

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

(1) DEPARTMENT Planning and Building	(2) MEETING DATE 11/5/2013	(3) CONTACT/PHONE Ryan Hostetter, Senior Planner\ (805)788-2351	
(4) SUBJECT Hearing to consider appeals by Sean Shealy and Brian LoConte of the Planning Commission's approval of (1) a Development Plan/Coastal Development Permit/Variance for the County Parks' Pirates Cove parking lot and trail project located at the end of Cave Landing Road, east of the intersection of Avila Beach Drive and Cave Landing Road in the community of Avila Beach and (2) adoption of the Mitigated Negative Declaration prepared for this project pursuant to the California Environmental Quality Act. District 3.			
(5) RECOMMENDED ACTION Adopt and instruct the Chairperson to sign the resolution denying both of the appeals and upholding the decision of the Planning Commission, and (1) conditionally approving the request by the San Luis Obispo County Department of General Services, Parks Division for a Development Plan/Variance/Coastal Development Permit (DRC2011-00069) to: improve the parking lot and trails, install drainage improvements, and install a vault restroom and other amenities at the Pirates Cove beach parking area and (2) approving the Mitigated Negative Declaration prepared for this project pursuant of the California Environmental Quality Act. The project site is located at the end of Cave Landing Road in Avila Beach.			
(6) FUNDING SOURCE(S) Department Budget	(7) CURRENT YEAR FINANCIAL IMPACT \$4,435.00	(8) ANNUAL FINANCIAL IMPACT \$0.00	(9) BUDGETED? Yes
(10) AGENDA PLACEMENT { } Consent    { } Presentation    { X } Hearing (Time Est. <u>30min</u> )    { } Board Business (Time Est. <u>    </u> )			
(11) EXECUTED DOCUMENTS { X } Resolutions    { } Contracts    { } Ordinances    { } N/A			
(12) OUTLINE AGREEMENT REQUISITION NUMBER (OAR) N/A		(13) BUDGET ADJUSTMENT REQUIRED? BAR ID Number: { } 4/5th's Vote Required    { X } N/A	
(14) LOCATION MAP Attached	(15) BUSINESS IMPACT STATEMENT? No	(16) AGENDA ITEM HISTORY { X } N/A    Date: _____	
(17) ADMINISTRATIVE OFFICE REVIEW			
(18) SUPERVISOR DISTRICT(S) District 3 -			

# County of San Luis Obispo



TO: Board of Supervisors

FROM: Planning and Building / Ryan Hostetter, Senior Planner

VIA: Ellen Carroll, Environmental Coordinator / Planning Manager

DATE: 11/5/2013

SUBJECT: Hearing to consider appeals by Sean Shealy and Brian LoConte of the Planning Commission's approval of (1) a Development Plan/Coastal Development Permit/Variance for the County Parks' Pirates Cove parking lot and trail project located at the end of Cave Landing Road, east of the intersection of Avila Beach Drive and Cave Landing Road in the community of Avila Beach and (2) adoption of the Mitigated Negative Declaration prepared for this project pursuant to the California Environmental Quality Act. District 3.

## **RECOMMENDATION**

Adopt and instruct the Chairperson to sign the resolution denying both of the appeals and upholding the decision of the Planning Commission, and (1) conditionally approving the request by the San Luis Obispo County Department of General Services, Parks Division for a Development Plan/Variance/Coastal Development Permit (DRC2011-00069) to: improve the parking lot and trails, install drainage improvements, and install a vault restroom and other amenities at the Pirates Cove beach parking area and (2) approving the Mitigated Negative Declaration prepared for this project pursuant to the California Environmental Quality Act. The project site is located at the end of Cave Landing Road in Avila Beach.

## **DISCUSSION**

This item is a continued hearing from the October 8, 2013 Board of Supervisors Meeting. The item was continued from that date to allow for additional time for the appellants to receive their legal notices.

The County Department of General Services, Parks Division, is requesting a Development Plan/Variance/Coastal Development Permit in order to improve and manage the parking area and trails for coastal access to the Pirates Cove Beach. The project includes the installation of other amenities and related improvements such as a vault restroom, picnic tables, drainage swales, and landscaping. Trail improvements include realignment of an existing trail that extends from the end of Cave Landing Road to the Bluffs subdivision in the City of Pismo Beach and improvements to the trail from the parking area to the beach including stairs at the steep lower portion. The project is proposed to facilitate long term public access of a property which has been accepted and will be managed by the County for the use of the public.

## Appeal Issues

The project was presented before the Planning Commission at their May 23, 2013 hearing, and was then continued to their July 25, 2013 hearing where the project was approved. On August 6, 2013 two appeal letters were submitted by Brian LoConte and Sean Shealy/Friends of Pirates Cove of the Planning Commission's decision based on a number of issues which are summarized in this report. Both appellants attended the July 25<sup>th</sup> Planning Commission hearing and submitted concerns which were considered, and are a part of the Planning Commission staff report discussion (also attached for your information).

### Appeal Issue #1:

The appeal issue states that the decision should have been delayed to a future Planning Commission Hearing date to allow the Planning Commissioner representing Supervisorial District 3 to vote in the decision.

*Staff Response: The July 25<sup>th</sup> hearing was a continued item from a May 23<sup>rd</sup> Planning Commission Hearing. Between May 23<sup>rd</sup> and July 25<sup>th</sup>, the Planning Commissioner seat representing Supervisorial District 3 was vacated and filled. The Planning Commissioner representing Supervisorial District 3 was appointed to the Planning Commission two days prior to the July 25<sup>th</sup> Planning Commission Hearing and sworn in the day of the hearing. Because the newly appointed Commissioner was not a party to the original hearing on May 23<sup>rd</sup>, and he had not reviewed the previous meeting tapes, he recused himself from the decision on the item. The commission was not required to continue the item again because of there being four commissioners acting on the item which constituted a quorum. The commissioner from the district is not required to take part in the action on the item.*

### Appeal Issue #2:

The appellant contends that the proposed project is not in conformance with the County of San Luis Obispo San Luis Bay Coastal Area Plan, particularly Chapter 8 describing Shoreline Access at Mallagh Landing .

*Staff Response: Chapter 8 (Planning Area Standards) of the San Luis Bay Coastal Area Plan states:*

***“Shoreline Access - Mallagh Landing.*** *New development shall be required to incorporate means to ensure that public access will be permitted on a permanent basis. Such assurance could include an offer-to-dedicate or a deed restriction. The extent of dedication and improvements, and the appropriate agency for maintenance will be determined as a part of the Development Plan. The level of public access required must be consistent with the extent of development approved and the potential prescriptive rights which may exist in the area. However, the minimum requirement shall be a means of ensuring public use of the sandy beach and a blufftop area for parking. Other improvements which may be appropriate include:*

- a) Parking area for 100 cars is to be improved. The parking area is to be surfaced with a permeable material to control bluff erosion. Selection of the site and improvement of the parking area is to be consistent with protection of the archaeological resources and geological conditions on the site.*
- b) Parking area is to be enclosed with a low-level fence of natural materials to contain vehicular use. Areas disturbed by vehicle overuse should be revegetated.*
- c) The parking area is to be landscaped with native trees and vegetation.*
- d) Restrooms and trash receptacles are to be provided.*
- e) Pedestrian trail to the beach is to be improved extending from the parking area.*
- f) Pedestrian and bicycle accessway is to be maintained and signed to allow access from Shell Beach.”*

*While the area plan standard asks for permeable materials and parking for 100 cars it also states that “selection of the site and improvement of the parking area is to be consistent with protection of the archaeological resources and geological conditions on the site.” Geologic and archaeological studies revealed that the installation of permeable pavers or surfacing would result in greater archeological*

*impacts and could exacerbate unstable geologic conditions due to the extent of excavation needed for installation and resulting drainage conditions. Park Division staff engaged the project engineer and the Planning Department regarding creating more parking while still honoring the Park and Recreation Element, the Local Coastal Plan, San Luis Bay Area Plan, and Coastal Commission policies and regulations for protecting archaeological resources and coastal bluffs, and minimizing the impacts to the site's fragile geology and aesthetics. Managing the drainage and runoff water is critical to protecting the coastal bluffs and active landsliding in the vicinity. The proposed drainage swales and basins accomplish this, and better achieves the goals stated in Item 7 in Section 8-7(a).*

*Improvement of a parking area for 70 cars, as opposed to improvement for a parking area for 100 cars, as stated in the San Luis Bay Coastal Area Plan, is consistent with the existing Mitigated Negative Declaration and can be found consistent with the Parks and Recreation Element, the Local Coastal Plan, San Luis Bay Area Plan and the Coastal Commission's goals and regulations regarding protecting archaeological resources and the site's fragile geological features and aesthetics. Beyond the 70 space parking design, any further increases may be inconsistent with these goals and policies and would not be consistent with the impact levels identified in the Mitigated Negative Declaration. While the area plan states 100 parking spaces, it also requires that we are consistent with the protection of the archaeological and geological resources. The 70 space parking area (not including on street parking) was chosen as to balance all of these stated needs.*

**Appeal Issue #3:**

Coastal environmental forces will cause the proposed stairs installed at the base of the beach access trail to be damaged, thus inhibiting public access during times of closure due to safety requirements when infrastructure is damaged.

Staff Response: *In the design phase of the project County Parks has made it known they are aware of the environmental challenges of the site and will attempt to address these issues through careful engineering of the stairs to minimize the frequency and duration of closures. If, however the conditions exist where the infrastructure is impaired the County does have the ability to close that portion until repairs are conducted and the infrastructure is safe to reopen.*

**Appeal Issue #4:**

The appellants contend that the Planning Commission was misled by Staff and County Counsel's comments during the hearing, specifically as it relates to project funding and County liability for future use and management of the project site.

Staff Response: *The Commission's decision was based on not only testimony during that individual hearing, but all of the information in the record and the previous continued hearing as well. Their decision was valid based on the information before them for the public hearing in the record.*

**Appeal Issue #5:**

Dusk to dawn beach closures are illegal in California, and San Luis Obispo County is legally obligated to in every possible way to keep this beach open to the public without exception of time of day.

Staff Response: *While the purpose of this project includes providing public access, due to the specific nature of the site and its vicinity, some level of management by the County must occur for safety purposes, liability reasons, longevity of the site, and protection of its natural habitats. Specifically Section 30210 of the Coastal Act regarding coastal access states that "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." This specific site is not within the urban area of Avila Beach and is more consistent with other rural coastal access ways with hazardous conditions and steep cliffs. In an effort to appropriately manage the resources on the site while limiting liability, the County has determined that late night uses are not appropriate in this location, and that visitors of the beach can gain coastal access through Avila Beach where there is a safe location for access during these late night hours. Additionally, based on information from the Sheriff's department the night time users of the site are not as likely to respect the natural resources and generally engage in*

*illegal activities on the site. The Sheriff's Department will have additional oversight and be able to remove visitors that conduct illegal activities with the County instituted night time closure from 10PM to 6AM (as outlined in County ordinance 11.04.30). The users will have night hours (until 10 PM) to enjoy the property through star gazing or enjoying the sunset with these hours of operation. Additionally with the site open at 6AM residents will be able to also enjoy sunrise from the property during most times of the year if they so choose.*

*The Coastal Act also discusses implementation of public access through section 30214 which states that implementation shall take 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...." It is the County's position that while this property should be open to the public at all times there are some significant safety and liability concerns that the County holds due to the unique nature of this site. These unique circumstances are protection of archaeological resources, steep cliffs, landslides, hazardous conditions and steep narrow trails down to the beach. This site is similar to those typically seen in rural areas and in generally rural parks such as our local State Parks that are all closed during the night for safety purposes. Urban beaches and beaches where there is safe access from the right of way to the sand are more appropriate for late night usage as they generally contain night lighting, unobstructed access, and the safety of additional Sheriff resources and population during the night unlike potentially hazardous remote rural areas. The protection of on-site resources during late night hours is also a concern and the County's position is that the County is better able to handle management during day, evening and early morning hours to limit further destruction of on-site archaeological resources and special geologic features of the site.*

**Appeal Issue #6:**

The adopted Mitigated Negative Declaration is inadequate because it fails to adequately address existing environmental conditions regarding recreational uses and prescriptive rights, and is "marked by grave deficiencies in its characterization of the environmental baseline."

*Staff Response: The draft Mitigated Negative Declaration was issued on February 21, 2013 and was circulated to the State Clearinghouse. A letter from the State Clearinghouse was sent to the County on March 28, 2013 which stated that the review period had completed, and that no state agencies had submitted comments regarding the environmental document. The environmental document discusses all of the legally mandated issue areas and includes discussion of the project description, setting, impacts, and any required mitigation measures to reduce impacts to a "less than significant level" as required by the California Environmental Quality Act. The project's environmental baseline is included in the setting discussion which was the setting at the time the project was accepted for processing.*

**Appeal Issue #7:**

The Planning Commission does not have the right, by issuing the Mitigated Negative Declaration, to circumvent the discussion of the project's potentially substantial interference with the prescriptive rights of the public at stake which have been acquired through historic use of the site.

*Staff Response: It is not the County's position or intent to block any of the prescriptive rights of the public, and in fact the purpose of the project is to provide for continued, safe public access to the property. The Mitigated Negative Declaration does not address or alter any prescriptive rights on the property, but evaluates the physical environmental impacts of the proposed improvements to the property.*

**Appeal Issue #8:**

The county has not adequately noticed interested members of the public.

*Staff Response: The County has undertaken the necessary legal noticing requirements for the proposed project. In addition, the notification area was expanded beyond the legal 300 foot requirement to 550 feet, and notification was provided to the Avila Community Advisory Council, the Whales Cave*

Conservancy as well as additional members of the public who have requested special notification. Two hearings were held before the Planning Commission on May 23, 2013 and July 25, 2013, where fifteen members of the public spoke concerning the project.

#### **Appeal Issue #9:**

The cumulative effect of the proposed Avila Point Project and potential trail and facility projects could drastically change the number and character of visitors to Pirate's Cove. The Friends of Pirate's Cove and the Appellant suggest and advocate that the county refrain from "leading" visitors to Pirate's Cove, in order to preserve its character as a place of discovery.

*Staff Response:* The purpose of this proposed project includes installing infrastructure in order to continue the use of the site for coastal access. The County does not regulate who will be visiting the site, as it is open to any member of the public per the requirements outlined in the Coastal Act and the County's Local Coastal Program. The Avila Point Project is the remediation and redevelopment of the Chevron tank farm site in Avila Beach. That project will undergo thorough evaluation which will address cumulative effects for that particular project, and will address the project setting and any impacts to the surrounding area.

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

The appeal was reviewed by the County Department of General Services, Cal Fire, County Risk Management, County Sheriff, and County Counsel. The California Coastal Commission staff included comments which are attached for the record. The attached resolution has been reviewed by County Counsel. County Counsel has approved the resolution as to form and legal effect.

#### **FINANCIAL CONSIDERATIONS**

The required appeal fee was waived because the appeal involves a coastal issue as the issue of appeal. In order to exhaust local appeals the County cannot charge a fee for the processing of an appeal on a coastal development project per the requirements of the Coastal Zone Land Use Ordinance and the Coastal Act. The cost of processing this appeal (total cost is approximately \$4,435) comes from the Department's General Fund support.

#### **RESULTS**

Denying the appeal and upholding the Planning Commission's decision will result in the construction of the project as proposed by County Parks (General Services) and allow the public to access the beach with reasonable "time of day" restrictions, and other appropriate conditions.

#### **ATTACHMENTS**

1. Board Resolution
2. Appeal Forms and Letters
3. Memo from Coastal Commission
4. Memo from County Parks
5. Planning Commission Memo July 25, 2013
6. Planning Commission Staff Report from May 23, 2013
7. Correspondence received from hearings
8. May 23, 2013 Planning Commission Minutes
9. July 25, 2013 Planning Commission Minutes