



**CITY OF PACIFIC GROVE**  
300 Forest Avenue, Pacific Grove, California 93950

**AGENDA REPORT**

**TO:** Honorable Mayor and Members of City Council

**FROM:** Daniel Gho, Public Works Director; Wendy Lao, Assistant Planner

**MEETING DATE:** April 6, 2016

**SUBJECT:** Consideration of an appeal of the Planning Commission's decision to approve Use Permit No. 16-093 for installation of protective golf barrier netting including 7 poles, and planting of 6 trees, along the fifth hole of Pacific Grove Golf Links; 77 Asilomar Avenue (APN 006-094-099)

**CEQA STATUS:** Categorical Exemption, Section 15303, Class 3

**RECOMMENDATION**

Review the application, deny the appeal, and adopt the proposed findings that uphold the Planning Commission's decision to approve UP 16-093.

**BACKGROUND**

On October 16, 2015 the City of Pacific Grove entered into a Stipulation for Entry of Final Judgement (Stipulated Judgement) that required removal of 6 Blue Gum Eucalyptus Trees identified as numbers 916,917,918,919,924,925 (Attachment A – Stipulated Judgment). These trees were located along the fifth hole of Pacific Grove Golf Links at 77 Asilomar Avenue (APN 006-094-099).

Based on several arborist reports prepared for the trees, it was determined that decay within the trees warranted removal. The Stipulated Judgement is an Order of the Superior Court, signed by Judge Wills. The Court Order required the City to remove the six trees; cost of the removal is to be split equally between plaintiffs and the City. The City is also required to promptly install netting on the golf course where the trees were removed. The City will bear all costs of the netting. After netting is installed, the City is required to plant replacement trees of a suitable species, likely Cypress Trees.

In November and December of 2015 the City removed the six trees and contacted firms to prepare for installation of the netting at the golf course along the fifth hole.

As a means to protect persons or property from errant golf balls, the City applied for a Use Permit (Use Permit No. 16-093) to allow installation of protective golf barrier netting, including 7 poles, and planting of 6 trees. This effort also complies with the Court Order and Stipulated

Judgement. On March 3, 2016, the Planning Commission held a hearing and approved Use Permit 16-093.

On March 11, 2016, Ms. Pamela Silkwood, an attorney with Horan Lloyd Legal, submitted an appeal of the Planning Commission's approval of the permit (Attachment L – Appellant Letter and Continuance Request). This appeal required to be processed in accord with PGMC Chapter 23.74. Paragraph B (1) of PGMC section 23.74.030 requires any appeal to be filed within 10 days of the action being appealed.

The Silkwood appeal is timely. No other appeal was received and PGMC section 23.74.050 (c) provides "No person shall be allowed to join an appeal after the expiration of the time limit for appeals."

Ms. Silkwood did request the hearing of the appeal to be continued to an unspecified date in May, 2016. (Attachment L.) The reason stated for the continuance was "to allow additional time to discuss the project with City staff with a goal towards reaching a resolution of the issues raised by the appellants." PGMC section 23.74.050 (Scheduling of Hearing) provides however, "After an appeal or call-up for review has been received... the matter shall be placed on the next available agenda of the appeal authority or body calling up the item." City staff is concerned that undue delay may result in injury by reason of errant golf balls.

## **DISCUSSION**

The City of Pacific Grove Public Works Department evaluated the site and determined the best netting would be similar to netting that already exists on the fifth hole and at the driving range (Attachment B - Location). The Monarch Pines Community, adjacent to the fifth hole, is currently protected by a netting system of 35 feet height strung between poles that are also 35 feet in height. The existing netting starts at the western point of the Monarch Pines boundaries, turns east and runs along the property adjacent to the golf hole. The City proposes to expand the existing netting an additional 320 feet (Attachment C - Existing Netting). The netting to be installed will be black in color, and comprise of U.V. treated #930 polyester barrier netting of 1 inch mesh size and average single mesh break strength of 116.7 pounds. Poles will match the existing brown poles and will be evenly spread at intervals of 53 feet and 4 inches. The netting will start at ground level and extend upwards to a height of 35 feet (Attachments E and F - Plans and Specifications).

The netting is virtually see-through; this style lends itself to transparent views and also provides the best protection to the surrounding community from errant golf balls (Attachment D - Driving Range Netting).

## **APPEAL PROCESS**

Following the March 3, 2016, Planning Commission approval of Use Permit 16-093, Ms. Pamela Silkwood on March 11, 2016 submitted an appeal of the Planning Commission's approval of the permit (Attachment L – Appellant Letter and Continuance Request).

PGMC section 23.74.030 (c) provides this Appeal “shall be limited to issues raised at the public hearing, or in writing before the hearing, or information that was not generally known at the time of the decision that is being appealed.”

PGMC section 23.74.050 (d) directs the City Council to conduct a de novo public hearing on the Appeal in compliance with Chapter 23.86 PGMC (Public Meeting and Hearing Procedures). At the hearing, the Council may consider any issue involving the matter that is the subject of the appeal, in addition to specific grounds identified in the appeal.

PGMC section 23.74.050 (d) (1) and (2) provide the Council may affirm, affirm in part, or reverse the action, decision, or determination that is the subject of the appeal, based upon findings of fact about the particular case. The findings shall identify reasons for the action on the appeal, and verify the compliance or non-compliance of the subject of the appeal with these regulations. Prior to approving a permit or other action, the applicable findings in Chapter 23.70 PGMC (Community Development Permit Review Authorities and Procedures) shall be made. The Council in this matter may also adopt additional conditions of approval that may address other issues or concerns than the subject of the appeal or call-up.

## **RESPONSE TO APPEAL**

The Pacific Grove Public Works and Community and Economic Development Departments have reviewed appellant’s appeal and respectfully disagree. The property is not located in the Coastal Zone (Attachment G – Coastal Zone Map). Issues concerning removal of the trees were discussed by City Council when the Council approved the Stipulated Judgment in October 2015. Notices were mailed to local residents ten (10) days prior to the Planning Commission March 3, 2016 meeting, as required by PGMC Section 23.86.020(b)(2), as evidenced by date stamps from the U.S. Postal Service (Attachment I – Mailing Notice). Golf net requires a Use Permit, not an Architectural Permit, and therefore does not require story poles or flagging. Nevertheless, staff installed story poles and flagging as of March 23, 2016, as a courtesy to appellants in preparation of the City Council meeting.

In its exercise of discretion on the appeal, the City Council must nonetheless comply with all requirements of the Stipulated Judgment and Court Order (Attachment A).

## **FINDINGS**

Staff proposes that the following findings be adopted as part of Council’s action on the appeal.

- (A) The proposed use is allowed with a use permit within the O zoning district and complies with all applicable provisions of these regulations;
- (B) The proposed use is consistent with the General Plan;
- (C) The establishment, maintenance, or operation of the use will not, under the circumstances of the particular case, be detrimental to the health, safety, or general welfare of persons residing or working in the neighborhood of the proposed use;
- (D) The use, as described and conditionally approved, will not be detrimental or injurious to property and improvements in the neighborhood or to the general welfare of the city; and
- (E) The location, size, design, and operating characteristics of the proposed use are compatible with the existing and future land uses in the vicinity.

**FISCAL IMPACT:**

The installation of the netting has been budgeted in Fund 77, the golf fund as part of the February, 2016 budget modification.

**ALTERNATIVES:**

There is a present need to ensure errant golf balls do not cause personal or property damage.

No tested alternative to the golf net exists. Failure to promptly install netting on a golf course where the trees were removed will violate terms of the Stipulated Judgment and Court Order in *Dolton, Nancy et al. v. City of Pacific Grove (M131641)*. Alternative net heights have been suggested, however, alternative protection measures have not been adequately designed, engineered or tested. The proposed size, color, and strength of the golf net and poles, as approved by Use Permit No. 16-093, have been recommended by subject experts from Judge Netting Inc. This design has been shown to be effective and to protect neighboring properties and people from errant golf balls; however, the City Council may approve an alternative design, with adequate testing and engineering.

**ATTACHMENTS**

1. Stipulated Judgment
2. Location Picture
3. Existing Netting
4. Driving Range Netting
5. Plans
6. Specifications
7. Coastal Zone Map
8. CEQA Exemption
9. Mailing Notice
10. Affidavit
11. Resolution UP 16-093
12. Appellant Letter and Continuance Request

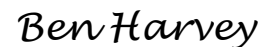
RESPECTFULLY SUBMITTED:



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Daniel Gho  
Public Works Director

REVIEWED BY:



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Ben Harvey  
Interim City Manager



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Wendy Lao  
Assistant Planner



**FILED**

NOV 05 2015

TERESA A. ...  
CLERK OF THE SUPERIOR COURT  
PESMERALDA DEPUTY

David C. Laredo, CSBN 66532  
Alex J. Lorca, CSBN 266444  
**De LAY & LAREDO**  
Attorneys at Law  
606 Forest Avenue  
Pacific Grove, CA 93950-4221  
Telephone: (831) 646-1502  
alex@laredolaw.net

Attorney for Defendant,  
CITY OF PACIFIC GROVE

**Exempt from Filing Fee  
per Govt. Code § 6103**

**SUPERIOR COURT OF CALIFORNIA  
COUNTY OF MONTEREY**

NANCY DOLTON, MARION  
TRENTMAN MORELLI and ROBERT  
MORELLI,

Plaintiffs,

v.

CITY OF PACIFIC GROVE and DOES 1-  
50, inclusive,

Defendants.

Case No.: M 131643

**STIPULATION FOR ENTRY OF  
FINAL JUDGMENT; AND  
JUDGMENT THEREON [CCP § 664.6]**

Plaintiffs NANCY DOLTON, MARION TRENTMAN MORELLI AND ROBERT  
MORELLI (Plaintiffs), appearing by and through attorneys Joel Franklin, Andrew Swartz, and Neil  
Shapiro, and the CITY OF PACIFIC GROVE (City), appearing by and through their attorneys  
David C. Laredo and Alex J. Lorca, enter into the following Stipulation for Entry of Final Judgment  
(Stipulated Judgment) in full and final settlement of the above-captioned case without trial or  
adjudication of any issue of fact or law, and agree that a final judgment may be so entered:

## RECITALS

1. The parties enter into this Stipulation with reference to and in acknowledgment of the following facts:

1.1. On April 8, 2015, Plaintiffs Nancy Dolton, Marion Trentman-Morelli and Robert Morelli (Plaintiffs) filed the instant matter alleging six (6) Blue Gum Eucalyptus trees identified as numbers 916, 917, 918, 919, 924 and 925 in an April 14, 2014 report by the City's Arborist (located on City property near Hole 5 of the Pacific Grove Municipal Golf Course and adjacent to Plaintiffs' homes) were improperly maintained by the City.

1.2. On May 13, 2015 the City served Plaintiffs with its Amended Answer denying Plaintiffs' claims.

1.3. On July 21, 2015, Marion Trentman-Morelli filed Monterey Superior Court Case No. M132694 (*Trentman-Morelli v. City of Pacific Grove*), a Petition for Writ of Mandate seeking to compel the City to allow the inspection of, and to provide a copies of, requested City records under the California Public Records Act. (California Government Code §§ 6250 et seq.)

1.4. On August 10, 2015 the City filed an Answer denying Plaintiff's claims.

2. The parties wish to avoid the burden and expense of further litigation and accordingly have determined to compromise and settle their differences in accordance with the provisions of this Stipulation. Neither this Stipulated Judgment nor any of the statements or provisions contained herein shall be deemed to constitute an admission or an adjudication of any of the allegations of the Complaint.

3. The parties to this Stipulated Judgment agree to resolve this action in its entirety by mutually consenting to the entry of a Final Judgment

## STIPULATED JUDGMENT

1  
2 1. The Six Trees (numbered 916, 917, 918, 919, 924, and 925) that are the subject of the  
3 instant matter shall be removed by the City, including stump grinding, within 60 days of entry of  
4 this Stipulated Judgment.

5 2. The costs of removal shall be split equally between Plaintiffs and the City. Plaintiff's  
6 payment shall be effected within 90 days following removal of the trees.

7 3. The City shall promptly install netting on the golf course where the trees were  
8 removed. The City shall bear the costs of netting.

9 4. The City shall replace the removed Eucalyptus trees with new trees of a suitable  
10 species, likely Cypress Trees, and regularly monitor and maintain the replacement trees.  
11 Plaintiffs shall be consulted regarding the specific species of tree to be planted, but City shall  
12 have the sole discretion to elect the species. Plaintiffs shall pay \$1,200 toward the costs of tree  
13 replacement. Costs exceeding this amount shall be borne entirely by the City.

14 5. Within five (5) court days of entry of the Stipulated Judgment herein, Plaintiff  
15 Marion Trentman-Morelli shall dismiss Monterey Superior Court Case No. M 132694 (*Trentman-*  
16 *Morelli v. City of Pacific Grove*), with prejudice. Each party shall bear its own attorney's fees and  
17 costs in that matter. Neither party shall be deemed a prevailing party in Case No. M 132694.

18 6. Neither party shall be deemed a prevailing party in the instant action.

19 7. All time periods set forth in this Stipulated Judgment may be extended by mutual  
20 written agreement between the parties.

21 8. Neither party shall appeal this Judgment.

## RETENTION OF JURISDICTION AND ENFORCEMENT

22 9. Pursuant to California Code of Civil Procedure §664.6 the Court shall retain  
23 jurisdiction for the purpose of enabling any of the parties to this Stipulated Judgment to apply to  
24  
25  
26

1 this Court at any time for such order or directions that may be necessary or appropriate for the  
2 construction, operation or modification of the Stipulated Judgment, or for the enforcement or  
3 compliance thereof.

4 10. This Stipulated Judgment may be used as evidence in a subsequent proceeding in  
5 which either party alleges breach of this Stipulated Judgment.

6 11. If any action at law or in equity, including an action for Declaratory Relief is brought  
7 to enforce or interpret the provisions of this Stipulated Judgment, the prevailing party shall be  
8 entitled to recover reasonable attorneys' fees in addition to any other relief to which the party may  
9 be entitled, including costs.

10 **IT IS SO STIPULATED:**

11  
12  
13 Dated: 10-15-15

Thomas Frutche  
Thomas Frutchey, City Manager  
City of Pacific Grove

14  
15  
16 Dated: 10-16-15

Nancy Dolton  
Nancy Dolton, Plaintiff

17  
18  
19 Dated: 10/16/15

Marion Trentman-Morelli  
Marion Trentman-Morelli, Plaintiff

20  
21  
22 Dated: 10-16-15

Robert Morelli  
Robert Morelli, Plaintiff

23  
24 Approved as to Form:

25 Dated: 10/16/15

David C. Laredo  
David C. Laredo  
City Attorney, City of Pacific Grove

26  
27 - 4 -

28 **STIPULATION FOR ENTRY OF FINAL JUDGMENT AND ORDER THEREON**

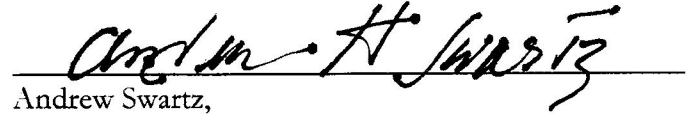
*Dolton, Nancy et al. v. City of Pacific Grove. (M131643)*

1 Dated: 10/14/15



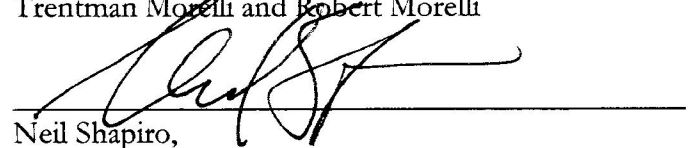
Joel Franklin  
Attorney for Plaintiffs Nancy Dolton, Marion  
Trentman Morelli and Robert Morelli

2 Dated: Oct. 16, 2015



Andrew Swartz,  
Attorney for Plaintiffs Nancy Dolton, Marion  
Trentman Morelli and Robert Morelli

3 Dated: Oct 16, 2015



Neil Shapiro,  
Attorney for Plaintiff Marion -Trentman Morelli

4  
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6  
7  
8  
9  
10  
11 Upon the stipulation of the parties hereto and upon their agreement to entry of this  
12 Stipulated Judgment without trial or adjudication of any issue of fact or law herein, and good cause  
13 appearing therefore, IT IS SO ORDERED, ADJUDGED AND DECREED.

14 Dated: NOV 05 2015

**THOMAS W. WILCO**  
\_\_\_\_\_  
JUDGE OF THE SUPERIOR COURT

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16  
17  
18  
19  
20 U:\GENERAL (NEW)\City of Pacific Grove\LITIGATION\Dolton v. Pacific Grove M131643\Settlement\Dolton v. City of Pacific Grove STIPULATION FOR ENTRY OF JUDGMENT  
AND ORDER THEREON.docx





Location of Proposed Netting and Trees - Along 5<sup>th</sup> Hole of Pacific Grove Golf Links





Example: Existing Netting Along the 5<sup>th</sup> Hole of Pacific Grove Golf Links, Located Adjacent to Monarch Pines Community





Example: Driving Range Netting

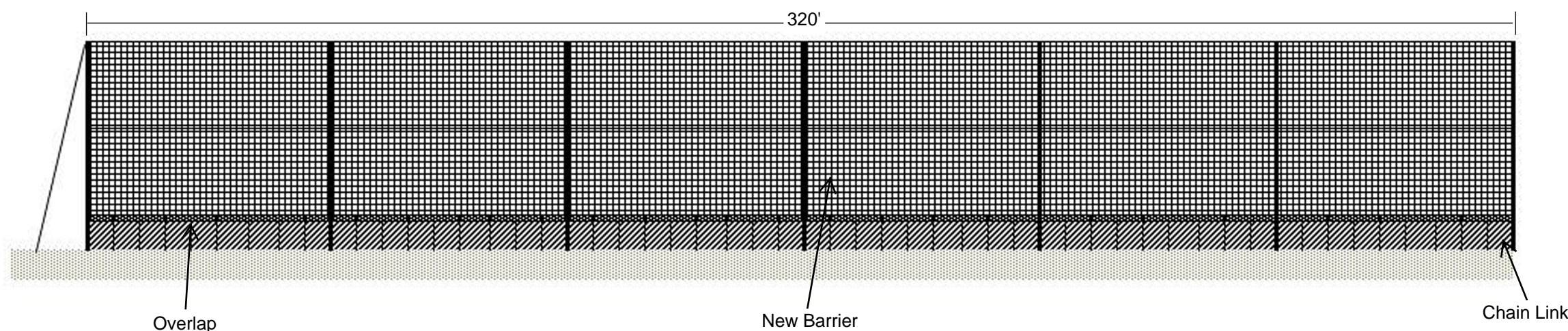
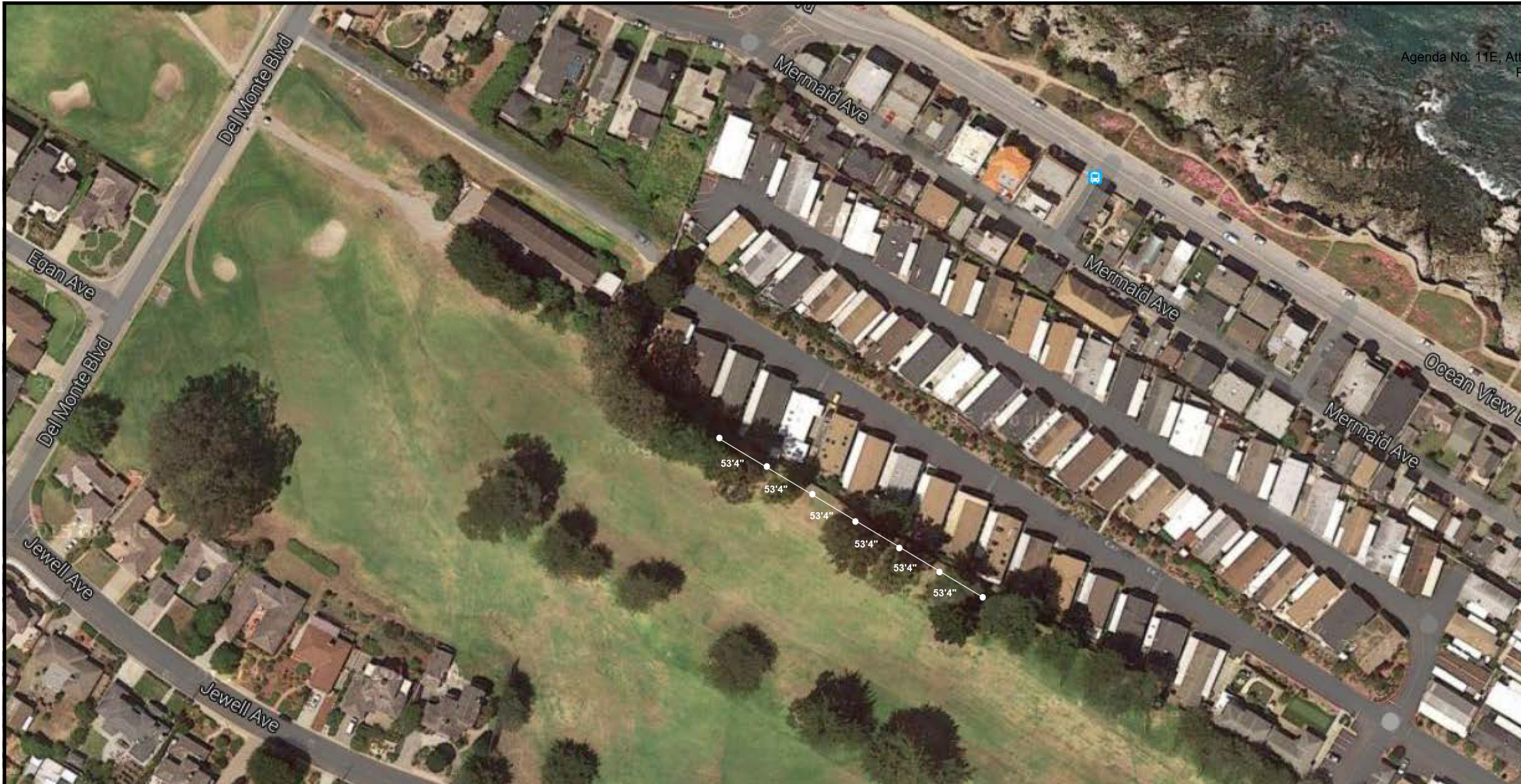


**Pacific Grove Golf Links**  
**77 Asilomar Coastal Trail**  
**Pacific Grove, CA 93950**  
**New Netting Barrier- Site Plan**

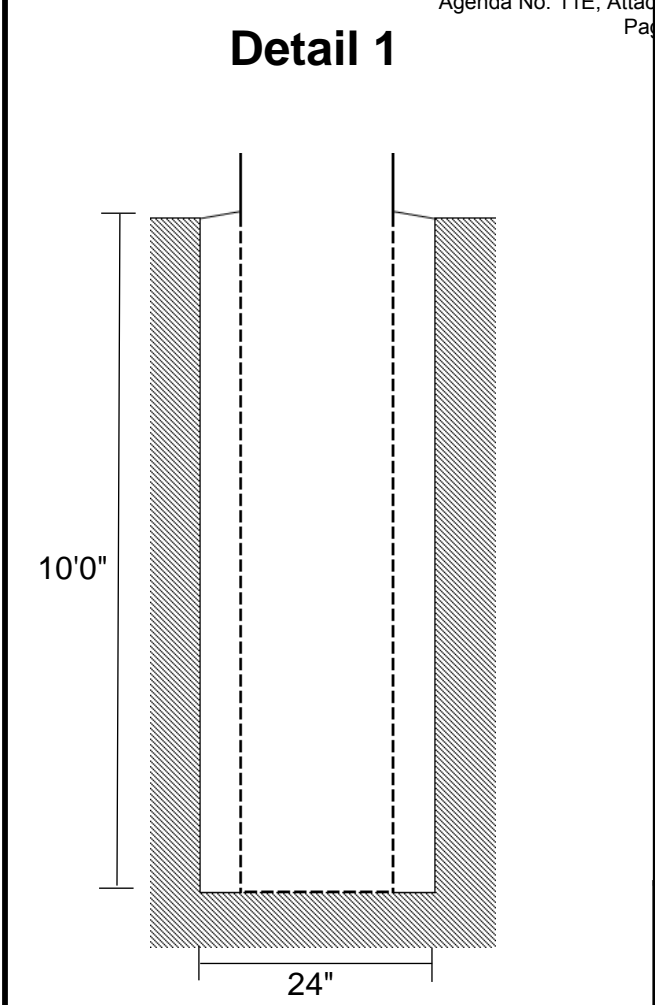
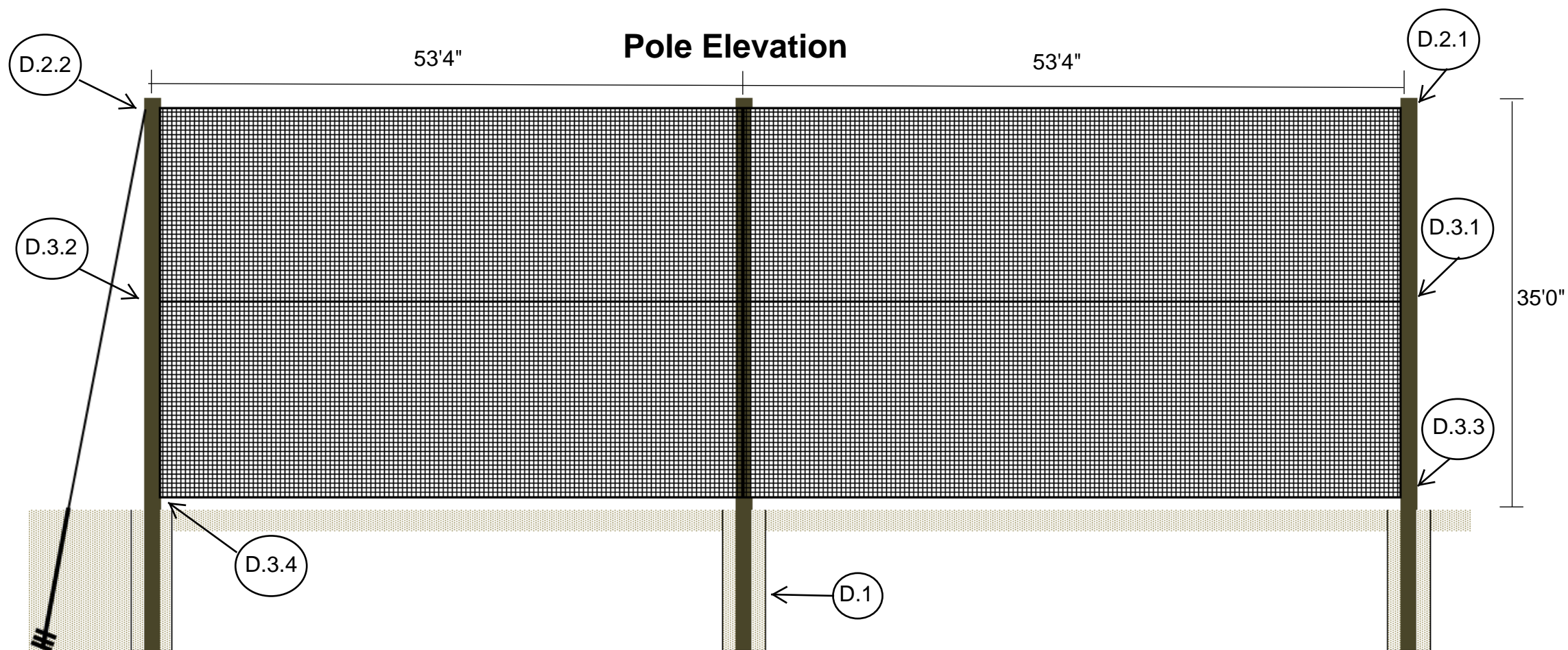
**Judge Netting Inc.**  
427 E. 17th St. #489  
Costa Mesa, CA. 92627  
P: 714-265-2200  
F: 714-265-2400  
www.judgenetting.com

Date:  
**1/18/2016**

Drawing:  
**Site Plan**







**Pacific Grove Golf Links**

77 Asilomar Coastal Trail

Pacific Grove, CA 93950

New Netting Barrier- Site Plan

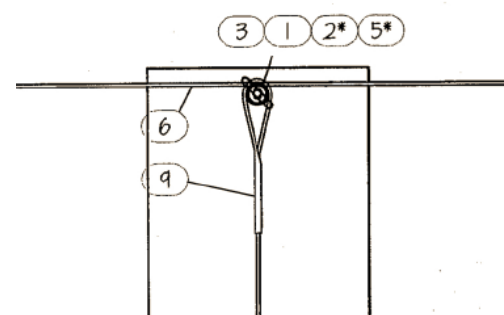
## Detail 2

### PART SCHEDULE (EQUAL OR EXCEED)

- ① 3/4" GALV. D.A. BOLT W/ NUT
- ② 1/2" x 3/4" x 0'-3" GALV. CURVE WASHER
- ③ 3/4" GALV. THIMBLEYE NUT
- ④ GALV. DOWN GUY ATTACHMENT
- ⑤ 3/4" GALV. SPRING WASHER

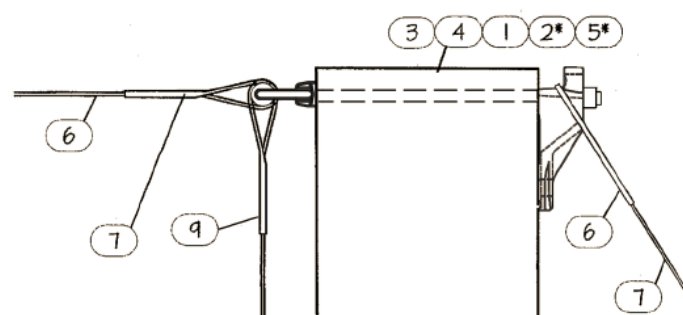
### \* INDICATES FAR SIDE

- ⑥ 3/8" GALV. E.H.S. STRAND
- ⑦ 3/8" GALV. PRE-FORMED GRIP
- ⑧ 3/8" ROUND WASHER
- ⑨ 5/16" GALV. PRE-FORMED GRIP
- ⑩ 5/16" GALV. E.H.S. STRAND



**TOP LINE POLE**

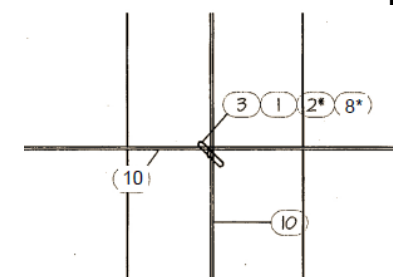
**Detail 2.1**



**TOP END POLE**

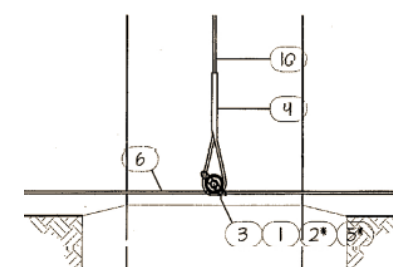
**Detail 2.2**

## Detail 3



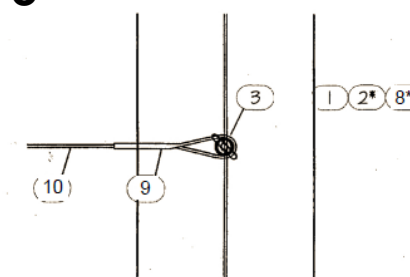
**INTERMEDIATE LINE POLE**

**Detail 3.1**



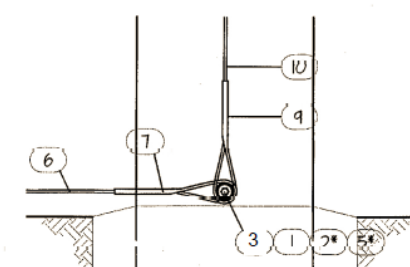
**BOTTOM LINE POLE**

**Detail 3.3**



**INTERMEDIATE END POLE**

**Detail 3.2**



**BOTTOM END POLE**

**Detail 3.4**

**Judge Netting Inc.**

427 E. 17th St. #489

Costa Mesa, CA. 92627

P: 714-265-2200

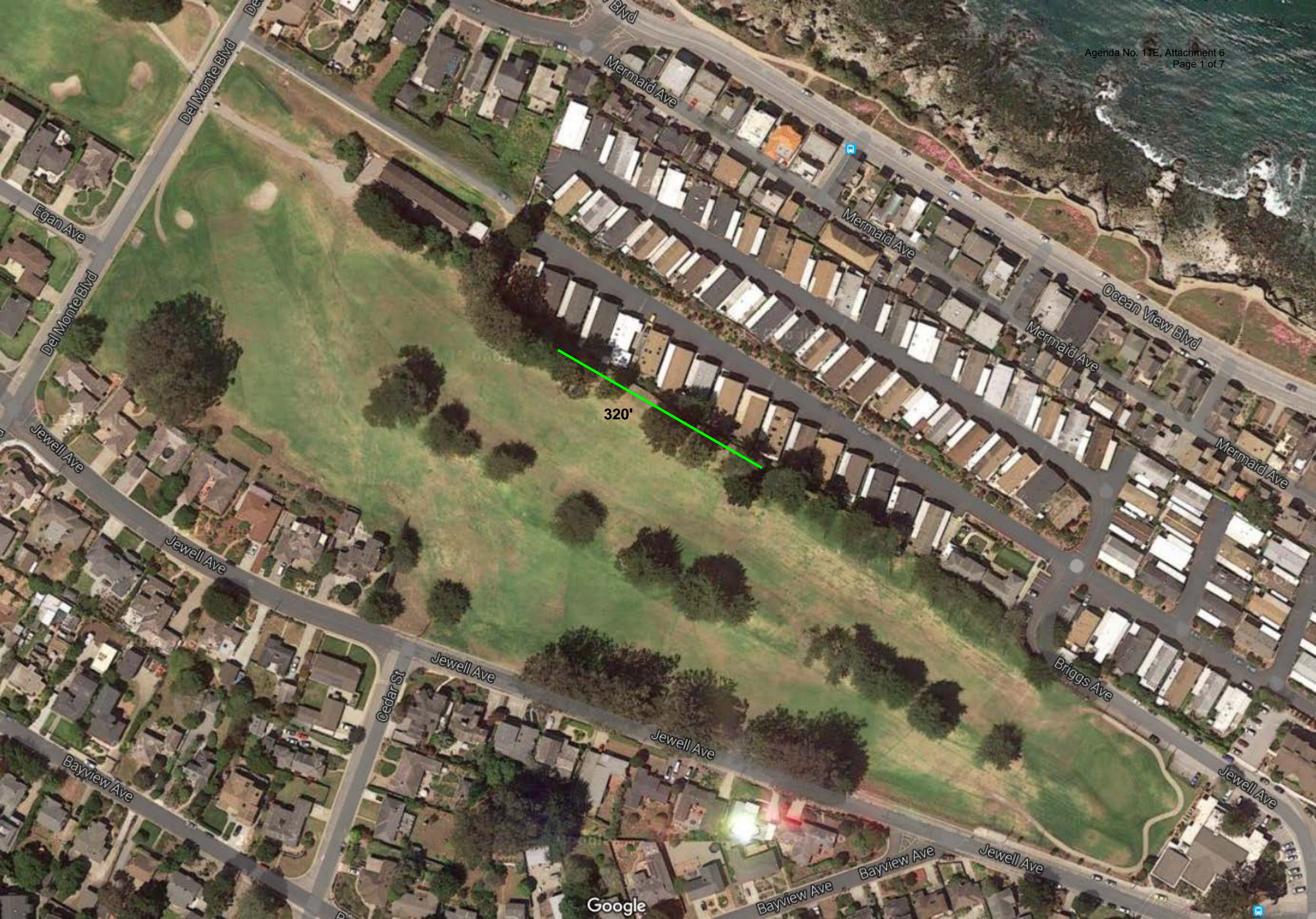
F: 714-265-2400

www.judgenetting.com

Date:  
**1/18/2016**

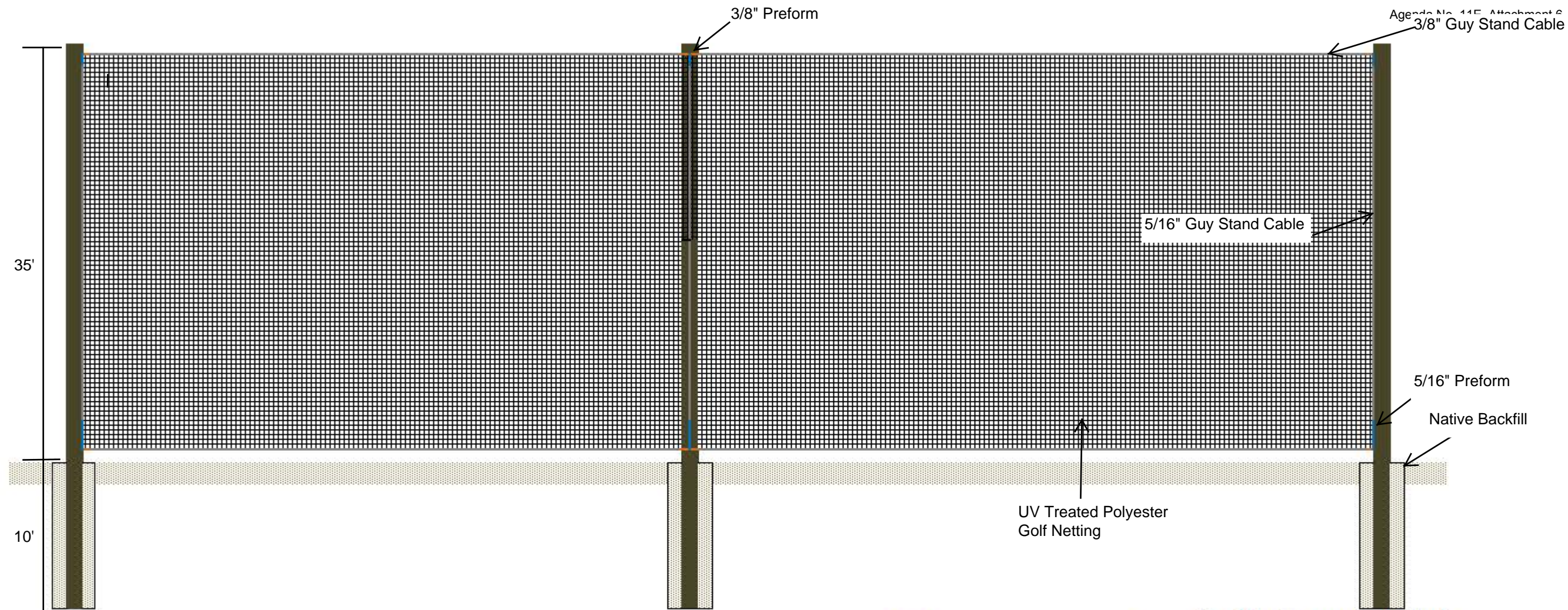
Drawing:  
**Pole  
Elevation**





320'





## **Redden Nets #930 Polyester Barrier Netting System**

- Component Specification / Tolerance

### **Netting Component:**

- ~ Redden Nets #930 polyester netting; 1" mesh size
- ~ Long stitch knotless join
- ~ U.V. treated yarn
- ~ Resin dye and bonding treatment
- ~ 116.7 lb. Average single mesh break strength. <sup>1</sup>
- ~ Weight factor: 40.0 square feet = 1-lb.

### **Attachment Twine / Hanging Twine:**

- ~ #48 Braided polyester twine
- ~ 375 lb. Tensile strength
- ~ Dye treated

### **Perimeter Border Ropes & Riblines:**

- ~ Braided synthetic cover
- ~ Parallel synthetic core
- ~ 3,500 lb. Tensile strength
- ~ 2,455 Wet abrasion cycles

### **Warranty:**

- ~ Ten year warranty. <sup>2</sup>

1.) Mesh strength based upon most recent independent lab testing reports. Report copies are available upon Request. Testing conducted per ISO 1806 methodology.

2.) Some exclusions and limitations do apply. Warranty document is available upon request.

## **Redden #930** **Golf Range Netting System Specifications**

**Netting:** Redden #930 polyester golf range netting with average 116.7 lb. mesh breaking strength, 2 ½" stretched mesh; 1" single bar measure, four needle raschel knotless construction, manufactured with U.V. treated yarn and additionally coated with a black resin dye and bonding treatment. Mesh break strength determined by independent laboratory per ISO 1806.

All sections of netting component to be constructed to a 3/8" braided black perimeter rope, minimum 3,500 lb. breaking strength. Additionally, net panels shall have internally constructed vertical and horizontal ropes of the same material. All rope locations on the net panels shall correspond to the as built net panel suspension and support cables constructed to pole structures. All net panels shall be custom fabricated to as built measurements of the pole/cable structure to provide a taut panel upon completion.

Attachment of net and rope components shall be made with #48 braided polyester twine, minimum 375 lb. tensile strength, treated black. The attachment twine shall continually encompass the netting component and be tied to the rope component via a clove and one half hitch knot +/- 6 inches on center, never to exceed 8 inches on center.

Finished net panels shall be suspended to cables by the rope component via a 9/32" cadmium plated steel carabiner attachment snap, minimum 1,140 lb. breaking strength. The interior of the snap shall encompass only the rope and cable components when suspension is completed. The interval between snap to cable attachment points shall not exceed 3 feet on center (snap size may vary to fit cable size(s) specified).

Netting system shall be accompanied by a ten year manufacturer's warranty. Netting system is available from Redden Marine Supply, Inc., Bellingham, WA, 800-426-9284, or engineers approved equal.



Certificate No. 0812-1036b  
December 16, 2008

Mr. Ron Chiabai  
Redden Marine Supply, Inc.  
1411 Roeder Ave.  
Bellingham, WA 98225-2916

**Subject:** Determination of net mesh breaking load

**Netting sample tested:** #930 Barrier Netting, Bale No. 353/028, 12/09/08

**Reference:** ISO 1806, "Fishing nets - Determination of mesh breaking load of netting"

Dear Mr. Chiabai:

Dynamark Engineering, Inc. was retained by Redden Marine Supply to perform tension testing on a netting sample provided by your company. This report contains a summary of our testing approach and results.

Testing was performed on December 16, 2008 using our JJ Lloyd Universal Testing Machine (DEI-110) which is in current calibration and traceable to the National Institute of Standards and Technology (NIST).

Per the referenced ISO 1806 specification, loading was applied with pins through one mesh at a time that was at least on one mesh inside of the edge. Tension loads were applied at a rate of 1 inch per minute until failure occurred.

The sample was tested a total of 10 times in remote locations on the netting. All tension was applied in the length direction of the manufactured netting.

Figure 1 shows the typical testing setup.

The test results are summarized in Table 1.





Figure 1. Tensile testing machine with net mesh in place for testing.



Figure 2. Break load testing in progress.



**Table 1. #930 Barrier Netting**

**Bale No. : 353/028 12/09/08**

| Test No.       | Tensile Strength [lb] |
|----------------|-----------------------|
| 1              | 121                   |
| 2              | 101                   |
| 3              | 111                   |
| 4              | 107                   |
| 5              | 122                   |
| 6              | 125                   |
| 7              | 121                   |
| 8              | 124                   |
| 9              | 117                   |
| 10             | 118                   |
| <b>Avg</b>     | <b>116.7</b>          |
| <b>Std Dev</b> | <b>7.5</b>            |
| <b>Max Val</b> | <b>125</b>            |
| <b>Min Val</b> | <b>101</b>            |

This report has been prepared for the exclusive use of Redden Marine Supply. Any reproduction or transmittal of this report must be done so with written permission from Redden Marine Supply. Thank you for using Dynamark Engineering, Inc. Please give me a call at 425.483.4447 if you have any questions regarding this testing, or if we can be of additional assistance.

Reviewed by: Leesa Johansen 

Sincerely,

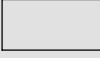



Mark J. Suryan, PE








**Legend**


 parcel 006094099000

 Coastal Zone Boundary



SCALE: 1:1,200      PRINT DATE: 3/9/2016

  0 50 100 Feet

 0 10 20 Meters





## CITY OF PACIFIC GROVE

### Community Development Department – Planning Division

300 Forest Avenue, Pacific Grove, CA 93950

T :: 831.648.3190 • F :: 831.648.3184 • [www.ci.pg.ca.us/cdd](http://www.ci.pg.ca.us/cdd)

### NOTICE OF EXEMPTION FROM CEQA

Agenda No. 11E, Attachment 8  
Page 1 of 1

**Property Address/Location:** 77 Asilomar Ave, Pacific Grove, CA 93950

**Project Description:** Use Permit (UP) 16-093

Description: To allow the installation of protective netting (35' height x 320' width) including 7 poles, and planting of 6 trees, along the fifth hole of Pacific Grove Golf Links.

APN: 006-094-099

ZC: O GP: Open Space

Applicant Name: Daniel Gho, City of Pacific Grove, Director of Public Works Phone #: (831) 648-5722

Mailing Address: 300 Forest Avenue, Pacific Grove, CA 93950

Email Address: [dgho@cityofpacificgrove.org](mailto:dgho@cityofpacificgrove.org)

**Public Agency Approving Project:** City of Pacific Grove, Monterey County, California

**Exempt Status (Check One):**

- ☐ Ministerial (Sec. 21080(b)(1):15268))
- ☐ Declared Emergency (Sec. 21080(b)(3): 15269(a))
- ☐ Emergency Project (Sec. 21080(b)(4); 15269(b)(c))
- ☐ Categorical Exemption

Type and Section Number: Section 15303 Class 3 Categorical Exemption

**Exemption Findings:**

The project includes the installation of protective netting (35' height x 320' width) including 7 poles, and planting of 6 trees, and therefore qualifies for a Class 3 Exemption from CEQA requirements, pursuant to Section 15303 – New Construction or Conversion of Small Structures.

The proposed alterations do not present any unusual circumstances that would result in a potentially significant environmental impact.

**Contact:** Wendy Lao, Assistant Planner      **Contact Phone:** (831) 648-3185

**Signature:**

**Date:** February 24, 2016



City of Pacific Grove  
Community and Economic Development Department  
300 Forest Avenue  
Pacific Grove, CA 93950

SAN JOSE  
FEB 23 2016  
PM 2 L



**NOTICE OF PUBLIC HEARING**  
**before the**  
**PLANNING COMMISSION**  
6:00 p.m. Thursday, March 3, 2016

**For a property located at**  
**77 ASILOMAR AVE.**  
**PACIFIC GROVE, CA 93950**

Meeting Location:  
City Council Chambers – City Hall  
300 Forest Avenue, Pacific Grove, CA

006141005000

7 JEWELL AVE  
PACIFIC GROVE CA 93950

93950253955



**Address:** Pacific Grove Golf Links: 77 Asilomar Avenue. Pacific Grove, CA 93950

**Use Permit:** UP No. 16-093

**Project Description:** To install 7 poles of 35 feet height with protective barrier netting along the fifth hole (northern side) of Pacific Grove Golf Links, for a total width of 320 feet.

**Applicant/Owner:** Daniel Gho, Public Works Director/City of Pacific Grove

**Zone District/ Land Use:** O

**General Plan Designation:** Open Space

**Assessor's Parcel Number:** 006-094-099

**CEQA Status:** Categorical Exemption, Section 15303, Class 3

**Staff Reference:** Wendy Lao, [wlao@cityofpacificgrove.org](mailto:wlao@cityofpacificgrove.org)

***What is the purpose of this notice?** This notice is to alert you to the time and place of the public meeting, which provides an opportunity for you to ask questions and/or formally record testimony related to a project. Legal challenges to the City's action on a project must be limited only to issues raised in testimony during the public meeting process.*

***What information is available?** This notice is posted at the project site frontage(s). If required, story poles and netting have been placed on the property to outline the proposed ridgelines and extent of the project, but do not reflect all details. Project materials are available for review at the Community and Economic Development Department 8-12 & 1-5, Monday-Thursday and online at [www.cityofpacificgrove.org/about-city/boards-commissions/planning-commission](http://www.cityofpacificgrove.org/about-city/boards-commissions/planning-commission). Up-to-date plans and related materials will also be available for review at the meeting.*

***Are there special accommodations?** The City of Pacific Grove does not discriminate against persons with disabilities and City Hall is an accessible facility. A limited number of devices are available to assist those who are hearing impaired. If you would like to use one of these devices, please contact the Community and Economic Development Department.*



|                    |               |       |       |
|--------------------|---------------|-------|-------|
| 77 Asilomar Avenue | Pacific Grove | CA    | 93950 |
| Street             | City          | State | Zip   |

Planning Application:

APN:


### DECLARATION

I, Wendy Lao, declare as follows:

1. The Notice of Public Hearing shall be posted on the subject lot in a location that can be viewed from the nearest street. If the subject lot is a through lot, a notice shall be conspicuously posted adjacent to each street frontage in a location that can be viewed from the street.
2. The Notice of Public Hearing shall be mailed to owners of all properties 300 feet from the subject lot. The names and addresses used for such notice shall be those appearing on the equalized county assessment roll, as updated from time to time.

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

Print Name: Wendy Lao

Signature: 

Date: March 25, 2016



## **RESOLUTION NO. 16-XX**

### **USE PERMIT (UP) NO. 16-093 TO INSTALL PROTECTIVE GOLF BARRIER NETTING (35 FEET HEIGHT X 320 FEET WIDTH) INCLUDING 7 POLES, AND TO PLANT 6 TREES, ALONG THE FIFTH HOLE OF PACIFIC GROVE GOLF LINKS.**

#### **FACTS**

1. The subject site is located at 77 Asilomar Ave., Pacific Grove, 93950 (APN 006-094-099)
2. The subject site has a designation of Open Space adopted by the City of Pacific Grove General Plan Land Use Map.
3. The project site is located in the O zoning district.
4. The subject site is developed with a golf course and a maintenance building.
5. The subject site is located in the Archaeological Zone.
6. The subject site is located in the Area of Special Biological Significance Watershed.
7. This project has been determined to be CEQA Exempt under CEQA Guidelines Class 3 Section 15303.
8. A use permit is required when structures are to be developed in the O zoning district.

#### **FINDINGS**

1. The proposed use is allowed in the O zoning district with a use permit per Pacific Grove Municipal Code 23.42.020, and;
2. The proposed development will meet the development regulations set forth in the O zoning district, and;
3. The proposed use is consistent with the general plan, and;
3. The establishment, maintenance or operation of the use will not, under the circumstances of this particular case, be detrimental to the health, safety, or general welfare of persons residing or working in the neighborhood of the proposed use, and;
4. The use, as described and conditionally approved, will not be detrimental or injurious to property and improvements in the neighborhood or to the general welfare of the city, and;
5. The location, size, and design of the proposed development are compatible with the existing and future land uses in the vicinity because the proposed structure is characteristic in the neighborhood, and;
6. The completed project will neither be detrimental to the orderly and harmonious development of the city nor impair the desirability of investment or occupation in the neighborhood because the project will be improving the subject property, and;
7. An archaeological report was completed on February 12, 2016 by Gary S. Breschini, Ph.D. and determined that the proposed project to not be delayed for archaeological reasons.

**CONDITIONS OF APPROVAL:**

1. **Permit Expiration:** This permit shall expire and be null and void if a building permit has not been applied for within one (1) year from and after the date of approval. Application for extension of this approval must be made prior to the expiration date.
2. **Archaeological Resources:** A qualified archaeological monitor should be present during initial project excavations. If archaeological resources or human remains are unexpectedly discovered during construction, work shall be halted within 50 meters ( $\pm 165$  feet) of the find until it has been evaluated for significance by a qualified professional archaeologist. If the find is determined to be significant, appropriate mitigation measures shall be formulated, with the concurrence of the lead agency, and implemented.
3. **Construction and Use Compliance:** All activities must occur in strict compliance with the proposal as set forth in the application for this Use Permit, subject to any special conditions of approval herein. Any deviation from approvals must be reviewed and approved by staff, and may require City Council approval as a use permit amendment.
4. **Public Works, Fire, and Building:** Review and approval by the Public Works, Fire and Building Departments are required prior to issuance of a building permit. Work taking place in the public right-of-way shall require an encroachment permit prior to issuance of the building permit.
5. **Tree Protection Standards During Construction:** Pursuant to Municipal Code Chapters 12.20 and 12.30, and the Urban Forestry Standards, all trees that are otherwise protected and will be impacted as a result of Development, both proposed for pruning or removal and where the development will impact the critical root zone of the tree are protected. Prior to issuance of the building permit, the Project Arborist shall review grading, drainage, utility, building and landscape plans to determine impacts to individual Trees, to determine required minimum Tree protection standards during construction.
6. **Stormwater Treatment:** The stormwater treatment measures shall be maintained by the property owner in perpetuity and City of Pacific Grove staff shall be allowed access to inspect all stormwater treatment measures on an annual basis.
7. **Terms and Conditions:** These terms and conditions shall run with the land, and it is the intention of the City Council and the Permittee to bind all future owners and possessors of the subject property to the terms and conditions, unless amended. Amendments to this permit may be achieved only if an application is made, and the City Council approves, any such amendments pursuant to the Zoning Code regulations.



8. **Conditions of Approval in Plans:** All conditions of approval for the Planning permit(s) shall be printed on a full size sheet and included with the construction plan set submitted to the Building Department.

**NOW, THEREFORE, BE IT RESOLVED BY THE PLANNING COMMISSION OF THE CITY OF PACIFIC GROVE:**

- I. The Commission determines that each of the Findings set forth above is true and correct, and by this reference incorporates those Findings as an integral part of this Permit.
- II. The Commission authorizes approval of Use Permit No. 16-02 to install protective golf barrier netting (35 feet height x 320 feet width) including 7 poles, and to plant 6 trees, along the fifth hole of Pacific Grove Golf Links.
- III. This permit shall become effective upon the expiration of the 10-day appeal period.
- IV. This permit shall not take effect until the owner acknowledges and agrees to all terms and conditions and agrees to conform to and comply with those terms and conditions.

**PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF PACIFIC GROVE**  
this 6<sup>th</sup> day of April, 2016, by the following vote:

AYES:

NOES:

ABSENT:

APPROVED:

\_\_\_\_\_  
BILL KAMPE, MAYOR

The undersigned hereby acknowledge and agree to the approved terms and conditions, and agree to fully conform to, and comply with, said terms and conditions.

\_\_\_\_\_  
Ben Harvey, City of Pacific Grove Interim City Manager

\_\_\_\_\_  
Date

## HORAN | LLOYD

ANTHONY T. KARACHALE  
STEPHEN W. DYER  
MARK A. BLUM  
JAMES J. COOK  
ELIZABETH C. GIANOLA  
JEROME F. POLITZER  
PAMELA H. SILKWOOD  
JACQUELINE M. PIERCE  
BIANCA KARIM  
JENNIFER M. PAVLET  
GREGORY J. CARPER

*Of Counsel*  
FRANCIS P. LLOYD  
ROBERT ARNOLD, INC.

LAURENCE P. HORAN  
(1929-2012)

HORAN LLOYD  
A PROFESSIONAL CORPORATION  
ATTORNEYS AT LAW  
26385 Carmel Rancho Blvd., #200  
Carmel, CA 93923

Pamela H. Silkwood

[psilkwood@horanlegal.com](mailto:psilkwood@horanlegal.com)

File No. 6910.02

Tel: 831.373.4131  
Fax: 831.373.8302  
[horanlegal.com](http://horanlegal.com)  
RECEIVED  
CITY MANAGER'S OFFICE  
2016 MAR 11 P 1:47  
CITY OF PACIFIC GROVE

March 11, 2016

### Via Hand Delivery

Mark Brodeur  
Department Director  
Community & Economic Development  
City Hall  
300 Forest Ave., 2<sup>nd</sup> Floor  
Pacific Grove, California 93950

**RE: Appeal of Planning Commission's approval of Use Permit Application No.  
UP 16 -093**

Dear Mr. Brodeur,

Enclosed with this letter, please find an appeal of the Planning Commission's approval of Use Permit Application No. UP 16 -093 for the installation of protective Netting (35 feet height x 320 feet width) and seven poles, and the planting of six trees along the fifth hole at the Pacific Grove Golf Links. Since the appeal fee is based on the application fee, and the City presumably did not pay a fee for this application, we assume the application fee to be zero. The appellants contacted the City to determine the application fee and received no response from the City. Accordingly, this appeal must not be denied due to non-payment of any fee.

Respectfully submitted,

  
Pamela H. Silkwood

PHS/jlt  
Enclosures



## CITY OF PACIFIC GROVE

Community Development Department - Planning Division

300 Forest Avenue, Pacific Grove, CA 93950

T :: 831.648.3190 • F :: 831.648.3184 • www.ci.pg.ca.us/cdd

### Appeal Form

Appeal #:

Date:

Received By:

Total Fee:

RECEIVED  
CITY MANAGER'S OFFICE

2016 MAR 11 P 1:48

### Project Information

Project Address:

☐ On HRI / ☐ Not on HRI

APN:

CITY OF PACIFIC GROVE

Application & No.:

Applicant Name:

Phone #:

Mailing Address:

Email Address:

Owner Name:

Phone #:

Mailing Address:

Email Address:

### Action<sup>1</sup>

☐ ARB: Architectural Review Board

☐ CDD: Planning Staff

☐ HRC: Historic Resources Committee

☐ PC: Planning Commission

☐ NRC: Natural Resources Committee

☐ SPRC: Site Plan Review Committee

☐ ZA: Zoning Administrator

Date of Action:

Action Taken:

### Appeal Information

Appellant Name:

Richard T. Stillwell\*

Phone #:

831-649-6269

Mailing Address:

801 Jewell Avenue, Pacific Grove, CA 93950

Email Address:

RTStillwell@pacbell.net

Appeal Deadline:

5:00 p.m. on

Grounds for Appeal:

Please see attached four (4) pages

\*Additional names will be sent via E-mail

If necessary, use additional pages.

### Fees

Discretionary Fees<sup>2</sup>

Appeal Fee = 25% of discretionary fees

Cost of publication of legal notice<sup>3</sup>

Photocopies \_\_\_\_\_ copies @ 10¢ each

Postage<sup>4</sup> \_\_\_\_\_ stamps @ 45¢ each

Other \_\_\_\_\_

Total Appeal Fee

*Richard T. Stillwell*  
Appellant Signature

Date

03/11/2016

<sup>1</sup> See Table 23.70.012-1 in the Pacific Grove Zoning Code, which identifies roles of review authorities as they relate to appeals.

<sup>2</sup> Whatever fee was collected by the city for the application for use permit, architectural approval, variance, etc., or combination of more than one fee if more than one decision is being appealed.

<sup>3</sup> Currently averaging \$250-300.

<sup>4</sup> Typically the number of address labels for parcels (or portions thereof) found within a 300 ft radius of the subject parcel (350 ft radius for homes in the Asilomar Dunes area) is approximately 120. Mailing is sent to owners and occupants (including most individual apartments) of properties.

**Appellants**

**Sanford Cohen**  
**775 Jewell Avenue**

**Margie Montana**  
**1421 Courtyard Dr.**  
**San Jose, CA 95118**

**Gail Cohen**  
**776 Jewell Avenue**

**Sally Sirocky**  
**767 Jewell Avenue**

**Alexander Sirocky**  
**767 Jewell Avenue**

**Rue Kabet**  
**755 Jewell Avenue**

**Darryl Donnelly**  
**759 Jewell Avenue**

**Jean Donnelly**  
**759 Jewell Avenue**

**David Messina**  
**751 Jewell Avenue**

**Felicitia Messina**  
**751 Jewell Avenue**

**Dorethy Nelson**  
**181 Cedar Street**

**Ken Nelson**  
**181 Cedar Street**



## Grounds for Appeal

Final Approval of Use Permit Application  
No. UP 16 -093 for the installation of protective  
Netting (35 feet height x 320 feet width) including  
7 poles, and planting of 6 trees, along the fifth hole  
of Pacific Grove Golf Links, pursuant to  
P.G.M.C. 23.42.020

In October, 2015, Monarch Pines Community of Pacific Grove and the City of Pacific Grove ("City") settled on a dispute regarding six poorly maintained Eucalyptus trees, and the Monterey County Superior Court entered judgment on the settlement ("Stipulated Judgment"). The Stipulated Judgment ordered the City to remove the six trees, to install netting on the golf course where the trees were removed, and to plant replacement trees.

At the outset, it is important to point out the City cannot contract away its right to exercise the police power in the future. (*Cotta v. City and County of San Francisco* (2007) 157 Cal.App.4<sup>th</sup> 1550, 1557.) A contract that purports to do so is invalid as against public policy and is a violation of Cal. Const., Art XI, §7. (*Cotta v. City and County of San Francisco, supra*, 157 Cal.App.4<sup>th</sup> at p. 1557.) Specific to this matter, the City's adjudicative bodies cannot be bound by the stipulated judgment because they are prohibited from surrendering, impairing or bargaining away its control of a police power or municipal function. Accordingly, the City Council must review this appeal on its merits without prejudice or bias. The California Coastal Commission, which is not a party to the complaint or the settlement, also has the obligation to review this appeal on its merits rather than in the context of the stipulated judgment if the application is further appealed.

Specific to the stipulated judgment, the City has jurisdiction over both tree removal [Pacific Grove Municipal Code ("PGMC") Chapter 12.20] and the issuance of a Use Permit (PGMC §23.60.070) for the installation of netting. Any discretionary approval must be supported by certain required findings based on substantial evidence in the record.

### Tree Removal

The removal of the Eucalyptus trees took place in November and December, 2015. The citizens of Pacific Grove did not receive notice of this action taken by the City. The trees removed were "Public Trees" within the category of "Protected Trees" and thus, their removal triggered the requirements of permit application and processing as set forth in Chapter 12.60. (PGMC §12.20.040.) The appellants did not receive notice of such application, nor of the City decision, to remove the trees and thus, the City has failed to follow its code requirements. Prior to the tree removal, an assessment of the project's potential impact to

Monarch butterflies and other sensitive species should have been prepared, and the appellants have no knowledge that City prepared such assessment prior to the tree removal.

### Use Permit

On March 3, 2016, the City Planning Commission held a public hearing and approved a Use Permit Application (UP 16 -093) for the installation of protective netting (35 feet height by 320 feet width) and seven poles. Again, the City failed to provide sufficient notice of the Use Permit application in violation of City of Pacific Grove Municipal Code ("PGMC") § 23.86.020. Specifically, not all of the owners within a 300-foot radius of the exterior boundaries of the Golf Links received a 10-day notice of the Planning Commission hearing on the Use Permit application.

Moreover, the City failed to install any story pole and flagging prior to the Planning Commission hearing to inform fully inform the public of the project as required under section 23.86.040 of the Municipal Code.

Additionally, the City failed to perform any environmental analysis of the netting project's impact to protected resources. It is clear that the project would significantly affect the public's visual access of the ocean which is protected under the California Coastal Act. Section 30251 of the Coastal Act states, in relevant part, as follows:

Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and where feasible, to restore and enhance visual quality in visually degraded areas.

Section 30009 of the Coastal Act requires that "[The Coastal Act] shall be liberally construed to accomplish its purposes and objectives."

Even without the need to liberally construe section 30251 of the Coastal Act, it is clear that the project would impact public and private views to and along the ocean and scenic coastal areas and is visually incompatible with the character of surrounding areas, i.e., open space of the golf links. Thus, the netting project is in violation of the Coastal Act.

It is important to point out that the City's Local Coastal Program ("LCP") update identifies the project area as protected open space. Please see Figure 3 from the LCP update included as Exhibit "A". The scenic values of the identified open space must be protected; to the contrary, the 35-foot high netting as part of the project would significantly impair public and private visual access.



The view of the Bay from Jewell Avenue adjacent to the golf course is important to tourism in Pacific Grove. The inhabitants of Jewell Avenue frequently encounter tourists strolling along the golf course, many from foreign countries, who capture the scenic views with their cameras.

It is also important to note that the height of the netting was not specified in the stipulated judgment. It appears that the only justification given for the selection of 35 feet was the fact that the netting would be installed adjacent to the existing netting that is 35 feet in height. The existing netting is badly deteriorated and difficult to see through; however, its condition is not obvious because it is shielded from public view by a hill and several trees. Although the Planning Commission stated at the hearing that "the netting is virtually see through," and the "style is the least intrusive to view shed," the appellants do not believe this to be true particularly due to conditions of the existing netting.

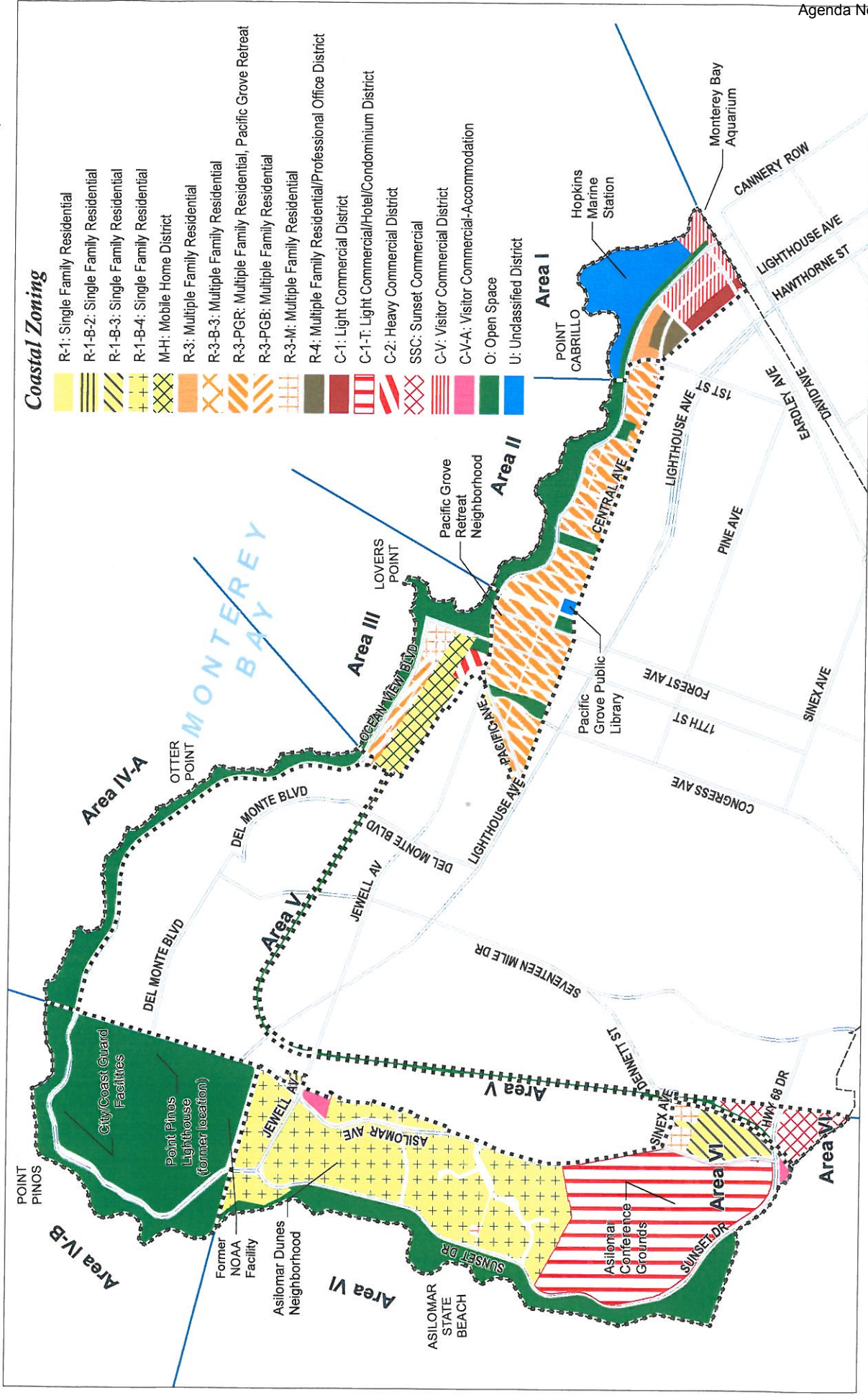
Based on the foregoing, the Appellants believe that the City failed to proceed with the procedural due process requirements; Planning Commission failed to make the required findings to approve Use Permit application UP 16 -093; and the Planning Commission lacked substantial evidence in the record to support the findings the Commission made as part of its approval.

#### Conclusion

Due to their potential to significantly impact these sensitive visual and other resources, the tree removal and netting should be evaluated under the California Environmental Quality Act. Upon the preparation of an initial study or Environmental Impact Report, the appellants request that the City Council approve this appeal and deny the project because it is clear that the project would pose significant impacts to public views and other valuable resources.

Coastal Zoning

- R-1: Single Family Residential
- R-1-B-2: Single Family Residential
- R-1-B-3: Single Family Residential
- R-1-B-4: Single Family Residential
- M-H: Mobile Home District
- R-3: Multiple Family Residential
- R-3-B-3: Multiple Family Residential
- R-3-PGR: Multiple Family Residential, Pacific Grove Retreat
- R-3-PGB: Multiple Family Residential
- R-3-M: Multiple Family Residential
- R-4: Multiple Family Residential/Professional Office District
- C-1: Light Commercial District
- C-1-T: Light Commercial/Hotel/Condominium District
- C-2: Heavy Commercial District
- SSC: Sunset Commercial
- C-V: Visitor Commercial District
- C-V-A: Visitor Commercial-Accommodation
- O: Open Space
- U: Unclassified District



Legend

- Planning Area Boundaries
- City of Pacific Grove
- Major Roads
- Coastal Zone



Exhibit A



## HORAN | LLOYD

ANTHONY T. KARACHALE  
STEPHEN W. DYER  
MARK A. BLUM  
JAMES J. COOK  
ELIZABETH C. GIANOLA  
JEROME F. POLITZER  
PAMELA H. SILKWOOD  
JACQUELINE M. PIERCE  
BIANCA KARIM  
JENNIFER M. PAVLET

*Of Counsel*  
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ROBERT ARNOLD, INC.  
VIRGINIA E. HOWARD

LAURENCE P. HORAN  
(1929-2012)

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Carmel, CA 93923

Tel: 831.373.4131  
Fax: 831.373.8302  
horanlegal.com

File No. 6910.02

March 25, 2016

### Via Electronic Mail

Wendy Lao  
Assistant Planner  
City of Pacific Grove  
300 Forest Avenue  
Pacific Grove, CA 93950

Re: Appeal of Use Permit 16-093 – Request for Extension

Dear Ms. Lao,

Thank you for meeting us at the Project site today. As we discussed, this letter is a request for a continuance of the hearing to May 2016 for the appeal of Use Permit 16-093. The appellants request the continuance to allow additional time to discuss the project with City staff with a goal towards reaching a resolution of the issues raised by the appellants.

Respectfully submitted,



Pamela H. Silkwood

Cc: Mark Brodeur