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CEQA COMMENTS
REGARDING THE INITIAL STUDY FOR PLN180523 (ISABELLA 2
LLC) REVIEW PERIOD OF MARCH 10 THROUGH APRIL 9, 2020

1. February 27 and 28, 2020, Molly Erickson, Attorney, Save Carmel Point Cultural Resources
 2. March 18, 2020 – Sarah Fonseca, Cultural Resources Analyst, California Native American Heritage Commission
-

Sidor, Joe (Joseph) x5262

From: Sidor, Joe (Joseph) x5262
Sent: Friday, February 28, 2020 7:46 AM
To: Molly Erickson
Cc: Friedrich, Michele x5189
Subject: RE: Notice of Intent for the Isabella 2 LLC project (PLN180523) - Additional Comments

Good morning,

Thank you for the additional comments.

Joe

Joseph (Joe) Sidor, Associate Planner
Monterey County RMA-Planning
1441 Schilling Place, Salinas, CA 93901
(831) 755-5262 direct
(831) 755-5025 main reception



From: Molly Erickson <erickson@stamplaw.us>
Sent: Thursday, February 27, 2020 4:30 PM
To: Sidor, Joe (Joseph) x5262 <SidorJ@co.monterey.ca.us>
Subject: Re: Notice of Intent for the Isabella 2 LLC project (PLN180523) - Roof Access Query

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Mr. Sidor:

Thank you. A problem is that the current plans show the elevator and an initial study does not analyze the impacts/consistency of the roof deck, the elevator, the stairway access to the roof, and the safety barriers that would need to be constructed on the roof if it to be accessible by elevator or stairway, or other project elements. The initial study should identify the elevator and require the removal as a condition/mitigation, and it does not. Or the initial study should analyze a revised project that does not propose an elevator. Either way, the initial study should be revised and recirculated.

Sheet A2.3 of the 1/2020 plans you posted to Accela this afternoon shows the structure on the roof as a chimney with spark arrestor. Other sheets show it is an elevator. Which is accurate, or is the chimney be immediately adjacent to and in the same enclosed structure as an elevator? The chimney/elevator seems extraordinarily high and bulky, in light of the 18 foot height limitation and potential visual/aesthetic/view impacts. If the elevator element is removed, would the County allow the chimney to remain the same height and bulk?

The initial study analysis claims the project is a "remodel of and minor addition to an existing single family dwelling and accessory structure." That cannot be accurate because the aerial shows an empty lot.

The limits of disturbance are not stated. This is an unanalyzed and unmitigated project feature and impact. The 2020 plans regarding grading do not appear accurate because they do not show grading past the northern wall of much of the house. That is not consistent with the typical practices at Carmel Point and the erodible soils at that location. Did the GPR cover the entire limits of disturbance or merely the house footprint (the latter is materially smaller)? The GPR depth appears to be significantly shallower than the proposed excavation depth.

Please respond. Thanks again.

Molly Erickson
STAMP | ERICKSON
479 Pacific Street, Suite One
Monterey, CA 93940
tel: 831-373-1214, x14

On Thursday, February 27, 2020, 2:13:39 PM PST, Sidor, Joe (Joseph) x5262 <sidorj@co.monterey.ca.us> wrote:

I was just looking at the elevator access. The County (myself) will inform the applicant to remove the elevator access to the roof.

Thanks,
Joe

Joseph (Joe) Sidor, Associate Planner
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(831) 755-5025 main reception

From: Molly Erickson <erickson@stampplaw.us>
Sent: Thursday, February 27, 2020 2:03 PM
To: Sidor, Joe (Joseph) x5262 <SidorJ@co.monterey.ca.us>
Cc: Friedrich, Michele x5189 <friedrichm@co.monterey.ca.us>
Subject: Re: Notice of Intent for the Isabella 2 LLC project (PLN180523)
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Thank you. It is an ongoing problem that the References list on County initial studies and County approvals fail to specify which version of the plans are being reviewed and approved, respectively. Please consider and escalate this concern.

Please respond to the query in my second paragraph below. Thanks again.

Molly Erickson
STAMP ERICKSON
479 Pacific Street, Suite One
Monterey, CA 93940
Tel: 831-373-1214, x14

On Feb 27, 2020, at 1:49 PM, Sidor, Joe (Joseph) x5262 <SidorJ@co.monterey.ca.us> wrote:

Good afternoon,

The revised plan set has been uploaded to Accela.

Joe

Joseph (Joe) Sidor, Associate Planner
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(831) 755-5262 direct
(831) 755-5025 main reception

From: Molly Erickson <erickson@stamplaw.us>
Sent: Thursday, February 27, 2020 12:46 PM
To: Sidor, Joe (Joseph) x5262 <SidorJ@co.monterey.ca.us>
Cc: Friedrich, Michele x5189 <friedrichm@co.monterey.ca.us>
Subject: Fw: Notice of Intent for the Isabella 2 LLC project (PLN180523)
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Mr. Sidor:

I represent Save Carmel Point Cultural Resources, which makes the following initial comments. The plans in the initial study (IS) are not consistent with the plans available on Accela. The plans on Accela are dated 2018. The plans in the IS appear to be dated 2019 or 2020, and some of the elevations/plans are not dated, which is confusing and potentially misleading. Please send me the complete set of current plans and put the complete current set of plans on the public Accela site.

The most recent plans appear to show to be a fourth level with elevator access, and no barriers on the fourth floor such as railings. Please let me know if that is not accurate. Thank you.

Sincerely,
Molly Erickson
STAMP | ERICKSON
479 Pacific Street, Suite One
Monterey, CA 93940
tel: 831-373-1214, x14

Friedrich, Michele x5189

From: Sidor, Joe (Joseph) x5262
Sent: Wednesday, March 18, 2020 2:23 PM
To: ceqacommments
Subject: FW: SCH 2020029094, Isabella 2 LLC Project
Attachments: MND Concerns Isabella 2 Sidor Monterey 2020.03.18.pdf

See attached letter.

Joseph (Joe) Sidor, Associate Planner
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From: Fonseca, Sarah@NAHC <Sarah.Fonseca@nahc.ca.gov>
Sent: Wednesday, March 18, 2020 2:06 PM
To: Sidor, Joe (Joseph) x5262 <SidorJ@co.monterey.ca.us>
Subject: SCH 2020029094, Isabella 2 LLC Project

[CAUTION: This email originated from outside of the County. Do not click links or open attachments unless you recognize the sender and know the content is safe.]

Good Morning,

Attached is the response to the project referenced above. If you have any additional questions, please feel free to contact our office email at nahc@nahc.ca.gov.

Regards,

Sarah Fonseca

Cultural Resources Analyst

Native American Heritage Commission

1550 Harbor Blvd., Suite 100
West Sacramento, CA 95691

(916) 373-3714

Sarah.Fonseca@nahc.ca.gov



NATIVE AMERICAN HERITAGE COMMISSION

March 18, 2020

Joseph Sidor
Monterey County

Via Email to: sidorj@co.monterey.ca.us



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Re: SCH# 2020029094, Isabella 2 LLC Project, Monterey County, California

Dear Mr. Sidor:

The Native American Heritage Commission (NAHC) has reviewed the Draft Environmental Impact Report (DEIR)/Mitigated Negative Declaration (MND) or Negative Declaration prepared for the project referenced above. The review may have included the Cultural Resources Section, Archaeological Report, Appendices for Cultural Resources Compliance, as well as other informational materials. We have the following concerns:

- It is unclear if the mitigation measures regarding cataloguing and testing of any findings not associated with human remains was discussed and agreed upon during consultation with all traditionally, culturally affiliated California Native American Tribes from the NAHC's contact list.

The California Environmental Quality Act (CEQA)¹, specifically Public Resources Code section 21084.1, states that a project that may cause a substantial adverse change in the significance of a historical resource is a project that may have a significant effect on the environment.² If there is substantial evidence, in light of the whole record before a lead agency, that a project may have a significant effect on the environment, an environmental impact report (EIR) shall be prepared.³ In order to determine whether a project will cause a substantial adverse change in the significance of a historical resource, a lead agency will need to determine whether there are historical resources with the area of project effect (APE).

CEQA was amended in 2014 by Assembly Bill 52 (AB 52).⁴ **AB 52 applies to any project for which a notice of preparation or a notice of negative declaration or mitigated negative declaration is filed on or after July 1, 2015.** AB 52 created a separate category for "tribal cultural resources"⁵, that now includes "a project with an effect that may cause a substantial adverse change in the significance of a tribal cultural resource is a project that may have a significant effect on the environment."⁶ Public agencies shall, when feasible, avoid damaging effects to any tribal cultural resource.⁷ Your project may also be subject to **Senate Bill 18 (SB 18)** (Burton, Chapter 905, Statutes of 2004), Government Code 65352.3, if it also involves the adoption of or amendment to a general plan or a specific plan, or the designation or proposed designation of open space. **Both SB 18 and AB 52 have tribal consultation requirements.** Additionally, if your project is also subject to the federal National Environmental Policy Act (42 U.S.C. § 4321 et seq.) (NEPA), the tribal consultation requirements of Section 106 of the National Historic Preservation Act of 1966⁸ may also apply.

¹ Pub. Resources Code § 21000 et seq.

² Pub. Resources Code § 21084.1; Cal. Code Regs., tit. 14, § 15064.5 (b); CEQA Guidelines Section 15064.5 (b)

³ Pub. Resources Code § 21080 (d); Cal. Code Regs., tit. 14, § 15064 subd.(a)(1); CEQA Guidelines § 15064 (a)(1)

Consult your legal counsel about compliance with AB 52 and SB 18 as well as compliance with any other applicable laws.

Agencies should be aware that AB 52 does not preclude agencies from initiating tribal consultation with tribes that are traditionally and culturally affiliated with their jurisdictions before the timeframes provided in AB 52. For that reason, we urge you to continue to request Native American Tribal Contact Lists and Sacred Lands File searches from the NAHC. The request forms can be found online at: <http://nahc.ca.gov/resources/forms/>. Additional information regarding AB 52 can be found online at http://nahc.ca.gov/wp-content/uploads/2015/10/AB52TribalConsultation_CalEPAPDF.pdf, entitled "Tribal Consultation Under AB 52: Requirements and Best Practices".

The NAHC recommends lead agencies consult with all California Native American tribes that are traditionally and culturally affiliated with the geographic area of your proposed project as early as possible in order to avoid inadvertent discoveries of Native American human remains and best protect tribal cultural resources.

A brief summary of portions of AB 52 and SB 18 as well as the NAHC's recommendations for conducting cultural resources assessments is also attached.

If you have any questions or need additional information, please contact me at my email address:
Sarah.Fonseca@nahc.ca.gov.

Sincerely,



Sarah Fonseca
Cultural Resources Analyst

Attachment

cc: State Clearinghouse

Pertinent Statutory Information:

Under AB 52:

AB 52 has added to CEQA the additional requirements listed below, along with many other requirements: Within fourteen (14) days of determining that an application for a project is complete or of a decision by a public agency to undertake a project, a **lead agency** shall provide formal notification to a designated contact of, or tribal representative of, traditionally and culturally affiliated California Native American tribes that have requested notice. A **lead agency** shall begin the consultation process within 30 days of receiving a request for consultation from a California Native American tribe that is traditionally and culturally affiliated with the geographic area of the proposed project.⁴ and **prior to the release of a negative declaration, mitigated negative declaration or environmental impact report.** For purposes of AB 52, "consultation shall have the same meaning as provided in Gov. Code § 65352.4 (SB 18).⁵

The following topics of consultation, if a tribe requests to discuss them, are mandatory topics of consultation:

- a. Alternatives to the project.
- b. Recommended mitigation measures.
- c. Significant effects.⁶

1. The following topics are discretionary topics of consultation:

- a. Type of environmental review necessary.
- b. Significance of the tribal cultural resources.
- c. Significance of the project's impacts on tribal cultural resources.

If necessary, project alternatives or appropriate measures for preservation or mitigation that the tribe may recommend to the lead agency.⁷

With some exceptions, any information, including but not limited to, the location, description, and use of tribal cultural resources submitted by a California Native American tribe during the environmental review process **shall not be included in the environmental document or otherwise disclosed by the lead agency or any other public agency to the public, consistent with Government Code sections 6254 (r) and 6254.10.** Any information submitted by a California Native American tribe during the consultation or environmental review process shall be published in a confidential appendix to the environmental document unless the tribe that provided the information consents, in writing, to the disclosure of some or all of the information to the public.⁸

If a project may have a significant impact on a tribal cultural resource, **the lead agency's environmental document shall discuss** both of the following:

- a. Whether the proposed project has a significant impact on an identified tribal cultural resource.
- b. Whether feasible alternatives or mitigation measures, including those measures that may be agreed to pursuant to Public Resources Code section 21082.3, subdivision (a), avoid or substantially lessen the impact on the identified tribal cultural resource.⁹

Consultation with a tribe shall be considered concluded when either of the following occurs:

- a. The parties agree to measures to mitigate or avoid a significant effect, if a significant effect exists, on a tribal cultural resource; or
- b. A party, acting in good faith and after reasonable effort, concludes that mutual agreement cannot be reached.¹⁰

Any mitigation measures agreed upon in the consultation conducted pursuant to Public Resources Code section 21080.3.2 **shall be recommended for inclusion in the environmental document and in an adopted mitigation monitoring and reporting program**, if determined to avoid or lessen the impact pursuant to Public Resources Code section 21082.3, subdivision (b), paragraph 2, and shall be fully enforceable.¹¹

If mitigation measures recommended by the staff of the lead agency as a result of the consultation process are not included in the environmental document or if there are no agreed upon mitigation measures at the conclusion of consultation, or if consultation does not occur, and if substantial evidence demonstrates that a project will cause a significant effect to a tribal cultural resource, **the lead agency shall consider feasible mitigation** pursuant to Public Resources Code section 21084.3 (b).¹²

An environmental impact report **may not be certified**, nor may a mitigated negative declaration or a negative declaration be adopted unless one of the following occurs:

⁴ Pub. Resources Code § 21080.3.1, subs. (d) and (e)

⁵ Pub. Resources Code § 21080.3.1 (b)

⁶ Pub. Resources Code § 21080.3.2 (a)

⁷ Pub. Resources Code § 21080.3.2 (a)

⁸ Pub. Resources Code § 21082.3 (c)(1)

⁹ Pub. Resources Code § 21082.3 (b)

¹⁰ Pub. Resources Code § 21080.3.2 (b)

¹¹ Pub. Resources Code § 21082.3 (a)

¹² Pub. Resources Code § 21082.3 (e)

- a. The consultation process between the tribes and the lead agency has occurred as provided in Public Resources Code sections 21080.3.1 and 21080.3.2 and concluded pursuant to Public Resources Code section 21080.3.2.
- b. The tribe that requested consultation failed to provide comments to the lead agency or otherwise failed to engage in the consultation process.
- c. The lead agency provided notice of the project to the tribe in compliance with Public Resources Code section 21080.3.1 (d) and the tribe failed to request consultation within 30 days.¹³

This process should be documented in the Tribal Cultural Resources section of your environmental document.

Under SB 18:

Government Code § 65352.3 (a) (1) requires consultation with Native Americans on general plan proposals for the purposes of "preserving or mitigating impacts to places, features, and objects described § 5097.9 and § 5091.993 of the Public Resources Code that are located within the city or county's jurisdiction. Government Code § 65560 (a), (b), and (c) provides for consultation with Native American tribes on the open-space element of a county or city general plan for the purposes of protecting places, features, and objects described in Sections 5097.9 and 5097.993 of the Public Resources Code.

- SB 18 applies to **local governments** and requires them to contact, provide notice to, refer plans to, and consult with tribes prior to the adoption or amendment of a general plan or a specific plan, or the designation of open space. Local governments should consult the Governor's Office of Planning and Research's "Tribal Consultation Guidelines," which can be found online at: https://www.opr.ca.gov/docs/09_14_05_Updated_Guidelines_922.pdf
- **Tribal Consultation:** If a local government considers a proposal to adopt or amend a general plan or a specific plan, or to designate open space it is required to contact the appropriate tribes identified by the NAHC by requesting a "Tribal Consultation List." If a tribe, once contacted, requests consultation the local government must consult with the tribe on the plan proposal. **A tribe has 90 days from the date of receipt of notification to request consultation unless a shorter timeframe has been agreed to by the tribe.**¹⁴
- There is no Statutory Time Limit on Tribal Consultation under the law.
- **Confidentiality:** Consistent with the guidelines developed and adopted by the Office of Planning and Research,¹⁵ the city or county shall protect the confidentiality of the information concerning the specific identity, location, character, and use of places, features and objects described in Public Resources Code sections 5097.9 and 5097.993 that are within the city's or county's jurisdiction.¹⁶
- **Conclusion Tribal Consultation:** Consultation should be concluded at the point in which:
 - The parties to the consultation come to a mutual agreement concerning the appropriate measures for preservation or mitigation; or
 - Either the local government or the tribe, acting in good faith and after reasonable effort, concludes that mutual agreement cannot be reached concerning the appropriate measures of preservation or mitigation.¹⁷

NAHC Recommendations for Cultural Resources Assessments:

- Contact the NAHC for:
 - A Sacred Lands File search. Remember that tribes do not always record their sacred sites in the Sacred Lands File, nor are they required to do so. A Sacred Lands File search is not a substitute for consultation with tribes that are traditionally and culturally affiliated with the geographic area of the project's APE.
 - A Native American Tribal Contact List of appropriate tribes for consultation concerning the project site and to assist in planning for avoidance, preservation in place, or, failing both, mitigation measures.
 - The request form can be found at <http://nahc.ca.gov/resources/forms/>.
- Contact the appropriate regional California Historical Research Information System (CHRIS) Center (http://ohp.parks.ca.gov/?page_id=1068) for an archaeological records search. The records search will determine:
 - If part or the entire APE has been previously surveyed for cultural resources.
 - If any known cultural resources have been already been recorded on or adjacent to the APE.
 - If the probability is low, moderate, or high that cultural resources are located in the APE.
 - If a survey is required to determine whether previously unrecorded cultural resources are present.

¹³ Pub. Resources Code § 21082.3 (d)

¹⁴ (Gov. Code § 65352.3 (a)(2)).

¹⁵ pursuant to Gov. Code section 65040.2,

¹⁶ (Gov. Code § 65352.3 (b)).

¹⁷ (Tribal Consultation Guidelines, Governor's Office of Planning and Research (2005) at p. 18).

- If an archaeological inventory survey is required, the final stage is the preparation of a professional report detailing the findings and recommendations of the records search and field survey.
 - The final report containing site forms, site significance, and mitigation measures should be submitted immediately to the planning department. All information regarding site locations, Native American human remains, and associated funerary objects should be in a separate confidential addendum and not be made available for public disclosure.
 - The final written report should be submitted within 3 months after work has been completed to the appropriate regional CHRIS center.

Examples of Mitigation Measures That May Be Considered to Avoid or Minimize Significant Adverse Impacts to Tribal Cultural Resources:

- Avoidance and preservation of the resources in place, including, but not limited to:
 - Planning and construction to avoid the resources and protect the cultural and natural context.
 - Planning greenspace, parks, or other open space, to incorporate the resources with culturally appropriate protection and management criteria.
- Treating the resource with culturally appropriate dignity, taking into account the tribal cultural values and meaning of the resource, including, but not limited to, the following:
 - Protecting the cultural character and integrity of the resource.
 - Protecting the traditional use of the resource.
 - Protecting the confidentiality of the resource.
- Permanent conservation easements or other interests in real property, with culturally appropriate management criteria for the purposes of preserving or utilizing the resources or places.
- Please note that a federally recognized California Native American tribe or a non-federally recognized California Native American tribe that is on the contact list maintained by the NAHC to protect a California prehistoric, archaeological, cultural, spiritual, or ceremonial place may acquire and hold conservation easements if the conservation easement is voluntarily conveyed.¹⁸
- Please note that it is the policy of the state that Native American remains and associated grave artifacts shall be repatriated.¹⁹

The lack of surface evidence of archaeological resources (including tribal cultural resources) does not preclude their subsurface existence.

- Lead agencies should include in their mitigation and monitoring reporting program plan provisions for the identification and evaluation of inadvertently discovered archaeological resources.²⁰ In areas of identified archaeological sensitivity, a certified archaeologist and a culturally affiliated Native American with knowledge of cultural resources should monitor all ground-disturbing activities.
- Lead agencies should include in their mitigation and monitoring reporting program plans provisions for the disposition of recovered cultural items that are not burial associated in consultation with culturally affiliated Native Americans.
- Lead agencies should include in their mitigation and monitoring reporting program plans provisions for the treatment and disposition of inadvertently discovered Native American human remains. Health and Safety Code section 7050.5, Public Resources Code section 5097.98, and Cal. Code Regs., tit. 14, section 15064.5, subdivisions (d) and (e) (CEQA Guidelines section 15064.5, subds. (d) and (e)) address the processes to be followed in the event of an inadvertent discovery of any Native American human remains and associated grave goods in a location other than a dedicated cemetery.

¹⁸ (Civ. Code § 815.3 (c)).

¹⁹ (Pub. Resources Code § 5097.991).

²⁰ per Cal. Code Regs., tit. 14, section 15064.5(f) (CEQA Guidelines section 15064.5(f)).