

5-11-10
S-4

HEISLER, STEWART & DANIELS, INC.
ATTORNEYS AT LAW
563 FIGUEROA STREET
MONTEREY, CALIFORNIA 93940
TELEPHONE (831) 372-3361
FACSIMILE (831) 646-9581

WILLIAM B. DANIELS

FRANCIS HEISLER
(1895-1984)
CHARLES A. STEWART
(1925-1986)

May 3, 2010

ELECTRONIC DELIVERY

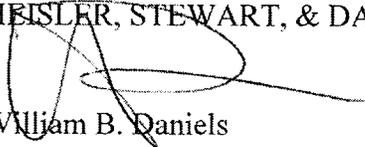
cob@co.monterey.ca.us
Chairperson Simon Salinas
& Members of the Board of
Supervisors
168 West Alisal, 2nd Floor
Salinas, CA 93901

**From: William B. Daniels,
Attorney for Mary de La Roza
Owner of Lot 241-291-010**
**Re: Moeller, Michael and Patricia
File No. : PLN060251
194 San Remo Road, Carmel Highlands (APN: 243-181-
006) and 192 San Remo Road, Carmel Highlands (APN:
243-181-005)
Hearing Date: May 11, 2010**

Dear Chairperson Salinas:

My client, Mary de la Roza requests that the Board consider the attached Supplemental Findings for Denial at the hearing on May 11, 2010 in the above entitled matter.

Yours truly,
HEISLER, STEWART, & DANIELS, INC.


William B. Daniels

cc: Client
Carl Holm
holmcp@co.monterey.ca.us

<i>Received by Clerk to the Board Additional Material for</i>	
Board Agenda Date of:	Item No:
5-11-10	S-4
Dist 1 <input checked="" type="checkbox"/>	CAO <input checked="" type="checkbox"/>
Dist 2 <input checked="" type="checkbox"/>	County Counsel <input checked="" type="checkbox"/>
Dist 3 <input checked="" type="checkbox"/>	
Dist 4 <input checked="" type="checkbox"/>	
Dist 5 <input checked="" type="checkbox"/>	

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2010 MAY -3 AM 11:34

May 3, 2010

MONTEREY, CALIFORNIA

DH DEPUTY

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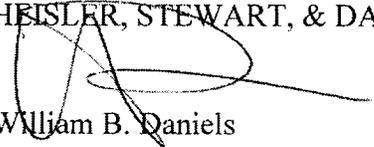
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Dist 4 <input checked="" type="checkbox"/>	
Dist 5 <input checked="" type="checkbox"/>	

5-11-10

S-4

From: Elizabeth Cummings [ECummings@horanlegal.com]
Sent: Tuesday, May 11, 2010 9:27 AM
To: 112-Clerk of the Board Everyone
Subject: Moeller Project -Board Hearing
Attachments: Scan8822 (4).pdf

Good Morning,

Attached please find a letter to the Board of Supervisors regarding the Moeller Project. Should you have any questions please do not hesitate to contact Ms. Silkwood.

Sincerely,

Elizabeth Cummings,
Assistant to Pamela H. Silkwood

NOTICE TO RECIPIENT:

This e-mail message is for the sole use of the intended recipient(s) and may contain confidential and privileged information. Any unauthorized review, use, disclosure or distribution is prohibited. If you are not the intended recipient, please contact the sender by reply e-mail and destroy all copies of the original message.

CIRCULAR 230 DISCLOSURE: To comply with Treasury Department regulations, we inform you that, unless otherwise expressly stated herein or in subsequent communication from the Law Firm to you, any tax advice therein is not intended to be and cannot be used for the purpose of (i) avoiding penalties that may be imposed under the Internal Revenue Code or any other applicable tax law or (ii) promoting, marketing or recommending to another party any transaction, arrangement, or other matter.

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Dist 3 <input checked="" type="checkbox"/>	
Dist 4 <input checked="" type="checkbox"/>	
Dist 5 <input checked="" type="checkbox"/>	

5/11/2010

HORAN, LLOYD, KARACHALE, DYER, SCHWARTZ,
LAW & COOK
INCORPORATED

P. O. Box 3350, Monterey, California 93942-3350
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JAMES J. COOK
DENNIS M. LAW

LAURENCE P. HORAN (Retired)
FRANCIS P. LLOYD
ANTHONY T. KARACHALE
STEPHEN W. DYER
GARY D. SCHWARTZ
MARK A. BLUM
MARK A. O'CONNOR
ROBERT E. ARNOLD III
ELIZABETH C. GIANOLA
AENGUS L. JEFFERS
PAMELA H. SILKWOOD
MICHEAL P. BURNS
AUSTIN C. BRADLEY

May 9, 2010

TELEPHONE: (831) 373-4131
FROM SALINAS: (831) 757-4131
FACSIMILE: (831) 373-8302
psilkwood@horanlegal.com

Via Electronic and Regular Mail

Board of Supervisors
Monterey County
168 W. Alisal Street, 1st Floor
Salinas, CA 93901

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Dist 3 <input checked="" type="checkbox"/>	
Dist 4 <input checked="" type="checkbox"/>	
Dist 5 <input checked="" type="checkbox"/>	

**RE: Moeller Project – Lot Line Adjustment and Development on Lot 5
(PLN 060251)**

Honorable Supervisors:

On behalf of Dr. and Mrs. Michael Moeller, this firm requests that you modify the proposed resolution of denial of the above referenced development project and continue the hearing on the lot line adjustment (with a building envelope) based on the following new information that is enclosed with this letter which could not be presented at the last hearing:

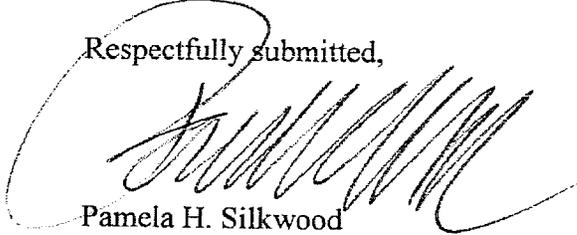
- 1) Revocable Offer to Dedicate Conservation Easement – Dr. and Mrs. Moeller own a property (Lot 11; please see attached map included as **Exhibit "A"**) that is not a subject of this application. The property has development rights for a single family residential dwelling, with water and power connections. Dr. and Mrs. Moeller are offering to dedicate to Monterey County a Conservation Easement over this property;
- 2) Notice of Intent to Preserve Ingress/Egress Easement – Contrary to assertions by counsel on behalf of Mary de la Rosa, the ingress/egress easement burdening Ms. de la Rosa's property has never been abandoned. Ms. de la Rosa has never commenced an abandonment proceeding. Dr. and Mrs. Moeller have now legally preserved the easement by timely recording a Notice of Intent to Preserve Easement on April 9, 2010 (**Exhibit "B"**). Section 887.060(c) of the Civil Code states that "an easement is not abandoned ... if a notice of intent to preserve the easement is recorded within 20 years immediately preceding commencement of the action to establish the abandonment of the easement." (Civil Code section 887 included **Exhibit "C"**.)
- 3) Smaller Building Envelope – Specifically addressing the concern of Supervisor Potter, Dr. and Mrs. Moeller are redesigning a smaller residence on Lot 5. The building footprint will be 1910 square feet, which is 25% smaller than the current footprint. Access to the residence can be served by either the de la Rosa easement or the driveway

Monterey County Board of Supervisors
May 9, 2010
Page 2

from San Remo Road – your Board can make a decision on access at the time an application for the residence is submitted.

Carl Holm, the Assistant Planning Director, is in agreement with this approach and is supportive of your decision to continue this matter to discuss the lot line adjustment for Lot 5. Accordingly, Dr. and Mrs. Moeller respectfully request that you continue the hearing and direct staff to evaluate this approach based on the above new information.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Pamela H. Silkwood', is written over a large, light-colored circular scribble or stamp.

Pamela H. Silkwood

Cc: client
Carl Holm

Exhibit A

Exhibit B

Recording Requested By:

Michael and Patricia Moeller
24808 Upper Trail
Carmel, California 93923

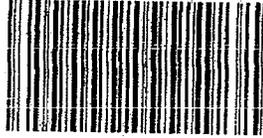
When Recorded Return To:

Michael and Patricia Moeller
24808 Upper Trail
Carmel, California 93923

Stephen L. Vagnini
Monterey County Recorder
Recorded at the request of
Filer

CRMELISSA
4/09/2010
15:10:56

DOCUMENT: **2010020038**



Titles: 1/ Pages: 2

Fees 13.00
Taxes
Other 2.00
AMT PAID \$15.00

THIS SPACE FOR RECORDER'S USE ONLY

INDEXING INSTRUCTIONS: This notice must be indexed as follows: Grantor and grantee index - claimant is a GRANTOR.

NOTICE OF INTENT TO PRESERVE INTEREST

This notice is intended to preserve an interest in real property from extinguishment pursuant to Title 5 (commencing with Section 880.020) of Part 2 of Division 2 of the Civil Code (Marketable Record Title).

Claimant:

Claimant Name: Michael Moeller and Patricia Moeller, husband and wife as community property

Mailing address of Claimants:

Michael Moeller, 42808 Upper Trail, Carmel, California 93923
Patricia Moeller, 42808, Upper Trail, Carmel, California 93923

Interest:

Character: Thirty foot wide non-exclusive ingress and egress easement reserved in that certain deed from Phillip Stearns MacDougal recorded February 11, 1960 in Book 2027 at Page 356 of the Monterey County Official Records.

I assert under penalty of perjury that this notice is not recorded for the purpose of slandering title to real property and I am informed and believe that the information contained in this notice is true.

Date: 4/7/10

Signed: Michael Moeller
Michael Moeller

Patricia Moeller
Patricia Moeller

APN: 241-291-011
APN: 243-181-005
APN: 243-181-006

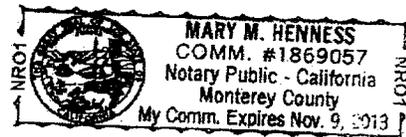
State of California)
)ss
County of Monterey)

On 4-7-10 before me, (Mary M. Henness, Notary Public), personally appeared Michael & Patricia Moeder, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Mary M Henness (Seal)



END OF DOCUMENT

Exhibit C

CIVIL CODE
Division 2. Property
Part 2. Real or Immovable Property
Title 5. Marketable Record Title
Chapter 7. Abandoned Easements

GO TO CALIFORNIA CODES ARCHIVE DIRECTORY

Cal Civ Code § 887.060 (2009)

§ 887.060. Notice of intent to preserve easement

(a) The owner of an easement may at any time record a notice of intent to preserve the easement.

(b) In lieu of the statement of the character of the interest claimed and the record location of the documents creating or evidencing the easement claimed, as otherwise required by paragraph (2) of subdivision (b) of Section 880.330, and in lieu of the legal description of the real property in which the interest is claimed, as otherwise required by paragraph (3) of subdivision (b) of Section 880.330, and notwithstanding the provisions of Section 880.340, or any other provision in this title, a notice of intent to preserve an easement may refer generally and without specificity to any or all easements claimed by the claimant in any real property situated in the county.

(c) An easement is not abandoned for purposes of this chapter if either of the following occurs:

(1) A notice of intent to preserve the easement is recorded within 20 years immediately preceding commencement of the action to establish the abandonment of the easement.

(2) A notice of intent to preserve the easement is recorded pursuant to Section 887.070 after commencement of the action to establish the abandonment of the easement and before judgment is entered in the action.

History:

Added Stats 1985 ch 157 § 2.

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2010 APR -3 10:11:27

May 3, 2010

RECEIVED

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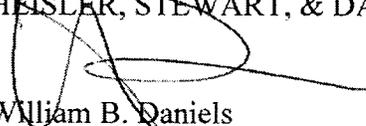
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EXHIBIT A
SUPPLEMENTAL FINDINGS FOR DENIAL
MOELLER APPEAL (PLN 060251)

2010 MAY -3 AM 11:34

1. **FINDING: LCP CONSISTENCY.** The Project is inconsistent with the emergency access policies of the Local Coastal Program

D.H. DEPUTY

EVIDENCE:

(a) The LCP includes the following policies to ensure suitable emergency access for new development:

- Projects in high fire hazard areas must be carefully regulated and planned to minimize risks to life and property. Carmel Area LUP Policy 2.7.2. Key Policy.
- Projects shall be approved only where it can be demonstrated that the project will neither create nor significantly contribute to a fire hazard. Carmel Area LUP Policy 2.7.3.3.
- Project roads shall be adequate to allow access by emergency vehicles. Carmel Area LUP Policy 2.7.4.3.
- Road and street networks, whether public or private, shall provide for safe access for emergency fire equipment. Monterey County CIP Section 18.56.060.1.

(b) The project is located in the Carmel Highlands in a high fire hazard area due to its steep forested slopes and limited roadway network.

(c) In 2006, the California Coastal Commission denied the Lot Line Adjustment based on concerns about the project's inconsistency with the emergency access policies of the LCP and uncertainty surrounding emergency access to the site.

(d) The availability of adequate emergency access for this project remains unresolved:

(1) The Carmel Highlands Fire Protection District ("Fire District") has identified the need for emergency access from Mentone Road due to its flatter gradient and the ease of ingress and egress to the proposed new residence as compared to access from San Remo Drive. However, the Fire District has no easement for emergency access to the site from Mentone Road. While an emergency access easement exists over a portion of the neighboring Lewis property, this easement does not connect to Mentone Road. Moreover, the availability of alternative emergency access routes remains uncertain and unresolved based on the Fire District's access standards and due to topographical constraints, including the presence of steep slopes.

(2) There is an existing 10' strip of land that separates the emergency access easement on the Lewis property from Mentone Road that is owned by the Lewis' and the Lewis' have not granted an emergency access easement to the Fire District over this 10' strip of land.

(e) The availability of vehicular access to Lot 5 from the property of Mary de la Roza, Assessor's Parcel Number 241-291-010 is disputed.

(1) Based on deeds submitted by the applicant, the applicant contends that they have access to Lot 5 over the property of Mary de la Roza, Assessor's Parcel Number 241-291-010.

(2) Based on the deeds submitted by the applicant and non-user for more than twenty (20) years, Mary de la Roza contends that vehicular access to Lot 5 from her property has been abandoned.

2. **FINDING: SITE SUITABILITY.** The site is not suitable for the proposed use.

EVIDENCE:

(a) Based on the emergency access constraints set forth in Finding 1, the site is not a suitable location for the proposed residence, lot line adjustment and related development.

(b) Even if an easement for emergency access could be acquired over the 10' strip of land to connect to Mentone Road, the location of this emergency access would be problematic and undesirable because it would provide for unlimited and uncontrollable general access over the Lewis property for the other residences and visitors of this area without the construction of additional and undesirable improvements.

(c) The Bestor Engineering plans submitted by the applicant incorrectly depict an 18' wide driveway for the Moeller Residence across the Lewis property and connecting to Mentone. In fact, the Moeller property has no legal emergency or general access easement over the Lewis property.

(d) The minimum lot size in LDR/1-D (CZ) zone is 1.0 acre. The applicant is proposing to adjust two undersized non-conforming lots consisting of 0.61 acres (243-181-005) and 0.85 acres (243-181-006). Based on a review of the Assessor's Parcel Maps (Book 241, page 18; Book 241, page 28; Book 241, p. 29) and related development records, the average size of lots in the general vicinity is approximately 1.10 acres and the average size of the structural improvements are approximately 2,260 square feet.

(e) The applicant is proposing 5,495 square feet of structure (3,994 s.f. home, 643 s.f. 3-car garage, and 858 s.f. of deck) on a 0.61 acre lot. The proposed structure is 243% larger than the average sized home in this area on a lot that is 51% smaller than the average sized lot in this area. Accordingly, the proposed size and massing of the project is incompatible with the surrounding homes in the neighborhood.

(f) The proposed Lot Line Adjustment would also allow two large residential structures to sit side by side on the currently configured upper lot (243-181-006) creating a more cluttered and congested appearance. The residence under construction on lot 243-181-006 includes approximately 4,700 square foot of structure.

(g) The site, under its current lot configuration (with a lower [-005] and upper lot [-006]), provides a more suitable opportunity for construction of a single-family residence without the need for a lot line adjustment:

(1) Retaining the historic configuration of the lots will enable development of a house separated horizontally and vertically from the current house under construction, thereby minimizing the problem of building density on undersized lots.

(2) Under the current configuration, there would be two separate access driveways from San Remo Road to approach these sites from the North and South dividing the traffic equally to insure safety and provide convenience. The uncertainty and difficulties of providing access from Mentone Road would be eliminated.

(3) The neighbors who purchased lots in this unique neighborhood of Carmel Highlands reasonably expected that development of the neighborhood would occur in its existing configuration and in manner that is consistent with the original subdivision design. The applicants were also aware of the current lot configuration when they purchased the lot and retain the ability to apply for and design a residence that fits within the current lot configuration.

(h) Government Code Section 66412(d) is one of four exceptions to the Subdivision Map Act. It imposes state law criteria for local approval of lot line adjustments involving four or fewer adjoining parcels, as is the case here. Subsection (d) states in part:

A local agency or advisory agency shall limit its review and approval to a determination of whether or not the parcels resulting from the lot line adjustment will conform to the local general plan, any applicable specific plan, any applicable coastal plan, and zoning and building ordinances. An advisory agency or local agency shall not impose conditions or exactions on its approval of a lot line adjustment except to conform to the local general plan, any applicable specific plan, any applicable coastal plan, and zoning and building ordinances,...

The "parcels resulting" from the lot line adjustment proposed by the applicant do not conform to the "local general plan, any applicable specific plan, any applicable coastal plan, and zoning and building ordinances" because the minimum lot size in a LDR/1 district in which the applicant's property is located is one acre. The proposed adjusted Parcel 006 would consist of 0.85 acres and adjusted Parcel 005 would consist of 0.61 acres. The standard applicable to LDR/1 sites is found in Carmel Implementation Plan (CIP) § 20.14.060 which states, "The minimum building site shall be one acre unless otherwise approved as part of a clustered residential development."

(i) The proposed adjusted lots would not be legal non-conforming building sites under CIP Section 20.68.060. The proposed adjusted lots will not be legal

nonconforming building sites under CIP § 20.68.060. Under that section “legal nonconforming building sites” means:

...divisions of property into parcels when said parcels were shown on the 1964 – 65 county tax roll under separate ownership, or a division of property into 4 or less parcels shown on a record of survey recorded prior to March 2, 1964, or record of survey of 4 or less parcels, each of which is over 2 ½ acres, recorded prior to March 7, 1972, or parcels of two and one-half acres or over when said parcels were shown under separate ownership prior to March 7, 1972, when shown on a deed or deeds recorded on or before March 7, 1972, when said parcels comply with applicable zoning ordinances in effect at the time of division, or when said parcels are lots on a recorded subdivision map approved by the Board of Supervisors of the County of Monterey.

§ 20.68.060 of the CIP limits nonconforming building sites to those configured by an approved subdivision. Both Lot 5 and Lot 6 are now legal nonconforming building sites under this section. However, if the applicant obtained an adjustment of those lots the adjustment will produce a configuration that is different from that of the approved subdivision map. Therefore, the newly adjusted lots will no longer be legal nonconforming building sites under § 20.68.060. When the right to adjust lot lines is invoked, state law requires that the resulting lots must conform to the local coastal plan. The adjusted lots cannot do that, given the one acre minimum for LDR/1 districts.

3. **FINDING: HEALTH & SAFETY.** The establishment, maintenance and operation of the proposed use would be detrimental to the health, safety, peace, morals, comfort and general welfare of person residing in the neighborhood of the proposed use and is detrimental or injurious to property and improvements in the neighborhood.

EVIDENCE:

- (a) The project is located in a high fire hazard area and, due to the lack of requisite easements, does not have suitable emergency access.
- (b) Even if the applicant and or Fire District could obtain the requisite emergency access, this location for emergency access is inappropriate and would provide an opportunity for unlimited general public access across the Lewis property to Mentone Road, which would be detrimental to the health, peace, comfort and general welfare of the Lewis' and future owners of this property.
- (c) The size and massing of the proposed residence is significantly larger than other homes in the neighborhood and therefore would be incompatible with the overall character of the neighborhood, which creates a significant aesthetic and visual quality impact.