

#870



COASTAL APPEAL FORM

SAN LUIS OBISPO COUNTY DEPARTMENT OF PLANNING AND BUILDING
976 OSOS STREET • ROOM 200 • SAN LUIS OBISPO • CALIFORNIA 93408 • (805) 781-5600

Promoting the Wise Use of Land • Helping to Build Great Communities

Please Note: An appeal should be filed by an aggrieved person or the applicant at each stage in the process if they are still unsatisfied by the last action.

Negative Declaration Morro Bay Audubon Society MUP

PROJECT INFORMATION

Name: Tree Permit DRC 2011-00013 File Number: DER 200

DRC 2011 - 00013

Type of permit being appealed:

- Plot Plan
- Site Plan
- Minor Use Permit
- Development Plan/Conditional Use Permit
- Variance
- Land Division
- Lot Line Adjustment
- Other: Tree permit

The decision was made by:

- Planning Director (Staff)
- Building Official
- Planning Department Hearing Officer
- Subdivision Review Board
- Planning Commission
- Other _____

Date the application was acted on: 3.15.2013

The decision is appealed to:

- Board of Construction Appeals
- Board of Handicapped Access
- Planning Commission
- Board of Supervisors

BASIS FOR APPEAL

State the basis of the appeal. Clearly state the reasons for the appeal. In the case of a Construction Code Appeal, note specific code name and sections disputed). (Attach additional sheets if necessary)

see attached sheets

List any conditions that are being appealed and give reasons why you think it should be modified or removed.

Condition Number _____ Reason for appeal (attach additional sheets if necessary)

APPELLANT INFORMATION

Print name: Save the Park!

Address: 405 Acacia St, Morro Bay, CA 93442

Phone Number (daytime): (805) 772-5912

We have completed this form accurately and declare all statements made here are true.

Signature: [Signature] Date: 3.29.2013
Vice President, Save the Park!

SLO COUNTY
PLANNING/BUILDING
DEPT
MAR 29 PM 3:43

OFFICE USE ONLY

Date Received: 3/29/13

By: NAR

Amount Paid: 0

Receipt No. (if applicable): N/A

SAVE THE PARK
405 Acacia Street
Morro Bay, CA 93442

March 29, 2013

Environmental Division
Department of Planning and Building
County Government Center
San Luis Obispo, CA 93408

**Subject: Proposed Negative Declaration Morro Bay Audubon Society;
MUP; Tree Permit DRC2011-00013**

Multiple concerns were raised at the hearing on March 15, about the impacts of components of the Audubon Chapter's project as enumerated in the Chapter's publication. Our organization is supportive of the plan's public access improvements but gravely concerned about the effects of the removal of vegetation and understory upon sensitive habitat. The hearing officer did not consider these habitat protection concerns under the theory that the only project features under consideration were the permits being requested to install a boardwalk, viewing platform, signage, and a water storage tank. These features were determined to be in conformance with the Coastal Zone Land Use Ordinance.

The centerpiece of CEQA is the idea that project impacts will be considered by public agencies and that the review process is open to public comment. It is also required that a project be defined as the "whole of an action" and not piecemealed for incremental public review. In our comments to the hearing officer we noted that a private activity supported by public funding is defined as a "project" under CEQA.

"An activity undertaken by a person which is supported in whole or in part through public agency contracts, grants, subsidies, loans, or other forms of assistance from one or more public agencies" (Section 15378(2), California Public Resource Code).

Since the Audubon project (including clearance of ground cover) is supported by and dependent on public agency contributions, the work is a "project" under CEQA. It is in its own category where *no distinction is made as to whether or not project components require issuance of a County permit*. County public works projects do not require permit approvals but, as with the category of project appropriate to the Audubon proposal, every element of a project requires CEQA consideration.

County staff argued that the review and comment period for the overall project had occurred at the time the funds were allocated to the Audubon Chapter by the Coastal Conservancy. Our comments, however relevant, should have been made in 2008 and

directed to the Coastal Conservancy which was then the lead agency. The County is adding no funding to the project so the time limit to make comments was long expired.

The Coastal Conservancy did make CEQA findings at the time grant funding was approved in January of 2008. The approvals included a note that the project was categorically exempt from CEQA because transfers of ownership of resource lands are permitted and because the minor nature of the improvements were exempted by Sections 15304 (Minor Alterations to Land) and 15303 (New Construction or Conversion of Small Structures). At the time of the grant approval, no specific plans had been developed either for vegetation removals or public access improvements.

As persons concerned about the impacts of the plan we do not accept the idea that there is no opportunity for community review or comment on this publically funded project. There were no plans that could be commented on in 2008. It is also evident that, in spite of the Conservancy's finding that all aspects of the project are categorically exempt, the County determined that selected project components needed CEQA review. A "project" that was initially just a funding decision has "changed" into a project that requires CEQA review.

The Audubon Chapter has published a description of all components of its "project". This includes both the public access features and the "restoration plans" involving wildlife surveys, and replacement plantings. The County staff said that the only elements of the activity requiring CEQA review were those in need of permits. We argued that the studies and plans should be completed and made available for public review because they were elements of an integrated plan that represented the "whole of the action".

The determination of what should be in or left out of an ongoing activity has to do with the degree that one component is separable from others. The County argues that the public access components of the Audubon project are separable from the vegetation removal because there is no significant linkage. However, one project component assigned to the "permit required" category which is closely linked to the vegetation removal is the installation of a water tank. The water is required to assure the growth new plantings, once the existing plantings are removed.

There are also issues of conformance with the Coastal Zone Land Use Ordinance. Audubon's description of the Sweet Springs East program, (downloaded from the Audubon website) involves;

"Removal of approximately 3.5 acres of non-native plants including veldt grass, ice plant, mustard, wild radish, fennel, African daisy, English ivy and more".

While it was argued (by Audubon) that non-native plants are somehow not worthy of protection, there is nothing in the County's plans supporting this argument. Whatever our personal preferences, non-native vegetation is habitat to many valued species such as Monarch Butterflies. The Sweet Springs area is defined as an Environmentally Sensitive

Habitat Area (ESHA) on the Estero Plan maps and the Coastal Commission has quite specifically included non-native vegetation as qualifying as ESHA in other locations.

In summary, it is evident that the entire Audubon plan for Sweet Springs East needs to have County review, not just the selected fragments of the project considered in the Negative Declaration. It is not a private project that is only subject to standard permit requirements. The project is supported by public funding and, as such, is in a special category of projects requiring review under CEQA. Additionally and separately, the scale of ground cover removal requires permitting under the Coastal Zone Land Use Ordinance. Finally, CEQA demands that reviewing agencies not allow the piecemealing of projects over time. Piecemealing is conspicuously being done here, with some components already on site and the most contentious components deferred to the future.

Everyone is supportive of improved public access to the Sweet Springs site and to the protection and enhancement of habitat. However, approval of only a subset of project components is inappropriate. This is inconsistent with CEQA requirements, with the Local Coastal Plan and with County code. Moreover, piecemeal planning is contrary to established natural resource management principles. The County's environmental criteria specifically endorse a comprehensive approach instead of single species protection. Any resource improvement plan for Sweet Springs should be grounded in a *comprehensive* analysis of resources. The Audubon group is in agreement with this analysis is sponsoring inventories of habitat and studies of valued species using the site such as Monarch Butterflies. Given the long lasting impacts of the Audubon project, it is essential that comprehensive plans be carefully reviewed by technical specialists, by County staff, and by the Los Osos community.



David Dubbink, PhD., AICP
Vice-president, Save the Park!

Attachment 2 Sweet Springs Expansion Project

Background

The Trust for Public Lands (TPL) negotiated the purchase of 8 acres of undeveloped land adjacent to the Sweet Springs Preserve in Los Osos in July 2008. The property was purchased for \$2 million dollars. The purchase was funded by the State Coastal Conservancy (SCC), California Wildlife Conservation Board (WCB) and the United States Fish & Wildlife Service (USFWS). At the close of escrow, the title for the property was transferred to Morro Coast Audubon Society (MCAS) along with a number of binding deed restrictions. The deed stipulates that the property may only be used "... for the purpose of natural resource protection, preservation, restoration and management of wildlife habitat and sensitive biological resources, wildlife oriented education and research, open space protection and compatible public access".

Current Status

Morro Coast Audubon conducted a number of surveys of cultural and biological resources on the property to inform decisions concerning the future management of the property. The surveys identified a wealth of cultural and biological resources. An archeological survey indicated the site has a long history of usage by the Native American Chumash tribes. Suitable habitat conditions for 17 special status plant species exist onsite, three of which have been directly observed: Blochman's leafy daisy (*Erigeron blochmaniae*), Sand almond (*Prunus aspiculate* var. *punctata*); California sea blite (*Suaeda californica*). There are also suitable habitat conditions for 13 special status wildlife species onsite. A number of these species have been directly observed including the federally endangered Morro Shoulderband Snail (*Helminthoglypta walkeriana*), Cooper's Hawk (*Accipiter cooperii*), Silvery legless lizard (*Anniella pulchra*) and Morro blue butterfly (*Plebejus icarioides 'moroensis'*).

With this information in hand, MCAS developed a plan for the property which would provide access to the public while protecting the sensitive resources found at the site. The plan was submitted to the County of San Luis Obispo for permit review on September 2, 2011. The review process is currently underway, with the plan having been distributed to concerned citizens, agencies and organizations for comment.

Public Access Plans

- Pedestrian entrance at the corner of 4th Street & Ramona following old road
 - ◆ Bike rack
 - ◆ Service gate
- Pedestrian entrance from existing Sweet Springs Preserve south east of large pond
- Pedestrian & wheelchair entrance at the eastern end of the sidewalk on Ramona
 - ◆ Wheel chair landing (8 x 12 feet)
 - ◆ Wood, raised boardwalk (5 feet wide x 80 feet long)
- ADA compliant granite trail and raised boardwalk leading to overlook
- Minimum of 3 benches for resting approximately half way along trail
- Large, wood viewing platform (16 x 24 feet) overlooking the estuary
 - ◆ Built-in benches
 - ◆ Binocular rests
- 3 large interpretive signs and 8-16 small interpretive signs
- Community kiosk and Storage shed (10 x10)

Restoration Plans

- Removal of approximately 3.5 acres of non-native plants including veldt grass, ice plant, mustard, wild radish, fennel, African daisy, English ivy and more.
- Reestablish cleared areas with native forbs, shrubs and trees using a combination of broadcast seeding & planting 1 gallon containers.
- Replant with plants favored by wildlife, such as coast live oak, silver dune lupine, mock heather, black sage & milkweed in coastal dune scrub areas and willows, dogwood, toyon & sedges in upland borders.
- Reintroduce rare plants that have been lost on the preserve, such as yerba mansa & San Luis Obispo monardella, as well as encourage rare plants such as Blochman's leafy daisy & sand almond.
- Conduct thorough wildlife surveys to determine if eucalyptus trees harbor wildlife such as monarch butterflies, raptors or bats; Designate trees as protected habitat.
- Gradual removal of up to 120 eucalyptus trees (if not used by wildlife) over 10 years with replacement plantings at 3:1 ratio of native trees including coast live oaks, sycamores, willows & wax myrtle.
- Remove all eucalyptus and cypress seedlings annually.

For more information on this project please visit: <http://www.morrocoastaudubon.org/ess.php>