

**CALIFORNIA COASTAL COMMISSION**

CENTRAL COAST DISTRICT OFFICE  
725 FRONT STREET, SUITE 300  
SANTA CRUZ, CA 95060  
PHONE: (831) 427-4863  
FAX: (831) 427-4877  
WEB: WWW.COASTAL.CA.GOV



# Th32a

**Prepared January 30, 2014 (for February 13, 2014 hearing)**

**To:** Coastal Commissioners and Interested Persons

**From:** Charles Lester, Executive Director  
Dan Carl, District Director  
Adrian Kamada, Coastal Program Analyst

**Subject: Dispute Resolution 3-14-0224-EDD (Ontario Ridge Fencing and Signs).** Public hearing and Commission determination on dispute over coastal permit processing (pursuant to California Code of Regulations, Title 14, Section 13569 and San Luis Obispo County Local Coastal Program Section 23.01.041(g)) for the installation of fencing and signs that block and discourage access to trails on and around Ontario Ridge above the County's Pirates Cove coastal accessway between Pismo Beach and Avila Beach in San Luis Obispo County.

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## SUMMARY OF STAFF RECOMMENDATION

After a local coastal program (LCP) is certified by the Coastal Commission, the certified local government takes on the primary coastal development permit (CDP) processing role, including making determinations regarding what type of development requires CDPs. Local government CDP processing decisions, though, may be challenged. When a processing decision is challenged, the Commission's regulations (and many LCPs) require the local government to consult with the Commission's Executive Director. Where the local government and the Executive Director agree on CDP processing, then that processing is what applies. Where they do not agree, then the Coastal Commission is responsible for resolving the disagreement. (All as specified in Section 13569 of the Commission's Regulations (California Code of Regulations (CCR), Title 14)

San Luis Obispo County has a certified LCP, and the Executive Director disagrees with the County regarding the correct CDP process for certain fencing and signs installed on and around Ontario Ridge above the County's Pirates Cove coastal accessway between Pismo Beach and Avila Beach in San Luis Obispo County. The County's position is that the fencing and signs are types of development that are exempt from CDP requirements, pursuant to exemption provisions in the County LCP Coastal Zone Land Use Ordinance (CZLUO). The Executive Director's position is that the fencing and signs are not exempt from CDP requirements, and thus that a CDP is necessary to allow for the fencing and signs.

The County cites CZLUO exemptions for certain open fencing and certain prohibitory signs (i.e. “no trespassing” signs and the like) as the basis for its opinion that no CDP is required. The Executive Director disagrees with the County’s determination because the Coastal Act and its implementing regulations do not authorize the exemption of the types of fencing and signs at issue in this case. The LCP derives its statutory authority from the Coastal Act, and all of its provisions, including any exemptions, must be read consistent with and understood to conform to the Coastal Act as a matter of law. Neither the County nor the Commission has the authority to exempt development from coastal permitting requirements that is not exempted by the Coastal Act, except through the categorical exclusion process, which has not happened here. Because the subject fencing and signs are not so exempted, they require a CDP. The CDP requirement is especially critical in this situation because the development at issue directly adversely affects public recreational access in that the subject fencing and signs have led to significant restrictions on public use along a significant trail segment that has long been used by the public. Absent a CDP, the fencing and signs are a violation of the Coastal Act and the LCP, which provide for removal of unpermitted development.

**Staff recommends that the Commission concur with the Executive Director’s determination that the subject fencing and signs require a CDP.** The motion to implement this recommendation is found on page 3 below.

## TABLE OF CONTENTS

<b>I. EXECUTIVE DIRECTOR’S RECOMMENDATION.....</b>	<b>3</b>
<b>II. FINDINGS AND DECLARATIONS .....</b>	<b>3</b>

### EXHIBITS

Exhibit 1: Location Map

Exhibit 2: Photos of Fencing and Signs

Exhibit 3: County and Executive Director Determinations and Correspondence

Exhibit 4: Coastal Act Section 30610 and CCR Sections 13250-13253

## I. EXECUTIVE DIRECTOR'S RECOMMENDATION

The Executive Director has determined that the subject fencing and signs are not exempt from the requirement of obtaining a CDP, and recommends that the Commission concur. If the Commission concurs, then notice of this Commission determination will be forwarded to San Luis Obispo County and to the property owners. To concur with the Executive Director's determination, the Executive Director recommends a NO vote on the motion below. Following the Executive Director's recommended "no" vote will cause the motion to fail, resulting in: (1) the Commission upholding the Executive Director's determination that the fencing and signs on and around Ontario Ridge that are the subject of Dispute Resolution Number 3-14-0224-EDD require a CDP; and (2) the adoption of the following resolution and findings. The affirmative vote of a majority of the Commissioners present is necessary to pass the motion.

**Motion.** I move that the Commission reject the Executive Director's determination that the fencing and signs on and around Ontario Ridge that are the subject of Dispute Resolution Number 3-14-0224-EDD require a CDP, and I recommend a no vote.

**Resolution.** The Commission, by adoption of the attached findings, determines, consistent with Section 13569 of Title 14 of the California Code of Regulations, that the fencing and signs on and around Ontario Ridge that are the subject of Dispute Resolution Number 3-14-0224-EDD require a CDP.

## II. FINDINGS AND DECLARATIONS

The Commission finds and declares as follows:

### A. Dispute resolution procedures

Both the Commission's regulations and the County's LCP provide a resolution mechanism for disputes regarding CDP processing. CCR Section 13569 states:

*Section 13569 (Determination of Applicable Notice and Hearing Procedures). The determination of whether a development is categorically excluded, non-appealable or appealable for purposes of notice, hearing and appeals procedures shall be made by the local government at the time the application for development within the coastal zone is submitted. This determination shall be made with reference to the certified Local Coastal Program, including any maps, categorical exclusions, land use designations and zoning ordinances which are adopted as part of the Local Coastal Program. Where an applicant, interested person, or a local government has a question as to the appropriate designation for the development, the following procedures shall establish whether a development is categorically excluded, non-appealable or appealable:*

*(a) The local government shall make its determination as to what type of development is being proposed (i.e. categorically excluded, appealable, non-appealable) and shall inform the applicant of the notice and hearing requirements for that particular development. The local determination may be made by any designated local government employee(s) or any local body as provided in local government procedures.*

*(b) If the determination of the local government is challenged by the applicant or an*

*interested person, or if the local government wishes to have a Commission determination as to the appropriate designation, the local government shall notify the Commission by telephone of the dispute/question and shall request an Executive Director's opinion;*

- (c) The executive director shall, within two (2) working days of the local government request (or upon completion of a site inspection where such inspection is warranted), transmit his or her determination as to whether the development is categorically excluded, non-appealable or appealable:*
- (d) Where, after the executive director's investigation, the executive director's determination is not in accordance with the local government determination, the Commission shall hold a hearing for purposes of determining the appropriate designation for the area. The Commission shall schedule the hearing on the determination for the next Commission meeting (in the appropriate geographic region of the state) following the local government request.*

Similarly, San Luis Obispo County LCP Section 23.01.041(g) states:

***Determination of applicable notice and hearing procedures.*** *The determination of whether a development is categorically excluded, non-appealable or appealable for purposes of notice, hearing and appeals procedures shall be made by the county at the time the application for development within the Coastal Zone is submitted. This determination shall be made with reference to the certified Local Coastal Program, including any maps, categorical exclusions, land use designations and provisions of this title which are adopted as part of the Local Coastal Program. Where an applicant, interested person or the county has a question as to the appropriate designation for the development, the following procedures shall establish whether a development is categorically excluded, non-appealable or appealable:*

- (1) The Planning Director shall make his/her determination as to what type of development is being proposed (i.e., categorically excluded, appealable, non-appealable) and shall inform the applicant of the notice and hearing requirements for that particular development.*
- (2) If the determination of the Planning Director is challenged by the applicant or an interested person, or if the county wishes to have a determination by the Coastal commission as to the appropriate designation, the Planning Director shall notify the Coastal Commission by telephone of the dispute/question and shall request an Executive Director's opinion.*

Thus, in a situation like this where the County and the Executive Director are not in agreement on the correct CDP process determination for the proposed project, the Coastal Commission resolves that dispute.

## **B. Dispute summary**

On December 30, 2013, it was reported to the Coastal Commission's Central Coast District Office that a fence was being constructed atop of Ontario Ridge, on Rob and Judi McCarthy's property, above Cave Landing Road in Avila Beach (APN 076-231-063) in San Luis Obispo County. Subsequently, numerous emails and calls from the public to the Central Coast District Office reported barbed wire fencing being installed along Cave Landing Road and on and around

Ontario Ridge that blocks the ability of the public to make use of informal trails in the area, including an approximately 6-foot tall barbed wire fence atop the ridge itself constructed alongside and across the informal trails used by many of the public. In addition, the public has reported to the Central Coast District Office that “no trespassing” and similarly restrictive signs have been placed along these trails. Commission staff discussed the matter with San Luis Obispo County Planning and Building staff, and those discussions revealed that the County did not intend to require any permits for the fencing or signs. Commission staff indicated to the County that CDPs would be required for such development, and recommended that the County proceed accordingly.

On January 22, 2014, Commission staff learned that the County had apparently determined that no CDPs would be necessary for the subject development, and asked the County to confirm the County’s CDP determination. On January 23, 2014, the County responded, indicating that as of that time the County had determined that no CDPs were necessary because the subject development was exempted from CDP requirements under the LCP, citing to LCP CZLUO Sections 23.03.040(d) and 23.04.306(b)(13). On that same day, Commission staff were informed by the County that the County’s determination in that regard had been challenged, and the County asked for the Executive Director’s opinion of the correct CDP processing, as is required by CCR Section 13569 and LCP Section 23.01.041(g). On January 27, 2014, Commission staff provided the Executive Director’s opinion that an appealable CDP would be required to allow for the subject fencing and the signs. Subsequently, on January 29, 2014, and in an effort to facilitate further discussion on the issue, with the goal of reaching agreement on the correct CDP process, Commission staff provided the County with some further background and information explaining the Executive Director’s opinion.

In summary, the Executive Director’s opinion is that the Coastal Act and its implementing regulations do not exempt such fencing and signs from CDP requirements; that the LCP derives its statutory authority from the Coastal Act, and all of its provisions, including any exemptions, must be read consistent with and understood to conform to the Coastal Act as a matter of law; that neither the County nor the Commission has the authority to exempt development from coastal permitting requirements that is not exempted by the Coastal Act; and thus that the subject fencing and signs are not so exempted and they require a CDP. (See Exhibit 3 for the described exchange of determinations and information.)

Because the County and the Executive Director do not agree on the correct CDP processing route, the matter is to be decided by the Coastal Commission.

### **C. CDP requirements for fencing and signs**

Coastal Act Section 30600 requires any person wishing to undertake development in the coastal zone to first obtain a CDP authorizing such development. The Coastal Act definition of “development” encompasses the construction of fencing and erection of signs. Coastal Act Section 30106 and CZLUO Section 23.03.030 both define “development” as:

*“Development” means, on land, in or under water, the placement or erection of any solid material or structure; discharge or disposal of any dredged material or of any gaseous, liquid, solid, or thermal waste; grading, removing, dredging, mining, or extraction of any*

*materials; change in the density or intensity of use of land, including, but not limited to, subdivision pursuant to the Subdivision Map Act (commencing with Section 66410 of the Government Code), and any other division of land, including lot splits, except where the land division is brought about in connection with the purchase of such land by a public agency for public recreational use; change in the intensity of use of water, or of access thereto; 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, kelp harvesting, and timber operations which are in accordance with a timber harvesting plan submitted pursuant to the provisions of the Z'berg-Nejedly Forest Practice Act of 1973 (commencing with Section 4511). As used in this section, "structure" includes, but is not limited to, any building, road, pipe, flume, conduit, siphon, aqueduct, telephone line, and electrical power transmission and distribution line.*

The subject fencing and signs include erection and placement of solid materials and structures (i.e., fencing and signs), grading (i.e., for fence poles), change in the intensity of use of land (i.e., reduced use of trails impacted by the fencing and signs), and change in access to water (i.e., reduced use of trails to the ocean). Thus, anyone wishing to construct such fencing and/or erect signs in the coastal zone must first obtain a CDP.

Coastal Act Section 30610 also includes certain exemptions from CDP requirements (see Exhibit 4). This is the only section of the Coastal Act in which the legislature created relevant exemptions from coastal permitting requirements. These exemptions include such development as certain improvements to existing single-family homes and other structures, certain repair and maintenance activities, and certain disaster replacement projects. Neither fencing nor signs are explicitly identified as exempt under PRC Section 30610.

The Commission's implementing regulations further describe the types of development exempted under PRC Section 30610. Within the relevant regulation sections (see Exhibit 4), the only mention of fencing is in the section related to exemptions for improvements to existing single-family residences. Specifically, 14 CCR Section 13250(a)(2) defines fences as a type of structure normally associated with a single-family residence. Signs are not specifically mentioned in the regulations, but fixtures directly attached to single-family residences or structures other than single-family residences may, under certain circumstances, be exempt under 14 CCR Sections 13250 and 13252.

In addition to the classes of exemption described above, PRC Section 30610 also identifies a particular type of exemption, a categorical exclusion that authorizes the Commission to exclude additional types of development from CDP requirements, but only through adoption of categorical exclusion orders. The process for adopting such an exclusion order is that: the local government identifies the type of development it wishes to exclude from CDP requirements and the circumstances under which it would be excluded; the Commission considers such requests at a public hearing; and the Commission may adopt the categorical exclusion order, either with or without conditions, but only if at least two-thirds of the Commission finds that the excluded development has "no potential for any significant adverse effect, either individually or cumulatively, on coastal resources or on public access to, or along, the coast" (PRC Section

30610(e), 14 CCR Sections 13240-13249). There have been no categorical exclusions adopted by the Commission that exempt fencing and signs in San Luis Obispo County.

Thus, the fencing and signs represent development that is not exempted by the Coastal Act and its implementing regulations. Therefore, the development requires CDPs.

#### **D. County exemption determination**

The County does not contend that the fencing and signs do not constitute development under the Coastal Act or the certified LCP, but rather that the fencing and signs are types of development that are exempt from CDP requirements. In terms of the subject fencing, the County cites CZLUO Section 23.03.040(d), which states in applicable part:

*Exemptions from permit requirements. The following types of development within the Coastal Zone are exempt from the land use permit [i.e., CDP] requirements of this title: ...*

*(2) Walls or fences of 6'-6" or less in height located in accordance with Section 23.04.190(c)(Fencing and Screening), except when in the opinion of the Planning Director such wall or fence will obstruct views of, or legal access to the tidelands;*

The County found that because the fence is open wire, as opposed to a solid block wall, that the fence does not obstruct view of the tidelands. The County also noted that the fence is located on the side and rear property lines in conformance with the fencing and screening standards of CZLUO section 23.04.190(c). Moreover, the County states that even if the fence were to block views of the tidelands, Section 23.04.190(c) would not require a permit for a fence less than 6'6" in height located outside of setbacks and made up of open structures (defined as open wire, chain link, or other materials approved by the County that permit passage of a minimum of 90% of light). See Exhibit 3 for the County's fencing exemption determination.

In terms of the subject signs, the County cites CZLUO Section 23.04.306(b)(13) that provides an exemption for "prohibition signs" such as no trespassing, no parking and similar warning signs. Section 23.04.306(b)(13) states:

*Exempt Signs. The following signs are allowed without a land use permit [i.e., CDP]... Prohibition signs: "No trespassing," "No Parking," and similar warning signs.*

See Exhibit 3 for the County's signs exemption determination.<sup>1</sup>

#### **E. CDP required for the fencing and signs**

The County's initial determination is that the subject fencing and signs are exempt from CDP requirements pursuant to CZLUO Sections 23.03.040(d)(2) and 23.04.306(b)(13), respectively. These LCP sections were not adopted as categorical exclusion orders, but rather as part of the County's LCP Implementation Plan, and thus must be understood and evaluated as standard LCP

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<sup>1</sup> The Commission notes that some of the signs have apparently been placed at a primary Ontario Ridge trailhead within the city limits of Pismo Beach. Commission staff have contacted the City as regards their CDP determination for the signs.

provisions deriving their statutory authority from the Coastal Act as opposed to any type of categorical exclusion. All LCP provisions must be read consistent with and understood to conform to the Coastal Act (*McAllister v. California Coastal Commission*, (2009) 169 Cal.App.4<sup>th</sup> 912, 931). Thus, because these exemptions are not categorical exclusions, they must be interpreted to be consistent with the exemptions allowed under the Coastal Act because neither the County nor the Commission has the authority to exempt development from coastal permitting requirements that is not exempted by the Coastal Act.

Therefore, in order to be consistent with and understood to conform with the Coastal Act, the Section 23.03.040(d)(2) fencing exemption must be interpreted to apply only to fences associated with existing single-family residences, as no other type of fencing is exempted by the Coastal Act or the Commission's regulations. Similarly, the Section 23.04.306(b)(13) sign exemption could only apply to signs directly attached to an existing single-family residence or existing related residential structures or signs directly attached to an existing structure other than a single-family residence or a public works facility (14 CCR Sections 13250 and 13253). In this case, the new fencing and signs were erected on undeveloped property. As such, the exemptions in LCP Sections 23.03.040(d)(2) and 23.04.306(b)(13) do not apply, and San Luis Obispo County should require that the property owners obtain a CDP for this development, where appropriate.

## **F. Conclusion**

The exemptions in the County's LCP must be read to be consistent with Coastal Act requirements. The Coastal Act and its implementing regulations do not exempt the subject fencing and signs<sup>2</sup> from CDP requirements, and thus a CDP is required. There is no CDP in this case. Absent a CDP, the property owners are required by the LCP to remove the unpermitted fencing and signs. Such removal is particularly important in this case as the fencing and signs restrict access to a well-established trail system on and around Ontario Ridge (and the County's extremely popular Pirates Cove access facility and trails) that has been historically used by the public. In fact, based on trail use observations, the Commission initiated a prescriptive rights study in March 2013 to develop information regarding use of the trails in question. Thus far the evidence collected appears to indicate that the public has used this trail system continuously for a substantial period of time for recreational purposes, such as hiking, running, bird watching, dog walking, sightseeing, nature study, biking, yoga, and picnics. It also appears that the public has openly used the trail for these recreational purposes as if it were a public trail. Some members of the public have reported using the trail since the 1960s. In short, the subject fencing and signs have led to significant restrictions on public use along a significant trail segment that has long been used by the public. The fact that the fencing and signs were not appropriately permitted is particularly troubling. For resolution, the violations have been referred to the Commission's enforcement unit to pursue all available remedies, including working with the County to enforce its LCP in conformity with Coastal Act requirements and remove the unpermitted fencing and signs as soon as possible.

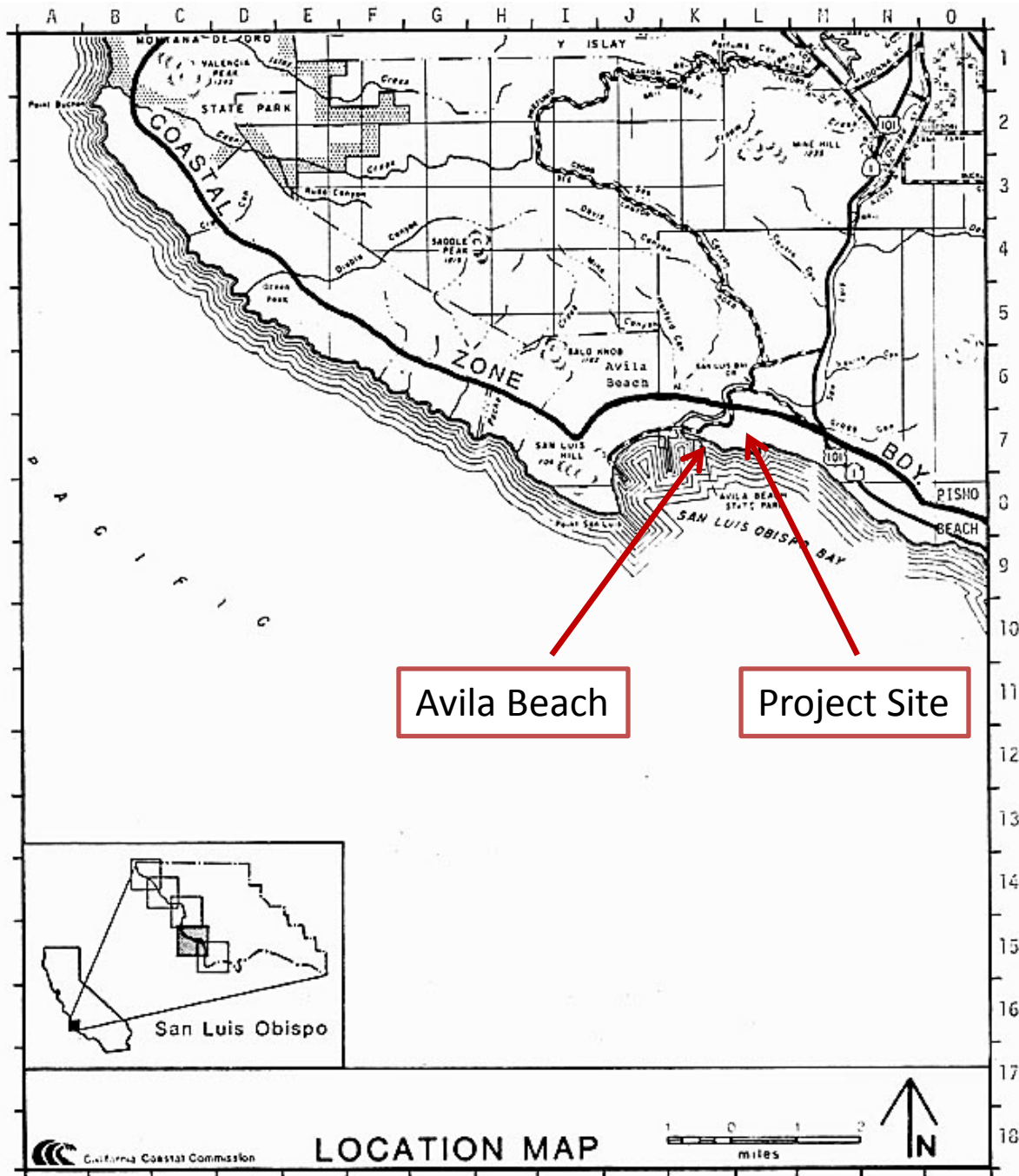
Finally, the County's LCP includes certain exemptions that are more broadly written than would be allowed by the Coastal Act and the Commission's implementing regulations. This creates

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<sup>2</sup> Note that CDPs would be required for any portion of the contested development located within the City of Pismo Beach as well.



confusion regarding CDP requirements for the public, the County and the Commission. Thus, the Commission strongly recommends that San Luis Obispo County submit an LCP amendment that more carefully defines the exemptions in its LCP to conform to allowed Coastal Act exemptions as soon as possible, or that it seeks categorical exclusion orders, where appropriate.



Avila Beach

Project Site

Avila Beach

Project parcel

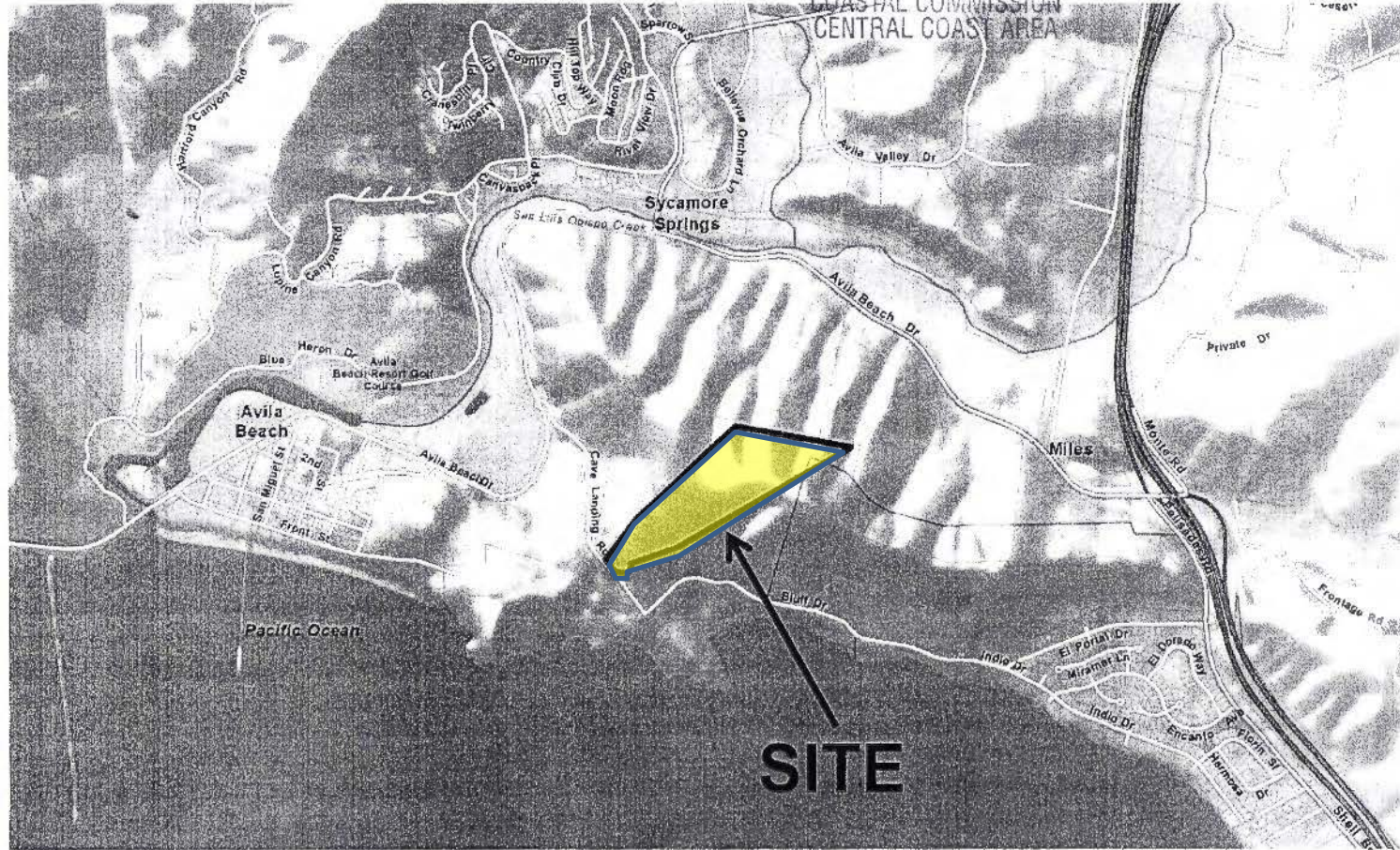
Pismo Beach

San Luis Obispo County  
APN 076-231-63

Proposition 20 Permit Area  
Map 9 - SLO  
Pismo Beach

APR 25 2012

CALIFORNIA  
COASTAL COMMISSION  
CENTRAL COAST AREA



3-39



EXHIBIT  
Vicinity Map



EXHIBIT

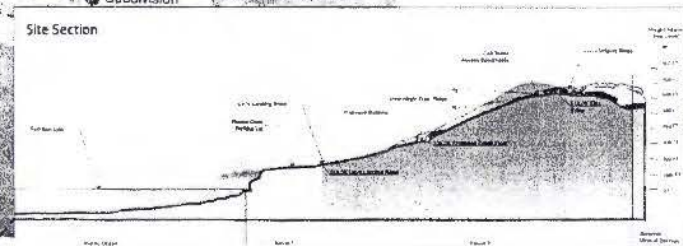
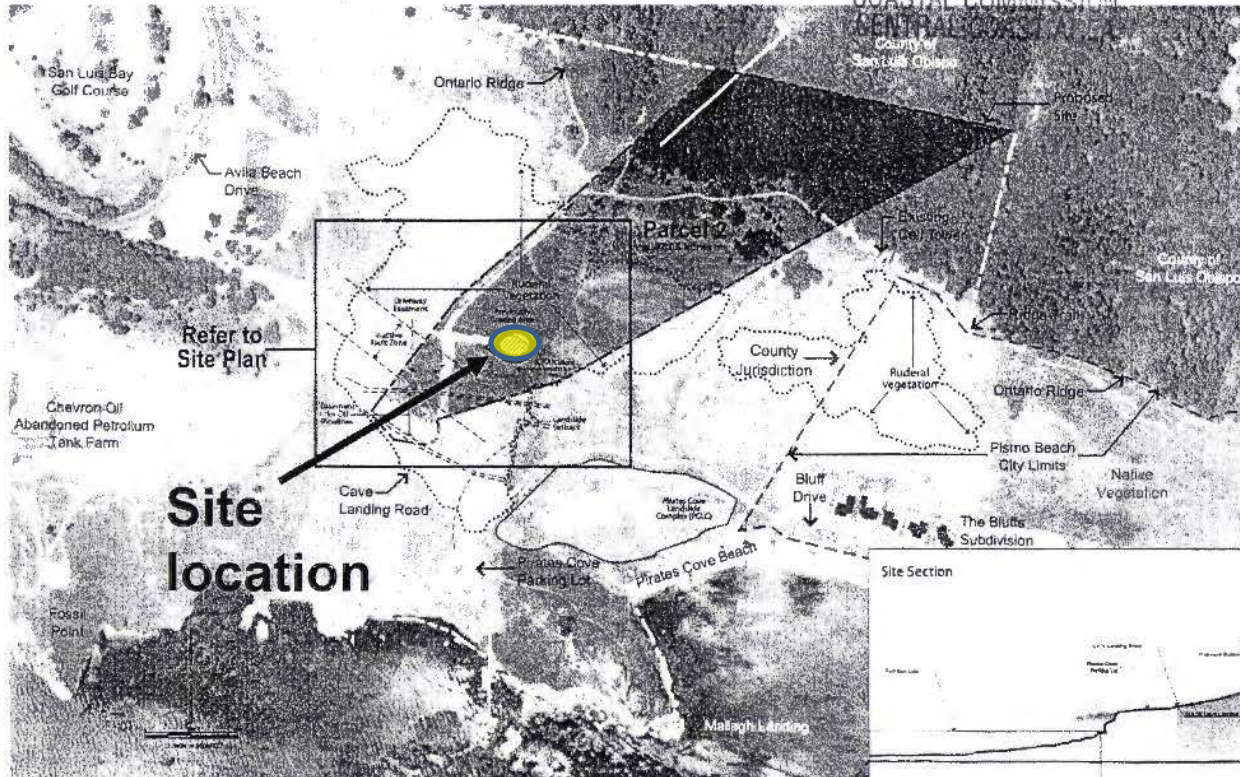
Aerial Photo

APR 25 2012

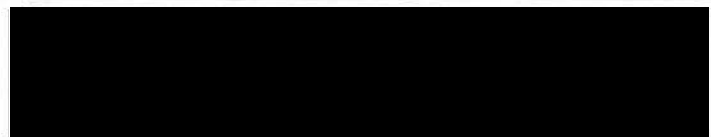
# Cave Landing Ranch

CALIFORNIA  
COASTAL COMMISSION  
CENTRAL COAST DISTRICT  
County of  
San Luis Obispo

Site Analysis Map  
& Vicinity Map



3-42



**EXHIBIT**  
**Site Analysis & Vicinity Map**



**NO  
ADMITTANCE**  
Right to pass by  
permission, and subject  
to control, of owner:  
Section 1008, Civil Code.

**AREA CLOSED  
FOR PLANT  
REHABILITATION**

**PRIVATE  
PROPERTY  
NO TRESPASSING**





Exhibit 2  
3-14-0224-EDD (Ontario Ridge Fencing and Signs)  
Page 3 of 27



Exhibit 2  
3-14-0224-EDD (Ontario Ridge Fencing and Signs)  
Page 4 of 27



Exhibit 2  
3-14-0224-EDD (Ontario Ridge Fencing and Signs)  
Page 5 of 27

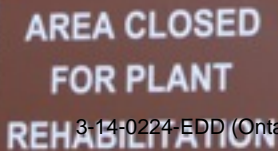


Exhibit 2  
3-14-0224-EDD (Ontario Ridge Fencing and Signs)  
Page 6 of 27



Exhibit 2  
3-14-0224-EDD (Ontario Ridge Fencing and Signs)  
Page 7 of 27



A brown rectangular sign with rounded corners and a white border, mounted on a wooden post. The sign is positioned in the foreground of a wooded area with many trees and a dirt path. The text on the sign is white and reads: "AREA CLOSED FOR PLANT REHABILITATION".

**AREA CLOSED  
FOR PLANT  
REHABILITATION**

Exhibit 2

3-14-0224-EDD (Ontario Ridge Fencing and Signs)

Page 9 of 27



AREA CLOSED  
FOR PLANT  
REHABILITATION

Exhibit 2

3-14-0224-EDD (Ontario Ridge Fencing and Signs)

Page 10 of 27





Exhibit 2  
3-14-0224-EDD (Ontario Ridge Fencing and Signs)  
Page 11 of 27

**PRIVATE  
PROPERTY  
NO TRESPASSING**

Right to pass by permission, and  
subject to control, of owner;  
Section 1008, Civil Code

Exhibit 2

3-14-0224-EDD (Ontario Ridge Fencing and Signs)

Page 12 of 27





Exhibit 2  
3-14-0224-EDD (Ontario Ridge Fencing and Signs)  
Page 14 of 27



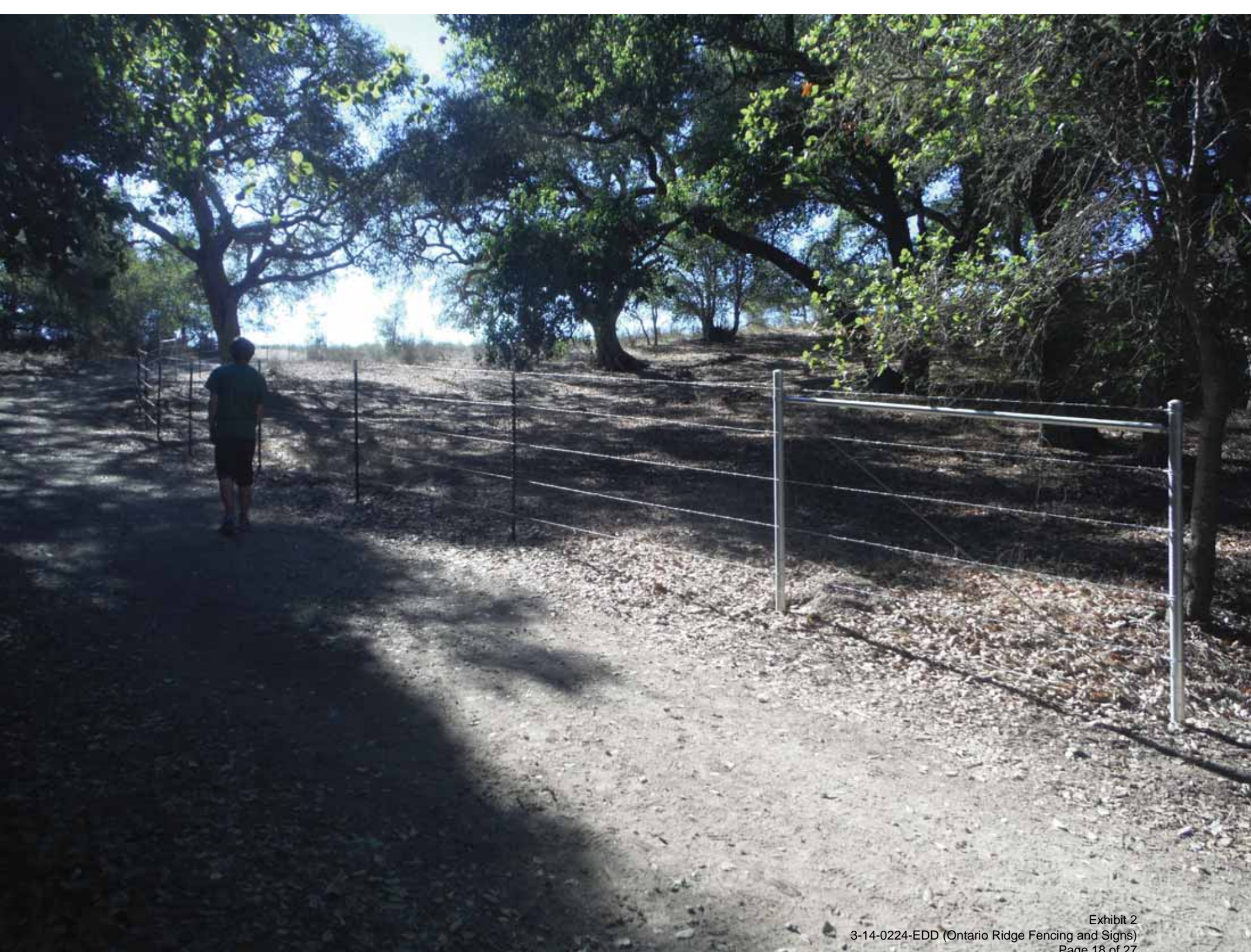
Exhibit 2  
3-14-0224-EDD (Ontario Ridge Fencing and Signs)  
Page 15 of 27



Exhibit 2  
3-14-0224-EDD (Ontario Ridge Fencing and Signs)  
Page 16 of 27



Exhibit 2  
3-14-0224-EDD (Ontario Ridge Fencing and Signs)  
Page 17 of 27









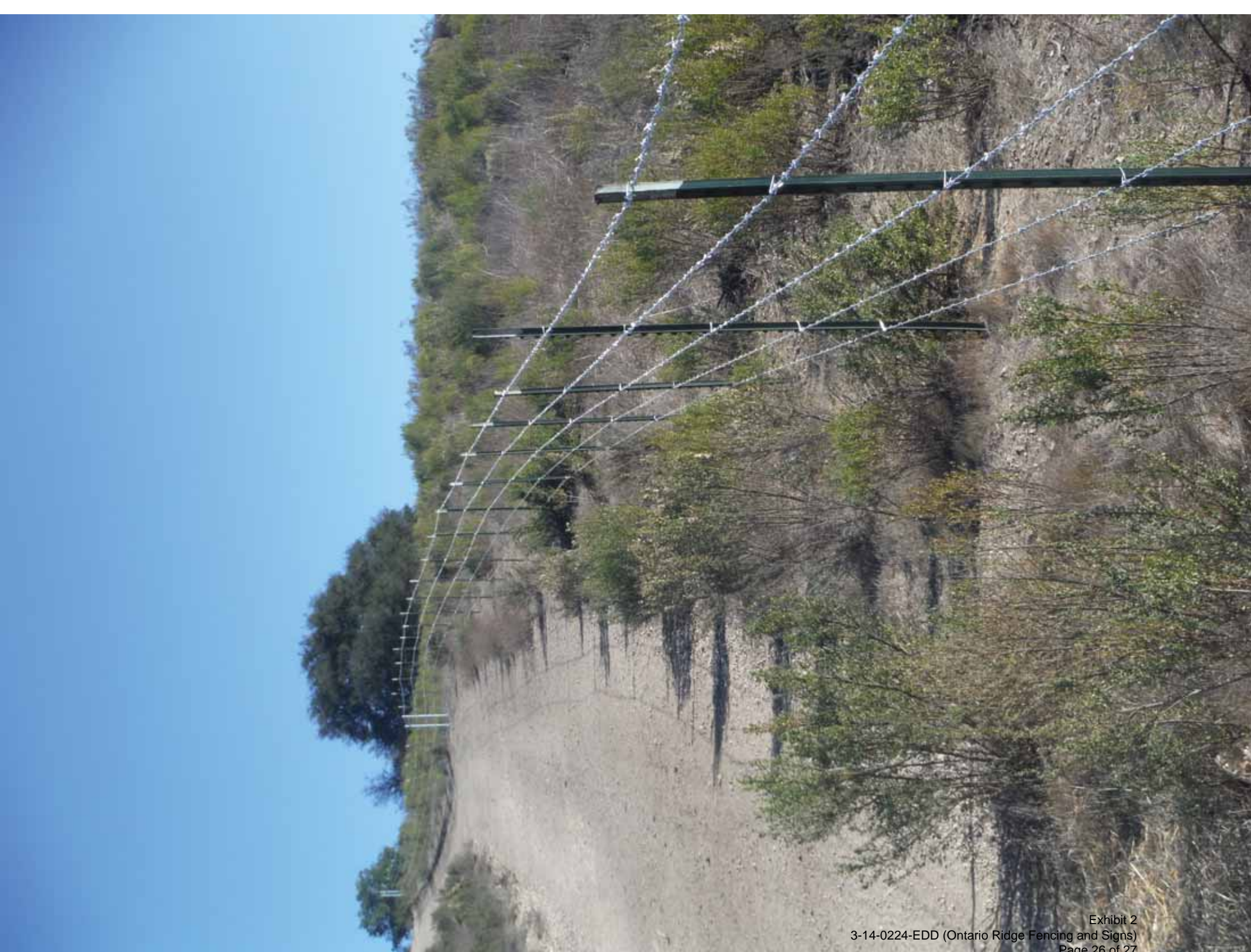
















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725 FRONT STREET, SUITE 300  
SANTA CRUZ, CA 95060  
PHONE: (831) 427-4863  
FAX: (831) 427-4877  
WEB: WWW.COASTAL.CA.GOV



January 29, 2014

Kami Griffin, Acting Director  
San Luis Obispo County Planning and Building Department  
976 Osos Street, Room 300  
San Luis Obispo, CA 93408

Subject: **Ontario Ridge fencing and signs**

Dear Ms. Griffin:

On December 30, 2013, it was reported to the Coastal Commission's Central Coast District Office that a fence was being constructed atop of Ontario Ridge, on Rob and Judi McCarthy's property, above Cave Landing Road in Avila Beach (Parcel 2 - APN 076-231-063), San Luis Obispo County. Since then numerous emails and calls from the public have reported barbed wire fencing being installed along Cave Landing Road and on and around Ontario Ridge that blocks the ability of the public to make use of informal trails in the area, including an approximately 6-foot tall barbed wire fence atop the ridge itself constructed alongside and across the informal trails used by many of the public. In addition, the public has reported that new "no trespassing" and similarly restrictive signs have been placed along these trails. Conversations with San Luis Obispo County Planning and Building staff revealed that the County did not intend to require any permits for the fencing or signs pursuant to San Luis Obispo Local Coastal Program (LCP) Coastal Zone Land Use Ordinance (CZLUO) Sections 23.03.040(d) and 23.04.306(b)(13).

As you are aware, including as I identified in my email to you on January 27, 2014, the County and the Commission's Executive Director disagree regarding the correct coastal development permit (CDP) process for the fencing and signs installed on and around Ontario Ridge. As a means of facilitating further discussion on this issue, with the goal of reaching agreement, we are providing the County with some further background and information explaining the Executive Director's opinion.

Public Resources Code (PRC) Section 30600 requires any person wishing to undertake development in the coastal zone to first obtain a CDP authorizing such development. The Coastal Act definition of "development" encompasses construction of fencing and erection of signs (PRC Section 30106). Thus, anyone wishing to construct fencing and/or erect signs in the coastal zone must first obtain a CDP. The County's LCP includes the same requirements for obtaining a CDP for development, including mirroring the Coastal Act's definition of development verbatim.

PRC Section 30610 also includes certain exemptions from CDP requirements. This is the only section of the Coastal Act in which the legislature created relevant exemptions from coastal permitting requirements. These exemptions include such development as certain improvements

to existing single-family homes and other structures, certain repair and maintenance activities, and certain disaster replacement projects. Neither fencing nor signs are explicitly identified as exempt under PRC Section 30610.

The Commission's implementing regulations further describe the types of development exempted under PRC Section 30610. Within the relevant regulation sections, the only mention of fencing is in the section related to exemptions for improvements to existing single-family residences. Specifically, 14 CCR Section 13250(a)(2) defines fences as a type of structure normally associated with a single-family residence. Signs are not specifically mentioned in the regulations, but fixtures directly attached to single-family residences or structures other than single-family residences may, under certain circumstances, be exempt under 14 CCR Sections 13250 and 13252.

In addition to the classes of exemption described above, PRC Section 30610 also identifies a particular type of exemption, a categorical exclusion, that authorizes the Commission to exclude additional types of development from CDP requirements, but only through adoption of categorical exclusion orders. The process for adopting such an exclusion order is that: the local government identifies the type of development it wishes to exclude from CDP requirements and the circumstances under which it would be excluded; the Commission considers such requests at a public hearing; and the Commission may adopt the categorical exclusion order, either with or without conditions, but only if at least two-thirds of the Commission finds that the excluded development has "no potential for any significant adverse effect, either individually or cumulatively, on coastal resources or on public access to, or along, the coast" (PRC Section 30610(e), 14 CCR Sections 13240-13249). There have been no categorical exclusions adopted by the Commission that exempt fencing and signs in San Luis Obispo County.

In making its initial determination that the subject fencing and signs are exempt from CDP requirements, the County cites CZLUO Sections 23.03.040(d)(2) and 23.04.306(b)(13), respectively. These LCP sections were not adopted as categorical exclusion orders, but rather as part of the County's LCP Implementation Plan. All provisions of an LCP must be read consistent with and understood to conform to the Coastal Act (*McAllister v. California Coastal Commission*, (2009) 169 Cal.App.4th 912, 931). Thus, because these exemptions are not categorical exclusions, they must be interpreted to be consistent with the exemptions allowed under the Coastal Act because neither the County nor the Commission has the authority to exempt development from coastal permitting requirements that is not exempted by the Coastal Act.

Therefore, in order to be consistent with and understood to conform with the Coastal Act, the Section 23.03.040(d)(2) fencing exemption must be interpreted to apply only to fences associated with existing single-family residences, as no other type of fencing is exempted by the Coastal Act or the Commission's regulations. Similarly, the Section 23.04.306(b)(13) sign exemption could only apply to signs directly attached to an existing single-family residence or existing related residential structures or signs directly attached to an existing structure other than a single-family residence or a public works facility (14 CCR Sections 13250 and 13253). In this case, the

new fencing and signs were erected on undeveloped property. As such, the exemptions in LCP Sections 23.03.040(d)(2) and 23.04.306(b)(13) do not apply, and San Luis Obispo County should require that the property owners obtain a CDP for this development.

We hope that this more detailed description of the exemption provisions of the Coastal Act and how they must be understood in terms of LCP exemptions is helpful, and that it allows the County an opportunity to revisit and adjust the County's initial exemption determination. If the County does adjust the County's determination, and the County and the Executive Director agree that CDPs are required for the fencing and the signs, then there will be no need for the dispute resolution hearing to which I referred in my January 27, 2014 email. Rather, such an outcome would mean that the property owners would be required by the LCP to remove the unpermitted fencing and signs. If the County does not adjust its initial determination, then we intend to hold a public hearing on the question on February 13, 2014 in Pismo Beach, as I previously indicated. We would much prefer to be in agreement with the County on this important question, including inasmuch as it is clear under any interpretation that the subject fencing and signs have led to significant restrictions on public use along a significant trail segment that has long been used by the public.

Finally, and as I have stated in the past, in order to avoid this type of confusion in the future, we strongly recommend that San Luis Obispo County submit an LCP amendment that more carefully defines the exemptions in its LCP to conform to allowed Coastal Act exemptions, or it should seek categorical exclusions for development that is not already exempted under PRC Section 30610, where appropriate. Our staff has worked closely with Santa Cruz County on such an LCP amendment recently (and it will be heard at the Commission's February 13, 2014 meeting in Pismo Beach as well) and would be happy to work with San Luis Obispo County on a similar amendment.

We look forward to resolving the permitting and coastal resource issues associated with the fencing and signs soon as possible. If you or other County staff have any questions or would like to discuss this matter further, please don't hesitate to contact me at your convenience.

Sincerely,



Dan Carl  
District Director  
Central Coast District  
California Coastal Commission

## **Carl, Dan@Coastal**

---

**From:** Carl, Dan@Coastal  
**Sent:** Wednesday, January 29, 2014 4:02 PM  
**To:** 'kgriffin@co.slo.ca.us'  
**Cc:** 'Adam Hill (ahill@co.slo.ca.us)'; 'hmill@co.slo.ca.us'; 'Steve McMasters (smcmasters@co.slo.ca.us)'; 'wmcdonald@co.slo.ca.us'; 'Ryan Hostetter (rhostetter@co.slo.ca.us)'; 'mjanssen@co.slo.ca.us'; 'norton@co.slo.ca.us'; Cavalieri, Madeline@Coastal; Craig, Susan@Coastal; Robinson, Daniel@Coastal; Locklin, Linda@Coastal; Johnston, Heather@Coastal; Traylor, Sharif@Coastal  
**Subject:** RE: Ontario Ridge fencing and signs  
**Attachments:** Ontario Ridge Fencing and Signs 13569 Dispute - Letter to SLO County 1.29.2014.pdf

Hi Kami,

As promised, here is some additional detail on the Executive Director's opinion (please see attached correspondence). I hope this information helps as the County considers its position on this matter. Feel free to contact me if you'd like to discuss further. Thanks....

Dan

---

Dan Carl  
District Director  
Central Coast and North Central Coast Districts California Coastal Commission  
725 Front Street, Suite 300  
Santa Cruz, CA 95060  
P: 831-427-4863  
F: 831-427-4877  
dan.carl@coastal.ca.gov  
www.coastal.ca.gov

-----Original Message-----

**From:** Carl, Dan@Coastal  
**Sent:** Monday, January 27, 2014 4:35 PM  
**To:** 'kgriffin@co.slo.ca.us'  
**Cc:** Adam Hill (ahill@co.slo.ca.us); hmill@co.slo.ca.us; Steve McMasters (smcmasters@co.slo.ca.us); wmcdonald@co.slo.ca.us; Ryan Hostetter (rhostetter@co.slo.ca.us); mjanssen@co.slo.ca.us; norton@co.slo.ca.us; Cavalieri, Madeline@Coastal; Craig, Susan@Coastal; Robinson, Daniel@Coastal; Locklin, Linda@Coastal; Johnston, Heather@Coastal; Traylor, Sharif@Coastal  
**Subject:** RE: Ontario Ridge fencing and signs

Thanks Kami,

As you are no doubt aware, we were informed late last week that the County's coastal permit determination has been challenged. The County subsequently reported that challenge to us on Thursday and asked for the Executive Director's opinion as to the correct coastal permit process for the fencing and signs (per our implementing regulations at Section 13569). Our position on this question is unchanged, and the Executive

Director's opinion is that an appealable coastal permit would be required to allow for the subject fencing and the signs. Because the County and the Executive Director are currently not in agreement on this point, pursuant to Section 13569, we plan to schedule the matter for a Coastal Commission hearing on February 13, 2014 in Pismo Beach. We will be following-up with you in the next several days to describe our position in more detail to facilitate a continued discussion. If the County and Executive Director continue to disagree on this issue, we will prepare a staff report and recommendation that will be available at the end of this week (please consult the Commission's website at [www.coastal.ca.gov](http://www.coastal.ca.gov)). We look forward to coordinating with the County to ensure that we characterize the applicable context and factset as accurately as possible. Please let me know if you have any questions.

---

Dan Carl  
District Director  
Central Coast and North Central Coast Districts California Coastal Commission  
725 Front Street, Suite 300  
Santa Cruz, CA 95060  
P: 831-427-4863  
F: 831-427-4877  
[dan.carl@coastal.ca.gov](mailto:dan.carl@coastal.ca.gov)  
[www.coastal.ca.gov](http://www.coastal.ca.gov)

-----Original Message-----

From: [kgriffin@co.slo.ca.us](mailto:kgriffin@co.slo.ca.us) [mailto:[kgriffin@co.slo.ca.us](mailto:kgriffin@co.slo.ca.us)]  
Sent: Thursday, January 23, 2014 8:32 AM  
To: Carl, Dan@Coastal  
Cc: Robinson, Daniel@Coastal; Johnston, Heather@Coastal; Locklin, Linda@Coastal; Cavaliere, Madeline@Coastal; Ryan Hostetter ([rhostetter@co.slo.ca.us](mailto:rhostetter@co.slo.ca.us)); Traylor, Sharif@Coastal; Steve McMasters ([smcmasters@co.slo.ca.us](mailto:smcmasters@co.slo.ca.us)); Craig, Susan@Coastal; [wmcDonald@co.slo.ca.us](mailto:wmcDonald@co.slo.ca.us); [mjanssen@co.slo.ca.us](mailto:mjanssen@co.slo.ca.us); [norton@co.slo.ca.us](mailto:norton@co.slo.ca.us); [hmilller@co.slo.ca.us](mailto:hmilller@co.slo.ca.us)  
Subject: Re: Ontario Ridge fencing and signs

Dan:

The County's position is that we have an adopted, certified Local Coastal Plan that contains the following exemption (Section 23.03.040d.(2)).

Exemptions from permit requirements. The following types of development within the Coastal Zone are exempt from the land use permit requirements of this title:

Walls or fences of 6'-6" or less in height located in accordance with Section 23.04.190(c) (Fencing and Screening), except when in the opinion of the Planning Director such wall or fence will obstruct views of, or legal access to the tidelands;

As this fence is open wire (as opposed to a solid block wall), we have determined (so far) that it does not obstruct views of the tidelands. In addition, there is no legal access to the tidelands, so it is not obstructing legal access. In addition, the fence is located on the side and rear property lines in conformance with the fencing and screening standards of the Coastal Zone Land Use Ordinance.

If the fence blocks views of the tidelands, we would re-evaluate our position. But so far, to our knowledge that has not occurred. However, even if the fence were to block views of tidelands, Section 23.04.190c would not

require a permit for a fence less than 6'6" in height located outside of setbacks and made up of open structures which is defined as open wire or chain link or other materials approved by the Department of Planning and Building that permit the passage of a minimum of 90% of light.

The no permit requirement was part of a Local Coastal Plan amendment approved in 2004 by the Coastal Commission.

As to the signs that are located on the property, which appear to be no trespassing signs, Section 23.04.306b(13) of the Coastal Zone Land Use Ordinance exempts "prohibition signs" such as no trespassing, no parking and similar warning signs.

We also are trying to contact the City of Pismo Beach to see if they are mandating any signage relative to parking on the public streets or fire lane access. We are not sure if the city has discussed these types of signs with the property owner. These signs would not be located in county jurisdiction and would not be subject to the County's Coastal Zone Land Use Ordinance.

We suspect that the survey being conducted by the Coastal Commission regarding the use of this trail and potential pursuit of investigations regarding prescriptive access has led this property owner to contact his lawyer and post and restrict access to his property. It is unfortunate that this has occurred, especially as this trail is very heavily used by the public.

We don't believe that the fence and signs (so far) violate the County's certified Local Coastal Plan which includes the County's Coastal Zone Land Use Ordinance. From past discussions with you, it appears that Coastal Commission staff believes that the fence and signs violate the Coastal Act, which would appear to put enforcement at the Coastal Commission level as we are not sure exactly what the County would enforce. The property owner would simply point to the County's adopted and certified Local Coastal Plan to show that no permits are required.

However, if Coastal Commission staff can enforce the Coastal Act itself (as opposed to the County's Coastal Zone Land Use Ordinance), perhaps that provides an avenue to resolution of this issue. We would be happy to help Coastal Commission staff in any way including walking the trail and taking our own pictures, noting the verbage and location of signs, etc and providing that information to you. Please let me know how we can help you in this endeavor.

Please don't hesitate to call me if you would like to discuss this matter further or if we can be of any assistance to Coastal staff.

---

Kami Griffin, Acting Director

(Embedded image moved to file: pic06270.jpg)

976 Osos Street, Room 300

San Luis Obispo, Ca 93408

805-781-5708

<http://www.sloplanning.org>

<http://www.facebook.com/SLOPlanning>

<http://twitter.com/SLOCoPlanning>

"Follow your bliss and don't be afraid,  
and doors will open where you didn't

know they were going to be"- Joseph Campbell

From: "Carl, Dan@Coastal" <Dan.Carl@coastal.ca.gov>  
To: "Kami Griffin (kgriffin@co.slo.ca.us)" <kgriffin@co.slo.ca.us>  
Cc: "Ryan Hostetter (rhostetter@co.slo.ca.us)" <rhostetter@co.slo.ca.us>, "Steve McMasters (smcmasters@co.slo.ca.us)" <smcmasters@co.slo.ca.us>, "Cavaliere, Madeline@Coastal" <Madeline.Cavaliere@coastal.ca.gov>, "Craig, Susan@Coastal" <Susan.Craig@coastal.ca.gov>, "Robinson, Daniel@Coastal" <Daniel.Robinson@coastal.ca.gov>, "Johnston, Heather@Coastal" <Heather.Johnston@coastal.ca.gov>, "Traylor, Sharif@Coastal" <Sharif.Traylor@coastal.ca.gov>, "Locklin, Linda@Coastal" <Linda.Locklin@coastal.ca.gov>  
Date: 01/22/2014 12:18 PM  
Subject: Ontario Ridge fencing and signs

Hi Kami,

As you know, we have been receiving a number of inquiries and complaints about the recently installed fencing and signs on and around Ontario Ridge, all of which is impeding access. I understand that the County has also been receiving a similar volume of inquiries and complaints. When we were first informed about this matter, we explained to County staff why we had concluded that the fencing required a coastal permit, and understood that the County intended to take that under advisement and decide on how to proceed. My understanding from talking to Daniel is that the County has apparently concluded this morning that a coastal permit is not going to be required for the fencing.

Two things. First, please confirm for me the County's position regarding coastal permit requirements for the fencing. I want to make sure we are proceeding based on a correct understanding of same. Second, please let me know what the County's position is regarding coastal permit requirements for the signs (which also constitute development under the Coastal Act and the LCP, and in our view require coastal permits as well). Once we have a clear understanding of the County's coastal permit determinations, we will be able identify the correct path towards resolution of the permitting and coastal resource issues here, including, if necessary, initiating the dispute resolution process.

Thank you in advance for taking the time to provide us the County's coastal permit determinations on the subject fencing and signs. Please don't hesitate to contact me if you would like to discuss this matter further.

Dan

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Dan Carl  
District Director  
Central Coast and North Central Coast Districts California Coastal Commission  
725 Front Street, Suite 300  
Santa Cruz, CA 95060  
P: 831-427-4863



## **Section 30610 Developments authorized without permit**

Notwithstanding any other provision of this division, no coastal development permit shall be required pursuant to this chapter for the following types of development and in the following areas:

- (a) Improvements to existing single-family residences; provided, however, that the commission shall specify, by regulation, those classes of development which involve a risk of adverse environmental effect and shall require that a coastal development permit be obtained pursuant to this chapter.
- (b) Improvements to any structure other than a single-family residence or a public works facility; provided, however, that the commission shall specify, by regulation, those types of improvements which (1) involve a risk of adverse environmental effect, (2) adversely affect public access, or (3) involve a change in use contrary to any policy of this division. Any improvement so specified by the commission shall require a coastal development permit.
- (c) Maintenance dredging of existing navigation channels or moving dredged material from those channels to a disposal area outside the coastal zone, pursuant to a permit from the United States Army Corps of Engineers.
- (d) Repair or maintenance activities that do not result in an addition to, or enlargement or expansion of, the object of those repair or maintenance activities; provided, however, that if the commission determines that certain extraordinary methods of repair and maintenance involve a risk of substantial adverse environmental impact, it shall, by regulation, require that a permit be obtained pursuant to this chapter.
- (e) Any category of development, or any category of development within a specifically defined geographic area, that the commission, after public hearing, and by two-thirds vote of its appointed members, has described or identified and with respect to which the commission has found that there is no potential for any significant adverse effect, either individually or cumulatively, on coastal resources or on public access to, or along, the coast and, where the exclusion precedes certification of the applicable local coastal program, that the exclusion will not impair the ability of local government to prepare a local coastal program.
- (f) The installation, testing, and placement in service or the replacement of any necessary utility connection between an existing service facility and any development approved pursuant to this division; provided, however, that the commission may, where necessary, require reasonable conditions to mitigate any adverse impacts on coastal resources, including scenic resources.
- (g) (1) The replacement of any structure, other than a public works facility, destroyed by a disaster. The replacement structure shall conform to applicable existing zoning requirements, shall be for the same use as the destroyed structure, shall not exceed either the floor area, height, or bulk of the destroyed structure by more than 10 percent, and shall be sited in the same location on the affected property as the destroyed structure.
  - (2) As used in this subdivision:
    - (A) "Disaster" means any situation in which the force or forces which destroyed the structure to be replaced were beyond the control of its owner.
    - (B) "Bulk" means total interior cubic volume as measured from the exterior surface of the structure.

(C) "Structure" includes landscaping and any erosion control structure or device which is similar to that which existed prior to the occurrence of the disaster.

(h) Any activity anywhere in the coastal zone that involves the conversion of any existing multiple-unit residential structure to a time-share project, estate, or use, as defined in Section 11212 of the Business and Professions Code. If any improvement to an existing structure is otherwise exempt from the permit requirements of this division, no coastal development permit shall be required for that improvement on the basis that it is to be made in connection with any conversion exempt pursuant to this subdivision. The division of a multiple-unit residential structure into condominiums, as defined in Section 783 of the Civil Code, shall not be considered a time-share project, estate, or use for purposes of this subdivision.

(i) (1) Any proposed development which the executive director finds to be a temporary event which does not have any significant adverse impact upon coastal resources within the meaning of guidelines adopted pursuant to this subdivision by the commission. The commission shall, after public hearing, adopt guidelines to implement this subdivision to assist local governments and persons planning temporary events in complying with this division by specifying the standards which the executive director shall use in determining whether a temporary event is excluded from permit requirements pursuant to this subdivision. The guidelines adopted pursuant to this subdivision shall be exempt from the review of the Office of Administrative Law and from the requirements of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(2) Exclusion or waiver from the coastal development permit requirements of this division pursuant to this subdivision does not diminish, waive, or otherwise prevent the commission from asserting and exercising its coastal development permit jurisdiction over any temporary event at any time if the commission determines that the exercise of its jurisdiction is necessary to implement the coastal resource protection policies of Chapter 3 (commencing with Section 30200).

(Amended by: Ch. 1075, Stats. 1978; Ch. 919, Stats. 1979; Ch. 43, Stats. 1982; Ch. 1470, Stats. 1982; Ch. 1088, Stats. 1992; Ch. 697, Stats. 2004.)

### **Section 30610.1 Single family residence construction; criteria**

(a) Prior to certification of the applicable local coastal program, no coastal development permit shall be required for the construction of a single-family residence on any vacant lot meeting the criteria set forth in subdivision (c) and located in a specified area designated by the commission pursuant to subdivision (b).

(b) Within 60 days from the effective date of this section, the commission shall designate specific areas in the coastal zone where the construction of a single-family residence on a vacant lot meeting the criteria set forth in subdivision (c) shall not require a coastal development permit. Areas shall be designated for the exclusion provided for in this section if construction of single-family residences within the area to be designated has no potential, either individually or cumulatively, for significant adverse impacts on highly scenic resources of public importance, on environmentally sensitive areas, on prime agricultural land or on agricultural lands currently in production, or on public access to or along the coast.

In addition, if septic tanks will be required or used, an area identified as having septic tank problems by the appropriate regional water quality control board or the State Water Resources Control Board in an approved basin plan or by other formal action of such board may not be designated for exclusion pursuant to this section.

(c) Within areas designated pursuant to subdivision (b), no coastal development permit shall be required for the construction of a single-family residence on any vacant lot which meets all of the following criteria:

### Subchapter 6. Existing Single-Family Residences

#### § 13250. Improvements to Existing Single-Family Residences.

(a) For purposes of [Public Resources Code section 30610\(a\)](#) where there is an existing single-family residential building, the following shall be considered a part of that structure:

- (1) All fixtures and other structures directly attached to a residence;
- (2) Structures on the property normally associated with a single-family residence, such as garages, swimming pools, fences, and storage sheds; but not including guest houses or self-contained residential units; and
- (3) Landscaping on the lot.

(b) Pursuant to [Public Resources Code section 30610\(a\)](#), the following classes of development require a coastal development permit because they involve a risk of adverse environmental effects:

- (1) Improvements to a single-family structure if the structure or improvement is located: on a beach, in a wetland, seaward of the mean high tide line, in an environmentally sensitive habitat area, in an area designated as highly scenic in a certified land use plan, or within 50 feet of the edge of a coastal bluff.
- (2) Any significant alteration of land forms including removal or placement of vegetation, on a beach, wetland, or sand dune, or within 50 feet of the edge of a coastal bluff, or in environmentally sensitive habitat areas;
- (3) The expansion or construction of water wells or septic systems;
- (4) On property not included in subsection (b)(1) above that is located between the sea and the first public road paralleling the sea or within 300 feet of the inland extent of any beach or of the mean high tide of the sea where there is no beach, whichever is the greater distance, or in significant scenic resources areas as designated by the commission or regional commission, improvement that would result in an increase of 10 percent or more of internal floor area of an existing structure or an additional improvement of 10 percent or less where an improvement to the structure had previously been undertaken pursuant to [Public Resources Code section 30610\(a\)](#), increase in height by more than 10 percent of an existing structure and/or any significant non-attached structure such as garages, fences, shoreline protective works or docks.
- (5) In areas which the commission or a regional commission has previously declared by resolution after public hearing to have a critically short water supply that must be maintained for the protection of coastal resources or public recreational use, the construction of any specified major water using development not essential to residential use including but not limited to swimming pools, or the construction or extension of any landscaping irrigation system.

(6) Any improvement to a single-family residence where the development permit issued for the original structure by the commission, regional commission, or local government indicated that any future improvements would require a development permit.

(c) In any particular case, even though an improvement falls into one of the classes set forth in subsection (b) above, the executive director of the commission may, where he or she finds the impact of the development on coastal resources or coastal access to be insignificant, waive the requirement of a permit; provided, however, that any such waiver shall not be effective until it is reported to the commission at its next regularly scheduled meeting. If any three (3) commissioners object to the waiver, the proposed improvement shall not be undertaken without a permit.

### **Subchapter 7. Repair and Maintenance Activities That Require a Permit**

#### **§ 13252. Repair and Maintenance of Activities Requiring a Permit.**

(a) For purposes of [Public Resources Code section 30610\(d\)](#), the following extraordinary methods of repair and maintenance shall require a coastal development permit because they involve a risk of substantial adverse environmental impact:

(1) Any method of repair or maintenance of a seawall revetment, bluff retaining wall, breakwater, groin, culvert, outfall, or similar shoreline work that involves:

(A) Repair or maintenance involving substantial alteration of the foundation of the protective work including pilings and other surface or subsurface structures;

(B) The placement, whether temporary or permanent, of rip-rap, artificial berms of sand or other beach materials, or any other forms of solid materials, on a beach or in coastal waters, streams, wetlands, estuaries and lakes or on a shoreline protective work except for agricultural dikes within enclosed bays or estuaries;

(C) The replacement of 20 percent or more of the materials of an existing structure with materials of a different kind; or

(D) The presence, whether temporary or permanent, of mechanized construction equipment or construction materials on any sand area, bluff, or environmentally sensitive habitat area, or within 20 feet of coastal waters or streams.

(2) Any method of routine maintenance dredging that involves:

(A) The dredging of 100,000 cubic yards or more within a twelve (12) month period;

(B) The placement of dredged spoils of any quantity within an environmentally sensitive habitat area, on any sand area, within 50 feet of the edge of a coastal bluff or environmentally sensitive habitat area, or within 20 feet of coastal waters or streams; or

(C) The removal, sale, or disposal of dredged spoils of any quantity that would be suitable for beach nourishment in an area the commission has declared by resolution to have a critically short sand supply that must be maintained for protection of structures, coastal access or public recreational use.

(3) Any repair or maintenance to facilities or structures or work located in an environmentally sensitive habitat area, any sand area, within 50 feet of the edge of a coastal bluff or environmentally sensitive habitat area, or within 20 feet of coastal waters or streams that include:

(A) The placement or removal, whether temporary or permanent, of rip-rap, rocks, sand or other beach materials or any other forms of solid materials;

(B) The presence, whether temporary or permanent, of mechanized equipment or construction materials.

All repair and maintenance activities governed by the above provisions shall be subject to the permit regulations promulgated pursuant to the Coastal Act, including but not limited to the regulations governing administrative and emergency permits. The provisions of this section shall not be applicable to methods of repair and maintenance undertaken by the ports listed in [Public Resources Code section 30700](#) unless so provided elsewhere in these regulations. The provisions of this section shall not be applicable to those activities specifically described in the document entitled Repair, Maintenance and Utility Hookups, adopted by the Commission on September 5, 1978 unless a proposed activity will have a risk of substantial adverse impact on public access, environmentally sensitive habitat area, wetlands, or public views to the ocean.

(b) Unless destroyed by natural disaster, the replacement of 50 percent or more of a single family residence, seawall, revetment, bluff retaining wall, breakwater, groin or any other structure is not repair and maintenance under section [30610\(d\)](#) but instead constitutes a replacement structure requiring a coastal development permit.

(c) Notwithstanding the above provisions, the executive director of the commission shall have the discretion to exempt from this section ongoing routine repair and maintenance activities of local governments, state agencies, and public utilities (such as railroads) involving shoreline works protecting transportation road ways.

(d) Pursuant to this section, the commission may issue a permit for on-going maintenance activities for a term in excess of the two year term provided by these regulations.

(e) In any particular case, even though a method of repair and maintenance is identified in subsection (a) above, the executive director may, where he or she finds the impact of the development on coastal resources or coastal access to be insignificant, waive the requirement of a permit; provided however, that any such waiver shall not be effective until it is reported to the commission at its next regularly scheduled meeting. If any three (3) commissioners object to the waiver, the proposed repair and maintenance shall not be undertaken without a permit

## Subchapter 7.5. Improvements to Structures, Other than Single-Family Residences and Public Works Facilities That Require Permits

### § 13253. Improvements That Require Permits.

(a) For purposes of to [Public Resources Code section 30610\(b\)](#) where there is an existing structure, other than a single-family residence or public works facility, the following shall be considered a part of that structure:

(1) All fixtures and other structures directly attached to the structure.

(2) Landscaping on the lot.

(b) Pursuant to to [Public Resources Code section 30610\(b\)](#), the following classes of development require a coastal development permit because they involve a risk of adverse environmental effect, adversely affect public access, or involve a change in use contrary to the policy of Division 20 of the Public Resources Code:

(1) Improvement to any structure if the structure or the improvement is located: on a beach; in a wetland, stream, or lake; seaward of the mean high tide line; in an area designated as highly scenic in a certified land use plan; or within 50 feet of the edge of a coastal bluff;

(2) Any significant alteration of land forms including removal or placement of vegetation, on a beach or sand dune; in a wetland or stream; within 100 feet of the edge of a coastal bluff, in a highly scenic area, or in an environmentally sensitive habitat area;

(3) The expansion or construction of water wells or septic systems;

(4) On property not included in subsection (b)(1) above that is located between the sea and the first public road paralleling the sea or within 300 feet of the inland extent of any beach or of the mean high tide of the sea where there is no beach, whichever is the greater distance, or in significant scenic resource areas as designated by the commission or regional commission an improvement that would result in an increase of 10 percent or more of internal floor area of the existing structure, or constitute an additional improvement of 10 percent or less where an improvement to the structure has previously been undertaken pursuant to [Public Resources Code section 30610\(b\)](#), and/or increase in height by more than 10 percent of an existing structure;

(5) In areas which the commission or regional commission has previously declared by resolution after public hearing to have a critically short water supply that must be maintained for protection of coastal recreation or public recreational use, the construction of any specified major water using development including but not limited to swimming pools or the construction or extension of any landscaping irrigation system;

(6) Any improvement to a structure where the coastal development permit issued for the original structure by the commission, regional commission, or local government indicated that any future improvements would require a development permit;

(7) Any improvement to a structure which changes the intensity of use of the structure;

(8) Any improvement made pursuant to a conversion of an existing structure from a multiple unit rental use or visitor-serving commercial use to a use involving a fee ownership or long-term leasehold including but not limited to a condominium conversion, stock cooperative conversion or motel/hotel timesharing conversion.

(c) In any particular case, even though the proposed improvement falls into one of the classes set forth in subsection (b) above, the executive director of the commission may, where he or she finds the impact of the development on coastal resources or coastal access to be insignificant, waive the requirement of a permit; provided, however, that any such waiver shall not be effective until it is reported to the commission at its next regularly scheduled meeting. If any three (3) commissioners object to the waiver, the proposed improvement shall not be undertaken without a permit

### **Subchapter 8. Minor Adjustments to the Coastal Zone Boundary**

#### **ARTICLE 1. BOUNDARY ADJUSTMENT REQUESTS**

##### **§ 13255.0. Scope.**

This subchapter shall govern (a) the request for a determination of the precise location of a particular parcel or area of land in relation to the boundary of the coastal zone, and (b) the request, review and implementation of proposed minor adjustments to the inland boundary of the coastal zone pursuant to [Public Resources Code Section 30103\(b\)](#). Boundary adjustments made pursuant to this subchapter shall be determinative for all purposes with respect to the California Coastal Act of 1976.