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November 1, 2017

5060.000

Carl Holm, Director
Monterey County RMA
1441 Schilling Place
Salinas, CA 93901

RE: Bailey/PLN160608

Dear Carl:

I represent Caroline Bailey. Ms. Bailey is proposing to build an addition to her house at 3257 Seventeen Mile Drive. The Planning Commission considered the application October 15th and was unanimously in support of the application. A couple of the Commissioners were concerned over the use of a Categorical Exemption when they had not been given the usual findings and evidence to support that position. The Commission continued the hearing to December 13th for the staff to either prepare an initial study or to prepare findings and evidence to support their recommendation to find the project Categorical Exempt and approve the Coastal Development Permit. I am very concerned that the application will be further delayed for the preparation and circulation of an unnecessary initial study when a CE is clearly appropriate in this case.

The staff is correct in its determination that a CE is appropriate and that is supported by substantial evidence in the record. There is no evidence in the record that is contrary to their recommendation. The project has been approved by the PBC ARB, DMF LUAC and the County's HRRB. There is no known opposition to the project.

Section 15061 (a) of the CEQA Guidelines provides that once the County has determined the project is subject to CEQA, which this project clearly is, it must next determine if the project is exempt from further CEQA review. Section 15061 (b) goes on to state that a project is exempt from further review if:

- The project is exempt pursuant to a categorical exemption (see Article 19, commencing with Section 15300) and the application of that categorical exemption is not barred by one of the exceptions set forth in Section 15300.2 (Section 15061(b)); or,
- The activity is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA (Section 15061(b)).

The CE which applies to this application is found in Section 15303 which exempts "the construction and location of limited numbers of new, small facilities or structures [which] include but are not limited to:

- (a) One single-family residence or a second dwelling unit in a residential zone..."

During the course of the Planning Commission discussion Wendy Strimling alluded to the fact that there was a limit on the size of the house or the size of an addition. I believe the limit she was referring to is for commercial buildings, not a single family residence.

This exemption is not barred by any of the exceptions listed in Section 15300.2:

- (a) Location. Classes 3, 4, 5, 6, and 11 are qualified by consideration of where the project is to be located -a project that is ordinarily insignificant in its impact on the environment may in a particularly sensitive environment be significant. Therefore, these classes are considered to apply in all instances, except where the project may impact on an environmental resource of hazardous or critical concern where designated, precisely mapped, and officially adopted pursuant to law by federal, state, or local agencies.

"Determinations of whether ESHA is actually present in the Del Monte Forest in any particular situation must be based on an evaluation of both the resources on the ground and knowledge about the sensitivity of the habitat at the time of development consideration (Monterey County Code Section 20.147.040.A)." Dr. Jeff Froke prepared a biotic report for the project in August, 2017. In that report he wrote "In a general fashion, the map-of-record that illustrates the range of native Monterey Cypress Forest in Pebble Beach (see DMFLUP Figure 2a), and that is solely based on the Monterey Cypress range map produced by Griffin and Critchfield (1972)... (Froke, Page 10)." The report prepared by Dr. Froke was based on his field studies performed in June, 2017. That time frame is recognized as the "...local flowering and bird nesting seasons." The objective of the survey was to "... provide documentation and an assessment of biological resources, including potential ESHA, sufficient in detail to support a consistency analysis by the County of Monterey with respect to guiding regulations and policies, particularly those per the DMFLUP and California Environmental Quality Act (CEQA)." So it is that report, not solely Figure 2a, which provides the information necessary to make the determination as to areas that are identifiable as ESHA and assess what, if any impact this project may have on ESHA. The Planning Commission found at its October 15th hearing that the area of the proposed home additions is not within the indigenous Monterey Cypress habitat.

- (b) Cumulative Impact. All exemptions for these classes are inapplicable when the cumulative impact of successive projects of the same type in the same place, over time is significant.

This is a single project on this lot and no subsequent projects are anticipated so there is no need to consider cumulative impacts.

- (c) Significant Effect. A categorical exemption cannot be used for an activity where there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances.

There are no unusual circumstances in the case at hand which would give rise to the application of the exception from exemption laid out in CEQA Guidelines Section 15300.2(c). The recent landmark case decided by the California Supreme Court in Berkeley Hillside Preservation v. City of Berkeley (2015) 60 Cal.4th 1086, clarified the meaning and applicability of the "unusual circumstances" exception to projects otherwise eligible for a categorical exemption under CEQA. The Court in that case held that:

*"In listing a class of projects as exempt, the Secretary has determined that the environmental changes typically associated with projects in that class are not significant effects within the meaning of CEQA, even though an argument *1105 might be made that they are potentially significant. The plain language of Guidelines section 15300.2, subdivision (c), requires that a potentially significant effect must be "due to unusual circumstances" for the exception to apply. The requirement of unusual circumstances recognizes and gives effect to the Secretary's general finding that projects in the exempt class typically do not have significant impacts. Id. at 104-105."*

Again, in this case there is no colorable argument that the project is subject to this "unusual circumstances" exception. The project is an addition to an existing single family dwelling in a residential area. The condition of this property is similar to most all other properties in the vicinity. There is no evidence in the record that this project will have any, much less a significant, impact on the environment. There is substantial evidence in the record there will be no impact to ESHA or the environment in general. In addition to the Froke Biotic Survey, a Tree Resource Survey was performed by Frank Ono. The findings of those reports included:

- *"...the 1.24-ac developed site is divisible into three (3) basic cover environments: (1) The existing residence with its surrounding hardscape and courtyard plantings; (2) a wooded front yard with mixed native and nonnative trees and shrubs, and with a predominantly cypress overstory; and (3) a wooded back yard with nominal ground cover of native and nonnative woody and herbaceous plants and an patchy overstory of mixed Coast Live Oak, Monterey Pine, and Monterey Cypress" (Froke, page 6);*
- *"A key finding of this report, especially with respect to ESHA and DMFLUP Policy 20, is that the mixed cypress-pine-oak cover of the historically developed property, particularly on the back half of the site does not constitute Monterey Cypress Forest, biologically, ecologically or structurally." (Froke, page 7);*

- "...the back portion of the property and the area that would be affected by the proposed property improvements are outside of the cypress forest coverage as presented by DMFLUP Figure 2a" (Froke, page 7);
- "The absence of integral habitat, particularly ground-level and understory conditions that would be suitable or requisite for special plants known from local closed-cone coniferous forests reinforces the observed absence of such plants onsite." (Froke, page 9);
- "...non-listed special taxa including, e.g., Hickman's Onion (*Allium hickmanii*; RPR IB.2), and Small-leaved Lomatium (*Lomatium parvifolium*; RPR 4.2 (limited distribution, not rare) are absent from the site." (Froke, page 9);
- "None of the animal taxa detected on site or nearby is listed by either the federal or state governments as Threatened or Endangered [or] the animals is listed as a Special Animal by CDFW" were found on site (Froke, page 9);
- "Monterey Cypress Forest as an integral, natural or even disturbed cover type is not present on the backend of the property, i.e., on the back side of the existing residence where proposed construction would occur. The front of the property between the residence and 17-Mile Drive may qualify as a disturbed and ruderal cypress forest, but that area is wholly outside of the project footprint or affected area." (Froke, page 11);
- "...the lower half evinces Monterey Cypress Forest while the upper half, wherein the project is planned, does not." (Froke, page 12);
- "A single mature cypress tree is proximal to a proposed structural element of the project, and the project has the potential to encroach inside the dripline of the tree...it is clear that none of the project, here specifically the garage construction, will adversely affect the identified cypress, or any other cypress onsite, directly or indirectly." Froke, pages 11 and 12);
- "...the project as proposed will not threaten to adversely affect special-status habitat, plant or animal resources, nor will it violate state and federal wildlife protection statutes... conclude with an opinion that has no cypress trees or cover being adversely affected by any element of the project." (Froke, page 17);
- "The project as proposed, plans on retaining trees without any tree removal and takes into account of the sustainability of the Monterey cypress habitat, with work being limited to those areas previously disturbed. There is existing encroachment into the root zone/dripline of several trees however the encroachment is historical and is not affecting the trees negatively." (Ono, page 8);
- This proposal to build additions to a single-family residence and expand the driveway and garage is planned to maintain the existing Cypress forested environment, allowing the forest to continue to exist and regenerate over time. No tree removal for this site is proposed or expected due to construction. All trees are expected to survive if properly protected and monitored...No significant long term affects to the forest ecosystem are anticipated as this is already a developed residential site." (Ono, page 9).

- (d) Scenic Highways. A categorical exemption shall not be used for a project which may result in damage to scenic resources, including but not limited to, trees, historic buildings, rock outcroppings, or similar resources, within a highway officially designated as a state scenic highway. This does not apply to improvements which are required as mitigation by an adopted negative declaration or certified EIR.

This project has no effect on a designated scenic highway. While it may be partially visible from Seventeen Mile Drive, it is screened by existing fencing and vegetation and is similar to other homes in the area.

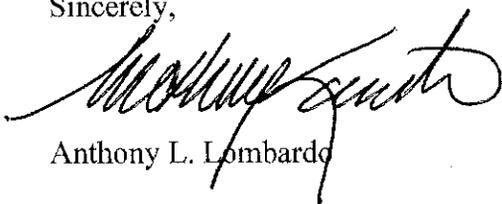
- (e) Hazardous Waste Sites. A categorical exemption shall not be used for a project located on a site which is included on any list compiled pursuant to Section 65962.5 of the Government Code. *This not a hazardous waste site nor is there one in the vicinity.*

- (f) Historical Resources. A categorical exemption shall not be used for a project which may cause a substantial adverse change in the significance of a historical resource.

The Bailey house is not eligible for listing on the State or National Registers. It may be eligible for listing on the local register. Concerns were expressed by the project historian that certain defining features of the existing house could be lost. As a result, John Scourkes, Chair of the Monterey County HRRB was invited to review the plans and make recommendations to assure those defining features would not be compromised. Those suggestions were incorporated into the final plans. The project, as currently designed has been unanimously recommended for approval by the HRRB. There is then no substantial adverse change to a significant historic resource.

Therefore, the staff was correct in its determination that a CE was appropriate for this project. There is substantial evidence in the record there will be no significant impact to the environment. There is no reason to further delay this project for the preparation and circulation of an initial study. Please direct your staff to move forward with the preparation of a Planning Commission resolution with findings and evidence demonstrating that Categorical Exemption is appropriate.

Sincerely,



Anthony L. Lombardo

cc: Jacqueline Onciano
Brandon Swanson

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