

**Before the Housing and Community Development Chief of Planning  
in and for the County of Monterey, State of California**

In the matter of the application of:

**BERRY NANCY A (PLN220104-AMD1)**

**RESOLUTION NO. 23-081**

Resolution by the Monterey County HCD Chief of Planning:

- 1) Finding that the proposed test well qualifies for a Class 3 Categorical Exemption pursuant to CEQA Guidelines Section 15303, and there are no exceptions pursuant to Section 15300.2; and
- 2) Approving a Minor and Trivial Amendment to a previously approved Coastal Administrative Permit (Chief of Planning Resolution No. 23-019) to delete Condition of Approval No. 7.

[PLN220104-AMD1, Nancy Berry, 48234 Highway 1, Big Sur, Big Sur Coast Land Use Plan, Coastal Zone, (Assessor's Parcel Number: 420-171-040-000)]

**The BERRY NANCY A application (PLN220104-AMD1) came on for an administrative decision hearing before the Monterey County HCD Chief of Planning on December 6, 2023. Having considered all the written and documentary evidence, the administrative record, the staff report, oral testimony, and other evidence presented the Monterey County HCD Chief of Planning finds and decides as follows:**

**FINDINGS**

1. **FINDING:** **PROCESS REQUIREMENTS** – The County has received and processed an amendment to PLN220104, as amended by PLN220104-AMD1.  
**EVIDENCE:** a) On March 15, 2023, HCD Chief of Planning approved a Coastal Administrative Permit (PLN220104, HCD Chief of Planning Resolution 23-019) allowing the construction of a test well for irrigation within 750 feet of known archaeological resources.  
b) Project. On August 18, 2023, an application for an Amendment (PLN220104-AMD1) was submitted to HCD-Planning staff. The amended project consists of amending the original permit (PLN220104) by removing the non-standard Condition of Approval No. 7. This condition required the area of disturbance be limited to a 10-foot by 10-foot area for the well and instead of excavating a drill pit, all spoils would be stockpiled aboveground and trucked away. The reason for this condition was due to the high archaeological sensitivity of the Coastlands area and the effort to minimize potential impacts on resources. This non-standard condition was found infeasible by the well

driller due to site constraints of the project being located on the Coastlands ridge in Big Sur. The applicant is requesting a Minor and Trivial Amendment to remove Condition No. 7 and proposes to drill a spoils pit in the original location that was analyzed under PLN220104. A Phase II Archaeological Assessment (LIB230319) was performed in the area of the proposed drill pit which concluded negative evidence of resources in the vicinity (see Finding 2, Evidence “f”).

- c) Conditions of Approval. Chief of Planning Resolution No. 23-019 Conditions of Approval Nos. 2 (Permit Approval Notice), 4 (Notice of Report), and 6 (Condition Compliance Fee) were met under the original permit for PLN220104. The proposed amendment (PLN220104-AMD1) will remove Condition No. 7 (Limited Area of Disturbance/Revised Scope (Non-Standard)). Only Condition No. 5 (Raptor/Migratory Bird Nesting) has been carried forward to this amendment, PLN220104-AMD1.
- d) Operating Permit. The findings and evidence from Chief of Planning Resolution No. 23-019 have been carried forward to this amendment. As approved and amended, permit number PLN220104-AMD1 will become and be referred to as the approved operating permit.
- e) The application, plans, and supporting materials submitted by the project applicant to Monterey County HCD-Planning for the proposed amendment found in Project File Nos. PLN220104 and PLN220104-AMD1.

**2. FINDING: CONSISTENCY** – The Project, as conditioned, is consistent with the applicable plans and policies which designate this area as appropriate for development.

**EVIDENCE:** a) During the course of review of this application, the project has been reviewed for consistency with the text, policies, and regulations in:

- the 1982 Monterey County General Plan;
- Big Sur Coast Land Use Plan;
- Coastal Implementation Plan, Part 3 (CIP); and
- Monterey County Zoning Ordinance (Title 20).

No conflicts were found to exist. No communications were received during the course of review of the project indicating any inconsistencies with the text, policies, and regulations in these documents.

- b) Allowed Use. The property is located at 48234 Highway 1, Big Sur, Big Sur Coast Land Use Plan, (Assessor’s Parcel Number 420-171-040-000). The parcel is zoned Rural Density Residential, one unit per 40 acres with a Design Control overlay within the Coastal Zone or “RDR/40-D(CZ)”, which allows for wells and small water systems serving 14 or fewer connections per Title 20 Section 20.16.040.J. The project involves drilling a test well within 750 feet of known archaeological resources for the purpose of irrigation on a residential lot. Additionally, the well would have the ability to provide fire suppression in the event of an emergency to protect the existing residence on the property. The project does not require a design approval since no new structures were proposed. As illustrated in the attached plans, Therefore, the project is an allowed land use for this site.

- c) Lot Legality. The subject 2.4-acre property (APN 420-171-040-000) is identified in its current configuration as Lot 29 on a residential subdivision map entitled Coastal Lands Tract #1, filed September 1, 1927, in Volume 3, Maps of Cities and Towns, at Page 46. Further, the subject property is shown in its current configuration and under separate ownership in both the 1964 and 1972 Assessors Map books (Book 400, Page 17-1). Therefore, the County recognizes the subject property as a legal lot of record.
- d) Development Standards. Deletion of Condition No. 7 will allow well spoils to be placed within 750 square foot pit approximately 10 feet deep. This pit would be temporary and only used during drilling of the well. As such, development standards do not apply. This Minor and Trivial Amendment does not change the location of the approved test well.
- e) Biological Resources. Deletion of Condition No. 7 does not change the conclusions contained in the Biological Assessment submitted for the Coastal Administrative Permit, prepared by Fred Ballerini, dated May 2, 2022 (see HCD-Planning file No. LIB230063).
- f) Cultural Resources. On June 12, 2023, a Phase II Archaeological Assessment (HCD-Planning file No. LIB230319) was performed in seven locations within the area of the originally proposed spoils pit. Results of the Phase II auger testing were negative for archaeological resources. Findings of this Phase II report support the deletion of Condition No. 7. The project is minor in nature and testing was comprehensive which provides with a high degree of certainty that impacts to archaeological resources will be avoided in this case. As a precaution, staff included a standard condition of approval (Condition No. 3) to ensure proper treatment in the event that unforeseen resources or human remains are discovered during construction.
- g) Public Access. As demonstrated in Finding No. 6, the development is consistent with public access policies of the Big Sur Coast LUP.
- h) Land Use Advisory Committee (LUAC) Review. Based on the Land Use Advisory Committee (LUAC) procedure guidelines adopted by the Monterey County Board of Supervisors per Resolution No. 08-338, this application does not meet any of the criteria in the guidelines requiring LUAC review because the project is for a test well and does not propose to build any new structures at this time.
- i) The project planner conducted a site inspection on September 14, 2022 to verify that the project on the subject parcel conforms to the plans listed above.
- j) The application, project plans, and related support materials submitted by the project applicant to Monterey County HCD-Planning found in Project File Nos. PLN220104 and PLN220104-AMD1.

**3. FINDING:** **SITE SUITABILITY** – The site is physically suitable for the proposed development and/or use.

**EVIDENCE:** a) The project has been reviewed for site suitability by the following departments and agencies: HCD-Planning, and Environmental Health Bureau. County staff reviewed the application materials and plans to verify that the project on the subject site conforms to the applicable

plans and regulations, and there has been no indication from these departments/agencies that the site is not suitable for the development. Conditions recommended have been incorporated.

- b) Staff identified potential impacts to biological and cultural resources. The following reports have been prepared:
  - “Biological Assessment” (LIB230064) prepared by Fred Ballerini Horticultural Services, Pacific Grove, CA, April 12, 2022.
  - “Phase I Preliminary Archaeological Assessment” (LIB230063) prepared by Achasta Archaeological Services, Marina, CA, May 2, 2022.
  - “Phase II Archaeological Assessment” (LIB230319) prepared by Achasta Archaeological Services, Marina, CA, June 12, 2023.County staff independently reviewed these reports and concurs with their conclusions. There are no physical or environmental constraints that would indicate that the site is not suitable for the use. All development shall be in accordance with these reports.
- c) Staff conducted a site inspection on September 14, 2022 to verify that the site is suitable for this use.
- d) The application, project plans, and related support materials submitted by the project applicant to Monterey County HCD-Planning found in Project File Nos. PLN220104 and PLN220104-AMD1.

**4. FINDING: HEALTH AND SAFETY** – The establishment, maintenance, or operation of the project applied for will not under the circumstances of this particular case be detrimental to the health, safety, peace, morals, comfort, and general welfare of persons residing or working in the neighborhood of such proposed use, or be detrimental or injurious to property and improvements in the neighborhood or to the general welfare of the County.

- EVIDENCE:**
- a) The project was reviewed by HCD-Planning, and Environmental Health Bureau. Deletion of Condition No. 7 will not have an adverse effect on the health, safety, and welfare of persons either residing or working in the neighborhood.
  - b) Deletion of Condition No. 7 will not impact necessary public facilities that exist and currently serve the single family dwelling onsite.
  - c) Staff conducted a site inspection on September 14, 2022 to verify that the site is suitable for this use.
  - d) The application, project plans, and related support materials submitted by the project applicant to Monterey County HCD-Planning found in Project File Nos. PLN220104 and PLN220104-AMD1.

**5. FINDING: NO VIOLATIONS** – The subject property is in compliance with all rules and regulations pertaining to zoning uses, subdivision, and any other applicable provisions of the County’s zoning ordinance. No violations exist on the property.

- EVIDENCE:**
- a) Staff reviewed Monterey County HCD-Planning and HCD-Building Services records and is not aware of any violations existing on subject property.
  - b) Staff conducted a site inspection on September 14, 2022 and researched County records to assess if any violation exists on the subject property.

- c) The application, project plans, and related support materials submitted by the project applicant to Monterey County HCD-Planning found in Project File Nos. PLN220104 and PLN220104-AMD1.
6. **FINDING:** **PUBLIC ACCESS** – The project is in conformance with the public access and recreation policies of the Coastal Act (specifically Chapter 3 of the Coastal Act of 1976, commencing with Section 30200 of the Public Resources Code) and applicable Local Coastal Program, and does not interfere with any form of historic public use or trust rights.
- EVIDENCE:**
- a) No public access is required as part of the project as no substantial adverse impact on access, either individually or cumulatively, as described in Section 20.145.150 of the Big Sur Coastal Implementation Plan can be demonstrated.
  - b) No evidence or documentation has been submitted or found showing the existence of historic public use or trust rights over this property.
  - c) The subject property is not described as an area where the Local Coastal Program requires physical public access (Figure 2, Major Public Access and Recreational Facilities, in the Big Sur Coast Land Use Plan).
  - d) The application, project plans, and related support materials submitted by the project applicant to Monterey County HCD-Planning found in Project File Nos. PLN220104 and PLN220104-AMD1.
7. **FINDING:** **CEQA (Exempt)** – The project is categorically exempt from environmental review and no unusual circumstances were identified to exist for the proposed project.
- EVIDENCE:**
- a) California Environmental Quality Act (CEQA) Guidelines Section 15303 categorically exempts new construction of small new facilities. The approved Coastal Administrative Permit (Chief of Planning Resolution No. 23-019) allowed a test well for the purpose of irrigation and deletion of Condition No. 7 will not cause a change in the project’s Class 3 categorical exemption.
  - b) None of the exceptions under CEQA Guidelines Section 15300.2 applied to the approved project and deletion of Condition No. 7 will not result in a change.
  - c) No adverse environmental effects were identified during staff review of the development application during a site visit on September 14, 2022.
  - d) See supporting Finding Nos. 2 and 3. The application, project plans, and related support materials submitted by the project applicant to Monterey County HCD-Planning found in Project File Nos. PLN220104 and PLN220104-AMD1.
8. **FINDING:** **APPEALABILITY** – The decision on this project may be appealed to the Board of Supervisors and California Coastal Commission.
- EVIDENCE:**
- a) Board of Supervisors. Pursuant to Section 20.86.030 of Title 20, an appeal may be made to the Board of Supervisors by any public agency or person aggrieved by a decision of an Appropriate Authority other than the Board of Supervisors.
  - b) Coastal Commission. Pursuant to Section 20.86.080.A of Title 20, the project is subject to appeal by/to the California Coastal Commission

because it involves development that is permitted in the underlying zone as a conditional use.

### **DECISION**

**NOW, THEREFORE**, based on the above findings and evidence, the HCD Chief of Planning does hereby:

1. Find that the proposed test well qualifies for a Class 3 Categorical Exemption pursuant to CEQA Guidelines Section 15303, and there are no exceptions pursuant to Section 15300.2; and
2. Approve a Minor and Trivial Amendment to a previously approved Coastal Administrative Permit (Chief of Planning Resolution No. 23-019) to delete Condition of Approval No. 7.

All of which are in general conformance with the attached sketch and subject to the attached conditions, all being attached hereto and incorporated herein by reference.

**PASSED AND ADOPTED** this 6th day of December 2023.

DocuSigned by:

*Melanie S Beretti*

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Melanie Beretti, AICP  
Acting HCD Chief of Planning

COPY OF THIS DECISION MAILED TO APPLICANT ON DATE **DECEMBER 7, 2023**.

THIS APPLICATION IS APPEALABLE TO THE BOARD OF SUPERVISORS. IF ANYONE WISHES TO APPEAL THIS DECISION, AN APPEAL FORM MUST BE COMPLETED AND SUBMITTED TO THE CLERK TO THE BOARD ALONG WITH THE APPROPRIATE FILING FEE ON OR BEFORE **DECEMBER 18, 2023**.

THIS PROJECT IS LOCATED IN THE COASTAL ZONE AND IS APPEALABLE TO THE COASTAL COMMISSION. UPON RECEIPT OF NOTIFICATION OF THE FINAL LOCAL ACTION NOTICE (FLAN) STATING THE DECISION BY THE FINAL DECISION MAKING BODY, THE COMMISSION ESTABLISHES A 10 WORKING DAY APPEAL PERIOD. AN APPEAL FORM MUST BE FILED WITH THE COASTAL COMMISSION. FOR FURTHER INFORMATION, CONTACT THE COASTAL COMMISSION AT (831) 427-4863 OR AT 725 FRONT STREET, SUITE 300, SANTA CRUZ, CA.

This decision, if this is the final administrative decision, is subject to judicial review pursuant to California Code of Civil Procedure Sections 1094.5 and 1094.6. Any Petition for Writ of Mandate must be filed with the Court no later than the 90th day following the date on which this decision becomes final.

## NOTES

1. You will need a building permit and must comply with the Monterey County Building Ordinance in every respect.

Additionally, the Zoning Ordinance provides that no building permit shall be issued, nor any use conducted, otherwise than in accordance with the conditions and terms of the permit granted or until ten days after the mailing of notice of the granting of the permit by the appropriate authority, or after granting of the permit by the Board of Supervisors in the event of appeal.

Do not start any construction or occupy any building until you have obtained the necessary permits and use clearances from Monterey County HCD-Planning and HCD-Building Services Department office in Salinas.

2. This permit expires 3 years after the above date of granting thereof unless construction or use is started within this period.

# County of Monterey HCD Planning

## Conditions of Approval/Implementation Plan/Mitigation Monitoring and Reporting Plan

PLN220104-AMD1

### 1. PD001 - SPECIFIC USES ONLY

**Responsible Department:** Planning

**Condition/Mitigation Monitoring Measure:** This Minor and Trivial Amendment (PLN220104-AMD1) allows an Amendment to a previously approved Coastal Administrative Permit (Chief of Planning Resolution No. 23-019) to delete Condition of Approval No. 7. The property is located at 48234 Highway 1, Big Sur, (Assessor's Parcel Number 420-171-040-000), Big Sur Coast Land Use Plan, Coastal Zone. This permit was approved in accordance with County ordinances and land use regulations subject to the terms and conditions described in the project file. Neither the uses nor the construction allowed by this permit shall commence unless and until all of the conditions of this permit are met to the satisfaction of the Director of HCD - Planning. Any use or construction not in substantial conformance with the terms and conditions of this permit is a violation of County regulations and may result in modification or revocation of this permit and subsequent legal action. No use or construction other than that specified by this permit is allowed unless additional permits are approved by the appropriate authorities. To the extent that the County has delegated any condition compliance or mitigation monitoring to the Monterey County Water Resources Agency, the Water Resources Agency shall provide all information requested by the County and the County shall bear ultimate responsibility to ensure that conditions and mitigation measures are properly fulfilled. (HCD - Planning)

**Compliance or Monitoring Action to be Performed:** The Owner/Applicant shall adhere to conditions and uses specified in the permit on an on-going basis unless otherwise stated.

### 2. PD002 - NOTICE PERMIT APPROVAL

**Responsible Department:** Planning

**Condition/Mitigation Monitoring Measure:** The applicant shall record a Permit Approval Notice. This notice shall state:  
"A Minor and Trivial Amendment (Resolution Number 23-081) was approved by HCD Chief of Planning for Assessor's Parcel Number 420-171-040-000 on December 6, 2023. The permit was granted subject to 4 conditions of approval which run with the land. A copy of the permit is on file with Monterey County HCD - Planning."

Proof of recordation of this notice shall be furnished to the Director of HCD - Planning prior to issuance of grading and building permits, Certificates of Compliance, or commencement of use, whichever occurs first and as applicable. (HCD - Planning)

**Compliance or Monitoring Action to be Performed:** Prior to the issuance of grading and building permits, certificates of compliance, or commencement of use, whichever occurs first and as applicable, the Owner/Applicant shall provide proof of recordation of this notice to the HCD - Planning.



### 3. PD003(A) - CULTURAL RESOURCES NEGATIVE ARCHAEOLOGICAL REPORT

**Responsible Department:** Planning

**Condition/Mitigation Monitoring Measure:** If, during the course of construction, cultural, archaeological, historical or paleontological resources are uncovered at the site (surface or subsurface resources) work shall be halted immediately within 50 meters (165 feet) of the find until a qualified professional archaeologist can evaluate it. Monterey County HCD - Planning and a qualified archaeologist (i.e., an archaeologist registered with the Register of Professional Archaeologists) shall be immediately contacted by the responsible individual present on-site. When contacted, the project planner and the archaeologist shall immediately visit the site to determine the extent of the resources and to develop proper mitigation measures required for recovery.  
(HCD - Planning)

**Compliance or Monitoring Action to be Performed:** The Owner/Applicant shall adhere to this condition on an on-going basis.

Prior to the issuance of grading or building permits and/or prior to the recordation of the final/parcel map, whichever occurs first, the Owner/Applicant shall include requirements of this condition as a note on all grading and building plans. The note shall state "Stop work within 50 meters (165 feet) of uncovered resource and contact Monterey County HCD - Planning and a qualified archaeologist immediately if cultural, archaeological, historical or paleontological resources are uncovered."

When contacted, the project planner and the archaeologist shall immediately visit the site to determine the extent of the resources and to develop proper mitigation measures required for the discovery.

### 4. PD050 - RAPTOR/MIGRATORY BIRD NESTING

**Responsible Department:** Planning

**Condition/Mitigation Monitoring Measure:** Any tree removal activity that occurs during the typical bird nesting season (February 22-August 1), the County of Monterey shall require that the project applicant retain a County qualified biologist to perform a nest survey in order to determine if any active raptor or migratory bird nests occur within the project site or within 300 feet of proposed tree removal activity. During the typical nesting season, the survey shall be conducted no more than 30 days prior to ground disturbance or tree removal. If nesting birds are found on the project site, an appropriate buffer plan shall be established by the project biologist. (HCD - Planning)

**Compliance or Monitoring Action to be Performed:** No more than 30 days prior to ground disturbance or tree removal, the Owner/Applicant/Tree Removal Contractor shall submit to HCD -Planning a nest survey prepared by a County qualified biologist to determine if any active raptor or migratory bird nests occur within the project site or immediate vicinity.





