

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

REVISED

RESOLUTION NO. 03027

A.P. # 243-081-008-000

In the matter of the application of
The Big Sur Land Trust (PLN030081)

FINDINGS AND DECISION

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 excavate a 160-foot by 140-foot area (738 cu. yds. cut/716 cu. yds. fill) located in 30% slope near an intermittent stream and remediate hazardous materials (high lead levels) in an abandoned dumpsite toward the southwest corner of the Palo Corona Ranch; Design Approval, located at 27319 Highway 1 near Ribera Road, Carmel Area, Coastal Zone, came on regularly for hearing before the Planning Commission on May 14, 2003.

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

FINDINGS AND EVIDENCE

1. **FINDING – COMPLY WITH REGULATIONS:** The proposed Coastal Development Permit requesting grading on slopes greater than 30% complies with all applicable requirements of Chapter 20.17 of Title 20 of Monterey County Codes.
EVIDENCE: Materials in project file PLN010331.
EVIDENCE: The subject site is located within a “WSC/40-D-SpTr (CZ)” or Watershed Scenic Conservation zoning district in the coastal zone. The project is also part of a design review and special treatment designation.
EVIDENCE: The Planning and Building Inspection Department staff reviewed the project, as contained in the application and accompanying materials, for conformity with the following Chapters of the Monterey County Zoning Ordinance:
 - a) Chapter 20.17 relative to land use regulations for the Watershed Scenic Conservation (WSC) district.
 - b) Chapter 20.44 relative to design review regulations.
 - c) Chapter 20.64.230 relative to development on slopes in excess of 30%.**EVIDENCE:** Qualified, technical professionals that reviewed this project include an Archaeologist, a Biologist, and a Geologist Engineer. Findings and recommendations from the reports prepared by these professionals have been incorporated into the analysis and conditions.
2. **FINDING – CONSISTENT WITH PLAN/POLICIES:** The subject Coastal Development Permit (PLN030081) conforms to the plans, policies, requirements and standards of the Carmel Area Land Use Plan and the Monterey County Coastal Implementation Plan, Part 4 (Chapter 20.146 MCC).
EVIDENCE: The project proposed in this application (PLN030081-Big Sur Land Trust/Palo Corona Ranch Dumpsite) consists of obtaining the necessary approvals to remediate hazardous materials found in an abandoned dumpsite. The affected area is approximately 0.8 acres within the 9,900-acre Palo Corona Ranch site. The project involves removing 8-inches to 2-feet of topsoil, removal of the buried refuse, and replacement of the soil. The area of work is 160 feet by 140 feet and consists of approximately 738 cubic yards of cut with 716 cubic yards of fill. No additional

grading would occur outside of the minimum amount required to remove the hazardous materials.

EVIDENCE: The Planning and Building Inspection Department staff reviewed the project, as contained in the application and accompanying materials, for conformity with:

a) Carmel Area Land Use Plan.

b) Chapter 20.146 of the Monterey County Coastal Implementation Plan.

EVIDENCE: The project area is visible from Highway 1 and is therefore, considered to be part of the “critical viewshed”. The Carmel Area Land Use Plan identifies this area as the frontal slope of the Palo Corona Ranch with a “special treatment” designation (Policies 4.4.3.F.3 and 4.4.2). A special treatment designation has been applied in order to transfer development away from the frontal slopes. There is no alternative to the proposed project in order to remediate hazardous materials found in the old, abandoned dumpsite (Policy 2.2.4.10). A Phase III environmental study was prepared by a certified geologist engineer to determine the actual extent of contamination in order to limit the amount of disturbance to the least amount possible.

EVIDENCE: The project area is visible from State Highway One; and therefore, is defined as being located within a critical viewshed under the Carmel Area Land Use Plan (Policy 2.2.2). The Big Sur Land Trust purchased this site in order to prevent future development (Policy 2.2.3.9). A Refuse Site Restoration Plan (October, 2002) has been submitted as part of the application. Conditions include re-vegetation of the disturbed area with native materials in accordance with this restoration plan (Policy 2.2.3.8). This plan identifies how the soil will be replaced, seeding, netting, mulching and monitoring. The site will be inspected by the project biologist after each rain event and determine any necessary corrective action. Final re-vegetation will occur within 15 days of completing the remediation activity.

EVIDENCE: A Biological Report (October 16, 2002) has been submitted as part of the application. This report finds that there will be direct impacts on the slope; however, no trees or chaparral will be directly impacted by the project. Debris in the drainage will be removed (Policy 2.2.3.7). The site will be visited by the project biologist after each storm with direction to make any necessary repairs to the drainage path. Once the hazardous materials are removed, the soil will be replaced and seeded with natural grasses and forbs.

EVIDENCE: The site is located in the Carmel Area Land Use Plan. The key water resource policy for this Plan is to protect and maintain water resources in this area. Policy 2.4.3.1 requires assistance from the California Department of Fish and Game as the technical experts on fish and wildlife habitat when work is conducted in or near streams. Fish and Game has reviewed the project and agreed to allow grading in this area between April 15 and November 15.

EVIDENCE: No testimony, either written or oral, was received during the course of the public hearing process to indicate that there is any inconsistency with these plans or policies.

EVIDENCE: April 7, 2003, Carmel/Carmel Highlands Land Use Advisory Committee minutes. The Committee voted 6-0 to recommend approval of the proposed project noting that concerns of impacts in the critical viewshed were outweighed by the evidence showing the presence of toxic materials.

3. **FINDING – SITE SUITABILITY:** The site is physically suitable for the proposed use.

EVIDENCE: A Phase I report was conducted in January 2002 to identify any potential sites with hazardous materials. This report discovered lead contaminants in the dumpsite area.

EVIDENCE: A Phase II – Limited Soil Investigation (March 20, 2002) confirmed that lead existed in the dumpsite area above Environmental Protection Agency preliminary remediation goals. It also found excessive PCBs (organochlorine pesticides).

EVIDENCE: A Phase III report (September 12, 2002) identifies the extent of area where hazardous materials exist.

EVIDENCE: The project has been reviewed by the Monterey County Planning and Building Inspection Department, Water Resources Agency, Public Works Department, Carmel Highlands Fire Department, Parks Department, and Health Department. There has been no indication from these agencies that the site is not suitable. Conditions recommended by these agencies have been incorporated to the project conditions.

EVIDENCE: Monterey County Environmental Health Department has reviewed the reports for this project and determined that abatement is required to protect water resources. The abatement area is near a seasonal creek where contamination could affect water supplies and wildlife.

EVIDENCE: Reports by a certified Archaeologist, Biologist, Forester, Geologist, and Engineer indicate that there are no physical or environmental constraints that would indicate the proposed plan is not suitable for the remediation required.

EVIDENCE: The proposed project limits the affected area to the least amount possible and still remediate the hazardous materials. A Biological Restoration Plan has been included to restore the area to a natural appearance following completion of the clean-up activity.

EVIDENCE: The rain season for this area runs generally from October 15 to April 15. Grading during this period would increase the potential for hazardous materials to seep into a nearby, intermittent, stream. The California Department of Fish and Game has reviewed the project and agreed to allow grading in this area between April 15 and November 15.

EVIDENCE: The work authorized by this Coastal Development Permit will eliminate an existing threat to public health and environmental (water) quality. Evidence is based on the above findings, conditions of approval for this Permit and Phase III report for the subject property, and the application materials in File No. PLN030081.

4. **FINDING – 30% SLOPE/NO ALTERNATIVE:** Based on substantial evidence, there is no feasible alternative which would allow development to occur on slopes of less than 30%. Based on substantial evidence, the proposed development better achieves the goals, policies and objectives of the Monterey County General Plan and applicable area plan than other development alternatives

EVIDENCE: The dumpsite is located in 30% slopes. Grading on this slope area is necessary to remove hazardous materials within the dumpsite. There is no alternative location for this project. The project would better achieve the goals and policies of the Carmel Area Land Use Plan than to leave hazardous materials near an intermittent creek.

EVIDENCE: On-site grading and earthwork will be in accordance with the Phase III Site Characterization (dated September 12, 2002) and the Refuse Area Investigation (dated October 8, 2002) included as part of the file for PLN 030081.

EVIDENCE: The Coastal Development Permit will require implementation of temporary Best Management Practices (BMPs) for erosion control in accordance with Monterey County Grading Ordinance #2535 and Erosion Control Ordinance #2806. An erosion Control Plan has been submitted as part of the Coastal Development Permit application, which meets the BMP requirements.

5. **FINDING – CONDITIONS OF APPROVAL:** The conditions of approval comply with the provisions of Title 20, Chapter 20.146.

EVIDENCE: The conditions are based on the recommendations of the Carmel Highlands Fire Department, the Monterey County Water Resources Agency, Monterey County Health Department and Monterey County Department of Public Works. The conditions incorporate the concerns and recommendations of those various agencies.

EVIDENCE: Conditions are included to assure that the proposed project addresses concerns for archaeological, biological, and aesthetic resources.

6. **FINDING – CEQA/EXEMPTION:** Coastal Development Permit (PLN030081) is exempt from the requirements of the California Environmental Quality Act (CEQA).

EVIDENCE: Section 15330 is a Categorical Exemption (Class 30) for any minor cleanup actions taken to prevent, minimize, stabilize, mitigate, or eliminate the release or threat of release of a hazardous waste or substance which are small or medium removal actions costing \$1 million or less.

EVIDENCE. The project involves the minimal grading necessary to remove toxic levels of lead found in an abandoned dumpsite. The project has been estimated at a cost of \$150,000.

EVIDENCE: Based on available information, there is no reasonable possibility that the proposed activity will have a significant effect on the environment due to unusual circumstances.

EVIDENCE: Finding and Evidence No. 1, File No. PLN030081.

7. **FINDING – FEE WAIVER:** This Coastal Development Permit (PLN030081) is exempt from Monterey County fees.

EVIDENCE: On August 29, 2000, Monterey County Board of Supervisors adopted a Resolution establishing a policy for waiving fees and authorizing the Director of Planning and Building Inspection to waive fees in certain cases. The subject project qualifies for a fee waiver under development by a non-profit organization or community group.

EVIDENCE: On March 20, 2003, the Director of Planning and Building Inspection determined that the application filed by the Big Sur Land Trust qualifies for a fee waiver for PLN030081.

8. **FINDING –APPEAL:** The decision on this project may be appealed to the Board of Supervisors and the California Coastal Commission.

EVIDENCE: Section 20.86.030 of the Monterey County Zoning Ordinance (Board of Supervisors).

EVIDENCE: Section 20.86.080 of the Monterey County Zoning Ordinance (Coastal Commission).

DECISION

THEREFORE, it is the decision of said Planning Commission that said application be granted as shown on the attached sketch, subject to the following conditions:

1. The Big Sur Land Trust/Palo Corona Ranch Dumpsite Coastal Development Permit (PLN030081) includes grading on slopes greater than 30%; and Design Approval. All work must be in accordance with the plans and specifications submitted to the Monterey County Planning and Building Inspection Department contained in the Grading and Building Permit applications and the Coastal Development Permit application, File No. PLN030081. The project is in accordance with County ordinances and land use regulations, and 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 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)**
2. A Grading and Building Permit must be obtained from the County of Monterey for the earthwork.

Prior to Issuance of a Building and/or Grading Permit

3. The property owner agrees as a condition and in consideration of the approval of this discretionary development permit that it will, pursuant to agreement and/or statutory provisions as applicable, including but not limited to Government code Section 66474.9, defend, indemnify and hold harmless the County of Monterey or its agents, officers and employees from any claim, action or proceeding against the County or its agents, officers or employees to attack, set aside, void or annul this approval, which action is brought within the time period provided for under law, including but not limited to, Government Code Section 66499.37, as applicable. The property owner will reimburse the county for any court costs and attorney's fees that the County may be required by a court to pay as a result of such action. County may, at its sole discretion, participate in the defense of such action; but such participation shall not relieve applicant of his obligations under this condition. An agreement to this effect shall be recorded upon demand of County Counsel or concurrent with the issuance of building permits, use of the property, filing of the final map, whichever occurs first and as applicable. The County shall promptly notify the property owner of any such claim, action or proceeding and the County shall cooperate fully in the defense thereof. If the County fails to promptly notify the property owner of any such claim, action or proceeding or fails to cooperate fully in the defense thereof, the property owner shall not thereafter be responsible to defend, indemnify or hold the county harmless. **(Planning and Building Inspection)**
4. The applicant shall record a notice which states: "A Permit (Resolution # 03027) was approved by the Monterey County Planning Commission for Assessor's Parcel Number **243-081-008-000** on **May 14, 2003**. The permit was granted subject to **11** 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)**
5. If applicable, evidence shall be submitted to the Monterey County Planning and Building Inspection Department that clearance and/or permits have been obtained from the following agencies:

- a. California State Regional Water Quality Control Board
- b. Environmental Protection Agency
- c. U.S. Army Corps of Engineers/ACOE (401/404)
- d. California Department of Fish & Game (1601)
- e. U.S. Fish and Wildlife Services
- f. Monterey Bay National Marine Sanctuary (MBNMS)

(Planning and Building Inspection)

6. The applicant shall copy applicable Best Management Practices onto the building plans for review and approval of the Planning and Building Inspection Department. In addition to these general practices, the applicant shall identify the following:
- a. No spoils from dirt removal may be allowed within the creek area at any time.
 - b. Creek banks shall be protected by installing temporary fencing that will be maintained until the construction is complete.
 - c. No new roads may be created for access to the dump site.
 - d. All construction access and staging areas shall be restored to their original condition prior to final approval.

The permittee shall submit weekly activity reports, including photographs and activity logs where applicable, that document how all construction measures were followed during project construction and these conditions. Said reports shall be submitted to the Director of Planning and Building Inspection by the end of the working day on Monday.

(Planning and Building Inspection)

During Construction

7. The applicant shall install and maintain a maximum of three (3) signs on the fence line along State Highway One. Said signs shall provide a telephone number for a contact that will address project information and/or public concerns. All signs shall be removed within seven (7) days of project completion. **(Planning and Building Inspection)**
8. The applicant and inspectors shall monitor the site for cultural materials in the soils in accordance with recommendations by Archaeological Consulting dated October 25, 2002 including:
- a. Prior to developing a plan for the removal or preservation of the dump, the applicant shall obtain a determination from a qualified archaeologist of the nature, extent and significance of the historic archaeological deposit under applicable provisions of the Public Resources Code.
 - b. If the dump is determined to have historic significance, an assessment shall be made of alternatives, such as capping or soil stabilization, which may allow preservation of the resource, or of any part of the resource which does not contain hazardous materials which pose an imminent environmental health threat.
 - c. If no alternative is found to the removal of the dump site contents in its entirety, a program of archaeological data recovery should be conducted both prior to, and in conjunction with, the site removal. This would include photographic documentation of potentially hazardous materials and selective archaeological recovery of ten percent or more, as determined by the initial excavation and evaluation of significance, of other component materials, such as ceramics, glass, and household items with the potential to provide temporal, economic, social, and other data relating to the early twentieth century inhabitants of the City of Carmel-by-the-Sea. A qualified archaeological monitor or monitoring

- team shall be present during all removal activities to insure adequate documentation and recovery of the materials in the dump.
- d. If partial removal of specified hazardous materials is feasible, a qualified archaeological monitor shall be present during those removal activities to provide data recovery through photographic and written documentation of those materials, as well as actual recovery of other materials which may be disturbed from their context during the process.
 - e. Subsequent to the field portion of the data recovery effort, laboratory processing of the materials should be completed. Professional analysis of the recovered materials shall be undertaken based on the amounts and types of materials recovered, including ceramics analysis, glass analysis, etc. as determined necessary by a qualified archaeologist.
 - f. Following the field portion of the data recovery project, a preliminary *Monitoring and Data Recovery Report* shall be prepared to identify compliance documentation. Said report shall be submitted to the Director of Planning and Building Inspection.
 - g. A *Final Technical Report* shall be completed within approximately one year of completion of the field work. Said report shall contain the results of any professional analysis and should be submitted to the Director of Planning and Building Inspection as well as the Regional Information Center at Sonoma State University.
 - h. 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 150 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)**

Prior to Final Inspection and/or Occupancy

- 9. The applicant shall provide the Director of Planning and Building Inspection Department written certification by a qualified biologist that the following measures have been performed in accordance with the biologist's recommendations.
 - a. Silt fencing shall be installed along disturbed areas and remain in place until the soil along the road edge is stabilized.
 - b. Invasive exotic plant species shall be controlled and eradicated in associated areas of disturbed soil to the satisfaction of the Director of Planning and Building Inspection. No excavated material or other debris shall be allowed to accumulate beneath the canopies of any tree.
 - c. Upon completion of the project, all remediation, access, and staging (equipment storage) areas shall be restored in accordance with the Refuse Site Restoration Plan dated October, 2002, subject to the review and approval of the Director of Planning and Building Inspection. Restoration shall be completed within 15 days following completion of the abatement activity. The applicant shall submit a report from the project biologist identifying the date that all restoration activity has been completed in accordance with the Restoration plan.

(Planning and Building Inspection)

- 10. The lead containing soil must be handled and disposed as required for hazardous waste. **(Environmental Health)**

11. Clean closure will be the required alternative for the following reasons:
- All of the lead contaminated soil would be removed from the site and therefore would no longer pose a threat to human health or the environment.
 - It would not be necessary to place a deed restriction on the property limiting future use.
 - It would not be necessary for the Division of Environmental Health to add this site onto CALEPA's inventory of closed disposal sites. Please note that closed disposal sites are charged an annual permit fee and are inspected quarterly.
 - Due to site conditions (steep slopes and a seasonal watercourse), state minimum standards for closed disposal sites could not be achieved; therefore, closure in place is not an option.

(Environmental Health)

PASSED AND ADOPTED this 14th day of May, 2003, by the following vote:

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

Original Signed By: _____

JEFF MAIN, SECRETARY

Copy of this decision mailed to applicant on May 29, 2003.

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 MAY 29, 2003.

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. 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.