Attachment A

This page intentionally left blank.

ATTACHMENT A
DISCUSSION

OVERVIEW

The two (2) subject parcels are zoned Medium Density Residential with Design Control overlay in the Coastal Zone [MDR/2-D(18)(CZ)] which allows a single-family dwelling (SFD) as a principally permitted use subject to a Coastal Administrative Permit (CAP) in each case. Each of the two SFDs is proposed with an attached garage and basement. The parcels (26338 and 26346 Valley View Avenue) are encumbered with active code enforcement cases. Code Violations 17CE00360-61 were opened on September 27, 2017 for actions that may cause conditions that lead to accelerated erosion including vegetation clearing, excavation and fill, all in an area of high archaeological sensitivity without the benefit of Coastal Development Permits (CSTs) as required in Monterey County Code. A CST is required for each property because the properties are located within 750 feet of known archaeological resources.

File Number(s)	*Address*	*Application Requested*	*Complete Application*	*Initial Study Circulated*
PLN170611	26307 Isabella	7/25/17	4/14/18	9/6-10/8/18
PLN170612/17CE00360	26338 Valley View	8/30/17	2/8/18	9/13-10/13/18
PLN170613/17CE00361	26346 Valley View	8/30/17	2/8/18	9/13-10/13/18

The projects are proposed in the Carmel Point area of Monterey County. The two Valley View lots are side-by-side adjacent while the southeast corner of 26307 Isabella Ave. touches the northwest corner of the 26346 Valley View lot (See **Attachment B**). Carmel Point is a well-documented area of archaeological resources where these addresses are within the CA-MNT-17. CA-MNT-17 nomenclature designates that archaeological resources have been recorded with the Regional Information Center of the California Historic Resources Information System. Historically, the archaeological findings in the CA-MNT-17 area have provided scientifically consequential information that indicates the Carmel Point was an Ohlone settlement dating to at least 4,000 years ago and as long ago as 9,300 years before present (YBP).

Proposed development on each of the parcels is as follows:

Site Address (Lot size)	**House**	**Garage**	**Basement**	**Grading**
26307 Isabella (8,438 sf)	3,397 sf	437 sf	1,366 sf	620 cy cut/fill
26338 Valley View (6,478 sf)	2,285 sf	450 sf	1,687 sf	830 cy cut
26346 Valley View (8,839 sf)	3,028 sf	440 sf	2,413 sf	1,255 cy cut

BACKGROUND

The three projects were heard before the Planning Commission on October 31, 2018 with a Staff recommendation of approval for the three single-family dwellings, each with an attached garage and without the proposed basements. The Planning Commission continued the hearing with direction for Staff to address the basements in environmental review.

Staff returned to the Planning Commission on 5 December 2018 with revisions. The Planning Commission decided in a 6 (ayes) – 2 (noes) vote to adopt the revised Mitigated Negative Declaration (MND) and approve construction of a single-family dwelling with an attached garage and basement on Isabella Avenue (PLN170611). The Planning Commission decided in

a 5 (ayes) – 3 (noes) vote to adopt the revised Mitigated Negative Declaration (MND) and approve construction of each of the two single-family dwellings with an attached garage and basement on Valley View (PLN170612 & PLN170613). One MND was written for PLN170611 and one MND was written for both PLN170612 and PLN170613.

An appeal was timely filed with the Clerk of the Board on January 14, 2019 by The Open Monterey Project and Save Carmel Point Cultural Resources, both represented by Ms. Molly Erickson. The appellant states the bases for the appeal are that there was a lack of fair or impartial hearing, the findings or decision or conditions are not supported by the evidence, and the decision was contrary to law.

Staff received a report regarding activity at the Valley View parcels on February 14, 2019 alleging large amounts of grading and movement of a large oak tree using a crane, and requested that all work at the site be prohibited until after the appeal has been resolved.

CA-MNT-17

The subject parcels are located within the CA-MNT-17 archaeological site wherein significant cultural resources, including prehistoric human remains, have been uncovered and recorded with the Regional Information Center of the California Historic Resources Information System. The site is presumed to be an Ohlone settlement dating to prehistory approximately 4,000 years.

ARCHAEOLOGICAL REPORTS, TRIBAL CONSULTATION, & CODE VIOLATIONS

March 2016

The first archaeological report (LIB170269) was prepared March 2016 by Albion Environmental Group, Inc. covering each of the parcels. This Phase 1 Assessment entailed a systematic visual pedestrian surface reconnaissance that resulted in observations of shell fragments and refuse from stone tool production (debitage). These observations prompted an assessment of potential cultural resources across the three subject properties. Albion staff recommended an Extended Phase 1 reconnaissance that would involve sub-surface investigation with shovel probes (SPs) which are hand-excavated units measuring approximately 40 centimeters (cm) in diameter by 60-100 cm in depth. Albion staff executed two SPs per parcel down to 80 cm. The SPs yielded incompatible information that Albion found inconclusive to confirm cultural resources would be present onsite. Each of the six SPs across the three subject parcels yielded cultural materials. In particular, one of the SPs "produced sufficient quantities of artifacts to surpass the density threshold and appears to represent a moderately intact deposit, as no modern trash was recovered in association with the prehistoric artifacts" (Document No. LIB170269). The incompatible information resulted from the five other SPs exhibiting a lack of midden soils alongside the findings of flaked stone, and modern debris found in association with marine shell. Albion speculated the prehistoric constituents (flaked stone debitage and marine shell) uncovered during the sub-surface investigation may have been a result of re-deposition or peripheral to a larger, denser prehistoric occupation site located outside the subject parcel boundaries. However, Albion emphasized there is potential for future excavation to result in intact archaeological deposits associated with the prehistoric culture of the CA-MNT-17 site. Albion recommended implementation of protection measures in case cultural resources are uncovered during

project-related ground disturbance.

July 2017
The application requests for each of the three projects came in July 25, 2017.

September 2017
In accordance with State AB52, Staff consultation with the tribe that is traditionally and culturally affiliated with the geographic area took place on September 12, 2017. Pursuant to PRC §21080.3.1(b)(2), the County is required to correspond with the "lead contact person" as either designated by the affiliate Native American tribe or by the Native American Heritage Commission (NAHC) that maintains a contact list with the names of individuals associated with each tribe. Louise Ramirez of the Ohlone Costanoan Esselen Nation (OCEN) is the lead contact person with whom Staff consulted as required. The consultation was concluded when, in compliance with PRC §21080.3.2(b)(1), parties reached mutual agreement concerning appropriate measures for preservation or mitigation. Staff agreed to the following measures to mitigate a significant effect, if a significant effect would be found to exist, on a tribal cultural resource, as requested by Ramirez:

- Retain a tribal monitor during soil movement. This tribal monitor may be authorized to stop construction,
- Return artifacts to the tribe,
- Rebury human remains along with artifacts, either onsite or at a site appropriate for reburial provided by the owner

Code violation cases 17CE00360 (26338 Valley View) & 17CE00361 (26346 Valley View) were opened on September 27, 2017. The violations are described as follows:

- clearing of indigenous vegetation (ground cover),
- placement of approximately 100 cubic yards of fill without a grading permit or Coastal Development Permit within 750 feet of known archaeological resources, and
- alterations are likely to cause conditions for accelerated erosion.

December 2017
Subsequent surface reconnaissance was conducted and reported in Preliminary Archaeological Assessments at each of the three parcels (LIB170435, LIB170436, and LIB170448), prepared by Gary S. Breschini in December 2017. The report on 26346 Valley View (17CE00361) concludes that none of the materials frequently associated with prehistoric cultural resources were observed in the soil of the project area or in the large mound of soil which had been deposited on the western end of the parcel. Materials frequently associated with prehistoric cultural resources include dark midden soil containing fragments of weathered marine shell, flaked or ground stone (debitage), weathered bones or bone fragments, fire-affected rock, etc. The report on 26338 Valley View (17CE00360) concludes that none of the materials frequently associated with prehistoric cultural resources were observed in the soil of the project area or in the imported layer of soil which had been spread on most of the parcel. Observation is noted that this parcel showed evidence of fairly recent demolition of a previous structure. The report on the Isabella parcel concludes that none of the materials frequently associated with prehistoric cultural resources were observed in the soil of the project area; however, two large piles of imported soil of unknown origin produced four pieces of cultural material associated with local archaeological sites.

ATTACHMENT A
DISCUSSION

Resulting observations diverge between Albion's 2016 findings of debitage and shell fragments at each of the three parcels and Breschini's 2017 findings of no marine shell or debitage in of the three project area soils.

CARMEL HIGHLANDS LAND USE ADVISORY COMMITTEE – 16 JANUARY 2018

On January 16, 2018, the Carmel Highlands Land Use Advisory Committee (LUAC) heard the projects presented by project architect Tom Meaney, applicant Chris Adamski, and agent Gail Hatter with Lombardo & Associates. The LUAC voted not to support recommendation of either of the projects as follows:

File Number(s)	*Address*	*Do Not Support Project as Proposed*
PLN170611	26307 Isabella Ave.	3 (ayes) – 1 (no), 1 (absent)
PLN170612	26338 Valley View Ave.	4 (ayes) – (no)
PLN170613	26346 Valley View Ave.	4 (ayes) – (no)

Reasons for not supporting the project as proposed are summarized as follows:

- Removal of large quantities of soil for construction of a large (1,687 sf & 2,413 sf, respectively) basement could disturb possible archaeological resources in an archeologically sensitive area.
- Design and materials should reflect rural character of the surrounding neighborhood
- Landscape plan should be rural, rather than urban, in design, and naturally relate to surroundings using indigenous plants and upper canopy trees
- Exterior lighting should be designed to stay onsite

PLANNING COMMISSION HEARING – 31 OCTOBER 2018

Staff prepared an initial study for the two projects, PLN170612 & PLN170613, resulting in a Mitigated Negative Declaration (MND) that included mitigations to reduce impacts to both Archaeological Resources and Tribal Cultural Resources to less than significant. Staff recommended deletion of the basements from the project proposal for the purpose of reducing environmental impacts to less than significant. The PC asked the applicant if he preferred action taken during that day's hearing for construction of the three single-family dwellings without basements or if he preferred the hearing be continued to further address the projects with basements. The applicant preferred to continue the hearing. The PC continued the hearing with direction to staff to address the basements in environmental review.

ARCHAEOLOGICAL REPORT

A third archaeological report (LIB190038), Cultural Resources Auger Testing, was prepared November 11, 2018 by Susan Morley for each of the parcels. Four auger test holes (ATH) were excavated to depths of approximately 9 feet, 10 feet, 4 feet, and 6 feet, respectively. In the Extended Phase 1 Assessment, Albion produced STPs to approximately 2.6 feet. Morley reports no cultural resources in any of the soils that were excavated or screened in the four ATH. As with the second surface reconnaissance, the site conditions at the time of Albion's 2016 STPs were pre-violation and the site conditions at the time of Morley's 2018 ATHs were

post-violation.

PLANNING COMMISSION HEARING – 5 DECEMBER 2018

Staff revised the MND which addresses the basements and included mitigation measures that are equivalent or more effective in reducing the environmental impacts of the basements to less than significant. The Planning Commission decided in a 6 (ayes) – 2 (noes) vote to adopt the revised Mitigated Negative Declaration (MND) and approve construction of a single-family dwelling with an attached garage and basement on Isabella Avenue (PLN170611), and in a 5 (ayes) – 3 (noes) vote to adopt the revised Mitigated Negative Declaration (MND) and approve Combined Development Permits (PLN170612 & PLN170613) allowing construction of each of the two single-family dwellings with an attached garage and basement on Valley View parcels.

ALLEGATIONS OF ILLEGAL GRADING AND TREE REMOVAL – 14 FEBRUARY 2019

Staff received an email on February 14, 2019 reporting allegations of grading and tree removal on the Valley View parcels, and requested a "Stop Work" order along with confirmation these actions were undertaken either with or without the benefit of permits from the County. Subsequently, it was determined that electrical permits 18CP01784 and 18CP01785 were issued on 5 July 2018 to allow construction of a 400 AMP electrical service panel at each of the Valley View parcels. Grading and tree removal activity, in association with the Construction Permits, were reported February 14, 2019. Once appeal of the Planning Commission's approvals of the Combined Development Permits are filed, the Planning Commission's approvals are stayed until the Board of Supervisors and/or the Coastal Commission resolves the appeal, pursuant to Section 20.86.090 of Title 20. Thus, the Board needs to act on the appeals prior to further development activity. As a result, RMA issued "Stop Work" orders on the Valley View parcels on February 15, 2019. Reports of code violation at the Isabella property were received by staff on March 7, 2019. Staff made a site visit on March 20, 2019 to the Isabella property and confirmed that no violation exists on the property.

The agent contends the trenching did not require a Coastal Development Permit (CDP). Staff confirmed this for the trenching done in the utility easement in accordance with Section II.B.2.b of *Repair, Maintenance and Utility Hook-up Exclusions* from Permit Requirements adopted by the Coastal Commission 5 September 1978. The portion of trenching that reaches onto the property is not covered by this exclusion as follows:

> A coastal permit is not required to install, test, place in service, maintain, replace modify or relocate underground facilities or to convert existing overhead facilities to underground facilities provided that work is limited to public road or railroad rights-of-way or public utility easements (P.U.E.).

The trenching onto the property for utility connection within 750 feet of known archaeological resources is a conditional use that is allowed with approval of a Coastal Development Permit in each case. Although a building permit was issued July 2018 to allow construction of a 400 AMP electrical service panel, the trenching was executed without the benefit of a land use

entitlement. Approval of PLN170612 during this appeal hearing would provide the necessary Coastal Development Permit to permit the after-the-fact trenching for utility extension onto the subject parcel.

The project file PLN170612 includes application of a Combined Development Permit (CDP) consisting of Coastal Administrative Permit (CAP) to allow construction of a single-family residence and a Coastal Development Permit (CST) that would allow development within 750 feet of known archaeological resources; however, the project was appealed. Along with the trenching, tree removal was also reported prior to approval of a land use entitlement. Section II.B.2.c states the following:

> Electrical service and metering facilities may be installed and placed in service to any development permitted or exempted under the Coastal Act. A coastal permit is not required to maintain, replace, or relocate a service or metering facilities for developments permitted or exempted under the Coastal Act.

While the principal use constructing the first single-family dwelling is exempt under the Coastal Act, movement of a protected tree from the utility easement onto the subject parcel is a conditional use that is not exempt under the Coastal Act. The applicant had received a building permit in July 2018 to allow construction of the 400 AMP electrical service panel which was executed in 2019 between the date of the tree relocation (February 6) and the report of alleged tree removal at the 26338 Valley View parcel (February 14). The agent contends that removal of the tree is covered under CPUC General Order 95. Staff found General Order No. 95 is an approximately 600-page document titled *Overhead Electric Line Construction*. Rule 35 – Vegetation Management of General Order No. 95 addresses appropriate handling of vegetation applicable to "all overhead electrical supply and communication facilities that are covered by this General Order, including facilities on lands owned and maintained by California State and local agencies." Rule 35 supports vegetation removal as follows:

- Dead, rotten, or diseased trees or portions, thereof, that overhang or lean toward and may fall into a span of supply, should be removed;
- In the event an electric supply circuit that is energized at 750 volts or less shows strain or evidences abrasion from vegetation contact, pruning of vegetation is a component of a suite of corrections that include reducing conductor tension, rearranging or replacing the conductor, or placing mechanical protection on the conductor;
- Requirements of Rule 35 do not apply where the utility has made a "good faith" effort to obtain permission to trim or remove vegetation but permission was refused or unobtainable.

The relocated tree is a 15" diameter Coast live oak that had been in the public right-of-way and was moved onto the 26338 Valley View property 18 feet from its original location, at the applicant's expense. Certified arborist, Frank Ono, provided a letter on 5 March 2019 regarding the relocated oak. He expressed perception of a "gray area" as to tree relocation qualifying as tree removal; however, tree relocation is usually part of the permit process. The tree had been proposed for removal by PG&E, and the applicant chose to relocate the tree onto the property instead of complete removal as a conservation effort. Relocation was implemented on 6 February 2019 by Environmental Designs, known for their experience and

success with large landscape tree relocation, the most identifiable of which is the Monterey cypress relocated on the 18th hole in Pebble Beach.

The General Order does not provide authority for utility companies to remove a non-hazardous protected tree from the public right-of-way without the benefit of a land use entitlement in the Coastal Zone and does not apply on the facts of this case. Approval of PLN170612 during this appeal hearing would provide the necessary CST to permit the after-the-fact relocation of the Coast live oak from the public right-of-way onto the property.

Provision of extension to utilities qualifies as a Class 3 exemption under Section 15303(d) of the CEQA Guidelines provided no exceptions apply under Section 1500.2 of the CEQA Guidelines. Location of the proposed residence is infill development within an existing Carmel housing tract, would not damage scenic resources, and does not constitute a hazardous waste site. The presence of historical resources is not supported by substantial evidence and the application of appropriate mitigations would reduce potential impacts to the environment to less than significant to unusual circumstances.

ALLEGATIONS OF ILLEGAL GRADING, VEGETATION AND TREE REMOVAL, AND HEAVY EQUIPMENT STORAGE – 26307 ISABELLA AVENUE

Staff received an email on 7 March 2019 reporting allegations of grading, vegetation and tree removal, and heavy equipment storage on the 26307 Isabella Avenue parcel. Staff had made a site visit on 6 March 2019 and observed no violations at the property. Heavy equipment and construction materials were stored at the site and have been removed by the applicant. There was no sign of fill or trenching during the site visit. No protected trees have been removed.

HR OVERLAY OR CONSERVATION EASEMENT?

The Planning Commission had approved a Mitigation Measure that would require a Conservation Easement be recorded over any accidentally uncovered human remains or grave goods. The Conservation Easement would have to be defined by a metes and bounds survey that would effectively pinpoint the exact location of the resource on the parcel. Staff considered an Historic Resources (HR) overlay as more appropriate for protection of resources given the generalized approach to defining the resource-containing area. However, the HR overlay would impose excessive restriction on a property-owner that is not appropriate to protection of Cultural or Tribal Cultural Resources. Therefore, staff recommends that if a parcel contains a resource, that parcel is recorded as a Conservation Easement with exceptions (such as for the residence and landscaping). See Condition No.

APPEAL CONTENTIONS AND RESPONSES

Contention #1 – Carmel Area Land Use Plan (LUP) Inconsistency. The appellant contends County approvals do not incorporate all site planning and design features needed to minimize or avoid impacts to archaeological resources because the Carmel Area LUP General Policy states “all available measures shall be explored to avoid development on sensitive prehistoric and archaeological sites” and County approvals are not in compliance with this policy and objective. The appellant states concern regarding design being inconsistent with the LUP requirement for the structure to blend into the wooded, rocky environment and be subordinate to the area.

Response:
Carmel Area LUP Policy 2.8.3.3, as the appellant paraphrases above, is one of a suite of policies regarding archaeological resources. The complete Policy 2.8.3.3 text is as follows, "All available measures, including purchase of archaeological easements, dedication to the County, tax relief, purchase of development rights, etc., shall be explored to avoid development on sensitive prehistoric or archaeological sites." The applicant was required to provide archaeological reports covering each of the three parcels pursuant to Policy 2.8.3.1 & .2 which are tasked with describing the sensitivity of the site and recommending appropriate levels of development and mitigation consistent with the site's need for protection. The first report (LIB170269) determined that after Albion's Phase 1 and Extended Phase 1 Assessments at each of the three parcels, no additional archaeological testing was necessary; however, protection measures of potential archaeological deposits were recommended. The second reports (LIB170436 & LIB170448) done for the two parcels on Valley View concluded the proposed projects should not be delayed for archaeological reasons; however, because the prehistoric archaeological materials on nearby parcels were found at considerable depth during basement and cistern excavations, archaeological monitoring was recommended. The third report (LIB190038) done for each of the three subject parcels determined there is no reason to delay the project due to concerns about cultural resources; however, because the project parcels are in the neighborhood of three recorded archaeological sites, both an archaeologist and a Native American monitor were recommended mitigation measures.

If Native American remains are uncovered during construction, and will remain buried onsite, the owner is required to record a Conservation Easement covering the entire parcel that retains the remains. This mitigation is in compliance with Policy 2.8.3.3.

Design proposal of the homes includes standing seam metal roofs. Standing seam metal roofs have become a common roofing material in the area. Advantages include longevity, durability, ease of installation, and range of color/style combinations. Disadvantages are that the materials tend to be expensive and difficult to repair. Although the materials can be expensive, the ease of installation could result in labor cost savings. Regular maintenance could reduce the need for expensive repairs. During the 31 October 2018 Planning Commission hearing, staff stated they had not witnessed other standing seam roofs in the neighborhood. Subsequently at that hearing, the agent for applicant provided several pictures of standing seam roofs existing in the neighborhood. Standing seam metal roofs are available in a range of color/style combinations that lend the material versatility in a design setting such as unincorporated Carmel. Staff had recommended the applicant submit revisions to some of the materials proposed although generally, the dark gray metal color proposed would not significantly disrupt the neighborhood character and noted the applicant would be open to changing the metal finishes. Further, the homes are infill development within an existing Carmel housing tract zoned medium density. The aesthetic of the neighborhood is urbanized rural village with eclectic home designs removed from wooded, rocky visual resources. Therefore, design of the proposed structures is in accordance with Carmel LUP Policy 2.2.3.6 that requires structures be subordinate to and blended into the environment, using appropriate materials to that effect.

Contention #2 – CEQA Compliance. Appellant contends the County did not comply with CEQA as follows:

- *Failed to consider cumulative impacts*

- *Provided inadequate information – no single map showing all three projects*
- *Failed to use the correct CEQA Guidelines, to provide enough evidence to proceed without an EIR, and to prepare an EIR*
- *Chose two out of three archaeological reports that preferred approval*
- *Ignored CEQA directive "if there is a disagreement among expert opinion supported by facts over the significance of an effect on the environment, the Lead Agency shall treat effect as significant and shall prepare an EIR."*

Response:
A visual aid that displays the three parcels on one map was made available as part of the staff report for the March 12, 2019 Board hearing on the project (**Attachment B**).

Opinions from the three different expert archaeologists were in agreement despite the difference in findings. Albion recommended no need for further testing, alongside protection measures of potential resource finds. Breschini recommended no delay of the project due to archaeology, along with onsite monitoring during construction. Morley recommended no delay of the project due to concerns about cultural resources, and mitigation measures that include both an archaeological and a tribal monitor onsite during construction. The conclusions of the three expert opinions were not in disagreement. Therefore, staff did not ignore the CEQA directive (Section 15064(g) of the CEQA Guidelines).

The decision by the County of whether to prepare an EIR was weighed judiciously in accordance with Section 15064(f)(2) that requires preparation of a mitigated negative declaration (MND) when substantial evidence exists for a project to have a significant effect on the environment, but the applicant agrees to mitigations that reduce the effects to a point where clearly no significant effect would occur. Based on substantial evidence from the three archaeological reports and agreement by the applicant to mitigation measures that would reduce impacts to potential cultural resources to less than significant, a MND was prepared. There is no fair argument supported by substantial evidence that the project, as mitigated, would have a significant impact on archaeological resources or tribal cultural resources. Therefore, an EIR is not required.

Albion reported each of the six shovel probes (SP) across the three subject parcels yielded cultural materials. In particular, one of the SPs "produced sufficient quantities of artifacts to surpass the density threshold and appears to represent a moderately intact deposit, as no modern trash was recovered in association with the prehistoric artifacts" (Document No. LIB170269). The incompatible information resulted from the five other SPs exhibiting a lack of midden soils alongside the findings of flaked stone, and modern debris found in association with marine shell. Albion speculated the prehistoric constituents (flaked stone debitage and marine shell) uncovered during the sub-surface investigation may have been a result of re-deposition or peripheral to a larger, denser prehistoric occupation site located outside the subject parcel boundaries. Albion found the information was inconclusive to confirm cultural resources would be present onsite. Although the other two reports yielded no cultural materials, the Albion report could not find substantial evidence for the presence of Cultural or Tribal Cultural resources.

This is a brief description of what determines a "positive" or "negative" archaeological report. A "positive" determination is made if the archeologist finds intact cultural materials during a surface

survey. Finding cultural materials is a single criterion for the recommendations made by an archaeologist. Other physical criteria include soil composition and context within which the find was made. Notwithstanding a find of cultural materials, the archaeologist analyzes all physical and historical factors and uses discretion as to recommending appropriate mitigations and monitoring. A "negative" archaeological report indicates no cultural materials were found during surface reconnaissance.

Each of the three proposed projects could disturb unknown subsurface human remains or cultural artifacts. However, the monitoring and protection measures recommended by the three archaeological reports for each of the three projects provides appropriate mitigation for uncovering potential cultural resources. Additional projects in a cumulative scenario throughout the immediate vicinity have been implemented in the past and are reasonably assumed to take place in the future. This area of Carmel Point has had a total of 215 applications with the County for single family dwellings since the 1990s. Of those 215 applications, the archaeological reports returned the following conclusions: 129 negative for cultural materials, 84 positive for cultural materials, and 2 inconclusive findings. Of the 215 applications, 43 project files were reviewed by staff. Of the 43 project files that were reviewed, the archaeological reports returned the following conclusions: 19 negative for cultural materials and 24 positive for cultural materials. Of the 24 positive reports, implementation of the project resulted in uncovering human remains at 2 of the sites. Of the 19 negative reports, implementation of the project resulted in uncovering human remains at 1 of the sites. For the three subject parcels, the reports returned results as follows: 2 negative for cultural materials and 1 positive for cultural materials. Staff considered cumulative impacts within the parameters of County practice to review each project case-by-case without evaluating the maximizing of development potential of Carmel Point parcels. Staff recommended during the 31 October 2018 Planning Commission Hearing to approve construction of the single-family dwellings with reduced or no basements. Elimination of the basement would reduce the amount of excavation from a depth of 14 feet to a depth of 6 feet for the structural foundation, approximately 57% more shallow.

Further exploration of available mitigations for the subsequent 5 December 2018 Planning Commission hearing produced alternative solutions to minimize, rectify, and reduce potential impacts, along with a provision to compensate for the impact through allocation of a substitute environment (Section 15370 of the CEQA Guidelines). Pursuant to PRC §5097.98, the landowner shall discuss and confer with the descendants all reasonable options regarding the descendants' preferences for treatment of Native American human remains which could include reburial at a different location on the parcel that would not incur future disturbance, or other culturally appropriate treatment [PRC §5097.98(b)(1)(d)]. Re-burial at a location on or off the parcel would constitute a substitute environment. The proposed mitigations would, upon implementation, be successful in protecting Cultural and Tribal Cultural Resources, if uncovered during ground disturbance.

Contention #3 – Archaeological Monitor Qualifications. The appellant contends the role of the archaeological monitor is not clearly defined as follows:

- *Define "qualified archaeological monitor"*
- *Different terms are used in the mitigations for "qualified archaeological monitor"*
- *Define required performance criteria and standards in the mitigations*

- *Give the archaeologist authority to halt work in Mitigation Measure #3*
- *Clarify if archaeologist under contract with the developer has to be the same as the one consulted when remains and artifacts are found*
- *Prohibit sharing the same observer for all three projects to watch over all soil disturbing activities at each site*

Response:
A qualified archaeological monitor is a licensed professional archaeologist on the County-approved list of archaeological consultants. The mitigations have been revised to consistently use the term "qualified archaeological monitor" and to prohibit sharing the same observer (Condition No. 9 for all three projects) for all three sites during concurrent soil disturbing activities (See **Attachment C** Conditions of Approval). The archaeologist has the authority to halt work in three of the four archaeological resource related mitigations; a monitor is not appropriate for the Conservation Easement mitigation. Performance criteria and standards are listed in the Mitigation Measure Monitoring Action No. 1b as requirements in the contract: specific construction activities for which the monitor shall be present, any construction activities for which the monitor will not be present, how sampling of the excavated soil will occur, and any other logistical information such as when and how work on the site will be halted. Mitigation Measure No. 1 specifically requires that when a find is determined significant, excavated soil from the project shall be screened for data recovery of smaller artifacts such as beads or lithic debitage. Monitors are obligated under California Code of Regulations Section 15064.5(e), Public Resources Code Section 5097.98, and California Health and Safety Code Section 7050.5 as to treatment of any human remains encountered during ground-disturbing activities to halt further disturbance of the site or any nearby area reasonably suspect to overlie adjacent remains until the County Coroner makes a determination as to origin of the remains. If the remains are determined to be of Native American origin, the County Coroner must contact the California Native American Heritage Commission (NAHC) within 24 hours of this identification. California law protects Native American burials, skeletal remains, and associated grave goods regardless of their antiquity, and provides for the sensitive treatment and disposition of those remains.

All archaeologists are governed by the same State laws and the applicant/owner is financially responsible for consultant fees. The archaeologist can be presumed to do his or her work according to professional standards; accordingly, there is no reason to compel the applicant/owner to contract two different archaeologists for different phases of the projects. The County requirement for choosing an expert archaeological consultant is that entity must be chosen from the County-approved list.

Contention #4 – Tribal Representation. The appellant states concern that the role of tribal representation is not clearly defined as follows:

- *Define "tribal monitor." Is the "OCEN" monitor different than the "tribal monitor"?*
- *Avoid potential conflict of interest: Tribal monitor should be a different person from the Most Likely Descendant (MLD)*

Response:
In order to participate in AB 52 tribal consultation, a **tribe must request, in writing, to be**

notified by lead agencies through formal notification of proposed projects in the geographic area with which the tribe is traditionally and culturally affiliated. Without this request, there is no statutory requirement that a lead agency engage in AB 52 tribal consultation. Ohlone Costanoan Esselen Nation (OCEN) has provided the formal written request to be contacted by the County regarding any project for which a Notice of Preparation, Notice of Mitigated Negative Declaration or Notice of Negative Declaration is filed on or after July 1, 2015. Within 14 days of determining that an application for a project is complete or of a decision by the County to undertake a project, the County must provide formal notification to the designated contact or tribal representative of traditionally and culturally affiliated California Native American tribes **that have requested notice**. Formal written notification from the County must include a brief description of the proposed project, the project location, County contact information, and notification the tribe has 30 days to request consultation. The tribe must respond in writing, within 30 days of receipt of the formal notification and request consultation. Response to the County must **include designation of a lead contact person**. If the tribe does not designate a lead contact person or designates multiple lead contact persons, the County shall defer to the person listed on the contact list maintained by the Native American Heritage Commission (NAHC) for SB 18 consultation. SB 18 consultation applies to all California tribes and local government adoption, or amendment of general plans, specific plans, or open space designations.

In accordance with AB52 requirements, the conventional approach by the County to requiring a "tribal monitor" has been that this is the same as an "OCEN" monitor. During the 5 December 2018 Planning Commission hearing, a motion was carried to make references to OCEN, specifically, more broadly inclusive. County language will now refer to an "a monitor approved by the appropriate tribe traditionally and culturally affiliated with the vicinity of the subject parcel and that has consulted with the County and designated a lead contact person in accordance with AB 52 requirements". The PC asked if it would be possible to assemble a directory similar to that which the County retains for archaeologists, arborists, and architectural historians. A concern expressed by the Planning CommissionPC is that as with consultants, monitors require payment for services rendered. Therefore, members of other tribes with affiliation to the vicinity should have a chance to access the same financial opportunity. However, neither designation of any one tribe nor rotation through a list of tribes is at the discretion of the County; under AB 52, tribal consultation is requested by the tribe and the County fulfills the request in accordance with State law.

There is no substantial evidence that the Tribal monitor should be a different person from the Most Likely Descendant (MLD), and the County is not in a position to issue this mandate to any tribe.

Contention #5 – Interpretation of Significant Resources. The appellant contends the following:

- *Meaning of "significance" may differ between a tribal monitor and an archaeologist*
- *Mitigations should protect all resources until they are determined to be significant rather than protecting only the "potentially significant resources." A small artifact that is not considered significant could be indicative of additional nearby resources that may be considered significant.*
- *Standards for significance should be clear, objective, and enforceable*
- *Language in the mitigation measures is inconsistent and should clearly allow stopping work for potentially significant finds.*

ATTACHMENT A
DISCUSSION

Response:
CEQA accounts for the differing meanings of "significance" through distinction between "Cultural Resources" and "Tribal Cultural Resources" in environmental review. These categories were analyzed separately in the Initial Studies and each category resulted in "less than significant impacts with mitigations incorporated," as reviewed separately. Mitigation measures include both a qualified archeological monitor (Condition No. 9 for all three projects) and a tribal monitor (Condition No. 13 for all three projects) from a tribe associated with the vicinity of the subject parcel (See **Attachment C** Conditions of Approval).

Standards for significance in terms of archaeological resources are as follows: "unique archaeological resource" means an archaeological artifact, object, or site about which it can be clearly demonstrated that, without merely adding to the current body of knowledge, there is a high probability that it meets any of the following criteria: (1) Contains information needed to answer important scientific research questions and that there is a demonstrable public interest in that information; (2) Has a special and particular quality such as being the oldest of its type or the best available example of its type; or (3) Is directly associated with a scientifically recognized important prehistoric or historic event or person. [PRC §21083.2(g)]. A nonunique archaeological resource need be given no further consideration, other than the simple recording of its existence by the lead agency if it so elects [PRC §21083.2(h)]. Standards for significance in terms of tribal cultural resources are as follows: (a) **"Tribal cultural resources"** are either **(1)** Sites, features, places, cultural landscapes, sacred places, and objects with cultural value to a California Native American tribe that are either (A) Included or determined to be eligible for inclusion in the California Register of Historical Resources, or (B) Included in a local register of historical resources as defined in subdivision (k) of Section 5020.1; or **(2)** A resource determined by the lead agency, in its discretion and supported by substantial evidence, to be significant pursuant to criteria set forth in subdivision (c) of Section 5024.1. In applying the criteria set forth in subdivision (c) of Section 5024.1 for the purposes of this paragraph, the lead agency shall consider the significance of the resource to a California Native American tribe. (b) A **cultural landscape** that meets the criteria of subdivision (a) is a tribal cultural resource to the extent that the landscape is geographically defined in terms of the size and scope of the landscape. (c) A **historical resource** described in Section 21084.1, a **unique archaeological resource** as defined in subdivision (g) of Section 21083.2, or a **"nonunique archaeological resource"** as defined in subdivision (h) of Section 21083.2 may also be a tribal cultural resource if it conforms with the criteria of subdivision (a). [PRC §21074]

The County is tasked, for determination of either category of resources, with making the determination based on substantial evidence. The archaeological reports found the potential for impacts to both Cultural and Tribal Cultural Resources and recommended mitigations to reduce the impacts to less than significant. Therefore, protection measures and onsite monitoring were recommended. These recommendations were incorporated as mitigation measures and significance of any finds uncovered during project-related ground disturbance shall be determined according to the standards set forth in PRC §21083 and PRC §21074. Under CEQA Guidelines Section 15064.5(e), Public Resources Code Section 5097.98, and California Health and Safety Code Section 7050.5, treatment of any human remains encountered during ground-disturbing activities requires ceasing further disturbance of the site or any nearby area reasonably suspect to overlie adjacent remains. The mitigation measures reflect this imperative.

ATTACHMENT A
DISCUSSION

Contention #6 – Removal of Resources. Appellate contends that County mitigation "requires" removal of human remains and historic artifacts.

Response:
The requirement of Mitigation Measure Monitoring Action No. 2c to which the appellant refers is as follows: The artifact, and any subsequent artifacts determined to be significant tribal cultural artifacts shall be removed by a qualified archaeologist and stored safely through the duration of excavation. The context of this requirement is that the artifacts must be uncovered, extracted, and handled with the expertise and caution of a professional archaeologist qualified to "remove" the artifact using methodology that will not harm or damage the artifact. The language has been revised in the mitigation to replace removed and the revised mitigation is as follows: The artifact, and any subsequent artifacts determined to be significant tribal cultural artifacts shall be surgically uncovered and extracted by a qualified archaeologist and stored safely through the duration of excavation.

Contention #7 – Excavations. Appellate states concern that excavation footprints are significantly larger than aboveground footprints due to the need for excavation of not only the walls, but also large light wells and escape wells, which are proposed in all three projects. The appellate contends the County has other options available to investigate and evaluate the sites, as previously presented to the Planning Commission 31 October 2018.

Response:
The alternative method presented during the Planning Commission 31 October 2018 was Geoprobe testing.
Geoprobe testing – Advantages:

- drill holes only 2 inches wide
- retrieve soil core samples beyond 50 feet deep
- excavate up to 12 locations per day

Traditional methods, such as hand excavation and backhoe trenching, are more invasive and less accurate methods for locating cultural resources due to the following *disadvantages*:

- the smallest size shovel test pit is no less than 18 inches wide
- pits can only be dug to a depth of ten to twelve feet
- workers excavating by hand can dig no more than 8 test pits per day

Geoprobe testing has the capability to characterize the extent and quality of archaeological resources, reaching depths that would normally require greater costs and area exposures using conventional excavation methods. Staff recommendation was to incorporate Geoprobe testing as Extended Phase 1 Assessment of Archaeological Resources. As a frame of reference, an Extended Phase 1 Assessment was prepared by Albion for the subject parcels using STPs. This recommendation would replace STPs with Geoprobe testing during an Extended Phase 1 Assessment.

Geoprobe testing by the County is still in the exploratory phase and is not ruled out as a method for investigation and evaluation of sites for potential findings of remains and artifacts.

The Planning Commission required hand shovel methodology for excavation in the Conditions of Approval as Mitigation Measure MM#2 as an alternative to mechanical excavation.

ATTACHMENT A
DISCUSSION

The proposal for excavation must be put in the context of Visual Resources. Carmel LUP Policy 2.2.5.2 requires that in order to provide for more visually compatible structures, the **height limit in the Carmel Point Area should be limited to a maximum height of 18 feet** from the natural average grade. Developers in the Carmel Point Area have a frequent conflict between competing resources due to the LUP height limitation that protects visual resources and those State laws that protect cultural resources. While basements may have potentially significant impact on cultural resources, State law provides statutory guidance in PRC §21074, §21080.3.1, §21080.3.2, §21083.2, §21084.3, and §5097.9 for reducing impacts to less than significant.

Further context for excavation in the Carmel Medium Density Residential (MDR) zone is that subgrade square footage is not accounted in floor area calculations. Maximum Floor Area Ratio (FAR) in MDR is 45%. The following chart shows the floor area for each project within the maximum thresholds of 3,797 sf at Isabella, 2,889 sf at 26338 Valley View, and 3,977 sf at 26346 Valley View.

Site Address (Lot size)	Floor Area	FAR: max 45%	Basement	% more Floor Area
26307 Isabella (8,438 sf)	2,822 sf	33.44%	1,366 sf	10.3%
26338 Valley View (6,478 sf)	2,285 sf	35.27%	1,687 sf	37.49%
26346 Valley View (8,839 sf)	2,704 sf	30.59%	2,413 sf	28.66%

The basement provides additional floor area for each of the parcels as follows: 10.3% for Isabella, 37.49% for 26338 Valley View, and 28.66% for 26346 Valley View.

The Geotechnical reports (LIB180048, LIB180049, and LIB180355) for the three projects prepared by Haro, Kasunich and Associates, Inc. provide foundation recommendations at different areas of the proposed structure and flatwork. Two foundation options in each of the three reports are offered for the garage and flatwork portions of both Valley View projects and for the flatwork, terraces, garage, entry, site walls, master wing, and basement den portions of the Isabella project. Loose soils anticipated at footing grade necessitate either A) Sub-excavation and scarification or B) Helical piers. Option “A” requires sub-excavation 4-9 feet (actual depth determined at the time of construction by a geotechnical engineer) of loose soil, scarification 12 inches deep at the bottom of the excavation, and a mat of engineered fill extended a minimum 5 horizontal feet beyond the outer edge of the foundation and slab elements in each direction. Option “B” requires the helical piers penetrate through the entire zone of loose soil to embed in firm sand at 5-9 feet depth. Alternately, conventional shallow spread foundations may be used where firm native soil is anticipated at footing grade as with the basements. Footing excavations are recommended at least 18 inches deep below lowest adjacent firm native grade and at least 18 inches wide. Basement and footing excavation would be approximately 15.5 feet deep.

The ratio of basement square footage to grading is 2 to 1; i.e., for every square foot of basement, half a cubic yard of grading is anticipated. Subtracting the basements from the projects would necessitate one of Options “A” or “B” for the entire foundation. Option “A” foundation implemented for the entirety of each project minus the basement would result in a range of reduction or increase of grading as follows: up to 110% more grading than the 620 cy proposed at Isabella, 38% less to 23% more grading than the 830 cy proposed at 26338 Valley View, and 54% less to 9% more grading than the 1,255 cy proposed at 26346 Valley View. The following chart

shows the lot coverage for each project and the range of grading that could be anticipated with implementation of the Option "A" foundation in each case. These calculations do not include the potential grading necessary to accommodate the mat of engineered fill extended a minimum 5 horizontal feet beyond the outer edge of the foundation and slab elements in each direction.

Site Address (Lot coverage)	Grading Est. w/out Basement	Grading for Proposed Project
26307 Isabella (2,954 sf)	652 - 1,304 cy	620 cy cut/fill
26338 Valley View (2,285 sf)	511 - 1,021 cy	830 cy cut
26346 Valley View (3,094 sf)	573 - 1,145 cy	1,255 cy cut

The Isabella property could end up necessitating much more excavation without the basement. Each of the Valley View parcels has the most potential to reduce excavation by taking out the basement. Concurrently, subtraction of the basement from each Valley View project is not likely to necessitate greater excavation as with this potential at Isabella.

Contention #8 – Archaeological Report Results. The appellant contends the following:

- *Auger pits were not done at a depth of the proposed excavation and locations were not relative to the areas proposed to be excavated*
- *Shovel test may have been done in the area where "large mound of imported sand and gravel" were found, showing evidence of illegal grading without a permit by the applicant*
- *Second archaeological report found resource that archaeologist claimed as not significant, and therefore, County claimed the report as "negative" for finding resources. This is inconsistent with County files that show "insignificant" items were buried with humans*

Response:

As previously mentioned in response to Contention #7, traditional methods of resource assessment are limited in scope. Auger Test Holes (ATHs) are constrained to depths allowed by manual tools as were available to expert archaeologists that surveyed the subject parcels. Testing done by Morley (LIB190038) was limited to a six-foot manual auger along with a five-foot auger extension, which could auger to a maximum depth of eleven feet. Reaching depths of proposed excavation was not possible using the traditional method of ATHs. Although the ATHs and SPs (Albion, LIB170269) were taken from the locations of proposed excavation at each of the parcels, the maximum ATH could reach a maximum depth of eleven feet. The basements are proposed for excavation to depths of 14 to 15 feet from average natural grade. Geoprobe testing can reach a depth of 50 feet with 2-inch diameter drill holes. Again, Geoprobe testing by the County is still in the exploratory phase and is not ruled out as a method for investigation and evaluation of sites for potential findings of remains and artifacts. The most pertinent question is whether the geoprobe testing would reduce the intensity required of mitigation measures to protect cultural materials found during implementation of an approved project. This is part of a larger conversation begun by the PC's original question to staff: Are the mitigation measures applied by the County working to avoid or minimize impacts to cultural resources at the Carmel Point area?

The second reports from Breschini noted that the 26346 Valley View parcel showed evidence of fairly recent demolition of a previous structure along with a large mound of soil and gravel piled at the west end of the parcel; the 26338 Valley View parcel showed evidence of a fairly recent

demolition of a structure along with a layer of soil imported from some other location that had been spread over much of the parcel. None of the materials frequently associated with prehistoric cultural resources such as dark midden soil containing fragments of weathered marine shell, flaked or ground stone, weathered bones or bone fragments, fire-affected rock, etc. were found on the parcels by Breschini during surface reconnaissance of each parcel.

Contention #9 – Mitigation Measures. The appellant states concern that mitigation measures do not protect resources and instead, provide incentive to destroy resource so it is not intact. The appellant would like for the County to adopt mitigations to prevent damage to resources beforehand and questions why some mitigations are referred to as "conditions of approval". The appellant has specific issues with mitigation measures as follows:

- *Mitigation Measure Action 1b is lacking these features – 1) performance or criteria for responsibilities and involvement of arch monitor, 2) requirement for accountability by the archaeologist to the County, 3) requirement as to who at the County should review the proposed contracts*
- *Mitigation Measure 2 is lacking these features – 1) clear, unambiguous grammar and writing, 2) standards and objectives, 3) statement of what occurs after remains are determined Native American, 4) recommendation language that guarantees proper handling of human remains and that requires the project applicant respect the wishes of the MLD, 5) requirement that soil disturbance halt within 50 meters, or 164 feet, at each of the three projects if an artifact is found on any one of the parcels during ground disturbance; this would make sense since the Pietro projects are within 50 meters of each other*
- *Mitigation Measure for Conservation Easement is lacking these features – 1) specific performance standards, criteria, or objectives, 2) language that would prevent all excavation and all development as defined in the Coastal Act, 3) requirement for applicant to pay for the easement, 4) requirement that easement be in place before building permits are issued, 5) inclusion of surroundings adjacent to human remains as a portion of the easement dedication since it is know that possessions and household items are buried with them as well*
- *Mitigation Measure 4c is lacking these features – 1) effective and enforceable action, 2) statement as to whom the letter shall be submitted, accuracy of the letter, or submission of the letter under penalty of perjury, 3) specific timing that explains "final" reference and imposes a definite, enforceable date, 4) protection of sites in perpetuity from further excavation, 5) requirement to remove basement component of project if human remains are found, 6) scenario of reburial being impossible to fit due to site constraints*

Response:
The appellant contends that mitigations are listed as conditions, are not enforceable, use unclear and confusing language, and not effective for protecting Cultural or Tribal Cultural Resources. Revisions to the Mitigation Measure language are included in ~~strike-out~~ and underline in Conditions of Approval (**Attachment C**). Specifically, Conditions 9-13 (highlighted headings) are the Mitigations that have revisions to make clarifications and provide language that strengthen the effectiveness of the mitigation measures. Mitigation measures are required as Conditions of Approval pursuant to PRC §21081.6(b) when mitigations have not been incorporated into the

project plans or design.

Contention #10 – Disclosure of Information. The appellant contends the following with regard to disclosure of information:

- *Requirement for a Final Technical Report a year after project completion is "far too long" and "additional projects could be approved during that time at that location without the benefit of the important information about the discovery."*
- *In the case of finding Native American remains onsite, the required re-design would not be subject to public review or notice, or CEQA review/exemption*
- *County agenda items fail to disclose that project approvals are part of clearing a code enforcement violation*
- *County has not published the reports and has controlled the information*

Response:
The Final Technical Report would be required as an assessment of uncovered artifacts that are not considered grave goods. Artifacts identified as grave goods would be interred with the associated human remains in accordance with PRC§21083 and PRC §21074.

If a project requires redesign such that it would amend the project description, an amendment to the project would be required to be processed. The combination of State law imperatives and mitigation measures are tools available to the County that are applied to the three projects for protecting uncovered human remains and grave goods.

Moving forward, County agenda items shall include information, if pertinent, that a project approval is part of clearing a code enforcement violation.

California Government Code §6254.10 and other state laws require confidentiality of records that relate to archaeological site information maintained by, or in the possession of, federal, state, and local agencies, including the records that an agency obtains through a consultation process between a tribe and that agency. Therefore, the County is prohibited by State law to make archaeological reports available to the public, except in heavily redacted form that protects confidentiality of archaeological site information.

Contention #11 – County Processes and Procedures. The appellant states concern with County processes and procedures as follows:

- *Staff did not sign the revised version of the resolution*
- *The revised Initial Study for PLN170611 was not attached*

Response:
An account of the procedural background is provided in Finding 7 of the resolution. Staff signed the approved resolutions 20 December 2018. The signed resolutions that had been sent out contained errors. The errors were corrected and because they were insubstantial, the resolution that was sent with corrections did not require a repeat signature.