

MONTEREY COUNTY

PLANNING AND BUILDING INSPECTION DEPARTMENT
COASTAL OFFICE, 2620 1ST AVENUE, MARINA, CA 93933
(831) 883-7500, main line / (831) 384-3261, facsimile
SCOTT HENNESSY, DIRECTOR



MONTEREY COUNTY ZONING ADMINISTRATOR

Meeting: January 9, 2003 9:50 a.m.	Agenda Item: 3
Project Description: MORENO (PLN020387) Administrative Permit to allow cut and fill activities, a small amount of which is on slopes exceeding 30% on .75 acres.	
Project Location: The subject property is located at 10814 Assissi Way, Salinas	
Plan Area: North County Area Plan	Flagged & Staked: No
Zoning Designation: LDR/B-6 Low Density Residential, Building Site	
CEQA Action: Exempt	
Date application deemed complete: October 11, 2002	
Department: Planning and Building Inspection (PBI)	

RECOMMENDATION:

Staff is recommending denial of the Moreno (PLN020387) Administrative Permit and site restoration subject to the Findings and Evidence in Exhibit "C."

OVERVIEW OF PROPOSED ACTION

In 1997, the applicant placed approximately 170 cubic yards of imported "native soil" along the north sideyard property line of the subject site, on a County right-of-way and within an area covering approximately 90 square feet on an adjacent parcel. Between 50 and 100 cubic yards of grading occurred on man-made slopes exceeding 30%, which required an Administrative Permit. Grading on the County right-of-way required an Encroachment Permit. A Grading permit also was required. The applicant obtained none of these permits prior to development. A discussion of this project is found in Exhibit "B."

The Monterey County General Plan prohibits grading on slopes greater than 30%, except when "substantial evidence" demonstrates that: (1) there is no feasible alternative which would allow development to occur on slopes of less than 30%; or (2) the proposed development better achieves the goals, policies and objectives of the Monterey County General Plan and applicable area plan than other development alternatives. This policy is codified in Chapter 21.64.230(E) of the Zoning Code, which requires one of these two findings for approval of development on slopes over 30%.

Staff recommends denial based on the lack of substantial evidence to support findings required by Chapter 21.64.230 (Regulations for Development on Slopes in Excess of 30%).

OTHER AGENCY INVOLVEMENT:

This application was reviewed by the Monterey County Water Resources Agency, Environmental Health Division, Public Works Department, the North County Fire Department and the Code Enforcement Branch.

This project is appealable to the Planning Commission.

Paul Mugan
Associate Planner

cc Zoning Administrator; County Counsel; Health Department; Public Works; Monterey County Water Resources Agency; Dale Ellis; Mike Novo, Paul Mugan, Linda Rotharmel; Anthony Lombardo; Property Owner; Lane Davis; File
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Attachments: Exhibit "A" Project Data Sheet
Exhibit "B" Discussion
Exhibit "C" Recommended Findings and Evidence
Exhibit "D" Public Works Encroachment Permit
Exhibit "E" Soil Survey, Inc. Analysis
Exhibit "F" Site Plan & Assessor's Parcel Map
Exhibit "G" Vicinity Map

EXHIBIT "C"
RECOMMENDED FINDINGS AND EVIDENCE FOR DENIAL

- 1. FINDING:** The proposed Administrative Permit Application (PLN020387) as described in the staff report and associated plans is inconsistent with the General Plan and Monterey County Zoning Ordinance. The Monterey County General Plan and North County Area Plan prohibit development on slopes over 30%, unless substantial evidence demonstrates that either: (1) there is no feasible alternative which would allow development to occur on slopes of less than 30%; or (2) that the proposed development better achieves the goals, policies and objectives of the Monterey County General Plan and applicable area plan than other development alternatives. Substantial evidence is lacking in project file PLN020387 to warrant either finding No. 1 or finding No. 2 noted above.
- EVIDENCE:** Materials in project file PLN020387 demonstrate that substantial evidence is lacking to support the required findings for approval.
- EVIDENCE:** Policy 26.1.10(A) & (B) of the Monterey County General Plan and Section 21.64.230(E) of the Zoning Code.
- EVIDENCE:** The applicant's request for fee waiver dated August 1, 2002, indicates that the purpose of the fill was to provide area for the Monterey County Department of Public Works and CalTrans to dispose of materials, effectively saving these agencies disposal costs. A review of the parcel map indicates that grading of 170 cubic yards of fill material could occur on areas where the slope does not exceed 30%.
- EVIDENCE:** The parcel map indicates that alternative areas on the site would allow for fill on slopes under 30%.
- EVIDENCE:** Materials in project file PLN020387 indicate that additional development (fill) occurred on site in 2001 using additional imported fill material from sources other than material provided by the Public Works Department & CalTrans.
- EVIDENCE:** Chapter 14.04 of the Monterey County Code prohibits development that allows conditions for accelerated erosion to occur.
- EVIDENCE:** Photographs in project file PLN020387 indicate that erosion has occurred in areas where compaction rates are less than 90%.
- EVIDENCE:** In discussions with Dora Moreno, a co-applicant, on or about November 8, 2002, Mrs. Moreno indicated that the purpose of the fill on slopes over 30% in the County right of way and along the sideyard property line, was to create a foundation to support plantings to create a visual barrier between the two properties.
- EVIDENCE:** Development alternatives, including alternative plantings, could be implemented to create a visual barrier between the two properties without grading on slopes over 30%.
- 2. FINDING:** There is a violation on the subject property involving each of the following chapters of the Monterey County Code that regulate grading: Chapter 16.12.040, allowing condition causing or likely to cause accelerated erosion; Chapter 21.64.230, development on slopes in excess of 30% without a permit; and Chapter

14.04 Encroachments for Excavations, Construction and Special Events, failure to comply with the conditions of an encroachment permit.

EVIDENCE: Code Enforcement file CE000373 opened in November of 2000 documents an existing condition on the property that allows for or causes accelerated erosion.

EVIDENCE: Material in project file PLN020387 establishes that the applicant graded the subject site and the County right-of-way without the required permits.

EVIDENCE: Encroachment Permit No. 02-102 documents the conditions of the Encroachment Permit, required to comply with Chapter 14.04 of the Monterey County Code.

EVIDENCE: September 26, 2001 correspondence from Soil Surveys, Inc. establishes that the fill material was not compacted to 90% compaction, as required by Encroachment Permit No.02-102.

EVIDENCE: No evidence exists either in materials in project file PLN020387 or in the Public Works Department Encroachment office that certifies that the fill material on the slope shall remain contained over time within the drainage right-of-way, as required by Encroachment Permit No. 02-102. Photographs in project file PLN020387 indicate that the fill material is not contained within the County right-of-way, and is sloughing onto the adjacent parcel.

EVIDENCE: No evidence exists either in materials in the project file PLN020387 or in the Public Works Department Encroachment office that demonstrates that a land survey by a qualified Land Surveyor was performed identifying the limits of the drainage easement and the location of the fill, as required by Encroachment Permit No. 02-102.

EVIDENCE: No evidence exists in project file PLN020387 or in the Public Works Department Encroachment office that demonstrates that fill material that sloughed onto the adjacent property has been removed, the area restored, or that exposed soils were stabilized or renegotiated, as required by Encroachment Permit No. 02-102.

EVIDENCE: No evidence exists in project file PLN020387 or in the Public Works Department Encroachment office that demonstrates that a video log of the storm drain was performed, as required by Encroachment Permit No. 02-102.

EVIDENCE: Site visit by project planner on November 8, 2002.

EVIDENCE: Consultation with Public Works Encroachment office staff on November 11, 2002.

3. **FINDING:** Encroachment Permit No. 02-102 was never “complete.” Additionally, Encroachment Permit No. 02-102 expired in June, 2002.

EVIDENCE: Preceding findings and supporting evidence. Encroachment Permit No. 02-102.

4. **FINDING:** The applicant shall restore the subject site(s) to its pre-violation state pursuant to Monterey County Code Chapter 21.84.

EVIDENCE: Code Enforcement Branch file CE000373 and the preceding findings and evidence establish a violation on site. Because there is a violation on the subject property involving a County ordinance that regulates grading, Chapter 21.84 requires that the subject site be restored to its pre-violation state.

5. **FINDING:** The decision on this project is appealable to the Planning Commission.

EVIDENCE: Sections 21.86.030(A) and 20.86.080 of the Monterey County Zoning Ordinance (Title 21).

EXHIBIT “B” DISCUSSION

Summary

In 1997, the Monterey County Public Works Department and CalTrans Maintenance crews loaded approximately 170 cubic yards of native soil from a clogged culvert near the intersection of Ralph Lane and Assisi Way, and unloaded the material on the applicant’s property. The applicant used this material to fill areas along the north property line of the subject parcel and across a 10’ wide County drainage right-of-way. A significant amount of this fill sloughed onto the adjacent property; an amount sufficient to cover approximately 90 square feet in area. The applicant did not obtain a Grading Permit, an Encroachment Permit, or an Administrative Permit prior to development.

Code Enforcement Branch

The adjacent property owner sought review by the Code Enforcement Branch for the trespass of fill material on his property, which resulted in a code enforcement action (CE000373). As a result, the applicant applied for an Encroachment Permit (9-14-01) to allow grading on County property, an Administrative Permit (8-22-02) for development on slopes over 30%, and a Grading Permit (12-13-01) for grading over 100 cubic yards.

Encroachment Permit

The Public Works Department issued an Encroachment Permit (Exhibit “D”) for grading on the County right-of-way, subject to the following conditions:

1. The preparation of plan by a Professional Engineer that indicates the full extent of the fill that was placed by Mr. Moreno and certifies compaction of the fill and the stability of the fill slope. Minimum required density of the fill shall be 90%.
2. The Professional Engineer shall also certify that the fill material on the slope shall remain contained over time within the drainage easement.
3. Completion of a land survey by a qualified Land Surveyor identifying the limits of the drainage easement and the location of the fill.
4. Any portion of the fill on the Davis property shall be removed.
5. Any exposed soil shall be stabilized and renegotiated.
6. Completion of a video log of the storm drain to assure that the RCP has not been damaged to include modification of the lines and grade by the overburden.
7. Any damage to the RCP shall be repaired prior to issuances of the Encroachment Permit. Public Works Encroachment staff shall be present during the video logging.

The material in project file PLN020387 and consultation with Public Works Department staff, indicates that the applicant has not complied with any of these conditions. The September 26, 2001 (Exhibit “E”) analysis from Soil Surveys, Inc., documents the extent of the fill; however, the letter fails to certify compaction rates of 90%, as required by Encroachment Permit No. 02-102, and fails to establish that the fill material on the slope shall remain contained within the drainage easement over time. This analysis also establishes that the development does not comply with the encroachment permit, and recommends additional grading and compaction.

Administrative Permit

The Monterey County General Plan prohibits development on slopes over 30%, except when “substantial evidence” justifies one of the following findings: (1) there is no feasible alternative which would allow development to occur on slopes of less than 30%; or (2) that the proposed development better achieves the goals, policies and objectives of the Monterey County General Plan and applicable area plan than other development alternatives. This policy is codified in Chapter 21.64.230(E) of the Zoning Code, which requires one of these two findings for approval of development on slopes over 30%.

Staff is recommending denial of the Administrative Permit based on the lack of substantial evidence to support the required findings. Material in project file PLN020387 fails to provide substantial evidence that this development is consistent with Policy 26.1.10(A) & (B) of the General Plan or Chapter 21.64.230(E) of the Zoning Code. The development appears to be part of a landscaping plan designed to create a visual barrier between the two properties. Such purposes are unrelated to the policies and goals of the General Plan and Zoning Code.

Site Restoration

Chapter 21.84 prohibits development activities without obtaining proper permits. Since this development occurred without a Grading Permit, an Encroachment Permit, or an Administrative Permit, there is a violation of County ordinances related to grading on site. Accordingly, Chapter 21.84 of the Zoning Code requires that the site be restored to its pre-violation condition. These regulations require that plans for restoration be submitted to and approved by the Director of Planning and Building Inspection prior to the commencement of restoration and the plan shall include a time period to ensure reestablishment of the soil or vegetation. “Restoration” shall include, but not be limited to, the revegetation of native plants and the reconstruction of natural features of the land which have been removed or changed in violation of County ordinances.