

**PLANNING COMMISSION
COUNTY OF MONTEREY, STATE OF CALIFORNIA**

RESOLUTION NO. 02049

A.P. # 007-103-004-000

FINDINGS AND DECISION

In the matter of the application of
Investmark, Inc. (PLN980621)

for a two year extension of a Major Use Permit in accordance with Title 21 (Zoning) Chapter 21.74 (Use Permits) of the Monterey County Code, to remove 165 Coast Live oak and 74 Monterey pine trees on nine lots of record (PLN980621), located southerly of Congress Road in the Country Club area of the Monterey Peninsula, Greater Monterey Peninsula Area Plan, came on regularly for hearing before the Planning Commission on August 14, 2002.

Said Planning Commission, having considered the application and the evidence presented relating thereto,

FINDINGS OF FACT

1. **FINDING:** The subject Use Permit Extension (PLN980621), as described in condition #1, and as conditioned, conforms with the plans, policies, requirements and standards of the General Plan, Greater Monterey Peninsula Area Plan, and the Monterey County Zoning Ordinance (Title 21). The property is located at Lots 4-12, Monterey Peninsula Country Club #6, Tract 852 between David and Congress Roads. The parcel is zoned MDR/B-6 D, Medium Density Residential building site, Design Control District. The subject property is in compliance with all rules and regulations pertaining to zoning uses, subdivision, and any other applicable provisions of Title 21 and any zoning violation abatement costs have been paid.

EVIDENCE:

1. The Planning and Building Inspection staff reviewed the project, as contained in the application and accompanying materials, for conformity with the General Plan and the Greater Monterey Peninsula Area Plan.
2. The project site is physically suitable for the proposed use as described in the project file. The proposed development has been reviewed by the Monterey County Planning and Building Inspection Department, Water Resources Agency, Public Works Department, Environmental Health Division, Parks Department, and applicable Fire Department. There has been no indication from these agencies that the site is not suitable for the proposed development. Each agency has recommended conditions for project approval.
3. The proposed use is consistent with the development standards for the Preservation of Oak and Other Protected Trees pursuant to Chapter 21.64.260, Title 21, Monterey County Zoning Ordinance.
4. Written and verbal public testimony submitted at public hearings before the Planning Commission.
5. The application, plans, and support materials submitted by the project applicant to the Monterey County Planning and Building Inspection Department for the proposed development, found in the project file.
6. Chapters 21.12, 21.42, and 21.44 of the Monterey County Zoning Ordinance (Title 21).
7. Staff verification of the Monterey County Planning and Building Inspection Department records indicated that no violations exist on subject property.
8. The on-site inspection by the project planner on July 3, 2001 to verify that the proposed project complies with the Greater Monterey Peninsula Area Plan.

9. The publicly noticed Planning Commission Field Trip on May 22, 2002 to verify the proper removal of trees within staked building footprints.
2. **FINDING:** The Planning Commission conducted a publicly noticed field trip to the site on May 22, 2002 to clarify the number of trees to be removed and to be retained, and their location in relation to the proposed building footprints, as recorded at that time by the consulting forester, Glenn Flamick of Forest City Consulting. While it was determined that essential environmental conditions on the site have not changed, changes in site circumstances help to explain discrepancies found in the tree count over an 8 year period given the method of counting; the approved removal of dead trees by the Pebble Beach Company Forestry Department; the natural attrition of the dense oak stand over an 8 year period; the permit waivers granted for tree removal for water well drilling; the newly proposed building footprints for lots 4 and 6, and other factors. The Planning Commission accepts the forester's most recent tree canopy study, dated June 14, 2002, that provides evidence that a continuous canopy of trees will be maintained when placed under a Scenic Conservation Easement, and the forester's July 24, 2002 inventory that establishes the number of trees to be removed (165 coast live oaks and 74 Monterey pines) and the minimum number of trees to be retained (591 coast live oaks and 167 Monterey pines).
This latest canopy tree study and tree count, in addition to recommendations for the maintenance of the tree canopy provided by Hugh Smith in his 1993 Forest Management Plan, will together serve as a Forest Management Plan to be followed when individual forest management plans are prepared and noticed for each lot prior to issuance of building permits.
- EVIDENCE:**
1. The on-site inspection on May 22nd, 2002 by Planning Commissioner's Errea, Sanchez, Hawkins, Classen and Diehl; the Investmark, Inc. representatives: the consulting forester; members of the public and the project planner. All nine building footprints were staked to determine which trees will be removed and which retained.
 2. The Congress Road Canopy Study prepared by Forest City Consulting, June 14, 2002, as found in Planning & Building Inspection Department file no. PLN980621 and attached as Exhibit G to this report.
 3. The updated inventory of trees to be removed and retained prepared by Forest City Consulting, July 24, 2002, as found in Planning & Building Inspection Department file no. PLN 980621 and attached as Exhibit H to this report.
 4. The Forest Management Plan for Residential Parcels prepared by Hugh E. Smith, March 15, 1993, and the Addendum to the report prepared on October 25, 1993.
 5. The General Biological Report prepared by Vernal L. Yadon, May 22, 1994, that first proposed the importance of a continuous canopy of coast live oak and Monterey pines be retained as a wildlife corridor.
 6. Materials in project file (PLN980621).
 7. Written and verbal testimony submitted at public hearings before the Planning Commission.
 8. Follow up letter on October 18, 2001 by biology consultant, Vern Yadon.
3. **FINDING:** The proposed project, including all permits and approvals, will not have significant adverse impacts on the environment. A Mitigated Negative Declaration has been prepared and is on file (File # PLN980621) in the Department of Planning and Building Inspection. All mitigation measures identified in the Initial Study and Mitigated Negative Declaration and all project changes required to avoid significant effects on the environment have been incorporated into the approved project or are made conditions of approval. A Program for Monitoring and/or Reporting on Conditions of Approval (hereafter "the Program") has been prepared pursuant to Public Resources Code 21081.6 and is made a condition of approval. The Program is attached

hereto as Exhibit "E" and is incorporated herein by reference. Potential environmental effects have been studied, and there is no substantial evidence in the record, as a whole, that supports a fair argument that the project, as designed, may have a significant effect on the environment. The Mitigated Negative Declaration reflects the independent judgment and analysis of the County based upon the findings and conclusions drawn in the Initial Study and the testimony and information received, and scientific and factual data presented as evidence during the public review process. The Monterey County Planning and Building Inspection Department, located at 240 Church Street, Room 116, Salinas, Ca is the custodian of the documents and the materials that constitute the record of proceedings upon which the adoption of the Mitigated Negative Declaration is based.

- EVIDENCE:**
1. The application, plans, and support materials submitted by the project applicant to the Monterey County Planning and Building Inspection Department for the proposed development, found in the project file.
 2. County staff prepared an Initial Study for the project in compliance with the California Environmental Quality Act (CEQA) and its Guidelines. The Initial Study provided substantial evidence that the project would not have significant environmental impacts. A Mitigated Negative Declaration was filed with the County Clerk on 6-10-94, included as Exhibit F. The following evidence has been received and considered: All comments on the Initial Study; evidence in the record that includes studies, data and reports supporting the Initial Study; additional documentation requested by staff in support of the Initial Study findings; information presented during public hearings; staff reports that reflect the County's independent judgment and analysis regarding the above referenced studies, data and reports; application materials, and expert testimony. Among the studies, data and reports analyzed as part of the environmental determination are the following:
 - The Forest Management Plan for Residential Parcels prepared by Hugh E. Smith, March 15, 1993, and the Addendum to the report prepared on October 25, 1993.
 - The General Biological Report prepared by Vernal L. Yadon, May 22, 1994, that first proposed the importance of a continuous canopy of coast live oak and Monterey pines be retained as a wildlife corridor.

These reports were subsequently updated because of an 8 year period lapsing since the original Use Permit approval. The following updated reports do not recommend any additional mitigations because the essential environmental conditions remain the same. Rather, the updated reports are reflected in modified numbers for tree removal with the addition of a minimum number of trees to be retained to better meet the original mitigation for a continuous tree canopy to serve as a wildlife corridor over all the 9 lots of record. The updated reports are as follows:

- Letter from Yadon, 10-18-01, found in file #PLN980621.
 - Investmark Tree Removal (Flamik, 10-18-01, found in File # PLN980621)
 - Investmark Tree Removal (Flamik, 10-22-01, found in File # PLN980621)
 - Congress Road Canopy Study (Flamik, 6-14-02, found in File #PLN980621)
 - Investmark Tree Removal (Flamik, 7-24-02, found in File #PLN980621)
- None of the circumstances identified in CEQA Guidelines, Sections 15162 or 15164, have occurred as determined by staff review of consultant reports, the project planner's site visit, and the project planner's review of applicable regulations, policies and plans. Pitch Canker disease was analyzed as part of the 1997 hearings and adequate mitigation was adopted for all impacts. This added mitigation is considered to satisfy Section 15164 (e) of the CEQA

Guidelines as an addendum or addition to the Program for Monitoring or Reporting on Conditions of Approval.

3. The Program for Monitoring and/or Reporting on Conditions of Approval, prepared and required pursuant to Section 21081.6 of the Public Resources Code as found in Exhibit E, is made a condition of approval and is designed to ensure compliance during project implementation.
 4. No facts, reasonable assumptions predicated on facts, testimony supported by adequate factual foundation, or expert opinion supported by facts, have been submitted that refute the conclusions reached by these studies, data and reports. Nothing in the record alters the environmental determination, as presented by staff, based on investigation and the independent assessment of those studies, data and reports.
 5. Studies, data and reports prepared by staff from various County departments including Planning and Building Inspection, Public Works, Environmental Health and Monterey County Water Resources Agency support the adoption of the Mitigated Negative Declaration for the project.
 6. Agreement reached upon settlement of the November 10, 1997 suit filed against the County and Investmark by Noel Mapstead.
4. **FINDING:** Pursuant to CEQA Guidelines Section 15162, no new environmental review document is required.
- EVIDENCE:**
1. A Mitigated Negative Declaration for the project was adopted on August 24, 1994 by the Planning Commission and modified by a court settlement on November 10, 1997 (Monterey County Superior Court Case No. 113206) to include addressing any symptoms of pine pitch canker disease and to make available pine cones on trees which exhibit no symptoms of the disease available to the Elkhorn Native Plant Nursery. There have been no changes in the project, changed circumstances, or new information indicating significant environmental effects or substantial increase in the severity of previously identified significant effects since the adoption of the Mitigated Negative Declaration.
 2. The General Biological Report prepared by Vernal L. Yadon, May 22, 1994, first proposed the importance of a continuous canopy of coast live oaks and Monterey pines be retained as a wildlife corridor. This report was followed by a letter from the same consultant who revisited the site on October 18, 2001 and concluded that no significant changes are to be made to the original report and no endangered species are known to be on the property.
 3. The Initial Study prepared for the project indicates that the proposed tree removal has the potential to cause significant impacts to the plant and wildlife communities on the subject parcel. Condition nos. 4, 6, 7, and 8 provide mitigations to reduce the impacts to less than significant by (a) requiring the applicant to enter a Mitigation Monitoring Agreement with the County; (b) requiring each respective property owner of the subject lots to provide a Forest Management Plan that is consistent with the master forest plan and biology reports for all nine lots; (c) requiring a qualified Biologist to survey the site for the potential of Pitch Canker disease prior to removal of the Monterey pines identified within each building footprint; and (d) requiring the dedication of a Scenic Easement Deed on each of the parcels in order to provide mitigation of these potential impacts.
5. **FINDING:** The establishment, maintenance, or operation of the use or structure applied for will not, under the circumstances of the particular case, be detrimental to 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 improvement in the neighborhood, or to the general welfare of the County.

- EVIDENCE:** 1. The project as described in the application and accompanying materials was reviewed by the Department of Planning and Building Inspection, Environmental Health Division, Public Works Department, applicable Fire Department, and Water Resources Agency. The respective departments have recommended conditions, where appropriate, to ensure that the project will not have an adverse effect on the health, safety, and welfare of persons either residing or working in the neighborhood; or the County in general.
2. File and application materials contained in the project file #980621.

6. **FINDING:** The following Findings and Evidence from previous Board of Supervisors approval (Resolutions 94-491 and 97-175) are hereby modified and shall be made part of this approval by the Monterey County Planning Commission.

- a. **FINDING:** On December 6, 1994 the Monterey County Board of Supervisors adopted Resolution #94-491 thereby granting a conditional use permit allowing the removal of 141 coast live oaks and 74 Monterey pines. These numbers have been amended by the Planning Commission to allow removal of 165 coast live oaks and 74 Monterey pines and to retain 591 coast live oaks and 167 Monterey pines.

EVIDENCE: Board of Supervisors Resolution No. 94-491; File No. PC 93081, administrative record.

EVIDENCE: Planning Commission hearing held on August 14, 2002, affirming the original adoption of the Negative Declaration with Mitigations based on the updated tree canopy study (June 14, 2002) and tree inventory (July 24, 2002) conducted by Glenn Flemik of Forest City Consulting

EVIDENCE: Materials in File PC93081, updated by the Use Permit extension in File PLN980621.

- b. **FINDING:** The proposed project consists of removing 74 unprotected Monterey Pine trees and 165 protected coast live oak trees on 9 lots of record to allow for the construction of single-family dwellings and associated improvements.

EVIDENCE: Materials in File PC93081, updated by the Use Permit extension in File PLN980621.

- c. **FINDING:** The proposed tree removal, reduced from 165 oaks to 141 oaks and 74 pines, now amended back to allowing removal of 165 oaks and 74 pines in addition to requiring retention of a minimum of 591 coast live oaks and 167 Monterey pines, will not significantly impact soil erosion on the subject parcels.
- EVIDENCE:** Section 4.5 of the Initial Study prepared for the project indicates that the project has the potential to significantly increase soil erosion. Mitigation of this potential impact will be achieved through the preparation and implementation of an erosion control plan required as a condition of approval by the Monterey County Water Resources Agency. In addition, any grading that may occur on the subject parcels is subject to the requirements of the Monterey County Erosion Control Ordinance (Chapter 16.12, Monterey County Code).
- EVIDENCE:** Section I-B(4) of Hugh Smith's Forest Management Plan dated March 15, 1993 (Addendum dated October 25, 1993) prepared for the project (Library #33.02.122) states, "Slope is so gradual that erosion is not likely. Excess surface moisture drains west to Congress Road. Construction will not require grading that will be subject to erosion".
- d. **FINDING:** The proposed tree removal will not substantially lessen the ability for the natural assimilation of nutrients, chemical pollutants, heavy metals, silt, and other noxious substances from ground and surface waters.
- EVIDENCE:** Materials in file PC93081 indicate the average lot coverage of the proposed structures to be approximately a little over 20%, not including driveway coverage. The remainder of the subject properties is available for assimilation of runoff waters. Development on the subject parcels is required to adhere to requirements of Chapter 16.12 of Monterey County Code (Erosion Control Ordinance, see section 16.12.070)
- EVIDENCE:** Section b of the Addendum to the Forest Management Plan states, "The ground coverage of the proposed structures will be a small enough percentage of the area of each lot so that there will be adequate moisture penetration for the welfare of trees and plants to be retained. The nature of the development is such that it will not generate harmful substances that could be detrimental to the plant, animal, or human environment".
- EVIDENCE:** Recent provided surveys of the footprints of the proposed residences provided to the Planning Commissioners show less lot coverage than the original footprints approved by the Planning Commission in 1994.
- e. **FINDING:** The proposed tree removal will not have a substantial adverse impact upon existing biological and ecological systems, climatic conditions which affect these systems, or such removal will not create conditions which may adversely affect the dynamic equilibrium of associated systems.
- EVIDENCE:** The Initial Study prepared for the project indicates that the proposed tree removal has the potential to cause significant impact to the plant and wildlife communities on the subject parcel. Condition #8 requires the dedication of a Scenic Easement Deed in order to provide mitigation of these potential impacts by preserving a forested canopy for a wildlife corridor. This mitigation is based upon recommendations found in the Biological Study prepared for the project by Vern Yadon on 2/5/94 (library #26.08.23) and the Mitigated Negative Declaration.
- f. **FINDING:** The proposed tree removal will not significantly increase ambient noise levels to a degree that a nuisance is anticipated to occur.
- EVIDENCE:** Section 17 of the Initial Study prepared for the project indicates that there are no significant noise related impacts expected from the project. It does note that a

temporary increase in noise levels can be expected to occur as trees are removed. Condition 16 addresses this impact by requiring tree removal to occur only on weekdays between the hours of 8:00 AM and 6:00 PM.

- g. **FINDING:** The proposed tree removal will not significantly reduce the ability of the existing vegetation to reduce wind velocities to the degree that a nuisance is anticipated to occur.
EVIDENCE: Section 5.3 of the Initial Study prepared for the project finds that the project will not significantly alter the air circulation in the project area.
EVIDENCE: Section "e" of the Forest Management Plan prepared for the project states, "The number of trees proposed for removal will have little or no effect on the movement of air in this neighborhood. The property is well back from the coast, and the percentage of trees to be removed is moderate compared to the total number of trees on the properties".
- h. **FINDING:** The proposed tree removal will not significantly reduce available habitat for wildlife existence and reproduction or result in the immigration of wildlife from adjacent or associated ecosystems.
EVIDENCE: Section 8 of the Initial Study prepared for the project indicates that the proposed tree removal has potential to significantly impact the migration of animals and wildlife habitat. This conclusion is based upon statements in the Biological Study prepared for the project which indicate that the subject parcels constitute a "Wildlife corridor". The study concludes that the potential impact can be mitigated so long as a continuous canopy of trees can be maintained. Condition #8 and #11 are incorporated into this permit in order to implement this mitigation.
- i. **FINDING:** The proposed tree removal will not have a significant impact upon the environment.
EVIDENCE: This is evidenced by Findings 3 and 5 c—h, above.
EVIDENCE: A Mitigated Negative Declaration for this project was filed on June 13, 1994.
EVIDENCE: A Negative Declaration for the subdivision of the subject parcels (MPCC #6) was adopted by the Board of Supervisors on August 18, 1974.
- j. **FINDING:** The tree removal is the minimum required under the circumstances of the case.
EVIDENCE: Maximum lot coverage permitted in the Medium Density Residential zoning district is 35%; lot coverage for this project averages 20%.
EVIDENCE: The trees proposed for removal are all within the proposed building footprint and driveway areas.
EVIDENCE: Alternative locations for the proposed development on the subject parcels would require an equal or greater amount of tree removal.
EVIDENCE: Materials in project file PLN980621.
- k. **FINDING:** The proposed tree removal is consistent with Section 21.64.260 of the Monterey County Code (Preservation of Oak and Other Protected Trees).
EVIDENCE: County Code Section 21.64.260 allows for the removal of protected oaks with a Use Permit provided Findings 5 (c—i) above are made.
- l. **FINDING:** For the purposes of the Fish and Game Code, the project will have potential for adverse impact on fish and wildlife resources upon which wildlife depends.
EVIDENCE: Staff analysis contained in the Initial Study and the record as a whole indicate the project may or will result in change to resources.
- m. **FINDING:** The proposed tree removal will not under the circumstances of the particular case, be

detrimental to the health, safety, peace, morals, comfort, and general welfare of persons residing or working in the neighborhood or to the general well-being of the County.

EVIDENCE: This is evidenced by the findings and evidence above.

n. **FINDING:** On October 28, 1998, pursuant to 21.74.110 of Title 21, Investmark Inc. requested by letter for an Extension of the Use Permit.

EVIDENCE: The Board of Supervisors approved a two-year extension of the previous permit (PC965445) on December 6, 1994 to December 6, 1998; File No. PC980621, administrative record.

o. **FINDING:** Applicant's request for an Extension first came before the Planning Commission at a public hearing on August 8, 2001 after the project was deemed complete on April 4, 2001. The 1998 request for the two year extension (PLN980621) was determined to be incomplete until such time that a companion permit (PLN980460) for a well and water distribution system was deemed complete. PLN980460 was never deemed complete, and the applicant formally withdrew the well and water distribution permit on April 4, 2001. Upon withdrawal of PLN980460, the subject application (PLN980621) was deemed complete.

EVIDENCE: File No. PC 980621, administrative record.

p. **FINDING:** Since the Planning Commission's first hearing on August 26, 2001, the Planning Commission has had 4 continued public hearings and 1 publicly noticed field trip. On August 14, 2001, the Planning Commission approved the applicant's request on the basis of the Findings and Evidence contained in Exhibit C and D of this report as well as affirming the original Mitigated Negative Declaration, Exhibit F, and approving the Mitigated Monitoring Program, Exhibit E.

EVIDENCE: File No. 980621, administrative record.

q. **FINDING:** Noel Mapstead (appellant) timely filed an appeal from the Planning Commission decision alleging that (1) the findings, conditions, or the decision of the Planning Commission were not supported by the evidence, (2) the decision was contrary to law.

EVIDENCE: Appellant's Notice of Appeal; files of Clerk of the Board of Supervisors.

r. **FINDING:** Pursuant to the provisions of Chapter 21.80 of the Monterey County Code and other applicable laws and regulations, the Board, on May 13, 1997, heard and considered the matter as a de novo hearing.

EVIDENCE: Minutes and other records of the Board of Supervisors' meeting of May 13, 1997; files of the Clerk of the Board of Supervisors, and the Planning and Building Inspection Department.

s. **FINDING:** Upon consideration of the documentary information in the files, the staff reports, oral and written testimony and other Evidence presented before the Planning Commission, the Board finds as follows:

i. The Findings, Conditions, and Decision of the Commission are supported by the Evidence for the reasons contained in Exhibit "A" of the Planning and Building Inspection staff report to the Board.

ii. The Commission decision is in accordance with and not contrary to law, and the appellant has failed to sustain its burden as to this contention.

EVIDENCE: File No. 96445 and PC93081, staff reports, oral testimony, and other documents in the administrative record.

7. **FINDING:** Applicant filed a timely extension request to Use Permit PLN965445, for a two-year period. The Use Permit expired on December 6, 1998. The Planning Commission approval of the Use Permit extension on August 14, 2002, is for a six (6) year extension from the date of expiration, or December 6, 2004.
EVIDENCE: Materials contained in File # PLN980621.
8. **FINDING:** Consideration of the subject request for extension has been carried out pursuant to Monterey County Code Section 21.74.110.
EVIDENCE: Materials contained in File # PLN980621, including extension request dated October 28, 1998.
9. **FINDING:** Notice of the extension has been carried out pursuant to Section 21.74.110 (B) of Title 21.
EVIDENCE: 1. Materials contained in File # PLN980621.
2. Project Planner review of Section 21.74.110.
10. **FINDING:** The project is appealable to the Board of Supervisors.
EVIDENCE: Section 21.80.040 D of the Monterey County Zoning Ordinance (Title 21).

DECISION

It is the decision of the Planning Commission of the County of Monterey that the Mitigated Negative Declaration and Program for Monitoring and/or Reporting on Conditions of Approval be adopted and said application for a two year extension of a Major Use Permit be granted as shown on the attached sketch and subject to the following conditions:

1. The subject Use Permit consists of a six-year extension of a Use Permit to remove 165 coast live oak and 74 Monterey Pine trees and retain a minimum of 591 coast live oaks and 167 Monterey pines over 9 lots of record (**Investmark, Inc. PLN980621**). The project is located southerly of Congress Road in the Monterey Peninsula Country Club area (APNs 007-103-004-000 through 007-103-012-000). The proposed project is in accordance with County ordinances and land use regulations, subject to the following terms and conditions. Neither the use 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 Planning and Building Inspection. 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. (**Planning and Building Inspection**)

Prior to the Issuance of Grading and Building Permits:

2. The property owner agrees as a condition and in consideration of the approval of this discretionary development permit that it will, pursuant to agreement and/or statutory provisions as applicable, including but not limited to Government Code Section 66474.9, defend, indemnify and hold harmless the County of Monterey or its agents, officers and employees from any claim, action or proceeding against the County or its agents, officers or employees to attack, set aside, void or annul this approval, which action is brought within the time period provided for under law, including but not limited to, Government Code Section 66499.37, as applicable. The property owner will reimburse the County for any court costs and attorney's fees which the County may be required by a court to pay as a result of such action. County may, at its sole discretion, participate in the defense of such action; but such participation shall not relieve applicant of his obligations under this condition. An agreement to this effect shall be recorded upon demand of County Counsel or concurrent with the issuance of building permits, use of the property, filing of the final map, whichever occurs first and as applicable. The

County shall promptly notify the property owner of any such claim, action or proceeding and the County shall cooperate fully in the defense thereof. If the County fails to promptly notify the property owner of any such claim, action or proceeding or fails to cooperate fully in the defense thereof, the property owner shall not thereafter be responsible to defend, indemnify or hold the County harmless. (**Planning and Building Inspection**)

3. The applicant shall record a notice on each parcel which states: "A permit (Resolution 02049 was approved by the Planning Commission for Assessor's Parcel Numbers 007-103-004, -005, -006, -007, -008, -009, -010, -011, and -012 on August 14, 2002. The permit was granted subject to 18 conditions of approval, which run with the land. A copy of the permit is on file with the Monterey County Planning and Building Inspection Department." Proof of recordation of this notice shall be furnished to the Director of Planning and Building Inspection prior to issuance of building permits or commencement of the use. (**Planning and Building Inspection**)
4. The applicant shall enter into an agreement with the County to implement a Mitigation Monitoring Plan. (**Planning and Building Inspection**)
5. No land clearing or grading shall occur on the subject parcel between October 15 and April 15 unless authorized by the Director of Planning and Building Inspection. (**Planning and Building Inspection**)
6. Prior to issuance of a building permit, each property owner shall provide a Forest Management Plan for their respective parcel that is consistent with the master subdivision forest plans and biology reports prepared for the 9 Investment, Inc. lots (APN 007-103-004 through 007-103-012), consisting of the following reports:
 - The Forest Management Plan for Residential Parcels prepared by Hugh E. Smith, March 15, 1993, and the Addendum to the report prepared on October 25, 1993.
 - The General Biological Report prepared by Vernal L. Yadon, May 22, 1994
 - Congress Road Canopy Study (Flamik, 6-14-02, found in File #PLN980621)
 - Investmark Tree Removal (Flamik, 7-24-02, found in File #PLN980621)

The Forest Management Plans prepared for the parcel shall indicate the minimum number of trees identified on the property outside the building footprints that are to remain or be replaced on an ongoing basis, consistent with the Flamick Congress Road Canopy Study (6-14-02). All tree removal on the parcel must be in accordance with the Forest Management Plan prepared for the parcel, as approved by the Director of Planning and Building Inspection. Any trees removed shall be replaced at a minimum 1:1 ratio, in accordance with the Forest Management Plan.

A notice shall be recorded with the Monterey County Recorder which states: "A Forest Management Plan has been prepared for this parcel by _____ dated _____ and is on record in the Monterey County Planning and Building Inspection Department Library, No. _____. All tree removal on the parcel must be in accordance with the Forest Management Plan, as approved by the Director of Planning and Building Inspection." This notice shall be recorded prior to issuance of building or grading permits. (**Planning and Building Inspection Department**)

7. Prior to the removal of the Monterey pines identified within each building footprint, the applicant shall have a qualified Biologist survey the site for the potential of Pitch Canker on site. The survey shall be submitted to the Director of Planning and Building Inspection prior to removal of the Monterey Pines. If Pitch Canker is identified on site, the applicant shall include the recommendations of the qualified Biologist in the removal of the Monterey pines, subject to the approval of the Director of Planning and Building Inspection. If at the time of removal of the Monterey Pine trees, the biologic survey indicates there are Monterey pine trees which exhibit no symptoms whatsoever of pine pitch canker, Investmark shall make any pine cones on such trees available for collection by the Elkhorn Native Plant Nursery LLC or other suitable organization. In doing so, Investmark

shall instruct the individuals or entities removing any pine pitch canker symptom free trees to collect and set aside any pine cones from such trees in order that Elkhorn Native Plant Nursery LLC or other suitable organization can pick up, store, and/or propagate any such Monterey Pine seeds contained in the cones at their facility in Moss Landing. **(MM per court stipulation) (Planning and Building Inspection)**

8. That a Scenic Easement for the purpose of maintaining a continuous tree canopy across the subject parcels be conveyed to the County over those areas of the subject parcels outside the building envelopes as shown in Glenn Flamik's tree canopy study (June 14, 2002) in Exhibit "G" and made a part of this by reference. A minimum number of trees to be retained for each lot shall be based on the existing number of trees outside of all the individual footprints, totaling 591 coast live oaks and 167 Monterey pines, as inventoried by Glenn Flamik (June 14, 2002) in Exhibit H attached hereto and made a part of this by reference. The Scenic Easement Deed may provide exceptions for driveways, fences, and removal of hazardous vegetation subject to the review and approval of the local fire district and Director of Planning and Building Inspection Department. The scenic easement deed shall be submitted to and approved by the Director of Planning and Building Inspection, and conveyed to the County of Monterey prior to the removal of trees and prior to the issuance of any grading or building permits. **(MM 7.2) (Planning and Building Inspection)**
9. The applicant shall record a covenant restriction on each of the subject parcels containing the following language: "Conditions of Permit PLN980621 granted by the Monterey County Planning Commission on August 14, 2002, require that a continuous tree canopy be maintained across this lot in perpetuity upon the terms and conditions therein set forth which are incorporated herein by this reference. This condition shall be implemented by following the recommendations found in the biological study prepared for the project (Yadon, 2/5/94. Monterey County Planning and Building Inspection Department Library #26.08.23); the Forest Management Plan (Smith. 5/10/93, Library #33.02.122); the tree canopy study prepared by Glenn Flamik (Flamik, June 14, 2002, PLN980621); and the tree inventory prepared by consulting forester, Glenn Flamik (Flamik, July 24, 2002, PLN980621). The tree canopy will consist of a total minimum number of 591 coast live oaks and 167 Monterey pines over all nine (9) subject lots, proportioned by each lot based on the existing number of trees outside of the proposed building footprints on each lot based on the June 14, 2002 canopy study and July 24, 2002 tree inventory by Glenn Flamik. It is the responsibility of the property owner to comply with this condition." **(MM 7.2, 7.3) (Planning and Building Inspection)**
10. Within 90 days of the issuance of this Use Permit, in order to provide notice to future property owners, the applicant shall record a covenant restriction on each of the subject parcel containing the following language: "No tree removal may occur on any parcel until a building permit for a single-family dwelling has been obtained. Once tree removal has occurred, construction must commence within the 30 days. If construction does not commence within the 30-day period, a public hearing shall be scheduled for revocation of the Use Permit as to that parcel. Upon revocation of the Use Permit the property owner must restore that parcel subject to the satisfaction of the Director of Planning and Building Inspection for the County of Monterey." The covenant restriction shall also contain the language as contained in condition numbers 9, 18 and 19. **(MM 7.2, 7.3, 8.1, 8.2) (Planning and Building Inspection)**
11. Pursuant to State Public Resources Code and the State Fish and Game Code, the applicant shall pay a fee to be collected by the County of Monterey in the amount of \$25.00. This fee shall be paid prior to filing the Notice of Determination. Proof of payment shall be furnished by the applicant to the Director of Planning and Building Inspection. **(Planning and Building Inspection)**
12. An erosion control plan shall be submitted to the Water Resources Agency for approval. The plan shall focus on applying erosion control measures in conjunction with any access roads used in the clearing process. **(MM 4.5, 6.2) (Water Resources Agency)**

Prior to Final Issuance of Building Permits:

13. At least three weeks prior to occupancy of each single-family dwellings constructed on the subject parcels, three copies of a landscaping plan shall be submitted to the Director of Planning and Building Inspection for approval. At the time of plan submittal, the applicant shall pay a plan review fee. The landscaping plan shall be in sufficient detail to identify the location, specie, and size of the proposed landscaping materials and shall be accompanied by a nursery or contractor's estimate of the cost of installation of the plan. Before occupancy, landscaping shall be either installed or a certificate of deposit or other form of surety made payable to Monterey County for that cost estimate shall be submitted to the Monterey County Planning and Building Inspection Department. (**Planning and Building Inspection**)
14. Construction on each parcel must commence and continue with substantial progress within 30 days from the time that trees are removed on that parcel. If construction does not commence within the 30 day time period a public hearing shall be scheduled for revocation of this Use Permit as to that parcel. Upon revocation of the Use Permit the property owner of that parcel shall be required to restore the subject parcel under the direction of a qualified Biologist. (**Planning and Building Inspection**)
15. The landscape plan prepared for condition #13 above shall incorporate the recommendations contained in the Biological Study (Yadon, 2/5/94, Monterey County Planning and Building Inspection Department Library #26.08.23) and the Forest Management Plan (Smith, 5/10/93, Library #33.02.122). This condition includes but is not limited to the maintenance of a continuous tree canopy across the subject parcels as provided for in condition #8 above. (**Planning and Building Inspection**)
16. Fences on the subject lots shall not be allowed within the front setback areas facing Congress Road. Fences on the subject lots shall be allowed on the property lines of the subject parcels along David Avenue and across the public utilities easements as shown on Final Map MPCC. #6. Tract #852. Fences along David Avenue shall not exceed 5 feet in height and may be of differing design styles for adjacent lots. (**Planning and Building Inspection**)
17. No tree removal shall occur until after the issuance of building permits for the proposed single-family dwellings. (**Planning and Building Inspection**)
18. Tree removal operations shall be limited to weekdays between the hours of 8:00 AM and 6:00 PM, or sunset, whichever occurs first. (**Planning and Building Inspection**)

Ongoing conditions:

19. All landscaped areas and/or fences shall be continuously maintained by the applicant and all plant material shall be continuously maintained in a litter-free, weed-free, healthy, growing condition. (**Planning and Building Inspection Department**)

PASSED AND ADOPTED this 14th day of August, 2002, by the following vote:

AYES: Errea, Sanchez, Hawkins, Pitt-Derdivanis, Brennan, Parsons, Diehl, Hernandez, Engell, Wilmot
NOES: None
ABSENT: None

Original Signed By:

DALE ELLIS, SECRETARY

Copy of this decision mailed to applicant on

IF ANYONE WISHES TO APPEAL THIS DECISION, AN APPEAL FORM MUST BE COMPLETED AND SUBMITTED TO THE CLERK OF THE BOARD OF SUPERVISORS ALONG WITH THE APPROPRIATE FILING FEE ON OR BEFORE

This decision, if this is the final administrative 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.

NOTES

1. You will need a building permit and must comply with the Monterey County Building Ordinance in every respect.

Additionally, the Zoning Ordinance provides that no building permit shall be issued, nor any use conducted, otherwise than in accordance with the conditions and terms of the permit granted or until ten days after the mailing of notice of the granting of the permit by the appropriate authority, or after granting of the permit by the Board of Supervisors in the event of appeal.

Do not start any construction or occupy any building until you have obtained the necessary permits and use clearances from the Monterey County Planning and Building Inspection Department office in Monterey.

2. This permit expires 2 years after the above date of granting thereof unless construction or use is started within this period.