



Zoning Administrator

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PLN200097 - WIND & SEA PROPERTY LLC

Continued from June 13, 2024 - Public hearing to consider restoration of approximately 11,750 square feet of Northern coastal bluff scrub habitat, removal of "Deck 2," after-the-fact partial conversion of a detached garage into a 336 square foot guesthouse, and after-the-fact construction of outdoor sauna, hot tubs, an outdoor patio, and a deck within 50 feet of a coastal bluff and 100 feet of environmentally sensitive habitat area to partially clear Code Enforcement Violation No. 16CE00201.

Project Location: 54722 Highway 1, Big Sur.

Proposed CEQA Action: Find the project Categorically Exempt pursuant to CEQA Guidelines sections 15301 and 15333, and no exceptions apply pursuant to section 15300.1

RECOMMENDATION:

It is recommended that the Zoning Administrator:

- a. Find the project Categorically Exempt pursuant to CEQA Guidelines sections 15301 and 15333, and no exceptions apply pursuant to section 15300.1;
- b. Approve a Restoration Permit to allow approximately 11,750 square feet of Northern coastal bluff scrub habitat and removal of "Deck 2"; and
- c. Approve an After-the-fact Combined Development Permit to partially clear Code Enforcement violation (16CE00201) consisting of a:
 1. Coastal Administrative Permit and Design Approval to allow the partial conversion of a detached garage into a 336 square foot guesthouse;
 2. Coastal Administrative Permit and Design Approval to allow construction of an outdoor sauna, hot tubs, an outdoor patio, and decks;
 3. Coastal Development Permit to allow development within 50 feet of a Coastal bluff; and
 4. Coastal Development Permit to allow development within 100 feet of environmentally sensitive habitat area.

A draft resolution, including findings and evidence, is attached for consideration (**Exhibit A**). Staff recommends approval subject to 11 conditions.

PROJECT INFORMATION:

Property Owner: Alex Hakakian

Agent: Chris Gourlay

APN: 421-011-010-000

Zoning: Rural Density Residential, 40 units per acre, Design Control Overlay, (Coastal Zone)

[RDR/40-D(CZ)]

Plan Area: Big Sur Coast Land Use Plan

Flagged and Staked: No

Project Planner: Fionna Jensen, 831-796-6407, JensenFI@countyofmonterey.gov

SUMMARY/DISCUSSION:

The project site is approximately 10.5 miles north of Lucia, CA, and is surrounded by residentially zoned parcels to the north and south, watershed and scenic conservation parcels to the west, and the Pacific Ocean to the west. The subject property is developed with an existing single-family dwelling and a detached garage, as well as various other site improvements including decks, an outdoor seating area, a driveway, and an on-site well and wastewater treatment system.

The project was previously scheduled for the June 13, 2024 Zoning Administrator hearing. However, prior to distribution of the June 13, 2024 Zoning Administrator staff report, the Applicant/Owner requested a continuance to a date uncertain to allow additional time to discuss the draft conditions of approval, specifically Condition No. 10 (Conservation and Scenic Easement) with HCD-Planning staff. Staff has since met with the project's agent to discuss the condition of approvals, which have been applied to address the property's violations and ensure compliance with applicable requirements of the Big Sur Coast LUP and Coastal Implementation Plan. These conditions are discussed in more detail below.

Violations

In 2016 and 2018, HCD-Code Enforcement received numerous complaints alleging construction and grading without appropriate permits. Additionally, since 2016 and as recently as April 5, 2024, the County has received complaints that the subject property has been used as a short-term rental, a wedding venue, and for the assemblage of people. After investigation, HCD-Code Enforcement issued an Administrative Citation (16CE00201) on November 4, 2022, confirming that the violations included use of the property as a short-term rental, holding of private events (e.g. weddings), and construction without property permits. To partially abate this violation, the Applicant/Owner requests that all unpermitted development be granted after-the-fact approvals. However, as detailed below, staff does not recommend after-the-fact approval for all unpermitted, as-built structures and site improvements, except for "Deck 2" which is recommended for removal and restoration. The granting of the proposed Restoration Permit and after-the-fact Combined Development Permit would not fully abate Code Enforcement Case No. 16CE00201 as the property still operates as a short-term rental and/or private event space.

As requested by the Zoning Administrator on June 13, 2024, the following discussion details the actions that HCD-Code Enforcement has taken relative to 16CE00201. Courtesy letters were sent to the property owner on March 1, 2016 and May 17, 2018, notifying them that the Resource Management Agency (predecessor to Housing and Community Development) had received complaints alleging the use of the property for events, such as weddings, short term rental of the residence, and unpermitted construction of site improvements (sauna, patio, and second living unit). These courtesy letters informed the property owner that they must either take the necessary actions to correct the violations or provide proof that the alleged violations do not exist on the property. The letter also noted that continued failure to correct the alleged violation may result in fines or penalties in accordance with Title 1 section 1.22.090 and 1.22.100 of the County's code.

In November 2022, HCD-Code Enforcement issued an administrative citation detailing the property's violations and required "immediat[e] cease of all unpermitted uses or construction until property permits are obtained." This citation also required that necessary planning and construction permits be obtained and the violation be corrected by December 2, 2022. On February 9, 2023, following no corrective actions, a "Notice of Monterey County Code Violation" was recorded on the property.

The property owner has not confirmed that these uses have ceased, nor have they attempted to obtain after-the-fact permitting to allow such uses. Therefore, since these portions of the violation are still outstanding, HCD-Code Enforcement has scheduled before the Hearing Officer to determine the existence of any violation, establish the requirement of all correction actions, and assess the appropriateness of any administrative penalties and administrative costs. The Administrative Hearing is scheduled for July 17, 2024. The Notice of Scheduled Administrative Hearing informed the Property Owner that the County has incurred \$720 while investigating this matter and \$558,600.00 in fines (penalties) have accrued pursuant to the formula established in Title 1 section 1.22.100 B. HCD-Code Enforcement will be recommending that the Health Officer requires the property owner pay 10% of the accrued fines. No cost recovery fees have been paid as of date. **Exhibit F** includes a summary of the code enforcement violation and a copy of the Notice of Scheduled Administrative Hearing.

Coastal Bluff

The existing residence is located at an elevation of approximately 185 feet on a coastal bluff west of Highway 1. The outdoor patio and decks were constructed within 50 feet of this coastal bluff, while the existing residence is approximately 70 feet from this bluff top. A geological report was prepared to address coastal bluff-related concerns. Based on available aerial imagery spanning 15 years, the project geologist determined that the bluff edge had retreated approximately 3 feet or 2.5 inches per year. Based on an estimated rate of bluff retreat of 2.5 inches per year, the adjacent bluff is predicted to retreat approximately 20 feet within the next 100 years. Using a more conservative estimated rate of bluff retreat of 6 inches per year, the bluff could retreat approximately 50 feet within the next 100 years. Utilizing either rate, the geological report concluded that the existing residence is situated appropriated from the bluff and would be safe from natural bluff erosion. However, the outdoor patio and decks are located within the projected bluff retreat, could be subject to failure, and should be considered sacrificial improvements. Retention of these non-habitable accessory structures is not necessary for the safety of the existing residence.

Big Sur Coastal Implementation Plan section 20.145.080.A.2.a.1 requires that development requiring geologic reports and subject to geologic hazards record a deed restriction. This implements Big Sur Coast LUP Policy 3.7.2.4, "In locations determined to have significant hazards, development permits should include a special condition requiring the owner to record a deed restriction describing the nature of the hazard(s), geotechnical and/or fire suppression mitigations and long-term maintenance requirements." Therefore, Condition No. 5 has been applied to require the applicant to record a deed restriction describing the nature of the coastal hazards and stating: "The parcel is located within a geological hazard area and development may be subject to certain restrictions required as per Section 20.145.080.A.2.a.1 of Part 3 of the Monterey County Coastal Implementation Plan and per the standards for development of residential property."

Environmentally Sensitive Habitat Area

The Big Sur Coast LUP defines Environmentally Sensitive Habitat Areas as “areas in which plant or animal life or their habitats are rare or particularly valuable because of their special nature or role in an ecosystem.” The outdoor patio, hot tubs, and decks were constructed within 100 feet of ESHA, specifically Northern coastal bluff scrub habitat, and therefore required the granting of a Coastal Development Permit. In addition to the Northern coastal bluff scrub habitat, the Project Biologist observed Hoover’s manzanita plant and Sea cliff buckwheat, the host plant for the federally endangered Smith’s blue butterfly. Other sensitive plant species that could exist, but were not observed, include Hutchinson’s larkspur, Jolon clarkia, Arroyo Seco bush mallow, San Luis Obispo sedge, Cone peak bedstraw, Santa Lucia bedstraw, Santa Lucia fir, and Teardrop moss. No sensitive wildlife species were identified. However, based on the biologist's literary review, the project site and the adjacent area have had two known observations of Smith’s blue butterflies. Further, it is assumed that Smith’s blue butterflies inhabit the area when sea cliff buckwheat is present.

Based on the Project Biologist’s observations and the conclusions of a previous biologist report prepared in 1998, the Project Biologist estimated that 30 sea cliff buckwheat plants and approximately 5,875 square feet of Northern coastal scrub habitat were permanently impacted by the unpermitted site improvements. To address this habitat loss, the Project Biologist recommends restoration consisting of replanting sea cliff buckwheat at a 3:1 ratio and habitat restoration of Northern coastal scrub to at least a 2:1 ratio.

Partial conversion of the garage into a guesthouse and installation of the sauna did not disrupt sensitive habitat. Accordingly, no restoration work is associated with these improvements. To address the cumulative impacts on sensitive habitat related to the installation and construction of the remaining unpermitted work, the Project Biologist recommends approximately 11,750 square feet of restoration. The selected restoration areas are located in proximity to the unpermitted work. However, the Project Biologist notes that the areas near the outdoor patio and “Deck 1” are most appropriate for a majority of the restoration. Condition No. 4 requires approximately 600 square feet of Northern coastal scrub restoration immediately south of the as-built hot tubs, approximately 3,600 square feet of Northern coastal scrub restoration and the planting of 25 Sea cliff buckwheat plants immediately west of the as-built outdoor patio, approximately 5,000 square feet of Northern coastal scrub restoration and the planting of 65 Sea cliff buckwheat plants immediately south of as-built “Deck 1”, and approximately 2,550 square feet of Northern coastal scrub restoration around as-built “Deck 2” and its access path. In accordance with Policies 3.3.2.1 and 3.3.2.4 of the Big Sur Coast LUP, Condition No. 4 has been applied to ensure that impacts to the subject property’s sensitive species and habitats are less than significant and invasive vegetation is removed. The biological report did not address the removal of “Deck 2” and thus recommends the restoration to occur around the deck and along the path. However, as detailed below and in the Draft Resolution, staff recommends the removal of “Deck 2” and full restoration of this area. Condition No. 6 has been applied to require that the Applicant/Owner obtain a construction permit to allow the removal of “Deck 2”.

Slopes in Excess of 30%

A majority of the subject property contains slopes in excess of 30%. The outdoor patio, hot tubs, sauna, and “Deck 1” were not constructed on slopes in excess of 30%. However, “Deck 2” and its access path were constructed on the steeper slopes of an informal drainage channel that conveys

runoff from Highway 1 and the subject property to the Pacific Ocean. The Project Biologist did not find evidence that this drainage channel supported any riparian habitat or special-status wildlife.

Construction of “Deck 2” and creation of its access path occurred on slopes in excess of 30% which would have required the granting of a Coastal Development Permit. Pursuant to Big Sur Coastal Implementation Plan section 20.145.140.A(4), the required findings to allow development on slopes are limited to there being no alternative which would all development to occur on slopes less than 30% and/or the development better achieves the resource protection policies of the Big Sur Coast LUP. All other unpermitted site improvements were constructed or installed on less steep slopes. This indicates that there are feasible alternatives for accessory structures, such as a deck, to be constructed on slopes less than 30%. Further, locating a non-essential structure and path within an environmentally sensitive habitat does not better achieve the resource protection policies of the Big Sur Coast LUP as the Project Biologist estimates that Sea cliff buckwheat plants and Northern coastal scrub habitat were removed. Accordingly, the criteria to grant a Coastal Development Permit to allow development on slopes in excess of 30% are not met in this case. Finally, although accessory non-habitable structures are principally allowed uses, subject to the granting of a Coastal Administrative Permit, the subject property is developed with a main residence and various accessory structures (garage, decks, patios, etc.) and would not be deprived of a privilege if “Deck 2” were to be removed.

The Project’s Biologist and Geologist submitted letters (**Exhibits D and E**) claiming that “Deck 2” is inaccessible by heavy machinery that may be needed to remove the deck and therefore the impacts associated with creating a new path (widening and recompacting to a gradient less than 20%) to accommodate the machinery outweigh retention of the unpermitted deck. Use of heavy machinery could degrade and destabilize the rock and soil below the deck. Staff agrees that if heavy machinery were needed, the resulting environmental impacts may be significant. However, based on photos of the violation site, as well as correspondence with the Applicant/Owner, it appears “Deck 2” and the access path were hand-built and could be hand-removed. Staff contacted the Project Biologist and Project Geologist and inquired as to whether hand removal (down to the deck’s concrete piers/footings) is feasible in their professional opinion. Both consultants agreed that while hand removal may be difficult, it would be possible. Therefore, as proposed, Condition No. 6 requires the removal of “Deck 2” down to its foundation. This would allow the foundation footings, which primarily have at-grade elevations, to remain. Northern coastal scrub habitat restoration would occur in and around this area (Condition No. 4). Removal of these footings would serve no biological benefit as removal would likely increase the potential for impacts to the bluff slope and the adjacent marine life below.

Restoration to Pre-Violation State

In order to create the path to “Deck 2”, the removal of ESHA and grading on slopes in excess of 30% would have occurred. Title 20 section 20.90.130 requires restoration of violations involving vegetation removal or grading, unless it can be provided that restoration would endanger public health or safety, or that restoration is unfeasible due to circumstances beyond the control of the Application/Owner. The Project Geologist’s letter (**Exhibit E**) states that the “better alternative is to abandon the deck and allow nature to take over the deck and the surrounding areas.” While abandoning the path will make access to the deck more difficult, access will still be possible. Retention of an accessory structure located on slopes in excess of 30% and potentially subject to future bluff failure creates a possible public health hazard. Staff has been presented with no evidence that restoration of the path and

removal of the deck would endanger public health or safety, or that such work is unfeasible due to circumstances beyond the control of the Application/Owner.

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) REVIEW:

California Environmental Quality Act (CEQA) Guidelines section 15301 categorically exempts existing private structures, and section 15333 categorically exempts less than 5 acres of restoration. As proposed, the project involves the after-the-fact approval of existing private structures (outdoor patio, deck, sauna, and hot tub), the removal of an existing deck, and the restoration of approximately 11,750 square feet of Northern coastal scrub habitat. Therefore, the project qualifies for this exemption.

OTHER AGENCY INVOLVEMENT:

The following agencies have reviewed the project: HCD-Planning, HCD-Engineering Services, HCD-Environmental Services, Environmental Health Bureau, and CalFire.

LAND USE ADVISORY COMMITTEE:

Based on the LUAC Procedure Guidelines adopted by the Monterey County Board of Supervisors, this application did warrant referral to the LUAC because it involves a Design Approval subject to consideration at a public hearing. However, due to the 2023 and 2024 Highway 1 slip-outs and closures, access to the South Coast LUAC meeting location was significantly impaired. Accordingly, staff did not refer the application to the South Coast LUAC. If directed by the Zoning Administrator, staff will refer the application to the LUAC for review.

Prepared by: Fionna Jensen, Senior Planner

Reviewed and Approved by: Anna Ginette Quenga, AICP, Principal Planner

Attachments:

Exhibit A - Draft Resolution, including:

- Conditions of Approval
- Project Plans, elevations, colors and materials

Exhibit B - Vicinity Map

Exhibit C - Restoration Plan

Exhibit D - Deck Removal Biological Opinion letter

Exhibit E - Deck Removal Geological Opinion letter

Exhibit F - Code Enforcement Case Summary

cc: Front Counter Copy; California Coastal Commission; Anna Ginette Quenga, AICP, Principal Planner; Fionna Jensen, Senior Planner; HCD Engineering Services; Environmental Health Bureau; HCD-Environmental Services; CalFire; Alex Hakakian, Applicant/Owner; Chris Gourlay, Agent; South Coast LUAC; The Open Monterey Project; LandWatch (Executive Director); Lozeau Drury LLP; Christina McGinnis, Keep Big Sur Wild; Project File No. PLN200097