

MONTEREY COUNTY ZONING ADMINISTRATOR

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| Meeting: September 14, 2006 Time: 9:45A.M | Agenda Item No.: 5 |
| Project Description: Coastal Development Permit to allow development within 100 feet of environmentally sensitive habitat as part of implementation of the Moro Cojo Slough Management and Enhancement Plan. This portion of the plan includes the creation of two ponds for the purpose of watershed restoration located on the northwestern side of the property. One pond will be 12 acres in size with a maximum depth of 3.5 feet and the other will be 1.5 acres in size with a maximum depth of 2 feet. | |
| Project Location: Highway One and Moss Landing Road, Moss Landing | APNS: 133-151-022-000 & 133-151-023-000 |
| Planning File Number: PLN060310 | Name: Elkhorn Slough Foundation, owner/Scott Hennessy, Agent |
| Plan Area: North County Land Use Plan | Flagged and staked: No |
| Zoning Designation: "RC (CZ)" [Resource Conservation (Coastal Zone)] and "CAP (CZ)" [Coastal Agricultural Preserve (Coastal Zone)] | |
| CEQA Action: Categorically Exempt per CEQA Section §15307 | |
| Department: RMA - Planning Department | |

RECOMMENDATION:

Staff recommends that the Zoning Administrator approve the Coastal Development Permit based on the Findings and Evidence (**Exhibit C**) and subject to the recommended Conditions (**Exhibit D**).

PROJECT OVERVIEW: The Elkhorn Slough Foundation proposes to create two ponds for the purpose of watershed restoration located on the northwestern side of the property as part of the implementation of the Moro Cojo Slough Management and Enhancement Plan which was adopted by the Board of Supervisors on October 22, 1996. The restoration is located in fallow agricultural land that has not been used as Ag land within the last 15 years. One pond will be 12 acres in size with a maximum depth of 3.5 feet and the other will be 1.5 acres in size with a maximum depth of two feet. The sole purpose and net result of the enhancement project will be to increase the quantity of viable wetland habitat and to increase the quality of wetland habitat through increasing ecosystem diversity including increasing fresh water wetland habitat.

OTHER AGENCY INVOLVEMENT:

- ✓ North County Fire Protection District
- ✓ Public Works Department
- ✓ Parks Department
- ✓ Environmental Health Division
- ✓ Water Resources Agency
- ✓ North County Coastal Land Use Advisory Committee

The above checked agencies and departments have reviewed this project. Conditions recommended by the Planning Department have been incorporated into the condition compliance reporting plan (**Exhibit D**).

The North County Coastal Land Use Advisory Committee voted (3-0) to recommend approval of the project on August 7, 2006. The LUAC members stated that this is taking unproductive agricultural land and allowing an excellent use of it.

Note: The decision on this project is appealable to Board of Supervisors and the California Coastal Commission

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August 28, 2006

cc: Jeff Main, Zoning Administrator; North County Fire Protection District; Public Works Department; Parks Department; Environmental Health Division; Water Resources Agency; Carl Holm, Planning & Building Services Manager; Elizabeth A. Gonzales, Planner; Carol Allen, Scott Hennessy, Mark Silberstein, Gage Dayton, Applicants; Planning File PLN060310.

Attachments: Exhibit A Project Data Sheet
Exhibit B Project Overview
Exhibit C Recommended Findings and Evidence
Exhibit D Recommended Conditions of Approval
Exhibit E Land Use Advisory Committee Minutes from August 7, 2006 meeting
Exhibit F Site Plan, Elevation, and Photo

This report was reviewed by Bob Schubert, Senior Planner

EXHIBIT B PROJECT OVERVIEW

Background

The Moro Cojo Slough is a tributary of Elkhorn Slough and plays the same critical biological role like all wetlands play. Forty percent of what we call the Elkhorn Slough watershed actually drains into Moro Cojo Slough. So it's a big part of what the Elkhorn Slough Foundation (ESF) is dedicated to protecting. In 2003, The Foundation acquired 183 critical acres along the main channel of the Moro Cojo Slough. The acquired "Seamist" property adjoins the 207 acres protected by the ESF since 1998. Together these two properties form a 390 acre restorable wetland, one of the largest such tracts on the California Coast.



Setting

The 183 acres of Seamist property is irregular in shape with its long axis trending northwest to southeast. The property is totally enclosed by levees generally approximately six feet above the property with drainage ditches generally approximately six feet deeper than the property at their outside edges. The property was intermittently used for row crop agriculture in the 1940's, 1950's, and 1980's and was pumped dry and disked regularly up until 1998 when it was purchased by the Elkhorn Slough Foundation. With the absence of disking, plant cover is increasing and ecological succession is changing the composition of plant types on the property. With the absence of pumping, standing water is often present in the ditch along the inside border of the levees on the northeastern side of the property.

Proposal

The improvements proposed for the Seamist property are part of the implementation of the Moro Cojo Slough Management and Enhancement plan which was adopted by the Monterey County Board of Supervisors on October, 1996. The objectives of this project on the property are to reclaim and enhance wetland environment. It is proposed that two ponds be created on the north side of the property. One pond will be 12 acres in size with a maximum depth of 3.5 feet and the other will be 1.5 acres in size with a maximum depth of 2 feet. In addition to excavating the ponds themselves, the existing slope leading to the pond areas will be increased to conduct as much water as possible into the ponds. Soil excavation in the process of this construction will be used to fill the ditch along the inside border of the levees on the northeastern side of the property thus further concentrating standing water on the property in the ponds. Access to the

construction sites will simply be by driving over the higher, drier areas leading to the construction sites. No road construction is proposed.

After construction, removal of naturalized non-native plant species will take place followed by installation of native plants of local origin to create a viable natural ecosystem characteristic of similar environments in our local area. At its most basic, restoring wetland functions is a matter of adding water. During the past five years, drainage ditches have been decommissioned and ponds created using recycled irrigation water from nearby farms and the regional water treatment plant. Wetlands biologically convert or transform nutrients and chemicals in the water, so they are more easily disposed of. The end result is a reduction in chemicals flowing off the land and into the harbor and bay. The restored wetlands will reduce sediment and agricultural chemical runoff into the Monterey Bay National Marine Sanctuary. The restored wetlands will also help trap fresh water and thus maximize seepage into over-drafted aquifers. Most visibly, the restored lands will provide a wetland habitat for birds and other animals.

ESHA

Wetland Habitats are classified as environmentally sensitive habitat areas (ESHA) which are areas in which plant or animal life or their habitats are rare or especially valuable due to their special role in an ecosystem. The Coastal Act and Local Coastal Program consisting of North County Land Use Plan and Coastal Implementation Plan (Chapter 20.144.040) provide policies and regulations to protect ESHA. Due to its proximity to the Moro Cojo Slough (within 100 feet) and on the basis of biological, hydrological and soils criteria, much of the Seamist Elkhorn Slough Foundation property could qualify as wetland habitat.

All development, including vegetation removal, excavation, grading, filling, and construction of roads and structures shall be prohibited in environmentally sensitive habitat areas, i.e., wetlands. As an exception, resource dependent uses, where allowed by the North County Land Use Plan, are allowed within environmentally sensitive habitats only if such uses will not cause significant disruption of habitat values. (Policy 2.3.2.1 NCLUP)

Even though some impacts to limited biological values will occur through this project, the goal of the project is expansion and enhancement of the wetland habitat present on the site. Ultimately, the projected increases in both quality and wetland habitat will more than mitigate for any impacts that may occur.

CEQA

California Environmental Quality Act (CEQA) Guidelines Section §15307, categorically exempts actions taken by regulatory agencies as authorized by state law or local ordinance to assure the maintenance, restoration, or enhancement of a natural resource where the regulatory process involves procedures for protection of the environment.

A Management and Enhancement Plan *Final Report* was prepared in February 1996, and adopted by the Monterey County Board of Supervisors on October 22, 1996. An initial study was prepared for this report and a Negative Declaration was filed on May 2, 1996 with no comments. The Biological Report prepared July 2, 2006, states that no significant plant species were observed and no significant animal species were found on the Seamist Elkhorn Slough Foundation property.

EXHIBIT C
RECOMMENDED FINDINGS AND EVIDENCE

1. **FINDING: CONSISTENCY** – The project, as described in Condition No. 1 and as conditioned, conforms to the policies, requirements, and standards of the Monterey County General Plan, North County Land Use Plan, Monterey County Implementation Plan, Part 2 (Chapter 20.144), and the Monterey County Zoning Ordinance (Title 20), which designates this area as appropriate for development.

- EVIDENCE:** (a) The text, policies, and regulations in the above referenced documents have been evaluated during the course of review of applications. No conflicts were found to exist. No communications were received during the course of review of the project indicating any inconsistencies with the text, policies, and regulations in these documents.
- (b) The property is located at Highway One at Moss Landing Road, Moss Landing (Assessor's Parcel Numbers 133-151-022-000 & 133-151-023-000), North County Land Use Plan. The parcel is zoned Coastal Agricultural Preserve and Resource Conservation ("CAP (CZ) & RC (CZ)"). The subject property complies with all the rules and regulations pertaining to zoning uses and any other applicable provisions of Title 20, and is therefore suitable for the proposed development.
- (c) The project planner conducted a site inspection on August 11, 2006 to verify that the project on the subject parcel conforms to the plans listed above.
- (d) The project was referred to the Land Use Advisory Committee (LUAC) for review. The Committee voted (3 to 0) to recommend approval of the project, stating that this is taking unproductive agricultural land and allowing an excellent use of it.
- (f) 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 PLN060310.

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, North County 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. Conditions recommended have been incorporated.
- (b) Technical reports by an outside biological consultant indicated that there are not physical or environmental constraints that would indicate that the site is not suitable for the use proposed. County staff concurs. The following reports have been prepared:
"Biological Survey" (LIB060445) Ed Mercurio, Biological Consultant, July 2, 2006.
- (c) Staff conducted a site inspection on August 11, 2006, to verify that the site is suitable for this use.
- (d) Materials in Project File PLN060310.

3. **FINDING: ENVIRONMENTALLY SENSITIVE HABITAT AREAS (ESHA) -** Environmentally sensitive habitat areas (ESHA) are areas in which plant or animal life or their habitats are rare or especially valuable due to their special role in an ecosystem. The Coastal Act and Local Coastal Program consisting of North County Land Use Plan and Coastal Implementation Plan (Chapter 20.144.040) provide policies and regulations to protect ESHA.
- (a) As required by Section 20.144.040.A, the applicant provided a “Biological Report” prepared by Ed Mercurio, Biological Consultant, Salinas, CA, July 2, 2006. The report states that no special status species or habitat types are present on the property, and that even though some impacts to limited biological values will occur through this project, the goal of the project is expansion and enhancement of the wetland habitat present on the site.
 - (b) All development, including vegetation removal, excavation, grading, filling, and construction of roads and structures shall be prohibited in environmentally sensitive habitat areas, i.e., wetlands. As an exception, resource dependent uses, where allowed by the North County Land Use Plan, are allowed within environmentally sensitive habitats only if such uses will not cause significant disruption of habitat values. (Policy 2.3.2.1 NCLUP)
 - (c) An Initial Study was prepared previously for the Management Enhancement Plan and a Negative Declaration was filed May 2, 1996 pursuant to CEQA. The Initial Study provides substantial evidence based upon the record as a whole, that the project would not have a significant effect on biological resources.
4. **FINDING: CEQA (Exempt): -** The project is categorically exempt from environmental review.
- EVIDENCE:**
- (a) California Environmental Quality Act (CEQA) Guidelines Section §15307, categorically exempts actions taken by regulatory agencies as authorized by state law or local ordinance to assure the maintenance, restoration, or enhancement of a natural resource where the regulatory process involves procedures for protection of the environment.
 - (b) “Moro Cojo Slough Management and Enhancement Plan Final Report”, prepared by The Habitat Restoration Group, dated February, 1996 and approved by the Board of Supervisors on October 22, 1996.
 - (c) Initial Study prepared for Moro Cojo Slough Management and Enhancement Plan and a Negative Declaration filed on May 2, 1996 with no comments.
 - (d) “Biological Survey” prepared by Ed Mercurio, Biological Consultant, dated July 2, 2006.
5. **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:**
- (a) Staff reviewed Monterey County RMA - Planning Department and Building Services Department Monterey County records and is not aware of any violations existing on subject property.

6. **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) Preceding findings and supporting evidence

7. **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 Section 20.70.050.B.4 of Title 20). Public access is required as part of the project, however, there is no substantial adverse impact on public coastal 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 specified in Policy 6.3.3 of the North County 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 August 11, 2006

8. **FINDING: APPEALABILITY** - The decision on this project is appealable to the Board of Supervisors and the California Coastal Commission.

EVIDENCE: Sections 20.86.030 and 20.86.080 of Title 20 Zoning Ordinance (Part 1 of the Monterey County Coastal Implementation Plan).

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| EXHIBIT D Monterey County Resource Management Agency Planning Department Condition Compliance and/or Mitigation Monitoring Reporting Plan | Project Name: <u>Elkhorn Slough Foundation</u> File No: <u>PLN060310</u> APNs: <u>133-151-022 & 133-151-023-000</u> Approved by: <u>Zoning Administrator</u> Date: <u>September 14, 2006</u> |
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**Monitoring or Reporting refers to projects with an EIR or adopted Mitigated Negative Declaration per Section 21081.6 of the Public Resources Code.*

| <i>Permit Cond. Number</i> | <i>Mitig. Number</i> | <i>Conditions of Approval and/or Mitigation Measures and Responsible Land Use Department</i> | <i>Compliance or Monitoring Actions to be performed. Where applicable, a certified professional is required for action to be accepted.</i> | <i>Responsible Party for Compliance</i> | <i>Timing</i> | <i>Verification of Compliance (name/date)</i> |
|------------------------------------|--------------------------|---|--|---|---|---|
| 1. | | PBD029 - SPECIFIC USES ONLY This Coastal Development permit (PLN060310) allows development within 100 feet of environmentally sensitive habitat as part of implementation of the Moro Cojo Slough Management and Enhancement Plan. This portion of the plan includes the creation of two ponds for the purpose of watershed restoration located on the northwestern side of the property. One pond will be 12 acres in size with a maximum depth of 3.5 feet and the other will be 1.5 acres in size with a maximum depth of 2 feet. The property is located at Highway One and Moss Landing Road, Moss Landing (Assessor's Parcel Numbers 133-151-022 & 133-151-023-000), North County Area, Coastal Zone. This permit was approved in accordance with County ordinances and land use regulations subject to the following terms and conditions. Neither the uses 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 RMA - Planning Department. 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. [Resource Management Agency (RMA) - Planning Department] | Adhere to conditions and uses specified in the permit. | Owner/ Applicant | Ongoing unless other- wise stated | |

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| 2. | <p>PBD025 - NOTICE-PERMIT APPROVAL</p> <p>The applicant shall record a notice which states: "A permit (Resolution No. 060310) was approved by the Zoning Administrator for Assessor's Parcel Numbers 133-151-022 & 133-151-023-000 on September 14, 2006. The permit was granted subject to 4 conditions of approval, which run with the land. A copy of the permit is on file with the Monterey County RMA - Planning Department." Proof of recordation of this notice shall be furnished to the Director of RMA - Planning Department prior to issuance of building permits or commencement of the use. (RMA - Planning Department)</p> | Proof of recordation of this notice shall be furnished to RMA - PD | Owner/ Applicant | Prior to Issuance of grading and building permits or start of use. | |
| 3. | <p>PBD030 - STOP WORK - RESOURCES FOUND</p> <p>If, during the course of construction, cultural, archaeological, historical or 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 a qualified professional archaeologist can evaluate it. The Monterey County RMA - Planning 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. (RMA - Planning Department)</p> | Stop work within 50 meters (165 feet) of uncovered resource and contact the Monterey County RMA - Planning Department and a qualified archaeologist immediately if cultural, archaeological, historical or paleontological resources are uncovered. 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. | Owner/ Applicant/ Archaeologist | Ongoing | |

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| 4. | <p>PBD026 – NOTICE OF REPORT Prior to issuance of building or grading permits, a notice shall be recorded with the Monterey County Recorder which states: "A Biological report has been prepared for this parcel by Ed Mercurio, Biological Consultant, dated July 2, 2006 and is on record in the Monterey County Planning and Building Inspection Department Library No. LIB060445. All development shall be in accordance with this report." (RMA - Planning Department)</p> | Proof of recordation of this notice shall be furnished to PBI. | Owner/ Applicant | Prior to issuance of grading and building permits | |
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Rev. 08/06