

**CALIFORNIA COASTAL COMMISSION**

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original staff report

# F10 & 11

## ADDENDUM

July 9, 2014

TO: Coastal Commissioners and Interested Parties

FROM: Lisa Haage, Chief of Enforcement

SUBJECT: ADDENDUM TO **ITEM NOS. F10 & 11** - CEASE AND DESIST ORDER NO. CCC-14-CD-02 AND NOTICE OF VIOLATION NO. CCC-14-NOV-01 (ROBERT & JUDITH McCARTHY)  
FOR THE COMMISSION MEETING OF **July 11, 2014**

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The objectives of this addendum are: (1) to update the record by supplementing it with several documents that Commission staff received after the staff report was issued, and (2) to provide staff's responses to issues raised, which responses are hereby incorporated into the Recommendations and Findings for Cease and Desist Order and Recordation of a Notice of Violation.

**I. Documents Received.** Documents included in this addendum are:

Letters of support of Staff's Recommendations (in order of date received):

1. *Letter from San Luis Obispo County Supervisor Adam Hill dated June 26, 2014*
2. *Correspondence from Beth Ralston dated June 28, 2014*
3. *Correspondence from Diana DeGarmo dated June 28, 2014*
4. *Correspondence from Chris Dickson dated June 29, 2014*
5. *Correspondence from Glen Dickson dated June 29, 2014*
6. *Letter from Bill Denneen dated July 3, 2014*
7. *Correspondence from Wanda McDonald dated July 4, 2014*
8. *Correspondence from Christopher Hamma dated July 8, 2014*
9. *Correspondence from Travis Rushing dated July 8, 2014*
10. *Letter from Sierra Club Santa Lucia Chapter dated July 8, 2008*
11. *Correspondence from David Zbin dated July 8, 2014*
12. *Correspondence from Reggie Santos dated July 8, 2014*

13. *Correspondence from Lena Rushing dated July 8, 2014*
14. *Correspondence from Matthew Rice dated July 8, 2014*
15. *Correspondence from Amber Eckert dated July 8, 2014*
16. *Correspondence from Tim O'Neill dated July 8, 2014*
17. *Correspondence from David Georgi dated July 8, 2014*
18. *Correspondence from Susan Kent dated July 8, 2014*
19. *Correspondence from Judy West dated July 8, 2014*
20. *Correspondence from Perry Judd dated July 8, 2014*
21. *Correspondence from Ginger Cochran dated July 8, 2014*
22. *Correspondence from Charles Beaudoin dated July 8, 2014*
23. *Correspondence from Maria Santos dated July 8, 2014*
24. *Correspondence from Marcia Guthrie dated July 8, 2014*
25. *Correspondence from Seth Souza dated July 9, 2014*
26. *Correspondence from Bridget Benson dated July 9, 2014*
27. *Correspondence from Kriste Judd dated July 9, 2014*
28. *Correspondence from Kim Malcom dated July 9, 2014*
29. *Correspondence from Sue Sloan dated July 9, 2014*
30. *Letter from Tarren Collins dated July 9, 2014*

Letter not supporting Staff's Recommendations (in order of date received):

1. *Correspondence from Raymond Gamma dated July 8, 2014*

Mr. Gamma's stated reason for not supporting the issuance of the cease and desist order is the right to protect one's property from trespassers. Staff notes that in this particular case, the public's use of a County-held access easement on the McCarthys' property is not in fact trespassing, as the public has a possessory interest in that portion of the McCarthys' land.

Additional correspondence from the McCarthys' counsel:

1. *Letter from Gregory Sanders of Nossaman LLP, on behalf of the McCarthys, dated July 8, 2014*

**II. Responses to Correspondence from the McCarthy's Counsel:**

As the McCarthys' July 8<sup>th</sup> letter (attached hereto) was submitted to Commission staff weeks after the Statement of Defense deadline, Commission staff was not afforded the opportunity to respond to the defenses in the June 27, 2014 Staff Report. Staff has excerpted text from arguments made in this supplemental submittal and has provided a brief response to each. As a preliminary matter, we note that many of the arguments raised in the July 8 letter are restatements of allegations raised in previous correspondence from the McCarthys and their counsel, to which Commission staff has responded at greater length beginning on page 32 of the Staff Report, but as a courtesy, we respond also below.

## **McCarthys' Defense Alleged**

1. *"There is no evidence in the record that the public has any ownership interest or right to use any of the 'trails' in the so-called Ontario Ridge System of Trails...without a trail that is lawfully available for use by the public, the County easement located on the Property cannot provide access to the coast as the Commission contends in the Notice of Violation.... Determination of the existence of a prescriptive right is the province of the courts. The only theory by which the Coastal Commission can determine that the so-called Ontario Ridge System of Trails feeds the County easement and provides access to the ocean is to conclude that a prescriptive right in favor of the public exists in the 'system of trails...Accordingly, as documented in our letter to you [sic] on March 6, 2014, the Commission cannot find and is without jurisdiction to enforce any finding that the McCarthys are blocking or impeding public access."*

## **Commission Response:**

The Commission's jurisdiction over the development at issue, and its authority for issuance of the Order, is based on the fact that the development lacks the requisite permit, rather than a finding regarding either an easement or prescriptive rights. While it is true that the unpermitted development here blocks public access, the underlying violation is the failure to comply with the requirements of the LCP and Coastal Act. It is undisputed that the development at issue counts as "development" for purposes of the Coastal Act and the LCP. The only question is whether an exemption in the LCP applies. Based on the express language of the LCP, the County's finding that the trail "provides legal access to and views of the tidelands" is sufficient to render the exemption inapplicable, and thus, to render the development subject to the permit requirements. The LCP says the applicability of the exemption is based not on an adjudication of prescriptive rights, but on the "opinion of the Planning Director."

The Planning Director has clearly stated his opinion regarding the development on this property, the effect of which is that it clarifies the appropriate application of the LCP to this development, meaning that the development at issue required but lacks a Coastal Development Permit. Moreover, the County's opinion was reasonable given the history and extent of public use on the segment of trail on the McCarthys' property and in the surrounding area. Moreover, the opinion issued by the County (see Exhibit 18 to the Staff Report) addresses views as well as public access, which, pursuant to the LCP, serves as an independent basis for the opinion.

The *LT-WR* case cited by Mr. Sanders held that the "authority to adjudicate the existence of prescriptive rights for public use of privately owned property," but that was in the context of a Commission action seeking to protect an inland trail for recreational use, where the Commission had no independent statutory basis for orienting to the potential for prescriptive rights. In that instance, the Commission had not relied upon, and the case did not involve, Public Resources Code section 30211, which specifically charges the Commission with protecting the public's "right of access to the sea where acquired through use."

Finally, as thoroughly discussed in the Staff Report, these Orders address development that is not only in an area of probable prescriptive public rights, but which is also both unpermitted and inconsistent with a public access easement held by the County.

### **McCarthys' Defense Alleged**

2. *"Inasmuch as there has been no coastal development permit issued for use of the County easement as a public trail or de minimus waiver approved, the County easement cannot be used by the public as a trail. Accordingly, the Commission cannot maintain the Enforcement Action on the basis that the McCarthys have blocked access to a public trail."*

### **Commission Response:**

The McCarthys counsel appears to be implying that the easement and its use are not legal because the County did not seek a CDP. In fact, Section 30106 of the Coastal Act requires a permit for "changes in the intensity of use". Here, Commission staff is aware of no evidence to suggest that the County's acquisition of an easement effected any change in intensity of use of the property, nor that it in any other way constituted development. In fact, all the evidence is to the contrary—that the easement did not create public use, but rather it codified and endorsed the public's ongoing use of the trail. Mr. Sanders' letter appears to assume that the County's acquisition of the easement was accompanied by some sort of public announcement that increased the use of the trail, but he provides no evidence of this. Accordingly, this is pure speculation.

On the other hand, the erection of the fence had a clear impact on the use of the land. The California Supreme Court affirmed in *Pacific Palisades Bowl Mobile Estates, LLC v. City of Los Angeles* (2012), 55 Cal. 4th 783, 795, that a decrease in intensity of use constitutes development as well as an increase. Contrary to his speculation, we have received numerous reports of members of the public no longer being able to use the trail as a result of the fences, gates, and signs. Thus, since the McCarthys' development resulted in a diminution of use, it did constitute development that, in the absence of a valid exemption, required a permit.

Finally, but critically, this comment again assumes, incorrectly, that the present enforcement action is dependent upon a finding that the McCarthys are blocking access to a public trail. As indicated above, the Orders are based on the fact that the development lacks the requisite permit, and while it is true that that permit requirement is related to the issue of public rights of access, the existence of such a right is not a prerequisite to the establishment of the permit requirement.

3. The McCarthys allege that the staff report is "replete with" unsubstantiated allegations, including those listed below:
  - a. *"The property is home to various sensitive habitat areas."*

**Commission Response:**

Again, the presence or absence of a habitat type on the property is irrelevant to the Commission's authority to issue the cease and desist order. However, it should be noted that the Commission previously found, in the adopted findings for the denial of the McCarthys' CDP No. A-3-SLO-11-061, that the Property is located on Ontario Ridge, "well known to include a rich mosaic of oak woodland, wetland seeps, and drainages that intermix with chaparral and grassland habitats."<sup>1</sup> Those findings are hereby incorporated herein.

It is unclear what exactly the McCarthys contest regarding the statement that these habitat-types are 'sensitive'; this adjective carries with it no legal bearing with respect to the LCP, and is merely reflective of the fact that these habitat areas are important and can be easily harmed. Full-grown oak trees can die if soil above their roots is compacted; wetland seeps – areas where subsurface groundwater reaches the surface – can have associated transitional riparian vegetation, which cannot persist absent the seep.

- b. *"The signs, gates, fences, footing and support structures preclude wildlife movement on the Property."*

**Commission Response:**

As described in the Staff Report, and as illustrated in photographs identified as Exhibits 24 and 28 to the Staff Report, the McCarthys elected to utilize six-foot high, five-strand barbed wire fences and field fencing on their property. As discussed in the Staff Report, animals can easily become entangled in barbed wire fencing; this phenomenon has been well documented in a variety of studies and reports such as:

[http://wildlifefriendlyfencing.com/WFF/Injuries\\_files/vdr%201999%20fencekill%20vic%20nat.pdf](http://wildlifefriendlyfencing.com/WFF/Injuries_files/vdr%201999%20fencekill%20vic%20nat.pdf). Moreover, field fences, by their very design, preclude wildlife passage, particularly when they are over six-feet in height.

- c. *"The signs, fences and gates on the Property preclude public use of the portion of the Ontario Ridge Trail on the McCarthy's property"*

**Commission Response:**

It is unclear how the McCarthys' counsel intends this comment to be taken. It is further unclear how fences, gates, and a variety of 'no trespassing' signs would fail to impede public use of the trail. When staff visited the location on June 17, 2014, the signs and fences and gates clearly affected the extent and nature of the access, and while some of the gates were open, there were many stretches of fencing with no gates. There were also signs in place purporting to prohibit access. As a result, the views were impeded and the trail was certainly rendered uninviting. The

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<sup>1</sup> A-3-SLO-11-061 Revised Findings at Page 22, adopted July 25, 2013  
(<http://documents.coastal.ca.gov/reports/2013/8/Th24b-8-2013.pdf>)

attached letters from members of the public tend to substantiate the notion that this area had been impeded.

- d. The fences and gate on the Property constitute substantial impediments to access and view, including views of the tidelands."*

**Commission Response:**

See above response.

- e. The McCarthys erected intentionally misleading signs."*

**Commission Response:**

The signs, including those posted after Commission staff sent a Notice of Violation letter on February 20, 2014, are located on the County easement and purport to demarcate the area as private. As the easement is not in fact 'private,' the signs are plainly misleading. Furthermore, the sign indicating that the property was closed for 'plant rehabilitation' was in the exact same type-face and style as those placed by public resource entities; installation of such a sign, to preclude access to a County access easement, was indeed misleading, and it is legitimate to infer that the party who generated and/or posted a sign intended it to convey the meaning that is plain on its face.

- f. "The width of the gate results in an unlawful reduction in the size of the County easement."*

**Commission Response:**

This assertion by the McCarthys is a reiteration of the assertion addressed as Allegation No. 9 (on page 21 of the Staff Report) and responded to in the Staff Report; in neither context did the McCarthys provide any evidence or rationale indicating that staffs' analysis is in any way erroneous. In short, the easement is required to be 20-feet wide, so a gate, even if opened, that is 15-feet wide and bounded on either side by high fences, would naturally be violative of the easement terms.

- g. "The McCarthys will suffer no liability in the event of injuries, or worse, sustained on the Property."*

**Commission Response:**

As a point of clarification, the portion of the Staff Report responding to the McCarthys' Statement of Defense discusses, in the response to Allegation Nos. 16 and 17, how California law provides various protections from liability for landowners; there is no explicit statement that the McCarthys "will suffer no liability." Further, as with the McCarthys' previous claim, staff addressed this subject matter at length in the Staff Report in response to Allegation Nos. 16 and 17 (page 21); the McCarthys appear to disagree with the information provided, and reassert this issue, without explanation.

- h. *“The McCarthys breached a confidentiality requirement by revealing the substance of negotiations to settle the Enforcement Action.”*

**Commission Response:**

It is standard legal practice to treat settlement negotiations as confidential. The Commission staff reached out to the McCarthys in an attempt to resolve this matter amicably.

- i. *The McCarthys knowingly undertook ‘development’ on the Property without a coastal development permit.*

**Commission Response:**

There doesn’t seem to be any question that development was undertaken by the McCarthys knowingly. Moreover, the unpermitted development has been maintained and even added to by the McCarthys in the months after they were contacted first by the County and then by the Commission staff to inform them that their actions required and lacked a Coastal Development Permit.

- j. *Harm resulting from unpermitted development on the Property is significant.*

**Commission Response:**

As discussed on Pages 13 to 14 of the Staff Report, impacts to public access and a protected viewshed are in fact substantial and ongoing; nothing in the McCarthys’ July 8<sup>th</sup> letter provides evidence to the contrary. Furthermore, responses to the prescriptive rights questionnaire (summarized and attached as Exhibit 9 to the Staff Report) and the letters from the public (attached to this addendum) provide additional indicia of the considerable impact on public access that the unpermitted development has had.

**McCarthys’ Defense Alleged**

4. *“The McCarthys proceeded in good faith reliance to erect the fences and gate on the opinion of the County that such fences and gate are exempt from the requirement to obtain a coastal development permit.”*

**Commission Response:**

As a preliminary matter, “good faith” does not create an exemption from permitting requirements, nor from the requirement to comply with the LCP and Coastal Act; therefore, this defense is not directly relevant to whether the development constitutes a violation or whether the Commission is authorized to issue the proposed orders. If the McCarthys had removed the development when they received the County’s February 7, 2014 letter clarifying its status, this assertion could be considered relevant to the question of the propriety of penalties. However,

penalties are not at issue at this stage. Moreover, the facts suggest the opposite. Moreover, the facts do not appear to support this assertion. The McCarthys were explicitly notified on February 7, 2014, by the County that the development was not exempt, and they continued to maintain the unpermitted signs, gates, and fences, and even erected additional unpermitted development thereafter.

### **McCarthys' Defense Alleged**

5. *"[t]he Finding of Fact proposed by the Commission staff that 'the McCarthys knowingly undertook 'development' [on the property] ...as defined by Coastal Act Section 30106, without a coastal development permit' is unfounded and counterfactual."*

### **Commission Response:**

The McCarthys were on constructive notice of the existence of the County access easement as it was duly recorded in their chain of title. Moreover, on any given day, hikers are continually traversing the trail; the use is open and notorious – observation of such use alone would have triggered an average person to inquire as to the status of the trail even if they had not yet read their title report. Given the constructive knowledge imputed to the McCarthys regarding the presence of the access easement, unpermitted development undertaken to preclude public recreation and access in the area is unequivocally 'knowing and intentional.'

Furthermore, even assuming arguendo that the McCarthys were not aware of the easement, the McCarthys refused to remove the development even after being notified by the County, on February 7, 2014, that they were required to do so as it was inconsistent with the public's use of the easement. The McCarthys maintained the unpermitted development after this notification by the County and an additional notice by Commission staff on February 20, 2014, and significantly, even added additional unpermitted development at some time prior to May 5, 2014.

### **McCarthys' Defense Alleged**

6. *"The McCarthys were unaware of the County easement themselves until informed of its existence by Ms. Griffin's letter. The documents creating the easement were not recorded until shortly before the escrow closed on the McCarthy's acquisition of the Property and after the preliminary title report for the Property was prepared."*

### **Commission Response:**

The McCarthys allege, within the same document, both that they were unaware of the County easement until Ms. Griffin's February 7, 2014 letter, and that they had approached the County as early as March 13, 2013 (almost a year before) regarding relocation of the trails ("relocation of the County easement (which the easement document gives him the clear right to do)..."). Regardless of the genuine timeline of the McCarthys' actual knowledge of the easement, by their own admission in the July 8<sup>th</sup> Letter, they were on constructive notice as the easement was recorded in their chain of title. Even if the McCarthys did not read their final title report, and did



not know earlier as the correspondence indicates they did, and even if they weren't put on actual notice by the public use of the path, this would not have any bearing on whether the Commission may issue the cease and desist order to address unpermitted development, nor whether the development is consistent with the LCP and Coastal Act. And even if they did not have notice by any of the myriad methods described above, at best that might mean that the McCarthys might question a failure of the preceding owner to disclose the easement, but it still has no bearing on whether the Commission may issue the cease and desist order, or whether, as discussed above, the McCarthys conducted and maintained the development in 'knowing and intentional' violation of the LCP and Coastal Act.

### **McCarthys' Defense Alleged**

7. *"As we advised in our letter of March 6, 2014, the McCarthys were motivated, in part, to erect the fences and gate to protect those using the easement on their property from obvious dangerous conditions."*

### **Commission Response:**

As enumerated in staff's response to Allegation No. 17 in the Staff Report, the McCarthys' motivation for erecting the development is irrelevant as to whether a permit was required for the fences, gates, and signs. If the McCarthys wish to diminish any perceived risks of the easement, they are free to continue to pursue relocation of the easement to a 'safer' area with the County, even after the subject orders issue, as long as the proposed new location is consistent with the legal rights of all parties, and all applicable laws.

### **McCarthys' Defense Alleged**

8. *"Long prior to the eruption of the dispute over the fences and gate, Mr. McCarthy engaged a consultant, had plans prepared for relocation of the County easement...and engaged County of San Luis Obispo staff and policy makers in a dialogue to improve the location of the trail."*

### **Commission Response:**

It seems that the implication of this statement is that the Commission should abandon the present enforcement action in favor of pursuing a cooperative relocation of the easement with the McCarthys and the County, presumably while the unpermitted development remains in situ. It is worth noting that nothing in the extant Commission action in any way precludes the McCarthys from developing a relocation plan to which the County would be amenable. This however would not resolve the Coastal Act violations on the Property or restore full public access in the meantime; the issuance and enforcement of the cease and desist order would.

# BOARD OF SUPERVISORS



1055 MONTEREY, ROOM D430 • SAN LUIS OBISPO, CALIFORNIA 93408-1003 • 805.781.5450

June 26, 2014

California Coastal Commission  
45 Fremont Street, Suite 2000  
San Francisco, CA 94105-2219

**ADAM HILL**  
SUPERVISOR DISTRICT THREE

**Re: Cease and Desist Order No. CCC-14-CD-02 (McCarthy, Ontario Ridge)**  
**Notice of Violation No. CCC-14-NOV-01 (McCarthy, Ontario Ridge)**  
**Friday, July 11, 2014 Regular Meeting**

Dear Chairperson Kinsey, Vice-Chair Zimmer and Honorable Commissioners:

As the elected Third District Supervisor for the County San Luis Obispo, I have in my district the Ontario Ridge Trail ("Trail") one of the most popular trails in San Luis Obispo, a trail that has been used by the public for more than 40 years. It is a special trail that provides unprecedented coastal access and scenic views enjoyed by residents of San Luis Obispo County, and travelers from all over the world.

This code enforcement matter dates back to November of 2013. After hearing from several of my constituents regarding the unpermitted development (i.e. fences, gates, signs, etc.) that is meant to physically and mentally discourage public use of the Trail, County staff and my office have reached out to Mr. McCarthy on a number of occasions to no avail. To date, access to the trail has been impeded for over a half of a year. Enough is enough, and I ask for your help on July 11 to restore the public's access to the Trail.

Furthermore, as you know, the Trail is legally protected by a Grant of Easements for Access (the "Easement") recorded on December 18, 2009, for the benefit of the public. The Easement establishes an express easement over the McCarthy's property allowing for recreation and other purposes, to include but not limited to, hiking, sightseeing, picnicking, nature study, nature contacting, etc.

To this end, on behalf of the citizens of San Luis Obispo County, and all who wish to enjoy the Trail and the coastal access it affords, I respectfully ask that the Commission take all actions necessary to ensure the removal of the unpermitted development on the Ontario Ridge Trail. In doing so, we hope to continue to secure the public's right to the Trail, as set forth in the Coastal Act and the Easement.

Thank you for your consideration and commitment to protect coastal access.

Sincerely,

A handwritten signature in black ink, appearing to read "Adam Hill", is written over a faint, larger signature.

ADAM HILL  
District Three Supervisor

cc: Heather Johnston, Enforcement Supervisor  
Central Coast District Office

**Johnston, Heather@Coastal**

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**From:** [REDACTED]  
**Sent:** Saturday, June 28, 2014 4:43 PM  
**To:** Johnston, Heather@Coastal  
**Cc:** coastlaw@gmail.com  
**Subject:** Ontario Ridge

Dear Ms. Johnston,

I urge you to support the staff recommendations for the issuance of Cease and Desist Order No. CCC-14-CD-02 and its recordation of a Notice of Violation – (agenda items F10 and F11).

I am an active hiker that lives on the Central Coast. The Ontario Ridge is one of the most beautiful trails that we have here. To have an individual illegally continue try to block the public from being able to hike this trail is such an injustice to those of us who love where we live and enjoy hiking. I take my son up this trail. I normally hike with my dog. When I have out of town guests – this is the trail that I take them on. You can find people on this trail on a daily basis.

This needs to stop immediately! Additionally, Mr. McCarthy should be fined for blocking our public (and legal) access.

Thank you,

Beth Ralston

**Johnston, Heather@Coastal**

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**From:** Diane [REDACTED]  
**Sent:** Saturday, June 28, 2014 3:55 PM  
**To:** Johnston, Heather@Coastal  
**Subject:** Ontario ridge mr McCarthy

Please use the email as my stand in for support of the Ontario ridge and the defiance of the law against Mr McCarthy Thank you Diana DeGarmo Citizen who hikes since 2000 on the trail

Regards  
Diana DeGarmo

**Johnston, Heather@Coastal**

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**From:** Chris Dickson [REDACTED]  
**Sent:** Sunday, June 29, 2014 4:47 PM  
**To:** Johnston, Heather@Coastal  
**Cc:** coastlaw@gmail.com  
**Subject:** Ontario Ridge

RE: Cease and Desist Order CCC-14-CD-02

Dear Coastal Commissioners:

I have been hiking up, down and around the Ontario Ridge trail for the last seven years, usually every other day. It's a wonderful place for encountering woods creatures such as deer, quail, wild turkeys, hawks and even Ospreys, owls and coyotes now and then.

At 62 years of age, I consider myself very lucky to have such a beautiful, diverse and accessible hill to climb. I see many young people there, and a surprising number of older people as well, because Ontario Ridge has hiking areas which vary from easy to difficult.

I strongly support the Coastal Commission's recommendations for issuance of cease and desist order, and notice of violation No. CCC-14-CD-02 to [Heather.Johnston@coastal.ca.gov](mailto:Heather.Johnston@coastal.ca.gov). Access to Ontario Ridge trail makes hundreds of hikers very happy and healthy. This trail is the only hike of its height in San Luis Obispo's south county, and it is gentle enough to keep even the elderly happy.

Christine Dickson

**Johnston, Heather@Coastal**

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**From:** Glen Dickson [REDACTED]  
**Sent:** Sunday, June 29, 2014 1:38 PM  
**To:** Johnston, Heather@Coastal  
**Cc:** coastlaw@gmail.com  
**Subject:** meeting items F10 and F11, Ontario Ridge

RE: Friday, 11 July  
items F10 and F11  
Ontario Ridge

Dear Commissioners:

I urge you to support the excellent staff report, and to issue a Cease and Desist Order (CCC-14-CD-02) and to record a Notice of Violation.

Even after the public easement (Cave Landing Easement) across their property became publicly known in February, the McCarthys installed a "no admittance" sign at the bottom of the easement (at Cave Landing Road), and put chain link fencing across a gate at the same location -- both of which are still there today. And the extensive fencing that was installed in December still remains.

I believe that the past six months have shown that the McCarthys will not comply with the Coastal Act unless compelled to do so. I also believe that the best way to compel compliance would be for the Coastal Commission to impose a significant fine for continued non-compliance.

Thank you.



Mr. Bill Denneen  
1040 Cielo Ln.  
Nipomo, CA 93444

Re: ONTARIO RIDGE

I have been hiking/jogging this trail for over 50 years. I urge you to issue the cease & desist order to have R. MCCARTHY to remove his fencing & locked gates from the property.

When doing marathons I feel jogging this trail gave the Training to set a record for 60-65 year olds in The Big Sur Marathon

I am a retired Biology Prof. now 89 years old.

Bill Denneen

805-929-3647



Mr. Bill Denneen  
1040 Cielo Ln.  
Nipomo, CA 93444

**RECEIVED**

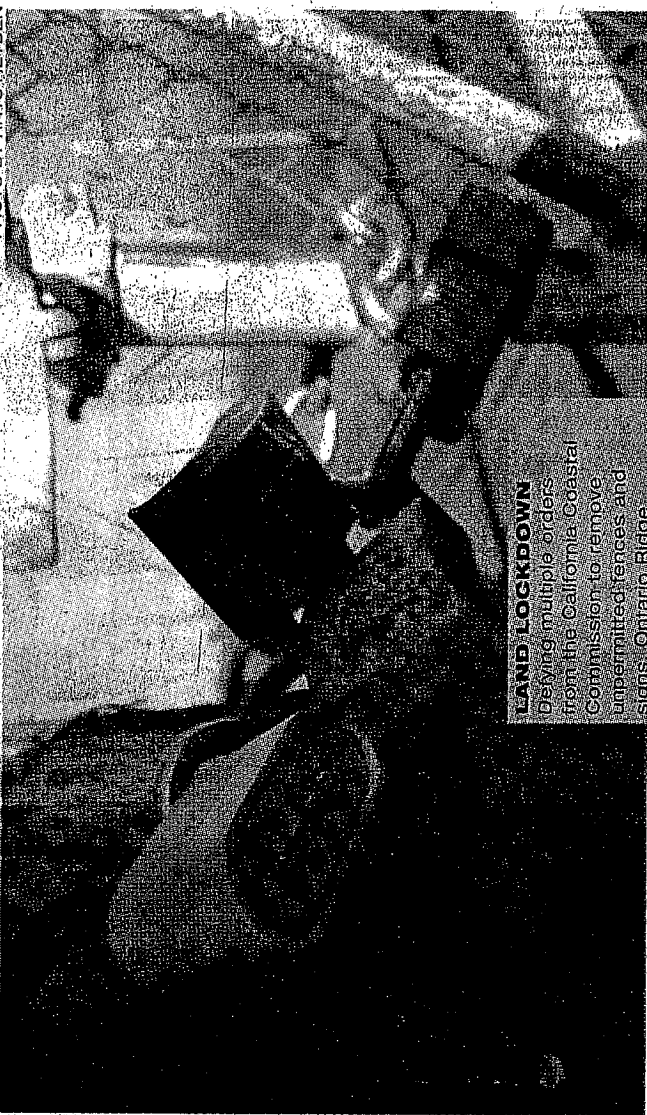
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CALIFORNIA  
COASTAL COMMISSION  
CENTRAL COAST AREA

What the county's talking about this week

# Ontario Ridge fight goes coastal

PHOTO BY RHY'S HEYDEN



## LAND LOCKDOWN

Ongoing multiple orders from the California Coastal Commission to remove unpermitted fences and signs, Ontario Ridge landowner Rob McCarthy has continued to construct and maintain barriers to keep hikers off of a popular trail.

"If the commission approves the cease and desist order, there would be deadlines," Johnston said. "Failure to comply would be problematic, draw consequences, and would have to be dealt with."

According to Johnston, coastal commissioners will receive public comment on the matter, debate, and then vote on both actions.

The notice of violation, if approved, would serve as a "red flag" on the property that would identify Coastal Act violations to potential future owners of McCarthy's land, she added.

When reached for comment, McCarthy said he is sticking with his conviction that his fences and signs are perfectly legal.

"I am convinced that I did nothing wrong when I built fences and put up 'No Trespassing' signs on my property," McCarthy wrote in an email to *New Times*. "If the Coastal Commission follows the law then they decide that I haven't violated anything."

If the Coastal Commission does decide that

After months of testy statements, controversial construction, and strongly worded letters, the land-use conflict between exasperated hikers and a defiant landowner on Ontario Ridge is finally headed to a formal showdown.

According to a recently released California Coastal Commission agenda, the commission will consider issuing a formal cease and desist order—as well as a notice of violation—to Ontario Ridge landowner Rob McCarthy during its July 11 meeting in Ventura.

"We recognize how important this trail is to locals, and we are doing everything we can to secure the public's right to the trail," said Heather Johnston, the Coastal Commission's local enforcement supervisor.

This skirmish dates back to November 2013, when McCarthy first started installing barbed wire fences and "no trespassing" signs on several parts of the property, blocking access to the Ontario Ridge trail, which overlooks Pirates Cove and Avila Beach.

After an outcry from local hikers, the Coastal Commission and San Luis Obispo County authorities eventually determined the fences and signs were illegal and infringed on an existing public access easement. The commission first ordered McCarthy to remove the fences on Feb. 7.

McCarthy subsequently removed some—but not all—of the fences and signs, and has constructed new barriers as recently as May. In response, some hikers have cut through fences and have bent back or removed signs that discourage public use of the trail.

According to Johnston, the proposed cease and desist order and notice of violation are both more formal mechanisms to force McCarthy to remove unpermitted development on his property and come into compliance with the state's Coastal Act.

**New Times**

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## Johnston, Heather@Coastal

---

**From:** Wanda [REDACTED]  
**Sent:** Friday, July 04, 2014 2:34 PM  
**To:** Johnston, Heather@Coastal  
**Cc:** coastlaw@gmail.com  
**Subject:** Ontario Ridge

I am in full support of Staff recommendations for issuance of Cease & Desist Order No. CCC-14-CD-02 and its recordation of a Notice of Violation-(agenda items F10 & F11), in regards to Robert and Judy McCarthy. I have previously notified the Coastal Commission of my many, many years of hiking the Ontario Ridge trails, and attended the last meeting held in Shell Beach, CA where notice of the easement was briefly discussed.

The McCarthy's have blatantly disregarded the order to remove fences, gates, signs that they put up without permits from SLO county or any city government. I would like it if their disregard for the public and their "feelings of being above the rules and regulations" that most of us have to obey were to result in Mr. McCarthy being the first recipient of the Commission's brand-new authority to fine those who deliberately block public access to our coast.

In closing I would just like to say that I do not find the trail dangerous or too steep for my hiking abilities, and as an adult I have enough sense to know when something is too dangerous for me; I don't need Mr. McCarthy or his attorney making that decision on my behalf.

Thank you for all you are doing on the behalf the people of California, the wildlife, and the access to our beautiful Pacific Ocean. I will be attending the meeting in Ventura.

Wanda McDonald  
1605 Hillsboro Dr  
Santa Maria, CA 93454  
805-922-1460

**Remember...saving the life of one animal may not change the world,  
but the world will be changed for that one animal.  
Please spay and neuter your 4-legged friends.**

## Johnston, Heather@Coastal

---

**From:** Christopher Hamma [REDACTED]  
**Sent:** Tuesday, July 08, 2014 9:41 PM  
**To:** Johnston, Heather@Coastal  
**Subject:** Ontario Ridge Trail

Dear Ms. Johnston,

I'm writing in support of protecting public access and wildlife on Ontario Ridge overlooking Avila Beach in San Luis Obispo County. I have been hiking regularly on the Ontario Ridge trail for approximately 5 years now, but have heard that general public use of the area goes back for decades. This trail provides one of the most spectacular coastal views in the Central Coast region, a view that has recently been marred by the addition of barbed wire and chain link fences and gates by a property owner who has been reluctant to observe the public access easement in the area, even after San Luis Obispo County reversed course and recognized the easement's existence. I am also concerned about the effect the fencing could have on wildlife – I have seen mule deer up there many times and have a hard time visualizing a deer fawn vaulting over a 5-foot barbed wire fence. I hope that at the July 11 meeting of the Coastal Commission in Ventura, which I plan to attend, the Commission will move to protect public access and wildlife in this remarkable area and issue a cease-and-desist order to the property owners, requiring them to remove the fencing and gates they have put up. Thank you for considering my thoughts.

Sincerely,

Christopher Hamma  
630 Lancaster Drive  
Arroyo Grande, CA 93420

**Johnston, Heather@Coastal**

---

**From:** Travis Rushing [REDACTED]  
**Sent:** Tuesday, July 08, 2014 3:51 PM  
**To:** Johnston, Heather@Coastal  
**Cc:** coastlaw@gmail.com  
**Subject:** Ontario Ridge

My name is Travis, I'm a 13 year old middle school student. Please don't let one guy come in and ruin the beautiful ridge that I hike with my mom. She cried the day we went and all the fences were up, blocking us from hiking. We were afraid that one of our favorite parts about living here(I've lived and hiked here my whole life) was gone forever. Then, she learned about the legal easement and regained hope. Please follow your staff's recommendation to issue a Cease and Desist Order and a Notice of Violation to the McCarthy's for blocking public access to the recreational easement on their property. The McCarthy's construction of fences across and along the easement, and their failure to remove them, clearly violate the Coastal Act.

Also, if ever there was a case where the Coastal Commission should impose fines to deter violators from blocking access to the coast, this is it!

Please issue the Cease and Desist Order and Notice of Violation, and also impose a hefty fine on the McCarthy's to deter others from blocking the public's access.

Thank you,  
Travis Rushing  
1634 Trouville Ave, Grover Beach, CA



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Santa Lucia Chapter  
P.O. Box 15755  
San Luis Obispo, CA 93406  
(805) 543-8717  
www.santalucia.sierraclub.org

Agenda Item # F10/11  
CCC-14-CD-02, CCC-14-NOV-01  
Meeting of June 11, 2014

Andrew Christie, Sierra Club, Santa Lucia Chapter

July 8, 2014

Heather Johnston  
California Coastal Commission  
45 Fremont Street, Suite 2000  
San Francisco, CA 94105-2219  
FAX (415) 904-5400

**RECEIVED**

**JUL 09 2014**

CALIFORNIA  
COASTAL COMMISSION

-Please distribute to Commissioners for 7/11/14 meeting

Dear Ms. Johnston,

The Santa Lucia Chapter of the Sierra Club represents the Club's 2,000 members in San Luis Obispo County. We strongly support the Cease & Desist Order and Notice of Violation in the matter of the unpermitted fencing and signage on the Ontario Ridge Trail. We further urge the imposition of a fine that reflects the degree of culpability, the extent of violations, the number of types and the breadth of unpermitted development, the severity of impacts caused thereby, and such other matters as justice may require. This case is a poster child for flagrant, deliberate violation of the Coastal Act, and deserves to become the first example of the commission's authority to administratively fine violators for blocking public access to the coast.

Rob and Julia McCarthy, after purchasing property that included an easement assuring public access -- reinforced by the implied dedication of a prescriptive easement established by unobstructed and un-objected public use of the Ontario Ridge Trail across the property over the last five decades -- fenced off the popular coastal trail, blocking access and impeding the use of a network of connecting trails. They also posted "no trespassing" signs, claiming a right to protect themselves from liability and a wish to protect the public from injuring themselves.

The McCarthys did not seek or obtain a required CDP for the fencing and signs, and have not removed them despite orders from the County and Coastal staff. They are in direct violation of

**Johnston, Heather@Coastal**

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**From:** David Zbin [REDACTED]  
**Sent:** Tuesday, July 08, 2014 6:08 PM  
**To:** Johnston, Heather@Coastal  
**Subject:** Agenda Items F10 & F11 (Ontario Ridge Trail; Cease and Desist Order and Notice of Violation against Robert and Judith McCarthy)

**Dear Chair Kinsey and Members of the Coastal Commission:**

**Please follow your staff's recommendation to issue a Cease and Desist Order and a Notice of Violation to the McCarthy's for blocking public access to the recreational easement on their property. The McCarthy's construction of fences across and along the easement, and their failure to remove them, clearly violate the Coastal Act.**

**Also, if ever there was a case where the Coastal Commission should impose fines to deter violators from blocking access to the coast, this is it!**

**Please issue the Cease and Desist Order and Notice of Violation, and also impose a hefty fine on the McCarthy's to deter others from blocking the public's access.**

**My interest in the access is my passion for coastal paragliding, and that access represents a valuable flying site.**

**Thank you,  
David J Zbin  
2309 Peachtree Lane  
San Jose, CA 95128**

## Johnston, Heather@Coastal

---

**From:** Refugio Santos [REDACTED]  
**Sent:** Tuesday, July 08, 2014 9:55 PM  
**To:** Johnston, Heather@Coastal; Tarren Collins  
**Subject:** Ontario Ridge

California Coastal Commission

Sent via email to [Heather.Johnston@coastal.ca.gov](mailto:Heather.Johnston@coastal.ca.gov)

Re: Agenda Items F10 & F11 (Ontario Ridge Trail; Cease and Desist Order and Notice of Violation against Robert and Judith McCarthy)

Dear Chair Kinsey and Members of the Coastal Commission:

Please follow your staff's recommendation to issue a Cease and Desist Order and a Notice of Violation to the McCarthy's for blocking public access to the recreational easement on their property. The McCarthy's construction of fences across and along the easement, and their failure to remove them, clearly violate the Coastal Act.

Also, if ever there was a case where the Coastal Commission should impose fines to deter violators from blocking access to the coast, this is it!

Please issue the Cease and Desist Order and Notice of Violation, and also impose a hefty fine on the McCarthy's to deter others from blocking the public's access.

I have hiked the Ontario many times with family and friends and it is a majestic place to be outdoors. The views of the ocean and the Pismo area are breathtaking. It has been used by visitors and residents alike, and is truly a gem of the central coast. Have the fences removed and give access back to the people.

Respectfully submitted,

Reggie Santos

**Johnston, Heather@Coastal**

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**From:** lena rushing [REDACTED]  
**Sent:** Tuesday, July 08, 2014 3:39 PM  
**To:** Johnston, Heather@Coastal  
**Cc:** coastlaw@gmail.com  
**Subject:** California Coastal Commission

Re: Agenda Items F10 & F11 (Ontario Ridge Trail; Cease and Desist Order and Notice of Violation against Robert and Judith McCarthy)

Dear Chair Kinsey and Members of the Coastal Commission:

Please follow your staff's recommendation to issue a Cease and Desist Order and a Notice of Violation to the McCarthy's for blocking public access to the recreational easement on their property. The McCarthy's construction of fences across and along the easement, and their failure to remove them, clearly violate the Coastal Act.

Also, if ever there was a case where the Coastal Commission should impose fines to deter violators from blocking access to the coast, this is it!

Please issue the Cease and Desist Order and Notice of Violation, and also impose a hefty fine on the McCarthy's to deter others from blocking the public's access.

My family and friends have been hiking this trail for years. Please don't let us be excluded from this beautiful public easement that my community and I cherish and enjoy daily. It's selfish, malicious and elitist for the McCarthy's to deny the community access to our beloved trails.

Thank you,  
Lena Rushing  
1634 Trouville Ave Grover Beach, CA

**Johnston, Heather@Coastal**

---

**From:** Matthew Rice [REDACTED]  
**Sent:** Tuesday, July 08, 2014 5:35 PM  
**To:** Johnston, Heather@Coastal  
**Subject:** Agenda Items F10 & F11 Ontario Ridge Trail

**California Coastal Commission**

**Re: Agenda Items F10 & F11: Keeping Ontario Ridge trail open as it was deeded to be.**

As a resident of the Five Cities areas since 1981 I have often had the opportunity to use the Ontario Ridge trail open areas. Until now, I have never been fenced out of the open spaces.

Please follow your staff's recommendation to issue a Cease and Desist Order and a Notice of Violation to the McCarthy's for blocking public access to the recreational easement on their property. The McCarthy's construction of fences across and along the easement, and their failure to remove them, clearly violate the Coastal Act.

Please, if ever there was a case where the Coastal Commission should impose fines to deter violators from blocking access to the coast, this is it!

Please issue the Cease and Desist Order and Notice of Violation, and also impose a hefty fine on the McCarthy's to deter others from blocking the public's access.

Sincerely,  
Matthew Rice and Family  
telephone: 805-459-5159



**Johnston, Heather@Coastal**

---

**From:** Amber Eckert [REDACTED]  
**Sent:** Tuesday, July 08, 2014 9:55 PM  
**To:** Johnston, Heather@Coastal  
**Subject:** RE: Agenda items F10 and F11- Ontario Ridge Trail

Dear Chair Kinsey and Members of the Coastal Commission,

Please, consider issuing a cease and desist order and a notice of violation to the party involved in blocking access to the Ontario ridge trail. The fences and blocked access are clear violations of the Coastal Act.

I am a SLO County native and have long enjoyed the beautiful natural spaces of our coast. I have hiked the trail many times and it would be very disappointing to have the access cut off for future generations. Beautiful spaces should not be appreciated by only those who can afford it, they should be open for all. As a county it would be great for us to set an example of not letting developers control our coastline. Coastal access should be open for everyone!

Please, consider the precedent that will be set by allowing a private landowner to mandate access to a space that should be enjoyed by a community. Would we want someone with such narrow minded vision controlling land in our county?

Thank you for your time and consideration.

Amber Eckert  
Arroyo Grande, CA 93420

**Johnston, Heather@Coastal**

---

**From:** Tim O'Neill [REDACTED]  
**Sent:** Tuesday, July 08, 2014 5:56 PM  
**To:** Johnston, Heather@Coastal  
**Subject:** Re: Agenda Items F10 & F11 (Ontario Ridge Trail; Cease and Desist Order and Notice of Violation against Robert and Judith McCarthy)

**Dear Chair Kinsey and Members of the Coastal Commission:**

**Please follow your staff's recommendation to issue a Cease and Desist Order and a Notice of Violation to the McCarthy's for blocking public access to the recreational easement on their property.**

**I have hiked this beautiful trail for years and feel the fences are a blight on our coast. The McCarthy's construction of fences across and along the easement, and their failure to remove them, clearly violate the Coastal Act.**

**Also, if ever there was a case where the Coastal Commission should impose fines to deter violators from blocking access to the coast, this is it!**

**Please issue the Cease and Desist Order and Notice of Violation, and also impose a hefty fine on the McCarthy's to deter others from blocking the public's access.**

**Thank you,  
Tim O'Neill  
1390 Kenneth Dr.  
Cambria, CA 93428**

Johnston, Heather@Coastal

---

From: David Georgi [REDACTED]  
Sent: Tuesday, July 08, 2014 3:48 PM  
To: Johnston, Heather@Coastal  
Subject: ontario ridge

To Chair Kinsey and Coastal Commission members,

I am a Sierra Club outings leader and have used Ontario Ridge for many years. I was disheartened to see the ugly fences and signs try to keep me from using a public easement. I was heartened when the Coastal Commission has a staff recommendation to order a Cease and Desist to require the removal of the ugly fences and signs. I urge the Commission to issue this order and to use its new power to fine, preferably at the highest level possible. If done, this will be a deterrence to those in the future who think that they can deny coastal access because they are billionaires.

Thank you,

David Georgi, professor emeritus  
California State University  
243 Vista Del Mar  
Shell Beach, CA 93449  
[REDACTED]

**Johnston, Heather@Coastal**

---

**From:** S Kent [REDACTED]  
**Sent:** Tuesday, July 08, 2014 8:30 PM  
**To:** Johnston, Heather@Coastal  
**Subject:** Ontario Ridge Trail

**Re: Agenda Items F10 & F11 (Ontario Ridge Trail; Cease and Desist Order and Notice of Violation against Robert and Judith McCarthy)**

**Dear Chair Kinsey and Members of the Coastal Commission:**

**Please follow your staff's recommendation to issue a Cease and Desist Order and a Notice of Violation to the McCarthy's for blocking public access to the recreational easement on their property. The McCarthy's construction of fences across and along the easement, and their failure to remove them, clearly violate the Coastal Act.**

**Also, if ever there was a case where the Coastal Commission should impose fines to deter violators from blocking access to the coast, this is it!**

**Please issue the Cease and Desist Order and Notice of Violation, and also impose a hefty fine on the McCarthy's to deter others from blocking the public's access.**

**Thank you,**

**Susan Kent  
344 Possumwood Ridge  
Aptos, CA 5003**

**Johnston, Heather@Coastal**

---

**From:** Judy West [REDACTED]  
**Sent:** Tuesday, July 08, 2014 6:09 PM  
**To:** Johnston, Heather@Coastal  
**Subject:** Agenda items F10 and F11

July 8, 2014. This email is regarding: Agenda items F10 and F11. ) Ontario Ridge-cease and deist order and notice of violation against Robert and Judith McCarthy.

Dear Chair Kinsey and members of the Coastal Commission,

Please follow your staff's recommendation to issue a Cease and Desist order and notice of violation to the McCarthy's for blocking public access to the recreational easement on their property. The McCarthy's construction of fences across and along the easement , and their failure to remove them violates the Coastal Act.

Please issue the Cease and Desist order and notice of violation along with a very hefty fine. This fine will send a message to others who think they can block public easement.

I have been hiking Ontario Ridge for five years now along with so many other hikers from this area. It is appalling that one family with power and money can try and take away what has been enjoyed by so many for so long.

Thank you for your time,

Judy West  
1278 12th street  
Los Osos CA 93402

**Johnston, Heather@Coastal**

---

**From:** Perry Judd [REDACTED]  
**Sent:** Tuesday, July 08, 2014 6:24 PM  
**To:** Johnston, Heather@Coastal  
**Subject:** Re: Agenda Items F10 & F11 (Ontario Ridge Trail; Cease and Desist Order and Notice of Violation against Robert and Judith McCarthy)

To: California Coastal Commission

Re: Agenda Items F10 & F11 (Ontario Ridge Trail; Cease and Desist Order and Notice of Violation against Robert and Judith McCarthy)

Dear Chair Kinsey and Members of the Coastal Commission:

I've been closely following the events related to the McCarthy's efforts to close off public access to the Ontario Ridge. Since 1977 I've been hang gliding, mountain biking or hiking the ridge. As an individual who has been freely accessing this unique and rare piece of coastal open space I strongly urge the Commission to take action to protect our rights to continue to enjoy it.

Please support staff's recommendation to issue a Cease and Desist Order and a Notice of Violation to the McCarthy's for blocking public access to the recreational easement on their property. The McCarthy's construction of fences across and along the easement, and their failure to remove them, clearly violate the Coastal Act. It is unfortunate the McCarthy's who only recently purchased this property, did not take the time to investigate it's history and the publics enjoyment of it. Sadly they've chosen to attempt to shut us out instead of embracing the public and find a way to develop the property to make it a win win for all involved.

Thank you,

---

Perry Judd  
229 Seaview Ave

Shell Beach, CA 93449

[REDACTED]

**Johnston, Heather@Coastal**

---

**From:** Ginger Cochran [REDACTED]  
**Sent:** Tuesday, July 08, 2014 7:30 PM  
**To:** Johnston, Heather@Coastal  
**Subject:** Re: Agenda Items F10 & F11 (Ontario Ridge Trail; Cease and Desist Order and Notice of Violation against Robert and Judith McCarthy)

Dear Chair Kinsey and Members of the Coastal Commission:

Please follow your staff's recommendation to issue a Cease and Desist Order and a Notice of Violation to the McCarthy's for blocking public access to the recreational easement on their property. The McCarthy's construction of fences across and along the easement, and their failure to remove them, clearly violate the Coastal Act.

I have been hiking this trail for 10 years multiple times a week. I have lived here my entire life and have built my career here because I enjoy our beautiful environment we have worked so hard to create. Please help us save it.

Please issue the Cease and Desist Order and Notice of Violation.

Thank you,  
Ginger Cochran  
851 Tulare street Pismo Beach Ca 93449

--

\*\*\*\*\*

Ginger C. Cochran, MS, RDN, ACSM-HFS  
Registered Dietitian Nutritionist  
Certified Wellcoach®  
Cel. 805.748.8194

\*\*\*\*\*

**Johnston, Heather@Coastal**

---

**From:** Charles Beaudoin [REDACTED]  
**Sent:** Tuesday, July 08, 2014 6:35 PM  
**To:** Johnston, Heather@Coastal  
**Subject:** Re: Agenda Items F10 & F11 (Ontario Ridge Trail; Cease and Desist Order and Notice of Violation against Robert and Judith McCarthy)

**Dear Chair Kinsey and Members of the Coastal Commission:**

**Please follow your staff's recommendation to issue a Cease and Desist Order and a Notice of Violation to the McCarthy's for blocking public access to the recreational easement on their property. The McCarthy's construction of fences across and along the easement, and their failure to remove them, clearly violate the Coastal Act.**

**Also, if ever there was a case where the Coastal Commission should impose fines to deter violators from blocking access to the coast, this is it!**

**Please issue the Cease and Desist Order and Notice of Violation, and also impose a hefty fine on the McCarthy's to deter others from blocking the public's access.**

**Thank you,  
Charlie Beaudoin  
3450 Shearer Ave Cayucos CA 93430**

Sent from my iPad



## Johnston, Heather@Coastal

---

**From:** Maria Santos [REDACTED]  
**Sent:** Tuesday, July 08, 2014 8:47 PM  
**To:** Johnston, Heather@Coastal; Tarren Collins  
**Subject:** Ontario Ridge Trail

California Coastal Commission

Sent via email to [Heather.Johnston@coastal.ca.gov](mailto:Heather.Johnston@coastal.ca.gov)

Re: Agenda Items F10 & F11 (Ontario Ridge Trail; Cease and Desist Order and Notice of Violation against Robert and Judith McCarthy)

Dear Chair Kinsey and Members of the Coastal Commission:

Please follow your staff's recommendation to issue a Cease and Desist Order and a Notice of Violation to the McCarthy's for blocking public access to the recreational easement on their property. The McCarthy's construction of fences across and along the easement, and their failure to remove them, clearly violate the Coastal Act.

Also, if ever there was a case where the Coastal Commission should impose fines to deter violators from blocking access to the coast, this is it!

Please issue the Cease and Desist Order and Notice of Violation, and also impose a hefty fine on the McCarthy's to deter others from blocking the public's access.

I hike alone on a regular basis as well as with Central Coast Hiking Group and Ontario Ridge is one of my favorite trails. It is hiked by many people daily. It is a shame that Mr. McCarthy is unwilling to adhere to the orders set by the Coastal Commission. Please take the necessary action to remove those fences and allow us to hike on the "ridge".

Respectfully submitted,

Maria Santos

**Johnston, Heather@Coastal**

---

**From:** Marcia Guthrie [REDACTED]  
**Sent:** Tuesday, July 08, 2014 7:29 PM  
**To:** Johnston, Heather@Coastal  
**Subject:** Agenda Items F10 & F11 (Ontario Ridge Trail; Cease and Desist Order and Notice of Violation against Robert and Judith McCarthy)

Please follow your staff's recommendation to issue a Cease and Desist Order and a Notice of Violation to the McCarthy's for blocking public access to the recreational easement on their property. The McCarthy's construction of fences across and along the easement, and their failure to remove them, clearly violate the Coastal Act.

Also, if ever there was a case where the Coastal Commission should impose fines to deter violators from blocking access to the coast, this is it!  
Please issue the Cease and Desist Order and Notice of Violation, and also impose a hefty fine on the McCarthy's to deter others from blocking the public's access.

I've been hiking this trail for many years and find it appalling at the lack of respect for the Coastal Commission, the Coastal Act and the total disregard to the many individuals who regularly hike this trail.

Marcia Guthrie  
112 Frances Way  
Pismo Beach, CA 93449  
(805) 709-0500

Thank you,

**Johnston, Heather@Coastal**

---

**From:** seth souza [REDACTED]  
**Sent:** Wednesday, July 09, 2014 8:19 AM  
**To:** Johnston, Heather@Coastal  
**Subject:** Re: Agenda Items F10 & F11 (Ontario Ridge Trail; Cease and Desist Order and Notice of Violation against Robert and Judith McCarthy)

California Coastal Commission

Sent via email to [Heather.Johnston@coastal.ca.gov](mailto:Heather.Johnston@coastal.ca.gov)

Re: Agenda Items F10 & F11 (Ontario Ridge Trail; Cease and Desist Order and Notice of Violation against Robert and Judith McCarthy)

Dear Chair Kinsey and Members of the Coastal Commission:

Please follow your staff's recommendation to issue a Cease and Desist Order and a Notice of Violation to the McCarthy's for blocking public access to the recreational easement on their property. The McCarthy's construction of fences across and along the easement, and their failure to remove them, clearly violate the Coastal Act.

Also, if ever this was a case where the Coastal Commission should impose fines to deter violators from blocking access to the coast, this is it!

Please issue the Cease and Desist Order and Notice of Violation, and also impose a hefty fine on the McCarthy's to deter others from blocking the public's access.

I have been going up and down this hill for fifteen plus years, how anyone feel they can shut it off to the public is beyond me. I use the hill for training purposes for obstacle course racing, trail running, I also bring all my visitors to Ontario Ridge for the Sunsets and views when they come into town. Please keep this open for us to enjoy, thanks so much for your time!

Thank you very much,

Seth Souza  
291 S. Halcyon Rd #11 Arroyo Grande, Ca. 93420

**Johnston, Heather@Coastal**

---

**From:** Bridget Benson [REDACTED]  
**Sent:** Wednesday, July 09, 2014 8:32 AM  
**To:** Johnston, Heather@Coastal  
**Subject:** Fwd: Agenda Items F10 & F11 (Ontario Ridge Trail; Cease and Desist Order and Notice of Violation against Robert and Judith McCarthy)

**Dear Chair Kinsey and Members of the Coastal Commission:**

**Please be sure to keep the Ontario Ridge Trail open to the public. I hike the trail monthly and truly enjoy the expansive view of Avila Bay (especially at sunset) the trail offers. Closing the trail would be a tragedy for outdoor enthusiasts like myself.**

Thank you,

**Bridget Benson  
Grover Beach, CA**

**Johnston, Heather@Coastal**

---

**From:** Kriste Judd [REDACTED]  
**Sent:** Wednesday, July 09, 2014 8:22 AM  
**To:** Johnston, Heather@Coastal  
**Subject:** Agenda Items F10 & F11 (Ontario Ridge Trail; Cease and Desist Order and Notice of Violation against Robert and Judith McCarthy)

To: California Coastal Commission

Re: Agenda Items F10 & F11 (Ontario Ridge Trail; Cease and Desist Order and Notice of Violation against Robert and Judith McCarthy)

Dear Chair Kinsey and Members of the Coastal Commission:

I've been closely following the events related to the McCarthy's efforts to close off public access to the Ontario Ridge. Since 1977 I've been hang gliding, mountain biking or hiking the ridge. As an individual who has been freely accessing this unique and rare piece of coastal open space I strongly urge the Commission to take action to protect our rights to continue to enjoy it.

Please support staff's recommendation to issue a Cease and Desist Order and a Notice of Violation to the McCarthy's for blocking public access to the recreational easement on their property. The McCarthy's construction of fences across and along the easement, and their failure to remove them, clearly violate the Coastal Act. It is unfortunate the McCarthy's, who only recently purchased this property, did not take the time to investigate it's history and the publics enjoyment of it. Sadly they've chosen to attempt to shut us out instead of embracing the public and find a way to develop the property to make it a win win for all involved.

Thank you,

---

Kriste Judd  
229 Seaview Ave

Shell Beach, CA 93449

**Johnston, Heather@Coastal**

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**From:** Kim Malcom [REDACTED]  
**Sent:** Wednesday, July 09, 2014 10:52 AM  
**To:** Johnston, Heather@Coastal  
**Subject:** Ontario Ridge Trail

Dear Chair Kinsey and Members of the Coastal Commission:

I am writing to ask that you keep the Ontario Ridge Trail open to the public. I hike the trail regularly and truly enjoy the what the trail offers. It is the best local trail to hike when I have limited time and want to get exercise to stay healthy. My friends use it to train for events such as the Mud Mash in Slo and the adventure race in Santa Margarita, both of which support our local economy. This is the best technical, challenging, and geographically accessible hill in the area. Closing the trail would be a tragedy for outdoor enthusiasts like myself.

With sincere thanks,

Kim Malcom  
Arroyo Grande, CA

**Johnston, Heather@Coastal**

---

**From:** Sue Sloan [REDACTED]  
**Sent:** Wednesday, July 09, 2014 1:48 PM  
**To:** Johnston, Heather@Coastal  
**Subject:** Ontario Ridge

Dear Chair Kinsey and Members of the Coastal Commission:

Please follow your staff's recommendation to issue a Cease and Desist Order and a Notice of Violation to the McCarthy's for blocking public access to the recreational easement on their property. The McCarthy's construction of fences across and along the easement, and their failure to remove them, clearly violate the Coastal Act.

Also, if ever there was a case where the Coastal Commission should impose fines to deter violators from blocking access to the coast, this is it!

Please issue the Cease and Desist Order and Notice of Violation, and also impose a hefty fine on the McCarthy's to deter others from blocking the public's access.

Thank you,  
Susan Sloan

334 Morro Avenue  
Shell Beach, CA 93449

# LAW OFFICE OF TARREN COLLINS

P.O. Box 3063  
Shell Beach, CA 93448  
Tel: (805) 773-0233

July 9, 2014

California Coastal Commission

Sent via email to [Heather.Johnston@coastal.ca.gov](mailto:Heather.Johnston@coastal.ca.gov)

**Re: Agenda Items F10 & F11** (Ontario Ridge Trail; Cease and Desist Order and Notice of Violation against Robert and Judith McCarthy)

Dear Chair Kinsey and Members of the Coastal Commission:

I am a Shell Beach resident and an attorney specializing in land use and Coastal Act issues. I hike the Ontario Ridge Trail five to six times a week, and I have been hiking there regularly since 2001. This is a very popular trail, with exceptional views of the coast line.

Please follow your staff's recommendation to issue a Cease and Desist Order and a Notice of Violation to the McCarthy's for constructing illegal fences blocking public access to the recreational easement on their property. The McCarthy's construction of fences across and along the easement, and their failure to remove them, clearly violate the Coastal Act.

You might imagine how we watched with dismay as the McCarthy's erected 6 foot fences in December and January, eventually blocking our access to a public recreational easement with tall fences, barbed wire wrapped gates and "No Trespassing" signs. Many of us who hike this trail contacted Coastal Commission staff and the County of San Luis Obispo to protest.

To let my fellow hikers know what they could do to fight for our right to hike this trail, I created the "Save Ontario Ridge Trail" Facebook page, which has 1588 followers in agreement that the unpermitted fences, gates and signs must be removed as expeditiously as possible.

I commend your staff for their excellent work on this disturbing matter of illegal fences blocking our access to a popular hiking trail on a deeded public recreational easement. In particular, I thank Linda Locklin, Dan Carl, Heather Johnston and your Executive Director Dr. Charles Lester for their exemplary work to free our trail from the gestapo-like tactics employed by the McCarthy's.

Your staffs' excellent report makes it crystal clear that the fences, gates and signs erected by Robert and Judith McCarthy are in violation of the Coastal Act and must be removed. Your staff demolishes the McCarthy's quasi legal arguments. The McCarthy's have no legally justified defense for refusing to remove their impediments to a public recreational easement long used by hikers. (Your staff has documented public use of this trail back to 1960.) The illegal fences and gates also impede wildlife, and obstruct the spectacular views of the coast.



California Coastal Commission Comment  
Ontario Ridge Trail  
July 9, 2014  
Page Two

The McCarthy's exhibited a blatant disregard for the public's easement rights when knowingly fencing off the public trail on Ontario Ridge. Their continued refusal to comply with your staffs patient efforts to resolve this situation amicably, along with their self-serving statements, bring to mind the image of a two year-old with his fingers stuck in his ears screaming "LALALALA!" Clearly no one can reason with these folks regarding their malicious actions. The McCarthy's are literally the "poster child" for you to exercise of your new power to levy administrative fines!

Therefore, if ever there was a case where the Coastal Commission should impose fines to deter violators from blocking access to the coast, this is it!

Please issue the Cease and Desist Order and Notice of Violation, and also impose a hefty fine on the McCarthy's to deter others from blocking the public's access.

Sincerely,

Tarren Collins

**Johnston, Heather@Coastal**

---

**From:** R. Craig Gamma [REDACTED]  
**Sent:** Tuesday, July 08, 2014 5:37 PM  
**To:** Johnston, Heather@Coastal  
**Subject:** Agenda Items F10 & F11 (Ontario Ridge Trail)

**California Coastal Commission**

**Re: Agenda Items F10 & F11 (Ontario Ridge Trail; Cease and Desist Order and Notice of Violation against Robert and Judith McCarthy)**

**Dear Chair Kinsey and Members of the Coastal Commission:**

Although, I hike the Ontario Ridge Trail quite often with my wife, I believe the McCarthys should have the right to protect their own property from trespassers. Hence, please *do not* follow your staff's recommendation to issue a Cease and Desist Order and a Notice of Violation to the McCarthys for blocking public access to their property. The McCarthy's construction of fences along their property line should be everyone's right in the USA.

Please *do not* issue the Cease and Desist Order and Notice of Violation, and *do not* impose a fine on the McCarthys.

Thank you,  
Raymond Gamma  
2405 Sandpiper Drive  
Santa Maria, CA 93455



NOSSAMAN LLP

ATTORNEYS AT LAW

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Suite 1800  
Irvine, CA 92612  
T 949.833.7800  
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Gregory W. Sanders  
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gsanders@nossaman.com

VIA FEDEX AND VIA EMAIL

Refer To File #: 400494-0001

July 8, 2014

Steve Kinsey, Chair and  
Members of the California Coastal  
Commission  
45 Fremont Street, Suite 2000  
San Francisco, CA 94105

Re: Cease and Desist Order No. CCC-14-CD-02 and Notice of Violation No. CCC-14-NOV-01 Public Hearings - Rob and Judy McCarthy

Dear Chair Kinsey and Members of the Commission:

We continue to represent Rob and Judi McCarthy with regard to proposed Cease and Desist Order No. CCC-14-CD-02 and Notice of Violation No. CCC-14-NOV-01 (collectively, "Enforcement Action"). The purposes of this letter are to provide you with a) a supplement to the McCarthy's defenses to the Enforcement Action; b) the complete record of events that led to the installation of fences and a gate on the McCarthy's property (the "Property"); c) the record of the efforts that have been made to improve the location of the County's easement over the Property; and d) a recommended course of action to resolve the dispute.

**Supplement of McCarthy's Defense to the Enforcement Action**

**1. The Coastal Commission Lacks Jurisdiction To Enforce Public Access Over the Property.** In the February 20, 2014 Notice of Violation of the California Coastal Act sent by the Coastal Commission to the McCarthy's ("Notice of Violation"), the Commission staff refers to the area in which the Property is located as a "vital link in the Ontario Ridge Trail, a heavily-used system of trails that affords public pedestrian access to the coast." It is apparent that the Commission staff chose its words carefully in an attempt to create the inference that the so-called "system of trails" is part of a public trail system that connects to the Bob Jones and other public trails in the area. There is no evidence in the record that the public has any ownership interest or right to use any of the "trails" in the so-called Ontario Ridge System of Trails. In fact, none of the "trails" in the Ontario Ridge "system of trails" are in public ownership and, to our knowledge, no permission has been granted for use of the "trails" by the general public.

This distinction is important because, as discussed in our letter to Heather Johnston of the Commission staff of March 6, 2014, without a trail that is lawfully available for use by the public, the County easement located on the Property cannot provide access to the coast as the Commission contends in the Notice of Violation. In the Enforcement Action staff report, the Commission staff relies on an alleged historic use of the "Ontario Ridge Trail" and other "trails"

in the area of the Property for the proposition that the public has a right to use the "system of trails" and that the Commission may, therefore, conclude that the County easement on the Property leads to the ocean. (See Commission response to McCarthy Statement of Defense, page 23: "... since the [McCarthy's] fences and the gate have blocked access to a portion of the Ontario Ridge Trail, the McCarthys are obstructing legal access to the tidelands.")

In LT-WR, LLC v. California Coastal Commission ((2007) 152 Cal. App. 4<sup>th</sup> 770), the court ruled that Commission cannot act in such a way as to decree a prescriptive right. In so ruling, the court determined that the "Commission is not vested with the authority to adjudicate the existence of prescriptive rights for public use of privately owned property." Determination of the existence of a prescriptive right is the province of the courts. The only theory by which the Coastal Commission can determine that the so-called Ontario Ridge System of Trails feeds the County easement and provides access to the ocean is to conclude that a prescriptive right in favor of the public exists in the "system of trails." This the Commission cannot do. Thus, the Commission staff's reliance on the Ontario Ridge "system of trails" that somehow feed the County easement on the Property and lead to the ocean has no legal basis. As a result, in terms of public access, the County easement leads in one direction – away from the ocean. Accordingly, as documented in our letter to you of March 6, 2014, the Commission cannot find and is without jurisdiction to enforce any finding that the McCarthys are blocking or impeding public access.

**2. The County Easement Cannot be Accessed by the Public Without Approval of a Coastal Development Permit or De Minimus Waiver.** The Commission staff asserts that for the County easement to be opened to the public as a trail, no coastal development permit is required because "the creation of an easement does not necessarily have an effect on the intensity of use of that land." (Commission Response to Statement of Defense, p. 22.) On its face, this conclusion is illogical. Any publicly acquired right to use the "trail" that traverses the County easement will most certainly result in an increase in use when the availability of the trail is promoted and the public learns of its lawful availability for hiking. In Pacific Palisades Bowl Mobile Estates LLC v. City of Los Angeles ((2012) 55 Cal. 4<sup>th</sup> 783) the California Supreme Court addressed the question of an increase in the intensity of use of land under the definition of "development" in the Coastal Act. In that case, the Supreme Court determined that a requirement to comply with the permit requirements of the Coastal Act cannot be skirted by an assertion that a conversion in the nature of ownership of property will have no impact on the intensity of land use. "In the first place, that a conversion might not immediately alter use of land does not preclude the possibility it will lead to an increase in the density or intensity of use . . ." Further, the Supreme Court noted that the Coastal Act "accounts for the possibility a proposed project may not affect coastal resources by conferring authority on the executive director of the Coastal Commission, after a public hearing, to issue 'waivers from coastal development permit requirements for any development that is de minimus.'" Inasmuch as there has been no coastal development permit issued for use of the County easement as a public trail or de minimus waiver approved, the County easement cannot be used by the public as a trail. Accordingly, the Commission cannot maintain the Enforcement Action on the basis that the McCarthys have blocked access to a public trail.

**3. The Coastal Commission Staff's Allegations Are Not Supported by Evidence.** The Enforcement Action is replete with allegations that are not supported by any evidence, to wit:

- A. The property is home to various sensitive habitat areas.
- B. The signs, gates, fences, footings and support structures preclude wildlife movement on the Property.
- C. The signs, fences and gates on the Property preclude public use of the portion of the Ontario Ridge Trail on the McCarthy's property.
- D. The fences and gate on the Property constitute substantial impediments to access and views, including views of the tidelands.
- E. The McCarthys erected intentionally misleading signs.
- F. The width of the gate results in an unlawful reduction in the size of the County easement.
- G. The McCarthys will suffer no liability in the event of injuries, or worse, sustained on the Property.
- H. The McCarthys breached a confidentiality requirement by revealing the substance of negotiations to settle the Enforcement Action.
- I. The McCarthys knowingly undertook "development" on the Property without a coastal development permit.
- J. Harm resulting from unpermitted development on the Property is significant.

**Record of Events Leading to Installation of Fences and Gate**

As the letter of February 7, 2014 from Kami Griffin, Assistant Director, Planning and Building Department, County of San Luis Obispo attached hereto as Exhibit "A" attests, the County of San Luis Obispo had informed the McCarthys that no coastal development for erection of the fences and gates on the Property would be required. (The McCarthys were unaware of the County easement themselves until informed of its existence by Ms. Griffin's letter. The documents creating the easement were not recorded until shortly before the escrow closed on the McCarthy's acquisition of the Property and after the preliminary title report for the Property was prepared.) The McCarthys proceeded in good faith reliance to erect the fences and gate on the opinion of the County that such fences and gate are exempt from the requirement to obtain a coastal development permit. Only after the County discovered that it owns the County easement did the County Department of Planning and Building reverse its position and inform the McCarthys of the change in the County's position. Thus, the Finding of Fact proposed by the Commission staff that "the McCarthys knowingly undertook 'development' [on the property] . . . as defined by Coastal Act Section 30106, without a coastal development permit" is unfounded and counterfactual. As the record clearly shows, the McCarthys were informed by the County that no coastal development permit would be required. Further, the basis for the determination by Ms. Griffin is not legally sufficient as there has been no coastal development permit approved

for the County easement, as discussed above. Until such time as a coastal development permit is approved, no legal access by the public has been obstructed or impeded.

As we advised in our letter of March 6, 2014, the McCarthys were motivated, in part, to erect the fences and gate to protect those using the easement on their property from obvious dangerous conditions. The rough, uneven, rock strewn "trail" that traverses the County easement, coupled with slopes in places that exceed 40 to 50 degrees make for treacherous hiking conditions. As documented in our letter of March 6, serious accidents have occurred on the Ontario Ridge "system of trails." Another accident occurred on Saturday, July 5, 2014 for which an incident report was taken by the San Luis Obispo County Sheriff's Department. A copy of the incident report will be provided to the Commission prior to the Enforcement Action hearing.

#### **Efforts Made to Improve the Location of the County Easement**

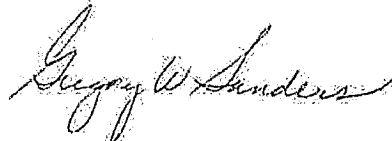
As the copy of an email from Rob McCarthy to San Luis Obispo County Supervisor Adam Hill, dated March 13, 2013 attached hereto as Exhibit "B" attests, the record is clear that the McCarthy's have acted in a responsible manner with regard to the presence of the "trail" on the Property. Long prior to the eruption of the dispute over the fences and gate, Mr. McCarthy engaged a consultant, had plans prepared for relocation of the County easement (which the easement document gives him the clear right to do) and engaged County of San Luis Obispo staff and policy makers in a dialogue to improve the location of the trail. Unfortunately, the County did not respond to Mr. McCarthy's offers. Through the undersigned, the McCarthys have also expressed a desire to resolve the dispute with the Coastal Commission. As discussed below, the McCarthys reiterate their desire to resolve the dispute in an amicable fashion that will result in an improved location for the trail that presently traverses the County easement.

#### **Recommended Course of Action to Resolve the Fences and Gate Dispute**

The McCarthys believe the most expeditious manner to resolve the dispute over the fences and gates on the Property is for the Commission to engage in a cooperative effort with them and the County of San Luis Obispo to move the County easement to a safer location that will be traversable by more members of the public. The McCarthys reiterate the offer made to the County of San Luis Obispo to relocate the trail as memorialized in the attached copy of Mr. McCarthy's email of March 13, 2013.

Thank you for your attention to this matter.

Sincerely,



Gregory W. Sanders  
of Nossaman LLP



SAN LUIS OBISPO COUNTY

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## DEPARTMENT OF PLANNING AND BUILDING

Promoting the wise use of land - Helping to build great communities

February 7, 2014

Gregory W. Sanders  
Nossaman LLP  
18101 Von Karman Ave, Suite 1800  
Irvine, Ca 92612

SUBJECT: Parcel 2 – COAL 96-036 – Fencing and Associated Development

Mr. Sanders:

Thank you for your letter dated February 3, 2014. As you are aware, a dispute resolution hearing has been scheduled for Thursday, February 13, 2014 with the California Coastal Commission regarding fencing and associated development (e.g., poles, gates, signs, etc.) located on and around the above referenced parcel.

As part of materials submitted to the Coastal Commission, the Department of Planning and Building was made aware of recorded public access easement granted for recreational and other purposes in the general location of the existing trail on Parcel 2 of COAL 96-036. As this easement has been brought to the Department's attention, it has modified the position of the Department relative to the need for a permit for the erection of a fence that obstructs legal access to or views of the tidelands, as well as its associated development (e.g., poles, gates, signs, etc.).

As the easement is available to the public for recreational purposes and provides legal access to and views of the tidelands, the Department has determined that the erection of the fence and related development on your clients' property is not exempt from the requirement to obtain a Coastal Development Permit.

The fence and associated development (e.g., poles, gates, signs, etc.) are unpermitted and need to be removed. If your clients desire to install fencing and related development, a Coastal Development Permit (CDP) will be required to be obtained. Until such time as a Coastal Development Permit has been applied for and granted, the County will be requesting that the Coastal Commission assume primary enforcement authority with regard to this violation pursuant to Public Resources Code Section 30810. This could include the issuance of a cease and desist and restoration order for all of the unpermitted development.

If you have any questions relative to this letter, please feel free to contact me directly at [kgriffin@co.slo.ca.us](mailto:kgriffin@co.slo.ca.us) or (805) 781-5708.

Sincerely,

Kami Griffin, Assistant Director  
Planning and Building Department

EXHIBIT A

## **Rob McCarthy**

---

**From:** Rob McCarthy  
**Sent:** Wednesday, March 13, 2013 9:16 PM  
**To:** 'Adam Hill (ahill@co.slo.ca.us)'; 'Curtis Black (cblack@co.slo.ca.us)'; 'Shaun Cooper (secooper@co.slo.ca.us)'; 'Jeff Smith (jeffrey@jgsdesigns.com)'; 'rhostetter@co.slo.ca.us'; 'Elizabeth Kavanaugh (ekavanaugh@co.slo.ca.us)'; 'Steven McMasters (smcmasters@co.slo.ca.us)'  
**Subject:** Today's Meeting Recap

Everyone –

Thanks to everyone to agreeing to meet with me and Jeff today. I appreciate that you were willing to sit down and explain to me your decisions regarding the County project at Cave Landing. If I can I would like to help the project succeed. My goal is that the very best project gets done, a project that everyone can be proud of. I would like to contribute in any way that I can. However, it is my understanding from our meeting today that there is really no way for me to contribute.

I want to make sure that I didn't misunderstand anything today so I am sending you all this recap of the meeting from my point of view. If you have any serious disagreement with my characterization then please let me know.

In roughly the order of the meeting –

1. I brought up as a first point of cooperation the north (uphill) side of Cave Landing Road. I suggested that we cooperate on the landscaping on that side of the road to discourage parking in order to keep an emergency lane available. Curtis said that was not the Parks Dept. responsibility, and that I should contact Public Works and apply for an encroachment permit to plant next to the road.
2. Elizabeth explained that the last section of Cave Landing Road was going to be pyloned off, and that an emergency vehicle could remove the pylons if they needed the extra space to turn around. She indicated there may still be a problem with emergency turns.
3. Elizabeth explained that the limited parking in the proposed lot (from roughly 100 spots down to roughly 35 spots) was due to the need for space for swales to absorb diverted water from the new trail.
4. Curtis showed a drawing with expected runoff amounts – Q100 at 130 CFS, i.e. a hundred year storm would deliver about 1000 gallons a second!
5. I offered to deliver both power and water to the parking lot for use for real bathrooms, drinking fountains, faucets, and irrigation. I also offered to pay for the bathrooms. Curtis and Shaun explained that a Coastal Commission staff person (I suppose Daniel Robinson or Dan Carl) decided that an outhouse was what they would be willing to approve, and that a fully functioning bathroom was unacceptable to the Coastal Commission. They also explained that the septic system and leech field was unacceptable to the Coastal Commission staffer.
6. I offered to deliver water for irrigation. Curtis and Shaun explained that no irrigation was necessary.
7. I offered to at least stub off water and power so that if the County changed their mind sometime in the future that they could then easily access the utilities. They indicated that was OK, but they foresaw no need ever for it.
8. Elizabeth explained that the parking lot was to be paved instead of gravel because the Coastal staff person did not want water to percolate underneath the parking lot.
9. Elizabeth explained that the location of the outhouse on the existing drawing was incorrect and that the Coastal staff person had decided that the outhouse should be on the east side of the trailhead, right next to the proposed picnic tables. This would give the required 25 ft. offset from the active roadway.
10. I offered to coordinate the native plant landscaping on my property with the native plants chosen by the County for the revegetation of the existing lower parking lot. Curtis explained that the plant types had not been selected yet, but in any case were going to be selected based on their ability act as swale and not for decorative purposes. Curtis explained that the County has no plans to plant anything for decorative purposes.



11. Curtis also explained that \$42,000 per year is budgeted toward the project for maintenance, and that would primarily be spent for trash pickup.
12. Jeff showed everyone an existing project that he had recently done using a "living" roof. Curtis expressed some interest in that idea, as sort of an awning over a prefab outhouse. I offered to pay for the installation and maintenance of the "living" roof.
13. We then moved onto the issue of public trails. I explained my problem with the existing cell tower access road, as it has 40% to 50% slopes. I then showed two different drawing, one with a 20% slope on lot #1, and another with a 20% slope on lot #3.
14. Curtis explained that the Parks Dept. wanted trails with no more than 12% slopes, but that he wanted to study the drawings in more detail. I said I would email the proposed trail drawings to him. BTW – I don't believe that it is possible to create a trail with 12% slopes from Cave Landing Road to Ontario Ridge at any location.
15. The final issue I brought up was about doing something nice for Barbara Baker to thank her for the donation of the Cave Landing property to the County. Adam expressed an interest in this. I promised to put Adam in contact with Mrs. Baker so that he could meet with her. I mentioned that Mrs. Baker is a very shy person, and that Adam may end up meeting with Ray Gallo (her lawyer) instead.

To summarize – SLO County Parks does not want utilities (water and power) at Cave Landing, even if there is zero cost. My offer to donate to pay for real bathrooms is impossible because the Coastal Commission staff wants outhouses only. There is no reason to coordinate on landscaping since the only planting that SLO County Parks plans to do is for the swales at the bottom of the existing dirt parking lot, and those plants are to be chosen for their water absorption ability and not for decoration. Since SLO County Parks only allows trails with a maximum of 12% slopes it is unlikely that any trails will ever be acceptable for Cave Landing Road up to Ontario Ridge. It is possible that I could help with a "living" roof for the outhouses.

After reading over my notes of our meeting, and having recently gone through my own Coastal Commission hearing, my input is this – if the SLO County Supervisors want real public bathrooms and drinking fountains instead of outhouses at Cave Landing there is no possible way that the full Coastal Commission would deny them, despite what any Coastal Commission staff person might have decided.

Thank you once again ...

Rob McCarthy  
[rob@lightspeedsystems.com](mailto:rob@lightspeedsystems.com)

**CALIFORNIA COASTAL COMMISSION**

45 FREMONT STREET, SUITE 2000  
SAN FRANCISCO, CA 94105-2219  
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TDD (415) 597-5885



# F10 & 11

Staff: Heather Johnston – SF  
Staff Report: June 27, 2014  
Hearing Date: July 11, 2014

## **STAFF REPORT: Recommendations and Findings for Cease and Desist Order and Recordation of a Notice of Violation**

<b>Cease and Desist Order No.:</b>	<b>CCC-14-CD-02</b>
<b>Notice of Violation No.:</b>	<b>CCC-14-NOV-01</b>
<b>Related Violation File:</b>	<b>V-3-14-0012</b>
<b>Property Owner:</b>	Robert and Judith McCarthy
<b>Location:</b>	Property identified by County of San Luis Obispo as Assessor's Parcel Numbers 076-231-063 and 076-231-065.
<b>Violation Description:</b>	Violations include installation of unpermitted fencing, gates, signage, footings and support structures. This unpermitted development precludes wildlife ingress and egress from the property; physically and psychologically dissuades and prevents use of a public trail; and impedes public views of the coast from the public trail.
<b>Persons Subject to these Orders:</b>	Robert and Judith McCarthy
<b>Substantive File Document:</b>	1. Public documents in Cease and Desist Order file No. CCC-14-CD-02 and Notice of Violation file No. CCC-14-NOV-01  2. Appendix A, and Exhibits 1 through 28 of this staff report
<b>CEQA Status:</b>	Exempt (CEQA Guidelines (CG) §§ 15060(c)(2) and (3)) and Categorically Exempt (CG §§ 15061(b)(2), 15307, 15308, and 15321)

## **SUMMARY OF STAFF RECOMMENDATIONS**

### **A. OVERVIEW**

This action pertains to unpermitted development activities knowingly undertaken by Robert and Judith McCarthy that preclude public use of a public access trail on their vacant property in unincorporated San Luis Obispo County. Their property, identified by the San Luis Obispo County Assessor's Office as APNs 076-231-063 and 076-231-065 (collectively the "Property"), occupies approximately 37 acres of an extraordinarily scenic southwest facing hillside on the coast overlooking Pirates Cove between Avila Beach and Pismo Beach.

On or before December 31, 2013, the McCarthys erected unpermitted development on the Property<sup>1</sup> including fences, gates, signs, and footings and support structures. Specifically located so as to prevent public use of a public trail that traverses their property and forms part of the Ontario Ridge Trail system, the unpermitted development obstructs not only public access, but also coastal views and wildlife movement on the Property. The public has been using the hiking trail on this property for recreation for more than 50 years, and San Luis Obispo County obtained an affirmative easement across the same trail for pedestrian and vehicular access in 2009 from the McCarthys' predecessor-in-interest.

San Luis Obispo County (the "County") contacted the McCarthys on January 29, 2014 requesting that the unpermitted development be removed from the Property. When the unpermitted development persisted in situ, the County again sent correspondence to the McCarthys on February 7, 2014, reminding them of their obligations pursuant to the easement and demanding timely removal of impediments to the easement. The same day, in light of the unpermitted development continuing to impair the public's use of the hiking trail, the County requested that the Commission take enforcement action to rectify the violations on the Property.

Commission staff sent the McCarthys a notice of violation on February 20, 2014, requesting that the McCarthys contact Commission staff and remove the unpermitted development. Since then, Commission staff has been in contact with McCarthys' counsel and representative in an effort to reach an amicable settlement of the Coastal Act violations on the Property. These discussions have not borne fruit, however, and staff therefore recommends that the Commission find that the Property has been developed in violation of the Coastal Act, as described in the findings below, thus resulting in the recordation, by the Executive Director, of a Notice of Violation against the Property.

Additionally Commission staff recommends that the Commission approve Cease and Desist Order No. CCC-14-CD-02 (the "Order") to address unpermitted development by requiring the

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<sup>1</sup> It is possible that the McCarthys also erected portions of such unpermitted development on adjacent properties, but it has been difficult to verify this. Where this report discusses unpermitted development on the Property, it is intended to extend also to any unpermitted development that may extend onto adjacent sites as well.

July 11, 2014

removal of all gates, fences, signs, and footings and support structures from the Property and adjacent properties upon which unpermitted development may also have been placed. The proposed Order additionally would preclude the McCarthys from taking any actions to physically or indirectly impede the public's use of the Ontario Ridge Trail system, including the easement on their property.

## **B. DESCRIPTION OF PROPERTY**

The approximately 37-acre property at issue in this matter is located among a cluster of relatively undeveloped lots in unincorporated San Luis Obispo County (Exhibit 1). This area lies between the densely developed Pismo Beach area and Avila Beach, providing a visual and natural area of respite between the two. The parcel includes a southwest facing bluff that rises several hundred feet from the cliffs at Pirates Cove and crests in a hilltop knoll that looks out across Avila Beach (Exhibit 2). In recognition of the importance of this scenic area, the Property is mapped as a Sensitive Resource Area in the San Luis Obispo County Local Coastal Program ("LCP").

Having been used in the past for agriculture, today the Property is vacant and home to various sensitive habitat areas, including oak woodlands, wetland seeps, and drainages blending chaparral and grassland habitats. A remnant of historic agricultural activities, a double-track trail traverses the Property from Cave Landing Road up the knoll to the crest and from there connects to properties to the north and east. The public has been hiking on this double-track trail, which forms part of the Ontario Ridge Trail system, for more than forty years, as discussed below. The Ontario Ridge Trail provides pedestrian access to the coast at Pirates Cove, and connects myriad other trails in the area to form an extensive public recreation network that includes the Bob Jones Trail, the Sycamore Crest Trail, and the Shell Beach Bluff Trail, among others (Exhibit 3).

Further formalizing the existing hiking trail on this property, in 2009, before the McCarthys owned the Property, San Luis Obispo County obtained a 20 foot-wide easement for pedestrian and vehicular access across the Property within the footprint of the double-track trail (Exhibit 4). In doing so, the County established a written record of the public's access rights, in perpetuity, to coastal hiking trail in the County stunning views of Avila Beach. The easement was duly recorded in the chain of title for the Property with the San Luis Obispo County Recorder's Office as Document No. 2009069462; the McCarthys were therefore on notice of the existence of the access easement when they purchased the property in 2010.

## **C. SUMMARY OF VIOLATION AND PROPOSED RESOLUTION**

Violations of the Coastal Act and San Luis Obispo County LCP on the Property include: installation of signs, gates, fences, footings and support structures (Exhibit 4). This unpermitted development spans much of the McCarthys' property, precludes wildlife movement on the Property (Exhibit 5), and physically and psychologically dissuades public access to the Ontario Ridge Trail (Exhibit 6).

The proposed Order directs the McCarthys: to refrain from undertaking any unpermitted activity that physically or indirectly discourages or prevents use of the Ontario Ridge Trail; to remove all

unpermitted fences gates, signs, footings, and support structures; and to cease and desist from conducting additional unpermitted development.

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## **APPENDIX**

**APPENDIX A**                      Proposed Cease and Desist Order

## **EXHIBITS**

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CCC-14-CD-02 and CCC-14-NOV-01 (McCarthy/Ontario Ridge)  
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Exhibit 8	Map: Ontario Ridge Trail
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Exhibit 15	Photograph: Access Impediments
Exhibit 16	Photograph: View Impediments
Exhibit 17	Letter from SLO County dated 1.29.14
Exhibit 18	Letter from SLO County to McCarthys dated 2.7.14
Exhibit 19	Notice of Violation Letter from CCC to McCarthys dated 2.20.14
Exhibit 20	Letter from CCC to McCarthys dated 3.5.14
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Exhibit 22	Notice of Intent to Commence Proceedings dated 5.29.14
Exhibit 23	Photograph: Unpermitted Supports/Footings
Exhibit 24	Photograph: Fences on Property
Exhibit 25	Photograph: Visual Impacts from County Property
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Exhibit 27                      Statement of Defense dated 6.19.14

Exhibit 28                      Photograph: No Trespassing Sign

## **I.    MOTION AND RESOLUTION**

### **Motion 1:**

*I move that the Commission **issue** Cease and Desist Order No. CCC-14-CD-02 pursuant to the staff recommendation.*

Staff recommends a **YES** vote on the foregoing motion. Passage of this motion will result in the issuance of the Cease and Desist Order. The motion passes only by an affirmative vote of a majority of Commissioners present.

Resolution to Issue Cease and Desist Order:

*The Commission hereby issues Cease and Desist Order No. CCC-14-CD-02, as set forth below, and adopts the findings set forth below on grounds that development, conducted and/or maintained by the McCarthys, has occurred on property owned and operated by the McCarthys without a coastal development permit, in violation of the San Luis Obispo County LCP and the Coastal Act, and that the requirements of the Order are necessary to ensure compliance with the Coastal Act.*

### **Motion 2:**

*I move that the Commission find that the real property known as Assessor's Parcel Number 076-231-063 and 076-231-065, in San Luis Obispo County, has been developed in violation of the Coastal Act, as described in the staff recommendation for CCC-14-NOV-01.*

Staff recommends a **YES** vote on the foregoing motion. Passage of this motion will result in a formal Commission finding of a violation, and the Executive Director recording a Notice of Violation against the above-referenced property in the San Luis Obispo County Recorder's Office. The motion passes only by an affirmative vote of the majority of Commissioners present.

Resolution to Find that a Violation of the Coastal Act Has Occurred:

*The Commission hereby finds that the real property known as Assessor's Parcel Numbers 076-231-063 and 076-231-065, in San Luis Obispo County, has been developed in violation of the Coastal Act, as described in the findings below, and adopts the findings*

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*set forth below on the grounds that development has occurred without a coastal development permit.*

## II. JURISDICTION

San Luis Obispo County's Local Coastal Program ("LCP") was effectively certified by the Commission in 1987. After an LCP is certified by the Commission, authority to review coastal development permit ("CDP") applications for new development within the portion of the coastal zone covered by the LCP rests with the locality, with the Commission retaining limited appellate jurisdiction over those decisions. The Property is in the Commission's appellate jurisdiction. For San Luis Obispo County, development appealable to the Commission is defined in Section 23.01.043 of the County Code<sup>2</sup> (as well as Section 30603 of the Coastal Act) and includes (among myriad other items) development approved by the County (1) between the sea and the first public road paralleling the sea, (2) in "[a]reas possessing significant recreational value," and (3) in other Sensitive Coastal Resource Areas as mapped in the Land Use Element. The first public road paralleling the sea, as that phrase is defined in section 23.11.030 of the County Code, in the area of the Property is Avila Beach Drive, which is nearly three quarters of a mile inland and is landward of the Property. Furthermore, as discussed below, the Ontario Ridge Trail system, a portion of which traverses the Property, is one of the most popular trails in San Luis Obispo County. Additionally, the Property is mapped in the County's Land Use Element as a Sensitive Resource Area. Therefore the entirety of the Property is within the Commission's appeals jurisdiction as it is both between the first public road and the sea, located in an area possessing significant recreational value, and is a mapped Sensitive Resource Area pursuant to the County's Land Use Element.

Once the Commission has certified a locality's LCP, the locality has inherent authority, via its police power, to take enforcement actions for violations of its LCP; San Luis Obispo County's LCP also contains specific provisions on enforcement (Chapter 23.10 of the County Code). The Commission also retains enforcement authority under specific circumstances enumerated in Coastal Act Section 30810(a), to address "any requirements of a certified [LCP]" or of the Coastal Act (including unpermitted development). For example, pursuant to Section 30810(a)(1) of the Coastal Act, the Commission can issue a cease and desist order to address an LCP/Coastal Act violation within a certified area if the local government requests that the Commission assume enforcement responsibility. Via letter dated February 7, 2014, San Luis Obispo County requested that the Commission assume primary enforcement authority for the resolution of this matter (Exhibit 7). The Commission therefore has jurisdiction to issue a cease and desist order to address these violations pursuant to Section 30810(a)(1) of the Coastal Act.

Further, pursuant to Section 30812(h) of the Coastal Act, if a local government that is the coastal development permitting authority for an area requests that the Commission assist in resolution of an enforcement matter within that area, and after following the procedures discussed in Section

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<sup>2</sup> Sections 23.01.010 to 23.11.030 of the County Code constitute Title 23, which is entitled the "Coastal Zone Land Use Ordinance" and serves as one of the two primary components of the LCP.



30812 of the Coastal Act, as discussed herein, the Commission finds that a violation has occurred on a property within that area, the Executive Director must record a Notice of Violation against the real property. The Commission therefore has jurisdiction to make the findings necessary to allow the Executive Director to record a Notice of Violation against the Property.

### **III. HEARING PROCEDURES**

#### **A. CEASE AND DESIST ORDER**

The procedures for a hearing on a Cease and Desist Order are outlined in the Commission's regulation at California Code of Regulations, Title 14 ("14 CCR") Section 13185. For a Cease and Desist order hearing, the Chair shall announce the matter and request that all parties or their representatives present at the hearing identify themselves for the record, indicate what matters are already part of the record, and announce the rules of the proceeding including time limits for presentations. The Chair shall also announce the right of any speaker to propose to the Commission, before the close of the hearing, any question(s) for any Commissioner, at his or her discretion, to ask of any other party. Staff shall then present the report and recommendation to the Commission, after which the alleged violator(s) or their representative(s) may present their position(s) with particular attention to those areas where actual controversy exists. The Chair may then recognize other interested persons, after which the Commission typically invites staff to respond to the testimony and to any new evidence introduced.

The Commission will receive, consider, and evaluate evidence in accordance with the same standards it uses in its other quasi-judicial proceedings, as specified in 14 CCR Section 13185 and 13186, incorporating by reference Section 13065. The Chair will close the public hearing after the presentations are completed. The Commission may ask questions to any speaker at any time during the hearing or deliberations, including, if any Commissioner so chooses, any questions proposed by any speaker in the manner noted above. Finally the Commission shall determine, by a majority vote of those present and voting whether to issue the Cease and Desist Order, either in the form recommended by the Executive Director, or as amended by the Commission. Passage of Motion 1, above, per the Staff recommendation or as amended by the Commission, will result in the issuance of the Cease and Desist Order. Issuance of the Order will not have significant adverse effects on the environment, within the meaning of CEQA (Cal. Pub. Res. Code §§ 2100 et seq.). The Order is exempt from the requirement for the preparation of an Environmental Impact Report, based on Sections 15060(c)(2) and (3), 15061(b)(2), 15307, 15308 and 15321 of the CEQA Guidelines, which are also in 14 CCR.

#### **B. NOTICE OF VIOLATION**

The procedures for a hearing on whether a violation has occurred are set forth in Coastal Act Section 30812(c) and (d) as follows:

*(c) If the owner submits a timely objection to the proposed filing of the notice of violation, a public hearing shall be held at the next regularly scheduled commission*

*meeting for which adequate public notice can be provided, at which the owner may present evidence to the commission why the notice of violation should not be recorded. The hearing may be postponed for cause for not more than 90 days after the date of the receipt of the objection to recordation of the notice of violation.*

*(d) If, after the commission has completed its hearing and the owner has been given the opportunity to present evidence, the commission finds that, based on substantial evidence, a violation has occurred, the executive director shall record the notice of violation in the office of each county recorder where all or part of the real property is located. If the commission finds that no violation has occurred, the executive director shall mail a clearance letter to the owner of the real property.*

The Commission shall determine, by a majority vote of those present and voting, whether Coastal Act violations have occurred on the Property. Passage of Motion 2, above, will result in the Executive Director's recordation of a Notice of Violation in the San Luis Obispo County Recorder's Office.

#### **IV. FINDINGS FOR CEASE AND DESIST ORDER No. CCC-14-CD-02 AND NOTICE OF VIOLATION No. CCC-14-NOV-01<sup>3</sup>**

##### **A. DESCRIPTION OF PROPERTY**

The Ontario Ridge Trail, also known as the Avila Ridge Trail and the Shell Beach Ridge Trail, is a popular coastal trail in San Luis Obispo County that provides a pedestrian connection between the Shell Beach portion of Pismo Beach, Avila Beach Drive, and Avila Beach itself (Exhibit 8). A prescriptive rights survey conducted in 2014 by Commission public access staff to evaluate usage of the trail on the McCarthys' property resulted in the return of 281 questionnaires indicating public use of the trail dates back at least to the 1960s (a tabulation of the survey results is included as Exhibit 9).

Not only does the Ontario Ridge Trail serve as a linkage between various other trails used by the public in the area, including the Bob Jones Trail and the Shell Beach Bluff Trail, but it additionally provides pedestrian access to Pirates Cove, a 27-acre County Beach Park down coast from Avila Beach. On the McCarthys', the seaward end of the pedestrian trail lies near the parking area for Pirates Cove, and from there the trail runs northeast, rising briskly approximately 700 feet to the crest of a knoll. Views of Pirates Cove and Avila Beach are visible throughout the rise (Exhibit 10), and the top of the knoll provides a spectacular panoramic view of both Avila Beach and Shell Beach (Exhibit 11).

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<sup>3</sup> These findings also hereby incorporate by reference the Summary at the beginning of the July 27, 2014 staff report ("STAFF REPORT: Recommendations and Findings for Consent Cease and Desist Order CCC-14-CD-02 and Notice of Violation No. CCC-14-NOV-01") in which these findings appear, which section is entitled "Summary of Staff Recommendations," and the section entitled "Jurisdiction".

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Historically, the Property had been used for agriculture; the extant pedestrian trail on the Property is a historic double-track trail from the days of agricultural use and which had also been used to access communications equipment on the knoll. As agricultural use of the Property has long-since ceased, and the Property has been in disuse for many years now, a variety of significant habitats now flourish on the site, including; oak woodlands, chaparral, grasslands, and wetland seeps.

In 2009, as foreshadowed in the purchase agreement in which the County bought the parcel adjacent to and immediately southeast of the McCarthys' parcel from the McCarthys' predecessor in interest, the County obtained a 20 foot-wide easement that traversed the McCarthys' property and the adjacent property to the west – entitled the Cave Landing Access Easement and the King Easement (Exhibit 12). These easements, which were duly recorded in the County Recorder's office as Document 2009069462, are over the same historic double-track trail mentioned above and thus formally codified the paths on which the public had been hiking for years prior. The McCarthys purchased the Property in 2010 and, as discussed briefly below, subsequently applied to the County for a coastal development permit for the construction of a large residence on the Property.

#### B. DESCRIPTION OF COASTAL ACT VIOLATION

At some time on or before December 31, 2013, the McCarthys installed fences, gates, signs, and footings and support structures on the Property that preclude public use of the hiking trail on their property (Exhibit 13). The fences stretching across the southern portion of the property are well over six feet tall and are comprised of field fencing (Exhibit 14), a woven wire fence with small openings typically used to enclose livestock, which completely precludes the movement of wildlife across the property. Additionally, the signs, fences, and gates preclude public use of the portion of the Ontario Ridge Trail on the McCarthys' property (Exhibit 15) and also significantly adversely affect public views of the ocean from the portion of the trail not on the McCarthys' property (Exhibit 16), as well as views of the hillside from Cave Landing Road and the Pirates Cove parking lot area.

#### C. HISTORY OF COMMISSION ACTION ON PROPERTY

The McCarthys applied to the County for a coastal development permit for development on the Property consisting of a single family residence complex with a 5,500 square-foot main residential structure, a 1,000 secondary residential structure above a 1,000 square-foot garage, multiple retaining walls, multi-level deck areas, and a driveway winding up the slope from Cave Landing Road. The County approved CDP DRC2009-00095 on July 28, 2011, and it was appealed to the Commission on August 16, 2011. On January 10, 2013, the Commission found the appeal to raise substantial issues and therefore took jurisdiction over the permit. After a De Novo hearing on the matter, the Commission denied the McCarthys' coastal development application. Revised findings were adopted by the Commission on August 15, 2013 (<http://documents.coastal.ca.gov/reports/2013/8/Th24b-8-2013.pdf>). The McCarthys sued the Commission on March 8, 2013 over the denial of the coastal development permit.

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#### D. ENFORCEMENT ACTIVITIES

San Luis Obispo County sent the McCarthys a notification on January 29, 2014 (Exhibit 17) reminding the McCarthys that the County "...holds easements for public access and recreational purposes along the area of your property known colloquially as the Ontario Ridge Trail and the Sycamore Springs Trail." The County enclosed a copy of the 2009 easement with its letter and directed the McCarthys to remove the recently-constructed unpermitted development and impediments to the public's use of the County's easements.

When the unpermitted development obstructing public access to the hiking trails and County property remained in place, the County requested that the Commission assume primary enforcement for this matter (Exhibit 7). The County followed-up with correspondence to the McCarthys on February 7, 2014 (Exhibit 18), indicating that the development on the Property remained unpermitted, needed to be removed, and that the Commission would be taking the lead on ensuring that the Property was brought into compliance with the Coastal Act.

After continuing to receive an outpouring of public comment regarding concerns over the trail closure as a result of the unpermitted development, Commission enforcement staff sent the McCarthys a Notice of Violation letter on February 20, 2014, in which staff explained why the development was not exempt from permitting requirements, described the variety of ways in which the development is inconsistent with the resource protection policies of the Coastal Act, directed the McCarthys to remove all unpermitted development by March 10, 2014, and asked that the McCarthys contact staff by February 27, 2014 to discuss resolution of the matter (Exhibit 19). When staff had still not heard from the McCarthys by the February 27<sup>th</sup> deadline, staff sent a follow-up letter on March 5, 2014, reiterating the fast-approaching March 10<sup>th</sup> deadline for removal and indicating a continued desire to discuss the matter with the McCarthys (Exhibit 20). The following day, March 6, 2014, counsel for the McCarthys submitted a letter to staff indicating, as discussed in detail below in Section V, their view that their clients' activities should be considered exempt from the permitting process, that the property should be closed to protect the public from hiking on it because of its steepness, and that his client would not be voluntarily removing the unpermitted development (Exhibit 21).

Commission staff subsequently received information that after the Notice of Violation had been sent, while the unpermitted development remained, some gates had temporarily been opened. Unfortunately Commission staff later learned that additional signage had been added to dissuade public usage of the trail. In the face of continued non-compliance with the Coastal Act and County LCP, the Executive Director sent a Notice of Intent to Record Notice of Violation and Notice of Intent to Commence Cease and Desist Order Proceedings on May 29, 2014 (Exhibit 22). Since that time, staff has sought to work with the McCarthys and their counsel to reach an amicable resolution of this matter, making themselves available at every opportunity for discussions with counsel. Unfortunately the McCarthys declined to fully resolve the Coastal Act violations at issue. Most recently, staff repeatedly contacted the McCarthys representatives over the last weeks, requesting that they contact staff, in an attempt to resolve this matter consensually prior to the deadline for mailing, but these efforts too were unsuccessful.

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**E. BASIS FOR ISSUING CEASE AND DESIST ORDER**

**1. STATUTORY PROVISION**

The statutory authority for issuance of this Cease and Desist Order is provided in Coastal Act Section 30810, which states, in relevant part:

*(a) if the commission, after public hearing, determines that any person or governmental agency has undertaken, or is threatening to undertake, any activity that (1) requires a permit from the commission without securing the permit or (2) is inconsistent with any permit previously issued by the commission, the commission may issue an order directing that person or governmental agency to cease and desist. The order may also be issued to enforce any requirements of a certified local coastal program or port master plan, or any requirements of this division which are subject to the jurisdiction of the certified program or plan under any of the following circumstances:*

*(1) The local government or port governing body requests the commission to assist with, or assume primary responsibility for, issuing a cease and desist order.*

*...*

*(b) The cease and desist order may be subject to such terms and conditions as the commission may determine are necessary to ensure compliance with this division, including immediate removal of any development or material or the setting of a schedule within which steps shall be taken to obtain a permit pursuant to this division.*

**2. APPLICATION TO FACTS**

Section 30106 of the Coastal Act and Section 23.03.040 of the County LCP define development within the Coastal Zone, in relevant part, as:

*“On land, in or under water, the placement or erection of any solid material or structure; ... change in the density or intensity of use of land, ... change in the intensity of water, or of access thereto.....”*

The installation of fences, gates, signs, and concrete footings and supports is squarely within the definition of development as it involves the placement of physical structures. Furthermore, the placement of the above-mentioned unpermitted development results in the impairment of the public’s ability to utilize historic trails; thus changing the intensity of use of land.

Though Section 23.03.040(d) of the County LCP purports to exempt walls or fences of 6’6” or less in height, this exemption is modified by an exception to the exemption in the instance “when in the opinion of the Planning Director such wall or fence will obstruct views of, or legal access to the tidelands.” In the County’s February 7, 2014 letter to the McCarthys (Exhibit 18), the (Acting) Planning Director states explicitly, “As the easement is available to the public for recreational purposes and provides legal access to and views of the tidelands, the Department has determined that the erection of the fence and related development on your clients’ property is not

exempt from the requirement to obtain a Coastal Development Permit. ” The infrastructure installed by the McCarthys is therefore development pursuant to the Coastal Act and County LCP, and is not exempt from coastal development permitting requirements as it deleteriously impacts legal coastal access and views of tidelands.

### **3.NATURE, CIRCUMSTANCE, EXTENT, AND GRAVITY OF THE VIOLATION<sup>4</sup>**

The County sent correspondence to the McCarthys directly requesting, on January 29, 2014, that they remove all unpermitted development, including that which precludes access to the County’s easement. Despite additional communication from the County requesting removal of the development and explaining the manner in which it is inconsistent with the County LCP, the McCarthys retained the development and continued to block public access and public views.

After the County requested assistance in resolving this matter, Commission staff sent a Notice of Violation letter on February 20, 2014 directing the McCarthys to remove the unpermitted development and reiterating the County’s position regarding inconsistencies of the development with the LCP and that the development was not exempt from the permit requirements. As the McCarthys failed to comply with this deadline, staff sent an additional letter reiterating the request for removal; the response to which was a multi-page letter from counsel iterating the various reasons they had for refusing to remove the development. Since May 29, 2014 when the Commission’s Executive Director sent the McCarthys a Notice of Intent letter, Commission staff has spent countless hours developing proposed settlement documents and has repeatedly reached out to the McCarthys’ counsel to discuss a potential amicable settlement. Despite Commission staff reaching out and making numerous efforts to reach a mutually acceptable resolution of this matter, the McCarthys have declined to settle the Coastal Act violations.

The persistence of the unpermitted development on the McCarthys property is of particular concern from a coastal resource perspective as the development is egregious in both its breadth and severity of impact to both wildlife and the public. The fences installed are approximately six and a half feet tall and span roughly 2,500 feet of land, including through sensitive habitat in the coastal zone. The fences themselves are supported by concrete footings (Exhibit 23) and consist of either quadruple strand barbed wire or field fencing (Exhibit 24).

Both barbed wire and field fences can entangle wildlife. Though deer are capable of jumping fences up to 8 feet tall, juvenile deer are unable to transit such obstacles and can easily become entangled attempting to navigate such fences, including if they attempt to go under such a high fence as found on the McCarthys’ property. Further, field fencing can completely preclude wildlife movement, leading to habitat fragmentation. Inappropriate fence design or placement leading to habitat fragmentation can reduce the carrying capacity of an area by dividing a large area into discrete subareas wherein resources are separated out. This can be particularly

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<sup>4</sup> This section is included in order to provide the Commission with relevant background on this matter and the impact that the unpermitted development has had on coastal resources including public access, views, and wildlife.

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devastating to an area such as the McCarthys' property where organisms have historically had ready access to the oak woodlands, chaparral, grasslands, and wetland seeps across the property; dividing the resources into subunits can preclude access to elements vital to an organism's survival.

In addition to the deleterious impacts that fencing can have on wildlife, the unpermitted development installed by the McCarthys has blighted the coastal viewshed from County property and from the Ontario Ridge Trail (Exhibit 25 & 26). As discussed above, the entirety of the Property is located in an area possessing significant recreational value, and is a mapped Sensitive Resource Area pursuant to the County's Land Use Element. Section 30251 of the Coastal Act provides protections for scenic and visual qualities in coastal areas and requires that development be sited and designed to protect views. The McCarthys installed signs reading "No Trespassing," "No Admittance: Right to pass by permission, and subject to control, of owner: Section 1008 Civil Code," and "No Public Access: Trail Access Located off Cave Landing Road." The fences, signs, gates, and related development the McCarthys installed negatively impact coastal views on and of the Property and are therefore inconsistent with the County LCP and Coastal Act.

Lastly, as discussed above, the unpermitted development undertaken by the McCarthys has dramatically impaired public access to the portion of the Ontario Ridge Trail that exists on their property, including a public access easement. The trail has been utilized for over forty years by the public, and the County codified the trail with the 2009 purchase of an easement across the Property; the public's right of continued use has been formally established. Section 30210 of the Coastal Act specifies that "maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people...." Moreover, 30211 states that "[d]evelopment shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization...." As the unpermitted development installed by the McCarthys precludes public recreation in the Coastal Zone and impairs access on land that provides pedestrian access to and from a County beach park, the development is inconsistent with Sections 30210 and 30211 of the Coastal Act.

As previously enumerated, the unpermitted development undertaken by the McCarthys remains in situ despite County and Commission staff explaining how the development is inconsistent with the Coastal Act and County LCP and repeatedly directing the McCarthys to remove it. The impacts from the unpermitted fencing, gates, signs, and supports on wildlife, coastal public views, and coastal public recreation are therefore ongoing and persist in contravention of the County LCP and the Coastal Act.

#### F. BASES FOR RECORDATION OF A NOTICE OF VIOLATION

Under the Coastal Act, a Notice of Violation ("NOVA") may be recorded against property that has been developed in violation of the Coastal Act. The NOVA is recorded in the office of the county recorder wherein the property is located and appears on the property title. A NOVA functions to notify prospective purchasers that a Coastal Act violation exists on the property.

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Ensuring that this information is communicated to potential buyers is critical as the Coastal Act violations run with the land; any new owner is also liable for violations and therefore responsible for remedying them. The statutory authority for the recordation of NOVA is set forth in Coastal Act Section 30812, which states, in relevant part:

*(a) Whenever the executive director of the commission has determined, based on substantial evidence, that real property has been developed in violation of this division, the executive director may cause a notification of intention to record a notice of violation to be mailed by regular and certified mail to the owner of the real property at issue, describing the real property, identifying the nature of the violation, naming the owners thereof, and stating that if the owner objects to the filing of a notice of violation, an opportunity will be given to the owner to present evidence on the issue of whether a violation has occurred.*

*(b) The notification specified in subdivision (a) shall indicate that the owner is required to respond in writing, within 20 days of the postmarked mailing of the notification, to object to recording the notice of violation. The notification shall also state that if, within 20 days of mailing of the notification, the owner of the real property at issue fails to inform the executive director of the owner's objection to recording the notice of violation, the executive director shall record the notice of violation in the office of each county recorder where all or part of the property is located.*

*(c) If the owner submits a timely objection to the proposed filing of the notice of violation, a public hearing shall be held at the next regularly scheduled commission meeting for which adequate public notice can be provided, at which the owner may present evidence to the commission why the notice of violation should not be recorded. The hearing may be postponed for cause for not more than 90 days after the date of the receipt of the objection to recordation of the notice of violation.*

*(d) **If, after the commission has completed its hearing and the owner has been given the opportunity to present evidence, the commission finds that, based on substantial evidence, a violation has occurred, the executive director shall record the notice of violation** in the office of each county recorder where all or part of the real property is located. If the commission finds that no violation has occurred, the executive director shall mail a clearance letter to the owner of the real property. (emphasis added)*

As explicated above, the development that the McCarthys installed on their property is unpermitted, not exempt from permitting requirements, and therefore persists in violation of the Coastal Act. The McCarthys submitted a written objection to the recordation of a NOVA as part of their Statement of Defense on June 19, 2014 (Exhibit 27). As such, staff scheduled a hearing to determine whether a violation of the Coastal Act has occurred on the Property; if, after a hearing, the Commission finds that the McCarthys have undertaken unpermitted development in violation of the Coastal Act on their property, the Executive Director will record a NOVA against the Property.



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### G. CALIFORNIA ENVIRONMENTAL QUALITY ACT

The Commission finds that issuance of this Order to compel compliance with the Coastal Act through removal of unpermitted development, is exempt from any applicable requirements of the California Environmental Quality Act of 1970 (CEQA), Cal. Pub. Res. Code §§ 2100 et seq., and will not have significant adverse effects on the environment, within the meaning of CEQA. The Order is exempt from the requirements for the preparation of an Environmental Impact Report, based on Section 15060(c)(2) and (3), 15061(b)(2), 15307, 15308 and 15321 of the CEQA Guidelines, which are also in 14 CCR.

## V. DEFENSES ALLEGED AND RESPONSES THERETO

The McCarthys' counsel completed a statement of defense form, primarily consisting of references to prior correspondence with Commission staff. Commission staff excerpted text from arguments made in the statement of defense and referenced in prior correspondence to try to identify anything that could conceivably be characterized as a defense. As a result, the Commission notes that many of the issues raised below are not actually defenses in that they do not contest the elements necessary for the Commission's issuance of a Cease and Desist Order under Section 30810 of the Coastal Act (whether or not unpermitted development was undertaken on the Property). Despite this, as a courtesy and as background, we provide the following responses, grouped based on subject-matter, and with citations to the documents in which the claims appeared, along with the Commission's response.

### Jurisdiction

#### **McCarthys' Defense Alleged:**

1. *"... the Commission has no independent jurisdiction over the trail, as it does not provide access to the sea or along the coast."* (Mar. 6, 2014 letter at 3.) *"The Commission has no jurisdiction over trails that lead away from the coast and thus has no jurisdiction over the alleged violations."* (Statement of Defense Form.)

#### **Commission Response:**

This comment confuses the scope of the Commission's jurisdiction with the subject-matter of certain individual goals and policies of the Coastal Act, such as those listed in Public Resources Code ("PRC") sections 30001.5 (one of the State's goals for the coast is to maximize public access "to and along the coast"), 30212 (new development must provide public access from the nearest public roadway "to the shoreline and along the coast") and 30530-31 (assigning responsibility to the Commission to prepare a "public coastal access program" to maximize public access "to and along the coastline"). These policies, requirements, and statements of intent do not establish the limits of the Commission's jurisdiction. As discussed in Section II, above, pursuant to Section 30810 of the Coastal Act, the Commission has jurisdiction to enforce

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the requirements of local coastal programs in certain circumstances including when, as is the case here, the local government requests that the Commission take enforcement action. The relevant LCP here required that the McCarthys obtain a permit before installing the subject fencing, gates, signs, footings, and support structures, as it involved the placement of solid materials and structures on property within the Coastal Zone covered by the LCP, and changed the intensity of use of such land, regardless of whether the trail provides access to the sea or along the coast. As such, analysis of the location or connectivity of the trail on the McCarthys' property is not a jurisdictional inquiry.

It is also untrue, as a factual matter, that the subject trails do not provide access to the coast. The statement that the trails "lead away from the coast" is clearly inaccurate. Trails are not unidirectional. While it is true that some hikers utilize this portion of the Ontario Ridge Trail to hike "up to the summit," just as some may hike up, others use this trail to hike down the slope and travel along the adjoining Cave Landing Road and Cave Landing Trail, which provide access to the coast and shoreline.

This portion of the Ontario Ridge Trail acts as a critical connection point, whereby hikers can extend their journeys to other trails, access the coast, and complete the popular "Ontario Ridge Trail Loop." This 2.8-mile loop, more than half of which is composed of the Ontario Ridge Trail, allows hikers to go to the shore, and provides sweeping coastal views. As a circular hike, the public has used and continues to use the Ontario Ridge Trail, not only to access the summit and ridgeline, but also to access the coast at Pirates Cove. Thus, the trail does in fact provide coastal access and views, both of which are afforded protections by the Coastal Act.

**McCarthys' Defense Alleged:**

2. *"... the fencing . . . that the Commission asserted unlawfully obstruct access to the steep dirt "jeep trail" [has] been removed from the property."* (March 6, 2014 letter from Gregory W. Sanders, Nossaman, LLP, to Heather Johnston, California Coastal Commission (hereinafter, "Mar. 6, 2014 letter") at 1.)

**Commission Response:**

Commission staff visited the Property as recently as June 17, 2014, and the fencing, gates, and signs remained intact (Exhibits 6, 13, 14, 15, 16, 24, and 25). While it appears that some fences had been cut or pushed down, either by the McCarthys or members of the public, the violation was in no way remedied and substantial impediments to access and views persist. Furthermore, after the Notice of Violation was sent on February 20, 2014, the McCarthys installed an additional "No Trespassing" sign (Exhibit 28) on the County easement.

**McCarthys' Defense Alleged:**

3. *"... even if the McCarthys were obligated to permit pedestrian access under the easement, the Commission has no authority to enforce such a contractual obligation through an enforcement action under the Coastal Act."* (Mar. 6, 2014 letter at 4.)

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**Commission Response:**

The Commission's issuance of the Orders is not an effort to enforce the McCarthys' contractual obligations; it is enforcement of their obligations under the Coastal Act and the LCP, including the prohibition of development placed without necessary authorization under the Coastal Act and LCP. The easements are relevant only indirectly. They represent written documentation of the public's right to use the area, which, in part informed the Planning Director's determination that the exemption in the LCP would not apply. Thus, they supported the conclusion that the development at issue required a coastal development permit, and the fact that it occurred without such a permit constitutes a violation of the Coastal Act and LCP. While the County can seek private redress for the violation of the terms of the easement, the Commission has separate enforcement jurisdiction over this matter to ensure that unpermitted development, which in this case impedes coastal recreation, access, and views, is removed, pursuant to Section 30810 of the Coastal Act.

Signs**McCarthys' Defense Alleged:**

4. *"... the signs that the Commission asserted unlawfully obstruct access to the steep dirt "jeep trail" have been removed from the property."* (Mar. 6, 2014 letter at 1.)

**Commission Response:**

As discussed in the preceding response, when Commission staff visited the property on June 17, 2014, "no trespassing" signs remained on the site. While some of the more intentionally misleading signs had been removed, unpermitted signs, including the large "no trespassing" sign at the bottom of the access easement remains in plain view (Exhibit 28).

**McCarthys' Defense Alleged:**

5. *"The . . . "no trespassing" signs at issue fall squarely within the plain language of [San Luis Obispo] County's Local Coastal Program's ("LCP") exemptions."* (Mar. 6, 2014 letter at 2.)

**Commission Response:**

The LCP does provide an exemption for "[p]rohibition signs: 'No Trespassing', 'No Parking', and similar warning signs" (Section 23.04.306(b)(13)). While some of the McCarthys' signs state "No Trespassing," others state "No Admittance: Right to pass by permission, and subject to control, of owner: Section 1008 Civil Code," and "No Public Access: Trail Access Located off Cave Landing Road." While some of these signs could be argued to be "similar warning signs," others are clearly not; "No Public Access: Trail Access Located off Cave Landing Road" is not a safety or prohibition sign, rather it is an attempt to misdirect public off of the easement. Some of

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these signs mislead the public and dissuade them from using the Ontario Ridge Trail, which is not exempt under the LCP.

Further, even if the signs were otherwise exempt, which they are not, the LCP also provides that “No Trespass Signs” installed in conjunction with accessways “shall contain the words “RESPECT PRIVATE PROPERTY – NO TRESPASSING” (Section 23.04.420(i)(3)). The McCarthys’ signs do not contain that language. Therefore, the signage installed by the McCarthys does not fall within the exemption set out in the LCP and, thus, requires coastal development permits.

Lastly, and most significantly the LCP specifically states that a sign is prohibited if it “makes use of words, symbols, or characters so as to interfere with, mislead or confuse pedestrian or vehicular traffic” (LCP Section 23.04.306(c)(1)). The McCarthys’ signs falsely mislead the public into thinking they have no legal right to hike on that portion of the Ontario Ridge Trail. Thus, not only do some of the signs not fall within the LCP’s exemption, but additionally mislead and confuse pedestrian traffic going through the Ontario Ridge Trail and thereby violate an express prohibition. These signs must be removed.

#### Public Easement

#### **McCarthys’ Defense Alleged:**

6. “. . . *the public has no right to traverse the McCarthys’ private property, and the Commission cannot require the McCarthys to provide access.*” (Mar. 6, 2014 letter at 3.)

#### **Commission Response:**

While it may be true that the public has no right to trespass onto the McCarthys’ private property in general, due to the existence of an express easement recorded on the property, as of December 15, 2009, the public has had a right to use this portion of the Ontario Ridge Trail to get across the McCarthys’ private property. The McCarthys had constructive notice of the existence of this easement, since it was listed in the property’s title. In addition, Mr. Gregory W. Sanders, the McCarthys’ attorney, acknowledged that “a grant of easement . . . was recorded in 2009” (Mar. 6, 2014 letter at 4), and Rob McCarthy acknowledged that there is a “current easement” on the property (Mar. 7, 2014 letter).

Even if this express easement did not exist, the public would still likely be allowed to use this portion of the Ontario Ridge Trail to cross the McCarthys’ property, since evidence demonstrates the existence of a prescriptive easement. In California, a public prescriptive easement is established where (1) the public used the land, as if it were public land, for a period of five years, (2) the public did not ask for or receive permission from the landowner, (3) the landowner had actual or presumed knowledge of this use, and (4) the landowner did not present significant objections or bona fide attempts to prevent or halt such use, during that five year period. *See*

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*Gion v. City of Santa Cruz*, 2 Cal. 3d 29 (1970), *Dietz v. King*, 2 Cal. 3d 29 (1970) (hereinafter “*Gion-Dietz*”).

**McCarthys’ Defense Alleged:**

7. “. . . the *McCarthys* have lawfully erected signs and fencing to preclude individuals from *trespassing on their property*.” (Mar. 6, 2014 letter at 3-4.) (emphasis in original)

**Commission Response:**

See response to point 6. While it may be lawful to erect “No Trespassing” signs and fences on one’s own property in most cases, if compliant with applicable laws, it is unlawful (pursuant to the LCP) to erect such signs and fences in a way that blocks a public easement. The signs at issue do not clarify that the easement is still open to the public, nor that the land around that 20 foot trail is private property. Instead, the closing of the gates and the blocking of the trail, in combination with the use of “No Admittance” signs, misleads the public into thinking that the public can be legally precluded from all of that land. As a result, and for the reasons stated above in response to point 5, they constitute a violation of the LCP. In addition, the McCarthys are legally required to ensure that the public easement remains unblocked by structures such as gates and fencing.

It is true that “[nothing] in the Local Coastal Program is to be construed as encouraging, permitting, or endorsing trespassing or invasion of private property rights or privacy,” but the use of a public easement is neither trespassing nor an invasion of private property rights or privacy, and notice of its existence in itself does not encourage trespass (County of San Luis Obispo Coastal Plan Policies, Policy 10 at p. 2-15). Conversely, the blocking of a well-used public trail may actually encourage trespass, as some members of the public may decide to go around the gates and fences in order to indirectly gain access to use the trail that they actually have a lawful right to use.

**McCarthys’ Defense Alleged:**

8. “*The Commission also states that the fencing and signs adversely affect public recreational access that has purportedly existed ‘for more than forty years’ . . . however, the Commission fails to provide any factual support for this statement, and fails to explain why such unpermitted and unlawful access would be legally relevant to the alleged violation that is the subject of the Commission’s Notice.*” (Mar. 6, 2014 letter at 3.)

**Commission Response:**

The Commission’s prescriptive rights investigation produced 281 questionnaires which reveal that the earliest recorded public usage of this trail (by those who submitted questionnaires in 2014) is in 1960. Thus, the public has actually been using this trail for nearly five and a half

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decades. Such use can develop into an implied dedication and prescriptive rights pursuant to the legal principles enunciated in case law such as *Gion-Dietz*. Once such rights are established, the relevance comes both from the rights themselves and from how they may make the otherwise-applicable exemption for fencing inapplicable, as is explained above. The unpermitted development on the McCarthys' property has illegally blocked the public's access to this trail. The historical use is also relevant to determining the extent of the impact that the unpermitted development has had on coastal resources.

**McCarthys' Defense Alleged:**

9. "[*The McCarthys*'] *new gates do not violate the easement.*" (March 7, 2014 letter from Rob McCarthy to Janette Pell, San Luis Obispo County (hereinafter, "Mar. 7, 2014 letter").)

**Commission Response:**

Whether the new gates violate the terms of the easement is irrelevant to whether it is development under the Coastal Act that requires a coastal development permit, which, as discussed above, it does. Even if the gates were considered part of the fences, so that they could potentially, under the right circumstances, be eligible for the fence exemption in section 23.03.040(d)(2) of the County Code, which the Commission does not believe is the case; under the County LCP, as long as "in the opinion of the Planning Director [they] obstruct view of, or legal access to the tidelands," which is the case here, they would not be exempt. Since they are not exempt, the failure to obtain a permit is a violation of the Coastal Act, regardless of whether they violate the terms of the easement.

That said, and although it is not necessary to find for the present Commission action, the gates do appear to violate the terms of the easements. The "Grant of Easements For Access" provides for "twenty (20) foot wide easements for pedestrian and vehicular access" across the McCarthys' property (Grant of Easements For Access document at 1). Rob McCarthy noted that the gate is fifteen feet wide, which is an unlawful reduction in the size of the public easement (Mar. 7, 2014 letter). More important, if the gates are closed, they entirely violate the easement, since the public is legally allowed to cross the McCarthys' land via that portion of the Ontario Ridge Trail. However, even if the gates are open, they still violate the Grant of Easements for Access, which provides for a twenty-foot easement.

**McCarthys' Defense Alleged:**

10. "... *the McCarthys are not required to permit such access* [referring to the recorded easement], *as the County never obtained the necessary government approval for the 'development' to lawfully exist.*" (Mar. 6, 2014 letter at 4.)

**Commission Response:**

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The Commission interprets the use of the phrase “the ‘development’” to refer to the County’s acquisition of the easement, which allegedly constituted development by effecting a change in the use of the land. It is true that “person,” as defined in the Coastal Act, does include local government, and that “a change in public access to the McCarthy property ‘constitute[s] development under both the Coastal Act and LCP’” (See Section 30106; Mar. 6, 2014 letter at 4 (quoting Notice of Violation at 2)). However, the County’s approval of this easement did not change the intensity of use of this area of land by the public. The public has been hiking this portion of the Ontario Ridge Trail for nearly five and a half decades and this easement was created merely to formalize the public’s right to use this trail. Creating this easement did not increase the level of public access to the McCarthys’ property, since the public had already been accessing this trail for quite some time.

The creation of an easement often has a very different effect than does the removal of an easement. It is clear that the removal of an easement can constitute development, since it can result in a direct decrease in the level of access and intensity of use of that specific land or nearby water sources. In *Electric Pointe, LLC v. California Coastal Commission*, the Court of Appeal held, in an unpublished decision, that a decrease in the intensity of use of land or access to water, as from the removal of an easement that provided beach parking, constituted development that required a permit. *See* No. B211755, 2009 WL 3808354 (Cal. Ct. App. 2d Nov. 16, 2009). In contrast, the creation of an easement does not necessarily have an effect on the intensity of use of that land. As noted above, the granting of the easement, here, merely formalized the fact that the public has been using this portion of the Ontario Ridge Trail and maintained the intensity of use, instead of changing it.

**McCarthys’ Defense Alleged:**

11. “. . . *there are no public trails in the Ontario Ridge area surrounding the alleged violations. Consequently the only direction the County’s easement can run is away from the coast. The Commission has no jurisdiction over trails that lead away from the coast and thus has no jurisdiction over the alleged violations.*” (Statement of Defense Form.)

**Commission Response:**

This is not correct. In fact, there are several public trails located in close proximity to the McCarthys’ property and to this portion of the Ontario Ridge Trail. To the North, there is the Sycamore Crest Trail. To the South, there is the Cave Landing Trail, several paths in the Avila Sea Caves and Pirate’s Cove areas, as well as the Cave Landing Road. These southern trails and paths provide direct access to the coast across public land. The McCarthys seem to allege that because some of the connecting trails cross private lands and the rights of use have never been adjudicated, they cannot be considered to exist. This position is contrary to public policy however and would mean that, in order to consider a trail ‘in existence’ the public would be forced to adjudicate all trails, even those where property owners had not expressed any desire to prevent the public’s continued use.

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More significantly, even if it were true, this is not relevant to the issue at hand, nor does it provide any legally relevant defense to issuance of the Order here. As discussed in response to Defense 1, the Commission's jurisdiction is not predicated on the directionality of a trail.

### Fencing

#### **McCarthys' Defense Alleged:**

12. *"The fencing . . . at issue [falls] squarely within the plain language of [San Luis Obispo County's Local Coastal Program's ("LCP") exemptions." (Mar. 6, 2014 letter at 2.)*

#### **Commission Response:**

While San Luis Obispo County's LCP provides an exemption for certain types of fencing, the McCarthys' fencing does not fall within the parameters of that exemption. The LCP exempts "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" (Section 23.03.040(d)(2)). Here, the exception to the exemption listed at the end of that sentence applies, so that the exemption itself does not apply.

The Acting Planning Director of San Luis Obispo County's Planning and Building Department explicitly stated in correspondence dated February 7, 2014, "As the easement is available to the public for recreational purposes and provides legal access to and views of tidelands, the Department has determined that the erection of the fence and related development on your clients' property is not exempt from the requirement to obtain a Coastal Development Permit." The Ontario Ridge Trail serves as a critical link in a system of trails that provide access to the coast, such as Pirate's Cove, as well as a route off of Cave Landing Trail that leads to the shore. As stated in *Friends of the Trails v. Blasius*, "the measure of the benefit of maintaining public access to a trail segment is, obviously, far more than the mere segment viewed in isolation," meaning that the court should not solely consider the "240-foot public easement across a single lot" when determining its overall importance and utility. 78 Cal. App. 4th 810, 835 (2000). Similarly, this portion of the Ontario Ridge Trail, which is but one trail in an interwoven system of trails, should be considered together with this larger series of trails. Therefore, since the fences and the gate have blocked access to a portion of the Ontario Ridge Trail, the McCarthys are obstructing legal access to the tidelands.

In addition, this unpermitted development obstructs views of the tidelands (Exhibit 16, 25, and 26). As stated in *Schneider v. California Coastal Commission*, the protection of public views in Section 30251 in the Coastal Act "has been construed to mean land-based scenic views from public parks, trails, roads and vista points." 140 Cal. App. 4th 1339, 1345 (2006). Commission staff visited the site and confirmed that the McCarthys' fencing and signs are obstructing the



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public's views of tidelands from the trail and from vista points on the ridgeline. The McCarthys' fences are therefore not exempt—they fall within the exception to the County LCP's exemption.

Furthermore, even if it were to be determined that the exception to the exemption did not apply, which is not the case, so that the LCP purported to render fences and signs such as these exempt from coastal development permitting requirements, any such LCP provision would be invalid. Interpreting the LCP that way would be tantamount to finding that the LCP contained a categorical exclusion. See PRC section 30610(e) and 14 CCR Division 5.5, Chapter 6, Subchapter 5 (sections 13240-249). As is explained below<sup>5</sup>, there are very specific and detailed requirements for such an exclusion. Since the requisite procedure for developing and implementing a categorical exclusion has not been followed, such a finding would be contrary to the statutory provisions of the Coastal Act.

The requisite steps (see Footnote 5) have not been taken by either the County of San Luis Obispo or the Commission; the County of San Luis Obispo has not provided the Commission with the

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<sup>5</sup> Where a local government or other public agency requests that whole categories of development be excluded from the coastal development permit requirements in Chapter 7 of the Coastal Act, several steps must be taken. First, the local government “shall provide the executive director of the commission with materials and information that the executive director deems necessary to make the findings required by Public Resources Code, Section 30610(e) and 30610.5(b) and the California Environmental Quality Act [CEQA].” (CCR Section 13241(a)) Section 30610(e) requires that the Commission find that the categories of development have “no potential for any significant adverse effect, either individually or cumulatively, on coastal resources or on public access to, or along, the coast.” Second, the executive director must “cause a public hearing on such a request to be scheduled within a reasonable time of the receipt of materials and information sufficient to allow him to evaluate whether the request for exclusion meets the [aforementioned] requirements.” (CCR Section 13241(a))

Third, the executive director “shall prepare and distribute a report” only after consulting with “the public agency that approves development activity for the particular category of development proposed for exclusion with any affected local government and with any persons known to be interested in the development activity.” (CCR 13242) Fourth, the Commission must vote to exclude the categories of development within specific geographic areas that the Commission finds meet the criteria in Section 30610(e) of Public Resources Code. (CCR Section 13243). The vote in favor of granting the exclusion must receive two-thirds of the votes from the Commission's appointed members. (CCR Section 13243) In addition, the Commission's order allowing the exclusion must contain “a precise description of the . . . [categories] of development within a specific geographic area that is the subject of the exclusion in sufficient detail to permit any person to know precisely which category of development . . . does not require a coastal development permit . . . specific findings supporting such determination to grant the exclusion . . . any terms and conditions necessary to comply with the requirements of Section 30610.5(b) . . . any category of development for which the commission shall receive notice of public agency approval . . . [and] a declaration that the exclusion may be rescinded at any time, in whole or in part.” (CCR Sections 13243(a)-(e))

Fifth, the Commission shall send copies of the exclusion order to “each applicable local government or other public agency affected by the exclusion order.” (CCR Section 13244) Importantly, “[no] categorical exclusion approved by the commission shall be effective until . . . the public agency which issues the permit for the category of development that is the subject of the categorical exclusion order, by action of its governing body, acknowledges receipt of the commission's resolution of approval . . . [the public] agency . . . by appropriate action of its governing body, accepts and agrees to the terms and conditions to which the categorical exclusion has been made . . . [and the] executive director of the commission determines in writing that the public agency's resolution is legally adequate to carry out the exclusion order and that the notification procedures satisfy the requirements of the exclusion order.” (CCR Section 13244(a)-(c))

information required to determine that these fences and prohibition signs have “no potential for any significant adverse effect . . . on coastal resources or on public access to, or along, the coast”, as required by Section 30510(e), nor to satisfy the requirements of [Section 30610.5(b)] or CEQA. Nor has the Commission made the necessary findings. And no supermajority vote of appointed Commissioners occurred, as is necessary to allow this extreme procedure to be effective.

While it is true that the Commission may also request a categorical exclusion (CCR Section 13241(c)), there have been no public hearings regarding the categorical exclusions for “walls or fences of 6’-6” or less in height located in accordance with Section 23.04.190(c)” (Section 23.03.040(d)(2)) or “prohibition signs: “No Trespassing”, “No Parking”, and similar warning signs” (Section 23.04.306(b)(13)). The Executive Director of the Commission has not consulted with the public agency that approves this development activity or with any affected parties, nor has the executive director distributed a report on this matter. In addition, the Commission did not vote for this categorical exclusion, nor did this vote receive a two-thirds supermajority of the Commission’s appointed members. Even if there were a successfully approved order, this exclusion would not be effective, since the public agency that issues permits for these fences and signs did not acknowledge receipt of such an approval, and the executive director did not determine, in writing, that such agency’s resolution is legally adequate to carry out the exclusion order.

A finding that the signs and fences at issue in this matter were exempt from coastal development permitting requirements would necessitate the existence of a legal categorical exclusion for this development; as no such categorical exclusion exists, such a finding cannot be properly made.

#### Conflict between the LCP and the Coastal Act

#### **McCarthys’ Defense Alleged:**

13. “. . . *the Coastal Act mandates that the development shall be approved if it is consistent with the County’s Certified LCP.*” (Mar. 6, 2014 letter at 1-2.) (quoting Pub. Resources Code, §§ 30519, 30600.5.)

#### **Commission Response:**

This statement does not provide any legally relevant defense to issuance of the Order here. As explicated above in response to Defense 12, the unpermitted development at issue is not exempt from County permitting requirements. Moreover, were it the case that the exemption could be interpreted in such a way that it would apply here, any such interpretation would be inconsistent with the scope of the permitting requirement in the Coastal Act and should therefore disfavored. *See, e.g., McAllister v. California Coastal Commission*, (2009) 169 Cal. App. 4th 912, 930-932. And even if one could argue that the exemption were unambiguous and *had to be* interpreted to apply here, which the Commission finds not to be the case, it would then be invalid for the reasons stated near the end of the Commission’s response to Defense 12. While a certified LCP plays a major role in determining what permits a landowner needs before pursuing development,

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the Coastal Act remains dispositive, and an LCP cannot be less protective of coastal resources than the Coastal Act. Furthermore, as discussed above, the LCP clearly states that the development at issue in this case is not exempt from permitting requirements.

**McCarthy's Defense Alleged:**

14. “. . . Section 30610, which appears in Chapter 7 of the Coastal Act, is irrelevant to County-enacted exemptions, such as the fencing and sign exemptions currently at issue; rather, Section 30610 is only relevant for determining the scope of Commission-enacted exemptions.” (Mar. 6, 2014 letter at 2.)

**Commission Response:**

Section 30610 is the primary section of the Coastal Act listing exemptions from the Coastal Act's permitting requirements. As such, it establishes the main limitations on the Coastal Act's permitting requirement. Under the Coastal Act, any development within the Coastal Zone that is not exempt pursuant to that section or one of the other exemptions in the Coastal Act requires a permit.

When the Coastal Act's permitting authority is delegated to a local government through the certification of an LCP, the local government assumes the primary permitting responsibility for all development that is subject to the permit requirements of the Coastal Act. There is only one legitimate way in which that LCP can establish new exemptions for development that would otherwise be within the scope of Coastal Act's permitting requirements. That method is established by section 30610(e) and Subchapter 5 of Chapter 6 of the Commission's regulations (14 CCR sections 13240-249). Allowing a LCP's exemptions to go beyond those listed in the Coastal Act would seriously undermine the Legislature's goals in creating the Coastal Act. These goals include: to “protect, maintain, and where feasible, enhance and restore the overall quality of the coastal zone environment and its natural and artificial resources,” to “assure orderly, balanced utilization and conservation of coastal zone resources,” to “maximize public access to and along the coast and maximize public recreational opportunities in the coastal zone,” and to “assure priority for coastal-dependent and coastal-related development over other development on the coast” (Section 30001.5(a)-(d)).

In any event, the County of San Luis Obispo concurs that this fence and other unpermitted development is not exempt. As stated in Section 30519(a) of the Coastal Act, “after a local coastal program . . . has been certified . . . the development review authority provided for in Chapter 7 . . . [shall] be delegated to the local government that is implementing the local coastal program or any portion thereof” (Section 30519(a)). The local government here, the County of San Luis Obispo, has agreed that the McCarthys must acquire a coastal development permit in order to keep the fences and signs (February 7, 2014 letter to the McCarthys).

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15. “Contrary to the Commission’s unsupported assertion, and as expressly set forth in the Coastal Act, the components of an LCP need only conform to the policies in Chapter 3 of the Coastal Act....Thus, Section 30610 is irrelevant to County-enacted exemptions, such as the fencing and sign exemptions currently at issue; rather, Section 30610 is only relevant for determining the scope of Commission-enacted exemptions.” (Mar. 6, 2014 letter at 2.)

**Commission Response:**

This does not constitute a defense to this action; the Commission’s action is not predicated on the application of Section 30610 to this matter. Rather, as discussed above, the violations at issue here are violations under both the LCP and Coastal Act. Furthermore, even if the LCP only had to conform to the policies in Chapter 3, that chapter expressly states that “*development shall not interfere with the public’s right of access to the sea where acquired through use* or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation” (Section 30211) (emphasis added). This policy is repeated verbatim in the County of San Luis Obispo’s Coastal Plan Policies (Chapter 2 p. 2-1). Since it has been established that there is an express easement recorded on the property, and, in the alternative, that the public has acquired an easement by prescription, the McCarthys’ development does interfere with the public’s right of access to the sea, which the public acquired through use. Thus, since the McCarthys’ fencing, gate, and signs block and/or discourage the public from using this portion of the Ontario Ridge Trail, the McCarthys must remove this unpermitted development.

Public Safety

**McCarthys’ Defense Alleged:**

16. “. . . the fencing and signs . . . protect the McCarthys.” (Mar. 6, 2014 letter at 4.)

**Commission Response:**

Again, as a prefatory matter, it should be noted that this is not a defense to the Orders requiring removal of unpermitted development that is also inconsistent with the LCP and Coastal Act. However, the McCarthys have alleged in various letters and conversations that the McCarthys erected the fences to protect themselves from potential liability associated with having a publicly used hiking trail on their property. As staff has explained to the McCarthys, although this does not create an exemption there are also some protections for such landowners. They have several levels of protection from liability associated with those recreating on the trail; immunity pursuant to California Government Code § 846, immunity pursuant to California Government Code § 831.4, and the explicit protections of the access easement language.

California Government Code § 846 states, in part that:

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An owner of any estate or any other interest in real property, whether possessory or non-possessory, owes no duty of care to keep the premises safe for entry or use by others for any recreational purpose or to give any warning of hazardous conditions, uses of, structures, or activities on such premises to persons entering for such purpose, except as provided in this section.

This protection extends to permittees and trespassers alike (Delta Farms Reclamation District No. 2028 v. Superior Court, 33 Cal.3d 699 (1983)), and applies to lands that are fenced as well as those that are made intentionally accessible (Ornelas v. Randolph 4 Cal. 4<sup>th</sup> 1095 (1993)). The McCarthys are therefore insulated from liability associated with hikers using the trails on their property under California law.

Furthermore, California statutory law provides protection for private grantors of recreation easements. California Government Code §831.4 states, in part, that:

“A public entity, public employee, or grantor of a public easement to a public entity for any of the following purposes, is not liable for an injury caused by a condition of:

(a) Any unpaved road which provides access to fishing, hunting, camping, hiking, riding, including animal...

...

(b) Any trail used for the above purposes....”

More significantly, the McCarthys are further insulated by the plain language of the Grant of Easement for Access, which states that the “Grantee [County of San Luis Obispo] assumes all liability for use of the easements” (Grant of Easements for Access document at 2). Therefore, the McCarthys need not be worried about assuming liability for hikers’ injuries that occur while on the Ontario Ridge Trail; any potential liability rests with the County.

Moreover, California Civil Code § 846.1 provides that private land owners may seek reimbursement of attorneys’ fees incurred in defending actions brought by recreational users up to \$25,000. The McCarthys are thus trebly insulated from liability regarding the use of their property by hikers.

Finally, apart from all of the aforementioned protections, even if the McCarthys had a legitimate concern about liability, that would not insulate them from the permit requirements of the LCP (and the Coastal Act). Even if the concerns were legitimate, and the protections enumerated above did not exist, they cannot simply perform development without complying with the Coastal Act and LCP and ignore the permit requirements on the basis of their liability concerns.

#### **McCarthys’ Defense Alleged:**

17. “. . . the fencing and signs . . . are necessary to protect the public.” (Mar. 6, 2014 letter at 4.)

#### **Commission Response:**

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As with the prior defense, while this may be an issue that the McCarthys wish to raise in an application to place fences that do not “obstruct views of, or legal access to the tidelands,” it is not an excuse for ignoring the permit requirement altogether, nor is it a defense to an Order requiring the removal of unpermitted placement of development inconsistent with the LCP and Coastal Act.

Moreover, while this trail may pose some risks to hikers, as all trails do, it is, ultimately, up to the individual to decide whether or not to continue to hike a trail. Many of the most renowned trails in California are also the most difficult to hike; it is not for private landowners to determine what is beyond the physical capacity of the public at large. Further, citing one instance of an individual sustaining an injury when hiking some portion of the Ontario Ridge Trail is not dispositive of the level of risk associated with the trail, which, in turn, even if it is high, is irrelevant to the question of whether the development at issue required a permit.

It is additionally worth noting that, in order for landowner immunity to be maintained, the land upon which recreation is being undertaken does not have to be suitable for recreational purposes (*Astenius v. State of California* (2005) 126 Cal. App. 4th 472, 476.)

Lastly, the signs that the McCarthys posted do not in fact warn the public of any dangers. Instead, though the public has a legal right to use the access easement, the McCarthys posted “No Admittance” signs. Rather than educating the public to potential steepness and dangers, the signs are misleading the public into believing that this portion of the trail is closed off to public use. The fences, gates, and barbed wire further discourage, and sometimes physically stop, hikers from continuing to use the trail.

### Penalties

In the Statement of Defense form, the McCarthys have elected to disclose the content of confidential settlement negotiations regarding the assessment of penalties under the Coastal Act. While the Commission does not condone this breach of confidentiality, in an effort to comprehensively respond to the McCarthys’ assertions, the matter has been addressed below. The Commission further notes that, since it is not imposing fines on the McCarthys in the instant action, the McCarthys’ objections to amounts that were proposed previously are irrelevant to the validity of the Commission’s current action. The Commission may seek the imposition of civil liabilities under the Coastal Act through referral of this matter to the Attorney General’s Office, or if the Commission chooses to impose administrative civil penalties on the McCarthys in the future, it will do so through a separate action pursuant to PRC section 30821.

### **McCarthys’ Defense Alleged:**

18. “. . . *excessive fines in the amount of \$200,000 . . .*” (Statement of Defense Form.)  
“*The excessive fine proposed by the Commission bears no proportional relationship to any alleged harm.*” (Statement of Defense Form.)

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**Commission Response:**

The Coastal Act contains a variety of provisions concerning the penalties that may be assessed as a result of a Coastal Act violation. Section 30820(b) of the Coastal Act provides in relevant part that, any

“person who performs or undertakes development that is in violation of this division or that is inconsistent with any coastal development permit ..., when the person intentionally and knowingly performs or undertakes the development in violation of this division or inconsistent with any previously issued coastal development permit, may, in addition to any other penalties, be civilly liable in accordance with this subdivision. Civil liability may be imposed by the superior court in accordance with this article for a violation as specified in this subdivision in an amount which shall not be less than one thousand dollars (\$1,000), not more than fifteen thousand dollars (\$15,000), per day for each day in which the violation persists.”

As discussed above, the public hiking trail, openly used for decades by the public, and further established by a duly recorded County easement on the McCarthys' property in 2009, was blocked by the unpermitted development undertaken by the McCarthys. As the use has been open and notorious for decades and the County easement was recorded in the McCarthys' chain of title, the McCarthys' were on notice of the existence of this easement. By erecting barbed wire fences, gates, and “No Admittance” signs, and by blocking an access easement, the McCarthys have “intentionally and knowingly” undertaken development in violation of the County of San Luis Obispo's LCP and of the Coastal Act. Such a violation would allow the Commission to seek penalties in an amount ranging from one thousand dollars (\$1,000) to fifteen thousand dollars (\$15,000) per day for each day in which a violation persists (PRC Section 30820). In addition, Commission staff sent letters dated February 20, 2014, March 5, 2014, and May 29, 2014 notifying the McCarthys that the development is unpermitted and requesting its removal; in spite of these letters, and a number of phone conversations, the McCarthys persisted in maintaining the unpermitted development on the Property.

Section 30820(c) of the Coastal Act further provides that in determining the appropriate amount of civil liability, the following factors shall be considered:

- (1) The nature, circumstance, extent, and gravity of the violation.
- (2) Whether the violation is susceptible to restoration or other remedial measures.
- (3) The sensitivity of the resource affected by the violation.
- (4) The cost to the state of bringing the action.
- (5) With respect to the violator, any voluntary restoration or remedial measures undertaken, any prior history of violations, the degree of culpability, economic profits, if any, resulting from, or expected to result as a consequence of, the violation, and such other matters as justice may require.

As of the date of the mailing of this document, the unpermitted development has remained in place on the McCarthys' property for at least 179 days, despite the efforts by County and Commission staff to resolve the matter and obtain removal. Under 30820 (b), for just one

July 11, 2014

violation, that would translate to a penalty between \$179,000 and \$2,685,000. The proposed settlement amount was at the extreme low end of that spectrum. In light of the extent of violations, number of types of unpermitted development put in place (fences, signs, gates, etc.) breadth of unpermitted development, and the severity of impacts caused thereby, any reasonable penalty calculation would far exceed the settlement offer made by Commission staff.

Further, pursuant to Section 30822 of the Coastal Act, the Commission may seek out exemplary damages in order to deter other landowners from blocking public easements and pathways; such an assessment of additional penalties may be appropriate here as this is an extraordinarily popular trail and as such this matter has been the subject of much public scrutiny.

**McCarthys' Defense Alleged:**

19. “. . . *the goal of imposing monetary fines for Coastal Act violations should be to mitigate for adverse impacts to coastal resources, not to impose punitive measures for actions such as erecting fencing . . .*” (Statement of Defense Form.)

**Commission Response:**

Notwithstanding the McCarthys' position as to how the Coastal Act should be interpreted, the plain language of the Coastal Act is clear on this point: as indicated above, Section 30820(c) lists factors to consider in assessing penalty amounts, factors that go well beyond the requirements to mitigate adverse impacts to coastal resources. This is consistent, of course, with the actual purpose of penalties: to provide a deterrent to violations. And Section 30822 states that, where “a person has intentionally and knowingly violated any provision of this division or any order issued pursuant to this division, the commission may maintain an action, in addition to Section 30803 or 30805, for exemplary damages and may recover an award, the size of which is left to the discretion of the court. In exercising its discretion, the court shall consider the amount of liability necessary to deter further violations.”

Moreover, had the confidential negotiations included a figure reflective of exemplary damages to deter future violations; the penalty calculus would have been significantly greater. The direct, observable, physical harm to wildlife is not the only type of impacts to coastal resources that can occur (and that should thus be compensated for in the event of unpermitted development); temporal impacts to both wildlife and public access are significant and must be accounted for when considering the deleterious impacts associated with the violation.

**McCarthys' Defense Alleged:**

20. “. . . *imposing such a fine on the McCarthys would violate the McCarthys' substantive due process rights, procedural due process rights, and other constitutional rights, including the right not to have excessive fines levied upon them. Moreover, imposition of such a fine would also constitute an unlawful taking.*” (Statement of Defense Form.)



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**Commission Response:**

The McCarthys provide no legal or factual substantiation for this allegation and the plain language of Chapter 9, Article 2 of the Coastal Act, as discussed above, provides that the Commission may seek penalties for Coastal Act violations. Public access and scenic viewsheds are critical aspects and resources associated with the protection of California's pristine coastlines. Assessment of a penalty, after a public hearing, pursuant to an extant statute is not even colorably a Fifth Amendment "taking".

**VI. SUMMARY OF FINDINGS OF FACT**

1. Robert and Judith McCarthy are the owners of approximately 37 acres of vacant rural land within the Coastal Zone (as defined by the Coastal Act) in unincorporated San Luis Obispo County, identified by San Luis Obispo County Assessor's Parcel Numbers 076-231-063 and 076-231-065 (the "Property").
2. In addition to owning the above-referenced property, the McCarthys knowingly undertook "development" thereon and possibly on adjacent properties, as defined by Coastal Act Section 30106, without a coastal development permit. Unpermitted development undertaken by the McCarthys on the Property includes installation of signs, gates, fences, footings, and support structures. This unpermitted development precludes wildlife ingress and egress from the property; physically and psychologically dissuades and prevents use of a public trail easement; and impedes public coastal views from and of the property.
3. The California Coastal Commission has jurisdiction over this matter as the unpermitted development described in Finding #2 occurred in the Coastal Zone in San Luis Obispo County. Though San Luis Obispo County has a certified LCP, the Commission has jurisdiction to enforce the LCP and Coastal Act on the Property pursuant to Section 30810(a)(1) of the Coastal Act as San Luis Obispo County requested that the Commission assume enforcement responsibility for this matter.
4. Harm resulting from the unpermitted development on the Property is significant and includes impacts to coastal public views, public access to the tidelands, and coastal habitat. These impacts persist as the McCarthys have failed to remove the unpermitted development despite repeated requests from the Commission staff to do so, beginning via Notice of Violation dated February 20, 2014. These impacts remain unmitigated.
5. Coastal Act Section 30810 authorizes the Commission to issue a cease and desist order under specific conditions, and as discussed in the Findings above, all elements of that section have been met herein.
6. The McCarthys received a notice of violation on February 20, 2014, and despite being made aware of the violation and the opportunities to resolve the matter, failed to do so. The McCarthys received notice of the intent to commence cease and desist order proceeding in compliance with Section 13181 of the Commission's administrative regulations on May 29, 2014.

7. The work to be performed under this Order, if completed in compliance with the Order requirements, will be consistent with Chapter 3 of the Coastal Act and relevant sections of the County LCP.

**CEASE AND DESIST ORDER CCC-14-CD-02**

1.0 CEASE AND DESIST ORDER CCC-14-CD-02 ("this Order"). Pursuant to its authority under California Public Resources Code ("PRC") Section 30810, the California Coastal Commission ("Commission") hereby orders and authorizes Robert and Judith McCarthy, and all their successors, assigns, employees, agents, contractors, and any person acting in concert with any of the foregoing (hereinafter referred to as "Respondents") to:

- 1.1. Cease and desist from engaging in any further development, as that term is defined in PRC Section 30106, that would normally require a coastal development permit ("CDP") on any of the property identified in Section 4.2 below ("Subject Property"), unless authorized pursuant to the Coastal Act (PRC Sections 30000-30900), which includes through this Order.
- 1.2. Cease and desist from maintaining any of the physical structures and materials that were placed or have come to rest on the Subject Property as a result of Unpermitted Development, as defined in Section 2.3, below, and any changes to the physical state of the Subject Property, or unpermitted changes in the use or intensity of use of the Subject Property resulting therefrom.
- 1.3. Refrain from undertaking any activity that physically or indirectly discourages or prevents use of the Ontario Ridge Trail, including by attempting to cause any person who is present on or adjacent to the Ontario Ridge Trail to leave or to move off of the trail, and cease and desist from any attempt to limit or interfere with the use by the holder of the public easement on the Subject Property to maintain the area and make it available for public use.
- 1.4. Remove, pursuant to the terms and conditions set forth in Section 3.0, below, all physical items placed or allowed to come to rest on the Subject Property as a result of Unpermitted Development, including, but not necessarily limited to: fences, gates, signs, and all footings or support structures.

2.0 DEFINITIONS.

**2.1. Persons Subject to this Order.**

Persons subject to this Order are Robert and Judith McCarthy, and their successors, assigns, employees, agents, contractors, and any persons acting in concert with any of the of the foregoing.

**2.2. Subject Property.**

The property that is the subject of this Order is described as follows:

Cease and Desist Order CCC-14-CD-02  
McCarthy

Assessor's Parcel Numbers 076-231-063 and 076-231-065 in unincorporated San Luis Obispo County, and areas on adjacent properties on which unpermitted development placed by the McCarthys has come to rest.

**2.3. Unpermitted Development.**

'Development', as that term is defined in the Coastal Act (PRC Section 30106), and materials, structures, topographic changes, or other changes to the property resulting therefrom, that occurred or exist on the Subject Property without the authorization required pursuant to the Coastal Act, including<sup>1</sup>: placement of fencing, gates, signage, and footings and support structures.

**2.4. Ontario Ridge Trail.**

That portion of the public trail, and spurs therefrom, crossing the Subject Property that connects public access from Cave Landing Road at Pirates Cove to the trails atop Ontario Ridge.

**3.0 Removal Requirements**

Respondents shall submit a Removal Plan within ten (10) days of the effective date of this Order for the review and approval of the Commission's Executive Director. The Removal Plan shall provide for the removal of all physical items that were placed or have come to rest on the Subject Property as a result of Unpermitted Development, and shall be consistent with the conditions set forth below.

3.1. The Removal Plan shall include a site plan, prepared by a licensed surveyor, depicting the locations of: the boundary lines of APNs 076-231-063, 076-231-065, and the Subject Property; all physical items of Unpermitted Development; San Luis Obispo County's easements on the Subject Property; and where photographs will be taken pursuant to Section 3.5, below.

3.1.1. The Removal Plan shall provide that Respondents shall obtain property owner permission for any activities that will be undertaken pursuant to this Order on property not owned by Respondents.

3.2. The Removal Plan shall provide that removal is to only be undertaken by using hand tools; no mechanized equipment is to be employed for the removal of the Unpermitted Development. Should mechanized equipment be determined to be necessary, Respondents shall submit evidence of necessity, for review and approval by the Executive Director, as well as BMPs to be employed during the use of any

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<sup>1</sup> The enumerated list is not necessarily a comprehensive accounting of all development on the Subject Property that is in violation of the Coastal Act and/or that may be of concern to the Commission. Accordingly, Commission's silence regarding (or failure to address) other development on the Subject Property is not indicative of the Commission's acceptance of, or acquiescence in, any such development.

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McCarthy

such mechanized equipment, and shall not use such equipment until they receive the Executive Director's approval.

- 3.3. The Removal Plan shall indicate that removal of all physical items that were placed or have come to rest on the Subject Property as a result of Unpermitted Development will be undertaken in the least disruptive manner possible. The Removal Plan shall also indicate that no native vegetation shall be removed nor landform alteration undertaken.

- 3.3.1. The Removal Plan shall include a description of the methods of removal as well as proposed resource protection measures to be employed during the removal process.

- 3.3.1.1. Oak trees within fifty (50) feet of all physical items that were placed or have come to rest on the Subject Property as a result of Unpermitted Development shall be temporarily fenced with protective constructive fencing prior to the commencement of removal activities, and such protection measures shall be completely removed from the Subject Property within five (5) days from the completion of removal activities addressed in the Removal Plan.

- 3.4. The Removal Plan shall indicate that removal of all physical items that were placed or have come to rest on the Subject Property as a result of Unpermitted Development shall be undertaken pursuant to the approved Removal Plan within ten (10) days of approval by the Executive Director.

- 3.5. The Removal Plan shall provide that Respondents will submit photographic documentation, from the locations depicted on the site plan in Section 3.1, evidencing the location of and removal of all physical items that were placed or have come to rest on the Subject Property as a result of Unpermitted Development and removal of the temporary protection measures discussed in Section 3.3.11, above, to the Executive Director within twenty-five (25) days of the approval of the Removal Plan.

4.0 REVISION OF DELIVERABLES.

The Executive Director may require revisions to deliverables under this Order, and Respondents shall revise any such deliverable consistent with the Executive Director's specifications, and resubmit them for further review and approval by the Executive Director, by the deadline established by the modification request from the Executive Director.

5.0 COMMISSION JURISDICTION.

The Commission has jurisdiction over resolution of these Coastal Act violations pursuant to PRC Section 30810.

**APPENDIX A**  
CCC-14-CD-02 & CCC-14-NOV-01  
(Robert & Judith McCarthy)

Cease and Desist Order CCC-14-CD-02  
McCarthy

6.0 EFFECTIVE DATE AND TERMS OF THIS ORDER.

The effective date of this Order is the date the Commission votes to issue this Order. This Order shall remain in effect permanently unless and until rescinded by the Commission.

7.0 FINDINGS.

This Order is issued on the basis of the findings adopted by the Commission, as set forth in the document entitled, "Staff Report: Recommendations and Findings for Cease and Desist Order and Hearing on Notice of Violation." The activities authorized and required in this Order are consistent with the resource protection policies set forth in Chapter 3 of the Coastal Act. The Commission has authorized the activities required in this Order, and has determined them to be being consistent with the resource protection policies set forth in Chapter 3 of the Coastal Act, if carried out in compliance with the terms of this Order.

8.0 COMPLIANCE OBLIGATION.

Strict compliance with this Order by all parties subject hereto is required. Failure to cure violations addressed herein or comply with any term or condition of this Order, including any deadline contained herein will constitute a violation of this Order and may result in the imposition of civil penalties under PRC Section 30821.6 of up to **SIX THOUSAND DOLLARS (\$6,000)** per day for each day in which each violation persists, in addition to any other penalty authorized under Chapter 9 of the Coastal Act, including PRC Section 30820, 30821, and 30822.

9.0 Submittal of Documents

All documents submitted to the Commission pursuant to this Order must be sent to:

California Coastal Commission  
Attn: Heather Johnston  
45 Fremont St., Suite 2000  
San Francisco, CA 94105-2219.

with a copy sent to:

California Coastal Commission  
Attn: Sharif Traylor  
725 Front Street, Suite 300  
Santa Cruz, CA 95060

10.0 DEADLINES.

**APPENDIX A**  
CCC-14-CD-02 & CCC-14-NOV-01  
(Robert & Judith McCarthy)

Cease and Desist Order CCC-14-CD-02  
McCarthy

The Executive Director may extend deadlines specified herein. Any extension request must be made in writing to the Executive Director and received by Commission staff ten (10) days prior to expiration of the subject deadline. Any such request shall be sent to the address pursuant to Section 9.0, above.

11.0 SEVERABILITY.

Should any provision of this Order be found invalid, void, or unenforceable, such illegality or unenforceability shall not invalidate the whole, but the Order shall be construed as if the provision(s) containing the illegal or unenforceable part were not a part hereof.

12.0 SITE ACCESS.

Respondent shall provide Commission staff and staff of any agency having jurisdiction over the work being performed under this Order with access to the areas of the property described below at all reasonable times. Nothing in this Order is intended to limit in any way the right of entry or inspection that any agency may otherwise have by operation of any law. The Commission and other relevant agency staff may enter and move freely about the following areas: (1) the portions of the Subject Property on which the violations are located, (2) any areas where work is to be performed pursuant to this Order or pursuant to any plans adopted pursuant to this Order, (3) adjacent areas of the property, and (4) any other area where evidence of compliance with this Order may lie to view the areas where work is being performed pursuant to the requirements of this Order or evidence of such work is held, for purposes including but not limited to, inspecting records, operating logs, and contracts relating to the property and overseeing, inspecting, documenting, and reviewing the progress of Respondent in carrying out the terms of this Order.

13.0 GOVERNMENT LIABILITIES.

Neither the State of California, the Commission, nor its employees shall be liable for injuries or damages to persons or property resulting from acts or omissions by Respondents in carrying out activities pursuant to this Order, nor shall the State of California, the Commission, or its employees be held as a party to any contract entered into by Respondents or their agents in carrying out activities pursuant to this Order.

14.0 SUCCESSORS AND ASSIGNS.

This Order shall run with the land binding Respondents and all successors in interest, heirs, assigns, and future owners of Assessors Parcels Numbers 076-231-063 and 076-231-065. Respondents shall provide notice to all successors, assigns, heirs, and potential purchasers of the aforementioned property of any remaining obligations under this Order.

15.0 MODIFICATIONS AND AMENDMENTS.

**APPENDIX A**

CCC-14-CD-02 & CCC-14-NOV-01  
(Robert & Judith McCarthy)

Cease and Desist Order CCC-14-CD-02  
McCarthy

Except as provided in Section 10.0 of this Order, or for ministerial corrections, this Order may be amended or modified only in accordance with the standards and procedures set forth in Section 13188(b) and Section 13197 of Title 14 of the California Code of Regulations.

16.0 APPEAL

Pursuant to PRC Section 30803(b), any person or entity against whom this Order is issued may file a petition with the Superior Court for a stay of this Order.

17.0 GOVERNMENT JURISDICTION.

This Order shall be interpreted, construed, governed, and enforced under and pursuant to the laws of the State of California.

18.0 NO LIMITATION ON AUTHORITY.

Except as expressly provided herein, nothing herein shall limit or restrict the exercise of the Commission's enforcement authority pursuant to Chapter 9 of the Coastal Act (PRC Sections 30800-30824), including the authority to require and enforce compliance with this Cease and Desist Order.

Executed in \_\_\_\_\_ on behalf of the California Coastal Commission:

\_\_\_\_\_  
Charles Lester, Executive Director

\_\_\_\_\_  
Date

**APPENDIX A**  
CCC-14-CD-02 & CCC-14-NOV-01  
(Robert & Judith McCarthy)



# PROPERTY LOCATION



Exhibit 1  
CCC-14-CD-02 & CCC-14-NOV-01  
(Robert & Judith McCarthy)



# COASTAL VIEWS FROM MCCARTHY PROPERTY ACCESS EASEMENT

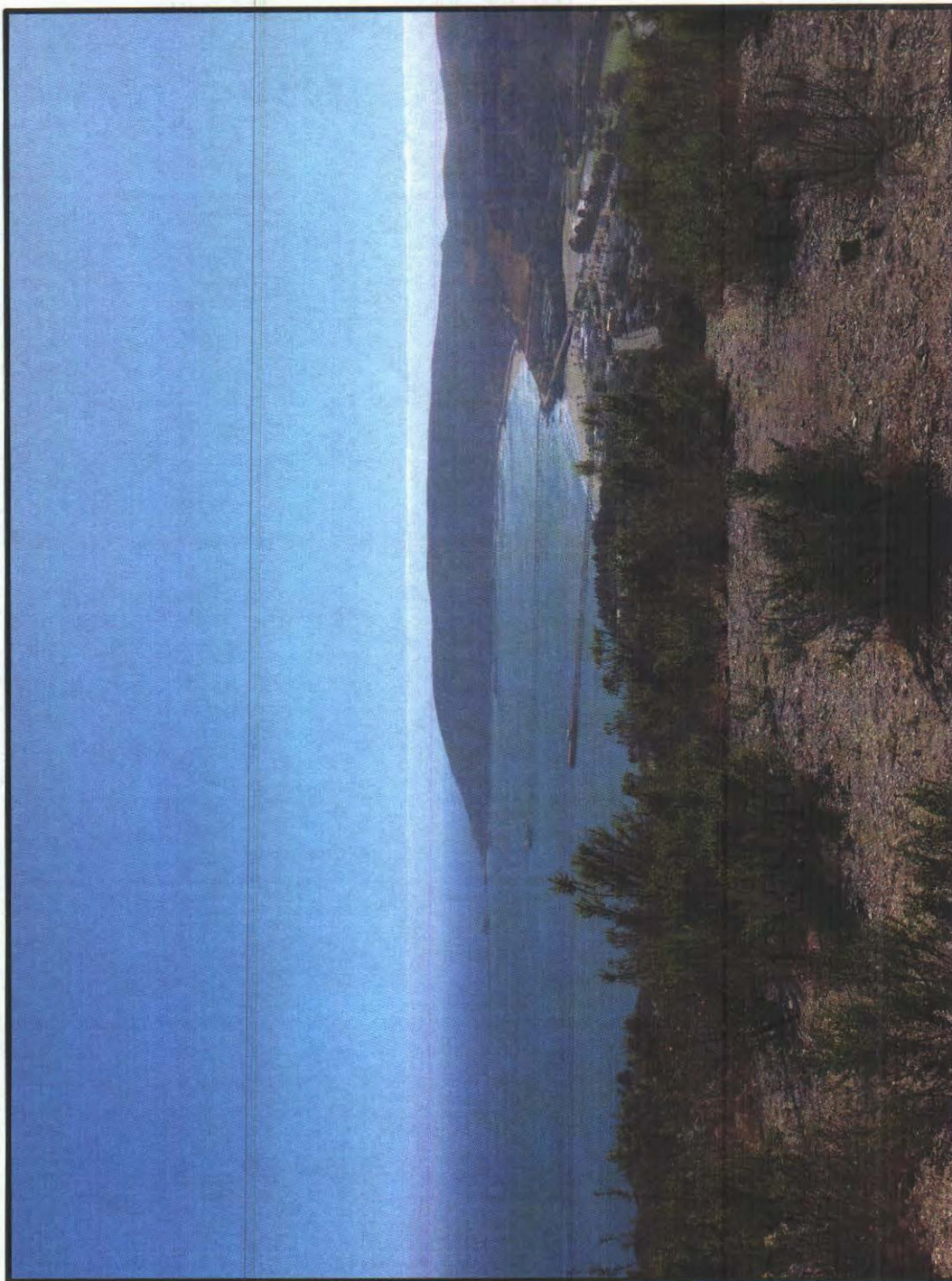


Exhibit 2  
CCC-14-CD-02 & CCC-14-NOV-01  
(Robert & Judith McCarthy)



# TRAILS ON AND ADJACENT TO THE MCCARTHY'S' PROPERTY

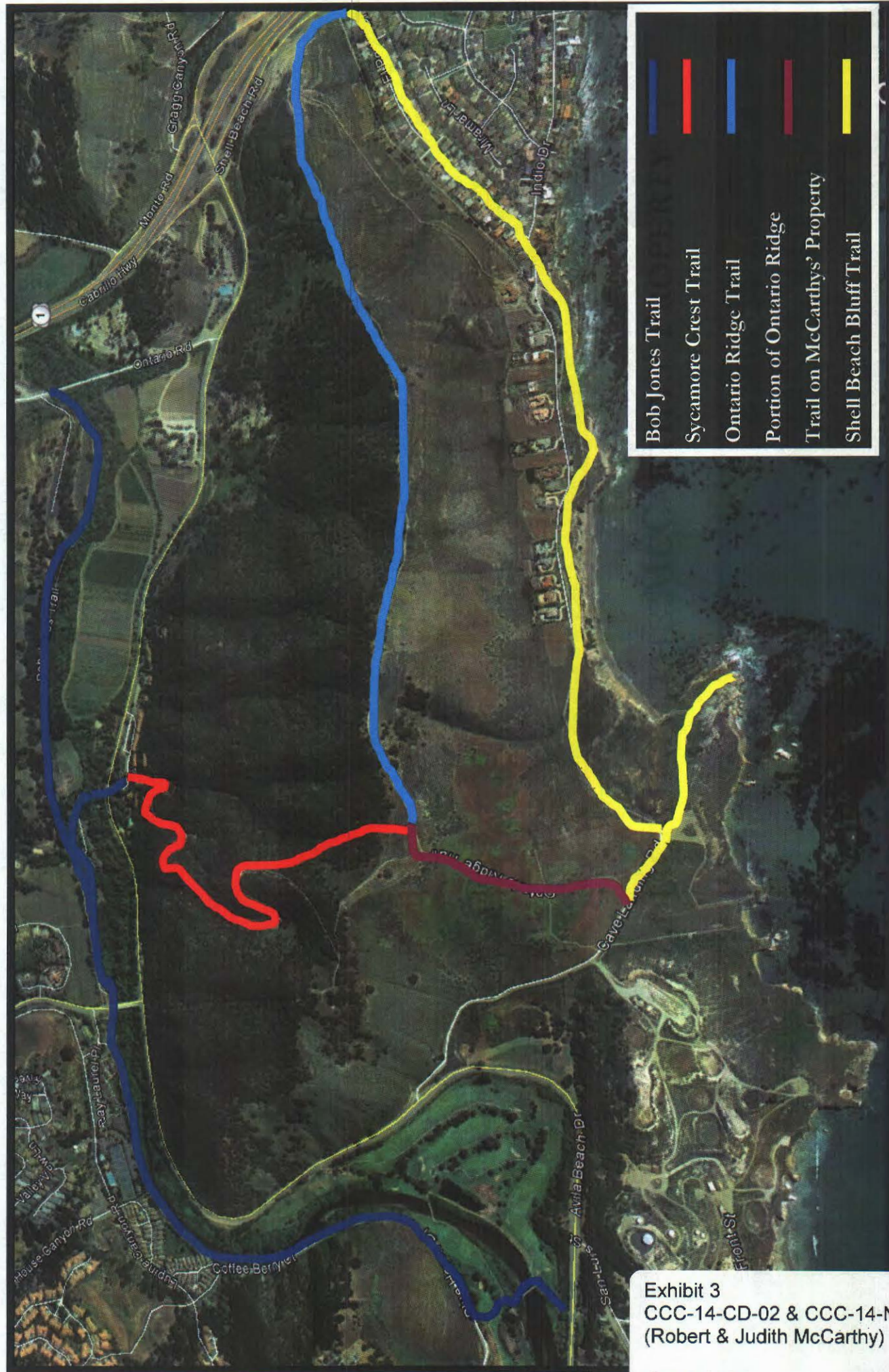


Exhibit 3  
CCC-14-CD-02 & CCC-14-NOV-01  
(Robert & Judith McCarthy)

**RECORDING REQUESTED BY  
AND WHEN RECORDED RETURN TO:**

Clerk of the Board of Supervisors  
County of San Luis Obispo  
1055 Monterey Street  
San Luis Obispo, CA 93408

DOC#: 2009069462



Titles: 1 Pages: 11

Fees	0.00
Taxes	0.00
Others	0.00
PAID	\$0.00

[Space above for Recorder's use]

**GRANT OF EASEMENTS FOR ACCESS**

(CAVE LANDING AND KING ACCESS EASEMENTS)

This Grant of Easements for Access ("Grant of Easements") is made as of December 15, 2009, by San Miguelito Partners, a California limited partnership ("Grantor") and the County of San Luis Obispo, a political subdivision of the State of California ("Grantee").

**RECITALS**

A. Grantee is the owner of that certain real property as particularly described in Exhibit "A" attached hereto and made a part hereof ("Grantee's Property").

B. Grantor and Grantee entered into that certain Real Property Purchase Agreement, dated November 18, 2008 ("Purchase Agreement") whereby Grantor sold to Grantee and Grantee purchased from Grantor Grantee's Property.

C. Among other things, the Purchase Agreement provides that Grantor shall convey to Grantee certain easements for access to Grantee's Property.

D. Grantor and Grantee desire to enter into this Grant of Easements in order to effectuate the matters described in Recital "C" above.

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties agree as follows:

1. Grant of Easements. Grantor hereby grants to Grantee and its successors and assigns in and to Grantee's Property non-exclusive twenty (20) foot wide easements for pedestrian and vehicular access only on, across, over, in and through those portions of Grantor's Property which are described and depicted on Exhibit "B" attached hereto and made a part hereof, for access to Grantee's Property ("Access Easements"). The Access Easements shall not unreasonably interfere with Grantor's use and enjoyment of Grantor's Property. Grantee shall have the right to improve and maintain the easements granted by this Grant of Easements.



Grantor shall have no obligation to improve or maintain the easements granted by this Grant of Easements. Grantee hereby acknowledges that this Grant of Easements is granted for recreational and other purposes pursuant to Civil Code section 846. Grantee further acknowledges that in their present condition the easements granted by this Grant of Easements are not safe for vehicular access. Grantee hereby assumes all liability for use of the easements granted by this Grant of Easements.

2. Relocation of Access Easements. The Access Easements may be relocated at Grantor's reasonable discretion and at Grantor's sole cost and expense to a location on Grantor's Property that Grantor and Grantee shall reasonably agree.

3. Successors and Assigns. This Grant of Easements shall be binding upon and inure to the benefit of Grantee, its heirs, successors, grantees, and assigns.

4. Authority. Each individual executing this Grant of Easements on behalf of a party hereto represents and warrants that he or she is duly authorized to execute and deliver this Grant of Easements on such party's behalf, and that in doing so such person is acting within the scope of such person's authority.

5. Notices. Any notice or demand required or permitted to be given pursuant to this Grant of Easements shall be given either personally, by certified or registered mail, postage prepaid, return receipt requested, by confirmed fax, or by reliable overnight courier to the address of the respective parties set forth on the signature page. Any notice if served personally shall be deemed delivered upon receipt, if served by facsimile transmission shall be deemed delivered on the date of receipt as shown on the received facsimile, and if served by certified or registered mail or by reliable overnight courier shall be deemed delivered on the date of receipt as shown on the addressee's registry or certification of receipt or on the date receipt is refused as shown on the records or manifest of the U.S. Postal Service or such courier. Either party may from time to time designate any other address for this purpose by written notice to the other party.

6. Recording. This Grant of Easements shall be recorded in the Official Records of the Recorder's Office of San Luis Obispo County.

7. Interpretation. This Grant of Easements shall be governed by the laws of the State of California. This Grant of Easements shall not be interpreted or construed against the party preparing it. The headings which have been used throughout this Grant of Easements have been inserted for convenience of reference only and do not constitute matter to be construed in interpreting this Grant of Easements. Words of any gender used in this Grant of Easements shall be held and construed to include any other gender and words in the singular number shall be held to include the plural, and vice versa, unless the context requires otherwise.

8. Survival. Terms and conditions of this Grant of Easements which by their sense and context survive the termination, cancellation or expiration of this Grant of Easements will so survive.

9. Counterparts. This Grant of Easements may be executed in counterparts, each of which shall constitute one original and all of which shall be one and the same instrument.

10. Entire Agreement. This Grant of Easements constitutes the entire agreement and understanding between the parties, and supersedes all offers, negotiations and other agreements, written or oral, concerning the subject matter contained herein. There are no representations or understandings of any kind not set forth herein. Any amendments to this Grant of Easements shall be effective only if in writing and executed by both parties.

IN WITNESS WHEREOF, the parties have executed this Grant of Easements as of the date first written above.

**SAN MIGUELITO PARTNERS,**  
a California limited partnership

By: San Miguelito Associates  
a California limited partnership,  
its general partner

By: Howard & Howard, Inc.  
a California corporation  
its general partner

By: Robert W. Howard  
Name: Robert W. Howard  
Title: Secretary

**Address and Phone:**  
San Miguelito Partners  
c/o Robert W. Howard  
9 Red Rock Lane  
Laguna Niguel, CA 92677  
Tel: (949) 363-8696

**COUNTY OF SAN LUIS OBISPO,**  
a political subdivision of the State of  
California

By: Guerra S. Ceballos  
Chairperson of the Board of Supervisors

Approved by the Board of Supervisors  
this 15<sup>th</sup> Day of December, 2009.

**Address, Phone and Fax:**  
Department of General Services  
1087 Santa Rosa Street  
San Luis Obispo, CA 93408  
Tel: (805) 781-5901  
Fax: (805) 781-1364

ATTEST:

**JULIE L. RODEWALD**

Clerk of the Board of Supervisors

By: Judy Cunniff  
Deputy Clerk

APPROVED AS TO FORM AND  
LEGAL EFFECT:

WARREN R. JENSEN  
County Counsel

By: Warren R. Jensen  
Assistant County Counsel

Date: 11/19/09

State of California

}  
} ss.  
}

County of Orange

On Nov. 10, 2009 before me, Carol Joy Miller,

Notary Public, personally appeared Robert W. Howard who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature

Carol Joy Miller



(SEAL)

STATE OF CALIFORNIA       )  
  ) ss.

COUNTY OF SAN LUIS OBISPO)

On December 15, 2009 before me, SANDY CURRENS Deputy       County  
Clerk-Recorder, County of San Luis Obispo, State of California, personally appeared \_\_\_\_\_  
BRUCE S. GIBSON \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the  
person whose name is subscribed to the within instrument and acknowledged to me that he/she  
executed the same in his/her authorized capacity, and that by his/her signature on the instrument  
the person, or the entity upon of which the person acted, executed the instrument.

I certify under Penalty of Perjury under the laws of the State of California that the  
foregoing paragraph is true and correct.

WITNESS my hand and official seal.

**JULIE L. RODEWALD**, County Clerk-  
Recorder and Ex-Officio Clerk of  
the Board of Supervisors

By: Sandy Currens  
Deputy County Clerk-Recorder

(SEAL)



**EXHIBIT A**  
**GRANTOR'S PROPERTY**

Parcel 3 of Parcel Map COAL 96-036 in the County of San Luis Obispo, State of California, according to a map recorded December 20, 1999 in Book 54, Page 36 of Parcel Maps, in the Office of the County Recorder of said county.

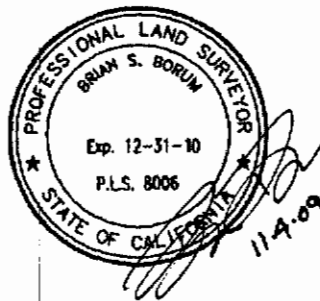
Exhibit 4  
CCC-14-CD-02 & CCC-14-NOV-01  
(Robert & Judith McCarthy)

EXHIBIT B  
LEGAL DESCRIPTION  
CAVE LANDING EASEMENT

A 20.00 foot wide strip of land over portions of Parcels 2 and 3 of Parcel Map COAL 96-036 recorded in Book 54 of Parcel Maps at Page 36, of official records, located in the County of San Luis Obispo, State of California, the centerline of which is described as follows:

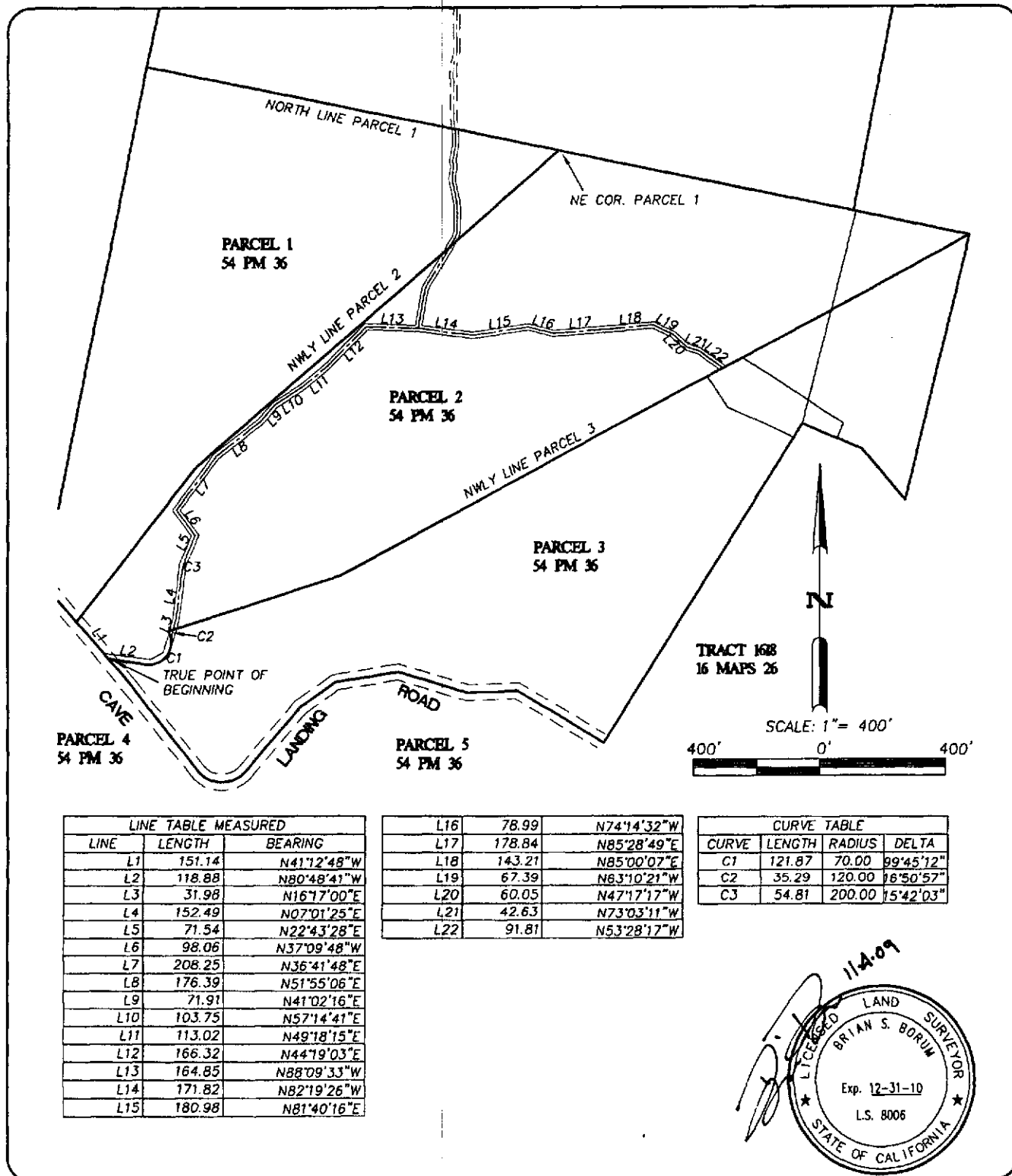
Commencing at the southwesterly corner of said Parcel 2; thence, South  $41^{\circ}12'48''$  East, along the southerly line of said Parcel 2, a distance of 151.14 feet to the southeasterly corner of said Parcel 2 and the southwesterly corner of said Parcel 3 and the TRUE POINT OF BEGINNING; thence, South  $80^{\circ}48'41''$  East, along the lines common to said Parcels 2 and 3, a distance of 118.88 feet; thence, northwesterly 121.87 feet along a curve concave northwesterly with a radius of 70.00 feet and a central angle of  $99^{\circ}45'12''$ ; thence, northeasterly 35.29 feet along a reverse curve concave easterly with a radius of 120.00 feet and a central angle of  $16^{\circ}50'57''$ ; thence, North  $16^{\circ}17'00''$  East, 31.98 feet; thence, North  $07^{\circ}01'25''$  East, 152.49 feet; thence, northeasterly 54.81 feet along a curve concave easterly with a radius of 200.00 feet and a central angle of  $15^{\circ}42'03''$ ; thence, North  $22^{\circ}43'28''$  East, 71.54 feet; thence, North  $37^{\circ}09'48''$  West, 98.06 feet; thence, North  $36^{\circ}41'48''$  East, 208.25 feet; thence, North  $51^{\circ}55'06''$  East, 176.39 feet; thence, North  $41^{\circ}02'16''$  East, 71.91 feet; thence, North  $57^{\circ}14'41''$  East, 103.75 feet; thence, North  $49^{\circ}18'15''$  East, 113.02 feet; thence, North  $44^{\circ}19'03''$  East, 166.32 feet; thence, South  $88^{\circ}09'33''$  East, 164.85 feet; thence, South  $82^{\circ}19'26''$  East, 171.82 feet; thence, North  $81^{\circ}40'16''$  East, 180.98 feet; thence, South  $74^{\circ}14'32''$  East, 78.99 feet; thence, North  $85^{\circ}28'49''$  East, 178.84 feet; thence, North  $85^{\circ}00'07''$  East, 143.21 feet; thence, South  $63^{\circ}10'21''$  East, 67.39 feet; thence, South  $47^{\circ}17'17''$  East, 60.05 feet; thence, South  $73^{\circ}03'11''$  East, 42.63 feet; thence, South  $53^{\circ}28'17''$  East, 91.81 feet more or less to the northwesterly line of Parcel 3 of said Parcel Map COAL 96-036, a distance of 885.88 feet from the northerly most corner of said Parcel 3 measured along the northwesterly line thereof and the terminus of said centerline.

Note: The sidelines of said 20.00 foot wide strip shall extend or shorten to terminate on the boundaries of Parcels 2 and 3 of said Parcel Map COAL 96-036.



11-04-09  
Omni Design Group Inc.

Exhibit 4  
CCC-14-CD-02 & CCC-14-NOV-01  
(Robert & Judith McCarthy)



PLOT DATE: \_\_\_\_\_

JOB NO. \_\_\_\_\_

DWG. NAME: \_\_\_\_\_

SCALE: \_\_\_\_\_

SHEET NO.: \_\_\_\_\_

**EXHIBIT B**

**CAVE LANDING EASEMENT**

**omni**  
**DESIGN GROUP**

ARCHITECTURE  
CIVIL ENGINEERING  
SURVEYING

689 TANK FARM ROAD, SUITE 140  
SAN LUIS OBISPO  
CALIFORNIA 93401  
PHONE (805) 544-9700  
FAX (805) 544-4327  
www.omni-designgroup.com

DRW BY: \_\_\_\_\_

CHK BY: \_\_\_\_\_

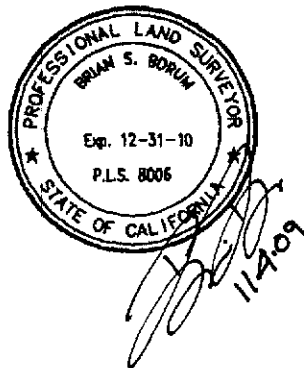
Exhibit 4  
CCC-14-CD-02 & CCC-14-NOV-01  
(Robert & Judith McCarthy)

EXHIBIT B  
LEGAL DESCRIPTION  
KING ACCESS EASEMENT

A 20.00 foot wide strip of land over portions of Parcels 1 and 2 of Parcel Map COAL 96-036 recorded in Book 54 of Parcel Maps at Page 36, of official records, located in the County of San Luis Obispo, State of California, the centerline of which is described as follows:

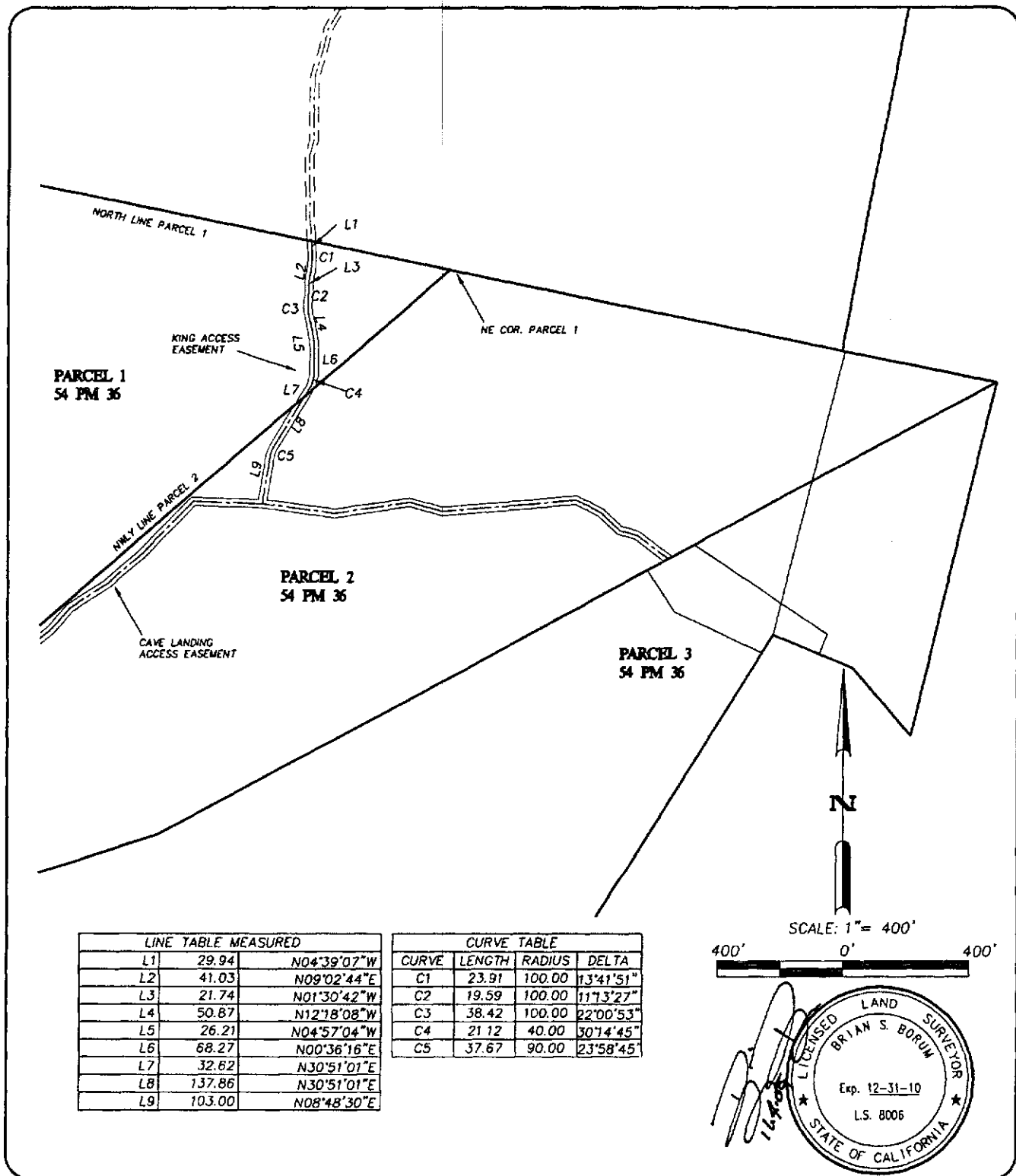
Commencing at the northeast corner of said Parcel 1; thence, North 78°29'23" West, along the North line of said Parcel 1 a distance of 336.12 feet to the centerline of an existing graded travel way and the TRUE POINT OF BEGINNING; thence, South 04°39'07" East, 29.94 feet; thence, southerly, 23.91 feet along a curve concave to the west with a radius of 100 feet and a central angle of 13°41'51"; thence, South 09°02'44" East, 41.03 feet; thence, South 01°30'42" East, 21.74 feet; thence, southerly 19.59 feet along a curve concave to West with a radius of 100.00 feet and a central angle of 11°13'27"; thence, continuing southerly 38.42 feet along a reverse curve concave to the East with a radius of 100.00 feet and a central angle of 22°00'53"; thence, South 12°18'08" East, 50.87 feet; thence, South 04°57'04" East, 26.21 feet; thence, South 00°36'16" West, 68.27 feet; thence, southerly 21.12 feet along a curve concave to the West with a radius of 40.00 feet and a central angle of 30°14'45"; thence, South 30°51'01" West, 32.62 feet to the intersection with the northwesterly line of said Parcel 2 said line also being the southeasterly line of said Parcel 1; thence, South 30°51'01" West, 137.86 feet; thence, southerly 37.67 feet along a curve concave to the East with a radius of 90.00 feet and a central angle of 23°58'45"; thence, South 08°48'30" East, 103.00 feet to the intersection with an existing graded travel way.

Note: The sidelines of said 20.00 foot wide strip shall extend or shorten to terminate on the North boundary of Parcels 1 and the existing graded travel way.



11-04-09  
Omni Design Group Inc.

Exhibit 4  
CCC-14-CD-02 & CCC-14-NOV-01  
(Robert & Judith McCarthy)



PLOT DATE:

JOB NO.

DWG. NAME:

SCALE:

SHEET NO.:

**EXHIBIT B**

**KING ACCESS EASEMENT**

**omni**  
DESIGN GROUP

ARCHITECTURE  
CIVIL ENGINEERING  
SURVEYING

469 TANK FARM ROAD, SUITE 140  
SAN LUIS OBISPO  
CALIFORNIA 93401  
PHONE: (805) 544-9700  
FAX: (805) 544-4327  
portal: omni-designgroup.com

DRW BY:

CHK BY:

Exhibit 4  
CCC-14-CD-02 & CCC-14-NOV-01  
(Robert & Judith McCarthy)

**CERTIFICATE OF ACCEPTANCE**

This is to certify that the interest in real property conveyed by the attached Grant of Easements for Access from San Miguelito Partners, a California limited partnership, to the County of San Luis Obispo is hereby accepted by order of the Board of Supervisors, pursuant to authority conferred by Board action approved on December 15, 2009. The grantee hereby consents to the recordation thereof by its duly authorized officer.

Dated: 12/15/2009

By: Bruce S. Gibson

Chairperson of the Board of Supervisors

STATE OF CALIFORNIA           )  
  ) ss.  
COUNTY OF SAN LUIS OBISPO)

On December 15, 2009, before me, SANDY CURRENS Deputy  
County Clerk-Recorder, County of San Luis Obispo, State of California, personally appeared  
BRUCE S. GIBSON, who proved to me on the basis of satisfactory  
evidence to be the person whose name is subscribed to the within instrument and acknowledged  
to me that he/she executed the same in his/her authorized capacity, and that by his/her signature  
on the instrument the person, or the entity upon of which the person acted, executed the  
instrument.

I certify under Penalty of Perjury under the laws of the State of California that the  
foregoing paragraph is true and correct.

WITNESS my hand and official seal.

(SEAL)

**JULIE L. RODEWALD**, County Clerk-  
Recorder and Ex-Officio Clerk of the Board  
of Supervisors

By: Sandy Currens  
Deputy County Clerk-Recorder

END OF DOCUMENT

Exhibit 4  
CCC-14-CD-02 & CCC-14-NOV-01  
(Robert & Judith McCarthy)

# UNPERMITTED FIELD FENCING

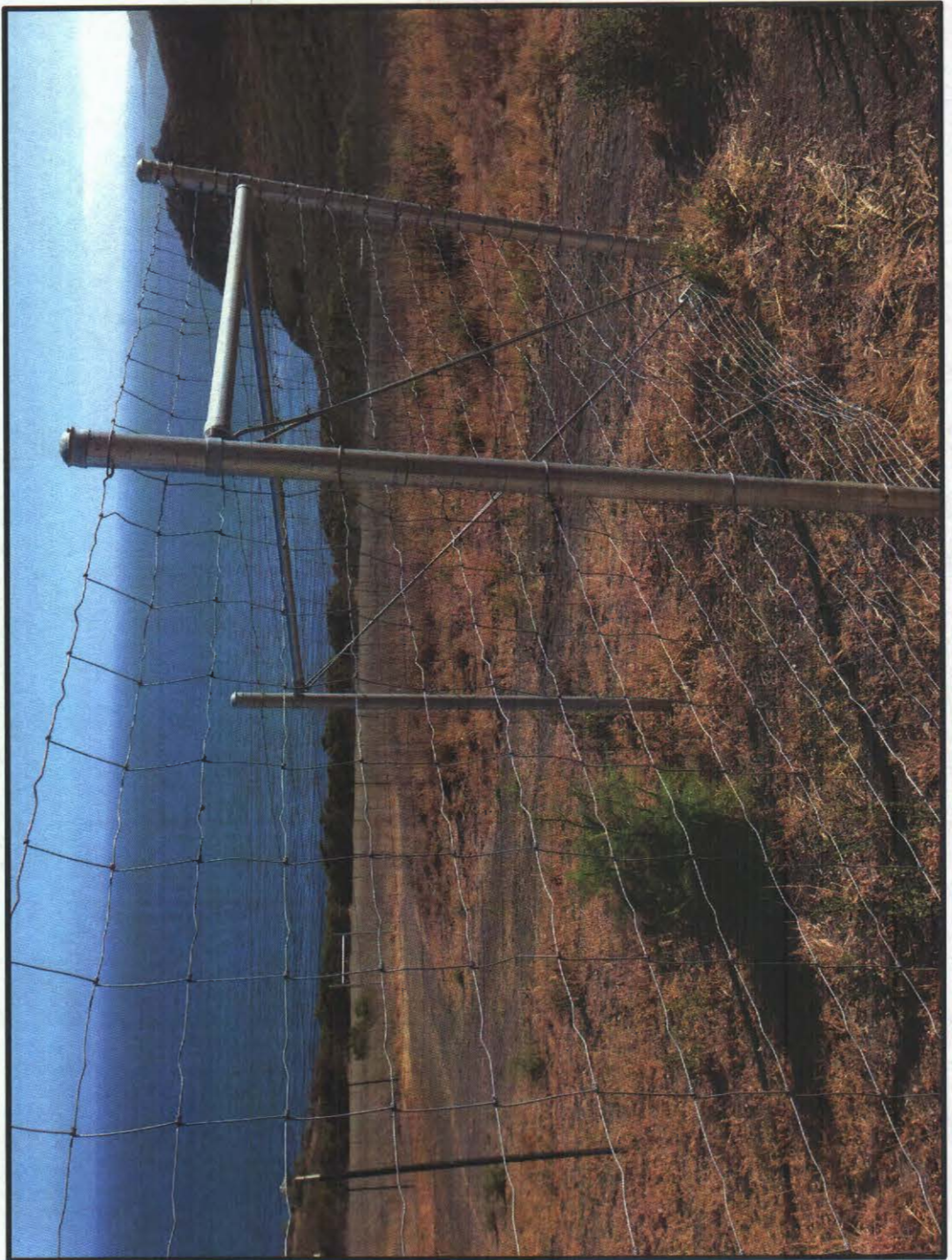


Exhibit 5  
CCC-14-CD-02 & CCC-14-NOV-01  
(Robert & Judith McCarthy)



# UNPERMITTED SIGNS IMPEDING PUBLIC ACCESS







## SAN LUIS OBISPO COUNTY

# DEPARTMENT OF PLANNING AND BUILDING

Promoting the wise use of land - Helping to build great communities

February 7, 2014

Dan Carl, District Director  
California Coastal Commission  
725 Front Street, Suite 300  
Santa Cruz, Ca 95060

SUBJECT: Fencing and Related Development – Parcel 2 – COAL 96-036

Dear Mr. Carl:

On February 6, 2014, the Department of Planning and Building received information regarding a recorded public access easement granted for recreational and other purposes in the general location of the existing trail on Parcel 2 of COAL 96-036. As this easement has been brought to the Department's attention, it has modified the position of the Department relative to the need for a permit for the erection of a fence that obstructs legal access to and views of the tidelands, and for its associated development (e.g., poles, gates, signs, etc.).

As the easement is available to the public for recreational purposes and provides legal access to and views of the tidelands, the Department has determined that the erection of the fence and associated development is not exempt from the requirement to obtain a Coastal Development Permit.

The County has notified the applicant's attorney that the fencing and related development is unpermitted and needs to be removed, and that if the applicant still desires to install fencing and related development, the applicant will need to apply for a Coastal Development Permit (CDP). The County requests that the Commission assume primary enforcement authority with regard to this violation pursuant to Public Resources Code Section 30810. Should the Commission assume primary authority, the County looks forward to coordinating closely with Commission enforcement staff as Commission staff pursues enforcement action, which may include the issuance of a cease and desist and restoration order for all of the unpermitted development. In addition, if the applicant chooses to subsequently apply for a CDP, the County looks forward to the Commission's input on such development's consistency with the County's LCP and Coastal Act's access and recreation policies as they pertain to this location.

We would like to continue to work with you to find the most effective means of collectively addressing the situation and appreciate your coordination.

If you have any questions, please don't hesitate to contact me directly at [kgriffin@co.slo.ca.us](mailto:kgriffin@co.slo.ca.us) or (805) 781-5708.

Sincerely,

Kami Griffin, Assistant Director  
Planning and Building Department

Exhibit 7  
CCC-14-CD-02 & CCC-14-NOV-01  
(Robert & Judith McCarthy)

Page 1 of 1

# ONTARIO RIDGE TRAIL



McCarthy Property

Pirates Cove

Exhibit 8  
CCC-14-CD-02 & CCC-14-NOV-01  
(Robert & Judith McCarthy)

# Ontario Ridge Trail: Public Usage Survey Results 1960 - 2014

User Number:	Year of Initial Use:	Approx. Number of Times of Use:	Duration of Use: (years)
User # 1	1960	300	53
User # 2	1960	10	10
User # 3	1965	25	25
User # 4	1972	80	18
User # 5	1975	10	18
User # 6	1977	12	36
User # 7	1977	370	35
User # 8	1979	25	14
User # 9*	1979	30	34
User # 10	1980	150	33
User # 11	1980	3000	33
User # 12	1985	15	27
User # 13	1985	100	27
User # 14	1985	600	28
User # 15	1985	1000	28
User # 16	1985	over 100	23
User # 17	1985	over 200	27
User # 18	1986	200	26
User # 19	1987	100	25
User # 20	1988	250	25
User # 21	1989	300	24
User # 22	1989	450	24
User # 23	1990	25	23
User # 24	1990	100	23
User # 25	1990	2300	23
User # 26	1992	12	11
User # 27	1992	16	5
User # 28	1993	50	20

User # 29	1994	500	9
User # 30	1994	1000	19
User # 31	1994	30	9
User # 32	1995	75	17
User # 33	1995	100	18
User # 34	1995	100	18
User # 35	1995	250	18
User # 36	1997	100	16
User # 37	1998	40	5
User # 38	1998	60	15
User # 39	1998	60	16
User # 40	1998	100	15
User # 41	1998	100	15
User # 42	1998	150	15
User # 43	1998	500	15
User # 44	1998	830	15
User # 45	1998	1000	15
User # 46	1999	10	4
User # 47	1999	10	4
User # 48	1999	25	14
User # 49	1999	30	14
User # 50	1999	30	4
User # 51	1999	50	14
User # 52	1999	650	14
User # 53	1999	blank	15
User # 54	1999	over 100	4
User # 55	2000	20	13
User # 56	2000	20	13
User # 57	2000	30	13
User # 58	2000	30	13
User # 59	2000	50	13
User # 60	2000	100	13
User # 61	2000	100	13
User # 62	2000	250	13

User # 63	2000	250	13
User # 64	2000	250	13
User # 65	2000	over 100	13
User # 66	2001	10	12
User # 67	2001	11	12
User # 68	2001	12	12
User # 69	2001	20	11
User # 70	2001	50	12
User # 71	2001	50	12
User # 72	2001	70	12
User # 73	2001	100	7
User # 74	2001	100	12
User # 75	2001	450	12
User # 76	2001	650	12
User # 77	2001	1100	13
User # 78	2001	over 2000	12
User # 79	2002	50	11
User # 80	2002	50	blank
User # 81	2002	200	40
User # 82	2002	350	11
User # 83	2002	500	11
User # 84	2002	1000	11
User # 85	2002	1500	11
User # 86*	2003	40	10
User # 87	2003	3	10
User # 88	2003	12	10
User # 89	2003	15	10
User # 90	2003	20	10
User # 91	2003	50	10
User # 92	2003	100	10
User # 93	2003	100	10
User # 94	2003	100	10
User # 95	2003	100	10
User # 96	2003	150	10

User # 97	2003	500	10
User # 98	2003	540	10
User # 99	2003	540	10
User # 100	2003	1000	10
User # 101	2003	many times	10
User # 102*	2004	300	10
User # 103	2004	12	9
User # 104	2004	15	9
User # 105	2004	200	9
User # 106	2004	200	9
User # 107	2004	520	9
User # 108	2004	1800	9
User # 109	2004	1800	9
User # 110	2004	2000	9
User # 111	2005	5	8
User # 112	2005	16	8
User # 113	2005	20	8
User # 114	2005	30	7
User # 115	2005	50	8
User # 116	2005	60	8
User # 117	2005	70	8
User # 118	2005	75	8
User # 119	2005	75	8
User # 120	2005	100	8
User # 121	2005	100	8
User # 122	2005	200	8
User # 123	2005	200	8
User # 124	2005	1000	8
User # 125	2005	1200	8
User # 126	2005	1500	8
User # 127	2005	1500	8
User # 128	2005	2100	8
User # 129	2005	blank	8
User # 130	2006	10	7

User # 131	2006	12	7
User # 132	2006	35	7
User # 133	2006	45	7
User # 134	2006	50	7
User # 135	2006	60	7
User # 136	2006	65	7
User # 137	2006	84	7
User # 138	2006	150	13
User # 139	2006	200	7
User # 140	2006	240	7
User # 141	2006	650	7
User # 142	2006	1000	7
User # 143*	2007	300	6
User # 144	2007	1	1
User # 145	2007	30	6
User # 146	2007	30	6
User # 147	2007	30	6
User # 148	2007	70	6
User # 149	2007	85	6
User # 150	2007	125	6
User # 151	2007	150	6
User # 152	2007	200	5
User # 153	2007	200	5
User # 154	2007	214	6
User # 155	2007	250	6
User # 156	2007	300	6
User # 157	2007	500	6
User # 158	2007	blank	6
User # 159	2008	9	5
User # 160	2008	15	5
User # 161	2008	18	5
User # 162	2008	30	5
User # 163	2008	30	5
User # 164	2008	45	4

User # 165	2008	50	5
User # 166	2008	50	5
User # 167	2008	60	5
User # 168	2008	60	5
User # 169	2008	60	5
User # 170	2008	100	5
User # 171	2008	100	5
User # 172	2008	100	5
User # 173	2008	100	5
User # 174	2008	100	5
User # 175	2008	150	5
User # 176	2008	200	5
User # 177	2008	500	5
User # 178	2008	500	5
User # 179	2008	750	5
User # 180	2008	2000	5
User # 181	2008	blank	5
User # 182	2008	over 100	5
User # 183	2008	blank	5
User # 184	2009	20	4
User # 185	2009	7	4
User # 186	2009	10	4
User # 187	2009	10	4
User # 188	2009	10	4
User # 189	2009	30	4
User # 190	2009	100	4
User # 191	2009	200	4
User # 192	2009	200	4
User # 193	2009	200	4
User # 194	2009	200	4
User # 195	2009	300	4
User # 196	2009	600	4
User # 197	2009	blank	blank
User # 198	2009	blank	blank



User # 199	2010	200	3
User # 200	2010	1	3
User # 201	2010	2	3
User # 202	2010	4	3
User # 203	2010	6	3
User # 204	2010	20	3
User # 205	2010	20	3
User # 206	2010	40	3
User # 207	2010	150	3
User # 208	2010	150	3
User # 209	2010	300	3
User # 210	2010	676	3
User # 211	2010	over 100	3
User # 212*	2011	50	2
User # 213	2011	1	2
User # 214	2011	3	2
User # 215	2011	8	2
User # 216	2011	10	2
User # 217	2011	11	2
User # 218	2011	20	2
User # 219	2011	20	2
User # 220	2011	50	2
User # 221	2011	200	2
User # 222	2012	2	1
User # 223	2012	3	1
User # 224	2012	5	1
User # 225	2012	5	1
User # 226	2012	10	1
User # 227	2012	blank	blank
User # 228	2013	1	1
User # 229	2013	1	1
User # 230	2013	1	1
User # 231	2013	2	1
User # 232	2013	2	1

User # 233	2013	3	1
User # 234	2013	3	1
User # 235	2013	3	blank
User # 236	2013	4	1
User # 237	2013	4	1
User # 238	2013	6	1
User # 239	2013	10	1
User # 240	2013	10	1
User # 241	2013	10	1
User # 242	2013	12	1
User # 243	2013	25	1
User # 244	2013	25	1
User # 245	2013	30	1
User # 246	2013	47	1
User # 247	2014 - probably earlier	20	1
User # 248	2014	100	blank
User # 249	2014	50	blank
User # 250	2014	3	0
User # 251	2014	5	0
User # 252	2014	20	0
User # 253	2014	40	0
User # 254	2014	40	0
User # 255	blank	6	blank
User # 256	blank	6	blank
User # 257	blank	45	blank
User # 258	blank	100 times per year	blank
User # 259	blank	35 times per year	blank
User # 260	blank	3	blank
User # 261	blank	20	blank
User # 262	blank	50	blank
User # 263	blank	100	blank
User # 264	blank	100	blank
User # 265	blank	650	blank
User # 266	blank	5	blank

User # 267	blank	8	blank
User # 268	blank	12	blank
User # 269	blank	55	blank
User # 270	blank	blank	blank
User # 271	blank	blank	blank
User # 272	blank	blank	blank
User # 273	blank	blank	blank
User # 274	blank	blank	blank
User # 275	blank	blank	blank
User # 276	blank	blank	blank
User # 277	blank	blank	blank
User # 278	blank	blank	blank
User # 279**	blank	blank	blank
User # 280**	blank	blank	blank
User # 281**	blank	blank	blank

did not use because thought was private

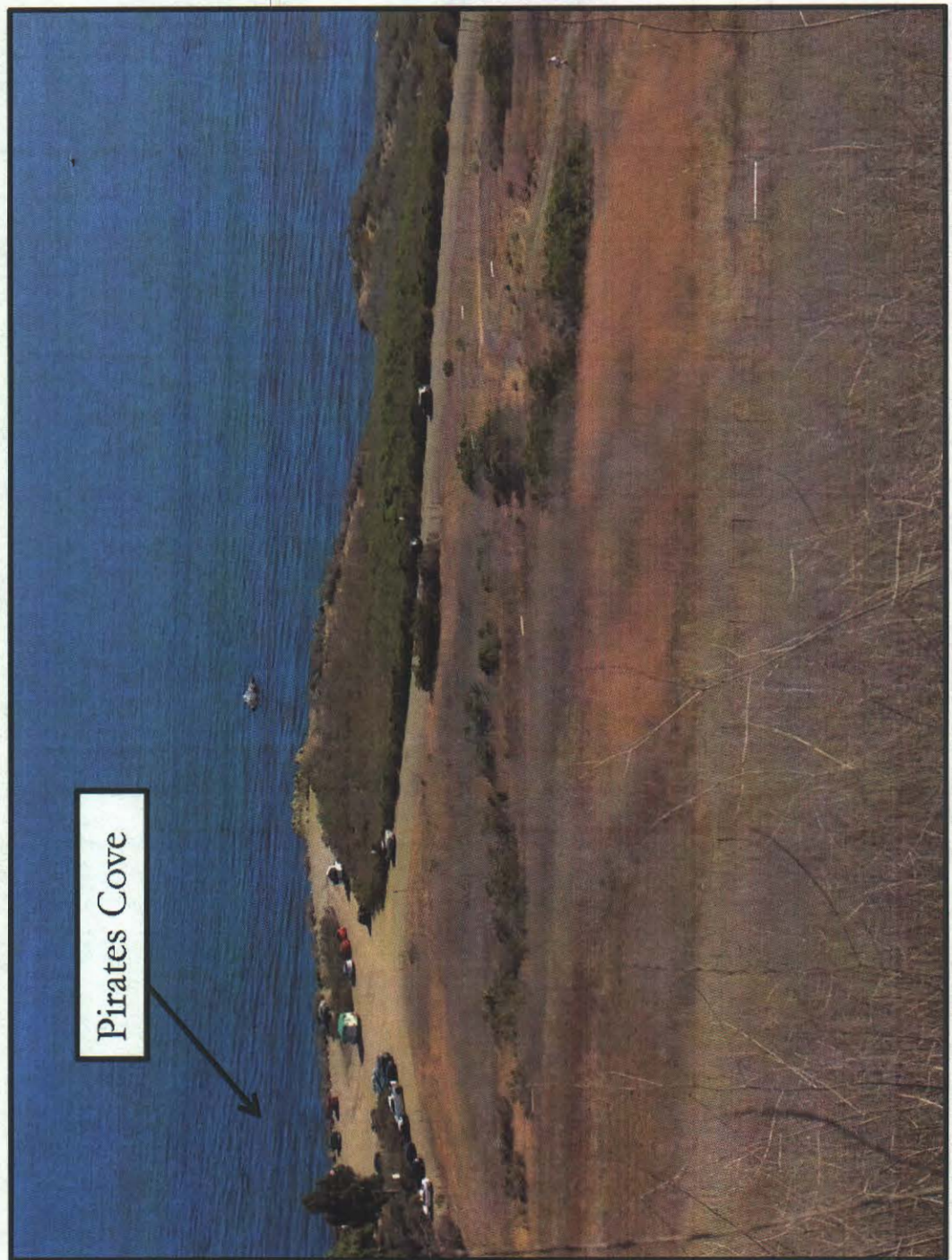
blank = the specific user left this question blank

**Additional Information:** Users included a guidebook author, hike leaders, hikers, students, paragliders, and paraglide instructors.

\*These users reported their adulthood usage, but noted that they also used the trail as a child, which is not reported

\*\*These users assert that they received permission to use the trail

# COASTAL VIEWS FROM MCCARTHY PROPERTY ACCESS EASEMENT

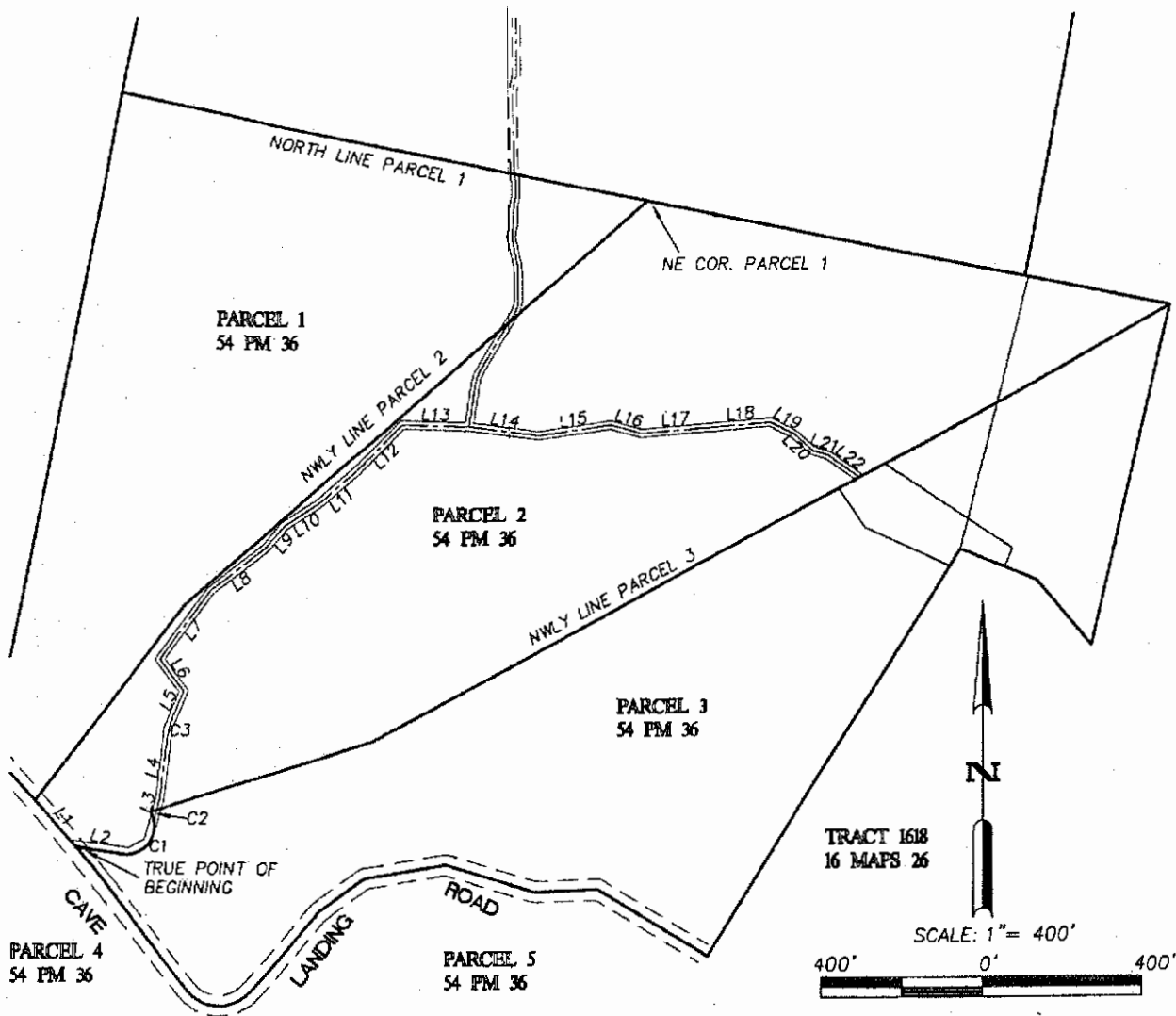






COASTAL VIEWS OF AVILA BAY FROM MCCARTHY PROPERTY ACCESS  
EASEMENT  
(Impeded by Unpermitted Development)

Exhibit 11  
CCC-14-CD-02 & CCC-14-NOV-01  
(Robert & Judith McCarthy)



LINE TABLE MEASURED		
LINE	LENGTH	BEARING
L1	151.14	N41°12'48"W
L2	118.88	N80°48'41"W
L3	31.98	N16°17'00"E
L4	152.49	N07°01'25"E
L5	71.54	N22°43'28"E
L6	98.06	N37°09'48"W
L7	208.25	N35°41'48"E
L8	176.39	N51°55'06"E
L9	71.91	N41°02'16"E
L10	103.75	N57°14'41"E
L11	113.02	N49°18'15"E
L12	166.32	N44°19'03"E
L13	164.85	N88°09'33"W
L14	171.82	N82°19'26"W
L15	180.98	N81°40'16"E

L16	78.99	N74°14'32"W
L17	178.84	N85°28'49"E
L18	143.21	N85°00'07"E
L19	67.39	N63°10'21"W
L20	60.05	N47°17'17"W
L21	42.63	N73°03'11"W
L22	91.81	N53°28'17"W

CURVE TABLE			
CURVE	LENGTH	RADIUS	DELTA
C1	121.87	70.00	99°45'12"
C2	35.29	120.00	16°50'57"
C3	54.81	200.00	15°42'03"



Exhibit 12  
CCC-14-CD-02 & CCC-14-NOV-01  
(Robert & Judith McCarthy)

PLOT DATE: \_\_\_\_\_

JOB NO. \_\_\_\_\_

DWG. NAME: \_\_\_\_\_

SCALE: \_\_\_\_\_

SHEET NO.: \_\_\_\_\_

**EXHIBIT F**

**CAVE LANDING EASEMENT**

**omni**  
DESIGN GROUP

ARCHITECTURE  
CIVIL ENGINEERING  
SURVEYING

689 TANK FARM ROAD, SUITE 14C  
SAN LUIS OBISPO  
CALIFORNIA, 93401  
PHONE: (805) 544-9700  
FAX: (805) 544-4337  
email: omni@omnidesigngroup.com

DRW BY: \_\_\_\_\_

CHK BY: **A14-24**

**11/18/2008**

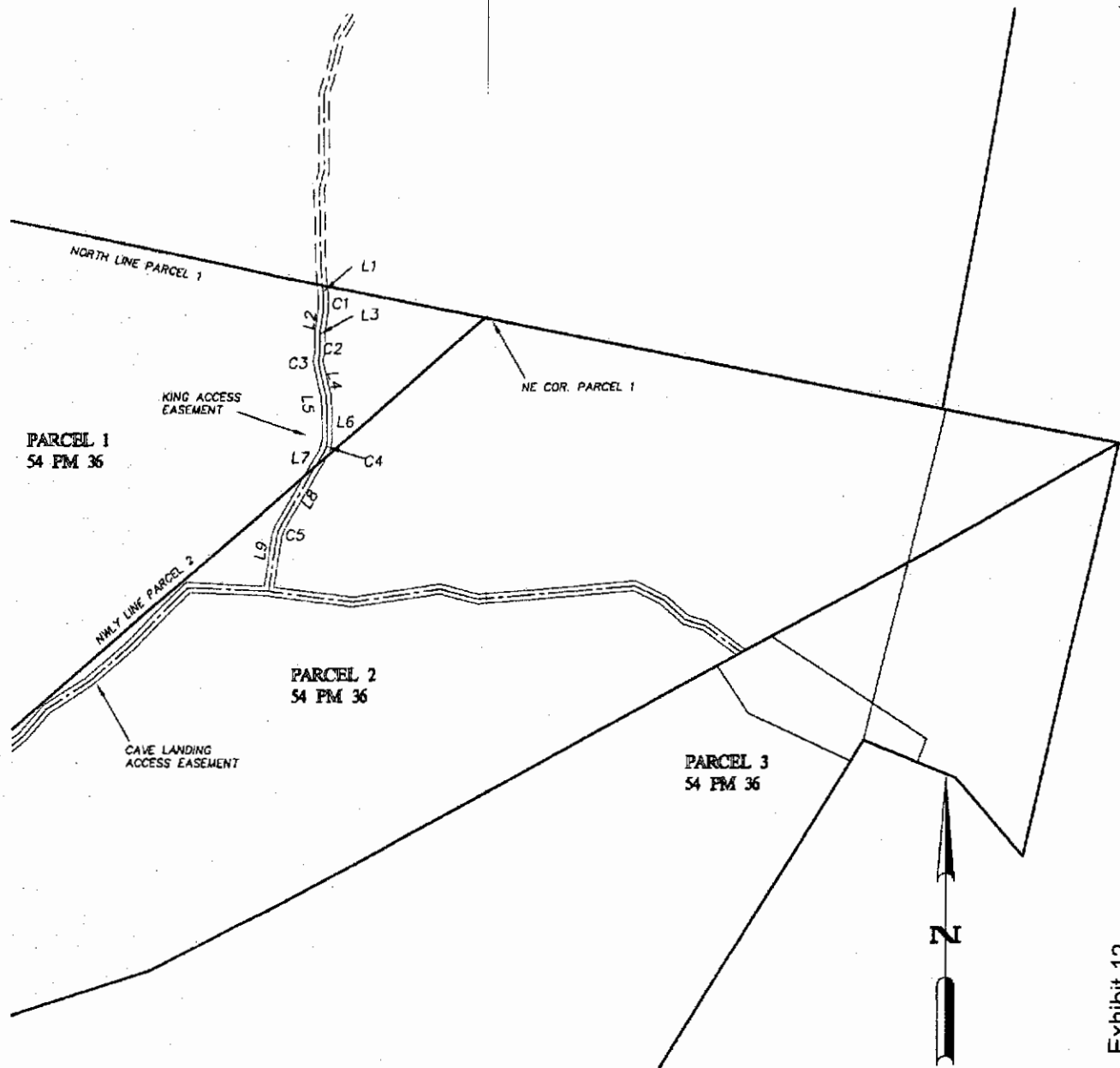
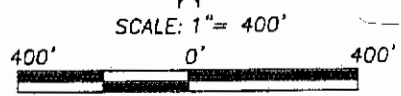


Exhibit 12  
 CCC-14-CD-02 & CCC-14-NOV-01  
 (Robert & Judith McCarthy)

LINE TABLE MEASURED		
L1	29.94	N04°39'02"W
L2	41.03	N09°02'44"E
L3	21.74	N01°30'42"W
L4	50.87	N12°18'08"W
L5	26.21	N04°57'04"W
L6	68.27	N00°36'16"E
L7	32.62	N30°51'01"E
L8	137.86	N30°51'01"E
L9	103.00	N08°48'30"E

CURVE TABLE			
CURVE	LENGTH	RADIUS	DELTA
C1	23.91	100.00	13°41'51"
C2	19.59	100.00	11°13'27"
C3	38.42	100.00	22°00'53"
C4	21.12	40.00	30°14'45"
C5	37.67	90.00	23°58'45"



PLOT DATE: \_\_\_\_\_

JOB NO. \_\_\_\_\_

DWG. NAME: \_\_\_\_\_

SCALE: \_\_\_\_\_

SHEET NO.: \_\_\_\_\_

**EXHIBIT F**

---

**KING ACCESS EASEMENT**

ARCHITECTURE  
 CIVIL ENGINEERING  
 SURVEYING

489 TANK FARM ROAD, SUITE 14C  
 SAN LUIS OBISPO  
 CALIFORNIA, 93401  
 PHONE: (805) 844-9700  
 FAX: (805) 844-4327  
 email: omni@omnidesigngroup.com

DRW BY: \_\_\_\_\_

CHK BY: **A14-26**

**11/18/2008**



# UNPERMITTED FENCES ON MCCARTHY PROPERTY

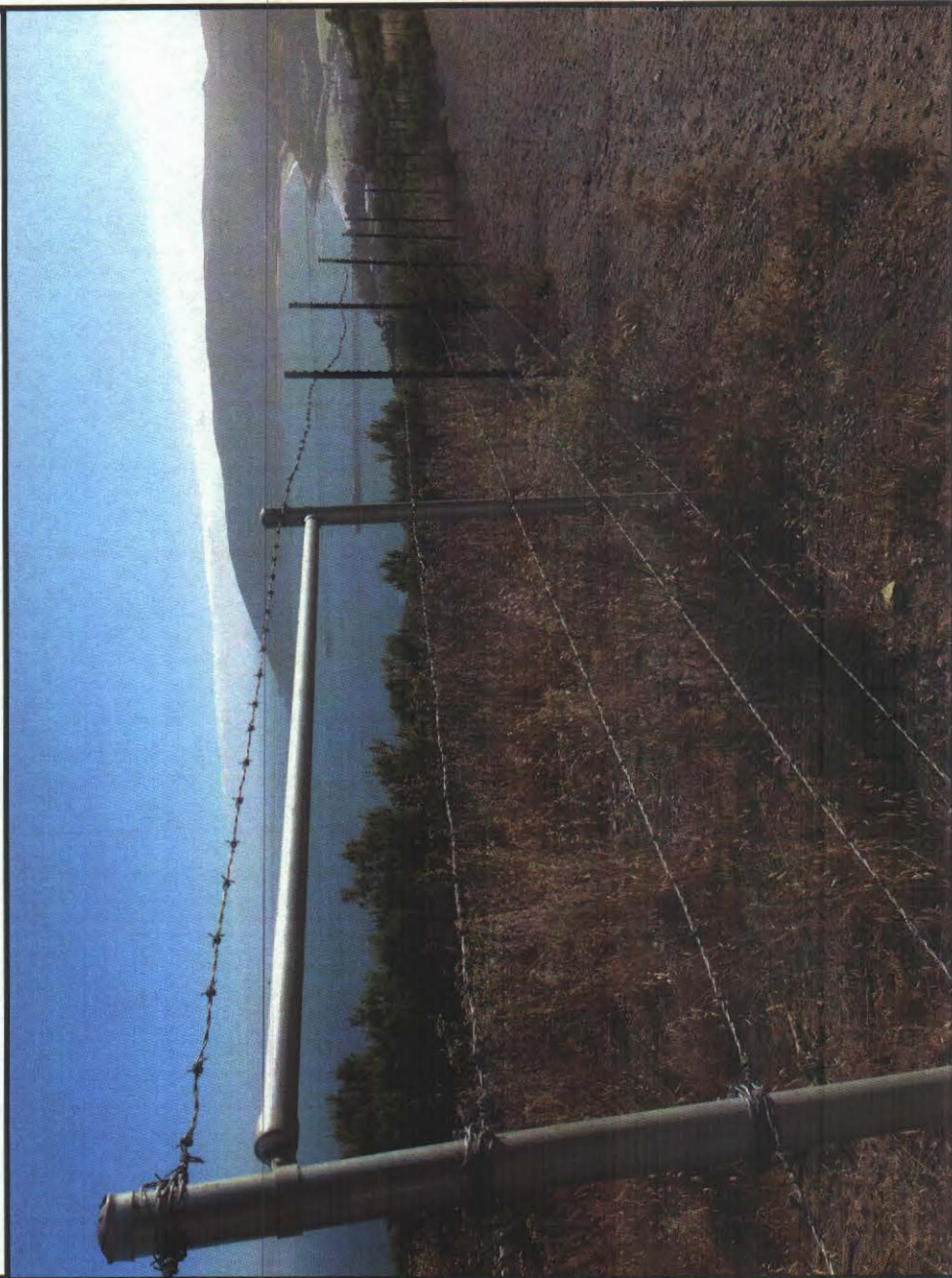


Exhibit 13  
CCC-14-CD-02 & CCC-14-NOV-01  
(Robert & Judith McCarthy)



# UNPERMITTED FIELD FENCING

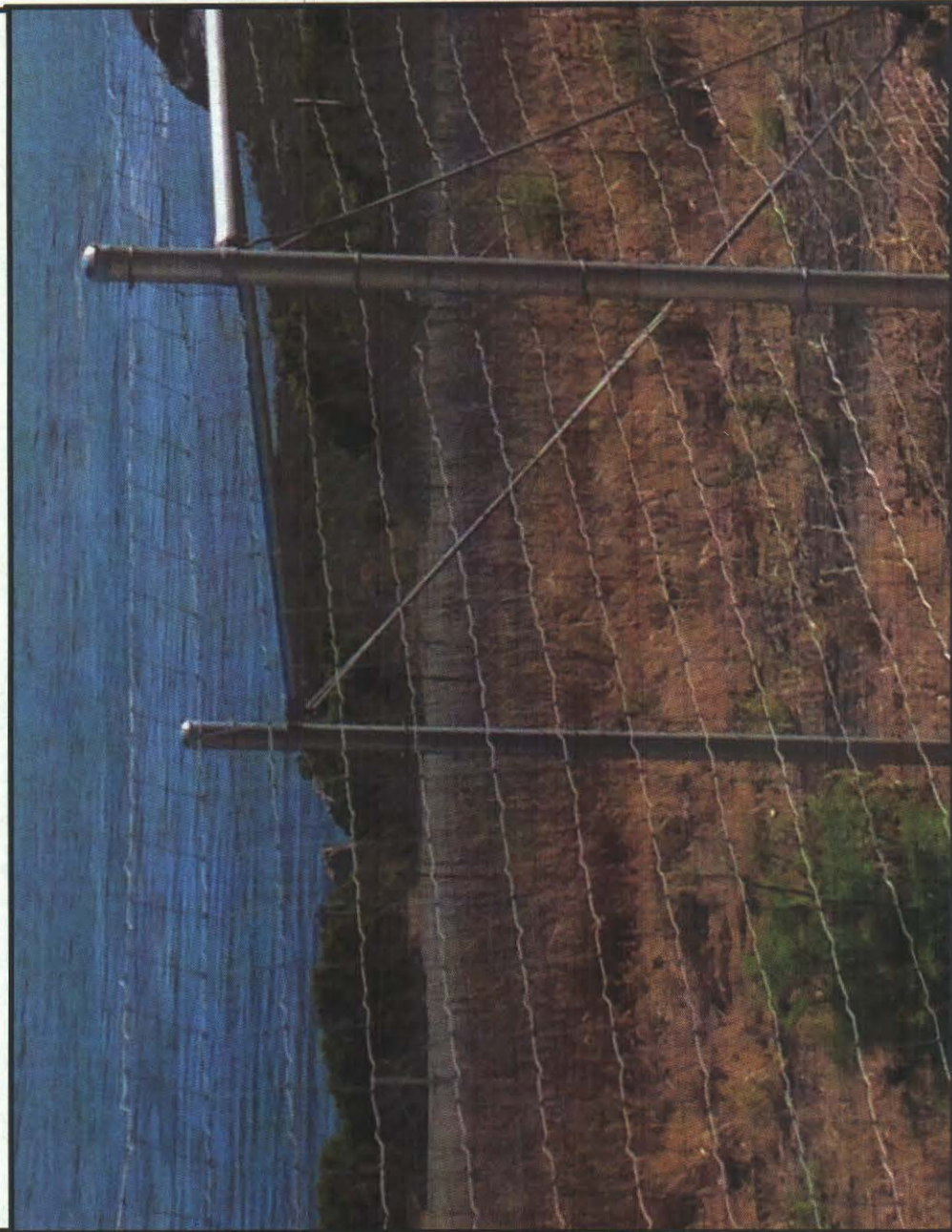


Exhibit 14  
CCC-14-CD-02 & CCC-14-NOV-01  
(Robert & Judith McCarthy)



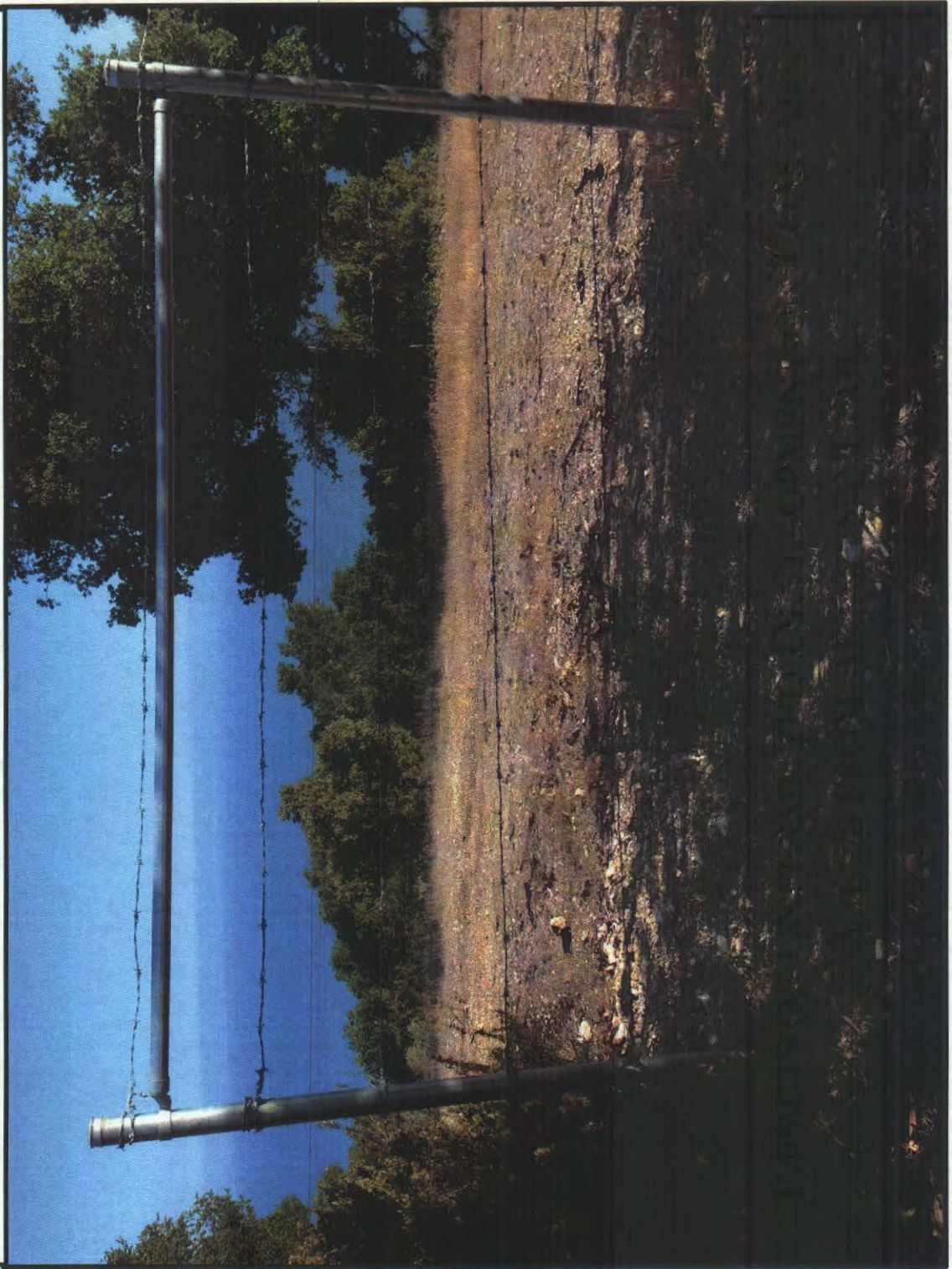
# UNPERMITTED DEVELOPMENT ON MCCARTHY PROPERTY



Exhibit 15  
CCC-14-CD-02 & CCC-14-NOV-01  
(Robert & Judith McCarthy)



IMPACTS OF UNPERMITTED DEVELOPMENT ON COASTAL  
VIEWS FROM ADJACENT TRAIL





County of San Luis Obispo

## GENERAL SERVICES AGENCY

Janette D. Pell, Director

Cody VanDorn, Department Administrator

Robert McCarthy & Judith McCarthy  
1800 19<sup>th</sup> Street  
Bakersfield, California 93301

Re: County of San Luis Obispo, APNs 076-231-063, 065  
Ontario Ridge Trail, Sycamore Springs Trail

Dear Mr. and Mrs. McCarthy:

It has come to our attention that the County of San Luis Obispo ("County") holds easements for public access and recreational purposes along the area of your property known colloquially as the Ontario Ridge Trail and the Sycamore Springs Trail. Enclosed is a copy of the document by which your predecessor-in-interest, San Miguelito Partners, granted those easements to the County in 2009. We are also aware that gates and fencing have been constructed across and/or within the County's easements that obstruct the public's use of the County's property. Please remove all such obstructions immediately. If the fencing and gates that encroach upon the County's easements are not removed in a timely fashion, the County will be forced to initiate legal proceedings to do so.

Please contact me at your earliest convenience to discuss how and when you intend to remedy this violation of the County's easements.

Sincerely,

Janette D. Pell  
Director General Services Agency

Cc: Gregory W. Sanders, Esq.  
Kami Griffin, Assistant Planning Director  
Supervisor Adam Hill

Enclosure:  
Grant of Easement dated 12/15/2009

Exhibit 17  
CCC-14-CD-02 & CCC-14-NOV-01  
(Robert & Judith McCarthy)

Page 1 of 14

**JULIE RODEWALD**  
 San Luis Obispo County - Clerk/Recorder  
 Recorded at the request of  
 Public

AM  
 12/16/2009  
 11:33 AM

**RECORDING REQUESTED BY  
 AND WHEN RECORDED RETURN TO:**

Clerk of the Board of Supervisors  
 County of San Luis Obispo  
 1055 Monterey Street  
 San Luis Obispo, CA 93408

DOC#: 2009089462



Title: 1 Page: 11

Fees	0.00
Taxes	0.00
Others	0.00
PAID	50.00

[Space above for Recorder's use]

**GRANT OF EASEMENTS FOR ACCESS**  
**(CAVE LANDING AND KING ACCESS EASEMENTS)**

This Grant of Easements for Access ("Grant of Easements") is made as of December 15, 2009, by San Miguelito Partners, a California limited partnership ("Grantor") and the County of San Luis Obispo, a political subdivision of the State of California ("Grantee").

**RECITALS**

A. Grantee is the owner of that certain real property as particularly described in Exhibit "A" attached hereto and made a part hereof ("Grantee's Property").

B. Grantor and Grantee entered into that certain Real Property Purchase Agreement, dated November 18, 2008 ("Purchase Agreement") whereby Grantor sold to Grantee and Grantee purchased from Grantor Grantee's Property.

C. Among other things, the Purchase Agreement provides that Grantor shall convey to Grantee certain easements for access to Grantee's Property.

D. Grantor and Grantee desire to enter into this Grant of Easements in order to effectuate the matters described in Recital "C" above.

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties agree as follows:

1. Grant of Easements. Grantor hereby grants to Grantee and its successors and assigns in and to Grantee's Property non-exclusive twenty (20) foot wide easements for pedestrian and vehicular access only on, across, over, in and through those portions of Grantor's Property which are described and depicted on Exhibit "B" attached hereto and made a part hereof, for access to Grantee's Property ("Access Easements"). The Access Easements shall not unreasonably interfere with Grantor's use and enjoyment of Grantor's Property. Grantee shall have the right to improve and maintain the easements granted by this Grant of Easements.

- 1 -

Grantor shall have no obligation to improve or maintain the easements granted by this Grant of Easements. Grantee hereby acknowledges that this Grant of Easements is granted for recreational and other purposes pursuant to Civil Code section 846. Grantee further acknowledges that in their present condition the easements granted by this Grant of Easements are not safe for vehicular access. Grantee hereby assumes all liability for use of the easements granted by this Grant of Easements.

2. Relocation of Access Easements. The Access Easements may be relocated at Grantor's reasonable discretion and at Grantor's sole cost and expense to a location on Grantor's Property that Grantor and Grantee shall reasonably agree.

3. Successors and Assigns. This Grant of Easements shall be binding upon and inure to the benefit of Grantee, its heirs, successors, grantees, and assigns.

4. Authority. Each individual executing this Grant of Easements on behalf of a party hereto represents and warrants that he or she is duly authorized to execute and deliver this Grant of Easements on such party's behalf, and that in doing so such person is acting within the scope of such person's authority.

5. Notices. Any notice or demand required or permitted to be given pursuant to this Grant of Easements shall be given either personally, by certified or registered mail, postage prepaid, return receipt requested, by confirmed fax, or by reliable overnight courier to the address of the respective parties set forth on the signature page. Any notice if served personally shall be deemed delivered upon receipt, if served by facsimile transmission shall be deemed delivered on the date of receipt as shown on the received facsimile, and if served by certified or registered mail or by reliable overnight courier shall be deemed delivered on the date of receipt as shown on the addressee's registry or certification of receipt or on the date receipt is refused as shown on the records or manifest of the U.S. Postal Service or such courier. Either party may from time to time designate any other address for this purpose by written notice to the other party.

6. Recording. This Grant of Easements shall be recorded in the Official Records of the Recorder's Office of San Luis Obispo County.

7. Interpretation. This Grant of Easements shall be governed by the laws of the State of California. This Grant of Easements shall not be interpreted or construed against the party preparing it. The headings which have been used throughout this Grant of Easements have been inserted for convenience of reference only and do not constitute matter to be construed in interpreting this Grant of Easements. Words of any gender used in this Grant of Easements shall be held and construed to include any other gender and words in the singular number shall be held to include the plural, and vice versa, unless the context requires otherwise.

8. Survival. Terms and conditions of this Grant of Easements which by their sense and context survive the termination, cancellation or expiration of this Grant of Easements will so survive.

9. Counterparts. This Grant of Easements may be executed in counterparts, each of which shall constitute one original and all of which shall be one and the same instrument.

10. Entire Agreement. This Grant of Easements constitutes the entire agreement and understanding between the parties, and supersedes all offers, negotiations and other agreements, written or oral, concerning the subject matter contained herein. There are no representations or understandings of any kind not set forth herein. Any amendments to this Grant of Easements shall be effective only if in writing and executed by both parties.

IN WITNESS WHEREOF, the parties have executed this Grant of Easements as of the date first written above.

**SAN MIGUELITO PARTNERS,**  
a California limited partnership

By: San Miguelito Associates  
a California limited partnership,  
its general partner

By: Howard & Howard, Inc.  
a California corporation  
its general partner

By: Robert W. Howard  
Name: Robert W. Howard  
Title: Secretary

Address and Phone:  
San Miguelito Partners  
c/o Robert W. Howard  
9 Red Rock Lane  
Laguna Niguel, CA 92677  
Tel: (949) 363-8696

**COUNTY OF SAN LUIS OBISPO,**  
a political subdivision of the State of  
California

By: Julie L. Rodewald  
Chairperson of the Board of Supervisors

Approved by the Board of Supervisors  
this 15<sup>th</sup> Day of December, 2009.

Address, Phone and Fax:  
Department of General Services  
1087 Santa Rosa Street  
San Luis Obispo, CA 93408  
Tel: (805) 781-5901  
Fax: (805) 781-1364

ATTEST:

**JULIE L. RODEWALD**

Clerk of the Board of Supervisors

By: Andy Cummins  
Deputy Clerk

APPROVED AS TO FORM AND  
LEGAL EFFECT:

WARREN R. JENSEN  
County Counsel

By: Warren R. Jensen  
Assistant County Counsel

Date: 11/19/09

State of California                    )  
  ) ss.  
County of Orange                    )

On Nov. 10, 2009 before me, Carol Joy Miller

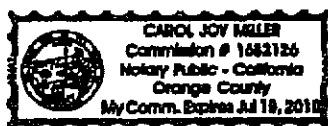
Notary Public, personally appeared Robert W. Howard who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature

Carol Joy Miller



(SEAL)



STATE OF CALIFORNIA       )  
  ) ss.  
COUNTY OF SAN LUIS OBISPO)

On ~~December 15, 2009~~ before me, SANDY CURRENS Deputy       County  
Clerk-Recorder, County of San Luis Obispo, State of California, personally appeared \_\_\_\_\_  
BRUCE S. GIBSON \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the  
person whose name is subscribed to the within instrument and acknowledged to me that he/she  
executed the same in his/her authorized capacity, and that by his/her signature on the instrument  
the person, or the entity upon of which the person acted, executed the instrument.

I certify under Penalty of Perjury under the laws of the State of California that the  
foregoing paragraph is true and correct.

WITNESS my hand and official seal.

JULIE L. RODEWALD, County Clerk-  
Recorder and Ex-Officio Clerk of  
the Board of Supervisors

By: Sandy Currens  
Deputy County Clerk-Recorder

(SEAL)

- 5 -

**EXHIBIT A**  
**GRANTOR'S PROPERTY**

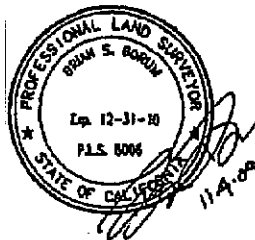
Parcel 3 of Parcel Map COAL 96-036 in the County of San Luis Obispo, State of California, according to a map recorded December 20, 1999 in Book 54, Page 36 of Parcel Maps, in the Office of the County Recorder of said county.

EXHIBIT B  
LEGAL DESCRIPTION  
CAVE LANDING EASEMENT

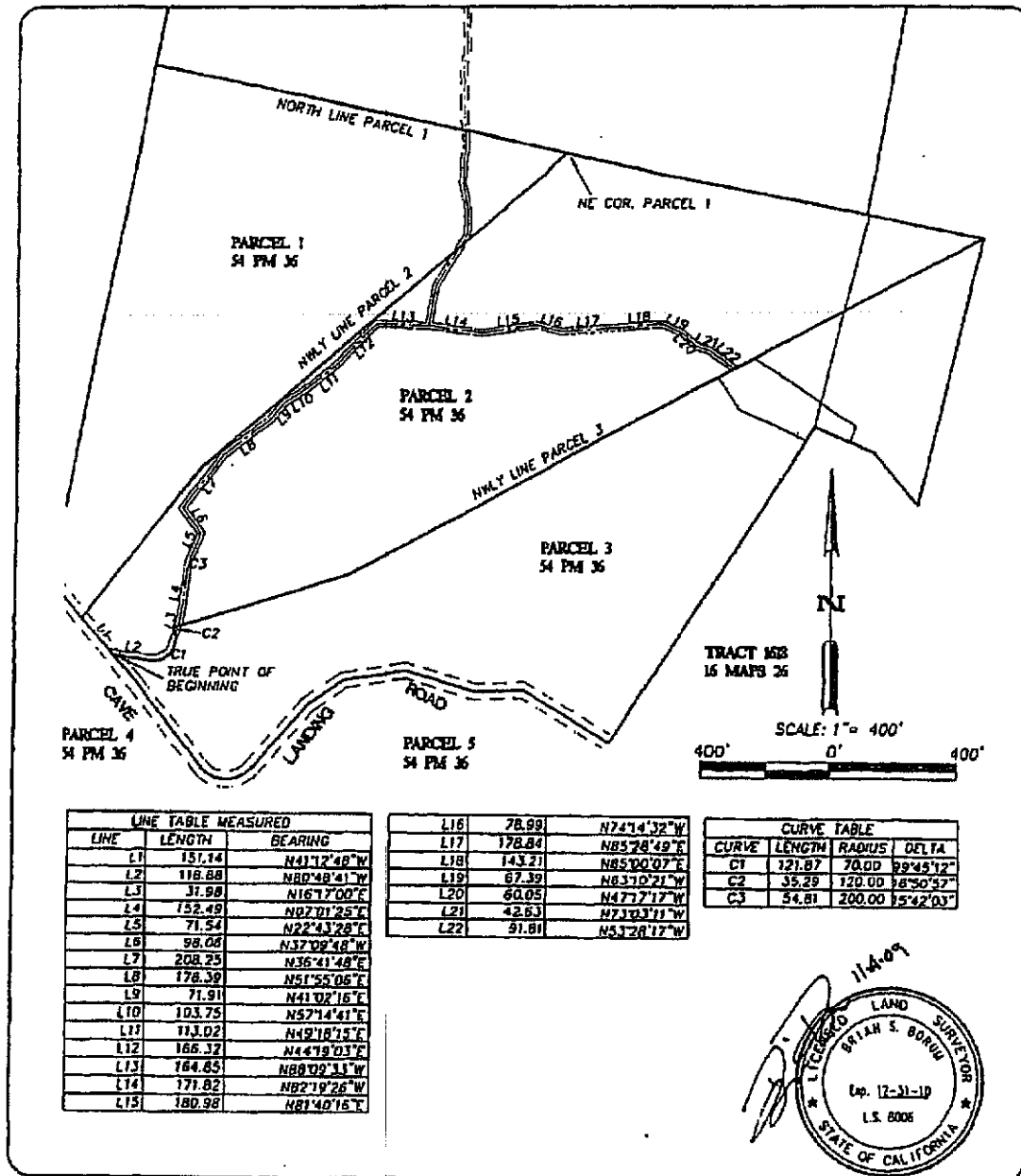
A 20.00 foot wide strip of land over portions of Parcels 2 and 3 of Parcel Map COAL 96-036 recorded in Book 54 of Parcel Maps at Page 36, of official records, located in the County of San Luis Obispo, State of California, the centerline of which is described as follows:

Commencing at the southwesterly corner of said Parcel 2; thence, South  $41^{\circ}12'48''$  East, along the southerly line of said Parcel 2, a distance of 151.14 feet to the southeasterly corner of said Parcel 2 and the southwesterly corner of said Parcel 3 and the TRUE POINT OF BEGINNING; thence, South  $80^{\circ}48'41''$  East, along the lines common to said Parcels 2 and 3, a distance of 118.88 feet; thence, northwesterly 121.87 feet along a curve concave northwesterly with a radius of 70.00 feet and a central angle of  $99^{\circ}45'12''$ ; thence, northeasterly 35.29 feet along a reverse curve concave easterly with a radius of 120.00 feet and a central angle of  $16^{\circ}50'57''$ ; thence, North  $16^{\circ}17'00''$  East, 31.98 feet; thence, North  $07^{\circ}01'25''$  East, 152.49 feet; thence, northeasterly 54.81 feet along a curve concave easterly with a radius of 200.00 feet and a central angle of  $15^{\circ}42'03''$ ; thence, North  $22^{\circ}43'28''$  East, 71.54 feet; thence, North  $37^{\circ}09'48''$  West, 98.06 feet; thence, North  $36^{\circ}41'48''$  East, 208.25 feet; thence, North  $51^{\circ}55'06''$  East, 176.39 feet; thence, North  $41^{\circ}02'16''$  East, 71.91 feet; thence, North  $57^{\circ}14'41''$  East, 103.75 feet; thence, North  $49^{\circ}18'15''$  East, 113.02 feet; thence, North  $44^{\circ}19'03''$  East, 166.32 feet; thence, South  $88^{\circ}09'33''$  East, 164.85 feet; thence, South  $82^{\circ}19'26''$  East, 171.82 feet; thence, North  $81^{\circ}40'16''$  East, 180.98 feet; thence, South  $74^{\circ}14'32''$  East, 78.99 feet; thence, North  $85^{\circ}28'49''$  East, 178.84 feet; thence, North  $85^{\circ}00'07''$  East, 143.21 feet; thence, South  $63^{\circ}10'21''$  East, 67.39 feet; thence, South  $47^{\circ}17'17''$  East, 60.05 feet; thence, South  $73^{\circ}03'11''$  East, 42.63 feet; thence, South  $53^{\circ}28'17''$  East, 91.81 feet more or less to the northwesterly line of Parcel 3 of said Parcel Map COAL 96-036, a distance of 885.88 feet from the northerly most corner of said Parcel 3 measured along the northwesterly line thereof and the terminus of said centerline.

Note: The sidelines of said 20.00 foot wide strip shall extend or shorten to terminate on the boundaries of Parcels 2 and 3 of said Parcel Map COAL 96-036.



11-04-09  
Omni Design Group Inc.



PLOT DATE:
JOB NO.
DWG. NAME:
SCALE:
SHEET NO.

<b>EXHIBIT B</b>
<b>CAVE LANDING EASEMENT</b>

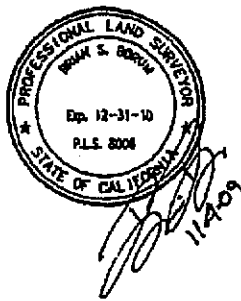
<b>omni</b>
<b>DESIGN GROUP</b>
DRW BY:
CHK BY:

EXHIBIT B  
LEGAL DESCRIPTION  
KING ACCESS EASEMENT

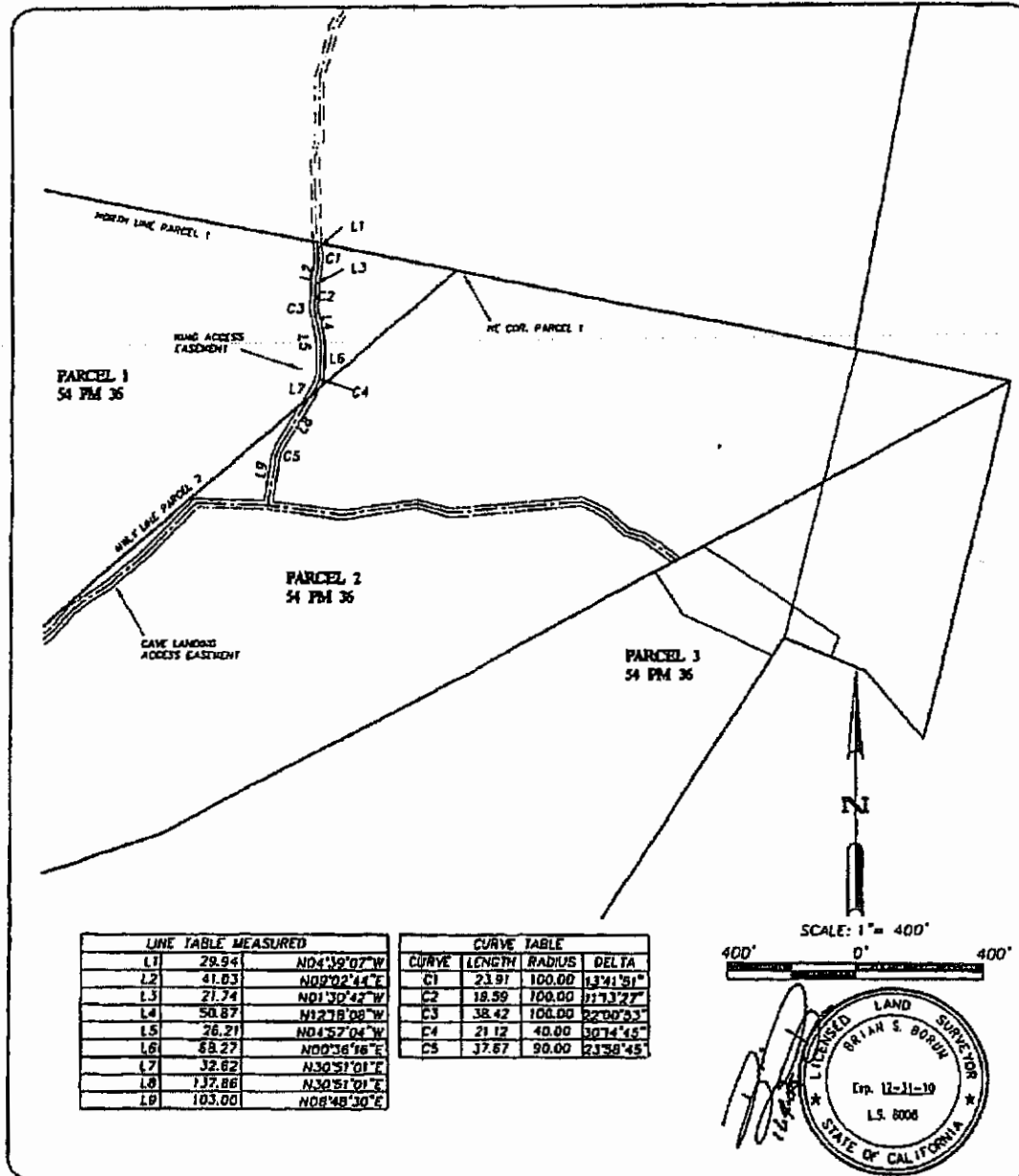
A 20.00 foot wide strip of land over portions of Parcels 1 and 2 of Parcel Map COAL 96-036 recorded in Book 54 of Parcel Maps at Page 36, of official records, located in the County of San Luis Obispo, State of California, the centerline of which is described as follows:

Commencing at the northeast corner of said Parcel 1; thence, North 78°29'21" West, along the North line of said Parcel 1 a distance of 336.12 feet to the centerline of an existing graded travel way and the TRUE POINT OF BEGINNING; thence, South 04°39'07" East, 29.94 feet; thence, southerly, 23.91 feet along a curve concave to the west with a radius of 100 feet and a central angle of 13°41'51"; thence, South 09°02'44" East, 41.03 feet; thence, South 01°30'42" East, 21.74 feet; thence, southerly 19.59 feet along a curve concave to West with a radius of 100.00 feet and a central angle of 11°13'27"; thence, continuing southerly 38.42 feet along a reverse curve concave to the East with a radius of 100.00 feet and a central angle of 22°00'53"; thence, South 12°18'08" East, 50.87 feet; thence, South 04°57'04" East, 26.21 feet; thence, South 00°36'16" West, 68.27 feet; thence, southerly 21.12 feet along a curve concave to the West with a radius of 40.00 feet and a central angle of 30°14'45"; thence, South 30°51'01" West, 32.62 feet to the intersection with the northwesterly line of said Parcel 2 said line also being the southeasterly line of said Parcel 1; thence, South 30°51'01" West, 137.86 feet; thence, southerly 37.67 feet along a curve concave to the East with a radius of 90.00 feet and a central angle of 23°58'45"; thence, South 08°48'30" East, 103.00 feet to the intersection with an existing graded travel way.

Note: The sidelines of said 20.00 foot wide strip shall extend or shorten to terminate on the North boundary of Parcels 1 and the existing graded travel way.



11-04-09  
Omni Design Group Inc.



PLOT DATE:
JOB NO.:
DWG. NAME:
SCALE:
SHEET NO.:

<b>EXHIBIT B</b> <b>KING ACCESS EASEMENT</b>
---

<b>omni</b> DESIGN GROUP 1000 S. F STREET, SUITE 100 SAN LUIS OBISPO, CA 93401 PHONE: (805) 484-8700 FAX: (805) 484-8701 WWW.OMNIDESIGN.COM	DRW BY: CHK BY:
---	--------------------

**CERTIFICATE OF ACCEPTANCE**

This is to certify that the interest in real property conveyed by the attached Grant of Easements for Access from San Miguelito Partners, a California limited partnership, to the County of San Luis Obispo is hereby accepted by order of the Board of Supervisors, pursuant to authority conferred by Board action approved on December 15, 2009. The grantee hereby consents to the recordation thereof by its duly authorized officer.

Dated: 12/15/2009

By: Bruce S. Gibson  
Chairperson of the Board of Supervisors

STATE OF CALIFORNIA )  
 ) ss.  
COUNTY OF SAN LUIS OBISPO)

On December 15, 2009, before me, SANDY CURRENS Deputy  
County Clerk-Recorder, County of San Luis Obispo, State of California, personally appeared  
BRUCE S. GIBSON, who proved to me on the basis of satisfactory  
evidence to be the person whose name is subscribed to the within instrument and acknowledged  
to me that he/she executed the same in his/her authorized capacity, and that by his/her signature  
on the instrument the person, or the entity upon of which the person acted, executed the  
instrument.

I certify under Penalty of Perjury under the laws of the State of California that the  
foregoing paragraph is true and correct.

WITNESS my hand and official seal.

**JULIE L. RODEWALD**, County Clerk-  
Recorder and Ex-Officio Clerk of the Board  
of Supervisors

By: Sandy Currens  
Deputy County Clerk-Recorder

(SEAL)

END OF DOCUMENT

**RECORDING REQUESTED BY**  
First American Title Company

**AND WHEN RECORDED MAIL DOCUMENT TO:**  
R & J McCarthy, III, Family Trust  
1800 19th Street  
Bakersfield, CA 93301

**JULIE RODEWALD**  
San Luis Obispo County - Clerk/Recorder  
Recorded at the request of  
First American Title Company

ASK  
7/20/2012  
3:38 PM

DOC#: 2012039759

Title: 1 Pages: 2



Fees	17.00
Taxes	** Conf **
Others	10.00
PAID	\$27.00

Space Above This Line for Recorder's Use Only

A.P.N.: 076-231-063, 065

File No.: 4009-3402967 (LB)

**SURVEY MONUMENT FEE \$10.00**

**GRANT DEED**

**DTT DECLARATION FILED**

The Undersigned Grantor(s) Declare(s): DOCUMENTARY TRANSFER TAX \$PER SEPARATE STATEMENT; CITY TRANSFER TAX \$;  
SURVEY MONUMENT FEE \$

- [ X ] computed on the consideration or full value of property conveyed, OR  
[ ] computed on the consideration or full value less value of liens and/or encumbrances remaining at time of sale,  
[ X ] unincorporated area; [ ] City of , and

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, San Miguelito Partners, a California limited partnership

hereby GRANTS to Robert Edwin McCarthy III and Judith Tuttle McCarthy, Co-Trustees of the R & J McCarthy, III, Family Trust dated February 20, 1993

the following described property in the unincorporated area of, County of San Luis Obispo, State of California:

**PARCEL 2 OF PARCEL MAP COAL 96-036, IN THE COUNTY OF SAN LUIS OBISPO, STATE OF CALIFORNIA, ACCORDING TO MAP RECORDED DECEMBER 20, 1999 IN BOOK 54, PAGE 36 OF PARCEL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.**

FILED	FEE PAID	EXEMPT	OUT OF STATE
AL			

Mail Tax Statements To: SAME AS ABOVE

SAN LUIS OBISPO, CA

Page 1 of 2

Printed on 1/7/2014 8:49:21 AM

Document: DED 2012.39759  
PDF created with pdfFactory Pro trial version www.pdffactory.com

Exhibit 17  
CCC-14-CD-02 & CCC-14-NOV-01  
(Robert & Judith McCarthy)

Page 13 of 14



Grant Deed - continued

Date: 07/18/2012

A.P.N.: 076-231-063, 065

File No.: 4009-3402967 (LB)

Dated: 07/18/2012

San Miguelito Partners, a California limited partnership

By: San Miguelito Associates, a California limited partnership, its General Partner

By: Howard & Howard, Inc., a California corporation, its General Partner

By: Robert W. Howard, Secretary

STATE OF California )SS  
COUNTY OF Orange )

On July 19, 2012, before me, Cynthia S. Ward, Notary Public, personally appeared Robert W. Howard

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature

Cynthia S. Ward

My Commission Expires: 11/24/13

Notary Name: Cynthia S. Ward

Notary Registration Number: 1832968

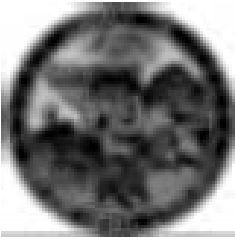


This area for official notarial seal

Notary Phone: 949-364-3684  
County of Principal Place of Business: Orange

Page 2 of 2

END OF DOCUMENT



SAN LUIS OBISPO COUNTY

DEPARTMENT OF PLANNING AND BUILDING

Promoting the wise use of land - Helping to build great communities

February 7, 2014

Gregory W. Sanders  
Nossaman LLP  
18101 Von Karman Ave, Suite 1800  
Irvine, Ca 92612

SUBJECT: Parcel 2 – COAL 96-036 – Fencing and Associated Development

Mr. Sanders:

Thank you for your letter dated February 3, 2014. As you are aware, a dispute resolution hearing has been scheduled for Thursday, February 13, 2014 with the California Coastal Commission regarding fencing and associated development (e.g., poles, gates, signs, etc.) located on and around the above referenced parcel.

As part of materials submitted to the Coastal Commission, the Department of Planning and Building was made aware of recorded public access easement granted for recreational and other purposes in the general location of the existing trail on Parcel 2 of COAL 96-036. As this easement has been brought to the Department's attention, it has modified the position of the Department relative to the need for a permit for the erection of a fence that obstructs legal access to or views of the tidelands, as well as its associated development (e.g., poles, gates, signs, etc.).

As the easement is available to the public for recreational purposes and provides legal access to and views of the tidelands, the Department has determined that the erection of the fence and related development on your clients' property is not exempt from the requirement to obtain a Coastal Development Permit.

The fence and associated development (e.g., poles, gates, signs, etc.) are unpermitted and need to be removed. If your clients desire to install fencing and related development, a Coastal Development Permit (CDP) will be required to be obtained. Until such time as a Coastal Development Permit has been applied for and granted, the County will be requesting that the Coastal Commission assume primary enforcement authority with regard to this violation pursuant to Public Resources Code Section 30810. This could include the issuance of a cease and desist and restoration order for all of the unpermitted development.

If you have any questions relative to this letter, please feel free to contact me directly at [kgriffin@co.slo.ca.us](mailto:kgriffin@co.slo.ca.us) or (805) 781-5708.

Sincerely,

A handwritten signature in black ink, appearing to read "Kami Griffin".

Kami Griffin, Assistant Director  
Planning and Building Department

Exhibit 18  
CCC-14-CD-02 & CCC-14-NOV-01  
(Robert & Judith McCarthy)

Page 1 of 1

**CALIFORNIA COASTAL COMMISSION**

45 FREMONT, SUITE 2000  
SAN FRANCISCO, CA 94105-2219  
VOICE (415) 904-5200  
FAX (415) 904-5400  
TDD (415) 597-5885



**NOTICE OF VIOLATION OF THE CALIFORNIA COASTAL ACT**  
SENT BY REGULAR AND CERTIFIED MAIL  
Certification No. 7006 2760 005 5883 4672

February 20, 2014

Robert McCarthy & Judith McCarthy  
1800 19<sup>th</sup> Street  
Bakersfield, California 93301

Coastal Act Violation File No: **V-3-14-0012 (McCarthy/Ontario Ridge Trail)**

Location: County of San Luis Obispo APNs 076-231-063  
and 076-231-065, and any other place where the  
unpermitted development has come to be located.

Alleged violation description: Unpermitted placement of fencing, gates, and signage.

Dear Mr. and Mrs. McCarthy:

The California Coastal Act<sup>1</sup> was enacted by the State Legislature in 1976 to provide long-term protection of California's 1,100-mile coastline through implementation of a comprehensive planning and regulatory program designed to manage conservation and development of coastal resources. The California Coastal Commission ("Commission") is the state agency created by, and charged with administering, the Coastal Act of 1976. In making its permit and land use planning decisions, the Commission carries out Coastal Act policies, which, amongst other goals, seek to protect and restore sensitive habitats; protect natural landforms; protect scenic landscapes and views of the sea; protect against loss of life and property from coastal hazards; and provide maximum public access.

Commission staff has confirmed that unpermitted development has occurred on your property including, but not necessarily limited to: installation of unpermitted fencing, gates, and signage. These activities have occurred on property owned by you and described by San Luis Obispo County ("County") as Assessor's Parcel Numbers ("APNs") 076-231-063 and 076-231-065. These parcels are located within the Coastal Zone, as defined in the Coastal Act.

<sup>1</sup> The Coastal Act is codified in sections 30000 to 30900 of the California Public Resources Code. All further section references are to that code, and thus, to the Coastal Act, unless otherwise indicated.

### Unpermitted Development

Pursuant to Section 30600(a) of the Coastal Act, and Section 23.01.031 of the San Luis Obispo County Local Coastal Program's ("LCP") Coastal Zone Land Use Ordinance, with limited exceptions that are not relevant here, any person wishing to perform or undertake development in the Coastal Zone must obtain a coastal development permit, in addition to any other permit required by law. "Development" is defined by Section 30106 of the Coastal Act and Section 23.03.040 of the LCP as follows:

*"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 any gaseous, liquid, solid, or thermal waste; grading, removing, dredging, mining, or extraction of any materials; change in the density or intensity of the 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 harvest of major vegetation other than for agricultural purposes, kelp harvesting, and timber operations....*

The activities at issue involve the placement or erection of solid materials, and, additionally, by your own admission, were designed specifically to change the intensity of use of land.<sup>2</sup> They constitute development under both the Coastal Act and the LCP.

The unpermitted activities undertaken on your property are not exempt development under the Coastal Act or the LCP. The Coastal Act and LCP only exempt the erection of fencing by private parties when such development satisfies one of the criteria listed in Section 30610 and is not of a sort designated by the Commission's regulations as nevertheless needing a permit due to its impacts. The subject fencing and related development is not associated with an existing single-family residence or other structure and does not fall under any of the other subsections of Section 30610. Thus, it is not exempt from Coastal Act and LCP permitting requirements.

You have, however, asserted that the subject development is somehow exempt from permitting requirements pursuant to Sections 23.03.040(d)(2) and 23.04.306(b)(13) of the LCP (via letter to the County dated February 3, 2014). The County disagrees with your assessment, and has already requested, via letters to you and your attorney dated February 7, 2014, that you remove the unpermitted development. The LCP excepts fencing that impedes public access to tidelands from the County's more general provision regarding fences that may be exempt from permit requirements. Therefore, under neither the Coastal Act nor the LCP are the unpermitted fence, gate, and signage allowable.

Furthermore, even if the LCP were ambiguous, any ambiguity would have to be interpreted so as to render it consistent with the Coastal Act. Because the Coastal Act itself provides no generic exemption for such fencing or signs, the LCP cannot provide such an exemption unless it is

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<sup>2</sup> You have stated publicly that your purpose in undertaking the subject development was to prevent the public from accessing the trail on the property.

approved by the Commission through the process for certification of a categorical exclusion, which must be approved by at least a two-thirds vote of the appointed membership of the Commission, pursuant to Section 30610(e). No such process occurred here, so the LCP cannot provide such an exemption.

Thus, the subject development is unpermitted, and a violation of Coastal Act and LCP permitting requirements.

As you know, the area in which your property is located provides a vital link in the Ontario Ridge Trail, a heavily-used system of trails that affords public pedestrian access to the coast. By installing the system of unpermitted fences, gates, and signs across and adjacent to the trail, you have blocked the public from accessing one of the most popular trails in San Luis Obispo; one which has been used by the public for more than forty years.

As you are further aware, the County holds an easement over the portion of the Ontario Ridge Trail that crosses your property and the neighboring property, for pedestrian and vehicular access. The County reminded you of this contractual obligation by letter dated February 7, 2014, in which they included a copy of the grant of easement dated December 15, 2009, and requested that you remove the subject development, as it is obstructing access to the easement.

#### **Resolution**

Since Commission staff is aware that, over the last few weeks, you have continued to place additional signage on the unpermitted fence and/or in the same general area, designed to preclude pedestrian use of a historic trail, as an initial matter, we demand that you *cease at once* all unpermitted activities. Additionally, as the development that you have installed is unpermitted (in violation of the Coastal Act and LCP), and violates your contractual easement obligations with San Luis Obispo County, please remove all unpermitted development and restore the affected area to its pre-unpermitted development condition by March 10, 2014. Once you have done so, please contact me at 415-904-5293 to schedule a site inspection to ensure that the development was removed satisfactorily.

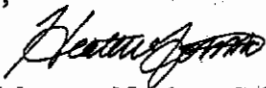
#### **Enforcement Remedies**

Commission enforcement staff prefers to work cooperatively with alleged violators to resolve Coastal Act and LCP violations administratively. We are confident that we can resolve this matter without resorting to formal action and look forward to working with you to do so. However, it is my obligation to inform you that, should this alleged violation remain unresolved, the Coastal Act contains a number of enforcement remedies for violations, including, but not limited to, issuance of Cease and Desist Orders, issuance of Restoration Orders, and the ability to initiate litigation to impose civil liability in an amount not less than \$500 and not more than \$30,000 for each instance of unpermitted development, pursuant to Coastal Act Sections 30809, 30810, 30811, and 30805 and 30820(a), respectively. Additionally, Section 30820(b) provides that additional civil liability may be imposed for illegal development that was undertaken knowingly and intentionally, in an amount not less than \$1,000 and not more than \$15,000 for each day in which the violation persists. Section 30822 additionally provides for exemplary

damages in cases of knowing and intentional violations of the Coastal Act. Finally, pursuant to Section 30812, the Executive Director, after giving notice and allowing for a public hearing if requested, may record a Notice of Violation on the property where an unresolved violation exists.

If you have any questions regarding this letter or the pending enforcement action, please contact me at 415-904-5293. We would like to talk to you as soon as possible to resolve this and avoid the potential for additional days of unpermitted development. Please contact me by **February 27, 2014** at the number noted above so that we can work with you to resolve this as quickly as possible. Thank you in advance for your cooperation.

Sincerely,



Heather Johnston, Northern California Enforcement Supervisor, CCC

cc: Lisa Haage, Chief of Enforcement, CCC  
Alex Helperin, Senior Staff Counsel, CCC  
Dan Carl, Deputy Director, Central Coast District, CCC  
Janette Pell, Director General Services Agency, San Luis Obispo County

**CALIFORNIA COASTAL COMMISSION**

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**SENT BY ELECTRONIC AND REGULAR MAIL**

March 5, 2014

Robert McCarthy & Judith McCarthy  
1800 19<sup>th</sup> Street  
Bakersfield, California 93301

Coastal Act Violation File No: **V-3-14-0012 (McCarthy/Ontario Ridge Trail)**

Location: County of San Luis Obispo APNs 076-231-063  
and 076-231-065

Re: Failure to Respond to Notice of Violation

Dear Mr. and Mrs. McCarthy:

The purpose of this communication is to follow up on the letter sent to you and your counsel on February 20, 2014, in which I addressed Coastal Act and San Luis Obispo County Local Coastal Program ("LCP") violations on your property in San Luis Obispo County along the Ontario Ridge Trail, and highlighted the need to resolve this situation consistent with the Coastal Act and LCP. In that letter we directed you to 1) cease unpermitted development 2) contact me not later than February 27, 2014, and 3) remove *all* unpermitted development by not later than March 10, 2014. Unfortunately, as we have not received any response to that letter, I am now writing to reiterate that all unpermitted development must be removed by March 10, 2014, and that continued failure to comply will result in additional enforcement action, notwithstanding recent events discussed later in this letter.

Please be aware that while we prefer to work cooperatively with alleged violators and remain more than willing to do so here, should this alleged violation remain unresolved, the Coastal Act contains a number of enforcement remedies for violations, including, but not limited to, issuance of Cease and Desist Orders, issuance of Restoration Orders, and the ability to initiate litigation to impose civil liability in an amount not less than \$500 and not more than \$30,000 for each instance of unpermitted development, pursuant to Coastal Act Sections 30809, 30810, 30811, and 30805 and 30820(a), respectively. Additionally, Section 30820(b) provides that additional civil liability may be imposed for illegal development that was undertaken knowingly and intentionally, in an amount not less than \$1,000 and not more than \$15,000 for each day in which each violation persists. Section 30822 additionally provides for exemplary damages in cases of

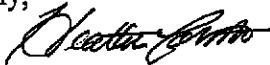
Exhibit 20  
CCC-14-CD-02 & CCC-14-NOV-01  
(Robert & Judith McCarthy)

McCarthy V-3-14-0012  
Ontario Ridge  
Page No. 2

knowing and intentional violations of the Coastal Act. Finally, pursuant to Section 30812, the Executive Director, after giving notice and allowing for a public hearing if requested, may record a Notice of Violation on the property where an unresolved violation exists.

Commission staff has been made aware that the unpermitted gates on your property have recently been opened; please note that although this is a step in the right direction, this does *not* constitute compliance with the requests articulated in our February 20, 2014 Notice of Violation, nor with the Coastal Act and LCP. You were directed to restore the property to its pre-violation condition by **removing all** unpermitted development – this includes all unpermitted fencing, gates, and signs. Please contact me immediately to discuss how you intend to resolve this matter. Additionally, once you have removed the unpermitted development, please contact me at 415-904-5293 to schedule a site inspection to ensure that the development was removed satisfactorily. I look forward to hearing from you.

Sincerely,



Heather Johnston, Northern California Enforcement Supervisor, CCC

cc: Lisa Haage, Chief of Enforcement, CCC  
Alex Helperin, Senior Staff Counsel, CCC  
Dan Carl, Deputy Director, Central Coast District, CCC  
Janette Pell, Director General Services Agency, San Luis Obispo County  
Gregory Nossaman, Esq.

Exhibit 20  
CCC-14-CD-02 & CCC-14-NOV-01  
(Robert & Judith McCarthy)

Page 2 of 2





ATTORNEYS AT LAW

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Suite 1800  
Irvine, CA 92612  
T 949.833.7800  
F 949.833.7878

Gregory W. Sanders  
gsanders@nossaman.com

Refer To File #: 400494-0001

**VIA FEDERAL EXPRESS AND EMAIL**

March 6, 2014

Heather Johnston  
Northern California Enforcement Supervisor  
45 Fremont, Suite 2000  
San Francisco, CA 94105

**Re: Rob and Judi McCarthy: Fencing and Signs Expressly Permitted Under  
Governing LCP (V-3-14-0012)**

Dear Ms. Johnston:

We are writing to you on behalf of our clients Rob and Judi McCarthy (collectively, "McCarthys") in order to refute the groundless position being asserted by the Coastal Commission with respect to its erroneous interpretation of the governing Certified Local Coastal Program ("LCP") and related Notice of Violation dated February 20, 2014. In the Notice of Violation the Commission has asserted that although the McCarthys' fencing and "no trespassing" signs are exempt under the plain and unambiguous language in San Luis Obispo County's Certified LCP, the exemptions do not apply because "the Coastal Act itself provides no generic exemption for such fencing or signs, [therefore] the LCP cannot provide such an exemption unless it is approved by the Commission through the process for certification of a categorical exclusion . . . ." This legal position, however, is based on a fundamental misunderstanding of the Coastal Act and the relevant case law. Moreover, we note that while the McCarthys maintain their right to erect and install fencing and signs consistent with the express exemptions in the Certified LCP, the fencing and signs that the Commission asserted unlawfully obstruct access to the steep dirt "jeep trail" have been removed from the property.

The fence and sign exemptions at issue were enacted by the County of San Luis Obispo, and approved by the Commission after public hearing and by two-thirds vote when it certified the LCP in 1986.<sup>1</sup> As such, the Coastal Act mandates that the development shall be

<sup>1</sup> The Commission cannot seriously contend that it was not aware of the exemptions when it certified the implementing portions of the LCP in 1986, as the exemptions were unambiguously identified in the text. (See Certified LCP Coastal Zone Land Use Ordinance Section 23.03.040(d) [entitled "**Exemptions from permit requirements**" and identifying the "types of development within the Coastal Zone (that) are exempt from the land use permit requirements of this title", emphasis in original; Certified LCP Coastal Zone Land Use Ordinance Section 23.04.306 [entitled "**Exempts signs**" and stating "The following signs are allowed without a land use permit", emphasis in original].) Accordingly, even under the Commission's erroneous theory, because the Commission approved the County's proposal to exempt a category of development after a public hearing and by a two-thirds vote, the

approved if it is consistent with the County's Certified LCP. (Pub. Resources Code, §§ 30519, 30600.5.) In this case, the Certified LCP expressly states that the following development in the coastal zone is "exempt" from the requirement to obtain a Coastal Development Permit:

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 (Certified LCP Coastal Zone Land Use Ordinance Section 23.03.040(d)(2));

"No Trespassing", "No Parking", and similar warning signs (Certified LCP Coastal Zone Land Use Ordinance Section 23.04.306(b)(13)).

The fencing and "no trespassing" signs at issue fall squarely within the plain language of these exemptions. Accordingly, contrary to the Commission's flawed legal analysis, and pursuant to the Coastal Act and the governing case law, the fencing and signs are exempt.

The Commission's legal analysis is wrong because it contradicts the plain and unambiguous language of the Coastal Act. The Commission has asserted that because fencing and signs are not explicitly discussed in section 30610 of the Public Resources Code ("Section 30610"), or in the regulations relating to Section 30610, the self-described "exemptions" in the LCP (see Certified LCP Coastal Zone Land Use Ordinance Section 23.03.040(d) [listing "Exemptions from permit requirements"], Section 23.04.306 [listing "Exempts signs"]) are not actually exemptions. This erroneous legal conclusion appears to be based on the faulty premise that all components of an LCP must be read consistent with and understood to conform to the Coastal Act.

Contrary to the Commission's unsupported assertion, and as expressly set forth in the Coastal Act, the components of an LCP need only conform to the policies in Chapter 3 of the Coastal Act (see Pub. Resources Code, § 30512, subd. (c) ["commission shall certify a land use plan . . . if it finds that a land use plan meets the requirements of, and is in conformity with, the policies of Chapter 3"]; Pub. Resources Code, § 30513 [commission may only reject implementing portions "on the grounds that they do not conform with, or are inadequate to carry out, the provisions of the certified land use plan"]], and "only to the extent necessary to achieve the basic state goals specified in Section 30001.5 of the Coastal Act." (Pub. Resources Code, § 30512.2, subd. (b).) Thus, Section 30610, which appears in Chapter 7 of the Coastal Act, is irrelevant to County-enacted exemptions, such as the fencing and sign exemptions currently at issue; rather, Section 30610 is only relevant for determining the scope of Commission-enacted exemptions.

Unlike the Commission's unsupported assertion, this legal position is also consistent with the holding in *McAllister v. California Coastal Commission* (2009) 169 Cal.App.4th 912, 931. In *McAllister*, a project opponent asserted that "the habitat policies in the Big Sur Land Use Plan must be interpreted in a way that is consistent with section 30240," which is part of

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fencing and signs would be exempt from the requirement to obtain a Coastal Development Permit.

Chapter 3 of the Coastal Act. (*Id.* at pp. 925-926.) The court found that as section 30240 was part of Chapter 3, it was required to presume that the Big Sur Land Use Plan incorporated the policies in section 30240 "because when the Coastal Commission reviewed Monterey County's local coastal program, the Commission was required only to determine whether the program meets the requirements of **Chapter 3** of the Coastal Act, including section 30240." (*Id.* at p. 932, emphasis added.) Thus, the *McAllister* holding expressly affirms, consistent with the plain language of the Coastal Act, that an LCP need only conform to "the requirements of Chapter 3 of the Coastal Act." (*McAllister v. California Coastal Commission, supra*, 169 Cal.App.4th at p. 932, brackets omitted.) As explained above, the Commission is not invoking a Chapter 3 policy. Instead, the Commission is invoking Section 30610, which is a "provision" from **Chapter 7**. Thus, neither the Coastal Act, nor the Certified LCP, nor *McAllister* supports the Commission's legal position.

In addition to applying faulty logic, the Commission also makes a number of irrelevant and erroneous statements in its Notice of Violation. For example, the Commission states that "the area in which [the] property is located provides a vital link in the Ontario Ridge Trail, a heavily-used system of trails that affords public pedestrian access to the coast." (Notice of Violation at 3.) As an initial matter, the Notice of Violation fails to explain where the alleged "Ontario Ridge Trail" is located with respect to the property, or how the public is legally accessing this unidentified "Trail." Moreover, it is clear that contrary to the Commission's latest statement, the property does not provide "access to the coast." As previously stated by the Commission, trespassers will "traverse the moderate to steeply sloping trail **up to the summit**." (See Coastal Commission Appeal Staff Report: Substantial Issue Determination & De Novo Hearing on Appeal No. A-3-SLO-11-061 dated December 19, 2012 at p. 14, emphasis added; see also Coastal Commission Revised Findings on Appeal No. A-3-SLO-11-061 dated January 15, 2013 at p. 16 [asserting that trail provides "access up the slope for those wishing to access the ridgeline from Cave Landing Road and the Pirates Cover parking and trail area"].) Thus, the Commission has no independent jurisdiction over the trail, as it does not provide access to the sea or along the coast. (See Pub. Resources Code, § 30211 [Development shall not interfere with the public's right of access **to the sea**]. Emphasis added; Pub. Resources Code, § 30212, subd. (a) ["access from the nearest public roadway **to the shoreline** and along the coast"], emphasis added; see also *Schneider v. California Coastal Commission* (2006) 140 Cal.App.4th 1339, 1348 [Commission prohibited from considering view impacts from off-shore locations because not included in LCP or in the Coastal Act]; *Security National Guaranty, Inc. v. California Coastal Commission* (2008) 159 Cal.App.4th 402, 422 [Commission cannot deny application based on ESHA not formally designated in LCP].)

The Commission also states that the fencing and signs adversely affect public recreational access that has purportedly existed "for more than forty years." Again, however, the Commission fails to provide any factual support for this statement, and fails to explain why such unpermitted and unlawful access would be legally relevant to the alleged violation that is the subject of the Commission's Notice. Moreover, as previously admitted by the Commission, and as explained below, the public has no right to traverse the McCarthys' private property, and the Commission cannot require the McCarthys to provide access. (See Coastal Commission Revised Findings on Appeal No. A-3-SLO-11-061 dated January 15, 2013 at pp. 49-50.) As such, consistent with the express exemptions in the Certified LCP, and their rights as private property owners, the McCarthys have lawfully erected signs and fencing to preclude individuals

from **trespassing** on their property. (See also County of San Luis Obispo Coastal Plan Policies, Policy 10 at p. 2-15 ["Nothing in the Local Coastal Program is to be construed as encouraging, permitting, or endorsing trespassing or invasion of private property rights or privacy."].)

The Commission also improperly asserts that the fencing and signs are in violation of contractual easement obligations with the County of San Luis Obispo. Relying on a grant of easement that was recorded in 2009, the Commission asserts that the McCarthys are obligated to permit pedestrian and vehicular access on the property. Contrary to the Commission's assertion, however, the McCarthys are not required to permit such access, as the County never obtained the necessary government approval for the "development" to lawfully exist. As stated by the Commission, unless exempted "any person wishing to perform or undertake development in the Coastal Zone must obtain a coastal development permit, in addition to any other permit required by law." (Notice of Violation at 2.) Under the Coastal Act, the term "person" is broadly defined to mean "any individual, organization, partnership, limited liability company, or other business association or corporation, including any utility, and any federal, state, local government, or special district or an agency thereof." (Pub. Resources Code, § 30111.) Thus, the County must obtain a coastal development permit before it may undertake "development" in the Coastal Zone. And, as admitted by the Commission in its Notice of Violation, a change in public access to the McCarthy property "constitute[s] development under both the Coastal Act and LCP." (Notice of Violation at 2; see also *Elec. Pointe v. Cal. Coastal Com.* (No. B211755, Nov. 16, 2009) 2009 Cal.App.Unpub. LEXIS 9044 [vacation of easement was "development" for purposes of Coastal Act because it would change intensity of use or change access to water].) Accordingly, as the County has not obtained a coastal development permit for its proposed "development," the public cannot lawfully access the property. Further, even if the McCarthys were obligated to permit pedestrian access under the easement, the Commission has no authority to enforce such a contractual obligation through an enforcement action under the Coastal Act.

Moreover, as demonstrated by recent events, the slopes on the dirt "jeep" trail, which can be as steep as 40%-50% (see Exhibit 1, enclosed herewith), are not safe. People have been seriously injured trying to hike the steep slopes. One person recently admitted that she broke her leg trying to climb the steep slopes, and cautioned that the slopes are "Very dangerous for those not experienced."<sup>2</sup> Thus, the fencing and signs not only protect the McCarthys, but they are necessary to protect the public. It is, in part, because of their concern for others that the McCarthys have offered, consistent with their right to relocate the easement,<sup>3</sup> to grant an easement for public access on an adjacent parcel with gentle slopes (no more than 20%) that offer safe access to the trails along Ontario Ridge. For the benefit of all the parties involved, and the public's safety, the Commission should work with the County on identifying and designating a safe trail, such as the one offered by the McCarthys, as opposed to bringing a

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<sup>2</sup> Comment by Dena Laugen-Aragon on KSBY Story by Connie Tran dated Jan 23, 2014: <http://www.ksby.com/news/part-of-popular-ontario-ridge-hiking-trail-closed-off-to-the-public/> (as of Feb. 5, 2014).

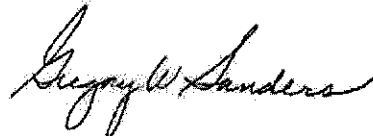
<sup>3</sup> The easement states that it "may be relocated at [the McCarthys'] reasonable discretion and at [the McCarthys'] sole cost and expense to a location on [the property] that [the McCarthys] and [County] shall reasonably agree."

Heather Johnston  
March 6, 2014  
Page 5

baseless enforcement action or forcing individuals to trespass on private property and risk significant injury.

As demonstrated above, the Commission's legal position cannot be reconciled with the relevant authorities, as the fencing and signs are exempt under the governing Certified LCP, and the public has no right to use the property. It is our hope that instead of acting contrary to law, the Commission will take this opportunity to open up a dialogue and try and identify and designate a trail that will respect the McCarthy's private property rights and insure the safety of the public. We thank you very much for your consideration of our letter.

Sincerely,

A handwritten signature in cursive script that reads "Gregory W. Sanders".

Gregory W. Sanders  
of Nossaman LLP

GWS/BZR

cc: Lisa Haage  
Dan Carl

Exhibit 21  
CCC-14-CD-02 & CCC-14-NOV-01  
(Robert & Judith McCarthy)

**CALIFORNIA COASTAL COMMISSION**

45 FREMONT STREET, SUITE 2000  
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**VIA ELECTRONIC, CERTIFIED, AND REGULAR MAIL**

May 29, 2014

Robert McCarthy & Judith McCarthy  
1800 19th Street  
Bakersfield, California 93301  
(Certified Mail No. 7006 2760 0005 5883 4715)

Nossaman LLP  
Gregory W. Sanders  
18101 Von Karman Avenue  
Ste 1800  
Irvine, CA 92612  
(Certified Mail No. 7006 2760 0005 5883 4708)

Subject: Notice of Intent to Record Notice of Violation and Notice of Intent  
to Commence Cease and Desist Order Proceedings

Violation No.: V-3-14-002

Location: County of San Luis Obispo APNs 076-231-063 and 076-231-065,  
and any other place where the unpermitted development has come to  
be located.

Violation Description: Unpermitted development including but not limited to placement of  
fencing, gates, and signage.

Dear Mrs. McCarthy and Messers McCarthy and Sanders:

I am directing this notice to Mr. and Mrs. McCarthy as owners of the property at issue, and to Mr. Sanders as counsel. This letter is a follow up to prior letters sent by my staff to you on February 20, 2014 and March 5, 2014 regarding Coastal Act issues involving your property. As staff stated in preceding correspondence, we would like to work with you to resolve these violations amicably, and remain willing and ready to discuss options to resolve the Coastal Act violations on your property, including by entering into a consent cease and desist order.

The purpose of this communication is to provide notice, of my intent as the Executive Director of the California Coastal Commission ("Commission"), to commence proceedings for

Exhibit 22  
CCC-14-CD-02 & CCC-14-NOV-01  
(Robert & Judith McCarthy)

recording of a notice of violation and issuance of a cease and desist order to address unpermitted development on your property. This notice communicates the intent to address, through formal enforcement actions, violations of the San Luis Obispo County Local Coastal Program ("LCP") and Coastal Act on property identified by San Luis Obispo County Assessor's Parcel Numbers 076-231-063 and 076-231-065 ("subject property").

Commission staff has confirmed that unpermitted development has occurred on property owned by Robert and Judith McCarthy including, but not necessarily limited to: installation of unpermitted fencing, gates, and signage to dissuade public access.

Pursuant to Section 30600 (a) of the Coastal Act, and Section 23.01.031 of the County LCP, with limited exceptions not applicable here, any person wishing to perform or undertake development in the Coastal Zone must obtain a coastal development permit, in addition to any other permit required by law. 'Development' is a broad term, defined by Section 30106 of the Coastal Act, and Section 23.03.040 of the County LCP as set forth below:

*"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 any gaseous, liquid, solid, or thermal waste; grading, removing, dredging, mining, or extraction of any materials; change in the density or intensity of the use of land, ... change in the intensity of water, or of access thereto; ... and the removal or harvest of major vegetation other than for agricultural purposes, kelp harvesting, and timber operations....*

The purpose of this letter and of the proposed enforcement proceedings is to address development on the subject property that was not authorized pursuant to the Coastal Act and the LCP. The proceedings will provide a means to address these matters through the issuance of a Cease and Desist Order that will direct you, as the owners to: 1) cease from performing any additional unpermitted development activity (development not authorized pursuant to, or exempt from, the Coastal Act), 2) remove unpermitted development according to an approved removal plan, and 3) restore the impacted area to its pre-violation condition. In addition to removal of the unpermitted development, resolving this matter administratively also allows resolution of the remainder of the violation via the settlement of monetary claims.

As mentioned above, staff remains committed to working with you to resolve this matter; one possible option you may want to consider is agreeing to a consent cease and desist order ("Consent Order"). A Consent Order would provide you with the opportunity to have more input into the process of restoring the subject property, mitigating the damages caused by the unpermitted activity, and could potentially allow you to negotiate a penalty amount with Commission staff in order to resolve the complete violation without any further formal legal action.

## **VIOLATION HISTORY**

Commission staff received myriad reports of unpermitted development from both the public and government agencies, regarding actions occurring on the subject property in early 2014. Staff confirmed the existence of unpermitted fences, gates, and signage after reviewing current site conditions, and historic aerial documentation, as well as County and Commission permit history. Thereafter, Commission staff sent you a Notice of Violation letter on February 20, 2014 indicating that the development is unpermitted, that no new unpermitted development should be undertaken,

and that the subject property should be restored to its pre-violation condition not later than March 10, 2014. In this letter staff explained that in addition to lacking any Coastal Development Permits, the unpermitted development you had installed interferes with the public's historic use of a vital link in the Ontario Ridge Trail, a heavily-used system of trails that affords public pedestrian access to the coast. Further, staff reminded you that the County holds an easement (for public access) over the portion of the Ontario Ridge Trail that was blocked by the unpermitted development at issue here. Lastly, staff requested that you contact staff by February 27, 2014 to begin discussions towards working with you amicably to resolve this matter and also enumerated the Commission's potential enforcement remedies should that not prove possible.

Although we did not hear from you as requested in our letter, in an effort to ensure the deadline would not be missed, staff again contacted you on March 5, 2014 to note that the deadline had passed, but to also reiterate staffs' desire to work cooperatively to resolve this matter. On March 6, 2014 staff received a letter from your counsel, Gregory Sanders, contending that the development is exempt from Coastal Act permitting requirements and that the "fencing and signs that the Commission asserted unlawfully obstruct access to the steep dirt 'jeep trail' have been removed from the property."

While some portion of the unpermitted development may have been temporarily removed, the majority of the unpermitted development remained. In fact at some time after our Notices of Violation (apparently on a date sometime prior to May 3, 2014), unfortunately, additional unpermitted signage was added at the site. These signs also lack any Coastal Development Permits, and unfortunately serve to misdirect and dissuade the public by alleging "no admittance" and "access controlled by owner" on a dedicated public easement. The unpermitted development therefore remains on site in violation of the Coastal Act and LCP.

### NOTICE OF VIOLATION

The Commission's authority to record a Notice of Violation is set forth in Section 30812 of the Coastal Act, which states the following:

*(a) Whenever the executive director of the commission has determined, based on substantial evidence, that real property has been developed in violation of this division, the executive director may cause a notification of intention to record a notice of violation to be mailed by regular and certified mail to the owner of the real property at issue, describing the real property, identifying the nature of the violation, naming the owners thereof, and stating that if the owner objects to the filing of a notice of violation, an opportunity will be given to the owner to present evidence on the issue of whether a violation has occurred.*

A Notice of Violation is a mechanism, recorded on the deed(s) of effected property, by which all parties are advised of the existence of unpermitted development in violation of the Coastal Act. The Notice of Violation remains in place on the title of the property until such time as the violation is fully resolved.

In our letter dated February 20, 2014 we notified Robert and Judith McCarthy of the potential for the recordation of a Notice of Violation against the subject property. I am issuing this notice of intent to record a Notice of Violation because the unpermitted development described above has occurred on the subject property in violation of the Coastal Act and LCP. This

Exhibit 22  
CCC-14-CD-02 & CCC-14-NOV-01  
(Robert & Judith McCarthy)



determination is based on information available to staff including, but not limited to, information provided by the parties involved, publicly available documents relating to the properties, a comparative analysis of historic aerial photographs, a review of the County and Commission's permit records, and staff inspection of the area.

If the property owners object to the recordation of a Notice of Violation in this matter and wish to present evidence to the Coastal Commission at a public hearing on the issue of whether a violation has occurred, the property owner must specifically object, in writing, within 20 days of the postmarked mailing of this notification. The objection should be sent to the attention of Heather Johnston in the Commission's San Francisco office at the address listed on the letterhead. Please include the evidence you wish to present to the Coastal Commission in your written response and identify any issues you would like us to consider.

### **COMMISSION ORDER AUTHORITY**

The Commission's authority to issue Cease and Desist Orders is set forth in Section 30810(a) of the Coastal Act, which states, in part, the following:

*If the commission, after public hearing, determines that any person or governmental agency has undertaken, or is threatening to undertake, any activity that (1) requires a permit from the commission without securing the permit or (2) is inconsistent with any permit previously issued by the commission, the commission may issue an order directing that person or governmental agency to cease and desist.*

Although the County has a certified LCP, the development at issue is within the purview of the Commission's jurisdiction pursuant to Section 30810(a), which provides that the Commission may enforce requirements of a certified local coastal program under specified circumstances including when:

- (1) The local government or port governing body requests the commission to assist with, or assume primary responsibility for, issuing a cease and desist order.*
- (2) The commission requests and the local government or port governing body declines to act, or does not take action in a timely manner, regarding an alleged violation which could cause significant damage to coastal resources.*

Though the County sent you a letter on February 7, 2014 requesting that you remove development obstructing their easement, the County has requested that the Commission facilitate expeditious resolution of this matter by assuming primary enforcement and ensuring that the development on the subject property is brought into compliance with the Coastal Act and LCP; therefore, the Commission has enforcement jurisdiction with regard to these matters under Section 30810(a)(1) of the Coastal Act.

### **CEASE AND DESIST ORDER**

Section 30600(a) of the Coastal Act states that, in addition to obtaining any other permit by law, any person wishing to perform or undertake any development in the Coastal Zone must obtain

Exhibit 22  
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(Robert & Judith McCarthy)

a CDP. Section 30106 of the Coastal Act and Section 23.03.040 of the County LCP define 'Development' (*see above*); the unpermitted development described herein is clearly within the definition of 'Development.'

Section 30810(b) of the Coastal Act states that the Cease and Desist Order may be subject to such terms and conditions as the Commission may determine are necessary to ensure compliance with the Coastal Act- including removal of any unpermitted development or material. As noted above, the development at issue herein is not otherwise exempt from permitting requirements under the Coastal Act, and is thus subject to the permit requirements of Section 30600(a) of the Coastal Act, and no such Coastal Development Permits were applied for nor obtained.

For these reasons, I am issuing this Notice of Intent to commence Cease and Desist Order proceedings. The procedures for the issuance of cease and desist orders are described in Sections 13180 through 13188 of the Commission's regulations, which are codified in Title 14 of the California Code of Regulations.

The proposed Cease and Desist Order will Robert and Judith McCarthy to 1) cease and desist from maintaining any development on the subject property not authorized pursuant to the Coastal Act; 2) cease and desist from engaging in any further development on the subject property unless authorized pursuant to the Coastal Act; and 3) take all steps, as identified, necessary to comply with the Coastal Act.

### **RESPONSE PROCEDURE**

This matter is tentatively scheduled for hearing during the Commission's August 2014 meeting. In accordance with Section 13181(a) and 13191(a) of the Commission's Regulations, you have the opportunity to respond to the Commission staff's allegations as set forth in this notice of intent to commence Cease and Desist Order proceedings by completing the enclosed Statement of Defense (SOD) form. **The SOD form must be returned to the Commission's San Francisco office, directed to the attention of Heather Johnston, no later than, June 20, 2014.**

Please remember that should this matter be resolved via a settlement agreement, a statement of defense form would not be necessary. In any case, and in the interim, staff would be happy to continue to accept any information you wish to share regarding this matter, and to talk with you regarding an amicable resolution of this matter.

### **CIVIL LIABILITY/ EXEMPLARY DAMAGES**

As previously noted, the Coastal Act includes a number of penalty provisions for unpermitted development. Section 30820(a)(1) provides for civil liability to be imposed on any person who performs or undertakes development without a CDP and/or that is inconsistent with any CDP previously issued by the Commission in an amount that shall not exceed \$30,000 and shall not be less than \$500 for each instance of development that is in violation of the Coastal Act. Section 30820(b) provides that additional civil liability may be imposed on any person who performs or undertakes development without a CDP and/or that is inconsistent with any CDP previously issued by the Commission when the person intentionally and knowingly performs or undertakes such development, in an amount not less than \$1,000 and not more than \$15,000 per day for each day in which each violation persists. Section 30821.6 additionally provides that a violation of a cease

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CCC-14-CD-02 & CCC-14-NOV-01  
(Robert & Judith McCarthy)

and desist order, including an Executive Director Cease and Desist Order, can result in civil fines of up to \$6,000 for each day in which the violation persists. Section 30822 provides for additional exemplary damages.

## **RESOLUTION**

We would hope to resolve the violations at issue through a Consent Cease and Desist Order ("Consent Order"), which would outline the terms of development removal and restoration of the site. Such an approach would help resolve the violations discussed herein without the need for contested enforcement order proceedings before the Commission or litigation. Furthermore, Consent Order would afford you greater opportunity for input into the process and timing of restoration, location and type of mitigation to be performed, and the settlement of penalties. We would much prefer to work cooperatively with you to resolve the above-mentioned Coastal Act violations expeditiously, and without the need for a contested enforcement hearing and/or litigation, and we are happy to do what we can to help make this happen. Of course, any such resolution will also require your immediate attention and proactive efforts to take all steps necessary to comply with the Coastal Act.

Please contact me by **May 6, 2014** if you are interested in discussing a consensual resolution of this matter, and in any event please return the Statement of Defense form not later than **June 20, 2014**. Should you have any questions regarding this letter or the pending enforcement matter; please feel free to contact Heather Johnston at (415) 904.5293 in the Commission's San Francisco office.

Sincerely,

CHARLES LESTER  
Executive Director

Encl.: Statement of Defense form

cc (without Encl): Lisa Haage, Chief of Enforcement  
Alex Helperin, Staff Counsel  
Heather Johnston, Northern California Enforcement Supervisor  
Dan Carl, Deputy Director

Exhibit 22  
CCC-14-CD-02 & CCC-14-NOV-01  
(Robert & Judith McCarthy)



## UNPERMITTED FENCE AND CEMENT FOOTING



Exhibit 23  
CCC-14-CD-02 & CCC-14-NOV-01  
(Robert & Judith McCarthy)





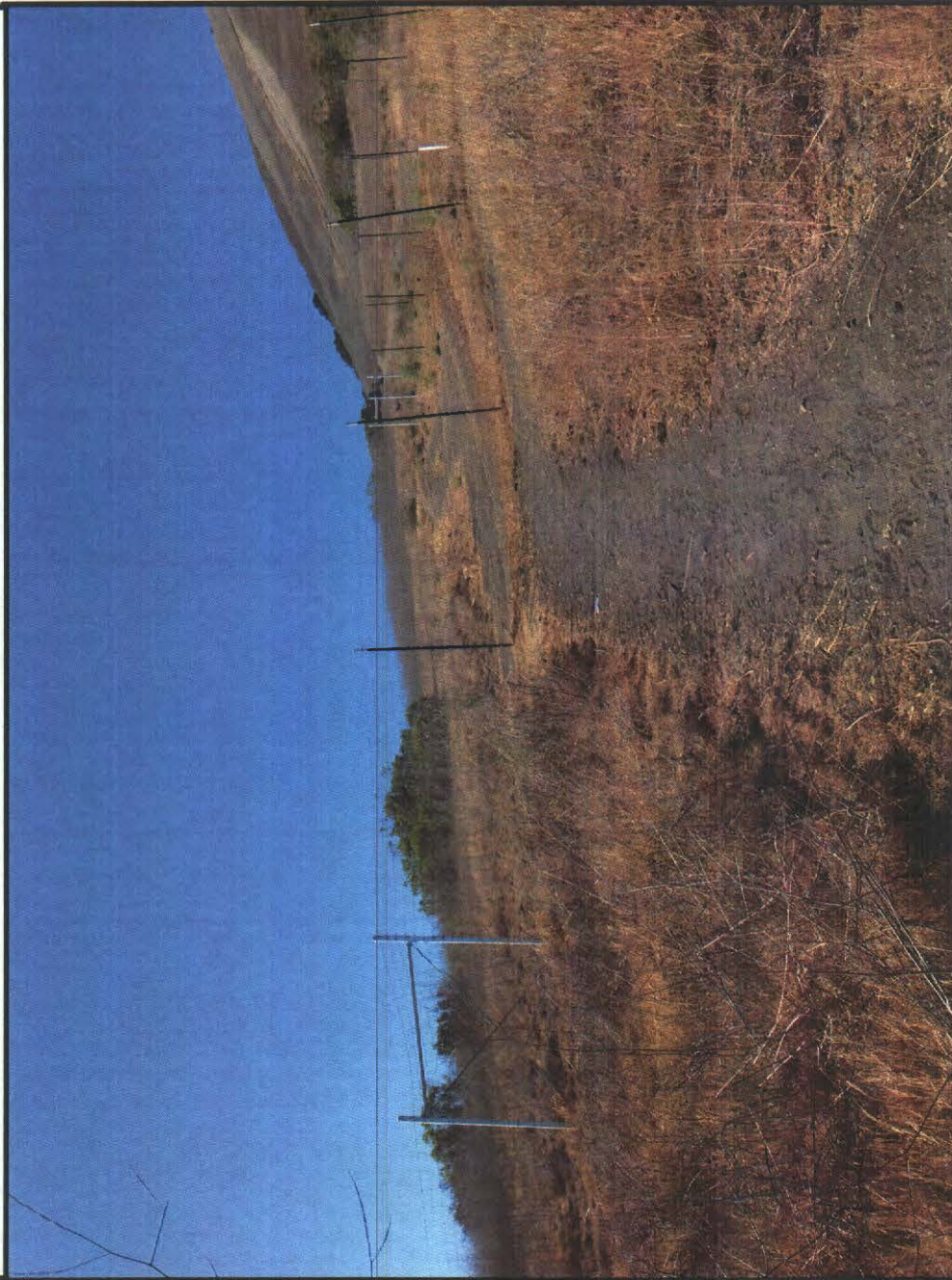
Unpermitted Field Fencing



Unpermitted Barbed Wire Fencing



VIEW OF UNPERMITTED DEVELOPMENT FROM  
COUNTY PROPERTY





COASTAL VIEWS IMPACTED BY UNPERMITTED  
DEVELOPMENT ON MCCARTHY PROPERTY



Exhibit 26  
CCC-14-CD-02 & CCC-14-NOV-01  
(Robert & Judith McCarthy)

**STATEMENT OF DEFENSE FORM**

**V-3-14-002 McCarthy**

**1. Facts or allegations contained in the notice of intent that you admit (with specific reference to the paragraph number in such document):**

The McCarthys admit the following facts contained in the Commission's May 29, 2014 notice of intent:

1. On February 20, 2014, the McCarthys received a Notice of Violation from the Commission.
2. On March 5, 2014, the McCarthys received a follow-up letter from the Commission.
3. On March 6, 2014, the McCarthys sent a letter to the Commission via their legal counsel, Gregory Sanders, asserting that the fencing and signs they had erected on their property were exempt from any requirement to obtain a coastal development permit under the San Luis Obispo County Local Coastal Program or the Coastal Act.

**2. Facts or allegations contained in the notice of intent that you deny (with specific reference to the paragraph number in such document):**

The McCarthys deny all facts not admitted in response to question 1 above and deny all legal allegations made in the Commission's May 29, 2014 notice of intent.

**3. Facts or allegations contained in the notice of intent of which you have no personal knowledge (with specific reference to the paragraph number in such document):**

None.

**4. Other facts which may exonerate or mitigate your possible responsibility or otherwise explain your relationship to the possible violation (be as specific as you can; if you have or know of any document(s), photograph(s), map(s), letter(s), or other evidence that you believe is/are relevant, please identify it/them by name, date, type, and other identifying information and provide the original(s) or (a) copy(ies) if you can:**

Under the plain language of San Luis Obispo County's Certified Local Coastal Program (LCP), the McCarthys have committed no legal violation. The Commission asserts that the McCarthys need to obtain a coastal development permit for the fencing and signage the McCarthys have erected on their property. However, said fencing and signage is explicitly exempt from any requirement to obtain a coastal development permit.



The County's Certified LCP expressly states that the following development is exempt from the requirement to obtain a coastal development permit:

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 (Certified LCP Coastal Zone Land Use Ordinance Section 23.03.040(d)(2));

"No Trespassing", "No Parking", and similar warning signs (Certified LCP Coastal Zone Land Use Ordinance Section 23.04.306(b)(13)).

It is undisputed that the fencing and signs at issue fall squarely within the plain language of these exemptions. The Commission approved the exemptions for fencing and signs in the County's LCP when it certified the LCP in 1986. It cannot now attempt to sanction the McCarthys for complying with the law.

See the attached letter of March 6, 2014 to Heather Johnston, Commission Enforcement Supervisor, and the attached letter of February 10, 2014 to Steve Kinsey, Chair of the Commission. These letters outline the legal and factual reasons why the allegations against the McCarthys are baseless and soundly demonstrate that no legal violations have occurred.

As stated in the attached letters of March 6 and February 10, 2014, contrary to the Commission's assertions, there are no public trails in the Ontario Ridge area surrounding the alleged violations. Consequently, the only direction the County's easement can run is away from the coast. The Commission has no jurisdiction over trails that lead away from the coast and thus has no jurisdiction over the alleged violations.

The McCarthys will also submit photographic and other evidence pertaining to the alleged violations and their defenses at the Cease and Desist hearing scheduled for July 10, 2014.

**5. Any other information, statement, etc. that you want to offer or make:**

The McCarthys engaged in negotiations with Commission staff in an attempt to come to agreement over a Consent Order and resolve this issue without the need for an enforcement hearing. The Consent Order proposed by the Commission on June 16 attempted to impose excessive fines in the amount of \$200,000 on the McCarthys. While reiterating that they have committed no violations of law, the McCarthys also state that the goal of imposing monetary fines for Coastal Act violations should be to mitigate for adverse impacts to coastal resources, not to impose punitive measures for actions such as erecting fencing, which cannot seriously be said to have caused \$200,000 in harm to coastal resources. For this reason, the McCarthys did not to accept the Commission's proposed Consent Order.

The excessive fine proposed by the Commission bears no proportional relationship to any alleged harm. Indeed, imposing such a fine on the McCarthys would violate the McCarthys' substantive due process rights, procedural due process rights, and other constitutional rights, including the right not to have excessive fines levied upon them. Moreover, imposition of such a fine would also constitute an unlawful taking.

**6. Documents, exhibits, declarations under penalty of perjury or other materials that you have attached to this form to support your answers or that you want to be made part of the administrative record for this enforcement proceeding (Please list in chronological order by date, author, and title, and enclose a copy with this completed form):**

February 10, 2014 – Letter to Steve Kinsey from Nossaman LLP on behalf of the McCarthys

March 6, 2014 – Letter to Heather Johnston from Nossaman LLP on behalf of the McCarthys

Letters from the County of San Luis Obispo

Other evidence and possibly legal briefing to be presented at or before the hearing scheduled for July 10, 2014

V-3-14-002 McCarthy  
Objection to Recordation of Notice of Violation  
June 19, 2014

**OBJECTION TO RECORDATION OF NOTICE OF VIOLATION**

**V-3-14-002 McCarthy**

In response to the Coastal Commission's May 29, 2014 notice of intent to record a notice of violation (alleged violation no. V-3-14-002), the McCarthys object to a recordation of a notice of violation.

The reasons for this objection, as well as the evidence the McCarthys intend to introduce at a hearing concerning this action, are those reasons and evidence set forth in the Statement of Defense Form enclosed with this objection.



ATTORNEYS AT LAW

18101 Von Karman Avenue  
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Irvine, CA 92612  
T 949.833.7800  
F 949.833.7878

Gregory W. Sanders  
gsanders@nossaman.com

Refer To File #: 400494-0001

**VIA FEDERAL EXPRESS AND EMAIL**

March 6, 2014

Heather Johnston  
Northern California Enforcement Supervisor  
45 Fremont, Suite 2000  
San Francisco, CA 94105

**Re: Rob and Judi McCarthy: Fencing and Signs Expressly Permitted Under  
Governing LCP (V-3-14-0012)**

Dear Ms. Johnston:

We are writing to you on behalf of our clients Rob and Judi McCarthy (collectively, "McCarthys") in order to refute the groundless position being asserted by the Coastal Commission with respect to its erroneous interpretation of the governing Certified Local Coastal Program ("LCP") and related Notice of Violation dated February 20, 2014. In the Notice of Violation the Commission has asserted that although the McCarthys' fencing and "no trespassing" signs are exempt under the plain and unambiguous language in San Luis Obispo County's Certified LCP, the exemptions do not apply because "the Coastal Act itself provides no generic exemption for such fencing or signs, [therefore] the LCP cannot provide such an exemption unless it is approved by the Commission through the process for certification of a categorical exclusion . . . ." This legal position, however, is based on a fundamental misunderstanding of the Coastal Act and the relevant case law. Moreover, we note that while the McCarthys maintain their right to erect and install fencing and signs consistent with the express exemptions in the Certified LCP, the fencing and signs that the Commission asserted unlawfully obstruct access to the steep dirt "jeep trail" have been removed from the property.

The fence and sign exemptions at issue were enacted by the County of San Luis Obispo, and approved by the Commission after public hearing and by two-thirds vote when it certified the LCP in 1986.<sup>1</sup> As such, the Coastal Act mandates that the development shall be

<sup>1</sup> The Commission cannot seriously contend that it was not aware of the exemptions when it certified the implementing portions of the LCP in 1986, as the exemptions were unambiguously identified in the text. (See Certified LCP Coastal Zone Land Use Ordinance Section 23.03.040(d) [entitled "**Exemptions from permit requirements**" and identifying the "types of development within the Coastal Zone (that) are exempt from the land use permit requirements of this title"], emphasis in original; Certified LCP Coastal Zone Land Use Ordinance Section 23.04.306 [entitled "**Exempts signs**" and stating "The following signs are allowed without a land use permit"], emphasis in original.) Accordingly, even under the Commission's erroneous theory, because the Commission approved the County's proposal to exempt a category of development after a public hearing and by a two-thirds vote, the

approved if it is consistent with the County's Certified LCP. (Pub. Resources Code, §§ 30519, 30600.5.) In this case, the Certified LCP expressly states that the following development in the coastal zone is "exempt" from the requirement to obtain a Coastal Development Permit:

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 (Certified LCP Coastal Zone Land Use Ordinance Section 23.03.040(d)(2));

"No Trespassing", "No Parking", and similar warning signs (Certified LCP Coastal Zone Land Use Ordinance Section 23.04.306(b)(13)).

The fencing and "no trespassing" signs at issue fall squarely within the plain language of these exemptions. Accordingly, contrary to the Commission's flawed legal analysis, and pursuant to the Coastal Act and the governing case law, the fencing and signs are exempt.

The Commission's legal analysis is wrong because it contradicts the plain and unambiguous language of the Coastal Act. The Commission has asserted that because fencing and signs are not explicitly discussed in section 30610 of the Public Resources Code ("Section 30610"), or in the regulations relating to Section 30610, the self-described "exemptions" in the LCP (see Certified LCP Coastal Zone Land Use Ordinance Section 23.03.040(d) [listing "Exemptions from permit requirements"], Section 23.04.306 [listing "Exempts signs"]) are not actually exemptions. This erroneous legal conclusion appears to be based on the faulty premise that all components of an LCP must be read consistent with and understood to conform to the Coastal Act.

Contrary to the Commission's unsupported assertion, and as expressly set forth in the Coastal Act, the components of an LCP need only conform to the policies in Chapter 3 of the Coastal Act (see Pub. Resources Code, § 30512, subd. (c) ["commission shall certify a land use plan . . . if it finds that a land use plan meets the requirements of, and is in conformity with, the policies of Chapter 3"]; Pub. Resources Code, § 30513 [commission may only reject implementing portions "on the grounds that they do not conform with, or are inadequate to carry out, the provisions of the certified land use plan"]), and "only to the extent necessary to achieve the basic state goals specified in Section 30001.5 of the Coastal Act." (Pub. Resources Code, § 30512.2, subd. (b).) Thus, Section 30610, which appears in Chapter 7 of the Coastal Act, is irrelevant to County-enacted exemptions, such as the fencing and sign exemptions currently at issue; rather, Section 30610 is only relevant for determining the scope of Commission-enacted exemptions.

Unlike the Commission's unsupported assertion, this legal position is also consistent with the holding in *McAllister v. California Coastal Commission* (2009) 169 Cal.App.4th 912, 931. In *McAllister*, a project opponent asserted that "the habitat policies in the Big Sur Land Use Plan must be interpreted in a way that is consistent with section 30240," which is part of

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fencing and signs would be exempt from the requirement to obtain a Coastal Development Permit.

Exhibit 27  
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(Robert & Judith McCarthy)

Chapter 3 of the Coastal Act. (*Id.* at pp. 925-926.) The court found that as section 30240 was part of Chapter 3, it was required to presume that the Big Sur Land Use Plan incorporated the policies in section 30240 "because when the Coastal Commission reviewed Monterey County's local coastal program, the Commission was required only to determine whether the program meets the requirements of **Chapter 3** of the Coastal Act, including section 30240." (*Id.* at p. 932, emphasis added.) Thus, the *McAllister* holding expressly affirms, consistent with the plain language of the Coastal Act, that an LCP need only conform to "the requirements of Chapter 3 of the Coastal Act." (*McAllister v. California Coastal Commission*, *supra*, 169 Cal.App.4th at p. 932, brackets omitted.) As explained above, the Commission is not invoking a Chapter 3 policy. Instead, the Commission is invoking Section 30610, which is a "provision" from **Chapter 7**. Thus, neither the Coastal Act, nor the Certified LCP, nor *McAllister* supports the Commission's legal position.

In addition to applying faulty logic, the Commission also makes a number of irrelevant and erroneous statements in its Notice of Violation. For example, the Commission states that "the area in which [the] property is located provides a vital link in the Ontario Ridge Trail, a heavily-used system of trails that affords public pedestrian access to the coast." (Notice of Violation at 3.) As an initial matter, the Notice of Violation fails to explain where the alleged "Ontario Ridge Trail" is located with respect to the property, or how the public is legally accessing this unidentified "Trail." Moreover, it is clear that contrary to the Commission's latest statement, the property does not provide "access to the coast." As previously stated by the Commission, trespassers will "traverse the moderate to steeply sloping trail **up to the summit**." (See Coastal Commission Appeal Staff Report: Substantial Issue Determination & De Novo Hearing on Appeal No. A-3-SLO-11-061 dated December 19, 2012 at p. 14, emphasis added; see also Coastal Commission Revised Findings on Appeal No. A-3-SLO-11-061 dated January 15, 2013 at p. 16 [asserting that trail provides "access up the slope for those wishing to access the ridgeline from Cave Landing Road and the Pirates Cover parking and trail area"].) Thus, the Commission has no independent jurisdiction over the trail, as it does not provide access to the sea or along the coast. (See Pub. Resources Code, § 30211 [Development shall not interfere with the public's right of access **to the sea**]. Emphasis added; Pub. Resources Code, § 30212, subd. (a) ["access from the nearest public roadway **to the shoreline** and along the coast"], emphasis added; see also *Schneider v. California Coastal Commission* (2006) 140 Cal.App.4th 1339, 1348 [Commission prohibited from considering view impacts from off-shore locations because not included in LCP or in the Coastal Act]; *Security National Guaranty, Inc. v. California Coastal Commission* (2008) 159 Cal.App.4th 402, 422 [Commission cannot deny application based on ESHA not formally designated in LCP].)

The Commission also states that the fencing and signs adversely affect public recreational access that has purportedly existed "for more than forty years." Again, however, the Commission fails to provide any factual support for this statement, and fails to explain why such unpermitted and unlawful access would be legally relevant to the alleged violation that is the subject of the Commission's Notice. Moreover, as previously admitted by the Commission, and as explained below, the public has no right to traverse the McCarthys' private property, and the Commission cannot require the McCarthys to provide access. (See Coastal Commission Revised Findings on Appeal No. A-3-SLO-11-061 dated January 15, 2013 at pp. 49-50.) As such, consistent with the express exemptions in the Certified LCP, and their rights as private property owners, the McCarthys have lawfully erected signs and fencing to preclude individuals

from **trespassing** on their property. (See also County of San Luis Obispo Coastal Plan Policies, Policy 10 at p. 2-15 ["Nothing in the Local Coastal Program is to be construed as encouraging, permitting, or endorsing trespassing or invasion of private property rights or privacy."].)

The Commission also improperly asserts that the fencing and signs are in violation of contractual easement obligations with the County of San Luis Obispo. Relying on a grant of easement that was recorded in 2009, the Commission asserts that the McCarthys are obligated to permit pedestrian and vehicular access on the property. Contrary to the Commission's assertion, however, the McCarthys are not required to permit such access, as the County never obtained the necessary government approval for the "development" to lawfully exist. As stated by the Commission, unless exempted "any person wishing to perform or undertake development in the Coastal Zone must obtain a coastal development permit, in addition to any other permit required by law." (Notice of Violation at 2.) Under the Coastal Act, the term "person" is broadly defined to mean "any individual, organization, partnership, limited liability company, or other business association or corporation, including any utility, and any federal, state, local government, or special district or an agency thereof." (Pub. Resources Code, § 30111.) Thus, the County must obtain a coastal development permit before it may undertake "development" in the Coastal Zone. And, as admitted by the Commission in its Notice of Violation, a change in public access to the McCarthy property "constitute[s] development under both the Coastal Act and LCP." (Notice of Violation at 2; see also *Elec. Pointe v. Cal. Coastal Com.* (No. B211755, Nov. 16, 2009) 2009 Cal.App.Unpub. LEXIS 9044 [vacation of easement was "development" for purposes of Coastal Act because it would change intensity of use or change access to water].) Accordingly, as the County has not obtained a coastal development permit for its proposed "development," the public cannot lawfully access the property. Further, even if the McCarthys were obligated to permit pedestrian access under the easement, the Commission has no authority to enforce such a contractual obligation through an enforcement action under the Coastal Act.

Moreover, as demonstrated by recent events, the slopes on the dirt "jeep" trail, which can be as steep as 40%-50% (see Exhibit 1, enclosed herewith), are not safe. People have been seriously injured trying to hike the steep slopes. One person recently admitted that she broke her leg trying to climb the steep slopes, and cautioned that the slopes are "Very dangerous for those not experienced."<sup>2</sup> Thus, the fencing and signs not only protect the McCarthys, but they are necessary to protect the public. It is, in part, because of their concern for others that the McCarthys have offered, consistent with their right to relocate the easement,<sup>3</sup> to grant an easement for public access on an adjacent parcel with gentle slopes (no more than 20%) that offer safe access to the trails along Ontario Ridge. For the benefit of all the parties involved, and the public's safety, the Commission should work with the County on identifying and designating a safe trail, such as the one offered by the McCarthys, as opposed to bringing a

<sup>2</sup> Comment by Dena Laugen-Aragon on KSBY Story by Connie Tran dated Jan 23, 2014: <http://www.ksby.com/news/part-of-popular-ontario-ridge-hiking-trail-closed-off-to-the-public/> (as of Feb. 5, 2014).

<sup>3</sup> The easement states that it "may be relocated at [the McCarthys'] reasonable discretion and at [the McCarthys'] sole cost and expense to a location on [the property] that [the McCarthys] and [County] shall reasonably agree."

Heather Johnston  
March 6, 2014  
Page 5

baseless enforcement action or forcing individuals to trespass on private property and risk significant injury.

As demonstrated above, the Commission's legal position cannot be reconciled with the relevant authorities, as the fencing and signs are exempt under the governing Certified LCP, and the public has no right to use the property. It is our hope that instead of acting contrary to law, the Commission will take this opportunity to open up a dialogue and try and identify and designate a trail that will respect the McCarthy's private property rights and insure the safety of the public. We thank you very much for your consideration of our letter.

Sincerely,

A handwritten signature in cursive script that reads "Gregory W. Sanders".

Gregory W. Sanders  
of Nossaman LLP

GWS/BZR

cc: Lisa Haage  
Dan Carl

Exhibit 27  
CCC-14-CD-02 & CCC-14-NOV-01  
(Robert & Judith McCarthy)





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Gregory W. Sanders  
gsanders@nossaman.com

Refer To File #: 400494-0001

**VIA FEDERAL EXPRESS**

February 10, 2014

Steve Kinsey, Chair  
California Coastal Commission and Commission Members  
Central Coast District  
725 Front Street, Suite 300  
Santa Cruz, CA 95060

**Re: Rob and Judi McCarthy: Fencing and Signs (Agenda No. 32a) On Private Property to Preclude Trespassers**

Dear Chair Kinsey and Members of the Commission:

We are writing to you on behalf of our clients Rob and Judi McCarthy (collectively, "McCarthy") in order to refute the groundless position being asserted by Coastal Commission staff, and to support the County of San Luis Obispo's logical and lawful interpretation of the governing Certified Local Coastal Program ("LCP"). In a letter dated January 29, 2014, and in a subsequent staff report, staff have asserted that although the McCarthy fencing and "no trespassing" signs are exempt under the plain and unambiguous language in the County's Certified LCP, the exemptions do not apply because exemptions "must be read consistent with and understood to conform to the Coastal Act as a matter of law." This position, however, is based on an obvious fundamental misunderstanding of the Coastal Act and the relevant case law.

The fence and sign exemptions were enacted by the County, and approved by the Commission when it certified the LCP. As such, the Coastal Act mandates that the development shall be approved if it is consistent with the County's Certified LCP. (Pub. Resources Code, §§ 30519, 30600.5.) In this case, the Certified LCP expressly states that the following development in the coastal zone is "exempt" from the requirement to obtain a Coastal Development Permit:

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 (Certified LCP Coastal Zone Land Use Ordinance Section 23.03.040(d)(2));

"No Trespassing", "No Parking", and similar warning signs (Certified LCP Coastal Zone Land Use Ordinance Section 23.04.306(b)(13)).

Exhibit 27  
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(Robert & Judith McCarthy)

It is undisputed that the fencing and "no trespassing" signs at issue fall squarely within the plain language of these exemptions. Accordingly, contrary to the staff's flawed analysis, and pursuant to the Coastal Act and the governing case law, the fencing and signs are exempt.

The staff's analysis is wrong because it contradicts the plain and unambiguous language of the Coastal Act. The staff asserts that because fencing and signs are not explicitly discussed in section 30610 of the Public Resources Code ("Section 30610"), or in the regulations relating to Section 30610, the self-described "exemptions" in the LCP (see Certified LCP Coastal Zone Land Use Ordinance Section 23.03.040(d) [listing "Exemptions from permit requirements"], Section 23.04.306 [listing "Exempts signs"]) are not exemptions, but merely LCP standards. The staff's assertion is premised on the faulty conclusion that all components of an LCP "must be read consistent with and understood to conform to the Coastal Act."

Contrary to the staff's assertion, and as expressly set forth in the Coastal Act, the components of an LCP need only conform to the policies in Chapter 3 of the Coastal Act (see Pub. Resources Code, § 30512, subd. (c) ["commission shall certify a land use plan . . . if it finds that a land use plan meets the requirements of, and is in conformity with, the policies of Chapter 3"]; Pub. Resources Code, § 30513 [commission may only reject implementing portions "on the grounds that they do not conform with, or are inadequate to carry out, the provisions of the certified land use plan"]], and "only to the extent necessary to achieve the basic state goals specified in Section 30001.5 of the Coastal Act." (Pub. Resources Code, § 30512.2, subd. (b).) Thus, Section 30610, which appears in Chapter 7 of the Coastal Act, is irrelevant to County-enacted exemptions, such as the fencing and sign exemptions currently at issue; rather, Section 30610 is only relevant for determining the scope of Commission-enacted exemptions.

In addition to disregarding the plain and unambiguous language in the Coastal Act, the staff also mischaracterizes the holding in *McAllister v. California Coastal Commission* (2009) 169 Cal.App.4th 912, 931, which it asserts stands for the proposition that "[a]ll LCP provisions must be read consistent with and understood to conform to the Coastal Act." Contrary to the staff's representation, the *McAllister* holding applies only to "the requirements of Chapter 3 of the Coastal Act." (*McAllister v. California Coastal Commission*, *supra*, 169 Cal.App.4th at p. 932, brackets omitted.) In *McAllister*, a project opponent asserted that "the habitat policies in the Big Sur Land Use Plan must be interpreted in a way that is consistent with section 30240," which is part of Chapter 3 of the Coastal Act. (*Id.* at pp. 925-926.) The court found that as section 30240 was part of Chapter 3, it was required to presume that the Big Sur Land Use Plan incorporated the policies in section 30240 "because when the Coastal Commission reviewed Monterey County's local coastal program, the Commission was required only to determine whether the program meets the requirements of **Chapter 3** of the Coastal Act, including section 30240." (*Id.* at p. 932, emphasis added.) As explained above, however, in this case the staff is not invoking a Chapter 3 policy. Instead, the staff is invoking Section 30610, which is a "provision" from **Chapter 7**. Thus, neither the Coastal Act, nor *McAllister* supports the staff's position.

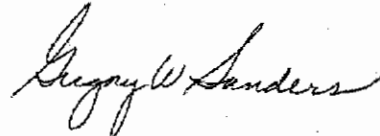
In addition to applying faulty logic in an attempt to support their position, the staff report also improperly asserts that the fencing and signs "adversely affect public recreational access[.]" But, as previously admitted by the Commission, the public has no right to traverse the McCarthy's private property, and the Commission cannot require the McCarthys to provide access. (See Coastal Commission Revised Findings on Appeal No. A-3-SLO-11-061 dated

January 15, 2013 at pp. 49-50.) As such, consistent with the express exemptions in the Certified LCP, and their rights as private property owners, the McCarthys have lawfully erected signs and fencing to preclude individuals from **trespassing** on their property.

Moreover, as demonstrated by recent events, the slopes on the dirt "jeep" trail, which can be as steep as 40%-50% (see Exhibit 1, enclosed herewith), are not safe. People have been seriously injured trying to hike the steep slopes. One person recently admitted that she broke her leg trying to climb the steep slopes, and cautioned that the slopes are "Very dangerous for those not experienced."<sup>1</sup> Thus, the fencing and signs not only protect the McCarthys, but they are necessary to protect the public. It is, in part, because of their concern for others that the McCarthys have offered to grant an easement for public access on an adjacent parcel with gentle slopes (no more than 20%) that offer safe access to the trails along Ontario Ridge. For the benefit of all the parties involved, and the public's safety, the Commission should work with the County on identifying and designating a safe trail, such as the one offered by the McCarthys, as opposed to forcing individuals to trespass on private property and risk significant injury.

As demonstrated above, the staff's position cannot be reconciled with the relevant authorities, as the fencing and signs are exempt under the governing Certified LCP. It is our hope that instead of acting contrary to law, the Commission will take this opportunity to open up a dialogue and try and identify and designate a trail that will respect the McCarthy's private property rights and insure the safety of the public. We thank you very much for your consideration of our letter.

Sincerely,



Gregory W. Sanders  
of Nossaman LLP

GWS/BZR

cc: Andrew Vogel  
Dan Carl  
Kami Griffin

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<sup>1</sup> Comment by Dena Laugen-Aragon on KSBY Story by Connie Tran dated Jan 23, 2014: <http://www.ksby.com/news/part-of-popular-ontario-ridge-hiking-trail-closed-off-to-the-public/> (as of Feb. 5, 2014).



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From: Kelly M Percival Phone: 949.833.7800  
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Client#:  
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# UNPERMITTED SIGNS, GATES, AND FENCES IN ACCESS EASEMENT



Exhibit 28  
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(Robert & Judith McCarthy)