

FINDINGS AND DECISION

In the matter of the application of
Elkhorn Slough Foundateion (PLN060310)

for a Coastal Development Permit in accordance with Title 20 (Monterey County Coastal Implementation Plan Ordinances) Chapter 20.140 (Coastal Development Permits) of the Monterey County Code, to allow development within 100 feet of environmentally sensitive habitat as part of implementation of the Moro Cojo Slough Management and Enhancement Plan. This portion of the plan includes the creation of two ponds for the purpose of watershed restoration located on the northwestern side of the property. One pond will be 12 acres in size with a maximum depth of 3.5 feet and the other will be 1.5 acres in size with a maximum depth of 2 feet. The property is located at Highway One and Moss Landing Road, Moss Landing, North County Land Use Plan, and came on regularly for hearing before the Zoning Administrator on September 14, 2006.

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

FINDINGS OF FACT

1. **FINDING: CONSISTENCY** – The project, as described in Condition No. 1 and as conditioned, conforms to the policies, requirements, and standards of the Monterey County General Plan, North County Land Use Plan, Monterey County Implementation Plan, Part 2 (Chapter 20.144), and the Monterey County Zoning Ordinance (Title 20), which designates this area as appropriate for development.

- EVIDENCE:** (a) The text, policies, and regulations in the above referenced documents have been evaluated during the course of review of applications. No conflicts were found to exist. No communications were received during the course of review of the project indicating any inconsistencies with the text, policies, and regulations in these documents.
- (b) The property is located at Highway One at Moss Landing Road, Moss Landing (Assessor's Parcel Numbers 133-151-022-000 & 133-151-023-000), North County Land Use Plan. The parcel is zoned Coastal Agricultural Preserve and Resource Conservation ("CAP (CZ) & RC (CZ)"). The subject property complies with all the rules and regulations pertaining to zoning uses and any other applicable provisions of Title 20, and is therefore suitable for the proposed development.
- (c) The project planner conducted a site inspection on August 11, 2006 to verify that the project on the subject parcel conforms to the plans listed above.
- (d) The project was referred to the Land Use Advisory Committee (LUAC) for review. The Committee voted (3 to 0) to recommend approval of the project, stating that this is taking unproductive agricultural land and allowing an excellent use of it.
- (f) The application, project plans, and related support materials submitted by the project applicant to the Monterey County RMA - Planning Department for the proposed development found in Project File PLN060310.

2. **FINDING: SITE SUITABILITY** – The site is physically suitable for the use proposed.

- EVIDENCE:** (a) The project has been reviewed for site suitability by the following departments and agencies: RMA - Planning Department, North County Fire Protection District, Parks, Public Works, Environmental Health Division, and Water Resources Agency. There has been no indication from these departments/agencies that the site is not suitable for the proposed development. Conditions recommended have been incorporated.
- (b) Technical reports by an outside biological consultant indicated that there are not physical or environmental constraints that would indicate that the site is not suitable for the use proposed. County staff concurs. The following reports have been prepared:
- “Biological Survey” (LIB060445) Ed Mercurio, Biological Consultant, July 2, 2006.
- (c) Staff conducted a site inspection on August 11, 2006, to verify that the site is suitable for this use.
- (d) Materials in Project File PLN060310.

3. **FINDING: ENVIRONMENTALLY SENSITIVE HABITAT AREAS (ESHA)** - Environmentally sensitive habitat areas (ESHA) are areas in which plant or animal life or their habitats are rare or especially valuable due to their special role in an ecosystem. The Coastal Act and Local Coastal Program consisting of North County Land Use Plan and Coastal Implementation Plan (Chapter 20.144.040) provide policies and regulations to protect ESHA.

- (a) As required by Section 20.144.040.A, the applicant provided a “Biological Report” prepared by Ed Mercurio, Biological Consultant, Salinas, CA, July 2, 2006. The report states that no special status species or habitat types are present on the property, and that even though some impacts to limited biological values will occur through this project, the goal of the project is expansion and enhancement of the wetland habitat present on the site.
- (b) All development, including vegetation removal, excavation, grading, filling, and construction of roads and structures shall be prohibited in environmentally sensitive habitat areas, i.e., wetlands. As an exception, resource dependent uses, where allowed by the North County Land Use Plan, are allowed within environmentally sensitive habitats only if such uses will not cause significant disruption of habitat values. (Policy 2.3.2.1 NCLUP)
- (c) An Initial Study was prepared previously for the Management Enhancement Plan and a Negative Declaration was filed May 2, 1996 pursuant to CEQA. The Initial Study provides substantial evidence based upon the record as a whole, that the project would not have a significant effect on biological resources.

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

- EVIDENCE:** (a) California Environmental Quality Act (CEQA) Guidelines Section §15307, categorically exempts actions taken by regulatory agencies as authorized by state law or local ordinance to assure the maintenance, restoration, or enhancement of a natural resource where the regulatory process involves procedures for protection of the environment.
- (b) “Moro Cojo Slough Management and Enhancement Plan Final Report”, prepared by The Habitat Restoration Group, dated February, 1996 and approved by the Board of Supervisors on October 22, 1996.

- (c) Initial Study prepared for Moro Cojo Slough Management and Enhancement Plan and a Negative Declaration filed on May 2, 1996 with no comments.
- (d) "Biological Survey" prepared by Ed Mercurio, Biological Consultant, dated July 2, 2006.

5. **FINDING: NO VIOLATIONS** - The subject property is in compliance with all rules and regulations pertaining to zoning uses, subdivision, and any other applicable provisions of the County's zoning ordinance. No violations exist on the property. Zoning violation abatement costs, if any, have been paid.

EVIDENCE: (a) Staff reviewed Monterey County RMA - Planning Department and Building Services Department Monterey County records and is not aware of any violations existing on subject property.

6. **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) Preceding findings and supporting evidence

7. **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 Section 20.70.050.B.4 of Title 20). No public 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) 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 specified in Policy 6.3.3 of the North County 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 August 11, 2006

8. **FINDING: APPEALABILITY** - The decision on this project is appealable to the Board of Supervisors and the California Coastal Commission.

EVIDENCE: Sections 20.86.030 and 20.86.080 of Title 20 Zoning Ordinance (Part 1 of the Monterey County Coastal Implementation Plan).

DECISION

THEREFORE, it is the decision of said Zoning Administrator that said request for a Coastal Development Permit be approved as shown on the attached sketch, subject to the attached conditions.

PASSED AND ADOPTED this 14th day of September, 2006.



JEFF MAIN, ZONING ADMINISTRATOR

COPY OF THIS DECISION MAILED TO APPLICANT ON OCT - 4 2006

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 OCT 14 2006

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 Salinas.

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

**Monterey County Resource Management Agency
Planning Department
Condition Compliance and/or Mitigation Monitoring
Reporting Plan**

Project Name: Elkhorn Slough Foundation

File No: PLN060310

APNs: 133-151-022 & 133-151-023-000

Approved by: Zoning Administrator

Date: September 14, 2006

**Monitoring or Reporting refers to projects with an EIR or adopted Mitigated Negative Declaration per Section 21081.6 of the Public Resources Code.*

<i>Permit Cond. Number</i>	<i>Mitig. Number</i>	<i>Conditions of Approval and/or Mitigation Measures and Responsible Land Use Department</i>	<i>Compliance or Monitoring Actions to be performed. Where applicable, a certified professional is required for action to be accepted.</i>	<i>Responsible Party for Compliance</i>	<i>Timing</i>	<i>Verification of Compliance (name/date)</i>
1.		PBD029 - SPECIFIC USES ONLY This Coastal Development permit (PLN060310) allows development within 100 feet of environmentally sensitive habitat as part of implementation of the Moro Cojo Slough Management and Enhancement Plan. This portion of the plan includes the creation of two ponds for the purpose of watershed restoration located on the northwestern side of the property. One pond will be 12 acres in size with a maximum depth of 3.5 feet and the other will be 1.5 acres in size with a maximum depth of 2 feet. The property is located at Highway One and Moss Landing Road, Moss Landing (Assessor's Parcel Numbers 133-151-022 & 133-151-023-000), North County Area, Coastal Zone. This permit was approved in accordance with County	Adhere to conditions and uses specified in the permit.	Owner/ Applicant	Ongoing unless other- wise stated	

		ordinances and land use regulations subject to the following terms and conditions. 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 RMA - Planning Department. 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. [Resource Management Agency (RMA) - Planning Department]				
2.		PBD025 - NOTICE-PERMIT APPROVAL The applicant shall record a notice which states: "A permit (Resolution No. 060310) was approved by the Zoning Administrator for Assessor's Parcel Numbers 133-151-022 & 133-151-023-000 on September 14, 2006. The permit was granted subject to 4 conditions of approval, which run with the land. A copy of the permit is on file with the Monterey County RMA - Planning Department." Proof of recordation of this notice shall be furnished to the Director of RMA - Planning Department prior to issuance of building permits or commencement of the use. (RMA - Planning Department)	Proof of recordation of this notice shall be furnished to RMA - PD	Owner/ Applicant	Prior to Issuance of grading and building permits or start of use.	
3.		PBD030 - STOP WORK - RESOURCES FOUND If, during the course of construction, cultural, archaeological, historical or paleontological resources are uncovered at the site (surface or subsurface resources) work shall be halted	Stop work within 50 meters (165 feet) of uncovered resource and contact the Monterey County RMA - Planning Department and a qualified archaeologist immediately if cultural, archaeological, historical	Owner/ Applicant/ Archaeologist	Ongoing	

		immediately within 50 meters (165 feet) of the find until a qualified professional archaeologist can evaluate it. The Monterey County RMA - Planning 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. (RMA - Planning Department)	or paleontological resources are uncovered. 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.			
4.		PBD026 – NOTICE OF REPORT Prior to issuance of building or grading permits, a notice shall be recorded with the Monterey County Recorder which states: "A Biological report has been prepared for this parcel by Ed Mercurio, Biological Consultant, dated July 2, 2006 and is on record in the Monterey County Planning and Building Inspection Department Library No. LIB060445. All development shall be in accordance with this report." (RMA - Planning Department)	Proof of recordation of this notice shall be furnished to PBI.	Owner/ Applicant	Prior to issuance of grading and building permits	

END OF CONDITIONS

PLND00310

EXHIBIT "F"



Partial List of Plants to be Installed
(All species planted will be native to the Moro Cojo watershed)

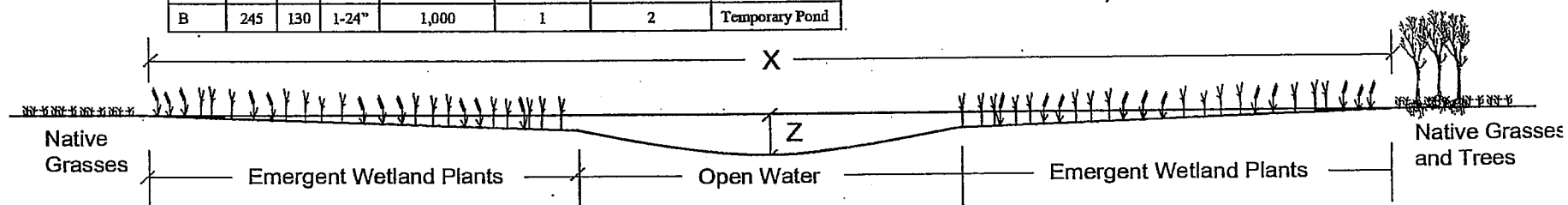
Common Name	Scientific Name
Creeping- Wild Rye	<i>Leymus tricoides</i>
California Brome	<i>Bromus carinatus</i>
Meadow Barley	<i>Hordeum brachyantherum</i>
Sedges and Rushes	<i>Juncus spp., Carex spp., Scirpus spp.</i>
Red Willow	<i>Salix lasiolepis</i>
Arroyo Willow	<i>Salix laevigata</i>
Black Cottonwood	<i>Populus trichocarpa</i>
Creek Dogwood	<i>Cornus sericea</i>

Pond Dimensions

Pond	Dimensions (feet) X Y Z			Volume (~cubic yards)	Total Area (~acres)	Max Depth (ft)	Comments
A	1300	720	1-42"	40,00	10	3.5	Permanent Pond
B	245	130	1-24"	1,000	1	2	Temporary Pond

Restoration Plan for Sea Mist Property
Gage Dayton and Adam Wiskind
Moss Landing Marine Laboratory
March 3, 2006

DRAFT



Pond cross-section



APPLICANT: ELKHORN SLOUGH FOUNDATION

APN: 133-151-022,023-000 **FILE # PLN060310**

