

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

RESOLUTION NO. 04024

A. P. # 000-000-000-000

In the matter of the application of  
**CalTrans (Rain Rocks) (PLN000203)**

**FINDINGS & DECISION**

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 and Design Approval to allow the placement of approximately 313,000 square feet of wire mesh drapery across the slope above Highway 1 for the purpose of rock fall prevention; and a Coastal Development Permit for development on 30% slope. The project is located on the east side of Highway 1 at Post Mile 21.4, Limekiln Point, Big Sur area, Coastal Zone, came on regularly for hearing before the Planning Commission on March 10, 2004.

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

1. **FINDING: CONSISTENCY:** The Project, as conditioned is consistent with applicable plans and policies, the Big Sur Coast Land Use Plan, Coastal Implementation Plan (Part 3), Part 6 of the Coastal Implementation Plan, and the Monterey County Zoning Ordinance (Title 20) which designates this area as appropriate for public/quasi-public uses.  
**EVIDENCE:** (a) Plan Conformance. PBI staff has reviewed the project as contained in the application and accompanying materials for consistency with the Big Sur Coast Land Use Plan, Coastal Implementation Plan (Part 3), Part 6 of the Coastal Implementation Plan. PBI staff has 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 designate this area as appropriate for public/quasi-public development. Staff notes are provided in Project File PLN000203.  
(b) Site Visit. Project planner conducted an on-site inspection on September 25, 2002, July 29, 2003 and October 9, 2003 to verify that the project in the subject locations conforms to the plans listed above.  
(c) Land Use. The project for rock fall protection devices within the Highway 1 right-of-way is a conditional use as a public/quasi-public use, in accordance with Section 20.40.050 CIP.  
(d) Zoning Consistency. The project is located within the state highway right-of-way, which is designated Public/Quasi-Public District, Coastal Zone. The project is in compliance with Site Development Standards for a Public/Quasi-Public District in accordance with Section 20.40.060 CIP.  
(e) Visual/Scenic Resources. See Finding #6.  
(f) Land Use Advisory Committee (LUAC): The Rain Rocks project was reviewed by the Big Sur LUAC on September 26, 2000. The LUAC recommended approval of the project by a vote of 5-1. The negative vote wanted to revisit the project in 5 years. A

mitigation measure/condition limits the permit to 10 years and requires permit renewal and re-evaluation of the project.

(g) 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 PLN000203.

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 Department, Public Works Department, Water Resources Agency, Environmental Health Division, California Department of Forestry, and the Monterey County Sheriff's Department. Conditions recommended have been incorporated.

(b) Technical reports by CalTrans geology, archaeology and biology staff indicates that there are no physical or environmental constraints such as environmentally sensitive habitats or similar areas that would indicate the site are not suitable for the use proposed. Agency staff concurs. Reports are in Project File PLN000203.

(c) Staff conducted an on-site visit on September 25, 2002, July 29, 2003 and October 9, 2003 to verify that the site is suitable for this use.

(d) No public facilities are necessary for the project.

3. **FINDING: CEQA (Mitigated Negative Declaration):** Based on the whole record before the Planning Commission there is no substantial evidence that the proposed project as designed and conditioned will have a significant effect on the environment. The negative declaration reflects the independent judgment and analysis of the County.

**EVIDENCE:** (a) The Monterey County Planning and Building Inspection Department prepared an Initial Study pursuant to CEQA. The Initial Study provides substantial evidence based upon the record as a whole, that the project would not have a significant effect on the environment. Staff accordingly prepared a negative declaration. The Initial Study is on file in the offices of the Planning and Building Inspection Department and is hereby incorporated by reference. (PLN000203).

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

- The application and materials
- Memos regarding biological review by Bob Pavlik (September 7, 1994), Greg Smith (June 15, 1993), Greg Smith (April 20, 1993).
- Verbal Communication with biologists Jeff Norman (May 21, 2003), Mark Alaback (May 29, 2003), Jason Scott (June 2, 2003), Paul Heady (June 4, 2003), and Don Roberson (June 2, 2003).
- Geologic Report for Rain Rocks by California Department of Transportation Engineering Services dated June 5, 1995. Geologic Memo by John Duffy (November 17, 1997).
- Staff site visit on September 25, 2002, July 29, 2003 and October 9, 2003.
- Staff reports that reflect the County's independent judgment

(c) These reports are on file in the offices of PBI (File Reference No. PLN000203) and are incorporated by reference herein.

(d) Potential visual impacts have been minimized and mitigated by using the minimum of netting necessary, coloring the proposed netting and components and any

additional netting to match the background rock, and limiting the permit approval to 10 years for the projects to be re-evaluated.

(e) Potential biological impacts to Seacliff buckwheat, which is host plant to the Federally Endangered Smith's blue butterfly, have been minimized. No additional work is proposed for the Rain Rocks netting. The site is unstable and not suitable habitat most wildlife or plant life and no sensitive species have been identified. Mitigation includes a one-time eradication of non-native exotic plants at the Rain Rocks project site to minimize potential impacts to native habitat.

(f) The negative declaration was circulated for public review from December 2, 2003 to December 31, 2003. The County has considered the comments received from the applicant during the public review period, and they do not alter the conclusions in the Initial Study and negative declaration. Comments related to corrections or clarifications are incorporated into the initial study. Several comments directed towards County procedures are addressed in a Response to Comments, attached to the Initial Study. Other comments concerning analysis and impact determination are included in the Response to Comments and are also summarized and addressed below:

- The applicant questions the determination made in the initial study of a mitigated negative declaration and states that "the project could not have a significant effect on the environment." However, based on the biological and aesthetic issues related to the projects, there are potential impacts requiring mitigation and therefore the mitigated negative declaration is the appropriate determination. The mitigation measures and their justification are described in more detail below.
- Several comments relate to the impact and mitigation measure #3 for eradication of non-native invasive plants at Rain Rocks. The initial study determined that that installation of the netting at Rain Rocks created additional disturbance and provided opportunity for invasive plants to establish. The mitigation requires a one-time eradication effort to the extent feasible and addresses this impact. The applicant points out that those non-native plants were present on the site prior to the project and are commonly found in the area and also questions the evidence. Non-native plants are a threat to the native species and habitat in the Big Sur area and LUP policies which serve as thresholds of significance encourage the removal of exotic invasive species (LUP 3.3.3.A.10). Given the extent of the netting and disturbance required for its installation, it is probable that additional invasive plants became established and is the same conclusion that would have been drawn prior to the project. In addition, because this permit and environmental review is after-the-fact, it is not possible to determine whether native habitat or sensitive buckwheat plants were impacted, but this measure is necessary to mitigate that potential impact
- Comments also question the potential impact to buckwheat plants at Old Faithful and the related mitigation measure #4. The project does not propose removal of any buckwheat plants and buckwheat plants in the project are will be flagged for avoidance. However, installation of the netting where buckwheat plants exist lends itself to potential impacts that must be mitigated. Impacting buckwheat plants, which are host to the Federally Endangered Smith's blue

butterfly, is potentially significant. The measure, which requires a follow-up survey and replanting of any impacted buckwheat, is designed to address the potential impact that might occur. Unfortunately, this is not possible at the Rain Rocks site, given the after-the-fact nature of the permit and environmental review.

- One comment was directed at the mitigation measure #1 for the 10-year permit expiration of both projects. This mitigation is required to ensure consistency with policies and to address visual and aesthetic issues. The Big Sur Coast Land Use Plan (LUP) requires new development to be “subordinate to the blend with its environment” and appropriate modifications to be made (LUP 3.2.4.A.3). Transportation policies also set the standard for Highway 1 to “maintain the highest possible standard of visual beauty and interest” (LUP 4.1.2.2). Staff determined that the netting on these significant landforms is highly visible and shiny metal connectors detract from their natural beauty. While recognizing that CalTrans routinely evaluates highway features, this evaluation is based on performance and function. The re-evaluation performed by the County is required to address visual and biological resource impacts. In order to find that impacts are fully mitigated to a level of insignificance, re-evaluation is necessary to better meet the LUP policies. In addition, although there is currently a safety need for these devices, the two projects are not integral for a functioning highway and are relatively easy to remove or modify if circumstances, practice, or technology changes. Each project has unique issues and some issues are more significant than others based on their situation. This mitigation measure is consistent with the rock fall fence project at Cow Cliffs (PLN000005), which was accepted by CalTrans.

**4. FINDING: NO VIOLATIONS:** The subject property is in compliance with all rules and regulations pertaining to zoning uses, subdivision and any other applicable provisions of the County’s zoning ordinance. No violations exist on the property, and all zoning violation abatement cost, if any, have been paid.

**EVIDENCE:** (a) Staff reviewed Monterey County Planning and Building Inspection Department records and is not aware of any violations that exist on subject property.

**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 20.70.050.B.4). No access is required as part of the project as no substantial adverse impact on access, either individually or cumulatively, as described in Section 20.70.050.B.4.c of the Monterey County Coastal Implementation Plan, can be demonstrated.

**EVIDENCE:** (a) The project is located within the state Highway 1 right-of-way, which is the primary means of public access to the Big Sur Coast area.

(b) The project as designed and conditioned does not impede public access or interfere with visual access of the ocean. It improves access by increasing highway reliability and safety.

(c) Staff site visit on September 25, 2002, July 29, 2003 and October 9, 2003.

- 6. FINDING: SCENIC RESOURCES:** The subject project is consistent with Visual Resource Policies of the Big Sur Coast Land Use Plan.
- EVIDENCE:** (a) Policy 3.2.1 of the Big Sur Coast Land Use Plan (LUP) prohibits development within the “critical viewshed,” which is defined as areas visible from Highway 1 with some exceptions. The intent of the policy is to preserve the scenic quality and character of the Big Sur Coast. However, highway safety improvements are allowed provided they meet visual criteria to minimize visibility. The project has minimized visibility by limiting the area covered by netting, using netting color that is non-reflective and matches the background rock and choosing an alternative that is the less visually intrusive, while still meeting project requirements. In addition, a condition has been incorporated limiting the life of the permit to 10 years and requiring a renewal in order to reevaluate the project need. The project as designed and conditioned is consistent with the policy.
- (b) Initial Study (Mitigated Negative Declaration) prepared for the projects and located in Project File PLN000203.
- (c) Application and materials in Project File PLN000203.
- (d) Staff site visits on September 25, 2002, July 29, 2003 and October 9, 2003.
- 7. FINDING: HEALTH AND SAFETY:** The establishment, maintenance or operation of the project applied for will not under the circumstances of this particular case, be detrimental to the health, safety, peace, morals, comfort, and general welfare of persons residing or working in the neighborhood of such proposed use, or be detrimental or injurious to property and improvements in the neighborhood or to the general welfare of the County.
- EVIDENCE:** (a) The project was reviewed by Planning and Building Inspection Department, Public Works Department, Water Resources Agency, Environmental Health Division, California Department of Forestry and the Monterey County Sheriff’s Department. The respective departments and agencies recommend 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. However, no conditions were found necessary.
- 8. FINDING: APPEALABILITY:** The project is appealable to the Board of Supervisors and California Coastal Commission.
- EVIDENCE:** (a) Sections 20.86.030.A of the Monterey County Coastal Implementation Plan, Part 1 (Board of Supervisors).
- (b) Section 20.86.080.A.3 of the Monterey County Coastal Implementation Plan, Part 1 (Coastal Commission). Development that is permitted as a conditional use is appealable to the Coastal Commission. The development located in the critical viewshed is a conditional use.

**DECISION**

It is the decision of the Planning Commission to adopt the Mitigated Negative Declaration and Mitigation Monitoring Reporting Program and approve said application for a Combined Development Permit as shown on the attached sketch and subject to the attached conditions:

**PASSED AND ADOPTED** this 10th day of March, 2004, by the following vote:

AYES: Errea, Parsons, Hawkins, Padilla, Vandever, Wilmot, Diehl, Salazar, Rochester, Sanchez  
NOES: \*  
ABSENT: \*

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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 90<sup>th</sup> 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.