



County of San Luis Obispo General Services Agency

## COUNTY PARKS

Janette D. Pell, Director

Curtis Black, Deputy Director

### MEMORANDUM

September 25, 2013

**TO:** Ryan Hostetter, LEED AP. Project Planner for the County Planning and Building Department

**FROM:** Elizabeth Kavanaugh, Parks Planner, General Service Agency-Parks

**VIA:** Curtis Black, General Services Agency Deputy Director - Parks

**SUBJECT:** DRC 2011-00069 Cave Landing (Pirates' Cove/Mallagh Point) Recreation Project - County Parks Response to Appeal Issues

#### Purpose

The purpose of this memorandum is to provide information associated with the project's appeals.

#### Response

Many of the appeal issues are procedural such as conformance with the Local Coastal Plan, the District 3 Planning Commissioner's recusing himself from a vote and perceived deficiencies in the environmental document. While we disagree with the appellants statements, we will leave it to Planning staff to address these issues. County Parks would like to address two appeal issues: hours of operation and stairs to beach because these are important to the operation of this site as a County Park facility and the safety of its visitors.

This site has been used for recreation for decades even through it was private property until February 2013 when it was accepted into County Parks' land inventory. As a County facility it is a challenging site it has many cliffs that drop to the ocean, a cave, and existing trails on an active land slide, along bluff tops, on slopes over 50 percent and through significant archeological resources. Existing recreation uses include these rugged trails including a coastal access trail to a small sunny beach cove. Another trail leads straight to the bluffs and the cave. Trails to each of these locations finish at sheer cliffs. In addition to legitimate daytime recreation use, according to San Luis Obispo County Sheriff's Office, this area frequently has different and illegal uses at night including sale of drugs, public sex and illegal fires.



Now that this site is a County facility, County Parks must upgrade the site to be safer for visitors and have the ability to manage and maintain the site that was not necessary while it was in private ownership. As the County we must consider the public good. The Board of Supervisors recognized the rugged nature of this site when it purchased this site declaring that County Parks is not to accept this site into the County's land inventory until a plan and funds were available to do improvements to this site. County Parks has improvement plans for this site and obtained grants to pay for these improvements. The physical improvements of the project will address some of the safety and access concerns by providing stairs to the beach, paving the severely rutted parking lot, providing a restroom and relocating a trail above the active landslide. To address the illegal night activity, County Parks is proposing hours of operation of 6am to 10pm which is consistent with our County Parks Ordinance, State Parks' hours of operations including their coastal parks and the preference of the County's Sheriff Department.

### **Hours of Operation**

The appellant states that the California Coastal Act and the Local Coastal Plan requires the County to maximize coastal access. We agree with this conclusion and are maximizing public coastal access with this project. The appellant cites newspapers articles written by past and present Coastal Commissioner's that declare the public has a right to use the beach at night. "For every troublemaker there are many more law abiding citizens who come to the beach to walk in the moonlight...". "There are a lot of people who want to use the beach, which they have a constitution right to do, in the middle of the night...." This opinion is supported by California Coastal Commission staff.

County Parks maintains beaches in Cayucos and Cambria where nighttime access is allowed and encouraged. In nearby Avila Beach and Shell Beach there are coastal access sites. None of these coastal accesses require the visitor to navigate a ¼ of a mile through steep terrain, cliffs that drop to the ocean, or a dark remote area that enables criminal activity to flourish. Due to the site's terrain, geological, archeological features and criminal activity, it is necessary to close this site and its coastal access from 10pm to 6am to ensure public safety and to manage and maintain this site. The County's Sheriff Department in its review of this project determined that nighttime closure of this area was the best way to minimize the criminal activities that regularly happen at this site. County Fire is also in support of 10pm to 6am closure for public safety.

The California Coastal Commission staff does not agree with the proposed hours of operation and suggest 24 hour access to the coast through this site. A review of the California Coastal Act and Local Coastal Plan does not require mandatory nighttime coastal access. Both documents note "Maximizing public access to and along the coast". A review of the California Coastal Act finds the Act does not require nighttime access specifically and actually states when coastal access generally is and is not appropriate. The California Coastal Act provides for exceptions to the coastal access requirement. County staff has determined limiting night time access for this project meets: public safety, protection of fragile coastal resources, adequate coastal access nearby, topographical and geological site characteristics. Below are the relevant sections of the California Coastal Act.

Section 30210: Coastal Access

In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.

Section 30212: New development projects

(a) Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where: (1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources, (2) adequate access exists nearby, or, (3) agriculture would be adversely affected. Dedicated accessways shall not be required to be opened to public use until a public agency or private association agrees to accept responsibility for maintenance and liability of the accessway.

Section 30214: Implementation of public access policies; legislative intent

- (a) The public access policies of this article shall be implemented in a manner that takes into account the need to regulate the time, place, and manner of public access depending on the facts and circumstances in each case including, but not limited to, the following:
- (1) Topographic and geologic site characteristics.
  - (2) The capacity of the site to sustain use and at what level of intensity.
  - (3) The appropriateness of limiting public access to the right to pass and repass depending on such factors as the fragility of the natural resources in the area and the proximity of the access area to adjacent residential uses.
  - (4) The need to provide for the management of access areas so as to protect the privacy of adjacent property owners and to protect the aesthetic values of the area by providing for the collection of litter.

It is County Staff's position that the proposed closure of this site between the hours of 10pm and 6am meets the coastal access requirement of the California Coastal Act as follows:

- 1) It is needed for the management of the site to be consistent with public safety by not directing people down a steep dark trail along the bluffs at night;
- 2) It Limits the criminal activities that go on at night;
- 3) Existing adequate coastal accesses nearby in both Shell Beach to the south and Avila Beach to the north that are not in remote areas and provide coastal access that is safe in the hours of darkness;
- 4) It is needed to protect on site's significant archeological resources and biological resources.
- 5) The site and coastal access trail has topographic and geologic characteristic in that it has slopes over 50% and an active land slide.

The California Coastal Act in Section 30214 defines the legislative intent of the coastal access policy. It states the coastal access policy is not all inclusive with regards to time, place and manner of public access. This section continues by outlining that public coastal access is not appropriate when topographic and geologic site characteristics exist. This site is dark, has very steep slopes, and an active land slide. Limiting night access will decrease the potential for new visitors to approach sheer cliffs of over 130 feet that fall to a rocky shoreline. Limiting night access will also help decrease the criminal activity which is a public safety concern now that the site is owned by the County. As long as the illegal activities continue at this site, it will not be used by most law abiding citizens for night walks on the beach as envisioned by the Coastal Commission staff in their letters included in the appeal package. State Parks closes its coastal parks at night. Nearby Montana de Oro, which is similar in terrain to this site is closed for night use from 10pm to 6am. Lack of night closure inhibits the control necessary for the County Sheriff's to enforce the laws. Night closures are an appropriate tool for County Parks to maintain the safety of the park facility and its visitors.

### **Stairs to the Beach**

The existing coastal access trail at this site is a steep narrow trail on slopes of over 50 percent that is at the bluffs edge in some parts. The beach access trail ends at a 10 to 12 foot drop to the beach. In the winter, a rope is used to climb down to the beach. In the summer months, beach users carve stairs out of the landslide debris to get down to the beach. The proposed project will retain the existing coastal access trail, cleaning up some of its inadequacies including adding coastal access stairs to make the connection to the beach. These stairs will be attached to an existing large boulder on the beach.

The appeal issue is that the stairs to the beach will temporarily improve coastal access; they will decrease coastal access when they are destroyed and the County needs to close access to the beach because this trail is the only access to this small beach cove. This argument can be made at any coastal access point that has stairs. In general, the average life of coastal access stairs ranges from 25 to 50 years. In this case, the proposed stairs are the most durable coastal access stairs offered. They are concrete stairs with rust resistant coated rebar. They are attached to a large bolder at the beach that has withstood the storms and tidal action of the ocean for hundreds of years. The position of the beach cove and the stairs leading to it is tucked behind Mallagh Point which shelters this beach cove from most storms waves. The project's Engineering Geologist and the County's Engineering Geologist have both reviewed this project and do not find any concerns with the stairs to the beach.

There are examples of coastal access stairs that have failed and need to be closed. County Parks' stairs at First Street in Cayucos are currently closed because the stairs are unsafe. These are wood stairs that were installed over 30 years ago and just recently needed to be closed. County Parks is in the process securing grants to rebuild these stairs. They will be replaced with the concrete stairs with rust resistant coated rebar as proposed in this project. Taking into consideration, that these wood stairs lasted 30 years in a more dynamic coastal environment than the proposed stairs, it is a conservative

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estimate that the proposed stairs will have a 30 year life. Finally, County Parks will maintain these stairs and will pursue funding to replace these stairs if they do fail. Applying the logic that the stairs will fail someday is not a reason to limit coastal access to this beach today and for the next 30 years plus years.

Thank you for the opportunity to present County Parks' position. We will be available and in attendance at the October 8, 2012 Board of Supervisors appeal hearing to answer any questions that may come up.