



Appeal Form

County of Ventura • Resource Management Agency • Planning Division
800 South Victoria Avenue, Ventura, CA 93009 • 805 654-2488 • www.vcrma.org/divisions/planning

Appeal Number: PL21-0035

To: ☐ Board of Supervisors
☒ Planning Commission
☐ PWA Advisory Agency

I hereby appeal the decision of the Jennifer Welch, Manager, Residential Permits , which was given on
August 18 , 20 21 .

The decision was as follows:

Approved Elliot Site Plan Adjustment (Case #PL21-00035) for 8120 Puesta Del Sol, Carpinteria, Coastal Planned Development Permit Case No. PL17-0084.

The grounds of appeal are (attach extra sheets as needed):
Please see attached statement of grounds for appeal.

I request that the appropriate decision making body take the following action:

Entire approval either be reversed or certain provisions be deleted or modified to protect environmental resources and to remove certain restrictions that impact appellants' adjacent property, as described in statement of grounds for appeal.

Name of Appellant: Douglas & Jaleh White

Address of Appellant: 8128 Puesta Del Sol, Carpinteria, CA 93013

Telephone Number of Appellant: (805) ~~745-5048~~ 684-1561

County of Ventura
Planning Commission Hearing
PL21-0035
Exhibit 5 - Appellant's Grounds of Appeal

Is the appellant a party in the application? ☒ No . If not, state the basis for filing the appeal as an "aggrieved person."

Appellants own the abutting real property, which shares a fenceline with the Elliot property and will be adversely impacted by the project and proposed project conditions. The project is located in a sensitive area adjacent to the sandy beach and very close to ESHA associated with the confluence of a major creek and the ocean. Appellants' property includes mature, specimen trees that could be adversely impacted or even killed by the project.



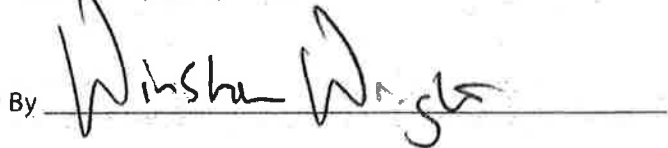
Signature of Appellant

August 27 - 21

Date

Appeal and deposit fee of \$ 1000.00 (pursuant to fee schedule specified by Resolution No. 222 of the Ventura County Board of Supervisors) received by the Planning Division at 12:06 (time) on August 27, 2021.

Dave Ward, AICP
Director- Planning Division

By 

ATTACHMENT TO APPEAL FORM

STATEMENT OF GROUNDS FOR APPEAL **SUBMITTED BY DOUGLAS AND JALEH WHITE** **[8120 PUESTA DEL SOL – CASE #PL17-0084 and** **MODIFICATION OF PROJECT PL21-0035]**

Introduction and Historical Background

The Appellants in this case own the property immediately to the west of, and abutting, the project site. Appellants have stayed in touch with County staff regarding the Elliott project because they had a suspicion that project modifications, not included in the original project application (which was woefully short of comprehensive disclosures regarding the project site features and challenges), would be made in the future, with or without permits. Appellants were concerned that future changes would result in adverse potentially significant environmental impacts as well as impacts upon Appellants' accessway, shared fenceline, and site improvements.

Appellants were disappointed by the County's original approval of the project and the conditions imposed on the project, but they took some comfort in the Planning Commission's and staff's assurances that the project would include no ground disturbance or grading and, thus, would not have an adverse impact on the protected trees and improvements on Appellants' property. On December 13, 2018, the Ventura County Planning Commission heard Appellants' original appeal, reviewed the slightly modified conditions, and approved the GMB Elliott Family LLC Planned Development project, subject to conditions. The approved project did not include any changes to the shared fence or a complete reconstruction and enlargement of the Elliott driveway and carport.

On their original appeal, in 2018, Appellants expressed substantial concern regarding the long-term integrity of the wooden piles that support much of the Elliotts' residence, so there was extensive discussion with staff and the Planning Commission of the potential that some or all of the piles would need to be replaced, a task that could damage or kill the Monterey Cypress trees by disturbing their roots.

Now we are back, once again discussing the significant adverse impact of digging new holes at the expense of the cypress trees' root systems – which would have a significant adverse environmental impact that would have been explored more thoroughly if environmental review had ever been conducted for this project.

Appellants opposed the original project and identified several ways in which the conditions either were too loose or would lead to future problems, particularly in regard to the Environmentally Sensitive Habitat Area (ESHA) that includes the Rincon Creek

estuary, the sandy beach, and the ocean, and regarding three (3) protected, mature, flourishing Monterey Cypress Trees. These trees are native to the California Central Coast and, as such, are required to have diligent protective measures to minimize or prevent project impacts. These three trees, located on Appellants' property, have an extensive root structure that is relatively shallow (likely due to the high groundwater table underlying the Elliott property and the Appellants' property) and extends onto the Elliott property and under their driveway and house.

In discussions with County staff and the Planning Commissioners at the public hearing, Appellants also were reassured that neither their property nor the surrounding ESHA would be altered, because the County's approval included the express statement that "The project will not extend beyond the boundaries of the subject property." In short, with no earth disturbance that could damage or kill the cypress trees, the project as then proposed would not be expected to adversely affect Appellants' property or trees.

The newly proposed project elements and the modified conditions give rise to new potentially significant environmental impacts and have some very serious impacts on Appellants' property. For example, the Elliots now propose, and staff has approved, a complete reconstruction and extension of the existing driveway in a manner that could damage the cypress trees' root systems and could result in an impediment to Appellants' driveway because the driveway now proposed by the Elliots WILL extend well beyond the Elliots' property line and would result in changes to parking and circulation.

#1 The staff-approved project changes also will include a demolition and replacement of the fence that lies between the two properties. This was never part of the project, and in lengthy discussions with staff regarding potential impact of support piles and the need to avoid impacting the protected trees' roots, Appellants conveyed substantial information to County staff to discourage ANY ground disturbances. That is why the original conditions prohibited ground disturbances and grading.

The applicants now propose to yank out all of the existing fence posts [see the arborist's report describing the planned fence demolition and replacement] and either using the resulting empty fencepost holes or digging entirely new ones. Neither the arborist report nor the staff report includes a count of the posts that will be removed, how they will be removed, given that they are anchored by large clumps of concrete, and how much earth disturbance the operation will cause. Because the existing fence has many posts, all of which are embedded in concrete, removing the existing fence and replacing it with a new fence in the same location as the existing fence, will involve substantial ground disturbance and will threaten the cypress trees' roots. The existing fence is quite serviceable so all of the proposed fence replacement is unnecessary and unsupportable.

#2 More to the point, the existing fence isn't entirely on the Elliots' property, and they have no legal right to remove any portion of the fence that is on Appellants' property. The County should not, therefore, approve an action that violates Appellants' rights.

#2 The fence has long been maintained by Appellants and was constructed by Appellants' parents and their predecessor in interest long before the Coastal Act was adopted. The fenceline meanders a bit, but at the most northerly end the existing fence, and the fenceposts that the Elliotts now propose to remove, are located mostly on Appellants' property. The newly proposed conditions include a requirement that the northerly 20 feet of the fence be replaced with a substantially lower fence. Appellants object. They are not parties to the application. Reducing the fence height close to the road will result in a complete loss of privacy for Appellants' enjoyment of their beautifully landscaped front yard area. It also will create a safety hazard for the family because their large German Shepherd Dog spends a great deal of time in this yard. A 3-foot high fence section would not be a suitable dog enclosure. It also would prevent Appellants from enjoying the privacy and tranquility of their yard. On hot days, Appellants lock their gate and leave their doors and windows open to provide air flow. The existing fence provides the security to do so. It also provides Appellants with a quiet, safe sanctuary. Reducing this northerly portion of the fence to 3 feet in height makes the front yard unusable -- Appellants' dog can easily escape and neighboring dogs and intruding humans can easily hop over a 3-foot high fence.

Most significantly, though, Appellants do **NOT** agree to any modifications of THEIR fence and the County has no legal grounds for requiring a mitigation measure to be carried out on Appellants' property for the Elliotts' benefit.

#3 Appellants' fear of piecemealing has been realized as the applicants now have decided that they want to dictate the fence style or composition, regardless of Appellants' property rights and the historical use of their property. The fence was there when the Elliotts purchased their property. If it was so objectionable, they either should not have purchased the property or should have included a fence replacement in their initial project application so its environmental impacts could be studied.

#4 In approving these project changes, County staff has grossly underestimated the environmental impacts that could result from these proposed changes by improperly characterizing the current application as a "Site Plan Adjustment." In a Coastal Commission staff letter dated October 22, 2015, regarding the appealability of permit modifications, the author defined a Site Plan Adjustment as "a minor change to a Coastal Development that would not alter any of the findings of approval for the underlying permit and would not have ANY adverse impact on the subject site or surrounding properties." [emphasis added] The proposed modifications **DON'T** qualify as being minor, nor can one conclude that they will have no adverse impact on Appellants. Neither this project, nor the proposed changes fall into this definition of a Site Plan Adjustment. CEQA review should have been conducted to address the original project and definitely should be applied to these proposed modifications.

#5 The avoidance of CEQA compliance by piecemealing the project is a serious issue and cannot be ignored. The Elliotts' property is located significantly within the ESHA buffer from the Rincon Creek estuary and its riparian habitat. The White and Elliott lots both

#5 [are 60 feet wide. The required buffer is 100 feet from the edge of the ESHA (not just from the creekbed). The three (3) Monterey cypress trees are entirely within the ESHA buffer. As can be seen from the attached photograph (Attachment #1), the local bird population uses these trees as part of the riparian vegetation that comprises the ESHA.

#6 [The protected root zones of all three Monterey cypresses extend well onto the Elliott property. The root zone as measured pursuant to Coastal Zoning Ordinance § 8178-7.4.3 extends under most of the Elliott house. See Attachment #2. The Elliotts' arborist opined that the cypress roots may not extend that far, but his opinion was not based upon any evidence and did not comply with the County ordinance requirements for measuring protected root zones.

#7 [In summary, Appellants object to the proposed project changes because these changes violate the CEQA requirement that projects not be piecemealed to avoid the environmental consequences of presenting the entire project in a single application and because of the damage to Appellants' property and enjoyment thereof. These project changes, approved without adequate environmental review, modify the project in such a way that it now extends beyond the project premises and threatens protected tree roots, and none of these changes are essential for the use and enjoyment of the improvements already approved by the County.

#8 [Appellants again raise the issue of compliance with the County's Coastal Zoning Ordinance because Appellants believe that the proposed changes do not comply with Section 8181-10.4, which describes the three (3) types of discretionary permit modifications -- Site Plan Adjustment, Minor Modification, and Major Modification. The ordinance describes "Site Plan Adjustment" as "a minor change to the coastal development permit that . . . would not have any adverse impact on the subject site or surrounding properties." Reducing the Appellants' long-existing 6-foot high privacy and security fencing and replacing the portion of the fence that abuts the public street with a 3-foot high fence will have a significant adverse impact on Appellants' property. Any intruder can easily jump a 3-foot high fence to access the Appellants' yard and house entrance. We attach an October 22, 2015 letter from Coastal Commission staff, concluding that if any proposed change exceeds the criteria of a Site Plan Adjustment, a Minor or Major Modification is the appropriate procedure and requires a public hearing. Attachment #3.

Summary of Objections to Significant Project Modifications and Require Substantive Changes to the Conditions Approved by the Planning Commission in 2018

Appellants' objections to these changes include:

#9 [The proposed changes, and the staff's decision to approve them, are not supported by substantial evidence in the record.

#10 [The proposed changes piecemeal the project to circumvent adequate CEQA review.

The proposed condition modifications render the conditions inadequate and now conflict with County and Coastal Commission policies. These revised conditions supplant and circumvent the determinations made by the Planning Commission at its December 13, 2018 hearing on Appellants' first appeal.

The condition modifications undermine the permit conditions approved by the Planning Commission and, most particularly, the conditions that protect biological resources, the three cypress trees and the estuary, riparian vegetation, and wetland buffer area for the Lower Rincon Creek and the lagoon that is part of the estuary. These changes also would allow the Elliott project to extend beyond the project site boundaries, to the detriment of Appellants and their property. Appellants currently enjoy the privacy and security of their existing fence and do not consent to any modifications to the fence and associated landscaping. They also have a limited, but adequate, access roadway from Puesta Del Sol into their property. That will change with these proposed changes.

Proposed site plan modifications are inappropriate because these project changes would pose a threat to Coastal Zone biological resources located in the wetland buffer of the Lower Rincon Creek lagoon.

The project site and scope are not accurately described or depicted.

Potential impacts on biological resources are omitted from staff's analysis because no substantive environmental review was utilized.

The revised site plan fails to accurately describe the facts on the ground: biological resources, ESHA buffers, protected trees and rootzones, activities under the project house next to distressed wooden piers from 1959, inaccurate description and location of the fence, that is partially located on Appellants' property and serves as an essential security and privacy barrier, missing or inadequate baseline elevations and potential for water displacement during flooding.

Errors and Omissions in Site Plan Description

- #12 [The 100-foot estuary buffer and ESHA are not depicted.
- #13 [Protected root zones of 3 Cypress trees, required to be measured using County specifications, are not depicted.
- #14 [All three dimensions of the existing fence and the proposed changed are not depicted.
- #15 [No driveway baseline elevations are provided so it is impossible to ensure that the new driveway will not be substantially larger in footprint and/or higher in elevation.

#16 [Original Condition #1 mandates that the project will not extend beyond parcel boundary, but the revised site plan shows proposed new activity that extends to fifteen feet (15') beyond the Elliotts' property line.

#17 [The carport location is not depicted on the plans and the four original pilings that are intended to support the house, are not clearly identified.

#18 [The applicant has not submitted a survey of the proposed new driveway so it is impossible for the County to determine precisely how and where the proposed project modifications will encroach into the shared access roadway upon which the Appellants rely to access their property. The result, of course, is that the County also won't be able to control the precise size of the driveway and its encroachment into the shared access roadway.

Arborist's Letter of August 6, 2021 Overlooks Essential Information

#19 [The arborist who submitted the latest tree report failed to fully investigate and describe the potential impacts of the project changes on the fenceline between the Elliott and White properties. Apparently, the arborist failed to notice the large four-inch root (from cypress tree #3) that runs over the ground surface, extends under fence between the properties and under the Elliott house into the leach field area. A photograph of this root is included as Attachment #4.

Errors, Inconsistencies and Omissions from Conditions of Approval

#20 [Original Condition #1, approved by the Planning Commission in 2018, stated, "No ground disturbance is proposed and no foundation work is authorized. The project will not extend beyond the boundaries of the subject property."

As noted above, the revisions will push this project well beyond the Elliott property line and will directly and adversely impact Appellants and their property by treating the fence on their property as the property of the applicants. While the fence straddles the shared property line, and therefore lies on both properties, the northerly portion is largely on the White property and no binding conditions may be applied to the Whites' property.

Planning Commission Hearing Resolution R-18-19 stated, "No grading and no ground disturbance is proposed. "

That has changed significantly with the proposed revisions.

The project changes include significant ground disturbance in ESHA and the ESHA buffer, including the removal and enlargement of the Elliotts' driveway and the new concrete slab within the building footprint, all of

which will involve earth disturbance, the impacts of which were not analyzed before approval of the project changes. If a proper CEQA analysis had been conducted, the County and the Appellants could better identify the potential environmental impacts.

The project revisions will result in extension of the project beyond the Elliotts' property line. This corner of Puesta del Sol is already subject to multiple constraints, as described in Appellants' letter dated May 13, 2021 and attached as Attachment #5.

#20 The original Condition 4 required that all project work involving ground disturbance would be subject to Condition 20 regarding compliance with County's Tree Protection Regulations set forth in the Ventura County Coastal Zoning Ordinance. It also incorporated the May 1, 2018 tree protective measures submitted to the County by arborist Duke McPherson.

These requirements reassured Appellants that their concerns about tree root damage had been addressed.

The proposed new Conditions 20 and 21 no longer comply with the Ventura County Coastal Zoning Ordinance. Instead, it appears that County staff is applying the significantly less restrictive Non-coastal Zoning Ordinance provisions. This has significantly reduced or eliminated the strict requirements applicable to this Coastal Zone project and Appellants fear that protected trees will be deprived of Coastal Zone preservation measures.

Mistakes from the original project application persist in the revised site plan, although Appellants were assured that the staff planners would rectify these mistakes and omissions. With these changes, there is no acknowledgment of the ESHA and the ESHA buffer zone ESHA; and, no acknowledgement of tree root zone protections as mandated in the Coastal Zoning Ordinance; and, no mention of the three protected Cypress Trees and the presence of their roots on the Elliott project site.

The ALTA Survey Fails to Depict Essential Elements of the Two Properties and Shared Components Such As Protected Tree Roots and the Fence Historically Maintained by Appellants and their Predecessors in Title.

#21 The survey identifies a portion of fence as chain-link. It is not chain-link. It is a temporary 3-foot high wire fence attached to metal stakes by plastic ties. There is no foundation or footing for the stakes or the fence.

The shared fence in this northerly area is largely on Appellants' property. It is only **partially** on the Elliott property. Because the owners of Appellants' property were polite to their neighbor and placed the posts on Appellants' side of the fence, most of the disturbance involved in the post removal will occur on Appellants' property, to which

#21 Appellants object. Just as the applicants failed to disclose relevant facts in their initial project application, all of the facts pertaining to these proposed project changes are NOT disclosed, nor are the impacts to Appellants' property. Appellants don't want their existing fence ON THEIR PROPERTY to be removed and replaced. They particularly do not consent to the proposed height reduction to three (3) feet above grade on the portion of the fence that lies on their property, either entirely or partially, thereby depriving them of the privacy and security that they have enjoyed for decades in their yard. Neither do they consent to their existing fence posts being removed.

The survey fails to include the baseline elevations for the driveway area and the carport foundation, making it impossible to regulate the amount of earth disturbance and potential grade change to provide for a new concrete driveway and pedestrian paving squares, which will require installation of a base to secure the pavers.

Looking Back, Certain Events that Occurred During the Original Application Process Foretold the Elliotts' Intent to Utilize Piecemealing to Accomplish their Objectives.

#22 **First Portend:** In communications between Appellants and Appellants' counsel and County staff and Planning Commissioners, Appellants pointed out that the Elliotts' application was incomplete and lacked important and relevant information regarding the project and the project site.

One such communication included the following statement, which was ignored by County staff in their analysis of the project: "The applicant has not been forthcoming about the potential Project impacts from the outset. The applicant-provided information on the application, signed by the applicant and the Project architect, fails to disclose several key facts about the Project and its potential impacts: (a) at F.8 (e) of the application (Surface Water Quality), there is no disclosure that there are no gutters on the current house and none are proposed and that the surface water from the site flows directly into Rincon Creek; (b) at F.21 (Existing Physical Features and Development), there is no identification of the proximity of the ESHA, the ESHA buffer, the riparian habitat, the estuary, the wildlife habitat, the debris flow, the periodic flooding, and the close proximity (within the 100-foot buffer) of the Project to the creek; and (c) at F.24 (Protected Trees), the applicant says "No." How can you miss the 3 enormous Monterey cypress in your viewshed?" This glossing over the truth and failure to be transparent was the first red flag for the Elliott project.

#23 **Second Portend:** During the early days following Appellants' original appeal, County staff and the Elliotts and their legal counsel approached Appellants, proposing that Appellants sign a binding agreement that would prevent Appellants from raising any objections to the original project and any future projects on the Elliott site. Appellants refused to agree to this proposed agreement.

#24 **Third Portend:** Appellants hoped that the project, as approved and conditioned in 2018, would be the end of Elliott projects, but they were advised one day, by a worker, that

#24 future changes were in store in the portion of the shared access roadway that serves Appellants' home. Soon after, Appellants were presented with a portion of a landscape plan depicting encroachments into the roadway, including substantial new planting proposed to be placed in front of the Elliott home and blocking Appellants' accessway. After Appellants contacted County planning staff and expressed their concerns about preserving their existing accessway, the next plan they saw was the one approved by County staff to revise the Elliott project by replacing the Elliotts' driveway while blocking a portion of Appellants' access and replacing the shared fence.

#25 Fourth Portend: Recently, County planning staff planners declared that the landscape planting that the Elliotts formerly proposed within the roadway would be pursued through a subsequent roadway encroachment permit – another piecemealing of the project. As depicted on the landscape plan reviewed by Appellants, Appellants' driveway entrance would be partially blocked so that delivery trucks, fire trucks, moving vans, and similar vehicles could not enter safely. This kind of impediment would significantly impair Appellants' use and enjoyment of their home and would reduce the value of their property. Appellants have a valid easement that neither the County nor the Elliotts have a right to block or constrict.

#26 Fifth Portend: Now we have major project revisions, including an entirely new driveway that will negatively impact Appellants' accessway by disrupting parking patterns and circulation. These new additions to the project should have been included in the initial application so their cumulative impacts could be properly analyzed and described to the decision makers.

#27 The incremental modification of the Elliott project site meets CEQA's definition of piecemealing projects to circumvent adequate environmental review [it bears repeating that the project has never had environmental review]. In conducting initial environmental review of a proposed project, the "whole of an action" must be described and analyzed. A complete project description is necessary to ensure that the environmental impacts of the entire project are considered. *City of Santee v. County of San Diego* (1989) 214 Cal.App.3d 1438. A lead agency may not split a single large project into smaller ones that result in piecemeal environmental review that fails to consider the environmental consequences of the entire project. *East Sacramento Partnership for a Livable City v. City of Sacramento* (2016) 5 Cal.App.5th 281.

The improper use of the Site Plan Adjustment process in this instance seriously undermines protections for biological resources [tree root protections and ESHA].

The Proposed New Project Changes Conflict with the Original Project Conditions and the County's Coastal Zoning Ordinance.

The proposed Site Plan changes contradict and undercut the environmental protections included in the following conditions, adopted by the Planning Commission for the original project:

Condition 1, which states: "no grading or vegetation removal is proposed"; "no ground disturbance is proposed" and the project "will not extend beyond the boundaries of the subject property".

#28 Condition 4, which states: "Any foundation work at the Project site shall require a modification of this Coastal PD permit." Staff repeatedly assured Appellants that the project would include "no undergrounding." The proposed project changes include excavation in the carport area for the laying of a new concrete slab despite the original conditions, rendering Appellants' front yard impossible to secure, and pulling out existing fence posts that are buried in concrete. All of the proposed excavation, however shallow, could disturb fragile old pilings that have never been properly analyzed for seismic risks. Of equal concern is the increased probability that the Monterey Cypress' roots will be damaged unnecessarily in this process.

Condition 20, which states: "The Project is not expected to impact the root system of the Cypress tree or any other trees... Roots in excess of two inches shall be protected to the maximum extent feasible". During the Planning Commission hearing, Appellants were promised that the recommendations of Arborist Duke McPherson would be followed, with the root zones clearly delineated and overseen by a neutral arborist. The proposed project changes have significantly undermined those requirements.

#29 Appellants object to the proposed appeal fee and will pay the fee under protest in order to expedite this appeal. Staff contends that the project revisions can't be appealed to the Coastal Commission, so Appellants are required to incur a substantial fee for this appeal. That is wrong. Under County ordinances, projects with a potential for significant environmental impacts **ARE** appealable to the Coastal Commission so those fees should be waived.

VC Coastal Zoning Ordinance Sec. 8174-6.2.5 b. 2 provides:

#30 "c. Pursuant to Section 13250 of Title 14 of the California Code of Regulations, the following improvements to existing single-family dwellings require a coastal development permit because they involve a risk of adverse environmental effects:

1. Improvements to a single-family structure if the structure or improvement is located: on a beach, in a wetland, seaward of the

#30
mean high tide line, in an ESHA, in an area designated as highly scenic in a certified land use plan, or within 50 feet of the edge of a coastal bluff;

2. Any significant alteration of land forms including removal or placement of vegetation, on a beach, wetland, or sand dune, or within 50 feet of the edge of a coastal bluff, or in ESHAs."

Conclusion

Appellants and their family members have owned their property for many decades. It is a home, not simply an investment. Appellants believe that both they and the Planning Commission were fooled into believing that the Elliott project included only those elements set forth in the County records for the original project – Case No. #PL17-0084. Now Appellants believe that they – and the County – were played. The Elliotts weren't satisfied with the remodel of the residence on their property so they are now back for more – all with no environmental review.

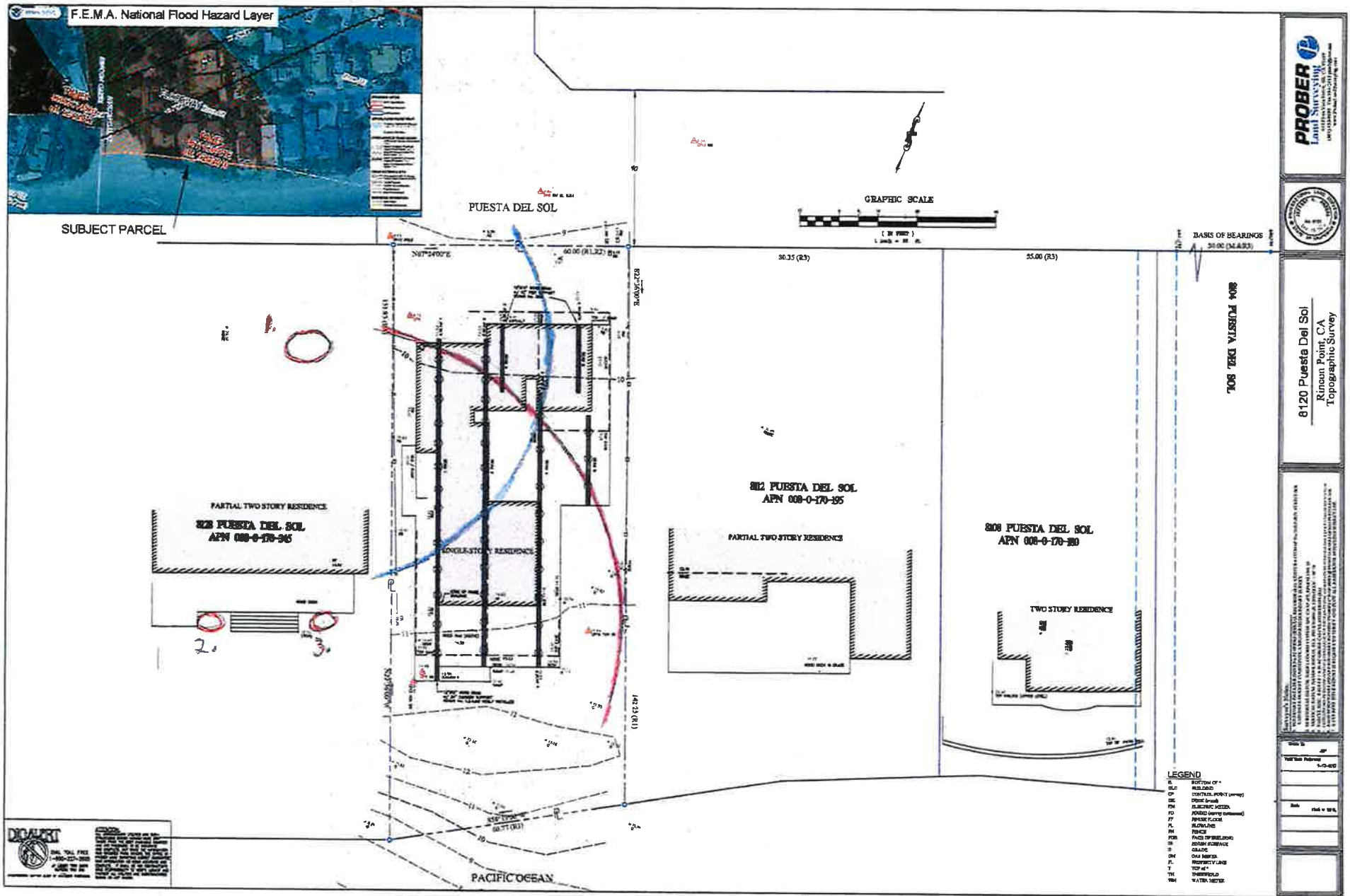
Appellants ask that the Planning Commission grant this appeal, reverse the staff approval and send a strong message to the Elliotts that piecemealed projects are not acceptable to the County. No more changes, no more expansions, and no more ground disturbing activities.

23052115.1

Attachment #1
Osprey roosting
on tree top.



Attachment #2



CALIFORNIA COASTAL COMMISSION

SOUTH CENTRAL COAST AREA
89 SOUTH CALIFORNIA ST., SUITE 200
VENTURA, CA 93001
(805) 585-1800



October 22, 2015

Jay Dobrowalski
Ventura County Planning Division
800 South Victoria Avenue
Ventura, CA 93009

RE: Appealability of Permit Modifications

Dear Mr. Dobrowalski:

In response to your email dated October 10, 2015 regarding the appealability of permit modifications, Commission staff has reviewed the provisions of the Local Coastal Program (LCP), and we appreciate the opportunity to provide input.

As described within Section 8181-10.4 of the Coastal Zoning Ordinance (CZO), there are three types of discretionary permit modifications: Site Plan Adjustment, Minor Modification, and Major Modification. As defined in the parameters of Section 8181-10.4.2(a) of the CZO, a Site Plan Adjustment is a minor change to a coastal development permit that would not alter any of the findings of approval for the underlying permit and would not have any adverse impact on the subject site or surrounding properties. Additionally, these minor changes must not circumvent the purpose or lessen the effectiveness of the approved permit conditions and must be consistent with all other provisions of the LCP. Furthermore, a Site Plan Adjustment can be acted upon by the Planning Director without a public hearing. As a result, Site Plan Adjustments approve plans that include adjustments that are so minor they are substantially in conformance with the originally approved permit, and therefore it is Commission staff's opinion that approval of a Site Plan Adjustment by the County is not appealable to the Commission.

Any proposed change that exceeds the criteria of a Site Plan Adjustment, may be processed as either a Minor or Major Modification. These types of modifications are for more substantial changes in a development, require additional review, and must be acted on through a public hearing process. As such, it is Commission staff's opinion that both Minor and Major Modifications to appealable coastal development permits are appealable to the Commission.

Again, we appreciate the opportunity to provide comments.

Sincerely,

A handwritten signature in cursive script that reads "Jacqueline Phelps".

Jacqueline Phelps
Coastal Program Analyst

cc: Brian Baca, County of Ventura
Dan Klemann, County of Ventura

8/26/2021

image003.jpg

Trachmen TT



Thursday, May 13, 2021

Re: Comments on Re-Submittal (PL21-0036)

Hi Angela,

Thank you for your two emails of May 6th. Here are some of our thoughts.

Tree Protections

In the first email, there seems to be some doubt whether conditions of approval for tree root protections carry through to the current proposal. We reviewed the Planning Commission hearing video of December 13, 2018. At that meeting we were offered repeated assurances that, in the future, should any ground disturbance be proposed by the Applicants, this would trigger the full protections offered in Conditions 1, 4 and 20 and the recommendations outlined in the letter of Arborist Duke McPherson would be implemented and the protected root zones would be delineated accordingly. This is Coastal ESH and ESH buffer. We had hoped this information would have been made available to County decision-makers currently evaluating the project impacts so they could make the best-informed decisions. We note that the Site Plan does not show the presence of our trees or their protected root zones.

The ground disturbance proposed in the project includes excavation for the concrete driveway (including the section under the house), holes for fence posts for ornamental fencing on the west side of their parcel and undefined landscaping that could require numerous excavations for trees, hedges and plants

as depicted in an earlier landscaping plan. Almost all of this proposed activity falls within the protected root zones of tree number one and tree number three described in the Arborist letter of Duke McPherson.

Fencing

Since we have no interest in removing our fence, conditions of approval for construction of a new fence on the Applicants' side in the flood plain and protections of root zones should apply. We note that the setback for the Applicants' ramp is only 22 inches from our existing fence. The desire for a duplicate fence in this sensitive area may well be outweighed by potential impacts to biological resources. Whether it be a proposal to remove a neighbor's fence or to extend project construction into a community roadway, the Applicants' willingness to exceed the boundaries of their property is not an entitlement.

Flooding

As we have mentioned in previous correspondence, this corner of Puerta del Sol falls within the Rincon Creek floodway and is subject to flooding both at high tide from the estuary as well as storm events – sometimes compounded by both at once. During these times we need every inch of the roadway in front of the Elliotts' to avoid the deepest water (the same is true for pedestrians). Flooding drastically reduces the proportion of useable roadway and funnels overlapping uses into significantly less space in a very dangerous way. Such flooding events are only expected to increase with sea level rise. Any changes to existing grade levels or the introduction of obstacles would

exacerbate the problem. Current elevations were not included in the Site Plan.

Access

This corner of Puesta del Sol is already subject to multiple constraints including flooding. Vehicular and pedestrian traffic such as skateboarders, scooters, cyclists, strollers, occasional wheelchairs and parking are all amplified by the significant percentage of short-term rentals in Rincon Point that foster a greater intensity of traffic and use than a typical single-family dwelling. Even the largely absentee Applicants, as the result of continuous construction activities combined with invitees' oversized vehicles, regularly generate overflow parking. In addition, out of five community beach accesses for Rincon Point, our driveway is likely the busiest and the only one that combines vehicular traffic with pedestrian use and in a confined space. Keeping this in mind, any obstructions or obstacles (visual or physical) placed in the roadway at this corner would compromise and interfere with the access, maintenance and protection of our property and pose a significant public safety hazard. This is not speculative. During the Thomas fire and its aftermath flooding, this corner was a staging area for clean-up equipment for nearly a week. Narrowing this busy corner impedes access by emergency vehicles and large service trucks and needlessly exposes the public to risk.

In the re-submittal of materials from the Applicant, there is a document entitled "Agreement to Install and Maintain Driveway Apron". This agreement is vague, ambiguous and overbroad with only indefinite reference to the location and dimensions of earth disturbance activities suggested or implied [i.e.

landscaping installation in the roadway (see section 4, page 2)]. The applicant, repeatedly himself and through intermediaries, has indicated his intent to extend his landscaping into the roadway easement. The property adjacent to the Elliott parcel on the north side is actually the 40-foot Puesta del Sol roadway. Calling it an “Apron” doesn’t change that. We strongly oppose the extension of the Project into the roadway and beyond the parcel’s boundaries. A Condition of Approval that expressly forbids the installation of obstacles in the roadway would protect numerous underlying easements as well as public safety.

Carport Area

Earth System’s letter of December 9, 2020 refers only to the repair of the driveway and parking area and does not specifically mention the carport, nor is the carport labeled on the Site Plan. This carport has very low vertical clearance and can barely accommodate modern SUVs. The master bedroom above it is supported by four original wooden 1959 pilings. These pilings were only visually examined. Our concern is how deeply they are planning to excavate in the carport area under the master bedroom since this area is within the protected root zones. Labeling this project only as driveway repair obscures the fact that a significant portion of the concrete driveway is actually under the house. The plan does not clearly show that the house is above the carport. A cursory examination of the site plan would not show the presence of the carport, the master bedroom above it or the four original pilings supporting it. Doesn’t excavation near these old pilings under the bedroom need analysis? In addition, The Earth Systems letter of December 9, 2020 relies on the Earth Systems Report of June 6, 2017. Page

11 of that report states that its conclusions should not be relied upon for more than one year.

The Applicants' project activities have been going on for years now with new and sometimes contradictory proposals popping up from time to time. Without a clear and transparent view of the entirety of what is proposed on site, continuous piecemealed projects will frustrate effective oversight and prevention of impacts.

Thank you for your consideration.

Regards,

Doug and Jaleh White