

# Attachment A

This page intentionally left blank.

## ATTACHMENT A PROJECT DISCUSSION

### **Background**

The Use Permit portion of the application was initiated to resolve a code enforcement action resulting from the unpermitted removal of protected trees.

The site has a complicated history, involving several different permits obtained over a several year period:

On April 2, 2013, the applicant submitted an application for a Design Approval (PLN130239) to allow the construction of a new 3,200 square foot barn. The plans included with the Design Approval application did not reflect that trees were present in the development area or indicate that trees were being removed to allow the proposed barn construction. On May 15, 2013, the Design Approval (PLN130239) was approved administratively without knowledge that tree removal would be necessary to construct the barn.

On August 16, 2013, the applicant submitted a request for a construction permit (13CP01494) to allow the construction of the 3,200 square foot barn. The plans did not reflect the trees present on site nor indicate that trees would be removed to allow the proposed development. On September 19, 2013, the construction permit (13CP01494) was issued.

On October 4, 2013, the applicant applied for a grading permit (13CP01799) to move 4,958 cubic yards of soil (1,263 cut/3,695 fill), including 2,432 cubic yards of imported fill. This quantity of imported fill, to create a building pad for the future house, resulted in fill slopes of approximately 8-10 feet. The plans submitted for the grading permit did not reflect the trees present on the property or indicate that trees were being removed to allow the grading. On January 16, 2014, the grading permit was issued.

On April 30, 2014, the applicant applied for a Design Approval to allow the construction of a new 7,200 square foot residence, 1,200 square foot Accessory Dwelling Unit (ADU) and demolition of an existing 1,200 square foot residence. During the review of the Design Approval application it was discovered that un-permitted removal of protected trees had occurred throughout the entirety of the site, including in the locations of the previously approved barn (PLN130239) and the areas proposed for development of the new residence and ADU.

Subsequently, on July 2, 2014, a code enforcement case (14CE00183) was opened on the subject parcel, relative to unpermitted removal of protected trees (Oaks and Monterey Pines). The Monterey County Code states that restoration of unpermitted tree removal should be pursued unless it can be demonstrated that restoration is not feasible. Specifically, Monterey County Code Section 21.84.130, states that *“no application for a discretionary land use permit shall be deemed complete, when there is a violation on the property related to grading, vegetation removal or tree removal, until that property has been restored to its pre-violation state. Furthermore, alternatives to the restoration requirement shall not be considered unless the applicant can show that restoration would endanger the public health or safety, or that*

*restoration is unfeasible due to circumstances beyond the control of the applicant or the property owner.”*

Furthermore, Monterey County Code Section 16.08.230, pertaining to grading provides that “*The Building Official may, in writing, suspend or revoke a permit issued under provisions of this Chapter whenever the permit is issued in error or on the basis of incorrect information supplied, or in violation of any ordinance or regulation or any of the provisions of this Chapter.*” The grading permit issued to authorize the site grading was based on an application that failed to adequately depict that trees would be removed in the areas proposed for placement of large quantities of fill. Additionally, the plans submitted with the application appear to not accurately show the amount of topography associated with the natural grade which may result in more grading on the site than was shown on the plans.

In this particular case, the applicant has moved approximately 4,958 cubic yards of soil (1,263 cut/3,695 fill), including 2,432 cubic yards of imported fill on the site in the areas of the unpermitted tree removal. Normally, restoration would involve restoration of natural grades and replanting of trees which have been removed. In this particular case, the applicant moved a total 3,695 cubic yards of fill (2,432 imported) throughout the site and did not want to remove the fill and restore the site. The applicant desired to apply for an after-the-fact permit for the removal of the trees. All outstanding permits were tied together as part of this application as a Combined Development Permit.

A Forest Management Plan (FMP) was prepared to assess the impacts resulting from the unpermitted removal of protected trees, assess the overall health of the remaining trees on site, and determine the appropriate/replanting requirements for the subject site. Subsequent to the FMP, an Initial Study/Negative Declaration was prepared to analyze potential impacts resulting from unpermitted removal of trees, extensive amounts of grading, and the proposed construction of the new single family dwelling and accessory dwelling unit.

The Initial Study (State Clearinghouse No. 2014121086) was circulated for public review from December 24, 2014 to January 26, 2015 (34 days). The primary issues analyzed include Biological Resources and Hydrology/Water Quality. The IS/ND identified mitigation measures which could be implemented to adequately reduced tree removal impacts, and recommended partial restoration/replanting of portions of the site which were not proposed for future development or had previously been developed.

Comments on the IS/ND were received from individuals who reside within the vicinity of the project site. The comment letters expressed concerns over the placement of large quantities of fill, the altered drainage pattern of the project site, the large amounts of removed trees, and questioned if adequate water could be supplied to the site to allow the construction of the proposed 7,200 sq ft main residence and 1,200 sq ft accessory dwelling unit.

### **Planning Commission Hearing**

The project was brought to public hearing before the Monterey County Planning Commission on January 28, 2015. The Staff Report to the Planning Commission recommended approval, but identified that another option available to the Planning Commission was to deny the permit and

require restoration of the site (Attachment D). The Planning Commission received a significant amount of testimony from neighbors of the site, opposing the application and expressing concern with the grading, impacts on hydrology, the house design, lack of permits for tree removal, and lack of water available to this site.

During the hearing, the Planning Commission was very concerned about water use (at the hearing the applicant changed his proposal regarding use of an on-site well and Cal-Am connection), site drainage, and unpermitted tree removal. The Commission expressed concern with such a large house, with an accessory dwelling unit and finished barn being constructed within the Cal-Am service area, in light of the State Water Resources Control Board's Cease and Desist Order (CDO) on Cal-Am.

### Water

The initial study discussed that water would continue to be provided by Cal-Am and that prior to issuance of building permits, the Water Resources Agency would require a completed Monterey Peninsula Water Management District Water Release Form. The Commission questioned how all this new construction would not constitute an increase in water use to which the applicant responded that only the accessory dwelling unit would receive water from Cal-Am, which is consistent with existing water use, and all new water use would come from a well located on-site. A Commissioner expressed concern that this was an expansion of water use that was not adequately addressed in the Initial Study/Negative Declaration, because the IS/ND assumed no increase in water use and connection to Cal-Am. The records in both the Planning Department and Environmental Health Bureau confirm that the project site was being processed assuming connection to Cal-Am.

### Violations

Additionally the Planning Commission was concerned by the cumulative disregard for the regulations and policies of Monterey County Code. The applicant submitted numerous permits (planning, grading, and construction) omitting the presence of large numbers of protected trees, removing those trees without appropriate permits, and grading which has the potential to adversely affect adjacent property owners by changing the drainage of the existing landscape. These facts were part of the evidence cited by the Planning Commission in its resolution.

### Restoration

Pursuant to Monterey County Code Section 21.84.130, "*alternatives to restoration of the property shall not be considered unless the applicant can show that restoration would endanger the public health or safety, or that restoration is unfeasible due to circumstances beyond the control of the applicant or property owner.* In this particular case, the Planning Commission found that restoration is feasible and the findings for alternatives to site restoration were not supported.

While the Forest Management Plan (FMP) prepared for the project only offered partial restoration, this recommendation was based on the assumption that the location, size, and/or design of the proposed project (house and accessory dwelling unit) would not change. Under the plain language of the Zoning Ordinance, design of the project is not a reason to avoid or reduce the requirement of restoration.

Ultimately, the Planning Commission did not adopt the Initial Study/Negative Declaration, found that restoration was feasible, determined the project to be Statutorily Exempt per Section 15270(a) of CEQA (projects which are denied/rejected by a public agency), denied the Combined Development Permit, and found the Design Approval incomplete until full site restoration has been completed. This decision was based on the fact that the applicant had not supplied/included/depicted the appropriate/required tree removal on previously issued permits (Planning and Building), nor demonstrated infeasibility of the requirement for restoration.

### **Appeal**

On February 17, 2015, Anthony Lombardo & Associates, on behalf of Paul & Linda Flores, appellant, timely appealed the Planning Commission's decision to deny the Combined Development Permit and find the Design Approval incomplete until restoration had been completed (Attachment C). The appellant requests that the Board of Supervisors grant the appeal and adopt a previously approved Negative Declaration, and approve the Combined Development Permit, including the Design Approval. The appellants appeal focuses on the fact that the Planning Commission did not follow the staff recommendation to approve the request. The Planning Commission action is completely consistent with the required of the zoning ordinance, which requires restoration unless restoration is not feasible or would do more harm.

Pursuant to Monterey County Code, the appeal was set for hearing on April 14, 2015.

On April 14, 2015, at the request of the applicant, the matter was continued to May 12, 2015, to allow time for the appellant to development and present alternatives for County review and consideration by the Board of Supervisors.

As of April 30, 2015, no alternatives have been submitted to the County for review, analysis or consideration; therefore the matter has been presented to the Board without the appellant's alternatives.

### **Appeal Contentions**

The appeal alleges: the findings or decision are not supported by the evidence and the decision was contrary to law. The contentions are contained in the Notice of Appeal (Attachment B). Responses to appellant's contentions are found within the proposed resolution presented to the Board (Attachment B).

### **Options**

The Board of Supervisors has a variety of options to consider:

1. Deny the appellant's appeal and Deny the Combined Development Permit and order full restoration of the site; or
2. Grant the appellant's appeal and consider the proposed project and Combined Development Permit; or
3. Grant the appellant's appeal and consider any project alternatives presented to the Board of Supervisors.

Option 1 would require the RMA-Planning and RMA-Building Departments to formally revoke all previously issued permit for the prior grading (13CP01799), construction of the on-site barn (PLN130239 – approved May 2013), and other associated permits for retaining walls (PLN130852 – approved December 2013), pursuant to an additional noticed public hearing. Additionally, the property owner/applicant/appellant would be responsible for the developing, submitting and obtaining approval of the restoration plan. The property owner/appellant has been aware of the potential for full restoration since prior to application for the after-the-fact permits. On July 31, 2014, the property owner/applicant/appellant submitted written confirmation and acknowledgement of this potential (Exhibit G of the January 28, 2015 Planning Commission Staff Report).

Option 2 would require a subsequent continuance of the public hearing, to allow the amplification/clarification and/or recirculation of the previously prepared Initial Study, to correct and revise analysis related to the use of water and drainage on the project site.

Option 3 would also require a continuance of the public hearing, to allow RMA-Planning and RMA-Building staff to review any submitted alternative(s) and revise and/or re-circulate the Initial Study based upon new information (i.e. water source, water use, new design(s), size of development, replanting of trees, removal of placed fill, etc).

### **Staff Recommendation**

Staff recommends that the Board of Supervisors consider the facts of the case, the actions of the Planning Commission, and take the following actions:

- a. Deny the appeal by Paul and Linda Flores from the Planning Commission's decision to deny a Combined Development Permit (Flores/PLN140300) consisting of: 1) Use Permit to allow after-the-fact removal of approximately 24 protected trees; 2) Use Permit to allow the removal of approximately 15 additional protected trees; and the Planning Commission's decision to find incomplete the Design Approval application to allow the construction of a single family dwelling and accessory dwelling unit (ADU) until full site restoration has been completed; and
- b. Find the project Statutorily Exempt per Public Resources Section 21080(b)(5) and Section 15270(a) of the CEQA Guidelines; and
- c. Deny a Combined Development Permit (Flores/PLN140300) consisting of: 1) Use Permit to allow after-the-fact removal of approximately 24 protected trees; 2) Use Permit to allow the removal of approximately 15 additional protected trees; and 3) Design Approval to allow the construction of a 7,200 square foot single family dwelling and 1,200 square foot accessory dwelling unit (ADU).

