

**COUNTY OF SAN MATEO
PLANNING AND BUILDING DEPARTMENT**

DATE: July 11, 2018

TO: Planning Commission

FROM: Planning Staff

SUBJECT: EXECUTIVE SUMMARY: Consideration of After-the-Fact Planned Agricultural, Coastal Development, and Grading Permits to allow for operation of a construction equipment and materials storage use and grading performed in January 2015 to construct and improve private access roads at 4448 La Honda Road in San Gregorio. The CDP is appealable to the California Coastal Commission.

County File Numbers: PLN 2016-00195 and PLN 2016-00197

PROPOSAL

The property is located along La Honda Road and is primarily accessed from a bridge on the northern border of the property at La Honda Road. The property's western border runs along San Gregorio Creek, the second largest watershed in Coastal San Mateo County. San Gregorio Creek is an environmentally sensitive habitat, which supports high levels of biological diversity and species richness across several taxa, including populations of endemic, sensitive, and/or special-status species.

The applicant proposes to continue the operation of a construction equipment and materials storage use, which staff estimates was established in 2012. The proposed use involves the on-site use and storage of equipment and materials for agricultural use and property and road maintenance, as well as the ongoing rental of such equipment to off-site farms and maintenance crews. The use is the subject of two open County Code Compliance Section violation cases (VIO 2015-00056 and VIO 2018-00142) as it was established and continues without required permits.

The application also seeks after-the-fact approval of grading activities associated with the construction of the on-site private road, referred to as the 'horseshoe road', which serves as the main access road to agricultural and storage areas. The road was constructed on both prime and non-prime soils without required permits and is the subject of violation case (VIO 2015-00056).

RECOMMENDATION

That the Planning Commission deny the Grading Permit (County File Number PLN 2016-00195) and Planned Agricultural Permit (PAD) and Coastal Development Permit (CDP) (County File Number PLN 2016-00197), by making the findings identified in Attachment A of the staff report.

SUMMARY

The project is not consistent with the General Plan. As described in Section 1 of the staff report, the project does not comply with General Plan policies establishing development standards to minimize land use conflicts with agriculture nor policies pertaining to the protection of sensitive habitat.

The project also does not conform to the plans, policies, requirements, and standards of the San Mateo County Local Coastal Program. The plans and materials have been reviewed against applicable LCP Policies, which regulate the location of new development, the protection of sensitive habitat, and development on Prime Soils and Lands Suitable for Agriculture. The manner and location in which the “horseshoe road” was constructed and the manner in which the proposed use has and will be conducted, results in adverse environmental impacts as described in the “Environmental Impact Assessment For the Property of Rogers, Richard K., San Gregorio Creek, unnamed tributaries and immediate vicinity, San Mateo County, California Department of Fish and Wildlife”, dated May 10, 2018, prepared by CDFW staff. In addition, the location of the ‘horseshoe road’ on Prime Soils and Lands Suitable for Agriculture and the location of the proposed construction equipment and materials storage use on Lands Suitable for Agriculture do not meet LCP criteria, including those requiring the maintenance of water quality and the protection of agricultural lands.

Accordingly, the proposal also does not meet the substantive criteria for the issuance of a PAD Permit including criteria requiring development to be located, sited, and designed to carefully fit its environment so that its presence is subordinate to the pre-existing character of the site, and its surrounding is maintained to the maximum extent practicable. Grading, vegetation removal, and in-stream work associated with the construction/improvement of the ‘horseshoe road’ which runs alongside the creek, and use of the site for construction equipment and materials storage, adversely have impacted San Gregorio creek and associated riparian areas.

The requested after-the-fact Grading Permit must also be denied, because the grading has had a significant adverse effect on the environment. As described in the staff report, the grading activities associated with the construction of the ‘horseshoe road’ have caused significant environmental impacts to San Gregorio Creek, associated habitat, and fish and wildlife.

As the project is not in compliance with the findings for the issuance of the requested After-the-Fact Grading Permit, Section 9298 (*Enforcement*) requires the Community Development Director to enforce the provisions of the Grading Regulations. In consultation with County Counsel and CDFW staff, the Community Development Director plans to pursue a Restoration Order per Section 9298 to require the restoration of the area of the 'horseshoe road' to the condition prior to the violations and the restoration of other impacted areas with documented violations, along with a bond or other equivalent security in the amount estimated for completion of the work. The County will consult with CDFW staff regarding the scope and method of the restoration work.

For non-grading related violations, the Code Compliance Section will continue enforcement of corrective measures pertaining to the removal of non-agriculturally related equipment, materials, pollutants, and unpermitted structures.

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County File Numbers: PLN2016-00195; PLN2016-00197 (Rogers)

PROPOSAL

The property is located at 4448 La Honda Road and is accessed from two bridges from Hwy 84, as shown in Attachment C. The primary access is from a bridge on the northern border of the property at La Honda Road. The property's western border runs along San Gregorio Creek, which is the second largest watershed in Coastal San Mateo County. San Gregorio Creek is an environmentally sensitive habitat area that supports high levels of biological diversity and richness across several taxa, including populations of endemic, sensitive, and/or special-status species.¹

The applicant proposes to continue the operation of a construction equipment and materials storage use, which staff estimates was established in 2012 without the benefit of required permits. The proposed use involves the storage of equipment and materials to support on- and off-site agricultural use, property and road maintenance, and water hauling and maintenance crews. The equipment proposed to be stored on the site includes 2 bulldozers, 3 loaders, 2 excavators, 1 grader, 4 low-boy transportation trailers, 1 discing tractor, 2 water trucks, 1 portable saw mill, 1 wood splitter, 4 shipping containers, and 4 tool sheds.

The proposed use is the subject of two open County Code Compliance Section violation cases (VIO2015-00056 and VIO2018-00142) as it was established and continues without required permits. The applicant proposes to store equipment for the proposed

¹ Source: Environmental Impact Assessment for the Property of ROGERS, Richard K., San Gregorio Creek, unnamed tributaries and immediate vicinity, San Mateo County, California Department of Fish and Wildlife, May 10, 2018.

use on flat areas of the property that are outside of prime soil and flood zone areas, as shown in the Site Plan included as Attachment C.

The proposal also includes the legalization of grading activities that were previously completed to construct the unpermitted on-site private road, which is referred to as the "horseshoe road". The horseshoe road serves as the main access road to the agricultural and storage areas. The road was constructed on both prime and non-prime soils (Lands Suitable for Agriculture and Other Lands) without required permits and is included in the open violation case (VIO2015-00056).

The applicant states that the property is currently used for hay production. The applicant has also indicated that he intends to add soil amendments in areas of prime soils and introduce approximately 252,000 sq. ft. of expanded agricultural use, as well as a new approximately 260,000 sq. ft. hillside tree farm area.

County Code Violations

As detailed in the letter sent to the property owner, Richard Rogers, on July 26, 2017 by the Code Compliance Section (Attachment G), Mr. Rogers is legally responsible for many land use, grading and stormwater violations, and unpermitted development on properties he owns or leases, including the subject property. These other properties are also within the Planned Agricultural Zoning District (PAD) zone. At this time, this report pertains only to the subject property as Mr. Rogers only seeks permits for the subject property.

Violations on the subject property include, but are not limited to, the unpermitted use of the property for construction equipment and materials storage, lumber milling, water hauling, used roadway material recycling and related activities, which are uses that are either not permitted within the PAD district, or require the issuance of permits that have not been obtained. On November 2, 2017, the Zoning Hearing Officer issued an administrative order requiring the property owner to: 1) remove and abate the unpermitted uses on the site, including the storage of construction equipment and materials storage unrelated on on-site agricultural use, 2) cease all unpermitted work by December 4, 2017, and 3) provide verification of the removal and abatement to the satisfaction of Planning & Building Program Manager, Wayne Hoss, or his designee, by December 4, 2017. The applicant has not complied with the administrative order. The applicant has been working with Planning staff to provide required materials for the County's review of the subject permit applications.

Violations also include the construction and expansion of roadways; erection of structures; placement of fill and construction spoils comprised of ground asphalt, bricks and other materials that could drain harmful materials into San Gregorio Creek; and the diversion of water from San Gregorio Creek under investigation by the State Water Control Board and the California Department of Fish and Wildlife. These activities and improvements require the issuance of a Coastal Development Permit, Planned Agricultural Permit, and Grading Permit.

As shown in plans submitted on June 18, 2018 (Attachment C), the applicant has recently constructed an unpermitted vegetable preparation building in a northwest section of the property. The applicant has also recently built an unpermitted bathroom attached to a barn used as housing, has converted a storage container for habitation (not shown on the revised site plan), and installed an unpermitted solar array structure near the existing barn and house. The vegetable preparation building, bathroom, converted storage container, and solar array structure are the subject of the Notice of Violation (VIO2018-00142) issued by the County on June 10, 2018 (Attachment J). The Notice of Violation required corrective action by July 2, 2018, including, but not limited to, the removal of unpermitted structures or the submission of a revised PAD/CD application to include these structures.

On June 18, 2018, the applicant submitted a revised site plan (Attachment C) which shows the approximate location of the vegetable preparation building, bathroom, and solar array structure, as well as areas of agricultural cultivation.

State Law Violations - CDFW

California Department of Fish and Wildlife (CDFW) personnel have documented various violations on the subject parcel and on adjacent parcels owned or leased by Mr. Rogers. An Administrative Notice of Violation (ANOV, see Attachment F) was sent to Mr. Rogers on May 23, 2012, following an inspection by Lieutenant James Ober and CDFW Environmental Scientist Suzanne DeLeon. The ANOV detailed violations of the Fish and Game Code associated with road and bridge construction, unauthorized water diversions, unauthorized grading and drainage ditches, and riparian destruction.

Lt. Ober conducted a site inspection on March 13, 2018, with California Senior Environmental Scientists (Specialists) Michelle Leicester and Heather McIntire, and Environmental Scientist Stephanie Holstege. A description of identified violations and the impacts of such violations to San Gregorio Creek and fish and wildlife resources are detailed in the report titled "Environmental Impact Assessment For the Property of Rogers, Richard K., San Gregorio Creek, unnamed tributaries and immediate vicinity, San Mateo County, California Department of Fish and Wildlife" (CDFW Report) dated May 10, 2018 (Attachment H).

CDFW personnel observed and documented activities on the subject property that substantially altered the bed, bank, and channel of streams, tributaries, and springs and placed fine sediment, petroleum products, and/or other deleterious material where it has and/or where it could pass into waters of the state. These activities consisted of:

- One (1) culvert with associated bank revetment, riprap, and placement of fill, installed at stream crossings without necessary permits;
- Five (5) locations where placement of deleterious substances adjacent to or within the bed, bank, or channel were documented.

Violations identified in the 2018 CDFW Report on the subject property are listed in Table 1 below:

Table 1. Fish & Game Code Violations				
<i>Site ID</i> <i>(locations as shown on the Map included in Attachment H)</i>	<i>GPS/APN</i>	<i>Description of Activities</i>	<i>Violation Section</i>	<i>Violation Description</i>
1	37.31267 N, -122.32883 W APN 082-120- 050	Parking lot discharging directly to creek (oil/ petroleum products)	5650(a)(1)	Pollution - deposition of deleterious substance (petroleum products)
2	37.31223 N, -122.32944 W APN 082-120- 050	Parking lot sediment discharge directly to creek	5650(a)(6)	Pollution - deposition of deleterious substance (sediment)
3	37.31235 N, -122.32953 W APN 082-120- 050	Dumped sediment from grading of illegal road and culvert clearing	1602(a), 1602(e),	Obstruction of streambed, placement of fill, failure to notify;
			5650(a)(6)	Pollution - deposition of deleterious substance (sediment)
9	37.31213 N, -122.32750 W APN 082-120-050	Leaking hydraulic equipment with no secondary containment placed in flood plain and within 150' of top of bank	5650(a)(1)	Pollution – deposition of deleterious substance (petroleum product; (hydraulic fluid, oil, gas)
10	37.31207 N, -122.32945 W APN 082-120-050	Road grading and construction with no permits,	1602(a), 1602(e)	Alteration of streambed, failure to notify
		Undersized culvert placed with no permits	1602(a), 1602(e)	Obstruction of streambed, failure to notify
		Placement of fill and riprap, unauthorized grading	5650(a)(6)	Pollution – deposition of deleterious substance (sediment)
<p>Note: 'Parking lot' is referred to as the 'staging area' by County staff. Source: Environmental Impact Assessment for the Property of Rogers, Richard K., San Gregorio Creek, unnamed tributaries and immediate vicinity, San Mateo County, California Department of Fish and Wildlife, May 10, 2018 (referred to as 'CDFW Report'). While this table outlines violations on the subject property, additional violations on an adjoining property (APN 082-160-080) are also described in CDFW Report.</p>				

State Law Violations - CALFIRE

In addition to the CDFW documented violations above, California Department of Forestry and Fire Protection (CAL FIRE) Forester Richard Sampson has also documented violations by Mr. Rogers on the subject property. Mr. Sampson evaluated

the construction of over 1,000 feet of new road in addition to other areas where construction debris had been dumped into drainages and steep slopes.

Mr. Sampson determined the following:

1. The hillslope in that area meets the definition of "Timberland" under the Public Resources Code (PRC 4526).
2. Road construction which included cutting of Commercial Species (Douglas fir) and land clearing meets the definition of a Timberland Conversion which requires a permit (PRC 4621).
3. Timberland Conversions meet the definition of Timber Operations (PRC 4527) which require both a state harvest permit and a Licensed Timber Operator to complete the operation.
4. Both the Conversion Permit and the Harvest Permit would require review from San Mateo County Planning Staff.
5. None of the permits or licenses mentioned in points 2, 3 and 4 above were obtained for this work.

Impacts to Fish and Wildlife Resources

The CDFW Report describes that the impacts of activities such as waterway obstruction likely had a substantial deleterious impact to obligate aquatic organisms, such as fish and amphibians, which must have adequate stream flow to survive, and to a slightly lesser extent to terrestrial organisms which rely on the creek for drinking water. Reduced in-stream flow volume has been found to have a positive correlation with increased water temperature. Increased water temperatures can increase susceptibility to disease, and result in lower quantities of dissolved oxygen, which can impact and/or reduce survival of species, such as fish, aquatic insects and aquatic life stages of amphibians.

Evidence collected at the site by CDFW staff was indicative of petroleum-based deleterious substances, such as vehicle oil/fluids, hydraulic fluid, asphalt, and other unknown substances having been placed where they could enter waters of the state. Potential impacts to salmonids include, but are not limited to, morphological abnormalities during development in larval and juvenile stages, contamination of invertebrate food sources and resultant bioaccumulation of chemicals, and increased susceptibility to infestation by parasites after chronic exposure to petroleum hydrocarbons.

The CDFW Report also describes activities in violation of the Fish and Game Code that resulted in volumes of sediment being placed directly, or placed where they could potentially enter, into San Gregorio Creek or its tributaries. Fine sediment can have

severe, long term detrimental effects to streams and waterways for long distances downstream of impacted areas/disturbed areas, and can impair the habitats for the wildlife that depend on them. Adverse effects associated with increased fine sediment include: 1) reduced survivorship of aquatic species because of low quality and complexity of habitat, due to blanketing of substrate and infilling of pools; 2) impacts of chronic turbidity² and settled fine sediment on obligate aquatic species; and 3) a decrease in the production of freshwater benthic macroinvertebrates³ and algae due to substrate coating with fines or burial of substrates.

RECOMMENDATION

That the Planning Commission deny the after-the-fact Grading Permit (County File Number PLN2016-00195) and Planned Agricultural Permit (PAD) and Coastal Development Permit (CDP) (County File Number PLN2016-00197), by making the findings identified in Attachment A.

BACKGROUND

Report Prepared By: Camille Leung, Senior Planner

Applicant: James Rogers

Owner: Richard Rogers

Location: 4448 La Honda Road, San Gregorio, CA 94074

APN: 082-120-050

Parcel Size: 114.44 acres

Zoning: Planned Agricultural District/Coastal Development (PAD/CD)

General Plan Land Use Designation: Rural/Agriculture

General Plan Designation: Agriculture/Rural

² Turbidity is a measurement of water clarity based on light scattering and attenuation that is impacted by the presence of both suspended and dissolved solids. High levels of total suspended solids and dissolved solids can increase water temperature and decrease dissolved oxygen ("DO"). Source: Environmental Impact Assessment for the Property of ROGERS, Richard K., San Gregorio Creek, unnamed tributaries and immediate vicinity, San Mateo County, California Department of Fish and Wildlife, May 10, 2018.

³ The EPT Index is named for three orders of aquatic insects that are common in the benthic macroinvertebrate community: Ephemeroptera (mayflies), Plecoptera (stoneflies), and Trichoptera (caddisflies). "EPT" species are desirable because they are the preferred prey of many aquatic organisms due to their presence and availability in the water column. Source: Environmental Impact Assessment for the Property of ROGERS, Richard K., San Gregorio Creek, unnamed tributaries and immediate vicinity, San Mateo County, California Department of Fish and Wildlife, May 10, 2018.

Williamson Act: Contracted Parcel. The applicant has submitted documentation which does not comply with the Williamson Act; documentation is insufficient and the property has not been confirmed to meet the income requirements for agriculture crops.

Existing Land Use: Agricultural Use, unpermitted construction equipment and materials storage use, existing single-family residence, existing greenhouses, 6 cargo containers, a carport, one barn, and 3 hoop houses in a northwest section of the property. A vegetable preparation building, bathroom, a converted storage container, and solar array structure were recently constructed on the property without permits.

Water Supply: Private well; unpermitted diversion on APN082-160-080 from San Gregorio Creek

Sewage Disposal: Existing septic system serves the existing residence.

Flood Zone: Large portions of the property are in Zone X, Area of Minimal Flooding; portions of the property along San Gregorio Creek, including areas in the subject area of work are within Zone A (areas with 1% annual chance of flooding and a 26% chance of flooding over the life of a 30-year mortgage).

Setting: The project parcel is approximately 4 miles east of Highway 1 and lies within the watershed of San Gregorio Creek, which extends from the Santa Cruz Mountains to the Pacific Ocean. Generally, the property is steeply sloped and heavily vegetated, with the exception of areas bordering San Gregorio Creek. These flatter areas contain a hay field, 3 hoop houses, the "horseshoe road," the single-family residence, and a barn that was, up until recently, used for the storage of equipment and excess materials (e.g., logs, asphalt grindings, concrete k-rails, soil stockpiles, bricks, and equipment parts).

Chronology:

<u>Date</u>	<u>Action</u>
May 23, 2012	- California Department of Fish & Wildlife (CDFW) issues Administrative Notice of Violation for grading without permits by Richard Rogers, diversion of San Gregorio Creek by unpermitted grading and other violations of Fish & Game Code Section 1602 (Attachment F).
February 20, 2015	- County issues First Notice of Violation (VIO 2015-00056) for grading and stormwater violations without permits.
May 11, 2016	- Applications for the After-the-fact Grading Permit (PLN2016-00195) and Planned Agricultural Permit (PAD) and Coastal Development Permits (CDP) (PLN2016-00197) are submitted to the County.

- May 25, 2015 - County issues Second Notice of Violation for grading and stormwater violations without permits.
- January 26, 2016 - County issues Third Notice of Violation and Stop Work Notice.
- July 26, 2017 - County issues Forth Notice of Violation and order to complete planning applications or abate public nuisance.
- August 31, 2017 - County issues First Administrative Citation 2015-00056-1 for two separate violations (SMC Zoning Regulations 6328.4 and 6353 - Development in Planned Agricultural District without Planned Agricultural (PAD) Permit and Coastal Development Permit (CDP); SMC Building Regulation 9283 - Grading & Land Clearing without a permit). Administrative minimum penalty of \$200.
- September 13, 2017 - Request for Administrative Citation Hearing Appeal submitted to the County by Richard Rogers, the appellant.
- October 3, 2017 - County issues Second Administrative Citation 2015-00056-2 (SMC Zoning Regulations 6328.4 and 6353) and (SMC Building Regulation 9283). Administrative minimum penalty of \$400.
- October 16, 2017 - A request for an Administrative Appeal Hearing was submitted to the County from the appellant for the second citation.
- November 2, 2017 - Zoning Hearing Officer (ZHO) public hearing, where the ZHO found that, based on evidence presented in the staff report, materials submitted by the appellant, and testimony given at the hearing, the violations existed on the dates specified in the Administrative Citations (Nos. 2015-00056-1 and 2015-00056-2). The ZHO upheld both Administrative Citations and their associated fines, totaling \$600.00, and issued an administrative order requiring the property owner to: 1) remove and abate the unpermitted uses on the site, including the storage of construction equipment and materials unrelated to on-site agricultural use, 2) cease all unpermitted work by December 4, 2017, and 3) provide verification of the removal and abatement.
- April 9, 2018 - Agricultural Advisory Committee (AAC) unanimously recommended denial of the PAD permit and recommended

- non-renewal for the Williamson Act contract associated with the property.
- May 10, 2018 - California Department of Fish and Wildlife (CDFW) staff completed an Environmental Impact Assessment (Attachment H) of the subject property.
- June 9, 2018 - Due to new unpermitted construction, the County's Code Compliance Section issued a Notice of Violation (VIO2018-000142) for the vegetable preparation building, bathroom, converted storage container, and solar array structure.
- June 18, 2018 - On June 18, 2018, the applicant provided a revised plan (Attachment C) showing cultivation areas, including 6 new hoop houses on prime soils near the creek, 3 existing hoop houses on non-prime soils, and an area intended for a tree farm on the other side of the "horseshoe road." The applicant provided photos of recently established agricultural uses at the property, including hay production in the former staging area. The applicant also provided documentation intended to substantiate commercial agricultural use of the property. The revised site plan also included the vegetable preparation building, bathroom addition to the barn, and solar array structure.
- July 11, 2018 - Planning Commission public hearing.

DISCUSSION

A. KEY ISSUES

1. Conformance with the General Plan

The subject parcel has a General Plan land use designation of "Agriculture."

Policy 9.23 (Land Use Compatibility in Rural Lands) and Policy 9.30 (Development Standards to Minimize Land Use Conflicts with Agriculture) "encourage compatibility of land uses in order to promote the health, safety and economy, seek to maintain the scenic and harmonious nature of the rural lands; and seek to cluster development so that large parcels can be retained for the protection and use of vegetative, visual, agricultural and other resources." As shown in plans submitted on June 18, 2018 (Attachment C), the applicant has recently constructed an unpermitted vegetable preparation building in a northwest section of the property. Four of the structures in the northeastern section of the property are not located

in proximity to other structures as required. The applicant has also recently built a bathroom addition to the barn, an unpermitted solar array structure, and a converted storage container near the existing barn and house.

Policy 1.2 (Protect Sensitive Habitats) calls for the County to protect sensitive habitats from reduction in size or degradation of the conditions necessary for their maintenance. CDFW and County staff have identified violations, as outlined above and described in Attachments G and H which have resulted in significant impacts to San Gregorio Creek, the endemic, sensitive, and/or special-status species it supports and their habitat. Species that have likely been impacted include:

- Two species of anadromous salmonids: CCC-ESU⁴ coho salmon (listed as endangered under both the federal and California Endangered Species Acts) and CCC-DPU⁵ steelhead (listed as threatened under the federal Endangered Species Act and as a California State Species of Special Concern)
- Tidewater goby (listed as threatened under the federal Endangered Species Act and as a California Species of Special Concern)
- California red-legged frogs (listed as threatened under the federal Endangered Species Act and as a California State Species of Special Concern)
- Foothill yellow legged frog (currently a candidate for listing as threatened under the California Endangered Species Act, and as such is afforded the same protections under state law as if it were already listed)
- San Francisco garter snake (listed as endangered under both the federal and California Endangered Species Acts; species has also received Fully Protected Species designation under Fish and Game Code Section 5050)
- Marbled murrelet (listed as a threatened species under the federal Endangered Species Act and as an endangered species under the California Endangered Species Act)

As described in the “Proposal” section of this report above, the manner in which the owner constructed the “horseshoe road” and staging area as well as his use of the lands adjacent to San Gregorio Creek for the proposed construction equipment and materials storage use were both unpermitted

⁴ Central California Coast Evolutionarily Significant Unit (CCC-ESU)

⁵ Central California Coast Distinct Population Unit (CCC-DPU)

and degraded the creek and associated habitats. The road construction and operation of the proposed use involved dumping of sediment, large debris, and trash into the creek, discharge of petroleum-based deleterious substances (such as vehicle oil/fluids, hydraulic fluid, asphalt, and other unknown substances), and creek diversion. As stated in the CDFW Report, adverse environmental impacts at the subject parcel as a result of the property owner's activities have already occurred, continue to be ongoing, and will likely worsen with time. These activities were conducted without required Incidental Take Permit coverage in sensitive habitat adjacent to areas known to support federally or state-listed species of plants and animals. Planning staff, in consultation with CDFW staff, have determined that the "horseshoe road" cannot not be retained or maintained in a manner that adequately minimizes or mitigates the impacts of the project to critical habitat and species of San Gregorio Creek and, instead, the impacted area should be restored to a condition which existed prior to the violation. Therefore, as detailed in this report, Planning staff recommends denial of the After-the-fact Grading Permit.

Additionally, due to the nature of the materials associated with the construction equipment and materials storage use (such as sediment and petroleum-based deleterious substances), the proposed use has and will continue to have adverse impacts on agricultural resources and sensitive habitats. Staff therefore recommends denial of the requested PAD permit to legalize the existing use.

2. Conformance with the Local Coastal Program (LCP)

The property is zoned Planned Agricultural District and is located within the Agriculturally-Related Development Categorical Exclusion Area, which exempts agriculturally-related development that meets exemption criteria from the requirement to obtain a CDP. The exemption does not include grading for roads. Therefore, the project requires a Coastal Development Permit, which is appealable to the California Coastal Commission.

The legalization of the "horseshoe road" and proposed construction equipment and materials storage use (associated with VIO2015-00056) also require a PAD permit, as road construction and storage are not a principally permitted uses on lands within the PAD Zoning District and do not meet the exemption criteria.

Locating and Planning New Development Component

Policy 1.8 (Land Uses and Development Densities in Rural Areas) allows new development in rural areas only if it is demonstrated that it will not: (1) have significant adverse impacts, either individually or cumulatively, on coastal resources or (2) diminish the ability to keep all prime agricultural

land and other land suitable for agriculture in agricultural production. The construction of the “horseshoe road” and the construction equipment and materials storage use meet the definition of new development. The road was completed and the storage use was initiated without permits; however, for review of these permit applications the road and use are considered new development. As described in the CDFW Report, the manner in which the road was constructed and the manner in which the owner conducts the proposed use have caused significant adverse impacts, both individually and cumulatively, on San Gregorio Creek and associated fish and wildlife resources.

Sensitive Habitats Component

Policy 7.1 (Definition of Sensitive Habitats) defines sensitive habitats as “any area in which plant or animal life or their habitats are either rare or especially valuable and any area which meets one of the following criteria: (1) habitats containing or supporting “rare and endangered” species as defined by the State Fish and Game Commission, (2) all perennial and intermittent streams and their tributaries, (3) coastal tide lands and marshes, (4) coastal and offshore areas containing breeding or nesting sites and coastal areas used by migratory and resident water-associated birds for resting areas and feeding, (5) areas used for scientific study and research concerning fish and wildlife, (6) lakes and ponds and adjacent shore habitat, (7) existing game and wildlife refuges and reserves, and (8) sand dunes. Sensitive habitat areas include, but are not limited to, riparian corridors, wetlands, marine habitats, sand dunes, sea cliffs, and habitats supporting rare, endangered, and unique species.” As described in the CDFW Report and the applicant’s biological report by MIG/TRA (Attachment I), the site contains State and Federal endangered species, Federal threatened species, State species of special concern, and State fully protected species, and meets the definition of sensitive habitat.

Policy 7.3 (Protection of Sensitive Habitats) a) Prohibits any land use or development which would have significant adverse impact on sensitive habitat areas; and b) requires development in areas adjacent to sensitive habitats to be sited and designed to prevent impacts that could significantly degrade the sensitive habitats. All uses shall be compatible with the maintenance of biologic productivity of the habitats. As described in the CDFW Report, the manner in which the road was constructed and the manner in which the owner conducts the proposed use has resulted in adverse environmental impacts at the property which have already occurred, continue to occur, and will likely worsen with time.

Policy 7.8 (Designation of Riparian Corridors) establishes riparian corridors for all perennial and intermittent streams and lakes and other bodies of freshwater in the Coastal Zone. The policy designates those corridors

shown on the Sensitive Habitats Map and any other riparian area meeting the definition of Policy 7.7 as sensitive habitats requiring protection, except for manmade irrigation ponds over 2,500 sq. ft. surface area. Policy 7.11 (Establishment of Buffer Zones) establishes buffer zones on both sides of riparian corridors, from the “limit of riparian vegetation”, and requires the extension of buffer zones 50 feet outward for perennial streams and 30 feet outward for intermittent streams. It states that where no riparian vegetation exists along both sides of riparian corridors, buffer zones should be extended 50 feet from the predictable high water point for perennial streams and 30 feet from the midpoint of intermittent streams. San Gregorio Creek is a perennial stream. Based on Figure 5 of the MIG/TRA biological report (Attachment I) and Page C-1 of the Project Plans, it appears that portions of the “horseshoe road,” 4 of the 9 proposed hoop houses, and the new vegetable preparation shed, are located within the 50-foot buffer zone of San Gregorio Creek.

Policy 7.4 (Permitted Uses in Sensitive Habitats) requires compliance with U.S. Fish and Wildlife and State Department of Fish and Game regulations. As stated in the CDFW Report, the manner in which the road was constructed and the manner in which the owner conducts the proposed use have resulted in environmental impacts and apparent violations of Fish and Game Code sections 1602, 5650 and 5652 (see Table 1).

Policy 7.33 (Permitted Uses in Areas with Rare and Endangered Species) requires that the County permit only the following uses: (1) education and research, (2) hunting, fishing, pedestrian and equestrian trails that have no adverse impact on the species or its habitat, and (3) fish and wildlife management to restore damaged habitats and to protect and encourage the survival of rare and endangered species. Also, the policy requires that, if the critical habitat has been identified by the Federal Office of Endangered Species, permit only those uses deemed compatible by the U.S. Fish and Wildlife Service in accordance with the provisions of the Endangered Species Act. Due to unpermitted grading work and violations documented by the CDFW Report, it is within the authority of the Planning Director per Section 9298.4 of the Grading Regulations to require restoration or remedial work of the property. Section 9298.4 states that, in determining what remedial action shall be required, Planning Director shall consider restoration to original condition as the most appropriate remedy. The Community Development Director’s intent to initiate a restoration order is further discussed in Section 6 of this report.

Agriculture Component

Portions of the “horseshoe road” are located on prime soils. Other areas of the “horseshoe road” and the proposed construction equipment and materials storage use will not be located on prime soils.

Development on Prime Soils

Policy 5.5 (Permitted Uses on Prime Agricultural Lands Designated as Agriculture) allows the County to permit agricultural and agriculturally-related development on prime agricultural lands. The “horseshoe road” which is located on both prime and non-prime soils is used, in part, to access on-site agricultural uses. Policy 5.5 allows for non-residential development customarily considered accessory to agricultural uses including barns, storage/equipment sheds, fences, water wells water storage tanks, water impoundments, water pollution control facilities for agricultural purposes, and similar development such as roads. Agricultural use has only been recently established and, based on the scope of the proposed use, is secondary to the proposed use.

On April 9, 2018, the PAD permit application was reviewed by the Agricultural Advisory Committee (AAC). Commercial agriculture at the site does not meet the Williamson Act Contract program requirements as discussed in Section 3 of this report. Therefore, the AAC recommended denial of the PAD permit and denied an income exception for the existing Williamson Act Contract. On June 18, 2018, the applicant provided a revised plan showing cultivation areas and 6 new hoop houses on prime soils near the creek, 3 existing hoop houses in a northwest section of the property, and an area intended for a tree farm on the other side of the “horseshoe road.” He provided photos of recently established agricultural uses at the property, including hay production in the former staging area. He also provided documentation intended to substantiate commercial agricultural use of the property. These documents were not available for the AAC review. Staff has reviewed the documents and found the documents to be insufficient to substantiate commercial agriculture as required by the Williamson Act, as further discussed in Section 3 of this report.

The road is also used to access non-agricultural uses on Prime Agricultural Lands Designated as Agriculture, such as the proposed equipment and materials storage use, which the applicant proposes as a use ancillary to agriculture. Policy 5.5 allows the County to conditionally permit uses ancillary to agriculture, such as permanent roadstands for the sale of produce (provided the amount of prime agricultural land converted does not exceed one-quarter (1/4) acre), facilities for the processing, storing, packaging and shipping of agricultural products, and commercial wood lots and temporary storage of logs.

Policy 5.8 (Conversion of Prime Agricultural Land Designated as Agriculture) prohibits conversion of prime agricultural land within a parcel to a conditionally permitted use unless the following can be demonstrated:

- (1) That no alternative site exists for the use: The “horseshoe road” is located adjacent to the creek and runs over three areas of prime soil. Based on non-compliance with many LCP policies as outlined in this section, Planning staff recommends restoration of the road area. Alternate access to areas indicated for farming have previously existed prior to road construction. Richard Rogers previously leased the adjoining property to the northeast (APN082-160-080), which provided access to the hay crop area (former staging area) via a bridge (labelled as “fire access” in Attachment C). After the “horseshoe road” is restored, the owner can access the hay crop area by leasing the adjoining property again or obtaining access easements from the property owner of the land. Other areas designated for farming are accessible without the road from the primary access bridge.
- (2) Clearly defined buffer areas are provided between agricultural and non-agricultural uses. Page C-1 of Attachment C illustrates distinct agricultural areas and non-agricultural uses.
- (3) The productivity of any adjacent agricultural land will not be diminished. The applicant has designated most areas of prime soils, excluding the area of the road, for agricultural use.
- (4) Public service and facility expansions and permitted uses will not impair agricultural viability, including by increased assessment costs or degraded air and water quality. The CDFW Report describes that the construction of the road involved dumped sediment from road grading into the creek, which as described above, can have severe, long-term detrimental effects to streams and waterways for long distances downstream of impacted areas/disturbed areas, and impairing the habitat for the wildlife that depend on them.

Due to non-compliance with the above criteria and non-compliance with other LCP policies as outlined in this section, Planning staff does not recommend approval of the conversion for prime soils for the road.

Development on Lands Suitable for Agriculture

Policy 5.6 (Permitted Uses on Lands Suitable for Agriculture Designated as Agriculture) conditionally allows uses ancillary to agriculture on Lands Suitable for Agriculture provided the criteria in Policy 5.10 (Conversion of Land Suitable for Agriculture Designated as Agriculture) are met:

- 1) All agriculturally unsuitable lands on the parcel have been developed or determined to be undevelopable. The majority of the property is heavily sloped and vegetated. Proposed storage locations (totaling 1.3 acres in size) are sited within the remaining

flat areas outside of the flood zone and prime soils areas, as shown on the Site Plan (Attachment C). These lands are contiguous to areas of prime soils (current hay crop field) and have been farmed historically.

- 2) Continued or renewed agricultural use of the soils is not capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, and technological factors (Section 30108 of the Coastal Act). The proposed areas of storage, while divided by informal access roads, are contiguous to prime soil areas and have been farmed historically.
- 3) Clearly defined buffer areas are developed between agricultural and non-agricultural uses. The proposed areas of storage are contiguous to prime soil areas and have been farmed historically.
- 4) The productivity of any adjacent agricultural lands is not diminished, including the ability of the land to sustain dry farming or animal grazing. The applicant has designated a large 260,000 sq. ft. flat area, consisting of lands suitable for agricultural uses and other lands, as a tree farm.
- 5) Public service and facility expansions and permitted uses do not impair agricultural viability, either through increased assessment costs or degraded air and water quality. In reviewing the list of equipment to be stored at the site (including 2 bulldozers, 3 loaders, 2 excavators, 1 grader, 4 trailers, 1 discing tractor, 2 water trucks, 1 portable saw mill, 1 wood splitter, 4 shipping containers, and 4 tool sheds). The applicant states that the listed equipment is used for both agriculture and construction.

The type and extent of the proposed equipment and materials storage uses exceed the extent to which the property is used for agricultural purposes and is thereby the primary use of the property. The dominance of this non-agricultural use impairs the agricultural viability of the property by consuming land that would otherwise be available for agricultural production, and by discharging pollutants that have deleterious impacts on soil and water quality.

Due to non-compliance with the above criteria and non-compliance with other LCP policies as outlined in this section, Planning staff does not support the conversion of Lands Suitable for Agriculture for the road or the proposed use.

3. Compliance with the Williamson Act

The property is under Williamson Act Contract (AP69-03) entered into by Tom, Elsie, and Eugene Pastorino in 1969. The area under contract is referred to as an Agricultural Preserve (AGP). The applicant states that hay production is ongoing and has provided two (2) leases for agricultural use of the property, both initiated on January 1, 2018. However, the information provided is not sufficient to substantiate a commercial agricultural use, where full compliance with the Williamson Act would need to demonstrate such use over the previous 3 of 5 years.

The County's Williamson Act Program requires that, should the Agricultural Advisory Committee (AAC) determine that the on-site commercial agriculture is not a viable operation, the contract would then be presented to the Board at a future public hearing for a decision on whether or not to non-renew the contract.

a. Minimum Requirement for Crops

The applicant has not provided a current Schedule F *Profit or Loss From Farming* form as requested by staff. The applicant has only provided tax documentation for reporting of self-employment income of \$5,300 for 2017. The project requires an income exception for the existing Williamson Act Contract. Should the AAC and Agricultural Commissioner grant the exception, then the parcel may remain under contract.

On April 9, 2018, the AAC reviewed the applicant's request for the requested PAD and CDP and denied an income exception for the existing Williamson Act Contract.

On June 18, 2018, the applicant provided a revised plan showing cultivation areas and 6 new hoop houses on prime soils near the creek, 3 existing hoop houses in a northwest section of the property, and an area intended for a tree farm on the other side of the 'horseshoe road'. He provided photos of recently established agricultural uses at the property, including hay production in the former staging area. He also provided documentation intended to substantiate commercial agricultural use of the property. After review of the documents, staff has found that the minimum income requirement of \$10,000 has not been met and only one year of reported income was noted, to which staff has not received the IRS accepted document. In order to maintain compliance with the Williamson Act Contract program, the applicant must have met the income requirement for the past 3 of 5 years. While it is understood that Rick Rogers did not have ownership of the property before mid-

2015, the tax benefit received from an active contract assumes ongoing commercial agriculture. At this time, the County's compliance review of this contract would be "non-compliant with a recommendation for non-renewal." At some point in the future, Rick Rogers may begin a new contract provided establishment of a commercial agriculture operation for 3 of 5 years and compliance with all other Williamson Act Contract program criteria.

b. Determination of Compatibility

In order to make a Determination of Compatibility (DOC) as required by the Williamson Act Contract program, the Agricultural Advisory Committee reviews a proposed compatible use to determine whether the use is in fact compatible with and incidental to the agricultural use on the parcel. On April 9, 2018, the AAC reviewed the applicant's request for the requested PAD and CDP and determined the proposed construction and equipment storage use was not compatible with and incidental to the agricultural use on the parcel.

The following is an analysis of the property's compliance with DOC criteria:

- 1) The primary use of the parcel would continue to be existing commercial agriculture. As discussed above in Section 3.a, based on the documentation provided to staff, the on-site agricultural use does not meet Williamson Act Contract program requirements (namely the \$10,000 per year income requirement for a commercial agricultural operation.
- 2) The proposed compatible use would not substantially interfere with the existing agricultural use on the subject parcel or any other property within the AGP: As discussed above in Section 2 in relation to LCP Policy 5.6(5), the equipment and associated materials proposed for storage at the property are neither secondary to nor compatible with agricultural uses.
- 3) The proposed compatible use would not hinder or impair agricultural operations in the area by significantly increasing the permanent or temporary human population of the area. The proposed use involves the on-site use and storage of equipment and materials for agricultural use and property and road maintenance. The applicant has not indicated a need for additional employees. Therefore, the proposed use is not likely to increase the permanent or temporary human population of the area.

- 4) The proposed compatible use would not significantly displace or impair current or reasonably foreseeable agricultural operations on the parcel, or any other property within the AGP. As discussed previously, the equipment and associated materials storage is neither secondary to nor compatible with agricultural uses. Under the current proposal, in which income requirements for commercial agriculture have not been met, the proposed use of equipment and materials storage is the primary use of the property. The dominance of this use impairs the agricultural viability of the property by consuming land and degrading soil and water quality.
- 5) The remaining portion of the parcel not subject to the proposed compatible use would be able to sustain the agricultural use. The applicant has proposed all areas of prime soils, with the exception of a portion of the 'horseshoe road', for agricultural use and a large 260,000 sq. ft. flat area, consisting of land suitable for agricultural uses and other lands, for a tree farm.

4. Conformance with Zoning Regulations

In order to qualify for approval and issuance of a PAD Permit, the project must comply with the substantive criteria for the issuance of a PAD Permit, as applicable and as delineated in Section 6355 of the Zoning Regulations. An analysis of project compliance with criteria for conversion of Prime Agricultural Lands and criteria for conversion of Lands Suitable for Agriculture and Other Lands is discussed in Section 2 of this report in relation to LCP Policies 5.6 and 5.8.

Analysis of Project Compliance with Other Criteria for a PAD Permit

- a. As proposed, the proposal complies with the following applicable policy:
 - 1) The encroachment of all development upon land which is suitable for agricultural uses and other lands shall be minimized. Proposed storage locations (totaling 1.3 acres in size) are outside of areas of prime soil but are located upon lands suitable for agricultural uses and other lands, as shown on the Site Plan (Attachment C). These lands, while contiguous to prime soil areas, are located in areas divided by access roads and are not ideal for farming. The applicant has designated all areas of prime soils for agricultural use, with the exception of a portion of the 'horseshoe road', and a large 260,000 sq. ft. flat area, consisting of lands suitable for agricultural uses and other lands, for a tree farm.
- b. As proposed, the proposal does not comply with the following applicable policies:

- 1) Development shall be located, sited and designed to carefully fit its environment so that its presence is subordinate to the pre-existing character of the site, and its surrounding is maintained to the maximum extent practicable. While the proposed areas of agriculture are appropriate to the site, the manner in which the owner has constructed the 'horseshoe road' and his conduct of the proposed use has resulted in significant environmental impacts, as described in the CDFW Report.

Sensitive Habitats: Grading, vegetation removal, and in-stream work associated with the construction/improvement of the 'horseshoe road', which runs alongside the creek, has impacted San Gregorio creek and associated riparian areas. Work was completed without required permits from both the County (Coastal Development, Grading, and Building Permits) and CDFW (Streambed Alteration Agreement). On May 23, 2012, CDFW issued an Administrative Notice of Violation of Fish and Game Code Section 1602 (Attachment F). Impacts to creek and riparian areas are outlined in this letter and the CDFW Report and include dumping of sediment into the creek and discharge of petroleum-based deleterious substances (such as vehicle oil/fluids, hydraulic fluid, asphalt, and other unknown substances). The violation case is still pending and has not been resolved.

Geologic Hazards: As shown on the Geotech and Grading Plan (Attachment D), the applicant has placed boulders as a stabilization measure in areas of large road cuts and landsliding. The County's Geotechnical Consultant has reviewed the measures and states that the measures are not adequate to properly stabilize the roadway alignment. To stabilize the roadway alignment, the large active landslide (Area F on Attachment D) that is moving beneath the roadway (probably moving fractions of an inch per year) would need to be stabilized.⁶ The actively moving landslide which has a depth on the order of 40 feet would likely require subsurface "stitch piers", where a mass grading solution is not viable because of environmental impacts. These would be cylindrical concrete and steel reinforced piers on the order of 2 to 3 feet in diameter extending about 60 feet in depth (if lateral tie-backs were also used to help add lateral support to the piers).⁷ As proposed the plans are not

⁶ In a very wet year, movement could push an inch or more with the associated risk of catastrophic failure. Looking at the size of that landslide, an informed guess at the depth of landsliding would be displacement to about 40 feet below grade (the actual depth and earth material properties would need to be confirmed by drilling) (Source: County's Geotechnical Consultant, email dated March 15, 2018).

⁷ The County's Geotechnical Consultant estimates the cost of stabilization as between \$300,000 to \$500,000. Work would involve the installation of piers at about 7 feet on center across the width of the landslide where a width of 200 feet is assumed). He estimates approx. \$10,000 per stitch pier with the need for 28 piers and additional expense for tiebacks.

adequate to ensure the stability of the road, which is necessary to support the proposed use. It will likely be infeasible for the applicant to accommodate the cost of these measures and obtain required permits from both the County and CDFW for the completed work and the additional geotechnical work due to the significant environmental impacts associated with the construction/ improvement of the 'horseshoe road'.

- 2) No use, development or alteration shall substantially detract from the scenic and visual quality of the County; or substantially detract from the natural characteristics of existing major water courses, established and mature trees and other woody vegetation, dominant vegetative communities or primary wildlife habitats. See discussion of impact to Sensitive Habitats above.
- 3) Where possible, structural uses shall be located away from prime agricultural soils. Portions of the 'horseshoe road' are located in areas of prime soils. Also, the applicant proposes (6) new hoop houses are located on prime soils. Proposed storage locations are outside of areas of prime soil. The applicant proposes to reserve remaining large areas of prime soil for farming, as shown on the Site Plan (Attachment C).
- 4) All development permitted on a site shall be clustered. Areas of flat land which are outside of flood zones and prime soil areas are limited at this property. The applicant proposes to cluster 4 areas of storage (totaling 1.3 acres in size) in a southeast portion of the property. As shown in plans submitted on June 18, 2018, the applicant has recently constructed an unpermitted vegetable preparation building in a northwest section of the site. Four of the structures in the northeastern section of the property are not located in proximity to other structures. The applicant has also recently built an unpermitted bathroom and unpermitted solar array structure near the existing barn and house.

5. Conformance with Grading Regulations

Per Section 9290 (Grading Regulations) of the County Ordinance Code, the following findings must be made in order to issue a grading permit for this project. Staff's review of the project is discussed below:

- a. That the granting of the permit will not have a significant adverse effect on the environment. As described previously in this report, the grading activities associated with the construction of the 'horseshoe road' has caused significant environmental impacts to San Gregorio Creek, associated habitat, and fish and wildlife.

- b. That the project conforms to the criteria of Chapter 8, Division VII, of the San Mateo County Ordinance Code, including the standards referenced in Section 9296. As described in Section 4.b(1) of this report above, the geotechnical measures implemented by the applicant are not adequate to properly stabilize the roadway alignment. To stabilize the roadway alignment, the large active landslide (Area F on Attachment D) that is moving beneath the roadway (probably moving fractions of an inch per year) would need to be stabilized.
- c. That the project is consistent with the General Plan. As described in Section 1 of this report, the project does not comply with General Plan policies establishing development standards to minimize land use conflicts with agriculture nor policies pertaining to the protection of sensitive habitat.

As the project does not meet the required findings for the issuance of the requested After-the-Fact Grading Permit, Section 9298 (Enforcement) requires the Community Development Director to enforce the provisions of Grading Regulations. The regulations require that, if the Community Development Director determines that grading or clearing has been done without a required permit, or that grading or land clearing has been done in violation of any of the terms and conditions of an issued permit, or that any person has otherwise failed to comply with these regulations, the Community Development Director shall do the following:

- a. Direct that a Stop Work Order be issued on all construction being carried out on the property affected by the violation, if one has not yet been issued under Section 9299.1. On January 26, 2016, the County issued a Stop Work Notice for grading and stormwater violations.
- b. In the event that any violation presents an immediate threat to the public health or safety, require that the property owner or permit applicant, as may be appropriate, take such steps as are necessary to protect the public health or safety, in accordance with the procedure set forth in Section 9298.3. The violations pose a threat to public health or safety by causing significant adverse impacts to important environmental resources. The submitted application does not include the actions necessary to protect the public from these impacts, giving rise to the need for a restoration order.
- c. Require that the property owner or permit applicant, as appropriate, prepare and implement a grading plan which meets the requirements of the Grading Regulations and which accomplishes one of the following:
 - i. Restores the property to the condition which existed prior to the violation;

- ii. Requires such remedial work as is necessary to make the grading or land clearing work already completed conform with all requirements of the Grading Regulations;
- iii. Requires such remedial work as is necessary to mitigate impacts of the grading work so that such work conforms as nearly as possible to all requirements of this chapter. The Community Development Director's determination shall be guided by the factors set forth in Section 9298.4.

Section 9298.4 (Restoration or Remedial Work) states that, in determining what remedial action shall be required, the Community Development Director shall consider restoration to original condition as the most appropriate remedy, conformance with all requirements of the Grading Regulations as the next most appropriate remedy, and mitigation to conform as nearly as possible to the requirements of the Grading Regulations as the least appropriate remedy. In making the necessary determination, the Community Development Director shall consider:

- a. The amount of grading which has been done in violation of this chapter.
- b. The amount of grading which would be necessary to either restore the property to its original condition or to bring the grading into conformance with the requirements of the Grading Regulations.
- c. The environmental damage which would occur as a result of either restoring the property to its original condition or bringing the grading into conformance with the requirements of the Grading Regulations.
- d. The economic feasibility of either restoring the property to its original condition or bringing the grading into conformance with the requirements of the Grading Regulations.
- e. The degree of culpability of the person committing the violation.
- f. Any other factor relevant to a proper determination of the matter.

This section also states that, before any work may commence, the property owner or permit applicant, as appropriate, shall provide a bond or other equivalent security, in the amount estimated for completion of the work. In the event the property owner or permit applicant fails to do the required work, the Community Development Director shall direct that the proceeds of the security be used to complete the required work.

Restoration Order and Further Enforcement

In consultation with County Counsel and CDFW staff and in the event that the Planning Commission denies the requested permits, the Community Development Director plans to pursue a Restoration Order to require the restoration of the area of the “horseshoe road” to the condition prior to the violations and the restoration of other impacted areas with documented violations. The Community Development Director will require a bond or other equivalent security in the amount estimated for completion of the work. The County will consult with CDFW staff regarding the scope and method of the restoration work.

For non-grading related violations, the Code Compliance Section will continue to pursue enforcement of corrective measures pertaining to the removal of non-agriculturally related equipment, materials, and pollutants, the unpermitted construction of the vegetable preparation building, bathroom, converted storage container, and solar array.

B. ENVIRONMENTAL REVIEW

Pursuant to Section 15270 (Projects Which are Disapproved) of the California Environmental Quality Act (CEQA) Guidelines, CEQA does not apply to projects which a public agency rejects or disapproves.

C. REVIEW BY THE CALIFORNIA COASTAL COMMISSION (CCC)

The California Coastal Commission was sent a project referral on February 20, 2018. No comment letter was received.

D. REVIEWING AGENCIES

County Building Inspection Section
County’s Geotechnical Consultant
County Code Compliance Section
California Historical Resources Information System (CHRIS)
California Department of Fish and Wildlife
California Coastal Commission (CCC)
California Department of Forestry and Fire Protection

ATTACHMENTS

- A. Vicinity Map
- B. Site Plan, submitted January 9, 2018
- C. Revised Site Plan, submitted June 18, 2018
- D. Geotech and Grading Plan, submitted January 9, 2018
- E. Flood Zone Map, submitted January 9, 2018
- F. CDFW Administrative Notice of Violation of Fish and Game Code Section 1602, dated May 23, 2012.
- G. Code Compliance Section Letter, dated July 26, 2017.
- H. Environmental Impact Assessment for the Property of Rogers, Richard K., San Gregorio Creek, unnamed tributaries and immediate vicinity, San Mateo County, prepared by California Department of Fish and Wildlife, dated May 10, 2018.
(Note: While this staff report outlines violations on the subject property, additional violations on an adjoining property (APN 082-160-080) are included in the CDFW Report).
- I. Biological Resources Evaluation, Skylonda Equipment, APNs 082-120-050, 082-120-040, and 082-160-040, San Mateo County, California, prepared by MIG/TRA Environmental Sciences, Inc, dated May 2016.
- J. Notice of Violation (VIO2018-00142) issued by the County on June 9, 2018.
- K. Site Photos
- L. Letter from Applicant to Melissa Ross, dated June 17, 2018.

Note: Attachment I is available online at:

<https://planning.smcgov.org/events/planning-commission-hearing-jul-11-2018>

County of San Mateo
Planning and Building Department

RECOMMENDED FINDINGS OF DENIAL

Permit or Project File Numbers:
PLN2016-00195; PLN2016-00197

Hearing Date: July 11, 2018

Prepared By: Camille Leung
Project Planner

For Adoption By: Planning Commission

RECOMMENDED FINDINGS

Regarding the Environmental Review, Find:

1. That the proposed project is exempt from environmental review pursuant to Section 15270 (Projects Which are Disapproved) of the California Environmental Quality Act (CEQA) Guidelines which exempts projects that would be denied by the Lead Agency.

Regarding the After-the-Fact Coastal Development Permit, Find:

2. That the project, as described in the application and accompanying materials required by Section 6328.7, does not conform with the plans, policies, requirements, and standards of the San Mateo County Local Coastal Program. The plans and materials have been reviewed against applicable LCP Policies, which regulate the location of new development, the protection of sensitive habitat, and development on Prime Soils and Lands Suitable for Agriculture. Regarding the location of development and sensitive habitat, the manner and location in which the 'horseshoe road' was constructed in close proximity to San Gregorio Creek, the dumping of sediment, trash, and debris into the creek, and the manner in which the owner conducts the proposed use has resulted in adverse environmental impacts at the subject parcels which have already occurred, continue to occur, and will likely worsen with time, as described in the CDFW Report. Regarding development on Prime Soils and Lands Suitable for Agriculture, the location of the 'horseshoe road' on Prime Soils and Lands Suitable for Agriculture and the location of the proposed construction equipment and materials storage use on Lands Suitable for Agriculture do not meet the required criteria, including those requiring maintaining water quality.

3. That the project does not conform to specific findings required by policies of the San Mateo County Local Coastal Program. As discussed in Section A.2 of the staff report and Finding 2 above, the project, as proposed, is not in compliance with applicable LCP Policies.

Regarding the After-the-Fact Planned Agricultural (PAD) Permit, Find:

4. The proposal does not meet the substantive criteria for the issuance of a PAD Permit, in particular criteria requiring development to be located, sited, and designed to carefully fit its environment so that its presence is subordinate to the pre-existing character of the site, and its surrounding is maintained to the maximum extent practicable. Grading, vegetation removal, and in-stream work associated with the construction/improvement of the 'horseshoe road' which runs alongside the creek and the manner in which the owner has conducted the proposed construction equipment and materials storage use has impacted San Gregorio creek and associated riparian areas.

Regarding the After-the-Fact Grading Permit, Find:

5. That the granting of the permit will have a significant adverse effect on the environment. As described in the staff report, the grading activities associated with the construction of the "horseshoe road" have caused significant environmental impacts to San Gregorio Creek, associated habitat, and fish and wildlife.
6. That the project does not conform to the criteria of Chapter 8, Division VII, of the San Mateo County Ordinance Code, including the standards referenced in Section 9296. As described in Section 4.b(1) of the staff report, the geotechnical measures implemented by the applicant are not adequate to properly stabilize the roadway alignment. To stabilize the roadway alignment, the large active landslide (Area F on Attachment D of the staff report) that is moving beneath the roadway would need to be stabilized.
7. That the project is not consistent with the General Plan. As described in Section 1 of the staff report, the project does not comply with General Plan policies establishing development standards to minimize land use conflicts with agriculture nor policies pertaining to the protection of sensitive habitat.

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