PLANNING COMMISSION
COUNTY OF MONTEREY, STATE OF CALIFORNIA

RESOLUTION NO. 03080

A. P. # 421-011-018-000

In the matter of the application of **FINDINGS & DECISION**

Esalen Institute (PLN020599)

to allow a Combined Development Permit in accordance with Chapter 20.82 (Combined Development Permits) of the Monterey County Code, consisting of a Coastal Development Permit for a rehabilitation & restoration plan for the Esalen Institute's south coast property, to include the construction of 2 structures (approximately 1,310 additional building coverage, in the context of approximately 14,810 total proposed building coverage, existing + new) and additional parking areas (34,848 sq. ft. total existing paved coverage/51,836.4 sq. ft. total proposed paved coverage); a Coastal Development Permit for development within 100 ft. of environmentally sensitive habitat (to include seacliff buckwheat); and a Coastal Development Permit for development on slopes of 30% or greater. The property is located on the east side of Highway 1, approximately 1 mile north of the Esalen Institute's main property, which is located at 55000 Highway 1, Big Sur (Assessor's Parcel Numbers 421-011-018-000, 421-011-005-000, 421-011-006-000 and 421-011-007-000), Big Sur Coast Land Use Plan, Coastal Zone, came on regularly for hearing before the Planning Commission on November 12, 2003.

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

1. FINDING: **CONSISTENCY** – The Project, as conditioned, is consistent with all applicable plans and policies, including the *Big Sur Coast Land Use Plan* and the development standards and zoning regulations contained in the certified Coastal Implementation Plan, specifically Chapter 20.145 (*Regulations for Development in the Big Sur Coast Land Use Plan*), and the zoning code (Title 20) and Part 6 of the Coastal Implementation Plan (Appendices). The parcel is designated as "WSC/40-D (CZ)" (*Watershed and Scenic Conservation, 40 acres per unit, Design Control District, Coastal Zone*), which allows the continuance of legal non-conforming uses where such uses are not expanded, enlarged, increased, or extended to occupy a greater area than that occupied when the legal nonconforming use was established and are not intensified over the level of use that existed at the time the legal nonconforming use was established.

EVIDENCE: (a) Planning and Building Inspection Department (PBID) staff have reviewed the project as contained in the application and accompanying materials for consistency with the *Big Sur Coast Land Use Plan*, the *Regulations for Development in the Big Sur Coast Land Use Plan*, and Part 6 of the Coastal Implementation Plan (Appendices). PBID 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* which designates this area as appropriate for the continuance of legal non-conforming uses where such uses are not expanded, enlarged, increased, or extended to occupy a greater area than that occupied when the legal nonconforming use was established

and are not intensified over the level of use that existed at the time the legal nonconforming use was established. Permit application, plans, and materials contained in Project File No. PLN020599.

(b) Project planner conducted onsite inspections on several occasions between the autumn 2002 and the summer of 2003 to verify that the project on the subject parcel conforms to the plans mentioned above.

(c) The project for the rehabilitation and restoration of Esalen Institute's facilities and landscapes, as conditioned, are allowed improvements to a legal nonconforming use, in accordance with Chapter 20.68 of Title 20 (Legal Nonconforming Uses), since the improvements were found not to result in an expansion or intensification of the existing legal non-conforming use.

(d) The parcel is zoned Watershed and Scenic Conservation, 40 acres per unit, Design Control District, Coastal Zone ("WSC/40-D [CZ]"). The project is a legal nonconforming use in compliance with Chapter 20.68 of Title 20 (Legal Nonconforming Uses).

(e) The South Coast Land Use Advisory Committee first heard and unanimously approved the project with a 3 to 0 vote (2 members absent) on January 7, 2003. The project was sent back to the LUAC for comment on the Initial Study and is scheduled for the November 4, 2003, meeting. The committee's final recommendation will be reported orally at the Planning Commission hearing of November 12th, 2003.

(f) 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 No. PLN020599.

2. 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, Water Resources Agency, Environmental Health, Parks and the California Department of Forestry and Fire Protection. Conditions recommended have been incorporated.

(b) Technical reports by outside consultants (to include biologists, archaeologists, geologists, and engineers) indicate that there are no unmitigatable physical or environmental constraints that would indicate the site is not suitable for the use proposed. Agency staff concurs. The complete list of technical reports can be found under Section IX (References) of the Initial Study and are included herein by reference. Reports are in Project File No. PLN020599.

(c) Staff conducted several onsite inspections between the autumn of 2002 and the summer of 2003 to verify that the site is suitable for this use.

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

3. FINDING: CEQA – The project is subject to environmental review pursuant to requirements of the California Environmental Quality Act. 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) CEQA Guidelines Section 15300.2 (Exceptions) disallow the project to be categorically exempted from CEQA review due the project's location, the potential for significant effects, its proximity along a scenic highway, and potentially historical resources present onsite.

(b) Potentially adverse environmental effects were identified during staff review of the development application and during site visits between the autumn of 2002 and the summer of 2003.

(c) The PBID prepared an Initial Study pursuant to CEQA Guidelines Section 15063. The Initial Study identified several potentially significant effects, but revisions have been made to the project and mitigation measures have been designed that avoid and/or mitigate the effects to insignificant levels. The Initial Study is on file in the office of PBID and is hereby incorporated by reference (File No. PLN020599). All project changes required to avoid significant effects on the environment have been incorporated into the project and/or are made conditions of approval.

(d) A Mitigation Monitoring and Reporting Program has been prepared in accordance with Monterey County regulations and is designed to ensure compliance with conditions and mitigation measures during project implementation. The Applicant must enter into an "*Agreement to Implement a Mitigation Monitoring and Reporting Program*" as a condition of project approval (Condition 9).

(e) Evidence that has been received and considered include:

i. The application, plans, materials, and technical reports, which are listed under Section IX (References) of the Initial Study, and which are included herein by reference.

ii. Staff report that reflect the County's independent judgment.

iii. Information and testimony presented during public hearings (as applicable).

(f) The Mitigated Negative Declaration was circulated for public review from October 10, 2003, to November 11, 2003.

(g) The Monterey County Department of Planning and Building Inspection, (located at 2620 First 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 Mitigated Negative Declaration is based. Reports are in Project File No. PLN020599.

4. FINDING: **VIOLATIONS PENDING** – The subject property is currently in violation of the County's Local Coastal Program because development was carried out without the benefit of permits. Approval of the current application (Project File No. PLN020599) resolves the code violations by bringing the subject property into compliance with all rules and regulations pertaining to it.

EVIDENCE: (a) During the course of project review by PBID staff, it was revealed that a garage for a CDF fire engine was constructed at Esalen Institute's South Coast Center without the benefit of a Coastal Administrative Permit, Design Approval, or building permit.

(b) Condition 14 requires that Esalen Institute apply for Design Approval and as-built building & grading (as applicable) permits for all unpermitted structures in order to resolve this violation of the Monterey County Code.

5. FINDING: **PUBLIC ACCESS –** The project is in conformance with the public access and public recreation policies of the Coastal Act and Local Coastal Program, and does not interfere with any form of historic public use or trust rights (see section 20.70.050.B.4 of Title 20).

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 of the Trails Plan, and Figure 2 of the Shoreline Access Map, 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.
(d) Several staff site visits between the autumn of 2002 and the summer of 2003.

6. FINDING: **CRITICAL VIEWSHED** – The project as proposed is consistent with Section 203.145.030 (Visual Resources Development Standards) of the *Regulations for Development in the Big Sur Coast Land Use Plan*, and related policies in the *Big Sur Coast Land Use Plan*, since the proposed development will not be visible from Highway 1 due to the site's topography and vegetative cover.

EVIDENCE: (a) Application, materials, and plans in Project File No. PLN020599
(b) Several site visits by PBID staff between the autumn of 2002 and the summer of 2003.
(c) Condition 8 requires that the applicant shall record a Scenic Easement over all portions of the subject parcel that are in the critical viewshed (*i.e.*, visible from any point along Highway 1), including all existing vegetated areas without which the development would be located within the critical viewshed, as required by Sections 20.145.030.A.2 (g) & (h) of the *Regulations for Development in the Big Sur Coast Land Use Plan*, in order to fulfill Key Policy 3.2.1 of the *Big Sur Coast Land Use Plan*, which seeks to "*prohibit all future public or private development visible from Highway 1 and major public viewing areas (the Critical Viewshed),*" due to "*the Big Sur coast's outstanding beauty and its great benefit to the people of the State and Nation*."

7. FINDING: **DEVELOPMENT WITHIN 100' OF ENVIRONMENTALLY SENSITIVE HABITAT** – Consistent with the requirements of Section 20.145.040.B (General Development Standards) and Section 20.145.040.C (Specific Development Standards) of the *Regulations for Development in the Big Sur Coast Land Use Plan*, and related policies in the *Big Sur Coast Land Use Plan*, development within or near environmentally sensitive habitat can be allowed as designed, given that the project will not cause negative effects on the long-term maintenance of environmentally sensitive habitats.

EVIDENCE: (a) Pursuant to Finding & Evidence 3, above, an Initial Study and Mitigated Negative Declaration have been prepared for the project. Mitigation measures and conditions of approval listed in the Mitigation Monitoring and Reporting Program have been designed that avoid and/or mitigate the effects to insignificant levels in order to avoid negative effects on the long-term maintenance of the environmentally sensitive habitats found at the subject parcels.
(b) Consistent with Section 20.145.040.B.2 of the *Regulations for Development in the Big Sur Coast Land Use Plan* and Policy 3.3.2.3 of the *Big Sur Coast Land Use Plan*, the applicant shall convey Conservation Easements to the County of Monterey over all environmentally sensitive areas on the subject parcels, pursuant to Condition 7, in order to fulfill Key Policy 3.3.1 of the *Big Sur Coast Land Use Plan*, which requires that "*[a]ll practical efforts shall be made to maintain, restore, and if possible, enhance Big Sur's environmentally sensitive habitats. The development of all categories of land use, both public and private, should be subordinate to the protection of these critical areas*."

8. FINDING: **SLOPE WAIVER** – The request for the proposed development to be located on slopes of 30% or more is consistent with Section 20.145.140.A.4.a of the *Regulations for Development in the Big Sur Coast Land Use Plan Area*, which allows development on slopes of 30% or greater where no alternatives exist that would allow the development to occur on slopes of less than 30% or where the proposed development better achieves the resource

protection objectives and policies of the *Big Sur Coast Land Use Plan Area* and developments standard of and developments standards of the *Regulations for Development in the Big Sur Coast Land Use Plan Area*, because of limited development areas and the need to avoid sensitive biological resources and positive archaeological resources.

EVIDENCE: (a) The topography of the subject parcel is very irregular. The limited areas of the parcel with slopes less than 30% are occupied by existing buildings and/or environmentally sensitive resources and/or located within the Critical Viewshed. Therefore, the proposed development on slopes of 30% or greater better meets the resource protection objectives and policies of the *Big Sur Coast Land Use Plan* and development standards of the *Regulations for Development in the Big Sur Coast Land Use Plan*.

(b) Application, materials, and plans in Project File No. PLN020599

(c) Several site visits by PBID staff between the autumn of 2002 and the summer of 2003.

(d) Finding & Evidence 3, above.

9. FINDING: **HEALTH AND SAFETY -** The establishment, maintenance or operation of the project applied for will not under the circumstances of this particular case, be detrimental to the health, safety, peace, morals, comfort, and general welfare of persons residing or working in the neighborhood of such proposed use, or be detrimental or injurious to property and improvements in the neighborhood or to the general welfare of the County.

EVIDENCE: (a) Preceding findings and supporting evidence.

10. FINDING: **APPEALABILITY** – The project, as approved by the Coastal Development Permit, is appealable to the Board of Supervisors and the California Coastal Commission.

EVIDENCE: (a) Sections 20.86.030 and 20.86.080 of the Monterey County Coastal Implementation Plan.

DECISION

It is the decision of the Planning Commission that said application for a Combined Development Permit be granted subject to the following conditions and as shown on the attached sketch.

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

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

Original Signed By:

JEFF MAIN, 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.