

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

RESOLUTION NO. 04012

A.P. # 243-071-005-000
243-071-004-000
243-071-003-000

In the matter of the application of
California State Parks (PLN020606)

FINDINGS & DECISION

for a Coastal Development Permit in accordance with Chapter 20.140 (Coastal Development Permits) of the Monterey County Code, to allow the construction of a temporary haul road and the placement of 200,000 cubic yards of fill soil onto approximately 30 acres of agricultural land, raising the elevation of agricultural land approximately 3-5 feet. The top soil from the agricultural field will be placed over the fill and the agricultural use will be continued. The fill soil will originate west of State Highway 1, and will be trucked to the agricultural field via the temporary haul road under the highway. The project is a component of the California State Parks' Carmel River State Beach Lagoon restoration project, which is under the California Coastal Commission's permitting authority. The project is located at the Odello East property, east of State Highway 1 and immediately south of the Carmel River, Carmel, Coastal Zone, came on regularly for hearing before the planning commission on March 31, 2004.

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

FINDINGS OF FACT

1. FINDING: CONSISTENCY – The CA State Parks Coastal Development Permit (PLN020606), as described in Condition #1, and as conditioned, is consistent with the plans, policies, requirements, and standards of the Local Coastal Program (LCP). The LCP for this site consists of the Carmel Area Land Use Plan, Carmel Area Coastal Implementation Plan (Part 4), Part 6 of the Coastal Implementation Plan, and Part 1 of the Coastal Implementation Plan (Title 20 Zoning Ordinance), which designates this area as appropriate for the subject development.

EVIDENCE: (a) Plans/Regulations – The Planning and Building Inspection staff reviewed the project, as contained in the application and accompanying materials, for consistency with:

- 1) Carmel Area Land Use Plan
- 2) Carmel Area Coastal Implementation Plan (Part 4)
- 3) Part 6 of the Coastal Implementation Plan
- 4) Part 1 of the Coastal Implementation Plan (Title 20 Zoning Ordinance)

There would be no conflict or inconsistencies with these policies or regulations. Staff's record of review is provided in project file PLN020606.

(b) Land Use Designation – The parcels are zoned Medium Density Residential, 3 units per acres, Design Control, Special Treatment, Coastal Zone ("MDR/3-D-SpTr (CZ)"); Coastal Agricultural Preserve, Design Control, Special Treatment, Coastal Zone ("CAP-D-SpTr (CZ)"); and Resource Conservation, Design Control, Coastal Zone ("RC-D (CZ)"). The project is in compliance with the Site Development Standards for Medium Density Residential, Coastal Agricultural Preserve and Resource Conservation Districts in accordance with Sections

20.12.060, 20.30.060 and 20.36.060, respectively. No structures are proposed that would be required to meet height and setback regulations.

(c) **Site Description** – The project is located at the Odello East property, east of State Highway 1 and immediately south of the Carmel River, Carmel (Assessor's Parcel Numbers 243-071-005, -004, -003), Coastal Zone. The construction of a temporary haul road and placement of fill soil are allowed uses in accordance with Sections 20.146.120.C.2.a.1), 20.30.040.A and 20.36.040.B.

(d) **Environmentally Sensitive Habitat** – The project is consistent with policies of the Carmel Area Land Use Plan dealing with ESHA (Chapter 2.3). The project consists of the construction of a temporary haul road for transporting the fill soil. This area currently offers moderate quality riparian habitat, due to the young age, low age heterogeneity and low species diversity. The majority of the vegetation on the haul road alignment consists of willows that were planted after 1995 under the Carmel River Mitigation Bank Project. According to the Initial Study prepared for this project, some immature riparian vegetation will be trimmed and some may be lost during construction to clear paths for the haul road. Riparian trimming and removal will be performed only to the minimum extent necessary to enable construction to proceed. All work will be designed and conducted in coordination with the California Department of Fish and Game, the California Coastal Commission, the California Department of Transportation, the Monterey Peninsula Water Management District, and the County of Monterey. The Initial Study further states that no mature riparian vegetation will be removed. The proposed construction would result in some loss of juvenile willow habitat. However, the revegetation and habitat restoration associated with the Carmel River State Beach Lagoon Restoration Project will result in a significant net increase in riparian forest and substantial net improvements in riparian and wetland habitats. Additional mitigation measures, as identified by the Final Mitigated Negative Declaration, include: 1) restoration and revegetation (minimum ratio of 1:1) of disturbed areas (includes removal of temporary haul road) as soon as possible following the completion of construction and transportation of fill soil; 2) implementation of an erosion/runoff control plan; 3) protection of existing riparian habitat from construction and grading operations; 4) removal of at least 100 French broom plants; and 5) long term monitoring to ensure success of restoration. Additional permits to allow for minimal riparian vegetation trimming and removal have already been obtained from the California Department of Fish and Game, the Monterey Peninsula Water Management District and the California Department of Transportation.

(e) **Visual Resources** – The project is consistent with policies of the Carmel Area Land Use Plan dealing with visual resources (Chapter 2.2). The project planner conducted a site visit on February 11, 2004 to verify that the proposed project will not have a significant adverse effect on the public viewshed pursuant to the visual resource policies contained in the Carmel Area Land Use Plan. The project will result in continued agricultural use that is considered compatible with the area's scenic character.

(f) **Archaeological Resources** – The project is consistent with policies of the Carmel Area Land Use Plan dealing with archaeological resources (Chapter 2.8). The project is located within an area of high archaeological sensitivity as identified by the Monterey County Geographic Information System. The Final Mitigated Negative Declaration prepared for this project identifies Mitigation Measure Cult-3, which states that the Big Sur Land Trust property east of State Highway 1, proposed as the soil disposal site, shall be surveyed for archaeological resources before any spoils are deposited on the site. As a condition of approval, a copy of this

survey will need to be submitted to the Planning and Building Inspection Department for review and approval. Additionally, an ongoing condition of approval will require that land disturbance be halted in the event that cultural resources are found.

(g) Hazards – The project is consistent with policies of the Carmel Area Land Use Plan dealing with hazards (Chapter 2.7). The Geotechnical Investigation prepared by Haro, Kasunich & Associates, Inc., dated January 17, 2003, concludes that the site is suitable for the project. The proposed development is located completely within Zone A8, 100-year floodplain of the Carmel River. The Monterey County Water Resources Agency reviewed the project to determine if it would adversely affect the flood capacity of the area (“adversely affect” means that the cumulative effect of the proposed development will increase the water surface elevation of the base flood more than one foot at any point). The applicant submitted a FEMA Conditional Letter of Map Revision, dated October 17, 2003, certifying that the proposed project will not result in more than a 1-foot rise in the base flood elevation and would not adversely affect the flood capacity of the area. Additionally, open space uses such as agriculture (which this project will not change) is considered an acceptable land use in the 100-year floodplain.

(h) Water Resources – The project is consistent with policies of the Carmel Area Land Use Plan dealing with water resources (Chapter 2.2). The development will be sited, designed and constructed to minimize runoff, erosion and resulting sedimentation. The project will be required to adhere to Monterey County’s Erosion Control (Chapter 16.12) and Grading (Chapter 16.08) Ordinances. Additionally, the Storm Water Pollution Prevention Plan prepared for the California Department of Parks and Recreation, dated January 2003, addresses runoff and erosion. Point and non-point sources of pollution as a result of fill soil placement will be insignificant since there is no known current or historical use of pesticides or other toxic materials present on the active or former agricultural fields.

(i) Agriculture – The project is consistent with policies of the Carmel Area Land Use Plan dealing with agriculture (Chapter 2.6). The project is located within an area of prime farmland as identified by the Monterey County Geographic Information System. The project proposes the placement of 200,000 cubic yards of fill soil onto approximately 30 acres of agricultural land, raising the elevation of agricultural land approximately 3-5 feet. The top soil from the agricultural field will be placed over the fill and the agricultural use will be continued. According to the Final Mitigated Negative Declaration prepared for this project, the initial soils reports indicate that the fill soil material is acceptable for agricultural use and the resulting higher elevation of the agricultural land will reduce the potential for flooding of crops.

(j) Transportation – The project is consistent with policies of the Carmel Area Land Use Plan dealing with transportation (Chapter 3.1). The fill soil will originate west of State Highway 1, and will be trucked to the agricultural field via the temporary haul road located underneath and adjacent to the Carmel River bridge. No impacts to the highway’s level of service will occur as a result of this project. The Lead Agency has referred the project to the California Department of Transportation and obtained all necessary permits.

(k) Site Visit – The project planner conducted a site visit on February 11, 2004 to verify that the proposed project complies with the LCP. Staff’s memo regarding the site visit is in project file PLN020606.

(l) Land Use Advisory Committee – The Carmel Unincorporated/Highlands Land Use Advisory Committee reviewed and recommended approval (5 - 1 vote) of the Coastal

Development Permit on February 18, 2003 with comments related to designation of work hours to reduce noise impacts due to truck transportation of fill soil; designation of location for worker parking; minimization of riparian vegetation removal for temporary haul road; and prohibition on night/flood lighting. The LUAC comments are incorporated in the project design or have been addressed as part of the planning permit review process and resulting project conditions.

(m) Application Materials – The application and plans submitted for the Coastal Development Permit in project file PLN020606 at the Monterey County Planning and Building Inspection Department.

(n) Testimony – 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.

2. FINDING: SITE SUITABILITY – The site is suitable for the use proposed.

EVIDENCE: **(a)** The project has been reviewed for suitability by the Monterey County Planning and Building Inspection Department, Cypress Fire Protection District, Monterey County Water Resources Agency, Monterey County Public Works Department, Monterey County Health Department, Monterey County Parks Department, and Agricultural Commissioner. There has been no indication from these agencies that the site is not suitable. Conditions recommended by these agencies have been incorporated as project conditions.

(b) The project planner conducted a site visit on February 11, 2004 to verify that the site is suitable for this use.

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

3. FINDING: PUBLIC ACCESS – The project is in conformance with the public access and public recreation policies of the Coastal Act and the Local Coastal Program, and does not interfere with any form of historic public use or trust rights. No access is required as part of the project as no substantial adverse impacts 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)** One of the subject properties is described as an area where the Local Coastal Program proposes public access (along the existing levee). The haul road to be constructed will not cause a substantial adverse impact to the proposed public access since it will be used on a temporary basis. Once fill soil placement has been completed, the haul road will be removed and the disturbed area will be restored. No evidence or documentation has been submitted or found showing the existence of historic public use or trust rights over this property.

(b) Staff site visit on February 11, 2004.

4. FINDING: CEQA – The project is subject to environmental review pursuant to the requirements of the California Environmental Quality Act (CEQA). On the basis of the whole record before the Planning Commission, there is no substantial evidence that the proposed project as designed, conditioned, and mitigated, will have a significant effect on the environment. The County, as the decision-making body of a Responsible Agency, hereby reviewed and considered the environmental information contained in the Lead Agency's (California Department of Parks and Recreation) Mitigated Negative Declaration and Mitigation Monitoring Program prior to acting upon or approving the project.

EVIDENCE: **(a)** The following documents are on file in the office of Planning and Building Inspection and

are hereby incorporated by reference (PLN020606, CA State Parks):

1) On June 17, 2002, the California Department of Parks and Recreation completed a Draft Initial Study/Mitigated Negative Declaration (IS/MND) for the Carmel River State Beach Lagoon Restoration Project prepared pursuant to CEQA. This Draft IS identified potentially significant impacts relative to air quality, biological resources, cultural resources, geology and soils, hazards and hazardous materials, hydrology and water quality, and noise. However, proposed mitigation measures were adopted that avoid the effects or mitigate the effects to a point where clearly no significant effects would occur. A Draft MND was filed with the State Clearinghouse on June 18, 2002, noticed for public review, and circulated for a 30-day review period and a 30-day extension (SCH#2002061088).

2) In October 2002, the California Department of Parks and Recreation completed an Addendum to the Draft MND for the Carmel River State Beach Lagoon Restoration Project. This document, along with the Draft IS/MND (SCH#2002061088) and Notice of Determination, constitute the Final MND for the Carmel River State Beach Lagoon Restoration Project. On October 15, 2002, the Deputy Director of Park Operations for the California Department of Parks and Recreation considered the document and related comments and adopted the "Final Initial Study/Mitigation Negative Declaration for the Carmel River State Beach Lagoon Restoration Project."

(b) The evidence in the record includes studies, data, and reports supporting the Final IS/MND; additional documentation requested by staff; 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. The following data and reports were analyzed as part of the environmental determination in addition to the environmental documents identified in subsection (a) above:

- 1) Geotechnical Investigation prepared by Haro, Kasunich & Associates, Inc., dated January 17, 2003.
- 2) Storm Water Pollution Prevention Plan prepared for the California Department of Parks and Recreation, dated January 2003.
- 3) Revegetation Mitigation and Monitoring Plan prepared for the California Department of Parks and Recreation, dated June 2003.

The Planning Commission hereby reviewed and considered the environmental information contained in the Final Mitigated Negative Declaration and Mitigation Monitoring Program adopted by the Deputy Director of Park Operations for the California Department of Parks and Recreation for the Carmel River State Beach Lagoon Restoration Project. This finding determines that although the project could have significant impacts, mitigation can reduce these potential impacts to a level of insignificance. These mitigation measures include: 1) preparation of an archaeological survey for the soil disposal site; 2) protection and restoration of riparian habitat; 3) implementation of an erosion/runoff control plan; 4) utilization of a temporary haul road under Highway 1; and 5) continuation of the existing agricultural use. These mitigations apply solely to development proposed within the County's jurisdiction and have been incorporated as conditions of approval (See Condition Numbers 1, 4, 5, 6 and 8).

(c) A Mitigation Monitoring Program was adopted by the Deputy Director of Park Operations for the California Department of Parks and Recreation to ensure compliance during project implementation. The California Department of Parks and Recreation, as Lead Agency, will be responsible for implementing this program. As a Responsible Permitting Agency, the

County has conditioned the project whereas CA State Parks must provide evidence that these measures are implemented and have the intended effect.

(d) The permitting authority of Monterey County is limited to development occurring east of State Highway 1 (construction of the temporary haul road and fill soil placement). There are no changes in the project or unusual circumstances that exist that would necessitate additional environmental review by the County of Monterey.

5. **FINDING: NO VIOLATIONS** – The subject properties is in compliance with all rules and regulations pertaining to zoning uses, subdivisions and other applicable provisions of Title 20. Zoning violation abatement costs, if any, have been paid.

EVIDENCE: Sections 20.12.020, 20.30.020 and 20.36.020 of the Monterey County Zoning Ordinance. Staff verification of the Monterey County Planning and Building Inspection Department records indicates that no violations exist on subject property.

6. **FINDING: HEALTH AND SAFETY** – The establishment, maintenance, and operation of the proposed development applied for will not under the circumstances of the particular case, be detrimental to the health, safety, peace, morals, comfort, and general welfare of persons residing or working in the neighborhood or to the general welfare of the County.

EVIDENCE: Preceding findings and supporting evidence.

7. **FINDING: APPEALABILITY** – The decision on this project is appealable to the Board of Supervisors and the Coastal Commission.

EVIDENCE: Sections 20.86.030 and 20.86.080 of the Monterey County Zoning Ordinance (Title 20).

DECISION

THEREFORE, it is the decision of said Planning Commission to consider and affirm the conclusions contained in the Mitigated Negative Declaration and Mitigation Monitoring Program adopted by the Deputy Director of Park Operations for the California Department of Parks and Recreation on October 15, 2002, and approve said application for a Coastal Development Permit subject to the attached conditions.

PASSED AND ADOPTED this 31st day of March 2004, by the following vote:

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

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 Planning Commission 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. This permit expires two years after the above date of granting thereof unless construction or use is started within this period.