

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

RESOLUTION NO. 04014

A. P. # 241-201-022-000
241-201-023-000

In the matter of the application of
Peter Pan Investors LLC (PLN030397)

FINDINGS & DECISION

to allow a Combined Development Permit in accordance with Chapter 20.82 (Combined Development Permits) of the Monterey County Code, consisting of a Coastal Administrative Permit for demolition of an existing single family dwelling and garage including the foundations; and a Coastal Development Permit for development on 30% slope for grading (approximately 10 cubic yards) for a temporary access road across the adjacent property (APN 241-201-023-000). The property is located at 226 Peter Pan Road, Carmel, east of Highway 1, Carmel Highlands area, Coastal Zone, came on regularly for hearing before the planning commission on March 31, 2004.

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

- 1. FINDING: CONSISTENCY:** The Project, as conditioned is consistent with applicable plans and policies, the Carmel Area Land Use Plan, Coastal Implementation Plan (Part 4), Part 6 of the Coastal Implementation Plan, and the Monterey County Zoning Ordinance (Title 20).
- EVIDENCE:** (a) Plan Conformance. PBI staff has reviewed the project as contained in the application and accompanying materials for consistency with the Carmel Area Land Use Plan, Coastal Implementation Plan (Part 4), and the Monterey County Zoning Ordinance (Title 20). County staff determined that the project is consistent with these policies and standards as they apply to residential development. Staff notes are provided in Project File PLN030397.
- (b) Site Visit. Project planner conducted an on-site inspection on November 25, 2003 and February 17, 2004 to verify that the project on the subject parcel conforms to the plans listed above.
- (c) Land Use. The project for demolition of a single-family residence and accessory structures and associated grading is an allowed use, in accordance with Section 20.14.040.
- (d) Zoning Consistency. The parcel is zoned Low Density Residential, 1 unit/acre, Design District, Coastal Zone ("LDR/1-D (CZ))." The project is in compliance with Site Development Standards for a Low Density Residential District in accordance with Section 20.14.060.
- (e) Tree Removal. PLN030397 does not propose any tree removal, except for two non-native acacia trees, which are not protected under the Land Use Plan. Conditions have been incorporated for the protection of trees located in the project vicinity.
- (f) 30% Slope. See Finding #6.
- (g) Land Use Advisory Committee (LUAC). The Carmel Highlands/Unincorporated Land Use Advisory Committee recommended approval of the demolition and denial of the access

road and slope waiver by a vote of 5 to 0 with one abstention. The LUAC's recommendations are addressed below.

- **Retain Oak Trees** – The LUAC recommended retaining two oak trees located in a terraced area between the garage and house that the applicant originally proposed to remove and transplant. The applicant amended PLN030397 to delete any tree removal, except for two non-native acacia trees, which are not protected under the Land Use Plan.
- **Limited Grading for Demolition and Drainage** – The LUAC recommended that grading be limited to the amount necessary for the demolition and drainage improvements and that it not include excavation for a future house pad or for the access road. The original proposal included grading of soils behind the retaining walls and in the house pad area, but this grading has since been eliminated from PLN030397. After demolition, the site will be sloped in order to ensure safe drainage and a condition has been incorporated requiring an erosion control and drainage plan for the site.
- **Access Road** – The LUAC recommended denial of the applicant's original proposal to grade an access road across the adjacent vacant property. This road is no longer proposed. (See Finding #6).
- (h) LUAC meeting minutes dated November 17, 2003.
- (i) 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 Project File PLN030397.

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

EVIDENCE: (a) The project has been reviewed for suitability by Planning and Building Inspection Department, Public Works Department, Water Resources Agency, Environmental Health Division, Parks Department and Carmel Highlands Fire Protection District. All applicable conditions recommended have been incorporated.

(b) Technical reports by outside biological, archaeological, geological and geotechnical consultants indicate that there are no physical or environmental constraints such as environmentally sensitive habitats or similar areas that would indicate the site is not suitable for the use proposed. Agency staff concurs. Reports are in Project File PLN030397 include:

- "Preliminary Archaeological Reconnaissance," prepared by Mary A. Doane, B.A., and Trudy Haversat, RPA, of Archaeological Consulting, Salinas, CA, dated November 17, 2000.
- "Geologic Reconnaissance," prepared by Geoconsultants, Inc., San Jose, CA, dated June 2003.
- "Landslide Investigation for 226 Peter Pan Road," prepared by Steven Raas & Associates, Inc, Consulting Geotechnical Engineers, Watsonville, CA, dated July 1998.
- "Geological and Geotechnical Investigation Slope Stabilization and Drainage Measures," prepared by Stevens, Ferrone & Bailey Engineering Company, Inc., Salinas, CA, dated April 9, 2003.
- "Geotechnical Soils-Foundation Report," prepared by Grice Engineering and Geology, Inc., Salinas, CA, dated October 1999.

- Biological Report prepared by Vern L. Yadon, Pacific Grove, CA, dated September 30, 1999.
- (c) Staff conducted an on-site visit on November 25, 2003 and February 17, 2004 to verify that the site is suitable for this use.
- (d) No public facilities are not necessary for the project.

3. FINDING: CEQA: The project is exempt from environmental review.

- EVIDENCE:**
- (a) CEQA Guidelines lists classes of projects, which have been determined to not have a significant effect on the environment, and are therefore exempt from the provisions of CEQA. Section 15301 (Class 1) categorically exempts projects for existing facilities, which includes the demolition of one single-family residence (§15301(l)(1)).
 - (b) The project consists of the demolition of an existing house and garage. No grading is proposed except for the temporary access road, which will be restored and revegetated. After demolition, the project site will be revegetated for erosion control. No tree removal is proposed and tree protection measures recommended in the Forest Management Plan by Stephen Staub dated April 2003 have also been incorporated as conditions.
 - (c) An application to construct a new residence on the property (PLN990376) has been submitted. However, that project has been deemed incomplete pending resolution of the proposed septic system design. The current project is limited to demolition of existing structures only and does not include preparation of the site for future development. This CEQA determination does not include consideration of the proposal for a future house and structures or future grading for a project when it is unknown whether it would be approved or constructed.
 - (d) Site visits by staff and technical reports submitted by the applicant have determined that there are no unusual circumstances associated with the project or the property that would require environmental review. Technical reports include:
 - Historical Report prepared by David S. Byrd of Jones & Stokes, Sacramento, CA, dated March 2003 determined that “the buildings do not appear to meet the criteria for listing in the CRHR and therefore are not historical resources for the purposes of CEQA.”
 - Biological Report prepared by Vern L. Yadon, dated September 30, 1999 found no significant or sensitive biological resources on the property.
 - “Geologic Reconnaissance,” prepared by Geoconsultants, Inc., San Jose, CA, dated June 2003.
 - “Forest Management Plan,” prepared by Stephen Staub of Staub Forestry, Felton, CA, dated April 2003.
 - Forester’s Letter regarding the Landmark Monterey Pine by Stephen Staub of Staub Forestry, Felton, CA, dated June 6, 2003.
 - (e) No adverse environmental effects were identified during staff review of the development application during a site visit on November 25, 2003 and February 17, 2004.

4. FINDING: NO VIOLATIONS: The subject property is in compliance with all rules and regulations pertaining to zoning uses, subdivision and any other applicable provisions of the County’s zoning

ordinance. No violations exist on the property, and all zoning violation abatement cost, if any, have been paid.

EVIDENCE: Staff reviewed Monterey County Planning and Building Inspection Department records and no open violations exist on subject property. The property contains a garage that has been converted to a guesthouse and Staff has been unable to find any record of a permit allowing this. However, no complaint has been filed and this project to demolish the structure clears any potential violation.

5. FINDING: PUBLIC ACCESS: The project is in conformance with the public access and public recreation policies of the Coastal Act and Local Coastal Program, and does not interfere with any form of historic public use or trust rights (see §20.70.050.B.4). No access is required as part of the project as no substantial adverse impact on access, either individually or cumulatively, as described in Section 20.70.050.B.4.c of the Monterey County Coastal Implementation Plan, can be demonstrated.

EVIDENCE: (a) The subject property is not described as an area where the Local Coastal Program requires access.
 (b) The subject property is not indicated as part of any designated trails or shoreline access as shown in Figures 3, the Public Access Map, of the Carmel Area Land Use Plan.
 (c) No evidence or documentation has been submitted or found showing the existence of historic public use or trust rights over this property.
 (d) Staff site visit on November 25, 2003 and February 17, 2004.

6. FINDING: 30% SLOPE: The project as designed and conditioned is consistent with policies in the Carmel Area Land Use Plan (Chapter 2.7.4) and the Monterey County Implementation Plan (Chapter 20.146.030.C.1) regulating development on 30% slope.

EVIDENCE: (a) The property is located on the steep hillsides in the Carmel Highlands area. Except for the existing driveway and building and garage pads, the entire parcel is on 30% slope. A proposed temporary access road traverses a section of 30% slope.
 (b) The access road is requested because of the change in elevation between the driveway and building pad area and difficulty of accessing the site. The access road requires grading over a section of 30% slope. The Carmel Area Land Use Plan prohibits development on 30% slope except when there is “no alternative that would allow development to occur on slopes of less than 30%” (CIP §20.146.030.C.1a). The current proposal for the access road keeps it on the subject property as much as possible, crossing over a corner of the adjacent parcel (APN: 241-201-023-000) and locates it at the point closest in elevation to the building site. It would be approximately 50 feet long, drop 10 feet in height and require approximately 10 cubic yards of grading. Given the site constraints because of the steep topography and existing structures, there is no alternative that would avoid the development on 30% slope. A condition has been added for erosion control and revegetation of this area.
 (c) Staff site visit on November 25, 2003 and February 17, 2004.

- 7. 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) The project was reviewed by Planning and Building Inspection Department, Public Works Department, Water Resources Agency, Environmental Health Division, Parks Department and Carmel Highlands Fire Protection District. The respective departments and agencies 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. The applicant has agreed to these conditions as evidenced by the application and accompanying materials and conditions.

- 8. FINDING: APPEALABILITY:** The project can be appealed to the Board of Supervisors and California Coastal Commission.

EVIDENCE: (a) Section 20.86.030.A of the Monterey County Coastal Implementation Plan, Part 1 (Board of Supervisors).
 (b) Section 20.86.080.A.3 of the Monterey County Coastal Implementation Plan, Part 1 (Coastal Commission). Development that is permitted as a conditional use is appealable to the Coastal Commission. The development on 30% slope, which requires a coastal development permit, is a conditional use.

DECISION

It is the decision of the Planning Commission that said application for a Combined Development Permit be granted as shown on the attached sketch and subject to the following conditions:

1. The subject Combined Development Permit consists of a Coastal Administrative Permit to allow demolition of an existing single family dwelling and garage including the foundations; and a Coastal Development Permit for development on 30% slope for grading (approximately 10 cu. yds.) of a temporary access road crossing the adjacent property (APN: 241-201-023-000). The property is located at 226 Peter Pan Road, Carmel (Assessor's Parcel Numbers 241-201-022-000 & 241-201-023-000), east of Highway One, in the Carmel Highlands Area, Coastal Zone. 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 Demolition, Grading and Building Permits:

2. The applicant shall record a notice that states: "A permit (Resolution 04014) was approved by the Planning Commission for Assessor's Parcel Number 241-201-022-000 and 241-201-023-000 on March 31, 2004. The permit was granted subject to 13 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)**
3. 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)**
4. The applicant shall obtain a grading permit. The grading plans shall reflect the grading allowed by this permit for the temporary access road. **(Planning and Building Inspection)**
5. Prior to issuance of grading or demolition permits, the applicant shall submit an erosion control plan and drainage plan prepared by a qualified engineer. All cut and/or fill slopes exposed during the course of construction shall be covered, seeded with native grasses or otherwise treated to control erosion in coordination with the consulting biologist and on-site drainage shall be managed to dissipate safely in a controlled manner, subject to the approval of the Director of Planning and Building Inspection. The improvement and grading plans shall include an implementation schedule of measures for the prevention and control of erosion, siltation and dust during and immediately following construction and until erosion control planting becomes established. This program shall be approved by the Director of Planning and Building Inspection. **(Planning and Building Inspection)**.
6. Individual native trees, which are located close to the construction site, shall be protected from inadvertent damage from construction equipment by 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 shall be demonstrated prior to issuance of building or demolition permits subject to the approval of the Director of Planning and Building Inspection. Measures for special protection of vulnerable root areas as recommended in the Forest Management Plan prepared by Stephen Staub, dated April 2003 shall be implemented. Prior to demolition or grading activities, the applicant shall also submit documentation that a qualified forester that has reviewed the plans and has consulted with the contractor about the recommended special protection measures. **(Planning and Building Inspection)**
7. 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)**

8. Prior to issuance of building or grading permits, obtain an encroachment permit from the Department of Public Works to construct and maintain the temporary driveway connection to Peter Pan Road. **(Public Works)**
9. Prior to issuance of building or grading permits, submit a plot plan to the Division of Environmental Health for approval showing the locations of all existing septic systems on the property. Any sewage disposal system or part thereof will require proper abandonment as specified in Monterey County Code, Chapter 15.20. A permit for the system abandonment shall be obtained from the Monterey County Health Department. **(Environmental Health)**

Prior to Final Building Inspection/Occupancy:

10. The site shall be revegetated and include restoration and revegetation of the temporary access road to the satisfaction of the Director of Planning and Building Inspection. At least three weeks prior to anticipated final, three copies of a revegetation plan for exposed or graded areas shall be submitted to the Director of Planning and Building Inspection for approval. A plan review fee is required for this project. Fees shall be paid at the time of plan submittal. The revegetation plan shall be in sufficient detail to identify the location, specie, and size of the proposed materials and shall be accompanied by a nursery or contractor's estimate of the cost of installation of the plan. Before final, revegetation 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)**
11. The revegetation plan shall include measures, such as irrigation and other measures as necessary, to ensure that revegetation of the site and disturbed areas is established within six (6) weeks of planting or prior to the start of the rainy season (October 15), whichever comes first. **(Planning and Building Inspection)**

Continuous Permit Conditions:

12. If during the course of construction activity on the subject property, cultural, archaeological, historical, paleontological resources are uncovered at the site (surface or subsurface resources) work shall be halted immediately within 50 meters (165 feet) of the find until it can be evaluated by a qualified professional archaeologist. The Monterey County Planning and Building Inspection Department and a qualified archaeologist (i.e., an archaeologist registered with the Society of Professional Archaeologists) shall be immediately contacted by the responsible individual present on-site. When contacted, the project planner and the archaeologist shall

immediately visit the site to determine the extent of the resources and to develop proper mitigation measures required for the discovery. **(Planning and Building Inspection)**

13. All revegetated and landscaped areas 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)**

PASSED AND ADOPTED this 31st day of March 2004, by the following vote:

AYES: Errea, Sanchez, Hawkins, Padilla, Vandever, Parsons, Diehl, Salazar, Rochester, Wilmot
NOES: None
ABSENT: None

JEFF MAIN, SECRETARY

COPY OF THIS DECISION MAILED TO APPLICANT ON

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

THIS APPLICATION IS ALSO APPEALABLE TO THE COASTAL COMMISSION. UPON RECEIPT OF NOTIFICATION OF THE DECISION BY THE BOARD OF SUPERVISORS, THE COMMISSION ESTABLISHES A 10 WORKING DAY APPEAL PERIOD. AN APPEAL FORM MUST BE FILED WITH THE COASTAL COMMISSION. FOR FURTHER INFORMATION, CONTACT THE COASTAL COMMISSION AT (831) 427-4863 OR AT 725 FRONT STREET, SUITE 300, SANTA CRUZ, CA

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 Marina.

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