

W 9.5a

State of California

California Coastal Commission
North Central Coast District

MEMORANDUM

TO: Commissioners and Interested Parties Date: August 5, 2005
FROM: Charles Lester, Deputy Director
North Central Coast District
SUBJECT: **Addendum to Commission Meeting for Wednesday, August 10, 2005**
North Central Coast District

AGENDA # APPLICANT

NEW APPEAL

W 9.5a A-2-SMC-05-009 (PENINSULA OPEN SPACE TRUST, SMC)

Letter, Katie Sanborn, dated August 2, 2005
Letter, Lynn B. Ubhaus, dated August 2, 2005
Letter, Nancy Rice, dated August 2, 2005
Letter, John Holton, dated August 2, 2005
Letter, Peter Stansky, dated August 2, 2005
Letter, Robert H. Caletti, dated August 2, 2005
Letter, Dan Alexander, dated August 2, 2005
Letter, Bethwy, dated August 2, 2005
Letter, Christie Vogel, dated August 2, 2005
Letter, Norma Jean Galiher, dated August 2, 2005
Letter, Larry Hebb, dated August 2, 2005

Letter, Jan & Bob Fenwick, dated August 3, 2005
Letter, Dan Quinn, dated August 3, 2005
Letter, Peter Holloran, dated August 3, 2005
Letter, Robert C. Kirkwood, dated August 3, 2005
Letter, Emily M. Renzel, dated August 3, 2005
Letter, Linda Liebes, dated August 3, 2005
Letter, Cary Chien, office of Leland Yee, dated August 3, 2005
Letter, Nancy Arbuckle, dated August 3, 2005
Letter, Linda Vrabel, dated August 3, 2005
Letter, Wayne & Dellalou Swan, dated August 3, 2005
Letter, Bess Touma, dated August 3, 2005
Letter, Roger Bishop, dated August 3, 2005

Chris Kern

From: Katie Sanborn [Katie.Sanborn@otaotr.com]
Sent: Tuesday, August 02, 2005 1:04 PM
To: ckern@coastal.ca.gov
Subject: Subject: Appeal A-2-05-9

California Coastal Commissioners
c/o Chris Kern
45 Fremont Street, Suite 2000
San Francisco CA 94105

I am writing to ask you to support the trail development at Whaler's Cove and to follow the staff finding that Appeal Number A-2-05-009 (Appellant: Ron Sturgeon) raises "No Substantial Issue."

I served as a docent at Pigeon Point Light Station from about 1997 to 2000 or so, giving tours of the lighthouse to hundreds of local, domestic and foreign tourists. I shared with them the geographic, political and natural history of the area and regaled them with tales of some of the people who lived in and around the area. During April each year, I joined with my fellow docents to provide whale talks when the migrating grays slip into Whaler's Cove for a rest. I reminded them how different it was in the 18th century when Portuguese whalers would wait for the grays appear and then launch their whaleboats in the hunt.

While I worked at Pigeon Point, the decrepit buildings that had been on the site in question for years were still there. I witnessed the demolition of those buildings and the initial construction of the motel cottages. I and my fellow docents were appalled. Then the construction stopped, and the buildings became an eyesore. Finally, POST rescued the site and the buildings were removed. We were all thrilled and looked forward to uniting that parcel with the rest of the park.

Visitors to Pigeon Point often asked me about the site and about beach access to Whaler's Cove. Sadly, I had to tell them that the property was privately owned and that beach access was impossible. I do not know what the opposition is to the construction of Mel's Lane, but I am sure that it cannot outweigh the public good of providing access to the cove and opening Pigeon Point State Historic Park as intended. At the risk of being flippant, perhaps we should put Mr. Sturgeon out on Prisoners Rock in the middle of Whaler's Cove and let him think about it.

Thank you.

Katie Sanborn
PO Box 2693
El Granada CA 94018

Chris Kern

From: Lynn Ubhaus [lynnub@earthlink.net]
Sent: Tuesday, August 02, 2005 1:25 PM
To: ckern@coastal.ca.gov
Subject: Whaler's Cove

Please follow your staff finding that Appeal Number A-2-05-009 raises "No Substantial Issue" so that the public trails and beach access at Whaler's Cove can be built a.s.a.p. Sincerely, Lynn B. Ubhaus, member of Committee for Green Foothills

Chris Kern

From: Nancy Rice [narice@wildmail.com]
Sent: Tuesday, August 02, 2005 2:16 PM
To: ckern@coastal.ca.gov
Cc: Office@GreenFoothills.org
Subject: Appeal Number A-2-05-009

Hi Coastal Commission,

Please follow your Staff finding that Appeal Number A-2-05-009 raises "No Substantial Issue" so that the public trails and beach access at Whaler's Cove can be built as soon as possible.

My husband and I use the frontage road of Pigeon Point Lighthouse to go camping in our tent trailer. We love the peacefulness and the unspoiled open spaces. Our new dog is going to find out how nice it is too, this weekend, in fact.

Thank you for keeping Pigeon Point such a gem.

-Nancy

Check out my updated web site! Lots of
new work:
<http://www.nancyrice.com>

Mourn the victims. Comfort the survivors. Stand for peace.
Light a virtual candle for London: <http://www.care2.com/go/z/london>
<http://www.Care2.com> Free e-mail. 100MB storage. Helps charities.

Chris Kern

From: John Holton [john@symphonyconsult.com]
Sent: Tuesday, August 02, 2005 2:50 PM
To: ckern@coastal.ca.gov
Cc: action@GreenFoothills.org
Subject: Mel's Lane Coastal Access Project at Whaler's Cove.

Dear California Coastal Commissioners,
I am writing to ask you to allow the trail project at Whaler's cove to move forward. Please follow the staff finding that Appeal Number A-2-05-009 raises "No Substantial Issue". I hope the public trails and beach access at Whaler's Cove can be built as soon as possible so I may enjoy them with my kids.

Kind Regards,
John Holton

1635 Corte Via
Los Altos, CA 94024

Chris Kern

From: Peter Stansky [stansky@stanford.edu]
Sent: Tuesday, August 02, 2005 3:49 PM
To: ckern@coastal.ca.gov
Subject: Appeal Number A-2-05-009; Applicant: Peninsula Open Space Trust; Appellant: Ron Sturgeon.

I am writing to urge you as strongly as I can to allow Mel's Lane to remain as planned. It is a wonderful project in honor of a wonderful man.

Yours sincerely, Peter Stansky, 375 Pinehill Road, Hillsborough 94010

Chris Kern

From: Caletti, Robert H. MHX [robert.caletti@hospira.com]
Sent: Tuesday, August 02, 2005 4:05 PM
To: ckern@coastal.ca.gov
Subject: Appeal Number A-2-05-009

California Coastal Commissioners
c/o Chris Kern
45 Fremont Street, Suite 2000
San Francisco CA 94105
Fax 415-904-5400
Email ckern@coastal.ca.gov <mailto:ckern@coastal.ca.gov>

Dear Coastal Commission,

Subject: Appeal A-2-05-9
Applicant: Peninsula Open Space Trust; Appellant: Ron Sturgeon

Please follow your Staff's finding that Appeal Number A-2-05-009 raises "No Substantial Issue" so that the public trails and beach access at Whaler's Cove can be built as soon as possible. Thanks,

Robert Caletti
605 Wallea Dr.
Menlo Park, CA 94025

Chris Kern

From: RednaxelaDan@aol.com
Sent: Tuesday, August 02, 2005 4:49 PM
To: ckern@coastal.ca.gov
Cc: %20action@Green Foothills.org
Subject: Pigeon Point Coastal Access

This is to urge the Coastal Commission to deny the appeal of Ron Sturgeon and approve the staff recommendation on appeal no. A-2-05-009, allowing public access to the beach and proposed trails and overlook at Pigeon Point to go forward to completion. Dan Alexander, 27200 Elena Rd Los Altos Hills, CA 94022.

Chris Kern

From: Bethwy@aol.com
Sent: Tuesday, August 02, 2005 4:51 PM
To: ckern@coastal.ca.gov; action@greenfoothills.org
Subject: Re Mel's Lane Project

Please approve this wonderful restoration of coastal access. A-02-005-009 Mel's Lane.

8/2/2005

Chris Kern

From: chris vogel [chrisvogel_99@yahoo.com]
Sent: Tuesday, August 02, 2005 5:36 PM
To: ckern@coastal.ca.gov
Subject: Appeal Number A-2-05-009; Applicant: Peninsula Open Space Trust; Appellant: Ron Sturgeon

Please follow the Coastal Commission Staff finding that this Appeal raises "No Substantial issue"; the approval of Mel's Lane Coastal Access should stand; and the public trails and beach access at Whaler's Cove should be built as soon as possible.

Thank you,

Yours truly,
(Ms) K. Christie Vogel
P.O. Box 67
El Granada, CA 94018

K. Christie Vogel

Start your day with Yahoo! - make it your home page
<http://www.yahoo.com/r/hs>

Chris Kern

From: Norma Jean Galiher, M.S. [njgaliher@earthlink.net]
Sent: Tuesday, August 02, 2005 8:06 PM
To: ckern@coastal.ca.gov
Subject: Appeal A2 05 9

The Coastal Commission has done exceptional work over the years, for which I applaud you.

I respectfully request that you support your staff's finding of No Substantial Issue and return us to public access at Whaler's Cove. I have been contributing to POST, who acquired and obtained permanent protection for this historic and scenic site, for as long as they existed. They are acknowledged worldwide as the pace-setter in Land Preservation Trust. Please help continue the groundbreaking work they have done to preserve the scenic value of this property and allow the public to again benefit from both. Thank you for taking my input into consideration when you vote.

Respectfully,
Norma Jean Galiher

--

Norma Jean Galiher, M.S.
Consultant in Toxicology
434 Carmelita Dr.
Mtn. View, CA 94040
Phone (650) 964-3803
FAX (650) 964-8453
e-mail njgaliher@earthlink.net

Chris Kern

From: Larry Hebb [larryhebb@yahoo.com]
Sent: Tuesday, August 02, 2005 8:43 PM
To: ckern@coastal.ca.gov
Subject: Subject: Appeal A-2-05-9

I am writing in support of access to the Mel's Lane Coastal Access Project at Whaler's Cove.

I understand that Ron Sturgeon has appealed restoring access to Whalers Cove just south of the Pigeon Point light house, notwithstanding agreement among the vast majority of interested parties. Please support your staff's recommendation that access to this beach be restored.

The matter is known as:

Appeal Number A-2-05-009; Applicant: Peninsula Open Space Trust; Appellant: Ron Sturgeon

Thank you,

Larry Hebb
340 Coronado Ave
Half Moon Bay, CA 94019
650-712-7788

[Start your day with Yahoo! - make it your home page](#)

Chris Kern

From: FenwickJan@aol.com
Sent: Wednesday, August 03, 2005 4:22 AM
To: ckern@coastal.ca.gov
Subject: Number A-2-05-009

We feel that the tremendous effort that POST has put into this project at Pigeon Point Lighthouse is valuable and exciting for the public to enjoy. Since differences have been worked out among all the agencies involved, we urge you to determine that Number A-2-05-009 raises no substantial issues.

Thank you! Sincerely, Jan and Bob Fenwick, 28011 Elena Rd. Los Altos Hills, 94022

8/3/2005

Chris Kern

From: Dan Quinn [riskfocus@sbcglobal.net]
Sent: Wednesday, August 03, 2005 11:00 AM
To: Chris Kern
Subject: Please act to allow beach access at Whaler's Cove

Re: Appeal Number A-2-05-009, appeal of action by Coastal Commission.

Please hold that this appeal raises no substantial issue, and reject it. This issue has been fully aired. POST, the Farm Bureau, the San Mateo County Planning Commission, and the San Mateo County Board of Supervisors approve the current agreement. It is time to end appeals and get on with the work.

Pigeon Point is a coastal jewel. Last month, my wife and I rode our bikes up Gazos Creek, then along the coast. We stopped at the Pigeon Point Lighthouse. It was a wonderful day, with wonderful views of the fog bank competing with the bright sunlight. Many others enjoyed it with us. Whaler's Cove beach access via Mel's Lane would be a very good addition to a popular site. More trails would be very welcome -- this is a good place for public trails, and they would be popular. Please keep this agreement and move forward on building Mel's Lane.

Please convey this appeal to the California Coastal Commission and enter it into the public record if appropriate. Thank you very much.

Dan Quinn
10 Bear Paw
Portola Valley, CA 94028
RiskFocus@sbcglobal.net

Chris Kern

From: Pete Holloran [peteh@ucsc.edu]
Sent: Wednesday, August 03, 2005 11:42 AM
To: ckern@coastal.ca.gov
Subject: Appeal Number A-2-05-009

Dear California Coastal Commissioners,

I am writing to support the application by the Peninsula Open Space Trust to provide public access at Whaler's Cove. As a botanist and naturalist with 12 years of field experience in coastal systems, I heartily endorse this effort to provide public access to the coast. I am quite familiar with the coastal bluffs to the immediate north and south of this area, and cannot imagine any substantive issues regarding native plant or animal life that are raised by this application. I have not read the application itself, but as long as they don't plant iceplant, then they're doing a good thing by promoting public awareness and appreciation for coastal systems. The fact that this application has been endorsed by the Committee for Green Foothills, the Farm Bureau, and the County Board of Supervisors clearly suggests that any major issues have been dealt with. It is rare for such parties to find unanimity on anything, and such efforts should be supported, not appealed.

with regards,
Pete Holloran
Ph.D. student, Environmental Studies
UC Santa Cruz
1156 High Street
Santa Cruz, CA 95064

Chris Kern

From: Bob Kirkwood [kirkwoodr@mindspring.com]
Sent: Wednesday, August 03, 2005 11:43 AM
To: ckern@coastal.ca.gov
Subject: Appeal A-2-05-9

Dear Coastal Commission members;

Please vote for the staff recommendation on this appeal. The development of Mel's lane as an addition to the Coastal Trail and modest visitor serving facilities at Whaler's Cove will have no significant adverse impact and will contribute substantially to the public's use and enjoyment of this portion of the California Coast.

Sincerely

Robert C. Kirkwood
1221 Waverley St
Palo Alto, Calif 94301

Chris Kern

From: Marshmama@aol.com
Sent: Wednesday, August 03, 2005 2:35 PM
To: ckern@coastal.ca.gov
Subject: Whaler's Cove Trail

Dear Coastal Commission: In the matter of the Appeal #A-2-05-009, I urge you to uphold your staff in finding that there is no substantial issue raised in the appeal.

The Property owner, POST, has shown good faith in working out agreements with nearby landowners and farmers and is complying in every way with the letter and spirit of the California Coastal Act.

I hope you will support the recommendations of your staff.

Sincerely,

Emily M. Renzel
Former Councilmember, City of Palo Alto (1979-1991)

Chris Kern

From: Linda Liebes [lindaliebes@earthlink.net]
Sent: Wednesday, August 03, 2005 2:37 PM
To: ckern@coastal.ca.gov
Subject: Mel Lane Coastal Access - Support

Please follow your staff finding that Appeal Number A-2-05-009 raises "No Substantial Issue" so that public trails and beach access at Whaler's Cover can be built as soon as possible.

Thank you!

- Linda

Linda Liebes
98 Monte Vista Ave.
Atherton, CA 94027
T: (650) 321-0898
F: (650) 324-9720
lindaliebes@earthlink.net

Chris Kern

From: Chien, Cary [Cary.Chien@ASM.CA.GOV]**Sent:** Wednesday, August 03, 2005 2:47 PM**To:** 'ckern@coastal.ca.gov'**Subject:** Leland Y. Yee supports Mel's Lane Coastal Access (Appeal Number A -2-05-009)

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California Coastal Commissioners
c/o Chris Kern
45 Fremont Street, Suite 2000
San Francisco CA 94105

August 3, 2005

**Re: Mel's Lane Coastal Access (Appeal Number A-2-05-009); Applicant: Peninsula Open Space Trust;
Appellant: Ron Sturgeon**

Dear Mr. Kern:

I am pleased to express my strong support for restoring public access to the bluffs adjacent to the Pigeon Point Lighthouse on the San Mateo County Coast.

Having been there myself on several occasions, I know how precious this area is. By upholding the coastal development permit approved by San Mateo County, you will insure that the seven million San Francisco Bay Area residents have access to this scenic area. In 1997, the Peninsula Open Space Trust had the foresight to purchase this property after a nine-unit motel was partially constructed. The site was restored and subsequently turned over to California State Parks Department in the hopes that site would one day offer recreational opportunities such as the four trails, an information kiosk, a seating area, and an overlook deck.

For many Bay Area families, access to outdoor recreation opportunities is a welcome retreat from our daily life and a valuable educational tool for our youth. Not only do our State Parks offer exercise and recreational activities for our children; they help foster an appreciation for protecting and conserving California's environment.

I urge your support for State Parks' efforts to preserve the San Mateo Coast's natural, cultural and scenic resources for the benefit of generations of Californians.

Sincerely,
LELAND Y. YEE, PH.D.
Speaker pro Tempore
California State Assembly
LY:cc/P1

CC: Lennie Roberts

--
Cary Chien
Office of Leland Y. Yee, Ph.D.
Speaker pro Tem
California State Assembly, District 12
455 Golden Gate Avenue
San Francisco, CA 94102

8/3/2005

:
415-557-2312 (phone)

:
415-557-1178 (fax)

www.assembly.ca.gov/yee

Chris Kern

From: Crockerbuckle Family [crockerbuckle@mindspring.com]
Sent: Wednesday, August 03, 2005 2:56 PM
To: ckern@coastal.ca.gov
Subject: Subject: Appeal A-2-05-9

RE: Appeal Number A-2-05-009; Applicant: Peninsula Open Space Trust; Appellant: Ron Sturgeon.

I am writing to ask you to please vote for the Mel's Lane Coastal Access Project at Whaler's Cove. These long-awaited public trails and overlook will complement the historic lighthouse and hostel next door.

Potential conflicts between agricultural use of the field across Pigeon Point Road and trail users have been worked out in an agreement between POST and the Farm Bureau, and the San Mateo County Planning Commission and Board of Supervisors have unanimously approved the project. I understand, however, that an individual has appealed this decision. I wish to express my agreement with the Coastal Commission staff that the appeal raises "No Substantial Issue" and the approval of Mel's Lane Coastal Access should stand.

Please follow your Staff finding that Appeal Number A-2-05-009 raises "No Substantial Issue" so that the public trails and beach access at Whaler's Cove can be built as soon as possible.

Thank you for your time and consideration of this important issue.

Sincerely,

Nancy Arbuckle

524 Nimitz Ave.

Redwood City, CA 94061

Chris Kern

From: Linda Vrabel [lvrabel@mail.arc.nasa.gov]
Sent: Wednesday, August 03, 2005 4:45 PM
To: ckern@coastal.ca.gov
Cc: action@GreenFoothills.org
Subject: public trails and beach access at Whaler's Cove

Members of the Coastal Commission,

As a resident of California I would like to take this opportunity to Please follow their Staff finding that Appeal Number A-2-05-009 raises "No Substantial Issue".

I really want the public trails and beach access at Whaler's Cove to be built as soon as possible.

Thank you for considering this request.

Cordially,
Linda Vrabel
2084 Shiloh Ave
Milpitas, CA 95035

Chris Kern

From: Wmswan@aol.com
Sent: Wednesday, August 03, 2005 9:52 PM
To: ckern@coastal.ca.gov
Cc: action@GreenFoothills.org
Subject: Public access to Whalers Cove

We love this mini beach. It is only eight miles from our property at the north end of Santa Cruz County. My wife and I have picniced there, swam and watched a seal cavort in the ocean. That was long before the nine unit motel was constructed there. We were delighted to watch the removal of these structures. They limited public access to this beach. It is a truly magnificent natural beach.

I hope the commission will follow the staff finding that there is no substantial issue; Reference Appeal # A-2-05-003. Please make it possible for people like us to once again have access to Whalers Cove.

Wayne and Dellalou Swan

8/4/2005

Chris Kern

From: Bess Touma [etouma@comcast.net]

Sent: Wednesday, August 03, 2005 10:17 PM

To: ckern@coastal.ca.gov

Subject: Appeal Number A-2-05-009; Applicant: Peninsula Open Space Trust; Appellant: Ron Sturgeon.

August 3, 2005

California Coastal Commissioners
c/o Chris Kern

As a resident of the Central Coast, I respectfully recommend that the Coastal Commission comply with its staff finding that Appeal Number A-2-05-009 raises "No Substantial Issue". Thus, the public trails and beach access at Whaler's Cove should be built as soon as possible.

Sincerely,

Bess Touma
POB 1583
El Granada, CA 94018
etouma@comcast.net
650.712.0773 - home
650.712/0396 - fax
415.759.3461 - work

Chris Kern

From: Roger Bishop [roger6@pacbell.net]
Sent: Wednesday, August 03, 2005 11:34 PM
To: ckern@coastal.ca.gov
Cc: action@GreenFoothills.org
Subject: Appeal No.A-2-05-009

To Chris Kern:

We join the Coastal Commission in following their staff finding that Appeal Number A-2-05-009 raises "No Substantial Issue" so that the public trails and beach access at Whaler's Cove can be built soon.

Dr. & Mrs. Roger M .Bishop, Los Altos, Calif.

Roger Bishop
roger6@pacbell.net
650.948.0528

655 California Street
Mountain View, CA 94041
August 3, 2005

CALIFORNIA
COASTAL COMMISSION

AUG 04 2005

RECEIVED

California Coastal Commissioners
c/o Chris Kern
45 Fremont Street, Suite 2000
San Francisco CA 94105
Fax 415-904-5400

**In Regards: Appeal Number A-2-05-009; Applicant: Peninsula Open Space Trust;
Appellant: Ron Sturgeon.**

Dear Chairperson Caldwell and members of the Coastal Commission,

A long and dramatic story at Pigeon Point and Whaler's Cove is nearing a happy end, thanks in part to concerned citizens and groups like the Committee for Green Foothills and the Peninsula Open Space Trust. Please help get us to the happy ending of coastal access and hiking trails at Pigeon Point by following your staff recommendation and denying this appeal.

Thank you.

Sincerely,

Jeff and Meridith Segall

Chris Kern

From: Chip B. Goldstein [Chip.Goldstein@stanford.edu]
Sent: Thursday, August 04, 2005 5:30 PM
To: ckern@coastal.ca.gov
Subject: Re: Coastal access at Whaler's Cove

Commissioners,

Please follow your staff finding that Appeal Number A-2-05-009 raises "No Substantial Issue" and vote affirmatively for the Mel's Lane Coastal Access Project at Whaler's Cove so that the public trails and beach access can be built as soon as possible. As San Mateo County coast residents, we look forward to using the walking trails and seating area overlooking the scenic bluffs next to the Pigeon Point Lighthouse.

Thank you for your efforts to protect our fragile coastline and maintain public access.

Dr. Chip B. & Linda B. Goldstein
125 Troon Way
Half Moon Bay CA 94019

Statements contained in this message are the opinion of the individual sender and do not necessarily reflect the policies or positions of Stanford University.

8/4/2005

Chris Kern

From: Thomas J Harder [tcharder@juno.com]
Sent: Thursday, August 04, 2005 10:57 AM
To: ckern@coastal.ca.gov
Cc: action@GreenFoothills.org; Marshmama@aol.com
Subject: Mel's Lane Coastal Access Project at Whaler's Cove: Appeal #A-2-05-009

California Coastal Commissioners- I believe that your staff has prepared plans for Whaler's Cove which are in the best interest of current and future generations, and I urge you to support their recommendations.

Sincerely, Tom Harder
Palo Alto, California



Ron Sturgeon, P.O. Box 36, San Gregorio, CA 94074

August 4, 2005

Coastal Commissioners
ATTN: Susan Craig
725 Front Street, Suite 300
San Francisco, CA 94105-2219

RECEIVED

AUG 04 2005

Agenda No. W. 9.5a
Application No. A-2-SMC-05-009
Opposed to Staff's recommendation

Dear Chair Caldwell and Commissioners:

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

Staff's, obviously hurried, analysis and recommendation that the Commission find that "No Substantial Issue" has been raised by this appeal is based on misreadings of the Coastal Act, the San Mateo County Local Coastal Program and misunderstandings of the proposed development.

Regarding the substantial issue relating to the proposed "vertical access trail's" conceivable impacts on accessed intertidial ESHA and thus its inconsistency with the LCP:

Contrary to Staff's repeated assertions, the "trails" development proposed by the Applicant's project includes a vertical access to the beach area below the project property and thereby to that area unequivocally designated by the LCP (and acknowledged by Staff) as a *sensitive habitat area* (see page 29 of Staff's report and attached 1st page of the "Notice of Intent to Adopt Negative Declaration", etc.). There currently is no other developed public access to this ESHA designated area. The applicant now proffers to the Commission that this aspect of the proposed project was/is merely "conceptual" and not a part of the proposed development. This is false. Commission Staff could not have missed this fact if this appeal had been given unhurried consideration.

Four trails were clearly indicated as apart of this proposed recreational development project that was approved by County. "Environmental" advocates celebrated at every hearing the coastal access that this vertical one (of the four) was going provide for the public. Staff's mistake in regarding this trail as not being a part of the proposed project cannot be overlooked without complete disregard for the integrity of the intertidial resources. Staff's mistake should not divert attention from the conceivable impacts that this particular access development will have on "these great, but sensitive resources" (California State Parks' Superintendent, Staff's Exhibit 7).

The vertical access to the sensitive intertidial resources is no more conceptual at this point than any other aspect of the proposed development. All aspects of the proposed (like any other) project are conceptual until developed. The LCP (Policy 7.5) requires that the applicant demonstrate that the proposed vertical access trail will not effect a significant adverse impact on these resources. Staff's conclusion that this demanding Policy has been met since "no such access is included as a part of the proposed project" is simply false, and an astounding dismissal of the Commission's responsibility to maintain the integrity of this acknowledged coastal ESHA.

I urge the Commission to reject Staff's preposterous contention that since these intertidial resources (that are specifically identified as a "Sensitive Habitat Area" by the LCP) are only vulnerable to impacts of access at times of low tide they are not properly accorded the due regard merited of a sensitive habitat by the Commission.

Staff's contentions that the "State Parks has commented extensively" on the development and operation of the proposed trail(s) is not supported by the record. In fact, the environmental evaluation/analysis of the project was not circulated (as required by law) to any of the trustee agencies including the Coastal Commission. Regardless, Staff's indication that State Parks' recent revelation to them of its inclination to alert everyone as to just how "wonderful and sensitive" these intertidal resources are' is not a demonstration that there will not be significant impacts to this intertidal ESHA as has occurred elsewhere in the County. Rather, State Park's "well intentions" invite (through inverse suggestion) the problem(s) well known to attend unregulated access to such resources – from pilfering, trampling and even the cumulatively other more appreciative experiencing of their associated fascinating and this accessible biota.

For a full enumeration of a complement of Sensitive Habitat Policies of the LCP with which this project is inconsistent see the appellant's letter to the Commission included in the *Staff Report* – pages 12-14.

Regarding the substantial issues relating to the proposed development of recreational facilities in a manner that is inconsistent with both the LCP and the Coastal Act:

Staff stands the Appellant's position on its head while misrepresenting LCP Policies and the Coastal Act itself. It is not the Appellant's position that the established buffer between the proposed recreational project and agricultural activities that is effected by the agriculture being distanced (moved away) from the project area is inadequate.

It is the Appellant's position:

- 1) That the Applicant's removal of land from production in order accommodate the proposed trail project (in lieu of a deed restriction as proffered below) has/will significantly reduces the agricultural production potential of adjacent lands.
- 2) **That this significant reduction in the agricultural potential of adjacent lands in order to facilitate a recreational project is not only needless but inconsistent with not only the LCP (see pages 11-12 of the *Staff Report*) but the Coastal Act as well.**
- 3) That the recommendation of the San Mateo County's Agricultural Advisory Committee [which would allow (via a deed restriction over the recreational property) for the infrequent closure of the proposed recreational facilities in order to accommodate infrequent agricultural activities (such as spraying) associated with maintaining the adjacent agricultural lands in its historical high value crop production] remains the appropriate legal instrumentality with which to protect the agricultural productivity of adjacent lands and provide for a compatible trails development in this instance; i.e., in a manner that makes the proposed trails project consistent with the cited LCP recreation/conversion Policies and the Coastal Act.
- 4) That the removal of prime agricultural land from production in order to create distance buffers between proposed recreational developments and agricultural activities in order to avoid use conflicts is inconsistent with the San Mateo County LCP and the Coastal Act.

The California Coastal Act states:

The maximum amount of prime agricultural land shall be maintained in agricultural production to assure the protection of the areas' agricultural economy, and . . . (§ 30241)

All other lands suitable for agriculture use shall not be converted to nonagricultural uses unless (1) continued or renewed agricultural use is not feasible, or (2) such conversion would preserve prime agricultural land or concentrate development consistent with Section 30250. Any such permitted conversion shall be compatible with continued agricultural use on surrounding lands. (§ 30242)

The San Mateo County LCP, consistent with these provisions of the Coastal Act requires that recreational trails be developed and managed in a manner that does not diminish the agricultural productivity on adjacent agricultural lands [Policies 10.28 (a), 5.8a (3), 5.10a (4)].

The "MOU" included in the *Staff Report* serves to clearly establish that there is an unresolved "Substantial Issue" relating to the inconsistency of the proposed project with key LCP Policies directed at effecting agricultural and recreational use compatibility. This now proposed "MOU" does not resolve this issue. Within the easement owned by the Applicant it retained the right not only construct and maintain the proposed recreational facilities but operate them as well. The "MOU" has the force and effect of "not a hill of beans" – it is in essence a "MOU" between the Applicant and itself. Contrary to the intimation of the "MOU", the Agricultural Advisory Committee does not have any mediation or arbitration authority; it serves only in an advisory capacity to the County's decision makers. The proposed "MOU" does not establish the mechanism that would give this Committee the appropriate authority to resolve "conflicts" occurring between the agricultural operator and the proposed development through the conceivable extended life of the project. If the Committee didn't have the clout to effect its recommendation regarding a deed restriction – how can it be expected to resolve conflicts between high powered parties?

Staff's reliance on the heavily conflicted personal testimony and observations of the Applicant's tenet is tantamount to advocacy on behalf of the Applicant's proposed project. The project as approved by the County, through the belated promulgation of the "MOU", has been determined (by the Applicant, State Parks, and the County) that it will have a significant impact on a vital coastal resource that as consequence of this substantial issue raised by this appeal being ignored by the Commission will have precedent setting regional and statewide adverse impacts on coastal agricultural and environment.

Staff's position to contrary notwithstanding, the comments in the Appellant's 7/12/05 letter to the Commission regarding the CEQA evaluation associated with the proposed development (found on pages 14-16 of the *Staff Report*) serve to establish the significance of the "substantial issues contention" raised by the appeal under the Coastal Act.

Sincerely,



Ron Sturgeon, appellant

COUNTY OF SAN MATEO, PLANNING DIVISION

JECT FILE

NOTICE OF INTENT TO ADOPT
NEGATIVE DECLARATION

A notice, pursuant to the California Environmental Quality Act of 1970, as amended (Public Resources Code 21,000, et seq.), that the following project: *Peninsula Open Space Trust (POST)*, when adopted and implemented, will not have a significant impact on the environment.

FILE NO.: PLN 2002-00675

OWNER: Peninsula Open Space Trust (POST)

APPLICANT: Peninsula Open Space Trust (POST)

ASSESSOR'S PARCEL NO.: 086-300-160

PROJECT DESCRIPTION AND LOCATION

Peninsula Open Space Trust (POST) proposes improving a 2.79-acre parcel with three walking trails. The project will include the following: (a) an information kiosk located near the existing parking area, (b) a proposed seating area, and (c) four separate trails.

- 1) Trail A is approximately 80 feet long and connects the information kiosk and a seating area.
- 2) Trail B begins from the seating area and continues south (for approximately 270 feet) and meets with a proposed boardwalk, which will serve as a proposed overlook point over the cliff. From the boardwalk, Trail B turns west and continues inland towards the lighthouse property. Trail C runs from the seating area, approximately 720 feet to the east, along the bluff. The last path is a stair trail that begins from the seating area and steps downward, east, to the beach.

The project site is surrounded by open space owned by San Mateo County to the east; the Pigeon Point Lighthouse and youth hostel to the west; the ocean to the south and Pigeon Point Road to the north.

The project site is located adjacent to the Pigeon Point lighthouse, west of the Cabrillo Highway public right-of-way (east side), in the unincorporated Pescadero area of San Mateo County.

FINDINGS AND BASIS FOR A NEGATIVE DECLARATION

The Planning Division has reviewed the initial study for the project and, based upon substantial evidence in the record, finds that:

1. The project will not adversely affect water or air quality or increase noise levels substantially.
2. The project will not have adverse impacts on the flora or fauna of the area.

3. The project will not degrade the aesthetic quality of the area.
4. The project will not have adverse impacts on traffic or land use.
5. In addition, the project will not:
 - a. Create impacts which have the potential to degrade the quality of the environment.
 - b. Create impacts which achieve short-term to the disadvantage of long-term environmental goals.
 - c. Create impacts for a project which are individually limited, but cumulatively considerable.
 - d. Create environmental effects which will cause substantial adverse effects on human beings, either directly or indirectly.

The County of San Mateo has, therefore, determined that the environmental impact of the project is insignificant.

MITIGATION MEASURES included in the project to avoid potentially significant effects:

Mitigation Measure 1: Prior to the issuance of a building permit, the applicant shall submit an erosion control plan, which demonstrates how sediment and other pollutants will be contained on-site if rain should occur during construction. Said plan shall conform to the requirements of the San Mateo Countywide Stormwater Pollution Prevention Program "General Construction and Site Supervision Guidelines," including:

- a. Stabilizing all denuded areas and maintaining erosion control measures continuously between October 15 and April 15.
- b. Removing spoils promptly, and avoiding stockpiling of fill materials when rain is forecast. If rain threatens, stockpiled soils and other materials shall be covered with a tarp or other waterproof material.
- c. Storing, handling, and disposing of construction materials and wastes so as to avoid their entry to a local storm drain system or water body.
- d. Avoiding cleaning, fueling or maintaining vehicles on-site, except in an area designated to contain and treat runoff.

Mitigation Measure 2: The seating area and trails at the head of this drainage shall be sloped to direct runoff dissipation areas, and/or diversion berms should be built to direct runoff to dissipation areas. The submitted grading and construction plans shall show these measures, for review and approval by the Planning Director.

Mitigation Measure 3: The project biologist shall conduct appropriately timed surveys (April-May) to identify habitat and plant populations and mark their locations if found. Project related

activities should avoid removal of these plans and applicable buffer zones shall be established by the biologist and marked.

Mitigation Measure 4: All construction shall be scheduled to avoid the breeding season, particularly if special-status species are discovered breeding on the site. Visitation to the site shall be restricted or a particular area on the site, if special-status species are discovered breeding or otherwise using the property, as confirmed by the biologist.

Mitigation Measure 5: The biologist shall conduct appropriately timed surveys prior to construction to determine the location of any sensitive plant species. Their removal shall be avoided and buffer zones shall be established. In order to minimize disturbance to native vegetation, and to minimize the footprint of construction in native plant areas and stake trail location, review with the botanist/biologist and revise the location prior to construction to avoid impacts. To minimize disturbance to wildlife and the footprint of construction; schedule construction to avoid breeding seasons and restrict public visitation if special-status wildlife is breeding. To minimize degradation of marine habitats, implement Best Management Practices erosion control, and minimize noise and construction impacts on marine wildlife.

Mitigation Measure 6: See response to 2.a. above.

RESPONSIBLE AGENCY CONSULTATION



None.

INITIAL STUDY

The San Mateo County Planning Division has reviewed the Environmental Evaluation of this project and has found that the probable environmental impacts are insignificant. A copy of the initial study is attached.

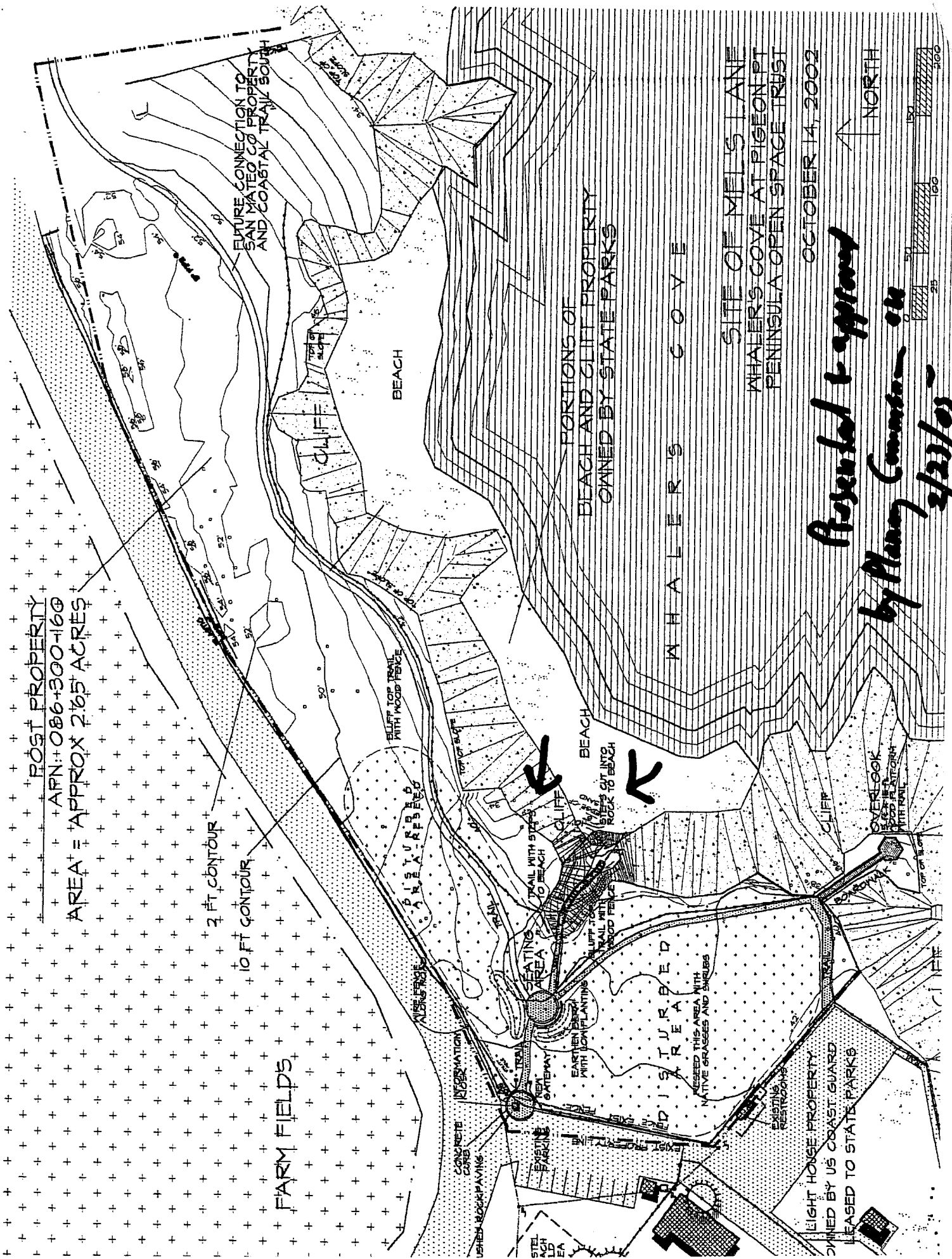
REVIEW PERIOD February 1, 2005 to February 22, 2005

All comments regarding the correctness, completeness, or adequacy of this Negative Declaration must be received by the County Planning Division, 455 County Center, Second Floor, Redwood City, no later than 7:00 p.m., February 22, 2005.

CONTACT PERSON

Olivia Sun Boo
Project Planner, 650/363-1852

Olivia Sun Boo, Project Planner



POST PROPERTY
 APN: 086-300-160
 AREA = APPROX 2.65 ACRES

2 FT CONTOUR
 10 FT CONTOUR

FARM FIELDS

DISJURBED
 AREA

BLUFF TOP TRAIL
 WITH WOOD FENCE

CLIFF

BEACH

PORTIONS OF
 BEACH AND CLIFF PROPERTY
 OWNED BY STATE PARKS

WHALER'S COVE

SITE OF MEL'S LANE
 WHALER'S COVE AT PIGEON PT
 PENINSULA OPEN SPACE TRUST

OCTOBER 14, 2002

NORTH



*Approved to expand
 by Planning Commission on
 9/26/02*

CONCRETE
 CURB
 UNITED ROCK PAVING

EXISTING
 PARKING

TRAIL
 GATEWAY

EARTHEN BRUSH
 WITH JON PLANTING

BLUFF
 ROCK CUT INTO
 ROCK TO BEACH

CLIFF

BEACH

DISJURBED
 AREA

RESEED THIS AREA WITH
 NATIVE GRASSES AND SHRUBS

EXISTING
 RESTROOMS

LIGHT HORSE PROPERTY
 OWNED BY US COAST GUARD
 LEASED TO STATE PARKS

CLIFF

OVERLOOK
 WOOD PLATFORM
 WITH RAIL

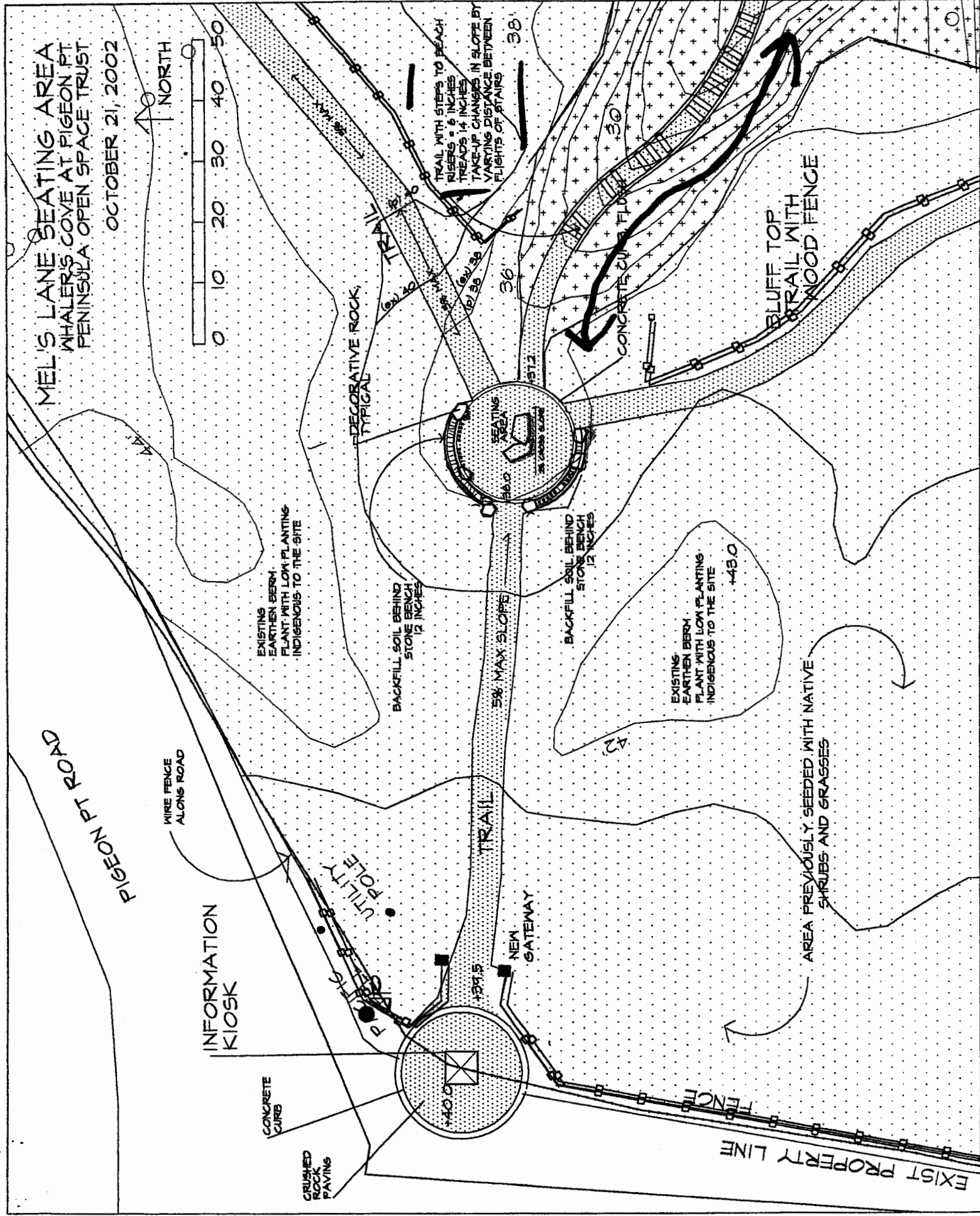
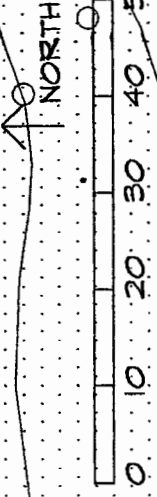
CLIFF

CLIFF

CLIFF

MEL'S LANE SEATING AREA
WHALER'S COVE AT PIGEON PT.
PENINSULA OPEN SPACE TRUST

OCTOBER 21, 2002



Regional Open Space

August 5, 2005

MIDPENINSULA REGIONAL OPEN SPACE DISTRICT

California Coastal Commission
c/o Chris Kern
45 Fremont Street, Suite 2000
San Francisco CA 94105

Via Facsimile: 415-904-5400

RECEIVED

AUG 05 2005

CALIFORNIA
COASTAL COMMISSION

Re: Appeal Number A-2-05-009 - REJECT

Dear Commissioners:

I urge you to reject appeal number A-2-05-009 and vote to approve the "Mel's Lane" Coastal Access Project at Whaler's Cove.

A coastal development permit has been granted by San Mateo County for four walking trails, an information kiosk, a seating area, and an overlook deck on the bluffs next to the Pigeon Point Lighthouse on the San Mateo Coast.

The project seeks to restore public access to the small sandy beach and build new blufftop trails for the public to enjoy the area's natural environment. Named Mel's Lane for the first chairman of the Coastal Commission, Melvin B. Lane, these public trails and overlook will complement the historic lighthouse and hostel next door.

Any potential conflicts between agricultural use of the field across Pigeon Point Road and trail users have been worked out in an agreement between Peninsula Open Space Trust and the San Mateo County Farm Bureau. The San Mateo County Planning Commission and Board of Supervisors have unanimously approved the project.

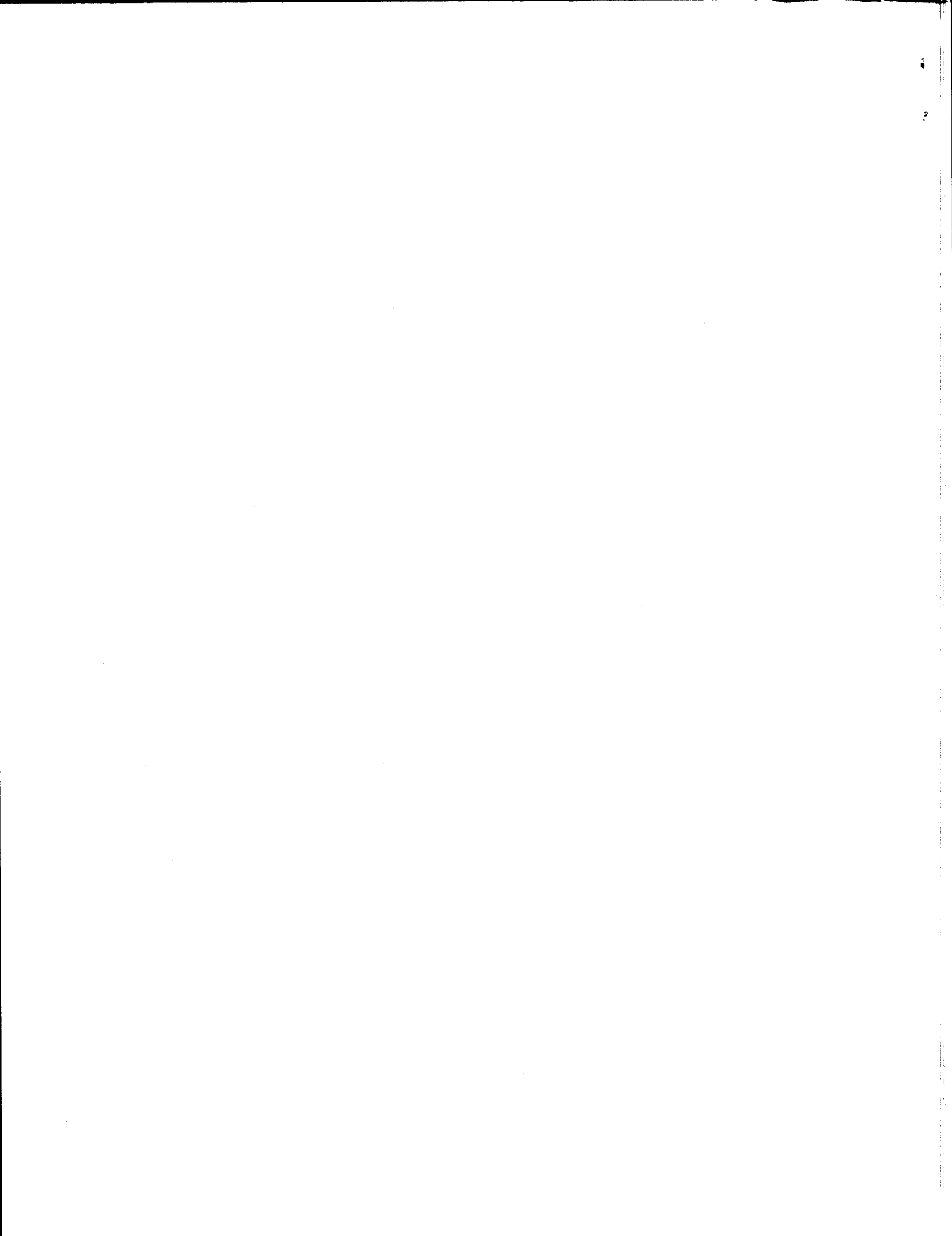
Please follow your staff's finding that appeal number A-2-05-009 raises "No Substantial Issue" and clear the way for public trails and beach access at Whaler's Cove to be built as soon as possible.

Sincerely,



L. Craig Britton
General Manager

cc: Midpeninsula Regional Open Space District Board of Directors





COMMITTEE FOR
GREEN FOOTHILLS

W9.5a

August 5, 1005

By FAX 415-904-5400

Meg Caldwell, Chair and Members
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 94105-2219

Agenda Item #W 9.5a
Lennie Roberts
Support Staff

Re: Appeal Number A-2-SMC-05-009
Applicant: Peninsula Open Space Trust
Appellant: Ron Sturgeon

Dear Chair Caldwell and Commissioners,

On behalf of the over 1300 family members of the Committee for Green Foothills, I am writing in strong support of the staff recommendation that the above-referenced appeal raises **No Substantial Issue.**

Mel's Lane Coastal Access Project is a wonderful and fitting outcome for this jewel of land adjacent to the Pigeon Point Lighthouse and Hostel. Its rich history has included whaling, rumrunning, an aquaculture facility, an informal trail access to the beach used extensively by the public, especially fishermen and schoolchildren, and a bitterly fought nine unit motel whose owner fenced off the public access to the beach some ten years ago. CGF vigorously fought the proposed motel, and its associated infrastructure; a 750 foot deep well, a reverse osmosis water treatment facility, a recirculating sand filter for the project's wastewater, leachfields for the septic system and brine wastewater, and extensive curtain drains all at the edge of the bluffs on this small parcel. Most egregious was the applicant's privatization of the publicly owned beach and tidepools through her blocking of historic public access through this property.

This owner was in the process of building the motel and appurtenant infrastructure on this small parcel in 2000, when she sold the 2.79 acre parcel to Peninsula Open Space Trust (POST).

Subsequently, POST removed the half built structures, recycled the building materials, restored the natural contours and revegetated the site. After an extensive planning process, which included coordination with State Parks, San Mateo County Parks, and the farmer on the adjacent property, POST obtained the unanimous approval of the San Mateo County Planning Commission and the Board of Supervisors for this project.

CGF agrees with the Staff Recommendation that your Commission find that the project, as conditioned by San Mateo County, does not raise any substantial issue as to conformity with the certified Local Coastal Program.

We are especially delighted that Mel's Lane trail and overlook will honor coastal champion and first Chairman of the Coastal Commission, Melvin B. Lane. This is a most appropriate tribute to a true leader for coastal protection. Committee for Green Foothills urges your unanimous approval so Mel's Lane Coastal Access can be built and the public can have the opportunity to truly appreciate this marvelous place.

Thank you for consideration of our comments.

Sincerely,



Lennie Roberts, Legislative Advocate
Committee for Green Foothills

CALIFORNIA COASTAL COMMISSION

NORTH CENTRAL COAST DISTRICT OFFICE
45 FREMONT, SUITE 2000
SAN FRANCISCO, CA 94105-2219
VOICE AND TDD (415) 904-5260
FAX (415) 904-5400

W9.5a



RECORD PACKET COPY

Filed: 7/12/2005
49th day: 8/30/2005
Staff: S. Craig
Staff report: 7/28/05
Hearing date: 8/10/05
Hearing item number: W9.5a

APPEAL STAFF REPORT - SUBSTANTIAL ISSUE DETERMINATION

Appeal number.....A-2-SMC-05-009 Mel's Lane Coastal Access Project
Applicant.....Peninsula Open Space Trust; Attn: Jeff Powers
Appellant.....Ron Sturgeon
Local government.....San Mateo County
Local decisionApproved with conditions (June 21, 2005)
Project location.....Adjacent to Pigeon Point Lighthouse, West of Cabrillo Highway, in the Unincorporated Pescadero Area of San Mateo County.
Project descriptionConstruction of four walking trails, an information kiosk, a seating area, and an overlook deck on a 2.79-acre bluff top parcel.
File documents.....San Mateo County Certified Local Coastal Program (LCP); San Mateo County CDP Application File PLN2002-00675; Mitigated Negative Declaration Certified June 21, 2005; Letter from Appellant to San Mateo County Planning Commission dated March 11, 2005.
Staff recommendation ...**No Substantial Issue**

Summary of staff recommendation:

The County of San Mateo approved the following improvements to a 2.79-acre parcel adjacent to the Pigeon Point Lighthouse in rural San Mateo County: 1) four walking trails (varying in length from 80 feet to 270 feet); 2) an information kiosk (measuring approximately 4 ft. x 6 ft. and 10 feet high); 3) a seating area (approximately 20 feet in diameter and paved with crushed rock) with a stone bench built around one-third of the perimeter of the seating area, and; 4) an overlook deck.

The appellant contends that the approved project does not comply with the core agricultural policies of the San Mateo County Local Coastal Program and will thus result in a significant reduction in the productivity of adjacent agricultural land because: 1) the project substitutes recreation for agriculture as the priority use on the County's agricultural lands; 2) the failure of the project to provide additional parking will cause vehicular intrusion onto adjacent agricultural fields; 3) the project does not adequately provide for the occasional closure of the trails at the request of farm operators on adjacent lands when necessary due to spraying of pesticides. The appellant further contends that the approved project does not comply with the sensitive habitat component of the LCP because additional public access in this area



California Coastal Commission

August 2005 Meeting in Costa Mesa

Staff: S. Craig Approved by:

will negatively impact adjacent intertidal habitat. Finally, the appellant contends that there are a number of issues with respect to project's conformity with the requirements of the California Environmental Quality Act (CEQA).

None of the contentions made by the appellant raise a substantial issue of conformity of the approved project with the certified LCP. Regarding parking, when the Pigeon Point Lighthouse parking lot is full, there is available parking along Pigeon Point Road that does not impact adjacent agricultural land. Also, the farm operator of the adjacent agricultural land states that visitor parking has never been a problem for his farming operation and that he does not anticipate that the approved project will cause any future parking problems that impact agricultural land.

Regarding conflicts between agriculture and recreation, the minimum distance between the approved trails/amenities and active agricultural operations is approximately 150 feet. The farmer who has farmed the adjacent agricultural land in the area for over 40 years states he has never had any problems arise between his farming operations and the numerous people who visit the lighthouse. Additionally, the typical crops farmed adjacent to the approved trails generally require no more than five applications of chemicals each year, which require no more than 100 feet of buffer zone for each application. In addition, these chemicals are usually applied during the evening or early morning hours, when there is less chance of windy conditions and when visitor use to the lighthouse area is low. As such, there is no evidence of past conflicts between agricultural uses of the adjacent cropland with visitors to the lighthouse and shoreline and no reason to expect that the approved project would lead to such conflicts in the future. Moreover, the certified LCP specifically contemplates public access improvements in agricultural areas and includes development standards designed to avoid conflicts between public access uses and agricultural uses—both priority uses under the LCP and Coastal Act—and the approved development conforms to these LCP standards. Finally, even though the approved development conforms to the requirements of the LCP and would not lead to conflicts between public access uses and agriculture, the applicant and State Parks have developed a draft Memorandum of Understanding that allows for closure of the trail by State Parks, upon 24-hour notification from the agricultural operator, up to 15 times a year when necessary to comply with regulatory requirements related to the use of agricultural chemicals on the adjacent fields.

Additionally, while the appellant contends that agricultural property has been taken out of production to provide a buffer for the project, the area in question (an approximately 25- to 50-foot wide strip running along Pigeon Point Road) was removed from production due to erosion problems, not to support the project. The project description for the approved project does not include any "buffers," nor did the County condition its approval to require any "buffers" between trail use and agricultural use.

Regarding impacts to sensitive intertidal habitats, although the approved project will likely lead to greater use of the pocket beach immediately south of the lighthouse, this area does not contain significant tide pools or particularly sensitive intertidal habitat. Contrary to the appellant's contention, allowing public access to the shoreline in areas that contain rocky intertidal habitat is not in conflict the San Mateo County LCP or the Coastal Act. Under both the Coastal Act and the LCP, resource dependent uses, such as nature study, are allowable uses within a marine or estuarine habitat if such uses



do not significantly degrade the habitat. The Commission has restricted a resource dependent use, such as access to environmentally sensitive habitat, only when such nature study or other resource dependent use would significantly degrade the environmentally sensitive habitat, e.g. seasonal access restrictions in known nesting areas of the Western snowy plover. The beach below the Pigeon Point Lighthouse, however, does not contain such extraordinarily sensitive habitat such that it would be necessary to prohibit public access to this area. The San Mateo County Land Use Plan (LUP) envisions additional public access to the beaches in the Pigeon Point area, which would ultimately lead to an increase in public access to the Pigeon Point intertidal areas. Consistent with the LUP, the project includes the installation of interpretive displays to educate the public regarding sensitive intertidal resources.

Regarding the contentions that the certified Negative Declaration does not comply with the requirements of CEQA, none of the CEQA-based contentions are valid grounds for an appeal because the contentions do not allege an inconsistency of the approved project with the certified LCP.

Staff recommends that the Commission, after conducting the public hearing, determine that **no substantial issue** exists with respect to this project’s conformance with the certified San Mateo County Local Coastal Program (LCP) and declines to take jurisdiction over the coastal development permit for the project. The motion to adopt the staff recommendation of No Substantial Issue for A-2-SMC-05-009 is found on page 5.

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1. Appeal of San Mateo County Decision

A. Local Government Action & Filing of Appeal

San Mateo County approved the proposed project subject to multiple conditions on June 21, 2005 (see Exhibit #1 for the County's adopted staff report, findings and conditions on the project). The County's approval was by the Board of Supervisors on an appeal from a decision of the Planning Commission approving the project on February 28, 2005.

Notice of the Board of Supervisor's action on the coastal development permit (CDP) was received in the Coastal Commission's Central Coast District Office on June 29, 2005. The Coastal Commission's ten-working-day appeal period for this action began on June 30, 2005 and concluded at 5pm on July 14, 2005. One appeal, from Ron Sturgeon, was timely received on July 12, 2005, within the 10-working-day the appeal period (see Exhibit #2 for a full copy of the appeal).

B. Appeal Procedures

After certification of Local Coastal Programs (LCPs), the Coastal Act provides for limited appeals to the Coastal Commission of certain local government actions on coastal development permits. Coastal Act Section 30603 provides for the appeal of approved coastal development permits in jurisdictions with certified local coastal programs for development that is: (1) between the sea and the first public road paralleling the sea or within 300 feet of the inland extent of any beach or of the mean high tideline of the sea where there is no beach, whichever is the greater distance; (2) on tidelands, submerged lands, public trust lands, within 100 feet of any wetland, estuary, or stream, or within 300 feet of the top of the seaward face of any coastal bluff; (3) in a sensitive coastal resource area; (4) for counties, not designated as the principal permitted use under the zoning ordinance or zoning district map; and (5) any action on a major public works project or energy facility. This project is appealable to the Commission pursuant to Sections 30603(a)(1)(2)(4) because it is located between the sea and the first public road paralleling the sea, is located within 300 feet of the inland extent of the beach and within 300 feet of the top of the seaward face of the coastal bluff, and the proposed project is not designated as the principal permitted use under the zoning ordinance.

The grounds for appeal under Section 30603 are limited to allegations that the development does not conform to the standards set forth in the certified LCP or the public access policies of the Coastal Act. Section 30625(b) of the Coastal Act requires the Commission to conduct a *de novo* coastal development permit hearing on an appealed project unless a majority of the Commission finds that "no substantial issue" is raised by such allegations (it takes a majority of Commissioners present to find that no substantial issue is raised).

Under Section 30604(b), if the Commission conducts a *de novo* hearing, the Commission must find that the proposed development is in conformity with the certified local coastal program. Section 30604(c) also requires an additional specific finding that the development is in conformity with the public access and recreation policies of Chapter 3 of the Coastal Act, if the project is located between the nearest



public road and the sea or the shoreline of any body of water located within the coastal zone. This project is so located and thus this additional finding would need to be made in a *de novo* review in this case.

The only persons qualified to testify before the Commission on the substantial issue question are the applicant, persons who made their views regarding the project that is the subject of the appeal known before the local government (or their representatives), and the local government. Testimony from other persons regarding substantial issue must be submitted in writing. Any person may testify during the *de novo* stage of an appeal.

2. Staff Recommendation on Substantial Issue

Staff recommends that the Commission determine that **no substantial issue** exists with respect to the grounds on which the appeal was filed. A finding of no substantial issue would mean that the County's decision in this matter would be final (conversely, a finding of substantial issue would bring the project under the jurisdiction of the Commission for hearing and action).

Motion. I move that the Commission determine that Appeal Number A-2-SMC-05-009 raises **no** substantial issue with respect to the grounds on which the appeal has been filed under §30603 of the Coastal Act.

Staff Recommendation of No Substantial Issue. Staff recommends a **yes** vote. Passage of this motion will result in a finding of No Substantial Issue and adoption of the following resolution and findings. If the Commission finds No Substantial Issue, the Commission will not hear the application *de novo* and the local action will become final and effective. The motion passes only by an affirmative vote by a majority of the Commissioners present.

Resolution to Find No Substantial Issue. The Commission hereby finds that Appeal Number A-2-SMC-05-009 does not present a substantial issue with respect to the grounds on which the appeal has been filed under §30603 of the Coastal Act regarding consistency with the Certified Local Coastal Program and/or the public access and recreation policies of the Coastal Act.

3. Recommended Findings and Declarations

The Commission finds and declares as follows:

A. Project Setting and Description

The applicant (Peninsula Open Space Trust, or POST) proposes to improve a 2.79-acre parcel adjacent to the Pigeon Point Lighthouse in rural San Mateo County with the following: 1) four walking trails (varying in length from 80 feet to 270 feet); 2) an information kiosk (measuring approximately 4 ft. x 6



ft. and 10 ft. high); 3) a seating area (approximately 20 feet in diameter and paved with crushed rock) with a stone bench built around one-third of the perimeter of the seating area, and; 4) an overlook deck. See Exhibit #1, pg. 29 for project plans. The proposed plans (although not the project description) also show the installation of steps down the bluff to the beach, which would be located in the area of an existing unimproved trail to the beach. The applicant has stated, however, that the development of stairs to the beach is conceptual and is not part of this project. Moreover, the County's approval was confined to the walking trails, the information kiosk, the seating area, and the overlook deck. In any event, the applicant has been informed that any development that touches the toe of the bluff would be within the Commission's original jurisdiction and would require a coastal development permit from the Commission.

In 2000, POST purchased the 2.79-acre property from Kathleen McKenzie. Ms. McKenzie was in the latter stages of building a nine-unit motel adjacent to the Lighthouse that had been approved by the Commission in 1996. Subsequent to POST's purchase of the property, POST removed the structures and recycled the building materials, removed the motel's foundations, restored natural contours to the property and re-vegetated the property with locally collected native grass seeds. In November of 2002, POST applied for a coastal development permit from the County for the proposed project. Since 2002, POST has been in negotiations with State Parks to transfer the property to State Parks. In February 2005 the 2.79-acre property, together with adjacent coastal areas comprising a total of 64 acres, was transferred to State Parks for 5 million dollars. POST retains an easement on the 2.79 acres that allows POST to construct and maintain trails and trail improvements. This easement comprises all of the proposed trail corridors. In addition to requiring a coastal development permit, the trail improvements had to be approved by State Parks. State Parks has commented extensively on the project and is very much in support of the approved project.

B. Appellant's Contentions

The appellant contends that the approved project does not comply with the core agricultural policies of the San Mateo County Local Coastal Program and will thus result in a significant reduction in the productivity of adjacent agricultural land because: 1) the project substitutes recreation for agriculture; 2) the failure of the project to provide additional parking will cause vehicular intrusion onto adjacent agricultural fields; 3) the project does not adequately provide for the occasional closure of the trails at the request of farm operators on adjacent lands when the trails might be adversely impacted by agricultural activities, such as the spraying of pesticides. The appellant further contends that the approved project does not comply with the sensitive habitat component of the LCP because additional public access in this area will negatively impact adjacent intertidal resources. Finally, the appellant contends that there are a number of issues with respect to the Negative Declaration prepared for the project and its conformity to CEQA law. Please see Exhibit #2 for the complete appeal document.



4. Substantial Issue Analysis

Section 30603(b)(1) of the Coastal Act states:

"The grounds for an appeal pursuant to subdivision (a) shall be limited to an allegation that the development does not conform to the standards set forth in the certified local coastal program or the public access policies set forth in this division."

Two of the contentions raised in this appeal present potentially valid grounds for appeal in that they allege the project's inconsistency with policies of the certified LCP or with the public access policies of the Coastal Act. These contentions allege that the approval of the project by the County raises substantial issues related to LCP provisions regarding the protection of agricultural resources and sensitive intertidal habitats.

Coastal Act Section 30625(b) states that the Commission shall hear an appeal unless it determines:

With respect to appeals to the commission after certification of a local coastal program, that no substantial issue exists with respect to the grounds on which an appeal has been filed pursuant to Section 30603.

The term "substantial issue" is not defined in the Coastal Act or its implementing regulations. The Commission's regulations indicate simply that the Commission will hear an appeal unless it "finds that the appeal raises no significant question." (California Code of Regulations, title 14, Section 13115(b).) In previous decisions on appeals, the Commission has been guided by the following factors:

1. The degree of factual and legal support for the local government's decision that the development is consistent or inconsistent with the certified LCP and with the public access policies of the Coastal Act;
2. The extent and scope of the development as approved or denied by the local government;
3. The significance of the coastal resources affected by the decision;
4. The precedential value of the local government's decision for future interpretations of its LCP; and
5. Whether the appeal raises only local issues, or those of regional or statewide significance.

Even when the Commission chooses not to hear an appeal, an appellant nevertheless may obtain judicial review of the local government's coastal permit decision by filing a petition for a writ of mandate pursuant to Code of Civil Procedure, Section 1094.5.

In this case, for the reasons discussed further below, the Commission exercises its discretion and determines that the development approved by the County raises no substantial issue with regard to the project's conformance with the certified LCP.



A. Agriculture

LUP Agricultural Component Policies Cited by the appellant:

LUP Policy 5.8a(3) - Conversion of Prime Agricultural Land Designated As Agriculture.

a. Prohibit conversion of prime agricultural land within a parcel to a conditionally permitted use unless it can be demonstrated: ...(3) The productivity of any adjacent agricultural land will not be diminished...

LUP Policy 5.10a(4) - Conversion of Land Suitable for Agriculture Designated as Agriculture.

a. Prohibit the conversion of lands suitable for agriculture within a parcel to conditionally permitted uses unless all of the following can be demonstrated: ...(4) The productivity of any adjacent agricultural lands is not diminished...

Related LUP Shoreline Access Component and Recreation/Visitor-Serving Facilities Component Policies Cited by the Appellant:

LUP Policy 10.25 - Access Trails in Fragile Resource Areas

a. During the planning and design phase for access projects, conduct studies by a qualified person agreed upon by the County and the applicant to determine the least disruptive method of constructing access trails and associated improvements. Consider in the study and implement appropriate levels of development and management practices to protect resources. b. Require that the design of trails encourages the public to stay on them or in designated rest areas. c. Prohibit the use of off-road vehicles on access trails.

LUP Policy 10.28 - Development Standards for Protecting Adjacent Land Uses - Agricultural

a. Locate access trails on agriculturally unsuitable land to the greatest extent possible. Where it is not possible to locate access on agriculturally unsuitable land, locate trails at the edge of fields, and/or along parcel lines consistent with the Conversion and Division Policies of the Agriculture Component. b. Provide improvements and management in agricultural areas adequate to protect the productivity of adjacent agricultural lands. Include, but do not limit, improvements and management practices to the following: (1) limit the seasons of the year when public access is permitted by using seasonal barriers and signs and (2) develop access trails with fences or other buffers to protect agricultural lands.

LUP Policy 11.11(c) - Agricultural Areas

(c) Permit low intensity facilities to locate adjacent to agricultural operations or undeveloped agricultural land which are: (1) separated from agricultural operations by distance or barriers, such as fences, consistent with Policies 5.8, 5.10, 5.15, and 5.22, and; (2) only require structures, like stables, which are visually compatible with agricultural areas.

The appellant contends that the approved project will result in significant diminishment to agricultural productivity on adjacent agricultural lands and that the project's approval will set the precedent of in effect substituting recreation for agriculture as the priority use on the County's agricultural lands. Please



see Exhibit #2 for the full text of the appellant's appeal. The appellant identifies four ways in which the approved project will have adverse impacts on adjacent agricultural productivity, as follows:

Parking

The appellant states that the existing vehicular parking at the Pigeon Point Lighthouse is inadequate and that the failure of the approved project to include new parking as a component of the project will negatively impact adjacent agricultural land. Specifically, the appellant states that vehicular intrusion directly onto agricultural land located on the inland side of Pigeon Point road is likely to take place due to increased use of the area due to the approved trail project. See Exhibit #2 for appellant's contentions and pg. 20 of Exhibit #2 for photographs related to the parking issue.

Currently there is a dirt & gravel parking lot located adjacent to the lighthouse. During staff's visit to the project site, the parking lot did become full temporarily, which resulted in individuals parking their cars in dirt turnout areas located along Pigeon Point Road. Staff observed no one parking on active agricultural land. Accordingly, there is available parking along Pigeon Point Road that does not impact agricultural land. During that site visit, staff also met with Joseph Muzzi, the farmer who leases and farms the adjacent agricultural land that is located inland and across Pigeon Point Road from the approved project site. Mr. Muzzi stated that he has been farming this area for over 40 years and has never had problems with visitors to the lighthouse parking on active farmland. Mr. Muzzi also submitted a letter (Exhibit #3) to Commission staff in which he states that parking has never been a problem for his farming operation and that he does not believe the approved project, the extent and scope of which is limited to walking trails and associated amenities, will cause any parking problems that will impact the adjacent agricultural land. Thus, the appellant's contention regarding parking raises no substantial issue with regard to the approved project and the protection of agricultural land consistent with the policies of the certified LCP.

Conflicts Between Agricultural Use and Trail Users

The appellant contends that the productivity of adjacent agricultural land will be diminished because of the lack of a deed restriction to allow for the occasional closing of the trails at the request of the farm operator during periods when the trails may be adversely impacted by agricultural activities, i.e., the spraying of pesticides or other chemicals. The appellant also contends that the County's action to address this issue, i.e. "Special Condition #15," is inadequate because it relies on future meetings, negotiations, and consultations to mitigate a potential environmental impact of the project. See Exhibit #1 pg. 8 for the language of Special Condition #15.

LUP Policy 5.8(a)(2) requires that "clearly defined buffer areas are provided between agricultural and non-agricultural uses." The purpose of this policy is to avoid negative impacts to agriculture due to complaints from nearby residents or users of adjacent parcels regarding ongoing normal agricultural operations. The LCP, however, does not require a specific buffer in terms of number of feet between residential and agricultural use. The San Mateo County Farm Bureau does not recommend any specific buffer between residential and adjacent agricultural use (pers. comm. Jack Olsen, Executive Director).



In this case, the minimum distance between the approved trails/amenities and active agricultural operations is approximately 150 feet. Joseph Muzzi, who has farmed the adjacent agricultural land in the area for over 40 years, submitted a letter regarding the approved project (Exhibit #3). Mr. Muzzi states that throughout these 40 years, he has never had any problems arise between his farming operations and the numerous people who visit the lighthouse. Mr. Muzzi also states that his typical crops require no more than five applications of chemicals each year, which require no more than 100 feet of buffer zone for each application. In addition, Mr. Muzzi also states that chemicals are usually applied during the evening or early morning hours, when there is less chance of windy conditions and when visitor use to the lighthouse is low. Exhibit #4 contains the pesticide use records for the last three years for the agricultural property operated by Mr. Muzzi, which is located just inland of the approved project site. Pesticides were applied to this property on four days in 2003, on seven days in 2004, and on four days thus far in 2005. While there are no "time of application" data in these records for 2003 and 2004, in 2005 there was only one day (April 2, 2005 at 9:45 a.m.) when pesticide application was not done in the evening or in the very early morning. The remaining data for 2005 show that pesticides were applied either very early in the morning or in the middle of the night (when visitation to the lighthouse is low), i.e. at 6:00 a.m. on April 15, 2005 and May 3, 2005, and at 2:30 a.m. on June 1, 2005.

As discussed above, there is a minimum 150-foot buffer between the approved trails and active agricultural operations, the majority of agricultural chemical spraying takes place during evening or early morning hours when few visitors are present, and the agricultural operator has stated that over the past 40 years he has never had any problems arise between his farming operations and the visitors to the lighthouse. Given all the above, there appears to be a high degree of factual support for the County's determination that there will be no conflict between ongoing agricultural use and the approved project, and thus there is no substantial issue of consistency of the approved project with the cited policies of the Land Use Plan. In addition, even though the above facts demonstrate that there is little potential for conflict between agricultural use and the approved project, the County's Special Condition #15 has addressed the issue of potential conflicts between agricultural use and the approved project and has resulted in a draft Memorandum of Understanding (MOU) (Exhibit #5) between POST, State Parks, and the County (the County owns some agricultural property adjacent to a portion of the trails; this land is currently not in active agricultural use, but agricultural use could resume on this land in the future). This MOU allows for closure of the trail by State Parks, upon 24-hour notification from the agricultural operator, up to 15 times a year when necessary to comply with regulatory requirements related to the use of agricultural chemicals on the adjacent fields. Thus, the MOU will help to ensure that there will be no future conflict between agricultural use and the approved project. Also, Mr. Muzzi's letter (Exhibit #3) states that he supports these conditions of the MOU. Additionally, correspondence from State Parks and the County states that they find the draft MOU language to be acceptable and that they anticipate signing the final document when it has been completed (Exhibit #6). Finally, closure of the trail not authorized under the MOU would constitute a violation of the County CDP. In light of all of the above, the appellant's contentions regarding diminishment of agricultural productivity raise no substantial issue of consistency of the approved project with the agriculture policies of the certified LCP.



Buffer

The appellant also contends that a 25-to-50-foot area adjacent to the inland side of Pigeon Point Road has been taken out of agricultural production in order to create a buffer for the proposed project. During Commission staff's site visit, Mr. Muzzi stated that this area was actually taken out of production because of erosion problems. Specifically, the agricultural land in this area slopes down steeply to meet Pigeon Point Road. Plowing and active farm use of this area was contributing to erosion. Also, the approved project did not include any mention of a "buffer" in its project description nor did the County condition its approval to require such a buffer (see Exhibit #1 for County's adopted staff report, findings, and conditions). Thus, the appellant's contention regarding a buffer requirement raises no substantial issue with regard to the consistency of the approved project with the agriculture policies of the certified LCP.

Future Trail Extension

The appellant contends that the project is part of a larger project (including parking improvements and additional trails) that may extend in the future across an adjoining agricultural parcel, thereby needlessly removing or substantially diminishing agricultural production. Indeed, parking improvements at the lighthouse, as well as a connection with the California Coastal Trail, are envisioned for this area in the future. Public access and coastal agriculture are both priorities under the Coastal Act and the certified San Mateo County LCP. Public access has been ongoing at the Pigeon Point Lighthouse for many years without significant conflicts with adjacent agricultural activities, demonstrating that these two Coastal Act priorities can peacefully coexist. When the parking improvements and trail extension projects come forth in the future, environmental review will be undertaken to ensure that any conflicts between public access and agricultural use are minimized. For this reason, the appellant's contention regarding future trail and parking development raises no substantial issue with regard to the approved project and its consistency with the agriculture policies of the certified LCP.

B. Sensitive Habitats**San Mateo County LUP Sensitive Habitats Policies Cited by the Appellant:*****LUP Policy 7.1 – Definition of Sensitive Habitats***

Define sensitive habitats as any area in which plant or animal life or their habitats are either rare or especially valuable and any area which meets one of the following criteria: (1) habitats containing or supporting "rare and endangered" species as defined by the State Fish and Game Commission, (2) all perennial and intermittent streams and their tributaries, (3) coastal tide lands and marshes, (4) coastal and offshore areas containing breeding or nesting sites and coastal areas used by migratory and resident water-associated birds for resting areas and feeding, (5) areas used for scientific study and research concerning fish and wildlife, (6) lakes and ponds and adjacent shore habitat, (7) existing game and wildlife refuges and reserves, and (8) sand dunes.

Sensitive habitat areas include, but are not limited to, riparian corridors, wetlands, marine



habitats, sand dunes, sea cliffs, and habitats supporting rare, endangered, and unique species.

LUP Policy 7.2 – Designation of Sensitive Habitats

Designate sensitive habitats as including, but not limited to, those shown on the Sensitive Habitats Map for the Coastal Zone.

LUP Policy 7.3 – Protection of Sensitive Habitats

a. Prohibit any land use or development which would have significant adverse impact on sensitive habitat areas. b. Development in areas adjacent to sensitive habitats shall be sited and designed to prevent impacts that could significantly degrade the sensitive habitats. All uses shall be compatible with the maintenance of biologic productivity of the habitats. [Emphasis added.]

LUP Policy 7.5 – Permit Conditions

a. As part of the development review process, require the applicant to demonstrate that there will be no significant impact on sensitive habitats. When it is determined that significant impacts may occur, require the applicant to provide a report prepared by a qualified professional which provides: (1) mitigation measures which protect resources and comply with the policies of the Shoreline Access, Recreation/Visitor-Serving Facilities and Sensitive Habitats Components, and (2) a program for monitoring and evaluating the effectiveness of mitigation measures. Develop an appropriate program to inspect the adequacy of the applicant's mitigation measures. b. When applicable, require as a condition of permit approval the restoration of damaged habitat(s) when in the judgment of the Planning Director restoration is partially or wholly feasible.

LUP Policy 7.22 – Designation of Marine and Estuarine Habitats

Designate all areas containing marine and estuarine habitats as requiring protection, specifically including but not limited to: Fitzgerald Marine Reserve, San Gregorio Estuary, Pescadero Marsh, Pigeon Point, Franklin Point, Ano Nuevo Point, and Ano Nuevo Island Reserve. [Emphasis added.]

LUP Policy 7.23 – Permitted Uses in Marine and Estuarine Habitats

In marine and estuarine habitats, permit only the following uses: (1) nature education and research, (2) consumptive uses as provided for in the Fish and Game Code and Title 14 of the California Administrative Code, (3) fishing and (4) fish and wildlife management. [Emphasis added.]

The appellant contends that the project includes the construction and provision of access to Pigeon Point intertidal resources that are designated as sensitive habitats by the LCP. The appellant contends that the currently relatively inaccessible sensitive intertidal resources adjacent to the proposed project will be subject to foreseeable adverse impacts due to the project, and that the County did not address these impacts in its review of the project.

The appellant references a number of San Mateo County Land Use Plan Sensitive Habitats policies, as referenced above. LUP policy 7.1 defines coastal tidelands as a sensitive habitat and LUP Policy 7.22 specifically designates the Pigeon Point marine habitat as requiring protection. LUP Policy 7.2 prohibits



any land use or development that would have a *significant* adverse impact on sensitive habitat areas; LUP Policy 7.3 permits only resource dependent uses in sensitive habitats, and LUP Policy 7.23 limits the types of uses allowed in marine habitats. LUP Policy 7.5 requires that, as part of the development review process, that the applicant demonstrates that there will be no significant impact on sensitive habitats.

Sections 30210-30212 of the Coastal Act provide for the maximization of public access and recreational opportunities, while acknowledging that such access needs to be managed in a manner taking into account natural resource protection needs. In general, the Commission has restricted a resource dependent use, such as coastal public access, to the most sensitive habitat areas only when such nature study or other resource dependent use would significantly degrade the sensitive habitat area. For example, in February 2005 the Commission concurred with federal consistency determination CD-094-04, which provides for restrictions to beach access on Vandenberg Air Force Base. The beaches on Vandenberg Air Force base support nesting snowy plovers, a federally listed threatened species. The U.S. Fish and Wildlife Service designated these beaches as "critical habitat" for the snowy plover. In that case, the consistency determination allows for beach closures during the plover's nesting season, March 1 through September 30. Commission staff, however, is not aware of any instance where the Commission restricted resource dependent access to sensitive rocky intertidal habitat areas (pers. comm. John Dixon, Commission staff biologist), which are present along much of the California coastline.

The proposed project provides lateral access in the form of four walking trails along the bluff top just south of the Pigeon Point Lighthouse. Additional bluff top development will include an information kiosk, a seating area, and an overlook area. As discussed above, the approved project does not include installation of vertical access, e.g. a staircase, down the bluff to the beach. No development is approved on the beach or in the marine habitat. However, even though the project does not include new access to the beach, the installation of new walking trails and other public amenities along the bluff top will likely lead to greater public access use of this area, which may lead to a greater number of individuals finding their way down to the beach and intertidal areas along the existing unimproved vertical trail.

As stated above, coastal access is a priority under the Coastal Act. Consistent with the Coastal Act, the San Mateo County Land Use Plan contains an extensive shoreline access component. Specifically, Shoreline Access LUP Policy 10.4 states:

10.4 – Designation of Shoreline Access

Designate vertical (trails) and lateral (shoreline destinations) access as areas to which the policies of this component apply. Such areas include, but are not limited to, those listed in the Assessment of Access Trails and Shoreline Destinations (Table 10.6).

Table 10.6 is entitled "Site Specific Recommendations for Shoreline Destinations." Regarding "Beaches Along Pigeon Point Road," the site-specific recommendations are as follows:

- (1) *Consolidate bluff trails*
- (2) *Develop interpretive educational displays discussing the fragile nature of the tidepools at*



Pigeon Point and prohibiting the removal of species.

- (3) *Construct short stairways to beaches.*
- (4) *Landscape parking area at Yankee Jim Gulch.*
- (5) *Include public access in all plans for the development of Pigeon Point Lighthouse.*

The beach and intertidal areas adjacent to the proposed bluff top development are located just south of the Lighthouse. Staff visited the site between low and high tides and observed large rocky outcroppings in the intertidal area directly below the bluffs proposed for trail development, but did not observe any lateral rocky shelves that would provide good tidepool habitat in this area. As stated above, development of the lateral bluff top trail project will likely lead to greater use of the beach and intertidal area below the bluffs, even though the project does not include construction of a vertical accessway to the beach. Thus, the approved trail development may lead to intensification of use of the intertidal area. However, given the rather rugged nature of the existing unimproved vertical access to the beach, the increased use intensity will be relatively small over that that exists currently, and it is not expected to significantly disrupt the intertidal habitat. Moreover, LUP Policy 7.23 and 7.3(a) of the San Mateo County LCP expressly authorizes nature education at Pigeon Point as long as such nature education would not have significant adverse impacts to the marine and intertidal habitats.

Photographs taken by the appellant at low tide show a number of lateral rocky shelves, which include tidepool areas (see Exhibit #2, pg. 21). These tidepool areas, however, are not located directly below the bluff top area where the trails will be constructed, but instead are located south of the approved project. It is only possible to reach these tidepool areas from the beach directly below the approved trails during periods of low tides. Thus, the approved project (which does not provide vertical access to the beach) will likely not result in a significant adverse impact on the tidepool areas that are located south of the approved project. Other informal trails from Highway One and agricultural roads south of the approved project provide access to the tidepool areas shown in the appellant's photographs.

Regarding beaches and intertidal areas adjacent to Pigeon Point Road, the Commission, during the County's LCP certification process, previously considered whether or not public access to this area of the shoreline would be consistent with the Coastal Act. Specifically, certified LUP Table 10.6 site-specific recommendations #3 and #5 envision additional public access to this area, including the development of stairways to the beach, which would ultimately lead to an increase in public access to the Pigeon Point intertidal areas. To protect these sensitive intertidal areas, site-specific recommendation #2 LUP in Table 10.6 calls for the installation of interpretive displays to educate the public regarding sensitive intertidal resources. The approved project also includes construction of an information kiosk, which will be located at the trailhead directly adjacent to Pigeon Point Road. This kiosk will include information about the sensitive nature of the adjacent coastal resources (Exhibit #7), including intertidal habitats, consistent with site-specific recommendation #2 in LUP Table 10.6.

The approved project includes bluff top development with lateral public access trails and other amenities. The approved information kiosk will provide information to the public regarding the sensitive nature of the adjacent coastal resources, including intertidal habitats. Furthermore, the LUP



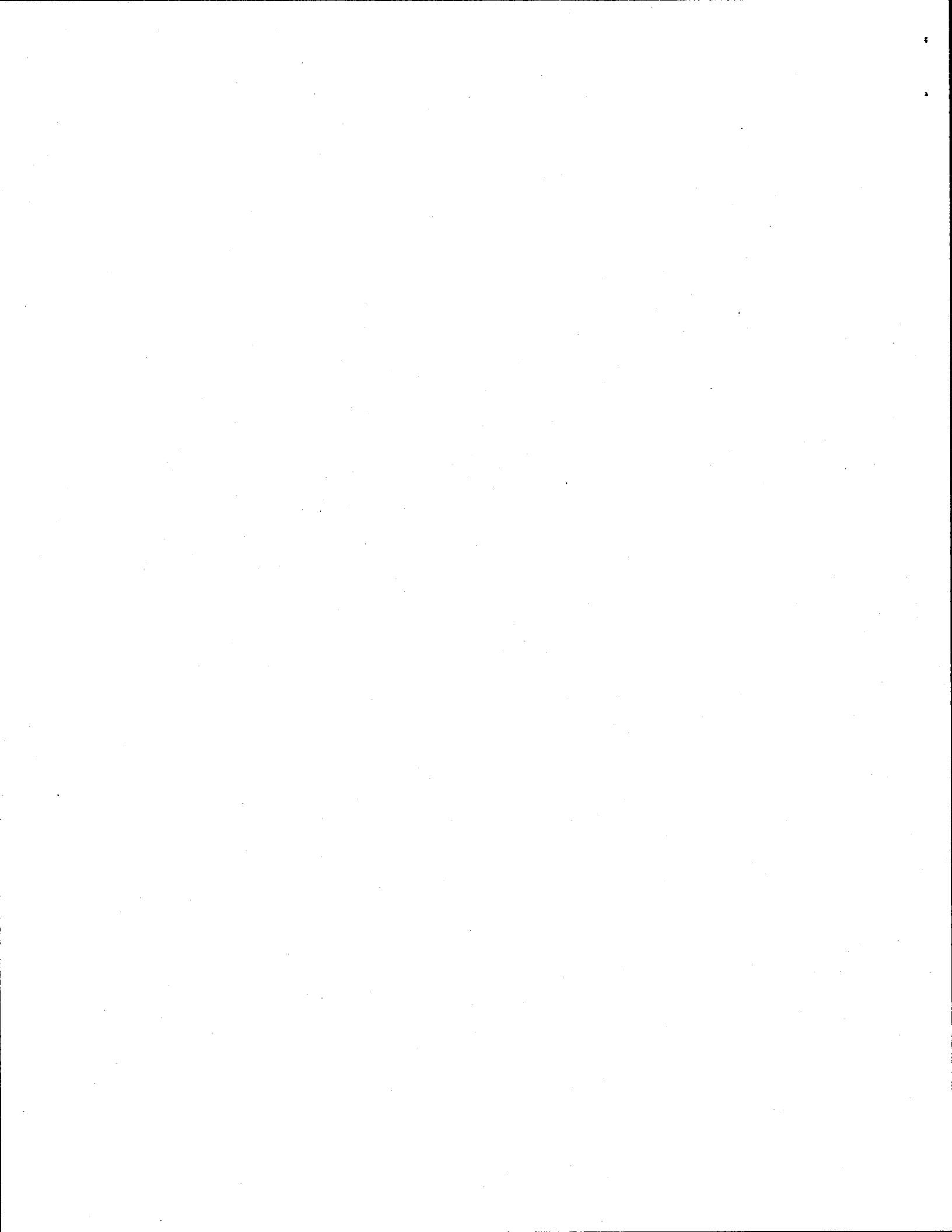
envisions additional public access in this area, which the approved project provides. In light of the above, the appellant's contentions regarding sensitive habitats raises no substantial issue with regard to the approved project and its consistency with the sensitive habitats policies of the certified LCP

C. Invalid Appeal Contentions

The appellant contends the Negative Declaration prepared for the project is incomplete because: 1) the project is part of a larger project (including parking improvements and additional trails) that has been unlawfully segmented; 2) the project includes an unlawful deferment of the ascertainment of the adequacy of potential adverse environmental impact mitigation until after approval and construction of the proposed project (this refers to Special Condition #15, discussed in the agricultural section above); 3) the Negative Declaration neglected to acknowledge the existence of a controlling "first tier" environmental document relating to all trail development within the County (the appellant is referring to the certified program EIR associated with the development and adoption of the San Mateo County Trails Plan) and thereby neglected noting the proposed project's noncompliance with the cumulative adverse agricultural impact mitigations measures included in the program EIR; 4) the Negative Declaration is inaccurate because POST was not the owner of the property (State Parks is the owner of the property), as was stated in the Negative Declaration at the time of its circulation.

None of the CEQA-based contentions are valid grounds for an appeal as established by Section 30603(b)(1) of the Coastal Act because the contentions do not allege an inconsistency of the approved project with the certified LCP. Even so, the first two contentions described above have been discussed in the agricultural section above and have been determined to raise no substantial issue. Regarding contention #3 above, the County's LCP is the standard of review for the project, not the County's Trail Plan (the LCP has *not* been amended to include the Trail Plan). Regarding contention #4, again the LCP is the standard of review, not CEQA.







2-SMC-05-011

Please reply to: Olivia Sun Boo
(650) 363-1852

RECEIVED

JUN 29 2005

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

June 27, 2005

**ENVIRONMENTAL
SERVICES
AGENCY**

Jeff Powers, POST
3393 Cloverdale Road
Pescadero, CA 94060

Notice of Final Local Decision

Agricultural
Commissioner/ Sealer of
Weights & Measures

Subject: PLN 2002-03675
**Location: Adjacent to Pigeon Point Lighthouse,
West of Cabrillo Highway, in the
Unincorporated Pescadero Area of San Mateo County**

- Animal Control
- Cooperative Extension
- Fire Protection
- LAFCo
- Library
- Parks & Recreation
- Planning & Building

Dear Mr. Powers:

On June 21, 2005, the San Mateo County Board of Supervisors considered your request of: (1) a Planned Agricultural District Permit, a Coastal Development Permit, and Grading Exemption pursuant to Sections 6353, 6328.4, and 8603.1, respectively, of the San Mateo County Zoning Regulations; and (2) certification of a Mitigated Negative Declaration, pursuant to the California Environmental Quality Act, to improve a 2.79-acre parcel with four walking trails, information kiosk, a proposed seating area and an overlook deck. (Appeal from decision of the Planning Commission approving the Planned Agricultural District Permit, Coastal Development Permit, and Grading Exemption.)

Commissioners:

- David Bomberger
- Steve Dworetzky
- Ralph Nobles
- Jon Silver
- William Wong

Based on the information provided by staff and evidence presented at the hearing, the Board of Supervisors denied the appeal, certified the negative declaration and approved the permits based on the findings and adopted conditions of approval as attached, with the only caveat to come back within ninety (90) days with some language on Condition No. 15 that clarifies the issues between Agriculture, POST and the State Parks.

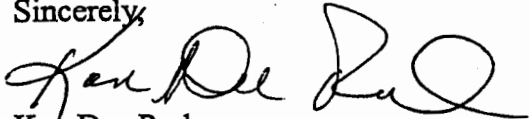
This permit approval is appealable to the California Coastal Commission. Any aggrieved person who has exhausted local appeals may appeal this decision to the California Coastal Commission within 10 working days following the Coastal Commission's receipt of this notice. Please contact the Coastal Commission's North Central Coast District Office at (415) 904-5260 for further

PLANNING COMMISSION
455 County Center, 2nd Floor • Redwood City, CA 94063 • Phone (650) 363-4161 • FAX (650) 363-4849

Jeff Powers, POST
June 27, 2005
Page 2

information concerning the Commission's appeal process. The County and Coastal Commission appeal periods run consecutively, not concurrently, and together total approximately one month. A project is considered approved when these appeal periods have expired and no appeals have been filed.

Sincerely,



Kan Dee Rud
Planning Commission Secretary
Bosdec0621p_kr_post.doc

cc: Ashnita Narayan, Agenda Coordinator
Jim Eggemeyer, Interim Planning Administrator
Bill Cameron, Building Inspection Manager
Lisa Ekers, Public Works
Gail Raabe, Agriculture Weights & Measures
Agricultural Advisory Committee
Jack Olsen, San Mateo County Farm Bureau
California Coastal Commission
Walter Moore, Post
Lennie Roberts, Committee for Green Foothills
Jeffrey Parry, Hostelling International
Ron Sturgeon
Jean Rusmore
Marilyn Walter
Other Interested Parties

COUNTY OF SAN MATEO
ENVIRONMENTAL SERVICES AGENCY

FINDINGS AND CONDITIONS OF APPROVAL

Permit File Number: PLN 2002-00675

Board Meeting Date: June 21, 2005

Prepared By: Olivia Sun Boo

Adopted By: Board of Supervisors

FINDINGS

Regarding the Negative Declaration, found:

1. That the Negative Declaration is complete, correct and adequate and prepared in accordance with the California Environmental Quality Act and applicable State and County guidelines.
2. That, on the basis of the Initial Study, comments received hereto, and testimony presented and considered at the public hearing, that there is no substantial evidence that the project if subject to the mitigation measures contained in the negative declaration, will have a significant effect on the environment.
3. That the Negative Declaration reflects the independent judgment of San Mateo County.
4. That the mitigation measures identified in the Negative Declaration, agreed to by the applicant, placed as conditions on the project, and identified as part of this public hearing, have been incorporated into the Mitigation Monitoring and Reporting Plan in conformance with California Public Resources Code Section 21081.6.

Regarding the Coastal Development Permit, found:

5. That the project, as described in the application and accompanying materials required by Section 6328.7 and as conditioned in accordance with Section 6328.14, conforms to the plans, policies, requirements and standards of the San Mateo County Local Coastal Program.
6. That the project conforms to specific findings required by policies of the San Mateo County Local Coastal Program.

Regarding the Planned Agricultural District Permit, found:

General Criteria

7. That the encroachment of all development upon land which is suitable for agricultural use is minimized.
8. That all development permitted on-site is clustered.
9. That the project conforms to the Development Review Criteria contained in Chapter 20A.2 of the San Mateo County Ordinance Code.

Criteria for the Conversion of Prime Agricultural Lands

10. That no alternative site exists on the parcel for the use.
11. That clearly defined buffer areas are provided between agricultural and non-agricultural uses.
12. That the productivity of an adjacent agricultural land will not be diminished.
13. That public service and facility expansions and permitted uses will not impair agricultural viability, including by increased assessment costs or degraded air and water quality.

Criteria for the Conversion of Lands Suitable for Agricultural and Other Lands

14. That all agriculturally unsuitable lands on the parcel have been developed or determined to be undeveloped.
15. That continued or renewed agricultural use of the soils is not capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social and technological factors.
16. That clearly defined buffer areas are developed between agricultural and non-agricultural uses.
17. That the productivity of any adjacent agricultural lands is not diminished, including the ability of the land to sustain dry farming or animal grazing.

18. That public service and facility expansions and permitted uses do not impair agricultural viability, either through increased assessment costs or degraded air and water quality.

Regarding the Grading Exemption, found:

19. That the project qualifies under Section 8603.1 of the County Ordinance Code as exempt from the requirements of a grading permit.

CONDITIONS OF APPROVAL

Planning Division

1. This approval applies only to the proposal, documents and plans described in this report and submitted to and approved by the Planning Commission on March 23, 2005. Minor revisions or modifications to the project may be approved by the Planning Director if they are consistent with the intent of and in substantial conformance with this approval.
2. The Coastal Development Permit and Planned Agricultural District Permit are valid for one year from the date of approval, until March 23, 2006, at or before which the applicant shall have been issued a building permit. Any extensions of these permits shall require submittal of a written request for permit extension and payment of applicable extension fees, no less than 30 days prior to permit expiration.
3. Any change in use or intensity shall require an amendment to the permits. Amendment to these permits requires an application for amendment, payment of applicable fees, and consideration at a public hearing.
4. The applicant shall submit plans and have a building permit issued within one year from the date of this approval and prior to the start of construction.
5. The applicant is required to monitor the noise level at the site so that the proposed construction activity will not exceed the 80 dBA level at any one moment. All construction activity is limited to 7:00 a.m. to 6:00 p.m., Monday through Friday, and 9:00 a.m. to 5:00 p.m. on Saturday. Construction is prohibited on Sunday or any national holiday.

6. Prior to the issuance of a building permit, the applicant shall submit, to the Planning Division for review and approval, an erosion and sediment control plan, which shows how transport and discharge of pollutants from the project site will be minimized during all grading and construction activities. The goal is to prevent sediment and other pollutants from entering local drainage systems and water bodies, and to protect all exposed earth surfaces from erosive forces. The erosion control plan shall clearly delineate the types of measures to be used, the location of where the measures will be placed as well as a sectional drawing showing how the measures shall be installed. All erosion control devices shall be installed on-site prior to the beginning of any construction or activity on-site. The erosion control plan shall clearly delineate the types of measures to be used, the location of where the measures will be placed as well as a sectional drawing showing how the measures shall be installed. All erosion control devices shall be installed on-site prior to the beginning of any construction activities. The applicant shall arrange for a site inspection to verify installation with the Building Inspection Section. Said plan shall adhere to the San Mateo Countywide Stormwater Pollution Prevention Program "General Construction and Site Supervision Guidelines," including:
 - a. Removing spoils promptly, and avoiding stockpiling of fill materials when rain is forecast. If rain threatens, stockpiled soils and other materials shall be covered with a tarp or other waterproof material.
 - b. Storing, handling, and disposing of construction materials and wastes so as to avoid their entry to a local storm drain system or water body.
 - c. Avoiding cleaning, fueling or maintaining vehicles on-site, except in an area designated to contain and treat runoff. The applicant shall arrange for a site inspection to verify installation with the Building Inspection Section.
7. The applicant shall have an archaeological monitor on-site during all construction and grading activities, in order to ensure an examination has taken place to record and recover any historic or prehistoric archaeological information present. The applicant shall submit a post-construction report to the Planning Division describing the final site conditions and verifying that the monitor was on-site for the duration of the project. At any time evidence is uncovered or encountered before or after monitoring, all excavations within 30 feet shall be halted until a qualified professional archaeologist is contacted to assess the situation and propose appropriate measures.

8. A landscaping/revegetation plan shall be submitted for approval prior to the issuance of a building permit. The landscaping plan shall include native vegetation as proposed by the applicant's biologist.
9. The project biologist shall conduct appropriately timed surveys (April-May) to identify habitat and plant populations and mark their locations if found. Project related activities should avoid removal of these plants and applicable buffer zones shall be established and marked by the biologist.
10. All construction shall be scheduled to avoid the breeding season as identified by the biologist, particularly if special-status species are discovered breeding on the site. Visitation to the site or a particular area on the site shall be restricted, if special-status species are discovered breeding or otherwise using the property, as confirmed by the biologist.
11. The biologist shall conduct appropriately timed surveys prior to construction to determine the location of any sensitive plant species. Their removal shall be avoided and buffer zones shall be established. In order to minimize disturbance to native vegetation, and to minimize the footprint of construction in native plant areas and stake trail location, review with the botanist/biologist is required. Said review may require revision of the plans to avoid impacts. To minimize disturbance to wildlife, the applicant shall schedule construction activities to avoid breeding seasons and shall restrict public visitation if special-status wildlife is breeding. To minimize degradation of marine habitats, the applicant shall implement Best Management Practices erosion control and minimize noise and construction impacts on marine wildlife.
12. The applicant shall execute a recordable agreement with the County that all prime and agricultural land and other land suitable for agriculture which is not needed for recreational development or for the protection and vital functioning of a sensitive habitat will be permanently protected for agriculture.
13. When legally feasible, the applicant shall agree to lease the maximum amount of agricultural land to active farm operators on terms compatible with the primary recreational and habitat use.
14. The applicant shall work with the State Department of Fish and Game and State Water Quality Board to determine appropriate mitigation measures and obtain a letter from these State agencies confirming the State's satisfaction of appropriate mitigation measure. This letter shall be submitted to the Planning Division.

15. The applicant, POST, shall arrange and coordinate a meeting(s) for the purpose of developing an agreement among interested parties to reduce potential conflicts between public access and adjacent agricultural operations for the subject parcel(s) and future trail development. POST shall invite the following organizations and interested parties to the meeting: San Mateo County (SMCo) Planning and Building Division, SMCo County Counsel, SMCo Parks and Recreation, SMCo Department of Agriculture/Weights and Measures, SMCo Agricultural Advisory Committee, SMCo Farm Bureau, Committee for Green Foothills, State of California, and any other interested parties requested by the Planning Administrator. Prior to the final building permit inspection and opening of the subject trails/kiosk project, the applicant, POST, and SMCo Planning and Building Division shall report to the Planning Commission the results of the meetings.
16. The owner shall comply with all disability access requirements deemed applicable by the Building Inspection Section prior to issuance of a building permit.

Building Inspection Section

17. The applicant shall apply for a building permit for the observation deck and the kiosk.

Department of Public Works

18. Erosion and sediment control during the course of work shall be according to a plan prepared and signed by the Engineer of record, and approved by the Department of Public Works and the Planning Division. Revisions to the approved erosion and sediment control plan shall be prepared and signed by the Engineer.
19. It shall be the responsibility of the applicant's engineer to regularly inspect the erosion control measures and determine that they are functioning as designed and that proper maintenance is being performed. Deficiencies shall be immediately corrected.

20. No construction work shall commence until a schedule of all construction operations has been submitted to and reviewed and approved by the Department of Public Works and the Planning Division. The submitted schedule shall include a schedule for winterizing the site. If the schedule of work is to be completed in one construction season, then the winterizing plan shall be considered a contingent plan to be implemented if work falls behind schedule. The applicant shall submit monthly updates of the schedule to the Department of Public Works and the Planning Division. All submitted schedules shall represent the work in detail and shall project the construction operations through completion.
21. Should construction work within the County right-of-way of Pigeon Point Road be necessary, it shall not begin until Public Works requirements for the issuance of an encroachment permit, including review of applicable plans, have been met and an encroachment permit issued by the Department of Public Works.

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JUN 17 2005

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

COUNTY OF SAN MATEO
Inter-Departmental Correspondence

ENVIRONMENTAL SERVICES AGENCY

DATE: June 16, 2005
BOARD MEETING DATE: June 21, 2005
SPECIAL NOTICE/HEARING: 10 days, within 300 ft.
VOTE REQUIRED: Majority

TO: Honorable Board of Supervisors

FROM: Marcia Raines, Director of Environmental Services

SUBJECT: STAFF REPORT ADDENDUM: Consideration of: (1) a Planned Agricultural District Permit, a Coastal Development Permit, and Grading Exemption pursuant to Sections 6353, 6328.4, and 8603.1, respectively, of the San Mateo County Zoning Regulations; and (2) certification of a Mitigated Negative Declaration, pursuant to the California Environmental Quality Act, to improve a 2.79-acre parcel with four walking trails, information kiosks, a proposed seating area and an overlook deck. The project location is adjacent to the Pigeon Point lighthouse, west of Cabrillo Highway in the unincorporated Pescadero area of San Mateo County. The project is appealable to the California Coastal Commission. (Appeal from decision of the Planning Commission approving the Planned Agricultural District Permit, Coastal Development Permit, and Grading Exemption.)

County File No.: PLN 2002-00675 (Peninsula Open Space Trust)

RECOMMENDATION

Append this to original report dated June 6, 2005, in order to correct Condition 15.

DISCUSSION

The staff report for the June 21, 2005 Board of Supervisors' public hearing, dated June 6, 2005, regarding the subject project has an early version of the condition which

was modified by the Planning Commission (see page 4, Section A.1, Condition of Approval No. 15). The correct version from the February 28, 2005 Planning Commission letter of decision is stated as follows:

15. *"The applicant, POST, shall arrange and coordinate a meeting(s) for the purpose of developing an agreement among interested parties to reduce potential conflicts between public access and adjacent agricultural operations for the subject parcel(s) and future trail development. POST shall invite the following organizations and interested parties to the meeting: San Mateo County (SMCo) Planning and Building Division, SMCo County Counsel, SMCo Parks and Recreation, SMCo Department of Agriculture/Weights and Measures, SMCo Agricultural Advisory Committee, SMCo Farm Bureau, Committee for Green Foothills, State of California, and any other interested parties requested by the Planning Administrator. Prior to the final building permit inspection and opening of the subject trails/kiosk project, the applicant, POST, and SMCo Planning and Building Division shall report to the Planning Commission the results of the meeting(s).*

Staff's response to the appeal remains unchanged.

FISCAL IMPACT

No fiscal impact.

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D. SMC 05 001

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JUN 10 2005

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA



COUNTY OF SAN MATEO
Inter-Departmental Correspondence

ENVIRONMENTAL SERVICES AGENCY

DATE: June 6, 2005
BOARD MEETING DATE: June 21, 2005
SPECIAL NOTICE/HEARING: 300 ft. within 10 days
VOTE REQUIRED: Majority

TO: Honorable Board of Supervisors

FROM: Marcia Raines, Director of Environmental Services *MR*

SUBJECT: EXECUTIVE SUMMARY: Consideration of: (1) a Planned Agricultural District Permit, a Coastal Development Permit, and Grading Exemption pursuant to Sections 6353, 6328.4, and 8603.1, respectively, of the San Mateo County Zoning Regulations; and (2) certification of a Mitigated Negative Declaration, pursuant to the California Environmental Quality Act, to improve a 2.79-acre parcel with four walking trails, information kiosk, a proposed seating area and an overlook deck. The project location is adjacent to the Pigeon Point lighthouse, west of Cabrillo Highway in the unincorporated Pescadero area of San Mateo County. The project is appealable to the California Coastal Commission. (Appeal from decision of the Planning Commission approving the Planned Agricultural District Permit, Coastal Development Permit, and Grading Exemption.)

RECOMMENDATION

That the Board of Supervisors deny the appeal and:

1. Certify the Negative Declaration by making the required findings listed in Attachment A.
2. Approve the Planned Agriculture Permit, Coastal Development Permit, and Grading Permit Exemption, County File No. PLN 2002-00675, by adopting the required findings and conditions of approval identified in Attachment A.

VISION ALIGNMENT

Commitment: Number 6, the proposed project keeps the commitment to preserve and provide people access to our natural environment.

Goal: Number 15, which states: "Residents have nearby access to green space such as parks and recreational opportunities."

The Planning Commission's deliberations further Commitment 6 and Goal 15 as the Commission carefully considered the proposed project and found the project complied with the General Plan, Local Coastal Program and Zoning Regulations by preserving our natural environment and enabling nearby residents public enjoyment of a recreational opportunity.

BACKGROUND

Proposal: The applicant is proposing to improve a 2.79-acre parcel with four walking trails, an information kiosk, a proposed seating area, and an overlook deck. The project will also involve restoration of the existing coastal bluff habitat. Parking will be provided in the existing youth hostel parking lot.

Planning Commission Action: On February 23, 2005, the Planning Commission voted unanimously to certify the Negative Declaration and approve the Planned Agricultural District Permit, Coastal Development Permit, and Grading Exemption.

DISCUSSION

On March 14, 2005, an appeal was filed based on the following objections: (a) POST cannot be taken "at its word," (b) the project's Negative Declaration is incomplete, inadequate AND INACCURATE, (c) the Negative Declaration is silent as to the potential adverse impacts associated with increased public access to the site's shoreline areas, and (d) the Planning Commission's approval is inconsistent with LCP Policies: 5.8.a(3), 5.10.a(4), 7.3, 7.5(a), 7.22 and 8.4(b), and CEQA.

Staff is recommending that the Board of Supervisors deny this appeal and uphold the Planning Commission's decision. Staff has reviewed the appellant's issues and believes the proposal complies with the applicable regulations and policies. Per Condition #15, the applicant is already coordinating efforts with all interested and affected parties for notification of agriculture spraying on adjacent parcels. The true ownership of the parcel by the California State Lands Commission was undisclosed. The Commission and the public were not informed of this conveyance until the day of the public hearing. Staff believes the change in ownership has no relevance to the question of the validity of the Negative Declaration, and that recirculation is not required. Potential adverse impacts were identified in the biological report and mitigation measures were proposed and adopted as conditions of approval.

This trail project will provide the public with recreation and education opportunities in the immediate area. While the project is located within the Cabrillo Highway State Scenic Corridor, the Planning Commission and staff believe that the visual impacts from this project will not be significant. In addition, the Planning Commission and staff believe that the project complies with the General Plan, Local Coastal Program, Zoning Regulations, and Grading exemption criteria.

FISCAL IMPACT

No fiscal impact.



COUNTY OF SAN MATEO
Inter-Departmental Correspondence

ENVIRONMENTAL SERVICES AGENCY

DATE: June 6, 2005
BOARD MEETING DATE: June 21, 2005
SPECIAL NOTICE/HEARING: 300 ft. within 10 days
VOTE REQUIRED: Majority

TO: Honorable Board of Supervisors

FROM: Marcia Raines, Director of Environmental Services *MR*

SUBJECT: Consideration of: (1) a Planned Agricultural District Permit, a Coastal Development Permit, and Grading Exemption pursuant to Sections 6353, 6328.4, and 8603.1, respectively, of the San Mateo County Zoning Regulations; and (2) certification of a Mitigated Negative Declaration, pursuant to the California Environmental Quality Act, to improve a 2.79-acre parcel with four walking trails, information kiosk, a proposed seating area and an overlook deck. The project location is adjacent to the Pigeon Point lighthouse, west of Cabrillo Highway in the unincorporated Pescadero area of San Mateo County. The project is appealable to the California Coastal Commission. (Appeal from decision of the Planning Commission approving the Planned Agricultural District Permit, Coastal Development Permit, and Grading Exemption.)

County File Number: PLN 2002-00675 (Peninsula Open Space Trust)

RECOMMENDATION

That the Board of Supervisors deny the appeal and:

1. Certify the Negative Declaration by making the required findings listed in Attachment A.
2. Approve the Planned Agriculture Permit, Coastal Development Permit, and Grading Permit Exemption, County File No. PLN 2002-00675, by adopting the required findings and conditions of approval identified in Attachment A.

VISION ALIGNMENT

Commitment: Number 6: The proposed project keeps the commitment to preserve and provide people access to our natural environment.

Goal: Number 15, which states: "Residents have nearby access to green space such as parks and recreational opportunities."

The Planning Commission's deliberations further Commitment 6 and Goal 15 as the Commission carefully considered the proposed project and found the project complied with the General Plan, Local Coastal Program and Zoning Regulations by preserving our natural environment and enabling nearby residents public enjoyment of a recreational opportunity.

BACKGROUND

Proposal: The applicant is proposing to improve a 2.79-acre parcel with four walking trails, an information kiosk, a proposed seating area, and an overlook deck. The project will also involve restoration of the existing coastal bluff habitat. Parking will be provided in the existing youth hostel parking lot.

Planning Commission Action: On February 23, 2005, the Planning Commission voted unanimously to certify the Negative Declaration and approve the Planned Agricultural District Permit, Coastal Development Permit, and Grading Exemption.

Report Prepared By: Olivia Sun Boo, Project Planner, Telephone 650/363-1852

Appellant: Ron Sturgeon

Applicant: POST (Peninsula Open Space Trust)

Owner: California State Parks Commission

Location: The project location is adjacent to the Pigeon Point lighthouse, west of the Cabrillo Highway public right-of-way, in the unincorporated Pescadero area of San Mateo County.

APN: 086-300-160

Parcel Size: 2.79 acres

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

General Plan Designation: Agriculture

Existing Land Use: Undeveloped open space covered with cover crop, coastal bluff

scrub, non-native grasslands, wildlife habitat and a very small area of wetland area located on the east edge of the property.

Water Supply/Sewage Disposal: N/A

Flood Zone: FEMA Flood Zone C, area of minimal flooding, Community-Panel No. 060311 0400 B, effective date: July 5, 1984

Environmental Evaluation: An Initial Study and Negative Declaration were prepared for this project. The public review and comments period began February 1, 2005 and ended February 22, 2005

Setting: The subject property is unimproved, relatively flat and located west of Cabrillo Highway in Pescadero, within the Cabrillo Highway State Scenic Corridor. The site is located adjacent to State Park Lands where the youth hostel buildings and Pigeon Point Lighthouse are located. The parcel is a mosaic of disturbed areas, dominated by non-native plant species and native Northern Coastal Bluff Scrub. There are no trees or large shrubs with exception of some ceanothus that were likely planted. The cliff and bluff faces are devoid of vegetation. There are both prime soils and non-prime soils on the parcel.

A 9-unit motel was under construction on the subject parcel prior to applicant's purchasing the property in 2000 as part of its open space holdings. The applicant demolished and removed the motel and former warehouse in 2001 and 2002, in preparation for the proposed trail project. Since the demolition, the applicant has been working on erosion control measures, seed collection from native plant species on the property and re-vegetation. The previously disturbed portions of the site cover approximately 1.3 acres or 47 percent of the site. The site was reseeded and covered with an erosion control blanket in October of 2002.

The property is surrounded to the east by open space owned by San Mateo County; to the west by the Pigeon Point Lighthouse and youth hostel (owned by the US Coast Guard and leased to California State Parks); to the south by property owned by California State Parks that covers portions of the beach and cliffs; and to the north by Pigeon Point Road and agricultural fields.

Chronology:

<u>Date</u>	<u>Action</u>
November 7, 2002	- Received proposed trail application.
December 23, 2003	- Staff site inspection completed.
November 8, 2004	- Agricultural Advisory Board reviewed the proposed project and made recommendations that are noted in this report

under Section D.

- February 1, 2005 - Initial Study and Negative Declaration posted. Public review and comment period ended February 22, 2005.
- February 22, 2005 - End of public review and comments period for the environmental review. No comments were received as of the writing of this staff report. Any comments received will be discussed at the public hearing.
- February 23, 2005 - Planning Commission Public Hearing.
- March 14, 2005 - Received Letter of Appeal.
- June 21, 2005 - Board of Supervisors Public hearing.

DISCUSSION

Following are the appellant's points of appeal, in **bold**, followed by staff's analysis.

A. KEY ISSUES OF THE APPEAL

1. **The Planning Commission was persuaded it could take POST "at its word" that if the Commission allowed the project to "go ahead," POST could be relied on to abide by the "requirements" of "Condition #15" and that all could anticipate satisfactory results.**

Staff's Response: Condition #15 states the following:

"The applicant shall contact property owners, within 1,000 feet of the subject parcel, who own land that operate agricultural activities and request the owners to send notification to POST when chemicals spraying will occur. When such notice is received by POST, they shall temporarily close the parking lot in order to meet State and/or Federal health and safety guidelines."

This condition was added in response to the Agriculture Advisory Committee's request that when chemical spraying occurs on adjacent farming properties, State Parks should temporarily close access to the trails and parking area to meet State and Federal health and safety guidelines. This condition of approval is not a mitigation measure or a requirement of CEQA (California Environmental Quality Act) review. The intent of this condition is to prevent any new or future development from affecting current and future productivity to existing agricultural activities.

As requested by the Agricultural Advisory Committee and conditioned by the Planning Commission, POST has already made efforts to contact and coordinate a future meeting with all interested parties, and property owners within 1,000 feet of the subject parcel who own land and operate agricultural activities.

2. **The project's Negative Declaration is incomplete, inadequate AND INACCURATE. As of the date of its release for public review (February 1, 2005), contrary to this Declaration's assertion, POST is not the owner of the project parcel(s). Its true ownership by the California State Lands Commission was undisclosed. The subject parcel was formerly owned by POST and conveyed on January 14, 2005 to the California Department of Parks and Recreation. The Commission and the public were not informed of this conveyance until the day of the public hearing.**

Staff's Response: Change in ownership of land is always possible and not unexpected. POST was acting as applicant and owner for the discretionary permitting process and continues to act as applicant on behalf of State Parks since the transfer of ownership in January 2005. It was the intention that POST would be transferring land ownership to State Parks.

Staff believes the change in ownership has no relevance to the question of the validity of the Negative Declaration, and that recirculation is not required. The change in ownership does not affect the scope of the project. Once the trail project is complete, State Parks intends to maintain the trail per the conditions of approval.

3. **The Negative Declaration is silent as to the potential adverse impacts associated with the project's direct facilitation of a potentially dramatic increase in public access to the site's shoreline and intertidal natural resources—specifically listed in the LCP as an important (“sensitive”) marine habitat area. Additionally, the project proposed frivolous bluff top recreational development that will be “visually obtrusive when viewed from the shoreline.”**

Staff's Response: The biologist report recommended that visitation to the site be restricted to a particular area on the site. The proposed trails have been designed to protect the existing conditions. The trails will incorporate railings that border both sides of the trails to restrict public access to designated areas only, thereby protecting the existing vegetation and habitats. LCP Policy 11.11 permits public recreation and shoreline access trails as an allowed use on prime agricultural land and lands suitable for agriculture, subject to the securing of a Planned Agricultural Permit. In order to minimize disturbance to native vegetation, and to minimize the footprint of construction in native plant areas, mitigation measures have been included to require that the trail locations be staked and then reviewed and relocated as necessary by a qualified biologist prior to construction.

4. The Planning Commission's approval on February 23, 2005 to allow this project to go forward is inconsistent with the San Mateo County Local Coastal Program (LCP), in particular Policies: 5.8.a(3), 5.10.a(4), 7.3, 7.5(a), 7.22 and 8.4(b), and CEQA.

Staff's Response: The San Mateo County LCP Policy 5.8.a(3) (Conversion of Prime Agricultural Land Designated as Agriculture) prohibits conversion of prime agricultural land within a parcel to a conditionally permitted use unless it can be demonstrated that the productivity of any adjacent agricultural land will not be diminished.

LCP Policy 5.10.a(4) (Conversion of Land Suitable for Agriculture Designated as Agriculture) prohibits the conversion of lands suitable for agriculture within a parcel to conditionally permitted uses unless it can be demonstrated that the productivity of any adjacent agricultural lands is not diminished.

Staff believes that this project will not significantly affect the potential for agricultural use of adjacent lands. Condition #15 has been included to protect existing agricultural activities. POST has already made efforts to contact and coordinate a future meeting with all interested parties, and property owners (within 1,000 feet of the subject parcel who own land and operate agricultural activities).

LCP Policy 7.3 (Protection of Sensitive Habitat) (a) prohibits any land use or development which would have a significant adverse impact on sensitive habitat areas, and (b) development in areas adjacent to sensitive habitats shall be sited and designed to prevent impacts that could significantly degrade the sensitive habitats. All uses shall be compatible with the maintenance of biologic productivity of the habitats.

LCP Policy 7.5(a) (Permit Conditions) as part of the development review process, require the applicant to demonstrate that there will be no significant impact on sensitive habitats. When it is determined that significant impacts may occur, require the applicant to provide a report prepared by a qualified professional which provides: (1) mitigation measures which protect resources and comply with the policies of the Shoreline Access, Recreation/Visitor-Serving Facilities and Sensitive Habitats Components, and (2) a program for monitoring and evaluating the effectiveness of the mitigation measures. Develop an appropriate program to inspect the adequacy of the applicant's mitigation measures.

LCP Policy 7.22 (Designation of Marine and Estuarine Habitats) designate all areas containing marine and estuarine habitats as requiring protection, specifically including but not limited to: Fitzgerald Marine Reserve, San Gregorio Estuary, Pescadero Marsh, Pigeon Point, Franklin Point, Ano Nuevo Point, and Ano Nuevo Island Reserve.

A complete biologist report identified sensitive habitat on the project site and

proposed mitigation measures to avoid potential impacts. Per recommendation of the biologist, the project is conditioned with the following mitigation measures Conditions 9, 10 and 11.

Condition #9: The project biologist shall conduct appropriately timed surveys (April-May) to identify habitat and plant populations and mark their locations if found. Project related activities should avoid removal of these plants and applicable buffer zones shall be established and marked by the biologist.

Condition #10: All construction shall be scheduled to avoid the breeding season as identified by the biologist, particularly if special-status species are discovered breeding on the site. Visitation to the site or a particular area on the site shall be restricted, if special-status species are discovered breeding or otherwise using the property, as confirmed by the biologist.

Condition #11: All construction shall be scheduled to avoid the breeding season as identified by the biologist, particularly if special-status species are discovered breeding on the site. Visitation to the site or a particular area on the site shall be restricted, if special-status species are discovered breeding or otherwise using the property, as confirmed by the biologist.

LCP Policy 8.4 (Cliffs and Bluffs) prohibits development on bluff faces except public access stairways where deemed necessary and erosion control structures which are in conformity with coastal policies on access and erosion.

Staff believes the proposed stairs provide shoreline access to the bluff and nearby beach. Additionally, although the biologist's report states the cliff face and steeper bluffs are devoid of vegetation, the project is conditioned to require appropriate mitigation measures during the construction phase, to protect the bluff face.

B. COMPLIANCE WITH COUNTY REGULATIONS

Conformance with the General Plan, Local Coastal Program, Zoning Regulations and Grading Exemption Regulations

Conformance with these regulations is discussed in the February 23, 2005, Planning Commission staff report. Please refer to Attachment G, Section A.

C. ENVIRONMENTAL REVIEW

An Initial Study and Negative Declaration was prepared for this project. The public review and comment period was from February 1, 2005 to February 22, 2005. Comments to the Initial Study and Negative Declaration were received in a letter of appeal submitted to the Planning Division on March 14, 2005. The comments were addressed by this staff report. The Initial Study and Negative Declaration is included in this report as Attachment H.

D. REVIEW BY THE AGRICULTURAL ADVISORY COMMITTEE

The Committee's review and recommendations is discussed in the February 23, 2005, Planning Commission staff report. Please refer to Attachment G, Section C.

Staff had subsequent discussions with County Counsel regarding the Committee's request. County Counsel confirmed the Committee's request could be added as a condition of approval. Staff has added Condition #15 to that effect.

E. REVIEWING AGENCIES

Review by all applicable agencies is discussed in the February 23, 2005, Planning Commission staff report. Please refer to Attachment G, Section D.

ATTACHMENTS

- A. Recommended Findings and Conditions of Approval
- B. Location Map/Parcel Map
- C. Site Plan
- D. Prime Soils Map
- E. Vegetation Types on the Whaler's Cove Property
- F. Letter of Appeal (dated March 14, 2005)
- G. Planning Commission Staff Report (dated February 23, 2005; Attachments Omitted)
- H. Initial Study and Negative Declaration
- I. Biological Report
- J. Site Photos

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COUNTY OF SAN MATEO
ENVIRONMENTAL SERVICES AGENCY

RECOMMENDED FINDINGS AND CONDITIONS OF APPROVAL

Permit File Number: PLN 2002-00675

Board Meeting Date: June 21, 2005

Prepared By: Olivia Sun Boo

For Adoption By: Board of Supervisors

RECOMMENDED FINDINGS

Regarding the Negative Declaration, find:

1. That the Negative Declaration is complete, correct and adequate and prepared in accordance with the California Environmental Quality Act and applicable State and County guidelines.
2. That, on the basis of the Initial Study, comments received hereto, and testimony presented and considered at the public hearing, that there is no substantial evidence that the project if subject to the mitigation measures contained in the negative declaration, will have a significant effect on the environment.
3. That the Negative Declaration reflects the independent judgment of San Mateo County.
4. That the mitigation measures identified in the Negative Declaration, agreed to by the applicant, placed as conditions on the project, and identified as part of this public hearing, have been incorporated into the Mitigation Monitoring and Reporting Plan in conformance with California Public Resources Code Section 21081.6.

Regarding the Coastal Development Permit, find:

5. That the project, as described in the application and accompanying materials required by Section 6328.7 and as conditioned in accordance with Section 6328.14, conforms to the plans, policies, requirements and standards of the San Mateo County Local Coastal Program.
6. That the project conforms to specific findings required by policies of the San Mateo County Local Coastal Program.

Regarding the Planned Agricultural District Permit, find:

General Criteria

7. That the encroachment of all development upon land which is suitable for agricultural use is minimized.
8. That all development permitted on-site is clustered.
9. That the project conforms to the Development Review Criteria contained in Chapter 20A.2 of the San Mateo County Ordinance Code.

Criteria for the Conversion of Prime Agricultural Lands

10. That no alternative site exists on the parcel for the use.
11. That clearly defined buffer areas are provided between agricultural and non-agricultural uses.
12. That the productivity of an adjacent agricultural land will not be diminished.
13. That public service and facility expansions and permitted uses will not impair agricultural viability, including by increased assessment costs or degraded air and water quality.

Criteria for the Conversion of Lands Suitable for Agricultural and Other Lands

14. That all agriculturally unsuitable lands on the parcel have been developed or determined to be undeveloped.
15. That continued or renewed agricultural use of the soils is not capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social and technological factors.
16. That clearly defined buffer areas are developed between agricultural and non-agricultural uses.
17. That the productivity of any adjacent agricultural lands is not diminished, including the ability of the land to sustain dry farming or animal grazing.
18. That public service and facility expansions and permitted uses do not impair agricultural viability, either through increased assessment costs or degraded air and water quality.

Regarding the Grading Exemption, find:

19. That the project qualifies under Section 8603.1 of the County Ordinance Code as exempt from the requirements of a grading permit.

RECOMMENDED CONDITIONS OF APPROVAL

Planning Division

1. This approval applies only to the proposal, documents and plans described in this report and submitted to and approved by the Planning Commission on March 23, 2005. Minor revisions or modifications to the project may be approved by the Planning Director if they are consistent with the intent of and in substantial conformance with this approval.
2. The Coastal Development Permit and Planned Agricultural District Permit are valid for one year from the date of approval, until March 23, 2006, at or before which the applicant shall have been issued a building permit. Any extensions of these permits shall require submittal of a written request for permit extension and payment of applicable extension fees, no less than 30 days prior to permit expiration.
3. Any change in use or intensity shall require an amendment to the permits. Amendment to these permits requires an application for amendment, payment of applicable fees, and consideration at a public hearing.
4. The applicant shall submit plans and have a building permit issued within one year from the date of this approval and prior to the start of construction.
5. The applicant is required to monitor the noise level at the site so that the proposed construction activity will not exceed the 80 dBA level at any one moment. All construction activity is limited to 7:00 a.m. to 6:00 p.m., Monday through Friday, and 9:00 a.m. to 5:00 p.m. on Saturday. Construction is prohibited on Sunday or any national holiday.
6. Prior to the issuance of a building permit, the applicant shall submit, to the Planning Division for review and approval, an erosion and sediment control plan, which shows how transport and discharge of pollutants from the project site will be minimized during all grading and construction activities. The goal is to prevent sediment and other pollutants from entering local drainage systems and water bodies, and to protect all exposed earth surfaces from erosive forces. The erosion control plan shall clearly delineate the types of measures to be used, the location of where the measures will be placed as well as a sectional drawing showing how the measures shall be installed. All erosion control devices shall be installed on-site prior to the beginning of any construction or activity on-site. The erosion control plan shall clearly delineate the types of measures to be used, the location

of where the measures will be placed as well as a sectional drawing showing how the measures shall be installed. All erosion control devices shall be installed on-site prior to the beginning of any construction activities. The applicant shall arrange for a site inspection to verify installation with the Building Inspection Section. Said plan shall adhere to the San Mateo Countywide Stormwater Pollution Prevention Program "General Construction and Site Supervision Guidelines," including:

- a. Removing spoils promptly, and avoiding stockpiling of fill materials when rain is forecast. If rain threatens, stockpiled soils and other materials shall be covered with a tarp or other waterproof material.
 - b. Storing, handling, and disposing of construction materials and wastes so as to avoid their entry to a local storm drain system or water body.
 - c. Avoiding cleaning, fueling or maintaining vehicles on-site, except in an area designated to contain and treat runoff. The applicant shall arrange for a site inspection to verify installation with the Building Inspection Section.
7. The applicant shall have an archaeological monitor on-site during all construction and grading activities, in order to ensure an examination has taken place to record and recover any historic or prehistoric archaeological information present. The applicant shall submit a post-construction report to the Planning Division describing the final site conditions and verifying that the monitor was on-site for the duration of the project. At any time evidence is uncovered or encountered before or after monitoring, all excavations within 30 feet shall be halted until a qualified professional archaeologist is contacted to assess the situation and propose appropriate measures.
 8. A landscaping/revegetation plan shall be submitted for approval prior to the issuance of a building permit. The landscaping plan shall include native vegetation as proposed by the applicant's biologist.
 9. The project biologist shall conduct appropriately timed surveys (April-May) to identify habitat and plant populations and mark their locations if found. Project related activities should avoid removal of these plants and applicable buffer zones shall be established and marked by the biologist.
 10. All construction shall be scheduled to avoid the breeding season as identified by the biologist, particularly if special-status species are discovered breeding on the site. Visitation to the site or a particular area on the site shall be restricted, if special-status species are discovered breeding or otherwise using the property, as confirmed by the biologist.
 11. The biologist shall conduct appropriately timed surveys prior to construction to determine the location of any sensitive plant species. Their removal shall be

avoided and buffer zones shall be established. In order to minimize disturbance to native vegetation, and to minimize the footprint of construction in native plant areas and stake trail location, review with the botanist/biologist is required. Said review may require revision of the plans to avoid impacts. To minimize disturbance to wildlife, the applicant shall schedule construction activities to avoid breeding seasons and shall restrict public visitation if special-status wildlife is breeding. To minimize degradation of marine habitats, the applicant shall implement Best Management Practices erosion control and minimize noise and construction impacts on marine wildlife.

12. The applicant shall execute a recordable agreement with the County that all prime and agricultural land and other land suitable for agriculture which is not needed for recreational development or for the protection and vital functioning of a sensitive habitat will be permanently protected for agriculture.
13. When legally feasible, the applicant shall agree to lease the maximum amount of agricultural land to active farm operators on terms compatible with the primary recreational and habitat use.
14. The applicant shall work with the State Department of Fish and Game and State Water Quality Board to determine appropriate mitigation measures and obtain a letter from these State agencies confirming the State's satisfaction of appropriate mitigation measure. This letter shall be submitted to the Planning Division.
15. The applicant, POST, shall arrange and coordinate a meeting(s) for the purpose of developing an agreement among interested parties to reduce potential conflicts between public access and adjacent agricultural operations for the subject parcel(s) and future trail development. POST shall invite the following organizations and interested parties to the meeting: San Mateo County (SMC) Planning and Building Division, SMC County Counsel, SMC Parks and Recreation, SMC Department of Agriculture/Weights & Measures, SMC Agricultural Advisory Committee, SMC Farm Bureau, Committee for Green Foothills, State of California, and any other interested parties requested by the Planning Administrator. Prior to the final building permit inspection AND opening of the subject trails/kiosk project, the applicant, POST, and SMC Planning and Building Division shall report to the Planning Commission the results of the meeting(s).
16. The owner shall comply with all disability access requirements deemed applicable by the Building Inspection Section prior to issuance of a building permit.

Building Inspection Section

17. The applicant shall apply for a building permit for the observation deck and the kiosk.

Department of Public Works

18. Erosion and sediment control during the course of work shall be according to a plan prepared and signed by the Engineer of record, and approved by the Department of Public Works and the Planning Division. Revisions to the approved erosion and sediment control plan shall be prepared and signed by the Engineer.
19. It shall be the responsibility of the applicant's engineer to regularly inspect the erosion control measures and determine that they are functioning as designed and that proper maintenance is being performed. Deficiencies shall be immediately corrected.
20. No construction work shall commence until a schedule of all construction operations has been submitted to and reviewed and approved by the Department of Public Works and the Planning Division. The submitted schedule shall include a schedule for winterizing the site. If the schedule of work is to be completed in one construction season, then the winterizing plan shall be considered a contingent plan to be implemented if work falls behind schedule. The applicant shall submit monthly updates of the schedule to the Department of Public Works and the Planning Division. All submitted schedules shall represent the work in detail and shall project the construction operations through completion.
21. Should construction work within the County right-of-way of Pigeon Point Road be necessary, it shall not begin until Public Works requirements for the issuance of an encroachment permit, including review of applicable plans, have been met and an encroachment permit issued by the Department of Public Works.

OSB:kcd - OSBP0509_WKU.DOC

TAX CODE AREA _____

86-30

A-2-SMC-05-009 (POST Trails)

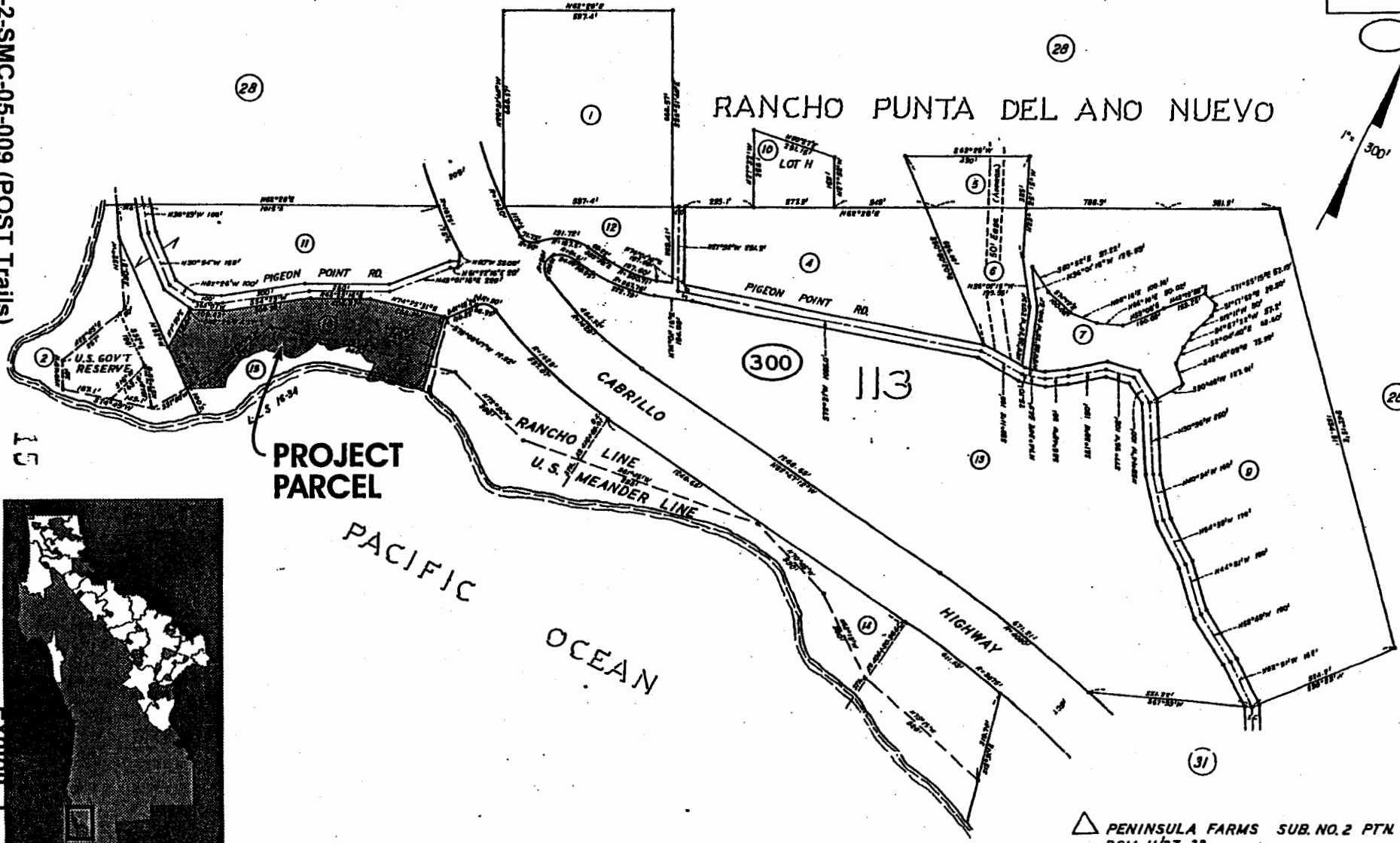


EXHIBIT 1 Pg 28

ASSESSOR'S MAP COUNTY OF SAN MATEO, CALIF.

LA HONDA-PESCADERO UNIFIED SCHOOL DISTRICT

△ PENINSULA FARMS SUB. NO. 2 PTN OF-RSM 1127-33

San Mateo County Board of Supervisors Meeting

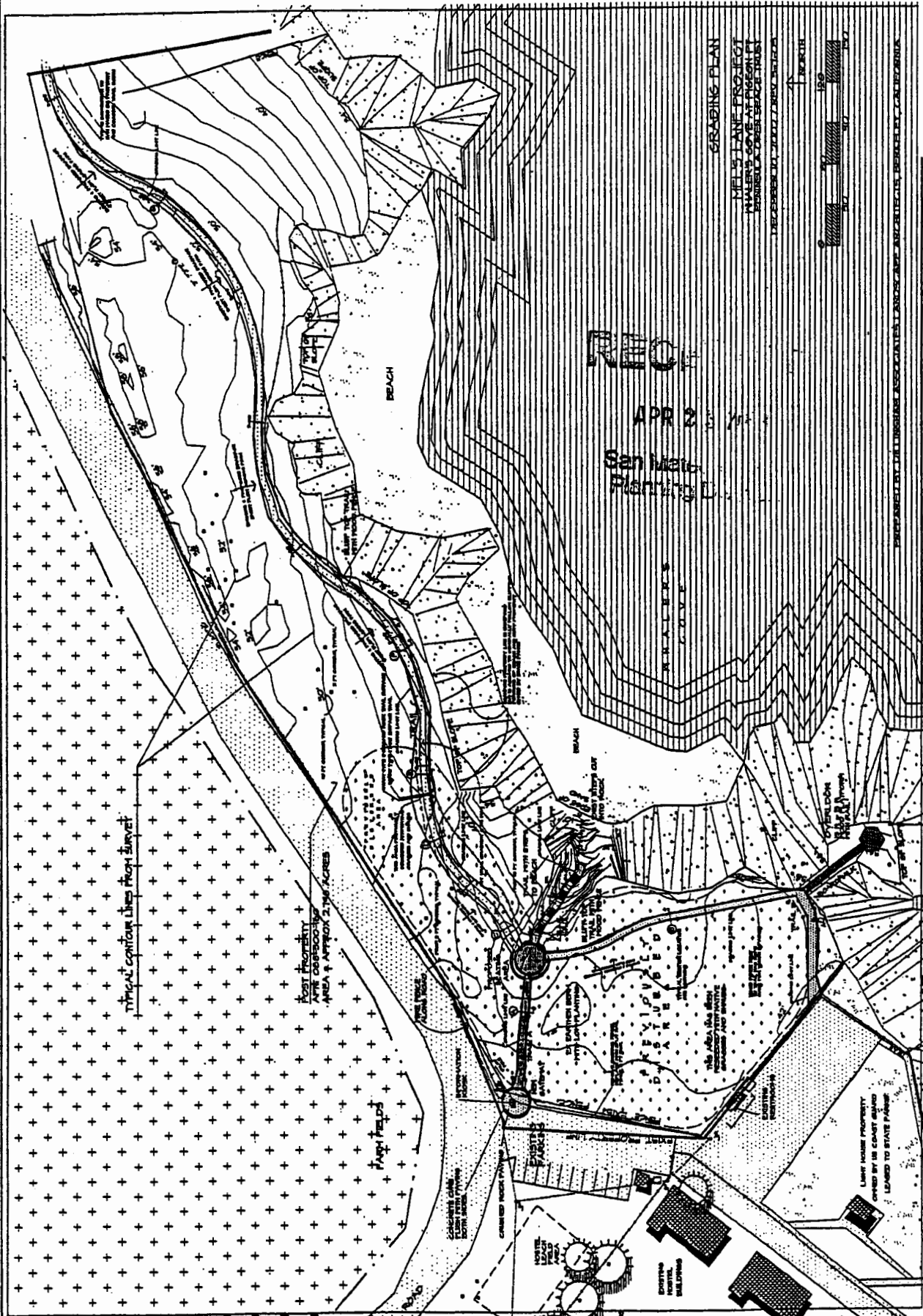
31

Applicant: Peninsula Open Space Trust

Attachment:

File Numbers: PLN 2002-00675

Attachment B



San Mateo County Board of Supervisors Meeting

Applicant: Peninsula Open Space Trust

File Numbers: PLN 2002-00675

Attachment:





San Mateo County Board of Supervisors Meeting








Attachment:

Applicant: Peninsula Open Space Trust

File Numbers: PLN 2002-00675



Vegetation Types

-  Beach
-  Bluff/Cliff Face
-  Coastal Bluff Scrub
-  Non-native Grassland/Coastal Bluff Scrub
-  Ruderal Vegetation/Coastal Bluff Scrub
-  Ruderal Vegetation/Cover Crop
-  Wetland (Approximate Boundary)

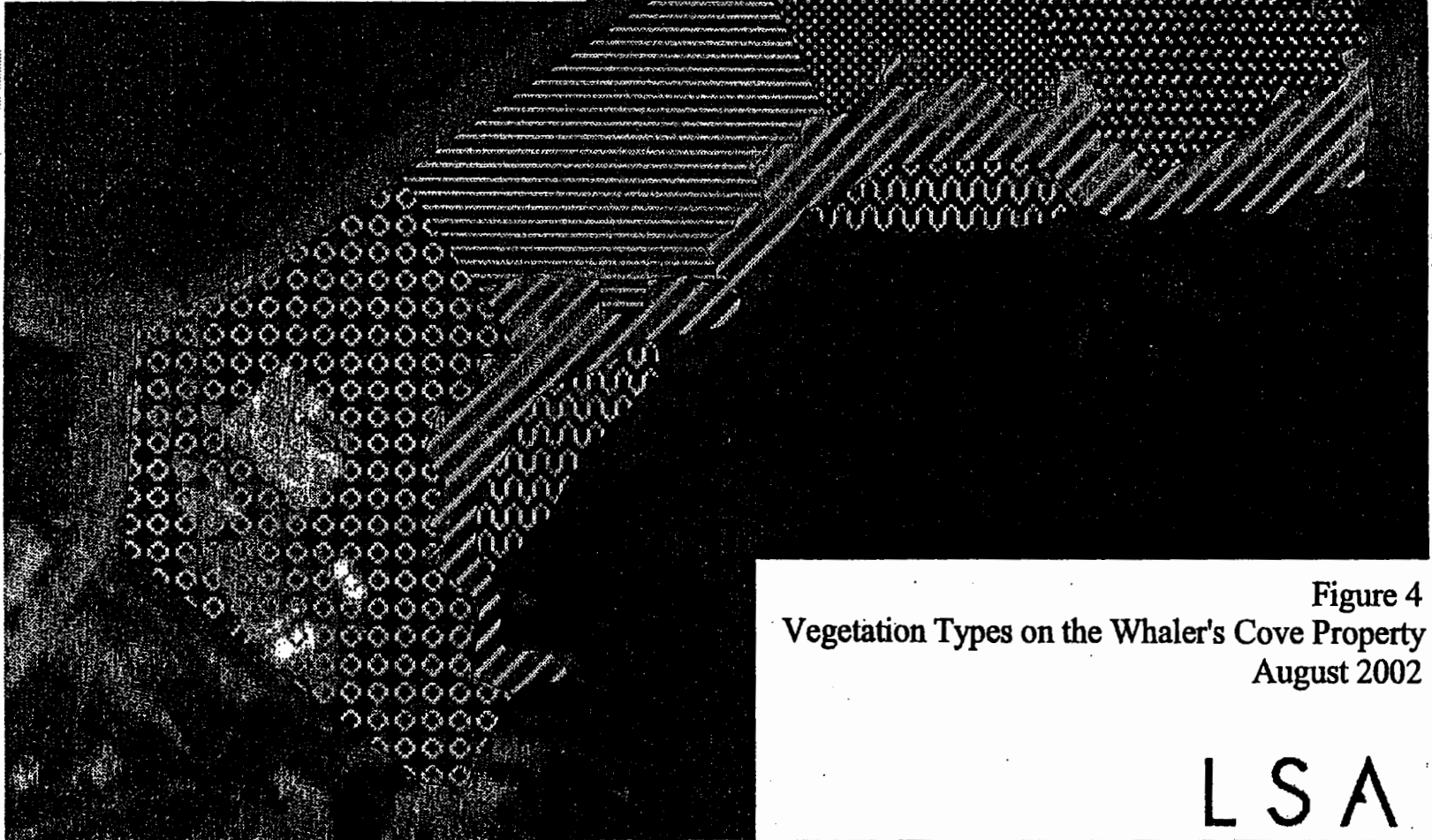


Figure 4
Vegetation Types on the Whaler's Cove Property
August 2002

LSA

San Mateo County Board of Supervisors Meeting

Applicant: Peninsula Open Space Trust

Attachment:

File Numbers: PLN 2002-00675



Attachment E

A-2-SMC-05-009 (POST Trails)

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Exhibit 1 Pg 31

31

CALIFORNIA COASTAL COMMISSION

CENTRAL COAST DISTRICT OFFICE
725 FRONT STREET, SUITE 300
SANTA CRUZ, CA 95060-4508
VOICE (831) 427-4863 FAX (831) 427-4877



APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT

Please Review Attached Appeal Information Sheet Prior To Completing This Form.

SECTION I. Appellant(s)

Name: *Ron Sturgeon*
Mailing Address: *P.O. Box 36*
City: *San Gregorio* Zip Code: *94074* Phone: *(415) 573-2489*

SECTION II. Decision Being Appealed

- 1. Name of local/port government: *San Mateo County*
- 2. Brief description of development being appealed: *Pentagula Open Space Trust's recreational/trails development at Pigeon Point California*
- 3. Development's location (street address, assessor's parcel no., cross street, etc.):
Adjacent to Pigeon Point Lighthouse, West of Cabrillo Hwy in the Unincorporated Pescadero Area of San Mateo County
- 4. Description of decision being appealed (check one.):
 Approval; no special conditions
 Approval with special conditions:
 Denial

Note: For jurisdictions with a total LCP, denial decisions by a local government cannot be appealed unless the development is a major energy or public works project. Denial decisions by port governments are not appealable.



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JUL 12 2005

CALIFORNIA COASTAL COMMISSION
CENTRAL COAST AREA

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 2)

5. Decision being appealed was made by (check one):

- Planning Director/Zoning Administrator
- City Council/Board of Supervisors
- Planning Commission
- Other

6. Date of local government's decision: June 21, 2005

7. Local government's file number (if any): PLN 2002 - 00675

SECTION III. Identification of Other Interested Persons

Give the names and addresses of the following parties. (Use additional paper as necessary.)

a. Name and mailing address of permit applicant: Post Powers; Pehinwala Open Space Trust
33 23 Cloverdale Rd.
Pescadero, CA
94060

b. Names and mailing addresses as available of those who testified (either verbally or in writing) at the city/county/port hearing(s). Include other parties which you know to be interested and should receive notice of this appeal.

(1) San Mateo County Farm Bureau
Half Moon Bay, CA
Main Street

(2) Walter Moore, PUST
Menlo Park, CA
Sandhill Road

(3) Linn Roberty
Committee For Green Foot Hills

(4)

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 3)

SECTION IV. Reasons Supporting This Appeal

PLEASE NOTE:

- Appeals of local government coastal permit decisions are limited by a variety of factors and requirements of the Coastal Act. Please review the appeal information sheet for assistance in completing this section.
- State briefly your reasons for this appeal. Include a summary description of Local Coastal Program, Land Use Plan, or Port Master Plan policies and requirements in which you believe the project is inconsistent and the reasons the decision warrants a new hearing. (Use additional paper as necessary.)
- This need not be a complete or exhaustive statement of your reasons of appeal; however, there must be sufficient discussion for staff to determine that the appeal is allowed by law. The appellant, subsequent to filing the appeal, may submit additional information to the staff and/or Commission to support the appeal request.

Appeal based on noncompliance with Local Coastal Program Policies: 5.8a(3), 5.10a(4), 11.11c, 10.28, 7.1, 7.2, 7.3, 7.23, 7.22, 7.5, 10.25 + CEQA. For complete discussion of bases of appeal see letter to Coastal Commission included handwritten with this appeal dated 7/12/05.

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 4)

SECTION V. Certification

The information and facts stated above are correct to the best of my/our knowledge.

Randall H. King
Signature of Appellant(s) or Authorized Agent

Date: 7/12/05

Note: If signed by agent, appellant(s) must also sign below.

Section VI. Agent Authorization

I/We hereby authorize _____
to act as my/our representative and to bind me/us in all matters concerning this appeal.

Signature of Appellant(s)

Date: _____



What happened to agriculture at Pigeon Point?

Appeal of County approval of Peninsula Open Space Trust's proposed recreational projects at Pigeon Point to the California Coastal Commission.

County File No: PLN2002-00675

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CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

July 12, 2005

California Coastal Commission
ATTN: Susan Craig
725 Front Street, Suite 300
Santa Cruz, CA 95060-4508

RE: Appeal of the coastal development permit (San Mateo County No: PLN2002-00675
– Peninsula Open Space Trust (POST), the Applicant)

Dear Ms. Craig:

The following seeks to inform the Coastal Commission of the bases of the appeal of the local approval of the proposed project(s) (given the “go ahead” at the County level on June 21, 2005):

1) Noncompliance with the agriculture component of the San Mateo County LCP.

The project, as approved, does not comply with core policies of the LCP directed at protecting prime and other lands suitable for agriculture:

*5.8a (3); 5.10a (4) – Prohibit the conversion of prime agricultural land and lands suitable for agriculture within a parcel to conditionally permitted uses unless all of the following can be demonstrated: [included in both (3) & (4)]
The productivity of any adjacent agriculture will not be diminished (emphasis added);*

and, policy 11.11c which permits low intensity recreation/visitor-serving facilities in agricultural areas **when consistent** with the foregoing agricultural land conversion policies.

The referent of ‘adjacent agriculture’ is to both agricultural productivity on the project parcel/site as well on lands off site (the subject project’s impacts resulting in a significant diminishment of the agricultural productivity and utility will occur on adjacent agricultural lands *off site*) (see Exhibit A, for a verification of this interpretation of ‘adjacent’ [County Staffs’ findings relating to POST’s (6/10/03) trail project located on the Cloverdale Ranch’s rangeland; page 13, paragraph 4]).

Discussion: The *Coastal Act* has among its basic goals (§ 30001.5):

- (a) *Protect, maintain, and where feasible, enhance and restore the overall quality of the coastal zone environment and its natural and artificial resources.*
- (b)
- (c) *Maximize public access to and along the coast and maximize public recreational opportunities in the coastal zone consistent with sound resources conservation principles and constitutionally protected rights of private property owners.*

What resource conservation principle(s) supersedes those inherent in the above referenced integrated policies of the San Mateo County LCP? What possible conservation rationale can be cited or fashioned to give credence to this Applicant’s indifference to the proposed recreational development’s needless diminishment of the area’s historic agricultural utility or, for that matter, countenance the project’s foreseeable impacts to the integrity of the area’s sensitive natural resources? There was a time when the Pigeon Point Lighthouse was a vital component of maritime infrastructure; even so, it then didn’t negatively impact agriculture

as it's clearly doing now when the Lighthouse's useful life is history - the area's agriculture ought to *now* be at least as cherishable by principled conservationism as an indispensable component of life sustaining infrastructure.

Because the proposed project entails an illogical, if not serendipitous, development of a "coastal trail" segment along with other recreational amenities, and was permitted with a cavalier acknowledgement of its significant impacts to the agricultural production potential of adjacent lands; **this project's approval has precedent setting scope by in effect substituting recreation for agriculture as the priority use on the County's agricultural lands - this constitutes a de facto amendment of the LCP with wide ranging impacts to the viability of agriculture within this County.** Urban and rural land uses can coexist, but only if the undertaking of their compatible interfacing is seriously engaged. Given that the number of significant adverse environmental and agricultural impacts of the project(s) are all potentially susceptible to mitigation to a level of insignificance; I plead that Commission find substantial issues with the proposed development and grant a full review of this project and the merits of this appeal.

The impacts of the proposed project to the agricultural use and utility of adjacent lands (resulting in "diminishment of their productivity"):

- a) **Because existing vehicular parking is currently inadequate for the existing facilities at Pigeon Point Lighthouse, and of the failure to include as a component of the proposed project some provision for the needed additional parking generated by the proposed facilities; Pigeon Point Road adjoining the prime lands of Lighthouse Ranch is the designated parking area by default - with vehicular intrusion onto this land likely, in order to park somehow off the road. By default, the parking for the proposed facility is immediately adjacent to, if not directly on, these highly productive soils which have historically produced high value crops requiring periodic pesticide applications.**

- b) **The "coastal trail segment" of the project terminates at the easterly property line of the project parcel. If it's to be eventually extended across the adjoining parcel as perhaps "planned" its extension then would traverse lands highly suitable for agriculture and thereby needlessly removing or substantially diminishing its production capability; we're talking about the impacts to land that has an extensive history in agricultural production (see 1943, 1974 USGS aerial photos, photo Exhibit B). If in the alternative the project trail segment were to terminate back at Pigeon Point Road (see Table 6, page 10.39 of the LCP, for "site specific recommendation" regarding beaches 40-42) the "coastal trail" could thence be extended within the right-of-ways of both this road and Highway 1 thus avoiding a substantial reduction in the agricultural potential of the adjoining parcel as well as the other extremely valuable agricultural lands contiguous to the south. If this adjoining parcel is in fact the intended future location of a parking area to service the parking needs of the now proposed development; the environmental assessment associated with the anticipated conversion of this agricultural parcel must also be**

appropriately incorporated within the environmental assessment of the currently proposed project which anticipates and predetermines its conversion – by law.

Under CEQA the reasonably foreseeable need for a vehicular parking facility adequate to accommodate the proposed development can not be skipped over and its environmental impact(s) assessment put off until a latter date; the foreseeable environmental impact(s) of any proposed development must either be mitigated to a level of insignificance or fully acknowledged through the development of an EIR wherein alternatives to the project as proposed may be fully explored – in this instance, conceivably reaching a conclusion therein that the project parcel itself is the best location upon which to accommodate the parking necessitated by the development resulting in a less “spread out facilities development” in the vicinity of the Lighthouse. Further comments on this and other inadequacies of the “Negative Declaration” prepared for the proposed project are included in CEQA comments beginning on page 9.

- c) The productivity of adjacent agricultural land is significantly diminished by the Applicant’s conversion of lands suitable for agriculture and failing (apparently refusing) to record a “deed restriction” (in conjunction with the project parcel’s conveyance to the Dept. of Parks and Recreation) that allows for the occasional right to appropriate closing of the proposed facilities at the request of the farm operator(s) on adjacent lands when the facilities might be adversely impacted by agricultural activities (such as the spraying of pesticides associated with the customary cultivation of the high value crops historically grown on Lighthouse Ranch).

Discussion:

Approval at the County level (by the Planning Commission) resulted in the placement of “Condition 15” on the project in order to determine if it’s possible to get the Applicant to agree to retroactively effect the unanimous recommendation by the County’s Agricultural Advisory Committee that approval and the permitting of the proposed development be made conditional upon the recordation of an appropriate deed restriction that would adequately provide for the proposed “trails to be closed when adjacent farm fields on Lighthouse Ranch are sprayed with hazardous chemicals” (see Exhibit C - e-mail between POST and County Staff, along with the Planning Commission’s *Recommended Findings And Conditions Of Approval*). The Agricultural Committees recommendation clearly sought to approve the proposed public access project while avoiding a significant reduction in the agricultural production potential of adjacent lands. Their recommendation sought to avoid making permanent the scraping of the agricultural potential of the Lighthouse Ranch land (now owned by the Applicant and which - contrary to any disclaimer – a significant portion of this ranch has already been taken out of production to facilitate the clearest path for the Applicant’s near term recreational development desires and designs (see photos ⁴²⁶, Exhibit B; depicting the area alongside Pigeon Point Road which has been removed

from production not to prevent erosion as claimed by the Applicant, but in order to accommodate all aspects of the proposed project including its default parking.

POST has on previous occasions executed a "deed restriction" with the State of California in order to effect the appropriate interfacing of public access with similar agricultural cropping that has historically occurred on the lands adjacent to the project parcel (see Exhibit D). What the Agricultural Committee recommended regarding the proposed project is nothing new. Back in the early days of POST, when its priorities extended beyond just buying land in the private domain for eventual conveyance to a public agency ("for permanent protection" as POST now says); back in the days when State ownership of the means of production was unthinkable, and when POST wanted to actually preserve the agricultural use, utility and value (for resale to a farmer) of land with similar public access and agricultural potential it then conveyed a conservation easement to the State Coastal Conservancy and retained the following right of closure for itself and all successor owners and its farm operators.

(b) Trail Closing. Each trail section shall be temporarily closed when one or more of the following events occur with respect to that section:

(1) If the fence on a section is broken, public access to that section shall be closed until the fence is repaired.

(2) If agricultural spraying or other necessary agricultural operations on the adjacent Agricultural Property could create a hazard for users of the trail, the trail shall be closed until the trail is safe for re-entry, at the request of the farm operator or Grantor, up to 15 times per year. (Conservation and Recreation Easement; 1989, POST Grantor, State Coastal Conservancy Grantee)

There's no loss for adequate language to effect principled conservation which incorporates the integration of coastal recreation with the fullest protection of its incomparable agricultural assets - or legal instrumentalities to affect enforceability; the problem is simply that POST no longer cares about protecting coastal agriculture and in private conversation have asserted that with the preempting of a subdivision of the agricultural lands they have done all that they have to or care to do for agriculture in the Pigeon Point region. If this turns out to be the case here, POST has used the pretext of "protecting agriculture" in order to acquire a "buy in" of public funders, but is now exercising its private will to eradicate all agriculture that has even the slightest possibility of getting in the way of unfettered recreation.

Consider:

November, 2004: San Mateo County Agricultural Advisory Committee makes its recommendation for a "deed restriction".

December, 2004: POST informs County Planning that this would be "problematic" for them.

January 14, 2005: POST conveys subject parcel, along with other Pigeon Point properties, to State Dept. of Parks and Recreation without the requested "deed restriction". The fact that POST retained an easement over the project property that allows it not only to construct the project facilities but also to operate them went undisclosed to the Planning Commission during its permit hearing while it was wondering/considering how it could retroactively effect the Ag Committees recommendation under the circumstances! POST did not disclose to the Commission that it still owns the right to close the proposed trails - the right to operate the trail/facilities was not conveyed to the Dept. of Parks and Recreation (see Exhibit F, the *Grant Deed*)

February 23, 2005: Planning Commission Public permit hearing of the project occurred on the first day after the conclusion of a 3 week public review period of the "Initial Study and Negative Declaration". The Commission's review of the permit application prompted a revision of

Coastal Commission Appeal

Pigeon Point, POST project

Sturgeon, San Gregorio

“Condition 15”, one of Planning Staff’s recommended conditions of approval (Which originally called for the closing of a nonexistent parking lot when needed to accommodate spraying!). Revised “Condition 15”:

The applicant, POST, shall arrange and coordinate a meeting(s) for the purpose of developing an agreement among the interested parties to reduce potential conflicts between public access and adjacent agricultural operations for the subject parcel(s) and future development. POST shall invite the following organizations and interested parties to the meeting: San Mateo County (SMC) Planning and Building Division, SMC County Counsel, SMC Parks and Recreation, SMC Department of Agriculture/Weights & Measures, SMC Agricultural Advisory Committee, SMC Farm Bureau, Committee for Green Foothills, State of California, and any other interested parties requested by the Planning Administrator. Prior to the final building permit inspection AND opening of the subject trails/kiosk project, the applicant, POST, and SMC Planning and Building Division shall report to the Planning Commission the results of the meeting(s). (underlining added)

June 7, 2005: A meeting called for in “Condition 15” occurred; officio representatives of the SMC Agricultural Advisory Committee were not in attendance. At the conclusion of this not altogether unproductive meeting, a POST’ representative announced that “*we have met and that satisfies the requirements of ‘condition 15’*”, a representative from County Planning chimed in announcing that the hearing of the appeal of this project by the Board of Supervisors had been set for 6/21/05, two weeks hence. The inadequacy of Mr. Power’s half-assed non-response to the Planning Commission’s directive was unfortunately not definitively dispatched by the Board of Supervisors at its hearing on the appeal.

June 21, 2005: San Mateo County Board of Supervisors hearing of the appeal. The Board’s deliberations focused exclusively on the resolution of the “conflict/closure issue” relative to “Condition 15”. A transcription of several pertinent portions of the hearing:

Walter Moore, Vice President of, and speaking for, POST:

“We would like to ask you to consider an amendment that allows for a more specific end product to be produced. Right now it just requires us to report back on that meeting. We would like to suggest additional language that would occur at the end of that condition which would state:” ***In addition, prior to opening the trail/kiosk project POST will submit to San Mateo County Planning an executed agreement between POST and the California Dept. of Parks and Recreation that addresses and reduces potential conflicts between public access and adjacent agricultural operations for the subject parcel and future trail development.*** “So we’re simply trying to say more than just a meeting on that issue prior to the opening of the trail we’re willing to do, and try to get an executed agreement on that.” (emphases added)

Supervisor Church asked: “Primarily we’re talking about - aren’t we talking about closing the trail during spraying?”

Mr. Eggemeyer acting Director of County Planning responded: “Exactly; . . . in regards to “Condition 15”, in the way the Planning Commission worded it, we held that meeting as Walter Moore had indicated . . . “

Supervisor Church: “But you’re going to come up with some specifics?”

Mr. Eggemeyer: “Exactly.”

Supervisor Church: “For example, closing the trail for a certain number of hours each time the adjacent farm owner sprays his crops correct?”

Mr. Eggemeyer: “Right.”

Motion subsequently passed by the Board of Supervisors: *To deny the appeal and certify the negative declaration and approve the planned agricultural permit and the only caveat would be*

to come back within 90 days with just some language on 'item No. 15' that sort of clarifies the issue between the agriculture, POST and State Parks.

Mr. Eggemeyer asked regarding this motion: "We are bringing back language indicating compliance with that condition?"

The Moving Supervisor: "Condition 15."

The Moving Supervisor and the President of the Board responded in unison: "Correct."

It should be remembered that the Agricultural Advisory Committee was not just trying to resolve conflict(s), as Mr. Moore suggests, but also to effect a mitigation of a recognized particular and significant conflict between the proposed public access and the continuation of the historical agriculture cropping pattern on Lighthouse Ranch in a manner that would **both** allow the access and preserve, without significant diminishment, the agricultural productivity of adjacent land.

At POST's arranged meeting, they and State Parks expressed their preference of resolving this particular conflict by utilizing State Park's generic solution of removing or relocating the agricultural activity that poses the conflict! It was explained to State Parks' representative that San Mateo County's Plans (General, Coastal, and Trail Plan, not to speak of the prioritization of rational/principled conservation as opposed to short term expediency) have it the other way around, buffers between agriculture and trails must be created by the moving/locating the proposed trail not by (re)moving the agriculture.

TRAIL DEVELOPMENT STANDARD FOR PROTECTING ADJACENT LAND USES

LCP Policy 10.28 Agricultural

- a. Locate access trails on agriculturally unsuitable land to the greatest extent possible. Where it is not possible to locate access on agriculturally unsuitable land, locate trails at the edges of fields, and/or along parcel lines consistent with the Conversion and Division Policies of the Agriculture Component.

Provide improvements and management in agricultural areas adequate to protect the productivity of adjacent agricultural lands. Include, but do not limit, improvements and management practices to the following: (1) limit the seasons of the year when public access is permitted by using seasonal barriers and signs and (2) develop access trails with fences or other buffers to protect agricultural lands.

State Parks' representative acknowledged that their generic "buffering" proposal would remove substantial amounts of the Ranch's and other valuable lands in the future from production – in other words, those that have recreation as their highest priority may in fact arrive at and submit an agreement to the Planning Commission after the facilities are constructed that does not make any (or the appropriate) effort to protect the utility/productivity of the adjacent agricultural soils but actually codify their preference to eliminate the agricultural utility instead, in order to make way for recreation.

Clearly POST's interpretation of "Condition 15" (first offered by Mr. Powers and then reiterated by Mr. Moore at the appeal hearing and undoubtedly reinforced by Mr. Eggemeyer's follow up question of the Board) is that POST is not been directed to come back to the Planning Commission before opening the proposed facilities with an executed agreement providing for the occasional closure of the proposed facilities in order to avoid the diminishment of the agricultural productivity of the adjacent lands (and within 90 days likewise bring back language

to the Board of Supervisors), but merely to report back to both authorities about its consultations/meetings to address conflict(s). Thus, a reasonable basis for the local approving authorities, or anyone else's, determination that the project will not result in a significant diminishment in the agricultural productivity of the adjacent land has not been demonstrated as required by LCP policy 5.8.a(3).

The inconsistency of the proposed project with this LCP policy and with the County's recently updated *Trails Plan* (and its certified "Program EIR"), contrary to County's assertion **does in itself present a CEQA issue** [CEQA Guidelines sections 15065(c) & 15130(d)]. Regardless of the "Initial Study" completed for the project and the subsequently prepared "Negative Declaration" proffers that the proposed project would "not significantly affect any existing or potential agricultural uses" (Initial Study, 3d); the approval process identified an adverse agricultural usage impact that the Planning Commission raised to a status of "significant and unmitigated" by directing that the Applicant must return to Planning Commission with its plan to address this impact **before the project is opened**. It is settled CEQA law, that the results of future negotiations, meetings and consultations cannot be utilized to compensate for or function as effective mitigation of a recognized significant environmental impact - simply for the reason, as in this instance, that their actual results (therefore their effectiveness) are unknown at the time of the approval of the project:

(Sundstrom v. County of Mendocino; 202 Cal.App.3d 296; Cal.Rptr. 352 [June 1988])

The requirement that the applicant adopt mitigation measures recommended in a future study is in direct conflict with the guidelines implementing CEQA. California Code of Regulations, title 14, § 15070, subdivision (b)(1) provides that if an applicant proposes measures that will mitigate environmental effects, the project plans must be revised to incorporate these mitigation measures "before the proposed negative declaration is released for public review . . . " (Italics added.) Here, the use permit contemplates that the project may be revised to incorporate needed mitigation measures after the final adoption of the negative declaration. This procedure, we repeat is contrary to law. (underlining added).

Under CEQA, the actual results of necessitated consultations not only have to be known but their end product if there be one that provides mitigation must be incorporated into the project not only before approval of a project but also before its/a "negative declaration" is released for public review. The certification of the proposed project's "Negative Declaration" is entangled in a fatal contradiction - since it was discovered/acknowledged that the project as proposed has significant adverse indirect and cumulative impacts on agriculture the mitigation of which is open-ended. A certified "Negative Declaration" for a project that it is known to have unmitigated significant detrimental impacts to important agricultural uses is incomplete, inadequate and vulnerable to successful challenge.

Further CEQA issues relating to other impacts of the proposed project on agriculture will be commented on after the following explication of the project's noncompliance with other Policies of the LCP pertinent to the site and the propose development.

2) The proposed project's noncompliance with the sensitive habitat component of the LCP:

Pertinent LCP policies:

7.1 Definition of Sensitive Habitats

Define sensitive habitats as any area in which plant or animal life or their habitats are either rare or especially valuable and any area which meets one of the following criteria: (1) . . . , (2) . . . , (3) coastal tide lands and marshes, (4) coastal and offshore areas containing breeding or nesting

sites and coastal areas used by migratory and resident water-associated birds for resting and feeding, (5) . . . , (6) . . . , (7) . . . and (8).

Sensitive habitat areas include, but are not limited to, riparian corridors, wetlands, marine habitats, sand dunes, sea cliffs, and habitats supporting rare, endangered, and unique species.

7.2 Protection of Sensitive Habitats

- a. Prohibit any land use or development which would have a significant adverse impact on sensitive habitat areas.
- b. Development in areas adjacent to sensitive habitats shall be sited and designed to prevent impacts that could significantly degrade the sensitive habitats. All uses shall be compatible with the maintenance of biologic productivity of the habitats.

7.3 Permitted Uses in Sensitive Habitats

- a. Permit only resource dependent uses in sensitive habitats. Resource dependent uses for riparian corridors, wetlands, marine habitats, sand dunes, sea cliffs and habitats supporting rare, endangered, and unique species shall be the uses permitted in Policies 7., 7.16, 7.23, 7.26, 7.30, 7.33, 7.44, respectively, of the County Local Coastal Program on March 25, 1986.

7.23 Permitted Uses in Marine and Estuarine Habitats

In marine and estuarine habitats, permit only the following uses: (1) nature education and research, (2) consumptive uses as provided for in the Fish and Game Code and Title 14 of the California Administrative Code, (3) fishing and (4) fish and wildlife management.

7.22 Designation of Marine and Estuarine Habitats

Designate all areas containing marine and estuarine habitats as requiring protection, specifically including but not limited to: Fitzgerald Marine Reserve, San Gregorio Estuary, Pescadero Marsh, Pigeon Point, Franklin Point, Ano Nuevo Point, and Ano Nuevo Island Reserve

7.5 Permit Conditions

- a. As part of the development review process, require the applicant to demonstrate that there will be no significant impact on sensitive habitats. When it is determined that significant impacts may occur, require the applicant to provide a report prepared by a qualified professional which provides: (1) mitigation measures which protect resources and comply with the policies of the Shoreline Access, Recreation/Visitor-serving Facilities and Sensitive Habitats Components, and (2) a program for monitoring and evaluating the effectiveness of mitigation measures. Develop an appropriate program to inspect the adequacy of the applicant's mitigation measures.

Discussion:

The proposed project includes the construction and provision of an access to the intertidal resources of Pigeon Point that are designated sensitive habitat by the LCP. The County's analysis and recommendations of the proposed development does not include a demonstration that, as a consequence of the development of this aspect of the project that there will not be attendant significant impact(s) upon this area's vulnerable tide land resources – there isn't a demonstration that the impacts that an ad lib access conceivably provides for harmful recreational activities and potential plundering opportunities are insignificant. The various "LCP" definitions of 'sensitive habitat' utilized throughout the Staff's report, including that

incorporated within the *Biological Assessment Report*, all omitted 'coastal tide lands' from inclusion in the definition! The only acknowledgement that Pigeon Point's sensitive habitat exists is in passing in the *Biological Assessment Report* where it is merely acknowledged as "listed specifically in the LCP as an important marine habitat area".

It is well know from the County's experience at its Fitzgerald Marine Reserve what even relatively supervised and monitored public access to similar intertidal resources can have. The "Shoreline Access Component" of the LCP mandates along with the demonstration of insignificant impact(s) (called for in 7. 5 above) that: *During the planning and design phase for access projects, conduct studies by a qualified person agreed upon by the County and the applicant to determine the least disruptive method of constructing access trails and associated improvements. Consider in the study and implement appropriate levels of development and management practices to protect resources.* (LCP Policy 10.25)

County Staff's and the Applicant's biologic report's silence as to the foreseeable adverse impacts of the proposed development upon the heretofore relatively inaccessible sensitive intertidal resource is in substantial noncompliance with LCP Policy and the Coastal Act. That "professional environmentalists" have oriented themselves vis a vis a/their development as if it didn't exist or is valueless and disposable is beyond incredible.

CEQA issues relating to the environmental "analysis" associated with the *Negative Declaration* prepared and certified for the proposed project(s).

Issues relating to agriculture:

- 1) **Unlawful segmentation of a larger project.** The proposed project's omission of a vehicular parking accommodation and the failure to analyze the environmental and agricultural impact(s) of this omission on high value adjacent agricultural lands; along with the failure to analyze the impacts of where the trail is designated to go on adjoining land (by the development of the proposed segment) once it leaves the property is an impermissible segmentation of the project under CEQA. For CEQA purposes, 'project' means: ". . . the whole of an action, which has a potential for resulting in either a direct physical change in the environment or a reasonably foreseeable indirect physical change in the environment, . . ." (CEQA Guidelines § 15378(a)); and all phases of the of the project planning, implementation and operation of a project must be considered in the initial study of a project (Guidelines § 15063 (a) (1); (*Bonzug v. LAFCO*, 13 Cal.3d 263, 283-284; 118 Cal.Rptr. 249)) ; and a "negative declaration" may be found defective if it mischaracterizes a proposed project and fails to acknowledge evidence showing significant effects might occur (*Christward Ministry v. Superior Court*, 184 Cal. APP.3d 180, 228 Cal.Rptr. 868)
- 2) **Unlawful deferment by the approving authorities of the ascertainment of the adequacy of potential adverse environmental impact mitigation until after approval and construction of the proposed project.** Under CEQA the permitting authorities must be fully aware of the potential environmental impact(s) emanating from their approval of a project before approving the project and certainly before certifying a

“negative declaration’ as complete”. (Sundstrom v. County of Mendocino, 202 Cal. App. 3d 296; 248 Cal.Rptr.352)

- 3) The “Negative Declaration” prepared for the project neglected to acknowledge the existence of a controlling “first tier” environmental documented relating to all trail development within the County (the certified Program EIR associated with the development and adoption of the San Mateo County Trails Plan), and thereby neglected noting the proposed project’s noncompliance with the direct, indirect and cumulative adverse agricultural impact mitigation measure included therein. This mitigation measure is not only directed at preventing direct and indirect impacts of trails on agricultural productivity but also their cumulative impact; i.e., the transformation of the County’s Planned Agricultural District over time into a de facto recreation district and states:

Proposed trails shall either be located to avoid prime agricultural lands and lands designated as suitable for agriculture or traverse such lands in a manner that does not result in interference with agricultural activities or substantially reduce the agricultural potential of those lands. Operators of active agricultural activities shall be consulted to identify appropriate routes on lands they cultivate. The agricultural activities and the agricultural potential of traversed lands shall be protected and buffered from trail user impacts by means of distance, physical barriers (e.g., sturdy fences), or other non-disruptive methods. Mitigation Measure 5.2.1 (see Exhibit E)

The concern of the local permitting authorities (i.e., “Condition 15”; that which has necessitated meetings and negotiations) is over previously identified significant adverse actual and cumulative impacts of the project on both Lighthouse Ranch agriculture, and agriculture regionally; the necessity of “Condition 15” and its called for negotiations/consultations alone establishes that the project’s significant environmental impacts to agriculture haven’t been adequately mitigated and thus the “Negative Declaration” certified by the County is legally inadequate.

Issues relating to sensitive habitat:

- The “Negative Declaration” prepared for the Project is incomplete.
 - a. It fails to identify and analyze the potential adverse environmental impacts of the project to the sensitive habitat/intertidal area at Pigeon Point.
 - b. The “Negative Declaration” was not circulated, as required, to the trustee agencies – State Lands Commission, Departments of Parks and Recreation and Fish and Game as well as the Marine Sanctuary.
- The “Negative Declaration” is inaccurate.
 - a. POST was not the owner, as erroneously indicated in the circulated “Negative Declaration”, at the time of its circulation.
 - b. Contrary to what is indicated on the map circulated with the “Negative Declaration”, POST was not and never has been the owner of the land upon which the “overlook” is proposed.

- The “Negative Declaration” is inconsistent with Mitigation Measure 5.5.3 of the “first tier” Program EIR prepared for the County’s Trail Plan, which states:

Biological resource assessment shall be conducted as specific trail routes outside of urban areas are implemented. Assessments shall be conducted by a qualified biologist and will include surveys for sensitive habitats and special status species in the appropriate seasons. These assessments will include recommendations to align the trail to avoid impacts to sensitive habitats, special status species, and heritage and significant trees. If any trail alignment may affect such resources, the County will consult with the appropriate agencies (i.e. the California Department of Fish and Game, U.S. Fish and Wildlife Service, and National Marine Fisheries.

This consultation has not taken place with conceivable recommendations resulting there from incorporated into both the project and its “Negative Declaration”.

- **For all the above reasons the “Negative Declaration” is therefore woefully inadequate.**

Conclusion:

I urge the Commission to find that the project as proposed is in substantial noncompliance with LCP Policies; and that the environmental analysis found in the “Negative Declaration” is so cursory and inadequate in its portrayal of the proposed development’s impacts upon its environmental setting that before the Commission can make an informed decision and appropriately consider the project as a responsible agency it must require that a subsequent EIR be prepared for the project.

If a responsible agency believes that the final EIR or negative declaration prepared by the lead agency is not adequate for use by the responsible agency, the responsible agency must either: (3) Prepare a subsequent EIR if permissible under Section 15162; (CEQA Guidelines, § 15096 (e)(3))

If after the project is approved, any of the conditions described in subsection (a) occurs a subsequent EIR or negative declaration shall only be prepared by the public agency which grants the next discretionary approval for the project, if any (CEQA Guidelines, § 15162(c)). One of the conditions indicated in (a) on which a subsequent EIR or negative declaration may be prepared after a project is approved is when: Substantial changes are proposed in the project which will require major revisions of the previous EIR or negative declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of a previously identified significant effects; (CEQA Guidelines, § 15162(a)(1))

There is a prima facie case that the project, as proposed, may have adverse environmental impacts that are clearly viewable as being unsusceptible to mitigation below a level of significance (because they haven’t been). Under CEQA, the public is not required to demonstrate that a proposed development will have significant adverse environmental impacts before the preparation of an EIR is required; the trigger threshold is if the development may have such impacts. The proposed project presents both unmitigated significant environmental impacts and noncompliance with key LCP polices directed at protecting coastal resources. Therefore the threshold for the necessity of an EIR under CEQA is presented; and the preparation of an EIR for the project is appropriately ordered by the Coastal Commission as a “responsible reviewing agency” and as the preeminent guardian of the coastal environment. Regardless of the Coastal Commission’s decision in this respect; I urge its finding that this proposed project has very substantial issues relating to its inconsistency with the San Mateo County Local Coastal

Program's Policies that were either unrecognized or unresolved in conjunction with its approval by the County' permitting authorities.

Sincerely,



Ron Sturgeon

cc: San Mateo County Agricultural Advisory Committee
San Mateo County Farm Bureau
San Mateo County Board of Supervisors
San Mateo County Planning Commission
Peninsula Open Space Trust
California Department of Parks and Recreation

SMC Staff's "findings" relating to Wilbur's Watch Trail at Pigeon Point Cleavelly Ranch for adoption by Board of Supervisors
6/10/03

The project has been reviewed against these criteria. The project complies with the site design criteria by minimizing alterations to the topography and vegetation of the site and does not encroach upon any sensitive habitats.

Exhibit
A

b. Criteria for the Conversion of Lands Suitable for Agricultural and Other Lands

The project site is located on soils which are designated as "Lands Suitable for Agriculture and Other Lands." The criteria for conversion of these lands is as follows:

- (1) *All agriculturally unsuitable lands on the parcel have been developed or determined to be undeveloped*

All the soils on the site are designated as "Lands Suitable." The site is characterized by severely rolling topography which does not lend itself to growing crops. The site is used for cattle grazing and could continue to be used for that purpose in the future.

- (2) *Continued or renewed agricultural use of the soils is not capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social and technological factors*

Only a small portion of the subject parcel will be converted to a non-agricultural use. The proposed parking lot and trail will not impede future economic use of the property, if the property owner chooses to use the land for grazing.

- (3) *Clearly defined buffer areas are developed between agricultural and non-agricultural uses*

As previously discussed, there is no active agriculture occurring on the parcel at the present. However, if the applicant were to run cattle on these parcels at some point in the future, it would be in their own best interest to erect fencing to separate trail users from the cattle.

- (4) *The productivity of any adjacent agricultural lands is not diminished, including the ability of the land to sustain dry farming or animal grazing*

The proposed parking lot and trail will not impact agricultural operations on adjacent parcels. The location of the parking lot is over 500 feet from the nearest property line. Cattle grazing is the primary agricultural use on adjacent parcels. The proposed parking lot and trail will not be in conflict with these continuing uses.

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CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

11. Use hand tools (e.g., chain saws) for the clearing of all vegetation within the project footprint, to remove cover and make the area less attractive to San Francisco garter snake.
12. The applicant shall conduct a pre-construction meeting at the project site and have a biological monitor inform construction personnel prior to beginning work, about the potential presence of San Francisco garter snake and California red-legged frog, their protected status, and that if one is observed, all work in the immediate vicinity of the siting should cease until the animal leaves of its own accord. Exh. 1.1
↑
13. The applicant shall have a biological monitor on site during all phases of the project. If snakes/frogs are observed, work is to cease and USFWS should be contacted for advice on procedure.
14. The applicant shall post interpretive signs along the hiking trail or at the parking lot describing the sensitive wildlife species and its habitat, and stating that collecting or harassing the wildlife is prohibited. The posting of the signs shall be confirmed by Planning staff prior to a final sign off of the project.
15. To avoid construction-related impacts to San Francisco garter snakes, the applicant is required to install fencing around the entire parking lot work area to completely exclude the animals. The work area must be completely enclosed by a snake-proof barrier so that snakes cannot enter from any side. The fencing will consist of 0.9 m. (0.56 feet) high, 0.31-centimeter (cm) (0.12 inches) mesh filter fabric or hardware cloth. The bottom of the fence will be buried to a depth of approximately 60 mm (2.36 inches). One-way funnel traps (which allow any snakes within the enclosed work area to escape) will be placed every 3.0 m (9.8 feet) along the fence. The funnels will be located close to the ground, with the 0.3 m (0.98 feet) opening tapering to 30 mm (1.18 inches). Once the fencing is installed, workers should clear off the vegetative cover within the fencing in 1.5 - 3.0 m (4.9 - 9.8 feet) wide strips by hand each day, or as necessary. Removal of fencing can commence after all construction is completed. Planning Staff shall confirm that the fencing has been erected prior to commencement of construction activities.
16. As owner of the agricultural parcels on the west side of Highway 1, the applicant shall require any farmer who leases this land to notify POST when soil fumigants, pesticides, etc. will be applied to these fields when such applications require a buffer which would overlap the proposed parking lot. When such notice is received by POST, they shall close the parking lot for the necessary time to meet State and/or Federal health and safety guidelines. If POST should sell the parcels on the west side of Highway 1, then they shall record this requirement as a deed restriction on the applicable deed.

PIGEON POINT PARKING & BUFFERS

EXHIBIT B



PHOTO No. 1 Over flow parking onto (6/20/05, at noon)
Pigeon Point Road

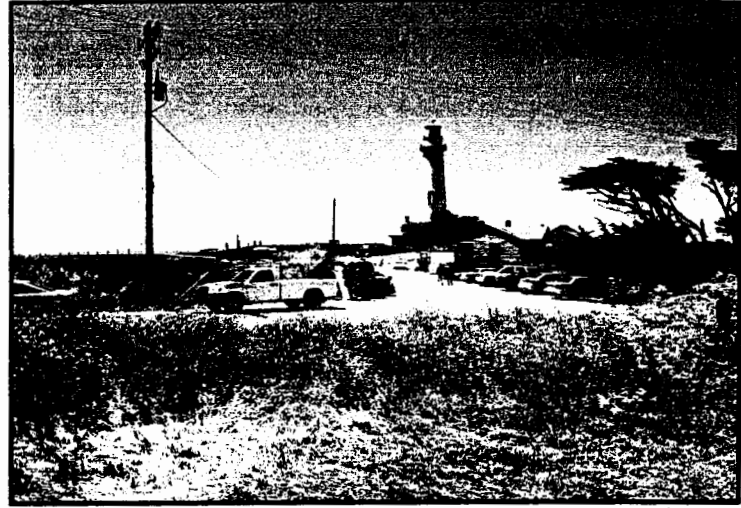


PHOTO No. 2 Over flow parking onto (6/20/05, at noon)
Pigeon Point Road



PHOTO No. 3 Over flow parking onto (7a.m., 7/20/05)
Pigeon Point Road



PHOTO No. 4 25' - 50' removed from (6/20/05)
production by the applicant
in order to create buffer for proposed project



PHOTO No. 5 Extensive area along eastern (6/20/05)
extension of Pigeon Point Road nearest the
proposed project area that is not in (taken out of?) Sprouts
A-2-SMC-05-069 (POST TRANS)



PHOTO No. 6 200'+ removed from production (6/20/05)
along northern extension of Pigeon
Point Road along future coastal trail extension?
EXHIBIT 2 Pg 20 of 35

PIGEON POINT TIDELANDS



PHOTO No. 7 High Tide (6/22/05)



PHOTO No. 8 Low Tide (7/10/05)



PHOTO No. 9 High Tide (6/22/05)



PHOTO No. 10 Low Tide (7/10/05)



PHOTO No. 11 Low Tide (7/10/05)
A-2-SMC-05-009 (POST Trails)



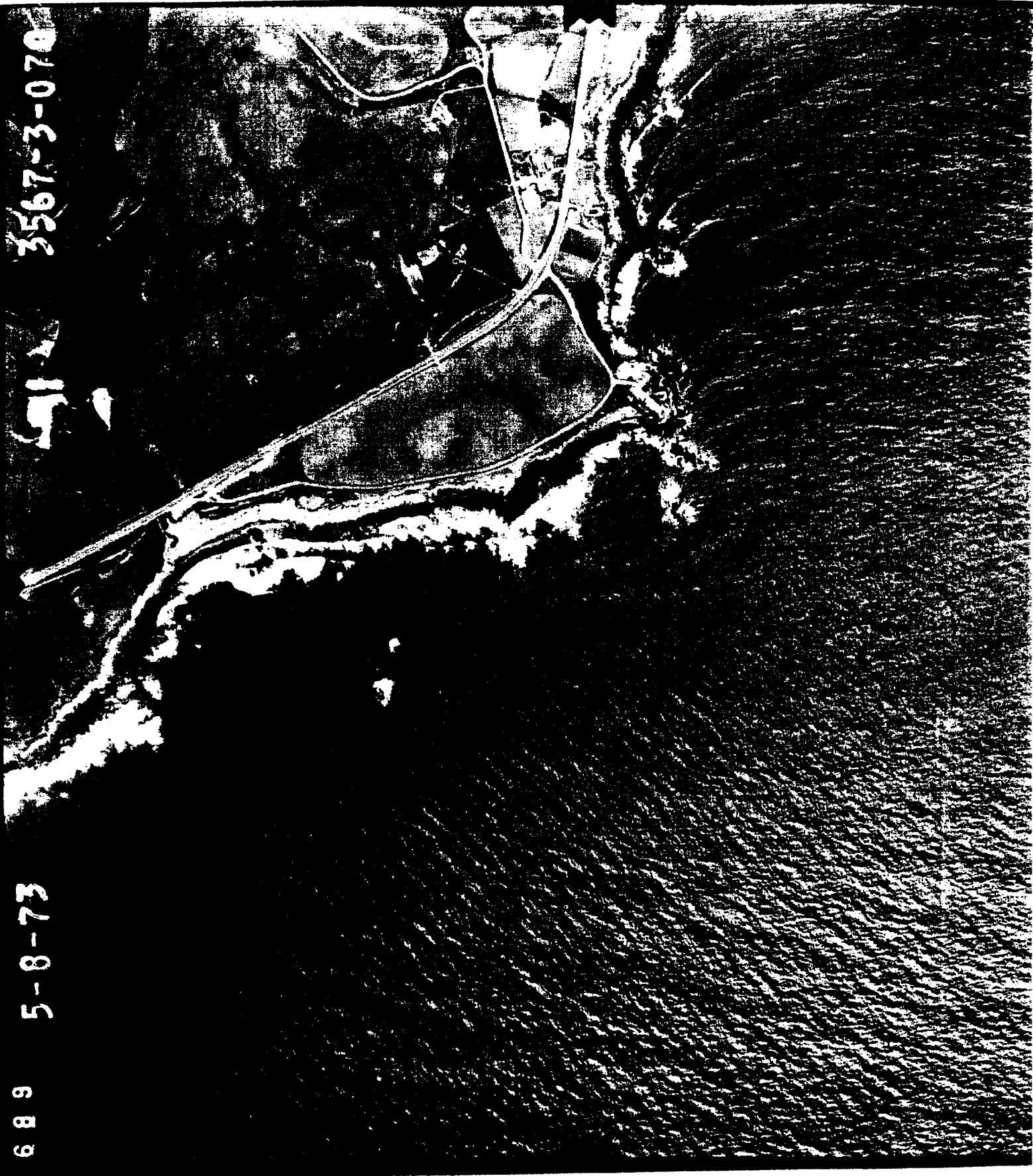
PHOTO No. 12 Low Tide (7/10/05)
Exhibit 2 Pg 2 of 33

B-2B-162

1943

689 5-8-73

3567-3-070



1973



1974

From: "Jeffrey Powers" <jpowers@openspacetrust.org>
To: "Olivia Boo" <OBoo@co.sanmateo.ca.us>
Date: 12/9/2004 11:47:58 AM
Subject: Trails Ag Committee issues

Exhibit
C

Hi Olivia,

I'm having problems with my e-mail and am not sure you got this message I sent earlier this morning - when you receive this please just reply quickly to say you have it - Thanks.

Here's a summary of the current situation with the Ag Advisory Committee:

* They met in October and were in general agreement with the project with the exception of one item. Committee members were unanimous that a deed restriction be included that would allow for the trails at Mel's Lane Trail Project to be closed when the adjacent farm fields on Lighthouse Ranch are sprayed with hazardous chemicals. I told them that POST would be agree to have this included as a condition of the permit, as we agreed to for Wilbur's Watch, but it would be problematic to include any changes to the deed given our intention to transfer this property to State Parks early next year. They were not swayed by this in the least and will be recommending the deed restriction be put in place as part of our Planning Commission hearing and approval process.

* However, State Parks would be totally willing to put an interagency agreement in place with the county whereby Parks would close the trail whenever necessary to accommodate spraying. This could be a recorded doc. Given all of the conditions that would need to be included on notification times and procedures, etc, it makes a lot more sense that this be a separate legal document than a deed reservation.

* The preferred option would be having the requirement be included as a condition of any permit issued by the Planning Commission.

* The second preferred alternative would be having this side agreement between State Parks and the County occur concurrently with the Planning Commission Hearing process (i.e. have State Parks staff at the hearing to explain what they would be willing to do)

Let me know your thoughts on this after you talk with your legal staff.

Jeff Powers

Cloverdale Project Manager

Peninsula Open Space Trust

Exhibit
C

avoided and buffer zones shall be established. In order to minimize disturbance to native vegetation, and to minimize the footprint of construction in native plant areas and stake trail location, review with the botanist/biologist is required. Said review may require revision of the plans to avoid impacts. To minimize disturbance to wildlife, the applicant shall schedule construction activities to avoid breeding seasons and shall restrict public visitation if special-status wildlife is breeding. To minimize degradation of marine habitats, the applicant shall implement Best Management Practices erosion control and minimize noise and construction impacts on marine wildlife.

12. The applicant shall execute a recordable agreement with the County that all prime and agricultural land and other land suitable for agriculture which is not needed for recreational development or for the protection and vital functioning of a sensitive habitat will be permanently protected for agriculture.
13. When legally feasible, the applicant shall agree to lease the maximum amount of agricultural land to active farm operators on terms compatible with the primary recreational and habitat use.
14. The applicant shall work with the State Department of Fish and Game and State Water Quality Board to determine appropriate mitigation measures and obtain a letter from these State agencies confirming the State's satisfaction of appropriate mitigation measure. This letter shall be submitted to the Planning Division.
15. The applicant, POST, shall arrange and coordinate a meeting(s) for the purpose of developing an agreement among interested parties to reduce potential conflicts between public access and adjacent agricultural operations for the subject parcel(s) and future trail development. POST shall invite the following organizations and interested parties to the meeting: San Mateo County (SMC) Planning and Building Division, SMC County Counsel, SMC Parks and Recreation, SMC Department of Agriculture/Weights & Measures, SMC Agricultural Advisory Committee, SMC Farm Bureau, Committee for Green Foothills, State of California, and any other interested parties requested by the Planning Administrator. Prior to the final building permit inspection AND opening of the subject trails/kiosk project, the applicant, POST, and SMC Planning and Building Division shall report to the Planning Commission the results of the meeting(s).
16. The owner shall comply with all disability access requirements deemed applicable by the Building Inspection Section prior to issuance of a building permit.

Building Inspection Section

17. The applicant shall apply for a building permit for the observation deck and the kiosk.

Page 15 of 82

Exhibit 2

STATE OF CALIFORNIA - OFFICIAL BUSINESS
Document recorded by first American Title Insurance Co.
pursuant to Gov't. Code Sec. 8140

RE	
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Recorded at the request
of and when recorded
return to:

State Coastal Conservancy
1330 Broadway, Suite 1100
Oakland, CA 94612

89131579

RECORDED AT REQUEST OF

FIRST AMERICAN TITLE INSURANCE CO.
SAN MATEO COUNTY TITLE DIVISION

1989 OCT 2 P 12:59

WARREN S. DENN, RECORDER
SAN MATEO COUNTY
OFFICIAL RECORDS

GRANT OF CONSERVATION AND RECREATION EASEMENT
(North Cowell Property)

89131579

THIS GRANT OF CONSERVATION AND RECREATION EASEMENT is made this
28th day of July, 1989, by PENINSULA OPEN SPACE TRUST
("Grantor"), a California nonprofit corporation, having an address at 3000 Sand
Hill Road, Building 4, Suite 135, Menlo Park, California 94025, to the STATE OF
CALIFORNIA, acting by and through the Public Works Board, with the consent of
the CALIFORNIA STATE COASTAL CONSERVANCY ("Grantee"), a public
agency of the State of California, having an address at 1330 Broadway, Suite
1100, Oakland, California 94612.

WITNESSETH:

WHEREAS, Grantor is the owner in fee simple of certain real property (the "North
Cowell Property") in San Mateo County, California, consisting of approximately
697 acres as shown on Exhibit A and more particularly described in Exhibit B(1)
(both of which exhibits are attached hereto and incorporated herein by this
reference), of which the westerly and southerly 77 acre portion as shown on
Exhibit A and more particularly described in Exhibit B2 (which exhibit is attached
hereto, and incorporated herein by this reference), shall be subject to the terms of
this Easement and is hereinafter referred to as the "Recreation Property"; and

WHEREAS, the Recreation Property possesses natural, scenic, historical, open
space, and recreational values (collectively "conservation values"); and

WHEREAS, the Recreation Property has over 7,900 feet of ocean frontage
including beaches, cliffs, and tidepools, as well as riparian corridors and other
sensitive natural areas; and

WHEREAS, the Recreation Property is located on the coastal terrace, and its
northern boundary is approximately 900 feet south of southerly boundary of the
city limits of the City of Half Moon Bay, California; and

pg 27
Exhibit 2

Exhibit
D

North Cowell Conservation and Recreation Easement

(3) Grantee shall assure that a public or nonprofit agency (the "Operating Entity") with sufficient assets, management capability, resources, and liability insurance to carry out the obligations of this Easement, has accepted in writing the responsibility and liability for operation and maintenance of the trail and beach areas.

(4) Trash cans and toilet facilities shall be provided and maintained where any parking lot is located.

(5) One parking area (meeting all governmental requirements) for not less than 10 cars or more than 20 cars shall be developed for the North Beach Trail and another similar parking lot shall be developed for the South Beach Trail as identified in Exhibit G.

(b) Trail Closing. Each trail section shall be temporarily closed when one or more of the following events occur with respect to that section:

(1) If the fence on a section is broken, public access to that section shall be closed until the fence is repaired. The cost and burden of repair shall be on the party causing the break. If broken by the public or by forces of nature, the Operating Entity is responsible for repairs. If broken by Grantor, or a successor in interest or a tenant of Grantor, Grantor or its successor in interest is responsible for repairs. All repairs shall be completed within one week of discovery by or receipt of notice by the responsible party. If the responsible party fails to repair the fence within one week, the other party shall have the right, but not the obligation, to complete the repair and bill the responsible party. The responsible party shall promptly reimburse such cost.

(2) If agricultural spraying or other necessary agricultural operations on the adjacent Agricultural Property could create a hazard for users of the trail, the trail shall be closed until the trail is safe for re-entry, at the request of the farm operator or Grantor, up to 15 times per year.

(3) If the Operating Entity for any portion of the Recreation Property determines that, as a result of trail use, significant damage is occurring to the the Recreation Property through erosion, disturbance of wildlife, or removal of natural vegetation, that Operating Entity may close the section of trail through the affected area until the damage is corrected.

(c) Termination of Agricultural Use. When the conditions set forth in paragraphs 2(b) and 6(a) are satisfied, and public use of the Recreation Property commences, non-recreational uses, including agricultural use shall cease on those portions of the Recreation Property which have been

Exhibit #2
pg 8 of 33



Planning and Building Division

County of San Mateo

Mail Drop PLN122 · 455 County Center · 2nd Floor · Redwood City
California 94063 · Telephone 650/363-4161 · Fax 650/363-4849

Exhibit E

Please reply to: **Sam Herzberg**
(650) 363-1823

December 20, 2000

Subject: Countywide Trails Plan/Program EIR

On November 22, 2000, the Planning Commission took public testimony, reviewed the Park Department's Countywide Trails Plan/Program EIR and made recommendations to the Board of Supervisors regarding certification of the Environmental Impact Report, consistency with the General Plan and replacement of the Trail Plan adopted in 1991, as follows:

- A. Adopted Resolution Number 3157 recommending that the Board of Supervisors certify the Program Environmental Impact Report, with the following revisions.

Mitigation Measure 5.2.1 on page 5.2.4 should be revised to read:

Proposed trails shall **either** be located to avoid **prime agricultural lands and lands designated as suitable for agriculture or traverse such lands in a manner that does not result in interference with agricultural activities or substantially reduce the agricultural potential of those lands.** ~~farmland where possible or to traverse prime farmland in a manner that will not result in interference with agricultural activities.~~

Operators of **active** agricultural activities shall be consulted to identify appropriate routes on lands they cultivate. **The agricultural activities and the agricultural potential of traversed lands shall be protected and buffered from trail user impacts by means of distance, physical barriers (i.e. sturdy fences), or other non-disruptive methods.**

Mitigation Measure 5.5.3 on page 5.5.14, which establishes Design Guidelines 1.3.1.4 should be revised to read:

Biological resource assessment shall be conducted as specific trail routes outside of urban areas are implemented. Assessments shall be conducted by a qualified biologist and will include surveys for sensitive habitats and special status species in the appropriate seasons. These assessments will include recommendations to align the trail to avoid impacts to sensitive habitats, special status species, and heritage and significant trees. ~~If avoidance~~

Sam Herzberg
 December 20, 2000
 Page 2

~~is not possible, the assessment will propose mitigation to reduce impacts to these resources to a level below significance.~~ If any trail alignment may affect such resources, the County will consult with the appropriate agencies (i.e. the California Department of Fish and Game, U.S. Fish and Wildlife Service, **and National Marine Fisheries Service**) to ensure that impacts will be avoided or mitigated as adequate. The report will also discuss the trail's consistency with relevant local and regional conservation and recovery plans, ~~including~~ (i.e. the Recovery Plan for Serpentine Species (1998) and the San Bruno Mountain Habitat Conservation Plan). **If mitigation is not feasible to a level of insignificance the trail should not be constructed at that location. Conflicts between trail alignment and resource protection shall be decided in favor of resource protection.**

- B. Adopted Resolution Number 3158 recommending that the Board of Supervisors adopt the Mitigation Monitoring and Reporting Program.
- C. Adopted Resolution Number 3159 recommending that the Board of Supervisors approve a General Plan Amendment amending Policies 6.37 and 6.38 of the Parks and Recreation Chapter of the General Plan, respectively, to: (1) support and encourage the development of the San Francisco Bay Trail, and (2) establish the San Mateo County Trails Plan as a General Plan Implementation Program.
- D. Recommended that the Board of Supervisors find that the 1999 Trails Plan is consistent with the County General Plan.
- E. Recommended that the Board of Supervisors adopt the 1999 Trails Plan to replace the Trails Plan adopted in 1990 as an Implementation Program of the General Plan, with the following revision:

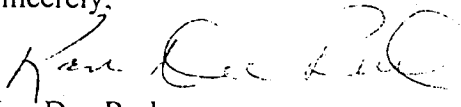
Policy 6.4.1 on page 3.0.16 should be revised to read:

"Locate, design and develop trail routes with sensitivity to their potential environmental, recreational, and other impacts on adjacent lands, private property, and utilities. If the location of a trail is proposed in a sensitive habitat or wetland and trail use is not allowed by the San Mateo County Local Coastal Program or State Coastal Act, then an alternative trail route ~~should~~ **must** be considered."

Sam Herzberg
December 20, 2000
Page 3

For information and questions regarding the Countywide Trails Plan/Program EIR, please contact Sam Herzberg at 650/363-1823.

Sincerely,



Kan Dee Rud
Planning Commission Secretary
Pcd1122k.kr.doc

cc: Public Works
Building Inspection
Environmental Health
Assessor
George Cattermole
Ron Sturgeon
Jean Rusmore

Exhibit

2005-025035

OLD REPUBLIC TITLE COMPANY
08:00am 02/16/05 ES Fee: NO FEE
Count of pages 14
Recorded in Official Records
County of San Mateo
Warren Slocum
Assessor-County Clerk-Recorder



DATE 0353000 2BBA
WHEN RECORDED MAIL TO

STATE OF CALIFORNIA
Department of Parks and Recreation
Office of Acquisition and Real Property Services
1 Capitol Mall, Suite 500
Sacramento, CA 95814

OFFICIAL STATE BUSINESS - EXEMPT FROM RECORDING FEES
PURSUANT TO GOVT. CODE SECTION 27383 AND DOCUMENTARY
TRANSFER TAX PURSUANT TO REVENUE AND TAXATION CODE SECTION 11922.

to transfer tax easement
SPACE ABOVE THIS LINE FOR RECORDER'S USE

Grant Deed

Agency: Department of Parks and Recreation
Project: Pigeon Point Light Station SHP/Pigeon Point Properties
Parcel(s): Parcels A44101,02, 03 DGS Parcel # 10183

APN(S): 086-260-100 (portion), 086-280-100 (portion), 086-300-100 (portion), 086-300-160 County of San Mateo

PENINSULA OPEN SPACE TRUST, a California nonprofit public benefit corporation

hereby GRANTS to THE STATE OF CALIFORNIA the following described real property situated in the State of California, County of San Mateo:

See Exhibit "A"
consisting of six (6) pages attached hereto
and by this reference made a part hereof.

The foregoing grant is made subject to the reservation of the Public Trail Easement set forth on Exhibit B, consisting of six (6) pages attached hereto and incorporated herein by this reference.

Dated: January 14, 2005

GRANTOR:

PENINSULA OPEN SPACE TRUST,
a California nonprofit public benefit corporation

By: Walter T. Moore
Walter T. Moore
Vice President

EXHIBIT B

Public Trail Easement

1. **Easement.** Grantor hereby reserves unto itself and its heirs, successors and assigns, a non-exclusive easement (the "Public Trail Easement") encumbering the property described on Schedule 1 attached hereto (the "Easement Area") to construct, use, allow for the public use of, operate, maintain, repair, replace and remove a network of public trails and related improvements, including, without limitation, the improvements described in Paragraph 3 below (the "Trail Improvements").

2. **Construction Permit.** Grantee shall provide Grantor a construction permit for the purposes of constructing the Trail Improvements as described below. Upon completion of construction of the Trail Improvements, Grantor agrees to restore impacted areas outside of the Easement Area to their pre-construction condition.

3. **Trail Improvements.** The Trail Improvements are as follows:

(a) Public trails, pathways and walkways identified as Trails 1 through 5 on Schedule 1 attached hereto (collectively, the "Trails"), which trails may include both paved and unpaved pathways.

(b) A recessed circular bench or similar structure for the purpose of recognizing individuals and entities that have made donations or other contributions to Grantor, located within the circular area labeled as Trail 5 on Schedule 1 attached hereto.

(c) Benches and other seating throughout the Trails.

(d) Such signage as Grantor reasonably requires in connection with the Trail Improvements, including, without limitation, signs to provide directions and other information to the public and signs identifying Grantor's name and providing information regarding Grantor's business and the improvements constructed on the Easement Area. All signage must comply with Grantee's sign standards or be approved in writing by the Grantee. If written approval is requested by Grantor, Grantee shall have thirty (30) days to respond to said request. If no written response is received by Grantor within thirty days, such request shall be deemed approved.

(e) Information kiosks, fencing, shelters and other structures related to the Trails and the Trail Improvements.

(f) A stairway providing access to the shoreline fronting the Easement Area and such other improvements, such as a wooden platform, as might be necessary or appropriate to provide safe and convenient access to such shoreline.

4. **Maintenance.** Grantor shall maintain to an acceptable health, safety and welfare standard the Easement Area and the Trail Improvements, and, in the event that Grantor or its successors or assigns abandon the Trail Improvements, then Grantee or its successors and assigns shall be provided with an appropriate quitclaim deed of the easement area and shall have the right to remove all such Trail Improvements and bill Grantor for the expense of such removal. The Grantee shall not be responsible for maintenance, removal, or repair of any Trail

RECEIVED

JUL 25 2005

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

Joe Muzzi
Muzzi Ranch, Inc.
P.O. Box 57
Pescadero, CA 94060

July 21, 2005

Susan Craig
CA Coastal Commission
725 Front Street, Suite 300
Santa Cruz, CA 95060

Dear Susan:

I am writing to offer my comments on Peninsula Open Space Trust's (POST) proposed trail project next to Pigeon Point Lighthouse.

My family has leased the land directly across from Lighthouse and the proposed trail project for over 40 years. During this time we have never encountered any problems with our farming operations and the numerous people that park and visit the Lighthouse. Our typical crops require no more than five applications of chemicals each year and require no more than 100 feet of buffer for application. We contract with a farm chemical company that applies these chemicals during evening and early morning hours (10:00 p.m. - 6:00 a.m.) when there is less chance of wind.

I do not see any problems from the proposed trail as currently planned. The current parking lot has never been a problem to my farming operation and I do not believe this project will cause any parking problems. In addition, POST and State Parks will be signing an MOU that will allow the trail to be closed up to 15 times each year if I provide 24 hour notice to State Parks and State Parks will be responsible for closing and opening the trail. I support these conditions of the MOU.

Please call me at 650-619-0305 if you have any questions.

Sincerely,


Joe Muzzi



July 21, 2005

Alex Michalko
Pennisula Open Space Trust
amichalko@openspacetrust.org

**ENVIRONMENTAL
SERVICES
AGENCY**

Agricultural
Commissioner/ Sealer of
Weights & Measures

Animal Control

Cooperative Extension

Fire Protection

LAFCo

Library

Parks & Recreation

Planning & Building

Dear Ms Michalko:

In response to your public information request, we have queried our pesticide use database for pesticide use records for the Lighthouse Ranch property with the assessor parcel numbers 086280100 and 086300110. By comparing GIS information from the County website with our pesticide permit maps we determined that you were referring to property that is operated by Muzzi Ranch and that has been assigned a Permit/Operator Identification Number 4100309, Site Identification Number Site 3 in our pesticide permit and use reporting records.

We maintain pesticide records for the current year plus three previous years. Pesticide use records are available for the years 2003, 2004 and 2005 to date. We checked both our computer database and the 2002 Muzzi Ranch office file and determined that no pesticide use was reported for this site during all of 2002.

The data is contained in three Text files, LTHSE05.txt, LTHSE04.txt and LTHSE03.txt which are ASCII comma delimited format and in an Excel file LIGHTHOUSEPURS.xls which has three worksheets (one for each year). There is no charge for computer generated public information requests.

If I can be of further assistance, please contact me at (650)-363-4700 or via email at mmastrangelo@co.sanmateo.ca.us.

Sincerely,

Maria Mastrangelo
Deputy Agricultural Commissioner/Sealer

Enclosure

AGRICULTURAL COMMISSIONER/SEALER OF WEIGHTS & MEASURES DIVISION

728 Heller Street • P.O. Box 999 • Redwood City, CA 94064-0999 • Phone (650) 363-4700 • FAX (650) 367-0130

A-2-SMC-05-009 (POST Trails)

Exhibit 4 Pg | of 4

SAN MATEO COUNTY DEPARTMENT OF AGRICULTURE

PERMIT	LOCATION (SITE ID #)	COMMODITY	DATE APPLIED	TREATED AMT (AREA METHOD TREATED)	UNITS	PESTICIDE	E.P.A REGISTRATION NUMBER		USE		TIME OF APPLICATION IN MILITARY TIME (2400 CLOCK)		SECTION	TOWNSHIP	RANGE	MERIDIAN
							FIRM NO	PESTCODE	ALPHA	AUXCODE	QUANTITY	UNITS				
4100309	SITE 3	BEAN UNSPECIFD	6/11/2003	G	4 A	BASAGRAN HERBICIDE	7969	45 AA	0	1 GA	0	0	0	4 09S	05W	M
4100309	SITE 3	BEAN UNSPECIFD	6/11/2003	G	4 A	FIRST CHOICE BREAK-THRU	11656	50095 AA	0	0.09 GA	0	0	0	4 09S	05W	M
4100309	SITE 3	LEEK	5/30/2003	G	5 A	QUADRI FLOWABLE FUNGICIDE	10182	415 ZB	0	0.47 GA	0	0	0	4 09S	05W	M
4100309	SITE 3	LEEK	5/30/2003	G	5 A	MUSTANG 1.5 EW INSECTICIDE	279	3126 ZA	0	0.16 GA	0	0	0	4 09S	05W	M
4100309	SITE 3	LEEK	5/30/2003	G	5 A	FIRST CHOICE BREAK-THRU	11656	50095 AA	0	0.12 GA	0	0	0	4 09S	05W	M
4100309	SITE 3	BEAN UNSPECIFD	6/25/2003	G	4 A	CLEAN CROP THIOLUX DRY FLOWABLE- MICRONI	55947	48 AA	34704	32 LB	0	0	0	4 09S	05W	M
4100309	SITE 3	BEAN UNSPECIFD	6/25/2003	G	4 A	VALENT ORTHENE 75 S SOLUBLE POWDER	59639	26 AA	0	5.32 LB	0	0	0	4 09S	05W	M
4100309	SITE 3	BEAN UNSPECIFD	6/25/2003	G	4 A	FIRST CHOICE BREAK-THRU	11656	50095 AA	0	0.09 GA	0	0	0	4 09S	05W	M
4100309	SITE 3	BEAN UNSPECIFD	7/25/2003	G	4 A	CLEAN CROP THIOLUX DRY FLOWABLE- MICRONI	55947	48 AA	34704	32 LB	0	0	0	4 09S	05W	M
4100309	SITE 3	BEAN UNSPECIFD	7/25/2003	G	4 A	FIRST CHOICE BREAK-THRU	11656	50095 AA	0	0.09 GA	0	0	0	4 09S	05W	M
4100309	SITE 3	BEAN UNSPECIFD	7/25/2003	G	4 A	PROVADO 1.6 FLOWABLE	3125	457 AA	0	0.11 GA	0	0	0	4 09S	05W	M

SAN MATEO COUNTY DEPARTMENT OF AGRICULTURE

LOCATION PERMIT (SITE ID #)	COMMODITY	DATE APPLICATION	TREATED METHOD AMT	UNITS	PESTICIDE	EPA REGISTRATION NUMBER		USE		TIME OF APPLICATION IN MILITARY TIME (2400 CLOCK)		SECTION	TOWNSHIP	RANGE	MERIDEN
						FIRM NO	PESTCODE	ALPHA	AUXCODE	QUANTITY	UNITS				
4100309 SITE 3	BRUSSEL SPROUT	1/22/2004 G		14 A	K-PAM HL	5481	483 AA	0	198 GA	0	0	4 09S	05W	M	
4100309 SITE 3	BEAN UNSPECIFD	4/2/2004 G		5 A	PROVADO 1.8 FLOWABLE	3125	457 AA	0	14 GA	0	0	4 09S	05W	M	
4100309 SITE 3	BEAN UNSPECIFD	4/2/2004 G		5 A	MUSTANG 1.5 EW INSECTICIDE	279	3128 ZA	0	0.18 GA	0	0	4 09S	05W	M	
4100309 SITE 3	BEAN UNSPECIFD	4/2/2004 G		5 A	FIRST CHOICE BREAK-THRU	11656	50095 AA	0	0.12 GA	0	0	4 09S	05W	M	
4100309 SITE 3	BEAN UNSPECIFD	4/8/2004 G		4 A	MUSTANG 1.5 EW INSECTICIDE	279	3128 ZA	0	12 GA	0	0	4 09S	05W	M	
4100309 SITE 3	BEAN UNSPECIFD	4/8/2004 G		4 A	PROVADO 1.8 FLOWABLE	3125	457 AA	0	11 GA	0	0	4 09S	05W	M	
4100309 SITE 3	BEAN UNSPECIFD	4/8/2004 G		4 A	FIRST CHOICE BREAK-THRU	11656	50095 AA	0	0.09 GA	0	0	4 09S	05W	M	
4100309 SITE 3	BRUSSEL SPROUT	4/14/2004 G		15 A	LORSBAN 4E-HF	62719	220 AA	0	3.75 GA	0	0	4 09S	05W	M	
4100309 SITE 3	BRUSSEL SPROUT	4/14/2004 G		15 A	MUSTANG 1.5 EW INSECTICIDE	279	3128 ZA	0	0.47 GA	0	0	4 09S	05W	M	
4100309 SITE 3	BRUSSEL SPROUT	6/9/2004 G		15 A	METASYSTOX-R 2 ORNAMENTAL INSECTICIDE	10163	220 AA	0	3.75 GA	0	0	4 09S	05W	M	
4100309 SITE 3	BRUSSEL SPROUT	6/9/2004 G		15 A	DIAZINON AG 500	66222	9 ZA	0	1.88 GA	0	0	4 09S	05W	M	
4100309 SITE 3	BRUSSEL SPROUT	6/9/2004 G		15 A	BRAVO ULTREX	50534	201 AA	0	21 LB	0	0	4 09S	05W	M	
4100309 SITE 3	BRUSSEL SPROUT	6/9/2004 G		15 A	NUTRIENT-BUFFER SPRAY 11-4-8	11656	50022 AA	0	0.47 GA	0	0	4 09S	05W	M	
4100309 SITE 3	BRUSSEL SPROUT	6/9/2004 G		15 A	DU PONT AVAUNT INSECTICIDE	352	597 AA	0	52.5 OZ	0	0	4 09S	05W	M	
4100309 SITE 3	BRUSSEL SPROUT	7/9/2004 G		7 A	PROVADO 1.8 FLOWABLE	3125	457 AA	0	0.2 GA	0	0	4 09S	05W	M	
4100309 SITE 3	BRUSSEL SPROUT	7/9/2004 G		7 A	DIAZINON AG 500	66222	9 ZA	0	0.88 GA	0	0	4 09S	05W	M	
4100309 SITE 3	BRUSSEL SPROUT	7/9/2004 G		7 A	FIRST CHOICE BREAK-THRU	11656	50095 AA	0	0.16 GA	0	0	4 09S	05W	M	
4100309 SITE 3	BRUSSEL SPROUT	7/13/2004 G		8 A	PROVADO 1.8 FLOWABLE	3125	457 AA	0	0.23 GA	0	0	4 09S	05W	M	
4100309 SITE 3	BRUSSEL SPROUT	7/13/2004 G		8 A	DIAZINON AG 500	66222	9 ZA	0	1 GA	0	0	4 09S	05W	M	
4100309 SITE 3	BRUSSEL SPROUT	7/13/2004 G		8 A	FIRST CHOICE BREAK-THRU	11656	50095 AA	0	0.19 GA	0	0	4 09S	05W	M	

SAN MATEO COUNTY DEPARTMENT OF AGRICULTURE

PERMIT (SITE ID #)	LOCATION	COMMODITY	DATE APPLIED	TREATED		PESTICIDE	EPA REGISTRATION NUMBER			USE QUANTITY	UNITS	TIME OF APPLICATION IN MILITARY TIME (2400 CLOCK)		SECTION	TOWNSHIP	RANGE	M
				METHOD	AMT		UNITS	PESTCODE	ALPHA			AUXCODE	MILITARY HRS				
4100309	SITE 3	BRUSSEL SPROUT	4/2/2005	G	19 A	LORSBAN 4E-HF	220	AA	0	4.75	GA	9	45	4	09S	05W	M
4100309	SITE 3	BRUSSEL SPROUT	4/2/2005	G	19 A	MUSTANG 1.5 EW INSECTICIDE	3126	ZA	0	0.59	GA	9	45	4	09S	05W	M
4100309	SITE 3	BRUSSEL SPROUT	4/15/2005	G	15.5 A	DIAZINON AG 500	9	ZA	0	1.94	GA	6	0	33	08S	05W	M
4100309	SITE 3	BRUSSEL SPROUT	4/15/2005	G	15.5 A	FURY 1.5 EW INSECTICIDE	3126	AA	0	0.48	GA	6	0	33	08S	05W	M
4100309	SITE 3	BRUSSEL SPROUT	5/3/2005	G	15.5 A	LORSBAN 50-W	221	AA	10163	31	LB	6	0	3	09S	05W	M
4100309	SITE 3	BRUSSEL SPROUT	5/3/2005	G	15.5 A	MSR SPRAY CONCENTRATE	220	ZC	0	3.88	GA	6	0	3	09S	05W	M
4100309	SITE 3	BRUSSEL SPROUT	5/3/2005	G	15.5 A	MUSTANG INSECTICIDE	3126	ZB	0	0.48	GA	6	0	3	09S	05W	M
4100309	SITE 3	BRUSSEL SPROUT	6/1/2005	G	15.5 A	DU PONT AVAUNT INSECTICIDE	597	AA	0	54.25	OZ	2	30	3	09S	05W	M
4100309	SITE 3	BRUSSEL SPROUT	6/1/2005	G	15.5 A	DIAZINON AG 500	9	ZA	0	1.94	GA	2	30	3	09S	05W	M
4100309	SITE 3	BRUSSEL SPROUT	6/1/2005	G	15.5 A	MSR SPRAY CONCENTRATE	220	ZC	0	3.88	GA	2	30	3	09S	05W	M
4100309	SITE 3	BRUSSEL SPROUT	6/1/2005	G	15.5 A	BRAVO WEATHER STIK	188	AA	10182	3.88	GA	2	30	3	09S	05W	M

**MEMORANDUM OF UNDERSTANDING
AMONG THE PENINSULA OPEN SPACE TRUST, THE
COUNTY OF SAN MATEO AND THE CALIFORNIA
DEPARTMENT OF PARKS AND RECREATION RELATING TO
AGRICULTURAL USE ON LANDS IMMEDIATELY ADJACENT
TO PIGEON POINT LIGHT STATION**

WHEREAS The California Department of Parks and Recreation (State Parks) owns Pigeon Point Light Station and surrounding coastal access areas located on Pigeon Point Road in San Mateo County, Pescadero, California; and

WHEREAS The Peninsula Open Space Trust (POST) retains an easement on a 2.79 acre property (APN: 086-300-160) near the Light Station which is part of the coastal access areas owned by State Parks; and,

WHEREAS the easement owned by POST on APN: 086-300-160 allows the construction and maintenance of a trail and trail improvements on the property (the trail), and there are other agricultural resources in the area; and,

WHEREAS, POST also owns other agricultural lands adjacent to Pigeon Point Light Station located on Pigeon Point Road (APN: 086-280-100 and 086-300-110),

WHEREAS, the County of San Mateo (County) owns lands designated for agricultural use immediately south of Pigeon Point Light Station (APN: 086-300-140); and,

THEREFORE, in order to facilitate the continued operation of the agricultural lands on the adjacent property (APN: 086-280-100 and 086-300-110) and avoid potential future conflicts between typical agricultural practices on those lands and the use of the trail on APN: 086-300-160, POST and State Parks agree to the following:

1. The agricultural operator on the agricultural lands adjacent to the trail (APN: 086-280-100, 086-300-110, and 086-300-140) can have the trail closed when necessary to comply with regulatory requirements related to the use of agricultural chemicals on the adjacent fields. In order to have the trail closed to accommodate application of agricultural chemicals the agricultural operator will coordinate with State Parks by notifying them at least 24 hours in advance of the trail closure and State Parks will close the trail for the necessary time period. The agricultural operator can have the trail closed for up to 15 times each calendar year.
2. The agricultural operator on the adjacent fields is encouraged to use all measures necessary to minimize the impacts of agricultural chemical applications. This includes the use of least toxic chemicals that can accomplish the pest/weed control desired and the timing of operations to avoid conflicts.
3. Any conflicts that arise between the agricultural operations and use of the trail will be mediated by the San Mateo County Agricultural Advisory Committee.

4. This MOU may not be amended without written consent from all parties, POST, State Parks and the County.

PENINSULA OPEN SPACE TRUST

Audrey Rust, President

Date

CALIFORNIA DEPARTMENT OF PARKS AND RECREATION

Dave Vincent, District Superintendent

Date

COUNTY OF SAN MATEO

Richard Gordon
Board of Supervisors

Date

Susan Craig

From: Chet Bardo [cbard@parks.ca.gov]
Sent: Tuesday, July 26, 2005 2:54 PM
To: scraig@coastal.ca.gov
Subject: MOU Agreement

Susan,

This e-mail is to confirm California State Parks intention to enter into a MOU regarding the agricultural spraying of crops located along Pigeon Point road in Pescadero, Ca.

We have reviewed the proposed language submitted by POST and find it to be acceptable. We anticipate signing the final document when it has been completed.

If you have any questions please give me a call.

Sincerely,

Chet M. Bardo
Ca. State Parks
(650) 726-8823

Chet M. Bardo
Park Superintendent
San Mateo Coast Sector
Santa Cruz District
95 Kelly Avenue
Half Moon Bay, CA 94019
(650) 726-8823
(650) 726-8816 Fax
E-mail:cbard@parks.ca.gov

Sent from a Blackberry Wireless Handheld

Susan Craig

From: Lisa Grote [LGrote@co.sanmateo.ca.us]
Sent: Thursday, July 28, 2005 10:27 AM
To: scraig@coastal.ca.gov
Cc: Mary Raftery; Marcia Raines; jpowers@openspacetrust.org
Subject: MOU for Pigeon Point Light Station



MOU (3) Red-line
7-05.doc

Dear Susan,

This e-mail confirms that staff from the San Mateo County Planning and Building Division intend to recommend that the Board of Supervisors approve the attached resolution and sign the attached MOU regarding the agricultural spraying of crops located along Pigeon Point Road in Pescadero, CA. The County staff has reviewed the proposed language in the attached documents and finds it to be acceptable.

Please call me at: (650) 363-1861 if you have questions or comments about these documents.

Thank you very much.

Sincerely,

Lisa Grote
Community Development Director
San Mateo County

Susan Craig

From: Chet Bardo [cbard@parks.ca.gov]
Sent: Tuesday, July 26, 2005 3:03 PM
To: scraig@coastal.ca.gov
Subject: Information Kiosk

Susan,

This e-mail confirms State Parks intention to include interpretive and educational information in the information kiosk located at the Mel's Lane project at Pigeon Point.

We are currently working on a comprehensive project to identify all of the thematic elements of the Lightstation and the important natural coastal resources in the area. Displays are being designed that assist our visitors in understanding the protection and include the preservation of these great, but sensitive resources.

If I can be of further assistance, please call.

Sincerely,

Chet M. Bardo
Ca. State Parks
(650) 726-8823

Chet M. Bardo
Park Superintendent
San Mateo Coast Sector
Santa Cruz District
95 Kelly Avenue
Half Moon Bay, CA 94019
(650) 726-8823
(650) 726-8816 Fax
E-mail:cbard@parks.ca.gov

Sent from a Blackberry Wireless Handheld