

Attachment D

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NOTICE OF APPEAL

Monterey County Code
Title 19 (Subdivisions)
Title 20 (Zoning)
Title 21 (Zoning)

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DEPUTY

No appeal will be accepted until a written decision is given. If you wish to file an appeal, you must do so on or before 11/30/18 (10 days after written notice of the decision has been mailed to the applicant). Date of decision 11/14/18. (DECISION MAILED 11/20/18)

1. Please give the following information:

- a) Your name PAUL SMITH
- b) Phone Number (831) 915-7669
- c) Address P.O. Box 339 City Big Sur Zip 93920
- d) Appellant's name (if different) _____

2. Indicate the appellant's interest in the decision by checking the appropriate box:

- Applicant
- Neighbor
- Other (please state) _____

3. If you are not the applicant, please give the applicant's name:

MORGENRATH TRUST (BLAZE ENGINEERING)

4. Indicate the file number of the application that is the subject of the appeal and the decision making body.

- | | File Number | Type of Application | Area |
|---------------------------|------------------|-----------------------------|--------------------------|
| a) Planning Commission: | <u>PLN160851</u> | <u>COMBINED DEV. PERMIT</u> | <u>Big Sur / Coastal</u> |
| b) Zoning Administrator: | _____ | _____ | _____ |
| c) Subdivision Committee: | _____ | _____ | _____ |
| d) Administrative Permit: | _____ | _____ | _____ |

Attachment A

Smith Appeal

Re: PLN160851

(Morgenrath – Blaze Engineering)

Response to Appeal Items 6 and 7

The findings and decision are not supported by the evidence, and the decision is contrary to the law, including, but not limited to, the evidence set forth below:

1. The project is not consistent with the applicable plans and policies which apply to this site. The site is not appropriate for the proposed development.

a. As stated by the 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 LUP which gives priority to visitor serving uses.

b. The project site is zoned Visitor Serving Commercial. A construction yard is not a permitted or conditionally permitted use in the VSC zoning district (Monterey County Code [MCC] Sec. 20.22).

c. Big Sur LUP 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. This project will cause a substantial disruption to the peace and tranquility of the neighbors, including the Smith and the Donaldsons.

- The commercial work shop, with its’ attendant commercial workshop noise, will be located just 60 feet from the existing Donaldson residence.
- The work shop 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 and the Apple Pie Ridge Road entrance.
- 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 Smith's access to their property
- 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 an unsightly visual impact.

d. 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.)

e. 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.)

f. 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.

g. 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.)

h. 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.)

i. 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).

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 serving parking, as well as be unsightly.

3. The project will be detrimental to the health, safety, peace, morals, comfort, and general welfare of the persons residing or working in the neighborhood, as well as the general visitor serving public.
 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.
 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.
The 35 ft. cement silo will be visible from Highway 1. Construction vehicle parking at the base of Apple Pie Ridge will eliminate existing visitor serving parking, as well as be unsightly.
 6. 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. 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 an unsightly visual impact.
- 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 others 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 well marked making it difficult to access the visual impact of the tree removal.

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 areas on the applicant's submitted materials are inconsistent. The diagrams prepared by Maureen Hamb showing the areas of 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 lateral support of the adjacent Donaldson property. No remediation has been done for this unpermitted grading.

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. Landmark trees are exemplary of their species. 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.

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 polices 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 the 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 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), 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 and 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 as 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 and pedestrian hazards and created significant safety risks.

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