

ATTACHMENT 2: FINDINGS FOR DENIAL

Case No. 09LUP-00000-00256 / 11APL-00000-00009

September 6, 2011

1.0 CEQA FINDINGS

The Board of Supervisors finds that the proposed project is exempt from environmental review under the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15270. Please see Attachment B, Notice of Exemption.

2.0 ADMINISTRATIVE FINDINGS

2.1 LAND USE PERMIT FINDINGS

2.A. *Findings required for all Land Use Permits. In compliance with Subsection 35.472.110.E.1 of the Montecito Land Use and Development Code, prior to the approval or conditional approval of an application for a Land Use Permit the review authority shall first make all of the following findings:*

2.A.1. *The proposed development conforms:*

2.A.1.a. *To the applicable provisions of the Comprehensive Plan, including the Montecito Community Plan.*

The development as installed and the proposal to keep the structural development, conduct some restoration, and install native landscaping around the site/retaining walls and the perimeter of the lawn do not conform to applicable provisions of the Comprehensive Plan. As discussed in Section 7.2 of the staff report to the Montecito Planning Commission dated October 8, 2010 and the staff memo to the Montecito Planning Commission dated May 13, 2011, all herein incorporated by reference, the project is inconsistent with policies and development standards of the Montecito Community Plan (MCP), adopted in 1992 to protect riparian environmentally sensitive habitats, oaks and other native trees, and is inconsistent with additional policies of the MCP and Land Use Element related to grading. Therefore, because the project is not consistent with these policies and development standards the project does not conform to the applicable provisions of the Comprehensive Plan, including the Montecito Community Plan, and this finding cannot be made.

2.A.1.b. *With the applicable provisions of this Development Code [MLUDC] or falls within the limited exception allowed in compliance with Chapter 35.491 (Nonconforming Uses, Structures, and Lots).*

The proposed development does not fall within the limited exception allowed under Chapter 35.491 of the Montecito Land Use and Development Code (MLUDC). As discussed in Section 7.3 of the staff report to the Montecito Planning Commission dated October 8, 2010, herein incorporated by reference, the proposed project does not comply with the applicable provisions and development standards of the MLUDC that apply to development proposed on property subject to the Environmentally Sensitive Habitat (ESH) Overlay. Therefore, because the project does not comply with the applicable provisions and development standards, this finding cannot be made.

2.A.2. *The subject property is in compliance with all laws, regulations, and rules pertaining to uses, subdivisions, setbacks and any other applicable provisions of this Development Code, and any applicable zoning violation enforcement fees and processing fees have been paid. This Subsection shall not be interpreted to impose new requirements on legal nonconforming uses and structures in compliance with Chapter 35.491 (Nonconforming Uses, Structures, and Lots).*

The unpermitted activities and structures constitute a zoning violation and because they are not consistent with the Comprehensive Plan (including the Montecito Community Plan) or the Montecito Land Use and Development Code (MLUDC) they cannot be approved as built. Therefore, the subject property is not in compliance with all laws, regulations and rules of the MLUDC and this finding cannot be made.

2.B. *Additional finding required for sites zoned Environmentally Sensitive Habitat (ESH) Overlay. In compliance with Subsection 35.428.040.C.3 of the Montecito Land Use and Development Code, prior to the issuance of a Land Use Permit for development located on sites designated with the ESH Overlay the review authority shall first find that the proposed development meets all applicable development standards in Subsection 35.428.040.D through Subsection 35.428.040.O.*

The area of the unpermitted development is located within a mapped ESH Overlay for riparian habitat, confirmed by P&D Biologist (Melissa Mooney, memo to Julie Harris, dated November 19, 2009 and reconfirmed upon review of applicant appeal submittal information and subsequent site visit on September 24, 2010). Thus, the development standards of MLUDC Subsection 35.428.040.K apply. As discussed in detail in Section 7.3 of the staff report dated October 8, 2010 and the Board Agenda Letter to the Board of Supervisors dated September 6, 2011, herein incorporated by reference, the project does not comply with the applicable development standards of this Subsection, specifically Subsections 35.428.040.K.2, 35.428.040.K.4 and 35.428.040.K.5. Therefore, this finding cannot be made.