

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

RESOLUTION NO. 04041

A.P. # 129-162-004-000-M

In the matter of the application of
Maria Vargas TR (PLN040016)

FINDINGS & DECISION

for a Coastal Development Permit in accordance with Chapter 20.140 (Coastal Development Permits) of the Monterey County Code, to allow for development within 100 feet of environmentally sensitive habitat (Maritime Chaparral) to allow the installation of four 5,000-gallon water tanks and associated water supply lines that have been installed in an unpermitted location; and a Restoration Plan to include restoring 2,450 sq. ft. of Maritime Chaparral habitat and replacing 850 sq. ft. of Extirpated Chaparral habitat by planting 2,610 sq. ft. (3:1 ratio) of Pájaro Manzanita in order to clear violation case CE030186. The subject parcels are located at 380 & 390 Hidden Valley Road, Watsonville, Royal Oaks, North County area, Coastal Zone, came on regularly for hearing before the Planning Commission on September 8, 2004.

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

FINDINGS OF FACT

- 1. FINDING: CONSISTENCY, SITE SUITABILITY, & PUBLIC ACCESS** – Coastal Development Permit (PLN040016/Vargas) for development within 100 feet of environmentally sensitive habitat (maritime chaparral) to allow the installation of four 5,000-gallon water tanks and associated water supply lines that have been installed in an unpermitted location; and a restoration plan to include restoring 2,450 sq. ft. of maritime chaparral habitat and replacing 850 sq. ft. of extirpated chaparral habitat by planting 2,610 sq. ft. (3:1 ratio) of Pájaro Manzanita in order to clear violation case CE030186. The parcels are zoned LDR/5 (CZ); i.e., Low Density Residential zoning district, 5 acres per unit, in the Coastal Zone. The project described in the application and accompanying materials conforms to the plans, policies, requirements, and standards of the *North County Coastal Land Use Plan*, the *Regulations for Development in the North County Coastal Land Use Plan Area* (Coastal Implementation Plan, Part 2), Part 6 of the Coastal Implementation Plan (Appendices), and the Monterey County Zoning Ordinance (Title 20). The site is physically suitable for the use proposed. The project is in conformance with the public access and public recreation policies of the Coastal Act and Monterey County 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). No access is required as part of the project as no substantial adverse impact on public coastal 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) Planning and Building Inspection Department (PBID) staff have reviewed the project as contained in the application and accompanying materials for conformity with

the certified Monterey County Local Coastal Program and have determined that the project is consistent as conditioned. Permit application, plans, and materials contained in Project File No. PLN030373.

(b) The project planner conducted onsite inspections on May 14th and July 30th, 2003, to verify that the project on the subject parcel conforms to the certified Monterey County Local Coastal Program.

(c) The requested Coastal Development Permit seeks to allow development within 100 feet of environmentally sensitive habitat; such development is conditionally allowable for the subject lots pursuant to Chapters 20.16 (RDR [CZ] District) and 20.70 (Coastal Development Permits) of the Zoning Ordinance (Title 20).

(d) Full restoration to a pre-violation state is found to be infeasible and/or highly unlikely due to circumstances beyond the control of the applicant/property owner. However, mitigation measures and monitoring actions designed by the project biologist will ensure that the project is compatible with the long-term maintenance of the chaparral habitat onsite, the project is found to consistent with the natural-resource regulations and policies contained in the Monterey County Code and the Local Coastal Program (LCP), respectively. This is also true since approval of this project will not establish a precedent for continued land development, which, on a cumulative basis, would further degrade maritime chaparral habitat.

(e) The parcel is zoned Rural Density Residential, 5 acres per unit, in the Coastal Zone.

(f) On February 2, 2004, the North County Coastal Land Use Advisory Committee voted 4 to 1 (with 2 members absent) to recommend approval 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 No. PLN040016.

(h) There has been no testimony received either written or oral, during the course of public hearings to indicate that the site is not suitable for the project. Necessary public facilities are available for the use proposed. The project has been reviewed by the Monterey County Planning and Building Inspection Department, Water Resources Agency, the applicable Fire Department, Public Works Department and Environmental Health Division. There has been no indication from those agencies that the site is not suitable. There are no physical or constraints such as geologic or seismic hazard areas that would indicate the site is not suitable for the use proposed. Environmental constraints were found to be such that complete restoration to a pre-violation state is infeasible and/or highly unlikely due to circumstances beyond the control of the applicant/property owner. Mitigation measures and monitoring actions required by the Mitigation Monitoring and Reporting Program (MMRP) will ensure that the project is compatible with the long-term maintenance of the maritime chaparral habitat onsite (Exhibit "C").

(i) The subject property is not adjacent to the seashore and is not described as an area where the Local Coastal Program requires public coastal access, according to Sections 20.70.050.B.4.c.i and ii of the Zoning Ordinance (Title 20).

- 2. FINDING: HEALTH AND WELFARE** – The establishment, maintenance, or operation of the use or building 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: The project as described in the application and accompanying materials was reviewed by the Department of Planning and Building Inspection, Health Department, Public Works Department, and the Water Resources District. The respective departments have recommended 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; or the county in general.

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) disallows the project to be categorically exempted from CEQA review due the project’s location, the potential for significant effects, due to the proximity to environmentally sensitive maritime chaparral habitat.

i. Potentially adverse environmental effects to maritime chaparral habitat were identified during staff review of the development application.

ii. The PBID prepared an Initial Study pursuant to CEQA Guidelines Section 15063. The Initial Study identified potentially significant effects relating to maritime chaparral habitat, but mitigation measures have been designed that mitigate the effects to less-than-significant levels. The Initial Study is on file in the office of PBID and is hereby incorporated by reference (File No. PLN040016). All project changes required to avoid significant effects on the environment have been incorporated into the project and/or are made conditions of approval. (Exhibit “D”)

iii. 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 5, Exhibit “C”).

(b) 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 (see Exhibit “D”), and which are included herein by reference.

ii. Staff report that reflects the County’s independent judgment.

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

(c) The Mitigated Negative Declaration was circulated for public review from August 5th to September 6th, 2004.

(d) 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. PLN040016.

4. **FINDING: VIOLATION PENDING** – The subject property is currently in violation of the Monterey County Code, including Section 20.16.00.A of the Zoning Ordinance (Title 20) and the *Regulations for Development in the North County Coastal Land Use Plan Area* because the development was carried out without the benefit of permits. Approval of the subject project (file no. PLN040016), as conditioned and mitigated, clears the code violations. All application fees have been doubled.

EVIDENCE: (a) On May 7, 2003, Code Enforcement case number CE030186 was opened to investigate allegations regarding the unpermitted removal of maritime chaparral at 390 Hidden Valley Road (Assessor’s Parcel Number 129-162-004-000).

(b) On May 13, 2003, it was confirmed that approximately 3,300 sq. ft. of pristine ‘old-growth’ maritime chaparral habitat was impacted by the installation of four (4) 5,000-gallon water tanks in an unpermitted location on the lot. Approximately 850 sq. ft. (14.3’ x 59.25’) of chaparral habitat was permanently lost by the installation of a concrete pad to support the water tanks.

(c) Full restoration to a pre-violation state is found to be infeasible and/or highly unlikely due to circumstances beyond the control of the applicant/property owner. However, mitigation measures and monitoring actions designed by the project biologist will ensure that the project is compatible with the long-term maintenance of the chaparral habitat onsite, the project is found to consistent with the natural-resource regulations and policies contained in the Monterey County Code and the Local Coastal Program (LCP), respectively. This is also true since approval of this project will not establish a precedent for continued land development, which, on a cumulative basis, would further degrade maritime chaparral habitat.

(d) Code Enforcement file no. CE030186

(e) Planning Project file no. PLN040016

(f) Mitigated Negative Declaration (Exhibit “D”) and Mitigation Monitoring and Reporting Program (Exhibit “C”).

5. **FINDING: APPEALABILITY** – The project is appealable to the Board of Supervisors and the California Coastal Commission.

EVIDENCE: Sections 20.78.050.E, 20.86.070, and 20.86.080 of the Monterey County Coastal Implementation Plan.

DECISION

THEREFORE, it is the decision of said Planning Commission to adopt the Mitigated Negative Declaration and Mitigation Monitoring Reporting Program and approve said application for a Coastal Development Permit as shown on the attached sketch, subject to the attached conditions.

PASSED AND ADOPTED this 8th day of September, 2004, by the following vote:

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

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.