

MONTEREY COUNTY PLANNING COMMISSION

Meeting: March 14, 2007	Time: 11:00A.M	Agenda Item No: 2
Project Description: Combined Development Permit consisting of: (1) an Administrative Permit and Design approval for the construction of a 5,818 square foot one-story single family dwelling with an attached 726 square foot three-car garage, 854 square feet of covered patios and a porta cochere; (2) a Use Permit for development on slopes in excess of 30% and (3) a Use Permit for the removal of 5 protected oak trees.		
Project Location: 25836 Paseo Real, Monterey		APN: 416-132-010-000
Planning File Number: PLN050671		Name: Magarich Primo LLC, Property Owner
Plan Area: Greater Monterey Peninsula Area		Flagged and staked: Yes
Zoning Designation: "LDR/B-6-VS (20)" or Low Density Residential, with Building Site Review and Visual Sensitivity Overlays and a 20 foot height limit.		
CEQA Action: Section 15061(b)(4) states that the California Environmental Quality Act does not apply to projects which a public agency rejects or disapproves.		
Department: RMA - Planning Department		

RECOMMENDATION:

Staff recommends that the Planning Commission deny the Combined Development Permit based on the Discussion (**Exhibit B**) and the Findings and Evidence (**Exhibit C**).

PROJECT OVERVIEW:

The subject property is a 3.8 acre parcel located at 25836 Paseo Real in Monterey (Assessor's Parcel Number 416-132-010-000) within the Hidden Hills Estates subdivision, approximately 1.25 miles south of Highway 68. The parcel is zoned "LDR/B-6-VS(20)" or Low Density Residential, with Building Site Review and Visual Sensitivity Overlay Districts and a 20 foot height limit. The subject property begins with a gentle grade at the southern property line and remains under 30% slope for approximately 120 feet north, then plateaus at the ridge top. Continuing north, in an area conserved within a scenic easement, the slope descends and steepens to approximately 45% and higher. The parcel contains vegetation such as native grasses and weeds in the south and heavily forested areas to the north. The building site is located approximately 40 feet south of the scenic easement line, near the top of a ridge. The project consists of the construction of a single family dwelling with an attached garage, grading and the removal of 5 protected oak trees. Development of the project requires an Administrative Permit and Design Approval pursuant to Section 21.46.030.D of the Monterey County Zoning Ordinance (Title 21) for the construction of structures within a Visual Sensitive District, a Use Permit pursuant to Section 21.64.230C.1 of Title 21 to allow development on slopes in excess of 30% and a Use permit pursuant to Section 21.64.260.D.3. of Title 21 for tree removal.

OTHER AGENCY INVOLVEMENT:

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

The above checked agencies and departments have reviewed this project.

The project was referred to the Greater Monterey Land Use Advisory Committee (LUAC) for review on April 5, 2006 and was denied with a 3-0 vote. The project was revised and heard again at the October 4, 2006. It was approved with a vote of 3-0 with the following recommendations: (1) the caretaker's unit be omitted; (2) the trees removed be replaced on a 3 to 1 ratio with established boxed trees; (3) the soils report be revised with the new building plan and (4) a condition be placed on the project requiring the applicant to maintain the forest on the Highway 68 side.

Note: The decision on this project is appealable to the Board of Supervisors.

Anna V Quenga
(831) 755-5175, quengaav@co.monterey.ca.us
February 20, 2006

cc: Planning Commission Members (10); County Counsel; Salinas Rural Fire Protection District; Public Works Department; Parks Department; Environmental Health Division; Water Resources Agency; Jacqueline Onciano, Planning & Building Services Manager; Anna V Quenga, Planner; Carol Allen; Magarich Primo LLC, Applicant; Roger A Cornejo AIA Architect Inc, Agent; File PLN050671.

Attachments: Exhibit A Project Data Sheet
Exhibit B Project Overview
Exhibit C Recommended Findings and Evidence
Exhibit D Site Plan, Floor Plan and Elevations
Exhibit E Forest Management Plan dated December 11, 2005
Exhibit F Forest Management Plan dated May 14, 2006
Exhibit G LUAC minutes dated April 5, 2006
Exhibit H LUAC minutes dated October 4, 2006

This report was reviewed by Jacqueline R. Onciano, Planning and Building Service Manager.

EXHIBIT A

Project Information for PLN050671

Project Title: MAGARICH PRIMO LLC

Location: 25836 PASEO REAL MONTEREY	Primary APN: 416-132-010-000
Applicable Plan: Greater Monterey Peninsula Area Plan	Coastal Zone: No
Permit Type: Combined Development Permit	Zoning: LDR/B-6-VS(20)
Environmental Status: Exempt	Plan Designation: LOW DENSITY
Advisory Committee: N/A	Final Action Deadline (884): 12/23/2006

Project Site Data:

Lot Size: 3.8 AC	Coverage Allowed: 25%
Existing Structures (sf): 0	Coverage Proposed: .04%
Proposed Structures (sf): 7,564	Height Allowed: 20'
Total Sq. Ft.: 7,564	Height Proposed: 15'
	FAR Allowed: N/A
	FAR Proposed: N/A

Resource Zones and Reports:

Environmentally Sensitive Habitat: No	Erosion Hazard Zone: HIGH
Biological Report #: N/A	Soils Report #:
Forest Management Rpt. #: LIB060554	
Archaeological Sensitivity Zone: MODERATE	Geologic Hazard Zone: VI
Archaeological Report #: N/A	Geologic Report #: N/A
Fire Hazard Zone: HIGH	Traffic Report #: N/A

Other Information:

Water Source: HIDDEN HILLS	Sewage Disposal (method): SEPTIC
Water Dist/Co: MPWMD	Sewer District Name: N/A
Fire District: SALINAS RURAL FIRE	Grading (cubic yds.): 2,200.0
Tree Removal: 5 OAKS	

EXHIBIT B DISCUSSION

Development in a VS District

The original project was submitted on March 8, 2006 and was later revised by the applicant due to visibility issues. The northern portion of the parcel, just south of the scenic easement line, is visible from Highway 68. The first proposal which included development on the ridge, coupled with extensive vegetation removal would have had the potential to create an adverse visual impact when viewed from Highway 68 and Laguna Seca, both common public viewing areas. Therefore the project was amended, the structures were relocated towards the south, away from the ridge and the amount of tree removal was reduced from 28 to 5. Although moving the structure 15 feet resulted in a reduction to the visual impact from Highway 68, it creates a greater impact to slopes in excess of 30% and tree removal is still required for grading and construction activities to take place.

Development on Slopes in Excess of 30%

The County of Monterey prohibits development on slopes in excess of 30% (Policy No. 26.1.10 of the Monterey County General Plan and Section 21.64.230 the Monterey County Zoning Ordinance) unless it can be found that there is no alternative location where development could take place on slopes less than 30%, or that the proposed development better achieves the resource protection objective and policies contained in the accompanying Area Plans. Staff has reviewed the project and is unable to make either finding.

Currently there exist feasible alternatives which would allow development to occur on slopes less than 30%. Approximately one third of the subject property is contained within a scenic easement, leaving roughly 2.5 acres of developable land. Of that 2.5 acres, approximately .86 of an acre has slopes that are 30% or greater. These areas are located just south of the scenic easement until they lessen (approximately 2-10%) at the plateau of the ridge and again increase in degree (greater than 30%) for approximately 80 feet, back down the ridge. After which, the slope lessens in degree (less than 30%) until you reach the southern property line. The subject property contains approximately 1.7 acres of land that has slopes less than 30%, leaving many options for alternative development locations.

Locating the structure in the current area will require tree removal and may cause some visibility of the roof line from Highway 68, a scenic corridor, which does not better achieve the goals, policies and objective of the Monterey County General Plan, the Greater Monterey Peninsula Area Plan or the Monterey County Zoning Ordinance, Title 21 for tree protection and visual sensitivity.

Tree Removal

Policies and Sections set forth in the Monterey County General Plan (Policy No. 7.2.2); the Greater Monterey Peninsula Area Plan [Policy No. 40.2.9(d)] and the Monterey County Zoning Ordinance (Section 21.64.260.D.5) require that any tree removal be the minimum necessary under the circumstances of each case. The project does not meet this requirement and therefore is inconsistent.

A thin strip of land to the south of the scenic easement, and the land within the scenic easement are the only areas on the subject property that contain oak trees. The proposed location of the structure is within this strip resulting in the removal of 5 oak trees ranging from 12 inches to 20

inches in diameter and many oaks under 6 inches in diameter. The remaining areas of the subject property, which are alternative areas for development, contain only native grasses and weeds, no trees or other protected vegetation.

Staff has found discrepancies between the Forest Management Plan (FMP) dated December 11, 2005 (LIB060177) and the FMP dated May 14, 2006 (LIB060554). Two trees found within the foot print of the structure are indicated to be less than 6 inches in the May 14th FMP; however, when compared to the December 11th FMP, the trees appear to be tree's No. 4 and 5, which are listed as 18 inch and 16 inch oak trees. Due to the size of these trees, they are protected and require a permit for removal; therefore they should have been included in the May 14th FMP as well as this Use Permit.

Staff has analyzed the project in conjunction with the Forest Management Plans (FMP) and the Geotechnical Report, and has concluded that grading and construction activities will have the potential the cause further tree removal than the proposed 5 oak trees. The site plan shows a multi-stemmed oak tree approximately 3 to 4 feet away from the North end of the structure. The FMP dated December 11th indicates that this tree, tree No. 2, has a 30 inch base. The Geotechnical report states that due to the slopes in the area of the construction of the residence, large amounts of cut and fill will be required. It also indicates that loose native soils are found to be located within the area of development and it is recommended that the loose soil be processed as engineered fill, requiring a minimum density of 90% compaction. These activities will adversely affect this tree and may require removal once construction activities have begun. Trees indicated as 8 (16 inch oak), 9 (6 inch oak) and 12 (a 10 inch and 12 inch multi-stemmed oak) on the December 11th FMP are also located either within the footprint or very close to a proposed retaining wall. Grade changes for the retaining wall as well as excavation for the footings will require the removal of tree No. 9, and will have a high probability of being detrimental to the health of trees No. 8 and 12. Impacts to trees No. 2, 8, 9 and 12 are not addressed in the May 14th FMP, they are not recommended for removal nor are they included with this application.

Conclusion

The project is not only inconsistent with the applicable policies but the project has the potential to require further tree removal once grading and construction activities have begun and the project is not subject to the California Environmental Quality Act (CEQA) for review. Therefore, staff recommends denial of the Combined Development Permit.

EXHIBIT C

RECOMMENDED FINDINGS AND EVIDENCE

1. FINDING: INCONSISTENCY – The project, as proposed, does not conform, or is not consistent with the policies, requirements, and standards of the Monterey County General Plan, the Greater Monterey Peninsula Area Plan, the Greater Monterey Peninsula Area Plan Inventory and Analysis and the Monterey County Zoning Ordinance (Title 21).

- EVIDENCE:**
- (a) The text, policies, and regulations in the above referenced documents have been evaluated during the course of review of applications and conflicts were found to exist. Communications from the public were received during the course of review of the project indicating inconsistencies with the text, policies, and regulations in these documents regarding visual sensitivity, development on 30% and tree removal.
 - (b) The property is located at 25836 El Paseo Real, Monterey (Assessor's Parcel Number 416-132-010-000), Greater Monterey Peninsula Area Plan. The parcel is zoned Low Density Residential, with Building Site Review and Visual Sensitivity Overlays and a 20 foot height limit ("LDR/B-6-VS (20)". The subject property complies with all the rules and regulations pertaining to zoning uses and any other applicable provisions of Title 21, and is therefore suitable for the proposed development. However, the location of the structures does not meet the requirements listed in Section 21.64.260.D.2.a (see finding No. 3) and Section 21.230.E (see finding No. 4) of Title 21.
 - (c) The project planner conducted site inspections on December 29, 2005; March 10, 2006 and October 25, 2006 to verify that the project on the subject parcel conforms to the plans listed above. The project does not.
 - (d) The subject property is located in the Hidden Hills Subdivision created in 1983, Volume 15, page 28 of the Cities and Towns map.
 - (e) The project was heard at the Greater Monterey Peninsula Land Use Advisory Committee (LUAC) for review on April 5, 2006. Public comment was submitted related to issues such as the size of the proposed structures, alternative development locations that would not require tree removal, drainage, the potential for ridgeline development and visibility of the proposed structures from Highway 68. The LUAC agreed with the comments and expressed additional concerns related to the proposed exterior colors and their impact to the visual character of the site. The LUAC recommended denial of the project with a vote of 3 to 0 with 1 member absent. The LUAC suggested that any changes to the proposed project should include relocation of the structures to reduce the amount of tree removal, reducing the size of the structures, revising the driveway to avoid 30% slope and reducing the amount of grading.
 - (f) The project was revised and brought back to the LUAC on October 4, 2006. Similar issues addressed at the April 5th hearing were submitted by the public and members of the LUAC. The LUAC recommended approval of the revised plans with a vote of 3 to 0 with 1 member absent and included the following changes: (1) omission of the caretakers unit; (2) trees removed be replaced on a 3 to 1 ratio with established boxed trees; (3) revision of the soils report to address the soil conditions at the new building location and (4) that a condition of approval be added which

requires the applicant to maintain the forest on the side facing Highway 68.

- (g) The application, project plans, and related support materials submitted by the project applicant to the Monterey County RMA - Planning Department for the proposed development found in Project File PLN050671.

2. FINDING: SITE SUITABILITY – The site is physically suitable for the use proposed. However there exist alternative locations on the site where the project would create little or no impact to 30% slope and no impact to existing vegetation.

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

- (b) Technical reports by outside arborist and geological consultants indicate that there are no physical or environmental constraints that would suggest that the site is not suitable for the use proposed. County staff concurs. The following reports have been prepared:

“Forest Management Plan” (LIB060177) prepared by Frank Ono, Pacific Grove, CA, Dated December 11, 2005.

“Forest Management Plan” (LIB060554) prepared by Frank Ono, Pacific Grove, CA, Dated May 14, 2006.

“Geotechnical Soils Foundation and Geoseismic Report” (LIB070076) prepared by Grice Engineering and Geology Inc., Salinas, CA, Dated February 2006.

- (c) Staff conducted site inspections on December 29, 2005; March 10, 2006 and October 25, 2006 to verify that the site is suitable for the residential use.
- (d) See Finding No. 3.
- (e) See Finding No. 4.
- (f) Materials in Project File PLN050671.

3. FINDING: DEVELOPMENT ON SLOPES IN EXCESS OF 30% - There exist feasible alternatives which would allow development to occur on slopes of less than 30%. The proposed development does not better achieve the goals, policies and objective of the Monterey County General Plan and the Greater Monterey Peninsula Area Plan than other development alternatives.

EVIDENCE: (a) Approximately one third of the subject property is contained within a scenic easement, leaving roughly 2.5 acres of developable land. Of that 2.5 acres, approximately .86 of an acre has slopes that are 30% or greater. These areas are located just south of the scenic easement until they lessen (approximately 2-10%) at the plateau of the ridge and again increase in degree (greater than 30%) for approximately 80 feet, back down the ridge. After which, the slopes lessen in degree (less than 30%) until you reach the southern property line. The subject property contains approximately 1.7 acres of land that has slopes less than 30%, leaving many options for alternative development locations.

- (b) Locating the structure in the current area will require tree removal and may cause some visibility of the roof line from Highway 68, a scenic corridor, which does not better achieve the goals, policies and objective of the Monterey County General Plan, the Greater Monterey Peninsula Area Plan or the Monterey County Zoning Ordinance, Title 21.
- (c) Policy No. 26.1.10 of the Monterey County General Plan prohibits development on slopes in excess of 30% with the exception that there exists no alternative which would allow development to occur on slopes of less than 30% or that the proposed development better achieves the resource protection objective and policies contained in the accompanying Area Plans. The proposed project does not meet either one of these, see preceding evidence.

4. FINDING: TREE REMOVAL - The tree removal is not the minimum necessary under the circumstances of this case.

- EVIDENCE:**
- (a) The land contained within the scenic easement and a small portion of land directly south of the easement line, are the only areas on the subject property that contain oak trees. The proposed location of development takes place within this area and will result in the removal of 5 oak trees ranging from 12 to 20 inches in diameter and many oaks under 6 inches in diameter.
 - (b) Staff has reviewed the conditions of the site and has found the remaining areas of the subject property, which are alternative areas of development, to contain only native grasses and weeds, no protected vegetation.
 - (b) Staff has found discrepancies between the Forest Management Plan (FMP) dated December 11, 2005 and the FMP dated May 14, 2006. Two trees found within the foot print of the structure are indicated to be less than 6 inches in the May 14th FMP; however, when compared to the December 11th FMP, the trees appear to be tree's No. 4 and 5, which are listed as 18 inch and 16 inch oak trees. Due to the size of these trees, they are protected and require a permit for removal; therefore they should have been included in the FMP dated May 14th as well as this Use Permit.
 - (c) Staff has analyzed the project in conjunction with the Forest Management Plans (FMP) and the Geotechnical Report, and has concluded that grading and construction activities will have the potential the cause further tree removal than the proposed 5 oak trees. The site plan shows a multi-stemmed oak tree approximately 3 to 4 feet away from the North end of the structure. The FMP dated December 11th indicates that this tree, tree No. 2, has a 30 inch base. The Geotechnical report states that due to the slopes in the area of construction, large amounts of cut and fill will be required. It also indicates that loose native soils are found to be located within the area of development and it is recommended that the loose soil be processed as engineered fill, requiring a minimum density of 90% compaction. These activities will adversely affect this tree and may require removal once construction activities have begun. Trees indicated as 8 (16 inch oak), 9 (6 inch oak) and 12 (a 10 inch and 12 inch multi-stemmed oak) on the December 11th FMP are also located either within the footprint or very close to a proposed retaining wall. Grade changes for the retaining wall as well as excavation for the footings will require the removal of tree No. 9, and will have a high probability of being detrimental to the health of trees No. 8 and 12. Impacts to trees No. 2, 8, 9

and 12 are not addressed in the May 14th FMP, they are not recommended for removal nor are they included with this application.

(d) Policy No. 7.2.2 of the Monterey County General Plan states that Landowners and developer shall be encouraged to preserve the integrity of existing terrain and natural vegetation in visually sensitive area such as hillsides and ridges. The location of the proposed structures near the top of the ridge which will require tree removal and is inconsistent with this policy.

(e) Policy No. 40.2.9(d) of the Greater Monterey Peninsula Area Plan states that where new development occurs in areas mapped as sensitive or highly sensitive (see Figure 17 of the Greater Monterey Peninsula Area Plan), tree removal shall be minimized. The amount of tree removal is not the minimum in this cast.

5. FINDING: CEQA (Exempt) - The project is exempt from environmental review.

EVIDENCE: (a) Section 15061(b)(4) states that the California Environmental Quality Act does not apply to projects which a public agency rejects or disapproves.

(b) See preceding and following findings and supporting evidence.

6. 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 Building Services Department records and is not aware of any violations existing on subject property.

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: Preceding findings and supporting evidence.

8. FINDING: APPEALABILITY - The decision on this project is appealable to the Board of Supervisors.

EVIDENCE: Section 21.80.050 Monterey County Zoning Ordinance, Title 21

