Introduced: 5/22/2017 **Current Status:** Agenda Ready

Version: 1 **Matter Type:** Planning Item

PLN160108 - OROSCO (BROOKS)

Public hearing to consider action on a request for after-the-fact permits to allow development on slopes exceeding 30%, including construction of retaining walls and additions to an existing single family dwelling (Code Enforcement Case 14CE00255).

Project Location: 47070 Highway 1, Big Sur, Big Sur Coast Land Use Plan

Proposed CEQA action: Statutorily Exempt per Section 15270(a) of the CEQA Guidelines.

RECOMMENDATION:

It is recommended that the Planning Commission:

a. Adopt a motion of intent to deny a Combined Development Permit consisting of:
   1. Coastal Administrative Permit and Design Approval to allow after-the-fact additions totaling 1,475 total square feet (161 square feet of livable space, 535 square feet of additional garage/mechanical room space, 13 square feet additional covered overhang, and 766 square feet of additional shed/storage space) to an existing single family dwelling;
   2. Coastal Development Permit and Design Approval to allow after-the-fact construction of a retaining wall ranging in height from 5 to 11 feet in height, encroaching into slopes exceeding 30%; and
   3. Design Approval to allow after-the-fact concrete pad decks on existing graded pads.

b. Direct staff to return with a resolution including findings and evidence for this action.

c. Direct the owner to fully restore the site to clear Code Enforcement Case 14CE00255.

If the Commission wants to allow any part of the retaining wall to remain, staff requests a continuance to complete CEQA and work with the applicant on a viable alternative design considering applicable Land Use Plan policies.

PROJECT INFORMATION:

Agent: Law Offices of Aengus Jeffers (Laura Lawrence)
Property Owner: Amanda Brooks
APN: 419-211-006-000
Zoning: WSC/40-D(CZ) or "Watershed Scenic Conservation, 40-acre minimum, with Design Control Overlay, Coastal Zone".
Plan Area: Big Sur Coast Land Use Plan
Flagged and Staked: No
Parcel Size: 5.21 acres

SUMMARY/DISCUSSION:

This is a 5-acre site located off Highway One with frontage along the Big Sur River with two existing legal non-conforming single family dwellings. The main house (2,280 square feet) and

an accessory dwelling (1,039 square feet) with a 438-square foot garage and 93 square feet of storage/shed area. The site has steep slopes and redwood forest habitat.

In January 2016, in response to a complaint, staff issued a "Stop Work" order advising the property that no further construction activities were to take place. A Notice of Violation (NOV) was never formally issued, due to the applicant expressing the desire to apply for required permits. On October 14, 2016, a formal application for the Combined Development Permit (PLN160108) requesting granting of after-the-fact permits was filed and the application was deemed complete on January 20, 2017.

The proposed Combined Development Permit requests after-the-fact permits for; a complete interior remodel and additions to the existing single family dwelling, an already constructed retaining wall ranging in height from 5 to 11 feet, already completed excavation of soil materials from an adjacent slope exceeding 30%, and the already completed placement/pouring of concrete pads decks, ranging from 10 to 27 feet in diameter, on existing graded pads. In March 2016, after review of the Application Request, staff advised the property owner that Monterey County Code required full site restoration, prior to deeming any discretionary applications complete. However, an application for after-the-fact permits could be pursued if site restoration was proven to be infeasible. Staff emailed the after-the-fact permit requirements and materials to the authorized agent. Part of the requested materials was a signed letter from the property owner acknowledging that the Planning Commission could deny requested after-the-fact permits until site restoration was completed (Exhibit E).

This application has been reviewed for consideration as if no work has been done. Staff finds that no evidence has been submitted to demonstrate that the completed grading better achieves the goals, policies or objectives of the Monterey County Local Coastal Project (Big Sur Coast Land Use Plan) or that no feasible alternative existed; therefore the finding for the Coastal Development Permit to support grading on slopes in excess of 30% cannot be made. The development (cut) into slopes in excess of 30% and the construction of a retaining wall without necessary permits is a violation of and is inconsistent with the policies contained within both the Monterey County Code and the Monterey County Coastal Implementation Plan.

Unpermitted grading and construction of the retaining wall resulted in additional developable areas, which would not have existed otherwise. Without the unpermitted grading, the additions to the existing structure may have been recommended and/or placed elsewhere or in a different configuration. (See Exhibit F, and refer to Exhibit B.1 Sheets C1 and C2). If structural additions/modifications were placed in a different location or configuration, then the requested Coastal Administrative Permit request would be for a different project and would need consideration based on that configuration. Based on the topography of the site, Staff believes that another location and/or configuration of structural additions could have been achieved without impacting slopes in excess of 30%.

A Combined Development Permit was submitted by the applicant in lieu of restoration. This approach requires the applicant to show that site restoration would endanger the public health or safety, or that restoration is unfeasible due to circumstances beyond the control of the applicant. The site can be restored by removing/demolishing the unpermitted concrete pads, and unpermitted structural modifications/additions to the existing accessory dwelling unit, none of

which will endangering the public health and safety. Restoration is the remedy provided as the preferred option in the Zoning Ordinance.

A letter by Grice Engineering (LIB160348) was submitted addressing restoration feasibility of the unpermitted grading and retaining wall. The letter presents two opinions, stating both that the risks exist with removal of the retaining wall, and that the "adjoining cut bank is not considered unstable" and the "removal of the retaining wall will require construction of an engineered fill to support the exposed cut" and "prior to placing fill, the base will need to be excavated to remove all soils loosened during demolition….to a depth estimated at 2 feet." The letter acknowledges that demolition/removal of the retaining wall (using large breaking hammers) "could encourage superficial movement through a transfer of impulse energy, however "some restoration is feasible." The area in which restoration (partial or complete) could be achieved is currently where the unpermitted structure is placed, therefore the Grice letter recommends that the retaining wall be retained to avoid impacts to the structure. This is inconsistent with the requirements of Monterey County Code.

Staff concludes that approval of an after the fact Coastal Development Permit for development on slopes in excess of 30% to allow grading (cut) and construction of a retaining wall where restoration is potentially feasible is inconsistent with the intent of the Zoning Ordinance. This approval would serve to encourage other un-permitted development on slopes, making it easier to obtain after-the-fact permitting than obtaining necessary permits prior to development.

Furthermore, approval of an after the fact Coastal Administrative Permit for modifications/additions to the existing dwelling unit where restoration is feasible is inconsistent with the intent of the Zoning Ordinance. This approval would serve to encourage the unpermitted modification/construction of other structures, making it easier to obtain after the fact permitting than obtaining necessary permits prior to development.

California Environmental Quality Act (CEQA)

California Environmental Quality Act (CEQA) Guidelines Section 15270(a) statutorily exempts projects which a public agency rejects or disapproves. However, if any part of the retaining wall is allowed, staff finds that an initial study is required.

Options

RMA-Planning staff recommends that the Planning Commission deny the Combined Development Permit for after-the-fact permits and find the Design Approval application incomplete until full site restoration has been accomplished.

Alternatively, the Planning Commission could determine that full site restoration is infeasible and consider approval of after-the-fact permits. Staff has met with the applicant's representative to identify possible options. This action would require RMA-Planning to conduct California Environmental Quality Act (CEQA) review on the un-permitted grading and impact within redwood forest habitat, as well as an analysis of site development standards (setback, height, coverage) for the unpermitted construction. If the Planning Commission determines that after-the-fact permits should be considered, staff requests the items to be

continued to a date uncertain to allow additional project review and analysis and appropriate CEQA review.

OTHER AGENCY INVOLVEMENT:
The following agencies have reviewed the project, have comments, and/or have recommended conditions:

RMA-Planning
Environmental Health Bureau
RMA-Public Works
RMA-Environmental Services
Water Resources Agency
Cal-Fire Coastal Fire Protection District

The proposed project was reviewed by the Big Sur Land Use Advisory Committee (BSLUAC) on December 13, 2016. The BSLUAC recommended approval of the project as proposed by a vote of 4-0 (no members absent) (**Exhibit C**).

Prepared by: David J. R. Mack, AICP, Senior Planner, Ext. 5096
Reviewed by: Brandon Swanson, RMA Planning Services Manager
Approved by: Carl P. Holm, AICP, RMA Director

The following attachments are on file with the RMA:

Exhibit A - Project Data Sheet
Exhibit B - Site Plans
Exhibit C - Big Sur LUAC Minutes
Exhibit D - Vicinity Map
Exhibit E - Letter from owner acknowledging restoration requirement
Exhibit F - Photo

cc: Front Counter Copy; Planning Commission; California Coastal Commission (if applicable); Brandon Swanson, RMA Services Manager; Jacqueline R. Onciano, RMA-Chief of Planning; David J. R. Mack, Senior Planner; Law Office of Aengus Jeffers (Laura Lawrence), Agent; Amanda Brooks, Applicant/Owner; The Open Monterey Project (Molly Erickson); LandWatch (Executive Director); John H. Farrow; Janet Brennan; Project File PLN160108.