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PLN210061

Friedrich, Michele

Rutan & Tucker
Comments
-HCD-Planning

From: Bennett, Brooke <bbennett@rutan.com>
Sent: Monday, August 12, 2024 1:06 PM
To: ceqacomment; Angelo, Philip
Cc: breylen.ammen@coastal.ca.gov; Katie.Butler@coastal.ca.gov; alan.kwong@dot.ca.gov; Francois, Matthew
Subject: Johnson Hal W Jr. & Allison H; File No. PLN210061
Attachments: 2024 0812 M. Francois Letter to P, Angelo Re_ Johnson Hal W Jr. _ Allison H_ File No. PLN210061.pdf

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Good afternoon,

Attached please find correspondence from Matt Francois in regards to the above-referenced matter.

Please feel free to contact our office with any questions or concerns.

Thank you,

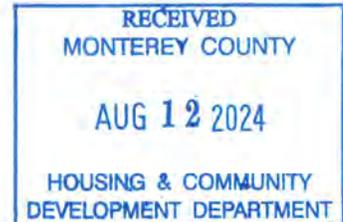
Brooke Bennett

Legal Assistant

Five Palo Alto Square, 3000 El Camino Real, Ste. 200 | Palo Alto, CA 94306
O. (650) 320-1500 | D.

bbennett@rutan.com | www.rutan.com

RUTAN
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VIA EMAIL [CEQAcomments@countymonterey.gov; AngeloP@countymonterey.gov]

County of Monterey
Housing & Community Development
Attn: Philip Angelo
1441 Schilling Pl. South 2nd Floor
Salinas, CA 93901

Re: Johnson Hal W Jr. & Allison H; File No. PLN210061

Dear Mr. Angelo:

We write on behalf of our client, the “Owner” of a single-family residence located at 230 Highway 1, to provide comments on the Mitigated Negative Declaration (“MND”) prepared by the County of Monterey (“County”) for the proposed residential development at 226 Highway 1 (the “Project”). As you know, the Project is proposed to be developed within a key coastal viewshed a mere few feet from a steeply sloped costal cliff.¹ Similar to the concerns previously raised by Coastal Commission Staff, Owner has serious concerns with the Project’s environmental impacts and conflicts with key Coastal Act policies pertaining to geological hazards and visual resources. In order to conform with these policies and avoid significant environmental impacts, the Project, at minimum, needs to be re-sited within and landward (not seaward) of the geologically feasible building envelope. We urge the County to address these serious concerns prior to proceeding with further consideration of the Project.

1. Background

Hal and Allison Johnson, the owners of an approximately 0.63 acre parcel of land located at 226 Highway 1, Assessor’s Parcel No. 241-182-003-000 (the “Property”), have submitted an application to the County of Monterey (“County”) for a combined development permit to develop the Property with a nearly 5,000 square foot single family residence and associated site improvements. The Property is located within the Coastal Zone, immediately east of the Pacific Ocean and south of a vista point off of Highway 1.

¹ Figure 5 (Project Elevation Profile) of the MND shows how the majority of the Project extends beyond the geologic setback line, protruding over the steep coastal cliff face. A copy of this figure is attached hereto as Exhibit A.

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The Project requires a coastal development permit (“CDP”) to allow: (1) development within 50 feet of a steep coastal bluff (with slopes exceeding 200%); (2) 6,758 square feet of development on slopes in excess of 30%; (3) removal of 6 trees, including 5 Monterey Cypress (4 of which are landmark trees), and 1 Monterey Pine;² and (4) development within 750 feet of known archaeological resources. All of these approvals would be appealable to the California Coastal Commission. (MND, p. 13.)

Further, the Project requires variances from required setbacks, specifically for the front setback parallel to Highway 1 from 30 feet to 20 feet and the front flag lot setback along the southern property line from 30 feet to 2 feet. The variances are needed to construct a 21 foot tall faux rock retaining wall and emergency fire access stairway in the southeast corner of the site.³ The retaining wall is taller in height than the height of the proposed Project home measured from grade.

Grading of the Project site would involve excavation of approximately 2,305 cubic yards of cut soil and approximately 355 cubic yards of fill, with approximately 1,950 cubic yards hauled off-site for disposal. The proposed construction management plan relies on construction vehicle staging on the shoulder of Highway 1, which would require an encroachment permit from Caltrans.

Access to the Property would be provided from a private drive off of Highway 1 and through a currently unimproved access easement over Owner’s property and immediately adjacent to their home. This access easement is unimproved, consisting of dirt and grass. (See photos attached hereto as Exhibit B.)

Water service would be provided from the Highway 1 Water Distribution System No. 12, an existing system designed to serve the Property, Owner’s property, and a third property immediately south of Owner’s property. The Project applicant would be responsible for obtaining permits for upgrading the existing water treatment system.

Sewer service would be provided through a mixed system. Sewer solid waste would be collected in a septic tank on the Property and disposed of by truck. For effluent disposal, the Project would install an ejector pump and 2 inch diameter force main sewer line traveling through the access easement to a private sewer line owned by the Highland Point Sewer Association, which connects to the Carmel Area Wastewater District (“CAWD”) water system. The MND states that the Project applicant will need to secure permission from the property owners served by the Highlands Point Association, including Owner, to connect into the shared

² In addition, an Acacia tree is proposed for removal.

³ The MND does not appear to consider the impacts of excavation needed for the installation of this wall on the adjacent Highway 1 right-of-way.

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private system, and that a coastal development permit will not issue until the Project applicant has received proof of such permission. (MND, pp. 89, 93.)

2. The Project should be revised to conform with key policies concerning geological hazards and re-sited to be located within and landward (NOT seaward) of the geologically feasible building envelope.

The Project conflicts with multiple policies of the Carmel Area Land Use Plan (“LUP”) and the Monterey County Coastal Implementation Plan (“CIP”) pertaining to geologic hazards that were adopted for the purpose of avoiding or mitigating significant environmental effects.⁴

LUP Section 2.7.4.1 states that “[a]ll development shall be sited and designed to conform to site topography and minimize grading and other site preparation activities.” To ensure protection of the Carmel area’s scenic resources, buildings located on slopes shall be sufficiently set back from the frontal face. (CIP § 20.146.030.C.1.) In general, development shall not be located on slopes of 30 percent or greater.⁵ (*Id.*; LUP § 2.2.4.10.a.) CIP Section 20.146.120.A.6 likewise requires that all parts of a parcel with slopes of 30 percent and greater shall be required to be placed in a scenic easement.

Further, all development must be “sited and designed to minimize risk from geologic, flood, or fire hazards,” and “areas of a parcel which are subject to high hazard(s) shall generally be considered unsuitable for development.” (LUP § 2.7.3.1; *accord*, CIP § 20.146.080.) For any development proposed in high hazard areas, an environmental or geotechnical report shall be prepared demonstrating compliance with specified policies and associated mitigation measures. (LUP § 2.7.4.3; CIP § 20.146.080.)

Revetments, seawalls, retaining walls and other such construction that alters natural shoreline processes “shall be permitted only where required for the protection of existing development” and “shall respect, to the greatest degree possible, natural landform and visual appearance.” (LUP § 2.7.4.10 [emphasis added].)

The MND states the reported “geological concerns” for the site as slope instability, long-term coastal erosion, and seismic shaking. (MND, p. 55.) The MND does not identify this as an impact, as required by CEQA. (*See, e.g.*, Pub. Res. Code §§ 21002, 21064.5; CEQA Guidelines §§ 15070, 15071.) And the MND fails to impose any mitigation of this impact, as also required

⁴ Together the LUP and CIP comprise the County’s Local Coastal Program (“LCP”). All coastal development permits must be consistent with the LCP. (LUP § 6.2.1.B; Pub. Res. Code § 30603(b).)

⁵ An exception can be granted but only if there is no alternative which would allow development to occur on slopes of less than 30 percent or the proposed development better achieves the resource protection objectives and policies of the LCP. (CIP § 20.146.030.C.1.a.)

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by CEQA. (*Id.*) Indicating that a condition will be imposed to comply with the recommendation of the geotechnical report is not the same as imposing a binding and enforceable CEQA mitigation measure. The same comments about the failure to identify impacts and mitigation apply to the analysis of ground shaking on MND page 56, the analysis of bluff erosion on MND pages 57 to 58, the analysis of landslides on MND page 60, the analysis of drainage on MND pages 60 to 61, and the analysis of paleontological resources on MND page 61.

In regard to coastal bluff erosion, the MND cites to figures showing the geologically feasible envelope.⁶ While some of the proposed Project is within this envelope, “much of the residence is seaward of it.” (MND, p. 57.) Instead of moving the Project to landward of the geologically feasible envelope, the MND cites to the geotechnical report’s recommendation to install a micro-pile foundation below the 100-year anticipated bluff profile. (MND, p. 57.) Although clearly needed to mitigate a significant environmental impact to bluff erosion, the MND does not identify an impact or require that this recommendation be adhered to as an enforceable mitigation measure. The MND fails to comply with CEQA in this regard. (CEQA Guidelines § 15070 [agency can rely on MND only if mitigation measures are imposed that would mitigate significant environmental impacts to the point where no significant environmental impacts would occur]; Public Resources Code §21064.5 [same].)

While not included in the MND, the Project grading plans show the estimated position of the 100 year blufftop. (See Exhibit C.) It runs through most of the Project home. And this projection does not appear to be based on conservative sea level rise projections, but rather aerial photographs of the site dating back to 1929. (MND, p. 57). The applicant will not be able to armor the bluff to protect the development, because it is new and not “existing development.” (LUP § 2.7.4.10.) So the County is taking the extreme measure of incorporating a condition requiring that development be re-evaluated and removed if/when it becomes threatened by coastal hazards, such as bluff erosion. (MND, p. 58.)

This is a dangerous and risk-prone development that is not being designed to reflect the highly-constrained nature of the site. In its comments on the Project application, Coastal Commission Staff states that the Project is proposed “adjacent to a steep descending coastal bluff in a high erosion hazard area” with the western footprint of the building appearing to be within five feet of the top of the bluff edge on highly erodible soil. (See October 21, 2021 email from Alexandra McCoy to Philip Angelo.) Commission Staff recommends moving the Project away from the bluff and towards Highway 1 as much as possible in order to minimize impacts from coastal hazards and states that the lower level should be reduced in order to provide a stair-stepped foundation that would require less grading. (*Id.*) County Staff too advised the applicant to move the Project “as far away as possible” from the bluff edge and closer to Highway 1. (See October 21, 2021 letter from Philip Angelo to Carla Hashimoto.)

⁶ The cross-references to the figures on page 57 of the MND are not accurate. The same comment applies to the figures cited on page 89 of the MND.

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The building footprint could easily be shifted landward to the east (i.e., where a courtyard is currently planned) and onto the geologically feasible building envelope, as urged by Coastal Commission Staff. This redesign would have the benefit of avoiding removal of protected Monterey Cypress and other trees.

The MND states that there are no indications of previous landslides in the area. (MND, p. 60.) That is not accurate. A significant slide occurred just south and west of the Project site at 255 Highway 1. (See photos attached hereto as Exhibit D.) Coastal Planner Breylen Ammen referenced this slide in her October 24, 2022 email to County Staff, noting that “[r]ecently a landslide occurred on [an] adjacent lot after unpermitted tree removal.”

Further, the MND does not analyze the feasibility of soils for the sewer tank. Instead, it assumes the soils would be suitable since there is no indication that they would not be. (MND, p. 61.) Section 20.146.050.E.3.c prohibits new on-site waste disposal systems on slopes exceeding 30 percent. The MND should have included an analysis of this key Project component, including how it conforms to the above-referenced policy, but did not. (Cf. *Save Agoura Cornell Knoll v. City of Agoura Hills* (2020) 46 Cal.App.5th 665, 702 [environmental impact report required where agency fails to gather information and undertake an adequate environmental analysis in its initial study].)

3. The Project Description fails to describe or analyze key Project components.

CEQA forbids piecemeal review of the significant environmental impacts of a project. (*Berkeley Keep Jets Over the Bay Committee v. Board of Port Commissioners* (2001) 91 Cal.App.4th 1344, 1358.) Rather, CEQA mandates that “environmental considerations do not become submerged by chopping a large project into many little ones—each with a minimal potential impact on the environment—which cumulatively may have disastrous consequences.” (*Bozung v. Local Agency Formation Commission* (1975) 13 Cal.3d 263, 283-284.) “Improper piecemealing occurs when the purpose of the reviewed project is to be the first step toward future development or when the reviewed project legally compels or practically presumes completion of another project.” (*East Sacramento Partnerships for a Livable City v. City of Sacramento* (2016) 5 Cal.App.5th 281, 293.)

In light of the prohibition on piecemealing, the CEQA Guidelines define “project” broadly as the “whole of an action” which has a potential for resulting in a physical change in the environment. (CEQA Guidelines § 15378(a); see also MND, p. 20 [noting that the MND “must take into account the whole action involved, including offsite as well as on site, cumulative as well as project-level, indirect as well as direct, and construction as well as operational impacts.”]) Courts have construed this to mean that an environmental impact report (“EIR”) or MND must examine all relevant parts of a project, including future expansion or later phases of a project that will foreseeably result from project approval. (*Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376 [EIR that analyzed only partial

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occupancy of a building by a university lab was invalid for failing to analyze the reasonably foreseeable occupancy of the entire building by the lab].)

It is well settled that a CEQA document must examine the impacts of utilities and other infrastructure that will be constructed to serve the Project. In *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713, the court struck down an environmental impact report that did not include an analysis of the construction of sewer lines and expansion of a wastewater treatment plant designed to serve the project. In *Santiago County Water District v. County of Orange* (1981) 118 Cal.App.3d 818, an EIR for a sand and gravel mine was found to be inadequate for failing to describe or analyze the construction of water pipelines that would be needed for mining operations. In *Tuolumne County Citizens for Responsible Growth, Inc. v. City of Sonora* (2007) 155 Cal.App.4th 1214, the court ruled that a proposed home improvement center and the realignment of a road were part of a single project because the home improvement center could not be completed and opened without the realigned road.

Here, the MND fails to consider the impacts of necessary roadway, storm drain, and water treatment system improvements. These necessary infrastructure components of the Project cannot be segmented from the Project. Instead, they must be included in the CEQA review for the Project, but were not.

The MND omits any discussion whatsoever of the necessary roadway improvements that will be needed to access the Property. The Property is currently served by an unimproved dirt and grass road. (See photos attached hereto as Exhibit B.) A dirt road is not adequate to serve the Property, including emergency vehicles, fire trucks, and service trucks for the septic tank. (See CIP § 20.146.120.A.1.c [new development is permitted only if access roads are constructed to “meet minimum County standards”].) There is no discussion or consideration whatsoever of the necessary roadway improvements and associated infrastructure (e.g., retaining walls) that would be needed to safely access the Property. Likewise, there has been no evaluation or discussion of the potential impacts of the Project’s roadway improvements on critical infrastructure supporting Owner’s property, including a retaining wall anchored with soil nails. This major omission alone prevents the MND from serving its purpose of informing the County and the public of the environmental impacts of the Project.

The MND also fails to describe and analyze the Project’s stormwater system. Controlling drainage is necessary to prevent erosion, which impacts bluff stability. (MND, p. 60.) Yet, this critical issue is being deferred to the post-entitlement phase where it will be reviewed in connection with “ministerial review of grading and building permits.” (MND, p. 61.) Omission of this key Project component fails to comply with CEQA. It also fails to comply with CIP Section 20.146.050.E.4.b which requires that an Erosion Control Plan be submitted and approved by the Planning Department prior to the application being deemed complete.

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The Project includes significant improvements to a centralized water treatment system. (MND, p. 88.) The water treatment system would include filtration and treatment for iron, manganese, fluoride, and water acidity. (*Id.*) While described in the Utilities and Service Systems section of the MND, the impacts of this off-site Project component are not analyzed anywhere in the MND.

For the reasons stated above, the MND likewise does not provide an accurate, stable, and finite project description, as required by CEQA in order to analyze a project's environmental impacts. (*County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185, 193; *San Joaquin Raptor/Wildlife Rescue Ctr. v. County of Stanislaus* (1994) 27 Cal.App.4th 713, 730; *Sierra Club v. City of Orange* (2008) 163 Cal.App.4th 523, 533. Additionally, an environmental document's project description, and the accompanying analysis, must be consistent throughout the document. If the project description is inconsistent, these shifts prevent the CEQA document from serving as a vehicle for intelligent public participation in the decision-making process. (*San Joaquin Raptor Rescue Ctr. v. County of Merced* (2007) 149 Cal.App.4th 645, 656; *Communities for a Better Environment v. City of Richmond* (2010) 184 Cal.App.4th 70, 80; *Citizens for a Sustainable Treasure Island v. City & County of San Francisco* (2014) 227 Cal.App.4th 1036, 1052.)

In addition to failing to incorporate key utility infrastructure into the project description, the MND is inconsistent with respect to the Project construction schedule. On page 9, the construction period is 24 months, but on the next page it is described as 12 months. It is unclear what period of time was actually assumed and used in the environmental analysis.

4. An EIR must be prepared due to a fair argument of significant environmental impacts.

An agency must prepare an EIR and cannot legally rely on an MND if there is a fair argument that the Project may result in significant environmental impacts. (Public Resource Code § 21151; *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 75; *Friends of "B" Street v. City of Hayward* (1980) 106 Cal.App.3d 988, 1002.) Here, there is a fair argument that the Project may result in significant impacts to multiple environmental resources. As such, an EIR must be prepared before the County can legally consider and act on the Project. An EIR is particularly warranted because the Project conflicts with multiple policies of the LUP and CIP that were adopted for the purpose of avoiding or mitigating significant environmental effects.

a. Aesthetics

The Property is situated within the Highway 1 Viewshed and directly visible from a popular pull-out lookout to the north of the site. (*See* LUP, Map A-Carmel Area Local Coastal

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Program General Viewshed.)⁷ All development within this viewshed “must harmonize [with] and be clearly subordinate to the natural scenic character of the area.” (LUP §§ 2.2.2, 2.2.3.3, 2.2.3.4, 2.2.3.6; CIP § 20.146.030.C.1 and C.4.) Existing visual access from scenic viewing corridors and major public view points “shall be permanently protected” for visitors and residents alike. (CIP § 20.146.130.E.5.e; *see also* LUP § 5.3.3.4.c [specifying that structures and landscaping placed on land on the west side of Highway 1 “shall be sited and designed to retain public views of the shoreline from Highway 1 and roads seaward of the Highway.”].)

Specifically, new development “within the public viewshed shall be sited within existing forested areas or in areas where existing topography can ensure that structures and roads will not be visible.” (CIP § 20.146.030.C.4 [emphasis added]; *accord*, LUP § 2.2.3.3.) CIP Section 20.146.120.A.1 further specifies that new development south of the Carmel River shall be permitted only if various criteria can be “fully met,” including that the structure is located outside the public viewshed.

Additionally, structures must be located and designed to minimize tree removal and grading for the building site and access road. (LUP § 2.2.3.7.) LUP Section 2.2.4.10.e states that “[e]xisting trees and other native vegetation should be retained to the maximum extent possible both during the construction process and after the development is completed.”] [emphasis added].)

Modification of plans, including siting, shall be required to comply with the above visual policies. (LUP § 2.2.3.6.) “The height and bulk of buildings shall be modified as necessary to protect the viewshed.” (CIP § 20.146.030.C.1.)

The MND acknowledges that the Project is visible from motorists on Highway 1 and the scenic overlook/vista point. (MND, pp. 22, 26 [Figure 8], 27 [Figure 9], and 28.) The MND claims that there is no significant aesthetic impact because, among others, the structure will be screened by the planting of 3 new trees and because other development is visible. (MND, pp. 22, 27.) But the LUP requires that new development not be visible under existing conditions. (LUP § 2.2.3.3.; CIP § 20.146.030.C.4.) The Project plainly does not comply with these policies.⁸

The MND also states that the removal of 7 trees (including 4 landmark Monterey Cypress trees) is not significant because they are not visible from the highway. That is not shown by any visual simulations in the MND. Coastal Commission Staff expressed concern that removal of

⁷ (*See also* CIP § 20.146.020.Z [defining “public viewshed” as “those areas visible from major public viewing areas such as . . . Highway 1 Corridor and turn-outs . . .”].)

⁸ Also, it is not clear whether these simulations represent the current proposed Project plans or were based on prior Project plans for which staking and flagging was done. If they do not represent current Project plans, new simulations based on new staking and flagging need to be conducted and the MND needs to be recirculated for review and comment. (CIP § 20.146.030.A.1.)

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the trees would exacerbate impacts from the public viewshed. (See October 24, 2022 email from Breylen Ammen to Philip Angelo.) Photos of the trees to be removed to accommodate the western extension of the home extending over the steep, descending coastal bluff are attached hereto as Exhibit E.

In accordance with LUP Section 2.2.4.10.e, existing trees are to be “retained to the maximum extent possible . . .” If the Project building footprint were shifted landward to the east (i.e., where a courtyard is currently planned) and onto the geologically feasible building envelope, as urged by Coastal Commission Staff, it would avoid removal of all Monterey Cypress and Monterey Pine trees. (See Project Plans, Sheet A-1.1.) For instance, in her October 14, 2021 email to County Staff, Coastal Planner Alexandra McCoy recommends that “the structure be sited towards highway 1 as much as possible . . . and that existing trees be retained as much as possible and that the property be landscaped with native, non-invasive plants such that they would screen the development from the highway and adjacent overlook.”

b. Biological Resources

The MND acknowledges that removal of 5 Monterey Cypress trees and 1 Monterey pine tree, which are special-status species, would be a significant environmental impact. (MND, p. 38.) The MND similarly concludes that the Project would result in substantial adverse effects to nesting bird species. (*Id.*) The MND states that these impacts are not significant due to conditions of approval that will be imposed later. (*Id.*)

After acknowledging significant impacts, the MND was required to include binding, enforceable mitigation measures detailing how the impacts would be reduced to a less than significant level. (Pub. Resources Code §§ 21002, 21064.5; CEQA Guidelines §§ 15070, 15071.) The MND lacks such information and fails to comply with CEQA. At minimum, the MND must be recirculated with the mitigation measures clearly specified and included for public review. (CEQA Guidelines § 15073.5.)

Further, as noted above, removal of the special status Monterey Cypress and Monterey Pine trees can be avoided. Thus, the Project fails to comply with relevant policies of the LCP. (See LUP § 2.2.4.10.e [“Existing trees and other native vegetation should be retained to the maximum extent possible both during the construction process and after the development is completed.”] and CIP § 20.146.030.D.1 [prohibits the removal of landmark trees, except where a finding can be made that no alternatives exist where the tree removal can be avoided].) Four of the Monterey Cypress are landmark trees. It appears that removal of all these protected trees can be avoided by shifting the building footprint to the east, on to the geologically feasible building envelope. Thus, alternative do exist where tree removal can be avoided.

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c. Cultural Resources

The MND acknowledges that the proposed Project sewer line traverses a mapped archaeological resource. (MND, p. 43.) The resource is comprised of a large precontact shell midden measuring approximately 75 by 32 meters. (*Id.*) The resource is a possible late period coastal gathering site. (*Id.*)

The MND acknowledges that the Project may result in a significant impact to this unique archaeological resource. (MND, pp. 45-46.) In response, Mitigation Measure CUL-4 requires that a qualified archaeologist prepare an archeological mitigation plan. The goals of the plan are to, “avoid disturbance of resources to the extent feasible, document any unique archaeological resources which would be directly impacted by construction activities, and ensure that the recommendations of the Tribal Cultural Monitor are considered.” (MND, p. 49.) Avoidance shall be considered infeasible “if re-design would preclude developing the site with a single-family residence and associated utilities entirely, or result in a reduction of square footage of 10% of the single-family dwelling and attached garage.” (MND, p. 50.)

Mitigation Measure CUL-4 conflicts with CIP Section 20.146.090.D.3 which requires that the Project “avoid impacts” to archeological resources. Mitigation Measure CUL-4 also fails to comply with CEQA. CEQA Guidelines Section 15126.4 prohibits the deferral of mitigation measures. The only exceptions are when it is not practical or feasible to include those details during the project’s CEQA review and the agency (1) commits itself to the mitigation, (2) adopts the specific performance standards the mitigation will achieve, and (3) identifies the type(s) of potential action(s) that can feasibly achieve that performance standard. Here, the MND does not explain how or why it is not practical/feasible to prepare the archaeological mitigation plan now. Further, Mitigation Measure CUL-4 lacks specific performance standards and fails to specify the actions that would achieve any such standard. In a substantially similar case, the First Appellate District ruled that a mitigation measure that required avoiding an impact to the extent feasible without restricting development potential failed to comply with CEQA’s requirement for a clear, objective performance standard. (*East Oakland Stadium Alliance v. City of Oakland* (2023) 89 Cal.App.5th 1226, 1274.)

Mitigation Measure CUL-2 requires an archaeological monitor for any earthwork within 50 feet of the unique archaeological resource. (MND, p. 47.) But the MND later states that the exact location of this resource is not known, and the County did not require further sub-surface investigations despite requests from tribal representative to do so. (MND, pp. 96, 86.) Thus, there is no assurance that this mitigation will avoid or minimize the impact, as stated and as required by CEQA.

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d. Geology

The Project's potentially significant impacts to geology and soils are detailed in Section 2, *supra*.

e. Greenhouse Gas Emissions

Contrary to CEQA Guidelines Section 15064.4 and controlling case law, the MND fails to quantify the Project's greenhouse gas emissions or rely on a qualitative analysis or performance based standards. (*Mission Bay Alliance v. Office of Community Investment & Infrastructure* (2016) 6 Cal.App.5th 160.) While the impacts are likely less than significant, the required analysis still must be performed.

f. Hazards

As yet another example of the extremely constrained nature of the site, the MND notes that the Project includes an emergency fire access stairway along the eastern property line parallel to Highway 1 to allow emergency evacuation or secondary access to the site for emergency responders. (MND, pp. 64, 82) The MND fails to explain how a staircase would serve as a functional secondary access to the site for emergency responders. The MND also states that a fire originating upslope would likely travel east to west and away from the Project site. (MND, pp. 65, 95.) It is unclear why this is or would be the case.

g. Hydrology

The Project adds 8,435 square feet of impervious surfaces to the Project site. (MND, p. 68.) As noted previously, the MND contains no detailed description or analysis of the Project's storm drain system. Yet, the MND claims that it "would capture runoff from structures and impervious surfaces in catch basins it toward [sic] dispersion trenches where water would infiltrate into the soil." (MND, p. 68.) On page 89, the MND states the dispersion trenches would be located along the western property line, where captured runoff would percolate into the ground. The western property line is the steep, eroding cliff bluff. Contrary to the MND's findings, this system would likely result in significant, unmitigated impacts to erosion and flooding.

h. Land use

The Property is located between Highway 1 and the Pacific Ocean. Key policies in the LCP emphasize protection of visual resources and minimizing risks associated with geologic hazards. As detailed above, there is a fair argument that the Project conflicts with policies in the LCP that were adopted for the purpose of avoiding or mitigating an environmental impact. As

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such, an EIR is needed. (*Cf. Pocket Protectors v. City of Sacramento* (2004) 124 Cal.App.4th 903 [EIR required due to fair argument of significant impacts related to project’s inconsistency with specified land use policies].) Additionally, the Project, as currently designed cannot be approved because it is inconsistent with the LCP. (LUP § 6.2.1.B; Pub. Res. Code § 30603(b).)

i. Noise

The MND states that construction would be allowed on Saturdays, which is not requested in the applicant’s construction management plan. (MND, p. 76.) Please confirm that these extended construction hours comply with County Code.

In its comments on the Project application, County Staff registered concerns about the Project’s deep piers causing major groundborne vibration. But there is no analysis of the vibration impacts in the MND on neighboring properties, including Owner’s property, even though the Project proposes to use the access road immediately adjacent to said property and requests a variance to install Project improvements within 2 feet of the shared property line. The MND states without analysis that “it is not anticipated that localized vibration would be excessive, as the project would utilize standard construction equipment” and vibration would attenuate with distance. (MND, p. 77.) The MND lacks substantial evidence to support this conclusion, and, at minimum, must be revised and recirculated to address it.

j. Tribal Cultural Resources

Despite the very high likelihood of impacts to tribal cultural resources, and the request by tribal representatives to conduct additional sub-surface investigations, the Project applicant was not required to do so. (MND, p. 87.) Under applicable case law, the failure to conduct such studies necessitates preparation for an EIR. (*Save Agoura Cornell Knoll v. City of Agoura Hills* (2020) 46 Cal.App.5th 665, 702 [EIR required where agency fails to gather information and undertake an adequate environmental analysis in its initial study].)

4. Findings for the necessary Project variance would not be supported by substantial evidence.

According to County Staff, the Property has two front setbacks—one from the Highway 1 right-of-way and the other from the southern property line bordering Owner’s property. The required front setbacks are 30 feet. (Monterey County Zoning Code [“MCZC”] § 20.14.060.C.1.) The Project request variances to allow a 20 foot setback from Highway 1 and a 2 foot setback from Owner’s property. (MND, p. 14.) The County could not justify granting such an immense variance from the setback required to Owner’s property.

A variance can be granted only if the following findings can be made: (1) because of

Philip Angelo
August 12, 2024
Page 13

special circumstances applicable to the subject property, including size, shape, topography, location or surroundings, the strict application of the County Zoning Code is found to deprive the subject property of privileges enjoyed by other properties in the vicinity and under identical zone classification, (2) the variance does not constitute a grant of special privileges inconsistent with the limitations upon other property in the vicinity and zone in which such property is located, and (3) the use or activity is expressly authorized by the zoning regulations governing the parcel of property. (MCZC § 20.78.040; *see also* Government Code § 65906 [“Variances from the terms of [a] zoning ordinance[] shall be granted only when, because of special circumstances applicable to the property, including size, shape, topography, location or surroundings, the strict application of the zoning ordinance deprives such property of privileges enjoyed by other property in the vicinity and under identical classifications.”].)

No substantial evidence would support findings for such an enormous variance of the front yard setback to Owner’s property. (Code of Civil Procedure § 1094.5(b); *see also Topanga Association for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506, 522 and *Lucas Valley Homeowners Association v. County of Marin* (1991) 233 Cal.App.3d 130, 142.)

First, the Property’s location, size, shape, topography, and/or other physical conditions do not vary substantially from those of other parcels in the same zoning district or vicinity such that special circumstances exist. A pad conforming to the setbacks was previously installed on the site, and there is no reason why the Project cannot be developed in accordance with the controlling setback from the southern property line. Courts have overturned an agency’s granting of a variance in similar circumstances when there has been no showing that the property differs substantially from other parcels in the zoning district. (*See, e.g., Topanga Association for a Scenic Community, supra*, 11 Cal.3d at 522; *Orinda Association v. Board of Supervisors* (1986) 182 Cal.App.3d 1145, 1166; and *PMI Mortgage Ins. Co. v. City of Pacific Grove* (1981) 128 Cal.App.3d 724, 731.)

As noted by the First District Court of Appeal in *Orinda Association, supra*, 186 Cal.App.3d at 1166, “the desirability of the proposed development, the attractiveness of its design, the benefits to the community, or the economic difficulties of developing the property in conformance with the zoning regulations, lack legal significance and are simply irrelevant to the controlling issue of whether strict application of zoning rules would prevent the would-be developer from utilizing his or her property to the same extent as other property owners in the same zoning district.” [Emphasis added; *accord, Broadway, Laguna, Valley Association v. Board of Permit Appeals* (1967) 66 Cal.2d 767, 775; *Hamilton v. Board of Supervisors of Santa Barbara County* (1969) 269 Cal.App.2d 64, 67; and *Stolman v. City of Los Angeles* (2003) 114 Cal.App.4th 916, 926.)

The Project applicant purchased the Property in 2020, after enactment of the LDR/1-D(CZ) zoning regulations. The applicant knew or should have known of the key limitations on development, including front yard setbacks. Self-induced hardship, as is the case here, is not a sufficient basis on which to grant a variance. (*See, e.g., Broadway, Laguna, Valley Association,*

Philip Angelo
August 12, 2024
Page 14

supra; *San Marino v. Roman Catholic Archbishop* (1960) 180 Cal.App.2d 657; *Minney v. Azusa* (1958) 164 Cal.App.2d 12; and *Town of Atherton v. Templeton* (1961) 198 Cal.App.2d 146.)

Second, contrary to state and local law, the Project would grant the Project applicant special privileges that are inconsistent with the restrictions placed on other parcels in the same zoning district or vicinity. (MCZC § 20.78.040; Government Code § 65906 [“Any variance granted shall be subject to such conditions as will assure that the adjustment thereby authorized shall not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and zone in which such property is situated.”].) Based on a survey of surrounding lots, including Owner’s property, they all comply with applicable front yard setbacks. Approval of the Project thus would grant the Applicant special privileges inconsistent with other properties in the area.

Third, while the Project home is allowed by zoning, there is no indication that the multiple retaining walls (including the nearly 21 foot one adjacent to Highway 1), are allowed in the LDR-1D (CZ) zone. (MCZC § 20.14.040.)

In short, the County’s approval of the Project would violate both state and local law. The Project requires a major variance from the setback required to Owner’s property. No substantial evidence would support granting such a variance. (*See, e.g., Topanga Association for a Scenic Community, supra*, 11 Cal.3d at 522 [California Supreme Court overturns variances for nonconforming mobile home park development reasoning that the approvals would “radically alter” the nature of the zone and noting that such changes were a “proper subject for legislation, not piecemeal administrative regulations.”].)

5. As currently designed, the Project cannot be approved as it is not the least environmentally damaging alternative in regard to views and geologic hazards.

The minimum building site in the LDR-1 zone is one acre. (CIP § 20.14.060.A.) At 0.63 acre, the Property is a substandard (or nonconforming) lot.

MCZC Section 20.02.060.B allows the County to grant an exception to allow for development on substandard lots if it finds that the strict application of the area land use policies or development standards denies all reasonable use of the subject property. The exception may be granted only if the County determines that: (1) the parcel is otherwise undevelopable due to specific policies of the applicable land use plan and development standards of the ordinance, (2) the grant of a CDP would not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and land use designation in which the property is located, (3) “any development being approved is the least environmentally damaging alternative project,” and (4) any development being approved is an allowable use and “shall be appealable to the California Coastal Commission.” (MCZC § 20.02.060.B.)

Philip Angelo
August 12, 2024
Page 15

In order to make Finding 3, “the development shall be required to minimize development of structures and impervious surfaces to the amount needed to reduce environmental impacts to the greatest extent possible and shall be required to locate the development on the least environmentally sensitive portion of the parcel.” (*Id.*)

As noted above, the Project is currently proposed to be situated in a geological hazard area, infringing on a key coastal viewshed area, and resulting in the removal of 6 special status tree species, including 4 landmark Monterey Cypress trees. The Project could be moved landward to avoid all of these impacts. As such, the Project is not being located on the least environmentally sensitive portion of the parcel.

Further, as noted above, there is no indication that the multiple retaining walls (including the nearly 21 foot one adjacent to Highway 1), are allowed in the LDR-1D (CZ) zone. (MCZC § 20.14.040.)

In short, as currently proposed, the County could not make the findings to grant an exception for development on this substandard lot.

Thank you for your consideration of our client’s views on this important matter. Please add the undersigned to the list of interested parties to receive any and all future notice(s) regarding the Project. Please do not hesitate to contact me with any questions regarding this correspondence.

Sincerely,

RUTAN & TUCKER, LLP



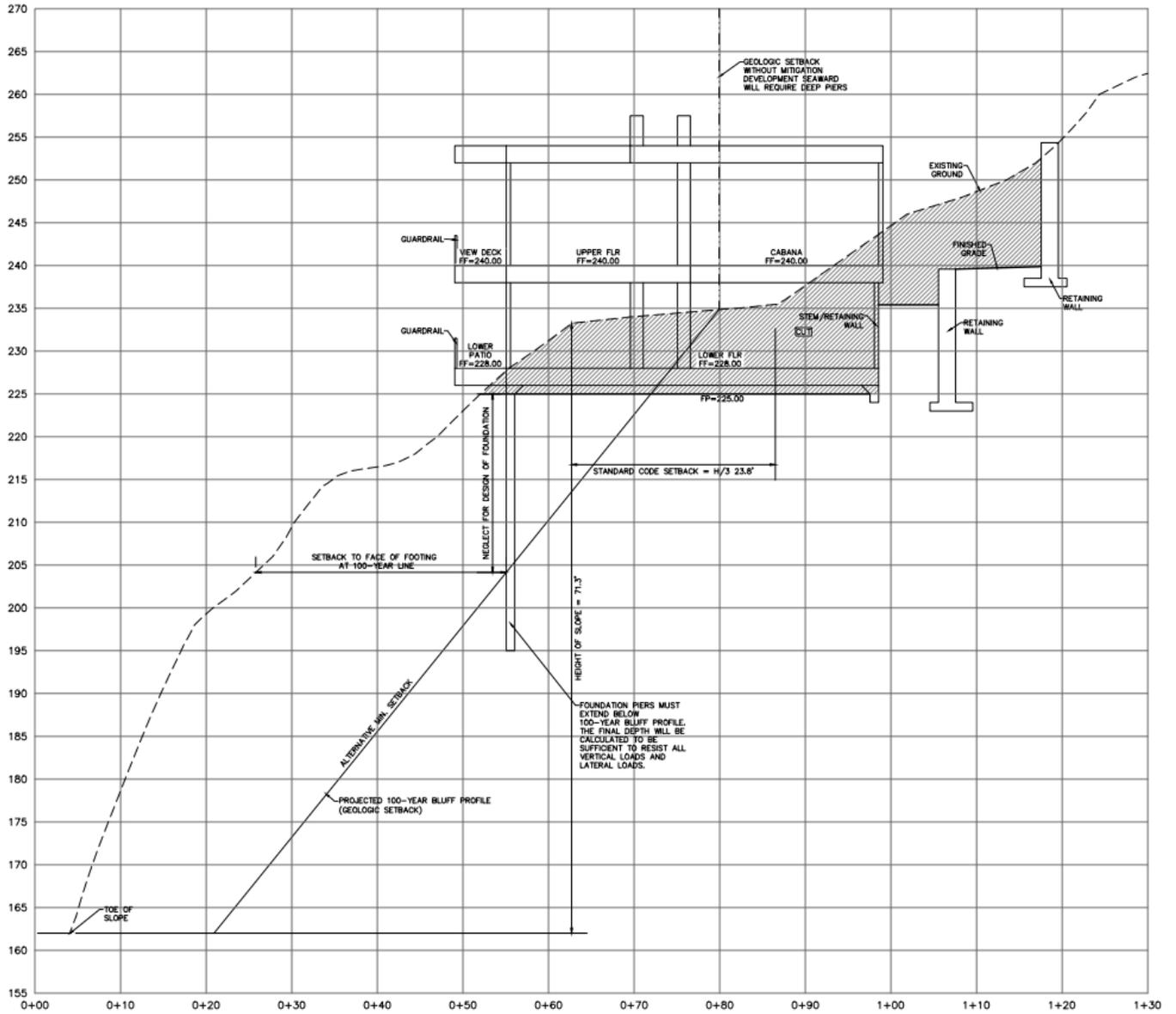
Matthew D. Francois

MDF:bb

cc: Client (*via email*)
Breylen Ammen, Coastal Program Analyst, California Coastal Commission (*via email*)
Katie Butler, District Supervisor, California Coastal Commission (*via email*)
Alan Kwong, California Department of Transportation, District 5 (*via email*)

EXHIBIT A

Figure 5 Project Elevation Profile



Source: IX.39

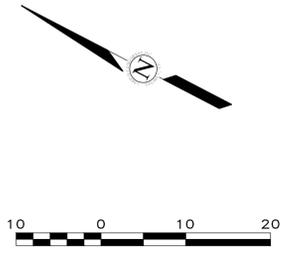
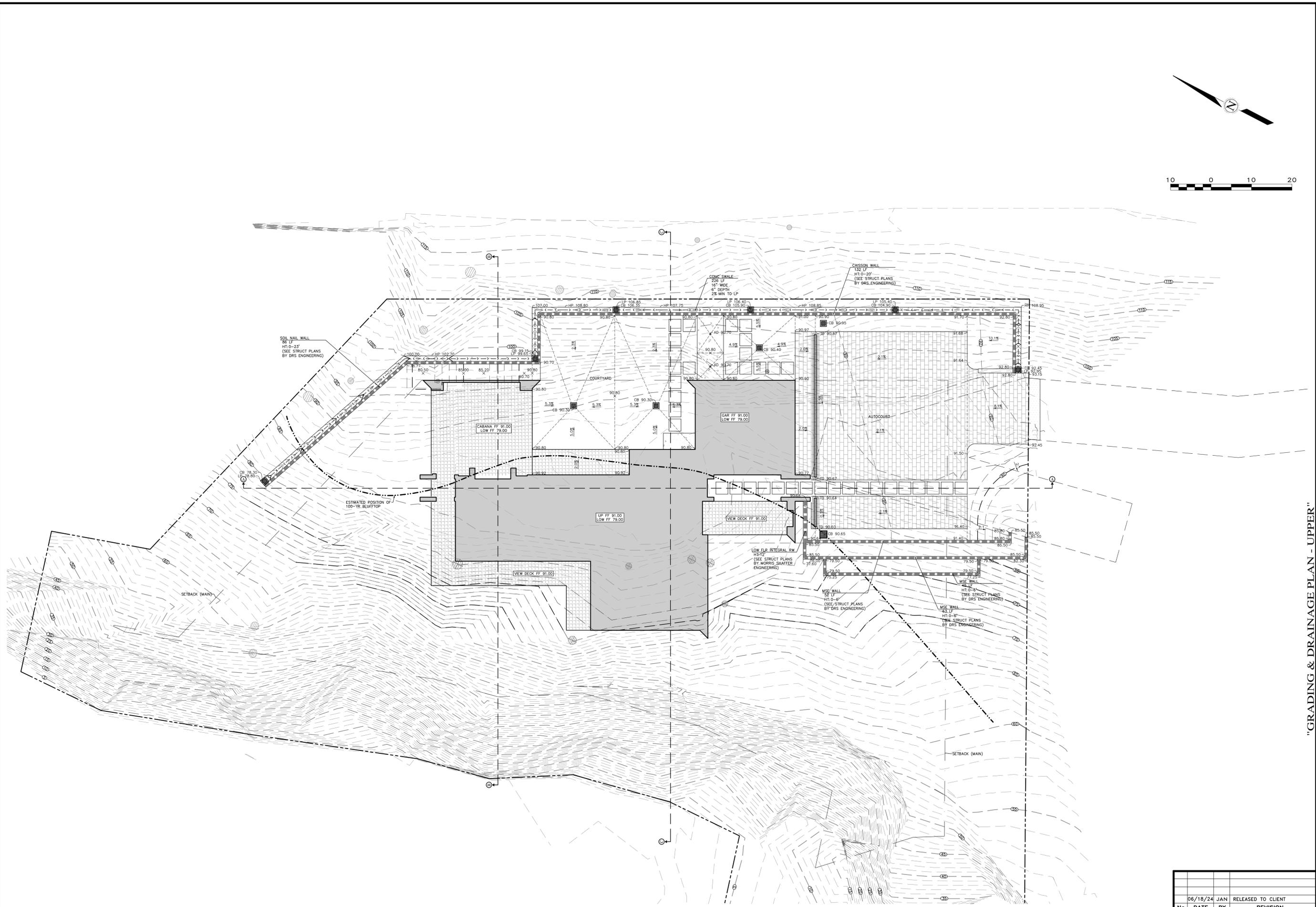
EXHIBIT B

A1) Easement access to property



<https://photos.app.goo.gl/fJf5c9B9pYet2PDZ9>

EXHIBIT C



APPROVED BY:
GUY R. GIRARDO



"GRADING & DRAINAGE PLAN - UPPER"
 GRADING, DRAINAGE, & EROSION CONTROL PLAN
 OF
 THE JOHNSON RESIDENCE
 A.P.N.: 241-182-003
 CARMEL, CALIFORNIA
 HAL & ALLISON JOHNSON

SCALE: 1" = 10'
 DATE: JUN 2024
 JOB NO. 2288-01

No.	DATE	BY	REVISION

SHEET **C3**
 OF 10 SHEETS



APPROVED BY:

GUY R. GIRAUDO



"GRADING & DRAINAGE PLAN - LOWER"
GRADING, DRAINAGE, & EROSION CONTROL PLAN
OF
THE JOHNSON RESIDENCE
A.P.N.: 241-182-003
CARMEL, CALIFORNIA
HAL & ALLISON JOHNSON

SCALE: 1" = 10'
DATE: JUN 2024
JOB NO. 2288-01

SHEET C4
OF 10 SHEETS

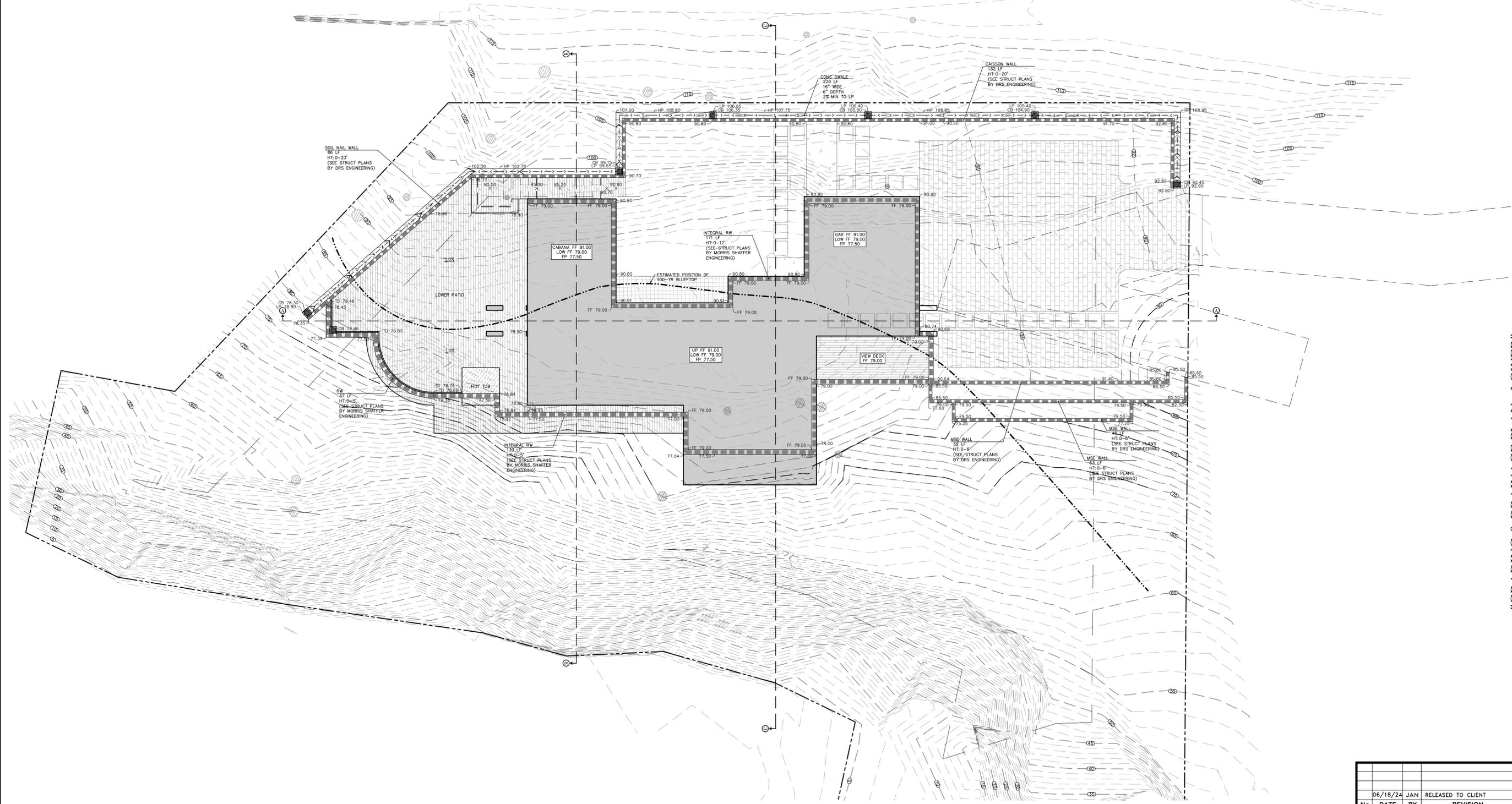
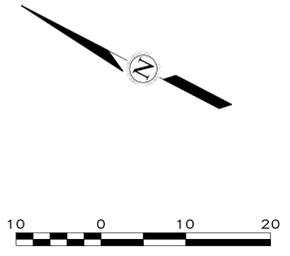


EXHIBIT D

C2) 255 Highway 1 Carmel, CA - Cliff washing out across driveway



C3) 255 Highway 1 Carmel, CA - Cliff washing out across driveway



C4) 255 Highway 1 Carmel, CA - Cliff washing out across driveway



C5) 255 Highway 1 Carmel, CA - Cliff washing out across driveway



C6) 255 Highway 1 Carmel, CA - Cliff washing out across driveway



EXHIBIT E

D1) Cypress to be removed unnecessarily for westward outcropping of house...



<https://photos.app.goo.gl/8Citr1ZK4dGG8kwH6>

D2) Cypress to be removed unnecessarily for westward outcropping of house...



From: [Heide Cortopassi](#)
To: [Angelo, Philip](#)
Subject: Re: PLN210061-JOHNSON (226 Highway 1) - Notice Distribution
Date: Tuesday, July 9, 2024 3:05:59 PM
Attachments: [image001.png](#)

Additional Heide
Cortopassi
Comments
-HCD-Planning

[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.]

Thank You for the information. I am against this project. It is too big for the buildable foot print. It is modern and not appropriate for the public view shed. The healthy cypress that support the cliff are being removed! Where have the rules and mitigations gone? Why are you looking the other way? Heide Cortopassi

On Tue, Jul 9, 2024 at 11:13 AM Angelo, Philip <AngeloP@countyofmonterey.gov> wrote:

Hi Heide,

We're getting ready to circulate an Initial Study we've prepared for the proposed residence at 226 Highway . I have your email address for the distribution list, but was there also a mailing address you'd like us to include?

I've also attached the most current project plans.

Best Regards,



Phil Angelo (*he/him*)

Senior Planner (Working out of Class)

Housing and Community Development

[1441 Schilling Place](#) South 2nd Floor, Salinas, CA
93901

Direct: (831) 784-5731

AngeloP@countyofmonterey.gov

From: [Angelo, Philip](#)
To: [Angelo, Philip](#)
Subject: RE: Carmel Highlands New Construction 244 Hwy 1 #3
Date: Friday, October 22, 2021 9:47:27 AM

Original Heide
Cortopassi
Comments
-HCD-Planning

From: Heide Cortopassi <heidecorto@gmail.com>
Sent: Sunday, August 29, 2021 4:35 PM
To: Angelo, Philip <AngeloP@co.monterey.ca.us>
Subject: Carmel Highlands New Construction 244 Hwy 1 #3

[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.]

Hello and Good Afternoon Mr. Angelo,

My name is Heide Cortopassi and I own the property across the cove from the proposed new construction site that was recently flagged. I am reaching out to you as it is my understanding you are the planner that has been assigned to this project (244 Hwy 1 #3) and I would like to express my concerns and also go on record so that you are well aware of the magnitude of the ongoing erosion that is happening in this cove! I was truly amazed at the audacity of the new property owners living in Texas and making it known they would not be paying any taxes in California. Furthermore, they have not responded to my written requests to carefully remove the multitude of guide wires they have had secured around a young cypress tree on my property and more wires strung across the cove anchoring a stake again into my property. It is obnoxious, it is reckless considering the instability of this area and it is presumptuous to not ask permission!

This proposed project seems to be moving at lightening speed when I think about all of the hurdles and hoops I had to jump through to obtain a building permit. I do hope the rules and regulations are applied and enforced equally Mr. Angelo and I appreciate the opportunity to share my concerns. Thank You!

The flagging suggests this home is too large for the lot. It would suggest a large two story portion of the home is perched at the edge of the cliff and directly above decomposing granite. A large cypress stump would need to be removed if this footprint is allowed and that root system would cause slides of earth and brush into the cove as has been happening over the past several years and is providing a pretty reliable pattern for this area. So given this information I think it is safe to assume this structure would need to be anchored under the Highway. At what point Mr. Angelo does anybody with the authority to protect this area have a backbone and say "It can't be done" ?

I met the Forester, Mr. Frank Ono, who was hired by the property owners and the architect and I was concerned when he said he was asked to assess the Coastal Cypress and provide a report that would support the removal of the trees! Why? Because they need to be pruned? They are full of new growth and they are not diseased or dying, so why is it that it would be acceptable to remove protected trees and not think twice about what happens to the earth on the slope where the trees grow? These Coastal Cypress are majestic. They are part of the beauty that defines this area and I do believe they are protected when they are of this large size.

Lastly, this proposed project is clearly visible from Hwy 1, the ocean and neighboring homes and I am concerned seeing the proposed home is constructed largely of glass, how will the light pollution be dealt with? There are no uplights allowed in this area, so how do they plan on keeping the lights from shining out of this glass house? Something about a dark sky rule.

Mr. Angelo, my apology to you if my email is heated and thank you for allowing me the opportunity to voice my concerns.

Heide Cortopassi

[831-293-4178](tel:831-293-4178)

Additional Jenny
Breitenwischer
Comments
-HCD-Planning

From: Jenny Breitenwischer <breitenj@hotmail.com>
Sent: Tuesday, July 9, 2024 11:44 AM
To: Angelo, Philip <AngeloP@countyofmonterey.gov>
Subject: Re: Concerns over APP#210391/APN 241182003000

[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.]

Hello Philip

Thank you for sending this over. I have since sold my home next door to this proposed home but was forced to sell it at a fraction of the valued price because of the threat of the overdevelopment of this project. All of the points in my original email are still true and valid.

We had a years long lawsuit with every property on that private drive over the road eroding and it was a nightmare. Allowing this type of home and the construction will only further the erosion of the already fragile cove. I know I'm not a homeowner there anymore, but I've passed this onto a coup of my former neighbors who I still keep in touch with. I'm sure you'll be hearing from them regarding this.

Thank you for sending this over to me and remembering my concerns.

Jenny

Get [Outlook for iOS](#)

From: Angelo, Philip <AngeloP@countyofmonterey.gov>
Sent: Tuesday, July 9, 2024 11:27 AM
To: Jenny Breitenwischer <breitenj@hotmail.com>
Subject: RE: Concerns over APP#210391/APN 241182003000

Good Morning Jenny,

It's been a number of years but I wanted to reach out as the County as getting ready to finalize an Initial Study for this project and publicly circulate it. I have your email but is there a mailing address you'd like us to include in the interested parties / distribution list for the project?

I've also attached the most current set of project plans.

Best Regards,



Phil Angelo (*he/him*)
Senior Planner (Working out of Class)
Housing and Community Development
1441 Schilling Place South 2nd Floor, Salinas, CA 93901
Direct: (831) 784-5731
AngeloP@countyofmonterey.gov

From: [Jenny Breitenwischer](#)
To: [Angelo, Philip](#)
Subject: Concerns over APP#210391/APN 241182003000
Date: Wednesday, August 25, 2021 1:58:48 PM

Original Jenny
Breitenwischer
Comments
-HCD-Planning

[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.]

Hello Mr. Angelo

I am the neighbor next door to the project you have assigned to you under the above information and with the address 244 Hwy 1 #3 Carmel. The property had flags put up last Friday and what I saw was shocking! Just the size and height alone are very worrying given the condition of the cove. I have a number of concerns about this project being next door to me.

1. The projected size of the home is 3876 square feet, 2 stories plus the 1,372 spare foot garage on such a small building footprint. The home is far too big for the allotted space.
2. The impact that the size of this home will have on our shared 3 property well system. I am aware that the neighbors on the other side of me have also applied for a building permit. This home's potential size of water usage could drain our well.
3. The proposed removal of obviously healthy and protected cypress trees. Yes, they need to be trimmed but they should not be removed. We had them trimmed a couple of years ago with permission from the former property owner so I know there is nothing wrong with them. Believe me, if there was something wrong with them, we would have paid to remove them because it would give our property a much better view!
4. The removal of the protected cypress trees and their root systems will cause more erosion on the same cove that is eroding in 2 other areas. There is also erosion off of the other side of the cove on our private one lane road.
5. The existing erosion in the 2 different spots on that same cove has resulted in a neighborhood lawsuit. 2 neighbors are suing the other 8 over the repairs of the erosion. It could be years until those 2 eroded parts of the cove are fixed and now we want to propose something that we know will cause MORE erosion? We are maxed out on space on our tiny one lane road.
6. The development on an into the cove at least 10 feet below the top of the cove will cause significant environmental impact
7. The cove setback is not being followed
8. I completed the construction on my home in 2014. My architects and builders had to follow very strict rules surrounding cypress tree protection and proximity to the cove, despite the fact that my property line wasn't even that close to the edge of the cove. The proposed plans for this home do not follow any of those same rules from Monterey County or the Coastal Commission. If I had to adhere to those rules, then so should this project. We all should be subject to the same set of rules when building.
9. This project "seems" to be moving mysteriously quickly though the permitting process, especially during COVID and all of the delays that I know are happening in the county. I have "heard" that it is because Eric Miller is the architect and "he has the ability to get projects though planning quickly". I would hate to think that who you hire as an architect and who you hire as an arborist to write tree reports gives you preferential treatment with the county. I have another building permit that was submitted through the county in January of 2020 and it still (though no fault of mine) is not approved!

I just wanted to officially go on record with my concerns to you. I would appreciate it if you could reply back to this email to let me know that you've received it. I also will be sending a separate email containing the photos I took to show you how massive this proposed house looks. Feel free to reach out to me at any time also.

Thank you,
Jennifer Breitenwischer
Cell (423)231-2334

Sent from my iPad

From: [Dennis Chambers](#)
To: [Angelo, Phillip](#); [Heide Cortopassi](#)
Subject: Re: Carmel Highlands New Construction 244 Hwy 1 #3
Date: Saturday, October 22, 2022 11:29:58 AM
Attachments: [image001.png](#)

Additional Dennis
Chamber
Comments
-HCD-Planning

[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.]

Philip, we are a bit concerned that this project is going to remove many of the trees on the cliff edge. They evidently hired an Arborist that is known for writing up whatever you want written. Those trees holed up the hill side which is loose soil and stones at least 12' deep. We are concerned that runoff will do irreparable damage. Trimming up the trees, fine, but removal, that is not smart. d

Dennis Chambers Inc.
License # 475577
Mobile: 408-605-6760
225 Crossroads Blvd. Suite 378
Carmel, CA 93923
dennis-chambers@outlook.com

From: [Angelo, Philip](#)
To: [Angelo, Philip](#)
Subject: RE: Ref. The Carmel Highlands
Date: Friday, October 22, 2021 9:49:33 AM

Original Dennis
Chamber
Comments
-HCD-Planning

From: Dennis Chambers <dennis-chambers@outlook.com>
Sent: Saturday, August 28, 2021 11:49 AM
To: Angelo, Philip <AngeloP@co.monterey.ca.us>
Subject: Ref. The Carmel Highlands

[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.]

Mr. Angelo, we live in the Carmel Highlands. A new ground up home is under design in our neighborhood, and I believe in your care as a planner. It's located below the Highlands Inn and on a 35' cliff. The parcel number is 241-182-003, the Johnson property.

Two humble comments: 1. The story poles are incredible close to a very unstable cliff. You need to come out and see this. 2. We understand the cypress trees to the north of the home site are to be removed, not trimmed. The entire northern portion of cliff is held together by the roots of those trees. The trees need trimming, yes, but removal, the arborist in question is badly distorting the truth.

Sincerely yours, Dennis Chambers, 258 Hwy One, Carmel Highlands

Dennis Chambers
Mobile: 408-605-6760
dennis-chambers@outlook.com

From: Ammen.Breylen@Coastal
To: Angelo.Philip
Cc: Butler.Katie@Coastal
Subject: Comments for PLN210061 (Johnson)
Date: Monday, October 24, 2022 3:09:35 PM
Attachments: [image001.png](#)

Additional Coastal
Commission Staff
Comments
-HCD-Planning

[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.]

Hi Phil,

We have reviewed the information available for this project in greater detail and have significant concerns about the suitability of this site for residential development, primarily given that the majority of the parcel consists of slopes greater than 30%. Several of the concerns in Alexandra McCoy's past comments on this project remain, and we have new concerns as well.

- 1. Scenic Views.** The proposed project location is in a public viewshed as it is located between Highway 1 and the Pacific Ocean and is also directly visible from a popular pull-out overlook at the north of the site. The staking and flagging images do not show the view from this lookout; however, the proposed removal of 8 trees, as shown in the plans, raises concerns about a loss in existing screening at the site. CIP Section 20.146.030.C.4 requires that new development in the Carmel Highlands must be carefully sited and designed to minimize visibility, and that development within the public viewshed "shall be sited within existing forested areas or in areas where existing topography can ensure that structures and roads will not be visible." Also, please note that CIP Section 20.146.120.A.6 requires that as a condition of approval for new development, all areas of a parcel in slopes of 30% and greater must be placed under scenic easement.
- 2. Coastal hazards.** The development is proposed largely on 30% slopes and adjacent to a steep descending coastal bluff in a high erosion hazard area. Carmel Land Use Plan (CLUP) policy 2.7.3.1 states (in part) "All development shall be sited and designed to minimize risk from geologic, flood, or fire hazards. Areas of a parcel which are subject to high hazard(s) shall generally be considered unsuitable for development..." The removal of 8 trees from the site raises further concerns about the stability of the blufftop. Recently, a landslide occurred on the adjacent lot after unpermitted tree removal. The highly hazardous nature of the parcel raises significant concerns about the safety of the parcel for residential development. Additionally, the Carmel LUP and CIP restrict development on 30% slopes. While parcels in the Carmel Highlands may be exempted from these requirements, in this case due to the highly hazardous nature of the parcel, it does not appear appropriate to allow the proposed amount of construction on 30% slopes.
- 3. Sewer Service.** Section 20.146.120.A.1.f of the Carmel Coastal Implementation Plan requires that new development has adequate sewer service. The parcel is not currently within the jurisdiction of the Carmel Area Wastewater District (CAWD). We understand that CAWD issued an intent to serve letter; however, the annexation of this parcel into the CAWD service area has not been approved by the Commission. We are currently reviewing CAWD's application to annex this (and other) parcels, including how such annexation would facilitate development on existing undeveloped parcels. It appears that, given the issues with the site as described above and in our previous comments, the parcel is largely inappropriate for the intensity of development proposed, and such development would not meet the overarching Carmel LUP Key Policy which requires all future development to be "clearly consistent with and subordinate to the foremost priority of protecting the area's scenic beauty and natural resource values."

Sincerely,

Breylen Ammen

Coastal Planner | Monterey County

CALIFORNIA COASTAL COMMISSION

725 Front Street, Suite 300

Santa Cruz, CA 95060

(831) 427-4863

From: [McCoy, Alexandra@Coastal](mailto:McCoy.Alexandra@Coastal)
To: [Angelo, Philip](#)
Subject: Re: PLN210061-JOHNSON - Monterey County Planning Application
Date: Thursday, October 14, 2021 12:11:12 PM
Attachments: [image001.png](#)
[image002.png](#)

Original Coastal
Commission Staff
Comments
-HCD-Planning

[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.]

Hello Angelo,

We reviewed the documents available on Accella for application number PLN210061 as well as other public databases and have the following comments:

- 1. Parcel Size and Boundaries.** The topographic survey dated June 2020 on Sheet 1 of 1 on the project plans states that the calculated lot area is 30,580 square feet or 0.70 acres. However, surveyors note A on the sheet states that “the legal description of the parcel lacks bearing and distances for the westerly line (along the Pacific Ocean). Therefore, the westerly line location is approximate as is the calculated lot area.” This has two implications that we recommend be investigated further at this early stage in the permitting process; the actual location of the westerly line and the actual lot area. Based on images of the project site seen on the sheet, the approximate location of the westerly line is past the mean high tide line. Further, publicly available online records indicate that the parcel (APN PN 241-182-003-000) size is 23,805 square feet. Thus, the County must verify the actual lot area of the parcel as well as the location of the westerly line (due to their implications on other site development standards such as FAR, setbacks, ect).
- 2. Coastal Hazards.** The development is proposed adjacent to a steep descending coastal bluff in a high erosion hazard area. Carmel Land Use Plan (CLUP) policy 2.7.3.1 states (in part) “All development shall be sited and designed to minimize risk from geologic, flood, or fire hazards. Areas of a parcel which are subject to high hazard(s) shall generally be considered unsuitable for development...” and goes on to require environmental or geotechnical reports be completed. Additionally, CLUP policy 2.7.4.3 requires “Any proposed development within 50 feet of the face of a cliff or bluff or within the area of a 20 degree angle from the toe of a cliff, which ever is greater, shall require the preparation of a geologic report prior to consideration of the proposed project.” In addition to all information required to be included in the geologic report as dictated in CLUP policy 2.3.4.7 and Coastal Implementation Plan/Zoning Ordinance section 20.66.040, the geotechnical report for the project must be able to demonstrate that the development is safe from coastal hazards over the lifetime of the development (i.e., 100 years). Further, based on project plans and the locations of the story poles erected to provide for visualization of the proposed structure, the western footprint of the building appears to be within 5 feet of the top of the bluff edge on easily erodible soil. We recommend requiring that the footprint of the building be brought back away from the bluff (i.e., towards the highway) as much as possible in order to minimize impacts from coastal hazards. Lastly, CLUP policy 2.7.4.1 requires that “All development shall be sited and designed to conform to site topography and to minimize grading and other site preparation activities.” The amount of grading proposed does not appear to be a minor or minimum amount in order to construct a habitable SFD on the property. We recommend that the footprint of the lower portion of the

proposed structure be reduced in order to provide for a more “stair-stepped” foundation that would require less grading.

3. **Scenic Views.** The proposed project site is located in a public viewshed as it is located between highway 1 and the Pacific Ocean but is also directly visible from a popular pull-out overlook at the North of the site. The exterior of the structure is proposed to consist of concrete, white stucco, and dark aluminum materials CLUP Section 2.2 contains numerous policies related to protection of scenic resources by siting new development within the public viewshed on the portion of the parcel where it will not be visible from from major public viewpoints and viewing corridors, requiring that materials be used so that new structures blend into the site and surroundings (and require that height and bulk of buildings shall be modified as necessary to protect the viewshed), and requiring that existing trees and other native vegetation be retained to the maximum extent possible in order to screen development. In order to minimize visual impacts, we recommend that the structure be sited towards highway 1 as much as possible, that materials be used on the exterior of the structure such that it blends into the natural surroundings, and that existing trees be retained as much as possible and that the property be landscaped with native, non-invasive plants such that they would screen the development from the highway and adjacent overlook. Variances in front and side setbacks may be appropriate in this case given the unique location and typography of the site in order to ensure that scenic views are protected (and coastal hazards are minimized).
4. **Runoff.** Please ensure that the Applicant has demonstrated that the development be sited and designed to prevent percolation of septic runoff and deposition of sediment due to its location adjacent to intertidal habitat, as required by the LCP.

Please note that due to the current COVID-19 shelter in place orders throughout the State, all correspondence with Commission staff should be conveyed via email, in addition to other means if required by the Coastal Act or regulations.

Alexandra McCoy

California Coastal Commission

Coastal Planner | Central Coast District

alexandra.mccoy@coastal.ca.gov | (831) 427 - 4865
