



**PLANNING & DEVELOPMENT
APPEAL FORM**

SITE ADDRESS: 2825 Padaro Lane, Summerland Area
 ASSESSOR PARCEL NUMBER: 005-260-018
 PARCEL SIZE (acres/sq.ft.): Gross 10.25 acres Net 10.25 acres
 COMPREHENSIVE/COASTAL PLAN DESIGNATION: Coastal, Summ. Comm. Plan Area, Rural, EDRN, SUM Overlay
 ZONING: Res 3-E-1, ESH Overlay, Design Control Overlay, Flood Haz. Overlay, Coastal Commission Appeals Jxdn.
 Are there previous permits/applications? no yes numbers: See attached permit history
 (include permit# & lot# if tract)
 Are there previous environmental (CEQA) documents? no yes numbers: _____

1. **Appellant:** Summerland Citizens Assn., Reeve Woolpert, Tom Evans Phone: see Attorney info, below FAX: _____
 Mailing Address: See Attorney info, below E-mail: see Attorney info, below
Street City State Zip
 2. **Owner:** Beach-Club Family Trust c/o Tim Hctor Phone: 805-701-6566 FAX: _____
 Mailing Address: 3705 Telegraph Road, Ventura, CA 93003 E-mail: _____
Street City State Zip
 3. **Agent:** Ginger Andersen, Penfield and Smith Phone: 805-963-9532 FAX: _____
 Mailing Address: 111 East Victoria Street, Santa Barbara, CA 93101 E-mail: _____
Street City State Zip
 4. **Attorney:** Ana Citrin, Law Office of Marc Chytilo Phone: 805-570-4190 FAX: 805-682-2379
 Mailing Address: P.O. Box 92233, Santa Barbara, CA 93190 E-mail ana@lomcsb.com
Street City State Zip

Case 1
Super
Applic
Projec.
Zoning

13APL-00000-00029
 3282 BEACH CLUB DRIVE APPEAL
 2825 PADARO LN 12/16/13
 CARPINTERIA 005-260-018

COUNTY USE ONLY

Companion Case Number: _____
Submittal Date: _____
Receipt Number: _____
Accepted for Processing _____
Comp. Plan Designation _____

COUNTY OF SANTA BARBARA APPEAL TO THE :

BOARD OF SUPERVISORS

PLANNING COMMISSION: COUNTY MONTECITO

RE: Project Title Beach Club Lot Split, Gabion Wall and Grading, and New Single Family Residence

Case No. 12TPM-00000-00006, 11CDH-00000-00006, 13-ND-12

Date of Action December 4, 2013

I hereby appeal the approval approval w/conditions denial of the:

Board of Architectural Review – Which Board?

Coastal Development Permit decision

Land Use Permit decision

Planning Commission decision – Which Commission? County

Planning & Development Director decision

Zoning Administrator decision

Is the appellant the applicant or an aggrieved party?

Applicant

Aggrieved party – if you are not the applicant, provide an explanation of how you are and “aggrieved party” as defined on page two of this appeal form:

Appellants Reeve Woolpert and Tom Evans appeared at the Planning Commission's approval hearing, and testified regarding their concerns and objection to the Project. Mr. Woolpert is a member of Appellant Summerland Community Association's Board of Directors, and a representative thereof.

Reason of grounds for the appeal – Write the reason for the appeal below or submit 8 copies of your appeal letter that addresses the appeal requirements listed on page two of this appeal form:

- A clear, complete and concise statement of the reasons why the decision or determination is inconsistent with the provisions and purposes of the County's Zoning Ordinances or other applicable law; and
- Grounds shall be specifically stated if it is claimed that there was error or abuse of discretion, or lack of a fair and impartial hearing, or that the decision is not supported by the evidence presented for consideration, or that there is significant new evidence relevant to the decision which could not have been presented at the time the decision was made.

____ Please see attached letter _____

Specific conditions imposed which I wish to appeal are (if applicable):

- a. _____
- b. _____
- c. _____
- d. _____

Please include any other information you feel is relevant to this application.

CERTIFICATION OF ACCURACY AND COMPLETENESS Signatures must be completed for each line. If one or more of the parties are the same, please re-sign the applicable line.

Applicant's signature authorizes County staff to enter the property described above for the purposes of inspection.

I hereby declare under penalty of perjury that the information contained in this application and all attached materials are correct, true and complete. I acknowledge and agree that the County of Santa Barbara is relying on the accuracy of this information and my representations in order to process this application and that any permits issued by the County may be rescinded if it is determined that the information and materials submitted are not true and correct. I further acknowledge that I may be liable for any costs associated with rescission of such permits.

Ana Citrin, Law Office of Marc Chytilo  12/16/13

Print name and sign - Firm Date

Ana Citrin, Law Office of Marc Chytilo  12/16/13

Print name and sign - Preparer of this form Date

Print name and sign - Applicant Date

Print name and sign - Agent Date

Print name and sign - Landowner Date

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Permit History for Parcel 005-260-018

Parcel Ancestry

The parcel number you entered has one, or more, ancestor parcels. Refer to the permit history of each for further information:

005260009

Parcel Information

Reference Address	2825 PADARO LN, CARPINTERIA
Legal Description	Not Available
Acreage	10.25
Supervisory District	1
Zoning	3-E-1

Parcel Holds/Notices

Code	Description	Status	Issue/Apply
ENF-03	Violation exists on this parcel. Permit fees shall be doubled as appropriate.	Notice-Applied	01/20/2011

Note: Code violations and the responsibility to rectify them remains and transfers with the property. All costs associated with code enforcement actions are the responsibility of the property owner.

Parcel Geographical Data

BAR Jurisdiction	All or portion within South BAR
California Natural Diversity Database	Check CNDDB - May Apply
Creeks	Check Hydro and Wetland layers - May Exist
Flood Hazard	Check Flood Hazard Overlay - May Apply
Plan Area	All or portion Within Summerland Community Plan
Rural Region	All or portion within South Coast Rural Region
Trails	Trail Corridor Likely, Check Trail Layers
X Coordinate	6085897
Y Coordinate	1976697
ESH RC Overlay	Check ESH and RC Overlays - May Apply
Tax Rate Area	059048
Use Code	0050
CA Coastal Comm Jurisdiction	All or part within Appeal or Permit Jurisdiction
Coastal Zone	All or portion Within Coastal Zone
Comprehensive Plan	RES-0.33
Existing Developed Res Neighborhood	All or part in Exist Developed Rural Neighborhood
Rural	All or portion Within Rural Area

Special Districts and Other Information of Interest (derived from Tax Rate Area no.)

CARPINTERIA UNIFIED SCHOOL
 CARPINTERIA/SUMMERLAND FIRE PROTECTION
 SUMMERLAND SANITARY
 SANTA BARBARA COUNTY WATER AGENCY
 MONTECITO COUNTY WATER

Permit History

Case Number	Dept*	Filed	Planner	Project Name or Description	Status
10BAR-00000-00064	P	04/08/2010	AH	3282 BEACH CLUB DR TRUST ALTERATION	Withdrawn
10BDV-00000-00158	E	11/16/2010	ES	10-158:BEACH CLUB DR TRUST / WALL	In Suspension
10CDH-00000-00020	P	07/16/2010	JG	3282 BEACH CLUB DR TRUST ALTERATION	Withdrawn
10CDP-00000-00081	P	09/15/2010	JG	3282 BEACH CLUB DR TRUST TRAILER	Withdrawn
10CUP-00000-00031	P	08/24/2010	EB	3282 BEACH CLUB DR TRUST TRAILER	Closed
10LUP-00000-00501	P	12/21/2010	JG	3282 BEACH CLUB DR TRUST TRAILER	Withdrawn
11CDH-00000-00006	P	02/09/2011	JG	BEACH CLUB FAMILY TRUST - UNPERMITTED GRADING & GABION WALL	Appeal Period In Progress
11CDH-00000-00054	P	11/30/2011	JG	3282 BEACH CLUB FAMILY TRUST NEW SFD	In Review
11PLM-00000-00040	B	06/17/2011	AB	BEACH CLUB/WATER LINE REROUTE	Closed
11ZEV-00000-00011	E	01/19/2011	KHM	BEACH CLUB FAMILY TRUST - UNPERMITTED GRADING & GABION WALL	In Suspension
12BAR-00000-00070	P	04/27/2012	AH	HOCTOR NEW BARN AND STABLES	Preliminary Review
12CNP-00000-00900	B	10/23/2012	AB	3282 BEACH CLUB FAMILY TRUST TEMP. POWER	Issued
12TPM-00000-00006	P	07/19/2012	JG	3282 BEACH CLUB DRIVE FAMILY TRUST LOT SPLIT (TPM 14,791)	In Review
13CUP-00000-00021	P	11/13/2013	JG	BEACH CLUB FAMILY TRUST - SHARED WATER SYSTEM	Awaiting Applicant Action
13FLM-00000-00023	B	03/06/2013	PO	Arqueonautas - Talent Newtwork Productions	Closed
13NGD-00000-00012	P	08/06/2013	EB	3282 BEACH CLUB DRIVE FAMILY TRUST LOT SPLIT (TPM 14,791)	Tracked Elsewhere

*Dept Code: B=Building, E=Enforcement, P=Planning, R=Project, U=Unknown

Accela Land Use Management System is used by P&D to track (B)uilding, (P)lanning and (E)nforcement activity by parcel number.

Building Cases

No LIX Building Cases for this Parcel

Planning Cases

No LIX Planning Cases for this Parcel

LAW OFFICE OF MARC CHYTILO

ENVIRONMENTAL LAW

December 16, 2013

County of Santa Barbara
Board of Supervisors
105 E. Anapamu Street, Suite 407
Santa Barbara, CA 93101

By hand delivery

RE: Appeal of the Planning Commission's Approval of the Beach Club Lot Split, Gabion Wall and Grading, and New Single Family Residence Project and Adoption of the Mitigated Negative Declaration for that Project

Dear Chair Carbajal and Members of the Board of Supervisors,

This appeal is filed on behalf of the Summerland Citizens Association, Reeve Woolpert, and Tom Evans ("Appellants"). We hereby appeal the Planning Commission's December 4th approval of the Beach Club Lot Split, Gabion Wall and Grading, and New Single Family Residence Project ("Project") and adoption of the Mitigated Negative Declaration ("MND") for the Project. We reserve the right to supplement this appeal with additional information, evidence and argument prior to the appeal hearing.

The Project site is located at 2825 Padaro Lane, between Padaro Lane and the Pacific Ocean, within the Summerland Community Plan area and within the Coastal Land Use Plan's Appeals Jurisdiction. The Toro Canyon Creek extends along the Project site's eastern boundary. A trail corridor demarcated on the County's Parks, Recreation and Trails map for the Summerland area (and part of the General Plan and Local Coastal Plan) extends across the Project site, and the public historically used this trail to access the beach at Loon Point and down coast beaches east of Loon Point. Public views of the ocean are available from Padaro Lane across the Project site, part of a view corridor recognized in the Summerland Community Plan.

Contrary to the requirements of the Summerland Community Plan and Coastal Land Use Plan ("CLUP"), the Project approved by the Planning Commission does not include any offer to dedicate a public trail, and does not include protections for public views. The MND is inadequate in numerous respects, including that it fails to accurately describe the environmental setting with respect to public access and views, and fails to consider the Project's inconsistency with policies in the Summerland Community Plan, and LCP. Additionally, substantial evidence supports a fair argument that the Project may significantly impact the environment, and accordingly an Environmental Impact Report ("EIR") is required.

For these reasons, we request that the Board grant our appeal, and deny the Project.

LAW OFFICE OF MARC CHYTILO
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1. The Project Is Inconsistent with Applicable Policy and Zoning Ordinance Requirements

The Project must conform to all applicable Comprehensive Plan, Community Plan, and Zoning Ordinance requirements in order to be lawfully approved. (Cal. Gov. Code § 66473.5; County Code § 21-18.1; CZO § 35-169.5.1). Unfortunately, the Staff Report and MND ignore several applicable requirements in the below categories, and deviate substantially from the text of the requirements in order to find that the Project is consistent. Additionally, the Staff Report and MND do not include an analysis of whether the Project CDP is consistent with the draft Summerland Community Plan update, which is required as of the date that the Board initiated that update by resolution. (See e.g. CZO § Sec. 35-169.4.1.e.) This approach is contrary to law, and demonstrates that the Planning Commission's approval was in error, and that the Board cannot legally approve the Project as proposed.

a. Parks, Recreation and Trails

There are several public access and recreation policies and a provision of the Coastal Zoning Ordinance (CZO) that apply to the Project, and with which the Project is clearly inconsistent. Staff focused on CLUP Policy 7-2, which speaks to the availability of other suitable public access corridors, and unmitigable impacts to habitat areas. However, two more restrictive policies and a CZO requirement apply to the Project by virtue of the fact that the Project site includes a "proposed off road trail" mapped on the County's Parks, Recreation and Trails (PRT) map for the Carpinteria – Montecito – Summerland area (PRT-2, available at <http://www.sbcountyplanning.org/forms/maps/index.cfm?id=Comprehensive>). The MND and PC Staff Report refer to this trail as a "possible future trail", but the PRT map makes clear that this is a "proposed off road trail" and requires protection pursuant to Summerland Community Policy PRT-S-2, CZO § 35-63, and by CLUP Policy 7-25.

Summerland Community Plan Policy PRT-S-2: In compliance with applicable legal requirements, all opportunities for public recreational trails within those general corridors adopted by the Board of Supervisors as part of the Parks, Recreation and Trails (PRT) maps of the County Comprehensive Plan (and this Community Plan) shall be protected, preserved and provided for during and upon the approval of any development, subdivision and/or permit requiring any discretionary review or approval.

CZO § 35-63. Coastal Trails. Easements for trails shown on the Santa Barbara County Comprehensive Plan Parks, Recreation and Trails (non-motorized) maps, shall be required as a condition of project approval for that portion of the trail crossing the lot upon which the project is proposed. (Also referenced in the Summerland Community Plan, p. 15.)

CLUP Policy 7-26: Easements for trails shall be required as a condition of project approval for that portion of the trail crossing the parcel upon which the project is proposed.

Policy PRT-S-2 requires that the “proposed off road trail” crossing the property be protected, preserved, and provided for as part of this discretionary project. CZO § 35-63 and CLUP Policy 7-26 require that an easement for the portion of the “proposed off road trail” crossing the Project lot be required as a condition of project approval.

Neither the MND nor PC Staff Report directly address this issue. The MND does not even reference any of these applicable provisions, and the Staff Report includes only Policy PRT-S-2. Staff’s reasoning supporting a determination that the Project is consistent with Policy PRT-S-2 moreover is wholly flawed. The Staff Report for example attempts to dismiss the issue by stating that the “possible future trail” is not a legal easement”, however none of the above provisions refer to legal easements, rather to proposed trails on the PRT map. Compliance with the policies requires that easements be granted – to require that there be an easement as a condition necessary to grant an easement is circular. The public’s historic use of this trail corridor, and the chilling impacts on public use that constructing a large new home by/on the corridor would have, significantly and adversely impact public access to the sea, providing the nexus for this exaction. (*Nollan v. California Coastal Commission* (1987) 483 U.S. 825.)

The record includes no evidence whatsoever, let alone substantial evidence, supporting a finding that the Project is consistent with Policy PRT-S-2, CZO § 35-63 and CLUP Policy 7-26.

a. Visual Resource Protection

Several visual resource protection policies apply to the Project, as with the above Parks, Recreation and Trails policies and CZO provision, the Project documents fail to disclose all applicable policies, and further rely on a fundamentally flawed rationale for determining consistency. Furthermore, neither the MND nor the Staff Report disclose that the Project site is located within a view corridor identified in the Summerland Community Plan. (Summerland Community Plan p. 137, “From the Padaro Lane area, a view corridor exists of the foothills to the north and of the ocean and Loon Point to the south and west.”) The MND also fails to disclose that Project structures would also be visible from the railroad.

CLUP Policy 4-3: In areas designated as rural on the land use plan maps, the height, scale and design of structures shall be compatible with the character of the surrounding natural environment. Structures shall be subordinate in appearance to natural landforms, shall be designed to follow the natural contours of the landscape, and shall be sited so as not to intrude into the skyline as seen from public viewing places.

Coastal Act Policy 30251: The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas to minimize the alteration of natural land forms, to be visually compatible with the character of

surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas.

Summerland Community Plan Policy VIS-S-3: Public views from Summerland to the ocean and from the Highway to the foothills shall be protected and enhanced. Where practical, private views shall also be protected.

Neither the MND nor the Staff Report include any reference to Policy VIS-S-3, despite the fact that public views from Padaro Lane (within Summerland) to the ocean do exist. The Staff Report emphasizes that existing views from Padaro Lane are “substantially filtered” by an existing hedge that “partially screens the site from public views” (PC Staff Report, p. 22), however this in fact tacitly acknowledging that some public views exist. Moreover, the MND acknowledges that “filtered views from Padaro Lane would include future structures”. (MND p. 9.) Policy VIS-S-3 is not limited to views that are not filtered or screened to some degree, and Staff’s rationale does not support a finding of consistency with this policy. The MND and Staff Report also entirely fail to address a key provision of CLUP Policy 4-3, that structures shall be sited so as to not intrude into the skyline as seen from public viewing places. The Project site, and proposed structures would be visible through the hedge, and would break the skyline as seen from Padaro Lane, a public viewing place. The record includes no evidence whatsoever, let alone substantial evidence, supporting a finding that the Project is consistent with this provision protecting the skyline. Further, in failing to recognize the view corridor that extends across the Project site, the Staff Report’s analysis regarding the Project’s consistency with Coastal Act Policy 30251 is flawed.

2. The MND Fails to Satisfy the Requirements of CEQA

a. Failure to Accurately Describe the Environmental Baseline

“To decide whether a given project's environmental effects are likely to be significant, the agency must use some measure of the environment's state absent the project, a measure sometimes referred to as the "baseline" for environmental analysis.” (*Communities for a Better Environment v. South Coast Air Quality Management District* (2010) 48 Cal. 4th 310, 315) “Without accurate and complete information pertaining to the setting of the project and surrounding uses”, an adequate investigation and discussion of a project’s environmental impacts is not possible. (*San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal. App. 4th 713,729.)

Discussed above, the MND mischaracterizes the “proposed off road trail” depicted on the Summerland PRT map along the eastern boundary of the property as a “possible future trail”, obscuring its relevance per the above PRT policies. While the MND states that this trail “has not received significant use in approximately 15-20 years based on statements from several members of the public”, it does not disclose that the public’s use 15 or 20 years ago may have created a public prescriptive right. The MND also mischaracterizes the adequacy of nearby beach access routes,

which in fact do not provide safe or adequate access to Loon Point and down coast beaches east of Loon Point particularly under high-tide conditions.

Also discussed above, the MND does not disclose that the Project site is within a view corridor recognized in the Summerland Community Plan, and does not make any attempt to characterize the existing view through the hedge from Padaro Lane and other public viewing locations. The MND also fails to disclose that the Project will be visible from the railroad. There are no photos or visual simulations in the document showing these views.

In light of this, the MND fails to accurately describe the environmental baseline, and accordingly the analysis of Project impacts is legally inadequate. (*Id.*)

b. Substantial Evidence Supports a Fair Argument that the Project May Significantly Impact Public Access and Recreation and Visual Resources

If substantial evidence in the record supports a fair argument that the Project may cause significant impacts in the area of fire protection, the County may not lawfully rely on an MND to approve the Project, even if substantial evidence also supports a conclusion that the Project will not result in significant impacts. (*Sundstrom v. County of Mendocino* (1988) 202 Cal. App. 3d 296, 309; *Friends of "B" Street v. City of Hayward* (1980) 106 Cal.App.3d 988, 1002; *The Pocket Protectors v. City of Sacramento* (2004) 124 Cal.App.4th 903, 935 ("It is the function of an EIR, not a negative declaration, to resolve conflicting claims, based on substantial evidence, as to the environmental effects of a project.")) Substantial evidence includes fact, reasonable assumptions predicated upon fact, or expert opinion supported by fact. (Public Resources Code § 21080 (e)(1).) The following does not qualify as substantial evidence under CEQA: "argument, speculation, unsubstantiated opinion or narrative, evidence that is clearly inaccurate or erroneous, or evidence of social or economic impacts that do not contribute to, or are not caused by, physical impacts on the environment." (Public Resources Code § 21080 (e)(2), *City of Redlands v. County of San Bernadino* (2002) 96 Cal. App. 4th 398, 410.) "Relevant personal observations of area residents on nontechnical subjects may qualify as substantial evidence for a fair argument." (*Pocket Protectors*, 124 Cal.App.4th at 928, citing *Ocean View Estates Homeowners Ass'n Inc. v. Montecito Water District* (2004) 116 Cal.App.4th 396, 402.) "[I]f substantial evidence supports a fair argument that the proposed project conflicts with policies [adopted for the purpose of avoiding or mitigating an environmental effect] this constitutes grounds for requiring an EIR." (*Pocket Protectors*, 124 Cal.App.4th at 930; Guidelines, App. G, § IX (b).)

Here, substantial evidence supports a fair argument that the Project conflicts with policies adopted for the purpose of avoiding or mitigating environmental effects (Summerland Community Policy PRT-S-2, CZO § 35-63, CLUP Policy 7-25, CLUP Policy 4-3, Coastal Act Policy 30251, and Summerland Community Plan Policy VIS-S-3. Relevant personal observations of area residents, including comments in the record from Reeve Woolpert, Tom Evans, and Sandy Lejeune also support a fair argument that the Project may result in significant impacts to public access and recreation, and

visual resources.

In light of this substantial evidence, the Project may not be approved with a MND, and a focused EIR is clearly required. (*Sundstrom*, 202 Cal. App. 3d at 309.)

3. Pattern and Practice of Legalizing Zoning Violations

One component of the Project is “legalization of work conducted without the benefit of a permit”, in response to a zoning complaint filed in 2011 regarding unpermitted grading within the creek setback and archaeological site. (Staff Report, p. 4.) Rather than require the violator to abate the zoning violation, the County allowed the violations to continue unabated and without interim restoration, and instead proceeded to “legalize” the violation by processing this Project. Not only does the County’s approval of this Project to “legalize” the zoning violation fail to penalize the applicant for violating the County’s CLUP and the Coastal Act, hence encouraging similar violations by the same applicant or other property owners, it fails to mitigate for the temporal impacts associated with the ongoing zoning violation on the property. This approach deprives the County of much-needed revenue, encourages landowners to ignore permitting requirements by sending the message that if they get caught, they can apply for a permit at that point without meaningful penalty or consequence, and imposes temporal impacts on coastal resources and recreational opportunities. The County has a pattern and practice of condoning unpermitted development in the coastal zone in this manner, with substantial cumulative adverse effects and promoting a culture of unpermitted development activity with only a small fraction of such violations ever being prosecuted as such, and for those, with token or no penalties or sanctions. This approach fails to safeguard the County’s sensitive coastal resources or uphold with letter and spirit of the California Coastal Act, LCP and coastal zoning ordinance.

4. Conclusion

For the reasons discussed above, the Planning Commission’s approval of the Project and adoption of the MND was in error, and we respectfully request that the Board grant our appeal and deny the Project.

Respectfully submitted,

LAW OFFICE OF MARC CHYTILO



Ana Citrin
Marc Chytilo