



Board Report

File #: RES 19-017, Version: 1

PLN170611, PLN170612, & PLN170613 - PIETRO FAMILY INVESTMENTS LP (CHRIS ADAMSKI)

Public Hearing to consider the appeal by The Open Monterey Project and Save Carmel Point Cultural Resources from the December 5, 2018 Planning Commission decisions:

- a. Approving a Combined Development Permit (PLN170612) to allow construction of a single-family dwelling, attached garage, and basement within 750 feet of known archaeological resources at 26338 Valley View Avenue (APN: 009-463-017-000), including approval for site work ahead of final approval [recommend for continuance to March 26, 2019];
- b. Approving a Combined Development Permit (PLN170613) to allow construction of a single-family dwelling, attached garage, and basement within 750 feet of known archaeological resources at 26346 Valley View Avenue (APN: 009-463-003-000), including approval for site work ahead of final approval [recommend for continuance to March 26, 2019]; and
- c. Approving a Combined Development Permit (PLN170611) to allow construction of a single-family dwelling, attached garage, and basement within 750 feet of known archaeological resources at 26307 Isabella Avenue (APN: 009-463-012-000).

Project Locations: These projects are located in the Carmel Area Land Use Plan area

Proposed CEQA action: Adopt a Mitigated Negative Declaration for PLN170611. A separate Mitigated Negative Declaration was prepared for PLN170612 and PLN170613 that is to be considered with those projects that are recommended for continuance to March 26, 2019.

RECOMMENDATION:

It is recommended that the Board of Supervisors adopt a resolution to:

- a. Continue the hearing on the appeal by The Open Monterey Project and Save Carmel Point Cultural Resources from the decision of the Planning Commission adopting a Mitigated Negative Declaration and approving a Combined Development Permit (PLN170612) to allow construction of a single-family dwelling, garage, and basement within 750 feet of known archaeological resources at 26338 Valley View Avenue;
- b. Continue the hearing on the appeal by The Open Monterey Project and Save Carmel Point Cultural Resources from the decision of the Planning Commission adopting a Mitigated Negative Declaration and approving a Combined Development Permit (PLN170613) to allow construction of a single-family dwelling, garage, and basement within 750 feet of known archaeological resources at 26346 Valley View Avenue;
- c. Adopt a resolution to:
 1. Deny the appeal by The Open Monterey Project and Save Carmel Point Cultural Resources from the Planning Commission's approval of a Combined Development Permit (PLN170611) to allow construction of a single-family dwelling, garage, and basement within 750 feet of known archaeological resources at 26307 Isabella Avenue;
 2. Adopt a Mitigated Negative Declaration (MND) prepared for project (PLN170611);
 3. Approve a Combined Development Permit (PLN170611) consisting of:
 - a) Coastal Administrative Permit and Design Approval to allow construction of a split level, 3,397 square-foot single family dwelling with a 437 square-foot attached garage, 1,366

- square-foot basement, and 620 cubic yards of cut at 26307 Isabella Avenue; and
- b) Coastal Development Permit to allow development within 750 feet of known archaeological resources at 26307 Isabella Avenue; and
4. Adopt a Mitigation Monitoring & Reporting Program (MMRP) for project (PLN170611).

A draft resolution, including findings and evidence, is attached for consideration (**Attachment C**). Staff recommends approval of the Combined Development Permit (PLN170611) subject to the twenty-three (23) Conditions of Approval and four (4) Mitigation Measures.

PROJECT INFORMATION:

Agent: Anthony Lombardo, Anthony Lombardo & Associates

Property Owners: PIETRO FAMILY INVESTMENTS LP

Applicant: Chris Adamski

APNs: 009-463-012-000, 009-463-017-000, and 009-463-003-000

Parcel Sizes: 8,438 sf, 6,420 sf, and 8,839 sf, respectively

Zoning: Medium Density Residential with gross density maximum 1 unit/per acre with Design Control overlay and 18-foot maximum height in the Coastal Zone [MDR/2-D(18)(CZ)]

Plan Area: Carmel Area Land Use Plan

Flagged and Staked: Yes

SUMMARY:

Chris Adamski (Pietro Family Investments LP) submitted three applications to develop three vacant parcels each with a new single-family dwelling with attached garage and basement. These three parcels are located on the same block of the Carmel Point area of Monterey County. The Valley View lots (26338 & 26346) are side-by-side adjacent while the southeast corner of 26307 Isabella Avenue touches the northwest corner of the 26346 Valley View lot.

Carmel Point is a well-documented area of archaeological resources known as CA-MNT-17, which is a designation used where archaeological resources have been recorded with the Regional Information Center of the California Historic Resources Information System. Historically, the archaeological findings in the CA-MNT-17 area have provided scientifically consequential information that indicates the Carmel Point was an Ohlone settlement dating to at least 4,000 years ago and as long ago as 9,300 years before present (YBP). For example, development has uncovered human remains during implementation of single-family dwellings in the last several years, a birthing rock is located on the Point; and this area of the residential location, in particular, is recognized as a habitation area of people in the Early Period (5,500 to 2,600 YBP).

Following public hearings on October 31 and December 5, 2018, after review of the three applications, all submitted documents, and public testimony, the Planning Commission found that the projects, subject to conditions of approval, were consistent with all applicable regulations and adopted resolutions to approve the projects. PLN170612 and PLN170613 were evaluated under one Mitigated Negative Declaration (MND) and PLN170611 was evaluated under a separate MND. Considerations of the Commission are summarized below, and explained in further detail in **Attachment A**.

Ms. Molly Erickson, representing two entities consisting of the Open Monterey Project and Save Carmel Point Cultural Resources, timely filed one appeal of Planning Commission decisions (**Attachment E**) to approve three Combined Development Permits (PLN170611, PLN170612, & PLN170613). The appeal contends that there was a lack of fair or impartial hearing, findings or decision or conditions are not supported by the evidence, and the decision was contrary to law. Specifically, the appeal contends there are inconsistencies with Policies contained in the Carmel Area Land Use Plan, CEQA violations, inappropriate and ineffective mitigations, and procedurally incorrect and improper County processes. These contentions are briefly addressed below and are discussed in detail within **Attachment A**.

Monterey County Code requires appeals be brought to hearing before the Board of Supervisors within 60 days of filing (by March 15, 2019), unless both applicant and appellant agree to waive that deadline. The hearing on the appeal of Planning Commission approval of the three projects (PLN170611, PLN170612, PLN170613) was scheduled for Board of Supervisors' meeting of March 12, 2019. However, subsequent to the Planning Commission action and prior to the appeal hearing, trenching and tree removal was reported on the 26338 Valley View property. A "Stop Work" order was issued on February 15, 2019 to confirm potential for further violation in addition to the existing violation (17CE00360) on the parcel. County Code prohibits approval of a project where a violation exists.

The applicant and appellant agreed to continue the hearings of the appeal on the Combined Development Permits (CDPs) for PLN170612 and PLN170613 from March 12 to March 26, 2019. However, the applicant did not agree to postpone the hearing on the appeal of the Planning Commission decision to approve a CDP for PLN170611 and requested it be heard on March 12, 2019, as scheduled. The appellant's representative (Ms. Erickson) contends that this is a single appeal combining all three projects, and as such all three should be continued and heard together on March 26th to consider the cumulative effects. Therefore, Staff suggests the Board consider continuance of the hearing on all three permit applications (PLN170611, PLN170612, and PLN170613). Staff recommends continuation of the hearing on PLN170612 and PLN170613 until after a complete investigation of current activities at the 26338 Valley View property. If that is the action of the Board, Staff will present analysis and discussion of information pertaining to PLN170612 and PLN170613 on March 26, 2019.

Staff recommends conducting a hearing on PLN170611 in accordance with Section 20.86.070 of Title 20. While one appeal was filed on all three projects together, Staff finds that each permit application (PLN170611, PLN170612, and PLN170613) is subject to a *de novo* hearing and action to approve or deny. As such, each project may be considered separately in accordance with Monterey County Code.

This report focuses analysis on PLN170611 only. Staff has prepared a draft resolution affirming the Planning Commission action by denying the appeal, adopting a MND and MMRP, and approving a CDP for PLN170611. Alternatively, the Board may hold the hearing, adopt a motion of intent and continue the hearing to March 26th for final consideration with the other permits (PLN170612 and PLN170613), or the Board could elect to continue the hearing on PLN170611 to a later date. If the Board holds the hearing on PLN170611 and chooses

to approve the appeal and deny the permit, the appropriate action would be a motion of intent with direction to Staff for preparing a resolution with modified findings.

BRIEF DISCUSSION

Zoning of the parcel (MDR/2) allows a single-family dwelling (SFD) as a principally permitted use subject to a Coastal Administrative Permit (CAP) in each case. PLN170611 is an application to build a new single family dwelling with an attached garage and basement. This application consists of a Combined Development Permit (CDP) including a CAP to allow development of one new single family dwelling (SFD) and a Coastal Development Permit (CST) to allow development within 750 feet of known archaeological resources.

County Staff scheduled and duly noticed the three projects for public hearing before the Planning Commission on October 31, 2018 and December 5, 2018. On December 5, 2018, after review of the three applications, all submitted documents, and public testimony, the Planning Commission found that the projects were consistent with all applicable regulations and adopted a Mitigated Negative Declaration, approved a Combined Development Permit, and adopted a Mitigation Monitoring and Reporting Plan for the project at 26307 Isabella Avenue (PLN170611). The Planning Commission, at the same public hearing, adopted a Mitigated Negative Declaration, approved Combined Development Permits, respectively for the projects at 26338 Valley View Avenue and 26346 Valley View Avenue, to allow the construction of the SFDs including the basements, and adopted Mitigation Monitoring and Reporting Plans for these projects (see **Attachment D**, Monterey County Planning Commission Resolution Nos. 18-047, 18-048, and 18-049). The considerations of the Commission are summarized below, and explained in further detail in **Attachment A**.

Construction Permits 18CP01784 and 18CP01785 were issued to the applicant on 5 July 2018 to allow construction of a 400 AMP electrical service panel at each respective parcel (26338 Valley View Avenue and 26346 Valley View Avenue). The applications for PLN170612 and PLN170613 were in “complete” status at the time Construction Permits 18CP01784 and 18CP01785 were issued. Grading and tree removal activity, in association with the Construction Permits, were reported February 14, 2019. Once appeal of the Planning Commission’s approvals of the Combined Development Permits are filed, the Planning Commission’s approvals are stayed until such time as the Board of Supervisors and/or the Coastal Commission resolves the appeal, pursuant to Section 20.86.090 of Title 20. Thus, the Board needs to act on the appeals prior to further development activity. As a result, RMA issued a “Stop Work” order on the 26338 Valley View parcel 15 February 2019. Staff is in the process of investigating the report of grading and tree removal activity.

Carmel Area Land Use Plan Policies:

The applicant was required to provide an archaeological report pursuant to Carmel Area Land Use Plan Policy 2.8.3.1 & .2 which describes the sensitivity of the site and recommends appropriate levels of development and mitigation consistent with the site’s need for protection. Two archaeological reports (LIB170269 and LIB190038) were prepared. Albion (LIB170269) recommended no need for further testing, alongside protection measures of potential resource finds. Morley (LIB190038) recommended no delay of the project due to concerns about cultural resources, and mitigation measures that include both an archaeological and a tribal monitor onsite during construction. If Native American remains are uncovered during construction, and will

remain buried onsite, the owner is required to request an Historic Resources overlay covering the entire parcel that will retain the remains. Further provisions for accidental finding of cultural materials aside from human remains, are within the mitigation measures for the project. These mitigations provide compliance with Policy 2.8.3.3 which requires all available measures be explored to avoid development on sensitive prehistoric or archaeological sites.

Design proposal of the home includes a dark gray standing seam metal roof. The home is infill development within an existing Carmel housing tract zoned medium density. The aesthetic of the neighborhood is urbanized rural village with eclectic home designs removed from wooded, rocky visual resources. Standing seam metal roofs are available in a range of color/style combinations that lend the material versatility in a design setting such as unincorporated Carmel and the applicant would be open to changing the metal finish. Therefore, use of the standing seam metal roofing material is in accordance with Carmel LUP Policy 2.2.3.6 that requires structures be subordinate to and blended into the environment, using appropriate materials to that effect.

CEQA:

Opinions from the two expert archaeologists were in agreement despite the difference in finds. Therefore, Staff did not ignore the CEQA directive, “if there is a disagreement among expert opinion support by facts over the significance of an effect on the environment, the Lead Agency shall treat effect as significant and shall prepare an EIR” (Section 15064(g) of the CEQA Guidelines). An EIR was not the appropriate environmental document for review of this project proposal in accordance with Section 15064(f)(2) that requires preparation of a mitigated negative declaration (MND) when substantial evidence exists for a project to have a significant effect on the environment, but the applicant agrees to mitigations that reduce the effects to a point where clearly no significant effect would occur, and there is no fair argument base on substantial evidence that the project, as mitigated, may have a significant effect on the environment.

Cultural and Tribal Cultural Resources and Monitor:

Performance criteria and standards for a qualified archaeological monitor are listed in the Mitigation Measure Monitoring Action No. 1b as requirements in the contract with the applicant: specific construction activities for which the monitor shall be present, any construction activities for which the monitor will not be present, how sampling of the excavated soil will occur, and any other logistical information such as when and how work on the site will be halted. In order to participate in AB 52 tribal consultation, a tribe must request, in writing, to be notified by lead agencies through formal notification of proposed projects in the geographic area with which the tribe is traditionally and culturally affiliated. In accordance with AB52 requirements, Ohlone Costanoan Esselen Nation (OCEN) has provided the formal written request to be contacted by the County regarding any project for which a Notice of Preparation, Notice of Mitigated Negative Declaration or Notice of Negative Declaration is filed on or after July 1, 2015. Therefore, the conventional approach by the County to requiring a “tribal monitor” has been that this is the same as an “OCEN” monitor. All monitors, whether archaeological or tribal, are obligated under California Code of Regulations Section 15064.5(e), Public Resources Code Section 5097.98, and California Health and Safety Code Section 7050.5 as to treatment of any human remains encountered during ground-disturbing activities to halt further disturbance of the site or any nearby area

reasonably suspect to overlie adjacent remains until the County Coroner makes a determination as to origin of the remains.

A conversation about Cultural and Tribal Cultural Resources in Carmel Point must include the topic of Visual Resources. Carmel LUP Policy 2.2.5.2 requires that in order to provide for more visually compatible structures, the height limit in the Carmel Point Area should be limited to a maximum height of 18 feet from the natural average grade. Developers in the Carmel Point Area have a frequent conflict between competing resources due to the LUP height limitation that protects visual resources and those State laws that protect cultural resources. The compromise made by the County has been based upon the availability of mitigative action to protect valued resources. While basements may have significant impact on cultural resources, State law provides statutory guidance in PRC §21074, §21080.3.1, §21080.3.2, §21083.2, §21084.3, and §5097.9 for reducing impacts to less than significant.

Mitigations:

The appellant contends that mitigations use unclear and confusing language, are listed as conditions, not enforceable, and not effective for protecting Cultural or Tribal Cultural Resources. Revisions to the Mitigation Measure language are included in ~~strike out~~ and underline in Conditions of Approval (**Attachment C**). Specifically, Condition Nos. 9-13 (**highlighted headings**) are the Mitigations that have revisions to make clarifications and provide language that strengthen the effectiveness of the mitigation measures. Mitigation measures have been incorporated as Conditions of Approval in accordance with PRC §21081.6(b).

County Processes:

The appellant stated concerns that the County discloses information improperly and operates incorrectly. An account of the procedural background is provided in Finding 7 of the resolution. Moving forward, County agenda items shall include information, if pertinent, that a project approval is part of clearing a code enforcement violation. Staff adheres to State laws in PRC §21083 and PRC §21074 for requesting reports of expert assessments and in Government Code §6254.10 in determination of authority for disseminating archaeological information.

CONCLUSION

The Appropriate Authority is obligated to make decisions based on substantial evidence that includes facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts pursuant to PRC §21082.2, which prohibits making a determination of significant effect based on the existence of public controversy, argument, speculation, unsubstantiated opinion or narrative. The first archaeological report prepared by Albion (LIB170269) concluded there was no need for further testing, notwithstanding a find of cultural materials during both a Phase 1 surface reconnaissance and an Extended Phase 1 sub-surface survey using shovel probes (SPs). The cultural material found in the SPs gave inconclusive information as to the certain presence of Cultural or Tribal Cultural Resources. Therefore, Albion recommended protection measures of potential resource finds. All recommendations from the archaeological experts for protections and monitoring of potential cultural materials are project mitigations that have been incorporated as conditions for all three projects. Staff recommends the Board of Supervisors deny the appeal and, with the proposed revisions,

herein, approve project application PLN170611.

OTHER AGENCY INVOLVEMENT:

Environmental Health Bureau
RMA-Public Works
RMA-Environmental Services
Water Resources Agency
Cal Fire - Coastal
Carmel Area Land Use Advisory Committee
California Coastal Commission

FINANCING:

Funding for staff time associated with this appeal is included in the FY 18-19 Adopted Budget for RMA-Planning.

BOARD OF SUPERVISORS STRATEGIC INITIATIVES:

This action represents effective and timely response to our RMA customers. Processing this application in accordance with all applicable policies and regulations also provides the County accountability for proper management of our land resources.

Check the related Board of Supervisors Strategic Initiatives:

Economic Development
 Administration
 Health & Human Services
 Infrastructure
 Public Safety

Prepared by: Jaime Scott Guthrie, AICP, Associate Planner, ext. 6414

Reviewed by: Craig Spencer, Acting RMA-Planning Services Manager

Approved by: John M. Dugan, FAICP, Deputy Director of Land Use and Community Development

The following attachments on file with the Clerk of the Board:

Attachment A - Discussion

Attachment B - Map of the Subject Parcels & Glossary of Abbreviations

Attachment C - Draft Resolution including:

- Conditions of Approval with underline and ~~strikethrough~~
- Plan Set

Attachment D - Planning Commission Resolution Nos. 18-047, 18-048, and 18-049

Attachment E - Notice of Appeal dated 14 January 2019

Attachment F - Initial Study/Mitigated Negative Declaration for 26307 Isabella Ave.

Attachment G - Comment letter from Eleanor Spare dated March 2, 2019

cc: Front Counter Copy; California Coastal Commission; RMA-Public Works and Facilities; Environmental Health Bureau; Monterey County Water Resources Agency; RMA-Environmental Services; Brandon Swanson, Acting RMA Chief of Planning; Craig Spencer, Acting RMA-Planning Services Manager; Jaime Scott Guthrie, Project Planner; Pietro Family Investments LP, Property Owner; Valley Point LLC, Property Owner; Chris Adamski, Applicant; Anthony Lombardo, Attorney for Applicant; Molly Erickson, Appellant; The Open Monterey Project (Molly Erickson); LandWatch (Director); Project Files PLN170611, PLN170612, and PLN170613