



MEMORANDUM

DATE: MAY 23, 2024
TO: IGNACIO GONZALEZ, COASTAL PERMIT ADMINISTRATOR
FROM: LIAM CROWLEY, PLANNER II
SUBJECT: CDP_2023-0009 (DE ALBA) REQUEST FOR CONTINUANCE

On March 15th, 2024, staff received comments from the Coastal Commission expressing several concerns regarding the proposed development and the takings analysis included in the staff report. Staff then met with the Agent to discuss these comments. It was determined that additional review and project revisions may be required to adequately address these comments, including the preparation of an alternatives analysis to supplement the takings analysis within the staff report.

The agent then submitted an Alternatives Analysis to County staff, dated May 7th. This Alternatives Analysis has been uploaded to the Coastal Permit Administrator website for public review. County staff sent this Alternatives Analysis to Coastal Commission staff on May 13th, along with responses to several items within the March 15th Coastal Commission comment letter. Staff's intent was to determine whether the Coastal Commission agreed with the conclusions provided in the Alternatives Analysis and the responses to other items within the comment letter.

On May 20th, Commission staff responded, noting that certain deadlines prevented further comment on the project, other than a note that the Commission staff disagrees with the conclusions provided and that Commission staff reiterate their prior comments from the March 15th letter. Commission staff also noted that public comments received from Jacob Patterson articulated well many of the concerns of Commission staff.

Therefore, County staff is left uncertain as to the nature and detail of Commission staff's continued concern with the project. To address the concerns of Commission staff, County staff must either (1) infer, based on the March 15th letter, a detailed understanding of the deficiencies present within the Alternatives Analysis and the response from County staff, and/or (2) obtain more information from Commission staff regarding the nature and detail of Commission staff's concerns.

This would then allow County staff to recommend modifications to the project that would satisfy Commission staff's concerns. Therefore, County staff recommends that the project be continued to a **date uncertain** to allow sufficient time to complete the aforementioned process. County staff's responses to other items within the March 15th letter are attached for reference.

County Staff Response to Certain Items Listed Within the March 15 Comment Letter:

1.A: I agree that the proposed development is inconsistent with the use limitations in the LCP. Additionally, the proposed ADU would be contained entirely within the existing "cabin" structure, which would not be repaired or improved to the extent that it constitutes a replacement structure because none of the structure would be replaced. Therefore, the cabin structure may be permitted as an ADU despite being located within ESHA buffers. However, the associated septic improvements would remain inconsistent.

1.B.1: I disagree that the nearby developments included in the takings analysis are unrelated. I am not aware of any standard by which nearby development's avoidance of ESHA would disqualify those properties from being considered in a takings analysis. Rather, I would presume that the ability of nearby development to avoid ESHA and avoid a takings question would have indicated that the subject property may not be as densely covered in ESHA, which sets up an expectation that the proposed development may not have been impacted in this way. If the takings analysis were to include only other properties which have reached the takings issue, I believe the sample size of similar properties would be greatly diminished, and the amount of development permitted in those cases would have been predicated upon the average size of development in their respective neighborhoods rather than the immediate surroundings.

The applicant may have reasonably expected to build a development in similar proportion to that approved by CDP 9-2011 on 33401 Pacific Way. I agree that 33401 Pacific Way is an appropriate comparison to the proposed development. On 33401 Pacific Way, CDP 9-2011 included a 1,120 square foot addition to an existing 875± square foot single-family residence and a new 572 square foot detached garage, among other development. If the analysis were to use this property alone, an expectation would be that a 1,995 square foot single-family residence and 572 square foot detached garage could be constructed that avoids ESHA. I believe that the property owner's expectation for 33389 Pacific Way would therefore not be limited to the addition alone, but to total improvements including the detached garage.

1.B.2: As discussed in the staff report, the takings analysis uses the test outlined in the Penn Central decision. In the case of *Palazzolo v. Rhode Island*, 533 U.S. 606 (2001), the supreme court found that the purchase of property after a regulation is in effect does not preclude landowners from asserting interference with investment-backed expectations. Therefore, the classification of Sensitive Natural Communities and the determination that these communities constitute ESHA prior to purchase would not preclude the landowner from a takings claim, particularly due to the fact that the ESHA determination is based upon the result of a survey that was not conducted until the applicant purchased the property.

1.B.3: I agree that the staff report fails to consider amendments to the building envelope. The submitted alternatives analysis includes alternatives which would have the development placed outside of the existing envelope. Therefore, I intend to further analyze this possibility.

1.B.4: I agree.

1.D: I agree. Should it be determined that some development must be approved, I would recommend the inclusion of conditions of approval requiring a deed restriction limiting development in the buffer area with the exceptions noted in the letter. I would also recommend prohibition of rodenticide.

1.E: I disagree. Inconsistency with ESHA policies should not categorically result in a "significant and unavoidable" determination. In this case, potentially significant degradation of ESHA would be sufficiently mitigated by the incorporation of the proposed conditions. Though the project would remain inconsistent with ESHA policies on their face, this inconsistency is rendered insignificant by the mitigation measures that would establish and restore impacted habitat.

2: I agree. Any modification to the findings would include further discussion of Chapter 20.204 ("Nonconforming Uses and Structures").