



# County of San Mateo

## Inter-Departmental Correspondence

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**Department:** PLANNING AND BUILDING

**File #:** 20-305

Board Meeting Date: 5/19/2020

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**Special Notice / Hearing:** None  
**Vote Required:** Majority

**To:** Honorable Board of Supervisors

**From:** Steve Monowitz, Community Development Director

**Subject:** Public hearing to consider an appeal of the Planning Commission's decision to deny a Planned Agricultural District Permit, Coastal Development Permit, and Use Permit to legalize unpermitted development including installation of wooden ramps, maintenance shed, gate, bench, and signs; change in the intensity of use of land, and removal or harvesting of major vegetation other than for agricultural purposes; and enlargement of a non-conforming use at Historic Purissima Cemetery. The Coastal Development Permit is appealable to the California Coastal Commission if the appeal is granted and the permit is approved.

County File Number: PLN 2019-00023 (Purissima Cemetery/Bixby)

### **RECOMMENDATION:**

Public hearing to consider an appeal of the Planning Commission's decision to deny a Planned Agricultural District Permit, Coastal Development Permit, and Use Permit to legalize unpermitted development including installation of wooden ramps, maintenance shed, gate, bench, and signs; change in the intensity of use of land, and removal or harvesting of major vegetation other than for agricultural purposes; and enlargement of a non-conforming use at Historic Purissima Cemetery, 1165 Verde Road, Half Moon Bay:

- A) Open public hearing
- B) Close public hearing
- C) Deny the appeal and uphold the Planning Commission's decision to deny the requested Planned Agricultural District (PAD) Permit, Coastal Development Permit (CDP), and Use Permit to legalize unpermitted development, by making the findings identified in Attachment A.

### **BACKGROUND:**

This is an appeal of the Planning Commission's decision to deny a PAD Permit, CDP, and Use Permit

to legalize unpermitted development (see Attachment C) at the Historic Purissima Cemetery. Staff recommends that the Board of Supervisors uphold the Planning Commission's decision (see Attachment E) to deny the requested permits based upon the incompleteness of the application. Additionally, the unpermitted burials, construction, and use of the property have and will continue to cause adverse environmental impacts to sensitive habitats and agricultural resources, and is therefore inconsistent with the County's General Plan, Local Coastal Program, and grading requirements.

## **PROPOSAL**

This application is for a PAD Permit, CDP, and Use Permit to legalize unpermitted development including: the erection of solid materials or structures (e.g., wooden ramps, maintenance shed, gate, bench, and signs), a change in the intensity of use of land, the removal or harvesting of major vegetation other than for agricultural purposes; and enlargement of a non-conforming use, at Historic Purissima Cemetery in unincorporated Half Moon Bay.

Edward Bixby, the "Appellant/Applicant," proposes to re-establish the operation of the historic cemetery and legalize the unpermitted development that has occurred without the required permits. The property is the subject of two open County Code violation cases (VIO 2017-00320-001 and VIO 2017-00320-002) related to the unpermitted construction of wooden ramps, a maintenance shed, gate, bench, and signs; and use of the Purissima Cemetery without the required Use Permit for the enlargement of a non-conforming use, structure or situation.

## **BACKGROUND**

Report Prepared By: Renée Ananda, Planner III, Telephone 650/599-1554

Applicant/Appellant: Edward Bixby

Owner: Undetermined

Location: 1165 Verde Road, unincorporated Half Moon Bay

APN: 066-180-060

Size: Approximately 5-acre parcel

Existing Zoning: Planned Agricultural District/Coastal Development (PAD/CD)

General Plan Designation: Agriculture/Rural

Local Coastal Plan Designation: PAD/CD

Williamson Act: Not Applicable

Existing Land Use: Historic Cemetery

Water Supply: An on-site well that meets Environmental Health Services standards for domestic use would be required to support any non-agricultural use that requires water for drinking and sewage disposal. No such well currently exists on the site, nor has it been proven that water of sufficient quantity and quality is available to support an on-site domestic well; and absent materials from the applicant that have been requested by the County, it is not possible to determine whether such a

water supply is needed.

**Sewage Disposal:** An on-site septic system that meets Environmental Health Services standards for the level of use it is intended to serve is required for any land use that necessitates sewage treatment. No such septic system currently exists on the site, nor had it been proven that one which meets Environmental Health Services standards could be constructed; and absent materials from the applicant that have been requested by the County, it is not possible to determine whether such a septic system is needed.

**Flood Zone:** Zone X, Area of Minimal Flooding, FEMA Panel No. 06081C0266F, effective August 2, 2017.

**Environmental Evaluation:** Pursuant to Section 15270 (*Projects Which are Disapproved*) of the California Environmental Quality Act (CEQA) Guidelines, CEQA does not apply to projects which a public agency rejects or disapproves. If approval of the project was desired, an Initial Study, pursuant to the California Environmental Quality Act (CEQA), would be required to determine what level of environmental impact analysis is appropriate for the proposed project. A Mitigated Negative Declaration, at a minimum, would likely be required. The CEQA analysis required to approve the project cannot be completed at this time due to the incomplete status of this application, including an insufficient project description, which leaves questions about the extent of the proposed development and the associated environmental impacts unanswered.

**Setting:** Purissima Cemetery occupies a 5-acre parcel which is mostly flat, with the south side gently sloping toward the Purissima Creek drainage that abuts the southern property line. The parcel is vegetated with coastal scrub brush, poison oak, evergreen and Monterey cypress trees. The property is bordered by Verde/Purissima Creek Road on the north, an open field with scrub brush on the east, the Purissima Creek drainage on the south, and the site of the former town of Purissima on its western boundary (see Attachment B). Types of land use on surrounding properties include agricultural uses on the south and east, undeveloped open space land on the north (owned by the Community College District) and west (the abandoned Purissima town site, now owned by the Coastsides Land Trust), and parcels with single-family homes.

**County Code Violations:** The Zoning Hearing Officer (ZHO) issued an Administrative Order ("Order") in a Letter of Decision, dated October 23, 2018, upholding the County's Administrative Citations (Nos. VIO 2017-00320-001 and VIO 2017-00320-002). The Order requires the applicant to: (1) immediately cease the unpermitted use, including, but not limited to conducting burials, land clearing, construction and posting signs; and (2) apply for the required Coastal Development Permit (CDP) and Use Permit within 60 days of the October 18, 2018 Administrative Hearing (December 17, 2018).

The applicant submitted permit applications after the required 60-day deadline. The applications were deemed incomplete due to the lack of required information and remain incomplete as of the preparation of this report. The applications were scheduled for hearing before the Planning Commission, despite their incomplete status, in order to reinforce the ZHO's Administrative Order, and to compel the applicant to cease burial activities and remove the unpermitted development.

Staff recommended that the Planning Commission deny the Appellant's/Applicant's permit request because the applications are incomplete, and because the request to legalize unpermitted development and continue the unpermitted use: (1) does not conform to specific findings required by Local Coastal Program (LCP) policies with respect to Locating and Planning Development, Agriculture, Sensitive Habitats, and Visual Resources; (2) does not comply with General Plan policies

regarding visual quality, vegetation, water, fish, and wildlife resources, (particularly Purisima Creek), and historical and archaeological resources; (3) does not meet the requirements for issuance of a Use Permit; and (4) does not meet the requirements for a PAD permit. The Planning Commission denied the requested permits at its November 13, 2019 public hearing, due to the incompleteness of the application.

#### Chronology:

<u>Date</u>	<u>Action</u>
March 29, 2018	-County issues Notice of Violation (VIO 2017-00320) for Development without necessary permits.
May 3, 2018	-County issues First Administrative Citation 2017-00320-001 for "Development without Necessary Permits (Coastal Development Permit, Planned Agricultural Permit, and Use Permit)."
May 17, 2018	-A Request for an Administrative Appeal Hearing of the Citation was submitted by the applicant.
June 5, 2018	-A hearing date of July 19, 2018 to consider the appeal of the citation was proposed by staff to the applicant's attorney.
June 26, 2018	-Applicant's attorney requested a continuance on the proposed July 19, 2018 hearing date.
August 24, 2018	-Hearing date of October 18, 2018 agreed to by applicant and County.
September 13, 2018	-Due to ongoing development activities, County issues <u>Second Administrative Citation</u> , No. VIO 2017-00320-002, for "Continuing Violations of Development without Necessary Permits (Costal Development Permit (CDP), Planned Agricultural Permit (PAD), and Use Permit (UP))."
October 18, 2018	-Hearing before Zoning Hearing Officer (ZHO).
October 23, 2018	-ZHO issued Letter of Decision upholding Administrative Citations (Nos. VIO 2017-00320-001 and VIO 2017-00320-002). ZHO required applicant to (1) immediately cease unpermitted use, including, but not limited to conducting burials, land clearing, construction, and posting signs; (2) apply for required CDP and UP within 60 days of the October 18, 2018 hearing (December 17, 2018); and (3) remove all illegal development by January 16, 2019 if time frame for submittal of CDP and UP applications is not met, and provide verification of the removal.
January 22, 2019	-Applicant submitted an application, after the required 60-day deadline. Application deemed incomplete.

February 12, 2019	-Applicant retains surveyor.
February 15, 2019	-Applicant submits insufficient proof of ownership (copy of tax bill and check written to County Tax Assessor both under the name "Purissima Church and Cemetery").
March 8, 2019	-Application again deemed incomplete.
March 12, 2019	-Informed applicant that additional documentation, such as bylaws, or articles of incorporation, is required to prove ownership; and site plan, archaeological report, biological survey, and hydrological report is required to complete application.
June 6, 2019	-County sends applicant a letter which served as the next step in continued enforcement for ongoing violations at Purissima Cemetery. Letter reiterates findings and requirements set forth in ZHO October 23, 2018 Letter of Decision.
August 15, 2019	-Another Incomplete Status letter sent to applicant that requested sufficient proof of ownership, a property survey, and biological, hydrological, and archaeological reports. The deadline for submittal of this information was extended to August 30, 2019. Informed applicant that after August 30, 2019 staff will schedule the application for a Planning Commission hearing on November 13, 2019 as submitted; and staff will recommend that it be denied due to incompleteness. The letter further provided that the County reserves the right to pursue available legal remedies to ensure compliance with the ZHO's Administrative Order because applicant has continued to conduct burials in violation of the Administrative Order.
August 30, 2019	-Applicant submits (via e-mail) an insufficient site survey. Survey does not show development on the parcel. Application remains incomplete.
September 20, 2019	-Corresponded with applicant via e-mail, again provided applicant with the August 15, 2019 filing status letter and informed the applicant that the Planning Commission hearing on the permit applications will occur on November 13, 2019.
November 13, 2019	-Planning Commission public hearing. Staff accommodated applicant's request to participate by telephone. Planning Commission denied the requested CDP, PAD, and Use permits based on information provided by staff and evidence presented at the hearing, specifically owing to the incompleteness of the application and conditions of denial as listed in Attachment A of the staff report.
November 26, 2019	-Applicant submits Application of Appeal to the Board of Supervisors to appeal Planning Commission's denial.

## **DISCUSSION**

## A. SUMMARY OF APPEAL

On November 26, 2019, Edward Bixby ("Appellant/Applicant") submitted an Application for Appeal to the Board of Supervisors (Attachment E) to appeal of the Planning Commission's decision to deny his permit requests. The issues/contentions raised by the appellant are presented below; and followed by staff's response:

1. Appellant/Applicant: States in the appeal application that he "*would like further clarification as to what exactly is needed to put improvements application forth once more*"

Staff's Response: Staff's multiple requests to the Appellant/Applicant specified what materials and information are necessary to deem his application complete. Such information amounts to standard practice for projects within the Coastal Zone located adjacent to or within sensitive habitat. The Zoning Hearing Officer issued Edward Bixby an Administrative Order on October 23, 2018 which upholds administrative citations (Nos. VIO 2017-00320-001 and VIO 2017-00320-002). The Order (see Attachment F) required the Appellant/Applicant, among other things, to apply for the required CDP and Use Permit within 60 days of the October 18, 2018 hearing (December 17, 2018). The appellant did not comply with the required deadline; submitting the application on January 23, 2019. The application was reviewed and deemed incomplete as it did not include a site plan, proof of ownership, and clarification of his New Jersey address (the application stated Woodbine and the check used to pay the application fee states Marshalltown). Staff informed the Appellant/Applicant, on January 28, 2019, of County's willingness to work with him in "good faith" to have the issue resolved and extended the deadline allowing 30 to 60 additional days for the applicant to complete the application. Staff again conveyed to the applicant that he submit the previously-requested survey/site plan and proof of ownership along with the other materials.

Staff had multiple communications (January 28, 2019, February 7, 2019, March 6, 2019, March 11, 2019, March 12, 2019, August 15, 2019, and September 4, 2019) with the appellant regarding what specific information was needed to complete the application. The Appellant/Applicant has conveyed to staff his position that his proposal to re-establish the Purissima Cemetery, and development in the form of construction of structures, and burials, do not require permits from the County. The Appellant/Applicant stated in an e-mail to staff on August 21, 2019 that it is "*...not our duty to perform a Bio report, Endangered species report, hydrological report nor a[n] archaeological/historical report.*" Staff has provided clear direction as to what is required to complete his application in an effort to proceed with the review and analysis of the proposal to re-establish and expand the cemetery, which is a non-conforming use (i.e., a use that is not allowed by current zoning regulations).

2. Appellant/Applicant: Contends that "*as stated by Board County has requested information from Applicant that may not be required for Improvement Review.*"

Staff's Response: The source and the accuracy of the Appellant's/Applicant's above-stated contention is unclear. Staff often requests materials, studies, and information that are germane to the review and analysis of the proposed project. Purissima Cemetery is located within the Coastal Zone in proximity to sensitive habitat.

Reports on biological and archaeological conditions at the site, as well as other requested information, are not above or beyond what is required to enable staff to effectively review the proposed project's conformance to applicable policies and regulations.

3. Appellant/Applicant: States that he is "... *not unwilling to proceed forward with further requirements,*" he also states that he "... *does not want to proceed with any further costly reviews if they are not required.*"

Staff's Response: The proposed project site is within the Coastal Zone and subject to the policies and regulations of the State of California's Coastal Act. The County Board of Supervisors and the California Coastal Commission approved/certified San Mateo County's Local Coastal Program (LCP) and the County assumed responsibility and the authority to implement the State Coastal Act in the unincorporated areas of San Mateo County. All development in the Coastal Zone requires either a Coastal Development Permit or an exemption from CDP requirements. Development must comply with LCP policies and the ordinances adopted to implement the LCP in order to obtain a Coastal Development Permit. A proposed project/development activity must also comply with other provisions of the County Ordinance Code, such as zoning, building and health regulations. The Appellant/Applicant did not complete the required permit application and has failed to comply with the Administrative Order. Planning staff, not the Appellant/Applicant, determines what reviews and entitlements are required for development in areas under the County's permit jurisdiction. The County's position is not one that would require the decommissioning or disturbance of the historic cemetery site, as it currently exists. However, the County will require compliance with the California Coastal Act prior to any new development on the site. "Development" is a specifically-defined term under Section 30106 of the Coastal Act and it includes the erection of solid materials or structures such as the unpermitted wooden ramps, maintenance shed, gate, bench, and signs constructed by the Appellant/Applicant; as well as the re-establishment or intensification of a use.

4. Appellant/Applicant: States that "*use of property as a cemetery is not in question*" and asks for advice on "*how we might be able to proceed further to an amicable solution and resolution.*"

Staff's Response: As discussed during the Planning Commission's deliberation at the November 13, 2019 hearing, re-establishment of a cemetery could be allowed upon appropriate review for possible impacts, mitigation and avoidance measures that address such impacts, and with proper permits.

## B. KEY ISSUES

### 1. Conformance with the General Plan

The proposed project must be evaluated and reviewed for its consistency with applicable County General Plan policies, including:

#### a. Vegetative, Water, Fish and Wildlife Resources Policies

General Plan Policy 1.8 (*Definition of Sensitive Habitats*) defines a sensitive habitat as any area where the vegetative, water, fish and wildlife resources provide

especially valuable and rare plant and animal habitats that can be easily disturbed or degraded. Policies 1.23 (*Regulate Development to Protect Vegetative, Water, Fish and Wildlife Resources*), 1.24 (*Regulate Location, Density, and Design of Development to Protect Vegetative, Water, Fish and Wildlife Resources*), 1.25 (*Protect Vegetative Resources*), 1.26 (*Protect Water Resources*), 1.27 (*Protect Fish and Wildlife Resources*) and Policy 1.29 (*Establish Buffer Zones*) all seek to regulate land use and development activities to prevent significant adverse impacts on vegetative, water, fish and wildlife resources; and to protect sensitive habitats. Policy 1.28 (*Regulate Development to Protect Sensitive Habitats*) specifically regulates land uses and development activities adjacent to sensitive habitat areas in order to protect rare, endangered and unique plants, and animals from reduction in their range or degradation of their environment and protect and maintain the biological productivity of important plant and animal habitats.

Purisima Creek and associated riparian habitat occurs south of the project parcel. The parcel is also located within an area identified in the California Natural Diversity Database (CNDDDB) as the location for a California overwintering population of monarch butterflies (*Danaus plexippus*). Monarch butterfly populations have declined as a result of habitat loss and changes in climate. The U.S. Fish and Wildlife Service (USFWS) is in the process of determining whether or not the species qualifies for protection under the Endangered Species Act. USFWS has extended the deadline for making a determination and continues efforts to collect data and analyze the Monarch's status and threats until December 15, 2020.

Staff made multiple requests to the applicant for information necessary to analyze the proposed cemetery's consistency with the policies of the General Plan that call for the protection of vegetative, water, fish, and wildlife resources. As standard practice for the review of development on parcels that have the potential to provide habitat for special status plant or animal species, a biological report is required. In correspondence dated March 12, 2019, staff specifically requested a biological report that delineates the riparian corridor as well as the areas of the site that provide habitat for species of concern. The applicant has not submitted this information.

The recent and proposed future burials have the potential to result in impacts to water resources, including Purisima Creek to the south of the parcel, and groundwater. An assessment of the hydrologic conditions must be provided to allow an adequate analysis of potential impacts. Staff requested that the applicant submit a hydrological report, which has not been submitted. The applicant has conducted unpermitted development on the parcel in the form of vegetation removal and construction of wooden ramps over an existing drainage ditch. Vegetation was also removed from the top of bank of the Purisima Creek. The ongoing unpermitted activities, including burials, could result in potential impacts to vegetative, water, fish and wildlife resources.

The goals and objectives of the General Plan, as provided by Policy 1.1, are to conserve, enhance, protect, maintain, and manage vegetative, water, fish, and wildlife resources. Furthermore, Policy 1.2 requires the protection of sensitive habitats from being reduced in size or degraded. The applicant has not submitted any evidence to indicate that measures have been implemented to mitigate the



proposed project's impacts to resources. Based on the lack of a plan from the applicant for avoiding impacts to the important sensitive habitat areas and important natural resources present on the site, and the high potential that vegetation removal, ground disturbance, ceremonial gatherings, and visitations would adversely impact such resources, the request to allow additional burials, and to retain unpermitted development that advertises and facilitates this use, is inconsistent with General Plan policies for the protection of vegetative, water, fish, and wildlife resources.

b. Soil Resources

The General Plan identifies specific goals and objectives for the protection of soil resources. Policy 2.1 (*Protect and Preserve Soil as a Resource*) provides for the protection of soil as a resource to sustain healthy plant, animal, and human life, which ensures that good quality soil remains available within San Mateo County. Policies 2.2 (*Minimize Soil Erosion*), 2.3 (*Prevention of Soil Contamination*), and 2.4 (*Protection of Productive Soil Resources*) all provide for the protection of soil resources. Respectively, they require the use of conservation practices to minimize erosion, appropriate use, storage, and disposal of toxic substances, and protection of productive soil resources from abuse, misuse, and degradation. Policy 2.5 (*Minimize Depletion of Productive Soil Resources in Agricultural Areas*) is to ensure that management practices in agricultural areas are applied to minimize depletion of productive soils. Several policies regulate development with respect to the protection of soil resources. These policies include Policy 2.17 (*Regulate Development to Minimize Soil Erosion and Sedimentation*), 2.18 (*Encouragement of Soil Protective Uses*), and 2.23 (*Regulate Excavation, Grading, Filling, and Land Clearing Activities Against Accelerated Soil Erosion*).

Important soil resources on and in the vicinity of the project include Class II Prime Agricultural soil located in the northwest corner of the parcel, and the soil within and adjacent to the Purisima Creek riparian corridor, that abuts the southern property line of the parcel. The proposed project includes excavation for burials and land clearing. The applicant has cut back natural vegetation/habitat along the bank of Purisima Creek, and conducted nearby burials without the benefit of the required permits. These activities necessitate the implementation of Best Management Practices (BMPs) to control erosion, sedimentation, and pollutants, particularly because of the parcel's proximity to Purisima Creek. The applicant has not submitted any evidence that erosion and or sediment control measures and BMPs, necessary to mitigate impacts from the above-described activities, have or will be provided. Nor has he provided, with the application, information about how the parking needed to accommodate visitors to the site will be provided in a manner that controls and filters drainage from parking areas, notwithstanding requests from County staff for such information.

The General Plan requires implementation of soil conservation standards and management techniques to control erosion and reduce off-site sediment migration. It also requires development to minimize the extent and duration of exposure of the soil and protect and stabilize disturbed areas. Owing to the incompleteness of the application, the applicant has failed to provide information to demonstrate that the unpermitted and proposed development activities will avoid the erosion of creek

banks, or the discharge of sediment or pollutants into the creek and its watershed. The proposed project is, therefore, inconsistent with the above-listed General Plan policies.

c. Visual Quality

The General Plan, particularly Policies 4.1 (*Protection of Visual Quality*), 4.3 (*Protection of Vegetation*), and 4.4 (*Protection of Appearance of Rural and Urban Development*), provides for the protection of visual resources. These policies, among others, protect scenic resources and the natural, visual quality of San Mateo County; as well as promote aesthetically pleasing development in rural areas. Policy 4.22 (*Scenic Corridors*) provides for the protection and enhancement of the visual quality of scenic corridors by managing the location and appearance of structural development. Policy 4.24 (*Rural development Design in Concept*) Policy 4.25 (*Location of Structures*) requires structures carefully conform with the natural vegetation, landforms, and topography of a site to ensure that that they are compatible with the pre-existing character of the site. Policy 4.26 (*Earthwork Operations*) requires that grading or earth-moving operations be kept to a minimum; and that where grading is necessary, ensure that graded areas blend with the natural landform. Policy 4.29 (*Trees and Vegetation*) provides for the preservation of trees and natural vegetation (except where required for development that is approved) and requires replacement of trees and vegetation with native plant materials where possible. Policy 4.47 (*Regulation of Development in Scenic Corridors*) is to protect and enhance the visual quality of rural landscapes by establishing controls that regulate site and architectural design of structures located within rural scenic corridors. Policy 4.48 (*Topography and Vegetation*) requires that structures be designed to conform with the natural topography of a site and blend rather than conflict with natural vegetation. Policy 4.58 (*Tree and Vegetation Removal*) only allows for removal of natural vegetation and trees when done in accordance with regulations. Storage areas are regulated by Policy 4.63 (*Storage Areas*) of the General Plan. Policy 4.63 requires screening for areas used for storing equipment, supplies, or debris. Such storage areas must not be visible from the scenic roadway, in this case Verde Road. Policy 4.67 (*Fences*) encourages the use of fences which minimize visual impacts. Policy 4.69 (*Rural Scenic Corridor District*) requires the regulation of architectural and site design of structures within scenic corridors by using a consolidated set of design standards.

The parcel is situated within the Cabrillo Highway State Scenic Corridor and located along Verde Road. The applicant constructed wooden ramps, removed vegetation, and installed signs without obtaining the required permits. The application submittal did not include a site plan. Staff requested that the applicant submit a plan (based on a topographic survey) of the parcel that shows all development, including a shed, signs, and ramps that he constructed. The applicant submitted a site survey on August 30, 2019, however; the plan is inadequate as it does not show the development on the parcel.

In order to protect the visual quality of scenic areas, as required by General Plan policies, development proposals must identify the scenic resource values of the site and avoid and minimize any potential impacts of the proposed project on visual resources. A site plan showing all existing and proposed development is necessary

to properly assess and address these impacts. Such a plan has not been submitted, notwithstanding the County's request for one. The, removal of vegetation, placement of materials, and the installation of structures on the parcel that has occurred, and that will occur in the future if the requested permits are approved, have not been planned in a manner that protects the visual qualities of the scenic corrido, conforms with the natural topography of the parcel, and blend with the natural vegetation. As a result, the proposed project does not comply with the above-listed General Plan policies.

d. Historical and Archaeological Resources

The General Plan has goals and objectives to protect and preserve historical and archaeological resources. Such resources must be protected from destruction so that they are preserved for future scientific research and public education. General Plan policies are in place to regulate development in a manner that meets these goals. Policy 5.1 (*Historic Resources*) identifies the protection of historic resources for their historic, cultural, social, and educational values and the enjoyment of future generations. Policy 5.3 (*Protection of Archaeological/Paleontological Sites*). The definition of historic resource as provided by Policy 5.7 (*Definition of Historic Resource*) includes sites, places, areas of historical or archaeological significance to the citizens of the County. Policy 5.14 (*Registration of Significant Archaeological/Paleontological Sites*) recommends that significant archaeological/paleontological sites obtain State or national status, as such. Protective policies include Policies 5.20 (*Site Survey*), and 5.21 (*Treatment*), which respectively require an adequate mitigation plan to protect archaeological/paleontological resources and that construction work be suspended when archaeological/paleontological resources are encountered.

The application states that the project site has existed as a cemetery since 1868. However, no information regarding the historical status of the site, or the historical resources it may contain, were included with the application, notwithstanding the County's request to the applicant for an archaeological and historical evaluation of the site, prepared by a qualified professional, in order to allow the County to determine the extent of historical and archaeological resources on the parcel, identify potential impacts to those resources, and incorporate measures to mitigate such impacts. The application is incomplete in this regard, and therefore inconsistent with General Plan policies requiring the protection of archaeological and historical resources.

e. General Land Use

General Plan Policy 7.4 (*Natural Resources*) requires the designation of land uses in order to enhance the protection and management of natural resources. Policy 7.15 requires that land use designations be established in Table 7.1P of the General Plan. Table 7.1P designates the land use for the project area is Agriculture. The primary feasible uses associated with Agriculture are resource management and production uses including, but not limited to, agriculture and use considered accessory and ancillary to agriculture. The proposed project is a cemetery, which is not associated with a resource management or production use. The General Plan has provisions for land use in rural areas, including policies 7.18 (

*Land Use Objectives for Rural Areas*) and 7.19 (*Appropriate Land Use Designations for Rural Areas*). Policy 7.18 requires that land uses located in rural areas preserve natural resources, provide for the productive use and monitoring of resources, provide outdoor recreation, and protect public health and safety. Policy 7.19 requires, among other things, that existing and future agricultural uses in suitable rural areas be protected.

The applicant has not submitted a site plan that shows where burials have and will occur. The project description does not include the information necessary to ensure that public health and safety will be protected, as required by Policy 7.18. The applicant has conducted, and continues to conduct, unpermitted burials on the parcel. The unplanned and unpermitted removal of vegetation and placement of human remains is inconsistent with General Plan Policy 7.18. The applicant has not demonstrated that his past or future development activities will preserve natural resources. As a result, the proposed re-establishment of an active cemetery is inconsistent with the General Land Use policies listed above, as it would not preserve natural resources, protect public health and safety, or support an agricultural use.

f. Rural Land Use

The goal of General Plan Policy 9.1 (*Goal for Land Use Planning in the Rural Area*) is to ensure a compatible and harmonious arrangement of land uses in the rural area. This is to be accomplished by concentrating development in specific areas to encourage the conservation and the managed production of natural resources which meet general social and economic needs. Policy 9.4 (*Land Use*) provides many objectives of Rural Land Use policies. The protection and enhancement of resources in Rural Lands, as specified by Policy 9.4, are required, among other things, to: (1) protect and conserve vegetation, water, fish and wildlife resources, productive soil resources for agriculture and forestry, and other resources vital to the sustenance of the local economy; (2) carefully manage and enhance the use, production, conservation or extraction of soils, timber, minerals and other natural resources; and (3) protect and enhance the unique scenic quality and pastoral character of the rural lands. Rural Lands, as defined by Policy 9.7 (*Rural Lands*), are areas outside of Rural Service Centers and Rural Residential Subdivisions. Rural Lands include agricultural activities and resource conservation. Policy 9.23 (*Land Use Compatibility in Rural Lands*) encourages compatible land uses to promote the health, safety, and economy and to maintain the scenic and harmonious nature of rural lands. Policy 9.26 (*Coastal Zone Priorities*) priorities certain land uses within rural coast areas, in accordance with California Coastal Act requirements.

As proposed by the applicant, the re-establishment of an active cemetery does not comply with the General Plan policies regarding visual quality, the Cabrillo Highway Scenic Corridor, and the protection of vegetation, water, fish, and wildlife resource. The proposed project is therefore inconsistent with Policies 9.1, 9.4, and 9.23.

2. Conformance with the Local Coastal Program

A Coastal Development Permit is required, pursuant to Section 6328.4 of the

County Zoning Regulations and LCP Policy 1.1 (*Coastal Development Permits*), for development in the Coastal Development (CD) District, as the parcel is within the Coastal Zone and zoned PAD/CD. The proposed project is appealable to the California Coastal Commission as the project does not involve a principally permitted use, and because a portion of the parcel encroaches within the Purisima Creek riparian corridor (a geographic area appealable to the Coastal Commission). The proposed project must be evaluated and reviewed for its consistency with applicable Local Coastal Program (LCP) policies. Relevant LCP policies are summarized below.

a. Locating and Planning New Development

LCP Policy 1.2 (*Definition of Development*) in applicable part defines development, as the placement or erection of any solid material or structure; discharge or disposal of any dredged material or any gaseous, liquid, solid, or thermal waste; grading, removing, dredging, mining, or extraction of any materials; and change in the density or intensity of use of land on land, in or under water. Development also includes construction, reconstruction, demolition, or alteration of the size of any structure, including any facility of any private, public, or municipal utility; and the removal or harvesting of major vegetation other than for agricultural purposes.

LCP Policy 1.6 (*Definition of Rural Areas*) defines rural areas as those lands suitable for a variety of residential, commercial, agricultural and recreational land uses which are consistent with maintaining open space in order to: (1) preserve natural resources, (2) manage the production of resources, (3) provide outdoor recreation, and (4) protect public health and safety. LCP Policy 1.25 (*Protection of Archaeological/Paleontological Resources*) requires that based on County Archaeology/Paleontology Sensitivity Maps, determine whether or not sites proposed for new development are located within areas containing potential archaeological/paleontological resources. Prior to approval of development proposed in sensitive areas, require that a mitigation plan, adequate to protect the resource and prepared by a qualified archaeologist/paleontologist be submitted for review and approval and implemented as part of the project.

The proposed project, including but not limited to the retention of unpermitted ramps, signs, and the removal of major vegetation, constitute development as defined by LCP Policy 1.2. Such development must comply with LCP Policy 1.6 by preserving natural and archaeological/paleontological resources.

The proposed project lacks the measures specificity necessary to ensure that unpermitted and proposed land use and development activities have and will be conducted in a manner that protect the public's safety and natural resources and is therefore inconsistent with the requirement of LCP Policy 1.6 and LCP Policy 1.2.

b. Agriculture

The LCP preserves agricultural land for agricultural uses within the Coastal Zone. LCP Policy 5.1 (*Definition of Prime Agricultural Lands*) and Section 6351 (*Definitions*) of the LCP Implementation Plan (Zoning Regulations), define prime agricultural lands as all land rated as Class I or Class II in the U.S. Department of

Agriculture Soil Conservation Service Land Use Capability Classification. LCP Policy 5.5 (*Permitted Uses on Prime Agricultural Lands Designated as Agriculture*) specifies the principally permitted uses allowed on Prime Agricultural Lands. LCP Policy 5.8 (*Conversion of Prime Agricultural Land Designated as Agriculture*) provides criteria which must be met in order to allow the conversion from agricultural to non-agricultural use.

In summary, LCP policies prohibit the conversion of prime agricultural land to a non-agricultural use unless it can be demonstrated that no alternative site exists for the use, clearly defined buffer areas are provided between agricultural and non-agricultural uses, that the productivity of any adjacent agricultural land will not be diminished, and that public service and facility expansions and permitted uses will not impair agricultural viability, including by increased assessment costs or degraded air and water quality.

There are Class II, Prime Agricultural Soils located within a small area of the parcel, adjacent to Verde Road. The applicant's site plan (Attachment D) does not show where development is proposed relative to the prime soil on the parcel. The applicant has not demonstrated that the proposed project meets the criteria to allow for the conversion of this area to a non-agricultural use.

c. Sensitive Habitats

LCP Policy 7.1 (*Definition of Sensitive Habitats*) identifies that sensitive habitat areas include, but are not limited to, riparian corridors, wetlands, marine habitats, sand dunes, sea cliffs, and habitats supporting rare, endangered, and unique species. Only resource-dependent uses are allowed in sensitive habitats as provided under LCP Policy 7.4 (*Permitted Uses in Sensitive Habitats*). LCP Policy 7.11 (*Establishment of Buffer Zones (for Riparian Corridors)*) requires the establishment of buffer zones around all riparian corridors. Chapter 3, Section 30240 (*Environmentally Sensitive Habitat Areas; Adjacent Developments*) of the Coastal Act of 1976 seek to protect riparian corridors from the impacts of adjacent development that could significantly degrade sensitive habitats. LCP Policy 7.5 (*Permit Conditions*) requires that the project demonstrate that there will be no impacts to sensitive habitats and if there are impacts, the impacts must be mitigated.

The applicant's inadequate site plan does not show the development that has or will occur on the parcel, and no biological report has been provided. Purisima Creek and its riparian corridor are sensitive habitats, as defined by LCP Policy 7.1. The creek and riparian corridor require protection, including an established buffer 50 feet from the edge of riparian vegetation, per LCP Policy 7.11. The parcel, as discussed above, is also located within an area used by Monarch butterflies (*Danaus plexippus*) as overwintering habitat. The proposed project is inconsistent with the LCP's policies for the protection of sensitive habitat areas, as it does not provide for the protection of sensitive resources, including the Purisima Creek riparian corridor and Monarch butterfly overwintering areas.

d. Visual Resources

LCP Policy 8.6 (*Streams, Wetlands, and Estuaries*) requires that development be

set back a sufficient distance from the edge of streams and other natural to preserve the visual character of the waterway. Structural development that will adversely affect the visual quality of perennial streams and associated riparian habitat, except for those permitted by Sensitive Habitats Component Policies, is prohibited. LCP Policy 8.10 (*Vegetative Cover*) requires that vegetation removed during construction be replaced with plant materials (trees, shrubs, ground cover) which are compatible with surrounding vegetation and suitable to the climate, soil, and ecological characteristics of the area. LCP Policy 8.31 (*Regulation of Scenic Corridors in Rural Areas*) requires the protection of scenic corridors in the Coastal Zone, including the protection of scenic landforms and vegetation.

The project site is located on a parcel within the Cabrillo Highway State Scenic Corridor along Verde Road. The area is zoned PAD/CD and comprises a typical agricultural/rural setting, with actively farmed land, open space, and riparian habitat. The proposed project site is rural as defined by LCP Policy 8.14. The applicant, as discussed above, has: removed vegetation up to the edge of the top of bank of the Purisima Creek; submitted a deficient site plan that does not show how unpermitted and proposed development conforms to required setbacks; has not conducted a biological assessment of the parcel or included measures to protect the riparian habitat or respect the required 50-ft buffer; and, has not provided a plan for replacing the vegetation that has been, and will be, removed. The proposed project is therefore inconsistent with LCP Policies 8.6, 8.10, and 8.31 for the protection of visual resources.

### 3. Conformance with Zoning Regulations for the Planned Agricultural District

Section 6350 (*Purpose of the Planned Agricultural District*) of the Zoning Regulations states that the purpose of the Planned Agricultural District (PAD) among other things is to preserve and foster existing and potential agricultural operations in San Mateo County in order to keep the maximum amount of prime agricultural land and all other lands suitable for agriculture in agricultural production, and to minimize conflicts between agricultural and non-agricultural land uses. The parcel, as discussed above, is predominantly Other Lands with a small area of Prime Agricultural Land. Sections 6352 and 6353 respectively provide the permitted uses allowed in the PAD and uses allowed subject to the issuance of a PAD permit.

Cemeteries are not a permitted use within the PAD zoning district, pursuant to Section 6352 of the Zoning Regulations. Nor are they allowed as a conditional use with a PAD permit, under Section 6353 of the Zoning Regulations, unless shown to be a use that will not conflict with the principally permitted uses. No agricultural activities currently occur on the parcel and it is not under a Williamson Act contract. As described above, a small portion of parcel is Class II, Prime Soil. The proposed project could potentially occur on this soil and result in the conversion of agricultural land to another use not allowed under the Planned Agricultural District.

### 4. Conformance with Use Permit Required Findings

Historically, the parcel was used as a cemetery. However, a cemetery is not a permitted use as provided under LCP Policy 5.5 (*Permitted Uses on Prime Agricultural Lands Designated as Agriculture*). To re-establish this type of use, a Use Permit is

required. There is no evidence that the historic cemetery was in active use when the Coastal Act was approved by voters in 1972. The proposed re-establishment of this use is a change in the intensity of use of the land and the enlargement of a non-conforming use. The following findings must be made in order to approve and issue a Use Permit to allow the proposed re-establishment of the historic cemetery for use as an active burial ground:

a. *That the establishment, maintenance and/or conducting of the use will not, under the circumstances of the particular case, result in a significant adverse impact to coastal resources, or be detrimental to the public welfare or injurious to property or improvements in said neighborhood.*

The proposed cemetery use, as discussed under the General Plan and LCP analyses above, will result in impacts to coastal resources. No evidence has been submitted by the applicant to demonstrate that the cemetery will not have a detrimental impact upon the surrounding area and coastal resources, including sensitive habitats, visual resources, and agriculture.

b. *That the proposed project is necessary for the public health, safety, convenience or welfare.*

The proposed re-establishment and expansion of this non-conforming use, as discussed above, could contaminate surface and groundwater resources within the Purisima Creek watershed. The applicant has not provided sufficient information to ensure that potentially significant adverse impacts to water resources associated with the disposal of human remains, and other impacts attributable to the use of the site as an active burial grounds, will be prevented.

## B. ENVIRONMENTAL REVIEW

Pursuant to Section 15270 (*Projects Which are Disapproved*) of the California Environmental Quality Act (CEQA) Guidelines, CEQA does not apply to projects which a public agency rejects or disapproves.

## ATTACHMENTS

- A. Recommended Findings of Denial
- B. Vicinity and Location Map
- C. Photos Unpermitted Development On-site
- D. Applicant's Site Survey Map
- E. Application for Appeal, dated November 14, 2019; and County Decision Letter, dated November 21, 2019
- F. Administrative Order Letter of Decision issued by the County on October 23, 2019 for Administrative Citations Nos. VIO 2017-00320-001 and VIO 2017-00320-002.

County Counsel has reviewed and approved the materials as to form and content.