



Appeal Application

County Use Only	Appeal Case No.:
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STEP 1: SUBJECT PROPERTY

011-220-003

ASSESSOR'S PARCEL NUMBER(S)

539 Periwinkle Lane, Montecito, Ca

PROPERTY ADDRESS (IF APPLICABLE)

BUSINESS/ESTABLISHMENT NAME (IF APPLICABLE)

STEP 2: PROJECT DETAILS

Babbitt et al Appeals of Scibird Exterior Alterations

PROJECT TITLE

23APL-00031, 23APL-00033, 21LUP-00000-00292, 22BAR-00000-00187

CASE NO(S).

Montecito Planning Commission, 3-20-24

DECISION MAKER

DATE OF ACTION

Is the appeal related to cannabis activities?

Yes No

STEP 3: APPEAL CONTACTS

APPELLANT

Bill Babbitt

NAME (if LLC or other legal entity, must provide documentation)

P.O. Box 92233

STREET ADDRESS

Santa Barbara, CA 93190

CITY, STATE ZIP

(805) 682-0585 marc@lomcsb.com

PHONE EMAIL

AGENT

NAME (if LLC or other legal entity, must provide documentation)

STREET ADDRESS

CITY, STATE ZIP

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ATTORNEY

Law Office of Marc Chytilo

NAME (if LLC or other legal entity, must provide documentation)

P.O. Box 92233

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STEP 4: APPEAL DETAILS

Is the Appellant the project Applicant? Yes No

If not, please provide an explanation of how you are an "aggrieved party", as defined in Step 5 on page 2 of this application form:

Please see attached.

Please provide a clear, complete, and concise statement of the reasons or ground for appeal:

- Why the decision or determination is consistent/inconsistent with the provisions and purposes of the County's Zoning Ordinances or other applicable law;
- There was error or abuse of discretion;
- The decision is not supported by the evidence presented for consideration;
- There was a lack of a fair and impartial hearing; or
- There is significant new evidence relevant to the decision which could not have been presented at the time the decision was made.

Please see attached.

RECEIVED
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 BOARD OF SUPERVISORS

LAW OFFICE OF MARC CHYTILO, APC

A PROFESSIONAL CORPORATION

ENVIRONMENTAL LAW

April 1, 2024

Chair Steve Lavagnino
Santa Barbara County Board of Supervisors
105 E. Anapamu Street, Fourth Floor
Santa Barbara, California 93101

RE: Appeal of Montecito Planning Commission approval of Land Use Permit and Design Review for Moody Sisters Cottage at 539 Periwinkle Lane, Montecito

Chair Lavagnino and Honorable Members of the Board of Supervisors:

Harriet Moody was a pioneering Santa Barbara architect who designed dozens of local houses and structures during the 1920's to 1940's that have been recognized as eligible for designation as County Landmarks and Places of Historic Merit. The Character Defining Features of Moody Cottages include textured roofs with low eaves, multi-paned windows and doors, whimsical light colors, board and batten walls, and design elements reminiscent of English Cottages of the day.

The Applicant Scibirds purchased a property that was advertised as an historical Moody Cottage, then proceeded to conduct major structural and exterior alterations without permits that destroyed a number of the Character Defining Features of the Moody Cottage at 539 Periwinkle. The Planning Director approved a Land Use Permit that allowed many of these damaging changes to remain. Through appeals to the Montecito Planning Commission, which included review and comment by the County Historic Landmarks Advisory Committee (HLAC), the roofing material was changed and the paint colors revised to emulate the Moody Character Defining Features, but despite HLAC's objections, MPC allowed a section of the Cottage's roof to be raised up to 17", altering the roofline and materially changing the Cottage's historic character, and approved the installation of a new oversize double door. Additionally, plans submitted by the Applicant in the last few minutes of the March 11, 2024 HLAC hearing demonstrated for the first time that there may have been other previously unpermitted modifications to the footprint and roofline of the front façade that have not been studied. Further, the structural and architectural plans submitted by the applicant throughout the application process have contained significant errors, seemingly masking earlier unpermitted work and/or mischaracterizing significant structural construction that the applicant undertook without permits, inaccurately identifying areas as existing, misleading staff, decisionmakers and the public. These 1973 plans, that were not considered in the Historical Report, also appeared to shed light on original design elements that must be considered in assessing historical impacts, especially at the front façade and roof line.

MARC CHYTILO

P.O. Box 92233 • Santa Barbara, California 93190
Phone: (805) 682-0585 • Email: Marc@lomcsb.com

By this letter, on behalf of Mr. William Babbitt, this office appeals the Montecito Planning Commission action taken March 20, 2024 to approve a Land Use Permit and to grant preliminary design review to allow the renovations of and modifications to the Moody Cottage at 539 Periwinkle Lane. Mr. Babbitt is an aggrieved party as an appellant below that appeared at all relevant proceedings and owns property nearby.

Approvals were improperly granted due to the lack of evidence to support the findings of approval, noncompliance with CEQA, project incompatibility with the Santa Barbara County General Plan, the Montecito Community Plan, and the Montecito Architectural Design Guidelines and Development Standards, reliance on misleading and/or inaccurate plans, drawings and representations of the structures: a) before the unpermitted construction began; b) after the unpermitted construction was performed/current condition; and c) as proposed for approval, and the failure to consider and address apparently unpermitted changes to the Moody Cottage subsequent to 1973 that became evident from the Applicant's late-submission of the 1973 plans. The approval of modifications that adversely impact various Character Defining Features of a structure eligible for listing as a County Place of Historic Merit, and in a neighborhood and area eligible for designation as a Historic District, triggers the application of CEQA under the County's Environmental Guidelines and Thresholds Manual (County Thresholds Manual), rendering incorrect the MPC's reliance on an exemption from CEQA pursuant to Guidelines § 15301(a) due to the existence of evidence triggering the exception to the exemption pursuant to the County's Thresholds Manual and CEQA Guidelines § 15300.2(f). The Notice Of Exemption fails to refer to CEQA Guidelines § 165064.5 and thus fundamentally mis-informed the MPC and the public of the controlling authority, and thereby the Supervisors may not defer to or consider in any way the action by MPC without materially prejudicing the Appellant and the public.

The approvals below were an abuse of discretion, were inconsistent with the Land Use and Development Code and General Plan, included reference to incomplete evidence of prior modifications to the structure in question, and are the result of an unfair and biased hearing process.

By this appeal, we request that the Board of Supervisors deny the Project with directions to comply with CEQA or propose additional modifications (in addition to those approved by MPC) to return the rooflines in the improperly altered portions of the Moody Cottage to their original Character Defining configuration, utilize a standard height door (and window(s), if desired) in place of the proposed oversized door with a smaller eyebrow or comparable Moody-style roof feature (if needed), and submit a complete, accurate and comprehensive set of architectural and structural plans of the Project showing the before, current, and future configurations.

The Appellant reserves the right to identify additional issues and submit additional evidence and argument to your Board in advance of the hearing date.

Respectfully Submitted,

LAW OFFICE OF MARC CHYTILO, APC

A handwritten signature in black ink, appearing to read 'M. Chytilo', with a stylized flourish extending to the right.

By: Marc Chytilo

Exhibits:

1. Historic Landmarks Advisory Committee Memorandum, March 14, 2024, Scibird Exterior Alterations
2. Letter, Law Office of Marc Chytilo, APC to Montecito Planning Commission, February 16, 2024
3. Letter, Joseph Cole, Counsellor at Law, to Montecito Planning Commission, March 15, 2024
4. Letter, Law Office of Marc Chytilo, APC to Montecito Planning Commission, March 15, 2024
5. Letter, Long Historic Preservation Services, Amber Long, to Montecito Planning Commission, March 15, 2024

COUNTY OF SANTA BARBARA
PLANNING AND DEVELOPMENT

HISTORIC LANDMARKS ADVISORY COMMISSION
MEMORANDUM

TO: Montecito Planning Commission
cc: Katie Nall, Planner

FROM: Keith Coffman-Grey, Chair, Historic Landmarks Advisory Commission

DATE: March 14, 2024

RE: Scibird Exterior Alterations
Case Nos. 21LUP-00000-00292 and 21ZEV-00000-00007
539 Periwinkle Lane, Montecito
APN 011-220-003

HLAC COMMENTS:

This project was heard by HLAC on September 13, 2021 and March 11, 2024. After consideration of the Historic Reports (prepared by Post/Hazeltine Associates) and presentations by the property owners and appellant, HLAC offers the following comments on the project for Montecito Planning Commission's consideration:

- Although the County building department issued a permit for the installation of the existing metal roof, the roof is not appropriate for a Moody Cottage design and does not meet the Secretary of Interior's Standards for Rehabilitation (Standards) for a property deemed eligible for designation as a historic resource under HLAC guidelines.
- HLAC does not support the existing color scheme of black roofing with white siding as it is not compatible with typical Moody Cottage colors and is not compatible with the predominant Moody Cottage style of the neighborhood.
- HLAC appreciates the need to make certain alterations (windows, doors, roof plate heights) for purposes of fire safety, weather-proofing, and life style, but such modifications must be consistent with the Standards.
- HLAC supports adding a new single door with a modest roof line increase on the east elevation, but not the proposed large-scale double doors and the existing as-built significantly-raised roof line.

LAW OFFICE OF MARC CHYTILO, APC
A PROFESSIONAL CORPORATION

ENVIRONMENTAL LAW

February 16, 2024

Montecito Planning Commission
c/o Planning and Development Department
123 East Anapamu Street
Santa Barbara, CA 93101

RE: Scibird Alterations of the Moody Sisters Cottage at 539 Periwinkle Lane

Honorable Commissioners:

This office is part of the legal team led by Joe Cole on behalf of the Appellants in the Babbit et al. Appeals of Scibird Alterations of the Moody Sisters Cottage at 539 Periwinkle Lane (Project).

We request that you direct staff to prepare findings for denial of the Project and to find that the permitting of significant structural alterations to a central element of this historical structure is not exempt from CEQA, and that an environmental review process must be commenced before further permitting can be considered.

1. California Environmental Quality Act and Alterations to Historical Structures

"Historic resources are accorded special protection under CEQA, and the state must 'take all action necessary to protect, rehabilitate, and enhance the environmental quality of the state' including the protection and rehabilitation of 'objects of historic or aesthetic significance.'" (*Citizens for a Sustainable Treasure Island v. City and County of San Francisco* (2014) 227 Cal.App.4th 1036, 1065) "A project that may cause a substantial adverse change in the significance of an historical resource is a project that may have a significant effect on the environment[]" and "[s]uch a project would require the preparation of an environmental impact report (EIR) or a mitigated negative declaration." (*Valley Advocates v. City of Fresno* (2008) 160 Cal.App.4th 1039, 1051.)

The Applicant's own historian establishes that the Moody Cottage at 539 Periwinkle Lane qualify for designation as a historic resource for CEQA purposes. "This report has concluded that the property at 539 Periwinkle Lane, a Moody Sisters-designed house, which is eligible for listing as a County of Santa Barbara Place of Historic Merit, is a significant historic resource for the purposes of environmental review." Staff Attachment F, page 7. The applicant's historical report improperly lacks analysis whether the Moody Cottages qualify as historical resources under state and federal definitions, but the significance of the Project as a historical resource is beyond dispute.

Significantly, once the structure has been determined to be an historical resource, then the favorable fair argument standard applies to the question whether the proposed project may cause

Moody Cottage on Periwinkle Lane
February 16, 2024
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a substantial adverse change in the significance of an historical resource and thereby have a significant effect on the environment. *Valley Advocates, supra*, 160 Cal.App.4th at 1072. Appellants have submitted extensive substantial evidence from four separate qualified historians that supports a fair argument of the Project potentially significant impact. A public agency must prepare an EIR whenever substantial evidence supports a fair argument that a proposed project “may have a significant effect on the environment.” (Pub. Resources Code, §§ 21100, 21151, 21080, 21082.2; Guidelines, §§ 15002, subd. (f)(1), (2), 15063.

2. CEQA’s Categorical Exemptions

Surprisingly, the underlying Land Use Permit and MBAR approvals sanctioning various alterations to this historically significant structure have been processed relying on a Categorical Exemption from CEQA’s environmental review process. Categorical Exemptions under CEQA § 15301(a) are permissible only for the “minor interior or exterior alteration of existing structures.” Exemptions from CEQA must be narrowly construed (*Dehne v. County of Santa Clara* (1981) 115 Cal.App.3d 827, 842) and may not be unreasonably expanded (*Wildlife Alive v. Chickering* (1976) 18 Cal. 3d 190, 205). CEQA requires that impacts from “the whole of an action” be considered, so the “minor” alterations include adding a new roof section with metal seamed covering, replacing the original brown roof with a black roof, changing windows, installing new doors, replacing siding, and importantly, raising the roof, ostensibly to accommodate the new doors. Any one of these (except raising the roofline of a historically significant structure) might be considered a minor alternation, but together, they represents a major remodel.

For comparison, merely attaching a fence to a historical structure was determined to be more than a “minor alteration” in *Committee to Save the Hollywood Specific Plan v. City of Los Angeles* (2008) 161 Cal.App.4th 1168, 1187. Further, Categorical Exemptions do not apply where the cumulative effect of successive projects of the same type in the same place over time may be significant. *Id.*, citing CEQA Guidelines § 15300.2(b).

The historic nature of the structure in question narrows the scope of the minor alteration. *Citizens for Environmental Responsibility v. State ex. Rel. 14th Dist. Ag. Assn.* (2015) 242 Cal.App.4th 555, 581 (citing *Committee to Save Hollywood* and noting “[t]he fence was different from the typical minor land use alteration contemplated by the exemption because the alteration was to a historical resource.”)

Tellingly, the County did not seek to rely on CEQA’s Class 31 Categorical Exemption for the maintenance, repair, rehabilitation, restoration, preservation, conservation or reconstruction of historical resources in a manner consistent with the Secretary of Interior’s Standards for the Treatment of Historic Properties. CEQA Guidelines § 15331. The alternations proposed under this application are clearly modification of a historic structure, and cannot be characterized as rehabilitation, and even with the dubious “mitigations” suggested by Post Hazeltine, the Project is nothing more than a major alteration to a historic structure. These last minute changes are

Moody Cottage on Periwinkle Lane
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lipstick on a pig. This project needs full CEQA review, HLAC consideration and direction, and a public process to ensure its intrinsic values are not compromised.

The historic Moody Cottage deserves stricter scrutiny when numerous alterations have a substantial impact to its historical integrity, as is the case here. The Commission should find the Categorical Exemption is simply not applicable, and direct preparation of an Environmental Review Document under CEQA.

3. The Exceptions to a Categorical Exemption Triggers CEQA Review

If the Categorical Exemption can apply to the multiple alterations associated with the Project, it is still impermissible if the project: a) is located in a particularly sensitive environment; b) involves a cumulative impact; c) if “unusual circumstances” create a reasonable possibility that the Project would have a significant adverse environmental impact; or d) the project may cause a substantial adverse change in the significance of a historical resource. CEQA Guidelines § 15300.2(a,b,c,f).

a. Particularly Sensitive Environment

The Project is one of a number of Moody Sisters Cottages on Periwinkle Lane, such that the neighborhood qualifies as a Historical District under federal standards. See Long Historic Preservation Services letter dated 2/15/24. A Historic District possesses a significant concentration, linkage, or continuity of sites, buildings, structures, or objects united historically or aesthetically by plan or physical development, according to the National Park Service. Structural alterations to the Moody Sisters Cottage at 539 Periwinkle Lane will represent deviation from the historical integrity of the District. The location of the project in this sensitive setting precludes use of a Categorical Exemption. CEQA Guidelines 15300.2(a).

b. Cumulative Impacts

The Project itself has multiple elements, some of which the County contends are not subject to the appeal (reroofing) and others that are subject to discretionary permit. CEQA requires examination of all elements of this Project in a cumulative manner, establishing an exception to the exemption.

The Post Hazeltine and County analysis piecemeals the project, attempting to minimize the roofline alteration as only “several inches,”¹ but the 2021 report observed “[a]s part of the as-built

¹ “Raising the plate height several inches on portions of the south elevation to provide sufficient height for exit doors meets the Secretary of the Interior’s Standards for Rehabilitation and is supportable as noted in the 2021 report.” Staff’s Attachment G, Post/Hazeltine Associates Historical Resources Memo, June 8, 2023, at page 2.

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project, the central section of the [east] elevation has been raised approximately 18 inches”.² Post Hazeltine never analyzes the impact that the 17” roof height increase has on the historical integrity of the structure, and fails to reconcile this element of the project with the Secretary of Interior’s Standards for Rehabilitation.

Additionally, the Project’s changes could have a snowball effect with other Moody Cottages seeking similar modifications, resulting in cumulative changes to the particularly sensitive Periwinkle district. CEQA Guidelines 15300.2(b).

c. Unusual Circumstances Establish The Project Has Caused Significant Impacts

The historical integrity of the Moody Sisters Cottage, in the context of a cluster of Moody Sister Cottages, is an unusual circumstance that disallows use of a Categorical Exemption. Another unusual circumstance is the unpermitted partial destruction and modification of a historical structure. This has allowed the applicant to present an artificial baseline that was established after the loss of historical integrity, representing a significant impact. CEQA will facilitate a close look at what the structure looked like before the violations, and only through that process can the Project’s compatibility with the Secretary of Interior’s Standards be assessed. See Long Historic Preservation Services, January 11, 2024 and February 16, 2024. CEQA Guidelines 15300.2(c).

d. Impacts to Historic Resource Precludes Use of a Categorical Exemption

CEQA disallows use of a Categorical Exemption when a project may cause significant impacts to a historic resource. CEQA Guidelines 15300.2(f). The unpermitted modifications have already caused significant impacts to a historic resource, and due to this changed baseline, the historical analysis conducted by Post Hazeltine is defective and CEQA disallows use of a Categorical Exemption. CEQA Guidelines 15300.2(f).

4. CEQA Significant Impacts From Policy Inconsistency

Conflicts with applicable policies designed at least in part to mitigate or avoid environmental effects are considered significant impacts under CEQA, requiring the preparation of an EIR. CEQA Guidelines Appendix G (IX)(b); *Pocket Protectors v. City of Sacramento* (2004) 124 Cal. App. 4th 903, 934, 936. (EIR required where petitioner demonstrated substantial evidence supporting a fair argument that the Project conflicted with land use policy that was “adopted for the purpose of avoiding or mitigation an environmental effect”).

The Montecito Community Plan includes the following policy: Goal CR-M-1: *Preserve and Project Properties and Structures with Historic Importance in the Montecito Community to the Maximum Extent Feasible.*

² Staff’s Attachment F, Post Hazeltine Associates Phase 1-2 Historical Resources Report, May 28, 2021, at page 19.

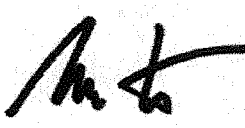
Moody Cottage on Periwinkle Lane
February 16, 2024
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The Project entails raising the roofline on a portion of a historically-significant Moody House, whose character-defining features include rooflines, and the installation of an incongruous seamed metal roof, in order to enable the installation of a new door to the structure. It is eminently feasible to leave the door in its existing location and preserve the Moody Sister Cottage's original roofline. Therefore, to degrade the structure with nonhistorical elements conflicts with Montecito Community Plan Goal CR-M-1, a policy adopted to protect Montecito's historical resources. This represents a CEQA impact and triggers an environmental review process.

In conclusion, this project requires a CEQA analysis to guide permitting, public involvement and decisionmaking. "The foremost principle under CEQA is that the Legislature intended the act "to be interpreted in such manner as to afford the fullest possible protection to the environment within the reasonable scope of the statutory language." [The Supreme Court has] repeatedly recognized that the EIR is the "heart of CEQA." "Its purpose is to inform the public and its responsible officials of the environmental consequences of their decisions before they are made. Thus, the EIR 'protects not only the environment but also informed self-government.' To this end, public participation is an "essential part of the CEQA process." *Protect Niles v. City of Fremont* (2018) 25 Cal. App. 5th 1129, 1138. This project cannot proceed without a meaningful and substantive assessment of its potentially significant impacts and consideration of alternatives and mitigation measures to protect the integrity of the historic Moody Sister Cottages while allowing the owners to respond to and cure the violations they committed on the property.

Respectfully Submitted

LAW OFFICE OF MARC CHYTILO, APC

By: 
Marc Chytilo

For Appellants

JOSEPH COLE
COUNSELOR AT LAW

March 15, 2024

Chair Miller and Honorable Commissioners
Montecito Planning Commission
123 East Anapamu Street
Santa Barbara, CA93101

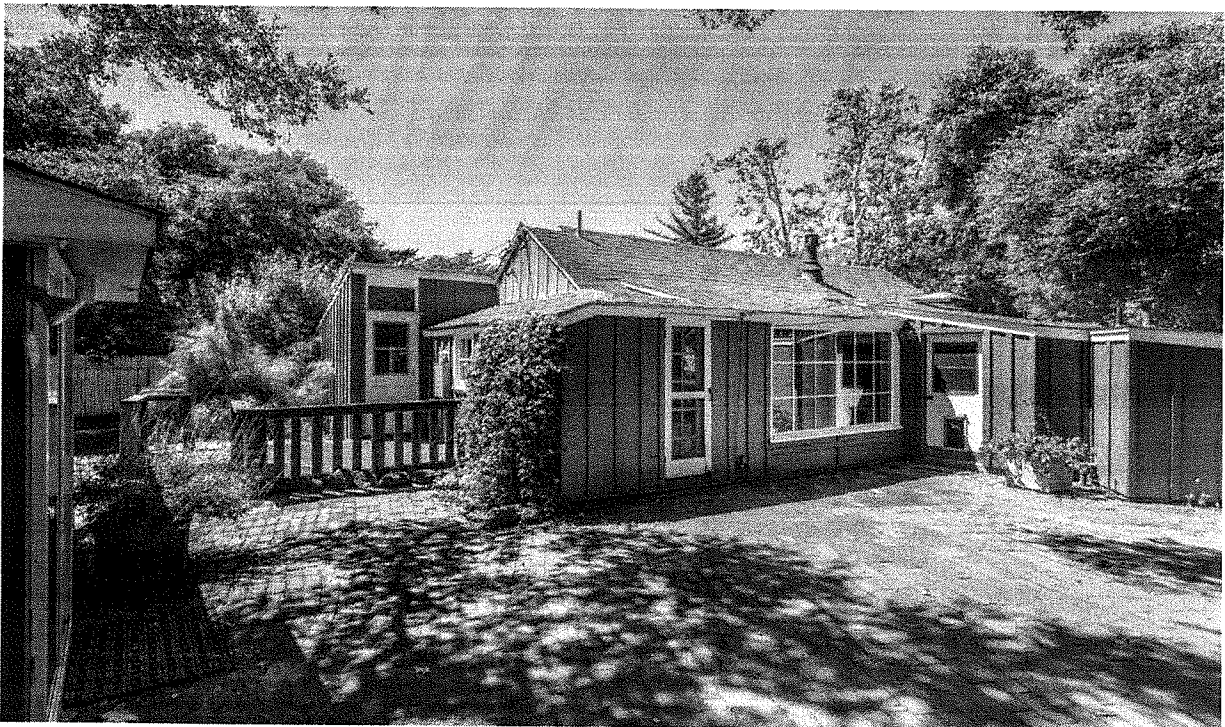
539 Periwinkle Lane, Rescue of Historic Harriett Moody Cottage.

Dear Commissioners:

I'm counsel for the Appellants in the Appeals of Scibird Exterior Alterations (Case Nos. 21LUP-00000-00292 & 22BAR-00000-00187), with Marc Chytilo as CEQA counsel.

BACKGROUND:

The Applicants, Richard and Lisa Scibird, purchased the historic Moody Sisters Cottage at 539 Periwinkle Lane in September 2020.



(Redfin.)

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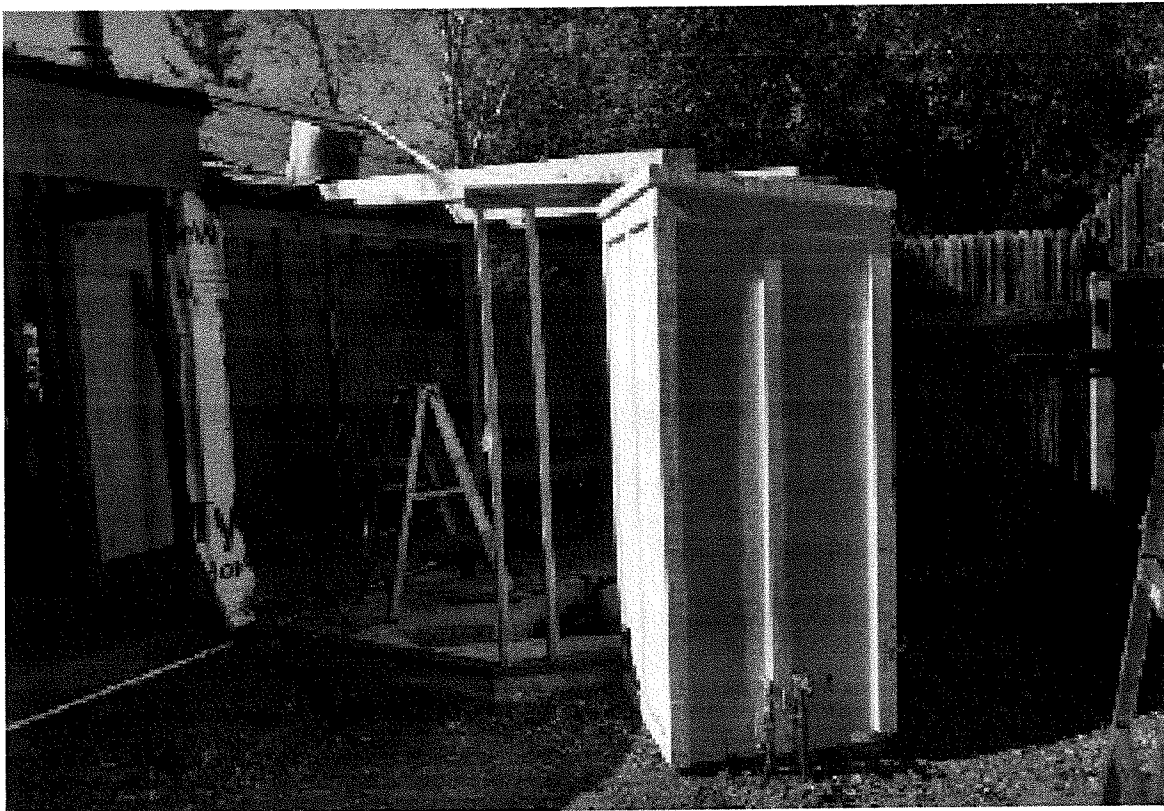
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March 15, 2024

The Scibird Project was originally designed and built in the 1940s under the direction of noted architect Harriet Moody.

The “HISTORICAL RESOURCES” section of the 1993 Final Environmental Impact Report for the Montecito Community Plan Update, at Appendix D, specifically lists *539 Periwinkle Lane* as a historic structure. See Exhibit A to my February 16, 2024 letter to the MPC.

Moreover, such Montecito Community Plan EIR at page 5-194 declares that “*the cluster of eight structures [near 539 Periwinkle Lane] suggest that the area may be worthy of a ‘historic district’ designation.*” (See Exhibit A to my February 16, 2024 MPC letter, the opinion of Long Historic Preservation Services dated February 15, 2024, and Mr. Chytilo’s letter to you dated February 16, 2024.)



After the Scibirds purchased 539 Periwinkle Lane in 2020, they gutted the interior and substantially demolished and rebuilt the northeast quadrant shown – **without permits**, except for

JOSEPH COLE
COUNSELOR AT LAW

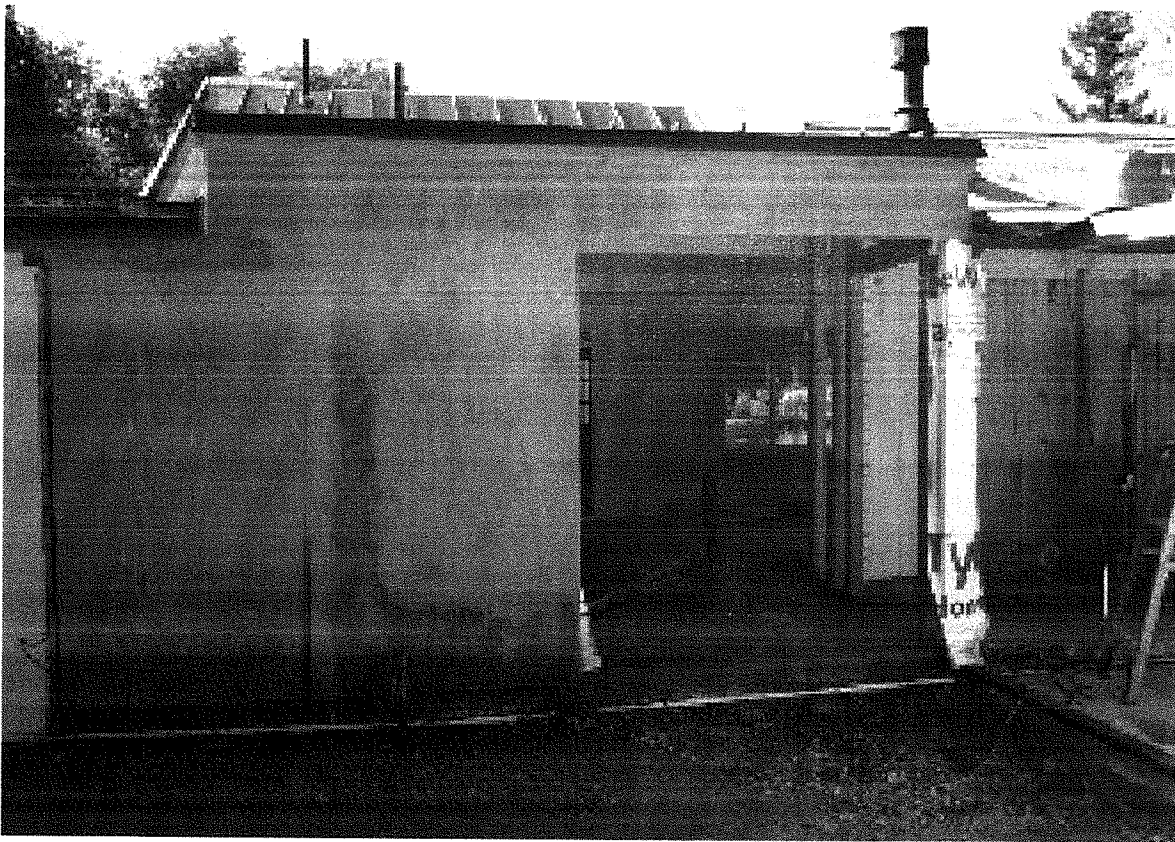
Montecito Planning Commission

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the violated over-the-counter re-roof permit described below.

The unpermitted and non-inspected construction included adding a new roof section with metal seamed covering, replacing the original grey and brown roof with a black roof, changing windows, installing new doors, replacing siding, adding black trim, and importantly, raising the roof substantially in two places.



(Construction photos from the Scibirds' historian.)

This major remodel was finally red-tagged by the County after complaints by the neighbors who witnessed the partial demolition of the Moody Cottage within their enclave. Despite the red-tag, the Scibirds continue construction – despite further warnings – to completion.

JOSEPH COLE
COUNSELOR AT LAW

Montecito Planning Commission

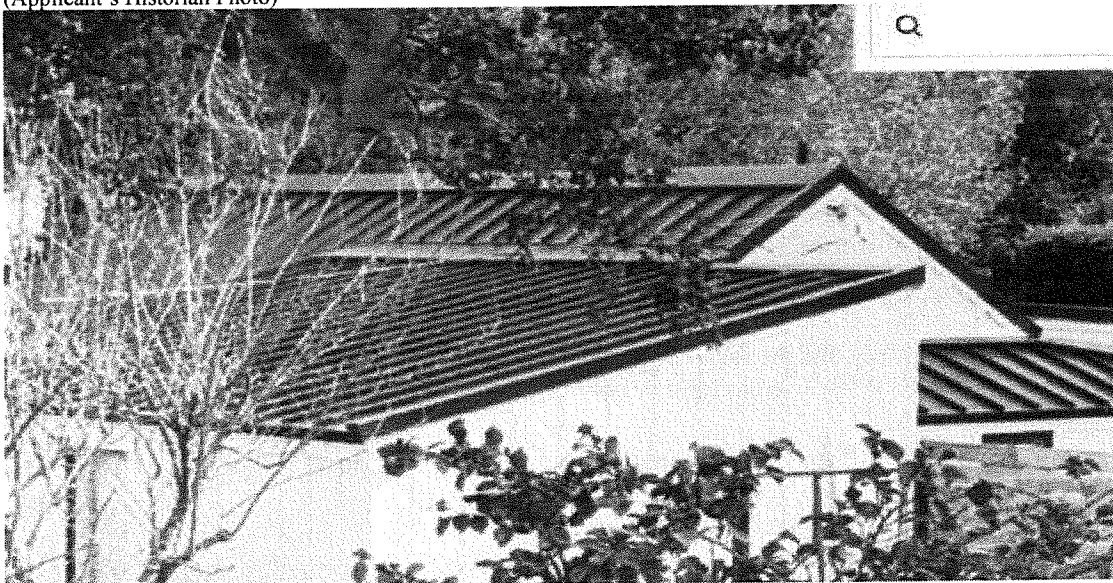
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March 15, 2024

As one member commented at MBAR's June 15, 2023, hearing, the unfortunate present reality is that *"the spirit and uniqueness of a Moody Cottage have been eliminated, the structure no longer retains historic qualities."* (Attachment D to Staff Report.)



(Applicant's Historian Photo)



(Appellant's photo from adjacent 539 Periwinkle.)

JOSEPH COLE
COUNSELOR AT LAW

Montecito Planning Commission

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March 15, 2024

THE RE-ROOF PERMIT IS NULLIFIED:

The owners pulled an over-the-counter “re-roofing” permit in 2020 that was:

- **Misleading on its face:** The permit application stated the roof replacement was to match the existing “*black*” roof, when the existing shingle roof was actually a Moody mixture of grey and brown as described in the letters by the Appellant’s four historians delivered to the MPC on January 12, 2024.
- **The Scibirds deviated from the permit during construction:** The face of the permit called for a “*flat*” metal roof, “*with no striations,*” not the standing seam (not flat) metal roof constructed.
- **The permit was legally nullified:** The misleading terms of the permit application and the substantial deviation from the permit during construction, including changing the pitch of the roof and materially raising the roof in two locations, legally nullifies the permit.

APPELLANTS’ PROPOSED RESOLUTION FOR THE MPC:

Losing the historic characteristics of this Moody Cottage is a terrible precedent for Montecito. Recently, a Moody Cottage on Middle Road was demolished rather than restored.

As described below and in my January 12 letter to you, the elimination by the Scibirds of the “*spirit, uniqueness, and historic qualities*” of the Moody Cottage at 539 Periwinkle Lane is clearly inconsistent with the Montecito Community Plan, the Montecito Architectural Guidelines and Development Standards, CEQA, and other applicable policies and statutes protective of historical resources in California.

Following HLAC’s review and comment, and receipt of the 1973 plans, in consultation with historians Fermina Murray and Amber Long, Appellant Babbitt requests MPC take the following actions regarding the 539 Periwinkle Lane Moody Cottage:

1. Replace applicant-proposed French door to a single 32” wide, 6’8” tall door.
2. Lower roofline to original 1949 design and plate height, with small eyebrow or other compliant architectural parapet/cant strip detail over the doorway, using flush frame rafter

JOSEPH COLE
COUNSELOR AT LAW

Montecito Planning Commission

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March 15, 2024

techniques to avoid height of a header above the door to maintain roofline and minimize plate height.

3. Install CertainTeed Presidential Shake TL textured shingles in a brown and grey color. Aged Bark, Country Grey, or Autumn Blend are all appropriate colors.
4. Paint exterior walls warm, pastel color with trim painted a lighter shade.
5. Paint the studio/carport the same color or a compatible color to the main house with corresponding compatible trim color. Reroof the building with similar brown and grey colored textured roof shingles.
6. Require accurate drawings reflecting true existing /as-built / proposed new work – including corrected structural drawings previously submitted.
7. Require revised plans conforming to these changes, including reference to the 1973 plans and accurate depictions of the current as-built conditions and proposed additional changes.
8. Impose County Standard Condition No. 31 to require County monitoring of changes to the Project.
9. Continue the MPC hearing on March 20, 2024, pending the submittal of revised and accurate plans and permit conditions.

NO SUBSTANTIAL EVIDENCE TO SUPPORT THE FINDINGS SET FORTH IN THE STAFF REPORT FOR MPC FEBRUARY 21, 2024.

There must be substantial evidence in the record to support the findings that Staff is asking you to adopt in its staff report. Topanga Ass'n for a Scenic Community v County of Los Angeles (1974) 11 C3d 506, 511. Staff must include the relevant facts in the finding and show the connection between the facts and the conclusion made in the finding. The courts carefully review variances and the MPC and the applicant must ensure there are facts to support the conclusions. Eskeland v City of Del Mar (2014) 224 CA4th 936, 949. See also Levi Family P'ship v City of Los Angeles (2015) 241 CA4th 123 (adequate findings supported planning commission's refusal to approve proposed eldercare facility).

My January 12, 2024 and February 16, 2024 letter to you described our contrary position to factual evidentiary assertions made in the Staff Report. With respect, there are additional key

JOSEPH COLE
COUNSELOR AT LAW

Montecito Planning Commission

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draft findings before you that are not supported by substantial evidence for this Project and prevent you from denying the two appeals.

FINDING:

2.1.1.1: “the proposed development conforms to all applicable policies of the Comprehensive Plan”

Montecito Community Plan Goal CR-M-1: *Preserve and Project Properties and Structures with Historic Importance in the Montecito Community to the Maximum Extent Feasible.*

EVIDENCE:

- The structure is *not* preserved and protected to the maximum extent feasible – the roof in two places could be lowered and restored to the pitch and elevation in the original design and construction per the HLAC recommendations.
- Staff’s statement in its February 21, 2024, Memorandum to the Commission is not accurate that the newly proposed black shingles will “comply with ... requests to keep the roofing consistent with typical Moody Sisters materials.” First, the Applicant’s have returned to the black metal roof. Second, HLAC’s position is clear as described in Chair Keith Coffman-Grey’s March 14, 2024 Memorandum to the MPC.

2.1.1.3: “The subject property is in compliance with all laws, regulations, and rules pertaining to uses”

EVIDENCE:

- The structure has been red-tagged due to numerous violations, including Violations noticed to Applicants on January 7, 2021 and January 11, 2021, with the “Scibird Unpermitted Construction” suspended on January 8, 2021.
- Construction exceeding the scope of issued permits.
- Construction was undertaken without needed permits.
- The project continues subject to a zoning violation, Case No. 21ZEV-00000-00007.

2.1.2.1: “Overall structure shapes, as well as parts of any structure (buildings, fences, screens, signs, towers, or walls) are in proportion to and in scale with other existing or permitted structures on the same site and in the area surrounding the property.”

EVIDENCE:

- Modifications to the roofline and pitch.
- Multiple clashing roofing materials.
- Changed windows.

JOSEPH COLE
COUNSELOR AT LAW

Montecito Planning Commission

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March 15, 2024

- New larger door.
- Conflict with the Moody Sisters' architectural theme and lack proportion and scale with other Moody Sisters houses in the Periwinkle Lane historical district
- See: HLAC Memorandum dated March 14, 2024; Expert Historian Fermina Murray Opinion dated March 15, 2024; and Long Historic Preservation Services Opinion dated March 15, 2024.

2.1.2.3: "There will be a harmony of color, composition, and material on all sides of a structure."

EVIDENCE:

- Roof color is changed from grey & brown to black and charcoal.
- White walls and black trim clash with the house style and neighborhood character.
- Roof is both composite shingle and metal seam.
- The outbuilding is painted all black and continues to have a black and charcoal metal roof.
- To the contrary, see: The testimony before you on February 21, 2024; HLAC Memorandum dated March 14, 2024; Expert Historian Fermina Murray Opinion dated March 15, 2024; and Long Historic Preservation Services Opinion dated March 15, 2024.

2.1.2.4: "There will be a limited number of materials on the exterior face of the structure."

EVIDENCE:

- Composite shingle and metal seam roof.
- Bright white walls and black window trim.
- Changed roofline.
- Changed windows.
- New door.

2.1.2.5: "There will be a harmonious relationship with existing and proposed adjoining developments, avoiding excessive variety and monotonous repetition, but allowing similarity of style, if warranted."

EVIDENCE:

- Changed roofline incompatible with surrounding Moody Sisters homes
- Composite shingle and metal seam roof conflict with adjacent homes

JOSEPH COLE
COUNSELOR AT LAW

Montecito Planning Commission

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- Bright white walls and black window trim incompatible with surrounding four homes in Moody Sisters style
- The project is visually prominent to Periwinkle Lane and degrades the Moody aesthetic of the surrounding other four Moody homes.

MONTECITO COMMUNITY PLAN:

Please review again my analysis of the Policies and Actions under the Montecito Community Plan set forth in my January 12, 2024 letter to you, incorporated herein by this reference.

MONTECITO ARCHITECTURAL GUIDELINES AND DEVELOPMENT STANDARDS:

Please review again my analysis of the Policies and Actions under the Montecito Architectural Guidelines and Development Standards set forth in my January 12, 2024 letter to you, incorporated herein by this reference, including “Good Neighbor Policies” and “Historic Structures.”

CONCLUSION:

These two appeals, if not decided by the MPC in favor of our community’s historical treasures, present a roadmap for sophisticated spec builders – using unlicensed designers and owner-builders – to convert, one by one, Montecito’s historical resources to incompatible modern flavor-of-the-month architecture marketed to out-of-town buyers.

If you uphold Appellants’ Appeals of Scibird Exterior Alterations (Case Nos. 21LUP-00000-00292 & 22BAR-00000-00187), you support Montecito and the County’s efforts to protect our historic resources. You send a message that it is better to follow the law and ask permission, first, rather than to demand forgiveness, later.

Thank you for your time and volunteer work to protect Montecito’s historic resources.

.Respectfully Submitted,



LAW OFFICE OF MARC CHYTILO, APC
A PROFESSIONAL CORPORATION

ENVIRONMENTAL LAW

March 15, 2024

Chair Marshall Miller
Montecito Planning Commission
c/o Planning and Development Department
123 East Anapamu Street
Santa Barbara, CA 93101

RE: Scibird Alterations of the Moody Sisters Cottage at 539 Periwinkle Lane

Chair Miller and Honorable Commissioners:

Please accept this letter on behalf of the Appellants in the Babbit et. al. Appeals of Scibird Alterations of the Moody Sisters Cottage at 539 Periwinkle Lane (Project).

Following your Commission's referral to the Historic Landmarks Advisory Committee (HLAC), on March 11, 2024 HLAC held a hearing and each Commissioner made comments expressing support for preserving the 539 Periwinkle Lane Moody Cottage and concern over the past unpermitted changes and the proposed further modifications. No motion was made, but the Chair crafted a memo of points he felt most important; however the transcript of the Commissioner's comments is the best way for MPC to understand HLAC's input. The HLAC Chair's memo:

- noted all modifications must meet the Standards for Rehabilitation
- rejected the metal roof as incompatible with the Standards for Rehabilitation
- rejected the color scheme
- rejected the French double doors and raised roof, but supported a single door with a modest, Moody-inspired roofline increase above the door

We request that the Montecito Planning Commission direct the following changes to the Project:

1. Replace applicant-proposed French door to a single 32" wide, 6'8" tall door.
2. Lower roofline to original 1949 design and plate height, with small eyebrow or other compliant architectural parapet/cant strip detail over the doorway, using flush frame rafter techniques to avoid height of a header above the door to maintain roofline and minimize plate height.
3. Install CertainTeed Presidential Shake TL textured shingles in a brown and grey color. Aged Bark, Country Grey, or Autumn Blend are all appropriate colors.
4. Paint exterior walls warm, pastel color with trim painted a lighter shade.
5. Paint the studio/carport the same color or a compatible color to the main house with corresponding compatible trim color. Reroof the building with similar brown and grey colored textured roof shingles.
6. Require accurate drawings reflecting true existing /as-built / proposed new work – including corrected structural drawings previously submitted.

Moody Cottage on Periwinkle Lane
 March 15, 2024
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7. Require revised plans conforming to these changes, including reference to the 1973 plans and accurate depictions of the current as-built conditions and proposed additional changes.
8. Impose County Standard Condition No. 31 to require County monitoring of changes to the Project.
9. Continue the MPC hearing on March 20, 2024, pending the submittal of revised and accurate plans and permit conditions.

The MPC has an obligation under the applicable legal authority to either ensure that each revision meets the Standards for Rehabilitation and maximizes the protection and preservation of this historical resource, or to deny the Project.

A. County CEQA Thresholds Manual Establishes Re-Roof Permit Was Erroneously Issued. Applicant Subsequently Failed to Follow Permit Terms and Adversely Impacted Historical Resources

The County's CEQA Thresholds Manual states "Please note that if a project will affect a significant historical [resource] (e.g., one that is eligible for inclusion on a federal, state or local list or register), then the project is not exempt from CEQA (CEQA Guidelines Section 15300.2(f); the "exception to the exemption"). This is the case even if the project only requires a ministerial permit, e.g. a Land Use Permit or Coastal Development Permit for demolition of a structure. In such instances, an Initial Study should be prepared."¹ The Project clearly has and will affect a significant historical resource, and the reroofing permit was improperly granted (and then additional unpermitted roof modifications completed) and CEQA must be triggered.

If any aspect or element of the Project does not conform to the Secretary of Interior's Standards for Rehabilitation, CEQA review is required. CEQA Guidelines § 15300.2(f), 15331. Thatched-style roofs are a character defining feature of the Moody Sister's designs. The applicant's proposed metal roof, incompatible double doors, raised and altered roofline on a structure eligible for historic designation each separately and cumulatively trigger the need for preparation of an Initial Study and CEQA review for the Project.

B. MPC Cannot Make the Mandatory Findings of Project Conformity with the Montecito Community Plan

The Montecito Planning Commission must make a finding that their actions conform to the General Plan, including the Montecito Community Plan Goal CR-M-1 to "**Preserve and Protect**

¹ County of Santa Barbara Planning and Development. 2021. "Environmental Thresholds and Guidelines Manual." County of Santa Barbara, Santa Barbara, California, p. 52.

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Structures With Historical Importance in the Montecito Community to the Maximum Extent Feasible”, and policy CR-M-2.1 “Significant historical resources in the Montecito area shall be protected and preserved to the extent feasible.” Finding 2.1.1 is not supported by any evidence and cannot be made.

CEQA, the County’s CEQA Thresholds and the Montecito Community Plan impose strict requirements and oversight for projects that impact historical resources. As a part of the County’s Comprehensive Plan, the Montecito Community Plan’s Goal CR-M-1 and Policy CM-M-2.1 are immutable binding legal authority that the applicant, County staff and the Montecito Planning Commission must observe and comply with. As proposed and improperly approved, the Project clearly fails to preserve and protect the historical Moody Sisters Cottage at 539 Periwinkle Lane as character defining historical features are either eliminated (metal roof fails to reflect or convey the thatched-roof appearance of Moody designs) or improperly modified (raising the roof height, installing incompatible double doors, changed plate heights). MPC cannot make the findings of compatibility with the Montecito Community Plan without making material changes to the Project, as delineated below. If these changes are not achieved, the project must be denied.

C. Modifications Necessary to Support Montecito Community Plan Compatibility Findings and CEQA Exemption

Based on the testimony of local historical experts Ms. Murray and Ms. Long, the HLAC analysis and comment (including both the memo and the transcript of HLAC Commissioner comments), the State and County CEQA Guidelines, and the Montecito Community Plan, the Montecito Planning Commission must direct the following changes to the permits:

1. Replace applicant-proposed French door to a single 32” wide, 6’8” tall door.
2. Lower roofline to original 1949 design and plate height, with small eyebrow or other compliant architectural parapet/cant strip detail over the doorway, using flush frame rafter techniques to avoid height of a header above the door to maintain roofline and minimize plate height.
3. Install CertainTeed Presidential Shake TL textured shingles in a brown and grey color. Aged Bark, Country Grey, or Autumn Blend are all appropriate colors.
4. Paint exterior walls warm, pastel color with trim painted a lighter shade.
5. Paint the studio/carport the same color or a compatible color to the main house with corresponding compatible trim color. Reroof the building with similar brown and grey colored textured roof shingles.
6. Require accurate drawings reflecting true existing /as-built / proposed new work – including corrected structural drawings previously submitted.
7. Require revised plans conforming to these changes, including reference to the 1973 plans and accurate depictions of the current as-built conditions and proposed additional changes.

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- 8. Impose County Standard Condition No. 31 to require County monitoring of changes to the Project.²
- 9. Continue the MPC hearing on March 20, 2024, pending the submittal of revised and accurate plans and permit conditions.

If the applicant is unwilling to accept and implement all of these changes, we request that you direct staff to prepare findings for denial of the Project based on your inability to make CEQA and General Plan conformity findings, to find that the permitting of significant structural alterations to a central element of this historical structure is not exempt from CEQA, and that an environmental review process must be commenced before further permitting can be considered.

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² Given the history of non-compliance on the site and the sensitivity of the structure, Standard County Monitoring Condition # 31 is appropriate.

Rules-31 Mitigation Monitoring Required. The Owner/Applicant shall ensure that the project complies with all approved plans and all project conditions including those which must be monitored after the project is built and occupied. To accomplish this, the Owner/Applicant shall:

- a. Contact P&D compliance staff as soon as possible after project approval to provide the name and phone number of the future contact person for the project and give estimated dates for future project activities;
- b. Sign a separate Agreement to Pay for compliance monitoring costs and remit a security deposit prior to approval of [LAND USE PERMIT / COASTAL DEVELOPMENT PERMIT / ZONING CLEARANCE] as authorized by ordinance and fee schedules. Compliance monitoring costs will be invoiced monthly and may include costs for P&D to hire and manage outside consultants when deemed necessary by P&D staff (e.g. non-compliance situations, special monitoring needed for sensitive areas including but not limited to biologists, archaeologists) to assess damage and/or ensure compliance. In such cases, the Owner/Applicant shall comply with P&D recommendations to bring the project into compliance. The decision of the Director of P&D shall be final in the event of a dispute. Monthly invoices shall be paid by the due date noted on the invoice;
- c. Note the following on each page of grading and building plans “This project is subject to [MITIGATION AND/OR CONDITION] Compliance Monitoring and Reporting. All aspects of project construction shall adhere to the approved plans, notes, and conditions of approval, [AND MITIGATION MEASURES FROM NEGATIVE DECLARATION # / ENVIRONMENTAL IMPACT REPORT #]”;
- d. Contact P&D compliance staff at least two weeks prior to commencement of construction activities to schedule an on-site pre-construction meeting to be led by P&D Compliance Monitoring staff and attended by all parties deemed necessary by P&D, including the permit issuing planner, grading and/or building inspectors, other agency staff, and key construction personnel: contractors, sub-contractors and contracted monitors among others.

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Respectfully Submitted,

LAW OFFICE OF MARC CHYTILO, APC

A handwritten signature in black ink, appearing to read "M. Chytilo", written over a horizontal line.

By:
Marc Chytilo

For Appellants



March 15, 2024

Chair Marshall Miller
Montecito Planning Commission
123 East Anapamu Street
Santa Barbara, CA 93101

RE: Steps Necessary to Retain the Integrity of the Moody Cottage at 539 Periwinkle Lane,
Montecito, California

Honorable Montecito Planning Commission,

On March 11, 2024, the Santa Barbara County (County) Historic Landmark Advisory Commission (HLAC) concurred with Post Hazeltine and the Montecito Planning Commission that the Moody Cottage at 539 Periwinkle Lane is eligible as a County Place of Historic Merit. In the memo dated March 14, 2024, HLAC laid out their comments in which they did not support the black metal roof, the existing black and white color scheme, or the existing as-built raised roof line and large-scale double doors. HLAC also noted that all modifications to the exterior of this structure "must be consistent with the Standards [for Rehabilitation]."

The County California Environmental Quality Act (CEQA) Thresholds Manual states that avoidance and preservation in place is always the preferred mitigation when dealing with historical resources, and that permits which would ordinarily be ministerial should be subject to CEQA when historical resources are involved (p. 51). *CEQA Guidelines Section 15064.5(b)(3)* recognizes that a project that follows the Secretary of the Interior's Standards (SOI) for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring, and Reconstructing Historic Buildings shall be considered as mitigated to a level of less than a significant impact on the historical resource. (p. 51). *If a project will affect a significant historical resource (e.g., one that is eligible for inclusion on a federal, state or local list or register), then the project is not exempt from CEQA (CEQA Guidelines Section 15300.2(f); the "exception to the exemption"). This is the case even if the project only requires a ministerial permit, e.g. a Land Use Permit or Coastal Development Permit for demolition of a structure. In such instances, an Initial Study should be prepared. (p. 52).*

To be an eligible historical resource, the resource must have both significance and integrity. Integrity is the ability of a historical resource to convey its significance. The National Park Services (NPS) defines the seven aspects of integrity as location, design, setting, materials, workmanship, feeling and association (National Park Service 1997). If a project results in a loss of integrity, the historical resource is no longer able to convey its significance and would no longer be eligible. The loss of eligibility is a significant impact per CEQA.

The changes made by the applicant and commented on in the HLAC memo, are not consistent with the Secretary of the Interior's Standards for Rehabilitation and severely impact the integrity of the historical resource. These changes have resulted in a loss of integrity to the cottage and are a significant impact per CEQA. To restore the integrity of the cottage, achieve consistency with the SOI Standards for Rehabilitation, and avoid a significant CEQA impact, it is my professional opinion that the following actions are required.

1. Replace applicant-proposed French door to a single 32" wide, 6'8" tall door.
2. Lower roofline to original 1949 design and plate height, with small eyebrow or other compliant architectural parapet/cant strip detail over the doorway, using flush frame rafter techniques to avoid height of a header above the door to maintain roofline and minimize plate height.
3. Install CertainTeed Presidential Shake TL textured shingles in a brown and grey color. Aged Bark, Country Grey, or Autumn Blend are all appropriate colors.
4. Paint exterior walls warm, pastel color with trim painted a lighter shade.
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6. Require accurate drawings reflecting true existing /as-built / proposed new work – including corrected structural drawings previously submitted.
7. Require revised plans conforming to these changes, including reference to the 1973 plans and accurate depictions of the current as-built conditions and proposed additional changes.
8. Impose County Standard Condition No. 31 to require County monitoring of changes to the Project.
9. Continue the MPC hearing on March 20, 2024, pending the submittal of revised and accurate plans and permit conditions.

In addition, the cottage is in the center of a potential historic district that would include all Moody cottages on Periwinkle Lane. The changes being requested not only ensure the integrity of the cottage itself, but the integrity of the historic district. HLAC Commissioner Shelia Snow expressed that the cottage as it is now "sticks out as a sore thumb". As such it will degrade the integrity of the district. Per the NPS, a historic district possesses a significant concentration, linkage, or continuity of sites, buildings, structures, or objects united historically or aesthetically by plan or physical development (National Park Service 1997). Therefore, the decisions made regarding this cottage go beyond one home and impact the neighborhood. This cottage was a guest studio designed by Moody to fit within an enclave of Moody designs and was the final design of Harriett Moody's career. The existence of this cottage in Moody's portfolio is rare given its size and history. Protecting this cottage by agreeing with the actions described above ensures that the missing integrity of the cottage is restored, as well as protecting the integrity of the district. As the cottage is now, with its extant changes, approval without resolving each of the issues listed above triggers a significant impact under CEQA and the project should undergo additional environmental review in the form of an environmental impact report.

The state of California has identified under CEQA that cultural resources need to be protected. Cultural resources include the built environment, historic and prehistoric archaeology, and tribal cultural resources. While it may appear that some arguments are a matter of personal architectural taste, in fact, all arguments are strongly rooted in case law and local, state, and federal guidance used by experts in the field as best practices.

Thank you for your consideration in this matter. I can be reached at info@longhps.com or (805) 748-7992.

Sincerely,

A handwritten signature in cursive script that reads "Amber Long".

Amber Long, M.A.
Owner | Principal Architectural Historian
Long Historic Preservation Services, LLC

References Cited:

County of Santa Barbara Planning and Development. 2021. "Environmental Thresholds and Guidelines Manual." County of Santa Barbara, Santa Barbara, California.

National Park Service. 1997. "How to Apply the National Register Criteria for Evaluation." National Park Service, Department of the Interior, Washington D.C.



COUNTY OF SANTA BARBARA

X 2183005

COB

Department

Date 4/1/24

Received from Law Office of Marc Chytlo

In Payment of Land Use Appeal Fee

Seven hundred thirty-three

and 06 Dollars \$ 733.06
100

Received original of the above numbered receipt

[Handwritten Signature]

CREDIT CARD	
CASH	
CHECK	X

1593

[Handwritten Signature]

AUTHORIZED SIGNATURE

SIGNATURE OF PAYOR