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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:

**FLORES PAUL H & LINDA S TRS (PLN200032)
RESOLUTION NO. 24-023**

Resolution by the County of Monterey Planning Commission:

- 1) Finding that denial of the project is statutorily exempt from CEQA pursuant to CEQA Guidelines section 15270; and
- 2) Denying a 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.

[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 Planning Commission on January 10, 2024 and July 10, 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 Planning Commission 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 submitted an application for review of their proposed residential development project. The applicant was deemed incomplete twice and was deemed complete on June 3, 2024.

- 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 and was continued by the due to confusion of whether or not the project could be considered in its incomplete state.
- c) The applicant has revised their proposal and the project has come back to the Planning Commission on July 10, 2024 for consideration.
- d) Land Use Advisory Committee. The applicant attempted to schedule their project for a LUAC meeting but the Greater Monterey Peninsula LUAC does not have a quorum at this time. Therefore, it was not possible to present before the LUAC due to the lack of quorum.

2. FINDING: **INCONSISTENCY** – The project, as proposed, does not conform, or 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 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;
 - 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 to be 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 that cannot be supported. In order to allow tree removal or development on slopes, certain findings need to be made including: the proposed development on slopes is the minimum under the circumstances and there is no feasible alternative to avoid development on slopes, similarly, tree removal must be the minimum under the circumstances. The lot has feasible alternatives to the proposed development site that would further minimize development on slopes and avoid tree removal completely.
 - c) Lot Legality. The subject property is located 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.
 - d) Inconsistent for Development within a Visually Sensitive Area. As demonstrated in Finding 3 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.

- e) Development on Slopes. As demonstrated in Finding 4 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%.
- f) Tree Removal. As demonstrated in Finding 5 and supporting evidence, the proposed project is inconsistent with the applicable goals, policies and regulations for the protection of trees and does not meet the findings to allow tree removal.
- g) Written Notice. In accordance with Title 21 section 21.02.060.B, if an application is found to be inconsistent when received, during processing, or when before the Appropriate Authority, written notice shall be given the applicant of inconsistency and the application shall be withdrawn or denied. The previous County planner reached out to the applicants in April of 2020 when the application request was submitted, she informed the applicant that their project included tree removal and development on slopes that may not be supportable. The current planner also reiterated this via email on September 14, 2023 and multiple times since. The applicant was informed that County staff would be recommending denial of the permit to the Planning Commission at the January 10th and July 10th hearings.
- h) The application, project plans, and related support materials submitted by the project applicant to County of Monterey HCD-Planning found in Project File PLN200032.

3. 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 as a Visual Sensitivity overlay district 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, and shall utilize landscape screening and other techniques to achieve maximum protection of the visual resource. 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 and GMP AP Policy GMP-3.2 requires that development on hilltops shall be designed to minimize visual impacts. As illustrated on the attached plans, the project is inconsistent with this policy as the proposed structures are located at the highest point (ridge)

of the subject property which is approximately 1,048 feet above sea level (ASL). Topography within the southern portion of the subject property contains sufficient area for residential development and has an elevation ranging from approximately 886 to 1,025 feet ASL. 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. Also see Finding 4 and supporting evidence.

- c) Incompatibility with the Visual Character of the Area. GMP AP Policy GMP-3.3.e.1 states that development shall be rendered 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. As demonstrated in the preceding evidence, the development is located at the top of the ridge as opposed to the lower lying areas of the property. The project includes 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 and 2,200 cubic yards of fill and 25,584 square feet of impervious coverage. The proposed concrete driveway includes switchbacks due to slopes and the location of development. Therefore, size of the proposed development would alter the existing terrain by creating building pads for the structures and flatwork which would result in a highly developed residential property with significant topography changes. Further, as demonstrated in Findings 4 and 5 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.

4. FINDING: DEVELOPMENT ON SLOPES IN EXCESS OF 25% - There exist 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) than other development alternatives.

- EVIDENCE:**
- a) Applicability. The proposed project includes development on slopes in excess of 25% in the amount of approximately 25,395 square feet. Therefore, the project includes a Use Permit to allow development on slopes in excess of 25%. General Plan Policy OS-3.5 and corresponding implementing regulations contained in Title 21 section 21.64.230 prohibits development on slopes in excess of 25% unless it is found that there is no feasible alternative which would allow development on slopes less than 25% and the proposed development better achieves the resource protection objectives and policies contained within the Monterey County General Plan and accompanying area plan.
 - b) Feasible Alternatives. The proposed development is inconsistent with the above policy and regulation as there are feasible alternatives for the proposed development. Although a portion of the property is encumbered by 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 development area 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 applicant proposes to cut into the steep hillside to develop their house, pool, and cabana 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. This would avoid potential hazards related to soil erosion and impacts to water quality. Additionally, modifications in location siting shall be required where such modifications will allow better conformity to natural topography and minimize required grading. As demonstrated in Findings 3 and 5 and supporting evidence, the proposed structures and site improvements have not been designed so that they would not create a substantially adverse visual impact and tree removal is not the minimum necessary under the circumstances of this case.
- d) The application, project plans, and related support materials submitted by the project applicant to County of Monterey HCD-Planning found in Project File PLN200032.

5. 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. In accordance with Title 21 section 21.64.260.D.3.a, the applicant provided a Tree Assessment (LIB230266) to identify potential impacts to trees within 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, the majority of the property contains open space with no protected vegetation. In order 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 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 of the 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. The 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. As demonstrated in Finding 3 and supporting evidence, the proposed tree removal would result in potential adverse visual impacts. Based on the amount of development proposed on steep slopes (see Finding 4 and supporting evidence), the development could result in potential impacts relative to soil erosion and water quality.
- d) The application, project plans, and related support materials submitted by the project applicant to County of Monterey HCD-Planning found in Project File PLN200032.

6. **FINDING:** **SITE SUITABILITY:** The site is physically suitable for a residential use. However, the proposed location of the structures and associated site improvements are inconsistent with several applicable policies and regulations, resulting in unsuitable development of the site.
EVIDENCE: See the preceding and subsequent Findings and supporting evidence.

7. **FINDING:** **NO VIOLATIONS** - The subject property is in compliance 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 Monterey County 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 application, project plans, and related support materials submitted by the project applicant to County of Monterey HCD-Planning 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 which a public agency rejects or disapproves.
b) The Planning Commission’s action to deny the project fits within this exemption, 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.

9. **FINDING:** **APPEALABILITY** - The decision on this project may be appealed to the Board of Supervisors.
EVIDENCE: Pursuant to Title 21 Section 21.80.040, an aggrieved party may appeal a decision of the Planning Commission to the Board of Supervisors.

DECISION

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

- 1) Find that denial of the project is statutorily exempt from CEQA pursuant to CEQA Guidelines section 15270; 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 this 10th day of July, 2024, upon motion of Commissioner Daniels, seconded by Commissioner Roberts, by the following vote:

AYES: Getzelman, Gomez, Gonzalez, Work, Roberts, Mendoza, Diehl, Monsalve, Daniels
NOES: None
ABSENT: Shaw
ABSTAIN: None

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Melanie Beretti
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Melanie Beretti, AICP
Secretary of the Planning Commission

COPY OF THIS DECISION MAILED TO APPLICANT ON 7/11/2024 .

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 7/22/2024 .

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.

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