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CALIFORNIA COASTAL COMMISSION

CENTRAL COAST DISTRICT
725 FRONT STREET, SUITE 300
SANTA CRUZ, CA 95060
PHONE: (831) 427-4863
FAX: (831) 427-4877
WEB: WWW.COASTAL.CA.GOV

**COMMISSION NOTIFICATION OF APPEAL**

October 4, 2021

To: Erik V. Lundquist, Director
Monterey County Housing and Community Development
1441 Schilling Place, South 2nd Floor
Salinas, CA 93901

From: Susan Craig, District Manager
Alexandra McCoy, Coastal Planner

Re: Commission Appeal No. A-3-MCO-21-0064

Please be advised the coastal development permit decision described below has been appealed to the California Coastal Commission pursuant to Public Resources Code Sections 30603 and 30625. Therefore, the decision has been stayed pending Commission action on the appeal pursuant to Public Resources Code Section 30623.

LOCAL PERMIT #: PLN180523

APPLICANTS: Isabella 2 LLC

APPELLANT(S): Property Owners Concerned with Equal Treatment, Fairness, and Tribal Cultural Resources c/o Molly Erickson

DESCRIPTION: Allow construction of a 2,100-square-foot, two-story, single-family dwelling with 318 square feet of deck area. Allow development within 750 feet of known archaeological resources. Allow the modification of parking standards, including no covered parking and authorization to allow parking within the front setback to count toward required parking. Allow a variance to increase the allowed floor area from 45 percent to 58.4 percent. Allow relocation of four Coast Live Oak trees.

LOCATION: 26308 Isabella Ave., Carmel, CA 93923 (APN: 009-451-015-000)

APPEAL FILED: 9/28/2021

A-3-MCO-21-0064 (Isabella 2 LLC)

The Commission appeal number assigned to this appeal is A-3-MCO-21-0064. The Commission hearing date has not been scheduled at this time. Within 5 working days of receipt of this Commission Notification of Appeal, copies of all relevant documents and materials used in Monterey County's consideration of this coastal development permit must be delivered to the Central Coast District Office of the Coastal Commission (California Administrative Code Section 13112). Please include copies of plans, relevant photographs, staff reports and related documents, findings (if not already forwarded), all correspondence, and a list, with addresses, of all who provided verbal testimony.

A Commission staff report and notice of the hearing will be forwarded to you prior to the hearing. If you have any questions, please contact Alex McCoy at Alexandra.McCoy@coastal.ca.gov or by mail at the Central Coast District Office.

cc: Isabella 2 LLC
Anthony Lombardo
Rob Carver
Molly Erickson
Roxanne and Carol Wilde
Mary Ann and Debbie Dillon (via email)
Eleanor Doyle (via email)
Marguerite Meyer (via email)
Vicky Thomas (via email)

CALIFORNIA COASTAL COMMISSION

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**APPEAL FORM**

Appeal of Local Government Coastal Development Permit

Filing Information (STAFF ONLY)**RECEIVED**

District Office: Central Coast

SEP 28 2021

Appeal Number: A-3-MCO-21-0064
 CALIFORNIA
 COASTAL COMMISSION
 CENTRAL COAST AREA
Date Filed: 9/28/2021
 Appellant Name(s): Property Owners Concerned w/Equal Treatment, Fairness, ;
Tribal Cultural Resource
c/o Molly Erickson
APPELLANTS

IMPORTANT. Before you complete and submit this appeal form to appeal a coastal development permit (CDP) decision of a local government with a certified local coastal program (LCP) to the California Coastal Commission, please review the appeal information sheet. The appeal information sheet describes who is eligible to appeal what types of local government CDP decisions, the proper grounds for appeal, and the procedures for submitting such appeals to the Commission. Appellants are responsible for submitting appeals that conform to the Commission law, including regulations. Appeals that do not conform may not be accepted. If you have any questions about any aspect of the appeal process, please contact staff in the Commission district office with jurisdiction over the area in question (see the Commission's contact page at <https://coastal.ca.gov/contact/#/>).

Note regarding emailed appeals. Please note that emailed appeals are accepted **ONLY** at the general email address for the Coastal Commission district office with jurisdiction over the local government in question. For the North Coast district office, the email address is CentralCoast@coastal.ca.gov. An appeal emailed to some other email address, including a different district's general email address or a staff email address, will be rejected. It is the appellant's responsibility to use the correct email address, and appellants are encouraged to contact Commission staff with any questions. For more information, see the Commission's contact page at <https://coastal.ca.gov/contact/#/>.

Appeal of local CDP decision

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1. Appellant information¹

Name: Property Owners Concerned with Equal Treatment, Fairness and Tribal Cultural Resources
Mailing address: c/o Molly Erickson, Box 2448, Monterey CA 93942
Phone number: 831-373-1214 (office)
Email address: erickson@stamplaw.us

How did you participate in the local CDP application and decision-making process?

Did not participate Submitted comment Testified at hearing Other

Describe: Submitted comments on the IS/MND, and to planning commission, appealed planning commission decision to Board of Supervisors, submitted comments and testified at Board hearing. Appellants to the board were

The Open Monterey Project and Property Owners Concerned with Equal Treatment, Fairness and Tribal Cultural Resources; the latter file this appeal. TOMP joins if necessary for standing.

If you did *not* participate in the local CDP application and decision-making process, please identify why you should be allowed to appeal anyway (e.g., if you did not participate because you were not properly noticed).

Describe: n/a

Please identify how you exhausted all LCP CDP appeal processes or otherwise identify why you should be allowed to appeal (e.g., if the local government did not follow proper CDP notice and hearing procedures, or it charges a fee for local appellate CDP processes).

Describe: See above.

¹ If there are multiple appellants, each appellant must provide their own contact and participation information. Please attach additional sheets as necessary.

Appeal of local CDP decision

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2. Local CDP decision being appealed²

Local government name: County of Monterey
Local government approval body: Board of Supervisors
Local government CDP application number: PLN180523
Local government CDP decision: CDP approval CDP denials
Date of local government CDP decision: August 24, 2021

Please identify the location and description of the development that was approved or denied by the local government.

Describe: Carmel Point -- a new house on a vacant lot within 750 feet of arch resources,
26308 Isabella Ave, Carmel, 93923
Variance for FAR -- 58.4% instead of 45%
Development within 750 Feet of archaeological resources,
including 304 cubic yards excavation
Interior formal staircase leading to flat third floor roof

See attached discussion.

² Attach additional sheets as necessary to fully describe the local government CDP decision, including a description of the development that was the subject of the CDP application and decision.

³ Very few local CDP denials are appealable, and those that are also require submittal of an appeal fee. Please see the appeal information sheet for more information.

Appeal of local CDP decision

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3. Applicant information

Applicant name(s):

Isabella 2 LLC / Chris Adamski

Applicant Address:

26302 Monte Verde, Carmel, CA 93923

4. Grounds for this appeal⁴

For appeals of a CDP approval, grounds for appeal are limited to allegations that the approved development does not conform to the LCP or to Coastal Act public access provisions. For appeals of a CDP denial, grounds for appeal are limited to allegations that the development conforms to the LCP and to Coastal Act public access provisions. Please clearly identify the ways in which the development meets or doesn't meet, as applicable, the LCP and Coastal Act provisions, with citations to specific provisions as much as possible. Appellants are encouraged to be concise, and to arrange their appeals by topic area and by individual policies.

Describe: The approved development does not conform to the LCP.

- It does not meet the requirements for an FAR variance and
a variance of 58.4% is not supported and would give
this site preferential treatment compared to similar sized
nonconforming lots that have FAR of 45% or less.

- Excessive excavation, more than appropriate under the LCP
and the CCC direction as to the applicant's three other projects.

- Formal interior staircase to flat roof for foreseeable use as
a third floor roof deck.

⁴ Attach additional sheets as necessary to fully describe the grounds for appeal.

Appeal of local CDP decision

5. Identification of interested persons


On a separate page, please provide the names and contact information (i.e., mailing and email addresses) of all persons whom you know to be interested in the local CDP decision and/or the approved or denied development (e.g., other persons who participated in the local CDP application and decision making process, etc.), and check this box to acknowledge that you have done so.

Interested persons identified and provided on a separate attached sheet

6. Appellant certifications

I attest that to the best of my knowledge, all information and facts in this appeal are correct and complete.

Print name Molly Erickson


Signature

Date of Signature 9-28-2021

*authorized rep for
properties, Olma, Concord
and the open
Monterey Project*

7. Representative authorizations

While not required, you may identify others to represent you in the appeal process. If you do, they must have the power to bind you in all matters concerning the appeal. To do so, please complete the representative authorization form below and check this box to acknowledge that you have done so.

I have authorized a representative, and I have provided authorization for them on the representative authorization form attached.

⁵ If there are multiple appellants, each appellant must provide their own certification. Please attach additional sheets as necessary.

⁶ If there are multiple appellants, each appellant must provide their own representative authorization form to identify others who represent them. Please attach additional sheets as necessary.

CALIFORNIA COASTAL COMMISSION

455 MARKET STREET, SUITE 300
 SAN FRANCISCO, CA 94105-2219
 VOICE (415) 904-5200
 FAX (415) 904-5400

**DISCLOSURE OF REPRESENTATIVES**

If you intend to have anyone communicate on your behalf to the California Coastal Commission, individual Commissioners, and/or Commission staff regarding your coastal development permit (CDP) application (including if your project has been appealed to the Commission from a local government decision) or your appeal, then you are required to identify the name and contact information for all such persons prior to any such communication occurring (see Public Resources Code, Section 30319). The law provides that failure to comply with this disclosure requirement prior to the time that a communication occurs is a misdemeanor that is punishable by a fine or imprisonment and may lead to denial of an application or rejection of an appeal.

To meet this important disclosure requirement, please list below all representatives who will communicate on your behalf or on the behalf of your business and submit the list to the appropriate Commission office. This list could include a wide variety of people such as attorneys, architects, biologists, engineers, etc. If you identify more than one such representative, please identify a lead representative for ease of coordination and communication. You must submit an updated list anytime your list of representatives changes. You must submit the disclosure list before any communication by your representative to the Commission or staff occurs.

Your Name Property Owners Concerned with Equal Treatment, Fairness and Tribal Cultural Resources; TOMP

CDP Application or Appeal Number PLN180523 (Isabella 2 LLC)

Lead Representative

Name Molly Erickson

Title attorney for appellants

Street Address Box 2448

City Monterey

State, Zip CA 93942

Email Address erickson@stampaw.us

Daytime Phone 831-373-1214

Your Signature 

Date of Signature 9.23.2014

Appeal of 26308 Isabella, Carmel Point

1. The variance to allow 58.4% floor area ratio is not supported at this site and is not appropriate. 58.4% is 130% of the 45% maximum in LCP, and would give this property privileges not enjoyed by other similarly situated properties in the immediate area.

Floor Area Ratio in the Carmel Area is 45% in the MDR/2 Zoning District.
(§ 20.12.060.F).

The County has not granted FAR variances for new development at Carmel Point before now. This applicant received a 130% variance which would be an unfair special privilege not granted to others, and specifically denied to others, on Carmel Point. Many lots at Carmel Point are approximately 4,000 sf, which was the size when originally subdivided many decades ago. The current minimum lot size is 6,000 s.f. (§ 20.12.060.A) which is the minimum size throughout the Monterey County coastal zone and does not reflect the small scale of Carmel Point. The establishment of the 6,000 s.f. minimum lot size created hundreds of legal nonconforming lots in the Carmel Area due to their size of less than 6,000 s.f.. Appellant researched public records and provided evidence to the County of the many nonconforming lots at in the immediate vicinity (surrounding blocks) that are developed at 45% FAR or less

The County FAR maximum is fair – larger lots get larger houses, smaller lots get smaller houses. This is a vacant never-developed lot, and it can and should comply with the FAR. The applicant can build a house of 1,618 under the 45% FAR.

Here, the County gave the applicant a variance of 130% of the FAR on the following grounds:

Based on the small size of the property and inability to construct a basement as originally proposed, zoning limitations would require a smaller house than other properties in the immediate vicinity and with the same zoning classification.

(County resolution, ¶ 10. FINDING: VARIANCE (SPECIAL CIRCUMSTANCES), evidence (b).) There is no legal or factual support for the 130% variance to the floor area ratio (FAR).

An FAR variance for new development is unprecedented at Carmel Point. What the County staff report describes as other "variances" to floor area ratio were for reductions in existing nonconforming FAR for property owners who were making changes to their existing structures, and the structure as modified still would have an FAR of greater than 45%. These are reductions to existing nonconforming structures built prior to the adoption of the current zoning development standards and that already exceed the FAR and that will exceed it to a lesser extent subsequent to the modification. That is a

markedly different variance posture than a new project on a vacant lot like 26308 Isabella. None of the past variances support the request for a variance here because all of them were for reduction of existing FAR for pre-existing structure.

County staff has expressly has recommended *against* variance applications at Carmel Point in circumstances other than the singular circumstance described above. County staff when reviewing the Cooper project in 2005 reviewed the history of Carmel Point requests for variances and stated this:

the County has a history of allowing Variances to FAR in the vicinity of the subject project for legal non-conforming structures that seek to reduce their FAR yet not fully comply with the current limitation due to special circumstances, and of denying other types of Variances to FAR in this vicinity.

That has long been the rule and practice,

In 2021, the reason stated at the Board hearing for the granting of the variance was the fact that the applicant had bought the lot and planned to develop a three-level house that included a basement level, and that subsequent to the July 9, 2020 Coastal Commission action on the three Adamski/Pietro projects, Adamski revised the project to eliminate the basement level and garage. The County approved a modification of parking standards and allowed parking within the front setback. It is basic land use law that there is no entitlement to zoning. There is also no entitlement to a basement at Carmel Point.

The Board resolution site the Coastal Commission action as evidence supporting the variance. (See Finding 10. FINDING: VARIANCE (SPECIAL CIRCUMSTANCES), evidence (e).) The CCC action is not adequate evidence for a variance. There is no proper evidence for the County's variance finding that the variance is necessary because the 45% FAR would "deprive the subject property of privileges enjoyed by other property owners in the vicinity under identical zoning classification." The neighboring properties all have the same zoning and they all have to comply with the 45% FAR including those that are less than the current minimum 6,000 sf lot size. No new development has been given for FAR variance at Carmel Point, and thus requiring this property to comply with the 45% FAR is appropriate.

The board also cited the small size of the lot, which is not a reasonable basis for the variance in light of the fact that there are dozens of nonconforming lots at Carmel Point, and some of similar size as the 26308 Isabella lot. The applicant is a sophisticated real estate developer and he chose to purchase a small lot. The County finding 10(b) cites as evidence that "The non-conforming size of the lot constrains the allowed development compared to other lots in the vicinity." This claim is not accurate because the size of the lot is similar to other nearby lots, many of which have development of less than 45% FAR. There mere fact that some nearby parcels are 1.5-lots in size or double lots or triple lots mean that they can build a larger house under the same 45%

FAR. The FAR applies across the board. FAR is a proportion, and thus the allowed development is the same proportion as other lots in the vicinity,. The fact that some nearby lots are larger and thus can have a larger house due to the 45% FAR is not a reason to allow an FAR variance here. The County again blamed the Coastal Commission in its variance finding that "Based on the small size of the property and inability to construct a basement as originally proposed, zoning limitations would require a smaller house than other properties in the immediate vicinity..." Appellant submitted evidence to the Board showing the numerous nearby nonconforming lots with less than 45% FAR according to County records.

Zoning limitations provide uniformity in a good way, and reliability as to what each lot can develop. The County's action to allow a very sizable variance of 130% of the allowed FAR is unprecedented and creates uncertainty. It is not supported because the elimination of the basement if not a valid basis for an FAR variance, contrary to the County's action here, and because dozens of lots in the area are the same or similar size and with far less FAR. The cumulative impact of all nonconforming lots getting 58% FAR would be significant and has not been analyzed.

The County's finding 11 that "allowing an increase to floor area better achieves the goals and objectives of the Carmel Area Land Use Plan in that it results in the avoidance and preservation of cultural resources." is not supported because increasing the floor area does not affect excavation.

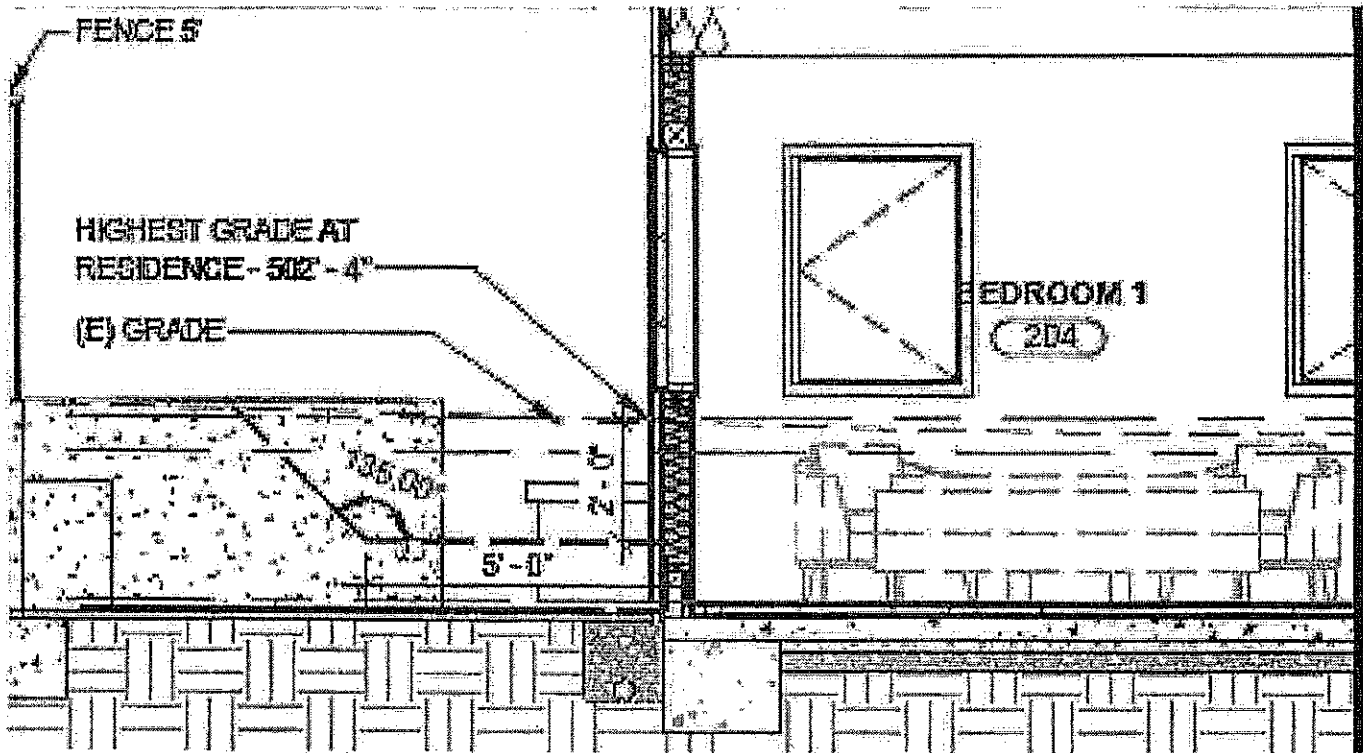
2. Amount of excavation is not the minimum amount per the CCC direction in Adamski's other projects at Carmel Point, re architectural and tribal cultural resources.

The proposed project would far exceed the limitations on ground disturbance required by the Coastal Commission for three new neighboring houses. The County should be consistent with the Coastal Commission and should require the same conditions of approval. Carmel Point is an area of high sensitivity for tribal cultural and archeological resources. The LCP also prohibits changes to land forms. 2.8.2 Key Policy says:

"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."

Native American remains have been found in shallow soil, such as in summer 2019 when four sets of remains were found approximately one block's distance away, and also at depth such as the excavation for the cistern across the street on Isabella.

The proposed house would not be built at current ground level. Instead, the applicant proposes the rear half of the property practically from property line to property line and to excavate more than 6 feet deep for the house, subsurface patio, and other development. The proposed design shows a finished level 5.5 feet below average natural grade (A.N.G.) and that excavation below the finished level is planned. See screenshot below of plan excerpt showing existing (E) grade at the site:



The project would require 304 cubic yards of cut due to the proposed subsurface development. That is a large amount for such a small lot. In July 2020, the Coastal Commission approved three new houses on Isabella and Valley View with the specific limiting condition as follows:

Limited Ground Disturbance/Subsurface Development. With the exception of foundation elements, utility trenching, driveways, minor impervious surfacing, and limited landscaping, all as described below, all other ground disturbing and/or subsurface elements, including all basements, shall be prohibited.

The Coastal Commission condition stated above should be applied to 26308 Isabella.

3. Foreseeable third floor roof deck use.

When the house was proposed it had a basement and a full set of interior stairs from the second level to a third story roof deck, which showed railings and seating areas and an extraordinarily high chimney in order to be well above the heights of persons standing on the roof deck. The County processed an initial study and released an MND. My clients pointed out the roof deck, which the County claimed not to have noticed. The County directed the applicant to eliminate the roof deck, which the applicant did. The County then revised the initial study and released a revised MND.

The interior stairs to the third story roof are a giveaway that the roof would be used as a deck. The extraordinarily tall chimney is another giveaway that the roof would be used as a deck. The chimney is far taller than other chimneys above flat decks. It is no comparison to look at chimneys on sloped roofs, as the applicant did here at the County Board appeal hearing, because the building code requirements for sloped roofs affect the height. Flat roofs are the only appropriate comparison, and there are no other similarly tall chimneys above flat roofs in the area. As proposed, and under the circumstances, the design would result in the foreseeable use as a deck, pit neighbor against neighbor and become a thorny County enforcement problem. The interior stairs should be removed as a design element to avoid this very foreseeable problem.

A third-story roof deck would be inconsistent with neighborhood character and affect privacy and views of surrounding properties. This is a spec house, and a purchaser of the house likely would see the stairs to the roof and presume that the flat roof could be used as a deck.

The applicant initially told the planning commission claimed that he needed access to the roof to maintain solar facilities; however, modern rooftop solar facilities do not need frequent maintenance and do not need a formal staircase. Any rooftop solar could be easily accessed by a ladder as needed. In any event, the developer may decide not to install solar facilities because there is no requirement that he install them, or even if installed a future owner may remove them. What would remain would be an interior formal staircase to a flat roof.

The applicant had a different story at the appeal before the board. On appeal, he apparently did not mention his previous claims about solar power and instead on appeal he claimed that he needed access to the roof to get leaves off the roof due to a claim of surrounding tree canopy. This also is not reasonable because Carmel Point has frequent coastal breezes, and if the trees are that close and taller than the house, then they would reduce the effectiveness and likelihood of solar power, and four trees are to be removed from the site as part of the project. In any event, a simple ladder from the second story deck would provide convenient access to the roof for sweeping, if that were necessary.

Appeal of 26308 Isabella, Carmel Point

Other interested persons:

Applicant:

Chris Adamski and Courtney Adamski (Isabella 2 LLC)
26302 Monte Verde, Carmel, CA 93923

Applicant's representatives:

Tony Lombardo, attorney
ANTHONY LOMBARDO & ASSOCIATES
A Professional Corporation
144 W. Gabilan Street
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Phone (831) 751-2330
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Rob Carver, architect
3640 The Barnyard Suite C32
Carmel, Ca 93923
PO BOX 2684, Carmel, CA 93921
info@studiocarver.com

Neighbors:

Mary Ann Dillon, Debbie Lynn Dillon-Adams <ddillonadams@gmail.com> – supported the appeal

Eleanor Doyle <bull340dog@yahoo.com> – agreed with Vicky Thomas, supported the appeal

Marguerite Meyer <marguer@pacbell.net> - agreed with Vicky Thomas, supported the appeal

Vicky Thomas <vickelizabeththomas@gmail.com> – close neighbor on small lot - FAR of 33% – objected to proposed FAR variance

Roxanne and Carroll Wilde, 26288 Inspiration Avenue, Carmel CA 93923 – objected to FAR variance

Appellants: c/o Molly Erickson, Box 2448, Monterey CA 93942
erickson@stamplaw.us