

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

RESOLUTION NO. 07008

A. P. # 416-132-010-000

FINDINGS AND DECISION

In the matter of the application of
Magarich Primo LLC (PLN050671)

WHEREAS: The Planning Commission, pursuant to regulations established by local ordinance and state law, has considered, at public hearing, a 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. The property is located at 25836 Paseo Real, Monterey, Greater Monterey Peninsula Area, and came on regularly for hearing before the Planning Commission on March 14, 2007.

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

FINDINGS OF FACT

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.

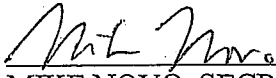
EVIDENCE: Section 21.80.050 Monterey County Zoning Ordinance, Title 21

DECISION

THEREFORE, it is the decision of said Planning Commission that said application for a Combined Development Permit be denied.

PASSED AND ADOPTED this 14th day of March, 2007, by the following vote:

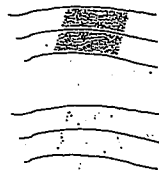
AYES: Errea, Padilla, Rochester, Diehl, Sanchez, Salazar, Vandevere
NOES: Brown, Isakson
ABSENT: Ottone


MIKE NOVO, SECRETARY

A COPY OF THIS DECISION WAS MAILED TO THE APPLICANT ON MAR 27 2007

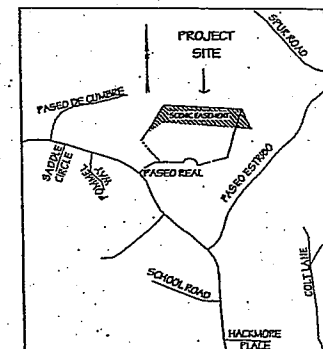
THIS APPLICATION IS APPEALABLE TO THE BOARD OF SUPERVISORS. IF ANYONE WISHES TO APPEAL THIS DECISION, AN APPEAL FORM MUST BE COMPLETED AND SUBMITTED TO THE CLERK OF THE BOARD OF SUPERVISORS ALONG WITH THE APPROPRIATE FILING FEE ON OR BEFORE APR - 6 2007

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.

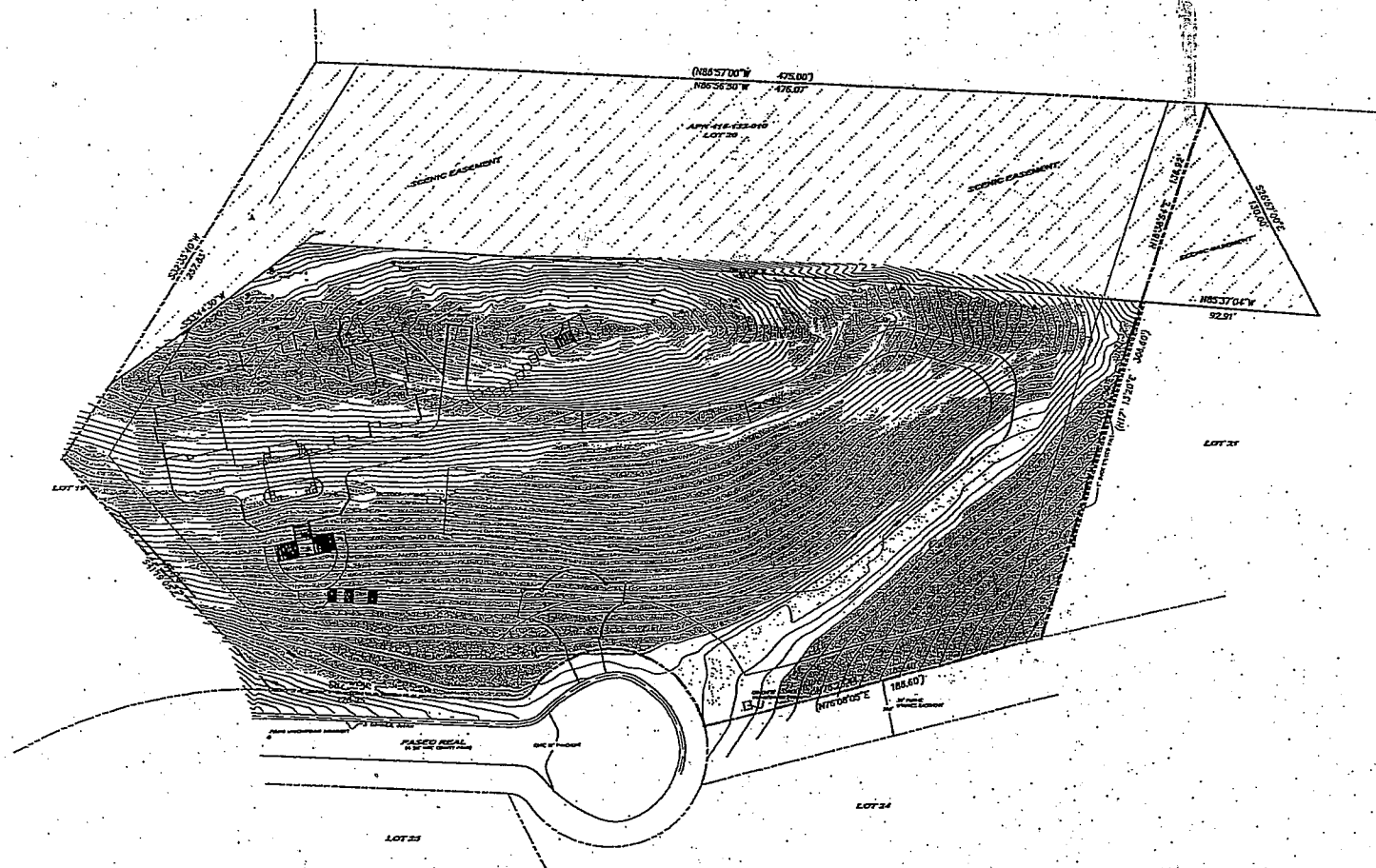


0 TO 29.9% SLOPES — 1.70 ACRES — 74155.42 SQ. FT. — 66.3%

30% SLOPES OR GREATER — 8.87 ACRES — 37727.21 SQ. FT. — 33.7%



LOCATION MAP
NOT TO SCALE



H. D. PETERS & CO.
ENGINEERING — SURVEYING — LAND PLANNING
1110 CENTRAL AVENUE — FIRST FLOOR — PASADENA, CALIFORNIA 92369 (951) 435-2700 FAX (951) 435-2701

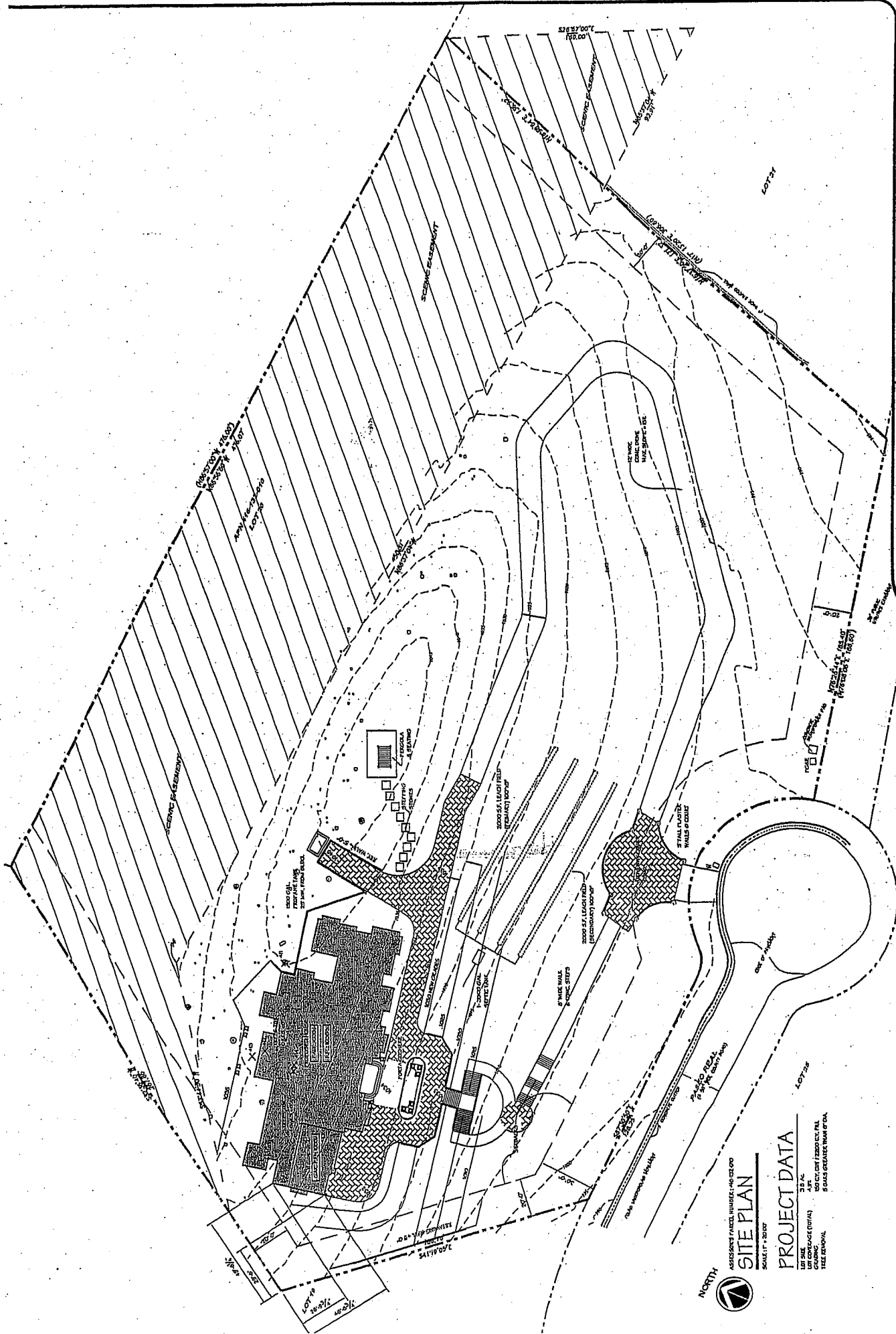
SLOPE DENSITY MAP
FOR
ASSESSOR PARCEL NUMBER: 416-132-010

PREPARED FOR
MAGARICH PRIMO LLC

SCALE 1" = 30' DRAWN J.R. JOB NO. 3678

DATE MARCH, 2008 DESIGNED FILE NO. PASEO REAL.GWG

SHEET
ONE
OF **ONE**



ASSOCIATES FANCL BUILDERS - 400 1000
SITE PLAN
 SCALE: 1" = 200'
 PROJECT DATA
 LOT AREA: 33 AC
 TOTAL LOT AREA: 100 AC
 TOTAL LOT AREA: 100 AC
 TOTAL LOT AREA: 100 AC

NEW RESIDENCE FOR:
MAGARICH PRIMO, LLC
 25836 EL PASEO REAL - BAY RIDGE
 MONTEREY - CALIFORNIA 93940

SHEET NO.
A-1
 OF 5 SHEETS

107 CHURCH STREET - SALINAS - CALIFORNIA 93901
 e-mail: rcomajopach@net

Phone: (831) 422-1046
 Fax: (831) 422-1952
 BY: SAC DATE: 5-6-06

ROGER A. CORNEJO
 ARCHITECT, INC.

0525

SCALE: VBS" = T-O'

AREA: 5,818 SF.

NEW RESIDENCE FOR:

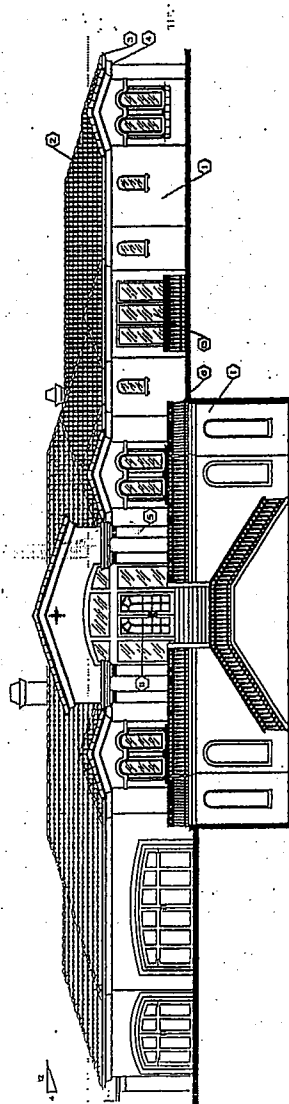
MAGARICH PRIMO, LLC
225836 EL PASEO REAL - BAY RIDGE
MONTEREY - CALIFORNIA 93940

התאחדות המורים

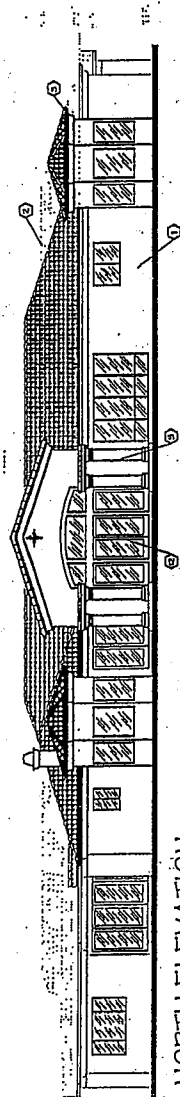
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Fax: (831) 422-1952

REVISED: 3-5-05
BY: SAC DATE: 3-5-05

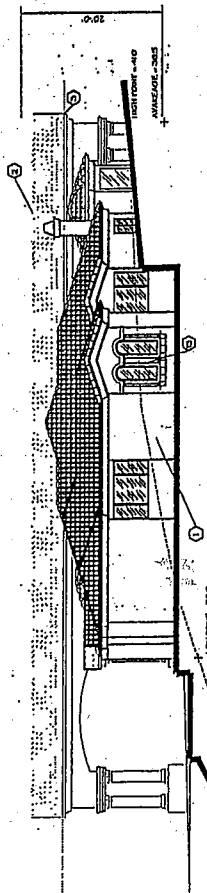
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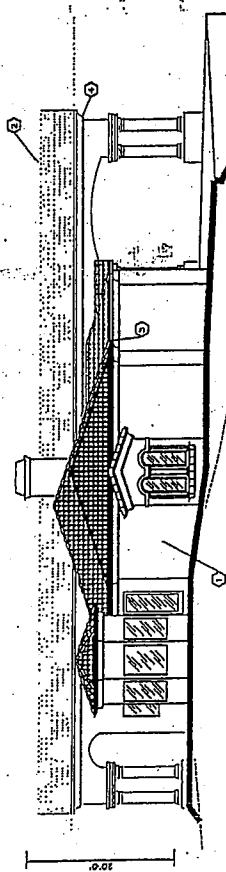
SOUTH ELEVATION
SCALE: 1/8" = 1'-0"



NORTH ELEVATION
SCALE: 1/8" = 1'-0"



EAST ELEVATION
SCALE: 1/8" = 1'-0"



WEST ELEVATION
SCALE: 1/8" = 1'-0"

FINISH SCHEDULE

- 1 EXTERIOR PLASTER (DOWNSIDE) & INTERIOR PLASTER (UPSIDE) GRADE UP
- 2 EXTERIOR PAINT - SATIN ENAMEL - WHITE
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NEW RESOURCE FOR:

MAGARICH PRIMO, LLC

25585 EL PASO REAL - BAY RIDGE

MONTEREY - CALIFORNIA 93940

SHEET NO. **A-3**

OF 3 SHEETS

107 CHURCH STREET - SALINAS - CALIFORNIA 93901

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ARCHITECT, INC.

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