

Attachment C

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b) If you are appealing one or more conditions of approval, list the condition number and state the condition(s) you are appealing. (Attach extra sheet if necessary)

6. Place a check mark beside the reason(s) for your appeal:

There was a lack of fair or impartial hearing _____
The findings or decision or conditions are not supported by the evidence X
The decision was contrary to law X

Give a brief and specific statement in support of each of the reasons for your appeal checked above. The Board of Supervisors will not accept an application for an appeal that is stated in generalities, legal or otherwise. If you are appealing specific conditions, you must list the number of each condition and the basis for your appeal. (Attach extra sheets if necessary)

7. As part of the application approval or denial process, findings were made by the decision-making body (Planning Commission, Zoning Administrator, or Minor Subdivision Committee). In order to file a valid appeal, you must give specific reasons why you disagree with the findings made. (Attach extra sheets if necessary)

Attached

8. You are required to submit **stamped-addressed envelopes** for use in providing notice of the public hearing on the appeal to all interested persons and all property owners within **300 feet** of the subject property. You may obtain the mailing list from the Planning and Building Inspection Department.

9. You must pay the required filing fee of \$1,728.07 (make check payable to "County of Monterey") at the time you file your appeal. (Please note that appeals of projects in the Coastal Zone are not subject to the filing fee.)

10. Your appeal is accepted when the Clerk to the Board accepts the appeal as complete and receives the required filing fee and the stamped-addressed envelopes. Once the appeal has been accepted, the Clerk to the Board will set a date for the public hearing on the appeal before the Board of Supervisors.

The appeal, filing fee, and envelopes must be delivered to the Clerk to the Board or mailed and postmarked by the filing deadline to PO Box 1728, Salinas CA 93902. A facsimile copy of the appeal will be accepted only if the hard copy of the appeal, filing fee, and envelopes are mailed and postmarked by the deadline.

APPELLANT SIGNATURE *Raw [Signature]* Date: 2/13/15

ACCEPTED _____ Date: _____
Clerk to the Board

APPEAL OF LINDA AND PAUL FLORES (PLN1403000) TO THE DECISION OF THE
PLANNING COMMISSION

1. Denying both a use permit for the after the fact removal of 24 protected trees and a use permit to allow removal of approximately 15 additional protected trees due to diminishing forest health; and,
2. Finding the Flores application for a design approval for a single family dwelling, accessory dwelling unit and the demolition of an existing single family dwelling incomplete until the site has been fully restored.

Brief Background:

The appellants had a series of permits approved and issued by Monterey County between May 15, 2013 and January 16, 2014. These permits included:

- A design approval for a 3,200 SF barn (PLN130239/issued May 15, 2013).
- A building permit for the 3,200 SF barn (13CPO1494/issued September 19, 2013). The barn construction record shows a total of 15 separate construction inspections.
- A design approval for 360' of retaining wall from 1'-5' in height (PLN130852/issued December 17, 2013).
- A grading permit, including retaining walls for 3,695 CY of cut and 1,263 CY of fill (13CPO1799/issued January 16, 2014. The inspection record shows a total of 5 separate site inspections.

In April, 2014 the appellants applied for a design approval for a 7,200 SF house and a 1,200 SF accessory dwelling unit. It was then determined that 24 protected trees (20 oak and 4 Monterey Pine) were removed without benefit of permits between May, 2012 and August, 2013. The staff correctly required the after the fact tree removal and additional tree removal to be included in their application. The appellants then amended their application, a forest management plan was prepared, an initial study was prepared and circulated, a staff report recommending approval was prepared. The application was heard and denied by the Planning Commission on January 28, 2015.

The findings of the Planning Commission to deny the application are not supported by the evidence:

Inconsistent with the General Plan: The Planning Commission found (Finding 2) that the Flores application was inconsistent with the General Plan essentially because the site had not been restored to its previolation state. This finding is not supported by the evidence for the following reasons:

- The site, under these specific circumstances is not required to be fully restored prior to the application being determined complete and being heard by the Planning Commission.

Monterey County Code Section 21.84.130 does state that “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.” However it goes on to state “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.” Simply put, full restoration is not required if it is not feasible or if the restoration would cause more damage than if there were restoration. Full restoration is not required in this case because:

- The appellants had a Forest Management Plan prepared by Vaughan Forestry and Land Management. That Plan was reviewed by the Department and found to be adequate. Page 3 of the staff report to the Planning Commission states “In an effort to help determine if restoration was preferred [a Forest Management Plan was prepared and] the staff was present on site when the consultants did their site evaluation.” The staff report to the Planning Commission, also on page 3, further states “subsequent to the onsite analysis, it was the opinion of the Forester, that full restoration of the project site would potentially involve significant environmental impacts, due to the placement/return of heavy grading equipment required to remove/relocate the vast quantities of fill placed and compacted onsite [and recommended] partial restoration (replacement planting) of the project site.(emphasis added)” Staff concurred. No evidence was submitted contrary to that determination.
- The staff prepared an Initial Study and determined a Negative Declaration was appropriate. That IS and the Notice of Intent to Adopt a Negative Declaration was circulated through the State Clearinghouse and locally. During the review of the IS/ND, although there were comments regarding the overall project, no evidence was submitted to contradict the staff’s determination regarding restoration.
- The determination regarding restoration rests with the Department, not the Planning Commission. In 2004 a memorandum was written addressing the question of who may approve an alternative to restoration. That memo, which is posted on the Department website states “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. It is incumbent upon the owner/applicant to show that an alternative to restoration is more appropriate. For the purpose of our operations, alternatives to restoration plan may be only be approved by the Director, Chief Assistant Director, or Assistant Director (emphasis added).” The Director made the determination regarding restoration based on the forester’s recommendation. There was no

appeal filed regarding the determination. The issue of restoration was not properly before the Planning Commission.

Tree Removal: The Planning Commission found (Finding 5) that "...tree removal is not the minimum necessary..." This finding is not supported by the evidence for the following reasons:

- The project included the removal of 39 trees including 21 oaks (20 previously removed) and 18 Monterey Pines (4 previously removed). The staff, after extensive review of the project, the Forest Management Plan, onsite consultation with the Forester and preparation of an initial study determined that the "...removal of 39 total trees can be considered to be the minimum required under the circumstances." No evidence was submitted contrary to that determination.
- The staff report overstates the number of trees for which a permit is required prior to removal. The correct number is 21 oaks (20 previously removed, plus one proposed to be removed). No permit is required for the removal of Monterey Pines. Monterey County Code Section 21.64.260 (Preservation of oak and other protected trees) requires a use permit for the removal of protected trees and identifies, by Area Plan, which type of trees are considered protected. Only oak trees are protected by this ordinance in the Greater Monterey Peninsula Area Plan. While the current GMPAP policy GMP-3.5 does state that the removal of Monterey pines is to be discouraged and there should be an ordinance developed, that ordinance does not yet exist. Nor, does the policy prohibit the removal of Monterey pines.
- At a public hearing January 28th for the Monterey Peninsula Country Club (PLN140077 and PLN140432) the Planning Commission was told specifically that Monterey pines are not protected outside the Coastal Zone (See Attachment 1). Coincidentally, the MPCC hearing immediately followed the Flores hearing.

Conclusion

The Flores believe that the staff correctly assessed their application, performed a full review of the application, including preparation of an initial study and came to the appropriate conclusion in their recommendation to the Planning Commission. The Flores ask that the Board of Supervisors grant their appeal and approve their application consistent with the staff's recommended findings, evidence and conditions.

ATTACHMENT 1

Excerpt of the Planning Commission Hearing for the MPCC (PLN140077 and PLN140432)

January 28, 2015

From 3:10-3:12 of video of hearing on County website:

Commissioner Vandevere: I'm having a little trouble seeing the forest for the trees here. There's 46 oak trees proposed for removal and 63 Monterey pine trees proposed for removal according to what I'm seeing. The staff report says a use permit is required for the removal of the 46 oak trees, doesn't say anything about the pine trees aren't listed there but and staff has just said that one to one replacement of oak trees is required by the mitigation. But I'm reading the mitigation, the copy I have in front of me says Monterey pine tree replacement will also be at a one to one ratio. So I'm asking is a permit a use permit also required for the removal of the pines and is this bio 12 in the initial study is that actually the mitigation that is going to take place. *(emphasis added)*

Luis Osorio: Ah. Yes. Ah Through the Chair. The Monterey pines are not do not require a use permit for the removal however in the forester's report they suggested that the pine trees be replaced as well just to maintain the forest. *(emphasis added)*

Commissioner Vandevere: Ok. And we have a finding through the Chair, finding number four, the tree removal is the minimum required under the circumstances and that the removal will not involve a risk of adverse environmental impacts, does that finding relate then only to the, well actually it says in the evidence, it seems to relate to both the oaks and the pines, is that accurate then?

Luis Osorio: Through the Chair Um, I believe it is because I think even though the trees, the pines have not are not do not require use permit for the removal, I think the forest needs to be taken as a whole and then it they replacement of both tree species will allow for the maintenance and the continuation of the forest area. *(emphasis added)*

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Monterey County Land Watch
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P.O. Box 1876
Salinas, CA 93902

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Flores Paul H & Flores Linda S. (owner)
564 Monhollan Rd.
Carmel, CA 93923

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ZIP 93902
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Agent
Davis Peter
196 Upper Walden Rd.
Carmel, CA 93923

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Ezekiel Samuel H & Melanie
12 Abinante Way
Monterey, CA 93940

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Pebble Beach Company
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Wagenhals Walter
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