

From: Molly Erickson <erickson@stamplaw.us>
Sent: Wednesday, December 4, 2019 11:03:44 PM
To: Swanson, Brandon xx5334 <SwansonB@co.monterey.ca.us>; Novo, Mike x5176 <NovoM@co.monterey.ca.us>
Cc: Guthrie, Jaime S. x6414 <GuthrieJS@co.monterey.ca.us>; Dugan, John x6654 <DuganJ@co.monterey.ca.us>; Strimling, Wendy x5430 <strimlingw@co.monterey.ca.us>; Briggs, Brian P. x5702 <BriggsBP@co.monterey.ca.us>; Spencer, Craig x5233 <SpencerC@co.monterey.ca.us>; McDougal, Melissa x5146 <McDougalM@co.monterey.ca.us>
Subject: Comments to the Zoning Administrator for December 5, 2019 —12CE00260, PLN160649 (CARMEL POINTE PROPERTIES LLC)

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To Mr. Novo as Zoning Administrator and Brandon Swanson as interim RMA chief of planning:

I represent Save Carmel Point Cultural Resources which asks you to refer this item to the planning commission. The proposed approval would set unanalyzed and unsupported policy precedents for after-the-fact permits on Carmel Point.

The "Carmel Pointe LLC" item is an illegal construction that the County red tagged in 2012. The county is finally getting around to it seven years later. A problem is that the illegal development involved earth disturbance without archaeological and tribal monitors. The County has not proposed a remedy — which means that this and other owners have an incentive to do illegal development in the future. In a nutshell: If owners go through the normal County permit process, they have to have monitors. If they do the work without permits they either (1) won't get caught or (2) be allowed to keep the unmonitored work without penalty.

Concerns include the following:

- The illogical claim by the County that because an archaeologist did not find *current* evidence of resources that no resources were affected by the illegal development that had taken place *four years earlier*. This makes no sense. The area is highly sensitive to archaeological resources and the Carmel Area LUP directs that the project is not exempt. An arch report should be performed as part of an environmental review. A negative archaeological report is not a free pass to avoid the required CEQA analysis for Carmel Point development. You should consult the LUP requirements and the County past practice. The practice is to require an initial study for projects within 750 feet of an arch resource, as this site is. A different approach by the County would incentivize unpermitted development, yet that is what the County proposes here. You should consult your legal counsel regarding the exceptions to the CEQA exemptions. There should have been an AB 52 consultation. Here is the odd and unsupported claim of the County:

- *"the County included this condition to memorialize that a Preliminary Cultural Resources Survey (File No. LIB170072) which was prepared by Susan Morley in*

October 2016 concluded there is no evidence of cultural resources on the parcel. Therefore, no cultural resources would have likely been affected by implementation of the 47 square foot addition."

Not so.

- The inconsistency between the plans with an after-added — and apparently ghostwritten — date of 2018 that does not match the 2017 date claimed by staff below.

- The seven year delay from violations to today.

- The ALJ decision. Who was the ALJ and what was decided?

- If Mr. Novo was the planning director when this project was red tagged, it does not seem proper for him to decide on a permit as the ZA.

- Whether the proposed permit would authorize new development or merely be after the fact permission to illegal work.

Save Carmel Point emphasizes that after the fact permits must be carefully scrutinized. The property owner attempted to circumvent County processes. The County should not reward those actions. The County should proceed only after review by the Planning Commission and Board of Supervisors due to the nature and frequency of violations at Carmel Point involving earth disturbing activities, and the discovery of four sets of human remains at Carmel Point in summer 2019. These human remains were found in an area much smaller than 47 square feet, which is the area at issue in the Carmel Pointe LLC project.

This summer the County fined another Carmel Point property which had illegal earth-disturbing work without an archeological monitor present. The County staff is proposing to treat this Carmel Pointe LLC property in an inconsistent manner.

Please add Save Carmel Point to the distribution list for this project, including all notices under Public Resources Code section 21092.2. Thank you.

Molly Erickson

STAMP ERICKSON

479 Pacific Street, Suite One
Monterey, CA 93940

Tel: 831-373-1214, x14

On Dec 2, 2019, at 7:38 AM, Swanson, Brandon xx5334 <SwansonB@co.monterey.ca.us> wrote:

Ms. Erickson,

Thank you for your patience over the holiday break. I will do my best to answer your questions below:

- Regarding the ALJ, and the age of the plans: The ALJ hearing occurred on June 21, 2016. The application was submitted February 17, 2017. The application materials included the As-Built Plans and request for the appropriate after the fact permits to clear the code enforcement case. All work is and has been halted until after permits are granted; therefore, nothing has changed on the As-Built Plans submitted in 2017. During that time, staff has been working with the applicant to define a second required parking space on the site.
- Regarding the archaeological condition, AB52, and earth work: There is no new earthwork associated with the after-the-fact permit. However, since the work that was done included a 47 square foot addition to the rear 865 square foot unit, the County included this condition to memorialize that a Preliminary Cultural Resources Survey (File No. LIB170072) which was prepared by Susan Morley in October 2016 concluded there is no evidence of cultural resources on the parcel. Therefore, no cultural resources would have likely been affected by implementation of the 47 square foot addition. Given this, there was no environmental document (Initial Study Neg Dec/Mitigated Neg Dec) prepared and therefore AB52 was not triggered.
- Regarding the incorrect name for the Plan: This was an error, thank you for pointing it out.
- Regarding the payment: The original payment that was received via check did not clear due to issues with the applicant's bank account. The check was returned and a subsequent payment was made to the full amount due. The system has been updated to reflect that this has been cleared.

I hope this helps answer your questions.

-Brandon

Brandon Swanson
Interim RMA Chief of Planning
Monterey County Resource Management Agency
1441 Schilling Place - Salinas, CA 93901
Phone: 831-755-5334 - www.co.monterey.ca.us/rma/

From: Dugan, John x6654 <DuganJ@co.monterey.ca.us>

Sent: Wednesday, November 27, 2019 8:09 AM

To: Molly Erickson <erickson@stamplaw.us>

Cc: Guthrie, Jaime S. x6414 <GuthrieJS@co.monterey.ca.us>; Swanson, Brandon xx5334 <SwansonB@co.monterey.ca.us>

Subject: Re: Notice of Public Hearing for the Zoning Administrator on December 5, 2019; 12CE00260, PLN160649 (CARMEL POINTE PROPERTIES LLC)

Ms Erickson, I apologize for the delay in responding. Staff is looking into your questions & will have an answer today.

Sincerely,

John Dugan

Deputy Director

Sent from my iPhone

On Nov 26, 2019, at 5:14 PM, Molly Erickson <erickson@stampaw.us> wrote:

[CAUTION: This email originated from outside of the County. Do not click links or open attachments unless you recognize the sender and know the content is safe.]

Ms. Guthrie and Mr. Dugan:

You have not shown the courtesy of a response. Please respond.

Thank you.

Molly Erickson
STAMP | ERICKSON
479 Pacific Street, Suite One
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tel: 831-373-1214, x14

On Wednesday, November 20, 2019, 4:30:23 PM PST, Molly Erickson <erickson@stampaw.us> wrote:

Ms. Guthrie and Mr. Dugan:

Here are a couple of additional questions:

The County Accela site says the 12CE00260 code violation matter is set for ALJ hearing. Please explain.

The site also says there is a condition dated November 6, 2019 stating "returned check due to do not represent." Please explain what that condition means.

A screen show of the Accela site is below.
<1574295967904blob.jpg>

Thank you.

Molly Erickson
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tel: 831-373-1214, x14

On Wednesday, November 20, 2019, 4:16:24 PM PST, Molly Erickson <erickson@stamplaw.us> wrote:

12CE00260, PLN160649 (CARMEL POINTE PROPERTIES LLC)

Ms. Guthrie and Mr. Dugan:

I write on behalf of Save Carmel Point Cultural Resources.

The code enforcement violation dates from at least 2012, correct? The drawings were submitted in 2016. What is the reason for the delay of more than seven years from violation notice? Why are the plans dated three years ago being considered now?

Please explain the sequence of events. The County Accela files are very few and do not fill in the many gaps.

What is the purpose of the proposed archaeological condition when the illegal work was done illegally seven years ago? Please explain how that is a meaningful condition in 2019. Please explain whether earth disturbance is and/or was part of the work. It is not clear from the notice or the online documents or the 2016 drawings.

There is no condition requiring a tribal monitor and no mention of AB52 compliance. Please explain.

The notice states an correct name for the applicable plan. The plan is the Carmel Area LUP. The Carmel Valley is not in the coastal zone. It is discouraging that the County planners are confused on this basic point.

Please respond promptly. Thank you.

Regards,

Molly Erickson
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479 Pacific Street, Suite One
Monterey, CA 93940
tel: 831-373-1214, x14

On Wednesday, November 20, 2019, 11:56:18 AM PST, Felicia M. x4878 <silveira@co.monterey.ca.us> wrote:

Good Afternoon,

Please find attached, the notices of public hearing for the Zoning Administrator scheduled for December 5, 2019 as follows:

- PLN190147-Marshall
- PLN160649-Carmel Pointe Properties

Thank you,

Felicia M. x4878

Secretary

Monterey County RMA

1441 Schilling Place, 2nd Floor

Salinas, CA 93901

Direct: (831) 755-4878

<[1574295967904blob.jpg](#)>