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ANTHONY LOMBARDO & ASSOCIATES

A PROFESSIONAL CORPORATION

ANTHONY L. LOMBARDO
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March 11, 2019

5064.000

Mr. John Phillips, Chair
Monterey County Board of Supervisors
168 West Alisal Street, 1st Floor
Salinas, CA 93901

RE: **Adamski/Pietro PLN170611 (26307 Isabella Avenue, Carmel)**

Dear Chair Phillips and Members of the Board:

We have reviewed the Board Report and Draft Resolution for this project, and have found several issues that we would like to bring to your attention for clarification purposes:

1) The Second Archaeological Survey Was Omitted

The Board Report and the Draft Resolution make frequent reference to the fact that two archaeological surveys (Albion 2016 and Morley 2018) were prepared for the Isabella site. In fact, there were 3 archaeological surveys carried out for the property. The omitted survey was prepared by Gary Breschini in 2017 and was cited throughout the Mitigated Negative Declaration as adopted by the Planning Commission for PLN170611. The conclusions of the Breschini report were the same as the Albion and Morley reports, finding that the site did not contain any significant cultural resources. A summary of the findings of each of the 3 archaeological surveys follows:

Albion 2016: Albion's small-scale subsurface investigation on this site produced 16 pieces of lithic debitage, low density fragmented marine shell, one piece of animal bone, and 1 modern item – rusted metal. Their conclusion was that no additional archaeological testing is necessary.

Breschini 2017: No cultural materials were noted and the conclusion was that the proposed project should not be delayed for archaeological reasons.

Morley 2018: One of Morley's auger borings resulted in the uncovering of one fragment of a Franciscan chert biface (stone fragment), no shell or other cultural materials. Morley's conclusion was that "there is no reason to delay the project due to concerns about cultural resources."

2) There Should be No Requirement for an HR Overlay

The Board Report states that the condition adopted by the Planning Commission requiring the placement of a conservation easement over the portion of the property if human remains are found, is not effective because it would telegraph to the public the fact that cultural resources are located on the property. Staff therefore replaces the conservation easement condition with a requirement that the entire parcel be placed in an HR overlay district in the event that human remains are uncovered.

The Planning Commission considered and rejected this condition. If an HR overlay was placed on the parcel, it would be the only one in the neighborhood with such a designation, and it would be clear that such designation was made because human remains were found on the property. This is confirmed by the fact that the condition requires the Board of Supervisors to approve the overlay prior to the finaling of building permits. In the Board Report for that item and at the hearing a discussion would surely take place regarding the purpose of the overlay. If, on the other hand, the location of the human remains were placed in conservation easement, it would simply be recorded and the public would have no specific information as to what the easement is protecting as conservation easements are employed to protect various different resources.

The HR overlay for all of Carmel Point was rejected by the Planning Commission in favor of conservation easements. One reason is that an HR overlay requires additional review for even minor changes to windows/doors since it is principally a tool to protect architectural resources.

Overexcavation is Required for Any Construction on The Property

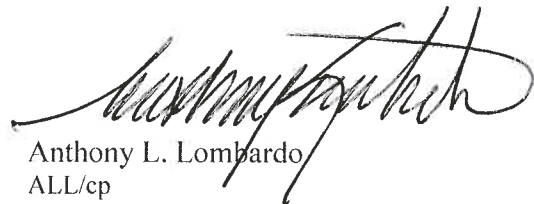
The County alludes to the unique geological conditions on the property several times, as highlighted by the Haro Kasunich report from December 2017. What is not made clear, however, is the fact that any construction on the property would require overexcavation and recompaction of soil to a depth of at least 6 feet. This means that whether or not a basement was included as part of the design of the project, a single-family home would require excavation to a depth of at least 6 feet.

3) There are No Open Code Enforcement Cases on The Property

Due to some confusing language in the Board Report, there is the possibility that a casual reader could get the impression that there are code enforcement concerns on the Isabella parcel. The Applicant wants to make it clear that there has never been a code enforcement case for any reason on the Isabella parcel.

Please let me know if you have any questions on the foregoing.

Respectfully Submitted,



Anthony L. Lombardo
ALL/cp

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March 7, 2019

5064.000

Mr. John Phillips, Chair
Monterey County Board of Supervisors
168 West Alisal Street, 1st Floor
Salinas, CA 93901

RE: Adamski/Pietro PLN170611 (26307 Isabella Avenue, Carmel)

Dear Chair Phillips and Members of the Board:

Our firm represents the applicant, Chris Adamski, who has been attempting for over 2 years to obtain approvals to construct a single-family dwelling on his vacant lot in Carmel.

Following the Commission's approval, an appeal was filed by Molly Erickson on behalf of a "neighbor", the Open Monterey Project and Save Carmel Point Cultural Resources. Neither Ms. Erickson or any of her "clients" appeared at the Planning Commission to express any concerns regarding this project. The appeal is filled with numerous vague allegations, primarily centered around cultural resources, which ignore the facts pertaining to the project, all of which are addressed herein.

The following are the allegations contained in the appeal and or responses thereto.

1) An EIR is Required Due to Potential Impacts to Cultural Resources

The appeal states repeatedly that an EIR is necessary for this project because of the potential impacts to cultural resources presented by the project's design. There is no evidence whatsoever in the record that there will be any impacts in cultural resources from the construction of this house.

Here, the initial study identified a potential impact to cultural resources because of the site's location on Carmel Point and its proximity to recorded archaeological site CA-MNT-17. Comment 17 is a generalized reference to areas of Native American habitation which existed, mostly immediately adjacent to the coastline in the Carmel area, it is not related to any Native American activity on this site. As a result, the Applicant conducted 3 separate archaeological surveys by 3 different County-approved archaeologists to determine whether any archaeological or cultural resources were present on the site.

All 3 experts concluded that there was no evidence of any archaeological or cultural resources on the site that would preclude the development of Adamski's proposed home.

Even though there was no evidence of any archaeological or cultural resources being present at the site, the experts recommended, and the County adopted conditions to address the discovery of unexpected resources. These measures, which included the presence of both an archaeological monitor and a tribal monitor, during site soil disturbance were determined by the County to reduce the potential impact to archaeological and cultural resources to a less than significant level.

Without any supporting evidence, the Appellant claims that there remain potentially significant impacts to cultural resources. One of Appellant's contentions is that the MND does not properly consider the potential impact of the discovery of an object that "lacks significance". Appellant's arguments are negated by specific language regarding archaeological/cultural resources in CEQA which all provide protection for "unique archaeological resources". A "unique archaeological resource" is defined in Public Resources Code Section 21083.2(g) as:

[A]n 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.
- (3) Is directly associated with a scientifically recognized important prehistoric or historic event or person.

A "nonunique" archaeological resource is defined in Section 21083.2(h) as "an archaeological artifact, object, or site which does not meet the criteria in subdivision (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."

In this case, the mitigation measures clearly provide for the protection of significant (i.e. "unique") archaeological resources, and following the same will allow for any potential impacts to be reduced to a less than significant level.

To the extent that the Appellant claims that "cumulative impacts" are not addressed between this property and other projects in this area, there are no pending projects before the County that the applicant is aware of where unique archaeological resources have been found including two other homes next door to this one.

Any potential impacts have therefore been demonstrated to be able to be reduced to level of less than significant, meaning that the preparation of an EIR is not required, and that the County may proceed with the circulated Mitigated Negative Declaration. Given the conclusions of the archaeological reports and the implementation of the proposed mitigation measures, there is no “fair argument” that the project will have a significant impact on the environment.

2) There is A “Disagreement Among Experts”

Appellant argues that the 3 archaeological reports on the property are inconsistent and constitute a “disagreement among experts” within the meaning of CEQA, requiring the preparation of an EIR, characterizing the County’s approach as picking “two out of three”. This is patently false and demonstrates Appellant’s lack of review of the application materials. In fact, there were three reports prepared for the property, and all three reached the same conclusion: that no significant archaeological resources were found or were likely to be found on the subject parcel.

Appellant further suggests that the Applicant is hiding something since the archaeological reports are not available for review to the public. In fact, the Applicant is on record as being willing to provide the reports to the public for review state. State regulations prohibit the release of archaeological surveys o the public. If the County allows the reports to be released, the Applicant will be more than happy to provide them to the public as they demonstrate the lack of significant resources on this parcel. The Appellant further calls into question the County’s independence as a result of its reliance on the Applicant’s archaeological reports. All archaeological reports are prepared from the County’s list of experts provided to applicants. Appellant also implies that the Applicant and/or the consultants did not submit all of their archaeological findings to the County. There is no evidence in the record to support this allegation.

The following are excerpts from the reports:

Arch Report #1 (Albion 2016, covering 4 different APNs): “Albion’s field effort revealed a partially disturbed Project Area with limited cultural material. No anthropogenic soils were observed, and no intact archaeological deposits were discovered...Subsurface investigations indicate that potentially significant cultural materials may be located within the Project Area, but the data is not conclusive.

...

Therefore, it is Albion’s judgment that no additional archaeological testing is necessary; however, several protection measure [sic] should be implement [sic] for the proposed development project, in an effort to protect cultural resources.”

Arch Report #2 (Breschini 2017; site-specific): “None of the materials frequently associated with prehistoric cultural resources in this area (dark midden soil containing

fragments of weathered marine shell, flaked or ground stone, weathered bones or bone fragments, fire-affected rock, etc...) were observed in the soil of the project area during the field survey.

...

Based upon the background research and the field assessment, we have concluded that there is no surface evidence of potentially significant archaeological resources on the project parcel. The auger bore produced no evidence of cultural resources to a depth of beyond 4 feet near the center of the parcel.”

Arch Report #3 (Morley, 2018; covering this property and two others): “We augered four (4) test holes, one to a depth of 275 cm (or approximately 9 feet), one to 9.5 feet, one to 6.5 feet, and one to 100 cm or 3 feet. We screened all the soil we excavated from these four auger holes. We encountered no cultural resources in any of these soils that we excavated and screened. We did not encounter any of the materials expected of an archaeology site in this region. There are no midden soils, shell or shell fragments, there were no burnt or unburnt cobbles, bone, or lithic debitage encountered in any of the four auger holes we excavated except for one cultural object we encountered, which was one fragment of a Franciscan chert biface (midsection) at APN 009-463-012 at a depth of 40 cm. As a result of these findings it is recommended that there is no reason to delay the project due to concerns about cultural resources, however, the following mitigation measures are recommended because the project parcels are located in the neighborhood of three recorded archaeological sites.”

As is clearly demonstrated from each of the excerpts above, all three archaeologists arrived at the same conclusion as a result of their actual surveys of the project site, meaning that there is no “disagreement” among the 3 experts here. Appellant insists that the County approval was not compliant with CEQA Guidelines Section 15064, which provides that:

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

Here, the project in question is not a “marginal case”, as there are 3 archaeological reports each in agreement that there will be no impacts to cultural resources on the property, however each recommended certain measures to avoid damage to cultural resources if any were unexpectedly uncovered. Even if the project were “marginal” within the meaning of Guidelines Section 15064, there is no disagreement among the archaeologists over the significance of an effect on the environment here.

3) The Project is Inconsistent With Carmel Area Land Use Plan

The Appellant further claims that the excavation below grade proposed for this project does not comply with LUP Policies/objectives (policy 2.8.2, 2.8.3.3). In fact, the project is consistent with the County's interpretation of these policies over the past 30 or more years. Dozens of homes with basements have been approved in the Carmel Point area and have been deemed to be consistent with the Carmel Area Land Use Plan. This is because of the numerous recommended mitigation measures set forth in the LUP, as well as the requirement that all parcels in the area obtain an archaeological report. Such a requirement, when paired with the recommended mitigation measures, has allowed County decisionmakers to deem every home which includes excavation on Carmel Point to be consistent with the LUP with a full understanding of the nature of the resources present on the project site on a site-by-site basis.

4) The Mitigation Measures are Inadequate

Appellant claims that the mitigations imposed by staff on this project are inadequate. Appellant provides no evidence of why these mitigations would be inadequate. In fact, they are the identical measures that have been imposed on every other project on Carmel Point.

5) Excavation is Not Necessary to Build a Home on this Lot

Appellant further states that the project should be required to be constructed at grade with no excavation, Appellant has either not read or does not understand the soils report for this lot. Per County requirements, the Applicant obtained a geotechnical report and also a subsequent letter (attached hereto as Exhibit A) from Haro and Kasunich and Associates which provides that the upper 5 to 9 feet of sandy soil is not structurally adequate to allow the construction of a foundation for a home and would require overexcavation and recompaction to that depth in order to meet the requirements of the California Building Code. Therefore, without excavation no house could be built on this property.

6) County has Ignored OCEN's Request for No Ground Disturbance Anywhere in the County

Appellant states that the County has ignored OCEN's essentially County-wide request for no ground disturbance and suggests that this request should be enough to prohibit the construction of basements as they require ground disturbance. This is not the law in California. California does not require that every request of a tribal representative be implemented into the mitigation measures for a given project. Instead, Public Resources Code Section 21080.3.1 provides:

[C]onsultation [between the agency and the tribal representative] shall be considered concluded when either of the following occurs:

- (1) The parties agree to measures to mitigate or avoid a significant effect, if a significant effect exists, on a tribal cultural resource.

(2) A party, acting in good faith and after reasonable effort, concludes that mutual agreement cannot be reached.

In other words, the parties should make a good faith effort to produce effective mitigation measures for a project, however the County is not obligated to implement all of the tribal representative's requests. On a practical level, if OCEN's request for nondisturbance was granted, virtually all construction would cease in Monterey County. The County explained its process in the MND, stating that "RMA-Planning has consulted the appropriate tribe and incorporated their requests where appropriate." (Mitigated Negative Declaration for PLN170611 at Page 62)

7) Condition Regarding Discovery of Human Remains Inadequate

Next, Appellant takes issue with the mitigation measure concerning the discovery of human remains. California law sets forth the procedure for dealing with human remains upon accidental discovery. Condition 10 and Mitigation Measure 2b goes above and beyond this procedure. CEQA Guidelines Section 15064.5(e) provides that upon discovery of human remains, after following a required notification process, the MLD may make recommendations as to how to handle to discovered remains and that:

(2) Where the following conditions occur, the landowner or his authorized representative shall rebury the Native American human remains and associated grave goods with appropriate dignity on the property in a location not subject to further subsurface disturbance.

(A) The Native American Heritage Commission is unable to identify a most likely descendent or the most likely descendent failed to make a recommendation within 24 hours after being notified by the commission.

(B) The descendant identified fails to make a recommendation; or

(C) The landowner or his authorized representative rejects the recommendation of the descendant, and the mediation by the Native American Heritage Commission fails to provide measures acceptable to the landowner.

In other words, CEQA does not require removal or redesign of project elements upon discovery of human remains, however the County has built in a requirement in Mitigation Measure 2b to "move/shrink/modify/redesign the basement portions of the project" to ensure the protection of the human remains. Contrary to Appellant's allegation, the approvals do not "allow the landowner to throw out the human remains in the trash or at the County dump."

Appellant finally states that the County should not make any decision on this application until it has placed all of Carmel Point in a Historic Overlay District and should implement alternative investigation techniques. No proposal by any agency has been made to do so, and no

Mr. John Phillips, Chair
Monterey County Board of Supervisors
March 7, 2019
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recommendation to staff or the Board of Supervisors has been made to initiate that process. This project has been the subject of numerous, substantial delays over the past 2 years and there is no reason to delay any further.

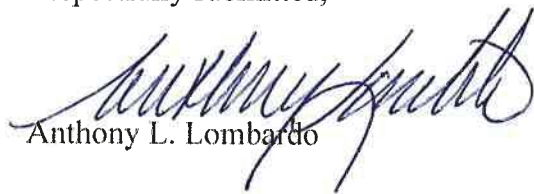
8) The Metal Roof is Consistent With the Neighborhood Character

Appellant finally contends that the Applicant's proposed roof design is inconsistent with the surrounding environment and neighborhood character. Attached as Exhibit B are photographs of a selection of homes in the immediate vicinity of the proposed home with similarly styled metal roofs.

9) Conclusion

Based on the foregoing, the Applicant respectfully requests that the Board deny the appeal and uphold the project approval.

Respectfully submitted,



Anthony L. Lombardo

ALL/cp
Enclosures

cc: Client (via email)
Supervisor Alejo (via email)
Supervisor Adams (via email)
Supervisor Lopez (via email)
Supervisor Parker (via email)

EXHIBIT A

EXHIBIT A

Project No. M11382
30 October 2018



MS. GAIL HATTER
c/o Anthony Lombardo & Associates
144 West Gabilan Street
Salinas, California 93901

Subject: Foundation Zone Soil Condition Mitigation Measures
For Proper Foundation Support

Reference: Proposed Residential Construction - Three Lots
26338 Valley View Avenue
26346 Valley View Avenue
26307 Isabella Avenue
Carmel, California

Dear Ms. Hatter:

At your request, we have reviewed our geotechnical Investigations for the subject residential lots. The purpose of our review was to summarize the primary subsurface findings relative to the foundation zone soils and the proper mitigation to support residential structures on each lot. Our geotechnical investigations are dated 18 December 2017 and present in detail the subsurface soil conditions, the geotechnical analyses, conclusions and appropriate recommendations to mitigate the loose near surface soil conditions at each site.

In summary, the foundation zone soils to a depth of 5 to 9 feet are in a loose condition and not capable of supporting residential structures in their existing condition. The loose soils if not penetrated or removed and recompacted cannot sufficiently support residential structures without total and differential settlement occurring causing distress to the improvements over time. To mitigate for this loose soil condition, the recommendations of our geotechnical reports required either excavation of the near surface soils to a depth of at least 5 feet (with a potential to 8 feet) and the construction of a subsurface basement supported on the underlying denser competent soils; or redensification of the top 4 to 5 feet soil requiring subexcavation of the near surface soils, stockpiling them, scarifying the exposed subgrade and then replacing them as compacted engineered fill to a minimum relative density of 90 percent.

The use of helical screw anchors can be considered for exterior flatwork or the subexcavated basement, but will not adequately support habitable structures

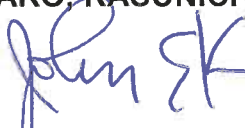
Ms. Gail Hatter
Project No. M11382
Three Lots at Valley View and Isabella
30 October 2018
Page 2

founded at existing grade due to depth of loose, near surface soil and the slender anchors inability to restrain lateral forces from seismic shaking during moderate to strong earthquake activity in the immediate (Cypress Fault) or nearby (San Andreas or San Gregorio Faults) source points.

If you have any questions regarding the results of our geotechnical investigation and the recommendations presented to mitigate the loose soils on the reference site, please call our office.

Respectfully Submitted,

HARO, KASUNICH AND ASSOCIATES, INC.


John E. Kasunich
G.E. 455



JEK/dk
Copies: 2 to Addressee + pdf gail@alombardolaw.com

EXHIBIT B

EXHIBIT B



2477 San Antonio. About 1 block from Isabella.

10CP D1878

Reroof w/DA

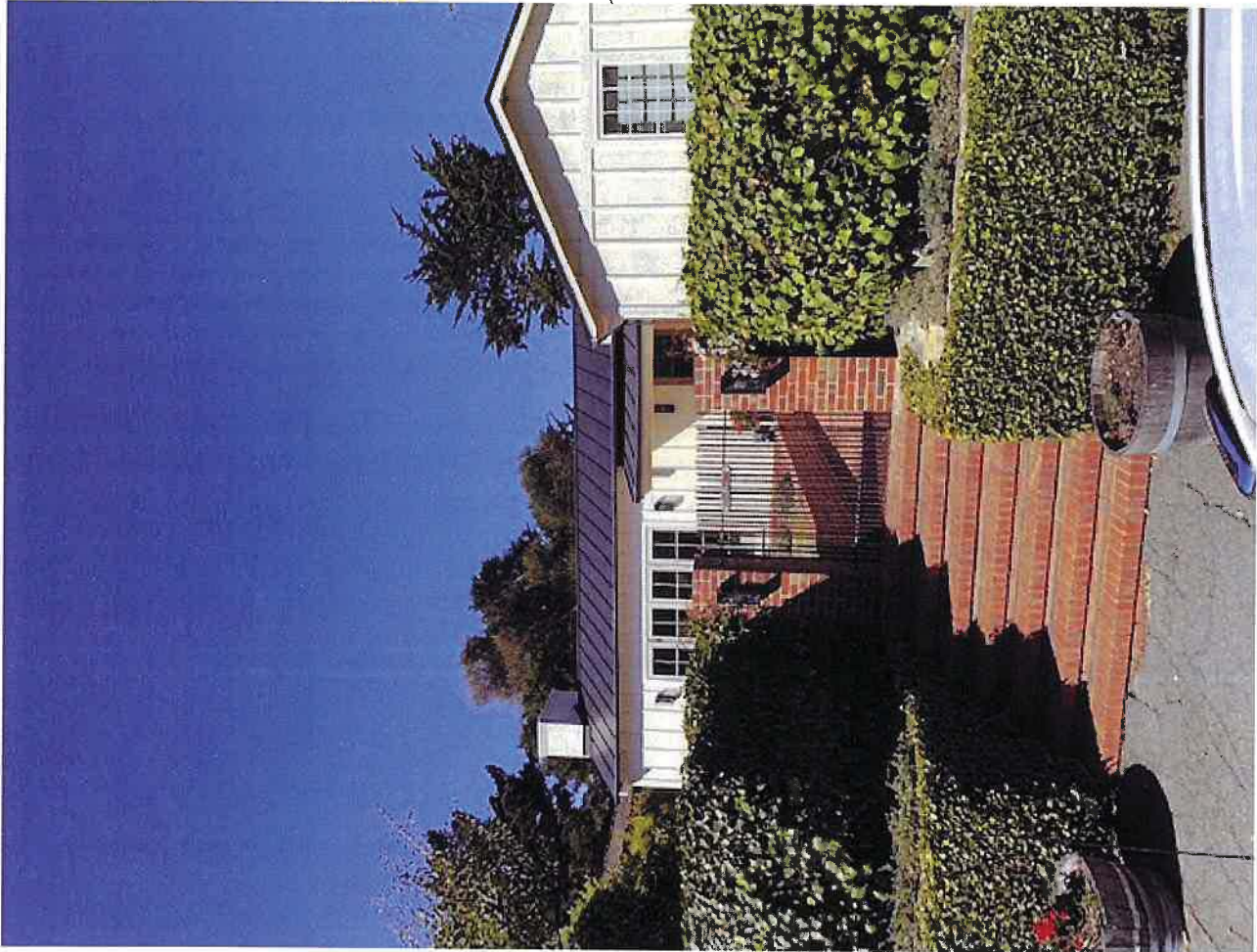
Gail Hatter

From: Chris Adamski <cadamski@emersondevgroup.com>
Sent: Friday, October 19, 2018 11:44 AM
To: Gail Hatter
Subject: Metal roof

26310 Valley View, 2 doors down.

(Planning Action 2013 PLN 130455) 13CP01671 - revision

to metal roof



Gail Hatter

From: Chris Adamski <cadamski@emersondevgroup.com>
Sent: Friday, October 19, 2018 11:49 AM
To: Gail Hatter
Subject: Roof

26225 valley view. Half block away.

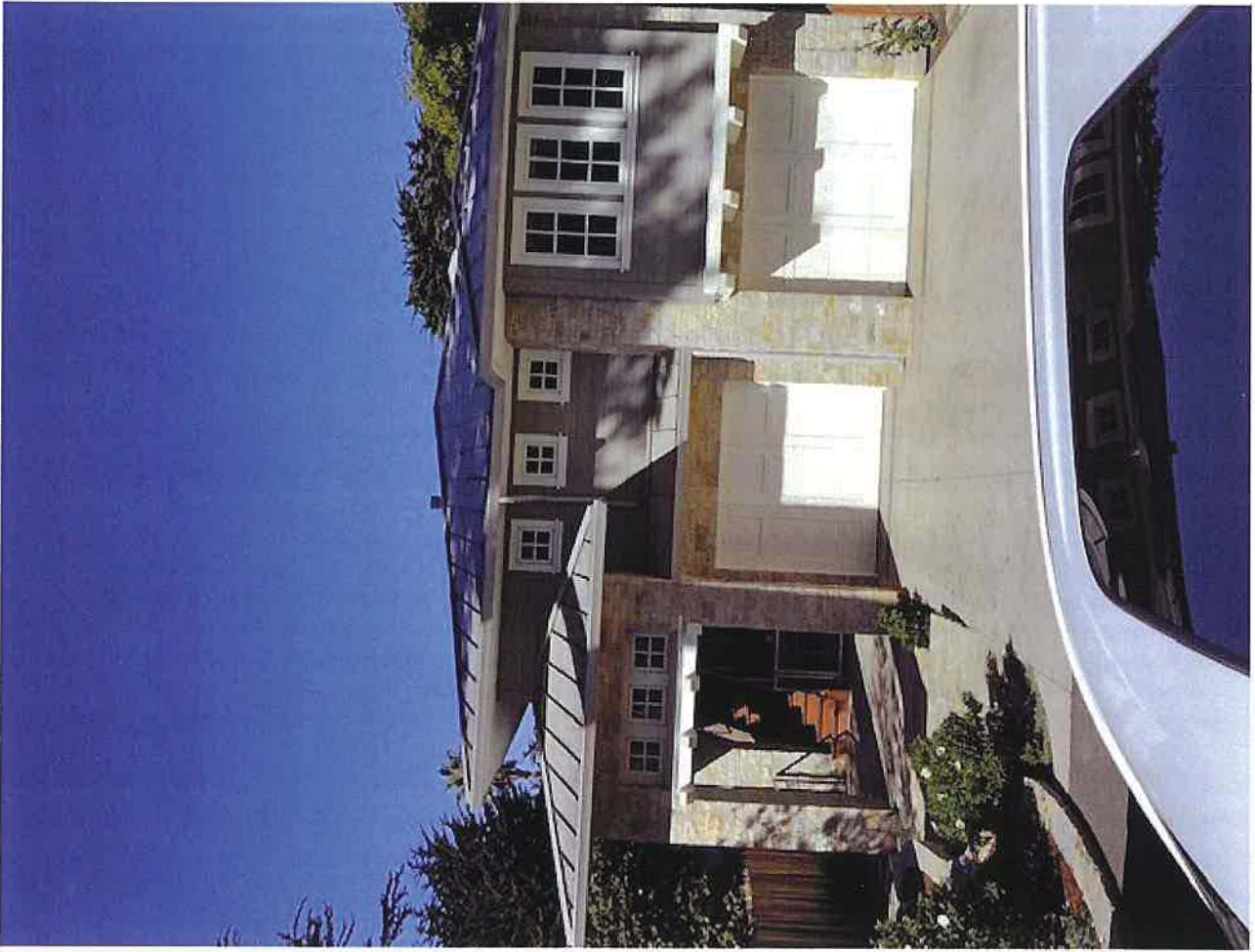


11CP00322 re roof



2543 14th, another block or so from valley view.

2016 permits





Not a great picture but a black metal roof. *2543 14th Avenue*

Chris Adamski

Emerson Development Group, Inc.

831.915.3912 m

831.309.7683 f

Sent from my iPhone

Regarding Valley view utility work

Gail Hatter <Gail@alombardolaw.com>

Tue 2/26/2019 5:02 PM

To:Guthrie, Jaime S. x6414 <GuthrieJS@co.monterey.ca.us>; Spencer, Craig x5233 <SpencerC@co.monterey.ca.us>;

Cc:Swanson, Brandon xx5334 <SwansonB@co.monterey.ca.us>; Dale Ellis <dale@alombardolaw.com>; Cody Phillips <cody@alombardolaw.com>;

1 attachments (584 KB)

info@alombardolaw.com_20190226_161717.pdf;

Jaime and Craig,

Attached per your request are the erosion control plans noting appropriate erosion control measures for any site disturbance including for the utility work done under 18CP01784 and 18CP01785. Please let me know if you would like full size prints of these sheets. Thank you.

PRIVILEGED & CONFIDENTIAL -- ATTORNEY CLIENT PRIVILEGE -- ATTORNEY WORK PRODUCT

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R. Gail Hatter
Sr. Land Use Specialist
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Email Gail@alombardolaw.com

"People will forget what you say, people will forget what you did; But people will never forget how you made them feel."

-----Original Message-----

From: info@alombardolaw.com <info@alombardolaw.com>

Sent: Tuesday, February 26, 2019 1:17 PM

To: Gail Hatter <Gail@alombardolaw.com>

Subject: Scanned image from MX-5141N

Reply to: info@alombardolaw.com <info@alombardolaw.com> Device Name: Not Set Device Model: MX-5141N

Location: Not Set

File Format: PDF

Resolution: 300dpi x 300dpi

Attached file is scanned image in PDF format.

Use Acrobat(R)Reader(R) or Adobe(R)Reader(R) of Adobe Systems Incorporated to view the document.

Adobe(R)Reader(R) can be downloaded from the following URL:

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<http://www.adobe.com/>

RE: Pietro Appeal

Gail Hatter <Gail@alombardolaw.com>

Tue 2/26/2019 3:17 PM

To:Guthrie, Jaime S. x6414 <GuthrieJS@co.monterey.ca.us>; Swanson, Brandon xx5334 <SwansonB@co.monterey.ca.us>; Spencer, Craig x5233 <SpencerC@co.monterey.ca.us>; Dale Ellis <dale@alombardolaw.com>; Dugan, John x6654 <DuganJ@co.monterey.ca.us>; Cody Phillips <cody@alombardolaw.com>;

Cc:Holm, Carl P. x5103 <HolmCP@co.monterey.ca.us>; Anthony Lombardo <tony@alombardolaw.com>; Chris Adamski <cadamski@emersondevgroup.com>;

Good afternoon All,

The following summarizes our conversation yesterday, addresses information requested during the meeting, and responds to the request by staff for a continuance. The items below are also responsive to the summary provided by Ms. Guthrie, though not in the same order.

Item 1: Staff has requested that the applicant agree to a continuance on the appeal(s) of PLN170611, 612, and 613 to provide staff time to gather and receive information to respond to allegations that improper activity was occurring on a parcel or parcels (PLN170612 & 613) for installation of utilities and relocation of a large tree. After discussing the request with the applicant, we note the following:

- We noted at the meeting that there should be no need to delay PLN170611, as this site (Isabella) has not been impacted by any activity alleged to have occurred improperly. Staff responded that the matters cannot be separated as they are one appeal. In fact, PLN170611 and its related MND are one decision by the Planning Commission, and PLN170612 & 613 and their related MND are a separate decision by the Planning Commission. We note that the filing of one appeal document for two separate decisions was technically deficient on its face, for which non-acceptance would have been warranted.
- Based on the fact that PLN170611 is a separate application, MND, and decision, on which no activity has occurred, the appellant respectfully declines to agree to a continuance of the hearing for the appeal of this project. This project is the proposed personal family home of the applicant, which has been unreasonably delayed numerous times for a course of the past two years.
- In preparation for the hearing on March 12th on the matter of the appeal of PLN170611 before the Board of Supervisors, we would like to clarify for staff that the project remains as previously analyzed and approved by the Planning Commission and that we find no deficiencies in the MND document or mitigations as analyzed and approved by the Planning Commission. We do note again for preparation of the staff report and findings, that information regarding the geotechnical requirements for the site should be referenced and included in the reports to ensure that the Board members and the public understand the minimum excavation requirements for development of the project site. Geologic, Geotechnical, and supplemental communications from the geotechnical engineer are on record to support those requirements. Responsive to Planning's questions following the meeting yesterday, there is no tree removal proposed in the project in PLN170611. The project plans and biotic report from Thompson Wildland Management on file for this project confirms this.
- We will respond to staff shortly with our responses to the appellant's contentions under the appeal. After lengthy consultation with our client and at his direction, we respectfully decline staff's request for a delay on PLN170611, and request that staff proceed with preparation for that hearing on this matter.

Item 2: On February 15th, staff contacted our office regarding complaints regarding alleged unpermitted and improper activity occurring at the sites for PLN170612 & 613 (Valley View). We were initially informed that the code enforcement officer was investigating and that building permits issued for installation of utilities were being reviewed. In fact, the code enforcement officer posted notice at the site of a stop work order for work occurring without a permit. This action was on its face wholly incorrect. The county did in fact issue valid building permits for the work that was occurring there in the form of installation of private utility connections, which included trenching work in the PG&E franchise area of 70' in length and trenching work on each of the two sites for 5' inclusive of electric lines and utility boxes. The building permits for this work were issued in mid-2018 with concurrence of planning and building staff. Subsequent to staff's initial contact with our office and after the posting of an incorrect stop work order on the site, staff sent our office an email indicating the County's intent to revoke the electrical permits with a demand that all electrical conduit and associated items having already been installed be removed from the utility trenches, citing concerns that staff may have overlooked CEQA review prior to allowing the work. We have previously responded to staff in writing to confirm the applicable CEQA exemptions with which the permits were properly issued. It is our understanding from the meeting that staff is now in agreement that no violation or issuance of improper permits have occurred, and that work may resume following submittal of an erosion control plan and supplemental information that we are volunteering. For the record, applicable exemptions previously noted to staff as well as exemptions from Coastal Development Permits for installation of utilities are as follows:

- CEQA Guidelines Section 15268: The permitted work is "ministerial" within the meaning of CEQA's "ministerial exemption", Item (4) "Approval of individual utility service connections and disconnections".
- The permitted work is exempt per Section 15304 (minor alterations to land), which is applicable to private individual projects for installation of utilities (laying pipelines and conduit) as it allows for, "minor trenching and backfilling where the surface is restored."
- The majority of the trenching work was actually carried out in the PG&E franchise area (PG&E easement area) and was exempt per the exemptions provided in Sections 15304 and 15268 above.
- The building permits were for recognized ministerial activity which does not require a Coastal Development Permit:

- [20.70.120 EXEMPTIONS FROM COASTAL DEVELOPMENT PERMITS](#)

G. The installation, testing, and placement in service or the replacement of any necessary utility connection between an existing service facility and any development provided that the County may, where necessary, require reasonable conditions to mitigate any adverse impacts on coastal resources, including scenic resources. In the Big Sur Coast area, the exception shall not apply to the installation of utility poles and lines within the "Critical Viewshed". (See Coastal Commission's September 5, [1978 "Repair, Maintenance and Utility Hook-Up Exclusions](#) from Permit Requirements" document for further detail on which public utility projects are exempt.)

Item 3: Upon review of the permitted utility work done at the sites, staff observed that a large tree had possibly been removed from the PG&E franchise area in the path of the trench for the public utility line installation. The tree in question was in fact moved on to the applicant's property at great expense to the applicant, as he desired to retain the tree. Staff believes that the tree is a Coast Live Oak, though this has not yet been confirmed. The following is responsive to staff's questions and concerns regarding this activity under the assumption that the tree is in fact a Coast Live Oak tree:

- The pruning and/or removal of a tree or trees from the franchise area of a public utility is exempt from permits via PUC General Order 95.

- The tree in question therefore could have been removed entirely for the extension of the public utility portion of the lines without permits.
- The tree was instead moved to the applicant's private property in a sincere effort to retain the tree for the owner's enjoyment. The tree relocation was effected by a reputable tree service company with a history of high success with transplanting large trees, at great expense to the applicant.
- Removal of the tree in the franchise area did not require permits. Planting of the tree on the applicant's property also does not require a permit.

Item 4: Following our meeting yesterday, staff raised questions regarding possible tree removal for the projects, apart from the relocated from the franchise. As noted herein, PLN170611 is not affected by tree removal of any kind. The following was noted in response regarding all projects:

- Mr. Thompson's reports cite only a few "immature" oak trees on two of the properties, which were not proposed for removal for the projects. He does repeatedly note that the sites have numerous introduced non-native tree species. The site plans do note removal of trees identified by the surveyor as "k" trees, not "o" which is the proper identification for coast live oak trees. This identification is also used for the tree relocated to the applicant's property from the franchise area. We have contacted Mr. Thompson to visit the sites to reconfirm his findings and to clarify for the record what species of trees are represented "k" trees as named by the surveyor. At this time it is not known if any of the "k" trees are coast live oak, therefore it should not be assumed that the projects are removing coast live oak. We are investigating to address your questions and concerns.
- Full responsive information regarding the trees will be sent to you shortly.

We appreciate the time provided by staff yesterday to meet and discuss these matters fully. We noted then and repeat here, that the project applicant has proceeded in good faith and with great patience in all matters related to the project sites and the processing of his applications for development. It is extremely distressful and financially damaging to him, and disappointing to us, that the events of February 15th occurred in such a manner as to imply that the applicant was acting improperly or in haste, which is not the case. It is regretful that the record of staff comments and actions in the matter of the properly issued ministerial permits for the installation of utilities appears to accuse the applicant of wrong doing necessitating punishment. We are hopeful that staff will properly clarify for the record and for the Board that no improper permitting or activity has occurred on these properties.

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R. Gail Hatter

Sr. Land Use Specialist

ANTHONY LOMBARDO & ASSOCIATES

A Professional Corporation

[144 W. Gabilan Street](#)

[Salinas, CA 93901](#)

Direct line [\(831\) 901-3847](tel:8319013847)

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Email Gail@alombardolaw.com

"People will forget what you say, people will forget what you did; But people will never forget how you made them feel."

From: Guthrie, Jaime S. x6414 <GuthrieJS@co.monterey.ca.us>

Sent: Monday, February 25, 2019 2:00 PM

To: Swanson, Brandon xx5334 <SwansonB@co.monterey.ca.us>; Spencer, Craig x5233 <SpencerC@co.monterey.ca.us>; Dale Ellis <dale@alombardolaw.com>; Dugan, John x6654 <DuganJ@co.monterey.ca.us>; Cody Phillips <cody@alombardolaw.com>; Gail Hatter <Gail@alombardolaw.com>

Cc: Holm, Carl P. x5103 <HolmCP@co.monterey.ca.us>; Anthony Lombardo <tony@alombardolaw.com>

Subject: Pietro Appeal

Hello Team Pietro,

Thank you all for meeting this morning in Carl's office. This email is a brief and summarized recap of the conversation. Feel free to chime in on anything that I may have missed or misunderstood.

- The County proposes to continue the scheduled 3/12 Board hearing of the Pietro Appeal to 4/2. Staff requires time to synthesize facts from the latest activity for a well-informed Board report.
- Gail & Co. will agree to this under protest. Proposed that County take the Isabella property forward separately from the Valley View properties. Staff clarified that the appeal is on all three of the properties and no substantial benefit would come from separating into two appeal hearings.
- County issued a permit in July 2018 for the applicant to do the electrical work. PG&E did the plans for the elect. work and a contractor implemented the plans in February 2019.
- PG&E was going to remove the tree in question. Applicant proposed and paid for moving the tree to the applicant's property instead of complete removal from the 70-foot franchise.
- Issues of public perception: Gail & Co. contend the County fuels the fire and contributes to the criminalized perception of the applicant by influence of reactive deployment. Staff acknowledged the concern and will take more deliberation moving forward.
- Staff is made aware of disjointed County process that permits trenching for electrical infrastructure before approval of land use entitlements.

- Gail & Co. want the Board to know, generally: elimination of the basement would not remove the need for 6-foot over-excavation for footings and the Isabella property is distinguished from the Valley View properties.
- Gail & Co. want the Board to know, specifically: trenching for electrical work is required for implementation of a SFD on a legal lot of record, the applicant was doing the electrical work with the benefit of a County permit, and the conduit will need to stay in place regardless of when backfill is implemented.
- Gail & Co. shall provide to Staff for inclusion in the Board report the following: an arborist assessment of the moved oak tree, a timeline and narrative as to when PG&E and applicant agreed to a transplant rather than a removal of the tree, and a Winter Erosion Control Plan.
- Staff report is due 2/28 (Thursday) for the 4/2 Board hearing.

Thanks again for your time. Feel free to contact me if you have any questions or comments.

Kind regards,

Jaime Scott Guthrie, AICP

Associate Planner



County of Monterey

Resource Management Agency - Planning

1441 Schilling Place South, 2nd Floor

Salinas, CA 93901

831.796.6414

GuthrieJS@co.monterey.ca.us

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

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

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

RE: Pietro Appeals

Gail Hatter <Gail@alombardolaw.com>

Tue 3/5/2019 6:16 PM

To: Spencer, Craig x5233 <SpencerC@co.monterey.ca.us>; Guthrie, Jaime S. x6414 <GuthrieJS@co.monterey.ca.us>;

Cc: Dale Ellis <dale@alombardolaw.com>; Guthrie, Jaime S. x6414 <GuthrieJS@co.monterey.ca.us>; Swanson, Brandon xx5334 <SwansonB@co.monterey.ca.us>; Cody Phillips <cody@alombardolaw.com>; Anthony Lombardo <tony@alombardolaw.com>;

1 attachments (867 KB)

Tree mapping and exhibits.pdf;

Craig and Jaime,

As noted in the February 25th email below and as requested by staff, we have fully investigated the question of whether not any tree removal was/is proposed for the applications on appeal to the Board of Supervisors for PLN170611, 612, & 613. We note that the plans on file with the planning department and as considered & approved by the Planning Commission have not changed subsequent to the application date (with one exception to 26346 as explained below). Responses for each project individually are as follows:

26307 Isabella (PLN170611):

- This project does not propose removal of any native/protected trees.
- The attached 2015 survey by Frank Lucido identifies three 6" oak trees, one 12" oak, and three 12" non-native trees. The project biologist/forester for the projects has revisited the sites and has confirmed that the four trees noted as "k" on this site are coast live oak trees.
- The attached civil sheet (C-2) clearly shows the retention of all four coast live oak trees located on the project site. The three non-native trees will be removed.

26346 Valley View (PLN170613):

- This project did not propose removal of any native trees at application. However during the planning review period, the geological engineer recommended revisions to the project to provide a minimum setback from a nearby geologic fault. The house plan was modified to reverse the footprint. In doing so, the proposed location of the driveway necessitates the removal of a 24" Cypress tree on the property. The applicant discussed the change with the planner and the plans do show the removal.
- The attached 2015 survey by Frank Lucido identifies only two trees on the property, one 12" Cypress and one 24" Cypress.
- The attached architectural sheet A1.1 shows that the location of the proposed driveway would necessitate the removal of the 24" Cypress.
- The applicant indicated that he will retain the 12" Cypress tree.
- The forester has revisited the site and has confirmed that no other native/protected trees exist on this project site. A forest management plan will follow shortly for the one native tree being removed for the project.

- Removal of the one native tree necessary for the construction of the house and driveway is consistent with the requirements of the geologic conditions, does not have a significant impact to resources, and does not alter the CEQA determination. Tree protection measures and removal/replacement requirements are standard measures (no mitigation measures are needed).

26338 Valley View (PLN170612):

- The project applicant has indicated that he will retain all native trees on this site.
- The attached 2015 survey by Frank Lucido identifies three oak trees on the site (one 8" and two 10") near the side boundary of the property, and one 8" non-native tree. The forester has revisited the site and has confirmed that the trees on the site are as identified by the 2015 survey.
- The attached civil plan sheet (C-4) shows removal of two of the oaks trees, but the applicant has stated that he intends to retain those trees, based in part on comments at the LUAC meeting at which neighbors requested retention and planting of more native trees and plants on the site. Accordingly no tree removal is proposed for the project.
- The 2017 civil plan also shows removal of two trees (in the footprint of the house and the driveway). No trees are identified in these areas on the 2015 survey. It is not clear why the 2017 civil plan identifies trees that did not exist on the 2015 survey. In his recent visit the forester confirmed that no trees exist in these areas.
- It should be noted that in addition to the three oak trees already existing on the site, the applicant has recently planted a 15" oak tree at the front corner of the property, which was saved from destruction from utility line installation in the PG&E franchise area in front of the project site. A letter regarding the relocation of this tree, as well as the invoice from the tree relocation service is attached.

From: Gail Hatter <Gail@alombardolaw.com>

Sent: Monday, February 25, 2019 6:45 PM

To: Spencer, Craig x5233 <SpencerC@co.monterey.ca.us>

Cc: Dale Ellis <dale@alombardolaw.com>; Guthrie, Jaime S. x6414 <GuthrieJS@co.monterey.ca.us>; Swanson, Brandon xx5334 <SwansonB@co.monterey.ca.us>; Cody Phillips <cody@alombardolaw.com>

Subject: Re: Pietro Appeal

Craig,

Per our discussion on the phone this evening, Mr Thompson's reports cite only a few immature (sapling) oak trees on two of the properties that were not proposed for removal per his reports. He does repeatedly note that the sites have numerous introduced non-native species trees. The site plans do note removal of trees identified by the surveyor as "k" trees not "o" which is the proper identification for coast live oak trees. This identification is also used for the tree relocated to the applicants property when slotted for removal by PGE as is allowed and exempt from permit requirements for utilities in the franchise area. We have contacted Mr Thompson to visit the sites to reconfirm his findings and to clarify for the record what type of the trees represent "k" trees as named by the surveyor. At this time it is not known if any of the "k" trees are coast live oak, therefore it should not be assumed that the projects are removing coast live oak. We are investigating to address your questions and concerns.

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R. Gail Hatter

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"People will forget what you say, people will forget what you did; But people will never forget how you made them feel."

On Feb 25, 2019, at 5:51 PM, Spencer, Craig x5233 <SpencerC@co.monterey.ca.us> wrote:

Dale and Gail,

Following-up on our phone conversation, we have reviewed the biological report from Rob Thompson that is on file.

Mr. Thompsons report states that there are no trees proposed for removal. Grading and drainage plans on file (not the architectural plans) show three oak trees with and X on them which typically means "to be removed"

Other than the oak tree moved in connection with the electrical work, which you are having Mr. Thompson address, can you confirm that no other trees are proposed for removal? Specifically the two oak trees in the side yard at 26338 Valley View.

Thank you

Craig Spencer
Monterey County, RMA-Planning Division
Phone: (831) 755-5233
Email: spencerc@co.monterey.ca.us

From: Dale Ellis [<mailto:dale@alombardolaw.com>]
Sent: Monday, February 25, 2019 4:05 PM
To: Dugan, John x6654 <DuganJ@co.monterey.ca.us>; Guthrie, Jaime S. x6414 <GuthrieJS@co.monterey.ca.us>; Swanson, Brandon xx5334 <SwansonB@co.monterey.ca.us>; Spencer, Craig x5233 <SpencerC@co.monterey.ca.us>; Cody Phillips <cody@alombardolaw.com>; Gail Hatter <Gail@alombardolaw.com>
Cc: Holm, Carl P. x5103 <HolmCP@co.monterey.ca.us>; Anthony Lombardo

<tony@alombardolaw.com>

Subject: RE: Pietro Appeal

To clarify the first point the arch review of the spoils was commissioned and in process before today's meeting was scheduled. It was not a result of the meeting.

Thank you.

Dale Ellis
ANTHONY LOMBARDO & ASSOCIATES
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144 W. Gabilan Street
Salinas, CA 93901
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From: Dugan, John x6654 <DuganJ@co.monterey.ca.us>
Sent: Monday, February 25, 2019 2:38 PM
To: Guthrie, Jaime S. x6414 <GuthrieJS@co.monterey.ca.us>; Swanson, Brandon xx5334 <SwansonB@co.monterey.ca.us>; Spencer, Craig x5233 <SpencerC@co.monterey.ca.us>; Dale Ellis <dale@alombardolaw.com>; Cody Phillips <cody@alombardolaw.com>; Gail Hatter <Gail@alombardolaw.com>
Cc: Holm, Carl P. x5103 <HolmCP@co.monterey.ca.us>; Anthony Lombardo <tony@alombardolaw.com>
Subject: RE: Pietro Appeal

I would add they agreed to an archeological review of the excavation spoils. Clarify that the excavation, except for two five foot connection areas, was undertaken in the PG&E easement.
I am not clear whether this was in public right of way or on the applicant's property.

From: Guthrie, Jaime S. x6414 <GuthrieJS@co.monterey.ca.us>
Sent: Monday, February 25, 2019 2:00 PM
To: Swanson, Brandon xx5334 <SwansonB@co.monterey.ca.us>; Spencer, Craig x5233 <SpencerC@co.monterey.ca.us>; Dale Ellis <dale@alombardolaw.com>; Dugan, John x6654 <DuganJ@co.monterey.ca.us>; cody@alombardolaw.com; Gail Hatter <Gail@alombardolaw.com>
Cc: Holm, Carl P. x5103 <HolmCP@co.monterey.ca.us>; Anthony Lombardo

[<tony@alombardolaw.com>](mailto:tony@alombardolaw.com)

Subject: Pietro Appeal

Hello Team Pietro,

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- Issues of public perception: Gail & Co. contend the County fuels the fire and contributes to the criminalized perception of the applicant by influence of reactive deployment. Staff acknowledged the concern and will take more deliberation moving forward.
- Staff is made aware of disjointed County process that permits trenching for electrical infrastructure before approval of land use entitlements.
- Gail & Co. want the Board to know, generally: elimination of the basement would not remove the need for 6-foot over-excavation for footings and the Isabella property is distinguished from the Valley View properties.
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Thanks again for your time. Feel free to contact me if you have any questions or comments.

Kind regards,

Jaime Scott Guthrie, AICP

Associate Planner



County of Monterey

Resource Management Agency - Planning

1441 Schilling Place South, 2nd Floor

Salinas, CA 93901

831.796.6414

GuthrieJS@co.monterey.ca.us

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

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

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

Follow up: Permitted utility work and tree relocation

Gail Hatter <Gail@alombardolaw.com>

Tue 3/5/2019 6:16 PM

To:Guthrie, Jaime S. x6414 <GuthrieJS@co.monterey.ca.us>; Spencer, Craig x5233 <SpencerC@co.monterey.ca.us>;

Cc:Swanson, Brandon xx5334 <SwansonB@co.monterey.ca.us>; Dugan, John x6654 <DuganJ@co.monterey.ca.us>; Anthony Lombardo <tony@alombardolaw.com>; Dale Ellis <dale@alombardolaw.com>; Cody Phillips <cody@alombardolaw.com>;

4 attachments (25 MB)

Erosion Control Plans.26338.26346.pdf; AR Invoice No 24672.Tree relocation from PGE franchise.pdf; 26339 Valley View Oak Tree Relocation.pdf; VALLEY VIEW LETTER 22819.pdf;

Craig and Jaime,

[The following information responses to our previous discussions for the permitted utilities work at 26346 & 26338 Valley View, Carmel.](#)

1. Staff had requested information on the relocation of the 15" tree from the PG&E franchise area to the project site/property known as 26338 Valley View:
 - a. As previously discussed, removal for utilities in the PG&E franchise is supported by PUC General Order 95. The private property owner and project applicant for PLN170613 desired to retain the tree.
 - b. Attached is the invoice from the tree relocation service responsible for the transplanting of the tree. This company is noted to be a highly respected service with a very high success rate on large tree transplants.
 - c. Attached is a letter from Frank Ono, forester, confirming that the owner did in fact consult with him prior to the transplanting of the tree. The letter cites to some confusion that did arise over whether or not County oversight was needed for this activity. Mr. Ono also expresses support for the relocation of the tree rather than removal, and confirms the abilities and history of success for the service company used.
2. Staff also requested that the applicant provide erosion control plans for the disturbed areas of the franchise and the properties (utility trenches). The erosion control plans were previously sent to you on February, but are included here again.
3. Although the installation of utilities is exempted from CEQA and from Coastal Development Permit requirements, staff did express some concern regarding archaeological considerations for the work. In response to staff's concerns, the applicant voluntarily commissioned the project archaeologist to review the excavation areas and soils. Her report and findings are attached. The report supports again the findings of the (3) prior archaeological investigations of both properties, noting discovery of no archaeologically or culturally significant items.

Based on our prior discussions and the information contained herein to address all concerns, please confirm your release for the applicant to complete the backfilling operations for the utility trenches on these sites and in the franchise area. Erosion control measures will be replaced and retained on the site after backfilling is completed.

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