



**COUNTY OF SAN MATEO**  
Inter-Departmental Correspondence  
Planning and Building



**Date:** October 5, 2015  
**Board Meeting Date:** October 20, 2015  
**Special Notice / Hearing:** 300 Feet  
**Vote Required:** Majority

**To:** Honorable Board of Supervisors

**From:** Steve Monowitz, Community Development Director

**Subject:** Public hearing to consider an appeal of the Planning Commission's approval of a Coastal Development Permit, pursuant to Section 6328.4 of the County Zoning Regulations, for the construction of a 4-foot tall fence within the public right-of-way, at the west end of Seventh Street, in the unincorporated Montara area of San Mateo County. This project is appealable to the California Coastal Commission.

**RECOMMENDATION:**

Deny the appeal and uphold the Planning Commission's approval of the Coastal Development Permit, County File Number PLN 2015-00020, by making the required findings and adopting the conditions of approval in Attachment A.

**BACKGROUND:**

The applicant is requesting a Coastal Development Permit to construct a 4-foot tall, wood framed, wire mesh fence within the public right-of-way at the western end of Seventh Street in Montara. The applicant has modified their original proposal by moving the proposed fence location approximately 5 feet closer to the house, directly adjacent to the edge of the existing landscaping in front of the house. The new location would start at the hinge post of the existing gate and travel due west, directly adjacent to the existing hedge and landscaping until it intersects a large mass of ceanothus bushes. This revised location would place the entrance to the Marine Walk pathway entirely south of the fence and would not require a 45-degree jog in the fence line as originally proposed.

In conjunction with the approval issued for PLN 2014-00302, the Planning Commission requested and the applicant agreed to the removal of the remaining portion of a legal 6-foot tall, solid wood fence within the public right-of-way. The removed section will be replaced with a 4-foot tall wood frame, wire mesh fence consistent with the originally proposed new fence. All new fences will be of the same height and design.

Planning Commission Action: The Planning Commission, at its February 25, 2015 meeting, voted 4-0 (one absence) to approve the project.

Report Prepared By: Michael Schaller, Senior Planner, Telephone 650/363-1849

Appellants: James and Louise Montalbano

Applicant: Bradford Westerfield

Owner: San Mateo County

Location: West end of Seventh Street, Montara, adjacent to 101 Seventh Street

APN: Public Right-of-Way and adjacent to 036-057-240

Existing Zoning: R-1/S-17/DR (Single-Family Residential/5,000 sq. ft. minimum parcel size/Design Review)

General Plan Designation: Medium Density Residential

Existing Land Use: Public Road Right-of-Way, Open Space

Flood Zone: The project site is located in an area of minimal flooding (Zone X), per FEMA Panel 06081C0117E, effective date October 16, 2012

Environmental Evaluation: Exempt under provisions of Section 15303 of the California Environmental Quality Act, consisting of the construction and location of limited numbers of new, small facilities or structures.

Setting: The project vicinity consists of residential development to the north, south, and east and the Pacific Ocean to the west. Based on geographic information system tools, the Pacific Ocean is approximately 150 feet west of the project site, and is not expected to be impacted by the project activities. At the project site, an existing concrete swale located along the southern edge of Seventh Street collects runoff from nearby streets and ditches and deposits the runoff into the Pacific Ocean. The understory beneath the landscaping shrubs at the cliff edge is comprised of non-native vegetation such as Bermuda buttercup, myoporum, cheeseweed, bull thistle, sow thistle, bur clover, ripgut brome, and wild oat.

The area in which the applicant wishes to construct the new fence is relatively flat and consists of an open area covered with pea gravel and ground shrubs. A series of posts connected by chain demarcates the southwest edge of the area.

Chronology:

<u>Date</u>	<u>Action</u>
Mid-1960s	- Encroachment permit to construct fence across the end of the Seventh Street right-of-way issued to C. Hayes Gowan, owner of 101 Seventh Street at that time.
March 17, 2011	- Zoning Hearing Officer approves permits (PLN 2010-00112) for an addition to 101 Seventh Street. The fence across the Seventh Street right-of-way (ROW) is a major issue of contention.
April 19, 2011	- Appeal to the California Coastal Commission (CCC) submitted. The fence and its implications on coastal access are one focus of the appeal. This appeal is still pending with the CCC.
August 20, 2014	- Department of Public Works (DPW) submits application (PLN 2014-00302) to remove a portion of the existing fence across the Seventh Street ROW and to replace it with guardrails.
December 12, 2015	- Mr. Westerfield submits application for new fence within the Seventh Street ROW. This proposed fence is approximately 30 feet long, 4-foot tall and would run east-west from the remaining portion of existing fence to the Marine Walk parcel line.
February 25, 2015	- Planning Commission public hearing. The Planning Commission approves Mr. Westerfield's fence proposal, but subject to two significant modifications: (1) the new east-west fence segment must be modified so that it does not block access to the existing footpath leading into Marine Walk; and (2) replacement of the remaining portion of the Seventh Street fence with a 4-foot tall fence to match the other approved fence segment.
March 11, 2015	- Appeal to the Board of Supervisors filed.
April 28, 2015	- Board of Supervisors hearing. Mr. Westerfield requests a continuance in order to explore alternative fence locations with staff.
July 16, 2015	- Applicant (Mr. Westerfield) submits request to modify his proposal by moving the fence approximately 5 feet closer to the house.

October 20, 2015 - Board of Supervisors hearing.

**DISCUSSION:**

**A. KEY ISSUES OF THE APPEAL**

Below in **bold** is a list of relevant appeal issues as presented by the appellants. The submitted appeal is also attached to the staff report as Attachment B. Each relevant issue is followed by staff's response.

**The Coastal Development Permit (CDP) for this project, as approved by the San Mateo County Planning Commission, does not comply with the County certified Local Coastal Program, specifically Table 10.6, Recommendations for Shoreline Destinations, and Policy 10.29, Protection of Trails from Closing and/or Encroachment.**

**Staff's Response:** The Planning Commission's staff report contained an extensive analysis of how the proposed new fence segments comply with the County's Local Coastal Program (LCP). As stated in the Project Proposal section above, the applicant's proposed new fence location will not inhibit access to the Marine Walk pathway. The proposed fence location complies with Policy 10.29. In approving the previous proposed fence location, the Planning Commission concluded that the proposal does comply with the County's LCP.

**In addition, the encroachment permit to fence off approximately 300 sq. ft. of coastal bluff in the public ROW for private use does not serve any street or allied access purpose.**

**Staff's Response:** There will continue to be sufficient space for public access after construction of the proposed fence. This comment pre-supposes that no actions will be taken to address bluff erosion in the future. This seems unlikely, in that failure to take any action to prevent bluff erosion will jeopardize access into not only Mr. Westerfield's property, but also the appellants' property as well. Additionally, there are adjacent public improvements that would be negatively impacted, including a sewage pumping station located on the south side of Seventh Street, approximately 30 feet east of the bluff edge.

In addition, all encroachment permits are revocable a point that was made several times at the Planning Commission hearing. If, at some point in the future, the Department of Public Works determines that it is in the public's best interest to be able to utilize the area behind the fence, then they can revoke Mr. Westerfield's encroachment permit and remove the fence.

**Accelerated V-shaped bluff retreat on the south side of Seventh Street has eroded over half of the 60-foot ROW (6/13/2000 50-Year Erosion and Drainage Map - attached). At the location of the proposed 10.5-foot**

encroachment, approximately 13 feet on average of ROW remains, and it is eroding on two sides. Given the historical erosion pattern, the remaining public portion will be the first to erode away. The public needs a safe distance from the cliff edge for a usable viewing area.

**Staff's Response:** There will continue to be sufficient space for public access after construction of the approved fence. The revised location of the fence does not consume space that is needed or suitable for public access. In addition, this comment pre-supposes that no actions will be taken to address bluff erosion in the future. This seems unlikely, in that failure to take any action to prevent bluff erosion will jeopardize access into not only Mr. Westerfield's property, but also the appellants' property as well. Additionally, there are adjacent public improvements that would be negatively impacted, including a sewage pumping station located on the south side of Seventh Street, approximately 30 feet east of the bluff edge.

In addition, all encroachment permits are revocable a point that was made several times at the Planning Commission hearing. If, at some point in the future, the Department of Public Works determines that it is in the public's best interest to be able to utilize the area behind the fence, then they can revoke Mr. Westerfield's encroachment permit and remove the fence.

**Also, it remains in question whether the fragile cliff can handle the digging of 8 to 10 piers for a new fence.**

**Staff's Response:** The applicant's proposal calls for approximately 2-foot deep postholes, approximately 6 inches in diameter. The nearest posthole to the bluff edge is approximately 25 feet. The fence posts will be sealed into their holes with concrete, thus preventing a likely pathway for stormwater to saturate the bluff top. Staff reviewed Mr. Westerfield's proposal with the County's Geotechnical Engineer prior to the Planning Commission hearing and again as part of the preparation of this staff report. Both times, the County's Geotechnical Engineer found no reason for concern regarding the fence proposal.

**The public ROW at the end of Seventh Street is effectively the shoreline. The proposed fence encroachment bisects the open gravel public viewing area, and excludes the public from a portion of the shoreline.**

**The proposed fence is new development (LCP Policy 10.2b) that will exclude the public from part of this shoreline viewing area they have enjoyed, and relegate them to the remaining portion which will be first to erode away.**

**Staff's Response:** As modified by the applicant, the proposed fence will exclude the public from a portion of the viewing area, but not the entirety. The portion of the public right-of-way that will be behind the fence is currently occupied by dense ground cover and bushes and would not be available for the public to occupy unless the vegetation is removed. A majority (approximately 450 sq. ft. out of 530

sq. ft. total) of the area will be dedicated public access. The County's LCP is silent as to the appropriate or necessary area that must be dedicated for public access when considering development proposals adjacent to the shoreline. At no point does the LCP state that it must be the maximum amount of land available in any given situation. Instead, it leaves that question to the decision makers, in this case the Planning Commission, to balance against other competing policies and regulations, such as Policy 10.27 (*Development Standards for Protecting Adjacent Land Uses*).

Policy 10.27 requires separation between shoreline access trails/areas and adjacent residential uses to protect the privacy and security of houses and the public nature and use of the shoreline. Specifically, the policy calls for keeping the edge of lateral shoreline access trails 25 feet from any occupied residential structure. To achieve this goal, the use of landscaping, fences, and grade separation should be maximized.

The Planning Commission, in its role as the appointed decision maker for this project, determined that the proposed project is the best compromise between the competing interests of public access and privacy. It represents a significant improvement over existing access conditions, which are limited by the existing fence.

**It should be kept in mind that whatever historic rights there were to maintain the current fence encroachment into the public right-of-way have been withdrawn by the action of the Planning Commission under the application made by the County, County Planning Case Number PLN 2014-00302, dated January 15, 2015, whereby the County was granted authority to remove the fence back to the property line.**

**Staff's Response:** This statement is factually incorrect. The DPW project only proposed to remove a portion of the existing fence, leaving approximately 10 feet encroaching into the right-of-way. This is the project that was approved by the Planning Commission. DPW has always had the authority to revoke the encroachment permit in part or in its entirety if it was determined to be necessary. Such action does not require discretionary authority from the Planning Commission. What was required from the Planning Commission was authorization to construct a barrier (originally guardrails, later changed to bollards) to prevent cars from driving over the bluff.

## **B. PROJECT COMPLIANCE WITH APPLICABLE POLICIES AND REGULATIONS**

### **1. Conformance with the County General Plan**

The project complies with all applicable General Plan policies, with specific discussion of the following:

## Chapter 1 – Vegetative, Water, Fish and Wildlife Resources Policies

Policy 1.27 (*Regulate Development to Protect Sensitive Habitats*). There is a storm drain intake near to the proposed work area. This storm drain line empties into the Fitzgerald Marine Preserve Area of Special Biological Significance (ASBS) which is a designated Sensitive Habitat. Soil disturbance to construct the proposed fence could result in sediment entering into the ASBS if no measures are taken to address this possibility. Staff is proposing a condition of approval (Condition No. 3) which requires the applicant to implement erosion control measures as part of the project to avoid this potential impact.

## Chapter 4 – Visual Quality Policies

Policy 4.21 (*Scenic Corridors*). This policy calls for the protection and enhancement of the visual quality of scenic corridors by managing the location and appearance of structural development. The project site is within the Cabrillo Highway County Scenic Corridor. The fence that the applicant is proposing to build should not be visually significant or obtrusive when viewed from Cabrillo Highway, which is approximately 250 feet east of the project site. Moreover, a 4-foot tall fence in front of a house would not be considered out of place by the average motorist.

### 2. Conformance with County Local Coastal Program (LCP)

Policy 1.1 (*Coastal Development Permits*). A Coastal Development Permit for this fence is required pursuant to San Mateo County Local Coastal Program Policy 1.1. Pursuant to Section 13250 of Title 14 of the California Code of Regulations, when a project site is between the sea and the first through, improved public road paralleling the sea, then the construction of any significant non-attached structure, including garages and fences, does not qualify for an exemption from the provisions of the Local Coastal Program.

## Sensitive Habitats Component

Policy 7.3 (*Protection of Sensitive Habitats*). This policy requires that development in areas adjacent to sensitive habitats be sited and designed to prevent impacts that could significantly degrade these resources. All uses shall be compatible with the maintenance of biologic productivity of the habitats. As discussed above, the project site sits adjacent to the Fitzgerald Marine Preserve ASBS. Soil disturbance to construct the proposed fence could result in sediment entering into the ASBS if no measures are taken to address this possibility. Staff is proposing a condition of approval (Condition No. 3) which requires the applicant to implement erosion control measures as part of their project to avoid this potential impact.

## Visual Resources Component

Policy 8.4 (*Cliffs and Bluffs*). This policy requires that development be set back from the bluff edge sufficiently far to ensure it is not visually obtrusive when viewed from the shoreline except in highly developed areas where adjoining development is nearer the bluff edge. As modified by the applicant, the western end of the proposed fence would terminate at an existing large ceanothus bush and be approximately 28 feet away from the top of the adjacent bluff. Given this setback distance in conjunction with the fence's relatively low height (4 feet), it is not anticipated that the fence will be visible from the shoreline area below.

Policy 8.12 (*General Regulations*). This policy requires that for all non-residential development in the Midcoast, the standards contained in Section 6565.17 of the San Mateo County Zoning Regulations apply. The standards that are applicable to this project are:

- Proposed structures are designed and situated so as to retain and blend with the natural vegetation and landforms of the site and to ensure adequate space for light and air to itself and adjacent properties.
- Views are protected by the height and location of structures and through the selective pruning or removal of trees and vegetative matter at the end of view corridors.
- Public views to and along the shoreline from public roads and other public lands are protected.
- The design of the structure is appropriate to the use of the property and is in harmony with the shape, size and scale of adjacent building in the community.

The project site is within the boundaries of the Cabrillo Highway County Scenic Corridor. However, because of distance, intervening vegetation and the narrow viewing corridor, the new fence will not be visible from Cabrillo Highway. The applicant is proposing to construct a 4-foot tall open mesh fence which will not block coastal views to the northwest, when standing in the open gravel area, which is a public viewing point. The view in that direction is already partially impeded by the applicant's house. Construction of the new fence will not change that current situation. Absent the construction of the fence, there will be an unclear demarcation between public and private space and a significant loss of privacy for the applicant. The applicant wishes to encroach into the public right-of-way in order to



have some level of access and privacy around the area of the front of the house.

Policy 8.32 (*Regulation of Scenic Corridors in Urban Areas*). This policy requires the application of the Design Review regulations contained in the Zoning Ordinance. Specifically, Section 6565.20(f)(3) (*Fencing*) addresses design standards for fencing within the design review districts of the Midcoast. The standard states:

“The design of fences, walls and similar site elements shall be compatible with the architecture of the main buildings and should blend with the surrounding neighborhood.”

The portions of the applicant’s house facing onto the Seventh Street right-of-way are covered in white plaster/stucco. A fence compatible with those materials would be a solid plaster covered structure painted white to match the house. Such a fence would not be consistent with other fences or buildings in the surrounding area and would conflict with other LCP policies concerning view preservation (discussed above). The proposed fence will be less obtrusive and will allow views above and through it. As approved by the Planning Commission, the new fencing will be left unpainted, in a natural wood condition, consistent with fencing throughout the area.

#### Shoreline Access Component

Policy 10.1 (*Permit Conditions for Shoreline Access*). This policy requires the provision of shoreline access as a condition of granting development permits for any public or private development permits between the sea and the nearest road. The type of provision, the location of the access and the amount and type of improvements required shall be consistent with the policies of this component.

This project’s applicant has agreed to the County’s modification of the historic encroachment permit, which has allowed the existing fence to cross the Seventh Street right-of-way since the 1960s (see associated PLN 2014-00302). Modification of that encroachment permit has clarified the public’s right of access to the area behind the fence, as discussed in the report for the Department of Public Works’ (DPW) project. Construction of the new fence segment will not reduce or eliminate this re-established shoreline access, but will, as discussed under Policy 10.27, create a boundary between the public and private realms.

Provision of this access, as discussed further in this section, complies with the requirement pursuant to Section 30212 of the California Public Resources Code (Coastal Act).

Policy 10.9 (*Public Safety*). This policy requires that safe access be provided for shoreline destinations which are large enough to accommodate public safety improvements and public use such as bluffs which are large enough and of a physical character to accommodate safety improvements and which provide room for public use as a vista point.

As discussed above, provision of lateral access within the Seventh Street right-of-way, i.e., a viewing area at the top of the bluff, is feasible with little or no safety improvements to the area. However, continued lateral access along the top of the bluff and within the Marine Walk parcel raises safety concerns and conflicts with privacy standards outlined in Policy 10.27 of the LCP.

There is a narrow footpath, roughly within the Marine Walk parcel, and parallel (and in some locations very close) to the bluff top edge that travels north from the Seventh Street right-of-way to the north end of the project parcel. The State of California Parks Department owns the Marine Walk and would be responsible for any safety improvements required under Table 10.6 of the LCP.

Policy 10.23 (*Access Trails*). This policy outlines development standards for protecting public safety, specifically:

- a. Give preference to providing access trails in level, safe areas.
- b. Where no such safe areas exist, provide the following trail improvements, including but not limited to: (1) staircases down steep bluffs, (2) fences along the edges of narrow bluffs, and (3) handrails and steps on steep terrain.
- c. Design and site trail improvements to blend with the natural environment. Prohibit the disturbance or alteration of landforms which would cause or contribute to erosion or geologic hazards.
- d. Refer to the Site Specific Recommendations for Shoreline Destinations (Table 10.6) for a listing of required improvements to protect public safety at existing sites.
- e. Post caution signs on all difficult access trails.

The Coastal Commission's comment letter regarding this project suggests that the applicant's proposed fence project must comply with this policy, especially with subsections (d) and (e). Both of these subsections pertain to Marine Walk, which lies adjacent to the applicant's property and is owned by the State of California. Besides the question of whether there is an essential nexus between the proposed project and the actions proposed by the

LCP's policy (as required by *Nolan vs. the California Coastal Commission*), there is the more basic issue that the applicant does not own the land in question. Nor has he been given authorization by that landowner (State Parks) to make alterations to their land.

Policy 10.27 (*Development Standards for Protecting Adjacent Land Uses – Residential*). This policy calls for separation between shoreline access trails/areas and adjacent residential uses to protect the privacy and security of houses and the public nature and use of the shoreline. Specifically, keep the edge of lateral shoreline access trails 25 feet and vertical shoreline access trails 10 feet from any occupied residential structure. To achieve this goal, maximize the use of landscaping, fences, and grade separation.

As stated above, the existing house has a non-conforming front yard setback of 11.8 feet. As modified, the applicant has requested a permit to construct the new fence approximately 5 feet into the Seventh Street right-of-way, resulting in a 17.8-foot separation between the public and private realms. Absent some form of fencing, there could be confusion on the part of the public as to whether they are on public or private land.

Policy 10.29 (*Protection of Trails from Closing and/or Encroachment*). This policy prohibits adjacent property owners from closing and/or encroaching on established trails except to protect public safety and sensitive habitats as specified in Policy 10.10. It also requires setbacks for development adjacent to existing or proposed shoreline access to prevent encroachment. It also does not permit new structures to encroach farther than the most extended adjacent structure.

The applicant has modified their original proposal by moving the proposed fence location approximately 5 feet closer to the house, directly adjacent to the edge of the existing landscaping in front of the house. The new location would start at the hinge post of the existing gate and travel due west, directly adjacent to the existing hedge and landscaping until it intersects a large mass of ceanothus bushes. This revised location would place the entrance to the Marine Walk pathway entirely south of the fence and would not require a 45-degree jog in the fence line as originally proposed.

### 3. Conformance with County Zoning Regulations

#### Compliance with Fence Regulations

Section 6412 of the County Zoning Regulations limits fences within the area regulated by the front yard setback to no higher than 4 feet total. The applicant is proposing to build within the Seventh Street right-of-way (i.e., outside of the area regulated by the front yard setback). However, the

proposed design will comply with the fence regulations at a proposed 4 feet in height.

C. ENVIRONMENTAL REVIEW

This proposed project is exempt under the provisions of Section 15303 of the California Environmental Quality Act (CEQA), consisting of the construction and location of limited numbers of new, small facilities or structures. This section of CEQA exempts the “construction and location of limited numbers of new, small facilities or structures” and includes “accessory (appurtenant) structures including garages, carports, patios, swimming pools, and fences.”

D. REVIEWING AGENCIES

California Coastal Commission  
Midcoast Community Council

Staff Comments: Both the Coastal Commission and the Midcoast Community Council’s comments for this project echo their comments made on the associated DPW project. Staff has addressed those comments extensively in the above analysis.

County Counsel has reviewed and approved the materials as to form.

The approval of this Coastal Development Permit for a 4-foot tall privacy fence within the public right-of-way contributes to the 2025 Shared Vision outcome of a Livable Community through compliance with Local Coastal Program policies that promote public access to the shoreline but also protect the privacy of adjacent residential uses.

**FISCAL IMPACT:**

No fiscal impact.

**ATTACHMENTS:**

- A. Recommended Findings and Conditions of Approval
- B. Vicinity Map/Location Map
- C. Site Plan
- D. Fence Elevation
- E. Appeal Submittal: James and Louise Montalbano
- F. California Coastal Commission Comment Letter
- G. Midcoast Community Council Comment Letter
- H. Planning Commission Decision Letter