

MIKE NOVO
ZONING ADMINISTRATOR

STATE OF CALIFORNIA
COUNTY OF MONTEREY

RESOLUTION NO. 010502

A.P.# 418-301-047-000

In the matter of the application of
James W. Madsen (PLN010502)

FINDINGS & DECISION

for a Use Permit in accordance with Title 21 (Zoning) Chapter 21.74 (Use Permits) of the Monterey County Code, to allow a waiver of the policy prohibiting development on 30% slope for restoration of a road (existing graded area totals 1,750 cubic yards of cut and 1,750 cubic yards of fill; 75 cu. yds. cut proposed). The project site is located off Carmel Valley Road, approximately 1,000 feet north of the 32-mile marker, Cachagua area, came on regularly for hearing before the Zoning Administrator on March 25, 2004.

Said Zoning Administrator, having considered the application and the evidence presented relating thereto,

FINDINGS OF FACT

- 1. FINDING: CONSISTENCY & SITE SUITABILITY** – The Madsen Use Permit (PLN010502), as described in Condition No. 1 and as conditioned, is consistent with the plans, policies, requirements, and standards of the Monterey County General Plan, the Cachagua Area Plan, and the Monterey County Zoning Ordinance (Title 21).
- The subject property is located approximately 1,000 feet north of the 32-mile marker, off Carmel Valley Road (Assessor’s Parcel Number 418-301-047-000), in the Cachagua planning area.
 - The property is zoned “RC/40-D,” or Resource Conservation, one unit per 40 acres, with a Design Control overlay.
 - The site is physically suitable for the use proposed.
- EVIDENCE:**
- (a) The application and plans submitted for the Combined Development Permit in project file PLN010502 at the Monterey County Planning and Building Inspection Department.
 - (b) Staff conducted a site visit to verify that the proposed project complies with regulations in Title 21.
 - (c) The proposal would authorize a total of 1825 cubic yards of cut and 1750 cubic yards of fill, with the balance being distributed evenly within the project area. Of these amounts, 75 cubic yards of cut remains to be excavated. A Determination of Initial Study was prepared for the project, to assess the whole project and render a determination pursuant to the California Environmental Quality Act (CEQA).
 - (d) The project was unanimously recommended for approval by the Cachagua Land Use Advisory Committee (by a vote of 3 – 0, with 2 members absent) on Wednesday, August 13, 2003.
 - (e) A “Cultural Resources Reconnaissance of Assessor’s Parcel Number 418-301-047-000 in an Unincorporated Portion of the County of Monterey, California” was performed in June of 2003 for James Madsen by Susan Morley, M.A., Registry of Professional Archaeologists. Conclusions of the report provided that “no evidence of cultural features was observed during the archaeological reconnaissance” other than two large boulders, one of which

had been moved. The report recommended that the owner “attach a weatherproof tag to the base of the rock so that future scholars and historians will understand that it has been relocated to its current place on the west of Madsen Pond.” This recommendation has been incorporated as a condition of approval for this project.

(f) A “Geotechnical Investigation and Evaluation (File No. 4248-03.06)” was performed on June 16, 2003 for James Madsen by Grice Engineering and Geology, Inc. Conclusions of the report stated that the original (existing) alignment of the access for the properties in the vicinity, through the “Bell” easement, “had a much greater portion within the loose alluvium of (Paloma) Creek, requiring more frequent maintenance” and exposing “the road to severe erosion during heavy rainfall as the area is subject to flash flooding.” The report recommended the new road alignment (the subject proposal), as this would reduce “the exposure to erosion and (provide) a greater probability of egress.” The report also recommended “that a culvert type crossing or a packed cobble / boulder crossing be constructed within the stream and to six feet either side.” These recommendations have been incorporated into the plans for the project, and will be enforced through the implementation of Condition No. 3 for this project.

(g) A “Biological Assessment for Grading Permit (PLN010502)” and “Biological Opinion of Existing Pond (PLN010502)” was performed on July 8, 2003, and January 8, 2004, respectively, for James Madsen by Rana Creek Habitat Restoration. Conclusions of the reports showed that “there were no rare plants or wildlife species observed at the site” and that the land adjacent to the graded area is “comprised of non-native weedy species.” The “Biological Opinion of Existing Pond” identified goldfish and bullfrogs in the pond, found that “no rare amphibians” were present, and recommended “that the pond remain in its current configuration.”

(h) The project has been reviewed by the Monterey County Planning and Building Inspection Department, the California Department of Forestry and Fire Protection (King City Station), Monterey County Water Resources Agency, Monterey County Public Works Department, Monterey County Parks Department, and the Monterey County Health Department. There has been no indication from these agencies that the site is not suitable. There are no physical or environmental constraints such as geologic or seismic hazard areas, environmentally sensitive habitats, or similar areas that would indicate that the project area is not suitable for the use proposed.

2. **FINDING: CEQA (Exempt)** - The project is exempt from environmental review.

EVIDENCE: The area of the project on slopes of less than 10 percent is exempt from environmental review pursuant to CEQA Guidelines Section 15304(c), which categorically exempts the filling of earth into previously excavated land with material compatible with the natural features of the site. CEQA Guidelines Section 15061(b)(3) exempts the area of the project on steeper slopes from environmental review, based on the ‘Determination of Initial Study’ prepared for the project. The primary environmental issue affecting this project is that the existing access was installed on natural slopes which exceeded 30 percent. Based on staff’s analysis, it was determined that development on these slopes would not have the potential for causing a significant adverse effect on the environment for the following reasons:

- 1) No adverse environmental effects were identified during staff review of the development application and during the site visit.
- 2) The area of the 30 to 50 percent slopes in the project area constitutes 0.05 percent of the lot in its entirety.
- 3) The applicant is required to comply with Title 16 (Environment) of the Monterey County Code in terms of grading and erosion control requirements. These recommendations are

included as permit conditions. See preceding and following findings and supporting evidence.

- 3. FINDING: 30 PERCENT SLOPE WAIVER** - There is no feasible alternative that would allow development to occur on slopes less than 30 percent. The proposed development better achieves the goals, policies, and objectives of the Monterey County General Plan and the Cachagua Area Plan than other development alternatives.

EVIDENCE: (a) Analysis of Alternatives. An area of gradual slope exists within an easement on the property (known as the Bell easement), which had historically been used as access prior to installation of a pond in that easement. However, restoration of this area would re-establish approximately 60 feet of access directly in Paloma Creek, which is known to experience flash flooding. Re-establishment of such access would endanger public health and safety. The Monterey County Zoning Ordinance states that “(a)lternatives to restoration of the property shall not be considered unless the applicant can show that restoration would endanger the public health or safety, or that restoration is unfeasible due to circumstances beyond the control of the applicant or the property owner.” The access is proposed to be located higher on the property (within an area known as the Klein easement).

(1) Development of the Bell easement would require further development on 30 percent slope, removal of a pond, and streambed alteration that would result in endangerment of public health and safety.

(2) Development of the Klein easement would not require further development on 30 percent slope, would not require removal of the pond, and would minimize work performed within Paloma Creek. Therefore, staff has determined that full restoration of the Bell easement is infeasible, and recommends a finding that there is “no feasible alternative” to the proposed project.

(b) See also supporting evidence for Findings 1 and 2 above.

(c) Materials in File No. PLN010502.

- 4. FINDING: VIOLATIONS** - The subject property is in compliance with all rules and regulations pertaining to zoning uses, subdivisions and any other applicable provisions of Title 21. The permit is part of the administrative remedy for past construction. Zoning violation abatement costs, if any, have been paid.

EVIDENCE: Section 21.84.120 of the Monterey County Zoning Ordinance states in part that “(n)o department, commission, or public employee of the County of Monterey which is vested with the duty or authority to issue or approve permits, licenses or other entitlements shall issue or approve such permits, licenses or other entitlements nor determine a discretionary permit complete where there is an outstanding violation of this Title involving the property upon which there is pending application for such permit, license or other entitlement unless such permit, license, or other entitlement is the, or part of the, administrative remedy for the violation.” The Madsen Use Permit application (PLN010502) is part of the “administrative remedy” within the meaning of this Section of the Monterey County Zoning Ordinance.

- 5. FINDING: HEALTH AND SAFETY** - The establishment, maintenance, or operation of the use or structure applied for, will not, under the circumstances of the particular case, be detrimental to 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 improvement in the neighborhood; or to the general welfare of the County.

EVIDENCE: Preceding findings and supporting evidence.

6. **FINDING: APPEALABILITY** - The decision on this project is appealable to the Planning Commission.
EVIDENCE: Section 21.80.040 of the Monterey County Zoning Ordinance (Title 21).

DECISION

THEREFORE, it is the decision of said Zoning Administrator that said application for a Use Permit be granted as shown on the attached sketch, and subject to the following conditions:

1. The Madsen Use Permit (PLN010502) consists of a Use Permit to allow a waiver of the policy prohibiting development on 30% slope for restoration of a road (existing graded area totals 1,750 cubic yards of cut and 1,750 cubic yards of fill; 75 cubic yards of cut proposed). The property is located approximately 1,000 feet north of the 32-mile marker, off Carmel Valley Road (Assessor's Parcel Number 418-301-047-000), in the Cachagua area. Neither the uses nor the construction allowed by this permit shall commence unless and until all of the conditions of this permit are met to the satisfaction of the Director of Planning and Building Inspection. Any use or construction not in substantial conformance with the terms and conditions of this permit is a violation of County regulations and may result in modification or revocation of this permit and subsequent legal action. No use or construction other than that specified by this permit is allowed unless additional permits are approved by the appropriate authorities. **(Planning and Building Inspection)**

Prior to Issuance of Grading Permits:

2. The applicant shall record a notice that states: "A permit (Resolution No. 010502) was approved by the Zoning Administrator for Assessor's Parcel Number 418-301-047-000 on March 25, 2004. The permit was granted subject to 8 conditions of approval, which run with the land. A copy of the permit is on file with the Monterey County Planning and Building Inspection Department." Proof of recordation of this notice shall be furnished to the Director of Planning and Building Inspection prior to issuance of a grading permit or commencement of the use. **(Planning and Building Inspection)**
3. The grading permit plans shall be modified and resubmitted to the Planning and Building Inspection Department to include the approved plans for this project. An erosion control plan visually describing erosion control measures (as a full size plan sheet) shall also be prepared by a qualified soils or geotechnical professional, and provided as part of the resubmitted grading permit. The erosion control plan shall be subject to the approval of the Director of Planning and Building Inspection, and shall include provisions for such grasses, shrubs, or other erosion control plants as may be deemed necessary by the soils or geotechnical professional. Erosion control notes shall not be accepted as substitute for the full size plan sheet. All cut and/or fill slopes exposed during the course of construction for the project shall be covered, seeded, or otherwise treated to control erosion, and the areas to be treated shall be indicated on the erosion control plan sheet. The grading plans shall include an implementation schedule (a timetable including specific dates) of measures for the prevention and control of erosion and dust during and immediately following construction until erosion control planting is established. **(Planning and Building Inspection)**
4. The applicant shall have a County-approved archaeologist place a metal weatherproof tag on the boulder on the property (as indicated on pg. 28 of the "Cultural Resources Reconnaissance" prepared by Susan Morley, M.A., Registry of Professional Archaeologists, for the property in June of 2003). Evidence of compliance with this condition shall be provided by the project archaeologist in the form of a one-page memorandum to the Director of Planning and Building Inspection Department. **(Planning and Building Inspection)**

- 5. Prior to issuance of any grading or building permits, the applicant shall provide certification to the Water Resources Agency that applications have been submitted for all required local, State, and Federal permits. The Agencies include but are not limited to the California Department of Fish and Game, California Regional Water Quality Control Board, Division of Safety of Dams, and the Army Corps of Engineers. **(Water Resources Agency)**

- 6. The grade for all roads shall not exceed 15 percent. Where road grades exceed 8 percent, a minimum structural roadway surface of 0.17 feet of asphaltic concrete on 0.34 feet of aggregate base shall be required. The length of vertical curves in roadways, exclusive of gutters, ditches, and drainage structures designed to hold or divert water, shall not be less than 100 feet. No roadway turn shall have a horizontal inside radius of less than 50 feet. A roadway turn radius of 50 to 100 feet is required to have an additional 4 feet of roadway surface. A roadway turn radius of 100 to 200 feet is required to have an additional 2 feet of roadway surface. Roadway turnarounds shall be required on dead-end roads in excess of 150 feet of surface length. The minimum turning radius for a turnaround shall be 40 feet from the centerline of the road. If a hammerhead/T is used, the top of the "T" shall be a minimum of 60 feet in length. **(CDF – King City Station)**

Continuous Permit Conditions:

- 7. Because this roadway is an easement access road only to adjacent properties, the California Department of Forestry and Fire Protection will waive a portion of the 15 percent grade requirement due to the excessive grading that would be required to accomplish this. However, the grading should be as close to the 15 percent as possible. And for any future development that would utilize this road as a main thoroughfare, the roadway would have to be improved to the Monterey County Road Standards. **(CDF – King City Station)**

- 8. The metal weatherproof tag required by Condition No. 4 of this resolution shall not be removed. If cultural, archaeological, historical or paleontological resources are uncovered at the site (surface or subsurface resources) at any time work shall be halted immediately within 50 meters (165 feet) of the find until it can be evaluated by a qualified professional archaeologist. The Monterey County Planning and Building Inspection Department and a qualified archaeologist (i.e., an archaeologist registered with the Society of Professional Archaeologists) shall be immediately contacted by the responsible individual present on-site. When contacted, the project planner and the archaeologist shall immediately visit the site to determine the extent of the resources and to develop proper mitigation measures required for the discovery. **(Planning and Building Inspection)**

PASSED AND ADOPTED this 25th day of March, 2004.

Original Signed By:

MIKE NOVO
ZONING ADMINISTRATOR

COPY OF THIS DECISION WAS MAILED TO THE APPLICANT ON

IF ANYONE WISHES TO APPEAL THIS DECISION, AN APPEAL FORM MUST BE COMPLETED AND SUBMITTED TO THE SECRETARY TO THE PLANNING COMMISSION ALONG WITH THE

APPROPRIATE FILING FEE ON OR BEFORE

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 Salinas.

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