



# Monterey County Planning Commission

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## Agenda Item No. 1

Legistar File Number: PC 18-034

April 25, 2018

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Matter Type: Planning Item

### **PLN160849 - CLIFTON HEATHER JOY & WOLSKE RUSSELL D (CONTINUED FROM APRIL 11, 2018)**

Continued from April 11, 2018 Planning Commission; public hearing to consider after-the-fact removal of 43 oak trees to clear Code Enforcement case (17CE00197), the construction of a new single family dwelling with attached guesthouse, including the removal of 25 oak trees and building a new driveway on slopes exceeding 25%. .

**Project Location:** 26735 Laureles Grade, Carmel Valley, Toro Area Plan

**Proposed CEQA Action:** Adopt Mitigated Negative Declaration

#### RECOMMENDATION:

Staff recommends the Planning Commission adopt a Resolution to:

1. Adopt Mitigated Negative Declaration.
2. Approve Combined Development Permit consisting of:
  - a) After-the-fact Use Permit for the removal of 43 oak trees to clear Code Enforcement case (17CE00197);
  - b) Administrative Permit and Design Approval to allow construction of a 2,792 square foot single story single family dwelling, a 600 square foot attached guesthouse, and a 414 square foot attached carport;
  - c) Use Permit to allow the removal of 25 Oak trees; and
  - d) Use Permit to allow construction of a driveway on slopes greater than 25%.
3. Adopt a Mitigation Monitoring and Reporting Program

The attached draft resolution includes findings and evidence for consideration **(Exhibit C)**

Staff recommends approval subject to 22 conditions and 6 Mitigation Measures.

#### PROJECT INFORMATION:

**Agent:** Bill Foster, Architect

**Property Owner:** Heather Clifton and Russ Wolske

**APN:** 416-361-043-000

**Parcel Size:** 27.87 acres

**Zoning:** "RDR/B-8(VS)" (Rural Density Residential with a development restriction overlay in a Visual Sensitivity District)

**Plan Area:** Toro Area Plan

**Flagged and Staked:** yes

#### SUMMARY

On April 11, 2018, the Planning Commission (PC) considered a request to allow the construction of a

single family dwelling and tree removal and development on slopes in excess of 25% to allow development. The request also included an after-the-fact permit for the removal of 43 oak trees to abate a zoning violation (17CE00197). During this hearing, staff suggested changes to the draft resolution, mitigation measures identified in the Initial Study/Mitigated Negative Declaration, and proposed conditions of approval. Based on the amount of suggested changes and in order to allow the PC the proper time to consider the additional information, staff recommended the hearing be continued to April 25, 2018. The draft resolution (Exhibit B) has been modified, strikeout and underline, to demonstrate the recommended changes to the findings and evidence. In addition, condition number 25 has been modified, condition number 28 - (IMM006 Native American Tribal Monitor On-site During Ground Disturbance) was deleted and replaced with (IMM006a Tribal Cultural Resources), and one condition has been added (Cond No. 29 -PD023 Conservation and Scenic Easement [Slope]).

Situated along the plateau of an east facing terrace in the hills of Carmel Valley, the proposed project includes the construction of a new one-story single family dwelling. Set atop the valley hills, the parcel has sweeping views of the surrounding valley and hillsides. Structures include a carport attached by a covered breezeway to the upper northwest side of the proposed residence, and a guesthouse attached to the west side of the carport. The residence is proposed for construction tucked into the 5.5 acres of dense oak woodland. Twenty-five trees are directly within the proposed building footprint and forty-three trees were identified as having been previously removed from within the vicinity of the proposed building footprint over an approximate acre of woodland area for a total removal of sixty-eight trees. The applicant has agreed to a one-to-one replacement in accordance with the Forest Management Plan (File no. LIB170415) prepared for the project. Upon consultation with the aboriginal tribe of the area, Ohlone Costanoan Esselen Nation (OCEN), staff worked with the applicant to reduce development-related tree removal from thirty-three to twenty-five total. The property is characterized by the heavily wooded native oak forest and varied topography ranging from the uneven oak forest plateaus to steep elevations covered in dense Northern Coastal Scrub. Development is restricted by 16.032 acres of scenic easement. Some portions of the parcel are visible from Laureles Grade public roadway although no proposed structures are visible from a public viewing area and are obscured from public view within the oak woodland. Segments of the new driveway could be visible, although obscured from view by dense Northern Coastal Scrub. No development is within the scenic easement. An Initial Study was prepared analyzing the potential of project implementation or operation to cause adverse environmental impacts. Staff recommends a Mitigated Negative Declaration be adopted.

## DISCUSSION

### Site Description

Located on a 27.87-acre parcel in Woodside Estates subdivision in the Carmel Valley area of Laureles Grade and Rinconada Drive, the subject property is located between Laureles Grade and Rinconada Drive near the summit approximately 1,000 feet east of Laureles Grade. This parcel is currently accessed from Rinconada Drive and the development site is approached from an existing steep dirt road with switchbacks and hairpin turns that is off Rinconada Drive. This dirt road continues southward from the development footprint terminating at the existing unnamed paved road mentioned above. The uneven topography of ingress decreases in slope from Rinconada Drive eastward toward the development site. Vegetation comprises approximately 5.5 acres of Oak woodland dispersed

heavily amongst typical Northern Coastal Scrub that covers the rest of the 28-acre parcel. Dense groves of Oak trees are found primarily in the northern half of the parcel. The building envelope is heavily wooded with trees and undergrowth. The parcel is located amidst similarly vegetated residential parcels that have the same rural density zoning as the subject parcel.

#### Project Description

The proposed project includes a 2,800 square foot one-story single family dwelling and a detached 600 square foot one-story guesthouse with a 420 square foot carport, attached to the residence by a covered breezeway. Site improvements also include construction of a new road with fire truck turnouts, a septic tank and leach field system, propane gas tank, 9,800 gallon water tank, in-ground pool, and above ground hot tub. Expected grading is approximately 1,800 cubic yards of cut and 2,160 cubic yards of fill, with an import of 360 cubic yards. Removal of 25 oak trees is the minimum required for development. Forty-three (43) oak trees were removed previous to ownership of the parcel by the applicant. The project includes replacement at a one-to-one ratio of sixty-eight (68) total oak trees on the subject parcel.

#### Use Permits

The application includes a request for Use Permits for both tree removal and development on slopes 25% or greater. The 27.87 acre parcel is restricted by approximately 16 acres of Scenic Easement. Dense oak woodlands cover approximately 5.5 acres, much of which stabilize slope areas of 25% or greater on the property. Proposed location of the new road is completely outside of the existing Scenic Easement on the property. Therefore, road construction is restricted to the proposed location occurring within 25% slopes. The structures are proposed for development on slopes less than 25% on a mildly undulating plateau along the hillside. This plateau is within densely wooded oak forest where the number of oaks proposed for removal is the minimum number required for implementation of the project in accordance with Section 21.64.260.5.A of Title 21. The preliminary observations of the professional forester who developed the project Forest Management Plan (FMP) found the forest specimens in and around the building site in fair to poor condition with multiple pests, overcrowding, and drought-related stress. The FMP determines that proposed development-related tree removal would not adversely impact the woodland stand and that thinning to increase tree spacing would benefit fire defensibility and reduce competition for resources between existing trees and sprouts. Furthermore, the Tree Removal Investigation determines the previously removed 43 trees, which are in the vicinity of the proposed building pad, have proven similarly beneficial to the health of the woodland stand. The other options for development that are on slopes less than 25% are within either the Scenic Easement or the public viewshed. The proposed placement of the structures screens development from public view. A two-story home would reduce the footprint of the structures, thereby reducing tree removal. However, the one-story structure is consistent with the rural nature of the oak woodland in accordance with Policy T-3.1 of the Toro Area Plan that prescribes development in Visual Sensitivity areas be designed in such a manner that will enhance the scenic value of the area. A two-story home would also raise the height and potentially create an adverse visual impact when viewed from a common public viewing area. Therefore, Staff recommends approval of the Use Permits for removal of the 68 trees and for development on slopes greater than 25%.

The original plan proposed removal of 33 oak trees as the minimum necessary for project implementation. The reports from Nedeff, Hamb, and Ono (File Nos. LIB170256 & LIB170304,

LIB170255, and LIB170415, respectively) concur that few trees within the areas of development are in better than fair to poor condition. Notwithstanding, the Ohlone Costanoan Esselen Nation (OCEN) tribe was consulted pursuant to AB52. The OCEN consider oak trees sacred and expressed a concern over the number of oak trees being removed. The applicant made revisions to the site plan that resulted in 25 total trees being removed from within the development footprint while the eight other trees proposed for removal by Hamb are adjacent to the development boundary. These trees require protection from construction activities as a provision of Condition number 10.

#### Code Violation

Oak tree removal is discouraged in the Toro Area Plan. However, the removal of protected oak trees is regulated by Section 21.64.260 of Title 21. There are 25 oak trees proposed for removal within the development footprint. During the application process for the proposed project, Code Enforcement Case (17CE00197) was opened in response to a complaint of possible oak tree removal on the subject parcel that may have been performed without the benefit of permits. The applicant requested that Nicole Nedeff, familiar with the property from preparation of the biological report (File No. LIB170256), investigate the allegation. Nedeff observed 43 oak stumps that indicate tree removal on the property (File No. LIB170304). The decomposing condition of cut stumps and the development of callouses on a majority of cut tree limbs appear to be consistent with tree removal occurrence between May and December 2012, prior to possession of the property by the current owner. Fees required are twice the amount normally charged pursuant to Title 21 Section 21.84.140 for a retroactive permit application. Therefore, the planning fees for this application were assessed double fees. However, paying a fine (double-fees) shall not relieve the applicant/owner from responsibility of implementing corrective action for restoration of the pre-violation condition pursuant to Section 20.90.080.D that addresses cumulative remedies for code violations. Furthermore, Restoration of the property to its pre-violation state is required in order to abate the violation in accordance with Section 20.90.130. However, due to the length of time since removal, circa 2012, of the 43 oak trees ranging from 9-25 inches in diameter, achievement of the pre-violation state would be unfeasible. Therefore, Condition number 25 requires that partial restoration of 43 trees is implemented with fifteen (15) gallon container-grown trees.

#### CEQA/Initial Study

Land use proposals that include removal of more than three protected oaks are subject to Title 21 Section 21.64.260.3.d that requires CEQA analysis of projects for identification of potentially significant environmental impacts and proposal of mitigations to reduce those potential impacts to less than significant. Staff prepared an Initial Study for the purpose of fulfilling environmental review for CEQA. The Initial Study (IS) for the proposed project identified potentially significant impacts to biological resources and tribal cultural resources. Mitigations were identified that would reduce these impacts to less than significant. Therefore, environmental review resulted in a Mitigated Negative Declaration (MND).

Mitigations identified in the Initial Study for biological resources are categorized as follows:

#### **General Best Management Practices (BMPs)**

Implementation of General Best Management Practices (BMPs) is consistent with the Title 16 Section 16.60.040.F to ensure mitigation of potential environmental impacts. In order to reduce those impacts to less than significant, mitigative actions have been identified as necessary for long term maintenance

and regeneration of the existing woodland environment. The applicant/owner shall implement BMPs that include procurement of a Certified Arborist or Professional Forester who monitors the implementation of biological resource mitigations, communicates with the applicant/owner and contractors for implementation of notes on Demolition and Construction Plans, and provides Monitoring and Reporting. A contract with a Certified Arborist or Professional Forester is required as Mitigation Measure MM001 (Condition number 23) for implementation of the BMPs including onsite monitoring for identification of landmark oak trees requiring protective measures, protective measure installation, tree and stump removal, and oak tree replacement. The contract shall include communication with the applicant/owner and contractors for implementation of notes on Demolition and Construction Plans. The way in which mitigation measures are examined for implementation and effectiveness shall be through monitoring and reporting. Therefore, MM002 requires the Certified Arborist or Professional Forester contract include a schedule of reporting submittals to RMA-Planning (Condition number 24).

### **Oak Woodland Planting and Restoration**

Planting and restoration of the oak woodland on the subject property entails replacement of removed trees on a one-to-one ratio pursuant to Title 16 Section 16.60.040.D. Forty-three (43) oaks were removed from the parcel prior to the 2012 possession of the property by the current owner over approximately one acre; and an additional twenty-five (25) oaks are proposed for removal to accommodate the project development. Therefore, the quantity of trees proposed for replacement is sixty-eight (68) total. This is included as an action for Mitigation Measure MM003 (Condition number 25). The Forest Management Plan (FMP) recommends that replacement trees get replanted at the margins of the wooded area near the proposed structure, in 15-20 foot spacing within areas of the greatest opening in the canopy using replant material of minimum 5-gallon size or greater container-grown oaks. The Tree Removal Investigation by Nedeff identified 27 of the removed oak trees sprouting back. In this case, natural occurrence of sprouting stumps does not constitute restoration of the trees that were removed by human intervention. As stated above, restoration of the 43 trees shall be implemented with fifteen (15) gallon container-grown trees (Condition number 25).

Although the biological survey reports no observation of nesting birds, there is potential for migratory bird nesting activity in existing tree canopies on the subject property. Migratory bird species are protected by the U. S. Federal government and protection of the migratory bird habitat entails avoidance of construction during times of nesting. Therefore, Mitigation Measure MM004 requires a nesting survey for potential presence of migratory bird species that may find suitable nesting habitat in trees on the parcel (Condition number 26).

### **Landscape Plan for Fire Defensible Space**

The oak woodland resources on the subject parcel shall be managed for not only forest stability and character, but also for fire protection. In order to prevent fire hazard in the very highly sensitive State Responsibility Area for fire protection, the Owner/applicant/certified arborist/professional forester shall maintain fire defensible space around all structures on the property. The reduction of fuel in the landscape that could intensify a fire is achieved by creating 30-foot and 100-foot buffer clearings outside structures. In order to ensure a fire defensible space, the Owner/applicant/certified arborist/professional forester shall submit to RMA-Planning for review and approval a "Concept Landscape Plan" developed by the expert certified arborist/professional forester. Therefore, Mitigation

Measure MM005 requires submittal of a Concept Landscape Plan developed by the certified arborist/professional forester and of evidence that resulting implementation of the Landscape Plan is in accordance with that reviewed and approved by RMA-Planning (Condition number 27).

Mitigations identified in the Initial Study for Tribal Cultural resources are categorized as follows:

**Potential Cultural Value to California Native American Tribe**

The subject parcel is located in the aboriginal territory of Ohlone/Costanoan-Esselen Nation (OCEN). Pursuant to AB 52, tribal consultation took place regarding the proposed project. The outcome of the consultation with OCEN was a recommendation to have a Native American Monitor from OCEN, approved by the OCEN Tribal Council, be present onsite during any ground disturbance for the project. There is no listed archaeological resource on the site. Based on staff discussions with the Tribe's Most Likely Descendent (MLD), nomadic tribal ancestors, prior to migration, traditionally buried tools and personal items at the base of oak trees which are considered sacred. Although an on-site Tribal Monitor is recommended by OCEN, and oak trees are known to be sacred to the civic and spiritual culture of Native American Tribes, there is no substantive evidence that these oak woodlands on the subject property would contain tribal cultural resources. A mitigation was proposed in the Initial Study to require a Tribal Monitor on-site during project-related ground disturbance. However, staff proposes Mitigation Measure 006 (Condition number 28) requesting a Native American Tribal Monitor be revised to require on all grading and construction plans the following note: "Stop work within 50 meters (165 feet) of uncovered resource. Immediately contact Monterey County RMA-Planning and the OCEN Tribal Council." Owner/Applicant shall coordinate with the project planner and OCEN to determine the extent of the resources and to develop proper mitigation measures required for recovery if discovered.

Staff finds that implementation of these MMs would reduce impacts on these resources to less than significant.

Design Review

The parcel is in a Visual Sensitivity (VS) zone due to visibility from Laureles Grade. Pursuant to Chapter 21.46 of Title 21, the project requires analysis for potential to create a substantially adverse visual impact when viewed from a common public viewing area. Therefore, staking-and-flagging was required and observed by staff. Staff observed on 6 July 2017 that none of the structures have potential to create substantially adverse visual impact from a common public viewing area. The structures are screened by naturally occurring oak woodland vegetation. There is some possibility that portions of the new road may be seen from Laureles Grade. However, placement of the new road is restricted to the proposed location which is encompassed by the existing scenic easement. Proposed location of the new road is completely outside of the existing scenic easement on the property.

The competing policies for resource protection between native trees and visual resources have been analyzed for this project proposal. The remedy for placing a structure in the public view shed would have required mitigations for adverse impacts to Aesthetic Resources to those for impacts to Biological Resources. Staff finds that visual resources would be more difficult to restore than removed native oak trees.

The design factors considered for protection of the public viewshed are also considered for

consistency with the neighborhood character and to assure visual integrity. The proposed residence is subordinate in height and roofline to the surrounding oak woodlands. The project conforms to height, site coverage, and parking requirements of the zoning code. The earthtone color palette and natural textures provide visual integrity. The residence faces eastward for optimal views of the surrounding valley and hillsides. The position of the structure within the forested oak trees obscures glare and interior light from the windows during dawn and sunrise. Furthermore, Condition number 22 requires tinted windows as protection against glare and visibility of interior lighting. Placement of Condition number 21 to comply with criteria set by County of Monterey Lighting Ordinance 5262 would ensure no new source of substantial light or glare would be created by exterior lighting. Staff finds that colors and materials proposed are appropriate for assurance that design is consistent with the neighborhood character and as conditioned, would not cause adverse impacts to aesthetic resources.

Public Comment

The Initial Study was circulated 9 March 10 April 2018. There was a comment from Sherriff Galletti that this project would have no impact on Public Services/Police Protection.

Correspondence from a neighbor included concerns about runoff to neighboring property, the effect of the pool on hillside erosion, and increased use of the private shared paved road. Condition number 18 requires an engineered Stormwater Control Plan to manage runoff on-site and off-site. This plan shall be reviewed and approved by the Monterey County Water Resources Agency. Condition 12 requires an engineered Grading Plan that incorporates the recommendations from the project Geotechnical Investigation prepared by Soils Surveys Group, Inc. (Exhibit E1) that shall be reviewed and approved by RMA-Environmental Services. Furthermore, Condition number 16 requires a Geotechnical Certification that development has been constructed in accordance with the recommendations in the project Geotechnical Investigation. The Woodside Water Association correspondence indicates that the proposed project is in compliance with Woodside Estates deeded CC&Rs specifically in response to questions regarding shared-road improvements and maintenance responsibilities (Exhibit F2).

During the 11 April 2018 Planning Commission hearing that was continued to today's date, Vicki and Craig Phillips submitted correspondence for public review (Exhibit F3).

OTHER AGENCY INVOLVEMENT:

The following agencies have reviewed the project, have comments, and/or have recommended conditions:

- Bureau of Environmental Health
- RMA-Public Works
- Water Resources Agency
- RMA-Environmental Services
- Monterey County Regional Fire Protection District
- Toro Land Use Advisory Committee (LUAC)

LUAC: The Toro LUAC voted 5-0 in favor of recommending the project for approval. The meeting took place on 28 August 2017.

Comments are summarized as follows:

1. recommend a replacement ratio of 3-to-1, using one-gallon oak "starters" with a Forest Management mitigation follow-up plan to ensure a decent survival amount of trees,

2. recommend no construction be allowed on 25% slopes,
3. uphold County guidelines for limiting the guesthouse to one-story and no higher than 15 feet,
4. recommend approval of proposed style and colors of the structures,
5. fire safety within the oak woodland,
6. amount of impervious surface area altering drainage patterns.

In response to LUAC comments:

1. As previously mentioned, removal of the 68 trees in total is assessed as beneficial to the health of the woodland stand by reducing competition for resources and reducing vulnerability to fire. Therefore, Staff does not recommend a 3-to-1 replacement ratio. The project Forest Management Plan requires minimum 5-gallon container trees planted at the margins of the wooded area near the proposed structure, in 15-20 foot spacing within areas of the greatest opening in the canopy. Stumps that are sprouting are recommended in the FMP to succeed old declining oaks. The project has been conditioned to plant larger trees to replace those that were removed illegally.
2. None of the structures are being developed on 25% slopes. The previously proposed road went through the Scenic Easement. The road currently proposed is completely outside the Scenic Easement, with portions on slopes greater than 25% and within public view screened by dense Northern Coastal Scrub.
3. The applicant reduced the height of the guesthouse to the allowed 15 feet.
4. Colors and materials are unchanged.
5. The reduction of fuel in the landscape that could intensify a fire is achieved by creating 30-foot and 100-foot buffer clearings outside structures. In order to ensure a fire defensible space, the Owner/applicant/certified arborist/professional forester shall submit to RMA-Planning for review and approval a "Concept Landscape Plan" developed by the expert certified arborist/professional forester.
6. Implementation of the proposed project would amount to impervious surfaces approximately 4.5% of the total parcel. There is no maximum limit for impervious surface amounts in the inland RDR zoning code (Title 21). Furthermore, the project is conditioned to provide an erosion control plan and an engineered drainage plan

In addition, the Woodside Water Association (WWA) for the Woodside Estates subdivision submitted a letter (Exhibit F2), subsequent to attendance of the LUAC meeting, in support of the plans as in keeping with the purpose and spirit of the CC&Rs, for "harmonizing with the natural terrain" and "protecting and enhancing the environment, and property values".

Prepared by: Jaime Scott Guthrie, Associate Planner, ext. 6414  
Reviewed by: Brandon Swanson, Planning Services Manager  
Approved by: John M. Dugan, AICP, Deputy Director of RMA Land Use and Community Development

The following attachments are on file with the RMA:

Exhibit A - Project Data Sheet

Exhibit B - Draft Resolution, including:

- Conditions of Approval
- Site Plans, Elevations

Exhibit C - Vicinity Map

Exhibit D - Initial Study/Mitigated Negative Declaration



Exhibit E - Reports, including:

- E1 - Geotechnical Report, Soil Surveys, Inc. (LIB170257)
- E2 - Biological Report, Nedeff (LIB170256)
- E3 - Tree Resource Assessment, Hamb (LIB170255)
- E4 - Forest Management Plan, Ono (LIB170415)
- E5 - Tree Removal Investigation, Nedeff (LIB170304)

Exhibit F - Correspondence

- F1 - 11 January 2018 email from Nicole Nedeff
- F2 - 5 September 2017 email from Woodside Water Assoc.
- F3 - 11 April 2018 letter from Vick and Craig Phillips

Exhibit G - Minutes - Toro LUAC, 28 August 2017

cc: Front Counter Copy; Jacqueline R. Onciano, RMA Chief of Planning, Bill Foster, Agent; Heather Clifton and Russ Wolske, Applicants; M R Wolfe & Associates (John Farrow); The Open Monterey Project (Molly Erickson); LandWatch (Executive Director); Project File PLN160849.