

CALIFORNIA COASTAL COMMISSION

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W12g



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APPEAL STAFF REPORT

SUBSTANTIAL ISSUE DETERMINATION

Appeal number **A-3-MCO-05-055, George R. Roberts, Trust**

Applicants George R. Roberts, Trust

Appellant Commissioners Wan and Reilly

Local government Monterey County

Local decision Resolution 05026 (PLN040662) Approved with conditions on June 29, 2005

Project location 3212 Seventeen Mile Drive (APN 008-472-004); Pebble Beach, Monterey County.

Project description PLN040662 - Replace an existing 7,565 square foot, two-story residence (PLN010225/Abdullah) destroyed by fire with a new 14,182 square foot, two-story single family residence, with outdoor patio, detached 850 square foot caretaker's unit above a 850 square foot mechanical room/laundry/storage room, a 6-foot tall front perimeter fence, and attached 1-car carport. Project includes removal of five (5) Monterey pine trees; relocation of two (2) Monterey cypress trees; trimming of one (1) Monterey cypress; after-the-fact approval for removal and trimming of approximately forty-seven (47) Monterey pine and Monterey cypress trees; development within 100 feet of ESHA (Monterey cypress habitat); and development within 75 feet of archaeological resources.

File documents Monterey County Certified Local Coastal Program (LCP), including the Del Monte Forest Land Use Plan (LUP) and Coastal Implementation Plan (CIP); Monterey County Coastal Development Permit PLN040662, and file materials received 8/22/05.

Staff recommendation ... **Substantial Issue**

I. Recommended Findings and Declarations for Substantial Issue:

The Monterey County Planning Commission approved a Coastal Development Permit for the George R. Roberts Trust, to replace an existing 7,565 square foot, two-story residence (PLN010225/Abdullah), destroyed by fire, with a new 14,182 square foot, two-story single family residence, detached 850 square



California Coastal Commission
September 2005 Meeting in Eureka

Staff: K. Cuffe Approved by:

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foot caretaker's unit above a 850 square foot mechanical room/laundry/storage room, 6-foot tall front perimeter fence, and attached 1-car carport. The project also includes removal of five (5) Monterey pine trees, relocation of two (2) Monterey cypress trees, trimming of one (1) Monterey cypress, and after-the-fact approval for removal and trimming of approximately forty-seven (47) Monterey pine and Monterey cypress trees. The project involves development within 100 feet of ESHA (Monterey cypress habitat) and development within 75 feet of archaeological resources. The County's approval of this project has been appealed to the Coastal Commission on the basis that: (1) the project is inconsistent with LCP ESHA policies protecting Monterey cypress habitat; (2) the caretaker unit is inconsistent with LCP density limitations and development standards; (3) the project is inconsistent with LCP policies protecting scenic and visual resources in Del Monte Forest and along 17-Mile Drive; and (4) the project is inconsistent with LCP provisions protecting archaeological resources.

Project location maps and plans are attached as Exhibits A-C. Photos of the site are included in Exhibits D-G. The County's Final Local Action Notice (FLAN), approving the project (Planning Commission Resolution Number 05026), is attached to the report as Exhibit H. The submitted reasons for appeal are attached to this report as Exhibit I. The LCP provisions referenced by this staff report appeal are attached in full as Exhibit J.

The appeal contentions are valid as discussed below, and, thus, the Commission finds that the appeal raises a **substantial issue** regarding the project's conformance to the Monterey County certified LCP for the following reasons:

1. The appeal raises a substantial issue regarding project consistency with LCP ESHA policies protecting Monterey cypress habitat.

The project is located within the Monterey Cypress Forest, native only at Point Lobos Reserve State Park and along 17-Mile Drive between Cypress Point and Pescadero Point. The Monterey County LCP notes the rarity of this habitat and lists the Monterey cypress forest community as environmentally sensitive habitat area (ESHA). The site is mapped in the LCP as ESHA. The site also contains Monterey pine forest, which is a CNPS 1B listed species. LCP policies require that ESHA be protected against any significant disruption of habitat values, and that development be sited and designed to prevent impacts that would significantly degrade the protected habitat (Del Monte Forest LUP Policy #8). Del Monte Forest Policy #21 refers specifically to Monterey cypress habitat, and requires structures and driveways to be carefully sited and designed to avoid potential damage or degradation of the "micro-habitat" of these trees (i.e., the area inside the driplines of the outer-most indigenous Monterey cypress trees on site).

As approved by Monterey County, the redevelopment of the site will remove and degrade the sensitive forest habitat. The significant expansion in site coverage inappropriately necessitates the removal and relocation of mature trees and encroaches within the dripline of existing trees, raising clear issues of conformity with Policy #21, which requires protection of the habitat area being impacted. In addition, the expansion will damage the habitat values of the site and surrounding area by reducing the amount of land available for forest regeneration, and by extending the impacts associated with residential development further into the forest (e.g., light, noise, fire clearance needs, etc.), in conflict with Policy



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#8. Additional issues regarding the project's consistency with Policies #8 and #21 are raised by the after-the-fact approval of the significant tree trimming and removal project that occurred in early 2005 without proper permits (further discussed in contention 3, below), and habitat damage associated with unpermitted foundation work.

2. The appeal raises a substantial issue regarding project consistency with LCP density limitations and development standards.

The appeal asserts that project exceeds the density of development allowed the site's Residential land-use designation and LDR/5-D-RC(CZ) zoning, which establish a 1 unit per 5 acre density standard. Further review of this contention indicates that the zoning designation was amended to LDR/2-D-RC(CZ), which, along with the Residential land-use designation, allows a maximum of 1 unit per 2 acres. Nevertheless, the appeal contentions raise a substantial issue with regards to density limitation standards, because the County approval allows the project to exceed density limits (i.e., 1 unit per two acres). The site is 2.7 acres in size, so is allowed only one residential unit. Caretakers units are considered residential units for the purpose of calculating residential density pursuant to CIP Section 20.147.020.N.1 and the Del Monte Forest Land Use Plan (pg. 42). Thus, a house plus a caretaker house on this site would normally require 4 acres.

However, CIP Section 20.64.180.E allows caretakers units in Del Monte Forest, irrespective of parcel size, provided that such units are within the overall buildout for the area, as established by the Del Monte Forest LUP Table A. Section 20.64.180.G.3 requires that where a numerical cap on the type of unit in a certain area is so established, the Planning and Building Inspection Department is required to maintain a running tally of the number of units permitted since certification. This process is a critical step in addressing the water, sewer, and traffic constraints that are the basis of the resource constraint overlay applied by the LCP to the project area. In this case, no evidence or findings have been included indicating that such a tally has been conducted, nor that the project meets the residential dwelling cap established by Table A. To make such findings would require calculating existing buildout (and density) in the Pebble Beach planning area and comparing the result to the buildout allowed by the zoning. No such calculations have been presented nor referenced by the County's approval. As a result, the appeal raises a substantial issue regarding project compliance with LCP density standards.

Additional LCP standards for the development of caretaker residences that have not been adequately addressed include:

- Del Monte Forest LUP Policy #78a¹ and CIP Section 20.147.090.B.4.d², which require applicants to demonstrate the need for a detached caretaker unit (no such finding was included in the County's approval);
- CIP Section 20.147.090.B.4.f, which requires a review of site characteristics to determine if the site is capable of sustaining additional development consistent with the policies of the Del Monte Forest LUP. (As described above, development of additional residential dwellings raise issue of

¹ The appeal contentions mistakenly refer to LUP Policy 78. The correct reference is to Policy 78a.

² The appeal contentions mistakenly refer to 20.147.090B.4.a. The correct reference is to 20.147.090B.4.



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conformity with ESHA policies designed to preserve and protect the rare and extremely limited native Monterey cypress habitat);

- CIP Section 20.64.030.D, which requires specific findings and conditions for the approval of caretaker units (no such specific findings were included in the County's approval); and,
- CIP Section 20.147.090.B.4.k, which requires a deed restriction reflecting the regulations for caretaker's quarters (no such condition was included in the County's approval).

3. The appeal raises a substantial issue regarding project consistency with LCP policies protecting scenic and visual resources in Del Monte Forest and along 17-Mile Drive.

The project is within a highly prominent scenic area just north of the Lone Cypress lookout, and is visible from 17-Mile Drive and Point Lobos. Del Monte Forest LUP Policy #51 requires development within such visually prominent settings to be sited in a manner that maximizes opportunities to screen buildings and access roads from view. Policy #55 requires structural setbacks from scenic corridors, such as those along 17-Mile Drive, and requires that development be designed to harmonize with the natural setting and not be visually intrusive, among other ways by minimizing the need for tree removal. CIP Sections 20.147.070.C.6 and C.9 further implement these Land Use Plan policies, by prohibiting development within a 100-foot setback from the centerline of 17-Mile Drive, and requiring that land within the setback be placed in scenic easement.

While the County did condition the project to require that land within the 100-foot setback be placed in scenic easement, the project approved by the County substantially increases the amount of development on site that will intrude into views available from Point Lobos and the Lone Cypress lookout, and also allows removal of trees that are important components of the area's scenic character, and that would otherwise provide visual screening of the proposed new structures. The County's approval permits the after-the-fact removal and/or trimming of as many as forty-seven (47) trees (Monterey cypress and pine),³ removal of five (5) additional Monterey pines, and the relocation of two (2) Monterey cypress trees. Removal of such a large number of trees opens up the forest front, and visually exposes the site, raising a substantial issue regarding consistency with policies #51⁴ and #55 prescribe. Tree removal activities have also placed remaining trees at risk of damage from uprooting and wind-throw.

The project does propose replanting at least forty-two (42) new Monterey cypress and Monterey pines along the north property boundary (adjacent to 17-Mile Drive). While this may help to screen the new structures from view from 17-Mile Drive over time, it does nothing to screen views from Point Lobos or the Lone Cypress lookout. The proposed development nearly doubles the size of the previous house, sites the significantly expanded house on the blufftop, which is the most prominent and exposed location on site as viewed from Point Lobos and the Lone Cypress lookout, and requires the aforementioned tree

³ County records indicate that the project arborist estimated that winter storms in December 2004 and January 2005 resulted in damage to 47 trees, while Pebble Beach Company staff estimated the number closer to 20 trees.

⁴ The appeal contentions mistakenly refer to Del Monte Forest LUP Policy #52. The correct reference is to Del Monte Forest LUP Policy #51.



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removal. Thus, the project has not been sited nor designed to minimize tree removal, maximize screening opportunities, or harmonize with the surrounding natural environment. As a result, the appeal raises a substantial issue regarding project consistency with Policies #51 and #55.

Furthermore, CIP Section 20.147.070.C.8 requires fences between 17-Mile Drive and the sea to be designed and sited so that views from the road to the sea remain intact. The County approval allows for a six-foot high post and trellis fence (6" square openings) and a line of three-foot high shrubbery.⁵ While this approved design does not totally block views from the road to the sea, it will interfere with such views and therefore raises a substantial issue regarding consistency with CIP Section 20.147.070.C.8.

4. The appeal raises a substantial issue regarding project consistency with LCP provisions protecting archaeological resources.

The Del Monte Forest Land Use Plan requires new land uses to incorporate site planning and design features necessary to avoid impacts to archaeological resources. On sites where significant archaeological resources are identified, Land Use Plan Policy #62 requires the consideration of all available measures to avoid development on significant prehistoric or historic sites, including open space easements, dedication of scenic easements, and purchase of development rights. When there are such constraints that do not permit avoiding construction on archaeological or other types of cultural sites, Policy #65 requires preservation measures designed by qualified archaeologists.

Finding 2(i) of the County's Final Local Action Notice identifies that the site is located in a highly sensitive archaeological area, and states that evidence of potential significant cultural resources were found on site. County staff reports prepared for the project indicate that the development would extend into an area along the coastal bluff identified as a main midden area, as well as other known and potential midden sites. The appeal asserts that the County's approval of the project with conditions requiring mitigation and preservation measures does not comply with the requirement of Policy #62 to avoid archaeological resources where possible. This raises a substantial issue regarding the project's consistency with Policy #62 because there is no evidence that the project has been designed or conditioned to avoid impacts to archaeological resources where feasible.

II. Recommended Motion and Resolution

MOTION:

*I move that the Commission determine that Appeal No. A-3-MCO-05-055 raises **NO** substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act.*

STAFF RECOMMENDATION:

⁵ The County approved fence would replace a 7-foot high fence that was partially constructed by the former owner without permits.



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Staff recommends a **NO** vote. Failure of this motion will result in a *de novo* hearing on the application, and adoption of the following resolution and findings. Passage of this motion will result in a finding of No Substantial Issue and the local action will become final and effective. The motion passes only by an affirmative vote of the majority of the appointed Commissioners present.

RESOLUTION TO FIND SUBSTANTIAL ISSUE:

The Commission hereby finds that Appeal No. A-3-MCO-05-055 presents a substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act regarding consistency with the Certified Local Coastal Plan and/or the public access and recreation policies of the Coastal Act.

III. Appeal Procedures:

Coastal Act Section 30603 provides for the appeal of approved coastal development permits in jurisdictions with certified local coastal programs for development that is (1) between the sea and the first public road paralleling the sea or within 300 feet of the inland extent of any beach or of the mean high tideline of the sea where there is no beach, whichever is the greater distance; (2) on tidelands, submerged lands, public trust lands, within 100 feet of any wetland, estuary, or stream, or within 300 feet of the top of the seaward face of any coastal bluff; (3) in a sensitive coastal resource area; (4) for counties, not designated as the principal permitted use under the zoning ordinance or zoning district map; and (5) any action on a major public works project or energy facility. This project is appealable because it is between the first public road and the sea and is located within 300 feet of the top of the coastal bluff.

The grounds for appeal under Section 30603 are limited to allegations that the development does not conform to the standards set forth in the certified LCP or the public access policies of the Coastal Act. Section 30625(b) of the Coastal Act requires the Commission to conduct a *de novo* coastal development permit hearing on an appealed project unless a majority of the Commission finds that “no substantial issue” is raised by such allegations. Under Section 30604(b), if the Commission conducts a *de novo* hearing, the Commission must find that the proposed development is in conformity with the certified local coastal program. Section 30604(c) also requires an additional specific finding that the development is in conformity with the public access and recreation policies of Chapter 3 of the Coastal Act, if the project is located between the nearest public road and the sea or the shoreline of any body of water located within the coastal zone. This project is located between the first public road and the sea and thus, this additional finding would need to be made in a *de novo* review in this case.

The only persons qualified to testify before the Commission on the substantial issue question are the Applicant, persons who made their views known before the local government (or their representatives), and the local government. Testimony from other persons regarding substantial issue must be submitted in writing. Any person may testify during the *de novo* stage of an appeal.

