

ATTACHMENT A: FINDINGS FOR APPROVAL

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

January 17, 2012

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 15303(e). Please see Attachment B, Notice of Exemption.

2.0 ADMINISTRATIVE FINDINGS

2.1 LAND USE PERMIT FINDINGS

2.1.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:

2.1.A.1. The proposed development conforms:

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

The retention of the bridges in the ESH area are necessary to allow safe pedestrian access to the portion of the property that is separated by the tributary to Hot Springs Creek, which would allow passive use of this part of the property. While retaining access, three segments of the retaining walls would be removed and several additional segments would be lowered in height with some lowering of the grade to more closely approximate the previous grade or to bring the grades flush with the new lower wall elevations. Project conditions of approval require the preparation and implementation of a revised final restoration plan to include additional critical components to ensure that the habitat is restored consistent with the requirements of the applicable MCP Policies (BIO-M-1.7, BIO-M-1.3, BIO-M-1.6, BIO-M-1.15, BIO-M-1.16 and BIO-M-1.17) and Development Standards (BIO-M-1.3.1, BIO-M-1.3.2, BIO-M-1.6.1, BIO-M-1.6.1, BIO-M-1.15.1 and BIO-M-1.16.1).

The modified project, with implementation of required conditions of approval, would result in a final restoration plan that would replace lost oaks and sycamores in the tributary creek, in the northern and southern thirds of the "island" area, and in the rock stockpile area in the southeast corner of the lot (near the Hot Springs Creek trailhead). In addition, all but one tree well within the "island" area would be removed along with the irrigated lawn. Removal of the irrigated lawn and restoration of the habitat beneath and adjacent to the oaks would provide a better environment for the long-term health of the trees. As conditioned, the EHS habitat and buffer restoration would use native species that normally occurred at the site prior to disturbance and thus be consistent with MCP Policy BIO-M-1.6 and Development Standards BIO-M-1.3.2 and BIO-M-1.6.2. Although the previous work occurred without any protection measures in place, the modified project is conditioned to implement tree protection measures during the wall and tree well removal, grade restoration and restoration

planting consistent with the MCP Policies BIO-M-1.16 and BIO-M-1.17, and Development Standards BIO-M-1.15.1 and BIO-M-1.16.1. Therefore, this finding can be made.

2.1.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). The modified project is subject to the Environmentally Sensitive Habitat (ESH) Overlay and the Flood Hazard Overlay.

Environmentally Sensitive Habitat (ESH) Overlay. The area of the unpermitted development is located within a mapped ESH Overlay for riparian habitat. The development standards of MLUDC Subsection 35.428.040.K apply. These development standards are intended to implement the parallel policies of the Montecito Community Plan. Specifically, Subsections 35.428.040.K.2, 35.428.040.K.4 and 35.428.040.K.5 apply to the project, which 1) only allow bridges within a riparian corridor when support structures are located outside the critical habitat and when no alternative route/location is feasible; 2) require riparian protection measures including setbacks and protective fencing during development and construction; and 3) require mandatory onsite restoration of any project-disturbed buffer or riparian vegetation within a creek using native species that would normally occur at the site prior to disturbance.

The modified project, as conditioned, is consistent with these ESH standards because the bridges are necessary to allow safe pedestrian access to the portion of the property that is separated by the tributary to Hot Springs Creek and the applicant has proposed to remove three segments of the retaining walls lower the height of several additional wall segments with some lowering of the grade to more closely approximate the previous grade or to bring the grades flush with the new lower wall elevations. Project conditions of approval require the preparation and implementation of a revised final restoration plan to include additional critical components to ensure that the habitat is restored on the site consistent with the above cited ESH Overlay requirements.

The modified project with implementation of required conditions of approval would result in a final restoration plan that would replace lost oaks and sycamores in the tributary creek, in the northern and southern thirds of the “island” area, and in the rock stockpile area in the southeast corner of the lot (near the Hot Springs Creek trailhead). In addition, all but one tree well within the “island” area would be removed along with the irrigated lawn. Removal of the irrigated lawn and restoration of the habitat beneath and adjacent to the oaks would provide a better environment for the long-term health of the trees. As conditioned, the EHS habitat and buffer restoration would use native species that normally occurred at the site prior to disturbance. Although the previous work occurred without any protection measures in place, the modified project is conditioned to implement tree protection measures during the wall and tree well removal, grade restoration and restoration planting.

Flood Hazard Overlay. Subsection 35.428.050.C.1 of the MLUDC requires all development subject to the FA [Flood Hazard] overlay zone be referred to the Flood Control District for a determination as to whether the development is subject to the requirements of

County Code Chapter 15A. A Final Hydrologic Study was prepared by Bengal Engineering (dated April 28, 2011) and was reviewed by the County Flood Control District. On May 4, 2011, in an email to Planning & Development staff, Flood Control District staff confirmed the study's conclusions that the walls and bridges do not interfere with the 100-year flood water elevation and that this development meets the minimum requirements of the County's Floodplain Management Ordinance. Therefore, this finding can be made.

2.1.A.2. *The proposed development is located on a legally created lot.*

The applicant's two lots, identified as APNs 011-020-034 and 011-020-042, were created by PM 13,167, recorded on June 2, 1983, Book 31, Pages 90-92. The north lot, APN 011-020-042 was created in its current configuration by a subsequent Record of Survey Lot Line Adjustment Book 145, Page 56, recorded July 26, 1993. The neighbor lot, APN 011-050-066, was created by PM 12,822, recorded on July 26, 1979, Book 22 Pages 78-80.

2.1.A.3. *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).*

With approval and implementation of this Land Use Permit, the property is in compliance with all laws, regulations and rules pertaining to uses, subdivisions, setback and other applicable provisions of the Montecito Land Use and Development Code (MLUDC). Approval of the modified project under 09LUP-00000-00256 and implementation of the modified project as approved would correct the documented zoning violation. The account for processing fees is currently in good standing. Final assessment of zoning violation enforcement fees will be made with the final accounting for the project. Therefore, with implementation of the restoration plan in compliance with the conditions of approval of 09LUP-00000-00156, the subject property is in compliance with all laws, regulations and rules of the MLUDC and this finding can be made.

2.1.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.*

As noted above under Finding 2.1.A.1.b, the development standards of MLUDC Subsection 35.428.040.K apply. Therefore, as discussed under Finding 2.1.A.1.b above, and herein incorporated by reference, the modified project as conditioned can be found consistent with these ESH standards and this finding can be made.