

Attachment N

This page intentionally left blank.

Re: Continuance of march 26th Board Hearing on PLN170611, PLN170612, and PLN170613 - Pietro to April 23

Guthrie, Jaime S. x6414

Mon 3/18/2019 10:48 AM

To: Molly Erickson <erickson@stamplaw.us>;

Cc: Holm, Carl P. x5103 <HolmCP@co.monterey.ca.us>; Swanson, Brandon xx5334 <SwansonB@co.monterey.ca.us>; Dugan, John x6654 <DuganJ@co.monterey.ca.us>; Spencer, Craig x5233 <SpencerC@co.monterey.ca.us>; Strimling, Wendy x5430 <strimlingw@co.monterey.ca.us>; McDougal, Melissa x5146 <McDougalM@co.monterey.ca.us>; 100-District 5 (831) 647-7755 <district5@co.monterey.ca.us>; Harris, Lisa x4879 <harrislm@co.monterey.ca.us>; Girard, Leslie J. x5365 <GirardLJ@co.monterey.ca.us>;

Ms. Erickson,

Thank you for your response and inquiries. There will be no other report and the applicant has agreed to the continuance.

Kind regards,

Jaime Scott Guthrie, AICP

Associate Planner



County of Monterey

Resource Management Agency - Planning

1441 Schilling Place South, 2nd Floor

Salinas, CA 93901

831.796.6414

GuthrieJS@co.monterey.ca.us

It does not do to leave a live dragon out of your calculations, if you live near him. ~ J. R. R. Tolkien, The Hobbit

Sometimes there's just no way to hold back the river. ~ Paul Coelho, The Alchemist

A certain type of perfection can only be realized through a limitless accumulation of the imperfect. ~ Haruki Murakami, Kafka on the Shore

From: Molly Erickson <erickson@stamplaw.us>

Sent: Monday, March 18, 2019 10:46:13 AM

To: Guthrie, Jaime S. x6414

Cc: Holm, Carl P. x5103; Swanson, Brandon xx5334; Dugan, John x6654; Spencer, Craig x5233; Strimling, Wendy

x5430; McDougal, Melissa x5146; 100-District 5 (831) 647-7755; Harris, Lisa x4879; Girard, Leslie J. x5365

Subject: Re: Continuance of march 26th Board Hearing on PLN170611, PLN170612, and PLN170613 - Pietro to April 23

Ms. Guthrie:

Thank you for your email. Will staff be preparing a report for March 26 other than to recommend the continuance?

Has the applicant agreed to the continuance?

Molly

Molly Erickson
STAMP ERICKSON
479 Pacific St., Suite One
Monterey, CA 93940

On Mar 18, 2019, at 12:52 PM, Guthrie, Jaime S. x6414 <GuthrieJS@co.monterey.ca.us> wrote:

Dear Ms. Erickson,

This email is to inform you that the appeal of all three projects will be scheduled to April 23. Staff will formally make this request at the March 26th Board meeting.

Kind regards,

Jaime Scott Guthrie, AICP

Associate Planner



County of Monterey

Resource Management Agency - Planning

1441 Schilling Place South, 2nd Floor

Salinas, CA 93901

831.796.6414

GuthrieJS@co.monterey.ca.us

It does not do to leave a live dragon out of your calculations, if you live near him. ~ J. R. R. Tolkien, The Hobbit

Sometimes there's just no way to hold back the river. ~ Paul Coelho, The Alchemist

A certain type of perfection can only be realized through a limitless accumulation of the imperfect. ~ Haruki Murakami, Kafka on the Shore

From: Molly Erickson <erickson@stamplaw.us>

Sent: Thursday, February 28, 2019 8:55 AM

To: Holm, Carl P. x5103

Cc: Swanson, Brandon xx5334; Dugan, John x6654; Spencer, Craig x5233; Guthrie, Jaime S. x6414; Strimling, Wendy x5430; McDougal, Melissa x5146; 100-District 5 (831) 647-7755; Harris, Lisa x4879; Girard, Leslie J. x5365

Subject: Re: Continuance of march 12th Board Hearing on PLN170611, PLN170612, and PLN170613 - Pietro to April 2nd

My clients object to separate Board consideration of the three projects. The three projects are interrelated and should all be heard together. The applicant caused the current situation through its illegal development. The County in its discretion can and should continue all three PLNs to a future hearing date. The County code requirement for action within 60 days does not contemplate a significant change of circumstances caused by the applicant. Alternatively, the County should simply uphold the appeal as to Isabella and the Valley View projects and require an EIR which could and should sort through the complex situation.

The projects have potentially significant cumulative impacts and they are all by the same applicant. One issue raised in the appeal is that if remains or artifacts are uncovered at one site, such as Valley View, then all excavation should stop within a specific radius, which could include the Isabella construction site. If the County acts to deny the appeal as to Isabella, then the County would have lost regulatory control over that site even if the County Board later wants to include Isabella in the excavation restrictions. CEQA prohibits piecemealing for this reason and others.

Molly

Molly Erickson

STAMP ERICKSON

479 Pacific St., Suite One

Monterey, CA 93940

On Feb 27, 2019, at 7:54 AM, Holm, Carl P. x5103 <HolmCP@co.monterey.ca.us> wrote:

I need to clarify. The applicant is agreeable to a continuance of the appeal on PLN170612 and 613 to the March 26th BOS hearing. PLN170611 is excluded from the agreement to continue. As such, we are obligated to take that to hearing within 60 days of the appeal being filed, and that is March 12th.

Carl P. Holm, AICP

RMA Director

From: Swanson, Brandon xx5334 <SwansonB@co.monterey.ca.us>

Sent: Tuesday, February 26, 2019 5:05 PM

To: Molly Erickson <erickson@stamp.law.us>

Cc: Holm, Carl P. x5103 <HolmCP@co.monterey.ca.us>; Dugan, John x6654

<DuganJ@co.monterey.ca.us>; Spencer, Craig x5233
<SpencerC@co.monterey.ca.us>; Guthrie, Jaime S. x6414
<GuthrieJS@co.monterey.ca.us>; Strimling, Wendy x5430
<strimlingw@co.monterey.ca.us>; McDougal, Melissa x5146
<McDougalM@co.monterey.ca.us>; 100-District 5 (831) 647-7755
<district5@co.monterey.ca.us>

Subject: RE: Continuance of march 12th Board Hearing on PLN170611, PLN170612, and PLN170613 - Pietro to April 2nd

Ms Erickson,

I apologize for the back and forth, but I just received an email from the applicant that they are not in agreement with a continuance to March 26th. Due to that fact, we will be keeping these projects on the March 12th agenda as originally planned.

Thank you,

-Brandon

Brandon Swanson
Interim RMA Chief of Planning
Monterey County Resource Management Agency
1441 Schilling Place - Salinas, CA 93901
Phone: 831-755-5334 - www.co.monterey.ca.us/rma/

From: Molly Erickson <erickson@stamplaw.us>
Sent: Monday, February 25, 2019 3:43 PM
To: Swanson, Brandon xx5334 <SwansonB@co.monterey.ca.us>
Cc: Holm, Carl P. x5103 <HolmCP@co.monterey.ca.us>; Dugan, John x6654 <DuganJ@co.monterey.ca.us>; Spencer, Craig x5233 <SpencerC@co.monterey.ca.us>; Guthrie, Jaime S. x6414 <GuthrieJS@co.monterey.ca.us>; Strimling, Wendy x5430 <strimlingw@co.monterey.ca.us>; McDougal, Melissa x5146 <McDougalM@co.monterey.ca.us>; 100-District 5 (831) 647-7755 <district5@co.monterey.ca.us>
Subject: Re: Continuance of march 12th Board Hearing on PLN170611, PLN170612, and PLN170613 - Pietro to April 2nd

Mr. Swanson:

Yes, March 26 in the afternoon would work. The morning would not work for me. Thank you.

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

On Monday, February 25, 2019, 3:36:39 PM PST, Swanson, Brandon xx5334
<SwansonB@co.monterey.ca.us> wrote:

Ms. Erickson,

I looking at our Board Calendar, and the work that needs to be done on the report, we can actually get this project to hearing on March 26th. Given that you will already be there for the PG&E item, I would assume that this date will work for you? Please confirm that March 26th will work for you as a continuance date for these projects.

Thank you,

-Brandon

Brandon Swanson
Interim RMA Chief of Planning
Monterey County Resource Management Agency
1441 Schilling Place - Salinas, CA 93901
Phone: 831-755-5334 - www.co.monterey.ca.us/rma/

From: Molly Erickson <erickson@stamplaw.us>
Sent: Monday, February 25, 2019 3:18 PM
To: Swanson, Brandon xx5334 <SwansonB@co.monterey.ca.us>
Cc: Holm, Carl P. x5103 <HolmCP@co.monterey.ca.us>; Dugan, John x6654 <DuganJ@co.monterey.ca.us>; Spencer, Craig x5233 <SpencerC@co.monterey.ca.us>; Guthrie, Jaime S. x6414 <GuthrieJS@co.monterey.ca.us>; Strimling, Wendy x5430 <strimlingw@co.monterey.ca.us>; McDougal, Melissa x5146 <McDougalM@co.monterey.ca.us>; 100-District 5 (831) 647-7755 <district5@co.monterey.ca.us>
Subject: Re: Continuance of march 12th Board Hearing on PLN170611, PLN170612, and PLN170613 - Pietro to April 2nd

Mr. Swanson:

Thank you for the clarification that the Carmel Point/Pietro appeal had been scheduled for March 12. I was not aware of the March 12 date. County staff had not consulted with me about a hearing on that date.

I have something scheduled for April 23 so as soon as I got your email I started looking into whether I can change it, which may be possible. I will let you know the status; I hope to have an update probably later this week. As to April 2, it is unlikely I could be available, I am sorry.

Update: As of yesterday afternoon, no stop work order was posted at either of the sites. I believe the County stop work orders are required to be posted. Thank you.

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

On Monday, February 25, 2019, 3:01:20 PM PST, Swanson, Brandon xx5334
<SwansonB@co.monterey.ca.us> wrote:

Ms. Erickson,

Thank you for the quick reply. Our Board will be in budget workshop all day on April 9th, and there is no meeting scheduled for April 16th. Is there any possibility you could be available for April 2nd? If not, would you be open to a continuance to April 23rd?

Thank you,

-Brandon

Brandon Swanson
Interim RMA Chief of Planning
Monterey County Resource Management Agency
1441 Schilling Place - Salinas, CA 93901
Phone: 831-755-5334 - www.co.monterey.ca.us/rma/

From: Molly Erickson <erickson@stamplaw.us>
Sent: Monday, February 25, 2019 2:43 PM
To: Swanson, Brandon xx5334 <SwansonB@co.monterey.ca.us>
Cc: Holm, Carl P. x5103 <HolmCP@co.monterey.ca.us>; Dugan, John x6654 <DuganJ@co.monterey.ca.us>; Spencer, Craig x5233

<SpencerC@co.monterey.ca.us>; Guthrie, Jaime S. x6414
<GuthrieJS@co.monterey.ca.us>; Strimling, Wendy x5430
<strimlingw@co.monterey.ca.us>

Subject: Re: Continuance of February 26th Board Hearing on PLN170611, PLN170612, and PLN170613 - Pietro to April 2nd

Mr. Swanson:

Thank you for your email. As of today, I am available on April 9 in the afternoon and April 16 in the afternoon. I am not available on April 2. I appreciate your checking with me about this scheduling matter.

Regards,

Molly

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

On Monday, February 25, 2019, 1:29:49 PM PST, Swanson, Brandon xx5334
<SwansonB@co.monterey.ca.us> wrote:

Ms. Erickson,

As you are aware, the County is investigating work that has taken place on two of these sites which currently have discretionary permits on appeal with the Board of Supervisors including trenching for electrical work and the removal/moving of an oak tree. Currently these projects are set for hearing on March 12th. However, pending the outcome of the County's investigation, there will be need to be additional discussion and analysis in the staff report, and resolution. As such staff is recommending continuing the hearing on the projects to April 2nd.

Please confirm if you would be in agreement with this continuance to April 2nd. If we receive concurrence, Staff will prepare a memo for the Board to make them aware of the continuance.

Thank you,

-Brandon

Brandon Swanson

Interim RMA Chief of Planning
Monterey County Resource Management Agency
1441 Schilling Place - Salinas, CA 93901
Phone: 831-755-5334 - www.co.monterey.ca.us/rma/

Michael W. Stamp
Molly Erickson

STAMP | ERICKSON
Attorneys at Law

479 Pacific Street, Suite One
Monterey, California 93940
T: (831) 373-1214

March 10, 2019

John Phillips, Chair
Board of Supervisors
County of Monterey
Salinas CA 93901

Re: Appeal of PLN170611, PLN170612, PLN170613, Carmel Point

Dear Chair Phillips and members of the Board of Supervisors:

I represent appellants The Open Monterey Project and Save Carmel Point Cultural Resources. The appeal concerns three projects with large underground floors/basements proposed for three contiguous parcels located on Carmel Point less than one block from Carmel River State Beach and within 750 feet of numerous known archaeological resources. The projects have the same owner, same builder, and very similar impacts.

Request: Uphold the appeal. Require a focused EIR to look at underground impacts. Or deny the projects based on the information to date.

Problems with the Three Projects

The three projects involve interrelated and complicated issues.

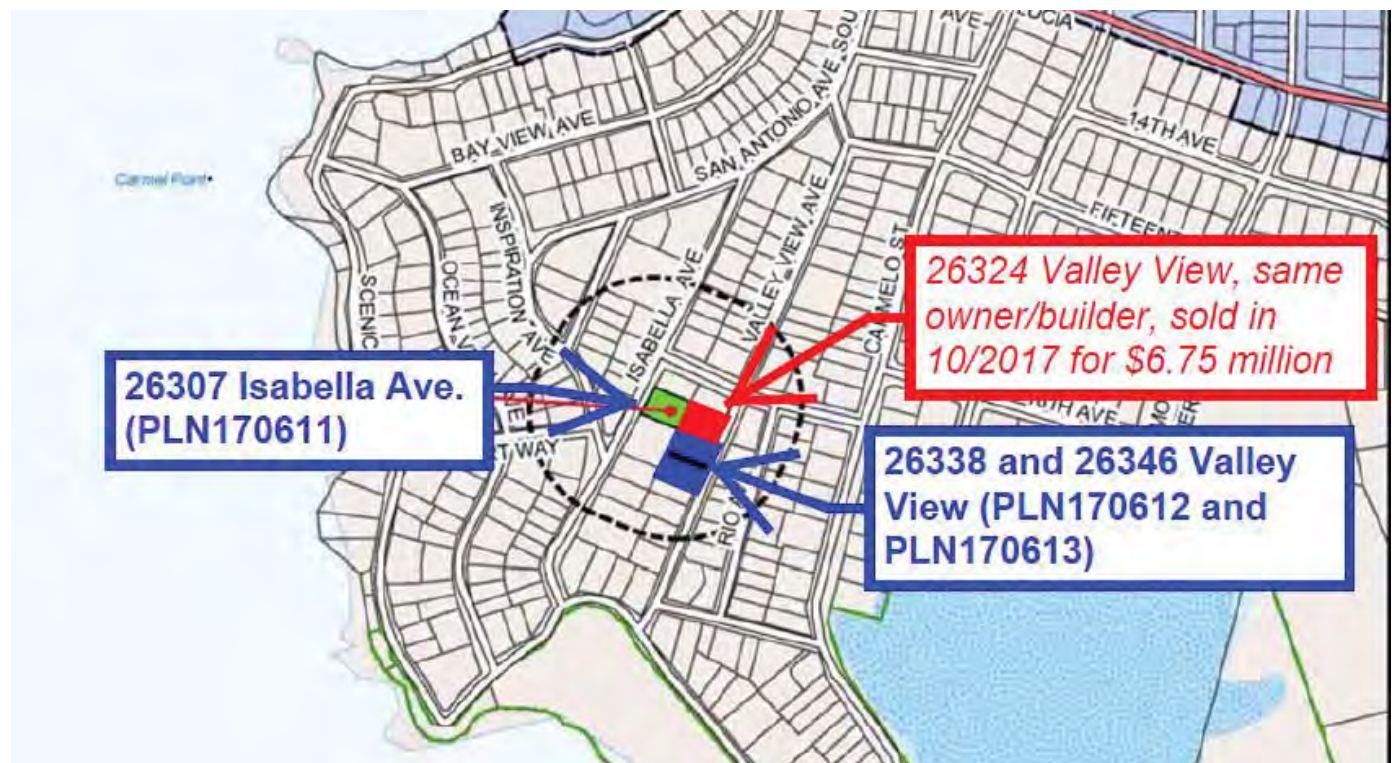
- The projects as proposed are inconsistent with the Carmel Area Land Use Plan and other laws.
- Focused review is required for these projects due to potential impacts on cultural resources and tribal cultural resources.
- The applicant has illegally graded the three sites extensively, and illegally removed protected trees and other vegetation.

The County Should Review All Three Projects Together.

Separate consideration of any one project is premature and would deprive the Board of a clear picture of the combined project impacts. Segmenting the Board review of, and actions on, the three related projects would be improper. The cumulative impacts of each project include the impacts of the others. The potential impacts are interrelated, and the proposed mitigations are interrelated. It is likely that the sites would be under construction at the same time. The three projects are in a highly sensitive archeological area. Attachment A to this letter shows the nearby known archeological finds.

One proposed condition is that upon discovery of remains or artifacts, excavation is to be halted within 50 meters *on that site only*. The three project sites are within 50 meters of each other. A discovery on one site could be within 50 meters (164 feet) of *both other sites*. The condition should require cessation within 50 meters *of the find*, which is what the County's original initial study proposed. The County made a material change to the mitigation and the County did not recirculate its changed proposed mitigation. The changed mitigation would have less effect on reducing the impact, and the proposed mitigation would not reduce the potential impacts to less than significant.

Attachment B to this letter shows the project sizes and sites. The following graphic shows how close each of the project sites is to the others:



If the Board of Supervisors were to approve the Isabella project as proposed, then in the future the Board's hands would be tied as to that project, because the approval would have been given. The Board could not later apply the broader condition to all three sites. This is one reason why CEQA prohibits segmentation – so that all aspects of a project are considered when it is still possible to place meaningful conditions on it. After a project has been approved, the Board's ability to affect the project is almost nonexistent.

John Phillips, Chair, Board of Supervisors
Re: Appeal of PLN170611, PLN170612, PLN170613, Carmel Point
March 10, 2019
Page 3

There are many reasons against piecemeal review of these three sites, including the fact that the County has proposed nearly identical conditions for all three projects. Thus, any change or direction regarding one project should flow through to the other two projects.

The one action that Board can take on March 12 is to require a focused environmental review of the impacts of the basements, as to the Isabella project and the two Valley View projects. The projects should be analyzed in a single environmental document, instead of the segmented multiple-document review that the County has done to date. That would be an efficient and logical step and would allow the projects to proceed through the County process.

County Appears to Be Unaware of Unpermitted Work and Unpermitted Uses at the 26307 Isabella site

The Board should not act on the Isabella site because there are existing county code violations at the site. County staff has not investigated the evidence and the complaints of past grading and past tree removal at the site. Here is a “before” photo:

26307 Isabella Ave. - while applicant was using as construction yard (Dec. 2016)



Here is an “after” photo:

26307 Isabella Ave. - AFTER applicant graded, cleared and used it as commercial construction yard, all without permits from by County (2017-2018)



Figure 22– Biological Assessment: The consultant found the subject parcel to be previously disturbed

None of the code enforcement issues and the required after-the-fact permits are reflected in the public hearing notice. The applicant's actions have caused very complicated issues. The applicant created the problems. The County should not accommodate the situation the applicant has caused. The Board's review process should be measured and thoughtful, instead of rushed by the applicant. These matters are too important to rush.

To make matters worse, the County has not investigated or addressed the ongoing and current commercial use of the Isabella site as a construction yard, including heavy equipment storage, a construction shed, loose construction materials stacked against oak trees, and large storage bins. The applicant has used all three sites as ongoing commercial construction sites to support his other, off-site construction projects, causing serious material negative impacts to the neighborhood.

Code Violations at the Isabella site and at BOTH Valley View sites

The staff report claims that the violations are at the two Valley View sites, and not at the Isabella site. That is not accurate. The before-and-after photographs of the Isabella site show illegal grading and clearing and vegetation, and the apparent removal of two trees, all without permits. The March 2019 photographs show the commercial construction yard use of the site.

The County Code prohibits the Board from approving this project because the site has unresolved code violations. The first paragraph of County code section 20.19.120 states "No department, commission, or public employee of the County of Monterey which is vested with the duty or authority to issue or approve permits, licenses or other entitlements shall issue or approve such permits, licenses or other entitlements nor determine a discretionary permit complete where there is an outstanding violation of this Title or the remaining portions of the Monterey County Coastal Implementation Plan involving the property upon which there is pending application for such permit, license or other entitlement unless such permit, license, or other entitlement is the, or part of the, administrative remedy for the violation."

County staff has taken the position that unless a violation notice is recorded, the Board can freely approve projects at a site where there are known violations. The position makes no sense and makes a mockery of the County code. It also creates an incentive for County RMA to delay investigating meritorious complaints about a site when the staff is trying to get the decision makers to approve a project at that site.

The Area Contains a Concentration of Sensitive Tribal Cultural Resources and Other Cultural Resources

Carmel Point is an extremely sensitive archaeological area and has been an area of archaeological study for at least thirty years. In 2012, Breschini and Haversat prepared a comprehensive report with an overview of archaeological investigations and a summary of findings. CA-MNT-17 is the oldest archaeological site in Monterey County, and among the oldest on the central California coast. The earliest radio carbon date from the site is more than 9,400 years before present.

County records show that the Carmel Point area meets the criteria for listing on the California Register of Historic Resources and the federal National Register of Historic Places because the sites are capable of "yielding information important in prehistory." The Breschini and Haversat report concludes that the Carmel Point area is eligible for listing as an "historic district" on the National Register,, given that prehistoric populations occupied this area for over 9,000 years and resources, including burials, remain in place.

County records contain reports from experienced archeologists that state that based on actual discoveries of human remains at Carmel Point, burials can be present even in sparse midden deposits, or where nearby excavation shows no or very few cultural resources.

Carmel Area Land Use Plan Requires the Protection of the Cultural Resources

According to the Carmel Area Land Use Plan (LUP), the shoreline from Carmel Point to Point Lobos contains one of the densest remaining concentrations of shellfish gathering activities by Native Americans in central California and these archeological deposits have been identified as a highly significant and sensitive resource.

The LUP's Key Archaeological Resource Policy 2.8.2 requires that Carmel's archaeological resources be maintained and protected for their scientific and cultural heritage values. This applies to areas considered to be archaeologically sensitive but not yet surveyed and mapped. The LUP key policy 2.8.2 states:

Carmel's archaeological resources, including those areas considered to be archaeologically sensitive but not yet surveyed and mapped, shall be maintained and protected for their scientific and cultural heritage values. New land uses, both public and private, should be considered compatible with this objective only where they incorporate all site planning and design features necessary to minimize or avoid impacts to archaeological resources.

LUP Policy 2.8.4.6 requires mitigation and adequate preservation measures to be implemented when site planning constraints do not allow for avoidance of cultural sites.

The Local Coastal Program (LCP) requires new development to be designed to avoid or substantially minimize impacts to cultural resources on parcels where archaeological or cultural sites are located (LUP Policy 2.8.3.4 and Coastal Implementation Plan section 20.146.090 D.3).

The Initial Study Tried to Mitigate the Impacts of the Basements/Underground Floors

The finished Isabella basement would be 1,366 square feet. The finished Val Verde basements combined would be 4,100 square feet.

The initial study circulated in 2018 questioned the suitability of the proposed basements in an area of known archaeological significance. The concern was for the large and deep excavation required for basements. The initial study stated that the

impacts to cultural resources and tribal cultural resources could and should be mitigated by removal of the basements. This is a feasible mitigation.

The initial study found that the deletion of the proposed basement resulted in less-than-significant impacts to cultural and tribal cultural resources. The initial study was circulated on that basis: presuming that the projects would not include basements. As the initial study stated, "the impacts assessed below and in the checklist above for Cultural Resources have *not* considered the impacts to cultural resources and associated mitigation measures with the incorporation of a basement." (Emph. added.)

The County does not have a registered archeologist on staff and the County did not retain an independent archeologist to advise the County as to these projects. Instead, the applicant submitted three archaeological surveys that the applicant's consultants had prepared. The three reports could not and did not rule out the possibility of finding cultural resources on the three sites, including human remains.

The initial study stated that the County has not investigated or evaluated the cumulative effects of maximizing the development potential of parcels on Carmel Point, as more and more existing smaller houses are demolished and replaced with larger houses with basements and large underground floors. (Typical basement uses are gyms, wine cellars, dens, entertainment rooms, and extra bedrooms and bathrooms.) The initial study stated that it did *not* analyze the cumulative impacts resulting from other development proposals, especially basement proposals, on the Point, including the three Pietro Investment projects. This analytical omission appears to have been based on the initial study's presumption that the basements would not be features of the three Pietro projects.

These three sites are either the last or among the few last vacant sites left on Carmel Point, which is almost fully built out. The fact that they have not been built on in modern memory, and they are contiguous, makes them even more valuable as potential archeological sites. According to County records, less than 10% (47 of the Point area's 512 parcels) contained a basement, subterranean garage, or underground living space. Before more are considered, the County should act to investigate and protect the underground resources as the laws require. A cumulative impacts analysis should include all three Pietro projects and the other known and foreseeable projects. In October 2018, County Planning reported that it had received six requests for basement approvals on Carmel Point in the past year alone.

Before the Planning Commission Acted, the County Materially Revised the Mitigations

The recommendation before you is to abandon the mitigation and instead to allow large basements as features of the three projects. The County also now proposes

to change other mitigations. The new replacement mitigations would be less effective and they have not been reviewed in a circulated CEQA document.

The analysis of the projects' impacts is incomplete. The County has not supplemented the initial study's cultural resource analysis to include an evaluation of the entire project, including an investigation on how the additional excavation for the basements might impact cultural resources. Instead, the County added the basements to the project approvals but the County did not perform the necessary supplemental analysis. Until and unless the analysis is done, the County cannot say that the impacts have been adequately mitigated. The County also has not performed a cumulative impacts analysis, as the initial study acknowledged.

AB 52 Protects Tribal Cultural Resources

State law has been amended to specifically protect tribal cultural resources. Under Public Resources Code section 21080.3.2, the County is required to consult with tribes that have requested such consultation. The County did that here, initially. As part of the consultation, the County and the tribe understood and agreed that:

- The County would prohibit basements, and
- The tribe requested that all artifacts uncovered during development be returned to the tribe.

The County circulated the initial study based on that consultation. (See Pub. Resources Code, § 21082.3.)

When later the County materially changed its position and decided to recommend that the basements be allowed, that was a material change to the project description. The County also changed its position about the ultimate destination of tribal artifacts. The County now recommends that the artifacts could go to the Monterey County Historical Society at the discretion of the property owner. The tribe opposes this change. The tribe has stated that the historical society has lost artifacts in the past. This was another material change.

The post-circulation project changes have abrogated any AB 52 agreement between the County and the tribe. The County has made material changes to the project described in the initial study for approval as conditioned: no basements vs. basements. The tribe asked for the artifacts back; the County initially agreed and now is leaving that decision up to the property owner to decide. The County has not respected the process and the Native Americans' cultural patrimony. The tribes have not been meaningfully consulted under AB 52. The only consultation the County has had with the tribe has been rendered null and void because the County materially

changed its position and the project features. The County should have reinitiated the AB 52 consultation process. Tribal consultation is not an "accommodation" to a tribe; it is the law.

The current version of the environmental document does not comply with Public Resources Code section 21082.3 because the document does not include the tribe's requested mitigation measures agreed upon in the AB 52 consultation. The revised document also fails to discuss whether the proposed project with a basement would have a significant impact on an identified tribal cultural resource, and whether feasible alternatives or mitigation measures, including those measures that were agreed on in the AB 52 consultation, would avoid or substantially lessen the impact on the identified tribal cultural resource.

A Mitigated Negative Declaration Is Not the Correct Environmental Document When the Applicant Refuses to Comply with the Proposed Mitigations

Even assuming that a mitigated negative declaration was appropriate here, which it was not, a lead agency may use a mitigated negative declaration only where the applicant agrees to the mitigations *before* the lead agency releases the initial study for public review. (CEQA Guidelines, § 15070(b)(1).)

Here, the original initial study recommended mitigations of eliminating the basements of all three projects. That document was circulated. The applicant objected. After that, the County deleted the mitigation and did not recirculate any environmental document. The County process did not follow CEQA's strict procedural mandates.

Other Post-Circulation Changes to Environmental Document

The original County initial study recognized and acknowledged the desire for respect for their ancestors' remains and for cultural resources. In the revised initial study, the County has taken the new position that "A second consecutive negative report on the subject parcel provides enough evidence" to allow basements. The County's approach is unsupported, unwise, and inconsistent with CEQA. The tribe's input, the project-specific archeological reports and other material and relevant Carmel Point evidence are substantial evidence to support a fair argument that there could be potentially significant impacts on cultural resources and tribal cultural resources. There was a positive archeological report and a second report that showed cultural resources that the developer's archeologist called "insignificant." The County staff's argument is that there is "enough evidence" to proceed based on the applicant's report. Not so. It is basic CEQA law that the existence of contrary evidence does not controvert the evidence that triggers the requirement to prepare an EIR. The County should not proceed on the basis of a mitigated negative declaration.

A new proposed condition requiring a historic resources overlay does not contain specific performance standards and is ambiguous and unclear how it would protect the known and unknown cultural, tribal cultural, and archeological resources on the sites. This is especially concerning in light of the multiple red tags and illegal excavation.

Late last week the County staff released a lengthy and materially changed version of the County analysis and proposed conditions. We have not yet had sufficient time to prepare meaningful comments on all the changes. The revised language in the proposed resolutions is confusing and ambiguous, and thus not enforceable as required by law. Appellants will submit further information on these concerns.

Potential Harms of 14'- Deep Excavation Throughout Much of the Sites
Outweigh the Applicant's Wish for Large Basements

The County should consider the potential harms.

- The permanent impacts to the cultural resources would be very significant, and the harm could not be undone.
- The impact of effective mitigations on the property owner merely means no basements. The owner would still be able to develop the properties with single-level houses of at least three or more bedrooms and 2.5 or more bathrooms

The potential harm far outweighs the minor burden on the applicant. The answer is clear. There is no prejudice in taking the time to do it right and follow the law.

The County Should Not Reward the Applicant for His Illegal Actions.

The applicant has argued that he should be able to excavate basements because he has already disturbed the site by grading illegally. The grading was illegal and the County should not reward him for his illegal actions.

In any event, the applicant's claim is not supported. The representations of the applicant are not reliable especially when as here, the applicant has a material interest in the approval of the project and argument would serve his goals. There is no independent investigation of the applicant's claim and how meaningful the claim is. There is no information as to how deep the disturbed soils go, versus how deep the excavation for the proposed basements would be, versus how deep the excavation for a one-story house would be. The County records show the excavation would be 14 feet or deeper, to allow for drainage. None of the archeological investigations went that deep. Archeologists cannot state and have not stated with certainty that there are no undisturbed cultural materials at depth. Even if the soils are disturbed, they still could

John Phillips, Chair, Board of Supervisors
Re: Appeal of PLN170611, PLN170612, PLN170613, Carmel Point
March 10, 2019
Page 11

yield valuable archeological information, cultural resources and tribal cultural resources that are of significance to Native Americans.

The County should not reward those who engage in unfair business practices. Developers who take illegal and unpermitted actions create unfair competition to those who comply with the laws and follow the requirements.

Cultural Resources and Tribal Cultural Resources.

For purposes of this appeal and these discussions, the terms cultural resources, tribal cultural resources, and archeological resources, each is intended to refer generally to all categories, unless the term is quoted or used with specificity.

A Focused EIR Would Be Funded by the Applicant Under the County Fee Schedule

The County fee schedule establishes that an applicant shall pay for independent EIRs, and the County charges a small surcharge to compensate the County staff for its coordination for the EIR.

The applicant is a sophisticated property investment company. The applicant has been on full notice of the laws and the rich resources of Carmel Point, and the applicant chose to proceed and take the risk. The applicant purchased four contiguous sites. One site had an existing house. The applicant recently sold that site for \$6.75 million according to County public records, so it has received a return on its investment. A reasonable estimate is that the three proposed projects would sell for a total of around \$20 million, if not more.

Renewed Offer to Meet

My written and verbal offers to meet with the County have not been accepted.

Conclusion

For each of the reasons described here and in the record before the County, the appeal should be granted. The County should require a focused EIR.

Very truly yours,

STAMP | ERICKSON

/s/ Molly Erickson

Molly Erickson

John Phillips, Chair, Board of Supervisors
Re: Appeal of PLN170611, PLN170612, PLN170613, Carmel Point
March 10, 2019
Page 12

Attachments:

- A. Initial Study figure 19
- B. Map showing size and proximity of project sites to each other
- C. OCEN letter dated March 28, 2018 on these Carmel Point projects. The OCEN letter apparently was not referenced in the initial study and was not provided in the staff reports to the Planning Commission.

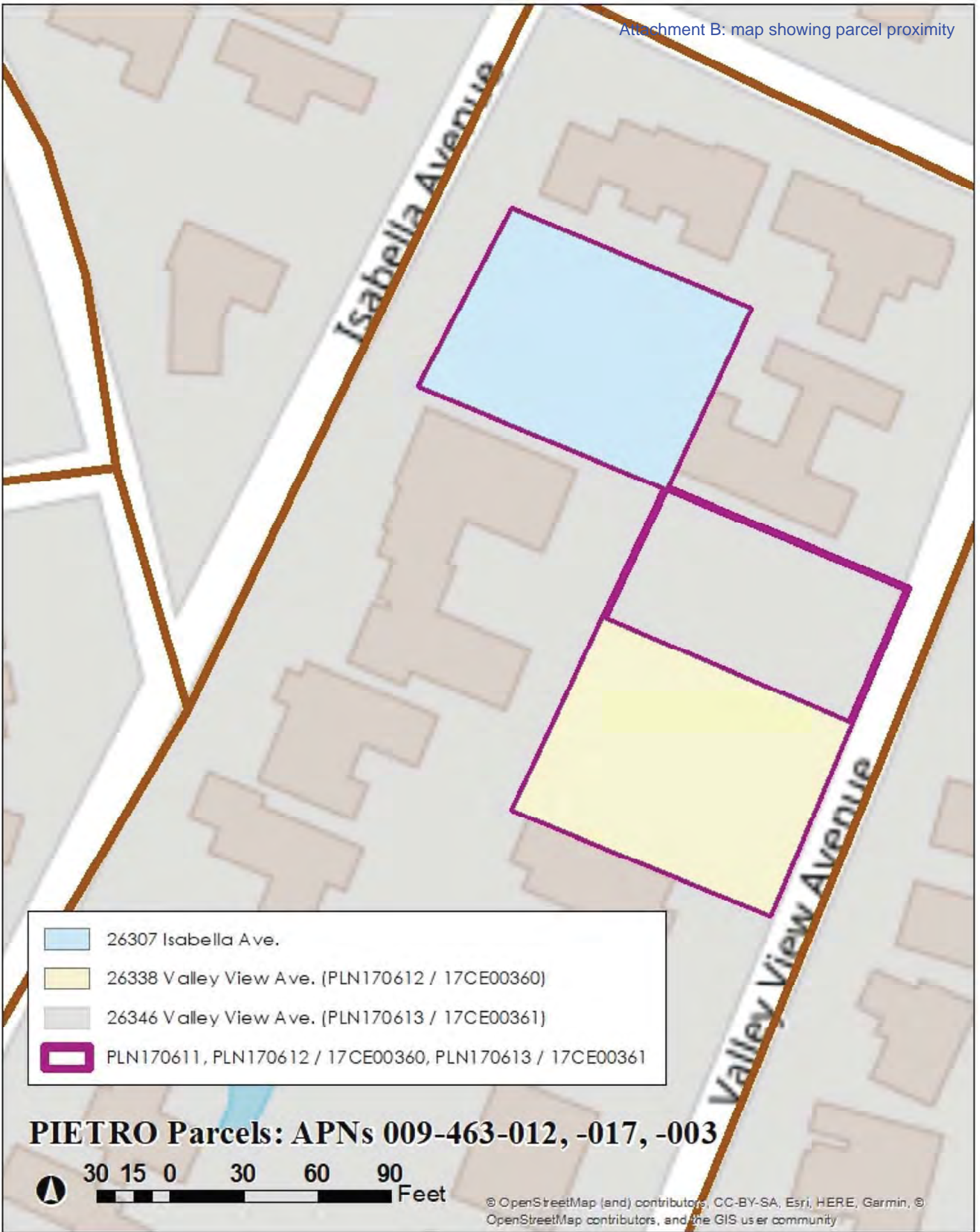
Attachment A:

Initial Study Figure 19

This figure shows the 26307 Isabella parcel in a cluster of archaeological buffers. The buffers represent 750-foot buffer zones from a known/positive archaeological finding.



Figure 19 – Carmel Point: Archaeological 750-foot buffer, subject parcel outlined in orange



Ohlone/Costanoan-Esselen Nation



*Previously acknowledged as
The San Carlos Band of
Mission Indians
The Monterey Band
And also known as
O.C.E.N. or Esselen Nation
P.O. Box 1301
Monterey, CA 93942*

www.ohlonecostanoanesselelnation.org

March 28, 2018

District 1 – Luis Alejo
District 2 – John M. Phillips
District 3 – Simon Salinas
District 4 – Jane Parker
District 5 – Mary Adams
Board of Supervisors
168 West Alisal Street, 1st Floor
P.O. Box 1728
Salinas, CA 93902

Re: CA-MNT-17, Sacred Village Site of Ohlone/Costanoan-Esselen Nation

Saleki Atsa,

Ohlone/Costanoan-Esselen Nation (OCEN) is the aboriginal and historic documented previously recognized tribe that was never terminated by any act of Congress and formally under the jurisdiction of the Bureau of Indian Affairs (BIA) during the first half of the 20th century. As a result of the discovery in 1905 of the 18 unratified California Indian treaties (1851-1852), and the subsequent appointment of Charles E. Kelsey as Special Indian agent for Northern California in 1905, our tribe was formally recognized as the Monterey Band of Monterey County and slated for land purchase under 1906, 1908 and later Congressional Landless California Indian Appropriation Acts. Presently, OCEN is the legal tribal government representative for over 600 enrolled members of Esselen, Carmeleno, Monterey Band, Rumsen, Chalon, Soledad Mission, San Carlos Mission and/or Costanoan Mission Indian descent of Monterey County. Though other Native people may have lived in the region, nonetheless the greater Monterey Bay area is the indigenous homeland of our people. OCEN constitutes the Most Likely Descendant documented tribe within the meaning of both federal and state laws. Included with this letter please find a territorial map by Taylor 1856; Levy 1973; and Milliken 1990, indentifying Tribal areas.

Brief Historical Background on the Theft and Settlement of Aboriginal California Lands

Our OCEN members had enrolled with the BIA under the 1928 California Indians Jurisdictional Act during the 1928-32, 1948-55 and 1968-71 enrollment periods and our applications were approved by the Secretary of Interior and federal courts. As a result of those enrollment enrolled heads-of-household were eligible in 1950s for a payment of \$150.00 for the illegal theft of 8.5 million acres of land not set aside for tribes as part of the 18 treaties of 1851-52. Furthermore, there was a second settlement in 1971/72 for the sum of \$668.00 per head-of-household as payment for the illegal theft of 64,425,000 acres of land. Under the California Indian Jurisdictional Act California Indians were not permitted to have legal representation during these claims hearings. This was the generous offer as just compensation for the theft of California, especially when the only legal instrument the US Government had to quiet the aboriginal title of Native Peoples in the United States was through the treaty system. This was what the dominant society offered through the federal courts, even after our tribal (as well as other California Indian tribe's) men and later women served overseas in every single military campaign spanning from WWI, WWII, Korea, Vietnam, Desert Storm and Iraq.

Ohlone/Costanoan-Esselen Nation objects to all excavation in known cultural lands, even when they are described as previously disturbed, and of no significant archaeological value.

Please be advised that it is our priority that our ancestor's human remains discovered within our ancestral heritage cemetery and/or village sites must be protected and remain undisturbed. We desire that all sacred burial items be left with our ancestors on site or as ultimately determined by OCEN's tribal governmental leadership. All cultural items must be returned to Ohlone/Costanoan-Esselen Nation as cultural patrimony as defined under the cultural resources and other statues found in federal and state case law. Furthermore, we ask for the same respect that is afforded all our current day deceased, and by no other definition these ancestral burial sites are indeed considered cemeteries, and as a result we seek that respect for our ancestors as anyone would expect respect for their deceased family members in present-day cemeteries. **Our definition of respect means no disturbance, disinterment, and destruction of the sacred resting grounds for our ancestors.**

CA-MNT-17 Prehistoric Background:

(Preliminary Cultural Resources Survey by Susan Morley – September 2015)

Carmel Point has yielded the earliest date for the central coast. Recently, Dr. Gary Breschini, working with Lynn Mounday, obtained a carbon date of 9,300 YBP (Breschini, 2011, personal communication) for CA-MNT-17C, the most studied archaeology site on Carmel Point. Earlier archaeologists have documented and reported in depth an early occupation site along the central coast of California dating to 8,350 BC, the Cross-Creek site, in San Luis Obispo County (Jones et. al. 2002), placing human occupation on the mainland to the terminal Pleistocene. Although this research was based upon work conducted 150 miles south of the project area, the study provides evidence that a separate migration of people may have initially populated the central coast. These people are now considered as having practiced a different subsistence technology from the inland groups. This has been determined by the recovery of milling stones and crude core and flake lithic technologies that do not appear in association with inland sites. (complete report attached)

CA-MNT-17:

Preliminary Archaeological Assessment by Gary S. Breschini -May 11, 2015

CA-MNT-17, the archaeological site underlying the parcel, covers the entire southern end of Carmel Point. Three other recorded prehistoric archaeological sites and two historical resources are located within one kilometer of the project parcel. The multi-component CA-MNT-17 prehistoric site has been the subject of many previous studies. Breschini and Haversat (2012) produced a summary of archaeological investigations within the CA-MNT-17 site up to 2012. The shell-rich archaeological deposit on the southwestern part of Carmel Point has been dated to the Late Period of Prehistoric Occupation. In contrast, on the interior side of Carmel Point, the cultural deposit has produced human remains as well as Archaic Period dates up to 9,420 years BP (Breschini, Haversat and Mounday 2012). This radiocarbon date, obtained from a parcel a short distance to the southeast of the project parcel, is the oldest in Monterey County.

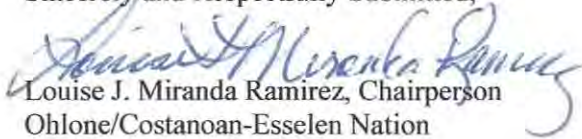
For the past many years OCEN has objected to the destruction of CA-MNT-17 due to construction. Our ancestral village/cultural/burial heritage sites have been built on in the "name of progress" for too long. The homes have doubled in size and now with height restrictions, increase disturbance continues because homeowners want additional space. The requests for basements are destroying our OCEN ancestral heritage sites and burial grounds. Over the years, I have received calls from owners trying to convince me to write a favorable letter approving their basement project. Some of the reasons and justifications include statements that "my children have grown, and they are all over 6 ft. tall and can't enter the basement," or "We need to have a Theatre Room" or "We need more space." There are many more reasons and the owners all feel

entitled since they own the property. They have no concern when I ask the questions "What if our Ancestors are buried under your home and you disturb their burial/grave sites? "What if these were your Ancestors?" In response, I have been told "Well you can move them out of the way!" The disrespect towards our Ancestors continues in the name of money, entitlements and just because they want a bigger home. Question: Were the owners advised by law that their home is built on a known village/cultural/burial site when they purchased the property? Was there full disclosure about the limitations placed on any future construction and subsurface alterations to the surrounding parcel due to the presence of a recorded ancestral heritage site?

As a result, Ohlone/Costanoan-Esselen Nation formally and respectfully requests of the Monterey County Board of Supervisors your support in not allowing any future basements within the boundaries of CA-MNT-17 and any other recorded/known OCEN-related ancestral heritage (archaeological) sites in the County of Monterey. Furthermore, we request that the fragile heritage sites and 10,000-year history of Ohlone/Costanoan-Esselen Nation, as well as the history of Monterey County be protected without future disturbance and ultimate destruction.

Please feel free to contact me at (408) 629-5189. I am available to answer all of your questions. Nimasianexelpasaleki. Thank you

Sincerely and Respectfully Submitted,


Louise J. Miranda Ramirez, Chairperson
Ohlone/Costanoan-Esselen Nation

Great Granddaughter of Tomas Santos Miranda and Maria Ynez Garcia Miranda
Granddaughter of Tomas Anthony Miranda
Identified by C.E. Kelsey as the Monterey Band of Monterey County
Genealogy certified to Mission San Carlos de Borromeo and
Nuestra Senora de La Soledad

Cc: OCEN Tribal Council
Frank Lienert, Native American Heritage Commission
Carl P. Holm, Monterey County, RMA - Director
Craig Spencer, Monterey County, RMA-Planning Division
Bob Schubert, Monterey County, Senior Planner, RMA-Planning Division
File

PREHISTORIC BACKGROUND

At this time CA-MNT-17C on Carmel Point has yielded the earliest date for the central coast. Recently, Dr. Gary Breschini, working with Lynn Mounday, obtained a carbon date of 9,300 YBP (Breschini, 2011, personal communication) for CA-MNT-17C, the most studied archaeology site on Carmel Point. Earlier archaeologists have documented and reported in depth an early occupation site along the central coast of California dating to 8,350 BC, the Cross Creek site, in San Luis Obispo County (Jones *et. al.* 2002), placing human occupation on the mainland to the terminal Pleistocene. Although this research was based upon work conducted 150 miles south of the project area, the study provides evidence that a separate migration of people may have initially populated the central coast. These people are now considered as having practiced a different subsistence technology from the inland groups. This has been determined by the recovery of milling stones and crude core and flake lithic technologies that do not appear in association with inland sites.

In prehistoric times, people we know today are identified based upon their linguistic group, Esselen and Costanoan speakers. They occupied the Monterey Peninsula and the Santa Lucia Mountains from Carmel Valley to the Big Sur Coast and south to Pfeiffer State Beach, and inland to Salinas, Spreckles, and south to Soledad (Figure 5).

The aboriginal peoples were hunter-gatherers with a well-developed, intimate knowledge of the rich diversity of their aboriginal lands. They processed vegetable foods, fished the rivers for anadromous fish such as the steelhead and salmon, sardines from the ocean, and hunted for deer, fowl, and rabbits; they did not cultivate the land but did manage the land by technologies such as burning (Lewis 1978).

Serious anthropological theorizing began in the early 1900s when Kroeber conducted what he called salvage anthropology. Kroeber formulated his idea of 'tribelets' from groups that were already thoroughly disrupted by missionization.

Bean with Lawton (1973) and Bean with Blackburn (1976) understood that the prehistoric people of the region we now call California was more connected and complex than Kroeber had initially made them out to be. Bean wrote that the people living in villages of close proximity intermarried and were thus connected families. Milliken's ethnographies of the regions prehistoric tribes provide evidence that elite people from the various tribes of the Monterey Bay region intermarried to form political alliances (1995& 1987).

Studies based upon mission records have provided the names and locations of the many villages of the Monterey region. Groups of Esselen speakers and those now referred to as Southern Costanoan or "rumsien"-speakers intermarried before missionization, at the missions where they were forced to convert to Catholicism (that is the San Carlos and San Antonio Missions) and after missionization. Beginning in 1770, these Esselen converts and other Native American people taken into the mission system as converts were called "neophytes", from the Spanish, *neofitas*, derived from the Latin for "newly planted". There are differing opinions on Esselen precontact and contact history (Breschini and Haversat 1980 and Jones 1994 for example).

Spanish Mission Period (1770-1834)

The Carmel/Monterey region has a long and distinguished history. Don Sebastian Vizcaino bestowed the place name Carmel in 1602. Vizcaino is thought to be the first European to set foot on the Monterey Peninsula. Carmelite friars were aboard ship on that expedition intending to establish

a mission in the area that would be backed by the Spanish military. On June 3, 1770 Junipero Serra founded the mission San Carlos de Borromeo de Monterey. A year later Serra wrote for permission to move the mission to the banks of the Carmel River. Therefore, in 1771 Mission San Carlos De Borromeo de Carmelo was founded.

When the Spanish missionaries arrived in the late 18th century, they applied the name *Costaños* to all of the tribes already inhabiting the region between the San Francisco and Monterey Bays, even though the aboriginal people of the present day region comprised many more distinct language groups and tribes (Milliken 1995) and were multilingual peoples. *Costaños* was anglicized to Costanoan. The Esselen village of Achasta may have been located on the Monterey Peninsula near the Presidio, though Milliken suggests Carmel Point (1987).

Ethnographic Background

The people indigenous to the Monterey Bay Region were known as *Rumsen*, *Esselen*, *Guacharonnes*, *Ecclémachs*, *Sakhones*, *Sureños*, and *Carmelesños*.

“The Indian **clans** were known as *Ensenes*, *Excelenes*, *Achistas*, *Runsenes*, *Sakhones*, and were considered as belonging to one nation” (Salvador Mucjai quoted in Taylor 1856, p. 5).

The Esselen and Costanoan (Ohlone to some) peoples came from at least nine major *rancherías*. Some of these *rancherías* have come to be known by several different names, due to variability in the transcription of these village and district locations by different priests as recorded in the Mission records. These nine *rancherías*/districts are:

- *Wacharon* (*Guachirron*)/*Calendaruc* (Moss Landing, Castroville, Watsonville area)
- *Ensen* (interior side of Fort Ord and Salinas Valley)
- *Achasta* (near Monterey)
- *Tucutnut*/*Capanay* (middle reaches Carmel River drainage)
- *Soccoronda*/*Jummis*/*Sepponet* (upper Carmel River drainage)
- *Echilat*/*Ixchenta*/*Tebityilat* (upper San Jose and Las Garzas Creek drainages)
- *Esselen*/*Excelen*/*Excelemac* (Santa Lucia Mountains/Ventana Wilderness)
- *Sargentaruc*/*Jojopan*/*Pixchi* (Carmel River south to Sur)
- *Eslanajan* (Soledad/Arroyo Seco)

Distribution of Ohlone/Costanoan-Esselen Nation Tribal Rancherías, Districts, Landgrants and Historic Landmarks

OCEN DIRECT LINEAL DESCENT

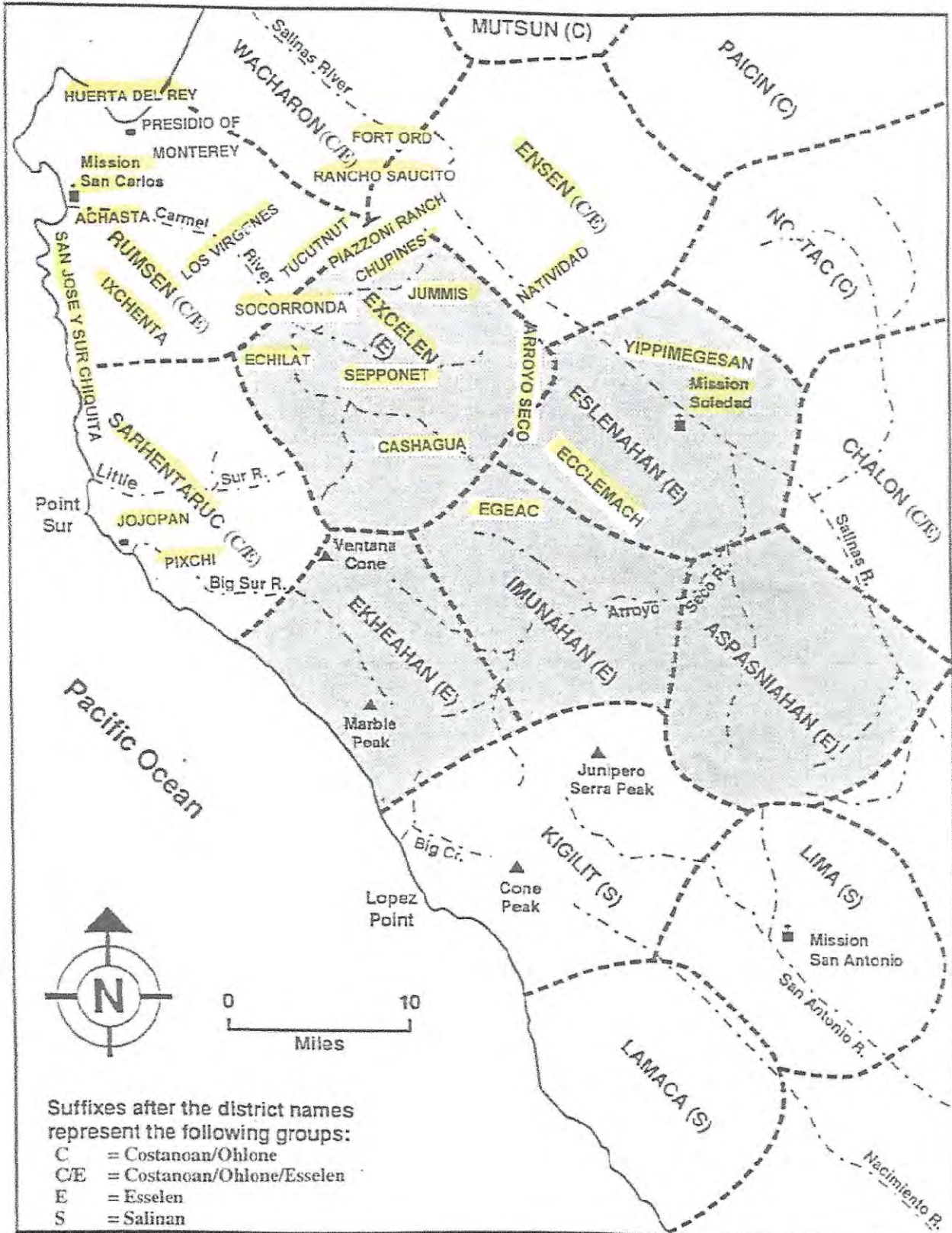


Figure 2:

Map after Taylor 1856; Levy 1973; Hester 1978; Milliken 1990

```
{"Attachments":[{"IsIrmRestricted":false,"__type":"ItemIdAttachment:#Exchange","ItemId":
{"__type":"ItemId:#Exchange","ChangeKey":null,"Id":"AAMkAGU1NmQwMDk5LTM3ZjMtNGRkNC05YzM4LW
YzM2ZiMGIxNjQxYgBGAAAAABxh3IEsLqqRqvs/6uyNwObBwCImfePzbSmQa1ya6OLPySjAAJAnJlaAACImfePzb
SmQa1ya6OLPySjAAJAnJ2FAAA="},"Name":"Complaint re: Excavation at Carmel Point sensitive
archaeological area -- sites of PLN170611, PLN170612, PLN170613 (on appeal), applicant Pietro Family
Investments LP","IsInline":false}]}
```

Re: Three Carmel Point projects (Pietro) - appealability to Coastal Commission

Swanson, Brandon xx5334

Wed 3/6/2019 9:59 AM

To: Molly Erickson <erickson@stamplaw.us>;

Cc: Holm, Carl P. x5103 <HolmCP@co.monterey.ca.us>; Spencer, Craig x5233 <SpencerC@co.monterey.ca.us>; Guthrie, Jaime S. x6414 <GuthrieJS@co.monterey.ca.us>; Strimling, Wendy x5430 <strimlingw@co.monterey.ca.us>; Dugan, John x6654 <DuganJ@co.monterey.ca.us>;

Ms Erickson,

The issue of appealability to the Coastal Commission is under review.

We will keep you informed of any decisions.

With regard to your question about all three projects going to the Board next week - we are taking all three projects to hearing in order to meet the appeal timeline requirements. However, staff will be recommending continuance of the two projects on Valley View to April 23rd to allow for further research and analysis of the work that was done on those properties.

Brandon.

Sent from my iPhone, please excuse brevity or typos.

On Mar 5, 2019, at 3:49 PM, Molly Erickson <erickson@stamplaw.us> wrote:

Mr. Holm, Mr. Swanson and Mr. Spencer:

The County has stated in the County's three original resolutions and three revised resolutions of approval that the approvals are appealable to the Coastal Commission. The County has made no other public statement, as far as I know, and the County has not advised the appellants of any change in the County's position. If the County has changed its position on appealability as to any of the projects, please advise me promptly. Thank you.

Molly Erickson
STAMP | ERICKSON
[479 Pacific Street, Suite One](#)

Monterey, CA 93940

tel: 831-373-1214, x14

Michael W. Stamp
Molly Erickson

STAMP | ERICKSON
Attorneys at Law

479 Pacific Street, Suite One
Monterey, California 93940
T: (831) 373-1214

March 6, 2019

John Phillips, Chair
Board of Supervisors
County of Monterey
Salinas, CA 93901

Re: OCEN comments on PLN170611, PLN170612, PLN170613, Carmel Point

Dear Chair Phillips and members of the Board of Supervisors:

I represent appellants in this matter that is set for hearing on March 12, 2019. The three proposed Carmel Point projects include large basements that would require extensive excavation in the highly sensitive area. The attached OCEN letter affirms OCEN's consistent opposition to excavation at Carmel Point. OCEN's position is clear:

Ohlone/Costanoan-Esselen Nation objects to all excavation in known cultural lands, even when they are described as previously disturbed, and of no significant archaeological value. Please be advised that it is our priority that our ancestor's remains be protected and undisturbed. **We desire that all sacred burial items be left with our ancestors on site or as culturally determined by OCEN.** We request all cultural items returned to Ohlone/Costanoan-Esselen Nation. We ask for the respect that is afforded all our current day deceased, by no other word these burial sites are cemeteries, respect for our ancestors as you would expect respect for your deceased family members in today's cemeteries. **Our definition of respect is no disturbance.**

The appealed planning commission resolutions of approval are inconsistent with OCEN's wishes as stated in the OCEN letter. The resolutions would authorize:

- The property owner to excavate the three large basements (cond. 1) and to use non-OCEN monitors (mits. 1, 2, 3).
- The property owner to give tribal artifacts removed from the sites to non-OCEN entities. (Mit. 2.)
- Non-OCEN entities to make decisions about items that are culturally significant to OCEN. (Mits. 2, 3.)

OCEN reports that County staff claimed that the planning commission wanted OCEN to identify why the site was sacred to the OCEN people. (OCEN ltr, p. 2.) OCEN understandably desires to keep the information confidential. Such a demand by the County is disrespectful and inconsistent with the protections of AB 52:

John Phillips, Chair, Monterey County Board of Supervisors
Re: PLN170611, PLN170612, PLN170613 on Carmel Point
March 6, 2019
Page 2

Consultation shall also recognize the tribes' potential needs for confidentiality with respect to places that have traditional tribal cultural significance. (Gov. Code, § 65352.4.

(Pub. Resources Code, § 21080.3, added by AB 52.)

California has a strong policy in favor of protecting Native American remains and artifacts. The OCEN comments are additional substantial evidence that supports a fair argument that the three projects could have potentially significant impacts on cultural resources and tribal cultural resources, and an EIR is required.

Very truly yours,

STAMP | ERICKSON

/s/ Molly Erickson

Molly Erickson

Attachment: January 7, 2019 letter from Ohlone/Costanoan-Esselen Nation (OCEN) to Monterey County Board of Supervisors, responding to statements by the applicant, County staff and planning commission during the County review of the three Carmel Point projects proposed by Pietro (2 pp.)

Ohlone/Costanoan-Esselen Nation



*Previously acknowledged as
The San Carlos Band of Mission Indians
The Monterey Band
And known as
O.C.E.N. or Esselen Nation
P.O. Box 1301
Monterey, CA 93942*

www.ohlonecostanoanesselenation.org

January 7, 2019

Monterey County Board of Supervisors

Monterey County Planning Commission, Monterey,

Native American Heritage Commission, Sacramento, CA

Re: Who is OCEN and why are we included in consultation?

Saleki Atsa,

Ohlone/Costanoan-Esselen Nation is an historically documented previously recognized tribe. OCEN is the legal tribal government representative for over 600 enrolled members of Esselen, Carmeleno, Monterey Band, Rumsen, Chalon, Soledad Mission, San Carlos Mission and/or Costanoan Mission Indian descent of Monterey County.

Under SB18 – Identify Tribal/Local Government Resources, page 73

Provide time to share the history of the Tribe

Items addressed by the public and Planning Commission

This item was addressed by Attorney Anthony Lombardo – stating that OCEN objects to all disturbance

In addressing this paragraph Mr. Anthony Lombardo is correct it is OCEN's request that there be no disturbance within known Archaeological and Cultural Sites. Yet, even with this request no project has ever been avoided or not approved. We are aware that our request will not be honored even with consultation based on AB52 or SB18, requirement of meaningful consultation. We continue to advise that we request respect for our Ancestors.

Ohlone/Costanoan-Esselen Nation objects to all excavation in known cultural lands, even when they are described as previously disturbed, and of no significant archaeological value. Please be advised that it is our priority that our ancestor's remains be protected and undisturbed. We desire that all sacred burial items be left with our ancestors on site or as culturally determined by OCEN. We request all cultural items returned to Ohlone/Costanoan-Esselen Nation. We ask for the respect that is afforded all our current day deceased, by no other word these burial sites are cemeteries, respect for our ancestors as you would expect respect for your deceased family members in today's cemeteries. **Our definition of respect is no disturbance.**

As stated in AB52 and SB18, OCEN must submit written request for consultation with Lead Agencies and each project.

OCEN request consultation with the lead agency and with all soil disturbance.

Consultation Protocols requested by OCEN as stated in SB18 and AB52

OCEN's Tribal leadership desires to be provided with:

Archaeological reports/surveys, including subsurface testing, and presence/absence testing.

OCEN request to be included in mitigation and recovery programs,

OCEN request that Cultural and Tribal mitigation measures reflect request for OCEN Tribal Monitor,

Reburial of any of our ancestral remains, burial artifacts,

Placement/return of all cultural items to OCEN, and that

A Native American Monitor of Ohlone/Costanoan-Esselen Nation, approved by the OCEN Tribal Council is used within our aboriginal territory.

The OCEN Tribal Council submitted the NAHC required letter requesting consultation according to – California Environmental Quality Act Public Resources Code section 21080.3, subd. (b) Request for Formal Notification of Proposed Projects within the Ohlone/Costanoan-Esselen Nation's Geographic Area of Traditional and Cultural Affiliation as required effective July 1, 2015. OCEN has participated in Meaningful Consultation from that date. OCEN is identified as requesting consultation within Monterey County. Until now no other Tribe other than the Salinan had requested consultation. It is OCEN's understanding that the Planning Commission removing OCEN's name from what was considered meaningful consultation between the lead agency and OCEN is disrespectful and violates our sovereignty.

SB18 page 67

Acknowledge and respect a Tribe's cultural and spiritual values and rights.

Provide the earliest possible notice to Tribes.

Provide meaningful consultation with Tribes.

Protect confidentiality of site records.

The Tribe determines the importance of the place

Tribal partnership in Management and protection

Process for acquisition or conservation of cultural places.

There is so much more information I choose to discuss. I have requested numerous times during consultation to meet with the Planning Commission to provide information on OCEN, as I was advised that the Commission did not accept my letter because you wanted me to identify why the site was sacred to our people and it is our choice to maintain that information confidential.

Do I live in San Jose, yes, but that does not determine my genealogy. As a child my family lived in Salinas, I attended Roosevelt School, Sacred Heart Church and lived at 25 West Market. I lived in Seaside, King City, Castroville and Monterey, but as a child I moved with my parents. Therefore, your statements that I lead a San Jose Group is incorrect, I am the proud leader of Tribal Members that can all prove the genealogy to Mission Carmel and Mission Soledad, as the first families forced into the Missions. Your statement that "we don't want our artifacts going to San Jose is insulting" these are our family's property, except that a law of colonization steals them from us. It is OCEN desire to have a place to share our history and display our culture within our homeland.

I hope that will accept the disc I am providing about OCEN and choose to meet. Please feel free to contact me at (408) 629-5189. Nimasianexelpasaleki. Thank you

Sincerely and Respectfully Yours,


Louise J. Miranda Ramirez, Chairperson

Ohlone/Costanoan-Esselen Nation

(408) 629-5189 Cc: OCEN Tribal Council

Re: Three Carmel Point projects (Pietro) - appealability to Coastal Commission; proposed segmentation of Board review of appeal (PLN17-611, -612, -613)

Molly Erickson <erickson@stamplaw.us>

Wed 3/6/2019 8:09 PM

To: Strimling, Wendy x5430 <strimlingw@co.monterey.ca.us>;

Cc: Guthrie, Jaime S. x6414 <GuthrieJS@co.monterey.ca.us>; Dugan, John x6654 <DuganJ@co.monterey.ca.us>; Kevin Kahn <kevin.kahn@coastal.ca.gov>; Michael Watson <michael.watson@coastal.ca.gov>; 100-District 5 (831) 647-7755 <district5@co.monterey.ca.us>; Swanson, Brandon xx5334 <SwansonB@co.monterey.ca.us>; Holm, Carl P. x5103 <HolmCP@co.monterey.ca.us>; Spencer, Craig x5233 <SpencerC@co.monterey.ca.us>; Michael Stamp <stamp@stamplaw.us>;

Ms. Strimling:

Please reread the email you sent below. I think you will be chagrined and disappointed about the way the County has handled this matter. The County is having trouble in making the basic determination as to appealability to the Coastal Commission. Either it is appealable or it is not.

We recognize that a key senior RMA staff member does not have planning background, and has been consulting closely and privately with Mr. Lombardo on these projects for months. That is no excuse for failing to provide basic, accurate and timely information to my clients and other interested members of the public.

Molly

Molly Erickson
STAMP ERICKSON
479 Pacific St., Suite One
Monterey, CA 93940

On Mar 6, 2019, at 3:18 PM, Strimling, Wendy x5430 <strimlingw@co.monterey.ca.us> wrote:

Dear Ms. Erickson,

I respectfully ask you to give County staff the room for investigation and deliberation. The issue of appealability to Coastal Commission is under review, as stated by the Interim Chief of Planning in his prior response to you today. I believe that the three resolutions you reference are the Planning Commission resolutions that are on appeal. The Board of Supervisors' hearing is de novo. If staff arrives at a determination that the decision on the Isabella project would not be appealable to the Coastal Commission, staff will inform the Board of Supervisors prior to the Board rendering a decision on the project, such that the Board and the public are aware of staff's analysis and reasons.

In regard to your objections to the Isabella project, staff is in receipt of your comments and will address the concerns as needed at the Board. Additionally, you are, of course, welcome to provide your comments to the Board of Supervisors, orally or in writing, at or before the March 12 hearing.

Wendy S. Strimling
Senior Deputy County Counsel
County of Monterey
strimlingw@co.monterey.ca.us
(831) 755-5430 (w)
(831) 755-5045 (office reception)

From: Molly Erickson <erickson@stamplaw.us>
Sent: Wednesday, March 6, 2019 12:18 PM
To: Swanson, Brandon xx5334 <SwansonB@co.monterey.ca.us>; Holm, Carl P. x5103 <HolmCP@co.monterey.ca.us>; Spencer, Craig x5233 <SpencerC@co.monterey.ca.us>
Cc: Guthrie, Jaime S. x6414 <GuthrieJS@co.monterey.ca.us>; Strimling, Wendy x5430 <strimlingw@co.monterey.ca.us>; Dugan, John x6654 <DuganJ@co.monterey.ca.us>; Kevin Kahn <kevin.kahn@coastal.ca.gov>; Michael Watson <michael.watson@coastal.ca.gov>; 100-District 5 (831) 647-7755 <district5@co.monterey.ca.us>
Subject: Re: Three Carmel Point projects (Pietro) - appealability to Coastal Commission; proposed segmentation of Board review of appeal (PLN17-611, -612, -613)

Mr. Swanson, Mr. Holm, and Mr. Spencer:

Appealability

What part of appealability to the Coastal Commission is under review? The three resolutions state that each project approval is appealable, and County staff has repeatedly stated that each is appealable. What has changed?

Segmenting the County Review of the Projects Is Improper

As to your comments that County staff will recommend the Board act on the Isabella project and continue the two Valley View projects:

As I have stated before to the County, most recently last week in a meeting with Craig Spencer, the three projects are the same owner, the same builder, are contiguous, and have very similar impacts. They should have been analyzed in a single environmental document, instead of suffering from the piecemeal review that the County has done to date. And the potential impacts are related.

One County-recommended condition is that upon discovery of remains or artifacts during excavation, all excavation is to be halted within 50 meters. Most of the three project sites are within 50 meters of each

other. The appealed County condition limits the scope to the site only. The appeal has pointed out that the condition should apply to all three project sites because of their close proximity. If the Board of Supervisors were to approve the Isabella project with the limited version of the condition, the Board could not later apply the broader condition to all three sites. This is one reason why CEQA prohibits segmentation. There are many additional reasons against piecemeal review of these three sites.

County Appears Unaware of Unpermitted Work and Unpermitted Uses at the 26307 Isabella site

County staff apparently has failed to investigate the past grading at the Isabella site and the past tree removal at the site. Please tell me the status of those issues and whether there is a code enforcement file.

Staff also appears to be unaware of the ongoing and current commercial use of the Isabella site as a construction yard, including heavy equipment storage, a construction shed, loose construction materials stacked against oak trees, and large storage bins. See attached photographs taken this week.

None of those code enforcement issues and the required after-the-fact permits are reflected in the public hearing notice, as required. The applicant's actions have caused very complicated issues. The County should not accommodate problems created by the applicant by hurrying the Board's review process.

Conclusion

All three projects should be continued to address these issues and while County staff figures out whether its stated position on appealability is accurate.

Please keep me advised. The March 12 hearing is only six days from now.

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

On Wednesday, March 6, 2019, 9:59:21 AM PST, Swanson, Brandon xx5334
<SwansonB@co.monterey.ca.us> wrote:

Ms Erickson,

The issue of appealability to the Coastal Commission is under review.

We will keep you informed of any decisions.

With regard to your question about all three projects going to the Board next week - we are taking all three projects to hearing in order to meet the appeal timeline requirements. However, staff will be recommending continuance of the two projects on Valley View to April 23rd to allow for further research and analysis of the work that was done on those properties.

Brandon.

Sent from my iPhone, please excuse brevity or typos.

On Mar 5, 2019, at 3:49 PM, Molly Erickson <erickson@stamplaw.us> wrote:

Mr. Holm, Mr. Swanson and Mr. Spencer:

The County has stated in the County's three original resolutions and three revised resolutions of approval that the approvals are appealable to the Coastal Commission. The County has made no other public statement, as far as I know, and the County has not advised the appellants of any change in the County's position. If the County has changed its position on appealability as to any of the projects, please advise me promptly. Thank you.

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

Re: Carmel Point projects - PLN170611, 170612, 170613

Molly Erickson <erickson@stamplaw.us>

Tue 3/5/2019 3:27 PM

To: Swanson, Brandon xx5334 <SwansonB@co.monterey.ca.us>; Spencer, Craig x5233 <SpencerC@co.monterey.ca.us>; Holm, Carl P. x5103 <HolmCP@co.monterey.ca.us>; McKee, Charles J <McKeeCJ@co.monterey.ca.us>;

Cc: Dy, Johanna x5748 <DyJ@co.monterey.ca.us>; 100-District 5 (831) 647-7755 <district5@co.monterey.ca.us>; Guthrie, Jaime S. x6414 <GuthrieJS@co.monterey.ca.us>;

Mr. Holm, Mr. Swanson, Mr. Spencer, Mr. McKee:

The County staff apparently has scrambled to accommodate the applicant and his illegal development at the site. The County staff has rushed to add the illegal work to the proposed County approvals. These changes project descriptions are shown in the new revised public hearing notices the County published over the weekend. The County's published notice appears to be inconsistent with what staff told me last week -- that the hearing on the two projects on Valley View would be continued to a future date to allow staff time to address some of the illegal and unpermitted development that has taken place recently. Please clarify.

At the same time that senior County staff is accommodating the applicant and trying to push the projects forward, the County staff has ignored my reasonable requests for records and basic information on behalf of the appellants. This includes the County's failure to respond to my questions below.

Molly Erickson

STAMP | ERICKSON

[479 Pacific Street, Suite One](#)

[Monterey, CA 93940](#)

tel: 831-373-1214, x14

On Wednesday, February 27, 2019, 4:56:33 PM PST, Molly Erickson <erickson@stamplaw.us> wrote:

Mr. Holm, Mr. Swanson, Mr. Spencer, and Ms. Guthrie:

I have a few follow up questions to the limited records the County produced today for the valley View sites. I ask for a prompt response in light of the applicant's refusal to continue all three items to allow the County to do the necessary work to prepare an adequate report to the Board of Supervisors.

Is excavation for trenching for an electrical permit allowed during the rainy season in the Carmel Area? Please tell me the applicable codes, rules and regs on which the County relies for its response.

Did the County place any conditions on the electrical permits? This includes standard conditions and special conditions.

Today Mr. Spencer said the some of trenching along Valley View — which was only part of the large amount of trenching and grading at the sites — was on the parcels in the County right of way. Does the County require an encroachment permit for this kind of work in the right of way? Was it required here, and if not, why not?

The County electrical permits for the two Valley View sites state that during the rainy season — Oct 15 through May 15 — the County requires weekly inspections of construction sites in the Carmel Area. Did the applicant call for inspections for the two electrical permits? If so, what dates were the calls and the inspections? The County has not yet produced any records of inspections; if there are any, please produce them promptly.

Thank you.

Molly

Molly Erickson
STAMP ERICKSON
479 Pacific St., Suite One
Monterey, CA 93940

MONTEREY COUNTY RESOURCE MANAGEMENT AGENCY

168. Alisal Street, 2nd Floor
 Salinas, CA 93901
 Office: (831) 755-5025
 Fax: (831) 757-9516
 www.co.monterey.ca.us



FEE WAIVER REQUEST

Permit No. PLN170611, -612, -613
 (Complete Section 1 and 3)

Parks Division
 (Complete Section 2 and 3)

Section 1: _____

Assessor Parcel Number: SEE ATTACHED LETTER DATED JAN. 14, 2019

Job Address: AND PREVIOUS CORRESPONDENCE WITH THE COUNTY ON THIS ISSUE.

Description of Project: Three projects on Carmel Point, applicant: Pietro Family Investments LP

Fee Waiver Justification: FEE IS ILLEGAL AND UNAUTHORIZED.

(Attach additional information if needed)

Section 2: _____

Park Name: _____

Park Area: _____

Date of Reservation: _____

Fee Waiver Justification: _____

(Attach additional information if needed)

Section 3: _____ Owner/Applicant Agent

Requestor: The Open Monterey Project and SCPGR. Public interest participants/appellants.

Address: SEE ATTACHED LETTER DATED JAN. 14, 2019

Phone: _____ Email: _____

Department Use Only

Employee Received: _____ Date: _____

Given to Admin. Secretary: _____ Date: _____

Review by the following department/agencies:

- RMA - Building
- RMA – Environmental Services
- RMA – Parks
- RMA – Planning
- RMA – Public Works
- Water Resources Agency
- Health Department
- Fire District: _____
- Other: _____

Fee Amount:	Amount Waived:	Approver Initials	Date

County Justification: _____

Total Approved Waiver Amount: \$

 Signature of RMA Director/Deputy Director _____ _____ Approved
 Print Name Date Denied

Michael W. Stamp
Molly Erickson

STAMP | ERICKSON
Attorneys at Law

479 Pacific Street, Suite One
Monterey, California 93940
T: (831) 373-1214

February 14, 2019

Via E-Mail

Carl Holm and Brandon Swanson
County of Monterey Resource Management Agency

Subject: California Public Records Act Request PLN170611, 170612, 170613

Mr. Holm and Mr. Swanson:

We represent The Open Monterey Project, which makes this public records request pursuant to the California Public Records Act (Gov. Code, § 6250 et seq.). The Open Monterey Project would like to inspect, and possibly copy, the following records with regard to PLN170611, PLN170612, PLN170613 (collectively, "project"), applicant Pietro Family Investments LP. The records requested are as follows:

1. All records for each of the three projects, including project application materials, documents prepared by the agency with respect to its compliance with the substantive and procedural requirements of CEQA and with respect to the action on the project., written testimony or documents submitted by any person, transcripts and minutes, and all records of communications regarding the project, including but not limited to internal communications and communications with the applicant and the applicants representatives.

The time frame for the requested records is up to the date of this request. Time is of the essence as to this request.

We request access to electronic records, including emails and other records, in the same format held by the agency. (Gov. Code, § 6253.9, subd. (a).) Attachments to emails should be provided attached to the original emails. Please place all electronic records, including attachments to emails still attached to the emails, on a CD or flash drive, and I will pick it up and pay the County's usual price of \$5.

If you have any questions regarding this request, please contact me. I will be happy to assist you. The County is required to assist the public in making a focused and effective request by identifying records and information responsive to the request, describing the information technology and physical location of the records, and providing suggestions for overcoming any practical basis for denying access to the records or information sought. (Gov. Code, § 6253.1.) Thank you.

Very truly yours,

STAMP | ERICKSON

/s/ Molly Erickson

Molly Erickson

c: Wendy Strimling

Michael W. Stamp
Molly Erickson

STAMP | ERICKSON
Attorneys at Law

479 Pacific Street, Suite One
Monterey, California 93940
T: (831) 373-1214

December 4, 2018

Keith Vandevere, Chair
Planning Commission
County of Monterey
Salinas CA 93901

Re: PLN170611, PLN170612, PLN170613, and all projects with a basement
on Carmel Point

Dear Chair Vandevere and members of the Planning Commission:

I represent The Open Monterey Project and Save Carmel Point Cultural Resources in this matter. The position of each of my clients is as follows:

An EIR is required for these projects due to potential impacts on cultural resources.

The evidence shows that the impacts to cultural resources can be mitigated by removal of the basements. County now proposes to abandon that mitigation. The County proposes to add muddled mitigations that have not been reviewed in a circulated CEQA document. This is bad planning. This is an example of last-minute actions responding solely to the wishes of the developer and the developer's representatives.

There is a fair argument based on substantial evidence in the record – including two site-specific archeological reports and a rich array of evidence as to the Carmel Point – that the project may have a significant impact on cultural resources. That means an EIR is required. The County should not proceed on the basis of a mitigated negative declaration.

The County staff report acknowledges and ignores "OCEN's request for no disturbance." In the newly revised initial study, the County has taken the new position that "A second consecutive negative report on the subject parcel provides enough evidence to continue this track." The County's approach is unsupported, unwise, and inconsistent with CEQA. Where there is disagreement among experts, an EIR is required. The question is whether there is substantial evidence to support a fair argument that there may be potentially significant impacts, and thus an EIR should be prepared. The project-specific archeological reports and other Carmel Point evidence are substantial evidence to support a fair argument here.

The County staff's argument is that there is "enough evidence" to proceed based on the applicant's report. Wrong. It is basic CEQA law that the existence of contrary evidence does not controvert the evidence that triggers the requirement to prepare an

Keith Vandevere, Chair, Planning Commission
Re: PLN170611, PLN170612, PLN170613, et al.
December 4, 2018
Page 2

EIR. Here, there was a positive archeological report, and a second report in late November that showed cultural resources that the developer-hired archeologist called "insignificant."

In the County planning staff's view, the applicant-hired consultant gets to have a controlling influence over the County's analysis. Contrary to the County's approach, this is not a "choose two out of three" analysis.

The initial study has uncovered "substantial evidence that any aspect of the project, either individually or cumulatively, may cause a significant effect on the environment," and the County must prepare an EIR. (CEQA Guidelines, § 15063, subd. (b)(1).) An EIR is required whenever "substantial evidence in the record supports a "fair argument" significant impacts or effects may occur" In the CEQA context, substantial evidence "means enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached." (CEQA Guidelines, § 15384, subd. (a).) Substantial evidence includes "facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts" (*id.*, subd. (b)). If you have any questions, the Sixth District Court of Appeal has reviewed the standards in its decision *Keep Our Mountains Quiet v. County of Santa Clara* (2015) 236 Cal.App.4th 714. The County may want to review that decision carefully before proceeding.

You as decision makers should be guided by the following CEQA directive:

"[I]n marginal cases where it is not clear whether there is substantial evidence that a project may have a significant effect on the environment, the lead agency shall be guided by the following principle: If there is disagreement among expert opinion supported by facts over the significance of an effect on the environment, the Lead Agency shall treat the effect as significant and shall prepare an EIR."

(CEQA Guidelines, § 15064, subd. (g).)

We provide some comments on the new last-minute uncirculated analysis and muddled vague mitigations that the County apparently scrambled to craft with the developer's active participation. There are more problems with the new County language than we can possibly describe in this letter, because all of the new mitigations are difficult to understand, are inadequate under CEQA, do not contain performance criteria, and are ineffective to reduce the impacts to less than significant.

The new mitigations would require removal of historic artifacts and human remains from the site. Removal is contrary to the desires of the tribal groups, who want

items preserved in place. The initial study ignores the adverse impacts of the removal of the remains and artifacts. A delay by a year for a final technical report is far too long and would mean that additional projects could be approved during that time at that location without the benefit of the important information about the discovery. In light of the facts around Native American customs, the discovery of cultural artifacts makes it likely that human remains could be found. The County recites but evidently does not understand "OCEN's request for no disturbance." "No disturbance" means no grading and no excavation, which means no basement. The proposal for an easement has no specific performance standards and is ambiguous. For example, it would not necessarily prevent all construction and all development as defined in the Coastal Act.

The late-added language in the initial study is confusing and thus unenforceable. The bullets, sub-bullets, indented paragraphs, combine to make the mitigation very confusing, and ambiguous as to what applies and where. The descriptions are vague. There are inconsistent periods and semicolons – it is not clear whether all bullets apply, or only some of them. A new part of the proposed mitigation for the discovery of human remains contains the following proposed language:

"If the remains are determined to be Native American, and the most likely descendant, in concurrence with a qualified archaeologist, determines that:

- a. The remains are evidence of a larger burial of human remains, which would qualify as a "unique archaeological resource", as defined in Public Resources Code Section 21083.2(g) that would be disturbed by further excavation; or
- b. There is no acceptable location on the parcel to re-bury the remains which would not be affected by excavation"

The mitigation is not clear on what happens next. It is not clear whether the subsequent bullet point is dependent on the preceding bullet points, or is a standalone requirement. The precedence is not clear and the roles and authority of the various players is not clear and enforceable. It is not established who would determine whether there is an "acceptable location on the parcel to re-bury the remains" and on what basis that decision would be made. The proposal of reburial elsewhere is repugnant to the tribal wishes, the LCP, CEQA, and the right thing to do. It is not clear whether in determining what is an "acceptable location" whether the most likely descendant (MLD) could be outvoted by the archaeologist or the property owner or the County. There is no reason that the reburial must be in an area "which would not be affected by excavation."

Keith Vandevere, Chair, Planning Commission
Re: PLN170611, PLN170612, PLN170613, et al.
December 4, 2018
Page 4

The County can and should impose a mitigation requiring preservation of the remains in place, and requiring the development to be redesigned to avoid the resources. The developer is on plenty of notice that the property may have cultural resources. The mitigation does not establish meaningful standards that would be used to determine the remains are “evidence of a larger burial of human remains.” The mitigations do not establish whether the County would choose the archeologist or the developer would be allowed to select the archeologist.

A new proposed mitigation proposes to halt excavation only on the parcel, and not on the adjacent parcels that are also proposed for development by the same applicant, Pietro. The applicant has control over all the parcels and the County mitigation should require halting of excavation and construction on all Pietro parcels within at least a 50-meter range.

The revised mitigations improperly reject and fail to implement much more effective and feasible mitigation, such as eliminating the basement elements of the projects. One newly revised mitigation requires merely as follows:

“The Owner/Applicant/Contractor will work with RMA Planning to move/shrink/modify/redesign the basement portions of the project which will have further impact on those areas of the site containing remains.”

This is not an effective mitigation. The County proposes to allow “The redesign should be done in a way that allows for maximum use of the property” which would prematurely commit the County to an unidentified future redesign, in violation of the California Supreme Court decision in *Save Tara v City of West Hollywood*.

The County should impose a mitigation to eliminate the basement element(s) if human remains are found. That is a feasible mitigation. The proposed County mitigation seeks to foreclose that as an option.

The proposed County mitigations do not adequately address the foreseeable situation where no location would allow a basement, or that other parts of the development must be redesigned in order to respect the artifacts or remains. There is no guidance and performance standards in the event that no “reburial” location fits the proposed vague County mitigation. Nor do the proposed mitigations contemplate the foreseeable scenario that there are multiple sets of remains needing reburials on the site, and not adequate room at the site for the reburials. The mitigations provide inadequate direction as to what happens then. Or the foreseeable scenario that there are multiple sets of artifacts unearthed at the site(s), and multiple impacts on one or more of the Pietro projects that could be avoided by redesigning the approved project development, including the basements. The County’s failure to do an adequate

Keith Vandevere, Chair, Planning Commission
Re: PLN170611, PLN170612, PLN170613, et al.
December 4, 2018
Page 5

analysis in the initial study has led to inadequate mitigations and unanalyzed potentially significant impacts that have not been adequately mitigated.

The idea of limiting a protective easement to only the exact area where human remains is found is not meaningful and is not mitigation for harm already done to the remains. The damage to the skeleton would likely have been done. The bodies were buried with possessions and household items, so the area to be protected would be much larger than the skeleton itself.

It is not clear what is meant by "Compliance or Monitoring Actions to be Performed, contained in this Condition of Approval." No explanation of the capitalized terms is provided. The mitigation confusingly refers to itself as a "condition of approval" instead of a mitigation, perhaps in an effort to avoid accountability under CEQA. If resources are found, there is no requirement to delimit the perimeter with unmistakable and enforceable markings that are communicated to all persons on site. The finding of archeological resources that are determined on the fly, as proposed, to be "insignificant" likely would mean there are more significant resources buried nearby, according to the information in the initial study.

The County has available other options to investigate and evaluate the sites, as presented to the Planning Commission at the November 2018 meeting. I refer you to all that information which I incorporate here by reference as if fully presented herein. It was presented to the Commission and is in County files, and apparently was prompted by the Pietro developments. If you want me to provide the information (again) to you let me know and I will happily email it all to you.

At the very least, if the County still wants to proceed on the basis of a mitigated negative declaration, recirculation of the initial study is required with inclusion of all reports and clearly written mitigations, and an independent archeological report with adequate testing of underground impacts of the basements from an expert retained by the County and with whom the applicant has no contact. Then the County decision makers can act.

The new last-minute additions and changes are confusing, vague, incomprehensible and unenforceable, and they do not contain adequate performance standards, and the information and new conclusions were not recirculated. They do not reduce the mitigations to less than significant in any event. There were two positive arch reports; the second positive arch report found resources that the archeologist claims are not significant, and so the County has called it as a "negative" report. This is not consistent with the information in the County files for this project that shows that "insignificant" items were buried with humans. It is also not consistent with the circles showing the protected known cultural sites that center on Carmel Point and the parcels at issue here.

Keith Vandevere, Chair, Planning Commission
Re: PLN170611, PLN170612, PLN170613, et al.
December 4, 2018
Page 6

Consider the harm, as compared to the minor burden on the applicant.

- The permanent impact to the cultural resources would be very significant, and the harm could not be undone.
- The impact of effective mitigations on the property owner merely means no basements. The owner would still be able to develop the properties.

The answer is clear. Another agenda item on your special meeting is to consider historic designation of the Carmel Point. You should not approve these projects and their basements before the area has been protected. There is no prejudice in taking the time to do it right and follow the law. The applicants are on full notice of the laws and the rich resources of Carmel Point, and they chose to proceed and take the risk.

Offer to Meet

We offer to meet with the County to discuss these important issues before the County acts. The County controls the schedule. My clients do not.

Request for Notification

Please put each of my clients, individually, in care of my Office, on the distribution list for all notification and hearings and decisions, including all notification under (1) Public Resources Code section 21092.2 and (2) the Coastal Act. If you are not the correct person to do this, please forward this request to the correct person and tell me who that person is. Thank you.

Conclusion

For each of the reasons described here and in the record, there is substantial evidence that the projects may have potentially significant impacts. An EIR is required.

Very truly yours,

STAMP | ERICKSON

/s/ Molly Erickson

Molly Erickson

cc: Wendy Strimling, Charles McKee
Coastal Commission Central Coast staff

This page intentionally left blank