

In the matter of the application of
Anthony & Gillian Thornley TRS (PLN060510)

FINDINGS AND DECISION

to allow a **Combined Development Permit** in accordance with Title 21 (Zoning) Chapter 21.76 (Combined Development Permits) of the Monterey County Code, consisting of: (1) an Administrative Permit and Design Approval to allow the construction of a 12,843 square foot two-story single family dwelling with an attached four-car garage, (2) an Administrative Permit and Design Approval for a detached 762 square foot senior unit, and (3) a Design Approval for a 542 square foot detached Guesthouse, an Equestrian Facility (3,710 square foot stable and 1,450 square foot hay barn/three-car garage), the removal of twenty-eight Monterey Pine trees and Grading (8,982 cubic yards of cut/9,075 cubic yards of fill). The property is located at 9 Goodrich Trail, Carmel (Assessor's Parcel Number 239-102-019-000), Carmel Valley Master Plan Area, came on regularly for meeting before the Zoning Administrator on February 22, 2007.

Said Zoning Administrator, having considered the application and the evidence presented relating thereto,

- FINDING: INCONSISTENCY** – The project, as proposed, does not conform to, or is not consistent with, the policies, requirements, and standards of the Monterey County General Plan, the Carmel Valley Master Plan, Monterey County Zoning Ordinance (Title 21), the Supplemental Environmental Impact Report (EIR No. 03-02), Combined Development Permit PLN010001 (Board of Supervisors Resolution No. 05-046), and the Santa Lucia Preserve Phase E Map (Volume 23 Cities & Towns Page 7). Specifically the project is inconsistent with Monterey County General Plan Policy 7.1.1, Carmel Valley Master Plan goal 3 and policy 7.1.1.1 (impacts minimized), Monterey County Zoning Ordinance Section 21.66.020.D.2 and Section 21.66.020.D.3, SEIR Mitigation Measure 11.1, Resolution No. 05-046 Condition No. 57, and the Santa Lucia Preserve Map Note No. 50.

EVIDENCE: (a) On February 15, 2005, Phase E of the Santa Lucia Preserve/Rancho San Carlos Partnership (Potrero Area Subdivision – [PLN010001]), a Standard Subdivision, was approved by the Board of Supervisors (BOS) subject to 132 conditions. At that meeting the BOS certified the Supplemental Environmental Impact Report (SEIR), per Resolution No. 05-046. The Potrero Area Subdivision application consists of the division of a 1,286 acre parcel into 29 lots ranging in size from 14.47 to 67.21 acres, grading (approximately 29,600 cubic yards), a Use Permit to allow the removal of up to 295 protected trees, and a Use Permit to allow development on slopes in excess of 30 percent. The subject parcel, Lot E 16, is one of the 29 lots resulting from the approval. As part of the approved subdivision, Homeland delineations were established prior to the recordation of the final map. Homelands are similar to recorded "building sites" in that development is restricted within the Homeland boundary. The project site plan illustrates an "Equestrian Facilities Only Zone" established by the Covenants, Conditions and Restrictions, or CC & R's, where only structures relating to equestrian facilities may be located.

- (b) On February 13, 2007, new sets of revised plans were submitted. Evaluation of the project takes in to account the sets of plans submitted on February 13, 2007, specifically in terms of tree counts.
- (c) According to the Biological Resources chapter (Chapter 11) contained in the SEIR for PLN010001 (EIR No.03-02), the subject parcel, Lot E16, contains the only Homeland boundary with a stand of Monterey pines "extensive enough to be mapped as a Monterey pine forest." The Biological Assessment for the Potrero Area Subdivision prepared by Denise Duffy & Associates, Inc. (July 2003) recognizes that "Monterey pine forest . . . [is a] sensitive habitat type that [is] of limited occurrence in the vicinity . . ." and that this Monterey pine forest "lies within one of three limited areas along the California coast in which Monterey pine is native." The Biological Assessment observed that Lot 16 contains "Seven mature Monterey pines . . . relatively widely spaced and the areas under and between the trees are vegetated with a dense cover dominated by grasses, largely native coastal prairie bunch grasses." It also observed that "all ages classes of Monterey pine are present" . . . and that "Monterey pine is expanding within the envelope, with a number of seedling- and sapling-sized trees located at some distance from the mature trees." It also observed that "In envelope 16, sizable stands of Monterey pine occur, with good reproduction and all age classes present." Monterey pines are listed as a 1B.1 status by California Native Plant Society. The Monterey pine tree is state ranked at S1.1. The unique pine forest/savanna meets the definition of environmentally sensitive habitat in the SEIR and related biological assessment and as such is considered environmentally sensitive habitat as defined in applicable County plans and regulations.
- (d) The project, as proposed, is inconsistent with Monterey County General Plan Policy 7.1.1 because the project does not provide for the conservation and maintenance of the Monterey pine forest/savanna contained on the project site given that it is a limited and threatened resource. The project proposes to remove 68% of the unique Monterey pine forest/savanna (the project proposes to remove 29 of 42 Monterey pines located in the center of the stand and within the Homeland boundary, a building envelope, recorded in Volume 23 Cities & Towns Page 7).
- (e) The proposed project is inconsistent with Carmel Valley Master Plan Goal number 3 to protect natural resources with emphasis on biological communities. The project removes 68% of the sensitive Monterey pine forest/savanna thereby not protecting and for the most part eliminating that limited unique biological community of the Monterey pine forest/savanna on the project site and in the general area.
- (f) The project proposal occupies the most biologically significant portion of the property within the Homeland boundary given that the project proposes removal 68% of the unique Monterey pine forest/savanna (the project proposes to remove 29 of 42 Monterey pines located in the center of the stand. There are areas within the Homeland boundary that do not contain Monterey pine forest that the residence can be built in. Therefore, the project is inconsistent with Carmel Valley Master Plan Policy 7.1.1.1.
- (g) The EIR No. 03-02 mitigated potentially adverse impacts to the Monterey pine forest/savanna by requiring that Monterey pine tree removal be minimized. Potentially significant adverse impacts to the Monterey pine forest are not reduced since Monterey pine tree removal is not minimized as required by Mitigation 11.1 of the EIR for the Potrero Area Subdivision. Therefore, the project is not

consistent with Monterey County Zoning Ordinance Section 21.66.020.D.2 as the mitigation is not adhered to and without the mitigation the removal remains a potentially significant adverse impact. In addition, the applicant's forester consultant has provided evidence showing that the Monterey pine forest/savanna has been degraded in the interim period between the time of the biological assessment (Biological Assessment for the Potrero Area Subdivision prepared by Denise Duffy & Associates, Inc., July 2003) was performed and the present conditions to include beetle infestations and deer rutting/furrowing. The consultant also concluded that some of the trees are in decline due to age.

- (h) The notes on the Santa Lucia Preserve Phase E Map (Volume 23 Cities & Towns Page 7) have been reviewed. Note No. 50 on the map (Mitigation 11.1 of SEIR No. 03-02; Condition of Approval No. 57 of Resolution No. 05-046 for PLN010001) states

"Avoid removal of Monterey pines to the greatest extent feasible through design. For the unavoidable removal of Monterey pines (due to vegetation density, topography or other factors), implement the tree replacement and protection measures specified in the Forest Management Plan for the Potrero Area Subdivision of the Santa Lucia Preserve. In addition to those protection measure, all individual specimens of Monterey pine less than 6" shall be relocated. Specimens over 6" and under 24" diameter that are proposed for removal shall either be relocated, or replanted at a 5:1 ratio. Individual trees greater than 24" diameter shall be avoided in place. Any Monterey pine replantings will use RSC on-site nursery stock. Applicants for individual lot development shall demonstrate to the satisfaction of the Planning and Building Inspection Department the necessity of the tree removal greater than what is approved in the chart enforced by condition 25 and outlined by the final lot-by-lot tree removal chart for the Potrero Area Subdivision and why removal cannot be avoided. Additionally, GMPAP Condition #24 relating to the monitoring of success of the replacement planting shall be applied to the Potrero Area Subdivision."

- (i) The project, as proposed, does not conform to Condition No. 57, which requires Monterey pine tree removal to be avoided to the greatest extent feasible by design. The project's representatives have not demonstrated that the number of Monterey pines proposed for removal is the minimum amount needed. Twenty-nine of the 42 Monterey pines (68%) within the homeland boundary are proposed for removal. The project's representatives met with County staff on December 15, 2006 and January 24, 2007 and expressed that the proposed location of the main residence is the most desirable location for the land owner. However, staff's analysis indicates that alternative locations exist, within the 5.1 acre homeland boundary, away from the significant Monterey pine forest, that would reduce or eliminate the removal of Monterey pines. As identified during the Zoning Administrator meeting of February 22, 2007, areas for alternative development include: the north slope towards the road off the knoll; areas north on the saddle and adjacent to the Oak stand which could include limited removal and design incorporation of the Oak stand with a Use Permit; and areas east toward the equestrian area. Driveway modification could include use of the existing road through the southerly portion of the Monterey pine forest/savanna to provide for greater areas on the identified alternative sites. Modification of the Equestrian Facilities Only Zone, established by the CC& R's, to provide for larger development site in the easterly area is also an option.

- (j) The replacement ratio, as proposed, is not in conformance with Condition No. 57, which requires 5:1 replacement for Monterey pines between 6" and 24" and relocation for Monterey pines under 6". The proposed replacement is 3:1 for Monterey pines between 6" and 24" and none for Monterey pines under 6". As identified during the Zoning Administrator meeting of February 22, 2007, the applicant's consultant arborist advised that tree transplantation and replacement is problematic and leads one to conclude that the rate of long term success was questionable and not certain.
- (k) Condition No. 57 does not allow any Monterey pines 24" or more in diameter to be removed. The project does not comply as two of the four (50%) Monterey pines 24" or more in diameter are proposed to be removed.
- (l) The project planner conducted a site visit on August 22, 2006 to verify that the project on the subject parcel conformed to the plans submitted on September 20, 2006. A second site visit was conducted on February 2, 2007 to photograph the subject parcel. The plans submitted on February 13, 2007 reflect the same physical site characteristics that existed on the subject parcel during the two previous site visits.
- (m) The project was not referred to the Carmel Valley Land Use Advisory Committee for review. Based on the current review guidelines adopted by the Monterey County Board of Supervisors per Resolution No. 05-046, this application did not warrant referral to the LUAC because the project does not involve slope restrictions, does not involve ridgeline/viewshed development, and is exempt from CEQA. Additionally, the project does not involve a Lot Line Adjustment or a variance.
- (n) The application, project plans (as revised and submitted on February 13, 2007), and related support materials submitted by the project applicant to the Monterey County RMA - Planning Department for the proposed development found in Project File No. PLN060510.
- (o) Potrero Area Subdivision Supplemental Environmental Impact Report (EIR No. 03-02).
- (p) Biological Assessment for the Potrero Area Subdivision prepared by Denise Duffy & Associates, Inc., July 2003.
- (q) Board of Supervisors Resolution No. 05-046 for PLN010001.

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, Carmel Valley Fire Protection District, Parks, 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.
 - (b) The property is located at 9 Goodrich Trail, Carmel (Assessor's Parcel Number 239-102-019-000), Carmel Valley Master Plan. The 32.2 acre parcel is zoned Rural Grazing/10 acres per unit-Design Control-Site Plan Review-Residential Allocation ("RG/10-D-S-RAZ"). The subject property complies with all the rules and regulations pertaining to zoning uses and any other applicable provisions of Title 21.
 - (c) The subject parcel, Lot E 16, is one of the 29 lots resulting from the approval of Resolution No. 05-046. As part of the approved subdivision, Homelands delineations were established prior to the recordation of the final map. Homelands are similar to recorded "building sites" in that development is restricted within the

Homeland boundary. The project site plan illustrates an "Equestrian Facilities Only Zone" established by the Covenants, Conditions and Restrictions, or CC & R's, where only structures relating to equestrian facilities may be located.

- (d) A report by outside environmental consultants indicated that this site is suitable for the equestrian use. The following reports have been prepared:
"Revised Rancho San Carlos Cattle Grazing and Livestock Management Plan" (LIB060650) prepared by Sage Associates, Montecito, CA, April 6, 1998).
- (e) A letter from Sage Associates (dated May 3, 2005, Exhibit H) designated Lot E16 as a full-time horsekeeping lot. The *Revised Rancho San Carlos Cattle Grazing and Livestock Management Plan* states that "owners of full-time horsekeeping lots may keep horses on their property" and "Permanent facilities shall be sited on designated areas of the Homeland site."
- (f) Materials in Project File No. PLN060510.

3. **FINDING:** CEQA - Project File No. PLN060510 is statutorily exempt per CEQA Guidelines Section 15270 which exempts project which are disapproved. The project is inconsistent with County plans and policies and is inconsistent with the requirements for mitigation of significant impacts to a less than significant level as provided for in the Supplemental Environmental Impact Report adopted for the Potrero Area Subdivision, EIR No. 03-02 because of the potential for significant impact to the unique Monterey pine forest/savanna from the subject project.

EVIDENCE:

- (a) A Supplemental Environmental Impact Report was adopted for the Potrero Area Subdivision, EIR No. 03-02.
- (b) According to the Biological Resources chapter (Chapter 11) contained in the SEIR for PLN010001 (EIR No.03-02), the subject parcel, Lot E16, contains the only Homeland boundary with a stand of Monterey pines "extensive enough to be mapped as a Monterey pine forest." The Biological Assessment for the Potrero Area Subdivision prepared by Denise Duffy & Associates, Inc. (July 2003) recognizes that "Monterey pine forest . . . [is a] sensitive habitat type that [is] of limited occurrence in the vicinity . . ." and that this Monterey pine forest "lies within one of three limited areas along the California coast in which Monterey pine is native." The Biological Assessment observed that Lot 16 contains "Seven mature Monterey pines . . . relatively widely spaced and the areas under and between the trees are vegetated with a dense cover dominated by grasses, largely native coastal prairie bunch grasses." It also observed that "all ages classes of Monterey pine are present" . . . and that "Monterey pine is expanding within the envelope, with a number of seedling- and sapling-sized trees located at some distance from the mature trees." It also observed that "In envelope 16, sizable stands of Monterey pine occur, with good reproduction and all age classes present." Monterey pines are listed as a 1B.1 status by California Native Plant Society. The Monterey pine tree is state ranked at S1.1. The unique pine forest/savanna meets the definition of environmentally sensitive habitat in the SEIR and related biological assessment and as such is considered environmentally sensitive habitat as defined in applicable County plans and regulations.
- (c) The notes on the Santa Lucia Preserve Phase E Map (Volume 23 Cities & Towns Page 7) have been reviewed. Note No. 50 on the map (Mitigation 11.1 of SEIR No. 03-02; Condition of Approval No. 57 of Resolution No. 05-046 for PLN010001) states

“Avoid removal of Monterey pines to the greatest extent feasible through design. For the unavoidable removal of Monterey pines (due to vegetation density, topography or other factors), implement the tree replacement and protection measures specified in the Forest Management Plan for the Potrero Area Subdivision of the Santa Lucia Preserve. In addition to those protection measure, all individual specimens of Monterey pine less than 6” shall be relocated. Specimens over 6” and under 24” diameter that are proposed for removal shall either be relocated, or replanted at a 5:1 ratio. Individual trees greater than 24” diameter shall be avoided in place. Any Monterey pine replantings will use RSC on-site nursery stock. Applicants for individual lot development shall demonstrate to the satisfaction of the Planning and Building Inspection Department the necessity of the tree removal greater than what is approved in the chart enforced by condition 25 and outlined by the final lot-by-lot tree removal chart for the Potrero Area Subdivision and why removal cannot be avoided. Additionally, GMPAP Condition #24 relating to the monitoring of success of the replacement planting shall be applied to the Potrero Area Subdivision.”

- (d) The project, as proposed, does not conform to Condition No. 57, which requires Monterey pine tree removal to be avoided to the greatest extent feasible by design. The project’s representatives have not demonstrated that the number of Monterey pines proposed for removal is the minimum amount needed. The project proposes removal of 68% of the unique Monterey pine forest/savanna which represents removal of 29 of 42 Monterey pines located in the center of the stand. The project’s representatives met with County staff on December 15, 2006 and January 24, 2007 and expressed that the proposed location of the main residence is the most desirable location for the land owner for views of the ocean. As identified during the Zoning Administrator meeting of February 22, 2007, areas for alternative development include: the north slope towards the road off the knoll; areas north on the saddle and adjacent to the Oak stand which could include limited removal and design incorporation of the Oak stand with a Use Permit; and areas east toward the equestrian area. Driveway modification could include use of the existing road through the southerly portion of the Monterey pine forest/savanna to provide for greater areas on the identified alternative sites. Modification of the Equestrian Facilities Only Zone, established by the CC& R’s, to provide for a larger alternative development site in the easterly area is also an option.
- (e) The replacement ratio, as proposed, is not in conformance with Condition No. 57, which requires 5:1 replacement for Monterey pines between 6” and 24” and relocation for Monterey pines under 6”. The proposed replacement is 3:1 for Monterey pines between 6” and 24” and none for Monterey pines under 6”.
- (f) Condition No. 57 does not allow any Monterey pines 24” or more in diameter to be removed. The project does not comply as two of the four (50%) Monterey pines 24” or more in diameter are proposed to be removed.
- (g) Removal of Monterey pine habitat may present a secondary adverse effect on non-listed wildlife species which utilize this habitat, as identified in EIR No. 03-02. EIR No. 03-02 (page 11-22) and the Biological Assessment for the Potrero Area Subdivision (prepared by Denise Duffy & Associates, Inc., July 2003) observed potential roosting habitat for bats and wood pecker cavities in Monterey pines greater than 24” in diameter. Additionally, the EIR No. 03-02 (page 11-22) and the Biological Assessment noted that some diurnal raptors, especially white-tailed

kites, a state protected species, nest in Monterey pines. Although a project specific biological report was not submitted, the arborist's report notes evidence of that deer use the Monterey Pine Forest habitat on the subject parcel.

- (h) Although an EIR was prepared for the subdivision, and given that among other mitigations, Mitigation #57 was to ensure that significant impacts were reduced to a level of insignificance for subsequent site development, there may be a potentially significant impact to the unique Monterey pine forest/savanna habitat as provided for in the preceding findings and evidence. Under normal circumstances this would require additional environmental review and analysis. However, the Monterey County Resource Management Agency - Planning Department recommends denial. CEQA Guidelines Section 15270 statutorily exempts projects which are disapproved from additional environmental review.
- (i) See preceding and following findings and supporting evidence.

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. Zoning violation abatement costs, if any, have been paid.

EVIDENCE: Staff reviewed Monterey County RMA - Planning Department and the RMA - Building Services Department Monterey County records and is not aware of any violations existing on subject property.

5. **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: See Findings and Evidence #2

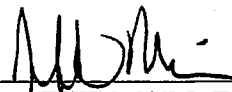
6. **FINDING: APPEALABILITY** - The decision on this project is appealable to the Planning Commission.

EVIDENCE: Section 21.80.040 Monterey County Zoning Ordinance Title 21.

DECISION

It is the decision of the Zoning Administrator of the County of Monterey that said application for a Combined Development Permit be denied.

PASSED AND ADOPTED this 22nd day of February 2007.



JEFF MAIN, ZONING ADMINISTRATOR

COPY OF THIS DECISION MAILED TO APPLICANT ON MAR 13 2007

IF ANYONE WISHES TO APPEAL THIS DECISION, AN APPEAL FORM MUST BE COMPLETED AND SUBMITTED TO THE SECRETARY TO THE PLANNING COMMISSION ALONG WITH THE APPROPRIATE FILING FEE ON OR BEFORE

MAR 23 2007

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.