

# Attachment H

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## Attachment H – Discussion

The proposed residential development is an allowed use within the Low Density Residential zoning district. However, the development has not been designed and sited appropriately to protect visual resources, conform to topographic and biologic constraints of the lot, or meet the regulations required by the Zoning Ordinance.

Appellant's arguments include:

- The main residence of this project was previously approved by the Board of Supervisors in a similar location;
- Neighbors have been approved to construct large houses that required tree removal and grading;
- Moving the proposed development would require more grading than the currently proposed location;
- Views from the top of the hill (where the home is proposed) are more desirable for a luxury home; and
- Some of the trees proposed for removal will be relocated onsite.

For these reasons, the applicant/appellant requests for the BOS approve the project as proposed.

Staff has reviewed the appeal contentions and concluded that the Appeal contentions provided lack merit. Specific contentions are addressed below after more general comments on issues with the project. Appeal contentions are further responded to in detail in the Draft Resolution (Exhibit A).

### Visual Sensitivity Analysis

The Greater Monterey Peninsula Area Plan (GMP AP) Scenic Highway Corridors & Visual Sensitivity map (Figure 14) illustrates that the subject property is in a "sensitive" area. In accordance with GMP AP Policy GMP-1.1, the property is designated with a Visual Sensitivity overlay district to regulate the location, height, and design of structures within the unique scenic corridor west of Laureles Grade. General Plan Policy OS-1.2 states that development in designated visually sensitive areas shall be subordinate to the natural features of the area. Further, GMP AP Policies GMP-3.2, GMP-3.3.a, GMP-3.3.e.1 and GMP-3.3.e.6 state, respectively, that visually sensitive areas are to be protected, development on hilltops shall be designed to minimize the visual impacts, development shall be rendered compatible with the visual character of the area if appropriate siting, design, materials, and landscaping are utilized, and that architectural review of projects shall be required to ensure visual compatibility of the development with the surrounding area. As illustrated in the attached plans, the proposed project has not been designed to conform to the property's natural topography and would result in development insubordinate to the visual character of the area. The project includes over 33,559 square feet of development, which is significantly larger than neighboring residential development. In addition, placement of the development within the upper portion of the site

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would require the installation of 2,200 cubic yards of fill and over half an acre of paving. As discussed below, there is ample area on the property to site development on the southern portion of the property and avoid development on the hilltop. Resiting development would also reduce development on slopes in excess of 25% as well as reduce the amount of tree removal proposed.

### Development on Slopes Exceeding 25%

The applicant has sited the proposed structures on slopes in excess of 25%, which are located on the hilltop of the property, resulting in approximately 25,395 square feet of development on slopes in excess of 25%. Due to the feasible alternatives onsite, the proposed development is inconsistent with multiple County policies and regulations as development on steep slopes is discouraged. General Plan Policy OS-3.5 states that the County shall regulate activity on slopes to reduce impacts to water quality and biological resources. This policy and corresponding implementing regulations contained in Title 21 section 21.64.230 requires that in order to approve such development, decision makers must find that there is no feasible alternative which would allow development to occur on slopes less than 25% and that the development better achieves the goals, policies and objectives of the Monterey County General Plan and applicable area plan than other development alternatives. GMP AP Policy GMP-3.3.e.3 states that the impact of any earth movement associated with the development in a visually sensitive area shall be mitigated in such a manner that permanent scarring is not created. Although a portion of the property is encumbered by scenic easement, there are other feasible locations on the property for the proposed structures that would minimize impacts to the natural topography. Further, the location of the development would not better achieve the goals and policies of either the General Plan or the GMP AP, as it would conflict with policies requiring the protection of a visually sensitive area preserving protected oak trees.



Figure 1. Google Earth Image of the site.

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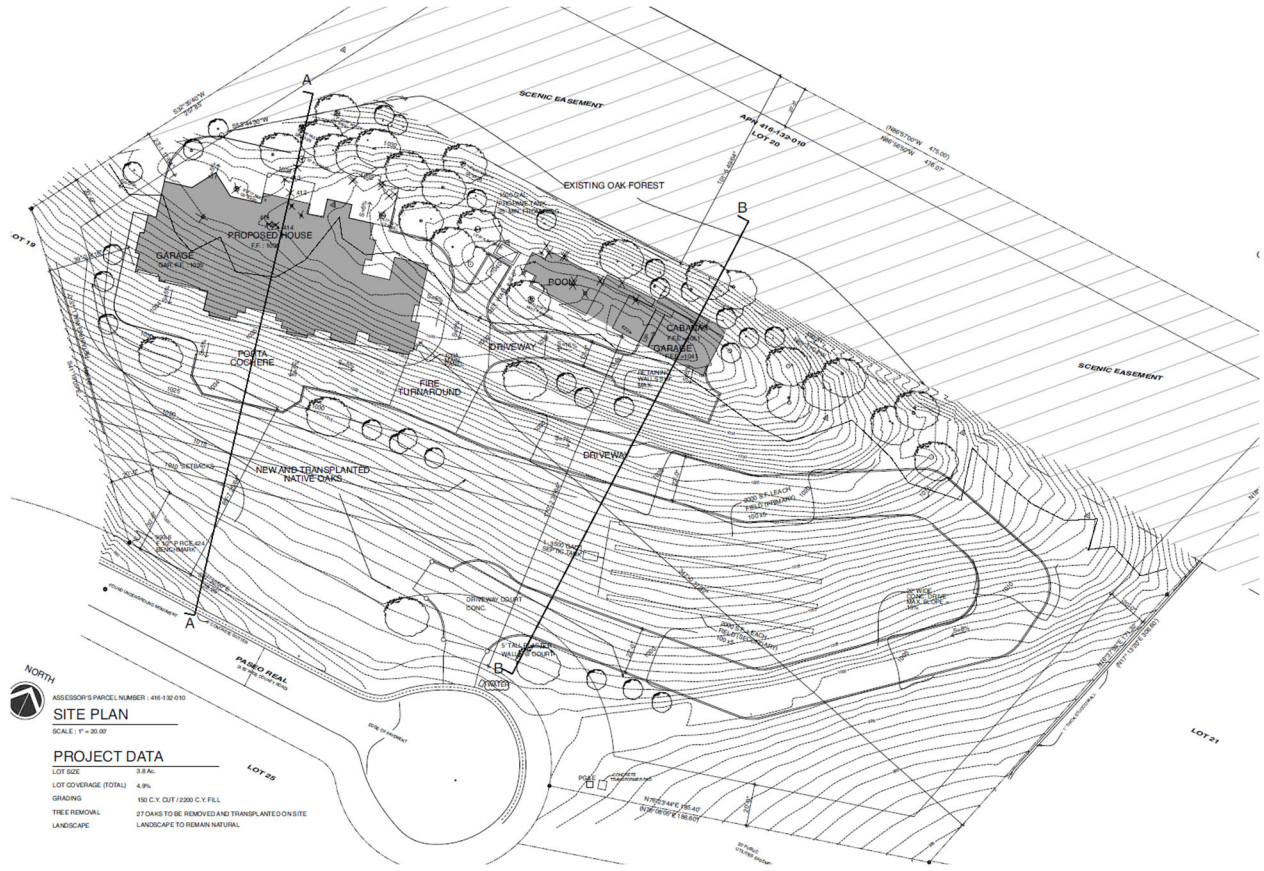


Figure 2. Proposed site plan.

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Figure 3. Photo of the steep slope leading to the top of the ridge, where the staking and flagging is located. This photo is from staff's site visit on September 25, 2023.

### Tree Removal

The proposed development would require the removal of 32 trees, 30 of which are protected Coast live oaks. GMP AP Policy GMP-3.5 states that removal of healthy native oak trees shall be discouraged. Implementing regulations contained in Title 21 section 21.64.260.D.5 requires that in order to approve removal of more than three protected trees, decision makers must find that the removal is the minimum required under the circumstances of the case and that removal will not involve a risk of adverse environmental impacts. Although the applicant has significantly reduced the number of trees proposed for removal from 69 to 30 through the redesign, the proposed tree removal is still far over the minimum amount. It is feasible to locate the structures where tree removal can be avoided. An existing scenic easement encumbers approximately one third of the property and contains slopes exceeding 25% as well as oak woodlands. At the northern portion of the property, this oak woodland extends outside of the easement and covers the top of the property's ridge. The applicant proposes two structures on top of the ridge abutting the easement within the extended woodland area and this is where the tree removal would occur. The arborist report prepared for the project (see **Exhibit C**) estimates 32 trees to be removed, some of which are within the easement and would therefore be impacted by construction beyond repair. Vegetation on the southern half (southern portion) of the property is limited to grass and weeds and is void of protected trees. This is also an area with slopes less than 25%. Relocating development to this area could avoid tree removal altogether. Therefore, the proposed tree removal is not the minimum amount under the circumstances. Further, the proposed tree removal would have the potential to impact the oak woodland and disturb the natural habitat of a

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protected scenic easement area. Further, removal is consistent with GMP AP Policy GMP 3.3.e.4, which states that tree removal shall be minimized in order to adequately mitigate visual impacts of development in areas mapped as visually sensitive.



Figure 4. Photo of Coast live oak forest from staff's site visit on September 25, 2023.

### Appeal Contention Responses

A similar project was applied for on the same lot in 2005. This project was smaller in scale and only included the construction of a single-family dwelling and removal of 5 protected oak trees. This project was denied by the Planning Commission in March 2007, but approved on appeal by the Board of Supervisors in August 2007. A building permit was never issued for the project; therefore, it expired in 2010. Rules and regulations, including the adoption of the 2010 General Plan, have changed since the prior approval. The prior decision on a different design does not entitle the appellants to a development permit.

The appellant claims their permit should be approved as their neighbors have a large house on top of a hill. The neighboring property at 25871 was approved for a single-family dwelling in 1988. As previously stated, the rules and regulations have changed over the years and the current proposal must be found consistent with the current regulations, not the regulations in place in 1988. Additionally, the neighboring parcel has different topography and resources than the Flores property and should not be used as a comparison for structure location and design.

The appellant states moving the proposed development would require more grading than the currently proposed location. There has been no evidence provided to staff supporting this claim. Staff requested a grading plan for the alternative building site but one was not provided.

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The appellant expressed their desire to construct the luxury home on the hilltop for the views from the proposed home. Private views from residential structures are not addressed in the 2010 General Plan or the Zoning Ordinance (Title 21 of the Monterey County Code). The applicant's desires have been considered but, in this instance, a desire for the best private view does not outweigh the impacts on trees, slopes, and public views.

One of the reasons provided for the appeal is that there will be more trees onsite following construction than there are now. This may be true, but Monterey County Code section (fill in the section) 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 does not involve risk of environmental impacts. In this case, the tree removal does not appear to be the minimum required under the circumstances of the case. There were no recommendations for 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. As there appears to be a feasible alternative that could eliminate the need for tree removal, staff cannot recommend that the Board make the necessary findings that 30 trees is the minimum amount to be removed to develop the lot.