



County of Monterey

Item No.

Board Report

Board of Supervisors
Chambers
168 W. Alisal St., 1st Floor
Salinas, CA 93901

Legistar File Number: RES 23-161

September 12, 2023

Introduced: 8/21/2023

Current Status: Agenda Ready

Version: 1

Matter Type: BoS Resolution

PLN160851-AMD1 - MORGENRATH (BLAZE ENGINEERING)

Public hearing to:

- a. Deny the appeals of Matt & Carol Donaldson and The Ventana Chapter, Sierra Club from the Planning Commission's approval of an Amendment to a previously approved Combined Development Permit;
- b. Consider a previously adopted Mitigated Negative Declaration as revised by a supplemental Mitigated Negative Declaration (SCH No. 2018091005), pursuant to CEQA Guidelines section 15163;
- c. Consider an Amendment to an approved Combined Development Permit (PLN160851) to allow establishment of a commercial operation for a contractor's equipment storage and office facility and the construction of a 760 square foot office with a 760 square foot two-bedroom second story employee housing unit, 600 square foot workshop, 800 square foot storage building, and associated site improvements including formalizing six public parking spots, installing two electrical vehicle charging stations, and removal of 10 protected trees, on slopes in excess of 30 percent and within Environmentally Sensitive Habitat Areas; and
- d. Adopt a Mitigation Monitoring and Reporting Plan.

Project Location: 46821 Highway 1, Big Sur, Big Sur Coast Land Use Plan area (APN: 419-201-007-000)

Proposed CEQA action: Consider a previously adopted Mitigated Negative Declaration as revised by a Supplemental Mitigated Negative Declaration (SCH No. 2018091005), pursuant to CEQA Guidelines section 15163.

RECOMMENDATION:

It is recommended that the Board of Supervisors adopt a resolution:

- 1) Denying the appeals of Matt & Carol Donaldson and The Ventana Chapter, Sierra Club from the Planning Commission's approval of an Amendment to a previously approved Combined Development Permit
- 2) Considering a previously adopted Mitigated Negative Declaration as revised by a supplemental Mitigated Negative Declaration (SCH No. 2018091005), pursuant to CEQA Guidelines section 15163;
- 3) Approving an Amendment to a previously approved Combined Development Permit (PLN160851; Board Resolution 19-285) consisting of:
 - a. Coastal Development Permit and General Development Plan to allow the establishment of a commercial business operation for a contractor's equipment storage and office facility;
 - b. Coastal Administrative Permit to convert a test well into a permanent well;

- c. Coastal Administrative Permit and Design Approval to allow construction of a 760 square foot office with a two bedroom second story employee housing unit, a 600 square foot workshop and 300 square foot canopy, 800 square foot storage building and associated site improvements including formalizing six public parking spots and installing two electrical vehicle charging stations;
 - d. Coastal Development Permit to allow development on slopes in excess of 30%;
 - e. Coastal Development Permit to allow development within 100 feet of ESHA; and
 - f. Coastal Development Permit to allow removal of 10 native trees; and
- 4) Adopting a Mitigation Monitoring and Reporting Plan.

The attached draft resolution includes findings, evidence, and draft conditions of approval for consideration (**Attachment B**).

PROJECT INFORMATION:

Property Owner: Morgenrath Martha J TR ET AL (Blaze Engineering)

Agent: Aengus L. Jeffers, Law Offices of Aengus L. Jeffers

APN: 419-201-007-000

Parcel Size: 2.55 acres

Zoning: Visitor Serving Commercial, Design Control, Coastal Zone or “VSC(CZ)”

Plan Area: Big Sur Coast Land Use Plan

Flagged and Staked: Yes

PROJECT SUMMARY:

The Morgenrath property is a 2.55-acre vacant parcel on the eastern side of Highway 1. Access is through an existing driveway off Highway 1, Apple Pie Ridge Road, that traverses through the property and provides access to nearby parcels.

The proposed Amendment (PLN160851-AMD1) revises the scope of work (Combined Development Permit PLN160851) previously approved by the Monterey County Planning Commission on November 14, 2018, and the Board of Supervisors on August 27, 2019 (Board of Supervisors Resolution No. 19-285; **Attachment H**). On August 27, 2019, the Board of Supervisors denied the appeal and adopted a Mitigated Negative Declaration (SCH No. 2020029094) for the project at that time. The Board of Supervisors’ decision on the Combined Development Permit was appealed to the Coastal Commission. Prior to the Coastal Commission taking action on the appeal, the applicant notified Coastal Commission staff that revisions to the previously proposed project were being made to address the appeal contentions. To process the modifications, the applicant seeks the granting of an Amendment to the approved Combined Development Permit. More detailed background on the project is provided in the attached Discussion (**Attachment A**).

The proposed Amendment (PLN160851-AMD1) includes construction of a second-story 760 square foot employee housing unit over the office, installs two public universal electric vehicle charging stations, re-routes the pedestrian trail along Apple Pie Ridge Road, reduces public parking along Highway 1 by one stall, and eliminates the on-site sale of products (concrete, rock, sand, plumbing, and landscape supplies) from the business operation plan. All other project components remain the same: construction of a 760 square foot office, 600 square foot workshop with a 300 square foot

canopy, 800 square foot storage building, development within 100 feet of Environmentally Sensitive Habitat Area, removal of 10 protected trees, and site improvements including installation of an on-site wastewater treatment system, conversion of a test well to a permanent domestic well, and placement of a 40-watt generator, 4,000 square foot diesel storage tank, and two 5,000 gallon water tanks. Associated grading consists of 293 cubic yards of cut and 478 cubic yards of fill. Primary activities on the site will be for administrative support, storage, maintenance, and housing of at least two employees. Based on the services Blaze provides, intensive construction activities will continue to occur off-site on their various client's properties.

On June 14, 2023, the Planning Commission considered the previously adopted Mitigated Negative Declaration as revised to reflect the proposed project changes, found the proposed Amendment did not require subsequent environmental review pursuant to CEQA Guidelines section 15162, and adopted an Amendment to the previously approved Combined Development Permit (Planning Commission Resolution No. 23-020; **Attachment G**).

The appellants, Matt and Carol Donaldson (represented by Christine Kemp) and the Ventana Club, Sierra Club, timely appealed the Planning Commission's June 14, 2023, decision approving the Amendment (**Attachment C**). The Appellants contend that the Planning Commission's findings are not supported by the evidence, the decision is contrary to law, and that the hearing was unfair or impartial. The specific contentions raised by the Appellants, all of which staff have concluded lack merit, are identified below, and are addressed in more detail in the Draft Resolution (**Attachment B**).

This hearing is de novo. Staff recommends denial of the appeals and approval of the proposed permit Amendment. Staff has prepared a draft resolution to deny the appeals, certify that the previously adopted Mitigated Negative Declaration as revised by the Supplemental Mitigated Negative Declaration has been considered, and approve the Amendment to the Combined Development Permit.

APPEAL/DISCUSSION:

The appellants, Matt and Carol Donaldson (represented by Christine Kemp) and the Ventana Club, Sierra Club, filed separate appeals raising numerous contentions (**Attachment C**). Staff has summarized and grouped the contentions as follows:

- 1) "Inaccurate and misleading" project description and improper processing of an Amendment to previously approved project that has been appealed to the California Coastal Commission;
- 2) The project is not an allowed use in the Visitor Serving Commercial Zoning District, and is inconsistent with the applicable Big Sur Coast Land Use Plan, Coastal Implementation Plan, and Monterey County Code policies and regulations;
- 3) This project will cause a substantial disruption to the peace and tranquility of the neighbors, including the Donaldsons;
- 4) The project was not adequately staked and will create a significant visual impact to Highway 1;
- 5) The proposed development on slopes in excess of 30% and tree removal is in violation of the Big Sur Coast Land Use Plan and Coastal Implementation Plan;
- 6) The site is not suitable for the proposed project, will eliminate existing visitor serving parking,

- and create a fire hazard;
- 7) The project will be detrimental to the health, safety, peace, morals, comfort, and general welfare of the persons residing or working in the neighborhood, as well as the general visitor-serving public;
 - 8) The project applicant has engaged in unpermitted grading on the site, including roads and pads, causing damage to the site, and compromising the lateral support of the adjacent Donaldson property. No remediation has been done for this unpermitted grading;
 - 9) The project will have a significant impact on environmentally sensitive habitat areas;
 - 10) The project violates the California Environmental Quality Act (CEQA) and that an Environmental Impact Report is required for this project because there is substantial evidence, in light of the whole record before the County, that the project may have a significant effect on the environment [CEQA Guidelines section 15064 (a)(1)]; and
 - 11) The Planning Commission's decision (Planning Commission Resolution No. 23-020) violates the Coastal Act, the Big Sur Land Use Plan, Title 20, and CEQA.

Staff's response is provided by relevant topic in more detail in **Attachment A**. Contention-specific responses are in Finding No. 12 of the draft Resolution (**Attachment B**). Almost identical contentions were made by Mrs. Kemp and considered and rejected by the Board of Supervisors in 2019 (Board of Supervisors Resolution No. 19-285; **Attachment H**).

In summary, staff has concluded that the project amendment, as proposed, is consistent with the applicable provisions of the 1982 Monterey County General Plan, Big Sur Coast Land Use Plan, Carmel Coastal Implementation Plan (Part 4), and Zoning Ordinance (Title 20). The Visitor Serving Commercial zoning district allows other visitor-serving uses of a similar character, density, and intensity as those listed, provided the Planning Commission determines that the proposed use is consistent and compatible with the intent of the VSC Chapter and the BSC LUP. Based on the existing conditions of the area, the benefit the operation provides to the surrounding area, and consistent with the Big Sur Valley Rural Community Center (RCC) land use designation of the site (see **Attachment A**), the Planning Commission found that the proposed project is allowed within the RCC designation and VSC zoning district (Resolution No. 23-020; **Attachment G**). The project minimizes development on slopes, ensure, long term habitat maintenance of environmentally sensitive habitat, and will not impact the Critical Viewshed. Finally, the Amendment has been processed in accordance with applicable Monterey County Code.

CEQA:

On August 27, 2019, the Monterey County Board of Supervisors adopted a Mitigated Negative Declaration ("2019 IS/MND") for the Blaze Engineering operation and associated development (SCH No. 2018091005), pursuant to Board of Supervisors Resolution No. 19-285 (**Attachment H**). The adopted Mitigated Negative Declaration (SCH No. 2018091005; **Attachment D**) contemplated previously approved project's original scope of work ("Original Project"), which included the removal of 16 protected trees, the conversion of a test well into a permanent well, development on slopes, installation of an on-site wastewater treatment system, and approximately 440 cubic yards of cut and

620 cubic yards of fill. The 2019 IS/MND disclosed that the original project would have potential impacts to biological resources and tribal cultural resources caused by site disturbance and the establishment of new structures. Mitigation measures were recommended and adopted to reduce impacts to a less than significant level. Mitigation Measure Nos. 1 through 4 required biological monitoring, tree protection, and County approval of a final Construction Management Plan and Restoration and Fuel Management Plan. Implementation of these mitigations would reduce potential impacts to biological resources to a less than significant level. Mitigation Measure No. 5 required an approved tribal monitor to observe excavation for a portion of the driveway and septic tank.

The previously adopted mitigation measures are still feasible and adequate for the proposed Amendment. However, minor clarification and amplifications to the mitigation measures are needed to address new circumstances. The County as Lead Agency, through HCD-Planning, prepared a Supplemental Initial Study pursuant to CEQA Guidelines sections 15162 and 15163 (**Attachment E**). The Draft Supplemental Initial Study and Mitigated Negative Declaration (Supplemental IS/MND) was circulated for public review from April 17, 2023 through May 17, 2023 (SCH No. 2018091005). The Supplemental IS/MND reflects the minor project changes made during the 2019 Board of Supervisors hearings for PLN160851 (which did not trigger recirculation) and the proposed modifications to the previously approved project (PLN160851-AMD1). In comparison to analysis contained in the 2019 IS/MND, the Supplemental IS/MND disclosed and analyzed the reduction in ground disturbance and grading by over 2,000 square feet and 300 cubic yards and the number of trees required for removal by 6, and the construction of a 2-bedroom employee housing unit over a 760 square foot office, an 800 square foot storage building rather than 800 square feet of shipping containers, and the installation of two electric vehicle charging stations. The rest of the 2019 IS/MND analyzes parts of the project unaffected by the Amendment: relocation of the commercial business to the subject property, construction of a 600-square-foot workshop, conversion of a test well into a permanent well, development on slopes, development within environmentally sensitive habitat, and installation of an on-site wastewater treatment system.

The Supplemental IS/MND found that the proposed Amendment would result in less than significant new impacts to aesthetics and no new impacts to agricultural and forest resources, air quality, cultural resources, geology and soils, greenhouse gas emissions, hazards and hazardous materials, hydrology and water quality, land use and planning, mineral resources, noise, population and housing, public services, recreation, transportation and traffic, tribal cultural resources, and utilities and service systems. However, due to the presence of previously unidentified special status species, the Supplemental IS/MND found that the proposed amendment would result in less than significant new impacts to biological resources, provided new mitigation was incorporated.

Previously adopted Biological Mitigation Measure Nos. 1, 3 and 4 are still adequate for the project in its changed circumstance and have been applied to the project as Condition Nos. 16, 18, and 19. The language of Biological Mitigation Measure No. 2 was slightly revised and has been applied to the project as Condition No. 17. Tribal Cultural Recourse Mitigation Measure No. 5 is still adequate for the proposed project; however, minor revisions were made. This mitigation measure has been applied to the project as Condition No. 22. To reduce new potentially significant impacts to biological resources, the Supplemental IS/MND includes Biological Mitigation Measure Nos. 5 and 6, which require pre-construction surveys for the Coast range newt, Santa Lucia slender salamander, Foothill

yellow-legged frogs, and Western bumble bee. These new mitigation measures have been applied as Condition Nos. 21 and 22, respectively. The applicant has agreed to adhere and implement the previously adopted mitigation measures (five), as revised, and the new mitigation measures (two), applied as Condition Nos. 16 through 22.

Staff received CEQA comment letters from the applicant's representative, Attorney Christine Kemp (representing the Donaldsons [neighbors]), and the Ventana Chapter of the Sierra Club (**Attachment F**). In response, the circulated Supplemental Initial Study/Mitigated Negative Declaration was revised on May 19, 2022 to reflect the accurate development square footage (2,458), employee count (12), and the 2019 IS/MND's traffic conclusion (no impact). The revisions do not create a new significant environmental impact; they merely clarify the IS/MND. Therefore, pursuant to CEQA Guidelines section 15073.5, recirculation of the revised supplemental initial study is not required. Ms. Kemp's letter raised concerns that the project would result in significant environmental impacts to the property's Redwood Forest and ESHA, violate County zoning law and the Coastal Act, intensify land use and environmental impacts including "night glare and height, bulk and mass," reduce the number of public parking spaces, and create a fire hazard through the EV charging station. Additionally, Ms. Kemp asserts that the project description is inaccurate and misleading, the baseline conditions are inaccurate, and that the project requires preparation of an Environmental Impact Report (EIR) to address its significant, adverse impacts. The Sierra Club contends that the proposed project is inconsistent with both the Big Sur Coast Land Use Plan and the purpose of the Rural Community Center and would significantly impact ESHA. The Sierra Club also requests that an EIR be prepared. In summary, no new substantial evidence has been submitted to the Lead Agency indicating either inaccuracies or that the proposed project may have a significant unavoidable effect on the environment. All disclosed potentially significant impacts have been mitigated to a less than significant level. Additionally, the Lead Agency has not been presented with a fair argument that the project may significantly impact the environment, and therefore an EIR is not warranted. A detailed response to Ms. Kemp's and the Sierra Club's contentions is provided in the Draft Resolution (**Attachment B**).

OTHER AGENCY INVOLVEMENT:

The following agencies have reviewed the project, have comments, and have recommended conditions:

- Environmental Health Bureau
- Cal Fire - Coastal
- Office of the County Counsel

LAND USE ADVISORY COMMITTEE:

Staff referred the Amendment to the Big Sur Land Use Advisory Committee (LUAC) for review on January 10, 2023. The LUAC reviewed the project and unanimously recommended approval of the project as proposed (**Attachment I**). Two members of the public voiced support of the project, while one public member objected. The LUAC raised aesthetic concerns based on the visibility of the EV charging stations. As conditioned (Condition No. 4), the charging stations will blend in with the surrounding natural environment dominated by Redwood trees, be compatible with the rural community of the surrounding community center, and minimize and control illumination and visibility.

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FINANCING:

Funding for staff time associated with this project is included in the FY2023-24 Adopted Budget within Community Development General Fund 001, Appropriation Unit HCD002, Unit 8543.

BOARD OF SUPERVISORS STRATEGIC INITIATIVES:

This action represents effective and timely response to our HCD customers. Processing this application in accordance with all applicable policies and regulations also provides the County accountability for proper management of our land resources.

Check the related Board of Supervisors Strategic Initiatives:

Administration

Economic Development

Health & Human Services

Infrastructure

Public Safety

Prepared by: Fiona Jensen, Senior Planner, x6407

Reviewed by: Lori Woodle, Finance Manager I

Reviewed and Approved by: Craig Spencer, Chief of Planning

DS
CS

The following attachments are on file with Clerk of the Board:

Attachment A -Discussion

Attachment B - Draft Resolution, including:

- Conditions of Approval
- Draft General Development Plan
- Project Plans

Attachment C - Appeals (Donaldson & Sierra Club)

Attachment D - Adopted Mitigated Negative Declaration

Attachment E - Draft Supplemental Mitigated Negative Declaration (Revised)

Attachment F - CEQA Public Comment for Supplemental Environmental Document

Attachment G - Planning Commission Resolution No. 23-020

Attachment H - Board of Supervisors Resolution No. 19-285 for PLN160851

Attachment I - Big Sur LUAC (January 10, 2023)

Attachment J - Public Correspondence

cc: Front Counter Copy; Clerk of the Board, California Coastal Commission; Fiona Jensen, Project Planner; Craig Spencer, HCD Chief of Planning ; Aengus L Jeffers, Agent; Morgenrath Martha J TR ET AL, Applicant/Owner; Matt and Carol Donaldson, Appellants; Christine Kemp, Appellant representative; The Ventana Chapter - Sierra Club (c/o Larry Silver), Appellant; LandWatch (Executive Director); Lozeau Drury LLP (Laborers International Union of North America); Project File PLN160851-AMD1.