

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

RESOLUTION NO. 03036

A. P. # 418-361-005-000M

FINDINGS AND DECISION

In the matter of the application of
Gallo (PLN010188)

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 35422 Paraiso Springs Road, Soledad, came on regularly for hearing before the Planning Commission on June 25, 2003.

WHEREAS: Said proposal includes:

- 1) Use Permit to allow vineyard cultivation on slopes in excess of 15% and
- 2) Use Permit to allow removal of 321 Oak trees to allow construction of a 350 acre foot reservoir; and
- 3) Grading of approximately 913,125 cubic yards

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

FINDINGS OF FACT

1. **FINDING:** The subject Combined Development Permit (**GALLO [Olson Ranch] PLN010188**), as described in condition #1 and as conditioned, conforms with the plans, policies, requirements and standards of the General Plan, the Central Salinas Valley Area Plan, and the Monterey County Zoning Ordinance (Title 21). The property is located at 35422 Paraiso Springs Road, (Assessor's Parcel Numbers 418-361-005-000, 418-381-005-000, 418-381-010-000, 418-381-011-000, 418-381-013-000, 418-381-014-000, 418-381-023-000, 418-381-024-000 and 418-381-025-000), westerly of Springs Road and 8 miles southwest of the City of Soledad. The parcel is zoned "Farmlands" or "F/40" and "Permanent Grazing" or "PG/40" with an allowed density of one unit per 40 acres. The subject property is in compliance with all rules and regulations pertaining to zoning uses except for the applicable provisions of Title 21 regarding the cultivation of slopes over 25% for agricultural use. Zoning violation abatement costs have been paid and correction of reported violations are made a part of this permit.

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

- a) The Central Salinas Area Plan
- b) Chapter 21.30, Sections 21.30.050 A. and I., Chapter 21.40, Sections 21.34.050 M. and N. of the Monterey County Zoning Ordinance regulations for development relating to the requirement for Use Permits for cultivation of land on slopes with 15% - 25% slopes and for agricultural support facilities. Also, Section 21.66.030 C. 1. of the Zoning Ordinance, Title 21, states that conversion of uncultivated land to cropland shall not be permitted on slopes over 25%.
- c) Section 21.64.260 D. 3. of the Monterey County Zoning Ordinance requiring a Use Permit for removal of more than 3 protected trees.

EVIDENCE: The project site is physically suitable for the proposed use as described in the project file. The proposed development has been reviewed by the Monterey County Planning and Building

Inspection Department, Water Resources Agency, Public Works Department, Environmental Health Division, Parks and Recreation Department, and applicable Fire Department. There has been no indication from these agencies that the site is not suitable for the proposed development. The Initial Study demonstrates that no physical or environmental constraints exist that would indicate the site is not suitable for the proposed development, except for the existing and proposed planting of grapevines on slopes over 25%. Each agency has recommended conditions for project approval.

EVIDENCE: The proposed use is consistent with the development standards for areas designated for Farmlands and Permanent Grazing pursuant to Title 21, Monterey County Zoning Ordinance.

EVIDENCE: Staff verification of the Monterey County Planning and Building Inspection Department records found in project file no. PLN010188, indicate that violations exist on the property regarding the cultivation of slopes over 15% without a Use Permit, and cultivation of slopes over 25% which is prohibited. An investigation of alleged illegal tree removal at the site in July of 2001 by Mimi Whitney, the original planner for the project, and John Knight, the County grading inspector, found no evidence to substantiate the claim. The applicant was instructed as to the kind of permits required to address proposed tree removal and cultivation of slopes greater than 15%. The current application addresses these required permits.

EVIDENCE: Written and verbal public testimony submitted at public hearings before the Planning Commission.

EVIDENCE: 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 the project file no PLN010188.

EVIDENCE: The on-site inspection by the project planner to verify that the proposed project complies with the Central Salinas Valley Area Plan.

2. **FINDING:** The proposed project, including all permits and approvals, will not have any significant adverse impacts on the environment and a Mitigated Negative Declaration has been adopted. Potential environmental effects have been studied and there is no substantial evidence in the record, as a whole, that supports a fair argument that the project, as designed and mitigated, may cause a significant effect on the environment. The Negative Declaration reflects the independent judgment and analysis of the County based upon the findings and conclusions drawn in the Initial Study and in consideration of testimony and information received, and scientific and factual data presented in evidence during the public review process. Mitigation measures identified in the Initial Study have been incorporated into the project, and agreed to by the applicant, to reduce any impact to an insignificant level. All applicable mitigation measures are included in the conditions of approval, which are hereby adopted as a mitigation monitoring and reporting program.

Studies, data, and reports prepared by staff from various County departments, including Planning and Building Inspection, Public Works, Environmental Health, and the Water Resources Agency, in addition to site specific consultant reports prepared for the project, support the adoption of a Mitigated Negative Declaration for the project. The custodian of the documents and materials that constitute the record of proceedings upon which the adoption of the Negative Declaration is based is the Monterey County Planning and Building Inspection Department, 2620 First Avenue, Marina. No facts, reasonable assumptions predicated on facts, testimony supported by adequate factual foundation, or expert opinion supported by facts have been submitted that refute the conclusions reached by these studies, data, and reports. Nothing in the record alters the environmental determination, as presented by staff, based on investigation and the independent assessment of those studies, data, and reports.

EVIDENCE: Pacific Municipal Consultants prepared an Initial Study for the project in compliance with the

California Environmental Quality Act (CEQA), its Guidelines, and the Monterey County CEQA Guidelines. The Initial Study provided substantial evidence that the project, with the addition of mitigation measures, would not have significant environmental impacts. A Negative Declaration was filed with the County Clerk on May 15, 2003 and noticed for public review. All comments received on the Initial Study have been considered as well as all evidence in the record, which includes studies, data, and reports supporting the Initial Study; additional documentation requested by staff in support of the Initial Study findings; information presented or discussed during public hearings; staff reports that reflect the County's independent judgment and analysis regarding the above referenced studies, data, and reports; application materials; and expert testimony. Among the studies, data, and reports analyzed as part of the environmental determination are the following:

1. Biological Resources Assessment prepared by Kjeldsen Biological Consulting, June 2001.
2. Forest Management Plan prepared by Stephen R. Staub, Registered Professional Forester, April 2002.
3. Archaeological Report prepared by Archaeological Consulting, June 18, 2000.
4. Hydrogeological Report prepared by Geoconsultants, Inc, March 2002.
5. Geotechnical Report prepared by Taber Consultants, August 2001.

EVIDENCE: File and application materials; Initial Study with mitigation measures; and Mitigated Negative Declaration contained in the project file no. PLN010188.

3. **FINDING:** For purposes of the Fish and Game Code, the project will have a potential for adverse impact on fish and wildlife resources upon which the wildlife depends.

EVIDENCE: Staff analysis contained in the Initial Study and the record as a whole indicate the project may or will result in changes to the resources listed in Section 753.5(d) of the Department of Fish and Game regulations. Considering the record as a whole, there is evidence that the project may have some minor and insignificant adverse impacts on wildlife resources, including native plant life. The application includes the construction of a reservoir that requires the removal of 320 oak trees and a significant amount of grading. Additionally the cultivation of grapes has erosion potential if improperly implemented. These impacts could be significant if not properly mitigated.

EVIDENCE: The applicant shall pay the Environmental Document Fee, pursuant to Fish and Game Code Section 753.5.

EVIDENCE: Initial Study and Mitigated Negative Declaration contained in the project file no. PLN010188.

4. **FINDING:** The establishment, maintenance, or operation of the use or structure applied for will not, under the circumstances of the particular case, be detrimental to 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 improvement in the neighborhood, or to the general welfare of the County.

EVIDENCE: The project as described in the application and accompanying materials was reviewed by the Department of Planning and Building Inspection, Environmental Health Division, Public Works Department, Mission Soledad Fire Department, and Water Resources Agency. The respective departments 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; or the County in general.

EVIDENCE: Adoption of the Mitigated Negative Declaration includes mitigation measures that

- 1) protect the native oak trees located close to the construction site;

- 2) replace the oak trees to be removed at the construction site on a 2:1 ratio;
- 3) prohibit planting on slopes greater than 25%, and require restoration of existing slopes cultivated on slopes greater than 25%;
- 4) require preconstruction biological surveys in order to develop measures to protect endangered fauna before habitat disturbance;
- 5) protect natural drainage areas; and
- 6) preserve any findings of archaeological resources.

EVIDENCE: File and application materials, Initial Study with mitigation measures, and Mitigated Negative Declaration contained in the project file no. PLN010188.

5. **FINDING:** The project as proposed is consistent with policies of the Central Salinas Valley Area Plan, dealing with visual resources and will have no significant impact on the public viewshed. The proposed project was evaluated in terms of the impact upon the public viewshed from Highway 101. a) The project will not result in ridgeline development. b) The project is located in the public viewshed as described under the “Scenic Resources” in the Central Salinas Area Plan, and shown on Figure 5 of said Plan. The site is within the lower foothills of the Sierra de Salinas Range with moderate terrain at a maximum elevation of approximately 700 feet. The project is nearly 4 miles from Highway 101 that renders visibility, particularly of the proposed dam, as an insignificant impact on the Highway 101 visual corridor.

EVIDENCE: The on-site investigation by the project planner to determine the impact of the project to the Scenic Resources described in the Central Salinas Valley Area Plan. Although the project is not ridgeline development, it is in an area of frontal slopes as seen from Highway 101 with grassland and oak woodland. The proposed native grassland planted on the dam facing the Highway 101 will harmonize with the surrounding foothills, and the planted vineyards will harmonize with the surrounding vineyards in the area.

6. **FINDING:** The proposed removal of 321 native oak trees at the site is the minimum required under the circumstances of the case, will not involve a risk of adverse environmental impacts. The removal of the native oak trees is for the express purpose of constructing a reservoir to irrigate proposed vineyards at the site that is the subject for the proposed Use Permit. One hundred ninety-nine (199) oaks are to be removed at the proposed reservoir site. One hundred twenty-two (122) oaks are to be removed at the proposed drainage diversion area.

EVIDENCE: Section 21.64.260 E. 3. of the Zoning Ordinance, Title 21, provides standards for oak tree removal for agricultural areas; specifically, this section refers to oak trees on land being converted to irrigated farmland where a Use Permit is required for such conversion by area plan policy. Staff is recommending approval of a Use Permit for the project based on an Initial Study that addresses mitigations for tree removal: namely, erosion control plans; a biological survey of areas to be disturbed and measures to protect habitat; protection of remaining trees adjacent to the construction sites; protection of natural drainage channels; and the replacement of the trees at a 2:1 ratio at specially selected “Oak Woodland Enhancement areas” at other areas of the site. Specifically, potential adverse impacts of removal of oak trees at the reservoir site are addressed as follows:

- soil erosion: Any erosion or sediment will be caught in the constructed reservoir. Sediment basins at other locations at the site will capture any run-off sediment and contain these sediments on site.
- water quality: The reservoir is located at an “off-stream” location, so the removal of the oak trees at the reservoir will not effect water quality.
- ecological impacts: Any wildlife that is displaced can utilize the protected trees or the upland habitat on the approximately 1,100 acres of ranch left in its existing condition.

- noise pollution: The removal of the oaks is not anticipated to significantly increase the ambient noise in this rural setting with few residences in immediate proximity. The vineyards are surrounded by other vineyard operations, and the nearest residence to the vineyard site is approximately 1,000 feet from the vineyard. The nearest residence to the location of the trees, or future reservoir location, is approximately 6,000 feet..
- air movement: The removal of the oaks to construct a reservoir is not anticipated to increase wind velocities to a degree that a nuisance is anticipated.

EVIDENCE: The one landmark oak (over 24” at breast height) at the site is at the bottom of the proposed reservoir location that cannot be avoided, for there is no alternative location to place a reservoir on the site that can take advantage of natural features to hold the 350 acre feet of water needed to irrigate nearly 700 acres of vineyards. Further, the one landmark tree cannot be seen as visually significant among the surrounding 320 oak trees at the site of the reservoir.

7. **FINDING:** The request for the proposed reservoir to be located on some slopes greater than 30 percent is consistent with the designated “Farmlands” category described under the natural resources section of the Central Salinas Valley Area Plan. Such lands must be irrigated to be used for the production of high value food and fiber crops. Since no other alternative exists which would allow the irrigation reservoir to occur on slopes of less than 30 percent that best utilizes the natural terrain on the site, the location on 30 percent slopes is considered the best alternative.

EVIDENCE: The Geotechnical Report prepared by Taber Consultants, August 2001, addresses the soil in the 8.4 acre area earmarked for the reservoir area and finds it seismically sound. The report states that the soil conditions will not lead to landslide, lateral spreading, subsidence, liquefaction or collapse.

EVIDENCE: The letter from James C. Hanson, consulting civil engineer, addresses the integrity of an embankment dam during a large magnitude earthquake. He states that the dam, engineered in accordance with current standards of dam design regarding seismicity and faulting, would unlikely be subject to catastrophic failure.

EVIDENCE: The estimated 545,000 cubic yards of grading for reservoir construction, along with the estimated 213,125 cubic yards of grading for road construction and 155,000 cubic yards of grading for diversion channel construction are to be balanced on-site, with any excess fill to be placed on an adjacent canyon to the south.

8. **FINDING:** The project is appealable to the Board of Supervisors.

EVIDENCE: Section 21.80.040. D of the Monterey County Zoning Ordinance (Title 21).

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 a Use Permit to allow vineyard cultivation on slopes in excess of 15% and a Use Permit to allow removal of 321 Oak trees to allow construction of a 350-acre foot reservoir; grading of approximately 913,125 cubic yards. The property is located at 35422 Paraiso Springs Road, Salinas (Assessor's Parcel Numbers 418-361-005-000, 418-381-005-000, 418-381-010-000, 418-381-011-000, 418-381-013-000, 418-381-014-000, 418-381-023-000, 418-381-024-000 and 418-381-025-000), 8 miles southwest of the City of Soledad area, westerly of Springs Road, in the Central Salinas Valley area.

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 the Issuance of Grading and Building Permits:

2. 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 which 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)**
3. The applicant shall record a notice which states: "A permit (Resolution 03036) was approved by the Planning Commission for Assessor's Parcel Numbers 418-361-005-000, 418-381-005-000, 418-381-010-000, 418-381-011-000, 418-381-013-000, 418-381-014-000, 418-381-023-000, 418-381-024-000 and 418-381-025-000 on June 25, 2003. The permit was granted subject to 15 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)**
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 recordation of the tentative map, 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 enter into an agreement with the County to implement a Mitigation Monitoring and/or Reporting Plan in accordance with Section 21.08.6 of the California Public Resources Code and Section 15097 of Title 14, Chapter 3 of the California Code of Regulations. The Mitigation Monitoring and/or Reporting Plan is contained in the staff report as Exhibit "D" and is incorporated herein by reference. Compliance with the fee schedule adopted by the Board of Supervisors for mitigation monitoring shall be required and payment made to the County of Monterey at the time the property owner submits the signed mitigation monitoring agreement.
6. 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)**

7. The applicant shall obtain a grading permit from the Building Inspection Division. **(Planning and Building Inspection)**
8. 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 in coordination with the consulting biologist, subject to the approval of the Director of Planning and Building Inspection. **(Planning and Building Inspection)**
9. The location, type and size of all antennas, satellite dishes, towers, and similar appurtenances shall be approved by the Director of Planning and Building Inspection. **(Planning and Building Inspection)**
10. A notice shall be recorded with the Monterey County Recorder which states the following reports have been prepared for the Olson Ranch property:
 - 1) A Biological Resources Assessment prepared by Kjeldsen Biological Consulting, June 2001.
 - 2) Forest Management Plan prepared by Stephen R. Staub, Registered Professional Forester, April 2002.
 - 3) Archaeological Report prepared by Archaeological Consulting, June 18, 2000.
 - 4) Hydrogeological Report prepared by Geoconsultants, Inc, March 2002.
 - 5) Geotechnical Report prepared by Taber Consultants, August 2001.

These reports have been prepared for the following subject parcels: 418-361-005-000, 418-381-005-000, 418-381-010-000, 418-381-011-000, 418-381-013-000, 418-381-014-000, 418-381-023-000, 418-381-024-000 and 418-381-025-000 and are on record in the Monterey County Planning and Building Inspection Department, file no. PLN010188. All development shall be in accordance with these reports." **(Planning and Building Inspection Department)**
11. A drainage plan shall be prepared by a registered civil engineer or architect to address on-site and off-site impacts, and necessary improvements shall be constructed in accordance with approved plans. **(Water Resources Agency, S.C.)**
12. The applicant shall provide to the Water Resources Agency information on the water system to serve the project, including the location of all water wells on the property, any well logs available, and the number of current hookups. **(Water Resources Agency, S.C.)**
13. Applicant shall provide certification to the County Water Resources Agency that applications have been submitted for all required local, State and Federal permits. **(Water Resources Agency, S.C.)**
14. Prior to the issuance of any grading and/or building permits, a dam failure analysis shall be prepared by a registered civil engineer. **(Water Resources Agency)**

Prior to Final Building Inspection/Occupancy:

15. The dam embankment shall be landscaped with native vegetation to harmonize with the surrounding foothills based on the consulting biologist's recommendation. At least three weeks prior to occupancy, three copies of a landscaping plan shall be submitted to the Director of Planning and Building Inspection for approval. A landscape plan review fee is required for this project. Fees shall be paid at the time of landscape plan submittal. The landscaping plan shall be in sufficient detail to identify the location, specie, and size of the proposed landscaping materials and shall be accompanied by a nursery or contractor's estimate of the cost of installation of the plan. Before final inspection, landscaping shall be either installed or a certificate of deposit or other form of surety made payable to Monterey County for that cost estimate shall be submitted to the Monterey County Planning and Building Inspection Department. **(Planning and Building Inspection)**

Continuous Permit Conditions:

The Mitigation Monitoring and/or Reporting Plan accompanying these conditions is contained in the staff report as Exhibit "D.". It includes six (6) Mitigation Measures with a 5 year monitoring/reporting program that are added to the conditions of approval for this project, incorporated herein by reference and implemented by agreement between the applicant and the County of Monterey as stated in condition no. 5 above.

PASSED AND ADOPTED this 25th day of June, 2003 by the following vote:

AYES: Errea, Parsons, Hawkins, Padilla, Sanchez, Gonzalves, Rochester
 NOES: Brennan
 ABSENT: Diehl, Wilmot

Original Signed By:

JEFF MAIN, SECRETARY

Copy of this decision mailed to applicant on

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 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 Salinas.

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.

