

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

RESOLUTION # 04043

A.P. # 418-151-031-000-M

In the matter of the application of  
**Jon and Chris Kitaji (PLN020357)**

**FINDINGS & DECISION**

for a Combined Development Permit in accordance with Title 20 (Zoning) Chapter 20.82 of the Monterey County Code, consisting of a Coastal Development Permit to allow demolition of an unpermitted structure and restoration of an unpermitted road involving tree removal and grading approximately 1,000 cu. yds. of soil out of approximately 2,890 cubic yards moved, removal of three culverts and re-vegetation; a Coastal Development Permit to allow development within 750 feet of an archaeological site; a Coastal Administrative Permit to allow unpermitted grading (approximately 1,000 cu. yds.) for a building pad, establishment of building footprints for a cabin and garage, abandonment of three unpermitted culverts and installation of three open armored culverts with down spouts and energy dissipaters; a Coastal Development Permit to allow development within 100 feet of environmentally sensitive habitat; and a Coastal Development Permit to allow a lot line adjustment for an equal exchange of land (3.2 acres) between a 44.7 acre parcel (Assessor's Parcel Number 418-151-031-000) and a 43.8 acre parcel (Assessor's Parcel Number 418-131-032-000). The property is located off a private road along Rocky Creek near the end of Palo Colorado Canyon Road, Las Piedras Canyon, Big Sur, Coastal Zone, came on regularly for meeting before the Planning Commission on September 8, 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).  
**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), and the Monterey County Zoning Ordinance (Title 20). The project, specifically implementation of the restoration plan and the remaining approved site grading and culvert placement, is consistent with these policies and standards as they apply to the restoration activities and residential development. Staff notes are provided in Project File PLN020357.  
(b) Site Visit. Project planner conducted an on-site inspection on September 10, 2002, September 25, 2002, May 21, 2003, and July 14, 2003 to verify that the project on the subject parcel conforms to the plans listed above.  
(c) Land Use. The proposed project includes a building pad for a proposed future residence. The residential use is an allowed use in accordance with Sections 20.17.040.A (Title 20).  
(d) Zoning Consistency. The parcel is zoned Watershed Scenic Conservation, 40 units/acre, Coastal Zone ("WSC/40 (CZ))." The project is in compliance with Site

Development Standards for a Watershed and Scenic Conservation Residential District in accordance with Section 20.17.060 (Title 20).

(e) Violation. Unpermitted activities on the subject properties resulted in violations, which are addressed in the proposed project. Approval of this project and implementation of the conditions/mitigations will remove this violation. See Finding #4.

(f) Archaeological Resources. Archaeological resources are located in the vicinity of the proposed project. See Finding #6.

(g) Environmentally Sensitive Habitat Areas (ESHA). Environmentally sensitive riparian habitat is located in the vicinity of the proposed project. See Finding #7.

(h) Tree Removal. Tree removal occurred as a result of unpermitted grading and road building. See Finding #8.

(i) Water Resources. Unpermitted grading and the project for restoration and the building pad are located adjacent to two creeks, Alder Creek and Rocky Creek. See Finding #9.

(j) 30% Slope. Unpermitted grading and road building and proposed restoration occur on areas of 30% slope. See Finding #10.

(k) Lot Line Adjustment. The proposed project includes a lot line adjustment. The lot line adjustment is a conditional use in accordance with Section 20.17.050.JJ (Title 20). See Findings #11, #12, and #13.

(l) Land Use Advisory Committee (LUAC). The Big Sur Coast Land Use Advisory Committee recommended approval of the project by a vote of 5 to 0. The LUAC commented that no additional trees should be removed as part of the project and noted that the project description could have been clearer. LUAC meeting minutes dated July 15, 2003. The project does not include any new tree removal, but it does address unpermitted tree removal that occurred previously.

(m) 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 PLN020357.

**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, Parks Department and California Department of Forestry and Fire. Conditions recommended have been incorporated.

(b) Technical reports by outside biology, archaeological, geological or geotechnical consultants indicate that there are no physical or environmental constraints such as environmentally sensitive habitats or similar areas that would indicate the site is not suitable for the use proposed. Agency staff concurs. Reports are Project File PLN020357 and include:

- “Preliminary Archaeological Reconnaissance,” prepared by Mary A. Doane, B.A., and Gary S. Breschini Ph.D., RPA, of Archaeological Consulting, Salinas, CA, dated May 28, 2003. “Archaeological Mitigation Plan,” prepared by Gary S. Breschini, RPA and Mary Doane, B.A., of Archaeological Consulting, Salinas, CA, dated July 17, 2003. Addendum to the Kitaji Archaeological Reconnaissance and Mitigation Plan, prepared by Gary S. Breschini, RPA and

Mary Doane, B.A., of Archaeological Consulting, Salinas, CA, dated September 2, 2003.

- “Geologic Reconnaissance,” prepared by Geoconsultants, Inc., San Jose, CA, dated June 2003.
- Geotechnical Reconnaissance - letter from Redwood Geotechnical Engineering, Inc., Morgan Hill, CA dated March 7, 2003; letter from Landset Engineers, Inc., Salinas, CA, dated February 28, 2003; letter from Landset Engineers, Inc., Salinas, CA, dated June 14, 2002.
- “Biological Report,” prepared by Jeffrey B. Froke, Ph.D., Pebble Beach, CA, dated June 10, 2002; “Addendum to Biological Report,” prepared by Jeffrey B. Froke, Ph.D., Pebble Beach, CA, dated June 20, 2003.

(c) A Biological report was prepared for the project because it occurs adjacent to a riparian corridor, which is designated as environmentally sensitive habitat areas under the Big Sur Land Use Plan. The project addresses grading and disturbance that occurred adjacent and restores the area to native conditions. A building pad with a proposed future cabin and garage is located approximately 100 feet from Rocky Creek and 50 feet from Alder Creek. The biological report concluded that siting the structures at this location would not adversely impact riparian habitat. No riparian vegetation will be removed and the primary concerns are impacts from runoff and erosion. However, sufficient distance from the creek, existing vegetation, and revegetation of exposed areas allows for effective runoff infiltration. Runoff from the structures will be controlled and directed to storm drain lines. Recommended measures have been incorporated as conditions.

(d) Archaeological reports were prepared for the project because of archaeological resources located in the project area. The surveys determined that a portion of a midden is located in the area of the unpermitted structure. It could not determine the extent of the midden that may have been impacted by unpermitted grading for the building pad. No additional grading for the building pad is proposed. The proposed future cabin is located to avoid the midden as much as possible and minimize new disturbance. The archaeological report concluded that “the proposed placement of the new cabin constructed with a slab on grade foundation and other proposed improvements in and around the cabin site appear to meet the goal of minimizing project impacts and mitigating unavoidable impacts.” Recommended measures have been incorporated as conditions.

(e) A geological hazards report was prepared because the project is in the area of potentially active fault according to Monterey County Resource maps. The geologic report determined that “damage from direct fault offset is not a critical issue relative to this project.” It found that the most likely hazards from seismic shaking were related to “adverse impacts on stability of slopes above the site to the north,” but did not find the hazard significant. It identified no significant hazards that would prevent the project. Recommended measures have been incorporated as conditions.

(f) Staff conducted on-site visits on September 10, 2002, September 25, 2002, May 21, 2003, and July 14, 2003 to verify that the site is suitable for this use.

(g) No public facilities are required for the proposed project.

**3. 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. Revisions to mitigation measures have been made resulting in new measures that are equivalent or more effective in mitigating or avoiding potential significant effects and that in itself will not cause any potentially significant effect on the environment. The mitigated 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 identified several potentially significant effects, but the 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 P&BI and is hereby incorporated by reference (PLN020357). 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) A Condition Compliance and Mitigation Monitoring and/or Reporting Plan has been prepared in accordance with Monterey County regulations and is designed to ensure compliance during project implementation. Applicant must enter into an "Agreement to Implement a Mitigation Monitoring and/or Reporting Plan" as a condition of project approval.

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

- The application and materials.
- Technical reports. "Preliminary Archaeological Reconnaissance," prepared by Mary A. Doane, B.A., and Gary S. Breschini Ph.D., RPA, of Archaeological Consulting, Salinas, CA, dated May 28, 2003. "Archaeological Mitigation Plan," prepared by Gary S. Breschini, RPA and Mary Doane, B.A., of Archaeological Consulting, Salinas, CA, dated July 17, 2003. "Addendum to the Kitaji Archaeological Reconnaissance and Mitigation Plan," prepared by Gary S. Breschini, RPA and Mary Doane, B.A., of Archaeological Consulting, Salinas, CA, dated September 2, 2003. "Geologic Reconnaissance," prepared by Geoconsultants, Inc., San Jose, CA, dated June 2003. Geotechnical Reconnaissance - letter from Redwood Geotechnical Engineering, Inc., Morgan Hill, CA dated March 7, 2003; letter from Landset Engineers, Inc., Salinas, CA, dated February 28, 2003; letter from Landset Engineers, Inc., Salinas, CA, dated June 14, 2002. "Biological Report," prepared by Jeffrey B. Froke, Ph.D., Pebble Beach, CA, dated June 10, 2002; "Addendum to Biological Report," prepared by Jeffrey B. Froke, Ph.D., Pebble Beach, CA, dated June 20, 2003. These reports are on file in the offices of PBI (File Number PLN020357) and are incorporated by reference herein.
- Letter regarding site visit from Joshua Schwartz, Road Engineer, Natural Resources Conservation Service, dated July 14, 2003.
- Personal Communication with Scott Wilson, Habitat Conservation Manager, Department of Fish and Game, July 26, 2004.
- Staff reports that reflect the County's independent judgment.
- Staff site visits on September 10, 2002, September 25, 2002, May 21, 2003, and July 14, 2003

(d) The Initial Study addresses potential environmental impacts of the unpermitted activities, proposed restoration, and future development. It includes mitigation to ensure that the impacts are reduced to a less than significant level. Potential impacts and mitigation measures are summarized below:

- Biological. The project includes direct biological impacts resulting from the unpermitted work and potential indirect impacts from the restoration activities required to correct the violation. Biological impacts include tree and vegetation removal from unpermitted grading, introduction of exotic grasses, disturbance to a sensitive riparian corridor, and increased sedimentation to Rocky Creek, a steelhead trout stream, as a result of unpermitted culverts and grading. Recommended measures from the biological report have been incorporated and enhanced where appropriate. The biological report concludes that “the recommended mitigation practices will ensure that impacts from the prior development and from the proposed rehabilitation and demolition work will be kept below a level of significance.” Additional measures have been added where necessary. Mitigation includes:
  - Mitigation #1: Monitoring the turbidity of Rocky Creek to ensure no additional sedimentation related to the project and property occurs and implementation of additional measures if necessary.
  - Mitigation #2: Limiting soil-disturbing activities to the dry season and improving streambed gravel conditions at the culvert removal sites.
  - Mitigation #3: A seeding and revegetation plan to include a minimum of 100 seedlings.
  - Mitigation #4: A weed control plan for implementation and monitoring.
  - Mitigation #5: Incorporating measures to address erosion control and runoff for the future cabin and garage.
- Cultural Resources. The proposed project occurs adjacent to an archaeological site in the vicinity of the building pad. Impacts result from demolition of the unpermitted structure and future construction of a cabin. Archaeological surveys could not determine the impact of the unpermitted grading because the topsoil and potential resources were unavailable for evaluation. Recommended measures from the archaeological reports have been incorporated and allows for the limited development of the cabin and garage. The report concludes that “the proposed placement of the new cabin constructed with a slab on grade foundation and other proposed improvements in and around the cabin site appear to meet the goal of minimizing project impacts and mitigating unavoidable impacts as required by CEQA.” Mitigation includes:
  - Mitigation #6: Minimizing soil disturbance during demolition of the unpermitted structure and construction of the future cabin.
  - Mitigation #7: Archaeological monitoring during all earth-disturbing activities with the authority to halt construction and to conduct data recovery of materials.
  - Mitigation #8: Placing an archaeological easement over the archaeological site to preserve it and adding a Historical Resource overlay zone over the parcel to identify it to reviewing agencies.
- Geology/Soils. Geologic and geotechnical reports identified no significant geologic or soil impacts from the unpermitted activities and proposed project. A recommendation from the geologic report, which addresses surface drainage and the potential for downward movement of materials in the building pad area, has been incorporated. Mitigation includes:

- Mitigation #9: Recommended measures from the Geologic Report to intercept surface drainage incorporated into future development of the building pad area.

- Hydrology/Water Quality. The proposed project occurs adjacent to Rocky Creek and Alder Creek. The unpermitted activities, restoration work and proposed future development impact natural drainage patterns, runoff and water quality. Geologic, geotechnical and biological reports identified several erosion and drainage issues that are addressed by the restoration work. Mitigation measures have been incorporated to ensure restoration of the natural drainage to the maximum extent possible and to minimize erosion and sedimentation from the proposed work and future development. Mitigation includes:

- Mitigation #10: Drainage, grading and erosion control plans showing the restored contours, minimal engineering, and specifications.

- Land Use/Planning. The proposed project includes an entitlement for the lot line adjustment related to the overall project along with activities required to clear a violation on the property. To avoid a conflict with land use policies, it is necessary to clear the violation first. Mitigation includes:

- Mitigation #11: Completing the demolition and restoration activities prior to recording the lot line adjustment.

(e) The mitigated negative declaration was circulated for public review from June 11, 2004 to July 10, 2004. The County has considered the comments received during the public review period. Comments received do not alter the analysis and conclusions of the initial study, but did result in revisions and clarifications to the mitigation measures, specifically concerning biological resources and restoration affecting Rocky Creek. Comments and revisions are summarized below:

- De Minimus Determination. Comments from the Department of Fish and Game (DFG) advised that the project results in changes to resources and that a de minimus determination is not appropriate.

*Response:* The circulated initial study determined that the project is not de minimus and that payment of the Fish and Game fee is required.

- Biological Assessment. DFG stated that a complete assessment of flora and fauna in the project area should be completed.

*Response:* A biological report was conducted by Jeffrey Froke, Ph.D., dated June 10, 2002, and contained a biological assessment of flora and fauna in the project area.

- CESA Permit. DFG advised that a California Endangered Species Act (CESA) Permit would be necessary if the project had the potential to result in taking a species listed under CESA.

*Response:* The biological report by Jeffrey Froke identified no sensitive species that would be affected by the proposed project, which primarily consists of pulling back soil in already disturbed areas and revegetating the site. Activities within the creek bed are subject to a Fish and Game Streambed Alteration Agreement and required to take place during the dry season when there is no potential for taking a sensitive species.

- Streambed Alteration Agreement. DFG advised that a Streambed Alteration Agreement would be necessary for any activity occurring within a stream or streambed.

*Response:* The applicant has been advised that a Streambed Alteration Agreement will be necessary. A condition has been incorporated requiring other necessary agency permits.

- Standard of Review. Public comments received state that the initial study uses an incorrect standard of review because “it does not require the applicants to attempt to restore the creek to its status before the violations occurred.” Comments claim that mitigation and monitoring actions “are not designed to require remediation, but are aimed solely at future increases in turbidity” and states that proper mitigation should “reduce the sediment levels to the levels that were there before the illegal earthmoving.” Comments suggested the need for additional monitoring or a comparison of turbidity with samples from other partner creeks.

*Response:* To the degree possible, the initial study includes pre-violation conditions in its impact analysis, but pre-violation baseline conditions of creek turbidity do not exist for the property. The proposed project is intended to correct as much as possible any erosion or sedimentation caused by the unpermitted activities by removing fill and loose soil, restoring contours and natural drainage, and revegetating the road area. Mitigation and monitoring activities are aimed at ensuring that the Kitaji property contributes no additional sediment to Rocky Creek related to the project and violation that would cause an increase in turbidity. Mitigation cannot address sedimentation that the unpermitted grading may have already contributed, but it does prevent that impact from continuing. It requires a return to pre-violation conditions under which the property is not adding unnecessary or undue amounts of sediment to the stream and sufficiently mitigates for any potential impacts. It allows for further measures to be implemented if determined necessary because of unusual or unreasonable sedimentation. Mitigation #1 has been revised to specify that measurements shall be taken at points where the creek enters and exits the Kitaji property for comparison of the turbidity and that monitoring reports should also note any erosion or sedimentation problems for immediate correction. An additional requirement has been added to Mitigation #1 to measure turbidity at the end of the rainy season in April in case winter rains caused increased erosion and to identify performance standards.

- Measurements. Comments recommend that in addition to measuring turbidity after the first big rain of the season as required in the mitigation, measurements should also be taken at different points on the property, other times of the year, and on other local creeks at the same time.

*Response:* Mitigation #1 has been revised to require measurements be taken at points where Rocky Creek enters and exits the property and an additional measurement at the end of the rainy season in April. These additional measurements ensure that turbidity levels in Rocky Creek are adequately monitored and measured to be able to determine the contribution of sediment from the Kitaji property.

- Culverts. Comments question why the three upper culverts should be allowed to remain when the road is being abandoned. They claim that mitigation requiring maintenance of the culverts is inadequate and unenforceable. They state that the culvert should be sized for a 50-year flood. The comments argue that the culverts should be removed and that “armoring the open gully will be much more

stable, and not be dependent on problematical future human maintenance before every rainstorm.

*Response:* The project has been revised and includes abandonment of the three culverts. Three open armored culverts will be installed to address the concerns. Mitigation Measure #1 include inspection of these culverts to ensure they function properly.

- Recreation Impact. Comments claim that “the recreation uses downstream are seriously affected by this project.” They point out that the Rocky Creek area has long provided recreation opportunities for hunting, fishing, and camping, including on Rio Piedras Club property located on the lower reaches of Rocky Creek.

*Response:* While it can be said that the whole stretch of Rocky Creek provides various recreational opportunities, the comments did not provide evidence showing how the proposed project impacts recreation. The project does not prevent or interfere with any recreational use. Rio Piedras Club property is located over two miles downstream of the project site with numerous other properties in between. It has not been demonstrated to what degree sediment from the subject project may have contributed to increased turbidity measurements taken by the club or how it may have impacted recreation. Based on the available evidence and the record as a whole, the project has no potential for a significant impact on recreation.

- Incorrect Findings. Comments claim that the statements that the project is “located in a non-sensitive environment” and “without project controversy” are incorrect.

*Response:* These two statements are found in Section IV-A as a part of the general explanation and guideline for the section. It applies to those specific elements where the lead agency has determined there is no potential for a significant impact and that further discussion in the Environmental Checklist is not necessary. It is not intended to apply to the project as a whole.

(f) De Minimus Determination (Fish and Game Fee). The Initial Study determined that the proposed project results in changes to the natural environment and that the de minimus determination was not appropriate. The changes include the unpermitted grading and subsequent restoration activities, development adjacent to a riparian corridor and stream, and grading for the building pad, which create potential impacts described above. The project is therefore subject to the Department of Fish and Game Fee pursuant to Fish and Game code and incorporated.

(g) Revised Initial Study. A revised Initial Study was prepared on August 25, 2004 to incorporate project changes and modifications to the mitigation measures. Project changes, which include abandoning the three upper culverts and installing open armored culverts instead, reduce the proposed project impacts and eliminate the need for measures addressing those impacts. Modifications to the mitigation measures are for clarification and amplification purposes and do not alter the analysis or conclusions of the initial study. The revised Initial Study is contained in Monterey County project file # PLN020357 and shows these changes represented by strikeout and underline. Specifically, Mitigations #1, #2, #4, #5, #10 and #11 were modified:



- Allowing a qualified hydrologist to perform the monitoring, adding inspection for the three open armored culverts and identifying performance measures (Mitigation #1);
- Allowing a qualified biologist to conduct the inspection work (Mitigation #2);
- Modifying the timing of the monitoring reports for the weed control to the first and third years after completion eliminating the report for the second year (Mitigation #4);
- Allowing a licensed architect to prepare the application plans addressing runoff and erosion control for the future cabin and combining the monitoring action with Mitigation #9 which has similar timing and requirements (Mitigation #5);
- Clarifying the language and revising it to reflect project changes of abandoning the three upper culverts and installing open armored culverts (Mitigation #10); and
- Deleting this measure for a maintenance plan and monitoring because of project changes to abandon the culverts it addressed (Mitigation #11).

**4. FINDING: EXISTING VIOLATIONS:** The proposed project cures an existing violation regarding unpermitted grading of a road and building pad, construction of a cabin, development on 30% slopes and within 100 feet for environmentally sensitive habitat, and tree removal. When implemented, the project will bring the subject property into compliance with all rules and regulations pertaining to the property and will remove the existing violations.

**EVIDENCE:** (a) In 1999, grading and building violations were committed on the subject property (APN: 418-151-031-000/Patch) as well as on an adjacent property under the same ownership (APN: 418-151-032-000/Patch). These violations were red-tagged with a “STOP WORK” notice from the County of Monterey Building Division in order to halt any further development (CE000238). The grading also continued onto a separate neighboring property (APN: 418-011-043-000/Burke), but was not included in the original violation case. The two Patch properties were subsequently sold to Kitaji (APN: 418-151-031-000) and Dahl (APN: 418-151-032-000), with the Dahl property later transferred back to Patch. The majority of the violation occurred on the subject property (APN: 418-151-031-000/Kitaji) and included: grading for a lower building site and construction of a cabin; grading of an approximately half-mile long road from the lower site (Kitaji/Patch) up about 200 feet in elevation to an upper clearing; clearance of brush for a potential upper building site with continued grading several hundred yards further ending on the Burke property; and installation of two large culverts (24” & 36”) within the stream channels of Rocky Creek (perennial) and Alder Creek (ephemeral) plus four other culverts (12” & 24”) within natural drainage courses along the hillside. An estimated 2,000 to 3,000 cubic yards of soil was graded and an undetermined number of trees were removed. The entire project scope applies to the Kitaji property with limited application to the Patch and Burke properties. Proposed work to occur on the Patch property is located on the portion of the property that will be transferred as part of the lot line adjustment and is included under the work for the Kitaji property.

(b) The proposed project corrects the violation by abandoning the road, pulling back soil to restore contours and natural drainage patterns, removing fill, addressing erosion problems, and revegetating the site with native trees and grasses. The three culverts by

Rocky Creek will be removed. The three upper culverts will be abandoned and open armored culverts installed. The unpermitted structure will be demolished and the building pad will be allowed to remain as a site for a future cabin and garage.

(c) A condition has been incorporated requiring demolition of the unpermitted structure and completion of the restoration actions and mitigation measures prior to recording the lot line adjustment to avoid a potential conflict with land use plan policies regarding entitlements for properties with an open violation (Mitigation #11).

(d) Project file numbers PLN020357 and CE000238

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 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 Figures 2 and 3, the Shoreline Access and Trails Map, of the Big Sur Coast Area 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. According to anecdotal evidence from the applicant, a wagon trail once crossed the property, but there is no current evidence of it or any indications of public use over it in recent times.

(d) Staff site visits on September 10, 2002, September 25, 2002, May 21, 2003, and July 14, 2003.

6. **FINDING: ARCHAEOLOGICAL RESOURCES:** The subject project is consistent with policies protecting archaeological resources in accordance with the applicable goals and policies of the Big Sur Coast Land Use Plan and Coastal Implementation Plan (Part 3).

**EVIDENCE:** (a) The subject property contains a positive archaeological site in the project area. Unpermitted activities potentially disturbed a portion of the site. However, restoration activities create no additional disturbance. Demolition of the unpermitted structure and construction of a future proposed cabin are conditioned and mitigated to minimize potential impacts.

(b) Policy 3.11.2.2 states that when development will occur on a parcel where an archaeological site is located “project design shall be required which avoids or substantially minimizes impacts to such cultural sites.” Demolition of the unpermitted structure will leave the pier footings in place if it proves feasible. The proposed future cabin is sited to avoid the archaeological site as much as possible and to minimize earth disturbance, while retention of the unpermitted building pad avoids additional archaeological and biological impacts that would result from more grading. Conditions include minimizing soil disturbance during demolition of the unpermitted structure and construction of the future cabin (Mitigation #6) and archaeological monitoring during all earth disturbing activities with the authority to halt construction and to conduct data recovery of materials (Mitigation #7).

- (c) Policy 3.11.2.5 states that when construction cannot be avoided on a cultural site, “adequate preservation measures shall be required.” The archaeological report concluded that “the proposed placement of the new cabin constructed with a slab on grade foundation and other proposed improvements in and around the cabin site appear to meet the goal of minimizing project impacts and mitigating unavoidable impacts as required by CEQA.”
- (d) Section 20.145.120.D.2 (CIP) requires rezoning the parcel to add an “HR” (Historical Resource) designation and placing the archaeological site in easement. Limited development for the future cabin is allowed within the easement. These requirements have been incorporated (Mitigation #8)
- (e) Recommended measures from archaeological reports have been incorporated. Technical reports prepared include: “Preliminary Archaeological Reconnaissance,” prepared by Mary A. Doane, B.A., and Gary S. Breschini Ph.D., RPA, of Archaeological Consulting, Salinas, CA, dated May 28, 2003. “Archaeological Mitigation Plan,” prepared by Gary S. Breschini, RPA and Mary Doane, B.A., of Archaeological Consulting, Salinas, CA, dated July 17, 2003. “Addendum to the Kitaji Archaeological Reconnaissance and Mitigation Plan,” prepared by Gary S. Breschini, RPA and Mary Doane, B.A., of Archaeological Consulting, Salinas, CA, dated September 2, 2003.
- (f) Staff site visits on September 10, 2002, September 25, 2002, May 21, 2003, and July 14, 2003.
- (g) Application and materials in project file number PLN020357.

**7. FINDING: ENVIRONMENTALLY SENSITIVE HABITAT (ESHA):** The subject project is consistent with policies protecting environmentally sensitive habitat in accordance with the applicable goals and policies of the Big Sur Coast Land Use Plan and Coastal Implementation Plan (Part 3).

**EVIDENCE:** (a) The subject property contains environmentally sensitive riparian habitat, Alder Creek and Rocky Creek, adjacent to the unpermitted activities, proposed restoration sites and proposed cabin site. The biological assessment prepared by Jeffrey B. Froke, Ph.D. dated June 10, 2002 and an Addendum dated June 20, 2003 identified no sensitive species impacted by the proposed project. Recommended measures have been incorporated. The biological report concludes that “the recommended mitigation practices will ensure that impacts from the prior development and from the proposed rehabilitation and demolition work will be kept below a level of significance.”

(b) Policy 3.3.2.1 prohibits development that disrupts the value of sensitive habitat. The proposed project addresses unpermitted grading that occurred adjacent to sensitive riparian habitat. It removes the streamside culverts that were installed and filled soil and revegetates the site. The proposed future cabin and garage are sufficiently setback from the streambank to avoid impacts. No additional development that would disrupt sensitive habitat is proposed.

(c) Policy 3.3.2.4 restricts land disturbance and vegetation removal to the minimum necessary. The proposed project does not include any vegetation removal other than non-native exotic species, but proposes to restore vegetation to areas previously cleared. Land disturbance is limited removing fill from the creek area and pulling back soil that was graded without permits to restore the natural landform as much as possible. The unpermitted building pad will remain as a site for a future cabin and garage in order to

prevent additional land disturbance and vegetation removal. It is a small site, approximately 2,000 square feet, and is not proposed to be increased.

(d) Policy 3.3.2.7 requires land uses compatible with the long-term maintenance of the resource. The proposed project consists of restoration of unpermitted grading that occurred. It does allow the unpermitted building pad where a proposed future cabin and garage will be sited subject to additional permits. The use of the single-family residence is compatible with maintenance of the resource. The structures are of modest size and according to the biological report, they are sufficiently setback from the streambank to avoid impacts. Conditions include measures to ensure the construction and design of the future structures does not create erosion or runoff problems (Mitigation #5).

(e) Policy 3.3.3.4 requiring 150-foot setback from streambank unless a narrower buffer is demonstrated to be sufficient. According to the biological report, they are sufficiently setback from the streambank to avoid impacts. Conditions include measures to ensure the construction and design of the future structures does not create erosion or runoff problems (Mitigation #5).

(f) Policy 3.3.2.9 requires appropriate landscaping with native species. The proposed project includes revegetation of disturbed sites with native grasses and trees (Mitigation #3). Construction of the future cabin is subject to additional permits, which will include appropriate landscaping requirements.

(g) Policy 3.3.3.10 encourages the removal of exotic plants. The biological report noted the introduction of non-native grasses from hay bales that had been used for erosion control of the unpermitted grading. A condition has been incorporated requiring a weed control plan to remove the non-native plants (Mitigation #4).

(h) Policy 3.3.3.3 requires protection of riparian habitat and minimization of erosion, runoff, and water pollution. The subject project proposes to restore and revegetate areas disturbed by unpermitted activities, addressing any potential erosion or runoff issues caused by it. Culverts installed by Rocky Creek will be removed, fill soil removed and the area revegetated. On the slopes above the creek, soil will be pulled back and natural contours restored as much as possible to allow for natural drainage and revegetated. Conditions to protect riparian habitat and minimize erosion include:

- Monitoring the turbidity of Rocky Creek to prevent additional sedimentation related to the project and property and implementation of additional measures if necessary (Mitigation #1);
- Limiting soil disturbing activities to the dry season and improving streambed gravel conditions at the culvert removal sites (Mitigation #2);
- A seeding and revegetation plan to include a minimum of 100 seedlings (Mitigation #3);
- Incorporating measures to address erosion control and runoff for the future cabin and garage (Mitigation #5).

(i) Staff site visits on September 10, 2002, September 25, 2002, May 21, 2003, and July 14, 2003.

(j) Application and materials in project file number PLN020357.

**8. FINDING: TREE REMOVAL:** The subject project is consistent with forest resource policies in accordance with the applicable goals and policies of the Big Sur Coast Land Use Plan and Coastal Implementation Plan (Part 3).

- EVIDENCE:** (a) The subject property is an undeveloped, densely forested area where unpermitted grading and road building occurred. It also occurred adjacent to riparian corridor. Native trees inventoried on the property in the biological assessment by Jeffrey B. Froke, Ph.D., dated June 10, 2002, include maples, madrones, alders, sycamores, oaks, and redwoods. The report noted a number of “dead madrone trees (impacted by road construction)” and although no estimates of tree removal were given, it stated that “almost exclusively, the road construction has resulting in trimming and cutting of madrone trees.”
- (b) Section 20.145.060.D.3 (CIP) limits tree removal to those necessary for the development and Section 20.145.060 (CIP) prohibits tree removal within a riparian corridor. The tree removal that occurred on the property was not associated with any permitted development and full replacement of trees is required. The project proposes replanting five (5) saplings. Although an accurate estimate of tree removal could not be obtained, a reasonable estimate of 100 trees based on one tree every 25 feet for the half-mile long road was calculated. A condition has been incorporated requiring the planting of a minimum of 100 seedlings of native trees as part of the roadway revegetation with monitoring of their success as part of required 1:1 replacement (Mitigation #3).
- (c) Staff site visits on September 10, 2002, September 25, 2002, May 21, 2003, and July 14, 2003.
- (d) Application and materials in project file number PLN020357.

**9. FINDING: WATER RESOURCES:** The subject project is consistent with water resource policies in accordance with the applicable goals and policies of the Big Sur Coast Land Use Plan and Coastal Implementation Plan (Part 3).

- EVIDENCE:** (a) The subject property a perennial stream, Rocky Creek, and an ephemeral creek, Alder Creek that drains into Rocky Creek. Both are located in the project area where unpermitted grading occurred and where restoration is proposed.
- (b) Policy 3.4.3.B.3 states that “water quality, adequate year-round flows, and stream bed gravel conditions shall be protected in streams supporting rainbow and steelhead trout.” Rocky Creek is listed among those streams. The proposed project addresses grading and erosion problems related to unpermitted work that may have impacted water quality. The project includes restoration of the site to natural drainage conditions, removing or improving culvert facilities, and revegetating bare areas. Conditions include:
- Measuring and monitoring stream turbidity to ensure the project and property contributes no additional sediment to Rocky Creek (Mitigation #1);
  - Completing earth disturbing activities during the dry season and improving streambed gravel conditions around the culverts to be removed (Mitigation #2);
  - Revegetating the unpermitted road area (Mitigation #3);
  - Incorporating measures to minimize runoff and erosion from future construction and from the structures (Mitigation #5);
  - Erosion control and drainage plans (Mitigation #10).
- (c) Policy 3.4.3.B.5 states that “substantial alterations of natural streams will be considered generally inappropriate in the Big Sur Coast area.” In addition, Policy 3.4.3.C.1 “encourages the restoration of streams and their immediate natural environment.” The proposed project removes culverts and adjacent fill and revegetates the site to return the area to its natural state.

- (d) Staff site visits on September 10, 2002, September 25, 2002, May 21, 2003, and July 14, 2003.
- (e) Application and materials in project file number PLN020357.

- 10. FINDING: 30% SLOPE:** The subject property includes development on slopes over 30% for which no alternative exists to avoid the development and which also better meets the goals and policies of the Big Sur Coast Land Use Plan.
- EVIDENCE:** (a) The property is located on the side of a ridge and contains steep slopes in excess of 30%. Unpermitted grading for the road occurred in areas with slopes over 30%. The project includes restoration and the installation of several water bars in these areas.
- (b) There are no alternatives that would avoid the restoration activities on the 30% slope that is necessary in order to address the potential impacts of unpermitted grading.
- (c) Restoring these areas better meets the goals and policies of the Big Sur Coast Land Use Plan to protect and enhance the natural resources and minimize impacts. Leaving the areas unrestored would lead to increased erosion and related problems.
- (d) Staff site visits on September 10, 2002, September 25, 2002, May 21, 2003, and July 14, 2003.
- 11. FINDING: LOT LINE (Adjacent Parcels):** The lot line adjustment is between two existing adjacent parcels.
- EVIDENCE:** (a) Application and plans for a lot line adjustment found in the Project File PLN020357.
- 12. FINDING: LOT LINE (Parcel Creation):** A greater number of parcels than originally existed will not be created as a result of the lot line adjustment.
- EVIDENCE:** (a) The lot line adjustment involves the exchange of approximately 3.2 acres of land between two contiguous separate legal parcels of record (Assessor's Parcel Numbers 418-151-031-000 & 418-151-032-000) and two separate legal parcels of record will result from the adjustment.
- 13. FINDING: LOT LINE (Zoning Conformity):** The parcels resulting from the lot line adjustment conform to the County Zoning and Building Ordinances.
- EVIDENCE:** (a) The proposed lot line adjustment is consistent with the site development standards for parcels within the "WSC/40 (CZ)" Zoning District, Section 20.17.060 of the Monterey County Zoning Ordinance (Title 20). The application and plans for a lot line adjustment found in Project File PLN020357. The size of both parcels will remain the same size after the lot line adjustment, 44.7 acres (Assessor's Parcel Number 418-151-031-000) and 43.8 acres (Assessor's Parcel Number 418-151-032-000).
- (b) An unpermitted structure currently straddles the property line between the two parcels. The lot line adjustment will allow the existing building pad to be utilized.
- 14. 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, Parks Department and California Department of Forestry and Fire. The respective departments and agencies 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. The applicant has agreed to these conditions as evidenced by the application and accompanying materials and conditions.

(b) The property is located in a high fire hazard area. A condition has been incorporated that a deed notice be recorded stating that the property is a high fire hazard area pursuant to Coastal Implementation Plan, Part 3, Section 20.145.080.C.

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

**EVIDENCE:** (a) Section 20.86.030.A of the Monterey County Coastal Implementation Plan (Part 1).

(b) Section 20.86.080.A of the Monterey County Coastal Implementation Plan (Part 1). The project occurs within 100 feet of a stream and includes development that is a conditional use. Projects within 100 feet of a stream and projects involving conditional uses are appealable to the Coastal Commission.

### **DECISION**

THEREFORE, 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, subject to the attached conditions.

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

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

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JEFF MAIN, SECRETARY

COPY OF THIS DECISION WAS MAILED TO THE 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 SECRETARY 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 Salinas.

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