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Appeal Filed: 7/27/2017
 49th Day: Waived
 Staff: Katie Butler - SC
 Staff Report: 8/25/2017
 Hearing Date: 9/14/2017

APPEAL STAFF REPORT: SUBSTANTIAL ISSUE DETERMINATION & DE NOVO HEARING

Application Number: A-3-MCO-17-0038 (Bardis Driveway Improvements)

Applicants: Chris and Sara Bardis

Appellant: Tracy Alford

Local Government: Monterey County

Local Decision: Monterey County Coastal Development Permit (CDP) Application Number PLN140715-AMD1, approved by the Monterey County Board of Supervisors on July 11, 2017

Project Location: 1525 Riata Road, Del Monte Forest Area, Monterey County (APN 008-341-026)

Project Description: Driveway improvements at an existing single family residence, including an approximately 12.5-foot-tall and 56-foot-long retaining wall into 30-60% slope

Staff Recommendation: Substantial Issue Exists; Denial

Important Hearing Procedure Note: The Commission will not take testimony on this “substantial issue” recommendation unless at least three Commissioners request it. The Commission may ask questions of the Applicants, any aggrieved person, the Attorney General or the Executive Director prior to determining whether or not to take testimony regarding whether the appeal raises a substantial issue. If the Commission takes testimony regarding whether the

appeal raises a substantial issue, testimony is generally (and at the discretion of the Chair) limited to three minutes total per side. Only the Applicants, persons who opposed the application before the local government (or their representatives), and the local government shall be qualified to testify during this phase of the hearing. Others may submit comments in writing. (*Id.*) If the Commission finds that the appeal raises a substantial issue, the de novo phase of the hearing will follow, unless it has been postponed, during which the Commission will take public testimony. (California Code of Regulations, Title 14, Sections 13115 and 13117.)

SUMMARY OF STAFF RECOMMENDATION

Monterey County approved a coastal development permit (CDP) authorizing the construction of driveway improvements at 1525 Riata Road in the Del Monte Forest Area of Monterey County. The improvements include expansion of the motor court area including the potential construction of an approximately 12.5-foot-tall and 56-foot-long retaining wall to support the cut slope necessitated by the motor court expansion. This expansion would involve a 15- to 23-foot excavation into the adjacent hillslope on the east side of the motor court, equaling approximately 300 cubic yards of cut, as well as some incursion into the canyon on the north side of the motor court (actual cut amount were not specified in the County's approval).

The Appellant contends that the County-approved project is inconsistent with Monterey County Local Coastal Program (LCP) provisions related to the Pescadero Watershed. Specifically, the Appellant contends that the project is inconsistent with the LCP's requirement that new development minimize runoff and protect water quality, including the requirement in the Pescadero Watershed area that limits residential impervious surface coverage (i.e. structural and site improvements) to a maximum of 9,000 square feet. With respect to 30 percent slopes, the Appellant contends that the project is inconsistent with the LCP's prohibition against development on slopes of 30 percent or more unless there is no feasible alternative or if siting on 30 percent slopes better meets LCP objectives as a whole.

Regarding the first contention, the LCP limits residential impervious surface coverage to 9,000 square feet in order to protect the water quality of the Pescadero Watershed, which drains into Carmel Bay (a State-designated Area of Special Biological Significance (ASBS)). In its approval of this project, the County found that the project would reduce the total impervious coverage on the site to 11,493 square feet, stating that the revised driveway and motor court area would be constructed of pervious materials. However, it is unclear how this would be achieved, given that a 2013 County CDP approval already required this area to be converted to pervious pavers and the County does not provide a breakdown of how the further reduction would be accomplished. Furthermore, in its approval of a project that would still exceed the LCP's coverage limitation, the County did not make a new variance finding for the continued non-compliance with the LCP's maximum impervious coverage requirement, but instead relied on a previous 2013 variance approval for a different project. Furthermore, Commission staff finds that use of variances in this manner to permit properties which are already in exceedance of the LCP's impervious surface limitation, *upon redevelopment*, to continue to exceed the LCP's impervious surface limitation is inconsistent with the purpose of variance allowances under the LCP. Thus,

the County-approved project is inconsistent with the LCP's requirement to limit total impervious coverage on a site in the Pescadero Watershed to 9,000 square feet.

With respect to the second contention, the CDP approval also allows for new development on 30 percent slopes, including approximately 300 cubic yards of cut and a potential 12.5-foot-tall and 56-foot-long retaining wall to support the cut slope (without the benefit of a geologic report), without providing factual support (and, as explicitly required by the LCP, "substantial evidence") for the project's necessity. Instead, the record is clear that the 2013 driveway configuration approval (i.e. the "no project alternative") is a feasible option that has already been approved by the County and the applicable fire agency in order to meet fire and public safety standards. In short, the County's findings are not supported by, or consistent with, LCP policies that seek to protect the Carmel Bay and Del Monte Forest from water quality degradation and unnecessary landform alteration, and the project must therefore be denied.

Staff therefore recommends that the Commission find that the appeal raises a substantial issue and that the Commission take jurisdiction over the CDP application. Staff further recommends that the Commission, on de novo review, deny the CDP. The motions can be found on Page 5 of the Staff Report.

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EXHIBITS

Exhibit 1 – Location Map

Exhibit 2 – Site Photo

Exhibit 3 – County’s Final Local Action Notice

Exhibit 4 – Appeal Contentions

Exhibit 5 – Land Use Plan Map of the Del Monte Forest Area’s Watersheds

Exhibit 6 – 2013 County-approved plans

I. MOTIONS AND RESOLUTIONS

A. Substantial Issue Determination

Staff recommends that the Commission determine that a **substantial issue** exists with respect to the grounds on which the appeal was filed. A finding of substantial issue would bring the CDP application for the proposed project under the jurisdiction of the Commission for de novo hearing and action. To implement this recommendation, staff recommends a **NO** vote on the following motion. Failure of this motion will result in a de novo hearing on the CDP application, and adoption of the following resolution and findings. Passage of this motion will result in a finding of No Substantial Issue and the local action will become final and effective. The motion passes only by affirmative vote of a majority of the Commissioners present.

***Motion:** I move that the Commission determine that Appeal Number A-3-MCO-17-0038 raises no substantial issue with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act, and I recommend a no vote.*

***Resolution to Find Substantial Issue:** The Commission hereby finds that Appeal Number A-3-MCO-17-0038 presents a substantial issue with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act regarding consistency with the certified Monterey County Local Coastal Program.*

B. CDP Determination

Staff recommends that the Commission, after public hearing, **deny** a coastal development permit for the proposed development. To implement this recommendation, staff recommends a **NO** vote on the following motion. Failure of this motion will result in denial of the CDP and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

***Motion:** I move that the Commission approve Coastal Development Permit Number A-3-MCO-17-0038 for the development proposed by the applicants, and I recommend a no vote.*

***Resolution to Deny CDP:** The Commission hereby denies Coastal Development Permit Number A-3-MCO-17-0038 on the grounds that the development will not be in conformity with the Monterey County Local Coastal Program. Approval of the permit would not comply with the California Environmental Quality Act because there are feasible mitigation measures and/or alternatives that would substantially lessen the significant adverse effects of the development on the environment.*

II. FINDINGS AND DECLARATIONS

The Commission finds and declares as follows:

A. PROJECT LOCATION AND CDP HISTORY

The County-approved project is located on a 1.86-acre lot at 1525 Riata Road in the unincorporated Del Monte Forest (i.e. Pebble Beach) area of Monterey County. The site is surrounded by single-family residences and is situated approximately three-quarters-of-a-mile inland and north of Stillwater Cove (the northern end of Carmel Bay). The southern two-thirds of the project site is developed with an existing single-family residence and driveway, and the northern one-third of the site consists of a wooded canyon with slopes up to 60 percent. The property is zoned Low Density Residential (LDR/1.5-D), allowing for residential development at a maximum of 1.5 units per acre and requiring design approval, in addition to CDP approval, for the construction of any structures.

The CDP for the existing residence on the site was approved in December 1988 by the Coastal Commission (CDP No. 3-87-265, Yakobovich).¹ That approval, which was subject to five special conditions,² allowed for the construction of an approximately 5,000- to 6,000-square-foot residence and motor court area, as well as tree removal and approximately 3,000 cubic yards of grading to accommodate the residential and driveway development. In 2012, the current Applicants purchased the property, and in 2013 they applied to the County for a CDP for a remodel and addition to the existing residence (County file number PLN120663, Commission file number 3-MCO-13-0384). This approval also included changes to the existing driveway to accommodate fire truck emergency access. The County Zoning Administrator approved that CDP on May 30, 2013 subject to 11 conditions. On December 10, 2014, the County Planning Commission approved a minor and trivial amendment (County file number PLN140715, Commission file number 3-MCO-15-0048) to the 2013 CDP to allow for a roof deck and for other adjustments to the previously approved site plan. The County has granted two other administrative approvals (non-CDP design approvals) for the site as well (PLN150379 and PLN170482). In addition, the County made an administrative decision in 2016 that the Applicants did not need CDP approval for conversion of a portion of the motor court area to a courtyard.

See **Exhibit 1** for a project location map and **Exhibit 2** for a photo of the project site.

B. PROJECT DESCRIPTION

¹ The Del Monte Forest Area Land Use Plan (LUP) was certified by the Coastal Commission on September 24, 1984 and the Del Monte Forest Area Coastal Implementation Plan (CIP) was certified on December 10, 1987. Application number 3-87-265 was still submitted to, and permitted, by the Commission instead of the County because the full LCP had not yet been certified at the time of submittal and acceptance for filing.

² One of the special conditions required the recordation of an offer-to-dedicate (OTD) an open space conservation easement over the northern approximately one-third of the property in the area of the wooded canyon. The OTD was recorded on June 9, 1988 but expired on June 9, 2009 (21 years after recordation) after no public or private entity accepted the offer. As such, no open space conservation easement currently exists on the property.

The County's CDP approval authorizes the construction of driveway improvements at the northeast end of the existing driveway in the motor court area, including expansion of the motor court area to the north and east to accommodate vehicle turnaround space. This expansion would involve a 15- to 23-foot-deep excavation into the adjacent hillslope on the east side of the motor court, equaling approximately 300 cubic yards of cut, as well as some incursion into the canyon on the north side of the motor court (actual cut amount was not specified in the County's approval). According to the County's approval, the expansion is required to accommodate Americans with Disability Act (ADA) and emergency vehicle access. The approval also allows for the construction of an approximately 12.5-foot-tall by 56-foot-long retaining wall to support the cut slope necessitated by the motor court expansion, if determined necessary by the Monterey County Building Official. The CDP was conditioned to require a geotechnical report prior to the issuance of the grading permit in order for the Building Official to make the determination on the necessity of the retaining wall.

See the County's conditions of approval and approved project plans in **Exhibit 3**.

C. MONTEREY COUNTY APPROVAL AND CCC APPEAL

On April 26, 2017, the Monterey County Planning Commission adopted a resolution (Planning Commission Resolution No. 17-010) approving the project as consistent with the Monterey County Local Coastal Program (LCP). The Appellant (Tracy Alford) filed an appeal of the Planning Commission's decision on May 12, 2017. On July 11, 2017, the Board of Supervisors (BOS), denied the appeal and approved the proposed project subject to seven special conditions (BOS Resolution No. 17-222). Notice of the County's action on the CDP was received in the Coastal Commission's Central Coast District Office on July 17, 2017. The Coastal Commission's ten-working-day appeal period for this action began on July 18, 2017 and concluded at 5 p.m. on July 31, 2017. One valid appeal was received during the appeal period (see **Exhibit 4**).

D. APPEAL PROCEDURES

Coastal Act Section 30603 provides for the appeal to the Coastal Commission of certain CDP decisions in jurisdictions with certified LCPs. The following categories of local CDP decisions are appealable: (a) approval of CDPs for development that is located (1) between the sea and the first public road paralleling the sea or within 300 feet of the inland extent of any beach or of the mean high tide line of the sea where there is no beach, whichever is the greater distance, (2) on tidelands, submerged lands, public trust lands, within 100 feet of any wetland, estuary, or stream, or within 300 feet of the top of the seaward face of any coastal bluff, or (3) in a sensitive coastal resource area; or (4) for counties, approval of CDPs for development that is not designated as the principal permitted use under the LCP (Coastal Act Sections 30603(a)(1)-(4).) In addition, any local action (approval or denial) on a CDP for a major public works project (including a publicly financed recreational facility and/or a special district development) or an energy facility is appealable to the Commission. (Coastal Act Section 30603(a)(5).) The County's approval of this project is appealable because the proposed development is located between the sea and the first public road (Highway 1 in this case).

The grounds for appeal under Section 30603(b)(1) are limited to allegations that the development

does not conform to the certified LCP or to the public access policies of the Coastal Act. Section 30625(b)(2) of the Coastal Act requires the Commission to conduct the de novo portion of the hearing on an appealed project unless a majority of the Commissioners present finds that “no substantial issue” is raised by such allegations. Under Section 30604(b), if the Commission considers the CDP de novo and ultimately approves a CDP for a project, the Commission must find that the proposed development is in conformity with the certified LCP. If a CDP is approved for a project that is located between the nearest public road and the sea or the shoreline of any body of water located within the coastal zone, Section 30604(c) also requires an additional specific finding that the development is in conformity with the public access and recreation policies of Chapter 3 of the Coastal Act. This project is located between the nearest public road (Highway 1) and the sea, and thus this additional finding needs to be made if the Commission were to approve the project following a de novo hearing.

The only persons qualified to testify before the Commission on the substantial issue question are the Applicants (or their representative(s)), persons opposed to the project who made their views known before the local government (or their representative(s)), and the local government. Testimony from other persons regarding substantial issue must be submitted in writing. (California Code of Regulations, Title 14, Section 13117.) Any person may testify during the de novo CDP determination stage of an appeal.

E. SUMMARY OF APPEAL CONTENTIONS

The Appellant contends that the County-approved project is inconsistent with Monterey County LCP provisions related to the Pescadero Watershed (Del Monte Forest Land Use Plan (LUP) Policy 1 and Del Monte Forest Area Coastal Implementation Plan (CIP) Sections 20.147.030.A.1.a and b) and 30 percent slopes (Del Monte Forest Area LUP Policy 78 and CIP Section 20.64.230.E.1). Specifically, the Appellant contends that the project is inconsistent with the LCP’s requirement that new development minimize runoff and protect water quality, including the requirement in the Pescadero Watershed area that limits residential impervious surface coverage (i.e. structural and site improvements) to a maximum of 9,000 square feet. With respect to 30 percent slopes, the Appellant contends that the project is inconsistent with the LCP’s prohibition against development on slopes of 30 percent or more unless there is no feasible alternative or siting on 30 percent slopes better meets LCP objectives as a whole. The Appellant also contends that the County improperly characterized the project under CEQA and consequently performed no environmental review, and further contends that the County approved the project during the pendency of a code violation in conflict with CIP Section 20.90.120.

See **Exhibit 4** for the Appellant’s contentions. See Section H below for the text of the above-cited LCP provisions.

F. SUBSTANTIAL ISSUE DETERMINATION

The term substantial issue is not defined in the Coastal Act. The Commission’s regulations simply indicate that the Commission will hear an appeal unless it “finds that the appeal raises no significant question” (California Code of Regulations, Title 14, Section 13115(b)). In previous decisions on appeals, the Commission has considered the following factors in making such

determinations: (1) the degree of factual and legal support for the local government’s decision that the development is consistent or inconsistent with the certified LCP and with the public access policies of the Coastal Act; (2) the extent and scope of the development as approved or denied by the local government; (3) the significance of the coastal resources affected by the decision; (4) the precedential value of the local government’s decision for future interpretation of its LCP; and (5) whether the appeal raises only local issues, or those of regional or statewide significance. Even where the Commission chooses not to hear an appeal, Appellants nevertheless may obtain judicial review of the local government’s coastal permit decision by filing a petition for a writ of mandate pursuant to Code of Civil Procedure, Section 1094.5.

In this case, for the reasons discussed further below, the Commission determines that the County’s approval of a CDP for the project presents a substantial issue.

1. Pescadero Watershed and Marine Resource Protection

Applicable LCP Provisions

The Monterey County LCP is divided into four segments, each with its own LUP and CIP.³ The subject property is located within the Del Monte Forest LCP segment, which includes an extensive policy framework meant to protect the area’s rich coastal resources, including through policies that protect freshwater and marine resources (including Carmel Bay, an Area of Special Biological Significance (ASBS) as designated by the State Water Resources Control Board (SWRCB)), as well as sensitive habitat and forest resources.

Specifically, the LCP includes provisions that require new development to: minimize runoff, site disturbance, erosion, and sedimentation; conform to site topography; keep driveways to the minimum length and width to provide “simple, direct access” (and be limited to the minimum required to meet daily, not occasional, parking needs); and design surfaces to minimize runoff (including through the use of permeable materials) (LUP Policy 1 and CIP Section 20.147.030.A.1.a). For the Pescadero Watershed area (which drains to Carmel Bay) specifically, the LCP requires that residential impervious surface coverage (i.e. structural and site improvements) be limited to a maximum of 9,000 square feet (CIP Section 20.147.030.A.1.b). The LCP includes other related provisions, including requirements that development avoid nonpoint sources of pollution⁴ to Carmel Bay (LUP Policy 2 and CIP Section 20.147.030.A.3), and that best management practices and erosion control measures be used both during and after construction (LUP Policies 3 through 6 and CIP Sections 20.147.030.A.4 through 7).

Overall, these policies and CIP sections (see Section H below for full text) are meant to implement applicable Coastal Act policies that require the protection of freshwater and marine resources, particularly areas or species of biological or economic significance, and the maintenance of water quality, both inland and along the coast.

Appellant’s Contentions

³ The County’s four LUP areas are: North County, Del Monte Forest, Carmel Area, and Big Sur.

⁴ Nonpoint source (NPS) pollution generally results from land runoff, precipitation, atmospheric deposition, drainage, seepage or hydrologic modification. NPS pollution, comes from many diffuse sources and is caused by rainfall or snowmelt moving over and through the ground. As the runoff moves, it picks up and carries away natural and human-made pollutants, finally depositing them into lakes, rivers, wetlands, coastal waters and ground waters.

The Appellant contends that the project is not necessary, is substantial, and is inconsistent with and in violation of CIP Sections 20.147.030.A.1.a and b, and LUP Policy 1. The Appellant further contends that the project will result in the creation of 910 square feet of additional impervious surface coverage in violation of CIP Section 20.147.030.A.1.b.⁵ As described above, this LUP policy along with these CIP sections address the protection of water quality from development runoff and specifically limit impervious surface coverage on residential sites in the Pescadero Watershed to 9,000 square feet.

Analysis

The project site is located in the Pescadero Watershed, which encompasses the approximately southern one-third of the Del Monte Forest that drains to the Carmel Bay ASBS. The project area is comprised primarily of large-scale single-family residences on approximately one-to-two-acre lots. The Pebble Beach Golf Links comprises the southwest portion of the Pescadero Watershed along the Carmel Bay shoreline. (See **Exhibit 5** for the LUP map of the Del Monte Forest area's watersheds.)

In 1972, the State Water Resources Control Board (SWRCB) adopted the California Ocean Plan (Ocean Plan) as the State's water quality control plan for ocean waters. The Ocean Plan provides the basis for regulation of discharges of both point and nonpoint source pollution. Shortly after adoption of the Ocean Plan, the State designated 34 ASBSs, including Carmel Bay. ASBSs were designated as such because they provide an unusual variety of aquatic life and often host unique individual species. The Carmel Bay was designated as an ASBS in 1975 (SWRCB Resolution 75-61) because of the Bay's unique ecosystem and physical characteristics, and because of the threat of increasing wastewater discharge entering the system from the existing wastewater treatment plant in Carmel and existing septic systems. For these reasons, protecting Carmel Bay as an ASBS, as well as the area's freshwater resources, are key LCP requirements. The importance of protecting the Carmel Bay ASBS was identified in the original LUP when it was certified in 1984 and this requirement was maintained in the 2012 Del Monte Forest LCP update.

When the Del Monte Forest LCP was originally certified in 1987, it included the 9,000-square-foot impervious surface limit requirement and broke it down by structural (5,000 square feet; e.g. a residence) and non-structural (4,000 square feet; e.g. a driveway) coverage to respond to, and address, the known concerns about storm water runoff into the Bay. This cap on impervious surfaces in the watershed was intended to provide a quantifiable and meaningful level of protection against excessive runoff and nonpoint source pollution to the ASBS.

At the time of Del Monte Forest LCP certification, a number of the residential lots in the Pescadero Watershed that were subject to these coverage limitations (including the proposed project site) were already developed with residences that had levels of coverage greater than 9,000 total square feet. Since LCP certification, the County has required *new* residences on vacant lots to comply with the 9,000-square-foot coverage limit, but has not required existing residences that are redeveloped to be brought fully into conformance with the coverage limit. Instead, for proposed redevelopment of existing residences, the County has typically issued variances to this requirement if applicants reduce the amount of impervious coverage on their property, even if that reduction still results in an overall exceedance of the maximum standard.

⁵ The alleged 910 square feet of new impervious coverage would be from new stone/concrete hardscape elements (205 square feet), northern expansion of motor court (380 square feet), and a new retaining wall (325 square feet).

Such reductions have been achieved largely by changing impervious paving to pervious materials (gravel, pavers, etc.) when homes are remodeled or redeveloped.

When the Del Monte Forest LCP was updated in 2012, the 9,000-square-foot impervious coverage limit was carried forward into the updated LCP as a requirement (although the specific limitations on structural and non-structural coverage were eliminated). In doing so, the County and the Coastal Commission affirmed that the 9,000-square-foot maximum coverage requirement per parcel remained appropriate for the protection of the biological quality of the watershed. The language remained clear in the LCP update that impervious coverage for residential development be limited to this maximum.⁶

The County's 2013 CDP approval for the remodel, driveway improvements and expansion of the residence on the project site included a variance to exceed the 9,000-square foot impervious surface coverage requirement. The County made the three LCP-required findings (see Section H below for the full text of these required findings) to approve the variance, and provided calculations for how the project would make the property "more conforming" with respect to the LCP's maximum coverage standard. Specifically, that approval stated that existing impervious coverage on the site equaled 17,185 square feet and the Applicants would convert approximately 3,265 square feet of the existing asphalt driveway to pervious pavers, reducing the total amount of impervious coverage to 13,514 square feet.⁷ Regardless, the County found that the reduction would improve a nonconforming condition but would still exceed the maximum impervious surface coverage allowed. The County made the same finding in its 2014 CDP amendment approval for the roof deck and other minor adjustments on the site, namely, that the project would again improve a nonconforming situation through further reductions, but it would still be inconsistent with the LCP's coverage requirement.

In its approval of this project, the County found that the project would again further reduce the total impervious coverage on the site to 11,493 square feet, stating that the motor court area would be constructed of pervious materials. However, it is unclear how this further reduction would be achieved, given that the original 2013 approval already required this area to be converted to pervious pavers and the County does not provide a breakdown of how the reduction would be accomplished. The Appellant contends that the proposed project would actually increase impervious coverage by 910 square feet. The County staff report did not address this discrepancy, and it is not otherwise addressed in the project materials received in the Final Local Action Notice for the project. Furthermore, in its approval of the current CDP on appeal, the County did not make a new variance finding for the continued non-compliance with CIP Section

⁶ Although the language of CIP Section 20.147.030.A.1.b does not explicitly state whether this coverage is for new or redevelopment of existing development, absent such an express distinction, the statutory intent is clear that it applies to all development, including redevelopment. Thus, the Commission further concludes that the County's use of variances to avoid compliance with the impervious coverage requirement for redevelopment is an improper application of the LCP's variance policy, as further discussed below in this staff report.

⁷ However, there are discrepancies regarding the amount of impervious coverage reduction that has ultimately been required on the site since 2013. The findings in the County's 2013 CDP approval for the remodel of the house (PLN120663) indicated that the coverage was required to be reduced to 13,514 square feet. The County's 2014 CDP amendment approval for a roof deck (PLN140715) indicated that the original reduction was to be to 13,606 square feet. Finally, the County's approval of the project that is the subject of this appeal states that the original reduction was to be to 14,994 square feet.

20.147.030.A.1.b but instead found that the project remained consistent with the previous variance approval (and would still exceed the LCP's coverage limitation).

In any case, the proposed project, like the previous 2013 and 2014 CDP approvals for the site, is inconsistent with the LCP's requirement to limit total impervious coverage on a site in the Pescadero Watershed to 9,000 square feet.

In addition, LUP Policy 1 and CIP Section 20.147.030.A.1.a require new residential driveways and other vehicular surfaces in the Pescadero Watershed to be kept to the minimum length and width necessary to provide "simple, direct access." The County did not discuss this requirement, but as described in the 30 percent slopes discussion below, the 2013 CDP approval allowed for ample parking and turnaround areas (including a lower garage parking area and an expansion of an existing firetruck turnaround⁸ approximately halfway up the driveway, as well as the existing remaining motor court area (i.e. the portion that was not converted to a courtyard) that is the subject of the proposed project). The existing approved driveway, parking, and turnaround areas on the site would provide simple and direct access as well as the required emergency access.⁹ (See **Exhibit 6** for the 2013 County-approved plans.) Thus, expansion of the motor court area would also conflict with this LCP standard.

The Applicants have indicated that issues exist with respect to the 2013-approved emergency access, and the vehicular turnaround area that the County approved in 2013, which would be located approximately halfway down the driveway, but has not been constructed. Additional consultation with the Pebble Beach Community Services District (District) appears necessary with respect to the required emergency access on the site. Such consultation was not undertaken during the County's review process for the project. Furthermore, the Applicants have indicated that at the County Board of Supervisors' hearing they offered to convert the entire driveway to pervious materials, bringing the total impervious coverage on the site down to approximately 6,500 square feet.¹⁰ However, this reduction was not reflected in the County's final resolution or in its conditions of approval for the project, and thus the approved project does not reduce pervious coverage on the site to the maximum 9,000 square feet allowed by the LCP.

In sum, the County's approval would allow for continued impervious coverage on the site in exceedance of the required maximum. Therefore, the County's approval is inconsistent with LUP Policy 1's overarching requirement that development be sited and designed to minimize runoff, site disturbance, erosion, and sedimentation, and with CIP Section 20.147.030.A.1.b's very specific requirement to limit impervious surface coverage for residential development to a maximum of 9,000 square feet. Properties with existing residences in this area should be required to conform to this policy requirement when they redevelop. In addition, there are fundamental underlying factual questions regarding the scope and conditioning of the approved development

⁸ However, the expansion to the existing turnaround area has not been constructed.

⁹ It is worth noting that neither the certified LCP nor any other portion of the County Code requires ADA accessibility for single-family homes, which was a stated basis for the County's approval of the project currently on appeal.

¹⁰ Given that the driveway is steep, questions remain with respect to feasibility of converting the entire driveway to pervious materials considering the District's requirements for firetruck access and the use of pervious pavers on steep driveways.

which further support a finding of substantial issue, including whether and to what extent the approved project will increase or decrease impervious surface, how the new retaining wall will impact that calculation, as well as new, post-approval issues raised by the Applicants regarding fire safety and conversion of the entire driveway to a pervious surface, all of which should have been resolved at the local level before approval of the CDP for the project. The County's approval therefore raises a substantial LCP conformance issue with respect to water quality and marine resource protection.

2. 30 Percent Slopes

Applicable LCP Provisions

The Del Monte Forest LCP includes specific requirements for development on 30 percent or greater slopes in order to protect against hazards, erosion, and landform alteration. Specifically, the LCP prohibits development on slopes of 30 percent or more unless (based on substantial evidence) such siting would better meet LCP objectives as a whole or if no feasible alternative exists for development on slopes less than 30 percent (LUP Policy 78 and CIP Section 20.64.230). The LCP also requires new development to not threaten the stability of a site or contribute to geologic instability or destruction of a site, and requires geotechnical reports for any project on 30 percent slopes to be submitted as part of the CDP application (LUP Policy 38 and CIP Section 20.147.060.A). See applicable LCP provisions in Section H below.

Appellant's Contentions

The Appellant contends that the project involves 305 cubic yards of cut into 30-60 percent slopes, and requires construction of a 700-square-foot retaining wall that will be 12.5 feet tall and 56 feet long, and that such development is inconsistent with LUP Policy 78 and CIP Section 20.64.230.E.1 because the County did not make the required findings that such development would better meet LCP objectives and no feasible alternative exists.

Analysis

The project site is located in a forested, residential area with varying topography that includes flat areas as well as steep slopes and canyons. The residence on the site was originally constructed in the late 1980s on the most level area of site, requiring approximately 3,000 cubic yards of grading. The northern approximately one-third of the project site is a steep, wooded canyon. The Commission required this canyon area to be placed in a scenic and conservation easement as part of its approval for the original house in 1988 (CDP 3-87-265).¹¹ The canyon, immediately up against which the residence and motor court were constructed (approximately zero to five feet away), contains steep slopes and acts as a primary natural drainage course for the area. The motor court area is also immediately adjacent to a steep hillslope that extends upward to the Appellant's residence, which is located approximately 50 feet to the east. (See **Exhibit 2**; see also **Exhibit 3**, pp. 16).

The County's 2013 approval of a remodel and additions to the residence did not include any incursion by development into any of the adjacent steep slopes. That project did not involve any changes to the motor court area, except to convert the existing asphalt to pervious pavers. The 2013 project also involved approval of a small extension of the existing firetruck turnaround

¹¹ See footnote 2.

located approximately halfway up the driveway to address the District's emergency access needs.¹² In addition, the 2013 County CDP included four conditions (including related to driveway length and turning radiuses, property address visibility at the street, defensible space, and roof construction). These conditions were required by the District, and the Applicants were able to meet all of these conditions. (See **Exhibit 6** for the 2013-County approved plans.) In other words, the 2013 approval provided sufficient specifications to meet traffic and fire safety requirements for the work undertaken on the driveway.

Sometime in 2016, the Applicant undertook revisions to the 2013-approved project to convert a portion of the existing motor court into a new courtyard area located between the house and the steep canyon area to the north, which resulted in a reduction in size of the motor court.¹³ Specifically, the Applicant converted the western half of the motor court area to a landscaped courtyard, effectively reducing the motor court to half its original size (see **Exhibit 2**). The Applicant then applied to the County for the CDP that is the subject of this appeal to expand the motor court to the north and east to regain some or all of the motor court area lost by the courtyard conversion. In other words, the original 2013 approval met all of the technical traffic and fire safety specifications without the need for slope cuts. Thus, the driving force behind the current approved project on appeal is to provide additional parking area to make up for parking that was properly permitted but that was subsequently lost due to conversion of the western half of the motor court area to a landscaped courtyard.

In its approval, the County states that the enlarged parking area and turnaround is intended to accommodate ADA and emergency vehicle access to the existing residence. The County found that the cut into the adjacent slope was consistent with the LCP's 30 percent slope requirements because, due to site topography and existing development (i.e. the residence), and that no feasible option existed to cutting into the adjacent slope. The County also found that the project minimized development on 30 percent slopes in that it provides the minimum required area to ensure adequate vehicle turnaround space, and that the project would better achieve LCP objectives than other development alternatives. However, there is no substantial evidence to support these findings. In addition, in response to the Appellant's concerns about the incursion into the hillslope and subsequent potential instability that could affect the Appellant's property and residence, the County included a condition to allow for a 13.5-foot-tall and 56-foot-long retaining wall at the edge of the expanded motor court (at the base of the hillslope) if determined necessary by the County Building Official during or after construction of the driveway/motor court improvements.

In order to approve development on slopes of 30 percent or more, CIP Section 20.64.230.E requires a finding, based on substantial evidence, that 1) there is no feasible alternative, or 2) the proposed development on slopes better achieves the goals, policies, and objectives of the LCP. The County found that there was no feasible alternative, but it appears that the "no project" alternative is feasible since ample, safe, and District-approved provisions for emergency access

¹² As discussed above, this extension to the turnaround area has not been constructed.

¹³ While the proper permitting requirements of this change are debatable, the County ultimately made a determination that no CDP or CDP amendment was required to convert a portion of the motor court area to a courtyard.

already exist on the site.¹⁴ The motor court area is not required by the District or any section of the LCP to provide a firetruck turnaround area when such areas already exist on other parts of the property. It also is not clear that the approved project would better achieve the goals, policies, and objectives as the LCP as a whole given that it would necessitate 300 cubic yards of cut into a steep slope, potentially undermining the hillslope and creating a potentially hazardous situation for the Applicants' as well as the Appellant's properties (as acknowledged by the County with its inclusion of the retaining wall condition), in addition to the fact that the approved project would not better achieve the goals, policies, and objectives of the LCP with respect to protection of biological productivity of Carmel Bay or limitations on landform alteration as previously discussed. Accordingly, no substantial evidence has been provided that the project is necessary for any reason other than the Applicants desire a larger motor court, which could also be accomplished by converting the courtyard back to motor court use.¹⁵

In addition, the County's approval of a condition (see page 15 of **Exhibit 3**) to require a retaining wall if determined to be necessary during construction is problematic in that it appears no detailed review of the stability of the slope was undertaken prior to the CDP approval, inconsistent with the LCP requirements. The County did not make any findings specific to the need for a retaining wall but the condition states that the CDP allows for construction of a retaining wall to support the cut slope if deemed necessary by the Building Official and, to determine the need, the Applicant is required to submit a geotechnical report prior to issuance of the grading permits. And although the project description includes this retaining wall, the condition states that if determined necessary, the Applicants shall apply for and obtain permits to construct it. LUP Policy 38 and CIP Section 20.147.060.A require geotechnical reports for all development on 30 percent slopes *prior to deeming a CDP application complete*. In other words, the geotechnical review must take place during the CDP process, not the grading permit process, to ensure stability and structural integrity of the development is understood prior to granting project approval. This review in its entirety is required to occur at the CDP stage, as mandated by the LCP and is critical when deciding if and where to allow new development that is impacting steep slopes. Accordingly, the County's condition to allow the requisite geotechnical review at the grading permit phase also raises a substantial issue with respect to compliance with the LCP's hazards requirements.

For these reasons, the project is inconsistent with LUP Policies 38 and 78 and CIP Sections 20.64.230 and 20.147.060.A, and thus the County's approval raises a substantial LCP

¹⁴ See footnote 9.

¹⁵ In discussions with the Applicants' representative since the appeal was filed, Commission staff has ascertained that the approved project is not necessary to provide bona fide ADA access at the residence. Instead, the Applicants desire to have ample emergency access turnaround area at the motor court in the event of a medical emergency because the motor court is level with the front door and the main living level of the house. However, such an arrangement is not necessary from an emergency access standpoint. The driveway, garage area, and approved lower extended turnaround area (as identified in **Exhibit 6**) were evaluated by the District as part of the County's 2013 CDP approval of the remodel and additions to the residence and satisfied the District's requirements for emergency access to the site. Even with the 2016 conversion of part of the motor court to a courtyard, the remainder of the driveway leading up to the motor court (including the garage area and approved (although unbuilt) extended turnaround area) would still provide adequate and District-approved emergency access. Furthermore, neither the LCP nor any other part of the County code requires formal ADA access at single-family residences.

conformance issue with respect to development on slopes of 30 percent or more as well as the required geotechnical evaluation for site stability.

3. Active Code Violation

The Appellant contends that Monterey County approved the project during pendency of a code violation in conflict with CIP Section 20.90.120. This CIP Section states that no permits may be approved on a property that has an outstanding violation of the LCP unless such permit is the remedy for the violation. As previously discussed, the County determined that a CDP was not required for conversion of a portion of the motor court to a courtyard. The Appellant filed a formal complaint, alleging that a permit was required for this change, but the County, in its approval of the project, states that the allegations have no merit. As such, no active County code violation case exists. The Appellant has also disagreed with the County's determination of a Design Approval instead of a CDP for replacement of an existing fence associated with the courtyard area, and asserts that this too is a code violation. But again, no active County code violation case exists. It appears that there have been differences of interpretation between the Appellant and the County regarding permitting requirements at the site,¹⁶ and the County has not found the Appellant's contentions in this respect to be code violations. As such, while issues do exist with respect to the expansion of the motor court and continued exceedance of the LCP's watershed protection requirements, all as previously discussed, the contention related to existing violations does not raise a substantial issue with respect to consistency with CIP Section 20.90.120.

4. CEQA

The Appellant contends that the County improperly characterized the project as a "minor alternation of land" under CEQA and consequently performed no environmental review. The grounds for appeal under Coastal Act Section 30603(b)(1) are limited to allegations that the development does not conform to the certified LCP or to the public access policies of the Coastal Act. This contention is therefore not relevant to the substantial issue determination.

5. The Five "Substantial Issue" Factors

As explained above, the Commission is guided in its decision of whether the issues raised in a given case are "substantial" by the following five factors: the degree of factual and legal support for the local government's decision; the extent and scope of the development as approved or denied by the County; the significance of the coastal resources affected by the decision; the precedential value of the County's decision for future interpretations of its LCP; and, whether the appeal raises only local issues as opposed to those of regional or statewide significance.

In this case, these five factors, considered together, support a conclusion that this project does raise a substantial issue of LCP conformance. Regarding the first factor, the County relied on a previously issued variance in order to find the project consistent with the LCP's requirements regarding development within the Pescadero Watershed; however no such variance was warranted. The project as approved clearly results in exceedance of the LCP's 9,000 square foot maximum impervious surface. The CDP approval also allows for development on 30 percent slopes without the LCP-required geotechnical report and without factual support (i.e. without

¹⁶ See footnote 13.

“substantial evidence”) for the project’s necessity. In fact the record is clear that not undertaking the project (the “no project” alternative) is a feasible option that was previously approved by the County and the applicable fire agency (via the 2013 approval). And not constructing the project would better meet the overall goals, policies, and objectives of the LCP. In short, the County’s findings are not supported by or consistent with LCP provisions that seek to protect the Carmel Bay and Del Monte Forest from water quality degradation and unnecessary slope cuts.

Regarding the second factor, it is also important to note that the cumulative effects on the Pescadero Watershed from continued non-compliance with the coverage limit (from this and other properties) are significant. This also relates to the third and fourth factors in that the cumulative impacts on the Carmel Bay ASBS, over time, could degrade this significant marine resource. Most importantly for making the substantial issue determination for this case, because the project approval hinges on a variance to an LCP provision that a large number of properties are subject to, a finding of no substantial issue would create an adverse precedent encouraging continued inconsistency with the requirement to limit impervious development in this watershed. In this case, the County-approved variance in 2013 allowed for the continued nonconforming situation. Typically, variance approvals are allowed by LCPs only to address unique properties and development situations (and may also be used to address constitutional takings concerns), but they are not a tool to be used to provide unwarranted approvals of LCP-inconsistent projects that grant special privileges (i.e. exceedance of impervious surface coverage) inconsistent with the limitations upon other properties in the vicinity and zone in which such property is situated (as has been the case for existing developed lots in the Pescadero Watershed). However, over time, the County has used the variance process to allow a number of residences in the Pescadero Watershed to redevelop without conforming to the impervious surface coverage requirement. Continued and ongoing nonconformity with this coverage limit has significant resource implications, particularly when applied to numerous properties. As such, the Commission finds that the County’s use of variances to allow for continued project approval without conformity with this particular LCP requirement is improper and has the potential, over time, to degrade the resource it is intended to protect (in this case, Carmel Bay).

Finally, the appeal raises a substantial issue because the impacted resource in this case (Carmel Bay) is not only regionally significant to the Central Coast, but also rises to the level of statewide significance on account of its protected status as an ASBS. In short, the County-approved project does not adequately address LCP coastal resource protection requirements, and the five factors on the whole support a finding of substantial issue.

G. SUBSTANTIAL ISSUE DETERMINATION CONCLUSION

When considering a project that has been appealed to it, the Commission must first determine whether the project raises a substantial issue of LCP conformity, which will determine whether the Commission should assert jurisdiction over a de novo CDP for such development. At this stage, the Commission has the discretion to find that the project does or does not raise a substantial issue of LCP conformance, including when evaluated in light of the five factors discussed above.

For the reasons stated above, the Commission finds that Appeal Number A-3-MCO-17-0038 presents a substantial issue with respect to the grounds on which the appeal has been filed under

Section 30603 of the Coastal Act, and therefore the Commission finds that a substantial issue exists with respect to the County-approved project's conformance with the certified Monterey County LCP, and takes de novo jurisdiction over the CDP application for the proposed project.

H. COASTAL DEVELOPMENT PERMIT DETERMINATION

The standard of review for this CDP determination is the Monterey County certified LCP, specifically the Del Monte Forest Area certified LUP and applicable CIP sections. All Substantial Issue Determination findings above are incorporated herein by reference.

1. Pescadero Watershed

Applicable LCP Provisions

As described in the Substantial Issue portion of this report, the Del Monte Forest Area segment of the Monterey County LCP includes an extensive policy framework meant to protect the area's rich coastal resources, including through policies that protect freshwater and marine resources (including Carmel Bay, an Area of Special Biological Significance (ASBS) as designated by the State Water Resources Control Board (SWRCB)). The LCP also allows for variances to requirements under certain circumstances. Specific relevant LUP and associated CIP sections include (where text in **bold** format means emphasis added):

Freshwater and Marine Resources – Key Policy: The water quality and biological value of the Del Monte Forest's coastal streams, wetlands, open coastal waters, and the Carmel Bay shall be protected and maintained, including through application of adequate buffers and setbacks, maintaining hydrologic inputs, protecting riparian and wetland vegetation, carefully controlling grading to minimize erosion and sedimentation, and effective collection, filtration, and treatment of runoff.

LUP Policy 1: New development shall be sited and designed to minimize runoff, site disturbance, erosion, and sedimentation. All new development shall be designed to conform to site topography as much as possible. New residential driveways and other vehicular surfaces shall be kept to the minimum length and width to provide simple, direct access, and surfaces shall be designed to minimize runoff (including through use permeable materials, filtration strips, and use of engineered collection/treatment units). Other impervious vehicular surfaces shall be limited to the minimum required to meet daily (not occasional) parking needs. This policy shall not be read to preclude safe bicycle lanes or adequate parking for commercial visitor-serving development and access points.

CIP Section 20.147.030 Freshwater and Marine Resources - Intent: It is the intent of this section to ensure that the water quality and biological value of the Del Monte Forest's coastal streams, wetlands, open coastal waters, and the Carmel Bay are protected and maintained, including through application of adequate buffers and setbacks, maintaining hydrologic inputs, protecting riparian and wetland vegetation, carefully controlling grading to minimize erosion and sedimentation, and effective collection, filtration, and treatment of runoff.

A. Development Standards

1. *New development in the Pescadero watershed and the smaller unnamed watersheds of the Pebble Beach planning area which drain into the Carmel Bay Area of Special Biological Significance (ASBS) and in the watersheds of Seal Rock Creek and Sawmill Gulch (see LUP Figure 2b for affected watersheds), shall be subject to the following development restrictions and criteria:*

(a) New development shall be sited and designed to minimize runoff, site disturbance, erosion, and sedimentation. All new development shall be designed to conform to site topography as much as possible. New residential driveways and other vehicular surfaces shall be kept to the minimum length and width necessary to provide simple, direct access, and surfaces shall be designed to minimize runoff (including through use of permeable materials, filtration strips, and use of engineered collection/treatment units). Other impervious vehicular surfaces shall be limited to the minimum required to meet daily (not occasional) parking needs. This standard shall not be read to preclude safe bicycle lanes or adequate parking for commercial visitor-serving development and access points.

(b) Impervious surface (structural and site improvements) coverage for residential development shall be limited to a maximum of 9,000 square feet.

CIP Section 20.78.040 Variances. *An application for Variance shall be made in writing on a form prescribed by the Director of Planning and Building Inspection and be accompanied by statements, plans, and other evidence supporting the Variance request. Variances from the terms of this Title shall only be granted based upon the following findings:*

A. That because of special circumstances applicable to subject property, including size, shape, topography, location or surroundings, the strict application of this Title is found to deprive subject property of privileges enjoyed by other properties in the vicinity and under identical zone classification; and

B. That the variance not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and zone in which such property is situated.

C. A Variance shall not be granted for a use or activity which is not otherwise expressly authorized by the zone regulation governing the parcel of property.

Analysis

The LCP requires that impervious surface coverage (i.e. structural and site improvements) for residential development shall be limited to a maximum of 9,000 square feet. In this case, as discussed above, the proposed project would result in at minimum 11,493 square feet of impervious surface.¹⁷ The proposed project is therefore inconsistent with the LCP's requirement to limit total impervious coverage on a site in the Pescadero Watershed to 9,000 square feet. While the Applicants have expressed a willingness to convert the entire driveway to pervious materials, bringing the total impervious coverage on the site down to approximately 6,500 square feet according to the Applicants, it is not clear whether the District would support this change in terms of fire access. Nor have the Applicants provided an accurate analysis of the proposed changes from impervious to pervious surfaces, or plans for the proposed project change. Accordingly, denial of the project would enable the Applicants to pursue necessary and

¹⁷ As discussed above, this is a conservative estimate of the resulting impervious surface coverage as it is unclear how this would be achieved, given that the original 2013 approval already required this area to be converted to pervious pavers and the County did not provide a breakdown of how the further reduction would be accomplished.

appropriate project changes through the local planning process, including with respect to local agency review.

In addition, as discussed above, LUP Policy 1 and CIP Section 20.147.030.A.1.a require new residential driveways and other vehicular surfaces in the Pescadero Watershed to be kept to the minimum length and width necessary to provide “simple, direct access.” The existing driveway design, as approved in 2013, already provides ample parking and turnaround areas (including a lower garage parking area and an expanded fire truck turnaround approximately halfway up the driveway, as well as the existing motor court area (prior to a portion of it being converted to a courtyard) that is the subject of the proposed project). The proposed changes, including expansion of the motor court area, are therefore also inconsistent with these LCP provisions and thus the proposed project must be denied.

2. **30 Percent Slopes**

As described in the Substantial Issue portion of this report, the Del Monte Forest Area segment of the Monterey County LCP includes an extensive policy framework meant to ensure that new development does not create unnecessary landform alterations or contribute to geologic hazards, including through policies that prohibit development on slopes greater than 30% except under very limited circumstances. Specific relevant LUP and associated CIP sections include (where text in bold format means emphasis added):

LUP Policy 38.** New development shall be sited and designed to minimize risk from geologic, flood, or fire hazards; to assure stability and structural integrity; and to not threaten the stability of a site, contribute significantly to erosion, geologic instability, or destruction of the site or surrounding areas. Areas that are subject to the highest category of fire hazard in the California Department of Forestry and Fire Protection Fire Hazard Rating System shall be considered unsuitable for development, unless it can be clearly demonstrated that design measures can adequately mitigate the fire hazard. Mitigation of hazards shall be demonstrated by detailed technical reports specific to the hazard type in question (e.g., soils, geologic, geotechnical, erosion control, fire hazard, etc.) that are prepared by persons who are appropriately qualified in the hazard field in question (e.g., civil engineers and engineering geologists familiar with coastal processes, geotechnical engineers, etc.) and that are submitted as part of any permit application. All technical reports shall be prepared consistent with County criteria for such reports (e.g., criteria for detail on seismic hazards are contained in the General Plan Safety Element; criteria for detail on fire hazards are based on the fire hazard rating system of the California Department of Forestry and Fire Protection; criteria for detail on shoreline hazards are based on Coastal Commission guidelines). **All technical reports and analyses shall accompany development applications and/or be part of any required environmental documentation (e.g., that associated with CEQA).

***LUP Policy 78** Development on slopes of 30% or more is prohibited unless such siting better addresses LUP objectives as a whole when compared to other possible siting alternatives on slopes of less than 30% associated with projects and/or sites.*

CIP Section 20.64.230.E Action of the Appropriate Authority 1. *In order to approve development on slopes of 30% or more, the Appropriate Authority must find, in addition to other necessary findings, based on substantial evidence, that: a) there is no feasible alternative which would allow development to occur on slopes of less than 30%; or b) that the proposed development better achieves the goals, policies and objectives of the Monterey County Local Coastal Program than other development alternatives.*

CIP Section 20.147.060.A Report Requirements. *Mitigation of hazards shall be demonstrated by detailed technical reports specific to the hazard type in question (e.g., soils, geologic, geotechnical, erosion control, fire hazard, etc.) that are prepared by persons who are appropriately qualified in the hazard field in question (e.g., civil engineers and engineering geologists familiar with coastal processes, geotechnical engineers, etc.) and that are submitted as part of any permit application. All technical reports and analyses shall accompany development applications and/or be part of any required environmental documentation. As technical reports supporting development proposals are completed and received by the County, the information contained therein shall become part of the public record. Where appropriate, the results of such technical reports shall augment and may supersede, if appropriate, more general information found in other County sources. Development that includes preparation of any technical report shall require recording a notice that development on the parcel must be in accordance with said report, and consistent with the terms and conditions of this coastal development permit. Said notice shall be recorded prior to issuance of building or grading permits.*

1. *Geologic Report Requirements...*

(b) ***Regardless of a parcel's seismic hazard zone, a geologic report shall be required for any development project located in the following areas: ...***

(4) on slopes of greater than 30%; ...

(g) ***Geologic reports shall be required, submitted, and deemed adequate by the County prior to the application being considered complete. The manner (electronic versus hard copy, number of copies, etc.) said Plan is to be submitted shall be determined by the Planning Department.***

Analysis

In order to approve development on slopes of 30 percent or more, CIP Section 20.64.230.E requires a finding, based on substantial evidence, that 1) there is no feasible alternative, or 2) the proposed development on slopes better achieves the goals, policies, and objectives of the LCP.

In this case, the proposed project would necessitate 300 cubic yards of cut into a steep slope, potentially undermining the hillslope and creating a potentially hazardous situation for the Applicants' as well as the Appellant's properties (as acknowledged by the County with its

inclusion of the retaining wall condition).¹⁸ Furthermore, the project would not better achieve the goals, policies and objectives of the LCP with respect to protection of biological productivity and limitations on land form alteration as discussed previously. It is also worth noting that the proposed motor court area is not required by the District or any section of the LCP to provide a firetruck turnaround area. Furthermore, such areas already exist on other parts of the property, including the fire truck turnaround approved under the 2013 CDP. Accordingly, there is no substantial evidence to demonstrate that the project better meets LCP goals than existing conditions or that there are not feasible alternatives to the project. Rather, the primary driver for the proposed changes appears to be the Applicants' desire for a larger motor court, which could also be accomplished by simply converting the courtyard back to motor court use consistent with the County's 2013 CDP approval.

For these reasons, the project is inconsistent with LUP Policies 38 and 78, and CIP Section 20.64.230.E, and must therefore be denied.

I. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

Public Resources Code (CEQA) Section 21080(b)(5) and Sections 15270(a) and 15042 (CEQA Guidelines) of Title 14 of the California Code of Regulations (14 CCR) state in applicable part:

CEQA Guidelines (14 CCR) Section 15042. Authority to Disapprove Projects. [Relevant Portion.] A public agency may disapprove a project if necessary in order to avoid one or more significant effects on the environment that would occur if the project were approved as proposed.

Public Resources Code (CEQA) Section 21080(b)(5). Division Application and Nonapplication. ... (b) This division does not apply to any of the following activities: ... (5) Projects which a public agency rejects or disapproves.

CEQA Guidelines (14 CCR) Section 15270(a). Projects Which are Disapproved. (a) CEQA does not apply to projects which a public agency rejects or disapproves.

14 CCR Section 13096(a) requires that a specific finding be made in conjunction with CDP applications about the consistency of the application with any applicable requirements of CEQA. This report has discussed the relevant coastal resource issues with the proposed project. All above findings are incorporated herein in their entirety by reference. As detailed in the findings above, the proposed project would have significant adverse effects on the environment as that term is understood in a CEQA context.

Pursuant to CEQA Guidelines (14 CCR) Section 15042 "a public agency may disapprove a project if necessary in order to avoid one or more significant effects on the environment that would occur if the project were approved as proposed." Section 21080(b)(5) of the CEQA, as implemented by Section 15270 of the CEQA Guidelines, provides that CEQA does not apply to projects which a public agency rejects or disapproves. The Commission finds that denial, for the reasons stated in these findings, is necessary to avoid the significant effects on coastal resources

¹⁸ As discussed above, the proposed development into slopes exceeding 30% would ordinarily require a geotechnical evaluation at the application/project review stage. However, given that such development is not approvable as presently proposed, there is no need for the Applicants to provide such reports.

that would occur if the project was approved as proposed. Accordingly, the Commission's denial of the project represents an action to which CEQA, and all requirements contained therein that might otherwise apply to regulatory actions by the Commission, do not apply.