

CALIFORNIA COASTAL COMMISSION

CENTRAL COAST DISTRICT OFFICE
725 FRONT STREET, SUITE 300
SANTA CRUZ, CA 95060
PHONE: (831) 427-4863
FAX: (831) 427-4877
WEB: WWW.COASTAL.CA.GOV

RECEIVED
City of Morro Bay

DEC - 7 2015

Administration

December 7, 2015



Scot Graham
Community Development Manager
955 Shasta Avenue
Morro Bay, CA 93442

Subject: 3420 Toro Lane Residence (CP0-417/UP0-383).

Dear Mr. Graham:

On October 6, 2015 the Planning Commission of Morro Bay approved CP0-417/UP0-383 for a new single-family residence at 3420 Toro Lane. Planning Condition #18 of that approval states:

“In recognition of the likelihood of an implied dedication of a trail on the Property for public use over the decades, the Applicant has volunteered to offer to dedicate an area for an unimproved public access trail through the project site to the satisfaction of the City Engineer and the Community Development Manager (the “Public Access Trail”). Prior to issuance of a building permit, the offer of dedication of the Public Access Trail shall be recorded. Upon that recordation, the City will not make nor support any effort to preserve that implied dedication. The Applicant’s offer of dedication and any acceptance thereof shall not require the City or other public entity to maintain the Public Access Trail.”

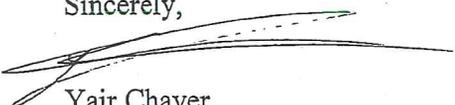
On Tuesday, December 8, 2015, the City Council will hold a public hearing on an appeal to the above-referenced approved project. The appeal addresses the alternative trail that the Applicants, Mr. Greg Frye and Mrs. Jeanne Frye, will construct and offer to dedicate as a public access easement.

In a conversation with you on December 7, 2015, we learned that the City has stated in a public hearing that it is ready and willing to accept and open the public access easement.

Given that there is alternative beach access upcoast and downcoast from the property, and given the fact that the Applicant will offer to dedicate an area for an additional access trail through the project site and that the City is willing to accept the public access easement, the California Coastal Commission Staff is generally in support of the project as approved.

Please provide a copy of this letter to the City Council and members of the public during the December 8, 2015 appeal hearing on this matter.

Sincerely,

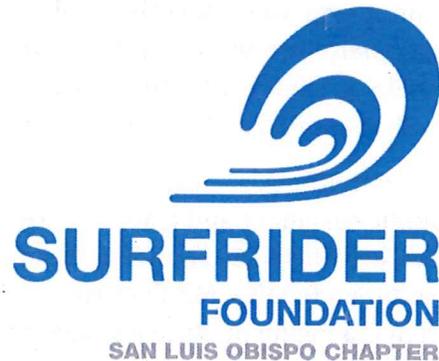

Yair Chaver

Scot Graham
Morro Bay Planning Division
Re: 3420 Toro Lane, Morro Bay
December 7, 2015
Page 2

Coastal Planner
Central Coast District Office

DEC - 8 2015

Administration



December 7, 2015

City of Morro Bay Honorable Mayor, City Council, and Staff
Via Email

Re: City Council Meeting Agenda for December 8, 2015 Item B1: Appeals of the Planning Commission Approval of Coastal Development Permit ("CDP") #CP0-419 and Conditional Use Permit #UP0-383 for Construction of a New Single-Family Residence on a Vacant Coastal Lot at 3420 Toro Lane.

Dear Honorable Mayor, City Council, and Staff,

We are writing on behalf of the Surfrider Foundation San Luis Obispo Chapter ("Surfrider SLO"). Surfrider Foundation is a non-profit 501(c)(3) organization that is dedicated to the protection and enjoyment of oceans, waves and beaches through a powerful activist network. In furtherance of this mission, Surfrider's 84 chapters located around the country focus on several core initiatives, including the protection of the public's beach access rights.

Towards this initiative, Surfrider SLO has been advocating for the public's continued right of coastal access at 3420 Toro Lane since August, 2015, and has been engaged in showing the likely existence of a right through a public prescriptive easement on the property. At that time, the Morro Bay Planning Commission and all interested parties agreed that the existing trail through the Frye property is an important, frequently utilized route for public access to the beach. Also, all parties agreed that a trail which allows continued public access to the beach is a critical requirement of permitting for this project, and therefore required that the applicant offer to dedicate an easement on the property for a public access trail. However, while all parties still agree on the importance of the trail, unfortunately it appears that Mr. Frye has been unable to secure a party willing to accept

the public easement, and both the Planning Commission Resolution and proposed City Council Resolution do not go far enough to protect the public's right to continued beach access on the property. In particular, Resolution Condition Number 18 is not sufficient, in that it provides that upon recordation of the offer to dedicate, "the City will not make nor support any effort to preserve that implied dedication."

It has been Surfrider SLO's understanding, as described by Mr. Frye, that he would find an organization to manage the public easement and trail. While accepting an easement is beyond the scope of activities which Surfrider Foundation can engage in, Surfrider SLO Chapter Chair Brad Snook recommended that Mr. Frye contact the Land Conservancy or another organization engaged in managing public easement properties. In a phone conversation in August, 2015, Mr. Frye agreed to find an organization to manage the easement. It is unfortunate that Mr. Frye has been unable to do, to our knowledge.

In light of this, and because as explained further herein below, we believe that the City is in the best position to accept Mr. Frye's offer to dedicate, we ask the Council to reconsider and revise Condition 18. In particular, Condition Number 18 must not include "Upon that recordation, the City will not make nor support any effort to preserve that implied dedication," as this provision seriously undermines the entire import of the CDP's public access provisions. Instead, we request that the City of Morro Bay agree to accept the Fryes' offer to dedicate. With respect to any potential liability concerns, we remind you that the California Government Code provides immunity to public entities and the grantors of public easements to public entities for injuries caused by conditions of trails that provide access to water sports, and recreational and scenic areas. Therefore, if the City accepts the offer of dedication for a public easement on this beach trail, neither the Fryes nor the City would be liable for injuries caused by the trail.

Cal. Gov. Code Section 831.4 provides as follows:

831.4. *A public entity, public employee, or a grantor of a public easement to a public entity for any of the following purposes, is not liable for an injury caused by a condition of:*

(a) Any unpaved road which provides access to fishing, hunting, camping, hiking, riding, including animal and all types of vehicular riding, water sports, recreational or scenic areas and which is not a

(1) city street or highway or

(2) county, state or federal highway or

(3) public street or highway of a joint highway district, boulevard district, bridge and highway district or similar district formed for the improvement or building of public streets or highways.

(b) Any trail used for the above purposes.

(c) Any paved trail, walkway, path, or sidewalk on an easement of way which has been granted to a public entity, which easement provides access to any unimproved property, so

long as such public entity shall reasonably attempt to provide adequate warnings of the existence of any condition of the paved trail, walkway, path, or sidewalk which constitutes a hazard to health or safety. Warnings required by this subdivision shall only be required where pathways are paved, and such requirement shall not be construed to be a standard of care for any unpaved pathways or roads.

Respectfully, the City Council has the authority to accept Mr. Frye's offer to dedicate the Public Access Trail, and if the Council exercises this authority, it would be a "win-win" for the community of Morro Bay, the City, and the Fries. It would allow a Public Access Trail to continue to provide the public with the access rights they have earned through historic use, the Fries' offer to dedicate would not be rendered meaningless, the City would be protected from liability via Government Code § 831.4(b), and the Fries could satisfy the requirements of their CDP, by having a public access trail which can be open to the public pursuant to the hours requirements set forth in Condition Number 21, and also be immunized from liability under Government Code § 831.4(b).

If the City of Morro Bay is unable to agree to accept Mr. Frye's offer of dedication for a public easement at 3420 Toro Lane during the December 8th meeting, we ask the Council to delay action and allow Staff to perform more research for later presentation to the Council. More research could allow better documentation of the City's potential agreement to accept the public easement, or it will allow the Fries time to arrange an agreement with another organization public entity which can agree to accept an offer to dedicate a public access easement.

Thank you for your consideration, and please feel free to contact us should you have any questions.

Sincerely,

/S/

Brad Snook
Co-Chair, Surfrider SLO
Chair@slo.surfrider.org



Staley Prom, Esq.
Surfrider Foundation Legal Associate
Sprom@surfrider.org

Item B-1

Dana Swanson - Fwd: Letter in support of Greg and Jeanne Frye

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City of Morro Bay

From: Whitney McIlvaine
To: Swanson, Dana
Date: 12/8/2015 12:35 PM
Subject: Fwd: Letter in support of Greg and Jeanne Frye

DEC - 8 2015

Administration

Dana,

I just received this email with a message of support for the Frye project. Can you forward it to Council, etc?

Thank you,

Whitney

Whitney McIlvaine
Contract Planner
City of Morro Bay
805-772-6211

>>> Greg Frye <gjfrye@gmail.com> 12/8/2015 12:32 PM >>>

Sent from my iPhone

Begin forwarded message:

From: Kelly Hotaling <kellyhotaling@sbcglobal.net>
Date: December 8, 2015 at 12:23:53 PM PST
To: gjfrye@gmail.com
Subject: Fwd: Letter in support of Greg and Jeanne Frye

Begin forwarded message:

From: Kelly Hotaling <kellyhotaling@sbcglobal.net>
Subject: Letter in support of Greg and Jeanne Frye
Date: December 8, 2015 12:19:44 PM PST
To: jirons@morro-bay.ca.us, cjohnson@morro-bay.ca.us,
mmakowetski@morro-bay.ca.us, nsmukler@morro-bay.ca.us,
jheading@morro-bay.ca.us

12/8/15

Dear Mayor and City Council Members,

I am writing to you in support of Greg and Jeanne Frye's house project at 3420 Toro Lane. We are unable to attend the meeting tonight, but wanted to show our support. My husband, 3 kids and I have lived in Morro Bay for over 17 years and we absolutely love this amazing place we call home. We have had the privilege of knowing the Fryes for the majority of our time here. They are upstanding people and truly good stewards of the environment. They have worked diligently with your local planners and the Coastal Commission who are in agreement with their project. The Fryes are honest, hardworking people who follow the rules. They, like us and you, enjoy the outdoors, specifically our coast of Morro Bay. Knowing them, they would never propose a project that would negatively impact our coast. We support Greg and Jeanne Fryes 3420 Toro Lane project. Thank you for your attention.

Best regards,
Kelly Hotaling

Item C-1

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City of Morro Bay

DEC - 7 2015

Administration

Theodore and Lisa Schade
182 Mindoro Street
Morro Bay, California 93442
Tel: 760-937-3360 E-mail: tedschade@gmail.com

December 7, 2015

Honorable Mayor Jamie L. Irons and City Council
City of Morro Bay
595 Harbor Street
Morro Bay, California 93442

Morro Bay City Council meeting - December 8, 2015

Agenda Item C-1
Determination Regarding the Sale of City Property on Mindoro Street (APN 065-113-066)
Public Comment

Dear Mayor Irons and City Council,

Your agenda for the meeting on December 8, 2015 includes a discussion regarding the sale of the City-owned lot at the end of the 100-block of Mindoro Street in the Beach Tract. We have previously written to both the City Council (August 16, 2015 and September 7, 2015) and the Planning Commission (September 29, 2015) regarding this property and we ask that this letter and our previous correspondence be considered as public comment on this agenda item.

We own the property directly west of the City lot (182 Mindoro St.). When the City lot came up for sale, we submitted an offer with the intention of incorporating the City's very small lot into our lot. This would make our lot the same size as the property on Luzon Street immediately behind ours. Because we would commit to not construct a separate house on the lot, we cannot offer the same price as someone that is constructing a stand-alone residence. However, In order to arrive at our offer price of \$39,000, we are offering the same price per square foot as the City is asking for the one-acre Cloisters lot that is currently for sale for \$799,000 (which is also adjacent to Highway 1). We believe that in the interest of public safety and for additional reasons summarized below, it would not be in the best interest of the residents on Mindoro Street to develop a house on this "tiny lot" (as described by City staff).

As you all know, every agenda of the Morro Bay City Council is headed by the City's Mission Statement which reads:

The City of Morro Bay is dedicated to the preservation and enhancement of the quality of life.
The City shall be committed to this purpose and will provide a level of municipal service and safety consistent with and responsive to the needs of the public.

We contend that selling the smallest lot in the Beach Tract for the construction of one of the smallest houses in the area is not consistent with the City's dedication "to the preservation and enhancement of the quality of life" for those impacted by this parcel's development. In addition, because there was no public discussion as to the range of potential uses of the property beyond its assumed use for a residential structure, the parcel's sale for development is certainly not "responsive to the needs of the public." But, most importantly, there is a strong public safety argument against selling the lot for the development of a house.

As we stated in our previous correspondence to the City Council and Planning Commission, we do not believe the City's Mindoro Street parcel is appropriate for the construction of a residence. However, the City's marketing of the property as a single family residential lot virtually guarantees that it will be required to approve some type of dwelling on the parcel and the City will be forever precluded from considering other uses for the property. This would not be in the best interest of the street's residents or, because of the public safety issue, the City as a whole.

The City Council authorized the sale of the parcel on March 24, 2015 after staff characterized it as a "tiny lot." It certainly is that. However, beyond this characterization, there was no analysis of the lot's constraints to development and there was no City Council discussion of the human and environmental impacts of the sale and the parcel's subsequent development. In addition, Planning staff provided the Planning Commission with only an analysis of what could be built on the lot without any recognition of the special constraints imposed by the lot's location at the very end of a long, dead-end street without any means of turning vehicles around. Below are some of the facts about the parcel that the Council should be aware of before it decides to sell the parcel as a residential lot.

- Most important, is the serious matter of public safety. The City's parcel is located at the end of one of the longest dead-end Beach Tract streets (the City's recent survey shows the Block is 643 feet long). It is very difficult, and sometimes impossible, to turn large trucks, including fire and rescue vehicles, around on these streets. (Our local mail carrier says she is frustrated on a daily basis by the narrow streets when she tries to turn around and there are cars parked on the street.)

Appendix D of the California Fire Code states at Section D103.4:

Dead ends. Dead-end fire apparatus access roads in excess of 150 feet shall be provided with width and turnaround provisions in accordance with Table D103.4.

The accompanying table specifies that for streets between 501 and 750 feet in length that the street must have a width of 26 feet with a 96-foot cul-de-sac or 120-foot hammerhead turnaround at the end. http://www.ecodes.biz/ecodes_support/free_resources/2013California/13Fire/PDFs/Appendix%20D%20-%20Fire%20Apparatus%20Access%20Roads.pdf

Mindoro Street has a curb-to-curb width of 24 feet, two feet less than fire safety standards. In addition, no emergency (or public convenience) turnaround of any kind is provided. The dead-end Beach Tract streets were created when Caltrans developed Highway 1 as a limited access roadway in the early 1960s. The City of Morro Bay was not responsible for the creation of these substandard streets. However, in the case of the Mindoro lot, the City has an opportunity to remedy this existing public safety issue without the need to acquire additional property. We believe selling the lot for the development of an additional residence at the end of a long, narrow street will exacerbate an existing public inconvenience and perpetuate a public safety hazard.

- According to the City Water Department, a 6-inch buried water main runs along the east edge of the parcel, next to the Caltrans right-of-way. This line supplies water to the east side of Highway 1. In the past, Water Department personnel have had difficulty accessing this line at other locations in the Beach Tract where there is a narrow space between the houses and the fenced Caltrans right-of-way. The City must preserve access to this line. Staff's analysis of the constructability of the lot provided for a 5-foot easement. This is the absolute minimum. Good engineering practices would size the easement at 8 to 10 feet so that a backhoe could access the line. The City has the opportunity to reserve the easement it really needs, not be stuck with a minimal easement because it wants to maximize the building envelope on this small lot.
- The City recently had the lot surveyed. It is 2,297 square feet in size, less than half the size of the other lots on the street. (The City's realtor erroneously lists the lot as 2,400 square feet.) Special Overlay Zone Standards for the area (R-1/S.2A) limit structures to one story. This means that, with the zone's setbacks and a mandatory one-car garage or carport (see below), a residence of about 928 square feet can be constructed on the parcel. This is far smaller than the other houses in the neighborhood and a house of this size on the parcel would not fit the existing character of the Beach Tract. (Our house currently has the smallest building footprint on the street, and yet, it would still be 47% larger than the largest house that could built on the City lot.) "Shoehorning" a house onto this lot would not be consistent or compatible with the size, bulk and scale of the existing houses on the street (these planning characteristics should apply to extra-small houses as well as extra-large ones).
- The parcel has a utility pole and two guy-wires in the middle of the front property line. This will make it impossible to park a car on the property without relocating the pole. However, there is no obvious place to do so. There is no easement on the adjacent private property to the west (our lot), the pole cannot be placed over the water line and Caltrans is unlikely to grant an easement on its Highway 1 right-of-way to the east. The pole and guy-wire relocation should be addressed and an easement secured before the City considers selling the parcel.
- The lot is home to the largest remaining tree along this portion of Highway 1, a very picturesque eucalyptus that would almost certainly need to be removed in order to fit a house on the parcel. The tree qualifies as "major vegetation" under City Resolution 39-07 and, as it is currently on public property, it belongs to the public. The loss of this tree would be an impact

that the shoehorned house could not mitigate. The City should act to preserve its tree on its property before it offers the property for sale.

- There is no on-street parking allowed on the south side of Mindoro Street (because of the narrow streets, "one-sided" parking is the norm in the Beach Tract). Special Overlay Zone Standards (R1/S.2A) only require a one-car garage or carport on a lot of this size. Where will the inevitable additional vehicles associated with this lot park? All the other houses on the street have off-street parking for more than two vehicles.
- The parcel is directly adjacent to Highway 1, with its associated noise and proven increased levels of health-impacting air pollution. Current state law prohibits building a school this close to the highway. How can the City condone selling a lot for residential development this close to the busiest road in the area?

More often than not, the City finds itself in the position of reacting to a proposed development on private property and doing what it can to limit the development's impacts on the City's residents and environment. In this case, it finds itself in the unusual position of being able to minimize impacts and even improve conditions before the lot becomes private property.

As mentioned above, we have submitted an offer for the lot and would commit to incorporate it into our existing lot. This would prevent the construction of an additional house on the street and would maintain the status quo with regard to parking and access issues. We would also grant the City an adequate (not minimal) waterline easement and would commit to protect and care for the eucalyptus tree. In addition, if the City decides to reserve some portion of its property to provide adequate access to its waterline, protect the existing tree and/or provide a turnaround for public safety purposes, we would commit to purchase any remainder square footage at the same price the City is asking for the Cloisters lot. The Mindoro lot should not be sold for the development of a house that will negatively impact the existing residents, never fit the vision of housing in Morro Bay and add to an existing public safety issue.

Thank you for your time and consideration. We will be attending the meeting on December 8 to answer any questions.

Your service to the public is appreciated.

Theodore D. Schade, P.E.
Lisa L. Schade

Copies (via e-mail only):

Hon. Jamie L. Irons, Mayor, jirons@morro-bay.ca.us

Ms. Christine Johnson, Councilwoman, cjohnson@morro-bay.ca.us

Mr. Matt Makowetski, Councilman, mmakowetski@morro-bay.ca.us

Mr. John Heading, Councilman, jheading@morro-bay.ca.us

Mr. Noah Smukler, Councilman, nsmukler@morro-bay.ca.us

Col. David Buckingham, City Manager, dbuckingham@morro-bay.ca.us

Mr. Joseph W. Pannone, City Attorney, jpannone@morro-bay.ca.us

Ms. Dana Swanson, City Clerk, dswanson@morro-bay.ca.us

Item C-1

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DEC - 7 2015

Administration

December 6th, 2015

City Of Morro Bay
Honorable Mayor and City Council
595 Harbor Street
Morro Bay, CA 93442

Honorable Mayor and City Council,

I, Douglas Castro, and my wife, Lindsie Castro, are writing to state our continued interest in purchasing the Mindoro Street property in Morro Bay California. We've attached our previous documents that state our interest in the property since September 2015. We have been closely following the process of the property with the planning commission to relocate our family of 4 from Bakersfield CA to the wonderful city of Morro Bay. The agenda stated that it would be a secondary residence but we are looking to permanently move our family to the central coast.

We submitted a Cash offer on property on Friday, September 18th, 2015. We understand that there are limitations and restrictions on the property but are still very interested and are willing to work within the building parameters. We are ready to take on the challenge of building a small home on the central coast.

We would have liked to be present at the December 8th meeting but unfortunately our entire family is currently ill at this time. I spoke to Brooke Austin in the Deputy City Clerk's office and she advised us to submit our written comments for the Council.

We are happy to receive any questions you might have for us at 661-900-3222. We look forward to hearing today's decision.

Thank you all for your time.

Best regards,


Douglas Castro


Lindsie Castro

The Castro Family • 12712 Mezzadro Avenue Bakersfield, California 93312
dougcastro@gmail.com • 661-900-3222

From: **Doug Castro** dougcastro@gmail.com
Subject: CASTRO FAMILY / MINDORO ST MORRO BAY PROPERTY
Date: September 24, 2015 at 9:09 AM
To: Brenda Auer brendaauer@gmail.com, Brenda J Auer property@charter.net

September 23, 2015

To Whom it May Concern:

I, Doug Castro, have been a Chief Financial Officer and Talent Buyer for Icon Entertainment Group for 15 years. I am 34 years old and have been married to my wife, Lindsie Castro, for 8 years. We have two beautiful children, Mila Castro who is 3 years old and Enzo Castro who is 1 year of age. Lindsie is 32 years old and has been an elementary school teacher for 10 years. We have all been residents of Bakersfield, California since birth, but we always have spent our summers on the central coast in the Morro Bay, San Luis Obispo, Pismo, and Avila areas since we were children. Now we are able to bring our children to these idyllic and gorgeous cities.

Our goal, since first visiting the central coast, has always been to move there. We have fallen in love with the people, the culture, the beaches, the communities, the environmental protective measures, and the forward thinking mind set of the area. For the past year and a half we have been actively searching for the perfect lot to relocate our family too. We want the best educational options, healthiest environment, and a community that our children can grow in thrive in. Our dream to move the coast is so strong that we are willing to leave our fairly large home here in Bakersfield to start a better life for our children to grow up in a much smaller coastal home. Once we found this lot we immediately drove the entire family over to see it. As we drove through the neighborhood we could not believe how lovely it was. Also, what a remarkable view from the end of the street, we could see the ocean! The enjoyable short walk to the beach sealed the deal for us. That night we started looking up creative small housing plans. Our children having the opportunity to play every day on an incredible stretch of California beach is simply magnificent!

Transitioning our family to the coast is a major change for our whole family. To ensure the security of our potential investment I carefully began researching the property. First, I contacted San Luis Obispo county who kindly sent me to the City of Morro Bay's Community Development office. I spoke numerous times with Joan Gargiulo, one of the cities Contract Planners, and her supervisor Scot Graham, the Community Development Manager. We discussed the build ability of the lot and the various parameters that would need to be followed to build a home in the neighborhood. At the time they stated that the lot was build-able and is currently zoned S2A Residential. I also reached out to Utilities Technician, Kay Merrill, to discuss the location of the utilities near the lot and City Engineer, Jarrod Whelan, to discuss the location of the cities sewer and a water main that was located near the property. After several conversations with the city of Morro Bay and confirmations that the lot was build-able we submitted an offer on Friday, September 18th, 2015.

Although we understand that the build-able space of the lot is small, we are still very interested in the property, if it passes the planning commission on October 6, 2015. Living in Morro Bay would literally be a dream come true!

Thank you for your time,

Doug Castro

Doug Castro
dougcastro@gmail.com
661-900-3222

November 17, 2015

City Of Morro Bay
Planning Commission
955 Shasta Avenue
Morro Bay, CA 93442

To Whom It May Concern:

I, Douglas Castro, and my wife, Lindsie Castro, had the privilege of attending the planning commission meeting on Tuesday, October 6th 2015 to state our interest in the Mindoro Street property. We submitted a cash offer on property on Friday, September 18th, 2015 with hopes of relocating our family of 4 from Bakersfield, CA to the wonderful city of Morro Bay.

We understand that there are limitations and restrictions on the property but are still very interested and are willing to work within the building parameters. We are ready to take on the challenge of building a small home on the central coast.

We look forward to hearing back from the planning commission.
Thank you for your time.

Best regards,


Douglas Castro


Lindsie Castro