifying the decisions both by the Commission and the HRRB included falsehoods and misinterpretations rendering their respective concluding decisions unsupported by logic.

I am president of the Neutra Institute for Survival Though Design, a 5013c organization founded in 1962 by my architect father. Its mission is to preserve and use the Neutra legacy to promote creative research and designs that benefit people and the planet. The Connell House was designed for photographer Arthur Connell, to nestle in the dunes above 17-mile drive (see attachment B) and has been featured in a number of publications of my father's work. It is the last remaining trace of his connection to this county that started with lectures in Carmel in 1928, his long-term friendship with Edward and Brett Weston and radio personality John Nesbitt. His 1940 Davy House on Jack's peak has been altered beyond recognition, so this is his remaining contribution to this area.

I realize that there are deep philosophical differences about whether the community at large should have any ability to interfere with the rights of property owners, either to protect historical properties or to protect the environment. The remedy for such libertarian concerns is to change the laws, not to ignore or purposely misinterpret them.

Yet this is exactly with the HRRB and the Planning Commission have done. If you allow this to stand you are establishing a precedent which will endanger all historic properties in your county going forward.

In June 2015 Ms. Taluban reported that someone had spent hours using a chain saw to cut through the structural supports of the Connell house. Note: the house had been certified as historically significant four years previously. At that time there were two possible explanations of this purposeful destructive act:

- 1) A new kind of vandal had emerged that was attacking properties. This would have put other sites in danger.
- 2) The owner who had requested a permit to tear the house down had some kind of connection to the vandalism (she continues to deny this explanation)

Neither the county nor the owner demanded a thorough investigation at the time to decide between these two explanations.

Now the HRRB and the Planning Commission are recommending that the historic structure be torn down because it has been damaged beyond repair and has been allowed to deteriorate further after chain saw episode. This sends a message to other purchasers of historic properties.

"Any intentional damage or neglect that threatens your historic property will not be seriously investigated and once the damage has occurred the county will deem it a sufficient reason to ignore its historicity and permit you to tear it down to make way for whatever project you propose."

(See Attachment A documenting deterioration between 2012 , two years after Mehdipour's own consultant told her that her house was historic, and the present)

The HRRB set a bad precedent in another way. They essentially took the owners word as to the difficulty of restoring the house and declared that a restored house would not have sufficient original fabric to qualify it as historic. On these grounds the HRRB and the Planning Commission went along with the county staff's recommendation to tear down the Connell House.

But the fact that the original historic fabric is damaged or missing does NOT preclude restoration of a building in ways that are in full compliance with the Secretary of Interior's Standards for the Treatment of Historic Properties and the related Guidelines. <https://www.nps.gov/orgs/1739/upload/treatment-guidelines-2017-part2-reconstruction-restoration.pdf>):

Indeed, even a full-scale reconstruction of the house could be accomplished in a manner consistent with the Standards and The Guidelines. There is a full set of plans for this house at the Richard Neutra Archive at UCLA that could guide such efforts.

Furthermore, the January 18, 2023 photographs in Attachment A show there is substantial original fabric in any case.

Please reverse these two faulty actions and avoid setting a terrible precedent for historic preservation in your county.

Sincerely yours

Raymond Richard Neutra MD DrPH
President

ATTACHMENT A (To Neutra's letter of Feb 7, 2023)

HOW THE CONNELL HOUSE HAS BEEN ALLOWED TO DETERIORATE

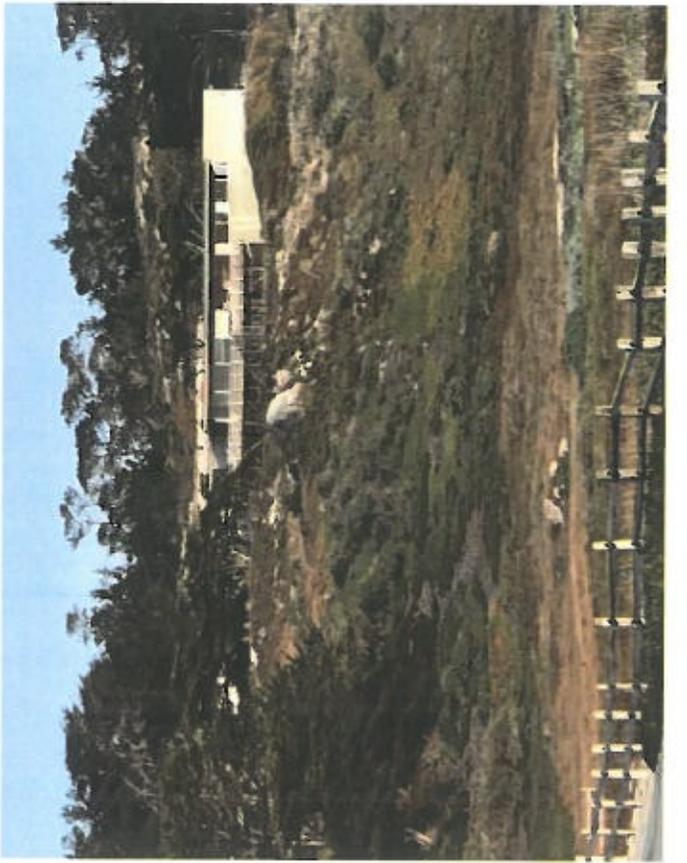
January 2012



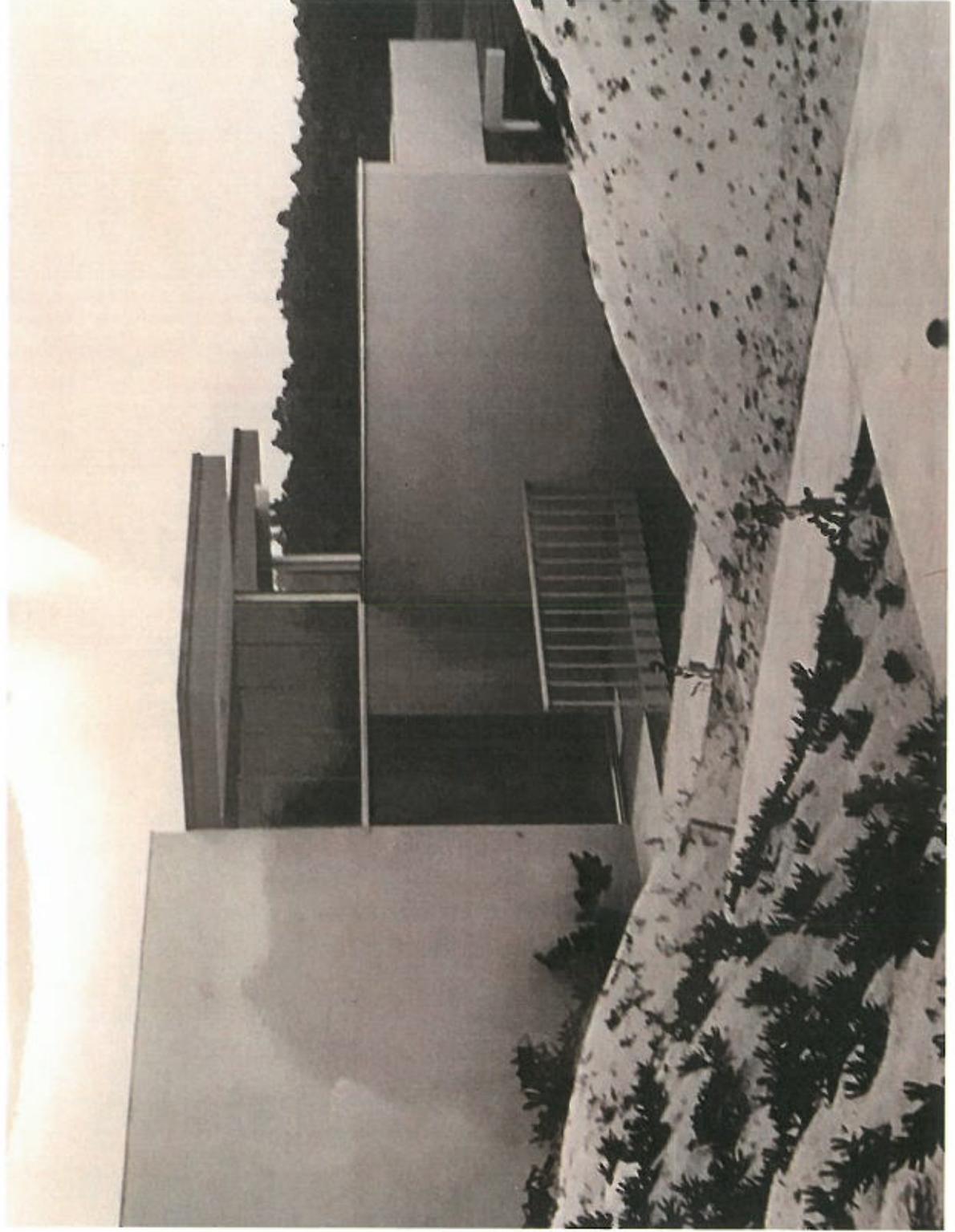
January 2023







Attachment B Connell House When New







ATTACHMENT B-2b

APPEAL AND COUNTY RESPONSES

Raymond Neutra, as representative of Neutra Institute for Survival Through Design,¹ asserts the following bases for the appeal with respect to the January 25, 2023 Planning Commission hearing and the findings of Resolution 23-005 for PLN100338. Appellant contends that there was a lack of fair and impartial hearing, that the findings made by the Planning Commission are not supported by the evidence, and the decision was contrary to law. The County has provided substantial evidence in the record for the findings of the project resolution and has made a good faith effort to disclose both the foreseeable environmental effects of the project and the reasoning supporting a statement of overriding considerations. Other contentions refer to testimony provided by the applicant during her presentation to the Planning Commission (Contention No. 1). The appellant's perception that the hearing body did not allow for rebuttals from neighbors and other concerns may be remedied by the Board hearing on the appeal. Response to the appellant's grouped contentions is included immediately following each grouped appellant contention.

Appellant's Contention No. 1: The Planning Commission hearing was not fair or impartial. The applicant was granted much more time to present her case than the Commission typically grants. The applicant also spoke several more times, interrupting commenters, while others were not given the opportunity to speak again. The applicant made false statements after the public comment period, but no time was allowed for rebuttal. The neighbor's attorney was granted much less time than typically allowed. The letter from Anthony Lombardo and Associates cited numerous issues with the staff report, but insufficient time was allowed for the presentation.

County Response No. 1: This comment challenges the Planning Commission Chair's management of the hearing. Staff who were present found that the Chair handled the hearing as well as could be expected and was equally polite with all parties. He was not required to allow members of the public to add more than three minutes of comment to the discussion section of the hearing. He allowed the applicant to respond to remarks by the public without limiting their time, just as Planning Commission leadership has in previous meetings. Therefore, the meeting was fair and impartial.

Appellant's Contention No. 2: Several Commissioners stated that they relied on the recommendation of the Historic Resources Review Board (HRRB). However, they did not seem to be knowledgeable about that decision, which removed any mention of overriding considerations.

County Response No. 2: Through both the staff report and Resolution and the staff presentation to the Planning Commission, the Commissioners were aware of the outcome of the HRRB meeting on the subject project. Staff were available in the hearing to answer any

¹ Raymond Neutra is also on the Board of the Alliance of Monterey Area Preservationists (AMAP), appellant organization for the third appeal filed on PLN100338.

questions on how the vote was captured in the draft minutes. Therefore, there is no reasonable indication that the Planning Commissioners voted in ignorance of the HRRB vote.

Appellant's Contention No. 3: The findings are not supported by the evidence. The project is not consistent with the policies of the Del Monte Forest Land Use Plan, confirmed by the Pebble Beach Company's letter of 1/24/23 (attached). The applicant has not applied for review and approval from the Pebble Beach Architectural Review Board, which is a requirement noted in all deeds in Del Monte Forest.

County Response No. 3: This comment refers to policies of the Del Monte Forest Land Use Plan in relation to the fact that the project has yet to be formally reviewed by the Architectural Review Board (ARB). There is not an LUP policy that requires ARB review prior to County approvals. The LUP notes that projects in the Pebble Beach area will require ARB review because it is "a private body whose review authority is established by CC&Rs that are incorporated in the deeds of property in the Del Monte Forest." However, ARB review is not required by the County prior to decision on a permit. Section 1 of the 1984 agreement between County of Monterey and Pebble Beach Company states "the ACB [sic] was established by the Company to serve as the Board from which approval must be sought by property owners for the design of residences in compliance with applicable deed restrictions. It is acknowledged that the architectural review and approval by the ACB (1) does not supersede or supplant any architectural review and approval required by the County under its ordinances and regulations . . ." (Reel 1800 Page 402). The ARB letter dated January 24, 2023 was not attached to the appeal but was made part of the record when it was sent to the Planning Commission prior to the January 25, 2023 hearing. It was reviewed by the commissioners and discussed as part of decision proceedings. The letter did not directly refer to LUP policies but raised concerns with the size of the project in comparison to existing homes in the immediate area of Signal Hill and the height of the full height project (30 feet) as a visual impact to the view of the dunes. It is true that the LUP recommends that all new development in highly scenic areas like the Del Monte Forest be subordinate to the setting. The policies guide specific steps that are taken to assess impacts on Scenic and Visual Resources, laid out in section 20.147.070 of the Del Monte Forest Coastal Implementation Plan. Public viewshed determinations were made by staff during project application review. Those preliminary findings were part of the reason that a full EIR was developed for the project. Recent communications with ARB staff, Nicky Simon, confirmed that the applicant is scheduling the Signal Hill LLC project for ARB review.

Appellant's Contention No. 4: The project is not consistent with the Monterey County Coastal Implementation Plan as confirmed by the California Coastal Commission in letters from 2015, 2018 and 2023. The project intrudes further into ESHA and is detrimental to the public viewshed (see attachments 3-5).

County Response No. 4: There were no more attachments to the appeal document than two sets of images, Attachment A and B, so staff extrapolated what attachments 3-5 likely address by the

mention of letters from California Coastal Commission from 2014, 2018 and 2023. There are the following three comment letters on record in Accela: 1) March 19, 2015 – Katie Butler, Coastal Planner, Central Coast Office of the California Coastal Commission (CCC) comment letter to the Notice of Preparation; 2) October 12, 2018 – Brian O’Neill, Coastal Planner, Central Coast Office of the CCC comment letter to the Public draft EIR that is included in the Final EIR as Comment Letter A-2, and 3) January 24, 2023 – Breylen Ammen, Coastal Planner, Central Coast Office of the CCC comment letter to the Planning Commission.

The message of the first two California Coastal Commission comment letters centered on concerns with LUP consistency. The letters cited LUP policies but not the Coastal Implementation Plan, or CIP. Therefore, the statement that inconsistency with the CIP was confirmed by these letters is incorrect.

As explained in the County response to Comment Letter A-2 in the Final EIR, the County does not dispute that the proposed project expands development footprint in the Signal Hill sand dunes. Although the area of expansion is disturbed with iceplant and landscaping vegetation and patios from the previous owners, there is the potential for the substrate to be restored and become ESHA, so it is recognized as ESHA by the LUP. Staff has met with CCC staff as part of the response to Comment Letter A-2, which triggered a new mitigation measure (BIO-mm 3.9) and a more collaborative approach to the consideration of residential expansion within residential lots that were formed prior to the California Coastal Initiative and Coastal Act of 1976. To that end, the most recent letter from Coastal Commission staff to the Planning Commission, dated January 24, 2023, did not condemn the expansion of the project footprint into ESHA in this project, but requested the LUP be amended. They stated,

“the Signal Hill dunes were subdivided for residential use prior to the Coastal Initiative (Proposition 20 in 1972) and the Coastal Act (1976), including Coastal Act Section 30240, the purpose of which is to protect ESHA, and there is a well-established pattern of residential development within the dunes. The County has received a number of CDP applications in the recent past for expansions and demolition/rebuilds of existing residences that involve expansion into the dunes. Because single-family residences are not resource dependent, an inherent problem exists with these policies as applied in this area. Technically speaking, such expansion of a non-resource dependent use is inconsistent with the LCP. Given all this, to address projects like the one before you today, we have discussed with Monterey County Planning staff the need to update and clarify the Del Monte Forest LCP to create a set of standards for allowable disturbance and restoration.”

Staff meets with Coastal Commission staff regularly and discussions about LCP amendments are underway. Therefore, the County concurs with the Coastal Commission that an LCP amendment, rather than enforcement of a strict adherence with the Local Coastal Act ESHA policies in the subject parcel, is the path forward. This project site is one of many which are on lots subdivided prior to the Coastal Act and have expanded footprint in ESHA and which provide some form of restoration of sand dune habitat in exchange.

Appellant’s Contention No. 5: The project is not consistent with the Monterey County Zoning Ordinance (Title 20). Demolition of a National Register-eligible property cannot be mitigated to a less than significant impact. The condition of the home after the application was made should not be considered. This issue is addressed in letters from the California Preservation Foundation. (See attachments 6-7)

County Response No. 5: Title 20, Chapter 54 Historic Resource District ordinance requirements were followed in this case. Pursuant to section 20.54.030.D., an historic resource is defined in Title 20 as “any structure, object, fence, site or portion of a site which has a significant historic, archaeological, architectural, engineering or cultural value.” The proposed demolition was referred to the HRRB. The HRRB guided the development of a Mothball Protection Plan for the structure. Then, in January 2023, noting that the Connell House was extensively degraded to the point that the Preservation Alternative, the EIR’s the environmentally superior alternative, would constitute the construction of “a replica.” The HRRB’s vote to support staff’s recommendation for the Planning Commission to allow demolition of the Connell House and construction of Alternative 9, Reduced Height project, was made considering the evidence in the record including the Comment Letter on the EIR from the California Preservation Foundation (Comment Letter O-8, Chapter 9 of the FEIR).

The comment also states that “demolition of a National Register-eligible property cannot be mitigated to a less than significant impact.” The County has prepared an EIR for the project that includes an analysis of all impacts. The EIR concluded that the project’s impact to Historical Resources could not be mitigated to a less than significant level. Staff has not contradicted this conclusion. The California Preservation Foundation’s January 24, 2023 letter to the Planning Commission agreed with the DEIR that replacing the Connell House with a residence designed by another notable architect would not mitigate the project’s impacts to Historic Resources to less-than-significant. The California Preservation Foundation letter also notes that sensitive additions to historic buildings have been allowed as mitigation for partial demolitions, although the author did not cite specific examples.

The appellant’s Contention No. 5 also states that the home’s condition post-application should not be considered. This questions the baseline of the project’s analysis, as others did in comment letters on the DEIR. A Master Response on the topic was included in Chapter 9 of the FEIR (MR-4). A Notice of Preparation for the proposed project was published on February 17, 2015. That date is considered the environmental baseline for the analyses in the EIR for all issue areas as the environmental setting. This is the standard CEQA procedure for the consideration of the potential environmental effects of a project on the existing environmental setting in an EIR. The established “baseline condition” of the Connell House incorporated in this EIR is not the original 1958 as-built condition of the residence or the time of the application for development. The Master Response also states:

“Changes in conditions at the site and to the historic residence located at the project site occurred after the NOP was published, including dereliction, alleged vandalism, and partial destruction of the historic residence, resulting in various ongoing code enforcement actions by the County Code. Structure stabilization has since occurred as part of a “Mothball” Protective Plan required by the County. These changing conditions do not typically require reevaluation of the potential physical adverse effects of a project on the environment, and the environmental baseline was not revised to account for the damage to

and deterioration of the historic resource. However, the EIR notes the condition of the residence is very poor, and EIR Section 5.6.1.3 specifically identifies the number and type of elements that would need to be replaced with new materials under the Preservation alternative, many of which would be similar to original construction of the residence. Therefore, the EIR identified an environmental baseline based on conditions that existed at the time the NOP was issued.”

Changes that have occurred since the baseline are considered valuable information in the evaluation of alternative feasibility in the project decision findings and in the statement of overriding considerations. The CEQA evaluation within the EIR led to a conclusion of an environmentally superior alternative. It falls to the decision makers to assess, in realistic terms, whether the choice of an alternative project will solve the health and safety issues and whether overriding considerations support project approval notwithstanding unmitigable impacts to historic resources.

Appellant’s Contention No. 6: The project is not consistent with Goal 52 of the Monterey County General Plan (1982): To designate, protect, preserve, enhance, and perpetuate those structures and areas of historical, architectural, and engineering significance which contribute to the historical heritage of Monterey County...”

County Response No. 6: County does not dispute that the situation of the subject parcel shows that County has difficulty in always being consistent with Goal 52. The Connell house was not recognized in public knowledge as Neutra-designed structure when the applicant bought the property. This was, in part, because the investigation into historic and notable qualities of structures usually commences fifty years after construction. To capture newer structures and best meet County’s Goal 52, HCD welcomes members of the public who are knowledgeable on the intrinsic value of private structures to communicate that to County staff, who can then share the information with owners and potentially engage a consultant in a windshield survey of historic resources. The preparation of formal Historic Resource assessments would still fall to the owners. Designation procedures are outlined in HR zoning sections of Title 20 and 21.

Appellant’s Contention No. 7: No evidence has been presented to demonstrate that all preservation options are infeasible. Poor condition does not mean that preservation is not feasible (see attachment 7). Documentation is not reasonable mitigation for the demolition of a significant historic resource. There is no economic hardship preventing restoration of the damage incurred under the current ownership. The applicant purchased an occupied house, rented it out for 3 years after the purchase, and then allowed it to deteriorate to its present condition. Alternative 1 (the environmentally preferable alternative) would avoid negative impacts to the historic resource and complies with all land use policies, codes and laws. Reconstruction is an acceptable preservation treatment under the Secretary of the Interior's Standards; the building plans and the information needed to do this are available.

County Response No. 7: Testimony was received in the public hearing of January 25, 2023 as

to the expense and impracticality of requiring an applicant to rebuild a dwelling as a replica. The rejection of Alternative 1, Preservation, in Finding 4 is supported by evidence in the record in the form of recordings of HRRB discussions on the matter, meeting minutes, and testimony received in the Planning Commission meeting. Documentation is a widely accepted mitigation for demolition of historic resources, as discussed in the Heritage Documentation Program webpage at <https://www.nps.gov/hdp/standards/habsguidelines.htm> and National Historic Preservation Act webpage at <https://www.nps.gov/subjects/historicpreservation/national-historic-preservation-act.htm>. County does not equate poor condition with infeasibility of full reconstruction and preservation. Preservation of the Connell House is possible, as discussed in the Final EIR. The resolution on the project discusses the vagaries of certifying an EIR and issuing a permit for preservation. There are many if/when considerations that are likely to result in continued decay of the Connell House. Staff notes the content of the last two sentences of Contention No. 7; they are true statements and require no response. Similarly, staff notes that the statement made at the bottom of page two of the letter from the appellant to the Board of Supervisors dated February 7, 2023, “But the fact that the original historic fabric is damaged or missing does not preclude restoration of a building in ways that are in full compliance with the Secretary of Interior's Standards for the Treatment of Historic Properties and the related Guidelines. <https://www.nps.gov/orgs/1739/upload/treatment-guidelines-2017-part2-reconstruction-restoration.pdf>). Indeed, even a full-scale reconstruction of the house could be accomplished in a manner consistent with the Standards and The Guidelines” are also true statements.

Appellant’s Contention No. 8: The proposed project is significantly higher and larger than neighboring houses (referring to the statement of overriding considerations, Finding 9, evidence i).

County Response No. 8: Staff does not agree that the proposed dwelling would be significantly taller or larger than many other Pebble Beach estates. The project that the Planning Commission and the HRRB supported was a Reduced Height Alternative, so the height was already reduced from the original design. The reduced height alternative maximum height is 25 feet. The setting that is referenced in Finding 9, evidence i was Pebble Beach, not exclusively Signal Hill Road. At the time of this writing, it is true that some other permitted dwellings on Signal Hill Road are smaller than the proposed project.

Appellant’s Contention No. 9: The demolition of the historic resource does not benefit the community or the county as a whole (in reference to the statement of overriding considerations, Finding 9, evidence i).

County Response No. 9: This comment takes issue with the draft Statement of Overriding Considerations, Finding 9, and evidence i. The appellant disputes that a new custom-built estate in the Pebble Beach area is a rationale supporting overriding considerations when the unmitigable impact is the demolition of an historic resource. In preparing the Statement, the County considered the point-of-view of prospective property owners who seek to acquire

property and pursue permits for the development of a custom-built estate. For County residents and potential residents of Pebble Beach, the real estate climate should show a pattern of predictability and normal development review from purchase to final build. If designs show the potential to impact resources, an EIR is prepared. Once the EIR identifies mitigations that can be applied and the public and agencies weigh in on the design and mitigation measures, the County decides on the project. Projects are not guaranteed support, but they should be given fair consideration and, where the County determines that, as a matter of policy, the economic and social benefits outweigh a particular case of environmental detriment, the County may adopt a Statement of Overriding Considerations. County residents who are considering development of a similar lot in a similar neighborhood taking account of the situation that befell their peer, were she awarded a permit only for preservation of the original structure after fifteen years of interaction with County, would not be left with normal investment uncertainty. It behooves County to consider the whole picture for the benefit of the community beyond the singular impact which, although mitigated, is not mitigated to a level of less-than-significant.

Appellant's Contention No. 10: CEQA does not allow tax revenue to be considered. The Statement of Overriding Consideration is not consistent with CEQA.

County's Response No. 10: Planning Commission Resolution 23-005 only mentions tax revenue within the evidence supporting the draft Statement of Overriding Considerations. Staff provided clear reasoning in Finding 9, the relevant finding, and further evidence was provided in testimony at the hearing. The appellant's contention is incorrect because overriding considerations can include economic concerns. The County's tax revenue is an economic concern as it relates to the subject property in its current condition vs. the condition that would result from permitting construction of Alternative 9, Reduced Height Alternative project. Direct revenue would be larger and, although not explicitly stated in the Resolution, the County can reasonably assume that tax revenue for the 17-Mile Drive area of the County might be greater once a dilapidated structure is removed. The evidence authorized to support a Statement of Overriding Considerations specifically includes economic benefits (CEQA Guidelines section 15093). No commissioner challenged the sufficiency of the evidence as it was clear to the decision makers what they represented.

Contentions not already included in the appeal document that were within the appellant's letter to the Board of Supervisors dated February 7, 2023 which was attached to the appeal notice:

Appellant's Contention No. 11: In June 2015 Ms. Taluban reported that someone had spent hours using a chain saw to cut through the structural supports of the Connell house. Note: the house had been certified as historically significant four years previously. At that time there were two possible explanations of this purposeful destructive act:

- 1) A new kind of vandal had emerged that was attacking properties. This would have put other sites in danger.
- 2) The owner who had requested a permit to tear the house down had some kind of connection

to the vandalism (she continues to deny this explanation)
Neither the county nor the owner demanded a thorough investigation at the time to decide between these two explanations.

County's Response No. 11: In 2015, the County Sheriff's office thoroughly investigated the vandalism but was not able to conclude who the vandals were. The County's Code Enforcement team and County Counsel pursued the code violations related to the vandalism by designing, with HRRB input, and enforcing, a Mothball Protection Plan through a Stipulated Agreement. All code violation fees are paid, and the Code Enforcement team continue to monitor the case. Since the project Final EIR was released, the County anticipates that the violations will be resolved through the Planning Permit PLN100338, however it may be decided.

Appellant's Contention No. 12: Now the HRRB and the Planning Commission are recommending that the historic structure be torn down because it has been damaged beyond repair and has been allowed to deteriorate further after chain saw episode. This sends a message to other purchasers of historic properties.

"Any intentional damage or neglect that threatens your historic property will not be seriously investigated and once the damage has occurred the county will deem it a sufficient reason to ignore its historicity and permit you to tear it down to make way for whatever project you propose."

(See Attachment A documenting deterioration between 2012, two years after Mehdipour's own consultant told her that her house was historic, and the present)

County's Response No. 12: The HRRB and the Planning Commission have both acknowledged that this is an unfortunate situation. There was neglect and decay of a structure that the applicant ties to the structure's inherent flaws (wood framing along the north side of the building was not anchored to the foundation, upper level walls are discontinuous and not supported on walls below, lateral resistance for the building was provided by cement plaster on the exterior and interior walls) and to sixty years of Pebble Beach weather that it was not built for (citing earlier owner's account of extreme draftiness) which resulted in moisture infiltration and mold. The owner stated in a comment letter to the Draft EIR (Letter P-125) that her family moved out after the mold inspection found it unhealthy to live in. There was a discrepancy between historical consultants employed by the applicant and others as to the historical significance of the Connell House. Part of the development of the EIR involved the County preparing a summary report of the many viewpoints on the historical merit of the house and concluding with a judgement that the EIR could rely upon. Because the HRRB was reviewed the project prior to the EIR being developed, it was familiar with the disagreements. During its discussion of the Signal Hill LLC project, the Planning Commission referred to the previous violations on the subject parcel relating to the Connell House and tree removal. It did not take the decision to approve lightly, but remedies to the previous violations were in place and therefore such violations could be set aside for the decision at hand. In approving the Reduced Height Alternative, the Planning Commission understood that the Preservation Alternative was the environmentally superior project. Nevertheless, it elected to approve another alternative with a Statement of Overriding Considerations for unmitigable impacts to Historic Resources.

Attachment B-3

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NOTICE OF APPEAL

Monterey County Code
Title 19 (Subdivisions)
Title 20 (Zoning)
Title 21 (Zoning)

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MONTEREY COUNTY

FEB 13 2023

CLERK OF THE BOARD

DEPUTY

VICENTE RAMIREZ

No appeal will be accepted until written notice of the decision has been given. If you wish to file an appeal, you must do so on or before 2/9/2023 (10 days after written notice of the decision has been mailed to the applicant).

Date of decision: 1/25/2023

1. Appellant Name: Alliance of Monterey Area Preservationists

Address: PO Box 2752, Monterey CA 93942

Telephone: 831-324-0186

2. Indicate your interest in the decision by placing a check mark below:

Applicant _____

Neighbor _____

Other (please state) advocate

3. If you are not the applicant, please give the applicant's name:

Signal Hill LLC?Massy Mehdipour

4. Fill in the file number of the application that is the subject of this appeal below:

Type of Application Area

a) Planning Commission: PC- PLN100338 Del Monte Forest

b) Zoning Administrator: ZA- _____

c) Administrative Permit: AP- _____

Notice of Appeal

5. What is the nature of your appeal?

a) Are you appealing the approval or denial of an application? Approval

If you are appealing one or more conditions of approval, list the condition number and state the condition(s) you are appealing. (Attach extra sheet if necessary)

N/A

6. Place a check mark beside the reason(s) for your appeal:

- There was a lack of fair or impartial hearing
- The findings or decision or conditions are not supported by the evidence
- The decision was contrary to law

7. Give a brief and specific statement in support of each of the reasons for your appeal checked above. The Board of Supervisors will not accept an application for an appeal that is stated in generalities, legal or otherwise. If you are appealing specific conditions, you must list the number of each condition and the basis for your appeal. (Attach extra sheets if necessary)

See Attachment

8. As part of the application approval or denial process, findings were made by the decision-making body (Planning Commission, Zoning Administrator, or Chief of Planning). In order to file a valid appeal, you must give specific reasons why you disagree with the findings made. (Attach extra sheets if necessary)

See Attachment

- 9. You must pay the required filing fee of \$3,572.00 (make check payable to "County of Monterey") at the time you file your appeal. (Please note that appeals of projects in the Coastal Zone are not subject to the filing fee.)
- 10. Your appeal is accepted when the Clerk to the Board accepts the appeal as complete and receives the required filing fee. Once the appeal has been accepted, the Clerk to the Board will set a date for the public hearing on the appeal before the Board of Supervisors.

The appeal and applicable filing fee must be delivered to the Clerk to the Board or mailed and postmarked by the filing deadline to PO Box 1728, Salinas CA 93902. A facsimile copy of the appeal will be accepted only if the hard copy of the appeal and applicable filing fee are mailed and postmarked by the deadline.

APPELLANT SIGNATURE

Mimi Sheridan
Mimi Sheridan, President. AMAP

Date: February 9, 2023

RECEIVED SIGNATURE

Date:

NOTICE OF APPEAL

Appeal of Planning Commission decision of 1.25.23

The Planning Commission hearing was not fair or impartial.

- The applicant was granted much more time to present her case than the Commission typically grants. The applicant also spoke several more times, interrupting commenters, while others were not given the opportunity to speak again.
- The applicant made false statements after the public comment period, but no time was allowed for rebuttal.
- The letter from the neighbor's attorney cited numerous issues with the staff report, but the attorney was granted only three minutes, much less time than typically allowed.
- Several Commissioners stated that they relied on the recommendation of the Historic Resources Review Board (HRRB). However, they did not seem to be knowledgeable about that decision, which removed any mention of overriding considerations.

The findings are NOT supported by the evidence.

Finding: The project, as conditioned, is consistent with the applicable plans and policies which designate this area as appropriate for development.

- The project is NOT consistent with the Del Monte Forest Land Use Plan, confirmed by the Pebble Beach Company's letter of 1/24/23. The applicant has not applied for review and approval from the Pebble Beach

Architectural Review Board, which is a requirement noted in all deeds in Del Monte Forest.

- The project is NOT consistent with the Monterey County Coastal Implementation Plan as confirmed by the California Coastal Commission in letters from 2015, 2018 and 2023. The project intrudes further into ESHA and is detrimental to the public viewshed.
- The project is NOT consistent with the Monterey County Code (Title 18). Demolition of a National Register-eligible property cannot be mitigated to a less than significant impact. The condition of the home after the application was made should not be considered. This issue is addressed in letters from the California Preservation Foundation.
- The project is NOT consistent with Goal 52 of the Monterey County General Plan (1982): To designate, protect, preserve, enhance, and perpetuate those structures and areas of historical, architectural, and engineering significance which contribute to the historical heritage of Monterey County..."

Finding: Preservation of the Connell House was considered but was found to be infeasible. Reasonable mitigation is proposed that would require documentation of the house...)

- No evidence has been presented to demonstrate that all preservation options are infeasible. Poor condition does not mean that preservation is not feasible.
- Documentation is not reasonable mitigation for the demolition of a significant historic resource.
- There is no economic hardship preventing restoration of the damage incurred under the current ownership. The applicant purchased an occupied house, rented it out for three years after the purchase, and then allowed it to deteriorate to its present condition.

- Alternative 1 (the environmentally preferable alternative) would avoid negative impacts to the historic resource and would comply with all land use policies, codes and laws.
- Reconstruction is an acceptable preservation treatment under the Secretary of the Interior’s Standards; the building plans and the information needed to do this are available.

Finding: “...the benefits of the project outweigh its unavoidable significant environmental impact. Each benefit set forth below constitutes an overriding consideration warranting approval of the project despite the identified unavoidable impact.

“The project would result in a custom-built estate home within a setting that is known to support this type of development and represents consistent application of development policies absent the historic resource considerations.”

- The proposed project is significantly higher and larger than neighboring houses.
- The demolition of the historic resource does not benefit the community or the county as a whole.

Finding: The project will create economic benefits to the County and the community...through the creation of new property tax revenue through higher property valuation.”

- CEQA does not allow an increase in tax revenue to be considered.

The decision was contrary to law for the reasons cited above and the fact that the Statement of Overriding Consideration is not consistent with CEQA.



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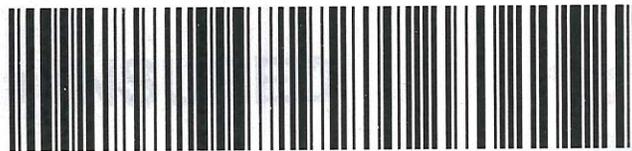
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 Neighbor _____
 (Other (please state) address) _____
 3. If you are not the applicant, please give the applica-
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 Administrator: ZA- _____
 Director: AP- _____
 Del Monte Food _____
 Approval _____
 or denial of an application? _____

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ATTACHMENT B-3b

APPEAL AND COUNTY RESPONSES

Mimi Sheridan, as representative of the Alliance of Monterey Area Preservationists, asserts the following bases for the appeal with respect to the January 25, 2023 Planning Commission hearing and the findings of Resolution 23-005 for PLN100338. Appellant contends that there was a lack of fair and impartial hearing, that the findings made by the Planning Commission are not supported by the evidence, and the decision was contrary to law. The County notes that most of the content of the Sheridan appeal is the same as the Neutra appeal, with minor differences. Therefore, the responses from the County are the same, except for Response to Contention Number 5, which was different from the Neutra appeal. The County has provided substantial evidence in the record for the findings of the project resolution and has made a good faith effort to disclose both the foreseeable environmental effects of the project and the reasoning supporting a statement of overriding considerations. Other contentions refer to testimony provided by the applicant during her project presentation to the Planning Commission (Contention No. 1). The appellant's perception that the hearing body did not allow for rebuttals from neighbors and other concerns may be remedied by the Board hearing on the appeal. Staff's response to the appellant's grouped contentions is included immediately following each grouped appellant contention.

Appellant's Contention No. 1: The Planning Commission hearing was not fair or impartial. The applicant was granted much more time to present her case than the Commission typically grants. The applicant also spoke several more times, interrupting commenters, while others were not given the opportunity to speak again. The applicant made false statements after the public comment period, but no time was allowed for rebuttal. The letter from Anthony Lombardo and Associates cited numerous issues with the staff report, but insufficient time was allowed for the presentation.

County Response No. 1: This comment challenges the Planning Commission Chair's management of the hearing. Staff who were present found that the Chair handled the hearing as well as could be expected and was equally polite with all parties. He was not required to allow members of the public to add more than three minutes of comment to the discussion section of the hearing. He allowed the applicant to respond to remarks by the public without limiting their time, just as Planning Commission leadership has in previous meetings. Therefore, the meeting was fair and impartial.

Appellant's Contention No. 2: Several Commissioners stated that they relied on the recommendation of the Historic Resources Review Board (HRRB). However, they did not seem to be knowledgeable about that decision, which removed any mention of overriding

considerations.

County Response No. 2: Through both the staff report and Resolution and the staff presentation to the Planning Commission, the Commissioners were aware of the outcome of the HRRB meeting on the subject project. Staff were available in the hearing to answer any questions on how the vote was captured in the draft minutes. Therefore, there is no reasonable indication that the Planning Commissioners voted in ignorance of the HRRB vote.

Appellant's Contention No. 3: The findings are not supported by the evidence. The project is not consistent with the policies of the Del Monte Forest Land Use Plan, confirmed by the Pebble Beach Company's letter of 1/24/23. The applicant has not applied for review and approval from the Pebble Beach Architectural Review Board, which is a requirement noted in all deeds in Del Monte Forest.

County Response No. 3: This comment refers to policies of the Del Monte Forest Land Use Plan in relation to the fact that the project has yet to be formally reviewed by the Architectural Review Board (ARB). There is not an LUP policy that requires ARB review prior to County approvals. The LUP notes that projects in the Pebble Beach area will require ARB review because it is "a private body whose review authority is established by CC&Rs that are incorporated in the deeds of property in the Del Monte Forest." However, ARB review is not required by the County prior to decision on a permit. Section 1 of the 1984 agreement between County of Monterey and Pebble Beach Company states "the ACB [sic] was established by the Company to serve as the Board from which approval must be sought by property owners for the design of residences in compliance with applicable deed restrictions. It is acknowledged that the architectural review and approval by the ACB (1) does not supersede or supplant any architectural review and approval required by the County under its ordinances and regulations . . ." (Reel 1800 Page 402). The ARB letter dated January 24, 2023 was not attached to the appeal but was made part of the record when it was sent to the Planning Commission prior to the January 25, 2023 hearing. It was reviewed by the commissioners and discussed as part of decision proceedings. The letter did not directly refer to LUP policies but raised concerns with the size of the project in comparison to existing homes in the immediate area of Signal Hill and the height of the full height project (30 feet) as a visual impact to the view of the dunes. It is true that the LUP recommends that all new development in highly scenic areas like the Del Monte Forest be subordinate to the setting. The policies guide specific steps that are taken to assess impacts on Scenic and Visual Resources, laid out in section 20.147.070 of the Del Monte Forest Coastal Implementation Plan. Public viewshed determinations were made by staff during project application review. Those preliminary findings were part of the reason that a full EIR was developed for the project. Recent communications with ARB staff, Nicky Simon, confirmed that the applicant is scheduling the Signal Hill LLC project for ARB review.

Appellant's Contention No. 4: The project is not consistent with the Monterey County Coastal Implementation Plan as confirmed by the California Coastal Commission in letters from 2015,

2018 and 2023. The project intrudes further into ESHA and is detrimental to the public viewshed.

County Response No. 4: The appellant refers to letters from California Coastal Commission from 2014, 2018 and 2023. There are the following three comment letters on record in Accela: 1) March 19, 2015 – Katie Butler, Coastal Planner, Central Coast Office of the California Coastal Commission (CCC) comment letter to the Notice of Preparation; 2) October 12, 2018 – Brian O’Neill, Coastal Planner, Central Coast Office of the CCC comment letter to the Public draft EIR that is included in the Final EIR as Comment Letter A-2, and 3) January 24, 2023 – Breylen Ammen, Coastal Planner, Central Coast Office of the CCC comment letter to the Planning Commission.

The message of the first two California Coastal Commission comment letters centered on concern with LUP consistency. The letters cited LUP policies but not the Coastal Implementation Plan, or CIP. Therefore, the statement that inconsistency with the CIP was confirmed by these letters is incorrect.

As explained in the County response to Comment Letter A-2 in the Final EIR, the County does not dispute that the proposed project expands development footprint in the Signal Hill sand dunes. Although the area of expansion is disturbed with iceplant and landscaping vegetation and patios from the previous owners, there is the potential for the substrate to be restored and become ESHA, so it is recognized as ESHA by the LUP. Staff has met with CCC staff as part of the response to Comment Letter A-2, which triggered a new mitigation measure (BIO-mm 3.9) and a more collaborative approach to the consideration of residential expansion within residential lots that were formed prior to the California Coastal Initiative and Coastal Act of 1976. To that end, the most recent letter from Coastal Commission staff to the Planning Commission, dated January 24, 2023, did not condemn the expansion of the project footprint into ESHA in this project, but requested the LUP be amended. They stated,

“the Signal Hill dunes were subdivided for residential use prior to the Coastal Initiative (Proposition 20 in 1972) and the Coastal Act (1976), including Coastal Act Section 30240, the purpose of which is to protect ESHA, and there is a well-established pattern of residential development within the dunes. The County has received a number of CDP applications in the recent past for expansions and demolition/rebuilds of existing residences that involve expansion into the dunes. Because single-family residences are not resource dependent, an inherent problem exists with these policies as applied in this area. Technically speaking, such expansion of a non-resource dependent use is inconsistent with the LCP. Given all this, to address projects like the one before you today, we have discussed with Monterey County Planning staff the need to update and clarify the Del Monte Forest LCP to create a set of standards for allowable disturbance and restoration.”

Staff meets with Coastal Commission staff regularly and discussions about LCP amendments are underway. Therefore, the County concurs with the Coastal Commission staff that an LCP amendment, rather than enforcement of a strict adherence with the Local Coastal Act ESHA

policies in the subject parcel, is the path forward. This project site is one of many which are on lots subdivided prior to the Coastal Act and have expanded footprint in ESHA and which provide some form of restoration of sand dune habitat in exchange.

Appellant's Contention No. 5: The project is not consistent with the Monterey County (Title 18). Demolition of a National Register-eligible property cannot be mitigated to a less than significant impact. The condition of the home after the application was made should not be considered. This issue is addressed in letters from the California Preservation Foundation.

County Response No. 5: Title 18, Chapter 18.08 - Historic Building Code states "That certain document entitled 2019 California Historical Building Code, California Code of Regulations, Title 24, Part 8 as published by the California Building Standards Commission is hereby adopted as the Historical Building Code for the County of Monterey." The Connell House is subject to Part 8 of 24, known as the California Historical Building Code (CHBC), because it is designated as an historical building at the State level (automatically added to the register when the State Historic Preservation Officer (SHPO) finds that it is eligible for the National Register of Historic Places. Application of the CHBC includes enforcement by the local enforcing agency when repairs are required for the preservation, restoration, reconstruction, rehabilitation, relocation or continued use of a qualified historical building. This was followed the vandalism of the Connell House, as documented in the Notice of Violation/Compliance Order dated July 21, 2015. A draft Mothballing Plan was referred to the HRRB for input. The HRRB reviewed the Mothball Plan in August and September 2015, after vandalism and neglect resulted in significant damage and affected the original architectural character and value of the dwelling. In mid-September 2015, the HRRB approved Resolution No. 15CP01861 (Signal Hill, LLC) recommending that the Monterey County Building official approve a Mothball Protection Plan (MPP) for the single-family dwelling located on the subject property. The former Resource Management Agency (now HCD) then formalized the MPP by executing a Stipulated Agreement on November 15, 2015. In this way, the County complied with the CHBC requirement to work to remediate the building if it is determined to be unsafe as defined in the regular building code. Other sections of the CHBC regulate improvements to qualified historical buildings or properties related to ADA accessibility, fire protection and fire-safe means of egress, and structural improvements with current and archaic materials and methods. The County is not acting inconsistent with the CHBC because there is no section of the CHBC that requires the rehabilitations/preservations be performed. Instead, it guides how they are done.

The comment also states that "demolition of a National Register-eligible property cannot be mitigated to a less than significant impact." The County has prepared an EIR for the project that includes an analysis of all impacts. The EIR concluded that the project's impact to Historical Resources could not be mitigated to a less than significant level. Staff has not contradicted this conclusion. The California Preservation Foundation's January 24, 2023 comment letter to the Planning Commission agreed with the DEIR that the replacement of the Connell House by a residence designed by another notable architect would not mitigate the project's impacts to Historic Resources to less-than-significant. The California Preservation Foundation letter also notes that sensitive additions to historic buildings have been allowed as mitigation for partial demolitions, although the author did not cite specific examples.

The appellant's Contention No. 5 also states that the home's condition post-application should not be considered. This questions the baseline of the project's analysis, as others did in comment letters on the DEIR. A Master Response on the topic was included in the Chapter 9 of the FEIR (MR-4). A Notice of Preparation for the proposed project was published on February 17, 2015. That date is considered the environmental baseline for the analyses in the EIR for all issue areas as the environmental setting. This is the standard CEQA procedure for the consideration of the potential environmental effects of a project on the existing environmental setting in an EIR. The established "baseline condition" of the Connell House incorporated in this EIR is not the original 1958 as-built condition of the residence or the time of the application for development. The Master Response also states:

"Changes in conditions at the site and to the historic residence located at the project site occurred after the NOP was published, including dereliction, alleged vandalism, and partial destruction of the historic residence, resulting in various ongoing code enforcement actions by the County Code. Structure stabilization has since occurred as part of a "Mothball" Protective Plan required by the County. These changing conditions do not typically require reevaluation of the potential physical adverse effects of a project on the environment, and the environmental baseline was not revised to account for the damage to and deterioration of the historic resource. However, the EIR notes the condition of the residence is very poor, and EIR Section 5.6.1.3 specifically identifies the number and type of elements that would need to be replaced with new materials under the Preservation alternative, many of which would be similar to original construction of the residence.

Therefore, the EIR identified an environmental baseline based on conditions that existed at the time the NOP was issued."

Changes that have occurred since the baseline are considered valuable information in the evaluation of alternative feasibility in the project decision findings and in the statement of overriding considerations. The CEQA evaluation within the EIR led to a conclusion of an environmentally superior alternative. It falls to the decision makers to assess, in realistic terms, whether the choice of an alternative project will solve the health and safety issues and whether overriding considerations support project approval notwithstanding unmitigable impacts to historic resources.

Appellant's Contention No. 6: The project is not consistent with Goal 52 of the Monterey County General Plan (1982): To designate, protect, preserve, enhance, and perpetuate those structures and areas of historical, architectural, and engineering significance which contribute to the historical heritage of Monterey County..."

County Response No. 6: County does not dispute that the situation of the subject parcel shows that County has difficulty in always being consistent with Goal 52. The Connell house was not recognized in public knowledge as Neutra-designed structure when the applicant bought the property. This was, in part, because the investigation into historic and notable qualities of structures usually commences fifty years after construction. To capture newer structures and best meet County's Goal 52, the HCD welcomes members of the public who are knowledgeable on the intrinsic value of private structures to communicate that to County staff, who can then share the information with owners and potentially engage a consultant in a windshield survey of

historic resources. The preparation of formal Historic Resource assessments would still fall to the owners. Designation procedures are outlined in HR zoning sections of Title 20 and 21.

Appellant's Contention No. 7: No evidence has been presented to demonstrate that all preservation options are infeasible. Poor condition does not mean that preservation is not feasible. Documentation is not reasonable mitigation for the demolition of a significant historic resource. There is no economic hardship preventing restoration of the damage incurred under the current ownership. The applicant purchased an occupied house, rented it out for 3 years after the purchase, and then allowed it to deteriorate to its present condition. Alternative 1 (the environmentally preferable alternative) would avoid negative impacts to the historic resource and would comply with all land use policies, codes and laws. Reconstruction is an acceptable preservation treatment under the Secretary of the Interior's Standards; the building plans and the information needed to do this are available.

County Response No. 7: Testimony was received in the public hearing of January 25, 2023 as to the expense and impracticality of requiring an applicant to rebuild a dwelling as a replica. The rejection of Alternative 1, Preservation, in Finding 4 is supported by evidence in the record in the form of recordings of HRRB discussions on the matter, meeting minutes, and testimony received in the Planning Commission meeting. Documentation is a widely accepted mitigation for demolition of historic resources, as discussed in the Heritage Documentation Program webpage at <https://www.nps.gov/hdp/standards/habsguidelines.htm> and National Historic Preservation Act webpage at <https://www.nps.gov/subjects/historicpreservation/national-historic-preservation-act.htm>. County does not equate poor condition with infeasibility of full reconstruction and preservation. Preservation of the Connell House is possible, as discussed in the Final EIR. The resolution on the project discusses the vagaries of certifying an EIR and issuing a permit for preservation. There are many if/when considerations that are likely to result in continued decay of the Connell House.

The statement made in this contention that the applicant purchased the house and rented it out is contested by the applicant's testimony on the record. In comment letter P-125 to the Draft EIR, the applicant described it as a house that she and her family stayed in until the mold from structural inadequacies made it unhealthy.

Staff notes the content of the last two sentences of Contention No. 7; they are true statements and require no response. Similarly, staff notes that the statement made at the bottom of page two of the letter from the appellant to the Board of Supervisors dated February 7, 2023, "But the fact that the original historic fabric is damaged or missing does not preclude restoration of a building in ways that are in full compliance with the Secretary of Interior's Standards for the Treatment of Historic Properties and the related Guidelines. <https://www.nps.gov/orgs/1739/upload/treatment-guidelines-2017-part2-reconstruction-restoration.pdf>). Indeed, even a full-scale reconstruction of the house could be accomplished in a manner consistent with the Standards and The Guidelines" are also true statements.

Appellant's Contention No. 8: The proposed project is significantly higher and larger than neighboring houses (referring to the statement of overriding considerations, Finding 9, evidence i).

County Response No. 8: Staff does not agree that the proposed dwelling would be significantly taller or larger than many other Pebble Beach estates. The project that the Planning Commission and the HRRB supported was a Reduced Height Alternative, so the height was already reduced from the original design. The reduced height alternative maximum height is 25 feet. The setting that is referenced in Finding 9, evidence i was Pebble Beach, not exclusively Signal Hill Road. At the time of this writing, it is true that some other permitted dwellings on Signal Hill Road are smaller than the proposed project.

Appellant's Contention No. 9: The demolition of the historic resource does not benefit the community or the county as a whole (in reference to the statement of overriding considerations, Finding 9, evidence i).

County Response No. 9: This comment takes issue with the draft Statement of Overriding Considerations, Finding 9, and evidence i. The appellant disputes that a new custom-built estate in the Pebble Beach area is a rationale supporting overriding considerations when the unmitigable impact is the demolition of an historic resource. In preparing the Statement, the County considered the point-of-view of prospective property owners who seek to acquire property and pursue permits for the development of a custom-built estate. For County residents and potential residents of Pebble Beach, the real estate climate should show a pattern of predictability and normal development review from purchase to final build. If designs show the potential to impact resources, an EIR is prepared. Once the EIR identifies mitigations that can be applied and the public and agencies weigh in on the design and mitigation measures, the County decides on the project. Projects are not guaranteed support, but they should be given fair consideration and, where the County determines that, as a matter of policy, the economic and social benefits outweigh a particular case of environmental detriment, the County may adopt a Statement of Overriding Consideration. County residents who are considering development of a similar lot in a similar neighborhood taking account of the situation that befell their peer, were she awarded a permit only for preservation of the original structure after fifteen years of interaction with County, would not be left with normal investment uncertainty. It behooves County to consider the whole picture for the benefit of the community beyond the singular impact which, although mitigated, is not mitigated to a level of less-than-significant.

Appellant's Contention No. 10: CEQA does not allow tax revenue to be considered. The Statement of Overriding Consideration is not consistent with CEQA.

County's Response No. 10: The Planning Commission Resolution 23-005 only mentions tax

revenue within the evidence supporting the draft Statement of Overriding Considerations. Staff provided clear reasoning in Finding 9, the relevant finding, and further evidence was provided in testimony at the hearing. The appellant's contention is incorrect because overriding considerations can include economic concerns. The County's tax revenue is an economic concern as it relates to the subject property in its current condition vs. the condition that would result from permitting construction of Alternative 9, Reduced Height Alternative project. Direct revenue would be larger and, although not explicitly stated in the Resolution, the County can reasonably assume that tax revenue for the 17-Mile Drive area of the County might be greater once a dilapidated structure is removed. The evidence authorized to support a Statement of Overriding Considerations specifically includes economic benefits (CEQA Guidelines section 15093). No commissioner challenged the sufficiency of the evidence as it was clear to the decision makers what they represented.