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F16a

Prepared February 12, 2021 for February 12, 2021 Hearing

To: Commissioners and Interested Persons
From: Susan Craig, Central Coast District Manager
Brian O'Neill, Coastal Planner

**Subject: Additional hearing materials for F16a Appeal Number A-3-SLO-17-0062
(Ontario Ridge Trail Relocation)**

This package includes additional materials related to the above-referenced hearing item as follows:

Staff report addendum

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F16a

Prepared February 12, 2021, for February 12, 2021 Hearing

To: Commissioners and Interested Persons

From: Susan Craig, Central Coast District Manager
Brian O'Neill, Coastal Planner

**Subject: STAFF REPORT ADDENDUM for F16a
Appeal Number A-3-SLO-17-0062 (Ontario Ridge Trail Relocation)**

The purpose of this addendum is to supplement staff's recommended findings in support of the recommended Commission action on the above-referenced item and to respond to materials submitted by the original applicants, the McCarthys (dated February 5, 2021, and located in the correspondence package for this item), after the staff report was distributed on January 22, 2021. Specifically, those applicants make a series of claims and assertions related to the Commission's authority to regulate development; the legal standard of review; and the project's impacts to archeological, biological, and geological resources. Staff does not agree with these assertions, and herein provides some substantive responses to these points, which staff hereby incorporates into its proposed findings for Commission adoption.

These responses and clarifications do not modify the staff recommendation with respect to the Commission's ultimate action, which is still: (1) a recommendation that the Commission determine that the County's approval of the project raises a substantial LCP conformance issue, and (2) on de novo review, a recommendation that the Commission deny the CDP for the proposed easement and trail relocation and associated construction or installation of trail-related amenities.

However, there has been one substantive change since the time the staff report was distributed, in that the owner of the neighboring property (the property to which the easement and trail are proposed to be relocated) has now agreed to become a co-applicant for the project (see Palm Finance's letter in the correspondence package), whereas that was not the case before the staff report was distributed. Thus, this addendum makes changes to the staff report to acknowledge this new fact. For clarity, the capitalized term "Applicants" will be used to refer to the original applicants (the McCarthys), as that is how that term was used in the original version of the staff report. When referring to all of the present applicants, the lower case version ("applicants") will be used.

The staff report is modified as shown below (where applicable, text in underline format indicates text to be added, and text in ~~strikethrough~~-format indicates text to be deleted):

1. Co-applicant

In the time since the staff report was released, the neighboring property owner, Palm Finance Corporation, has joined the project as a co-applicant.¹ The staff report had explained that Palm Finance Corporation had not given consent to relocate the existing trail onto its property, and thus the Applicants did not have the legal authority to carry out the project. Now that Palm Finance Corporation has agreed to be a co-applicant for the project, the following changes to the staff report are necessary:

- a. On staff report page 1, add Palm Finance Corporation to the list of “Applicants” in the caption, immediately preceding footnote number 1, and modify footnote number 1 as follows:

San Miguelito Partners previously owned one of the undeveloped lots (APN 076-231-060) involved in the project and was a co-applicant during the County’s approval process. However, that property is now owned by the Palm Finance Corporation. Palm Finance Corporation ~~has declined to be a~~ joined this application as a co-applicant for the project on February 4, 2021.

- b. Modify the staff summary in the first full paragraph on staff report page 3 as follows:

As a threshold matter, ~~the Applicants have provided no evidence to demonstrate that they either own the Palm Finance Corporation property or have legal authorization from the property owner to implement and construct the project there. In fact, staff reached out to Palm Finance Corporation representatives who have declined to become a co-applicant on the project. Thus, it does not appear that the Applicants have the legal authority to move forward with the project at this time.~~ the crux of the County-approved project would be to relocate the existing trail and easement, which is in direct conflict with the express terms of that easement, which allows it to be relocated, but only to another location on the McCarthy property. In addition, the County-approved project would prohibit the public from using the existing trail and easement on the McCarthy property by completely removing the trail and extinguishing the easement, which is in direct conflict with a 2014 Commission Cease and Desist Order prohibiting same. The Commission’s findings in that action also indicate that the County easement is most likely not the sole basis for a public possessory interest in this portion of the McCarthy property, as the public’s right of continued use was likely formally established as a prescriptive right through historic use. Thus, even if the County’s action permitting the relocation of the trail easement

¹ The Applicants’ letter falsely states that Palm Finance Corporation was always a co-applicant and that Commission staff launched a campaign to intimidate the neighbor to withdraw their consent. The Chairman of the Palm Finance Corporation submitted correspondence refuting this claim (which can be found in the correspondence package for this item) explaining that they had not been aware of the trail relocation project that extends the trail onto Palm Finance Corporation’s property until Commission staff brought it to their attention, did not consent to become a co-applicant for the project until February 4, 2021, and stating that all of their interactions with Commission staff were professional and helpful.

~~was able to~~ could be found to be legally permissible, this action ~~does~~ would not simultaneously extinguish the underlying prescriptive rights of use that are held by the public at large. While the lack of the Applicants' legal authority to carry out the project is alone a sufficient basis for denial of the project, and Commission staff encouraged the Applicants to withdraw their proposed project for these reasons, the Applicants' continued pursuit of the project thus requires further analysis and Commission action.

- c. Modify footnote number 4 on staff report page 8 as follows:

~~The property was owned by San Miguelito Partners during the County's approval process, but is now owned by the Palm Finance Corporation. The Palm Finance Corporation has declined to be a co-applicant for the project.~~

- d. Modify the staff report findings on staff report pages 22-23 as follows:

~~Prior to release of this staff report, Commission staff has reached out to representatives of Palm Finance Corporation, who have stated that the San Miguelito Partners' prior consent to the trail relocation project is was no longer valid. After the staff report was distributed, Palm Finance agreed to become a co-applicant (on February 4, 2021). Although Palm Finance Corporation has not taken a position on the merits of the project, it has not provided consent to the current Applicants (Judy and Rob McCarthy) to construct the trail on the Palm Finance Corporation property at this time. The Palm Finance Corporation has also not agreed to be a co-applicant for the project.~~

~~The current Applicants have provided no evidence to demonstrate that they either own a fee interest in the Palm Finance Corporation property or that they possess a legal right, interest, or other entitlement to use the Palm Finance Corporation property for the project. The Applicants have not shown that they have express authorization from that property owner to construct the project. Thus, it does not appear that the Applicants have the legal authority with the fee-title owners of all of the underlying properties now being co-applicants in this matter, it appears that there is no longer any property rights ownership issues that would indicate that the Applicants lack the legal authority to move forward with the project at this time.~~

~~Moreover However, as explained above, the Commission issued a Cease and Desist Order to the Applicants in 2014. ...~~

- e. Modify the staff report findings at the bottom of staff report page 24 as follows:

~~Thus, although the Applicants ~~do not~~ appear to have the legal authority in terms of underlying property owner consent to construct the project on the Palm Finance property, it does not appear that they can legally ~~or~~ remove either the public access easement or the trail from their property at all.~~

- f. Modify the staff report findings at the top of staff report page 26 as follows:

However, the project is being denied because the Applicants do not have the legal authority to carry out the project ~~on a property they do not own~~ and because of the project's substantial inconsistencies with the Coastal Act and LCP's public access and recreation policies. ...

2. Legal Authority to Implement the Project

The McCarthys assert that the Commission does not have the authority to determine whether prescriptive rights exist on the property and does not have the authority to deny property line fencing. Staff offers the following to this point.

First, the staff report does not rely on the existence of prescriptive rights to deny the project, because there is an independent basis for the public's rights to access this specific property. Namely, a recorded public access easement across the McCarthys' property already exists, and this easement itself provides for movement of the trail only on the McCarthy property, not elsewhere, whether in general or to the Palm Finance property. Moreover, although the staff report does not rely on a formal determination of prescriptive rights, since the existence of the easement made that unnecessary, it should be noted that there was significant and extensive evidence of prescriptive rights gathered regarding this specific trail and location. Additionally, there are a number of potential Coastal Act issues that would be triggered by the proposed relocation of the trail, such as impacts to public recreational access, archaeological resources, public views, geologic hazards and ESHA.

In addition, as is explained in more detail in the staff report, the Commission issued a 2014 Cease and Desist Order (CDO) to "preclude the McCarthys from taking any actions to physically or indirectly impede the public's use of the Ontario Ridge Trail system, including the easement on their property." Here, the McCarthys' proposal would directly impede (and in fact, completely eliminate) the public's use of the easement on their property, in direct conflict with the terms of the CDO and the easement itself, by extinguishing the easement on their property and establishing a new easement on a separate property. As explained in the staff report, the trail relocation project is therefore inconsistent with the terms of the 2014 CDO and would constitute a Coastal Act violation. The Applicants do not have the legal authority to carry out the project and it must be denied at the de novo phase on this basis alone.

Second, the Applicants argue that the Commission must allow property line fencing based upon the decision in the *LT-WR* case (*LT-WR, L.L.C. v. California Coastal Commission* (2007) 152 Cal.App.4th 770). However, the Applicants' reliance on *LT-WR* is misplaced. The court in *LT-WR* found that the Commission's denial of fencing was "premised on the existence of 'potential' prescriptive rights" and was therefore speculative. Here, the Commission's denial is based in part on an existing recorded public access easement and valid Commission CDO, not on speculative potential public access rights, although as noted above, in this case the evidence of such is extensive, and was only not pursued formally given the existence of the easement, which was on the same location and already provided the same protection of public access in this location, as noted below.

The Applicants also appear to argue that the installation of fencing is a matter of right and must be allowed to protect private property. To the contrary, even assuming the existence of the stick in the bundle of private property rights that allows property owners to exclude others from their property, that does not automatically entitle property owners to build fences. Fencing constitutes development that must be consistent with the coastal resource protections of the LCP and, given the location of this project, the public access and recreation provisions of the Coastal Act. The court in *LT-WR* specifically rejected the sort of argument advanced by the McCarthys here, stating that “irrespective of the intent behind the installation of the gates and signs ... gates/fences, with attached signs, clearly fall within the act’s definition of ‘development.’” As described below, the County-approved fencing raises significant coastal resource concerns related to public views, archeological resources, and environmentally sensitive habitat (ESHA). Accordingly, even after the *LT-WR* decision, the Commission has denied fencing when it has impermissible impacts to such non-access-related resources. In fact, four years after the *LT-WR* decision, the Commission denied an application for fencing in the same area, by a related entity, on just this basis (see May 12, 2011 denial of CDP application number 4-10-005, which denial was challenged unsuccessfully in court).

Finally, it is important to note that in the adopted findings for the CDO, the Commission previously recognized that prescriptive rights likely do exist across the McCarthys’ property, although staff is not recommending that the Commission deny this project on this basis alone. As discussed in those adopted findings, the potential presence of prescriptive rights across the McCarthys’ property is not speculative but based upon a prescriptive rights survey and extensive research that demonstrates that the public has been using the trail for more than 50 years, well before the County easement was codified.² The Coastal Act (Section 30211) prohibits development from interfering with access that has been acquired through such use, and thus the Commission is required to consider whether acquired access exists when reviewing proposed development. The *LT-WR* case did not involve an assertion that the trail at issue would “interfere with the public’s right of access to the sea where acquired through use” (the relevant language from Section 30211), as it did not involve a trail that connected to the shore. In fact, as a result, neither the Commission’s findings in that matter nor the Court of Appeal decision ever mention Section 30211. Here, to the contrary, Section 30211 is directly implicated, and as such, although the Commission cannot adjudicate the existence of prescriptive rights or render a controlling decision on the issue, it has an explicit statutory mandate to consider the issue. The Commission is required to render its permitting decisions on the basis of the evidence that is available to it at the time regarding consistency with each policy that forms the standard of review. Because Section 30211 is part of the standard of review in this case (see the next section), unlike the circumstances in *LT-WR*, here, the Commission cannot avoid the requirement to

² The Commission’s adopted findings for the CDO state, “[t]he Commission’s prescriptive rights investigation produced 281 questionnaires which reveal that the earliest recorded public usage of this trail (by those who submitted questionnaires in 2014) is in 1960,” and that “[e]ven if this affirmative easement did not exist, the public would still likely be able to use this portion of the Ontario ridge trail to cross the McCarthy’s property since as described in the staff report, evidence tends to demonstrate that a prescriptive right was likely perfected long before the McCarthy’s purchased the property.”

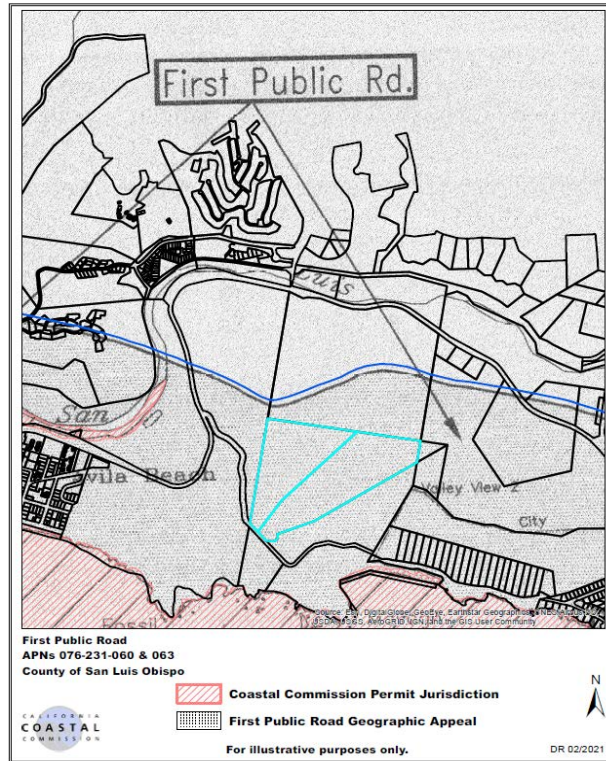
assess the possibility of public rights of access to the sea that were acquired through use. Here, though, the Commission does not and need not rely on the evidence of prescriptive rights in denying this application. Rather, it is noted primarily as important background information and context. In this case there is an existing public access easement that clearly establishes the public's right of access to the trail on the McCarthys' property, and that easement by its own terms does not allow the easement to be moved to another property. Similarly, the Commission's CDO also does not allow that easement or the trail to be moved to another property. In other words, the Applicants here are legally unable to move the easement and trail.

And even if the Applicants weren't so legally constrained, the proposed relocated trail would result in a degradation of the public access experience associated with the existing trail (in conflict with at least Sections 30210 and 30213, in addition to the Section 30211 problems identified above), including as evidenced by the overwhelming majority of comments from trail users suggesting same, but also on its face inasmuch as the proposed trail relocation would move the accessway further inland and away from the coast, to the degradation of the views and public access utility it currently provides as parts of the Ontario Ridge trail system. Further, the new trail raises its own coastal resource impact concerns, including with respect to ESHA, Tribal resources, public views and geologic hazards, as described herein and in the staff report. In other words, yes the question of prescriptive rights is important as it relates to this proposed project, but the Applicants' attorneys observations on its importance to the Commission's decision here are misplaced.

3. Public Access and Recreation Standards

The Applicants assert that the project is not located between the sea and the first public road and therefore, according to the Applicants, the Coastal Act's public access and recreation policies are not applicable to the project. Relatedly, the Applicants also assert that the LCP does not require public access across their property.

First, the Applicants argue that Cave Landing Road is the first public road inland of the shore, and thus, because the project is not between the sea and Cave Landing Road, the Coastal Act's public access and recreation policies do not apply to the project. However, Cave Landing Road is not a through road that provides a continuous access system, as it must be (pursuant to Sections 13011(e) and 13577(i)(1)(E) of the Commission's regulations) for it to qualify as the first public road paralleling the sea. The staff report correctly identifies Shell Beach Road as the first public road. Post-LCP Certification Permit and Appeal Jurisdiction Map 107, shown below with the project site parcels outlined in turquoise, confirms that the entire area is located between the sea and the first public road.



Because the project site is between the sea and the first public road, the Coastal Act’s extensive public access and recreation policies, in addition to the public access and recreation provisions of the LCP, are applicable to the project, pursuant to Coastal Act Section 30604(c) and as is further explained in the staff report.

In addition, the Applicants repeatedly assert that the LCP “simply does not require the provision of public access on the McCarthy property.” However, the Applicants seem to ignore the fact that public access *already exists* on the McCarthy property in the form of the recorded public access easement. The appropriate analysis is not whether the Coastal Act and LCP require new access on the McCarthys’ property (as the Applicants suggest), but whether removing the existing access from their property would be consistent with the standard of review. Both the Coastal Act and the LCP include provisions that require development to provide maximum access, and also include strong protections for existing public access and recreational facilities, and in particular for low- and no-cost facilities such as public trails.

As explained in the staff report, the existing trail on the McCarthys’ property is well used and very popular because the trail is located adjacent to and connects with other public access features such as the trail to Pirates Cove and the Shell Beach Bluff Trail. The trail on the McCarthys’ property provides dramatic and sweeping vistas of the ocean and coastline, and its steepness provides for a unique and long-standing user experience of a straight ascent from Cave Landing Road to the top of the ridge. Many users have submitted comments in support of keeping the trail in its current location because the trail experience cannot be duplicated.

The Applicants also seem to suggest that the easement was only meant to provide the County with access to a communications tower, not public access, and that the public access easement was designed to be temporary because the document allows the easement to be relocated. However, the access easement (see **Exhibit 6** in the staff report) itself demonstrates this is simply not the case; it clearly states that the easement is for “recreational and other purposes.” Moreover, in the findings for the 2014 CDO, the Commission has already found the access across the McCarthys’ property is required by the recorded easement. The easement makes no mention of the access being temporary and explicitly states that the terms and conditions survive any cancellation or expiration of the granting documents. Finally, although the easement does allow for relocation, it states that the easement can be relocated only “to a location **on the Grantor’s Property**,” requiring that the easement specifically remain on the McCarthys’ property.

In short, as described in the staff report, the proposed relocation does not provide a better accessway and would diminish the user experience, is not consistent with the Coastal Act or the LCP with respect to protecting existing accessways, and thus the proposed project must be denied. Moreover, the proposed trail relocation raises a host of coastal resource concerns, explained in more detail below and in the staff report, all of which would be avoided by keeping the trail in its current location.

4. Public Views

The Applicants assert that the project will not impact public views because the approved fencing is only six feet tall and is set back from the proposed relocated trail by twenty feet. The Applicants also claim that the staff report incorrectly states that the fencing will be barbed wire in order to “inflame the Commission.”

The Applicants appear to argue that the views from the trail toward the ocean are the only visual resources that warrant protection under the LCP. To the contrary, the entire project area is designated as a Sensitive Resource Area in the LCP in part to protect the significant public views of the undeveloped hillside and ridge. The LCP states that the steep undeveloped hillsides of the Ontario Ridge area “forms an important scenic backdrop for the coastal area of Avila Beach and Pismo Beach, as well as for Avila Valley.” Visual Policy 1 (cited in the staff report) clearly protects all “attractive features of the landscape, including but not limited to unusual landforms, scenic vistas and sensitive habitats.”

The County-approved project includes significant new development on this scenic hillside, including some 2,500 linear feet of fencing that would all be clearly visible from public viewing areas such as the Shell Beach Bluff Trail and the Pirates Cove parking area, as well as from some areas in the town of Avila Beach. While the County did prohibit the top and bottom wire strands from containing barbs, the County approval allows for “4 strand wire” fencing with the “[b]ottom and top strand barbless,” thus allowing for barbed wire to be installed on the middle two strands. Staff correctly identifies the fencing for what it is, a barbed wire fence. The project also includes three gates and seven no trespassing signs, all of which would be visible from public viewing areas and would detract from the scenic qualities of the Ontario Ridge area.

The Applicants also state that the project includes 3,200 linear feet of new trail, not 2,500 as stated in the staff report.³ In other words, the project includes significantly more grading, cut, and vegetation removal on the undeveloped scenic hillside than originally identified in the staff report. The project is clearly inconsistent with Visual and Scenic Resources Policy 5 (cited in the staff report), which states that “[g]rading, earthmoving, major vegetation removal and other landform alterations within public view corridors are to be minimized.”

In short, the staff report correctly concludes that the project raises a substantial issue of conformance with the visual resource protection provisions of the LCP.

5. Archeological Resources

Much of the Cave Landing area, including the proposed project site, is identified in the LCP as an archaeological study area. The Applicants assert that the staff report fails to acknowledge the archeological reports that were completed for the project, that all tribal concerns were adequately addressed by the County, and that the County’s mitigation measures are adequate to protect archeological resources. The Applicants also state that the new trail alignment was modified to avoid impacts to known resources (i.e., that the originally proposed location for the relocated trail was found to be directly atop a known archeological site and thus was moved to the currently proposed location to avoid this specific archeological site). Despite acknowledging that the trail was relocated due to the presence of a known significant archeological resource, the Applicants appear to argue that the project site’s designation as an archeological study area does not provide conclusive evidence of the presence of significant resources, perhaps suggesting that no significant resources are present on the site.

The Applicants’ own letter confirms that significant resources important to the Northern Chumash and Yak Tityu Tityu Northern Chumash tribes are present on the site and includes analysis from the County’s mitigated negative declaration that demonstrates that tribal concerns were not adequately addressed by the County. That analysis states that Mona Tucker, chair of the Yak Tityu Tityu Northern Chumash tribe council, did not believe the archeological reports were adequate, and that Ms. Tucker was “still uncomfortable” with the new trail location “given that there was limited visibility and the earlier testing was not done within the trail alignment.” A County planner’s letter to the County Planning Commission provided more explanation, stating that: “Native Americans have continued to express lingering concerns regarding the location of a couple segments of the trail and their relation to cultural resource sites. The location of the trail in these locations is *intended* to be outside any mapped resource sites. Due to the heavy vegetation and the need to cross some steep slopes, confirmation of site boundaries could not be verified during the recent site visit” (emphasis added). In other words, even though the County relocated a portion of the proposed new trail alignment

³ The trail length of 2,500 linear feet described in the Commission’s staff report was based on the County’s staff report for the project, which described the relocated trail as being approximately 2,500 linear feet.

to avoid identified cultural resources, the County *did not know* whether the trail was located directly atop other cultural resources before approving the trail alignment.

Due to these uncertainties, the County added a condition to verify the exact location of the trail and its relation to archeological resources post-approval. However, based upon this lack of information and failure to verify the location of all archeological resources on the site, the record is not clear whether the trail impacts any significant archeological resources or whether a continuous trail that avoids such resources is even possible. As stated in the staff report, the full scope of the project's impacts to archeological resources and tribal concerns have not been fully addressed as required by the LCP.

Finally, the Northern Chumash Tribal Council has weighed in on the staff recommendation for this project (see the correspondence package for this item), and supports staff's recommendation of denial, stating:

*For thousands of years the Chumash would hike up from the villages along the cliffs of Avila and build fires and gaze out into the wonder of the our Western Gate, the Gateway to the next world, for which the Chumash are the caretakers. This sacred site overlooks the entire coast line, from whale rock to Point Conception, one of great meaning and wonder. It is very difficult to understand why the Planning Commission and Board of Supervisors would overlook the social and environmental justice issues of the Chumash, the indigenous peoples of San Luis Obispo County. ... Under the LCP, CEQA, Executive Oder B-10-11, UNDRIP and all other laws that protect California Native American Chumash Tribal Resources, **NCTC [the Northern Chumash Tribal Council] does not approve of this project, and supports the Coastal Commission's Staff recommendations.** (emphasis added)*

And ultimately, the Applicants' letter was objected to by the Northern Chumash Tribal Council and others inasmuch as the Tribal Council and others were deeply concerned that the letter identified locations of Native American sacred sites. Upon being made aware of this concern, staff removed the Applicants' letter from the correspondence package, and replaced it with a redacted version. The Applicants subsequently demanded that the unredacted letter be reposted immediately stating:

It is frankly outrageous that Commission staff has taken such drastic action based on unspecified "complaints," when all the information is public and the regular protective procedures have been followed. Unfortunately, this latest action is consistent with other efforts to keep all relevant facts in this case from being considered by the Commission as described in detail in our February 5, 2021 letter.

In response, Commission staff informed the Applicant that it had no intention of posting an unredacted version of their letter, and explained the reasons why, stating:

Thank you for your note. However, we will not be reposting an unredacted version of your letter. Archaeological locations are generally considered confidential and public access to such information is restricted by laws including

Section 304 of the National Historic Preservation Act; Section 9(a) of the Archaeological Resources Protection Act; Executive Order 13007; and Section 6254.10 of the California State Government Code. Disclosure of records that relate to archaeological site information and reports are generally not required by state agencies, including the records that an agency obtains through a consultation process between a California Native American tribe and a state or local agency.

Regardless of whether the County has previously made such records public, the Commission makes every attempt not to release such information on its website. The redacted version of your letter includes all of your arguments in favor of the project, while removing information related to the specific location of archeological sites. You will have an additional opportunity to voice your concerns directly to the Commission at Friday's hearing. However, we would ask that you please refrain from disclosing the location of archeological sites during your presentation.

6. Biological Resources/ESHA

The Applicants assert that the staff report mischaracterizes the area as biologically sensitive, fails to acknowledge the biological reports that were completed for the project, and state that the project will not have any habitat impacts because no sensitive species were found on the site.

The staff report correctly states that the entire area has previously been identified as potentially containing sensitive habitats, and the biological reports cited by the Applicants confirm that sensitive species have the potential to be present on the site. The County staff report also states that the trail "extends into native coastal sage scrub habitat," but that because no individual special status species were found, this area would not be considered ESHA. Because of the lack of individual special status species, the County did not require any construction monitoring or mitigation to address potential impacts.

However, the County LCP defines ESHA as a resource "where plant or animal life **or their habitats** are either rare or especially valuable because of their special nature or role in an ecosystem" (emphasis added). The presence of individual special status plants or animals is therefore not a requirement for an area to be considered ESHA. Rather, ESHA also includes any underlying habitats with the *potential* to support rare or valuable biological resources. Coastal sage scrub habit could potentially constitute ESHA and is recognized in the LCP as a highly sensitive habitat. The Applicants' own consulting biologist's report recommended the trail alignment avoid the identified scrub habitat areas. Despite the biologist's recommendation, the County did not approve a trail solely within ruderal habitat, and instead approved the trail through coastal sage scrub. The County did not provide further analysis with regard to potential habitat impacts based solely on the lack of individual special status plants, and, as a result, did not adequately analyze the project in terms of whether it is even allowed in ESHA, and if so subject to what mitigations for potential impacts, as required by the LCP. The

approved project therefore raises a substantial issue of conformance with the ESHA protection provisions of the LCP, as stated in the staff report.

7. Geological Hazards

The Applicants assert that the project does not pose any geological hazards, is consistent with sound engineering practices, and that the staff report mischaracterizes the potential for retaining walls or significant slope cuts.

The County's mitigated negative declaration that was prepared for the project states that the project site "is within the vicinity of a large landslide complex" and that "[d]evelopment on a slope can substantially increase the frequency and extent of potential slope failures." The County ultimately found that the project was approvable because the "project is not located in an *existing* landslide area." However, the project itself was not finalized at the time of the County's approval. Of relevance here, neither the exact location and design of the trail, nor the specifics of potential erosion control measures were final at that time. The County's conditions of approval (see **Exhibit 3** in the staff report) demonstrate these uncertainties, requiring the Applicants to submit final plans that "shall be designed in accordance with the County of San Luis Obispo and the California Building Code," requiring the Applicants to "submit an erosion and sedimentation control plan for review and approval," requiring that "[i]f cut slopes exceed 6-feet in height, erosion control measures placed on the slope faces shall be maintained," and noting that "[a]ny surface instability or seepage observed along the trail alignment shall be immediately brought to the attention of the Engineering Geologist." In other words, the approved project includes development that can substantially increase slope failures, is located in a highly hazardous location in close proximity to major landslides, and the exact details of the required mitigations for trail relocation with respect to geological stability have not been finalized. As stated in the staff report, it is not clear from the County's record and findings whether the project can ensure safety from, and not contribute to, geologic hazards, as is required by the LCP.

8. Conclusion

In short, the project raises a substantial issue of conformance with the LCP, the terms of the 2014 CDO prohibits the Applicants from interfering with the public trail on their property, the trail relocation is inconsistent with the terms of the easement itself, would diminish the existing public access experience, is inconsistent with historic use and existing information regarding potential prescriptive uses, and the project has the potential to adversely impact significant coastal resources, including with respect to public access and the failure to comply with Coastal Act policies, visual resources, ESHA, archaeological resources, and geologic stability, all of which could be avoided by keeping the trail in its current location. As such, staff continues to recommend that the Commission find that the County's approval of a CDP for the proposed project raises a substantial issue of conformance with the LCP, and on de novo review, deny the CDP.