

Exhibit H

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MONTEREY COUNTY RESOURCE MANAGEMENT AGENCY

Carl P. Holm, AICP, Director



LAND USE & COMMUNITY DEVELOPMENT | PUBLIC WORKS & FACILITIES | PARKS

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October 18, 2018

Revised on November 26, 2018

Dear applicant,

The environmental document for Pietro Family Investments, LP (PLN170612 & PLN170613) was circulated from September 13, 2018 to October 15, 2018. Pursuant to Section 15074 of the CEQA Guidelines, prior to approving a project, the decision-making body (i.e. Planning Commission) of the lead agency shall consider the proposed negative declaration or mitigated negative declaration together with any comments received during the public review process. As such, staff has included comments received for these projects as an exhibit which will be presented to the Planning Commission on October 31, 2018 together with the Resolution.

Please find below a summary of the comments/concerns/observations made in your letter dated October 15, 2018 and staff's response.

1. Open code enforcement violations on both parcels (17CE00360 and 17CE00361)

According to the County's records, an administrative citation and notice of intent to record a notice of violation was issued on June 25, 2018 after an inspection on the subject lots was conducted on September 27, 2017. Included in the description of violation(s):

- Clearing of indigenous vegetation
- Placement of approximately 100 cubic yards of fill without a grading permit or a Coastal Development Permit in an area of high archaeological sensitivity
- Alteration of the land which may cause or is likely to cause conditions for accelerated erosion

Staff became aware of the code enforcement violations after a site visit was conducted on November 21, 2017 and did observe extensive use of the vacant lots for construction management purposes. Staff was informed that the applicant has made requests to clear the violations, however, the clearance of the violation is part of the current project description. Under Title 20, removal of major vegetation is considered development. No fees were incurred during this period and plans for restoration may be up for consideration.

2. Disagreement with staff's interpretation of statements made in the initial Albion archaeological report

On page 40 (not page 41) of the environmental document, staff does state "based on Albion's determination that additional testing was needed and its overall inconclusive results, a supplemental archaeological report was required to address the current project proposal." There is disagreement about whether or not additional testing (e.g. supplemental archaeological report) was needed. On page 24 of the Albion report, the concluding paragraph reads "Therefore, it is Albion's

judgement that no additional archaeological testing is necessary; however, several protection measure (sic) should be implement (sic) for the proposed development project, in an effort to protect cultural resources.” Importantly, on page 2, the authors of the Albion report make clear that at the time of the study, the maximum depth of ground disturbance was unknown. Secondly, the site(s) were found to have positive evidence of surface level materials associated with archaeological sites, such as shell fragments and refuse from stone tool production. On page 19, the Albion report indicates that “because the Phase I survey produced positive results, Albion commenced with the excavation of Shovel Probes to determine the presence/absence of subsurface constituents.” They continue on page 23, by stating “subsurface investigations indicate that potentially significant cultural materials may be located within the Project Area, but the data are not conclusive.” Pursuant to Section 20.146.090 of the Carmel CIP (Part 4), a report must clearly and adequately include the currently proposed development site within the scope of the survey. Therefore, the incomplete letter dated September 28, 2017, requested a supplemental archaeological survey that might include more definitive findings through additional testing.

3. Disagreement with staff’s interpretation of statements made in the supplemental archaeological report

On page 41 of the Initial Study document, the following is said in relation to the archaeological investigations: “The subject property has yielded two (2) reports with differing and/or inconsistent findings (one clearly positive, the other negative with ‘see text’ for anything of archaeological significance).” There seems to be a disagreement with the latter observation: “We could find no reference to ‘see text’ in this report.” ‘See Text’ is checked off on the cover page of the Archaeological Consulting report dated December 7, 2017. The supplemental report does indicate that “the proposed project should not be delayed for archaeological reasons” -a point made clear in the Initial Study- but also recommends five (5) protection measures noting “the possibility of burial cultural resources being discovered during deep excavations.”

4. Clarification that “finds” discussed in Initial Study background are not on the subject parcel

Significant archaeological finds were not made on the subject parcel, however, there were positive/likely indicators of archaeological artifacts based on the surface level findings. OCEN considers all artifacts, even those considered archaeologically insignificant, as important and worth protecting.

5. Analysis ignores the requirements of the geologic and geotechnical studies relevant to the development of the project site

Staff is aware of the unstable topsoil but also notes the alternative, less invasive building techniques.

6. Contest the application of the HR zoning district overlay (premature and counterintuitive)

The Historic Resources re-zoning is codified in the Carmel Coastal Implementation Plan and other projects in Carmel Point have been conditioned to request an HR zoning overlay. Under Section 20.146.090 (Archaeological Resources Development Standards), D (b):

The applicant shall request to add the combining “HR” zoning district to the existing zoning on the parcel. The rezoning shall not necessitate an amendment to the Land Use Plan or this ordinance.

EDIT as of November 28, 2018: Staff has reconsidered the Historic Resources re-zoning as a mitigation measure. Given the second consecutive negative archaeological report for the subject parcels, staff has determined that any potential resources recovered from the site would be better protected through a conservation easement. HR Zoning District overlays should be reserved for parcels with indisputable evidence of cultural material.

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1. Oppose the project because it would hurt tribal archaeological resources that we know exist on Carmel Point

Staff has taken into consideration all available information and describes the archaeological sensitivity of Carmel Point in detail. Staff has identified potential impacts to Tribal Cultural Resources and Cultural Resources (Archaeological) in the Initial Study. Staff has consulted the Ohlone, Costanoan, Essalen Nation (OCEN) Chairwoman and understands that any disturbance on a known cultural site, is significant, even when artifacts are described as "insignificant." **Staff will be recommending an onsite tribal monitor be present during earth-moving activities to bring the impacts of the proposed development to a less than significant level. Additionally, staff has included language in the mitigation measures that would give the Most Likely Descendant (MLD) a say in the final disposition of remains and/or resources. Staff has recommended the owner/applicant return all cultural material to OCEN if it is not feasible to rebury onsite.**

2. 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." The Carmel Area Land Use Plan says the entire area should be preserved.

Staff is recommending denial of the basement component of the project and recommending tribal and archaeological monitors for earth-moving activities, including excavation for the foundation of the first single-family dwelling. The "no basement" recommendation is the mitigation being relied upon to mitigate significant impacts to the resources; however, basements and development

with similar depth have been mitigated in the past with onsite monitors. Based on staff's research, there is reason to believe that additional finds may be made on the Point.

EDIT as of November 28, 2018: Given a second consecutive negative archaeological report and absent the County's firm determination on the treatment of CA-MNT-17 and a prohibition on basements in high archaeological sensitivity areas, staff has to act on the best available information. There is an established protocol concerning the discovery of remains and is included in Mitigation Measure #2. Staff has included OCEN's request to reburial remains with the proper burial ceremonies. Staff has also modified Mitigation Measure #4 to place archaeological resources reburied onsite in a conservation easement in an effort to protect the resource in perpetuity.

3. The County of Monterey document says that the project would be inconsistent with the Carmel Area LUP. You cannot use a mitigated negative declaration for a project that is inconsistent with the plan.

The environmental document discusses at length how and why the projects, as proposed, are inconsistent with the Carmel Area Land Use Plan. Specifically, it is staff's opinion that the design is not a design which minimizes or avoids impacts to cultural resources. Staff has interpreted the key policy on Archaeological Resources (2.8.2) to guide the recommendation.

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.

EDIT as of November 28, 2018: Staff's initial interpretation of this key policy was determined to be overly conservative. Instead of considering the context of CA-MNT-17, staff has been directed to continue analyzing projects in the area, on a parcel-by-parcel basis. The subject parcels have yielded two consecutive negative reports and therefore is consistent with the County's practice of approving basements in high archaeological sensitivity areas. Through revised mitigation measures, staff has found ways to strengthen the recommended mitigation measures, including a proposal to modify (i.e. reduce) the size of the basement or avoid significant artifacts/remains. Impacts have been found to be mitigable to a less than significant level with the inclusion of four mitigation measures, including two onsite monitors.

4. 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.

Based on the provision in the Carmel CIP (Part 4), staff can require the applicant to request an Historic Resources overlay to the existing zoning (MDR/2-D(18)). Staff has applied this measure as mitigation for the development of the proposed project. Relatedly, RMA-Planning staff is working on options for the Planning Commission to consider. One of these options includes directing staff to explore listing the Point on a cultural heritage list, such as the local and/or state registers.

EDIT as of November 28, 2018: Staff has reconsidered the Historic Resources re-zoning as a mitigation measure. Given the second consecutive negative archaeological report for the subject parcels, staff has determined that any potential resources recovered from the site would be better protected through a conservation easement. HR Zoning District overlays should be reserved for parcels with indisputable evidence of cultural material. Although

staff has referenced all available information to conclude that there is clear evidence of the Point's archaeological significance (CA-MNT-17), there seems to be disagreement, even among experts, about this position.