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A PROFESSIONAL CORPORATION

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August 15, 2019

File No. 5224.000

Chip Rerig, City Manager  
City of Carmel-by-the-Sea  
PO Box CC  
Carmel, CA 93921

Re: Spite trees located on City property

Dear Chip,

We represent Philip Purcell, Jon Lindsey, and Michelle Tutelian with regard to the above referenced matter. My clients own three s homes across the street from Kathleen Correia the owner of a residential property located on N. San Antonio, Carmel-By-The-Sea; APN 010-421-001.

Ms. Correia has planted and grown a large hedge on City property in front of her home which extends approximately twenty feet above the ground and obstructs all three of my client's viewsheds looking west. We have not been able to find any encroachment permits that were issued which would allow Ms. Correia to use the City's property. Ms. Correia claims she was given permission by the City, but has never been able to produce anything to prove it.

Pursuant to the map and survey attached hereto as Exhibit A and Exhibit B, respectively, the hedge is clearly located on City property. The survey, which was prepared in 2010 in anticipation of the construction of the pedestrian trail which runs along N. San Antonio, shows a wooden fence which also appears in the City right of way. That fence can also be seen in the aerial photo from 2003 as highlighted in Exhibit C. The entire hedge is located on the street side of the wooden fence, meaning it is located entirely within the City's right of way. Moreover, the survey also identifies three plants/trees as "Jun" (an abbreviation for juniper plants) which are identified between the wooden fence and the then-proposed trail. These juniper plants are undoubtedly the same juniper plants that make up the hedge in question.

The hedge functions essentially as a fence in front of Ms. Correia's property. The City requires that front fences be a maximum of 4' in height.

My clients have already requested that Ms. Correia trim her hedge to comply with the City's height restrictions. Each time, Ms. Correia has refused to trim her hedge claiming that her gardeners are responsible for the hedge's height or that she has no control over the height of the hedge. Since the hedge is also located on City property, without an encroachment permit, the City must require that the hedge either be removed entirely or allow the hedge to legally encroach by permit and require the hedge to be properly trimmed and maintained pursuant to the terms of the encroachment permit.

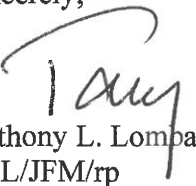
In addition, this hedge is essentially a "spite fence". Why else would Ms. Correia intentionally refuse to maintain the hedge at the legally required height of state and local laws? Under Civil Code 481.4, any fence or other structure in the nature of fence, including trees and shrubs, that unnecessarily exceeds 10' in height and is maliciously erected or maintained for the purpose of annoying an adjoining property owner, is a "spite hedge" and a private nuisance.

Since Ms. Correia has not been responsive to our attempts at resolving these issues, we are left with no other option than to file suit to require her to comply with the law. If legal action is necessary, we will be required to sue the City for its failure to require an encroachment permit, failure to enforce its own height restrictions and because the City appears to be the actual owner of the property where the hedge is located. The hedge is now an actionable public nuisance. Unfortunately, suing the City cannot be avoided if the hedge is not maintained properly.

Obviously, my clients do not want to file a law suit against anybody. All they want is for the hedge to be brought into compliance with state and local laws. If my clients are forced to take legal action, we will seek all attorney fees and costs incurred in connection with such action as well as punitive damages against Ms. Correia for intentionally maintaining a "spite hedge". My clients do not wish to proceed in this fashion and request that the City take immediate action to require Ms. Correia to comply with the law.

I look forward to receiving your response. Please let me know how you wish to proceed.

Sincerely,

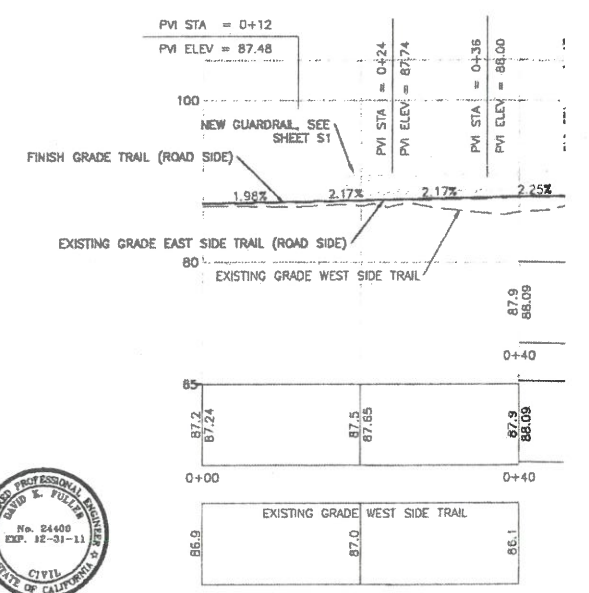
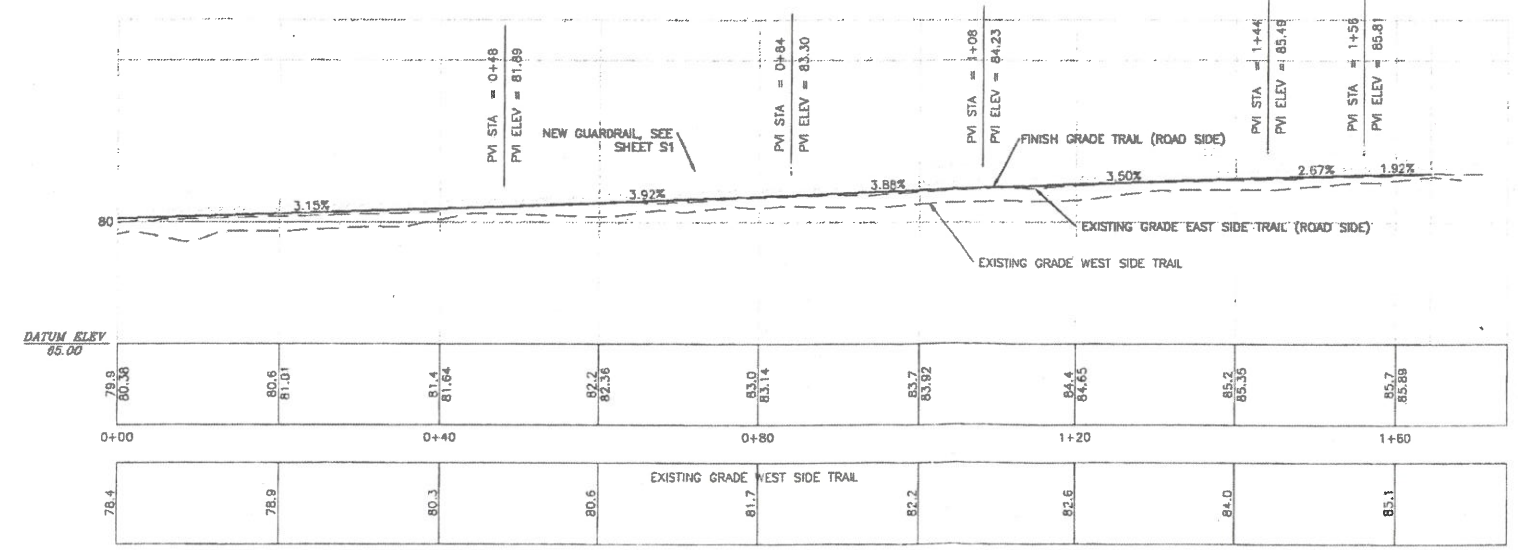
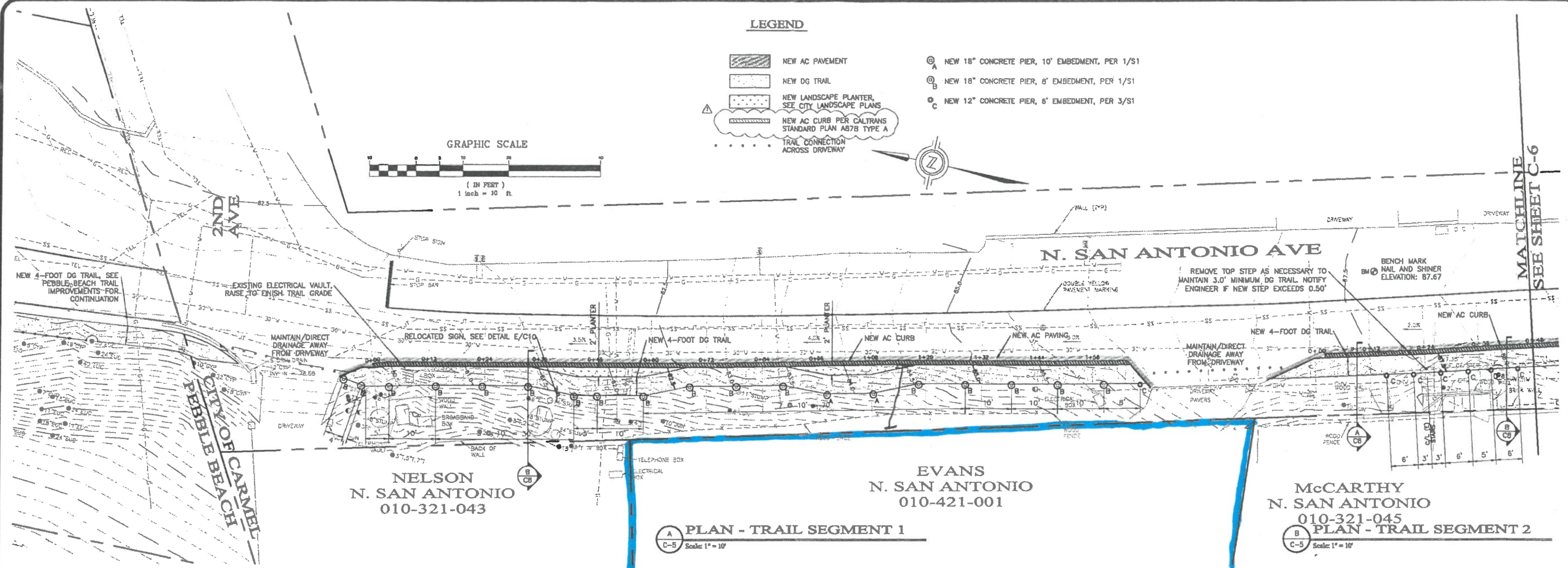
  
Anthony L. Lombardo  
ALL/JFM/rp

cc: Clients

Enclosures



Exhibit B



**PEBBLE BEACH COMPANY**  
P.O. BOX 1767 PEBBLE BEACH, CALIFORNIA 93953  
(831) 624-8900

**PARCEL INFORMATION:** MONTEREY COUNTY, CALIFORNIA

**NORTH SAN ANTONIO AVENUE**  
**PEDESTRIAN TRAIL**  
**TRAIL PLAN AND PROFILE**

**C-5**  
DATE: APR 8, 2010

