

Attachment A

This page intentionally left blank.

ATTACHMENT A
DRAFT RESOLUTION

Before the Board of Supervisors
in and for the County of Monterey, State of California

In the matter of the application of:

FLORES PAUL H & LINDA S TRS (PLN200032)

RESOLUTION NO. ----

Resolution by the County of Monterey Board of Supervisors:

- 1) Finding that denial of the project is statutorily exempt from CEQA pursuant to CEQA Guidelines section 15270; and
- 2) Denying the Flores's appeal of the Planning Commission's decision at the July 10th, 2024 Planning Commission hearing to deny a Combined Development Permit; and
- 3) Denying a Combined Development Permit consisting of:
 - a. An Administrative Permit and Design Approval to allow construction of a 6,023 square foot single family dwelling inclusive of an 862 square foot attached garage, a 1,090 square foot non-habitable accessory structure and associated site improvements including 150 cubic yards of cut and 2,200 cubic yards of fill, a paved driveway, patios, retaining walls, paved walkways and a pool within a Visual Sensitivity District;
 - b. A Use Permit to allow the removal of 30 protected Coast live oak trees; and
 - c. A Use Permit to allow development on slopes in excess of 25% in the amount of 25,395 square feet.

[PLN200032 FLORES PAUL H & LINDA S TRS, 25836 Paseo Real, Monterey, Greater Monterey Peninsula Area Plan (APN: 416-132-010-000)]

The FLORES PAUL H & LINDA S TRS application (PLN200032) came on for a public hearing before the Monterey County Board of Supervisors on September 17, 2024. Having considered all the written and documentary evidence, the administrative record, the staff report, oral testimony, and other evidence presented the County of Monterey Board of Supervisors finds and decides as follows:

FINDINGS

1. FINDING: **PROCESS** – The County has processed the Combined Development Permit in compliance with all applicable procedural requirements.

EVIDENCE:

- a) On May 26, 2023, the applicant applied for review of their proposed residential development project. Pursuant to the Permit Streamlining Act, the subject application was deemed incomplete three times, once on June 16, 2023. The applicant resubmitted their application with additional materials on September 14, 2023, the application was deemed incomplete again on October 13, 2023. The applicant resubmitted their application with additional information on April 30, 2023 which was again deemed incomplete on May 17, 2024. The applicant cleared the outstanding code violation and resubmitted their application for the last time on June 3, 2024 and their application was reviewed and deemed complete on the same day.
- b) Prior to the project being deemed complete, the applicant had requested to go to the Planning Commission without first submitting a complete application. Therefore, the project came before the Planning Commission on January 10, 2024. The Planning Commission continued the hearing on the matter due to confusion of whether the project could be considered in its incomplete state.
- c) The applicant revised their proposal, and the project went back to the Planning Commission on July 10, 2024. The Planning Commission voted 9-0 to adopt a resolution denying the project.
- d) In compliance with Monterey County Code (MCC) section 21.80.050.C, the appellants' Notice of Appeal, along with the required processing fees, were received by the Clerk of the Board within 10 days of appellants' receipt of the Planning Commission's, which was provided to the applicant on July 11, 2024. The Notice was received on July 19, 2024.
- e) Consistent with MCC section 21.80.090.A, the project was set for a Board of Supervisors hearing within 15 days of receiving the appeal, the project was scheduled for a public hearing before the Board of Supervisors.
- f) Consistent with MCC section 21.80.090.E, the September 17 hearing date is within 60 days of receiving the Notice of Appeal from the appellant (July 19, 2024).
- g) Land Use Advisory Committee. The project was scheduled for review by the Greater Monterey Peninsula Land Use Advisory Committee, but there were not enough members present at the meeting to form a quorum.

2. FINDING: **APPEAL** – Upon consideration of the documentary evidence, the staff report, the oral and written testimony, and all other evidence in the record as a whole, the Board finds that there is no substantial evidence to support the contentions and makes the following specific findings in response to the appellants' contentions:

EVIDENCE:

- a) The appellants contend that there was a lack of a fair or impartial hearing at the July 10 Planning Commission hearing, where their permit request was denied and that there was insufficient evidence to support

the Planning Commission's findings at that hearing. Both grounds are supported by a single claim, “[t]he main residence of this project was previously approved by the Board of Supervisors – see attachment.” The attachment referenced is a Google Earth photo together with separate assertions concerning the project. Neither is evidence that the Planning Commission hearing was unfair nor that the decision stemming from that hearing was not supported by adequate evidence. Indeed, the Google Earth photo and unsworn assertions attached thereto are not even evidence of a prior approval. However, staff has found the prior approval that appellant presumably is referencing from 2007, Resolution No. 07-318.

Preliminarily, a prior approval is immaterial to the issues before the Board. The Board is evaluating the current project under current planning standards, which have changed significantly since 2007, including in the form of a new General Plan, adopted in 2010.

Moreover, the project design was markedly different in 2007 than the one before the Board now. In 2007, the approved project was to build a 5,818 square foot, one-story single-family dwelling with a 726 square foot garage, development on slopes in excess of 30% and removal of 5 protected oak trees.

As proposed, the current design includes a 6,023 square foot single family dwelling inclusive of an attached garage, pool and 1,090 square foot pool cabana with an attached garage, the removal of 30 protected oak trees (25 trees more than the design approved in 2007) and development on slopes in excess of 25% in the amount of 25,395 square feet. In short, the projects are not comparable.

The only additional argument or evidence provided is the Google Earth photo and unsworn assertions concerning the project and possible alternatives. The Board will treat these assertions as arguments. These assertions and the Board's responses follow.

- b) Appeal Contention 1: Referencing the attached Google Earth photo, the appellant notes there is an adjacent “existing large luxury home with an accessory structure and swimming pool. You can see that many trees were removed and large amounts of grading were performed.” Although not expressly stated, the implication appears to be that this separate project means a similar project, i.e. the one at issue, should be approved.

County Response 1: Staff researched the approval of the home referred to in the appeal. The Board of Supervisors approved development of the neighboring home at 25871 Paseo Real in 1988. This neighboring lot has different topography and resources than the Flores' property. Additionally, the more than 30-year-old decision on the neighboring project, which involved different facts, is not relevant to the Board's decision here. The project is governed by current land use policies, not those in place in 1988 when the neighbor's house was approved.

- c) Appeal Contention 2: The appellant claims there will be substantially more cut and fill required to develop the southern portion of the lot rather than the proposed location because “the residence would be subject to water intrusion” and require “retaining walls 10’ to 20’ in height.”

County Response 2: A grading plan for the proposed development has been submitted and reviewed. The proposed grading includes 150 cubic yards of cut and 2,200 cubic yards of fill. Unfortunately, staff are not able to compare these numbers to those of development proposed in the alternative location. Although requested by staff, appellant has provided neither plans nor documentation to substantiate their claim that an alternative design on the southern portion of the lot would increase the amount of cut and fill. But even had such evidence been submitted and accepted as accurate, the mere fact that one possible alternative location is undesirable does not support a claim in favor of building in the proposed location.

- d) Appeal Contention 3: The appellant states “views from the top of the hill are more desirable for a luxury residence.”

County Response: This is a bare opinion with no evidentiary support provided, such as, for example, comparable properties with different views and consequently, different values. Once again, even if such evidence were available, the appellant’s desire for a particular view has no bearing on this appeal. Homeowner views from their property are neither considered nor addressed in the 2010 General Plan or the Zoning Ordinance (Title 21 of the Monterey County Code).

- e) Appeal Contention 4: The appellant argues that there will be more trees onsite after the construction is completed due to replanting and relocation.

County Response 5: MCC section 21.64.260.D prohibits the removal of native trees greater than 6 inches in diameter unless findings are made that: 1) the tree removal is the minimum required under the circumstances; and 2) the removal would risk environmental impacts. In this case, the tree removal does not appear to be the minimum required under the circumstances of the case. Replanting trees as mitigation for removing them neither minimizes project impacts nor supports the assertion that the removal is appropriate in the first instance. The arborist report prepared for the project, and submitted to HCD with the application, recommended replanting and relocation to mitigate the loss of the 30 protected trees proposed for removal. The arborist found that most trees proposed for removal are in fair condition. The arborist did not recommend either tree removal for the health of the forest or general forest thinning. The only trees recommended for removal by the arborist were those that would be impacted by the development.

- f) Appeal Contention 6: The appellants argue their permit should be approved because a similar project was approved by the Board in 2007 on this property.

County Response 6: See evidence a, above.

g) The appeal and supporting materials submitted by the project applicant to County of Monterey HCD-Planning for the proposed project are found in Project File PLN200032.

3. FINDING: **INCONSISTENCY** – The project, as proposed, does not conform, and is not consistent with the policies, requirements, and standards of the 2010 Monterey County General Plan, the Greater Monterey Peninsula Area Plan, and the Monterey County Zoning Ordinance (Title 21).

EVIDENCE:

- a) During review of this application, staff reviewed for consistency with the text, policies, and regulations in:
 - The 2010 Monterey County General Plan;
 - The Greater Monterey Peninsula Area Plan (GMP AP); and
 - Monterey County Inland Zoning Ordinance (Title 21).
- Pursuant to Title 21 section 21.02.060.A, no building permit, grading permit, land use discretionary permit, or other permit relative to land use may be approved if it is found inconsistent with the Monterey County General Plan or an adopted Area Plan.
- b) Allowed Use. The property is located at 25836 El Paseo Real, Monterey (Assessor's Parcel Number 416-132-010-000), Greater Monterey Peninsula Area Plan. The parcel is zoned Low Density Residential, with Building Site Review and Visual Sensitivity zoning overlays and a 20-foot height limit or “LDR/B-6-VS (20)”. Title 21, section 21.14.030 allows for the first single family dwelling on a parcel and non-habitable accessory structures. Therefore, the proposed structures are an allowed use for the site. However, as proposed, the construction of these structures requires tree removal and development on slopes in a manner that is inconsistent with the adopted goals and policies that govern development as evidenced in this resolution.
- c) Development on Slopes. As demonstrated in Finding 5 and supporting evidence, the proposed project is inconsistent with the applicable goals, policies and regulations for the protection of slopes and does not meet the findings to allow development on slopes exceeding 25%.
- d) Tree Removal. As demonstrated in Finding 6 and supporting evidence, the proposed project is inconsistent with the applicable goals, policies, and regulations for the protection of trees because the proposed development does not minimize removal of trees.
- e) Visually Sensitive Area. As demonstrated in Finding 4 and supporting evidence, the proposed project is inconsistent with the applicable goals, policies, and regulations for the protection of the areas unique scenic and visual resources.
- f) Design and Site Conditions. Given the conditions on the property, there are locations (the southern portion) on the site where construction of a single-family dwelling can occur that better achieves the goals and policies. The southern portion of the lot includes an area where the topography includes slopes less than 25% and has no trees.
- g) Lot Legality. The subject property is in the Hidden Hills Subdivision created in 1983, Volume 15, page 28 of the Cities and Towns map. Therefore, the County recognized the parcel as a legal lot of record.

- h) Written Notice. In accordance with Title 21 section 21.02.060.B, if an application is found to be inconsistent when received, during processing, written notice shall be given to the applicant of the inconsistency and the application shall be either withdrawn or denied. The applicant was informed that County staff would be recommending denial of the permit to the Planning Commission at the January 10 and July 10 hearings, and to the Board of Supervisors at the September 17 hearing.
- i) The appeal and supporting materials submitted by the project applicant to County of Monterey HCD-Planning for the proposed project are found in Project File PLN200032.

4. FINDING: **DEVELOPMENT IN A VISUALLY SENSITIVE AREA** - The proposed development is inconsistent with the goals, policies and objectives of the 2010 Monterey County General Plan and Greater Monterey Peninsula Area Plan (GMP AP) for the protection of unique scenic resources in the area.

EVIDENCE:

- a) Applicability. Greater Monterey Peninsula Area Plan Scenic Highway Corridors & Visual Sensitivity map (Figure 14) illustrates that the subject property is located within a "sensitive" area. In accordance with GMP AP Policy GMP-1.1, the property is designated with a Visual Sensitivity overlay to regulate the location, height, and design of structures within the unique scenic corridor west of Laureles Grade.
- b) Insubordinate to the Natural Features of the Area. General Plan Policy OS-1.2 states that development in designated visually sensitive areas shall be subordinate to the natural features of the area. GMP AP Policy GMP-3.3.a states that all areas designated as "sensitive" or "highly sensitive" are to be protected. Additionally, GMP 3.3.d states development shall be sited in a manner that minimizes visible effects of proposed structures and roads to the greatest extent possible. General Plan Policy OS-5.5 states that landowners and developers shall be encouraged to preserve the integrity of existing terrain and natural vegetation in visually sensitive area such as hillsides and ridges. Although it would not likely be visible from any public viewing areas, the project is located in a Visual Sensitivity Zoning District and as proposed, includes development on top of a ridge. As such, the proposed project has not been designed appropriately to conform to the property's natural topography, which would result in development insubordinate to the visual character and natural features of the area.
- c) Incompatibility with the Visual Character of the Area. GMP AP Policy GMP-3.3.e.1 states that development shall be found compatible with the visual character of the area if appropriate siting, design, materials, and landscaping are utilized. The proposed project is inconsistent with this policy, as it is inappropriately sited and designed. The project would include two structures, walkways, patios, a pool, and a new driveway resulting in over 33,559 square feet of development, including 150 cubic yards of cut, 2,200 cubic yards of fill, and 25,584 square feet of impervious coverage. The proposed concrete driveway would include switchbacks due to slopes and the location of development. Therefore, the size of the proposed development would alter the existing terrain by

requiring building pads for the structures and flatwork that would result in a highly developed residential property with significant topographical changes. Further, as demonstrated in Findings 5 and 6 and supporting evidence, the project has not been sited and designed to avoid development on 25% slope and tree removal is not the minimum amount necessary which would result in further altering the natural character of the site.

d) The appeal and supporting materials submitted by the project applicant to County of Monterey HCD-Planning for the proposed project are found in Project File PLN200032.

5. FINDING: **DEVELOPMENT ON SLOPES IN EXCESS OF 25%** - There are feasible alternatives which would allow development to occur on slopes less than 25%. The proposed development does not better achieve the goals, policies and objective of the Monterey County General Plan and the Greater Monterey Peninsula Area Plan (GMP AP).

EVIDENCE:

- a) Applicability. The proposed project includes development on slopes in excess of 25%. Therefore, a Use Permit to allow development on slopes in excess of 25% is required. General Plan Policy OS-3.5 and corresponding implementing regulations contained in MCC Title 21 section 21.64.230 prohibit development on slopes in excess of 25% unless the Board finds that there is no feasible alternative that would allow development on slopes less than 25% or the proposed development would better achieve the resource protection objectives and policies contained within the Monterey County General Plan and accompanying area plan.
- b) Feasible Alternatives. There are feasible alternatives to the proposed development that would both avoid slopes and better achieve the goals, policies, and objectives of the General Plan. Although a portion of the property is encumbered by a scenic easement, there are other feasible locations to site the proposed structures on the property that would minimize impacts to the natural topography. The southern portion of the property contains ample area outside of the scenic easement, that does not contain slopes in excess of 25%. Instead of utilizing this area and avoiding development on slopes to the greatest extent feasible, the applicants propose to cut into the steep hillside to develop their house, pool, and cabana with an attached garage on the hilltop.
- c) Resource Protection. The proposed development is inconsistent with the above policy and regulation as it does not better achieve resource protection objectives and policies contained within the Monterey County General Plan and GMP AP. The proposed project has not been designed and sited appropriately to conform to the natural landform of the property and does not reduce potential impacts to visual or natural resources to the greatest extent feasible. Title 21 section 21.66.040.C.3 – Development Standards for Hazardous areas, states development shall be sited and designed to conform to site topography to minimize grading and other site preparation activities where feasible. Modifications of the proposed development would better conform to natural topography and minimize required grading, while also reducing impacts on trees.

d) The appeal and supporting materials submitted by the project applicant to County of Monterey HCD-Planning for the proposed project are found in Project File PLN200032.

6. FINDING: **TREE REMOVAL** - The tree removal is not the minimum necessary under the circumstances of this case and would have the potential to involve a risk of adverse environmental impacts.

EVIDENCE:

- a) Applicability. Pursuant to section 21.64.260 of the MMC, removal of more than 3 protected trees requires a Use Permit in each case. To grant a Use Permit for the removal of trees, the Appropriate Authority must find that: 1) The tree removal is the minimum required under the circumstances of the case; and 2) the tree removal will not involve risk of adverse environmental impacts. The proposed project would remove 30 Coast Live Oak trees that are contiguous with hundreds of other trees within the scenic easement of the property. In accordance with Title 21, section 21.64.260.D.3.a of the County Code, the applicants provided a Tree Assessment (LIB230266) to identify potential impacts to trees on the project site. The assessment determined that the property contains hundreds of Coast live oak trees within the existing scenic easement and at the top of the property's ridge, just outside of the easement area. However, most of the property contains open space with no protected vegetation. To accommodate the proposed development, 32 trees would need to be removed, 30 of which are protected Coast live oak trees. Pursuant to Title 21 section 21.64.260.D.3, a Use Permit is required for the proposed tree removal.
- b) Minimum Amount Required. Removal of 30 protected trees is not the minimum amount required under the circumstances. The project proposes to construct two structures on top of the ridge, which would abut an area encumbered by a conservation easement containing oak woodlands. All proposed tree removal would occur in this area. As illustrated in the attached plans, the southern portion of the site does not contain trees and provides a feasible alternative location where development could avoid tree removal.
- c) Risk of Adverse Environmental Impacts. 2010 General Plan Policy OS-5.11 states conservation of large, continuous expanses of native trees and vegetation shall be promoted as the most suitable habitat for maintaining abundant and diverse wildlife. The proposed development is inconsistent with this policy because it does not promote conservation of native trees. Instead it would eliminate a portion of the onsite oak woodland, resulting in a potential ecological impact.
- d) The appeal and supporting materials submitted by the project applicants to County of Monterey HCD-Planning for the proposed project are found in Project File PLN200032.

7. FINDING: **NO VIOLATIONS** - The subject property complies with all rules and regulations pertaining to zoning uses, subdivision, and any other applicable provisions of the County's zoning ordinance. No known violations exist on the property.

- a) Staff reviewed County of Monterey HCD-Planning and Building Services Department records and is not aware of any violations existing on subject property.
- b) Staff conducted site visits on September 25, 2023 and April 24, 2024, reviewed aerial imagery and photos of the project site and researched County records to assess if any violation exists on the subject property.
- c) The appeal and supporting materials submitted by the project applicants to County of Monterey HCD-Planning for the proposed project are found in Project File PLN200032.

8. FINDING: **CEQA (Exempt)** – Denial of the project is statutorily exempt from environmental review.

EVIDENCE:

- a) California Environmental Quality Act (CEQA) Guidelines section 15270 statutorily exempts projects that a public agency rejects or disapproves.
- b) The Board of Supervisors action to deny the project fits within this exemption, as the County is a public agency disapproving of a project.
- c) Statutory exemptions from CEQA are not qualified by the exceptions applicable to categorical exemptions in CEQA Guidelines section 15300.2.
- d) The appeal and supporting materials submitted by the project applicants to County of Monterey HCD-Planning for the proposed project are found in Project File PLN200032.

DECISION

NOW, THEREFORE, based on the above findings and evidence and the administrative record, the Board of Supervisors does hereby:

- 1) Find that denial of the project is statutorily exempt from CEQA pursuant to CEQA Guidelines section 15270; and
- 2) Deny the Flores's appeal of the Planning Commission's decision at the July 10, 2024 Planning Commission hearing to deny a Combined Development Permit; and
- 3) Deny the Combined Development Permit consisting of:
 - a. Administrative Permit and Design Approval to allow construction of a 6,023 square foot single family dwelling inclusive of an 862 square foot attached garage, a 1,090 square foot non-habitable accessory structure and associated site improvements including 150 cubic yards of cut and 2,200 cubic yards of fill, a paved driveway, patios, retaining walls, paved walkways, and a pool within a Visual Sensitivity District;
 - b. Use Permit to allow the removal of 30 protected Coast live oak trees; and
 - c. Use Permit to allow development on slopes in excess of 25% in the amount of 25,395 square feet.

PASSED AND ADOPTED upon motion of Supervisor _____, seconded by Supervisor _____, and carried this September 17, 2024, by the following vote to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

I, Valerie Ralph, Clerk of the Board of Supervisors of the County of Monterey, State of California, hereby certify that the foregoing is a true copy of an original order of said Board of Supervisors duly made and entered in the minutes thereof Minute Book _____ for the meeting on September 17, 2024.

Date:

File Number:

Valerie Ralph, Clerk of the Board of
Supervisors
County of Monterey, State of California

COPY OF THIS DECISION MAILED TO APPLICANTS ON _____.

This decision, if this is the final decision, is subject to judicial review pursuant to California Code of Civil Procedure Sections 1094.5 and 1094.6. Any Petition for Writ of Mandate must be filed with the Court no later than the 90th day following the date on which this decision becomes final.