



Monterey County

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

Board Report

Legistar File Number: RES 19-106

August 27, 2019

Introduced: 8/8/2019

Current Status: Agenda Ready

Version: 1

Matter Type: BoS Resolution

Public Hearing, continued from February 26, 2019, April 23, 2019, and May 21, 2019 to consider appeals by Matt and Carol Donaldson and by Paul Smith from the November 14, 2019 Planning Commission decision approving a Combined Development Permit establishing a commercial operation, construction of an office, workshop, storage area, and formal parking area with associated site improvements and tree removal within environmentally sensitive habitat areas.

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

Proposed CEQA action: Adopt a Mitigated Negative Declaration

PLN160851 - MORGENRATH (BLAZE ENGINEERING)

RECOMMENDATION:

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

- a. Deny the appeal of Matt and Carol Donaldson from the November 14, 2019 Planning Commission decision approving a Combined Development Permit (RMA-Planning File No. PLN160851/Morgenrath);
- b. Deny the appeal of Paul Smith from the November 14, 2019 Planning Commission decision approving a Combined Development Permit (RMA-Planning File No. PLN160851/Morgenrath);
- c. Adopt a Mitigated Negative Declaration; and
- d. Approve a Combined Development Permit consisting of:
 1. Coastal Development Permit, Design Approval, and General Development Plan to establish 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 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; and
- e. Adopt a Mitigation Monitoring and Reporting Program.

A draft resolution, including findings and evidence, is attached for consideration (**Attachment B**). Staff recommends approval subject to 32 conditions.

PROJECT INFORMATION:

Agent: Aengus L Jeffers, Law Offices of Aengus L Jeffers
Property Owner: Morgenrath Martha J TR ET AL (Blaze Engineering)
APN: 419-201-007-000
Parcel Size: 2.55 acres
Zoning: Visitor Serving Commercial, Design Control, Coastal Zone or “VSC(CZ)”
Plan Area: Big Sur Coast Land Use Plan
Flagged and Staked: Yes

SUMMARY:

Between 1989 and 2017, Blaze Engineering operated a construction company, including a storage yard, on property they leased along Highway 1 (APN 419-201-006-000), which abuts the eastern property line of the subject property (APN 419-201-007-000). In 2017, Morgenrath, owner and operator of Blaze Engineering, was notified that the lease of the property they were operating on would no longer be available. As a result, Blaze Engineering is seeking to relocate their facilities and establish their commercial operations (consisting of construction company and storage yard) to an adjacent 2.55-acre vacant parcel located on the eastern side of State Route 1 (SR1).

On February 21, 2019, the Board of Supervisors continued the hearing to allow a compromise between the parties. Prior to the May 21, 2019 hearing, a compromise between the applicant and appellants was not reached. The applicant, however, made an oral presentation of potential project modifications before the Board. The Board found these presented changes acceptable and adopted a resolution of intent to deny the appeals and approve the Combined Development Permit with a modified scope of work to allow the applicant to submit revised plans and staff to return with a revised resolution and a final scope of work.

Changes to the project, and as described in the recommendation above, include: removal of the bypass road and cement silo, switching locations of the shop and storage, change from the use of storage containers to a storage building, a reduction in tree removal, an increase of public parking spaces, and providing a pedestrian walking trail to access SR1. These changes are also reflected in the draft resolution (**Attachment A**), the General Development Plan (**Attachment A.1**), and the project plans (**Attachment A.2**).

This Board of Supervisors hearing on the project is de novo and the attached resolution reflects staff’s recommendation to deny both appeals, adopt a Mitigated Negative Declaration (**Attachment D**), and approve the project. The matter can be appealed to/by the Coastal Commission within 10 working days of the Coastal Commission receiving the FLAN.

DISCUSSION:

The project came for public hearing before the Planning Commission on October 31, 2018 and November 14, 2018. Public testimony included contention that impacts from the operation of the business would negatively affect the environment, traffic, scenic views, and the tranquility of the surrounding neighborhood. On November 14, 2018, the Commission adopted a Mitigated Negative Declaration, approved a Combined Development Permit to allow the proposed development, and adopted a Mitigation Monitoring and Reporting Plan (see **Attachment E**, Monterey County Planning

Commission Resolution No. 18-045).

Two appeals of the Planning Commission action were timely filed, one by Matt and Carol Donaldson, c/o Christine G. Kemp (**Attachment B**) and a second by Paul Smith (**Attachment C**). The appeals contain identical contentions in most respects and contend that the findings or decision or conditions are not supported by the evidence and that the decision was contrary to law. Appellants 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 (VSC) zoning designation, inappropriate tree removal, visual impacts in the Critical Viewshed, and development within environmentally sensitive habitat areas.

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 allow the applicant (Marty Morgenrath) and appellants (Matt and Carol Donaldson and Paul Smith) time to resolve their issues. Ultimately, a mutually agreed upon solution was not found through mediation.

As discussed above, on May 21, 2019, the Board adopted a resolution of intent to approve the project with modifications. On June 27, 2019, the applicant submitted revised plans, a revised General Development Plan, and revised colors and materials to the RMA. Subsequently, the applicant submitted an updated Tree Assessment consistent with the revised scope of work.

Revised Project Scope:

On May 21, 2019, the Board was presented with a project scope consisting of: a 760 square foot office, a 600 square foot workshop with a 300 square foot canopy, an 800 square feet of storage units, 12 parking spaces on the upper portion of the property, and equipment such as generators, a cement silo, and above ground diesel storage tanks. Site improvements would result in the removal of 16 protected trees (14 Bay laurel trees that range in size from 13 to 60-inches; 1 cypress 48-inches in size; and 1 Coast Redwood 20-inches in size) and grading of 444 cubic yards of cut and 619 cubic yards of fill.

The applicant has elected to revise the project to omit the bypass road on the lower western portion of the property and the cement silo on the lower eastern portion of the property. To reduce impacts to the neighboring property owner, the workshop has been relocated to the area originally proposed for storage, and vice versa. In addition, the 3 separate storage containers have been replaced by a single story 798 square foot storage building. Exterior siding for the workshop and storage building consist of standing seam metal painted "Oxford Brown" (dark brown) to resemble redwood siding while providing fire protection. New project components include a pedestrian walking trail providing access between Apple Pie Ridge Road to the lower area near SR1; a trash enclosure, and 7 public parking spaces adjacent to SR1 and separated from the semi-truck and trailer parking.

Modification of the scope results in the reduction of grading quantity and tree removal. Grading will be reduced from 444 cubic yards of cut and 619 cubic yards of fill to 218 cubic yards of cut and 370 cubic yards of fill. Total tree removal will be reduced from 16 to 10. Through omission of the bypass road, and other proposed modifications, 6 additional Bay Laurel trees are being retained. There are

also 2 Coast live oak trees that have died due to Sudden Oak Death. The project arborist recommends these trees be removed and chipped to prevent spreading the disease.

The applicant requested staff consider modification of proposed Condition of Approval No. 28, which states:

“As an on-going condition, the site shall be maintained and long-term outdoor storage of construction materials shall be prohibited. These materials shall include: concrete mix, cement, sand, asphalt, landscaping soils, plumbing supplies, electrical supplies, scrap metal, scrap material, machinery, and similar items. The property shall be kept free from junk and debris that would cause a visual nuisance.”

The intent of this condition is to address neighbor concerns by ensuring maintenance of the site through the prohibition of long-term outdoor storage of debris and construction materials. The applicant has concerns with the word “machinery” and the potential for misinterpretation resulting in non-compliance with the condition. For example, Blaze Engineering’s operation uses various types of machinery (such as generators and air compressors on trailers and backhoe buckets) that would be too large to store within the one-story 798 square foot storage building. Therefore, the applicant requests the word “machinery” be stricken from the condition language. Staff finds this modification acceptable as the revised language would continue to meet the intent of the condition.

CEQA:

An Initial Study/Mitigated Negative Declaration or “IS/MND” (SCH No. 2018091005) for the Morgenrath project was prepared and circulated from September 5, 2018 to October 5, 2018. After circulation, the project has been revised and the scope of work reduced. Section 15073.5(a) of the CEQA Guidelines calls for recirculation of an IS/MND when the document must be substantially revised after public circulation but before adoption. Pursuant to Section 15073.5(c) of the CEQA Guidelines, 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 project, as modified, would reduce 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. Mitigation measure 5, Condition 24, requires an OCEN approved tribal monitor onsite during excavation of the new driveway (bypass road) and the septic tank. Because the bypass road has been omitted, this mitigation has been modified to clarify monitoring for this specific project component would not be warranted. Based on this information presented, the reduced project scope does not require a substantial revision of the IS/MND and recirculation is not required in accordance with Section 15073.5(c) of the CEQA Guidelines.

A substantial revision if the MND means a new, avoidable significant effect is identified and mitigation measure or project revisions must be added in order to reduce the effect to insignificance, or the proposed mitigation measures or project revisions will not reduce potential effect to less than significance and new measures or revisions must be required.

OTHER AGENCY INVOLVEMENT:

Environmental Health Bureau
RMA-Public Works
RMA-Environmental Services
Water Resources Agency
Cal Fire - Coastal
Big Sur Land Use Advisory Committee
California Coastal Commission
California Department of Transportation (Caltrans)

FINANCING:


The Board appeal fee is typically, \$1,750.07; however, projects in the coastal zone are not charged an appeal fee. If the County were to charge a fee, then the project could be appealed directly to the Coastal Commission rather than going to the Board first. Funding for staff time associated with this appeal is included in the FY 19-20 Adopted Budget for RMA-Planning. Direct costs such as noticing impact the department's budget by not realizing revenue.

BOARD OF SUPERVISORS STRATEGIC INITIATIVES:

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

Check the related Board of Supervisors Strategic Initiatives:

- Economic Development
- Administration
- Health & Human Services
- Infrastructure
- Public Safety

Prepared by: Anna V. Quenga, Senior Planner, ext. 5175
Reviewed by: Brandon Swanson, Acting RMA Chief of Planning 
Approved by: John M. Dugan, FAICP, Deputy Director of Land Use and Community Development

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

Attachment A - Draft Resolution including:

- Conditions of Approval
- General Development Plan
- Project Plans

Attachment B - Notice of Appeal, Donaldson, Filed November 30, 2018

Attachment C - Notice of Appeal, Smith, Filed November 20, 2018

Attachment D - Initial Study/Negative Declaration

Attachment E - Planning Commission Resolution No. 18-045

Attachment F - Vicinity Map

cc: Front Counter Copy; California Coastal Commission; RMA-Public Works and Facilities; Environmental Health Bureau; Monterey County Water Resources Agency; RMA-Environmental Services; Brandon Swanson, Acting RMA Chief of Planning; Craig Spencer, Acting RMA-Planning Services Manager; Anna V. Quenga, Project Planner; Marty Morgenrath, Property Owner; Aengus Jeffers, Attorney for Property Owner, Matt and Carol Donaldson, Appellant; Christine Kemp, Attorney for Appellant; Paul Smith, Interested Party; Christopher Bjornstad, Caltrans; John Olejnik, Caltrans; The Open Monterey Project (Molly Erickson); LandWatch (Director); Project File PLN160851.