

Attachment A

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Attachment A
PROJECT DISCUSSION
PLN180289 (Miller)

The project site is an undeveloped lot located at 24275 Via Malpaso within the Monterra Ranch subdivision. Monterra Ranch is a private, gated community of single-family dwellings on large lots with an architectural style that can be generally described as Mediterranean (light colored stucco exterior with tile roofs). Lots are surrounded by large open spaces consisting largely of oak woodlands.

The applicant plans to develop a vacant lot within the Monterra Ranch subdivision with a two-story single family home and an attached garage. The subject property is located in a sparsely populated wooded residential block containing two-story homes over 100 feet from each other. It is bound to the west by Via Malpaso and to the east and south by developed and undeveloped residential parcels. The site is constrained with a building envelope that was recorded as part of the final map. In addition, scenic easements surround the perimeter of the property outside of the the parcel's building envelope. Highway 68 is about three quarters of a mile north of the project location, and the area between the highway and the project site is principally occupied by open space.

Design Review:

The Miller conceptual design is a two-story single family dwelling with a Spanish revival architectural style. The proposed exterior colors, materials and finishes, which consist predominantly of cream stucco walls, stone tile, red clay tile roof, and copper gutter and downspout are appropriate for the neighborhood and will blend in with the surrounding environment. Additionally, because the elevation of the home is broken up by varied roof pitches, the bulk and mass of the design are proportionate to the site and do not conflict with the surrounding neighborhood. In addition, the project has been reviewed and approved by the Monterra architectural review board.

The proposed project meets all development standards (height, setbacks, coverage, etc.) for this area:

Main Structure

Required:	Proposed:
Front Setback: 30 feet (minimum)	30 feet
Side Setback:	
<i>North Side:</i> 20 feet (minimum)	49 feet
<i>South Side:</i> 20 feet (minimum)	85.5 feet
Rear Setback: 20 feet (minimum)	212 feet
Maximum height: 30 feet	30 feet

Accessory Habitable Structures

Required	Proposed
Front Setback: 50 feet (minimum)	203 feet

Side Setback:

<i>North Side:</i> 6 feet (minimum)	24 feet
<i>South Side:</i> 6 feet (minimum)	152 feet
Rear Setback: 6 feet (minimum)	93.75 feet
Maximum height: 15 feet	11.83 feet

Slopes

The natural terrain on the Miller parcel slopes down from Via Malpaso Road to the rear of the property and contains slopes in excess of 25% along Via Malpaso Road and along the access easement bisecting the property. The applicant has sited development between Via Malpaso Road and the access easement, which is predominantly in an area with slopes less than 25% (**Attachment D**). However, the applicant proposes to develop 800 square feet on slopes greater than 25% around the auto court and northern portion of the home.

General Plan Policy OS-3.5 (c) exempts a discretionary permit if less than 500 square feet of the total development footprint will impact slopes. This project is subject to a Use Permit because it exceeds that exemption threshold. In order to approve a Use Permit, the decision-making body must find that there is no feasible alternative which would allow development on slopes of less than 25% or the proposed development better achieves the resource protection objectives.

Impacts to slopes will primarily occur to obtain access from the easement to the proposed garage and fire department turnaround area along the northern portion of the proposed home. Impacts on slopes are the result of needing to access a building area through a cut slope that was likely created with the construction of the existing access easement across the site. The siting of the home (structure) avoids slopes and oak trees that populate near the front property line (along Via MalPaso). The home is also sited off the access road on the site to minimize grading for driveway access in addition to the proposed building sites. For these reasons, the attached resolution provides findings and evidence that there is no feasible alternative to avoid development on slopes and the proposed development is sited and design to achieve compliance with resource protection objectives (trees).

Tree Removal/Forest Management

The project site is a vacant 1.79 acre lot surrounded by vacant parcels and large custom residential homes in the Monterra Ranch Subdivision. Coast Live Oak trees and Monterey pines are scattered throughout the site and the subdivision. The applicant is proposing to remove three (3) Coast Live Oak trees ranging in size from 6” to 26” dbh in association with construction of the new residence.

The Greater Monterey Peninsula Area Plan states that tree removal shall be minimized. Removal of three or less protected trees does not require a Use Permit pursuant to Section 21.64.260 of the zoning ordinance Title 21 (preservation of oaks and other protected trees). However, one tree is considered a “Landmark Tree” (greater than 24” diameter at breast height or “dbh”), so a Use Permit is required for removal of this tree.

A Forest Management Plan (FMP) was prepared for the project by Frank Ono dated May 24, 2018 (**Attachment F**), which analyzes the impact of removal of five (5) trees. The original FMP

identifies impacts to three Coast Live Oak trees and two Monterey Pine trees based on the development as proposed; however, the applicant has modified the project to reduce impacts to trees. Under the current proposal, three Coast Live Oak trees (identified in the FMP as Trees No. 1-3) would be removed for the development of the single-family dwelling. Those trees are described in the FMP as in fair or poor condition. The FMP concludes that the project as proposed will not significantly reduce the availability of wildlife habitat over the long-term. The trees proposed for removal are on the edge of existing openings in tree canopy. The FMP also makes recommendations for management of excessive brush and undergrowth to ensure fire-fuel loads are reduced to a safe level. Clearing of this debris will also promote healthy growth of the forest surrounding the home. Recommendations from the FMP will be implemented through a landscaping condition placed on the project

Alternative locations for the home were considered; however, the proposed location is sited within an area that has the largest opening in tree canopy and is sensitive to slopes on the lot. As designed, siting the project elsewhere on the property would impact more trees and could increase development on slopes. A smaller home could further reduce the amount of trees required for removal, however the proposed home meets all site development standards and is consistent with the size and mass of other homes in the Monterra subdivision. The remainder of the property contains tree cover, which will remain undisturbed. Staff has reviewed the FMP and agrees with the conclusions. Recommended conditions have been included as conditions of approval for the project (**Attachment B.1**).

Fire Hazard Zone

The project site has been identified as located within a very high fire hazard zone. A Fuel Management Plan (FMP) was submitted with the application (**Attachment D**). The plan includes maintaining landscaping within 30 feet of the proposed home and managing vegetation beyond that 30 foot zone to the property line. Vegetation management will include creating horizontal and vertical space between shrubs and trees, removing dead leaves from the ground, and mowing grass. Fire clearance can be accomplished without removing additional trees. Monterey County Regional Fire Protection District reviewed the FMP as part of the application and recommended approval subject to standard conditions.

Biology

The applicant submitted a biological report dated December 4, 2018, which found no species of biological significance on the parcel besides the presence of Coast Live Oak and Monterey Pine trees (**Attachment G**). The subdivision created a drainage easement slightly below the applicant's property line to drain water runoff after heavy periods of rain. The biologist also noted the drainage easement is a deeply incised reach across a heavy clay bedding and bears no vegetation between the channel banks across the easement area of Lot 18. The proposed development is located more than 100 feet from the drainage easement. As such, the biological report concludes the unnamed drainage presents neither riparian habitat nor aquatic in-stream habitat (**Attachment G**); and therefore, development of this lot would not adversely affect sensitive species in the area.

PARCEL LEGALITY:

A neighbor to the west of the parcel site, has expressed concerns about the proposal as it relates

to the property boundary between the Miller property and their property. Attorney's for the neighbor allege that boundaries for Lot 18 (the Miller property) are subject to a lot line adjustment from 2003 rather than the original 1998 parcel boundaries created by the Monterra Ranch subdivision. There is a dispute regarding a parking area in the landscaped and improved paved driveway area occupied by Lot 19 south of the 2003 boundary. Landscaping and driveway improvements have been installed by the owner of lot 19 near the boundary with lot 18. Staff has reviewed the status of the Lot Line adjustment and determined that the boundaries shown on the survey submitted for the project reflect the current legal configuration of the property. See discussion below.

History

In 1992, a final subdivision map for Monterra Ranch, Tract No. 1177, was recorded in Volume 18 at Page 1. The subject parcel was identified as Lot 18 with a total of 2.55 acres, and included a delineated Building Envelope (1.53 acres). It also included 1.02 acres of scenic easements towards the east of the parcel, outside of the Building Envelope. Access to the parcel is located off Camino Monterra, on the west side of the parcel.

Then, in 1998, Monterra Ranch Properties LLC obtained a permit for a Lot Line Adjustment (PLN980080), which was reflected in a record of survey showing the new boundaries at Volume 21 Surveys page 126. This LLA changed the boundary between Lots 18 and 19 reducing the total lot area of the subject Lot 18 from 2.55 Ac to 1.79 Ac.

A second Lot Line Adjustment was approved on May 9, 2001, adjusting boundaries between three undeveloped lots (Lots 17, 18 and 19) to accommodate driveway and building envelopes, which resulted in reducing the size of Lot 19 (from 2.27 Ac to 2.16 Ac) and Lot 18 (from 1.79 Ac to 1.67 Ac) and increasing Lot 17 (from 2.55 Ac to 2.66 Ac) (PLN000547). However, the 2001 lot line adjustment was never perfected through a recorded deed which is a step required by the Subdivision Map Act to officially adjust parcel boundaries and descriptions (Government Code section 66412(d)). In April 2003, the owners of Lots 17, 18, and 19 obtained another permit approval for lot line adjustment (Permit No. 000547). A record of survey reflecting the proposed new boundaries was recorded on May 8, 2003, at Volume 26 at Page 69. Once again, the lot line adjustment was never perfected in a grant deed. Records of surveys alone do not effect a lot line adjustment, so the lot line adjustments in 2000 and 2003 never resulted in a revision to the boundary.

In May 2004 and April 2006, the Monterra Ranch Properties executed a deeds of trust on Lot 18 identifying Lot 18 by reference to the 1998 lot line adjustment under Volume 21, Page 126, Surveys recorded July 24, 1998 (the first lot line adjustment). In 2018, the Millers purchased Lot 18, in which the deed identifies Lot 18 by reference to the 1998 lot line adjustment (not the 2001 approved configuration that was never executed through a deed). This means that the project, as proposed is in conformance with all setback requirements and does not encroach upon the neighbor's property.

APPEAL

The Planning Commission approved the project on July 29, 2020. On September 2, 2020, the County received an appeal from Christine Kemp, representative of Rebecca Tweten who is the

neighbor contending the ongoing boundary dispute with the applicant. The appeal contentions were similar to the public comments received during the Planning Commission hearing, and the contentions along with County responses are detailed below.

Contention No.1: No project should be approved for this site until the litigation is resolved.

Response No.1: There is currently an on-going lawsuit between the applicant and appellant which includes a dispute over the property lines. Appellant argues that the boundary dispute is complex and cannot be determined by the County and that the outcome would directly affect the project. County is proceeding to make a determination of the application because the Permit Streamlining Act sets timeframes for acting on a development application, unless the applicant is willing to extend the deadlines. Second, staff has reviewed the evidence and determined that applicant's Lot 18 as configured by the 1998 lot line adjustment is a legal lot of record and is the property that is the subject of this application; regardless, judicial resolution of the dispute between the neighbors as to the property boundaries and scenic easement is not required to precede project approval because the revised Project, as submitted by the applicant and approved by the Planning Commission, proposes no development in the area under dispute. If resolution of the lawsuit were to necessitate revision of the project, the applicant could apply for an amendment to the permit.

Contention No. 2: The entirety of the Miller Project should be reviewed, as a whole, not piecemealed, once the litigation is resolved.

Response No. 2: County's approval of a reduced project as compared to the initial application is not piecemealing. Prior to the July Planning Commission meeting, the applicant submitted a revised site plan that removed the ADU and shortened the main building to meet the setback of a scenic easement that was depicted on the 2001 record of survey. The prior components of the project application are not being held as a pending future application. If applicant wanted to pursue the other elements, the project would have to return to the County to amend the permit. The outcome of the litigation is not known, and it would be speculative to assume what additional development, if any, applicant would seek in the future. Any potential future development on this property would be subject to separate review subject to County permits.

Contention No. 3: No Justification for Building on 25% and 30% Slope.

Response No. 3: The Monterra Ranch subdivision created lots in the subdivision that include areas with steep slopes. Specific areas to avoid were placed in easements, or building envelopes were created, to establish the area where development was preferred (allowed) to occur. Policy OS 3.5 and the 2010 General Plan regulates development on slopes in excess of 25%. Development on slopes in excess of 25% is prohibited unless there is no feasible alternatives for development on the project location and/or the development better meets resources protection objectives and policies. The project site is a naturally sloped terrain, and the single-family dwelling has been sited to avoid the steeper slopes around the center of the property. Moreover, the single-family dwelling has been designed so the bulk and mass would avoid steep slopes and protected trees. Finally, the Miller property is accessible off Via Malpaso, is it not possible to avoid slopes entering the property from Via Malpaso. Therefore, given the site constraints, the

existing driveway easement, and the natural topography of the site, most of the development that would exist on slopes in excess of 25% would be around the auto court and northern portion of the home.

Contention No. 4: The Miller Project is too large and domineering for this constrained site.

Response No. 4: Monterey County policies and regulations establish development standards for what is considered reasonable development. The proposed development is on a 1.79 acre parcel, and would have a building site coverage of 4,715 square feet, well below the maximum allowable coverage of 19,470 square feet for this zoning designation. The conceptual design of the project is a two-story single family dwelling with a Spanish revival architectural style. The proposed exterior colors, materials and finishes consist of cream stucco walls, stone tile, red clay tile roof, and copper gutter and downspouts are appropriate for the neighborhood and surrounding environment. Additionally, the elevation of the home is broken up by varied roof pitches to minimize its bulk and composition and to better fit in with the surrounding community.