

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

RESOLUTION NO. 04025

A. P. # 419-231-013-000

In the matter of the application of
Gilbert and Joanne Segel (PLN020561)

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 Administrative Permit for adding 1,705 square feet to an existing 780 square foot single family dwelling (2,485 square feet total), construction of two new water tanks, grading (approximately 400 cubic yards) and the construction of a new carport; a Coastal Development Permit for the construction of a new 841 square foot caretaker's unit and carport; a Coastal Development Permit for development within environmentally sensitive habitat; a Coastal Development Permit to remove six oak trees (9-inch diameter and less) and relocate three redwood trees; and a Variance to reduce the required front yard setback from 50 feet to 25 feet for the caretaker's unit and to 2 feet for the caretaker's unit carport. The property is located at 46750 Clear Ridge Road, Big Sur, Coastal Zone, came on regularly for hearing before the planning commission on June 9, 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, Big Sur Coast Land Use Plan, Coastal Implementation Plan (Part 3), and the Monterey County Zoning Ordinance (Title 20) which designates this area as appropriate for residential development.

EVIDENCE: (a) Land Use. Gilbert and Joanne Segel own a 39.53-acre parcel with an existing 780 square foot residence. The site is located approximately 1.5 miles northwest of Highway One with a gated access to a private, unpaved road (Pfeiffer Ridge Road) that crosses the Big Sur River and ultimately accesses Clear Ridge Road.

(b) Zoning. The site is zoned Watershed Scenic Conservation with a 40 acre minimum lot size with a Design Control Overlay, Coastal Zone [WSC/40-D(CZ)].

(c) Plan/Code Conformance. The Planning and Building Inspection Department staff reviewed the project, as contained in the application and accompanying materials, for conformity with the:

- (1) Big Sur Coast Land Use Plan
- (2) Monterey County Coastal Implementation Plan - Part 3 (Chapter 20.145); and
- (3) Monterey County Coastal Implementation Plan – Part 1 (Zoning Ordinance - Title 20), which establishes regulations for:
 - Watershed Scenic Conservation (Chapter 20.17).
 - Design Control (Chapter 20.44).
 - Caretaker Units (Chapter 20.64.030)
 - Development in Environmentally Sensitive Habitat (Chapter 20.66.020).

With the recommended conditions, there would be no conflict or inconsistencies with the regulations of these plans or policies. These conditions generally require mitigation above what is designed into the project in order to address specific policy thresholds related to visual resources and environmentally sensitive habitat as detailed in the following findings and evidence.

(d) Permits. The project generally involves an application for permits to demolish a 780 square foot residence and develop a 2,485 square foot single family home with an attached, 1-car carport and an 841 square foot caretaker unit with a detached, 1-car carport. An existing on-site well and septic systems would serve these structures. Grading involves 233 cubic yards of cut and 196 cubic yards of fill. Entitlements for the proposed project include:

- Coastal Administrative Permit for the new single family residence.
- Coastal Development Permit to allow a caretaker unit.
- Coastal Development Permit to modify parking standards such that a carport is not required for the caretaker unit.
- Coastal Development Permit to allow development within 100 feet of environmentally sensitive habitat (Central Maritime Chaparral).
- Variance to reduce the required front setback from 50 feet to 29 feet for the Caretaker Unit.

(e) Scenic Resources. This project is subject to Scenic Resource policies in Section 3.2.4.A of the Big Sur Land Use Plan (LUP) for land not in critical viewshed. Staking and flagging was used to determine that the proposed structures are not visible from Pfeiffer Beach and will not detract from the ridgeline silhouette (Policy 3.2.4.A.1 LUP). A site visit established that although a corner/eave of the caretaker unit would be visible from the neighboring property, existing vegetation and a design to avoid openings on the northwest corner provides privacy for these neighbors (Policy 3.2.4.A.2 LUP). Proposed colors and materials consist of sustainable redwood siding and corten, board formed concrete (unpainted), clear glass with dark green mullions, and charcoal gray asphalt shingles. The low profile design with wood finish/texture complimented by grey and green tones blend in with the surrounding forest and chaparral environment (Policy 3.2.4.A.3 LUP). A modest extension of the natural forest will provide landscape screening for the new caretaker unit (Policy 3.2.4.A.4 LUP). All development uses, and is located within areas disturbed by, existing roads (Policy 3.2.4.A.5 LUP).

(f) Environmentally Sensitive Habitat (ESHA). As conditioned, the proposed project is consistent with regulations for development adjacent to environmentally sensitive habitats (Section 20.145.040 CIP). The following biological assessments were prepared for the subject site in accordance with Section 20.145.040.A CIP:

- (1) *Biological Report*. Jeff Norman, Consulting Biologist. March 31, 2003.
- (2) Amendment to Biological Report. Jeff Norman, Consulting Biologist. November 9, 2003.
- (3) Caretaker Site Biological Analysis. Jeff Norman, Consulting Biologist. November 13, 2003

The area surrounding the proposed structures has an existing conservation easement (20.145.040.B.2 CIP) to preserve the habitat and scenic qualities of the area. No new easement is required.

(g) Land Use Advisory Committee: The Big Sur Coast Land Use Advisory Committee voted 4-0-2 to recommend approval of the project with one changes:

- Replace the dome on the caretaker unit with a flat skylight (**Condition 7**).

LUAC meeting minutes dated October 14, 2003.

(h) Site Visits. County staff conducted on-site inspections to review that the subject parcel conforms to the plans listed above.

(i) Application. 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 PLN020561.

2. FINDING: TREE REMOVAL. The subject project minimizes tree removal in accordance with the applicable goals and policies of the Big Sur Coast Land Use Plan and Coastal Implementation Plan (Part 3).

EVIDENCE: (a) Section 20.145.060.A.1.c of the Monterey County Coastal Implementation Plan, Part 3, provides an exception for thinning small (less than 12-inch diameter) trees. The project also involves a Coastal Development Permit to remove six oak trees that are all 9-inches or less in diameter.

(b) Three redwoods trees (*Sequoia sempervirens*) will be impacted by development of the new main house. These trees will be transplanted to an area southeast of this residence as described in the project biological report. Success will be monitored and if a tree does not survive, new trees shall be started using seeds from trees on-site.

(c) Biological Assessment prepared by Jeff Norman, Consulting Biologist, dated March 31, 2003 and amended November 9, 2003. Report and Addendum is in Project File PLN020561.

3. FINDING: VARIANCE (Special Circumstances): Because of special circumstances applicable to the subject property, including the size, shape, topography, location of the lot, or the surrounding area, the strict application of Section 20.147.030.A.1.b of the Monterey County Coastal Implementation Plan is found to deprive the subject property of privileges enjoyed by other property owners in the vicinity under an identical zoning classification.

EVIDENCE: (a) Section 20.17.060.C requires a 50-foot front yard set back for habitable and non-habitable accessory structures in the Watershed and Scenic Conservation zone. The intent of this regulation is to preserve natural views. A caretaker unit is a habitable accessory structure and a carport is a non-habitable accessory structure.

(b) The site is restricted with two scenic easements, sensitive habitat and steep slopes that encompass most of the property.

(c) The way Clear Ridge Road bisects the property significantly restricts the property set back requirements. Holding to 50-foot set back requirements from the right of way impacts a section of land that is 160 feet wide (right of way plus 50 feet on each side) through the Segel property.

(d) Requiring the full set backs and to develop only in areas not located within a scenic easement would prohibit development on this parcel. Although the easement area west of Clear Ridge Road allows development under certain restrictions, areas not constrained by sensitive habitat and/or steep slopes are generally located less than 50 feet from the right of way.

(e) Carport Parking Modification. Existing driveways provide adequate area to park around the caretaker unit without obstructing emergency access and without impacting surrounding habitat. The intent of the WSC zone is to limit structures so eliminating the carport would better serve this purpose and will not generate the need for additional parking.

(f) There are special circumstances on the site that warrant a variance to reduce the front set back requirement provided there is no special privilege (*Finding 4*) and it is an authorized use (*Finding 5*).

(g) Materials and documents in Project File No. PLN020373.

4. FINDING: VARIANCE (Special Privileges): The variance shall not constitute a grant of privileges inconsistent with the limitations upon other property owners in the vicinity and zone in which such property is situated.

EVIDENCE: (a) Caretaker units are conditional uses allowed subject to a Coastal Development Permit (Section 20.17.050.I CIP). If a conditional use cannot meet the minimum development standards, the County is not obligated to approve a permit. Properties within the vicinity have been routinely afforded permits for caretaker units. Therefore, allowing a permit for a caretaker unit on the subject property is a not a special privilege.

(b) The right of way for Clear Ridge Road is 60 feet wide. Habitat and slope constraints would limit potential changes to the current alignment so the road is likely improved to its ultimate width as a private, gated, dirt road. Although the proposed caretaker unit is set back 55 feet from the existing roadway improvements, the set back would be only 25 feet if the road is widened or realigned. Staff finds that a 25-foot set back provides adequate area to screen the structure from view, which is the intent within the WSC zoning district. Circumstances with easements and sensitive habitat restrict the possible location of where a caretaker unit can be sited and meet the policies of the Land Use Plan. In addition, a reduction from 50 feet to 25 feet is consistent with set back variances granted in other remote areas of the WSC zone. Therefore, allowing a caretaker unit set back 25 feet from the right of way (55 feet from the existing road improvement) would not constitute a special privilege.

(c) Other properties in the vicinity have received approval for caretaker units. Circumstances (*Finding 3*) with easements and sensitive habitat restrict the possible location of where a caretaker unit can be sited and meet the policies of the Land Use Plan (*Finding 5*).

(d) Materials and documents in Project File No. PLN020561.

5. FINDING: VARIANCE (Authorized Use): The Variance shall not be granted for a use or activity which is not otherwise expressly authorized by the zone regulation governing the parcel of property.

EVIDENCE: (a) A caretaker unit is a conditional use allowed subject to a Coastal Development Permit (Section 20.17.050.I CIP).

(b) Caretaker units are required to provide one covered parking space (Section 20.64.030.C.6 CIP). However, Section 20.58.050 CIP allows the Planning Commission to modify parking standards (See *Finding 3e and 6*).

(c) The proposed unit has been designed and located to avoid impacts to sensitive habitat in accordance with the Big Sur Land Use Plan (see *Finding 1*).

- (d) A caretaker unit is an authorized use provided there is no special privilege (*Finding 4*) in granting such a variance and that there are special circumstances (*Finding 3*) that are unique to this site.
- (e) Materials and documents in Project File No. PLN020561.

6. FINDING: SITE SUITABILITY: The site is physically suitable for the proposed use.

- EVIDENCE:**
- (a) Site Inspection. The project planner conducted an on-site inspection to assess work completed prior to issuance of a permit and remaining work to be completed.
 - (b) Agency Review. The project has been reviewed by the Monterey County Planning and Building Inspection Department, Water Resources Agency, Public Works Department, Agriculture Commissioner, Parks Department, and Environmental Health Department. The project has also been reviewed by California Department of Forestry (CDF), Department of Fish and Game, and Coastal Commission. 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.
 - (c) Carpport Parking Modification. The Planning Commission determines that the one covered parking space for the caretaker unit is not required in this case due to unusual circumstances on this project site relative to sensitive habitat, scenic resources, easement restrictions, and a road easement through the property (See *Finding 3*). Parking for the unit can be supported on the site by parking within the graded driveway areas. Said uncovered parking will not interfere with emergency access and will reduce impacts to the surrounding habitat (Section 20.58.050 CIP).
 - (d) Professional Reports. Reports by a biologist, archaeologist and engineer indicate that there are no physical or environmental constraints that would indicate the site is not suitable for the proposed use:
 - *Preliminary Cultural Resources Reconnaissance of Assessor's Parcel Number 010-087-004, Big Sur, County of Monterey, California*. Susan Morely, M.A. March 17, 2003.
 - *Geologic Report*. Karl Vonder Linden Ph.D., Certified Engineering Geologist. March 17, 2003.
 - *Opposition to Siting of Caretaker Unit*. Robert Carver, architect representing neighbors, and James G. Heisinger, Jr. attorney representing neighbors. October 27, 2003.
 - *Caretaker Site Analysis*. Arden Handshy, land use facilitator, Warren Lawson, architect. December 10, 2003.
 - *Biological Report*. Jeff Norman, Consulting Biologist. March 31, 2003.
 - *Amendment to Biological Report*. Jeff Norman, Consulting Biologist. November 9, 2003.
 - *Caretaker Site Biological Analysis*. Jeff Norman, Consulting Biologist. November 13, 2003.

7. VIOLATION: The subject property is not in compliance with all rules and regulations pertaining to zoning uses, subdivision and any other applicable provisions of the County's zoning

ordinance. A violation exists on the property; however, if approved, the proposed project will remove the violation. Zoning violation abatement cost, if any, have been paid.

EVIDENCE: (a) Staff verified that the subject property is in compliance with all rules and regulations pertaining to the use of the property, that no violations exist on the property and that all zoning abatement costs, if any have been paid.

8. FINDING: CEQA/MITIGATED NEGATIVE DECLARATION: 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) Initial Study. As part Monterey County Planning and Building Inspection Department's permit process, staff prepared an Initial Study pursuant to CEQA. The Initial Study identified potentially significant effects to aesthetic and biological resources, but applicant has agreed to proposed mitigation measures that avoid the effects or mitigate the effects to a point where clearly no significant effects would occur. The Initial Study is on file in the office of PB&I and is hereby incorporated by reference. (PLN030561/Segel). All project changes required to avoid significant effects on the environment have been incorporated into the project and/or are made conditions of approval.

(b) Mitigated Negative Declaration. On April 27, 2004, County staff completed an Initial Study for the project (PLN030561/Segel) in compliance with the California Environmental Quality Act (CEQA) and its Guidelines. The Initial Study provides substantial evidence that the project, with the addition of Mitigation Measures, would not have significant environmental impacts. A Mitigated Negative Declaration was filed with the County Clerk on May 4, 2004, noticed for public review, and circulated to the State Clearinghouse from May 4 to June 4, 2004. The evidence in the record 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. *Preliminary Cultural Resources Reconnaissance of Assessor's Parcel Number 010-087-004, Big Sur, County of Monterey, California*. Susan Morely, M.A. March 17, 2003.

2. *Geologic Report*. Karl Vonder Linden Ph.D., Certified Engineering Geologist. March 17, 2003.

3. *Opposition to Siting of Caretaker Unit*. Robert Carver, architect representing neighbors, and James G. Heisinger, Jr. attorney representing neighbors. October 27, 2003.

4. *Caretaker Site Analysis*. Arden Handshy, land use facilitator, Warren Lawson, architect. December 10, 2003.

5. *Biological Report*. Jeff Norman, Consulting Biologist. March 31, 2003.
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The Planning Commission determines that although the project could have significant impacts, mitigation can reduce these potential impacts to a level of insignificance. Therefore, a Mitigated Negative Declaration is hereby adopted by the Planning Commission.

(c) Mitigation Monitoring Program. A Mitigation Monitoring and/or Reporting Plan has been prepared in accordance with Monterey County regulations and is designed to ensure compliance during project implementation. The applicant/owner must enter into an "Agreement to Implement a Mitigation Monitoring and/or Reporting Plan" as a condition of project approval.

(d) Comments. No comments have been received. No issues remain.

(e) Public Testimony. The Planning Commission considered public testimony and the initial study at hearings on June 9, 2004.

9. FINDING: FISH & GAME FEE: For purposes of the Fish and Game Code, the project will have a significant adverse impact on the fish and wildlife resources upon which the wildlife depends.

EVIDENCE: (a) De Minimus Finding. The site includes rare plant communities that qualify as resources listed A-G listed above as reviewed and agreed by the State Department of Fish and Game and the U.S. Department of Fish and Wildlife. Biological assessments determine that potential impacts can be mitigated through restoration/replacement of habitat. Therefore, the project is not De Minimus and is subject to the required fee.

(b) Initial Study and Negative Declaration contained in File No. PLN030561/Segel.

10. 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). The proposed project is in conformity with the public access and public recreation policies of Chapter 3 of the Coastal Act of 1976 and Section 20.145.150 of the Big Sur Coastal Land Use Plan and Coastal Implementation Plan.

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 2, 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) Staff site visit on December 11, 2003.

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

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

(b) Coastal Commission. Section 20.86.080.A of the Monterey County Zoning Ordinance.

DECISION

It is the decision of the Planning Commission to adopt Mitigated Negative Declaration and Mitigation Monitoring 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 9th day of June, 2004, by the following vote:

AYES: Errea, Sanchez, Padilla, Vandever, Parsons, Diehl, Salazar, Rochester, Wilmot, Hawkins

NOES: None

ABSENT: None

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.