



Board Report

File #: RES 19-056, **Version:** 1

PLN160851 - MORGENRATH (BLAZE ENGINEERING)

Public Hearing, continued from February 26, 2019 and April 23, 2019, to consider appeals by Matt and Carol Donaldson and by Paul Smith from the November 14, 2018 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 (Up to 16 trees, consisting of Bay laurel (14), cypress (1), and Coast Redwood (1), trees ranging in size from 13 to 60 inches).

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

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, 2018 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, 2018 Planning Commission decision approving a Combined Development Permit (RMA-Planning File No. PLN160851/Morgenrath);
- c. Adopt a Mitigated Negative Declaration;
- 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, 800 square feet of storage containers, storage of construction equipment such as generators, cement silo, 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 up to 16 trees [14 Bay laurel trees (two at 13-inches; two at 30-inches and ten, each at 14, 18, 23, 25, 26, 35, 36.5, 40, 50, and 60-inches respectively), 1 cypress tree at 48-inches, and 1 Coast Redwood at 20-inches] 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 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. As of the preparation of this May 21, 2019 Board report, staff has received no indication from either the applicant or appellants that a compromise was reached and agreed to. Therefore, staff is bringing this project forward with a recommendation of project approval for consideration by the Board.

Changes to the project since the Board hearing on February 26th are based on Board direction to modify the draft resolution and applicable conditions to clarify overflow parking for Big Sur River Inn employees and storage of construction materials. Modified language in Finding 2 (Consistency), Evidence “b”, is provided in “~~strikeout~~/underline” for clarification, which clarifies that the 12 parking spaces dedicated to Big Sur River Inn employees are located in the “upper parking area,” as delineated in the parking plan (**Attachment B.3**) and specified in Condition of Approval No. 1. Similarly, Finding No. 6, Evidence “e” and Condition of Approval No. 28, has been modified to specify indoor storage of construction materials and debris includes: concrete mix, cement, sand, asphalt, landscaping soils, plumbing supplies, electrical supplies, scrap metal, scrap material, machinery, and similar items.

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 E**), and conditionally approve the project. If the Board desires to take a different action, the Board could adopt a motion of intent and continue the hearing to a date certain for the staff to prepare a resolution with modified findings. Should the Board deny the appeal and approve the project, staff will file a Final Local Action Notice (FLAN) with the Coastal Commission. The matter can be appealed to/by the Coastal Commission within 10 working days of the Coastal Commission receiving the FLAN. Should the Board uphold the appeal and deny the project, there would be no project to appeal to the Coastal Commission.

DISCUSSION/PROCESS:

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 F**, 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 C**) and a second by Paul Smith (**Attachment D**). 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. These contentions are briefly addressed below and are discussed in detail within **Attachment A**.

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 April 23, 2019 in order to allow the applicant (Marty Morgenrath) and appellants (Matt and Carol Donaldson and Paul Smith) time to resolve their issues. On April 23, 2019, the Board further continued the hearing to May 21, 2019 at the request of the applicant and appellants to complete mediation proceedings.

As of the preparation of this May 21, 2019 Board report, staff has received no indication from either the applicant or appellants that a compromise was reached and agreed to. Therefore, staff is bringing this project forward with a recommendation of project approval for consideration by the Board. This recommendation is based on analysis of the proposed project's consistency with applicable policies and regulations, findings and evidence previously adopted by the Planning Commission (**Attachment F**, Resolution 18-045), the draft Board resolution (**Attachment B**) and proposed conditions of approval (**Attachment B.1**).

Project:

Proposed facilities consist of: a 760 square foot office, a 600 square foot workshop, an 800 square foot storage unit, and equipment such as generators, a cement silo, and above ground diesel storage tanks. An onsite wastewater treatment system is proposed to provide wastewater service and potable water would be provided by a test well converted into a permanent well. As a vacant parcel, these site improvements would result in the removal of up to 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. In addition, part of the development would occur on slopes in excess of 30%. Staff determined that the proposed site, as designed, would best comply with the LCP policies given the existing site conditions. The proposed General Development Plan, if approved, would address the operational components of the project.

Staff's analysis of the project application included review of the compatibility of the use with the subject property's zoning and the surrounding area, development within environmentally sensitive habitats and on slopes in excess of 30%, and the project's potential impacts to visual and tribal cultural resources. Prior to the Planning Commission hearing, staff received correspondence from California Coastal Commission (CCC) staff and neighboring property owners relative to the project's consistency with the VSC zoning district and surrounding neighborhood, proposed equipment storage within a right-of-way, noise, aesthetics, impacts to Apple Pie Ridge Road, and employee parking. Visual and noise impacts were addressed, by conditions of approval requiring: 1) submittal of a landscape and maintenance plan incorporating vegetative screening between the proposed shop area and the single family dwelling next door; and 2) storage of debris (such as scrap metals and materials) machinery, and similar items, within the approved storage containers. In addition, numerous letters from the Big Sur Community were received urging the Planning Commission to approve the project based on Blaze Engineering's role in the community. After weighing all of the evidence and testimony presented, the Planning Commission found that the project was consistent with all applicable regulations and adopted a resolution to approve the project. The considerations of the Commission are summarized below, and explained in further detail in **Attachment A**.

Compatible Use in VSC and Surrounding Area:

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. This district allows the establishment of other non-specific visitor-serving uses, of a similar character, density and intensity as those listed, provided the use is determined to be consistent and compatible with the intent of this VSC Chapter and the BSC LUP by the Planning Commission.

In addition, the Big Sur Land Use Plan (BSLUP) indicates that the subject property is within an area defined as Rural Community Center or “RCC” of the Big Sur Valley. This land use classification exists in areas where a variety of land use activities (inns, restaurants, service stations, and commercial uses) exist. The goal of the RCC is to support providing a spectrum of functions for both the visiting public and residents of the adjoining rural areas within areas where those uses were already established. In general, any use allowed in any zoning district is appropriate for RCC. Commercial uses are especially directed to existing RCCs.

In October 2018, a letter was received from CCC staff. The letter opined that the proposed project is not consistent with the RCC designation and the VSC zoning district of the property as it is CCC staff’s belief that these areas should be reserved for “higher priority” visitor serving uses such as restaurants, grocery stores, arts and crafts galleries, inns, hostels, service stations, and campgrounds. The Planning Commission determined that the project provides a direct service to the visiting public by: 1) providing first responder service in proximity to visiting commercial services, facilities, and their patrons in the area, and 2) dedicating 12 parking spaces on the Morgenrath property for Big Sur River Inn employees to use during the weekends and holidays. Based on the existing conditions of the area, the benefit the operation provides to the surrounding area, and consistency with the RCC land use designation of the site, the Planning Commission found that the project is allowed within the RCC designation and VSC zoning district. In addition, it is CCC staff’s belief that the proposed project is subject to the policies for development within the Critical Viewshed. Prior to the Planning Commission hearing, the applicant met with CCC staff resulting in a modification to the design; screening of the parking area adjacent to State Route 1 would be achieved with native vegetation instead of fencing. This modification was incorporated into the project that was considered and approved by the Planning Commission.

ESHA:

The subject property contains Redwood Forest natural community across the site. As such, proposed construction and tree removal would occur within 100 feet (in proximity) of areas identified as ESHA. BSLUP policies restrict development, including vegetation removal, in ESHA if it would result in any potential disruption of habitat value. The project proposes to primarily utilize existing disturbed areas such as roadways, building pads, and an existing parking area; resulting in siting development that minimizes disturbance to biological resources to the maximum extent feasible. However, complete avoidance cannot be achieved without reducing the project scope. As such, the project includes a request for a Coastal Development Permit to remove of up to 16 trees (14 Bay laurel ranging in size from 13 to 60-inches; 1 cypress 48-inches in size; and 1 Coast Redwood 20-inches in size). Five of these trees are being removed due to construction impacts, seven trees due to both their hazardous condition and construction impacts, and four trees due solely to their hazardous condition (hazard created with developing the site).

Appellants contend that removal of landmark and non-landmark trees violates BSCLUP forest resources policies and the Planning Commission’s failure to not include a condition requiring conveyance of a conservation easement over ESHA areas is also a violation of BSCLUP ESHA policies. The Planning Commission found that the proposed tree removal is the minimum necessary for development and would not result in the fragmenting of an intact forest system, creation of a new forest edge, or impact the existing quality of the system. Re-siting of the proposed development would result in additional removal of healthy trees and/or additional development on slopes in excess of 30%. Mitigation measures were incorporated within the project

requiring monitoring by a qualified arborist and the approval and implementation of protective fencing, construction management, and a restoration and fuel management plans. These mitigations are designed to reduce impacts to the Redwood Forest natural community to a less than significant level. The project biologist found the project site to contain very little native vegetation and an abundance of invasive English Ivy. Although it was not recommended by the biologist and the ESHA on the property is fragmented, pursuant to CIP Section 20.145.040.B, the project has been condition requiring dedication of a conservation easement over the ESHA. The applicant will have to consult with the project biologist and arborist to ensure any restrictions of the easement would not preclude restoration of the site.

Development on Slopes:

BSLUP policies prohibit development on slopes in excess of 30% unless the appropriate hearing body finds that there is no alternative which would allow development to occur on slopes less than 30%, or that the proposed development better achieves the resource protection objectives and policies of the LUP.

Approximately 48 square feet of the proposed development would occur on slopes in excess of 30%, divided by locations at: 1) the soldier pile walls adjacent to the office building and shop; 2) the proposed Hilfiker wall; and 3) the proposed driveway off State Route 1. Due to the shape, existing vegetation, and topography of the site, it is infeasible to relocate the development anywhere else on the site without increasing impacts on resources. The Hilfiker and soldier pile walls are necessary as the subject property has the potential to experience seismic ground shaking due to faults in the area and contains soils with moderate and high erosion potential.

Appellants contend that the Planning Commission resolution did not contain a separate finding for development on 30% and that the project's proposed development on 30% is in violation of the BSLUP. However, the Planning Commission found that development on 30% for the construction of the soldier pile and Hilfiker walls better achieves resource protection objectives as it reduces hazard risks on the site. The Commission also found that development on 30% slopes for the creation of 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. The appropriate finding and supporting evidence is found in Finding 9 of the Board of Supervisor's draft resolution (**Attachment B**).

Aesthetics - Visual/Design:

BSLUP policies prohibit public or private developments visible from State Route 1 (SR1) and major public viewing areas (the Critical Viewshed), except for developments within Rural Community Centers (RCC). Staking and flagging of the proposed office, shop, storage areas, and cement silo were observed during a site visit to determine potential impacts. The existing topography, combined with the vegetation of the site, is such that staking and flagging of the office, shop, and storage areas could not be seen from SR1. Due to its proximity to SR1, the silo has potential to be seen from the roadway. However, views would be obscured from the existing vegetation. Trees proposed for removal would not expose the proposed structures to views from SR1.

Appellants contend that the proposed project would be in violation of BSCLUP Critical Viewshed policies and would impact the appellant's private views. The Planning Commission found that impacts to scenic resources and the scenic character of the area were less than significant based on the siting of the structures, vegetation, and topography.

Tribal Cultural Resources:

During tribal consultation, the Ohlone/Costanoan-Esselen Nation (OCEN) stated that locations such as the coast and/or areas containing (or used to contain), a water source, have been known to provide occupation, gathering, and processing sites for Native Americans. The Big Sur River and Pheneger Creek are in proximity of the development area. Therefore, OCEN considers the subject property to potentially contain cultural tribal

resources. To reduce potential impacts to tribal cultural resources to a less than significant level, a mitigation measure recommended by OCEN was incorporated and approved by the Planning Commission.

Comments from California Coastal Commission (CCC) Staff:

As of this date, staff has not received any additional correspondence from CCC staff. All concerns relative to visitor serving uses and visual impacts have been addressed. No issues remain.

A more detailed discussion is included as **Attachment A**

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 18-19 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 - Discussion

Attachment B - Draft Resolution including:

- Conditions of Approval

- General Development Plan
- Project Plans

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

Attachment D - Notice of Appeal, Smith, Filed November 30, 2018

Attachment E - Initial Study/Negative Declaration

Attachment F - Planning Commission Resolution No. 18-045

Attachment G - California Coastal Commission Correspondence

Attachment H - 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.