

DRAFT RESOLUTION

Before the Board of Supervisors in and for the County of Monterey, State of California

In the matter of the application of:

**MORGENRATH MARTHA J TR ET AL
(PLN160851)**

RESOLUTION NO. ----

Resolution by the Monterey County Board of Supervisors to:

- 1) Deny the appeal filed by of Matt and Carol Donaldson challenging the Planning Commission's approval of a Combined Development Permit (RMA-Planning File No. PLN160851/Morgenrath);
- 2) Deny the appeal filed by Paul Smith challenging the Planning Commission's approval of a Combined Development Permit (RMA-Planning File No. PLN160851/Morgenrath);
- 3) Adopt a Mitigated Negative Declaration;
- 4) Approve a Combined Development Permit consisting of:
 - a. Coastal Development Permit, Design Approval, and General Development Plan to allow the establishment of a commercial business operation at 46821 Highway 1 including a 760 square foot office, a 600 square foot workshop with a 300 square foot canopy, 798 square foot storage building, storage of construction equipment such as generators and diesel storage tanks;
 - b. Coastal Development Permit to allow development on slopes in excess of 30%;
 - c. Coastal Development Permit to allow removal of 10 protected trees [8 Bay laurel trees (18, 19, 22, 30, 36.5, and 50-inch dbh and two multi-trunked); 1 Lyland cypress tree at 44.8-inches dbh; and 1 Coast Redwood at 20-inches dbh] in an environmentally sensitive area; and
 - d. Coastal Administrative Permit to convert a test well into a permanent well; and

5) Adopt a Mitigation Monitoring and Reporting Plan.
[PLN160851, Morgenrath Martha J TR ET AL (Blaze Engineering), 46821 Highway 1, Big Sur, Big Sur Coast Land Use Plan (APN: 419-201-007-000)]

The Appeals filed by Matt and Carol Donaldson, and by Paul Smith challenging the decision by the Monterey County Planning Commission to adopt a Mitigated Negative Declaration, approve a Combined Development Permit, and adopt a Mitigation Monitoring and Reporting Plan [Morgenrath Martha J TR ET AL (Blaze Engineering) – PLN160851] came on for a public hearing before the Monterey County Board of Supervisors on February 26, 2019; April 23, 2019; May 21, 2019; and August 27, 2019. Having considered all the written and documentary evidence, the administrative record, the staff report, oral testimony, and other evidence presented, the Board of Supervisors finds and decides as follows:

FINDINGS

1. **FINDING:** **PROCESS** – The County has processed the subject Combined Development Permit application [RMA-Planning File No. PLN160851/Morgenrath Martha J TR ET AL (Blaze Engineering)] (“project”) in compliance with all applicable procedural requirements.
- EVIDENCE:** a) On December 12, 2017, pursuant to Monterey County Code (MCC) Sections 20.82, Morgenrath Martha J TR ET AL (Blaze Engineering) (Applicant) filed an application for a discretionary permit to allow to allow the establishment of a commercial business operation including a 760 square foot office, a 600 square foot workshop, 800 square feet of storage containers, storage of construction equipment such as generators, cement silo, and diesel storage tanks, development on slopes in excess of 30%, and the removal of 16 trees, and the conversion of a test well into a permanent well on a project site located 46821 Highway 1, Big Sur, (APN: 419-201-007-000) Big Sur Coast Land Use Plan area, Coastal Zone.
- b) The project was referred to the Big Sur Land Use Advisory Committee (LUAC) for review prior to the Planning Commission public hearing. The LUAC, at a duly-noticed public meeting at which all persons had the opportunity to be heard, reviewed the proposed project on January 26, 2018. See Finding No. 2 (Consistency), Evidence “i”.
- c) The Monterey County Planning Commission held a duly-noticed public hearing on the Morgenrath application on October 31, 2018. Notices for public hearing were published in the Monterey County Weekly on October 18, 2018; posted at and near the project site on October 17, 2018; and mailed to vicinity property owners and interested parties on October 15, 2018.
- d) On October 31, 2018, Planning Commission received and approved a request from the project applicant to continue the hearing to November

- 14, 2018 in order to allow the applicant to resolve issues brought up by California Coastal Commission staff.
- e) On November 14, 2018, after review of the application and submitted documents, and a duly-noticed public hearing at which all persons had the opportunity to be heard, the Planning Commission adopted a Mitigated Negative Declaration; approved a Combined Development Permit, Design Approval, and General Development Plan; and adopted a Mitigation Monitoring and Reporting Plan to allow the proposed development (Monterey County Planning Commission Resolution No. 18-045).
 - f) Matt and Carol Donaldson and Paul Smith (Appellants), pursuant to MCC Section 20.86.030.C, timely filed appeals from the November 14, 2018, decision of the Planning Commission. The appeal challenged the Commission's approval and contends that the findings or decision or conditions are not supported by the evidence and the decision was contrary to law. The appeal contends there are inconsistencies with Policies contained in the Big Sur Coast Land Use Plan, conflicts with the property's Visitor Serving Commercial zoning designation, inappropriate tree removal, visual impacts in the Critical Viewshed, development within environmentally sensitive habitat areas, and a CEQA violation. See Finding No. 12 (Appeal) for the text of the Appellants' specific contentions and the County responses to the appeal.
 - g) Pursuant to MCC Sections 20.86.030.C and E, an appeal shall be filed with the Clerk of the Board of Supervisors within 10 days after written notice of the decision of the Appropriate Authority (i.e., Monterey County Planning Commission Resolution No. 18-045) has been mailed to the Applicant, and no appeal shall be accepted until the notice of decision has been given (i.e., mailed). The County mailed the written notice of the decision on November 20, 2018, and said appeals were filed with the Clerk of the Board of Supervisors on November 30, 2018, within the 10-day timeframe prescribed by MCC Section 20.86.030.C. The appeal hearing is de novo. A complete copy of the appeal, including the additional contentions, is on file with the Clerk of the Board, and is attached to the May 21, 2019, staff report to the Board of Supervisors as Attachments C and D.
 - h) On December 20, 2018, staff received correspondence from the applicant requesting a 30 day extension of the Board hearing to allow time to resolve issues with the appellant. Staff received correspondence from the appellant's attorney agreeing to extend the MCC 60 day requirement to consider the appeal and render a decision by an additional 30 days.
 - i) This appeal was timely brought to a duly-noticed public hearing before the Monterey County Board of Supervisors on February 26, 2019. Notice of the hearing was published on February 14, 2019, in the Monterey County Weekly; notices were mailed on February 12, 2019, to all property owners and occupants within 300 feet of the project site, and to persons who requested notice; and at least three (3) notices were posted at and near the project site on February 15, 2019.
 - j) On February 26, 2019, the Board of Supervisors received testimony and deliberated on the Morgenrath appeal. Based on the discussions that

took place, it was determined, and agreed to by the applicant and appellants, that a compromise between the parties could be sought through mediation. Therefore, it was the Board's action to continue the hearing to April 23, 2019 in order to allow the applicant (Marty Morgenrath) and appellants (Matt and Carol Donaldson and Paul Smith) time to resolve their issues.

- k) On April 23, 2019, the Board of Supervisors continued the hearing to May 21, 2019 to meet the needs of the applicant and appellants to complete mediation.
- l) Said appeal was timely brought to a public hearing before the Monterey County Board of Supervisors on May 21, 2019. As demonstrated in Evidence "k" above, the Board continued hearing of the appeal to a date certain; and therefore, notice of the May 21, 2019 hearing was not required.
- m) On May 21, 2019, the Board of Supervisors received testimony from the applicant and appellants that a compromise was not reached. However, the applicant presented several options to modify the project and reduce the scope of work. The Board approved a resolution of intent to continue the hearing to a date uncertain to allow the applicant to return with revised plans omitting the bypass road and cement silo and switching locations of the shop and storage area.
- n) This appeal was timely brought to a duly-noticed public hearing before the Monterey County Board of Supervisors on August 27, 2019. Notice of the hearing was published on August 15, 2019, in the Monterey County Weekly; notices were mailed on August 16, 2019, to all property owners and occupants within 300 feet of the project site, and to persons who requested notice; and at least three (3) notices were posted at and near the project site on August 17, 2019.
- o) The application, project plans, and related support materials submitted by the project applicant to Monterey County RMA-Planning for the proposed development found in Project File No. PLN160348; Clerk of the Board of Supervisors' file(s) related to the appeals.

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 (BSC LUP);
- Monterey County Coastal Implementation Plan Part 3 (CIP); and
- Monterey County Zoning Ordinance (Title 20);

Communications were received during the course of review of the project indicating inconsistencies with the text, policies, and regulations in these documents. Comments were fully analyzed to ensure no issues remain and addressed where appropriate. The subject property is located within the coastal zone; therefore, the 2010 Monterey County General Plan does not apply.

b) Zoning Designation – The property is located at 46821 Highway 1, Big Sur, (APN: 419-201-007-000), Big Sur Coast Land Use Plan. The parcel

is zoned Visitor Serving Commercial, Design Control, Coastal Zone or “VSC-D(CZ)”. As a conditional use, Title 20 Section 20.22.060.W, allows “[O]ther visitor serving uses of a similar character, density, and intensity of those listed in this Section determined by the Planning Commission to be consistent and compatible with the intent of this Chapter and applicable land use plan.” The project is for the establishment of a commercial business operation for Blaze Engineering, which previously operated out of an adjacent property (APN 419-201-006-000) between 1989 and 2017. Development associated with this use consists of the construction of an office for employees, a workshop for repair of equipment, storage building for storage of equipment and materials, and the permanent placement of a generator, and above ground diesel storage tanks. Blaze Engineering’s operation includes providing goods (concrete, rock, sand, plumbing, and landscape supplies) and services (grading, paving, installing water, septic, and electrical systems, and road building and repair) for local construction projects. Primary activities on the site will be for administrative support, storage, and maintenance. Based on the goods and services Blaze provides, intensive construction activities will continue to occur off-site on their client’s respective property. The VSC zoning district allows uses such as hotels and motels, restaurants, service stations, assemblages of people, zoos, and public and quasi-public uses. The project would have similar density, and noise intensity of these uses. However, traffic, water use, and wastewater would be less intensive. Although Title 20 does not provide a definition of “quasi-public”, Merriam-Webster defines it as: “essentially public (as in service rendered) although under private ownership and control.” Blaze Engineering has historically provided similar goods and services to the community and visitor service facilities in Big Sur, especially on an on-call/emergency basis. Blaze Engineering provides a direct service to the visiting public through their capacity to act as a first responder in proximity to visiting commercial services, facilities, and their patrons in the area. Approval of this permit would allow this emergency response to continue. The project is also in support of VSC uses in the area as it includes providing 19 parking spaces as delineated in the Parking Plan contained the attached sketch and as specified in the “PD001 – Specific Uses Only” condition. The upper area of the site provides 12 parking spaces (9 spaces near the office and storage building and 3 spaces near the workshop) for use by Big Sur River Inn employees during weekends and holidays. The lower portion of the site, adjacent to State Route 1, provides 7 parking spaces available to the general public. This would result in additional parking spaces available for visitors of the Big Sur River Inn and the general public. Based on the evidence contained in this, and subsequent findings, the Board of Supervisors finds the use consistent with the intent of the VSC zoning.

- c) Land Use Development – BSCLUP Chapter 5 addresses land use and development and provides respective policies for the planning area. Pursuant to subsection 5.3.1.5, secondary conditional uses for recreational, visitor-serving commercial, and public quasi-public land uses include: administrative, management and maintenance facilities for

public agencies, and fire stations. The map entitled “Big Sur Valley North – Detail A” illustrates that the subject property is located within the Big Sur Valley Rural Community Center (RCC). Subsection 5.3.2 states that the RCC is a special *land use classification for areas with an existing variety of land use activities that provide essential services to the community and visiting public* and that in general, any use allowed in any zone is appropriate for RCCs. Policies applicable to RCCs are intended to allow developments that would continue to provide a spectrum of functions to the public and residents of the area. Subsection 5.4.3.E contain policies for commercial uses and developments and the project is consistent with applicable Policies 1, 3, 6, 7, 8, 9, and 10 of this subsection; the development is in an RCC, it is rustic in nature, it is aimed at serving both local residents and the visiting public, it involves relocation of a use that operated on an adjacent property, it does not affect the peace and tranquility of existing neighbors, parking is screened from public view and design includes safety improvements, and the project would enhance recreational use of nearby lands by providing additional parking for employees, visitors, and the general public. In addition to the uses described in Evidence “b” above, establishment of the operation on the subject property would allow Blaze Engineering to continue to provide heavy equipment, fuel, and labor to the Big Sur area on an emergency basis¹. This is consistent with the BSC LUP RCC policies as it provides residents, visitors, and visitor serving commercial facilities of Big Sur with maintenance and repair of infrastructure during emergencies.

- d) Visual Sensitivity and Design Control – The project allows development that will be visible from State Route 1. However, as demonstrated in Finding 6, the development is consistent with visual resource policies of the BSC LUP and CIP and design control regulations of Title 20.
- e) Tree Removal – The project allows for the removal of 16 protected trees. As demonstrated in Finding 8, the project is consistent with BSC LUP policies and CIP regulations for forest resources and no issues remain.
- f) Environmentally Sensitive Habitat Areas (ESHA) – The project allows development within ESHA. As demonstrated in Findings 7, 8, and 10, the development, as sited, conditioned, and mitigated, is the least environmentally damaging alternative and is consistent with the ESHA protection policies of the BSC LUP and regulations of the CIP. No issues remain.
- g) Development on slopes in excess of 30% – The project includes grading and construction on slopes in excess of 30% which requires approval of a Coastal Development Permit pursuant to Big Sur Coastal Implementation Plan (CIP) Section 20.145.140.A.4 and Title 20 Section 20.64.230. As demonstrated in Finding 9 and supporting evidence, the Board of Supervisors approves the project consistent with the requirements in the CIP and Title 20.

¹ Blaze Engineering has historically provided emergency services to the Big Sur community. For example, Blaze assisted in repairing and re-opening damaged public and private roads during the 1998 El Nino, 2008 Basin Complex Fire, 2013 Pfeiffer Ridge Fire, 2016 Soberanes Fire, and 2017 landslide events.

- h) Public Access – As demonstrated in Finding 11, the development is consistent with public access policies of the BSC LUP. No issues remain.
- i) The project was referred to the Big Sur Land Use Advisory Committee (LUAC) for review on January 26, 2018. Based on the LUAC Procedure guidelines adopted by the Monterey County Board of Supervisors, this application warranted referral to the LUAC because the development required environmental review and approval at a public hearing. The LUAC reviewed the project and recommended approval with suggested changes to incorporate landscape screening (Finding 6, Evidence “b” and “d”) and an erosion control plan (Finding 4, Evidence “d”). Although not recommended by the LUAC, the applicant has also agreed to install a safety barrier along Apple Pie Ridge Road (Finding 4, Evidence “e”) to address concerns from neighboring property owners. No issues remain.
- j) Staff conducted site inspections on February 8, 2018 to verify that the project on the subject property conforms to the plans listed above.
- k) The application, project plans, and related support materials submitted by the project applicant to Monterey County RMA-Planning for the proposed development found in Project File PLN160851; Clerk of the Board of Supervisors’ file(s) related to the appeals.

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

- EVIDENCE:**
- a) The project has been reviewed for site suitability by the following departments and agencies: RMA-Planning, Cal Fire – Coastal, RMA-Public Works, RMA-Environmental Services, Environmental Health Bureau, and Water Resources Agency. There has been no indication from these departments/agencies that the site is not suitable for the proposed development and recommended conditions have been incorporated.
 - b) Potential impacts to archaeological resources, tribal cultural resources, biological resources, soil/slope stability, and geological hazards were identified. The following reports have been prepared and submitted with the application:
 - “Tree Resource Evaluation Project Impact Analysis”, dated October 6, 2017 and update dated June 19, 2019 (Monterey County Document No. LIB170437), prepared by Maureen Hamb-WCISA, Santa Cruz, CA.
 - “Preliminary Archaeological Assessment”, dated February 17, 2018 (Monterey County Document No. LIB170438), prepared by Gary S. Breschini, Ph. D., Salinas, CA.
 - “Biological Assessment”, dated October 23, 2017 (Monterey County Document No. LIB170439), prepared by Fred Ballerini, Pacific Grove, CA.
 - “Geotechnical Report”, dated February 2017, (Monterey County Document No. LIB170440), prepared by Grice Engineering, Inc., Salinas, CA.

- “Percolation Testing Results”, dated November 27, 2017 (Monterey County Document No. LIB170441), prepared by Haro, Kasunich and Associates, Inc., Watsonville, CA.
- “Geologic Report”, dated June 22, 1993 (Monterey County Document No. LIB170052), prepared by Karl Vonder Linden, Menlo Park, CA.

The above-mentioned technical reports prepared by outside consultants demonstrate that there are no physical or environmental constraints indicating the site is not suitable for the proposed use. County staff has independently reviewed these reports and concurs with their conclusions. See Finding No. 10 for further discussion of environmental impacts.

- c) Surrounding lands uses consist of rural residential parcels to the north, northeast, and east of the subject property, which range in size between 2 and 60 acres. Nearby visitor serving commercial uses such as inns, campgrounds, service stations, and restaurants, are found to the west and southwest of the subject property. BSC LUP Policy 5.4.3.E.1 prohibits large scale commercial facilities that are unlike existing character and size of facilities in Big Sur and Policy 5.4.3.E.8 requires careful consideration of impacts resulting from newly established commercial uses on surrounding lands from a good neighbor point of view. Where commercial activities are in proximity to residences, care must be taken to ensure that noise or visual modification do not affect the peace and tranquility of existing neighbors. The proposed project is consistent with the size and scale of Blaze Engineering’s operations conducted on the adjacent parcel (APN 419-201-006-000) between 1989 and 2017. However, approval of the project would locate higher noise intensity noise operations to the lower portions of the site further away from sensitive receptors, provide a parking facility with safer ingress and egress for large construction vehicles, and result in providing a greater distance between the operations and existing residential structures than that of the former site.
- d) Comments received from California Coastal Commission staff provide their opinion that the proposed use is not suitable for the site. Their letter states that the lands, and in this case the subject property, found within RCCs (Finding 2, Evidence “c”) should be reserved for essential/priority visitor-serving uses. Although these uses are consistent with the property’s Visitor Serving Commercial zoning designation, the acreage of the subject property is not. Table 1 found in the BSC LUP establishes minimum lot sized for inns, RV campgrounds, rustic campgrounds and hike-in and environmental campsites. The 2.55-acre size of the subject property does not meet the minimum size (between 5 to 20-acres) of the visitor-serving uses listed above. As demonstrated in Finding 2 above, the proposed project is consistent with the land use designation and zoning district and the use is suitable for the subject property. Furthermore, the priority visitor uses suggested by CCC staff are inconsistent with the development standards of the BSC LUP.
- e) The project includes use of an existing improved road for ingress and egress to the property and improvements adjacent to State Route 1. The Department of Transportation (Caltrans) has reviewed the project for

consistency with their roadway improvement regulations for safety, construction, and maintenance. As recommended, a non-standard condition of approval has been incorporated into the project required the owner/applicant to obtain an encroachment permit from Caltrans prior to any work within their right-of-way.

- f) Staff conducted site inspections on February 8, 2018 to verify that the site is suitable for this use.
- g) The application, project plans, and related support materials submitted by the project applicant to the Monterey County RMA - Planning for the proposed development found in Project File PLN160851; Clerk of the Board of Supervisors' file(s) related to the appeals.

4. **FINDING:** **HEALTH AND SAFETY** - The establishment, maintenance, or operation of the use or structure applied for, will not, under the circumstances of the 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 RMA-Planning, Cal Fire – Coastal, RMA-Public Works, Environmental Health Bureau, RMA-Environmental Services, and Water Resources Agency. The respective agencies have recommended conditions, where appropriate, to ensure that the project will not have an adverse effect on the health, safety, and welfare of persons either residing or working in the neighborhood.
 - b) Necessary public facilities will be provided. On December 12, 2017, the Environmental Health Bureau deemed the project application complete and found that domestic water service provided by the conversion of a test well (approved by Planning File No. PLN170051, Resolution No. 17-006) into a permanent well and wastewater service provided by an onsite wastewater treatment system acceptable.
 - c) The project application includes a preliminary drainage plan addressing stormwater control. To ensure the final plans are consistent with applicable regulations, the project has been conditioned requiring the owner/applicant to submit a stormwater management plan for review and approval prior to issuance of construction permits. As recommended by Caltrans, a non-standard condition of approval has been incorporated into the project requiring the owner/applicant to submit the final drainage plans to the Department of Transportation to ensure water runoff from new impervious surfaces does not drain onto and impact State Route 1.
 - d) The project has been reviewed by RMA-Environmental Services for consistency with County health and safety codes for grading (Monterey County Code Section 16.08) and erosion control (Monterey County Code Section 16.12). No issues were identified and conditions of approval have been incorporated to ensure project implementation meets these requirements and development occurs in accordance with recommendations of the geotechnical report (Finding 3, Evidence “b”).
 - e) An existing road right of way, Apple Pie Ridge Road, traverses through the subject property and terminates on an adjacent property to the north

(Assessor's Parcel Number 419-201-010-000). During the Big Sur Land Use Advisory Committee Meeting, a member of the public identified concerns with the project's introduction of additional vehicular-pedestrian interface as school children in the area walk on the road to get to and from school. To address these concerns, the applicant has modified their plans delineating an an informal walking path on page A1.1 of their plans. A non-standard condition of approval has been incorporated to ensure the final construction plans include construction and details for the walking path.

- f) The project was reviewed by the Environmental Health Bureau (EHB) for consistency with Monterey County Code Chapters 10.65 (Hazardous Materials Registration) and 10.67 (Hazardous Materials Emergency Response). EHB identified that Blaze Engineering is currently permitted as a hazardous waste generator for their above-ground diesel storage tank (Facility ID No. FA0813374) and has conditioned the project requiring the applicant to obtain a Hazardous Materials Management Services update.
- g) Staff conducted site inspections on February 8, 2018 to verify that the site is suitable for this use.
- h) The application, project plans, and related support materials submitted by the project applicant to the Monterey County RMA - Planning for the proposed development found in Project File PLN160851; Clerk of the Board of Supervisors' file(s) related to the appeals.

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 RMA - Planning and Building Services Department records and violations existing on subject property have been abated and Code Enforcement cases have been closed.
 - b) Staff conducted site inspections on February 8, 2018. County records were researched to assess if any violation exists on the subject property.
 - c) There are no known violations on the subject parcel. On April 10, 2015 a code enforcement case was opened for grading, occupying mobile homes, waste disposal, and water diversion. County records show the violations were abated and a Release of Notice of Monterey County Code Violation was recorded on the property on May 30, 2017 (Document No. 2017028546). On January 19, 2018, Code Enforcement received another complaint and after an investigation, the Code Enforcement Officer found no merit and the case was closed October 3, 2018.
 - d) The application, plans and supporting materials submitted by the project applicant to Monterey County RMA-Planning for the proposed development are found in Project File PLN160851; Clerk of the Board of Supervisors' file(s) related to the appeals.

6. **FINDING:** **VISUAL SENSITIVITY** – The project, as proposed and conditioned, is compatible with the existing scenic and visual resources of Big Sur and is consistent with the applicable scenic and visual resource

protection policies set forth in the Big Sur Coast Land Use Plan (BSC LUP), the Monterey County Coastal Implementation Plan, Part 3 (CIP), and the Monterey County Zoning Ordinance (Title 20).

- EVIDENCE:**
- a) Visual Sensitivity Determination – Key Policy 3.2.1 of the BSC LUP prohibits developments visible from the “Critical Viewshed”, which is defined in Section 3.2.2.1 as: “*everything within sight of Highway 1 and major public viewing areas including turnouts, beaches and the following specific locations Soberanes Point, Garrapata Beach, Abalone Cove Vista Point, Bixby Creek Turnout, Hurricane Point Overlook, upper Sycamore Canyon Road (Highway 1 to Pais Road), Pfeiffer Beach/Cooper Beach, and specific views from Old Coast Road as defined by policy 3.8.4.4.*” However, BSCLUP Policy 3.2.5.A and CIP Section 20.145.030.B1 identifies that developments located in rural service centers provide essential services to the community and visiting public and, as such, affords an exception to this key policy. As demonstrated in Finding 2, Evidence “c”, the subject property is within the Big Sur Valley RCC and qualifies for a Critical Viewshed exception.
 - b) Design Development Standards – Although the project is exempt from the Critical Viewshed policy, BSCLUP Policy 3.2.5.A states that development in RCCs shall be permitted under careful design and siting controls as provided for in specific policies listed in BSC LUP 5.4.3 and regulations contained in Title 20. BSCLUP Policies 1 through 8 listed under 5.4.3.L provide specific development policies for the Big Sur Valley. Relative to aesthetics, Policy 5.4.3.L.4 requires developments to incorporate tasteful, rustic designs using natural materials and careful siting of structures to meet scenic protection objectives; rather than the criteria of non-visibility, as existing development is already visible. Pursuant to Title 20 Section 20.44.010, the purpose of the Design Control or “D” district is to provide regulation of the location, size, configuration, materials, and colors of structures where design review is appropriate to assure protection of the public viewshed and/or neighborhood character. On February 8, 2018, the project staking and existing operations conducted out of the adjacent parcel (APN 419-201-006-000) were observed to determine consistency with the visual resource policies and regulations. Staking of the office, storage containers, and workshop could not be seen from State Route 1 and staking of the cement silo was obscured by existing vegetation. In addition, and as discussed in Finding 1, Evidence “m”, the project scope was reduced to omit the cement silo and bypass road. Tree removal associated with the project (Finding 8) would not result in exposing these structures to views from State Route 1. Parking of Blaze Engineering’s large construction vehicles (e.g. trucks, trailers, dozers) within the existing parking area on the lower portion of the subject property (which is currently being utilized for parking by both Blaze Engineering and the River Inn Motel) will result in more frequent use by Blaze and vehicles will be seen from State Route 1. During the Big Sur Land Use Advisory Committee (LUAC) meeting, a member of the public stated that they support the project but suggested equipment, trucks, and structures be shielded from view. As discussed in

subsequent Evidence “d”, the applicant revised their screening to vegetation. This would achieve the desired results recommended by the LUAC. Consistent with these standards, the structures and improvements to the lower parking area have been sited and designed to be subordinate to the existing character of the area.

- c) Exterior Lighting – The project includes establishment of new structures that require exterior lighting. Blaze Engineering’s approved General Development Plan (as attached to this resolution) states that lighting is limited to the entrances and exits of the office and workshop and are proposed to have recessed lighting elements where the light source would not be visible from the State Route 1 and exterior lights will be unobtrusive, down-lit, compatible with the local area, and constructed or located so that only the intended area is illuminated and off-site glare is fully controlled. To ensure this is fully implemented, a standard condition of approval has been incorporated requiring the owner/applicant to submit an exterior lighting plan to RMA-Planning for review and approval.
- d) Although preceding Evidence “a” demonstrates that development on the subject property is not subject to the Critical Viewshed policy, comments received from California Coastal Commission (CCC) staff state that it is their opinion the project components, particularly parking of construction vehicles within the existing parking area and the construction of a wooden fence along State Route 1, would create a significant adverse visual impact to the Critical Viewshed. It is CCC staff’s opinion that the fence would not provide screening, “but rather trades one visual impact for another.” The area proposed for parking is currently designated and used for parking by Blaze Engineering and the general public and installation of a Redwood fence was recommended by the public and LUAC to screen the vehicles from views from State Route 1. Section 3.2.5.C.2. of the BSC LUP and 20.145.030.B.3.b of the CIP requires design of private highway improvements, such as driveway entrances, gates, roadside fences, mailboxes, and signs, to be complementary to the rural setting and character of Big Sur, with preference for natural materials. Although the proposed fencing was found consistent with the design guidelines for development adjacent and along State Route 1 contained in the “Big Sur Coast Highway Management Plan” dated March 2004, the applicant has agreed to revised their landscape plans to plant native vegetative screening instead, based on recommendation by California Coastal Commission staff after an onsite visit on October 26, 2018. The revised screening is also consistent with the applicable development standards. To ensure the landscape plans are consistent with this recommendation, the project has been conditioned, “PD012(G) – Landscape Plan & Maintenance”, requiring the applicant to submit final landscape plans identifying the location, species, and size of planting to RMA-Planning for review and approval prior to issuance of construction permits. This condition also requires verification of planting in accordance with the Landscape Plan prior to occupancy.
- e) Staff discussed the concerns of potential project impacts to neighboring property owners. In order to address visual and noise impacts, a

condition of approval requiring submittal of a landscape and maintenance plan has been modified requiring vegetative screening between the previously proposed shop area, now the storage building location, and the single family dwelling next door. In addition, a non-standard condition of approval, “PDSP004 – Site Maintenance”, has been incorporated ensuring construction material and associated debris (such as concrete mix, sand, supplies, scrap metals and materials, and similar items) are stored within the approved storage building and not visible onsite (uncovered) resulting in a visual nuisance.

- f) The application, project plans, and related support materials submitted by the project applicant to the Monterey County RMA - Planning for the proposed development found in Project File PLN160851; Clerk of the Board of Supervisors’ file(s) related to the appeals.

7. **FINDING:** **ENVIRONMENTALLY SENSITIVE HABITAT AREAS** – The project minimizes impacts on environmentally sensitive habitat areas (ESHA) in accordance with the applicable goals and policies of the 1982 Monterey County General Plan (1982 GP); Big Sur Coast Land Use Plan (BSC LUP); Monterey County Coastal Implementation Plan, Part 3 (CIP); and the Monterey County Zoning Ordinance (Title 20).
- EVIDENCE:**
- a) **ESHA Determination** – The “Monterey County Vegetation” layer contained in Monterey County Geographic Information System (GIS) indicates that the subject property does not contain sensitive vegetation. However, the California Natural Diversity Database layer within GIS and the BSC LUP Environmentally Sensitive Habitat Areas (ESHA) map indicates that the subject property has the potential to contain rare, endangered, or sensitive species such as Smith’s blue butterfly and Steelhead.
 - b) **Report Requirement** – BSC LUP Key Policy 3.3.1 states that all practical efforts shall be made to that maintain, restore, and if possible, enhance ESHA. In accordance with CIP Section 20.145.040, a biological survey (Finding 3, Evidence “b”) was submitted to identify ESHA on the property and determine if the project would have the potential to result in an impact to that ESHA.
 - c) **Redwood Forest Natural Community** – The project biologist identified that the subject property lies entirely within a Redwood Forest natural community dominated by coast redwood (*Sequoia sempervirens*) and co-dominated by California bay (*Umbellularia California*). Tan-oak (*Notholithocarpus densiflorus*), coast live oak (*Quercus agrifolia*), and Shreve oak (*Quercus parvula* var. *shrevei*) were also found onsite, but in limited amounts. Very little native understory plants, such as sword fern (*Polystichum munitum*), thimbleberry (*Rubus parviflora*), Douglas’ iris (*Iris douglasiana*), redwood sorrel (*Oxalis oregana*), California hedgenettle (*Stachys bullata*), and poison oak (*Toxicodendron diversilobum*), were found onsite as non-native invasive English ivy (*hedera helix*) dominates the understory and is found climbing up the trunks of many onsite trees.
 - d) **Siting of Development** – The project minimizes disturbance to biological resources to the maximum extent feasible by utilizing existing disturbed areas such as roadways, building pads, and an

existing parking area. However, complete avoidance of ESHA is not feasible. BSC LUP Policy 3.3.2.1 states that development, including vegetation removal, shall not be permitted in ESHA if it would result in any potential disruption of habitat value. The project biologist provided recommended actions and concluded that through implementation of those actions, the project would have a less than significant impact on special natural communities. These actions also include protection and restoration measures to enhance ESHA and provide for long-term land management and exotic species control. The preliminary Construction Management Plan and Conceptual Restoration & Fuel Management Plan includes notes consistent with the recommended actions (exotic species control, best management practices, thinning of invasive plants, and site restoration). To ensure proper implementation of these actions occur, they have been incorporated as mitigation measures requiring final submittal of a final Construction Management Plan and Restoration & Fuel Management Plan to RMA-Planning for review and approval. The project, as proposed and mitigated, will not result in the significant disruption of ESHA.

- e) Tree Removal in ESHA – The project arborist concludes that the proposed tree removal is minimum necessary for development and to reduce the risk of tree failure that would be a hazard to people or structures. Removal would not result in the fragmenting of an intact forest system, create a new forest edge, or impact the existing quality of the system. The arborists findings were independently reviewed and confirmed (see Finding 8).
- f) CIP Section 20.145.040.B requires deed restrictions or conservation easement dedications over ESHA areas as a condition of approval for any development proposed on parcels containing ESHA, even in this case, where a property is already developed. The biologist did not recommend placing ESHA areas of the site within a conservation easement; instead, the focus was on restoration efforts. However, consistent with the CIP, the project has been condition requiring the applicant to dedicate a conservation easement over portions of the property containing ESHA according to the provisions of Title 20 Section 20.64.080.
- g) Staff conducted site inspections on February 8, 2018 to verify that the site and proposed project meet the criteria for an exemption.
- h) The application, project plans, and related support materials submitted by the project applicant to Monterey County RMA-Planning for the proposed development found in Project File PLN160851; Clerk of the Board of Supervisors’ file(s) related to the appeals.

8. **FINDING:** **TREE REMOVAL** – Tree removal conforms with Big Sur Coast Land Use Plan (BSC LUP) policies and Coastal Implementation Plan, Part 3 (CIP) standards regarding water and marine resources, environmentally sensitive habitat areas, and scenic visual resources. The development has been sited, designed, and conditioned to minimize tree removal and protect retained trees.

EVIDENCE: a) The project includes the removal of 10 protected trees. Pursuant to CIP Section 20.145.060.B.1.a, a tree evaluation (Finding 3, Evidence “b”)

has been prepared and submitted with the project application. The project arborist identified coast redwoods on the property to be in fair to good condition and California bay laurels in various stages of decline due to structural defects, fungal infestations by Ganoderma and Sudden Oak Death disease. Out of the 10 trees proposed for removal, 4 trees will be removed due to construction impacts (tree Nos. 2, 19, 25, and 31), 3 due to their hazardous condition and construction impacts (trees Nos. 1, 4, and 33), and 3 due to their hazardous condition (tree Nos. 3, 35, and 36). In addition, the arborist recommends removal of 3 dead Coast live oaks (tree Nos. 21, 23, and 24) to reduce the potential spread of Sudden Oak Death.

- b) CIP Section 20.145.060.A.1.a provides an exception for the removal of planted trees, where removal would not expose structures in the Critical Viewshed or where the tree intended for removal is not considered landmark. The project arborist identified tree No. 2 as planted; however, due to its size (44-inch), it is considered landmark. The arborists identifies that the tree is just outside of the office footprint and is in fair condition. However, the tree is showing decay at the base of the tree. Based on development impacts and future health of the tree, the arborist recommends its removal.
- c) CIP Section 20.145.060.D.1 only allows removal of landmark trees if the decision making body can find that there are no alternatives to development where their removal can be avoided. Furthermore, CIP Sections 20.145.060.D.3 & 4 requires minimizing tree removal to that which is necessary for the proposed development and/or necessary to improve unhealthy forest conditions and for the long-term maintenance of the forest. As discussed above, Tree No. 21 (35-inch Coast live oak) is standing dead due to Sudden Oak Death and its removal is recommended to reduce the spread of the disease. Tree No. 31 is located within the proposed grading area of the office and is also in poor health and structure. Avoidance of this tree would require shifting the office building to the east into areas with slopes in excess of 30%.
- d) Trees Nos. 1, 4, and 33 are located within the proposed development area and are in declining health. Failure of these trees would have the potential to fall onto Apple Pie Ridge Road or on the parking area as well as cause accelerated erosion downslope of the trees. Analysis also considered if their removal would be supported without the proposed development, such as the potential for trees to pose a hazard/threat to either persons or structures. Pursuant to CIP Section 20.145.060.D.4, the spread of disease and the overall health of the forest is also considered. Removal of tree No. 33, a Coast Redwood, is not for the purpose of harvesting timber, but due to poor health and structure as well as development impacts. Based on the targets the trees pose hazards to, potential erosion issues felling may cause, and for the overall health of the forest, their removal is consistent with the forest resource policies of the BSC LUP and CIP.
- e) The project arborist recommends 3 trees for removal, whether or not the development occurs, due to their high hazard rating and for the overall health of the forest. Removal of tree Nos. 3, 35, and 36 would reduce potential failure hazards and the spread Sudden Oak Death.

- f) Trees that are removed will not expose proposed structures to views from State Route 1. Their removal will not expose the development or detract from the scenic value of the area.
- g) The project arborist concludes that the proposed tree removal is minimum necessary for development and to reduce the risk of tree failure that would be a hazard to people or structures. Removal would not result in the fragmenting of an intact forest system, create a new forest edge, or impact the existing quality of the system. To ensure construction activities do not inadvertently cause harm to trees to be retained, mitigation measures requiring monitoring by a qualified arborist during grading and construction and implementation of an approved tree protection plan have been incorporated. Due to site constraints and as a result of balancing policies for the protection of healthier trees, the tree removal is the minimum amount required in this case.
- h) The application, project plans, and related support materials submitted by the project applicant to the Monterey County RMA - Planning for the proposed development found in Project File PLN160851; Clerk of the Board of Supervisors' file(s) related to the appeals.

9. **FINDING:** **DEVELOPMENT ON SLOPE** – There is no feasible alternative which would allow development to occur on slopes of less than 30% and the development better the BSCLUP's objectives and policies for resource protection.

EVIDENCE: a) BSCLUP General Policy 5.4.2.5 states that existing lots of record are buildable and suitable for development provided all resource protection policies can be fully satisfied, there are adequate building areas less than 30% cross slope, and the lots have not been merged by provisions elsewhere in this plan. Although none of the structures are proposed on 30% slopes or more, site improvements will. The soldier pile walls adjacent to the office building and public parking area and the Hilfiker wall west of the storage building will require grading and construction on slopes on slopes in excess of 30%. In accordance with the applicable policies of the BSCLUP and regulations contained in CIP Section 20.145.140.A.4 and Title 20 Section 20.64.230.E, a Coastal Development Permit is required and the criteria to grant said permit have been met.

- b) Based on the geotechnical engineer recommendations, construction of the soldier pile and Hilfiker walls is necessary to reduce potential seismic and erosion hazard risks. Reducing potential soils/erosion hazards better meets policy objectives of the BSCLUP.
- c) The application, plans and supporting materials submitted by the project applicant to Monterey County RMA-Planning for the proposed development are found in Project File PLN160851; Clerk of the Board of Supervisors' file(s) related to the appeals.

10. **FINDING:** **CEQA (Mitigated Negative Declaration)** - On the basis of the whole record before the Monterey County Board of Supervisors, there is no

substantial evidence that the proposed project as designed, conditioned and mitigated, will have a significant effect on the environment. The Mitigated Negative Declaration reflects the independent judgment and analysis of the County.

- EVIDENCE:**
- a) Public Resources Code Section 21080.d and California Environmental Quality Act (CEQA) Guidelines Section 15064.a.1 require environmental review if there is substantial evidence that the project may have a significant effect on the environment.
 - b) Monterey County RMA-Planning prepared an Initial Study pursuant to CEQA. The Initial Study is on file in the offices of RMA-Planning and is hereby incorporated by reference.
 - c) The Initial Study identified several potentially significant effects, but the applicant has agreed to proposed mitigation measures that would avoid or mitigate the effects to a point where clearly no significant effects would occur.
 - d) All project changes required to avoid significant effects on the environment have been incorporated into the project and/or are made conditions of approval. A Condition Compliance and Mitigation Monitoring and/or Reporting Plan has been prepared in accordance with Monterey County regulations ensure compliance during project implementation, and is hereby incorporated herein by reference. As a condition of project approval, the applicant shall enter into an “Agreement to Implement a Mitigation Monitoring and/or Reporting Program” prior to construction and/or commencement of use.
 - e) The Draft Mitigated Negative Declaration (“MND”) for PLN160851 was prepared in accordance with CEQA and circulated for public review from September 5, 2018 through October 5, 2018 (SCH#: 2018091005). Comments from the Department of Transportation (Caltrans), Coastal Commission staff, the project applicant, and members of the public were received.
 - f) Tribal Cultural Resources – In accordance with Public Resources Code Section 21080.3.1, often referred to as Assembly Bill 52 – Native Americans: California Environmental Quality Act, non-exempt projects subject to environmental review shall request a Tribal Consultation to determine if potential impacts to tribal cultural resources exist. On June 19, 2018, RMA-Planning staff consulted with the Ohlone/Costanoan-Esselen Nation (OCEN). The priority of OCEN is to protect their ancestor’s remains and sacred resources through avoiding disturbance. OCEN asks that sites be preserved and/or all cultural and sacred items be left with their ancestors where they were discovered. Through continuous discussions with Tribal representatives and background information contained in the archaeological report, locations such as the coast and/or areas containing, or used to contain, a water source, have been known to provide occupation, gathering, and processing sites for Native Americans. The Big Sur River is approximately 500-feet west of the site and Pheneger Creek, a tributary to the Big Sur River, is approximately 150-feet to the south. Because of this knowledge, the OCEN tribe considers the subject property to potentially contain cultural tribal resources. To reduce potential impacts to tribal cultural resources to a less than significant level, a mitigation measure recommended by

OCEN has been incorporated. During the consultation, RMA-Planning staff worked with OCEN to develop reasonable measures for the applicant while ensuring effectiveness to protect the identified resource. This resulted in a mitigation that requires an OCEN approved tribal monitor to observe excavation for only the new driveway and septic tank areas. All other earth disturbance on the site does not require monitoring. After circulation of the IS/MND, the project scope of work was reduced to omit the driveway/access road. Therefore, the mitigation measure has been modified to clarify monitoring shall be required for excavation of the septic tank only. A standard condition of approval has been incorporated requiring all work halt should human remains or resources be accidentally discovered. The project as proposed, conditioned, and mitigated would have a less than significant impact to tribal cultural resources.

- g) Caltrans – The project includes work within the Caltrans right of way. Comments received request the County include, as a condition of approval, the requirement that the work comply with Caltrans standards. Therefore, two non-standard conditions of approval have been incorporated requiring Caltrans review of the final drainage plan and the applicant to obtain an encroachment permit from the Department of Transportation prior to working within the State’s right-of-way.
- h) California Coastal Commission – Comments received by CCC staff did not directly pertain to analysis of the environmental document such as proper identification of potential impacts and/or adequacy of mitigation measures. Their comments primarily outlined their position that the project could not be supported by CCC staff because the priority of newly established uses in Big Sur’s Rural Commercial Center’s should be for essential/primary visitor-serving uses, the use is inconsistent with the Visitor Serving Commercial zoning district, and parking of Blaze Engineering’s construction vehicles and the construction of a Redwood fence to screen the vehicles would negatively impact the Critical Viewshed, inconsistent with the visual resource policies of the BSC LUP. These comments have been addressed in the preceding findings. No other issues specific to the project’s environmental review remain.
- i) Applicant – In their comment letter, the project applicant notified RMA-Planning staff that they do not agree with the mitigation measure requiring a tribal monitor to observe project related excavation to reduce project impacts to tribal cultural resources to a less than significant level. Reasons for this disagreement are based on the negative archaeological report submitted with the application and that there are no previously recorded sites in the immediate vicinity. Although this is correct, archaeological resources are not the same as tribal cultural resources. The purpose of Public Resources Code Section 21080.3.1, is to allow subject matter experts, in this case OCEN, to identify whether or not a project would have the potential to impact a tribal cultural resource. Therefore, the County, as the lead agency, cannot assume conclusions of an archaeologist are appropriate for tribal cultural resources.
- j) Members of the Public – Comments received by neighboring property owners did not directly pertain to analysis of the environmental

document such as proper identification of potential impacts and/or adequacy of mitigation measures. Their comments primarily outlined their position that the project is not suitable for the site or the site's land use designation or zoning; it would require development on slopes in excess of 30%; the project would be visible from State Route 1; parking provided would be insufficient; and Blaze's eviction of their operations on the adjacent property. These issues have been analyzed in the preceding findings and evidence. Comments relative to potential environmental impacts such as aesthetics, noise, and traffic safety were also identified. The initial study has properly analyzed the project's potential impacts related to aesthetics, noise, and traffic and additional analysis or mitigation is required to address these comments. No other issues specific to the project's environmental review remain.

- k) Issues that were analyzed in the Mitigated Negative Declaration include: aesthetics, agriculture and forest resources, air quality, biological resources, cultural resources, geology/soils, greenhouse gas emissions, hazards/hazardous materials, hydrology/water quality, land use/planning, mineral resources, noise, population/housing, public services, recreation, transportation/traffic, tribal cultural resources, and utility/service systems.
- l) The project was found to have no impact on agricultural and State forest resources, land use/planning, mineral resources, population and housing, public services, recreation, or utilities and service systems.
- m) The project was identified to have less than significant impacts on aesthetics, air quality, cultural resources, geology/soils, greenhouse gas emissions, hazards and hazardous materials, hydrology and water quality, land use/planning, noise, and transportation and traffic. Conditions of approval assuring compliance with County requirements, to the extent that they mitigate the identified potential impacts, have been incorporated. Also see Findings 2, 3, 4, 6 and 9.
- n) The project was found to have potential impacts to biological and tribal cultural resources. As discussed in Findings 2, 3, 7, and 8, mitigation measures have been incorporated to reduce impacts to these resources to a less than significant level.
- o) Evidence that has been received and considered includes: the application, technical studies/reports (see Finding 3), staff reports that reflect the County's independent judgment, and information and testimony presented during public hearings. These documents are on file in RMA-Planning No. PLN160851 and are hereby incorporated herein by reference.
- p) Staff analysis contained in the Initial Study and the record as a whole indicate the project could result in changes to the resources listed in Section 753.5(d) of the California Department of Fish and Game (CDFG) regulations. All land development projects that are subject to environmental review are subject to a State filing fee plus the County recording fee, unless the Department of Fish and Game determines that the project will have no effect on fish and wildlife resources. The site supports a Redwood forest natural community and for purposes of the Fish and Game Code, the project may have a significant adverse impact on the fish and wildlife resources upon which the wildlife

depends. The Initial Study was sent to the California Department of Fish and Game for review, comment, and to recommend necessary conditions to protect biological resources in this area. On November 16, 2019, the applicant paid the State and County fee and filed a Notice of Determination (NOD) with the Monterey County Clerk/Recorder. The NOD was posted for 30 days.

- q) After circulation of the IS/MND, the project was revised and the scope of work reduced. CEQA Guidelines Section 15073.5(a) calls for recirculation of an IS/MND when the document must be substantially revised after public circulation but before adoption. Pursuant to CEQA Guidelines Section 15073.5(c), recirculation of the IS/MND is not required if: mitigation measures are replaced with equal or more effective measures, new project revisions are added in response to written or verbal comments on the project's effects identified in the proposed MND which are not new avoidable significant impacts, measures or conditions are added that are not required by CEQA and do not create a new significant environmental effect and are not necessary to mitigate an impact, or if new information is added to clarify, amplify, or to make insignificant modifications to the MND. The revised project scope reduces the amount of development, tree removal, and grading quantities. This reduction would not create new avoidable significant impacts. No new mitigations would be necessary as a result of project modification and measures 1 through 4 (Conditions 20-24) will not need to be revised. As discussed in Evidence "f" above, the tribal cultural mitigation (Condition 24, Mitigation Measure 5) has been clarified to omit required monitoring for excavation of the bypass road since it is no longer part of the project.
- r) Monterey County RMA-Planning, located at 1441 Shilling Place, 2nd Floor, Salinas, California, 93901, is the custodian of documents and other materials that constitute the record of proceedings upon which the decision to adopt the Mitigated Negative Declaration is based.
- s) The application, project plans, and related support materials submitted by the project applicant to the Monterey County RMA - Planning for the proposed development found in Project File PLN160851; Clerk of the Board of Supervisors' file(s) related to the appeals.

11. **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 Local Coastal Program, and does not interfere with any form of historic public use or trust rights.

- EVIDENCE:**
- a) Figure 2 – Shoreline Access Plan, North Section, of the Big Sur Coast Land Use Plan (BSC LUP) indicates that the subject property is not described in an area where physical public access is required.
 - b) Figure 3 – Trails Plan, North Section, of the BSC LUP indicates that the subject property does not contain an inland trail corridor, a through coastal access corridor, public trail, private trail, access to Ventana Wilderness, or identified as an area for future public acquisition or a proposed trail.

- c) No evidence or documentation has been submitted or found showing the existence of historic public use or trust rights over this property.
- d) The application, plans and supporting materials submitted by the project applicant to Monterey County RMA-Planning for the proposed development are found in Project File PLN160851.
- e) Staff conducted site inspections on February 8, 2018.
- f) The application, project plans, and related support materials submitted by the project applicant to the Monterey County RMA - Planning for the proposed development found in Project File PLN160851; Clerk of the Board of Supervisors' file(s) related to the appeals.

12. **FINDING:**

APPEAL – Upon consideration of the documentary evidence, the staff report, the oral and written testimony, and all other evidence in the record as a whole, the Board responds as follows to the Appellant's contentions:

- EVIDENCE:** a) The Appellants (Matt and Carol Donaldson and Paul Smith), pursuant to MCC Section 20.86.030.C, timely filed an appeal from the November 14, 2018, decision of the Planning Commission (see also Finding No. 1, Process). The appeal challenged the Planning Commission's approval of the Morgenrath Permit contending that the findings or decision or conditions were not supported by the evidence and the decision was contrary to law.

In summary, the Notice of Appeals submitted on November 30, 2018, contend that there are inconsistencies with Policies contained in the Big Sur Coast Land Use Plan such as; conflicts with the property's Visitor Serving Commercial zoning designation, inappropriate tree removal, visual impacts in the Critical Viewshed, and development within environmentally sensitive habitat areas.

The County finds that the Appellant's contentions are without merit for the following reasons: 1) The contentions are not supported by the evidence; and/or 2) The contentions are not supported by the Monterey County Code; and/or 3) The contentions are speculative.

See the text of the Appellant's contentions (with duplicative statements removed) and the County's responses to those contentions in the evidence below.

- b) **Appellants Donaldson and Smith's Contention 1a:** *"The findings and decision are not supported by the evidence, and the decision is contrary to the law. As stated by California Coastal Commission in their October 1, 2018 letter to County staff, copy attached, the project is more in line with a General Commercial use and is inconsistent with the Big Sur Coast LUP which gives priority to visitor serving uses."*

The North Section Map and Detail A of the Big Sur Coast Land Use Plan (BSC LUP) indicates that the subject property is within an area defined as Rural Community Center or "RCC" of the Big Sur Valley, a land use classification for areas where a variety of land use

activities (inns, restaurants, service stations, and commercial uses) exist. The goal of the RCC is to provide a spectrum of functions for both the visiting public and residents of the adjoining rural areas within areas where those uses are already established. In general, any use allowed in any zoning district is appropriate for RCC. BSC LUP Policy 5.4.3.E.1 directs development of new commercial uses serving the community and visitor needs to RCCs.

During the November 14, 2018 hearing, the Commission received testimony demonstrating Blaze Engineering operations provided Big Sur's residents and visitor serving commercial facilities with emergency services for maintenance and repair of infrastructure, such as clearing and repairing roads, electricity, and water wells during fires and landslides, as well as normal "wear and tear" for almost 30 years. The Commission found that relocation of the operation from its original site (APN 419-201-006-000) to the adjacent property (APN 419-201-007-000) was consistent with BSC LUP's specific development policies for commercial uses in the RCC because it would: maintain existing services in proximity to residents and visitors in the area; locate activities with higher noise intensity on lower portions of the site away from sensitive receptors; provide an overflow parking area for the Big Sur River Inn; provide safer ingress and egress to the site; and, result in providing a greater distance between the operations and existing residential structures than that of the former site. Furthermore, the Commission received testimony from staff demonstrating that the subject property does not meet the minimum requirements to provide alternative visitor-serving accommodations². Restaurants with a maximum size to accommodate a 120-seat enclosed dining room facility; however, do not have a minimum parcel size and would be allowed on the subject property according to BSC LUP Policy 5.4.3.C.7. However, in comparison with the project, water use intensity, vehicular trips, and necessary onsite wastewater treatment system areas for a 120-seat restaurant would be far greater. Furthermore, a restaurant would not address the concerns by neighbors relative to noise, site improvements, and the potential to add to the pedestrian/vehicle interface along a rural road.

Based on the evidence above and testimony received at the Planning Commission hearing, the Board of Supervisors finds that the Appellant's Contention 1a has no merit.

- c) **Appellants Donaldson and Smith's Contention 1b:** *"The findings and decision are not supported by the evidence, and the decision is contrary to the law. The project site is zone Visitor Serving Commercial. A construction yard is not a permitted to conditionally permitted use in the VSC zoning district (Monterey County Code [MCC] Sec 20.22)."*

² In RCCs, inns, RV campgrounds, and rustic campgrounds require a minimum of 10 acres and hostels require a minimum of 5 acres. Hike-in and environmental campsites allow clustering of 5 spaces per acre but have an overall density of 1 space per 20 acres. The subject property contains approximately 2.55 acres, well below the minimum required for the above uses.

Zoning of the subject property is Visitor Serving Commercial, Coastal Zone or “VSC(CZ)”. The purpose of this district is to establish areas necessary to service the needs of visitors and the traveling public to Monterey County. The VSC zoning district allows uses such as hotels and motels, restaurants, service stations, assemblages of people, zoos, public and quasi-public uses, and the establishment of other non-specific visitor-serving uses. Title 20 Section 20.22.060.W, states that “[O]ther visitor serving uses of a similar character, density, and intensity of those listed in this Section determined by the Planning Commission to be consistent and compatible with the intent of this Chapter and applicable land use plan.”

During the November 14, 2018 hearing, the Commission received testimony demonstrating that the project is for the establishment of a commercial business with an office for administrative support, storage of materials and vehicles, and a maintenance area. This business would provide a direct service to the visiting public through its capacity to act as a first responder in proximity to visiting commercial services, facilities, and their patrons. Approval would also support existing visitor serving accommodations, Big Sur River Inn. The modified project increases available parking from 12 to 19, resulting in 12 parking spaces for employees to use during the weekends and holidays and 7 parking spaces for visitors of the Big Sur River Inn and/or the general public. The Commission found that the project would support visitor serving uses in the surrounding area and is similar in density and noise intensity as public/quasi-public uses, hotels, motels, service stations, and restaurants, and is less intensive in terms of traffic, water use, and wastewater. Therefore, the Planning Commission found the proposed use consistent with the intent of the VSC zoning.

Based on the evidence above and testimony received at the Planning Commission hearing, the Board of Supervisors finds that the Appellant’s Contention 1b has no merit.

- d) **Appellants Donaldson and Smith’s Contention 1c:** *“The findings and decision are not supported by the evidence, and the decision is contrary to the law. Big Sur Policy 5.4.3.E.8 requires permits for commercial uses to adhere to a “good neighbor” policy, ensuring that noise or visual impacts do not affect the peace and tranquility of existing neighbors. The project will cause a substantial disruption to the peace and tranquility of neighbors, including the [Smith’s and the Donaldsons].*
- *The commercial work shop, with its’ attendant commercial workshop noise, will be located just 60 feet from the existing Donaldson’s residence.*
 - *The workshop and other commercial buildings will be clearly visible from the Donaldson home.*

- *Large construction trucks and equipment operating on and entering and exiting the property will create commercial traffic noise.*
- *Large commercial trucks using the joint entrance driveway will impact the Donaldson's property entrance. [Donaldson Appeal]*
- *Large commercial trucks using the joint entrance driveway will impact the Donaldson's property entrance and the Apple Pie Ridge Road entrance. [Smith Appeal]*
- *Substantial tree removal will impact the Donaldson's forest views.*
- *Increased parking at the entrance to, and base of Apple Pie Ridge, will impact the Donaldson's access to their property. [Donaldson Appeal]*
- *Increased parking at the entrance to, and base of Apple Pie Ridge, will impact the Smith's access to their property. [Smith Appeal]*
- *The project makes no provision for the location of stockpiling their sand and gravel materials. As the material must be accessible to large commercial trucks, stockpiling material at the base of Apple Pie Ridge will be an unsightly visual impact."*

Pursuant to BSC LUP Policy 5.4.3.E.8, permits for renewal of existing commercial uses or establishment of new uses require careful consideration of the impact of the use on surrounding land from a good neighbor point of view. Particularly where commercial activities are in proximity to residences, care must be taken to ensure that noise or visual modification do not affect the peace and tranquility of existing neighbors. In accordance with implementing regulations contained in Part 3 of the Monterey County Coastal Implementation Plan, Regulations for Development in the Big Sur Coast Land Use Plan (CIP), Specific Development Standards, Section 20.145.140.B.2.g, development of new or expanded commercial or renewal permits for existing commercial uses shall not adversely impact surrounding land use, such as through additional light or glare. As such, proposal for commercial development shall be evaluated for the nature and extent of land use conflicts, and modifications shall be required as necessary to reduce potential adverse impacts.

Disruption of Views – During the November 14, 2018 hearing, the Commission received testimony demonstrating that the BSCLUP provides for very little protection of private views. Instead, importance is placed on protection of public views, both in and outside of the Critical Viewshed. As demonstrated in Finding 2, Evidence “c” and Finding 6, Evidence “a”, development of the subject property is exempt from Critical Viewshed policies and shall be permitted under careful design and siting controls as provided for in the County Zoning Ordinance (Title 20 of the County Code) and by Policy 5.4.3 of this Plan. As demonstrated in Finding 6, Evidence

“b” the project as proposed and conditioned, is consistent with BSCLUP Policy 5.4.3.L.4 and Title 20 Section 20.44.

Impact of Forest Views – During the November 14, 2018 hearing, the Commission received testimony demonstrating that only forest views from the Critical Viewshed are protected. BSCLUP Key Policy 3.5.1 states that the primary use of forested land in Big Sur shall be for recreational and aesthetic enjoyment and for educational, scientific, watershed, and habitat protection activities and Policies 5.4.2.13 and 3.5.2.2 address tree removal impacts to the Critical Viewshed. However, there are no polices or standards that protect private views of the forest. As demonstrated in Finding 8, tree removal is consistent with the forest resource policies as it would not expose proposed, or existing, structures in the critical viewshed, is limited to the minimum necessary in this case, and includes the removal of diseased trees resulting in a healthier condition of the forest. As demonstrated in Finding 6, Evidence “e”, the project has been conditioned requiring the applicant to plant vegetation screening between the previously proposed shop area, now the storage building location, and the appellant’s property, increasing the amount of vegetation between the two properties.

Disruption from Noise – During the November 14, 2018 hearing, the Commission received testimony demonstrating that the project was consistent with the size and scale of Blaze Engineering’s operations previously conducted on the adjacent parcel (see Finding 2, Evidence “b” and Finding 6, Evidence “b”). However, approval of the project would allow relocation of higher noise intensity operations, such as the 40 kilowatt generator and semi-truck and trailer parking, to the lower portions of the site, further away from sensitive receptors and closer to State Route 1 in an area with existing high noise levels. As demonstrated in Finding 3, Evidence “c”, the project as proposed and conditioned would not result in a significant increase beyond existing noise levels in the area and is consistent with BSCLUP Policy 5.4.3.E.8 and CIP Section 20.145.140.B.2.g as it requires planting of vegetation between the shop and the appellant’s residence to create a natural noise buffer.

Disruption Caused by Access/Traffic – During the November 14, 2018 hearing, the Commission received testimony demonstrating that the applicant intends to park large construction vehicles and equipment on the portion of the property adjacent to SR 1. Site access by construction vehicles would be limited to the lower portion of the property where the cement silo and diesel vault is located, the storage area to pick up and drop off scrap material as necessary, and to the shop building for minor repairs. As discussed in Finding 1, Evidence “m”, the project scope has been reduced to omit the cement silo. This reduces the need for large cement trucks to frequently access this area of the property. Further, there are no proposed parking areas on or adjacent to the Donaldson’s existing access.

Based on the evidence above and testimony received at the Planning Commission hearing, the Board of Supervisors finds that the Appellant's Contention 1c has no merit.

- e) **Appellants Donaldson and Smith's Contention 1d:** *"The findings and decision are not supported by the evidence, and the decision is contrary to the law. The 35 ft. high cement silo was not fully staked along the sides of the silo to adequately access the visual impact from Highway 1. The 35 ft. high silo will be visible from Highway 1, in violation of the County's "critical viewshed" policy for Big Sur (Coastal Implementation Plan Policy 20.145.030(A) et. Seq.)."*

As demonstrated in Finding 6, Evidence "b", on February 8, 2018 staff observed the project staking. Staking of the office, storage containers, and workshop could not be seen from SR 1. The cement silo, the portion of the project closest to SR 1, was obscured by existing vegetation. There was no indication that staking of the silo was inaccurate. In addition, and as discussed in Finding 1, Evidence "m", the project scope was reduced to omit the cement silo and bypass road. As demonstrated in the preceding Evidence "d", development of the property is excluded from Critical Viewshed requirements and the proposed development is consistent with CIP Section 20.145.030.B.1, which states that development within Visitor-Serving Commercial zoning districts shall be permitted within the critical viewshed under careful design and siting controls as contained in CIP Section 20.145.030.

Based on the evidence above and testimony received at the Planning Commission hearing, the Board of Supervisors finds that the Appellant's Contention 1d has no merit.

- f) **Appellants Donaldson and Smith's Contention 1e:** *"The findings and decision are not supported by the evidence, and the decision is contrary to the law. The project approval does not provide for a scenic easement on the areas containing environmentally sensitive habitat, in violation of County's environmentally sensitive habitat policies for Big Sur (Coastal Implementation Plan Policy 20.145.040(B) et. Seq.)."*

As demonstrated in Finding 7, Evidence "f", in accordance with CIP Section 20.145.040.B, the project has been conditioned requiring dedication of a conservation easement over areas of the property containing ESHA.

Based on the evidence above and testimony received at the Planning Commission hearing, the Board of Supervisors finds that the Appellant's Contention 1e has no merit.

- g) **Appellants Donaldson and Smith's Contention 1f:** *"The findings and decision are not supported by the evidence, and the decision is*

contrary to the law. The project involves the removal of eight (8) landmark trees over 24 inches in diameter, and as large as 60 inches in diameter, in violation of County's forest resource policies for Big Sur (Coastal Implementation Plan Policy 20.145.060(D) et. Seq.). Removal of these trees will also further expose the cement silo to critical view from Highway 1."

CIP Section 20.145.060.D.1 states that removal of landmark trees (tree 24 inches or more in diameter) of all species shall not be permitted. However, an exception may be granted by the decision-making body for removal of a landmark tree that is not visually or historically significant, exemplary of its species or more than 1,000 years old; provided that the appropriate authority finds that there are no alternatives to development (such as resiting, relocation, or reduction in development area) whereby the tree removal can be avoided. As demonstrated in Finding 8, removal of landmark trees meets the exemption for removal.

Based on the evidence above and testimony received at the Planning Commission hearing, the Board of Supervisors finds that the Appellant's Contention 1f has no merit.

- h) **Appellants Donaldson and Smith's Contention 1g:** *"The findings and decision are not supported by the evidence, and the decision is contrary to the law. The project involves the creation of a new private road in the critical viewshed to access the property from Highway 1, in violation of County's viewshed and transportation policies for Big Sur (Coastal Implementation Plan Policies 20.145.030.A.2.e & 20.145.130.D.1 et. Seq.)"*

As demonstrated in Finding 2, Evidence "c" and Finding 6, Evidence "a", development of the subject property is exempt from Critical Viewshed policies and shall be permitted under careful design and siting controls as provided for in the County Zoning Ordinance (Title 20 of the County Code) and by Policy 5.4.3 of this Plan. BSCLUP Policy 6.4.3.K.1 permits new private roads where it is appropriate for the establishment, continuation or expansion of Coastal Act priority use or if it provides a superior alternative to an existing road in carrying out the policies of this Plan. BSCLUP Policy 6.4.3.K.2 requires new private roads to meet resource protection policies of the plan, be able to accommodate emergency vehicles, incorporated planting of exposed slopes, include and implement drainage and an engineer certified erosion control plans, and ensure any environmentally sensitive habitats present will not be harmed. New roads across slopes of 30% or more shall not be allowed unless no feasible alternative exists or the proposed road design better achieves the overall resource protection objectives of this Plan.

During the May 21, 2019 hearing, the Board of Supervisors received testimony that the project scope would be revised to eliminate the

bypass road. As demonstrated in the attached plans, the bypass road has been omitted. Therefore, the Board of Supervisors finds that the Appellant's Contention 1g has no merit.

- i) **Appellants Donaldson and Smith's Contention 1h:** *"The findings and decision are not supported by the evidence, and the decision is contrary to the law. The project involves the development on slopes or 30% or greater, in violation of County's land use and development policies for Big Sur (Coastal Implementation Plan Policy 20.145.140.A.4 & MCC Sec. 20.64.230)."*

As demonstrated in Finding 9, development on slopes in excess of 30% meets the standards contained in CIP Section 20.145.140.A.4 and Title 20 Section 20.64.230.E.

Based on the evidence above and testimony received at the Planning Commission hearing, the Board of Supervisors finds that the Appellant's Contention 1h has no merit.

- j) **Appellants Donaldson and Smith's Contention 1i:** *"The findings and decision are not supported by the evidence, and the decision is contrary to the law. The project approval makes no findings related to allowing development on slopes in excess of 30% slope, which findings are required to be made to allow such development to occur (Coastal Implementation Plan Policy 20.145.140.A.4 & MCC Sec. 20.64.230)."*

The appellants' contention that the Planning Commission resolution did not contain finding for allowing development on slopes in excess of 30% is correct. Although the Planning Commission staff report included a discussion explaining how the project is consistent with the 30% finding and the Commission received a presentation during the hearing demonstrating consistency (see staff's response to appellant's contention 1h), the resolution did not contain the specific finding. The appropriate finding (Finding 9) and supporting evidence of this resolution demonstrates the development meets the standards for development on slopes in excess of 30%.

Based on the evidence above and testimony received at the Planning Commission hearing, the Board of Supervisors finds that the Appellant's Contention 1i has no merit.

- k) **Appellants Donaldson and Smith's Contention 2:** *"The project is not suitable for the site.*
- *See all comments included herein.*
 - *The project is split by the existing Apple Pie Ridge road causing residents to have to drive through a commercial corporation yard and attendant equipment and structures.*
 - *Development is proposed to occur on slopes of 30% and over.*

- *The project requires the removal of 16 protected trees, including trees as large as 35", 48" and 60" in diameter.*
- *Construction vehicle parking at the base of Apple Pie Ridge will eliminate existing visitor service parking, as well as be unsightly."*

As demonstrated in this resolution, the project has been found to be suitable for the site. See Finding 9 for development on slopes (also staff's response to appellant's contention 1h) and Finding 8 for removal of landmark trees (also staff's response to appellant's contention 1f). As demonstrated in Finding 4, Evidence "e", recommendations for installation of a safety barrier were made at the Big Sur LUAC meeting and the applicant acquiesced. The project has been conditioned requiring the applicant to submit a final construction plans showing installation of the informal walking path consistent with the preliminary plans page A1.1. The parking area the appellant references is on both the Morgenrath and River Inn properties. As demonstrated in Finding 2, Evidence "b" and discussed in staff's response to the appellant's contention 1a, the project results in additional dedicated visitor serving parking. As demonstrated in Finding 6, Evidence "b" the applicant agreed to plant vegetation to create a natural barrier.

Based on the evidence above and testimony received at the Planning Commission hearing, the Board of Supervisors finds that the Appellant's Contention 2 has no merit.

- l) **Appellants Donaldson and Smith's Contention 3:** *"The project will be detrimental to 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.*
- *[From Donaldson Appeal] See all comments included herein."*

As demonstrated in the preceding and subsequent findings, the project will not be detrimental to 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.

Based on the evidence above and testimony received at the Planning Commission hearing, the Board of Supervisors finds that the Appellant's Contention 3 has no merit.

- m) **Appellants Donaldson and Smith's Contention 4:** *"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."*

As demonstrated in Finding 5, there is no evidence of an ongoing investigation or an open code enforcement on the property.

Based on the evidence above and testimony received at the Planning Commission hearing, the Board of Supervisors finds that the Appellant's Contention 4 has no merit.

- n) **Appellants Donaldson and Smith's Contention 5:** *"The project will have a visual impact on the scenic Highway 1 and adjacent properties. Among other visual impacts,*
- *See all comments included herein. (No bullet point in Smith Appeal.)*
 - *The 35 ft. cement silo will be visible from Highway 1. (No bullet point in Smith Appeal.)*
 - *Construction vehicle parking at the base of Apple Pie Ridge will eliminate existing visitor serving parking, as well as be unsightly. (No bullet point in Smith Appeal.)*
 - *The project is split by the existing Apple Pie Ridge road causing residents to have to drive through a commercial corporation yard attendant equipment and structures. (No bullet point but identified as "6" in Smith Appeal.)*
 - *The project makes no provision for the location of stockpiling their sand and gravel materials. As the material must be accessible to the large commercial trucks, stockpiling material at the base of Apple Pie Ridge will be unsightly visual impact. (No bullet point in Smith Appeal.)*
 - *The project requires the removal of 16 protected trees, including eight (8) landmark trees as large as 35", 48" and 60" in diameter, many of which screen the site from Highway 1, and other of which provide a forest view from the Donaldson property.*
 - *Visual impacts – removing trees for road – opens view plus Silo not fully staked – new road not laid out on ground.*
 - *The diagrams prepared by Maureen Hamb showing the areas of tree removal, show trees being removed to create the new driveway entrance. Removal of these trees will further expose the 35 high cement silo.*
 - *The new driveway will be visible from Highway 1, yet the location of the new driveway was not staked.*
 - *The location of the trees to be removed on the site, including the trees to be removed for the new driveway, are not well marked, making it difficult to assess to the visual impact of the tree removal."*

As demonstrated in the preceding and subsequent Findings and discussed in appellants' contentions 1c and 1f, the project would not have a visual impact to State Route 1 and adjacent properties.

Based on the evidence above and testimony received at the Planning

Commission hearing, the Board of Supervisors finds that the Appellant's Contention 5 has no merit.

- o) **Appellants Donaldson and Smith's Contention 6:** *"The project will have a significant impact on environmentally sensitive habitat areas.*
- *The project requires the removal of 16 protected trees, including trees as large as 35", 48" and 60" in diameter. These are very large trees – a 60" diameter tree has a circumference of 15 feet; a 48" diameter tree has a circumference of 12.5 feet.*
 - *The tree removal area on the applicant's submitted materials are inconsistent. The diagrams prepared by Maureen Hamb showing the areas for tree removal, show trees being removed to create the new driveway entrance, yet other site plans submitted show no tree removal in the same areas. The location of the trees to be removed on the site is not well marked and difficult to access which trees are actually being removed.*
 - *The project applicant has already engaged in unpermitted grading on the site, including roads and pads, causing damage to the site, and compromising the later support of the adjacent Donaldson property. No remediation has been done for this unpermitted grading."*

As demonstrated in the preceding and subsequent Findings and discussed in appellants' contentions 1f and 4. The project will not have a significant impact on ESHA. Information on the site plan and the diagram prepared by the arborist is inconsistent. However, on November 14, 2018, the Planning Commission received testimony during staff's presentation identifying all trees to be removed, including the trees not shown on the site plan but shown in the diagram.

Based on the evidence above and testimony received at the Planning Commission hearing, the Board of Supervisors finds that the Appellant's Contention 6 has no merit.

- p) **Appellants Donaldson and Smith's Contention 7:** *"The project does not conform to the Big Sur LUP or Coastal Implementation Plan with regard to tree removal.*
- *See all comments included herein.*
 - *Big Sur LUP policy 3.5.2.4 requires that landmark trees of all species shall be protected. The project requires the removal of 16 protected trees, including trees as large as 35", 48" and 60" in diameter. These are very large trees – a 60" diameter tree has a circumference of 15 feet; a 48" diameter tree has a circumference of 12.5 feet.*
 - *The project involves the removal of eight (8) landmark trees over 24 inches in diameter, and as large as 60 inches in*

diameter, in violation of County's forest resources policies for Big Sur (Coastal Implementation Plan Policy 20.145.060 (D) et. Seq.). Removal of these trees will also further expose the cement silo to critical view from Highway 1."

As demonstrated in Finding 8, tree removal is in conformance with the applicable BSCLUP policies and CIP regulations and standards.

Based on the evidence above and testimony received at the Planning Commission hearing, the Board of Supervisors finds that the Appellant's Contention 7 has no merit.

- q) **Appellants Donaldson and Smith's Contention 8:** *"The project violates the California Environmental Quality Act (CEQA). An Environmental Impact Report (EIR) is required for this project, as 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 guideline 15064 (a)(1)). The project is also in rural area, where an activity that might not be significant in an urban area, but may be significant in a rural area (CEQA guideline 15064 (b)). Additionally, in determining whether an effect will be adverse or beneficial, the lead agency shall consider the views held by members of the public in all areas affected, as expressed in the whole record before the lead agency (CEQA guideline 15064 (c)). Further, in evaluating significance of the environmental effect of a project, the County must consider direct physical changes which will be caused by the project, including such physical impacts as dust, noise, heavy equipment traffic, etc. (CEQA guideline 15064 (d)). The above CEQA guidelines heightened the CEQA review for this project located in a rural, visitor serving commercial area of Big Sur where this type of construction yard commercial business is not permitted. The evidence presented to the County, including, but not limited to the evidence set forth below, shows that contrary to the Initial Study, the project will create potentially significant environmental impacts to:*

- *Land Use and Planning – the project conflicts with the policies of the Big Sur Land Use Plan, Big Sur Coastal Implementation Plan, the County Visitor Serving Commercial Zoning, as well as other land use policies and regulations, as set forth here.*
- *Aesthetics – the project will be visible from Highway 1, a protected critical viewshed, including the 35 ft. high silo, the new private driveway being created to access the property off Highway, the storing of large construction trucks and equipment, along with stockpiling of sand, gravel and other construction materials, the on the lower portion of the property, as set forth herein*
- *Noise – The commercial work shop, with its' attendant commercial workshop noise, will be located just 60 feet from the existing Donaldson's residence. Large constructions*

trucks and equipment operating on and entering and exiting the property will create unmitigated commercial traffic noise, as set forth herein.

- *Geology and Soils – The project involves the development on slopes of 30% or greater, in violation of County’s land use and development policies for Big Sur (Coastal Implementation Plan Policy 20.145.140.A.4 et. Seq.) The project approval makes no finding related to allowing development on slopes in excess of 30% slope, which findings are required to be made to allow such development to occur (Coastal Implementation Plan Policy 20.145.140.A.4 & MCC Sec. 20.64.230), as set forth herein.*
- *Transportation/Traffic – The project involves the creation of a new private road in the critical viewshed to access the property from Highway 1, in violation of County’s viewshed and transportation policies for Big Sur (Coastal Implementation Plan Policies 20.145.030. A.2.e & 20.145.130.D.1 et. Seq.). The project will use an existing road serving 23 residential homes, as well as, share a driveway entrance with another residence, increasing the driving pedestrian hazards and created significant safety risks.*
- *Biological Resources – The project involves the removal of eight (8) landmark trees over 24 inches in diameter, and a large as 60 inches in diameter, in violation of County’s forest resources policies for Big Sur. The project approval does not provide for a scenic easement on the areas containing environmentally sensitive habitat, in violation of County’s environmentally sensitive habitat policies for Big Sur.*
- *Hazards and Hazardous Materials – The project is in the middle of a residential neighborhood. The project involves the storage of diesel, propane, and other hazardous materials, as well as, the transportation of said materials. The project will use an existing road serving 23 residential homes, as well as, share a driveway entrance with another residence, increasing the driving pedestrian hazards and created significant safety risks”*

As demonstrated in Finding 10, the Initial Study/Mitigated Negative Declaration (SCH#: 2018091005) discloses that project components with the potential to result in an impact were either found less than significant due to implementation of County regulations through conditions of approval or less than significant with mitigation measures incorporated. The applicant agreed to these mitigation measures during the hearing. See Finding 4, Evidence “e” regarding pedestrian/vehicle hazards. As demonstrated in Finding 4, Evidence “f”, potential impacts caused by hazards were determined to be less than significant.

Based on the evidence above and testimony received at the Planning

Commission hearing, the Board of Supervisors finds that the Appellant's Contention 8 has no merit.

- r) The application, project plans, and related support materials submitted by the project applicant to the Monterey County RMA - Planning for the proposed development found in Project File PLN160851; Clerk of the Board of Supervisors' file(s) related to the appeals.

13. **FINDING:** **APPEALABILITY** - The decision on this project may be appealed to the California Coastal Commission.

EVIDENCE: Title 20 Section 20.86.080 states that the proposed project is subject to appeal by/to the Coastal Commission because it involves development that is permitted in the Visitor Serving Commercial zoning district as a conditional use.

DECISION

NOW, THEREFORE, based on the above findings and evidence, and the administrative record as a whole, the Board of Supervisors does hereby:

- A. Certify that the foregoing recitals and findings are true and correct;
- B. Deny the appeal by Matt and Carol Donaldson challenging the Planning Commission's approval of a Combined Development Permit (RMA-Planning File No. PLN160851/Morgenrath);
- C. Deny the appeal by Paul Smith challenging the Planning Commission's approval of a Combined Development Permit (RMA-Planning File No. PLN160851/Morgenrath);
- D. Adopt a Mitigated Negative Declaration;
- E. Approve a Combined Development Permit consisting of:
 - 1. Coastal Development Permit, Design Approval, and General Development Plan to allow the establishment of a commercial business operation at 46821 Highway 1 including a 760 square foot office, a 600 square foot workshop with a 300 square foot canopy, 798 square foot storage building, storage of construction equipment such as generators and diesel storage tanks;
 - 2. Coastal Development Permit to allow development on slopes in excess of 30%;
 - 3. Coastal Development Permit to allow removal of 10 protected trees [8 Bay laurel trees (18, 19, 22, 30, 36.5, and 50-inch dbh and two multi-trunked); 1 Lyland cypress tree at 44.8-inches dbh; and 1 Coast Redwood at 20-inches dbh] in an environmentally sensitive area; and
 - 4. Coastal Administrative Permit to convert a test well into a permanent well.
- F. Adopt a Mitigation Monitoring and Reporting Program.

All of which subject to the attached conditions attached hereto and incorporated herein by reference.

PASSED AND ADOPTED upon motion of Supervisor _____, seconded by Supervisor _____, and carried this 27th day of August, 2019 by the following vote to wit:

AYES:
NOES:
ABSENT:
ABSTAIN:

I, Valerie Ralph, Clerk of the Board of Supervisors of the County of Monterey, State of California, hereby certify that the foregoing is a true copy of an original order of said Board of Supervisors duly made and entered in the minutes thereof Minute Book _____ for the meeting on August 27, 2019.

Date:

File Number:

Valerie Ralph, Clerk of the Board of Supervisors
County of Monterey, State of California

By _____
Deputy