



County of Monterey

Board of Supervisors
Chambers
168 W. Alisal St., 1st Floor
Salinas, CA 93901

Board Report

File #: ZA 19-110, **Version:** 1

PLN190038 - NICOLA

Public hearing to consider after-the-fact development on slopes in excess of 25% for a residential driveway, residential building pad, and installation of two water tanks to correct a code violation (16CE00305).

Project Location: 28771 Underwood Road, Salinas (Assessor's Parcel Number 416-451-048-000), Toro Area Plan

Proposed CEQA action: Categorically Exempt per Section 15304 of the CEQA Guidelines

RECOMMENDATION:

It is recommended that the Zoning Administrator adopt a resolution to:

- 1) Find the project is a Categorical Exemption pursuant to Section 15304 of the CEQA Guidelines; and there are no exceptions pursuant to Section 15300.2; and
- 2) Approve an after-the-fact Use Permit for development on slopes in excess of 25% for a residential driveway, residential building pad, and installation of two water tanks.

The attached draft resolution includes findings and evidence for consideration (**Exhibit B**). Staff recommends approval subject to 6 conditions of approval.

PROJECT INFORMATION:

Agent: Anthony Nicola

Property Owner: Anthony Nicola

APN: 416-451-048-000

Parcel Size: 3.06 acres

Zoning: Permanent Grazing with a Building Site and Visual Sensitivity Zoning overlays districts or "PG/B-6-VS"

Plan Area: Toro Area Plan

Flagged and Staked: No

SUMMARY:

The subject property is located on Underwood Road approximately 5 miles southeast of Monterey-Salinas Highway 68 and 3.5 miles east of Carmel Valley Road. It's situated on a 3.06 acres parcel in a rural area of the Salinas valley containing steep terrains surrounded by vegetation and trees.

On May 2, 2016, an administrative permit (PLN150599) for construction of single-family dwelling was approved by the County. On August 1, 2016, it was brought to Resource Management Agency's (RMA) attention by a member of the public that the owner has widened this driveway without the proper permit(s). Therefore, a code enforcement case was initiated (16CE00305). After further research, it was discovered that some of the development on slopes in excess of 25% identified as "existing" on a previously approved plans for the single-family dwelling (PLN150599) does not have the correct permits.

Granting of this entitlement will clear a code violation for unpermitted work including development on slopes in excess of 25% for a residential driveway, residential building pad and installation of two water tanks.

DISCUSSION:

History

On September 25, 2015 an application for the construction of a 1,250 square foot single family dwelling and 500 sq. ft. porch was submitted (PLN150599). The submitted site plan identified the driveway from the property line to the house as “existing”. The project was administratively approved on May 2, 2016. On August 1, 2016, it was brought to Resource Management Agency’s (RMA) attention by a member of the public that the owner has widened this driveway without the proper permit(s). Therefore, a code enforcement case was initiated (16CE00305). According to a correspondence dated August 9, 2016 from Environmental Services, Google Earth imagery documented that grading on the site began between August 2013 and April 2015.

On December 5, 2017, an application (PLN171000) was submitted to clear the code violation in order to obtain the appropriate after-the-fact entitlement(s) for the unpermitted grading. The application was voided due to non-activity on June 5, 2018. In February 2018, the property changed ownership. Since the violation is still pending, the current owner/applicant submitted this application with all the pertinent materials on February 4, 2019.

Project Issues/Analysis

The proposed project would allow for the unpermitted grading of 234 cubic yard of cut and 233 cubic yards of fill. This accounts for approximately 300 linear foot of driveway from the property line to the dwelling (approved PLN150599) and for the graded areas of the residential building pad and water tanks pads. Approval of this project would correct the violation on the site and denial of this project would require the applicant to restore the site to its pre-violation state. A Geotech report dated November 14, 2014 was prepared and submitted by Soil Surveys Group. In addition, a supplemental letter dated May 10, 2018 prepared by Soils Surveys Group concluded that the restoration of the existing slopes at the project site is not recommended based on gradients of adjacent slopes, increase in land disturbance on these steep slopes and the increase in the potential of soil movement, erosion and slope failures.

Staff proceeded to process this application and analyze the grading as if none of the work had been performed to determine the appropriate entitlements for the site. Ultimately, staff found that the amount of prior grading is reasonable given the vast distance between the house and the front property line on a three-acre parcel. Furthermore, the surrounding neighborhood also consists of homes on comparable size lots, mostly with development on slopes in excess of 25%.

The after-the-fact grading on slopes in excess of 25% requires approval of a Use Permit pursuant to Monterey County Zoning Ordinance Section 21.64.230. In addition, MCC Section 21.84.140 (Fees of retroactive permit application), states that after-the-fact permits to abate violations require a penalty fee of twice the amount normally charged for the application. Since grading was done prior to the issuance of the proper entitlement, the double-fee was applied to this application. In accordance with Section 21.84.130 of the Monterey County Zoning Ordinance (Title 21) restoration is required when there is a violation for grading, vegetation removal or tree removal. The fundamental goal of restoration is the re-vegetation of native plants and the reconstruction of natural land features which may have been altered in violation of County Code. Therefore, 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. Although, grading was done prior to obtaining the proper entitlement; all applications for after-the-fact permits are treated with the same requirements as if they are new submittal irrespective of the unpermitted disturbance. In this case, after a site visit and review of expert’s report, staff

concludes and concurs that siting of the unpermitted grading is in the most suitable location of the property. Restoration is not feasible and would increase erosion potential considering the parcel has a relatively steep topography and can potentially cause additional environmental harm. For this reason, staff would have recommended approval of this project if they had come in for permits prior to doing the work.

Staff reviewed the County GIS maps, and confirmed that approximately 90% of the site contains slopes in excess of 25%. Furthermore, the site is surrounded by vegetation and trees. However, no trees were affected by the unpermitted grading.

Although the site is within the Visually Sensitive zoning district, as such, requires that after the fact grading does not create adverse visual impacts when viewed from a common public viewing area. The subject site is located in an isolated canyon, therefore would not have an impact on any public viewing area and is consistent with the requirements of the VS district overlay

CEQA

California Environmental Quality Act (CEQA) Guidelines Section 15304 which categorically exempts minor public or private alterations in the condition of land, water, and/or vegetation which do not involve removal of health, mature, scenic trees except for forestry or agricultural purposes. The primary purpose of the project is to correct a violation of unpermitted grading. Therefore, the proposed project is consistent with the parameters of this Class 4 exemption. There are no exceptions pursuant to Section 15300.2. No evidence of significant adverse environmental effects were identified during staff review of the development application. There is no cumulative impact without any prior successive projects of the same type in the same place, over time. There is no significant effect on the environment due to unusual circumstances. The site is not included on any list compiled pursuant to Section 65962.5 of the Government Code to be considered on a hazardous waste site. No known historical resources are found in the geotechnical or archaeological reports which may cause a substantial adverse change in the significance of a historical resource. It is not within a highway officially designated areas as a state scenic highway.

OTHER AGENCY INVOLVEMENT:

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

- Environmental Health Bureau
- RMA-Public Works
- RMA-Environmental Services
- Monterey County Regional Fire Protection Department

LUAC:

The project was not referred to the Toro Area Land Use Advisory Committee (LUAC) for review. Based on the LUAC Procedure guidelines adopted by the Monterey County Board of Supervisors, this application did not warrant referral to the LUAC because it did not meet any of the guidelines for referral. The project does not involve development requiring CEQA review (i.e. did not require an Initial Study), lot line adjustments involving conflict, variances, or a Design Approval subject to review by the Zoning Administrator or Planning Commission.

Prepared by: Son Pham-Gallardo, Assistant Planner, (831) 755-5226
Reviewed by: Brandon Swanson, Interim RMA Chief of Planning
Approved by: John M. Dugan, RMA Deputy Director of 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
- Grading Plans

Exhibit C - Vicinity Map

Exhibit D - Geotechnical Report

Exhibit E - Soil Surveys Group Supplemental Letter

cc: Front Counter Copy; Planning Commission; Son Pham-Gallardo, Associate Planner, Craig Spencer, RMA Interim Services Manager; Anthony Nicola, Applicant/Owner; The Open Monterey Project (Molly Erickson); LandWatch (Executive Director); John H. Farrow; Janet Brennan; Project File PLN190038