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# F11a

Appeal Filed: 8/9/2022  
Action Deadline: 10/18/2022  
Staff: Sarah MacGregor - SC  
Staff Report: 9/23/2022  
Hearing Date: 10/14/2022

## STAFF REPORT SUBSTANTIAL ISSUE DETERMINATION ONLY

**Appeal Number:** A-3-MCO-22-0039

**Applicants:** Huff, Daryl & Rhonda Trs c/o The Lexrupe Living Trust

**Appellants:** Fred and Gale Krupica c/o Alex J. Lorca Esq.

**Local Government:** Monterey County

**Local Decision:** Coastal permit application number PLN210231 approved by the Monterey County Board of Supervisors (on local appeal) on July 12, 2022.

**Project Location:** Undeveloped property located at 1125 Spyglass Woods Drive in the unincorporated Del Monte Forest area of Monterey County (APN: 008-023-004-000).

**Project Description:** Construction of a new 3,951 square-foot single family dwelling and 677 square-foot attached garage, and related development including 300 cubic yards of grading and the removal of 51 trees of various sizes.

**Staff Recommendation:** No Substantial Issue

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## IMPORTANT HEARING PROCEDURAL NOTE

Please note that this phase of the hearing on this appeal will only address the question of whether the appeal raises a substantial issue, and testimony will be taken *only* on that question. Such testimony is generally limited to three minutes total per side (although the Commission's Chair has the discretion to modify these time limits), so please plan your testimony accordingly. Only the Applicant, persons who opposed the application before the local government, the local government, and their proxies/representatives are allowed to testify during this substantial issue phase of the hearing. Other interested parties may submit comments in writing. If the Commission finds that the appeal raises a substantial issue, then the Commission takes jurisdiction over the underlying coastal development permit (CDP) application and will then review that application at a future Commission meeting, at which time all persons are invited to testify. If the Commission finds that the appeal does *not* raise a substantial issue, then the local government CDP decision stands, and is thus final and effective.

## SUMMARY OF STAFF RECOMMENDATION

Monterey County approved a CDP to allow for the construction of a new 3,951 square-foot (sf) single family dwelling, a 677-sf attached garage, a 722-sf pervious driveway, 1,288 sf of exterior patios, and related development, including 300 cubic yards of grading and the removal of 51 trees of various sizes. The project is located on a 0.6-acre undeveloped parcel in the Del Monte Forest area of unincorporated Monterey County, and it is generally surrounded by single-family residences in a forested setting.

The Appellants contend that the approved project is inconsistent with the Monterey County Local Coastal Program (LCP) regarding the proposed driveway design, claiming it is larger than allowed by the LCP, that it is longer than allowed by the County's Architectural Review Board (ARB) guidelines, that it doesn't satisfy the local land use advisory committee's (LUAC) requests, and that it would lead to unhealthy exhaust fumes and noise for the Appellants (the neighboring property owners). None of these contentions raises substantial LCP consistency issues, and most do not even allege LCP inconsistency.

Specifically, the driveway size is within the LCP's allowable coverages and consistent with the LCP's setback requirements, the LCP does not define a maximum driveway length (and the ARB guidelines are not part of the LCP), but rather encourages driveway design that minimizes tree removal<sup>1</sup>, and the project was actually modified based on LUAC suggestions. In terms of the Appellants' noise and air quality

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<sup>1</sup> And here, the trees in question consist of various sizes, with diameter at breast height (DHB) ranging from 6" to 38". Tree removal at this site was specifically accounted for, including in terms of pre-mitigation, by the LCP's Pebble Beach Company Concept Plan (circa 2012) that identifies where development is allowed (and this site is one of the allowed residential development sites) and not allowed, and habitat conservation, protection, and mitigation provisions associated with such development within the Del Monte Forest. The Concept Plan is often referred to as the allowed "buildout" plan for the Del Monte Forest, and it resulted in over 635 acres of native Monterey pine forest being protected, restored, and enhanced in perpetuity in return for the allowed buildout under the plan.

contentions, there is nothing to suggest that this driveway would have unusual impacts of this sort, and the LCP doesn't include any specific requirements regarding these issues. In sum, the County-approved residential project is not dissimilar from others in the Del Monte Forest, including the Appellant neighbor, and the appeal contentions do not pose a substantial issue in relation to the Monterey County LCP or the Coastal Act.

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

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**EXHIBITS**

- Exhibit 1 – Project Location
- Exhibit 2 – Project Site Plans
- Exhibit 3 – Del Monte Forest Watershed Boundaries
- Exhibit 4 – Final Local CDP Action Notice
- Exhibit 5 – Appeal of County CDP Action

**CORRESPONDENCE**

## 1. 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 would not take jurisdiction over the underlying CDP application for the proposed project and would not conduct further hearings on this matter, and that the local government CDP decision stands and is thus final and effective. To implement this recommendation, staff recommends a yes vote on the following motion which, if passed, will result in the recommended no substantial issue finding. If the motion fails, then the Commission will have instead found a substantial issue and will instead take jurisdiction over the subject CDP application, resulting in a future hearing and action. 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-22-0039 **raises no substantial issue** with respect to the grounds on which the appeal has been filed under Section 30603, and I recommend a **yes** vote.*

***Resolution to Find No Substantial Issue.*** *The Commission finds that Appeal Number A-3-MCO-22-0039 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 certified Local Coastal Program and/or the public access policies of the Coastal Act.*

## 2. FINDINGS AND DECLARATIONS

### A. Project Description and Location

The County-approved project is located on a 0.6-acre lot at 1125 Spyglass Woods Drive in the unincorporated Del Monte Forest area of Monterey County. The undeveloped site is surrounded by single-family residences in a dense forest setting (primarily Monterey pine and Coast live oak) and is situated approximately 1 mile from the shoreline. The property is zoned Medium Density Residential (maximum of 4 dwelling units/acre), and it is located in the Seal Rock Watershed (see **Exhibit 3**).

Monterey County is divided into four<sup>2</sup> separate Land Use Plan (LUP) areas, and those LUPs are implemented by a Coastal Implementation Plan (CIP). The property is subject to the LCP's Del Monte Forest area provisions, and it is an allowed development site as part of the Pebble Beach Company Concept Plan, which was incorporated into the Monterey County LCPA in 2012 and implemented via a County CDP in 2012.<sup>3</sup>

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<sup>2</sup> The four LUPs are Big Sur Coast, Carmel Area, Del Monte Forest, and North County Coastal.

<sup>3</sup> The Concept Plan allowed development and required habitat protection measures for the Del Monte Forest, and limited future development of undeveloped properties to explicitly identified sites. And the implementing CDP (PLN100138) provided for subsequent authorization. The subject site is one of the allowed residential development sites per the LCP Concept Plan provisions.

The project involves the construction of a new 3,951 square-foot (sf) single family dwelling, a 677-sf attached garage, a 722-sf pervious driveway, 1,288 sf of exterior patios, and related development, including 300 cubic yards of grading and the removal of 51 trees of various sizes.<sup>4</sup>

See **Exhibit 1** for a location map and see **Exhibit 2** for the approved project plans.

### **B. Monterey CDP Approval**

On April 14, 2022, the Monterey County Zoning Administrator (ZA) approved a CDP for the above-described project. The Appellants appealed that decision to the County Board of Supervisors, which upheld the ZA's decision, and thus finalized the County's CDP action, on July 12, 2022. The County's Final Local CDP Action Notice (see **Exhibit 4**) was received in the Coastal Commission's Central Coast District Office on July 26, 2022, and the Coastal Commission's ten-working-day appeal period for the action began on July 27, 2022, and concluded at 5 p.m. on August 9, 2022. One valid appeal (discussed below) was received during the appeal period.

### **C. 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, and (3) in a sensitive coastal resource area; or (b) for approvals of CDPs by counties, approvals of development that is not designated as the principal permitted use under the LCP. 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. This County CDP decision is appealable to the Commission because the project site is located between the first public road and the sea.

For appeals of a CDP approval, valid grounds for appeal are limited to allegations that the approved development does not conform to the LCP and/or to Coastal Act public access provisions. For appeals of a CDP denial, where allowed (i.e., such appeals are only allowed in extremely limited circumstances – see description of appealable actions, above), the grounds for appeal are limited to allegations that the development conforms to the LCP and to Coastal Act public access provisions.

The Commission's consideration of appeals is a two-step process. The first step is determining whether the appeal raises a substantial issue that the Commission, in the exercise of its discretion, finds to be significant enough to warrant the Commission

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<sup>4</sup> Where such tree removal on allowed development sites was countenanced and mitigated by the habitat protection requirements of the LCP Concept Plan.

taking jurisdiction over the CDP application. This step is often referred to as the “substantial issue” phase of an appeal. The Commission is required to begin its hearing on an appeal, addressing at least the substantial issue question, within 49 working days of the filing of the appeal unless the applicant has waived that requirement, in which case there is no deadline. Here, the Applicants have not waived the 49-working day deadline, and thus the Commission has until October 18, 2022, to take action on this appeal (i.e., no later than the Commission’s October meeting).

The Coastal Act and the Commission’s implementing regulations are structured such that there is a presumption of a substantial issue when the Commission acts on this question, and the Commission generally considers a number of factors in making that determination.<sup>5</sup> At this stage, the Commission may only consider issues brought up by the appeal. At the substantial issue phase, staff will make a recommendation for the Commission to find either substantial issue or no substantial issue. If staff makes the former recommendation, the Commission will not take testimony at the hearing on the substantial issue recommendation unless at least three Commissioners request it, and, if no such hearing is requested, a substantial issue is automatically found. In both cases, when the Commission does take testimony, it is generally (and at the discretion of the Commission Chair) limited to three minutes total per side, and only the Applicant, persons who opposed the application before the local government, the local government, and their proxies/representatives are allowed to testify, while others may submit comments in writing.

If, following testimony and a public hearing, the Commission determines that the appeal does not raise a substantial issue, then the first step is the only step, and the local government’s CDP decision stands. However, if the Commission finds a substantial issue, the Commission takes jurisdiction over the underlying CDP application for the proposed project, and the appeal heads to the second phase of the hearing on the appeal.

In the second phase of the appeal, if there is one, the Commission must determine whether the proposed development is consistent with the applicable LCP (and in certain circumstances the Coastal Act’s public access and recreation provisions). This step is often referred to as the “de novo” review phase of an appeal, and it entails reviewing the proposed project in total. There is no legal specific deadline for the Commission to act

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<sup>5</sup> 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 substantial issue...” (California Code of Regulations, Title 14, (CCR) Section 13115(b)). CCR Section 13115(c) provides, along with past Commission practice, that the Commission may consider the following five factors when determining if a local action raises a significant issue: (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 the Coastal Act’s public access provisions; (2) the extent and scope of the development; (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. The Commission may, but need not, assign a particular weight to a factor, and may make a substantial issue determination for other reasons as well.

on the de novo phase of an appeal. Staff will make a CDP decision recommendation to the Commission, and the Commission will conduct a public hearing to decide whether to approve, approve with conditions, or deny the subject CDP. Any person may testify during the de novo phase of an appeal hearing (if applicable).

#### **D. Summary of Appeal Contentions**

The Appellants contend that the County's CDP-approval for the project is inconsistent with the LCP as regards the project driveway. Specifically, the Appellants primarily contend that the driveway is larger than allowed by the LCP, that it is longer than allowed by the County's Architectural Review Boards (ARB) guidelines, that it doesn't satisfy the local land use advisory committee's (LUAC) requests, and that it would lead to unhealthy exhaust fumes and noise for the Appellants (the neighboring property owners). See **Exhibit 5** for the full appeal document.

#### **E. Substantial Issue Determination**

##### **1. Driveway Size/Design**

The Appellants contend that the County-approved driveway is inconsistent with Del Monte Forest LUP Policy 1, which states, "[n]ew residential driveways and other vehicular surfaces shall be kept to the minimum length and width to provide simple, direct access...". However, the policy does not actually dictate a maximum driveway width or length, just that driveways be kept to the length necessary to provide simple and direct access. While clearly a subjective standard, the driveway in question is certainly not an unusually long or large driveway, especially by the Del Monte Forest residential standards (see **Exhibit 2**).

Additionally, LUP Policy 35 states, "development, including driveways and parking areas, shall be sited and designed to minimize removal of trees." Again, this is not strictly an objective standard so much as a subjective one, and it is tied to tree removal minimization specifically. And, importantly, tree removal on this site to accommodate residential development was allowed for and mitigated by the LCP's Concept Plan provisions. And while 51 trees being removed sounds like a high number, a majority of the trees in question are in poor condition or are already dead<sup>6</sup>. In addition, the County evaluated the Appellants' proposal that the house be 'flipped' to reduce the driveway area, and ultimately concluded that "removal of additional protected trees would be required if the structure is rotated 90 degrees [horizontally] to flip the home and place the garage on the side of the house nearest the access point." In other words, and in light of Concept Plan provisions and site-specific analysis, the LCP would not require a different driveway design here. Additionally, the proposed driveway meets fire access requirements and conforms to the site's topography.

Additionally, LUP Policy 77 limits impervious surface coverage to 9,000 square feet in the Seal Rock Watershed (mapped in **Exhibit 3**). However, the County-approved

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<sup>6</sup> The 51 trees slated for removal are comprised of coastal live oak (*Quercus agrifolia*), and Monterey Pine (*Pinus radiata*).



project would result in 6,638 feet of impervious surface area,<sup>7</sup> which is allowed under Policy 77.

For the above reasons, the County's approval of a CDP for the proposed project does not raise a substantial issue of LCP conformance with respect to the driveway design.

## **2. Requested Project Redesign**

The Appellants contend that the Del Monte Land Use Advisory Committee (LUAC) voted to support the project on December 16, 2021, but only if it were modified. The LUAC commented: "architect to consider shifting the building to address the [Appellants] concern". The representative for the Appellants further contended that Bart Bruno, member of the Del Monte Forest Architectural Review Board (ARB), suggested that the house be flipped to place the garage at the north end of the property. However, in an email sent on December 15, 2021, Bart Bruno wrote in response to the Appellant's representative that the review board decided to approve the project and not require that change as it is "the normal ARB's approach" (see Appendix A). Regarding comments raised at the LUAC meeting, the Applicant made changes to the project to shift the home approximately 2 feet back from the southwest corner and pivot the house to the northwest, away from the Appellants' home (see **Exhibit 2**), resulting in the home being located 21.5' to 68' away from the property line. In other words, it appears that these LUAC and ARB contentions are without merit. More importantly, these are not LCP contentions, and thus are not valid appeal contentions in the first place. These contentions do not raise a substantial issue with respect to legitimate appeal grounds.

## **3. ARB Guidelines**

The Appellants contend that the project's proposed garage and driveway violate the Del Monte Forest ARB Guidelines (Guidelines). Specifically, the Appellants contend that the driveway's length is inconsistent with the Guidelines, that the proposed driveway exceeds setback limits, and that the driveway is not "as unobtrusive as possible".

First and foremost, the Guidelines are not part of the LCP and thus are not the standard of review for this appeal. Moreover, the proposed single-family dwelling would have a front setback of 21 feet 6 inches, thus meeting the LCP's required minimum front setback of 20 feet. Driveways are not included in setback requirements. And as indicated above, the driveway's size and design do not raise a substantial LCP conformance issue otherwise. These contentions do not raise substantial issues.

## **4. Other**

The Appellants make numerous other arguments and claims to support their appeal, none of which relates to any LCP consistency issues. First, the Appellants contend that their home, which is currently under construction, complies with all regulations set by the ARB Guidelines. However, not only is that immaterial to the appeal of the County-

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<sup>7</sup> Where the County considered the driveway to also be impervious (and included it in the 6,638 square-foot calculation) to err on the conservative side, even though it is made up of concrete pavers and thus 'pervious' to a degree.

approved project here, but ARB guidelines are not a part of the LCP and are not valid grounds of appeal. Thus, this contention also does not raise a substantial LCP conformance issue.

Next, the Appellants argue that they offered to pay for the redesign of the Applicants' project to have the garage located at the northern end of the lot. This too does not raise an issue with respect to LCP conformance.

Finally, the Appellants argue that the driveway location will create "intrusive noise" and "unhealthy exhaust fumes". In response to these contentions, the County found that operation of the garage door and use of the driveway is not in conflict with Monterey County Code Section (non-LCP) 10.60.030 which prohibits operation of any device that produces a noise level that exceeds 85 dBA. There is nothing to suggest that this driveway would have unusual impacts of this sort and, importantly, there are no policies in the Del Monte Forest portion of the LCP related to noise and exhaust fumes. These contentions do not raise substantial issues.

## 5. Conclusion

When considering a project on appeal, the Commission must first determine whether the project raises a substantial issue of LCP conformity or Coastal Act public access conformity, such that the Commission should assert jurisdiction over the CDP application 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 Coastal Act public access and/or LCP conformance. The Commission's regulations lay out the following five factors that it may consider when determining whether the issues raised in a given appeal are "substantial" (14 CCR section 13115(c): 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. The Commission may, but need not, assign a particular weight to a factor, and may make a substantial issue determination for other reasons as well.

In this case, these five factors, considered together, support a conclusion that the County's approval of a CDP for this project does not raise a substantial issue of LCP or Coastal Act conformance. First, in terms the degree of factual and legal support for the local government's decision, the County staff report went through a detailed analysis of Coastal Act and LCP consistency findings that appear supported by the record (see **Exhibit 4** findings pp. 3-13). Specifically, in relation to the proposed driveway that is the genesis of this appeal, the County found that changing the driveway configuration would result in the removal of more trees than the current driveway configuration. The proposed driveway is objectively consistent with applicable LCP policies regarding maximum impervious surfaces and setbacks, there is nothing in the more subjective LCP standards that would require redesign. All other contentions raised by the Appellants (i.e., related to the LUAC, the ARB Guidelines, offers to pay for a redesign for the Applicants, the ARB consistency of their own home construction project, etc.) are

not LCP contentions and not valid grounds for appeal.

As to the extent and scope of the development, the project is a single-family home project not unlike others in the Del Monte Forest, and this factor weighs against a finding of substantial issue. In terms of the significance of the coastal resources affected by the County's decision, the proposed project could arguably impact water quality and tree habitat. However, the project meets LCP standards for water quality, and tree removal at this site specifically covered by the LCP's Pebble Beach Concept Plan provisions. In addition, it appears that tree removal has been minimized and while 51 trees being removed sounds like a high number, many of the trees in question are in poor condition or are dead.

In terms of the precedential value of the County's decision, there does not appear to be any potential for this project to set any sort of precedent including because the County properly interpreted its LCP when analyzing this project. Finally, this appeal clearly raises issues of only local concern as this appeal appears to be nothing more than a simple neighbor dispute.

Therefore, all five factors weigh against a finding that the County's approval raises a substantial issue with respect to the LCP or the Coastal Act. In short, the record supports the County's action and the County's analysis did not result in the approval of a project with significant coastal resource impacts or LCP/Coastal Act inconsistencies.

For the reasons stated above, the Commission finds that Appeal Number A-3-MCO-22-0039 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 and declines to take jurisdiction over the CDP application for this project.

### 3. APPENDICES

#### **A. Substantive File Documents<sup>8</sup>**

- County CDP Application File for PLN210231

#### **B. Staff Contacts with Agencies and Groups**

- Monterey County Housing and Community Development Department

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<sup>8</sup> These documents are available for review from the Commission's Central Coast District office.