

CALIFORNIA COASTAL COMMISSION

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December 13, 2011

Morro Bay City Council
Attn: Kathleen Wold
City of Morro Bay
595 Harbor Street
Morro Bay, CA 93442

Subject: **December 13, 2011 Hearing for Proposed Jordan Terrace/Cerrito Peak Residence (CP0-285)**

Mayor Yates and Councilmembers:

We are writing to express our significant concerns about the proposed residence at Cerrito Peak that will be presented at tonight's City Council hearing. We have identified several major inconsistencies with the requirements of the City's LCP relating to biological, archeological, visual and public access resources, as described below, and we urge you to examine the proposed project carefully. Please consider our concerns, as well as the concerns of other organizations and the public.

First, it is not clear from the record if the subject lot is a legal lot. The subject lot is shown on a map dated 1888. However, case law indicates that appearance on such a map does not establish that the property was legally created. Instead, recent Court of Appeal decisions in both *Witt Home Ranch v. County of Sonoma* (2008) and *Abernathy Valley, Inc. v. County of Solano* (2009) instruct that the legal status of lots appearing on subdivision maps of this vintage is that they are still in common ownership. Thus, the City should determine whether the lot is legal prior to acting on the project. Such an evaluation should include an analysis of: (1) the historic chain of title for the subject property, and; (2) information that establishes the legality of the subject parcel, including certificates of compliance, grant deeds and information demonstrating whether all such property complies with the provisions of the Subdivision Map Act and the City Ordinances enacted pursuant thereto, including at each juncture where the property is identified.

Second, the LCP includes strong protections for biological resources and environmentally sensitive habitat areas (ESHAs). These policies include 11.01 which prohibits development in ESHA except if it is resource-dependent, 11.02 requiring development adjacent to ESHA to be sited and designed to prevent adverse impacts, 11.06, which requires adequate buffers from ESHAs, and 11.22, which requires the precise location and boundary line of ESHA to be determined prior to approval of the CDP. The Commission's biologist reviewed the available information for this case and determined that it is likely ESHA due to the use of the site by monarch butterflies. In addition to the existing information about the historic use of the site by butterflies, the City should require an updated butterfly survey conducted at the appropriate time of year to inform the determination as to where ESHA for monarch butterflies is located.

In addition, there is a potential for the site to contain ESHA related to raptor habitat. To determine the location of raptor habitat, the City should require surveys to be conducted during the appropriate season, prior to taking an action on the project. Typically, when considering raptor habitat, the Commission requires both nesting and wintering raptor surveys. Surveys must be conducted by biologists with formal training in avian biology, significant field experience in raptor survey techniques, and demonstrated ability to accurately identify local species under a variety of field conditions. For nesting habitat, surveys should be conducted between March 1 and June 15, and should consist of at least five visits spaced at least one week apart. Each visit should consist of at least two hours on site between dawn and 10 am, and the biologist should search for nests and foraging raptors and raptors using trees for perching, roosting or nesting. The wintering habitat survey should follow the requirements of the nesting habitat survey, but must be conducted between December 1 and February 15.

Any ESHA that is identified through surveys or otherwise must be shown on a map, in relation to the proposed project, consistent with LCP policy 11.22. This map must then be used to determine necessary ESHA buffers, as required by the LCP. In addition, the project must be sited and designed to minimize any impacts on adjacent ESHA, including the impacts caused by placing a residence and human activity in close proximity to wildlife habitat. Because the City has not made a determination as to whether the site contains ESHA, and has not identified such ESHA on a map, it appears the City does not have the necessary information to evaluate the project for consistency with the certified LCP.

Third, with regard to archaeological resources, the site is a known sacred site and it also contains several Native American grinding stones. The City's LCP requires these significant archaeological resources to be protected. The policies include 4.01, requiring archaeological resources to be preserved to the greatest extent possible and 4.07, which requires the City to explore all available measures, including purchases, tax relief, and purchase of development rights. In this case, it appears the City has neglected to ensure the sacred site is protected, as required by the LCP, instead focusing on protecting the grinding stones that were found. In addition, it appears that the City has not explored options for avoiding development on the site, as required by LCP policy 4.07.

Fourth, the proposed project is located on a visually significant rocky peak that can be viewed from numerous public areas, including potentially Highway 1. The LCP requires the City's scenic and visual qualities to be considered and protected as a resource of public importance. It appears the City does not have adequate information to evaluate the proposed project for consistency with the LCP. For such a significant site, the application should include visual simulations showing the proposed project from several vantage points, as well as a story pole analysis that includes photographs of story poles taken from public locations. Further, given the limited visual information that is available, it appears the project would be large in scale, that it would substantially affect surrounding views, and that it would result in the removal of a significant number of trees that will increase the visual impact of the project, in addition to adversely impacting biological resources.

Finally, it appears that the site has been used regularly by the public for recreational purposes. The City should evaluate the potential for the site to contain public easements obtained through prescriptive use. If such easements exist, the development must be sited to avoid impacts and maximize public access, as required by the LCP.

Thank you for the opportunity to comment on the proposed project. As described above, the project appears to raise numerous significant inconsistencies with the City's certified LCP. We urge you to consider these comments and delay action on the project until the necessary information is obtained, allowing the City to fully evaluate the project for consistency with the certified LCP.

Sincerely,

A handwritten signature in black ink, appearing to read "Madeline Cavalieri", with a long horizontal flourish extending to the right.

Madeline Cavalieri
Coastal Planner

