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ANTHONY LOMBARDO & ASSOCIATES

A PROFESSIONAL CORPORATION

ANTHONY L. LOMBARDO
KELLY MCCARTHY SUTHERLAND
JENNIFER M. PAVLET
CODY J. PHILLIPS

144 W. GABILAN STREET
SALINAS, CA 93901
(831) 751-2330
FAX (831) 751-2331

October 15, 2018

File No. 5064.001/2

Maira Blanco, Associate Planner
Monterey County Resource Management Agency
1441 Schilling Place
Salinas, CA 93901

Re: Initial Study PLN170612 and PLN170613 (Pietro Family Investments)

Dear Maira:

We have reviewed the Initial Study and proposed Mitigated Negative Declaration for the aforementioned projects. The following responds to staff discussion regarding alleged property violations, and staff findings regarding consistency with the LUP policies and to the proposed mitigations related to protection of cultural resources.

On page 17, staff notes "open code enforcement violations on both subject parcels (17CE00360, 17CE00361) which indicate grading occurred without a grading permit and that alteration of the land may cause or be likely to cause conditions for accelerated erosion", and that "a bulldozer was being operated onsite". In addition, on page 26, staff notes that during their site visit (November 17, 2017), it was observed that vegetation had been removed and that "both sites were being used as construction staging areas". We note the following in response to the allegations. During the week of June 22, 2018, our office made an application for PG&E electrical stub-outs at the project sites. At that time, we were informed of an open code enforcement investigation. In researching this matter, we found that a complaint had been filed in September of 2017 and that the department had visited the sites on September 27, 2017. No notification of the investigations was ever sent to the owners, and no actions were taken during the period extending from September 2017 to June 2018. Upon requesting information and learning what the concerns/allegations were, our office responded in writing on June 22, 2018, documenting that no grading occurred on the site and that "vegetative removal" amounted to clearance of high vegetation for fire prevention. We also clarified for the department that the site was in fact used for worker parking, equipment parking, and stockpile of materials for a project on an adjacent parcel also owned by this applicant during construction of that project. On June 25th, the code enforcement officer suddenly issued a citation after having done nothing for 9 months, completely disregarding the clear evidence provided that no violations existed

on these parcels. At each follow up effort by our office to obtain closure to these cases, we have been informed simply that “planning will not allow” the code enforcement officer to close the case.

Staff has summarized findings of two cultural/archaeological reports on the subject property, to which we note some additional clarification from these reports that was not included in the initial study summaries. Specifically, on Page 54 of the MND, staff notes that “based on Albion’s determination that additional testing was needed...” We disagree. In fact, on page 24 of the Albion report, they conclude that “Therefore, it is Albion’s judgement that no additional archaeological testing is necessary; however, several protection measure should be implemented for the proposed development project, in an effort to protect cultural resources.” On page 41, staff characterizes the report as stating that the report on a parcel “in the near vicinity” was “positive” and that “artifacts were recovered at a considerable depth at said parcel”. We assert that this is a gross misrepresentation of the finding on the parcel referenced as “in the vicinity” (Isabella). First, it is noted in Albion’s report that all borings on all four parcels in the report were between 0 and 2.62 feet (80 cm), which is not as staff proposes “a considerable depth”. Second, on this parcel, Albion found only fractured shells (lacking midden), and the archaeological report specifically notes that the materials lacked integrity. Following the Albion report, the applicant voluntarily obtained additional site-specific archaeological surveys. These reports appear to also be mischaracterized as well on page 57, as being contradictory. Staff indicates that the report state “that no surface evidence of potentially significant archaeological resources exists on the project parcels”, but that the subsequent paragraph in the reports state that the project(s) “would” have a potential impact to archaeological resources. There is no such statement in either of the site specific reports. Rather, the archaeologist stated that, “based on previous studies in the area, we note the possibility of burial cultural resources being discovered during deep excavations.”, when noting that the project “should not be delayed for archaeological reasons”. The report conclusions also state that “because the prehistoric archaeological materials on nearby parcels were found at considerable depth during basement and cistern excavations, there remains a very small possibility that deeply buried cultural materials might be found on the project parcel when deep excavations are undertaken. For that reason, the archaeologist(s) recommended archaeological monitoring.

Cumulatively the two archaeological reports recommended the following protective measures:

1. A qualified archaeological monitor should be present during ground disturbing project excavations. The monitor should recover any potentially significant cultural materials that may be found. Excavated soil may be screened to assist in such data recovery. (Both reports)
2. If, at any time, potentially significant cultural materials or features are encountered, work shall be halted until the monitor and/or the principal archaeologist can evaluate the discovery. If the feature is determined to be significant, an appropriate mitigation should be developed, with the concurrence of the lead agency, and implemented. (Both reports)
3. If, at any time, human remains are identified, work must be halted, and the Monterey County Coroner must be notified immediately. If the Coroner determines that the remains are likely to be Native American, the Native American Heritage Commission must be notified as

- required by law. The Most Likely Descendant designated by the Heritage Commission will provide recommendations for treatment of Native American remains. (Both reports)
4. If collection or analysis of cultural materials is undertaken, a *Final Technical Report* documenting the results of all scientific studies should be completed with a year following completion of monitoring and data recovery field work. (Breschini report)
 5. Recovered cultural materials should be curated in the public domain at a suitable research facility. (Breschini report)
 6. The creation of a Project specific Archaeological Monitoring Plan. Specifically, the plan should address the following topics: 1) description of cultural resources present; 2) monitoring procedures; 3) the evaluation process; 4) Native American participation; and treatment of human remains. Having an Archaeological Monitoring Plan in place prior to construction activities will ensure that any inadvertent discoveries of cultural resources that may be encountered during Project construction will be dealt with in a respectful and proper manner. The Plan will also reduce construction delays. (Albion report)
 7. A representative from the local Native American community should monitor all ground-disturbing activities associated with the redevelopment Project. (Albion report)

Following the narrative given in the MND on these reports staff provides an extensive narrative regarding the recognized resource CA-MNT-17 (a large swath of Carmel Point), and discusses multiple resources previously located within the boundaries of this resource. We note that to the reader it is not always made clear that these “finds” were not on the subject parcel. Though this parcel is within the boundaries of the designated resource, no artifacts or resources have been found on the subject parcels, and items found in all of the borings on all four parcels in the Albion borings were noted to “lack integrity” and to have not existed in concert with midden soils indicative of archaeological/cultural resources.

Based on the narrative given in the report, staff then concludes several times that the proposed project is not consistent with the Carmel LUP Policy 2.8.2, because it is not designed “to avoid impacts” (Section 20.146.090.D.3). Unfortunately, this analysis ignores two relevant facts. First the Carmel LUP Policy 2.8.2 has existed for decades and has been cited consistently in previous planning decisions on projects including basements, with specific findings of consistency with the policy sections noted in these projects as somehow as being inconsistent. Second, staff ignores the requirements of the geologic and geotechnical studies relevant to development of the project sites. Specifically, based on the geologic soils borings and geologic conditions, the geotechnical report notes that “The upper 5 to 9 feet of dark brown loose silty sand soil is not adequate for shallow foundation or slab support in their present condition. It is anticipated the bottom of excavation for the basement of the main part of the house (about 10 to 13 feet deep and 12 to 15 feet deep) will encounter firm native soils that are adequate for conventional footing support.”. The report goes on to note that in all areas surrounding the building where other improvements are planned (patios, other levels of the building, etc.) a “minimum of 4’ of excavation is necessary (depth to be determined by geotechnical engineer during excavation)” to effect a solid foundation for flatwork improvements. Cross referencing the information and the borings from the geologic report to the borings in the

Albion report, which noted potential cultural resources in the upper 80 cm (2.6 ft); it is evident that elimination of the basement from the plan will not lessen the excavation requirements in the area of soils which may contain cultural resources. With or without the basement, construction of the residence will require excavation down to firm native soil or bedrock. Based on this fact, the appropriate application of 20.146.090.D4 is "Where construction on or construction impacts to a 'potential' (not identified) archaeological or paleontological site cannot be avoided, a mitigation plan shall be required for the project", which shall include preservation measures and a final report prepared by the archaeologist.

Based on the aforementioned reports and the recommendations of both archaeologists, the project (with the basement) should not be delayed but should incorporate the recommended mitigations. However, the additional mitigation recommended by staff should be deleted. Staff has added a mitigation measure above those recommended by the professional archaeologists of an HR zoning district overlay for the site, based on 20.146.090.D.2b. This requirement is both premature and counterintuitive. Site studies have not uncovered any significant archaeological or cultural resources on the subject site. Absent such a discovery and absent a listing of CA-MNT-17 as a historical resource, the HR zoning is inappropriate and overly restrictive. Further as it is customary and understood that disclosure of the location of archaeological resources is restricted, a designation of HR for the purposes suggested here (presumption of cultural resources on the site) has the effect of disclosing to the general public information that is protected. In the event that an artifact or resource had been identified on the site that would remain, item c (a conservation easement) might be appropriate, in that it need not specify the existence of a resource. However, in this case, a resource has not been found and there is no basis to require the HR zoning.

In summary, there has been no grading on the parcels and no violation exists for grading or vegetation removal. Evidence has been provided to the department which clearly demonstrates this fact, and the code enforcement case should have been closed shortly thereafter in June 2018. Further, the proposal for a basement in the design does not increase the necessary excavation beyond the geotechnical requirements for the site to be excavated to "firm native soil". The necessary site disturbance will be overseen and fully mitigated through implementation of the recommendations cited by both archaeologists, in compliance with 20.146.090D. Finally, there is no basis for a requirement of an HR zoning for the property.

Sincerely,



Gail Hatter,
Sr. Land Use Specialist

Rudy Rosales
Indigenous Peoples Consultant
P.O. Box 647
Monterey CA 93942



One page Fax to (831) 757-9516
County of Monterey
Resources Management Agency - Planning
Attn: Maria Blanco, Associate Planner
1441 Schilling Place, 2nd Floor, Salinas, CA 93901
re: Pietro Family Investments, LP; File Numbers PLN170612 & PLN170613

Dear County Planning Commission, Mr. Holm, Ms. Blanco,

I oppose the project because it would hurt tribal archeological resources that we know exist on Carmel Point.

I am a former tribal chair of Esselen Nation. I was born and raised on the Monterey Peninsula. My mother was full-blood Esselen. For decades I was the MLD for Monterey County. I know the sacred sites, I know the burial sites, and I know our local cultural resources. These are my ancestors.

I know the location of the site. Based on my knowledge and experience, I believe it is more than likely that there are human remains at the site. It is best to leave the resources in place to honor the bones and associated grave artifacts of our ancestors and not excavate or try to "mitigate". That also is what the Carmel Area Land Use Plan Policy 2.8.3.5 says - the entire area should be preserved.

The County of Monterey document says that the project would be **INCONSISTENT** with the Carmel Area Land Use Plan. You cannot use a mitigated negative declaration for a project that is **INCONSISTENT** with a plan. It says the applicant has not proposed not building the basements so tribal resources would be avoided. The County document says the archeologist could not rule out the possibility of intact archaeological deposits at the site. The mitigations are not enough. Once an excavator hits remains, or resources, the harm is done.

The County document says there is **CLEAR EVIDENCE OF ARCHAEOLOGICAL SIGNIFICANCE** at the site. The whole Carmel Point area is historic and should be protected. It should be on the National Register and the California Register.

Please deny the project. You can avoid the sensitive indigenous resources by not building basements. That is what they should do.

Rudy Rosales

CALIFORNIA COASTAL COMMISSION

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



October 17, 2018

Maira Blanco
Monterey County Resource Management Agency
141 Schilling Place, 2nd Floor
Salinas, CA 93901

**Subject: Mitigated Negative Declaration (PLNs 170611, 170612, and 170613) 26307
Isabella Avenue, 26338 & 26346 Valley View Avenue, Carmel Point Area,
Monterey County (Pietro)**

Dear Ms. Blanco:

Thank you for the opportunity to comment on the Mitigated Negative Declaration (MND) for the proposed single family residences at 26307 Isabella Avenue and 26338 & 26346 Valley View Avenue in the Carmel Point Area of Monterey County. As we understand it, the proposed projects include the construction of three single-family residences with large basements (1,366 sf, 1,687 sf, and 2,413 sf respectively) on three residentially-zoned lots in the County's medium density residential zone district. The parcels are located roughly one block from Carmel River State Beach and within 750 feet of a known archaeological resource.

The MND raises questions about the suitability of the proposed development, in particular the proposed basements, in an area of known archaeological significance. According to the Carmel Area Land Use Plan (LUP), the shoreline from Carmel Point to Point Lobos contains one of the densest remaining concentrations of shellfish gathering activities in central California and that these deposits have been identified as a highly significant and sensitive resource. The LUP's Key Archaeological Resource Policy 2.8.2 requires that Carmel's archaeological resources be maintained and protected for their scientific and cultural heritage values. This applies to areas considered to be archaeologically sensitive but not yet surveyed and mapped. When site planning constraints do not allow for avoidance of cultural sites, the Carmel LUP requires mitigation and adequate preservation measures to be implemented (LUP Policy 2.8.4.6). Finally, the Local Coastal Program (LCP) requires new development to be designed to avoid or substantially minimize impacts to cultural resources on parcels where archaeological / cultural sites are located (LUP Policy 2.8.3.4 and Coastal Implementation Plan Section 20.146.090 D.3).

As we understand it, an archaeological survey was prepared for the project sites and though it did not observe intact archaeological deposits, it could not rule out the possibility of finding said resources on the subject parcels. A second archaeological survey similarly did not turn-up any materials frequently associated with prehistoric cultural resources. However, based on positive findings on a parcel in the near vicinity and because artifacts were recovered at depths on that parcel, the subsequent report recommended mitigation measures that include having a qualified

Maira Blanco
Pietro (PLNs 170611, 170612, and 170613)
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archaeological monitor onsite during ground disturbing activities, and standard recommendations for the inadvertent discovery of human remains. This approach is generally sufficient in most cases to preserve the integrity of cultural resources during construction. We note however that the project impacts and recommended mitigation measures are based solely on an evaluation of project impacts associated with the development of the single-family residences *without* the basements. As such it appears that the analysis of project impacts is incomplete and we recommend that the MND's cultural resource analysis be supplemented to include an evaluation of the *entire* project, including an investigation on how the additional excavation for the basements might impact cultural resources.

Thank you again for the opportunity to comment on the MND. We hope that these comments prove useful as the County evaluates the project for consistency with the LCP. If you have any questions or would like to further discuss this matter, please don't hesitate to contact me at (831) 427-4898.

Regards,

A handwritten signature in black ink, appearing to read "Mike Watson", with a stylized, flowing script.

Mike Watson
Coastal Planner
Central Coast District Office

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