

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

RESOLUTION NO. 03008

A. P. # 243-251-021-000

**FINDINGS AND DECISION**

In the matter of the application of  
**Hugh A. McAllister Jr. TR (PLN020347)**

WHEREAS: The Planning Commission, pursuant to regulations established by local ordinance and state law, has considered, at public hearing, a Combined Development Permit, located at 36654 Highway 1, near Garrapata Ridge Road, Big Sur area, came on regularly for hearing before the Planning Commission on February 12, 2003.

WHEREAS: Said proposal includes:

- 1) Coastal Development Permit to construct a new bluff-top retaining wall to protect an existing residence,
- 2) Coastal Development Permit for development on slopes exceeding 30%,
- 3) Coastal Development Permit for development within environmentally sensitive habitat, and
- 4) Design Approval

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

**FINDINGS OF FACT**

1. **FINDING: CONSISTENCY** - The Project, as conditioned is consistent with the Big Sur Land Use Plan, Coastal Implementation Plan (Part 3), of the Coastal Implementation Plan, and the Monterey County Zoning Ordinance (Title 20) which designates this area as appropriate for rural density residential development.

- EVIDENCE:**
- (a) PBI staff have reviewed the project as contained in the application and accompanying materials for consistency with the Big Sur Land Use Plan, Coastal Implementation Plan (Part 3), Part 6 of the Coastal Implementation Plan. PBI staff has reviewed the project as contained in the application and accompanying materials for conformity with the Monterey County Zoning Ordinance (Title 20) and have determined that the project is consistent with the Big Sur Land Use Plan which designates this area as appropriate for rural density residential development. Staff notes are provided in Project File PLN020347.
  - (b) Project planner conducted an on-site inspection on August 20, 2002 to verify that the project on the subject parcel conforms to the plans listed above.
  - (c) The project for an accessory structure is a conditionally allowed use in accordance with Section 20.16.040.E.
  - (d) The parcel is zoned Rural Density Residential, Coastal Zone "RDR (CZ)." The project is in compliance with Site Development Standards for a Rural Density Residential District in accordance with Section 20.16.060.
  - (e) **LAND USE ADVISORY COMMITTEE:** The Big Sur Land Use Advisory Committee recommended approval of the project by a vote of 4-0. LUAC meeting minutes dated August 27, 2002 (Exhibit "D").
  - (f) The project is consistent with the Monterey County Coastal Implementation Plan for Big Sur; Subsection 20.145.080: Hazardous Area Development Standards because grading and topographic change have been minimized and the design of the retaining

walls are consistent with the recommendations contained in the Geologic Report prepared for the project.

- (g) The application, plans, and support materials submitted by the project applicant to the Monterey County Planning and Building Inspection Department for the proposed development, found in Project File PLN020347.

2. **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, and all zoning violation abatement cost, if any, have been paid.

**EVIDENCE:** (a) Staff reviewed Monterey County Planning and Building Inspection Department records and is not aware of any violations that exist on subject property.

3. **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) The project was reviewed by Planning and Building Inspection, Public Works Department, Water Resources Agency, Environmental Health Division, Parks Department and North County Fire Protection District. The respective departments and agencies have recommended conditions, where appropriate, to ensure that the project will not have an adverse effect on the health, safety, and welfare of persons either residing or working in the neighborhood. The applicant has agreed to these conditions as evidenced by the application and accompanying materials and conditions.

(b) Technical reports have been provided by consulting geotechnical engineers with recommended conditions and modifications that provide additional assurances regarding project safety. "Geotechnical Engineering Investigation for Blufftop Retaining Wall," prepared by Haro, Kasunich and Associates, dated June, 2000; updated by Addendum on November 21, 2002. Reports are in Project File PLN020347.

4. **FINDING: SITE SUITABILITY** - The site is suitable for the use proposed.

**EVIDENCE:** (a) The project has been reviewed for suitability by Planning and Building Inspection, Public Works Department, Water Resources Agency, Environmental Health Division, California Department of Forestry and Fire Protection, and the California Coastal Commission. Conditions recommended have been incorporated.

(b) Technical reports by outside archaeology and geotechnical consultants indicate that there are no physical or environmental constraints such as geologic or seismic hazard areas or similar areas that would indicate the site is not suitable for the use proposed. "Preliminary Archaeological Reconnaissance of APN 243-251-021, Rocky Point, Monterey County, California." prepared by Archaeological Consulting, March 3, 1987. "Geotechnical Engineering Investigation for Blufftop Retaining Wall," prepared by Haro, Kasunich and Associates, dated June, 2000; updated by Addendum on November 21, 2002. Reports are in Project File PLN020347.

(c) Staff conducted an on-site visit on August 20, 2002 to verify that the site is suitable for this use.

(d) Necessary public facilities are available and will be provided.

5. **FINDING: CEQA:** On the basis of the whole record before the Planning Commission there is no substantial evidence that the proposed project as designed, conditioned and mitigated, will have

a significant effect on the environment. The mitigated negative declaration reflects the independent judgment and analysis of the County.

- EVIDENCE:** (a) The Monterey County Planning and Building Inspection Department prepared an Initial Study pursuant to CEQA. The Initial Study identified several potentially significant effects, but the applicant has agreed to proposed mitigation measures that avoid the effects or mitigate the effects to a point where clearly no significant effects would occur. The Initial Study is on file in the office of PB&I and is hereby incorporated by reference. (PLN020347). All project changes required to avoid significant effects on the environment have been incorporated into the project and/or are made conditions of approval. (Exhibit C)
- (b) A Condition Compliance and Mitigation Monitoring and Reporting Plan has been prepared in accordance with Monterey County regulations and is designed to ensure compliance during project implementation. Applicant must enter into an "Agreement to Implement a Mitigation Monitoring and/or Reporting Plan as a condition of project approval (condition #3, Exhibit "G")
- (c) Evidence that has been received and considered includes:  
 1) The application; 2) Initial Study for McAllister Retaining Walls, Monterey County – SCH #2002111118. November, 2002; 2) Haro, Kasunich and Associates, June, 2002. *Geotechnical Engineering Investigation for Blufftop Retaining Wall*. 3) \_\_\_\_\_, October 3, 2002. *Addendum Geotechnical Design Criteria*. 4) \_\_\_\_\_, November 21, 2002 *Response to Monterey County letter of October 14, 2002*. 5) Archeological Consulting, March 3, 1987. *Preliminary Archeological Resources Reconnaissance at APN 243-251-21*. 6) Jeff Norman, June 25, 2002. *Biological Report: McAllister Property, Rocky Point, Big Sur*. 7) \_\_\_\_\_, September 30, 2002. *Biological Report Addendum: McAllister Property, Rocky Point, Big Sur*.
- (d) The mitigated negative declaration was circulated for public review from November 27, 2002 to December 26, 2002.
- (e) No comments from the public were received.
- (f) The Monterey County Department of Planning and Building Inspection, located at 2620 1<sup>st</sup> Avenue, Marina CA, 93933, is the custodian of documents and other materials that constitute the record of proceedings upon which the decision to adopt the negative declaration is based

6. **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 20.70.050.B.4). No access is required as part of the project as no substantial adverse impact on 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 steep rocky shoreline and restricted access to the site make this location inappropriate for public access.
- (b) No evidence or documentation has been submitted or found showing the existence of historic public use or trust rights over this property.
- (c) Staff site visit on August 20, 2002.

7. **FINDING: DEVELOPMENT ON SLOPES EXCEEDING 30%:** There is no feasible alternative which would allow development to occur on slopes of 30% or less.

**EVIDENCE:** The purpose of the project is to prevent soil erosion on two coastal bluff slopes that are in excess of 30%. The project is designed to provide permanent stabilization of the slopes only.

**EVIDENCE:** Project description and project plans contained in File No. PLN020347.

8. **FINDING: FISH & GAME/NEGATIVE DECLARATION:** The design of the proposed improvements are not likely to cause substantial environmental damage or substantial or unavoidable injury to fish or wildlife or their habitat.

**EVIDENCE:** Staff analysis contained in the Initial Study and the record as a whole indicate the project could result in changes to the resources listed in Section 753.5(d) of the Department of Fish and Game regulations. The project site supports suitable habitat for the Federally-listed endangered Smith's Blue butterfly. The project site is located adjacent to the habitat of southern sea otter, a California Species of Special Concern. Therefore, this project is not subject to a de minimus exemption and the applicant is required to pay the Fish and Game fee.

**EVIDENCE:** Initial Study and Negative Declaration contained in File No. PLN020347.

**EVIDENCE:** A Mitigated Negative Declaration has been filed for this project and no comments were received. The applicant will be required as conditions of approval to follow practices of erosion control.

9. **FINDING: APPEALABILITY -** The project is appealable to the Board of Supervisors and the California Coastal Commission.

**EVIDENCE:** (a) Section 20.86.080.A.3 of the Monterey County Coastal Implementation Plan (Part 1).

### **DECISION**

It is the decision of the Planning Commission of the County of Monterey that the Mitigated Negative Declaration and Program for Monitoring and/or Reporting on Conditions of Approval be adopted and said application for a Combined Development Permit be granted as shown on the attached sketch and subject to the following conditions:

1. The subject Combined Development Permit consists of Coastal Development Permit to construct a new bluff-top retaining wall to protect an existing residence; Coastal Development Permit for development on slopes exceeding 30%, Coastal Development Permit for development within environmentally sensitive habitat, and Design Approval. The walls will each be approximately 70 feet long and will have a maximum height of approximately 17 feet. A stairway and landing will be constructed into the face of the southernmost wall. The project also involves approximately 160 feet of trenching at the perimeter of the existing parking area for installation of a gas supply line.  
**(Planning and Building Inspection)**

**Prior to the Issuance of Grading and Building Permits:**

2. The applicant shall record a notice which states: "A permit (Resolution #03008) was approved by the Planning Commission for Assessor's Parcel Number 243-251-021-000 on January 12, 2003. The permit was granted subject to 22 conditions of approval, which run with the land. A copy of the permit is on file with the Monterey County Planning and Building Inspection Department." Proof of recordation of this notice shall be furnished to the Director of Planning and Building Inspection prior to issuance of building permits or commencement of the use. **(Planning and Building Inspection)**
3. The applicant shall enter into an agreement with the County to implement a Mitigation Monitoring Plan. The Plan shall be submitted to the Director of Planning and Building Inspection Department for approval prior to issuance of building and/or building permits. **(Planning and Building Inspection)**
4. Pursuant to the State Public Resources Code, State Fish and Game Code and California Code of Regulations, the applicant shall pay a fee to be collected by the County of Monterey in the amount of **\$1,275. This fee shall be paid within five days of project approval**, before the filing of the Notice of Determination. Proof of payment shall be furnished by the applicant to the Director of Planning and Building Inspection prior to the commencement of the use, or the issuance of building and/or grading permits, whichever occurs first. The project shall not be operative, vested or final until the filing fees are paid. **(Planning and Building Inspection)**
5. The applicant shall submit a copy of a signed contract with a qualified Biologist or landscape consultant (from the County's list of qualified consultants) to the Director of Planning and Building Inspection for approval to implement the vegetation restoration measures contained in the mitigation measures 5-9 as outlined in Biological Report, dated June 25, 2002 and addendum dated September 30, 2002, by Jeff Norman. **(Planning and Building Inspection)**
6. The applicant shall submit a construction schedule consistent with the seasonal construction limitations outlined in the Biological Report dated June 25, 2002 and addendum dated September 30, 2002, by Jeff Norman. Any changes to the timing of construction activities shall be subject to approval of the project biologist. **(Planning and Building Inspection)**
7. The applicant shall incorporate the recommendations from the Geotechnical Engineering Report prepared by Haro, Kasunich and Associates, Inc., dated June, 2002, into the retaining wall plans. **(Planning and Building Inspection)**
8. Temporary erosion control and revegetation measures, including mulching and seeding, shall be consistent with the restoration plans contained in the biological report prepared for the project. The biological restoration plan shall take precedent over erosion control recommendations contained in the geotechnical engineering report prepared for the project. **(Planning and Building Inspection)**

**Conditions from the Mitigated Negative Declaration:**

9. **MITIGATION MEASURE 1.** In order to mitigate potential significant impacts to biological resources on the subject parcel, the applicant shall retain a qualified Biologist (from the County's list of consulting Biologists) to execute the biological mitigations contained in the mitigation measures 5-7 of the mitigation monitoring plan, as outlined in Biological Report, dated June 25, 2002, and addendum dated September 30, 2002, by Jeff Norman.

**MONITORING ACTION**

**Prior to the issuance of grading and building permits**, the applicant shall submit a copy of a signed contract with a qualified Biologist (from the County's list of consulting Biologists) to execute the biological mitigation measures contained in the mitigation measures 5-7.

10. **MITIGATION MEASURE 2.** In order to execute the vegetation restoration measures contained in the mitigation measures 8-10 of this mitigation monitoring plan and as outlined in Biological Report, dated June 25, 2002 and addendum dated September 30, 2002, by Jeff Norman, the applicant shall retain a qualified Biologist or landscaping consultant (from the County's list of consulting Biologists or Landscapers) to implement the revegetation plan.

**MONITORING ACTION**

**Prior to the issuance of grading and building permits,** the applicant shall submit a copy of a signed contract with a qualified Biologist or landscaping consultant to execute the biological mitigation measures contained in the mitigation measures 8-10.

11. **MITIGATION MEASURE 3.** To protect the waters of the Monterey Bay National Marine Sanctuary and associated Southern sea otter food resources, temporary erosion controls/Best Management Practices (BMPs) shall be installed to prevent excavated material or construction debris entering the marine habitat.

**MONITORING ACTION**

**Prior to the issuance of grading and building permits** the applicant shall submit to the Director of Planning and Building Inspection an erosion control/ BMP plan for both temporary and permanent erosion control for review and approval.

12. **MITIGATION MEASURE 4.** To avoid disturbance of pupping activity of the Southern sea otter, excavation and operation of heavy equipment associated with this project shall occur between the months of April and November, inclusive. (Should operation of heavy equipment extend into December, a biological monitor shall assess the level of pupping activity to determine if construction should be temporarily halted to reduce disturbance to Southern sea otters).

**MONITORING ACTION**

**Prior to the issuance of grading and building permits,** the applicant shall submit a construction schedule to the Director of Planning and Building Inspection for review and approval.

13. **MITIGATION MEASURE 5.** To prevent damage to seacliff buckwheat plants that will not be lost outright due to project implementation, protective fencing shall be installed to keep workers and equipment from making contact with buckwheat plants located adjacent to the project area.

**MONITORING ACTION**

**Prior to the commencement of construction,** the Biologist shall submit photographic evidence to the Director of Planning and Building Inspection verifying that protective fencing has been installed to prevent damage to seacliff buckwheat located adjacent to the project area.

14. **MITIGATION MEASURE 6.** In order to minimize the loss of seacliff buckwheat plants, the project Biologist shall advise workers of the presence of seacliff buckwheat, and how to minimize impacts upon Smith's blue butterfly habitat, including control of overburden and dust abatement.

**MONITORING ACTION**

**Concurrent with commencement of construction,** the Biologist shall submit written evidence to the Director of Planning and Building Inspection that these measures have been executed.

15. **MITIGATION MEASURE 7.** In order to mitigate the loss of seacliff buckwheat plants, the Biologist shall document the number of seacliff buckwheat plants actually lost after the project has been completed. The verified

number of seaciff buckwheat plants lost to project construction shall be replaced at a 2-1 ratio, consistent with Mitigation Measure 9.

#### **MONITORING ACTION**

**Upon completion of construction**, the Biologist shall submit to the Director of Planning and Building Inspection documentation of the actual number of seaciff buckwheat plants lost to project construction.

16. **MITIGATION MEASURE 8.** To restore habitat disturbed by construction of the project, a minimum of 32 Monterey Indian paint brush shall be planted and grown. As many Monterey Indian paint brush plants as possible shall be salvaged prior to construction. Additional plants shall be grown from site- collected seed, if possible. Salvaged and new plants shall be planted in the same area as the seaciff buckwheat plants, as shown on the Botanical Maps in the Biological Report prepared for this project. The success criterion shall be the establishment of 32 Monterey Indian paint brush plants, under the conditions described above, within five years of the completion of the project.

**MONITORING ACTION** The Biologist shall visit the site and shall provide a revegetation progress report three times yearly to the Director of Planning and Building Inspection until this mitigation is successfully implemented.

17. **MITIGATION MEASURE 9.** To restore habitat disturbed by construction of the project, revegetation of seaciff buckwheat plants will occur. A 2-to-1 replacement ratio will be instituted, with 70 seaciff buckwheat plants (or more if necessary) to be outplanted in the area between the northern and southern retaining walls (see Botanical Maps). This area is presently devoted to a sculpture garden planted with native species. Should more than the above-described 35 seaciff buckwheat plants be affected, additional buckwheats will be outplanted. The material to be outplanted must be propagated from site-collected seed, gathered by a professional consultant familiar with precautions mandated by the US Fish and Wildlife Service to reduce impacts to Smith's blue butterfly.

#### **MONITORING ACTION**

The Biologist shall visit the site and shall provide a revegetation progress report three times yearly to the Director of Planning and Building Inspection until this mitigation is successfully implemented.

18. **MITIGATION MEASURE 10.** To restore salt grass grassland disturbed by construction of the project, 600 square feet of salt grass grassland will be restored within the area in which it presently occurs. Seed shall be gathered prior to the start of the project, and shall include salt grass, sea-pink, Pacific seaside plantain and coastal willow dock.

#### **MONITORING ACTION**

The Biologist shall visit the site and shall provide a revegetation progress report three times yearly to the Director of Planning and Building Inspection until this mitigation is successfully implemented.

19. **MITIGATION MEASURE 11.** Revegetation areas shall be monitored for exotic plant infestation; should this occur, all non-native plants must be eradicated.

#### **MONITORING ACTION**

The Biologist shall visit the site and shall provide a revegetation progress report three times yearly to the Director of Planning and Building Inspection until this mitigation is successfully implemented.

#### **Continuous Permit Conditions:**

20. If during the course of construction activity on the subject property, cultural, archaeological, historical, 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 it can be evaluated by a qualified professional archaeologist. The Monterey County Planning and Building Inspection 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. **(Planning and Building Inspection)**

21. All landscaped areas and replanted trees shall be continuously maintained by the applicant and all plant material shall be continuously maintained in a litter-free, weed-free, healthy, growing condition. **(Planning and Building Inspection)**
22. No land clearing or grading shall occur on the subject parcel between October 15 and April 15 unless authorized by the Director of Planning and Building Inspection. **(Planning and Building Inspection)**

**PASSED AND ADOPTED** this 12th day of February, 2003 by the following vote:

AYES:	Errea, Sanchez, Hawkins, Padilla, Brennan, Parsons, Diehl, Gonzalves, Rochester, Wilmot
NOES:	None
ABSENT:	None

Original Signed By:

DALE ELLIS, SECRETARY

Copy of this decision mailed to applicant on

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

THIS APPLICATION IS ALSO APPEALABLE TO THE COASTAL COMMISSION. UPON RECEIPT OF NOTIFICATION OF THE DECISION BY THE BOARD OF SUPERVISORS, THE COMMISSION ESTABLISHES A 10 WORKING DAY APPEAL PERIOD. AN APPEAL FORM MUST BE FILED WITH THE COASTAL COMMISSION. FOR FURTHER INFORMATION, CONTACT THE COASTAL COMMISSION AT (831) 427-4863 OR AT 725 FRONT STREET, SUITE 300, SANTA CRUZ, CA.

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 90<sup>th</sup> 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. The construction or use authorized by this permit must start within two years of the date of approval of this permit unless extended by the Director of Planning and Building Inspection pursuant to Section 20.140.100 of the Coastal Implementation Plan.