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**Before the Planning Commission in and for the
County of Monterey, State of California**

In the matter of the application of:
Paul & Linda Flores (PLN140300)

RESOLUTION NO. 15-010

Resolution by the Monterey County Planning
Commission:

- 1) Finding the Denial statutorily exempt from CEQA per Section 15270(a); and
- 2) Denying a Combined Development Permit consisting of: 1) Use Permit to allow after-the-fact the removal of approximately 24 protected trees; 2) Use Permit to allow the removal of approximately 15 additional protected trees due to diminishing forest health; and
- 3) Finding the Design Approval to allow the construction of a single family dwelling and accessory dwelling unit (ADU) and the demolition of an existing single family dwelling, incomplete until full site restoration been completed.

[PLN140300, Paul & Linda Flores 564 Monhollan Road, Carmel, Greater Monterey Peninsula Area Plan (APN: 103-071-025-000)]

The Flores application (PLN140300) came on for public hearing before the Monterey County Planning Commission on January 28, 2015. Having considered all the written and documentary evidence, the administrative record, the staff report, oral testimony, and other evidence presented, the Planning Commission finds and decides as follows:

FINDINGS

1. **FINDING:** **PROJECT DESCRIPTION** – The proposed project is a Combined Development Permit consisting of: 1) Use Permit to allow after-the-fact the removal of approximately 24 protected trees (20 Oaks and 4 Monterey Pines) (14CE00183); and 2) Use Permit to allow the removal of approximately 15 additional protected trees (14 Monterey Pine and 1 Oak); and 3) Design Approval to allow the construction of a 7,200 square foot one-story single family dwelling and a 1,200 square foot accessory dwelling unit (ADU) and the demolition of an existing 1,200 square foot single family dwelling.
EVIDENCE: The application, project plans, and related support materials submitted by the project applicant to Monterey County RMA-Planning for the proposed development found in Project File PLN140300.

2. **FINDING:** **INCONSISTENCY** – The Project, as designed, is inconsistent with the applicable plans and policies which designate this area as appropriate for development.
EVIDENCE: a) During the course of review of this application, the project has been reviewed for consistency with the text, policies, and regulations in:
 - the 2010 Monterey County General Plan;
 - Greater Monterey Peninsula Area Plan;

- Monterey County Zoning Ordinance (Title 21);
Conflicts were found to exist with the Monterey County Zoning Ordinance, relative to policies and regulations relating to removal of protected trees.
- b) The property is located at 564 Monhollan Road, Carmel (Assessor's Parcel Number 103-071-025-000), Greater Monterey Peninsula Area Plan. The parcel is zoned RDR/10 D or "Rural Density Residential, 10 acres with a Design Control Overlay, which allows residential development and construction of accessory dwelling units as allowed uses subject to approval of a Design Approval. Therefore, the construction of a single family residence is an allowed land use for this site subject to approval of a Design Approval.
 - c) The property owner removed approximately 39 protected trees (21 Oaks and 18 Monterey Pines).
 - d) Monterey County Code 21.64.260.D.3 (Title 21) requires the granting of a Use Permit for the removal of more than three protected trees. Approval of a Use Permit requires the Approving Authority to find that the project results in the removal of the minimum number of trees possible. The trees were removed without any permits and the applicant has not submitted evidence to demonstrate that the tree removal was the minimum necessary.
 - e) The finding for the Use Permit to support tree removal cannot be made. No evidence has been submitted to demonstrate that this is the minimum number of trees to be removed.
 - f) The removal of the trees without necessary permits is a violation of the Monterey County Code.
 - g) Monterey County Code 21.84.130, states: *No application for a discretionary land use permit under the authority of the Director of Planning, the Zoning Administrator, the Planning Commission or the Board of Supervisors shall be deemed complete if there is a violation on said property of a County ordinance which regulates grading, vegetation removal or tree removal until that property has been restored to its pre-violation state. "Restoration" of the property shall include, but not be limited to, the revegetation of native plants and trees and the reconstruction of natural features of the land which have been removed or changed in violation of County ordinances regulating grading, vegetation removal or tree removal. 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 the property owner.*
 - h) The Combined Development Permit has been submitted in lieu of restoration. This approach requires the applicant to show that restoration would endanger the public health or safety, or that restoration is unfeasible due to circumstances beyond the control of the applicant. The site can be restored by removing the imported fill material, and replacement trees can be replanted on site without endangering the public health and safety. This is the remedy provided as the preferred option in the Zoning Ordinance and should be followed.
 - i) The approval of an after the fact Use Permit for tree removal where restoration is feasible is inconsistent with the intent of the Zoning

Ordinance and would serve to encourage the unpermitted removal of trees, making it easier to obtain after the fact permitting than obtaining necessary permits prior to tree removal.

- j) The project planner conducted a site inspection on July 22 and August 20, 2014.
- k) The application, project plans, and related support materials submitted by the project applicant to Monterey County RMA-Planning for the proposed development found in Project File PLN140300.

3. **FINDING:** **VIOLATIONS** - The subject property is in not compliance with the rules and regulations pertaining to provisions of the County's zoning ordinance relative to the un-permitted removal of protected trees. Violations exist on the property. The approval of this permit will correct the violations and bring the property into compliance.

- EVIDENCE:**
- a) Staff reviewed Monterey County RMA - Planning and Building Services Department records and is aware of violations existing on subject property.
 - b) On October 4, 2013, the project applicant applied for a grading permit (13CP01799) from the County's Building Services Department. 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. Therefore, on January 16, 2014, the grading permit was issued without knowledge or evaluation of potential tree removal.
 - c) 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 in the area(s) of each proposed development area (residence and ADU), as well as in the location of a previously approved barn (PLN130239). Subsequently, a code enforcement case (14CE00183) was opened on the subject parcel.
 - d) Under Monterey County Code Section 21.84.130, restoration of the site to its pre-violation state is required prior to consideration or issuance of discretionary permits or construction (building and/or grading) permits.
 - e) The application plans and supporting materials submitted by the project applicant to Monterey County RMA-Planning for the proposed development are found in Project File PLN140300.

4. **FINDING:** **CEQA (Exempt):** - The project is statutorily exempt from environmental review and no unusual circumstances were identified to exist for the proposed project.

EVIDENCE: California Environmental Quality Act (CEQA) Guidelines Section 15270(a) statutorily exempts projects which a public agency rejects or disapproves.

5. **FINDING:** **TREE REMOVAL** – The tree removal is not the minimum required under the circumstances.

- EVIDENCE:**
- a) The project includes the removal of a total of 39 total trees; 21 oaks and 18 Monterey Pines. In accordance with the applicable policies of the Greater Monterey Peninsula Area Plan and the Monterey County

Zoning Ordinance (Title 21), a Use Permit is required and the criteria to grant said permit has not been met.

- b) Unpermitted tree removal occurred on the subject property. The exact number of removed trees is unable to be determined, due to the large area of tree removal, and subsequent grading (fill) materials which was placed in areas of tree removal. No evidence to exact location of unpermitted tree removal on site exists; however aerial photographs obtained from the County GIS system and Google Earth, show that approximately 24-36 trees have been removed from the property without appropriate permits.
- c) The application, plans and supporting materials submitted by the project applicant to the Monterey County Planning Department for the proposed development are found in Project File PLN140300.

6. **FINDING:** **APPEALABILITY** - The decision on this project may be appealed to the Board of Supervisors.
EVIDENCE: Section 21.80.040.D Monterey County Zoning Ordinance (Title 21).

DECISION

NOW, THEREFORE, based on the above findings and evidence, the Planning Commission does hereby:

1. Find the Denial statutorily exempt from CEQA per Section 15270(a); and
2. Deny the Flores Combined Development Permit consisting of: 1) Use Permit to allow after-the-fact the removal of approximately 24 protected trees; 2) Use Permit to allow the removal of approximately 15 additional protected trees due to tree health; and
3. Find the Design Approval request to allow the construction of a single family dwelling and accessory dwelling unit (ADU) and the demolition of an existing single family dwelling, incomplete until full site restoration has been completed.

PASSED AND ADOPTED this 28th day of January, 2015 upon motion of Commissioner Diehl, seconded by Commissioner Salazar, by the following vote:

AYES: Brown, Vandevere, Getzelman, Rochester, Salazar, Hert, Roberts, Diehl, Padilla, Mendez
NOES: None
ABSENT: None
ABSTAIN: None



Mike Novo, Secretary

COPY OF THIS DECISION MAILED TO APPLICANT ON FEB 04 2015

THIS APPLICATION IS APPEALABLE TO THE BOARD OF SUPERVISORS.

IF ANYONE WISHES TO APPEAL THIS DECISION, AN APPEAL FORM MUST BE COMPLETED AND SUBMITTED TO THE CLERK TO THE BOARD ALONG WITH THE APPROPRIATE FILING FEE ON OR BEFORE

FEB 17 2015