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Th16a

Prepared June 12, 2024 for June 13, 2024 Hearing

To: Commissioners and Interested Persons
From: Kevin Kahn, Central Coast District Manager
Ryan Moroney, District Supervisor
Subject: **STAFF REPORT ADDENDUM for Th16a**
CDP Number 3-24-0020 (Morro Bay-Cayucos Coastal Trail)

The purpose of this addendum is to both respond to certain points made by the attorney for the North Point Morro Bay Homeowners Association (HOA) in correspondence dated June 7, 2024 (see correspondence package for this item) and to make some minor changes at the request of the Applicant, the San Luis Obispo County Department of Parks and Recreation. Both the response and the minor changes do not modify the basic staff recommendation, which is still approval of the CDP with conditions.

As a preliminary matter, staff continues to believe that this project represents an exciting opportunity to realize important Coastal Act goals in this corridor, including providing a separated multi-use public recreational pathway that parallels the shore and connects two coastal communities; that provides lateral and vertical beach access; that provides parking, overlooks, and interpretation; and that includes some 9 acres of dune restoration. This project has been envisioned for several decades, and its coming to fruition will provide meaningful coastal resource enhancements for residents and visitors alike.

Response to HOA Concerns

And while many in the community and elsewhere strongly support the project, there are still those that oppose certain elements of it, particularly the homeowners along a portion of Toro Lane in Morro Bay that live adjacent to the road where portions of the new trail will be located.¹ While staff was already aware of their concerns and analyzed them starting on page 20 of the staff report, the HOA's attorney provided a letter after publication of the staff report that summarizes and reiterates the HOA's objections to siting the trail along Toro Lane. The main thrust of their argument is that the road is not

¹ To be clear, about half of the Toro Lane property in question is public property owned by the City of Morro Bay, and the HOA's easement concerns are not applicable to that public property. The portion of Toro Lane that is private fronts ten homes at the northern edge of the road for about 600 feet, where that full section of road is encumbered by a public access easement that was required by the Coastal Commission in 1993. It is the 600-foot stretch of Toro Lane to which the HOA's comments are directed.

equipped nor legally allowed to have such trail use on it. On the former, they argue that expanding public use on this road will lead to privacy concerns and general residential disruptions by having new people using the pathway so close to their homes, including because Toro Lane serves as their residential ingress and egress point. And with respect to the latter, they argue that the trail is beyond the scope of what the Coastal Commission-required public access easement associated with that 600-foot portion of the road allows.

On the latter point, the 600-foot section of the road fronting the ten HOA homes is privately owned by the HOA, but is subject to a public access easement that was required by the Coastal Commission, in part in response to the HOA's original proposal for a private gated entry across Toro Lane that would have blocked and limited public access in this area.² The HOA's attorney argues that the easement's language evinces an intent to solely allow for very limited public access to and from the public portion of Toro Lane (i.e., nearest the Yerba Buena Street intersection) and the City's North Point Natural Area public parking lot at its northern end. In other words, the HOA opines that the easement only allows limited public use to access the parking lot and no more. Staff disagrees with the HOA's position.

The HOA appears to interpret the public access easement as being extremely limiting in its scope and breadth, and to interpret it to affirmatively prohibit the proposed trail from using the road. However, there is actually nothing in the easement document itself that prohibits the type of access proposed here or that supports such a narrow and limited interpretation (e.g., the easement does not say that such access is only allowed to the parking lot and not beyond, or that it is only allowed for some type of limited public access with restrictions on same), and the HOA appears to be reading such access limiting terms into the easement in a manner that they do not exist. And actually, the Commission required the easement in part to provide maximum public recreational access opportunities, as required by the Coastal Act, and the Commission's findings at the time note that it was intended to provide public access for "unlimited pedestrian volume" (emphasis added). And in fact, the easement was intended to and provides access from Toro Lane to the City's natural area and the beach and points to the north (which are the same points where the trail improvements north of the easement would be located), and vis versa. And public access easements and other public property interests are often 'stitched together' over time to provide for public access improvements in the coastal zone as funding and other factors come together, and this case is no different. That it helps to formally complete a de facto gap in the California Coastal Trail, which is a primary State objective, makes such use of the public access easement all the more appropriate here.

In sum, there is nothing in the plain reading of the easement language that would affirmatively preclude the proposed public recreational use of it, and there is little doubt

² The Commission required the easement as part of CDP approval for the 10-unit residential subdivision seaward of that section of the road in 1993 (CDP Number 3-93-01), which required "an easement for public and pedestrian access to lot 11 [now the City's North Point Natural Area parking lot]...along the entire length and width of the access road and any sidewalks provided on lot 12 [the privately owned 600-foot section of Toro Lane], from the southern end of lot 12 to lot 11, between the Highway One right-of-way and the residential lots' northeasterly property lines."

that it is in the public's interest to make use of the easement in this way for public purposes, including to make use of the easement to maximize public recreational access opportunities, as it was required by the Commission to do in the first place. In addition, there is no doubt that directing trail users along Toro Lane, as the County proposes in this project, would provide a safer, more attractive, more useful, and less expensive option than would moving the trail up to Highway 1 grade to avoid the public access easement area as these private homeowners would prefer (see also staff report discussion starting on page 21). As to use of the 600-foot section of the road fronting the ten HOA homes leading to some sort of undo privacy concerns and/or disruption, such claims appear to be significantly overblown, including as the road is already used for public access purposes today including all types of vehicles that are currently lawfully allowed to use public streets and sidewalks (including cars, electric scooters, bikes, pedestrians) and those uses would not change with this project. In addition, the County indicates that it intends to provide appropriate signage designed to alert users of the need to respect adjacent private property, to use striping/sharrows so that trail users can safely coexist with other users of the space, and to work directly with the HOA to address their issues as best as possible through other appropriate means. Staff will also work with the County and HOA to address issues in this regard as well.

Minor Staff Report Changes

Finally, the County has requested a few minor changes to clarify items related to tribal monitoring and repair and maintenance duration, as well as regarding consolidated CDP processing, all of which are reasonable to staff and do not significantly alter the staff report or recommendation. Thus, 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. Modify Special Condition 4(a) on staff report pages 8-9 as follows:

AT LEAST ONE MONTH PRIOR TO COMMENCEMENT OF ANY GROUND-DISTURBING CONSTRUCTION ACTIVITIES, the Permittee shall (i) notify in writing, email, and/or phone calls, as necessary, the representatives of Native American Tribes listed on an updated Native American Heritage Commission (NAHC) contact list who responded to the Commission's consultation process during CDP review; (ii) invite all the Tribal representatives on that list to who responded to be equally represented in all tribal cultural monitoring, be present and to monitor ground-disturbing activities; and (iii) arrange for any invited Tribal representative that requests to monitor and a qualified archaeological monitor to be present to observe project activities with the potential to impact archaeological and/or tribal cultural resources based on the Cultural Monitoring Plan prepared by a qualified archaeologist and approved by the Executive Director. A qualified archaeological monitor means qualified at a minimum by the California Office of Historic Preservation (OHP) standards. The monitor(s) shall have experience monitoring for archaeological resources of the local area during excavation projects, be competent to identify significant resource types, and be aware of recommended Tribal procedures for the inadvertent discovery of archaeological resources and human remains. Evidence of written notification shall be made available to the Executive Director upon request.

2. Modify Special Condition 7(h) on staff report page 14 as follows:

***Duration of Covered Maintenance/Repair.** Future armoring maintenance under this CDP is allowed subject to the above terms until ~~June 13, 2034~~ 10 years post completion of construction of the project, where that armoring maintenance term may be extended by the Executive Director if the Permittee requests and the Executive Director grants, in writing, such extension, where such extensions can be in increments from at least one to up to ten years at a time...*

3) Add the following language to the end of the “Standard of Review” section on staff report page 16:

Thus, the Commission is processing and acting upon a consolidated CDP application pursuant to Coastal Act Section 30601.3 for the proposed development as San Luis Obispo County, the City of Morro Bay, and the Commission’s Executive Director all agreed to consolidate CDP processing for the proposed development based upon findings warranting such consolidation.