

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

RESOLUTION NO. 03023

A.P. # 422-011-017-000

FINDINGS AND DECISION

In the matter of the application of
Caltrans (PLN000417)

for a Coastal Development Permit in accordance with Title 20.1 (Monterey County Coastal Implementation Plan Ordinances) Chapter 20.140 (Coastal Development Permits) of the Monterey County Code, to allow the transport and placement of approximately 5,000 cubic yards of material from the east side of Highway 1 to the west side of the highway at the same location, and construction of a 180-foot long berm approximately 160 feet above the beach to prevent the material from falling into the Pacific Ocean, located on post mile 21.5 of Highway 1, approximately half a mile north of Limekiln Creek, Big Sur Coast area, Coastal Zone, came on regularly for hearing before the Planning Commission on April 30, 2003.

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

FINDING

1. **FINDING: CONSISTENCY** - The Project, as conditioned is consistent with applicable plans and policies, Big Sur Coast Land Use Plan, Coastal Implementation Plan (Part 3), Part 6 of the Coastal Implementation Plan, and the Monterey County Zoning Ordinance (Title 20) which designates this area as appropriate for residential development.
EVIDENCE: (a) PBI staff have reviewed the project as contained in the application and accompanying materials for consistency with the Big Sur Coast Land Use Plan, Coastal Implementation Plan (Part 3), Part 6 of the Coastal Implementation Plan. PBI staff have 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 Coast Land Use Plan. Staff notes are provided in Project File PLN000417.
(b) **LAND USE ADVISORY COMMITTEE:** The South Coast Land Use Advisory Committee recommended approval of the project by a vote of 3-0. LUAC meeting minutes dated February 11, 2003.
(c) 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 PLN000417.
(d) The proposed project is located in an area designated by the Land Use Plan as an environmentally sensitive habitat area (ESHA). The project is consistent with the Big Sur Coast policies and regulations for development in ESHAs because, as the record shows, placement of the earth material will not impact the long-term maintenance of the habitat.

- (e) The proposed project is consistent with the critical viewshed protection policies of the Big Sur Coast Land Use Plan and Coastal Implementation plan because the project will be located below the roadway and because the placement of material will not adversely impact the existing landforms

1. **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.

2. **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, and Environmental Health Division. 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 and geologists with recommended conditions that provide additional assurances regarding project safety. "Preliminary Geotechnical Report" prepared by John D. Duffy – Caltrans District 5 dated October 22, 2001. The report is in Project File PLN000417.

1. **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. Where appropriate, conditions recommended have been incorporated.

- (b) Technical reports by outside archaeology, geology 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 Geotechnical Report" prepared by John D. Duffy – Caltrans District 5 dated October 22, 2001. "Negative Archeological Survey Report" prepared by Caltrans, District 5, dated June 12, 2000. Reports are in Project File PLN000417.

1. **FINDING: CEQA:** - On the basis of the whole record before the Planning Commission, there is no substantial evidence that the project as designed and conditioned, will have a significant effect on the environment. The 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 provides substantial evidence based upon the record as a whole, that the project would not have a significant effect on the environment. Staff accordingly prepared a negative declaration. The Initial Study is on file in the offices of PB&I and is hereby incorporated by reference. (PLN000417).

- (b) Evidence that has been received and considered includes:

1. Application material contained in file PLN000417
2. Reports submitted by the applicant which include: Visual Analysis and Site Management Plan; Natural Environment Study; Preliminary Geotechnical Report; Negative Archaeological Survey Report; and Shoreline and Nearshore Biological Characterization Report.
3. Staff reports that reflect the County's independent judgment
4. Information and testimony presented during public hearings.

These reports are on file in the offices of PBI (File PLN000417) and are incorporated by reference herein

- (b) The negative declaration was circulated for public review from March 10, 2003 to April 10, 2003 (SCH# 2003031033). The County has considered the comments received during the public review period, and they do not alter the conclusions in the Initial Study and negative declaration.
- (c) The Monterey County Department of Planning and Building Inspection, located at 2620 1st Avenue, Marina California, 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.

1. **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 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 shown in Figure 3, the Trails Plan, of the Big Sur Coast 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.

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

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

DECISION

THEREFORE, it is the decision of the Planning Commission of the County of Monterey that the Negative Declaration be adopted and said application for a Coastal Development Permit be granted as shown on the attached sketch and subject to the following conditions:

1. The subject Coastal Development Permit consists of the transport and placement of approximately 5,000 cubic yards of material from the East side of Highway 1 to the West side of the highway at the same location, and construction of a 180-foot long berm approximately 160 feet above the beach to prevent the material from falling into the Pacific Ocean. The project includes a monitoring plan to assess the effects of potential slide movement and sloughing of material onto the shoreline below. The project site is located at Post Mile 21.5 of Highway 1 on State Right-of-Way and Assessor's Parcel Number 422-011-017-000), Big Sur area, Coastal Zone. The proposed project is in accordance with County ordinances and land use regulations, subject to the following terms and conditions. Neither the use 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 Planning and

Building Inspection. 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. **(Planning and Building Inspection)**

Prior to Commencement of Construction Activities:

2. The applicant shall record a notice which states: "A permit (Resolution # 03023) was approved by the Planning Commission for Assessor's Parcel Number 422-011-017-000 on April 30, 2003. The permit was granted subject to 8 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. In order to evaluate and monitor shoreline habitat conditions associated with landslide management techniques, the applicant shall implement a Monitoring Plan consistent with the protocol set forth in the 2000 and 2002 Surveys by Tenera Environmental. (Contained in the Initial Study/Negative Declaration as Attachment 9 and incorporated herein by reference)

The Monitoring Plan shall include:

Objective: Identify patterns of change to the biological community at the toe of the Pitkins Curve landslide that may result from gradual migration of sediment material onto the intertidal zone.

Shoreline Monitoring: The intertidal sampling shall be consistent with the baseline intertidal surveys completed by Tenera in 2000 and 2002 and shall provide the same level of observation detail. The results shall extend the database to provide a comparative analysis of four sites identified as North Rocks, Middle Rocks, Toe of Slide, and South Rocks. Fixed 0.25 m² quadrats at these four sites shall be re-sampled for invertebrate and algal abundance, as with the two fixed vertical band transects at North Rocks. Owl limpets at North Rocks shall be measured for size (shell) lengths to document any changes that might occur in recruitment, growth, and survivorship. The rocks in the surf zone that are not accessible shall be monitored using photographic techniques. Photographs of these rocks shall be taken from fixed vantage points to provide a time series view. Mapping the toe of the slide using a Geographic Positioning System shall be performed to monitor physical shifts in the toe of slide boundaries.

Time Interval: Monitoring surveys shall be conducted annually during the spring-fall growing season. If at any time, in the opinion of the consulting biologist, a substantial loss of sediment retention by the berm or significant sediment erosion from the slope occurs, additional surveys shall be performed. The applicant shall immediately implement any recommendation by the consulting biologist including, but not limited to, removing the previously deposited material behind the containment berm.

Slope Monitoring: Conditions affecting the stability of the slope shall be documented. An on-site environmental monitor shall be present to further document material placement and slope stability during berm construction and deposition of materials on the slope. Within the 5,000 cubic yard limit and as the catchment ditch cleaning cycles progress, material may be further added on the slope above the berm provided that the slope has remained stable and that with time the uncertainty of significant erosion from the slope lowers. At each cleaning cycle and prior to placing material on the slope, the applicant shall submit a report by a licensed engineering geologist to the Director of Planning and Building Inspection Department for approval. The report shall document and certify that the slope is stable enough to receive the intended amount of material. Proposals to deposit material exceeding the total 5,000 cubic yards of material approved with this permit shall require an amendment to the Coastal Development Permit. Subsurface instrumentation shall be installed to monitor slope movement. The data shall be downloaded periodically to assess slope stability. It is expected that sediment

material will be eroded gradually under conditions of high surf, high tide, and rainy conditions. However, there will always be some level of uncertainty that portions of the slope may collapse, causing a larger, more acute amount of sediment falling onto the shoreline. Consequently, the slope shall be re-inspected following large-scale storm events. While annual shoreline monitoring is planned, additional shoreline biological surveys may be implemented, if deemed necessary, following observations of large-scale sediment movement from the slope into the intertidal zone. (See Time Interval section above) Additional measures related to these surveys may be required for ongoing maintenance of the slope as deemed appropriate by the Director of Planning and Building Inspection Department.

Duration: The monitoring program shall be implemented for five years following project approval.

Reporting: For the first three years after project approval, the results of the intertidal monitoring program and assessments of slope stability and erosion shall be submitted in annual reports. These annual reports are expected to be additive to the previous years reports, essentially extending the observational time-line by one year, with discussion of any observed differences among years. The reports shall include recommendations regarding site management and an evaluation of the effectiveness of the monitoring protocol. A final report shall be submitted at the end of the fifth year following project approval.

4. The applicant shall submit to the Director of Planning and Building Inspection Department for approval, a copy of the contract with a qualified consulting biologist to implement the Monitoring Plan described in Condition #3.

Continuous Permit Conditions:

5. All cut and/or fill slopes exposed during the course of construction shall be covered, seeded with native grasses or otherwise treated to control erosion subject to the approval of the Director of Planning and Building Inspection and in accordance with the Site Management Plan (Exhibit "H") contained in file PLN000417 incorporated herein by reference. Seeding will be manual with no irrigation. **(Planning and Building Inspection)**
6. 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)**
7. All landscaped areas 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)**
8. 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 30th day of April, 2003, by the following vote:

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

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 90th 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. This permit expires 2 years after the above date of granting thereof unless construction or use is started within this period.