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Staff:	Yair Chaver - SC
Staff Report:	1/22/2016
Hearing Date:	2/11/2016

APPEAL STAFF REPORT SUBSTANTIAL ISSUE DETERMINATION

Appeal Number:	A-3-MRB-16-0002
Applicants:	Greg and Jeanne Frye
Appellants:	Barry F. Branin, Linda Stedjee
Local Government:	City of Morro Bay
Local Decision:	Coastal Development Permit application number CP0-419 approved by the Morro Bay Planning Commission on October 6, 2015, and upheld by the Morro Bay City Council on December 8, 2015.
Location:	3420 Toro Lane (APN 065-091-022), immediately fronting Morro Strand State Beach, in the northern portion of the City of Morro Bay.
Project Description:	Construction of a 1,580-square-foot, single-story, single-family dwelling with an attached 552-square-foot garage and an approximately 242-square-foot open patio; relocation of an existing informal beach access trail; and related improvements on an existing 10,019-square-foot vacant beach front lot.
Staff Recommendation:	No Substantial Issue

Important Hearing Procedure Note: This is a substantial issue only hearing. Testimony will be taken only on the question of whether the appeal raises a substantial issue. (*See generally* 14

CCR § 13115.) Generally and at the discretion of the Chair, testimony is limited to three minutes total per side. Please plan your testimony accordingly. Only the Applicant, persons who opposed the application before the local government (or their representatives), and the local government shall be qualified to testify. (*Id.* § 13117.) Others may submit comments in writing. (*Id.*) If the Commission determines that the appeal does raise a substantial issue, the de novo phase of the hearing will occur at a future Commission meeting, during which the Commission will take public testimony. (*Id.* § 13115(b).)

SUMMARY OF STAFF RECOMMENDATION

The City of Morro Bay approved a coastal development permit (CDP) authorizing a new 1,580-square-foot single-family residence with an attached 552-square-foot garage and a roughly 242-square-foot open patio on a 10,019-square-foot lot immediately fronting Morro Strand State Beach, located at 3420 Toro Lane in the City of Morro Bay. The subject parcel is located within a string of beachfront residential lots and is zoned Single-Family Residential (R-1), and is bounded by a small unnamed stream to the north, coastal dune habitat to the west and northwest, and an existing single-family residence to the south. The site also contains an unofficial, unmaintained beach access path crossing the undeveloped lot that is used by the general public to access the beach from Toro Lane.

The Appellants contend that the City-approved project violates numerous Morro Bay Local Coastal Program (LCP) policies, including those that protect public access and environmentally sensitive habitats, and those that ensure new development is located in areas safe from coastal hazards. Specifically, with respect to public access, the Appellants contend the removal of the existing public access trail would deprive many Morro Bay residents of the only safe and usable beach access route within walking distance of their homes, and the City's required replacement trail on the site does not provide the "same or comparable benefits as existed before closure" of the existing path, as required by the LCP. An Appellant also claims the project should be set back farther from the adjacent stream, and that the project's geologic report erred in its conclusions regarding the location and erosion rates of the coastal and canyon bluffs. Finally, the Appellant contends that the Applicant's tsunami wave run-up analysis should have used more conservative wave height assumptions.

After reviewing the local record, Commission staff has concluded that the approved project does not raise a substantial issue with respect to the project's conformance with the City of Morro Bay LCP. The local action is factually and legally supported by the record, and the project complies with applicable LCP requirements. The City-approved project authorizes a residential structure located on an appropriately zoned, vacant parcel adjacent to a string of existing beachfront homes. With respect to public access, while the City's approval allows the structure to be located on an existing informal, unmaintained trail (thus extinguishing at least part of the trail), the City conditioned its approval to require the Applicant to construct a replacement trail, and required that this trail be available and open for general public beach access usage on the same site and in roughly the same configuration as required by the LCP. The replacement public beach pathway will be similar in location, configuration, and utility as the existing pathway, and the City's action affirmatively requires the trail to remain open and usable for general public beach access usage. In addition, this area of Morro Bay includes other extensive existing public beach access

offerings to reach Morro Strand State Beach, including public parking and beach access trails at the Northpoint Natural Area, at the Morro Strand State Beach Campground entrance, and along Beachcomber Drive. The City's approval provides a relocated beach access trail in an area surrounded by extensive and adequate existing nearby public beach access. Even if the City had *not* required the Applicant to provide equivalent replacement public beach access, adequate alternative public access to Morro Strand State Beach exists in abundance in the immediate vicinity of this project. Thus, the City's action does not raise a substantial issue with respect to the LCP's public beach access requirements.

With respect to sensitive habitat protection, the City appropriately set back the residence from coastal dune and stream corridor areas, required their restoration and permanent protection via a conservation easement, and consulted with all required resource agencies on habitat protection issues. The subject parcel is located in a beachfront residential community, and represents infill development between existing developed parcels located both upcoast and downcoast. Thus, the City appropriately ensured the residence will be sited and designed to avoid all sensitive habitats while still allowing a residential use. The City-approved project does not raise a substantial issue with respect to the LCP's sensitive habitat and stream protection requirements.

Finally, with respect to coastal hazards, the proposed residence is located within a beachfront residential community set back from a broad sandy beach atop a coastal bluff. The Applicant's geologic reports identified the site to be stable for development, identified the bluff edge to be seaward of the properly line, and identified the erosive potential for both the bluff and the adjacent stream corridor to be low. The Commission's Senior Coastal Engineer and Senior Geologist have both reviewed the project materials, including the Applicant's geologic and wave run-up analyses, and both concurred with the conclusions of the analyses, including with respect to the bluff location and delineation, site stability, and required stream corridor and development setbacks. As such, both the Commission's Senior Coastal Engineer and Senior Geologist concluded that the residence, as approved by the City, was safely sited and designed and did not raise a substantial issue with respect to the LCP's coastal hazards requirements.

In short, Commission staff has worked extensively with both the Applicant and the City to proactively identify and address potential coastal resource concerns during the local CDP review process, and the result is a City-approved project that does not raise substantial LCP conformance issues.

As a result, staff recommends that the Commission determine that the appeal contentions do not raise a substantial LCP conformance issue, and that the Commission decline to take jurisdiction over the CDP for this project. The single motion necessary to implement this recommendation is found on page 5 below.

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APPENDICES

Appendix A – Substantive File Documents

EXHIBITS

Exhibit 1 – Project Location Map and Site Photos
Exhibit 2 – Approved Project Plans
Exhibit 3 – Existing Path
Exhibit 4 – Final Local Action Notice (FLAN)
Exhibit 5 – Appeal Text
Exhibit 6 – City of Morro Bay Letter of Intent to Accept and Open the OTD
Exhibit 7 – Applicant’s Preliminary Access Trail Feasibility Study
Exhibit 8 – Site Plan Showing Required Buffers
Exhibit 9 – USFWS and CDFW Communications re. Reduced Stream Setback
Exhibit 10 – Coastal Commission Staff Engineer and Geologist Review
Exhibit 11 – Applicant Correspondence
Exhibit 12 – Appellant Correspondence

I. MOTION AND RESOLUTION

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 Commission will not hear the application de novo and that the local action will become final and effective. To implement this recommendation, staff recommends a **YES** vote on the following motion. Passage of this motion will result in a finding of No Substantial Issue and the local action will become final and effective. The motion passes only by affirmative vote of a majority of the Commissioners present.

***Motion:** I move that the Commission determine that Appeal Number A-3-MRB-16-0002 raises no substantial issue with respect to the grounds on which the appeal has been filed under Section 30603. I recommend a yes vote.*

***Resolution to Find No Substantial Issue.** The Commission finds that Appeal Number A-3-MRB-16-0002 does not present a substantial issue with respect to the grounds on which the appeal has been filed under Section 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.*

II. FINDINGS AND DECLARATIONS

The Commission finds and declares as follows:

A. PROJECT DESCRIPTION AND LOCATION

The City of Morro Bay-approved project authorizes a new 1,580-square-foot single-family residence with an attached 552-square-foot garage and a roughly 242-square-foot open patio on a 10,019-square-foot lot immediately fronting Morro Strand State Beach, located at 3420 Toro Lane (APN 065-091-022) in the City of Morro Bay (see **Exhibit 1** for the project location map and **Exhibit 2** for the approved project plans). The subject parcel is located within a string of beachfront residential lots and is zoned Single-Family Residential (R-1), and is bounded by a small unnamed stream to the north, coastal scrub dune habitat to the west and northwest, and an existing single-family residence to the south.

The site also contains an unofficial, unmaintained beach access path crossing the undeveloped lot from east to west that connects Toro Lane to the beach (see **Exhibit 3** for a photo of the existing beach path). Historic photos indicate that the path has been in existence since the 1940s and has subsequently been used by the public as an informal, unmaintained beach access trail. The City-approved project allows for the construction of the single-family dwelling on part of the existing trail (see **Exhibit 2**), thus necessarily extinguishing at least part of the trail. However, the City conditioned its approval to require the Applicant to construct and offer to dedicate a relocated Public Access Trail on the property at issue for continued public beach access use. Specifically, Planning Condition 18 requires the Applicant to offer to dedicate an area for an unimproved trail (the Public Access Trail) through the Applicant's property. Per Planning Conditions 19 through 21, the path design must be reviewed and approved by the City prior to issuance of a building permit to construct the residence, with the Applicant required to build and open the trail for

public use prior to final construction signoff. The trail is to be open to the public from one hour before dawn until one hour after sunset, with appropriate signage at both trail ends to inform the public of the access trail.

B. CITY OF MORRO BAY CDP APPROVAL

The City of Morro Bay Planning Commission approved coastal development permit (CDP) CP0-419 by a 4-1 vote on October 6, 2015. The Planning Commission-approved project was appealed to the City Council on October 9, 2015 by Linda Stedjee and on October 13, 2015 by Barry Branim.

On December 8, 2015, the Morro Bay City Council denied the appeals and approved the project. The City's notice of final local action was received in the Coastal Commission's Central Coast District office on January 6, 2016 (**Exhibit 4**). The Coastal Commission's ten-working day appeal period for this action began on January 7, 2016 and concluded at 5pm on January 21, 2016. Two valid appeals of the City's CDP decision were received during the appeal period (see below and see **Exhibit 5**).

C. APPEAL PROCEDURES

Coastal Act Section 30603 provides for the appeal to the Coastal Commission of certain CDP decisions in jurisdictions with certified LCPs. The following categories of local CDP decisions are appealable: (a) approval of CDPs for development that is located (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 tide line 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, and (3) in a sensitive coastal resource area; or (b) for counties, approval of CDPs for development that is not designated as the principal permitted use under the LCP. (*See* Pub. Res. Code § 30603(a)(1)-(4).) In addition, any local action (approval or denial) on a CDP for a major public works project (including a publicly financed recreational facility and/or a special district development) or an energy facility is appealable to the Commission. (*Id.* § 30603(a)(5).) This project is appealable because it is located between the first public road and the sea, and because it is located within 300 feet of the beach and the coastal bluff.

The grounds for appeal under Section 30603 are limited to allegations that the development does not conform to the certified LCP or to the public access policies of the Coastal Act. (*Id.* § 30603(b).) Section 30625(b) of the Coastal Act requires the Commission to consider a CDP for an appealed project de novo unless a majority of the Commission finds that "no substantial issue" is raised by such allegations.¹ (*Id.* § 30625(b)(2).) Under Section 30604(b), if the

¹ The term "substantial issue" is not defined in the Coastal Act or in its implementing regulations. In previous decisions on appeals, the Commission has generally been guided by the following factors in making substantial issue determinations: the degree of factual and legal support for the local government's decision; the extent and scope of the development as approved or denied by the local government; the significance of the coastal resources affected by the decision; the precedential value of the local government's decision for future interpretations of its LCP; and, whether the appeal raises only local issues as opposed to those of regional or statewide significance. Even when the Commission chooses not to hear an appeal, appellants nevertheless may obtain judicial review of a

Commission conducts the de novo portion of an appeals hearing and ultimately approves a CDP for a project, the Commission must find that the proposed development is in conformity with the certified LCP. If a CDP is approved for a project that is located between the nearest public road and the sea or the shoreline of any body of water located within the coastal zone, 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. This project is located between the nearest public road and the sea and thus this additional finding would need to be made (in addition to a finding that the proposed development is in conformity with the Morro Bay certified LCP) if the Commission were to approve the project following a de novo hearing.

The only persons qualified to testify before the Commission on the substantial issue question are the Applicant, persons opposed to the project who made their views known before the local government (or their representatives), and the local government. (14 CCR §13117.) Testimony from other persons regarding substantial issue must be submitted in writing. (*Id.*) Any person may testify during the de novo CDP determination stage of an appeal, if there is one.

D. SUMMARY OF APPEAL CONTENTIONS

The Appellants contend that the City-approved project violates numerous Morro Bay Local Coastal Program (LCP) policies, including those that protect public access and environmentally sensitive habitats, and those that ensure new development is located in areas safe from coastal hazards. Specifically, with respect to public access, the Appellants contend the removal of the existing public access trail would deprive many Morro Bay residents of the only safe and usable beach access route within walking distance of their homes. Furthermore, the Appellants contend that the relocated path would not provide the “same or comparable benefits as existed before closure” of the existing path, as required by Land Use Plan (LUP) Shoreline Access and Recreation Policy 1.07, including because it would be too narrow and steep to allow individuals with mobility challenges and families with strollers and beach wagons to use. Finally, since the City’s conditions do not require the Applicant, the City, or any other public agency to maintain the trail the Appellants contend that the trail will likely eventually be washed away and never rebuilt, meaning that the trail will be only temporary in nature.

With respect to sensitive habitat protection, an Appellant contends that the City-approved project violates LUP Environmentally Sensitive Habitat Areas Policy 11.14² because the project’s allowed reduction in stream buffer width is not the minimum necessary to allow for the residence. The Appellant states that the buffer between the residence and the stream should be wider than the LCP-required 25-foot minimum.

With respect to coastal hazards, an Appellant contends that the Project may be in violation of LUP Hazards Policy 9.02³ because the project’s geologic report erred in its conclusions

local government’s CDP decision by filing a petition for a writ of mandate pursuant to the Code of Civil Procedure, Section 1094.5. (*See* Pub. Res. Code § 30801.)

² The Appellant cites LUP Policy 11.04 in the appeal; however, LUP Policy 11.14 addresses stream buffers.

³ The Appellant cites Coastal Act Section 30253 in the appeal; however, that section of the Coastal Act is not the standard of review for this appeal. Instead, the LCP’s hazards policies that implement Coastal Act Section 30253 (i.e. LUP Hazards Policy 9.02), is the applicable standard of review for this CDP and appeal.

regarding the location and erosion rates of the coastal and canyon bluffs. Finally, this Appellant contends that the Applicant's tsunami wave run-up analysis should have used more conservative wave height assumptions.

See **Exhibit 5** for the full appeal text.

E. SUBSTANTIAL ISSUE DETERMINATION

1. Public Access

Applicable Coastal Act and Morro Bay Local Coastal Program Policies

The applicable Morro Bay LCP policy regarding the protection of existing public access pathways is:

Morro Bay LUP Shoreline Access and Recreation Policy 1.07

Consistent with Coastal Act Section 30211, development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization. Such access shall be protected through permit conditions on permitted development, including easements, dedications or continued accessway maintenance by a private or public association. Existing identified trails or other access points shall not be required to remain open provided that they are consolidated or relocated to provide public access on the same site and provides the same or comparable access benefits as existed before closure and meets all other open access and other applicable access and recreation policies of the LUP.

Coastal Act Section 30211 reads:

Coastal Act Section 30211

Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.

LUP Policy 1.07 incorporates language from Section 30211 of the Coastal Act and expressly prohibits development from interfering with the public's right of access to the sea, whether acquired by use or legislative authorization. This LUP policy requires the protection of existing coastal access paths, and only allows their closure if the path is relocated on the same site to provide comparable public coastal access.

The project site contains an existing informal, unmaintained trail that traverses the property and provides public access from Toro Lane to the adjacent Morro Strand State Beach. According to the City, the path may have been constructed during World War II as a path for tanks to access the beach. Since then, it has been used as a public beach access trail, including as evidenced by a list of 75 individuals who state that they have used or currently use the path to access the beach (see **Exhibit 5**). Thus, the path constitutes an existing identified trail for purposes of LUP Policy 1.07. While the City's approval authorizes the construction of a single-family residence on

portions of the existing trail, per Policy 1.07, the City conditioned its approval to require the Applicant to construct a new replacement public beach access trail adjacent to the existing one.

Specifically, the City's approval requires the Applicant to offer to dedicate (OTD) an easement for an area to be used for an unimproved public access trail through the project site. The OTD must be recorded, and the City must review and approve the Applicant's final trail design configuration, prior to issuance of a building permit. While the condition states that the Applicant shall offer to dedicate the area for the trail, the City has indicated that it will accept the easement and open the trail commensurate with the issuance of final occupancy⁴ (see **Exhibit 6** – letter from Scot Graham, Community Development Manager, stating as such). Furthermore, the conditions require the path to be open for general public beach access usage from one hour before sunrise to one hour after sunset, and such information must be posted at both trail ends using standard coastal access signage.

Appellants' Contentions

The Appellants contend that the City's approval to construct a single-family dwelling on portions of an established and well-used access path does not preserve the public's right to access the coast. The Appellants maintain that the approval fails to comply with LCP policies that require the protection of existing coastal accessways, and that require provision of comparable public access when existing access is closed or removed. Specifically, the Appellants argue that the required relocated path would not provide the "same or comparable benefits as existed before the closure" of the existing path, as required of LUP Policy 1.07, because the relocated path would be narrower than the existing path (at only two feet wide, as opposed to the existing path's width of approximately three feet), and would be constructed on a steeper hill than the current trail location. The Appellants argue that the existing path is on a flat, relatively-level surface and descends gradually to the beach, and that it is the only path in the vicinity that provides beach access to individuals with mobility challenges or with strollers and beach wagons.

The Appellants also argue that since Planning Condition 18 (see **Exhibit 3**) expressly states that the City, Applicant, or other public entity shall not be required to maintain the trail, the trail may never actually be opened. In essence, since neither the Applicant nor the City is required to maintain the relocated path, the Appellants contend that the path may either never be opened, or it would never be reopened should it become damaged or erode away. The Appellants are concerned that the path would erode since it is located in a stream corridor/drainage ditch on a steeper gradient than the existing path.

Analysis

The City's approval requires the Applicant to construct and offer to dedicate an area for a relocated public beach access trail. This area of Morro Bay presently already includes extensive existing public beach access offerings to reach Morro Strand State Beach, including free public parking and beach access trails at the Northpoint Natural Area located immediately upcoast from the project site along Toro Lane, as well as the parking lot and trails at the Morro Strand State

⁴ Issuance of final occupancy is a City administrative step indicating that the construction has met all required standards, requirements, and conditions and is thus safe for potential occupancy; it does not mean actual occupancy of the residence.

Beach Campground entrance, located just downcoast of the project site along Trinidad Street. There are also free public on-street parking and beach trails along adjacent Beachcomber Drive. Thus, the City's approval provides a relocated beach access trail in an area surrounded by extensive, comparable, and adequate existing nearby public beach access. The approved trail will be located on the same parcel as the proposed residence, immediately adjacent to the existing trail, and continue to provide public access from Toro Lane to Morro Strand State Beach. While the conditions require the City to review and approve final path site plans, the Applicant's preliminary Access Trail Feasibility Study (Study) has identified that the site can safely accommodate a two-to-four-foot wide path with minimal grading and site disturbance (see **Exhibit 7**). With respect to path steepness, the Study further shows that the existing path ranges from two-to-five feet in width (and not the blanket three-foot width the Appellant claims), and has slope gradients ranging from 8.5% to 18%. The relocated path will similarly range from two-to-four feet in width, with slopes ranging from 6% to 18%. Thus, the relocated path will continue to provide access from Toro Lane to the beach, will be located on the same parcel, and will be roughly the same width and even less steep than the existing trail.

Furthermore, as discussed previously, the City has affirmatively stated its intent and willingness to accept the public access easement and ensure that the pathway remains open and usable for general public beach access. The easement must be accepted and the final path configuration approved by the City prior to issuance of a building permit. The Applicant must construct the path, and the City must open it for general public use, prior to final construction signoff (i.e. the "Issuance of Final Occupancy"). Since the Applicant's geologic and coastal hazards reports have concluded that the site is stable and safe for the construction of both the residence and the pathway (the conclusions of which both the City's and the Commission's Geologist and Coastal Engineer concur - see discussion of these points subsequently in this report), the Appellants' claim that replacement access path will erode away (resulting in illusory, temporary replacement access) does not raise a substantial issue with respect public access under LUP Policy 1.07.

Therefore, the Commission finds that the required relocated public beach pathway will be similar in location, configuration, and utility as the existing pathway, and that the City's action affirmatively requires the trail to remain open and usable for general public beach access usage. The relocated trail will provide comparable access benefits as the existing pathway, as required by the LCP. Furthermore, the City's approval provides a relocated beach access trail in an area surrounded by extensive and adequate existing nearby public beach access. Thus, the City's action does not raise a substantial issue with respect to LUP Policy 1.07's requirement for the provision of comparable replacement beach access.

2. Environmentally Sensitive Habitat

Applicable LCP Policies (in relevant part)

Morro Bay LUP Environmentally Sensitive Habitat Areas Policy 11.01

Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on such resources shall be allowed within such areas.

...

Morro Bay LUP Environmentally Sensitive Habitat Areas Policy 11.14*A minimum buffer strip along all streams shall be required as follows:*

- (1) a minimum buffer strip of 100 feet in rural areas;*
- (2) a minimum buffer strip of 50 feet in urban areas.*

If the applicant can demonstrate that the implementation of the minimum buffers on previously subdivided parcels would render the subdivided parcel unusable for its designated use, the buffer may be adjusted downward only to a point where the designated use can be accommodated, but in no case shall the buffer be reduced to less than 50 feet for rural areas and 25 feet for urban areas. Only when all other means to project modifications are found inadequate to provide for both the use and the larger minimum buffer. The lesser setback shall be established in consultation with U.S. Fish & Wildlife and the California Department of Fish & Game and shall be accompanied by adequate mitigations. The buffer area shall be measured landward from the landward edge of riparian vegetation or from the top of the bank (e.g., in channelized streams). Maps and supplemental information may be required to determine these boundaries.

...

The Morro Bay LCP protects sensitive habitat areas, including through Policy 11.01, which protects any area designated as environmentally sensitive habitat area (ESHA) by only allowing uses dependent on the resource within it, and Policy 11.14, which requires a minimum stream buffer of 50 feet in urban areas⁵. Policy 11.14 allows, however, for a reduction of the buffer to 25 if it can be shown that the 50-foot buffer would make the parcel unusable for the designated use. In other words, if the LCP setback policies as applied to such properties would render a parcel unusable for its designated use, then a reduction to a minimum of 25 feet can be pursued consistent with the policies. In addition, any reduced buffer must be established in consultation with California Department of Fish and Wildlife (CDFW) (formerly California Department of Fish and Game) as well as with United States Fish and Wildlife Services (USFWS).

In this case, the City found the western/seaward portion of the project site to contain coastal dune ESHA. As such, the City conditioned its approval to require a 50-foot buffer from the coastal dune. The City also required development to be set back from the stream/drainage ditch which forms the northern parcel boundary. As discussed above, while 50-foot stream buffers are ordinarily required, the City approved a buffer as low as 25 feet in some locations, because requiring the full 50-foot buffer, along with the requisite coastal dune buffer on the seaward side, would preclude the ability to build a residence. Thus, while most of the approved residence will be set back far from the stream, in some locations well over 50 feet, a small portion of the

⁵ Per Implementation Plan Section 17.12.655, the project site lies within the LCP's "urban area" for purposes of stream buffer setbacks.

residence will be set back the absolute minimum of 25 feet. Finally, the City required the stream, coastal dune, and their buffers to be restored and placed into permanent protective easement.

Appellant's Contentions

An Appellant contends that the City does not provide justification as to why a maximum stream buffer reduction to 25 feet is appropriate, and suggests that a wider stream buffer could have been required. The Appellant also raises questions as to the adequacy of the project's biological reports and ESHA designations.

Analysis

As discussed above, the LCP allows for a reduction in the required 50-foot stream buffer to an absolute minimum of 25 feet if the buffer would render the parcel unbuildable for its intended use. Such reduction may only be allowed after consultation with CDFW and USFWS and accompanied by adequate mitigation. In this case, due to the parcel's site constraints, including its narrow configuration and required coastal bluff and coastal dune setbacks on its western portion, a standard 50-foot buffer would result in a severely curtailed building footprint (see **Exhibit 8**). Furthermore, both CDFW and USFWS reviewed and commented on the proposed reduced stream buffer widths and coastal dune delineation and designations, with both agencies concluding that the project's coastal dune protections and the stream buffer reduction (to 25 feet along a small portion of the house, with the remainder of the residence set back in excess of 50 feet due to the required coastal dune setback) is appropriate and will effectively protect these habitats (see **Exhibit 9**). Finally, the City required the Applicant to restore all stream and buffer areas and place such areas into a protective conservation easement, thereby adequately mitigating for any potential impacts, as required by the LCP.

Therefore, the City appropriately set back the residence from coastal dune and stream corridor areas, required their restoration and permanent protection via conservation easement, and consulted with all required resource agencies on habitat protection issues. The subject parcel is located in a beachfront residential community and represents infill development between existing developed parcels both upcoast and downcoast. Thus, the City appropriately ensured the residence will be sited and designed to avoid all sensitive habitats while still allowing a residential use. Thus, the City-approved project does not raise a substantial issue with respect to the LCP's ESHA and stream protection policies.

3. Coastal Hazards

Applicable LCP Policy

Morro Bay LUP Hazards Policy 9.02

All new development shall ensure structural stability while not creating nor contributing to erosion or geologic instability or destruction of the site or surrounding area.

The Morro Bay LCP includes an extensive policy framework to ensure that new development is sited safely outside of areas subject to coastal hazards, including through Policy 9.02, which requires new development to ensure structural stability and not create or contribute to erosion.

The Applicant's property is bounded to the north by a drainage basin/unnamed stream and to the west by coastal dune and coastal bluff. To understand the potential coastal hazards at this site, including beach and bluff erosion, storm surges, and potential flooding impacts, the Applicant prepared a Geologic Bluff Study and a Wave Run-up Analysis. The bluff study determined the site to be stable for development and subject to a low level of historic erosion. The analysis identified the edge of the coastal bluff to be seaward of the Applicant's property line, with coastal dune ESHA forming the property's northwest corner near the mouth of the creek. Due to the required 50-foot coastal dune setback, the house will be set back from the edge of the bluff by roughly 100 feet. Finally, the Applicant's wave run-up analysis evaluated potential threats from storm surges, sea level rise, and tsunamis, and concluded that the site has a low potential for flood impacts.

Appellant's Contentions

The Appellant contends that the photographs used in the Applicant's hazards reports to ascertain the bluff edge delineation were distorted and therefore cannot be relied upon. Furthermore, the Appellant contends that the maximum tsunami flood elevation of 17.2 feet determined in the Wave Run-up Analysis is questionable and should have used more conservative (i.e. larger flood elevations) assumptions.

Analysis

As described above, the proposed residence is located within a beachfront residential community set back from a broad sandy beach atop a coastal bluff. The Applicant's geologic reports identified the site to be stable for development, identified the bluff edge to be seaward of the property line, and identified the erosive potential for the both bluff and the adjacent stream corridor to be low. The Commission's Senior Coastal Engineer and Geologist have both reviewed the project materials, including the Geologic Bluff Study and Wave Run-up Analysis, and both concurred with the conclusions in these analyses, including regarding the bluff location and delineation, site stability, and required stream corridor and coastal dune setbacks (see **Exhibit 10**). As such, both concluded that the residence and associated development, as approved by the City, were safely sited and designed and did not raise significant coastal hazards concerns.

Therefore, the residence and the replacement public access path will be located on a stable building site located well inland from the coastal bluff edge, and do not raise any significant coastal hazards issues. The project represents a residential structure located in a residentially zoned lot surrounded by existing homes. Thus, the City's approval does not raise a substantial LCP compliance issue with respect to coastal hazards.

F. CONCLUSION

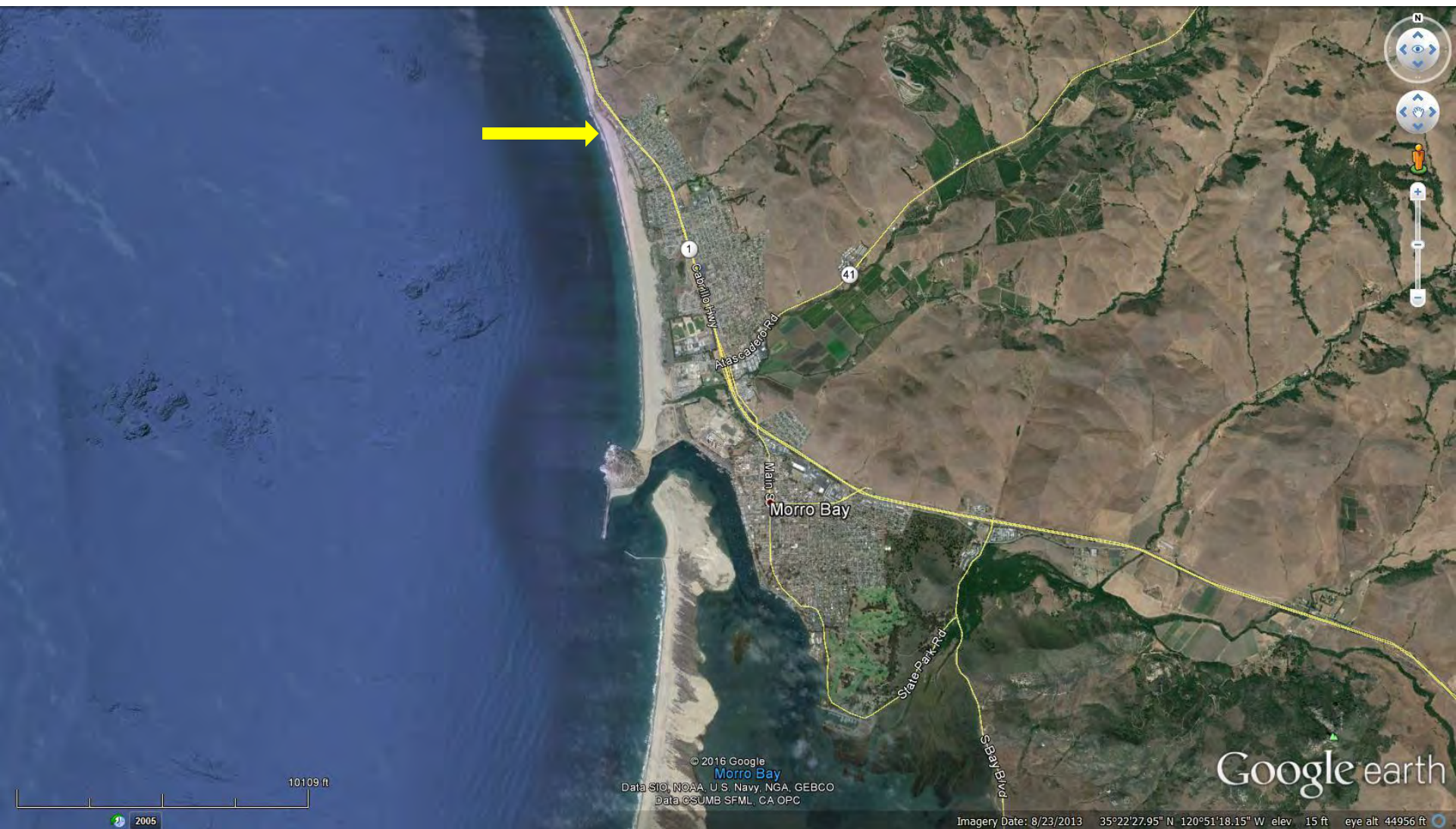
When considering a project that has been appealed to it, the Commission must first determine whether the project raises a substantial issue of LCP conformity, such that the Commission should assert jurisdiction over a de novo CDP for such development. At this stage, the Commission has the discretion to find that the project does not raise a substantial issue of LCP conformance. As explained above, the Commission is guided in its decision of whether the issues raised in a given appeal are "substantial" by the following five factors: the degree of factual and legal support for the local government's decision; the extent and scope of the development as

approved or denied by the County; the significance of the coastal resources affected by the decision; the precedential value of the County's decision for future interpretations of its LCP; and, whether the appeal raises only local issues as opposed to those of regional or statewide significance.

In this case, these five factors, considered together, support a conclusion that this project does not raise a substantial issue of LCP conformance. First, the City's conclusion that, as conditioned, the approved residence would not have significant adverse impacts to coastal access, sensitive habitats, or coastal hazards, is well supported by the record (as discussed extensively by staff in Section II.E of this staff report) weighing against finding a substantial issue. Second, the approved project is consistent with the purpose of the residential zoning district and complies with the LCP's development standards, including with respect to the provision of replacement coastal access, and setbacks from sensitive habitats and coastal hazards. Thus, the extent and scope of this project weigh in favor of a finding of no substantial issue. Third, because the City adequately protected the coastal resources implicated by the proposed development, no significant coastal resources are expected to be adversely affected by this approval, and this factor also weighs against finding a substantial issue. The proposed project is consistent with the LCP, so this project should not create an adverse precedent, and thus this factor weighs against finding a substantial issue. Finally, the decisions made here are site- and LCP-specific and therefore do not raise issues of regional or statewide significance, also weighing against a finding that a substantial issue exists.

Therefore, all five factors weigh against a finding that the City's approval raises a substantial issue with respect to the LCP. Given that the record supports the City's action and the City's analysis did not result in the approval of a project with significant coastal resource impacts, and given that the approved project complies with applicable LCP provisions and raises no statewide issues, the Commission finds the appeal does not raise a substantial issue of conformance with the LCP and thus the Commission declines to take jurisdiction over the CDP for this project.

For the reasons stated above, the Commission finds that Appeal Number A-3-MRB-16-0002 does not present a substantial issue with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act and finds the project is consistent with the certified LCP and the public access policies of the Coastal Act.







Street View From Toro Lane



LOW-IMPACT DEVELOPMENT

HABITAT RESTORATION AND ENHANCEMENT AS PER BIOLOGY REPORT
NON-INVASIVE DROUGHT TOLERANT PLANTS
VEGETATED SWALES
AMEND SOILS
CATCH BASINS
CONSTRUCTION BEST MANAGEMENT PRACTICES (BMP)

GREEN MEASURES

ENERGY STAR APPLIANCES
TANKLESS WATER HEATER
HIGH EFFICIENCY FAU
LOW E GLAZING
SHIELDED LOW INTENSITY EXT. LIGHTING
TITLE 24 ENERGY COMPLIANCE
LOW & NO-VOC FINISHES

BLDG. CODES

2013 CALIFORNIA BUILDING CODE
2013 CALIFORNIA RESIDENTIAL CODE
2013 CALIFORNIA PLUMBING CODE
2013 CALIFORNIA MECHANICAL CODE
2013 CALIFORNIA ELECTRIC CODE
2013 CALIFORNIA ENERGY CODE
CALIFORNIA GREEN BUILDING CODE
2013 CALIFORNIA FIRE CODE
CALIFORNIA REFERENCE STANDARDS CODE

STORMWATER

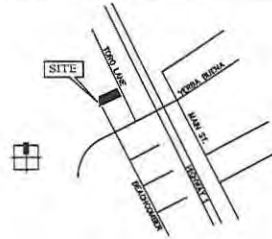
APPENDIX A

CHILPERFORMANCE REQUIREMENT DETERMINATION FORM

The following form shall be completed for all SFR development and redevelopment projects. Projects that are exempt from performance requirements are required to complete Section 1 & 2 only.

Section 1: General Information	
Project Name	Frye Residence
Project Address	3426 TORO LN
Assessor's Parcel Number(s)	065-081-022
Name of Applicant	Green & Nature, Inc.
Applicant's email address	gna@greenandnature.com
Applicant phone	(805) 225-1000
Project Type (e.g., single-family residential, commercial, etc.)	Single-Family Residence
Section 2: Area Information (SF)	
Total Project Area	5,816.19 SQ. FT.
Total Existing Impervious Surface Area	None
Proposed New Impervious Area (List only the surface areas that are being added to the project)	
a. Rooftops	2,124.71 SQ. FT.
b. Driveways	581.6 SQ. FT.
c. Patios	< 100.00 SQ. FT.
d. Other	
Total New Impervious Area	2,706.31 SQ. FT.
Total Impervious Area (Total New + Existing)	2,706.31 SQ. FT.
Section 3: Performance Requirements	
Net Impervious Area (Total New + Existing)	2,706.31 SQ. FT.
Performance Requirements (from Table 1)	6.1 & 4.5

VICINITY MAP



TRAIL / PATH DESIGN

THE SUBJECT TRAIL/PATH WILL BE IN-ACCORDANCE WITH THE CALIFORNIA STATE PARKS HANDBOOK, THE RESOURCES AGENCY DEPARTMENT OF PARKS AND RECREATION, "TRAILS HANDBOOK"

PROJECT INFO.

APN: 065-091-022
ZONING: R-1 / S2.A / ESH
PROPOSED NEW RESIDENCE:
CONDITIONED SPACE: 1,580 SQ. FT.
GARAGE: 552 SQ. FT.
COVERED ENTRY: 17 SQ. FT.
OPEN PATIO: 242.4 SQ. FT.
PORTION OF DRIVEWAY & CONC. PLATWORK ON PROPERTY: 581.6 SQ. FT.
PORTION OF DRIVEWAY IN RIGHT-OF-WAY: 1,056 SQ. FT.
LOT SIZE: 10,019 SQ. FT.
PROPOSED LOT COVERAGE: (2,149 SQ. FT.) 21.3%
[HOUSE, GARAGE, & COVERED ENTRY]
PROPOSED IMPERVIOUS SURFACES: 2,959.7 SQ. FT.
[WITHIN PROPERTY - HOUSE, GARAGE, COVERED ENTRY, OPEN PATIO, DRIVEWAY & CONCRETIZED PLATWORK]
OCCUPANCY: R-3 SFR
CONSTRUCTION TYPE: TYPE V, SPRINKLED
A.N.G. OF BUILDING PAD: 31.03°
ALLOWED ROOF HEIGHT: > 4:12 SLOPE 48.03°
ALLOWED ROOF HEIGHT: < 4:12 SLOPE 45.03°
PROPOSED ROOF HEIGHT: > 4:12 SLOPE 47.95°

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ARCHITECT

CHRISTOPHER R. PARKER
ARCHITECT
338 QUINTANA RD., SUITE 100
SAN LUIS OBISPO, CA 93401
(805) 752-8760

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(805) 244-1000
EARTH SYSTEMS PACIFIC
1701 SANTA FE ROAD
SAN LUIS OBISPO, CA 93401
(805) 544-3276
KMA
KEVIN MEER ASSOCIATES, LLC
P.O. BOX 318
SAN LUIS OBISPO, CA 93406
PROJECT 1

FRYE RESIDENCE

3426 TORO LANE
MORRO BAY, CA
93402

DRAWING PHASE
CONSTRUCTION DOCUMENTS

Project No.	14-112
Drawn By	CPA
Draw Date	09/26/15
Updated	-
Scale	AS NOTED

REVISIONS

SHEET TITLE

PROJECT INFO.

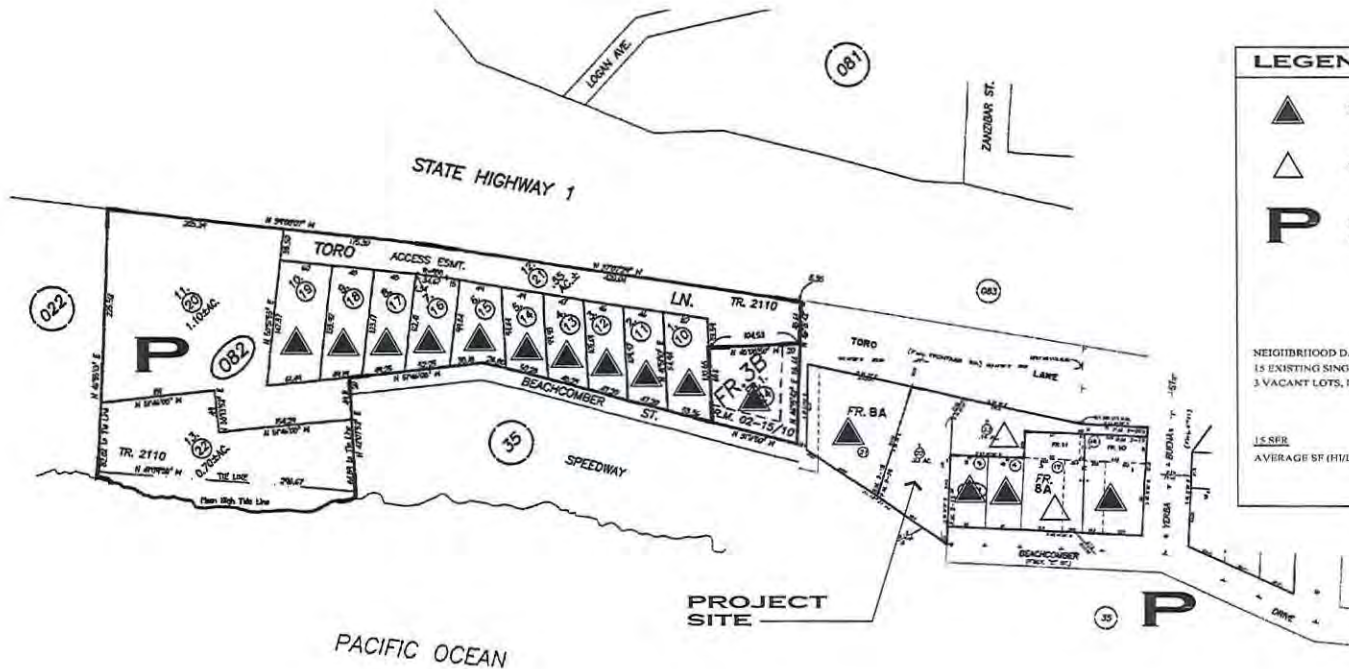
SHEET NO.

A1.1

SHEET INDEX

A1.1 PROJECT INFORMATION
A1.2 SITE PLAN
A1.3 GRADING PLAN
A2.1 FLOOR PLAN
A3.1 ELEVATIONS
A4.1 SECTIONS

NEIGHBORHOOD COMPATIBILITY



LEGEND

- EXISTING SFR
- VACANT PARCEL
- PUBLIC LANDS & ACCESS POINT

NEIGHBORHOOD DATA (FROM PUBLIC RECORDS)
15 EXISTING SINGLE FAMILY RESIDENCES (SFR)
3 VACANT LOTS, INCLUDING THE PROPOSED RESIDENCE

SFR	AREA	LOT COVERAGE
AVERAGE SF (H/L/W)	2,463 SF	28.80%

C. P. PARKER
ARCHITECT

U-2-640201-REK-6422
S-640201-REK-6422
S-640201-REK-6422
S-640201-REK-6422
(MON) 778-7700

A-3-MRB-16-0002 (Frye SFD)



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(805) 434-3774

KMIA
KINNEAR ASSOCIATES, INC.

SAN LUIS OBISPO, CA 93406
PROJECT:

FRYE RESIDENCE

3420 TORO LANE
MORRO BAY, CA
93422

CONSTRUCTION
DOCUMENTS

Project No.	14-11
Drawn By	CPI
Dwg. Date	09/26/11
Updated	
Scale	AS NOTED

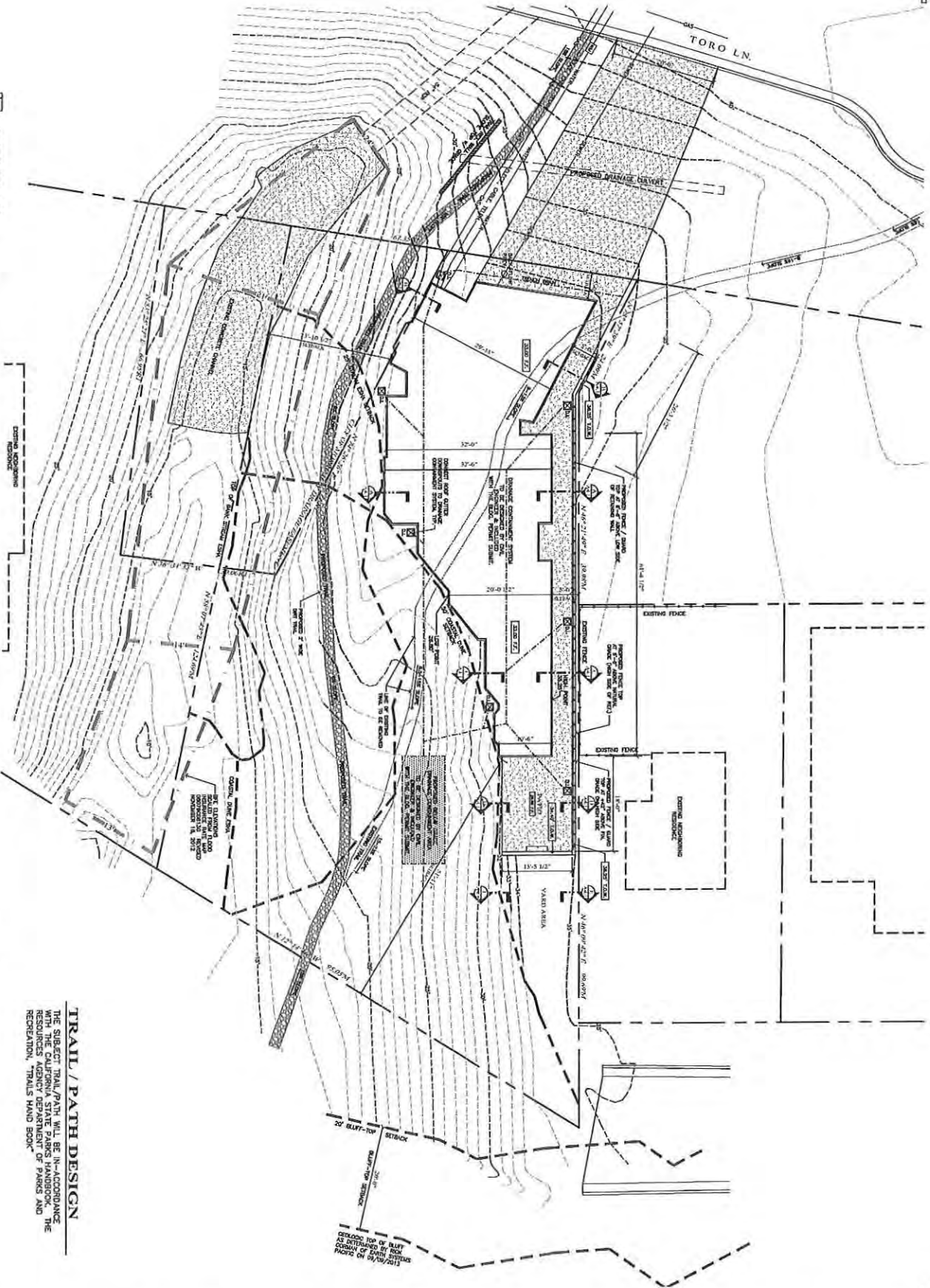
REVISIONS

SHEET TITLE
SITE PLAN

APPENDIX

A1.2

SITE PLAN



C. P. PARKER
 ARCHITECT

CHIEF ARCHITECT: C. PARKER
 600 QUINN ROAD, SUITE 200
 SAN LEONARDO, CA 92586
 (951) 261-0000



CONSULTANTS
MBS
 LAND SURVEYORS
 MICHAEL L. SANCHEZ, PRINCIPAL
 SAN LEONARDO, CA 92586
 (951) 261-0000

PAATH SYSTEMS PACIFIC
 4770 SAN ANITA RD. SUITE 100
 SAN LEONARDO, CA 92586
 (951) 261-0000

KMA
 KEVIN KUMA ASSOCIATES, LLC
 SAN LEONARDO, CA 92586

FRYE RESIDENCE

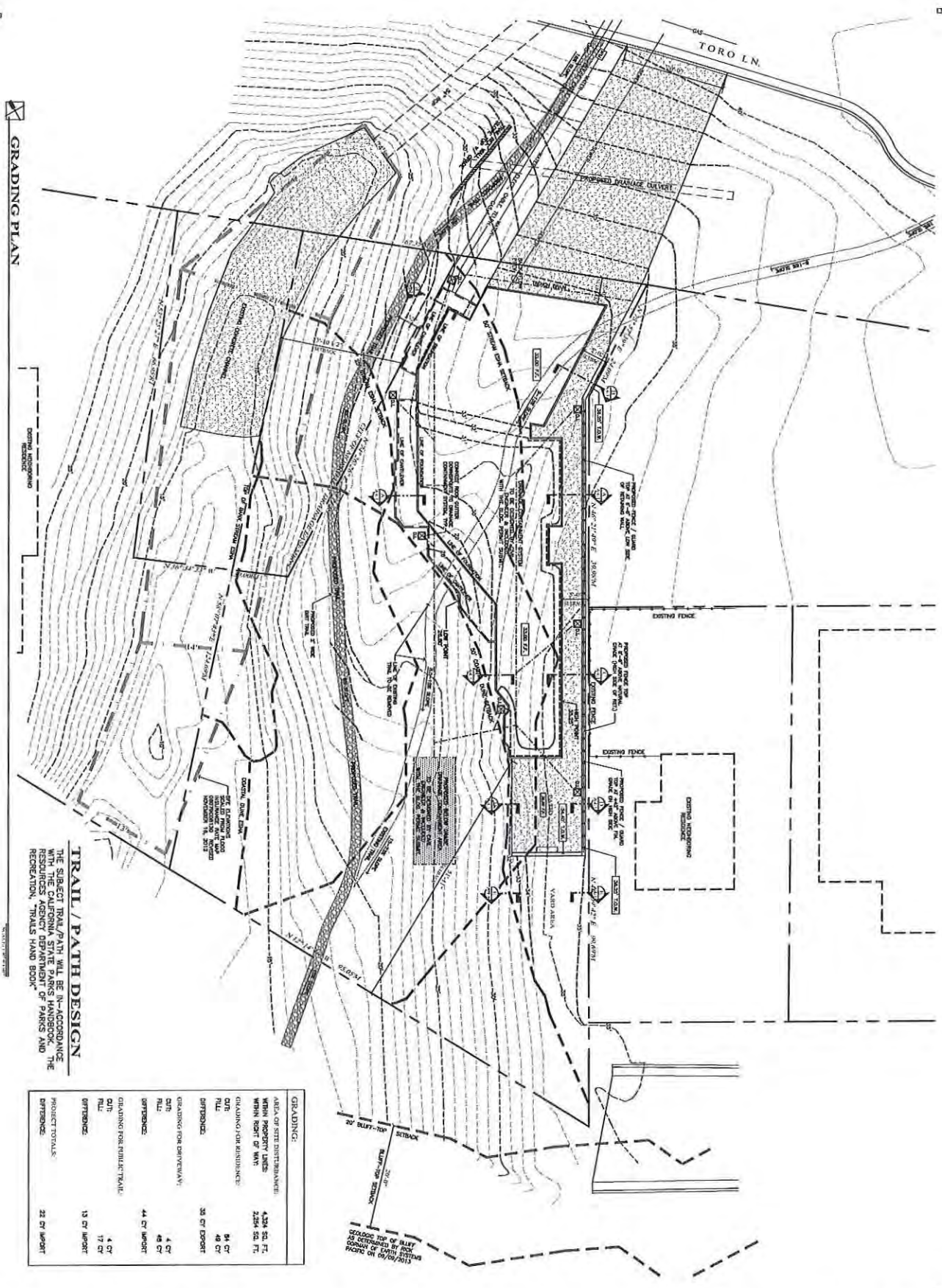
3420 TORO LANE
 MORENO VALLEY, CA
 92553

CONSTRUCTION DOCUMENTS

PROJECT NO.	14-112
DRAWN BY	CVE
CHECKED BY	AS NOTED
DATE	09/25/15
REVISIONS	

GRADING PLAN

A1.3

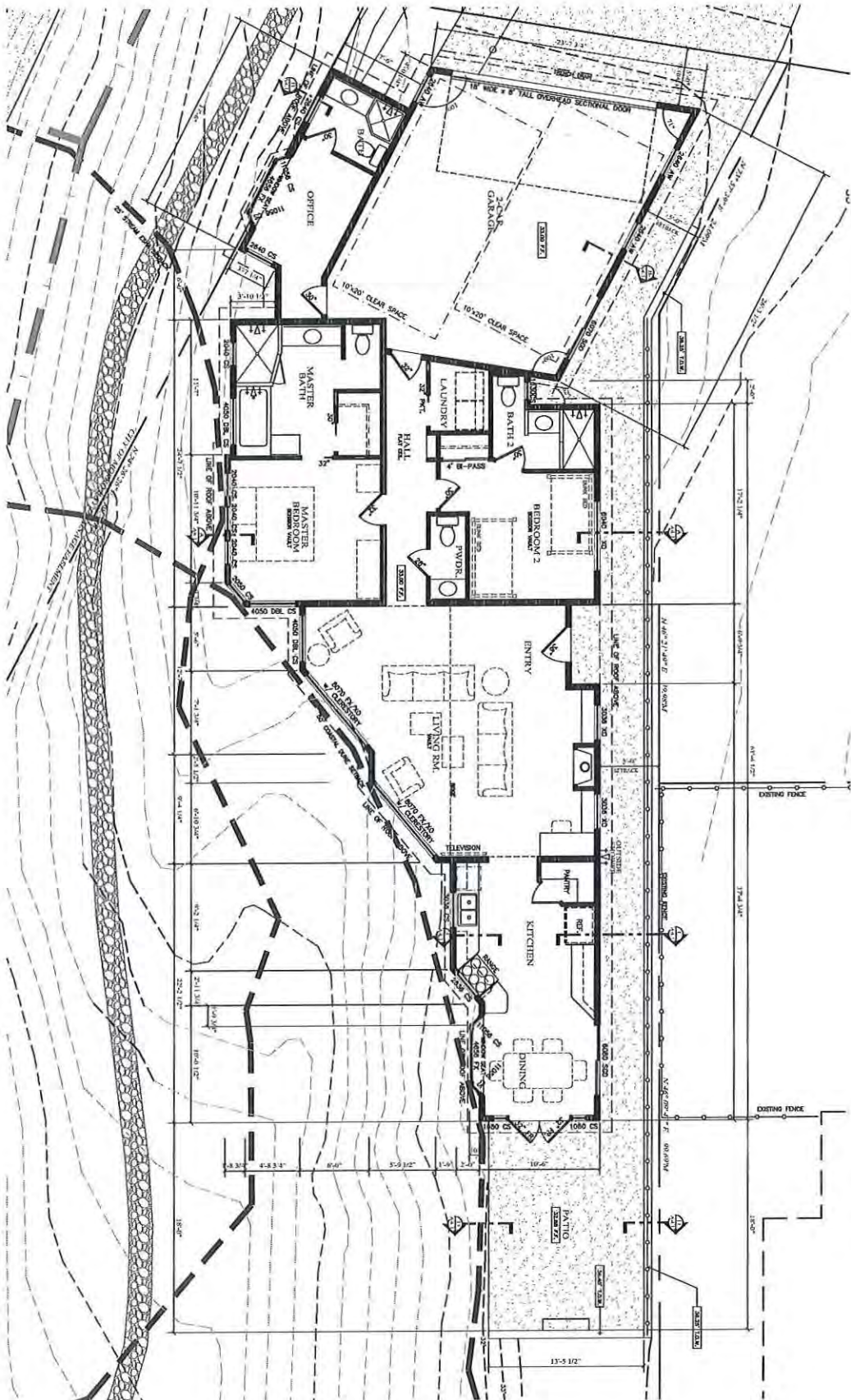


GRADING PLAN

TRAIL / PATH DESIGN
 THE SUBJECT TRAIL / PATH WILL BE IN ACCORDANCE WITH THE CALIFORNIA STATE PARKS HANDBOOK, THE RESOURCES AGENCY DEPARTMENT OF PARKS AND RECREATION, TRAILS HANDBOOK

GRADING:	
AREA OF SITE DISTURBANCE:	4,324 SQ. FT.
WHICH PROPERTY LIES:	2,204 SQ. FT.
GRADING FOR RESIDENCE:	
DIT:	54 CV
FILL:	48 CV
EXPORT:	35 CV EXPORT
GRADING FOR DRIVEWAY:	
DIT:	4 CV
FILL:	48 CV
EXPORT:	44 CV EXPORT
GRADING FOR FUTURE DETAIL:	
DIT:	4 CV
FILL:	17 CV
EXPORT:	13 CV EXPORT
PROJECT TOTALS:	
EXPORT:	22 CV EXPORT

FLOOR PLAN



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 Exhibit 2
 A-3-MRB-16-0002 (Frye SFD)
 4 of 6

C. P. PARKER
 ARCHITECT

REGISTERED ARCHITECT
 NO. 00123456
 STATE OF CALIFORNIA
 1000 10th Street
 San Francisco, CA 94103



CONSULTANTS
MBS
 MICHAEL B. STANLEY, P.E.
 1000 10th Street
 San Francisco, CA 94103

EAFFY SYSTEMS PACIFIC
 4175 SANTA FE BOULEVARD
 SAN ANTONIO, CA 78249

KMA
 KERRY M. KERR, ASSOCIATES LLC
 SAN ANTONIO, CA 78249

FRYE RESIDENCE

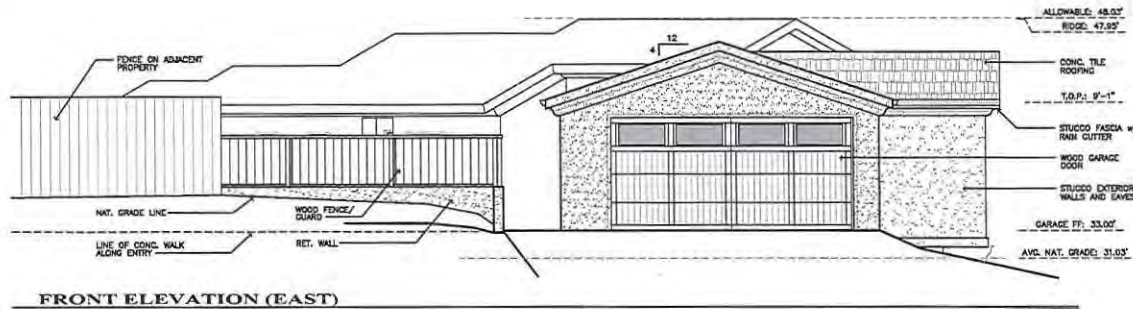
3251 TONGUE LANE
 MORRIS HILL, CA 94442

CONSTRUCTION DOCUMENTS

Project No.	14-112
Drawn By	CPW
Date Drawn	09/29/15
Checked	AS
Revisions	AS

SHEET TITLE
FLOOR PLAN

A2.1

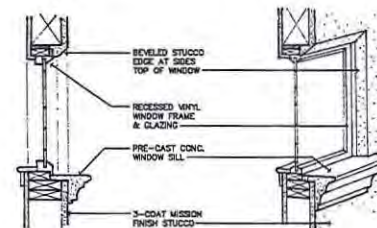


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430 GUNNARA RD. #350
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(805) 778-8706

STAMPS



EXTERIOR LIGHTING REQUIREMENTS

ALL EXTERIOR LIGHTING SHALL BE OF HIGH EFFICACY, OR ON A PHOTOCELL & MOTION SENSOR
EXTERIOR LIGHTING IS TO BE DOWNWARD FACING AND SHIELDED TO NOT ALLOW THE BULB TO BE VISIBLE FROM NEIGHBORING PROPERTIES, OR PUBLIC SPACES

Frye Residence

3420 TORO LANE
MORRO BAY, CA 93442

DRAWING PHASE
CONSTRUCTION DOCUMENTS

Printed No.	14-112
Drawn By	CPP
Date	09/28/15
Updated	-
Scale	AS NOTED

REVISIONS

SHEET TITLE:

ELEVATIONS

SHEET NO.

A3.1

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KMA

KEVIN MERRA ASSOCIATES, LLC

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SAN LUIS OBISPO, CA 93406

PROJECT

FRYE RESIDENCE

3420 TIGRO LANE

MORRO BAY, CA

93442

DRAWING PHASE

CONSTRUCTION
DOCUMENTS

Project No.	14-112
Drawn By.	CPP
Disc. Date	09/26/15
Updated	-
Scale	AS NOTED

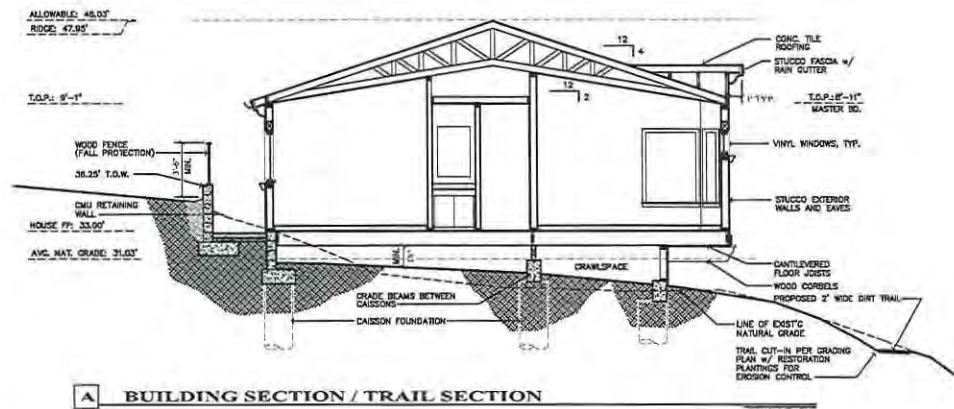
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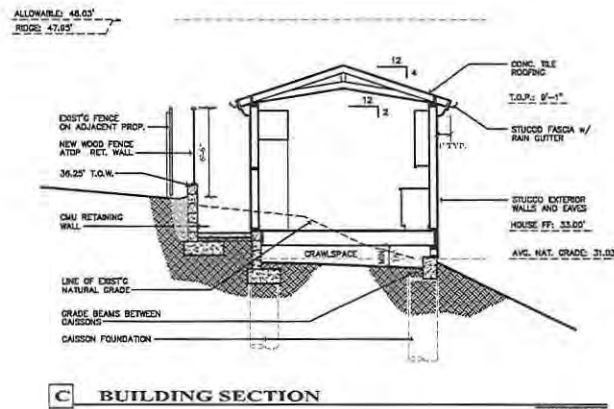
SECTIONS

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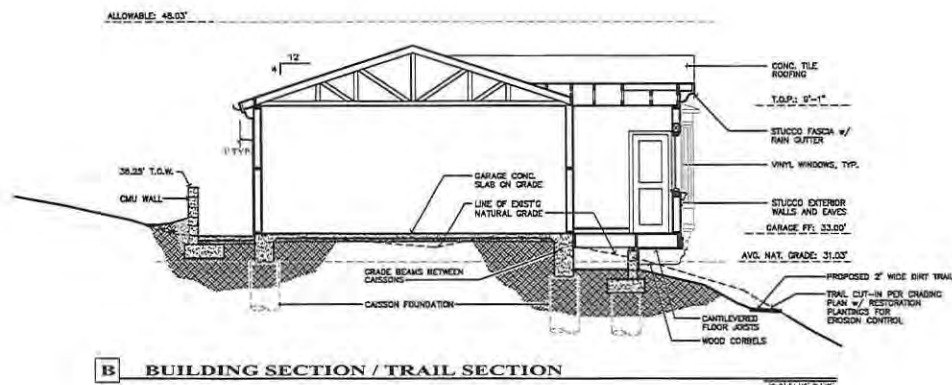
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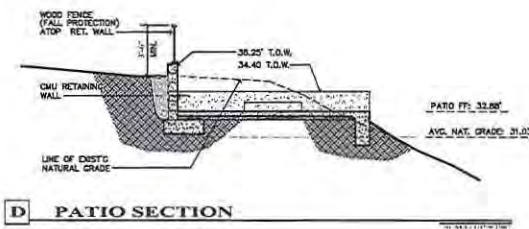
A BUILDING SECTION / TRAIL SECTION



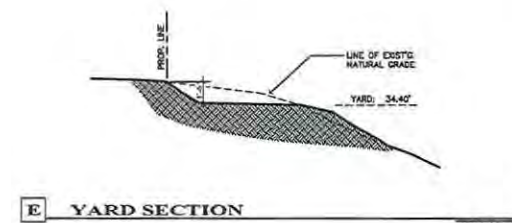
C BUILDING SECTION



B BUILDING SECTION / TRAIL SECTION



D PATIO SECTION



E YARD SECTION



Existing Path

Nearby Access



**CITY OF MORRO BAY
COMMUNITY DEVELOPMENT DEPARTMENT**

NOTICE OF FINAL ACTION ON COASTAL DEVELOPMENT PERMIT

DATE OF NOTICE: DECEMBER 28, 2015

NOTICE OF FINAL CITY ACTION on Coastal Development Permit No. CP0-419 & UP0-383

THE FOLLOWING PROJECT IS LOCATED IN THE MORRO BAY COASTAL ZONE AND A COASTAL PERMIT APPLICATION HAS BEEN ACTED ON BY THE CITY.

Applicant: Jeanne and Greg Frye

Address 1725 Little Morro Creek Road, Morro Bay, CA 93442

Project

Description: Coastal Development Permit and Conditional Use Permit for an addition exceeding 25% of the existing floor area to a nonconforming residential structure in the Embarcadero bluff area on property within the Coastal Commission appeal jurisdiction. The project entails a 1,759 SF single-story addition and roof deck to an existing two-story 2,024 SF dwelling.

Project Location: 3420 Toro Lane, Morro Bay, CA

APN: 066-091-022

Zoning: R-1/S.2A/ESH

Land Use Plan/General Plan: Low Medium Density Residential/Special Overlay
Zone/Environmentally Sensitive Habitat

Lot Area: 10,019 square feet

Filing Date: 1/10/2014

Approval Body: City Council on appeal

Action Taken: Approve with conditions

Action Date: December 8, 2015

☐

THIS SITE IS OUTSIDE OF THE COASTAL COMMISSION APPEAL JURISDICTION

☒

This City decision is appealable to the California Coastal Commission pursuant to the California Public Resource Code, Section 30603. The applicant or any aggrieved person may appeal this decision to the Coastal Commission within TEN (10) working days following Commission receipt of this notice. Appeals must be in writing and should be addressed to: California Coastal Commission, 725 Front Street, #300, Santa Cruz, CA 95060, 531-427-4863.

RESOLUTION NO. 77-15

**RESOLUTION OF THE CITY COUNCIL
OF THE CITY OF MORRO BAY, CALIFORNIA
TO DENY THE APPEALS AND UPHOLD THE PLANNING COMMISSION'S
ADOPTION OF A MITIGATED NEGATIVE DECLARATION OF ENVIRONMENTAL
IMPACT AND APPROVAL OF A COASTAL DEVELOPMENT PERMIT (CP0-419)
AND CONDITIONAL USE PERMIT (UP0-383) TO CONSTRUCT A NEW SINGLE-
FAMILY DWELLING ON A VACANT BEACH FRONT PROPERTY
AT 3420 TORO LANE**

**THE CITY COUNCIL
City of Morro Bay, California**

WHEREAS, the Planning Commission of the City of Morro Bay conducted public hearings at the Morro Bay Veteran's Hall, 209 Surf Street, Morro Bay, California, on August 18 and October 6, 2015, for the purpose of considering Coastal Development Permit #CP0-419 and Conditional Use Permit #UP0-383; and

WHEREAS, on October 6, 2015, the Morro Bay Planning Commission adopted Resolution 28-15 with findings and conditions for approval of Coastal Development Permit #CP0-419 and Conditional Use Permit #UP0-383; and

WHEREAS, on October 9, 2015, an appeal of the Planning Commission action approving Coastal Development Permit #CP0-419 and Conditional Use Permit UP0-383 was filed by Linda Stedjee, specifically requesting the Council overturn the Planning Commission decision and deny Coastal Development Permit #CP0-419 and Conditional Use Permit UP0-383 because the project would block an existing beach access path; and

WHEREAS, on October 13, 2015, an appeal of the Planning Commission action approving Coastal Development Permit #CP0-419 and Conditional Use Permit UP0-383 was filed by Barry Branin, specifically requesting the Council overturn the Planning Commission decision and deny Coastal Development Permit #CP0-419 and Conditional Use Permit UP0-383 because the project would block an existing beach access path; and

WHEREAS, the City Council of the City of Morro Bay conducted a public hearing at the Morro Bay Veteran's Hall, 209 Surf Street, Morro Bay, California, on December 8, 2015, for the purpose of considering appeals of the Planning Commission approval of Coastal Development Permit #CP0-419 and Conditional Use Permit #UP0-383; and

WHEREAS, notices of said public hearings were made at the time and in the manner required by law; and

WHEREAS, the City Council has duly considered all evidence, whether written or oral, including without limitation, the testimony of the appellants, the applicant, interested parties, City staff and all written and oral evaluations and recommendations by staff, presented at Planning Commission hearings and the City Council hearing.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Morro Bay as follows:

Section 1: Findings. Based upon all the evidence, the City Council makes the following findings:

California Environmental Quality Act (CEQA) Finding

1. For purposes of the California Environmental Quality Act, an Initial Study was prepared for the project which resulted in a Mitigated Negative Declaration. The Mitigated Negative Declaration was routed to the State Clearinghouse for the required 30 day review and all other legal noticing and review requirements have been met. The project applicants agreed to all mitigation measures. With the incorporation of these mitigation measures the project will have a less than significant impact on the environment.

Coastal Development Finding

1. As conditioned, the project is consistent with applicable provisions of the Local Coastal Program for construction of a new single-family residence and bluff development in the Atascadero State Beach Bluff Area.

Conditional Use Findings

1. As conditioned, the project is consistent with the General Plan and Local Coastal Program regarding the location of residential uses and development of property in coastal bluff setback review area.
2. As conditioned, the project will not be detrimental to the health, safety and welfare of persons residing or working in the neighborhood.

Reduced Buffer Area Finding

1. Consistent with the Coastal Land Plan Use (Policy 11.14) and the Environmentally Sensitive Habitat development standards in the City's Zoning Ordinance (subsection 17.40.040.D.6), the reduction in the stream corridor buffer area from 50 feet to 25 feet is reasonably necessary to allow development of the site and environmental mitigation is incorporated into the project description to require native habitat restoration landscaping in the buffer area.

Coastal Access Finding

1. The project is consistent with the public access and public recreation policies of Chapter 3 of the Coastal Act because it includes a beach access trail through the project site.

Section 2. Action. The City Council does hereby deny the appeals, adopt the June, 2015 Mitigated Negative Declaration and approve Coastal Development Permit CP0-419 and Conditional Use Permit UP0-383 for property located at 3420 Toro Lane subject to the following conditions:

STANDARD CONDITIONS

1. This permit is granted for the land described in the staff report dated October 6, 2015, for the project at 3420 Toro Lane (the "Property"), as depicted on plans received by the City on September 29, 2015, as part of Coastal Development Permit CP0-419 and Conditional Use Permit UP0-383, on file with the Community Development Department, as modified by these conditions of approval, and more specifically described as follows: Site development, including all buildings and other features, shall be located and designed substantially as shown on plans, unless otherwise specified herein.
2. Inaugurate Within Two Years: Unless the construction or operation of the structure, facility, or use is commenced not later than two (2) years after the effective date of this Resolution and is diligently pursued, thereafter, this approval will automatically become null and void; provided, however, that upon the written request of the applicant, prior to the expiration of this approval, the applicant may request up to two extensions for not more than one (1) additional year each. Any extension may be granted by the City's Community Development Manager (the "Manager"), upon finding the project complies with all applicable provisions of the Morro Bay Municipal Code (the "MBMC"), General Plan and certified Local Coastal Program Land Use Plan (LCP) in effect at the time of the extension request.
3. Changes: Minor changes to the project description and/or conditions of approval shall be subject to review and approval by the Community Development Manager. Any changes to this approved permit determined, by the Manager, not to be minor shall require the filing of an application for a permit amendment subject to Planning Commission review.
4. Compliance with the Law: (a) All requirements of any law, ordinance or regulation of the State of California, the City, and any other governmental entity shall be complied with in the exercise of this approval, (b) This project shall meet all applicable requirements under the MBMC, and shall be consistent with all programs and policies contained in the LCP and General Plan for the City.
5. Hold Harmless: The applicant, as a condition of approval, hereby agrees to defend, indemnify, and hold harmless the City, its agents, officers, and employees, from any claim, action, or proceeding against the City as a result of the action or inaction by the City, or from any claim to attack, set aside, void, or annul this approval by the City of the applicant's project; or applicant's failure to comply with conditions of approval. Applicant understands and acknowledges the City is under no obligation to defend any legal actions challenging the City's actions with respect to the project. This condition and agreement shall be binding on all successors and assigns.

6. Compliance with Conditions: The applicant's establishment of the use or development of the subject property constitutes acknowledgement and acceptance of all Conditions of Approval. Compliance with and execution of all conditions listed hereon shall be required prior to obtaining final building inspection clearance. Deviation from this requirement shall be permitted only by written consent of the Manager or as authorized by the Planning Commission. Failure to comply with any of these conditions shall render this entitlement, at the discretion of the Manager, null and void. Continuation of the use without a valid entitlement will constitute a violation of the MBMC and is a misdemeanor.
7. Compliance with Morro Bay Standards: This project shall meet all applicable requirements under the MBMC, and shall be consistent with all programs and policies contained in the LCP and General Plan of the City.

PLANNING CONDITIONS

1. Construction Hours: Pursuant to MBMC subsection 9.28.030.I, Construction or Repairing of Buildings, the erection (including excavating), demolition, alteration or repair of any building or general land grading and contour activity using equipment in such a manner as to be plainly audible at a distance of fifty feet from the building other than between the hours of seven a.m. and seven p.m. on weekdays and eight a.m. and seven p.m. on weekends except in case of urgent necessity in the interest of public health and safety, and then only with a permit from the Community Development Department, which permit may be granted for a period not to exceed three days or less while the emergency continues and which permit may be renewed for a period of three days or less while the emergency continues.
2. Dust Control: That prior to issuance of a grading permit, a method of control to prevent dust and wind blow earth problems shall be submitted for review and approval by the Building Official.
3. Conditions of Approval on Building Plans: Prior to the issuance of a Building Permit, the final Conditions of Approval shall be attached to the set of approved plans. The sheet containing Conditions of Approval shall be the same size as other plan sheets and shall be the last sheet in the set of Building Plans.
4. Exterior Materials: Building color and materials shall be as shown on plans approved by the Planning Commission and specifically called out on the plans submitted for a Building Permit to the satisfaction of the Community Development Manager.
5. Boundaries and Setbacks: The property owner is responsible for verification of lot boundaries. Prior to requesting foundation inspection, a licensed land surveyor shall verify lot boundaries and building setbacks to the satisfaction of the Community Development Manager. A copy of the surveyor's *Form Certification* based on a boundary survey shall be submitted to the Building Inspector with the request for foundation inspection.

6. Building Height Verification: Prior to foundation inspection, a licensed land surveyor shall measure and inspect the forms and submit a letter to the Community Development Manager certifying that the tops of the forms are in compliance with the finish floor elevations as shown on approved plans. Prior to either roof nail or framing inspection, a licensed surveyor shall submit a letter to the Building Inspector certifying that the height of the structures is in accordance with the approved plans.
7. Maximum Building Height: Building height shall comply with the maximum building height standards in the S-2.A Overlay, which are 14 feet for flat roofs and roof deck sills, and 17 feet for roofs with a minimum pitch of 4 in 12. Height shall be measured from the average natural grade beneath the building footprint.
8. Stream Corridor Buffer: The minimum buffer area for the stream corridor shall be 25 feet from the top of bank as delineated on the project site plan.
9. Coastal Dune Buffer: The minimum buffer area for the coastal dune habitat shall be 50 feet as delineated on the project site plan.
10. ESH Easement: Consistent with Land Use Element Policy LU-61, the property owners shall dedicate a permanent easement over portions of the Property determined to be sensitive habitat as defined by the Zoning Ordinance. This will include the stream corridor and the coastal dune area as shown on the project site plan and in the Addendum to Biological Resources Assessment (KMA 2014) together with the approved buffer areas. Easement boundaries shall be clearly delineated to the satisfaction of the Community Development Manager.
11. Geologic Reports: The applicant shall comply with all recommendations contained in the geologic reports, prepared for this property by Earth Systems Pacific (June/September 2002, September, 2013 Update).
12. Slope Stability Analysis: The applicant shall comply with all recommendations contained in the slope stability analysis prepared for this property by Earth Systems Pacific (March 5, 2015).
13. Soils Engineering Report: The applicant shall comply with all recommendations contained in the soils engineering report prepared for this property by GeoSolutions (August, 2014).
14. Utility Undergrounding: Prior to final occupancy clearance, the applicant shall install all utility distribution and service lines to the site underground.
15. Landscaping: Project landscaping shall include native and drought tolerant plants consistent with the Habitat Restoration and Enhancement Plan (as required by Biological mitigation measure 4 in the *Mitigation, Monitoring and Reporting Program* approved by the Community Development Manager). Landscaping shall be designed to minimize

ecological and geological disturbances. Only plant materials recognized for their drought tolerance or erosion controlling properties shall be authorized on bluffs or bluff tops. Project landscaping shall be maintained such that it does not obstruct the Public Access Trail.

16. HVAC Location: Any HVAC system shall be located under the roof lines or on the ground outside of required setbacks and not visible from the public right of way to the satisfaction of the Community Development Manager.
17. Shoreline Protective Structures Prohibited: Shoreline protective structures that protect the approved development (including but not limited to seawalls, revetments, retaining walls, tie backs, caissons other than for structural foundation purposes, piers, groins, etc.) shall be prohibited. Prior to issuance of a building permit, the Applicant shall record acknowledgement of this condition on behalf of itself and all successors and assigns in a manner and form acceptable to the City.
18. Public Access Offer to Dedicate: The Applicant has volunteered to offer to dedicate an area for an unimproved public access trail through the project site to the satisfaction of the City Engineer and the Community Development Manager (the "Public Access Trail"). Prior to issuance of a building permit, the offer of dedication of the Public Access Trail shall be recorded. Upon that recordation, the City will not make nor support any effort to preserve that implied dedication. The Applicant's offer of dedication and any acceptance thereof shall not require the City, the Applicant or other public entity to maintain the Public Access Trail.
19. Public Access Design: To effectuate Condition No. 18 above, prior to issuance of a building permit, the Applicant shall submit a design for the creation of the Public Access Trail through the project site and the adjacent Toro Lane right-of-way to the satisfaction of the City Engineer and the Community Development Manager (the "Design").
20. Preparation of the Public Access: Prior to issuance of final occupancy for the project, the Applicant shall create the Public Access Trail in accordance with the Design.
21. Trail Hours: The Public Access Trail shall be open to the public from one hour before dawn until one hour after sunset. This information shall be posted at both ends of the Public Access Trail using standard coastal access signage to the satisfaction of the Community Development Manager.
22. Limitation on Trail Area: Trails through the ESH areas located on the Property, other than the Public Access Trail and a link from the residence to the Public Access Trail shall be prohibited.
23. Retaining Wall: There shall be no retaining wall or fence past the western edge of the patio.

24. Fence Height: The maximum fence height adjacent to the patio shall not exceed the minimum height required by the Building Code.

ENVIRONMENTAL CONDITIONS

1. The applicant shall comply with the environmental mitigation measures as detailed in the Mitigation Monitoring and Reporting Program which is attached hereto as Attachment 1.

PUBLIC WORKS CONDITIONS

1. The project shall provide frontage improvements as noted below and must include Low Impact Development (LID) Performance Requirements as required by the Storm Water Management Guidance- EZ Manual, March 6, 2014 amendment to the City Standard Drawings and Specifications.

The following comments shall be addressed with the building permit submittal:

2. Stormwater: Since the project is $\geq 2,500$ sf of impervious area provide a Stormwater Performance Requirement #1 Certification, prepared by a Registered Civil Engineer. Since there is no potential for downstream flooding, the project is exempt from the requirements of Performance Measure #5.
3. Erosion and sediment control: Provide a standard erosion and sediment control plan. The Plan shall show control measures to provide protection against erosion of adjacent property and prevent sediment or debris from entering the City right of way, adjacent properties, any harbor, waterway, or ecologically sensitive area.
4. Frontage improvements:
- a. City standard driveway approach and a concrete curb and gutter are required. A street tree is required.
 - b. All standard improvements (e.g. driveway approach) in the City right of way per City Engineering Standards require a Standard Encroachment Permit.
 - c. Non-standard improvements in the right of way (e.g. retaining wall) shall require a Special Encroachment Permit.
5. Utilities:
- a. Include the locations of all proposed utilities, gas, sewer, water etc. Indicate on the plans if the sewer lateral is proposed or existing. If the existing sewer lateral is going to be used the following must be completed:
 - i. Conduct a video inspection of the conditions of existing sewer lateral prior to building permit issuance. Submit a DVD to City Public Services Department. Repair or replace as required to prohibit inflow/infiltration.
 - b. Sewer Backwater Valve: A sewer backwater valve shall be installed on site to prevent a blockage or maintenance of the municipal sewer main from causing damage to the proposed project. (MBMC 14.07.030) Indicate on the plans.

Add the following Notes to the Plans:

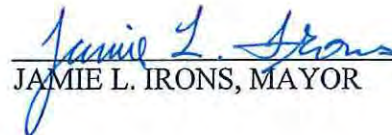
1. Any damage to City facilities, i.e. curb/berm, street, sewer line, water line, or any public improvements shall be repaired at no cost to the City of Morro Bay.

BUILDING CONDITIONS

1. Building Permit: Prior to construction, the applicant shall submit a complete Building Permit Application and obtain the required Permit.

PASSED AND ADOPTED by the City Council of the City of Morro Bay at a regular meeting thereof held on this 8th day of December, 2015 on the following vote:

AYES:	Headding, Johnson, Makowetski, Smukler
NOES:	Irons
ABSENT:	None
ABSTAIN:	None


JAMIE L. IRONS, MAYOR

ATTEST:


DANA SWANSON, City Clerk

Attachment 1 to Resolution CC 77-15

Mitigation Monitoring and Reporting Program

AESTHETICS:

AES Impact 1 **Visibility of night lighting and daytime glare would adversely affect views resulting in a direct long-term impact.**

AES/mm-1 *Prior to issuance of a building permit, a comprehensive lighting plan shall be submitted for review and approval by the City. The lighting plan shall be prepared using guidance and best practices endorsed by the International Dark Sky Association. The lighting plan shall address all aspects of the lighting, including but not limited to all buildings, infrastructure, parking and driveways, paths, recreation areas, safety, and signage. The lighting plan shall include the following at minimum:*

- a) The point source of all exterior lighting shall be shielded from offsite views.*
- b) Light trespass from exterior lights shall be minimized by directing light downward and utilizing cut-off fixtures or shields.*
- c) Lumination from exterior lights shall be the lowest level allowed by public safety standards.*
- d) Exterior lighting shall be designed to not focus illumination onto exterior walls.*
- e) Bright white-colored light shall not be used for exterior lighting.*
- f) Any signage visible from offsite shall not be internally illuminated.*

AES/mm-2 *Prior to issuance of a building permit, the applicant shall submit building plans and elevations for review and approval consistent with the following conditions:*

- a) No highly reflective glazing or coatings shall be used on windows.*
- b) No highly reflective exterior materials such as chrome, bright stainless steel, or glossy tile shall be used on the portions of the development where visible from off-site locations.*

After implementation of these measures, residual impacts would be less than significant.

Monitoring:

The City of Morro Bay would verify implementation of these design details through review and approval of the lighting plan and building plans prior to issuance of building permits for the project.

AIR QUALITY

AQ Impact 1 **Construction activities associated with development of the proposed project would result in short-term emissions of DPM, potentially affecting sensitive receptors.**

AQ/mm-1 *Prior to issuance of grading and construction permits, the applicant shall submit plans including the following notes, and shall comply with the following standard mitigation measures for reducing diesel particulate matter (DPM) emissions from construction equipment:*

- a) Maintain all construction equipment in proper tune according to manufacturer's specifications;*

- b) Fuel all off-road and portable diesel powered equipment with ARB certified motor vehicle diesel fuel (non-taxed version suitable for use off-road);*
- c) Use diesel construction equipment meeting ARB's Tier 2 certified engines or cleaner off-road heavy-duty diesel engines, and comply with the State off-Road Regulation;*
- d) Use on-road heavy-duty trucks that meet the ARB's 2007 or cleaner certification standard for on-road heavy-duty diesel engines, and comply with the State On-Road Regulation;*
- e) Construction or trucking companies with fleets that do not have engines in their fleet that meet the engine standards identified in the above two measures (e.g. captive or NOx exempt area fleets) may be eligible by proving alternative compliance;*
- f) All on and off-road diesel equipment shall not idle for more than 5 minutes. Signs shall be posted in the designated queuing areas and or job sites to remind drivers and operators of the 5-minute idling limit;*
- g) Excessive diesel idling within 1,000 feet of sensitive receptors is not permitted;*
- h) Electrify equipment when feasible;*
- i) Substitute gasoline-powered in place of diesel-powered equipment, where feasible; and,*
- j) Use alternatively fueled construction equipment on-site where feasible, such as compressed natural gas (CNG), liquefied natural gas (LNG), propane or biodiesel.*

AQ Impact 2

Construction activities associated with development of the proposed project could generate dust that could be a nuisance to adjacent sensitive receptors.

AQ/mm-2

Prior to issuance of grading and construction permits, the applicant shall include the following notes on applicable grading and construction plans, and shall comply with the following standard mitigation measures for reducing fugitive dust emissions such that they do not exceed the APCD's 20 percent opacity limit (APCD Rule 401) and do not impact off-site areas prompting nuisance violations (APCD Rule 402) as follows:

- a) Reduce the amount of disturbed area where possible;*
- b) Use of water trucks or sprinkler systems in sufficient quantities to prevent airborne dust from leaving the site. Increased watering frequency would be required whenever wind speeds exceed 15 mph. Reclaimed (non-potable) water shall be used whenever possible;*
- c) All dirt stockpile areas shall be sprayed as needed;*
- d) Permanent dust control measures identified in the approved project revegetation and landscape plans should be implemented as soon as possible, following completion of any soil disturbing activities;*
- e) All disturbed soil areas not subject to revegetation should be stabilized using approved chemical soil binders, jute netting, or other methods approved in advance by the APCD;*
- f) All roadways, driveways, sidewalks, etc. to be paved should be completed as soon as possible. In addition, building pads should be laid as soon as possible after grading unless seeding or soil binders are used.*

- g) *Vehicle speed for all construction vehicles shall not exceed 15 mph on any unpaved surface at the construction site;*
- h) *All trucks hauling dirt, sand, soil, or other loose materials are to be covered or should maintain at least two feet of freeboard (minimum vertical distance between top of load and top of trailer) in accordance with California Vehicle Code Section 23114;*
- i) *Sweep streets at the end of each day if visible soil material is carried onto adjacent paved roads. Water sweepers with reclaimed water should be used where feasible;*
- j) *All PM₁₀ mitigation measures required shall be shown on grading and building plans; and*
- k) *The contractor or builder shall designate a person or persons to monitor the fugitive dust emissions and enhance the implementation of the measures as necessary to minimize dust complaints, reduce visible emissions below 20 percent opacity, and to prevent transport of dust off-site. The name and telephone number of such persons shall be provided to the APCD Compliance Division and listed on the approved building plans prior to the start of any grading, earthwork or demolition.*

AQ Impact 3 Construction activities associated with development of the proposed project could generate dust that could be a nuisance to adjacent sensitive receptors.

AQ/mm-3 Prior to issuance of a grading permit, the applicant shall submit a geologic evaluation that determines if naturally occurring asbestos (NOA) is present within the area that will be disturbed. If NOA is not present, an exemption request shall be filed with the District. If NOA is found at the site, the applicant shall comply with all requirements outlined in the Asbestos ATCM. This may include development of an Asbestos Dust Mitigation Plan and an Asbestos Health and Safety Program for approval by the APCD.

With implementation of these measures, air quality impacts would be less than significant.

Monitoring:

Copies of regulatory forms will be submitted to the APCD for review and approval, consistent with existing regulations. The applicant is required to submit approval documentation from APCD to the City Community Development Director/Planning Manager. Monitoring or inspection shall occur as necessary to ensure all construction activities are conducted in compliance with the above measures. Measures also require that a person be appointed to monitor the fugitive dust emissions and enhance the implementation of the measures as necessary to minimize dust complaints, reduce visible emissions below 20 percent opacity, and to prevent transport of dust off-site. All potential violations, remediation actions, and correspondence with APCD will be documented and on file with the City Community Development Director.

BIOLOGICAL RESOURCES

BIO Impact 1 Development of the project could indirectly affect the natural drainage feature to the north of the site, coastal and shoreline habitat to the west, and special-status species and wildlife in the proximity.

BIO/mm-1 Prior to issuance of construction permits, the applicant shall submit documentation verifying designation of a qualified environmental monitor for all biological resources measures to ensure compliance with Conditions of Approval and mitigation measures. The monitor shall be responsible for: (1) ensuring that procedures for verifying compliance with environmental mitigations are followed; (2) lines of communication and reporting methods; (3) compliance reporting; (4) construction crew training regarding environmentally sensitive areas; (5) authority to stop work; and (6) action to be taken in the event of non-compliance. Monitoring shall be at a frequency and

duration determined by the affected natural resource agencies, which may include the U.S. Army Corps of Engineers, California Department of Fish and Wildlife, Regional Water Quality Control Board, California Coastal Commission, U.S. Fish and Wildlife Service, and the City of Morro Bay.

BIO/mm-2

Prior to the initiation of construction, the environmental monitor shall conduct environmental awareness training for construction personnel. The environmental awareness training shall include discussions of sensitive habitats and animal species in the immediate area. Topics of discussion shall include: general provisions and protections afforded by the Endangered Species Act; measures implemented to protect special-status species; review of the project boundaries and special conditions; the monitor's role in project activities; lines of communications; and procedures to be implemented in the event a special-status species is observed in the work area.

BIO/mm-3

Prior to the initiation of construction, the applicant's contractors and the environmental monitor shall coordinate the placement of project delineation fencing throughout the work areas. The environmental monitor shall field fit the placement of the project delineation fencing to minimize impacts to sensitive resources. The project delineation fencing shall remain in place and functional throughout the duration of the project. During construction, no project related work activities shall occur outside of the delineated work area.

BIO/mm-4

Prior to issuance of grading and construction permits, the applicant shall submit a Habitat Restoration and Enhancement Plan prepared by a qualified restoration ecologist for the review and approval by the City Community Development Manager. The plan shall be implemented concurrent with or immediately following construction. The plan shall include, but not be limited to the following measures, pursuant to the Biological Resources Assessment (KMA December 2013 and KMA Addendum 2014):

- a. Prior to any construction activities, a construction buffer shall be demarcated with highly visible construction fencing or staking for the benefit of contractors and equipment operators.*
- b. Restoration of surface contours through minor grading and seeding native vegetation may be required to reduce the erosion potential and provide temporary cover during and after construction.*
- c. Non-native and invasive plant species shall not be permitted in the approved buffer areas. For a list of noxious weeds and appropriate plant materials, please refer to the following sources: the California Invasive Plant Council website at www.cal-ipc.org and the County of San Luis Obispo's approved landscape plant list. Substitutions may be allowed, but shall be approved by a qualified botanist.*
- d. The ESH buffer areas shall utilize native species characteristic of the coastal scrub and coastal grassland habitat. Landscaping around the house and to the east and south shall utilize drought tolerant, non-invasive species.*
- e. As part of any building permit application, a sediment and erosion control plan shall be submitted that specifically seeks to protect the drainage and protected native habitat adjacent to the construction site. Erosion control measures shall be implemented to prevent runoff from the site. Silt fencing, straw bales, and/or sand bags shall be used as well as other methods to prevent erosion and sedimentation of the drainage channel. The plan shall specify locations and types of erosion and sediment control structures and materials that would be used on-site during construction activities. Biotechnical approaches using native vegetation shall be used as feasible. The plan shall also describe how any and all pollutants originating from construction equipment would be collected and disposed.*
- f. Current Best Management Practices (commonly referred to as BMPs) shall be utilized to minimize impacts to the drainage feature and native habitat areas onsite. Washing of concrete, paint, or equipment shall occur only in areas where polluted water and materials can be contained for subsequent removal from the site. Washing of equipment, tools, roads, etc. shall not be allowed in any location where the tainted water could affect the drainage and adjacent beach's sensitive biological resources.*

- g. Identification of areas to be seeded or planted following weed abatement, planting and weed control methodologies, measures to protect plantings during the establishment period, irrigation methods and timing (which shall not result in erosion or down-gradient sedimentation).
- h. The plan shall be monitored for two years following initial site preparation, planting, and seeding.
- i. Two annual monitoring reports shall be submitted to the City Community Development Manager, and shall include written explanation of adherence to the plan, any necessary remediation or maintenance actions, and photo-documentation.

BIO Impact 2 Development of the project could adversely affect nesting birds onsite or in the proximity.

BIO/mm-5

Prior to ground disturbance, to minimize impacts to nesting bird species, including special status species and species protected by the Migratory Bird Treaty Act, initial site grading shall be limited to outside the nesting season and focused during the time period between September 1 and February 1 as feasible. If initial site disturbance cannot be conducted during this time period, a pre-construction survey for active bird nests onsite shall be conducted by a qualified biologist. Surveys shall be conducted within two weeks prior to any construction activities. If no active nests are located, ground disturbing/construction activities can proceed. If active nests are located, then all construction work shall be conducted outside a non-disturbance buffer zone to be developed by the qualified biologist based on the species (i.e., 50 feet for common species and upwards of 250 feet for special status species), slope aspect and surrounding vegetation. No direct disturbance to nests shall occur until the young are no longer reliant on the nest site as determined by the project biologist. The biologist shall conduct monitoring of the nest until all young have fledged.

After implementation of these measures, residual impacts to biological resources would be less than significant.

Monitoring:

The City shall verify required elements on plans and compliance in the field. The City shall review and approve plans and monitoring reports.

CULTURAL RESOURCES

CR Impact 1 Ground disturbance associated with the construction of the residence and all associated facilities may result in the inadvertent discovery of previously undocumented archaeological resources.

CR/mm-1

A qualified archaeologist and a Salinan or Chumash Native American who is culturally affiliated to the project area, as approved by the City, shall be on site to monitor grading, trenching and related site preparation. The name and contact information of the monitoring archaeologist shall be included on the cover sheet of the building plans. Prior to a request for foundation inspection, the applicant shall submit a report prepared by the monitoring archaeologist summarizing the dates and times of monitoring and observations regarding the presence or absence of cultural material during grading operations.

CR/mm-2

In the event that intact and/or unique archaeological artifacts or historic or paleontological resources are encountered during grading, clearing, grubbing, and/or other construction activities associated with the proposed project involving ground disturbance, all work in the immediate vicinity of the find shall be stopped immediately, the onsite archaeological monitor shall be notified, and the resource shall be evaluated to ensure the discovery is adequately recorded, evaluated and, if significant, mitigated.

CR/mm-3

Prior to any grading or construction, contractors involved in grading and grubbing activities shall receive training from a City-approved qualified archaeologist knowledgeable in local tribes. At a minimum, the training shall address the following:

- a) Review of the types of archaeological artifacts that may be uncovered.*
- b) Provide examples of common archaeological artifacts to examine.*
- c) Review what makes an archaeological resource significant to archaeologists and local Native Americans.*
- d) Describe procedures for notifying involved or interested parties in case of a new discovery.*
- e) Describe reporting requirements and responsibilities of construction personnel.*
- f) Review procedures that shall be used to record, evaluate, and mitigate new discoveries.*
- g) Describe procedures that would be followed in the case of discovery of disturbed or intact human burials and burial-associated artifacts.*

After implementation of these measures, residual impacts would be less than significant.

Monitoring:

The City Community Development Director shall verify compliance with this measure.

GEOLOGY/SOILS

GS Impact 1

Development associated with the proposed project places structures and people in an area subject to geologic hazards including seismic groundshaking, and risks associated with slope stability.

GS/mm-1

Upon application for grading and construction permits, all mitigation measures identified in the September 13, 2002 Geologic Report and September, 2013 Update prepared by Earth Systems Pacific shall be incorporated into the project. These measures shall be included on all grading and building plans. These include the following:

- a. The Certified Engineering Geologist of record shall provide an engineering geologist's written certification of adequacy of the proposed site development for its intended use.*
- b. A Certified Engineering Geologist shall review, approve and stamp construction plans including all plans for building foundations and excavation.*
- c. The Certified Engineering Geologist shall inspect work on-site and verify that building construction, including all foundation work, has been performed in a manner consistent with the intent of the plan review and engineering geology report.*
- d. Before final inspection and/or issuance of occupancy permits, should the services of the Certified Engineering Geologist be terminated the applicant shall submit a transfer of responsibility statement to the Planning Division from the new Certified Engineering Geologist pursuant to the Uniform Building Code.*

GS/mm-2

Concurrent with submittal of construction plans, the applicant shall submit a Soils Report, prepared by a California Registered Geologist or Soils Engineer, a Geology Report, prepared by a

California Registered Geologist, and a Slope Stability Report, prepared by a California Registered Engineering Geologist. The Soils Report shall address soils engineering and compaction requirements, slope stability issues, drainage locations with respect to walls, finish floor elevations, drain materials, and shall contain recommendations regarding foundation design, retaining wall design, and paving sections, where applicable, for the project. The soils report shall be reviewed and approved by the City Engineer.

GS/mm-3 Prior to issuance of grading and construction permits, the applicant shall prepare a drainage and erosion control plan to reduce the potential for erosion and down-gradient sedimentation both during construction and for the life of the project. Grading and construction plan shall include measures to prevent and avoid spills or spread of dangerous materials and clean-up procedures in the event of a spill. Monitoring or inspection of construction activities by the City Building Inspector shall occur as needed to ensure compliance with the erosion control plan.

After implementation of these measures, residual impacts related to geology and soils would be less than significant.

Monitoring:

Design plans shall be inspected and approved by the City Engineer to ensure compliance with the requirements of the Geologic Report. Erosion control plans shall be submitted to the City Community Development Department for review and approval, in consultation with the City Engineer. Monitoring or inspection of construction activities by the City Building Inspector shall occur as needed to ensure compliance with design plans and the drainage and erosion control plan.

HAZARDS AND HAZARDOUS MATERIALS

HAZ Impact 1 Development associated with the proposed project has the potential to result in the accidental release of hazardous materials into sensitive areas adjacent to the project site.

HAZ/mm-1 Prior to construction, the applicant shall prepare a drainage and erosion control plan which also specifically addresses hazardous materials to be used during construction and operation, and identifies procedures for storage, distribution, and spill response for review and approval by the City Community Development Department. The plan shall identify hazardous materials to be used during construction and operation, and shall identify procedures for storage, distribution, and spill response. Equipment refueling shall be done in non-sensitive areas and such that spills can be easily and quickly contained and cleaned up without entering any existing stormwater drainage system or creek. The plan shall include procedures in the event of accidents or spills, identification of and contact information for immediate response personnel, and means to limit public access and exposure. Any necessary remedial work shall be done immediately to avoid surface or ground water contamination. The plan shall be implemented by the construction contractor, and verified by the City Building Inspector.

With implementation of this mitigation measure, impacts related to hazards and hazardous materials would be less than significant.

Monitoring:

The applicant shall be responsible for implementing the approved drainage and erosion control including spill prevention control and response measures. The City Building Inspector shall conduct periodic inspections to verify compliance.

HYDROLOGY AND WATER QUALITY

- HWQ Impact 1** The project would increase impervious surfaces at the project site, which would increase the total volume of storm water runoff and could contribute to erosion, siltation and flooding risks.
- HWQ/mm-1* *Prior to issuance of grading permits, the applicant shall submit a final grading and drainage plan for review and approval by the City Engineer and California Department of Transportation (Caltrans). The drainage plan shall demonstrate that additional runoff resulting from the project would not compromise the existing culvert under Toro Lane, and would avoid scour under the culvert structure and concrete portion of the channel.*
- HWQ/mm-2* *Prior to issuance of grading permits, final plans shall clarify if any work will occur within the easement for the culvert and drainage channel and obtain any encroachment permit deemed necessary by the City Engineer.*
- HWQ/mm-3* *Prior to issuance of grading and building permits, the applicant shall submit construction plans incorporating Low Impact Development (LID) planning principles, to the maximum extent feasible, consistent with the City of Morro Bay "Stormwater Management Guidance Manual for Low Impact Development and Post-Construction Requirements" to the satisfaction of the Public Works Director.*

After implementation of these measures, residual impacts would be less than significant.

Monitoring:

Monitoring shall occur as necessary to ensure development is proceedings consistent with the final grading and drainage plan. The City shall verify receipt of a copy of the Caltrans-issued Encroachment Permit.

NOISE

- N Impact 1** The proposed project places structures and people in an area subject to excessive noise levels associated with traffic along State Route 1.
- N/mm-1* *Prior to issuance of building permits, the applicant shall submit plans incorporating noise mitigation measures, including, but not limited to:*
- a. location of all vents and other roof and wall penetrations on walls and roofs facing away from the noise source (on the north, west and east elevations whenever possible)*
 - b. use of bends and insulation in ventilation systems*
 - c. use of closable dampers*
 - d. Sound Transmission Class rated wall, door and window materials*
 - e. use of acoustical sealant on all windows and other openings as appropriate.*

With implementation of these construction measures, impacts would be less than significant.

Monitoring:

Monitoring shall occur as necessary to ensure development is proceeding consistent with the mitigation measures and that all exterior and interior noise levels are consistent with levels established in the Noise Element prior to occupancy.

Acceptance of Mitigation Measures by Project Sponsor:

Name

Date

LOW-IMPACT DEVELOPMENT

HABITAT RESTORATION AND ENHANCEMENT AS PER BIOLOGY REPORT
NON-INVASIVE DROUGHT TOLERANT PLANTS
VEGETATED SWALES
AMEND SOILS
CATCH BASINS
CONSTRUCTION BEST MANAGEMENT PRACTICES (BMP)

GREEN MEASURES

ENERGY STAR APPLIANCES
TANKLESS WATER HEATER
HIGH EFFICIENCY FAU
LOW E GLAZING
SHIELDED LOW INTENSITY EXT. LIGHTING
TITLE 24 ENERGY COMPLIANCE
LOW & NO-VOC FINISHES

BLDG. CODES

2013 CALIFORNIA BUILDING CODE
2013 CALIFORNIA RESIDENTIAL CODE
2013 CALIFORNIA PLUMBING CODE
2013 CALIFORNIA MECHANICAL CODE
2013 CALIFORNIA ELECTRIC CODE
2013 CALIFORNIA ENERGY CODE
CALIFORNIA GREEN BUILDING CODE
2013 CALIFORNIA FIRE CODE
CALIFORNIA REFERENCE STANDARDS CODE

STORMWATER

APPENDIX A

CHILPERFORMANCE REQUIREMENT DETERMINATION FORM

The following form shall be completed for all SFR development and redevelopment projects. Projects that are exempt from performance requirements are required to complete Section 1 & 2 only.

Section 1: General Information	
Project Name	Frye Residence
Project Address	3426 TORO LN
Assessor's Parcel Number(s)	065-091-022
Name of Applicant	GREEN & SHAWK
Applicant's email address	gshawk@gmail.com
Applicant phone	(805) 225-1003
Project Type (e.g., single-family residential, commercial, etc.)	Single-Family Residence
Section 2: Area Information (SF)	
Total Project Area	5,816.19 SQ. FT.
Total Existing Impervious Surface Area	None
Proposed New Impervious Area (List only the surface areas that are being added to the project)	
a. Rooftops	2,124.71 SQ. FT.
b. Driveways	581.6 SQ. FT.
c. Patios	< 100 SQ. FT. ?
d. Other	
Total New Impervious Area	2,706.31 SQ. FT.
Total Gross Impervious Area (Total Existing Impervious Area + Total New Impervious Area)	2,706.31 SQ. FT.
Section 3: Performance Requirements	
Net Impervious Area (Final page 1)	2,706.31 SQ. FT.
Performance Requirements (from Page 1)	6.1 & 4.5

VICINITY MAP



TRAIL / PATH DESIGN

THE SUBJECT TRAIL/PATH WILL BE IN-ACCORDANCE WITH THE CALIFORNIA STATE PARKS HANDBOOK, THE RESOURCES AGENCY DEPARTMENT OF PARKS AND RECREATION, "TRAILS HANDBOOK"

PROJECT INFO.

APN: 065-091-022
ZONING: R-1 / S.2.A / ESH
PROPOSED NEW RESIDENCE:
CONDITIONED SPACE: 1,580 SQ. FT.
GARAGE: 552 SQ. FT.
COVERED ENTRY: 17 SQ. FT.
OPEN PATIO: 242.4 SQ. FT.
PORTION OF DRIVEWAY & CONC. PLATWORK ON PROPERTY: 581.6 SQ. FT.
PORTION OF DRIVEWAY IN RIGHT-OF-WAY: 1,056 SQ. FT.
LOT SIZE: 10,019 SQ. FT.
PROPOSED LOT COVERAGE: (2,149 SQ. FT.) 21.3%
[HOUSE, GARAGE, & COVERED ENTRY]
PROPOSED IMPERVIOUS SURFACES: 2,959.7 SQ. FT.
[WITHIN PROPERTY - HOUSE, GARAGE, COVERED ENTRY, OPEN PATIO, DRIVEWAY & CONCRETTE PLATWORK]
OCCUPANCY: R-3 SFR
CONSTRUCTION TYPE: TYPE V, SPRINKLED
A.N.G. OF BUILDING PAD: 31.03°
ALLOWED ROOF HEIGHT: > 4:12 SLOPE 48.03°
ALLOWED ROOF HEIGHT: < 4:12 SLOPE 45.03°
PROPOSED ROOF HEIGHT: > 4:12 SLOPE 47.95°

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CHRISTOPHER R. PARKER
ARCHITECT
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(805) 752-8760

STAMPS



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(805) 244-1900

EARTH SYSTEMS PACIFIC
1701 SANTA FE ROAD
SAN LUIS OBISPO, CA 93401
(805) 544-3276

KMA
KEVIN MCKINNON ASSOCIATES, LLC
P.O. BOX 318
SAN LUIS OBISPO, CA 93406

PROJECT

FRYE RESIDENCE

3426 TORO LANE
MORRO BAY, CA 93422

DRAWING PHASE
CONSTRUCTION DOCUMENTS

Project No.	14-112
Drawn By	CPA
Draw Date	09/26/15
Updated	-
Scale	AS NOTED

REVISIONS

SHEET TITLE

PROJECT INFO.

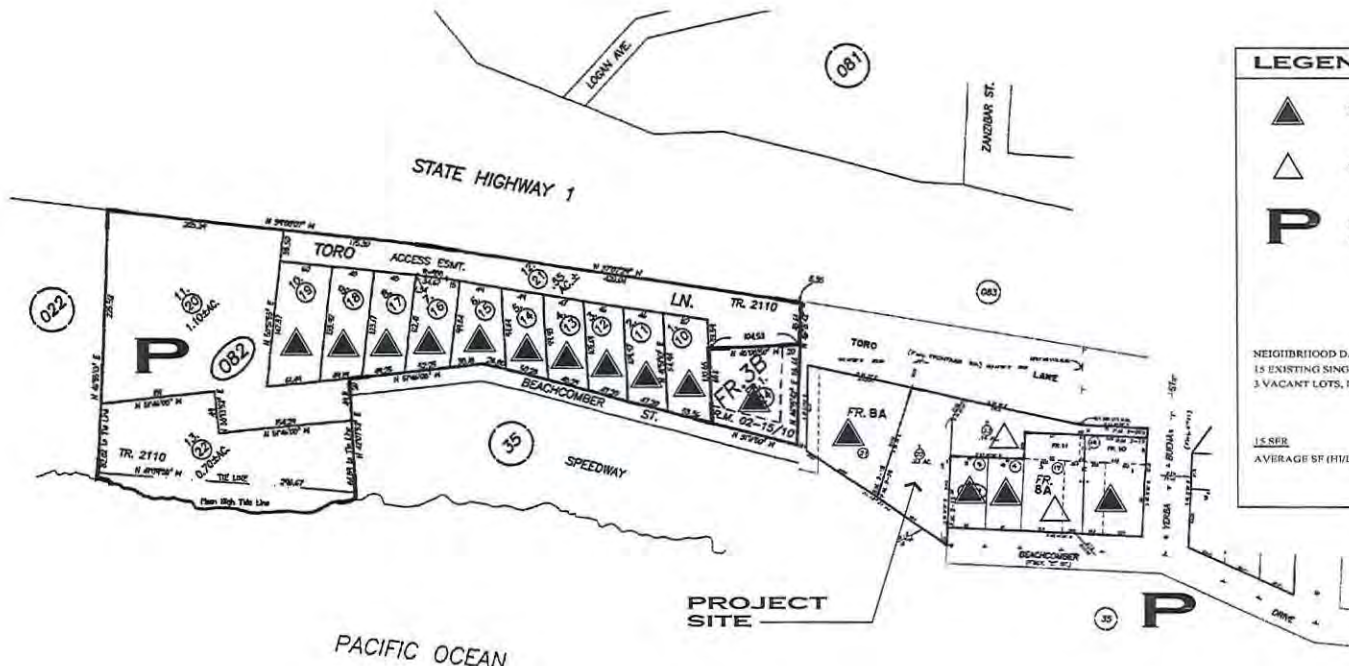
SHEET NO.

A1.1

SHEET INDEX

A1.1 PROJECT INFORMATION
A1.2 SITE PLAN
A1.3 GRADING PLAN
A2.1 FLOOR PLAN
A3.1 ELEVATIONS
A4.1 SECTIONS

NEIGHBORHOOD COMPATIBILITY



LEGEND

- EXISTING SFR
- VACANT PARCEL
- PUBLIC LANDS & ACCESS POINT

NEIGHBORHOOD DATA (FROM PUBLIC RECORDS)
15 EXISTING SINGLE FAMILY RESIDENCES (SFR)
3 VACANT LOTS, INCLUDING THE PROPOSED RESIDENCE

15 SFR	AREA	LOT COVERAGE
AVERAGE SF (HI/LOW)	2,463 SF	28.80%

KEY

100



1

CLINICAL
D
101401

WOLFE

ANCE

STATION

14.1
C
09/28
S NOTH

2

SITE PLAN



TRAIL / PATH DESIGN

C. P. PARKER
 ARCHITECT

CHIEF ARCHITECT: C. PARKER
 600 QUINN ST., 2ND FLOOR
 SAN FRANCISCO, CA 94104
 (415) 774-1000



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 MICHAEL L. SANCHEZ, PRINCIPAL
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 (951) 366-0800

KMA
 KEVIN MCKEN ASSOCIATES, LLC
 SAN LEONARDO, CA 92586

PROJECT
FRYE RESIDENCE

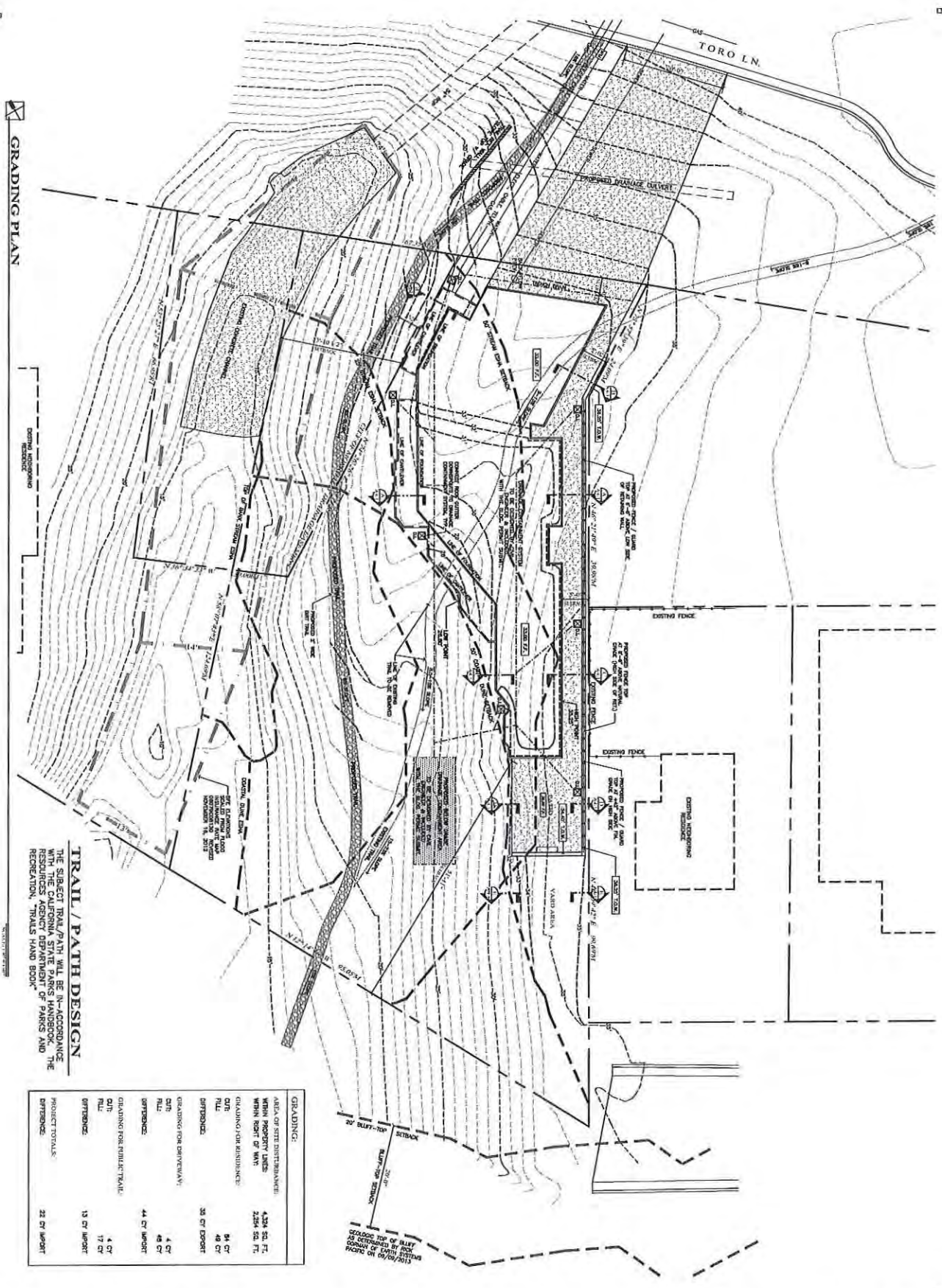
3420 TORO LANE
 MORENO VALLEY, CA
 92553

DEVELOPER/OWNER
CONSTRUCTION DOCUMENTS

PROJECT NO.	14-112
DRAWN BY	CVE
CHECKED BY	09/25/15
DATE	AS NOTED
REVISIONS	

SHEET TITLE
GRADING PLAN

SHEET NO.
A1.3

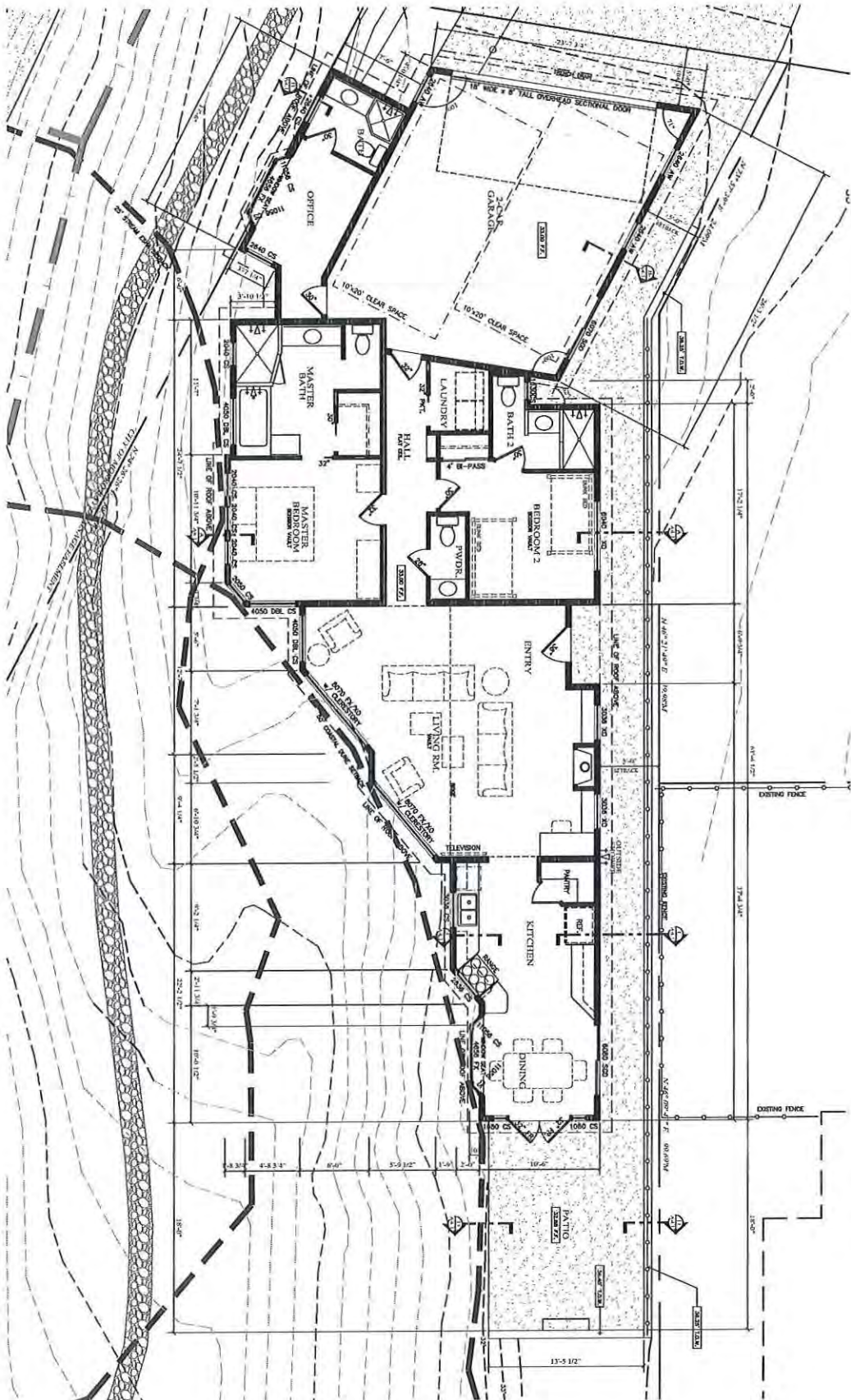


GRADING PLAN

TRAIL / PATH DESIGN
 THE SUBJECT TRAIL / PATH WILL BE IN ACCORDANCE WITH THE CALIFORNIA STATE PARKS HANDBOOK, THE RESOURCES AGENCY DEPARTMENT OF PARKS AND RECREATION, TRAILS HANDBOOK

GRADING:	
AREA OF SITE DISTURBANCE:	4,324 SQ. FT.
AREA OF SITE IMPROVEMENT:	2,204 SQ. FT.
GRADING FOR DRIVEWAY:	54 CV
GRADING FOR DRIVEWAY:	48 CV
GRADING FOR DRIVEWAY:	35 CV EXPORT
GRADING FOR DRIVEWAY:	4 CV
GRADING FOR DRIVEWAY:	48 CV
GRADING FOR DRIVEWAY:	44 CV IMPORT
GRADING FOR DRIVEWAY:	4 CV
GRADING FOR DRIVEWAY:	17 CV
GRADING FOR DRIVEWAY:	13 CV IMPORT
GRADING FOR DRIVEWAY:	22 CV IMPORT

FLOOR PLAN



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C. P. PARKER
 ARCHITECT

REGISTERED ARCHITECT
 NO. 00123456789
 STATE OF CALIFORNIA
 1000 10th Street
 STEAMERS



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 1000 10th Street
 STEAMERS

EAFFY SYSTEMS PACIFIC
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 (800) 244-2270

KMA
 KERRY M. KERR, ASSOCIATES, LLC
 1000 10th Street
 STEAMERS

FRYE RESIDENCE

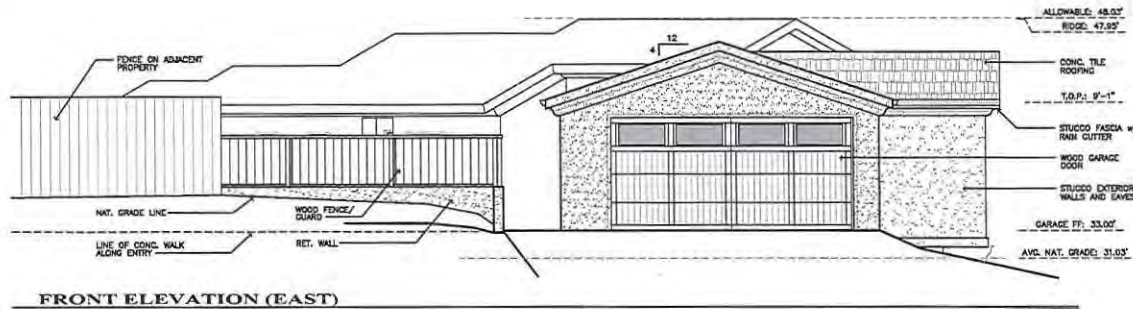
3231 TONGUE LANE
 MORRIS HILL, CA
 94442

CONSTRUCTION DOCUMENTS

Project No.	14-112
Drawn By	CJP
Date	09/29/15
Revised	AS NOTED
Revisions	

SHEET TITLE
FLOOR PLAN

A2.1

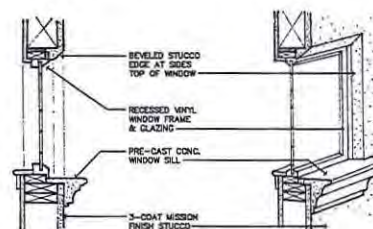
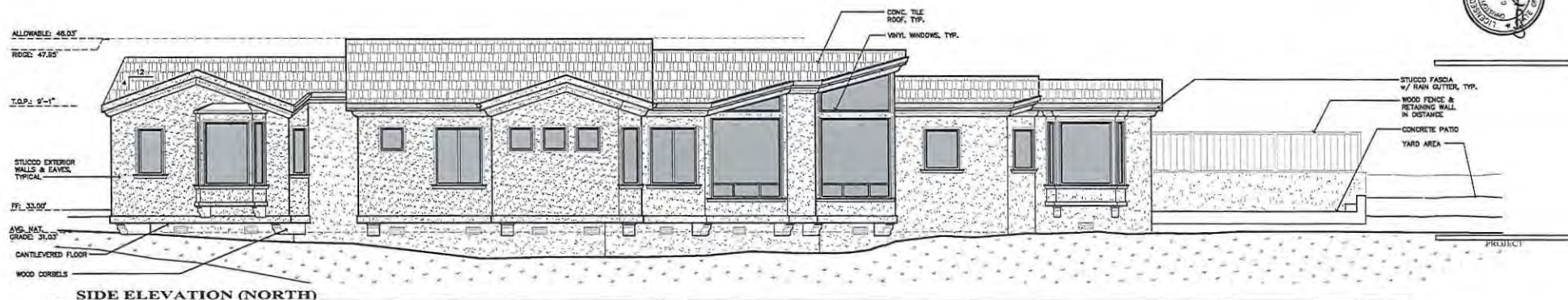


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ARCHITECT

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ARCHITECT
430 GUNNARA RD. #350
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STAMPS



EXTERIOR LIGHTING REQUIREMENTS

ALL EXTERIOR LIGHTING SHALL BE OF HIGH EFFICACY, OR ON A PHOTOCELL & MOTION SENSOR
EXTERIOR LIGHTING IS TO BE DOWNWARD FACING AND SHIELDED TO NOT ALLOW THE BULB TO BE VISIBLE FROM NEIGHBORING PROPERTIES, OR PUBLIC SPACES

Frye Residence

3420 TORO LANE
MORRO BAY, CA 93442

DRAWING PHASE
CONSTRUCTION DOCUMENTS

Printed No.	14-112
Drawn By	CPP
Date	09/28/15
Updated	-
Scale	AS NOTED

REVISIONS

SHEET TITLE:
ELEVATIONS

SHEET NO.

A3.1

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STAMPS



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KMA
 KEVIN MERRA ASSOCIATES, LLC
 P.O. BOX 318
 SAN LUIS OBISPO, CA 93406

PROJECT

FRYE RESIDENCE

3420 TIGRO LANE
 MORRIS BAY, CA
 93442

DRAWING PHASE
CONSTRUCTION DOCUMENTS

Project No.	14-112
Drawn By.	CPP
Disc. Date	09/26/15
Updated	-
Scale	AS NOTED

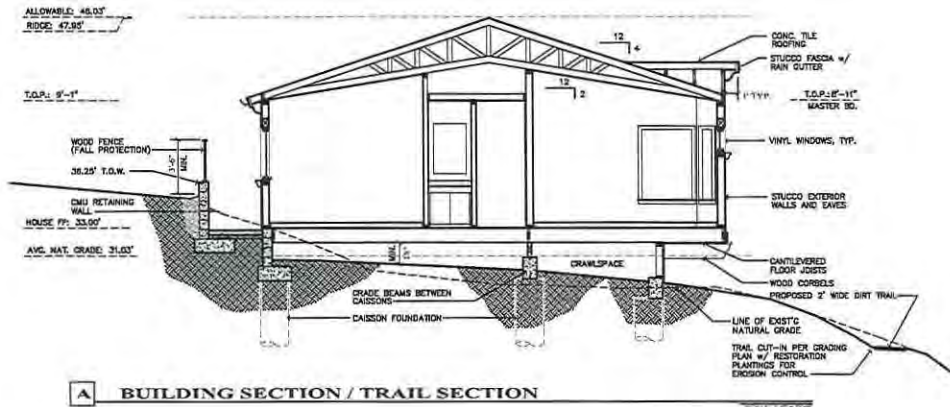
REVISIONS

SHEET TITLE

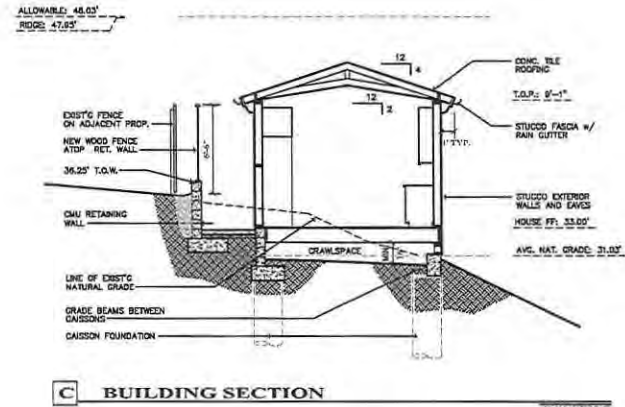
SECTIONS

SHEET NO.

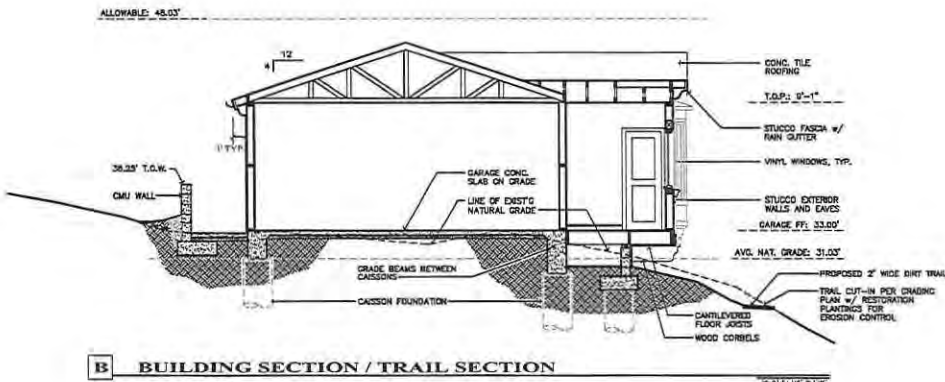
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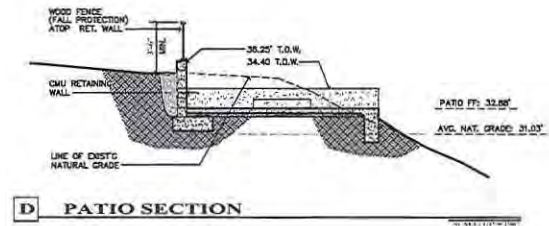
A BUILDING SECTION / TRAIL SECTION



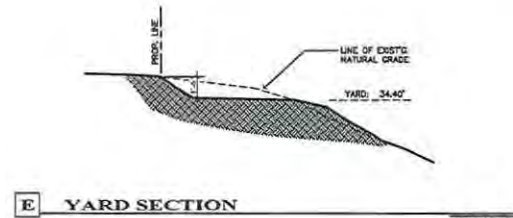
C BUILDING SECTION



B BUILDING SECTION / TRAIL SECTION



D PATIO SECTION



E YARD SECTION

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: Barry F. Branin

Mailing Address: P.O. Box 540

City: Morro Bay

Zip Code: 93443

Phone: 8057719310

SECTION II. Decision Being Appealed

1. Name of local/port government:

City Of Morro Bay

2. Brief description of development being appealed:

Construction of a Single Family residence at 3420 Toro Lane, Morro Bay, CA

3. Development's location (street address, assessor's parcel no., cross street, etc.):

3420 Toro Lane, Morro Bay, CA 93442. Nearest cross street Yerba Buena, APN 065-091-022

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.

TO BE COMPLETED BY COMMISSION:

APPEAL NO: A-3-MRB-16-0002

DATE FILED: 1/7/2016

DISTRICT: Central Coast

RECEIVED
DEC 28 2015
CALIFORNIA
COASTAL COMMISSION

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: December 8, 2015

7. Local government's file number (if any): CPO - 419, UPO - 383

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:

Jeanne and Gregory Frye, 1725 Little Morro Creek Road, Morro Bay, CA 93442

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) Linda Stedjee, 2848 Birch Avenue, Morro Bay, CA 93442

(2) Betty Winholtz, 405 Acacia St, Morro Bay, CA 93442

(3)

(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.

Overview:

The project is in violation of the Morro Bay Local Coastal Plan. In Chapter III, Shoreline Access and Recreation, policy 1.07 it states that development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization.

Details:

The construction of the new single family residence will block a trail to the beach that has been in open and continuous public use since the 1940's. It is a hard packed gentle trail that leads directly from the street to the beach. Verbal history and early photos show that this was used by the military to bring tanks used in the amphibious training exercises that were practiced on the coast in this area. The soils in this area are firmer than that further south along the coast as evident by the bluffs and rocky shoals that are evident. Further south the beach is all covered with sand dunes that are constantly shifting. This stable trail is in constant use by residents of North Morro Bay. These residents' access to the ocean was cut off when the four lane Highway 1 was constructed. The Highway placed 6' chainlink fence on both sides of the road for about 1 mile. This forces anyone that wants to get to the beach to cross the Highway at the traffic light at Yerba Buena and thus funnels the foot traffic directly to the trail in question.

Many of the homes on the inland side of the Highway are vacation homes. These people are not full time residents and are not aware of the "taking of their trail".

When Proposition 20 was passed it was a reflection of the need for the Government to protect the people that can not own ocean front property to still have access to their Beach.

Summary:

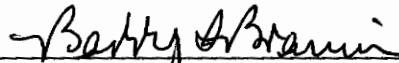
I will not go further in my appeal with the specific details of the law. Another appellant has done a complete job and I have reviewed her work and agree with her summary.

Please keep this important trail from being taken.

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.



Signature of Appellant(s) or Authorized Agent

Date: December 21, 2015

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: December 21, 2015

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

RECEIVED

DEC 14 2015



APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT

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

SECTION I. Appellant(s)

Name: Linda Stedjee

Mailing Address: 2848 Birch Avenue

City: Morro Bay

Zip Code: 93442

Phone: 805-771-9254

SECTION II. Decision Being Appealed

1. Name of local/port government:

City of Morro Bay

2. Brief description of development being appealed:

Construction of new home at 3420 Toro Lane, Morro Bay, CA

3. Development's location (street address, assessor's parcel no., cross street, etc.):

3420 Toro Lane, Morro Bay, CA 93442, nearest cross street Yerba Buena, APN 065-091-022

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.

TO BE COMPLETED BY COMMISSION:APPEAL NO: A-3-MRB-16-0002DATE FILED: 1/7/2016DISTRICT: Central Coast

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.

Overview:

The project as approved violates Morro Bay Local Coastal Plan Chapter III, Shoreline Access and Recreation, policy 1.07 and would deprive many Morro Bay residents of the only safe and usable beach access route within walking distance of their homes.

Details:

The permit applicants have sited their proposed home directly on top of a public beach access path that has been in public use for 70 years. A recent survey, designed and conducted under the guidance of the CCC's prescriptive easement expert, documents use since the 1950's, and indicates that all criteria for establishment of a public prescriptive easement on the path have been met. A court filing to begin the process of formalizing the public prescriptive easement will be done shortly.

The applicants have offered dedicated alternate access on the site. However, the access afforded by the proposed alternate route is decidedly inferior to the access provided by the existing route and would not be useable by many who utilize the existing access path.

The existing beach access path on the Toro Lane site primarily serves middle- and lower-middle-income neighborhoods located east of Highway 1 in North Morro Bay. Generations of beachgoers have crossed the highway at Yerba Buena Street and then proceeded to the path on the 3420 Toro Lane site to go to the beach. Yerba Buena is the only way in the area to cross the highway to reach the shore. The next-closest crossing point is about a mile to the south - not walking distance for many.

The existing path is on a flat, relatively-level surface, and descends gradually to the beach. It is used extensively by various segments of the population, including older persons and others who may have mobility or balance issues, and by families with small children. Many families use beach wagons and strollers to transport their children safely to the beach on this path.

Morro Bay Local Coastal Plan, Chapter III, policy 1.07 says, "Consistent with Coastal Act Section 30211, development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization. Such access shall be protected through permit conditions on permitted development, including easements, dedications or continued accessway maintenance by a private or public association. Existing identified trails or other access points shall not be required to remain open provided that they are consolidated or relocated to provide public access on the same site

and provides the same or comparable access benefits as existed before closure and meets all other open access and other applicable access and recreation policies of the LUP."

Although the applicants propose to provide an alternate beach access path on the same site, it would NOT provide the "same or comparable benefits as existed before closure" of the existing path. The proposed beach access route would be just 18 inches wide and would be located on the side of a bluff, with a steep drop to a concrete swale below. Strollers and beach wagons are too wide to fit on an 18-inch-wide path, and anyone who fell on such a narrow path could easily tumble down into the ravine and land on concrete. Thus it would be unusable by many users of the current path, such as older residents and others who may have mobility or balance issues, and families that use beach wagons and strollers to transport small children. Hence, the proposed alternative trail would exclude some segments of the population that use the current one. So, as noted previously, the proposed trail would not provide benefits the same as or comparable to benefits provided by the existing one.

In addition, it has been clearly stated by the applicants and by the City of Morro Bay that neither will maintain the new path. According to Coastal Act section 30212, "Dedicated accessway shall not be required to be opened to public use until a public agency or private association agrees to accept responsibility for maintenance and liability of the accessway." This appears to mean that even if the inferior alternative path were allowed and constructed, it the applicant would not be required to open it for public use. Once again, LCP policy 1.07 would be violated, as a trail not open to the public would clearly not provide the same (or comparable) access benefits as the old (currently existing) one, which has been in continual use by the public for 70 years.

In addition, please note that the existence of other beach access in the area (which I believe are all unusable for many users of the that of the Toro Lane path) appears to be irrelevant, since LCP policy 1.07 basically indicates that closing an existing trail is only allowed when there is consolidation or relocation on the same site. It does not say you can substitute an offsite access route for the closed trail.

Finally, since both the City and the applicant have said they would not maintain the new access path, it would be only temporary, as an un-maintained hillside path would obviously erode away and disappear - likely in a fairly- short time, especially as compared with the 70 years the existing path has been in use.

In sharp contrast to the proposed alternate path, it seems likely that the existing path would last many more decades, even without maintenance. It was originally a tank road during WWII, and the soil was well compacted by tanks that were brought to the shore in LST's unloaded, and driven up the tank road to the highway. This existing path including its adjacent "shoulder areas" is obviously quite wide compared to the proposed path, due to the width necessary to accommodate a tank.

Attachments:

Exhibit 1. Copy of Morro Bay Local Coastal Plan Policy 1.07, from LCP Chapter III, Shoreline Access and Recreation, pages 47 and 48

Exhibit 2. Prescriptive easement questionnaire results summary

Exhibit 3. Copies of resident-submitted prescriptive easement questionnaires as obtained from the City of Morro Bay Planning and Building Department

Exhibit 4. Copy of written appeal of Coastal Development Permit #CP0-419 as submitted to the City of Morro Bay

Exhibit 5. Copy of Powerpoint slides and speaker notes used in appeal presentation at City of Morro Bay Council meeting on December 8, 2015

Exhibit 6. Table of attributes of beach access routes at and in the vicinity of 3420 Toro Lane

Exhibit 7. Aerial view showing the only two beach access routes across Highway 1 in North Morro Bay

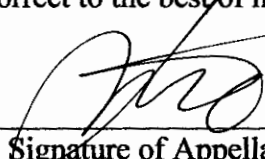
Exhibit 8. Close-up aerial view of Yerba Buena Street Highway crossing and existing coastal access at 3420 Toro Lane

Exhibit 9. References Regarding the importance of trail maintenance to prevent trail deterioration and loss

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.



Signature of Appellant(s) or Authorized Agent

Date:

12/16/2015

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

Section VI. Agent Authorization

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

Signature of Appellant(s)

Date:

N/A

City of Morro Bay
Coastal Land Use Plan
Chapter III

G. RECREATION AND ACCESS POLICIES

1. General Access and Recreation Policies

The following general access and recreation policies apply to the area of the City which is between the mean high tide line and the first public road. These policies are in addition to those listed by planning areas.

Policy 1.01. For new developments adjacent to the bayfront or ocean, public access from the nearest public roadway to the shoreline and along the coast shall be provided except where (1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources, (2) adequate access exists nearby, or (3) agriculture would be adversely affected. For new development on properties adjacent to the mean high tide line, lateral easement dedications shall be from the mean high-tideline to the first line of vegetation.

Policy 1.02. No unrelated development shall be permitted in publicly-owned recreational areas except energy conduits and pipelines and other necessary ancillary equipment and related fixtures to serve coastal-dependent industrial uses when no alternate route or location is feasible.

Policy 1.03. In implementing all proposals made in this plan for expanding opportunities for coastal access and recreation, purchase in fee (simple) shall be used only after all other less costly alternatives have been studied and rejected as infeasible. Other alternatives may include purchase of easements, recreation preserve contracts, and mandatory dedication in connection with development.

Policy 1.04. Consistent with the provisions of Coastal Act Section 30212, dedicated accessways shall not be required to be opened to public use until a public agency or private association agrees to accept responsibility for maintenance and liability of the accessway. Whenever feasible in view of the availability of funds, the City shall acquire accessways in addition to those otherwise acquired as a result of mandatory conditions to development permit approvals.

Policy 1.05. Parking shall be provided in conjunction with new or improved vertical accessways whenever feasible and consistent with site constraints to ensure use of the accessway. The number of spaces shall be determined by the Planning Commission or Community Development Department and shall be based upon need, carrying capacity of the public recreation area to which access is provided and environmental constraints and safety conditions.

Policy 1.06. All accessways shall be properly signed and should conform to Coastal Conservancy/Coastal Commission access standards and guidelines.

Policy 1.07. Consistent with Coastal Act Section 30211, development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization. Such access shall be protected through permit conditions on permitted development, including easements dedications or continued accessway maintenance by a private or public association. Existing identified trails or other access points shall not be required to remain open.



provided that they are consolidated or relocated to provide public access on the same site and provides the same or comparable access benefits as existed before closure and meets all other applicable access and recreation policies of the LUP.

Policy 1.07A. In reviewing all new development requests, provision shall be made for adequate off-street parking in order to serve the needs of the development. Once an approved parking management program for the City providing off-street parking resources has been developed and implemented as a part of the LUP, new development shall be allowed to satisfy parking requirements through participation in such a program. If the program includes an in-lieu fee system, the new development shall provide an in-lieu fee of an amount equal to the purchase of land and construction of the number of spaces needed to serve the development's needs.

2. Policies by Planning Area

The following policies are specific to access and recreation uses by planning area. The planning areas are shown on Figure 3 in Chapter I "Introduction." Figures 8 and 9 show the general location of access and recreation areas discussed in the following policies. These policies implement the public access and recreation policies of the Coastal Act which require that maximum shoreline access shall be provided in new developments except where it is inconsistent with the protection of coastal resources.

Area 1- North Morro Bay

Policy 1.08. With the exception of the Chevron U.S.A. Pier which is a coastal-dependent industrial use, the City shall designate the sand area west of State Highway One between the mean high tide line and the first line of vegetation as open space/recreation use.

Policy 1.09. As a condition to the approval of any development permit on the Chevron U.S.A. property the City shall require clear dedication of a lateral access easement along the sand area and under the pier. The lateral accessway shall be a minimum of 25 feet of dry sandy beach at all times of the year, or shall include the entire sandy beach area if the width of the beach is less than 25 feet.

Policy 1.10. As a condition to the approval of any development permit the City shall require State Department of Parks and Recreation to submit a master plan for the development of Atascadero State Beach, which shall include the following improvements:

- a. The design and construction of two stairways to the state beach off Beachcomber Drive, one below the bluffs between the Beachcomber Drive, one below the bluffs between the Beachcomber Drive terminus with Yerba Buena Street and another at a proper location between Unnamed Creek and the Orcas Street drainage.

3420 Toro Lane Public Path Prescriptive Easement Survey Results Summary

Process:

Questionnaires were developed according to specifications and a sample obtained from the California Coastal Commission. Questionnaire requirements were also discussed with a Commission staff member who specializes in prescriptive easements.

The questionnaires were distributed by one individual over a two-week period. Distribution was done as follows:

- At the trailhead, on two weekend days, for about 2 hours each day
- At a farmer's market, on two consecutive Thursday afternoons
- Door-to-Door on three streets (Zanzibar, Yerba Buena, Vashon) east of Highway One
- To some persons with whom the person distributing the questionnaires was acquainted

Completed questionnaires were delivered to the City of Morro Bay Planning and Building department.

Results:

75 questionnaires were completed by persons who use the path.

The earliest documented path use was by a respondent who used it in the 1950's. Two respondents began using the path in the 60's, seven began using it in the 70's, thirteen in the 80's, seven in the 90's, and 13 began using the path between 2000 and 2010. The remainder either began using it within the last five years, or misunderstood the question and gave the dates of their most recent uses.

The primary reason given for path use is beach access. Additional uses specified include birding, surfing, walking, biking, dog walking and clamming (clamming was in the 1950's).

More than a third of the responding path users state they are 61 or older. Age groups of respondents are as follows:

20 and under:	3
21 - 30:	9
31 - 40:	4
41 - 50:	6
51 - 60:	15
61 - 70:	19
71 - 80:	8
over 80:	1
No age given:	10

Fifteen respondents said they had used the path 100 times or more (of those, one said "100?"). Within that group, three said they had used it 1,000 or more times over the years. Three said their uses were "too many to count". Four said "numerous", "many", or "frequently". Some said they used it a specific number of times per week, month, or year. Others gave numbers of uses between 2 and 50+.

According to the California Coastal Commission, the following are the basic criteria for determining prescriptive rights to use a property:

- Use is substantial rather than minimal
- Use is continual, although it need not be continuous
- Use must be without asking or receiving permission from the owner
- Use must be with the actual or presumed knowledge of the owner
- There must be no significant objection or bona fide attempts by the fee owner to prevent or halt the use.

Only one respondent stated she had asked for permission to use the path; all others stated that they had never sought nor received permission. One respondent said that within the two week period prior to completing his questionnaire, someone had tried to interfere with his use of the path; one stated that in the last year, signs have been put up. All others stated that their path use had never been interfered with. Many respondents specifically stated on questionnaire page 2 that they believed the path was public property.

Respondents provided significantly more information than that compiled in the table below. The data provided here was chosen because it is a meaningful subset of that data which specifically addresses the California Coastal Commission criteria.

Respondent		Path Usage Duration	Approximate Number of Uses	Used Path Openly?	Asked and/or Received Permission?	Did Anyone Ever Try to Prevent Path Use?	Observed Others Using the Path?
Betty W.	63	1986 to present	35 - 40	Yes	No	Not until the last year, when signs were put up	Frequently
J. Gary W.	72	Last 3 years	20+	Yes	No	No	Frequently
F. Paul W.	56	1999 to present	20+	Yes	No	No	Frequently
James W.	53	1975 to present	Not specified	Yes	No	No	Whenever I was there
Robert S.	80	not specified	6	Yes	No	No	Frequently
Michael S.	70	1981 to present	100+	Yes	No	No	Whenever I was there; frequently
Chris S.	56	Since July, 2015	10+	Yes	No	No	Whenever I was there
Gail Q.	72	Since January, 2014	20	Yes	No	No	Whenever I was there
Daniel P.	66	Since 2001	4 times a year	Yes	No	No	Occasionally
Charlene P.	68	Since 2001	4 times a year	Yes	No	No	Occasionally
Daniel O.	25	Within last 6 months	4 or 5	Yes	No	No	Occasionally
Jonathan O.	34	Since 1981	100 ?	Yes	No	No	Frequently
Jeff O.	63	Since 1971	not specified	Yes	No	No	Frequently
Jacque O.	---	Since 1971	many	Yes	No	No	Frequently and Occasionally
Lynda M.	---	Since 1980	50	Yes	No	No	Occasionally
Frank M.	77	Since 1987	6	Yes	No	No	Occasionally
Denise H.	54	Since the 70's	whenever in town	Yes	Yes	No	Frequently

David N.	67	1990	2 – 3 times a week	Yes	No	No	Whenever I was there
Monique N.	---	Roughly 1995	varied over years but now 2 – 3 times/week	Yes	No	No	Frequently
Ruby N.	9	2006	Too many to count	Yes	No	No	Whenever I was there
Bill N.	68	2000	50	unspecified	No	No	Occasionally
Ava R. P.	9	2006	100's	Yes	No	No	Whenever I was there
Leanne	57	unspecified	2	Yes	No	No	Frequently
Logan R.	25	2010	? – looks like 101s!	Yes	No	No	Frequently
Michele S.	43	40 years	100's	Yes	No	No	Whenever I was there
Nine T.	62	every day	7 days a week	unspecified	No	No	Whenever I was there
Ben W.	37	7-1- 4	100	Yes	No	No	Whenever I was there
Alice Y.	72	3 x week	100's	Yes	No	No	Frequently
Diane and Ralph S.	---	1980	1000 +	Yes	No	No	Whenever I was there, and Frequently
Margie P.	70	1989	weekly	Yes	No	No	Whenever I was there
Abe P.	84	1989	On and off since 1989	Yes	No	No	Whenever I was there
Barbara W.	71	1987	Well over 3000	Yes	No	No	Frequently
Cynthia H.	---	August 2015 and in 1950's	20	Yes	No	No	Whenever I was there
Lisa K.	55	1986	20 – 30 years	Yes	No	No	Frequently
Kirk K.	65	1975	100	Yes	No	No	Frequently
Flora K.	27	1990	unspecified	Yes	No	No	Whenever I was there
Francesca K.	17	1998	unspecified	Yes	unspecified	No	Frequently
Nancy K. B.	65	2005	25	Yes	No	No	Occasionally
Chase C.	23	many, many years	? partially crossed out	Yes	No	No	Whenever I was there
Dennis C.	67	1968	50	Yes	No	No	Frequently
Natalia M.	---	1968	50	Yes	No	No	Frequently
Melinda J. U.	52	July, 2015	30	Yes	No	No	Frequently
Jackie R.	75	August, 2012	Twice a month	Yes	No	No	Frequently
Debbie H.	65	8/1/15	Several	Yes	No	No	Frequently
Helen G. A.	52	unspecified	unspecified	unspecified	unspecified	unspecified	unspecified
Christine B.	54	1996	20 times	Yes	unspecified	unspecified	occasionally

THIS IS REPRESENTATIVE OF
QUESTIONNAIRES RECEIVED FROM
75 INDIVIDUALS

PRESCRIPTIVE RIGHTS STUDY PUBLIC USE QUESTIONNAIRE AND DECLARATION

TORO LANE, MORRO STRAND STATE BEACH AREA, MORRO BAY, CA, SAN LUIS
OBISPO COUNTY

The Planning Commission of the City of Morro Bay is holding a coastal development permit hearing which involves a beach access trail and other uses made of the vacant hillside and ridge top between Toro Lane and the Morro Strand State Beach adjacent to the south side of No Name Creek located near the Yerba Buena signalization on Highway One. The investigation is for the purpose of determining whether any public rights exist therein by reason of public use. Your answers to this Questionnaire and Declaration will be appreciated.

Name (Print) Betty Winholtz
Street Address: 405 Acacia City: Morro Bay State: CA Zip: 93442
Mailing Address if different: —
Telephone (Home/Cell): (805) 772-5412 (Office): —
Email: winholtz@sbglobal.net
Occupation: homework tutor Age: 63

1. Have you personally and openly used the trail shown on the attached photograph? yes
If so, since what date 1986

2. Please mark the areas of your use on the enclosed photograph and date and sign the same.

3. Please describe the uses you have made of the trail. For example, did you use the trail for:
☒ access to the beach

☐ nature study (e.g. birding, plant identification)

☐ dog walking

☐ other (please specify) —

4. Approximately how many times have you used the trails? 35-40

5. Did you ever ask for and receive permission to use the trails? NO

6. Did anyone ever interfere in any way with your use? NO

7. Have you observed others using these trails? Yes

If so, for what purposes? access the beach

How often have you seen other members of the public using the trails?

Whenever I was there: — Frequently: — Occasionally: — Rarely: — Never: —

On these occasions, usually there were approximately 2-5 people present on any one occasion (Indicate number or range.)

8. Do you know the names of the other people who have used these trails? Yes NO

If so, please list them with their addresses and telephone numbers, if known.

RECEIVED

AUG 11 2015

City of Morro Bay
Community Development Dept.

9. Do you possess or know of the existence and/or whereabouts of items such as photographs, logs, diaries, notebooks, letters, etc. relating to your use of the trail or the uses of other people? If so, please describe the items and list the name of parties or locations where such items can be found:

NO

10. Did you make use of the trail as you would public property? If so, please explain.

YES, appeared public, no signs saying
it was public and its right close
to the public beach

11. Have you ever observed any no trespassing signs or equivalent signs, or signs giving permission to utilize the trail? YES If so, when and where?

In the last year no trespassing signs

12. Have you ever lived or worked in this vicinity? _____ If so, when and where?

I live in Morro Bay, but not this end of town
→ south → north

I declare under penalty of perjury that any answers to the foregoing Questionnaire and Declaration are true and correct to the best of my recollection.

Dated at: Morro Bay, CA on 8/4/15
City and State Date

Signature: Betty Alinholtz

The information contained in this questionnaire is subject to public disclosure and will not be kept confidential unless requested by the signatory in writing.

PLEASE MARK YOUR AREAS OF USE ON THE FOLLOWING PHOTO

Indicate any and all of the access routes you used and where you parked.

When you complete this questionnaire, please drop off or send a paper copy (not an email version) to:

The City of Morro Bay
Scot Graham, Community Development Manager
595 Harbor Street
Morro Bay, CA 93443

Questions regarding prescriptive rights and the Coastal Commission can be directed to Linda Locklin, 831-427-4875 or llocklin@coastal.ca.gov.



Betty Winkler
8/4/15

3420 Toro Lane Project Appeal to City Council

There are multiple concerns regarding the project proposed for 3420 Toro Lane, including disputed issues in consultant studies that support the CEQA determination, and concerns regarding a public path on the property. This complaint focuses on the public path.

As discussed in detail below, the path is necessary to provide beach access for those who cannot negotiate other area trails, all of which are too steep, and/or hilly, and/or have unstable soil underfoot. The proposed alternate path on the property, proposed only after residents submitted substantial proof that a prescriptive easement had likely been established, is unacceptable because:

- It would not be safe for many users due to its location
- It would not be permanent, also due to its location and because it has been clearly stated that it would not be maintained

Shortly after purchasing his land at 3420 Toro Lane, the applicant chose to change the ownership of one of the two lots in his parcel, and proposes his project for the second lot, the one on which the path is located. The proposed house is sited squarely on top of the path. Had the applicant chosen to merge the two lots, he would have had an ideal site for a good-sized home in a beautiful location - without blocking a public beach access route uniquely suited to the needs of older residents and visitors, others who are not agile and strong, and those who require the use of wheeled conveyances.

Please do not ask the public to suffer the negative consequences of a personal property ownership decision over which the public had no control. I ask that the Council reverse the Planning Commission decision and deny the permit for the proposed project at 3420 Toro Lane, as it is currently sited.

Following are details of some critical issues and concerns regarding the existing public path at 3420 Toro Lane, and the proposed alternate path at the site:

1. The Current Path Provides Unique, Safe Beach Access for Seniors and Others

The existing public path across the 3420 Toro Lane property has been in use by the public for decades and is unique in the area because its gentle slope and stable, compacted soil make it particularly suitable for older persons, and for those using strollers and beach wagons to transport babies and young children. Given that these conveyances can be and are used on the path, it is likely that a wheelchair could also be used on the path.

None of the other area paths could be considered beach wagon -friendly, stroller-friendly, or wheel chair-friendly. In short, while some users of the current Toro Lane path may be able to use other area trails, some cannot.

Contrary to claims made by the applicant's representative, some City staff, and one Planning Commissioner, the area does NOT have numerous comparable alternative routes to the beach. An extensive study of area beach access, prepared by Planning Commissioner Robert Tefft, provides substantial evidence that other area routes are not viable for many users of the current path.

In the document, "Investigation as to Potential Prescriptive Easement, Appendix A, PHOTOGRAPHIC RECORD OF ALTERNATE BEACH ACCESS", Commissioner Tefft provides both photographic and written description of area trails. Commissioner Tefft also provides annotated aerial views with path locations noted.

The first image below shows trails in the immediate vicinity of the 3420 Toro Lane path. The second and third images show trails in the general vicinity.



Alternative Access Routes - Beachcomber Area



Alternative Access Routes - North Point Area



Please note that Commissioner Tefft has numbered the trails from 1 through 12. Trails 1 through 3 access, (or connect with trails that access) the beach north of the 3420 Toro Lane path. Trails 4 through 7, and 8 through 12, access the beach south of the Toro Lane path.

Commissioner Tefft provides images of the trails/paths, and brief descriptions of each. Following, in italics, are quotes from his specific descriptions of these trails. Please note the portions in red type.

“Trail 1, North Point Area – Trail 1 appears to be the remnant of an old road along the ocean bluff (perhaps a vestige of the old, two-lane Highway 1). It does not provide direct beach access, but leads from the North Point parking area to four additional trails (1a, 1b, 1c, and 1d) which access the beach and coastal bluff views. The trail is composed of asphalt and packed dirt and is relatively level, with little irregularity related to erosion.”

“Trail 1a, North Point Area – Trail 1a extends northward toward the beach from the northern terminus of Trail 1, skirting the chain link fence that marks the boundary of the Highway 1 right-of way. The surface is packed dirt. Significant plant incursion suggests that this route is little-used”
“... In all likelihood, the disuse of Trail 1a is due to the fact that this access is interrupted by a drainage ravine, which renders passage somewhat difficult. In addition, after passing the ravine, the trail descends very steeply and is impacted by significant erosion.”

“Trail 1b, North Point Area – Trail 1b leads from the north end of Trail 1 to the beach. Its surface is composed of packed dirt. As shown in the photograph, the seaward end of this trail is quite steep and the walking surface is very irregular due to erosion.”

“Trail 2, North Point Area – Trail 2 leads from the North Point parking lot northward along the edge of the coastal bluff. The trail is level to gently sloped. The initial 50 feet or so are asphalt and the remainder of the surface is packed dirt. This trail does not provide direct beach access, but offers spectacular views along the coast to both the north and south. Trail 2a, which branches off of Trail 2, does access the beach below”

“Trail 2a, North Point Area – Trail 2a leads from the mid-portion of Trail 2 to the beach. Its surface is composed of packed dirt, with numerous loose rocks in the uphill segment. This trail is relatively narrow and very steep, and the walking surface is moderately irregular due to erosion. This route appears to be used rather infrequently”

“Trail 3, North Point Area – Trail 3 consists of a stairway leading from the North Point parking area to the beach. The stair treads are wood and compacted gravel, and handrails are present on both sides of the stairway. The facility appears to be well-maintained and in good repair. This stairway provides the primary route for public beach access from the North Point parking lot.”

“Trail 4, Beachcomber Area – Trail 4 is a narrow, steep access that leads northward from the north end of Beachcomber Street and passes just seaward of the southwestern corner of the 3420 Toro Lane property. Although more challenging than other nearby access, Trail 4 does appear to be utilized to a degree, as evidenced by the footprints at the bottom of the trail.”

“Trail 5, Beachcomber Area – Trail 5 is another narrow and rather steep access that leads from Beachcomber Street to the beach”

“Trail 6 Beachcomber Area – A third informal access from Beachcomber Street. The trail is moderately steep at the top, flattening some as it approaches the beach. The surface is hardpack near the road, giving way to sand in the lower section”

“Trail 7, Beachcomber Area – Trail 7 provides access to the beach from Beachcomber Street as it intersects with Yerba Buena and Trinidad Street. This is the widest and most gently sloped of the

Beachcomber accessways, and exhibits a packed dirt surface all the way to beach level. As can be seen, moderate surface irregularity due to erosion is present. Trail 7 appears to be the most heavily used of the Beachcomber trails."

It appears that Commissioner Tefft considered trail 7 the least difficult of the above-listed trails to negotiate. However, that does not mean that it is as user-friendly as the 3420 Toro Lane path. Following are two photos of trail 7 that were provided in the report. While it may be easier to manage than the other area trails, it is still quite steep. I have walked past this trail many times, and wouldn't even think of trying to use it to get to the beach. Furthermore, it cannot be considered usable for those using strollers or beach wagons to transport babies and small children, or for wheelchair beach access.

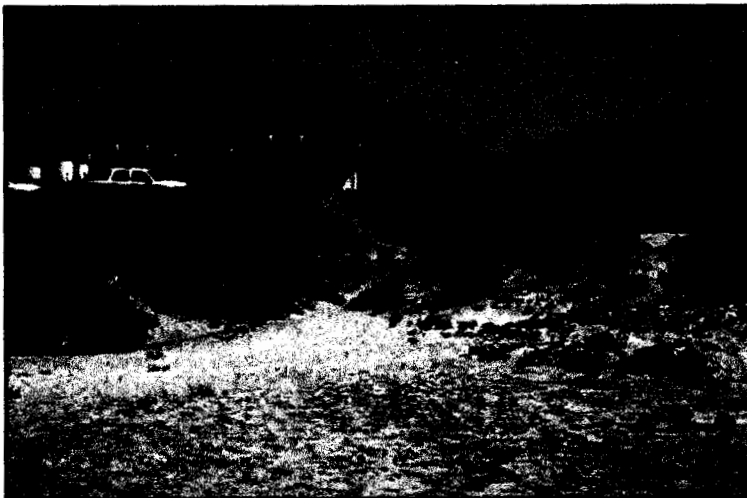


Photo No. 16: Trail 7, Beachcomber Area - View of Trail 7 looking landward from the beach.

Four trails farther to the south, designated by Commissioner Tefft as trails 8, 9, 20, 11, require negotiating a field of dunes in order to reach the flat area of the beach – and are thus not usable for any form of wheeled conveyance. In addition, in order to reach these trails, it is necessary to either drive or walk to the State Park day parking lot, which can fill up fast, leaving no place to park. The road to the lot – and the trails is, of course, frequented by numerous RV's arriving at and leaving the park campground, and has no sidewalk.

It should also be noted that although the two areas of beach are not a great distance apart, the beach experience in the State Park area is somewhat different than the experience at the foot of the Toro Lane path. The beach adjacent to the State Park is used by visitors staying at the park and tends to be more crowded.

“Trail 8 intersects Trinidad Street while the paved road is still relatively high on the bluff. Consequently, the upper part of this access is relatively steep. Irregularity of the walking surface due to erosion is minimal, as most drainage is directed southward by the curb of Trinidad Street. Density of footprints at the foot of the trail suggests fairly light usage by the public”

“Trail 9 appears similar in configuration and usage to Trail 8.”

“Trail 10 leaves Trinidad Street at a lower elevation than Trails 8 and 9 and is, therefore, less steep. This beach accessway is primarily sand and undulates between dunes on its way to the beach. Footprint density is higher than observed on Trails 8 and 9.”

“Trail 11 appears similar to Trail 10, though somewhat more narrow. The growth of vegetation in the trail and relatively low density of footprints would appear to indicate relatively little use by the public. This may be due to the fact that nearby Trail 12 offers easier access.”

While trails 10 and 11 may be less steep than trail 8, they are still not navigable for a significant portion of the population. This leaves trail 12.

“Trail 12 begins at Trinidad Street just as that street enters Morro Strand State Beach. The head of this trail is also adjacent to the State Beach day-parking lot. The route skirts a protected snowy plover nesting area in the dunes immediately to the south. The access is sandy and virtually level.”

I have personally used this trail for beach access, and would agree that it is “fairly” level. However, given that the trail is sandy, it is obviously not suited for transporting anything or anyone down to the beach in any form of wheeled conveyance. While it is the easiest of the trails surveyed by Commissioner Tefft, it is not as user-friendly as the 3420 Toro Lane path.

So, although it has been claimed that there are numerous alternative beach access points in the vicinity, none offers beach access that is equivalent to, or even truly comparable to that offered by the existing public path through the 3420 Toro Lane property.

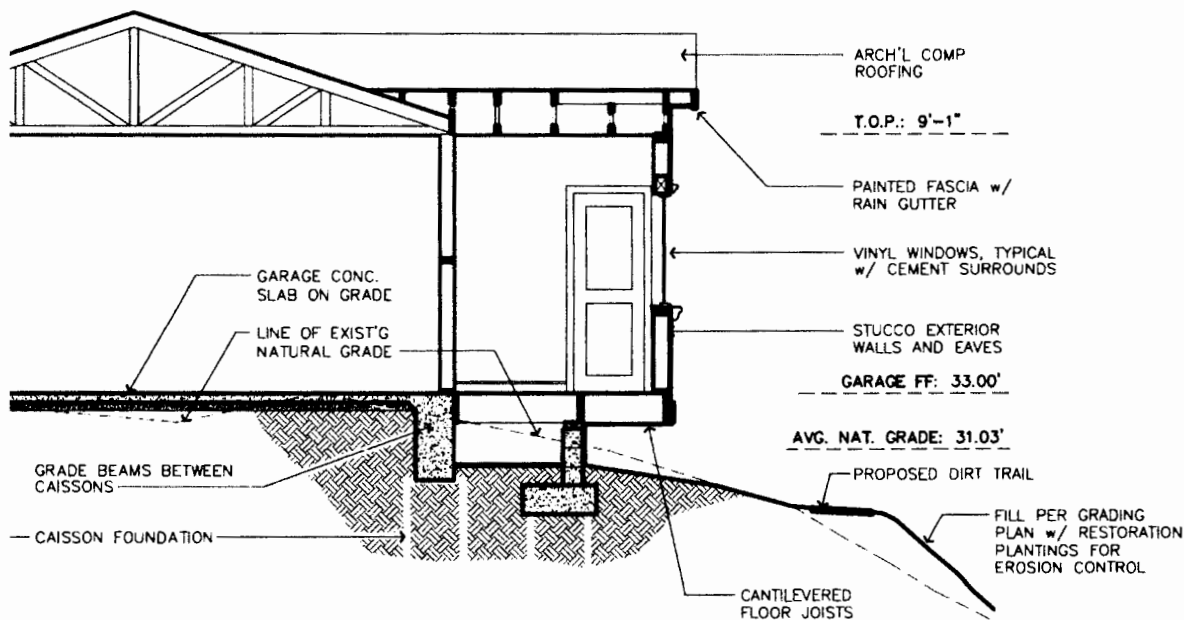
It should also be noted that, as for trails 8 through 11, reaching trail 12 requires driving or walking to the State Park campground day parking lot, which does not always have parking space available.

Also noteworthy is the fact that the 3420 path offers a different experience than trail 12. The 3420 path offers beautiful vistas of the canyon and, and sightings of wildlife species not seen on the more heavily-traveled trail 12.

The Proposed Path Would Erode Away Quickly and Beach Access Would be Lost

While the existing path passes through the 3420 Toro Lane site on a level area on the bluff top, with flat areas on both sides, the proposed path would be located on the side of the steep canyon bluff. The following clip from a diagram in the October 6, 2015 Planning Commission meeting agenda packet, shows the proposed trail location on the edge of the ravine (lower right of diagram).

According to statements by the applicant’s representative and City staff, this path would be about 18 inches wide, would not be maintained, and would be posted with signs indicating that it was to be used at the user’s own risk. Please note the steep dropoff immediately adjacent to one side of the proposed trail.



N / TRAIL SECTION

SCALE: 1/4" = 1'-0"

The existing path has survived without maintenance for decades because of its configuration and location. However, trails on steep slopes must be maintained, or they can be quickly eroded away by a combination of use, precipitation and flowing water. In other words, the location of the proposed alternate path on a slope makes it particularly prone to erosion.

At the October 6, 2015 project hearing, much was made of the fact that a local trail maintenance group, the "Black Hill Gang" had been consulted regarding trail construction to ensure it would be done right. However, the best-constructed hillside trail will obviously not last if it is not maintained, and it was made very clear that there would be no maintenance. The problem with that seems very obvious, especially given the fact that if hillside trail maintenance were unnecessary, the "Black Hill Gang" would not exist.

Regarding the importance of maintaining trails, The County of Santa Clara Department of Parks and Recreation Trail Maintenance Manual says,

"Neglect of drainage maintenance can develop into situations where a trail system could literally be washed away. An annual maintenance program will prevent expensive reconstruction projects. With the understanding that there is a limited amount of money and manpower for trail work, that work should be directed toward factors that are causing the most damage. Ideally, drainage maintenance, clearing, tread maintenance and brushing are considered annual routine trail maintenance."

Please also consider the following quotes from the document, PCTA Trail Skills College Curriculum Instructor Planning Guide, Course 100. Intro to Trail Maintenance :

"Hillside Hydrology : Water from rain, melting snow and seeps poses a major threat to trails. In a perfect trail world, when water **sheet flows** down a hillside and encounters a trail with good **outslope**, it immediately crosses the trail and continues down the hillside without causing any **erosion** of the trail **tread**. In the worst case, hillside sheet flow is interrupted and follows the trail instead. As the water gains volume and speed on steep **grades**, it erodes a trail into a deep gully filled with rocks and roots left behind after the soil has been carried away.

This can happen all at once in a major storm event, or slowly over years due to a lack of trail maintenance. Regardless, the outcome is the same: a trail difficult to use and sediment carried

downhill, often into streams causing habitat damage. Such a trail needs major reconstruction or to be abandoned. But it doesn't need to happen, if trail workers work to prevent it."

"It is important for students to understand that the natural aging process of trails requires vigilant maintenance. If neglected, the problems will only grow worse and require major reconstruction or abandonment. In some cases poor design, construction and maintenance have exacerbated such problems. This all adds up to trail workers facing much work to do to improve tread and prevent further erosion"

Clearly, the proposed alternate path would last a very short time. It would quickly deteriorate and become impassible, and then disappear entirely.

The Proposed Path Would, Even While it Lasted, be Unsafe and Even Impassible for Many Users of the Existing Path

The proposed path would rest on the side of a steep slope leading down to a concrete swale. It would be just 18 inches wide, with no flat area on the canyon side. Thus, if someone were to slip and fall on the path, and fall toward the canyon, the person would most likely tumble down the hill and land on concrete. The following recent site photo, which shows some compacted soil in the area of the proposed path, illustrates the problem.



The reality, which is clearly shown in the above photo, seems to contrast sharply with the following simulated photo images of the project site that were provided by the applicant:



Note that neither seems to show the real steepness of the slope or the fact that there is a sharp dropoff right next to the proposed trail site. The dropoff is especially concerning given the narrowness (18 inches) of the proposed trail, and the fact that the edge of an unmaintained trail on the side of a sharp drop is likely to erode quickly.

Some trail standards from the "County of Santa Clara Department of Parks and Recreation Trail Maintenance Manual" state,

"The width of the tread will vary from 4-feet to 12-feet depending on the type of use. There are five basic trail use types: 1) Single Use; 2) Pedestrian/Equestrian, 3) Multi-Use (non-fire road), 4) Paved Shared Use, and 5) Multi-Use & Fire Road (standards also apply for roads that function solely as fire or service roads and allow for no public access). The variation in tread width dimensions allows the trail to flow around natural barriers and provide for safety and resource protection."

and, for single use trails (hiking),

"Minimum tread width varies from 3 feet for shallow side slopes (less than 30%) up to 4 feet for steep side slopes (greater than 30%)."

Specified minimum widths for other types of trails are greater. The existing path, which lies on a flat surface rather than on a side slope, appears to be at least 3 feet in most areas, and where it is not, there is a flat "shoulder" area.

Clearly, the proposed path would be unsuitable for not only those with mobility and/or balance issues. In addition, it is unlikely that those using wheeled conveyances would consider it a safe passage to the beach.

It is Likely that a Public Prescriptive Easement has Been Established on the Existing Path

According to Coastal Commission staff, the City must address claimed public prescriptive easements in the Coastal Zone. Documents claiming a public prescriptive easement on the existing 3420 Toro Lane path were submitted to the City in late August, after a statement in documents for an August project hearing appeared to dismiss the importance of public beach access through the 3420 Toro Lane site..

On August 18, 2015, the Planning Commission held a hearing regarding the proposed project, identified as case number CPO-419, UPO-383. The staff report discussed the path at length, but the proposed Planning Commission resolution, PC28-15, dismissed the value of the path to the public with this Coastal Access finding:

"The project is consistent with the public access and public recreation policies of Chapter 3 of the Coastal Act because there are several other well established paths nearby that lead down to the beach from Beachcomber drive in addition to an engineered trail leading to the beach from a parking lot at the north end of Toro Lane. Therefore, it is not necessary to provide public access across the project site."

Public access was not mentioned within the Planning Conditions in the proposed resolution.

Shortly after that meeting, concerned residents, working with the California Coastal Commission's prescriptive easement expert, developed and distributed questionnaires to a subset of users of the existing path. Completed questionnaires were delivered to the City of Morro Bay Planning and Building Department. Data from the questionnaires was compiled by a resident, and the resulting document (attached) was also delivered to Planning and Building.

It appears that the results of the survey convinced some that a public prescriptive easement was a real possibility. The documents attached to the agenda for next hearing for the project, held October 6, 2015, contained a great deal of discussion on prescriptive easements, and a proposal for an alternate path on the 3420 Toro Lane property.

Equivalent alternate access would have to be established to prevent a public prescriptive easement from being established on the existing path. I believe the evidence submitted here proves that there is no equivalent alternate beach access in the vicinity of the existing 3420 Toro Lane path.

Given the problems with the proposed path, as described in this appeal document, its acceptance as equivalent alternate access seems unlikely. In addition, given the major issues with other area beach access paths, also described in this appeal, it seems clear that despite claims to the contrary, there simply is no equivalent alternate beach access in the vicinity – especially for path users who many have mobility limitations or balance issues, and users who need a path that is wheeled-conveyance-friendly.

Without viable alternative area beach access for all users of the current path, it appears that a public prescriptive easement on the existing path could be legally established.

Request to Deny Permit for 3420 Toro Lane Project Pending Further Investigation of Alternatives

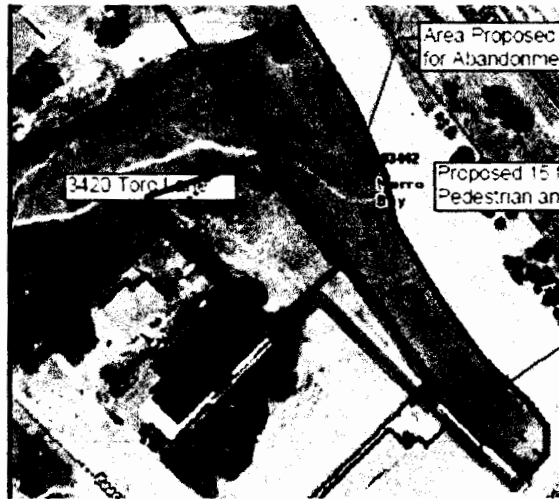
- Conflict between public property rights and private property rights
- Public path in use for decades versus applicants' desire to build a home that obliterates part of that path
- Potential resolution requires more study

This appeal is a result of a conflict between public and private property rights.

- The applicants want to build a home over a long-used beach access path.
- Some residents believe that a public property right to the path, can be established, and efforts to accomplish that are underway.

I believe that the issues require further study, and that the Council should, at this time, deny the permit until the issues can be sorted out.

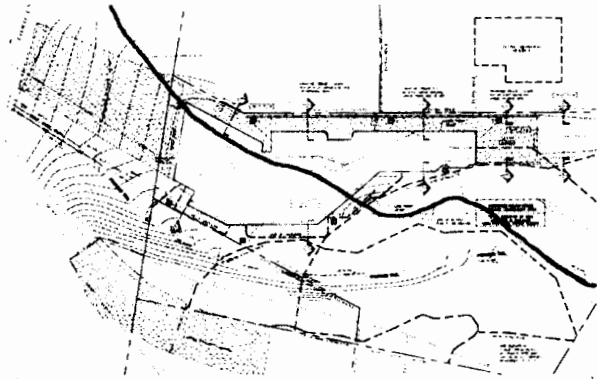
The Parcel



Here is an annotated aerial image of the property where the conflict exists. It is a portion of an image from a 2013 City staff report.

- Outlined in green is the 2-lot parcel originally purchased by the applicants in November, 2012
- Added to the original diagram is a dotted line showing the approximate boundary between the southern and the northern lots
- You can see the path on the northern lot.
- Also added, to the diagram, outlined in blue, is the area where observers thought the applicants would build their house, after merging the two lots into one.
- Please note that a house built in that area of the parcel would not conflict with the public path

Siting of the house over the path



- However, the applicants chose to site the house wholly within the northern lot, and directly over the path.
- In this slide, made using an attachment to a Planning Commission agenda, the site of the house is shaded in blue. The path is marked in red.
- As you can see, the house would obliterate part of the path.

California State Law Requires Preservation of Beach Access

- § 30211. Development not to interfere with access Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation California Constitution Article X § 4. Access to navigable waters
- California Constitution Article X, section 4. No individual, partnership, or corporation, claiming or possessing the frontage or tidal lands of a harbor, bay, inlet, estuary, or other navigable water in this State, shall be permitted to exclude the right of way to such water whenever it is required for any public purpose, nor to destroy or obstruct the free navigation of such water; and the Legislature shall enact such laws as will give the most liberal construction to this provision, so that access to the navigable waters of this State shall be always attainable for the people thereof.

Elimination of the path conflicts with State laws that specifically support preservation of beach access. For example:

- Coastal Act section 30211 states development may not interfere with access to the sea

and,

- California State Constitution article 10, section 4 forbids obstruction of the public's access to the navigable waters of the State

The Public's Claim to the Path

It is believed that a public prescriptive easement on the path can be established, and efforts to do that are underway.

Survey shows all CCC prescriptive easement criteria have been met:

- Use is substantial rather than minimal
- Use is continual, although it need not be continuous
- Use must be without asking or receiving permission from the owner
- Use must be with the actual or presumed knowledge of the owner
- There must be no significant objection or bona fide attempts by the fee owner to prevent or halt the use.

Whether or not such right has been acquired is not yet known. Thus the Council does not currently have sufficient information to make a decision fair to all stakeholders

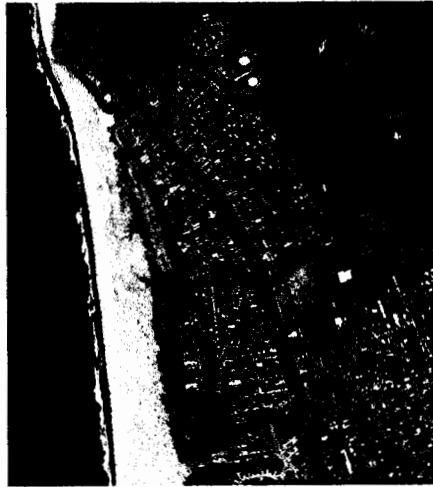
Elimination of the path also conflicts with a potential public property right, a prescriptive easement. It appears that a prescriptive easement on this path can be established.

A survey, done under the guidance of the Coastal Commission's prescriptive easement expert, shows that all Coastal Commission criteria have been met.

After just five years of use meeting the criteria listed here, a prescriptive easement can be claimed. The recent path user survey documents many years of use meeting these requirements, going back decades.

However, as noted by staff, the public's prescriptive rights have not yet been formally established – meaning that Council does not currently have sufficient information to make a decision fair to all stakeholders

Key Beach Access Route for North Morro Bay Residents and Visitors



The path is part of a key beach access route for North Morro Bay residents and visitors.

There are only two beach access routes across the highway in North Morro Bay – Yerba Buena and San Jacinto

In this image, The red dot marks the Toro Lane trailhead, the closest one to the point where beachgoers cross the highway at Yerba Buena.

The other dots mark the locations of other area paths.

No Equivalent Alternative Access in the Area

Trail/path	Direct Beach Access?	Slope	Surface Regularity	Surface Composition	Width	Suited to wheeled conveyances	In Immediate Vicinity of Toro Lane path?
Trail 1	No	flat	minor irregularity	asphalt and packed soil	wide	Yes	No
Trail 1a	Yes	very steep	very irregular	packed soil	narrow	No	No
Trail 1b	Yes	very steep	very irregular	packed soil	average	No	No
Trail 2	No	gentle	minor irregularity	packed soil	wide	Yes	No
Trail 2a	Yes	very steep	moderately irregular	packed soil, loose rock	narrow	No	No
Trail 3	Yes	stairway	regular	wood and packed gravel	average	No	No
Trail 4	Yes	steep	irregular	soil and sand	narrow	No	Yes
Trail 5	Yes	steep	irregular	soil and sand	narrow	No	Yes
Trail 6	Yes	moderately steep	irregular	soil and sand	narrow to average	No	Yes
Trail 7	Yes	moderate	moderately irregular	soil and sand	moderately wide	No	Yes
Trail 8	Yes	steep	irregular *	sand	average	No	No
Trail 9	Yes	steep	irregular *	sand	average	No	No
Trail 10	Yes	somewhat steep	irregular *	sand	average	No	No
Trail 11	Yes	somewhat steep	irregular *	sand	narrow	No	No
Trail 12	Yes	gentle	moderately irregular	sand	average	No	No
Toro Lane	Yes	gentle **	minor irregularity	packed soil	average to wide	Yes	N/A

Contrary to some claims, there is no equivalent beach access in the area.

Of all the paths in the general vicinity, the Toro Lane path, with its gentle slope and stable surface, provides the safest, most user-friendly beach access for those using wheeled conveyances, and for older and other residents who may have balance or mobility issues. This is particularly significant given that over 1/3 of respondents to the path user's survey were 61 years of age or older.

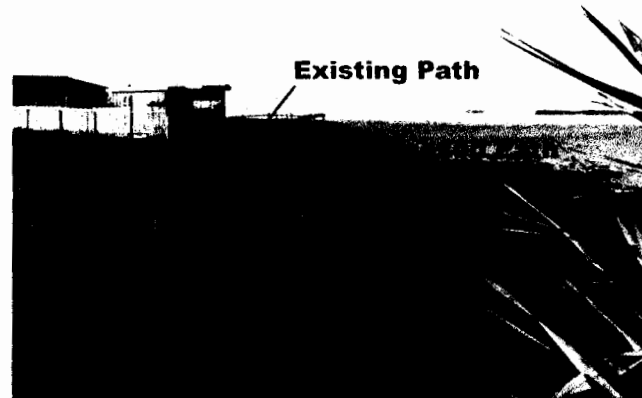
Planning Commissioner Bob Tefft did a comprehensive survey of area beach access paths. 13 appear in this table. Several additional paths were surveyed but are not included here due to their greater distance from the Toro Lane path.

This table was prepared using the data from Commissioner Tefft's survey, supplemented with a small amount of data from other Morro Bay residents.

The data shows that none of the ten other area paths providing direct beach access have all of the key attributes of the Toro Lane path, making it unique in the area.

1. This path would be unsafe and unusable for many users of the current path. Built on fill, it would be just 18 inches wide, too narrow for the strollers and beach wagons used to bring children to the beach - and would be located on the side of the bluff, with a steep drop on one side to a concrete swale below.
2. The path might never be opened for public use, because no agency has agreed to accept liability and responsibility for maintenance. This appears to mean, per Coastal Act Section 30212, that there would be no requirement that it be opened for public use, even if it were constructed.
3. The path would only be temporary. It's location— on fill on the side of a steep slope, along with the fact that it would not be maintained, means that it would erode away and disappear.

Safety of the Existing Path versus the Proposed Alternate Path



Safety is major issue with the alternative path. This recent photograph shows the locations of the existing path and the site for the proposed alternative.

The existing path is on a flat surface on the top of the bluff, with well-compacted soil.

The proposed alternative would be on fill, and on a slope. At the bottom of that slope is a hard concrete surface.

If someone fell on the existing path, the person would be falling on compacted soil, and might, or might not be injured.

If someone fell on the proposed path, just 18 inches wide, the person could easily tumble down the hill and land on concrete. That risk would increase as the path deteriorated due to lack of maintenance.

Summary of the conflict

- California law supports preservation of access
- The public has a strong claim to the path
- The applicants want to build their house
- The proposed house siting would destroy the current path
- The alternative path, as proposed, does not provide access equivalent to that of the existing one
- The Council does not currently have sufficient information to make a decision fair to all stakeholders

To summarize some key issues in this conflict between public and private property rights:

- California law supports preservation of beach access
- The public has a strong claim to a public property right to the path
- The applicants want to build their house on what they consider their property
- The proposed house siting would destroy the current path
- The alternative path, as proposed, does not provide access equivalent to that of the existing one. It would be unsafe and unusable for many. It would be temporary, and might never be opened for public use.
- The Council does not have sufficient information to make a decision fair to all stakeholders.

Two Suggested Solutions

- 1. Make significant improvements to the proposed alternative path, including identification of an agency to accept liability and responsibility for maintenance.**
- 2. Investigate the possibility of merging the two lots from the original parcel to create a building site that does not interfere with the existing path.**

It seems likely that a public property right to the path will be established through a prescriptive easement. How can we protect the public's right to beach access at the site, and still ensure that the applicants can build their home at the beach? Here are two suggestions:

- 1. Make significant improvements to the proposed alternative path, including identification of an agency to accept liability and responsibility for maintenance.**
- 2. Investigate the possibility of merging the two lots from the original parcel to create a building site that does not interfere with the existing path.**

Challenges in Creating a better Alternative Path at the Site

Challenges to creating an alternative path on the site that is as safe and usable for all current users as the existing one would include

- Environmental impact issues**
- Engineering issues**
- Finding an agency to accept liability and maintenance responsibility**

12

There are challenges to creating an alternative path at the site that provides beach access equivalent to that of the existing one.

- 1. Because of environmentally-sensitive habitat in the area, more studies might be required, and the Coastal Commission would have to approve the new design.**
- 2. Creating a safer, wider path, with protection from possible falls into the ravine would require resolving some engineering issues**
- 3. It might be difficult to find an agency willing to accept liability and responsibility for maintenance – although a better-designed and engineered path might make that easier**

Challenges in Merging the Applicants' Two Original Lots

Ownership changes made by the applicants could complicate this option. At the August 18 Planning Commission meeting, it was stated that the southern lot was owned by "family members".

- November 20, 2012, owner of both lots in the 2-lot parcel is recorded as a trust in the names of the applicants.
- January 13, 2014, the first application to build on the property is submitted to the City
- June 6, 2014, an ownership change for the southern lot is recorded. The trust in the name of the applicants now owns 90% of that lot, and a trust in the name of a relative owns 10%
- November 19, 2014, another ownership change is recorded. The owners do not change, but the percentages do. The trust in the names of the applicants now owns 50% of the southern lot, and the trust in the name of the relative owns the other 50%

Ownership changes made by the applicants may create challenges to merging the lots to create a new building site.

According to public records held by the San Luis Obispo County Recorder's Office, on November 20, 2012, the owner of both lots in the parcel was a trust in the names of the applicants.

Also according to public record, on June 6, 2014, a change of ownership for the southern lot was recorded. The applicants' trust still owned 90% of the lot, but a trust in the name of a relative owned the other 10%.

Public records further indicate on November 19, 2014, there was another change of ownership on the same lot. Now, the trust in the names of the applicants owns 50% and the trust in the name of the family member owns the other 50%.

Request to Uphold the Appeal and Deny the Permit

I ask that you uphold this appeal and deny the permit, and ask that the applicants investigate the options, including

- improving the proposed alternative path option
- merging the original lots in the parcel so that the house can be relocated away from the path.

I ask that you uphold this appeal and deny the permit at this time, and that you ask the applicants to investigate the options, including:

- improving the proposed alternative path design
- merging the original lots in the parcel so that the house can be relocated away from the path.

I also ask that further consideration of the permit be delayed until the prescriptive easement issue has been resolved and the public's legal rights have been fully determined.

Despite the challenges involved, I believe it is worthwhile to investigate all potential means of fairly resolving this conflict between public and private property rights.

Please don't take away what is, for many North Morro Bay residents, the only convenient, usable and safe area route to
The beach

Exhibit 6

Trail Attribute Comparison

The following table was prepared using data from Commissioner Tefft's survey, supplemented with a small amount of data from independent review by other Morro Bay residents.

Trail/path	Direct Beach Access?	Slope	Surface Regularity	Surface Composition	Width	Suited to wheeled conveyances	In Immediate Vicinity of Toro Lane path?
Trail 1	No	flat	minor irregularity	asphalt and packed soil	wide	Yes	No
Trail 1a	Yes	very steep	very irregular	packed soil	narrow	No	No
Trail 1b	Yes	very steep	very irregular	packed soil	average	No	No
Trail 2	No	gentle	minor irregularity	packed soil	wide	Yes	No
Trail 2a	Yes	very steep	moderately irregular	packed soil, loose rock	narrow	No	No
Trail 3	Yes	stairway	regular	wood and packed gravel	average	No	No
Trail 4	Yes	steep	irregular	soil and sand	narrow	No	Yes
Trail 5	Yes	steep	irregular	soil and sand	narrow	No	Yes
Trail 6	Yes	moderately steep	irregular	soil and sand	narrow to average	No	Yes
Trail 7	Yes	moderate	moderately irregular	soil and sand	moderately wide	No	Yes
Trail 8	Yes	steep	irregular *	sand	average	No	No
Trail 9	Yes	steep	irregular *	sand	average	No	No
Trail 10	Yes	somewhat steep	irregular *	sand	average	No	No
Trail 11	Yes	somewhat steep	irregular *	sand	narrow	No	No
Trail 12	Yes	gentle	moderately irregular	sand	average	No	No
Toro Lane	Yes	gentle**	minor irregularity	packed soil	average to wide	Yes	N/A

* Passes through a "field" of dunes. The Morro Bay Local Coastal Program discourages access through the dunes, stating:

"Uncontrolled and undirected shoreline access has, over the years, resulted in resource damage to the sand dunes paralleling the beach. Dune vegetation has been trampled and lost and the dunes themselves have eroded away. Fragile native plants and wildlife habitat have been lost. There is an urgent need to control and direct access and restore, as far as possible, the former dune habitat"

** Commissioner Tefft states that the last 25 feet of the Toro Lane path is moderately steep. There is some disagreement on this point. The opposing point of view is that this final stretch of the path simply descends at a slightly greater incline than that of the very gentle slope that characterizes most of the path.

Exhibit 7

In the following image, the locations of Yerba Buena and San Jacinto Streets are indicated. The 3420 Toro Lane public path trailhead is indicated by the small red dot.

The larger colored dots mark the locations of groups of other paths/trails in the general vicinity. These are included in the Trail Attribute Comparison, Exhibit 6, attached to this appeal.

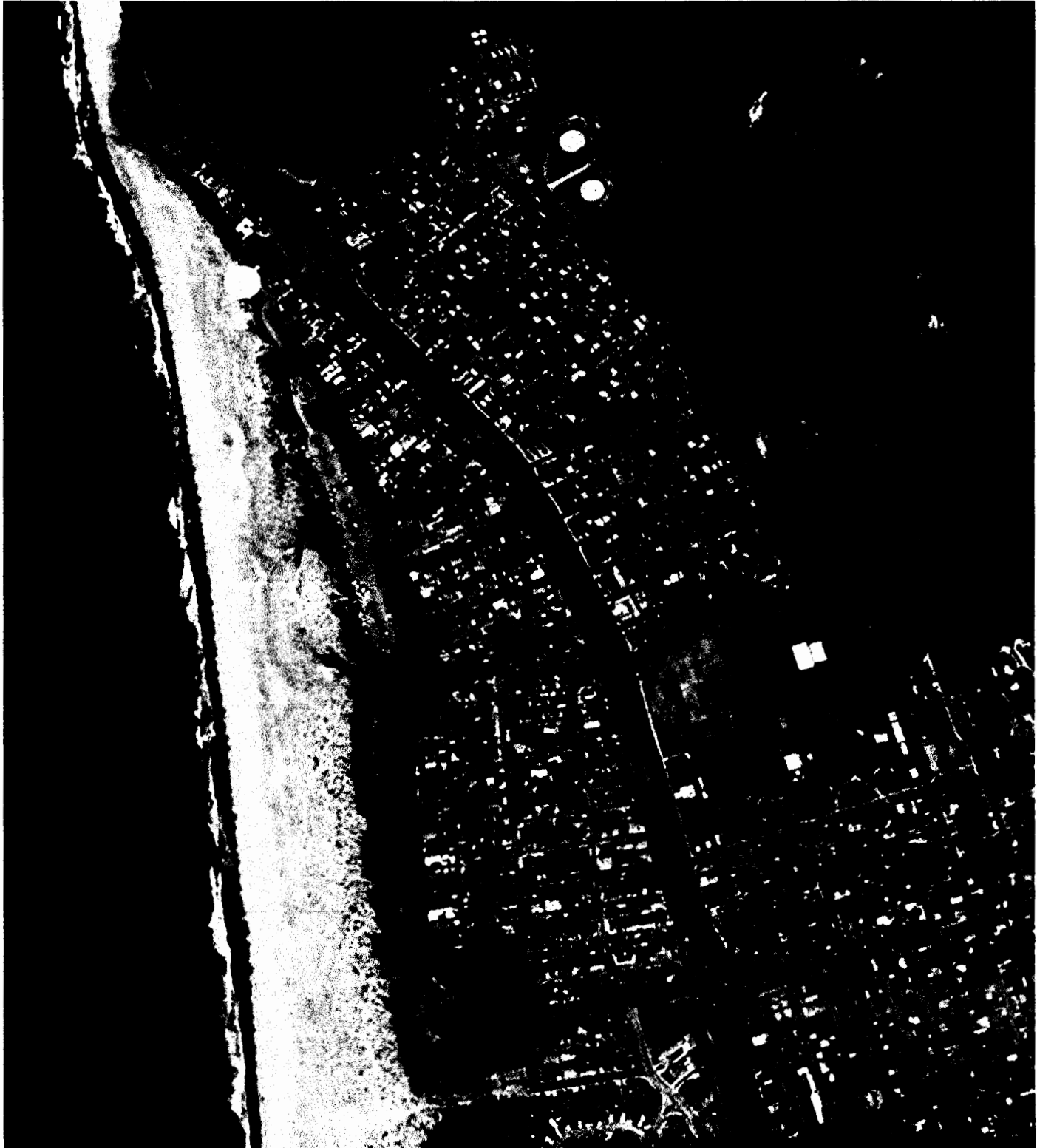


Exhibit 8

The following image shows the intersection of Hwy1 and Yerba Buena Street. Yerba Buena has no sidewalks, and because it leads directly to the State Park campground entrance, the section west of the highway carries considerable RV traffic - especially in the summer.



Using the Toro Lane beach access path provides increased safety for those walking to the beach from residential neighborhoods east of the highway; particularly for those with young children in tow. Using this route to the beach makes it unnecessary to walk along the western end of Yerba Buena; sharing the road with the RV's and other traffic into the park. Toro Lane, in comparison to Yerba Buena, has very little vehicle traffic.

Exhibit 9

References Regarding the Importance of Trail Maintenance to Prevent Loss

Neither the City nor the applicant has stated willingness to maintain the proposed alternate trail at 3420 Toro Lane. Unlike the existing path, which is on a level surface and extraordinarily-well-compacted soil due to original use as a tank road, and which has lasted well for 70 years, the proposed trail would be on fill added to the side of a steep incline, and thus would be subject to severe erosion.

The importance of trail maintenance is well known and well documented. For example, the County of Santa Clara Department of Parks and Recreation Trail Maintenance Manual states,

"Neglect of drainage maintenance can develop into situations where a trail system could literally be washed away. An annual maintenance program will prevent expensive reconstruction projects. With the understanding that there is a limited amount of money and manpower for trail work, that work should be directed toward factors that are causing the most damage. Ideally, drainage maintenance, clearing, tread maintenance and brushing are considered annual routine trail maintenance."

The following quotes from the document, PCTA Trail Skills College Curriculum Instructor Planning Guide, Course 100. Intro to Trail Maintenance provide another example.

"Hillside Hydrology" : Water from rain, melting snow and seeps poses a major threat to trails. In a perfect trail world, when water **sheet flows** down a hillside and encounters a trail with good **outslope**, it immediately crosses the trail and continues down the hillside without causing any **erosion** of the trail **tread**. In the worst case, hillside sheet flow is interrupted and follows the trail instead. As the water gains volume and speed on steep **grades**, it erodes a trail into a deep gully filled with rocks and roots left behind after the soil has been carried away.

This can happen all at once in a major storm event, or slowly over years due to a lack of trail maintenance. Regardless, the outcome is the same: a trail difficult to use and sediment carried downhill, often into streams causing habitat damage. Such a trail needs major reconstruction or to be abandoned. But it doesn't need to happen, if trail workers work to prevent it."

"It is important for students to understand that the natural aging process of trails requires vigilant maintenance. If neglected, the problems will only grow worse and require major reconstruction or abandonment. In some cases poor design, construction and maintenance have exacerbated such problems. This all adds up to trail workers facing much work to do to improve tread and prevent further erosion"

Please note the reference to habitat damage in the next-to-last paragraph in the reference directly above.

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: Linda Stedjee

Mailing Address: 2848 Birch Avenue

City: Morro Bay

Zip Code: 93442

Phone: 805-771-9254

SECTION II. Decision Being Appealed

1. Name of local/port government:

City of Morro Bay

2. Brief description of development being appealed:

Construction of a new home at 3420 Toro Lane, Morro Bay, CA

RECEIVED

JAN 12 2016

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

3. Development's location (street address, assessor's parcel no., cross street, etc.):

3420 Toro Lane, Morro Bay, CA 93442, nearest cross street Yerba Buena, APN 065-091-022

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.

TO BE COMPLETED BY COMMISSION:

APPEAL NO: _____

DATE FILED: _____

DISTRICT: _____

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: December 8, 2015

7. Local government's file number (if any): CP0-419, UP0-383

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:

Gregory and Jeanne Frye, 1725 Little Morro Creek Road, Morro Bay, CA 93442

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) Barry Branin, PO Box 540, Morro Bay, CA 93442

(2) Betty Winholtz, 405 Acacia Street, Morro Bay, CA 93442

(3)

(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.

This supplemental appeal, filed in addition to an original appeal focusing on violation of Morro Bay LCP Shoreline Access and Recreation policy 1.07, addresses the following setback-related issues:

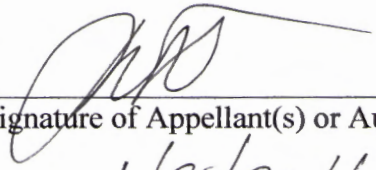
1. Apparent violation of Morro Bay LCP Environmentally Sensitive Habitat policy 11.04
2. Possible violation of Coastal Act section 30253 Minimization of Adverse Impacts

Please see attached for details

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.



Signature of Appellant(s) or Authorized Agent

Date:

1/8/2016

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:

3420 Toro Lane Project – Supplemental Appeal

This supplemental appeal, filed in addition to an original appeal focusing on violation of Morro Bay LCP Shoreline Access and Recreation policy 1.07, addresses the following setback-related issues:

1. Apparent violation of Morro Bay LCP Environmentally Sensitive Habitat policy 11.04
2. Possible violation of Coastal Act Section 30253

1. Apparent violation of Morro Bay LCP Environmentally Sensitive Habitat policy 11.04

This LCP policy (**Exhibit 1**) sets a minimum buffer strip of 50 feet along streams, except where this would render the parcel, "unusable for its designated use". In such cases, according to the policy, *"the buffer may be adjusted downward only to a point where the designated use can be accommodated."*

In the documents attached to the 8/18/2015 Planning Commission agenda, under the heading "ESH Buffer Area" is the statement (**Exhibit 2**):

"Where the full setback would render the subdivided property unusable, the stream corridor setback may be reduced down to 25 feet..."

In the documents attached to the 10/6/2015 Planning Commission agenda, is this conditional use finding (**Exhibit 3**):

"Reduced Buffer Area Finding

*1. Consistent with the Coastal Land Plan Use (Policy 11.14) and the Environmentally Sensitive Habitat development standards in the City's Zoning Ordinance (subsection 17.40.040.D.6), **the reduction in the stream corridor buffer area from 50 feet to 25 feet is reasonably necessary to allow development of the site** and environmental mitigation is incorporated into the project description to require native habitat restoration landscaping in the buffer area."*

The "designated use" for this parcel is R-1, residential. Evidence indicates that a wider stream corridor could have been required and the designated use could still have been achieved. The City appears to have automatically taken the buffer width down to the absolute minimum without considering that a different configuration for the house would allow for a wider buffer. }

Among the project documents on the City's Web site is the 2002 geologic report done for the same building site (although the street address given at that time was different):

<http://www.morro-bay.ca.us/documentcenter/view/8746> This document includes a plan for a house that was proposed at the time the report was done (**Exhibit 4, figure 1**)

The image shows a plan for a home that is sited at least 5 feet south of the City of Morro Bay drainage easement, at its nearest point.

Part of the currently-proposed home lies right on the drainage easement boundary (**Exhibit 4, figure 2**).

This means that the currently-proposed home was allowed a stream corridor buffer at least 5 feet wider than necessary. A 30-foot buffer could have been required, but was not.

The homes are very similar in configuration. The houses are of similar size and include similar features: Both the 2002 house plan and the 2015 house include a living room, a kitchen, an indoor laundry and two bedrooms. The 2002 house includes an "entry center" and a dining room. The 2015 house includes neither, but includes an office and has a dining area in the kitchen. The 2002 house has 2 bathrooms, and the 2015 house has two bathrooms, plus a powder room (**Exhibit 4, figures 2 and 3**).

ESH on the site is also a concern in regard to setbacks, as greater a wider buffer area would provide greater protection and conservation of ESH. However, although a 2012 study identified a considerable amount of ESH on the property, a 2014 study indicated nearly all of it was gone. (**Exhibit 5**).

In a 2012 study, KMA identified various components of ESH on the property, and suggested that a 50-foot setback from the riparian corridor would ensure that the ecological health and function of the drainage feature and adjacent ESH were protected.

Two years later, in 2014, working this time for the current permit applicant, the same consultants revised their original report. In a letter to the applicant they stated, among other things, that an area they had previously classified as "degraded coastal prairie" is now considered "annual grassland" because on their recent visit, they did not see purple needlegrass. They said it must have been "consumed by gophers". Yet, according to the USDA, this plant establishes easily on gopher mounds.

In the 2014 report, the consultants stated they were "more accurately" characterizing the nature of the plants found on the site. Does this mean that their original report was inaccurate? Does this mean that in just two years, ESH on the site disappeared, never to be seen again? Neither explanation seems entirely satisfactory.

In 2012, on page 16 of 26 of the 3450 Toro Lane Biological Assessment, done at request of McLennan family trust, the consultants said,

"By following the policies in the City's LCP, and adhering to a 50-foot setback from the top of bank or edge of the riparian canopy (in this case, the one arroyo willow shrub) onsite, future project construction and long-term occupation of the site would not be expected to jeopardize the existence of the overall ecological health and functions of the drainage feature and adjacent coastal prairie, central dune scrub/iceplant or arroyo willow habitat."

Although the consultants appear to indicate that the ESH seen on the site in 2012 is gone, it has been suggested that much of it is simply dormant due to the prolonged drought. For example, the purple needlegrass that, according to the consultants, formed *"the basis of the original habitat characterization as degraded Coastal Prairie"* is known to go dormant when deprived of water. This fact is well documented. While ordinarily, this occurs only during the summer, it seems likely that the type of extreme and prolonged drought we have been experiencing could prolong the period of dormancy.

2. Possible violation of Coastal Act section 30253 Minimization of Adverse Impacts

The Coastal Act requires that building be safe, requiring that new development shall "(1) Minimize risks to life and property in areas of high geologic, flood, and fire hazard."

The City notes the need to analyze these issues in a document attached to the agenda for the August 18, 2015 Planning Commission agenda. A discussion of bluff development standards (**Exhibit 6**) says, in part

"Development projects in the bluff review area are required to submit a geologic report that addresses slope stability, erosion, building setbacks, and overall site suitability for development over a minimum 75-year period. For this project, Earth Systems Pacific has prepared a Geologic Bluff Study, a Sea Wave Run-up Analysis, a Slope Stability Report, as well as a clarification of top of bank and identification of coastal and canyon bluff lines."

3420 Toro Lane project issues that fall under this section of the Coastal Act are:

- a. Canon bluff erosion
- b. Maximum tsunami wave run-up

Following are detailed discussions of each:

a. Canyon bluff erosion

In a September 29, 2014 letter to the applicant (**Exhibit 7**), Earth Systems Pacific said,

"Aerial photographs were analyzed to assess the degree and pattern of erosion along the toe of the north-facing bluff at the site. Stereoscopic vertical aerial photographs of the site (Caltrans 1953 and 2001) were reviewed and the toe of the north-facing canyon bluff as plotted (see attached Toe of North Facing Bluff graphic). A current aerial photograph (World Imagery Website 2014) is also shown on this graphic. The toe of the canyon bluff for this 2014 aerial photograph was determined based upon assessment of the canyon/stream channel topography during a site reconnaissance by the undersigned.

The aerial photographs show that no significant changes in the configuration of the canyon bluff have occurred within the last 61 years. The toe of the canyon bluff near the mouth of the creek is adjacent to the end of the Tank Access Road in all three photographs, indicating no significant marine erosion has occurred within this historical period that can reasonably be documented through photogrammetry analysis.

On September 25, 2014 there was a High Surf Advisory along the Central Coast with 9 to 13 foot high waves. The high surf wave run-up only came within 200 feet to the mouth of the creek on site, which is consistent with the results of the sea wave run-up analysis, see attached High Surf Advisory Photograph.

To summarize, based upon the methodology outlined in the Coastal Protection Design Manual, the wave run-up height under the current site conditions is elevation 10.2 feet, which is approximately 110 feet to the west of the coastal bluff terminus. This indicates that the canyon bluff beyond the coastal bluff terminus is not currently subject to marine erosion. While it is not possible to document historical erosion for the past 200 year period, historical aerial photographs provide evidence that the canyon bluff has not been subject to marine erosion for at least 61 years, as no significant changes have occurred along the toe of the north-facing bluff configuration during this period."

The consultants refer to three photographs, one taken in 1953, in 2001, and one in 2014 (**Exhibit 8**). At first glance, the photographs might seem to support the claims made in the above statements, but upon closer examination, questions arise.

Using added the grids on the 2001 and 2014 images as a guide (**Exhibit 9, figure 1**), it is clear that the horizontal positions of landmarks in the two photos are noticeably "off". This could be due to camera lense distortion, the angles from which the photographs were taken, and distortion resulting from taking photos through plane windows.

Without other photos taken in 2001, and others taken in 2014, how do the consultants know that what they have are accurate representations of the site? It appears that they have no way of knowing which, if either photo accurately represents reality.

A greater problem occurs when trying to compare the 1953 photo with the later ones (**Exhibit 9, figure 2**). None of the structures present in the later photos is present in the earliest image, and in that image, the end of Beachcomber Drive (lower right corner) is indistinct.

How, based upon this questionable evidence, can anyone know where anything really is - and thus, how do we know whether there has been "channel bluff" erosion or not?

Finally, as noted above, the consultants said,

"The toe of the canyon bluff near the mouth of the creek is adjacent to the end of the Tank Access Road in all three photographs, indicating no significant marine erosion has occurred within this historical period that can reasonably be documented through photogrammetry analysis."

However, looking closely at the full 2001 photo (**Exhibit 10**) it is clear that the toe of the bluff is NOT adjacent to the end of the Tank Access Road. The road obviously extends a significant distance to the west.

b. Maximum tsunami wave run-up

As noted above, the consultants said,

"On September 25, 2014 there was a High Surf Advisory along the Central Coast with 9 to 13 foot high waves. The high surf wave run-up only came within 200 feet to the mouth of the creek on site, which is consistent with the results of the sea wave run-up analysis, see attached High Surf Advisory Photograph."

However, some locals have claimed that they have seen ocean run-up extend far eastward into the "canyon". A resident's photograph (**Exhibit 11**) shows one incident of seawater intrusion into the stream area.

In addition, the tsunami inundation level specified by the consultants is disputed.

In their Sea Wave Run-up Study (**Exhibit 12**), the consultants stated that the maximum tsunami flood elevation for the site was 17.2 feet. This number has come up and been questioned before. The last time was in 2012, when the City of Morro Bay was attempting to justify putting the new sewer plant in a beachside location adjacent to the current facility.

The methodology used to develop the 17.2 foot estimate for the sewer plant site was very basic. Earth Systems Pacific took their 100-year design still water elevation of 7.65 feet (based on a 1973 observation from a source that includes data through the year 2001), added their expected 100-year 4.58 sea level change, and got 12.2 feet. Then, they took the highest surge from the Japan tsunami (about 5 feet) and added that to 12.2 to get 17.2 feet.

There are obvious issues with this extreme simplification of a complex system, including the fact that the 5-foot surge from the Japan tsunami is not likely to be the highest possible in the future (or even the highest that ever hit Morro Bay in the past). The City of Morro Bay Local Hazard Mitigation Plan, indicates that in 1878, a tsunami "Reportedly overtopped the sand spit between the bay and the ocean".

In addition, the 17.2 foot estimate is significantly lower than tsunami inundation level estimates used in emergency plans of local agencies including San Luis Obispo County (40 - 50 feet), Cal Fire (over 28 feet), and the City of Morro Bay (no greater than 50 feet over mean sea level). In addition, studies done for the Diablo Canyon nuclear power plant, a short distance south of Morro Bay, predict a 36.4 foot maximum tsunami inundation level.

Specifically, the 2012 Earth Systems Pacific report done for the sewer plant project said,

"The recent seismic event that occurred in Japan on March 11, 2011 produced an 8.9 magnitude earthquake. Local news reports indicated that this earthquake caused a tsunami tidal surge into Morro Bay that was documented as one of the highest surges recorded along the California Coast. Dean Wendt of San Luis Obispo Science and Ecosystem Alliance (SLOSEA) prepared a graph showing the normal changes in the Morro Bay tidal heights followed by tsunami-generated surges over the next four hours initiated by the March 11, 2011 Japan earthquake; this graph "Tsunami Surges in Morro Bay" is appended. The highest tidal surge documented in the graph was approximately 5 feet. The maximum 5 foot tidal surge was added to the 100-year design still water elevation of 12.2 feet to derive a total tsunami elevation of 17.2 feet, and plotted on Cross Section A-a'. This maximum tsunami elevation is slightly higher than the 100-year sea wave run-up elevation, which was calculated at 15.7 feet."

It appears that the consultants simply used the same number for the 3420 Toro Lane site.

The estimated maximum tsunami water level elevations for the beachside WWTP site are as follows:

San Luis Obispo County Plan	40 – 50 feet
Cal Fire Plan	over 28 feet
Morro Bay Local Hazard Mitigation Plan	no greater than 50 feet above mean sea level
Dudek/Earth Systems Pacific Study	17.2 feet

The figure in the San Luis Obispo County Plan is from recent run-up and inundation modeling and mapping, done by the University of Southern California (USC) under contract to Cal EMA. Diablo Canyon is not that far from here, and they came up with 36.4 feet, as follows:

"The limiting case for the UFSAR tsunami runup was developed using historical tide, storm surge and storm wave data combined with an analytically determined, near shore tsunami wave height. Because the intake structure's geometry impacts the combined wave runup in a complex way, the maximum credible wave runup was determined using a scale model of the intake bay, breakwater and intake structure. This model was placed in a large tank with a wave generator to determine wave runup elevation on the scale model. The maximum runup value was obtained by simulating a combined, long period wave consisting of tsunami, storm surge and tide of 17' MLLW with a superimposed storm wave height of 26.8' MLLW. This equates to a combined wave height of 43.8' MLLW. The resulting maximum runup was 34.6' MLLW. The limiting elevation (bottom of ASP snorkel) is 48' MLLW." (emphasis added) The study also refers to the Updated Final Safety Analysis Report (UFSAR) "credible wave height" as 36.4."

It would seem prudent to place more reliance on the more sophisticated and detailed studies done by USC and the power plant than on the very simplistic calculation apparently used for the 3420 Toro Lane wave run-up analysis.

E. ENVIRONMENTALLY SENSITIVE HABITAT AREA POLICIES

- Policy 11.01 Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on such resources shall be allowed within such areas. The City shall either prepare a wetlands/estuarine map or, if funding does not permit such preparation, adopt the National Wetland Inventory by U.S. Fish and Wildlife Service dated 1979, as the mapping illustration of the wetland and estuarine areas contained within City boundaries. If the City adopts the National Wetland Inventory Mapping as their LUP wetlands map, then because that map does not precisely delineate the extent of wetland habitats and types, all proposed development located within 1000 feet of the mapped wetland boundaries shall be required to submit additional mapping based on U.S. Fish and Wildlife and Coastal Commission Statewide Interpretive Guidelines done by a qualified biologist. The additional mapping will be submitted for review and approval from U.S. Fish and Wildlife and the California Department of Fish and Game. After public agency approval has been obtained, the City shall define buffer areas around the wetland areas. The buffer areas shall be 100 feet around all wetland areas except where biologists identify the need for a greater buffer to protect the overall wetland system or a particular resource. Developments permitted within wetland and/or buffer areas are limited to the uses listed in Section 30233(c) of the Coastal Act.
- Policy 11.02 Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade such areas, and shall maintain the habitats' functional capacity.
- Policy 11.04 No land division shall be allowed in the environmentally sensitive habitat areas of wetlands, sand dunes, stream beds and endangered wildlife habitats as designated on Figures 6 and 28, unless the land division is for the express and sole purpose of transferring the property to a public management agency or for some other bona-fied conservation purpose.
- Policy 11.05 Prior to the issuance of a coastal development permit, all projects on parcels containing environmentally sensitive habitat as depicted on the Land Use Plan map or habitat map included within the LUP and on the adopted U.S. Fish and Wildlife wetland inventory map, or projects on parcels within 250 feet of all designated areas (except wetlands where projects on parcels within 1000 feet is the criterion), or projects having the potential to affect an environmentally sensitive habitat area must be found to be in conformity with the applicable habitat protection policies of the Land Use Plan. All development plans, grading plans, etc., shall show the precise location of the habitat(s) potentially affected by a proposed project. Projects which could adversely impact an environmentally sensitive habitat area shall be subject to adequate environmental impact assessment by a qualified biologist(s). In areas of the City where sensitive habitats are suspected to exist but are not presently mapped or identified in the city's Land Use Plan, projects shall undergo an initial environmental impact assessment to determine whether or not these habitats exist. Where such habitats are found to exist, they shall be included in the City's environmentally sensitive habitat mapping included within the LUP.

- Policy 11.06 Buffering setback areas a minimum of 100 feet from sensitive habitat areas shall be required. In some habitat areas setbacks of more than 100 feet shall be required if environmental assessment results in information indicating a greater setback area is necessary for protection. No permanent structures shall be permitted within the setback area except for structures of a minor nature such as fences or at-grade improvements for pedestrian or equestrian trails. Such projects shall be subject to review and comment by the Department of Fish and Game prior to commencement of development within a setback area. For other than wetland habitats, if subdivision parcels would render the subdivided parcel unusable for its designated use, the setback area may be adjusted downward only to a point where the designated use is accommodated but in no case is the buffer to be less than 50 feet. The lesser setback shall be established in consultation with the Department of Fish and Game. If a setback area is adjusted downward mitigation measures developed in consultation with the Department of Fish and Game shall be implemented.
- Policy 11.07 Passive recreation activities (i.e. bird-watching, walking, nature studies) shall be permitted with appropriate controls to prevent adverse impacts.
- Policy 11.08 Pollutants such as chemicals, fuels, lubricants, raw sewage and other harmful wastes generated during commercial or recreational boating activities shall be prohibited from being discharged into the bay.
- Policy 11.09 The recreational use of rare or endangered species habitats shall be minimal, i.e. walking, bird-watching. Protective measures for such areas should include fencing and posting so as to restrict, but not exclude, use by people.
- Policy 11.10 Only native vegetation shall be planted in the habitat areas of rare or endangered species. Where feasible, use of drought tolerant plants of a native variety shall be used in coastal zone areas.
- Policy 11.11 (Deleted per revisions of July, 1982.)
- Policy 11.12 Recreational uses allowed on Black Hill and the sandspit shall not disrupt the viability of rare or native plant communities. Passive recreational use of these sensitive habitat areas shall be allowed as long as they are determined to be compatible with preserving the sensitive habitat, following review and comment of the proposed recreational uses by U.S. Fish and Wildlife, the California Department of Fish and Game and the Department of Parks and Recreation.
- Policy 11.13 The dumping of dredge spoils on the sandspit shall be prohibited. Native plants should be planted along the sandspit to aid in dune stabilization.
- Policy 11.14 A minimum buffer strip along all streams shall be required as follows:
- (1) a minimum buffer strip of 100 feet in rural areas;
 - (2) a minimum buffer strip of 50 feet in urban areas.

If the applicant can demonstrate that the implementation of the minimum buffers on previously subdivided parcels would render the subdivided parcel unusable for its designated use, the buffer may be adjusted downward only to a point where the designated use can be accommodated, but in no case shall the buffer be reduced to less than 50 feet for rural areas and 25 feet for urban areas. Only when all other means to project modifications are found inadequate to provide for both the use and the larger minimum buffer. The lesser setback shall be established in consultation with U.S. Fish and Wildlife and the California Department of Fish and Game and shall be accompanied by adequate mitigations. The buffer area shall be measured landward from the landward edge of riparian vegetation or from the top of the bank (e.g., in channelized streams). Maps and supplemental information may be required to determine these boundaries.

Adjustments to the minimum buffer must protect the biological productivity and water quality of the streams. Assessment of impact shall include, but not be limited to the following factors:

- (a) Soil type and stability of stream corridors;
- (b) How surface water filters into the ground;
- (c) Slope of land on either side of the stream; and
- (d) Location of the 100 year flood plain boundary.

Where riparian vegetation has been previously removed, except for stream channelization, the buffer shall allow for the re-establishment of riparian vegetation to its prior extent to the greatest degree possible.

Policy 11.15 No structures shall be located within the stream corridor except: public trails located within a buffer when no alternative location is feasible but outside of riparian habitat; necessary water supply projects; flood control projects where no other method for protecting existing structures in the flood plain is feasible and where such protection is necessary for public safety or to protect existing development; and development where the primary function is the improvement of fish and wildlife habitat. Bridges (when support structures are located outside the critical habitat areas) may be permitted when no alternative route/location is feasible. All development shall incorporate the most protective mitigations feasible.

Policy 11.16 All permitted development, including dredging, filling, and grading within stream beds and setback buffer areas shall be limited to activities necessary for the construction of uses specified in Policy 11.15. When such activities require removal of riparian plant species, revegetation with local native riparian species shall be required. Projects which would cause the removal of vegetation shall be subject to review and comment by U.S. Fish and Wildlife Service and the Department of Fish and Game.

Policy 11.17 The biological productivity of the City's environmentally sensitive habitat areas shall be maintained and, where feasible, restored through maintenance and

enhancement of the quantity and quality of Morro and Chorro groundwater basins and through prevention of interference with surface water flow. Stream flows adequate to maintain riparian and fisheries habitat shall be protected.

Policy 11.18 New subdivisions shall be prohibited in areas designated as environmentally sensitive habitat areas. New subdivisions proposed adjacent to wetland areas shall not be approved unless the to-be-created parcels contain building sites entirely outside the maximum applicable buffer (i.e., 100 feet for wetlands and rural streams, and 50 feet for urban streams).

Policy 11.19 No vehicle traffic shall be permitted in wetlands and pedestrian traffic shall be regulated and incidental to the permitted uses. New development adjacent to wetlands shall not result in adverse impacts due to additional sediment, runoff, noise, and other disturbances.

Policy 11.20 Coastal dune habitats shall be preserved and protected from all but resource-dependent, scientific, educational and passive recreational use. Disturbance or destruction of any dune vegetation shall be prohibited, unless no feasible alternative exists, and then only if revegetation is made a condition of project approval. Such revegetation shall be with native plants propagated from the disturbed sites or from the same species at adjacent sites.

All non-authorized motor vehicles shall be prohibited in beach and dune areas. A buffer strip, a minimum of 50 feet in width in urban areas and 100 feet in non-urban areas shall be maintained between the dune habitat and adjacent development. All permitted uses shall be regulated and restrictions enforced to protect critical bird habitats during breeding and nesting seasons. Controls may include restriction of access, noise abatement, restriction of hours of operations of public or private facilities. For all permitted uses within dune habitat areas, including recreation, foot traffic on vegetated dunes shall be minimized. Where access through dunes is necessary or established through historical public use, well-defined footpaths or boardwalks shall be developed and used.

Policy 11.21 The following environmental standards shall apply to development of the large privately owned parcel located between Morro Bay High School and Azure Street on the west side of Highway One referred to herein as Mixed Use Area G and formerly known as the VRM property.

The sand and dunes area between the mean high tide line and the easternmost line of dunes, and the marshy lowland habitat areas shall be adequately identified and mapped as part of the information submitted with any development plans for the area. The sandy beach portion of the parcel shall be designated as open space/recreation. The dunes areas and marshy lowland habitat area shall be designated as environmentally sensitive habitat. A buffer setback of no less than 50 feet, if fenced (or 100 feet if not fenced) shall be established after mapping of the habitat boundaries has taken place. The mapping and proposed buffers shall be subject to review and comment by U.S. Fish and Wildlife and California Department of Fish and Game. Recreational use of this portion of the site shall be limited to passive recreational uses which do not conflict with the habitat values. Dedication of beach and dune area to the state is encouraged for proper management. Prior to commencement of any development, the applicant shall

ensure restoration, enhancement and protection of the dune and marsh habitat areas. The restoration-enhancement-protection program shall be submitted for review and comment by U.S. Fish and Wildlife Service, the California Department of Fish and Game, and the California Coastal Commission, and suggested modifications shall be incorporated into the program after review by these agencies.

- Policy 11.22 The precise location and thus boundary line of Environmentally Sensitive Habitat areas shall be determined based upon a field study paid for by the applicants and performed by the City or City's consultants and approved by City Council and/or their appointed designee prior to the approval of development on the site, including, but not limited to, a division of land, provision of public access, or restoration of the ESH.
- Policy 11.23 As a condition of approval of development prior to commencement of any development, property owners/applicants shall dedicate appropriate permanent easement over portions of the property determined to be sensitive habitat, such as dunes, beach, wetlands, or riparian corridor.

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southeasterly property line. Setbacks from the northwesterly property line are based on a proposed 25-foot ESH buffer from the stream corridor and a 50-foot ESH buffer from the coastal dune habitat.

****Coverage: In response to site constraints, the project confines all on-site development (structure and impervious surfaces) to roughly 30% of the lot. Project coverage, as defined by the Zoning Ordinance Section 17.12.092, which does not include impervious surfaces such as driveways and walkways, is 21.2% of the lot area.

Environmentally Sensitive Habitat Overlay (ESH). Both the City Zoning Map and Land Use Map show an Environmentally Sensitive Habitat (ESH) designation on the project site. Coastal Land Use Plan Policy 11.05 requires that prior to issuance of a coastal development permit, project plans shall show the precise location of potentially affected habitats. Two Biological Resources Assessment Reports were submitted for the project by Kevin Merk (March 2012, and December 2013). An addendum to these reports was also submitted in November, 2014, following guidance from and discussions with California Coastal Commission Ecologist, Dr. Jonna Engle. (Links to each of these documents is provided at the end of this report.)

Vegetation on site includes annual grassland, Bermuda buttercup, and ice plant mat/foredune. No special status species were observed on site. The biological studies conclude that there are two ESH areas on the property – the stream corridor along the northerly boundary and a small area of coastal dune in the westerly corner of the site shown in the Addendum to Biological Resources as Iceplant Mat/Foredune (Exhibit E). The stream corridor habitat is confined to the drainage channel and includes a single willow. There is no other riparian vegetation associated with the stream corridor ESH.

ESH Buffer Areas. The Zoning Ordinance specifies setback/buffer distances from identified ESH areas. In the case of streams and coastal dunes, the required setback is 100 feet in non-urban areas and 50 feet in urban areas. Where the full setback would render a subdivided property unusable, the stream corridor setback may be reduced down to 25 feet, subject to mitigation deemed necessary for habitat protection and in consultation with the U.S. Fish and Wildlife Service (USFWS) and the California Department of Fish and Wildlife (CDFW). Brandon Sanderson, CDFW Environmental Scientist, noted that CDFW received the MND for review and had no concerns with the project. He suggested fencing at the buffer setback so that residential activities do not occur within the buffer. (See Planning condition 16 in the attached resolution.) Julie Vanderwier, Senior Fish and Wildlife Biologist at USFWS, commented that the Biological Addendum adequately addressed previous concerns, especially regarding habitat for the possible presence of red-legged frogs and the California seablight plant (a coastal dune scrub plant). (Correspondence from CDFW and USFWS can be viewed on the City web page at <http://www.morro-bay.ca.us/DocumentCenter/View/8737>.)



Conditional Use Findings

1. As conditioned, the project is consistent with the General Plan and Local Coastal Program regarding the location of residential uses and development of property in coastal bluff setback review area.
2. As conditioned, the project will not be detrimental to the health, safety and welfare of persons residing or working in the neighborhood.

Reduced Buffer Area Finding

1. Consistent with the Coastal Land Plan Use (Policy 11.14) and the Environmentally Sensitive Habitat development standards in the City's Zoning Ordinance (subsection 17.40.040.D.6), the reduction in the stream corridor buffer area from 50 feet to 25 feet is reasonably necessary to allow development of the site and environmental mitigation is incorporated into the project description to require native habitat restoration landscaping in the buffer area.

Coastal Access Finding

1. The project is consistent with the public access and public recreation policies of Chapter 3 of the Coastal Act because it includes a beach access trail through the project site.

Section 2. Action. The Planning Commission does hereby adopt the June, 2015 Mitigated Negative Declaration and approve Coastal Development Permit CP0-419 and Conditional Use Permit UPO-383 for property located at 3420 Toro Lane subject to the following conditions:

STANDARD CONDITIONS

1. This permit is granted for the land described in the staff report dated October 6, 2015, for the project at 3420 Toro Lane as depicted on plans received by the City on September 29, 2015, as part of Coastal Development Permit CP0-419 and Conditional Use Permit UP0-383, on file with the Community Development Department, as modified by these conditions of approval, and more specifically described as follows: Site development, including all buildings and other features, shall be located and designed substantially as shown on plans, unless otherwise specified herein.
2. Inaugurate Within Two Years: Unless the construction or operation of the structure, facility, or use is commenced not later than two (2) years after the effective date of this Resolution and is diligently pursued, thereafter, this approval will automatically become null and void; provided, however, that upon the written request of the applicant, prior to the expiration of this approval, the applicant may request up to two extensions for not more than one (1) additional year each. Any extension may be granted by the City's Community Development Manager (the "Manager"), upon finding the project complies with all applicable provisions of the Morro Bay Municipal Code (the "MBMC"), General Plan and certified Local

EXHIBIT 4

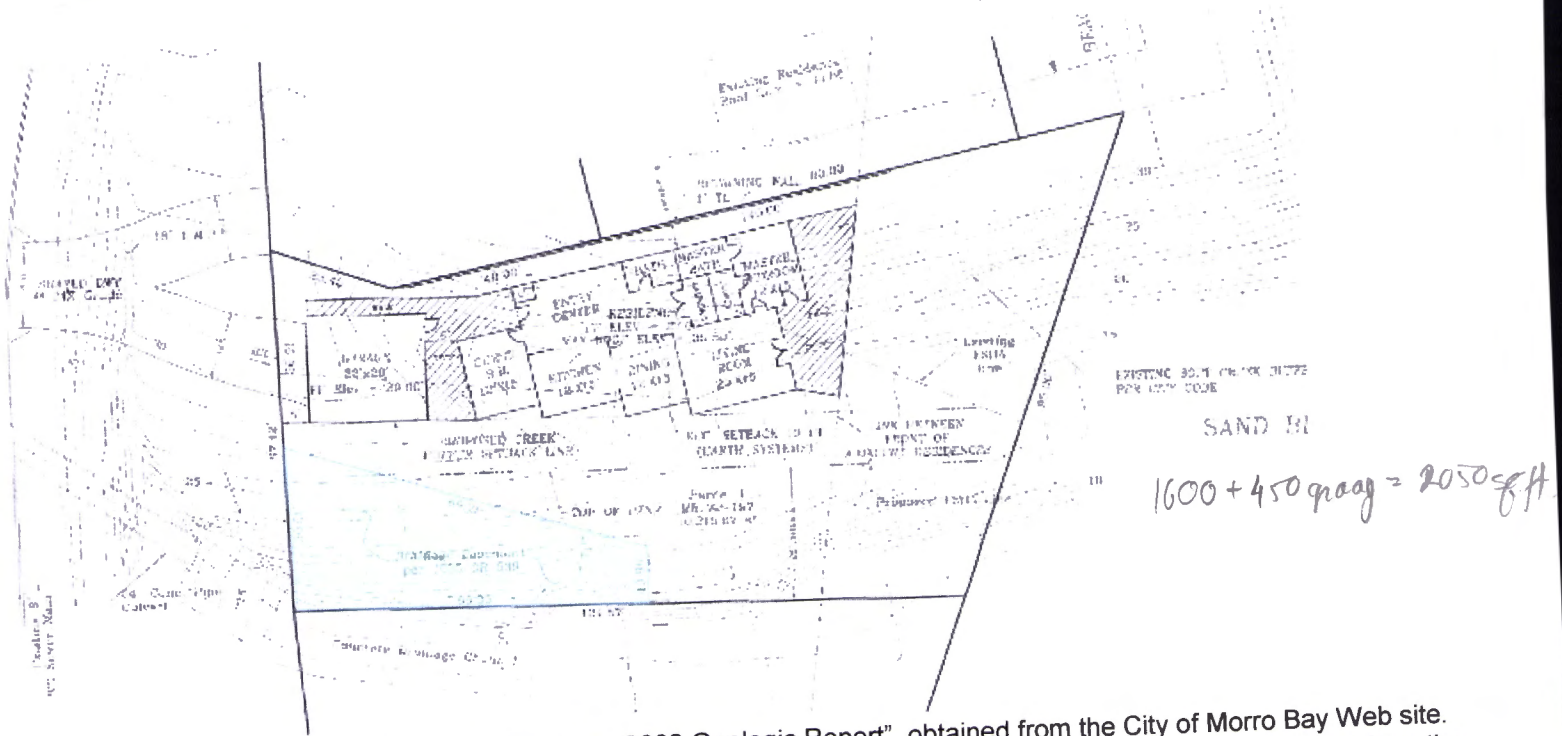


Figure 1: The above image is from the "Toro Lane 2002 Geologic Report", obtained from the City of Morro Bay Web site. <http://www.morro-bay.ca.us/documentcenter/view/8746> Note that at its nearest point, the house is at least 5 feet from the drainage easement (shaded in blue).

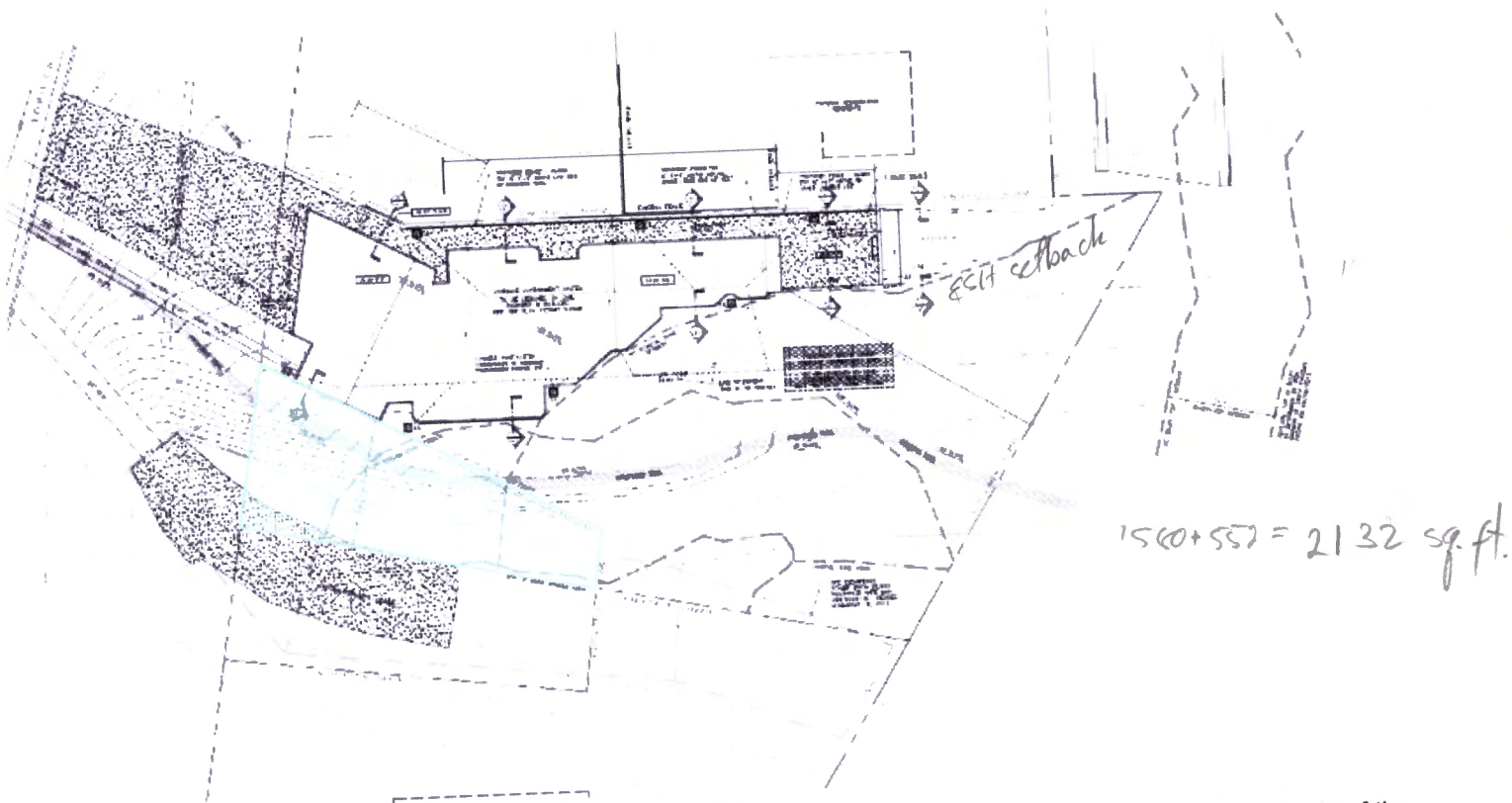
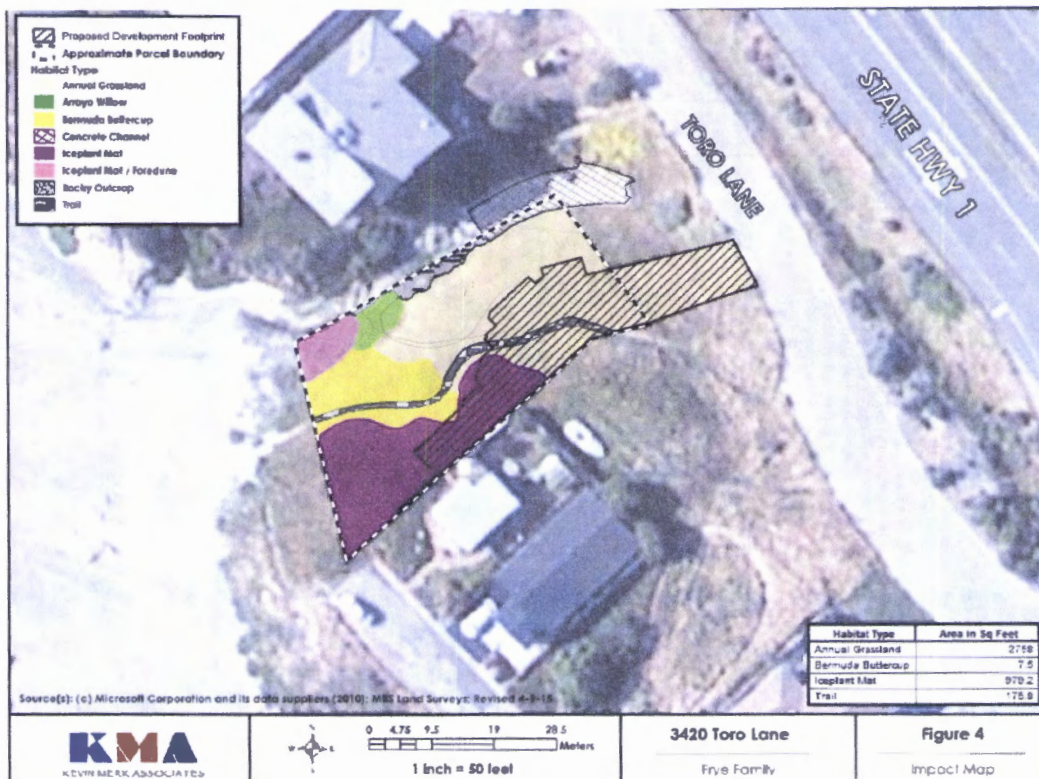
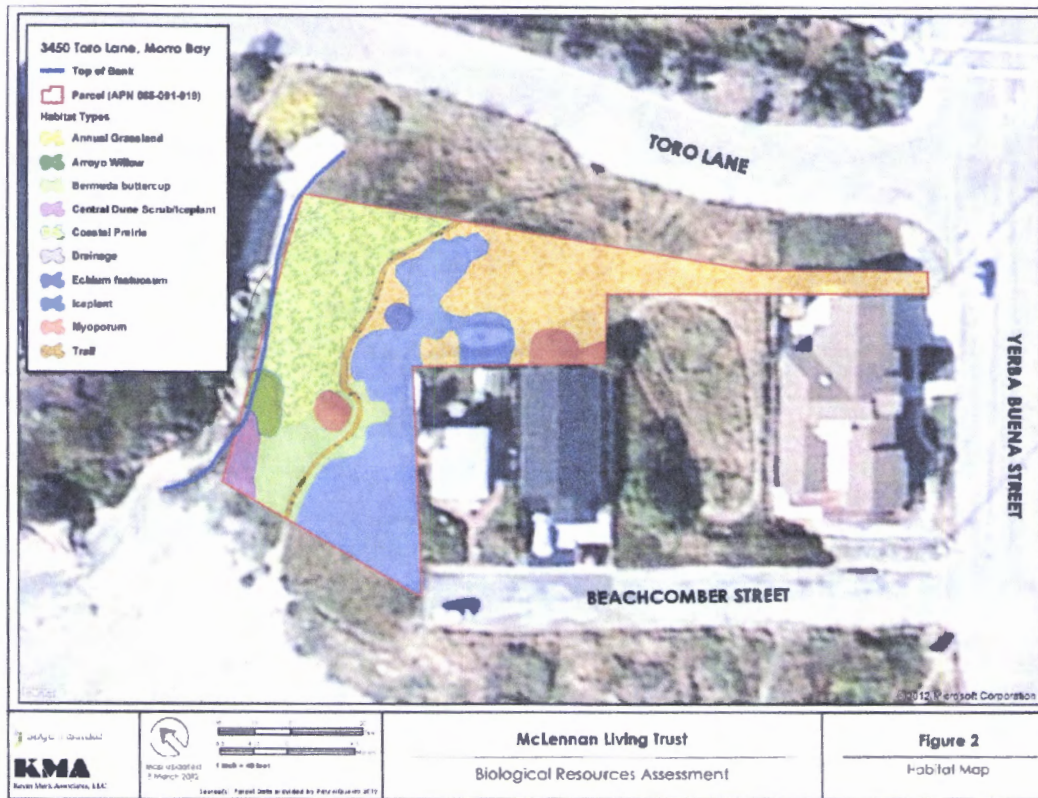


Figure 2: The above image, from documents attached to the October, 6, 2015 Planning Commission agenda, is of the currently-proposed home. One wall lies directly on the drainage easement boundary.

The first image below is from the 2012 ESH study; the second from the 2014 study



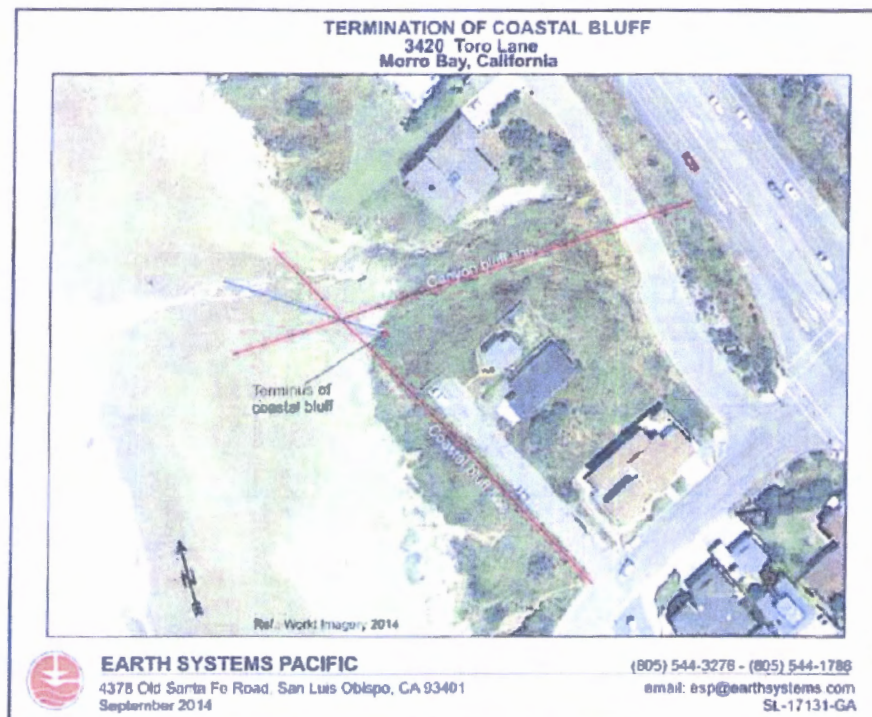
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Bluff Development Standards

Because the site is between the ocean beach and the first public road, it is within a coastal bluff review area. Chapter 17.45 of the Zoning Ordinance establishes development standards and requires use permit approval for properties within the bluff review area setback. The Coastal Land Use Plan specifically references two bluff lines – the one running from the power plant to Morro Bay State Park and the one running along Beachcomber Drive inside Atascadero State Beach. The project site sits inland from the bluff line within Atascadero State Park, just north of the terminus of Beachcomber Drive.

Development projects in the bluff review area are required to submit a geologic report that addresses slope stability, erosion, building setbacks, and overall site suitability for development over a minimum 75-year period. For this project, Earth Systems Pacific has prepared a Geologic Bluff Study, a Sea Wave Run-up Analysis, a Slope Stability Report, as well as a clarification of top of bank and identification of coastal and canyon bluff lines. (On-line links to these documents are listed at the end of this report.)

The project site is unique in that it sits inland from the edge of a coastal bluff and is bordered on the northerly side by a canyon bluff. Geologic analysis of the site by Earth Systems Pacific in consultation with Coastal Commission staff geologist, Mark Johnsson, concludes that the top of coastal bluff is outside the boundaries of the property and runs roughly parallel to the shoreline. The on-site slope adjacent to the drainage is more accurately characterized as a riverine or canyon bluff, which runs more or less perpendicular to the beach and ocean. Site topography has also been significantly altered by previous grading and the concrete channelization of the natural drainage.





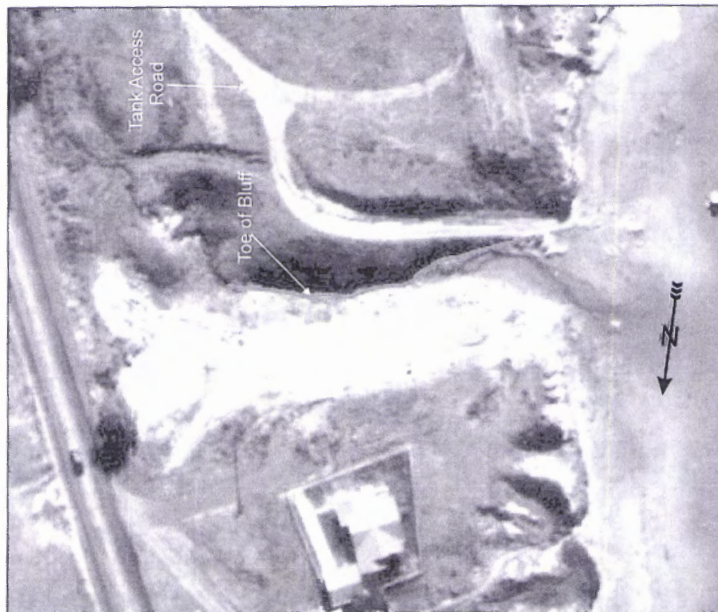
#3 Geology

The California Coastal Commission questioned whether an analysis was performed to determine where the northern facing section of the coastal bluff transitions to a stream channel [canyon bluff] bank. At the time the geologic bluff study was performed in 2002, such analyses were not typically required or performed. For this response, an analysis was performed following the methodology as presented in the California Coastal Act, California Code of Regulations, Title 14, § 13577 (h) (2). This method defines the terminus of the coastal bluff line as "a point reached by bisecting the angle formed by a line coinciding with the general trend of the bluff line along the seaward face of the bluff, and a line coinciding with the general trend of the bluff line along the inland facing portion of the bluff." It should be noted that while the methodology indicates that a minimum of 500 feet of bluff line should be used when making the determination, both the canyon and the coastal bluff lines have been obscured by construction of Highway 1, Yerba Buena Street and other development; consequently, the general trends of the bluff lines beyond the developed areas were not used in the analysis. The location of the terminus point of the coastal bluff is shown on the attached Termination of Coastal Bluff graphic.

Additionally, the Commission cites § 13577 (h) (1) of the California Code of Regulations as defining coastal bluffs as "those bluffs, the toe of which is now or was historically (generally within the last 200 years) subject to marine erosion. To assess historical and current erosion related to marine influences, tidal and historic wave data were reviewed. According to tidal elevation data derived from Station 9412110 (NOAA 2013), the highest water level recorded locally was elevation 7.65 feet Mean Lower Low Water (MLLW) on January 18, 1973 (NAVD 88 Datum). This elevation also included a 2-foot storm surge. Based upon storm data from the 1982-1983 El Nino event, which is considered comparable to a 100-year storm, the maximum breaking wave height at the site is considered to be 15 feet. The compilation of these data, using the methodology outlined in the Coastal Protection Design Manual (NAVFAC 1982), results in a calculated sea wave run-up height of elevation 10.2 feet under the current site conditions. The point at which this elevation occurs on the beach is approximately 110 feet seaward of the coastal bluff terminus point.

Aerial photographs were analyzed to assess the degree and pattern of historical erosion along the toe of the north facing bluff at the site. Stereoscopic vertical aerial photographs of the site (Caltrans 1953 and 2001) were reviewed and the toe of the north-facing canyon bluff was plotted (see attached Toe of North Facing Bluff graphic). A current aerial photograph (World Imagery Website 2014) is also shown on this graphic. The toe of the canyon bluff for this 2014 aerial photograph was determined based upon assessment of the canyon/stream channel topography during a site reconnaissance by the undersigned.

TOE OF NORTH FACING BLUFF
3420 Toro Lane
Morro Bay, California



Ref.: Caltrans 1953



Ref.: Caltrans 2001



Ref.: World Imagery Website 2014



EARTH SYSTEMS PACIFIC

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 September 2014

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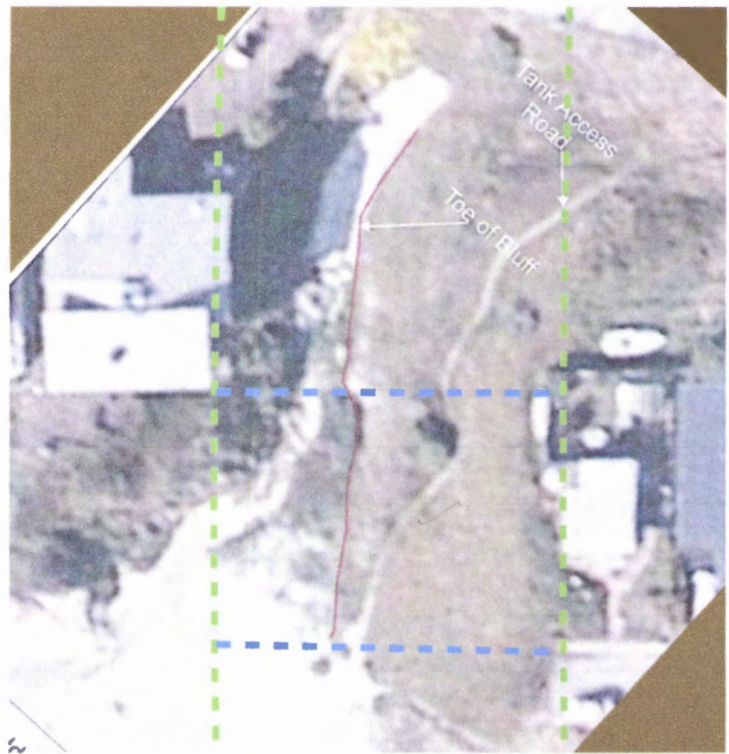
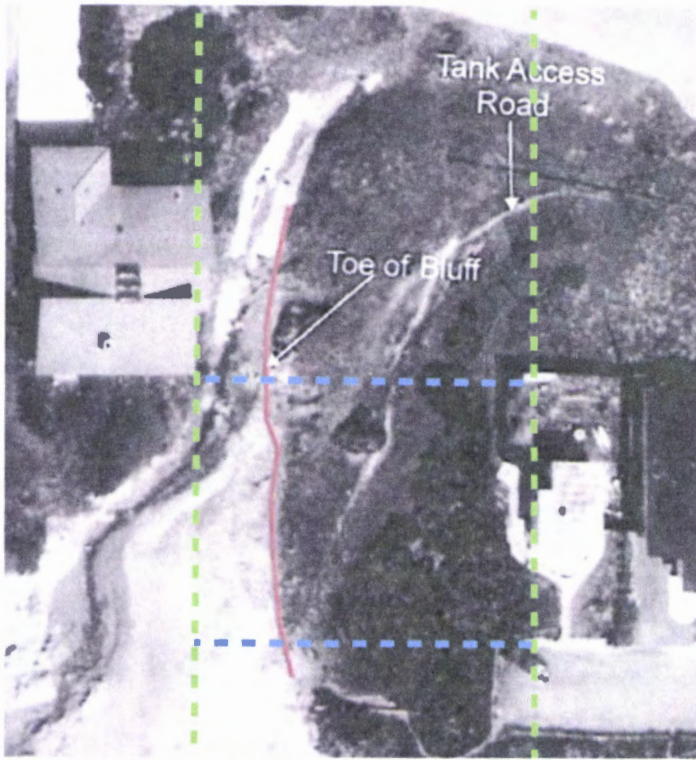


Figure 1. To the left is the 2001 image, rotated 2 degrees and cropped, with a grid added. To the right is the 2014 image, rotated 42 degrees, cropped, and with a corresponding grid.

The vertical green grid lines are aligned with walls of structures. The horizontal blue lines are aligned with a wall of a structure (upper line) and with the sidewalk at the end of Beachcomber Drive (lower line).

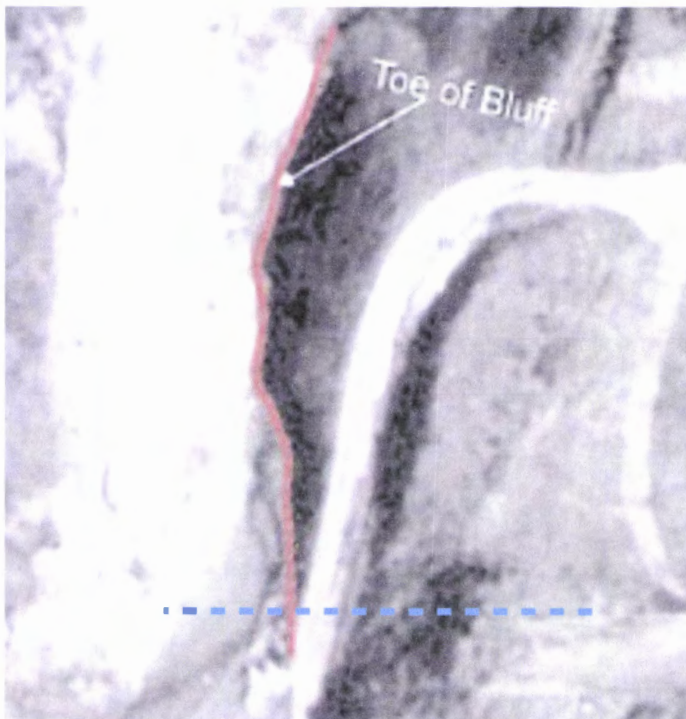


Figure 2. 1953 image rotated and cropped, with one grid line inserted at the likely position of the later-build sidewalk along Beachcomber Drive



Ref.: Caltrans 1953





3420 Toro Lane
Morro Bay, California

7

February 12, 2015

TSUNAMIS

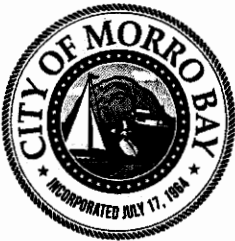
According to the State of California Tsunami Inundation Zone map for the County of San Luis Obispo (July 2009), the project site lies within a Tsunami Inundation Zone. Hazardous tsunamis along the California coastline are generally associated with seismic events and are typically caused by vertical displacement of submarine faults. The Hosgri fault lies offshore in the vicinity of Morro Bay. This fault has strike-slip (horizontal) movement and no vertical movement. Therefore, it is unlikely that the Hosgri fault would produce tsunami surges along the Morro Bay coastline. Tsunamis can also occur as a result of submarine landslides that may or may not occur in conjunction with seismic activity. Due to the gradual shallowing of the ocean toward the coast in south-central and southern California the potential for tsunamis from localized landslides is considered low.

The seismic event that occurred in Japan on March 11, 2011 produced an 8.9 magnitude earthquake. Local news reports indicated that this earthquake caused a tsunami tidal surge into Morro Bay that was documented as one of the highest surges recorded along the California Coast. Dean Wendt of San Luis Obispo Science and Ecosystem Alliance (SLOSEA) prepared a graph showing the normal changes in the Morro Bay tidal heights followed by tsunami-generated surges over the next four hours initiated by the March 11, 2011 Tohoku earthquake in Japan. The highest tidal surge documented in the graph was approximately 5 feet. Therefore, the maximum 5-foot tidal surge was added to the 100-year design stillwater elevation of 12.2 feet to derive a maximum tsunami flood elevation of 17.2 feet, and plotted on the attached Cross Section A-A' and Site Plan.

CONCLUSIONS

Future Sea Level Rise

The 100-year wave run-up analysis indicated that during a 100-year storm event, the highest elevation that a sea wave run-up would reach is elevation 16.25 feet (NAVD 88 datum). This elevation also includes a 1.5-foot creek storm surge. Based upon available data regarding tsunami inundation at the site, a tsunami-generated tidal surge would exceed the height of the sea waves and wave run-up that would be associated with a 100-year storm event. This is based upon a maximum 5-foot tidal surge that was documented as a result of the March, 2011 Tohoku earthquake in Japan, combined with the maximum 100-year design stillwater elevation of 12.2 feet. This results in an estimated maximum tsunami surge elevation of 17.2 feet, which is slightly higher than the 100-year sea wave run-up elevation of 16.25 feet. The 100-year sea wave run-up analysis took into consideration such factors as an eroded or scoured beach, a 100-year storm event (the equivalent of the 1982/1983 El Niño event), an extreme high tide, and the projected 100-year rise in sea level based upon conservative theory.



CITY OF MORRO BAY
COMMUNITY DEVELOPMENT DEPARTMENT
955 Shasta Avenue
Morro Bay, CA 93442

RECEIVED

January 8, 2016

JAN 12 2016

Yair Chaver, Coastal Planner
California Coastal Commission
725 Front Street
Santa Cruz, CA 95060

**CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA**

Dear Yair,

This letter is to assure you that, pursuant to the conditions of project approval related to coastal access, the City of Morro Bay fully intends to accept the offer of dedication for a coastal access through property at 3420 Toro Lane and will require construction of an engineered trail with appropriate signage prior to allowing occupancy of the project.

Anticipated timing for opening the new coastal access trail to the public is as follows: The offer of dedication must be received and recorded prior to issuance of a building permit. Upon recordation of the offer to dedicate, acceptance of the offer will be placed on the City Council agenda. Also prior to issuance of a building permit, the City will require an engineered design for the trail construction. The building permit will not be signed off to enable occupancy until construction of the trail is complete and required signage is in place. The trail will be open to the public prior to issuance of occupancy on the newly constructed home.

Sincerely,

Scot Graham
Community Development Manager

ACCESS TRAIL FEASIBILITY STUDY

APN: 065-091-022
Morro Bay, CA

January 11, 2016

Prepared For:

Greg and Jeanne Frye
1725 Little Morro Creek Road
Morro Bay, CA 93442

Prepared By:

Engineering Design Professionals, Inc.
400 Avalon Street
Morro Bay, CA 93442
(805)602-6167

January 11, 2016

Greg and Jeanne Frye
3420 Toro Lane
Morro Bay, CA 93442

Reference:

Frye Residence
3420 Toro Lane
Morro Bay, CA 93442

Dear Yair and Coastal Staff:

This Access Trail Feasibility Study has been prepared for the proposed realigned pedestrian trail that is to be constructed adjacent to a proposed single-family residence located at 3420 Toro Lane, Morro Bay, California, APN: 065-091-022.

On January 9, 2016, I was asked by Greg Frye to determine the constructability of a sustainable pedestrian trail that would be equivalent or better than the existing pedestrian trail that provides access from Toro Lane to Morro Strand State Beach. The location and alignment of the existing pedestrian trail and the proposed pedestrian trail alignment which is in compliance with the City of Morro Bay's Local Coastal Plan are shown on the construction documents prepared by Architect C.P. Parker dated September 28, 2015.

It is my recommendation that the proposed pedestrian trail along the proposed alignment as shown by C.P. Parker be constructed in compliance with the Parks and Recreation Element of the San Luis Obispo County General Plan and follow the Federal Highway Administration's "Designing Sidewalks and Trails for Access Best Practices Design Guide" where feasible.

Based on my analysis I have concluded a pedestrian trail constructed as specified in this study would be sustainable and equivalent or better than the existing pedestrian trail it is intended to replace.

Respectfully,

Engineering Design Professionals, Inc.

Daniel A. Sotelo, PE
Principal, C81227

Engineering Design Professionals, Inc.
400 Avalon Street
Morro Bay, CA 93442
Ph: 805-602-6167
dsotelo@edpincorporated.com

Project No. FRY_065091022
3420 Toro Lane
Morro Bay, CA

Page 1 of 5

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1 INTRODUCTION

This Access Trail Feasibility Study has been prepared for Greg and Jeanne Frye for the development of a new Single Family Residence in Morro Bay, California. This report has been prepared to determine the constructability of low maintenance sustainable pedestrian access trail over the property as well as to describe the methods in which the trail will be built. The purpose of this trail is to re-route an existing pedestrian access trail with a comparable trail that runs from Toro Lane to Morro Strand State Beach.

1.1 SITE DESCRIPTION

The City of Morro Bay is located on the central coast of California and experiences a cool Mediterranean climate. Morro Bay is a waterfront city in San Luis Obispo County with an estimated population of 10,000.

The project site is located on Toro Lane which can be accessed off of Yerba Buena Street, west of California Highway 1 between Hill Plant Road and San Jacinto Street. The parcel size is 0.23 acres. The Site is located on a vacant portion of the coastal bluff. The topography slopes down towards the southwest at approximately 12.5%.

1.2 PRE/POST-DEVELOPMENT TRAIL CONDITIONS

The parcel currently is undeveloped raw land that is vegetated by annual grasses and is surrounded by single family residences. The existing public access trail meanders from Toro Lane to Morro Strand State Beach. The existing trail is a compacted dirt trail that ranges in width from 2ft to 5ft. The trail has cross slopes that vary from 1% to 5% with longitudinal slopes that range from 8.5% to 18%. (See Exhibits A and B)

The planned development will include one new single family residence and an access trail. The proposed compacted dirt access trail will be 4 ft. wide where feasible. The minimum allowable width of this trail is 2ft. The trail will have a maximum cross slope of 3%. The longitudinal grade will vary between 6%-18% which is less steep than the maximum sustained grade of 25%. The access trail side slopes will be vegetated on both the uphill and downhill side with approved vegetation to retard soil erosion. An approved shrub will be planted on the downhill side and serve the dual purpose of a soil stabilizer and edge protection. This shrub will be a minimum average height of 42 in. (See Exhibit A)

1.3 ACCESS TRAIL GUIDELINES

The Federal Highway Administration (FHWA) is an agency within the U.S. Department of Transportation that supports State and local governments in the design, construction, and maintenance of the Nation's highway system (Federal Aid Highway Program) and various federally and tribal owned lands (Federal Lands Highway Program). Through financial and technical assistance to State and local governments, the Federal Highway Administration is responsible for ensuring that America's roads and highways continue to be among the safest and most technologically sound in the world. (See Appendix A)

The California Department of Parks and Recreation website and the Cal Trans Highway Design Manual refer to the FHWA "Designing Sidewalks and Trails for Access" for pedestrian access trail design. (See Appendix A)

The County of San Luis Obispo standard for pedestrian access trail specifications can be found in the Parks and Recreation Element of the San Luis Obispo County General Plan, Appendix B Pedestrian Trail Standards as referenced by the San Luis Obispo County Department of Public Works & Transportation 2014 Public Improvement Standards. (See Appendix A)

For the purpose of this study the FHWA "Designing Sidewalks and Trails for Access" guidelines will be used where feasible. Ultimately the Parks and Recreation Element of the San Luis Obispo County General Plan, Appendix B Pedestrian Trail Standards will govern the minimum and maximum allowable design specifications. (See Exhibit E and Appendix A)

1.4 ACCESS TRAIL DESIGN PARAMETERS

The proposed public access trail will be a compacted dirt trail designed using the following design parameters which comply with The Parks and Recreation Element of the San Luis Obispo County General Plan, Appendix B Pedestrian Trail Standards. (See Exhibit E)

1.4.1 MAXIMUM SUSTAINED GRADIENT

The pedestrian trail shall have a maximum sustained Grade of 25% but allow up to a 40% sustained grade for less than 50 yards (The proposed trail is expected to range from 6%-18%). (See Exhibit E and Appendix A)

1.4.2 MINIMUM WIDTH AND MAXIMUM CROSS SLOPE

Proposed pedestrian trail shall be 4 ft. wide where feasible but will allow a minimum width of 2 ft. The cross slope should not exceed 3%. (See Exhibit C)

1.4.3 SLOPE EROSION CONTROL AND EDGE PROTECTION

Side slopes shall be vegetated with approved vegetation to retard soil erosion. An approved brush with a minimum average height of 42" shall be planted on the downhill side slope to function as both edge protection and help prevent soil erosion. (See Exhibit D)

2 CONCLUSION & RECOMMENDATIONS

My recommendation is that the proposed trail alignment be constructed in compliance with the Parks and Recreation Element of the San Luis Obispo County General Plan and follow the Federal Highway Administration's "Designing Sidewalks and Trails for Access Best Practices Design Guide" where feasible.

The proposed compacted dirt pedestrian trail designed to replace the existing compacted dirt pedestrian trail will have similar widths and maximum gradients. The pre and post development trails are comparable. The proposed trail will also be enhanced with edge protection.

After observing the performance of the existing compacted dirt trail it can be concluded that a trail constructed of compacted native soil combined with approved vegetation that retards soil erosion is a sustainable design with minimal maintenance.

3 REPORT APPENDICES

3.1 EXHIBIT A: EXISTING AND PROPOSED ACCESS TRAIL ALIGNMENT

3.2 EXHIBIT B: EXISTING TRAIL PHOTOGRAPHS

3.3 EXHIBIT C: PROPOSED TRAIL CROSS SECTION

3.4 EXHIBIT D: APPROVED VEGETATION

3.5 EXHIBIT E: SLO COUNTY PARKS AND RECREATION ELEMENT – A-B

3.6 APPENDIX A: REFERENCE MATERIAL

EXHIBIT A

EXISTING AND PROPOSED ACCESS TRAIL ALIGNMENT

Engineering Design Professionals, Inc.
400 Avalon Street
Morro Bay, CA 93442
Ph: 805-602-6167
dsotelo@edpincorporated.com

Project No. FRY_065091022
3420 Toro Lane
Morro Bay, CA

LOW-IMPACT DEVELOPMENT

HABITAT RESTORATION AND ENHANCEMENT AS PER BIOLOGY REPORT
NON-INVASIVE DROUGHT TOLERANT PLANTS
VEGETATED SWALES
AMEND SOILS
CATCH BASINS
CONSTRUCTION BEST MANAGEMENT PRACTICES (BMP)

GREEN MEASURES

ENERGY STAR APPLIANCES
TANKLESS WATER HEATER
HIGH EFFICIENCY FAU
LOW E GLAZING
SHIELDED LOW INTENSITY EXT. LIGHTING
TITLE 24 ENERGY COMPLIANCE
LOW & NO-VOC FINISHES

BLDG. CODES

2013 CALIFORNIA BUILDING CODE
2013 CALIFORNIA RESIDENTIAL CODE
2013 CALIFORNIA PLUMBING CODE
2013 CALIFORNIA MECHANICAL CODE
2013 CALIFORNIA ELECTRIC CODE
2013 CALIFORNIA ENERGY CODE
CALIFORNIA GREEN BUILDING CODE
2013 CALIFORNIA FIRE CODE
CALIFORNIA REFERENCE STANDARDS CODE

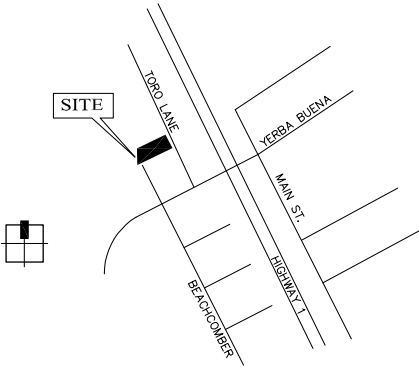
STORMWATER

APPENDIX A
SFR PERFORMANCE REQUIREMENT DETERMINATION FORM

The following form shall be completed for all SFR development and redevelopment projects. Projects that are exempt from performance requirements are required to complete Section 1 & 2 only.

Section 1: General Information	
Project name	Frye Residence
Project Address	3420 Toro Ln
Assessor's Parcel Number(s)	065-011-022
Name of Applicant	Erika & Jeanne Frye
Applicant email address:	giffne@gmail.com
Applicant phone:	(805) 235-6503
Project Type (e.g. single-family residential, commercial, etc.)	Single-Family Residence
Section 2: Area Information (ft²)	
Total Project Area	Site: 10,019 sq. ft.
Total Existing Impervious surface area	None
Proposed Gross Impervious Area (its only the surface areas that are being created or repaved)	
a. Rooftops	2124.7 sq. ft.
b. Driveways	581.6 sq. ft.
c. Patios	< part of b. >
d. Parking Lots	
e. Other	
Total Gross Impervious Area	2,706.3 sq. ft.
If Gross Impervious Area < 5,000 ft², write "EXEMPT". Otherwise continue to Sec. 3.	
Section 3: P/R Determination	
Net Impervious Area (from page 7)	2,706.3 sq. ft.
Performance Requirements (from Flow Chart)	#1 & #5

VICINITY MAP



TRAIL / PATH DESIGN

THE SUBJECT TRAIL/PATH WILL BE IN-ACCORDANCE WITH THE CALIFORNIA STATE PARKS HANDBOOK. THE RESOURCES AGENCY DEPARTMENT OF PARKS AND RECREATION, "TRAILS HAND BOOK"

PROJECT INFO.

APN:	065-091-022
ZONING:	R-1 / S.2.A / ESH
PROPOSED NEW RESIDENCE:	
CONDITIONED SPACE:	1,580 SQ. FT.
GARAGE:	552 SQ. FT.
COVERED ENTRY:	17 SQ. FT.
OPEN PATIO:	242.4 SQ. FT.
PORTION OF DRIVEWAY & CONC. FLATWORK ON PROPERTY	
PORTION OF DRIVEWAY IN RIGHT-OF-WAY	581.6 SQ. FT.
LOT SIZE:	10,019 SQ. FT.
PROPOSED LOT COVERAGE:	(2,149 SQ. FT.) 21.3% [HOUSE, GARAGE, & COVERED ENTRY]
PROPOSED IMPERVIOUS SURFACES:	2,959.7 SQ. FT. [WITHIN PROPERTY - HOUSE, GARAGE, COVERED ENTRY, OPEN PATIO, DRIVEWAY & CONCRETE FLATWORK]
OCCUPANCY:	R-3 SFR
CONSTRUCTION TYPE:	TYPE V, SPRINKLED
A.N.G. OF BUILDING PAD:	31.03'
ALLOWED ROOF HEIGHT:	> 4:12 SLOPE 48.03'
ALLOWED ROOF HEIGHT:	< 4:12 SLOPE 45.03'
PROPOSED ROOF HEIGHT:	> 4:12 SLOPE 47.95'

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(805) 772-5700

STAMPS



CONSULTANTS

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SAN LUIS OBISPO, CA 93401
(805) 594-1960

EARTH SYSTEMS PACIFIC

4378 SANTA FE ROAD
SAN LUIS OBISPO, CA 93401
(805) 544-3276

KMA

KEVIN MERK ASSOCIATES, LLC
P.O. BOX 318
SAN LUIS OBISPO, CA 93406

PROJECT

FRYE RESIDENCE

3420 TORO LANE
MORRO BAY, CA
93442

DRAWING PHASE

CONSTRUCTION
DOCUMENTS

Project No.	14-112
Drawn By	CPP
Dwg. Date	09/28/15
Updated	-
Scale	AS NOTED

REVISIONS

SHEET TITLE

PROJECT INFO.

SHEET NO.

Exhibit 7
A-3-MRB-16-0002 (Frye SFD)

8 of 18

LEGEND



EXISTING SFR



VACANT PARCEL



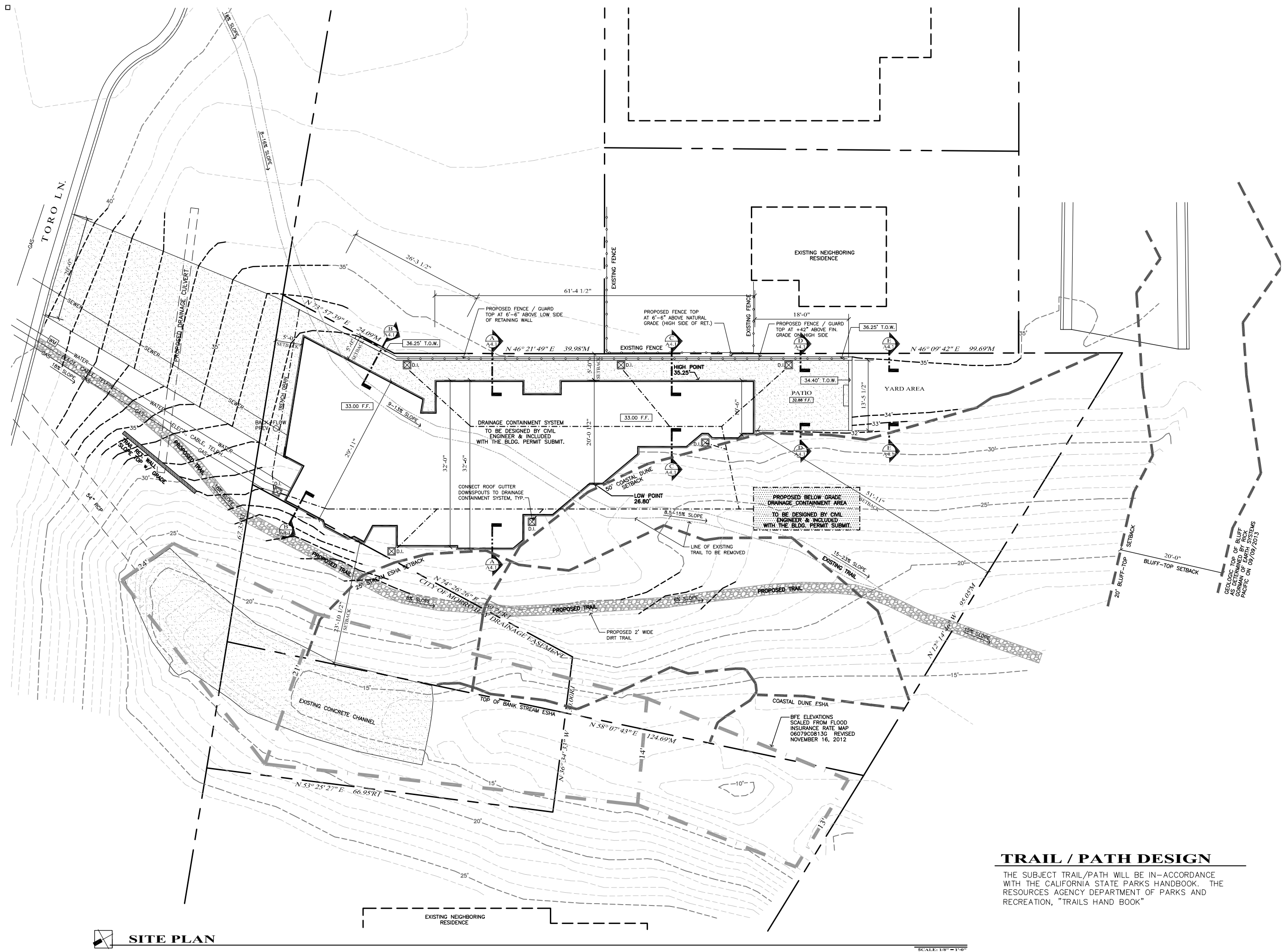
PUBLIC LANDS &
ACCESS POINT

NEIGHBORHOOD DATA (FROM PUBLIC RECORDS)
15 EXISTING SINGLE FAMILY RESIDENCES (SFR)
3 VACANT LOTS, INCLUDING THE PROPOSED RESIDENCE

15 SFR	AREA	LOT COVERAGE
AVERAGE SF (HI/LOW)	2,463 SF	28.89%

SHEET INDEX

A1.1	PROJECT INFORMATION
A1.2	SITE PLAN
A1.3	GRADING PLAN
A2.1	FLOOR PLAN
A3.1	ELEVATIONS
A4.1	SECTIONS



SITE PLAN

TRAIL / PATH DESIGN

THE SUBJECT TRAIL/PATH WILL BE IN-ACCORDANCE WITH THE CALIFORNIA STATE PARKS HANDBOOK. THE RESOURCES AGENCY DEPARTMENT OF PARKS AND RECREATION, "TRAILS HAND BOOK"

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Scale	AS NOTED

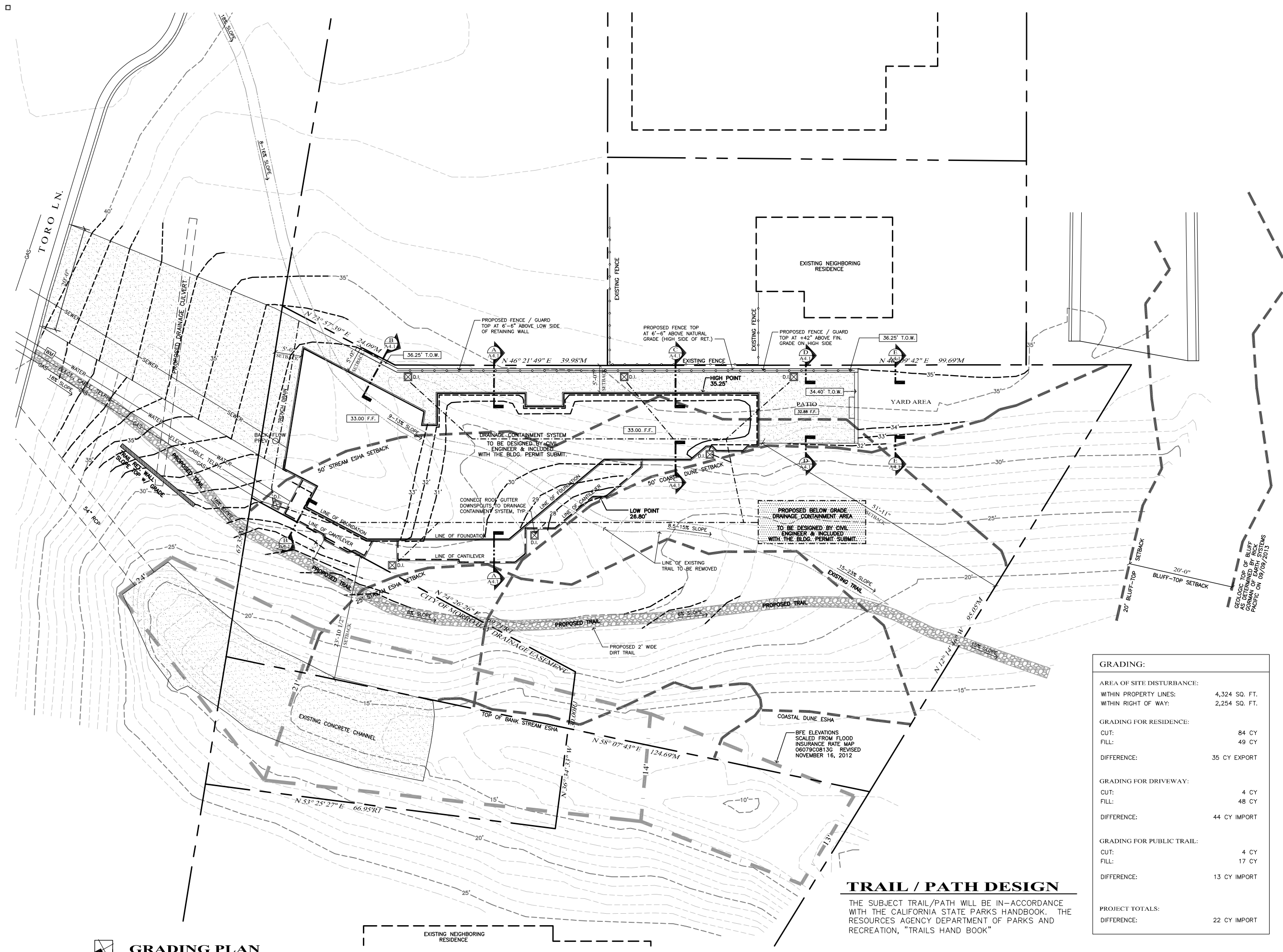
REVISIONS

SHEET TITLE

SITE PLAN

SHEET NO.

A1.2
Exhibit 7



GRADING PLAN

TRAIL / PATH DESIGN

THE SUBJECT TRAIL/PATH WILL BE IN-ACCORDANCE WITH THE CALIFORNIA STATE PARKS HANDBOOK. THE RESOURCES AGENCY DEPARTMENT OF PARKS AND RECREATION, "TRAILS HAND BOOK"

GRADING:

AREA OF SITE DISTURBANCE:	
WITHIN PROPERTY LINES:	4,324 SQ. FT.
WITHIN RIGHT OF WAY:	2,254 SQ. FT.
GRADING FOR RESIDENCE:	
CUT:	84 CY
FILL:	49 CY
DIFFERENCE:	35 CY EXPORT
GRADING FOR DRIVEWAY:	
CUT:	4 CY
FILL:	48 CY
DIFFERENCE:	44 CY IMPORT
GRADING FOR PUBLIC TRAIL:	
CUT:	4 CY
FILL:	17 CY
DIFFERENCE:	13 CY IMPORT
PROJECT TOTALS:	
DIFFERENCE:	22 CY IMPORT

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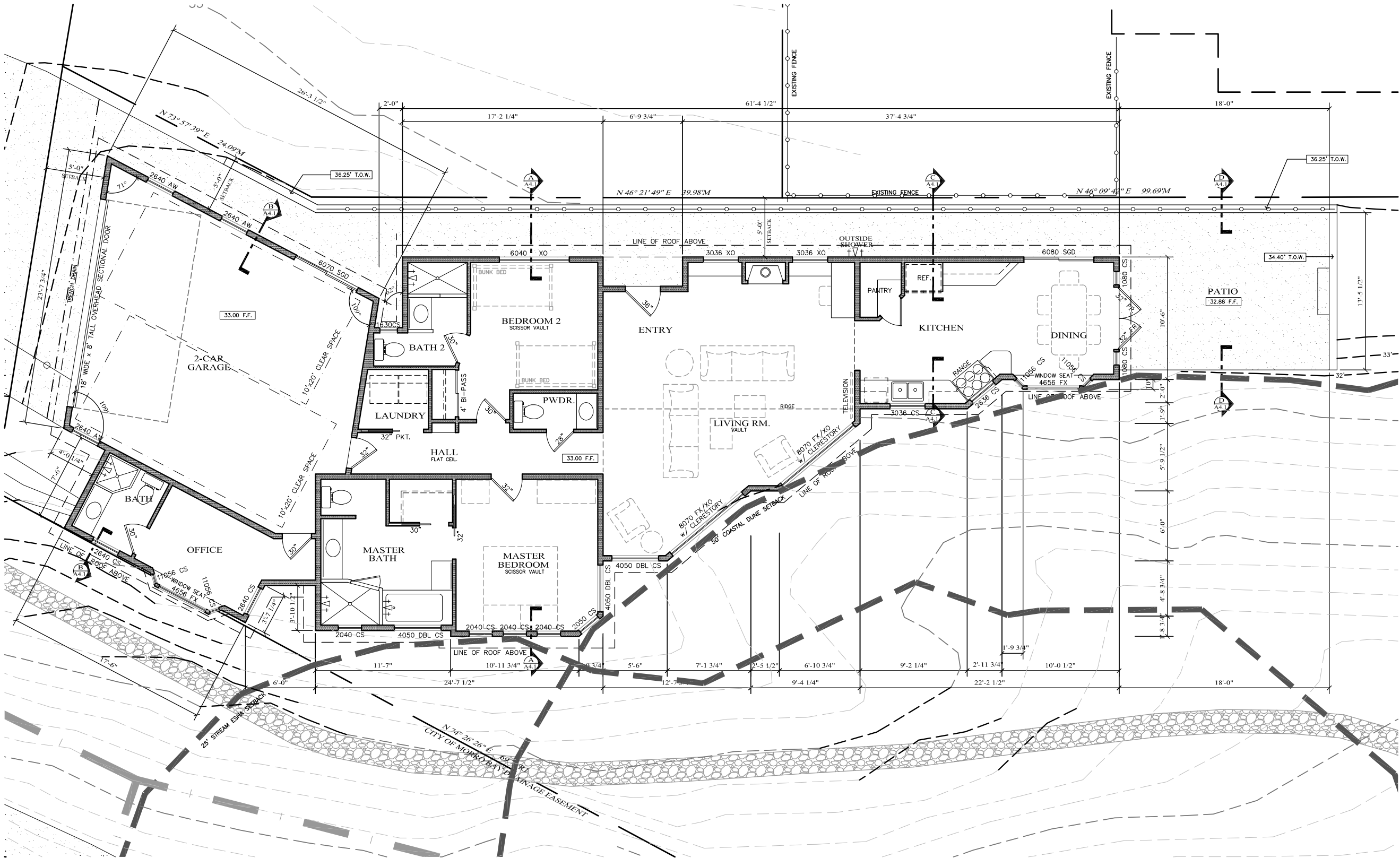
REVISIONS

SHEET TITLE

GRADING PLAN

SHEET NO.

A1.3
Exhibit 7



 **FLOOR PLAN**

SCALE: 1/4" = 1'-0"

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Updated	-
Scale	AS NOTED

REVISIONS

SHEET TITLE

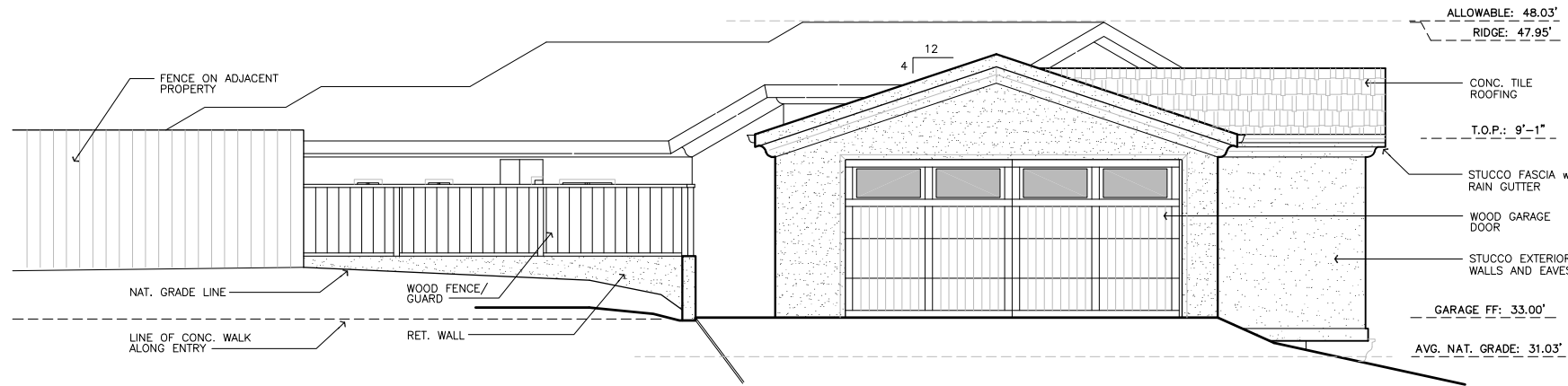
FLOOR PLAN

SHEET NO.

A2.1
Exhibit 7

A-3-MRB-16-0002 (Frye SFD)
11 of 18

□

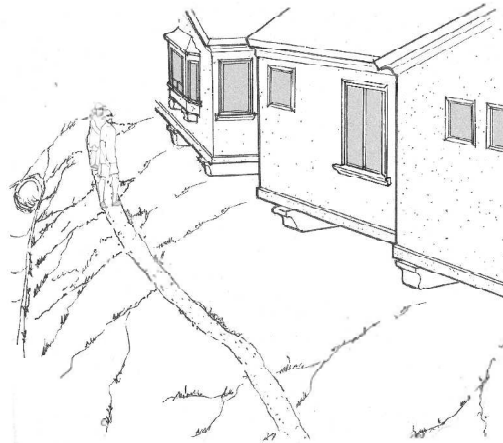


FRONT ELEVATION (EAST)

SCALE: 1/4" = 1'-0"

TRAIL / PATH SKETCH

SCALE: N.T.S.



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C. P. PARKER
ARCHITECT

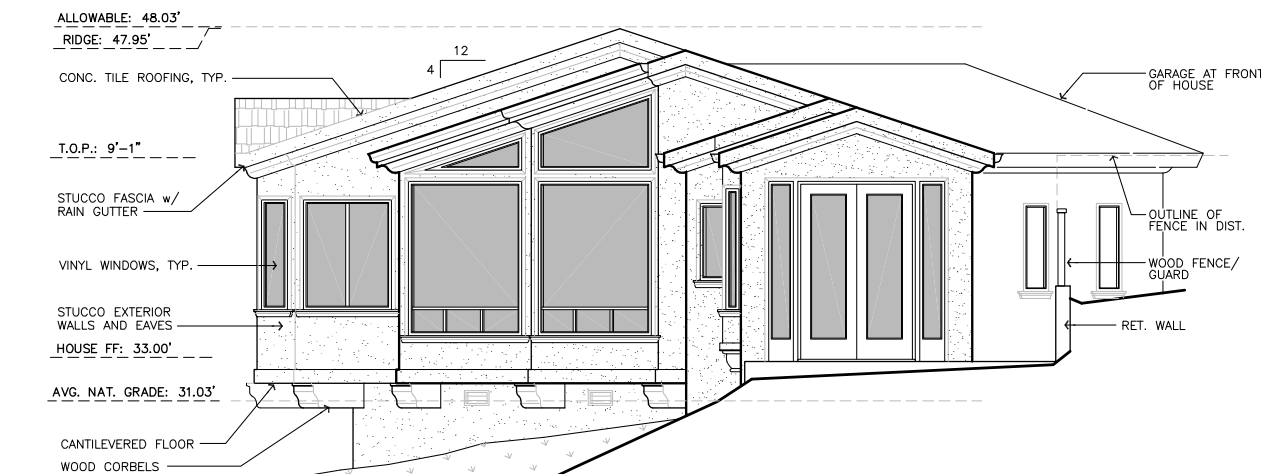
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STAMPS



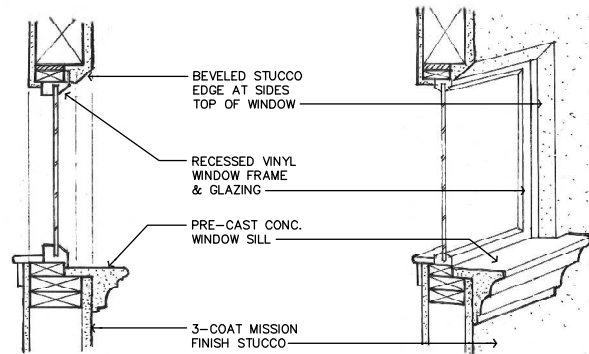
SIDE ELEVATION (NORTH)

SCALE: 1/4" = 1'-0"



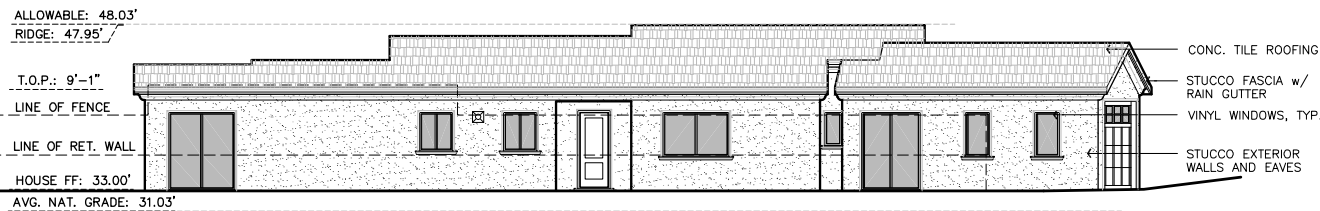
REAR ELEVATION (WEST)

SCALE: 1/4" = 1'-0"



RECESSED WINDOW DETAIL

SCALE: N.T.S.



SIDE ELEVATION (SOUTH)

SCALE: 1/8" = 1'-0"

EXTERIOR LIGHTING REQUIREMENTS

ALL EXTERIOR LIGHTING SHALL BE OF HIGH EFFICACY, OR ON A PHOTOCELL & MOTION SENSOR
EXTERIOR LIGHTING IS TO BE DOWNWARD FACING AND SHIELDED TO NOT ALLOW THE BULB TO BE VISIBLE FROM NEIGHBORING PROPERTIES, OR PUBLIC SPACES

FRYE RESIDENCE

3420 TORO LANE
MORRO BAY, CA
93442

DRAWING PHASE

CONSTRUCTION
DOCUMENTS

Project No.	14-112
Drawn By	CPP
Dwg. Date	09/28/15
Updated	-
Scale	AS NOTED

REVISIONS

SHEET TITLE

ELEVATIONS

SHEET NO.

A3.1
Exhibit 7

A-3-MRB-16-0002 (Frye SFD)
12 of 18

□

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ARCHITECT

CHRISTOPHER P. PARKER
ARCHITECT
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STAMPS



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(805) 544-3276

KMA
KEVIN MERK ASSOCIATES, LLC
P.O. BOX 318
SAN LUIS OBISPO, CA 93406

PROJECT

FRYE RESIDENCE

3420 TORO LANE
MORRO BAY, CA
93442

DRAWING PHASE

**CONSTRUCTION
DOCUMENTS**

Project No.	14-112
Drawn By	CPP
Dwg. Date	09/28/15
Updated	-
Scale	AS NOTED

REVISIONS

SHEET TITLE

SECTIONS

SHEET NO.

A4.1
Exhibit 7

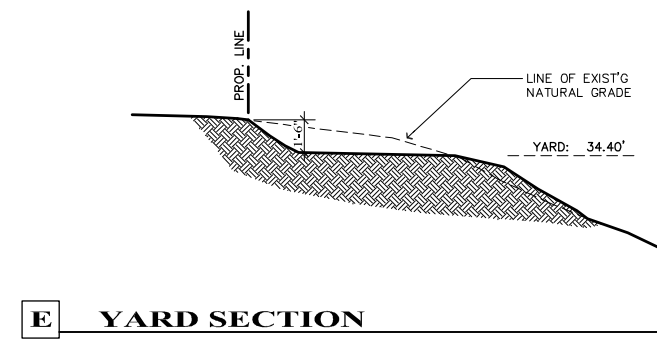
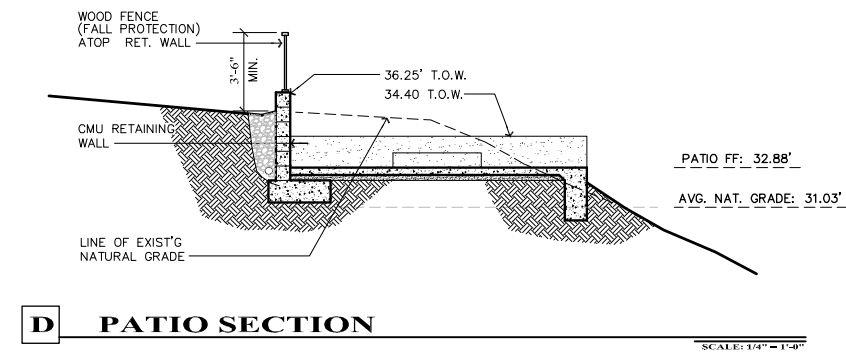
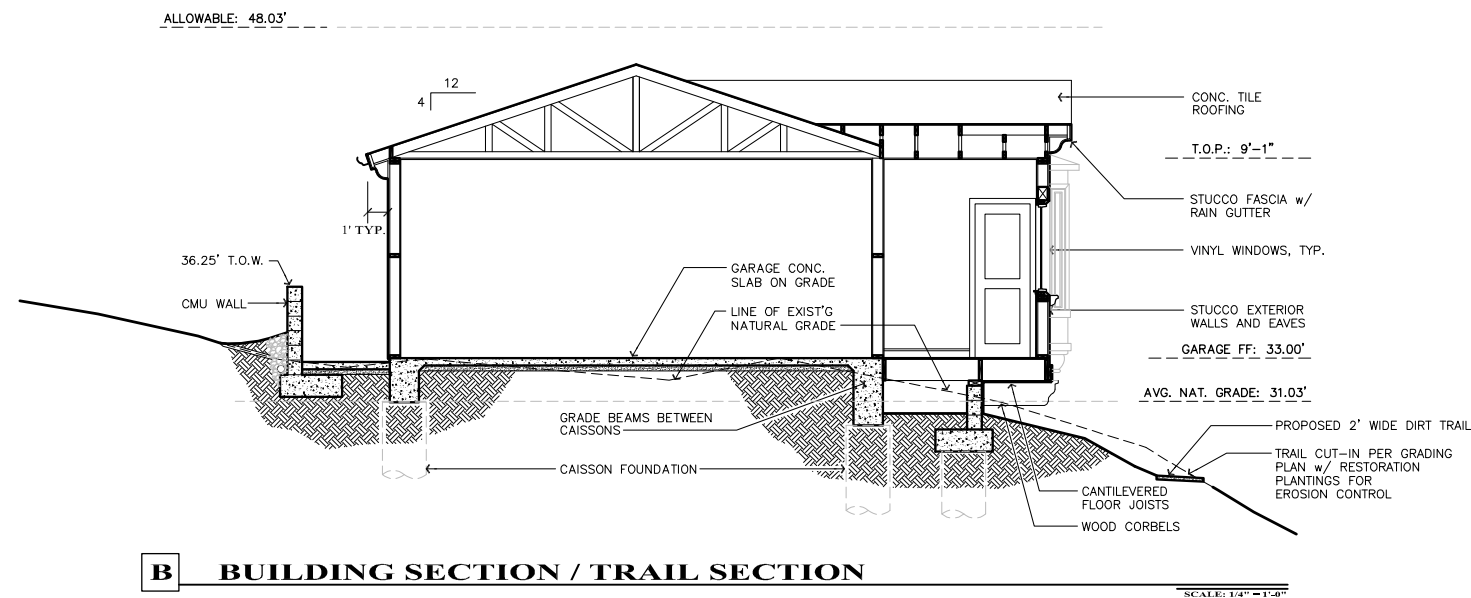
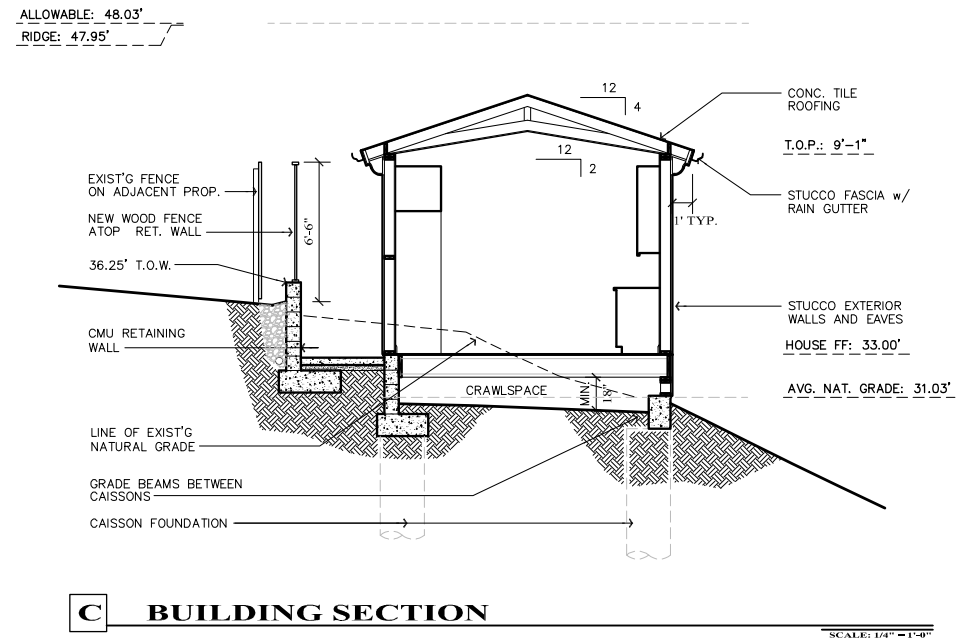
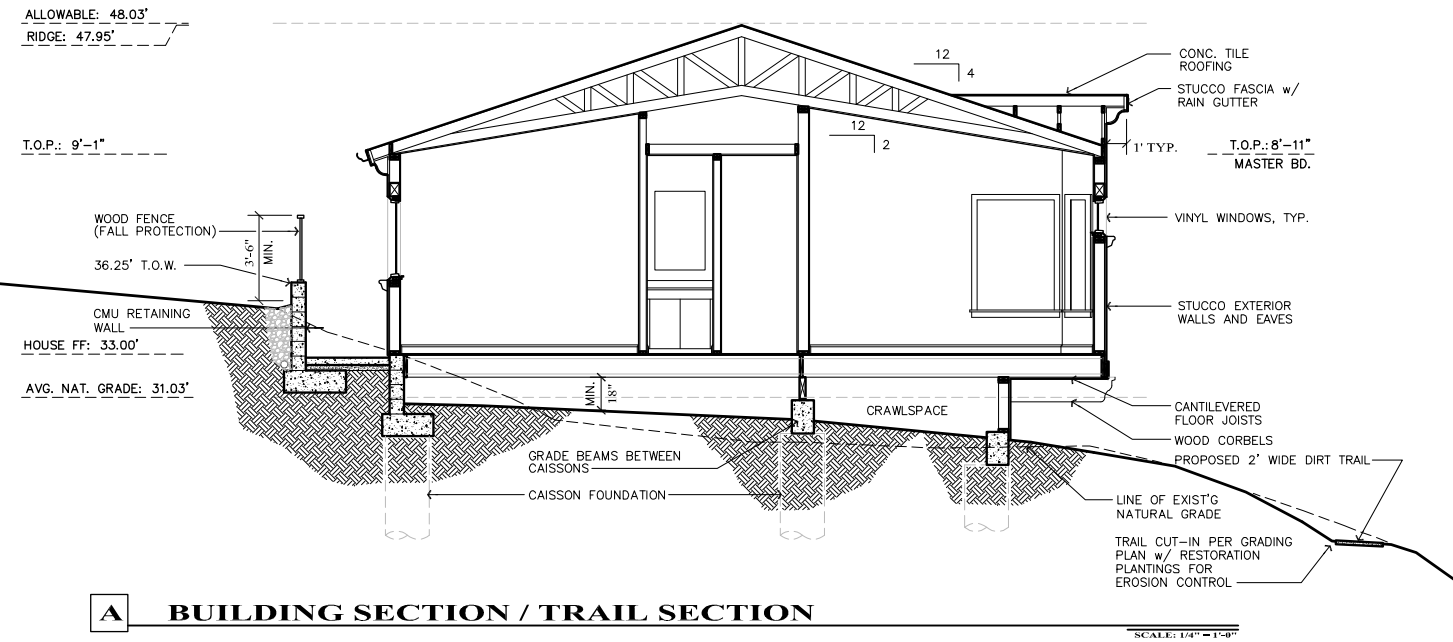


EXHIBIT B

EXISTING TRAIL PHOTOGRAPHS

Engineering Design Professionals, Inc.
400 Avalon Street
Morro Bay, CA 93442
Ph: 805-602-6167
dsotelo@edpincorporated.com

Project No. FRY_065091022
3420 Toro Lane
Morro Bay, CA



Photo 1.



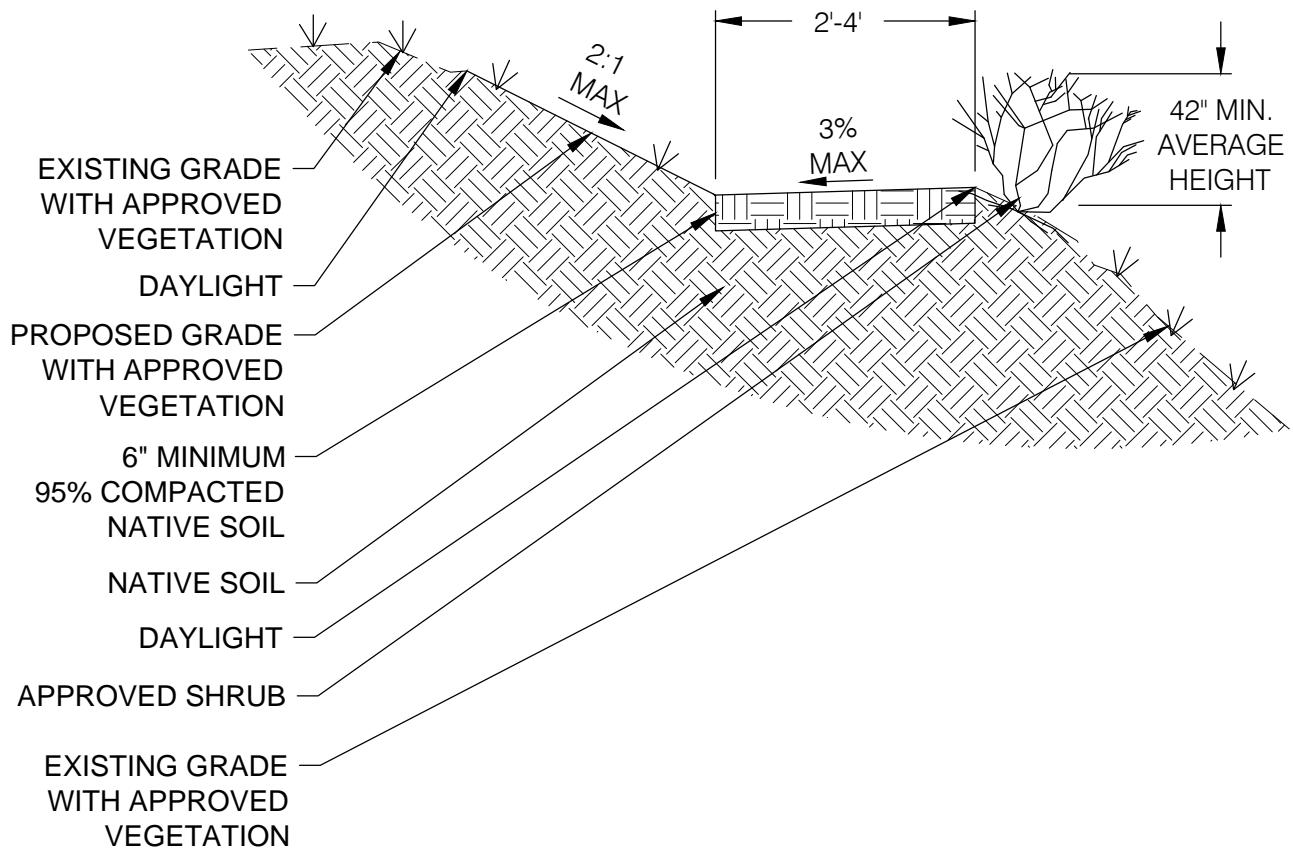
Photo 2.

Engineering Design Professionals, Inc.
400 Avalon Street
Morro Bay, CA 93442
Ph: 805-602-6167
dsotelo@edpincorporated.com

Project No. FRY_065091022
3420 Toro Lane
Morro Bay, CA

EXHIBIT C

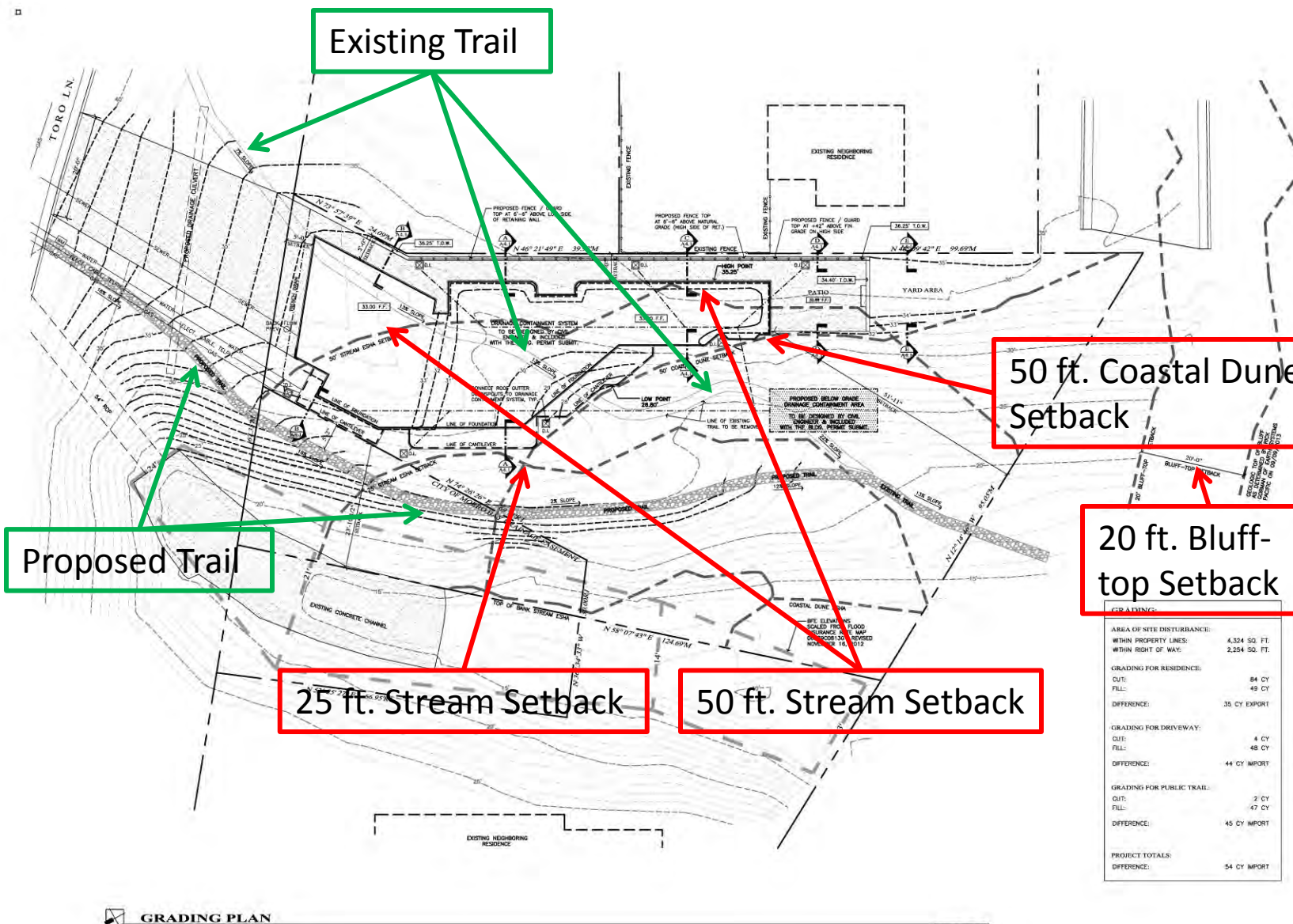
PROPOSED TRAIL CROSS SECTION



PEDESTRIAN ACCESS TRAIL

(NOT TO SCALE)

EXHIBIT C



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KMA KEVIN MERK ASSOCIATES, LLC
 SAN LUIS OBISPO, CA 93406

PROJECT

FRYE RESIDENCE

3420 TORO LANE
 MORRIS BAY, CA 93442

DRAWING PHASE
CONSTRUCTION DOCUMENTS

Project No.	14-112
Drawn By	CPP
Dwg. Date	09/14/15
Updated	-
Scale	AS NOTED

REVISIONS

SHEET TITLE

GRADING PLAN

SHEET NO.

A1.3

GRADING:	
AREA OF SITE DISTURBANCE:	4,324 SQ. FT.
WITHIN PROPERTY LINES:	2,254 SQ. FT.
GRADING FOR RESIDENCE:	
CUT:	84 CY
FILL:	49 CY
DIFFERENCE:	35 CY EXPORT
GRADING FOR DRIVEWAY:	
CUT:	4 CY
FILL:	48 CY
DIFFERENCE:	44 CY IMPORT
GRADING FOR PUBLIC TRAIL:	
CUT:	2 CY
FILL:	47 CY
DIFFERENCE:	45 CY IMPORT
PROJECT TOTALS:	
DIFFERENCE:	54 CY IMPORT

GRADING PLAN

From: **Whitney McIlvaine** WMcIlvaine@morro-bay.ca.us
Subject: Fwd: 3420 toro lane, morro bay (apn 065-091-022)
Date: June 22, 2015 at 12:17 PM
To: gjfrye@gmail.com, **Scot Graham** SGraham@morro-bay.ca.us



Whitney McIlvaine
Contract Planner
City of Morro Bay
805-772-6211

||| "Vanderwier, Julie" <julie_vanderwier@fws.gov> 06/19/15 4:24 PM >>>

hi whitney. i received the IS for the proposed project to be located at 3420 toro lane in north morro bay. i looked at the biological resources addendum prepared by kevin merk associates (november 7, 2014) and it appears that issues raised by kirstina barry, formerly of our office, regarding suaeda californica and california red-legged frog have been adequately addressed. thanks for the opportunity to review. -- julie

julie m. vanderwier, senior fish & wildlife biologist
u.s. fish & wildlife service
ventura fish & wildlife office
2493 portola road, suite b
ventura, california 93003
805.644.1766 ext. 222

From: **Whitney McIlvaine** WMcIlvaine@morro-bay.ca.us
Subject: Fwd: RE: 3420 Toro Lane
Date: July 17, 2015 at 12:11 PM
To: greg frye gjfrye@gmail.com



Whitney McIlvaine
Contract Planner
City of Morro Bay
805-772-6211

>>> "Sanderson, Brandon@Wildlife" <Brandon.Sanderson@wildlife.ca.gov> 7/15/2015 3:45 PM >>>

Whitney,

Yes we have received the MND. We have no concerns at this time. However, I would recommend that any property fencing, etc. be placed at or near the setback and not at the property line so that residential activities do not occur within the buffer.

Brandon

Brandon Sanderson
Environmental Scientist
Department of Fish & Wildlife
3196 S. Higuera St., Suite A
San Luis Obispo, CA 93401
805-594-6141
Brandon.Sanderson@wildlife.ca.gov
<http://www.wildlife.ca.gov/>

Every Californian should conserve water. Find out how at:



SaveOurWater.com · Drought.CA.gov

From: Whitney McIlvaine [mailto:WMcIlvaine@morro-bay.ca.us]
Sent: Thursday, July 09, 2015 3:36 PM
To: Sanderson, Brandon@Wildlife
Subject: 3420 Toro Lane

Hello Brandon,

I just wanted to know if your office had received a copy of the MND that was circulated for a beach front project at 3420 Toro Lane at the north end of Morro Bay. The project is bordered by a drainage channel. Our zoning ordinance requires a 50 foot setback from streams, but allows a reduction down to 25 feet in urban areas in consultation with the CDFW. The project will not require a stream bed alteration permit and there are no listed species on site. I just need to confirm that CDFW has no concerns. Or if you do, please let me know. This project is scheduled for action by the Planning Commission on August 4th.

I would really appreciate a response from you either way.
Thanks so much,

Whitney

Whitney McIlvaine
Contract Planner
City of Morro Bay
805-772-6211



Chaver, Yair@Coastal

From: Buhr, Justin@Coastal
Sent: Thursday, January 21, 2016 4:02 PM
To: Chaver, Yair@Coastal
Subject: FW: frye- toro lane

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

From: Ewing, Lesley@Coastal
Sent: Friday, February 27, 2015 1:36 PM
To: Buhr, Justin@Coastal; Johnsson, Mark@Coastal
Subject: RE: frye- toro lane

Justin,

I concur in the analysis and the conclusions in the February 12, 2015 memo letter from Mr. Richard Gorman, Associate Geologist, Earth Systems Pacific, to Mr. Greg Frye.

I will courier the report to you this afternoon.

Lesley Ewing, Ph.D. P.E.
Sr. Coastal Engineer
California Coastal Commission

Chaver, Yair@Coastal

From: Buhr, Justin@Coastal
Sent: Wednesday, January 13, 2016 10:31 AM
To: Chaver, Yair@Coastal
Subject: FW: Frye Slope Stability

From: Johnsson, Mark@Coastal
Sent: Monday, May 11, 2015 3:05 PM
To: Robinson, Daniel@Coastal
Cc: Buhr, Justin@Coastal
Subject: RE: Frye Slope Stability

I agree

Mark J. Johnsson, Ph.D. Staff Geologist

California Coastal Commission (415) 904-5200 (v)
45 Fremont St., Suite 2000 (415) 904-5400 (f)
San Francisco, CA 94105 mark.johnsson@coastal.ca.gov

From: Robinson, Daniel@Coastal
Sent: Monday, May 11, 2015 3:05 PM
To: Johnsson, Mark@Coastal
Cc: Buhr, Justin@Coastal
Subject: RE: Frye Slope Stability

Thanks Mark – appreciate it.
Sounds like they are good to go on this one topic of the project.

Daniel

From: Johnsson, Mark@Coastal
Sent: Monday, May 11, 2015 12:23 PM
To: Robinson, Daniel@Coastal
Cc: Buhr, Justin@Coastal
Subject: Frye Slope Stability

Daniel—

I've reviewed the following report:

Earth Systems Pacific, 2015, "3420 Toro Lane, Morro Bay, California, Slope Stability Analysis", 4 p. letter report dated 5 March 2015 and signed by R. Gorman (CEG 1325).

The study made use of three borings, from which three samples were collected for direct shear tests. These tests, which showed excellent stress/strain curves and correlation coefficients between normal stress and shear stress,

From: Carl_Dan@Coastal
To: Craig_Susan@Coastal; Kahn_Kevin@Coastal; Moroney_Ryan@Coastal
Cc: Chaver_Yair@Coastal
Subject: FW: 3420 Toro Lane, Morro Bay Appeal
Date: Monday, January 04, 2016 10:38:02 AM
Attachments: [Frye CCC Comments 7-6-15.pdf](#)
[CCC 12-7-15 Frye Ltr.pdf](#)

From: Rachel Kovesdi [mailto:rachel@kovesdiconsulting.com]
Sent: Friday, January 01, 2016 4:39 PM
To: Carl, Dan@Coastal; Chaver, Yair@Coastal
Subject: 3420 Toro Lane, Morro Bay Appeal

Good Afternoon Gentlemen:

I hope you're doing well and are enjoying the holidays with your families. As you know, the Frye residence in Morro Bay is scheduled for the February CCC meeting. The Substantial Issue staff report is currently being drafted, and I am hoping that we can have a discussion with you and your staff before that report is finalized.

It is our understanding, based upon regular contact with Coastal staff, as well as the above comment letters, that the project as approved and conditioned is entirely LCP compliant. The Frye family has worked diligently for several years to ensure that all agency and expert input has been incorporated into the approved project. We would appreciate your preliminary review of the draft staff report, and notification to us of any remaining issue your preliminary staff report uncovers. (Though I can't imagine what that would be, the applicants are fully prepared to take staff direction to avoid the delay of a De Novo hearing.) We know that the appellants are taking a "kitchen sink" approach at this point, but believe that all potential issues have been thoroughly evaluated by local and Coastal staff. Please let us know immediately if this is not the case.

To both of you – thanks for all of your guidance during this process, and particularly your time and efforts during the local review. We truly appreciate the up-front communication, and believe that it has resulted in a better project and more efficient use of staff time. I will look forward to hearing from you soon. Very best regards,

RKK

Rachel Kovesdi
Kovesdi Consulting
3940-7 Broad Street, #139
San Luis Obispo, CA 93401
(805) 471-2948
Rachel@KovesdiConsulting.com

From: [greg frye](#)
To: [Chaver_Yair@Coastal](#); [Craig_Susan@Coastal](#)
Cc: [Rachel Kovesdi](#)
Subject: Frye- Toro Lane , follow up letter
Date: Thursday, January 21, 2016 10:15:02 PM

Yair and Susan,

Thank you for the opportunity to meet last Friday. As requested by Yair, I asked our engineer to create the 3-foot trail in addition to the other 3 options. I have forwarded this to you in a pdf for your review. If you have any particular preferences, let me know, otherwise it will remain an item to discuss with the City as part of our Coastal Development Permit. I sent a copy to Whitney.

I also spoke with Bob Mason regarding additional information about the group of volunteers known as the Black Hill gang. He has been with them for 10+ years and they are in essence, a volunteer group of local citizens who create and maintain otherwise unmaintained trails. They are not employees of the California State Parks system and are not a non-profit group but do provide volunteer assistance to the State Parks. They may be requested to work on certain trails or may be self-directed based on the need. They meet on Friday mornings and work for 3-4 hours on trails in and around Morro Bay and Los Osos. Bob Mason has mentioned on several occasions that he would be happy to provide similar volunteer maintenance for our trail as needed. I believe this group will continue to grow and thrive given the commitment that so many in our community have to our trail systems and love for the outdoors.

We discussed Policy 1.07 which states “ Consistent with Coastal Act Section 30211, development shall not interfere with the public’s right of access to the sea where acquired through use or legislative authorization. Such access shall be protected through permit conditions on permitted development, including easements dedications **OR** continued access way maintenance by a private or public association.” We were given 4 options, by Daniel Robinson from your staff, as a means to provide and establish legal beach access across our property. We selected the Offer To Dedicate an easement as it provided us

with greater liability protection. We have met the requirement from that Policy. (The word OR rather than AND is important in Section 1.07)

The second part of Policy 1.07 states “ Existing identified trails or other access points shall not be required to remain open provided that they are consolidated or relocated to provide public access on the same site and provides the same or comparable access benefits as existed before closure and meets all other applicable access and recreation policies of the LUP.”

The trail we are offering will be comparable in most aspects and superior in others. It is clearly SUPERIOR in the following areas:

1. It will be a trail on a new City easement in perpetuity rather than a trail trespassing on private property.
2. It allows for the intended use for this property, a single-family residence in a residential subdivision along with a trail. The appellants intend to disregard our rights and the intended use of the property, which is in violation of the Coastal Act and the Constitution.
3. It will be an engineered trail with associated habitat restoration. The current trail was an un-engineered, sparsely vegetated spur trail, and there is no habitat restoration.
4. Both trails are unmaintained but community volunteers, out of the goodness of their heart rather than by compulsion, are available to assist in repair or maintenance if needed. More importantly, with a City easement trail, the City may choose at anytime to assist in trail improvement. Furthermore, with a perpetual easement, other private or public organizations may step up and provide support as well. The City may choose to enter into a formal maintenance agreement at any time in the future, and the Coastal Commission has the option of requiring the City to maintain the trail, if that's ever needed.

We have offered a trail that is well designed so that it is useful to our neighbors, community and ourselves. The City will oversee this process and will have input on the various engineered trail options we have provided thus far. The trail will have signage that declares it as a public beach access trail open for use within the specified hours as is standard for public easement trails. In regards to maintenance, we feel strongly that any signage wording indicates that it is an unmaintained trail. This is purely for additional liability

protection that we feel is very important. There are several reasons we feel this is both reasonable and justified.

1. As property owners dedicating a permanent easement to the City of our personal property, we would like the maximum protection under the law as possible to protect us from future lawsuits or harassment. Our attorney and the attorney for the City both agree signage stating it is an unmaintained trail offers the best protection.

2. The City has accepted our offer to dedicate and any concerns that arise regarding this easement and trail can be directed to the City for a remedy. There are mechanisms in place for this to occur should concerns arise. It is proper to allow the City to perform this duty on behalf of its citizens.

3. It is in our interest to have this trail open as it is our access as well.

4. We have a strong group of volunteers who out of the goodness of their heart maintain all of the otherwise unmaintained trails in our community. Ours will be available for this volunteer service as well thanks to this wonderful group.

Sincerely,

Greg and Jeanne Frye

Yair and Coastal staff,

Thank you for the time spent reviewing the documents for our proposed home on a R-1 residential lot in north Morro Bay. Our lot is 10,000 sq. ft. and we will use approximately 30% of the lot for our home and outdoor living space. The remaining 70% or so, which is severely degraded, will be preserved and landscaped with native drought resistant plants for a sensitive habitat buffer.

As you are aware, it has been our intent since the beginning to align ourselves with Coastal Commission staff to develop a project that meets your expectations, guidelines and follows the Coastal Act. We have also diligently followed the advice of our City Planning staff, Planning Commission and City Council, and worked with our neighbors to accommodate them as well. The project before you now is the end result of a 3-year effort to achieve a balance between property rights, beach access, and habitat enhancement. In sum, we have done the following items in this process.

1. We have submitted 3 different house plans in response to concerns from a neighbor regarding his side bedroom views, and from responses by the City Planning staff and the Coastal Commission staff.
2. Most of last year was occupied with numerous additional studies including soils analysis, slope stability, bluff determination, bluff retreat and wave run up analysis. Coastal staff experts Dr. Mark Johnsson, Dr. Leslie Ewing and Dr. Jonna Engel worked closely with our consultants to develop appropriate scopes of analysis. This resulted in a letter of approval from Coastal Commission staff indicating we have provided the necessary house plan changes and mitigations with regards to visual, biologic, geologic and bluff setbacks and resources. This provided us with the building envelope for our third set of plans.
3. We have offered a dedicated easement to the City for beach access, with acceptance of this easement by the City in order to provide continued and perpetually protected public access on this R-1 lot.

We have concerns that the appellants have become overly myopic with regards to their focus on the trail and specifically the application/interpretation of Policy 1.07. Policies found in the City of Morro Bay Coastal Land Use Plan Chapter 3 – Shoreline Access and Recreation in Section B, 1, governs shoreline access.

Section 30210 “In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, **rights of private property owners, and natural resource areas from overuse.**”

We agree with the City of Morro Bay that the proposed project provides the correct balance of resource protection and public access, while still allowing some benefit for this private property.

Section. 30212 “(a) Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects **except** where (1) it is inconsistent with public safety, military security needs, or **the protection of fragile coastal resources. (2) adequate access exists nearby,** or (3) agriculture would be adversely affected. Dedicated accessway shall not be required to be opened to public use until a public agency or private association agrees to accept responsibility for maintenance and liability of the accessway.”

Abundant access exists in the immediate vicinity of the site. Nevertheless, we have chosen to provide public access for the continued convenience and enjoyment of neighbors and residents.

Section 30214. (a) The public access policies of this article shall be implemented in a manner that takes into account the need to regulate the time, place, and manner of public access depending on the facts and circumstances in each case including, but not limited to, the following:(3) **The appropriateness of limiting public access to the right to pass and repass depending on such factors as the fragility of the natural resources in the area and the proximity of the access area to adjacent residential uses.** (4) The **need to provide for the management of access areas so as to protect the privacy of adjacent property owners** and to protect the aesthetic values of the area b providing the collection of litter.”

The proposed project provides continued public access, while also restoring and enhancing habitat value on-site.

Section 30214 (b) It is the intent of the Legislature that the public access policies of this article be carried out in a **reasonable manner that considers the equities and that balances the rights of the individual property owner** with the public’s constitutional right of access pursuant to Section 4 of Article X of the California Constitution.

Again, the proposed project includes both public access and habitat restoration on a 10,000 sq. ft. R-1 lot, with less than 30% of the lot area utilized for private uses.

Later in Chapter 3, Section C under item 2, Land and Shoreline Ownership: “Approximately 90 percent of land frontage abutting the waters of the Pacific Ocean and Morro Bay are publically owned”. This demonstrates how lucky we are to have such abundant public access along our coast. It is for this reason that the City Planners, Commissioners and Council members have affirmed such abundant access. The report by Dr Robert Tefft, Chairman of the Planning Commission, is clear in his report that no shortage of excellent access exists. Furthermore, he did not include access points further to the south which are much better and easier than that found within close range of our property. This brings up the issue of shoreline protection. Chapter 3 of the LCP section D item 10 states **“Uncontrolled and undirected shoreline access has, over the years, resulted in resource damage to the sand dunes paralleling the beach. Dune vegetation has been trampled and lost and the dunes themselves have eroded away. Fragile native plants**

and wildlife habitat have been lost. There is an urgent need to control and direct access, and restore, as far as possible, the former dune habitat”. Our mayor, Jamie Irons, in his presentation at our City Council appeal hearing, was the only dissent for our project. He dissented only because he felt the trail was not necessary and that habitat restoration and conservation was of a greater need in this area. He has been a proponent of habitat protection and control of unrestricted access. Again, we agree that habitat restoration is essential on this site, but in deference to a few Morro Bay residents (mainly the appellants), we have offered a realigned trail for public use.

We have been open to access across our property from the beginning of this entire process. Coastal staff can attest to this fact. The only issue was whether access was of more value than habitat protection. We have offered the easement dedication as advised by the Coastal staff. We have furthermore offered to create the trail with the use of a civil engineer and advice from our local trail volunteers who work for the California State Parks. We will be happy to have you weigh in on the issue of access, habitat protection and property rights, as all are part of the Coastal Act and must be thoughtfully considered. We have followed your counsel thus far in the offer to dedicate and provision of a trail that allows for access with less impact to the planned restoration. Just let us know what you want.

The appellants have essentially asked that we be unable to build our home. We ask that you look at the big picture, our willingness to compromise, to follow your advice and work closely with our local government to resolve the issues and develop a completely LCP-compliant single family residential project. We have done all the Coastal staff and our local Planning department have asked. I would also like to add that there is a large group of Morro Bay residents who are appalled at the appellant’s position in this matter. Many of them have written letters and many more will do so if you feel it is needed.

I would like to address a few of the other specific concerns from the appellants regarding Policy 1.07 and the current trail being not comparable benefit. The existing trail varies in slope, as will the realigned trail. Neither the present trail nor the proposed will be handicap-accessible. However, the realigned trail will serve the same population of able-bodied beachgoers that utilize the existing trail, with no additional hardship. And the City may elect to enhance the trail we establish, if desired. They will have the easement and therefore the prerogative to alter it at any time.

Regarding the Coastal Act section 30212 **“dedicated accessway shall not be required to be opened to public use until a public agency or private association agrees to accept responsibility for maintenance and liability of the accessway.”** The word “required” is a key word here because it is not saying that the trail cannot be used. This is simply the status quo —no person or agency is maintaining or responsible for liability for the current one on our property and any of the other volunteer trails that flow to the beach, throughout Morro Bay and

California. When the home, trail and landscape are completed and it is safe to walk, there is no one preventing anyone from using it. It will become a City easement. With the current trail, anyone using it is in effect trespassing on private property, whereas with the new trail no trespass exists because the City has an easement.

In reference to the fear about the slope beside the drainage easement giving way, the culvert and concrete swale were engineered sometime back in the 40's or 50's and that slope has remained intact since the that time with very minor focal sloughing. This is despite the foot traffic, gopher proliferation and lack of solid stabilizing vegetation or maintenance. In addition, with the house present, the whole area will be more stable, especially near the steeper section adjacent to the concrete drainage ditch. Water runoff will be better managed, landscaping will be established and maintained and all of this will add to stability. It is most vulnerable now because of the foot traffic, squirrel and gopher holes that are legion.

Trail liability is a real concern, for us as well as the City. It has become an American pastime to sue for practically anything. Coastal staff gave us 4 options in regards to how to offer land for a trail. We originally preferred to simply donate land or create a lot line adjustment with the City, but after discussions with the City staff, those were declined and an easement was accepted. This was acceptable to us as our liability was limited. The City attorney made it clear to the City Council members that adding maintenance to the trail does increase the liability. The City has aptly noted that the vast majority of trail access to the beaches in Morro Bay are unmaintained and yet people still use them. Furthermore, San Luis Obispo County has an extensive trail system that provides miles and miles of trails that are maintained by volunteer groups rather than by legal compulsion. Just because these trails are not "officially" maintained does not mean that no one is maintaining them or that they have all washed away. On the contrary, more and more trails are being created and maintained by volunteer organizations. Perhaps the appellants would like to use some of their energy to create a volunteer group to maintain our trail. Given the interest in our trail by Surfrider San Luis chapter President Brad Snook, perhaps his local chapter would maintain it with a volunteer group. This could coincide with their beach cleanup days.

After Coastal staff has analyzed the need for a trail, we are open to suggestions regarding some specifics such as width, etc. Perhaps you can discuss any ideas you have with us in order to work on any specifics. Please give consideration to aesthetics, erosion, and habitat intrusion.

It is our experience, having lived in Morro Bay for 20 years, that most people still need or prefer to drive to the beach. For those healthy enough to walk and live west of the highway, they have exceptional access within a few blocks in any direction. Those east of the highway need to use Yerba Buena, San Jacinto or Atascadero Road to cross the highway. There are no sidewalks present in north Morro Bay, either on the west or east side of Highway 1. Anyone walking, biking or strolling with children will be in the street.

The appellant states it is dangerous for families to walk without a sidewalk down Yerba Buena (the length of one house) to several access points and that walking a similar distance down Toro lane (no side walks) to our path is somehow safer. The reality is that the majority follows human nature and the principles of geometry and simply takes the straightest and quickest path to the beach.

If you have a stroller or beach wagon, you still just go straight to the quickest access or simply take a quick left to the State Park. The road is wide and traffic is minimal compared with the street traffic you have just traversed. Do RVs pull in and out? Yes, some, but in general they are there to stay for a few days. Also the road to the state park is wider, people are driving slowly and visibility is not hindered.

With regard to concerns that the path at 3420 Toro Lane is the only path available for those with mobility or balance problems is simply false. The appellants state we would block "a public beach access route uniquely suited to the needs of older residents and visitors, others who are not agile and strong, and those who require the use of wheeled conveyances". I would suggest if the findings presented by the City staff are not convincing enough, then please come for a day and make a site visit. Walk all of the paths between Morro rock and the North Point subdivision. Google Earth also provides a pretty good idea of access, if a site visit is unfeasible. In addition, it must be remembered that those with significant mobility, balance or strength issues must still traverse the beach sand and dunes before they reach the water.

The appellants have also complained that we should merge 2 lots so that the public should not have to "suffer the negative consequences of a personal property ownership decision over which the public had no control". Three years ago we were fortunate enough to purchase 2 legal lots in Morro Bay. We were unable to afford this, despite remortgaging our home for the maximum we could, and needed to get another investor for the rest. Jeanne and I retained the lot we have planned to build on. The other lot is owned with three other entities/investors. Bringing in these investors has provided additional and necessary financial means for us to continue to pursue our dream of building this home.

The last item involves the issue of a prescriptive rights claim for a trail. We recognize that a claim can be pursued by any public or private entity. We have done our best to work with our City and Coastal staff to provide a trail. It appears that despite our best efforts, the appellant intends to pursue legal action in this matter. Although my wife has her law degree and I have two brothers who are attorneys, we feel pursuit of a solution that has involved compromise on our part would be our preferred route. At present, keeping the trail in it's current location would grant the public more rights than ourselves, since we would be unable to build on the property, and would disregard our constitutional property rights. The Coastal Act speaks to this as well. We believe even if a court was to agree sufficient data was present to establish a prescriptive easement, a California court would most likely not allow it since it would be an exclusive prescriptive easement. In other words, if

the trail remained in its current location, the lot would be unbuildable. Please see Harrison v. Welch (2004). An exclusive prescriptive easement is typically disallowed because it gives more rights to the easement holder than the titleholder.

In sum, we hope that you will look at the big picture and the Coastal Act as a whole when reviewing our project. We have done everything in our power to ensure a project that is completely compliant with the Morro Bay LCP and the Coastal Act, and is sensitive to the preferences of our neighbors. We appreciate the feedback thus far and will continue to work with you in a similar manner as we have done. As proposed, our home will be of modest size (1500 sq. ft. for our family of 6), will restore a large area of degraded habitat and offer a dedicated easement with construction of a trail.

Thank you,

Greg and Jeanne Frye

From: Linda Stedjee
To: Chaver_Yair@Coastal
Cc: Locklin_Linda@Coastal; Robinson_Daniel@Coastal
Subject: 3420 Toro Lane - 2002 Earth Systems Pacific Study provides more evidence of temporary nature of proposed alternate access
Date: Wednesday, December 23, 2015 11:58:48 AM

Hi Yair,

Earth Systems Pacific, the consultant who did the geologic and other studies for the 3420 Toro Lane project also did work for the prior property owners back in 2002. This study was done for the same lot, although the address given is different. <http://www.morro-bay.ca.us/documentcenter/view/8746> Below this message is a site map from the document, showing the house proposed at that time.

On page 9 of the 2002 study is this:

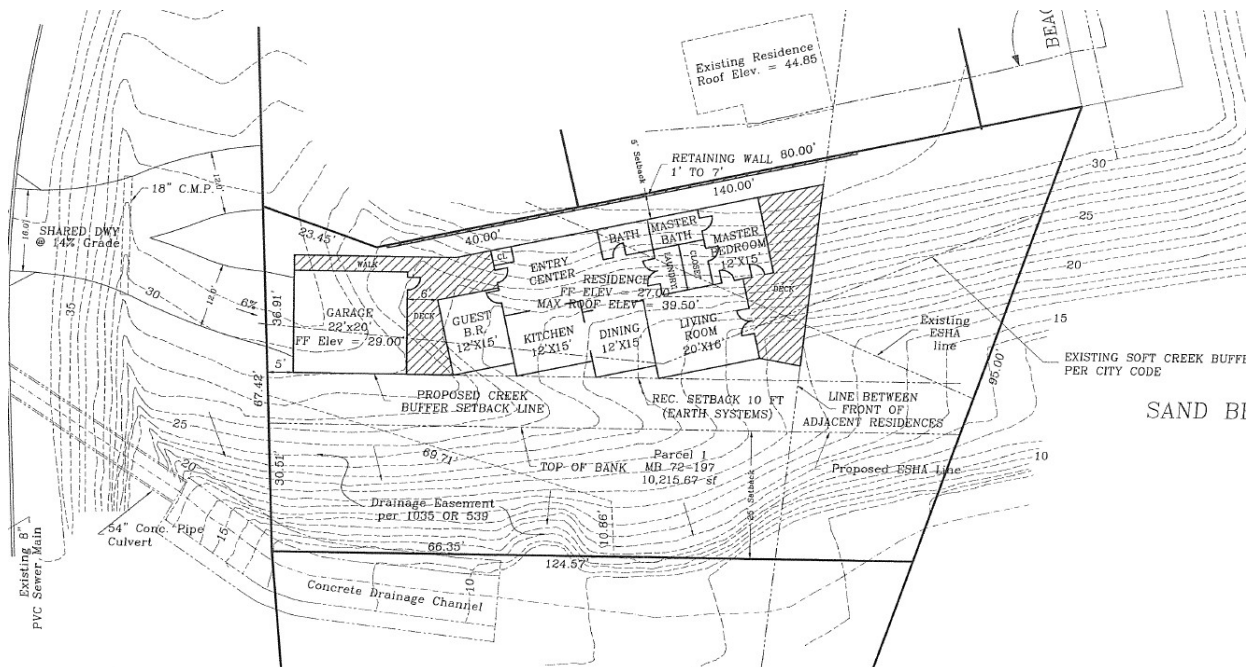
The sandstone bedrock exposed in the lower part of the channel bank is grossly stable due to hard, massive characteristics. **The overlying terrace deposits have a high potential for slumping along and over the sandstone rock surface.** Two slumps were observed downstream of the concrete channel (see Photograph 2). Factors that caused slumping on the channel bank include over-steepened slopes, uncontrolled surface water runoff, springs along the soil/bedrock contact, rodent burrows and saturated soils conditions due to precipitation. Generally, surficial creek bank/bluff top stability increases once the property is developed and on-site drainage is controlled. The slope above the tank access road also exhibited minor soil slumping

Given that the "overlying terrace deposits have a high potential for slumping along and over the sandstone rock surface", I think it is very clear that a path constructed on fill on the side of the bluff would not last much longer than the proverbial snowball in the hot place...

Clearly, a path subject to "slumping" at any time is not going to provide the same access benefits as the current one - as required by policy 1.07, because it would only provide temporary access

While the above quoted material notes that stability can increase after development occurs and drainage improves, there is clearly no guarantee offered that the slumping will stop. No matter how good your drainage is, heavy rains are going to saturate the soil. The sources of springs may not be affected by the development and drainage improvements, and rodent burrows are evidently a big problem in the area, since another consultant claimed that the reason there is no more needle grass on the site is that the gophers ate it all. Personally, I think the needle grass is just dormant due to drought and was not eaten by gophers- especially since I have read in a USDA document that "The species is known for establishing easily on disturbed soils, roadsides and gopher mounds." ref: plants.usda.gov/plantguide/pdf/pg_napu4.pdf

Linda Stedjee



From: Linda Stodje
 To: Chavar, Yair@Coastal
 Cc: Locklin, Linda@Coastal; Robinson, Daniel@Coastal
 Subject: Coastal Bluff survey did not include important areas of the bluff near the 3420 Toro Lane site
 Date: Saturday, January 02, 2016 11:54:06 AM

Hi Yair,

Every time I think I have found everything in the documents for the 3420 Toro Lane project, I find something else. Hopefully, this is it. I think this discovery is particularly important as it concerns more major differences between content of a consulting report done in 2013 and one done in 2002.

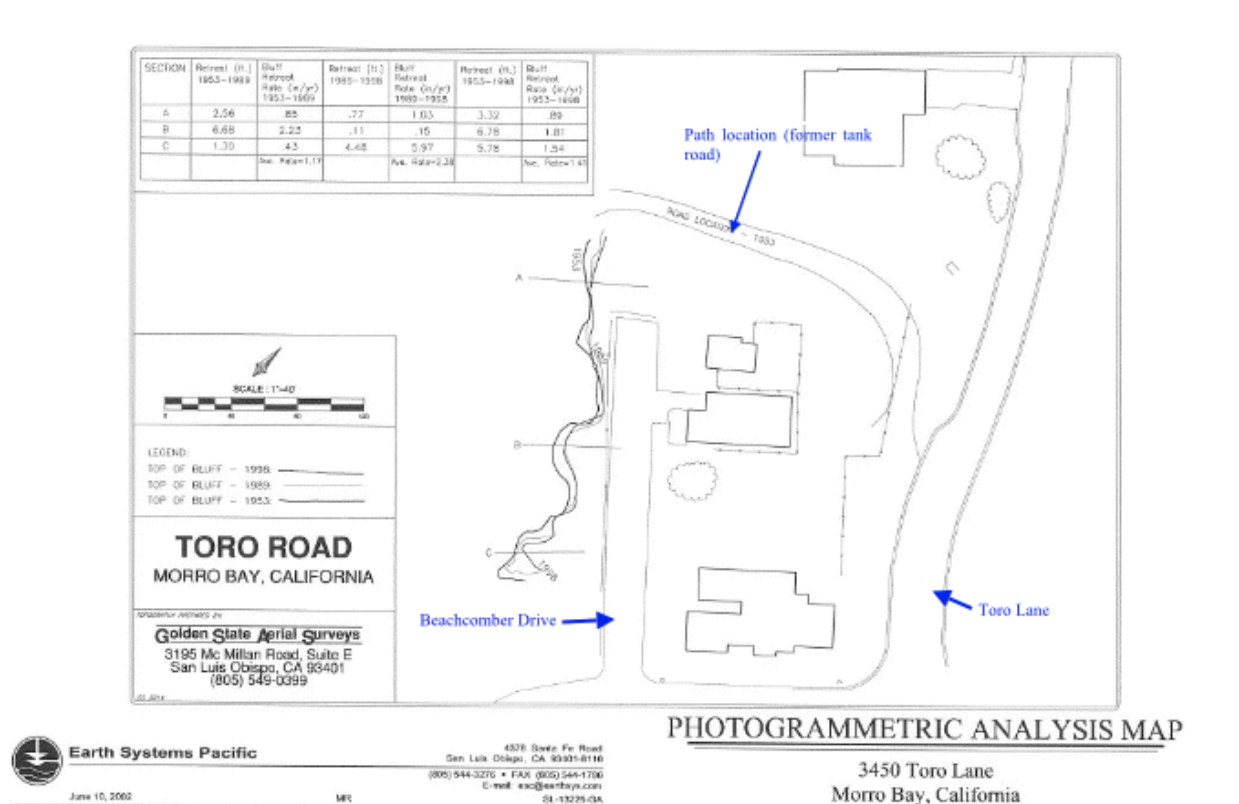
There are some new concerns regarding the Coastal Bluff retreat rate estimates used by the consultants working on the project. These stem from a diagram found on page 24 of 25 in the consultants' 2002 geologic report. <http://www.morro-bay.ca.us/documentcenter/view/8746>

The diagram documents the results of a study done by Golden State Aerial Surveys. Golden State was evidently asked to survey a specific section of coastline in the vicinity of the current 3420 Toro Lane (then referred to as 3450 Toro Lane) property. To document the results of the survey, Golden State Aerial Surveys created a diagram showing the top of the bluff in 1953, 1989, and 1998. They chose three points at which to calculate the bluff retreat between those three years, and charted the results. The points are labeled A, B, and C. The results were then averaged. The diagram shows areas where the bluff retreat was significantly greater than the average, and areas where it was significantly less.

Concerns include the following:

- On page 2 of 8 of their 2013 report, (<http://www.morro-bay.ca.us/documentcenter/view/8745>) the consultants said, "The maximum bluff erosion retreat that occurred in the general area of the site ocean bluff during the last 60 years was 6 feet, which occurred near the end of Beachcomber Drive." However, the above-cited diagram from the 2002 study shows a much greater retreat in an area of the bluff directly west of the site, as documented by another consulting firm. That diagram shows a retreat between 1953 and 1998, of about 10 feet - in two areas near the end of Beachcomber Drive.
- The area surveyed includes quite a bit of the coastline south of the 3420 Toro Lane site, but does not appear to include all of the coastline immediately to the west. It includes none of the coastline to the north. Thus, it does not include the bluff at the westernmost end of the drainage channel/stream (note that the stream lies north of the path/tank road). So, we do not have a complete picture of ocean bluff erosion that could affect the project.
- The northernmost portion of the area surveyed (that in the closest proximity to the 3420 Toro Lane building site) shows a significant rate of erosion - much greater than that calculated as the average in the diagram, and much greater than that for any of the three selected points. Using the scale on the diagram, I estimate the bluff retreat in the northernmost area surveyed to be at least 10 feet for the period between 1953 and 1989. Is it possible that the erosion north of the area surveyed is generally greater than the area surveyed? We don't know.

I have annotated the original diagram to identify some of the landmarks. Please note that in the northernmost plotting of the bluff positions, the leftmost dark line is for 1953, the lighter-colored line is for 1989, and the rightmost dark line is for 1998. This is easier to see in the original image in the cited PDF document. The lines are clearly labeled, but I lost some of the resolution when I captured the image.



The chart at the upper left is a little hard to read. Here is an enlargement:

SECTION	Retreat (ft.) 1953-1989	Bluff Retreat Rate (in/yr) 1953-1989	Retreat (ft.) 1989-1998	Bluff Retreat Rate (in/yr) 1989-1998	Retreat (ft.) 1953-1998	Bluff Retreat Rate (in/yr) 1953-1998
A	2.56	.85	.77	1.03	3.32	.89
B	6.68	2.23	.11	.15	6.78	1.81
C	1.30	.43	4.48	5.97	5.78	1.54
		Ave. Rate=1.17		Ave. Rate=2.38		Ave. Rate=1.41

Without a complete picture of the bluff retreat directly west of the complete house site, it is impossible to be sure just what rate of bluff erosion to expect, but it appears, potentially, to be higher than the figure determined by the consultants. It is also impossible to determine how much the bluff has eroded at the mouth of the stream because that area was not included in the survey discussed above - AND - as noted in a previous email, one or both of the photos used by Earth Systems Pacific in their 2013 analysis appear to have serious distortion problems; hence, it does not appear that the photos can be used as a basis for sound analysis of the erosion of the "channel bluff".

I would also like to share the following photo, which appears to show the ocean waters entering the channel, thus making the western part of the channel subject to marine erosion. I believe that makes the so-called "channel bluff" a coastal bluff in that area. Note: The existing beach access path is hard to see in the photo unless one is familiar with the area. It lies just above the signs, and much of it is hidden behind the foreground vegetation. It's end is just west of the signs, approximately in line with the leftmost edge of the seaweed piled on the sand.



I think this gives a pretty clear indication that in order to determine coastal bluff setbacks for this project, it would have been a good idea to order aerial survey work that includes more coastline to the north of that included in the survey provided.

Linda Stedjee

From: [Linda Stedjee](#)
To: [Chaver, Yair@Coastal](#)
Cc: [Robinson, Daniel@Coastal](#); [Locklin, Linda@Coastal](#)
Subject: More on ocean bluff setback issue at 3420 Toro Lane - setback calculation issues
Date: Monday, January 04, 2016 10:12:11 AM
Attachments: [goldenstateaerialsurvey.pdf](#)

Hi Yair,

In order to ensure safety for the structure to be built, I believe it makes more sense to use the maximum historic ocean bluff retreat rate documented for the specific area of bluff where erosion could affect the building site and structure - NOT an average for a stretch of coastline that is nearly all to the south of the site.

Attached is page 24 of 25 from the Earth Systems Pacific 2002 geologic study for 3420 Toro Lane. It's easier to read than the image I captured and included in my last email. The full study is here: <http://www.morro-bay.ca.us/documentcenter/view/8746>

The diagram clearly shows that the northernmost area of the bluff surveyed shows at least 10 feet erosion between 1953 and 1998. I believe it is clear that erosion in that area of the site could potentially affect the structure.

According to my calculations, 10 feet = 120 inches. Dividing 120 inches by 45 years, we get the infinite decimal value of 2.6666666 ... inches of bluff retreat per year in that area. I believe it makes sense to use the period of 45 years between 1953 and 1998 as a 45-year time span would seem likely to "even out" the annual variations in the retreat rate. I suspect that the rate might be distorted if we tried to estimate the overall bluff retreat rate over a significantly-shorter period.

So, I will take the 75-year structure life used in the consultants' calculations (see quote below from page 3 of 8 their 2013 report), and multiply that value by a truncated bluff retreat value of 2.66666. The result is 199.9995 inches per year. Dividing by 12 inches per foot, we get a 75-year bluff retreat of 16.666625 feet. Truncating the value at 2 decimals, and adding the CCC's required 10 feet to that, we get a total setback of 26.66 feet.

This is WAY more than the setback suggested by the consultants.

"Bluff Erosion

Minor sea wave erosion has resulted in ocean bluff retreat during the last 60 years and the erosion retreat rate has slightly decreased during the last 11 years. An erosion retreat rate of 1.2 inches per year for the marine terrace deposits was estimated for the site ocean bluff. For a 75-year period with a long-term average site bluff retreat rate of 1.2 inches per year, it is estimated that the bluff will retreat 7.5 feet from the current top of bluff. The California Coastal Commission (CCC) requires that additional 10 feet should be added to the 7.5-foot bluff top building setback for total setback of 17.5 feet. The CCC adds a 10-foot buffer to the long-term average bluff retreat rate to account for unforeseeable

episodic bluff erosion events and sea level rise. The 17.5-foot bluff top building setback is less than the City of Morro Bay Title 17, 17.45.040 required setback of 20 feet; therefore the City of Morro Bay setback should be used for the new development and construction (see attached Topographic Site Map)."

From: [Linda Stedjee](#)
To: [Chaver, Yair@Coastal](#)
Cc: [Carl, Dan@Coastal](#); [Robinson, Daniel@Coastal](#); [Locklin, Linda@Coastal](#); [Barry Branin](#)
Subject: Responses to 3420 Toro Lane applicants' letter as mailed to the appellants on January 4.
Date: Tuesday, January 05, 2016 8:19:29 AM
Attachments: [Trail comparison table.pdf](#)

Hi Yair,

I have read the applicants' letter, consulted with other concerned residents, and prepared responses, which are provided below.

Overview

To summarize some of the key points made in the detailed responses to the applicants' statements, there are some significant concerns with the project including, but not limited to, the project's failure to conform to Morro Bay LCP Shoreline Access and Recreation policy 1.07. The alternative path, as proposed, would not be in compliance with the LCP because it would not provide, on the same site, the same or comparable access benefits as the existing path.

A speaker at the August 18, 2015 Planning Commission hearing very effectively summed up some of the site access issues. The speaker indicated that his family owned the 3420 Toro Lane property for 45 years prior to its purchase by the applicants, that he lives in a home next door to the project site, and that his house overlooks the existing path. The speaker's comments regarding the path include the following:

- The existing path is "unique" in that it is usable by people "who have a limited ability to get around"
- The existing path is "in constant use"
- A lot of the area trails mentioned previously are "informal, steep, unusable", and "not really adequate for the vast majority of the people in our community."

These comments can be heard on the City's video of the hearing, available online at <https://www.youtube.com/watch?v=uXKHfMLEvSI&feature=youtu.be&t=29m44s>. This speaker's comments begin at approximately 46:31 into the meeting.

The proposed alternate access path does not address the speaker's concerns, and does not fulfill the requirements of policy 1.07. It would be on the side of a steep slope with concrete below, and would be too narrow to accommodate many users of the current path, including those who "have a limited ability to get around" and families who use beach wagons and strollers transport young children. It would only be temporary, as it would be built on fill and unmaintained, and it might, under the terms of Coastal Act section 30212, never be opened for public use.

Because his comments go to what many of us believe is at the heart of this matter, I will again quote a 2014 opinion article written by CCC Executive Director Charles Lester. It says, in part, "*...the broad public interest in coastal access should not be subordinated to the narrow interests of fortunate coastal property owners.*" <http://www.sfgate.com/opinion/openforum/article/Martins-Beach-reflects-Californians-choice-to-5682494.php>

Fortunately, in spite of the problems and issues, it appears that LCP compliance can still be achieved, and the broad public interest can be served - while allowing the applicants to build a very livable home on the property and allowing for restoration and protection of coastal resources - a win for everyone.

It has been suggested that a boardwalk constructed of durable synthetic materials might provide the "same or comparable" access benefits as the current path AND provide excellent protection for restored natural habitat. Someone would have to agree to maintain the new path, and that has been an issue due to fears related to liability. However, despite concerns expressed by some, it appears that, according to California government code section 831.4, there would be no liability issues.

Detail

Following are detailed responses to the applicant's statements. Applicant statements are quoted sequentially, in logical groups, and are followed by responses to the specific statement groupings. Specific pages and paragraphs within the applicants' letter are identified for reference.

Applicant statements page 1, paragraph 2

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"As you are aware, it has been our intent since the beginning to align ourselves with Coastal Commission staff to develop a project that meets your expectations, guidelines and follows the Coastal Act. We have also diligently followed the advice of our City Planning staff, Planning Commission and City Council, and worked with our neighbors to accommodate them as well. The project before you now is the end result of a 3-year effort to achieve a balance between property rights, beach access, and habitat enhancement. In sum, we have done the following items in this process.

- 1. We have submitted 3 different house plans in response to concerns from a neighbor regarding his side bedroom views, and from responses by the City Planning staff and the Coastal Commission staff.*
- 2. Most of last year was occupied with numerous additional studies including soils analysis, slope stability, bluff determination, bluff retreat and wave run up analysis. Coastal staff experts Dr. Mark Johnsson, Dr. Leslie Ewing and Dr. Jonna Engel worked closely with our consultants to develop appropriate scopes of analysis. This resulted in a letter of approval from Coastal Commission staff indicating we have provided the necessary house plan changes and mitigations with regards to visual, biologic, geologic and bluff setbacks and resources. This provided us with the building envelope for our third set of plans.*
- 3. We have offered a dedicated easement to the City for beach access, with acceptance of this easement by the City in order to provide continued and perpetually protected public access on this R-1 lot."*

Responses:

1. While the applicants may have followed the advice of various agencies and advisers (or sincerely believed they were following that advice), we are still looking at a project out of compliance with the LCP, and with a stream corridor setback that

is more narrow than necessary (a 2002 house plan for the same site (attached) shows a home of comparable size that is set back at least 5 feet farther from the stream than the currently-proposed structure.) Obviously the widest-possible stream corridor setback is desirable for the protection of the fragile coastal resources that are of concern to all involved parties.

2. Questions and concerns have been raised by the appellants in regard to some of the cited studies, and documented in recent emails to CCC staff. These include conflicting statements made by the same consultants during different time periods.

3. The project as originally heard by the Planning Commission did not include any provision for dedicated access. One City document, dated May 29, 2015, actually says, in writing, that the path is not dedicated public access. It was only after residents did their prescriptive easement survey, (delivered to the City on August 11) that the dedication was offered. Persons speaking for the applicants have, on more than one occasion, claimed that there was plenty of other access in the area and access at the site was not needed.

Applicant statements page 1, paragraphs 3, 4, and 5

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"We have concerns that the appellants have become overly myopic with regards to their focus on the trail and specifically the application/interpretation of Policy 1.07. Policies found in the City of Morro Bay Coastal Land Use Plan Chapter 3 – Shoreline Access and Recreation in Section B, 1, governs shoreline access.

*Section 30210 "In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, **rights of private property owners, and natural resource areas from overuse.**"*

We agree with the City of Morro Bay that the proposed project provides the correct balance of resource protection and public access, while still allowing some benefit for this private property."

Responses:

1. Shoreline access for the public is the very reason that the Coastal Act was passed and that the Coastal Commission exists. Hence, focusing on the public access path and policy 1.07 cannot be considered "myopic" - overly, or otherwise.

2. Shoreline Access and Recreation Policy 1.07 is part of the certified City of Morro Bay LCP - which of course means that the CCC found it to be fully compliant with all Coastal Act policies, including section 30210.

3. The crafters of policy 1.07 were very wise. They understood that, in the future, developers could chip away at public access by saying that there was other access in the area - and that this could lead to a significant reduction in public access to the shore. Policy 1.07 effectively addresses that concern while conforming to the provisions of the

Coastal Act.

4. As noted by a neighbor and demonstrated in prior communications, for many users of the existing path, other area access routes would not work well and, in many cases, would not work at all. These users include families with small children (especially those who use beach wagons and strollers), and older and other persons who may have balance or other mobility issues (those "who have a limited ability to get around"). For those persons, the 3420 Toro Lane path is the only safe and usable beach access within walking distance of their homes.

Applicant statements page 2, paragraphs 1 through 6

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*"Section. 30212 "(a) Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects **except** where (1) it is inconsistent with public safety, military security needs, or **the protection of fragile coastal resources. (2) adequate access exists nearby,** or (3) agriculture would be adversely affected. Dedicated accessway shall not be required to be opened to public use until a public agency or private association agrees to accept responsibility for maintenance and liability of the accessway."*

Abundant access exists in the immediate vicinity of the site. Nevertheless, we have chosen to provide public access for the continued convenience and enjoyment of neighbors and residents.

*Section 30214. (a) The public access policies of this article shall be implemented in a manner that takes into account the need to regulate the time, place, and manner of public access depending on the facts and circumstances in each case including, but not limited to, the following:(3) **The appropriateness of limiting public access to the right to pass and repass depending on such factors as the fragility of the natural resources in the area and the proximity of the access area to adjacent residential uses.** (4) **The need to provide for the management of access areas so as to protect the privacy of adjacent property owners** and to protect the aesthetic values of the area b providing the collection of litter."*

The proposed project provides continued public access, while also restoring and enhancing habitat value on-site.

*Section 30214 (b) It is the intent of the Legislature that the public access policies of this article be carried out in a **reasonable manner that considers the equities and that balances the rights of the individual property owner** with the public's constitutional right of access pursuant to Section 4 of Article X of the California Constitution.*

Again, the proposed project includes both public access and habitat restoration on a 10,000 sq. ft. R-1 lot, with less than 30% of the lot area utilized for private uses."

Responses:

1. As noted in a response above, "Shoreline Access and Recreation Policy 1.07 is part of the certified City of Morro Bay LCP - which of course means that the CCC found it to be

fully compliant with all Coastal Act policies," That includes 30212 and 30214.

2. "Adequate" access does not exist nearby. In addition, Policy 1.07 states that if any access route is to be closed, alternate access be provided onsite - access that provides the same or comparable "access benefits" of any access route to be closed. This clearly means the alternate access must serve all of the users of the current path.

3. Fragility of coastal resources is also a concern of the appellants. In fact, it was the appellants who took issue with an early suggestion that an alternate access route could be placed in the stream bed. A well-designed and constructed path (and concerned residents believe the currently proposed alternate path would be neither) will help ensure that beach-goers remain on the path, and do not disturb adjacent plant and animal life in order to find safer passage to the beach.

4. The proposed project does not provide "continued public access" for many users of the current path, since the alternative path would be a narrow, unmaintained path constructed on fill on the side of a steep slope.

5. As noted previously, a 2002 home design (attached) found in the 2002 geologic survey document, shows that the applicants could have set their home back at least 5 feet farther back from the creek, thus providing additional protection for "fragile coastal resources" - but did not do so, choosing instead to build a larger home. Setting the house back 5 feet further, as shown in the attached 2002 home design, could also potentially allow for easier construction of a safer, wider beach access path.

6. It seems reasonable to assume that the applicants must have known the path was there when the property was purchased. Although, since seller disclosure statements are not public record, we do not know what information the seller provided the applicants in regard to the path, its presence is obvious, and it is mentioned in various documents created before the applicants bought the property in November, 2012.

7. It seems reasonable to assume, based on the 2012 biological assessment (site view attached) that the best way for the applicants to protect fragile coastal resources would have been to place their home primarily or solely on the southernmost lot in the parcel they purchased, rather than on the northernmost lot, where the ESH was shown to be located.

Applicant statements page 2, paragraph 7. page 3, paragraph 1

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"Later in Chapter 3, Section C under item 2, Land and Shoreline Ownership:

*"Approximately 90 percent of land frontage abutting the waters of the Pacific Ocean and Morro Bay are publically owned". This demonstrates how lucky we are to have such abundant public access along our coast. It is for this reason that the City Planners, Commissioners and Council members have affirmed such abundant access. The report by Dr Robert Tefft , Chairman of the Planning Commission, is clear in his report that no shortage of excellent access exists. Furthermore, he did not include access points further to the south which are much better and easier than that found within close range of our property. This brings up the issue of shoreline protection. Chapter 3 of the LCP section D item 10 states **"Uncontrolled and undirected shoreline access has, over the years,***

resulted in resource damage to the sand dunes paralleling the beach. Dune vegetation has been trampled and lost and the dunes themselves have eroded away. Fragile native plants and wildlife habitat have been lost. There is an urgent need to control and direct access, and restore, as far as possible, the former dune habitat”.

Our mayor, Jamie Irons, in his presentation at our City Council appeal hearing, was the only dissent for our project. He dissented only because he felt the trail was not necessary and that habitat restoration and conservation was of a greater need in this area. He has been a proponent of habitat protection and control of unrestricted access. Again, we agree that habitat restoration is essential on this site, but in deference to a few Morro Bay residents (mainly the appellants), we have offered a realigned trail for public use."

Responses:

1. The 3420 Toro Lane path, unlike some of the other area paths, does not require users to pass through a wide swath of dunes to get to the beach. I believe this is clear from the attached photo of vicinity trails. Note that the trails marked 4, 5, 6 and 7 go through significant areas of the tall dunes adjacent to the roadway, while the 3420 Toro Lane path does not go through this type of terrain.

2. The offering of a realigned trail seems unlikely have been done in "deference to a few Morro Bay residents (mainly the appellants). " As noted previously in this email, no alternate access was offered at all until residents did a prescriptive easement survey, collecting 75 completed questionnaires from path users after just a few hours of work. Additional time and effort would likely produce a substantially greater number of questionnaires from others who use the path. In fact, some users spoke at the City hearing, and described exactly the same scenario that the appellants have - numerous persons living across the highway who use the existing path for beach access, as have generations before them.

Applicant statements page 3, paragraphs 2 and 3

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"We have been open to access across our property from the beginning of this entire process. Coastal staff can attest to this fact. The only issue was whether access was of more value than habitat protection. We have offered the easement dedication as advised by the Coastal staff. We have furthermore offered to create the trail with the use of a civil engineer and advice from our local trail volunteers who work for the California State Parks. We will be happy to have you weigh in on the issue of access, habitat protection and property rights, as all are part of the Coastal Act and must be thoughtfully considered. We have followed your counsel thus far in the offer to dedicate and provision of a trail that allows for access with less impact to the planned restoration. Just let us know what you want.

The appellants have essentially asked that we be unable to build our home. We ask that you look at the big picture, our willingness to compromise, to follow your advice and work closely with our local government to resolve the issues and develop a completely LCP-compliant single family residential project. We have done all the Coastal staff and our local Planning department have asked. I would also like to add that there is a large group of Morro Bay residents who are appalled at the appellant's position in this matter. Many of

them have written letters and many more will do so if you feel it is needed."

Responses:

1. As previously noted, the initial version of the project included no provision for access, One City document, dated May 29, 2015, actually says, in writing, that the path was not dedicated public access. It was only after residents did their prescriptive easement survey, turned in to the City on August 11, that the dedication was offered.

2. It is clear that the appellants have not asked that the applicants be unable to build their home. The current home design would not be incompatible with an adjacent path built as an elevated boardwalk for safety and for preservation of ESH AND, they could also build a home with a wider setback, as illustrated by the 2002 house plan attached to this email. This would provide additional space for the path as well as increased area for ESH restoration.

In addition, the applicants had the opportunity to build a home on the southern lot in their parcel – with no conflicts with the public path or with ESH. It was their choice to build on the northern lot.

3. The proposed project is not LCP-compliant as it violates LCP Shoreline Access and Recreation policy 1.07. It is difficult to understand how this policy was missed by the City, which is required to certify that projects comply with the LCP.

4. While some might be "appalled" at the appellants' position, many other residents are "appalled" by the project as proposed, in that it would allow one property owner, who can afford to buy a piece of our California coastline for a private residence, to take away the beach access of numerous residents of the pleasant, but much-less-affluent neighborhoods on the other side of the highway. In those neighborhoods, the price of an average home is about 1/6 to 1/7 the price of a home on Toro Lane, and many residents rely on beach access for recreation.

Applicant statements page 3, paragraph 4

"I would like to address a few of the other specific concerns from the appellants regarding Policy 1.07 and the current trail being not comparable benefit. The existing trail varies in slope, as will the realigned trail. Neither the present trail nor the proposed will be handicap-accessible. However, the realigned trail will serve the same population of able-bodied beachgoers that utilize the existing trail, with no additional hardship. And the City may elect to enhance the trail we establish, if desired. They will have the easement and therefore the prerogative to alter it at any time."

Responses:

1. The existing path has a gentle slope and is wide enough to safely accommodate the beach wagons and strollers used by families to take their children to the beach, and persons with balance and some other mobility issues. The proposed path would be too narrow to accommodate these users of the current path. In addition, as stated by one speaker at the City hearing, older children who were "horsing around" on the proposed

alternate path could easily fall down the steep embankment and land on cement.

2. The applicant says, "the realigned trail will serve the same population of able-bodied beach-goers that utilize the existing trail, with no additional hardship". That is incorrect. Families taking their children to the beach are, for the most part, able-bodied. Yet, many could not use the proposed alternate path.

3. The applicants fail to mention the users of the current path who are not entirely able-bodied, but still want and need safe beach access. They would lose their access if the currently-proposed alternative path were accepted.

4. Whether or not enhancement of the proposed trail would be the City's "prerogative", it is not the responsibility of the City and its taxpayers to fund and build an improved version of the alternative path in order to assist the applicants in obtaining a permit. However, were they willing to volunteer to do so in this case, the appellants would obviously want an "ironclad" guarantee that they would do so by a specified date, and that guarantee would have to include specifications approved by the appellants and other representatives of the users of the current path, including those with mobility and balance issues, and families who use beach wagons and strollers to take their children to the beach.

5. Given the City's apparently-extreme aversion to taking on maintenance of a new path, it seems unlikely that the City would be interested in enhancing one established by the applicants.

Applicant statements page 3, paragraph 5, continuing to page 4

*"Regarding the Coastal Act section 30212 **"dedicated accessway shall not be required to be opened to public use until a public agency or private association agrees to accept responsibility for maintenance and liability of the accessway."** The word "required" is a key word here because it is not saying that the trail cannot be used. This is simply the status quo —no person or agency is maintaining or responsible for liability for the current one on our property and any of the other volunteer trails that flow to the beach, throughout Morro Bay and California. When the home, trail and landscape are completed and it is safe to walk, there is no one preventing anyone from using it. It will become a City easement. With the current trail, anyone using it is in effect trespassing on private property, whereas with the new trail no trespass exists because the City has an easement."*

Responses:

1. I must dispute the applicants' interpretation of Coastal Act section 30212. I believe the meaning of the words is very clear – neither the applicant nor the City would be required to open the alternate access path for public use if no one volunteered to maintain it and to accept liability (if there is any liability to accept).

2. The applicant said, "With the current trail, anyone using it is in effect trespassing on private property, whereas with the new trail no trespass exists because the City has an easement." I believe this is incorrect in that there is no trespassing when an implied dedication has been established.

Users of the current path have, over the decades, established an "implied dedication". In fact, Permit approval Condition #18, included when the Planning Commission approved the project on October 6, states, "In recognition of the likelihood of an implied dedication of a trail on the Property for public use over the decades, the Applicant has volunteered to offer to dedicate an area..."

Applicant statements page 4, paragraph 2

"In reference to the fear about the slope beside the drainage easement giving way, the culvert and concrete swale were engineered sometime back in the 40's or 50's and that slope has remained intact since the that time with very minor focal sloughing. This is despite the foot traffic, gopher proliferation and lack of solid stabilizing vegetation or maintenance. In addition, with the house present, the whole area will be more stable, especially near the steeper section adjacent to the concrete drainage ditch. Water runoff will be better managed, landscaping will be established and maintained and all of this will add to stability. It is most vulnerable now because of the foot traffic, squirrel and gopher holes that are legion."

Response:

Whether or not the slope has remained intact is debatable, given questions regarding the methods the consultants used to support their claim that the "channel bluff" has not eroded significantly. As noted in earlier communications, one or both of the photographs used to support the claim appears to have significant distortion. The landmarks (buildings, and the end of Beachcomber Drive, for example) in the two photos simply do not line up. As asked previously, how could the consultants even have been sure where things were are actually located - and thus, how could they know how much erosion may have taken place?

The fact remains that there has been "slumping", as noted in the 2002 geologic study. In addition, that study states that "The sandstone bedrock exposed in the lower part of the channel bank is grossly stable due to hard, massive characteristics. The overlying terrace deposits have a high potential for slumping along and over the sandstone rock surface. Two slumps were observed downstream of the concrete channel (see Photograph 2). Factors that caused slumping on the channel bank include over-steepened slopes, uncontrolled surface water runoff, springs along the soil/bedrock contact, rodent burrows and saturated soils conditions due to precipitation. Generally, surficial creek bank/bluff top stability increases once the property is developed and on-site drainage is controlled. The slope above the tank access road also exhibited minor soil slumping."

An additional important fact is that the proposed alternate path would be on fill on steep slope, and would be unmaintained.

Applicant statements page 4, paragraph 3

"Trail liability is a real concern, for us as well as the City. It has become an American

pastime to sue for practically anything. Coastal staff gave us 4 options in regards to how to offer land for a trail. We originally preferred to simply donate land or create a lot line adjustment with the City, but after discussions with the City staff, those were declined and an easement was accepted. This was acceptable to us as our liability was limited. The City attorney made it clear to the City Council members that adding maintenance to the trail does increase the liability. The City has aptly noted that the vast majority of trail access to the beaches in Morro Bay are unmaintained and yet people still use them. Furthermore, San Luis Obispo County has an extensive trail system that provides miles and miles of trails that are maintained by volunteer groups rather than by legal compulsion. Just because these trails are not "officially" maintained does not mean that no one is maintaining them or that they have all washed away. On the contrary, more and more trails are being created and maintained by volunteer organizations. Perhaps the appellants would like to use some of their energy to create a volunteer group to maintain our trail. Given the interest in our trail by Surfrider San Luis chapter President Brad Snook, perhaps his local chapter would maintain it with a volunteer group. This could coincide with their beach cleanup days."

Responses:

1. California government code section 831.4 appears to indicate that liability is not an issue. It says, in part, "A public entity, public employee, or a grantor of a public easement to a public entity for any of the following purposes is not liable for an injury caused by a condition of....any unpaved road which provide access to recreational or scenic areas ... Any trail used for the above purposes." This information has been provided by more than one individual, but seems to have been either unread or ignored. The full text of government code section 831.4 is available online at <http://law.onecle.com/california/government/831.4.html>
2. Given the content of the above-cited code, one must wonder just how the City Attorney could have concluded that maintenance would increase liability – given that there would be no liability to increase.
3. Whether people use unmaintained trails elsewhere is irrelevant. Per Coastal Act section 30212, someone must maintain the alternate trail, or it never has to be opened for public use - thus making such a trail out of compliance with LCP Shoreline Access and Recreation policy 1.07.
4. As noted in an email sent to the Morro Bay City Council on January 4 (CCC staff copied) the City recently opened a new park - a BMX-style bike park. Why are they apparently unconcerned about liability for that facility, but concerned about liability on one beach access path where State law apparently says they would have no liability issues?
5. Yes, there are various groups that MIGHT maintain the alternative path, but a commitment needs to be obtained BEFORE the permit for the project is approved, or, per Coastal Act section 30212, there would be no requirement that the path ever be opened. The logical parties to maintain the trail would seem to be those involved in developing this project; specifically, the applicants and the City of Morro Bay. Perhaps it would be possible to add a covenant to the property deed (the sort of covenant that passes from one property owner to the next) that would require the owner to maintain the path.

Applicant statements page 4, paragraph 5

"After Coastal staff has analyzed the need for a trail, we are open to suggestions regarding some specifics such as width, etc. Perhaps you can discuss any ideas you have with us in order to work on any specifics. Please give consideration to aesthetics, erosion, and habitat intrusion."

Response:

This is encouraging. As previously noted, an elevated boardwalk path similar to the one in the nearby Elfin Forest, constructed of Trex or similar materials, could provide safe access for all current path users while allowing optimal protection of sensitive coastal resources. The "underpinnings" for the path could be put in at the same time that the "underpinnings" for the house are installed.

Applicant statements page 4, paragraph 6, continuing to page 5

"It is our experience, having lived in Morro Bay for 20 years, that most people still need or prefer to drive to the beach. For those healthy enough to walk and live west of the highway, they have exceptional access within a few blocks in any direction. Those east of the highway need to use Yerba Buena, San Jacinto or Atascadero Road to cross the highway. There are no sidewalks present in north Morro Bay, either on the west or east side of Highway 1. Anyone walking, biking or strolling with children will be in the street."

The appellant states it is dangerous for families to walk without a sidewalk down Yerba Buena (the length of one house) to several access points and that walking a similar distance down Toro lane (no side walks) to our path is somehow safer. The reality is that the majority follows human nature and the principles of geometry and simply takes the straightest and quickest path to the beach.

If you have a stroller or beach wagon, you still just go straight to the quickest access or simply take a quick left to the State Park. The road is wide and traffic is minimal compared with the street traffic you have just traversed. Do RVs pull in and out? Yes, some, but in general they are there to stay for a few days. Also the road to the state park is wider, people are driving slowly and visibility is not hindered."

Responses:

1. It is the experience of the appellants, some speakers at the City hearing, and those who filled out the prescriptive easement survey forms, that many need or prefer to walk to the beach. Yerba Buena Street is one of only two beach access routes across the highway in North Morro Bay, and it provides that access for hundreds of households. Toro Lane path users are primarily, although not exclusively, those who use Yerba Buena to cross the highway to go to the beach. Many residents are very health conscious and would not even consider driving to the beach when it is only a few blocks away. Besides that, many residents restrict driving due to environmental concerns and the fact that gasoline is expensive.

2. It is true that North Morro Bay has few sidewalks. The issue with Yerba Buena is that,

on the west side of the highway, pedestrians must share the road with the RV traffic going to and from the State Park campground whose entrance is on the west end of that street. That is not the case with other North Morro Bay streets where residents walk for recreational purposes.

3. The beach access paths in the State Park are too steep and/or too hilly and/or have unstable footing; especially as compared to the Toro Lane path.

Applicant statements page 5, paragraph 2

"With regard to concerns that the path at 3420 Toro Lane is the only path available for those with mobility or balance problems is simply false. The appellants state we would block "a public beach access route uniquely suited to the needs of older residents and visitors, others who are not agile and strong, and those who require the use of wheeled conveyances". I would suggest if the findings presented by the City staff are not convincing enough, then please come for a day and make a site visit. Walk all of the paths between Morro rock and the North Point subdivision. Google Earth also provides a pretty good idea of access, if a site visit is unfeasible. In addition, it must be remembered that those with significant mobility, balance or strength issues must still traverse the beach sand and dunes before they reach the water."

Responses:

1. The attributes of all area access routes were thoroughly documented by Planning Commissioner Robert Tefft, and those findings formed the basis of the previously-submitted "trail comparison table", which is attached to this message. These documents demonstrate that the attributes of the Toro Lane path are unique, which likely explains the continual use of that path for decades. We also have the comments of the neighbor whose home overlooks the path, and whose family owned the 3420 Toro Lane property for 45 years, who stated at the August 18 Planning Commission hearing that the existing path is "unique" in that it is usable by people "who have a limited ability to get around"

2. Not all persons going to the beach are necessarily trying to reach the water. Many simply want to get to the beach, sit on a blanket, and watch and listen to the waves.

Applicant statements page 5, paragraph 3

"The appellants have also complained that we should merge 2 lots so that the public should not have to "suffer the negative consequences of a personal property ownership decision over which the public had no control". Three years ago we were fortunate enough to purchase 2 legal lots in Morro Bay. We were unable to afford this, despite remortgaging our home for the maximum we could, and needed to get another investor for the rest. Jeanne and I retained the lot we have planned to build on. The other lot is owned with three other entities/investors. Bringing in these investors has provided additional and necessary financial means for us to continue to pursue our dream of building this home."

Responses:

1. If they did not wish to merge the 2 lots, the applicants could have built on the southern lot in the parcel, and avoided all controversy over the path and all, or nearly all issues with setbacks and with potential damage to ESH.

2. Yes, some residents believe that the public should not have to suffer the negative consequences of a personal property ownership decision over which the public had no control". Some residents also believe that the public should not have to suffer the negative consequences of other residents' investment choices and decisions.

This public reaction is similar to the one that occurred when, right after the applicants bought the 3420 Toro Lane parcel. The applicants asked the City to abandon adjacent City right-of-way so that they could acquire it and add it to their property. There was a major outcry by residents who did not want this public property to be used to benefit one property owner. They wanted it used for future public parking. As a result of the protests, the City did retain the right-of-way for future parking.

Applicant statements page 5, paragraph 4, continuing to page 6

"The last item involves the issue of a prescriptive rights claim for a trail. We recognize that a claim can be pursued by any public or private entity. We have done our best to work with our City and Coastal staff to provide a trail. It appears that despite our best efforts, the appellant intends to pursue legal action in this matter. Although my wife has her law degree and I have two brothers who are attorneys, we feel pursuit of a solution that has involved compromise on our part would be our preferred route. At present, keeping the trail in it's current location would grant the public more rights than ourselves, since we would be unable to build on the property, and would disregard our constitutional property rights. The Coastal Act speaks to this as well. We believe even if a court was to agree sufficient data was present to establish a prescriptive easement, a California court would most likely not allow it since it would be an exclusive prescriptive easement. In other words, if the trail remained in its current location, the lot would be unbuildable. Please see Harrison v. Welch (2004). An exclusive prescriptive easement is typically disallowed because it gives more rights to the easement holder than the titleholder."

Responses:

1. There are those who might question the statement that, at this point, the applicants have made their best efforts to avoid litigation. Legal action is never desirable, but in this case, it appears it may still be necessary to protect the public's right to beach access at the 3420 Toro Lane site. That is the reason the appellants and other concerned parties are, at least for the present, pursuing legal action. The alternate path, as proposed, clearly violates LCP Shoreline Access and Recreation policy 1.07 and would deprive many residents of the only safe and usable beach access within walking distance of their homes.

- It is too narrow to meet the needs of many current path users
- Its location on the side of a steep slope would be dangerous for many
- It would not be maintained, meaning it would erode away, and it might never even be opened for public use

2. It has been made crystal clear that the appellants are not attempting to force the

applicants to keep the existing path where it is (although that would be ideal), despite the fact that the applicants clearly had (until the change in ownership of the southern lot) two ways that they could have accomplished that. They could have built on the southern lot or merged the two lots together.)

In fact, I clearly stated at the City hearing, at which the applicants were present, that an alternative path route would be acceptable so long as it served the needs of all of the users of the current path. This, of course, is the exact intent of policy 1.07, which says that if access on a site is closed, any re-routed access must provide the same "access benefits"- on the same site.

3. As previously noted, the house design from the 2002 geologic study proves that a very livable house could be built 5 feet farther back from the stream corridor than the one currently proposed – meaning there is room for development AND a safer, wider path.

The houses are of similar size and include similar features:.

- Both the 2002 house plan and the 2015 plan (attached) show a living room, a kitchen, an indoor laundry and two bedrooms.
- The 2002 plan includes an "entry center" and a dining room. The 2015 plan includes neither, but includes an office and has a dining area in the kitchen.
- The 2002 plan has 2 bathrooms, and the 2015 plan has two bathrooms, plus a powder room.

4. As previously noted, the applicants must have been aware that the path was on the property when they bought it.

Applicant statements page 6, paragraph 2

"In sum, we hope that you will look at the big picture and the Coastal Act as a whole when reviewing our project. We have done everything in our power to ensure a project that is completely compliant with the Morro Bay LCP and the Coastal Act, and is sensitive to the preferences of our neighbors. We appreciate the feedback thus far and will continue to work with you in a similar manner as we have done. As proposed, our home will be of modest size (1500 sq. ft. for our family of 6), will restore a large area of degraded habitat and offer a dedicated easement with construction of a trail."

Responses:

1. As noted previously, there appears to be more that the applicants could do to ensure a project completely compliant with the LCP, since the one currently proposed is not. Specifically, the applicants could construct an alternate beach access path that meets LCP Shoreline Access and Recreation policy 1.07 requirements.

2. The "modest" size of the home appears to be what the applicants have wanted all along. At the August 18, 2015 Planning Commission meeting, the applicants' representative stated, "Our direction has been from these applicants ... has been... just make this house little and cute and so that if people notice it at all, it is not an eyesore..." These comments can be heard online in the City's video of the hearing

at <https://www.youtube.com/watch?v=uXKHfMLEvSI&feature=youtu.be&t=29m44s>
The comments begin at approximately 2:45:45 into the hearing

Linda Stedjee

From: [Linda Stedjee](#)
To: [Chaver, Yair@Coastal](#)
Cc: [Locklin, Linda@Coastal](#); [Robinson, Daniel@Coastal](#)
Subject: Information that will be used communicating problems with 3420 Toro Lane project public beach access
Date: Friday, December 11, 2015 9:42:05 AM

Hi Yair

The documentation below this message is being provided FYI. It is primarily intended for use in informing other Morro Bay residents.

It pulls together some important information on the City of Morro Bay's failure to perform due diligence in analyzing the 3420 Toro Lane project. A key City document used in communicating with the public and with the CCC, includes incorrect statements and conclusions that were used to support granting of a permit for a project that is non-LCP compliant.

I thought I could trust the staff to find and document all applicable LCP policies for proposed projects. I won't trust them again.

Linda Stedjee

Summary

Morro Bay City staff identifies the Coastal Act and Local Coastal Plan policies applicable to a building project during preparation of the "Initial Study and Checklist." All such policies are noted and discussed in detail in this document.

This is where Morro Bay staff failed to perform due diligence in their analysis of the 3420 Toro Lane project. <http://www.morro-bay.ca.us/documentcenter/view/7529>

The "Initial Study and Checklist" for that project makes erroneous statements, including these:

- <!--[if !supportLists]--><!--[endif]-->● There is an existing spur trail through the property, which is not dedicated public access.
- <!--[if !supportLists]--><!--[endif]-->● Because adequate access exists nearby, the project may be found consistent with the Coastal Act and the City's LCP regarding coastal access ..."

Because of these incorrect conclusions, the staff failed to include any reference to and possibly any study of LCP Shoreline Access and Recreation policy 1.07, which is not only applicable to but critical in determining this project's LCP compliance.

Coastal Commission documents that identify important Commission policies and procedures were evidently missed by staff.

<!--[if !supportLists]--><!--[endif]-->● “Some Facts About Public Prescriptive Rights” states that a right of access acquired through use is an “implied dedication”.

<!--[if !supportLists]--><!--[endif]-->● “Public Access Plan” refers to, “Working in concert with the Attorney General’s Office to ensure that any access rights that the public may have acquired are preserved.” This seems a clear indication that whether or not a right acquired through use has been declared a prescriptive easement by the courts, it is still a right acquired through use and, thus, an “implied dedication”.

LCP Policy 1.07 clearly states that where an access route is acquired through use, it cannot be closed unless an alternate route offering the same or comparable access benefits is established on the same site. This makes the presence of other access points in the area essentially irrelevant. In addition, the proposed alternative access route at 3420 Toro Lane would not serve some of the key population segments served by the current one and so, would not offer the same or comparable access benefits.

Thus, because it fails to adhere to policy 1.07, the proposed alternative access route through the 3420 Toro Lane property is non-LCP-compliant; making the recently-issued Coastal Development Permit invalid.

Detail

“Initial Study and Checklist” document dated May 29, 2015 <http://www.morrobay.ca.us/documentcenter/view/7529> identifies a number of applicable LCP policies. Of particular interest is this section, which begins on the 51st page of the document package and ends on page 53:

“The project is also subject to Coastal Act and the City’s LCP policies related to coastal access and potential environmental impacts resulting from the creation of a dedicated coastal accessway. The project site is currently crossed by an informal trail to the beach. The Access Issues and Constraints discussion in Chapter III of the City’s Coastal Land Use Plan (p.43) notes, “Uncontrolled and undirected shoreline access has, over the years, resulted in resource damage to the sand dunes paralleling the beach...Fragile native plants and habitat have been lost. There is an urgent need to control and direct access, and restore, as far as possible, former dune habitat.”

The following Coastal Act sections related to public coastal access are applicable to project evaluation:

Section 30210 of the Coastal Act states, “...maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.”

Section 30211. “Development shall not interfere with the public’s right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.

Section 30212(a). Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where (1) it is inconsistent with the public safety, military security needs, or the protection of fragile coastal resources, (2) adequate access exists nearby, or (3) agriculture would be adversely affected. Dedicated accessway shall not be required to be open to public use until a public agency or private association agrees to accept responsibility for maintenance and liability of the accessway.

Section 30214(a). The public access policies of this article shall be implemented in a manner that takes into account the need to regulate the time, place, and manner of public access depending on the facts and

circumstances in each case including, but not limited to, the following:

- (1) Topographic and geologic site characteristics.*
- (2) The capacity of the site to sustain uses and at what level of intensity.*
- (3) The appropriateness of limiting public access to the right to pass and repass depending on such factors as the fragility of the natural resources in the area and the proximity of the access area to adjacent residential uses.*
- (4) The need to provide for the management of access areas so as to protect the privacy of adjacent property owners and to protect the aesthetic values of the area by providing for the collection of litter.*

City LCP Policy 11.15 provides for the possibility of public access trails along streams provided they are located within a buffer outside of riparian habitat when no alternative location is feasible. Policy 11.20 provides for the possibility of access through coastal dunes, but notes, "Where access through the dunes is necessary, or established through historical public use, well-defined footpaths or boardwalks shall be developed or used." This same policy also cautions that disturbance or destruction of dune vegetation shall be prohibited, unless no feasible alternative exists.

*While the applicants are not opposed to creation of a formal public accessway, adequate access exists nearby on numerous alternative paths to the beach in the vicinity. Development of a boardwalk through the site would decrease the area available on site for ecological restoration and may conflict with adjacent residential development. **Because adequate access exists nearby, the project may be found consistent with the Coastal Act and the City's LCP regarding coastal access,** thereby allowing a larger area for ecological restoration.*

c. There are no habitat conservation plans or natural community conservation plans that apply to the project site. No impacts would occur.

Conclusion: Based on the existing disturbed nature of the habitat, its current lack of significant ecological function, and incorporation of mitigation measures including monitoring and habitat restoration (see Section 4, Biological Resources), the project may be found consistent with applicable

land use policies and regulations adopted for the purpose of avoiding or mitigating an environmental effect.”

On the 58th page of the document package, we find this:

“Environmental Setting:

The City of Morro Bay manages 13 City parks, and also offers three state parks and a significant number of open space and recreational opportunities associated with more than 10 miles of ocean shoreline within the City limits, over 95 percent of which is open to lateral coastal access. Approximately 90 percent of the lands abutting the Pacific Ocean in Morro Bay are publicly owned (City of Morro Bay 1982). The proposed project is located adjacent to Morro Strand State Beach, is approximately 800 feet southeast of the Northpoint Natural Area, and approximately 850 feet northwest of the Morro Strand State Beach Campground. There is an existing spur trail through the property, which is not dedicated public access. Signage is posted granting permission of trespass by owner approval.”

Not mentioned at all in the “Initial Study and Checklist” is Shoreline Access and Recreation policy 1.07:

“1.07. Consistent with Coastal Act Section 30211, development shall not interfere with the public’s right of access to the sea where acquired through use or legislative authorization. Such access shall be protected through permit conditions on permitted development, including easements, dedications or continued accessway maintenance by a private or public association. Existing identified trails or other access points shall not be required to remain open provided that they are consolidated or relocated to provide public access on the same site and provides the same or comparable access benefits as existed before closure and meets all other open access and other applicable access and recreation policies of the LUP.”

The staff’s statement that the existing “spur trail” is not dedicated public access is incorrect. The Coastal Commission’s publication **Some Facts About Public Prescriptive Rights** says,

A right of access acquired through use is, essentially, an easement over real property that comes into being without the explicit consent of the owner. The acquisition of such an easement is referred to as an “implied dedication”, the right acquired is also referred to as a “public prescriptive easement”. This term recognizes that the use must continue for the length of the “prescriptive period” before a public easement comes into being. In California the prescriptive period is five (5) years.”

So, a right of access acquired through use is an “implied dedication”.

The Coastal Commission’s Access Program includes section titled, “Public Access Plan”. This plan includes the following text:

3. Prescriptive Rights

In various places within the coastal zone, the public has historically used private property to get from the road to the shoreline, to traverse informal trails, or to simply enjoy the coast by such activities as picnicking at a headland or inland meadow. The Coastal Act mandates that development not interfere with the public’s right of access to the sea where acquired through use.

In some areas, development proposals and non-permitted encroachments such as fencing and signing threaten continued use of these historically-used areas. Recommendations to address this issue include:

- <!--[if !supportLists]--><!--[endif]-->● Identifying all known historic trails, public use areas, etc.*
- <!--[if !supportLists]--><!--[endif]-->● Prioritizing those areas and initiating*

prescriptive rights studies to document the level of public use.

<!--[if !supportLists]--><!--[endif]-->● *Working in concert with the Attorney General's Office to ensure that any access rights that the public may have acquired are preserved.*

The last statement appears to clearly indicate that you don't have to have formally established a prescriptive easement in the courts in order to have acquired access through use.

The bottom line is that when you put these two discussions of the official Coastal Commission position on public access established through long-time use, you do indeed have implied "dedicated public access". Were the staff sufficiently knowledgeable to handle this kind of project, and had they done their homework, they would have known that.

It is clear that the staff should have identified the public access issue in its Initial Study and Checklist document, as that is obviously where the identification of all applicable Coastal Act and LCP policies should have been fully explored and documented. Having done that, they should have recognized the applicability of LCP Shoreline Access and Recreation policy 1.07, but of course they did not. The only mentioned LCP policies related to access are 11.15 and 11.20 and the staff erroneously concludes that,

"Because adequate access exists nearby, the project may be found consistent with the Coastal Act and the City's LCP regarding coastal access, thereby allowing a larger area for ecological restoration."

That is incorrect. The 3420 Toro Lane project is, as currently proposed, LCP-non-compliant, making the permit recently approved by the Council essentially invalid.

From: [Linda Stedjee](#)
Cc: [David Buckingham](#); [Chaver, Yair@Coastal](#); [Robinson, Daniel@Coastal](#); [Locklin, Linda@Coastal](#)
Subject: Appeal of Council decision on 3420 Toro Lane project
Date: Sunday, December 13, 2015 7:42:53 AM

Sent to Council using BCC rather than TO, per their preference

An appeal of the Council decision on the CDP for the proposed project at 3420 Toro Lane has been filed with the Coastal Commission, and required notifications have been sent to the City, the applicants, and those listed on the appeal form as interested parties. It is my understanding that the quiet title action necessary to formalize the prescriptive easement will be filed shortly.

The appeal focuses primarily on the fact that the CDP, as approved, violates Morro Bay LCP Chapter III, Shoreline Access and Recreation policy 1.07. Please note the portions I have emphasized with bold type.

"1.07. Consistent with Coastal Act Section 30211, development shall not interfere with **the public's right of access to the sea where acquired through use** or legislative authorization. Such access shall be protected through permit conditions on permitted development, including easements, dedications or continued accessway maintenance by a private or public association. Existing identified trails or other access points shall not be required to remain open **provided that they are consolidated or relocated to provide public access on the same site and provides the same or comparable access benefits as existed before closure** and meets all other open access and other applicable access and recreation policies of the LUP."

The people who wrote our LCP were smart. They knew that as time went by, there would be attempts to chip away at our coastal access. They knew that people would claim that there was no problem with development projects wiping or reducing out Coastal Access on specific properties because there was access on some other area site(s). The LCP authors wisely required that any public access that is removed to facilitate development on a site be replaced with access on the same site - access that provides the same or comparable "access benefits".

The approved CDP for 3420 Toro Lane is in clear violation of LCP policy 1.07 because:

- The proposed new path would be unsafe and, in many cases, unusable for significant segments of the population that currently use the existing path. These include families that use strollers and beach wagons to take small children to the beach, and those with balance and/or mobility issues, for whom a narrow path on the side of a steep slope would be particularly dangerous. It has suggested that the proposed path might be widened to two feet. That is still much too narrow to provide safety for many current path users, and is too narrow to accommodate many beach wagons and strollers (see references below this message).
- The new path would not be maintained, meaning that with the winter rains, it would erode away, becoming even narrower and even more unsafe, and would

finally disappear. This contrasts sharply to the existing path, a former tank road, which has existed for over 70 years, and appears to have the potential to last for many decades more

- Due to a provision in Coastal Act section 30212, the applicant would not be required to open the new path for public access, even if it were built, because no one has accepted liability, or the responsibility for maintenance.

Clearly, the proposed path would not even come close to providing "the same or comparable access benefits as existed before closure" of the existing path because...

- When you exclude families with small children and others who cannot safely use and, in many cases, use at all, a narrow path on the side of a steep slope....
- When you leave a hillside path unmaintained, allowing it to wash away down a steep slope until it is no longer usable by anyone ...
- When you allow a situation in which the proposed path might never even be required to be opened for public use...

Then you are NOT offering "access benefits" that are the same or comparable to those provided by the path that exists on the site today.

Furthermore, references to other access in the area have been used in an attempt to justify the fact that the proposed path would not serve the same population as the current one. Yet, it is clear that in the application of policy 1.07, other area access is simply irrelevant. There must be onsite access that offers the same or comparable access benefits as existed before. You cannot substitute access on some other site.

It is clear that policy 1.07 applies to the 3420 Toro Lane project. The public's right of access was definitely acquired through use - over a period of 70 years. Such a right is sometimes referred to as an "implied dedication" and, when formalized by the courts, a "public prescriptive easement".

In fact, approval condition #18 for the project, as approved by the Planning Commission on October 6 says,

In recognition of the likelihood of an **implied dedication** of a trail on the Property for public use over the decades, the Applicant has volunteered to offer to dedicate an area..

Initially, staff was resistant to admitting that any "right acquired through use" (that's what an implied dedication is) existed on the current path. In the May 29, 2015 "Initial Study and Checklist" done for the project, staff specifically stated that the existing path is NOT "dedicated public access". This claim was made despite the fact that residents had previously stated, repeatedly, that the public can claim a prescriptive easement on the existing path. I personally stated this in emails to various persons, including not only staff, but Council as well.

The City made no apparent effort to address the issue, and it was not until residents performed a public prescriptive easement survey, and turned in the completed forms to the City, that staff finally admitted that this was an issue and that an implied dedication, acquired through use, meant that the applicant must provide alternate

access on site. This was recognized in the Approval Condition #18 when the project approved the project on October 6. That condition states, "In recognition of the likelihood of an implied dedication of a trail on the Property for public use over the decades, the Applicant has volunteered to offer to dedicate an area..."

However, as previously noted, the path proposed for that dedicated area does not even come close to meeting the requirements of LCP Shoreline Access and Recreation policy 1.07. Why are we in this situation?

I believe that once the staff understood that there was an implied dedication, which is clearly access acquired through use, they should have returned to the LCP to determine if there were any applicable access policies that they had erroneously excluded in their earlier analysis. However, the documentation package attached to the October 6 agenda, although it contains numerous references to access, makes no mention of policy 1.07. Documentation provided for the Council hearing also fails to mention this policy.

Further, during the Planning Commission and Council deliberations on the project, the staff made no mention of this policy, allowing both bodies to continue their discussions without the knowledge that any new path must provide the same or comparable access benefits as the one existing AND the fact that other area access is, per policy 1.07, essentially irrelevant because those access benefits must be provided on site - not elsewhere.

I believe the responsibility for failure to ensure this project adheres to the LCP falls squarely on the City. The City must formally certify coastal development projects as being in conformance with the CDP. It is not the responsibility of residents know all the LCP policies that apply to a project (although in this case, resident intervention has been necessary). The Coastal Commission could not possibly be expected to memorize all the LCP policies for every community within their jurisdiction. You might call CCC staff to ask about the applicability of a particular policy in a particular situation, but you certainly would not call them and ask, "Hey, do you know of any policies in our LCP that might apply to this project?" Finally, while it might be in their best interests, permit applicants are not required to do their own LCP research.

All of us, including residents, the CCC, and permit applicants depend on the City to make sure projects conform to the LCP. That's why City must sign on the dotted line. The City holds the final responsibility.

Granted, it can be very hard to find anything in the LCP, given that it consists of scanned documents that cannot be searched with a computer. If you want to find something in the LCP, you have to slog through pages and pages of text. In fact, I only discovered policy 1.07 right after the December 8 Council hearing. While preparing my CCC appeal, I read through through LCP Chapter III, Shoreline Access and Recreation (yes, the whole thing), to make sure I was covering all applicable requirements and policies - and found the policy on pages 47 and 48. Previously, like other interested parties, I had been depending on the City to have identified all policies pertinent to the project.

Despite the challenges in finding things in the LCP, identifying policies applicable to projects is the City's job. I believe that when the staff finally admitted that there was an "implied dedication" (a right acquired through use), they should have gone

back to the LCP chapter on Shoreline Access and Recreation and double checked their work. Hopefully, that will happen if another situation similar to this one develops in the future.

Linda Stedjee

Examples of Beach Wagon and Stroller Dimensions

Beach wagon examples – widths range from 20” to 24”:

Mac Sports Collapsible Folding Utility Wagon Garden Cart Shopping Beach
35.5"L x **20.2**"W x 22.5"H assembled

1 X Folding Beach Wagon All Terrain Blue Collapsible Kart Foldable Sports Dolly Gear Storage Mac
Cart
36.20 x **21.40** x 24.60

ABO Gear Collapsible Folding Utility Wagon Garden Cart Shopping Buggy Yard Beach Cart
35.5"L x **20"W** x 23.6"H assembled

TMS® Folding Collapsible Utility Wagon Garden Cart Shopping Buggy Yard Beach Cart Toy Sports
34"(L) x **21"(W)** x 46"(H)

EasyGoWagon Folding Collapsible Utility Wagon Fits in Trunk of Standard Car
32 x **24** x 10 inches

Stroller examples – widths range from 19” to 25.4”:

Baby Trend Expedition Jogger Stroller, Phantom, 50 Pounds
47 x **21** x 41 inches

Graco LiteRider Classic Connect Stroller
27 x **19** x 39 inches

Graco Fastaction Fold Click Connect Travel System, Finley 2015
33.5 x **22.5** x 39.5 inches

Britax B-Agile 3 Stroller
38.5 x **23** x 40.5 inches

BOB Revolution Flex Stroller
48 x **25.4** x 42 inches

From: [Robinson, Daniel@Coastal](mailto:Robinson.Daniel@Coastal)
To: [Chaver, Yair@Coastal](mailto:Chaver.Yair@Coastal)
Subject: FW: Misleading, and incorrect statements about liability regarding 3420 Toro Lane beach access?
Date: Friday, January 22, 2016 9:38:40 AM

From: Linda Stedjee [mailto:lstedjee@charter.net]
Sent: Monday, December 14, 2015 7:05 AM
Cc: Chaver, Yair@Coastal; Robinson, Daniel@Coastal; Locklin, Linda@Coastal
Subject: Misleading, and incorrect statements about liability regarding 3420 Toro Lane beach access?

Sent to Council using BCC

At the December 8 hearing, a number of comments were made by City officials and staff, and by the applicant's representative, regarding fears of liability that might be incurred by anyone who maintained the path. Unless there is some other law that trumps California Government Code Section 831.4, claims that anyone would incur liability simply for keeping the proposed path in good condition appear to be false. The code grants immunity from liability for public entities and grantors of public easements for trails used to provide access to recreational or scenic areas. It does not say that if you maintain the trail, you lose that immunity. So, if no other law supercedes the following, the comments made at the hearing were wrong.

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

*(a) Any unpaved road which **provides access to** fishing, hunting, camping, hiking, riding, including animal and all types of vehicular riding, water sports, **recreational or scenic areas** and which is not a*

(1) city street or highway or

(2) county, state or federal highway or

(3) public street or highway of a joint highway district, boulevard district, bridge and highway district or similar district formed for the improvement or building of public streets or highways.

(b) Any trail used for the above purposes.

(c) Any paved trail, walkway, path, or sidewalk on an easement of way which has been granted to a public entity, which easement provides access to any unimproved property, so long as such public entity shall reasonably attempt to provide adequate warnings of the existence of any condition of the paved trail, walkway, path, or sidewalk which constitutes a hazard to health or safety. Warnings required by this subdivision shall only be required where pathways are paved, and such requirement shall not be construed to be a standard of care for any unpaved pathways or roads.

Although, for health reasons, I could not attend all of the December 8 meeting, I have caught much of it on the channel 20 "reruns" and I have yet to hear our City Attorney or anyone else cite the above or any other government code to clear up the liability confusion. Hence, it appears that there may have been false and misleading statements about liability and those statements may have prejudiced the Council, and even members of the public, against the appeal.

In addition, even if maintenance of the path did incur liability (which I suspect it would not), it is my understanding that the City has comprehensive liability insurance that protects the City. Isn't that insurance in effect all over town, including North Morro Bay?

Furthermore, why do you worry about liability that you think might be incurred by maintaining the Toro Lane path, and evidently not worry about the potential results of what many consider sub-standard maintenance of a recreation support facility in another part of the City?

For example, the City maintains the Rock parking lot, which supports access to the Rock and the adjacent beach. In my opinion and in the opinions some other residents, the City does a rather bad job of maintaining that lot. It is usually full of big potholes, dips and bumps. Someone could easily trip there and be injured, but that doesn't seem to stop the City from doing maintenance by occasionally "paving" the lot with ground-up asphalt recycled from street paving operations. In fact, that was done fairly recently.

Why is there no worry about liability for injuries resulting from badly-done maintenance of that very large parking lot, but great concern about possible liability for maintaining one beach access path? Are concerns about liability only an issue when the City doesn't want to do something?

In conclusion, if you still don't believe me regarding liability immunity, please get that checked out by Mr. Pannone, and consider this August 24, 2014 opinion article by Charles Lester, Executive Director of the California Coastal Commission:

<http://www.sfgate.com/opinion/openforum/article/Martins-Beach-reflects-Californians-choice-to-5682494.php>

Here are some interesting quotes:

*"We also have informed Khosla's attorneys that **property owners allowing public access are insulated from personal liability, and that there is no requirement for expensive insurance.**"*

*"Khosla is correct that the Coastal Act directs the commission to respect private property, but he ignores the fact that the act's purpose was to guard against the loss of public shoreline access from private development, and that **the broad public interest in coastal access should not be subordinated to the narrow interests of fortunate coastal property owners.**"*

That last line isn't specifically about liability, but it is very applicable in the Toro Lane situation. The inferior alternate access path that has been proposed violates LCP policy 1.07 AND would result in loss of access for many users of the current access route - thus

subordinating "the broad interest in coastal access" to the narrow interests of one well-heeled developer who can afford to buy a piece of our California coast for a private residence. That path needs to be redesigned to be wider and safer and it needs to be maintained.

Finally, what was all that business about how, the wider a path is, the more it will erode, and therefore a narrow path is better? Sounded to me like a bunch of utter and complete nonsense.

Linda Stedjee

From: [Linda Stedjee](#)
To: [Chaver, Yair@Coastal](#)
Cc: [Robinson, Daniel@Coastal](#); [Locklin, Linda@Coastal](#)
Subject: Questions on the 3420 Toro Lane appeal
Date: Tuesday, December 15, 2015 12:18:08 PM

Hi,

I was told by a CCC staff member that it is the job of the City of Morro Bay to look into potential public prescriptive rights on the property located at 3420 Toro Lane. However, as time went on, it looked highly unlikely to some of us that the City would do that. It appeared that they would do nothing.

So, as you know, several residents consulted with Ms. Locklin, got a sample form, and proceeded to do our own prescriptive rights survey. We collected 75 questionnaires from users of the existing path, and turned them in to the City, as required.

This work had at least some success. The first iteration of the project did not provide any alternative access on the site, and the initial staff study of the project says the existing path is NOT "dedicated public access". HOWEVER, after the prescriptive easement questionnaires were turned in, as though by magic, the next iteration of the project had a permit condition that provided for access. Approval condition #18 for the project, as approved by the Planning Commission on October 6 says,

In recognition of the likelihood of an **implied dedication** of a trail on the Property for public use over the decades, the Applicant has volunteered to offer to dedicate an area..

So, we made some progress. However, what the applicant offered as alternative access is decidedly inferior to what is there now, as it would not be usable by many users of the current path.

The Council denied the appeal, and some observers said they appeared to have their minds made up before they even heard what we had to say. For example, the Mayor even brought his own slide presentation to support his comments against the appellants and for the applicants. Given that he couldn't have prepared the slides at the meeting, we must assume his mind was made up before we appellants could make our case.

Then, right after the Council hearing on the project, I found LCP policy 1.07, which says that when an access right on a site is acquired through use, if you want to move that path, the new access path must provide the same or comparable access benefits on the same site. That seems to tie in with the survey we did, because of the use issue, but we are not sure exactly what impact it might have.

We believe that policy will help the appellants' cause, but although we think it was a great find, the existence of that policy has made us realize that we are a bit "fuzzy" as to what the CCC's role is from here forward. We don't want to get in your way, or inadvertently work at cross purposes.

I know you cannot provide legal advice, but hope that you can consult with the other CCC staff and answer at least some of these questions:

1. Will the CCC look at the public prescriptive rights issue as a normal and standard function of processing our appeal?
2. If the answer to question 1 is yes, would the CCC rely on our questionnaires to do that, or would they need to be redone?
3. If the answer to question 1 is yes, would the CCC potentially issue a statement of some kind that prescriptive rights criteria appear to be met or not met?
4. If the CCC found in favor of the appellants, and took control of the CDP, would the CCC then be responsible for enforcing Morro Bay's LCP policy 1.07 as pertains to the 3420 Toro Lane project?

Thanks,
Linda

From: [Robinson, Daniel@Coastal](mailto:Robinson.Daniel@Coastal)
To: [Chaver, Yair@Coastal](mailto:Chaver.Yair@Coastal)
Subject: FW: Misleading, and incorrect statements about liability regarding 3420 Toro Lane beach access?
Date: Friday, January 22, 2016 9:44:11 AM
Attachments: [ATT00001.png](#)

From: Linda Stedjee [mailto:lstedjee@charter.net]
Sent: Wednesday, December 16, 2015 7:15 AM
To: David Buckingham
Cc: Daniel@; Linda@; Scot Graham; Yair@
Subject: Re: Misleading, and incorrect statements about liability regarding 3420 Toro Lane beach access?

Hi Dave,

As I have said before, I have the greatest respect for you, and consider you and your predecessor Ed to be two of the best things that have happened to Morro Bay in the nearly 11 years I have lived here. However, I must take exception with your comments on the 3420 Toro Lane project.

Below, please find your comments in red type, with my responses, in black type, immediately below:

On access, the most important issue for the public, we are quite happy the property owner voluntarily committed to provide an alternate access.

1. I suspect that quite a few residents would question the application of the term "voluntarily" in this case, as the offer was not made until AFTER the residents did a prescriptive easement survey.

- The May 29, 2015 "Initial Study and Checklist" staff did for the project specifically stated that the existing path is NOT "dedicated public access".
- Residents then did a prescriptive easement survey and turned in the survey forms on August 11 (verified by City date stamps on the forms). After that, something changed.
- Permit approval Condition #18, included when the Planning Commission approved the project on October 6, states, "In recognition of the likelihood of an implied dedication of a trail on the Property for public use over the decades, the Applicant has volunteered to offer to dedicate an area..."

2. Had the applicant not "volunteered" to provide the access once that survey was done, the City would have been obligated to further investigate the prescriptive easement. I suspect that many residents would suggest that, this "voluntary" provision of dedicated access might have been a strategic move aimed at "managing" the situation in an effort to prevent formalization of a public prescriptive easement.

3. I would also like to note that while I obviously agree that access is a big issue for the public, if the access provided by the alternate path is not as safe and usable as that provided by the current path, then the needs and rights of the public are not well served.

As you saw in the various documents presented, there are a significant number of access points in the immediate vicinity of this lot, enough to likely warrant not providing access at this particular point, but we're happy the property owner is willing to keep access at this point open and therefore quite robust in the immediate vicinity.

1. Per Morro Bay LCP Shoreline Access and Recreation Policy 1.07, when access is acquired through use, as it clearly was on the 3420 Toro Lane property, you cannot close an access point on a site unless you open another one "on the same site" that provides "the same or comparable access benefits as existed before closure..." Thus LCP policy applicable to this case makes other area access points essentially irrelevant.

*"1.07. Consistent with Coastal Act Section 30211, development shall not interfere with the public's right of access to the sea **where acquired through use** or legislative authorization. Such access shall be protected through permit conditions on permitted development, including easements, dedications or continued accessway maintenance by a private or public association. **Existing identified trails or other access points shall not be required to remain open provided that they are consolidated or relocated to provide public access on the same site and provides the same or comparable access benefits as existed before closure** and meets all other open access and other applicable access and recreation policies of the LUP."*

2. As I have stated before, basing my conclusions primarily on the alternative access study done by Planning Commissioner Bob Tefft, no other existing access route in the area provides access as usable and safe as the existing Toro Lane path for such a wide user base. This is likely why so many people have continued to use it for 70 years. Many people would be unable to use the alternate path as proposed.

3. It's not just that the existing path is superior to others. There's more. Using that path eliminates the need to walk down the west end of Yerba Buena. Yerba Buena is not very wide, has no sidewalks, and is the route used by people driving enormous RV's between Highway 1 and the entrance of the State Park campground at the west end of the street. I consider that a safety issue and suspect that others do as well.

I'd simply make two observations on liability.

First, while the this code section may protect the city from liability, it certainly does not prevent one from suing the city. So, actions we take to avoid the probability of a suit are appropriate.

Second, it is not clear that section of code provides immunity to the City if we were to decide to take the affirmative act to maintain a trail.

From a liability perspective, it is clear the city's best approach is not to maintain the alternate trail.

1. If "it is not clear that the section of code provides immunity if the City were to decide to take affirmative act(ion) to maintain a trail" then it seems to me that the City needs to get that clarified.

The City Attorney seems more than ready to swing into action in some situations. I'm sure that you recall the recent case in which some residents allege that he unnecessarily terrorized a very elderly

couple who did not trim their trees - by filing a criminal complaint against them. (Happily, public pressure seems to have put a stop to that). However, in this matter of beach access trail maintenance and liability, our City Attorney seems to be strangely silent.

Further, I will again note that the City does not seem to be similarly worried about maintenance and related liability and lawsuit potential in other areas of the City, including the perennially-uneven surface of the Rock parking lot, which the City maintains - or at least tries to maintain...

And, since the existing trail is not maintained, this also has the benefit of consistency.

1. There isn't a lot of consistency between the attributes of existing path and the proposed alternative; thus I believe that their maintenance needs would vary considerably. This makes consistency in terms of maintenance (or in this case, no maintenance) a risk rather than a benefit. Some of the differences include:

- The existing path is not on the side of a steep slope with a concrete surface below. Hence, the risk of serious injury in case of a fall is less than the risk that would exist if the proposed path were built as currently designed. Even a small amount of erosion would increase the risk of injury on the proposed path.
- The existing path is less prone to erosion than the proposed path would be - due to its location and the fact that the proposed path would be on fill.

2. Although your point on maintenance consistency is interesting, I believe that where public safety is concerned, you would not give it the highest priority.

A non-maintained trail exists now, and a non-maintained trail will exist when the home is constructed.

I suggest that depends on the results of the Coastal Commission analysis and the quiet title action that concerned residents are working on with their attorney.

On a related subject, I thought of you and your military background recently when I was doing research on the Toro Lane area, and found an interesting article about the WWII activities in Morro Bay; in particular, the U.S. Naval Amphibious training base that existed here.

<http://www.sanluisobispo.com/news/local/news-columns-blogs/photos-from-the-vault/article43471959.html>

We know that the existing path at 3420 Toro Lane was once a tank road. Maybe the tanks that used it were associated with this operation - or maybe it was another one. My late friend Sam was a Gunnery Sergeant in WWII and worked with LST's, so this is interesting to me due to the connection to him.

Linda

On 12/15/2015 5:08 PM, David Buckingham wrote:

Hi Linda,

Thanks for your note below.

You are right, there was some discussion in and around the question of liability.

On access, the most important issue for the public, we are quite happy the property owner voluntarily committed to provide an alternate access. As you saw in the various documents presented, there are a significant number of access points the immediate vicinity of this lot, enough to likely warrant not providing access at this particular point, but we're happy the property owner is willing to keep access at this point open and therefore quite robust in the immediate vicinity.

I'd simply make two observations on liability.

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Second, it is not clear that section of code provides immunity to the City if we were to decide to take the affirmative act to maintain a trail.

From a liability perspective, it is clear the city's best approach is not to maintain the alternate trail.

And, since the existing trail is not maintained, this also has the benefit of consistency.

A non-maintained trail exists now, and a non-maintained trail will exist when the home is constructed.

Thanks,

--Dave

David W. Buckingham
City Manager
City of Morro Bay



>>> Linda Stedjee <lstedjee@charter.net> 12/14/2015 7:05 AM >>>
> Sent to Council using BCC

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sidewalk which constitutes a hazard to health or safety. Warnings required by this subdivision shall only be required where pathways are paved, and such requirement shall not be construed to be a standard of care for any unpaved pathways or roads.

Although, for health reasons, I could not attend all of the December 8 meeting, I have caught much of it on the channel 20 "reruns" and I have yet to hear our City Attorney or anyone else cite the above or any other government code to clear up the liability confusion. Hence, it appears that there may have been false and misleading statements about liability and those statements may have prejudiced the Council, and even members of the public, against the appeal.

In addition, even if maintenance of the path did incur liability (which I suspect it would not), it is my understanding that the City has comprehensive liability insurance that protects the City. Isn't that insurance in effect all over town, including North Morro Bay?

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For example, the City maintains the Rock parking lot, which supports access to the Rock and the adjacent beach. In my opinion and in the opinions some other residents, the City does a rather bad job of maintaining that lot. It is usually full of big potholes, dips and bumps. Someone could easily trip there and be injured, but that doesn't seem to stop the City from doing maintenance by occasionally "paving" the lot with ground-up asphalt recycled from street paving operations. In fact, that was done fairly recently.

Why is there no worry about liability for injuries resulting from badly-done maintenance of that very large parking lot, but great concern about possible liability for maintaining one beach access path? Are concerns about liability only an issue when the City doesn't want to do something?

In conclusion, if you still don't believe me regarding liability immunity, please get that checked out by Mr. Pannone, and consider this August 24, 2014 opinion article by Charles Lester, Executive Director of the California Coastal Commission:

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*respect private property, but he ignores the fact that the act's purpose was to guard against the loss of public shoreline access from private development, and that **the broad public interest in coastal access should not be subordinated to the narrow interests of fortunate coastal property owners.***"

That last line isn't specifically about liability, but it is very applicable in the Toro Lane situation. The inferior alternate access path that has been proposed violates LCP policy 1.07 AND would result in loss of access for many users of the current access route - thus subordinating "the broad interest in coastal access" to the narrow interests of one well-heeled developer who can afford to buy a piece of our California coast for a private residence. That path needs to be redesigned to be wider and safer and it needs to be maintained.

Finally, what was all that business about how, the wider a path is, the more it will erode, and therefore a narrow path is better? Sounded to me like a bunch of utter and complete nonsense.

Linda Stedjee

From: [Linda Stedjee](#)
To: [Chaver, Yair@Coastal](#); [Locklin, Linda@Coastal](#); [Robinson, Daniel@Coastal](#)
Subject: Fwd: Re: 3420 Toro Lane
Date: Thursday, December 17, 2015 8:19:43 AM

Hi,

Me again. Below is my reply to the email I received this morning from the Mayor.

Linda

----- Forwarded Message -----

Subject: Re: 3420 Toro Lane

Date: Thu, 17 Dec 2015 06:22:25 -0800

From: Linda Stedjee <lstedjee@charter.net>

To: Jamie Irons <jjirons@morro-bay.ca.us>, flywaco@juno.com

Hi,

Thank you for sharing your presentation. It's very comprehensive and shows a strong commitment to protecting the environment - something that I appreciate.

However, in light of an LCP policy that the City evidently forgot to consider, I don't consider it applicable to the Toro Lane project.

Per Morro Bay LCP Shoreline Access and Recreation Policy 1.07, when access is acquired through use, as it clearly was on the 3420 Toro Lane property, you cannot close an access point on a site unless you open another one "on the same site" that provides "the same or comparable access benefits as existed before closure..."

Thus LCP policy applicable to this case makes other area access points essentially irrelevant. Here is the full text of the cited policy (emphasis added with bold type):

"1.07. Consistent with Coastal Act Section 30211, development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization. Such access shall be protected through permit conditions on permitted development, including easements, dedications or continued accessway maintenance by a private or public association. Existing identified trails or other access points shall not be required to remain open provided that they are consolidated or relocated to provide public access on the same site and provides the same or comparable access benefits as existed before closure and meets all other open access and other applicable access and recreation policies of the LUP."

Discussion of this policy is included in my appeal to the Coastal Commission. USPS tracking shows that the City's copy of the submitted appeal document package, mailed to Mr. Graham at the City offices at 955 Shasta, was delivered on Monday, December 14, at 11:01 A.M. and "left with person". In case you have not yet had a chance to review the appeal package, you can find the above-cited policy on pages 47 and 48 of LCP Chapter III, Shoreline Access and Recreation.

I find it strange that the staff evidently never mentioned this policy in any of their project documentation. Granted, I did not find it in the LCP myself until right after the Council hearing, but identifying applicable policies is City staff's job, and up to that point, I had been relying on them to do it. After all, it is the City that must certify that a CDP conforms to the LCP and Coastal Act.

They certainly knew that the existing access at the site was acquired through use. That is clearly acknowledged in permit approval Condition #18 of the CDP approved by the Planning Commission on October 6. Condition #18 states, in part, "In recognition of the likelihood of an implied dedication of a trail on the Property for public use over the decades, the Applicant has volunteered to offer to dedicate an area..."

An implied dedication is, as you know, a right acquired through use. One would think that once that was established, the staff would have gone back to see if there were any policies that they erroneously excluded in their original analysis, when they incorrectly declared that the existing path was not "dedicated access". However, it appears that didn't happen.

I do appreciate your strong interest in preserving and restoring ESH. I believe that at the Toro Lane site, that would have been most effectively accomplished by merging the two lots from the original parcel to create a building site that would not have involved reduced setbacks - and would have had the added benefit of not interfering with the existing path.

Linda

On 12/16/2015 9:42 PM, Jamie Irons wrote:

Dear Barry and Linda,
At the December 8 City Council meeting where you presented your appeal I also attempted to explain my position apposing your appeal and the applicants proposed project with the trail. Instead I offered to the council my view of the applicants original project proposal with a restored ESH and the elimination of the trail. Unfortunately due to my finalizing the presentation that day I overlooked converting the document to a pdf and you and the council were unable to see my full presentation. I was only able to present a hard copy of my script not the presentation that is attached to this email. I took the time to attach my narrative script to the presentation in one document. Obviously this issue was ruled on at

council and will be appealed to CCC. Do with it what you choose. I will be sending a copy to Mr. Frye as well.

Best,
Jamie

From: [Linda Stedjee](#)
To: [Chaver_Yair@Coastal](#)
Cc: [Locklin_Linda@Coastal](#); [Robinson_Daniel@Coastal](#)
Subject: 3420 Toro Lane project - issues with City drainage easement in regard to placement of proposed path, erosion control plantings, and the house itself.
Date: Monday, December 21, 2015 1:59:23 PM

Hi Yair,

Now that we are appealing the 3420 Toro Lane project to the CCC, I would like to remind everyone that there are some serious concerns regarding the building of the proposed alternate path in a City drainage easement. These concerns were expressed a while ago, and I believe it is important to restate them now.

In fact, it appears, from the applicant's diagram (second image in the forwarded email string below) that it is not just the path that would be in the drainage easement. The wall of the house actually sits on the border of the easement and, at its eastern end, apparently overlaps the drainage easement boundary. It also appears that the eaves on the north side of the house significantly encroach the drainage easement.

The City is, as you can see in the emails below, saying this is OK. I am not so sure. They have, in the past, made statements regarding legal matters that turned out to be 100% wrong.

As the messages below indicate, our Public Works Director evidently said he did not object to the proposed path being built in a drainage easement, and evidently does not object to the erosion control plantings on the side of the bluff - also in the drainage easement. However, I am not so sure that his willingness to allow this makes it alright.

No one is supposed to alter the configuration of a Morro Bay drainage easement in any way. The reason for that is obvious, but I will state it for the record. A drainage easement is there for a reason - to provide area drainage. A path on the side of the bluff, and adjacent erosion control plantings would obviously result in very significant alteration of the drainage easement. What would the impacts be - especially the impacts on ESH?

I suggest that a much smarter way to provide the on-site alternate access required by Morro Bay LCP Shoreline Access and Recreation Policy 1.07 would be to construct some kind of boardwalk on pilings to replace the section of the existing path that would be wiped out by the proposed home. This would enable safe and usable access for ALL current path users and would avoid potentially-damaging interference with drainage which is, obviously what a drainage easement is for.

A boardwalk would also help address concerns about protecting ESH at the site. This is what was done at the Elfin Forest in nearby Los Osos where, by putting a boardwalk suspended above the surface of the land, ESH is preserved, and all the little critters and the plants can safely co-exist with the site's numerous visitors. <http://elfin-forest.org/index.htm>

A boardwalk could also eliminate concerns that the proposed alternative access would be only temporary, and would be unsafe and even unusable for many users of the current path. It would also make maintenance much easier. If it were constructed of something like Trex, maintenance would be very minimal (I know because I have two decks made of that material.) This would mean it would likely be fairly easy to find someone to accept maintenance responsibility, avoiding the risk of having the alternate path never opened for public use (per Coastal Act 30212) - which would violate policy 1.07.

Yes, this would cost some money, but a well-designed-and-constructed section of boardwalk would help preserve an important beach access route used by generations of people from middle- and lower-middle income neighborhoods east of Highway 1. It would ensure adherence to Policy 1.07. It would ensure that the drainage easement functions correctly, as pilings would only minimally obstruct water flow, and it would undoubtedly cost less than fighting the quiet title lawsuit soon to be filed. I learned today that the attorney for the plaintiff is currently in the process of writing the documents for the filing.

Linda Stedjee

----- Forwarded Message -----

Subject:Re: Construct a trail over a drainage easement?

Date:Fri, 9 Oct 2015 13:20:15 -0700

From:Scot Graham <SGraham@morro-bay.ca.us>

To:Linda Stedjee <lstedjee@charter.net>

CC:Daniel@Coastal Robinson <Daniel.Robinson@coastal.ca.gov>, Whitney Mcilvaine <WMcilvaine@morro-bay.ca.us>

With the trail being offered to the public, the encroachment permit requirement is not necessary.

As you indicate, the City does not intend on maintaining the trail and it will be signed accordingly.

Scot

>>> Linda Stedjee <lstedjee@charter.net> 10/9/2015 12:34 PM >>>

>

Hi Scot,

Thanks for the response. I am very surprised that the City would not require an encroachment permit for anything built on a City easement.

I still believe that it is clear that any such trail would not last long. I believe it is obvious that, without maintenance (and it has been clearly stated there would be none) it would be eroded away very quickly, with whatever fill was used washing down the bank into the stream. Thus, the promised alternative access would very quickly be gone.

Linda

On 10/9/2015 12:15 PM, Scot Graham wrote:

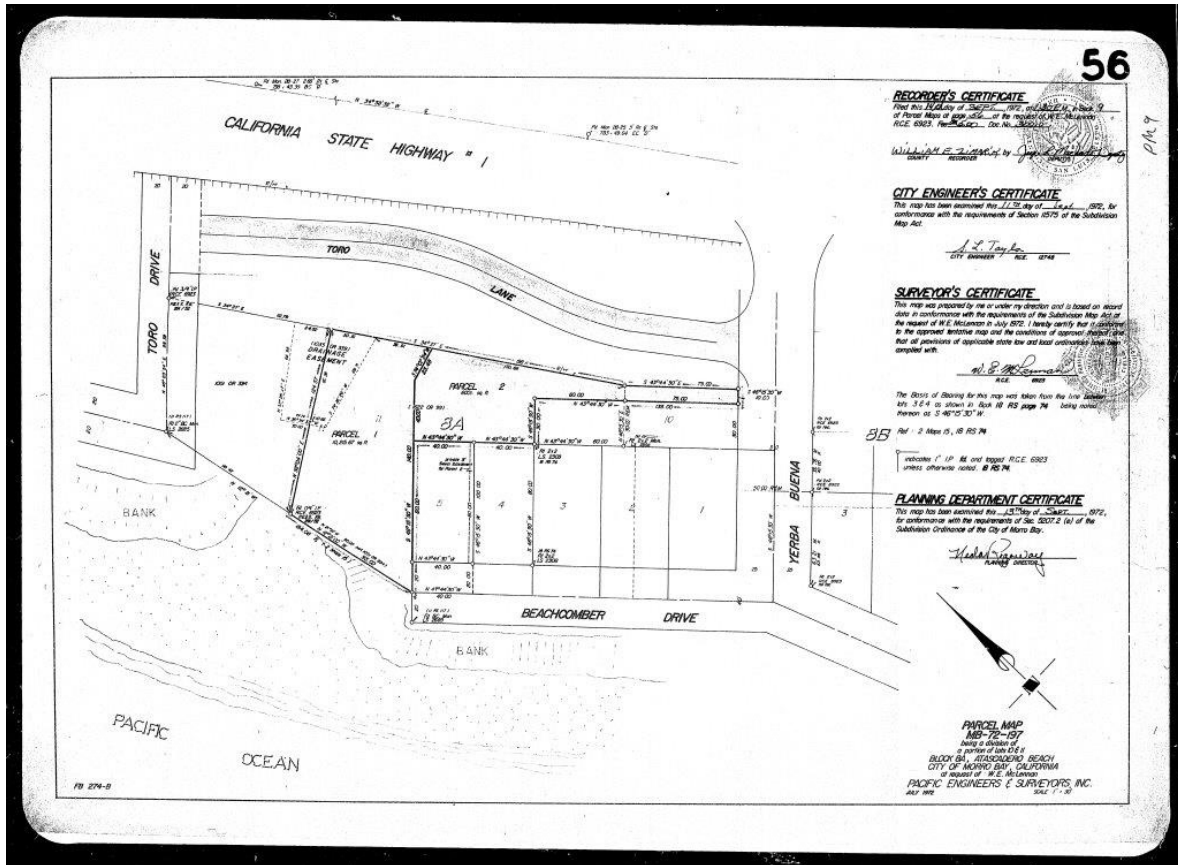
Hi Linda,
Our Public Works Department reviewed the project and I confirmed with Rob Livick, Public Works Director, that there is no issue placing the trail within the drainage easement. They also had no issue with the plantings.
Scot

>>> Linda Stedjee <lstedjee@charter.net> 10/9/2015 10:26 AM >>>

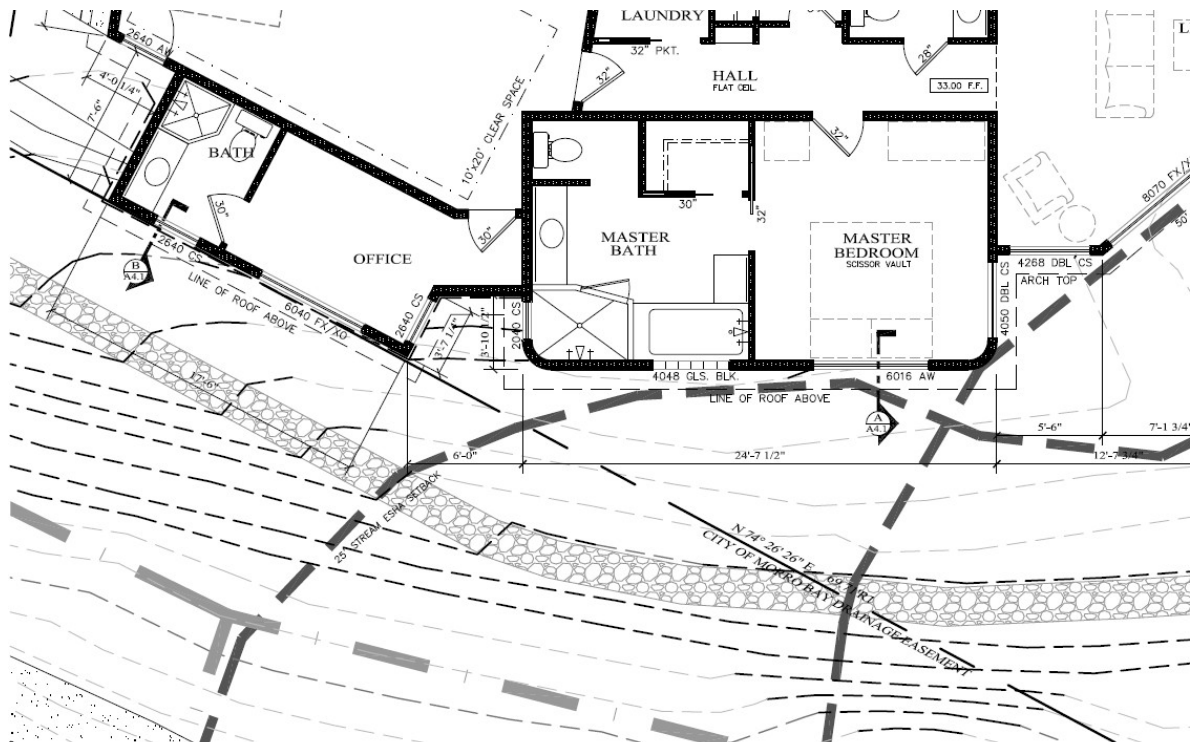
> Hi,

There is another issue related to the proposal to re-route the public path at 3420 Toro Lane, Morro Bay.

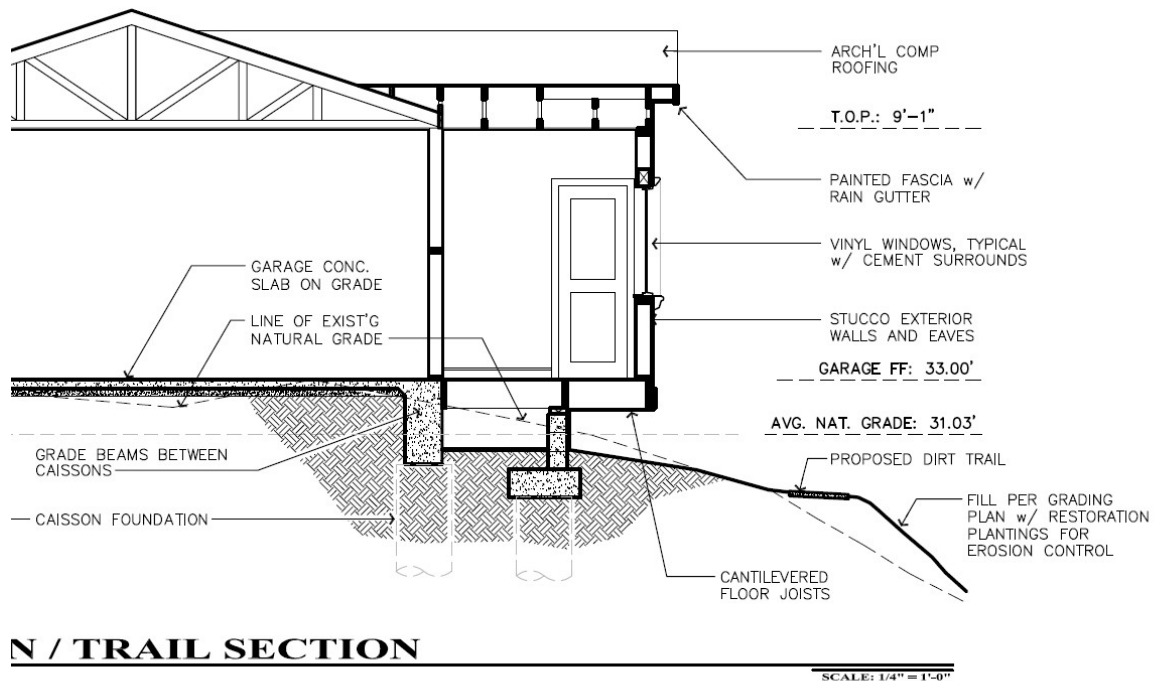
As you know, I asked for some documents on the 3420 Toro Lane property. Planning and Building gave me this old parcel map from 1972 in response to my public records request. It shows a drainage easement over part of the lot where Mr. Frye proposes to build his house. It's very hard to read the print on the map, but the drainage easement is the trapezoidal figure on the east side of Frye's lot and that of his neighbor to the north.



I just pulled a diagram from the agenda packet for the October 6 hearing on the project, and captured this part, which clearly identifies the drainage easement boundary:



I see that the north walls of the bathroom and office in the left side of the diagram lie right on top of the southern boundary of the drainage easement. Much of the rerouted path would be constructed **within** the drainage easement. The following diagram, also from the agenda packet, shows that they plan to use fill to construct the path - I guess to create a level area for the path on that steep slope. Is it legal to modify a the contours of a drainage easement like that?



I thought you couldn't alter the configuration of a drainage easement in any way. I thought people were not supposed to plant things there either, but I could be wrong about that. The diagram does indicate "plantings for erosion control".

I will also point out that one must question how long an unmaintained path (and it was clearly stated that it not be maintained) would last in a drainage easement on the steep side of a canyon.

Linda Stedjee

From: [Linda Stedjee](#)
To: [Chaver, Yair@Coastal](#)
Cc: [Robinson, Daniel@Coastal](#); [Locklin, Linda@Coastal](#); [Carl, Dan@Coastal](#)
Subject: 3420 Toro Lane project - concerns with City of Morro Bay actions and objectivity
Date: Tuesday, December 22, 2015 10:29:54 AM

Hi Yair,

As previously mentioned, I recently came across a 2014 opinion article written by CCC Executive Director Charles Lester. It says, in part, "*...the broad public interest in coastal access should not be subordinated to the narrow interests of fortunate coastal property owners.*"

<http://www.sfgate.com/opinion/openforum/article/Martins-Beach-reflects-Californians-choice-to-5682494.php>

Those words seem particularly important in regard to the Toro Lane situation. The City of Morro Bay has put the interests of one CDP applicant, who can afford to buy a piece of our California coastline for a private residence, ahead of the interests of hundreds of other Morro Bay residents who live in the far-less-affluent neighborhoods on the east side of Highway 1. Many of those residents depend on the existing Toro Lane beach access path as the only safe and usable beach access within walking distance of their homes.

Why would the City do that? This situation seems to be a textbook example illustrating why the Coastal Act was passed and the the Coastal Commission was formed. Some residents have become very concerned about what appears to be a serious lack of objectivity among some persons in City government. It appears that the City is going out of its way to push the project through for the benefit of one property owner while ignoring the coastal access rights, under the Coastal Act and our LCP, of hundreds of other Morro Bay residents.

Is City government not charged with enforcing the law, and with serving and protecting the interests of all residents? The Coastal Act is clearly intended to protect and defend coastal access for everyone, not just an affluent few, and our LCP makes it clear that the provisions Coastal Act must be implemented at the local level.

Given this and other failures by the City to adhere to the letter and the spirit of the Coastal Act and our LCP, I ask that in evaluating the appeals of 3420 Toro Lane CDP recently granted by the City of Morro Bay, you examine very closely any information provided by the City, and that you independently verify that information.

In terms of potential problems with the City's objectivity in regard to this project, here are some examples of what residents are concerned about:

- **The City's failure to investigate the prescriptive easement issue:** The City Ignored residents' warnings that a prescriptive easement could be claimed on the existing beach access path and apparently failed to do any investigation of the issue. One City document, dated May 29, 2015, actually says, in writing, that the path is not dedicated public access. This attitude continued until residents did their own prescriptive easement survey and turned the forms in to the City on August 11, 2015.

- **The City's failure to identify and apply LCP Access Policy 1.07, which is favorable to the interests of path users and unfavorable to the CDP applicant:** The City failed to mention LCP Shoreline Access and Recreation policy 1.07 in any public meeting, or in project document that I have been able to find. On more than one occasion, staff members and elected and appointed officials claimed that there was other access in the area; hence, the access at 3420 Toro Lane could be eliminated. I have heard it said that some of our City Staff are very knowledgeable about LCP content. Yet, this policy was never mentioned in regard to the 3420 Toro Lane project until residents found it.
- **The City's failure to identify and appropriately address the potential impacts of Coastal Act section 30212:** Section 30212 states that "*Dedicated accessway shall not be required to be opened to public use until a public agency or private association agrees to accept responsibility for maintenance and liability of the accessway.*" So, the applicant would not have to open a new, alternative access route unless someone takes responsibility for maintaining it, and for liability. Both the applicant and the City have clearly stated they would not maintain the new path. So, it might never be open to the public, even if it were constructed.
- **The City's failure to appropriately investigate liability issues:** Both the applicant and the City have used liability as a reason for refusing to maintain a new alternative path. However, the City has been provided with specific legal references that appear to show that the City would NOT be liable. Even so, as of this writing, the City appears to be studiously ignoring those laws. Further, even if there were liability, why would this be a big issue in regard to one small path when the City has comprehensive liability insurance covering the numerous entities that it maintains, such as streets, sidewalks, parking lots, etc.?
- **The City's dismissal of concerns regarding construction in a drainage easement:** No one is supposed to alter the configuration of a Morro Bay drainage easement in any way. However, when advised that the Toro Lane alternative path and erosion control plantings would be installed on a formally-defined City drainage easement, City staff said that was OK with them. They also did not seem concerned that builders' diagrams indicate that part of the wall of the proposed house would sit right on the easement boundary, and that the eaves would extend into the easement. If no one is allowed to alter the configuration of a drainage easement, how can this be acceptable? How would the alterations to drainage patterns impact ESH?
- **The City's expression of concerns about ESH in regard to the current path, while ignoring ESH issues in regard to other area beach access paths:** City officials have cited concerns about ESH in pushing for elimination of the beach access at 3420 Toro Lane and restoration of ESH. However, they seem completely unconcerned about ESH issues related to other beach access in the area. Several area access routes go directly through a fairly-wide field of sand dunes. Our LCP says, "*Uncontrolled and undirected shoreline access has, over the years, resulted in resource damage to the sand dunes paralleling the beach. Dune vegetation has been trampled and lost and the dunes themselves have eroded away. Fragile native plants and wildlife have been lost. There is an urgent need to control and direct access, and restore, as far*

as possible, the former dune habitat." Why would the City be so worried about ESH in regard to the existing Toro Lane path, which does not require navigating a wide swath of dune habitat to reach the beach, while ignoring ESH issues related to other access paths that do?

- **The City's expression of concerns about ESH at 3420 Toro Lane as contrasted with an apparent lack of concern regarding environmental damage caused by leaking sewage from the City's dilapidated sewer lines:** Council and staff have been presented with irrefutable evidence that leaking sewage is contaminating the ground water and the ocean. Sucralose was found in every tested well downgradient of City sewer lines, and images of the interiors of many lines clearly show huge cracks, holes, and pipe separations that obviously allow sewage to leak into the groundwater. Yet, the City has done little to fix the lines, and has said that it will wait four years to fix the main culprit, the Main Street trunk line. The massive environmental harm being done 24/7 seems of no concern to them whatsoever; yet City officials and staff profess great concern for the very small area occupied by one beach access path.
- **The Council's apparent failure to listen to project appellants and concerned residents before making a decision on the CDP for the 3420 Toro Lane project:** Several people remarked to me that the questions asked by Council members at the hearing sounded rehearsed, and that they seemed to have made up their minds before they got there. Worse than that is the fact that the Mayor had already prepared a slide presentation favoring total elimination of the path before the hearing. Concerns expressed by path users who spoke at the hearing, along with facts brought forward in the appeal presentations, seemed to fall on deaf ears. Then, a few days later, the mayor sent his slide presentation to me and to the other appellant, and told us that he was also going to share it with the applicant. Why would anyone do that?

To summarize, there are some serious questions regarding the objectivity of the City of Morro Bay in its handling of the CDP for the 3420 Toro Lane project. Their actions seem to indicate an attitude that is the polar opposite of that expressed in Mr. Lester's 2014 letter, when he said, "the broad public interest in coastal access should not be subordinated to the narrow interests of fortunate coastal property owners."

Please consider this when reviewing and evaluating information and commentary that you receive from City officials and staff.

Linda Stedjee

From: [Linda Stedjee](#)
To: [Chaver_Yair@Coastal](#)
Cc: [Robinson_Daniel@Coastal](#); [Locklin_Linda@Coastal](#)
Subject: 3420 Toro Lane - serious concerns regarding consultant standards and conclusions
Date: Sunday, December 27, 2015 8:08:28 AM

Hi Yair

We have identified some very significant concerns regarding content of consultant reports that have been used as a basis for determining:

- The viability of the 3420 Toro Lane building site
- Appropriate placement of a house on the site
- Location of an alternative beach access path on the side of the bluff.

I believe that the concerns discussed below more than justify taking another look at the location and configuration of the proposed house, and also justify requiring that any alternative beach access path on the site be constructed as a boardwalk to for the protection of ESH.

Concerns include

- Significant unexplained and insufficiently-explained differences in statements and conclusions found in reports done by the same consultants at different times
- Specific methodologies and evidence that the consultants used to arrive at their stated conclusions.

There are four general areas of concern. Section A, below, includes summaries of each area. Section B provides detailed discussions of each area of concern, with illustrative images, references, and links to pertinent documentation.

A. Summary of Concerns

1. Coastal Bluff erosion: Earth Systems Pacific, which did the geologic study for the current project, also did one in 2002 for the former property owner. There is a significant difference in their estimates of coastal bluff erosion then and in 2013.

In 2002, the consultants said the coastal bluff erosion rate at the 3420 Toro Lane site was 2.0 , and cited the analysis done to support that conclusion. However, in 2013, they said that the rate was 1.2, but did not cite any analysis done to support that, and did not discuss the results of their own study done in 2002. In 2013, they simply said, "An erosion retreat rate of 1.2 inches per year for the marine terrace deposits was estimated for the site ocean bluff." Estimated by whom? Based on what?

They took 40% off their 2002 estimate and gave no reason for doing so. Why did the consultants make such a radical change in their estimate with no explanation?

2. Tsunami wave runup:

Earth Pacific Systems, the consultants who did the geologic study for the 3420 Toro Lane project, also did the Sea Wave Runup study. In that study, they stated that the maximum tsunami flood elevation for that site was 17.2 feet. This number has come up and been questioned before. The last time was in 2012, when the City of Morro Bay was attempting to justify putting the new sewer plant in a beachside location adjacent to the current facility.

The methodology used to develop the 17.2 foot estimate for the sewer plant site was very basic. Earth Systems Pacific took their 100-year design still water elevation of 7.65 feet (based on a 1973 observation from a source that includes data through the year 2001), added their expected 100-year 4.58 sea level change, and got 12.2 feet. Then, they took the highest surge from the Japan tsunami (about 5 feet) and added that to 12.2 to get 17.2 feet.

There are obvious issues with this extreme simplification of a complex system, including the fact that the 5-foot surge from the Japan tsunami is not likely to be the highest possible in the future (or even the highest that ever hit Morro Bay in the past). The City of Morro Bay Local Hazard Mitigation Plan, indicates that in 1878, a tsunami "Reportedly overtopped the sand spit between the bay and the ocean".

In addition, the 17.2 foot estimate is significantly lower than tsunami inundation level estimates used in emergency plans of local agencies including San Luis Obispo County (40 - 50 feet), Cal Fire (over 28 feet), and the City of Morro Bay (no greater than 50 feet over mean sea level). In addition, studies done for the Diablo Canyon nuclear power plant, a short distance south of Morro Bay, predict a 36.4 foot maximum tsunami inundation level.

3. Channel Bluff erosion - or lack thereof: To support their statements regarding the alleged lack of erosion of the the "channel bluff", Earth Systems Pacific consultants used aerial photos taken in 2001 and 2014. However, it is clear that the relative positions of landmarks in the two photos are noticeably "off". This could be due to camera lense distortion, the angles from which the photographs were taken , and distortion resulting from taking photos through plane windows.

When the images are rotated and sized for visual comparison, the obvious landmarks simply do not line up. One or both of the images appear to be significantly distorted; particularly in the horizontal. The consultants cited use of "photogrammetric analysis, but provided no indication of the specific methods and equipment used.

With just one image from each time period, and no discussion of the methods used to compare them, it is easy to question the reliability of statements based on review of two photographs that show visible landmarks in different positions in relation to each other.

4. Mysterious missing purple needlegrass and other components of ESH:

In March, 2012, Kevin Merk Associates (KMA) performed a biological assessment of the parcel where the 3420 Toro Lane site is located. Given that the applicant bought the property in November, 2012, it appears likely that this study was done for the sellers in order to provide information to potential buyers.

In the 2012 study, KMA identified various components of ESH on the property, and suggested that a 50-foot setback from the riparian corridor would ensure that the ecological health and function of the drainage feature and adjacent ESH were protected.

Two years later, in 2014, working this time for the current permit applicant, the same consultants revised their original report. In a letter to the applicant they stated, among other things, that an area they had previously classified as "degraded coastal prairie" is now considered "annual grassland" because on their recent visit, they did not see purple needlegrass. They said it must have been "consumed by gophers".

In the 2014 report, the consultants made statements about how they were "more accurately" characterizing the nature of the plants found on the site. Does this mean that their original report was completely wrong? Does this mean that in just two years, ESH on the site disappeared, never to be seen again? Neither explanation seems entirely satisfactory.

B. Detailed Discussion of Concerns

Below is more detailed evidence supporting discussion of each of the above points.

1. Coastal Bluff erosion:

Earth Pacific, which did the geologic studies for the current project, also did one in 2002 for the former property owner, Florence McLennan. There is a significant difference in their estimates of coastal bluff erosion then and in 2013.

In 2002, the consultants said the coastal bluff erosion rate at the 3420 Toro Lane site was 2.0 , and cited the analysis done to support that conclusion. However, in 2013, they said that the rate was 1.2, but did not cite any analysis done to support that, and did not discuss the results of their own study done in 2002. In 2013, they simply said, "An erosion retreat rate of 1.2 inches per year for the marine terrace deposits was estimated for the site ocean bluff." Estimated by whom? Based on what?

They took 40% off their 2002 estimate and gave no reason for doing so. Why did the consultants make such a radical change in their estimate with no explanation?

Here are some quotes from the two studies.

- a. The following is from the **2002** study done by Earth Systems Pacific, same company that did the recent one. This was for a house to be built at 3450 Toro Lane, but although the addresses are different, it's the same lot. <http://www.morro-bay.ca.us/documentcenter/view/8746> On page 13 of 25 is the following:

"Bluff Retreat

In determining the bluff retreat rate for the site, the results from the review of the tract and topographic maps indicated that during the last 45 years, the bluff top has eroded at a rate of 0.89 to 2.0- inches per year. At location C, per the Photogrammetric Analysis Map, during the last 9 years, almost 4.5 feet of bluff was eroded. However, it is believed that the bluff top at this location may have been disturbed as a result of the residential and infrastructure development in the area.

In reviewing the results of the two bluff retreat methodologies it appears that the bluff has been eroding at an average rate of 2.0 inches per year within the site bluff area. Therefore, based on the above data and the results of the bluff retreat rate comparison, we recommend that a long-term average bluff retreat rate of 2.0 inches per year be used for the site. It should be noted however, that the actual bluff erosion rate will typically be episodic and irregular. The majority of the erosion will occur during El Nino events when there is temporary rise in the sea level. The above bluff retreat rate also reflects the last seven strong El Nino events.

For a 75-year building design life with a site long-term average bluff retreat rate of 2.0 inches per year, we recommend a building setback of 12.5 feet from the established top of bluff. To account for possible error in the analysis and measurements of the long term average bluff retreat rate and unforeseeable episodic bluff erosion events, we recommend that an additional 10 feet be added to the 12.5 foot bluff top building setback, for total setback of 22.5 feet, see Site Plan in Appendix."

- b. Earth Systems Pacific had something different to say about the bluff retreat rate in their **2013** study done for the current applicant. <http://www.morro-bay.ca.us/documentcenter/view/8745> On page 3 of 8 is this:

"Bluff Erosion

Minor sea wave erosion has resulted in ocean bluff retreat during the last 60 years and the erosion retreat rate has slightly decreased during the last 11 years. An erosion retreat rate of 1.2 inches per year for the marine terrace deposits was estimated for the site ocean bluff. For a 75-year period with a long-term average site bluff retreat rate of 1.2 inches per year, it is estimated that the bluff will retreat 7.5 feet from the current top of bluff. The California Coastal Commission (CCC) requires that additional 10 feet should be added to the 7.5-foot bluff top building setback for total setback of 17.5 feet. The CCC adds a 10-foot buffer to the long-term average bluff retreat rate to account for unforeseeable

episodic bluff erosion events and sea level rise. The 17.5-foot bluff top building setback is less than the City of Morro Bay Title 17, 17.45.040 required setback of 20 feet; therefore the City of Morro Bay setback should be used for the new development and construction (see attached Topographic Site Map)."

2. Tsunami wave runup:

Earth Pacific Systems, the consultants who did the geologic study for the 3420 Toro Lane project, also did the Sea Wave Runup study. In that study, they stated that the maximum tsunami flood elevation for that site was 17.2 feet. This number has come up and been questioned before. The last time was in 2012, when the City of Morro Bay was attempting to justify putting the new sewer plant in a beachside location adjacent to the current facility.

The methodology used to develop the 17.2 foot estimate for the sewer plant site was very basic. Earth Systems Pacific took their 100-year design still water elevation of 7.65 feet (based on a 1973 observation from a source that includes data through the year 2001), added their expected 100-year 4.58 sea level change, and got 12.2 feet. Then, they took the highest surge from the Japan tsunami (about 5 feet) and added that to 12.2 to get 17.2 feet.

There are obvious issues with this extreme simplification of a complex system, including the fact that the 5-foot surge from the Japan tsunami is not likely to be the highest possible in the future (or even the highest that ever hit Morro Bay in the past). The City of Morro Bay Local Hazard Mitigation Plan, indicates that in 1878, a tsunami "Reportedly overtopped the sand spit between the bay and the ocean".

In addition, the 17.2 foot estimate is significantly lower than tsunami inundation level estimates used in emergency plans of local agencies including San Luis Obispo County (40 - 50 feet), Cal Fire (over 28 feet), and the City of Morro Bay (no greater than 50 feet over mean sea level). In addition, studies done for the Diablo Canyon nuclear power plant, a short distance south of Morro Bay, predict a 36.4 foot maximum tsunami inundation level.

Specifically, the 2012 Earth Systems Pacific report done for the sewer plant project said,

"The recent seismic event that occurred in Japan on March 11, 2011 produced an 8.9 magnitude earthquake. Local news reports indicated that this earthquake caused a tsunami tidal surge into Morro Bay that was documented as one of the highest surges recorded along the California Coast. Dean Wendt of San Luis Obispo Science and Ecosystem Alliance (SLOSEA) prepared a graph showing the normal changes in the Morro Bay tidal heights followed by tsunami-generated surges over the next four hours initiated by the March 11, 2011 Japan earthquake; this graph "Tsunami Surges in Morro Bay" is appended. The highest tidal surge documented in the graph was approximately 5 feet. The maximum 5 foot tidal surge was added to the 100-year design still water elevation of 12.2 feet to derive a total tsunami elevation of 17.2 feet, and plotted on Cross Section A-a'. This maximum tsunami elevation is slightly higher than the 100-year sea wave run-up elevation, which was calculated at 15.7 feet."

It appears that the consultants simply used the same number for the 3420 Toro Lane site.

The estimated maximum tsunami water level elevations for the beachside WWTP site are as follows:

San Luis Obispo County Plan	40 – 50 feet
Cal Fire Plan	over 28 feet
Morro Bay Local Hazard Mitigation Plan	no greater than 50 feet above mean sea level
Dudek/Earth Systems Pacific Study	17.2 feet

The figure in the San Luis Obispo County Plan is from recent run-up and inundation modeling and mapping, done by the University of Southern California (USC) under contract to Cal EMA. Diablo Canyon is not that far from here, and they came up with 36.4 feet, as follows:

"The limiting case for the UFSAR tsunami runup was developed using historical tide, storm surge and storm wave data combined with an analytically determined, near shore tsunami wave height. Because the intake structure's geometry impacts the combined wave runup in a complex way, the maximum credible wave runup was determined using a scale model of the intake bay, breakwater and intake structure. This model was placed in a large tank with a wave generator to determine wave runup elevation on the scale model. The maximum runup value was obtained by simulating a combined, long period wave consisting of tsunami, storm surge and tide of 17' MLLW with a superimposed storm wave height of 26.8' MLLW. This equates to a combined wave height of 43.8' MLLW. The resulting maximum runup was 34.6' MLLW. The limiting elevation (bottom of ASP snorkel) is 48' MLLW." (emphasis added) The study also refers to the Updated Final Safety Analysis Report (UFSAR) "credible wave height" as 36.4."

It would seem prudent to place more reliance on the more sophisticated and detailed studies done by USC and the power plant than on the very simplistic calculation apparently used for the 3420 Toro Lane wave runup analysis.

3. Channel Bluff erosion - or lack thereof:

To support their statements regarding the alleged lack of erosion of the "channel bluff", Earth Systems Pacific consultants used aerial photos taken in 2001 and 2014. However, it is clear that the relative positions of landmarks in the two photos are noticeably "off". This could be due to camera lense distortion, the angles from which the photographs were taken, and distortion resulting from taking photos through plane windows.

When the images are rotated and sized for visual comparison, the obvious landmarks simply do not line up. One or both of the images appear to be significantly distorted; particularly in the horizontal. The consultants cited use of "photogrammetric analysis, but provided no indication of the specific methods and equipment used.

With just one image from each time period, and no discussion of the methods used to compare them, it is easy to question the reliability of statements based on review of two photographs that show visible landmarks in different positions in relation to each other.

Unexplained differences in the ocean bluff erosion rates specified by this consultant in 2002 and in 2013 (2.0 versus 1.2), along with the extremely "basic" nature of this consultant's tsunami inundation level calculations raise some questions regarding the depth and nature of the analysis used to develop conclusions regarding channel bluff erosion.

To illustrate the lack of congruence between landmarks in the 2001 image and the 2014 image, I have:

- rotated the original images to line up some key landmarks (the first image was rotated 2 degrees, and the second one 42 degrees)
- sized the images to get those landmarks as close as possible to the same size
- added a grid
- cropped the images

Please note that the red lines were put in by the consultants; I added the grid of green and blue dotted lines.





Using the grids as a guide, it is clear that the horizontal positions of landmarks in the two photos are noticeably "off". Without other photos taken in 2001, and others taken in 2014, how do the consultants know that what they have are accurate representations of the site? It appears that they have no way of knowing which, if either photo accurately represents reality. How, based upon this questionable evidence, do the consultants know where anything really is - and thus, how do they know whether there has been "channel bluff" erosion or not?

The original images provided by the consultants can be viewed on page 7 of 8 in this document: www.morro-bay.ca.us/DocumentCenter/View/8742 (Please note that the arrows indicating north, evidently added to the images by the consultants, do not point in exactly the same direction when the images are rotated to line up the landmarks.)

4. Mysterious missing purple needlegrass and other components of ESH:

In March, 2012, Kevin Merk Associates (KMA) performed a biological assessment of the parcel where the 3420 Toro Lane site is located. Given that the applicant bought the property in November, 2012, it appears likely that this study was done for the sellers in order to provide information to potential buyers.

In the 2012 study, KMA identified various components of ESH on the property, and suggested that a 50-foot setback from the riparian corridor would ensure that the ecological health and function of the drainage feature and adjacent ESH were protected.

Two years later, in 2014, working this time for the current permit applicant, the same consultants revised their original report. In a letter to the applicant they stated, among other things, that an area they had previously classified as "degraded coastal prairie" is now considered "annual grassland" because on their recent visit, they did not see purple needlegrass. They said it must have been "consumed by gophers".

In the 2014 report, the consultants made statements about how they were "more accurately" characterizing the nature of the plants found on the site. Does this mean that their original report was completely wrong? Does this mean that in just two years, ESH on the site disappeared, never to be seen again? Neither explanation seems entirely satisfactory.

In 2012, on page 16 of 26 of the 3450 Toro Lane Biological Assessment, done at request of McLennan family trust, the consultants said,

"By following the policies in the City's LCP, and adhering to a 50-foot setback from the top of bank or edge of the riparian canopy (in this case, the one arroyo willow shrub) onsite, future project construction and long-term occupation of the site would not be expected to jeopardize the existence of the overall ecological health and functions of the drainage feature and adjacent coastal prairie, central dune scrub/Iceplant or arroyo willow habitat."

Here is an image from the 2012 report, which may be viewed at: <http://www.morro-bay.ca.us/documentcenter/view/8739>



Here, in marked contrast, is an image from the 2014 letter, which can be viewed at <http://www.morro-bay.ca.us/documentcenter/view/8741> :



Obviously, there is a lot of ESH that was in the first image, but is not in the second. What happened here? The consultants indicate they discussed the site with the CCC Ecologist, Dr. Engel, but do not indicate that Dr. Engel had actually visited the site. In their letter, they state,

"Following guidance from the CCC Ecologist, Dr. Engel, the vegetation classification was refined to more precisely determine the limits of ESHA. The area previously identified as degraded Coastal Prairie was determined to more accurately represent Annual grassland, since the area was impacted by pocket gopher (*Thomomys bottae*) activity. The purple needle grass (*Stipa pulchra*) plants that were observed in 2012 and formed the basis of the original habitat characterization as degraded Coastal Prairie were gone, apparently consumed by gophers. The area now consists of bare soils (gopher tailings) and scattered remnants of annual grasses, and was therefore changed to Annual Grassland on the attached habitat Map included as Figure 3. In addition, the area classified as Central Dune Scrub/Iceplant was also re-evaluated to determine if a more accurate characterization of the plant community composition was possible. Based on the predominance of iceplant (*Carpobrotus* spp.) with small amounts of beach bur (*Ambrosia Chamissonis*) growing on beach sands (compared the adjacent heavier clay soils) the area was reclassified as Iceplant Mat/Foredune. This is an important separation from the Iceplant Mat growing on heavier clay soils observed on the slope in the southern part of the site. The Iceplant Mat/Foredune habitat type occurs on beach sands and was re-classified to more accurately reflect plant composition and its position to the ocean. this habitat or plant community still meets the definition as coastal dune ESHA."

More accurately? Does this mean that in 2012, they produced an inaccurate report? If so, how did that happen? If the consultants did not produce an accurate report in 2012, what assurance is there that their 2014 work is accurate?

I would like to specifically address the issue of the purple needlegrass. While I am not a botanist, I find the idea that the needlegrass is "gone" very odd simply due to the fact that we have been in a prolonged drought. One does not need to be a botanist to have observed that plants can go dormant during periods of stress, and show up again when conditions are more favorable. Were that not the case, it seems reasonable to assume that most species on the planet would have been wiped out long ago.

Years ago, I had a large shrub removed from my property, and saw no sign of it for at least 5 years. Then, last summer, it appeared again in the same spot. I was told by the yard maintenance people that some of the root material had evidently been left underground, allowing the plant to regrow years after it was "removed".

I did some research on purple needlegrass and learned from USDA documents that "Purple needlegrass has been reported to root as deep as 16 feet (4.8 m) in deep soils (Netstate 2009), but the roots more typically range from 2 to 6 feet deep (pers. obs.)." I then did some research on the pocket gophers that the consultants claimed had eaten the needlegrass, and found that their feeding tunnels range from 4 to 12 inches beneath the soil (although their nests are deeper underground). This seems to indicate that the gophers would not have eradicated deep roots. In addition, one of the USDA documents said that purple needlegrass is

known for establishing easily on disturbed soils, roadsides and gopher mounds. If gophers considered the needlegrass to be a highly-desirable food source, would it be easy for it to get established on top of gopher mounds?

From a publication called, "Landowners Guide to Native Grass Enhancement and Restoration", by Mark Stromberg, Ph.D. Hastings Natural History Reserve, UC-Berkeley and Paul Kephart, Rana Creek Habitat Restoration, Inc., I learned that many bunches of purple needlegrass are over 200 years old, and some may live 1,000 years. Sounds like pretty hardy stuff to me.

So, is it really "gone" or is it simply dormant? I'm leaning toward the latter.

In that same vein, are the wetlands species not observed at the Toro Lane site recently gone for good, or would they repopulate the area after a season or two with normal rains?

Is it right to allow building to forever wipe out what has been sensitive coastal habitat because, after a prolonged drought, the usual occupants were not observed? If you do, that habitat is lost forever. Like the coastal bluff, it will just keep eroding - unless we prevent that from happening.

Linda Stedjee

From: [Linda Stedjee](#)
To: [Chaver_Yair@Coastal](#)
Cc: [Locklin_Linda@Coastal](#); [Robinson_Daniel@Coastal](#)
Subject: 3420 Toro Lane - City allowed narrower-than-reasonably-necessary stream corridor buffer
Date: Thursday, December 31, 2015 8:41:47 AM

Hi Yair,

As I go through the City of Morro Bay's 3420 Toro Lane project documents, I am finding more concerning information. As noted in an earlier email, some of us are seriously questioning the objectivity of the City of Morro Bay in regard to this project. I just found one more reason to do that. The City allowed a narrower-than-necessary stream corridor buffer, claiming that the buffer width granted to the applicant is "reasonably necessary" to allow site development. I have found evidence that it is not.

In the documents attached to the 10/6 Planning Commission agenda, is this conditional use finding:

Reduced Buffer Area Finding

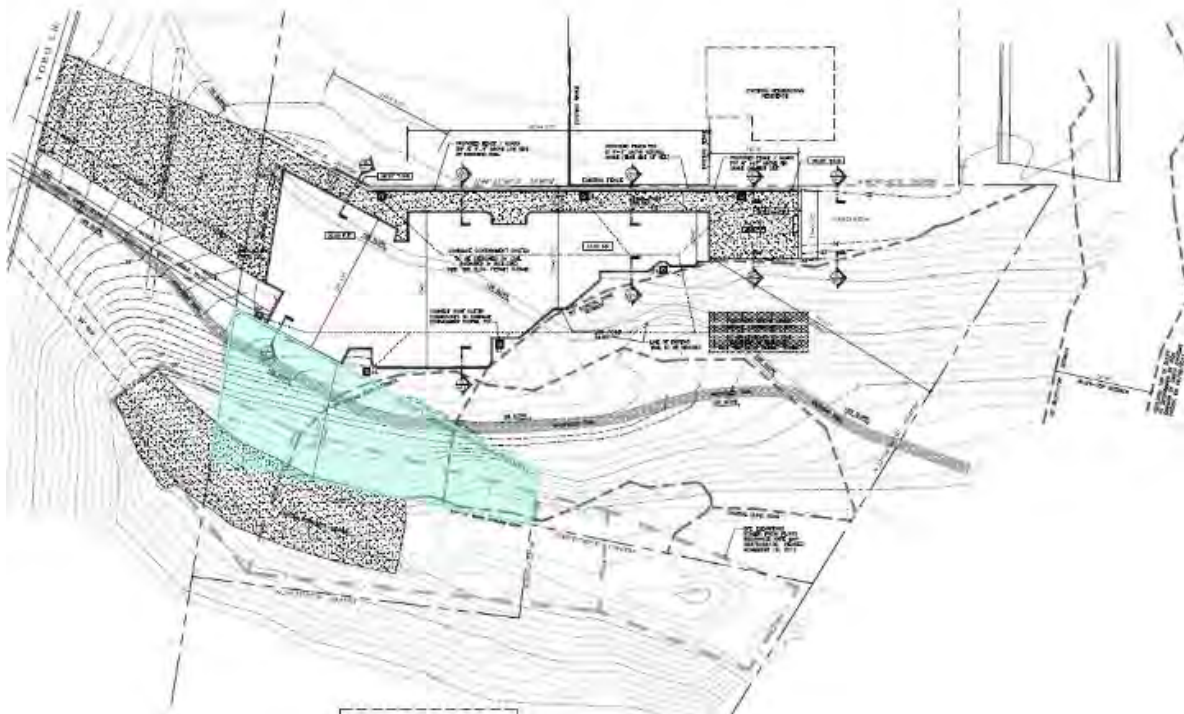
1. Consistent with the Coastal Land Plan Use (Policy 11.14) and the Environmentally Sensitive Habitat development standards in the City's Zoning Ordinance (subsection 17.40.040.D.6), **the reduction in the stream corridor buffer area from 50 feet to 25 feet is reasonably necessary to allow development of the site** and environmental mitigation is incorporated into the project description to require native habitat restoration landscaping in the buffer area.

However, among the project documents on the City's Web site is the 2002 geologic report done for the same building site (although the street address given at that time was different): <http://www.morro-bay.ca.us/documentcenter/view/8746>. It includes this plan for a house that was proposed at that time. Please note that the following 2002 image shows a home that is sited at least 5 feet south of the City of Morro Bay drainage easement, at its nearest point. I have shaded the easement, as shown in the diagram, in blue.



I believe that this makes it very clear that it is NOT "reasonably necessary" to reduce the stream corridor buffer area from 50 feet to 25 feet to allow development of the site. The 2002 development proposal makes that pretty obvious.

Please compare the above image to this one, the 2015 house proposal (in which I have also shaded the drainage easement indicated on the diagram).



The information provided by the two diagrams could easily lead one to conclude that although the City had evidence that the site **could** be developed with a wider stream buffer setback, City personnel apparently chose to ignore that fact and to allow the applicant to have a narrower setback in order to build a bigger house. They also stated, when questioned, that it was OK for the wall of the house to sit on the edge of the drainage easement. As noted in an earlier email, and I also question the validity of that claim.

Please also note that the current applicant appears to have managed to talk the City out of requiring a driveway shared with the adjacent lot in the parcel (this topic was discussed by the Planning Commission). This does not seem to have been a concern for the 2002 project applicant. Please note, in the 2002 image above, the shared driveway shown in the upper left of the image.

On a related subject, we will be monitoring the site for the re-appearance of purple needlegrass, which I suspect will show up again after some significant rain storms. I believe that is likely what appears in the foreground and on the north bank of the stream corridor in this April, 2010 photo. If so, then it seems to have been pretty extensive and healthy at that time - and it was reported to be present in 2012 as well. As I'm sure you recall, it was a consultant's reported absence of this plant in 2014 that was the basis of that consultant's statement that the site no longer included an area of Coastal Prairie.



Linda Stedjee