

Attachment H

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A PROFESSIONAL CORPORATION

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April 21, 2020

File No. 1893.000

Chair Chris Lopez
Monterey County Board of Supervisors
168 West Alisal St.
1st Floor
Salinas, CA 93901

Re: **Appeal of PLN180434**

Dear Chair Lopez and Members of the Board of Supervisors:

Our office represents Tim and Ethna Haley, the owners of the property which is the subject of this appeal. Mr. and Mrs. Haley's project consists of a proposal to merge three legal lots of record into two legal lots of record, each with one home. The two homes are existing. The permit will allow an internal remodel of the existing 865 square foot home with the addition of a carport to meet the County's covered parking requirement. The footprint of this home, built in 2002, will not change. The permit also includes the partial demolition, remodel, and additions to the second home on the property. This home was originally built as a garage or "carriage house" and does not meet current building codes for a habitable structure. For example, the bedroom on the second floor is reached by a staircase that is so steep it is like climbing a ladder and the head height in the stairs is barely 6'. The design for the rebuild and additions to this home has been carefully planned to limit grading to the minimum necessary for footings and a slab foundation per the recommendations in the project soils report. There is no basement proposed for either home.

The Haleys went beyond the recommended archaeological investigations usually performed by other applicants, obtaining a project specific report from Susan Morley, as well as a report from archaeologists PaleoWest which utilized both ground penetrating radar ("GPR") and geo-probe borings to analyze the site. (The GPR report is attached hereto as Exhibit "A".) Both the Morley and the PaleoWest reports found no archaeological or cultural resources and are substantial evidence that there is no potential impact on cultural or archeological resources.

The County imposed the same mitigations and conditions that have been applied to every other recent project approval on Carmel Point (including a requirement that both an archaeological and a tribal monitor be present during all grading and excavation activities). In addition, the applicant agreed to a further condition that requires the home be redesigned if significant cultural or archaeological resources are encountered which could not otherwise be mitigated.

This modest project received approval from the local Land Use Advisory committee, the neighboring property owners and unanimous approval of the County Planning Commission.

The following are responses to the specific allegations contained in the appeal.

1) Mitigations proposing monitors are inadequate because there is no accountability for failure to have one or both monitors:

Detailed mitigations are included in the environmental document and in the conditions applied to the project that require the presence of an archaeological monitor and a tribal monitor onsite for all excavation (earth-disturbing) activities (conditions #15 & 16). These mitigations include detailed requirements prior to issuance of construction permits, prior to start of excavation, during excavation activities, and subsequent to completion of excavation. The requirement for compliance with the mitigations and all action items contained therein are not optional, nor is there any evidence that the Haley's or licensed professionals would intentionally set out to ignore these requirements.

The appellant continues to harp on the one project in the County where the contractor mistakenly started excavation without the archeologist present as evidence that all projects will not comply with the County's requirements, conditions and mitigations. To the contrary it shows that the County's conditions are very effective. Out of hundreds of projects requiring archeological monitors there has only been one instance where a project was started without complying with the condition.

The appellant also complains about the County fine structure. In actuality the County fine was only a small fraction of what this contractors mistake cost. The property owners project was delayed 8 months and they spent in excess of \$200,000.00 in engineers, architects, attorneys and consultant fees correcting this mistake. In fact, that mistake is still costing the property owners who are still in litigation with the neighboring property owner who is represented by the appellant in this case. It would have been far better for them had the contractor followed the condition of approval.

In any event the County code is what it is. The County cannot apply different rules to an individual applicant on an ad hoc basis. The County always has the authority to set a hearing to revoke a permit for non-compliance in addition to fining a property owner. If this circumstance should occur in the future, believe me that is deterrent enough.

2) The conditions are ambiguous or ineffective because they do not cover presence of monitors for removal of existing patios

The project conditions and mitigations specify that an archaeological monitor and tribal monitor shall be present for "all excavation activities" (conditions #15 & 16, mitigation measures 1 & 2). The areas identified for excavation include all areas where the existing residence and patios exist as well as the future house, patios, and driveway extending out 5' around the parameter. There is no ambiguity in the mitigations and conditions. The archaeological and tribal monitor will be present for excavation in these areas as required by conditions #15 & 16 and mitigations #1 & 2.

3) There is inadequate identification of the plans that are intended to be approved in the resolution

The project plans are attached to the staff report and resolution. Those plans are dated and numbered. Contrary to the assertion by the appellant, the County does not have a poor record of

identifying plans with dates, pages, numbers, etc. Not only does the resolution attach the plans being approved, planners review building permit submittals to insure they are consistent with the approved plans including for height, coverage, FAR and grading quantities.

4) If archaeological or tribal cultural resources are discovered, work should be stopped for all development on and off site within 50 meters

This project is not associated with any other properties or projects within 50 meters, and we are unaware of any other projects approved or pending within 50 meters of the site. In any event, it would be beyond the authority of the Haleys or the County to order a non-applicant property owner to stop work on their property as condition or of this project. The project already includes conditions and mitigations that work will stop on this project if resources are discovered (Condition 17).

5) A positive finding for archeological resources was made on the site in 2001.

One of the homes on the property was constructed in 2001. A Phase I and Phase II archeological survey and report were prepared by archaeologist, Gary Breschini in which Breschini conducted subsurface testing within the footprint of the then proposed home. The testing results yielded highly disturbed ashy/sandy midden soils from 0-10 cm below ground surface. The soil constituents included small fragments of shell and lithic debitage, and modern glass, nails and brick building material. Soils below 10 cm were culturally sterile yellow sand. Breschini advised the soils were not native to the site and had been dumped on the site (within the last century).

Breschini concluded that the house project should proceed without additional archaeological investigations; however, he recommended monitoring due to the proximity of two known archaeological sites (CA-MNT-16 and CA-MNT-1286). An Initial Study was prepared with appropriate mitigations applied and a mitigated negative declaration was adopted for the project including the presence of an archeological monitor during construction. As predicted by Breschini, no archeological or cultural resources were encountered during construction of the home.

In addition, both home sites have also been surveyed with ground penetrating radar and geoprobing (see Exhibit A attached). The results of that testing provides the sites are devoid of any archaeological or cultural resources.

6) No accountability for and confirmation of maximum amount of grading, not quantified or capped:

The resolution states 120 cu. yd. and a maximum of 3' of excavation as required by the soils engineer. This is the limit of the project approval.

The allegation that grading amounts are not quantified or capped is totally and completely incorrect.

The appellant appears to be concerned by the terms "erosive soils" and "over-excavation" within in the soil's reports. The term "over-excavation" describes the amount of soil which must be removed and recompacted in order to pour the slab foundation. (In this case a maximum of 3' in

depth). Erosive soils is simply a description of the type of soil present on the site (sand) and does not alter the amount of grading which is being proposed.

The appellant also appears not to understand that soil conditions are not uniform on every lot in Carmel Point. The County requires, as does State law, individual soils reports prepared by a licensed engineer for each building site throughout the County. In the case of this project, the soils report concludes that a maximum 3' of excavation and re-compaction will be necessary to build a foundation for the homes with less excavation for the carport. In other areas of the County, including Carmel Point, where there are different soils conditions requiring 5 to 9' of excavation (deeper layers of loose, unconsolidated soils) appellant provides no explanation, information or evidence to support a conclusion that the soils report for this property is incorrect.

7) Mitigations and conditions are limited in scope and do not protect resources:

Appellant alleges that the conditions and mitigations do not prevent harm to artifacts and resources, stating that the use of the word "intact" in the conditions incentivizes persons to intentionally destroy archeological or cultural resources. Ignoring the absurdity of the professional archeologist and tribal monitor allowing this to occur the appellant does not understand what the word "intact" means in the context of an archeological investigation. Attached is a letter from PaleoWest explaining the meaning of the word "intact" which effectively means all resources on site (see Exhibit B attached).

8) An EIR should be prepared for Carmel Point as a whole

Appellant alleges that an Environmental Impact Report should be prepared for the entirety of Carmel Point because it is eligible for listing in the National Register of Historic Places and the California Register of Historical Resources. Appellant further claims that the County needs to analyze the cumulative impacts caused to Carmel Point by projects, such as the Haley project, which require any ground disturbance, in an EIR. The claims are unfounded and has no basis in California law.

First, to the extent that the Appellant takes issue with the County's environmental analysis, the Applicant would like to point out that the Appellant submitted no objections to the Mitigated Negative Declaration during the circulation period, and did not submit any objections to the project at all until the evening before the hearing before the Planning Commission.

Second, based on the extensive development that has occurred on Carmel Point for over a century, experts have said the area has in all likelihood lost its integrity as a potential "historic resource" that would qualify for listing.

On page 47 of the 2012 archaeological report which was prepared for the entire Carmel Point area (specifically CA-MNT-17) by Breschini and Haversat, they conclude that "over a century of building and development, including the projects reported upon here, have reduced the integrity of location, design, setting, materials, workmanship, feeling, and association to the point where the site is (possibly) no longer eligible" (for listing as a historic resource).

Finally, Appellant's contention that the foundation construction on the subject parcel somehow contributes to the "wholesale destruction" of Carmel Point and therefore requires a cumulative

impacts analysis, is also without legal or factual support. Nowhere in the record is there any evidence that this project will have any impact on archeological or cultural resources either individually or cumulatively. CEQA Guidelines Section 15355 defines cumulative impacts as “two or more individual effects which, when considered together are considerable or which compound or increase other environmental impacts.” As described above, the project site has already been significantly disturbed and is currently occupied by several structures. Furthermore, in the present case and in the Pietro projects that the applicant points to, there are no “resources” that would be impacted by the proposed development which have had numerous archeological reports including surface reconnaissance, ground penetrating radar and geo-probing conducted at each property referenced by the appellant, and not a single archeological or cultural resource was found to exist on any of these properties.

In the case of *Leonoff v. Monterey County Board of Supervisors* (1990) 222 Cal.App.3d 1337, the Court held that an agency is not required to prepare an EIR where, as here, there is no substantial evidence of any individually potentially significant effect by the project, therefore the project cannot have a cumulative impact. The court went on to state “Zero plus zero equals zero.” Id. at 1358. The project in question will not have an impact on any resources as it has been clearly demonstrated by several professional archaeologists because there are no resources on the project site.

By Appellant’s own citation to *Keep Our Mountains Quiet v. County of Santa Clara* (2015) 236 Cal.App.4th 714, it is clear that appellant has not provided the required “substantial evidence” that a project will have a significant effect on a resource may occur as required by CEQA to support the preparation of an EIR. It is a well-settled tenant of CEQA practice that “substantial evidence” does not include argument, speculation, unsubstantiated opinion or narrative, or evidence that is clearly inaccurate or erroneous. (Public Resources Code Section 21080). Appellant has provided no facts or expert opinion supported by facts to support its argument that there will be individual, let alone, a cumulative impact to Carmel Point as a result of the project in question. Instead, appellant simply makes vague, unsubstantiated statements about impacts to an undefined “overall resource” and archaeological resources which are demonstrably not present on this site. Such unfounded statements and claims do not in any way rise to the level of “substantial evidence” supporting a fair argument that significant environmental impacts will occur as a result of the project as required by CEQA Guidelines Section 15384.

While the Appellant has provided no evidence whatsoever to support its position, there are 3 expert opinions, the 2001 Breschini report, and the current reports from Susan Morley and PaleoWest to establish that there are no significant archaeological or cultural resources present on the site. All reports were negative for archeological or cultural resources, and the GPR survey conclusively established the absence of any resources on site. The report concluded that there was “no evidence of cultural materials and no evidence of cultural soils or sediments within the parcel.”

Based on the foregoing, it is clear that there is no “fair argument” that can be made by the appellant that the project will have a cumulatively significant impact on the environment that would warrant the preparation of an EIR.

9) Appellant's Contention: The County did not listen to OCEN's requests which constitutes a violation of AB 52 and CEQA.

Appellant contends that the mitigation measures are inadequate because the County did not incorporate all of OCEN's requests into its conditions of approval and mitigations. To the contrary at the request of OCEN and the appellant the County Planning Commission added several mitigations which the appellant said would resolve the concerns of her "client". Mitigation measures 15-18 included all of the items requested in Louise Ramirez October 8, 2019 letter attached hereto (see Exhibit C attached).

Specifically:

- OCEN be included in mitigation recovery program and as tribal monitor (mitigation 16(2)(a)).
- Reburial of ancient remains, land artifacts (mitigation measure 17B).
- Placement/returning all cultural items to OCEN (mitigation 16(2)(B)).
- Native American monitoring be approved by OCEN tribal council (mitigation 16(2)(A)).

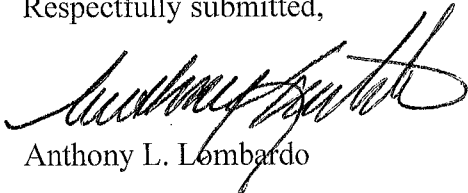
These mitigations go above and beyond the requirements of AB 52 and were a good faith effort by the staff, Planning Commission and Haley's to address the request of Louise Ramirez (on behalf of OCEN) and the Planner reported that during his consultation with Ms. Ramirez she said that she was satisfied by the addition of these requested mitigations.

10) Conclusion

As demonstrated above, there is no evidence to support a finding that this project, as approved by the Planning Commission, would have an impact on archaeological or cultural resources. The appeal is basically a recitation of the contempt the "Appellant" has for the County Planning process unsupported by any evidence or authority. In fact, the appeal ignores numerous conditions and mitigations designed to insure the protection of those resources.

The Haleys respectfully request that the Board of Supervisors support the neighbors, Land Use Advisory Committee and unanimous decision of the Planning Commission and deny this appeal.

Respectfully submitted,



Anthony L. Lombardo

cc: Client
County Counsel
Brandon Swanson
Joe Sidor



www.paleowest.com

March 26, 2020

Gail Hatter
Senior Land Use Specialist
Anthony Lombardo and
Associates, Inc.
144 West Gabilan Street
Salinas, CA 93901

Re: Report on Additional Phase II Archaeological Presence/Absence Testing for 26226 Isabella Avenue, Carmel, Monterey County, California

Dear Ms. Hatter,

In compliance with our contract with Tim Haley, c/o Gail Hatter and Anthony Lombardo and Associates Inc., this report summarizes the results of the additional Phase II archaeological presence/absence testing in support of the 26226 Isabella Avenue Project (Project) in unincorporated Carmel, Monterey County, California.

The additional Phase II subsurface presence/absence testing for the Project parcel involved using ground penetrating radar (GPR). Direct push geo-probe boring technologies were implemented at locations where GPR studies identified anomalies in order to determine whether the anomalies contained potential cultural features or strata.

Three previous Phase I and II archaeological studies have been conducted on the Project parcel (Breschini 2000; Breschini 2001; Morley 2018). No significant archaeological resources were found during the studies and the authors concluded potential impacts to archaeological resources from the proposed Project is low. The Resource Management Agency (RMA) of Monterey County proposed a Mitigated Negative Declaration (MND), and a Mitigation Monitoring and Reporting Plan (MMRP) for the Project. The Monterey County Planning Commission approved the MND and MMRP for the Project on January 29, 2020.

This report contains summaries of the Project background, previous studies, cultural, and historic settings, a description of the results of the GPR and geo-probe boring activities, and professional recommendations. Geoprobe bore results are detailed in Appendix A. Geoprobe bore locations and GPR survey grids are depicted in Figures 1-3 located in Appendix B.

Project Location and Description

Project parcel is a 0.41-acre irregular shaped lot located at 26226 Isabella Avenue (APN 009-451-013) in unincorporated Carmel, Monterey County, California. The Project area is bounded by San Antonio Avenue on the north, Isabella Avenue on the east, one developed parcel to the south, and one developed parcel to

the west. Two single family dwellings are currently situated on the parcel. The proposed Project involves a lot line adjustment, including a lot merger, between three legal lots of record, resulting in two lots of 9,369 square feet (ft) (Lot A) and 8,587 square ft (Lot B). The proposed Project also involves the demolition of an existing one-story single-family dwelling and the construction of a new one-story single family dwelling with an attached garage (Lot A), and the remodel of an existing 865 square foot square single family dwelling and the addition of a 225 square foot trellis carport (Lot B). The Project is located within 750 ft of three known archaeological resources: CA-MNT-16, MNT 17 and MNT-1286. The proposed Project's ground disturbance will include, but are not limited to, the removal of approximately 120 cubic yards of soil a to a depth of approximately 2 ft plus 1 ft of scarification (3 ft total).

Cultural Setting

The cultural setting is based on the reports by Breschini (2000, 2001). The Project area is within the currently recognized ethnographic territory of the Esselen and Ohlone or Costanoan group of Native Americans. Discussions of this group and their territorial boundaries can be found in Breschini, Haversat and Hampson (1983), Kroeber (1925), Levy (1978), Margolin (1978), and other sources. In brief, the Ohlone practiced a basic hunting and gathering subsistence pattern with some dependence on the native oak acorn crop. Habitation was semi-sedentary with most occupation sites located near water, such as the confluence of streams, terraces along streams, or in the vicinity of springs. Also, resource gathering and processing areas and associated temporary campsites are frequently found in locations containing resources utilized by the group. Factors that may influence the locations of these sites include the presence of suitable exposures of rock for bedrock mortars or other milling activities, the presence of specific resources (oak groves, marshes, quarries, game trails, trade routes, etc.), proximity to water, and the availability of shelter. Temporary camps or other activity areas can also be found along ridges or other travel corridors.

Previous Studies on the Project Site

In 2000, Dr. Gary Breschini conducted a Phase I preliminary archaeological survey of the parcel prior to the development of the second cottage. The survey consisted of a general surface reconnaissance of all areas that would be expected to contain visible evidence of cultural resources (Breschini 2000:2). Dark brown, ashy sand containing fragments of *Mytilus* shell and fire altered rock were observed in the northern and eastern perimeters of the parcel. However, no other materials (bone or bone fragments, flaked or ground stone, etc.) frequently associated with prehistoric cultural resources were observed in these areas (Breschini 2000:4).

In 2001, Dr. Gary Breschini conducted a Phase II test excavation on the parcel within the footprint of the proposed second cottage. The testing results yielded highly disturbed ashy/sandy midden soils from 0-10 centimeters (cm) below ground surface. The soil constituents included small fragments of shell and lithic debitage, and modern glass, nails and brick building material (Breschini 2001:2). Soils below 10 cm were culturally sterile yellow sand. Breschini concluded soils in the upper 10 cm were not in situ and were redeposited from a different location, either on or off the parcel. Breschini's recommendations advised that the project should proceed without additional archaeological investigations. Archaeological monitoring of project related ground disturbance was recommended due to the Project's proximity of known archaeological sites (Breschini 2001:3).

In November 2018, auger testing to the depth of the proposed vertical Area of Potential Effects (APE) for

the Project foundations was conducted under the direction of Susan Morley (Morley 2018). Two auger holes were excavated to depths of 2 ft below ground surface. No midden soils, shell or shell fragments, burnt or unburnt cobbles, bone, or lithic debitage were encountered in any of the auger holes. Morley concluded the Project should not be delayed for archaeological purposes. A detailed archaeological monitoring and reporting plan was recommended (Morley 2018:14).

Ground Penetrating Radar (GPR)

On March 9, 2020, archaeological ground-penetrating radar (GPR) investigations lead by Scott Byram of Byram Archaeological Consulting, and assisted by Brenna Wheelis of PaleoWest, were conducted at 26226 Isabella Avenue on Carmel Point to help determine whether buried cultural features and human burials may be present within areas of planned excavation for home construction. GPR data are generated by sending pulses of radar energy into the ground from a surface antenna at a specific time interval. The energy reflected off buried objects, features, or strata is measured as the waves return to a receiving antenna, often as it is moved along a transect, collecting reflection traces at intervals tallied with a calibrated survey wheel. The data are sampled and processed by a control unit designed for this purpose (SIR 4000), attached by cable to the receiving 900 MHz antenna (Byram 2020:1-2).

A separate Utility Location survey including GPR technology was performed by Pacific Coast Locators on March 13, 2020 to delineate buried utilities including active gas, electrical and water lines. The results of the utilities survey of the property showed eight of the potential archaeological GPR findings (“anomalies,” point reflection clusters etc.) were buried utilities or other phenomena related to previous construction.

Eleven GPR grids were surveyed at standard resolution for archaeology, transect spacing of 0.33 meters (m) or 1.08 ft. Survey areas include the inner grid dimensions, and 0.33 m outside of the grid. Grids were positioned over the Project’s vertical APE plus the estimated 5 ft over excavation buffer. Depth estimates are approximate due to soil variation and surface conditions, but in general the GSSI SIR 4000 with the 900 MHz antenna yielded accurate radar data up to 1.3 m/4.26 ft depth in the silty soils of the Project area. Distinct features are visible in profiles and in slice maps. Many appear to be related to previous construction, including active electrical, gas and water lines. Vertical obstructions, including trees, shrubs, landscaping, and utilities were present at the time of the survey, partially limiting the horizontal extent of the survey grids. Ten grids yielded data suitable for amplitude slice maps (all but Grid 9) (Byram 2020:1). Anomalies, or reflection features, are discussed grid by grid below.

The GPR survey emphasized identifying potential Native American burials and midden layers. None of the potential features marked on the surface during the GPR survey or during slice map analyses were determined to be cultural in origin. Anomalies, or reflection features, are discussed grid by grid below.

26226 Isabella Avenue Grids 1-11

Grid 1 was located in the northeastern portion of the property and measured 6 m north-south by 4 m east-west. This grid was area is a probable terrace that includes construction fill that buried a slope. One anomaly located in 1.5 m west and 1.0 m south of the northwest corner was recommended for probing.

Grid 2 was located south and semi-parallel to Grid 1 with a slight overlap. Grid 2 measured 7.0 m north-south by 3.75 m east-west. A less pronounced buried slope was observed in the upper 25 cm. One buried

pipe or gravel filled trench like feature was observed, however no anomalies were recommended for probing.

Grid 3 was located adjacent to and north of Grid 4 and measured 4 m north-south by 7 m east-west. Grid 3 slightly overlapped Grid 4 and 5. Grid 3 appeared to hold linear features consistent with pipes and trenching. One anomaly was recommended for probing, located 2 m south and 1 m east of the northwest corner.

Grid 4 was located adjacent to the front entryway of the house, south of Grid 3 and west of Grid 5, measuring 6 m north-south by 9 m east-west. Buried strata were identified in the northwest portion of the grid between 25 and 50 cm in depth and was recommended for probing.

Grid 5 was located north of Grid 6 and east of Grid 4, measuring 13 m north-south by 5 m east-west. Grid 5 slightly overlaps both Grid 4 and Grid 6. A large Monterey Cypress tree is located near the southeast corner of the grid. One anomaly was identified during slice map analysis, located 2.5 m south and 1.5 m west of the northeast corner and was recommended for probing. This anomaly was identified by Pacific Coast Locators as an active gas line and was not probed. Two additional anomalies were identified during the field survey. These were located 2.3 m north and 0 cm west of the southeast corner, and 2.5 m north and 35 cm east of the southwest corner.

Grid 6 was located south of Grid 5 in the southeast corner of the parcel, measuring 8.0 m north-south by 6.75 m east-west. One anomaly identified corresponded with the southwest anomaly coordinates in overlapping Grid 5.

Grid 7 was located in the southwest corner of the parcel, measuring 7.0 m north-south by 4.75 m east-west. Numerous metal objects, irrigation pipes and electrical conduit were present at the time of the survey. One probe was recommended 5.5 m south and 1.0 m west of the northeast corner.

Grid 8 was located north of Grid 7, measuring 7.0 m north-south by 4.75 m east west. Numerous active utility boxes and conduits were present on the western boundary of the existing house. The northern extent of this grid was obstructed by a large potted tree. One probe was recommended 1.5 m north and 0.5 m east of the southwest corner.

Grid 9 is an irregular grid, measuring 6.0 m north-east by 1.5 m south-west. This grid was limited in size due to the existing landscaped and built environment in the survey area, and the large potted tree in Grid 8. Two anomalies were recommended for probing in Grid 9. These anomalies were identified by Pacific Coast Locators as active electrical and gas lines and were not probed.

Grid 10 was located on the existing flagstone paved patio on the north side of the main house, measuring 2.5 m north-south by 7.2 m east-west. No features were identified beneath the northern flagstone patio.

Grid 11 was located on the existing flagstone paved patio on the south side of the main house. The entire patio was surveyed, however due to the semi-circular shape of the patio, precise north-south/east-west grid dimensions were not measurable. One anomaly was identified during the survey. Pacific Coast Locators determined the anomaly was an existing electrical line and was not probed.

Geo-probe Boring

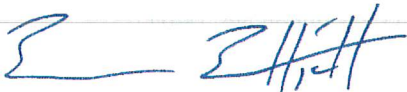
Eight of the anomalies described above were further investigated by PaleoWest using geo-probes technology. Geo-probe boring was conducted by Environmental Control Associates, Inc using a limited access rig and was monitored by PaleoWest. Probing was conducted to ensure a thorough investigation of whether any potential cultural or archaeological materials are present in the Project area. Cores were drilled to a maximum depth of 4 ft below ground surface. The results of the geo-probe coring are outlined in Appendix A.

A continuous core was extracted from each bore location in order to identify and accurately depict the subsurface soil and sediment stratification. All core samples were extracted using a direct push method, collecting continuous core sample in 2.5-inch diameter transparent plastic tubes housed within a steel casing that was hydraulically driven into the subsurface in one five-foot increment. All investigative efforts resulted in no evidence of cultural materials and no evidence of cultural soils or sediments within the parcel.

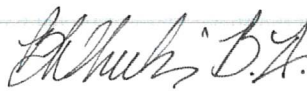
Recommendations

The Phase II Archaeological Presence/Absence Testing (GPR and geo-probe boring) for the Project parcels produced negative results, with no archaeological deposits or cultural sediments encountered. PaleoWest recommends the project should not be delayed for archaeological concerns and recommends the approved MMRP and MND be implemented and followed.

Sincerely,



Evan Tudor Elliot, MA, RPA,
Senior Archaeologist,
PaleoWest Archaeology



Brenna Wheelis, B.A.
Project Manager
PaleoWest Archaeology

References

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- 2001 Archaeological Test Excavation at Assessor's Parcel 009-451-013, Carmel, County of Monterey, California. Report on file with Resource Management Agency, Monterey, California (Monterey County File No. LIB180383)

Byram, Scott

- 2020 Archaeological GPR Survey, 26226 Isabella, Carmel, California. Prepared for PaleoWest Archaeology, Walnut Creek, CA. Prepared by Byram Archaeological Consulting, El Cerrito, CA.

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- 1978 *The Ohlone Way: Indian Life in the San Francisco-Monterey Bay Area*. Heyday Books, Berkeley, CA.

Monterey County Planning Commission

- 2018 Findings on the Pietro Family Investments L.P. (PLN 170611) Resolution No. 18-047. December 5, 2018.

Morley, Susan

- 2018 Cultural Resources Auger Testing of Assessor's Parcel Number 009-451-013 Carmel, County of Monterey, California. Prepared for R. Gail Hatter, Sr. Land Use Specialist, Anthony Lombardo & Associates, Salinas, California

Appendix A: Geo-probe Bore Results

Geo-probe Boring Results

Bore	Depth range (ft)	Sediment description	Munsell	Cultural materials
1	0-0.25	Artificial turf and dry, compacted blocky clayey engineer fill.	10YR 7/6 Yellow	None
	0.25-0.5	Imported 2" base-rock, rounded and angular.	2.5Y 6/0-5/0 Gray	None
	0.5-3.5	Semi-moist medium to fine grain silty sand, sparse root turbation (<1%), no gravels. No blocky structure, moderate platy structure. No shell, faunal, lithic, charcoal present. No midden soils. no cultural constituents.	10YR 3/3-3/2 Dark brown- very dark grayish brown	None
	3.5-4	Semi-moist medium to fine grain silty sand, no gravels. No blocky structure, moderate platy structure. No shell, faunal, lithic, charcoal present. No midden soils. no cultural constituents.	10YR 2/2 Very dark brown	None
2	0-0.25	Artificial turf and dry, compacted blocky clayey engineer fill.	10YR 7/6 Yellow	None
	0.25-0.5	Imported 2" base-rock, rounded and angular.	2.5Y 6/0-5/0 Gray	None
	0.5-3	Semi-moist medium to fine grain silty sand, sparse root turbation (<1%), no gravels. No blocky structure, moderate platy structure. No shell, faunal, lithic, charcoal present. No midden soils. no cultural constituents.	10YR 3/3-3/2 Dark brown- very dark grayish brown	None
	3-4	Semi-moist medium to fine grain silty sand, no gravels. No blocky structure, moderate platy structure. No shell, faunal, lithic, charcoal present. No midden soils. no cultural constituents.	10YR 2/2 Very dark brown	None
3	0-0.25	Topsoil duff, loosely consolidated loamy sand. No blocky or platy structure.	10YR 4/3 Brown-dark brown	None
	0.25-0.66	Loosely compacted moderately coarse silty sand, no blocky or platy structure. Gravels <10%, root turbation <5%. No shell faunal, lithic, charcoal present. No midden soils, no cultural constituents.	10YR 4/1 Dark grey	None
	0.66-2.5	Semi-moist moderately compact silty sand, No gravels, sparse root turbation (<1%). Gravels <1%. No shell, faunal, lithic, charcoal present. No midden soils, no cultural constituents.	10YR 3/2 Very dark greyish brown	None
	2.5-4	Semi-moist, moderately compact silty sand. No blocky structure, moderate platy structure. No gravels. No root turbation. No shell, lithic, charcoal present. No midden soils, no cultural constituents.	10YR 2/2 Very dark brown	None
4	0-0.25	Artificial turf and dry, compacted blocky clayey engineer fill.	10YR 7/6 Yellow	None
	0.25-0.5	Imported 2" base-rock, rounded and angular.	2.5Y 6/0-5/0 Gray	None
	0.5-3	Semi-moist medium to fine grain silty sand, sparse root turbation (<1%), no gravels. No blocky structure, moderate platy structure. No shell, faunal, lithic, charcoal present. No midden soils. no cultural constituents.	10YR 2/2 Very dark brown	None
	3-4	Semi-moist medium to fine grain silty sand,	10YR 3/2 Very dark	None

Bore	Depth range (ft)	Sediment description	Munsell	Cultural materials
		no gravels. No blocky structure, moderate platy structure. No shell, faunal, lithic, charcoal present. No midden soils. no cultural constituents.	brown	
5	0-0.33	Artificial turf and dry, compacted blocky clayey engineer fill.	10YR 7/6 Yellow	None
	0.33-0.5	Loosely compacted silty sand, medium to fine grain. No blocky or platy structure. No shell, faunal, lithic, charcoal present. No midden soils, no cultural constituents.	10YR 4/1 Dark grey	None
	0.5-3	Semi-moist, compact medium to fine grain silty sand, no gravels. No blocky structure, moderate platy structure. No shell, faunal, lithic, charcoal present. No midden soils. no cultural constituents.	10YR 2/2-2/1 Very Dark brown - Black	None
	3-4	Semi-moist, compact medium to fine grain silty sand. No blocky structure, moderate platy structure. No shell, faunal, lithic, charcoal present. No midden soils. no cultural constituents.	10YR 3/2 Very dark grayish brown	None
6	0-0.33	Topsoil duff, loosely consolidated loamy sand. Landscape bark <5%. No blocky or platy structure. no cultural constituents.	10YR 4/3 Brown-dark brown	None
	0.33-1.5	Loosely compacted loamy hummus. Root Turbation <15%. Fertilizer pellet present. No blocky or platy structure. No shell, faunal, lithic or charcoal present. No midden soils, no cultural constituents.	10YR 4/2 Dark greyish brown	None
	1.5-4	Semi-moist, compact medium to fine grain silty sand. No blocky structure, moderate platy structure. No shell, faunal, lithic, charcoal present. No midden soils. no cultural constituents.	10YR 3/2-3/1 very dark grayish brown – very dark grey	None
7	0-0.33	Topsoil duff, dry loosely consolidated Loamy sand. Landscape bark <1%. Minor root turbation <1%. No blocky or platy structure. No cultural constituents.	10YR 4/3 Brown-very dark brown	None
	0.33-0.8	Loosely compacted moderately coarse sand. No blocky structure, no platy structure. No shell, faunal, lithic, charcoal present. No midden soils, no cultural constituents.	10YR 3/3-3/2 Dark brown – very dark greyish brown	None
	0.8-1	Rodent krotovina (gopher tunnel). Loosely compacted, semi moist, redeposited silty sand. No cultural constituents.	10YR 2/2 Very dark brown	None
	1-2	Semi-moist, compact medium to fine grain silty sand, no blocky structure, moderate platy structure. No shell, faunal, lithic, charcoal present. No midden soils. no cultural constituents.	10YR 3/3 Dark brown	None
	2-4	Semi-moist compact medium to fine grain sand. No blocky structure, moderate platy structure. No shell, faunal, lithic, charcoal present. No midden soils, no cultural constituents.	10YR 3/3-3/2 Dark brown-very dark greyish brown	None

Bore	Depth range (ft)	Sediment description	Munsell	Cultural materials
8	0-0.33	Artificial turf and imported 2" base rock, Rounded and angular	2.5Y 6/0-5/0 Gray	None
	0.33-2	Semi-moist, compact medium to fine grain silty sand, no blocky structure, moderate platy structure. No shell, faunal, lithic, charcoal present. No midden soils. no cultural constituents.	10YR 2/2 Very dark brown	None
	2-2.25	Imported 2" base rock, rounded and sub-Angular	2.5Y 6/0-5/0 Gray	None
	2.25-2.5	Utility trench sand	2.5Y 8/6-8/4 Yellow – pale yellow	None
	2.5-4	Semi-moist, compact medium to fine grain silty sand, no blocky structure, moderate platy structure. No shell, faunal, lithic, charcoal present. No midden soils. no cultural constituents.	10YR 2/2 Very dark brown	None

Appendix B: Figures



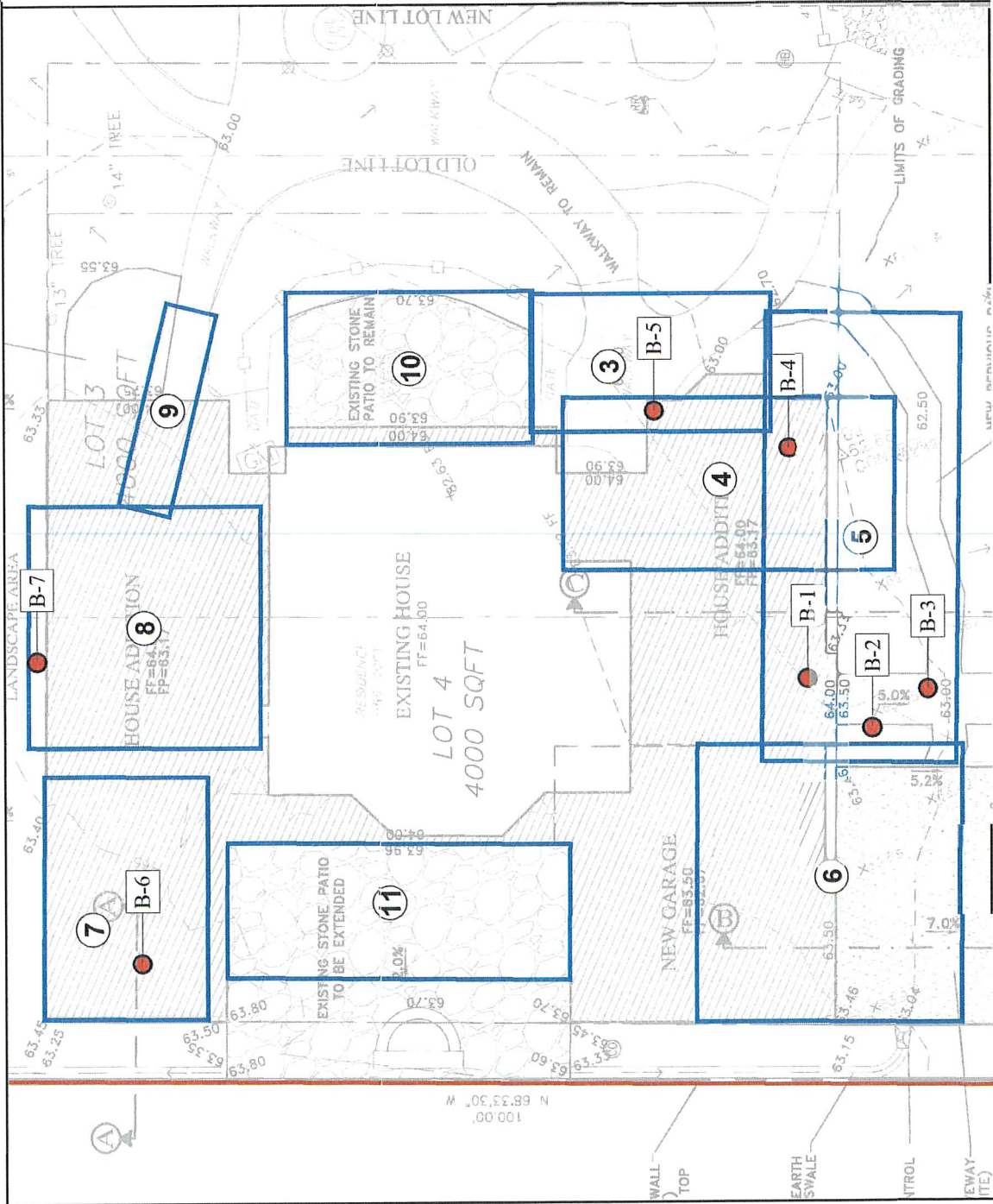
Figure 3
26226 Isabella Ave
Carmel, CA 93923

Grid 3-11

- Project Boundary
- Grid Line
- Bore (B-#)



Map Location



Gail Hatter

From: Gail Hatter
Sent: Tuesday, April 21, 2020 3:16 PM
To: Gail Hatter
Subject: FW: Intact Resource Question

From: Brenna Wheelis <bwheelis@paleowest.com>
Sent: Monday, April 20, 2020 4:42 PM
To: Cody Phillips <cody@alombardolaw.com>
Cc: Tony Lombardo <tony@alombardolaw.com>; Gail Hatter <Gail@alombardolaw.com>
Subject: Re: Intact Resource Question

Hi Cody,

You are correct. An intact resource is one that has not been previously disturbed and remains *in situ*, however the resource can still be broken or damaged in some way. Intact resources frequently exhibit damage from environmental factors, such as fire, saturation, burrowing animals, earthquakes, and sedimentation. Such damage is quite common in our field; rarely do we encounter an intact resource or burial that has not been affected somewhat by age and/or elements.

Redeposited human remains, even a single toe bone, are subject to documentation and treatment under the California Health and Safety Code regardless of previous damage or taphonomy.

The materials that Breschini encountered at the Haley residence during his testing in 2010 were not intact resources. They were redeposited and mixed with modern building materials.

Best,
Brenna



Brenna Wheelis | Supervisory Archaeologist-Project Manager

PaleoWest
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Bay Area Office

1870 Olympic Blvd., Suite 100

Ohlone/Costanoan-Esselen Nation



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

www.ohlonecostanoanesselenation.org

October 8, 2019

CONFIDENTIAL – REQUEST DURING CONSULTATION

Resource Management Agency
Monterey County Planning Dept.
1441 Schilling Place, 2nd floor
Salinas, CA 93901-4527

Re: *26224 Isabella Ave, Carmel, Ca PLN 180434*

Ohlone/Costanoan-Esselen Nation objects to all excavation in known cultural lands, even when they are described as previously disturbed, and of no significant archaeological value. Our definition of respect is no disturbance. Yet, we are aware that the sacredness of our Ancestor's cemeteries is of no importance to the Monterey County Governments. All the while, the Planning Commissioners object to Tribal Monitoring as "overburdening" to the project adding needless expense for the applicant.

Monterey County continues to destroy our Ancestors cemeteries despite our objections therefore OCEN's Tribal leadership continues to request the protection of our Ancestors and desires to be provided with:

- Archaeological reports/surveys, including subsurface testing, and presence/absence testing.
- OCEN request to be included in mitigation and recovery programs,
- OCEN request that Cultural and Tribal mitigation measures reflect request for OCEN Tribal Monitor,
- Reburial of any of our ancestral remains, burial artifacts,
- Placement/return of all cultural items to OCEN, and that
- A Native American Monitor of Ohlone/Costanoan-Esselen Nation, approved by the OCEN Tribal Council is used within our aboriginal territory.
- OCEN request consultation with the lead agency.**

We ask that a sacred lands search with the Northwest Information Center, Sonoma State University and the Native American Heritage Commission. Please feel free to contact me at (408) 629-5189. Nimasianexelpasaleki. Thank you.

Sincerely and Respectfully Yours,

Louise J. Miranda Ramirez
OCEN Tribal Chairwoman
2653 McLaughlin Ave.
San Jose, CA 95121

Cc: OCEN Tribal Council



April 24, 2020

File No.: 1800-02

Mr. Tim Haley
C/o Anthony Lombardo Associates
144 W. Gabilan Street
Salinas, California 93901

Attention: Ms. Gail Hatter

Project: **Haley Residence Additions (APN 009-451-013)**
26226 Isabella Avenue
Scenic Area of Carmel, Monterey County, California

Subject: **RESPONSE COMMENTS TO BOARD OF SUPERVISORS APPEAL**

- Reference:
1. Soil Engineering Investigation, Haley Residence Additions (APN 009-451-006), 26226 Isabella Avenue, Scenic Area of Carmel, Monterey County, California, Doc. No. 1806-115.SER, prepared by Landset Engineers, Inc., dated June 12, 2018.
 2. Project Grading, Drainage & Erosion Control Plans, Haley Residence Remodel & Addition, APN: 009-451-013, Carmel, Monterey County, California, Job No. 1800-03, prepared by Landset Engineers, Inc., dated June 2018, *latest revision dated April 21, 2020.*
 3. Letter of Appeal, PLN180434 – prepared by Stamp, Erikson Attorneys at Law, dated March 2, 2020.

Dear Mr. Haley:

As requested by your counsel, Landset Engineers, Inc. has reviewed the above referenced project documents for the proposed additions and remodel to your residence located off of Isabella Avenue in the Scenic area of Carmel, Monterey County, California. This firm has previously prepared a Soil Engineering Investigation (Reference 1) for the design and development of the proposed project on the subject parcel. The purpose of this review was to provide specific soil engineering response comments with respect to the appellant's contentions (Reference 3) that the proposed development is inconsistent with the County of Monterey's initial study.

The appellant claims that the maximum amount of grading is not adequately quantified or capped. This claim is inaccurate, review of the project improvement plans (Reference 2) indicates earthwork grading quantities of 120yd³ of cut and 40yd³ of fill yield with a net export of

80yd³. These earthwork quantities are clearly within the specified limits of the County of Monterey’s conditions of approval.

Based on the soil conditions encountered as part of our site specific Soil Engineering Investigation (Reference 1) it was recommended that the top two feet of soil underlying future building areas be subexcavated and the resulting surface scarified an additional 12-inches and recompacted. The appellant speciously argues that the recommended subexcavation may be insufficient based on site conditions encountered by other engineers on another project more than 450 feet from the subject parcel. This claim is wholly unsupported by our direct observations, laboratory testing and site specific engineering analysis on the subject parcel.

Lastly, the appellant claims that the potential erosive nature of the site soils will result in the need for additional overexcavation of the site soils. This assumption on the appellant’s part is incorrect. The erosion potential of the soils on the subject parcel as addressed in the project soil engineering investigation is for the purposes to aid the project civil designer in the design of site drainage improvements & erosion control BMP’s for site development and will not result in the need for additional overexcavation.

In conclusion, it is our opinion that the project soil engineering constraints have been adequately characterized and appropriate mitigative measures have been included for CEQA and Carmel Area Land Use Plan compliance.

We appreciate the opportunity to have provided services for this project. If you have any questions concerning this letter, please do not hesitate to contact the undersigned.

LandSet Engineers, Inc.

Brian Papurello
CEG 2226



Guy R. Girardo
RCE 56569



Distribution: Addressee (2 mail & e-mail: gail@lombardolaw.com)

Doc. No. 2004-131.LTR

STAMP | ERICKSON
Attorneys at Law

Monterey, California
T: (831) 373-1214

April 28, 2020

Via email

Chris Lopez, Chair
Board of Supervisors
County of Monterey

Subject: Agenda item 18; PLN180434, objections and concerns

Dear Chair Lopez and members of the Board of Supervisors:

I represent The Open Monterey Project in this matter. Save Carmel Point Cultural Resources joins in the concerns expressed in this letter and also urges the Board to continue the matter to a future date and to respond adequately to the appeal points, which the staff report have not adequately addressed. My clients provide these initial comments.

The Board Referral REF 2019.12 is intended to strengthen the County ordinances to better protect tribal and archeological resources. Instead, the Planning Department is asking you to approve more projects instead of protecting the resources.

The Planning department has ignored Board Referral.

This Carmel Point project should not proceed until the Board has addressed and rectified the serious problem demonstrated in spring 2019 by the \$4,300 fine for out-of-town developers illegally excavating 720 cubic yards without an archeological monitor present, for a spec house on Carmel Point. On October 15, 2019, the Board, led by Supervisors Alejo and Adams, referred this issue to the Planning department. Responses were due in December 2019. It is now six and one-half months later, and the Planning department has done nothing to respond to the referral. The Planning department instead has continued to push through construction projects on Carmel Point that while at the same time ignoring the Board referral REF 2019.12. You should put a stop to that. The Planning department has prioritized private for-profit development and harm to tribal and archeological resources over the specific Board direction.

This is at issue here because the mitigations proposing monitors are inadequate. In Spring 2019 on nearby Scenic Road a property owner excavated hundreds of cubic yards of soil. No monitor was present. All resources were lost forever. The County fined the property owner a mere \$4,300, which was less than the owner would have paid the monitor had s/he been present as required by the condition/mitigation on the County permit. The \$4,300 fine is an incentive to violate the monitoring conditions, because it is cheaper to violate the conditions than to comply with them. with regard to the amount of the County's low fine imposed by the planning staff on the Skeen and Chang violations for failures to have monitors present during excavation, this board

referred the issue of fines to the Planning department in November 2019 and directed a prompt response. The Planning Department has not met the Board's direction and instead has continuously kicked the item into the future. In sum, the Planning department has refused to deal with the board's direction to address the issue of monitors, and instead the Planning department has pushed forward projects like this one that require monitors, all while avoiding the stricter accountability that this Board directed should be considered.

Inequitable, ambiguous, inadequate and unenforceable mitigations are proposed.

The concerns are resolvable. The County planning department's refusal to consider reasonable issues and evidence of potentially significant impacts is holding up this project. The resolution is simple and straightforward and would allow the project to proceed with more effective, meaningful and accountable conditions and mitigations. The planning staff report to you shows a hostile approach to the appeal and the report analysis is improperly biased in favor of the applicant. This is shown by the report's mischaracterization of the facts and of the appellant's points. One example is the staff claim that "The Appellant speculates that the applicant will violate the conditions of approval" when no such speculation was made.

Confusion over 17 conditions or 18 conditions should be avoided.

The Planning department approach to have 17 conditions but to enumerate 18 conditions is a recipe for future confusion and inability to enforce. The County planning department is already overwhelmed and unable to keep pace with mitigation monitoring. Numbering conditions that are not conditions will sow confusion and misunderstanding. This is a straightforward problem that can and should be corrected.

Discussion

The Carmel Area Land Use Plan (LUP) says this:

2.8.1 Overview

The Carmel area experienced intensive prehistoric use.

The Carmel area shoreline from Carmel Point to Point Lobos Reserve contains one of the densest remaining concentrations of shellfish gathering activities in central California. These archaeological deposits have been identified as a highly significant and sensitive resource.

The Carmel Area LUP requires specific action to protect these resources.

2.8.2 Key Policy

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.

General Policy 2.8.3.3.

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 Carmel Point is a significant historic resource. It is eligible for the National Register of Historic Places and the California Register of Historical Resources. The past County project approvals have not protected the project sites, which are areas considered to be archaeologically sensitive. Here, the proposed excavation below grade may not comply with this LUP policy and objective. The County approvals have not incorporated all site planning and design features necessary to minimize or avoid impacts to archaeological resources.

A positive archeological report is substantial evidence of potential impacts. There is a fair argument based on substantial evidence in the record, including site-specific archeological reports and a rich array of evidence as to the Carmel Point, that the project may have a potentially significant impact on cultural resources. Further environmental review should be required before you consider the project. This would allow the County time to investigate, analyze and mitigate for the impacts.

Violations are rarely caught on Carmel Point, which results in harm that the County does not identify and mitigate.

The Planning department staff report makes a spurious claim that inspections will catch violations. No so. Violations are rarely caught on Carmel Point because inspectors are there only rarely, and then there is evidence they look only for what they are called for, instead of for compliance with all conditions. If violations occur they usually are not caught. County inspectors visited the Skeen and Chang project site the but there was no record of their enforcing the hours of operation condition that the contractor exceeded daily, or the requirement to have a monitor present, or the amount of excavation. The County asked me, as the complaining party's attorney, for any information about the amount of excavation. The neighbor's geotechnical engineer did

a site visit and reviewed the County-approved plans and determined the amount was 720 cubic yards. The County and its inspectors had no evidence to the contrary, as shown by the County response to my client's CPRA request. The issue of potential violations of the monitoring requirement and the County's recent action to impose a small fine is relevant to the project because it provides an incentive for County permittees to violate the monitoring requirements in the future. It is relevant to the potentially significant harm that can result and it is relevant to the effectiveness of the proposed mitigations requiring monitors. This is an important issue that applies to this project and all other projects that required monitors, because if the monitors are not present as the condition/mitigation requires then the harm can be permanent. That is what happened with Skeen and Chang project on Carmel point, a few short blocks away, Skeen and Chang and their agents accepted the mitigation as a mitigation/condition of approval, signed and recorded the MMRP, and told the County they had retained an archeologist. Then Skeen and Chang ignored the requirement and without a monitor present Skeen and Chang excavated 720 cubic yards from the undeveloped site, according to geotechnical engineer Elizabeth Mitchell in a report provided to the County. The County did not catch those violations of Skeen and Chang despite the presence of County inspectors on a frequent basis during the period when the excavation was occurring without the benefit of the required monitors.

Violations of mitigations that are intended to protect underground resources are not like a construction height violation where the County can require reduction of the height. There simply is no remedy that is adequate as a substitute for these mitigations when they are violated, the monitoring mitigations are not adequately enforced by the County, there is no additional protection for the protected resources and the intent of the monitoring if the monitoring is not actually done as prescribed. For all these reasons and the reasons presented in the materials, the monitoring mitigation is inadequate. The staff inaccurately characterizes the appellant's position as a guaranteed violation, and the planning staff's mischaracterization is not helpful to this board's consideration of the issues.

The County Planning department does not always issue a stop work order for violations in my decades of experience with County Planning issues. Simply getting the County to respond to complaints at all is a big problem. For the Skeen/Chang violations I had to call more than 15 people, none of whom were at their desks or returning calls. The first person to respond was the CAO, Lew Bauman, who I contacted last given the failure by everyone in the Planning department to respond. It took hours of extraordinary effort by me to find anyone to respond. Most members of the public do not have the expertise and dedication to keep calling until they get a response. Most people would give up under those circumstances, which would mean that the violation would go undetected and the harms would go unaddressed. The problem is particularly severe in Carmel point which is more than 50% non-owner occupied; it is largely second homes and vacation homes.

The proposed mitigations are ambiguous, inequitable with other Carmel Point projects, and do not mitigate the impacts to less than significant, among other problems.

The proposed mitigations are difficult to understand, are vague on matters essential to enforceability, are inadequate under CEQA, do not contain adequate and enforceable performance criteria and performance objectives, and are ineffective to reduce the impacts to cultural resources to a less than significant level. We address several of these in this letter. Furthermore, the County's bare conclusions that impacts to cultural resources would be "mitigated to a less-than-significant level" does not quantify the impacts or the claims reduction and is not supported by facts or analysis.

Mitigation measure 1 (condition 15) is not adequate. It merely requires an archeological monitor to be "present." There is no requirement that the monitor be watching the earth disturbance. The archeological monitor must be required to actively observe during all soil disturbing activities, rather than sitting in his vehicle or on his phone or on another part of the site. The potential for earth disturbing activities to take place outside of the direct view of the "observer" is significant. This is a known issue because witnesses have seen observers on other parts of the site when earth movement is going on, and the observers are not actively observing the activity at issue. Each project site should have a skilled observer dedicated to that site who is actively observing all soil disturbing activities. TOMP and SCPCR make the same comments and objections to the mitigation measure 2 (condition 16) that merely requires a tribal observer to be "onsite."

The initial study is not consistent in the discussion of excavation. In one place the initial study claims excavation will be "two feet" (p. 65) and in another place the initial study says "the site soils are erodible when disturbed, and the project would involve *over-excavation by approximately two feet below the building area*" (p. 47). The RMA appears to be confused by this. Overexcavation means soil removed in an effort to investigate or remediate *in addition to the minimum amount*. The excerpts of the plans do not have legible calculations, the complete plans are not attached, and I cannot access the records because the County Accela is down as I write this letter – it gives an error message. There is no condition of approval that places a maximum depth of excavation.

To make matters worse, erodible soils mean the sides of the hole typically cave in when soils are excavated, so as a result applicant have argued that even more excavation is required on all sides. The Pietro applicants, represented by the same attorney as this PLN180434 project, have argued that the soils at their nearby sites must be overexcavated and that many feet of additional excavation was necessary due to the erodible soils.. That applicant stated that

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.

The County RMA staff agreed. (RMA staff report for Pietro projects, 4/23/2019, Att. A, p. 15.) In contrast, the RMA staff has taken a very different approach to this project without explanation, and is claiming that two feet of subexcavation is needed, instead of the “4-9 feet” claimed nearby. The Commission should get more information to determine which claim is accurate. If the overexcavation is 4-9 feet, then this project would have much more cut than the amount analyzed in the initial study. SCPCR and TOMP are also concerned because GPR is not 100% reliable for protected items of concern such as those at issue at Carmel Point. The discussion grading fails to adequately include, quantify and consider the impacts of the proposed scarification. Scarification consists of mechanical breaking-up of soils or other materials, performed with a deep-toothed bucket, grader or other construction equipment. Scarification is the process of breaking up soil by fracturing it; scarification in agriculture refers to ripping or tilling the soil. Scarification is grading under the County code definition and it can cause harm.

The mitigation action 1b does not include performance standards or criteria for the responsibilities and involvement of the archaeological monitor. There are no standards to guide the applicant and its paid consultant, and no standards on which the County is required to rely as a basis to accept or reject a proposed contract. There also is no requirement for accountability by the archaeologist to the County, as there should be. There is no requirement as to whom at the County should review the proposed contracts, and what expertise that person should have. This is important, given the County RMA’s demonstrated lack of expertise in specific environmental issues, including archaeological and contract expertise. It also is important as shown by the County’s failures regarding the Scenic Road property owner who violated the County permit conditions requiring a monitor, and the County’s \$4,300 fine would not deter others from similarly violating these monitoring conditions. To the contrary, the County’s \$4,300 fine has provide an incentive to violate the conditions, because it is cheaper to violate the monitoring condition than to comply with it.

A 50-meter stoppage of work should be required when resources are found.

Another example of staff’s mischaracterization of an appeal point is “Application of conditions to a parcel that is not included in the project application, or is owned separately, would be contrary to law.” This is a blatant attempt to prejudice the decision makers against the appeal. The appeal did not make this argument. The point is that the County can and should place the condition on all construction permits

at Carmel point that if resources are found within 50 meters that all excavation and earth movement should be halted until the resource can be fully defined and the limits/perimeter of the find can be established by appropriate professionals. That is a reasonable and small burden to bear in exchange for protecting the resource.- All County permits should include this condition, discretionary and ministerial, because it would protect all resources. Carmel Point is a small area and there is construction going on nearly every street, as personal observations show. By simply walking around, you can hear construction and see construction trucks. Here, where the applicant for both houses is the same, the applicant can easily stop work on one parcel if a resource is discovered on the other parcel. Same with the three Adamski/Pietro/Emerson projects. And the additional projects that are being proposed on Carmel Point. If all project approvals include this mitigation, they would bear the minor burden equitably. The condition is placed on each approval, instead of on other sites. That is legal.

Tribal concerns have not been adequately addressed and resolved under the law.

The County has failed to place any mitigation requiring reburial at the site. The County has failed to follow the following OCEN statements during the OCEN consultation as follows:

“OCEN request consultation with the lead agency, that mitigation measures reflect the request for an OCEN Tribal Monitor, reburial of any ancestral remains, burial artifacts, placement/return of all cultural items to OCEN ...”

The County has failed to explain why these OCEN requests were not met and has failed to include that information in the circulated initial study. The failures violates AB52 and CEQA. In addition, the mitigations merely direct that the owner “allow” the tribes to provide “recommendations” as to resources, instead of requiring the owner to consult in good faith with the tribes, which is what should be required.

The County should place a mitigation that requires redesign of the project to avoid the human remains and important materials that are uncovered. That is what the Carmel Area Land Use Plan requires when it says that “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.”

The proposed mitigations are not consistent with the standard recommendations of the Native American Heritage Commission.

The proposed approvals are not consistent with the NAHC recommendations for areas including Carmel Point as follows:

- If an archaeological inventory survey is required, the final stage is the preparation of a professional report detailing the findings and recommendations of the records search and field survey.
- The final report containing site forms, site significance, and mitigation measures should be submitted immediately to the planning department. All information regarding site locations, Native American human remains, and associated funerary objects should be in a separate confidential addendum and not be made available for public disclosure.
- The final written report should be submitted within 3 months after work has been completed to the appropriate regional CHRIS center.

(See attached NAHC comment letter on another Carmel Point project.)

Here, the proposed approvals have a lower standard. The reports required by the County conditions have allowed and here would allow years after the project is approved, even if resources are found. This condition is not being monitored and enforced. Initial studies are prepared at Carmel Point, as here, that rely on CHRIS reports that may be outdated because the County does not require reports to be submitted promptly. The consultant may not be aware of new information that has come to light and for which no report has been submitted yet. There should be a requirement for review of CHRIS reports shortly before final approval in order to determine whether new information has come to light. The harm is that projects could be approved even though resources have been found at a next-door or nearby property, and the County is deprived of that information in crafting appropriate conditions and protections and whether to approve the project as proposed. The public does not have access to the confidential reports and thus cannot enforce it. Only the County can get this information and enforce this requirement. Additionally, the County should require a mitigation that “the final report containing site forms, site significance, and mitigation measures should be submitted immediately to the planning department” as a public document. No delay and no secrecy, unlike what the proposed conditions would allow, and what the County standard approach allows.

CEQA and LCP compliance has not been met.

The proposed negative declaration and approvals do not comply with the CEQA directive that says:

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

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

The County's fragmented, one-off approach to projects involving digging at Carmel Point is harming the protected resources in steps, and the effect is the same as a wholesale destruction. The harm is occurring on a project-by-project basis because the County is not protecting the overall resource in a responsible and required manner. The County has failed to consider the cumulative impacts of this project and other known projects, including the three nearby Pietro projects.¹

The County documents fail to adequately show the cumulative effect and total impacts of the Carmel Point excavation projects. The Commission should request a map that coherently presents all Carmel Point projects and their location and proximity to each other. This lack of information makes it difficult for you and for my clients to understand the combined overall impacts of the projects. As a result, you have not been adequately informed of the potential impacts, the potential excavation, and the potential effectiveness of the mitigations. The County initial studies for the three nearby Pietro projects on Isabella and Valley View stated that the County had uncovered "substantial evidence that any aspect of the project, either individually or cumulatively, may cause a significant effect on the environment." An EIR is required whenever "substantial evidence in the record supports a "fair argument" significant impacts or effects may occur" (See CEQA Guidelines, § 15063, subd. (b)(1).) In the CEQA context, substantial evidence "means enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached." (CEQA Guidelines, § 15384, subd. (a).) Substantial evidence includes "facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts" (*id.*, subd. (b)). The Sixth District Court of Appeal has reviewed the standards in its decision *Keep*

¹ The Pietro projects are three new houses on three vacant lots on Isabella and Valley View. All three houses would have at least three bedrooms and 2.5 bathrooms on the ground level. The applications include excavation for even more bedrooms and bathrooms below grade, plus a gym, wine storage, bar, dens. The total finished construction below grade would include 5,466 square feet, according to the County. The excavation foot prints are significantly larger than that because the walls have to be excavated and supported, and large light wells and escape wells are features of all three projects.

Our Mountains Quiet v. County of Santa Clara (2015) 236 Cal.App.4th 714. The County should review that decision carefully before proceeding.

My clients continue to object to the proposed approvals and the initial study on all issues raised in the appeal and before the planning commission. On all matters, I ask the County to carefully review the recent 2020 decision *Save the Agoura Cornell Knoll v City of Agoura Hills*, which is relevant to several cultural resource protection issues and support the positions of TOMP and SCPCR here.

Request for Continuance

The staff report claims that I was sent a copy. I was not. At no time have I received a paper copy of the report. On Friday Planning staff reluctantly claimed to send a package by "overnight delivery" that Planning staff admitted Monday afternoon has not been delivered. I was not sent an electronic copy until late Friday afternoon. Because of the late receipt, Monday was the soonest I could view it. I regret that these partial and limited comments are submitted late but the timing was caused by the County planning actions. We ask that the Board continue the item to allow further review of the report and correction of the problems with the proposed approvals, to adequately comply with CEQA and the LCP.

Offer to Meet

TOMP and SCPCR offer to meet with the County to discuss these issues before you act, with the goal of resolving these straightforward issues. The County controls the schedule. TOMP and SCPCR do not control the schedule.

Request

You should strengthen the mitigations as requested and you should ensure that there is adequate accountability in order to deter and prevent violations that cause irreversible harm, before you consider approving this project. My clients and I appreciate your consideration of these comments. Thank you.

Very truly yours,

STAMP | ERICKSON

/s/ Molly Erickson

Molly Erickson

Monterey County Board of Supervisors
April 28, 2020
Page 11

Attachment: NAHC letter



NATIVE AMERICAN HERITAGE COMMISSION

March 18, 2020

Joseph Sidor
Monterey County

Via Email to: sidorj@co.monterey.ca.us



CHAIRPERSON
Laura Miranda
Luiseño

Re: SCH# 2020029094, Isabella 2 LLC Project, Monterey County, California

VICE CHAIRPERSON
Reginald Pagaling
Chumash

Dear Mr. Sidor:

SECRETARY
Merri Lopez-Keifer
Luiseño

The Native American Heritage Commission (NAHC) has reviewed the Draft Environmental Impact Report (DEIR)/Mitigated Negative Declaration (MND) or Negative Declaration prepared for the project referenced above. The review may have included the Cultural Resources Section, Archaeological Report, Appendices for Cultural Resources Compliance, as well as other informational materials. We have the following concerns:

PARLIAMENTARIAN
Russell Atebery
Karuk

- It is unclear if the mitigation measures regarding cataloguing and testing of any findings not associated with human remains was discussed and agreed upon during consultation with all traditionally, culturally affiliated California Native American Tribes from the NAHC's contact list.

COMMISSIONER
Marshall McKay
Wintun

The California Environmental Quality Act (CEQA)¹, specifically Public Resources Code section 21084.1, states that a project that may cause a substantial adverse change in the significance of a historical resource is a project that may have a significant effect on the environment.² If there is substantial evidence, in light of the whole record before a lead agency, that a project may have a significant effect on the environment, an environmental impact report (EIR) shall be prepared.³ In order to determine whether a project will cause a substantial adverse change in the significance of a historical resource, a lead agency will need to determine whether there are historical resources with the area of project effect (APE).

COMMISSIONER
William Mungary
Paiute/White Mountain Apache

COMMISSIONER
Joseph Myers
Pomo

CEQA was amended in 2014 by Assembly Bill 52 (AB 52).⁴ **AB 52 applies to any project for which a notice of preparation or a notice of negative declaration or mitigated negative declaration is filed on or after July 1, 2015.** AB 52 created a separate category for "tribal cultural resources"⁵, that now includes "a project with an effect that may cause a substantial adverse change in the significance of a tribal cultural resource is a project that may have a significant effect on the environment."⁶ Public agencies shall, when feasible, avoid damaging effects to any tribal cultural resource.⁷ Your project may also be subject to **Senate Bill 18 (SB 18)** (Burton, Chapter 905, Statutes of 2004), Government Code 65352.3, if it also involves the adoption of or amendment to a general plan or a specific plan, or the designation or proposed designation of open space. **Both SB 18 and AB 52 have tribal consultation requirements.** Additionally, if your project is also subject to the federal National Environmental Policy Act (42 U.S.C. § 4321 et seq.) (NEPA), the tribal consultation requirements of Section 106 of the National Historic Preservation Act of 1966⁸ may also apply.

COMMISSIONER
Julie Tumamait-Stenslie
Chumash

COMMISSIONER
[Vacant]

EXECUTIVE SECRETARY
Christina Snider
Pomo

NAHC HEADQUARTERS
1550 Harbor Boulevard
Suite 100
West Sacramento,
California 95691
(916) 373-3710
nahc@nahc.ca.gov
NAHC.ca.gov

¹ Pub. Resources Code § 21000 et seq.

² Pub. Resources Code § 21084.1; Cal. Code Regs., tit.14, § 15064.5 (b); CEQA Guidelines Section 15064.5 (b)

³ Pub. Resources Code § 21080 (d); Cal. Code Regs., tit. 14, § 15064 subd.(a)(1); CEQA Guidelines § 15064 (a)(1)

Consult your legal counsel about compliance with AB 52 and SB 18 as well as compliance with any other applicable laws.

Agencies should be aware that AB 52 does not preclude agencies from initiating tribal consultation with tribes that are traditionally and culturally affiliated with their jurisdictions before the timeframes provided in AB 52. For that reason, we urge you to continue to request Native American Tribal Contact Lists and Sacred Lands File searches from the NAHC. The request forms can be found online at: <http://nahc.ca.gov/resources/forms/>. Additional information regarding AB 52 can be found online at http://nahc.ca.gov/wp-content/uploads/2015/10/AB52TribalConsultation_CalEPAPDF.pdf, entitled "Tribal Consultation Under AB 52: Requirements and Best Practices".

The NAHC recommends lead agencies consult with all California Native American tribes that are traditionally and culturally affiliated with the geographic area of your proposed project as early as possible in order to avoid inadvertent discoveries of Native American human remains and best protect tribal cultural resources.

A brief summary of portions of AB 52 and SB 18 as well as the NAHC's recommendations for conducting cultural resources assessments is also attached.

If you have any questions or need additional information, please contact me at my email address:
Sarah.Fonseca@nahc.ca.gov.

Sincerely,



Sarah Fonseca
Cultural Resources Analyst

Attachment

cc: State Clearinghouse

Pertinent Statutory Information:

Under AB 52:

AB 52 has added to CEQA the additional requirements listed below, along with many other requirements: Within fourteen (14) days of determining that an application for a project is complete or of a decision by a public agency to undertake a project, a **lead agency** shall provide formal notification to a designated contact of, or tribal representative of, traditionally and culturally affiliated California Native American tribes that have requested notice. A **lead agency** shall begin the consultation process within 30 days of receiving a request for consultation from a California Native American tribe that is traditionally and culturally affiliated with the geographic area of the proposed project.⁴ and **prior to the release of a negative declaration, mitigated negative declaration or environmental impact report.** For purposes of AB 52, "consultation shall have the same meaning as provided in Gov. Code § 65352.4 (SB 18).⁵

The following topics of consultation, if a tribe requests to discuss them, are mandatory topics of consultation:

- a. Alternatives to the project.
- b. Recommended mitigation measures.
- c. Significant effects.⁶

1. The following topics are discretionary topics of consultation:

- a. Type of environmental review necessary.
- b. Significance of the tribal cultural resources.
- c. Significance of the project's impacts on tribal cultural resources.

If necessary, project alternatives or appropriate measures for preservation or mitigation that the tribe may recommend to the lead agency.⁷

With some exceptions, any information, including but not limited to, the location, description, and use of tribal cultural resources submitted by a California Native American tribe during the environmental review process **shall not be included in the environmental document or otherwise disclosed by the lead agency or any other public agency to the public, consistent with Government Code sections 6254 (r) and 6254.10.** Any information submitted by a California Native American tribe during the consultation or environmental review process shall be published in a confidential appendix to the environmental document unless the tribe that provided the information consents, in writing, to the disclosure of some or all of the information to the public.⁸

If a project may have a significant impact on a tribal cultural resource, **the lead agency's environmental document shall discuss** both of the following:

- a. Whether the proposed project has a significant impact on an identified tribal cultural resource.
- b. Whether feasible alternatives or mitigation measures, including those measures that may be agreed to pursuant to Public Resources Code section 21082.3, subdivision (a), avoid or substantially lessen the impact on the identified tribal cultural resource.⁹

Consultation with a tribe shall be considered concluded when either of the following occurs:

- a. The parties agree to measures to mitigate or avoid a significant effect, if a significant effect exists, on a tribal cultural resource; or
- b. A party, acting in good faith and after reasonable effort, concludes that mutual agreement cannot be reached.¹⁰

Any mitigation measures agreed upon in the consultation conducted pursuant to Public Resources Code section 21080.3.2 **shall be recommended for inclusion in the environmental document and in an adopted mitigation monitoring and reporting program**, if determined to avoid or lessen the impact pursuant to Public Resources Code section 21082.3, subdivision (b), paragraph 2, and shall be fully enforceable.¹¹

If mitigation measures recommended by the staff of the lead agency as a result of the consultation process are not included in the environmental document or if there are no agreed upon mitigation measures at the conclusion of consultation, or if consultation does not occur, and if substantial evidence demonstrates that a project will cause a significant effect to a tribal cultural resource, **the lead agency shall consider feasible mitigation** pursuant to Public Resources Code section 21084.3 (b).¹²

An environmental impact report **may not be certified**, nor may a mitigated negative declaration or a negative declaration be adopted unless one of the following occurs:

⁴ Pub. Resources Code § 21080.3.1, subds. (d) and (e)

⁵ Pub. Resources Code § 21080.3.1 (b)

⁶ Pub. Resources Code § 21080.3.2 (a)

⁷ Pub. Resources Code § 21080.3.2 (a)

⁸ Pub. Resources Code § 21082.3 (c)(1)

⁹ Pub. Resources Code § 21082.3 (b)

¹⁰ Pub. Resources Code § 21080.3.2 (b)

¹¹ Pub. Resources Code § 21082.3 (a)

¹² Pub. Resources Code § 21082.3 (e)

- a. The consultation process between the tribes and the lead agency has occurred as provided in Public Resources Code sections 21080.3.1 and 21080.3.2 and concluded pursuant to Public Resources Code section 21080.3.2.
- b. The tribe that requested consultation failed to provide comments to the lead agency or otherwise failed to engage in the consultation process.
- c. The lead agency provided notice of the project to the tribe in compliance with Public Resources Code section 21080.3.1 (d) and the tribe failed to request consultation within 30 days.¹³

This process should be documented in the Tribal Cultural Resources section of your environmental document.

Under SB 18:

Government Code § 65352.3 (a) (1) requires consultation with Native Americans on general plan proposals for the purposes of "preserving or mitigating impacts to places, features, and objects described § 5097.9 and § 5091.993 of the Public Resources Code that are located within the city or county's jurisdiction. Government Code § 65560 (a), (b), and (c) provides for consultation with Native American tribes on the open-space element of a county or city general plan for the purposes of protecting places, features, and objects described in Sections 5097.9 and 5097.993 of the Public Resources Code.

- SB 18 applies to **local governments** and requires them to contact, provide notice to, refer plans to, and consult with tribes prior to the adoption or amendment of a general plan or a specific plan, or the designation of open space. Local governments should consult the Governor's Office of Planning and Research's "Tribal Consultation Guidelines," which can be found online at: https://www.opr.ca.gov/docs/09_14_05_Updated_Guidelines_922.pdf
- **Tribal Consultation:** If a local government considers a proposal to adopt or amend a general plan or a specific plan, or to designate open space it is required to contact the appropriate tribes identified by the NAHC by requesting a "Tribal Consultation List." If a tribe, once contacted, requests consultation the local government must consult with the tribe on the plan proposal. **A tribe has 90 days from the date of receipt of notification to request consultation unless a shorter timeframe has been agreed to by the tribe.**¹⁴
- **There is no Statutory Time Limit on Tribal Consultation under the law.**
- **Confidentiality:** Consistent with the guidelines developed and adopted by the Office of Planning and Research,¹⁵ the city or county shall protect the confidentiality of the information concerning the specific identity, location, character, and use of places, features and objects described in Public Resources Code sections 5097.9 and 5097.993 that are within the city's or county's jurisdiction.¹⁶
- **Conclusion Tribal Consultation:** Consultation should be concluded at the point in which:
 - The parties to the consultation come to a mutual agreement concerning the appropriate measures for preservation or mitigation; or
 - Either the local government or the tribe, acting in good faith and after reasonable effort, concludes that mutual agreement cannot be reached concerning the appropriate measures of preservation or mitigation.¹⁷

NAHC Recommendations for Cultural Resources Assessments:

- Contact the NAHC for:
 - A Sacred Lands File search. Remember that tribes do not always record their sacred sites in the Sacred Lands File, nor are they required to do so. A Sacred Lands File search is not a substitute for consultation with tribes that are traditionally and culturally affiliated with the geographic area of the project's APE.
 - A Native American Tribal Contact List of appropriate tribes for consultation concerning the project site and to assist in planning for avoidance, preservation in place, or, failing both, mitigation measures.
 - The request form can be found at <http://nahc.ca.gov/resources/forms/>.
- Contact the appropriate regional California Historical Research Information System (CHRIS) Center (http://ohp.parks.ca.gov/?page_id=1068) for an archaeological records search. The records search will determine:
 - If part or the entire APE has been previously surveyed for cultural resources.
 - If any known cultural resources have been already been recorded on or adjacent to the APE.
 - If the probability is low, moderate, or high that cultural resources are located in the APE.
 - If a survey is required to determine whether previously unrecorded cultural resources are present.

¹³ Pub. Resources Code § 21082.3 (d)

¹⁴ (Gov. Code § 65352.3 (a)(2)).

¹⁵ pursuant to Gov. Code section 65040.2,

¹⁶ (Gov. Code § 65352.3 (b)).

¹⁷ (Tribal Consultation Guidelines, Governor's Office of Planning and Research (2005) at p. 18).

- If an archaeological inventory survey is required, the final stage is the preparation of a professional report detailing the findings and recommendations of the records search and field survey.
 - The final report containing site forms, site significance, and mitigation measures should be submitted immediately to the planning department. All information regarding site locations, Native American human remains, and associated funerary objects should be in a separate confidential addendum and not be made available for public disclosure.
 - The final written report should be submitted within 3 months after work has been completed to the appropriate regional CHRIS center.

Examples of Mitigation Measures That May Be Considered to Avoid or Minimize Significant Adverse Impacts to Tribal Cultural Resources:

- Avoidance and preservation of the resources in place, including, but not limited to:
 - Planning and construction to avoid the resources and protect the cultural and natural context.
 - Planning greenspace, parks, or other open space, to incorporate the resources with culturally appropriate protection and management criteria.
- Treating the resource with culturally appropriate dignity, taking into account the tribal cultural values and meaning of the resource, including, but not limited to, the following:
 - Protecting the cultural character and integrity of the resource.
 - Protecting the traditional use of the resource.
 - Protecting the confidentiality of the resource.
- Permanent conservation easements or other interests in real property, with culturally appropriate management criteria for the purposes of preserving or utilizing the resources or places.
- Please note that a federally recognized California Native American tribe or a non-federally recognized California Native American tribe that is on the contact list maintained by the NAHC to protect a California prehistoric, archaeological, cultural, spiritual, or ceremonial place may acquire and hold conservation easements if the conservation easement is voluntarily conveyed.¹⁸
- Please note that it is the policy of the state that Native American remains and associated grave artifacts shall be repatriated.¹⁹

The lack of surface evidence of archaeological resources (including tribal cultural resources) does not preclude their subsurface existence.

- Lead agencies should include in their mitigation and monitoring reporting program plan provisions for the identification and evaluation of inadvertently discovered archaeological resources.²⁰ In areas of identified archaeological sensitivity, **a certified archaeologist and a culturally affiliated Native American with knowledge of cultural resources** should monitor all ground-disturbing activities.
- Lead agencies should include in their mitigation and monitoring reporting program plans provisions for the disposition of recovered cultural items that are not burial associated in consultation with culturally affiliated Native Americans.
- Lead agencies should include in their mitigation and monitoring reporting program plans provisions for the treatment and disposition of inadvertently discovered Native American human remains. Health and Safety Code section 7050.5, Public Resources Code section 5097.98, and Cal. Code Regs., tit. 14, section 15064.5, subdivisions (d) and (e) (CEQA Guidelines section 15064.5, subds. (d) and (e)) address the processes to be followed in the event of an inadvertent discovery of any Native American human remains and associated grave goods in a location other than a dedicated cemetery.

¹⁸ (Civ. Code § 815.3 (c)).

¹⁹ (Pub. Resources Code § 5097.991).

²⁰ per Cal. Code Regs., tit. 14, section 15064.5(f) (CEQA Guidelines section 15064.5(f)).