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F16a

Prepared February 9, 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:

Correspondence received since the staff report was distributed.

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California Coastal Commission
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F16a

Re: McCarthy/Palm Trail Relocation and Fencing CDP
Case No.: A-3-SLO-17-0062
Hearing Date: February 12, 2021 - Agenda Item No. F16a
Request for Approval of CDP

Dear Honorable Commissioners:

This law office represents Rob and Judi McCarthy, applicants in the above referenced matter. The McCarthys have now spent over ten years trying to get the Coastal Commission to let them to build a house on their vacant property. After completely denying the first house the McCarthys had approved by the County of San Luis Obispo, the Commission itself directed that the McCarthys must first obtain approval for a relocated trail before any house project will be considered. Presented now with the County approved trail relocation, the Commission staff has pulled a 180, and recommends denial until after a new house proposal comes forward. The real question before this Commission is: How long are you going to jerk the McCarthys around before you allow them to build a house?

Palm Finance is the Co-Applicant and Supports Approval of the Application

The Commission staff knows that it is on thin legal ice in recommending denial of the requested permit. So staff launched a campaign to convince the co-applicant next door neighbor to withdraw their consent to the application. Staff made numerous contacts with the neighboring property owner in an effort to have them withdraw. Then staff falsely claims in the staff report that Palm Finance declined to be the co-applicant. That is simply not true. Palm Finance has responded to the staff report by stating in writing what was always the case, that they are the co-applicant for the permit and support its approval.

There is No Prescriptive Easement and the McCarthys Have a Right to Fence Their Property

The staff report is replete with claims that a prescriptive public easement exists and denies that the McCarthys have a right to fence their property. These are old Commission tricks which have been time and time again rejected by the California courts.

In LT-WR, L.L.C. v. California Coastal Commission, 152 Cal.App.4th 770 (2007), the Court made clear that:

“Inherent in one's ownership of real property is the right to exclude uninvited visitors. (See Black's Law Dict. (5th ed. 1979) p. 1095 [definition of property]; *General Dynamics Corp. v. County of L. A.* (1958) 51 Cal.2d 59, 71 (conc. opn. of McComb, J.)) The Commission's decision would deny LT-WR that right. In precluding LT-WR from barring the public from traversing its property on the theory that "potential exists to establish prescriptive rights for public use of this road," the Commission in effect decreed the existence of such prescriptive rights.

We recognize one of the basic mandates of the Coastal Act is to maximize public access and recreational opportunities within coastal areas. Public Resources Code section 30210 provides: "In carrying out the requirement of Section 4 of Article X of the California Constitution [access to navigable waters], *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." (Italics added.) **However, the Commission is not vested with the authority to adjudicate the existence of prescriptive rights for public use of privately owned property. In denying LT-WR a permit for the gates and no trespassing signs due to the possibility of prescriptive rights, the Commission in effect gave credence to the claimed prescriptive rights. The Commission's denial of a permit for the gates and signs, premised on the existence of "potential" prescriptive rights, was speculative and properly was overturned by the trial court.** (Emphasis added.)

We conclude the trial court properly directed the Commission to vacate its denial of a permit with respect to LT-WR's gates and no trespassing signs.”

There is no authority for the Commission to ignore these clearly established legal principles. There is no prescriptive easement, and the McCarthys have the right to fence their property.

The Staff Report Ignores the Detailed Expert Reports Supporting Approval of the Trail Realignment

The staff report makes it sound like the applicants and the County failed to provide any analysis to support the trail relocation. Nothing could be farther from the truth. Extensive studies were requested by the County and included in their consideration of the trail relocation.

This list of studies is not referenced in the CCC report nor are they included as exhibits of record in the link provided in the February 12, 2021 staff report. In effect, the staff is not relying on any studies in the administrative record of the appeal to inform their analysis, and instead are simply providing their own non-fact based conclusions as to each issue.

Here is a list of the detailed expert reports which form the basis of the County approval and which are unexplainably ignored by the Commission staff:

- 2010-05-10 - Biological Resources Assessment, prepared by Brooke Langle, biologist, of Terra Verde Environmental
- 2017-04-20 - Biological Assessment of Trail relocation by Kevin Merk Associates
- 2011-01-25 - Soils Engineering and Geologic Hazards Report, McCarthy Residence, Parcel 2, Cave Landing Road, Avila Beach Area of San Luis Obispo County, California, prepared by Earth Systems Pacific
- 2015-07-01 - Focused Engineering Geology Review, GeoSolutions
- 2015-07-09 - Response to Drainage Comment No 10, prepared by Garing Taylor and Associates
- 2015-07-27 - Review of Focused Engineering Geology Review - Rustic Trail (APN 076-231-063 & 060), prepared by Landset Engineers, Inc. (*This is by the County's own staff Geologist who concurred with the noted reports and found no geotechnical and geologic issues with the trail relocation.*)
- 2003-02-05 - Phase 2 Archaeological Subsurface Testing, Prepared by RO Gibson and JA Parsons of Gibson Archaeological Consulting
- 2016-09-16 - Limited Phase 1 Archaeological Survey, prepared by Rebecca Loveland Anastasio Cultural Resources Services
- 2017-02-09 – Updated Limited Phase 1 Archaeological Survey, prepared by Rebecca Loveland Anastasio Cultural Resources Services

Instead, more fitting to their predetermined outcome, staff repeatedly rehashes the prior targeted enforcement action taken against the McCarthys. Staff report Findings and Declarations, Pages 9 thru 12, 2.C – makes multiple references to both the 2013 CDP denial and the 2014 Cease and Desist Orders. What relevance do these have to the trail relocation other than to inflame prejudice against the McCarthys?

The Staff Report Ignores the Site Specific Facts

The staff report's proposed findings are meritless and completely contradictory to the facts as well documented in the County approval.

For example, staff report Findings and Declarations, Page 8, 2.A – makes reference to:

This Area Plan maps the site as part of the Ontario Ridge Sensitive Resource Area (SRA) for its “important scenic backdrop for the coastal area of Avila Beach and Pismo Beach, as well as for the Avila Valley.” Each parcel is also mapped as an Archaeological Sensitive Area (ASA) and Geologic Study Area (GSA) due to the presence of archaeological resources and geologic instability and steep slopes, respectively.

Response: The SLO County LCP includes designations of Archaeological (aka “Cultural Resource”) and Geologic Study Areas to highlight the need to carefully study these environmental matters concurrent with any proposed development. The designation is a broad reference to the need to study these areas, not a presumption that “the presence” of significant resources on a particular site have been “mapped”, implying a conclusive fact that such resources exist on the site, or may be impacted by proposed development. The uncontroverted site specific studies for this property do not indicate any such unmitigated impacts.

The Staff's Public Access Analysis Ignores the Specific Mandates of the Certified LCP

In 2011-2012 when the CCC appealed and then denied the SLO County CDP-2009-00095 home approval for, among other reasons, lack of public access, the McCarthys embarked on a process of seeking reconsideration of the home with design modifications that were embraced by CCC staff in 2015. Such reconsideration was, however, conditioned on the resolution of public access via a trail relocation advocated by CCC staff in 2017.

The public access issues is not one that originated under the provisions of the County's certified LCP, or for that matter the denied CDP from 2011-2012, but rather as a byproduct of CDP #D010127D (issued by SLO County's PC 8-28-2003) and the 2008-2009 County purchase of Parcel 3 from the McCarthys predecessor in ownership - San Miguelito Group.

In this context, the County issued the 2003 CDP to itself as a co-applicant with the City of Pismo Beach, Cingular Wireless and San Miguelito Partners which, among other conditions, prohibited any access from the Pirates Cove-Cave Landing Road area to the top of Ontario Ridge. By 2008, when considering the County's ultimate acquisition of Parcel 3, someone at the County realized that vehicular access to maintain the Ontario Ridge communications towers had never been perfected through Sycamore Mineral Springs (SMS) as was a condition of the 2003 CDP, and so a temporary stopgap plan was devised by the County to secure a vehicular maintenance access on the McCarthys Parcel 2 until such time as the SMS access, consistent with the 2003 CDP, could be secured. The 2008 Purchase Agreement between the County and San Miguelito Partners makes

clear that the McCarthys' easement on Parcel 2 is subject to quitclaim at such time as the SMS access is secured. The staff reports to the Board of Supervisors justifying the expenditure of public funds on acquisition of Parcel 3, clearly represents that public access use on this temporary easement on McCarthys' Parcel 2 was never intended.

In order to achieve a reconsideration of a smaller home on the McCarthys parcel, an application to the County was initiated to "relocate" and make permanent the Parcel 2 easement.

Now that the McCarthys have complied with CCC dictates, prerequisites and demands for public access in order to consider a home on their property, instead of embracing permanent public access built and maintained by the McCarthys, the staff elects to frustrate this continuing effort by recommending denial of a trail system they themselves requested.

"Public access" across the McCarthy property is not required under the County certified LCP, nor under the Coastal Act. This application is the result of having no alternative course of action per CCC staff other than to implement public access at Ontario Ridge, as supported by the following facts:

1. The Coastal Act requires "access from the nearest roadway to the shoreline and along the coast shall be provided in new development projects (PRC 30212)." The subject site is located inland of Cave Landing Road and does not connect to the shoreline, nor does it front on the coast.
2. A review of the County's certified LCP reveals no reference or requirement for establishing a public trail along Ontario Ridge or connecting access between the Ridge and the coastline.
3. San Luis Bay Area Plan, Pg 4-4 makes reference to "Planning Area Circulation Programs," and specific reference to bikeways on Cave Landing Road and establishing equestrian trails generally in the San Luis Bay area.
4. The LCP Land Use Plan, Pgs 6-3, 6-6 and 6-7, specifically address Pirates Cove (Cave Landing) and Ontario Ridge. The LCP makes a compelling argument that (a) any residential development should occur above Cave Landing Rd with preservation of the upper slopes, (b) existing recreational resources are to be focused at the Pirates Cove parking area, beach area and Mallagh Landing Point, and (c) recreational use and "trails" are to be maintained/enhanced in the area of the parking lot, beach and Mallagh Point, not Ontario Ridge.
5. Reference on LCP LUP Page 6-7 to improving public access can be found in the LCP Combining Designations (Chapter 7). LCP Pg 7-1 reiterates establishing open space easements on the Ontario Ridge slopes for protection, not public access.
6. LCP Pg 7-4 targets public acquisition of Pirates Cove and Mallagh Point for recreation and access.

7. LCP Planning Area standards Pg 8-4 cite the need for shoreline access in this area for sandy beach and blufftop parking. Further, pedestrian trails to the beach and along the coastline to Shell Beach are the only references to trails in this planning area, consistent with Coastal Act standards and as translated into the certified LCP.
8. LCP Pg 8-31, makes it clear the Ontario Ridge slopes are to be preserved as open space, and that no public access is to be provided unless desired by the property owner.

The County's certified LCP simply does not require the provision of public access on the McCarthy property.

The McCarthys have exhausted all attempts to find resolution to the public access issue. It is accurate to state that the property owners would, as they have since the original CCC appeal in 2013, support access along Ontario Ridge, but do not support any form of dangerous vertical access on their property.

There Would be No Extinguishment of Public Rights

The “Extinguishment” terminology used in the staff report is incorrect and prejudicial. The CDP application is the relocation of a portion of the easement as provided for under the terms of the easement.

Staff report Findings and Declarations – Substantial Issues Analysis, Page 14, F.1 – makes reference to:

Applicable Coastal Act and LCP Provisions

The project site is located between the sea and the first public road (i.e., Shell Beach Road), and thus the Coastal Act's public access and recreation policies, as well as the public access and recreation provisions of the LCP, are applicable to the project.

Response: False. The first public road is Cave Landing Road, not Shell Beach Road (which is located in the City of Pismo Beach). In this case there are no SLO County certified LCP standards that establish public access along Ontario Ridge as a “public trail,” and there is no LCP provision requiring the creation of vertical public access between Pirates Cove and Ontario Ridge through the McCarthys’ property.

Staff goes on at great length to cite Coastal Act standards for providing public access without returning to a single citation in the LCP that requires any lateral or vertical public access on the Ontario Ridge. They ignore the specific provisions of the certified LCP in favor of vague personal Coastal Act interpretations.

Staff report Findings and Declarations – Substantial Issues Analysis, Page 16, does note the following SLO Co LCP standards:

Access Policy 1. Development shall not interfere with the public's right of access to the sea where acquired through historic use of legislative authorization.

Access Policy 2. Maximum public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development...

Recreation Policy 1. Coastal recreational and visitor-serving facilities, especially lower-cost facilities, shall be protected, encouraged and where feasible provided by both public and private means.

In the case particularly of Access Policy 2, access from the nearest roadway to the shoreline and along the coast is access from Cave Landing Road to the bluff edge and beaches, not away from the coast across this property.

Staff report Findings and Declarations – Substantial Issues Analysis, Page 16, F.1 – makes reference to:

Analysis

The County-approved project is located in an area that includes extensive public access and recreation opportunities and serves as a coastal recreation hub. This includes public trails on Ontario Ridge and down to Pirates Cove Beach. The Ontario Ridge Trail stretches from the Pirates Cove parking area up and across the McCarthy property to the top of the ridge, and ultimately to Pismo Beach along the top of the ridge and to Sycamore Mineral Springs down the opposite side of the ridge. A separate existing trail also extends from the Pirates Cove parking area to Pismo Beach along the blufftop as well. The existing trail on the McCarthy property is well used and very popular for a variety of reasons: the trail is located adjacent to and connects with all of these related public access features; it provides dramatic and sweeping vistas of the ocean and coastline; and its steepness provides a unique and long-standing user experience due to its direct ascent from Cave Landing Road to the top of the ridge. The County-approved replacement trail would provide a different and less unique experience that would be generally more meandering and have a more gradual ascent and descent than the existing trail. It would be located generally farther to the west and farther away from the access "hub" features identified above, with a reduced (but still dramatic) coastal vista to the south.

Response: The concept of "recreational hub" is not identified in the certified LCP. It has been invented here to reinforce the staff conclusion that "existing" access in the form of the McCarthy vertical easement is a permanent access. It does not recognize the temporary nature of the easement and the rights of the property owner to relocate the easement at their expense, and to retire and quitclaim the portion on the McCarthy parcel as provided in the exhibits attached to the staff report (Exhibit 6 and reference to the 2018-11-18 Purchase and Sale Agreement).

It is also baffling that staff offers a “different and less unique experience” with the County approved Trail relocation that, by their own words, would “generally be more meandering,” and “have a more gradual ascent and descent” – precisely what the County found to be “safer” for the general public - and “would expand the ridgetop trail by 400 FT” and “expand the vertical trail from 1,400 FT to 2,500 FT”.

The staff report Project Description (and Findings and Declarations, Page 9, 2.B) states:

More specifically, about 1,400 feet of the existing trail (i.e., the portion of trail on the McCarthy property that steeply ascends to the ridgeline from Cave Landing Road) would be relocated about 400 feet inland and to the north onto the adjacent Palm Finance Corporation-owned parcel. The new trail’s alignment would then make a more gradual ascent to the top of the ridge and ultimately connect with the remaining (unchanged) portion of the Ontario Ridge Trail on the flatter top of the McCarthy property. The Ontario Ridge Trail then leaves the McCarthy property and traverses the ridge all the way to Shell Beach Road in the City of Pismo Beach (no changes would be made to this portion of the trail).

The new trail would have a less steep, more meandering alignment up the ridge and thus it would be about 2,500 feet in length (compared with the existing 1,400-foot steep ascending trail on the McCarthy property). About 2,000 feet of the new trail would be graded into the hillside. Grading would total some 1,260 cubic yards, with cuts roughly 5 feet tall, to provide for a 5-foot-wide decomposed granite trail. The trail would be flanked by wire fencing up to 54 inches tall, some of which could be barbed wire. To ensure trail users do not stray off the trail, seven 6-inch by 12-inch “No Trespassing” signs would be affixed to the new fencing. The new trail would be located within a new 20-foot-wide easement proposed to be held by the County for public recreational access purposes.

(5) This fencing is required by the County to be at least 20 feet from the trail’s outer edges.

Response: The staff description fails to correctly note that the vast majority of the total grading identified as 1,260 cy occurs in an isolated area of less than 200 lineal feet as noted on the plans as the upper area of Trail Segment C. The reference to a 5 ft tall cut is also false. The grading plans approved by the County provide a 5 ft wide horizontal trail cut, with a ½:1 cut slope above the trail. In no instance does the trail cut exceed 2.5 ft in height at a maximum condition. In reality, the trail as approved by the County is planned to follow existing contours and slope more gently downslope, using the falling terrain to limit cuts to the greatest extent possible. 200 lf of the 1,984 lf Segment C trail equals about 10% of this trail segment at a 2.5 ft tall cut. The remainder of the trail involves little to no “cut” of significance.

In addition, the statement that the ridgetop trail is “unchanged” is incorrect. Two features of the County’s approval increase the ridgetop trail length by 800 additional lf, and incorporate an overlook view area with benches.

The trail length references are also incorrect. The trail was approved by the County to include five (5) new and distinct trail segments, in addition to the existing ridgetop path worn into the site. These new segments total 4,600 lf of new trail in addition to the ridgetop existing. This would replace the 1,400 lf trail on McCarthys’ parcel, resulting in 3,200 lf (or 0.6 miles) of new trail.

To inflame the Commission, staff falsely claims that the fence will be barbed wire when in fact barbed wire fencing is prohibited by County conditions of approval and the final project scope submitted for permits.

The Staff Report Ignores the Final Certified CEQA Analysis

The County’s analysis of visual impacts from the Mitigated Negative Declaration included:

Aesthetics

Setting. The project site is located at the top of Cave Landing Road (north side) which is a dead end road (to cars, however foot or bike traffic can continue through to Shell Beach) just outside the town of Avila Beach east of the (formerly Unocal) Avila Tank Farm property. The elevation of the project site ranges from 188 feet to 610 feet which is well above the town of Avila Beach, and the project site slopes up from Cave Landing Road to the top of the ridge on the north side of the project site (ocean is on the south side in this location). The existing and proposed trails are visible from Avila Beach Drive and the town of Avila Beach at some elevations/locations as it includes part of the ridgeline separating the beach with Avila Valley (coastal side of Sycamore Mineral Springs). The County has acquired adjacent properties to the east and south for beach and trail access.

Impact. The existing trail (which traverses straight up the slope) and the relocated trail, associated 6 foot tall fencing, and signage will be visible from Cave Landing Road and Avila Beach. The 6 foot tall fencing consists of pipe posts, T-bar posts between pipe posts, a 5'6" metal top rail, 'with no-climb' dog wire. Signage consists of a 12" by 6" signs stating 'No trespassing Private Road' and "Private Property No Trespassing". No lighting is proposed. The proposed project is considered consistent with surrounding area which includes informal trails, a parking area, and beach access. Grading associated with the relocated trail will be visible, minor cuts and fills will be revegetated. While the fencing is not considered a significant impact, it may be inconsistent with character of the area. This project will not silhouette against any ridgelines as viewed from public roadways, parks, or the ocean.

As a result of this analysis, the County required (a) that fencing be restricted to a maximum of 4'-6" in height, (b) be see-through wire mesh to enhance views through the fencing, (c) include an 18" tall opening at the base to ensure habitat movement would be unencumbered, (d) use of 2 ft tall wooden trail marker rails where fencing would not be permitted, (e) limited use of fencing to the lower half of the site and along portions of the upper ridge trail that were several feet below the trail to reduce visual impacts, (f) minimum 20 ft setbacks from any fencing to improved trail paths, and (g) prohibited barbed-wire fencing.

Staff report Findings and Declarations – Substantial Issues Analysis, Page 19, F.3 claim:

Analysis

Ontario Ridge forms an important scenic backdrop for the coastal areas of Avila Beach and Pismo Beach, and for the overall Pirates Cove public access and recreational area. It is part of a significant and rather stunning public viewshed. Per the above-cited LCP provisions, new development must be sited to protect scenic views, minimize visibility from public view corridors, be located in the least visible portion of the site, minimize structural height and mass by using low-profile design, and be subordinate to and blend with the rural character of the area. The County-approved project is inconsistent with these requirements because the project includes property-line barbed wire fencing, gates, and "No Trespassing" signage that would be prominent in the public view in a way that will degrade the character of this significant scenic public viewshed. In addition, the project would create a new developed trail on the side of an undeveloped portion of the hillside, with associated grading, cut, and fill that would degrade the public view and materially change the area's rural scenic character. For these reasons, the County-approved project raises a substantial issue of conformance with the visual resource protection provisions of the LCP.

Response: Again, the Staff report falsely states that "property line barbed wire fencing" is permitted by the County approval. In fact, it is specifically prohibited.

With respect to gates, three (3) gates were included in the County approval. It must be noted that the non-exclusive County easement referred to on the McCarthy property also serves as a utility company access to the communications equipment at the Ontario Ridge site owned and operated by the County. Access to this site is required irrespective of relocation of this pedestrian trail segment.

The first gate, at Cave Landing Road, would prevent vehicular access to the utility access way. A pedestrian "dodge-way" per typical US Fish & Wildlife and Interior Department wildland management practices was included to further restrict vehicular use of the site. The second gate would be located along the 54" fencing at roughly the mid-point of the McCarthy parcel (approximately elevation +325' MSL). The third gate would be located below the ridgetop trail of the McCarthy parcel (approximately elevation +550' MSL). This third gate would be located more than 55 ft below the elevation of the trail at this location (+605' MSL), purposefully

designed to remove the gate from pedestrian foreground views along the ridgetop trail, but still providing protection for the private property areas not subject to public access.

The Staff Report Falsely Claims That Archaeological Issues Were Not Addressed

Staff report Findings and Declarations – Substantial Issues Analysis, Page 18, F.2 states:

Analysis

The County's approval raises issues with the above-cited LCP provisions because it appears to allow portions of the project to be constructed on and/or adjacent to mapped archaeological resources. Comments received on the project by the County include those from the Northern Chumash Tribal Council indicating that the Tribe does not support the County-approved project. Thus, the full scope of archaeological and Native American issues has not been appropriately addressed as required by the LCP, and the County-approved project raises a substantial issue of conformance with the archaeological protection provisions of the LCP.

Response: Staff ignores the three Archaeological Reports were prepared and submitted for County and public use during CEQA review of the project. County conditions were imposed to avoid placement of the trail on any archaeological sites, and in fact specific changes were made to ensure the routing of the trail was moved to avoid potential sites in consultation with Mona Tucker of the recognized Yak Tityu Tityu Northern Chumash Tribe.

The staff report cites Fred Collins, who admitted to not participating in the AB52 Consultation outreach made per State Law by the County at the outset of the application. Mr. Collins' objections, outlined in his letter of December 6, 2016, alleged that (a) the archaeologist doing the reports was not recognized by his Council and unqualified to do this work (although the author Ms. Anastasio was and remains on the County's qualified consultant's list), (b) the project violates CEQA as it was not being reviewed as a whole (which is false – the entirety of the trail project was submitted and analyzed by the archaeologist), (c) it violates the Coastal Act (without explaining any factual evidence or basis for his allegation), (d) and the mitigation measures applied to the project would not satisfactorily avoid desecration of the Sacred Sites (again, without any evidence to support the allegations as noted in the County's Response to comments).

The Conclusions offered by the Project Archaeologist stated:

2.0 CONCLUSIONS AND RECOMMENDATIONS

[REDACTED]

* Note: The applicant's letter included information regarding the location of archaeological resources. This information has been redacted.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED] Further, County conditions of approval require on-site monitoring by an archaeologist and Native American observer at such time as any ground disturbance were to occur.

The County's CEQA review, in part, included the following:

Cultural Resources

Setting. *The project is located in an area historically occupied by the Obispeno Chumash. No historic structures are present and no paleontological resources are known to exist in the area.*

Cultural resources investigations were conducted of the project site (Gibson's Archaeological Consulting, February 5, 2003 and Rebecca Loveland Anastasio September 16, 2016). The surveys identified archeological resources at the project site. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

In order to meet AB52 Cultural Resources requirements, outreach to four Native American tribes groups had been conducted (Northern Salinan, Xolon Salinan, Yak Tityu Tityu Northern Chumash, and the Northern Chumash Tribal Council). Comments were received from one of the tribal groups, Yak Tityu Tityu Northern Chumash on June 14, 2016 and a consultation was conducted on August 22, 2016. Mona Tucker of the Yak Tityu Tityu Northern Chumash tribe requested additional archaeological information regarding the new trail alignment. The applicant provided the requested information (a Phase I of the new trail alignment prepared by Rebecca Loveland Anastasio), Ms. Tucker was still uncomfortable given that there was limited visibility and the earlier testing was not done within the trail alignment. A follow-up phone call to Ms Anastasio (on September 29, 2016 by K. Brown) occurred to discuss the need for more information, Ms Anastasio stated that the areas with poor visibility were in the steeper locations, where it was unlikely that cultural resources would be present and if there were cultural resources in the steeper slopes that over time these resources would likely migrate down the hill. Given Ms. Anastasia 's analysis, staff concluded monitoring would be sufficient.

Impact. *Due to the location (in close proximity of cultural sites) of the proposed project, earth disturbing activities associated with the construction of the new trail alignment have the potential to impact the cultural site. Impacts to historical or paleontological resources are not expected.*

* Note: The applicant's letter included information regarding the location of archaeological resources. This information has been redacted.

Mitigation/Conclusion. No direct impacts to cultural resources is expected with the project. With incorporation of archaeological monitoring, potential impacts to cultural resources can be minimized or mitigated to a level less than significant. Based on the consultation with the tribal representative, it was agreed that all ground disturbance activities would be monitored by a qualified archaeologist and a Native American. This would be sufficient to mitigate potential impacts to cultural resources. No significant cultural resource impacts are expected to occur, and no mitigation measures above what area already required by ordinance are necessary.

As a result of the Tribal Consultation process and Ms. Tucker's participation, the County's CEQA determination appropriately avoids and provides for mitigation for any unforeseen impacts to cultural resources.

The Staff Report Blatantly Mischaracterizes the Undisputed Expert Biology Reports

Staff report Findings and Declarations – Substantial Issues Analysis, Page 20, F.5 notes:

Analysis

Ontario Ridge is well known to include a rich mosaic of oak woodlands, wetland seeps, and drainages that intermix with chaparral and grassland habitats. Much of this area is environmentally sensitive habitat area (ESHA) per the LCP and requires protection per the LCP. It is not clear from the County's file and findings whether the relocated trail and disturbance area extends onto or in close proximity to such habitat areas, and to what degree such resources may require additional protection. As such, the County-approved project raises a substantial issue of conformance with the ESHA protection provisions of the LCP.

Response: The staff report completely mischaracterizes the undisputed documented expert reports. The County's CEQA analysis included the following summary of its evaluation of the habitat materials submitted, including both the 2010 biological resources assessment and 2017 updated biological conditions associated with the trail relocation:

The results of the surveys indicated that no "sensitive plant or wildlife species" were observed on the property ... Many of the species identified in the NDDB are associated with San Luis Creek or beaches including: California red-legged frog, steelhead, tidewater goby and snowy plover. These habitats, while they exist in the larger regional setting of the project, are not found on the project site and are located a substantial distance from the project site.

Impact. The biological resources assessment identified that nesting birds may be impacted by the project if present during clearing and grading.

Mitigation/Conclusion. *No significant impacts to vegetation are expected to occur, and no mitigation measures are necessary. Potential impacts to identified wildlife or nesting birds as identified in the biological assessment, however are proposed to be mitigated which reduces impacts to a level of insignificance.*

Mitigation includes:

To protect bird and raptor species protected by the Migratory Bird Treaty Act and Fish and Game code, the applicant shall avoid vegetation clearing and earth disturbance during the typical nesting season (March 1 - August 15). If avoiding construction during this season is not feasible, a qualified biologist shall survey the area one week prior to activity beginning on site. If nesting birds are located, they shall be avoided until they have successfully fledged. A buffer zone of 50 feet will be placed around all non-sensitive bird species and all activity will remain outside of that buffer until a County approved biologist has determined that the young have fledged. High visibility exclusion fencing will be placed at the buffer zone to ensure no work occurs within this zone. If special status bird species are located, no work will begin until an appropriate buffer is determined by consultation with the County and/or the local California Department of Fish and Game biologist.

With these measures included in the County approval, sensitive habitat that may be in the area at the time of construction would be properly surveyed and protected as conditions require.

Staff Seemingly Failed to Review the Approved Geologic Studies

Staff report Findings and Declarations – Substantial Issues Analysis, Page 20, F.4 notes:

The County-approved project is also located within an LCP-designated Geologic Study Area. The approved trail construction is located on a steep slope and in an area known for overall geologic instability (including due to faults, landslides, unconsolidated soils and slopes, erosion, etc.). The approved project includes substantial areas of cut and fill for the new trail, and potential retaining walls and engineered drainage and erosion control devices on multiple sections of the site. It is not clear from the County's file and findings whether the project can ensure safety from, and not contribute to, geologic hazards, as is required by the LCP. As such, the County-approved project raises a substantial issue of conformance with the geological hazards provisions of the LCP.

Response: Again, the staff report falsely mischaracterizes the uncontroverted expert reports which support the County approval. The County-approved project included four soils and geotechnical evaluations specific to the trail project that were peer reviewed by the County. One of these reports was the County Geologist's review (8/27/2015, Land Set Engineers, Inc., Brian Pauparello) of the materials submitted (GeoSolutions Engineering Review of Rustic Trail 7/1/2015 and Garing Taylor & Associates Grading Plan April 2015) and found as follows:

“The purpose of this letter is to summarize our findings of a site reconnaissance performed on August 19, 2015; and review of the above referenced engineering geology report (Reference 1).

The report was reviewed for conformance with section 23.07.084 of the San Luis Obispo County Coastal Land Use Ordinance (CZLUO) and the San Luis Obispo County Guidelines for Engineering Geology Reports. It is our opinion that the referenced report presents an accurate outline, modeling the site engineering geologic constraints.

It is our opinion that the site engineering geologic conditions are accurately modeled as represented. Our findings are congruent with the conclusions and recommendations of the engineering geologic report prepared by GeoSolutions, Inc., dated July 1, 2015. It is our opinion that the project engineering geologic constraints have been adequately characterized and appropriate mitigative measures have been included for CEQA & CZLUO compliance. The itemized recommendation summarized in Section 6.0 (Reference 1) should be included as conditions of approval prior to the issuance of permits.”

There are no retaining walls included with the project proposal, nor are any such walls “potentially” required as speculated by staff.

Engineered drainage and erosion control devices are included with the trail plans, as required by sound engineering practices, as well by the certified County LCP.

What is not clear from the staff analysis is whether they ever actually reviewed the administrative record and the CEQA analysis conducted by the County, including the soils and geologic studies summarized herein, and further, on what factual basis they can suggest the findings and conditions of the County may not be accurate or clear.

Conclusion

When you start with the premise that you are going to deny whatever the McCarthys propose and the County approves, this is exactly the kind of staff report that you get. Blatant falsehoods. Intimidating the neighbor. Completely ignoring all of the uncontroverted expert reports, final CEQA analysis and specific provisions of the certified LCP. Pretending that the Commission has not already been told by the courts that you cannot declare prescriptive rights and must allow a property owner to fence their property.

California Coastal Commission

February 5, 2021

Page 17

It's time to stop playing games. After ten plus years, just tell us where you will allow the McCarthys to build a house and where you want the trail.

The application before you is for a fence you must approve and for an enlarged, safe, public trail in the exact location staff directed the applicants to place it. It must be approved.

Sincerely,

GAINES & STACEY, LLP

Fred Gaines

By

FRED GAINES

cc: All Coastal Commissioners

From: scmarkoff@aol.com
To: [O'Neill, Brian@Coastal](mailto:O'Neill.Brian@Coastal)
Cc: fgaines@gaineslaw.com; jfk@kurtzlawllc.com
Subject: Steven Markoff to Brian O'Neill: My view of our communications and our request to approve the trail move and property fencing.
Date: Monday, February 8, 2021 10:45:32 AM
Attachments: [scan.pdf](#)

Dear Mr. O'Neill,

This email sets out:

I. My views and recollections regarding Section "A", marked on the first page of Mr. Gains's February 5, 2021 letter (attached) to the California Coastal Commission.

II. Our request that the Coastal Commission approve the subject request, moving the trail from the McCarthy land to our and to allow both parties to fence our land.

=====

I. The words of that Section "A" (attached):

"So staff launched a campaign to convince the co-applicant next door neighbor [Palm Finance] to withdraw their consent to the application. Staff made numerous contacts with the neighboring property owner [Steven Markoff, chair of Palm Finance] in an effort to have them withdraw. Then staff falsely claims in the staff report that Palm Finance declined to be the co-applicant. That is simply not true. Palm Finance has responded to the staff report by stating in writing what was always the case, that they [Palm Finance] are the co-applicant for the permit and support its approval"

Unfortunately my views and recollections are different then the words above. Here are my views of my communications with you regarding the subject McCarthy/ Palm Finance application:

1. When I first talked with you some days ago, and you asked me if Palm was joining the Application, I told you that I had not followed the Subject project and that we (Palm Finance) hadn't got into it's issues;

2. In the days ahead you provided me with several opportunities to join the Application as a co-applicant and you provided me with Mr. McCarthy's contact information. You also suggested that I discuss the project with Mr. McCarthy's representatives and the County. You never suggested that Palm Finance join or not join as co-applicant. You just gave me the information so we could make an informed decision;

3. After doing some home work and after various discussions, Palm Finance became a co-applicant on the application on February 4, 2021;

4. All of my interactions with you have been professional, straightforward, and helpful.

II. As I understand it our co-application asks that the trail that now goes through the McCarthy property, be moved to run through Palm's property. Due to the slop being substantially lowered with the trail relocation, the public would be well served as the lower slope would make it safer and easier to use for walkers and hikers, particularly for those older and/ with health and disabilities. Additionally, we are asking that we be allowed to fence our property. Fencing would be a safety factor for us as property owners, and also lesson the chance that unauthorized persons accidently enter our land.

We hope you will approve the pending application.

Feel free to contact me at either number below if you have any questions.

Respectfully,

Steven (Steve) C. Markoff
Chairman
Palm Finance Corporation
0-310-587-1470
H-310-459-1655

From: CentralCoast@Coastal
To: [O'Neill, Brian@Coastal](mailto:O'Neill.Brian@Coastal)
Subject: Fw: Public Comment on February 2021 Agenda Item Friday 16a - Appeal No. A-3-SLO-17-0062 (McCarthy Public Access Trail Relocation)
Date: Monday, February 8, 2021 9:44:22 AM

From: tarrencollins@charter.net <tarrencollins@charter.net>
Sent: Friday, February 5, 2021 7:39 PM
To: CentralCoast@Coastal <CentralCoast@coastal.ca.gov>
Subject: Public Comment on February 2021 Agenda Item Friday 16a - Appeal No. A-3-SLO-17-0062 (McCarthy Public Access Trail Relocation)

Dear Chair Padilla and Commissioners,

My name is Tarren Collins. I am one of the appellants of the McCarthy Public Access Trail Relocation project.

I appreciate your Santa Cruz staff's excellent staff report. I urge you to adopt your staff's recommendations and findings.

Please find that our appeals raise a substantial issue, and please adopt staff's recommendation to deny this project during the de novo hearing.

During the hearing on our appeals on February 12, I will be making a brief presentation, and showing a short video, in support of our appeals. You can also link to this video to see the stunning beauty of the Ontario Ridge Trail being enjoyed by the public: <https://vimeo.com/217128729?ref=em-share> Videographer Robin Chilton donated his time, skills, and equipment to produce this video.

I've been fighting for the public's right to access the Ontario Ridge Trail since 2013 when the McCarthy's first erected their 6-foot tall fences to illegally block the public's access to this trail. This Commission issued a Cease and Desist Order requiring the removal of these fences in 2014. Not long after removing the fences, the McCarthy's began their campaign to move the public off this trail again by apply for the permit to relocate the Ontario Ridge Trail over the side of the hill and onto a neighboring property.

If you have any doubt about the importance of the Ontario Ridge Trail to the public, please visit my Save Ontario Ridge Trail page on Facebook. 1700 people have indicated their support for this page, which is dedicated to maintaining the Ontario Ridge Trail in its current location.

I am grateful to this Commission, to your Enforcement staff, and to your Santa Cruz staff, for all of your dedicated efforts to support continued public access to the Ontario Ridge Trail. Thousands of hikers who enjoy this trail each week are depending on you once again.

Thank you,

Tarren Collins

Law Office of Tarren Collins

PO Box 3063

Shell Beach, CA 93448

(805)773-0233

<https://collinscoastlaw.com>

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From: CentralCoast@Coastal
To: [O'Neill, Brian@Coastal](mailto:O'Neill.Brian@Coastal)
Subject: Fwd: Public Comment on February 2021 Agenda Item Friday 16a - Appeal No. A-3-SLO-17-0062 (McCarthy)
Date: Tuesday, February 2, 2021 9:40:28 AM

From: Fred Collins <fcollins@northernchumash.org>
Sent: Tuesday, February 2, 2021 9:33:21 AM
To: CentralCoast@Coastal <CentralCoast@coastal.ca.gov>
Cc: Kahn, Kevin@Coastal <Kevin.Kahn@coastal.ca.gov>
Subject: Public Comment on February 2021 Agenda Item Friday 16a - Appeal No. A-3-SLO-17-0062 (McCarthy)

Dear Commissioners:

The County-approved project is also located within an LCP-designated Archaeological Sensitive Area (ASA). The LCP requires that archaeological resources, including ASAs, be protected and preserved, with the highest priority given to avoiding disturbance of the resources. The resource which is located on the McCarthy property is a Chumash Sacred Ceremonial Site. 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. UN Deceleration of Rights of Indigenous Peoples states Article 32, 2. Development must get "their free and informed consent prior to the approval of any project affecting their lands or territories and other resources." Under the LCP, CEQA, Executive Oder B-10-11, UNDRIP and all other laws that protect California Native American Chumash Tribal Resources, NCTC does not approve of this project, and supports the Coastal Commission's Staff recommendations.

Fred Collins
Chairman

Northern Chumash Tribal Council



P. O. Box 6533
Los Osos, CA 93412
805-801-0347
fcollins@northernchumash.org

From: CentralCoast@Coastal
To: [O'Neill, Brian@Coastal](mailto:O'Neill.Brian@Coastal)
Subject: Fwd: 2/12/21 Agenda Item F16a - Appeal No. A-3-SLO-17-0062 McCarthyPublic Access Trail Relocation: DENY CDP
Date: Tuesday, February 9, 2021 7:50:18 AM

From: Santa Lucia Sierra Club <sierraclub8@gmail.com>
Sent: Monday, February 8, 2021 8:03:24 PM
To: CentralCoast@Coastal <CentralCoast@coastal.ca.gov>
Subject: RE: 2/12/21 Agenda Item F16a - Appeal No. A-3-SLO-17-0062 McCarthyPublic Access Trail Relocation: DENY CDP



RE: 2/12/21 Agenda Item F16a - Appeal No. A-3-SLO-17-0062 McCarthy Public Access Trail Relocation: DENY CDP

Dear Commissioners,

The Santa Lucia Chapter of the Sierra Club represents the Sierra Club's 2,500 members and supporters in San Luis Obispo County. We urge you to uphold the appeal of the proposed relocation of the Public Access Trail on Ontario Ridge at Pirates Cove and deny the application for a permit.

We have been involved in the issues surrounding this applicant and this trail, one of the most popular in our County, since 2013, when the first attempt was made to acquire a CDP for a residence and driveway that would have blocked the existing trail, followed by subsequent actions that led to a Cease and Desist Order from your commission requiring the applicants to remove unpermitted signage, fencing and gates that blocked the trail, as described in the staff report.

In permitting these actions, the County distinguished itself by overlooking the existence of a public access easement held by the County and the fact that this has been recorded as a public trail since 2009. When the applicant erected a chain-link fence topped with barbed wire without a CDP in 2014, the County Planning Department reasoned that the applicant's undeveloped land was equivalent to a single-family residence so his fence was exempt from permit requirements; the fence did not block coastal views because it was possible to see the coast through the chain link; and access was not impaired because when hikers reached the fence and found their access to Pirates Cove blocked, they could turn around, hike back to Shell Beach, get in their cars, and drive to Pirates Cove on Cave Landing Road.

Hence, we note that the project before you is a variation on a theme: An attempt to nullify the prescriptive right of the public to the historic use of a trail, and to extinguish a trail easement.

The current proposal to relocate the trail onto private property with no evidence of an agreement to do so from the second property owner has been permitted by the County in ESHA and a Sensitive Resource Area, with no biological surveys or mitigations, requiring 1,260 yards of grading with cuts five feet tall, plus wire fencing and "no trespassing" signs.

Please affirm the Coastal Act's provisions for public access and coastal protection, uphold the appeal, and deny a permit for this project.

Thank you for your attention to this issue,

Sue Harvey, Conservation Chair,

From: CentralCoast@Coastal
To: [O'Neill, Brian@Coastal](mailto:O'Neill.Brian@Coastal)
Subject: Fw: Public Comment on February 2021 Agenda Item Friday 16a - Appeal No. A-3-SLO-17-0062 (McCarthy Public Access Trail Relocation).
Date: Wednesday, January 27, 2021 8:51:38 AM

From: Rebecca Atkinson <rlmoodyatkinson@gmail.com>
Sent: Tuesday, January 26, 2021 6:52 PM
To: CentralCoast@Coastal <CentralCoast@coastal.ca.gov>
Subject: Public Comment on February 2021 Agenda Item Friday 16a - Appeal No. A-3-SLO-17-0062 (McCarthy Public Access Trail Relocation).

This trail as it currently stands is an integral part of the San Luis Obispo County community. It has provided my family with unparalleled access to the natural beauty that this community has to offer, that would otherwise only be available to a very elite group of citizens. My partner and boys have hiked this trail at least semi-monthly for the last decade. I think that improvement to the existing trail would preserve this community asset more than relocating it under the guise of safety concerns. I appreciate your consideration of what is in the best interest of the San Luis Obispo community as a whole as you make this decision.

Thank you,
Rebecca Atkinson
San Luis Obispo County Resident

From: CentralCoast@Coastal
To: [O'Neill, Brian@Coastal](mailto:O'Neill.Brian@Coastal)
Subject: Fw: Public Comment on February 2021 Agenda Item Friday 16a - Appeal No. A-3-SLO-17-0062 (McCarthy Public Access Trail Relocation).
Date: Wednesday, January 27, 2021 8:51:12 AM

From: Alexis Gharavi <alexisgharavi@gmail.com>
Sent: Tuesday, January 26, 2021 5:56 PM
To: CentralCoast@Coastal <CentralCoast@coastal.ca.gov>
Subject: Public Comment on February 2021 Agenda Item Friday 16a - Appeal No. A-3-SLO-17-0062 (McCarthy Public Access Trail Relocation).

Dear Commission Members,

My family of 5 has regularly hiked the Ontario Ridge trail for over a decade. When my kids were little we went as a family. During the lockdown it has provided physical activity and natural therapy for my teens. The trail is well used and well loved by many in our community. It is featured in many memories and many photographs.

I was shocked to hear of the plan to relocate any part of the trail. I can't imagine why such an idea would even be considered. The trail is very clearly a well-established public easement. It provides the public with beautiful coastal views and unique coastal scenery. This is not a new trail. It is not newly infringing on any private property rights. It is a public trail and is very well used and very well loved by a wide range of the public.

I strongly object to any plan to relocate the trail. I can only imagine the purpose is to develop the land that is the public easement of the Ontario Ridge Trail. That means the plan is to erode the public's use of our coastlands and erode the public's ability to access our scenic coastal views.

Please maintain the people's rights to this public hiking trail and maintain California's tradition of preserving the coast for public enjoyment and appreciation.

Thank you,
Alexis Gharavi

From: CentralCoast@Coastal
To: [O'Neill, Brian@Coastal](mailto:O'Neill.Brian@Coastal)
Subject: Fw: Public Comment on February 2021 Agenda Item Friday 16a - Appeal No. A-3-SLO-17-0062 (McCarthy Public Access Trail Relocation).
Date: Wednesday, January 27, 2021 8:51:51 AM

From: Alec Atkinson <alecatkinson@gmail.com>
Sent: Tuesday, January 26, 2021 6:51 PM
To: CentralCoast@Coastal <CentralCoast@coastal.ca.gov>
Subject: Public Comment on February 2021 Agenda Item Friday 16a - Appeal No. A-3-SLO-17-0062 (McCarthy Public Access Trail Relocation).

The Ontario Ridge trail is enjoyed by a diverse population including thousands of locals and a great number of visitors who come to enjoy the panoramic view of San Luis Bay and Pismo State Beach. It is one of few dedicated foot paths that offer challenging terrain with a spectacular reward. The Pismo Preserve is accommodating to bikes and horses but it has seen fires and parking challenges that make it less enjoyable for year round recreation. Please preserve the Ontario Ridge trail access from Pirate's Cove and the East side trailhead for current and future generations of hikers.

Thank you,
Alec Atkinson, Oceano CA

From: CentralCoast@Coastal
To: [O'Neill, Brian@Coastal](mailto:O'Neill,Brian@Coastal)
Subject: Fw: Public Comment on February 2021 Agenda Item Friday 16a - Appeal No. A-3-SLO-17-0062 (McCarthy Public Access Trail Relocation).
Date: Wednesday, January 27, 2021 8:51:05 AM

From: Timothy Harding <Timothy.Harding@skyworksinc.com>
Sent: Tuesday, January 26, 2021 5:02 PM
To: CentralCoast@Coastal <CentralCoast@coastal.ca.gov>
Subject: Public Comment on February 2021 Agenda Item Friday 16a - Appeal No. A-3-SLO-17-0062 (McCarthy Public Access Trail Relocation).

Adding my two cents. Do NOT modify the Ontario Ridge trail! It is possibly the most beautiful coastal trail in all of California due to the stunning view. We do not want a change!

Thanks,

Tim Harding
timothy.harding@skyworksinc.com
office:805.480.4626
mobile:805.276.0514

From: CentralCoast@Coastal
To: [O'Neill, Brian@Coastal](mailto:O'Neill.Brian@Coastal)
Subject: Fw: Public Comment on February 2021 Agenda Item Friday 16a - Appeal No. A-3-SLO-17-0062 (McCarthy Public Access Trail Relocation)
Date: Wednesday, January 27, 2021 8:52:17 AM

From: Lance Young <lanceyoung@gmail.com>
Sent: Tuesday, January 26, 2021 7:07 PM
To: CentralCoast@Coastal <CentralCoast@coastal.ca.gov>
Subject: Public Comment on February 2021 Agenda Item Friday 16a - Appeal No. A-3-SLO-17-0062 (McCarthy Public Access Trail Relocation)

Regarding 'Public Comment on February 2021 Agenda Item Friday 16a - Appeal No. A-3-SLO-17-0062' (McCarthy Public Access Trail Relocation), I support the staffs' recommendation to deny this trail relocation.

Sincerely,

Lance G Young
San Luis Obispo CA 93405

From: CentralCoast@Coastal
To: [O'Neill, Brian@Coastal](mailto:O'Neill,Brian@Coastal)
Subject: Fw: Public Comment on February 2021 Agenda Item Friday 16a - Appeal No. A-3-SLO-17-0062 (McCarthy Public Access Trail Relocation).
Date: Wednesday, January 27, 2021 8:52:25 AM

From: Erin Warren-Gordon <ewarrencg@hotmail.com>
Sent: Tuesday, January 26, 2021 7:23 PM
To: CentralCoast@Coastal <CentralCoast@coastal.ca.gov>
Subject: Public Comment on February 2021 Agenda Item Friday 16a - Appeal No. A-3-SLO-17-0062 (McCarthy Public Access Trail Relocation).

Dear Commission Members,

My friends and I have regularly hiked the Ontario Ridge Trail for many years. The stunning views and unique scenery are well worth the challenge of the trail. The trail provides an opportunity for nearby outdoor physical activity for residents which has been essential for both physical and mental well being during this lockdown.

I strongly object to any plan to relocate part of this well established, long standing trail. It does not infringe on property rights and is an essential public asset that is well loved often utilized by the members of this community and visitors for many years. Please preserve this much valued trail.

Thank you,

Erin Warren-Gordon

From: CentralCoast@Coastal
To: [O'Neill, Brian@Coastal](mailto:O'Neill,Brian@Coastal)
Subject: Fw: Public Comment on February 2021 Agenda Item Friday 16a - Appeal No. A-3-SLO-17-0062 (McCarthy Public Access Trail Relocation).
Date: Wednesday, January 27, 2021 8:52:42 AM

From: Kirsten Bird <kirstenaz@hotmail.com>
Sent: Wednesday, January 27, 2021 6:48 AM
To: CentralCoast@Coastal <CentralCoast@coastal.ca.gov>
Subject: Public Comment on February 2021 Agenda Item Friday 16a - Appeal No. A-3-SLO-17-0062 (McCarthy Public Access Trail Relocation).

Sent from [Mail](#) for Windows 10

Dear Commissioners,

I just wanted to take a moment to let you know that I support the staff's recommendation to deny the relocation of the Ontario Ridge trail. My family and I moved here over 10 years ago from the Central Valley. As a family, we have hiked this ridge trail more times than I can count. The views are stunning and never fail to lift our spirits. This trail hike has provided lots of talking point with my boys and I over the years. Every time we would pause to enjoy the view we have had time talk and reconnect. Please do not relocate this trail and take from us the beauty of the this trial and the opportunity to enjoy one of God's greatest gifts to us, His earth. You can get outdoors and walk a trail anywhere if you just wanted to walk or hike, but as a community we make a special effort to go to the Ontario Ridge trail because it brings with it a beauty and majesty that we can't get walking other trails. Please do not relocate this trail.

Warmly,
Kirsten Bird

From: [O'Neill, Brian@Coastal](mailto:O'Neill.Brian@Coastal)
To: [O'Neill, Brian@Coastal](mailto:O'Neill.Brian@Coastal)
Subject: FW: Public Comment on February 2021 Agenda Item Wednesday 16a - County of San Diego Post LCP Certification Permit and Appeal Jurisdiction Map.
Date: Monday, February 8, 2021 10:02:42 AM

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

From: Schmidt- Butcher <idealize@hotmail.com>
Sent: Wednesday, January 27, 2021 9:26 AM
To: SanDiegoCoast@Coastal <SanDiegoCoast@coastal.ca.gov>
Subject: Public Comment on February 2021 Agenda Item Wednesday 16a - County of San Diego Post LCP Certification Permit and Appeal Jurisdiction Map.

Thank you for taking your time to read my comments. I truly believe in our community and our officials hands on involvement in this community.

ACTION NEEDED!!! Our Coastal Commission appeals of the McCarthy's Ontario Ridge Trail Relocation project. Commissioners, I support staffs' recommendation to deny this trail relocation! This is a public easement that is for the community, for our access to open land for the betterment of our people. The view is for us all, the exercise brings us health and enriches our lives. Please keep this public access.

the staff report here: <https://www.coastal.ca.gov/meetings/agenda/#/2021/2>

The Coastal Commission staff drafted an excellent report which supports our appeals, with a recommendation to Coastal Commissioners to uphold the appeals, and deny this terrible project which is attempting to move our trail over the side of the hill!!

Thank you!!

Virginia — at Ontario Ridge.
Shell Beach resident
Pier Ave.

From: CentralCoast@Coastal
To: [O'Neill, Brian@Coastal](mailto:O'Neill.Brian@Coastal)
Subject: Fw: Public Comment on February 2021 Agenda Item Friday 16a - Appeal No. A-3-SLO-17-0062 (McCarthy Public Access Trail Relocation).
Date: Thursday, January 28, 2021 11:44:04 AM

From: Korie <koriebayer@mac.com>
Sent: Wednesday, January 27, 2021 11:49 AM
To: CentralCoast@Coastal <CentralCoast@coastal.ca.gov>
Subject: Public Comment on February 2021 Agenda Item Friday 16a - Appeal No. A-3-SLO-17-0062 (McCarthy Public Access Trail Relocation).

Re: Public Comment McCarthy Public Access Trail Relocation

Thank you for allowing public input into this project. After reviewing the staff recommendations and finding them to be so thoroughly and admirably researched and conveyed, I ask that our commissioners likewise spend some time acquainting themselves with the significant impact this proposal would create on a public that relies upon you to do so.

At a time when all of us can feel the effect of a pandemic that has created a necessary yet mercifully temporary separation of our human experiences, it feels even more urgent that we embrace and support our access to resources intended for meeting our common needs. This trail provides recreation. It provides access to exercise. It allows us to experience the coastline that is our home and has been so long before the landowners put down their cash and began to erect their fences. This trail has been at the heart of some transformational moments in my life. It has witnessed my sweat and it has seen a few tears. It has been a refuge for me and for so many others, and should continue to be available exactly as it is, to all of us and not a privileged few.

Thank you for your attention and consideration.

Korie Bayer

From: CentralCoast@Coastal
To: [O'Neill, Brian@Coastal](mailto:O'Neill.Brian@Coastal)
Subject: Fwd: Public Comment on February 2021 Agenda Item Friday 16a - Appeal No. A-3-SLO-17-0062 (McCarthy)
Date: Monday, February 1, 2021 7:10:31 PM

From: Amie DuMong <adumong2@gmail.com>
Sent: Sunday, January 31, 2021, 11:08 AM
To: CentralCoast@Coastal
Cc: Amie DuMong, ABOC
Subject: Public Comment on February 2021 Agenda Item Friday 16a - Appeal No. A-3-SLO-17-0062 (McCarthy)

I am a home owner on El Portal Drive with my back yard connected to Ontario Ridge. While you would think that I would be in favor of closing or moving the trail, I am not. This is a beautiful part of our central coast and a trail that offers healthy fitness and mental meditation for many. I do however think that we could spend money to provide better parking for access to the trail and maintenance to protect the land. I would be in favor of rerouting parts of the trail to protect against erosion to preserve this exquisite gem but certainly not moving or closing it.

Amie DuMong
Ahmad Amir
264 El Portal Dr.
Pismo Beach
805-704-1973

Sent from my iPhone

From: CentralCoast@Coastal
To: O'Neill_Brian@Coastal
Cc: Shara_Kelsey@Coastal
Subject: [For: Public Comment on February 2021 Agenda Item Friday 16a - Appeal No. A-3-SLO-17-0062 \(McCarthy\)](#)
Date: Monday, February 8, 2021 9:44:12 AM

From: lena.rushing <lenarushingart@gmail.com>
Sent: Friday, February 5, 2021 11:42 AM
To: CentralCoast@Coastal <CentralCoast@coastal.ca.gov>
Subject: Public Comment on February 2021 Agenda Item Friday 16a - Appeal No. A-3-SLO-17-0062 (McCarthy)

To Whom it May Concern,

Beauty and health. This is why we pay so much to live here, for access to this kind of natural magnificence ...unobstructed , unaltered.

The Ontario Ridge Trail is an absolute treasure of this community, we use it, we appreciate it, we love it and we need it in our lives. I personally have been using this hiking trail 3 or 4 times a week for over a decade. I've never been on a hike and not seen several other hikers, this is a constantly well used trail and on weekends it's swarming with visitors because this is where we take our friends and family to show off our slice of heaven! This trail also offers great health benefits to our community, most notably, what local refer to as , " Cardio Hill", the steep part of the trail that joins cave landing to the ridge. This is where we build leg muscles and get our great cardio workout! It's one of the best parts of the trail! Personally, I wouldn't change a thing, but if the planning commission is concerned about how steep the hill is, there are minimally invasive ways to alter the current hill by just adding a simple wood plank and earth set of rustic stairs. My kids grew up enjoying this trail. Back when the fences went up, my teenage son wrote a letter to the coastal commission about how I started crying when I saw them. This trail is perfect just the way it is, the fact that it's used all day everyday is testimony to that!

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

I agree entirely with the following statements:

"Before purchasing the property which holds our public access easement, Rob and Judy McCarthy acknowledged the public recreational access easement on this parcel, and they agreed, in writing that their property rights on the land were subordinate to the county's access easement. This agreement is called "Subordination and Non-Disturbance Agreement". Not only did the McCarthy's agree that the county's public access easement here is a property right that is superior to theirs, they also agreed not to "disturb or deprive County in or of the use, quiet enjoyment and possession (or its right of use, quiet enjoyment or possession) of such easements or any part thereof..."

" This hiking trail has been used by the public for generations, with documented use going back over 50 years. This trail easement is held in trust by the county on behalf of the public. It is a priceless public resource. We need to keep it, not gift it to the McCarthy's."

"The view at the new relocation site chosen by McCarthy is of the back of the old tank farm and Avila Road, not the beauty of the coast from Point Sal to Point Buchon. The new site subjects hikers to the noise of traffic below on Avila Road. The new site cuts into native soils, will destroy native plants, creates disturbance in a Chumash sacred area, cuts across a landslide zone and creates new erosion problems. The disturbance of this designated Sensitive Resource Area is preventable."

"Hundreds of people hike the current trail easement every week. 1,787 of them have registered their support for keeping the trail in its current location and fence free. Do not trade our priceless trail easement for McCarthy's less desirable plan. The county owes the McCarthy's nothing. The county's property right in the access easement trumps the McCarthy's rights, and the McCarthy's agreed to this arrangement. The only benefit of this "relocated" trail will be to the McCarthy's, not the public."

"Allowing a private party to purchase land, then to extinguish a public access easement on it, is a slippery slope."

I would say, "Allowing a private party to purchase land, then to extinguish a public access easement on it, is.." gross!

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

From: CentralCoast@Coastal
To: [O'Neill, Brian@Coastal](mailto:O'Neill.Brian@Coastal)
Subject: Fw: Public Comment on February 2021 Agenda Item Friday 16a - Appeal No. A-3-SLO-17-0062 (McCarthy Public Access Trail Relocation)
Date: Monday, February 8, 2021 9:44:44 AM

From: Rachael Foe <rachaelfoe@gmail.com>
Sent: Saturday, February 6, 2021 8:40 AM
To: CentralCoast@Coastal <CentralCoast@coastal.ca.gov>
Subject: Public Comment on February 2021 Agenda Item Friday 16a - Appeal No. A-3-SLO-17-0062 (McCarthy Public Access Trail Relocation)

Dear Coastal Commission,

Please continue to provide access to the Ontario Ridge Trail for the public. It is a source of pride and joy for the community.

Thank you,
Rachael Foe

From: CentralCoast@Coastal
To: O'Neill_Brian@Coastal
Cc: Sharp_Kelsey@Coastal
Subject: Fw: Public Comment on February 2021 Agenda Item Friday 16a - Appeal No. A-3-SLO-17-0062 (McCarthy)
Date: Monday, February 8, 2021 9:45:12 AM

From: Cary <cgeihs@slonet.org>
Sent: Sunday, February 7, 2021 9:16 PM
To: CentralCoast@Coastal <CentralCoast@coastal.ca.gov>
Subject: Public Comment on February 2021 Agenda Item Friday 16a - Appeal No. A-3-SLO-17-0062 (McCarthy)

February 7, 2021

RE: SUBSTANTIAL ISSUE & DE NOVO HEARING February 12, 2021, Agenda Item F 16a

Steve Padilla, Chair & Members
California Coastal Commission
c/o Central Coast District Office
Dan Carl, District Director
45 Fremont Street, Suite 2000
San Francisco, CA [94105-2219](tel:94105-2219)
Via Fax: [\(415\) 904-5400](tel:415-904-5400)

Subject: Appeal No. A-3-SLO-17-0062 (Ontario Ridge Trail Relocation)

Dear Chair Padilla and Members of the Commission:

As a resident of the Central Coast District, I am writing in response to the Staff Report dated January 22, 2021, and ask that you deny the relocation of an existing public access pedestrian easement and trail (the "Ontario Ridge Trail"). For the reasons stated below and the significant Coastal Act and LCP inconsistencies stated in the staff report.

First, the applicants have failed to demonstrate a fee interest in the subject property and the owner of the property (Palm Finance Corporation) have stated that the San Miguelito Partners' prior consent to the trail relocation project is no longer valid, and Palm Finance Corporation has also not agreed to be a co-applicant for the project.

If the applicant could demonstrate fee interest or Palm Finance Corporation was willing to agree to be co-applicant, the project still should be denied. On grounds that the recorded public recreational easement states that the easement can only be relocated at "Grantor's reasonable discretion and at Grantor's sole cost and expense to a location on Grantor's Property that Grantor and Grantee shall reasonably agree."

Second, the project should be denied solely on the grounds stated in the staff report “[Namely, the Commission found, based on a prescriptive rights survey and extensive research, that as the public had been using the trail for more than 50 years, a prescriptive use likely exists across the trail, and that the County easement, “...did not create public use, but rather it codified and endorsed the public's ongoing use of the trail” (Adopted Findings, page 4). Thus, the public has actually been using this trail for nearly five and a half decades. Such use can develop into an implied dedication and prescriptive rights pursuant to the legal principles enunciated in case law such as Gion-Dietz" (Adopted findings, page 21).

And third, the “Commission's Adopted Findings for the Orders, the proposed off-site relocation of the Ontario Ridge Trail would be inconsistent with the Coastal Act, the terms of said Orders, and may be an impermissible alienation of an interest in land held by the public.”

In conclusion, we need to protect the public’s recreational easement, and the implied dedication and prescriptive rights, along with the access features, the Ontario Ridge Trail provides. Such as the dramatic and sweeping vistas of the ocean and coastline, and the steepness of the trail that has provided hikers for over 55 years a distinctive user experience of a straight ascent from Cave Landing Road to the top of the ridge, by DENYING THE PROJECT.

Sincerely,

Cary L. Geihs,
Avid hiker of the Ontario Ridge Trail for over 43 years.

From: CentralCoast@Coastal
To: [O'Neill, Brian@Coastal](mailto:O'Neill.Brian@Coastal)
Subject: Fwd: Please Read for Public comment on 2/21 agenda Item Friday 16a - Appeal No. A-3-SLO-17-0062
Date: Tuesday, February 9, 2021 7:50:34 AM

From: Shelley Malcolm <shelleysmalcolm@gmail.com>
Sent: Tuesday, February 9, 2021 6:50:39 AM
To: CentralCoast@Coastal <CentralCoast@coastal.ca.gov>
Subject: Please Read for Public comment on 2/21 agenda Item Friday 16a - Appeal No. A-3-SLO-17-0062

Thank you for taking time to read and include my comments.

I have lived in Shell Beach for about 26 years. Our family included four now adult children. We never take for granted the value of our natural surroundings and how formative hiking and exploring our hills and taking in the views can be. These beauties, these challenges, these precious resources are irreplaceable for future generations.

The Ontario Ridge is like no other. The views speak for themselves. The foliage and critters inherent to this trail teach us about the balance of life, the delicate nature as well as its resilience, strength and resourcefulness.

One of the most extraordinary benefits of the trail as it stands is the physical challenge it offers. It is an incredible training ground for the athlete and motivating for the weekend warrior. It encourages "teamwork" when hikers of different abilities take it on as they encourage each other to reach the top, to realize the reward of the incomparable views.

It is easy to find strolling paths and easy to moderate rolling trails, but there are few like the Ontario Ridge trail. Those who have frequented it over the years are protective of this precious resource.

Those who have never done it look to it in hopes that someday they will. I have a friend who has achieved remarkable weight loss and is getting her second knee replacement because she set a goal to someday "hike to the top". I truly want to see her and others be able to do so.

The Ontario Ridge trail is a familiar friend to many, and we are thankful to be able to speak up in order to preserve this incomparable experience.

Thank you for reading.

Shelley S Malcolm
Shell Beach Resident

From: CentralCoast@Coastal
To: [O'Neill, Brian@Coastal](mailto:O'Neill,Brian@Coastal)
Subject: FW: Public Comment on February 2021 Agenda Item Friday 16a - Appeal No. A-3-SLO-17-0062 (McCarthy Public Access Trail Relocation)
Date: Tuesday, February 9, 2021 10:09:09 AM

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

From: George Glaser <george_glaser@yahoo.com>
Sent: Tuesday, February 9, 2021 9:48 AM
To: CentralCoast@Coastal <CentralCoast@coastal.ca.gov>
Subject: Public Comment on February 2021 Agenda Item Friday 16a - Appeal No. A-3-SLO-17-0062 (McCarthy Public Access Trail Relocation)

To COASTAL COMMISSIONERS:

I, and several friends, hike the Ontario Ridge Trail weekly (sometimes twice a week). It is a great workout with inspiring views that are hard to match. It would be a major loss to have the trail relocated or altered in any way.

Please keep the Ontario Ridge Trail open as is for the public to enjoy. Thank you.

Regards,
George Glaser

Sent from my iPad

From: CentralCoast@Coastal
To: [O'Neill, Brian@Coastal](mailto:O'Neill,Brian@Coastal)
Subject: Fwd: Public Comment on February 2021 Agenda Item Friday 16a - Appeal No. A-3-SLO-17-0062 (McCarthy Public Access Trail Relocation)
Date: Tuesday, February 9, 2021 7:49:19 AM

From: Chris Tollefson <chris.ccd@outlook.com>
Sent: Monday, February 8, 2021 6:12:55 PM
To: CentralCoast@Coastal <CentralCoast@coastal.ca.gov>
Subject: Public Comment on February 2021 Agenda Item Friday 16a - Appeal No. A-3-SLO-17-0062 (McCarthy Public Access Trail Relocation)

Hello -

I first began using the Ontario trail in the late 1980's and feel strongly that it should remain open and accessible for everyone to enjoy. My now adult children have also used this trail and I hope my future grandchildren will as well. The public has a right to continued access to the Ontario Ridge Trail as it currently exists. One person should not be able to control access to a public trail that has been in use for decades.

Best Regards,

Chris Tollefson
chris.ccd@outlook.com

From: CentralCoast@Coastal
To: [O'Neill, Brian@Coastal](mailto:O'Neill.Brian@Coastal)
Subject: Fwd: Public Comment on February 2021 Agenda Item Friday 16a - Appeal No. A-3-SLO-17-0062 (McCarthy
Date: Tuesday, February 9, 2021 7:48:45 AM

From: Cynthia Replogle <cynthia.replogle@gmail.com>
Sent: Monday, February 8, 2021 5:47:33 PM
To: CentralCoast@Coastal <CentralCoast@coastal.ca.gov>
Subject: Public Comment on February 2021 Agenda Item Friday 16a - Appeal No. A-3-SLO-17-0062 (McCarthy

Please act in accordance with staff's recommendations that, as the County's approval of the project raises a substantial LCP conformance issue with respect to the issues, the Commission take jurisdiction over the CDP application and deny that CDP application due to significant Coastal Act and LCP inconsistencies.

Rich people shouldn't be allowed to take away the public's established right to access a popular coastal trail.

Best,
Cynthia Replogle
Oceano, CA

From: CentralCoast@Coastal
To: [O'Neill, Brian@Coastal](mailto:O'Neill.Brian@Coastal)
Subject: Fwd: Public Comment on February 2021 Agenda Item Friday 16a - Appeal No. A-3-SLO-17-0062 (McCarthy
Date: Tuesday, February 9, 2021 7:50:07 AM

From: merkal jaobbs <tablebalance50@gmail.com>
Sent: Monday, February 8, 2021 6:50:57 PM
To: CentralCoast@Coastal <CentralCoast@coastal.ca.gov>
Subject: Public Comment on February 2021 Agenda Item Friday 16a - Appeal No. A-3-SLO-17-0062 (McCarthy

F16 A we need public access to Ontario ridge on the original path. I would love to hike the trail soon . Thanks