

Attachment C

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MONTEREY COUNTY
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NOTICE OF APPEAL

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

DEPUTY
[Signature]

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 Matt and Carol Donaldson, c/o Christine G. Kemp, NHEH
- b) Address P O Box 2510 City Salinas Zip 93902
- c) Phone Number 831-424-1414 - e-mail ckemp@nheh.com

2. Indicate your 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. PLN 160851

5.

	File Number	Type of Application	Area
a) Planning Commission:	<u>PLN 160851</u>	<u>Combined Dev. Permit</u>	<u>Big Sur/Coastal</u>
b) Zoning Administrator:	_____	_____	_____
c) Subdivision Committee:	_____	_____	_____
d) Administrative Permit:	_____	_____	_____

5. What is the nature of your appeal?

a) Are you appealing the approval or the denial of an application? (Check appropriate box)

b) If you are appealing one or more conditions of approval, list the condition number and state the condition(s) you are appealing. (Attach extra sheets if necessary).

6. Check the appropriate box(es) to indicate which of the following reasons form the basis for your appeal:

There was a lack of fair or impartial hearing; or

The findings or decision or conditions are not supported by the evidence; or

The decision was contrary to law.

You must next give a brief and specific statement in support of each of the bases for appeal that you have checked above. The Board of Supervisors will not accept an application for appeal that is stated in generalities, legal or otherwise. If you are appealing specific conditions, you must list the number of each condition and the basis for your appeal. (Attach extra sheets if necessary).

SEE ATTACHMENT A

7. As part of the application approval or denial process, findings were made by the decision making body (Planning Commission, Zoning Administrator, Subdivision Committee or Director of Planning and Building Inspection). In order to file a valid appeal, you must give specific reasons why you disagree with the findings made. (Attach extra sheets if necessary).

SEE ATTACHMENT A

8. You are required to submit stamped addressed envelopes for use in notifying interested persons that a public hearing has been set for the appeal. The Resource Management Agency - Planning Department will provide you with a mailing list.

9. Your appeal is accepted when the Clerk to the Board's Office accepts the appeal as complete on its face, receives the filing fee \$ -0- and stamped addressed envelopes.

APPELLANT SIGNATURE Chadley atty for Matt & Carol Benardson DATE 11/29/18

ACCEPTED _____ DATE _____
(Clerk to the Board)

Attachment A

Donaldson 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 Donaldsons.

- The commercial work shop, with its’ attendant commercial workshop noise, will be located just 60 feet from the existing Donaldson’s residence.
- The work shop and other commercial buildings will be clearly visible from the Donaldson home.
- Large constructions 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.

- 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
- 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.
 - See all comments included herein.

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.
 - 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 not well marked, making it difficult to assess 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 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 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.

CALIFORNIA COASTAL COMMISSION

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October 1, 2018

Anna Quenga
Monterey County Resource Management Agency
141 Schilling Place, 2nd Floor
Salinas, CA 93901

**Subject: Mitigated Negative Declaration (PLN 160851); SCH 2018091005 46821
Highway 1, Big Sur (Morgenrath)**

Dear Ms. Quenga:

Thank you for the opportunity to comment on the Mitigated Negative Declaration (MND) for the proposed use of the property at 46821 Highway 1 in Big Sur. As we understand it, the proposed development includes the establishment of a commercial business operation including a new office building, workshop, storage unit, and onsite storage of equipment, trucks, fuel, cement, and related development on a 2.55-acre parcel in Big Sur Valley. The site has a Rural Community Center (RCC) land use designation and is zoned for Visitor-Serving Commercial (VSC).

As you are aware, lands designated RCC are very limited and are intended to serve the needs of residents and visitors to the Big Sur coast. More specifically, the Big Sur Land Use Plan (LUP) identifies the appropriate land use activities for RCC-designated parcels as those found in the Outdoor Recreation, Recreational, Visitor-Serving Commercial, and Public and Quasi-Public classifications, which include a host of typical visitor-serving uses (e.g., restaurants, grocery stores, arts and crafts galleries, inns, hostels, service stations, campgrounds, etc.) as principally permitted uses. The LUP further identifies conditional uses that may also be permitted (e.g., administrative, management, and maintenance facilities for public agencies, fire stations, clinics, community halls, churches, post office, libraries, and schools). Residential use may also occur in this land use designation under limited circumstances. However, given the limited availability of land that is designated RCC in the Big Sur area and the increasing numbers of visitors to Big Sur, we believe that RCC-designated land ideally should be reserved for essential/priority visitor-serving uses.

Based on the LUP description of the priority uses, the proposed use for the site and related development does not appear to comport with the requirements of the underlying RCC designation, but rather appears to be more aligned with General Commercial uses, as defined in the Local Coastal Program (LCP). While we can appreciate the need for engineering and construction-related services provided by the prospective tenant, there may be other more suitable locations for such operations that are not located on RCC-designated land.

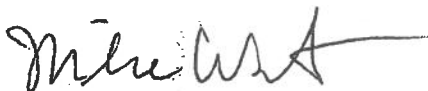
Anna Quenga
Morgenrath (PLN 160581; SCH 2018091005)
October 1, 2018
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Additionally, we disagree with the MNDs interpretation of LUP Policy 5.3.2 (i.e., "any use allowed in any zone is appropriate for rural community centers") as allowing general commercial and/or any other uses within RCC designated lands. Clearly, the LUP does not stand for the allowance of a military or agricultural use, or other similarly inappropriate (i.e., not visitor-serving, public, quasi-public, or recreation) uses at this site. Likewise, LUP Policy 5.4.3 E.1 directs new visitor-serving commercial development to RCC-designated lands in Big Sur Valley. Furthermore, Monterey County's Implementation Plan (i.e. coastal zoning) is explicit with regard to principal and conditional uses allowed under the Visitor Serving Commercial zone district (Title 20, Chapter 20.22, VSC). Contractor yards and storage facilities are *not* authorized as either a principally permitted or conditional use in the VSC zone. These uses are, however, explicitly identified as conditional uses in the County's General Commercial zone districts.

The project further involves development within the critical viewshed, which also cannot be supported under the LUP. Specifically, the LUP allows exceptions for development on RCC-designated land that would be located in the critical viewshed if such development uses vegetative screening where possible to soften the impact on the viewshed. In this case, the proposal includes the parking and staging of construction vehicles, trucks, and bulldozers, etc., within an existing parking area that is located within the critical viewshed. The additional traffic and vehicles associated with the development likely would result in significant visual impacts. As proposed, the project includes construction of six-foot high solid wood fencing along the Highway 1 frontage to "screen" vehicles and facilities on site. Staff notes that solid wood fences are themselves development with their own visual impacts. Thus, the proposal does not actually screen development from public viewing, but rather trades one visual impact for another. The proliferation of fences along the Big Sur coast is concerning and we would not be supportive of any project that includes solid fencing within the critical viewshed.

Thank you again for the opportunity to comment on the MND for the proposed use and development of the Morgenrath property in Big Sur Valley. We hope that these comments prove useful as the County evaluates the project for consistency with the LCP. If you have any questions or would like to further discuss this matter, please don't hesitate to contact me at (831) 427-4898.

Regards,



Mike Watson
Coastal Planner
Central Coast District Office

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