

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

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| (1) DEPARTMENT General Services Agency | (2) MEETING DATE 8/26/2014 | (3) CONTACT/PHONE Curtis Black 805 781-5204 | |
| (4) SUBJECT Consideration of options related to Pirate's Cove Park and Cave Landing Trail construction project. District 3 | | | |
| (5) RECOMMENDED ACTION It is recommended that the Board: <ol style="list-style-type: none"> 1. Direct staff to withdraw the Coastal Development Permit application for the Pirate's Cove Park and Cave Landing Trail construction project; 2. End efforts to construct this project; and 3. Remove this project from the Park Priority Projects list. | | | |
| (6) FUNDING SOURCE(S) CA Dept. of Fish and Wildlife, San Luis Obispo Council of Governments, California Coastal Conservancy | (7) CURRENT YEAR FINANCIAL IMPACT \$1,432,745 | (8) ANNUAL FINANCIAL IMPACT \$0.00 | (9) BUDGETED? Yes |
| (10) AGENDA PLACEMENT <input type="checkbox"/> Consent <input type="checkbox"/> Presentation <input type="checkbox"/> Hearing (Time Est. ____) <input checked="" type="checkbox"/> Board Business (Time Est. 15 Minutes) | | | |
| (11) EXECUTED DOCUMENTS <input type="checkbox"/> Resolutions <input type="checkbox"/> Contracts <input type="checkbox"/> Ordinances <input checked="" type="checkbox"/> N/A | | | |
| (12) OUTLINE AGREEMENT REQUISITION NUMBER (OAR) N/A | | (13) BUDGET ADJUSTMENT REQUIRED? BAR ID Number: N/A <input type="checkbox"/> 4/5 Vote Required <input checked="" type="checkbox"/> N/A | |
| (14) LOCATION MAP Attached | (15) BUSINESS IMPACT STATEMENT? No | (16) AGENDA ITEM HISTORY <input type="checkbox"/> N/A Date: <u>11/18/2008; 12/15/2009;</u> <u>2/26/2013; 11/05/13</u> | |
| (17) ADMINISTRATIVE OFFICE REVIEW Emily Jackson | | | |
| (18) SUPERVISOR DISTRICT(S) District 3 | | | |

County of San Luis Obispo



TO: Board of Supervisors

FROM: General Services Agency / Curtis Black
805 781-5204

DATE: 8/26/2014

SUBJECT: Consideration of options related to Pirate's Cove Park and Cave Landing Trail construction project.
District 3

RECOMMENDATION

It is recommended that the Board:

1. Direct staff to withdraw the Coastal Development Permit application for the Pirate's Cove Park and Cave Landing Trail construction project;
2. End efforts to construct this project; and
3. Remove this project from the Park Priority Projects list.

DISCUSSION

For over ten years County staff has pursued a construction project for improvements to Pirate's Cove Park and Cave Landing Trail in Avila Beach. As noted on the attached site plan, the project was placed on two parcels. Parcel 3 begins to the north at Ontario Ridge and flows southward down a steep slope to the closed section of Cave Landing Road. The lower parcel, parcel 5, flows downhill from closed Cave Landing Road to the beach at Pirate's Cove. The project included a new trail to be placed uphill from the closed section of Cave Landing Road that would connect the communities of Shell Beach and Avila Beach. The trail was planned to intercept storm water runoff from Ontario Ridge and guide that water to bio-swales placed around the paved parking lot on parcel 5. All of the existing trails on the lower parcel would be improved; closed Cave Landing Road would be removed and natural vegetation restored to help protect the active land slide which is located just south of the crumbling road and running downslope to the beach. A restroom and picnic benches were to be placed near the parking lot on parcel 5. Interpretive signage noting Chumash cultural significance and historical events was to be installed around the parking lot.

Actions taken to pursue this project are outlined in the attached project time line. Significant milestones are as follows:

- **2002** The California Department of Fish and Game awarded the County \$732,745 of the Unocal Avila Beach Oil Spill Settlement Grant Fund for improvements on the site.
- **2003** GSA-County Parks commissioned archeological, biological, design, engineering and geological studies.
- **2008** The Board of Supervisors approved the land purchase (parcel 3) and the Irrevocable Offer to Dedicate (parcel 5).
- **2010** The California Coastal Conservancy committed \$350,000 to fund beach access at this site.
- **2011** The San Luis Obispo Council of Governments committed \$350,000 to coastal trail improvements at this site and the current design plan was approved by GSA-County Parks.
- **2013**
 - Planning Commission approved the Coastal Development Permit for the project.
 - The project was appealed to the Board of Supervisors.
 - The Board of Supervisors approved the Coastal Development Permit for the project.
 - The project was appealed to the California Coastal Commission.
 - The California Coastal Commission approved only the trail portion of the project on parcel 3 and denied

all development and maintenance on parcel 5

As noted above, California Coastal Commission (CCC) conditionally approved construction of Cave Landing Trail on parcel 3. However, the Commission denied a permit to provide any improvements or maintenance on parcel 5, the Pirate's Cove Park area of the project. In accordance with CCC actions, no improvements may be made to the parking area, trails or beach access. No signage, restrooms or amenities may be constructed except for signage as it relates to the trail itself. No maintenance activities may be pursued for the trails, parking lot or beach. Only litter abatement is allowed and no trash receptacles may be placed for the litter removal. All other activities would have to be authorized through a new application for a Coastal Development Permit. Commission's actions raise important questions.

Service Level Concerns:

As the Cave Landing Trail was designed, an improved parking lot was anticipated as the companion trailhead for the trail. This was important as an avenue to address parking concerns expressed by nearby residents of Shell Beach and the Bluffs neighborhood. The CCC actions have eliminated the opportunity to provide an improved parking area and trailhead. Adding a new trail to this area could result in increased visitorship exacerbating the current parking problems at this location.

Funding Concerns:

The project as designed has been funded entirely through grants received from public agencies. These agencies have entered into contracts with the County to complete the proposed project within certain conditions and time constraints.

Time constraints are as follows:

- California Department of Fish and Wildlife (CDFW)--
This grant for \$732,745 has been used to perform the various studies for geology, archeology, hydrology, etc. Approximately \$180,000 of this grant funding has been consumed to date leaving approximately \$550,000 available for a project. This grant will expire if a project is not constructed before September 24, 2016
- California Coastal Conservancy—
This grant for \$350,000 has not been used to date. It has been reserved for use in actual construction of the planned beach access portion of the project. This grant will expire if a project is not constructed before December 31, 2016.
- San Luis Obispo Council of Governments (SLOCOG)—
This grant for \$350,000 has not been used to date. It has been reserved for use in actual construction of the planned trail portion of the project. This grant will not expire and has a flexible ending date.

While time constraints are of concern, staff is also concerned that the above agencies may redirect funding at their option based upon the actions that CCC took on July 11, 2014. That is, SLOCOG has already taken actions to move a portion of their grant funds to the Pismo Preserve project if the County is unable to complete the planned trail. Additionally, CDFW is considering the reduced scope of the CCC approvals and is considering reducing the amount of their grant to provide funding to other local project(s).

Liability Concerns:

The State legislature placed into law Section 831.2 in 1963 to recognize, that to encourage public entities to allow the public to use public property in its natural condition without placing the burden and expense of putting such property in a safe condition and the expense of defending claims for injuries on the public entity, absolute immunity from liability was necessary.

Accordingly, neither the County nor its employees or agents, etc. is liable for an injury caused by a natural condition at a property if the property is in its unimproved state in the immediate vicinity of the accident. There is also no liability for an injury caused by the condition of any trail, or certain unpaved roads that provides access to recreational or scenic areas or trails (paved or unpaved). Therefore, liabilities would continue to be controlled if no project is pursued and these parcels remained in their natural condition.

However, one condition placed on the permit for this project by the CCC was for the County to assume all risk and provide waiver of liability for CCC as related to the Coastal Development Permit for this project.

Specifically this CCC condition of construction would provide in part,

"...unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; and to indemnify and hold harmless the Commission, its officers,

agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense due to such hazards. e of such claim), expenses, and amounts paid in settlement arising from any injury or damage."

In basic terms, pursuing the construction of Cave Landing Trail would place into effect the above condition which could create the need for the County to indemnify the CCC, should an injured party sue for injury that may be caused due to provision of or failure to provide improvements that had been anticipated through this project but were denied by the CCC.

Project Options:

Coastal Commission's actions of July 11, 2014 result in the need for the Board to consider various options and impacts, and determine whether to pursue this project further. Project options are as follows:

1. Withdraw the Coastal Development Permit application for the Pirate's Cove Park and Cave Landing Trail construction project, end efforts to construct this project and remove this project from the Park Priority Projects list.

This option would end efforts to construct the Cave Landing Trail and Pirate's Cove Park and these areas would remain in their current condition as desired by many of the appellants. County Staff would direct their work efforts to other projects that are in progress. Unspent funds would be returned to the three agencies that committed funding to this project. Conversations with these agencies indicate that the California Fish and Wildlife funds would be redirected to a project in the local Avila Beach area. Projects that may be considered would include but are not limited to: Avila Beach to Harford Pier Trail; Harford Pier improvements; Pismo Preserve; and, the Central Coast Aquarium expansion project. Funds returned to the California Coastal Conservancy and the San Luis Obispo Council of Governments could be directed to many transportation and/or coastal projects including but not limited to the Pismo Preserve purchase and/or construction. Staff recommends this option.

2. Pursue construction of Cave Landing Trail on parcel 3 and take no further action to construct Pirate's Cove Park improvements on parcel 5.

This option would attempt to follow the actions as conditionally approved by the CCC. With Board direction, staff would employ hydrologist and engineering consultants to weigh alternatives to resolve issues created by storm water runoff from Ontario Ridge and Cave Landing Trail. This runoff water was planned to move toward the Pirate's Cove Park parking lot and into level spreaders contained in bio-swales. As a result, all storm water runoff would have been directed downward into the bluffs avoiding trail erosion and preventing excess rain water from impacting the active landslide area below closed Cave Landing Road.

With CCC denial of the lower portion of the project the storm water must be somehow contained on parcel 3 without allowing it to move into the parking area, onto Cave Landing Road or into the active land slide. Additional studies that would be required to address the water runoff would likely require two to three years to complete and would not likely receive CCC approval. This being the case, there does not appear to be a viable means to deal with the runoff water within time constraints and liabilities could be increased. Therefore, staff does not recommend pursuing additional consultant studies for this project and recommends against building the Cave Landing Trail.

3. Pursue a new Minor Use Permit and a new Coastal Development Permit for construction of both Pirate's Cove Park and Cave Landing Trail.

This option would require the County to begin the project anew and redesign the project to somehow make it more attractive to the appellants and resolve concerns expressed by the CCC. This public input and engineering process would likely take approximately three to five years, exceeding the time lines for the granting agencies.

Based upon testimony of the appellants and the Commissioners who spoke at the CCC public hearing, it does not appear likely that storm water systems would be approved that could address the problems created by water runoff from Ontario Ridge. Commissioners and appellants did not support an impermeable surface that could direct water toward bio-swales (current plans). County and CCC staff did not support digging drainage pipes down into the sensitive Chumash archeological site that is located just under the parking area of parcel 5. The grants that have been received for this project would expire before a new project could be developed and the new project would require new funding from unknown sources. Therefore, this option does not appear to be viable and staff does not recommend it.

For the above reasons, staff recommends the Board of Supervisors approve option 1.

OTHER AGENCY INVOLVEMENT

California Department of Fish and Wildlife has provided grant funding and approvals for various expenditures to date. California Coastal Conservancy has approved grant funding for this project. San Luis Obispo Council of Governments has approved grant funding for this project.

The San Luis Obispo County Parks and Recreation Commission has placed this project on the Parks Priority Projects list and on January 28, 2013 recommended that the Board of Supervisors accept the Pirate's Cove Easement for parcel 5.

The San Luis Obispo Planning Commission heard a report on this topic and conditionally approved the related Coastal Development Permit on July 25, 2013.

The County Planning and Building Department, Risk Management, County Counsel, Sheriff's Office and General Services Agency staffs discussed this project and assisted in considering options for actions in response to CCC actions.

FINANCIAL CONSIDERATIONS

The recommended action (Option 1) would not present a financial impact to the County Parks operating or capital budgets. Funding that would be returned to granting agencies would be as follows:

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|--|--------------------|
| California Department of Fish and Wildlife (1) | \$ 732,745 |
| San Luis Obispo Council of Governments | \$ 350,000 |
| California Coastal Conservancy | \$ 350,000 |
| Total | <u>\$1,432,745</u> |

(1) Approximately \$180,000 of this grant has been spent to date with approximately \$550,000 remaining.

These funds could be redirected to other projects at the sole discretion of the granting agencies.

RESULTS

Pursuing recommended actions will allow staff to work directly on park projects that can be constructed that would meet County goals of providing a healthy, safe and livable community.

ATTACHMENTS

1. Vicinity Map
2. Site Map
3. Project Site Plan
4. Project Time Line