

# Exhibit B

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

In the matter of the application of:

**BERRY NANCY A (PLN220104)**

**RESOLUTION NO. 23-019**

Resolution by the Monterey County HCD Chief of Planning:

- 1) Finding that proposed test well qualifies for a Class 3 Categorical Exemption pursuant to CEQA Guidelines Section 15303, and there are no exceptions pursuant to Section 15300.2; and
- 2) Approving a Coastal Administrative Permit to allow construction of a test well for irrigation; and
- 3) Approving a Coastal Administrative Permit to allow development within 750 feet of known archaeological resources.

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

**The BERRY application (PLN220104) came on for an administrative decision hearing before the Monterey County HCD Chief of Planning on March 15, 2023. Having considered all the written and documentary evidence, the administrative record, the staff report, oral testimony, and other evidence presented the Monterey County HCD Chief of Planning finds and decides as follows:**

**FINDINGS**

1. **FINDING:** **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;
  - Costal Implementation Plan, Part 3 (CIP); and
  - Monterey County Zoning Ordinance (Title 20).No conflicts were found to exist. No communications were received during the course of review of the project indicating any inconsistencies with the text, policies, and regulations in these documents.  
b) Allowed Use. The property is located at 48234 Highway 1, Big Sur, Big Sur Coast Land Use Plan, (Assessor’s Parcel Number 420-171-040-000). The parcel is zoned Rural Density Residential, one unit per 40 acres with a Design Control overlay within the Coastal Zone or “RDR/40-D(CZ)”, which allows for wells and small water systems serving 14 or fewer connections per Title 20 Section 20.16.040.J. The project involves drilling a test well within 750 feet of known archaeological resources

for the purpose of irrigation on a residential lot. Additionally, the well would have the ability to provide fire suppression in the event of an emergency to protect the existing residence on the property. The project does not require a design approval since no new structures were proposed. As illustrated in the attached plans, Therefore, the project is an allowed land use for this site.

- c) Lot Legality. The subject 2.4-acre property (APN 420-171-040-000) is identified in its current configuration as Lot 29 on a residential subdivision map entitled Coastal Lands Tract #1, filed September 1, 1927, in Volume 3, Maps of Cities and Towns, at Page 46. Further, the subject property is shown in its current configuration and under separate ownership in both the 1964 and 1972 Assessors Map books (Book 400, Page 17-1). Therefore, the County recognizes the subject property as a legal lot of record.
- d) Development Standards. The proposed test well is required to be setback 100 feet from a septic system. The test well will be located within a previously disturbed area (backyard lawn) of the subject parcel. The applicant owns the adjacent parcel to the left of the property (Assessor's Parcel Number: 420-171-041-000), and the well will be drilled approximately 23 feet from the adjacent property line and 92 feet from the top of a coastal bluff located west of the property. The well will be situated 110 feet from the existing septic system which serves a single family dwelling on the property and 152 feet from the septic system on the adjacent parcel. The location of the irrigation well maintains the required 100-foot radius from existing septic systems and future expansion leach fields in the area.
- e) Biological Resources. Monterey County GIS data indicates the potential for biological resources onsite. As such, a Biological Assessment (Finding 2, Evidence "b") was submitted with the application. On April 8, 2022, the biologist surveyed the project site for environmentally sensitive habitat. The report identified that no naturally occurring native plant communities or special status species are found within the proposed project area. Recommendations of the biologist include a bird nest survey and using best management practices for erosion control to prevent impacts to vegetation during construction. In addition, a standard condition of approval has been incorporated requiring the applicant to file a Notice of Report (Condition No. 6) stating that all development shall be done in accordance with the Biological Assessment.
- f) Cultural Resources. County records identify that the project site is within an area of high sensitivity for cultural resources, and the project includes a Coastal Administrative Permit to allow development within 750 feet of known archaeological resources, including areas of known archaeological resources pursuant to CIP Section 20.145.120.A.1. The Big Sur Coast Land Use Plan requires that impacts to archaeological resources be avoided or minimized to the extent feasible. On April 18, 2022, archaeologists Susan Morley and Brenna Wheeler conducted a pedestrian survey at the site in areas that would be impacted by construction of the test well (see Finding 2, Evidence "b"). The report confirms that there are resources nearby and potential for impacts.

Consistent with BSC LUP Key Policy 3.11.1, the scope of the project was reduced to avoid excessive ground disturbance. A non-standard condition of approval (Condition 7) has been incorporated requiring the Owner/Applicant to submit a revised site plan limiting the area of disturbance to a 100 square foot area for the well and omitting the 750 square foot, 10 feet in depth, spoils and fluid storage pit. Compliance with this condition requires well drilling spoils be stockpiled and hauled off site. In addition, a standard condition of approval (Condition No. 3) has been incorporated into this project to assure construction work would be halted if archaeological resources are accidentally uncovered.

- g) Public Access. As demonstrated in Finding No. 5, the development is consistent with public access policies of the Big Sur Coast LUP.
- h) Land Use Advisory Committee (LUAC) Review. Based on the Land Use Advisory Committee (LUAC) procedure guidelines adopted by the Monterey County Board of Supervisors per Resolution No. 08-338, this application does not meet any of the criteria in the guidelines requiring LUAC review because the project is for a test well and does not propose to build any new structures at this time.
- i) The project planner conducted a site inspection on September 14, 2022 to verify that the project on the subject parcel conforms to the plans listed above.
- j) The application, project plans, and related support materials submitted by the project applicant to Monterey County HCD-Planning found in Project File PLN220104.

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

**EVIDENCE:** a) The project has been reviewed for site suitability by the following departments and agencies: HCD-Planning, Environmental Health Bureau, and California Coastal Commission. County staff reviewed the application materials and plans to verify that the project on the subject site conforms to the applicable plans and regulations, and there has been no indication from these departments/agencies that the site is not suitable for the development. Conditions recommended have been incorporated.

- b) Staff identified potential impacts to biological and cultural resources. The following reports have been prepared:
  - “Biological Assessment” (LIB230064) prepared by Fred Ballerini Horticultural Services, Pacific Grove, CA, April 12, 2022.
  - “Phase I Preliminary Archaeological Assessment” (LIB230063) prepared by Achasta Archaeological Services, Marina, CA, May 2, 2022.

County staff independently reviewed these reports and concurs with their conclusions. There are no physical or environmental constraints that would indicate that the site is not suitable for the use. All development shall be in accordance with these reports.

- c) Staff conducted a site inspection on September 14, 2022 to verify that the site is suitable for this use.

- d) The application, project plans, and related support materials submitted by the project applicant to Monterey County HCD-Planning found in Project File PLN220104.

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

- EVIDENCE:**
- a) The project was reviewed by HCD-Planning, Environmental Health Bureau, and California Coastal Commission. 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 exist and currently serve the single family dwelling onsite. The developed property is served by an onsite septic system and receives potable water from the Coastlands Mutual Water System (CMWS), which is currently declining in capacity due to recent drought years. On March 31, 2022, the applicant submitted an application to the Environmental Health Bureau (EHB) for an irrigation well. The purpose of the well is to provide irrigation for existing landscape as well as provide fire suppression in the event of an emergency. EHB reviewed the project site plan for placement of existing and future septic system locations. EHB concurred that the well development and location is in compliance with well and septic setback standards identified in Title 15 of the Monterey County Code.
  - c) Staff conducted a site inspection on September 14, 2022 to verify that the site is suitable for this use.
  - d) The application, project plans, and related support materials submitted by the project applicant to Monterey County HCD-Planning found in Project File PLN220104.

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

- EVIDENCE:**
- a) Staff reviewed Monterey County HCD-Planning and HCD-Building Services records and is not aware of any violations existing on subject property.
  - b) Staff conducted a site inspection on September 14, 2022 and researched County records to assess if any violation exists on the subject property.
  - c) The application, project plans, and related support materials submitted by the project applicant to Monterey County HCD-Planning found in Project File PLN220104.

**5. FINDING:** **PUBLIC ACCESS** – The project is in conformance with the public access and recreation policies of the Coastal Act (specifically Chapter 3 of the Coastal Act of 1976, commencing with Section 30200 of the

- Public Resources Code) and applicable Local Coastal Program, and does not interfere with any form of historic public use or trust rights.
- EVIDENCE:**
- a) No public access is required as part of the project as no substantial adverse impact on access, either individually or cumulatively, as described in Section 20.145.150 of the Big Sur Coastal Implementation Plan can be demonstrated.
  - b) No evidence or documentation has been submitted or found showing the existence of historic public use or trust rights over this property.
  - c) The subject property is not described as an area where the Local Coastal Program requires physical public access (Figure 2, Major Public Access and Recreational Facilities, in the Big Sur Coast Land Use Plan).
  - d) The application, project plans, and related support materials submitted by the project applicant to Monterey County HCD-Planning found in Project File PLN220104.
- 6. FINDING: CEQA (Exempt)** – The project is categorically exempt from environmental review and no unusual circumstances were identified to exist for the proposed project.
- EVIDENCE:**
- a) California Environmental Quality Act (CEQA) Guidelines Section 15303 categorically exempts new construction of small new facilities. The proposed project is to allow a test well for the purpose of irrigation. As a secondary measure, the irrigation would provide water for fire suppression for protection of the existing single family dwelling. Therefore, the project qualifies for a Class 3 categorical exemption.
  - b) None of the exceptions under CEQA Guidelines Section 15300.2 apply to this project. The project does not involve a designated historical resource, a hazardous waste site, development located near or within view of a scenic highway, unusual circumstances that would result in a significant effect or development that would result in a cumulative significant impact. The subject property is located in a high archeological sensitivity area; however, due to the limited nature of the development (above ground stockpiling and hauling off drill spoils) and confined area of disturbance for the well (10-feet by 10-feet), the project would not result in a significant impact to resources (see Finding No. 1, Evidence “f”) since the project.
  - c) No adverse environmental effects were identified during staff review of the development application during a site visit on September 14, 2022.
  - d) See supporting Finding Nos. 1 and 2. The application, project plans, and related support materials submitted by the project applicant to Monterey County HCD-Planning found in Project File PLN220104.
- 7. FINDING: APPEALABILITY** – The decision on this project may be appealed to the Board of Supervisors and California Coastal Commission.
- EVIDENCE:**
- a) Board of Supervisors. Pursuant to Section 20.86.030 of Title 20, an appeal may be made to the Board of Supervisors by any public agency or person aggrieved by a decision of an Appropriate Authority other than the Board of Supervisors.
  - b) Coastal Commission. Pursuant to Section 20.86.080.A of Title 20, the project is subject to appeal by/to the California Coastal Commission

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

**DECISION**

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

1. Find the test well qualifies for a Class 3 Categorical Exemption pursuant to CEQA Guidelines Section 15303(d), and there are no exceptions pursuant to Section 15300.2;
2. Approve a Coastal Administrative Permit to allow construction of a test well for irrigation; and
3. Approve a Coastal Administrative Permit to allow development within 750 feet of known archaeological resources.

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

**PASSED AND ADOPTED** this 15th day of March 2023.

DocuSigned by:  
*Craig Spencer*  
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Craig Spencer  
HCD Chief of Planning

COPY OF THIS DECISION MAILED TO APPLICANT ON DATE March 16, 2023.

THIS APPLICATION IS APPEALABLE TO THE BOARD OF SUPERVISORS. IF ANYONE WISHES TO APPEAL THIS DECISION, AN APPEAL FORM MUST BE COMPLETED AND SUBMITTED TO THE CLERK TO THE BOARD ALONG WITH THE APPROPRIATE FILING FEE ON OR BEFORE March 27, 2023.

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

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

## NOTES

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

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

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

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

# County of Monterey HCD Planning

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

PLN220104

### 1. PD001 - SPECIFIC USES ONLY

**Responsible Department:** HCD-Planning

**Condition/Mitigation Monitoring Measure:** The Coastal Administrative Permits (PLN220104) allow construction of a test well for irrigation and development within 750 feet of known archaeological resources. The property is located at 48234 Highway 1, Big Sur, (Assessor's Parcel Number 420-171-040-000), Big Sur Land Use Plan, Coastal Zone. This permit was approved in accordance with County ordinances and land use regulations subject to the terms and conditions described in the project file. Neither the uses nor the construction allowed by this permit shall commence unless and until all of the conditions of this permit are met to the satisfaction of the Director of HCD - Planning. Any use or construction not in substantial conformance with the terms and conditions of this permit is a violation of County regulations and may result in modification or revocation of this permit and subsequent legal action. No use or construction other than that specified by this permit is allowed unless additional permits are approved by the appropriate authorities. To the extent that the County has delegated any condition compliance or mitigation monitoring to the Monterey County Water Resources Agency, the Water Resources Agency shall provide all information requested by the County and the County shall bear ultimate responsibility to ensure that conditions and mitigation measures are properly fulfilled. (HCD - Planning)

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

### 2. PD002 - NOTICE PERMIT APPROVAL

**Responsible Department:** HCD-Planning

**Condition/Mitigation Monitoring Measure:** The applicant shall record a Permit Approval Notice. This notice shall state:  
"Coastal Administrative Permits (Resolution Number 23-019) was approved by the HCD Chief of Planning for Assessor's Parcel Number 420-171-040-000 on March 15, 2023. The permit was granted subject to 7 conditions of approval which run with the land. A copy of the permit is on file with Monterey County HCD - Planning."

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

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

### 3. PD003(B) - CULTURAL RESOURCES POSITIVE ARCHAEOLOGICAL REPORT

**Responsible Department:** HCD-Planning

**Condition/Mitigation Monitoring Measure:** If archaeological resources or human remains are accidentally discovered during construction, the following steps will be taken:

There shall be no further excavation or disturbance of the site or any nearby area reasonably suspected to overlie adjacent human remains until the coroner of the county in which the remain are discovered must be contacted to determine that no investigation of the cause of death is required.

If the coroner determines the remains to be Native American:

- The coroner shall contact the Native American Heritage Commission and HCD - Planning within 24 hours.
- The Native American Heritage Commission shall identify the person or persons from a recognized local tribe of the Esselen, Salinan, Costonoans/Ohlone and Chumash tribal groups, as appropriate, to be the most likely descendant.
- The most likely descendant may make recommendations to the landowner or the person responsible for the excavation work, for means of treating or disposing of, with appropriate dignity, the human remains and any associated grave goods as provided in Public Resources Code Section 5097.9 and 5097.993, Or

Where the following conditions occur, the landowner or his authorized representatives shall rebury the Native American human remains and associated grave goods with appropriate dignity on the property in a location not subject to further subsurface disturbance:

1. The Native American Heritage Commission is unable to identify a most likely descendant or the most likely descendant failed to make a recommendation within 24 hours after being notified by the commission.
2. The descendant identified fails to make a recommendation; or
3. The landowner or his authorized representative rejects the recommendation of the descendant, and the mediation by the Native American Heritage Commission fails to provide measures acceptable to the landowner.

(HCD - Planning)

**Compliance or Monitoring Action to be Performed:** Prior to the issuance of permit(s) for the test well, the Owner/Applicant, per the archaeologist, shall submit the contract with a Registered Professional Archaeologist for on-call archaeological services should resources be discovered during construction activities. Submit the letter to the Director of the HCD – Planning for approval.

Prior to the issuance of permit(s) for the test well, the Owner/Applicant shall include requirements of this condition as a note on all related plans.

Prior to Final, the Owner/Applicant shall submit a report or letter from the archaeologist summarizing their methods, findings, and recommendations if their services are needed during construction or if no resources were found.

#### 4. PD016 - NOTICE OF REPORT

**Responsible Department:** HCD-Planning

**Condition/Mitigation Monitoring Measure:** Prior to issuance of building or grading permits, a notice shall be recorded with the Monterey County Recorder which states:  
"A Biological Assessment (Library No. LIB230064), was prepared by Fred Ballerini Horticultural Services on April 12, 2022 and is on file in Monterey County HCD - Planning. All development shall be in accordance with this report."  
(HCD - Planning)

**Compliance or Monitoring Action to be Performed:** Prior to the issuance of grading and building permits, the Owner/Applicant shall submit proof of recordation of this notice to HCD - Planning.

Prior to occupancy, the Owner/Applicant shall submit proof, for review and approval, that all development has been implemented in accordance with the report to the HCD - Planning.

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

**Responsible Department:** HCD-Planning

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

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

#### 6. PD006(A) - CONDITION COMPLIANCE FEE

**Responsible Department:** HCD-Planning

**Condition/Mitigation Monitoring Measure:** The Owner/Applicant shall pay the Condition Compliance fee, as set forth in the fee schedule adopted by the Board of Supervisors, for the staff time required to satisfy conditions of approval. The fee in effect at the time of payment shall be paid prior to clearing any conditions of approval.

**Compliance or Monitoring Action to be Performed:** Prior to clearance of conditions, the Owner/Applicant shall pay the Condition Compliance fee, as set forth in the fee schedule adopted by the Board of Supervisors.

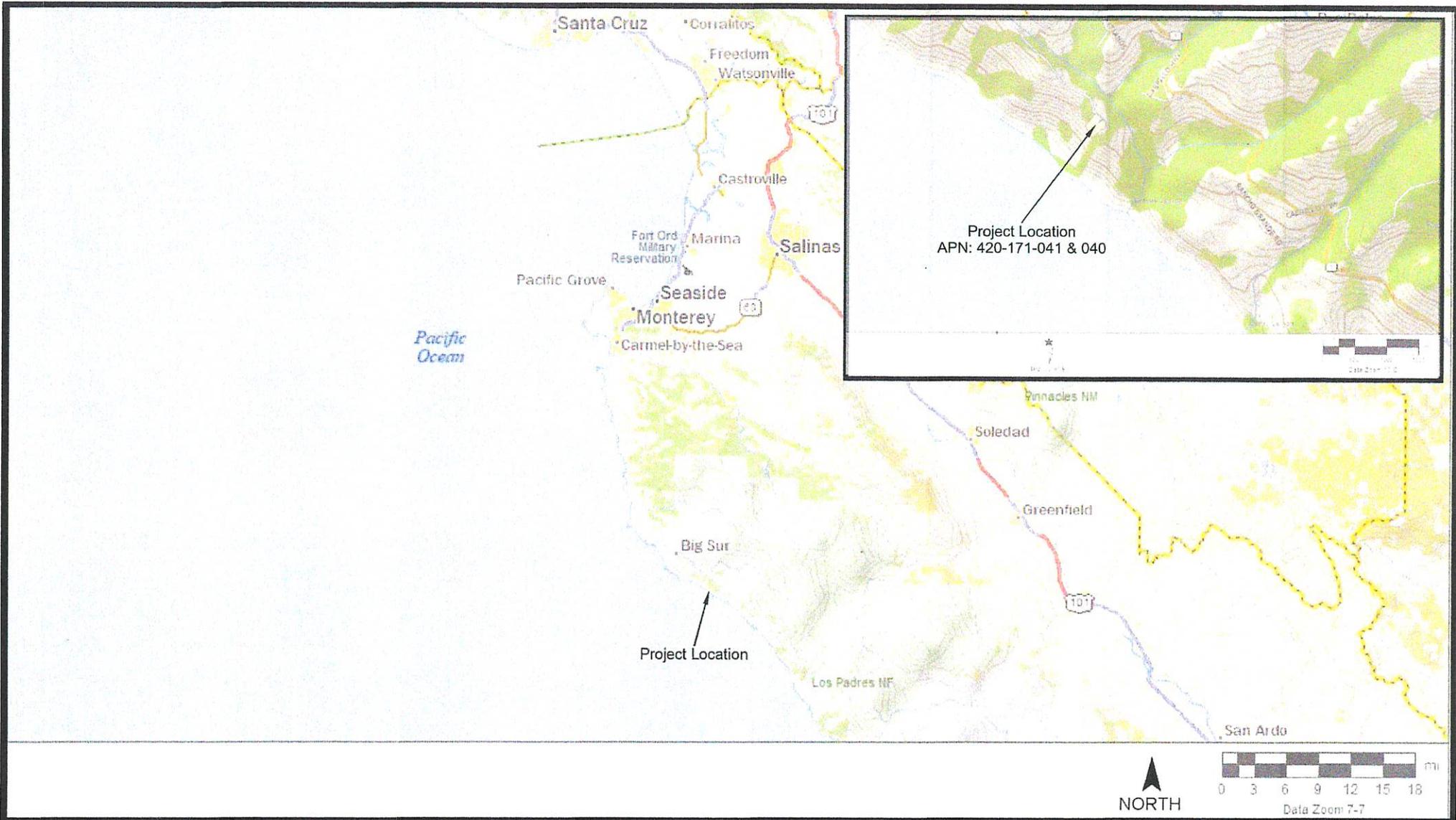
**7. PDSP001 - LIMITED AREA OF DISTURBANCE/REVISED SCOPE (NON-STANDARD)**

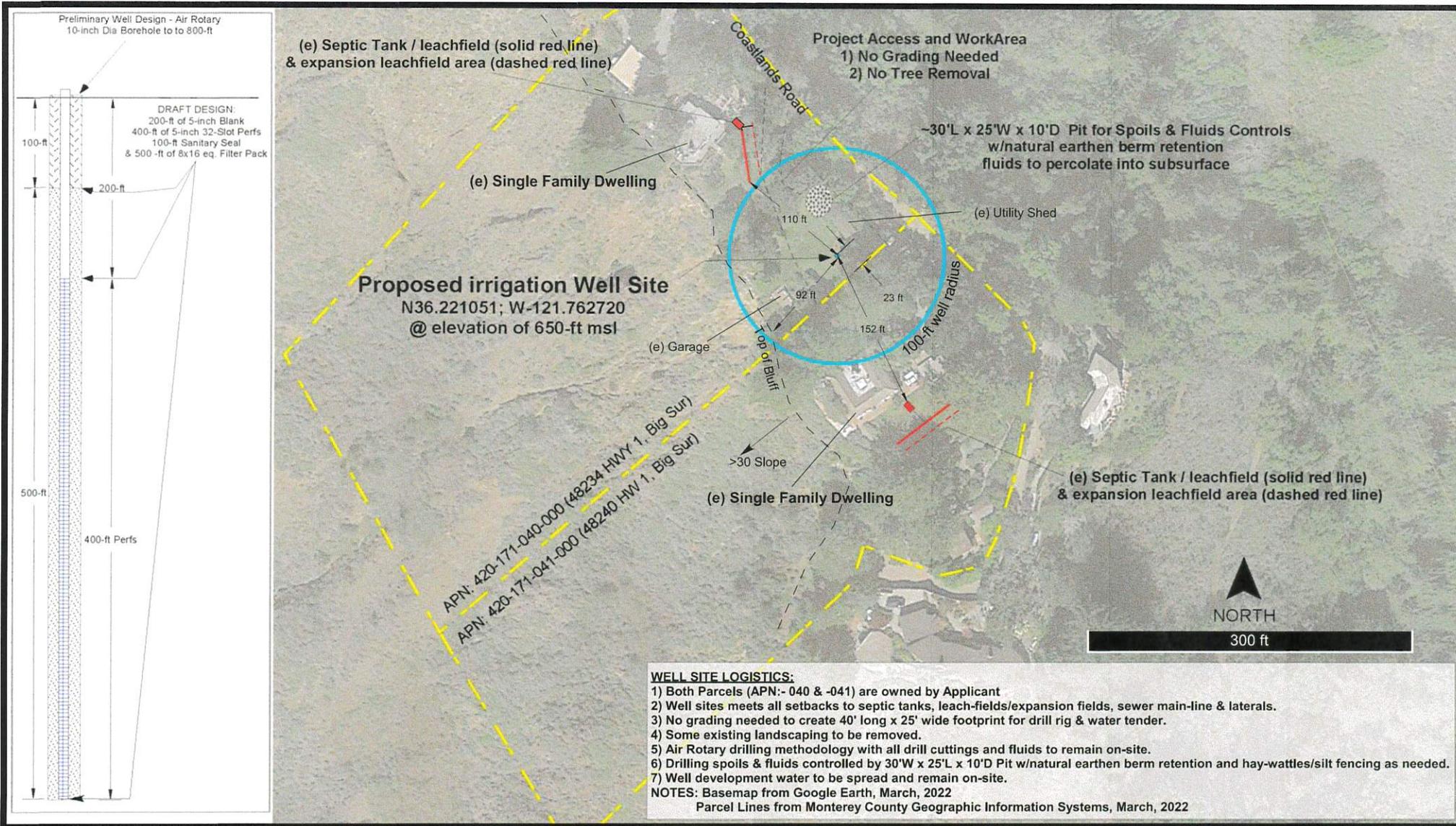
**Responsible Department:** HCD-Planning

**Condition/Mitigation Monitoring Measure:** The attached plans identify a 750 square foot pit, 10 feet deep for the purpose of holding fluid and spoils from drilling the test well. In order to avoid excessive ground disturbance, the Owner/Applicant has revised their scope. The area of disturbance is limited to a 10 foot by 10 foot area for the well and instead of the pit, all spoils will be stockpiled above the surface and trucked away.

To ensure consistency with the revised scope, plans submitted as part of the test well ministerial application shall illustrate the limited area of disturbance and location of the above ground stockpile as well as notate logistics for hauling off drill spoils.

**Compliance or Monitoring Action to be Performed:** Prior to issuance of permit(s) for the test well, the Owner/ Applicant shall submit a revised site plan meeting the requirements of this condition as part of their ministerial permit application.





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