

MONTEREY COUNTY ZONING ADMINISTRATOR

Meeting: January 31 st , 2008 Time:	Agenda Item No.:
Project Description: Amendment to PLN060291, Use Permit to allow the removal of five additional oak trees to clear Code Enforcement Case CE070340 which allows for the construction of a 3,230 square foot one-story single family dwelling, and a 797 square foot attached three-car garage.	
Project Location: 26002 Paseo El Cajon, Monterey	APN: 416-131-034-000
Planning File Number: PLN070508	Name: Manuel and Mary Lopez, Property Owner
Plan Area: Greater Monterey Peninsula Area Plan	Flagged and staked: No, under construction.
Zoning Designation: LDR/B-6-D-S or Low Density Residential with B-6, Design Control and Site Plan Review overlays.	
CEQA Action: Categorically Exempt per Section 15303	
Department: RMA - Planning Department	

RECOMMENDATION:

Staff recommends that the Zoning Administrator approve the Use Permit based on the Findings and Evidence (**Exhibit C**) and subject to the recommended Conditions (**Exhibit D**).

PROJECT OVERVIEW:

See (**Exhibit B**)

OTHER AGENCY INVOLVEMENT:

- ✓ Salinas Rural Fire Protection District
- ✓ Public Works Department
- ✓ Environmental Health Division
- ✓ Water Resources Agency
- ✓ Code Enforcement

The above checked agencies and departments have reviewed this project. Conditions recommended have been incorporated into the condition compliance reporting plan (**Exhibit D**).

The project was not referred to the Greater Monterey Peninsula Land Use Advisory Committee (LUAC) for review. Based on the current review guidelines adopted by the Monterey County Board of Supervisors per Resolution No. 04-236, this application did not warrant referral to the LUAC because the project the project is exempt from CEQA per Section 15303.

Note: The decision on this project is appealable to the Planning Commission.

Brittanyann C. Nicholson
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January 23, 2008

cc: Front Counter Copy, Zoning Administrator; Salinas Rural Fire Protection District; Public Works Department; Parks Department; Environmental Health Division; Water Resources Agency; Building Department – Code Enforcement Division, Bob Schubert Acting Planning Services Manager; Brittany Nicholson, Planner; Carol Allen, Manuel and Mary Lopez, Applicants; Code Enforcement File CE070340, Planning File PLN070508.

Attachments:	Exhibit A	Project Data Sheet
	Exhibit B	Project Overview
	Exhibit C	Recommended Findings and Evidence
	Exhibit D	Recommended Conditions of Approval
	Exhibit E	Site Plan, Elevations, Floor Plans
	Exhibit F	Tree Inventory & Management

This report was reviewed by Bob Schubert, Acting Planning Services Manager

EXHIBIT B

PROJECT OVERVIEW

BACKGROUND:

The plans that were submitted and approved for file number PLN060291 (drawn by Wesley Jay Beebe – Architecture, dated 02/06) showed an inaccurate location of the five Coastal Live Oaks that were removed illegally. For instance, Tree 5 (of Exhibit F) a 12.4 inch Coast Live Oak was shown four feet away from the covered porch when in fact it was located inside where the approved covered porch is located. The same can be said for Tree 6 the 6 inch Coast Live Oak. Tree 8, a 13.5 inch Coast Live Oak was shown as being 5 feet away from the garage when in fact it was in the footing for the approved garage. The same can be said for Tree 15 a 10.2 inch Coast Live Oak. Tree 25, an 11.2 inch Coast Live Oak was shown one foot away from the approved retaining wall when in fact it was located in the middle of the approved driveway.

A Building Permit, BP061609 and Grading Permit, GP060191 were issued for the construction of the single family dwelling approved under PLN060291 on May 09, 2007. At some point between May 09, 2007 and September 19, 2007 the referenced trees were removed without the benefit of permits by construction personnel. When the owner realized this he had the arborist (Mr. Fidel Imperial) come to the Planning Department to apply for retro-active permits. It was at this time (September 19, 2007) that a Code Enforcement Case was opened (CE070340).

PROJECT DESCRIPTION:

The proposed project consists of; an Amendment to a project that was approved by RMA- Planning Department Staff Administratively on December 21, 2006 (Lopez – PLN060291). The application was composed of a Combined Development Permit consisting of an Administrative Permit and Design Approval to allow the construction of a one-story 3,230 square foot single family dwelling, a 737 square foot attached three-car garage and a Tree Removal Permit to allow the removal of 3 protected oaks (ranging in size from 8” to 18” inches in diameter). The amendment includes a Use Permit in accordance with the Monterey County Zoning Ordinance (Title 21) Section 21.64.260.C to allow the removal of five additional protected Oak trees (1-6”, 1-12.4”, 1-13.5”, 1-11.2” and 1-10.2” [see Exhibit F for details]) to clear Code Enforcement Case CE070340.

The project is located at 26002 Paseo El Cajon in Monterey. The property is zoned Low Density Residential with B-6, Design Approval and Site Plan Review overlays or “LDR/B-6-D-S”. The subject property falls within the Greater Monterey Peninsula Area Plan Boundaries.

ENVIRONMENTAL REVIEW (CEQA):

This project is an amendment to a previously approved Administrative Permit (PLN060291) which allowed the construction of a one-story 3,230 square foot single family dwelling, a 737 square foot attached three-car garage and a Tree Removal Permit to allow the removal of 3 protected oaks (ranging in size from 8” to 18” inches in diameter) which was Categorically Exempt per the California Environmental Quality Act Guidelines Section 15303. Staff’s recommendation of approval and environmental determination would have been the same had the original plans submitted indicated the five additional trees that were removed without permits. This amendment is to correct that error. The tree removal was strictly tied to the construction of the permitted single family dwelling.

FINDINGS AND RESTORATION:

Title 21 requires that two findings be made before an appropriate authority (in this case the Zoning Administrator) can approve the project.

- 1) The tree removal must be the minimum required under the circumstances of the case; and
- 2) The tree removal must not involve a risk of adverse environmental impacts.

As stated, an error was made on the site plans originally submitted in relation to the location of the trees which resulted in the previous arborist Mr. Wiesfuss and county staff not being able to adequately analyze and address tree removal for the project. When county staff went to the project site to analyze the proposed tree removal for PLN060291 the project was staked in accordance with the incorrect plans making it impossible for the planner to know additional trees were going to be removed.

The tree removal was the minimum required under the circumstances of the case. Construction had already taken place (i.e. foundations poured, framing started) by the time the tree placement error was noticed. This made project redesign financially infeasible, timely and potentially impossible not knowing the potential effects on other trees from re-design. Looking at the corrected plans and tree removal retroactively avoiding removing additional trees would have been impossible. Preserving Trees 8 and 15 would have required moving the garage North-East which would have put the garage into a required detention basin and close to the critical root zone of a group of protected Coastal Live Oaks which makes the removal of the referenced trees the minimum required in this case. Preservation of Tree 25 would have required re-design of the driveway which is infeasible. The project site is heavily forested with Coastal Live Oaks of a protected size. As designed the driveway requires the removal of three protected trees, if re-designed it would affect the critical root zone of a cluster of protected Coastal Live Oaks and a required detention basin. Trees 5 and 6 could have potentially been saved from removal with re-design but were in fact inside of the area approved for a covered porch.

The arborist report prepared by Fidel Imperial (Certified Arborist of Arboriculture and Urban Forestry) on November 15, 2007 states that the removal of the referenced five Oak trees has a less than significant impact on: Soil Erosion, Water Quality, Ecological Resources, Noise, Air Movement and Wildlife habitat. Ten replacement Coast Live Oaks (26 inch boxed nursery stock) have been planted on the site in accordance with the Monterey County Zoning Ordinance (Title 21) Section 21.64.260.D.4 and the approved restoration plan submitted to planning staff (prepared by Fidel Imperial) on November 20, 2007 in accordance with Title 21 Section 21.84.130 (which required restoration prior to the application being deemed complete). The replacement trees have been planted in an area that was susceptible to erosion due to the recent change in topography from construction which will aid in erosion. The replacement trees were planted East of the single family dwelling in an barren area which will aid in blocking strong wind currents from the residence. The key in choosing the relocation area was to plant the trees in an area most conducive to a long successful/healthy life for the trees which per the arborist the relocation area is.

On a side note staff found that even with restoration a Use Permit was still required in accordance with Section 21.64.260.C because more than three trees of a protected statue were removed. A Use Permit was also required due to the fact that if the error was not made on the original site plan the previous application would have included the removal of eight trees of a protected statue.

CONCLUSION:

In conclusion staff finds this project to be consistent with the Monterey County Zoning Ordinance (Title 21), the Greater Monterey Peninsula Area Plan and the Monterey County General Plan and recommends approval subject to the Findings and Evidence of Exhibit C and Recommended Conditions of Exhibit D.

EXHIBIT C

RECOMMENDED FINDINGS AND EVIDENCE

1. **FINDING: CONSISTENCY** – The project, as described in Condition No. 1 and as conditioned, conforms to the policies, requirements, and standards of the Monterey County General Plan, Greater Monterey Peninsula Area Plan and the Monterey County Zoning Ordinance (Title 21), which designates this area as appropriate for development.

EVIDENCE: (a) The text, policies, and regulations in the above referenced documents have been evaluated during the course of review of applications. No conflicts were found to exist. No communications were received during the course of review of the project indicating any inconsistencies with the text, policies, and regulations in these documents.

(b) The property is located at 26002 Paseo El Cajon, Monterey (Assessor's Parcel Number 416-131-034-000), Greater Monterey Peninsula Area Plan. The parcel is zoned Low Density Residential with B-6, Design Control and Site Plan Review District overlays ("LDR/B-6-D-S") which allow residential development. Therefore, the property is suitable for the proposed development.

(c) The project planner conducted a site inspection on December 28, 2007 to verify that the project on the subject parcel conforms to the plans listed above.

(d) The Hidden Hills Estate Subdivision created the subject parcel (Volume 15 Page 28 of Cities and Towns).

(e) The project was not referred to the Greater Monterey Peninsula Land Use Advisory Committee (LUAC) for review. Based on the current review guidelines adopted by the Monterey County Board of Supervisors per Resolution No. 04-236, this application did not warrant referral to the LUAC because the project is exempt from CEQA per Section 15303.

(f) The application, project plans, and related support materials submitted by the project applicant to the Monterey County RMA - Planning Department for the proposed development found in Project Files PLN070508, PLN060291 AND CE070340.

2. **FINDING: SITE SUITABILITY** – The site is physically suitable for the use proposed.

EVIDENCE: (a) The project has been reviewed for site suitability by the following departments and agencies: RMA - Planning Department, Salinas Rural Fire Protection District, Public Works, Environmental Health Division, and Water Resources Agency. There has been no indication from these departments/agencies that the site is not suitable for the proposed development. Conditions recommended have been incorporated.

(b) Technical reports by an outside Arborist indicated that there are no physical or environmental constraints that would indicate that the site is not suitable for the use proposed. County staff concurs. The following reports have been prepared:

- i. "Forest Management Plan, Tree Removal, Reforestation and Maintenance" (LIB080054) prepared by Fidel Imperial Certified Arborist WE-5692A, Salinas, Ca, November 18, 2007.
- ii. "Landscape Plan" (LIB080055) prepared by Fidel Imperial Certified Arborist WE-5692A, Salinas, Ca, November 18, 2007.

- iii. "Supplemental Report" (LIB080056) prepared by Fidel Imperial Certified Arborist WE-5692A, Salinas, Ca, November 15, 2007.
 - iv. "Construction Report" (LIB080057) prepared by Fidel Imperial Certified Arborist WE-5692A, Salinas, Ca, August 18, 2007.
 - v. "Documentation for Tree Removal including Tree Inventory and Analysis" (LIB080058) prepared by Fidel Imperial Certified Arborist WE-5692A, Salinas, Ca, August 18, 2007.
 - (c) Staff conducted a site inspection on December 28, 2007 to verify that the site is suitable for this use.
 - (d) Materials in Project Files PLN070508, PLN060291 AND CE070340.
3. **FINDING: CEQA (Exempt):** - The project is categorically exempt from environmental review and no unusual circumstances were identified to exist for the proposed project.
- EVIDENCE:** (a) California Environmental Quality Act (CEQA) Guidelines Section 15303, categorically exempts the first single family dwelling in a residential zone.
- (b) This project is an amendment to a previously approved Administrative Permit (PLN060291) which allowed the construction of a one-story 3,230 square foot single family dwelling, a 737 square foot attached three-car garage and a Tree Removal Permit to allow the removal of 3 protected oaks (ranging in size from 8" to 18" inches in diameter) which was categorically exempt per the California Environmental Quality Act Guidelines Section 15303. Staff's recommendation of approval and environmental determination would have been the same had the original plans submitted indicated the five additional trees that were removed without permits. This amendment is to correct that error. The tree removal was strictly tied to the construction of the permitted single family dwelling.
- (c) No adverse environmental effects were identified during staff review of the development application during a site visit on December 28, 2007.
- (d) See preceding and following findings and supporting evidence.
4. **FINDING: VIOLATIONS** – A Code Enforcement Case (CE070340) is open on the subject property for the removal of five protected Coastal Live Oaks without the benefit of permits.
- EVIDENCE:** (a) Approval of this Combined Development Permit will clear the property of the existing violations (CE070340).
5. **FINDING: TREE REMOVAL** – The project includes a Tree Removal Permit for the removal of five Coastal Live Oak trees in accordance with the applicable policies of the Greater Monterey Peninsula Area Plan and the Monterey County Zoning Ordinance (Title 21). The Required Findings in order to grant the permit for tree removal have been met. Title 21 requires that two findings be made before an appropriate authority (in this case the Zoning Administrator) can approve the project.
- 3) That the tree removal must be the minimum required under the circumstances of the case; and
- 4) That the tree removal must not involve a risk of adverse environmental impacts.

EVIDENCE: (a) As stated, an error was made on the site plans originally submitted in relation to the location of the trees which resulted in the previous arborist Mr. Wiesfuss and county staff not being able to adequately analyze and address tree removal for the project. When county staff went to the project site to analyze the proposed tree removal for PLN060291 the project was staked in accordance with the incorrect plans making it impossible for the planner to know additional trees were going to be removed. The tree removal was the minimum required under the circumstances of the case. Construction had already taken place (i.e. foundations poured, framing started) by the time the tree placement error was noticed. This made project redesign financially infeasible, timely and potentially impossible not knowing the potential effects on other trees from re-design.

(b) Looking at the corrected plans and tree removal retroactively avoiding removing additional trees would have been impossible. Preserving Trees 8 and 15 would have required moving the garage North-East which would have put the garage into a required detention basin and close to the critical root zone of a group of protected Coastal Live Oaks which makes the removal of the referenced trees the minimum required in this case. Preservation of Tree 25 would have required re-design of the driveway which is infeasible. The project site is heavily forested with Coastal Live Oaks of a protected size. As designed the driveway requires the removal of three protected trees, if re-designed it would affect the critical root zone of a cluster of protected Coastal Live Oaks and a required detention basin. Trees 5 and 6 could have potentially been saved from removal with re-design but were in fact inside of the area approved for a covered porch.

(c) Ten replacement Coast Live Oaks (26 inch boxed nursery stock) have been planted on the site in accordance with the Monterey County Zoning Ordinance (Title 21) Section 21.64.260.D.4 and the approved restoration plan submitted to and approved by planning staff (prepared by Fidel Imperial) on November 20, 2007. The replacement trees have been planted in an area that was susceptible to erosion due to the recent change in topography from construction which will aid in erosion. The replacement trees were planted East of the single family dwelling in an barren area which will aid in blocking strong wind currents from the residence. The key in choosing the relocation area was to plant the trees in an area most conducive to a long successful/healthy life for the trees which per the arborist the relocation area is.

6. **FINDING: HEALTH AND SAFETY** - The establishment, maintenance, or operation of the project applied for will not under the circumstances of this particular case be detrimental to the health, safety, peace, morals, comfort, and general welfare of persons residing or working in the neighborhood of such proposed use, or be detrimental or injurious to property and improvements in the neighborhood or to the general welfare of the County.

EVIDENCE: (a) Preceding findings and supporting evidence.

7. **FINDING:** **APPEALABILITY** - The decision on this project is appealable to the Planning Commission.

EVIDENCE: Section 21.80.040.B of the Monterey County Zoning Ordinance (Title 21) states, “The Planning Commission is the Appeal Authority to consider appeals from the discretionary decisions of the Zoning Administrator made pursuant to this Title. The decision of the Planning Commission shall be final and may not be appealed, except as provided for in Section 21.80.040 C.”

<p align="center">EXHIBIT D</p> <p align="center">Monterey County Resource Management Agency</p> <p align="center">Planning Department</p> <p align="center">Condition Compliance and/or Mitigation Monitoring Reporting Plan</p>	<p>Project Name: Lopez</p> <p>File No: PLN070508</p> <p>Approved by: Zoning Administrator</p> <p>APNs: 416-0131-034-000</p> <p>Date: January 31st, 2008</p>
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**Monitoring or Reporting refers to projects with an EIR or adopted Mitigated Negative Declaration per Section 21081.6 of the Public Resources Code.*

<i>Permit Cond. Number</i>	<i>Mitig. Number</i>	<i>Conditions of Approval and/or Mitigation Measures and Responsible Land Use Department</i>	<i>Compliance or Monitoring Actions to be performed. Where applicable, a certified professional is required for action to be accepted.</i>	<i>Responsible Party for Compliance</i>	<i>Timing</i>	<i>Verification of Compliance (name/date)</i>
1.		<p>PD001 - SPECIFIC USES ONLY</p> <p>This Amendment to PLN060291/Use Permit to (PLN070508) allows/legalizes the removal of five additional oak trees to clear Code Enforcement Case CE070340. The property is located at 26002 Paseo El Cajon, Monterey (Assessor's Parcel Number 416-131-034-000), Greater Monterey Peninsula Area Plan. This permit was approved in accordance with County ordinances and land use regulations subject to the following terms and conditions. Neither the uses nor the construction allowed by this permit shall commence unless and until all of the conditions of this permit are met to the satisfaction of the Director of the RMA - Planning Department. Any use or construction not in substantial conformance with the terms and conditions of this permit is a violation of County regulations and may result in modification or revocation of this permit and subsequent legal action. No use or construction other than that specified by this permit is allowed unless additional permits are approved by the appropriate authorities. To the extent that the County has delegated any condition compliance or mitigation monitoring to the Monterey County Water Resources Agency, the Water Resources Agency shall provide all information requested by the County and the County shall bear ultimate responsibility to ensure that conditions and mitigation measures are properly fulfilled. (RMA - Planning Department)</p>	Adhere to conditions and uses specified in the permit.	Owner/ Applicant	Ongoing unless otherwise stated	

<i>Permit Cond. Number</i>	<i>Mitig. Number</i>	<i>Conditions of Approval and/or Mitigation Measures and Responsible Land Use Department</i>	<i>Compliance or Monitoring Actions to be performed. Where applicable, a certified professional is required for action to be accepted.</i>	<i>Responsible Party for Compliance</i>	<i>Timing</i>	<i>Verification of Compliance (name/date)</i>
2.		PD002 - NOTICE-PERMIT APPROVAL The applicant shall record a notice which states: "A permit (Resolution _____) was approved by the Zoning Administrator for Assessor's Parcel Number 416-131-034-000 on January 31 st , 2008. The permit was granted subject to 6 conditions of approval which run with the land. A copy of the permit is on file with the Monterey County RMA - Planning Department." Proof of recordation of this notice shall be furnished to the Director of the RMA - Planning Department prior to issuance of building permits or commencement of the use. (RMA - Planning Department)	Proof of recordation of this notice shall be furnished to the RMA - Planning Department.	Owner/ Applicant	Prior to the continuance of construction	
3.		PD011 – TREE AND ROOT PROTECTION Trees which are located close to the construction site(s) shall be protected from inadvertent damage from construction equipment by fencing off the canopy driplines and/or critical root zones (whichever is greater) with protective materials, wrapping trunks with protective materials, avoiding fill of any type against the base of the trunks and avoiding an increase in soil depth at the feeding zone or drip-line of the retained trees. Said protection, approved by a certified arborist, shall be demonstrated prior to issuance of building permits subject to the approval of the RMA – Director of Planning. If there is any potential for damage, all work must stop in the area and a report, with mitigation measures, shall be submitted by a certified arborist. Should any additional trees not included in this permit be harmed, during grading or construction activities, in such a way where removal is required, the owner/applicant shall obtain required permits. (RMA - Planning Department)	Submit evidence of tree protection to the RMA - Planning Department for review and approval.	Owner/ Applicant	Prior to the continuance of construction	
			Submit on-going evidence that tree protection measures are in place through out grading and construction phases. If damage is possible, submit an interim report prepared by a certified arborist.	Owner/ Applicant/ Arborist	During Construction	
			Submit photos of the trees on the property to the RMA – Planning Department after construction to document that tree protection has been successful or if follow-up remediation or additional permits are required.	Owner/ Applicant	Prior to final inspection	

<i>Permit Cond. Number</i>	<i>Mitig. Number</i>	<i>Conditions of Approval and/or Mitigation Measures and Responsible Land Use Department</i>	<i>Compliance or Monitoring Actions to be performed. Where applicable, a certified professional is required for action to be accepted.</i>	<i>Responsible Party for Compliance</i>	<i>Timing</i>	<i>Verification of Compliance (name/date)</i>
4.		PD016 – NOTICE OF REPORT Prior to issuance of building or grading permits, a notice shall be recorded with the Monterey County Recorder which states: "Arborist reports have been prepared for this parcel by Fidel Imperial and are on record in the Monterey County RMA - Planning Department , Library Nos. LIB080054, LIB080055, LIB080056, LIB080057 and LIB080058. All development shall be in accordance with these reports." (RMA – Planning Department)	Proof of recordation of this notice shall be furnished to the RMA - Planning Department.	Owner/ Applicant	Prior to the continuance of construction	
5.		PDSP01-NON STANDARD- CONDITION COMPLIANCE All other Conditions and or Mitigations of the Lopez project (PLN060290) (Resolution No.060291) remain in full force and effect and must be complied with according to the referenced resolution. (RMA – Planning Department)	In accordance with specifications stated in Resolution No. 060291.	Applicant/ Owner	In accordance with timelines specified in Resolution No. 060291	
6.		PDSP001 – TREE REPLACEMENT The project Arborist shall continue to work with the Contractor to implement the approved Restoration Plan. Written and photographic verification from the Arborist is required to verify planting has been done in accordance with the Restoration Plan (Lib # 080054). The plan shall be accompanied by a Monitoring Program that includes monitoring for a minimum of five years to assure 100% success for the replacement trees. The report shall provide evidence to indicate the health and condition of replacement trees as well as other native trees within proximity of the construction area not scheduled for removal. In the event any initial plantings fails or other native trees fail during or within one year of construction, new trees shall be planted with a new 5-year monitoring period to assure 100% success of all replacement trees. All replacement trees shall be installed prior to the continuation of construction. (RMA – Planning Department)	Submit a Restoration Plan monitoring program prepared by a certified Arborist. Submit annual monitoring reports to the RMA- Planning Department addressing the health of the replacement trees.	Owner/ Applicant Certified Forester/ Arborist	Prior to the continuance of construction / Ongoing for 5 years.	