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Appeal Filed:	4/16/2019
Action Deadline:	6/25/2019
Staff:	Katie Butler - SC
Staff Report:	5/24/2019
Hearing Date:	6/13/2019

**APPEAL STAFF REPORT: SUBSTANTIAL ISSUE
 DETERMINATION**

Appeal Number: A-3-MCO-19-0024

Applicant: Tracy Alford

Appellants: Chris and Sara Bardis

Local Decision: Approved by the Monterey County Board of Supervisors on March 12, 2019 (Coastal Administrative Permit (CAP) and Design Approval Application File Number PLN171011, Resolution No. 19-072)

Project Location: 1496 Bonifacio Road, Del Monte Forest Area, Monterey County (APN 008-341-037)

Project Description: Authorize the following: 1) After-the-fact construction of a 660-square-foot rear patio and extension of gas line to patio grill and fireplace; 2) replacement of 4,600 square feet of unpermitted impervious driveway with pervious materials; and 3) install new drainage improvements

Staff Recommendation: No Substantial Issue Exists

Important Hearing Procedure Note: This is a substantial issue only hearing. Testimony will be taken only on the question of whether the appeal raises a substantial issue. Generally and at the discretion of the Chair, testimony is limited to three minutes total per side. Please plan your testimony accordingly. Only the Applicant, persons who opposed the application before the local government (or their representatives), and the local government shall be qualified to testify. Others may submit comments in writing. If the Commission determines that the appeal does

raise a substantial issue, the de novo phase of the hearing will occur at a future Commission meeting, 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 administrative permit (CAP) for the: replacement of 4,600 square feet of unpermitted impervious driveway with pervious materials; installation of new drainage improvements, including replacement of two existing driveway catch basins; and after-the-fact authorization of a 660-square-foot patio and extension of a gas line to the patio grill and fireplace. The County approval clears an existing code enforcement case related to impervious surfaces in exceedance of previous approvals and the unpermitted conversion of a raised lawn area to a patio with a gas grill and fireplace. The project is located at an existing single-family residence in the Del Monte Forest area (Pebble Beach) of unincorporated Monterey County, and is generally surrounded by single-family residences in a forested setting.

The Appellants contend that the approved project is inconsistent with Monterey County Local Coastal Program (LCP) provisions related to freshwater and marine resources, environmentally sensitive habitat area, and geology/safety/hazards. After reviewing the local record, Commission staff has concluded that the approved project does not raise a substantial issue with respect to the project's conformance with the Monterey County LCP.

Specifically, in terms of the freshwater and marine resource-related contentions, the project approved by the County brings the site into conformance with the LCP's site coverage requirements in the Pescadero Watershed and otherwise improves existing drainage on the site consistent with the LCP. Furthermore, the record shows no evidence of existing erosion or sedimentation at the site or its surroundings. The County's condition of approval requiring submittal of a final stormwater control plan within specified parameters and the final stormwater control plan proposed by the Applicant further support the conclusion that the Appellants' assertions regarding consistency with LCP freshwater and marine resource protections are a less-than-significant issue. In terms of the Appellants' ESHA contention, although the County approval did not include an easement requirement for a ravine on the property, the Applicant subsequently prepared and recorded such an easement, consistent with the LCP, rendering this appeal contention moot. In terms of public safety and hazards, existing conditions on the site indicate that existing development (including the driveway, patio area, and gas line) are structurally sound and the standard building and grading permit process and inspections will ensure continued stability and erosion protection both during and after construction. Thus, the County's approval as conditioned will ensure less-than-significant impacts with respect to the Appellants' generalized assertions regarding public safety and hazards, and the Appellants' did not otherwise allege project inconsistency with any specific LCP public safety or hazards policies in particular. The proposed project is relatively minor and an improvement over existing conditions and it will not adversely impact significant coastal resources.

As a result, staff recommends that the Commission determine that the appeal contentions do not raise a substantial LCP conformance issue, and that the Commission decline to take jurisdiction over the CDP for this project. The single motion necessary to implement this recommendation is found on page 4 below.

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EXHIBITS

Exhibit 1 – Regional Location Map

Exhibit 2 – Aerial Photo

Exhibit 3 – County’s Final Local Action Notice

Exhibit 4 – Appeal of County Coastal Administrative Permit Decision

Exhibit 5 – Applicable LCP Provisions

Exhibit 6 – Final Stormwater Control Plan

Exhibit 7 – Site Photos

Exhibit 8 – Scenic and Conservation Easement Area Map

CORRESPONDENCE

I. MOTION AND RESOLUTION

Staff recommends that the Commission determine that **no substantial issue** exists with respect to the grounds on which the appeal was filed. A finding of no substantial issue would mean that the Commission will not hear the application de novo and that the local action will become final and effective. To implement this recommendation, staff recommends a **YES** vote on the following motion. 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 an affirmative vote of a majority of the Commissioners present.

***Motion:** I move that the Commission determine that Appeal Number A-3-MCO-19-0024 raises no substantial issue with respect to the grounds on which the appeal has been filed under Section 30603. I recommend a yes vote.*

***Resolution to Find No Substantial Issue.** The Commission finds that Appeal Number A-3-MCO-19-0024 does not present 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 Monterey County Local Coastal Program and/or the public access and recreation policies of the Coastal Act.*

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 1.75-acre lot at 1496 Bonifacio Road in the unincorporated Del Monte Forest (i.e., Pebble Beach) area of Monterey County. The site is surrounded by single-family residences in a forest setting (primarily Monterey pine and Coast live oak) and is situated approximately three-quarters of a mile inland and north of Stillwater Cove (the northern end of Carmel Bay). The southern one third of the project site is developed with an existing single-family residence and driveway, and the northern two thirds of the site consist of a steep wooded canyon. 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 development activities.

The original two-story residence on the site was constructed prior to the Coastal Act or certified LCP. In 2001 (the LCP was certified by this time), the owner at the time (Tescher-Levett Investments Inc.) obtained a coastal administrative permit (CAP) from the County for an addition and improvements to the residence (County file number PLN000489), and multiple design approvals and building permits from the County for various improvements from 2001 through 2007.¹ The current Applicant, Tracy Alford, purchased the property in 2007 and obtained two separate coastal development permit (CDP) waivers from the County for removal

¹ These County authorizations allowed for: a remodel of the existing house and garage; entry gate and wall; retaining walls (including to create a new turf area at the rear of the residence that was later converted without permits to the patio that is the subject of the current after-the-fact CAP); driveway improvements; exterior stairs; façade and materials changes; and foyer addition.

of dead Monterey pine trees on the property. In 2017, the County opened a code enforcement case on the property² for the heretofore unpermitted development that is the subject of the CAP approval in this appeal (*i.e.*, replacement of 4,600 square feet of unpermitted impervious driveway with pervious materials and after-the-fact authorization of a 660 square-foot patio and extension of a gas line to the patio grill and fireplace).

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

B. PROJECT DESCRIPTION

The County approved a CAP³ and Design Approval that provided for: replacement of 4,600 square feet of unpermitted impervious driveway with pervious materials; installation of new drainage improvements, including replacement of two existing driveway catch basins; and after-the-fact authorization of a 660-square-foot patio and extension of a gas line to the patio grill and fireplace. The County approval clears Code Enforcement case 17CE00253 related to impervious surfaces in exceedance of previous approvals and the unpermitted conversion of a raised lawn area to a patio with a gas grill and fireplace.

See **Exhibit 3, pp. 25-31** for the County-approved project plans.

C. MONTEREY COUNTY APPROVAL AND CCC APPEAL

On September 27, 2018, the Monterey County Zoning Administrator approved an after-the-fact CAP and Design Approval to clear code enforcement case 17CE00253 (Resolution No. 18-056). The Appellants (Chris and Sara Bardis) filed an appeal of the Zoning Administrator's decision on October 8, 2018. On March 12, 2019, the Monterey County Board of Supervisors (BOS) approved the CAP and Design Approval subject to 12 special conditions (BOS Resolution No.19-072). Notice of the County's final action was received in the Coastal Commission's Central Coast District Office on April 2, 2019 (see **Exhibit 3**). The Coastal Commission's ten-working-day appeal period for this action began on April 3, 2019 and concluded at 5pm on April 16, 2019. 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,

² Monterey County file number 17CE00253.

³ Coastal Administrative Permits are a type of Coastal Development Permit that can be considered on an administrative level under the Monterey County LCP (pursuant to Monterey County Coastal Implementation Plan Section 20.76).

or within 300 feet of the top of the seaward face of any coastal bluff, and (3) in a sensitive coastal resource area; or (b) 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).) This project is appealable because it is located between the first public road (Highway 1 and Highway 68 in this case) and the sea.

The grounds for appeal under Section 30603 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 consider a CDP for an appealed project de novo unless a majority of the Commission finds that “no substantial issue” is raised by such allegations.⁴ Under Section 30604(b), if the Commission conducts the de novo portion of an appeals hearing (upon making a determination of “substantial issue”) and finds that the proposed development is in conformity with the certified LCP, the Commission must issue a CDP. 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 and the sea and thus this additional finding would need 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 Applicant, persons opposed to the project who made their views known before the local government (or their representatives), and the local government. Testimony from other persons regarding the substantial issue question 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 (if applicable).

E. SUMMARY OF APPEAL CONTENTIONS

The Appellants, Chris and Sara Bardis, contend that the County-approved project is inconsistent with Monterey County LCP provisions related to Freshwater and Marine Resources (specifically, Del Monte Forest Area Coastal Implementation Plan (CIP) Section 20.147.030), environmentally sensitive habitat areas (ESHA), and geology/safety/hazards. Specifically, the Appellants contend that protection of water quality and biological resources of the Del Monte Forest’s coastal

⁴ The term “substantial issue” is not defined in the Coastal Act or in its implementing regulations. In previous decisions on appeals, the Commission has considered the following factors in making substantial issue determinations: 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 local government; the significance of the coastal resources affected by the decision; the precedential value of the local government’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. Even when the Commission chooses not to hear an appeal (by finding no substantial issue), appellants nevertheless may obtain judicial review of a local government’s CDP decision by filing a petition for a writ of mandate pursuant to the Code of Civil Procedure, Section 1094.5.

streams, wetlands, open coastal waters, and the Carmel Bay cannot be confirmed based on inadequate plans provided with the application and the County's deferral of a drainage plan until after approval. Furthermore, the Appellants contend that drainage and "improper development activities" from the Alford property have and will continue to cause damage and erosion to both the Applicant's and Appellants' properties; the conversion of impervious to pervious materials on the site will be ineffective and create further erosion and damage due to existing geologic conditions under the driveway; the conversion of the driveway surface will jeopardize the structural stability of an existing retaining wall and result in significant erosion into the ravine located on the Appellants' property; the County did not require an easement over the portion of the ravine located on the Applicant's property, as required by the LCP's ESHA policies; and the gas line to the patio constitutes a dangerous public health and safety risk. The Appellants also contend that the County failed to analyze the project as a whole under CEQA and improperly deemed the project exempt under CEQA.

See **Exhibit 4** for the full text of the appeal.

F. SUBSTANTIAL ISSUE DETERMINATION

1. Freshwater and Marine Resources

Applicable LCP Provisions

The Monterey County LCP is divided into four segments, each with its own Land Use Plan (LUP) and corresponding CIP.⁵ 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; 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 nonpoint sources of pollution⁶ to Carmel Bay be minimized and mitigated through use of appropriately sited and designed drainage and runoff control systems (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

⁵ The County's four LUP areas are: North County, Del Monte Forest, Carmel Area, and Big Sur.

⁶ 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.

construction (LUP Policies 3 through 6 and CIP Sections 20.147.030.A.4 through 7). See **Exhibit 5** for the LCP's applicable provisions.

Overall, these policies and CIP sections 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.

Appellants' Contentions

The Appellants contend that protection of the water quality and biological value of the Del Monte Forest's coastal streams, wetlands, open coastal waters, and the Carmel Bay cannot be confirmed in relation to the proposed development because the County deferred the drainage plan until after approval and the evidence on which the County based its approval was inadequate and incomplete. The Appellants specifically state that the project approved by the County would result in drainage directly into the wooded ravine both onsite and on the neighboring (Appellants') property, and that runoff from development on the site would continue to result in damage (including from sedimentation and erosion) to the ravine and the Appellants' property. Overall, the Appellants claim that impervious development on the site (both permitted and unpermitted to date, and including the 660-square-foot patio approved under this application) drains to their property, resulting in illegal runoff and erosion and sedimentation problems on their property.

Analysis

The project site currently exceeds the total impervious site coverage allowed by a previous County CDP.⁷ Specifically, that CDP allowed for total impervious site coverage of 9,000 square feet (consistent with the LCP's impervious coverage requirement), but recent surveys conducted in response to the County code enforcement case indicated that impervious coverage on the site equals 13,100 square feet. To address this non-compliance with the previous CDP, the County approval requires replacement of 4,600 square feet of impervious driveway materials with pervious pavers to achieve a total impervious coverage amount of 8,500 square feet. The Appellants claim that the driveway surface conversion will be ineffective to protect water quality because the underlying substrate consists of "a very thin layer of topsoil overlaying bedrock which is impermeable" and that this mitigation strategy is "fatally flawed." They claim that this change to the driveway surface will "result in further increases in runoff leaving the Alford property." A geotechnical and infiltration investigation prepared for the project (prepared February 5, 2018 by Soil Surveys Group Inc.) and relied on by the County in its approval found that subsurface conditions under the driveway were suitable for the improvements. Specifically, four geotechnical borings undertaken on the driveway at depths of five to 14.5 feet identified loose, silty fine grained sand and decomposed granite and gravels, with no indication of solid rock that would render ineffective the use of a permeable driveway surface. The investigation also included two-hour infiltration tests in the borings that confirmed the appropriateness of the project design. The Appellants provided no new information to support their claim, and nothing in the record suggests that the County's approval was improper or inconsistent with the LCP. As such, this aspect of the approved project does not raise a substantial issue of LCP conformance with respect to freshwater and marine resources.

⁷ Monterey County CDP PLN000489; Coastal Commission reference no. 3-MCO-01-378.

To accommodate the driveway surface change (and expected reduction in runoff amounts), the project includes new onsite drainage improvements, including replacement of two existing driveway drains with two new stormwater catch basins. The Appellants claim that the County deferred the final drainage plan until after approval, and that the drainage plans used by the County in its approval were inadequate. The preliminary stormwater control plan shows the proposed removal of the existing driveway surface and replacement with permeable pavers, and the two existing drains, as well as a third drain in the existing motor court area, that are drained by existing 8-inch-diameter PVC pipes that daylight northwesterly (into the ravine) (see **Exhibit 3 page 29**). The County conditioned its approval on submittal of a final stormwater control plan with supporting calculations prepared by a registered civil engineer to mitigate on- and off-site impacts, and required that the final plan show impervious surface stormwater runoff dispersed at multiple points onsite, away from and below structures and foundations, with erosion control at the outlets (Condition 9 – see **page 24 of Exhibit 3**). This condition is required to be met prior to issuance of any grading or building permits.

As described above, CIP Section 20.147.030 requires that runoff to the Carmel Bay be minimized and mitigated through use of appropriately sited and designed drainage and runoff control systems, and as part of that determination, CIP Section 20.147.030.A.1(b)(3) states that:

...It shall be determined through staff review of the project whether or not the project contains, as a course of its operation or as any other result of existence, the ability or possibility to contribute to the degradation of the water and marine resources of the area. Projects determined to have such an effect shall supply to the Planning staff proof of adequate erosion and runoff control systems to control any offsite effects of the projects....

Monterey County staff determined that, given the overall reduction in stormwater runoff from conversion of the driveway from impervious to pervious materials (a 4,600-square-foot reduction), the project was not expected to result in degradation to water or marine resources, and was in fact an improvement over existing conditions. Even so, given the sensitive nature of the resources in this case (namely, the ravine/wooded canyon on the Applicant's and the Appellants' properties, and ultimately, Carmel Bay), in an abundance of caution, County staff conditioned the approval to require proof of adequate erosion and runoff control systems in a final stormwater control plan prepared by a registered civil engineer or other qualified professional with parameters set in a manner consistent with LCP requirements. The Applicant provided a final drainage plan prior to the BOS hearing to help address the Appellants' concerns regarding drainage and erosion (even though the condition did not require it until a later date) (see **Exhibit 6**).

The County's approach for requiring the final stormwater control plan prior to issuance of the grading and building permits is appropriate and consistent with CIP Section 20.147.030.A.1(b)(3) because, as conditioned, the requirement that the Applicant provide a final stormwater control plan that meets the specified parameters/performance standards should be sufficient to ensure that runoff impacts will be less-than-significant, particularly when considering that impervious surfaces are being reduced as compared to existing conditions (a 4,600 square-foot reduction from existing 11,300 square-foot impervious coverage, or a 35%

reduction). In addition, this approach is appropriate and consistent with the LCP considering the mitigation of said runoff impacts as can be anticipated based on both the preliminary stormwater plan, which the County considered when approving the project, and the final stormwater plan, which the Applicant proposes to satisfy the County's condition of approval.

With respect to contentions regarding continued runoff, damage, erosion, and sedimentation in the ravine and on the Appellants' property, neither the County record nor materials submitted by the Appellants include evidence of this claim. In addition to the two driveway drains, a third stormwater drain exists on the Applicant's property in the motor court area that also drains downslope into the ravine, and a fourth drain collects stormwater runoff from the south and west sides of the property around the residence and patio, ultimately daylighting on the Appellants' property. A County site inspection report from February 2019 (which included supporting photographs) observed that the area was in a stable condition with no erosion or sedimentation issues observed along the driveway, near the house, near the stone patio, adjacent to the discharge pipes, or near the discharge points in the ravine on either the Applicant's or Appellants' properties. As just described, the Applicant provided a final drainage plan prior to the BOS hearing to help address the Appellants' concerns regarding drainage and erosion, and that plan indicates, consistent with Condition 9 of the County's approval, that all drainage infrastructure will be contained onsite (see **Exhibit 6**). It shows that the existing drain pipe that outlets on the Appellants' property will be removed and that a new percolation trench will be installed on the Applicant's property to accommodate the residential runoff from the west and south sides of the property. The Applicant committed at the BOS hearing that the final drainage plan she provided at that hearing was the plan intended to satisfy Condition 9.

With respect to claims that the existing pipes that drain into the ravine will continue to create erosion and sedimentation issues on the Appellants' property, again, no evidence has been provided by the Appellants of any erosion-related damage to their property, and the County record indicates no such damage has occurred. Furthermore, the existing drainpipes are partially buried and would remain in place (with the exception of the one that would be removed from the Appellants' property) so as to avoid ground disturbance, and new erosion control dissipaters at the outlets would provide additional protection against any possible erosion and sedimentation in the ravine and on the Appellants' property.

The Appellants also claim that the rear patio that was approved after-the-fact by the County's action will continue to drain directly onto their property and "alter the historical drainage patterns on the Alford property to our detriment." The proposed final stormwater control plan provided at the BOS hearing shows a new scupper sub-drain around the entire west side of the patio that will collect runoff from the patio and from the house downspouts, and a new pipe that will direct this runoff to a new percolation trench on the Applicant's property. In addition, photographs of the area around the patio do not indicate any evidence of scouring or erosion on either the Applicant's or the Appellants' properties (see **page 2 of Exhibit 7**). The proposed final drainage plan ensures that drainage will be collected and diverted away from the Appellants' property from the patio, thereby minimizing runoff, site disturbance, erosion, and sedimentation, consistent with the LCP. Thus, this contention does not raise a substantial issue in terms of the project's conformance with the certified LCP.

In sum, the project as approved and conditioned by the County improves the existing conditions on the site with respect to drainage and water quality. The new pervious driveway surface, improved driveway drains to accommodate the changes in the driveway surface, new energy dissipaters at the existing drain outlets, removal of the existing drain on the Appellants' property, and collection and containment of stormwater runoff from the west and south sides of the residence on the Applicant's property are consistent with the LCP's requirements related to protection of freshwater and marine resources. There is no evidence in the record to suggest that any of these improvements will lead to damage to the Appellants' property or to water quality in the Carmel Bay. As such, the Appellants' contentions do not raise a substantial issue of LCP conformance with respect to freshwater and marine resources.

2. Environmentally Sensitive Habitat Area

The Monterey County LCP requires that where development is proposed within or near environmentally sensitive habitat areas (ESHA), such areas shall be protected through deed restrictions or permanent open space conservation and scenic easements granted to the Del Monte Forest Foundation (LUP Policy 13 and CIP Section 20.147.040.C.8). The LCP further stipulates that where development has already occurred within or near ESHA, property owners are encouraged to voluntarily grant such easements. See **Exhibit 5** for the LCP's applicable ESHA protection provisions.

The Appellants contend that the County referenced the Coastal Commission's findings and decision regarding ESHA on their (Bardis') property (under A-3-MCO-17-0038), but then failed to make the same findings and condition for an easement over the portion of the same wooded canyon/ravine next door on the Applicant's (Alford's) property (see **Exhibit 7** for photos of the ravine). They state that an easement should be required for the ravine on the Alford property like it was on theirs because it has already been found to be ESHA. But since the appeal was filed, the Applicant has voluntarily prepared and has recorded a Conservation and Scenic Easement to benefit the Del Monte Forest Conservancy for the area of the parcel that comprises the ravine (see **Exhibit 8** for the graphic depiction of the easement area). As such, the Applicant's appeal contention regarding this issue is moot and the Commission does not find substantial issue in terms of the project's conformance with the ESHA protection requirements of the certified LCP because of this mootness.

3. Hazards

The LCP requires new development to: be sited and designed to minimize risk from geologic and fire hazards; assure stability and structural integrity; and not threaten the stability of a site, contribute significantly to erosion, geologic instability, or destruction of the site or surrounding areas (LUP Policy 38). See **Exhibit 5** for the LCP's applicable hazards policy.

Although the Appellants do not cite specific LCP hazards provisions, they make two separate claims that relate to safety and structural stability. First, they state that the structural integrity of the existing retaining wall system along the Applicant's driveway will be compromised in the driveway resurfacing and that the heavy construction loads that will be placed on the driveway fill to remove the existing surfacing materials will result in further degradation of the structural integrity of the retaining wall system. They claim that this situation presents a clear and present

threat to public health and safety, and that the wall failure will cause a washout and significant erosion to their property and the ravine.

The geotechnical report prepared for the project states that the westerly side of the driveway (along the edge of the ravine) is supported by two retaining walls and some areas of minor erosion, scour, and rodent activity were apparent on the descending slope down to the ravine, but that the slopes do not exhibit mass movement or major erosion and appear stable. As described above, a County site inspection report from February 2019, which included supporting photos, observed that the site was in stable condition with no erosion or sedimentation issues along the driveway (see **Exhibit 7**). The Applicant described that the resurfacing of the driveway will involve scraping the top 1-2 inches of material and replacement with the permeable surfacing, which is not expected to cause or result in structural instability to the adjacent wall system. Furthermore, the County's grading permit, which is required prior to commencement of the project, will include technical specifications to ensure stability of the site both during and after construction. As such, this contention does not raise a substantial issue in terms of the project's conformance with the certified LCP.

The second hazards/safety-related contention is that the unpermitted, exposed gas line running on top of the surface, as well as under the unpermitted patio, is a dangerous condition that is a public health and safety risk. Both the gas line and patio have been permitted through this County approval, and as part of that, will be inspected during the building permit phase and would need to comply with current building code requirements, which may require specific portions of the gas line (possibly all of the gas line) to be exposed for inspection.⁸ It is standard planning practice for the technical building code requirements to be finalized after the discretionary approval and during the building permit stage. The Appellants have not provided any evidence of a safety risk from the existing patio gas line, and nothing in the County's record suggests so either. Thus, this contention also does not raise a substantial issue with the hazards provisions of the LCP.

4. CEQA

The Appellants contend that the County failed to analyze the project as a whole and that the project is not exempt from CEQA as the County determined. The County specifically found the project categorically exempt from CEQA under Section 15303(e) (new construction of accessory structures such as garages, carports, patios, swimming pools, and fences). 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.

G. 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, such that the Commission

⁸ Jacquelyn Nickerson, Monterey County RMA – Planning, personal communication with Katie Butler, Coastal Commission staff, May 10, 2019.

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 not raise a substantial issue of LCP conformance. As explained above, the Commission has in the past considered the following five factors in its decision of whether the issues raised in a given case are “substantial”: 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 not raise a substantial issue of LCP conformance. First, in terms of the freshwater and marine resource-related contentions, the project approved by the County brings the site into conformance with the LCP’s site coverage requirements in the Pescadero Watershed and otherwise improves existing drainage on the site consistent with the LCP. (Any error regarding the County’s decision to require a final stormwater plan to be provided after CDP approval is *de minimis*, as discussed above, considering the 35% reduction in impervious surfaces based on existing conditions, adequacy of the preliminary stormwater control plan, and the adequacy of the final stormwater control plan proposed by the Applicant to satisfy the County’s condition of approval, including with respect to specified substantive parameters/performance standards.) Furthermore, the record shows no evidence of existing erosion or sedimentation on the site or its surroundings. In terms of the Appellants’ ESHA contention, although the County approval did not include an easement requirement for the ravine, the Applicant subsequently prepared and recorded such an easement consistent with the LCP, rendering this LCP consistency issue moot. In terms of public safety and hazards, the Appellants’ did not allege project inconsistency with any public safety and hazard LCP policy in particular, and the standard building and grading permit process and inspections entailed by the County’s approval adequately address the Appellants’ more generalized concerns anyway. Thus, the County has provided adequate factual and legal support for its decision that the approved development would be consistent with the certified LCP.

Second, regarding the extent and scope of development approved by the County, the proposed project is relatively minor (*i.e.*, ancillary development accessory to use of an existing single-family dwelling) and an improvement over existing conditions (*i.e.*, 35% reduction in impervious surfaces; new drainage improvements). Third, regarding the significance of the coastal resources affected by the decision, the neighboring ravine and Carmel Bay *are* significant coastal resources but, as discussed in this report impacts to both resources will be less-than-significant (due to recordation of a conservation easement to protect the ravine and County conditioning of approval to require a final stormwater control plan within specified parameters/performance standards). Fourth, regarding the precedential value of the County’s decision for future interpretations of its LCP, although the County’s approval may not have fully applied the LCP in the manner which the Commission believes it should be applied (*e.g.*, condition allowing submittal of final stormwater control plan after CDP approval rather than prior to approval; failure to require conservation easement over ESHA on the project site prior to project approval), for the reasons discussed in this report the errors can be found to be *de minimis*, and a finding of no substantial issue will not create an adverse precedent for future interpretation of the LCP given the corrective guidance for applying the LCP set forth by the Commission in this report. Finally, the

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project does not raise issues of regional or statewide significance since this appeal only relates to application of development and coastal resource protection standards specific to the local County LCP, rather than issues of adequacy of said LCP standards as a matter of regional or statewide significance.

For the reasons stated above, the Commission finds that Appeal Number A-3-MCO-19-0024 does not present a substantial issue with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act.

APPENDIX A – SUBSTANTIVE FILE DOCUMENTS⁹

- Monterey County Resource Management Agency – Planning File Numbers:
 - PLN171011, Resolution Number 19-072 (Coastal Commission File Number A-3-MCO-19-0024)
 - PLN000489 (Coastal Commission File Number 3-MCO-01-378)
 - Coastal Commission File Number A-3-MCO-17-0038

APPENDIX B – STAFF CONTACT WITH AGENCIES AND GROUPS

- Monterey County Resource Management Agency – Planning Department

⁹ These documents are available for review in the Commission’s Central Coast District office.