

**COUNTY OF SAN LUIS OBISPO BOARD OF SUPERVISORS  
AGENDA ITEM TRANSMITTAL**

(1) DEPARTMENT General Services Agency	(2) MEETING DATE 5/21/2013	(3) CONTACT/PHONE Janette Pell/General Services Agency Director 805-781-5200	
(4) SUBJECT Request to approve a notice to preserve deed restrictions on the main parking area at First and San Francisco Streets in Avila Beach, owned by the Port San Luis Harbor District. District 3.			
(5) RECOMMENDED ACTION It is recommended that the Board: 1. Approve the Notice of Intent to Preserve Interest and instruct the Chairperson to sign, and 2. Instruct the Clerk-Recorder to record the Notice.			
(6) FUNDING SOURCE(S) N/A	(7) CURRENT YEAR FINANCIAL IMPACT \$0.00	(8) ANNUAL FINANCIAL IMPACT \$0.00	(9) BUDGETED? Yes
(10) AGENDA PLACEMENT { } Consent    { } Presentation    { } Hearing (Time Est. ___)    { x } Board Business (Time Est. <u>20 min.</u> )			
(11) EXECUTED DOCUMENTS { } Resolutions    { } Contracts    { } Ordinances    { x } N/A			
(12) OUTLINE AGREEMENT REQUISITION NUMBER (OAR) N/A		(13) BUDGET ADJUSTMENT REQUIRED? BAR ID Number: N/A { } 4/5th's Vote Required    { x } N/A	
(14) LOCATION MAP Attached	(15) BUSINESS IMPACT STATEMENT? No	(16) AGENDA ITEM HISTORY { } N/A    Date: <u>April 2, 2013</u>	
(17) ADMINISTRATIVE OFFICE REVIEW			
(18) SUPERVISOR DISTRICT(S) District 3 -			

# County of San Luis Obispo



TO: Board of Supervisors

FROM: General Services Agency  
Janette Pell/General Services Agency Director  
805-781-5200

DATE: 5/21/2013

SUBJECT: Request to record a notice to preserve deed restrictions on the main parking area at First and San Francisco Streets in Avila Beach, owned by the Port San Luis Harbor District. District 3.

## **RECOMMENDATION**

It is recommended that the Board:

1. Approve the Notice of Intent to Preserve Interest and instruct the Chairperson to sign, and
2. Instruct the Clerk-Recorder to record the Notice.

## **DISCUSSION**

In 1983, the County of San Luis Obispo deeded a large parking lot at the intersection of First Street and San Francisco Street in downtown Avila Beach to the Port San Luis Harbor District (Port). The parking lot currently has 376 parking spaces that provide parking for visitors to beach areas and businesses of Avila Beach and the Port. A map showing its location is attached (Attachment #1). The deed was subject to a restriction prohibiting the use of the parking lot for commercial or residential development and requiring that the parking lot should be "substantially open and available" for public parking.

The deed defines the term "substantially open and available" as requiring that no less than 300 parking spaces be available for use by the general public 365 days per year. An Agreement for the Operation of Avila Beach Recreational Facilities ("Agreement") that was executed with the deed states that the parking lot is conveyed to the Port as a "revenue source to off-set the cost of operating and maintaining the Pier, Beach, and Parking Lot." It further clarifies that "it is specifically not the intention of the parties hereto to preclude development of commercial facilities but rather to limit said development on said Parking Lot in recognition of the critical need for parking in the Community of Avila Beach." The Avila Beach Specific Plan proposes that some multi-family housing could be built in the parking lot, subject to certain conditions.

The deed recorded on June 15, 1983 (Attachment #2) and includes deed restrictions stating that the property shall revert to the County (also called the "power to terminate") in the event that any of the following should occur:

1. If the property is not held by the Port in public trust, substantially open and available for public parking and unencumbered by any commercial or residential development.
2. If the Port were no longer to operate and maintain the physical beach at Avila Beach (not including the pier located thereon).
3. If the Port did not acquire title to the beach and pier properties that the County had leased from the State per an agreement in 1950 (this clause is no longer applicable since this acquisition was completed in 1987).

California Civil Code section 880.030 provides that the power to terminate a deed expires thirty years after the deed containing such right is recorded, which would be on June 15, 2013 in this case. The power to terminate may be renewed

for an additional thirty years if the County records the attached Notice of Intent to Preserve Interest (Attachment # 3). Without the power to terminate, the deed restrictions are effectively void.

At the request of the Port, an Agreement for Temporary Waiver of Deed Restriction was approved by the Board of Supervisors on April 2, 2013 in order to allow the parking lot to be used by AEG Cycling on May 15 and 16, 2013 for activities surrounding the Amgen Tour of California 2013. Along with that request, Harbor Manager Steve McGrath discussed with General Services Agency staff the procedure necessary to permanently revise the deed restriction to allow the Port greater authority to manage the parking lot for special events. Staff advised that the process to revise the deed restrictions could begin upon receipt of a request from the Harbor Commission and would require review by the Avila Valley Advisory Council, County Planning Commission, and other entities that may be identified by County Planning and Building staff prior to being placed on the County Board of Supervisors' agenda.

The power to terminate is standard when property with deed restrictions changes hands between government entities, especially in the case of recreational property where the entity acquiring the property is also taking on operational and maintenance obligations. Properties such as these are protected by deed restrictions as an assurance to the public that the property will remain dedicated to public use. For example, properties that the County has acquired for park purposes from the State or Federal government are always deed restricted to remain in park use. The power to terminate is a promise to the public that the property will remain in recreational use and assures that the agency deeding the land is a part of any decision to change the deed restriction in the future.

In the case of this Avila Beach parking lot, the deed restriction links the parking lot to the maintenance obligation for the beach area, as well as to guarantee that a minimum of 300 parking spaces remain available for public parking year-round. The 1983 Agreement signed by the State, County, and Port states that there is a "critical need for parking in the Community of Avila Beach."

On April 23, 2013, the Harbor Commission discussed the County's Notice of Intent to Preserve Interest and approved a motion to send the County Board of Supervisors a letter requesting that the Notice not be filed. The letter (Attachment #4) states that the Port is the most appropriate agency to manage the parking lot on behalf of the public and maintains that a "deed restriction on property owned by another public agency is both unnecessary and redundant." The letter acknowledges that the parking lot serves a vital public function, and points out that the Port has taken a "proactive role in developing a parking management study for both the harbor and the community." In March 2013, the Port published a draft Parking Management Plan that has been funded by the San Luis Obispo Council of Governments.

Staff agrees that the Port has managed the parking lot well on behalf of the public, but we respond that deed restrictions on public lands are more than simply an agreement between two agencies. They are intended to be a covenant with the public that both government agencies can be relied upon together to uphold. The approval and recording of this Notice of Intent to Preserve Interest would not prevent future revisions to the deed restriction that may be proposed by the Harbor Commission. Proposals from the Harbor District to modify the deed restrictions would be brought to the Board of Supervisors for separate consideration at a later time.

Without the power to terminate, the County still retains land use jurisdiction along with the Coastal Commission, but the link between maintenance of the beach area and ownership of the parking lot would be lost, as well as the specific parking space restrictions (300 spaces and year-round availability). Staff recommends that the Port's proposals for development and operation of the parking lot can be cooperatively achieved in the future by modifying the deed restrictions as mutually agreed. Furthermore, as indicated above, the Harbor District has commissioned the Parking Management Plan that is in draft form and not yet complete. Staff feels it to be prudent to request the Board to approve the Notice of Intent to Preserve Interest and to work with the Harbor District to bring a mutually acceptable approach to the Board to modify the deed restriction.

It is recommended that the Board approve the Notice of Intent to Preserve Interest with the understanding that the Harbor District may in the future propose revised language for the deed restriction. If the Board approves the Notice of Intent to Preserve Interest, staff recommends that the County Clerk-Recorder be instructed to record the document.

#### **OTHER AGENCY INVOLVEMENT/IMPACT**

The Port San Luis Harbor District has been informed of the proposed Notice of Intent to Preserve Interest and has

responded in their attached letter dated April 26, 2013. County Planning and Building Department staff has been notified of the proposed Notice and supports its recordation. County Counsel has approved the Notice as to form and legal effect.

### **FINANCIAL CONSIDERATIONS**

There are no financial considerations to the County in deciding whether or not to record the Notice of Intent to Preserve Interest.

### **RESULTS**

Approval and recordation of the attached Notice of Intent to Preserve Interest will renew for an additional thirty years the County's power to terminate a deed to the Port San Luis Harbor District for a parking lot located at San Francisco Street and First Street in downtown Avila Beach, which gives the County the authority to enforce the existing deed restrictions that generally limits the year-round use of the property to public parking and requires the Port to operate and maintain the beach area. This action contributes to the County's communitywide result of a Livable Community.

### **ATTACHMENTS**

1. Location Map
2. 1983 Deed to Parking Lot
3. Notice of Intent to Preserve Interest
4. Harbor Commission Letter 4-26-13