

LAW OFFICE OF MARC CHYTILO

ENVIRONMENTAL LAW

April 29, 2016

County of Santa Barbara
Board of Supervisors
105 E. Anapamu Street, Suite 407
Santa Barbara, CA 93101

*By email to sbcob@co.santa-barbara.ca.us
and by hand delivery*

RE: Urbany/Pinkham Appeal of the Bonillo New SFD (Case Nos. 14LUP-00000-000144 & 14BAR-00000-00063)

Dear Chair Adam and Board Members,

This office represents Appellants Bill & Lara Urbany, and Audrey Pinkham in this matter. The Urbany and Pinkham properties abut the Bonillo New SFD (849 Cheltenham Road) on the west and south. 849 Cheltenham Road is one of the few scattered vacant parcels that exist in the Mission Canyon Heights neighborhood. As part of the 2014 Mission Canyon Community Plan (“MCCP”) update, your Board adopted Mission Canyon Residential Design Guidelines (“Guidelines” or “MCRDG”) “to articulate and implement the community’s desire to preserve neighborhood character and charm” and to “[i]mprove aesthetics”. (MCCP EIR, pp. 2-1 – 2-2.) The MCCP mandates that “The Mission Canyon Residential Design Guidelines **shall be used** to guide development subject to review and approval by the Board of Architectural Review.” (MCCP, DevStd LU-MC-2.1, emphasis added.) **This MCCP requirement is expressly relied on in the MCCP EIR to mitigate the potential aesthetic impacts from buildout.** (MCCP EIR p. 4-7.) Unfortunately in this case, both the South County Board of Architectural Review (SBAR) and the Planning Commission simply ignored any specific consideration whatsoever of these important Guidelines and did not specifically apply them to the Bonillo New SFD during their respective reviews, and as a result, disregarded clear inconsistencies with the Guidelines. Notably, the Project plainly conflicts with MCRDG guidance for second stories, by significantly intruding into the “side yard encroachment plane,” by failing to conform to and fit into the lot topography, by exceeding the mass, bulk and scale of surrounding houses, and by including a separate boxy element to be built to the edge of the setback, resulting in this element looming over and looking into the Urbany property to the west. To address this and other conflicts with the MCRDG, and to enable the Board to make the required Design Review and LUP findings, the Project requires a redesign to step this part of the second story in from the west property line consistent with the MCRDG Second Story Design and Location Guidelines, to lower the project on the site to fit into the topography, and to reduce the size, bulk, and scale of the structure to comply with the MCRDG Neighborhood Scale Guidelines.

In addition to being one of few vacant parcels in the Mission Canyon Heights neighborhood, 849 Cheltenham Road is unique in that it presently and historically has channeled storm water from a County culvert crossing under Cheltenham Road and across the north east corner of 851 Cheltenham,

down to the south east corner of 849 Cheltenham where it flows down a driveway and onto Foothill Road. Even small deviations from this historical drainage path can have the effect of disrupting flows and inundating the Pinkham property that abuts the Bonillo property to the south. Accordingly, while Appellants are generally satisfied with the Drainage Plan approved by the Planning Commission that respects this historical drainage path, drainage and its CEQA implications were raised in the appeal given the importance of ensuring that the Drainage Plan will function as proposed. Because any deviations from the approved Drainage Plan can be addressed via condition enforcement however, Appellants no longer view drainage as a disputed issue.

Regrettably, the Planning & Development Department instigated a separate investigation by Public Works Road Division regarding a 60-year old culvert, creating the impression that there may be future changes to the historic drainage path that traverses the Bonillo property. It is important to note that Public Works' proposed solutions to improve the culvert *do not alter the historic drainage path that traverses the Bonillo property*, as explained below, and thus the Drainage plan and path for storm flows approved by the Planning Commission (and reflected in the Applicant's own materials) has been set and should not change. Accordingly, it is not material to your Board's consideration of this Project.

We respectfully request the Board to **grant the appeal as to the design issues**, and direct the Applicant to undertake revisions to the design to ensure that the MCRDG are given specific consideration and adhered to. With respect to drainage, we respectfully request the Board **approve the Drainage Plan approved by the Planning Commission**.

1. Design Issues - The Lack of Substantial Evidence to Support Findings of Approval

Administrative approvals including for the Bonillo SFD Land Use Permit (LUP) and Design Review must be accompanied by administrative findings supporting the conclusion that all requirements for the approval have been satisfied. (*See Topanga Ass'n for a Scenic Community v. County of Los Angeles* (1974) 11 Cal. 3d 506, 511). These required findings must support the approval, and substantial evidence in the record must support the findings. (*Id.*, Cal. Code Civ. Pro. § 1094.5). Findings are essential to "bridge the analytic gap between the raw evidence and ultimate decision or order." (*Topanga, supra*, 11 Cal. 3d at 515).

The administrative findings required to support the Bonillo SFD approval are articulated in the County's Land Use and Development Code ("LUDC") § 35.82.070.F.1 (Design Review Findings), § 35.82.070.F.7 (Mission Canyon Community Plan Design Review Findings, and § 35.82.110.E.1 (Land Use Permit Findings). Specifically, to approve the Project the Board must make a number of findings with respect to the Project's size, bulk, scale and compatibility with the Mission Canyon Design Guidelines.

Mission Canyon Community Plan Development Standard, LU-MC-2.1 directs that "[t]he Mission Canyon Residential Design Guidelines shall be used to guide development subject to review and approval by the Board of Architectural Review." The findings make cursory and circular

reference to the MCRDG, but the record below indicates there has been no actual specific evaluation of the Project's consistency with these important Guidelines.

A. Mission Canyon Residential Design Guidelines Consistency and Findings

Review of the Bonillo application requires affirmative findings of consistency with the design standards applicable to the local area, in this case, the Mission Canyon Residential Design Guidelines.

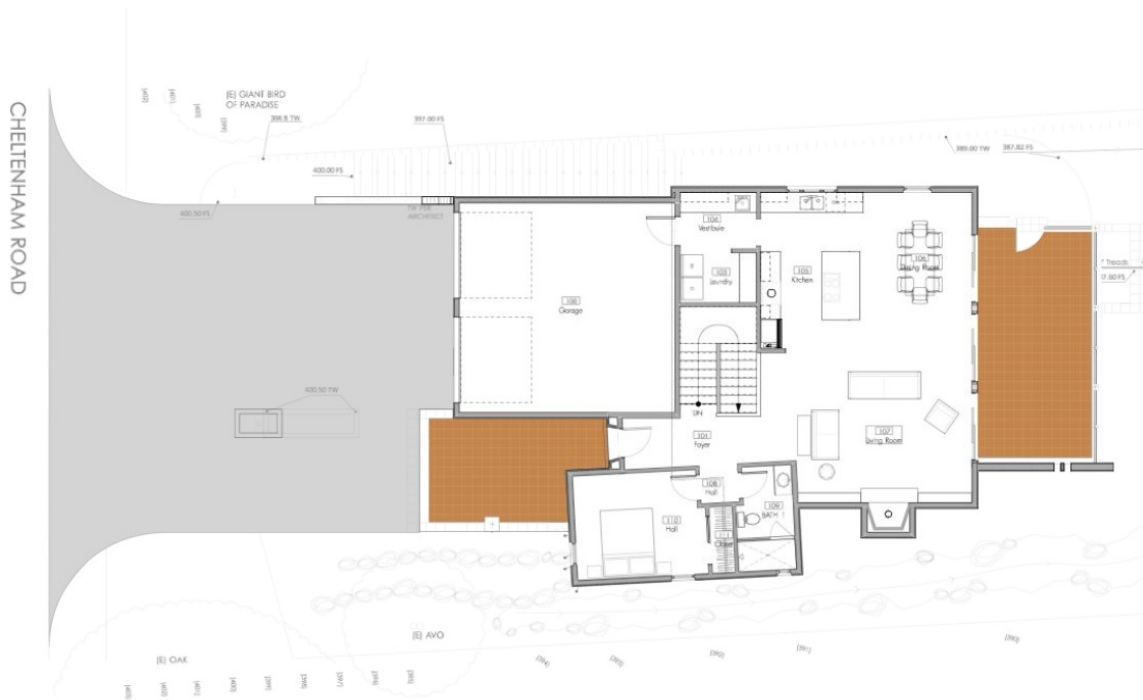
Design Review Finding 2.1.i: The proposed development is consistent with any additional design standards as expressly adopted by the Board for a specific local area, community, or zone in compliance with Subsection G (local design standards) below.

The Project is inconsistent with the specifically applicable design standards adopted for the Mission Canyon Community Plan area, as follows.

[see next page]

Neighborhood Scale Guideline 4.14: Design new and remodeled dwellings to appear proportional and complementary to nearby dwellings.

The proposed design does not appear either proportional nor complementary to nearby dwellings. As shown by the story poles (*see e.g.* Exhibits A & B) the proposed Project's design appears as a large unarticulated box that juts up above the surrounding homes when viewed from the east and west along Cheltenham, from the adjacent homes on Cheltenham (*see* Exhibits C & D), and from the adjacent home to the south (Exhibit E).



Note the “Box” jutting out from the bottom of this image.

Further, nearby homes with second stories follow the natural topography, either being built into the hillside in the case of the Hillside homes to the north, or stepping down along the natural grade in the case of the three homes west and one home east of the Project site. The Bonillo SFD stands erect, prominent and visually jarring by comparison, with minimal grading and substantial fill on a site with a history of unpermitted fill and soil storage that has unnaturally raised the grade from that of surrounding homes.

Neighborhood Scale Guideline 4.16: Minimize size, bulk, and scale through the use of appropriate roof style and pitch, form and materials, varied setbacks, window treatment and location, and door size and type. Break up mass to create interplay between various building elements.

The design of the Bonillo SFD does not minimize size, bulk, and scale. Its roofline extends higher than necessary based on the Applicant's insistence that the design place the garage floor even with the second story floor. This unreasonable demand has become the "tail wagging the dog" as the rest of the second floor stands much taller than is appropriate, presenting a large and bulky profile, with blocky angular house elements (specifically the spare bedroom on the second floor, extending to the west side setback and shown above) creating an oversized appearance on a small lot. One Planning Commissioner labelled the effect of this part of the Project as a "massive overhang impression."

While the lot is small at 0.18 acre, or 7,840 square feet, the house and garage are relatively large, nearly 3,500 square feet. One Planning Commissioner stated that this project "really belongs on the city streets of lower Santa Barbara", but in fact, this is more development than even the City would permit on this size lot. The Floor to Area Ratio ("FAR") for the Project is 0.44, well above the 0.40 that is the City of Santa Barbara's maximum allowed for this lot (and the City urges all projects to come in at no more than 85% of the maximum FAR). The City's Single Family Residence Design Guidelines would limit the maximum house size to 2,700 square feet and total house plus garage to 3,160 square feet, and their Guidelines' 85% recommendation would reduce the total development to 2,686 square feet. (City of Santa Barbara Single Family Residence Design Guidelines, page 23-C). The Project is oversize for the small lot, and the design elements exacerbate, rather than ameliorate this relatively large development's relative appearance in comparison to surrounding homes.

The large size of the house, its blocky design, and the unrealistic insistence that the garage floor elevation be the same as the second story have resulted in a project that is inconsistent with Neighborhood Scale Guideline 4.16.

*Neighborhood Scale Guideline 4.18: Structures that significantly differ from adjacent dwellings in size, bulk, scale, height, or architectural style may be allowed **if the new or remodeled dwelling is consistent with the Design Guidelines**. However, such structures should be held to an exceptionally high standard of design **because they will be highly visible and distinguishable as examples for the design of surrounding future dwellings**. (Emphasis added).*

Discussed above, the Bonillo SFD differs significantly from adjacent dwellings with respect to size, bulk, scale, and height. It is not, however, consistent with the Second Story Design and Location Guidelines. The record here below, and as presented in this appeal, show that the Mission Canyon Residential Design Guidelines were ignored, and not applied to the project.

Neither does the Bonillo SFD rise to the status of “an exceptionally high standard of design” to serve as an example for other comparable projects, as required by Neighborhood Scale Guideline 4.18. While we respect Mr. Cearnal and appreciate that he has designed many distinguished buildings, for whatever reason, the design of this house falls short of qualifying as an “exceptionally high standard of design.” The Applicant appears unwilling to accept the constraints of this small and steep lot, and demands design features – specifically a flat floor from car to kitchen – that force unacceptable compromises in the external appearance of the structure.

Consistent with this Guideline, the Bonillo SFD should *not* be approved, as it is significantly larger and bulkier than surrounding structures, is NOT consistent with the other Design Guidelines, and while highly visible, it is not distinguishable and inappropriate to serve as an example for the design of surrounding future dwellings in Mission Canyon.

Second Story Design and Location Guideline 4.19: Set the second story back and to the center of the first story (Figure 26). In general, the second story should not be located within the side yard encroachment plane, which is defined as a 30 degree angle measured from the vertical at a point 6 feet above existing grade on the interior side property line (Figure 27). Increase the second story setback when a two-story dwelling is proposed adjacent to a one-story dwelling.

The proposed second story is plainly inconsistent with the two elements of this fundamental Guideline. Not only is the second story not set back and to the center of the first story, it is plainly located within the side yard encroachment plane. In particular, the upstairs bedroom juts out toward the side yard fence and overhangs the first story in this location adjacent to the residence at 851 Cheltenham. Without specifically referencing the MCRDG’s standards, the SBAR recognized this aspect of the design as a problem, stating “West elevation . . . towers over the neighbor”, “consider stepping in the 2nd story” (SBAR Minutes 10/17/14, Exhibit G). Although SBAR’s comments spoke to an earlier iteration of the design, the west elevation has the same vertical profile – the design revisions did not step in the 2nd story or move the looming vertical wall away from the side yard setback. (*C.f.* current plan (Exhibit H) and previous plan (Exhibit I). This issue is specifically and graphically explained in the CMRDG’s examples, reproduced below. The first graphic, showing Figure 27 from the Design Guidelines, depicts an example of a structure that fails to meet this objective standard, and one that does. The third graphic is from the Project Plans, showing the side yard encroachment plane for the Bonillo SFD:

MCRDG

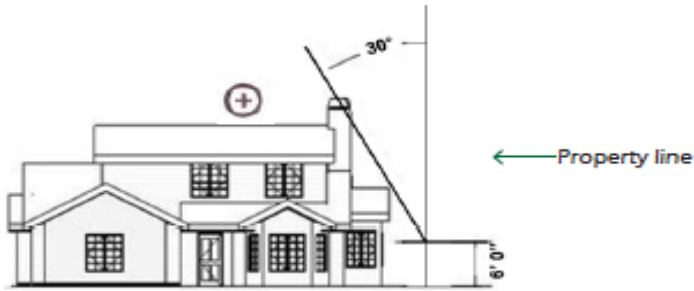
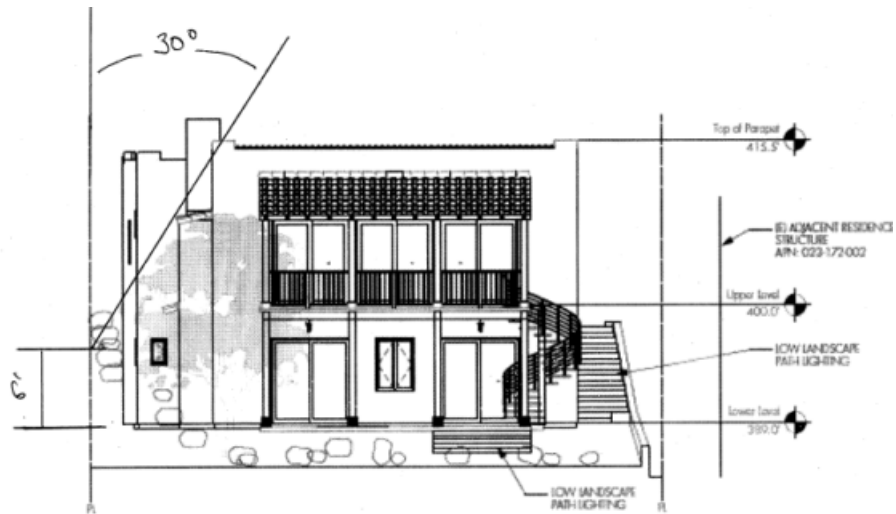
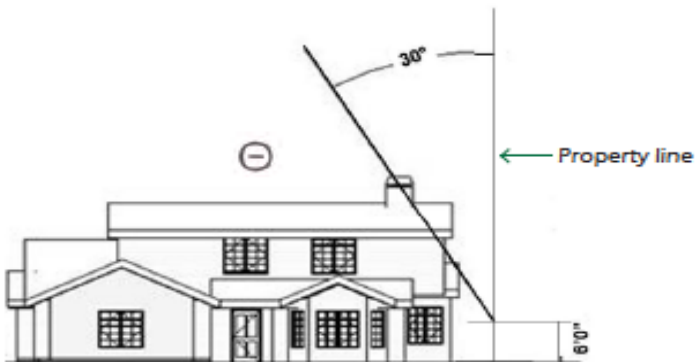


Figure 27

The top example conforms to the intent of Guideline 4.19;
the bottom example does not.



South Elevation

Scale: 1/8" = 1'-0"

849 Cheltenham Road Project

Second Story Design and Location Guideline 4.19 contains the most objective standard in the MCRDGs. It requires first, that the mass of the second story element be centered on the structure, not on the edge. The Bonillo SFD places the jutting “Box Bedroom” on the edge instead.

The Guidelines emphasize this requirement by including a numerical formula to test a project’s consistency, using the Side Yard Encroachment Plane metric. There has been no overt use of this standard in the design review below, and as shown above, the proposed design completely and utterly fails to conform with this objective standard.

Cumulatively, it is evident that the Project does not conform with either the spirit or letter of the MCRDG. The appeal should be granted and the design rejected with directions to reduce its size, conform its design to the MCRDG, and direct the SBAR to review the revised design with specific consideration of the MCRDG.

B. County Design Review Findings cannot be made

In addition to the MCRDG-specific conformity findings, The LUDC imposes additional finding requirements for the design review process.

- i. Design Review Finding 2.1.a: 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.*

To support this Finding, the proposed Findings for Approval state that the proposed dwelling is “designed to present a modest single story street-front elevation to for public view while presenting a two-story elevation toward the rear of the home”. However, while the proposed dwelling may present a single story street-front elevation from directly in front of 849 Cheltenham, it does NOT present as a single story street-front elevation from locations on Cheltenham to its east (Exhibit A) or to its west (Exhibit B). Exhibits A and B clearly show the story poles for the proposed dwelling extending well above the rooflines of the surrounding dwellings, and show that the proposed dwelling presents as a two-story structure from public viewing locations along Cheltenham.

In an attempt to establish that the proposal is “consistent with the surrounding neighborhood” the proposed Findings for Approval describe “seven (7) of the thirteen (13) closest homes along Cheltenham Road having second-story elements”. This description is misleading because of the 7 with second-story elements, 4 are “Hillside Housing” which are fundamentally different from the Project site and closest homes to the east, west, and south. Of the nearest 17 non-Hillside homes, only 3 have second story elements (*see* Exhibit F), and all three that do are situated uphill to the west, and step down the hill in a manner that follows the natural topography. By contrast the proposed Project would stick up above its neighbors to the east and west like a sore thumb. (*See* Exhibits C and D) Of the nearest 24 homes (including the Hillside homes), only 8 have second story elements,

all of which are located uphill to the west and north – all of the homes east and south of the Project site are or appear in profile as one-story.

The proposed Findings for Approval further state that “the proposed side elevations are well articulated with fenestration and varied roof heights, and side views from adjacent lots are screened and softened by the proposed new landscape plantings”. Photos of story poles for the proposed dwelling from the properties on either side of 849 directly contradict this finding, showing large vertical walls looming over each of its neighbors. Exhibit C shows the story poles as viewed from 847 Cheltenham, and Exhibit D shows the story poles as viewed from 851 Cheltenham. In addition, Exhibit E shows how the proposed dwelling would loom over the Pinkham residence to the south.

- ii. *Design Review Finding 2.1.f: Site layout, orientation and location of structures and signs will be in an appropriate and well designed relationship to one another, and to the environmental qualities, open spaces, and topography.*

Again here, the proposed Findings for Approval misleadingly state “The proposed two-story home reads as a one-story house to the public viewing it from Cheltenham Road” when in fact it reads as a two-story home from locations to its east and west along Cheltenham Road (*see* Exhibit A and B). The proposed Findings for Approval further state that the revisions approved by the Planning Commission “will lower the profile of the proposed residence”. However, the story poles erected on August 31, 2015 include the 3.5 foot reduction in overall height directed by the Planning Commission, demonstrating that even with the “lower profile” the home reads as a two-story home from locations on Cheltenham to its east and west.

- iii. *Mission Canyon Community Plan Design Review Finding 2.2.a: Plans for new or altered structures subject to the provisions of Section 38.28.080 (Design Control Overlay) are in compliance with the Mission Canyon Residential Design Guidelines as applicable.*

The record below, and the Findings themselves, confirm Appellant’s contention that the Project’s consistency with individual MCRDG has not been analyzed. The proposed Findings for Approval assert that they incorporate the “analysis” of the Project’s consistency with the Guidelines contained in the Planning Commission Staff Report (dated July 2, 2015) by reference, however the July 2, 2015 staff report merely cross references attached findings that reference back to the Staff Report. Staff has provided no written document to the Board that specifically analyzes the Project’s consistency with the Guidelines, nor did either the Planning Commission or SBAR specifically examine the Project’s consistency with the MCRDG.

C. The Board’s First Review of the Application of the MCRDG

This appeal represents the very first time the Board of Supervisors has reviewed how the SBAR and Planning Commission have interpreted and applied the MCRDG. Appeals of design review decisions are rare, because of the quality of the design review process and skill of its

members. In this case, SBAR was not directed to consider, and failed to specifically evaluate the project's conformity with the MCRDG. Approval of this appeal will instruct both staff and the SBAR of the importance of using these specific criteria as part of future design reviews in Mission Canyon, and avoid the need for such appeals in the future.

D. MCRDG Compliance is a mitigation measure for the M CCP

The Board's certification of the M CCP EIR and adoption of the M CCP relied upon specific mitigation measures to reduce the significant impacts of the M CCP. One significant impact was to the nature and character of Mission Canyon as a result of building out the remaining vacant lots. (See M CCP FEIR p. 4-6. The M CCP EIR¹ relied on the adoption of DevStd LU-MC-2.1, providing that "The Mission Canyon Residential Design Guideline shall be used to guide development subject to review and approval by the Board of Architectural Review" as a programmatic mitigation measure to reduce this M CCP impact below significant levels (*Id.*, p. 4-7; Findings of Approval, § 1.1.5²). However, in this proceeding, these Guidelines were not applied as required to gauge the project. DevStd LU-MC-2.1 is mandatory, and accordingly County must pay more than lip service to the design review requirement and programmatic mitigation measure, and in this instance, this requires that the appeal be approved, the design revised to address the Guidelines, and the SBAR consider the project anew.

E. Mere Demonstration of a Reduction From Prior Designs Does Not Constitute Compliance with Design Guidelines

It has become common practice for applicants to "ask for the moon" with their initial designs, in an effort to end up with more than they would otherwise. An Applicant cannot achieve compliance with a community design Guideline merely by showing they have made reductions from initial or earlier proposals.

For all the above reasons, we respectfully request that the appeal be upheld as to the design review process and findings, with the applicant directed to reduce the size and profile of their structures, center second story elements in the structure, and not use elements that extend into the Side Yard Encroachment Plane.

1

http://longrange.sbcountyplanning.org/planareas/mission_canyon/missioncanyon.php

² Available at file:///Users/ana/Documents/Cheltenham/Attachment%201%20-%20PC%20Action%20Letter_MCCP%20adoption.pdf

Drainage Issues

A. Summary of Position – PC-Approved Drainage Plan is Acceptable

Storm water drainage in the vicinity of the Project site has been the subject of a lengthy dispute between the former owners of 849 Cheltenham Road and surrounding neighbors, which culminated in a lawsuit in 2007 by the former 849 Cheltenham owners that was subsequently dismissed. The evidence concerning historical drainage across 851 and 849 Cheltenham Road has been exhaustively reviewed, and overwhelmingly supports the conclusion that the current drainage path from the County culvert, across the north east corner of 851 Cheltenham and onto 849 Cheltenham, exiting in the south east corner and onto a shared driveway to the east of the Pinkham residence.

With respect to the Drainage Plan approved by the Planning Commission, Staff concluded “The existing and historic drainage across the lot would be maintained by channeling it along the western side of the proposed home via an engineered bio-swale and detention basin”. (Section 6.2 of the 7/22/15 PC Staff Report, incorporated by reference into the Findings of Approval (*see e.g.* Finding 2.2.a). Upon learning that any deviations from the approved plan could be resolved through enforcement, **Appellants support the Board’s approval of the Drainage Plan approved by the Planning Commission.**

B. CEQA Implications of Revising Historical Flow Pattern

Because an alternation in this drainage pattern would have detrimental impacts to the neighborhood that has grown in reliance of storm water following its current course, should the Board decide to weigh in on the historical drainage issue and make material changes to the Drainage Plan approved by the Planning Commission, CEQA’s “unusual circumstances” exception to the categorical exemption would clearly apply (*see* CEQA Guidelines § 15300.2 (c)), necessitating CEQA review before the Project can move forward.

C. The 12” Culvert – a Red Herring

The Board Letter states that “[t]he specific drainage issue that appellants cite has been determined by Public Works to involve illegal work within the County road right-of-way in front of the Urbany property.” Staff conflates two issues: first the Appeal’s request for CEQA review of the drainage plans on 849, largely from concern that discharge from 849 may flood the lots below, including that of Appellant Pinkham, and second, the 60 year old 12” culvert that connects to an 18” pipe under Cheltenham Road. The 12” culvert, constructed over 60 years ago, has performed perfectly for many decades, and was recently inspected with a video camera and shown to be clear of debris. As shown in the Planning Commission-approved Drainage plan and the Applicant’s own

materials, the historic drainage path is not contested and will not be affected by any of the solutions stated acceptable to PWD.³

With respect to the Drainage Plan approved by the Planning Commission, Staff concluded “The existing and historic drainage across the lot would be maintained by channeling it along the western side of the proposed home via an engineered bio-swale and detention basin”. (Section 6.2 of the 7/22/15 PC Staff Report, incorporated by reference into the Findings of Approval (*see e.g.* Finding 2.2.a). Upon learning that any deviations from, or failure of the approved plan could be resolved through enforcement, **Appellants support the Board’s approval of the Drainage Plan as approved by the Planning Commission.**

D. Evidence of Historical Flow

For many years, allegations of illegal manipulation of the drainage pattern of the waters from Upper Mission Canyon Heights that flow across these two parcels have manifested in the form of zoning complaints to the County and even a lawsuit. The County reviewed the evidence regarding historical drainage across the properties on numerous occasions, in response to various zoning complaints and inquiries, and in conjunction with the Bonillo SFD application. In each instance, the County determined there was no evidence that the Urbanys had illegally diverted the outflow from the County’s culvert pipe or altered what has been the historic drainage for decades. For example, an October 11, 2006 letter from Jeff Thomas, County Supervising Building & Grading Inspector, stating that to the extent maps accurately depict the drainage pipe at the time it was installed as exiting at the residence at 851 Cheltenham Road, “it would have been moved at the time the home was built. Since the home was built about 50 years ago, the change in drainage at that time would be considered historic today, as there were no drainage laws at the time the residence was built.” (Exhibit 1) As recently as July of 2015, County Grading Inspector Tony Bohnett concluded that the waters discharged from the drainage pipe on the Urbany property “have been identified as historical flow to the vacant lot by others. That volume has entered the parcel and will exit the parcel as it has done historically. All waters from that parcel will exit the site as it has historically done.” Email, T Bohnett to J. Ridderback, July 13, 2015, Exhibit 2.

Moreover, Civil Engineer Glenn C. Hawks conducted a field visit and review of relevant documents on October 17, 2008 (Exhibit 3) and concluded:

My field visit and review [of documents pertaining to grading and drainage at the site] confirmed my conclusions that the Urbanys have done nothing to change grading and drainage of any significance on their property, or adjacent properties.

³ PWD Staff has replied in conversation and email that the substandard transition from 18” to 12” drain pipes may be remedied by either upgrading the 12” section to 18”, or by installing an inspection structure with overflow capacity for the transition point. (*See* Exhibit 6, Public Works email dated 4/20/16).

Historic topographic maps clearly show that the natural drainage at 851 is to the south and east as is also the case with the vacant lot at 849.

In addition, a number of individuals intimately familiar with the history of 849 and 851 Cheltenham have confirmed that the current drainage path is the same path the storm water traveled historically. For example, Mary Ferrari Manning, daughter of the former owners of 851 and 849 Cheltenham who grew up on the property provided a declaration (Exhibit 4) stating:

I can recall as a child in the 1960's that the storm water that drained from the culvert that ran under Cheltenham Road exited from a large pipe in the eastern side of our front yard, away from the driveway. The storm water then ran through a shallow drainage ditch towards and over the boundary of the adjacent lot, which my family owned and had orange and avocado trees on it. The pipe that the water drained from, and the path that the water then travelled – across the property line and across the adjacent lot - did not materially change during the years I lived there.

As a child, I can recall playing with the water that ran in the drainage ditch. That storm water always drained from the pipe, through the shallow ditch and across to the adjoining lot to the east.

I recall my father periodically clearing the drainage ditch, such as before rains and during the winter to keep the water that exited the pipe in the front yard flowing to the east and down and across the property line and across the adjacent vacant lot next door.

Additionally, an August 20, 2013 declaration of neighbor Charles Saenger who has lived at 856 Cheltenham Road since 1975 (Exhibit 5) states:

On many occasions I have witnessed storm water from Cheltenham Road cross over the property at 851 Cheltenham Road and onto the property at 849 Cheltenham Road through a culvert and channel located near the north end of the property line between 851 Cheltenham Road and 849 Cheltenham Road. In fact, over the years of my residency at 856 Cheltenham Road I have helped the previous owners, Charles and Marguerite Ferrari, clear this watercourse of debris. The location and direction of this watercourse has not changed since 1975 . . .

The evidence cited by the County regarding the 12" pipe issue is inconclusive regarding the time when the 12" pipe was installed or who was responsible. The County Road Log which describes the culvert at issue as an "18" C.M.P. x 40 ft., concrete headwall at intake" is dated July 1947, before the residence at 851 Cheltenham was built. A City map dated 1984 notes an 18" C.M.P extending across Cheltenham Road, but was an exhibit to an easement for the Mission Canyon sewer conversion project at the south end of 849 and 851 that had nothing to do with and was hundreds of feet from the culvert under Cheltenham Road. The "Constituent Correspondence" record from January 26, 2005 purporting to originate from Lara Urbany did not in fact, according to Ms. Urbany.

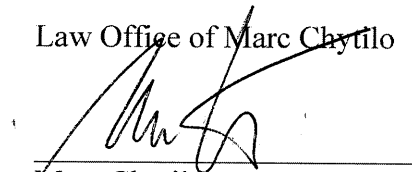
This record is puzzling since Ms. Urbany has a clear recollection of not initiating such a request and would not have made a request the culvert be plugged. Exhibit 7. A Public Records Act request of County files did not confirm the authenticity of this report – there were a number of other service calls and PWD actions logged during that time (January 7, 2005 and February 2, 2005), but not this one. The only similar Report produced by the County (of many pages of produced documents) was a request by neighbor Karen Jones to clear silt from a drainage inlet. See Exhibit 8. The 2006 document may have been the product of someone claiming to be Ms. Urbany, but in any case, supports only an imputed motive and no direct evidence of significance, and utterly fails to prove, or even provide evidence to support the PWD’s admitted “assumption” that triggered the County’s demand that the Urbanys spend tens of thousand of dollars to upgrade the County’s infrastructure to fix a non-problem. See Exhibit 9, Email from Packie Villa to Marc Chytilo, January 19, 2016.

As noted above, there is overwhelming evidence that the location and direction of the culvert and the waters it discharged have not changed in many decades, and represent the location of historical flow. The evidence, including but not limited to the above, strongly suggests that the current configuration of the culvert and drain has existed at least since 1952 when the house at 851 Cheltenham was built. As Mr. Thomas’ letter provides, any such change from that era would be “considered historic today, as there were no drainage laws at the time the residence was built.” (Exhibit 1). Indeed, any alteration was clearly meant to be permanent and has been relied on by the community of landowners for at least 64 years. Case law establishes that under these circumstances the alternation is considered natural and “subject to as much protection as if the condition were natural” (*see Clement v. State Reclamation Bd.* (1950) 35 Cal.2d 628, 638-638).

For all these reasons, we respectfully request that the Board decline to modify the Project or take other action that would deviate from the Drainage Plan approved by the Planning Commission.

Sincerely,

Law Office of Marc Chytilo



Marc Chytilo
Ana Citrin

Exhibit List

- A. Story Poles as viewed from Cheltenham Road east of the Project site
- B. Story Poles as viewed from Cheltenham Road west of the Project site
- C. Story Poles showing east elevation and adjacent neighbor to the east
- D. Story Poles showing west elevation and adjacent neighbor to the west
- E. Story Poles showing south elevation
- F. Neighborhood map showing 2nd story homes in the neighborhood

G. SBAR Minutes 10/17/14

H. Plans showing west elevation for current proposal

I. Plans showing west elevation for previous proposal

1. October 11, 2006 letter from Jeff Thomas, County Supervising Building & Grading Inspector
2. Email, T Bohnett to J. Ritterbeck, July 13, 2015
3. October 17, 2008 report from civil engineer Glenn C. Hawks
4. Declaration of Mary Ferrari Manning, 4/29/16
5. Declaration of Charles Saenger, 8/20/13
6. Public Works email dated 4/20/16
7. Statement by Lara Urbany, 4/29/16
8. Transportation Service Request Detail Report, 2/5/2014
9. Email from Packie Villa to Marc Chytilo, January 19, 2016



EXHIBIT A



EXHIBIT B



EXHIBIT C

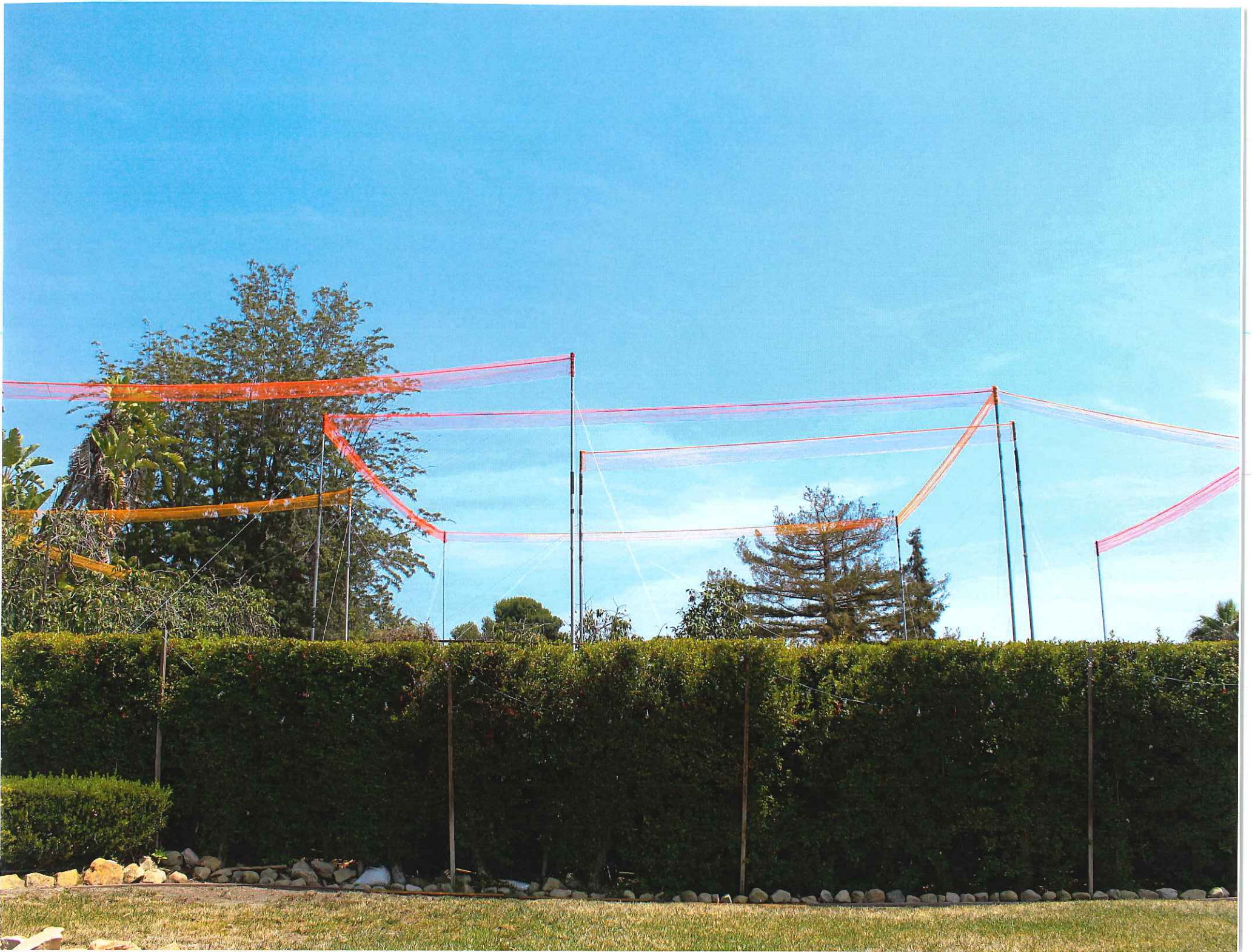


EXHIBIT D



EXHIBIT E

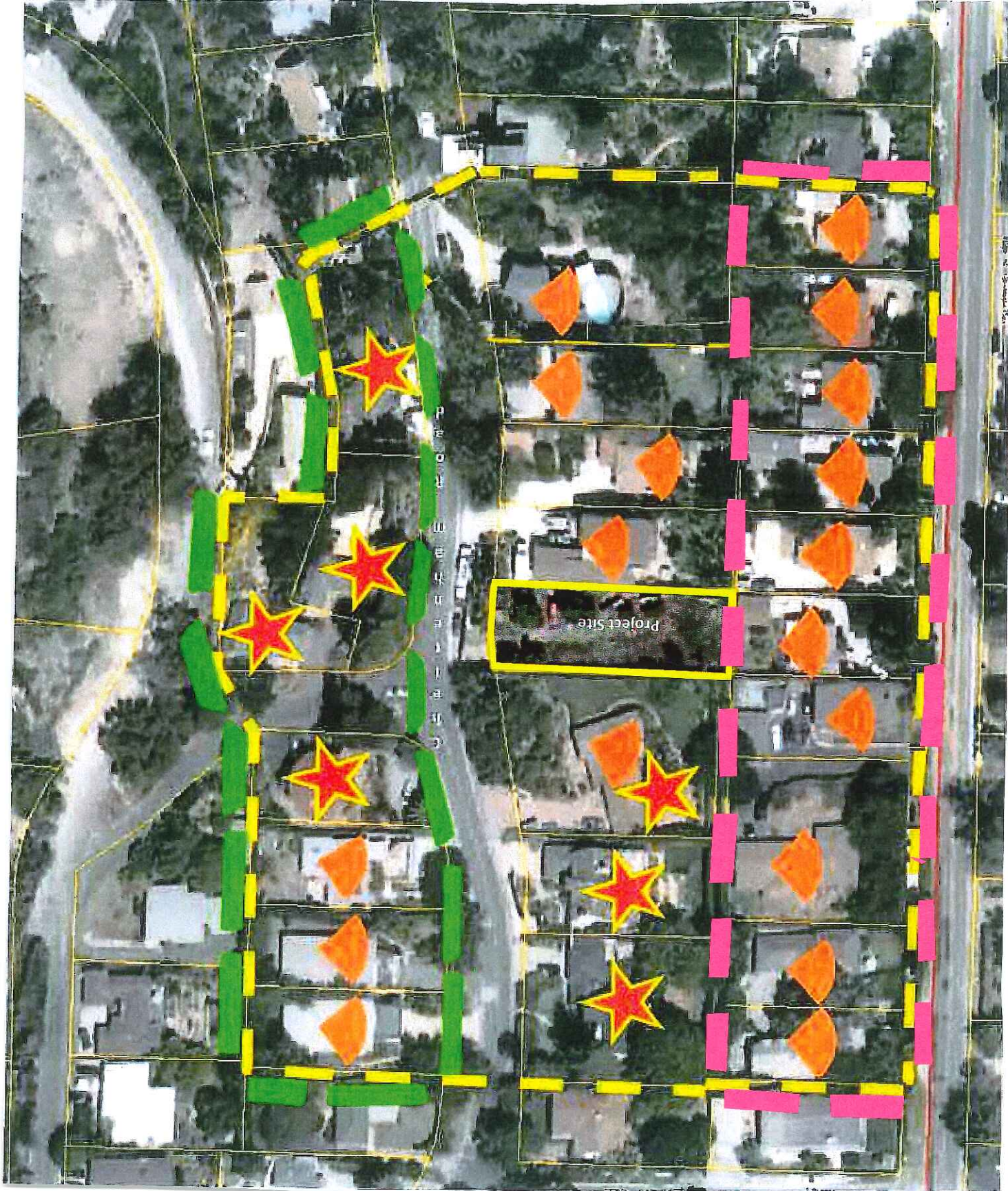


EXHIBIT F

NEIGHBORHOOD COMPATIBILITY MAP LEGEND

Bonillo proposed subject site



2 story homes



Surrounding properties around subject site



"Hillside homes" and nestled into the hillside



1 story homes and/or 2 story homes that appear to be 1 story from Cheltenham Road



Site Visit

7. 14BAR-00000-00063 Bonillo/La Torre New Residence Mission Canyon
14LUP-00000-00144 (J. Ritterbeck, Planner) **Jurisdiction: Mission**

Request of Kathy Hancock, architect for the owners, Christian Bonillo and Ana La Torre, to consider Case No. 14BAR-00000-00063 for **site visit of a new residence of approximately 2,868 square feet**. No structures currently exist on the parcel. The proposed project will require 16 cubic yards of cut and 180 cubic yards of fill. The property is a 7,928 square foot parcel zoned 7-R-1 and shown as Assessor's Parcel Number 023-172-001, located at **849 Cheltenham Road** in the Mission Canyon area, First Supervisorial District. (Continued from 4/04/14)

Project received a site visit at this time, no action was taken. See Item #8 below for review notes.

8. 14BAR-00000-00063 Bonillo/La Torre New Residence Mission Canyon
14LUP-00000-00144 (J. Ritterbeck, Planner) **Jurisdiction: Mission**

Request of Kathy Hancock, architect for the owners, Christian Bonillo and Ana La Torre, to consider Case No. 14BAR-00000-00063 for **further conceptual review of a new residence of approximately 2,868 square feet**. No structures currently exist on the parcel. The proposed project will require 16 cubic yards of cut and 180 cubic yards of fill. The property is a 7,928 square foot parcel zoned 7-R-1 and shown as Assessor's Parcel Number 023-172-001, located at **849 Cheltenham Road** in the Mission Canyon area, First Supervisorial District. (Continued from 4/04/14)

Public Comments: Renae Gentry, Audrey Pinkham, Lara Urbany, Hugh Twibell, Ken Jones, Kenneth Guoin, Gregg Patronyti, Charles Saeger, E. Fastaldo, Robert Helman, Rhonda Yager, Dave Muttly, Robert Hankenson, Greg Geyer, William Kiernan, Amy Mayhall, Marci Friedlander, Bill Urbany, George Messerlian, Don Mills, Ann Pattison, Katie Laris, Chad Stewart, Elisabeth Swede, Judy Malmgren, Lucinda Thieliche, Rosalind Roch

COMMENTS:

- **After visiting the site and reviewing the plans, story poles and another site visit may be required after reviewing proposed design.**
- **Project is bulky and tall and does not nestle into the site; design needs to better respect the site contours.**
- **Consider stepping down the residence with the site and moving it further back on the property, which would help to reduce bulk and scale.**
- **The two garages dominate the front of the house; better to combine into one.**
- **Consider modifying the roof in the rear of the house with hips and shed porch instead of gables.**
- **West elevation has too many windows and towers over the neighbor.**
- **Break up the mass of the architecture; consider stepping in the 2nd story.**
- **Return for further conceptual review.**

Project received further conceptual review only, no action was taken. Applicant was requested to return for further conceptual review with a site visit to include story poles.

9. 14BAR-00000-00183 Vernon New Residence Mission Canyon
14LUP-00000-00331 (Tammy Weber, Planner) **Jurisdiction: Mission**

Request of Larry Borrello, architect for Brett Vernon, owner, to consider Case No. 14BAR-00000-00183 for **preliminary approval of a new residence of approximately 3,779 square feet**. No structures currently exist on the parcel. The proposed project will require 1,150 cubic yards of cut and fill. The property is a 1.29 acre parcel zoned 1-E-1 and shown as Assessor's Parcel Number 023-300-021, located at **1100 Palomino Road** in the Mission Canyon area, First Supervisorial District. (Continued from 9/05/14, 9/19/14 & 10/03/14)

COMMENTS:

- **No annuals in seed mix on slopes.**
- **Add some height to plantings along the parking courtyard and at the southwest corner high point of the residence exposed understory wall; consider adding large boulders at corner to raise the grade.**



CEARNAL ANDRULAITIS
ARCHITECTURE
INTERIOR DESIGN
521 1/2 STATE STREET
SANTA BARBARA
CALIFORNIA 93101
P: 805.963.8077
F: 805.963.0884
www.cearnal.com

Proposed project for:
849 Cheltenham Road
Santa Barbara, CA 93105

JOB NUMBER: 14-042

CONTENTS:
EXTERIOR ELEVATIONS

DRAWN BY: MM

CHECKED BY:

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SUBMITTALS

DATE	TYPE
02.13.15	SBAR
09.02.15	PC

ISSUE DATE: 08.20.15

REVISIONS

NO.	DATE	TYPE

A-202

SHEET OF

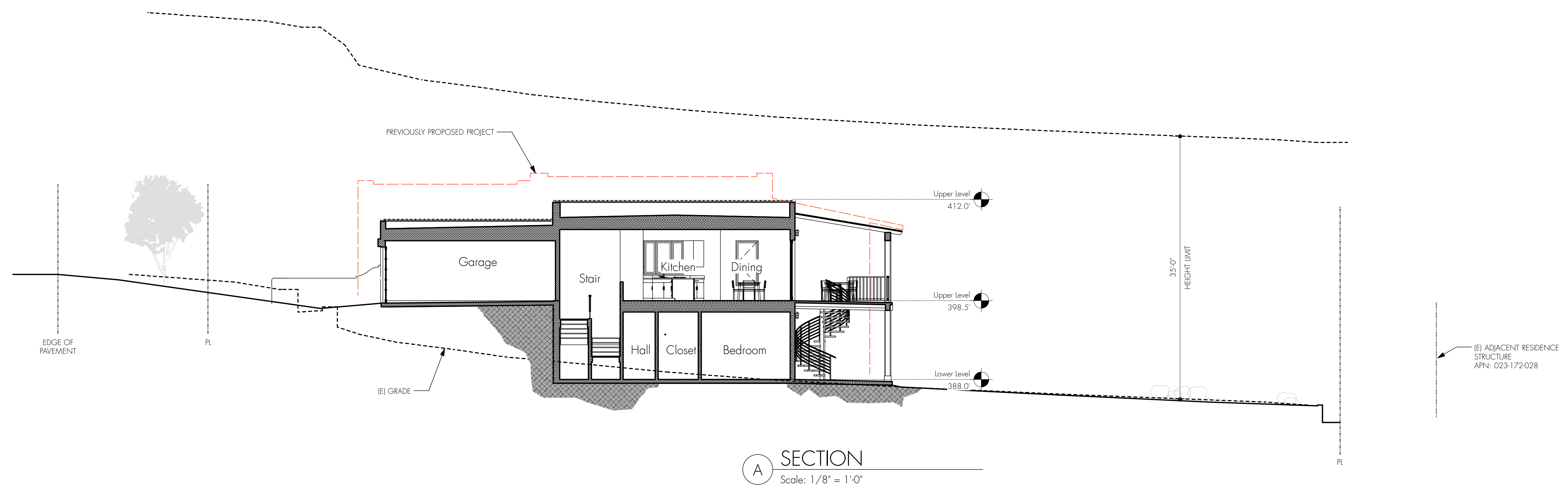
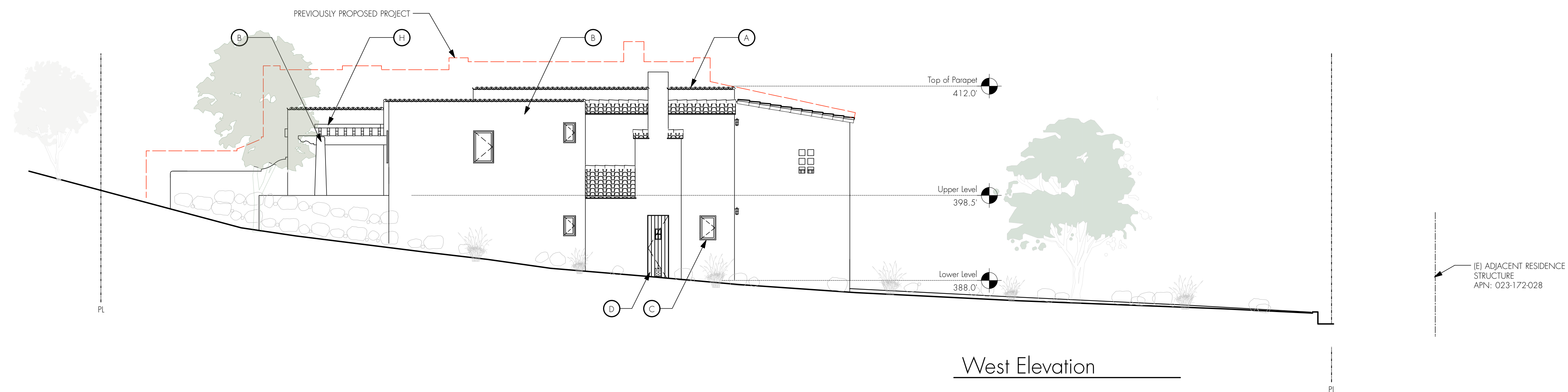
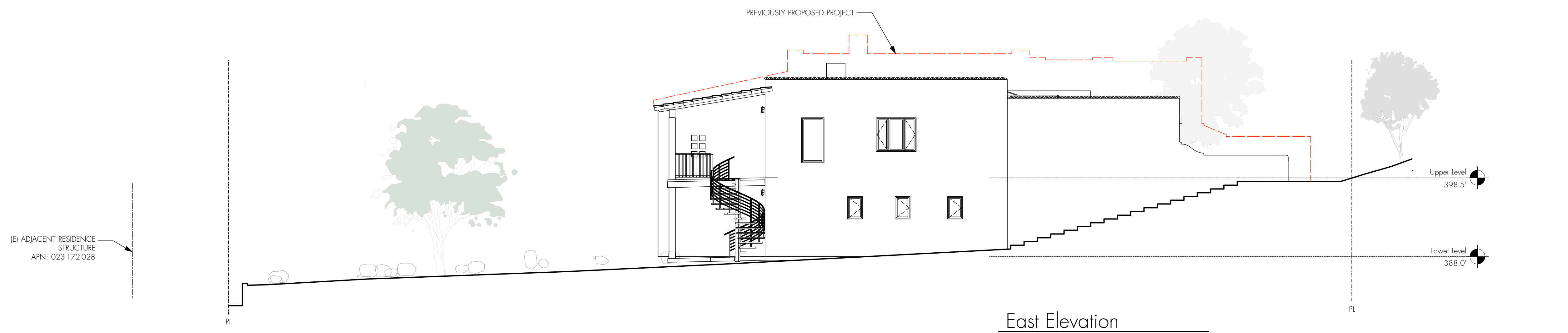
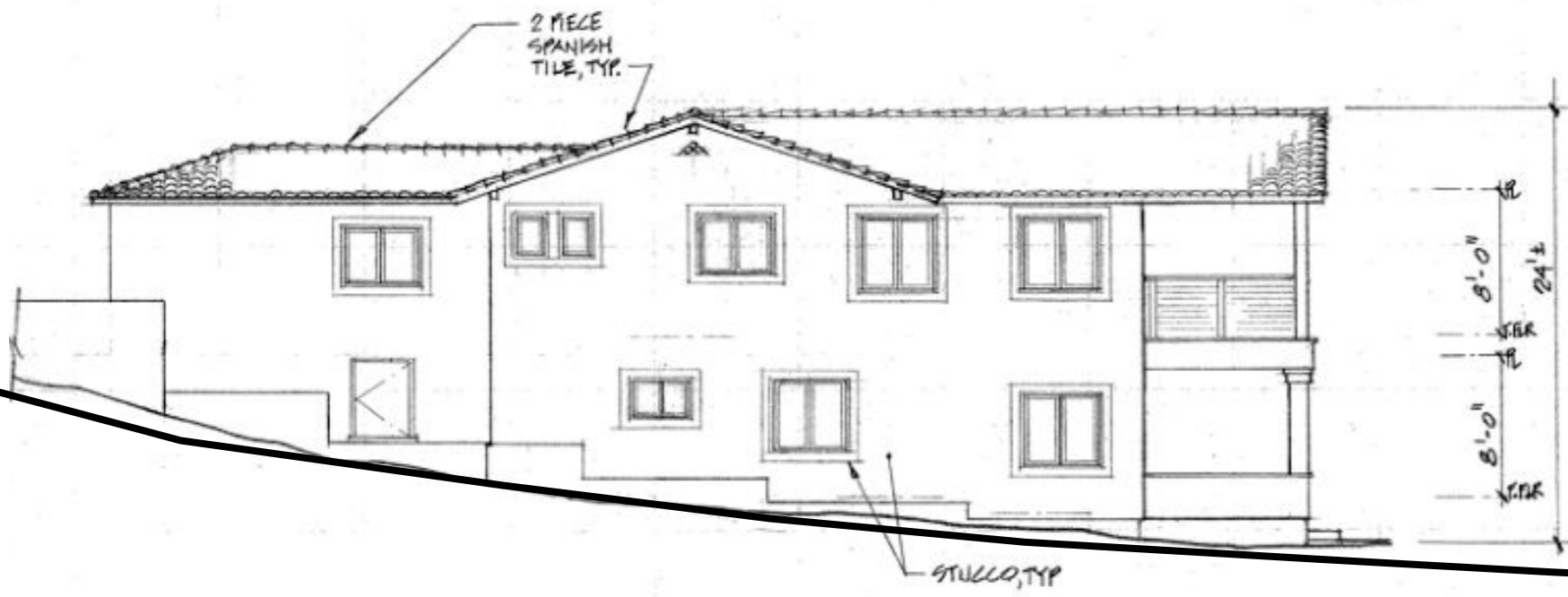


EXHIBIT H



PREVIOUS West Elevation

October 11, 2006

Gerald & Kim Castillo
3061 Samarkand Dr.
Santa Barbara, CA 93105

Subject: Your letter dated October 4, 2006

Dear Mr. & Mrs. Castillo,

In regards to your letter dated October 4, 2006, please refer to my letter dated August 30, 2006. Although I have addressed the questions from your August 30, 2006 letter, I am including the following to further clarify a couple of questions in your October 4, 2006 letter.

1. The drainage map you refer to is a hand drawn map, by Public Works. The location of the culvert in question appears to have been labeled incorrectly, as it shows the pipe exiting in a location that would be underneath the existing house at 851 Cheltenham. If this was an accurate depiction of the drainage pipe at the time it was installed, it would have been moved at the time the home was built. Since the home was built about 50 years ago, the change in drainage at that time would be considered historic today, as there were no drainage laws at the time the residence was built.
2. The retaining wall at 851 Cheltenham. The County did review the wall and did make a determination. The wall and grading are exempt. The County utilized the same concessions and benefit of doubt for 851 Cheltenham as we did for your retaining wall and grading.
3. If the owners of 851 Cheltenham regraded the area around the culvert to cause the water to be directed onto your property, the County has not received any information that would indicate they have. Therefore, the County stands by its conclusions as stated in my August 30, 2006 letter.

If you have any questions please feel free to contact me at (805) 934-6513 or (805) 686-5027

Sincerely,

Jeff Thomas
Supervising Building & Grading Inspector
Building & Safety Division
Santa Barbara County

CC:
Salud Carbajal, 1st District Supervisor, County of Santa Barbara, sent via email
John Baker, Director, Planning and Development, Santa Barbara County, sent via email
Dianne Meester, Assistant Director, Planning and Development, Santa Barbara County, sent via email
Mike Zimmer, Building Official, Planning and Development, Santa Barbara County, sent via email
Mary Pat Barry, County Counsel, Santa Barbara County, sent via email

EXHIBIT 1

Tuttle, Alex

From: Ritterbeck, J.
Sent: Monday, July 13, 2015 8:48 AM
To: Tuttle, Alex; McCurdy, Alice
Subject: FW: drainage Q:

FYI

Thank you.

J.

J. Ritterbeck, Planner II
County of Santa Barbara
Dept. of Planning & Development
Phone: (805) 568-3509
Fax: (805) 568-2030
jritterb@co.santa-barbara.ca.us

From: Bohnett, Tony
Sent: Monday, July 13, 2015 7:47 AM
To: Ritterbeck, J.
Subject: RE: drainage Q:

J

The Engineer of record would provide a hydrology report using a computer modeling program that the County would accept.

Like HydroCad or others.

The real question is what does the new development volumes add to the already existing historical on flow that the street pipe produces.

The on flow to the Vacant Property has not changed and is determined by the size of the drainage pipe that releases waters on the Urbany Property and flows east to the vacant lot and what falls from the heavens. This pipe waters have been identified as historical on flow to the vacant Parcel by others.

That volume has entered the parcel and will exit the parcel as it has done historically. All waters from that parcel will exit the site as it has historically done.

The question is how much new concentrated volume does the development produce and what system is put in place to equal or lessen the amount of volume run off through a time period to equal the historical run off average.

The engineer will look at these things and calculate what the pipe has historically produced in a 10 , 25, 50 year event and what the roof will produce and design a system to hold the new produced concentrated water amounts.

Lets chat

Tony

From: Ritterbeck, J.
Sent: Friday, July 10, 2015 9:19 AM
To: Bohnett, Tony
Subject: drainage Q:

What kind of a hydrology study will be required to demonstrate the adequacy of the proposed swale off of Cheltenham that is piped onto the property?

Thank you.
J.

J. Ritterbeck, Planner II
County of Santa Barbara
Dept. of Planning & Development
Phone: (805) 568-3509
Fax: (805) 568-2030
jritterb@co.santa-barbara.ca.us

Oct. 17. 2006 3:45PM

ATTN: JEFF THOMAS
Supervising Building & Grading Inspector



Hawks & Associates
Planning

Engineering

Surveying

October 17, 2008

John C. Lauritsen Law Office
800 Garden Street, Suite L
Santa Barbara, CA 93101

RECEIVED

OCT 29 2008

S.B. COUNTY
PLANNING DEPARTMENT

RE: 851 Cheltenham Road, Santa Barbara

Dear Mr. Lauritsen:

This letter will report the results of my field visit on Thursday, Oct. 9, 2008 to 849 and 851 Cheltenham Road, Santa Barbara. I also reviewed a number of documents that pertain to grading and drainage at the site, including notes from a visit to the site in 2007.

My field visit and review confirmed my conclusions that the Urbany's have done nothing to change grading and drainage of any significance on their property, or adjacent properties.

Historic topographic maps clearly show that the natural drainage at 851 is to the south and east as is also the case with the vacant lot at 849. (See Exhibits 1 and 1A)

The historic flow path from the culvert under Cheltenham Road is uncertain and the time of change from an 18" CMP culvert to a 12" RCP as shown on the field survey map is an unknown factor. However my hydrology analysis indicated the flow is probably less than 1 cubic foot per second and should not create unusual erosion problems. However, in my field visit I noticed that the southeasterly natural drainage flow direction at the common property line between 851 and 849 has been blocked and should be restored as shown on the survey map Exhibit 2.

It is also apparent from topographic maps that some minor grading has taken place at 849 to re-grade the natural south east slope to a more due south slope as depicted on Exhibit 2.


My conclusion is generally consistent with that of the Santa Barbara County Planning and Development Department as set forth in discussion item 3 of their letter of August 30, 2006 (attached).

I am a qualified grading and drainage expert in the Santa Barbara Superior Court System, having testified several times, and am prepared to testify to the above conclusions if necessary.

Please call if you have any questions.

Sincerely,

Hawks & Associates


Glenn C. Hawks



- Attachments:
- County of Santa Barbara Letter August 30, 2006
 - Exhibit 1 - Topographic Map Pre 1984
 - Exhibit 1A - Topographic Map Date Unknown
 - Exhibit 2 - Topographic Survey Map Dec. '07 with flow path
 - Exhibit 3 - South coast watershed map

cc: Bill and Lara Urbany

EXHIBIT 3

1 I, Mary Ferrari Manning, declare as follows:
2

3 1. I am the daughter of Charles & Margite Ferrari, and grew up in Santa Barbara,
4 California at a house located at 851 Cheltenham Road, where I lived from the years 1954 to
5 1975. I make this declaration of my own personal knowledge, and I could and would testify
6 competently thereto.

7 2. My father built the house at 851 Cheltenham Road before I was born.

8 3. I am familiar with the layout and physical features of the house and yard at 851
9 Cheltenham Road from my time living there, and in subsequent visits.

10 4. I can recall as a child in the 1960's that the storm water that drained from the
11 culvert that ran under Cheltenham Road exited from a large pipe in the eastern side of our front
12 yard, away from the driveway. The storm water then ran through a shallow drainage ditch
13 towards and over the boundary of the adjacent lot, which my family owned and had orange and
14 avocado trees on it. The pipe that the water drained from, and the path that the water then
15 travelled – across the property line and across the adjacent lot - did not materially change during
16 the years I lived there.

17 5. As a child, I can recall playing with the water that ran in the drainage ditch. That
18 storm water always drained from the pipe, through the shallow ditch and across to the adjoining
19 lot to the east.

20 6. I recall my father periodically clearing the drainage ditch, such as before rains and
21 during the winter to keep the water that exited the pipe in the front yard flowing to the east and
22 down and across the property line and across the adjacent vacant lot next door.

23 7. I declare under penalty of perjury under the laws of the State of California that the
24 foregoing is true and correct.

25 Executed this 28th day of April at Bandon, Oregon.

26 By: Mary Ferrari Manning
27 MARY FERRARI MANNING
28

DECLARATION


State of California,)
)
County of Santa Barbara)

I, Charles Saenger of Santa Barbara, California, declare:

I have lived at 856 Cheltenham Road, Santa Barbara, California, since 1975. On many occasions I have witnessed storm water from Cheltenham Road cross over the property at 851 Cheltenham Road and onto the property at 849 Cheltenham Road through a culvert and channel located near the north end of the property line between 851 Cheltenham Road and 849 Cheltenham Road. In fact, over the years of my residency at 856 Cheltenham Road I have helped the previous owners, Charles and Marguerite Ferrari, clear this watercourse of debris. The location and direction of this watercourse has not changed since 1975, except that it has recently been blocked at the point where it crosses the property line between 851 and 849 Cheltenham Road.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Dated: 8/20/13

 Charles Saenger
Charles Saenger

From: [Villa, Packie](#)
To: "[Marc Chytilo](#)"
Cc: [Irabon, Jemmi](#); [Pearson, Eric](#); [Ritterbeck, J.](#)
Subject: RE: 851 Cheltenham
Date: Wednesday, April 20, 2016 7:50:55 AM

Per our phone conversation yesterday afternoon, the County of Santa Barbara Permits Department is asking for the unpermitted 12' culvert pipe extension be removed from the end of the existing 18" County culvert pipe on the outlet side of the storm drain. We have no objections if an 18" pipe extension is put in to replace the 12". We prefer to have a clean out junction box at the connection of the extension to allow the County Road Department access to remove any debris. Please understand that this request is only for the section of pipe in the County Road Right of Way. Please consult with County Planning Department Mr. Ritterbeck for the portion on private property.

Packie Villa
Road Encroachment Permit Inspector
County of Santa Barbara
Public Works Department
805-681-4989

From: Marc Chytilo [mailto:marc@lomcsb.com]
Sent: Monday, April 18, 2016 3:05 PM
To: Villa, Packie
Subject: Re: 851 Cheltenham

Thanks Packie - I look forward to your call. In my mind, the encroachment issue is separate from the neighbors project and should not have been raised to influence the house approval issues. I don't think you can make a current owner correct a 60 year old action that was undertaken when there were no laws controlling drainage systems at the time, (according to a county letter).

Talk soon
Marc

Marc Chytilo
Law Office of Marc Chytilo, APC
POB 92233
Santa Barbara, CA 93190
805 682-0585

Sent from my iPhone

On Apr 18, 2016, at 2:23 PM, Villa, Packie <PVilla@cosbpw.net> wrote:

I am sorry I have been very busy. I will sit down with my supervisor in the morning and

EXHIBIT 6

get back to you by the afternoon.

From: Marc Chytilo [<mailto:marc@lomcsb.com>]

Sent: Monday, April 18, 2016 12:57 PM

To: Villa, Packie

Subject: 851 Cheltenham

Packie – I have left a phone message to you last week asking for a call back to discuss where PWD department stands regarding the storm drain encroachment issue and your letter of January 7, 2016 filed at the behest of Mr. Ridderback. As discussed in the conversations and communications following receipt of your letter, and then transmittal of our letter dated March 4, 2016 submitted on behalf of Ms. Urbany, your office was to review our letter and the evidence addressing the historical nature of the existing drainage, and we were going to meet and discuss and resolve the issue, if possible. I have heard nothing back since our letter, and would appreciate you responding and advising. As you know, there is substantial evidence that the existing watercourse, including the 12" CMP, have been in place for over 60 years and as such, is the historical drainage and we believe your request should be rescinded.

But if this is not the case, I think we should continue as we had planned to review the evidence, meet and discuss the right course of action.

All the best

Marc

* * * * *

If you believe you have received this message in error, please notify sender immediately.

* * * * *

Marc Chytilo
Law Office of Marc Chytilo
Post Office Box 92233
Santa Barbara, California 93190
Phone: (805) 682-0585 · Fax: (805) 682-2379
Email: Marc@lomcsb.com

Statement by Lara Urbany
April 29, 2016

I have reviewed a County document sent to us, labeled as “Constituent Correspondence” in which I was identified as the “Requestor” that asked that water drainage be re-routed or the culvert plugged. Apparently, from this document, the Public Works Department “just assume[d]” that the 12” culvert was not in place at that time.

I am baffled by this report, as I did not make a call to Naomi Schwartz's office or any County department making this request. I would not and did not make a request that the water be re-routed or that the culvert be plugged.

Over the course of the past 13 years, by our count, we have been the target of at least 9 zoning complaints filed by our neighbors and investigated by the County and one lawsuit over various aspects of the drainage issues.

Respectfully Submitted,

Lara Urbany

Transportation Service Request Detail Report

Request ID							
NTR20140205124400284							
Date Received	Response Required By	Date Entered	Status Date	Status	Activity Code	Location Code	Program ID
2/5/2014	2/19/2014	2/5/2014	2/5/2014	Complete	HH21	SB - 2014020547	2310
Type of Request	District	Supervisor/Staff	Created By	Assigned To	Street Number	Street Name	
Plugged/Damaged Culvert	1	Salud Carbajal	Katherine Douglas	MGonzal@cosbpw.net,		CHELTENHAM RD	
Location				Request			
Cheltenham Road (@ Exeter)				Lower end of culvert on Cheltenham @ Exeter is filled with silt			
Response							
<p>2/6 Field inspected by Mario Gonzalez. 2/7 Mario left message that hopefully Crew can clean ditch next week Status: Responded Currently Assigned to: MGonzal@cosbpw.net,</p> <p>2/18 Bill's Crew finished clearing ditches Status: Complete Currently Assigned to: MGonzal@cosbpw.net,</p>							
						First Response Date	Is this a PIR?
						2/10/2014	*

Requestor

Requestor Name	Work Phone	Cell Phone	Home Phone	Street Address	City State and Zip
KAREN JONES			(805) 682-2284	847 CHELTENHAM	, CA

Marc Chytilo

From: Villa, Packie
Sent: Tuesday, January 19, 2016 2:54 PM
To: 'Marc Chytilo'
Cc: Ritterbeck, J.; Gonzalez, Mario; Carnahan, Randy; Irabon, Jemmi
Subject: RE: 849 Cheltenham
Attachments: doc01160520160119143608.pdf

Mr. Chytilo, I have attached the service request that the County Road Department received on 1/26/2005 from Lara Urbany. This is the only paper trail I could find and it states that the drainage was running onto her property from the existing culvert outlet. I just assume at that time the 12 culvert extension was not in place, if it was there would not have been a complaint. Please let me know if this helps.

Packie Villa
Road Encroachment Permit Inspector
County of Santa Barbara
Public Works Department
805-681-4989

From: Marc Chytilo [<mailto:marc@lomcsb.com>]
Sent: Tuesday, January 19, 2016 9:37 AM
To: Villa, Packie
Subject: 849 Cheltenham

Mr. Villa -

As discussed today, on behalf of Lara Urbany, I request that your letter dated January 7, 2016 and received on January 12 be rescinded and any demand for action by Ms. Urbany be delayed by at least 30 days to allow a more complete development of the facts and appropriate solution, if any is needed, in this matter. I am informed that the culvert was scoped last week and is free to convey flows as it has historically for over 60 years.

Thank you for your courtesy in this regard and I look forward to your confirming email.

Best regards,

Marc

* * * * *

If you believe you have received this message in error, please notify sender immediately.

* * * * *

Marc Chytilo
Law Office of Marc Chytilo
Post Office Box 92233
Santa Barbara, California 93190
Phone: (805) 682-0585 · Fax: (805) 682-2379
Email: Marc@lomcsb.com