

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

RESOLUTION NO. 04036

A. P. # 420-231-004-000
420-231-005-000

In the matter of the application of
Peter W. Mullin, TR (PLN030190)

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 to allow grading (1200 cu. yds. cut/800 cu. yds. fill), a temporary construction access road, retaining walls, and a wire mesh erosion control net on coastal bluffs exceeding 30% slope; a Coastal Development Permit for development within 100 feet of environmentally sensitive habitat; and Design Approval. The project is located at 2858 Burns Creek, Big Sur, approximately one mile south of Julia Pfeiffer-Burns State Park on the west side of Highway 1, Coastal Zone, came on regularly for hearing before the Planning Commission on August 11, 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. Peter Mullin owns a 2.5-acre parcel (APN: 420-231-005-000) with an existing single-family residence located on a west facing mesa along the coastal bluff. Access to the residence is provided by an asphalt driveway that winds down a steep hill from Highway One to the west toward the Pacific Ocean through a separate 10-acre parcel that is also owned by Mr. Mullin (APN: 420-231-004-000). The site is located immediately north of Burns Creek and south of the historic Anderson's Landing.

(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).
 - Development on Slopes in Excess of 30% (Chapter 20.64.230)
 - 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 construct a 25-foot tall retaining wall and install a 25-foot by 30-foot gabion wire mesh netting on the slope below the wall. Entitlements for the proposed project include:

- Coastal Development Permit to development on slopes greater than 30%.
- Coastal Development Permit to allow development within 100 feet of environmentally sensitive habitat (Central Maritime Chaparral).

(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. The proposed design with coloring, texturing and sculpting to simulate sandstone bedrock along with native planting around the project area will blend in with the surrounding environment (Policy 3.2.4.A.3 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 assessment was prepared for the subject site in accordance with Section 20.145.040.A CIP:

- (1) *Biological Assessment and Erosion Control Plan*. Nicole Nedeff, Consulting Ecologist. November 3, 2003.

The surrounding property, owned by the applicant, 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 South Coast Land Use Advisory Committee voted 3-0-2 to recommend approval of the project as proposed finding that the project was well engineered. LUAC meeting minutes dated June 29, 2004.

(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 PLN030190.

2. 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) Professional Reports. Reports by a biologist and engineer indicate that there are no physical or environmental constraints that would indicate the site is not suitable for the

proposed use:

- *Geotechnical Engineering and Engineering Geology Investigation*. Haro, Kasunich and Associates, Inc. May 14, 2004.

- *Biological Assessment and Erosion Control Plan*. Nicole Nedeff, Consulting Ecologist. November 3, 2003.

3. **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.

EVIDENCE: (a) A site investigation and research of the subject property found that a drainage system was installed without County permits. In response to the initial engineer report, Mr. Mullin installed a temporary collection and drainage system to control surface runoff, seepage water, and storm water from the house drains and carry it down the slope past the slide area. There are no permits on file for this work.

(b) Building permit violation abatement cost, if any, will be paid as a condition of approval (**Condition 9**).

4. **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. (PLN030190/Mullin). 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 July 7, 2004, County staff completed an Initial Study for the project (PLN030190/Mullin) 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 July 9, 2004, noticed for public review, and circulated to the State Clearinghouse from July 9 to August 10, 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. *Geotechnical Engineering and Engineering Geology Investigation*. Haro, Kasunich and Associates, Inc. May 14, 2004.
2. *Biological Assessment and Erosion Control Plan*. Nicole Nedeff, Consulting Ecologist. November 3, 2003.

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 August 11, 2004.

5. **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. PLN030190/Mullin.

6. **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 July 21, 2003.

7. **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 that said application for a Combined Development Permit be granted as shown on the attached sketch and subject to the attached conditions.

PASSED AND ADOPTED this 11th day of August, 2004, by the following vote:

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

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.