



# Monterey County Planning Commission

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## Agenda Item No. 1

Legistar File Number: PC 18-088

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**Introduced:** 8/1/2018

**Current Status:** Agenda Ready

**Version:** 1

**Matter Type:** Planning Item

### PLN170246 - GIANOS

Public hearing to consider the demolition and construction of a single-family dwelling (adding a below-grade basement) within 750 feet a known archaeological resource.

**Project Location:** 26339 Isabella Avenue, Carmel Area Land Use Plan

**Proposed CEQA action:** Adopt Mitigated Negative Declaration

### RECOMMENDATION:

It is recommended that the Planning Commission adopt a resolution to:

- 1) Adopt the Mitigated Negative Declaration
- 2) Approve a Combined Development Permit consisting of:
  - a. A Coastal Administrative Permit and Design Approval for the demolition and construction of a 2,992-square foot, three-level single family dwelling with attached garage and below-grade basement and grading; and
  - b. A Coastal Development Permit to allow development within 750 feet of a known archaeological resource.
- 3) Adopt a Mitigation Monitoring and Reporting Program.

The attached draft resolution includes findings and evidence for consideration (**Exhibit D**). Staff recommends approval subject to 20 conditions of approval, including 3 mitigation measures.

### PROJECT INFORMATION:

**Agent:** Terrance Latasa

**Property Owners:** Carol and Phillip Gianos

**APN:** 009-463-010-000

**Parcel Size:** .15 acres (6,748-square feet)

**Zoning:** MDR/2(18)-D (CZ)

**Plan Area:** Carmel Area Land Use Plan

**Flagged and Staked:** Yes

### SUMMARY:

Located on Isabella Avenue in the Carmel Point residential neighborhood, the project proposal consists of the demolition of an existing 1,810-square foot, one-story, single family dwelling and construction of a 2,992-square-foot, three-level, single family dwelling inclusive of a 1,369-square foot subterranean basement, and a 200-square foot attached, one-car garage. The primary project issues involve:

- **Cultural resources.** The project is located in a recorded archaeological site, CA-MNT-17. Significant archaeological resources have been found, including human remains at multiple sites in this neighborhood. As such, staff required a supplemental archaeological report plus hand excavating two 3-inch auger bores to a depth of about 9.5 feet. No cultural materials were noted; however, based on the known sensitivity of this area and potential impact of a basement, staff recommends requiring two on-site monitors during excavation for at least the first six feet of depth.
- **Seismic hazards.** The potential seismic hazard was independently evaluated by a registered and certified geologist and engineer within the context of the project being proposed (including basement addition). Staff agrees with the findings deeming the project to be feasible as detailed in the discussion below.

Staff found the impacts could be mitigated to a less-than-significant level with the incorporation of three (3) mitigation measures and therefore in accordance with CEQA, a Draft Mitigated Negative Declaration (“MND”) was prepared and circulated for the subject project.

DISCUSSION:

The project was deemed complete on February 9, 2018 with notice that further environmental review was necessary. Per CEQA Section 15108, the [mitigated] negative declaration must be completed and approved within 180 days from the date when the lead agency (Monterey County, RMA-Planning) accepted the application as complete. Therefore, the project was processed in a timely manner and adheres to the processing time frame established by CEQA.

**Project History:**

On August 17, 2017, an application was received for the project currently being considered. On September 15, 2017, the project application was deemed incomplete by RMA-Planning because additional information was needed to fully analyze the project. In addition to a Geologic Report (project site is located within 660 feet of an active fault/potentially active fault), staff asked the applicant to supply a Phase II Archaeological Report because the Phase I Archaeological Report on file did not evaluate a basement proposal and therefore, did not address mitigation measures specific to this type of disturbance. Pursuant to the Carmel Coastal Implementation Plan, Section 20.146.090 B.5, an archaeological survey may be required if a previous report does not clearly and adequately include the currently-proposed development site within the scope of the survey. The applicant returned with the technical reports needed on January 24, 2018, and the project was deemed complete on February 9, 2018. Due to the findings of the Phase II Archaeological Report, the scope of the project (e.g. depth of basement), high archaeological sensitivity of the area, and compelling evidence found near the subject site, staff determined that a categorical exemption was not appropriate for the proposed project. Staff recommended an Initial Study be prepared for the project. Furthermore, staff made it clear that the basement proposal specifically would not be supported, in accordance with Key Policy 2.8.2 and General Policy 2.8.3.4 of the Carmel Areal Land Use Plan. Pursuant to CEQA Section 21082.3, staff consulted the appropriate California Native American tribe (OCEN). Together, this undertaking resulted in the following: Based on the whole record, staff found that although the proposed project could have a significant effect on the environment there will not be a significant effect in this case because revisions (i.e. mitigation measures) in the project have been made

by or agreed to by the project proponent; a Mitigated Negative Declaration was drafted. The Draft Mitigated Negative Declaration (“MND”) and recommended conditions of approval (including mitigation measures) for PLN170246 were prepared in accordance with CEQA and circulated for public review from July 6, 2018 through August 6, 2018. Comments from the applicant were received on July 5 and July 13, 2018 concerning the application of the mitigation measures. Specifically, the applicant is not in agreement with having an on-site monitor from OCEN and insist that Condition Number 10/ Mitigation Measure #3 (PDSP003-NON-STANDARD CONDITION [MM#3 PROTECTION OF TRIBAL CULTURAL RESOURCES AND SACRED PLACES] [OCEN MONITOR]) is burdensome, redundant and premature. Staff has detailed the intent of the mitigation measures and how staff arrived at these specific measures below.

**Project Issues:**

**CULTURAL AND TRIBAL CULTURAL RESOURCES.** The subject project is within 750 feet of a known archaeological resource and has a high archaeological sensitivity. Carmel Point has been the center of recent examination, specifically with the development of basements relative to the Carmel Area Land Use Plan and the Monterey County Coastal Implementation Plan, Part 4 - Regulations for Development in the Carmel Area Land Use Plan Area (Chapter 20.146). In just the past year, RMA-Planning has received six requests for basement approvals on the Point. Carmel’s key policy on Archaeological Resources is such that when development is proposed for parcels where archaeological or other cultural sites are located, project design shall be required which avoids or substantially minimizes impacts to such cultural sites (Chapter 2.8 - Archaeological Resources, 2.8.2 Key Policy). CEQA puts the onus on the lead agency to determine whether a project may have a significant effect on archaeological resources (CEQA, Section 21083.2 Archaeological Resources: Determination of the effect of a project; EIR or Negative Declaration; Mitigation Measures). A site that has yielded, or may be likely to yield, information important in prehistory or history is just one of the ways CEQA defines historical resources (CEQA, Section 15064.5). Carmel Point has a rich archaeological history and was first recorded as an archaeological site (CA-MNT-17) in 1953. Archaeologists with extensive work history on the Point include but are not limited to: the late Gary Breschini, Ph.D. RPA, Trudy Haversat, M.A. RPA, Susan Morley, M.A. RPA, and Albion Environmental Inc.-all of whom were and are approved archaeology consultants for Monterey County. CA-MNT-17, which extends well beyond the current project area, has been characterized as an expansive and moderately dense accumulation of marine shell, mammal bone, flaked and ground stone tools. The site is presumed to be an Ohlone settlement dating to at least 4,000 years ago (Breschini, 2009). Cultural resources which have been formally recorded with the Regional Information Center of the California Historic Resources Information System are referenced by trinomial designations. The trinomials take the form “CA-MNT-17,” where the first two letters designate the state, the next three the county. The numbers at the end are sequential and represent the order in which the site was recorded within each county (Breschini and Haversat, 2012). In Central California, archaeologists are alerted to prehistoric sites by the presence of midden soils darkened from accumulation of organic remains; presence of various shell remnants may indicate a site (Morley, 2015).

On December 11, 2011, a Phase 1 Archaeological Assessment was prepared for the subject parcel. A single 4-inch auger bore produced clean brown sand to a depth of 115 cm (45”) and no cultural materials were noted. The project proposed at the time (PLN130463), and which facilitated the current assessment, included interior remodeling, a 162-square foot rear addition, a 50-square foot garage addition, replacing asphalt drive with stone pavers, and a 6-foot wood fence. This original project did not include demolition of the existing home or a subterranean basement. The findings indicated that the site was negative for archaeological resources but described mitigation measures to be considered if deeper excavations should be undertaken (i.e. basement). The report notes that because prehistoric archaeological materials in the near vicinity of the parcel were found at a considerable depth during basement and cistern excavations (9 feet), there remains a possibility that deeply buried cultural materials might be found. According to Morley (2015), archaeological sites are most often discrete entities. In other words, close proximity to known sites does not mean that cultural resources will be encountered on the project; however, this cannot be ruled out either.

On August 17, 2017, an application was received for the project currently being considered. This current project proposal involves the demolition of the existing single family dwelling, and construction of a 2,992-square foot, three-level single family dwelling with attached garage and basement. A supplemental archaeological report was required to address the current project proposal. In addition to background research, the supplemental archaeological assessment consisted of observing Engineering Geologist Craig Harwood hand excavate two 3” auger bores, one in the front and one in the back of the existing residence. No cultural materials were noted with either bore to a depth of about 9.5 feet (Breschini, 2017). Most of the soil from the auger bores was screened through 1/8-inch mesh and no shell or other cultural materials were noted at any time. The background research conducted by the archaeologist established that nine previously recorded prehistoric or historic sites are located about 1 kilometer or .6 of a mile from the parcel and that the subject parcel is included in the boundary of CA-MNT-17.

Cognizant of this information, staff applied three mitigation measures addressing archaeological resources to mitigate impacts of development to a less-than-significant level. The applicant is not in agreement with one of the three mitigation measure which would require monitoring by an OCEN tribe member (**Exhibit E**). However, this mitigation measure is appropriate for the development being proposed and suitable given the area’s sensitivity to archaeological resources. In addition to being within a recorded archaeological site (CA-MNT-17), the project is also within the near vicinity of a parcel where archaeological findings were made and where cultural artifacts were recovered at a considerable depth. Although the subject parcel yielded two negative archaeological reports, both reports contained language recommending an archaeological monitor be present during excavation. It would stand to reason that if an archaeological find is made, a cultural resource has also been uncovered (although the inverse may not be true). Through Assembly Bill (AB) 52, the Legislature finds and declares that the former state law provided a limited measure of protection for sites, features, places, objects, and landscapes with cultural value to California Native American tribes and that CEQA did not readily or directly include California Native American tribes’ knowledge and concerns which has resulted in significant environmental impacts to tribal cultural resources and sacred places, including cumulative impacts, to the detriment of California Native American tribes and California’s environment (2014 CA AB 52 Native Americans: CEQA). Therefore, RMA-Planning has consulted the appropriate tribe and incorporated their request to be present during excavation. All development

proposed on parcels with known archaeological resources, as identified through the survey report prepared for the project are subject to environmental assessment under the CEQA Guidelines.

Staff has reviewed the permit history of all eighteen parcels bordered by Isabella Avenue, Scenic Road, Valley View Avenue, and 16th Avenue. Eight of the eighteen (44%) parcels yielded archaeological reports with positive findings; of the eight, one parcel was approved for a basement. There are at least two other existing basements on this block not including four pending approval. A Mitigated Negative Declaration was filed in one of these instances and an archaeological monitor was present as part of the monitoring program. Presumably because this basement project was approved prior to Assembly Bill 52, a Native American monitor was not included in the mitigation measures; nonetheless, this basement project yielded over twenty archaeological artifacts from a rock feature, all of which were removed from the site for processing and eventually curated at the Monterey County Historical Society vault. The subject project is in the near vicinity of this parcel. The subject proposal was reviewed independent of the other basement proposals and analyzed in the manner the RMA's Planning Department has been processing all projects: on a case-by-case basis. Basement proposals, specifically, have not been prohibited- although in light of the whole record, there is evidence to suggest that CA-MNT-17, a recorded archaeological site, is significant and that the allowance of basements has resulted in impacts to archaeological resources.

Since the implementation of CEQA along with the passage of Assembly Bill 52 (AB 52 Native Americans), onsite monitors have been used to mitigate impacts to cultural and tribal cultural resources to a less than significant level. AB 52, Section 21080.3.2 (a) states that as part of the consultation process, the parties may propose mitigation measures, including, but not limited to, those recommended mitigation measures capable of avoiding or substantially lessening potential significant impacts to a tribal cultural resource or alternatives that would avoid significant impacts to a tribal cultural resource. Further, any mitigation measures agreed upon in the consultation 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 and shall be fully enforceable (AB 52, Section 21082.3). Neither the applicant nor his/her representative were present during the consultation; however, the proposed basement- which arguably poses the greatest impact to tribal cultural resources- has not been reconsidered or downsized. The OCEN letter (**Exhibit G**) received by staff on May 2, 2017, states that OCEN objects to all excavation in known cultural lands, even when they are described as previously disturbed, and of no significant archaeological value. Because the applicant has opted not to remove the basement proposal altogether, staff finds it reasonable to recommend two monitors- limited to excavation up to six feet- as conditions of approval/mitigation measures to minimize impacts.

The mitigation measures have been applied with the following intentions: 1) mitigate impact(s) to archaeological and tribal cultural resources to a less than significant level; 2) properly identify and manage recovered human remains and artifacts; and 3) establish process by which a conservation easement may protect resource in perpetuity, if necessary.

#### HAZARDS

The subject property is located within 660 feet of an active/potentially active fault. The Geotechnical Report identified the Cypress Point Fault (CPF) as trending through the far northeast corner of the

site. Pursuant to Section 20.146.080 (Hazardous Area Development Standards) in the CIP, all structures shall be sited a minimum of 50 feet from an identified active fault or potentially active fault. According to research presented in the Geotechnical Report, fifty-foot fault-building setbacks have traditionally been used. However, given the very low level of hazard posed by the Cypress Point Fault, the relatively small estimated fault displacements and the calculated setback values, the engineering geologist concluded that a 15-foot wide building foundation-fault setback is reasonable mitigation for fault surface rupture along the northeastern side of the projected fault surface. It is the engineering geologist's professional opinion that no geologic conditions or geologic hazards would preclude construction of the proposed residence as it is currently proposed and given its current adherence to the fault setback. In a follow-on letter, the same author maintained that the established 15-foot foundation setback from the CPF applies to foundations for habitable structures and does not prohibit other improvements from being placed within that setback zone. Haro, Kasunich and Associates, Inc. have developed geotechnical recommendations for foundations, retaining walls, slabs-on-grade, subgrade preparation beneath flatwork, and site drainage. RMA-Environmental Services has reviewed the Geologic and Geotechnical Reports and applied the following conditions to ensure compliance: As-Built Certification (Condition No. 16), and Geologic Plan Review (Condition No. 17).

#### DESIGN

The subject property is zoned Medium Density Residential, with a maximum of two units per acre, a Design Control overlay, and subject to an 18-foot height restriction [MDR/2-D (18)]. This height restriction follows an Ordinance (Ordinance No. 3275) adopted for the area by the Board of Supervisors in 1987 in order to provide for more visually compatible structures. A "D" (Design Control) overlay requires design review of structures to assure the protection of the public viewshed, neighborhood character, and the visual integrity of certain developments without imposing undue restrictions on private property.

The existing single-family, wood-frame dwelling follows a Ranch style and was constructed in 1953. Because the existing structure is more than fifty (50) years old, an archived Historical Report for the subject parcel was reviewed to assure that the property/structure is not associated with: 1) events that have made a significant contribution to the broad patterns of national, state or local history; or, 2) with a significant individual in the US. The proposed design will incorporate different roof lines (i.e. hip, arch) with gable accents and eaves of moderate overhang. A dormer will face the street (Isabella) and will be composed of natural wood shingles. A taupe color is proposed for the body (stucco) of the residence. Staking and flagging was installed in time for staff's site visit on September 21, 2017.

During staff's site visit, staff observed other homes in the neighborhood with a similar architectural design and layout, including partial and full second-stories. The colors and materials proposed for the subject project will not disrupt the character of the neighborhood.

No tree removal is proposed for the development of this project. The Landscape Plan's planting notes directs the contractor to erect tree protection barriers around existing trees to be saved on site, creating a tree protection zone. Plants in the backyard, plants in front yard, and plants in pots will be irrigated by a drip valve.

SETBACKS

Staff finds that the proposed project meets or exceeds all development standards (height, setbacks, coverage, etc.) for this area:

**Main Structure Setback and Height Requirements in MDR/2 zoning:**

Front Setback: 20 feet (minimum)

Side Setback: 5 feet (minimum)

Rear Setback: 10 feet (minimum)

Maximum height: 18 feet

**The Gianos project proposal meets all standards as detailed below:**

Front Setback: 20 feet

Side Setbacks: 5 and 10 feet

Rear Setback: 30+ feet

Maximum Height: 18 feet

CEQA

Monterey County RMA-Planning prepared an Initial Study pursuant to Section 15063 of the California Environmental Quality Act. A Draft Mitigated Negative Declaration (“MND”) for PLN170246 was prepared in accordance with CEQA and circulated for public review from July 6, 2018 through August 6, 2018.

Potential impacts that were analyzed in the Mitigated Negative Declaration include: aesthetics, air quality, cultural resources, geology/soils, greenhouse gas emissions, hazards/hazardous materials, land use/planning, noise, and tribal cultural resources.

Of the potential impacts analyzed, staff only identified impacts related to Cultural Resources and Tribal Cultural Resources, as discussed above. Mitigations have been incorporated to reduce these impacts to a less than significant level. Staff has made the necessary findings to approve the project subject to twenty (20) conditions, which includes three (3) mitigation measures (**Exhibit D.1**).

Staff received one formal comment during the thirty-day public circulation period (July 6-August 6). This letter (**Exhibit F**) was received via email on July 13th from the law offices of Anthony Lombardo and Associates on behalf of the applicant, the owner of the subject project (Gianos). The applicant objects to the additional on-site monitor (OCEN), even though the letter correctly identifies examples of feasible mitigation measures to fully mitigate impacts to tribal cultural resources:

1. Avoidance and preservation of the resources in place, including, but no limited to, planning and construction to avoid the resources and protect the cultural and natural context, or planning greenspace, parks, or other open space to incorporate the resources with culturally appropriate protection and management criteria.
2. 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:
  - a. Protecting the cultural character and integrity of the resource
  - b. Protecting the traditional use of the resource
  - c. Protecting the confidentiality of the resource
  - d. 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

e. Protecting the resource

To this point, staff has taken into consideration all of the elements of the project in the context in which it is proposed and maintains that all three mitigation measures are necessary and appropriate. The finished floor for the basement is approximately 8-10 feet below average natural grade; staff is proposing both monitors be present for the excavation of the initial 6 feet.

The letter also included a comment about acceptance of the mitigation measures prior to the public circulation of the Initial Study and the inability to review the staff report prior to accepting the conditions of approval. Staff agrees that not enough time was given for the applicant to review and accept/reject the conditions of approval prior to the circulation of the environmental document; however, RMA-Planning's practice has not been one of allowing preview of the staff report. The applicant has opted to wait until the hearing to sign the mitigation and monitoring agreement for the project.

A Condition Compliance and Mitigation Monitoring and/or Reporting Plan has been prepared in accordance with Monterey County regulations and is designed to ensure compliance during project implementation. The applicant must enter into an "Agreement to Implement a Mitigation Monitoring and/or Reporting Program" (Condition No. 3).

OTHER AGENCY INVOLVEMENT:

The following agencies have reviewed the project, have comments, and/or have recommended conditions:

- RMA-Public Works
- Environmental Health Bureau
- RMA-Environmental Services
- Water Resources Agency
- Cypress FPD
- Carmel Highlands Land Use Advisory Committee

The proposed project was reviewed by the Carmel Highlands LUAC on October 16th and the vote was: 2 ayes, 1 no, and 1 absent, to approve the new additions as proposed with colors and materials to match the existing home. A specific objection was made to the basement proposal.

- Prepared by: Maira Blanco, Assistant Planner, x5052
- Reviewed by: Brandon Swanson, RMA Services Manager
- Approved by: Carl Holm, AICP, RMA Director

The following attachments are on file with the RMA:

- Exhibit A - Project Data Sheet
- Exhibit B - Mitigated Negative Declaration, Initial Study
- Exhibit C - Vicinity Map
- Exhibit D - Draft Resolution including:

- Conditions of approval
- Plans
- Colors and Materials

Exhibit E - Carmel Highlands LUAC meeting minutes (October 16, 2017)

Exhibit F - Letter from Anthony Lombardo and Associates

Exhibit G - Letter from OCEN

cc: Front Counter Copy; Planning Commission; Brandon Swanson, RMA Services Manager; Maira Blanco, Project Planner; Terrance Latasa, agent; Anthony Lombardo, agent; Carol and Philip Gianos, property owners; Morgan Gilman, interested party; Robert Carver, interested party; Barbara Rainer, interested party; The Open Monterey Project (Molly Erickson); LandWatch (Executive Director); John H. Farrow; Janet Brennan; Project File PLN170246.