

Attachment A

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ATTACHMENT A

DISCUSSION

Mr. and Mrs. Donaldson, represented by attorney Christine Kemp, and Paul Smith (both referred to as appellants) filed appeals with the Monterey County Clerk of the Board contending that the Morgenrath (Blaze Engineering) Combined Development Permit (file PLN160851) was approved by the Planning Commission in error. The discussion below presents each of the appellant's contentions followed by staff's response to allow the Board to consider the facts of the situation. As demonstrated by the responses, staff recommends that the Board deny the appeal and uphold decision of the Planning Commission, adopt a Mitigated Negative Declaration, approve the Combined Development Permit for the project, and adopt a mitigation monitoring and reporting program.

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.”*

STAFF'S RESPONSE

The North Section Map and Detail A of the Big Sur Coast Land Use Plan (BSCLUP) 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 fact, text in BSCLUP section 5.3.2 states that *“(I)n general, any use allowed in any zoning district is appropriate for Rural Community Centers.”* 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 that 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 419-201-006-000) 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 accommodations¹. Restaurants with a maximum size to accommodate a 120-seat enclosed dining

¹ 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.

room facility; however, do not have a minimum parcel size and would be allowed according to BSC LUP Policy 5.4.3.C.7. In comparison, water use intensity, vehicular trips, and necessary onsite wastewater treatment system areas for a 120-seat restaurant would be far greater than project. 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.

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 or conditionally permitted use in the VSC zoning district (Monterey County Code [MCC] Sec 20.22).”*

STAFF'S RESPONSE

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, by providing 12 parking spaces for employees to use during the weekends and holidays, resulting in additional 12 parking spaces for visitors of the Big Sur River Inn. 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-public² 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.

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 constructions trucks and equipment operating on and entering and exiting the property will create commercial traffic noise.*

² Merriam-Webster defines “quasi-public” 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.

- *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."*

STAFF'S RESPONSE

The project shall be consistent with BSC LUP Policy 5.4.3.E.8 and 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. Language for the policy and standards, in their entirety, are found below to provide a complete understanding of how the two shall work together:

Policy 5.4.3.E.8 – “Renewal of use permits for existing commercial uses or the establishment of new uses will 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.”

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. (Ref. policy 5.4.3.E.8)”

Based on the language above, consistency and implementation of the policy requires consideration of potential impacts to all surrounding neighbors, not just the neighbor nearest to the proposed development and potential adverse impacts shall be addressed through modification of the project, not through the prohibition³ of development. The appellant provides several points supporting Contention 1c. Staff has categorized these point into separate topic areas and responds to these points accordingly.

Staff's Response to Points Relative to Disruption of Views – Based on the contention from the appellant and previous correspondence received for the project, the nearest residential structure is between 60 and 70 feet from the proposed workshop. Project application materials demonstrate that the residence is at an elevation approximately 13 feet higher than the proposed workshop site. The appellant contends that the workshop and other proposed buildings will be

³ For example, Policy 3.11.2.6 of the BSCLUP states that: “Off-road vehicle use, unauthorized collecting of artifacts, and other activities other than development which could destroy or damage paleontological, archaeological or cultural sites shall be prohibited.”

visible from the Donaldson home and that stockpiling of sand and gravel material will be an unsightly visual impact. The proposed tree removal would also impact the appellant's views of the forest.

During the November 14, 2018 hearing, the Commission received testimony demonstrating that the BSCLUP provides for very little protection of private views⁴. Instead, importance is placed on the protection of public views, both in and outside of the Critical Viewshed. BSCLUP Key Policy 3.2.1 prohibits new development within the Critical Viewshed and requires development outside of the Critical Viewshed to meet the siting and design criteria contained in Sections 3.2.3, 3.2.4, and 3.2.5. BSCLUP Policy 3.2.5.A is an exception to Key Policy 3.2.1. BSCLUP Policy 3.2.5.A states that development within the Big Sur Valley RCC provides essential services to the community and visiting public and permits construction within the Critical Viewshed 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. On that basis, the Commission found that the project is not subject to the aforementioned policies related to private views. Consistent with BSCLUP Policy 5.4.3.E.8 and CIP Section 20.145.140.B.2.g, the Commission conditioned the project to modify the landscape plan to include planting of vegetation between the workshop and the nearby residence in order to provide natural visibility screening of the shop. The Commission also incorporated a non-standard condition of approval requiring the applicant to store debris (such as scrap metals and materials, machinery, and similar items) inside of the approved storage containers and not visible onsite (uncovered).

In addition to the Commission's findings, staff recommends the Board consider if the appellant's contention would be addressed by relocating the shop to either the proposed office or storage area. As illustrated in **Figure 1** below, relocating the shop to the proposed office area could potentially result in additional grading due to the turning movement required for vehicles to access the shop. In addition, this location would provide very little additional screening by the site's natural topography and vegetation. Therefore, relocation to this area would not address the appellant's concern.

⁴ There are two BSCLUP policies that require consideration of private views: 1) Policy 3.2.4.A.2, new development must consider visual effects upon public views as well as the views and privacy of neighbors, shall be located in an area least visible from public viewpoints, and shall be located where existing topography or trees provide natural screening; and 2) Policy 3.2.4.D, utilities poles shall be placed in the least conspicuous locations out of public, and where possible, private view.

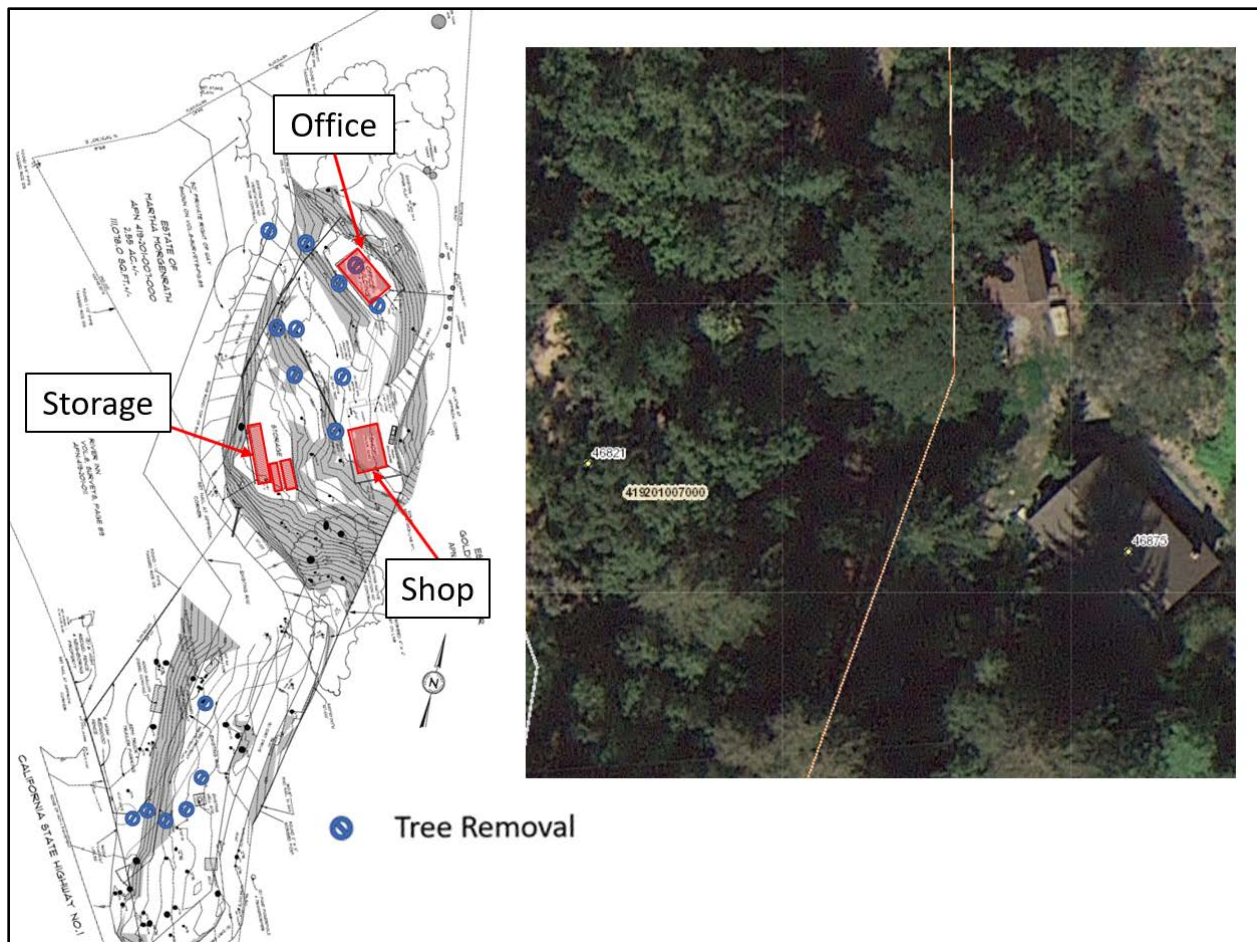


Figure 1. Partial Site Plan and Aerial Photo of the Morgenrath and Donaldson Properties

Relocation to the proposed storage area would result in providing greater distance from the existing structures on the appellant’s property. However, it would place the structure approximately 20 feet from Apple Pie Ridge Road at an elevation approximately 20 feet higher than the traveled roadway. The shop is proposed to be 20 feet, 6 inches high. This would result in a structure that would loom over the traveled roadway, causing a greater impact to all neighbors who travel along Apple Pie Ridge Road. This option would address the appellant’s concerns but would result in a greater impact to the neighborhood as a whole.

Staff’s Response to Subpoint Relative to Impact of Forest Views

The appellant contends that substantial tree removal will impact their 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 illustrated in **Figure 1** above, tree removal is localized in two sections. The Commission found the proposed tree removal is consistent with the forest resource policies and implementing regulations of Big Sur 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 discussed above, the Commission conditioned the project requiring modification of the landscape plan to include planting of vegetation between the workshop and the nearby residence.

Although not required by policies protecting private views of the forest, it is consistent with 5.4.3.E.8 and CIP Section 20.145.140.B.2.g as it increases the amount of vegetation between the two properties.

Staff's Response to Subpoints Relative to Disruption from Noise:

The appellant contends that the location of the shop will cause noise impacts to their nearby residence and the operation of construction trucks and equipment will create commercial noise. BSCLUP Policy 5.4.3.L.5 states that increased levels of activity and noise point to the need for special care in planning for the growth of the Big Sur Valley.

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 (APN 419-201-006-000) between 1989 and 2017. However, approval of the project would allow relocation of higher noise intensity operations, such as the 40 kilowatt generator, cement silo, and semi-truck and trailer parking, to the lower portions of the site, further away from sensitive receptors and closer to State Route 1 (SR 1) in an area with existing high noise levels⁵. The Commission found that the project would not result in a significant increase to the existing noise levels in the area. Furthermore, consistent with BSCLUP Policy 5.4.3.E.8 and CIP Section 20.145.140.B.2.g, the Commission conditioned the project to require planting of vegetation between the shop and the appellant's residence to create a natural noise buffer.

Staff's Response to Subpoints Relative to Disruption Caused by Access/Traffic

The appellant contends that the project would create commercial traffic on the site and that commercial traffic and parking will impact access to the Donaldson's property via the "joint entrance driveway" and at the base of Apple Pie Ridge Road.

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. The applicant demonstrated that in the past, intensive construction activities occurred off-site on their client's respective properties. This logistical component would not change as a result of project approval. Site access by construction vehicles would be limited to the lower portion of the property where the cement silo and diesel vault is located (see **Figure 2** below), the storage area to pick up and drop off scrap material as necessary, and to the shop building for minor repairs.

⁵ US Department of Transportation, Federal Highway Administration indicates that highway traffic noise levels typically range from 70 to 80 dB(A) at a distance of 50 feet from the highway.

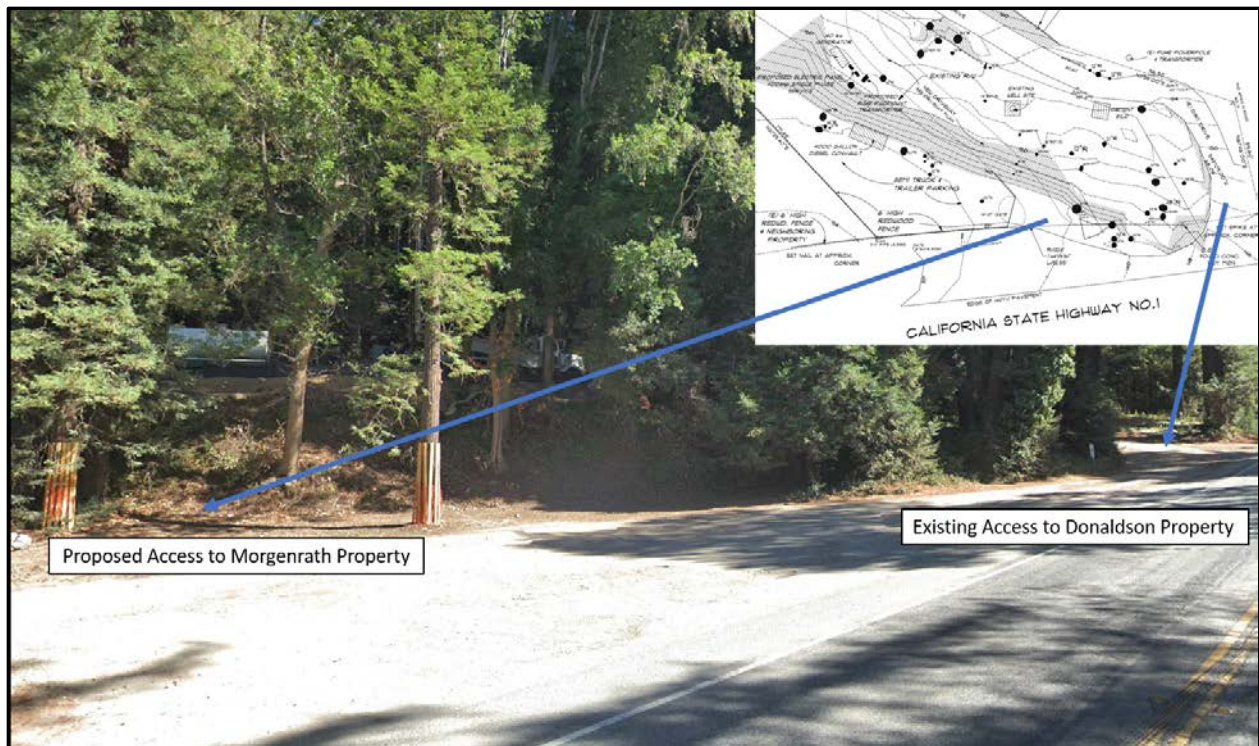


Figure 2. Site Access

The application and plans also demonstrated that the proposed driveway access to the Morgenrath property would allow construction traffic to avoid using the existing access to the Donaldson property. In addition, there are no proposed parking areas on or adjacent to the Donaldson’s existing access. Therefore, the Planning Commission’s finding of project consistency with BSCLUP Policy 5.4.3.E.8 and CIP Section 20.145.140.B.2.g, as it relates to parking and vehicular traffic is accurate.

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.).”

STAFF’S RESPONSE

As discussed above, BSCLUP Policy 3.2.5.A identifies that development within the Big Sur Valley RCC provides essential services to the community and visiting public and therefore affords an exception to Key Policy 3.2.1 (Critical Viewshed). If the subject property were to be located within the Critical Viewshed, then CIP Section 20.145.030.A that the appellants refer to would apply. However, because of the exception, the correct Section to cite is 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 Section 20.145.030, C.2.

During the November 14, 2018 hearing, the Commission received testimony demonstrating that on February 8, 2018, staff observed the project staking and existing operations conducted out of the adjacent parcel (APN 419-201-006-000) to determine consistency with the visual resource

policies and regulations. 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. Based on this testimony and the application materials, the Planning Commission found the project consistent with visual resources policies and standards.

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.).”*

STAFF’S RESPONSE

The appellants contended that a condition of approval requiring placement of a conservation easement over areas of the property containing environmentally sensitive habitat (ESHA) was not incorporated into the project.

During the November 14, 2018 hearing, the Planning Commission received testimony that a biologist surveyed the property and identified that it lies entirely within a Redwood Forest natural community dominated by coast redwood (*Sequoia sempervirens*) and co-dominated by California bay (*Umbellularia California*). However, 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. The biologist concluded that 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. Recommended actions for protection and restoration measures to enhance ESHA and provide for long-term land management and exotic species control were incorporated in the project.

However, 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 cases when a property is already developed and when ESHA is already disturbed. This Board hearing on the appeal is de novo; therefore, staff recommends the Board consider adding a standard condition of approval 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.

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.”*

STAFF’S RESPONSE

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 that is no 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.

During the November 14, 2018 hearing, the Planning Commission received testimony that removal of the 10 landmark trees (see **Table 1** below) is consistent with this regulation. Trees located in development areas have structural defects and/or decay. Tree No. 10 is located within the proposed driveway access and realignment would impact a greater number of trees (an 82-inch, 61-inch, and 14-inch Coast redwood, and a 15-inch and 32-inch Bay laurel to the south; a 54-inch, 17-inch, 24-inch, 13-inch, and 12-inch Coast redwood to the north). Tree No. 21 is within the area for access to the storage structures. Realignment would potentially require additional grading and removal of a healthy 14-inch Bay laurel. Tree No. 31 is located within the proposed grading area for the office and shifting the the building would require additional development on slopes in excess of 30%. The remaining trees have a high risk of failure and their removal would reduce the spread of decay. For these reasons, the Planning Commission found the project meets the exemption for removal of landmark trees.

Table 1. Landmark Trees to be Removed		
<i>Number & Type</i>	<i>Size</i>	<i>Comment</i>
No. 1, Bay laurel	36.5-inch DBA	In office footprint. Poor condition and diseased. Failure could impact Apple Pie Ridge Road and healthier trees in its proximity. Removal would reduce the spread of decay.
No. 2, Cypress	48-inch DBA	In grading area for the office. Arborist identifies the tree was planted.
No. 3, Bay laurel	50-inch DBA	Between office and shop. Poor condition with symptoms of Sudden Oak Death. Risk of failure with hazard rating of 12. Removal would reduce the spread of decay.
No. 4, Bay laurel	30-inch DBA	Adjacent to shop. Poor condition, structural defects, and decay. Risk of failure with hazard rating of 12. Failure could impact Apple Pie Ridge Road and healthier trees in its proximity. Removal would reduce the spread of decay.
No. 10, Bay laurel	25-inch DBA	In roadway improvement area. Poor condition with weak branch attachments, thin canopy, and appears to have Sudden Oak Death. Removal would reduce the spread of decay.
No. 15, Bay laurel	26-inch DBA	In roadway improvement area. Poor condition, decay, fungal fruiting bodies, and significant lean. Risk of failure with hazard rating of 12. Failure could impact healthier trees in its proximity. Removal would reduce the spread of decay.
No. 16, Bay laurel	30-inch DBA	Not in development area. Poor condition, decay, and exposed structural roots. Risk of failure with hazard rating of 12.
No. 18, Bay laurel	60-inch DBA	Not in development area. Poor condition, decay, and exposed structural roots. Risk of failure with hazard rating of 12.
No. 21, Bay laurel	35-inch DBA	In grading area. Poor condition.
No. 24, Bay laurel	40-inch DBA	In grading area. Poor condition and decay. Risk of failure with hazard rating of 12. Failure could impact Apple Pie Ridge Road.

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.)”

STAFF'S RESPONSE

As demonstrated in staff's response to the appellant's contention 1c, the subject property is exempt from the strict requirement for development within the Critical Viewshed. 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 November 14, 2018 hearing, the Planning Commission received testimony that the project supports existing visitor serving uses and facilities (see staff's response to appellant's contentions 1 a and b) and provides road repair during emergencies in the area. Access and visitor serving uses are Coastal Act priorities in Big Sur. The application demonstrates that the proposed driveway entrance would allow the project's operational vehicles to use a separate access than the existing driveway utilized by the appellant and residents that live along Apple Pie Ridge Road (see staff's response to appellant's contention 1c), potential impacts to ESHA would be less than significant (see staff's response to appellant's contention 1e), and that it meets the requirements for development on 30% slopes (see staff's response to appellant's contention 1h). For these reasons, the Commission found the proposed driveway consistent with Policies 6.4.3.K.1 and 6.4.3.K.2.

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).”*

STAFF'S RESPONSE

According to BSCLUP Policy 5.4.2.5, 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 they are not merged by provisions elsewhere in this plan.⁶ CIP Section 20.145.140.A.4 and Title 20 Section 20.64.230.E prohibits development on slopes in excess of 30% unless a Coastal Development Permit is granted and the appropriate hearing body can find that there is no alternative which would allow development to occur on slopes less than 30%, or that the proposed development better the BSCLUP's objectives and policies for resource protection.

During the November 14, 2018 hearing, the Planning Commission received testimony explaining that approximately 48 square feet of the proposed development is on 30% slopes or more: at the

⁶ BSCLUP Policy 5.4.3.G and CIP Section 20.145.140.B.6.A requires merging of substandard parcels created by an antiquated subdivision, such as the Garrapatos Redwoods Subdivision, prior to allowing development. This requirement does not apply in this case.

soldier pile walls adjacent to the office building and shop; the southwest corner of the shop; at the proposed Hilfiker wall; and, at driveway off SR 1. The subject property is constrained by existing vegetation, an existing improved right-of-way, and topography. Shifting of the shop would require the structure to encroach into either the septic tank and secondary leachfield areas to the north or encroach closer into the root systems of two protected trees upslope to the east. Shifting of the proposed driveway to areas less than 30% would require the removal of 10 additional protected trees that are in healthy condition. In addition, the soils engineer found that construction of the soldier pile and Hilfiker walls were necessary to reduce potential seismic and erosion hazard risks. The new driveway would allow safer ingress and egress on and off State Route 1 by providing a greater line of sight distance for turning movements. Providing a safe path of travel and a less hazardous condition also better meets policy objectives. For these reasons, the project's development on 30% slopes cannot be avoided and better meets policy objects for the protection of trees and environmentally sensitive habitat areas.

Based on this information, the project meets the requirements for development on slopes in excess of 30% and as described in the Planning Commission resolution, the Commission granted approval of a Coastal Development Permit.

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).”*

STAFF'S RESPONSE

The appellant's contention that the Planning Commission resolution did not contain a 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.

This Board hearing on the appeal is de novo; therefore, staff recommends the Board consider approving the draft resolution (**Exhibit B**) with the required 30% slope finding and supporting evidence.

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.”*

STAFF'S RESPONSE

As discussed in the preceding and subsequent staff responses, the project is suitable for the site, findings for development on slopes (see staff's response to appellant's contention 1h) and

removal of landmark trees (see staff's response to appellant's contention 1f) can be made. During the November 14, 2018 hearing, the Planning Commission received testimony that during the Big Sur Land Use Advisory Committee (LUAC) meeting, neighboring property owners had concerns that the project's added vehicular traffic could result in safety hazards from a pedestrian vehicular interface. Recommendations for installation of a safety barrier were made and the applicant acquiesced. The Planning Commission approved the project with a condition of approval requiring the applicant to submit a final landscape plan showing installation of the safety barrier. The parking area the appellant references is on both the Morgenrath and River Inn properties. As discussed in staff's response to the appellant's contention 1a, the project includes dedication of 12 parking spaces to River Inn employees. Therefore, the project would result in additional dedicated visitor serving parking. The applicant also testified that as a result from discussions with Coastal Commission staff during a site visit, they have agreed to modify their plan to install fencing along SR 1 to screen vehicles. Instead, the applicant will plant vegetation to create a natural barrier.

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.”*

STAFF'S RESPONSE

As discussed in the preceding and subsequent staff responses, the Planning Commission did not find the project to 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.

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.”*

STAFF'S RESPONSE

Prior to the November 14, 2018 Planning Commission hearing, the project planner searched County records and consulted with Code Enforcement staff. There were no open code enforcement cases for the property. The most recent complaint was investigated and resulted in no merit. Therefore, the Planning Commission's finding for no violation was correct.

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.”*

STAFF’S RESPONSE

Please refer to staff’s responses to the appellant’s contentions 1c and 1f found in this discussion.

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.*

STAFF’S RESPONSE

Please refer to staff’s responses to the appellant’s contentions 1f and 4. Staff agrees that the site plan and the diagram prepared by the arborist are 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.

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.

STAFF'S RESPONSE

Please refer to staff's responses to the appellant's contentions 1f for the removal of 10 landmark trees. The remaining 6 consist of: 2 trees in the development area (1 standing dead and 1 in poor condition); 3 in the development area and pose hazards (2 where failure could impact people and 1 diseased); and 1 outside of the development area but pose hazards (hazard rating of 11). As discussed in staff's response to the appellant's contention 1d, staking of the silo was observed and it was determined that tree removal would not expose the structure as existing trees and topography provide screening. For these reasons, the Planning Commission found tree removal in conformance with the BSCLUP and CIP.

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”*

STAFF’S RESPONSE

During the November 18, 2018 hearing, the Planning Commission received testimony that on the basis of the whole record, that there is no evidence that the project, as designed, conditioned, and mitigated, would have a potential significant impact to the environment. Evidence contained in Initial Study/Mitigated Negative Declaration (SCH#: 2018091005) demonstrated that the 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.

According to Section 15064.f(2) of the CEQA Guidelines, if the lead agency determines there is substantial evidence in the record that the project may have a significant effect on the environment but determines that revisions in the project plans or proposals made by, or agreed to by, the applicant would avoid the effects or mitigate the effects to a point where clearly no significant effect on the environment would occur and there is no substantial evidence in light of the whole record before the public agency that the project, as revised, may have a significant effect on the environment then a mitigated negative declaration shall be prepared. The appellants

provide several points supporting Contention 8 and staff has responded to these points accordingly.

Staff's Response to Land Use and Planning – Please refer to all staff's responses found in this discussion.

Staff's Response to Aesthetics – Please refer to staff's responses to the appellant's contentions 1c, 1d, f, g, 2, 5, and 7 found in this discussion.

Staff's Response to Noise – Please refer to staff's responses to the appellant's contentions 1a, 1b, and 1c found in this discussion.

Staff's Response to Geology and Soils – Please refer to staff's responses to the appellant's contentions 1f, 1g, 1h, 1i, and 2 found in this discussion.

Staff's Response to Transportation/Traffic – Please refer to staff's responses to the appellant's contentions 1b, 1c, 1g, 2, and 5 found in this discussion.

Staff's Response to Biological Resources – Please refer to staff's responses to the appellant's contentions 1c, 1e, 1f, 1g, 5, 6 and 7 found in this discussion.

Staff's Response to Hazards and Hazardous Materials – Relative to pedestrian/vehicle hazards, please refer to staff's responses to the appellant's contention 2 found in this discussion. 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). EHB has also conditioned the project requiring the applicant to obtain a Hazardous Materials Management Services update. Therefore, potential impacts caused by hazards were determined to be less than significant.