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original staff report](#)



F14a

Prepared July 10, 2014 for July 11, 2014 Hearing

To: Coastal Commissioners and Interested Persons

From: Madeline Cavalieri, District Manager
Daniel Robinson, Coastal Program Analyst

**Subject: STAFF REPORT ADDENDUM for F14a
Application Number A-3-SLO-13-0252 (Cave Landing/Pirate's Cove Trail and
Parking Lot Project)**

The purpose of this addendum is to respond to comments received since the staff report was issued. Specifically, a number of public comments have been submitted regarding core appeal issues, particularly those related to public use hours and project design. Although staff believes that the issues are appropriately and adequately addressed in the distributed staff report for this item, this addendum is provided as a response to comments.

Nighttime Closure

A core element of the proposed project is that it would close the parking lot, beach trail, and trail from Pismo Beach connecting to Cave Landing Road from 10 pm to 6 am. As detailed in the staff report, staff concurs that a nighttime closure is appropriate for the parking lot due to the level of criminal activity that has been demonstrated there, but not for the other public access areas, and has recommended conditions accordingly. Critical to this recommendation is a recognition that although the proposed project more formally improves this access point (through paving, trail improvements, benches, etc.), the access point currently exists and is currently available 24 hours and 365 days a year. In other words, it is not the project that is leading to the need for some type of nighttime access closure per se, rather it is the nature of the use at the accessway; a use that has been going on for some time and would continue to do so absent the project. In this sense, the proposed project is really a project that does two separable things: one, improve the accessway, and two, close it at night. Staff continues to believe that the recommendation strikes the appropriate balance that recognizes that there are bonafide access users who seek out nighttime access for other than criminal activities, and the staff recommendation accounts for this in a way that also recognizes the need for closure to address issues that have been ongoing at the accessway for some time. This is particularly critical as it affects the improved section of trail from Pismo Beach to Cave Landing Road. This trail is a designated component of the California Coastal Trail (CCT) and a nighttime closure of it would result in a nighttime gap in the CCT; a gap that would necessitate a several mile inland detour. Staff does not believe this appropriate nor approvable pursuant to Coastal Act and LCP requirements to maximize and protect existing public access.

On this point, the County has suggested that the Commission's own guidance suggests that the entire accessway be off limits from 10pm to 6am, citing to the document "Guidance on Actions Limiting Public Access to Beaches and State Waters (Beach Curfews)." However, this document was never adopted by the Coastal Commission. Even if it were a Commission adopted guidance document, it would be simply that: guidance that must be applied to the facts of any particular case to render the appropriate decision under the Coastal Act and LCP. The document itself recognizes that there is no rote one response that should be applied, rather that facts and circumstances should be determinative. In addition, contrary to the closure hours proposed here, the referenced document actually suggests that the starting point for closure hours, when they are considered, should be from midnight to one hour before sunrise, and not 10pm to 6am. Again, the Coastal Act stands for the premise of maximizing access, and a project that limits access in this way for the whole access area, including one that introduces a gap in a critical CCT link and eliminates the ability to walk along the beach at night, is simply not appropriate.

The County has also raised the argument that the staff recommendation will lead to a "complex set of rules that would be nearly impossible for visitors to understand or officers to enforce." They suggest that there would be two different parking restriction times on Cave Landing Road itself: 24 hours a day for the 12 spaces identified in the staff recommendation and 2 am to 6 am for the spaces on the road otherwise, and then 10 pm to 6 am in the parking lot. When coupled with 24-hour access to the beach and CCT trails, the County suggests that this represents an unwieldy and complicated series of timing restrictions to apply and enforce. Staff does not concur.

First, with respect to the parking on Cave Landing Road, there have been no CDPs authorizing any parking restrictions and thus the current baseline is that parking on the road is allowed 24 hours a day. The staff recommendation accounts for this, and does not change the status quo. Similarly, the CCT connection to Pismo Beach and the CCT spur to the beach area itself are likewise currently available 24 hours a day, and that also would not change under the staff recommendation. The only thing that would change, and that would acquire some changes in management and use patterns, would be that the parking lot area itself would be closed from 10 pm to 6 am. Yes, the County would need to make provisions for pedestrians to be able to move through the parking lot to get to the beach trail, but this is no different than the way in which the Commission typically provides for access through closed areas to get to not-closed areas (such as across a parking lot and beach area to get to public trust wet sandy beach areas when there are similar closures in place). Thus, the only timing restriction would be to say the parking lot is closed from 10 pm to 6 am (or as recommended in the staff report *open* from 6am to 10 pm), and everything else is not subject to closure. To staff, this is hardly complicated or unwieldy.

Design

A variety of commenters have suggested that the proposed project inappropriately 'prettifies' what is and should remain a more rural and undeveloped accessway. These comments are almost universally directed at the improvements in the parking lot area, and to a lesser degree to the beach trail/stairs. The trail improvement from Pismo Beach to Cave Landing Road seems to be much less of a concern in this respect, perhaps given its importance to the CCT, as discussed above, and the fact that it will be unpaved (i.e., a decomposed granite surface) and acts as a critical and necessary link between communities in the area.

The proposed project is not unlike other projects that improve public accessways, but that in doing so change their character. It is important in these cases to strive to find the appropriate balance between improving recreational access utility and protecting the character of the area. This can be a difficult balance to strike, and the Commission has been faced with many such cases over the years where there were wildly diverging viewpoints as to what constituted the appropriate character (e.g., in the Pleasure Point and Twin Lakes promenade projects in Santa Cruz County). This current case is no different. Clearly, the project will lead to a change in the character of this accessway. It is currently very undeveloped and very informal. The improvements will make it fairly developed and fairly formal, particularly as it relates the parking lot area with its new paving and restroom. Certain design elements, like coloring the pavement and providing a through view area toward Avila Beach as is required per the staff recommendation, will help limit the impact of the project on the character of the site, but it's difficult with an improvement of this scope to do more than that. It is a judgment call as to where the appropriate balance lies, and reasonable people can disagree on that balance. Staff believes that the project, as conditioned, meets the balance test in a way that will improve access while providing a different but complementary character to the accessway overall.

Paving

Since the time that the staff report was released, one of the Appellants has again raised concerns regarding the Applicant's proposal to pave the existing dirt parking lot and install a series of bioswales and diffusers, for hydrologic and archaeologic purposes, as part of the overall public access improvement project at Cave Landing/Pirate's Cove. The Commission's water quality staff has concurred with the County's approach in this case (see staff report pages 25-26 and 38-39). The Appellant indicates that an alternative that entails adding fill in increasing amounts from the northern to the southern end of the parking lot to better even out the currently sloping lot, with the aim being to reduce the erosional forces upon the lot resulting in less rutting and erosion in the parking lot and the surrounding blufftop area, would be a better approach. Again, the Commission's water quality staff reviewed this option, as it was in the appeal, and found the County's proposal to be superior in terms of water quality and coastal resource protection overall.

In terms of the suggestions that the pavement used here should be a permeable pavement, staff does not concur. Although staff generally adheres to the notion that permeable surfaces are superior to impervious ones for water quality and related coastal resource purposes, permeable surfaces have their limits, especially in highly trafficked areas such as this. With the added factor of the area being the site of a large and highly sensitive archaeological site, and the protections that are required of it, staff continues to believe that the County's proposal for a system comprised of pavement and bioswales is the most protective of coastal resources in this case.

Vehicle Counts. An argument has been raised by an Appellant that the Commission's analysis of the available vehicle counts has been in error, and specifically because of its reliance on the County's limited car counts over a recent three-month period. Staff recognizes the inherent limitations in the County's car counts, and that the Whales Cave Conservancy car counts included the parking lot and within and along Cave Landing road. As described more thoroughly in the staff report on page 21, staff did not simply use the County's car counts (or the Appellant's) to decipher the approximate maximum amount of available parking. Staff, Appellants, as well as other local stakeholders (e.g., the Avila Valley Advisory Council and the

Whales Cave Conservancy), all determined a maximum parking lot capacity between 65-75 vehicles, based on historical evidence, photos, site visits, etc.

In addition, as noted in the staff report, the 100 parking spaces identified in the LCP are not a requirement at this location. Rather, the LCP indicates that that level of parking improvement *may* be appropriate. The Coastal Act and LCP dictate that the site constraints need to be considered and it is those constraints (including visual, archaeological, water quality, hazards, etc.) that will dictate the appropriate amount of parking. Staff believes that the County's proposal as conditioned, including with respect to parking along Cave Landing Road, adequately accounts for parking capacity at this time.

Special Condition 9. Since the time of the staff report release, concerns have been raised over the intent and requirements of Special Condition 9 (see staff report page 13). This condition requires the parking lot, trails, overlooks, picnic areas, and the stairs to the beach to be maintained "in a structurally sound manner and in their approved state." The argument has been raised that the stairs, if and when they fall into disrepair and/or beyond repair, would be allowed to be abandoned. However, the condition requires maintenance of the stairs in their approved state, which would necessarily prevent the stairs from falling into disrepair, being abandoned, and necessitating their removal. While coastal storms have the ability to damage coastal staircases up and down the coast, the County has proposed to repair them if this happens. Staff's condition both allows for, and requires, maintenance on these project components to maintain through access.

Finally, beach access stairs are by definition installed in areas that can be subject to coastal hazards from time to time. That is simply the nature of these types of access facilities. While it can be difficult to predict longevity in such a dynamic coastal environment, the stairs have been designed in a manner that addresses this environment similar to other beach accessways with which the Commission is familiar. There is nothing to suggest that this project is different in that way from other coastal access projects, nor to suggest that the Commission must apply some sort of different condition requirements on this applicant than others of a similar type. The project objective is to improve public access, and there is nothing to suggest that that is not the intent of the Applicant or the project in this case.

Chumash. Since the time of the staff report, staff received a letter from the San Luis Obispo County Chumash Council, indicating that the County's project just recently came to their attention and expressing concerns over it (see Central Coast Deputy Directors Report for the July 11, 2014 hearing). Specifically, the San Luis Obispo County Chumash Council is concerned with paving over the parking lot and making other improvements at the site, including artificial stairways down to the beach. Staff was unaware that Chumash had such issues with the project because the Northern Chumash Tribal Council has been actively engaged and involved with the project for several years, including as the project was working its way through the local hearing process. It is unclear whether the two Councils have coordinated. In any event, the project meets LCP archaeological requirements (see staff report pages 26-27 and 37-38), including avoiding disturbance of archaeological soils through cap and fill, as is allowed by the LCP. In addition, Special Condition 10 appropriately addresses a procedure in case archaeological resources are discovered, including coordination with local Native American tribes, such as the Chumash councils.

F14a

Good Afternoon,
I recently sent you a message regarding Item 14a on the agenda for the California Coastal Commission July 11, 2014.

Unfortunately, I failed to copy Coastal Commission staff with that information and I understand that, that should have been done to meet requirements for ex parte communications.

Specifically, I have information that I'd like to share with you regarding item 14a in response to Commission staff's report. Please see the attached, related information and accept my apologies for not speaking with you personally on this topic.

San Luis Obispo County looks forward to the meeting on Friday and we hope that you will have had time to review this information in advance of the meeting. Please feel free to contact me directly on this topic at (805) 305-3057 cell or (805) 781-5204 office phone.

Best Regards,
Curtis

Curtis Black
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Think Outside!

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Item 14a. Pirate's Cove Park / Cave Landing Trail Report on Coastal Commission's Staff Agenda July 11, 2014.

Nighttime closure of Pirate's Cove Park is needed because:

1. Nighttime closure of the site is consistent with the Coastal Commission's Guidance on Actions Limiting Public Access to Beaches and State Waters (Beach Curfews) and The Coastal Act;
2. The Park is mostly bluffs with up to 100 feet drops to rocky outcroppings;
3. The Park has an active land slide on it;
4. A large portion of the Park is a Chumash sacred site that is being desecrated by fires and vandalism;
5. The Park has a 30 plus year history of criminal activity throughout;
6. The twelve conditioned 24/7 parking spaces will allow illegal overnight camping and enable illicit activities; and,
7. Safe, lateral beach access points exist for nighttime use both immediately north of and south of Pirate's Cove Park/Cave Landing Trail.

For these reasons County Parks, the Local Chumash organization, the County Sheriff, the local newspaper 'The Tribune', the Whale's Cave Conservancy (the local volunteer group who has cared for the beach for decades) and the San Luis Obispo County Board of Supervisors support night closure of the site from 10:00 pm to 6:00 am.

1. Nighttime closure of the site is consistent with the Coastal Commission's Guidance on Actions Limiting Public Access to Beaches and State Waters (Beach Curfews) and the Coastal Act.

These Coastal Commission documents outline when limiting public access to a beach is appropriate. The Guidance on Actions states:

"the Commission must balance the public access needs with those of public safety and protection of environmentally sensitive habitats"; and,

The Coastal Act states;

"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..."*

- The proposed nighttime closure hours meet the test and findings necessary for limiting public access. The criminal activities and steep bluffs at the site present a significant public safety concern at night.
- The desecration of the Chumash's sacred site happens at night.

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- The County considered alternatives of fencing and lighting as alternatives to restricting hours as a way to keep the public and resources safe but rejected them based on visual impact.
- The county is not proposing night closure for every beach park. Other coastal lateral access ways managed by the County are open at night. Both Avila Beach to the north and Shell Beach to the south have safe and accessible coastal access within minutes from this site.
- Proposed parking restrictions would create a complex set of rules that would be nearly impossible for visitors to understand or officers to enforce. The proposed conditions would provide three separate hours of operations adjacent to one another. Cave Landing Road would begin with parking restricted from 2:00 am to 6:00 am; then twelve spaces would be provided that allow parking 24/7; and then, the parking lot would restrict parking from 10:00 pm until 6:00 am. Meanwhile, somehow the County would need to provide signage and delineate a trail from Cave Landing Road to the bluffs and the beach which would be open 24/7. Having three different parking regulations within 100 feet of each other is very confusing for the beach goers and will make it very difficult for the sheriff to sweep the area of the criminal activity at night enabling the criminal culture of the site to prevail.

2. HAZARDOUS BLUFFS

Trails from the parking lot lead directly to the edge of rocky outcroppings over 100 feet above the rocky coast line. In the darkness one cannot determine easily where the trail ends and the cliff begins. The County approved project allows use up to 10:00 pm providing many hours of recreation while eliminating access at times when persons may be visiting the Park after a party or following hours of drinking.

3. ACTIVE LAND SLIDE

An active land slide exists on this steep parcel above the trail that leads to the beach. Soil and land slippage could be seen easily in day light hours. However, significant slippage could occur in darkness thereby endangering or trapping Park visitors.

4. CHUMASH SACRED SITE

Pirate's Cove Park is rich with archeological items of great importance to the Northern Chumash. In addition the cave, often referred to as "Whale's Cave", is a sacred site for the people as they see this as the Jumping Off point for their ancestors' journey in the afterlife. This cave has been desecrated by fires and vandalism caused by nighttime visitors. Day time visitors do not start fires nor do they spray the cave walls with graffiti. Nighttime visitors tend to hold drunken parties and leave their trash behind in the cave with bottles and cans tossed about the cave and onto the rocky outcroppings below.

5. CRIMINAL ACTIVITY

The San Luis Obispo County Sherriff's department documented a lengthy history of criminal activity from prostitution and lewd acts to drunken parties, drug dealing and overnight camping throughout the

parking lot along the trail to the cave and occasionally at the beach. Embers from an illegal beach bon fire blew upwards to the grassy slopes in 2010 and started a brush fire that endangered the nearby homes of Shell Beach.

The County appreciates Coastal Commission staff's acknowledgement of criminal activity in the parking lot but must remain steadfast in desire to control criminal activities throughout the park. The County Sherriff has stated that no one but criminals go to this site after dark because the criminal activity at the Park at night make it unsafe for people to take a walk star gaze. Many citizens of the County have expressed a desire to go the Pirate Cove/Cave Landing in the evening but don't dare. The local Chumash stopped having gatherings at the site because of the criminal activities here despite the fact that it is a sacred site. Even the local paper, 'The Tribune', states that keeping Pirate Cove open at night is good for only the "dope dealers, gangsters and homeless people" (July 2, 2014)

The County has limited law enforcement, fire and rescue services to protect this park and its users. The County Sheriff has stated that there are only two cars to patrol the entire coastal areas of the County each night. The criminal activity at this site can be minimized by preventing cars at the site at night. This will allow the Sheriff to drive through the site and clear people from the area. Cal Fire receives monthly rescue calls from this site. Nighttime closure of this site will aid law enforcement and rescue services instead of adding to the already taxed police and rescue forces by increasing service calls from this site.

6. UNLAWFUL OVERNIGHT CAMPING

This park already experiences illegal camping. Many mornings there are vehicles and visitors camping in the parking lot with recreational vehicles and tents. The 12 conditioned all night parking spaces will be used for camping. For good reason, County ordinance provides that camping is only allowed within designated campgrounds designed for this purpose.

7. ALTERNATIVE BEACH ACCESS

As opposed to the hazardous cliffs and dangerous darkness of a nighttime walk down the Pirate's Cove Park trails; safe lateral and lighted access is available with free 24/7 parking less than five minutes away to the north in Avila Beach. Additional lateral nighttime access is available to the south in Pismo Beach.

JUL 03 2014

02 JULY 2014

Subject: CCC Application Number A-3-SLO-13-0252

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**APPELLANT BRIAN LoCONTE'S RESPONSE TO AND SUPPLEMENTAL COMMENTS RE:
SAN LUIS OBISPO CO. CAVE LANDING DEVELOPMENT AND CCC STAFF REPORT & RECOMMENDATIONS:**

The heart and soul of this appeal is the preservation of the rural nature and community character of the Cave Landing Area. I feel strongly regarding the other issues presented in my appeal, and as contained in this supplement, however they pale in comparison, by orders of magnitude, the passion that I feel for this single issue. The root of the evil is asphalt.

I strongly urge you to:

- 1) **FIND SUBSTANTIAL ISSUE** regarding the proposed project.
- 2) **DENY A COASTAL DEVELOPMENT PERMIT AS AMENDED** by special conditions as proposed by California Coastal Commission's Staff.
- 3) **THE COMMISSION MAKE A SEPARATE MOTION** to approve the project, as proposed upon Parcel 3, the Cave Landing Trail Improvements (part of the California Coastal Trail) separable from any improvements upon Parcel 5, with the following conditions:
 - a. Cave Landing Road east of the trail-head shall not be blocked off preventing parking. Parking improvements of this area shall include provisions for ADA parking and at least two additional spaces. The road easement upon Parcel 5 may be utilized to facilitate this requirement. Only the ADA compliant parking shall have line demarcations,
 - b. Bike racks and a trash dumpster shall be located near the trail-head and bathroom (such as parking space #67),
 - c. Space for a minimum of five vehicles be installed along the north-east portion of Cave Landing Road (in the area currently noted as spaces #68, 69, & 70), without line demarcations,
 - d. Earthen-colored asphalt shall be used on the affected Parcel 3 parking as well as any resurfacing of the adjacent portion of Cave Landing Road,
 - e. Remediation of the abandoned Cave Landing Road is allowed to shelter/protect the land-slide, including any portion of the road easement upon Parcel 5.
 - f. Special Conditions proposed by CCC Staff applicable to development upon Parcel 3, as constrained by the above, shall be included.
- 4) **PROVIDE CLEAR GUIDANCE TO SLO COUNTY** Coastal Commission's expectations regarding any future development upon Parcel 5 include:
 - a. Any development upon the parking lot shall be permeable and of color and material that is visibly subordinate to the area's character, as required by the LCP,
 - b. Parking upon the existing bluff-top "foot-print" shall be sufficient to allow a minimum of 75 vehicles,
 - c. Gating of the parking lot shall not be permitted, nor shall fees be imposed for use of parking facilities, or for recreational activities.

Asphalt, colored or not, conveys a sense of urbanization that is completely out of community character and the rural nature of this area. All of the stated project constraints can be achieved without asphalt. Please, do not blight this portion of the California Landscape with asphalt, reducing Parking and its associated Coastal Access simply to provide a Park.

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SITE HISTORICAL PICTURES

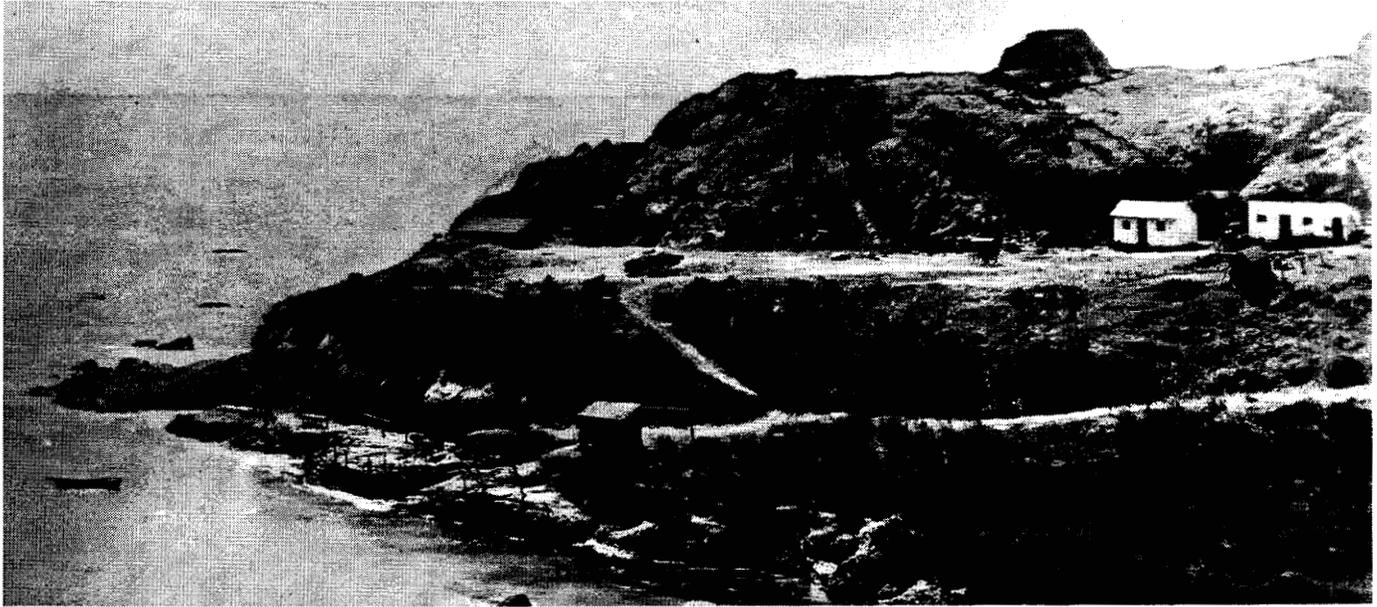


FIGURE 1: MALLAGH LANDING, 1903 [USGS PHOTO SGW00774, (FIG 11, FOLIO 101, 1904)]



FIGURE 2: CALIFORNIACOASTLINE.ORG IMAGE 7939016 TAKEN FRI 1979-05-04 @ 13:45

Please separate the development of this area into two segments, development upon Parcel 3, and development upon Parcel 5. I ask that you approve a project upon Parcel 3 as significantly proposed. I ask that you deny the project upon Parcel 5 as proposed and conditioned.

DEVELOPMENT UPON PARCEL 3

The primary development proposed upon Parcel 3 is the re-alignment of the Cave Landing Trail and its improvements. It is part of the California Coastal Trail system. The trail's improvement and completion will be a welcome complement to this scenic area. This was the original scope of the project now before you. To my knowledge, there is no objection to the trail as proposed, although residents of The Bluffs Home-owners Association have expressed some concerns.

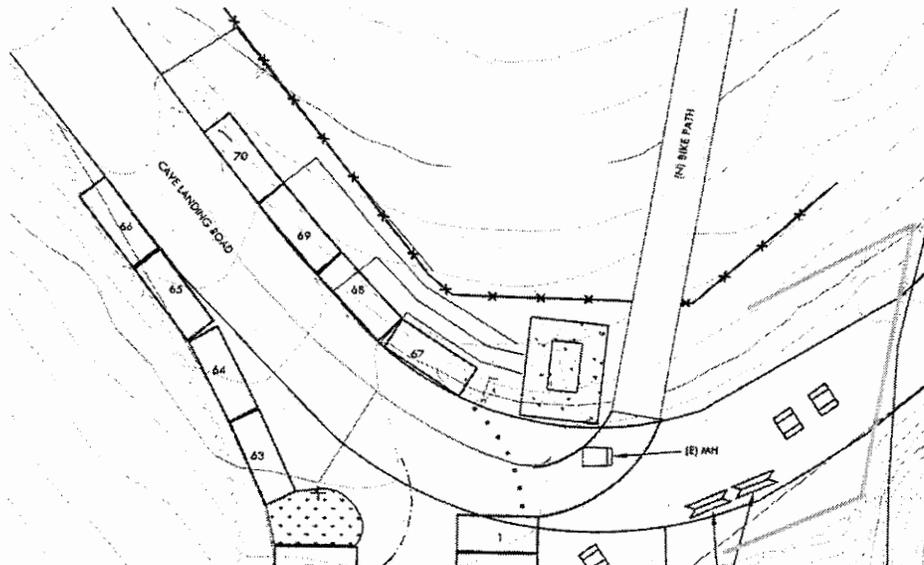


FIGURE 3: AREA OF PARCEL 3 IN THE VICINITY OF CAVE LANDING ROAD

The major issue with the proposed development on Parcel 3 and the existing paved portion of the Cave Landing Road, is its closure at the east end (note bollards between spaces #67 and #1) to install bike racks and picnic tables, preventing the area to be used for parking, as is currently done.

The picnic table concept should be abandoned completely. The bike racks should be relocated adjacent to the trail and bathroom (such as area marked space #67) as well as a trash dumpster of earth tone color.

Installing a restroom here will most likely be problematic for both the County and law enforcement; however it is specified in the approved LCP. Since I've argued for strict adherence to this section of the LCP, I can not consciously argue against it.

An ADA accessible parking spot and the maximum number of spaces as would be feasible should be established on Parcel 3 and the road easement to the east of the trailhead designed to allow one ADA space and at least two conventional spaces.

The SLO staff has proposed four parking spaces along the NE-side of Cave Landing Rd. on Parcel 3, with CCC staff proposing an additional two. If adopted as proposed, this would provide at least 5 parking spaces in this area, four of which could be considered "new" parking. The resultant 8 or more parking spaces as a whole maintains the existing parking availability, one of which would now be ADA compliant.

What should be the nature of material for the proposed parking? Should the parking have line demarcations?

Let's recognize that the surface area for the above parking is of a relatively minor amount, that it is immediately adjacent to an existing asphalt road, and that due to its location relative to the trails above it would have

minimal visual consequences when taking in the Ocean view. Therefore, I could fully support earthen-colored asphalt to act as a cap for the archeological resources below, as fill would not be a viable option here.

The only State Law requirement for line demarcation would be for the ADA compliant space [ref 23MAY2013 SLO Planning Comm. Mtg. @ about time-stamp 01:46:50]. Line demarcation should be limited to solely fulfill that requirement.

I ask your support for the following:

THE COMMISSION MAKE A SEPARATE MOTION to approve the project, as proposed upon Parcel 3, the Cave Landing Trail Improvements (part of the California Coastal Trail) separable from any improvements upon Parcel 5, with the following conditions:

- a. Cave Landing Road east of the trail-head shall not be blocked off preventing parking. Parking improvements of this area shall include provisions for ADA parking and at least two additional spaces. The road easement upon Parcel 5 may be utilized to facilitate this requirement. Only the ADA compliant parking shall have line demarcations,
- b. Bike racks and a trash dumpster shall be located near the trail-head and bathroom (such as parking space #67),
- c. Space for a minimum of five vehicles shall be installed along the north-east portion of Cave Landing Road (in the area currently noted as spaces #68, 69, & 70), without line demarcations,
- d. Earthen-colored asphalt shall be used on the affected parking as well as any resurfacing of the adjacent portion of Cave Landing Road,
- e. Remediation of the abandoned Cave Landing Road is allowed to shelter/protect the land-slide, including any portion of the road easement upon Parcel 5,
- f. Special Conditions proposed by CCC Staff applicable to development upon Parcel 3, as constrained by the above, shall be included.

I recognize that as a layman, the above wording may need modification to meet the California Coastal Commission's authority and policies. I request that the CCC staff prepare a conforming motion containing the content and intent of the above prior to the 11 JULY meeting, so that it would be available should a Commissioner wish to pursue that course of action.

DEVELOPMENT UPON PARCEL 5

My hope is that the following discussions are now moot, but that may not be the case. I include them as a 'back-stop' in that event. Having read many, many, many technical reports and having written a few myself, I recognize that the following will not be read in its entirety; a summary precedes the detailed discussion.

- 1) A 'fill-to-cap' design will:
 - a) Protect archeological resources consistent with the approved SLO LCP,
 - b) Have significantly less impact upon native soils than excavation for bio-swale usage,
 - c) Mitigate surface erosion (rutting) by decreasing the slope of the parking lot,
 - i) The Applicant has not provided any evidence of the means nor amount of diverted water from the land-slide area that construction of Cave Landing Trail improvement project would contribute to this issue requiring the nebulous "need" for asphalt and bio-swales.
 - d) Be significantly more conforming to LCP requirement to reduce visual impacts, than the proposed earthen-colored asphalt and its obtrusive line demarcation to define parking orientation.

- 2) There are only two pertinent numbers regarding available parking, 100 and 77.
 - a) 100 is called for by the LCP. The LCP predates the reduction of bluff-top parking that occurred in the early 1990's. Whether, explicit or implied, the *de facto* conclusion would be: the bluff-top parking, in its current form, is sufficient to meet the LCP requirements. A further cumulative reduction is contrary to the original intent of the LCP.
 - b) 77 is the approximate maximum number of vehicles that can park on the current "foot-print"
- 3) Beach staircase,
 - a) Per SLO Public Works, "*... all bets are off if we have a big storm, high tide and boulders are crashing around. That would be true with anything that we built or didn't build. But as far as day-to-day environment there, most of that could be addressed quite readily.*" This will be the situation the staircase will face multiple times each and every winter.
 - i) I fully agree that a re-enforced concrete staircase can be designed to last 30-ish years under simple wave attack, with minor maintenance. However, that is not the situation that is of concern.
 - b) Any staircase needs to be located so as not to impede traditional beach access when it is damaged and closed.
 - c) Timely maintenance will be necessary to repair this staircase. A maintenance reserve fund needs to be readily available, rather than an uncertain and likely long process to obtain funding.
 - d) Special Condition 9(j) seems to allow the County to "walk-away" from a maintenance intensive structure. The conditioning should be that if abandoned, the structure must be removed.
- 4) Any over-look or picnicking area is best located in the south-western portion of the parking lot.

ASPHALT – ARCHEOLOGICAL RESOURCE PROTECTION

The heart and soul of this appeal is the preservation of the rural nature and community character of the Cave Landing Area. I feel strongly regarding the other issues presented in my appeal, and those contained in this supplement, however they pale in comparison, by orders of magnitude, the passion that I feel for this single issue. **Please do not forever mar the rural nature of this area by allowing it to be asphalted.**

Let's discuss "rural" in this area's context. If one stops to listen, the sounds they hear is predominantly the ocean waves coming to shore, then the wind, next the various bird calls, an occasional fog horn in the distance and the sounds of gravel & earth crunching beneath vehicle tires. Looking to the West is Point San Luis and its surrounding hill-side with Port Hartford / Old Port Pier at its base. To the NW, at 1/8th mile or so away is a terraced hill-side now void of structures (the old Unical / Standard Oil Tank farm [we don't look that way much]) To the North, is the 600-700 ft. hillside of Ontario Ridge, covering hundreds of acres of open space, and in the near field of vision the occasional road-runners, herons, deer, and other wildlife including falcons and osprey soaring above. To the East is open space for a vast expanse, then a few homes, then the distant communities of Shell Beach & Pismo Beach. To the SE is the Nipomo dunes, Point Sal and Point Arguello, with Point Conception envisioned behind; all of which at this distance seem virtually undeveloped. To the South is the blue-gray Ocean as far as the horizon. An earthen-gravel parking lot is in the foreground; it and the vehicles parked upon it are the only immediate vestiges of modernization.

I will not re-iterate most of the details that I presented in my appeal, but will now try to augment and focus your attention upon the flaws presented by the County re: the "necessity" to asphalt this area as the "best" means to achieve design goals, in clear violation of the current certified LCP.

The most damning is the argument that the current fill is so compacted that to bring it to a condition such that it is permeable, significant grading would be required, much deeper than the current fill layer, thus disturbing a vast quantity of native soil. FIGURE 4 below is an overlay of both the initial and the current locations of bio-swales. If one studies the details of **the planned bio-swales, they are about 48 inches below grade, thus, they**

would/will greatly impact 30-36 inches of native soil in these areas and presumably more than if it were made permeable via grading.

[Note: Having re-reviewed the various SLO County Mtgs. re: this issue, the 'time-stamp' that I've referenced through the following discussions seems to be variable depending upon each viewing. Please take it a "pointer" as it was intended].

My understanding of the process to restore the purported compacted and now impervious nature of the existing fill to a pervious nature, is a multiple layering technique of a sand layer alternating with gravel [ref 23MAY2013 SLO Planning Comm. Mtg. @ about time-stamp 01:45:15]. It seems obvious to me that this concept could be incorporated into a workable design of a fill-to-cap to protect the archeological resources as suggested. Additionally, it seems obvious to me, the design features of a bio-swale to filter, store and distribute the accumulated water volume can also be incorporated into the fill design as stated.

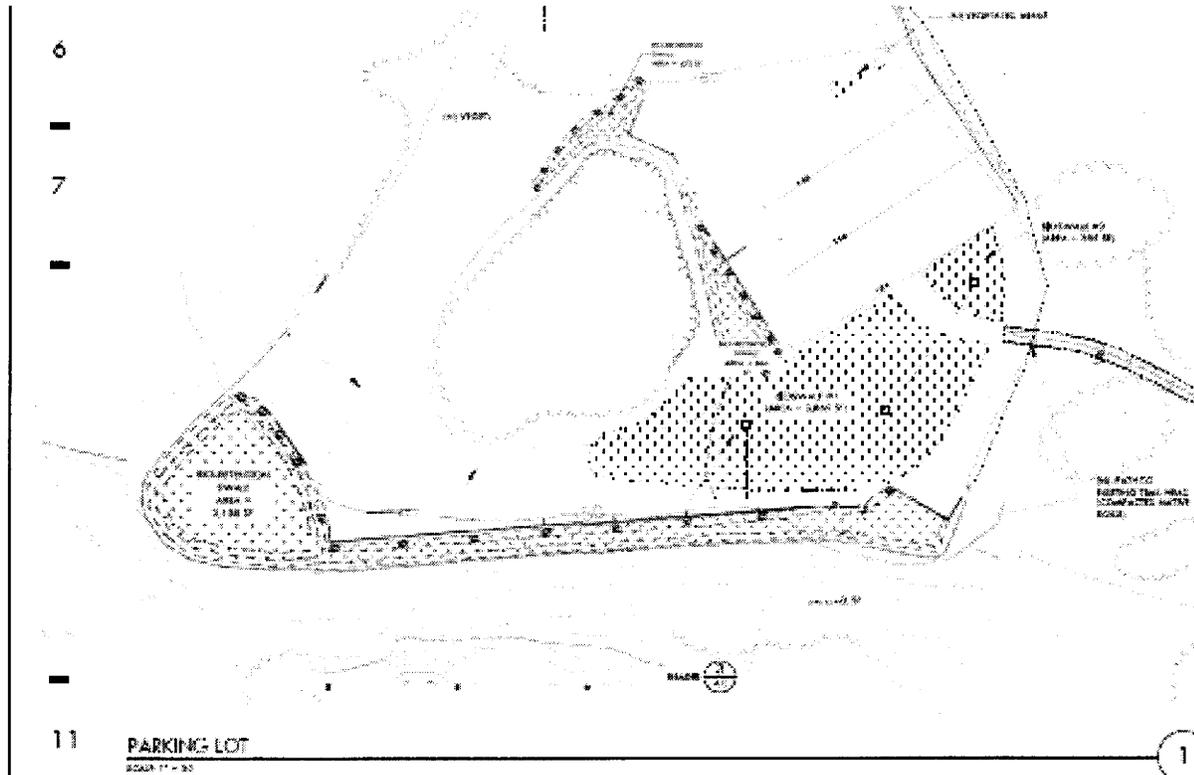


FIGURE 4: OVERLAY OF PROPOSED BIO-SWALE LOCATIONS AS PER SLO COUNTY'S DESIGNS

For protection of archeological resources, the SLO LCP allows an alternate capping procedure to add fill to sufficiently act as a buffer between the archeological resource and the development upon it. That is exactly what happened in the early 1990's at this location. Not only did it protect the resource, it did so in a manner which was "...designed (e.g., ..., materials, color) to be subordinated to, and blend with, the character of the area. ...". This can and should be done again.

ASPHALT – CLAIMED INCREASED WATER RUN-OFF

The County has repeatedly made a vague assertion that the design of the Cave Landing Trail will result in increased volume of water upon the existing parking lot. To date, they provide no supporting data/documentation for this assertion to explain neither the means nor amount of diverted water from the landslide area that construction of the Cave Landing Trail improvement project would contribute. My attempt to do so concludes that the additional water volume is negligible.

ASPHALT – EROSION CONTROL OF WATER RUN-OFF

Erosion is a function of the material and the velocity of the water run-off upon it; the velocity is a function of the slope of the topography. A direct benefit of adding fill is that it will reduce the slope of the areas most susceptible to erosion. The current rutting is simply a result of more than 20 years of non-maintenance, and is a testament to both the erosion resistance of the fill material that was added in the early '90s and the overall negligible storm run-off onto the lot.

Referencing FIGURE 5, there is no rutting of the parking lot above the orange (upper) line. Rutting is present on both sides of the "island" between the orange line and the magenta (lower) line in SW and SE direction, respectively. Rutting is also present in a W to E direction just below the magenta line. Adding fill below the orange line in an increasing depth in the southern direction, will decrease the slope of the parking lot, significantly reducing erosion effects of water run-off.

FILL-TO-CAP CONCEPTUAL DESIGN

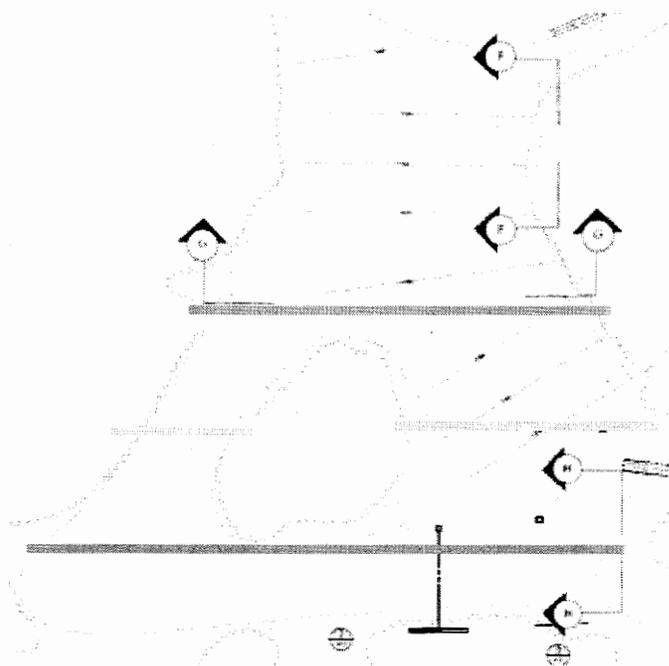


FIGURE 5: PARKING LOT "ZONES" FOR CONCEPTUAL 'FILL-TO-CAP' DESIGN

The downside of providing a conceptualized, partially developed alternative in lieu of simply an objection of the "as-is" project is that any details provided immediately become a target with the viability of the underlying concepts completely ignored.

Your staff presents two additional objections [Pg. 26] to the alternative to asphaltting suggested in my appeal:

- 1) "Second, if alternative types of permeable surfaces to permeable asphalt or concrete are considered, such as an interlocking open lawn paver grid (as suggested by the Appellant), these surfaces would not be uniformly supported and would break up."
- 2) "Lastly, in terms of water quality protection, the approved bioswales will be better at filtering pollutants from the stormwater than the coarse gravel layer the Appellant suggests be used."

Pavers of any sort are laid on a bottom layer of gravel to help stabilize the paver from the underlying soil, followed by a layer of sand to "float" the paver to allow it to level-ize itself the best it can.

The best means to break-down pollutants is the UV of sunlight. Sand is an extremely effective filter for water quality, as can be gravel. [I hold State of California, Dept. of Health & Safety, certifications: Water Treatment Operator Grade T-2, #29391; Water Distribution Operator Grade D-2, #37017 – both expired.]

The pollutant argument seems circular. There is no indication that any pollutants at this site are currently causing adverse environmental harm. However, if asphaltting is allowed, then pollutants such as leaching from the asphalt itself and motor oil, transmission oil, radiator coolant, cigarette butts, etc. will be rapidly transported to any ocean discharge due to the high velocity of storm water across the asphalted surface, that otherwise would not occur.

FIGURE 5 was developed early in developing my appeal. For brevity and time constraints, I combined my intent of sections H-H and F-F into the following cross-section elevation drawing, which I felt was conceptually representative for the entire lot. The general concept is that the slope of the parking lot be reduced by each of the 4 zones shown on FIGURE 5, and also incorporate utilizing bio-swale features in the “fill-to-cap” philosophy.

The zone above the orange (upper) line comprises a thin layer of coarse gravel, a thin layer of medium gravel, and an upper layer of sand & pea gravel. The intent is that the lower layer compresses into the clay fill to make it more stable for the upper layers. It is recognized that the upper layer will require periodic augmentation, especially in the first few years and will require periodic grooming/redistribution.

The zones between the orange (upper) line and the magenta (lower) line would have increasingly deeper layers of coarse gravel to act as initial reservoirs that would increase as that layer successively increase. Finally, the zone below the magenta line would be quite deep, acting as both a reservoir and having perforated piping near its base would act as a bio-swale.

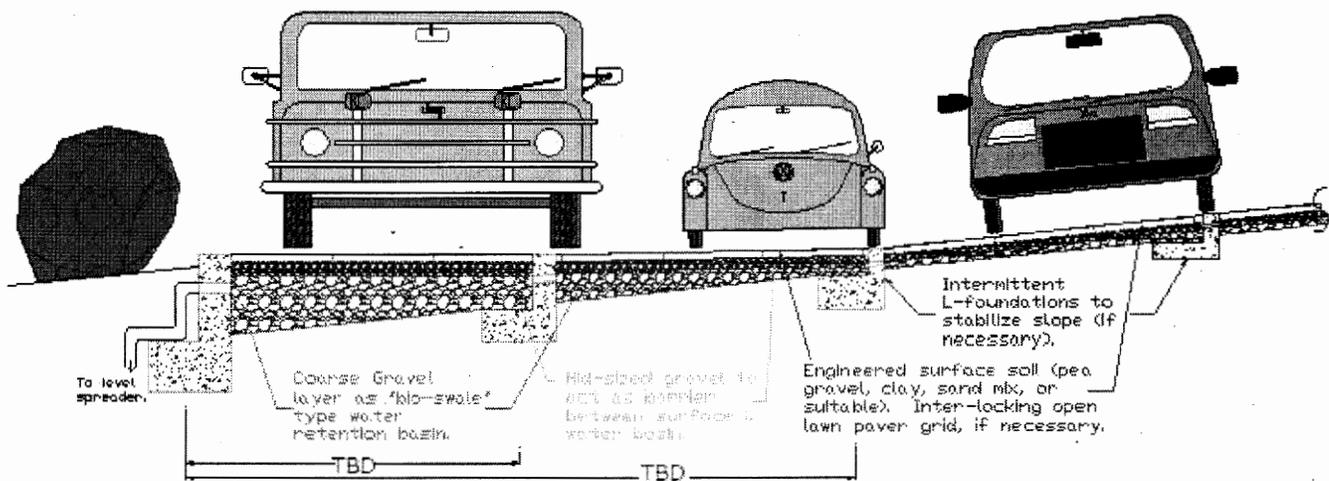


FIGURE 6: PARKING LOT CONCEPTUAL ‘FILL-TO-CAP’ CROSS-SECTION DESIGN

I do not want nor was I advocating that the entire surface of the parking lot utilize interlocking lawn pavers, however, having re-read that section, coupled with the paver locations shown in FIGURE 6, my intent was not adequately conveyed. I foresaw the issue of the upper layer of sand/soil/pea-gravel to naturally migrated downhill. I felt that the greatest impacts would be at the transitional zones (the colored lines shown in FIGURE 5). Therefore I felt that a row or more along the transition zones, full enough to stabilize the area above it, but also partially empty to aid collect the migration of the material above. I admittedly did not make this clear in my original proposal.

I’ll re-iterate, this is a design concept and is being **presented to facilitate constructive alternative thinking**. I’ll leave it to those actually getting paid for their engineering services to determine the details.

PARKING - GENERAL DISCUSSION

The discussion regarding parking comes down to two pertinent numbers:

- 1) **100**; this is the number called out in the approved SLO LCP,
- 2) **76 to 78**; this is the maximum number of vehicles that can park upon the current "foot-print", and

PARKING - SLO COUNTY APPROVED SAN LUIS BAY COASTAL AREA PLAN DISCUSSION

SLO County adopted this LCP on **March 1, 1988**; the California Coastal Commission certified it on **February 25, 1988**. It states, in part:

Shoreline Access – Mallagh Landing. New development shall 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...."*

In the early 1990's, the allowable area of public parking upon the bluff-top (see Figure 2) was significantly restricted by placement of boulders to prevent vehicle use beyond the current parking lot's configuration.

I do not have the time to determine the Coastal Development considerations that should have been provided in the 1990's approval of that project. Whether, explicit or implied, the *de facto* conclusion would be: the bluff-top parking, in its current form, is sufficient to meet the LCP requirements. The caveat re: protecting archeological resources with respect to the specified 100 bluff-top spaces was therefore incorporated at that time the necessary protection. To again restrict available parking is inconsistent with the intent of the LCP.

The County is now redefining "bluff-top" to include parking along Cave Landing Road, when it is obvious that was not the intent of the 1988 LCP language. Future parking needs are an unknown. What is certain is that by reducing available parking on the bluff-top 'foot-print' now, it will be unavailable in the future.



FIGURE 7: LIMITED AREA THAT SHOULD BE CONSIDERED FOR PARKING LOT EXPANSION

Additionally, the County gave NO consideration to expanding the parking eastward upon the original bluff-top parking foot-print. I am not specifically advocating that approach, however, it needs to be given due consideration if the surfacing of the currently available bluff-top parking is being proposed, so as to meet the intent of the 1988 LCP. To add a cumulative reduction of available parking is inadvisable considering the consistent LCP references to provide increased public access, including available parking. Eastward expansion upon the already disturbed native soil is possibly the better alternative to protecting archeological resources than to expand parking upon along the NE side of Cave Landing Road.

PARKING - CURRENT BLUFF-TOP PARKING

While my primary focus is not allowing asphaltting, this discussion is a direct result of that proposal due to the resultant line demarcation of the parking area as currently allowed by this project. A main point of contention of myself as well as many other users of this area is that the proposed plan, significantly reduces the available parking upon the current parking lot's "foot-print".

FIGURE 8 is an extreme condition, but illustrates numerous aspects of current parking practices. Beginning with the white pickup truck at the upper left corner and ending with the green pickup truck in the upper center, there are 73 vehicles on the unpaved area, with about 3 spaces (if parked angled) still open. The vehicle behind the bush between the aforementioned green pickup and the blue pickup w/ camper-shell could be considered on the foot-print. Therefore, **spacing for a maximum of approximately 77 vehicles exists upon the foot-print as currently available (defined as the unpaved area south of Cave Landing Road).**



FIGURE 8: CALIFORNIACOASTLINE.ORG IMAGE 2289 [CROPPED] TAKEN MON 2002-09-02 @ 12:16 [LABOR DAY]
[As an aside, I can identify my truck parked on the foot-print; I must have gotten there much earlier.]

The SLO Co. proposed parking upon the existing foot-print [Exhibit 6, Pg 100 of 298] consists of only 63 spaces. [Note: CCC Staff considers space #63 along Cave Landing Rd; an equally valid opinion, resulting in 62 spaces.]

Parking impacted by the restroom, bike racks, etc near the Cave Landing Rd gate (@ NE corner of road) shows 6 vehicles, with space for one more, which was likely where the silver van was heading, for a total of 7.

Also identifiable in FIGURE 8 is that 5 vehicles are circling the lot and 2 more are on the road, all looking for a parking spot. Please note that this is at 12:16, so even more vehicles would be expected to arrive w/in the next hour or so.

The CCC Staff reduces the available parking by an additional 4 spaces **resulting in a reduction** to only 59 vehicles. The cumulative effect is that current parking availability is reduced **by about 25%** [(59-77)/77]. **This is a significant decrease.**

An additional item of note, on page 17 of the CCC staff report, the following appears: "*The informal nature of the parking lot has resulted in traffic circulation problems for vehicles, bicyclists, and pedestrians, with cars typically parking haphazardly wherever there is room to park, with the result that vehicles sometimes block trailheads and other vehicles, as well as encroach on adjacent habitat.*" FIGURE 9 is a 2011 satellite photograph showing a similar parking pattern as in FIGURE 8, nine years later. This pattern, as seen, hardly

seems “haphazard”. As evidenced by both pictures, the notion that the parking pattern creates “circulation problems for vehicles, bicycles, and pedestrians ... [and]...sometimes block trailheads and other vehicles ...” is unfounded! Instead it supports my prior comments to the SLO Planning Comm., “**people know how to park**”.

In fact, these examples **should be the design model for any future formalized parking lay-out** if that ever comes to pass.



FIGURE 9: GOOGLE EARTH IMAGE TAKEN SAT 2011-09-17 [TIME NOT SPECIFIED, SHADOWS INDICATE APPROX 16:00]

PARKING - CURRENT USAGE AND SUFFICIENT DISCUSSION

To discuss this subject properly, more data than is currently available is required. I myself have not done a rigorous data accumulation nor do I intend to do so. I have my own impressions and experiences, however, they are difficult to substantiate. The most complete data set that I know of is by the Whales Cave Conservancy (WCC) and by decades of interaction with individuals in that organization, I trust their reports. From my observations, I believe them to be accurately representative.

Rather than debate numbers that have not been established at this time-frame, **let's concentrate on preserving the current available parking**. The LCP acknowledged that there was a need for more parking than what is currently available (77). Let's honor the number specified by the 1988 LCP, rather than trying to justify further reduction via loop-holes.

The SLO Co. & CCC staffs seem to be calling into question the veracity of the parking counts taken by the Whales Cave Conservancy I provided from public documentation in my appeal. Their discussion seems to imply disbelief due to lack of photographic evidence and the seeming disparity between the eight car counts

that the county conducted over a "... *three-month study (with photos) from April 2013 to June 2013 [sic]*" [pg. 21 of staff report]. Anyone who has ever taken statistics will immediately recognize that **8 data points over a 72 day period has a huge error** associated with the data obtained.

I'll leave it to the WCC to defend their counts; however, I will address three aspects, since I utilized their count for expediency:

- 1) I know for a fact that the WCC obtains parking data 3 to 5 days a week, and has done so consistently since they started (apparently about 01 MAR 2013).
- 2) It is apparent from the chart [Exhibit 7b, Pg 62 of 63] and as stated upon it, the data points in the graph are ONLY counts over 100. This occurred 14 times over a 90 day period (16%), and with approx 40 data points, is statistically much more accurate than that provided by SLO Co. I look forward to seeing a future analysis by the WCC of their now 15 month long study.
- 3) The CCC staff comments on Pg 21 contain many inaccuracies. This is not the forum to individually rebut those inaccuracies so I will not pursue that action.

A specific independent and unbiased confirmation of one of the WCC's data point [a count of approx 104] is provided by SLO Planning Commission Chair, Jim Irving during its 23 MAY 2013 meeting [approximately at time stamp 01:48:20], "*When I was there Sunday [19 MAY 2013], there were 77 cars parked in this graveled area and 34 along Cave Landing Rd.*" Then [@01:55:25] he began a discussion re: the proposed picnic area along the east end of Cave Landing Rd. and during it, he stated, "*Right now though, that area is used for, [pause] there were probably about 6 cars parked in that area alone.*"

Neither I nor anyone else has requested that this project be designed to accommodate peak usage (>130), which from the WCC data, appears to be 2% or less [2/91]. The true basis of evaluation re: adequacy of parking is the LCP's intent by specification of 100 spaces. Due to cumulative effects of other planned improvements and developments in this area, user-ship will increase.

BEACH ACCESS - PROPOSED STAIRCASE

I did not raise this as a Coastal Act Substantial Issue to this Commission, as I myself couldn't justify it within the intent of that Act. **CCC Staff has correctly identified this as a maintenance issue**, just as I have throughout the local process. Since it is an important aspect and we're now in a *de novo* hearing, it deserves further review by this Commission.

Excerpts from Exhibit 6 Pgs 93 & 94 of 298:

".... 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."

"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 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 [sic]."

The above provides two insights, the County:

- 1) Is unaware of the dynamics of this beach, and
- 2) Fails to understand the issue being raised.

The beach along the waters of Pirates' Cove is south facing, running east to west. The staircase being proposed is at the western end. Normal ocean surf is from the northwest, with a very small southern component. Mallagh Point indeed shelters this beach during normal surf conditions. **During winter storms, the surf comes from the South impacting the beach head-on.** The water then tends to circulate in a counter-clockwise manner, especially at the western end of the beach. This wave action has deposited many rocks and boulders at that end (see FIGURE 10) in the vicinity of the proposed staircase.



FIGURE 10: WESTERN END OF PIRATES' COVE BEACH.

I considered, as a given, that coated rebar would be used in the design. In my correspondence to the 25 JULY 2013 SLO Planning Commission [Exhibit 7b, Pg. 39 of 63] after explaining concrete “spalding”, I then stated: *“Because of all this, any concrete structure built in a marine environment, typically uses a coated rebar. It is intended to resist the saltwater degradation to the rebar. There are two problems with coatings. If not applied properly, it loses adherence to the steel thus exposing the under laying portion allowing corrosion, which causes continue peeling away and more corrosion, eventually rendering the coating completely useless. Also, if the coating gets scratch the same degradation to the coating eventually happens.”*

During discussion on this topic in the 25 July 2013 SLO Planning Commission Mtg., the SLO Public Works representative discussed his experiences re: concrete structures along shoreline areas in response to my correspondence [approx. time stamp of mtg. video, 01:14:00]. He stated, in part: *“... all bets are off if we have a big storm, high tide and boulders are crashing around. That would be true with anything that we built or didn't build. But as far as day-to-day environment there, most of that could be addressed quite readily.”*

He, at least, fully understood the concern. Each storm, every year, the rocks and boulders in the vicinity will strike the new staircase hundreds of times, chipping away the concrete, exposing the rebar, stripping away its coating to expose bare rebar to the every-day saltwater environment.

I fully agree that re-enforced concrete staircase can be designed to last 30-ish years under simple wave attack with minor maintenance. However, that is not the situation that is of concern.

Cayucos Beach is primarily west facing, running north to south. FIGURE 11 shows the two concrete staircases to the south of the pier. FIGURE 12 shows the area surrounding the closed First Street public beach access.



FIGURE 11: CONCRETE STAIRCASES SOUTH OF THE CAYUCOS PIER.

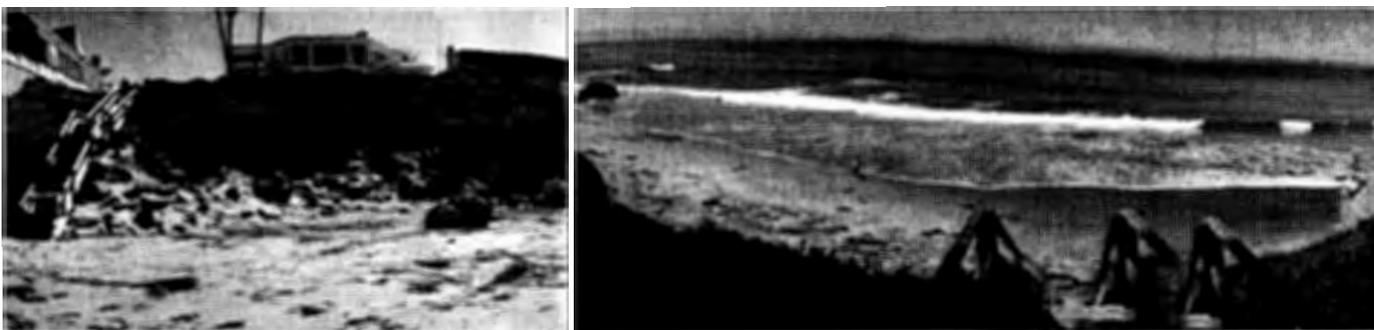


FIGURE 12: CLOSED WOODEN STAIRCASE AT FIRST STREET, FARTHER SOUTH OF CAYUCOS PIER.

I admit that I have never witnessed winter wave events in the Cayucos area. The main aspect of these photos of Cayucos Beach is the complete lack of any wave deposited rocks upon the beach, in stark contrast to Pirates' Cove Beach.

The point is not to argue which site is more dynamic; it is to address the very real and probable issue of damage within the next 3 to 5 years, not "sometime in the future". I am absolutely sure that if this project is approved in the future, a staircase will be built. I and many other long-time users, are also absolutely sure that it will be significantly damaged within a 3-5 year time frame. The County has the complete opposite opinion. Only time will tell.

The exact location of the staircase is important. To date, this has been undefined "attached to a large boulder". As can be seen in FIGURE 13, the existing access points are to both the left and right of the orange box. The area to the left has year round access. The area to the right is seasonal, and much easier to navigate. The orange box is therefore literally 'middle ground' to conduct this experiment.



FIGURE 13: WESTERN END OF PIRATES' COVE BEACH SHOWING ACCESS POINTS.

The next item for discussion is maintenance funding. The County has “promised” to repair the stairs if damaged. However the County is already struggling to find funding for other coastal projects (e.g., Cayucos First Street). How timely will these repairs be made? The California Coastal Conservancy is the key funding organization for construction of these stairs; and has gone on record that they believe the stairs will last 20 or more years. Will they commit upfront that they will fund repairs should the County not be able to do so? What assurances will this Commission bring to bear to enforce timely repairs?

The County has proclaimed “... *it is a conservative estimate that the proposed stairs will have a 30 year life. ...*” Both the County’s engineering consultant and the California Coastal Conservancy have made similar claims. In that light, CCC Staff’s Special Condition 9(j) is extremely concerning to me. It allows the County two opportunities, 10 years apart, to simply ‘walk-away’/abandon a failed experiment. **This Commission requires bluff-top property owners to relocate/remove the dwelling or structure should the bluff setback no longer be retained. The County should be held equally accountable by this Commission for the staircase if it becomes irreparable or abandoned.**

VIEWPOINTS AND PICNIC TABLES

The County has proposed picnic tables to the west of spaces #1-7. The CCC Staff has proposed an additional viewpoint with benches on the west to replace spaces #50-53. Upper portion of FIGURE 14. The primary issue is that the ‘mouth’ of the parking lot has been severely narrowed which directly transition to the available parking issue; as does the CCC staff’s recommendation to establish a viewpoint on the western side.

The most scenic spot to view the Ocean and the surrounding area is at the south-western corner of the parking lot in the vicinity of spaces #32&33, see Lower portion of FIGURE 14 below. This is the area where the photos of FIGURE 15 were taken.

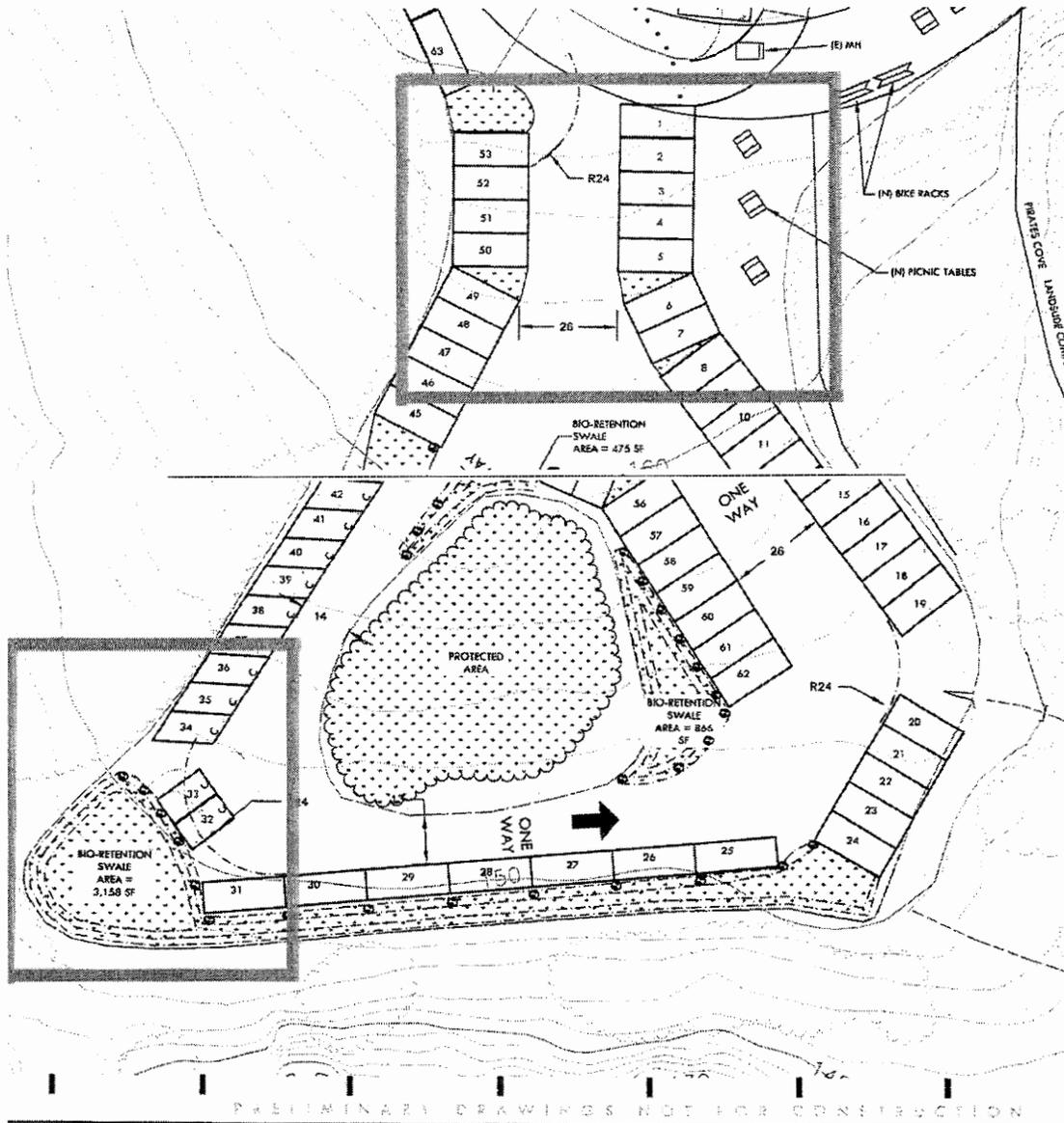


FIGURE 14: VIEW AREAS, BOTH COUNTY/CCC STAFF AND AS SUGGESTED BY APPELLANT

Establishing a viewpoint on the current bio-swale could easily incorporate benches or picnic tables. An arc of hard-surfacing visualized by spaces #32&33 and re-aligning spaces #31&34 would allow establishment of one or two ADA compliant spaces as well as an additional two or three conventional spaces.

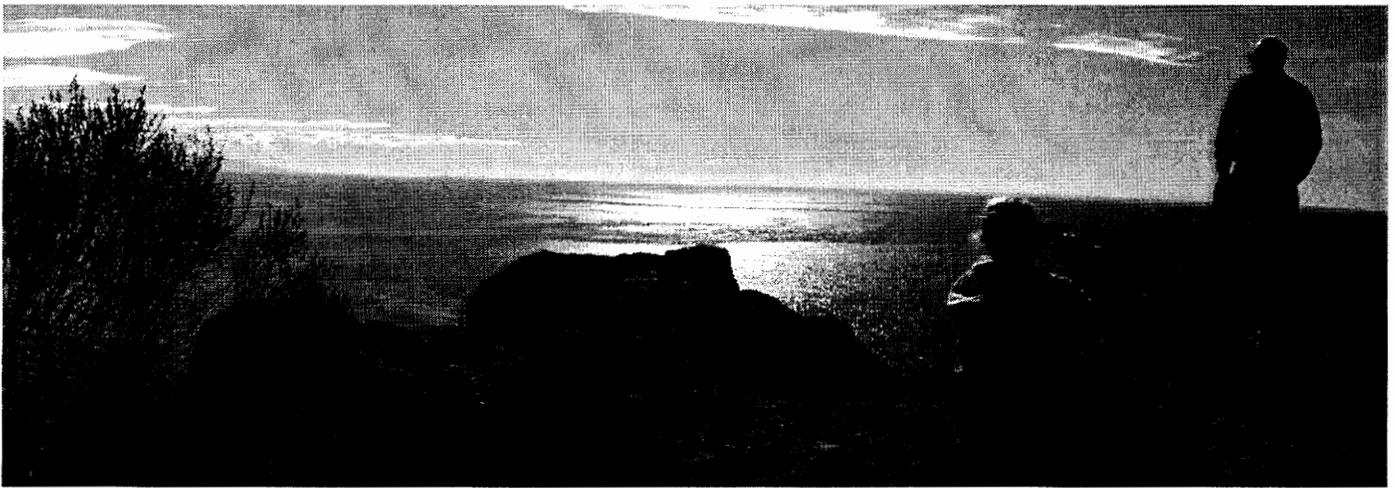


FIGURE 15: VIEWS, EAST TO WEST FROM THE SOUTH-WESTERN CORNER OF THE PARKING LOT.

CONCLUDING SUMMARY:

It is hoped that this Commission separate the development of this area into the two projects this proposal truly is.

I ask that you approve a project upon Parcel 3 as significantly proposed, separable from development upon Parcel 5, by an Amending Motion.

I ask that you deny the project upon Parcel 5 as proposed and conditioned based upon the following:

- Asphaltting the existing parking area is not consistent with the rural setting and would have adverse impact upon its community character.
- A 'fill-to-cap' design will protect archeological resources consistent with the approved SLO LCP, having significantly less impact upon native soils than excavation for bio-swale usage.
- The LCP predates the reduction of bluff-top parking that occurred in the early 1990's. Whether, explicit or implied, the *de facto* result is that the archeological protection consistency was met at that time. A further cumulative reduction is contrary to the original intent of the LCP.
- Future parking needs are an unknown; what is certain, is that by reducing available parking on the bluff-top 'foot-print' now, it will be unavailable in the future.
- Beach staircase: per SLO Public Works, "*... all bets are off if we have a big storm, high tide and boulders are crashing around. That would be true with anything that we built or didn't build. But as far as day-to-day environment there, most of that could be addressed quite readily.*"
- Special Condition 9(j) is inconsistent with past Commission requirements that should bluff-top setbacks no longer be retained that the dwelling or structure shall be relocated or removed. Similar conditioning should be applied to any staircase built for public access at this location that has become irreparable or intended to be abandoned without further maintenance.

F14a

24 JUNE 2014

To: California Coastal Commission
c/o: Dan Carl, Deputy Director, Central Coast District Office

SUBJECT: Clarification of Special Conditions proposed for CCC Application Number A-3-SLO-13-0252.

Mr. Carl,

Having reviewed the proposed Special Conditions, I request that multiple aspects be clarified and addressed prior to the California Coastal Commission's JULY 2014 hearing on this matter:

Special Condition 1(d): Parking Spaces

Cave Landing Rd. runs NW-SE in the area being discussed. This condition cites "two of these spaces shall be relocated to the south side of Cave Landing Road adjacent to space #66" This is very confusing language as spaces #65&64 are on the "south side" of space #66. I believe the condition should read "relocated to the north side of Cave Landing Road" to be consistent with other spaces' relocation wording.

Special Condition 1(e): New Public Overlook Area

Is this in lieu of, or in addition to the proposed picnic table area to the east?

Special Condition 1, etc. (general): Executive Director's determinations

It is assumed that this authorization will be delegated. *How far down the chain of command will this be delegated?* I do not believe this should be lower than the Deputy Director for the area.

Special Condition 3: Construction Plan

Will the Public be able to provide input to the Plan prior to Executive Director's approval?

Special Condition 4(b): Construction Coordinator

Under what organization will this position be staffed? CCC, SLO Co., or the construction contractor? I believe there should be a strong tie-in to the CCC; please define expectation.

Special Condition 9(f): Future Maintenance

- 1) *How will the Public be notified of the maintenance event?*
- 2) *Is the 5 day response time from the CCC staff, working days or calendar days?*

Special Condition 9(j): Duration of Maintenance

- 1) *Does this imply that if the proposed staircase at the beach is deemed to be problematically maintenance intensive that it could simply be abandoned? If this should be the case, then I believe this section should include a provision that the structure should be removed prior to abandonment.*
- 2) *Will the Public be involved in the Executive Director's decision to extend maintenance period?*

I have attempted to make this request as timely as it could have been submitted. I request that a response be provided, as a minimum, via email (already on record) as-soon-as-possible, and specifically, prior to 3 JULY 2014.

Sincerely,



Brian LoConte
Irish Hills Resident
San Luis Obispo, Ca
(Appellant)

RECEIVED

JUN 27 2014

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

RECEIVED F14a

JUN 27 2014

May 28, 2014

To: Daniel Robinson, Coastal Commission

Fr: Tim Duff, Coastal Conservancy

Re: **Pirates Cove/Cave Landing nighttime closures**

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

It was good to discuss the Pirates Cove/Cave Landing night time closures with you briefly yesterday. While I appreciate your staffs' concerns with a precedent being set if the Coastal Commission were to allow a County beach park to be posted as closed from 10pm to 6am as called for by their local ordinance, this position jeopardizes the viability of the project ever getting constructed, much less operated. Further, to me it demonstrates the exact kind of rigid bureaucratic response that your current strategic plan expressly states staff is to avoid.

The Coastal Conservancy board authorized \$350,000 for the construction of this project with the understanding that the County would be able to close the park- or portions of the park- as needed to ensure public safety. The County approved a permit that requires these closures, and at that time substantiated the need to post the park as closed from 10pm to 6am in light of the record of ongoing and increasing illicit acts that occur there. These acts, documented by the County Sheriff's Office over a three – plus year period from 2011 to April of 2014 and provided in writing to your staff include prostitution, public acts of sex both at night and during the day, felony child abuse, contact with registered sex offenders, drug dealing, sexual assault/battery, armed robbery, burglary, indecent exposure, complaint of a 60 year old nude male with an 8 year old female nude, arrests for warrants, fights, large juvenile parties, possession of illegal narcotics, indecent exposure, multiple incomplete 911 calls, illegal camping and associated fires with trash and human waste left in the Chumash Sacred Landscape Caves, drug dealing, drunk in public, illegal dumping, and a variety of miscellaneous lewd acts.

The Sherriff's Office has indicated that the type of conduct describe above has been going on for decades and, due to the site's remote location and private ownership (until recently), has "fostered the development of a pronounced criminal culture" and that the volume of illicit acts are steadily increasing while the nature of the acts is getting progressively worse. The Sheriff has confirmed that the majority of these incidents occur at night, and at an exponentially faster pace than the criminal activity at any other County Park or beach in the County. (See memo from the County Sheriff to your office dated May 16, 2014) Clearly, this site is not your typical park or beach that experiences at least some level and frequency of illegal / criminal behavior.

With the site now in County ownership, the Sheriff's Office has been working with County Parks staff and other nearby jurisdictions to change the criminal element and illicit atmosphere that currently dominates the area. The Sheriff's Office has stated that enforceable night closures is the most effective tool they have to succeed in making Cave Landing/Pirates Cove a safe place for citizens and visitors to recreate as it gives their deputies the ability to clear the parking lot after 10pm, and before the late evening hours when the problems described above typically develop. The County's proposed closure hours (of the entire park) are intended to protect park users that could otherwise be unwittingly exposed or even subjected to the types of documented illegal activities described above.

The Sheriff's office has stated that due to limited resources their deputies can only patrol the site once or twice each night. By reducing the closure hours from midnight to 5am your current recommendation would serve to reduce the effectiveness of the very tool needed to protect public safety. This may conflict with the Coastal Conservancy staff recommendation as approved by its board, and thereby trigger the need to return to the board for consideration of any necessary amendments to its previous authorization. We would only do so upon the request of the County should they agree to your current closure terms. Should the Board of Supervisors reject the midnight to 5am closures out of concern for the Sheriff's Office ability to adequately protect its citizens and visitors at a designated county park, the project would not proceed and the status quo at the site would reign.

As I mentioned to you and your staff in recent discussions, there are convenient alternatives for those who wish to access nearby beaches between 10pm and 6am. The long and broad sandy beaches of Avila Beach are within a five minute drive from Cave Landing/Pirates Cove and offer free nighttime (i.e. 10pm to 6am) parking 365 days a year with ample street lighting and safe, easy access.

Furthermore, as stated by the Northern Chumash Tribal Council in a letter to you dated May 21, 2014, the cultural resources at the site would be better protected with the County's proposed closure hours given that most of the damage to their *Sacred Landscape at Pirates Cove* (i.e. the rock art in the caves) happens at night. The Council thus supports the County's closure plan.

In addition, the Whales Cave Conservancy, the only established local nonprofit dedicated to preservation of natural resources and safe public use of the site supports the County's closure plan. Formed in the early 1990's, this cadre of dedicated volunteers has taken the lead role in managing what until recently has been private property. A primary task for them has been trash removal, and in their letter to you dated May 22, 2014, they state that the biggest challenge in this regard are the nighttime hours when they estimate 50% of all trash accumulates.

In the end, while your proposed recommendation may seem to you and your staff like a reasonable compromise, the end result of requiring the County to keep the site open an additional two hours late at night and one hour in the early morning may in fact prevent the project from proceeding. On balance, that seems like a poor route to take if your goal at this specific site is to maximize public access to as many visitors as possible.

F14a

California Coastal Commission
725 Front Street, Suite 300
Santa Cruz, CA 95060-4508

RECEIVED

JUL 03 2014

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

July 3, 2014

Dear Commissioners,

Thank you for agreeing to hear our appeal, and please pass along our thanks to your staff for their very well-thought out compromises and solutions to the issues we presented therein. Already, as a result of their work, if those solutions alone are implemented, it will be a vast improvement over the original project approved by the county.

Here we address these one by one, and ask that you consider our modifications of them, if any.

NIGHT CLOSURE: We believe that the suggestion of the staff to close the parking lot from 10PM to 6AM, while still allowing parking along Cave Landing Rd., as well as access to the beach, the trails, and the bluff, is a suitable compromise for all involved, and will go a long way towards mitigating the concerns of the county.

It appears that the county will engage in a full-court press at the hearing in an effort to achieve total night closure of the beach and everything else. We will have much to say on that subject at the hearing. The staff appears to have a fine grasp on the Commission's mission of maximizing public access, and so perhaps nothing more need be said.

However, one other thing bears mentioning: I seem to recall (though I cannot lay my hand upon it at the moment) that one of the missions of the Commission is to avoid allowing legal precedents to be set that may be used in future cases to further restrict public access elsewhere. Indeed, in the County's correspondence, they write, "State parks closes its coastal parks at night. Nearby Montana de Oro closes their park at night from 10PM to 6am."

This is *exactly* why this move by the county needs to be countered. They use one exception as precedent for another, and those two for the next, and another, and another, until everything becomes an exception.

I would also point out that Montana de Oro has 40 primitive camping sites for overnight use, so while it may be closed to entry, it is NOT entirely closed to the experience of nighttime use by the public. In this illustration, we see the county using a disingenuous example, even, as a precedent. Here we see how one little bump of the camel's nose beneath the tent becomes a full-blown stampede.

We ask that you stand firmly on the principle and the law and the goal of maximizing public access to California's coast, as was the intent of the Coastal Act, by denying any such precedent to move forward, in this case or any other.

PARKING LOT PAVING: Friends of Pirate's Cove abhors the idea of any development of the bluff, and the paving of the parking lot will be a tremendous blow to many who love this place just as it is. We cannot endorse any pavement here at all; as one user recently told the appellant, "even the paving of the parking lot will kill the experience." We continue to ask that this development be denied.

However, should this intrusion upon the experience of so many simply be unavoidable, we will state for the record that we are pleased, at least, that the staff has recommended that the color of the parking lot be made to match the existing and surrounding surface of the bluff. This is a tremendous improvement over the stark black wound envisioned by the County.

We would like to make the following suggestion (plea), as well: The addition of unnatural painted stripes across the bluff, a visual eyesore that will be shockingly apparent from the top of Ontario ridge, have often been discussed in these plans as an inevitable result of the laying of pavement. They are not. Stripes do not fall from the back of asphalt trucks; these are two separate constructive phases.

Stripes may be laid across the asphalt at any time after it is poured and dried -- immediately, or the next week, or six months or six years from then.

We ask that, should the asphalt be inevitable approved, the Commission consider at least delaying the permitting of stripes to be painted across the bluff. This, along with congruent asphalt, would go a long ways towards alleviating the visual impact of the parking lot. For decades, self-managed parking has worked mostly without a hitch. Should it be necessary, a simple sign on Cave Landing Rd. reading 'If your car is parked in such a way that it obstructs traffic, consumes unnecessary space, or impedes the entry/exit of your neighbor's car, it may be towed at owner's expense' may well suffice.

If this solution, also, is denied by the Commission, we would as a final measure of mitigation ask that the stripes be as close to the color of the pavement as possible while still being able to be seen by visitors.

We thank you again for all mercy in this matter, and we ask you again to consider that striping can be done at any time -- it is not an inevitable result of pavement, which may be viewed as necessary by some to prevent erosion of the bluff top. Parking and erosion are separate concerns.

PICNIC TABLES AND BENCHES:

The mission of the Coastal Commission is to maximize public access to the Coastal Zone.

In the staff report, one section reads in part "the proposed project will improve connectivity to the surrounding recreational amenities by (formalizing paths, etc) ... adding picnic tables, ... (etc.).

While we agree that much of this is true, In what way does a picnic table "improve access"? It doesn't get you down the trail, walk you down the stairs, or drive you down the road. Picnic tables are irrelevant to the issue of access. They are, however, extremely relevant to the issue of gentrification.

There is no greater method of announcing 'this place is a tamed, subjugated, pre-planned, pre-packaged extension of civilization' than by bolting a picnic table to the ground.

What this really does is remove the choice of the visitor of how to use a given area of the park.

Estimating from the size of the parking spaces on the appeal, it appears that the space allotted to three picnic tables on the southern end of the parking lot is at least fifty feet wide and twenty feet deep. That's enough space for a badminton game. Or for dozens of people to place chairs, or spread blankets. Or for an entire orchestra, for that matter. Who gets to decide that 'picnic' is what every member of the public wants to do in that space?

The appellant personally owns a plastic collapsible picnic table that can be set up anywhere, and camping chairs to put around it. Even the poorest members of the public can manage to bring a blanket to spread out upon the bluff if they wish to have a picnic. We do not need government intervention to facilitate picnics, and the addition of these manmade structures will necessarily change the scenic, rugged, wild nature of the place.

The county contends that the public has an "expectation" of picnic tables at a county park. So, should "we've always done it this way" be the guiding principle in every project, then? Is every photo of a scenic county-owned vista doomed to have a picnic table in the foreground? What if the public wishes to set up an easel on that spot, or have a drum circle? By bolting a picnic table to the ground, you remove those options.

We ask that the picnic tables be denied, and that any benches be below the viewshed from the blufftop. We ask that any additional fencing, railings, etc that may negatively affect the natural view be denied.

In Conclusion

Although our appeal triggered a review of the project as a whole, we have never specifically written a word opposing the bike trail or the bridge. We do believe, with the Commission staff, that these things facilitate access.

We still oppose the construction of stairs to the beach, for all of the reasons noted by appellant Brian Laconte.

We thank you again for accepting jurisdiction over this project. We appreciate the diligence and principle of the Commission staff, and the Commissioners themselves.

What you decide here will reverberate for generations yet unborn. We wish you wisdom and foresight in your decision.

Sincerely,



Sean R, Shealy

Friends of Pirate's Cove



Northern Chumash Tribal Council

A Native American Corporation - NorthernChumash.org
67 South Street, San Luis Obispo, CA 93401 805-801-0347

F14a

RECEIVED

Daniel Robinson
Coastal Commission

JUL 08 2014

May 21, 2014

Sent via email only: drobinson@coastal.ca.gov
Re: Prorates Cove Assess

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

Dear Daniel,

The Northern Chumash Tribal Council (NCTC) is a 501c3 non-profit, federally and state tax exempt, dedicated to the preservation of the Chumash Culture. NCTC corporate offices are located in San Luis Obispo California at 67 South Street. NCTC was formed under the guidelines of California Senate Bill 18 April 26, 2006 as a California State Recognized Tribal Government by the California Native American Heritage Commission, organized and dedicated to preservation of the California Native American Chumash Culture, and Sacred Sites. NCTC is dedicated to meaningful consulting with Federal, State, local governments, agencies, corporations, consulting with the development community, and supporting tribal community well-being. In San Luis Obispo County the UN Declaration of the Rights of Indigenous Peoples has been passed by resolution of the County Board of Supervisors.

The Pirates Cove area, located between Pismo Beach and Avila Beach in San Luis Obispo County CA, is a major Californian Native American Chumash Sacred Landscape, with many villages, and rock art in the area. Over the years much of our Sacred Landscape has been tampered with and looted in many incidents, most of which happens at night, when no one is around, or, watching.

NCTC is in favor of public assess, but, when it in accord with the enforcement arm of protection for our Sacred Sites, the only enforcement we have is the Sheriff's Office, concerned citizens and our neighborhood watch. All of these protection arms require light to see. Most all of our parks in the County close at 10:00pm and reopen at 6:00am, we find that this is inclusive of all peoples, and protects our Sheriff's Office already stranded budget and man power, and lets our concerned citizens and neighborhood watch folks help in the protection for everyone.

NCTC is recommending that the Sacred Chumash Landscape at Pirates Cove be protected by this evening, across the county closures, at 10:00pm and reopening at 6:00am. NCTC is in support of the County Parks and Recreations findings, which also agree with ours.

Thank you very much for your consideration.

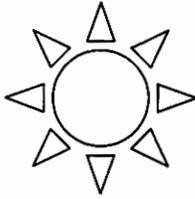
Fred Collins
Tribal Administrator
Northern Chumash Tribal Council

**ENVIRONMENTAL & LAND-USE CONSULTING
EDUCATIONAL SERVICES TEACHING NATURE, NATIVE CULTURES &
FARMING**

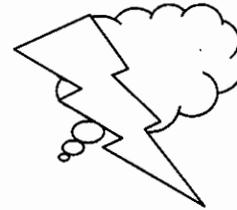
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F14a

JUL 08 2014



CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA



The San Luis Obispo County Chumash Council

Chief: Mark Vigil Sr.

1030 Ritchie Rd: Grover Beach, CA. 93433

Ph#(805)481-2461—Fax#(805)474-4729

Email: chiefmvigil@charter.net

July 7, 2014

California Coastal Commission
Sent via email

Re: Agenda Item F14a (Cave Landing/Pirate's Cove Trail and Parking Lot)

Dear Chair Kinsey and Members of the Coastal Commission:

The County of San Luis Obispo's application to pave over the parking lot and make other "improvements" at Cave Landing/Pirates Cove, as described in your staff report, just recently came to our attention.

Because there are significant differences within the community regarding the County's proposed "improvements" we ask that you continue the hearing on this agenda item. We believe that a continuance would allow the various stakeholders to work out a win-win solution. In the event that a continuance will not be granted, we ask that you deny the County of San Luis Obispo's request to pave over the bluff or to create more artificial stairways down to the beach. We ask for the least possible disturbance of this area.

The Cave Landing/Pirates Cove/Fossil Point/Avila Beach area encompasses a wealth of great cultural and spiritual importance to Chumash Native Americans. For at least 10,000 years, this area was occupied by the Chumash. Here our ancestors held ceremonies; gave reverence to and tended their sacred areas; stewarded the land and all its resources; sang, danced, gathered food and medicines; and buried their dead with honor and respect.

The Chumash suffered the terrorist acts of the invading European hordes. Our people were murdered, starved and enslaved, and pushed off the land by force and trickery. They were forbidden from practicing their spiritual traditions and way of life. Despite the efforts of the European invaders, many Chumash and our culture survived, and much of the traditional way has been preserved in the hearts and souls of the Chumash.

The Chumash culture is alive, not merely a vestige of past eras. The coast and inland areas of San Luis Obispo County contain many areas that are of immeasurable importance to the practice of our sacred and cultural traditions. Our culture mandates that we care for these areas, and gives us the responsibility to protect these areas from destruction. These areas are essential for the continuation of our place-based culture.

Respect for the Chumash people, and their living culture, requires the protection of Cave Landing/Pirates Cove/Fossil Point and all other culturally sensitive sacred sites, village sites, burial sites and gathering sites in this area. These places serve as vital connections to our culture. Here there are places where the Chumash have performed, and still perform, ancient ceremonies. We ask that you deny the County of San Luis Obispo's request to pave over the bluff or to create more artificial stairways down to the beach. We ask for the least possible disturbance of this area. Once these places are destroyed, they are lost forever.

Allowing "data recovery" as a mitigation for digging up or disturbing Chumash sacred sites or other cultural resources is NOT mitigation! Data recovery as mitigation is like allowing the killing of an endangered Condor as long as this magnificent bird is cut open and its anatomy studied. We ask that you require the project applicant to place a restrictive cultural resource easement over a comparable culturally important area in the immediate vicinity in the event that any disturbance is allowed. Capping over of our sacred sites is only to be used as a last resort, it is not mitigation.

The desecration of sacred sites is intolerable not just for Native Americans, but for non-natives too, for these places have sacredness in and of themselves. "In talking about this land, we are talking about the sacredness for all of us. So let us cast our prayers widely to save the land, as a fisherman casts his nets." (Tom Goldtooth as quoted in Sacred Lands of Indian America.)

These areas of cultural significance are endangered, nonrenewable resources which deserve the utmost protection.

We ask that you make every effort to ensure the complete protection of the sacred lands, and cultural and sensitive biological resources, which may be impacted by the "improvements" set forth in the County of San Luis Obispo's project application for this area.. Accept no less.

Faithfully, Chief Mark Vigil, Sr. and the San Luis Obispo County Chumash Council

F14a

Robinson, Daniel@Coastal

From: cblack@co.slo.ca.us
Sent: Tuesday, July 08, 2014 8:04 AM
To: Robinson, Daniel@Coastal
Cc: skinsey@marincounty.org; Gregcoastal@sdcounty.ca.gov; cgroom@smcgov.org; lcross@marincounty.org; secooper@co.slo.ca.us; jpell@co.slo.ca.us
Subject: Fw: Pirates Cove
Importance: High

Good Morning,
Please see letter below that was sent to San Luis Obispo County Parks regarding Item 14a on the California Coastal Commission agenda for July 11, 2014. These individuals live in nearby Shell Beach and have been exposed to the type of nighttime bad behavior that San Luis Obispo County Supervisors have conditioned to control through nighttime closures.

Thank you for including this letter with the information to be provided to the Commissioners for this Friday's Commission meeting.
Best Regards,
Curtis Black

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JUL 08 2014

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

Curtis Black
Deputy Director - Parks
County of San Luis Obispo
General Services Agency
(805) 781-5204
www.slocountyparks.org

SAN LUIS OBISPO



Think Outside!

----- Forwarded by Curtis Black/GenSrvcs/COSLO on 07/08/2014 07:57 AM -----

From: Joan Degasparis <mettamomma@gmail.com>
To: "cblack@co.slo.ca.us" <cblack@co.slo.ca.us>
Cc: Becky te Velde <beckysbunch@gmail.com>, Larry Strasbaugh <lstras@sunrisemarsh.com>
Date: 07/07/2014 10:01 PM
Subject: Pirates Cove

Mr. Black, I understand that rules of Pirates Cove are to be decided in the next few days in Ventura. Please know that residents within miles of this park are vehemently in favor of closing this park during the night because of the occurrence of deviant behavior that takes place in this location, rendering this beach unusable and unsafe for families.

This park is littered with trash related to sexual behavior, and draws persons to it who have errant intentions. At this time it is not considered a place for families, and leaving this 'park' open at night will encourage a host of potential activities including

criminal actions, that will defeat the purpose of an improved park facility.

Please protect the public by keeping this park open during daytime only.

Joan Degasparis
Shell Beach

[Scanned @co.slo.ca.us]

F14a

Robinson, Daniel@Coastal

From: Donald Scott <donscott943@gmail.com>
Sent: Wednesday, July 02, 2014 8:01 PM
To: Robinson, Daniel@Coastal
Subject: comment on proposal to leave Pirates Cove open at night

Dear Mr. Robinson,

Here's what I wrote in response to the story in the Tribune:

"Leaving Pirates Cove open at night is an invitation to vandalism, litter, and nefarious misbehavior. I was a State Park Ranger on a coastal beach park; even WITH a locked gate we had problems at night - including the dumping of a body. The Coastal Commission should not approve this modification."

As a former state and national park ranger, I cannot emphasize enough what a foolhardy proposal this is - to leave the facility open at night with no protection. Restrooms will be vandalized, crime will happen, the place will be graffitied and trashed. It will significantly increase the costs of maintainance in a time of weak budgets. It will also lead to violent crime against night visitors.

The gate should be at the intersection of Whales Cave Road and Avila Beach Drive (or whatever the name of the main road.) It should be locked at night.

Cheers,

Donald M. Scott

F14a

FROM THE DESK OF
JUDY BROWN

RECEIVED

JUL 03 2014

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

July 3, 2014
Central Coast District Office
California Coastal Commission
725 Front Street, Suite 300
Santa Cruz, Ca 95060
Fax: (831) 427-1877
RE: Permit #A-3-SLO-0252

To whom it may concern,

The meeting concerning Pirate's Cove on July 11, 2014 Agenda item # 14A. I am a homeowner of two houses in Pirate's Cove. I do not want a park open 24 hours with loud parties and fires on the beach the could burn down my homes. I am opposed to any bike path or development that would impact the slide area that I am on one lot over from. We loss 15 feet a few years ago, and do not need to lose any more land. We do not need any more development in this area. I would like to see garbage cans to pick up the garbage that people leave, that is all development that we need. The natural beauty of the land needs to preserved. I am opposed to this plan.



Sincerely yours,

Judy Brown at 178 Bluff Drive Drive, Shell Beach, California 95449

F14a

Page 1 of 1

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JUL 03 2014

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

Doug Brown
66 Bluff Drive
Shell Beach, CA 93449

California Coastal Commission
725 Front Street, Suite 300
Santa Cruz, CA 95060
Fax: 831-427-4877

Ref: Permit #A-3-SLO-0252

July 3, 2014

Dear Commission:

Attached with this fax is an article forwarded to me from one of my neighbors in The Bluffs at San Luis Bay. This community of 23 lots butts up to the Pirate's Cove Area in question. My concern is in the "Important Public Hearing Notice, New Appeal", it states "closure of facilities between the hours of 10 pm and 6 am" (underlined in attachment). This is reasonable. Closing only the parking lot (the position of the Coastal Commission staff stated in the SLO Tribune) is not. By closing only the parking lot, you would be encouraging people to access the area from our road and pedestrian path after 10 pm. This is not acceptable, as it can only lead to more vandalism, both to the new facilities you are proposing and to the private property inside our community. Please note, I had not responded to the Notice mailed June 20th, as I didn't have any major concerns, but, after reading the article in today's Tribune, I most certainly do. I ask the Commission to reconsider their position.

Doug Brown
Enclosures

CALIFORNIA COASTAL COMMISSION

725 FRONT ST., STE. 300
 SANTA CRUZ, CA 95060
 PHONE (831) 427-4863
 FAX (831) 427-4877



June 20, 2014

IMPORTANT PUBLIC HEARING NOTICE
NEW APPEAL

PERMIT NUMBER: A-3-SLO-13-0252

APPLICANT(S): San Luis Obispo County, Department of General Services, Parks Department

APPELLANT(S): Friends of Pirate's Cove; Brian LoConte

DECISION BEING APPEALED: Construction of an approximately 1,800-foot-long bike/pedestrian trail including a 30-foot bridge; formalization of an existing parking lot and adjacent on-street parking, including leveling, resurfacing, and striping for a total of 70 spaces, and installing drainage, stormwater and erosion control improvements; improvements to an existing trail leading to the beach from the parking lot, including construction of new stairs; installation of a restroom and other amenities; regular maintenance of all facilities; and closure of facilities between the hours of 10 pm and 6 am. ←

PROJECT LOCATION: At the terminus of Cave Landing Road in Avila Beach, between Avila Beach and the City of Pismo Beach, in the unincorporated area of San Luis Obispo County).

HEARING DATE AND LOCATION:

DATE:	Friday July 11, 2014	Agenda Item No. 14a
TIME:	Meeting begins at 8:30 a.m.	
PLACE:	City of Ventura – City Hall 501 Poli Street Ventura, CA 93001	
PHONE:	(415) 407-3211 (This phone number only in service during the meeting.)	

HEARING PROCEDURES:

This item has been scheduled for a public hearing and vote. People wishing to testify on this matter may appear at the hearing and/or may present their concerns in writing to the Commission on or before the hearing date. The Coastal Commission is not equipped to receive comments on any official business by electronic mail. Any information relating to official business should be sent to the appropriate Commission office using U.S. Mail or courier service.

AVAILABILITY OF STAFF REPORT:

A copy of the staff report on this matter will be available no later than 10 days before the hearing on the Coastal Commission's website at <http://www.coastal.ca.gov/mtgcurr.html>. Alternatively, you may request a paper copy of the report from the Central Coast District office.

LOCAL

BRING NEWS AT SANLUISOBISPO.COM

INSIDE | PAGE B6

IN BUSINESS

Many states trail the U.S. in job recovery. B6

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LOCAL

THURSDAY, JULY 3, 2014

THE TRIBUNE | B

CALIFORNIA COASTAL COMMISSION

Meeting to cover Pirate's Cove

By DAVID SNEED
dsneed@thetribunenews.com

Plans to make significant improvements to a county park at Pirate's Cove in Avila Beach and a plan by Caltrans to move inland nearly 3 miles of Highway 1 at Piedras Blancas could get final approval at a July 11 state Coastal Commission meeting in Ventura.

Panel could OK proposal to add parking lot to nude beach and move Highway 1 near Piedras Blancas in July 11 votes

Commission staff is recommending that the Pirate's Cove project be approved with minor modifications to increase public access. The main modification is a requirement that the beach and the

trail to the beach remain open around the clock.

The project approved by the county called for all of the park's amenities to be closed from 10 p.m. to 6 a.m. to minimize criminal ac-

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tivity. However, Coastal Commission staff wants only the parking lot to be closed, thereby retaining public access to the other amenities 24 hours a day.

The public could gain access to the other facilities at night by parking on the roadway leading to the

Please see COMMISSION, B2

F14a

Whales Cave Conservancy

"Dedicated to the Preservation of the Cultural, Ecological, Scenic Resources and Historic Use, of Pirates Cove."

Date: July 3rd, 2014

RE: F14a Appeal staff report, Comments on Exhibits 10, 11 and safety.

Attn: Daniel Robinson, California Coastal Commission

CC: Ryan Hostetter, San Luis Obispo County Planning

Elizabeth Kavanaugh, San Luis Obispo County Parks and Recreation

Dear Mr. Robinson,

Regarding Exhibit 10, we recognize the use of the North side of Cave Landing road for four parking spaces. It has always been our contention that the need for adequate and safe parking will eventually require a solution. Through the early stages of this project we proposed a plan for parking on the North side of Cave Landing road. (See attachment, Exhibit A, dated May 15 2013) The fact that the current design now incorporates this type of parking demonstrates that it was a feasible suggestion. While it is not our intent to straddle this project with additional design issues, we ask that this possibility be acknowledged for future design consideration.

Concerning Exhibit 11 (parking) The Whales Cave Conservancy started a parking impact survey on Feb 23rd 2013. The purpose of this was to establish the current use in support of increasing the parking from the original proposed 35 spaces. We have since, with Avila Valley Advisory Council and SLO County Planning agreed on the 70 space parking lot. Recognizing that there will be future concerns, we continued our survey.

These counts were limited to the time of arrival of the person taking the count. All vehicles on Cave Landing road were included in a single count with an approximate time. These were recorded and distributed via email to the "Covevb" members so we have date/time records for verification. Please note that our counts were usually at the start of the "beach day" so they typically represent less than the maximum for each day. While our counts are not to be considered as engineering data, it appears that we were the only ones actually undertaking this task. It also appears that the data in Exhibit 11 while accurate is not representative of the actual use of the area. Case in point, Monday, May 26th our count shows 117 cars and we estimate that at peak there were more than 130 cars. That day was one of the most crowded days in 2014 and we observed a continuous line of cars parked to 150ft on the downhill side past the Standard Oil road turnoff. We have determined that 125 cars can park up to the turnoff...

The following are simplified examples of our counts. The full versions include temperatures, beach conditions and unusual events such as "High School Ditch Days":

Month	Date Day	Auto count	Time	Comments
June 2014	29/Sun	118	1:45PM	
	28/Sat	107	1:40PM	
	27/Fri	87	4:00PM	
	25/Wed	75	2:30PM	
	22/Sun	84	2:00PM	
	21/Sat	84	5:00PM	
	20/Fri	82	3:00PM	

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COASTAL COMMISSION
CENTRAL COAST AREA

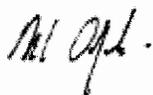
Month	Date Day	Count	Time	Comments
June, '14 continued				
	18/Wed	48	1:30PM	
	15/Sun	72	1:45PM	
	14/sat	71	1:15PM	
	08/Sun	108	5:00PM	
	07/Sat	115	1:00PM	
	06/Fri	54	2:00PM	
	04/Wed	54	1:45PM	
	01/Sun	102	2:00PM	
January 2014				
	29/Wed	51	2:00PM	
	26/Sun	52	3:00PM	
	25/Sat	60	3:30PM	
	20/Mon	76	1:15PM	(MLK day cold)
	19/Sun	85	1:45PM	
	18/Sat	118	3:15PM	(peak count)
	17/Fri	97	1:30PM	
	16/Thu	92	2:00PM	
	15/Wed	90	1:15PM	
	12/Sun	52	1:30PM	
	11/Sat	64	2:00PM	
	10/Fri	75	4:30PM	
	05/Sun	92	4:30PM	
	03/Fri	48	2:00PM	
	01/Wed	71	1:00PM	
March 2014				
	28/Fri	42	1:30PM	
	23/Sun	115	2:00PM	
	22/Sat	43	1:00PM	
	21/Fri	43	3:00PM	
	19/Wed	56	2:00PM	
	18/Tue	130+ est.	NA	(HS ditch day)
	16/Sun	118	12:45PM	
	15/Sat	130+	3:30PM	
	14/Fri	64	1:45PM	
	12/Wed	52	4:30Pm	
	09/Sun	52	4:45P	
	08/Sat	91	12:00PM	
December 2013				
	31/Tue	62	1:00PM	
	29/Sun	72	1:00PM	
	28/Sat	48	12 noon	
	27/Fri	64	12 noon	
	25/Wed	61	2:00PM	
	22/Sun	46	1:00PM	
	21/Sat	36	1:00PM	
	16/Mon	65	1:30PM	
	15/Sun	51	1:00PM	

In closing, we would like to stress that our group is comprised of people in professional, related fields that have relevance to the proposed park, including; Public park managers, Civil Engineers, Architects, Forestry and those in public recreation. We have members that have been continually using the beach since the mid 1970's and some infrequent users that can confirm use in the 1960's.

Pirates Cove beach and surrounding areas have always been wild, untamed and at times dangerous. We again urge you to consider this and include measures that inform all users (daytime and nighttime) of the potential hazards both to the user and to the environment. Our group has accepted the task of stewardship and for the *daylight hours* when our presence is felt, we are effective.

Should you have any concerns, please feel free to contact us.

Sincerely,



Mike Obayashi

For the Whales Cave Conservancy

CALIFORNIA COASTAL COMMISSION

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F14a

Filed: 11/26/2013
Action Deadline: Waived
Staff: D. Robinson - SC
Staff Report: 6/20/2014
Hearing Date: 7/11/2014

APPEAL STAFF REPORT: SUBSTANTIAL ISSUE DETERMINATION AND DE NOVO HEARING

Application Number: A-3-SLO-13-0252 (Cave Landing/Pirate's Cove Trail and Parking Lot Improvements)

Applicant: San Luis Obispo County, Department of General Services, Parks Department

Appellants: Friends of Pirate's Cove; Brian LoConte

Project Location: At the terminus of Cave Landing Road in Avila Beach, between Avila Beach and the City of Pismo Beach, in the unincorporated area of San Luis Obispo County.

Project Description: Construction of an approximately 1,800-foot-long bike/pedestrian trail including a 30-foot bridge; formalization of an existing parking lot and adjacent on-street parking, including leveling, resurfacing, and striping for a total of 70 spaces, and installing drainage, stormwater and erosion control improvements; improvements to an existing trail to the beach from the parking lot, including construction of new stairs; installation of a restroom and other amenities; regular maintenance of all facilities; and closure of all facilities between the hours of 10 pm and 6 am.

Staff Recommendation: Substantial Issue Exists; Approval with Conditions

SUMMARY OF STAFF RECOMMENDATION

On October 8, 2013, the County of San Luis Obispo approved a CDP (DRC2011-00069) to allow construction of an approximately 1,800-foot-long trail, new stairs to the beach, improvements to an existing informal parking area and other related improvements at Pirate's Cove in Avila Beach. The County's CDP decision was then appealed to the Coastal Commission by two separate parties (Friends of Pirate's Cove, and Brian LoConte) based on contentions related to public access and recreation, visual resources, coastal watersheds, botanical resources, and archaeology. Regarding public access and recreation, the Appellants contend that the approved project is inconsistent with the LCP and Coastal Act for a variety of reasons, including because the approved public access improvements would be closed at night, and because they contend that the project does not provide adequate vehicle parking. In addition, the Appellants contend that paving the parking lot will create drainage, water quality and visual impacts, inconsistent with the LCP's Coastal Watershed and Scenic and Visual Resource policies. Finally, Friends of Pirate's Cove contends that the project: 1) will impact sensitive plant species; 2) will impact archaeological resources, and 3) that there was an inadequate CEQA analysis and review undertaken by the County.

Staff recommends that the Commission find that the appeals raise a substantial issue and that the Commission take jurisdiction over the CDP application. Staff further recommends that the Commission approve a CDP for a slightly modified project.

The proposed project would significantly improve public access and recreational opportunities along this portion of the coast by improving parking and public access amenities, including updating an important link in the California Coastal Trail (CCT), and constructing a trail and staircase to Pirate's Cove beach to replace the existing informal accessway. However, the County is proposing to close off all of the proposed amenities, including the trail to the beach and the CCT link, between 10 pm and 6 am. Although the County has raised valid issues related to criminal activity and public safety in the parking lot during nighttime hours, these concerns are focused more on activity in the parking lot than along the trail or on the beach. Therefore, to ensure public access is protected and maximized, Staff is recommending conditions to limit the closure to the parking lot only, thus allowing pedestrians and bicyclists access to the trails and beach. On-street parking is available nearby, and could be utilized by nighttime visitors. The recommended condition would limit the allowed parking lot closure to a period of five years, and requires monitoring during that time. If the County wishes to extend the parking lot closure beyond the five year period, the County would need to apply for an amendment to this CDP to do so. Also related to public access, Staff is recommending a Signage and Operations plan to ensure public access is protected and maximized.

Finally, Staff is recommending special conditions to protect water quality and environmentally sensitive habitat, as well as conditions to protect the significant archaeological resources at the site, to protect and enhance scenic views, and to require the County to waive any future rights to protect the new development from coastal hazards.

As conditioned, the project is consistent with the San Luis Obispo County LCP and the Coastal Act’s public access and recreation policies, and staff recommends **approval** of the CDP. The required motions and resolutions are found on page 5 below.

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APPENDICES

Appendix A – Substantive File Documents

EXHIBITS

Exhibit 1 – Project Vicinity Map

Exhibit 2 – Current Site Photos

Exhibit 3 – Time Sequence Photos

Exhibit 4 – Parcel Map

Exhibit 5 – Project Site Plans

Exhibit 6 – Notice of Final Local Action

Exhibit 7a – Friends of Pirate's Cove Appeal Documents

Exhibit 7b – Brian LoConte Appeal Documents

Exhibit 8 – Applicable LCP and Coastal Act Policies

Exhibit 9 – SLO County Sheriff's Statistics of Criminal Activity Report

Exhibit 10 – Parking Lot Boundary

Exhibit 11 – County Parking Survey

Exhibit 12 – Location of Black-Flowered Figwort

Exhibit 13 – Correspondence Received Prior to Hearing

I. MOTION AND RESOLUTION

A. Substantial Issue Determination

Staff recommends that the Commission determine that a **substantial issue** exists with respect to the grounds on which the appeal was filed. A finding of substantial issue would bring the CDP application for the proposed project under the jurisdiction of the Commission for de novo hearing and action. To implement this recommendation, staff recommends a **NO** vote on the following motion. Failure of this motion will result in a de novo hearing on the CDP application, and adoption of the following resolution and findings. Passage of this motion will result in a finding of No Substantial Issue and the local action will become final and effective. The motion passes only by affirmative vote of a majority of the Commissioners present.

***Motion:** I move that the Commission determine that Appeal Number A-3-SLO-13-0252 raises no substantial issue with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act, and I recommend a no vote.*

***Resolution to Find Substantial Issue:** The Commission hereby finds that Appeal Number A-3-SLO-13-0252 presents a substantial issue with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act regarding consistency with the certified Local Coastal Program and/or the public access and recreation policies of the Coastal Act.*

B. CDP Determination

Staff recommends that the Commission, after public hearing, **approve** a coastal development permit for the proposed development. To implement this recommendation, staff recommends a **YES** vote on the following motion. Passage of this motion will result in approval of the CDP as conditioned and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

***Motion:** I move that the Commission approve Coastal Development Permit Number A-3-SLO-13-0252 pursuant to the staff recommendation, and I recommend a yes vote.*

***Resolution to Approve CDP:** The Commission hereby approves Coastal Development Permit Number A-3-SLO-13-0252 and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with San Luis Obispo County Local Coastal Program policies and Coastal Act access and recreation policies. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.*

II. STANDARD CONDITIONS

This permit is granted subject to the following standard conditions:

1. **Notice of Receipt and Acknowledgment.** The permit is not valid and development shall not commence until a copy of the permit, signed by the Permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. **Expiration.** If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. **Interpretation.** Any questions of intent of interpretation of any condition will be resolved by the Executive Director or the Commission.
4. **Assignment.** The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
5. **Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Commission and the Permittee to bind all future owners and possessors of the subject property to the terms and conditions.

III. SPECIAL CONDITIONS

This permit is granted subject to the following special conditions:

IV. SPECIAL CONDITIONS

1. **Revised Final Plans.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the Permittee shall submit two sets of Revised Final Plans to the Executive Director for review and approval. The Revised Final Plans shall be substantially in conformance with the plans submitted to the Coastal Commission labeled, "Cave Landing Bike Path and Parking Lot Improvements" dated March 2014 and dated received March 19, 2014, but shall show the following changes and clarifications to the project:
 - (a) **Location of Parking Lot Footprint.** The Final Plans shall show the boundary of the existing parking lot (the area of existing disturbed surface south of Cave Landing Road as outlined on Exhibit 10) and this area shall be the "parking lot" for purposes of this CDP.
 - (b) **Paving.** All new paved surfaces within the parking lot footprint shall be sand-colored to match the color of the existing unpaved parking lot color and to blend in with the surrounding environment.
 - (c) **Drainage.** The proposed dissipater spreader ("level spreader") along the southern end of the parking lot (south of space 25-26) shall be lengthened to 100 feet, if necessary to meet the requirements of the Water Quality Management Plan in Special Condition 5.
 - (d) **Parking Spaces.** Spaces #50, #51, #52, and #53, designated on the project plans dated March 2014, shall be relocated and no parking shall be allowed in that area. The revised

plans shall show that two of these spaces shall be relocated to the south side of Cave Landing Road adjacent to space #66 and two shall be relocated to the north side of Cave Landing Road adjacent to space #70. Formalizing these four spaces along Cave Landing Road shall be done in a manner that minimizes impacts to natural landforms.

- (e) **New Public Overlook Area.** A new overlook area with low-lying public amenities (i.e., benches, low-profile interpretative signs, etc.) shall be included on the plans in the general location of parking spaces #50, #51, #52, and #53.
- (f) **Trail to Pirate's Cove.** To avoid the black-flowered figwort, the Revised Final Plans shall show no development (i.e., trail improvements, cut and fill work, etc.) beyond the existing disturbed trail within 25 feet of any black-flowered figwort habitat, as identified in the updated Botanical Survey, required pursuant to Special Condition 6 below.
- (g) **Trail Through The Parking Lot.** A designated nighttime pathway shall be identified through the parking lot (through striping, description, etc.) that provides pedestrian access from Cave Landing Road and the trail towards Pismo Beach to the top of the trail that leads down to the beach. This designated nighttime pathway shall be available for use when the parking lot is closed (see Special Condition 2).

Any necessary changes to the Revised Final Plans shall be reported to the Executive Director. No changes to the Revised Final Plans shall occur without an amendment to the CDP, unless the Executive Director determines that no amendment is required. Minor adjustments to the above requirements may be allowed by the Executive Director if such adjustments: (1) are deemed reasonable and necessary; and (2) do not adversely impact coastal resources. All requirements above and all requirements of the approved Revised Final Plans shall be enforceable components of this CDP. The Permittee shall undertake development in accordance with this condition and the approved Revised Final Plans.

- 2. **Signage and Operations Plan.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the Permittee shall submit two sets of a Signage and Operations Plan to the Executive Director for review and written approval. The Signage and Operations Plan shall clearly describe the manner in which general public access associated with the approved project is to be managed and provided, with the objective of maximizing public access to the public access areas of the site (including all trails) and all related areas and public access amenities (i.e., overlooks, interpretive signs and facilities, bench seating, etc.) described in this special condition. The Signage and Operations Plan shall at a minimum include the following:

- (a) **Location, Size, Materials and Type of all Signage.** Signs shall be welcoming (i.e., using warm, earth tone colors), shall indicate hours of operation rather than hours of closure for the parking lot (i.e., parking lot is open from 6am to 10pm), shall indicate that all other public access areas (i.e., all trails, the beach, and all non-parking lot access amenities) are open 24 hours a day, seven days a week, shall provide clear direction on how to access the beach through the designated nighttime pathway when the parking lot is closed, and shall be sited and designed to minimize impacts to public views. At least one interpretive sign shall be installed that is designed to educate the public about the Chumash experience and cultural history of the area. The Chumash interpretive sign(s)

shall be developed in consultation and cooperation with appropriate Chumash tribal representatives.

- (b) Parking Lot and Bathroom Restrictions.** The parking lot and bathroom may be closed between 10pm and 6am for five (5) years from the date of approval (i.e., July 11, 2019) of this CDP. Such parking lot closure shall not extend to the designated nighttime pathway. Any other public access restrictions are prohibited. Any extension of this allowed closure beyond five years shall require approval of a separate CDP or an amendment to this CDP. Absent an approved CDP or CDP amendment allowing for an extension of the closure, the parking lot and bathroom shall be opened to 24 hour use, including through removal of signs effecting the closure, and installation of Executive Director-approved signs indicating that the parking lot and bathroom are now open at all times.
- (c) Extension of Parking Lot and Bathroom Restrictions.** Any application to extend or modify the parking lot and bathroom restrictions shall include a complete evaluation of alternatives to such closure between 10pm and 6am (e.g., increased patrols, more limited closure areas and/or hours, etc.) instead of restricting hours of use. Any such application shall also include documentation regarding parking lot usage, criminal activity statistics for the area, and any public comments received related to the parking lot and bathroom restrictions and/or impacts to public access from the parking lot and bathroom restrictions.
- (d) Gate Prohibited.** No gate is permitted prohibiting access to the parking lot and the parking lot shall not otherwise be physically closed. The 12 parking spaces provided as part of this project along Cave Landing Road shall all be incorporated into the park facility but shall not be closed to the public at any time during the night.
- (e) Park Facilities to Remain Open.** The plans shall show that all public access areas of the park facility (e.g., Pirate's Cove beach, all trails, picnic areas, etc.) shall be available to the public 24 hours a day, except that the parking lot and bathroom may be closed pursuant to Special Condition 2b.
- (f) Fees.** Fees for parking or other public access shall be prohibited.

Any necessary changes to the Signage and Operations Plan shall be reported to the Executive Director. No changes to the Signage and Operations Plan shall occur without an amendment to the CDP, unless the Executive Director determines that no amendment is required. Minor adjustments to the above requirements may be allowed by the Executive Director if such adjustments: (1) are deemed reasonable and necessary; and (2) do not adversely impact coastal resources. All requirements above and all requirements of the approved Signage and Operations Plan shall be enforceable components of this CDP. The Permittee shall undertake development in accordance with this condition and the approved Signage and Operations Plan.

- 3. Construction Plan.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the Permittee shall submit two sets of a Construction Plan to the Executive

Director for review and approval. The Construction Plan shall, at a minimum, include the following:

- (a) **Construction Areas.** The Construction Plan shall identify the specific location of all construction areas, all staging areas, all storage areas, all construction access corridors (to the construction site and staging areas), and all public pedestrian access corridors. All such areas within which construction activities and/or staging are to take place shall be minimized in order to minimize construction encroachment on all public recreational use areas and to have the least impact on public access.
- (b) **Construction Methods and Timing.** The Construction Plan shall specify the construction methods to be used, including all methods to be used to keep the construction areas separated from public recreational use areas (including using the space available on the non-use portions of the project area for staging, storage, and construction activities to the maximum extent feasible provided it does not significantly adversely affect public access, and including using unobtrusive fencing (or equivalent measures) to delineate construction areas), and including all methods to be used to protect coastal waters. All erosion control/water quality best management practices to be implemented during construction and their location shall be noted.
- (c) **Construction Requirements.** The Construction Plan shall include the following construction requirements specified by written notes on the Construction Plan:
 - All work shall take place during daylight hours, and lighting of the beach area is prohibited.
 - No work shall occur during weekends unless, due to extenuating circumstances (such as tidal issues or other environmental concerns), the Executive Director authorizes such work.
 - Specify that should grading take place during the rainy season (November 1 – March 31), the applicant shall: install or construct temporary sediment basins (including debris basins, desilting basins or silt traps); install or construct temporary drains and swales; deploy sand bag barriers and silt fencing; stabilize any stockpiled fill with geo-fabric covers or other appropriate cover; install geotextiles or mats on all cut or fill slopes; and close and stabilize open trenches as soon as possible. Basins shall be sized to handle not less than a 10 year, 6 hour duration rainfall intensity event.
 - Identify and delineate on a site or grading plan the locations of all temporary erosion control measures.
 - Include erosion control measures which shall be required on the project site prior to or concurrent with the initial grading operations and maintained throughout the development process to minimize erosion and sediment from runoff waters during construction. All sediment should be retained on-site, unless removed to an appropriate, approved location either outside of the coastal zone or within the coastal zone to a site permitted to receive such sediment.

A-3-SLO-13-0252 (Cave Landing (Pirate's Cove) Trail and Parking Lot Improvements)

- Construction work or equipment operations shall not be conducted below the mean high tide line unless tidal waters have receded from the authorized work areas.
- Only rubber-tired construction vehicles are allowed on the beach, except track vehicles may be used if the Executive Director determines that they are required to safely carry out construction. Machinery and equipment shall be maintained and washed in confined areas specifically designed to control runoff.
- All construction materials and equipment placed on the beach during daylight construction hours shall be removed in their entirety from these areas by sunset each day that work occurs, except for erosion and sediment controls and/or construction area boundary fencing where such controls and/or fencing are placed as close to the toe of the coastal bluff as possible, and are minimized in their extent.
- Construction (including but not limited to construction activities, and materials and/or equipment storage) is prohibited outside of the defined construction, staging, and storage areas.
- The construction site shall maintain good construction site housekeeping controls and procedures (e.g., clean up all leaks, drips, and other spills immediately; keep materials covered and out of the rain, including covering exposed piles of soil and wastes; dispose of all wastes properly, place trash receptacles on site for that purpose, and cover open trash receptacles during wet weather; remove all construction debris from the beach; etc.). Spill prevention and control measures shall be implemented to ensure the proper handling and storage of petroleum products and other construction materials. Measures shall include a designated fueling and vehicle maintenance area with appropriate berms and protection to prevent any spillage of gasoline or related petroleum products or contact with runoff. The area shall be located as far away from the receiving waters and storm drain inlets (if any) as possible. All stock piles and construction materials shall be covered, enclosed on all sides, shall be located as far away as possible from drain inlets and any waterway, and shall not be stored in contact with the soil.
- All public recreational use areas and all beach access points impacted by construction activities shall be restored to their pre-construction condition or better within three days of completion of construction. Any native materials impacted shall be filtered as necessary to remove all construction debris.
- No construction materials, debris, or waste shall be placed or stored where it may enter sensitive habitat, receiving waters or a storm drain, or be subject to wave, wind, rain, or tidal erosion and dispersion. No demolition or construction equipment, materials, or activity shall be placed in or occur in any location that would result in impacts to environmentally sensitive habitat areas, streams, wetlands or their buffers. Any and all debris resulting from demolition or construction activities shall be removed from the project site within 24 hours of completion of the project. Demolition or construction debris and sediment shall be removed from work areas each day that demolition or construction occurs to prevent the accumulation of sediment and other debris that may be discharged into coastal waters. All trash and

debris shall be disposed in the proper trash and recycling receptacles at the end of every construction day.

- All BMPs shall be maintained in a functional condition throughout the duration of construction activity.

The Permittee shall notify planning staff of the Coastal Commission's Central Coast District Office at least three working days in advance of commencement of construction activities, and immediately upon completion of construction activities.

Any necessary changes to the Construction Plan shall be reported to the Executive Director. No changes to the Construction Plan shall occur without an amendment to the CDP, unless the Executive Director determines that no amendment is required. Minor adjustments to the above requirements may be allowed by the Executive Director if such adjustments: (1) are deemed reasonable and necessary; and (2) do not adversely impact coastal resources. All requirements above shall be enforceable components of this CDP. The Permittee shall undertake development in accordance with this condition and the approved Construction Plan.

4. Construction Site Documents & Construction Coordinator. DURING ALL CONSTRUCTION:

(a) Construction Site Documents. Copies of the signed CDP and the approved Construction Plan shall be maintained in a conspicuous location at the construction job site at all times, and such copies shall be available for public review on request. All persons involved with the construction shall be briefed on the content and meaning of the CDP and the approved Construction Plan, and the public review requirements applicable to them, prior to commencement of construction.

(b) Construction Coordinator. A construction coordinator shall be designated to be contacted during construction should questions arise regarding the construction (in case of both regular inquiries and emergencies), and the coordinator's contact information (i.e., address, phone numbers, etc.) including, at a minimum, a telephone number that will be made available 24 hours a day for the duration of construction, shall be conspicuously posted at the job site where such contact information is readily visible from public viewing areas, along with an indication that the construction coordinator should be contacted in the case of questions regarding the construction (in case of both regular inquiries and emergencies). The construction coordinator shall record the name, phone number, and nature of all complaints received regarding the construction, and shall investigate complaints and take remedial action, if necessary, within 24 hours of receipt of the complaint or inquiry.

5. Water Quality Management Plan. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the Permittee shall submit two sets of a Water Quality Management Plan (WQMP) for the post-construction project site to the Executive Director for review and approval. The WQMP shall be prepared by a licensed water quality professional, and shall include drainage plans, water quality BMP descriptions, sizing and supporting calculations. Minor adjustments to the following requirements may be allowed by the Executive Director if such adjustments: (1) are deemed reasonable and necessary; and (2)

do not adversely impact coastal resources. The WQMP shall be in substantial conformance with the Cave Landing Bike Path and Parking Lot Improvements Plans dated March 2014, and dated received March 19, 2014, and shall be in substantial conformance with the following requirements:

- (a) **BMPs.** The WQMP shall incorporate appropriate structural and non-structural Best Management Practices (BMPs) (site design, source control and treatment control) into the development, designed to reduce, to the maximum extent practicable, the volume, velocity and pollutant load of stormwater and dry weather flows leaving the project area.
- (b) **Repair and Maintenance.** All BMPs shall be designed, installed, and maintained for the life of the project in accordance with well-recognized and accepted design principles and guidelines, such as those contained in the California Stormwater Quality Association Best Management Practice Manuals. Should any of the project's surface or subsurface drainage/filtration structures or other BMPs fail or result in increased erosion, the applicant/landowner or successor-in interest shall be responsible for any necessary repairs to the drainage/filtration system or BMPs and restoration of the affected area. Should repairs or restoration become necessary, prior to the commencement of such repair or restoration work, the applicant shall submit a repair and restoration plan to the Executive Director to determine if an amendment or new CDP is required to authorize such work.
- (c) **Minimum Maintenance Schedule.** At a minimum, all BMPs shall be inspected and cleaned/repaired or otherwise maintained in accordance with the following schedule: (1) prior to the start of the winter storm season, no later than October 15th each year, (2) monthly thereafter for the duration of the rainy season (October 15th -April 30), and cleaned/maintained as necessary based on inspection and, (3) as needed throughout the dry season. Debris and other water pollutants removed from structural BMP(s) during clean out shall be contained and disposed of in a proper manner.
- (d) **Post-Construction Criteria.** Post-construction structural BMPs (or suites of BMPs) shall be designed to treat, infiltrate or filter the amount of stormwater runoff produced by all storms up to and including the 85th percentile, 24-hour storm event for volume-based BMPs, and/or the 85th percentile, 1-hour storm event, with an appropriate safety factor (i.e., 2 or greater), for flow-based BMPs, and shall not create conditions that exceed pre-project peak flows for the 2-10 year storm events.
- (e) **Manufacturer's Specifications.** It is the Permittee's responsibility to maintain the drainage system and the associated structures and BMPs according to manufacturer's specifications.

Any necessary changes to the WQMP shall be reported to the Executive Director. No changes to the WQMP shall occur without an amendment to the CDP, unless the Executive Director determines that no amendment is required. Minor adjustments to the above requirements may be allowed by the Executive Director if such adjustments: (1) are deemed reasonable and necessary; and (2) do not adversely impact coastal resources. All requirements above and all requirements of the approved WQMP shall be enforceable

components of this CDP. The Permittee shall undertake development in accordance with this condition and the approved WQMP.

- 6. Updated Botanical Survey.** PRIOR TO CONSTRUCTION, the Permittee shall submit two copies of a current botanical survey/report for identification of sensitive plant species, with an emphasis on the locations of any black-flowered figwort and purple needlegrass or other sensitive plant species on the site. The survey shall be prepared by a licensed biological professional.
- 7. Coastal Hazards Response.** By acceptance of this CDP, the Permittee acknowledges and agrees, on behalf of itself and all successors and assigns that no bluff or shoreline protective device(s) shall ever be constructed to protect the development approved pursuant to CDP A-3-SLO-13-0252 in the event that the development is threatened with damage or destruction from coastal hazards (including but not limited to episodic and long-term shoreline retreat and coastal erosion, high seas, ocean waves, storms, tsunamis, tidal scour, coastal flooding, and the interaction of same). By acceptance of this CDP, the Permittee waives, on behalf of itself and all successors and assigns, any rights to construct such devices that may exist under Public Resources Code Section 30235 and San Luis Obispo County LCP Hazards Policy 4.
- 8. Assumption of Risk, Waiver of Liability and Indemnity.** By acceptance of this permit, the Permittee acknowledges and agrees, on behalf of itself and all successors and assigns: (i) that the site is subject to hazards from episodic and long-term shoreline retreat and coastal erosion, high seas, ocean waves, storms, tsunamis, tidal scour, coastal flooding, and the interaction of same; (ii) to assume the risks to the Permittee and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development; (iii) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; and (iv) 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 claims), expenses, and amounts paid in settlement arising from any injury or damage.
- 9. Future Maintenance.** This CDP authorizes future maintenance of the site as described in this special condition. The Permittee acknowledges and agrees on behalf of itself and all successors and assigns that it is the Permittee's responsibility to maintain the parking lot, trails, overlooks, picnic areas, and stairs to the beach in a structurally sound manner and in their approved states. Any such development, or any other maintenance development associated with the project shall be subject to the following:

 - (c) Maintenance.** "Maintenance," as it is understood in this condition, means development that would otherwise require a CDP whose purpose is to repair, and/or otherwise maintain the approved project in its approved state.
 - (d) Maintenance Parameters.** Maintenance shall only be allowed subject to the parameters of the approved Construction Plan required by Special Condition 2. Any proposed modifications to the approved construction plan associated with any maintenance event

shall be reported to planning staff of the Coastal Commission's Central Coast District Office with the maintenance notification (described below), and such changes shall require a CDP amendment unless the Executive Director deems the proposed modifications to be minor in nature (i.e., the modifications would not result in additional coastal resource impacts) and that an amendment is not legally required.

- (e) **Other Agency Approvals.** The Permittee acknowledges that these maintenance stipulations do not obviate the need to obtain permits from other agencies for any future maintenance and/or repair episodes.
- (f) **Maintenance Notification.** At least 1 week prior to commencing any maintenance event, the Permittee shall notify, in writing, planning staff of the Coastal Commission's Central Coast District Office. The notification shall include a detailed description of the maintenance event proposed. The maintenance event shall not commence until the Permittee has been informed by planning staff of the Coastal Commission's Central Coast District Office that the maintenance event complies with this CDP. If the Permittee has not received a response within 5 days of receipt of the notification by the Coastal Commission's Central Coast District Office, the maintenance event shall be authorized as if planning staff affirmatively indicated that the event complies with this CDP. The notification shall clearly indicate that the maintenance event is proposed pursuant to this CDP, and that the lack of a response to the notification within 5 days of its receipt constitutes approval of it as specified in the permit.
- (g) **Maintenance Coordination.** Maintenance events shall be, to the degree feasible, coordinated with other maintenance events proposed in the immediate vicinity with the goal being to limit coastal resource impacts, including the length of time that construction occurs in and around the parking lot, trails and/or Pirate's Cove beach. As such, the Permittee shall make reasonable efforts to coordinate the Permittee's maintenance events with other events, including adjusting maintenance event scheduling as directed by planning staff of the Coastal Commission's Central Coast District Office.
- (h) **Non-compliance Proviso.** If the Permittee is not in compliance with the conditions of this permit at the time that a maintenance event is proposed, then the maintenance event that might otherwise be allowed by the terms of this future maintenance condition shall not be allowed by this condition.
- (i) **Emergency.** Nothing in this condition shall serve to waive any Permittee rights that may exist in cases of emergency pursuant to Coastal Act Section 30611, Coastal Act Section 30624, and Subchapter 4 of Chapter 5 of Title 14, Division 5.5, of the California Code of Regulations (Permits for Approval of Emergency Work).
- (j) **Duration of Covered Maintenance.** Future maintenance under this CDP is allowed subject to the above terms for ten (10) years from the date of approval (i.e., until July 11, 2024). Maintenance can be carried out beyond the 10-year period, for no longer than an additional 10-year period (i.e., until no later than July 11, 2034) if the Executive Director extends the maintenance term in writing.

10. Archaeological Resources. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the Permittee shall submit two copies of an archaeological mitigation and monitoring plan prepared by a qualified archaeologist for review and approval of the Executive Director. The Plan shall provide for an archaeological monitor to be present during all ground disturbing activities. The Plan shall also include a description of monitoring methods, including provision for a pre-project survey that includes participation by qualified local Native Americans, frequency of monitoring, procedures for halting work on the site and a description of reporting procedures that will be implemented during ground disturbing activities to ensure that cultural resources are not disturbed. The Plan shall include a list of the personnel involved in the monitoring activities and their qualifications, and shall include qualified local Native Americans as project monitors. At a minimum, the Plan shall provide for the following:

- (a) **Training.** PRIOR TO COMMENCEMENT OF CONSTRUCTION, the archaeological monitor shall conduct a training session with construction personnel discussing the cultural sensitivity of the area and the protocol for discovery of cultural resources during construction. The archaeological monitor shall also inform all qualified local Native Americans of the timing of construction and their opportunity to participate in construction monitoring.
- (b) **Halt Construction.** SHOULD ARCHAEOLOGICAL RESOURCES BE ENCOUNTERED DURING ANY CONSTRUCTION, all activity that could damage or destroy these resources shall be temporarily suspended until qualified archaeologist and Native American representatives have examined the site and mitigation measures have been developed that address and proportionately offset the impacts of the project on archaeological resources.
- (c) **Monitor.** DURING ALL GROUND DISTURBING ACTIVITIES, the Permittee shall retain a qualified archaeologist, approved by the Executive Director, to monitor all earth disturbing activities per the approved monitoring plan. The Permittee shall also include qualified local Native Americans as project monitors as applicable. If an area of cultural deposits is discovered during the course of the project, all construction shall cease in the vicinity of the resource, and a new plan shall be submitted that avoids such resources that shall be submitted for the review and approval of the Executive Director.

All requirements above and all requirements of the approved Plan shall be enforceable components of this coastal development permit. The Permittee shall undertake development in accordance with the approved Plan.

V. FINDINGS AND DECLARATIONS

A. PROJECT LOCATION AND BACKGROUND

The County-approved project is located in the Pirate's Cove area of Avila Beach in unincorporated San Luis Obispo County (SLO), on the eastern end of Cave Landing Road

A-3-SLO-13-0252 (Cave Landing (Pirate's Cove) Trail and Parking Lot Improvements)

(APNs 076-231-062 and -064). The project site is within a large, mostly undeveloped area on the ocean-facing flank of Ontario Ridge that is located east and above the town of Avila Beach, just east of the Avila tank farm site, and between Avila Beach and Pismo Beach along San Luis Obispo County's central coast. This rural area separates higher density development found to the east in the City of Pismo Beach and to the west in Avila Beach. The project site is designated Residential Rural.¹ The project site is located outside of the Urban Services Line in an area subject to the LCP's San Luis Bay Coastal Area Plan. See **Exhibit 1** for location maps and **Exhibit 2** for current site photos.

The project site includes project components on two separate parcels, both now owned by the County, known as Parcel 3 and Parcel 5 (see **Exhibit 4** for a parcel map). Parcel 5 (seaward of Cave Landing Road) contains the bulk of the County-approved project components, including improvements to the parking lot and the trail to the beach, and the installation of stairs at the beach. Parcel 3 (inland of Cave Landing Road) includes the approved vault restroom, as well as the trail and bridge portion of the project, which are intended to improve upon an existing non-vehicular connection between Avila beach and Pismo Beach. The County accepted Parcel 5, which contains Pirate's Cove beach and the parking lot, in February of 2013 in order to move forward with the proposed improvements. Until that time, this parcel was privately owned by San Miguelito Partners, LLC.²

At one time, Cave Landing Road had continued through to the City of Pismo Beach. Vehicular use of this portion of the road was discontinued in 1974 due to an active landslide complex that made the existing connection through to Pismo Beach unsafe. Since the closure, this portion of the former Cave Landing Road has been used as an informal bike and pedestrian trail that follows the existing road alignment between the eastern end of Cave Landing road (in Avila Beach) and the western end of Indio Drive (in Pismo Beach). The trail is actively used by pedestrians, bicyclists and other users, and links an approximate 20 mile segment of the California Coastal Trail.

The beach at Pirate's Cove was the site of the original wharf (constructed in 1855) and boat landing for the Avila Beach area. The site was used to bring goods in from overseas as it was a landing spot for shipments before new wharves and piers were built elsewhere in the area. The original wharf is no longer in existence, but Pirate's Cove has continued to be used by the public over the years and is a popular visitor destination. Walking, biking, sightseeing, skimboarding, bodysurfing, stargazing, fishing, sunbathing, etc., constitute the range of recreational activities available along this stretch of bluff and beach. The project site is used by the public throughout

¹ The Commission encourages the County to submit an LCP amendment to change the land use designation on Parcel 3 and Parcel 5 from Residential Rural to Open Space or Recreation.

² In 1999 an irrevocable offer of dedication (OTD) was made by San Miguelito Partners LLC to SLO County to provide vertical public access to the shoreline and to provide lateral public access and passive recreational use along the shoreline. In 2002, the California Department of Fish and Game awarded \$732,745 in Unocal Avila Beach Oil Spill Settlement grant funds to SLO County Parks to develop the Cave Landing Trail connecting Shell Beach to the Pirate's Cove parking lot. In 2008, the County purchased the parcel adjacent to Pirate's Cove (Parcel 3) to ensure continued open space in this area. As part of the purchase negotiation, an irrevocable OTD in fee was made, to the County, for the parcel containing Pirate's Cove (Parcel 5). In 2012, \$350,000 in State Highway Administration grant funds were committed to the project along with an additional \$350,000 in matching grant funds from the California Coastal Conservancy, for construction of the parking lot and coastal access improvements. The County accepted the lot containing Pirate's Cove in February of 2013 in order to move forward with the proposed improvements.

the year, with summertime visitors sometimes exceeding the parking capacity of the existing parking lot and the informal parking area on the south side of Cave Landing Road. Coastal Records Project aerial photos show the site used by the public as far back as 1972 (see **Exhibit 3** for photos of the site taken from 1972 to 2013).

Today, the project site includes numerous unimproved trails, including a trail from the unpaved parking lot down to Pirate's Cove beach, and other trails along the bluff. No other amenities, such as restrooms, water fountains, benches, lighting, etc., currently exist at the site. In addition, the existing hard-pack dirt parking lot is deeply rutted and eroded by vehicle use, which exacerbates erosion along the adjacent bluffs and trails. Further, the parking lot does not have formalized parking designations or stormwater retention devices, and does not provide formal ADA (Americans with Disabilities Act) accessibility. The informal nature of the parking lot has resulted in traffic circulation problems for vehicles, bicyclists, and pedestrians, with cars typically parking haphazardly wherever there is room to park, with the result that vehicles sometimes block trailheads and other vehicles, as well as encroach on adjacent habitat.

Additionally, the project area contains sensitive archaeological resources, and immediately south of the parking lot is a site that is sacred to the local Chumash Indians, who consider this site their jumping off point to Heaven. These archaeological resources have received little in the way of protection over the decades. Rutting and erosion of the dirt parking lot (and haphazard vehicle use on it) has led to impacts to these archeologically sensitive lands. Graffiti and other vandalism have also plagued this important archeological site.

Also, the secluded nature of the area has led to it being a frequent site of late night partying, public drunkenness, petty theft, and a variety of other criminal activities. According to County Parks' staff and the SLO County Sheriff's Office, these activities occur in the parking lot area at night (see **Exhibit 9** for the County Sheriff's Statistics of Criminal Activity).

B. PROJECT DESCRIPTION

The County-approved project allows for: 1) the construction of a bike and pedestrian trail that would be approximately 1,800 feet long and 12 feet wide (including approximately 800 linear feet of new trail alignment and removal of approximately 800 linear feet of existing road pavement); 2) paving and striping the existing dirt parking lot and nearby road shoulders to provide 62 parking spaces within the lot footprint and eight (8) parking spaces along Cave Landing Road, for a total of 70 spaces; 3) installation of vegetated bio-retention swales and other drainage improvements in the parking lot; 4) improvements to an existing trail from the parking lot to Pirate's Cove beach (including an improved four-foot wide permeable surfaced trail, drainage improvements, and stairs to the beach with railings for public safety); 5) installation of a waterless vault restroom inland (north) of Cave Landing Road; 6) picnic tables, benches, garbage cans, and interpretive signs; 7) maintenance of all project components; and 8) closure of the entire park facility from 10pm to 6am daily (see **Exhibit 5** for project plans).

C. PROJECT PROCEDURAL HISTORY

On July 25, 2013, the San Luis Obispo County Planning Commission approved CDP DRC2011-00069 to allow for the project. Two local appeals were filed on the approval. On October 8,

2013, the San Luis Obispo County Board of Supervisors denied both appeals, and upheld CDP DRC2011-00069 on a 5-0 vote. Notice of the Board of Supervisors' final local action on the CDP was received in the Coastal Commission's Central Coast District Office on November 12, 2013 (see Exhibit 6). The Commission's ten-working-day appeal period for this action began on November 12, 2013 and concluded at 5pm on November 26, 2013. Two valid appeals (see below) were received during the appeal period.

D. APPEAL PROCEDURES

Coastal Act Section 30603 provides for the appeal to the Coastal Commission of certain CDP decisions in jurisdictions with certified LCPs. The following categories of local CDP decisions are appealable: (a) approval of CDPs for development that is located (1) between the sea and the first public road paralleling the sea or within 300 feet of the inland extent of any beach or of the mean high tide line of the sea where there is no beach, whichever is the greater distance, (2) on tidelands, submerged lands, public trust lands, within 100 feet of any wetland, estuary, or stream, or within 300 feet of the top of the seaward face of any coastal bluff, and (3) in a sensitive coastal resource area; or (b) for counties, approval of CDPs for development that is not designated as the principal permitted use under the LCP. In addition, any local action (approval or denial) on a CDP for a major public works project (including a publicly financed recreational facility and/or a special district development) or an energy facility is appealable to the Commission. This project is appealable because it involves development that is located between the sea and the first public road paralleling the sea, within 300 feet of the top of a coastal bluff, and because it is a major public works project.

The grounds for appeal under Section 30603 are limited to allegations that the development does not conform to the certified LCP or to the public access policies of the Coastal Act. Section 30625(b) of the Coastal Act requires the Commission to conduct the de novo portion of the hearing on an appealed project unless a majority of the Commission finds that "no substantial issue" is raised by such allegations. Under Section 30604(b), if the Commission considers the CDP de novo and ultimately approves a CDP for a project, the Commission must find that the proposed development is in conformity with the certified LCP. If a CDP is approved for a project that is located between the nearest public road and the sea or the shoreline of any body of water located within the coastal zone, Section 30604(c) also requires an additional specific finding that the development is in conformity with the public access and recreation policies of Chapter 3 of the Coastal Act. This project is located between the nearest public road and the sea, and thus this additional finding would need to be made if the Commission approves the project following a de novo hearing.

The only persons qualified to testify before the Commission on the substantial issue question are the Applicant (or its representatives), persons who made their views known before the local government (or their representatives), and the local government. Testimony from other persons regarding substantial issue must be submitted in writing. Any person may testify during the de novo CDP determination stage of an appeal.

E. SUMMARY OF APPEAL CONTENTIONS

The County's CDP decision was appealed to the Coastal Commission by two separate parties: Friends of Pirate's Cove; and Brian LoConte. Both Appellants contend that the approved project

is inconsistent with the LCP because: 1) closing the park facility at night, and providing only 70 parking spaces, violates prescriptive rights and is inconsistent with the LCP’s Shoreline Access and Recreational policies that protect maximum access to and along the shoreline; and 2) paving the parking lot will create drainage, water quality and visual impacts, inconsistent with the LCP’s Coastal Watershed and Scenic and Visual Resource policies.

In addition, Friends of Pirate’s Cove contends: 1) that the project will impact sensitive plant species; 2) that the project will impact archaeological resources; and 3) that the County’s CEQA analysis and review was inadequate.

Lastly, Brian LoConte contends that the project has delayed implementation of a portion of the CCT and that the construction of the stairs at Pirate’s Cove beach will lead to a reduction in access due to future damage to the stairs from coastal hazards. See **Exhibit 7a** for the Friends of Pirate’s Cove contentions and **Exhibit 7b** for Brian LoConte’s contentions.

F. SUBSTANTIAL ISSUE DETERMINATION

1. Substantial Issue Background

The term substantial issue is not defined in the Coastal Act. The Commission's regulations simply indicate that the Commission will hear an appeal unless it “finds that the appeal raises no significant question” (California Code of Regulations, Title 14, Section 13115(b)). In previous decisions on appeals, the Commission has been guided by the following factors in making such determinations: (1) the degree of factual and legal support for the local government’s decision that the development is consistent or inconsistent with the certified LCP and with the public access policies of the Coastal Act; (2) the extent and scope of the development as approved or denied by the local government; (3) the significance of the coastal resources affected by the decision; (4) the precedential value of the local government’s decision for future interpretation of its LCP; and (5) whether the appeal raises only local issues, or those of regional or statewide significance. Even where the Commission chooses not to hear an appeal, Appellants nevertheless may obtain judicial review of the local government's coastal permit decision by filing a petition for a writ of mandate pursuant to Code of Civil Procedure, Section 1094.5

In this case, for the reasons discussed further below, the Commission determines that the County’s approval of the project presents a substantial issue.

2. Substantial Issue Analysis

Shoreline Access

As described above, the County-approved project is located in a highly scenic and heavily used recreational area stretching between the community of Avila Beach and the City of Pismo Beach. The Pirate’s Cove area of Avila Beach is a popular visitor-serving recreational area offering numerous coastline opportunities including swimming, sunbathing, skimboarding, hiking, sightseeing, and stargazing on the beach.

The Appellants contend that the approved project is inconsistent with the Coastal Act and LCP policies that require maximum public access and recreation opportunities to and along the

shoreline because: 1) the project improvements and the closure of the park at night minimizes access and violates the public's prescriptive rights to the area; and 2) the paving and striping of the parking lot will lead to a reduction in the number of existing informal parking spaces, which will limit access to the site.

The Appellants specifically contend that the approved project is inconsistent with LCP Shoreline Access Policies 2 and 8, Recreational Policies 1 and 2, Coastal Act policies 30210, 30211 and 30604(c), and Coastal Zone Land Use Ordinance (CZLUO) section 23.04.420(k)(3), which require that a review of accessways consider safety hazards, adequate parking provisions, privacy needs of adjacent residences, adequate signage, and levels of improvement necessary to provide for access. The Appellants also cite Chapter 2 (pages 2-5 and 2-6) of the Coastal Plan Policies (Shoreline Access) and section (A)(7)(a) of the San Luis Bay Area Plan, which describe the LCP combining designation for Shoreline Access at Mallagh Landing (a.k.a. the Pirate's Cove area and beach). Shoreline Access Policy 2 requires maximum access from the public roadway to the shoreline and along the beach as a part of any new development. Shoreline Access Policy 8 requires maximum access to be provided in a manner that minimizes conflicts with adjacent uses and that where a proposed project would increase the burdens on access to the shoreline, additional access areas may be required to balance the impact of heavier use resulting from the construction of the proposed project. Recreational Policies 1 and 2 require coastal recreational and visitor serving facilities to be protected, encouraged and where feasible provided, and that visitor serving facilities have priority over non-coastal dependent use (but not over agriculture or coastal depended industry). Coastal Act Section 30210 requires that public recreational opportunities be maximized and Section 30211 further requires that development not interfere with existing public access. Please see **Exhibits 7a and 7b** for the Appellants' contentions and **Exhibit 8** for the applicable Coastal Act and LCP policies and standards.

Parking Lot Access

The Appellants contend that the number of approved parking spaces will not provide adequate public access. Specifically, the Appellants contend that the existing unpaved and unstriped parking lot "can and does accommodate 70-75 vehicles and sometimes more," and that the 70 approved spaces (62 spaces within the main parking lot and eight total spaces along the existing north and south shoulders of Cave Landing Road) will limit public access opportunities at the site. An Appellant further contends that the County-approved project would increase the demand for public access in this area, and thus additional parking spaces should be required.

Chapter 8 of the San Luis Bay Area Plan (Plan) includes language regarding the Pirate's Cove area (see **Exhibit 8**). Section (A)(7)(a) of the Plan requires that new development ensure that public access will be permitted on a permanent basis and that the level of public access required must be consistent with the extent of development approved and the potential prescriptive rights that may exist in the area. This section also states that, "the minimum requirement shall be a means of ensuring public uses of the sandy beach and a blufftop parking area for parking." This section further states that other improvements which *may be* appropriate (emphasis added) include: a) "parking area for 100 cars to be improved..." with the caveat that "selection of the site and improvement of the parking area is to be consistent with protection of archaeological resources and geological conditions on the site." See **Exhibit 8**.

The County-approved project includes paving and striping to provide a total of 70 formal parking spaces (see **Exhibit 5** for project plans). Approximately 15 to 20 additional informal spaces would continue to be available along the south side of Cave Landing Road, for a total of approximately 85 spaces available for vehicles in the immediate area of Pirate's Cove.

Commission staff has reviewed photos and other available information (including California Coastal Records Project photos, Google Earth, Mr. LoConte's submitted 3-month car count (undertaken by the Whales Cave Conservancy), County Parks' car count, etc.) and visited the site on numerous occasions, and determined that the existing parking lot includes space for approximately 65-75 vehicles depending on how individuals align their vehicles, within the unpaved/unstriped parking lot.

A three-month car count by the Whales Cave Conservancy was submitted with an Appellant's appeal (see **Exhibit 7b**). These counts do not include associated photos of the date and time the counts were taken, nor do they differentiate between parking lot and other parking areas, such as the Cave Landing Road shoulder and the area between the parking lot and the gate. The Appellant's counts and accompanying appeal narrative generally indicate higher vehicular use than the County's: exceeding 130 vehicles during four days between March 1 and June 1, 2013, and indicating the estimated range of average moderate use to be 107 vehicles. However, a review of photos showing the parking lot when there are approximately 70 cars present demonstrates that the parking lot is near full capacity, meaning there is little, if any, room for additional cars. Therefore, it appears likely that the counts provided by an Appellant include cars parked along Cave Landing Road. Although there is room nearby for 15 to 20 cars to continue to park along the south side of Cave Landing Road, as mentioned previously, additional cars could park along the entire length of Cave Landing Road (space allowing), which extends approximately 1/4 mile further down the hillside.³ Thus, it is possible that as many as 130 vehicles have utilized the parking lot and Cave Landing Road at certain times, but it appears infeasible that those cars could have been parked within the existing unpaved parking lot.

Moreover, County parking counts over the last several months indicate that more typically, the maximum number of cars in the lot is less than 70 (see **Exhibit 11**). SLO County Parks did not conduct car counts of the parking lot or shoulders predating the County's approval. However, once the project was appealed to the Commission, County Parks undertook an approximate three-month study (with photos) from April 2013 to June 2013. These counts show that the parking lot contained between 23 and 62 cars during weekends and between 7 and 69 cars on weekdays. Thus, the available evidence shows that the total number of cars that park in the immediate Cave Landing area of Avila Beach is generally lower than 70, with numbers typically ranging from 7-69, depending on variables such as weather, time of year, and how people align their cars in the existing unpaved and unstriped lot.

Based upon the above analysis, the County-approved 70 parking spaces (not including additional approximately 15-20 spaces to remain along the south side of Cave Landing road) would accommodate the vast majority of daily visitors throughout the year. Further, the project includes

³ There are existing signs along both sides of Cave Landing Road that restrict parking. However, there is no evidence that these restrictions are certified as part of the County's LCP, or that the signs received CDP authorization.

improvements to the bicycle and pedestrian trail that connects Pismo Beach to Avila Beach, and therefore, the project as a whole may increase opportunities for bicycle and pedestrian access while decreasing demand for vehicular parking. As such, and for all of the above reasons, this component of the approved project does not raise a substantial issue of conformance with the LCP and the Coastal Act's public access and recreation policies.

Prescriptive Rights Claims

An Appellant contends that the public has prescriptive rights to access the Pirate's Cove area and that this right extends to protection of the rugged, relatively undeveloped character of that access. This Appellant also contends that the prescriptive right prohibits the County from implementing nighttime closures. With respect to the existence of a prescriptive right (technically, an "implied dedication of an easement to the public") of public access, the County has now acquired the property and proposes to maintain public access to Pirate's Cove.

Several LCP and Coastal Act policies address prescriptive rights, including Shoreline Access Policy 1 and Coastal Act Section 30211 (see **Exhibit 8**). Also, Chapter 2 of the LCP's Coastal Plan Policies, Shoreline Access (pp. 2-29) states:

A public prescriptive right is a right of access over real property which comes into being as the public crosses land to gain access to the beach. Over time, the public gains rights through use. By law, the public must use the property for five years before a prescriptive right may exist. The establishment of prescriptive rights can be resolved between the property owners and interested individuals or groups. However, where this cannot be resolved, the government or an individual or group may bring suit on behalf of the public to confirm the public easement (prescriptive right) to such land for the public. Some areas present evidence that prescriptive rights may exist because they have been kept open through use during past years. However, there are several problems with prescriptive rights. The following basic findings must be made:

- The public must produce evidence that persons have used the land for the prescriptive five-year period, without permission and without effective interference, as they would have used public land.*
- The use must be substantial.*
- The public must show that the land has been used by members of the general public, not only neighbors or friends of the fee owner.*
- The use of the area has been with the actual or presumed knowledge of the owner and without significant objection of attempts by the owner to prevent or halt such use.*

In many areas where demand is regional in nature, more land than just the accessway gained through implied dedication is needed. Land is needed for parking, restroom facilities and other improvements associated with public access. These lands must be acquired through public purchase or through a condition of a permit for development. This is especially true when the land is

being used for non-priority uses and there is a need to offset the public loss. The Coastal Act requires that prescriptive rights be protected, which can be done through regulating development and acquisition. Pursuing establishment of such rights through the courts may only be advantageous in cases where access cannot be acquired by purchase or permit conditioning.

Whether the public has the right to use the trails leading to Pirate's Cove is not contested. The purpose of this project is to facilitate public access along these trails. While only a court can definitively establish whether an implied dedication has taken place, the Commission must ensure that new development does not interfere with the public's access to the sea. With the possible exception of night closures, addressed below, this project enhances public access to the sea. Thus, the project does not generally interfere with the public's access to the sea and is consistent with the LCP and Section 30211 of the Coastal Act. This contention therefore does not raise a substantial issue of LCP conformity.

Nighttime Closure

The County's approval allows for the entire park facility, including the parking lot, beach, the access trail that leads to it, and the blufftop trail, to be closed from 10 pm to 6 am every day. An Appellant contends that this night closure violates Article 10, Section 4 of the California Constitution, as well as numerous provisions of the Coastal Act and the Local Coastal Plan (in addition to prescriptive rights, as discussed above). Specifically the Appellant has cited LCP Access Policy 2, LCP Recreation Policies 1 and 2, and Coastal Act section 30640(c). In addition, the Appellant cites Coastal Act policies 30210 and 30211, which require that public recreational opportunities be maximized and that development not interfere with existing public access. See **Exhibit 8** for these policies.

The approved nighttime closure would reduce public access and recreational opportunities at a significant public access destination and resource. Although the County has provided reasons for such nighttime restrictions (including see **Exhibit 9**), the approved closure does not maximize public access, as required by the LCP and the Coastal Act. A nighttime closure of this public park would prohibit access to the beach at night, because accessing this beach from other locations is infeasible, essentially except by boat or kayak, etc. In addition, the blufftop trail between Avila Beach and Pismo Beach is an important link between segments of the California Coastal Trail (CCT) and its nighttime closure would therefore interfere with an approximate 20-mile-long section of trail stretching from Rattlesnake Canyon to the Santa Barbara/San Luis Obispo County line. Thus, the nighttime closure component of the County-approved project raises a substantial issue with the above-mentioned Coastal Act and LCP policies, which require maximum public access to and along the shoreline and the maintenance of existing access with new development.

Stairs

An Appellant contends that the approved stairs (see **Exhibit 5** for project plans), which are to be located at the base of the bluff, will ultimately fail due to coastal storms and associated wave run-up, and that this failure will cause the accessway to be closed, thereby reducing public access, inconsistent with LCP and Coastal Act policies requiring maximum public access. However, in designing the stairs, the County considered the dynamic environment and historic storm patterns at this site. Specifically, the County's Engineering Geologist and the project's

Engineering Geologist have both confirmed that the stairs, which will be made of concrete with rust-resistant coated rebar and attached to a large boulder on the beach, are adequately designed for this location. Thus, the stairs should provide access to the beach for the foreseeable future. And similar to other beach access stairways up and down the County's coast, if the stairs are damaged in the future, SLO County Parks' has indicated on the record that it will undertake repairs to the stairs as quickly as possible (see **Exhibit 6**, pp. 93-94).

In addition, to currently access the beach, the public needs to use informal rock steps that are carved out of the toe of the bluff as necessary each year. There is also a rope that helps individuals climb down to the beach. The approved stairs will make it easier for more members of the public to access the beach, compared to the existing situation. Thus, the approved stairs will maximize public access opportunities, consistent with the public access requirements of the Coastal Act and the LCP. For the above reasons, this contention does not rise to the level of a substantial issue.

California Coastal Trail Segment

An Appellant contends that the County has necessarily delayed the implementation of a critical segment of the California Coastal Trail (CCT) by combining the trail improvements with the parking lot improvements. The County has actively sought to relocate a portion of the trail to a safer location since accepting ownership of Parcel 3 in 2008. For decades, the blufftop trail between Cave Landing Road in Avila Beach and Bluff Drive in Pismo Beach has been used as an informal bicycle and pedestrian trail, and thus the trail has acted as a de facto segment of the CCT for many decades. The County-approved project would merely improve this existing trail segment, through inclusion in this project, and officially designate this segment as a component of the CCT when the project is completed. While the other components of the larger project (improvements to the parking lot and trail to the beach, new stairs, etc.) have raised their own issues in the County process, the length of time that this project has been active in the County's process is not unheard of or unduly long. In any case, approval of this CDP would allow construction of this segment of the CCT, thus, this contention does not rise to the level of a substantial issue.

Shoreline Access Conclusion

The County's approved nighttime closure of the entire park facility would reduce public access and recreational opportunities at a significant public access destination. The public has had unlimited nighttime access to the entire area for decades and permanent closure of the entire park facility is incompatible with the Coastal Act and the certified LCP. For this reason, the County's approval raises a substantial LCP and Coastal Act conformance issue with respect to public access and recreation.

Visual and Scenic Resources

The Appellants contend that the approved project will have impacts on scenic and visual resources due to the paving with asphalt and striping of the parking lot in particular, and the overall development of the site in general (e.g. through the construction of a restroom building, signage, picnic tables, stairs to the beach, etc.), resulting in a loss of the character of the site.

The Appellants have cited LCP Visual and Scenic Resource Policy 4 (Chapter 10 of the Coastal Plan Policies) and CZLUO section 23.040.420(c)(1), which require that new development in

rural areas be sited to minimize its visibility from public view corridors and that structures shall be designed to be subordinated to, and blend with, the rural character of the area.⁴ LCP Policy 1 is also relevant here, which states that, "Unique and attractive features of the landscape, including but not limited to unusual landforms, scenic vistas and sensitive habitats are to be preserved protected, and in visually degraded areas restored where feasible." The project site is additionally within the Ontario Ridge Sensitive Resource Area (SRA), for which the LCP requires additional development standards regarding location of development, visibility, ridge-top development, landscaping requirements, and open space preservation (CZLUO Section 23.04.210c). See **Exhibit 8**.

The County-approved project allows for the construction of an asphalt parking lot, bioswales, new stairs to the beach, an improved trail segment of the CCT (with cut-slopes and a new bridge), picnic tables, benches, interpretive signs, and garbage cans, all within this highly sensitive visual area, characterized by striking bluffs, blufftops, and rolling hillsides. While the visual impacts of several components of the approved project have been minimized (e.g. the restroom has been re-located to the inland (north) side of Cave Landing Road, and the approved bridge (over an existing drainage feature between Pismo Beach and Avila Beach) is low-lying and designed to blend with the surrounding landscape, other components of the approved project will impact visual resources in this highly scenic area. For example, the existing unpaved dirt parking lot blends in with the adjacent rural feel of the environment. Paving the parking lot with black asphalt will have significant visual impacts on the rural nature of the area by changing the lot from a sandy brown color to a dark black color, especially when seen from the public trail along the inland bluff, or from above the park on Ontario Ridge

Therefore, although the majority of the project has been designed appropriately to minimize visual impacts (and include necessary components providing a public benefit), the paving of the parking lot with black asphalt does not blend with the rural character of the area, and is not subordinate to it, inconsistent with the visual policies of the LCP. Thus, the County's approval, for this project component, raises a substantial LCP conformance issue with respect to visual resources.

Water Quality

An Appellant further contends that paving the parking lot will create impacts to existing drainage patterns, stormwater management and overall water quality issues. The Appellant contends that paving the parking lot with impermeable asphalt is inconsistent with the LCP's requirement that the surface be permeable (see **Exhibit 7b**). As mentioned above, section (A)(7)(a) of Chapter 8 of the San Luis Bay Area Plan includes language regarding the overall Pirate's Cove/Mallagh Landing area. Section (A)(7)(a) of the Plan requires that new development ensure that public access will be permitted on a permanent basis and that the level of public access required must be consistent with the extent of development approved and the potential prescriptive rights that may exist in the area. This section also states that, "the minimum requirement shall be a means of ensuring public uses of the sandy beach and a blufftop parking area for parking." This section further states that that other improvements which *may* be appropriate (emphasis added) include:

⁴ An Appellant also cites Coastal Act Sections 30251 (Scenic and Visual Qualities) and 30253 (Community Character), but the LCP, not the Coastal Act, is the standard of review.

a) "The parking area is to be surfaced with a permeable material..." with the caveat that "selection of the site and improvement of the parking area is to be consistent with protection of archaeological resources and geological conditions on the site" (see **Exhibit 8**).

The County and its consultant (Fall Creek Engineering) investigated the possibility of using permeable pavement, and also evaluated using no pavement at all. The County ultimately rejected those ideas for several reasons, including because the installation of permeable pavers or other types of permeable surfacing would result in archaeological impacts and could exacerbate unstable geologic conditions due to the extent of excavation needed for installation of permeable paving and resulting drainage conditions. Specifically, communications with the County's engineering firm indicate that the installation of permeable materials would have significant impacts to the native soils of the parking lot (which contain significant archaeological resources) because a permeable material would necessarily allow saturation of the underlying clay, resulting in this clay expanding. This causes two problems. First the weight of a vehicle will compress the saturated clay, so that ruts and depressions develop in the traffic lanes. These ruts tend to concentrate surface runoff and cause erosion (similar to what is occurring currently). Second, if alternative types of permeable surfaces to permeable asphalt or concrete are considered, such as an interlocking open lawn paver grid (as suggested by the Appellant), these surfaces would not be uniformly supported and would break up. To prevent these conditions, the clay soils could be amended (engineered) or removed, but in this case, the underlying clay soils cannot be disturbed due to archaeological concerns (see next section below).

The County's Hydrology and Drainage Analysis also determined that not paving the lot will result in continued rutting and erosion of the parking lot and surrounding blufftops. Also, the new bluff path alignment will result in slightly increased stormwater flows into the parking lot area, which would result in increased erosion and damage to an unpaved lot, but should not result in such damage to a paved lot, including because the stormwater flows will be directed into on-site bioswales and away from the landslide complex. Lastly, in terms of water quality protection, the approved bioswales will be better at filtering pollutants from the stormwater than the coarse gravel layer the Appellant suggests be used.

Finally, the County's conditions of approval include numerous requirements to ensure proper implementation of the project's water quality protection measures, including requirements for construction and drainage plans. Therefore, this appeal contention does not result in a substantial issue of conformance with the LCP.

Archaeology and Cultural Resources

As mentioned above, the project site, including a much larger area surrounding the site, is located on a large prehistoric archaeological site. A cultural resources report prepared for this project clearly identifies this site as having an important cultural and archaeological significance. Descendants of the Northern Chumash Indians continue to perform ceremonies here and are heavily invested into ensuring that every precaution is taken to protect important cultural resources.

An Appellant contends that the project, specifically the paving of the parking lot, will have impacts to the archaeological site, and that LCP Archaeology Policy 5 requires a mitigation plan

to protect the site (see **Exhibit 7a**). LCP Archaeological Policy 5 requires that an applicant follow certain procedures where substantial archaeological resources are found as a result of a preliminary site survey and also requires a mitigation plan to protect culturally sensitive sites (see **Exhibit 8**). Priority mitigation measures for preservation of an archaeological site include avoidance, covering the site with a layer of fill sufficiently thick to insulate it from project impacts, and lastly, removal and preservation of archaeological artifacts off-site. In this case, County Parks designed the parking lot improvements to be consistent with this policy, by leveling the ruts and capping the site with a layer of fill and proposing asphalt surfacing instead of a permeable surface so as not to need to excavate or impact the native soils, which are found just below a thin layer of fill.⁵ The County in its approval also required a full mitigation plan (often called a "Phase III program"), a monitoring plan and a follow up letter from the archaeologist stating that all necessary field work, as identified in the Phase III program, has been completed.

Lastly, much care was undertaken by the County to involve the local Northern Chumash Indian tribe throughout the project design and permitting process. Staff has received correspondence from a member of the tribal council (Fred Collins), speaking on behalf of the Northern Chumash, which states support of the approved project as conditioned to protect archaeological resources.

Commission staff reviewed this aspect of the Appellant's contentions and concurred that the County's approval adequately addresses archaeological concerns and appropriately conditions the project to ensure protection of the site. Thus, this contention does not raise a substantial LCP conformance issue with respect to archaeological and cultural resources.

Biological Resources

An Appellant contends that the project will have impacts to the endangered black-flowered figwort and the Hoover's bentgrass, due to certain project components, such as the paving of the parking lot (see **Exhibit 7a**).⁶ While the Appellant did not cite any specific LCP policies regarding this contention, the LCP's Environmentally Sensitive Habitats (ESH) policies and corresponding CZLUO standards protect sensitive habitats, including wetlands, riparian vegetation, terrestrial habitat and marine resources. These include ESH Policy 30, which requires protection of native vegetation, Policy 35, which requires development to be designed to disturb the minimum amount possible of wildlife or plant habitat, and Policy 31, which requires that the design of trails in and adjoining sensitive habitat areas minimize adverse impact on these areas. CZLUO section 23.07.176 is intended to preserve and protect rare and endangered species of terrestrial plants and animals by preserving their habitats. This section states that, "Development shall be sited to minimize disruption of habitat," that "Emphasis for protection is on the entire ecological community rather than only the identified plant or animal," and that, "Vegetation that is rare or endangered, or that serves as habitat for rare or endangered species shall be protected." This section also states that, "Any pedestrian or equestrian trails through the habitat shall be shown on the site plan and marked on the site," and that, "The biologist's evaluation required by Section 23.07.170a shall also include a review of impacts on the habitat that may be associated with trails." See **Exhibit 8**.

⁵ County Parks indicates that there is approximately 18 inches of fill currently on top of the native soils.

⁶ In particular, an Appellant is concerned that the paving of the parking lot with non-permeable surface will displace 700 cubic yards of water, and that "the impact of this runoff upon the back-flowered figwort was not discussed."

The County undertook a biological report in 2010 and a botanical survey in 2012, which both identified two sensitive botanical resources within the survey boundaries: the black-flowered figwort (*Scrophularia atrata*) and purple needlegrass (*Stipa pulchra*). The black-flowered figwort is listed on List 1B.2 of the California Native Plant Society's (CNPS) inventory of rare, threatened, or endangered plants, and was documented in the coyote brush scrub and coast live oak woodland habitat occurring southwest of the parking lot and along the existing trail to Pirate's Cove beach. The reports indicate that the black-flowered figwort could be impacted by the project activities, and specifically by the improvements to the trail from the parking lot to the beach (see **Exhibit 12** for a map identifying these resources).

The purple needlegrass was found towards the eastern end of the project site near the CCT bluff trail, but would not be impacted by any of the approved improvements to this trail. The Hoover's bentgrass was not found on the project site.

The site is not within a mapped Environmentally Sensitive Habitat Area (ESHA); however this area may qualify as unmapped terrestrial habitat ESHA due to the presence of the black-flowered figwort. The LCP policies listed above require protection of native vegetation and that vegetation that is rare or endangered, or that serves as habitat for rare or endangered species, shall be protected. In this case, the black-flowered figwort is listed on CNPS's 1B.2 list because it is rare (although it is neither federally or state listed as endangered or threatened). The black-flowered figwort is known to occur within the project boundaries and likely would be impacted by the trail improvement.

As mentioned, the Appellant contends that the paving of the parking lot will impact the black-flowered figwort. In this regard, water quality staff have addressed this issue and concluded that the paving of the lot will not have a noticeable difference on water quantity flows in the area of the black-flowered figwort. Even if flows may be reduced slightly from the proposed parking lot design, the black-flowered figwort will not be impacted, including because the plant is drought tolerant and does not rely on sustained flows of water, but rather takes its water from moisture in the air and periodic rain fall.

The County conditioned the project to require submission of a mitigation plan, to be developed and implemented by a qualified biologist/restoration specialist, if avoidance of the black-flowered figwort is not feasible. Such a plan may include salvaging/transplanting figwort plants that would be impacted by the trail development and relocating them to a suitable habitat, taking cuttings from the impacted plants prior to construction, or collecting figwort seeds for distribution in a designated mitigation/restoration area. However, the LCP requires that development avoid impacts to sensitive plant species and does not provide for relocation of threatened species to provide for development. Also, the presence of the black-flowered figwort may indicate that the project site is ESHA, and thus, to ensure that the project is consistent with the LCP, this habitat may not be disturbed. Thus, the County's approval raises a substantial LCP conformance issue with respect to biological resources.

Other Contentions

An Appellant contends that the County failed to adequately evaluate the project correctly under CEQA in general (e.g. failing to consider the "No Project" alternative or requiring an environmental impact report (EIR)), and specifically that the County failed to analyze

cumulative impacts (including in relation to future development) or ADA requirements relative to the “No Project” alternative). However, the only appropriate grounds for appeal are whether the project is consistent with the certified LCP and the Coastal Act’s public access policies. Thus, any CEQA contentions are not appropriate grounds for appeal.

3. Substantial Issue Conclusion

The County-approved project raises substantial LCP conformance issues regarding public access and recreation and the protection of public viewsheds and ESHA. Therefore, the Commission finds that a substantial issue exists with respect to the County-approved project’s conformance with the certified San Luis Obispo County LCP and the public access and recreation policies of the Coastal Act, and takes jurisdiction over the CDP application for the proposed project.

G. COASTAL DEVELOPMENT PERMIT DETERMINATION

The Cave Landing Trail and Parking Lot Improvements project site is located within San Luis Obispo County’s CDP jurisdiction area and thus the standard of review is the San Luis Obispo certified LCP and, because the project is located between the first public road and the sea, the public access and recreation policies of the Coastal Act.

All Substantial Issue Determination findings above are incorporated herein by reference.

Public Access

Coastal Act Section 30604(c) requires that every coastal development permit issued for any development between the nearest public road and the sea “shall include a specific finding that the development is in conformity with the public access and public recreation policies of [Coastal Act] Chapter 3.” The proposed project is located seaward of the first through public road (Avila Beach Drive).

The Coastal Act and the County’s certified LCP require protection and enhancement of public access to and along the shoreline, including prioritizing public recreational use and development in areas along the shoreline such as this one. Coastal Act Section 30210 requires that public recreational opportunities be maximized,⁷ and Section 30211 further requires that development not interfere with existing public access. Section 30221 protects oceanfront land such as the area associated with this application for recreational use, Section 30220 protects coastal areas suited for water-oriented recreational activities, Section 30222 prioritizes the use of lands suitable for visitor-serving commercial recreational facilities, and Section 30223 similarly reserves upland areas necessary to support public recreational uses for such uses. Coastal Act Section 30213 requires lower-cost visitor and recreation facilities to be protected, encouraged, and where feasible, provided. Coastal Act Section 30214 requires implementation of public access 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.

⁷ Coastal Act Section 30210 direction to maximize access represents a different threshold than to simply provide or protect such access, and is fundamentally different from other like provisions in this respect. In other words, it is not enough to simply provide access to and along the coast, and not enough to simply protect access; rather such access must also be maximized. This terminology distinguishes the Coastal Act in certain respects, and provides fundamental direction with respect to projects along the California coast that raise public access issues, like this one.

The LCP has similar policies protecting and requiring maximum access to the shoreline. For example, Shoreline Access Policy 2 requires maximum access from the public roadway to the shoreline and along the beach as a part of any new development. Shoreline Access Policy 8 requires maximum access to be provided in a manner that minimizes conflicts with adjacent uses and that where a proposed project would increase the burdens on access to the shoreline, additional access areas may be required to balance the impact of heavier use resulting from the construction of the proposed project. Recreational Policies 1 and 2 require coastal recreational and visitor serving facilities to be protected, encouraged and where feasible provided, and that visitor serving facilities have priority over non-coastal dependent use (but not over agriculture or coastal depended industry). Implementing these policies, Coastal Zone Land Use Ordinance (CZLUO) section 23.04.420(k)(3) requires that a review of accessways consider safety hazards, adequate parking provisions, privacy needs of adjacent residences, adequate signing, and levels of improvement necessary to provide for access. Additionally, Chapter 2 (pages 2-5 and 2-6) of the Coastal Plan Policies (Shoreline Access) and section (A)(7)(a) of the San Luis Bay Area Plan, describe the LCP combining designation for Shoreline Access at Mallagh Landing. See **Exhibit 8** for these policies and standards.

These overlapping policies protect the Pirate's Cove area, including access along Cave Landing Road, the parking lot and trails, and including in terms of providing lower-cost access and recreational opportunities.

Potential Public Access and Recreation Benefits of Proposed Project

The Cave Landing/Pirate's Cove area, including the surrounding Ontario Ridge area (stretching between and above Avila Beach and Pismo Beach) is extremely popular and heavily visited, and thereby provides significant recreational opportunities for residents and visitors alike. A multitude of existing trails in the area (e.g. up to Ontario Ridge, between Avila Beach and Pismo Beach, to the beach, along the blufftop) are regularly used and provide a visually stunning coastal experience. Pirate's Cove beach is a heavily used recreational resource that occupies a relatively undeveloped stretch of coast that is sandwiched between more developed areas upcoast and downcoast. Currently the trail to the beach consists of informal steps that are carved into the bluff face, and a rope to help people down to the beach. Because of this and the beach's relative seclusion, Pirate's Cove beach is often used for nude sunbathing and is commonly known as a clothing optional beach.

The proposed project at its core is a public access enhancement project that would facilitate public access to the beach throughout this highly used recreational area. The proposed project would support public access and recreation in this area by making improvements to the pedestrian and bicycle friendly access trail along the bluff and the pedestrian trail to the beach. Specifically the proposed project will improve connectivity to the surrounding recreational amenities and the beach by improving the bluff trail, formalizing the public parking spaces (including by adding a minimum of three handicapped parking spaces), improving circulation patterns within the parking lot, adding picnic tables, interpretive signage, and stairs to the beach. The improvements would provide safer and easier access to Pirate's Cove beach as well as improve recreational access throughout this popular area for all users. The proposed access improvements would also improve upon the existing trail that links Avila Beach and Pismo Beach, and would contribute to a larger overall network of pedestrian and bicycle trails through the region and the State.

Lastly, the LCP includes language which encourages enhancement of the site. Pages 6-6 through 6-7 of the San Luis Bay Area Plan state that, "Recreational use of the area should be retained and a trail system provided rather than allowing continued uncontrolled access and further environmental degradation of the area. Such protection is especially needed in order to protect significant archaeological resources on Mallagh Point."

Nighttime closure

While in many ways this is a highly beneficial public access improvement project, coastal improvement projects such as this can result in a variety of impacts on coastal resources, including adverse effects to existing access opportunities. If not carefully planned for, such projects can ultimately result in a reduction in access to the beach and shoreline, or result in unintended impacts to the character of the site or the sensitive habitat of the site, or more. Most visibly, the Commission faces questions of reductions in access through projects that propose to close public coastal facilities at certain times. Nighttime closures are often the most common type of access reductions that are proposed with new or expanded public access facilities.

Several LCP and Coastal Act sections are relevant to the discussion of beach closures, or curfews. For example, Coastal Act Section 30210 requires that maximum public access and recreational opportunities 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. Coastal Act Section 30214 states that implementation of public access 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 natural resources..." LCP Shoreline Access Policy 2 requires that maximum public access from the nearest public roadway to the shoreline and along the coast be provided in new development. The intent of this policy and CZLUO 23.04.420 is to assure public rights of access to the coast are protected as guaranteed by the California Constitution. Lastly, section (A)(7)(a) of the San Luis Bay Area Plan, which is specific to this area, requires that new development be required to incorporate means to ensure that public access will be permitted on a permanent basis, and that the "minimum requirement shall be a means of ensuring public use of the sandy beach and a blufftop area for parking." This standard also lays out additional requirements that may be appropriate.

The Commission, through these Coastal Act policies (and through LCP policies where projects have occurred within SLO County), has required maximum public access in new developments along the coast, typically including unobstructed access to the beach 24 hours a day, seven days a week. In terms of nighttime closures, the Commission has authorized various closure times, yet these have occurred relatively rarely. Where the Commission has allowed night closures or "curfews," the Commission has also often required these to be allowed on a limited timeframe only, requiring the Applicant to come back to the Commission to extend any allowed closure for additional time.⁸ In the most recent of cases in which the Commission has allowed nighttime

⁸ See for example, CDP 5-93-232 (City of Los Angeles; closure of Alamitos Ave, Belmont Pier and La Verne lots from 10 pm to 8 am for 1 year); CDP 6-02-90 (City of San Diego; approval of proposal to extend closure of 3 parking lots in Mission Bay from 2 am to 4 am to 10 pm to 4 am for 2 years); CDP 3-81-041-A (City of Santa Cruz;

public access closures in the Central Coast, these have been limited to 12 am to 5 am, including for public safety reasons and to prevent overnight camping.⁹

In the case of Pirate's Cove, the Applicant is proposing to close the proposed new park facility, including the parking lot, the bluff trail, the trail leading to the beach, and effectively the beach itself (since access to the beach from other locations other than this trail is infeasible, except by boat or kayak, etc.), between the hours of 10 pm and 6 am. The Applicant has cited Coastal Act section 30214, which allows implementation of public access to take into account topographic and geologic site characteristics. County Parks has argued that there are some significant safety and liability concerns that the County holds due to the unique nature of this site, including steep cliffs, an active landslide complex, steep narrow trails down to the beach, and relative darkness (including no current or proposed lighting). In addition, the County has cited public safety concerns regarding nighttime use of this area. The County has documented numerous occurrences of theft, public drunkenness, lewd acts, fighting, vandalism, indecent exposure, drug dealing, and large parties at this location, especially at night (see **Exhibit 9**).¹⁰ County Parks has argued that the secluded and off-the-beaten-path location of the site, in combination with its rural location, has had the unintended consequence of attracting illegal activity.

The proposed closure of the entire park facility between 10 pm and 6 am, including access to and along Pirate's Cove beach, would result in the loss of the public's ability to access and enjoy the trails (including the important blufftop trail) and Pirate's Cove beach 24 hours per day, seven days per week. Therefore, as currently proposed, the project would have a direct adverse impact on existing public access to the site. Although the County has provided evidence demonstrating that there is a valid security issue related to criminal activity in the parking lot, the evidence provided is not sufficient to demonstrate a public safety problem related to public access to the trail and the beach that would warrant closure of these areas. Therefore, the closure of the entire facility is more than is required to address the public safety concerns. Instead, the public safety concerns can be met, and some access to the shoreline can remain open at all times, by allowing for closure of the parking lot between 10 pm and 6 am, when the majority of the problematic criminal activities have occurred.

Further, regarding the natural hazards at the site, the Commission's approval allows for the County to install aesthetically appropriate signage in the area alerting the public to the rugged nature of the area, that steep cliffs exist, to stay on the trail, that no lifeguard is on duty, and to use the site at your own risk. Signage such as this is a common technique that public agencies use up and down the coast to alert the public of potential danger. In this way, these areas can remain wild and rugged but still be accessible as required by the Coastal Act and the LCP. Here, access to Pirate's Cove beach can remain open while appropriately warning users of the risks involved in accessing the area, especially at night.

approval of closure of the Santa Cruz wharf between 2 am and 5 am); CML-LUP-SUB-R3 (City of Carmel; approval of beach parking lot closure from 12 am to 5 am).

⁹ CDP A-3-STC-07-057 (City of Santa Cruz; approval of parking restrictions along West Cliff Drive between 12 am and 5 am);

¹⁰ In 2013, there were 121 reported incidents. Between the months of January and April 2014, there have been 38 reported incidents. Commander Aaron Nix of the San Luis Obispo County Sheriff's Office has stated that the Pirate's Cove/Cave Landing area is on pace in 2014 to match or exceed calls for service in 2013.

Thus, given the amount of illegal activity that takes place in the parking lot, especially at night, the Commission finds it consistent with sections 30210 (requiring maximum access, consistent with public safety needs) and 30214 (recognizing the need to regulate the time, place and manner of access, depending on individual facts and circumstances) to impose some limit to the hours of operation of the proposed parking lot; however closing Pirate's Cove beach (and the access trail that leads to it), and the blufftop trail that links Avila Beach and Pismo Beach is not necessary to address the public safety issue that has been presented, and such a closure does not protect and maximize public access to the shoreline, as required by the LCP and the Coastal Act. Because the identified and documented problems are associated with the parking lot, closing the parking lot for a limited period of time during the night will help minimize criminal activity in the area, and enable the Sheriff to more effectively address illegal activities that are occurring there.

While **Special Condition 2** allows for a limited night closure, it is also recommending this closure be for a limited period of time. Because of the high public demand for access to the beach, the closure of the parking lot should not be approved by the Commission as permanent, but rather limited in scope. **Special Condition 2**, therefore, additionally limits the closure of the parking lot to five (5) years from the commencement of the facility's operation. If the Applicant desires to extend the closure period beyond five years from the date of approval, an evaluation of alternatives to closing the parking lot at 10 pm and reopening at 6 am shall be included in the application (in addition to the annual monitoring reports).

However, the trails, including the blufftop trail link, shall remain available 24 hours a day seven days a week to allow access along the shoreline. In addition, the trail from the road to the beach (including the designated pathway through the parking lot) shall be made available to the public at all times to allow access to Pirate's Cove beach. The blufftop trail is crucial in allowing the public to travel between Avila Beach and Pismo Beach, whether that is during the day or night and will be designated as a segment of the CCT with this approval. In addition, the trail to the beach must remain open to allow the public to access the beach below the parking lot to recreate, stargaze, walk, sit, etc. as provided for in the Coastal Act and LCP, and thus must be assured of remaining free and open to the public at all hours. Thus, **Special Condition 2** requires submittal of a Signage and Operations Plan that provides for, among other things, the closure of the parking lot only, between the hours of 10am and 6am, for a limited period of five years.

Construction Impacts on Public Access

Finally, with respect to construction impacts, this project will: require the movement of large equipment, workers, materials, and supplies in and around the shoreline area and public access points; include large equipment operations in these areas; result in the temporary loss of public access use areas to a construction zone; and generally intrude and negatively impact the aesthetics, ambiance, serenity, and safety of the recreational experience at these locations. These public recreational use impacts have been minimized (through the Applicant's proposed BMPs) and can be mitigated through construction parameters that limit the area of construction, limit the times when work can take place (to avoid weekends), clearly fence off the minimum construction area necessary, keep equipment out of coastal waters, require off-beach equipment and material storage during non-construction times, clearly delineate and avoid to the maximum extent feasible public use areas, and restore all affected public access areas at the conclusion of construction. A construction plan is required to implement these measures (see **Special Condition 3**). In addition, to provide maximum information to the beach-going public during all

construction, the Applicant must maintain copies of the CDP and approved plans available for public review at the construction sites, as well as provide a construction coordinator whose contact information is posted at the sites to respond to any problems and/or inquiries that might arise (see **Special Condition 4**).

Conclusion

Pirate's Cove beach and the larger Ontario Ridge area are highly popular and serve as an exceptional recreational opportunity for locals and visitors throughout the year. Improvements to the area's main parking lot and trails will benefit the larger public and facilitate access. However, the proposed project will not maximize public access consistent with the Coastal Act and LCP, because it would close the entire park facility to the public between 10 pm and 6 am. The beach and trail to the beach, and the blufftop trail (new CCT segment) connecting Avila Beach and Pismo Beach, are valuable public accessways and must remain available to the public 24 hours a day seven days a week. Therefore, **Special Condition 2** requires the trails and beach to be open to the public at all times.

However, the Applicant has identified a significant public safety concern related to the parking lot. Therefore, **Special Condition 2** allows the parking lot to be closed for a limited timeframe. However, there are numerous parking spaces along Cave Landing Road that could be utilized for nighttime visitors, including the 12 formalized parking spaces that would be required pursuant to **Special Condition 1**. Thus, although the CDP, as conditioned, would limit parking in the parking lot, at least 12 cars could still park along the road at night. The public could therefore still access the trails and beach at night. Thus, with imposition of special conditions, the project is consistent with the access and recreation policies of the LCP and Coastal Act.

H. VISUAL RESOURCES

The LCP includes strong protections for visual and scenic resources along the coast and requires new development to respect its setting. It also provides enhanced protection for LCP-designated special view areas, like that associated with Ontario Ridge. The LCP has multiple provisions that require new development to be sited and designed to ensure protection of significant visual resources, including views within public viewsheds. Such policies and protections specifically protect areas having regional public importance for their natural beauty by ensuring that new development is appropriately designed and constructed to have minimal to no adverse impact upon identified visual resources. Also, views from beaches and the shoreline are protected visual resources under the LCP. See **Exhibit 8** for the applicable LCP provisions.

Location and Visual Setting

As described above, the proposed project site is located on a section of rural coastal bluff between the more urban development in both Avila Beach and Pismo Beach up and downcoast respectively. Forming a striking and picturesque surrounding above both of these communities, and the subject site, is Ontario Ridge, a significant coastal feature which rises steeply from the ocean to almost 750 feet above the ocean. Ontario Ridge is an LCP-mapped Sensitive Resource Area (SRA) and the LCP requires extra measures to ensure that any development along its slopes adequately protects visual and scenic resources. In general, the purpose of an SRA is to identify areas of high environmental quality and in so doing, to enhance and maintain the scenic values accruing to the public from the preservation of the scenic and environmental quality of San Luis

Obispo.

In this case, the Ontario Ridge SRA LCP designation is based on the protection of its visual resources. According to the San Luis Bay Area Plan, hillside protection is important because Ontario Ridge forms a major scenic backdrop.¹¹ In addition, Ontario Ridge forms an important scenic backdrop for the coastal area of Avila Beach and Pismo Beach, as well as for Avila Valley.¹² All of the proposed project components are located within the Ontario Ridge SRA.

A majority of the proposed project components (except for an approximately 800 linear foot section of trail to avoid a landslide complex, new stairs located at the toe of the bluff adjacent to Pirate's Cove, the new waterless restroom and the four parking spaces on the north side of Cave Landing Road) would be located on existing disturbed area. The construction of the restroom and the stairs at the beach, while admittedly placing development in a more rural public viewshed, are necessary components of a public access improvement project which is designed to accommodate the public. The blufftop trail is being realigned to avoid geologic hazards associated with the Pirate's Cove Landslide Complex and the parking spaces are within the County's Right-of-Way. The parking lot, proposed to change from a hard-packed dirt lot to a paved and striped black asphalt lot, is the most significant visual impact of the entire project.

LCP Visual and Scenic Resource Policy 1 provides broad protections for scenic features, which in this case includes the Ontario Ridge. This policy states that unique and attractive features of the landscape, including, but not limited to unusual landforms, scenic vistas and sensitive habitats are to be preserved and protected. By providing a scenic backdrop to both Avila Beach and Pismo Beach, the Ontario Ridge is a significant feature to be preserved. Visual and Scenic Resource Policies 2 and 4 provide standards for new development in San Luis Obispo. According to Policy 2, "permitted development must be sited so as to protect views to and along the ocean and scenic coastal areas." In addition, Policy 2 states that, "wherever possible, site selection for new development is to emphasize locations not visible from major public view corridors." Visual and Scenic Resource Policy 4 further reiterates that new development must be minimized to limit impacts to views in rural areas, as is the case with this project: "new development shall be sited to minimize its visibility from public view corridors." More specifically, "Structures shall be designed (height, bulk, style) to be subordinate to, and blend with, the rural character of the area."

Parking Design and Protection of Visual Resources

The proposed project is by and large improving already existing disturbed areas. However, several components of the project are entirely new impacts. In terms of the former, the parking lot is proposed to be paved, striped, and enhanced with over 4,500 square feet of bioswales and other stormwater retention devices (and public overlook areas), yet a large dirt parking lot, in the same footprint, currently exists. The trail to the beach and the blufftop trail are proposed to be improved, yet these trails currently exist in largely the same area.¹³ In terms of new impacts, the proposed restroom is now located north or inland of Cave Landing Road so as to avoid being a

¹¹ San Luis Bay Area Plan Pirate's Cove (Avila Beach Urban Area), pages 6-6 to 6-7.

¹² San Luis Bay Area Plan, Ontario Ridge SRA, page 7-1.

¹³ A portion of the trail between Avila Beach and Pismo Beach is being relocated approximately 150 feet inland for approximately 800 linear feet to better avoid geologic hazards, and to have better connectivity to the parking lot.

visual impact in the parking lot area. The proposed stairs adjacent to the beach at the toe of the bluff have been designed to blend in with the surrounding environment as much as feasible, at the same time ensuring longevity and integrity of design. The new bridge and trail segment between Avila Beach and Pismo Beach have been designed to minimize cut slopes, be as low profile as is feasible, and blend in with the surrounding environment, to protect the viewshed, consistent with the LCP.

Formalization of the existing dirt parking lot, through paving and striping, and the installation of bioswales, picnic tables, benches, signage, garbage cans, etc., has the potential to adversely impact visual resources in this area. However, the bioswales, picnic tables, benches, signage, garbage cans, etc. are all common components of public access projects and do not significantly impact the viewshed here. The parking lot's size and prominence in the area, however, cause this component of the project to stand out. While parking currently occurs throughout the lot, Commission staff has been out to the site many times and has communicated with County Parks staff regarding how to protect the viewshed from the new trail looking southwest toward Avila Beach. The original design proposed by the County was comprised of 35 spaces with a host of public areas and viewshed corridors on the western and southwestern side of the parking lot. Through design changes, and concerns over the amount of parking spaces needed by the public, the proposed project now has 62 spaces in a circular pattern around the entirety of the lot (8 located on the Cave Landing Road shoulder), with spaces now located within this viewshed. Thus, to ensure visual resources are protected consistent with the LCP, and because alternative parking designs are feasible, Commission staff is recommending spaces #50, #51, #52 and #53 to be relocated for viewshed enhancement (See **Special Condition 1**). This condition also requires an additional public overlook to be constructed, with public amenities in the location of parking spaces #50, #51, #52 and #53. Finally, staff recommends parking spaces #50, #51, #52, and #53 be relocated to the south side of Cave Landing Road (adjacent and to the west of parking space #66) for increased daytime and, especially, nighttime parking availability.

In addition, as mentioned, the Applicant's proposed change to the parking lot from a hard-packed dirt lot to a paved and striped black asphalt lot will create a significant visual impact upon the surrounding environment. Instead of a sand colored parking lot as exists today, the parking lot would be transformed using a dark colored asphalt surface into something altogether different than what currently is evident. Because the proposed black asphalt will lead to significant visual impacts, and will not blend in or be subordinate to the surrounding landscape, inconsistent with Policy 4, staff is recommending a condition requiring sand-colored asphalt to be used to surface the parking lot (see **Special Condition 1**). In this way, while the new lot will still be visible, the lot will retain its existing color thereby minimizing its visual impacts, consistent with the LCP.

Visual and Scenic Resource Protection Conclusion

The LCP strongly protects public viewsheds and provides a range of policies to ensure that development is sited to protect scenic views, to minimize visibility in public view corridors, to be located in the least visible portion of the site, to maintain the character of the open countryside, and overall to be subordinate to and blend with the rural character of the area (including LCP Visual and Scenic Resources Policies 1, 2, and 4, and LCP CZLUO Section 23.04.210(c)). The project site is located in a rural area outside the USL within an LCP-designated special scenic area (the Ontario Ridge SRA) on a disturbed blufftop.

Permanent visual impacts would occur with both the design of the parking lot itself and through the use of black asphalt. Fortunately, both impacts can be avoided by redesigning the parking lot in one section (while still retaining an adequate amount of parking spaces) (**Special Condition 1**), and by using colored asphalt which will better blend in with the existing environment (**Special Condition 1**). Temporary visual impacts during construction would occur, and would be minimized through best management practices as required by **Special Condition 3**. Overall, as conditioned, the Commission finds the project consistent with the above-cited LCP public viewshed policies.

I. ARCHAEOLOGY

As indicated earlier, the subject project site, as well as the surrounding area, is within the territory historically occupied by the Northern Chumash Indian tribe. The LCP protects archaeological and cultural resources. Applicable LCP policies include:

Archaeologically Sensitive Site

As described earlier, the Applicants' proposed project aims to minimize disturbance to this highly significant archaeological site. The project site is underlain by clay soils and the Obispo formation bedrock, and the soils contain archaeological resources that must be protected. The LCP requires that archeological resources be protected and preserved.

According to CZLUO Section 23.07.104(c), priority shall be given to avoiding disturbance of sensitive resources. Lower priority mitigation measures may include use of fill to cap the sensitive resources. And as a last resort, the review authority may permit excavation and recovery of those resources. The Applicant is proposing to cap the parking lot area and pave over it in order to protect the underlying resource while at the same time, improve the lot for public access and water quality benefits. Use of the site as a parking lot is acceptable as long as there is no excavation done that would disturb the resource.

There are several LCP-designated ASAs in the vicinity of the subject property and throughout the Avila Beach area¹⁴ and according to the Applicant's archeological investigation dated September 2010, the project site is located directly over site CA-SLO-47. This site was historically occupied by the Obispeno Chumash, the northernmost of the dialect area of the Chumash speaking peoples of California¹⁵ and recent surveys have identified the presence of intact subsurface archaeological deposits, including marine fragments, within the proposed bike and trail alignment. Previous fieldwork indicated that portions of a prehistoric Chumash site are present in the Pirate's Cove area. Its proximity to Fossil Point and Whaler's Cove, both places of spiritual significance to modern day Chumash, support the area's unique status.

The Northern Chumash community has been directly involved with many projects in the Avila Beach area over the years and provided input during, and in the lead up to, the project's local hearings in SLO County. The Northern Chumash are supportive of the project and have

¹⁴ Again, the Chumash regard themselves as caretakers of Mother Earth and the Avila Beach area is at the spiritual center of their territory.

¹⁵ According to *Results of Phase 2 Archeological Subsurface Testing at SLO-47, Lots 1-4, Whales Cave Development Project, San Luis Obispo County, CA*, prepared by Gibson's Archeological Consulting in 2003.

provided correspondence indicating that the proposed mitigation technique to cap and fill the parking lot is a suitable method for preserving and protecting their archaeological resources. The Northern Chumash also support the night closure of the park facility to aid in protection of the archaeological site.

As mentioned, the LCP requires that archaeological resources be protected and preserved, with the highest priority given to avoiding disturbance of the resources and a lower priority to filling and capping. In this case, there is no other feasible location for the parking lot or trails, so complete avoidance of archeological resources is infeasible. The proposed project does not include extensive grading, and has been designed to fill and cap the identified archaeological resources in place, which is the next LCP requirement if avoidance is infeasible.

A preliminary archaeological site survey was completed, as required, for the project, in conformance with CZLUO Section 23.07.104. The Applicant's survey identified archaeological resources on the subject property. Due to the highly sensitive nature of the site, monitoring during all ground disturbing activities associated with the project is necessary to ensure protection of archaeological resources. Thus, **Special Condition 10** requires the submittal of an archaeological mitigation and monitoring plan, and ensures that the project is consistent with LCP policies that require protection and preservation of archaeological resources.

Archaeological and Cultural Resources Conclusion

The LCP requires that archaeological resources be protected and preserved, with the highest priority given to avoiding disturbance of the resources. The Applicant's proposal to place fill and cover the entirety of the existing parking lot with asphalt has the potential to disturb such resources, especially since some limited surface artifacts were found around these areas. However, while avoidance is the preferred method, it is infeasible to modify the project to avoid this area entirely and alternatives to paving the site are also infeasible. In addition, trail work also has the ability to disturb such resources, and thus **Special Condition 10** is required.

J. WATER QUALITY

The LCP contains a number of coastal watershed policies which provide protection against new development affecting marine resources and other waterways. These policies aim to ensure that construction minimizes sedimentation, erosion, and that drainage does not cause increased erosion. LCP Coastal Watershed Policy 8 generally prevents construction from occurring during the rainy season. Coastal Watershed Policy 9 requires measures be undertaken to minimize erosion and sedimentation, and Policy 10 requires drainage does not increase erosion. See **Exhibit 8**.

In this case, the proposed bioswales will retain and treat the water that accumulates on-site and that drains on to it from the surrounding hillsides and blufftop trail. In terms of water quality protection, the proposed bioswales will be better at filtering pollutants than permeable material (pavers, coarse gravel, etc.). The bioswales have been designed to filter and retain a large volume of runoff, so that the volume, flow rate, timing and duration of runoff from the site are largely unchanged, preserving the natural hydrologic conditions. The Applicant's Hydrology and Drainage Analysis demonstrates that the bioswales will treat runoff up to the 50-year recurrence

storm event. Further, overflow from the bioswales will seep onto a wide area of moderately resistant bedrock at the bluff edge through engineered level spreaders placed in gravel trenches, similar to natural conditions.

However, to better ensure that the project does not increase erosion, the County's most southerly level spreader may need to be lengthened to the west of its proposed position. Typically, level spreaders can be extended to at least 100 feet, and this may be an appropriate distance in this case based on the size of the parking lot. Additional BMPs are also required to protect against construction impacts and to ensure adequate post-construction measures are undertaken to ensure water quality protections over the life of the project.

Thus, to ensure that the project is consistent with the above LCP policies, a construction plan (see **Special Condition 3**) and a post construction water quality management plan (see **Special Condition 5**) are required, all designed to protect marine and groundwater through BMPs throughout the project life.

K. HAZARDS

The LCP requires new development to avoid and minimize risks due to coastal hazards and requires new development to ensure that it will not result in increased hazards. For example, CZLUO policy 23.07.086(c) states that new development shall insure structural stability while not creating or contributing to erosion, sedimentation, or geologic instability.

The LCP also specifically addresses the risks due to bluff and shoreline related hazards. The LCP defines bluffs and blufftops, prohibits most new development on bluff faces, requires adequate setbacks from bluffs, and addresses the need to ensure long-term stability and structural integrity and avoid landform-altering devices. The LCP also restricts the development of permanent structures on the beach, prohibits new development that would require shoreline protection now or in the future, and provides criteria and standards for the development of shoreline structures, including groins, piers, breakwaters and other similar structures that serve to protect development. In addition, the LCP's San Luis Bay Area Plan includes other policies associated with coastal hazards, including policies requiring that certain new development only be allowed if it can be setback for 75 years and that future shoreline armoring and similar coastal hazard response be prohibited.¹⁶ Lastly, the LCP contains geologic study areas (GSA) which require additional studies to be undertaken and higher standards for development. See **Exhibit 8**.

Required Setbacks

The Applicant has developed a significant geologic and soils framework for the project, including the LCP required reports and analyses regarding the potential for active land sliding and slope failure at the project site. There is an active landslide complex here, which is a main reason for adjusting a segment of the blufftop trail inland up to approximately 150 feet in places. According to the Applicant's geologic report, bluff top erosion in the site vicinity is controlled

¹⁶ Implementing this is CZLUO Section 23.04.118(a), which requires that new development or expansion of existing uses on blufftops shall be designed and set back from the bluff edge a distance sufficient to assure stability and structural integrity and to withstand bluff erosion and wave action for a period of 75 years without construction of shoreline protection structure.

by wave attack and coastal erosion of the shoreline, landsliding and upward progression of active landslides below the proposed trail, and ongoing instability and erosion of steep slopes along the head of the landslide and coastal bluffs.

Per the LCP, new development or expansion of existing uses on blufftops shall be designed and set back from the bluff edge a distance sufficient to assure stability and structural integrity and to withstand bluff erosion and wave action for a period of 75 years without construction of shoreline protection structures (CZLUO section 23.04.118). The San Luis Bay Area Plan Chapter 7-2 requires development within a GSA to be located so that it can withstand 75 years of bluff erosion without the need for a shoreline protection structure that would substantially alter the landform, affect public access, or impact movement of sand.

The proposed project includes certain components that are to be constructed within the coastal bluff setback area (for the parking lot and trails). The Applicant's geologic report estimated that the blufftop retreat rate is controlled by upward progression of the headscarp of those landslides, and is estimated to average approximately 4 feet per year, equaling approximately 400 feet over 100 years. However, this rate is episodic and is based primarily on periodic and relatively large scale movement of the main landslide complex within Pirate's Cove. Based on the report, the entire blufftop trail is located within this bluff setback as the 75 year erosion rate would exist at approximately the 120 foot line above the proposed trail location. The trail down to the beach, and the stairs at the toe of the bluff, are also within this bluff setback area. Finally, the entire parking lot is within the required bluff setback.

The project components are required to provide public access to the sea – development which must necessarily be within the 75 year setback in order to provide access to the ocean. Further, the access improvements in the proposed locations are integral to the overall design, which protects, enhances and maximizes coastal access in this location. The components are considered temporary in nature and can be realigned or moved if threatened by coastal hazards. They do not have foundations or other structural elements that would make it difficult to remove these structures if threatened by erosion. Because development is occurring within the setbacks, no future shoreline protections are allowed, but rather removal and relocation are required if threatened.

In summary, the project site is subject to geologic hazards by virtue of its blufftop location. Because portions of the proposed project are necessarily within the bluff setback, the approval must ensure that no future shoreline protective device would be allowed to protect it. Thus, this approval prohibits future shoreline protection, including prohibiting construction of a seawall, retaining wall, revetment, or similar structures (see **Special Condition 7**). If the site is threatened by coastal hazards in the future, the parking lot and other components, such as the trails and stairs, may be moved inland to protect public access while avoiding the need for shoreline protection. Also, given the project's location on a blufftop area that is subject to coastal hazards, and given that the Applicant is pursuing development nonetheless, **Special Condition 8** requires that the Applicant assumes all risks for developing at this location so as to ensure that the Applicant bears the costs for the development in this potentially hazardous location.

Finally, to address potential drainage issues that can in some cases exacerbate geologic hazards, **Special Conditions 5** requires submission of a water quality management plan that shows

drainage directed away from the bluff as much as feasible and either retained through infiltration within the proposed bioswales in such a way that does not exacerbate geologic hazards or degrade visual resources. Therefore, as conditioned, the Commission finds that the proposed project is consistent with the LCP's hazard policies.

L. BIOLOGICAL RESOURCES

In terms of natural resource protection, an integral component of the proposed project is to more clearly designate public areas, e.g. the existing trails that will be improved, overlooks, parking lot boundaries, etc., so that the public will keep to these areas instead of walking around the blufftop on volunteer trails or otherwise making their own way to the beach. Therefore, the proposed improvements should better manage access and reduce impacts on habitat and archaeological resources that are taking place due to unmanaged access.

However, as discussed above, the proposed project does not comply with LCP policies and ordinances protecting ESHA, as the project's impacts to ESHA, caused by the location of its various components, have not been adequately addressed by the County's proposal. Special conditions are needed to bring the project into conformance with the LCP in this respect.

The LCP has multiple overlapping provisions that protect ESHA in and around the Pirate's Cove area, including the area's terrestrial habitats, certain wetlands, coastal streams and riparian habitat areas. The Environmentally Sensitive Habitats (ESH) policies of the LCP (and corresponding CZLUO standards) seek to protect sensitive habitats, including wetlands, riparian vegetation, terrestrial habitat and marine resources. These include ESH Policy 30, which requires protection of native vegetation, Policy 35, which requires development to be designed to disturb the minimum amount possible of wildlife or plant habitat, and Policy 31, which requires that the design of trails in and adjoining sensitive habitat areas minimize adverse impact on these areas. CZLUO section 23.07.176 is intended to preserve and protect rare and endangered species of terrestrial plants and animals by preserving their habitats. This section states that, "Development shall be sited to minimize disruption of habitat," that, "Emphasis for protection is on the entire ecological community rather than only the identified plant or animal," and that, "Vegetation that is rare or endangered, or that serves as habitat for rare or endangered species shall be protected." This section also states that, "Any pedestrian or equestrian trails through the habitat shall be shown on the site plan and marked on the site," and that, "The biologist's evaluation required by Section 23.07.170a shall also include a review of impacts on the habitat that may be associated with trails." See **Exhibit 8**.

In this case, and as mentioned earlier, the trail improvements are likely to impact the black-flowered figwort, a listed 1B.2 listed species. Staff, including staff's ecologist, have recognized this grouping of plants as rising to the level of ESHA. The proposed project has the potential to impact this species through improvement to the trail and potentially due to the creation of temporary construction areas needed to improve the trail.

Therefore, special conditions are necessary to ensure the project avoids impacts to ESHA. First, **Special Condition 6** requires the County submit an updated botanical survey. This updated survey is necessary to ensure accurate identification of all existing sensitive plants for trail purposes, as the existing study will likely be approximately 3-4 years old before construction

begins. **Special Condition 1** also requires trail improvements, including grading and cut and fill work, to not exceed the existing disturbed widths in areas that are within 25 feet of any identified black-flowered figwort plants. The Commission's biologist has determined that 25 feet is an adequate buffer, given the nature of the ESHA and the potential impacts of the trail construction. Thus, in these limited locations, the trail improvements will not impact the black-flowered figwort.

M. OTHER

Unpermitted Development

There are existing signs along both sides of Cave Landing Road that restrict parking. The signs prohibit parking from 2 am to 6 am along the south side of Cave Landing Road nearest the parking lot and restrict parking at all times along the north side of the road. Although these parking restrictions are called for in the Department of Public Works' Official Traffic Regulation Codes, there is no evidence that these restrictions are certified as part of the County's LCP, or that the signs received CDP authorization.

Although development has taken place prior to Commission review of this permit application, consideration of the application by the Commission has been based solely upon the policies of the certified LCP. Commission review and action on this permit does not constitute a waiver of any legal action with regard to the violations, nor does it constitute an implied statement of the Commission's position regarding the legality of any development undertaken on the subject site without a coastal development permit, or that all aspects of the violation have been fully resolved.

N. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

Section 13096 of the California Code of Regulations requires that a specific finding be made in conjunction with coastal development permit applications showing the application to be consistent with any applicable requirements of CEQA. Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect that the activity may have on the environment.

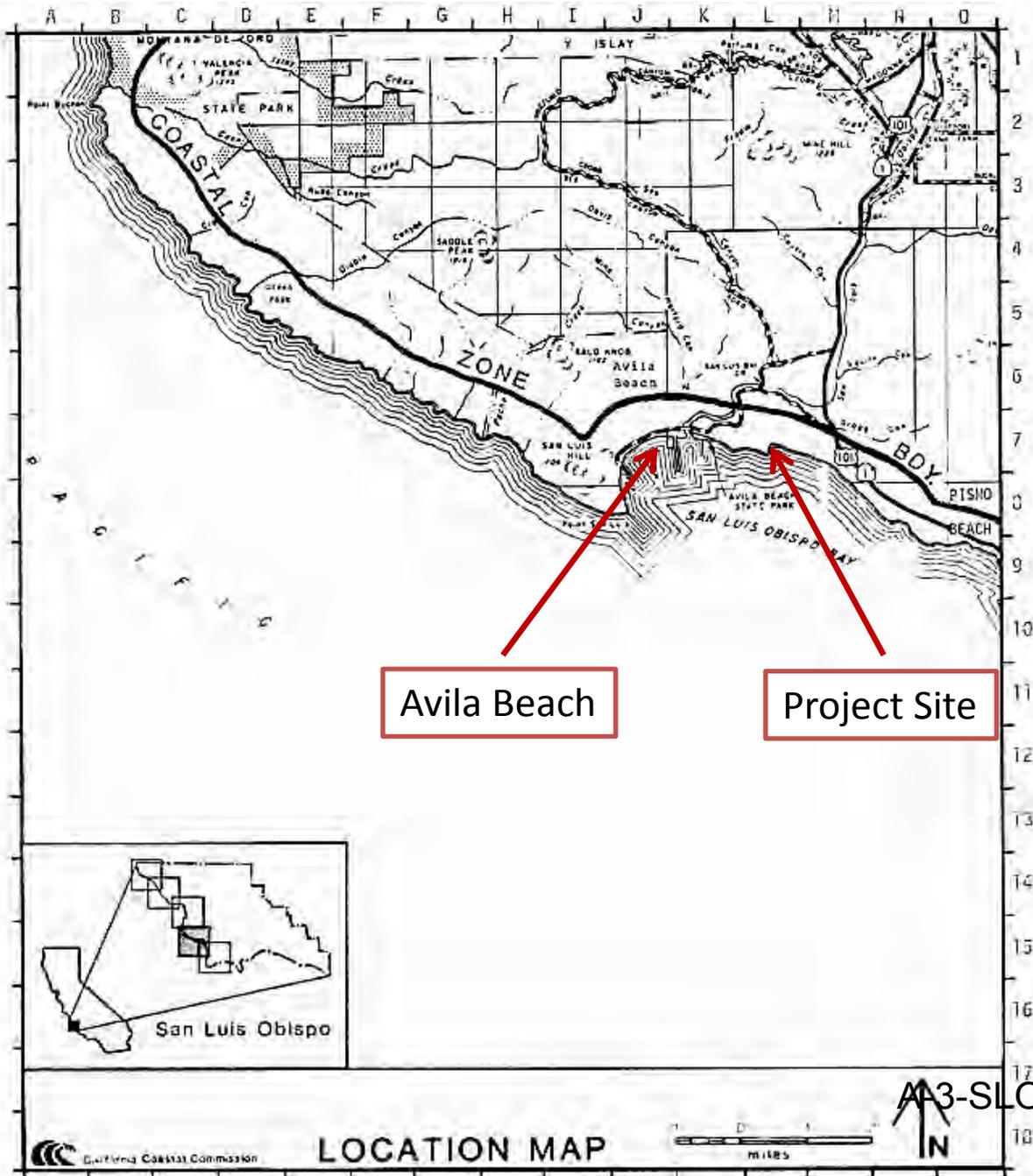
San Luis Obispo County, acting as the CEQA lead agency, adopted a Mitigated Negative Declaration for the proposed project on February 21, 2013. The Coastal Commission's review and analysis of land use proposals has been certified by the Secretary of Resources as being the functional equivalent of environmental review under CEQA. The preceding coastal development permit findings discuss the relevant coastal resource issues with the proposal, and the permit conditions identify appropriate modifications to avoid and/or lessen any potential for adverse impacts to said resources. All public comments received to date have been addressed in the findings above, which are incorporated herein in their entirety by reference.

As such, there are no additional feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse environmental effects which approval of the proposed project, as conditioned, would have on the environment within the meaning of

CEQA. Thus, if so conditioned, the proposed project will not result in any significant environmental effects for which feasible mitigation measures have not been employed consistent with CEQA Section 21080.5(d)(2)(A)

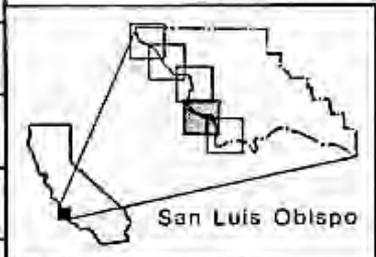
APPENDIX A – SUBSTANTIVE FILE DOCUMENTS

1. *County CDP Application File (DRC2011-00069)*
2. *Botanical Survey Letter-Report (dated April 18, 2012)*
3. *Phase 2 Archeological Subsurface Testing at SLO-47, Lots 1-4, Whales Cave Development Project, San Luis Obispo County, CA, prepared by Gibson's Archeological Consulting in 2003.*

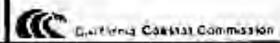


Avila Beach

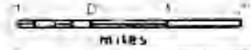
Project Site



San Luis Obispo



LOCATION MAP





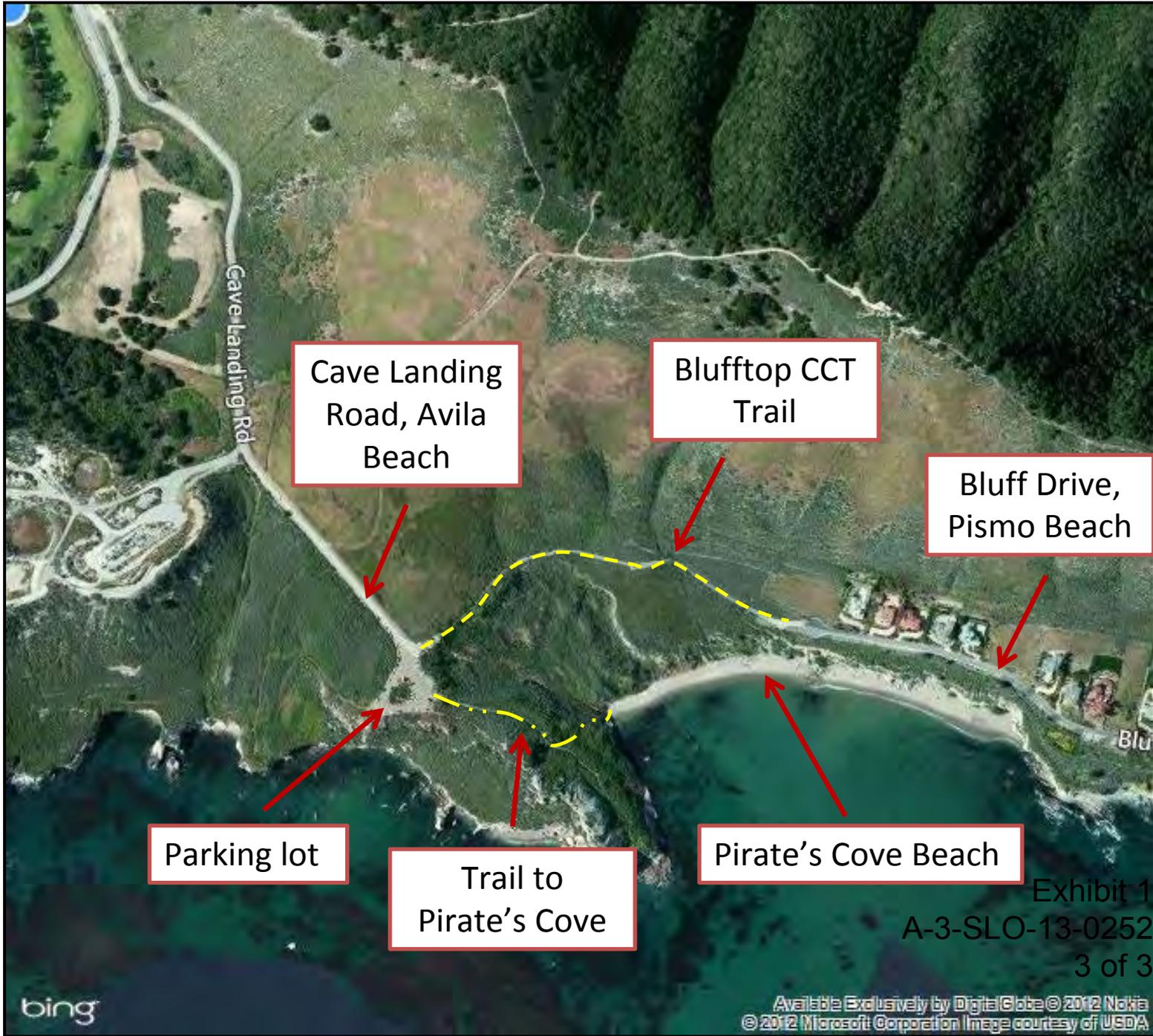
Avila Beach

Pismo Beach



Project Site

Exhibit 1
A-3-SLO-13-0252
2 of 3



Cave Landing
Road, Avila
Beach

Blufftop CCT
Trail

Bluff Drive,
Pismo Beach

Parking lot

Trail to
Pirate's Cove

Pirate's Cove Beach

Exhibit 1
A-3-SLO-13-0252
3 of 3



Exhibit 2
A-3-SLO-13-0252
1 of 10



Exhibit 2
A-3-SLO-13-0252
2 of 10



Exhibit 2
A-3-S16-13-0252
3 of 10



Exhibit 2
A-3-SLO-13-0252
4 of 10



Exhibit 2
A-3-S06-103-0220
06-10-2012
5 of 10



Exhibit 2
A-3-SLO-18-G252
06-02-2012
6 of 10

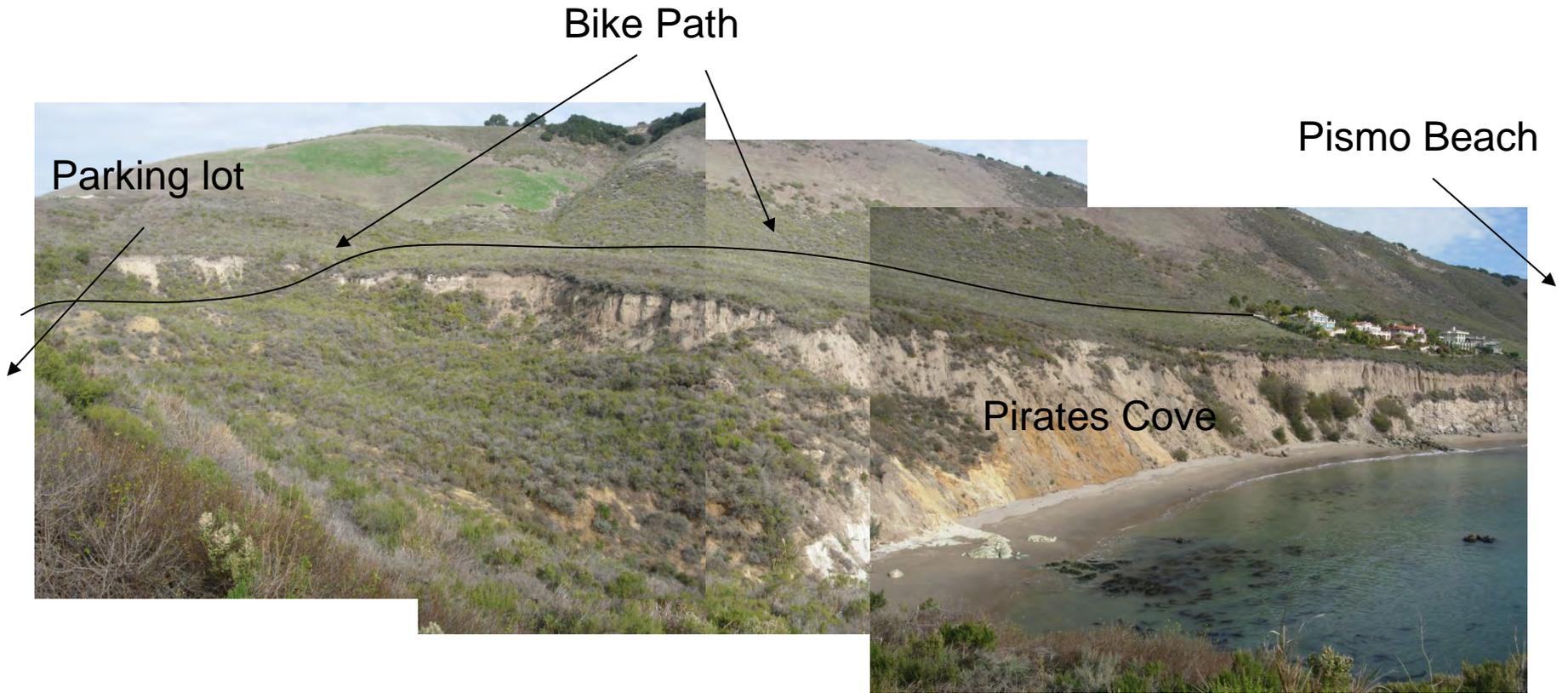




Exhibit 2
A-3-SLO-13-0252
8 of 10



Exhibit 2
A-3-SLO-13-0252
9 of 10



Exhibit 2

A-3-SLO-13-0252

10 of 10









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Exhibit 3
A-3-SLO-13-0252
4 of 9

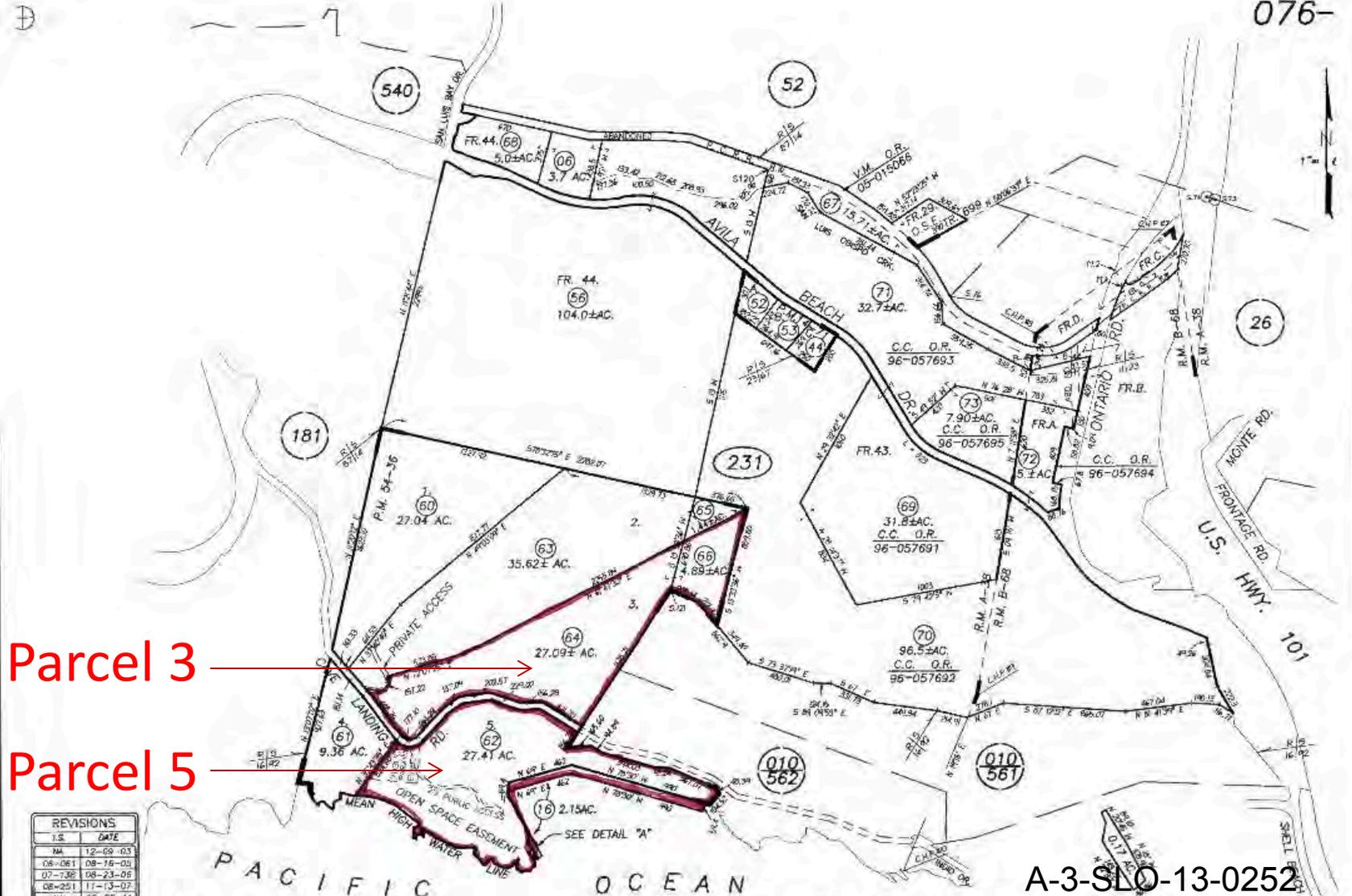












Parcel 3

Parcel 5

REVISIONS	
I.S.	DATE
MA	12-09-03
06-061	08-16-01
07-736	08-23-06
08-251	11-13-07
MA	02-25-11

330' 0 560' 1320'

68 3-31-99 THIS MAP IS PREPARED FOR ASSESSMENT PURPOSES ONLY.

TRACT 699, R.M. Bk. 10 , Pg. 12.
 W. L. BEEBEE TRACT PTN., R.M. Bk. B , Pg. 68.
 RANCHO SAN MIGUELITO, R.M. Bk. A , Pg. 38.

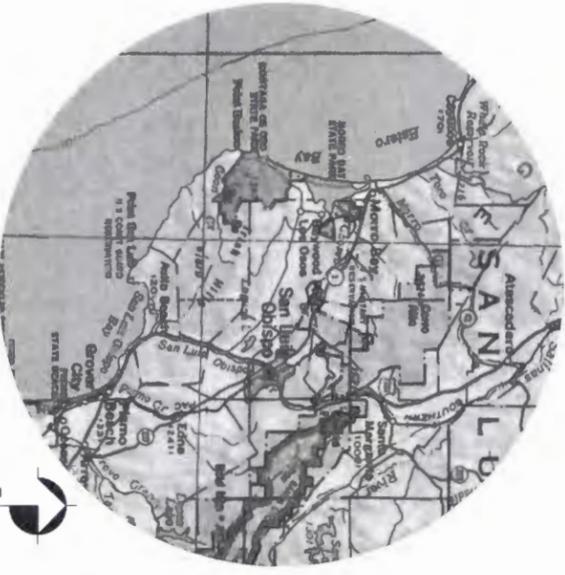
A-3-SLO-13-0252

DETAIL "A" (SCALE: 1"=220')

Exhibit 4

CAVE LANDING BIKE PATH AND PARKING LOT IMPROVEMENTS (PRELIMINARY DESIGN PLANS)

RECEIVED
MAR 19 2014
CALIFORNIA
COUNTY OF SAN LUIS OBISPO
CENTRAL COAST AREA



PROJECT VICINITY
SCALE NTS



PROJECT LOCATION
SCALE NTS



PROJECT SITE
SCALE 1" = 100'

PROJECT CONTACTS

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PRINCIPAL ENGINEER

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660 CLARION COURT SUITE A
SAN LUIS OBISPO, CA 93401
PHONE: 805-542-0797
FAX: 805-542-9311
CONTACT: CHRISTOPHER IOVATTO, C.E.
PROJECT BRANCHER

PROJECT GRADING QUANTITIES

MAIN TRAIL ALIGNMENT	CUT VOLUME	FILL VOLUME	NET VOLUME
REACH TRAIL ALIGNMENT <td>503 CUBIC YARDS</td> <td>345 CUBIC YARDS</td> <td>160 CUBIC YARDS CUT</td>	503 CUBIC YARDS	345 CUBIC YARDS	160 CUBIC YARDS CUT
REACH TRAIL ALIGNMENT <td>23 CUBIC YARDS</td> <td>8 CUBIC YARDS</td> <td>15 CUBIC YARDS CUT</td>	23 CUBIC YARDS	8 CUBIC YARDS	15 CUBIC YARDS CUT
NET VOLUME <td>526 CUBIC YARDS</td> <td>353 CUBIC YARDS</td> <td>173 CUBIC YARDS CUT</td>	526 CUBIC YARDS	353 CUBIC YARDS	173 CUBIC YARDS CUT
PARKING LOT <td>47 CUBIC YARDS</td> <td>497 CUBIC YARDS</td> <td>450 CUBIC YARDS FILL</td>	47 CUBIC YARDS	497 CUBIC YARDS	450 CUBIC YARDS FILL

PROJECT REFERENCES

GEOTECHNICAL REPORT - CAVE LANDING BIKE PATH CAVE LANDING ROAD - BLUFF DRIVE, SAN LUIS OBISPO COUNTY, CALIFORNIA - PREPARED BY FIGARO WEST INC. DATED DECEMBER 21, 2009
PRELIMINARY DESIGN MEMORANDUM, CAVE LANDING PATH REVISED PRELIMINARY DESIGN - PREPARED BY AECOM, DATED MARCH 17, 2010

SHEET INDEX

NO.	DESCRIPTION
0.0	COVER SHEET
1.0	SITE IMPROVEMENT PLAN
2.0	GRADING PLAN - MAIN TRAIL ALIGNMENT PLAN AND PROFILE
2.0.1	GRADING PLAN - MAIN TRAIL ALIGNMENT DETAILS
2.1	GRADING PLAN - REACH TRAIL ALIGNMENT PLAN AND PROFILE
2.1.1	GRADING PLAN - REACH TRAIL ALIGNMENT DETAILS
2.2	GRADING PLAN - PARKING AREA
3.0	EROSION CONTROL PLAN AND DETAILS
4.0	DRAINAGE PLAN AND DETAILS

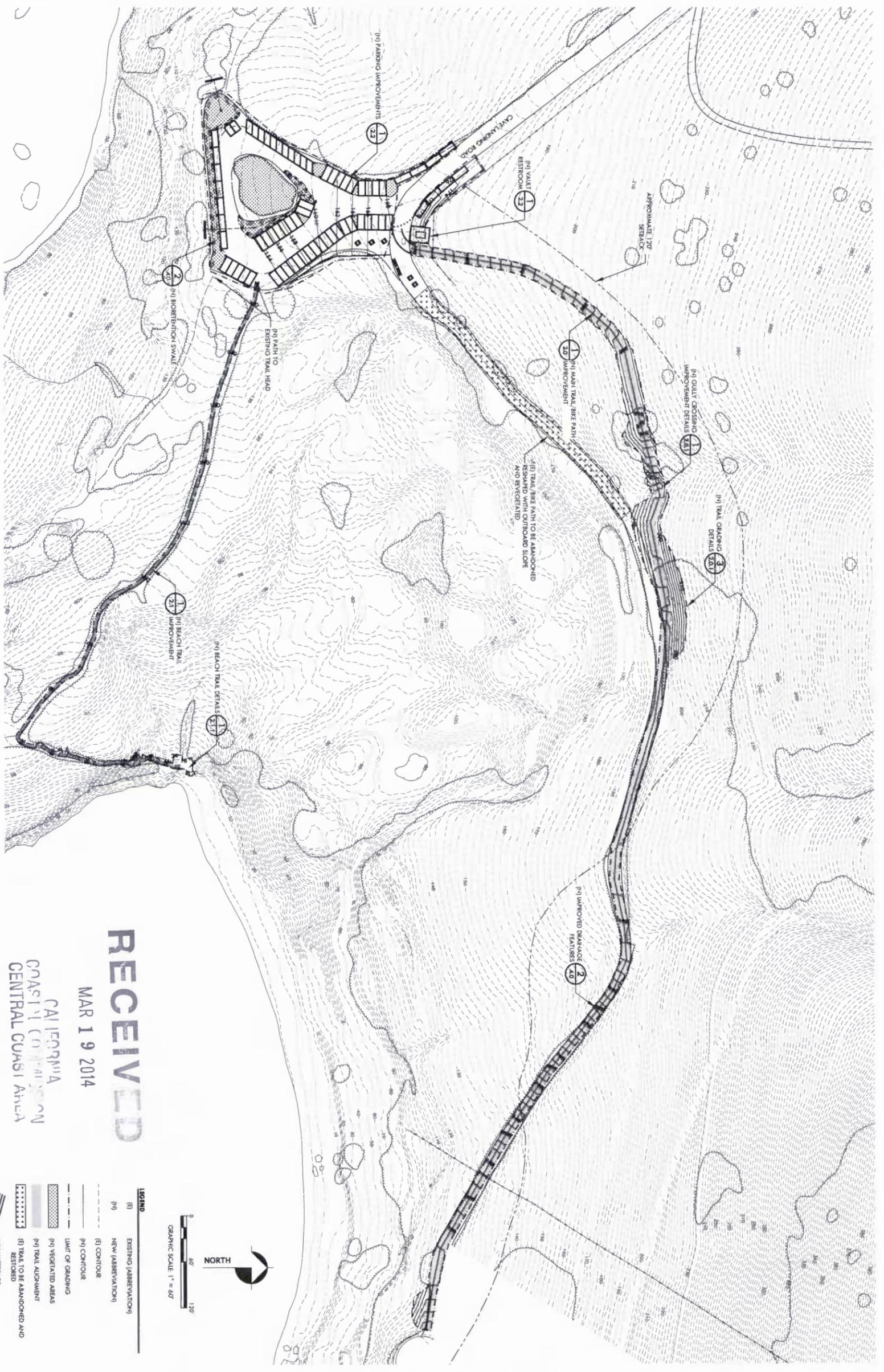
LEGEND

- (E) EXISTING (ABBREVIATION)
- (N) NEW (ABBREVIATION)
- (E) CONTOUR
- PRATES COVE LANDING COMPLEX (PCLC)

PRELIMINARY DRAWINGS NOT FOR CONSTRUCTION

<p>SHEET TITLE COVER SHEET PRELIMINARY SITE IMPROVEMENT PLANS Exhibit 5</p>	<p>CLIENT COUNTY OF SAN LUIS OBISPO PARKS DIVISION ATTN: SHAUN COOPER 1087 SANTA ROSA STREET SAN LUIS OBISPO, CA</p>	<p>PROJECT TITLE CAVE LANDING BIKE PATH IMPROVEMENTS CAVE LANDING ROAD SAN LUIS OBISPO, CALIFORNIA</p>	<p>7/AL CREEK ENGINEERING, INC. Consulting Engineers Civil, Environmental & Water Resources P.O. BOX 7994, SANTA CRUZ, CA 95061 TEL: (831) 426-9054 FAX: (831) 426-4932</p> <p>DESIGNED BY: RLC CHECKED BY: PHH DATE: MARCH 2014 JOB NO.: 21107 SCALE: AS SHOWN SHEET: 0.0 1 OF 9</p>
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A I B I C I D I E I F I G I H I I I J I K I L I M I N I O I P



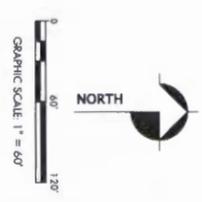
SITE IMPROVEMENT LAYOUT - PLAN VIEW
SCALE 1" = 60'

PRELIMINARY DRAWINGS NOT FOR CONSTRUCTION

RECEIVED
MAR 19 2014
CALIFORNIA
COUNTY OF SAN LUIS OBISPO
CENTRAL COAST AREA

LEGEND

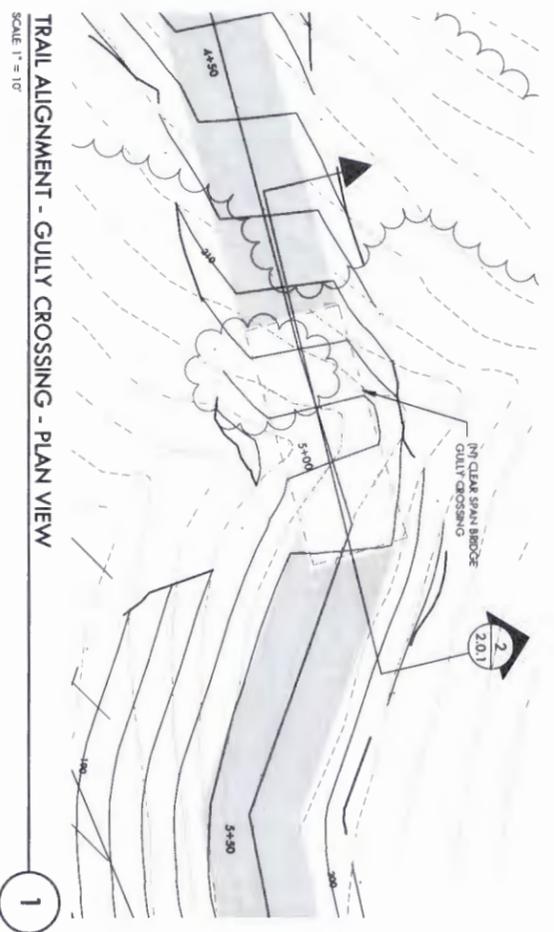
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(N)	NEW (ABBREVIATION)
(C)	CONTOUR
(L)	LIMIT OF GRADING
(V)	VEGETATED AREAS
(A)	TRAIL ALIGNMENT
(R)	TRAIL TO BE ABANDONED AND RESTORED
(W)	WATERBARS



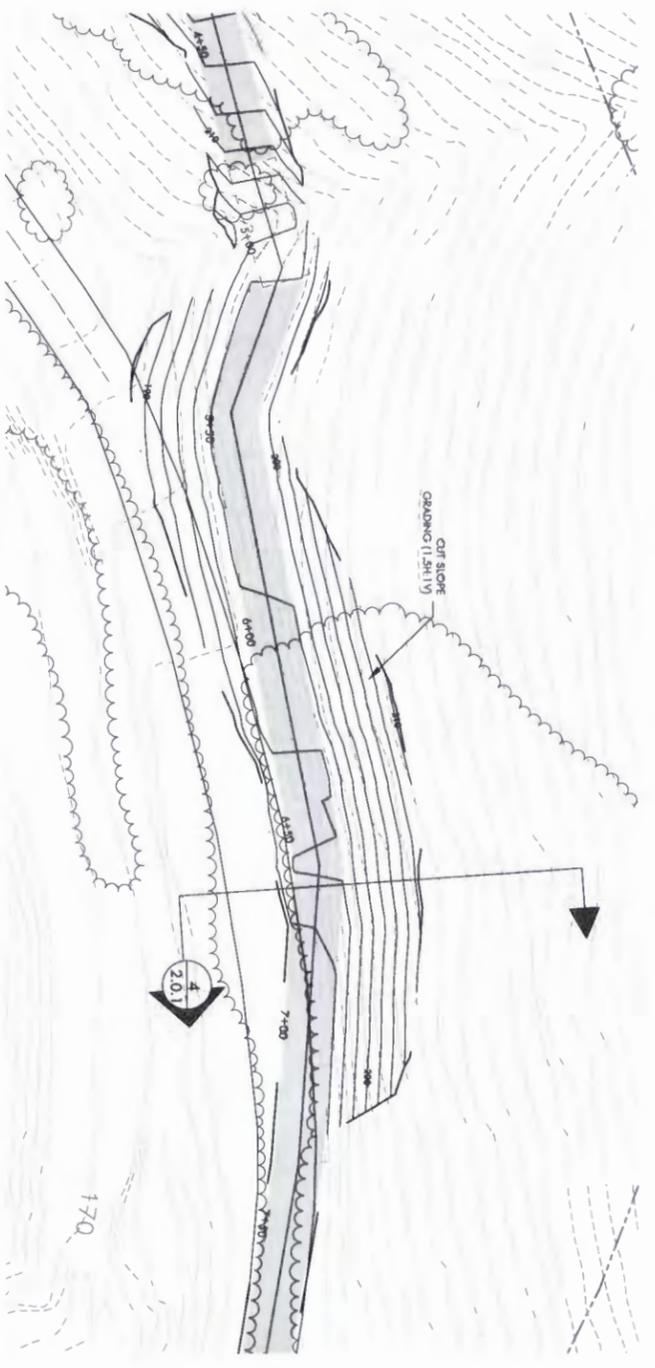
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<p>DESIGNED BY: RLC CHECKED BY: PHH DATE: MARCH 2014 JOB NO: 21107 SCALE: AS SHOWN SHEET: 1.0 2 OF 9</p>		<p>FULL SERVICE ENGINEERING, INC. Consulting Engineers Civil, Environmental & Water Resources P.O. BOX 2994, SANTA CRUZ, CA 95061 TEL: (831) 424-8054 FAX: (831) 424-8932</p>	<p>PROJECT TITLE CAVE LANDING BIKE PATH IMPROVEMENTS CAVE LANDING ROAD SAN LUIS OBISPO, CALIFORNIA</p>	<p>CLIENT: COUNTY OF SAN LUIS OBISPO PARKS DIVISION ATTN: SHALIN COOPER 1087 SANTA ROSA STREET SAN LUIS OBISPO, CA</p>	<p>SHEET TITLE: PRELIMINARY SITE IMPROVEMENT PLAN Exhibit 5 A-3-SLO-13-0252 2 of 8</p>
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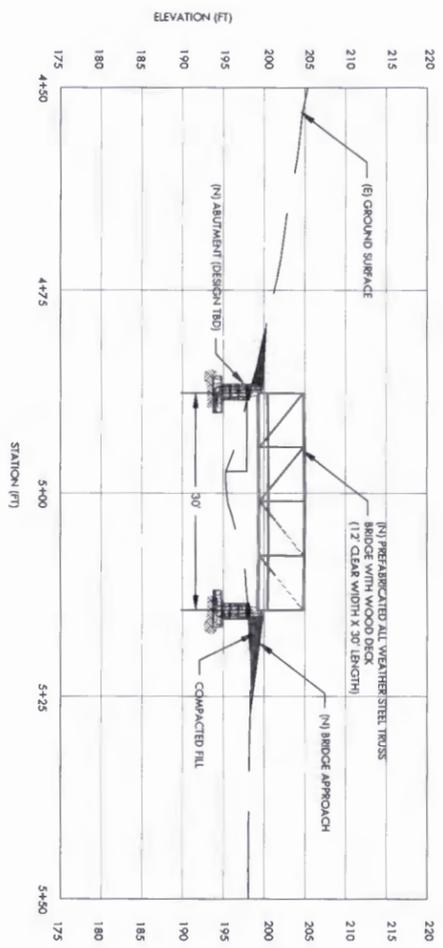
A I B I C I D I E I F I G I H I I I J I K I L I M I N I O I P



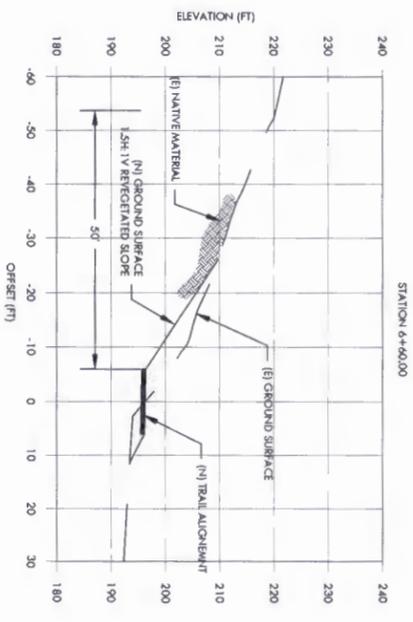
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3



2



4

LEGEND

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- (N) NEW (ABBREVIATION)
- (E) CONTOUR
- (N) CONTOUR
- LIMIT OF GRADING
- (N) TRAIL ALIGNMENT
- (E) TRAIL ALIGNMENT
- NATIVE MATERIAL

GRAPHIC SCALE 1" = 10'

NORTH

RECEIVED

MAR 19 2014

CALIFORNIA
COASTAL COUNTY
CENTRAL COAST AREA

PRELIMINARY DRAWINGS NOT FOR CONSTRUCTION

SHEET TITLE
PRELIMINARY GRADING PLAN
MAIN TRAIL ALIGNMENT
Exhibit 5

CLIENT
COUNTY OF SAN LUIS OBISPO
PARKS DIVISION
ATTN: SHAUN COOPER
1087 SANTA ROSA STREET
SAN LUIS OBISPO, CA

PROJECT TITLE
CAVE LANDING
BIKE PATH IMPROVEMENTS
CAVE LANDING ROAD
SAN LUIS OBISPO, CALIFORNIA

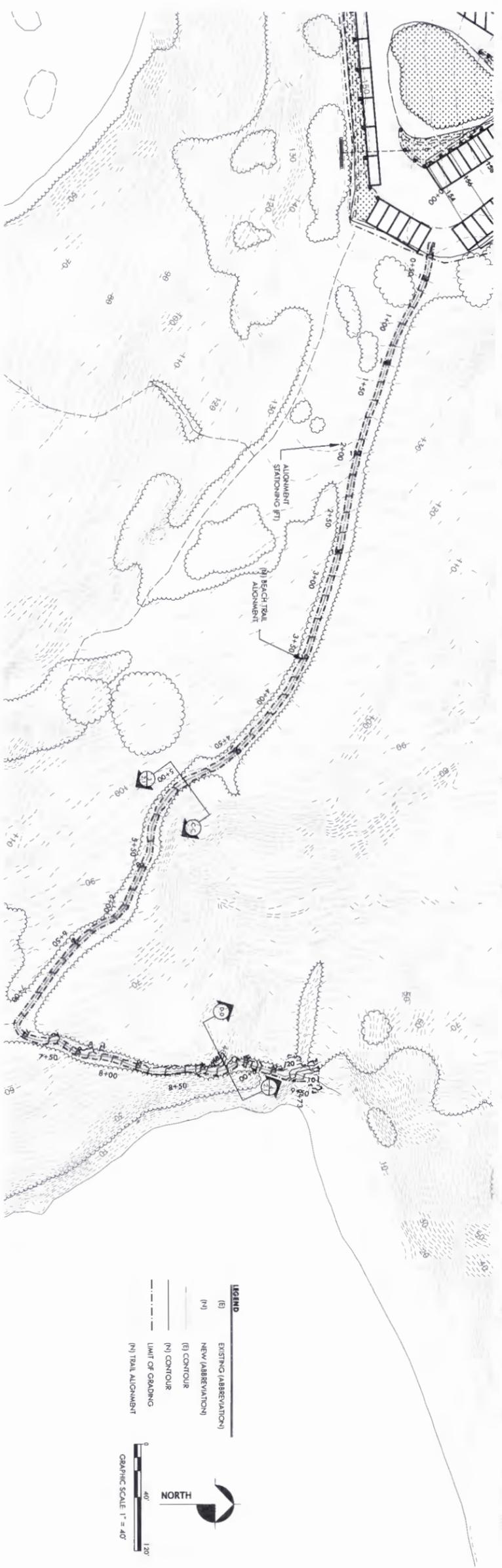
FALL CREEK ENGINEERING, INC.
Consulting Engineers
204 Commonwealth Blvd. Mariposa
CA 95349
P.O. BOX 7794 SANTA CRUZ, CA 95061
(408) 381-4200 FAX (408) 421-0222



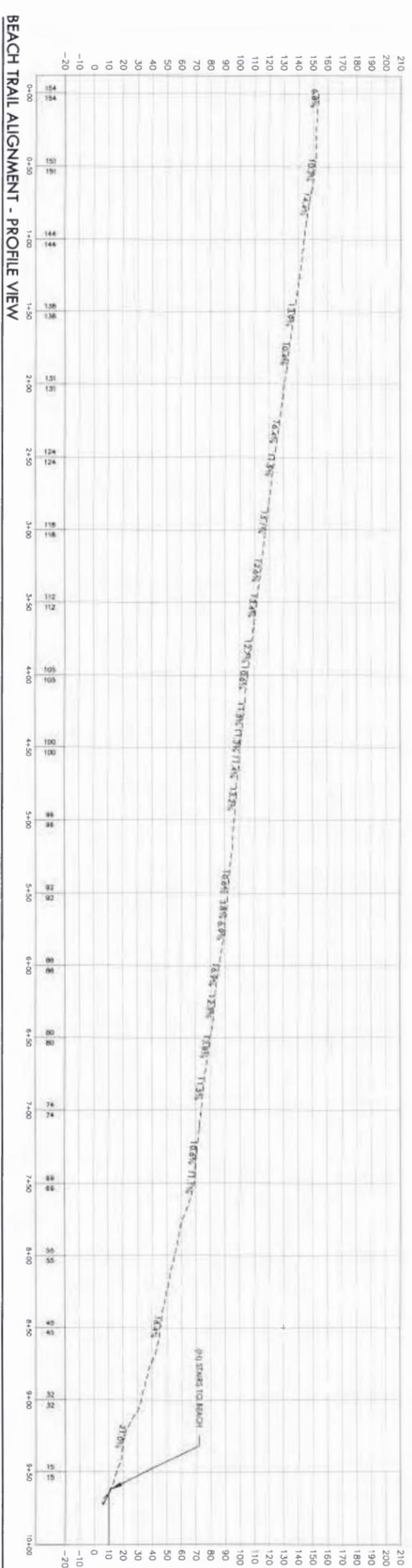
DRAWN BY: RIC
CHECKED BY: PHH
DATE: MARCH 2014
JOB NO: 21107
SCALE: AS SHOWN
SHEET

2.0.1
4 OF 9

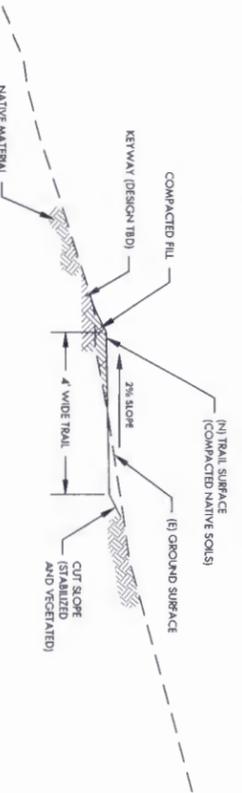
A B I C D E F G H I J K L M N O P



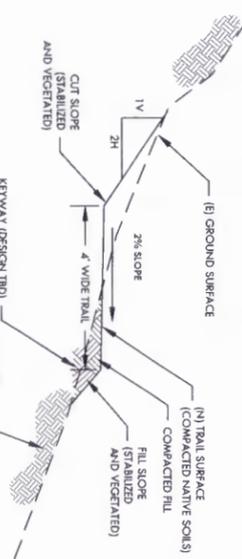
BEACH TRAIL ALIGNMENT - PLAN VIEW
SCALE 1" = 40'



BEACH TRAIL ALIGNMENT - PROFILE VIEW
SCALE 1" = 40'



TYPICAL TRAIL SECTION C-C
SCALE 1" = 2'



TYPICAL TRAIL SECTION D-D
SCALE 1" = 2'

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CALIFORNIA
COASTAL COMMUNITY
CENTRAL COAST

SHEET TITLE
PRELIMINARY
GRADING PLAN
BEACH TRAIL ALIGNMENT
PROJECT NO. 13-0252

CLIENT
COUNTY OF SAN LUIS OBISPO
PARKS DIVISION
ATTN: SHAUN COOPER
1087 SANTA ROSA STREET
SAN LUIS OBISPO, CA

PROJECT TITLE
CAVE LANDING
BIKE PATH IMPROVEMENTS
CAVE LANDING ROAD
SAN LUIS OBISPO, CALIFORNIA

FALL CREEK ENGINEERING, INC.
Consulting Engineers
104 University & River Avenues
P.O. BOX 7784, SANTA CRUZ, CA 95061
(562) 953-1313 FAX (562) 952-4532

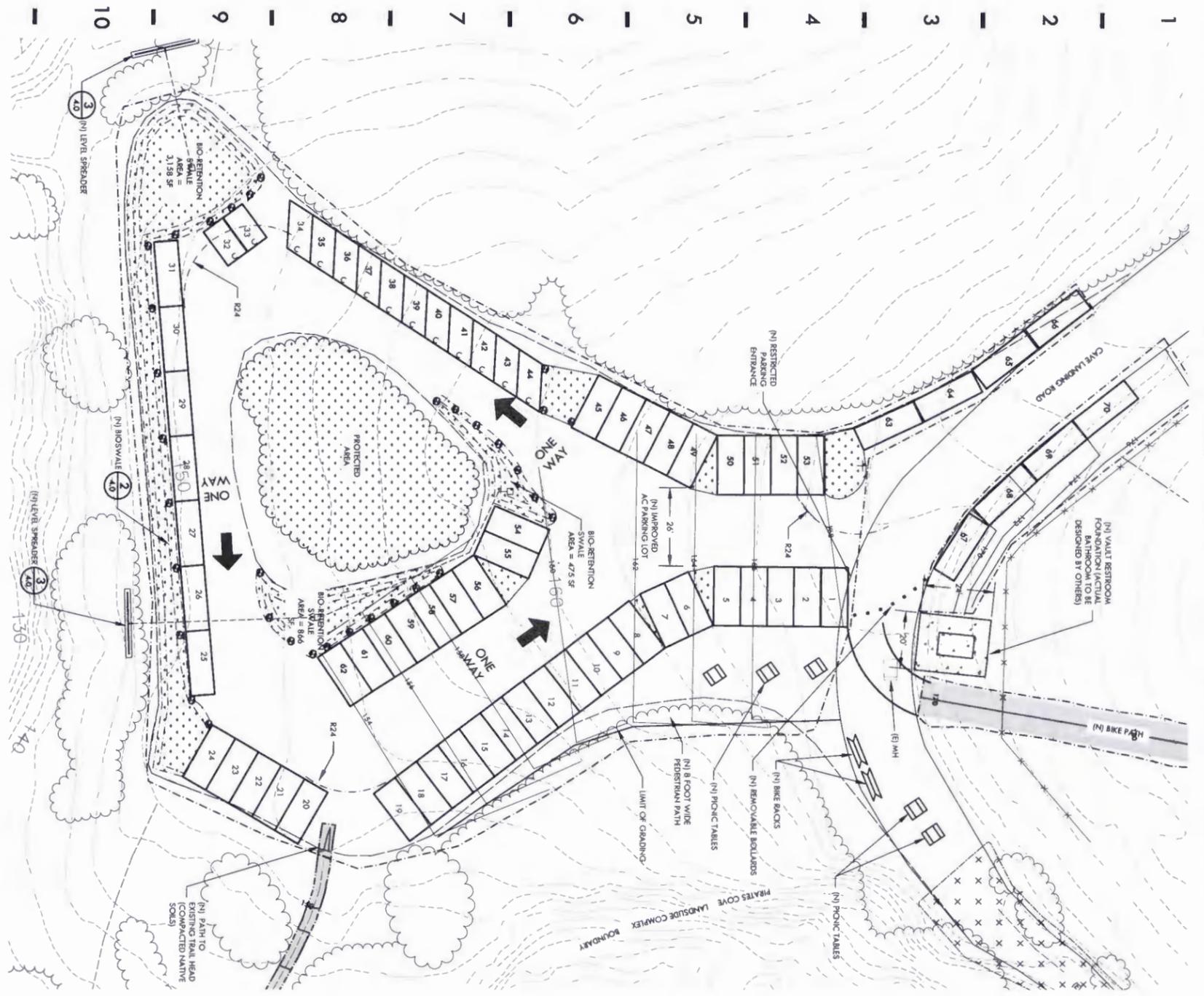


DRAWN BY: RJC
CHECKED BY: PHH
DATE: MARCH 2014
JOB NO: 21107
SCALE: AS SHOWN
SHEET: 2.1
5 OF 9

RECEIVED

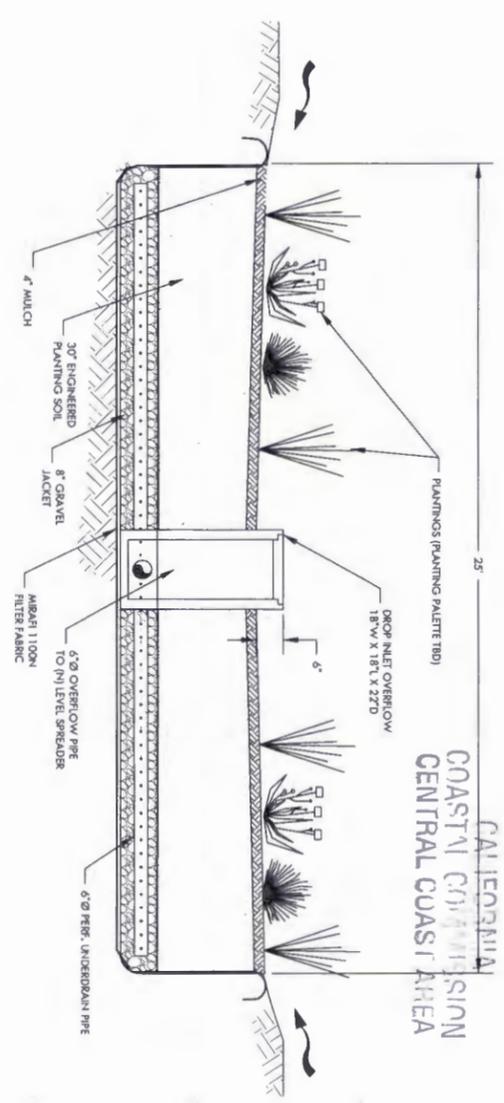
MAR 19 2014

CALIFORNIA
 COUNTY OF SAN LUIS OBISPO
 COASTAL COMMUNITY DEVELOPMENT
 CENTRAL COAST AREA

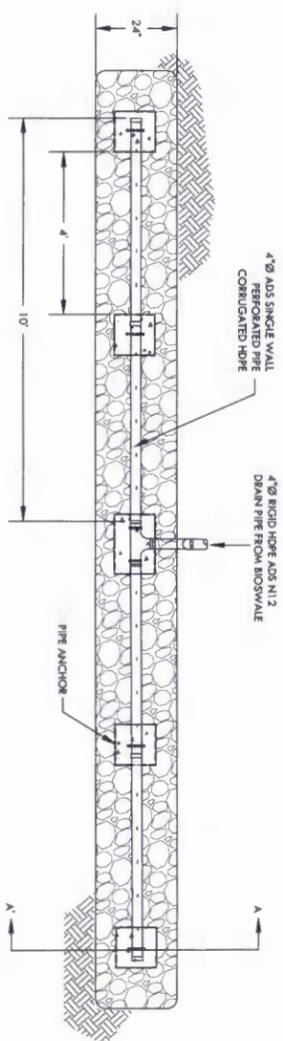


PARKING LOT IMPROVEMENT PLAN
 SCALE 1" = 20'

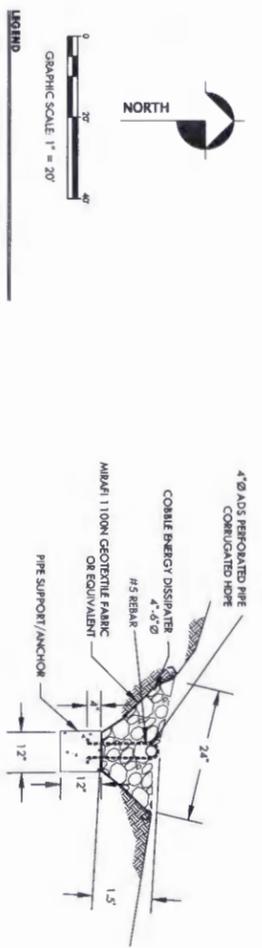
PRELIMINARY DRAWINGS NOT FOR CONSTRUCTION



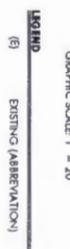
TYPICAL BIOSWALE CROSS SECTION
 SCALE 1" = 2'



TYPICAL LEVEL SPREADER - PLAN VIEW
 SCALE 1" = 4'



TYPICAL LEVEL SPREADER - SECTION A-A
 SCALE 1" = 2'





PRELIMINARY EROSION CONTROL PLAN
SCALE 1" = 80'

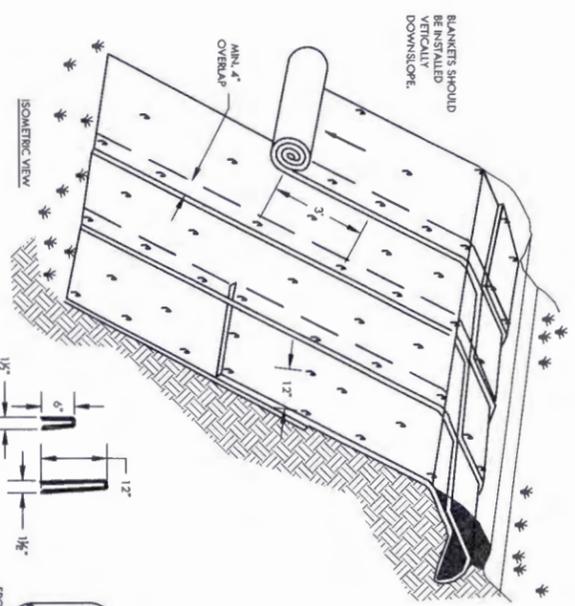
LEGEND

- (E) EXISTING (ABBREVIATION)
- (N) NEW (ABBREVIATION)
- (E) CONTOUR
- (N) CONTOUR
- LIMIT OF GRADING
- ▨ EROSION CONTROL BLANKET
- ▨ STRAW WATTLE
- ▨ WATER BARS

GRAPHIC SCALE 1" = 80'

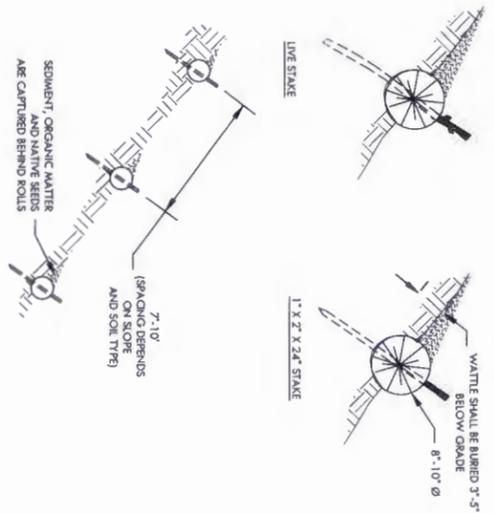
0 80' 160'

NORTH



TYPICAL EROSION CONTROL BLANKET INSTALLATION
SCALE AS DIMENSIONED

2



TYPICAL STRAW WATTLE INSTALLATION
SCALE AS DIMENSIONED

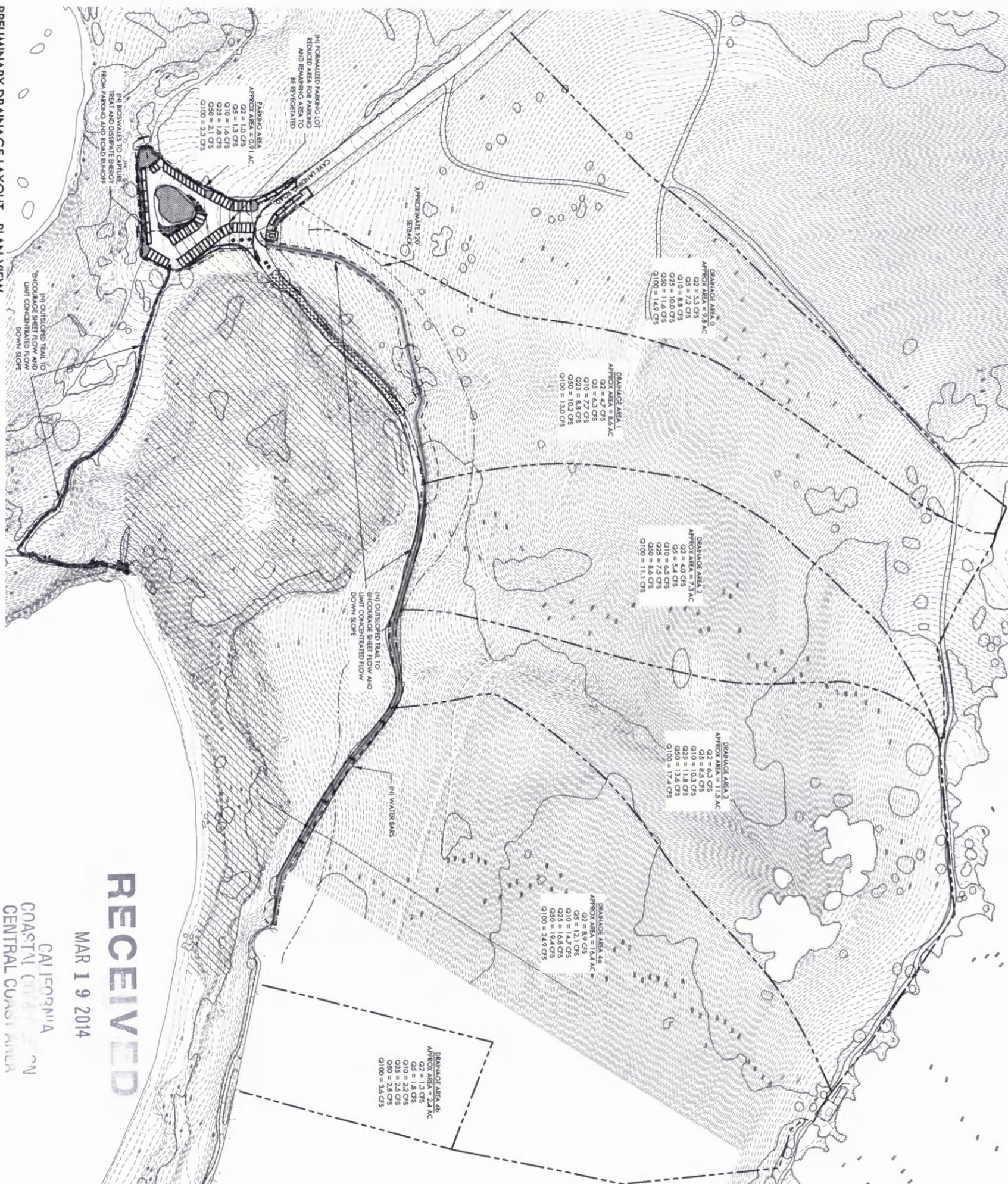
3

RECEIVED
MAR 19 2014
CALIFORNIA
COASTAL CONSTRUCTION
CENTRAL COAST AREA

<p>SHEET TITLE PRELIMINARY EROSION CONTROL PLAN Exhibit 5 A-3-SLO-13-0252 7 of 8</p>	<p>CLIENT: COUNTY OF SAN LUIS OBISPO PARKS DIVISION ATTN: SHAUN COOPER 1087 SANTA ROSA STREET SAN LUIS OBISPO, CA</p>	<p>PROJECT TITLE CAVE LANDING BIKE PATH IMPROVEMENTS CAVE LANDING ROAD SAN LUIS OBISPO, CALIFORNIA</p>	<p>PROFESSIONAL ENGINEER PALL OBERG ENGINEERING, INC. Civil Engineering • Water Resources P.O. BOX 7994, SANTA CRUZ, CA 95061 TEL: (831) 426-9054 FAX: (831) 426-8923</p> <p>DATE: MARCH 2014 SCALE: AS SHOWN SHEET: 3.0 8 OF 9</p>
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A B C D E F G H I J K L M N O P

1 2 3 4 5 6 7 8 9 10 11



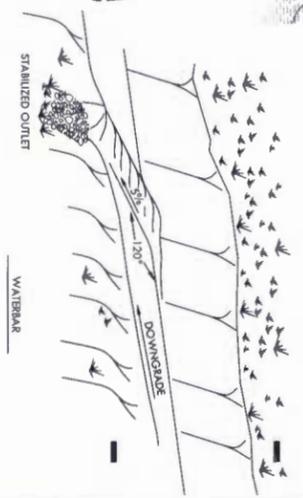
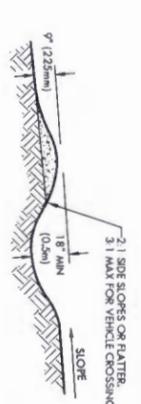
PRELIMINARY DRAINAGE LAYOUT - PLAN VIEW
SCALE 1" = 60'

PRELIMINARY DRAWINGS NOT FOR CONSTRUCTION

RECEIVED

MAR 19 2014

CALIFORNIA
COASTAL COMMUNITY
CENTRAL COAST AREA



	PROJECT TITLE CAVE LANDING BIKE PATH IMPROVEMENTS CAVE LANDING ROAD SAN LUIS OBISPO, CALIFORNIA	CLIENT COUNTY OF SAN LUIS OBISPO PARKS DIVISION ATTN: SHAUN COOPER 1087 SANTA ROSA STREET SAN LUIS OBISPO, CA	SHEET TITLE PRELIMINARY DRAINAGE PLAN Exhibit 5
	DRAWN BY: RJC CHECKED BY: PHH DATE: MARCH 2014 JOB NO.: 21107 SCALE: AS SHOWN SHEET: 4.0 9 OF 9	FULL CREW ENGINEERING, INC. Consulting Engineers 2415 Chippendale Street San Luis Obispo, CA 93401 P.O. BOX 7946, SANTA ROSA, CA 95401 TEL: (805) 438-8024 FAX: (805) 438-8023	A-3-SLO-13-0252 8 of 8



SAN LUIS OBISPO COUNTY
DEPARTMENT OF PLANNING AND BUILDING

November 6, 2013

FINAL LOCAL
ACTION NOTICE

REFERENCE # 3-SLO-13-0827
APPEAL PERIOD 11/12-11/26/13

RECEIVED

NOV 12 2013

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

County of San Luis Obispo
General Services Agency – Parks Division
Attention: Ryan Hostetter - Dept. of Planning and Building
Elizabeth Kavanaugh - General Services Agency Parks Division

NOTICE OF FINAL COUNTY ACTION

HEARING DATE: November 5, 2013

SUBJECT: County File No. DRC2011-00069
County of San Luis Obispo,
Department of General Services, Parks Division
Development Plan / Variance / Coastal Development Permit

LOCATED WITHIN COASTAL ZONE: YES

The above-referenced application was approved by the Board of Supervisors, based on the approved Findings and Conditions, which are attached for your records. This Notice of Final Action is being mailed to you pursuant to Section 23.02.033(d) of the Land Use Ordinance.

This action is appealable to the California Coastal Commission pursuant to regulations contained in Coastal Act Section 30603 and the County Coastal Zone Land Use Ordinance 23.01.043. These regulations contain specific time limits to appeal, criteria, and procedures that must be followed to appeal this action. The regulations provide the California Coastal Commission ten (10) working days following the expiration of the County appeal period to appeal the decision. This means that no construction permits can be issued until both the County appeal period and the additional Coastal Commission appeal period have expired without an appeal being filed.

Exhaustion of appeals at the county level is required prior to appealing the matter to the California Coastal Commission. This second appeal must be made directly to the California Coastal Commission Office. Contact the Commission's Santa Cruz Office at (831) 427-4863 for further information on their appeal procedures.

If the use authorized by this Permit approval has not been established, or if substantial work on the property towards the establishment of the use is not in progress after a period of twenty-four (24) months from the date of this approval or such other time period as may be designated through conditions of approval of this Permit, this approval

A-3-SLO-12-1252

shall expire and become void unless an extension of time has been granted pursuant to the provisions of Section 23.02.050 of the Land Use Ordinance.

If the use authorized by this Permit approval, once established, is or has been unused, abandoned, discontinued, or has ceased for a period of six (6) months, or conditions have not been complied with, such Permit approval shall become void.

If you have questions regarding your project, please contact me at (805) 781-5612.

Sincerely,



RAMONA HEDGES
Custodian of Records

cc: California Coastal Commission,
725 Front Street, Suite 300, Santa Cruz, California 95060

Brian LoConte, RR 1 Box 245, San Luis Obispo, California 93405

Friends of Pirates Cove, Attn Sean Shealy, 522 Corralitos Road, Arroyo Grande,
California 93420

(Planning Department Use Only – for California Coastal Commission)

Date NOFA copy mailed to Coastal Commission: 11/7/13

Enclosed: X Staff Report(s) dated 5/23/13
 X Resolution with Findings and Conditions

IN THE BOARD OF SUPERVISORS
COUNTY OF SAN LUIS OBISPO, STATE OF CALIFORNIA

Tuesday, November 5, 2013

PRESENT: Supervisors Frank R. Mecham, Adam Hill, Caren Ray, Debbie Arnold and
Acting Chairperson Bruce S. Gibson

ABSENT: None

RESOLUTION NO. 2013-275

RESOLUTION UPHOLDING THE DECISION OF THE
PLANNING COMMISSION AND CONDITIONALLY APPROVING
THE APPLICATION OF THE COUNTY OF SAN LUIS OBISPO DEPARTMENT OF
GENERAL SERVICES, PARKS DIVISION FOR DEVELOPMENT
PLAN/VARIANCE/COASTAL DEVELOPMENT PERMIT DRC2011-00069

The following resolution is now offered and read:

WHEREAS, on May 23 2013, the Planning Commission of the County of San Luis Obispo (hereinafter referred to as the "Planning Commission") duly considered and continued the item until July 25, 2013 where the commission conditionally approved the application of the County of San Luis Obispo Department of General Services, Parks Division for Development Plan/Variance/Coastal Development Permit DRC2011-00069; and

WHEREAS, Sean Shealy for Friends of Pirates Cove and Brian LoConte have appealed the Planning Commission's decision to the Board of Supervisors of the County of San Luis Obispo (hereinafter referred to as the Board of Supervisors) pursuant to the applicable provisions of Title 23 of the San Luis Obispo County Code; and

Attachment 1

WHEREAS, a public hearing was duly noticed and conducted by the Board of Supervisors on October 8 2013, and determination and decision was made on October 8, 2013; and

WHEREAS, at said hearing, the Board of Supervisors heard and received all oral and written protests, objections, and evidence, which were made, presented, or filed, and all persons present were given the opportunity to hear and be heard in respect to any matter relating to said appeal; and

WHEREAS, the Board of Supervisors has duly considered the appeal and finds that the appeal should be denied and the decision of the Planning Commission should be affirmed and that the application should be approved subject to the findings and conditions set forth below.

NOW, THEREFORE, BE IT RESOLVED AND ORDERED by the Board of Supervisors of the County of San Luis Obispo, State of California, as follows:

1. That the recitals set forth hereinabove are true, correct and valid.
2. That the Board of Supervisors makes all of the findings of fact and determinations set forth in revised Exhibit A attached hereto and incorporated by reference herein as though set forth in full.
3. That the Mitigated Negative Declaration prepared for this project is hereby approved as complete and adequate and as having been prepared in accordance with the provisions of the California Environmental Quality Act.

4. That the appeals filed by Sean Shealy and Brian LoConte are hereby denied and the decision of the Planning Commission is affirmed and that the application of County Department of General Services, Parks Division, for Development Plan/Coastal

Attachment I

Development Permit DRC2011-00069 is hereby approved subject to the conditions of approval set forth in Exhibit B attached hereto and incorporated by reference herein as though set forth in full.

Upon motion of Supervisor Hill, seconded by Supervisor Ray, and on the following roll call vote, to wit:

AYES: Supervisors Hill, Ray, Mecham, Arnold and Acting Chairperson Gibson

NOES: None

ABSENT: None

ABSTAINING: None

the foregoing resolution is hereby adopted.

Bruce S. Gibson
Acting Chairperson of the Board of Supervisors

ATTEST:

Julie L. Rodewald
Clerk of the Board of Supervisors

By: Annette Ramirez
Deputy Clerk

[SEAL]

EXHIBIT A
FINDINGS FOR DEVELOPMENT PLAN/VARIANCE/COASTAL DEVELOPMENT PERMIT
DRC2011-00069

Environmental Determination (Revised Project for 70 space Parking Area)

- A. The Environmental Coordinator, after completion of the initial study, finds that there is no substantial evidence that the project may have a significant effect on the environment, and the preparation of an Environmental Impact Report is not necessary. Therefore, a Mitigated Negative Declaration (pursuant to Public Resources Code Section 21000 et seq., and CA Code of Regulations Section 15000 et seq.) has been issued on February 21, 2013 and is hereby adopted for this project. Mitigation measures are proposed to address aesthetics, air quality, biological resources, cultural resources, geology and soils, traffic, noise, and land use and are included as conditions of approval.
- B. The County as the Lead Agency finds that the revised project is consistent with the existing proposed Mitigated Negative Declaration and as a result the proposed Mitigated Negative Declaration does not need to be substantially revised and recirculated under the provisions of CEQA Guidelines section 15073.5 because:
1. The area near the proposed bathroom where the additional parking is to occur is located within an area previously proposed for disturbance for construction staging and grading for the bathroom and area around the bathroom;
 2. The additional parking does not generate new significant impacts beyond those impacts already reviewed in the Mitigated Negative Declaration;
 3. The additional parking and grading does not require additional mitigation measures beyond what was already proposed in the Mitigated Negative Declaration;
 4. There is no substantial evidence in light of the whole record that the project as revised will have a significant effect on the environment that has not already been considered and mitigated for in the Mitigated Negative Declaration

Development Plan

- C. The proposed project or use is consistent with the San Luis Obispo County General Plan because the use is an allowed use and as conditioned is consistent with all of the General Plan policies. The County's Park and Recreation Element identifies the Cave Landing Trail as a proposed project. This project will not only fulfill the County's Park and Recreation Element, but serve as part of the statewide California Coastal Trail which will provide coastal access, further achieving the goals of the County's Parks and Recreation Element for coastal access.
- D. As conditioned, the proposed project or use satisfies all applicable provisions of Title 23 of the County Code.
- E. The establishment and subsequent operation or conduct of the use will not, because of the circumstances and conditions applied in the particular case, be detrimental to the health, safety or welfare of the general public or persons residing or working in the neighborhood of the use, or be detrimental or injurious to property or improvements in the vicinity of the use because the project which includes improvements to existing trails and parking areas does not generate activity that presents a potential threat to the surrounding properties. This project is subject to Ordinance and Building Code requirements designed to address health, safety and welfare concerns.
- F. The proposed project or use will not be inconsistent with the character of the immediate neighborhood or contrary to its orderly development because the trail, parking area and

passive recreation facilities (picnic tables, restrooms and trash receptacles) will not conflict with the surrounding lands and uses.

- G. The proposed project or use will not generate a volume of traffic beyond the safe capacity of all roads providing access to the project, either existing or to be improved with the project because the project is located on Cave Landing Road, a local road constructed to a level able to allow the current informal passive recreation facilities to become formalized and remain under County maintenance and control.

Archeological Sensitive Area

- H. The site design and development incorporate adequate measures to ensure that archeological resources will be acceptably and adequately protected because the project. The project has been sited and designed to minimize impacts to cultural resources, but full avoidance to cultural resources is not feasible. The project is conditioned to include a monitoring plan which will require a qualified professional approved by the county to monitoring any ground disturbing activities.

Coastal Access

- I. The proposed use is in conformity with the public access and recreation policies of Chapter 3 of the California Coastal Act, because the purpose of the project is to provide for and formalize coastal access for the public on the subject properties.

Variance Findings

- J. The Variance authorized does not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and land use category in which it is situated.

This proposed project is requesting four variances from the strict interpretations of the Coastal Zone Land Use Ordinance. The variance requests are as follows:

to avoid landslides - cultural resources
no slopes less than 30%
disturbed areas on embankment

- ① Variance to allow development of the trail within the coastal bluff setback;
- ② Variance to allow grading on slopes of 30% for portions of the newly re-aligned trail between Cave Landing and Pismo Beach because grading on steep slopes of 30% or more is not normally allowed (unless there is no possible way around the slopes);
- ③ Variance to allow development within the required 25 foot front setback area from Cave Landing Road;
- ④ Variance to allow parking within the front 25 foot setback area along Cave Landing Road.

This project with the requested variances does not grant special privileges inconsistent with the limitations upon other properties in the vicinity. Variance approvals for these items are common when there are no alternative designs for a proposed project, or where there are no alternative designs which comply with other portions of the Local Coastal Program such as protection of resources. Specifically, the location of the improvements are being limited to disturbed areas to the maximum amount feasible except for the re-alignment of the new trail in order to avoid landslides and cultural resources. These locations happen to be clustered very close to the road which are within the front setback areas (3 and 4 above). The trail improvements within the bluff setback are similar to other projects where coastal trails are on the edge of the bluff in order to maximize the public viewing experience being as close to the ocean as possible (1 above). Additionally, portions of the trail will be on slopes of 30%, and in this case there is no alternative location on the site to locate the trail off of these steep slopes. This is similar to other projects that are unable to be designed to avoid steep slopes due to site constraints and have received approval for a variance (2 above).

A-3 St. O. 12-1252

- K. There are special circumstances applicable to the property, including size, shape, topography, location, or surroundings, and because of these circumstances, the strict application of this Title would deprive the property of privileges enjoyed by other properties in the vicinity and in the same land use category.
This project is unique in that the purpose is to provide coastal access for the public. This is unlike private development projects where there is a principal use of the site and the property owner has a right to use the property for this principal use, and without granting a variance the property owner would be deprived of their privileges enjoyed by surrounding properties within the same zoning. This proposed project includes properties held by the County which will contain trails and parking areas for coastal access. The proposed project site does contain special circumstances relative to its location which include sensitive resources areas and proximity to the coastal bluff. Similar to other projects which receive variances for slope or setback, this proposed project includes similar site constraints which do not allow for a revised project design without granting of a variance, or further impacting sensitive coastal resources (such as landslide areas and cultural resources).
- L. The Variance does not authorize a use that is not otherwise authorized in the land use category.
The project includes passive recreation which is an allowed use within the Residential Rural Land Use Category.
- M. The Variance is consistent with the provisions of the Local Coastal Program (LCP).
The project complies with the requirements of the Local Coastal Program as the purpose of the project is to enhance coastal access consistent with the goals and policies of the LCP.
- N. The granting of such application does not, under the circumstances and conditions applied in the particular case, adversely affect public health or safety, is not materially detrimental to the public welfare, nor injurious to nearby property or improvements.
This project will include improvements to existing informal trails and parking areas which will increase the safety for the users of the property. Currently the site contains hazardous trails which are damaged due to landslides and these will be enhanced and re located in order to provide safe access. Hand rails and stairs are also being installed which will increase safety of the proposed site. The project is not injurious to neighboring properties as the use will remain unchanged, but will be formalized in order to enhance the safety of the site.

EXHIBIT B
REVISED CONDITIONS OF APPROVAL DEVELOPMENT PLAN/VARIANCE/COASTAL
DEVELOPMENT PERMIT DRC2011-00069

Approved Development

1. This approval authorizes a Development Plan/Coastal Development Permit/Variance to allow for the construction of the following:
 - a. Construction of a bike/pedestrian trail of approximately 1,800 linear feet long and approximately 12 feet wide. Approximately 800 feet of this proposed trail is located within the abandoned road segment of Cave Landing Road. This trail will be made of decomposed granite or similar permeable surface and will require removal of approximately 800 linear feet of existing abandoned road pavement. A 30 foot span bridge will cross a natural drainage way;
 - b. formalization of the Pirates' Cove parking lot by leveling, resurfacing with asphalt, landscaping, and providing a minimum of 70 parking spaces;
 - c. installation of drainage improvements of vegetated bio-swales and two level spreaders in the parking lot area;
 - d. Improvement of the existing pedestrian trail from the parking lot to Pirates Cove beach including: a four foot wide trail; additional water bars for drainage; stairs to the beach; and rails or fencing as necessary;
 - e. construction of accessory facilities including a waterless vault restroom, picnic tables, benches, garbage cans, and interpretive signs, and
 - f. regular maintenance of these facilities.
 - g. Variance to allow construction on slopes of 30% ²
 - h. Variance to allow parking and fencing within a front setback along Cave Landing Road
 - i. Variance to allow construction within the coastal bluff setback area.
 - j. Hours of operation shall be between 6 a.m. and 10 p.m.

Conditions required to be completed prior to commencement of construction

Site Development

2. Construction plans submitted shall show all development consistent with the revised site plan, floor plans and elevations.
3. The project shall comply with the parking design standards of section 23.04.164 of the Coastal Zone Land Use Ordinance.

Lighting Plan

4. The applicant shall provide a Lighting Plan. The plan shall include the height, location and intensity of all exterior lighting. All light fixtures shall be shielded so that neither the lamp nor the reflective interior surface is visible from areas outside the project site. All light poles, fixtures and hoods shall be dark (non-reflective) colored. All exterior lighting sources shall be low-level and adjusted so that light is directed into the project site. Security lighting shall be shielded so as not to create glare when viewed outside the project boundaries.

Sign Plan

5. The applicant shall provide a signage plan which shows the location and language of all signage proposed for the property, including but not limited to signs identifying trail boundaries and signs listing prohibited activities such as camping and campfires. Signs shall explain the hazardous and potentially dangerous nature of the property, the steep cliffs and unstable terrain down to the beach. Signs shall also explain that visitors

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using the stairs or walking to or on the beach are "at their own risk" and should take extra precautions during hours of low visibility or severe conditions.

Fire Safety

6. All construction plans shall meet the fire and life safety requirements of the California Fire Code. Requirements shall include, but not be limited to those outlined in the letter prepared by the CDF/County Fire Department for this proposed project and dated April 11, 2012.

Public Works

7. The applicant shall obtain all necessary approvals from County Public Works, and all recommendations from Public Works shall be incorporated in the project plans. A drainage plan and sedimentation and erosion control plan shall also be prepared for review and approval by County Public Works.

Vault Restroom

8. The applicant shall submit evidence that the vault restrooms are reviewed and approved by County Environmental Health Department.

Air Quality

9. AQ-1 Fugitive PM 10 **Mitigation measures (All required PM190 measures shall be shown on applicable grading or construction plans.** In addition, the County of San Luis General Service Agency/Parks shall designate personnel to insure compliance and monitor the effectiveness of the required dust control measures (as conditions dictate, monitor duties may be necessary in weekend and holidays to insure compliance); the name and telephone number of the designated monitors shall be provided to the APCD prior to construction/grading permit issuance:

- Reduce the amount of disturbed area where possible;
- Use water trucks or sprinklers systems in sufficient quantities to prevent airborne dust from leaving the site. Increased watering frequency would be required whenever wind speeds exceed 15 miles per hour. Reclaimed (nonpotable) water should be used whenever possible; Water all active construction areas at least twice daily. Frequency should be based on the type of operation, soil and wind exposure;
- All dirt stock-pile areas should be sprayed daily as needed;
- Permanent dust control measures identified in the approved project revegetation plan should be implemented as soon as possible following completion of disturbing activities;
- Exposed ground areas that are planned to be reworked at dates greater than one month after initial grading should be sown with fast germinating native grass seed and watered until vegetation is established;
- All disturbed soil areas not subject to revegetation should be stabilized using approved chemical soil binders, jute netting, or other methods approved in advance by APCD;
- All roadways driveways, sidewalks etc. to be paved should be completed as soon as possible. In additional, building pads should be aid as soon as possible after grading unless seeding or soil binders are used.
- Vehicle speed for all construction vehicles shall not exceed 15 mph on any unpaved surface at the construction site;
- All trucks hauling dirt, sand, soil, or other loose materials are to be covered or should maintain at least two feet freeboard (minimum vertical distance between top of load and top of trailer) in accordance with the CVC Section.

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- Install wheel washers where vehicles enter and exit unpaved roads onto streets, or wash off trucks and equipment leaving the site; and
 - Sweep streets at the end of each day if visible soil material is carried onto adjacent paved roads. Water sweepers with reclaimed water should be used where feasible.
10. AQ-2 Prior to construction the General Service Agency/Parks shall provide evidence they have contracted APCD on any proposed portable equipment requiring APCD or CARB registration such as: 50-hp portable generators, IC engines, unconfined abrasive blasting operations, concrete batch plants, rock and pavement crushing, tub grinder, trammel screens, etc. should any of these types of equipment be used during construction activities, Californian Statewide portable equipment registration (issued by the Californian Air Resources Board) or a APCD permit may be required.

Biological Resources

11. BIO-1 The Black-flowered figwort shall be flagged along the beach trail so construction activities avoid this area. If avoidance is not feasible; a mitigation plan would be developed and implemented by a qualified biologist/restoration specialist, and may include salvaging/transplanting plants and/or cuttings from impact areas and relocating to suitable habitat and/or collecting seeds for distribution in a designated mitigation/restoration area.
12. BIO-2 A qualified biologist shall conduct a pre-construction survey prior to the mobilization, operation, and demobilization of project equipment within work areas to determine presence/absence sensitive wildlife species. In the event that any special-status species are identified within the immediate project work area, work will not be initiated until the appropriate agencies have been contacted and appropriate measures for protection have been instituted. Project activities may commence only after pre-construction surveys have confirmed the absence of all special-status species
13. BIO-3 All applicable agency permits with jurisdiction over the project area (e.g. CCC, CDFW, Corps, Regional Water Quality Control Board [RWQCB]) should be obtained (as necessary) for proposed project improvements. All additional mitigation measures required by these agencies would be implemented as necessary throughout the project.
14. BIO-4 If feasible, construction activities shall take place between mid-August and mid-March to be outside of the nesting bird season. If construction activities occur within the nesting bird season, a qualified biologist shall perform pre-activity nesting bird surveys to determine if breeding/nesting birds are present within the project site. If an active bird nest, greater than 50% completed, is identified, then CDFW and/or USWFS shall be consulted to determine appropriate buffer during construction activities. Nests less than 50% completed or a non-active nest (i.e., last year's nest or an abandoned nest) shall be removed by a qualified biologist in accordance to the MBTA.

Cultural Resources

15. CR-1 The applicant shall submit to the Environmental Coordinator for review and approval, a detailed researched design for a Phase III data recovery archaeological investigation. The Phase III program shall be prepared by a subsurface qualified archaeologist, approved by the Environmental Coordinator. The consulting archaeologist responsible for the Phase III program shall be provided with a copy of the previous archaeological investigations. The Phase III program shall include at least the following:
- a. standard archaeological data recovery practices;

- b. recommendation of sample size adequate to mitigate for impacts to the archaeological site, including bases and justification of the recommended sample size;
- c. identification of location of sample sites/test units;
- d. detailed description of sampling techniques and material recovery procedures (e.g. how sample is to be excavated, how the material will be screened, screen size, how materials will be collected);
- e. disposition of collected materials;
- f. proposed analysis of results of data recovery and collected materials, including timeline of final analysis results; and
- g. consultation with appropriate Chumash tribal representatives.

Once approved these measures shall be shown on all applicable plans and implemented during construction. C

- 16. CR-2 A monitoring plan, prepared by a subsurface-qualified archaeologist, approved by the Environmental Coordinator, to be reviewed and approved by the Environmental Coordinator. The monitoring plan shall include at a minimum: C
 - a. List of personnel involved on the monitoring activities;
 - b. Description of how monitoring shall occur;
 - c. Description of frequency of monitoring (e.g. full-time, part time. Spot checking);
 - d. Description of what resources are expected to be encountered;
 - e. Description of circumstances that would result in the halting of work at the project site (e.g. what is considered significant archaeological resources?);
 - f. Description of procedures for halting work on the site and notification procedures;
 - g. Description of monitoring reporting procedures; and
 - h. Consultation with appropriate Chumash tribal representatives.
- 17. CR-3 A letter from the consulting archaeologist shall be submitted to the Environmental Coordinator indicating that all necessary field work, as identified in the Phase III, program, has been completed. C

Geology and Soils

- 18. GS-1 General Service Agency/Parks shall prepare construction plans that show the Cave Landing Road trail head relocated away from the potential sinkhole area and tension crackling/scarps as shown on page 27 of this report. ?
- 19. GS-2 General Service Agency/Parks shall prepare construction/drainage plan(s) that show the level of water drained into the Pirates Cove Landslide Complex does not increase, drainage does not cause erosion or flow into the landslide areas and the grading does not affect the overall stability of the site. C
- 20. GS-3 General Service Agency/Parks shall prepare construction plans that increase the span of the bridge to a length that will reduce foundation depths of the bridge footing to no more than two or three feet and reduce the potential to remove lateral support from an active landslide that is present in the area of the west abutment.
- 21. GS-4 General Service Agency/Parks shall prepare construction plans that include:
 - a. proper compaction and grading for fills placed on sloping ground;
 - b. fill slopes no steeper than 2h:1v; and
 - c. cut slopes no steeper than 1.5h:1v.
- 22. GS-5 General Service Agency/Parks shall prepare construction plans for the bridge that include:

- a. fill placed on slopes steeper than 20 percent (at the bridge approaches) should be initiated from a toe key excavated into firm material, and be keyed and benched into the hillside in accordance with good construction practices;
 - b. The embankment should be founded on firm subgrade soil below any loose or fissured topsoil;
 - c. The toe embankment should be initiated from a toe key excavated to at least two feet below existing site grades and sloped at least two percent into the fill side. The toe key should be at least eight feet wide. The fill above the toe key should then be keyed and benched into the hillside such that at least the upper two feet of soil is removed by the grading.
23. GS-6 General Service Agency/Parks shall prepare construction/drainage plans that:
- a. improve cross drainage on trails and reduce concentrated flows of runoff;
 - b. do not increase erosion or flow of surface drainage water into landslide area; and
 - c. spreader trenches sized such that storm water runoff trenches allow no additional runoff than the natural surface runoff.
24. GS-7 General Service Agency/Parks shall prepare a complete erosion and sedimentation control plan in accordance with Title 23.05.
25. GS-8 The applicant shall provide verification that the plans and specification for the design of the trail, grading, bridge structures, utility trenches and appurtenant improvements have been prepared in accordance with the recommendations of the geotechnical report(s) prior to beginning construction. Structures shall be designed to at least the minimum requirements of the 2010 California Building Code and the recommendations of the geotechnical report(s).

Traffic and Circulation

26. TR-1 Prior to construction, General Service Agency/Parks shall secure an encroachment permit to allow the installation of the restroom, tables, benches, bike racks and the removal and restoration to native of a portion of the existing trails that lies within the County maintained road right-of-way. General services shall meet with Public Works and the Chumash representatives to determine the minimum disturbance necessary for the proposed parking area adjacent to the restroom.

Water

27. W-1 Prepare and implement an erosion, sedimentation and pollution prevention plan and SWPPP.
28. W-2 Submit a drainage plan showing the use of a filter device to prevent oils and fuel washing from the proposed parking area into the ocean at the parking lot inflow location

Access

29. At the time of construction document design for the beach access stairs, San Luis County Parks in consultation with Coastal Conservancy, shall take into consideration the location, dynamic environment and historic storm patterns for this site to allow for a design that will allow maximum public access throughout the year as to avoid any closures to the beach.

Conditions required to be completed during project construction

Biological Resources

30. BIO-5 An Environmental Sensitivity Training presentation shall be prepared and presented to all construction personnel at the beginning of the project. The program

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shall discuss sensitive species with potential to occur in the construction zone, with emphasis on special-status wildlife, plants, and sensitive marine resources. The program shall explain the importance of minimizing disturbance and adhering to all permit conditions and provide an overview of petroleum spill prevention and response actions.

31. BIO-6 The following measures shall be implemented to further mitigate impacts to sensitive wildlife that may occur within project area:
- All vegetation removal and initial ground disturbing excavation activities shall be monitored by a qualified biologist, authorized to relocate native wildlife to adjacent suitable habitat;
 - A qualified biologist shall inspect the immediate work areas for any signs of nesting woodrats. In the event a woodrat nest is found within the immediate work area and project activities cannot avoid the nest, all activities within the vicinity of the nest shall stop and the CDFW shall be consulted. At no time shall a woodrat nest be removed until CDFW consultation;
 - All construction activities will be completed during daylight hours only;
 - All trash receptacles will be located away from the bluff face and will be covered; and all food-related trash shall be removed from the Project Site at the end of each working day;
 - Project-related equipment should be prohibited outside of designated work areas and delineated access routes;
 - No firearms should be allowed in the project area;
 - In the event a special status animal is observed within the Project Site, appropriate agencies will be notified immediately to determine further mitigation;
 - No project activities shall be conducted during rain events; and,
 - No rodenticides or herbicides should be applied within the project area.
32. BIO-7 The use of heavy equipment and vehicles shall be limited to the proposed project limits, existing roadways, and defined staging areas/access points. Impervious material will be placed under all containers with petroleum products, including machinery engines and fuel tanks, in the storage or refueling area. The boundaries of each work area shall be clearly defined and marked with visible flagging and/or fencing.
33. BIO-8 During construction, washing of concrete, paint, or equipment and refueling and maintenance of equipment shall occur only in designated areas. Straw bales, sandbags, and sorbent pads shall be available to prevent water and/or spilled fuel from entering adjacent waters. In addition, secondary containment should be installed around all locations where petroleum products are stored. Construction equipment shall be inspected by the operator on a daily basis to ensure that equipment is in good working order and no fuel or lubricant leaks are present.
34. BIO-9 Heavy equipment that creates noise levels above 85 dB shall not be used for project activities along the shoreline during installation of the storm drain culverts and/or during future improvements of the lower portion of Pirate's Cove trail down to the beach. Specifically, noise level measurements shall be taken during the first day that a piece of equipment that has no published noise level data is to be used at the site. Measurements shall be taken to determine the distance to the 85 dB noise level and adjustments to machinery operation (i.e., ramp up) shall be made if wildlife (i.e., harbor seal, sea otter, and sea lion) are observed to be negatively affected by the equipment noise.

35. BIO-10 Erosion control measures shall be implemented to prevent runoff into adjacent waters. Silt fencing, in conjunction with other methods, shall be used to prevent erosion and avoid and/or minimize excavated soil and sediments from entering adjacent waterways. Further, appropriate dust control measures, such as, daily watering of work areas, shall be implemented to minimize dust impacts to surrounding habitat areas.

Cultural Resources

36. (a) CR-4 All ground disturbing construction activities, the applicant shall retain a qualified archaeologist (approved by the environmental coordinator) and Native American to monitor all earth disturbing activities, per the approved monitoring plan. If any significant archaeological resources or human remains are found during monitoring all work shall stop within the immediate vicinity (precise area to be determined by the archaeologist in the field) of the resource until such time as the resource can be evaluated by an archaeologist and any other appropriate individuals. The applicant shall implement the mitigation as required by the Environmental Coordinator.

(b) During the construction of the improvements to the pedestrian trail from the parking lot to Pirates Cove, the County shall work closely with the Native American monitor to avoid or reduce impacts to cultural resources if at all feasible. In areas of concern as identified by the monitor, trail improvements may be limited to those necessary to make the trail safe or stabilize it due to drainage of other surface concerns. The County will consider installation of "cover" (e.g. mulch, jute netting, inhospitable vegetation) for areas of visible cultural resources directly adjacent to the trail if acceptable to the Native American monitor.

Noise

37. N-1 Construction activities will be limited to the hours of 7:00 a.m. to 7:00 p.m.
38. N-2 Heavy equipment that creates noise levels above 85 dB shall not be used for project activities along the shoreline during installation of the storm drain culverts and/or during future improvements of the lower portion of Pirate's Cove trail down to the beach. Specifically, noise level measurements shall be taken during the first day that a piece of equipment that has no published noise level data is to be used at the site. Measurements shall be taken to determine the distance to the 85 dB noise level and adjustments to machinery operation (i.e., ramp up) shall be made if wildlife (i.e., harbor seal, sea otter, and sea lion) are observed to be negatively affected by the equipment noise.

Conditions required to be completed prior to final inspection

Aesthetics

39. AES-1 The balance of any cuts into the hillside shall be replanted as soon as possible with erosion control planting.
40. AES-2 Stairs to the beach shall be painted or made of material that is a muted and natural color that match the surrounding natural environment.
41. AES-3 The vault restroom shall be painted or made of material that is a muted and natural color that match the surrounding natural environment.
42. Landscaping in accordance with the approved landscaping plan shall be installed before final inspection. All landscaping shall be maintained in a viable condition in perpetuity.

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43. The applicant shall contact the Department of Planning and Building to have the site inspected for compliance with the conditions of this approval.

Cultural Resources

44. CR-5 Upon completion of all monitoring/data recovery activities, and prior to final inspection (whichever occurs first) the consulting archaeologist shall submit a report to the Environmental Coordinator summarizing all monitoring/data recovery activities and confirming that all mitigation measures have been met. If the analysis included in the Phase III program is not complete by the time of final inspection the applicant shall provide to the environmental coordinator, proof of obligation to complete the required analysis.
45. CR-6 Split rail fencing, or similar type fencing, a minimum of three feet high shall be installed along the bike/pedestrian trail. This fencing is to discourage people from meandering off the official trail.
46. CR-7 Interpretive panel(s) shall be installed to educate the public about the Chumash experience and cultural history of the area. The(se) interpretive panel(s) shall be approved by County Parks, and the content shall be developed in cooperation with appropriate Chumash tribal representatives

Geology and Soils

47. GS-9 The applicant shall provide verification that the earthwork, drainage, structures, and trail improvements were inspected, tested, and observed under the auspices of a California registered professional engineer and the geotechnical engineer for conformance with the plans, specifications, and any special inspection requirements of the 2010 California Building Code so as to have reasonable certainty that the work was constructed according to the approved plans and specifications.
48. GS-10 If landslide potential is perceived (heavy rains, earthquakes) the bike/pedestrian trail will be closed to ensure public safety.
49. GS-11 A sign will be posted at either end of the trail with notice to contact County Parks if dangerous or unusual conditions are observed.

Traffic and Circulation

50. TR-2 After completion of the bike trail improvements and realignment, General Service Agency/Parks shall request vacation of the County maintained road right-of-way being superseded by the trail.

On-going conditions of approval (valid for the life of the project)

Air Quality

51. AQ-3 As of February, 2000, the APCD prohibits developmental burning of vegetative material with San Luis Obispo county. However, under certain circumstances where no technically feasible alternatives are available, limited developmental burning under restrictions may be allowed, any such exemption must complete the following prior to any burning: APCD approval; payment of fee to APCD based on the size of the project; and issuance of a burn permit by APCD and the local fire department authority. As part of APCD approval, the applicant shall furnish them with the study of technical feasibility (which includes cost and other constraints) at the time of application. For any questions regarding these requirements, Karen Brooks of APCD's Enforcement Division may be contacted.

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Geology and Soils

52. GS-12 The trail should be inspected by the County following periods when landslide potential may increase (such as following periods of heavy rains, earthquakes, or high surf) or when there are reports of cracking, settlement, or erosion of within or adjacent to the bike/pedestrian and the trail will be closed to ensure public safety if conditions are deemed to make travel on the path unsafe.
53. GS-13 This project shall comply with the requirements of the National Pollutant Discharge Elimination System Phase I and/or Phase II storm water program and the county's Storm Water Pollution Control and Discharge Ordinance, Title 8, Section 8.68 et. seq.

Land Use

54. LU-1 The recreational area shall be closed down during significant rain storms or ground movement to ensure public safety.
55. This land use permit is valid for a period of 24 months from its effective date unless time extensions are granted pursuant to Coastal Zone Land Use Ordinance Section 23.02.050 or the land use permit is considered vested. This land use permit is considered to be vested once a construction permit has been issued and substantial site work has been completed. Substantial site work is defined by Land Use Ordinance Section 23.02.042 as site work progressed beyond grading and completion of structural foundations; and construction is occurring above grade.
56. All conditions of this approval shall be strictly adhered to, within the time frames specified, and in an on-going manner for the life of the project. Failure to comply with these conditions of approval may result in an immediate enforcement action by the Department of Planning and Building. If it is determined that violation(s) of these conditions of approval have occurred, or are occurring, this approval may be revoked pursuant to Section 23.10.160 of the Coastal Zone Land Use Ordinance.

IN THE BOARD OF SUPERVISORS
COUNTY OF SAN LUIS OBISPO, STATE OF CALIFORNIA

_____ day _____, 20__

PRESENT: Supervisors

ABSENT:

RESOLUTION NO. _____

RESOLUTION UPHOLDING THE DECISION OF THE
PLANNING COMMISSION AND CONDITIONALLY APPROVING
THE APPLICATION OF THE COUNTY OF SAN LUIS OBISPO DEPARTMENT OF
GENERAL SERVICES, PARKS DIVISION FOR DEVELOPMENT
PLAN/VARIANCE/COASTAL DEVELOPMENT PERMIT DRC2011-00069

The following resolution is now offered and read:

WHEREAS, on May 23 2013, the Planning Commission of the County of San Luis Obispo (hereinafter referred to as the "Planning Commission") duly considered and continued the item until July 25, 2013 where the commission conditionally approved the application of the County of San Luis Obispo Department of General Services, Parks Division for Development Plan/Variance/Coastal Development Permit DRC2011-00069; and

WHEREAS, Sean Shealy for Friends of Pirates Cove and Brian LoConte have appealed the Planning Commission's decision to the Board of Supervisors of the County of San Luis Obispo (hereinafter referred to as the Board of Supervisors)

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pursuant to the applicable provisions of Title 23 of the San Luis Obispo County Code;
and

WHEREAS, a public hearing was duly noticed and conducted by the Board of Supervisors on October 8, 2013, and continued to November 5, 2013 and determination and decision was made on November 5, 2013; and

WHEREAS, at said hearing, the Board of Supervisors heard and received all oral and written protests, objections, and evidence, which were made, presented, or filed, and all persons present were given the opportunity to hear and be heard in respect to any matter relating to said appeal; and

WHEREAS, the Board of Supervisors has duly considered the appeal and finds that the appeal should be denied and the decision of the Planning Commission should be affirmed and that the application should be approved subject to the findings and conditions set forth below.

NOW, THEREFORE, BE IT RESOLVED AND ORDERED by the Board of Supervisors of the County of San Luis Obispo, State of California, as follows:

1. That the recitals set forth hereinabove are true, correct and valid.
2. That the Board of Supervisors makes all of the findings of fact and determinations set forth in revised Exhibit A attached hereto and incorporated by reference herein as though set forth in full.
3. That the Mitigated Negative Declaration prepared for this project is hereby approved as complete and adequate and as having been prepared in accordance with the provisions of the California Environmental Quality Act.

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4. That the appeals filed by Sean Shealy and Brian LoConte are hereby denied and the decision of the Planning Commission is affirmed and that the application of County Department of General Services, Parks Division, for Development Plan/Coastal Development Permit DRC2011-00069 is hereby approved subject to the conditions of approval set forth in Exhibit B attached hereto and incorporated by reference herein as though set forth in full.

Upon motion of Supervisor _____, seconded by Supervisor _____, and on the following roll call vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAINING:

the foregoing resolution is hereby adopted.

Chairperson of the Board of Supervisors

ATTEST:

Clerk of the Board of Supervisors

[SEAL]

**EXHIBIT A
FINDINGS FOR DEVELOPMENT PLAN/VARIANCE/COASTAL DEVELOPMENT PERMIT
DRC2011-00069**

Environmental Determination (Revised Project for 70 space Parking Area)

- A. The Environmental Coordinator, after completion of the initial study, finds that there is no substantial evidence that the project may have a significant effect on the environment, and the preparation of an Environmental Impact Report is not necessary. Therefore, a Mitigated Negative Declaration (pursuant to Public Resources Code Section 21000 et seq., and CA Code of Regulations Section 15000 et seq.) has been issued on February 21, 2013 and is hereby adopted for this project. Mitigation measures are proposed to address aesthetics, air quality, biological resources, cultural resources, geology and soils, traffic, noise, and land use and are included as conditions of approval.
- B. The County as the Lead Agency finds that the revised project is consistent with the existing proposed Mitigated Negative Declaration and as a result the proposed Mitigated Negative Declaration does not need to be substantially revised and recirculated under the provisions of CEQA Guidelines section 15073.5 because:
1. The area near the proposed bathroom where the additional parking is to occur is located within an area previously proposed for disturbance for construction staging and grading for the bathroom and area around the bathroom;
 2. The additional parking does not generate new significant impacts beyond those impacts already reviewed in the Mitigated Negative Declaration;
 3. The additional parking and grading does not require additional mitigation measures beyond what was already proposed in the Mitigated Negative Declaration;
 4. There is no substantial evidence in light of the whole record that the project as revised will have a significant effect on the environment that has not already been considered and mitigated for in the Mitigated Negative Declaration

Development Plan

- C. The proposed project or use is consistent with the San Luis Obispo County General Plan because the use is an allowed use and as conditioned is consistent with all of the General Plan policies. The County's Park and Recreation Element identifies the Cave Landing Trail as a proposed project. This project will not only fulfill the County's Park and Recreation Element, but serve as part of the statewide California Coastal Trail which will provide coastal access, further achieving the goals of the County's Parks and Recreation Element for coastal access.
- D. As conditioned, the proposed project or use satisfies all applicable provisions of Title 23 of the County Code.
- E. The establishment and subsequent operation or conduct of the use will not, because of the circumstances and conditions applied in the particular case, be detrimental to the health, safety or welfare of the general public or persons residing or working in the neighborhood of the use, or be detrimental or injurious to property or improvements in the vicinity of the use because the project which includes improvements to existing trails and parking areas does not generate activity that presents a potential threat to the

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surrounding properties. This project is subject to Ordinance and Building Code requirements designed to address health, safety and welfare concerns.

- F. The proposed project or use will not be inconsistent with the character of the immediate neighborhood or contrary to its orderly development because the trail, parking area and passive recreation facilities (picnic tables, restrooms and trash receptacles) will not conflict with the surrounding lands and uses.
- G. The proposed project or use will not generate a volume of traffic beyond the safe capacity of all roads providing access to the project, either existing or to be improved with the project because the project is located on Cave Landing Road, a local road constructed to a level able to allow the current informal passive recreation facilities to become formalized and remain under County maintenance and control.

Archeological Sensitive Area

- H. The site design and development incorporate adequate measures to ensure that archeological resources will be acceptably and adequately protected because the project. The project has been sited and designed to minimize impacts to cultural resources, but full avoidance to cultural resources is not feasible. The project is conditioned to include a monitoring plan which will require a qualified professional approved by the county to monitoring any ground disturbing activities.

Coastal Access

- I. The proposed use is in conformity with the public access and recreation policies of Chapter 3 of the California Coastal Act, because the purpose of the project is to provide for and formalize coastal access for the public on the subject properties.

Variance Findings

- J. The Variance authorized does not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and land use category in which it is situated.
This proposed project is requesting four variances from the strict interpretations of the Coastal Zone Land Use Ordinance. The variance requests are as follows:

1. Variance to allow development of the trail within the coastal bluff setback;
2. Variance to allow grading on slopes of 30% for portions of the newly re-aligned trail between Cave Landing and Pismo Beach because grading on steep slopes of 30% or more is not normally allowed (unless there is no possible way around the slopes);
3. Variance to allow development within the required 25 foot front setback area from Cave Landing Road;
4. Variance to allow parking within the front 25 foot setback area along Cave Landing Road.

This project with the requested variances does not grant special privileges inconsistent with the limitations upon other properties in the vicinity. Variance approvals for these items are common when there are no alternative designs for a proposed project, or where there are no alternative designs which comply with other portions of the Local Coastal Program such as protection of resources. Specifically, the location of the improvements are being limited to disturbed areas to the maximum amount feasible

Attachment I

except for the re-alignment of the new trail in order to avoid landslides and cultural resources. These locations happen to be clustered very close to the road which are within the front setback areas (3 and 4 above). The trail improvements within the bluff setback are similar to other projects where coastal trails are on the edge of the bluff in order to maximize the public viewing experience being as close to the ocean as possible (1 above). Additionally, portions of the trail will be on slopes of 30%, and in this case there is no alternative location on the site to locate the trail off of these steep slopes. This is similar to other projects that are unable to be designed to avoid steep slopes due to site constraints and have received approval for a variance (2 above).

- K. There are special circumstances applicable to the property, including size, shape, topography, location, or surroundings, and because of these circumstances, the strict application of this Title would deprive the property of privileges enjoyed by other properties in the vicinity and in the same land use category.
This project is unique in that the purpose is to provide coastal access for the public. This is unlike private development projects where there is a principal use of the site and the property owner has a right to use the property for this principal use, and without granting a variance the property owner would be deprived of their privileges enjoyed by surrounding properties within the same zoning. This proposed project includes properties held by the County which will contain trails and parking areas for coastal access. The proposed project site does contain special circumstances relative to its location which include sensitive resources areas and proximity to the coastal bluff. Similar to other projects which receive variances for slope or setback, this proposed project includes similar site constraints which do not allow for a revised project design without granting of a variance, or further impacting sensitive coastal resources (such as landslide areas and cultural resources).
- L. The Variance does not authorize a use that is not otherwise authorized in the land use category.
The project includes passive recreation which is an allowed use within the Residential Rural Land Use Category.
- M. The Variance is consistent with the provisions of the Local Coastal Program (LCP).
The project complies with the requirements of the Local Coastal Program as the purpose of the project is to enhance coastal access consistent with the goals and policies of the LCP.
- N. The granting of such application does not, under the circumstances and conditions applied in the particular case, adversely affect public health or safety, is not materially detrimental to the public welfare, nor injurious to nearby property or improvements.
This project will include improvements to existing informal trails and parking areas which will increase the safety for the users of the property. Currently the site contains hazardous trails which are damaged due to landslides and these will be enhanced and re located in order to provide safe access. Hand rails and stairs are also being installed which will increase safety of the proposed site. The project is not injurious to neighboring properties as the use will remain unchanged, but will be formalized in order to enhance the safety of the site.

EXHIBIT B
REVISED CONDITIONS OF APPROVAL DEVELOPMENT PLAN/VARIANCE/COASTAL
DEVELOPMENT PERMIT DRC2011-00069

Approved Development

1. This approval authorizes a Development Plan/Coastal Development Permit/Variance to allow for the construction of the following:
 - a. Construction of a bike/pedestrian trail of approximately 1,800 linear feet long and approximately 12 feet wide. Approximately 800 feet of this proposed trail is located within the abandoned road segment of Cave Landing Road. This trail will be made of decomposed granite or similar permeable surface and will require removal of approximately 800 linear feet of existing abandoned road pavement. A 30 foot span bridge will cross a natural drainage way;
 - b. formalization of the Pirates' Cove parking lot by leveling, resurfacing with asphalt, landscaping, and providing a minimum of 70 parking spaces;
 - c. installation of drainage improvements of vegetated bio-swales and two level spreaders in the parking lot area;
 - d. Improvement of the existing pedestrian trail from the parking lot to Pirates Cove beach including: a four foot wide trail; additional water bars for drainage; stairs to the beach; and rails or fencing as necessary;
 - e. construction of accessory facilities including a waterless vault restroom, picnic tables, benches, garbage cans, and interpretive signs, and
 - f. regular maintenance of these facilities.
 - g. Variance to allow construction on slopes of 30%
 - h. Variance to allow parking and fencing within a front setback along Cave Landing Road
 - i. Variance to allow construction within the coastal bluff setback area.

Conditions required to be completed prior to commencement of construction

Site Development

2. Construction plans submitted shall show all development consistent with the revised site plan, floor plans and elevations.
3. The project shall comply with the parking design standards of section 23.04.164 of the Coastal Zone Land Use Ordinance.

Lighting Plan

4. The applicant shall provide a Lighting Plan. The plan shall include the height, location and intensity of all exterior lighting. All light fixtures shall be shielded so that neither the lamp nor the reflective interior surface is visible from areas outside the project site. All light poles, fixtures and hoods shall be dark (non-reflective) colored. All exterior lighting sources shall be low-level and adjusted so that light is directed into the project site. Security lighting shall be shielded so as not to create glare when viewed outside the project boundaries.

Sign Plan

5. The applicant shall provide a signage plan which shows the location and language of all signage proposed for the property, including but not limited to signs identifying trail

Attachment I

boundaries and signs listing prohibited activities such as camping and campfires. Signs shall explain the hazardous and potentially dangerous nature of the property due to steep cliffs and unstable terrain down to the beach. Signs shall also explain that visitors using the stairs or walking to or on the beach are "at their own risk" and should take extra precautions during hours of low visibility or severe conditions.

Fire Safety

6. All construction plans shall meet the fire and life safety requirements of the California Fire Code. Requirements shall include, but not be limited to those outlined in the letter prepared by the CDF/County Fire Department for this proposed project and dated April 11, 2012.

Public Works

7. The applicant shall obtain all necessary approvals from County Public Works, and all recommendations from Public Works shall be incorporated in the project plans. A drainage plan and sedimentation and erosion control plan shall also be prepared for review and approval by County Public Works.

Vault Restroom

8. The applicant shall submit evidence that the vault restrooms are reviewed and approved by County Environmental Health Department.

Air Quality

9. AQ-1 Fugitive PM 10 **Mitigation measures (All required PM190 measures shall be shown on applicable grading or construction plans.** In addition, the County of San Luis General Service Agency/Parks shall designate personnel to insure compliance and monitor the effectiveness of the required dust control measures (as conditions dictate, monitor duties may be necessary in weekend and holidays to insure compliance): the name and telephone number of the designated monitors shall be provided to the APCD prior to construction/grading permit issuance:
 - Reduce the amount of disturbed area where possible;
 - Use water trucks or sprinklers systems in sufficient quantities to prevent airborne dust from leaving the site. Increased watering frequency would be required whenever wind speeds exceed 15 miles per hour. Reclaimed (nonpotable) water should be used whenever possible; Water all active construction areas at least twice daily. Frequency should be based on the type of operation, soil and wind exposure;
 - All dirt stock-pile areas should be sprayed daily as needed;
 - Permanent dust control measures identified in the approved project revegetation plan should be implemented as soon as possible following completion of disturbing activities;;
 - Exposed ground areas that are planned to be reworked at dates greater than one month after initial grading should be sown with fast germinating native grass seed and watered until vegetation is established;
 - All disturbed soil areas not subject to revegetation should be stabilized using approved chemical soil binders, jute netting, or other methods approved in advance by APCD;

Attachment I

- All roadways driveways, sidewalks etc. to be paved should be completed as soon as possible. In addition, building pads should be laid as soon as possible after grading unless seeding or soil binders are used.
 - Vehicle speed for all construction vehicles shall not exceed 15 mph on any unpaved surface at the construction site;
 - All trucks hauling dirt, sand, soil, or other loose materials are to be covered or should maintain at least two feet freeboard (minimum vertical distance between top of load and top of trailer) in accordance with the CVC Section.
 - Install wheel washers where vehicles enter and exit unpaved roads onto streets, or wash off trucks and equipment leaving the site; and
 - Sweep streets at the end of each day if visible soil material is carried onto adjacent paved roads. Water sweepers with reclaimed water should be used where feasible.
10. AQ-2 Prior to construction the General Service Agency/Parks shall provide evidence they have contracted APCD on any proposed portable equipment requiring APCD or CARB registration such as: 50-hp portable generators, IC engines, unconfined abrasive blasting operations, concrete batch plants, rock and pavement crushing, tub grinder, trammel screens, etc. should any of these types of equipment be used during construction activities, Californian Statewide portable equipment registration (issued by the Californian Air Resources Board) or a APCD permit may be required.

Biological Resources

11. BIO-1 The Black-flowered figwort shall be flagged along the beach trail so construction activities avoid this area. If avoidance is not feasible; a mitigation plan would be developed and implemented by a qualified biologist/restoration specialist, and may include salvaging/transplanting plants and/or cuttings from impact areas and relocating to suitable habitat and/or collecting seeds for distribution in a designated mitigation/restoration area.
12. BIO-2 A qualified biologist shall conduct a pre-construction survey prior to the mobilization, operation, and demobilization of project equipment within work areas to determine presence/absence sensitive wildlife species. In the event that any special-status species are identified within the immediate project work area, work will not be initiated until the appropriate agencies have been contacted and appropriate measures for protection have been instituted. Project activities may commence only after pre-construction surveys have confirmed the absence of all special-status species
13. BIO-3 All applicable agency permits with jurisdiction over the project area (e.g. CCC, CDFW, Corps, Regional Water Quality Control Board [RWQCB]) should be obtained (as necessary) for proposed project improvements. All additional mitigation measures required by these agencies would be implemented as necessary throughout the project.
14. BIO-4 If feasible, construction activities shall take place between mid-August and mid-March to be outside of the nesting bird season. If construction activities occur within the nesting bird season, a qualified biologist shall perform pre-activity nesting bird surveys to determine if breeding/nesting birds are present within the project site. If an active bird nest, greater than 50% completed, is identified, then CDFW and/or USWFS shall be consulted to determine appropriate buffer during construction activities. Nests less than

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50% completed or a non-active nest (i.e., last year's nest or an abandoned nest) shall be removed by a qualified biologist in accordance to the MBTA.

Cultural Resources

15. CR-1 The applicant shall submit to the Environmental Coordinator for review and approval, a detailed researched design for a Phase III data recovery archaeological investigation. The Phase III program shall be prepared by a subsurface qualified archaeologist, approved by the Environmental Coordinator. The consulting archaeologist responsible for the Phase III program shall be provided with a copy of the previous archaeological investigations. The Phase III program shall include at least the following:
- a. standard archaeological data recovery practices;
 - b. recommendation of sample size adequate to mitigate for impacts to the archaeological site, including bases and justification of the recommended sample size;
 - c. identification of location of sample sites/test units;
 - d. detailed description of sampling techniques and material recovery procedures (e.g. how sample is to be excavated, how the material will be screened, screen size, how materials will be collected);
 - e. disposition of collected materials;
 - f. proposed analysis of results of data recovery and collected materials, including timeline of final analysis results; and
 - g. consultation with appropriate Chumash tribal representatives.

Once approved these measures shall be shown on all applicable plans and implemented during construction.

16. CR-2 A monitoring plan, prepared by a subsurface-qualified archaeologist, approved by the Environmental Coordinator, to be reviewed and approved by the Environmental Coordinator. The monitoring plan shall include at a minimum:
- a. List of personnel involved on the monitoring activities;
 - b. Description of how monitoring shall occur;
 - c. Description of frequency of monitoring (e.g. full-time, part time. Spot checking);
 - d. Description of what resources are expected to be encountered;
 - e. Description of circumstances that would result in the halting of work at the project site (e.g. what is considered significant archaeological resources?);
 - f. Description of procedures for halting work on the site and notification procedures;
 - g. Description of monitoring reporting procedures; and
 - h. Consultation with appropriate Chumash tribal representatives.
17. CR-3 A letter from the consulting archaeologist shall be submitted to the Environmental Coordinator indicating that all necessary field work, as identified in the Phase III, program, has been completed.

Geology and Soils

18. GS-1 General Service Agency/Parks shall prepare construction plans that show the Cave Landing Road trail head relocated away from the potential sinkhole area and tension crackling/scarps as shown on page 27 of this report.
19. GS-2 General Service Agency/Parks shall prepare construction/drainage plan(s) that

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show the level of water drained into the Pirates Cove Landslide Complex does not increase, drainage does not cause erosion or flow into the landslide areas and the grading does not affect the overall stability of the site.

20. GS-3 General Service Agency/Parks shall prepare construction plans that increase the span of the bridge to a length that will reduce foundation depths of the bridge footing to no more than two or three feet and reduce the potential to remove lateral support from an active landslide that is present in the area of the west abutment.
21. GS-4 General Service Agency/Parks shall prepare construction plans that include:
 - a. proper compaction and grading for fills placed on sloping ground;
 - b. fill slopes no steeper than 2h:1v; and
 - c. cut slopes no steeper than 1.5h:1v.
22. GS-5 General Service Agency/Parks shall prepare construction plans for the bridge that include:
 - a. fill placed on slopes steeper than 20 percent (at the bridge approaches) should be initiated from a toe key excavated into firm material, and be keyed and benched into the hillside in accordance with good construction practices;
 - b. The embankment should be founded on firm subgrade soil below any loose or fissured topsoil;
 - c. The toe embankment should be initiated from a toe key excavated to at least two feet below existing site grades and sloped at least two percent into the fill side. The toe key should be at least eight feet wide. The fill above the toe key should then be keyed and benched into the hillside such that at least the upper two feet of soil is removed by the grading.
23. GS-6 General Service Agency/Parks shall prepare construction/drainage plans that:
 - a. improve cross drainage on trails and reduce concentrated flows of runoff;
 - b. do not increase erosion or flow of surface drainage water into landslide area; and
 - c. spreader trenches sized such that storm water runoff trenches allow no additional runoff than the natural surface runoff.
24. GS-7 General Service Agency/Parks shall prepare a complete erosion and sedimentation control plan in accordance with Title 23.05.
25. GS-8 The applicant shall provide verification that the plans and specification for the design of the trail, grading, bridge structures, utility trenches and appurtenant improvements have been prepared in accordance with the recommendations of the geotechnical report(s) prior to beginning construction. Structures shall be designed to at least the minimum requirements of the 2010 California Building Code and the recommendations of the geotechnical report(s).

Traffic and Circulation

26. TR-1 Prior to construction, General Service Agency/Parks shall secure an encroachment permit to allow the installation of the restroom, tables, benches, bike racks and the removal and restoration to native of a portion of the existing trails that lies within the County maintained road right-of-way. General services shall meet with Public Works and the Chumash representatives to determine the minimum disturbance

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necessary for the proposed parking area adjacent to the restroom.

Water

27. W-1 Prepare and implement an erosion, sedimentation and pollution prevention plan and SWPPP.
28. W-2 Submit a drainage plan showing the use of a filter device to prevent oils and fuel washing from the proposed parking area into the ocean at the parking lot inflow location

Access

29. At the time of construction document design for the beach access stairs, San Luis County Parks in consultation with Coastal Conservancy, shall take into consideration the location, dynamic environment and historic storm patterns for this site to allow for a design that will allow maximum public access throughout the year as to avoid any closures to the beach.

Conditions required to be completed during project construction

Biological Resources

30. BIO-5 An Environmental Sensitivity Training presentation shall be prepared and presented to all construction personnel at the beginning of the project. The program shall discuss sensitive species with potential to occur in the construction zone, with emphasis on special-status wildlife, plants, and sensitive marine resources. The program shall explain the importance of minimizing disturbance and adhering to all permit conditions and provide an overview of petroleum spill prevention and response actions.
31. BIO-6 The following measures shall be implemented to further mitigate impacts to sensitive wildlife that may occur within project area:
 - All vegetation removal and initial ground disturbing excavation activities shall be monitored by a qualified biologist, authorized to relocate native wildlife to adjacent suitable habitat;
 - A qualified biologist shall inspect the immediate work areas for any signs of nesting woodrats. In the event a woodrat nest is found within the immediate work area and project activities cannot avoid the nest, all activities within the vicinity of the nest shall stop and the CDFW shall be consulted. At no time shall a woodrat nest be removed until CDFW consultation;
 - All construction activities will be completed during daylight hours only;
 - All trash receptacles will be located away from the bluff face and will be covered; and all food-related trash shall be removed from the Project Site at the end of each working day;
 - Project-related equipment should be prohibited outside of designated work areas and delineated access routes;
 - No firearms should be allowed in the project area;
 - In the event a special status animal is observed within the Project Site, appropriate agencies will be notified immediately to determine further mitigation;
 - No project activities shall be conducted during rain events; and,
 - No rodenticides or herbicides should be applied within the project area.

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32. BIO-7 The use of heavy equipment and vehicles shall be limited to the proposed project limits, existing roadways, and defined staging areas/access points. Impervious material will be placed under all containers with petroleum products, including machinery engines and fuel tanks, in the storage or refueling area. The boundaries of each work area shall be clearly defined and marked with visible flagging and/or fencing.
33. BIO-8 During construction, washing of concrete, paint, or equipment and refueling and maintenance of equipment shall occur only in designated areas. Straw bales, sandbags, and sorbent pads shall be available to prevent water and/or spilled fuel from entering adjacent waters. In addition, secondary containment should be installed around all locations where petroleum products are stored. Construction equipment shall be inspected by the operator on a daily basis to ensure that equipment is in good working order and no fuel or lubricant leaks are present.
34. BIO-9 Heavy equipment that creates noise levels above 85 dB shall not be used for project activities along the shoreline during installation of the storm drain culverts and/or during future improvements of the lower portion of Pirate's Cove trail down to the beach. Specifically, noise level measurements shall be taken during the first day that a piece of equipment that has no published noise level data is to be used at the site. Measurements shall be taken to determine the distance to the 85 dB noise level and adjustments to machinery operation (i.e., ramp up) shall be made if wildlife (i.e., harbor seal, sea otter, and sea lion) are observed to be negatively affected by the equipment noise.
35. BIO-10 Erosion control measures shall be implemented to prevent runoff into adjacent waters. Silt fencing, in conjunction with other methods, shall be used to prevent erosion and avoid and/or minimize excavated soil and sediments from entering adjacent waterways. Further, appropriate dust control measures, such as, daily watering of work areas, shall be implemented to minimize dust impacts to surrounding habitat areas.

Cultural Resources

36. (a) CR-4 All ground disturbing construction activities, the applicant shall retain a qualified archaeologist (approved by the environmental coordinator) and Native American to monitor all earth disturbing activities, per the approved monitoring plan. If any significant archaeological resources or human remains are found during monitoring all work shall stop within the immediate vicinity (precise area to be determined by the archaeologist in the field) of the resource until such time as the resource can be evaluated by an archaeologist and any other appropriate individuals. The applicant shall implement the mitigation as required by the Environmental Coordinator.

(b) During the construction of the improvements to the pedestrian trail from the parking lot to Pirates Cove, the County shall work closely with the Native American monitor to avoid or reduce impacts to cultural resources if at all feasible. In areas of concern as identified by the monitor, trail improvements may be limited to those necessary to make the trail safe or stabilize it due to drainage of other surface concerns. The County will consider installation of "cover" (e.g. mulch, jute netting, inhospitable vegetation) for areas of visible cultural resources directly adjacent to the trail if acceptable to the Native American monitor.

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Noise

37. N-1 Construction activities will be limited to the hours of 7:00 a.m. to 7:00 p.m.
38. N-2 Heavy equipment that creates noise levels above 85 dB shall not be used for project activities along the shoreline during installation of the storm drain culverts and/or during future improvements of the lower portion of Pirate's Cove trail down to the beach. Specifically, noise level measurements shall be taken during the first day that a piece of equipment that has no published noise level data is to be used at the site. Measurements shall be taken to determine the distance to the 85 dB noise level and adjustments to machinery operation (i.e., ramp up) shall be made if wildlife (i.e., harbor seal, sea otter, and sea lion) are observed to be negatively affected by the equipment noise.

Conditions required to be completed prior to final inspection

Aesthetics

39. AES-1 The balance of any cuts into the hillside shall be replanted as soon as possible with erosion control planting.
40. AES-2 Stairs to the beach shall be painted or made of material that is a muted and natural color that match the surrounding natural environment.
41. AES-3 The vault restroom shall be painted or made of material that is a muted and natural color that match the surrounding natural environment.
42. Landscaping in accordance with the approved landscaping plan shall be installed before final inspection. All landscaping shall be maintained in a viable condition in perpetuity.
43. The applicant shall contact the Department of Planning and Building to have the site inspected for compliance with the conditions of this approval.

Cultural Resources

44. CR-5 Upon completion of all monitoring/data recovery activities, and prior to final inspection (whichever occurs first) the consulting archaeologist shall submit a report to the Environmental Coordinator summarizing all monitoring/data recovery activities and confirming that all mitigation measures have been met. If the analysis included in the Phase III program is not complete by the time of final inspection the applicant shall provide to the environmental coordinator, proof of obligation to complete the required analysis.
45. CR-6 Split rail fencing, or similar type fencing, a minimum of three feet high shall be installed along the bike/pedestrian trail. This fencing is to discourage people from meandering off the official trail.
46. CR-7 Interpretive panel(s) shall be installed to educate the public about the Chumash experience and cultural history of the area. The(se) interpretive panel(s) shall be approved by County Parks, and the content shall be developed in cooperation with appropriate Chumash tribal representatives

Attachment I

Geology and Soils

47. GS-9 The applicant shall provide verification that the earthwork, drainage, structures, and trail improvements were inspected, testing, and observed under the auspices of a California registered professional engineer and the geotechnical engineer for conformance with the plans, specifications, and any special inspection requirements of the 2010 California Building Code so as to have reasonable certainty that the work was constructed according to the approved plans and specifications.
48. GS-10 If landslide potential is perceived (heavy rains, earthquakes) the bike/pedestrian trail will be closed to ensure public safety.
49. GS-11 A sign will be posted at either end of the trail with notice to contact County Parks if dangerous or unusual conditions are observed.

Traffic and Circulation

50. TR-2 After completion of the bike trail improvements and realignment, General Service Agency/Parks shall request vacation of the County maintained road right-of-way being superseded by the trail.

On-going conditions of approval (valid for the life of the project)

Air Quality

51. AQ-3 As of February, 2000, the APCD prohibits developmental burning of vegetative material with San Luis Obispo county. However, under certain circumstances where no technically feasible alternatives are available, limited developmental burning under restrictions may be allowed, any such exemption must complete the following prior to any burning: APCD approval; payment of fee to APCD based on the size of the project; and issuance of a burn permit by APCD and the local fire department authority. As part of APCD approval, the applicant shall furnish them with the study of technical feasibility (which includes cost and other constraints) at the time of application. For any questions regarding these requirements, Karen Brooks of APCD's Enforcement Division may be contacted.

Geology and Soils

52. GS-12 The trail should be inspected by the County following periods when landslide potential may increase (such as following periods of heavy rains, earthquakes, or high surf) or when there are reports of cracking, settlement, or erosion of within or adjacent to the bike/pedestrian and the trail will be closed to ensure public safety if conditions are deemed to make travel on the path unsafe.
53. GS-13 This project shall comply with the requirements of the National Pollutant Discharge Elimination System Phase I and/or Phase II storm water program and the county's Storm Water Pollution Control and Discharge Ordinance, Title 8, Section 8.68 et. seq.

Land Use

54. LU-1 The recreational area shall be closed down during significant rain storms or ground movement to ensure public safety.

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55. This land use permit is valid for a period of 24 months from its effective date unless time extensions are granted pursuant to Coastal Zone Land Use Ordinance Section 23.02.050 or the land use permit is considered vested. This land use permit is considered to be vested once a construction permit has been issued and substantial site work has been completed. Substantial site work is defined by Land Use Ordinance Section 23.02.042 as site work progressed beyond grading and completion of structural foundations; and construction is occurring above grade.
56. All conditions of this approval shall be strictly adhered to, within the time frames specified, and in an on-going manner for the life of the project. Failure to comply with these conditions of approval may result in an immediate enforcement action by the Department of Planning and Building. If it is determined that violation(s) of these conditions of approval have occurred, or are occurring, this approval may be revoked pursuant to Section 23.10.160 of the Coastal Zone Land Use Ordinance.

#872

COASTAL APPEALABLE 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

An appeal should be filed by an aggrieved person or the applicant at each stage in the process if the appeal is not approved by the last action.

2013 AUG - 7 PM 3:56
SLO COUNTY
PLANNING & BUILDING
DEPT

INFORMATION Name: Cave Landing Trail File Number: DRC2011-00069

Permit being appealed:

General Use Permit Site Plan Minor Use Permit Development Plan/Conditional Use Permit
 Land Division Lot Line Adjustment Other: Coastal Development Permit Approval of Mitigated

Decision was made by:

Planning Director (Staff) Building Official Negative Declaration
 Division Review Board Planning Commission Planning Department Hearing Officer
 Other _____

When the application was acted on: July 25, 2013; May 23, 2013

Where the decision is appealed to:

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

BASIS FOR APPEAL

INCOMPATIBLE WITH THE LCP. The development does not conform to the standards set forth in the Certified Local Coastal Program of the county for the following reasons (attach additional sheets if necessary)
Explain: See Attached Basis for Appeal

INCOMPATIBLE WITH PUBLIC ACCESS POLICIES. The development does not conform to the public access policies of the California Coastal Act – Section 30210 et seq of the Public Resource Code (attach additional sheets if necessary).
Explain: See the attached Basis for Appeal

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

Condition Number All Conditions Reason for appeal (attach additional sheets if necessary)
See the attached Basis for Appeal

APPELLANT INFORMATION

Print name: Sean Shealy, for Friends of Pirates Cove

Address: 522 Corralitos Rd. Phone Number (daytime): (805) 710-2529
Arroyo Grande, CA 93420

I/We are the applicant or an aggrieved person pursuant to the Coastal Zone Land Use Ordinance (CZLUO) and are appealing the project based on either one or both of the grounds specified in this form, as set forth in the CZLUO and State Public Resource Code Section 30603 and have completed this form accurately and declare all statements made here are true.

Signature: [Signature] Date: August 6, 2013

OFFICE USE ONLY

Date Received: 8/7/13 By: [Signature]
Amount Paid: N/A Receipt No. (if applicable): N/A

COASTAL APPEAL FORM
SAN LUIS OBISPO COUNTY PLANNING & BUILDING
SLOPLANNING.ORG

PAGE 2 OF 3
JULY 1, 2010
PLANNING@CO.SLO.CA.US



BASIS FOR APPEAL: Dusk to Dawn Beach Closures Are Illegal

Regarding Dusk to Dawn California beach closures, the following was written by then-acting California Coastal Commission Chairwomen Bonnie Neeley, and published in the LA Times in December 2010:

"For more than 30 years the commission has dealt with local governments seeking to control where, when and how the public can enjoy the beach, and access State waters. It has never found that nighttime public use problems warrant dusk-to-dawn closures.

Unfortunately, we often find that public access restrictions imposed by local government are motivated by political pressure from residents annoyed by the presence of outsiders. In those cases the commission stands firmly for protecting public access rights. Safeguarding public coastal access, after all, was a primary reason the Coastal Commission was created.

Public use and enjoyment of our beaches is not limited to daylight hours. For every troublemaker there are many more law-abiding citizens who come to the beach at night to walk in moonlight or under the stars seeking tranquility, relaxation, spiritual renewal or self-contemplation. Whether taking a stroll after the graveyard shift, hitting the waves in the dark before dawn, or watching the moon set with a lover, the public has a right to enjoy California's coast at all hours but within reason.

People fortunate enough to reside on or near a beach should realize they are privileged to live adjacent to public space and must accommodate the impacts associated with public use. Of course residents have a right to expect reasonable law enforcement when needed. If local government doesn't provide this essential service, residents can petition their elected officials for a reallocation of resources. (But) sweeping beach closures are not the answer.

What neither we, nor the public, want or need is wasteful litigation to confirm long-established public coastal access rights. If reason and common sense are brought to the table, we are confident a meaningful outcome can be achieved."

[SNIP]

To Neeley's column, the following comment should also be considered from former Coastal Commission Executive Director Peter Douglas, who said: "There are a lot of people who want to use the beach, which they have a constitutional right to do, in the middle of the night... You don't preclude the public from that use ..."

In summary, SLO County is legally obligated in every possible way to keeping this beach open to the public without exception to time of day. To do otherwise invites costly litigation, and is a violation not only of the county's legal obligations, but of the public trust. I strongly encourage the board to adhere not merely to the letter of the law, but the spirit of the law: Access to the ocean and beaches is a fundamental, natural human right.

In legal documents ranging from the California Constitution, to the Coastal Act, to the Local Coastal Plan, all the way through every legal document agreed to by the county during the acquisition of Cale Landing/Pirate's Cove, there are guarantees of open public access to coastal lands. Indeed, all of these documents call again and again for *maximizing* public access. Closing the beach for 157 days of the year -- all of the cumulative hours of proposed night closure -- would have the exact *opposite* effect.

Below are samplings and excerpts from those documents:

CALIFORNIA CONSTITUTION
ARTICLE 10: WATER

SEC. 4. No individual, partnership, or corporation claiming or possessing the frontage or tidal lands of a harbor, bay, inlet, estuary, or other navigable water in this State, shall be permitted to exclude the right of way to such water whenever it is required for any public purpose, nor to destroy or obstruct the free navigation of such water; and the Legislature shall enact such laws as will give the most liberal construction to this provision, so that access to the navigable waters of this State shall be always attainable for the people thereof.

COUNTY OF SAN LUIS OBISPO
LOCAL COASTAL PROGRAM POLICY DOCUMENT
A PORTION OF THE SAN LUIS OBISPO COUNTY LAND USE ELEMENT
OF THE GENERAL PLAN

COASTAL PLAN POLICIES REVISED JUNE 2004 2-7 SHORELINE ACCESS

Issues Relating to Shoreline Access. **The right of public access to all coastal tidelands is guaranteed by the California Constitution** and has been detailed in the requirements of the California Coastal Act. **The act requires acknowledgment of existing rights of access (including those acquired through historic use)** and mandates that reasonable access be provided in new developments along the coast. **The access component of the LCP assures opportunities for optimum public access** within the county.

From Pirate's Cove Acceptance Resolution:

"WHEREAS, there is a public need and it is in the best interest of the County and the general public to accept certain offers to dedicate **allowing public pedestrian access to and from the shoreline, public pedestrian access and passive recreational use along the shoreline**, parking and other public trails and recreational uses."

From page 11, 12 of the Cave Landing Trail Project Description and Regulatory Compliance Document:

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 bluff top area for parking. Other improvements which may be appropriate include:

This is from the San Luis Bay Area Coastal Plan, Page 45:

Goal: Maximize public access and recreation opportunities within the Beach and Bluff planning sub-area and provide open space and complementary facilities where appropriate.

Requirement of the Coastal Act:

4. Public Access and Recreation

Applicable Policies

Coastal Act Section 30604(c) requires that every coastal development permit issued for any development between the nearest public road and the sea "shall include a specific finding that the development is in conformity with the public access and public recreation policies of [Coastal Act] Chapter 3." The proposed project is located seaward of the first through public road and thus such a finding is required. Coastal Act Sections 30210 through 30213 and 30221 specifically protect public access and recreation. In particular:

From the County's own final analysis of the acquisition of Pirate's Cove:

LCP policies amplify such requirements, including:

Access Policy 2. Maximum public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development...

Recreation Policy 1. Coastal recreational and visitor-serving facilities, especially lower-cost facilities, shall be protected, encouraged and where feasible provided by both public and private means.

Recreation Policy 2. Recreational development and commercial visitor-serving facilities shall have priority over non-coastal dependent use, but not over agriculture or coastal dependent industry in accordance with PRC 30222.

In summary, the California Constitution⁴³ and the federal Coastal Zone Management Act⁴⁴ mandate the protection and enhancement of public access to and along California's coastline. The Coastal Act and the County's certified LCP refine these requirements, including prioritizing public recreational use and development in areas along the shoreline such as this one. Coastal Act Section 30210 requires that public recreational opportunities be maximized,⁴⁵ and Section 30211 further requires that development not interfere with existing public access. Section 30221 protects oceanfront land such as the area associated with this application for recreational use, Section 30222 prioritizes the use of lands suitable for visitor-serving commercial recreational facilities, and Section 30223 similarly reserves upland areas necessary to support public recreational uses for such uses. Coastal Act Section 30213 requires lower-cost visitor and recreation facilities to be protected, encouraged, and where feasible, provided. These overlapping policies protect the Pirates Cove accessway area, including access along Cave Landing Road, the parking lot, the trails and the scenic overlook, including in terms of lower-cost access and recreational opportunities.

In conclusion, it is apparent that 'closing' nature at night is not only unethical, and against the spirit of every law intended to thwart this kind of action, but also illegal, and invites expensive lawsuits. The seven hundred co-signers of the Friends of Pirate's Cove petition, along with the appellant, ask the county to sensibly abandon this plan altogether.

Where the county has concerns for public safety or littering, we are more than happy to contribute ideas, suggestions and policy discussions towards mitigating those concerns. As concerns county liability, one suggestion that has been put forth is that the county may be able to mitigate liability simply by declining to develop the area. By not deliberately attracting visitation, or, indeed, by placing a sign at the entrance to Cave Landing Road reading 'NOTICE: This area is wild and undeveloped. Entry indicates assumption of all risk upon those who choose to visit', we may be able to deflect liability altogether.

BASIS FOR APPEAL: Environmental and Cultural

The Mitigated Negative Declaration ("*Negative Declaration*") adopted by the Planning Commission is marked by grave deficiencies in its characterization of the environmental baseline. Instead of performing an accurate, meaningful analysis of the existing environmental conditions, the *Negative Declaration* analyzes a hypothetical environmental baseline that, among other things, fails to account for existing historic and cultural resources as well as existing recreational opportunities affecting existing uses of the site which the public has acquired a right to by prescription¹. The *Negative Declaration's* failure to account for the "existing environmental settings" renders it inadequate under section 15125 of the CEQA guidelines², which require that the baseline must include existing conditions.

Baseline

A standard for development, as identified in "Policy 1: Protection of existing access" within the "shoreline access" section of the Coastal Plan Policies³ ("CPP"), on page 2-11, requires that "[d]evelopment shall not interfere with the public's right of access to the sea where acquired through historic use." The project, at its inception, involves closure of the beach during night hours which will immediately and significantly impact the historic use of the site. The site, "the Mallagh Landing area (Pirate's Cove)" is the last piece of undeveloped beach wilderness between Port San Luis and Oceano, which, according to page 2-5 of the CPP, "has experienced intensive recreational use." The public's intensive recreational use is completely ignored in the *Negative Declaration* adopted by the planning commission, which devotes all of one paragraph to addressing all of the project's impacts to recreation opportunities prior to concluding that the impact will be "insignificant." (See *Negative Declaration*, p. 2-75 through 2-76). The CPP, discussing Pirate's Cove on p. 2-5 acknowledges that "[p]rescriptive rights may exist within the area." The mitigated negative declaration is flawed because it fails to address the potentially significant impacts that the project will have upon the existing environmental conditions regarding the recreational uses and the prescriptive rights that have arisen as a result of such

¹ "A successful claimant of a prescriptive easement...gains not title but the right to make a specific use of someone else's property." *Main St. Plaza v. Cartwright & Main, LLC*, 194 Cal. App. 4th 1044, 1054, 124 Cal. Rptr. 3d 170, 178 (2011)

² "To decide whether a given project's environmental effects are likely to be significant, the agency must use some measure of the environment's state absent the project, a measure sometimes referred to as the 'baseline' for environmental analysis. Thus, an inappropriate baseline may skew the environmental analysis flowing from it, resulting in an EIR that fails to comply with CEQA." *Citizens for E. Shore Parks v. California State Lands Com.*, 202 Cal. App. 4th 549, 557, 136 Cal. Rptr. 3d 162, 171 (2011), review denied (Mar. 14, 2012), as modified on denial of reh'g (Jan. 27, 2012)

³ Available at <http://www.slocounty.ca.gov/Assets/PL/Elements/Coastal+Plan+Policies.pdf>

uses, in a manner inconsistent with the provisions of the CPP that implement § 30211 of the Coastal Act⁴.

Policy 1 of the CPP requires that “where prescriptive rights exist...the appropriate amount of public use should be established through the review process at the time of development.” In addition to the interference with the public’s prescriptive right to use Pirate’s Cove at night, the project will potentially impact the character of the prescriptive sunbathing rights that have arisen through historical use at Pirate’s Cove. As a preliminary matter, sunbathing is a “Coastal Dependent Recreation” and the Coastal act gives priority to coastal dependent recreational activities (CPP, p. 3-2). More significantly, it is important for the County to recognize that “the allowable usage of the prescriptive easement is defined by its historical usage.” *Twin Peaks Land Co. v. Briggs*, 130 Cal. App. 3d 587, 594, 181 Cal. Rptr. 25, 28 (Ct. App. 1982). See also Cal. Civ. Code § 806, which in relevant part states that “the extent of a servitude is determined by...the nature of the enjoyment by which it was acquired.”

The Planning Commission does not have the right to, by issuing the *Negative Declaration*, 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. This exact issue was considered in the case of *Burch v. Gombos*, 82 Cal. App. 4th 352, 362, 98 Cal. Rptr. 2d 119, 126 (2000) (“*Burch*”), where the Court determined that the “the scope of a prescriptive easement is determined by the use through which it is acquired. A person using the land of another for the prescriptive period may acquire the right to continue such use, but does not acquire the right to make other uses of it... We see no reason the same rule should not apply to a public easement that has arisen through...dedication⁵.” By approving a project that impacts the historical uses which gave rise to the prescriptive rights on the project site, such that the project may ultimately lead to extinguishment of the prescriptive rights, without any discussion of the project’s impact upon those uses or rights, the planning commission has failed to comply with the policies and standards in the CPP, the CEQA guidelines, the provisions of the Coastal Act, and Article 10, Section 4 of the California Constitution⁶.

The project will significantly impact the public customs and uses of the site in a manner that the affected parties did not anticipate because the County has not provided

⁴ “Development shall not interfere with the public’s right of access to the sea where acquired through use...including, but not limited to, the use of dry sand and rocky coastal beaches...”

⁵ See also *Jones v. Deeter*, 152 Cal. App. 3d 798, 802, 199 Cal. Rptr. 825, 827 (Ct. App. 1984), holding that “[a] dedication is legally equivalent to the granting of an easement.”

⁶ “No individual, partnership, or corporation, claiming or possessing the frontage or tidal lands of a harbor, bay, inlet, estuary, or other navigable water in this State, shall be permitted to exclude the right of way to such water whenever it is required for any public purpose...”

adequate notice to the interested members of the public. This can be seen from the fact that in the aftermath of the decision, Friends of Pirate's Cove circulated a petition, which can be viewed at <https://www.change.org/petitions/san-luis-obispo-county-board-of-supervisors-maintain-cave-landing-pirate-s-cove-as-free-open-undeveloped-wilderness> (a printed-out copy of this petition has been attached as **EXHIBIT A**); in only one week, this petition has garnered substantial public support from nearly 700 locals and visitors who would prefer that the county consider proceeding with the "no project" alternative. These stakeholders did not have an opportunity to bring their concerns to the attention of the planning commission because of inadequate notice, and the decision to adopt the mitigated negative declaration will further deprive them of a meaningful opportunity to voice their concerns by circumventing the public discussions regarding the potentially significant impacts that the California Environmental Quality Act intended to sponsor.

On May 24, 2013, Ryan Hostetter received a proposal to prepare an environmental impact report and to provide consultant services for Avila Point Project from Aaron P. Goldschmidt, which can be found at the following link:

<http://www.slocounty.ca.gov/Assets/PL/EIR/2013/Avila+Point+Project/Proposals+from+Consultants/AMEC.pdf>

The 86-page proposal details plans to make significant changes to the entire region surrounding Pirate's Cove. According to page 20 of the proposal, the project would require, among other things:

- * Local Coastal Program/General Plan Amendments to change the site's land use designation to Recreation from Industrial;
- * Amendments to the Avila Beach Specific Plan;
- * Rezoning of the site from Industrial to Recreation;
- * Approval of a Development Plan;
- * Approval of a Vesting Tentative Tract Map;
- * Approval of a Remedial Action Plan Permit; and,
- * Issuance of a Coastal Development Permits (CDP) for the Project site

All of these changes to the region surrounding Pirate's cove were not discussed or noted for discussion during the meeting on July 25, 2013 where Ryan Hostetter recommended to the planning commission to proceed with the Cave Landing Trail.

The failure to disclose the pending proposed modifications to the landscape resulted in a misleading discussion of the project that occurred out of context. This compounded the problems that occurred as a result of the usage of a hypothetical environmental baseline that did not accurately reflect the existing environmental and cultural conditions.

The people are entitled to an honest discussion of the fate of their beaches, as well as transparency, full disclosure, the right to understand how their cultural resources would be altered in context of the two projects, and the right to understand how their recreational opportunities may likely be impacted as a result.

The creation of a direct link from the proposed Avila Point Resort, along with all of the expected promotional efforts of both the resort and the county, in addition to trail and facility 'improvements', will radically alter both the number and character of the visitors to Pirate's Cove. While the area has traditionally been 'off the beaten path', and has largely attracted only the adventurous and those who have gone out of their way to find wilderness and relative solitude, the combination of these two development projects will potentially result in hundreds of additional visitors to Whale's Cave/Pirate's Cove on any given day.

Those who presently utilize the beach at Pirate's are of the same character and nature as those who have sought this place out for decades: They come to this beach to escape from the throngs of tourists who overcrowd the beaches at Avila and Pismo. They come seeking and expecting tolerance in their choice of how to experience nature naturally; but also out of respect for the tourists themselves: While clothing-optional sunbathing is technically legal on any beach (or anywhere else) in California, the generally accepted social norm in Pismo or Avila is to (rather inexplicably) wear clothing while sunbathing and swimming. Those who frequent Pirate's do not challenge this convention, but instead sought their own space, where they could neither be offended, nor give offense, to anyone.

A massive influx of new visitors, steeped in the prevailing cultural norms, is necessarily a threat to the long-existing cultural norms of the beach. History is rich with examples of cultural oppression and outright annihilation of minority cultures at the hands of those steeped in religious and conservative traditions; this destruction is often aided and enforced by government, which, wishing to be seen as 'good' in some hypothetical war between 'good and evil', facilitates the oppression.

Directing throngs of new visitors to a place that they have not sought out, and did not previously seek to go on their own, only threatens an existing culture which has gone out of its way to remove itself from any opportunity to offend such sensibilities. This is an existing culture and historical resource that deserves every bit as much protection as any other.

Friends of Pirate's Cove, and the appellant, are not suggesting that visitors to this area be limited in any way (we advocate the exact opposite: complete free and open use by all). What

we are suggesting, and advocating, is that the county refrain from creating a 'trail of breadcrumbs' from the resort into the wilderness, including signs and picnic tables and all the amenities of the resort (or civilization in general), creating an expectation in the visitor that this wild place is culturally identical to the resort itself, and is governed under the same cultural norms as Pismo and Avila. It is not, and never has been. If visitors find their way to the beach, let them come, and they will be welcomed -- but let them find it themselves, and with full knowledge, due to a visual absence of development, that this area is wild, free, and natural.

The Board of Supervisors should remand to the Planning Commission with specific instructions to inform the public of the context in which this project is contemplated to occur, and to solicit comments from, and address the concerns of, the hundreds and hundreds of beachgoers who have signed the petition.

Friends of Pirate's Cove reserves the right to supplement or amend its statement concerning the basis for this appeal in order to elaborate on its concerns in greater detail.

TABLE OF AUTHORITIES

Cases

Burch v. Gombos, 82 Cal. App. 4th 352, 362, 98 Cal. Rptr. 2d 119, 126 (2000)..... 2

Citizens for E. Shore Parks v. California State Lands Com., 202 Cal. App. 4th 549, 557, 136 Cal. Rptr. 3d 162, 171 (2011), review denied (Mar. 14, 2012), as modified on denial of reh'g (Jan. 27, 2012)..... 1

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CPP, discussing Pirate’s Cove on p. 2-5 1

CPP, p. 3-2 2

page 2-5 of the CPP 1

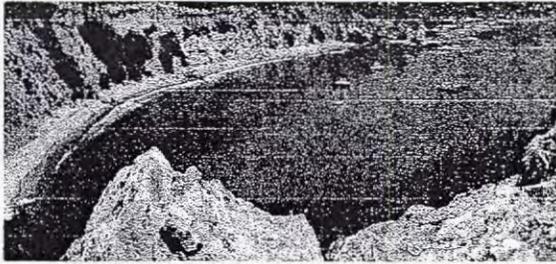
Policy 1 of the CPP 2

Administrative Record

Negative Declaration, p. 2-75 through 2-76..... 1

EXHIBIT A

(Petition Circulated August 1, 2013)



✓ Signed
with 670 supporters

Petitioning San Luis Obispo County Board of Supervisors ▾

San Luis Obispo County Board of Supervisors: Maintain Cave Landing/Pirate's Cove As Free, Open, Undeveloped Wilderness

Submitted August 8, 2013

1) Cave Landing/Pirate's Cove is the last undeveloped wilderness between Port San Luis and Oceano. Otherwise, every inch of this entire coastal access area has been developed as homes, condos, businesses, manicured beaches, or developed parks.

The California Environmental Quality Act (CEQA) requires that 'no development' be thoroughly discussed as an option in all such proposals. This discussion never took place in the county's public hearings regarding this land. This option needs to be fully advocated and evaluated.

2) At the time of the Planning Commission's vote to develop this area, the public was nearly universally unaware of the 100 acre resort/conference center/hotel/restaurants/spa proposed for the adjacent land. Our concern is that under the present design, Cave Landing/Pirate's Cove would essentially become — visually, and perhaps in perception, as well — an extension of the resort. This would fundamentally alter the wild and pristine experience enjoyed by so many, both locals and the tourists, who specifically come to Cave Landing for just that experience.

3)The Dusk to Dawn closure, the proposed shrunken size of the parking lot, and the addition of stairs to the beach, all threaten free, unfettered access to the water, in violation of the California Constitution and the Coastal Act, as well as every legal document adopted by the county during the acquisition of the area. All of those documents and laws require, again and again, INCREASING access to the coast.

Recent counts of cars in the parking area by both Whales Cave Conservancy and Friends of Pirate's Cove establish that the area receives hundreds of visitors daily. A more certain public opinion poll could not be conceived: Clearly the public treasures this area just as it is.

We, the undersigned, support keeping Cave Landing/Pirate's Cove in a state of free and open wilderness, and ask that the County re-open the deliberative process to conform with legal requirements, while acknowledging the potential impact of Avila Point Resort proposal, and with an eye towards natural preservation.

Sincerely,

Sean R. Shealy

Attachment 2

1. Sean Shealy Arroyo Grande California 93420
2. Jeffrey Millar Arroyo Grande California 93420
3. Gwen Rountree Atascadero California 93422
4. Caitlynn Brouillet Arroyo Grande California 93420
5. Rachael Wagener Santa Maria California 93454
6. Felicia Ronquillo Guadalupe California 93434
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8. Krystal Winter Arroyo Grande California 93420
9. Kai Roath San Francisco California 94131
10. Julie Solorio Fairfield California 94533
11. Alexis de Falla San Luis Obispo California 93401
12. Joseph Buck clovis California 93612
13. Margaret Malloy San Luis Obispo California 93401
14. Cassie Hetrick San Luis Obispo California 93405
15. Saundra Armbruster Kirkland Washington 98034
16. Megan O'Sullivan Oakland California 94607
17. Kelli Johnston Sacramento California 95820
18. Lorrie Toles San Luis Obispo California 93401
19. Charlotte LoPrete Tempe Arizona 85281
20. Kristine Lamar Avila Beach California 93424
21. Holly Abreu San Luis Obispo California 93401
22. Sergio Monge San Luis Obispo California 93401
23. Ariana Chini San Luis Obispo California 93401
24. Rina Maynard Oakland California 94623
25. Raquel Aparicio Whittier California 90603
26. Kaylee Yoshida Campbell California 95008
27. Donald Murphy elizabeth New Jersey 07206
28. Cassandra McLain Baywood-Los Osos California 93402
29. Michele Marckesano Irvine California 92606
30. Janean Elise La Monica Costa Mesa California 92626
31. Robin Powell Santa Monica California 90025
32. James Watson Santa Barbara California 93109
33. Istenya Hurty Albany New York 12208
34. Amber Rodriguez Grover Beach California 93433
35. Alicia Beekman West Hollywood California 90069
36. Jessica Backlund sacramento California 95815
37. Carol Wu San Luis Obispo California 93410
38. Michelle Call San Luis Obispo California 93401
39. Aaron Gragg San Luis Obispo California 93401
40. Henry Bruington San Luis Obispo California 93401
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42. Catherine Weeks San Luis Obispo California 93401
43. Edward Laurson Denver Colorado 80235
44. matthew clark arroyo grande California 93420
45. Justine Kimball Palo Alto California 94306
46. Ed Foley San Luis Obispo California 93405
47. Lorna Small Lompoc California 93436
48. Monique Matta Orcutt California 93455
49. camilla titsworth los osos California 93402
50. Ashley Gable San Luis Obispo California 93401
51. Leonard Miyahara Nipomo California 93444
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53. Kimberley Sibley Orofino Idaho 83544
 54. Tiara Sterrett Paso Robles California 93446
 55. Rebeka Levin San Jose California 95117
 56. Diana Cavanaugh Napa California 94559
 57. maureen s orcutt California 93455
 58. Andrew Flores Concord California 94518
 59. Jessica Myers Arroyo Grande California 93420
 60. Elizabeth Homen SAN LUIS OBISPO California 93405
 61. Selene Houlis Isla Vista California 93117
 62. Christy Schermerhorn arroyo grande California 93420
 63. Mayra Concepcion San Luis Obispo California 93405
 64. Molly Smith Newport Coast California 92657
 65. Diane Lee San Luis Obispo California 93405
 66. Thomas Whaley San Luis Obispo California 93401
 67. Camille Zinn Atascadero California 93422
 68. Niki Buczynski Arroyo Grande California 93420
 69. Taylor Valkenburgh ATASCADERO California 93422
 70. monica calvo Agua dulce California 91390
 71. Todd Hall Oceano California 93445
 72. Ruben Diaz Los Angeles California 90012
 73. Amanda Zakerski San Luis Obispo California 93401
 74. Bo Sharp San Luis Obispo California 93405
 75. Stacy Chinander Owatonna Minnesota 55060
 76. Erica Washington San Luis Obispo California 93405
 77. Linda Castellon Comfort SLO California 93401
 78. Robert Colt Atascadero California 93422
 79. John Reilly San Luis Obispo California 93401
 80. Stephen Henchy-Boyle San Luis Obispo California 93401
 81. Morgan Wise Morro Bay California 93442
 82. Jordan Zinn Atascadero California 93422
 83. Brandon Austin San Diego California 92107
 84. zach smoot templeton California 93465
 85. Heather Ackerman Oakland California 94607
 86. Brian Lanzone Morro bay California 93442
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 89. Karen Dubravetz Atascadero California 94322
 90. Anne Hilbert Arroyo Grande California 93420
 91. Matt F. SLO California 00000
 92. Desire Gallo Los Osos California 93405
 93. Corinna Harris San Luis Obispo California 93405
 94. Kelly Hoffman San Luis Obispo California 93405
 95. Lauren Veach San Luis Obispo California 93401
 96. Suzanne Thompson Citrus Heights California 95621
 97. Celeste Parkhurst Portland Oregon 97215
 98. Margaret Quigley Morro Bay California 93442
 99. Brian Ko Fremont California 94555
 100. Nadee Gun Sunnyvale California 94086
 101. leslie bilbee nipom California 93444
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Attachment 2

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 111. Cassandra Torres Corona California 92882
 112. Elizabeth Lucas San Luis Obispo California 93401
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 114. Iva Rayburn Grover Beach California 93433
 115. Kathleen Whipp San Miguel California 93451
 116. Zoey Herbst Cottage Grove Oregon 97424
 117. cassidy herbst fort irwin California 92310
 118. Daniel Gross San Luis Obispo California 93401
 119. Lisa Salazar Foster City California 94404
 120. Steven Carr Arroyo Grande California 93420
 121. Hinda Silva Atascadero California 93422
 122. Sommer Shahan Atascadero California 93422
 123. Jennings Jacobsen Los Osos California 93402
 124. Kristen Marshall Los Osos California 93402
 125. Kat Schaefer Arroyo Grande California 93420
 126. Jonathan Kent San Luis Obispo California 93401
 127. Nadine Steffensen Nipomo California 93444
 128. hailey jones santa maria California 93458
 129. Ginger Forgione San Luis Obispo California 93401
 130. Judith Levin Oceanside California 92057
 131. Brian Phillips San Luis Obispo California 93405
 132. Bree Elza San Luis Obispo California 93401
 133. Jody Owen Oceano California 93445
 134. Juan Orellana Miami Beach Florida 33141
 135. Layne Neilson San Luis Obispo California 93401
 136. Katherine Bates Morro Bay California 93442
 137. David Kinsella Arroyo Grande California 93420
 138. Chrystal Kinsella fresno California 93726
 139. Brad Hosley Sunny Valley Oregon 97497
 140. Christopher-Robin Wilson Arroyo Grande California 93420

 141. John Hayes Tucson Arizona 85719
 142. Cari Hoversten Oceano California 93445
 143. Lisa Anderson coarsegold California 93614
 144. Naomi Miller-Wave Santa Barbara California 93105
 145. Michael Eissinger Fresno California 93704
 146. Kerry Trainor Oakland California 94607
 147. kerry bowman redding California 96089
 148. Jamie Combs Clovis California 93611
 149. linda dotson fresno California 93722
 150. Stacie Highland Orange California 92869
 151. Griffin Chanley Arroyo Grande California 93420
 152. Travis Massa nipomo California 93444
 153. Andrea Martin Los Osos California 93402
 154. Courtney Kinsella Arroyo Grande California 93420
 155. Tara Mitchell San Luis Obispo California 93401

Attachment 2

156.	Micah Ochej	Nipomo	California	93444
157.	sylvia jacinto	fresno	California	93726
158.	Chris Aul	San Antonio	Texas	78249
159.	Jeff Mitchell	San Luis Obispo	California	93401
160.	Michael Johnson	San Luis Obispo	California	93405
161.	Clara Divelbiss	Clovis	California	93612
162.	Christopher Divelbiss	Clovis	California	93612
163.	Garran Gossage	San Luis Obispo	California	93401
164.	Samantha Cragg	San Luis Obispo	California	93405
165.	William doty	SAN LUIS OBISPO	California	93401
166.	Michael Souza	San Luis Obispo	California	93406
167.	Holly Hetherington	Grover Beach	California	93433
168.	Brad Holland	Lottlerock	California	93543
169.	Yasiu Kruszynski	Chicago	Illinois	60613-0011
170.	Anya Strunk	Los Osos	California	93402
171.	Tenillia Hebron	Atascadero	California	93422
172.	Sandra Freeman	San Luis Obispo	California	93401
173.	Yuliya Moiseyeva	Halcyon	California	93421
174.	Connor Colerick	Southlake	Texas	76092
175.	Matthias Clark	San Luis Obispo	California	93402
176.	Luis Perez	Fresno	California	93703
177.	Jacqueline Martinez	Grover Beach	California	93433
178.	Andrea Delcore	FRESNO	California	93728
179.	lacy berndt	Arroyo Grande	California	93420
180.	Alex R	Fresno	California	93729
181.	Jason McKenzie	Fort Worth	Texas	76179
182.	Jimmy Mancini	los osos	California	93402
183.	james von fuckstick	San Luis Obispo	California	93401
184.	Sabrina Hill	Fresno	California	93725
185.	Dana Pearson	Atascadero	California	93422
186.	Daniel Lopez	San Luis Obispo	California	93405
187.	Elizabeth Perry	New Hope	Minnesota	55427
188.	steven clark	Grover City	California	93433
189.	Adam Wilson	Arroyo Grande	California	93420
190.	Michael Okerblom	Nipomo	California	93444
191.	Russell Allen	Orcutt	California	93455
192.	Kelly Hood	San Luis Obispo	California	93405
193.	Claudia Orona	Solvang	California	93463
194.	Erika Dunn	San Luis Obispo	California	93405
195.	Erin Krout	San Luis Obispo	California	93405
196.	Laura Wahl	Santa Maria	California	93454
197.	Stephanie Johnson	Shell Beach	California	93449
198.	Pam Boland	Grovetown	Georgia	30813
199.	adrian franco	Fresno	California	93722
200.	Marjanne Schnarr	Tucson	Arizona	85748
201.	Beth Gilbert	Belfast	" "	United Kingdom
202.	Kelly Oringer	Los Osos	California	93402
203.	Andrea Kwan	伯克利	California	" "
204.	Kelsey Clarkson	San Luis Obispo	California	93405
205.	Allan Dick	Grover Beach	California	93433
206.	Dannette Clark	Elmira	New York	14905

207. Ed de la Torre San Luis Obispo California 93401
 208. Emily Roach Pompey New York 13138
 209. Jacklyn Nicole Aves Mandaluyong 1552 Philippines
 210. Lacye Winkelpleck Sebastopol California ""
 211. tona harms la palma California 90623
 212. Jennifer Cunningham Lompoc California 93436
 213. Sherri RotherABQ New Mexico 87111
 214. Anke Fischer 80469 Germany
 215. Tim Barnes Austin Texas 78701
 216. Brady Dawson Boise Idaho 83713
 217. Ben Henzgen Santa Maria California 93458
 218. Wendy Sison Las Vegas Nevada 89131
 219. Robert Ross San Luis Obispo California 93401
 220. queena morales oceano California 93445
 221. Ryland Veasart San Luis Obispo California 93405
 222. Kristen Kozowski Bend Oregon 97701
 223. Aubrie Hilstein San Luis Obispo California 93401
 224. Terez AutrandSan Luis Obispo California 93405
 225. Jason Steinmetz San Luis Obispo California 93405
 226. April Beach Erie Colorado 80516
 227. April Beach Erie Colorado 80516
 228. Stephanie Lewis Morro Bay California 93442
 229. Gina MartinezFayetteville North Carolina 28311
 230. Pierre Michael San Luis Obispo California 93401
 231. Candida Plotkin Los Osos California 93402
 232. grant leonardatascadero California 93422
 233. Cheri DePauloSan Luis Obispo California 93401
 234. Cami MoynihanTempleton California 93465
 235. Robert Anderson Arroyo GrandeCalifornia ""
 236. Andrew McGeo Oceano California 93445
 237. TIM O'NEILL CAMBRIA California 93428
 238. Lauren BarkerSan Luis Obispo California 93401
 239. Jennifer Hetherington Grover Beach California 93433
 240. Lauren Caraconcea santa maria California 93455
 241. Christopher Sanchez Santa Maria California 93454
 242. Stephen Johnson Arroyo GrandeCalifornia 93421
 243. Christina Molthen Salinas California 93909
 244. Whitney Diaz San Luis Obispo California 93401
 245. Katie H Atascadero California 93423
 246. Paco Maldonado Santa Maria California 93454
 247. marshall Diggins Arroyo GrandeCalifornia 93420
 248. sal delgado grover beach California 93433
 249. Abram Perlstein Los Osos California 93402
 250. Garrett Mallory Atascadero California 93422
 251. neila denneenArroyo GrandeCalifornia 93420

Attachment 2

252.	Katarina Benner	San Luis Obispo	California	93401
253.	Megan Costello	Los Angeles	California	90027
254.	Rick Augenstein	Olga	Washington	98279
255.	david sims	los osos	California	93402
256.	joanne huntermanassas		Virginia	20110
257.	Lenora Jones	Pine Bluff	Arkansas	71603
258.	Nick Johnston	Phoenix	Arizona	85032
259.	Luke Reccord	Santa Maria	California	93455
260.	Heather Martin	San Luis Obispo	California	93401
261.	Parker Bole	Santa Maria	California	93454
262.	johnny wyatt	arroyo grande	California	93420
263.	Christopher Paz	Santa Maria	California	93454
264.	William Farris	Grover Beach	California	93433
265.	Jacob Augino	San Luis Obispo	California	93405
266.	Andrew Harmer	Arroyo Grande	California	93420
267.	Kris Roudebush	San Luis Obispo	California	93401
268.	Emilie Smith	Raymond	California	93653
269.	Charles Galan	Miami	Florida	33186
270.	Joseph Bedford	Joshua Tree	California	92252
271.	tate snedeker	arroyo grande	California	93420
272.	Anna Moiseyeva	Arroyo Grande	California	93420
273.	Christian Straight	Palo Alto	California	94306
274.	Gena Mckeown	Paso Robles	California	93446
275.	Christopher Petro	Pismo Beac	California	93449
276.	Christine VanderWal	Oakland	New Jersey	07436
277.	James Piper	Santa Cruz	California	95062
278.	Derick Smith	Paso Robles	California	93446
279.	Brant Myers	San Luis Obispo	California	93405
280.	Vivian Woodfin	San Luis Obispo	California	""
281.	Aaron Cribbs	Santa Maria	California	93455
282.	Kaden Bledsoe	Santa Maria	California	93455
283.	jeff biafore	campbell	California	95008
284.	Timothy Rapson	Grover Beach	California	93433
285.	Russell Barron	Atascadero	California	93422
286.	Timo Beckwith	San Uis Obispo	California	93406
287.	sean cooper	santa maria	California	93455
288.	Brooke Powell	Calhoun	Georgia	30701
289.	Miesha Conrad	Santa Maria	California	93458
290.	Lewis Call	San Luis Obispo	California	93407
291.	Kathleen Yeung	San Luis Obispo	California	83401
292.	Hanna Peterson	arroyo grande	California	93420
293.	Vince Kelsey	Saratoga	California	95070
294.	Justin Hill	Oceano	California	93445
295.	David Seidenberg	Santa Maria	California	93455
296.	Ellis Briery	San Luis Obispo	California	93405

297. James Pardini Santa Maria California 93455
 298. Sam Abrams San Luis Obispo California 93401
 299. R. M. Oceano California 93445
 300. Brenda Wainscott San Luis Obispo California 93405
 301. adam henriques Tahoe City California 96145
 302. Dan Williams Santa Maria California 93454
 303. seychelle wilson santa maria California 93458
 304. Noe Chavez Oceano California 93445
 305. Tyler Andreson Oceano California 93445
 306. eddie gudino Santa Maria California 93458
 307. kristian tubbs Shasta Lake California 96019
 308. Andrew Miller Grover Beach California 93433
 309. Ryan Gilbert San Luis Obispo California 93405
 310. Nataliya McElroy Grover Beach California 93433
 311. Marilyn Henriques Tahoe city California 96145
 312. Jessica Pooley East Stroudsburg Pennsylvania 18302
 313. Mattics Phi San Luis Obispo California 93405
 314. Capri Sahlstrom San Luis Obispo California 93401
 315. chyna thomas Atascadero California 93422
 316. Andrew Westby San Luis Obispo California 93401
 317. Nikita Kozlov Portland Oregon 97212
 318. David Standish San Luis Obispo California 93405
 319. Chris Nguyen Sunnyvale California 94086
 320. Hao Phung San Luis Obispo California 93405
 321. Desiree Kimball Bellevue Washington 98004
 322. Angie Yang San Luis Obispo California 93410
 323. alexis ramirez santa maria California 93454
 324. R A Alexandria Virginia 22304
 325. Matt McElearney San Luis Obispo California 93405
 326. lorenza pavesi sao carlos SP 13590-161 Brazil
 327. Zach Haist San Diego California 92131
 328. Kerry Northwood Rochester New York 14618
 329. tawny goodwine Redding California 96001
 330. Sara Joy Marquez Lake Elsinore California 92530
 331. Feng-Chun Lin UNION CITY California 94587
 332. Salvador Villanueva San Luis Obispo California 93401
 333. Christopher Mojo San Luis Obispo California 93405
 334. gabriela garcia Santa Maria California 93458
 335. ali hernandez san luis obispo California 93420
 336. Shelby Attwood San Luis Obispo California 93405
 337. Annette Vega Beverly Hills California 90212
 338. Kathryn Albee 06844 Germany
 339. David Pearson Cambridge Massachusetts 02138
 340. Kyle Brennan orcutt California 93455
 341. Ella Johnson San Luis Obispo California 93405
 342. Jamin HO rn Oakland California 94609
 343. Jeremy Cleere San Luis Obispo California 93401
 344. Gina Miranda Arroyo Grande California 93420
 345. Benny Keele salt lake city Utah 84106
 346. tony thomas Santa Maria California 93455

347. Daniel Marquez San Luis Obispo California 93401
 348. Erin Geyer Pittsburg California 94565
 349. Alden Wilson Santa Maria California 93458
 350. Katie Mitchell San Luis Obispo California 93405
 351. Luke Blair San Luis Obispo California 93405
 352. Enrique Hernandez Arroyo Grande California 93420
 353. Arra Patel Stockton California 95121
 354. Johnathan Felch San Luis Obispo California 93401
 355. Krista Clearwater Oxnard California 93035
 356. Chelsea Griggy San Francisco California 94115
 357. blair ekleberry 75010 France
 358. Robert Green Bainbridge Island Washington 98110
 359. Megan Rivoire San Luis Obispo California 93401
 360. Claire Marshal San Luis Obispo California 93405
 361. Leah Rife-Dupuy Harrison Idaho 83833
 362. Eric Buringrud San Luis Obispo California 93401
 363. Wil Gilbreath Scottsdale Arizona 85250
 364. Ryan Paterson Los Osos California 93402
 365. Devin Jones San Luis obispo California 93401
 366. Robert Ortiz Phoenix Arizona 85008
 367. Jordan Lambert San Luis Obispo California 93401
 368. Angelica Gomez San Luis Obispo California 93401
 369. Bryan Harry San Luis Obispo California 93401
 370. Kimberley Ritchie Santa Maria California 93455
 371. Alexandra Milaychev San Luis Obispo California 93401
 372. jason jacques San Luis Obispo California 93401
 373. austin cole Santa Maria California 93455
 374. Aubrey Rejon Whittier California 90602
 375. Zac Loeb San Diego California 91941
 376. Mary velasquez Orcutt California 93455
 377. Paige Logan Santa Maria California 93455
 378. Kelsey Hooley Orcutt California 93455
 379. Bryan Koch San Luis Obispo California 93401
 380. Nina Moody Salinas California 93907
 381. nate trevino san luis obispo California 93401
 382. bryan kraft Orcutt California 93455
 383. April Martinez Santa Maria California 93458
 384. Brandon Moon San Diego California 92122
 385. Jasmine Hosier Arroyo Grande California 93420
 386. Julia Berban Santa Maria California 93454
 387. Maya McNamara San Luis Obispo California 93405-2302
 388. Kyle Murray San Luis Obispo California 93410
 389. Brandon Alves Tahoe City California 96145
 390. Daniel Eaton Arroyo Grande California 93420
 391. skyler pienack Oceano California 93445
 392. Noelle Ricco San Luis Obispo California 93401
 393. PAULA Smith Arroyo Grande California 93420
 394. Nick Forselles San Luis Obispo California 93401
 395. Igmacio Moreno Santa Maria California 93458
 396. melissa catalli elmira Oregon 97437
 397. Valentina Milaychev Monterey California 93940
 398. Trevor Nunez arroyo grande California 93420

399.	Winona Thayer	Orcutt	California	93455
400.	shontay harmon	hesperia	California	92345
401.	Cassie Banash	Anaheim	California	92806
402.	Christy Shirley	Whittier	California	90604
403.	Taylor Scotto	Nipomo	California	93444
404.	Ellen Pavlosek	Pleasant Hill	Oregon	97455
405.	Ryan Schmidt	Grover beach	California	93434
406.	Harrison Wong	Alhambra	California	91801
407.	Luke Huskey	Templeton	California	93465
408.	Ashley Armstrong	Flagstaff	Arizona	86005
409.	Ben Parsons	Los Osos	California	93402
410.	james garcia	Menifee	California	92584
411.	Samantha Detwiler	Los Osos	California	93402
412.	Kellymarie Otto	Paso Robles	California	93446
413.	Morgan Murphy	San Luis Obispo	California	93401
414.	Rebecca Forcier	San Luis Obispo	California	93405
415.	Paul May	Santa Maria	California	93455
416.	Nicholas Teng	Huntington Beach	California	92646
417.	Elizabeth Denny	Los Osos	California	93402
418.	Naomi Brebes-mensah	San Luis Obispo	California	93401
419.	Justin Doty	San Luis Obispo	California	93401
420.	Tauria Linala	San Luis Obispo	California	93403
421.	Maci Miri	San Marcos	California	92069
422.	keri bartleson	los osos	California	93420
423.	Bryan Wells	San Luis Obispo	California	93401
424.	Casey Woods	Apple Valley	California	92307
425.	Sam Silveira	Atascadero	California	93422
426.	Cooper Schumann	San Luis Obispo	California	" "
427.	chris herbst	cottage grove	Oregon	97424
428.	Mauri henderson	arroyo grande	California	93420
429.	GRACE NEHME	7248	Australia	
430.	Briana Weise	Arroyo Grande	California	93420
431.	ANN MONTOYA	chino	California	91710
432.	Richard Decater	San Miguel	California	93451
433.	patrick slagle	Irvine	California	92620
434.	Elizabeth Schmidt	San Luis Obispo	California	93401
435.	April Chludzinski	Los Angeles	California	90041
436.	justin Armstrong	Atascadero	California	93422
437.	Glenn Walton	San Miguel	California	93451
438.	Kristen Keate	San Luis Obispo	California	93401
439.	Sequoia Seebach	San Luis Obispo	California	93401
440.	Ashlynn Vann	Guadalupe	California	93434
441.	stephen gasch	Cayucos	California	93430
442.	Cassandra King	Santa Maria	California	93455
443.	sonia simmons	grove	Oklahoma	74344
444.	Alexandrea Cini	Atascadero	California	93422
445.	Angelique DePauw	Los Osos	California	93402
446.	Mykel Wolf waukesha	Wisconsin		53188
447.	Angela Mueller	orange	California	92869
448.	William Larson	Santa Maria	California	93454
449.	Nick VanMeter	San Luis Obispo	California	93401
450.	kevin dirksen	Santa Maria	California	93454

451. Elizabeth Gay Los Osos California 93402
 452. Chelsea Baumberger San Francisco California 94102
 453. Lauren DeMates Auburn California 95603 Chile
 454. pat robinson san luis obispo California 93405
 455. abraham slezak san luis obispo California 93401
 456. melodia szpyrka Pismo Beach California 93449
 457. Anna Mariscal Vineburg California 95487
 458. Mel Hickman Santa Maria California 93455
 459. zac adler San Luis Obispo California 93401
 460. a sundt so.sf California 94080
 461. Sam Stearns Grover Beach California 93433
 462. Kory Oliveira Atascadero California 93422
 463. Annie McNulty san luis obispo California 93403
 464. Rachel Ziemer Las Vegas Nevada 89122
 465. joseph hall jr baltimore Maryland 21211
 466. Michael Grasseschi San Luis Obispo California 93401
 467. jessica moody San Luis Obispo California 93401
 468. Tyler Cox Santa Maria California 93455
 469. Cassidy McSurdy san luis obispo California 93401
 470. Jim Helm Sacramento California 95816
 471. Jessica Holt Fresno California 93727
 472. Anders Meisenheimer San Luis Obispo California 93401
 473. Vinesà Wilson Grover Beach California 93433
 474. Amber Harwell San Luis Obispo California 93401
 475. Manny Velazco San Luis Obispo California 93401
 476. Patricia Okerblom Nipomo California 93444
 477. Trevor Dieterle San Luis Obispo California 93405
 478. Kyle Miller Winchester California 92596
 479. Jonathan Okerblom La Jolla California 92037
 480. Dominic Bono San Luis Obispo California 93401
 481. Gary Garrett San Francisco California 94114
 482. sam Artho-Bentz San Luis Obispo California 93401
 483. dan blount Santa Maria California 93455
 484. Hope Decker San Mateo California 94403
 485. Andrew Ecker Morro Bay California 94332
 486. thomas ellis Pismo Beach California 93449
 487. Phaedra Reitzel Porterville California 93257
 488. Taylor Lee San Diego California 92129
 489. Lance Niccoli Santa Maria California 93455
 490. Nikole Conlee Nipomo California 93444
 491. justin hortillosa oceano California 93445
 492. Angela Normanly Nipomo California 93444
 493. Brittney Conklin Nipomo California 93444
 494. Michael Byrd Nipomo California 93444
 495. Melissa Kyle Brooklyn New York 11211
 496. Carl Kunde San Luis Obispo California 93401
 497. travis silva pismo beach California 93449
 498. jimmy powell Nipomo California 93444
 499. theodore phan la mirada California 90638
 500. konstantin frankvienna 1030 Austria
 501. Jacqlynn Tidwell Nipomo California 93444
 502. takeshi kubota santa maria California 93454

503. Olivia Mejia Atascadero California 93422
 504. Sofia Rios Fresno California 93704
 505. trevor mahin San Luis Obispo California 93401
 506. adam sheehy nipomo California 934444
 507. ed craine Mira Loma California 91752
 508. jacob st james Nipomo California 93444
 509. Daniel Rodman San Luis Obispo California 93401
 510. Jeremy Rubin Nipomo California 93444
 511. Eva Hogue San Luis Obispo California 93401
 512. Kartonio Hall Arroyo Grande California 93420
 513. Lillian Garland Rossford Ohio 43460
 514. James Stoker San Rafael California 94903
 515. Ralph Kilmann Newport Coast California 92657
 516. Sherry Malone Thornton Colorado 80241
 517. Andrew Cordoba San Luis Obispo California 93401
 518. Natasha Maltby bakersfield California 93306
 519. Cheyanne Whitmer Santa Maria California 93454
 520. Kristina Van Wert San Luis Obispo California 93405
 521. Maxwell Hunt San Luis Obispo California 93401
 522. Joni Rose Nipomo California 93444
 523. Gary DuTeau Plum Branch, S.C. Georgia 29845
 Zimbabwe
 524. Danzel Maltby Bakersfield California 93312
 525. Angela Bowles Atlanta Georgia 30339
 526. Betty Doughty Keysville Georgia 30216
 527. Barbara Lord Grovetown Georgia 30813
 528. Shirley Perry Martinez Georgia 30907
 529. Gary Roberts Syracuse New York 13206
 530. c p Fresno California 93710
 531. Kerry Glasser Irmo South Carolina 29063
 532. brianna owens pismo beach California 93448
 533. julie maravillas Nipomo California 93444
 534. brian caneda north charleston South Carolina 29405
 535. Amy Loyd Statesboro Georgia 30459
 536. Krissy Flower Avila beach California 93424
 537. may tambo Santa Maria California 93455
 538. Dakota Cartmell Santa maria California 93454
 539. Jesus Silva Santa Maria California 93458
 540. raissa zoff Arroyo Grande California 93420
 541. Christina Curto Tustin California 92782
 542. kristina thompson Santa Maria California 93455
 543. Tori Porrazzo Oceano California 93445
 544. Marcus Velasquez Santa Maria California 93455
 545. Merina Gomez Orcutt California 93455
 546. stephanie garnica Santa Maria California 93454
 547. Ryan Springer Carter paso robles California 93446
 548. brooke wollam santa maria California 93454
 549. moises hernandez santa maria California 93458
 550. Casey Thomas Santa Maria California 93455
 551. Johnathan Hayes Nipomo California 93444
 552. Scott Gillson San Luis Obispo California 93405
 553. priscilla ruedas Santa Maria California 93454

554.	Christian Uhler	San Luis Obispo	California	93405
555.	Jerusha Beebe	San Luis Obispo	California	93405
556.	Sharon Simpson	Santa Maria	California	93455
557.	Amber Wilbur	Arroyo Grande	California	93420
558.	Karla Haeberle	Los Osos	California	93402
559.	Carole Wagener	Santa Maria	California	93454
560.	erika roedl	slo	California	93401
561.	Iain MacAdam	Cambria	California	93428
562.	Glenn Goodwin	santa maria	California	93454
563.	Alyssa Adams	Arroyo Grande	California	93420
564.	latrice jackson	Las Vegas	Nevada	89115
565.	Rain Lewis	san luis obispo	California	93402
566.	Ann Wellford	San Luis Obispo	California	93401
567.	Socorro Herda	San Luis Obispo	California	93401
568.	Amanda Sanchez	Avila Beach	California	93424
569.	Virginia Schenk	Grover Beach	California	93433
570.	Marcia Guthrie	Pismo Beach	California	93449
571.	Sean Ellenson	San Luis Obispo	California	93401
572.	Kelly Foster	San Luis Obispo	California	93401
573.	Todd Jarman	arroyo grande	California	93420
574.	Parker Hayes	Oakland	California	94609
575.	Michael Okerblom	Nipomo	California	93444
576.	Cynthia Halley	Los Osos	California	91011
577.	Cheryl Johnson	Altadena	California	91001
578.	Kenneth Scarbrough	Arroyo Grande	California	93420
579.	Andrew Gulbranson	San Luis Obispo	California	93405
580.	Mitch Houseman	grover beach	California	93433
581.	daniel fuentes	Arroyo Grande	California	93420
582.	David Williams	Atascadero	California	93422
583.	Eric Miller	Atascadero	California	93422
584.	Carly Dahlager	Santa Maria	California	93458
585.	olivia bell	california valley	California	93453
586.	Beini Qu	San Jose	California	95133
587.	tyler smallwood	atascadero	California	93422
588.	Jonathan Nickols	Santa Maria	California	93458
589.	Tristan Kuzmaul	Atascadero	California	93422
590.	Joana Sandoval	Madera	California	93637
591.	Rocio Mariscal-Rodriguez	Santa Maria	California	93455
592.	Ernesto Peimbert	Lake Forest	California	92630
593.	benjamin speaker	San Luis Obispo	California	93401
594.	Ginny Walton	Paso Robles	California	93446
595.	Jordan Fluitt	Arroyo Grande	California	93420
596.	Mandee Fletcher	Atascadero	California	93422
597.	Pastor Mariscal Jr.	Paso Robles	California	93446
598.	Garett Hanlon	Paso Robles	California	93446
599.	Claire Guittard	Atascadero	California	93422
600.	Sandra Marshall	San Luis Obispo	California	93405
601.	Yvonne Tang	Arroyo Grande	California	93420
602.	Collin Bryan	Paso robles	California	93446
603.	Lee Baldwin	Northwood	New Hampshire	03261
604.	JacLynn Dabbs	Creedmoor	North Carolina	27522

Attachment 2

605. Lucas Agostini Atascadero California 93422
 606. Hannah Ayhens Atascadero California 93422
 607. Jennifer Fowler Santa Maria California 93455
 608. Jesse Holder Grover Beach California 93433
 609. Peter Tomis San Luis Obispo California 93401
 610. Emily Nelson Pasadena California 91101
 611. E Farrington San Luis Obispo California 93405
 612. Alexander Lindt San Luis Obispo California 93401
 613. Bon Hall Grover Beach California 93433
 614. Andrea Burks Murrieta California 92562
 615. Kave Maguire Los Osos California 93402
 616. Stephanie Terrazas San Luis Obispo California 93405-1614

 617. Rae Stilwell santa maria California 93455
 618. Art Guirnalda Bakersfield California 93301
 619. Kristel Thyrring Halcyon California 93421
 620. Victoria Ketchum San Francisco California 94132
 621. Elizabeth Coughlin San Luis obispo California 93401

 622. Taylor Bonetti Monterey California 93940
 623. Alexander Kalpakoff mountain center California 92561
 624. Jose Grajeda San Miguel California 93451
 625. Chelsea de Goede Arroyo Grande California 93420
 626. Terrell Liedstrand Berkeley California 94705
 627. Sam Soleimany Los Angeles California 90024
 628. Brandon Gable San Luis Obispo California 93401
 629. Carver Cordes Oakland California 94606
 630. Erika Foronjy Los Osos California 93402
 631. Barbara Robinson Nipomo California 93444
 632. Nicole & Doc anonymous arroyo grande California 93420

 633. Crystal Aumand Castro Valley California 94546
 634. Dennis Hale Angleton Texas 77515
 635. Mackenzie Cypriano Lincoln California 95648
 636. linda Seeley San Luis Obispo California 93405
 637. Loesha Bechthold GROVER BEACH California 93433
 638. Laura Crandall Santa Margarita California 93453
 639. Derek Marin Hacienda Heights California 91745
 640. Danielle Cantu Oceano California 93445
 641. Shane Blume Nipomo California 93444
 642. John Poetker Grover Beach California 93433
 643. Rachel Saalsaa san luis obispo California 93405
 644. Isaac Wollman San Luis Obispo California 93405
 645. stephen seitz Atascadero California 93422
 646. Dan McGauley Atascadero California 93422
 647. Susan Kennedy San Luis Obispo California 93401
 648. BreeAnna McManus Nipomo California 93444
 649. Sophia Otto Sacramento California 95835
 650. Laurie Edwards Paso Robles California 93446
 651. Michael Wollman San Luis Obispo California 93405
 652. Jeremy Kastner san luis obispo California 93401
 653. James Hunt Grover Beach California 93433

Attachment 2

654. Guinevere Chan Los Angeles California 90046
655. Shannon Greene Paso Robles California 93446
656. Joe Giral Oceano California 93445
657. Steph alvarez San Mateo California 94403
658. J M Bluett Atascadero California 93422
659. kimberly wallace Atascadero California 93422
660. micah jimenez Grover Beach California 93433
661. Megan Souza Cayucos California 93430
662. Patricia Horton San Luis Obispo California 93401
663. Bradley Kirkman San Luis Obispo California 93405
664. Megan McCurley Murrieta California 92562
665. Stephanie Bailey San Luis Obispo California 93401

PUBLIC COMMENTS

Felicia Ronquillo Guadalupe CA 93434 United States 2013-08-01 This is the only place where people can really forget about the harsh world and come here to be free of no thoughts and complications, and I speak for any one else that this place is a great place for swimming

K. Winter Arroyo Gande CA 93420 United States 2013-08-01 Beaches should be left alone. Development leads to restrictions on personal freedoms and ruins pristine nature spaces. I say no to development of any kind at this beach.

Alexis de Falla San Luis Obispo CA 93401 United States 2013-08-01 There is nothing more valuable than the remaining natural spaces in tact, free for people to enjoy. The proposed plans will attract unwanted foot traffic, alter the environment severely, and drive away wildlife, which part of the whole point of going!

Jospeh Buck clovis CA 93612 United States 2013-08-01 I have been regularly visiting this beach for almost 10 years. I would even fly to Fresno to drive to this beach when I lived in Seattle. There's no where else like it. I have made this trip with at least 20 different people at various points in time, and it has since become a regular destination for a majority of their families.

Megan O'Sullivan Mountain View CA 94043 United States

2013-08-01 I went to Cal Poly and Pirate's cove is my favorite beach. The environment it offers is unique and special and needs to be maintained. It was heartbreaking to hear that they wanted to develop it into basically what ever other beach in the county is. When I go to visit SLO (multiple times/year), Pirate's is the only place I absolutely need to visit. Please leave it alone and allow it to continue to provide the amazing escape it so eloquently does.

Charlotte LoPrete Tempe AZ 85281 United States 2013-08-01 beaches, as well as other public natural settings, need to be respected and maintained.

Kristine Lamar Grover Beach CA 93433 United States 2013-08-01 I grew up going. There and brought mt children also. It's sacred.

Rina Maynard Newport Beach CA 92660 United States 2013-08-01 This is the place to be! I take all my friends there every time they used to visit. Now that I have moved away I am not there as much but I would still love to be able and enjoy it there when I do visit. Its has that natural beauty. please do not turn it into some Newport Beach wanna be snotty development. Please keep it as it!!

Zazz McMeaty MeatMeat Los Osos CA 93402 United States 2013-08-01 Because this should have never even happened. Leave pirates alone. Not like slo county doesn't have enough parks or other beaches to mess with.

Robin Powell Santa Monica CA 90025 United States 2013-08-01 Every time I go up north, I stop here to spend good time with quality people in a serene quiet space.

James V Watson Jr Santa Barbara CA 93109 United States 2013-08-01 "I grew up in Atascadero, went to high school in SLO, and spent my youth visiting this beautiful rugged coastline. I still do, at least once a month or more. Developing this area and "sterilizing" it as such would be deplorable. Depriving future generations of the enjoyment of this wonderful area would be short-sighted at best. Re-open talks for "no development at once, PLEASE!"

Ashley Gable San Luis Obispo CA 93401 United States 2013-08-01 We love this beach and want to preserve it's natural state.

scott kam san luis obispo CA 93401 United States 2013-08-01 We love this cove, leave it be!

Rebeka Levin San Luis Obispo CA 93401 United States 2013-08-01 I grew up going to Pirate's cove with my family and friends, and still head out there every time I come down to visit. It would sadden me greatly to see this changed, as it has been a community-managed, wonderful private little beach for those willing to make the trek. Please let it remain the hidden gem it is!!

Andrew Flores Concord CA 94518 United States 2013-08-01 It is our responsibility to keep places like this clean and available to be enjoyed by all.

Diane Lee San Luis Obispo CA 93405 United States 2013-08-01 It's a beautiful and peaceful place that doesn't need to be over crowded with tourists and trash.

Taylor Van Valkenburgh San Luis Obispo CA 93402 United States 2013-08-01 It is important that we preserve the small and unique areas that we have on the central coast that keep out locals happy and engaged in the land. Pirates Cove offers a get away, away from tourists that is still beautifully preserved by the people who use it every day.

monica calvo agua dulce CA 91390 United States 2013-08-01 Because my family lives in this beautiful area
Stephen Henchy-Boyle San Luis Obispo CA 93401 United States

2013-08-02 Many cherished memories and experiences at Pirate's Cove were a signature part of my experiences and time spent living in the central coast. That these same possibilities would be kept from future generations lessens the cultural worth of our County.

zach smoot templeton CA 93465 United States 2013-08-02
personal freedom and responsibility and ecosystem
preservation

Lauren Veach San Luis Obispo CA 93401 United States 2013-
08-02 Commercialism and tourism could ruin this lovely little
beach, which is the only clothing optional one in the county. I
don't want it to become a tourist attraction.

Suzanne Thompson Citrus Heights CA 95621 United States 2013-
08-02 "This is one of my favorite places to be! Do you have a
place where you become one with the surrounding environment?
Have you basked in the absence of mechanical noise? I am signing
to preserve the natural for the present and the future, I want my
children to always have beauty as unsullied by our carelessness
as possible! I am signing because there's enough possession and
too little protection, too much entitlement, too little
appreciation. Do not change a delicate balance for money, let
nature decide, please. Thank you.
Suzanne"

Celeste Parkhurst Portland OR 97202 United States 2013-
08-02 I've spent most of my life living in various parts of the
California coast. Although I no longer live in California, the
undeveloped beaches have always been my favorite thing and it
saddens me to see them dwindle into nonexistence. Please keep
some of the California coast undeveloped so future generations
can experience it.

breanna sheppard Grover Beach CA 93433 United States 2013-
08-02 i love pirates just the way it is! dont ruin it like you
have started to do to the rest of our town!

Danielle Okerblom Tucson AZ 85716 United States 2013-
08-02 This beach is the only beach where I can have my dog off
leash and no body is afraid or threatens my dog. I clean up after
her and people are accepting and peaceful. Lets keep it that way.

janice Ziomek arroyo grande CA 93420 United States 2013-
08-02 this area is where i grew up and i would appreciate that it
remains untouched!!!!

Adrienne Ratty San Luis Obispo CA 93401 United States 2013-
08-02 The environment is amazing and natural. I love coming here
as it reminds me what a beach should be, not completely manicured
and surrounded by shops or rich fancy homes. Its the only beach

I feel free of these distractions.

cassidy herbst fort irwin CA 92310 United States 2013-08-02
because i used to live here and all beaches have been overly popular and it would be nice to have a beach that isnt a hotspot for parties and people

Sommer Shahan Atascadero CA 93422 United States 2013-08-02
This is a beautiful beach that should remain in its natural state, not ready to battle the crowds and parking there too!

Todd Kent San Luis Obispo CA 93401 United States 2013-08-02
I have been a regular at Pirates Cove since 1987, and by regular I mean at least 3 days a week I enjoy this beach and sometimes 7 days a week. I am a local, tax-paying, home owning and voting local born at Sierra Vista hospital and have lived here and will live here my entire life. This beach is a rare gem, not only on the central coast, but in the entire state of California. We, the locals, the voters, do not want more concrete and street light and stair cases. We just want our beach the way it is. The way it has been since the Chumash Indians enjoyed it, since their predecessors enjoyed it. Once it's paved it can never return to its natural beautiful form. Don't build a concrete dinosaur to lure in tourists. The tourists like it the way it is also. I've met thousands of them over the years. Do something that would really help the residents of this county, Board of Supervisors: get the polluting gas machines off the dunes. Leave our beach alone. Please. I vote and I'm very loud.

Hailey Jones Santa Maria CA 93458 United States 2013-08-02
Pirates is a beautiful and well maintained area as it is, govt assistance is not needed and will just ruin this land like the rest of the beaches have been ruined on the central coast.

Judith Levin Oceanside CA 92057 United States 2013-08-02
This is one of the ONLY beautiful untouched remaining natural areas of the coastline/beach. Do we REALLY need another development!

Juan Orellana Miami Beach FL 33141 United States 2013-08-02
I have family in the area, and I lived there.
Layne Neilson San Luis Obispo CA 93501 United States 2013-08-02
Love the area exactly how it is now...and that is how it should always stay.

Christopher-Robin Wilson Arroyo Grande CA 93420 United States 2013-08-02
Retain the natural beauty of this local treasure!

Jamie Combs Clovis CA 93611 United States 2013-08-02
Because nature should be preserved. We as humans need to share the earth not use it as we see fit.

Stacie Highland Orange CA 92869 United States 2013-08-02

Sacred Indian grounds. Enjoyed by many, would never be the same place if you develop it. I have many memories there from when I lived there, I would be heartbroken if it was developed.

Travis Massa nipomo CA 93444 United States 2013-08-02

it is preferable to preserve the natural state of the environment for public use to attempting to profit privately from what belongs to everyone.

Michael Johnson San Luis Obispo CA 93405 United States 2013-

08-02 There are thousands of beaches in California for those who prefer to wear clothes. And only a handful for those who choose not to wear clothes. Allow us to keep this beach clothing optional as it has always been.

Christopher Divelbiss Fresno CA 93726 United States 2013-

08-02 I go here frequently and it would sadden me greatly for it to be closed off behind fences for only those wealthy enough to go to a resort to enjoy.

Michael Souza San Luis Obispo CA 93406 United States 2013-

08-02 This is a unique spot. It is important to as a born and raised local to keep it the way it has always been

Holly Hetherington Grover Beach CA 93433 United States

2013-08-02 There are SO many developed tourists area's in this county. Undeveloped, pristine land is rare and we need to protect it. What's left of it.

Sandra Freeman San Luis Obispo CA 93401 United States 2013-

08-02 I was born here, as was my grandfather, mother, daughter and grandchildren. We have all enjoyed Cave Landing and Pirate's Cove and now you want to change that. Keep this open, keep it as UNDEVELOPED wilderness. The last thing this county needs is another development of homes, condos, luxury hotels or parks. Are you really that greedy? If so, I'll be sure to change ALL my votes for the County Supervisors from now on!

Luis Perez Fresno CA 93703 United States 2013-08-02 Keep

the Cove as nature made it.

Jason McKenzie Fort Worth TX 76179 United States 2013-08-02

There is a need for undeveloped land especially a place like this.

Sabrina Hill Fresno CA 93725 United States 2013-08-02

It's a beautiful place to visit during vacations.

Beth Gilbert Belfast "" United Kingdom 2013-08-02

The government needs to quit wrecking nature just for more buildings we don't even need. The world is going to end up with no wild places left if this keeps going. STOP.

Andrea Kwan 伯克利 CA United States2013-08-02 I've never been, but i can't bear to see such a beautiful beach turn into something industrial and ugly

Allan Dick Grover Beach CA 93433 United States2013-08-02 Don't over-control everything!

Lacye Winkelpleck Fort Bragg CA 95437 United States2013-08-02 I have grown up going to this beach! It's one of the most special places in the area. Locals need it, and tourists need it to to feel like they've found a private, special little place. Please leave it alone!

Anke Fischer "" 80469 Germany 2013-08-02 i studied in slo in 1990 and i went to that place a lot. it would be a shame if it would change and become a developed place. it is a nice thing that wilderness can and should be found. pls leave pirate's cove what it is - a nice and peacefull place.

Tim Barnes Austin TX 78701 United States2013-08-02 I am a past resident and frequent visitor of San Luis Obispo county. I believe this undeveloped area is an asset to the community.

Brady Dawson Boise ID 83713 United States2013-08-02 I grew up in Shell Beach. We always went to Pirates Cove. It should remain untouched. We need more nature not more big corporation resorts.

Aubrie Hilstein San Luis Obispo CA 93401 United States2013-08-02 This beach is so beautiful, why would we change it?!

Terez AutrandSan Luis Obispo CA 93405 United States2013-08-02 I grew up in San Luis Obispo.

April Beach Erie CO 80516 United States2013-08-02 This is where I grew up. Please preserve this.

Gina MartinezFayetteville NC 28311 United States2013-08-02 I am a combat veteran from Pismo Beach. Cave Landing/Pirate;'s Cove is one of the places I enjoy visiting every time I come home. Please don't take this away to build a real estate monstrosity. Please build elsewhere.

Robert Anderson Arroyo GrandeCA United States2013-08-02

Because I frequently visit this beach to fish, kayak, or just to spend some quality time with nature... people always pick up their trash and there has never been any problems before.

Tim O'Neill Cambria CA 93428 United States2013-08-02 ACCESS TO THE RIDGE IS VERY IMPORTANT AND AN ASSET TO THE AREA.

lauren schlosser coarsegold CA 93614 United States2013-08-02 this is a home away from home!

Christopher Sanchez Santa Maria CA 93454 United States2013-08-02 I've been going to Pirates and appreciating its beauty since my friends and I were old enough to drive. DON'T destroy this beautiful place!

Stephen Johnson Arroyo GrandeCA 93421 United States2013-08-02

Pirate's Cove is the last unspoiled beach on the central coast. The people who love it keep it clean and beautiful in a way that development will destroy forever.

Abram Perlstein Los Osos CA 93402 United States2013-08-02 Cave Landing and Pirates Cove is a rare gem in the rough. Keep it undeveloped. Period.

Garrett Mallory Atascadero CA 93422 United States2013-08-02 I grew up in Slo county, and have been going to the Cave/pirates cove since I was 18,,,let's keep it Undeveloped, Free and Open!!!!

neila denneenArroyo GrandeCA 93420 United States2013-08-02 Less

Rick Augenstein Olga WA 98279 United States2013-08-02 I grew up on the central coast and Pirates is the best beach around. I have so many fond memories of the place and I return yearly.

Lenora Jones Pine Bluff AR 71603 United States2013-08-02 Born and raised in that area. It is so beautiful.

Nick JohnstonPhoenix AZ 85032 United States2013-08-02 The constant drumbeat of development has to stop somewhere. Wild and beautiful for ALL not manicured and expensive for a few.

Christopher Paz Santa Maria CA 93454 United States2013-08-02 I really enjoy the wilderness and although pirates cove isn't exactly that I would not want to see it become anymore developed than it already is. We have so many resorts and homes and almost no wilderness that is available to the

public. I would like to see a slight reversal of these figures.

Kristen Roudebush San Luis Obispo CA 93401 United States2013-08-02

I love to hike and lay at the beach here. Maintaining the areas natural beauty is something that the central coast can pride its self on and keeps it from become simply an extension of southern California delopment.

Charles GalanMIAMI FL 33186 United States2013-08-02 I once visited this beautiful reserve approx 6 months ago. My friends whom live in the area treasure this place as I now do in my heart.

Christian Straight Palo Alto CA 94306 United States2013-08-02 one of the few places left that remains untouched by commercial growth...what's happening to my beloved Central Coast childhood home?

Christopher Petro Pismo Beac CA 93449 United States2013-08-02 I visit this beach all the time and I'm a HUGE advocate for the promotion, conservation and creation of public lands. We must preserve our public open spaces. Places like this MUST be preserved for the future and not simply exploited and closed for rich. Public land belongs to all of us and this spot must be dedicated and endowed to the public good for all time.

Aaron Cribbs Santa Maria CA 93455 United States2013-08-02 Preserve places like this for the public!!!

jeff biafore campbell CA 95008 United States2013-08-02 SLO county is a special place. It has treasures that need to be preserved so that generations can discover it and fall in love with it like I did.

Timothy Beckwithg San Luis Obispo CA 93406 United States2013-08-02

I have bee going to this treasure place since 1962. Please let it be one the only free and undeveloped beaches on the Central Coast!

Lewis Call San Luis Obispo CA 93407 United States2013-08-02 It is the most beautiful beach I know. The California Coastal Act requires us to preserve Pirate's Cove, and so does ethics.

James PardiniSanta Maria CA 93455 United States2013-08-02 Why wouldn't the last refuge of private, undeveloped beach not be important? You would spend money, then keep on spending money to maintain it. If the road gets washed out, you would close the beach due to 'Lack of funding.' KEEP IT FREE. KEEP IT OPEN. AND LASTLY KEEP IT UNDEVELOPED. FOR THE SAKE OF SANITY.

R. M. Oceano CA 93445 United States2013-08-02 I'd rather see our county

take care of the poor than develop more land for the rich.

Brenda Wainscott San Luis Obispo CA 93405 United States2013-08-02
some places were meant to remain free to the locals..we have few places
left in this county that are natural and historic..and that don't cost to
enjoy.

adam henriques tahoe city CA 96145 United States2013-08-02 Open
spaces are vial to the longevity of our collective human soul, for the
preservation of recreational opportunities, for the preservation of
biodiversity, and for aesthetic appeal. Preserve the only part of this
beautiful coast left unadulterated by the exploitations of man

Dan Williams Orcutt CA 93454 United States2013-08-02 Because people ruin
everything. We're destroying the planet and if it's possible to save a spot
like this, then it's important to me.

Andrew MillerGrover Beach CA 93433 United States2013-08-02 This is a
great, pure natural landscape and development would be a huge detraction and
invasion of the landscape!!

Nataliya McElroy Grover Beach CA 93433 United States2013-08-02 I want
the natural beauty of Pirates Cove kept untarnished by commercial and
residential development!

Nikita KozlovPortland OR 97212 United States2013-08-02 I lived in
SLO while a student at Cal Poly. I believe that developing on this land would
be very detrimental to the surrounding environment.

David Standish San Luis Obispo CA 93405 United States2013-08-02
This beautiful small stretch of coast line must remain undeveloped and
open to the public.

alexis ramirez Santa Maria CA 93454 United States2013-08-02 cause
i always go and swim there and its a site i go to travel

Matt McElearney San Luis Obispo CA 93405 United States2013-08-02
I like Pirate's Cove just as it is!

Salvador Villanueva San Luis Obispo CA 93401 United States2013-08-02
Pirates Cove area is beautiful.

ali hernandezsan luis obispo CA 93420 United States2013-08-02 don't
develop what's already our home

Jamin Horn Oakland CA 94609 United States2013-08-02 Because open space, especially coastal California space is rare and needs to be protected and access increased.

Benny Keele salt lake city UT 84106 United States2013-08-02 spent a lot of time here as a kid in the 70-80's

Enrique Hernandez Arroyo GrandeCA 93420 United States2013-08-02 let it be

Johnathan Felch San Luis Obispo CA 93401 United States2013-08-02
I love this place and have been going there for over 25 years

Megan Mastache San Luis Obispo CA 93401 United States2013-08-02
I have been going to Pirate's Cove & the Cave Landing since I was a freshman at Cal Poly a decade ago. I love this special place. I love that you have to hike down with your bags on your back, its not easy to access like Pismo & Avila... keep Pirate's unique. I don't live in LA for a reason. Our beaches are special!

nate trevino san luis obispo CA 93401 United States2013-08-03
Pirates needs to stay the same the animals are precios and it would ruin the vibe.

Brandon Moon San Diego CA 92122 United States2013-08-03 Because with all the cities and streets these days, we need to preserve as much wildlife as possible to maintain our sanity and the beauty of our mother Earth!

Brandon AlvesChico CA 95926 United States2013-08-03 I spent two years of my life in SLO and I visit regularly. I would hate to see development ruin the serine destination. It would ruin the place!

PAULA Smith Arroyo GrandeCA 93420 United States2013-08-03 I HAVE LIVED HERE ALL MY LIFE AND LOVE THIS BEACH JUST THE WAY IT IS. WE SHOULD PROTECT IT

melissa catalli elmira OR 97437 United States2013-08-03 this place is part of my soul!

harrison wongAlhambra CA 91801 United States2013-08-03 my college is located near to this location

Ashley Armstrong Flagstaff AZ 86001 United States2013-08-03 This

has been my favorite place since I was little. I have introduced this place to many people from across this country. It is beautiful and rare and we need to keep this beautiful spot open to the public.

Ben Parsons Los Osos CA 93402 United States2013-08-03 This beach serves not only as a beautiful coastal landmark, but as an homage to human free expression. There are fewer and fewer places like this left in the world, and I think it's a shame to see expression and beauty come under the heavy hand of urbanization.

Kellymarie Otto Paso Robles CA 93446 United States2013-08-03 Grew up around there. It's a landmark!

chris herbst cottage groveOR 97424 United States2013-08-03 I just moved away from the Pismo beach area but visit often. in my 15 years of living there I spent lots of time in that area because it was still a undeveloped wilderness. I would hate to see the last undeveloped area become like all the rest

Mauri Henderson NipomoCA 93444 United States2013-08-03 This beach is such a key part of my life, it's the one place the locals have left. let it stay FREE!!!!

Briana Weise Arroyo GrandeCA 93420 United States2013-08-03 This is the most beautiful place on the central coast, and it sickens me to think that people want to pollute its natural wonder in attempt to make it like every other overdeveloped beach. Pirate's Cove is a treasure, cherished by many of us for countless years, and we need to do all that we can to stop people from destroying it.

Glenn Walton San Miguel CA 93451 United States2013-08-03 This area has been free to the public for as long as I can remember and I have been in the county since 1957. It needs to remain a free and accessible area.

Sequoia Seebach San Luis Obispo CA 93401 United States2013-08-03 visit priates weekly... i would ate to see it overtaken. let me know if there is anything i could do, it would truely break my heart

Cassandra King Santa Maria CA 93455 United States2013-08-03 I think so much of our natural areas have been ruined its so nice to see a place still untouched and think it should stay this way ! I visit this place myself a lot!

sonia simmonsgrrove OK 74344 United States2013-08-03 I grew up there in

arroyo and grover it is a beautiful beach and it should not be developed it should be left the way it is. We do visit there still the area is beautiful would not be as nice to visit if it is to developed

Mykel Wolf waukesha WI 53188 United States2013-08-03 the expanse of the human race is astounding. Dependence on coastal vegetation and animal life is crucial. Our disregard for the natural balance is unnerving and disrespectful. please save some cool places for nature to exist.

kevin dirksenSanta Maria CA 93454 United States2013-08-03 Pirates cove is fine the way it is.

Chelsea Baumberger San FranciscoCA 94102 United States2013-08-03 It is important to preserve pirates natural beauty. Once developed it would be impossible for that land to return to its former majesty. Do not develop! Maintain SLOs natural essence and history. That beach is an oasis.

jessica moodySan Luis Obispo CA 93401 United States2013-08-03
"Pirates is my home
"

Jessica Holt Fresno CA 93727 United States2013-08-03 I love this area and want it to remain undeveloped

Amber HarwellSan Luis Obispo CA 93401 United States2013-08-03 keep pirate's free!

Patricia Okerblom Nipomo CA 93444 United States2013-08-03 I have been going to pirates to find peace for years. I will not allow our only undeveloped land to become part of the worlds construction zone!

Jonathan Okerblom La Jolla CA 92037 United States2013-08-03
Because undeveloped wilderness is precious in the central coast and it's truly one of our greatest treasures.

Gary Garrett San FranciscoCA 94114 United States2013-08-03 I visit Pirates Cove about once a month. I travel from SF, stay in the area, and spend several hundred dollars on food and lodging. I'm interested because I love this place exactly as it is.

Hope Decker San Luis Obispo CA 93405 United States2013-08-04 This site is extremely important. It gives the locals and tourists a taste of unspoiled San Luis Obispo coastal land. We need to protect this wilderness!
travis silva pismo beach CA 93449 United States2013-08-04 i go to this beach all the time its perfect the way it is and needs no changes. there is

plenty of beach all up and down the central coast why build something in a spot that already brings people to its shores with a resort? go build something some where else .

jimmy powell Nipomo CA 93444 United States2013-08-04 Because pirates cove is awesome and should be able to be enjoyed by everyone.

takeshi kubota santa maria CA 93454 United States2013-08-04 ""You think you own whatever land you land on The Earth is just a dead thing you can claim But I know every rock and tree and creature Has a life, has a spirit, has a name""

takeshi kubota santa maria CA 93454 United States2013-08-04 "You think you own whatever land you land on The Earth is just a dead thing you can claim But I know every rock and tree and creature Has a life, has a spirit, has a name"

adam sheehy nipomo CA 934444 United States2013-08-04 this beach is important because it is the one place where locals can hang out without tourist destroying the beach

Kartonio HallArroyo GrandeCA 93420 United States2013-08-04 I want the beach to maintain its privacy and it worries me watching as each new land is systematically covered and paved in grey concrete. Pirates cove is special BECAUSE it is undeveloped. Don't turn it into another generic tourist beach. Lillian Garland Sturgis KY 42460 United States2013-08-04

Because I care.!!!!

James Stoker San Rafael CA 94903 United States2013-08-04 This is a Beautiful Beach, and should REMAIN SO !!!

Ralph KilmannNewport CoastCA 92657 United States2013-08-04 This stretch of land is beautiful and priceless. It should not be given away for another purpose

Molly Smith Newport CoastCA 92657 2013-08-04 *I visit the Central Coast about 15-20 times a year. I come to the Central Coast BECAUSE of Pirate's Cove The wild surroundings and the beach at the Cove gives me a spiritual peace. It's a special slice of land that should be kept in it's original state for

all to enjoy at any time, day or night. "

Sherry MaloneThornton CO 80241 United States2013-08-04 I believe natural spaces are important to every human because they reveal God's creative power.

Cheyenne Whitmer Santa Maria CA 93454 United States2013-08-04 To preserve the land and species that occupy it.

Maxwell Hunt San Luis Obispo CA 93401 United States2013-08-04 I walk that trail to work often. Beautiful area. I would hate to see it turn to homes for the 1%, they have enough of this county as it is.

Gary DuTeau Plum Branch, S.C. GA 29845 Zimbabwe 2013-08-04 We need more wilderness that is historic as well...please help save it. Once a McDonald's and Starbucks arrive, then there will be gangs and real pirates...

Shirley PerryMartinez GA 30907 United States2013-08-04 "Maintain natural preservation of land. Say NO to more developing.

Gary Roberts Syracuse NY 13206 United States2013-08-04 If unspoiled, naturally beautiful places are not preserved when threatened, they will be at risk of being lost forever.

brianna owenspismo beach CA 93448 United States2013-08-04 This is a beautiful place that needs to remain undeveloped and open to all to enjoy!

julie maravillas Nipomo CA 93444 United States2013-08-04 What wilderness we have left needs to remain wilderness .

Tori PorrazzoOceano CA 93445 United States2013-08-04 I hate seeing such natural beauty go just so we have more luxuries. I believe we need to keep some of California's natural beauty

Ryan Springer Carter paso robles CA 93446 United States2013-08-04 Pirates is the most beautiful secluded cove on the central coast!

Casey Thomas Santa Maria CA 93455 United States2013-08-04 Pirates is an amazing place with beautiful scenery I believe it should be left open for future generations to experience it's great spot along our coast

Carole Wagener Santa Maria CA 93454 United States2013-08-05 Let's leave it in it's natural state.

latrice jackson Las Vegas NV 89115 United States2013-08-05 I grew up going camping and family summer vacations and it is not the same when I take my children because of all the changes in the environment.

Rain Lewis san luis obispo CA 93402 United States2013-08-05 iv loved this beach ever since i was in diapers,

Kelly Foster San Luis Obispo CA 93401 United States2013-08-05 Changing this beach would be so so sad. It is treasured and cared for by those who love it.

Parker Hayes Oakland CA 94609 United States2013-08-05 Before I moved to Oakland for school I used to go to Pirate's all the time with my friends and just relax under the sun. I still go back every time I'm in town to visit. I'd hate to see it all gone.

Michael Okerblom Nipomo CA 93444 United States2013-08-05 My friends and family have historically used this site since we were kids and it is important to them that it remains wild.

Cynthia Halley Los Osos CA 91011 United States2013-08-05 It's areas like this that make the central coast one of the best places to live. The Central coast is such a desirable vacation destination BECAUSE of its wonderful untouched atmosphere and its many small towns with all their charming qualities. Please keep big resorts out! Much of the area is supported by tourism - but the tourists come because of the way the area is right now. Please don't try to fix something that's not broken!

Cheryl Johnson Altadena CA 91001 United States2013-08-05 Areas that are undeveloped and truly wild are few and far between, especially along the coasts. To the people that visit them, they serve as an important reminder of what the world looks like free from too much human disturbance, and as such, need and deserve to be protected.

Kenneth Scarbrough Arroyo Grande CA 93420 United States2013-08-05 Real tire of speculators and land developers ruining the beautiful coast line I have been enjoying for the last 42 years.

David Williams Atascadero CA 93422 United States2013-08-05 It is one of the few remaining places in the immediate area that I can take friends or family who aren't from our county and show them the ocean while staying out of someone's yard. Development of the area does not benefit anyone, it is a

waste of money. People come from all around to this specific spot because it is not tarnished by a bunch of concrete and other man-made structures.

Eric Miller Atascadero CA 93422 United States2013-08-05 Why would anyone want to destroy a beautiful beach and replace it with cheap condos?

olivia bell california valley CA 93453 United States2013-08-06 This beach is an important and historical spot for alot of locals and it would be a travisty to ruin it with modern CRAP.

Tristan Kuszmaul Atascadero CA 93422 United States2013-08-06 the development of pirate's cove would ruin the pristine beauty of the area

Ginny Walton Paso Robles CA 93446 United States2013-08-06 It provides a place of solace and natural beauty that hasn't yet been corrupted by our ignorant government.

Yvonne Tang Arroyo GrandeCA 93420 United States2013-08-06 This is a singularly unique area and attraction for our community.

Lee Baldwin Northwood NH 03261 United States2013-08-06 "the country has too much development, especially along the coasts. a "wild", natural beach area is far more appealing to me than a developed strip. Mty tourist dollars would go elsewhere were this beach to become just another piece of commercial blandness."

Lucas Agostini Atascadero CA 93422 United States2013-08-06 this is a beautiful area people come from all around to enjoy already. this is one of the only pieces of coastline that i know of that isnt a park, private property or restricted in one way or another. it's beauty would only be damaged by concrete and an overflow of people

Alex Lindt San Luis Obispo CA 93401 United States2013-08-07 Cave Landing + Pirate's Cove is an important piece of the county's culture. It represents not only a great piece of undisturbed natural beauty, but also a place of freedom and expression for the community. By formalizing the use of pirate's cove it simply becomes another Avila, Port Slo, or Pismo beach. The area is not lacking in formalized beaches, and by doing so the county will effectively destroy a culturally rich environment.

Bon Hall Grover Beach CA 93433 United States2013-08-07 Where we live is so beautiful!

Rae Stilwell santa maria CA 93455 United States 2013-08-07 I've spent many many days here with my children and

friends... I would love to see future generations have the same wonderful experiences we did!!

Victoria Ketchum San Francisco CA 94132 United States 2013-08-07 "Throughout my college years in San Luis Obispo and during my frequent visits to the central coast I spent many hours enjoying the natural beauty, serenity, and perfect climate of Cave Landing/Pirates Cove, and would be extremely saddened to see this beautiful asset ""developed"" into another cookie cutter beach resort or unused public park. The frequent beachgoers and hikers more than sufficiently undertake the responsibility to clean and maintain the passages and beach- in fact, Pirates Cove is the cleanest beach I have ever visited. Please do not change this peaceful place. "

Alexander Kalpakoff mountain center CA 92561 United States 2013-08-07 i lived there when i was a child and i am moving back i a short time. this landmark holds so many amazing memories and i feel that leaving it undeveloped and the way it is would be the best course of action. please do not take this amazing place away from the people who love it.

Terrell Liedstrand Berkeley CA 94705 United States 2013-08-07 It's nature. Please leave it be. Condos means plumbing and waste and trash and congestion. Humans have done this for soooo long. Destroying their beautiful habitats for their own benefit and poorly conceived comfort. Find comfort in Pirate Coves natural beauty. Let that benefit us all. I'm not a local. But the times I've spent at Pirate's are wonderful memories for me. I would be so disappointed to return to a horizon of infrastructure instead if beautiful plant life, land forms and sunsets over our great ocean.

Sam Soleimany Los Angeles CA 90024 United States 2013-08-07 This little pocket of cove should remain as freely accessible as it was for my generation, those before and those after. I can't see any legitimate basis for changing the scope of public access to the cove.

Carver Cordes Oakland CA 94606 United States 2013-08-07 This area should be preserved in its natural state and with the public access it currently enjoys.

Barbara Robinson Nipomo CA 93444 United States 2013-08-07 This is our coastline our wilderness and if people tear it up it can never be restored to it's original beauty...leave our California Coast alone for God sakes....

Nicole & Doc anonymous arroyo grande CA 93420 United States 2013-08-07 Why change something that is so beautiful to begin with? Leave it be because a lot of people have wonderful memories and come back there time after time for years because of

the preservation of this one of a kind central coast location.
Nothing compares to the beauty and natural state this cove has.

Crystal Aumand Castro Valley CA 94546 United States 2013-08-07
Love this place and want to keep it wild!

Dennis Hale Angleton TX 77515 United States 2013-08-07
Over time, we have developed and terra-formed everything the earth once was into something convenient for ourselves. This area stands testament to originality, and I would rather be inspired by its natural beauty then just view another apartment complex or walmart.

Derek Marin Hacienda Heights CA 91745 United States 2013-08-07
The cliffs and land above Cave Landing, and in particular Pirate's Cove are geologically unstable and prone to land slides and cliff calving. Developing this area would be dangerous.

Shane Blume Nipomo CA 93444 United States 2013-08-07
We have over developed SLO county, with the ever increasing population. Rarely do we see anything that is natural, and altered by humanity. Fight to keep one of our last remaining undeveloped wilderness areas, just that, undeveloped!

BreeAnna McManus Nipomo CA 934444 United States 2013-08-07
I love this natural beach. I love that it is clothing optional, too!

Jeremy Kastner san luis obispo CA 93401 United States 2013-08-07
Pirate's Cove is SACRED to me.

Megan Souza Cayucos CA 93430 United States 2013-08-07
I been going to this beach since I was a child and it has remained my favorite spot in the county for the 27 years I have lived in SLO. Please, PLEASE, do not add stairs or diminish the parking lot! Also, it would be AWFUL to see this beautiful, isolated cove dwarfed by a 100 acre resort--ew!

Megan McCurley Murrieta CA 92562 United States 2013-08-07
Its one of the only places that has not changed since i was a baby. Used to go there and sit on the rocks with my mom to watch the waves splash on to the rocks. So many childhood memories it would be heartbreaking to see it changed.



SAN LUIS OBISPO COUNTY
DEPARTMENT OF PLANNING AND BUILDING

August 8, 2013

Friends of Pirates Cove
Attn: Sean Shealy
522 Corralitos Road
Arroyo Grande, CA 93420

County of SLO_General Services
Attn: Elizabeth Kavanaugh & Ryan Hostetter (P&B)
INTEROFFICE

SUBJECT: APPEAL OF COUNTY OF SLO_GENERAL SERVICES (CAVE LANDING -PIRATES COVE)
COUNTY FILE NUMBER: DRC2011-00069
HEARING DATE: JULY 25, 2013 / PLANNING COMMISSION

We have received an appeal on the above referenced matter. In accordance with County Real Property Division Ordinance Section 21.04.020, County Land Use Ordinance Section 22.70.050, and Section 23.01.042 of the Coastal Zone Land Use Ordinance, the matter will be scheduled for public hearing before the County Board of Supervisors. A copy of the appeal is attached.

The public hearing will be held in the Board of Supervisors' Chambers, County Government Center, San Luis Obispo. As soon as we get a firm hearing date and the public notice goes out, you will receive a copy of the notice.

Please feel free to telephone me at 781-5718 if you have any questions.

Sincerely,

Handwritten signature of Nicole Retana in cursive.

Nicole Retana, Secretary
County Planning Department

cc: Ryan Hostetter, Project Manager & Elizabeth Kavanaugh, Parks & Rec. Project Manager
Steve McMasters, Supervisor
Jim Orton, County Counsel & Whitney McDonald, County Counsel

976 OSOS STREET, ROOM 300 • SAN LUIS OBISPO • CALIFORNIA 93408 • (805) 781-5600
EMAIL: planning@co.slo.ca.us • FAX: (805) 781-1242 • WEBSITE: <http://www.sloplanning.org>

MEMORANDUM

DATE: August 8, 2013

TO: JIM ORTON, COUNTY COUNSEL & WHITNEY McDONALD, COUNTY COUNSEL

FROM: NICOLE RETANA, PLANNING and BUILDING DEPARTMENT

RE: **APPEAL OF COUNTY OF SLO-GENERAL SERVICES (CAVE LANDING – PIRATES COVE)**
COUNTY FILE NUMBER: DRC2011-00069
PLANNING COMMISSION – JULY 25, 2013

Please find attached copies of associated correspondence which have been forwarded to the Project Manager and Supervisor.

#871(1)



COASTAL APPEALABLE 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

2013 AUG - 7 AM 11:17
SLO COUNTY
PLANNING/BUILDING
DEPT

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.

PROJECT INFORMATION

Name: CAVE LANDING AREA IMPROVEMENTS

File Number: DRC 2011-00069

Type of permit being appealed:

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

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: 29 JULY 2013

The decision is appealed to:

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

BASIS FOR APPEAL

INCOMPATIBLE WITH THE LCP. The development does not conform to the standards set forth in the Certified Local Coastal Program of the county for the following reasons (attach additional sheets if necessary)
Explain: See attached re: SAN LUIS BAY AREA PLAN, COASTAL

INCOMPATIBLE WITH PUBLIC ACCESS POLICIES. The development does not conform to the public access policies of the California Coastal Act - Section 30210 et seq of the Public Resource Code (attach additional sheets if necessary).
Explain: See attached

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: BRIAN LoCONTE

Address: RR1 Box 245, SAN LUIS OBISPO 93405 Phone Number (daytime): 595-2038

I/We are the applicant or an aggrieved person pursuant to the Coastal Zone Land Use Ordinance (CZLUO) and are appealing the project based on either one or both of the grounds specified in this form, as set forth in the CZLUO and State Public Resource Code Section 30603 and have completed this form accurately and declare all statements made here are true.

Signature: Brian A LoConte Date: 6 AUG 2013

OFFICE USE ONLY

Date Received: 8/7/13 By: CAF

Amount Paid: 0 Receipt No. (if applicable): N/A

COASTAL APPEAL FORM
SAN LUIS OBISPO COUNTY PLANNING & BUILDING
SLOPLANNING.ORG

PAGE 2 OF 3
JULY 1, 2010
PLANNING@CO.SLO.CA.US

(2)



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.

PROJECT INFORMATION Name: CANE LANDING AREA IMPROVEMENTS File Number: PRC 2011-00069

Type of permit being appealed:

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

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: 29 JULY 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

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: BRIAN LOCONTE

Address: 1221 BOX 245, SAN LUIS OBISPO, CA 93109

Phone Number (daytime): 599-2038

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

Brian Loconte Signature Date: 6 Aug 2013

OFFICE USE ONLY

Date Received: _____ By: _____

Amount Paid: _____ Receipt No. (if applicable): _____

COASTAL APPEAL FORM
SAN LUIS OBISPO COUNTY PLANNING & BUILDING
SLOPLANNING.ORG

PAGE 3 OF 3
JULY 1, 2010
PLANNING@CO.SLO.CA.US

(3)

6 AUG 2013

Subject: CAVE LANDING AREA IMPROVEMENTS (DRC 2011-00069)

The intended course of actions by SLO Parks & Recreations Department, for development of the Cave Landing area, historically also called Mallagh's Landing, as approved by the Planning Commission (25JULY2013) should not be allowed to proceed in its current form.

Specific Items that warrant appeal of this project:

- 1) This project is occurring en total, within District #3. The District #3 Commissioner had been appointed two days prior to the Planning Commission Meeting. He therefore reclused himself since he hadn't been party to previous discussions, and abstained from a vote in the decision. Further discussion and subsequent decision should have been continued to a future Planning Commission Meeting at which time he could adequately represent District #3's residents by casting a vote in that decision.
- 2) This project is NOT in conformance with the SLO Co., San Luis Bay Area Plan, Coastal Plan (dated March 1, 1988, Certified by California Coastal Commission February 25, 1988, Revised August 2009, Page 8-6, item 7. Shoreline Access - Mallagh Landing). Two items in particular:
 - a. "Parking area for 100 cars is to be improved."
 - b. "The parking area is to be surfaced with a permeable material to control bluff erosion."
- 3) Any infrastructure installed at the base of the beach access trail WILL be damaged. While its installation will temporarily "improve" coastal access, it also has the real and eminent potential to cause "closure" due to safety requirements, resulting in an unintended "decrease" in coastal access.
- 4) The Commission made its decision, in part, based upon Staff's and County Council's input and response to Commissioners' questions. There were a few responses by staff personnel that were ambiguous in nature. I believe those comments were misconstrued by the Commission, and were key in their final vote regarding approval. In general, they regarded liability and project funding. Therefore, this decision should be revoked such that clarification and definitive answers regarding those elements can be made known to them.

Each item is appealable in its own right; however, when taken in whole, they essentially compel revocation of the Planning Commission's 25JULY2013 decision to allow this project to proceed in its current form.

I will provide expanded discussions for each item in future correspondence to the Board of Supervisors, once it has been scheduled as an agenda item, but prior to that meeting itself.

Sincerely,

Brian LoConte
Irish Hills resident, District #3



SAN LUIS OBISPO COUNTY
DEPARTMENT OF PLANNING AND BUILDING

August 7, 2013

County of San Luis Obispo
General Services Agency, Parks Division
Attn: Ryan Hostetter
976 Osos St.
San Luis Obispo, CA 93406

**SUBJECT: APPEAL OF COUNTY OF SAN LUIS OBISPO GENERAL SERVICES AGENCY, PARKS
DIVISION DEVELOPMENT PLAN/COASTAL DEVELOPMENT PERMIT DRC2011-00069**

HEARING DATE: JULY 25, 2013 / PLANNING COMMISSION

We have received an appeal on the above referenced matter. In accordance with County Real Property Division Ordinance Section 21.04.020, County Land Use Ordinance Section 22.70.050, and Section 23.01.042 of the Coastal Zone Land Use Ordinance, the matter will be scheduled for public hearing before the County Board of Supervisors. A copy of the appeal is attached.

The public hearing will be held in the Board of Supervisors' Chambers, County Government Center, San Luis Obispo. As soon as we get a firm hearing date and the public notice goes out, you will receive a copy of the notice.

Please feel free to telephone me at 781-5612 if you have any questions.

Sincerely,

Ramona Hedges, Secretary
County Planning Commission

A handwritten signature in cursive script, appearing to read "R. Hedges", is written over the typed name and title.

cc: Brian LoConte, RR 1 Box 245, San Luis Obispo, CA 93405
Jim Orton, County Counsel & Whitney McDonald, County Counsel

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EMAIL: planning@co.slo.ca.us • FAX: (805) 781-1242 • WEBSITE: <http://www.sloplanning.org>

To: Ryan Hostetter/Planning/COSLO,
Cc: Steve McMasters/Planning/COSLO, Ellen Carroll/Planning/COSLO, Nancy Orton/Planning/COSLO, Bill Robeson/Planning/COSLO,
Bcc:
Subject: Appeal recieved - Pirates Cove Improvement project DRC2011-00069

**** YOUR ITEM HAS RECEIVED A COASTAL APPEAL!!! ****

DATE RECEIVED: August 7, 2013

DATE DECIDED: July 25, 2013 Planning Commission Item 2

COUNTY FILE NUMBER: DRC2011-00069

APPEALED TO: Board of Supervisors

APPEAL RECEIVED FROM: Brian LoConte

FEE RECEIVED: 0.00

Appropriate copies will be distributed ASAP.

And please see me to set up a BOS date. Here are the questions the BOS needs to be completed to request time. You may just copy these on a new email and I can email Kristi to request time.

Date Requested (or Round about date)
Amount of time requested
Provide the item name
Hearing Item or Board Business
The district
Contact person
State if the item will be noticed
When was the item noticed, or when will it be noticed, it is a 10 day, 30 day, or a 45 day notice?
Provide a brief couple of sentences as to what the item is about

Nicole Retana, Secretary
NRetana@co.slo.ca.us



PLANNING & BUILDING
COUNTY OF SAN LUIS OBISPO
976 Osos Street, Room 300
San Luis Obispo, Ca 93408
805-781-5718

Ramona Hedges, (805) 781-5612
Planning Commission Secretary
Custodian of Records
Records Management Supervisor
rhedges@co.slo.ca.us



SAN LUIS OBISPO COUNTY
DEPARTMENT OF PLANNING AND BUILDING

MEMORANDUM

DATE: August 7, 2013

TO: JIM ORTON, COUNTY COUNSEL & WHITNEY McDONALD, COUNTY COUNSEL

FROM: RAMONA HEDGES, PLANNING and BUILDING DEPARTMENT

RE: APPEAL OF COUNTY OF SAN LUIS OBISPO GENERAL SERVICES AGENCY,
PARKS DIVISION (Improvements at Pirates Cove)

COUNTY FILE NUMBER: DRC2011-00069

PLANNING COMMISSION HEARING #2 – July 25, 2013

Please find attached copies of associated correspondence which have been forwarded to the Project Manager and Supervisor.



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 newspaper 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

Attachment 4

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.

2-1



SAN LUIS OBISPO COUNTY
DEPARTMENT OF PLANNING AND BUILDING
Promoting the Wise Use of Land ♦ Helping to Build Great Communities

Date: July 25, 2013

To: Planning Commission

From: Ryan Hostetter, Senior Planner

RE: Revised Parking Area for the Cave Landing (Mallagh Landing/Pirates Cove) Project

Recommendation

Staff recommends approval of a revised Development Plan/Coastal Development Permit/Variance DRC2011-00069. The revised plan includes parking for 70 cars in the existing parking area and around the proposed bathroom (which includes 3 ADA spaces). The approval is based on the revised Findings listed in Exhibit A and revised Conditions listed in Exhibit B and adoption of the Mitigated Negative Declaration (pursuant to Public Resources Code Section 21000 et seq., and CA code of Regulations Section 15000 et seq.).

Summary

The project described in the May 23, 2013 staff report included improvements to the existing parking area resulting in a 35 car parking lot, drainage facilities, a vault restroom, and trail improvements. Based on comments received on the original project, County Parks at the May 23, 2013 hearing, presented a revised plan that included 51 parking spaces in the existing parking area. At the direction of the Planning Commission, County Parks worked with their designers and has prepared a further revised parking plan that includes 70 parking spaces, three of which are designated ADA spaces. This plan results in increased grading and reduced drainage improvement areas. All other components of this project including trails, signs, bathroom, and fencing remain as originally proposed.

On May 23, 2013, the Planning Commission reviewed the Cave Landing (Mallagh Landing /Pirates Cove) project that proposed the following improvements:

- A bike/pedestrian trail that connects Pismo Beach and Avila Beach,
- Improvements to the existing coastal access trail including stairs to the beach,
- Surfacing, striping and installation of drainage improvement to the existing parking area,
- A waterless vault restroom,
- Picnic tables, benches and bike racks,
- Interpretive signs.

The project described in the May 23, 2013 staff report included improvements to the existing parking area resulting in a 35 car parking lot. Based on comments received on the original

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project, staff presented a revised plan that included 51 parking spaces in the existing parking area.

The Planning Commission heard testimony that the proposed 51 space parking lot was not sufficient parking to meet demand. Discussion ensued about balancing the public need for more parking along with the constraints of the site including: a significant archeological site, slopes over 50 percent, an active land slide and coastal bluff erosion/drainage issues. Because of these issues the Commission continued this item and directed staff to:

- Consider a non-striped parking lot,
- Review other options to increase the number of parking spaces, and
- Consult closely with members of the public and Avila Valley Advisory Counsel.

Parking Lot Striping

At the May 23 hearing, questions were raised about the limitations of a non-striped parking lot as part of a County facility. This parking lot can accommodate up to approximately 77 cars with unorthodox parking and no striping. However, as a County project, this parking lot must follow the requirements for size of parking spaces, aisle width and turning radius which limit the number of cars that can fit into the parking lot. This question was posed to the County's Risk Management Officer and County Counsel. The response that was received clearly indicated that not striping the parking lot would create an unacceptable liability for the County.

Increased Parking Options

Parks' 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 the Coastal Commission's policies and regulations for protecting archeological 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 the active landslide. The proposed drainage swales and basins accomplish this. To accommodate more parking on site, County Parks has developed a plan that:

- expands the area to be graded by the restroom by approximately 2000 square feet, ✓
- reconfigures the existing parking area to maximize striped parking possible while meeting the parking regulations of the Coastal Zone Ordinance, and ✓
- includes 14 compact car parking spaces (the Ordinance allows up to 20 percent of the parking spaces to be compact). ✓

These changes have created a 70 space parking area at this site. This parking plan does not account for the 20 plus parking spaces currently along the ocean side of Cave Landing road right-of-way which will remain unchanged.

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These project changes however are not without compromise. The previous 35 and 51 space parking plans did not require grading outside of the existing parking area or any impacts to vegetation. The 70 space parking area requires trimming of vegetation along the west edge of the parking area, and proposes some grading at the lower end of Cave Landing Road near the proposed restroom. This would result in an increase in the impact to archeological resources.

In addition, the 35 space parking plan allowed for a cohesive drainage area located at the edge of the site. This provided superior runoff water management which would likely prolong the life of the site because it would optimally handle runoff so as not to exacerbate the active land slide and bluff erosion. The proposed 70 space plan will adequately handle typical drainage and runoff, but would not be as effective as the original design.

A table outlining the differences in the three parking plans, including each site plan, are all attached to this report.

American Disabilities Act

The American Disabilities Act (ADA) does apply to elements of this project: bathroom, parking lot, recreation area and trails. The bathroom will be ADA complaint. The parking lot will comply by providing three ADA parking spaces. The parking plan allows for ADA loading and unloading areas, though not shown on plan. The ADA recreation area is the space with benches adjacent to parking spaces 1-10. This area will be level enough to allow a disabled person to get out of the car and enjoy the surrounding area and views. A sign at this area will inform people of ADA accessible beaches that are close by, making this recreation area ADA compliant. Creating an ADA accessible trail on this site with its steep slopes and cultural resources is very difficult and would require much more grading than proposed. Fortunately the ADA law has an exemption for ADA accessible trails on sites with steep slopes, biological resources and cultural resources. This project qualifies for this exemption.

Environmental Determination

The 70 space parking area 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 archeological 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.

Review by Other Agencies

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This new parking plan has been reviewed by the Avila Valley Advisory Council, Chumash Tribal Representatives, County Public Works Department and the Whale's Cave Conservancy. The following is a summary of their comments on the new parking plan:

Avila Valley Advisory Council – None received by the date of this report.

County Public Works – Concerns about the parallel parking next to the retention basin (parking spaces 25-31). People accessing the passenger side of the car will be impaired by the retention area. The concentrated foot traffic may also impair the bio retention area. Angled parking would put the doors farther from the "cliff edge".

Northern Chumash Tribal Counsel- None received by the date of this report.

Tribal Chair, yak tityu tityu - Northern Chumash Tribe- Mona Tucker- Dismayed that native soil will have to excavated. Whales' Cave is a very important site to the Northern Chumash and once a site is destroyed it can never be replaced or repaired. The new excavation for 70 parking spaces will be in an area that is a known cultural site and every precaution is needed to insure protection of important cultural resources.

Whales Cave Conservancy –Mike Obayashi, Mildly supports the 70 car parking area providing the continuation of parking on the Southwest side (ocean side) of Cave Landing Road.

Conclusion

Staff recommends approval of the revised Development Plan/Coastal Development Permit/Variance DRC2011-00069 that includes parking 70 cars in the existing parking area and around the restroom based on the revised Findings listed in Exhibit A and revised Conditions listed in Exhibit B, and adoption of the Mitigated Negative Declaration (pursuant to Public Resources Code Section 21000 et seq., and CA code of Regulations Section 15000 et seq.).

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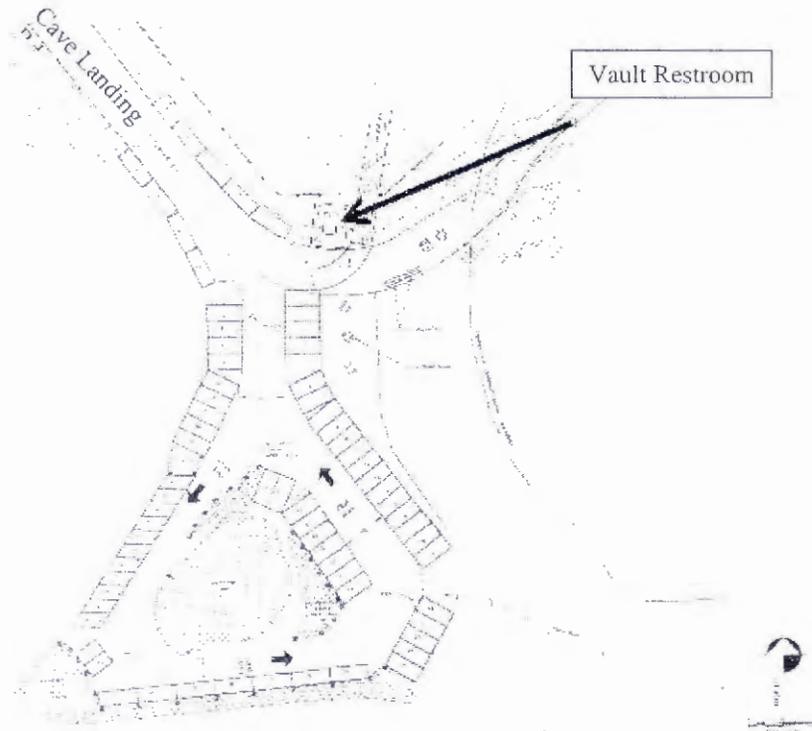
Review of Parking Proposals for Cave Landing Road

Parking Area	Amenities	Drainage Performance	Design Sensitivity to Environmental Resources	Aesthetic Value
70 spaces One way circulation through parking lot	Walkway ¼ of the way around parking lot Fewer vegetated areas	Adequate drainage management 4,499 sq. ft. of swales /basins for 17,000 sq. ft. of parking area	Grading impacts to archeological site Adequate drainage basin location Impacts to vegetation of site	Loss of vegetated areas Limits view of ocean and Ontario Ridge view from Road
51 spaces One way circulation through parking lot	Walkway ¼ of the way around parking lot Fewer vegetated areas	Adequate drainage management 4,499 sq. ft. of swales/basin for 15,000 sq. ft. of parking area	No significant grading in an archeological site Adequate drainage basin location	Tapered entrance to parking lot Less vegetated areas Retain ocean and Ontario Ridge view from Road
35 spaces No turn around in parking lot	American Disabilities Act walkway around parking lot Access to second view area Vegetated areas	Excellent drainage management 4,250 sq. ft. of drainage basin for 5,000 sq. ft. of parking area	No significant grading in an archeological site Optimal drainage basin location for geological features of site	Lots of vegetated areas in parking area Bottle neck Tapered entrance to parking lot Retain ocean and Ontario Ridge view from Road

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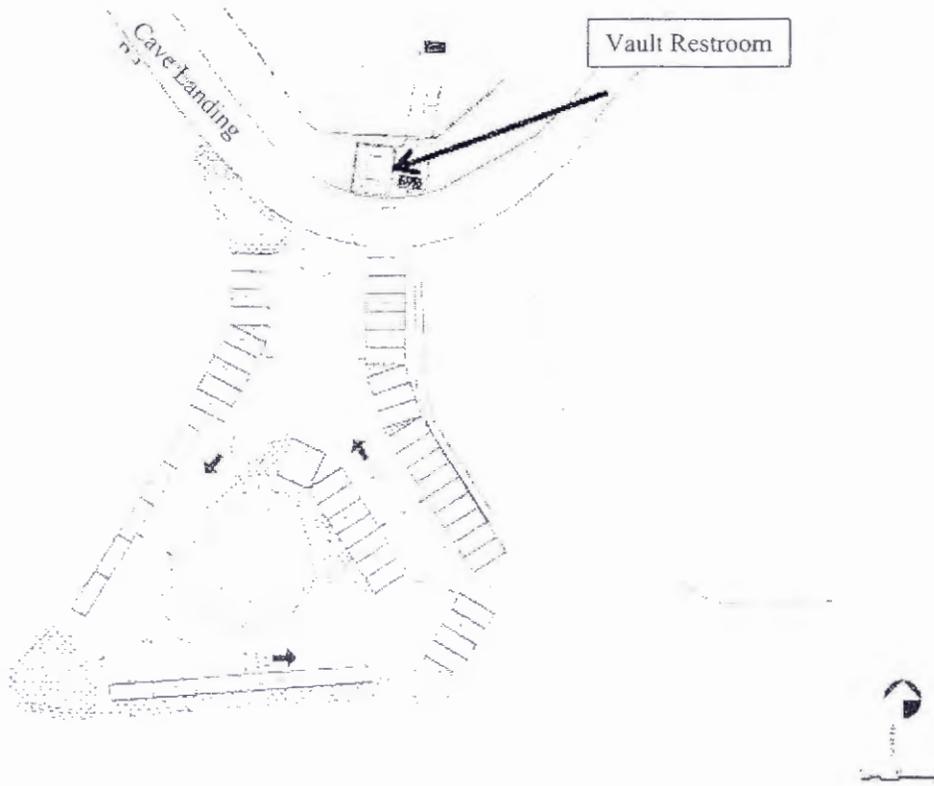
New Recommended 70 Space Parking Design:



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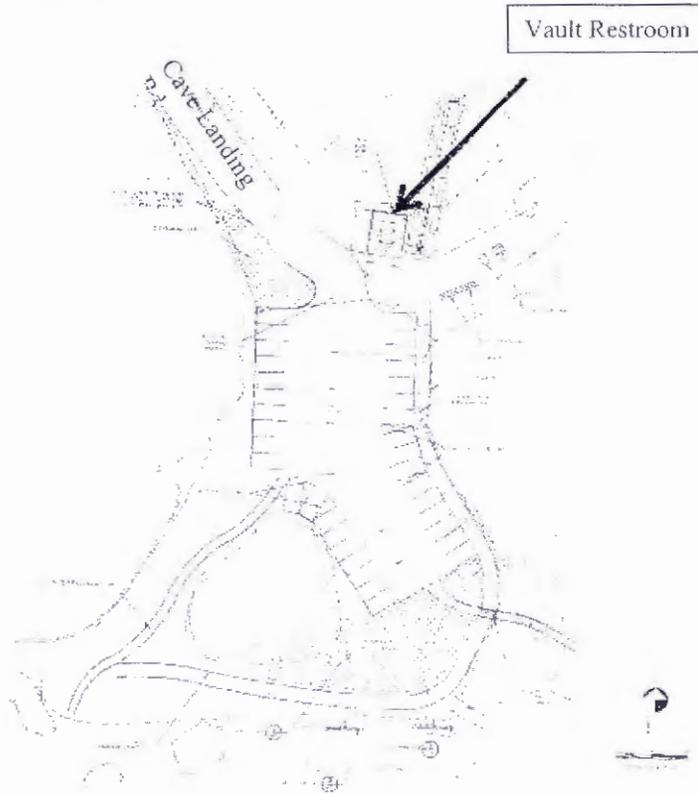
Previous 51 Space Parking Design presented on May 23, 2013 Planning Commission:



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Original 35 Space Parking Design:



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Promoting the wise use of land
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COUNTY OF SAN LUIS OBISPO
DEPARTMENT OF PLANNING AND BUILDING
STAFF REPORT

PLANNING COMMISSION

MEETING DATE May 23, 2013	CONTACT/PHONE Ryan Hostetter, Project Manager (805) 788-2351 rhostetter@co.slo.ca.us	APPLICANT San Luis Obispo County General Services	FILE NO. DRC2011-00069
LOCAL EFFECTIVE DATE June 6, 2013			
APPROX FINAL EFFECTIVE DATE June 27, 2013			
SUBJECT Hearing to consider a request by the County of San Luis Obispo General Services Agency, parks division for a Development Plan/Coastal Development Permit & Variance to construct the following: 1) Bike/Pedestrian trail approx. 1,800 feet long by 12 feet wide constructed of decomposed granite; 2) A 30 foot bridge in the middle of the trail to span a natural drainage; 3) Resurface, stripe, and install drainage improvements at Pirates Cove parking area for 35 parking spaces; 4) Improvements to existing trail and stairs down to the beach at Pirates Cove; 5) Waterless vault restroom, picnic tables, benches, garbage cans and signage including regular maintenance of all facilities. This project will require a variance of the bluff top setback, development on slopes of 30 percent and a variance to allow the parking and restroom within the front setback. The project is located at the south end of Cave Landing Road (end of pavement at top of Cave Landing).			
RECOMMENDED ACTION Approve Development Plan/Coastal Development Permit/Variance based on the findings listed in Exhibit A and the conditions listed in Exhibit B.			
ENVIRONMENTAL DETERMINATION The Environmental Coordinator, after completion of the initial study, finds that there is no substantial evidence that the project may have a significant effect on the environment, and the preparation of an Environmental Impact Report is not necessary. Therefore, a Mitigated Negative Declaration (pursuant to Public Resources Code Section 21000 et seq., and CA Code of Regulations Section 15000 et seq.) has been issued on February 21, 2013 and is hereby adopted for this project. Mitigation measures are proposed to address aesthetics, air quality, biological resources, cultural resources, geology and soils, traffic, noise, and land use and are included as conditions of approval.			
LAND USE CATEGORY Residential Rural	COMBINING DESIGNATION Archaeologically Sensitive Area, Local Coastal Program, Coastal Appealable Zone, Geologic Study Area and Sensitive Resource Area	ASSESSOR PARCEL NUMBER 076-231-062 & -064	SUPERVISOR DISTRICT(S) 3
PLANNING AREA STANDARDS: Site Planning, Ontario Ridge SRA, Cave Landing Permit Requirements			
LAND USE ORDINANCE STANDARDS: Setbacks, Height Requirements, Visual Resources, Parking, Combining Designations, Grading Requirements			
EXISTING USES: Site is currently used as parking, coastal access, and open space			
SURROUNDING LAND USE CATEGORIES AND USES: North: Residential Rural, Open Space; undeveloped East: Rural Lands; undeveloped South: Residential Rural; undeveloped, Pirates Cove Parking area and Trail West: Open Space; undeveloped			
ADDITIONAL INFORMATION MAY BE OBTAINED BY CONTACTING THE DEPARTMENT OF PLANNING & BUILDING AT: COUNTY GOVERNMENT CENTER γ SAN LUIS OBISPO γ CALIFORNIA 93408 γ (805) 781-5600 γ Fax: (805) 781-1242			

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Planning Commission

County Parks Development Plan/Variance/Coastal Development Permit DRC2011-00069

OTHER AGENCY / ADVISORY GROUP INVOLVEMENT: The project was referred to: Avila Community Advisory Council, Public Works, Environmental Health, County Parks, Cal Fire, Avila Community Services District, APCD, Cal Trans, RWQCB, and the California Coastal Commission	
TOPOGRAPHY: Varies from nearly level to steeply sloping property	VEGETATION: grasses
PROPOSED SERVICES: Water supply: N/A Sewage Disposal: N/A Fire Protection: CDF	ACCEPTANCE DATE: April 22, 2013

PROJECT HISTORY:

Cave Landing (Mallagh Landing/Pirates Cove) was the site of the original wharf and landing for the Avila Beach area developed in 1855. The site was used to bring goods in from overseas as it was a landing spot for shipments before the new piers were installed. This use was replaced approximately 10 years later with the development of a pier at Avila Beach, however the cove has continued to be used by beach goers and the public as a popular visitor spot.

Cave Landing Road accesses the site from Avila Beach Drive and at one time had continued through to the City of Pismo Beach. The road had to later be discontinued due to active landslides which removed most of the connection through to Pismo Beach. The beach and cove areas have been popular with beachgoers; however little in the way of formal improvements have been provided to date. Currently a somewhat developed parking area exists, however no other amenities are provided. There are numerous volunteer trails that exist throughout the property and bluff area as well as a trail that follows the existing old discontinued road alignment to Pismo Beach. Because this trail was a part of the eroded access to Pismo this project proposes to realign and stabilize the trail so that it may be used safely by the public as a pedestrian and bike path.

The County's Park and Recreation Element identifies the Cave Landing Trail as a proposed project. This project will not only fulfill the County's Park and Recreation Element, but serve as part of the statewide California Coastal Trail which will provide coastal access, further achieving the goals of the County's Parks and Recreation Element for coastal access.

In 1999 an irrevocable offer of dedication was made, to the County, to provide vertical public access to the shoreline and to provide lateral public access and passive recreational use along the shoreline. In 2002, the Department of Fish and Game awarded \$732,745 in Unocal Avila Beach Oil Spill Settlement grant funds to County Parks, for developing the Cave Landing Trail connecting Shell Beach to the Pirates' Cove parking lot. In 2008, the County purchased the parcel adjacent to Pirates' Cove to ensure continued open space in this area. As part of the purchase negotiation, an irrevocable offer of dedication in fee was made, to the County, for the lot containing Pirates' Cove. In 2012, \$350,000 in State Highway Administration grant funds were committed to the project along with an additional \$350,000 in matching grant funds from the California Coastal Conservancy, for construction of the parking lot and coastal access improvements. The County accepted the lot containing Pirates' Cove in February of 2013, in order to move forward with the proposed improvements.

The proposed project goals are to improve the facilities on the site and create a safe area for public access to the beach and connection of the Coastal Trail to Pismo Beach. These facilities will include:

- Paved and striped parking within the existing informal parking area;

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Planning Commission

County Parks Development Plan/Variance/Coastal Development Permit DRC2011-00069

- Drainage facilities and natural vegetation to enhance the visual character of the site as well as provide for planted bio swales for drainage which will reduce erosion issues from the dirt lot as it exists today;
- Trash receptacles;
- Restroom facilities which include waterless vault restrooms as the site is not within the urban services line and does not propose to use well and septic at this sensitive location;
- Improved trail realignment as to avoid landslide areas and cultural resources;
- Installation of picnic tables, benches and signage;
- Hand rails and stairs at the bottom of the existing trail to the beach.

ORDINANCE COMPLIANCE:

Following is a list of the applicable ordinance requirements for this proposed project, and a statement of compliance that addresses each requirement:

Section 23.01.045 – Variance

This proposed project will require the approval of four separate variances as follows:

1. Variance to allow development of the trail within the coastal bluff setback;
2. Variance to allow grading on slopes of 30% for portions of the newly re-aligned trail between Cave Landing and Pismo Beach because grading on steep slopes of 30% or more is not normally allowed (unless there is no possible way around the slopes);
3. Variance to allow development within the required 25 foot front setback area from Cave Landing Road;
4. Variance to allow parking within the front 25 foot setback area along Cave Landing Road.

The Planning Commission must approve, approve subject to conditions, or disapprove a Variance as set forth in this subsection (CZLUO 23.01.045). Such decision may be appealed to the board of supervisors as set forth in Section 23.01.42 (Appeal).

Variance Findings

1. The Variance authorized does not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and land use category in which it is situated.

This proposed project is requesting four variances from the strict interpretations of the Coastal Zone Land Use Ordinance. The variance requests are as follows:

1. *Variance to allow development of the trail within the coastal bluff setback;*
2. *Variance to allow grading on slopes of 30% for portions of the newly re-aligned trail between Cave Landing and Pismo Beach because grading on steep slopes of 30% or more is not normally allowed (unless there is no possible way around the slopes);*
3. *Variance to allow development within the required 25 foot front setback area from Cave Landing Road;*
4. *Variance to allow parking within the front 25 foot setback area along Cave Landing Road.*

This project with the requested variances does not grant special privileges inconsistent with the limitations upon other properties in the vicinity. Variance approvals for these items are common when there are no alternative designs for a proposed project, or where there are no alternative designs which comply with other portions of the Local

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Planning Commission

County Parks Development Plan/Variance/Coastal Development Permit DRC2011-00069

Coastal Program such as protection of resources. Specifically, the location of the improvements are being limited to disturbed areas to the maximum amount feasible except for the re-alignment of the new trail in order to avoid landslides and cultural resources. These locations happen to be clustered very close to the road which are within the front setback areas (3 and 4 above). The trail improvements within the bluff setback are similar to other projects where coastal trails are on the edge of the bluff in order to maximize the public viewing experience being as close to the ocean as possible (1 above). Additionally, portions of the trail will be on slopes of 30%, and in this case there is no alternative location on the site to locate the trail off of these steep slopes. This is similar to other projects that are unable to be designed to avoid steep slopes due to site constraints and have received approval for a variance (2 above).

2. There are special circumstances applicable to the property, including size, shape, topography, location, or surroundings, and because of these circumstances, the strict application of this Title would deprive the property of privileges enjoyed by other property in the vicinity and in the same land use category.
This project is unique in that the purpose is to provide coastal access for the public. This is unlike private development projects where there is a principal use of the site and the property owner has a right to use the property for this principal use, and without granting a variance the property owner would be deprived of their privileges enjoyed by surrounding properties within the same zoning. This proposed project includes properties held by the County which will contain trails and parking areas for coastal access. The proposed project site does contain special circumstances relative to its location which include sensitive resources areas and proximity to the coastal bluff. Similar to other projects which receive variances for slope or setback, this proposed project includes similar site constraints which do not allow for a revised project design without granting of a variance, or further impacting sensitive coastal resources (such as landslide areas and cultural resources).
3. The Variance does not authorize a use that is not otherwise authorized in the land use category.
The project includes passive recreation which is an allowed use within the Residential Rural Land Use Category.
4. The Variance is consistent with the provisions of the Local Coastal Program (LCP).
The project complies with the requirements of the Local Coastal Program as the purpose of the project is to enhance coastal access consistent with the goals and policies of the LCP.
5. The granting of such application does not, under the circumstances and conditions applied in the particular case, adversely affect public health or safety, is not materially detrimental to the public welfare, nor injurious to nearby property or improvements.
This project will include improvements to existing informal trails and parking areas which will increase the safety for the users of the property. Currently the site contains hazardous trails which are damaged due to landslides and these will be enhanced and re located in order to provide safe access across the trails. Hand rails and stairs are also being installed which will increase safety of the proposed site. The project is not injurious to neighboring properties as the use will remain unchanged, but will be formalized in order to enhance the safety of the site.

23.04.100 Setback Requirements – Required setbacks are as follows: front shall be a minimum 25 feet, side shall be a minimum of 30 feet, and the rear property line setback shall be a minimum of 30 feet except for parking which is subject to 23.04.163 Location of Parking on a Site. *The project includes a request for a variance in order to allow for a portion of the project to*

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Planning Commission

County Parks Development Plan/Variance/Coastal Development Permit DRC2011-00069

be located within the front setback area. Due to the sensitive nature of the site (geologically and culturally), and in an effort to keep the project on previously disturbed areas to the maximum amount feasible, the project is proposed to be located up to the property line, and partially within the right of way at the end of Cave Landing Road. An encroachment permit shall be required in order to allow any improvements within the right of way. The project complies with the side and rear setback requirements.

23.04.118 Blufftop Setbacks - New development or expansion of existing uses on bluffs shall be designed and set back from the bluff edge a distance sufficient to assure stability and structural integrity and to withstand bluff erosion and wave action for a period of 75 years without construction of shoreline protection structures that would in the opinion of the Planning Director require substantial alterations to the natural landforms along bluffs and cliffs. New development or expansion of existing uses on bluffs shall be designed and set back from the bluff edge a distance sufficient to assure stability and structural integrity and to withstand bluff erosion and wave action for a period of 75 years without construction of shoreline protection structures that would in the opinion of the Planning Director require substantial alterations to the natural landforms along bluffs and cliffs. *The proposed project is requesting a variance for bluff setback because a portion of the project is located within this bluff setback area. Based on review of the Engineering Geologic investigations (Blanchard, July 19, 2012) and discussion with the Engineering Geologist, the entire trail is located within this bluff setback as the 75 year erosion rate would exist at approximately the 120 foot line above the proposed trail location (setback line outlined in the project plans). The trail down to the beach is also within this bluff setback area, a portion of the proposed parking lot and vault restroom are also within this bluff setback area.*

23.04.120 Height limit- Maximum height limits for residential rural structures is 35 feet as measured from the average natural grade. *The project complies with this requirement at a proposed maximum height of approximately 18 feet for the proposed vault restroom.*

23.04.164 Parking Design Standards – Required parking spaces are not to be located within the front setback area except in high intensity multi family areas. *This proposed project does include parking within the front setback and partially within the right of way. A variance is requested for this design similar to that of the front setback variance because of the unique nature of the project and the site. County Parks' design includes keeping the facilities in the current locations to the maximum amount feasible in order to reduce impacts to the site however, the existing facilities are within the setback areas therefore a variance is being requested in order to reduce site impacts to the maximum amount feasible.*

23.04.164 Parking Design Standards – Requirements for parking space size, isle width, and driveway standards are outlined within this section of the Coastal Zone Land Use Ordinance. Spaces are to be a minimum of 9 by 18 feet and the isle is required to be at least 24 feet for 90 degree angled parking (standard parking as opposed to slightly angled parking spaces). The project complies with these requirements as conditioned.

23.04.180 landscape, screening, and fencing - The purpose of landscape, screening and fencing standards are to: provide areas which can absorb rainfall to assist in reducing storm water runoff; control erosion; preserve natural resources; promote, preserve and enhance native plant species; reduce glare and noise; enhance the appearance of structures and property; and to provide visual privacy, while recognizing the need to use water resources as efficiently as possible. *The proposed project includes a landscape plan which shows for the replanting of disturbed areas as a result of the project, and landscaping for the proposed parking area. This project complies with this requirement.*

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County Parks Development Plan/Variance/Coastal Development Permit DRC2011-00069

23.04.210 - *Visual Resources* – The proposed project site is located within a Sensitive Resource Area as listed in the San Luis Bay Coastal Area Plan for visual and scenic resources. Specific development standards for these sensitive resource areas include location of development, visibility, ridge top development, landscaping requirements, and open space preservation. Following is a list of standards along with responses showing how this proposed project complies with these requirements:

- a. Location of Development - Development shall be located on the least visible portion of the site, consistent with protection of other resources. Emphasis shall be given to locations not visible from major public view corridors. Visible or partially visible development locations shall only be considered if no feasible non-visible development locations are identified, or if such locations would be more environmentally damaging. New development shall be designed (e.g., height, bulk, style, materials, color) to be subordinate to, and blend with, the character of the area. Use naturally occurring topographic features and slope-created "pockets" first and native vegetation and berming second, to screen development from public view and minimize visual intrusion. *This proposed project complies with this requirement as proposed. This project includes minimal above grade work which will be visible (small vault restroom which is less than 200 square feet). The location of the restroom was amended from the original proposal for the purposes of complying with this standard. The proposed location is on the uphill side of Cave Landing Road as to not obstruct the public's views of the ocean and bluff when traveling on the road. The proposed location is nestled on the uphill side of the road into the hillside as to minimize the visual impacts to the site for the public. The other improvements associated with this proposed project (trails and parking area) are located in the existing disturbed areas of the site. A portion of the trail that connects Cave Landing to the Pismo Beach side will be relocated higher on the slope as to extend the longevity of the trail due to constant landsliding and bluff erosion. This new location will be more visible, however it is not possible to keep the trail in the existing lower configuration as it is being eroded to a point of being unusable today. It is anticipated that the new alignment will exist a minimum of 25 years due to the amount of erosion occurring at this location.*
- b. Structure visibility - Minimize structural height and mass by using low-profile design where feasible, including sinking structures below grade. Minimize the visibility of structures by using design techniques to harmonize with the surrounding environment. *The project includes minor facilities and the main visible portion of the project (the vault restroom) has been redesigned to be located on the uphill of Cave Landing which is the least visible portion of the site. The project is also required to paint the structure dark/blending colors which will minimize visual impacts (mitigation measures).*
- c. Ridgetop development - Locate structures so that they are not silhouetted against the skyline or ridgeline as viewed from the shoreline, public beaches, the Morro Bay estuary, and applicable roads or highways described in the applicable planning area standards in the area. *This project complies with this requirement as there is no ridgetop development proposed.*
- d. Landscaping for hillside and ridgetop development - Provide screening of development at plant maturity using native vegetation of local stock, non-invasive, or drought-tolerant vegetation without obstructing major public views (e.g., screening should occur at the building site rather than along a public road). The use of vegetation appropriate to the site shall be similar to existing native vegetation. Alternatives to such screening may be approved if visual impacts are avoided through use of natural topographic features and the design of structures. *The proposed project complies with this requirement as proposed. The project*

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County Parks Development Plan/Variance/Coastal Development Permit DRC2011-00069

- includes a landscape plan that includes native drought-tolerant vegetation which blend into the native vegetation of this hillside.*
- e. Open space preservation - Pursuant to the purpose of the Critical Viewshed or SRA to protect significant visual resources, sensitive habitat or watershed, open space preservation is a compatible measure. Approval of an application for new development in these scenic coastal areas is contingent upon the applicant executing an agreement with the county to maintain in open space use appropriate portions of the site within the Critical Viewshed or SRA (for visual protection). Guarantee of open space preservation may be in the form of public purchase, agreements, easement controls or other appropriate instrument approved by the Planning Director, provided that such guarantee agreements are not to provide for public access unless acceptable to the property owner or unless required to provide public access in accordance with the LCP. *This project complies with this requirement as the properties are within the County jurisdiction for the benefit of open space and public trails/coastal access, and this proposed project description is to enhance the public access to the site.*

23.04.320 Outdoor lighting – Outdoor lighting requirements are intended to keep lighting on site and eliminate any type of lighting nuisance for the neighborhood. Standards include light shielding, direction, and height requirements. *The project does not currently propose any lighting. In the event that some lighting is proposed in the future (such as security lighting), the project is conditioned to comply with outdoor lighting requirements.*

23.04.420 Coastal Access Required - Development within the Coastal Zone between the first public road and the tidelands shall protect and/or provide coastal access as required by this section. The intent of these standards is to assure public rights of access to the coast are protected as guaranteed by the California Constitution. Coastal access standards are also established by this section to satisfy the intent of the California Coastal Act. *The proposed project complies with this requirement as the project description includes improvements of trails and coastal access improvements for the public on the subject properties.*

23.05.034 Grading Standards – Grading shall be limited to the minimum amount necessary to provide stable embankments for the required parking areas or street rights-of-way and structural foundations. Grading shall be limited to slopes less than 30% (or between 20% and 30% slopes with approval of an adjustment for grading on steep slopes). Additionally grading shall occur more than 100 feet from an Environmentally Sensitive Habitat area (unless a setback adjustment has been granted). Grading, vegetation removal and other landform alterations shall be minimized on sites located within areas determined by the Planning Director to be a public view corridors from collector or arterial roads. Where feasible, contours of finished grading are to blend with adjacent natural terrain to achieve a consistent grade and appearance. Contours, elevations and shapes of finished surfaces are to be blended with adjacent natural terrain to achieve a consistent grade and natural appearance. Border of cut slopes and fills are to be rounded off to a minimum radius of five feet to blend with the natural terrain. Grading, dredging or diking (consistent with Section 23.07.174) shall not alter any intermittent or perennial stream, or natural body of water, except as permitted through approval of a county drainage plan and a streambed alteration permit from the California Department of Fish and Wildlife issued under Sections 1601 or 1602 of the Fish and Game Code. Additionally, graded areas or areas where natural vegetation has been removed shall be revegetated. *This proposed project complies with these requirements except for grading on steep slopes of 30% or more. The project requires a variance in order to allow for grading on slopes of 30% or higher for portions of the trail. There is no other way to realign the trail outside these steep slopes as in some areas it is impossible to cross the property without impacting these steep slopes. The project included review by an Engineering Geologist (John Blanchard with Fugro*

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Consultants Inc.) in order to recommend specific design/construction procedures within these steep slopes and are included as conditions of approval.

23.05.036 Sedimentation and Erosion Control - Submittal of a sedimentation and erosion control plan for review and approval by the County Engineer is required when grading during a period from October 15 through April 15, or when land disturbance activities are conducted in geologically unstable areas, on slopes in excess of 30%, or on soils rated as having severe erosion hazard. This project is required to include a sedimentation and erosion control plan and complies with this requirement as conditioned.

23.05.040 Drainage Requirements - Standards for the control of drainage and drainage facilities provide for designing projects to minimize harmful effects of storm water runoff and resulting inundation and erosion on proposed projects, and to protect neighboring and downstream properties from drainage problems resulting from new development. The standards of Sections 23.05.042 through 23.05.050 are applicable to projects and activities required to have land use permit approval. The proposed project complies with this requirement and is required to include a drainage plan for review and approval as conditioned.

23.04.420 Coastal Access Required - Development within the Coastal Zone between the first public road and the tidelands shall protect and/or provide coastal access as required by this section. The intent of these standards is to assure public rights of access to the coast are protected as guaranteed by the California Constitution. Coastal access standards are also established by this section to satisfy the intent of the California Coastal Act. These standards include the type of access (i.e. vertical or lateral), when access is required with a project, permit requirements, and guarantee of access. This project complies with these requirements as the purpose is to provide for coastal access and improve the safety of existing informal trails and parking areas by construction of improvements to these facilities.

COMBINING DESIGNATIONS:

Sensitive Resource Area 23.07.166 - Minimum Site Design and Development Standards - All uses within a Sensitive Resource Area shall conform to the following standards:

- a. *Surface mining is not permitted except in areas also included in an Energy and Extractive Resource Area combining designation by the Land Use Element. Where the dual designation exists, surface mining is allowed only after approval of surface mining permit and reclamation plan, approved in accordance with Section 23.08.180.*
- b. *Shoreline areas shall not be altered by grading, paving, or other development of impervious surfaces for a distance of 100 feet from the mean high tide line, 75 feet from any lakeshore, or 50 feet from any streambank, except where authorized through Development Plan approval. Where the requirements of the California Department of Fish and Game or other public agency having jurisdiction are different, the more restrictive regulations shall apply. Special requirements for setbacks from wetlands, streams, and the coastline are established by Sections 23.07.172 through 23.07.178.*
- c. *Construction and landscaping activities shall be conducted to not degrade lakes, ponds, wetlands, or perennial watercourses within an SRA through filling, sedimentation, erosion, increased turbidity, or other contamination.*
- d. *Where an SRA is applied because of prominent geological features visible from off-site (such as rock outcrops), those features are to be protected and remain undisturbed by grading or development activities.*
- e. *Where an SRA is applied because of specified species of trees, plants or other vegetation, such species shall not be disturbed by construction activities or*

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subsequent operation of the use, except where authorized by Development Plan approval.

The proposed project is located within a Sensitive Resource Area due to the Ontario Ridge viewshed as outlined in the San Luis Bay Coastal Area Plan. The project has been designed with this in mind, and complies with the viewshed requirements as outlined above in 23.04.210 - Visual Resources. The project is not impacting sensitive vegetation or species, will not include surface mining, and will not impact streams or lakes as none exist near the site. The project is generally located on previously disturbed areas as the historic use of the site has included a dirt parking area and trails. The trail connecting Cave Landing to Pismo is being re-located and re-constructed to avoid landslide and cultural resource constraints.

23.07.086 - Geologic Study Area Special Standards - All uses within a Geologic Study Area are to be established and maintained in accordance with the following, as applicable:

- a. Grading: Any grading not otherwise exempted from the permit requirements of Sections 23.05.020 et seq. (Grading) is to be performed as engineered grading under the provisions of those sections.
- b. Seismic hazard areas: As required by California Public Resources Code Sections 2621 et seq. and California Administrative Code Title 14, Sections 3600 et seq., no structure intended for human occupancy shall be located within 50 feet of an active fault trace within an Earthquake Fault Zone.
- c. Erosion and geologic stability. New development shall insure structural stability while not creating or contributing to erosion, sedimentation or geologic instability.

The proposed project complies with the requirements of 23.07.086 for Geologic Study Area Special Standards. An engineering geology investigation has been completed and reviewed by the County Geologist (Blanchard, 2012). Specific mitigation measures are included in the conditions of approval.

23.07.104 Archaeologically Sensitive Area - To protect and preserve archaeological resources, the following procedures and requirements apply to development within areas of the coastal zone identified as archaeologically sensitive.

- a. Preliminary site survey required. Before issuance of a land use or construction permit for development within an archaeologically sensitive area, a preliminary site survey shall be required. The survey shall be conducted by a qualified archaeologist knowledgeable in local Native American culture and approved by the Environmental Coordinator. The County will provide pertinent project information to the Native American tribe(s).
- b. When a mitigation plan is required. If the preliminary site survey determines that proposed development may have significant effects on existing, known or suspected archaeological resources, a plan for mitigation shall be prepared by a qualified archaeologist. The County will provide pertinent project information to the Native American tribe(s) as appropriate. The purpose of the plan is to protect the resource. The plan may recommend the need for further study, subsurface testing, monitoring during construction activities, project redesign, or other actions to mitigate the impacts on the resource. Highest priority shall be given to avoiding disturbance of sensitive resources. Lower priority mitigation measures may include use of fill to cap the sensitive resources. As a last resort, the review authority may permit excavation and recovery of those resources. The mitigation plan shall be submitted to and approved by the Environmental Coordinator, and considered in the evaluation of the development request by the Review Authority.
- c. Archeological resources discovery. In the event archeological resources are unearthed or discovered during any construction activities, the standards of

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Section 23.05.140 of this title shall apply. Construction activities shall not commence until a mitigation plan, prepared by a qualified professional archaeologist reviewed and approved by the Environmental Coordinator, is completed and implemented. The County will provide pertinent project information to the affected Native American tribe(s) and consider comments prior to approval of the mitigation plan. The mitigation plan shall include measures to avoid the resources to the maximum degree feasible and shall provide mitigation for unavoidable impacts. A report verifying that the approved mitigation plan has been completed shall be submitted to the Environmental Coordinator prior to occupancy or final inspection, whichever occurs first.

This proposed project complies with the Archaeologically Sensitive Area requirements as outlined in 23.07.104 of the coastal Zone Land Use Ordinance. A cultural resources investigation was conducted and reviewed by the Environmental Coordinator for the property (SWCA Inc., September 2010) which identified archeological resources on the subject property. Based on this survey, specific recommendations are outlined in the conditions of approval for the project.

23.07.120 Local Coastal Program -The project site is located within the California Coastal Zone as determined by the California Coastal Act of 1976 and is subject to the provisions of the Local Coastal Program which have been outlined in this staff report.

23.01.043 Coastal Appealable Zone -The project is appealable to the Coastal Commission because the project is between the first public road and the ocean.

PLANNING AREA STANDARDS:

Following is a list of the applicable area plan standards for this proposed project, and a statement of compliance with those requirements:

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 non-permeable material to manage site run-off. 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.

The project complies with the above requirements as proposed. This project is being undertaken by the County of San Luis Obispo Department of General Services which has accepted an offer of dedication for the properties and will maintain the proposed improvements. The entire project is to improve the public access to the beach, trail, and parking areas as well

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as restoration of the damaged and eroded parking area by formalizing parking spaces and installing improvements to reduce the erosion issues that are occurring on the site today. While the standard mentions 100 parking spaces, it is staff's recommendation that the proposed engineered design (which includes 35 formal spaces) is appropriate as the engineering, site design and environmental review process has determined that paving is the best surface (geologically) and additional drainage improvements are necessary beyond what was anticipated when the 100 space standard was written. Additional studies by General Services required a specific site design for larger drainage swales and vegetated areas be left around the parking lot. These swales remove some of the anticipated parking spaces, but are necessary to reduce the erosion problem by allowing a place for the water to percolate. Additionally, more area was also required for protection of biological and cultural resources therefore the 35 space parking area was chosen in this case. Additional parking along Cave Landing Road will remain as it exists today. The project also includes waterless restroom facilities, trash receptacles, formal stairs to the beach, and a bridge on the re-aligned trail to avoid sensitive drainage areas.

Site Planning - Development Plan Projects - Projects requiring Development Plan approval are to concentrate proposed uses in the least sensitive portions of properties. Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade such areas, and shall be compatible with the continuance of such habitat areas. Native vegetation is to be retained as much as possible. *The project complies with this requirement as the project area is located on previously disturbed areas which will reduce the amount of grading for the project. The project will enhance the site as one of the project goals includes eliminating major erosion issues in the existing dirt parking areas and including bio-swales for drainage of the site. A portion of the trail will be re-aligned however in order to avoid geologic and cultural impacts.*

Mallagh Landing Permit Requirement - Development plan approval is required for all uses, except secondary dwellings and shall include the following:

- a. A preliminary archaeological survey shall be required. Mitigation measures and residential site selection shall emphasize the protection of known archaeological sites.
- b. A geologic report shall be required to indicate areas of landslide risk, bluff erosion, or where engineered foundations may be required. The residential clusters should be located consistent with these identified geologic concerns.
- c. Appropriate methods for ensuring public access and recreational use of Pirates Cove and the adjacent bluff top shall be identified.

The project complies with the above Mallagh Landing permit requirements. This Development Plan application is being processed as required above for the project. Additionally, the archaeological and geologic studies have been conducted and reviewed by the Environmental Coordinator and are incorporated into the project design and conditions of approval for the project.

Combining designation - Ontario Ridge (SRA) - This major ridge forms an important scenic backdrop for the coastal area of Avila Beach and Pismo Beach, as well as for Avila Valley. Open space agreements on the slopes should be obtained at the time of development proposals. *The project complies with this requirement as the entire project is an open space/public access project for the beach as well as parking and continuation of the California Coastal Trail. The project is generally all flatwork and will not impact views of and from the project site. The project does include the construction of a small vault restroom which has been designed and located on the uphill side of the project against the slope as to not impact views across the site from Cave Landing and the parking area.*

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COASTAL PLAN POLICIES:

Shoreline Access: Policy No(s): 1, 2, 4, 5, 6, 7, 8, & 9
 Recreation and Visitor Serving: N/A
 Energy and Industrial Development: N/A
 Commercial Fishing, Recreational Boating and Port Facilities: N/A
 Environmentally Sensitive Habitats: N/A
 Agriculture: N/A
 Public Works: Policy No(s): 1 & 7
 Coastal Watersheds: Policy No(s): 7, 9, 10
 Visual and Scenic Resources: Policy No(s): 4
 Hazards: Policy No(s): 1, 2, 3, 6, & 7
 Archeology: Policy No(s): 1
 Air Quality: N/A

Does the project meet applicable Coastal Plan Policies: Yes, as conditioned

COASTAL PLAN POLICY DISCUSSION:*Shoreline Access:*

Policy 1: Protection of Existing Access. Public prescriptive rights may exist in certain areas of the county. Development shall not interfere with the public's right of access to the sea where acquired through historic use or legislative authorization. These rights shall be protected through public acquisition measures or through permit conditions which incorporate access measures into new development. *This project complies with this policy as the purpose of the project is to provide formalized, safe coastal access, parking, and support facilities such as picnic tables and restrooms.*

Policy 2: New Development. Maximum public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development. Exceptions may occur 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. Such access can be lateral and/or vertical. Lateral access is defined as those accessways that provide for public access and use along the shoreline. Vertical access is defined as those accessways which extend to the shore, or perpendicular to the shore in order to provide access from the first public road to the shoreline. *This project complies with this policy as the intent of the project is to provide the maximum amount of public access feasible for the property.*

Policy 4: Provision of Support Facilities and Improvements. Facilities necessary for public access shall be provided. This may include parking areas, restroom facilities, picnic tables or other such improvements. The level of these facilities and improvements should be consistent with the existing and proposed intensity and level of access use and provisions for on-going maintenance. Requirements for coastal access and improvements are identified in the specific Planning Area Standards and the Land Use Ordinance for the coastal zone. *The proposed project complies with this policy because it provides for facilities such as improved parking, restrooms, picnic tables, trash receptacles and ongoing maintenance of these facilities.*

Policy 5: Acceptance of Offers to Dedicate. Dedicated accessways shall not be required to be opened to public use until a public agency or private association agrees to accept the responsibility for maintenance and liability of the accessway. New offers to dedicate public access shall include an interim deed restriction that restricts the property owner from interfering with the present use by the public of the areas subject to the easement prior to acceptance of the offer. Existing offers for dedication having such an interim deed restriction, shall remain open and unobstructed during the period when the offer is outstanding. Once a public agency or

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private association agrees to accept the responsibility for maintenance and liability of the access, the property owner's responsibility under the interim deed restriction may be relinquished. *The project complies with this requirement as the County has accepted an offer to dedicate for the properties and will maintain the proposed facilities.*

Policy 6: Public Safety. The level and intensity of shoreline access is to be consistent with public safety concerns related to bluff stability, trail improvements as well as the provision of adequate facilities such as signs, fences and stairways. *The project complies with this policy as one of the project goals includes improving and formalizing facilities for public safety due to geological concerns on the site. The trails will be improved and re-routed to enhance public safety of the site.*

Policy 8: Minimizing conflicts with Adjacent Uses. Maximum access shall be provided in a manner which minimizes conflicts with adjacent uses. Where a proposed project would increase the burdens on access to the shoreline at the present time or in the future, additional access areas may be required to balance the impact of heavier use resulting from the construction of the proposed project. *This project complies with this policy because the project includes improving a historic trail and parking area which are pre-existing uses, and no new uses are proposed with this project. This passive recreation area is an allowed use within this zoning category and does not conflict with the neighboring properties.*

Policy 9: Restoration and Enhancement of Shoreline Access Areas. Areas that have been severely degraded through overly intense and unrestricted use should be restored by such techniques as revegetation with native plants, trail consolidation and improvement and through the provision of support facilities such as parking, defined trail and/or beach walk stairway systems, trash receptacles, restrooms, picnic areas, etc. In extremely degraded areas (especially sensitive habitat areas), a recovery period during which public access would be controlled and limited may be necessary. This should be determined through consultation with the property owner and appropriate public agencies to establish the means of controlling public access that is reasonable and cost effective. Any limitation of use shall be evaluated periodically to determine the need for continued limited use. *This project complies with this policy as one of the project goals includes restoration of damaged and eroded areas, instituting best management practices and installing low impact development drainage facilities, and re-aligning portions of the existing trail which currently contains severe erosion issues.*

Public Works:

Policy 1: Availability of Service Capacity applies to the project. *The proposed project does not intend to use water/sewer facilities. The proposed restroom includes a waterless vault type of restroom which is commonly used in other park facilities.*

Policy 7: Permit requirements. A permit is required for projects within the coastal zone. *The applicant is requesting approval of a Development Plan / Coastal Development Permit, consistent with the requirements of this policy.*

Coastal Watersheds:

Policy 7: Siting of New Development. Grading for the purpose of creating a site for a structure or other development shall be limited to slopes of less than 20 percent. Grading that will occur on slopes of greater than 20 percent requires a Minor Use Permit or Development Plan approval and shall consider site characteristics such as proximity of nearby streams, erosion potential, and slope stability, amount of grading necessary, and measures proposed to reduce potential erosion and sedimentation. *The project is designed to incur the least amount of site disturbance as possible. The project design does include grading on steep slopes of 30% or more, however this activity includes a variance request in order to complete this construction. The project has obtained additional review from a project Engineering Geologist (Fugro) and recommendations*

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for construction activities are included as conditions of approval in order to increase geologic stability and erosion control.

Policy 9: Techniques for Minimizing Sedimentation. Appropriate control measures shall be utilized to minimize erosion and sedimentation. *The project complies with this project as proposed and as conditioned.*

Policy 10: Drainage Provisions. Site design shall ensure that drainage does not increase erosion. *The project has been sited and designed to ensure runoff does not increase erosion. Additionally, conditions of approval have been put in place to ensure construction documents show compliance with this requirement.*

Visual and Scenic Resources:

Policy 4: New Development in Rural Areas. New development shall be sited to minimize its visibility from public view corridors. *The project is designed to minimize views from public vantage points through project design and location of the proposed facilities (such as the vault restroom on the uphill side of Cave Landing Road). The parking lot and trails are existing uses and this project does not propose to change these uses such that there would be additional visual impacts for the trail and parking areas. The newly re-aligned trail which provides access from Cave Landing Road to Pismo will include cut slopes which will be visible, however the project proposes to vegetate these slopes which will reduce any visual impacts (also outlined in the adopted Mitigated Negative Declaration and attached mitigation measures).*

Hazards:

Policy 1: New Development. All new development proposed within areas subject to natural hazards from geologic or flood conditions (including beach erosion) shall be located and designed to minimize risks to human life and property. Along the shoreline new development (with the exception of coastal-dependent uses or public recreation facilities) shall be designed so that shoreline protective devices (such as seawalls, cliff retaining walls, revetments, breakwaters, groins) that would substantially alter landforms or natural shoreline processes, will not be needed for the life of the structure. Construction of permanent structures on the beach shall be prohibited except for facilities necessary for public health and safety such as lifeguard towers. *The proposed project complies with this policy as one of the project goals is to improve an existing trail and parking area which are currently degraded due to erosion issues, and the re-designed parking area and trails are engineered to provide safe coastal access on the property for the public.*

Policy 2: Erosion and Geologic Stability. New development shall ensure structural stability while not creating or contributing to erosion or geological instability. *The proposed project complies with this policy because an engineering geology investigation (Fugro) has been completed and reviewed by the County Geologist which contains recommendations for construction which ensure geologic stability for the life of the project.*

Policy 3: Development Review in Hazard Areas. The county shall require a detailed review of development proposed within the geologic study area and flood hazard combining designations as indicated on the Land Use Element maps for the coastal zone. The review shall be performed by a qualified registered and/or certified engineering geologist and shall be adequately detailed to provide recommendations and conclusions consistent with this plan. *The proposed project complies with this policy because an engineering geology investigation (Fugro) has been completed and reviewed by the County Geologist which contains recommendations for construction which ensure geologic stability for the life of the project.*

Policy 6: Bluff Setbacks. New development or expansion of existing uses on bluffs shall be designed and set back adequately to assure stability and structural integrity and to withstand

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bluff erosion and wave action for a period of 75 years without construction of shoreline protection structures which would require substantial alterations to the natural landforms along bluffs and cliffs. A site stability evaluation report shall be prepared and submitted by a certified engineering geologist based upon an on-site evaluation that indicates that the bluff setback is adequate to allow for bluff erosion over the 75 year period. *The proposed project complies with this policy because an engineering geology investigation (Fugro) has been completed and reviewed by the County Geologist which contains recommendations for construction which ensure geologic stability for the life of the project. This project is also requesting a variance for the 75 year bluff setback as most of the project (bluff trail and a portion of the parking area) are within this setback area due to the nature of the project being a bluff top coastal trail, and due to the sensitive nature of the site. A project redesign to avoid the 75 year bluff setback is infeasible for this particular project.*

Policy 7: Geologic Study Area (GSA) Combining Designation. The GSA designation in coastal areas of the county include all coastal bluffs and cliffs greater than 10 feet in vertical relief and that are identified in the *Assessment and Atlas of Shoreline Erosion* (DNOD, 1977) as being critical to future or present development. Maps clearly distinguish the different geologic and seismic hazards which the county covers by the GSA combining designation. These hazards shall include steep slopes, unstable slopes, expansive soils, coastal cliff and bluff instability, active faults, liquefaction and tsunamis. *This proposed project is located within the GSA combining designation and complies with the ordinance requirements by including an engineering geology investigation (Fugro) which includes recommendations for construction within this sensitive area.*

Archaeology:

Policy 1: Protection of Archaeological Resources. *The project includes mitigation measures which ensure the protection of archaeological resources. Archaeological site surveys have been conducted which include recommendations for the location of improvements and construction. These recommendations are outlined in the conditions of approval.*

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COMMUNITY ADVISORY GROUP COMMENTS: In the minutes for the March 11, 2013 meeting the Avila Valley Advisory Council (AVAC) stated the following: "Support letter for Pirates Cove/Cave Landing Project: Sherri reviewed a previous letter written in support with concerns expressed re: loss of parking spaces, and cataloging/placement of archaeological artifacts found during construction. The letter will be modified by Sherri to reflect our support with the same concerns. Action passed."

Staff Response to AVAC comments: Staff has been coordinating with Public Works regarding striping additional parking spaces along Cave Landing Road and it was recommended by Public Works that this may in fact reduce the actual number of parking spaces that could fit along the street therefore it was determined that additional striping is not recommended with this project. The proposed parking lot will hold fewer cars than the existing dirt parking area, however this is due to the requirements for on site drainage basins, geologic issues for expansion, and avoidance of sensitive cultural resources. It was determined through an intensive site design process that this proposed parking configuration was the best option based on all the underlying issues of the site. Additionally, special measures are in place to ensure archaeological resources are not impacted during construction through project conditions of approval.

AGENCY REVIEW (responses shown):

Public Works-The existing trail is within the County right of way. The proposed facilities will require an encroachment permit.

Cal Fire -Letter from Cal Fire dated April 11, 2012 recommended conditions to be incorporated into the project (attached).

LEGAL LOT STATUS:

The lot was legally created by deed at a time when that was a legal method of creating lots.

Staff Report prepared by Ryan Hostetter and reviewed by Steve McMasters

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*changed at hearing
↑ to 50 spaces*

**EXHIBIT A
FINDINGS DEVELOPMENT PLAN/COASTAL DEVELOPMENT PERMIT**

Environmental Determination

A. The Environmental Coordinator, after completion of the initial study, finds that there is no substantial evidence that the project may have a significant effect on the environment, and the preparation of an Environmental Impact Report is not necessary. Therefore, a Mitigated Negative Declaration (pursuant to Public Resources Code Section 21000 et seq., and CA Code of Regulations Section 15000 et seq.) has been issued on February 21, 2013 and is hereby adopted for this project. Mitigation measures are proposed to address aesthetics, air quality, biological resources, cultural resources, geology and soils, traffic, noise, and land use and are included as conditions of approval.

Development Plan

B. The proposed project or use is consistent with the San Luis Obispo County General Plan because the use is an allowed use and as conditioned is consistent with all of the General Plan policies. The County's Park and Recreation Element identifies the Cave Landing Trail as a proposed project. This project will not only fulfill the County's Park and Recreation Element, but serve as part of the statewide California Coastal Trail which will provide coastal access, further achieving the goals of the County's Parks and Recreation Element for coastal access

C. As conditioned, the proposed project or use satisfies all applicable provisions of Title 23 of the County Code.

D. The establishment and subsequent operation or conduct of the use will not, because of the circumstances and conditions applied in the particular case, be detrimental to the health, safety or welfare of the general public or persons residing or working in the neighborhood of the use, or be detrimental or injurious to property or improvements in the vicinity of the use because the project which includes improvements to existing trails and parking areas does not generate activity that presents a potential threat to the surrounding properties. This project is subject to Ordinance and Building Code requirements designed to address health, safety and welfare concerns.

E. The proposed project or use will not be inconsistent with the character of the immediate neighborhood or contrary to its orderly development because the trail, parking area and passive recreation facilities (picnic tables, restrooms and trash receptacles) will not conflict with the surrounding lands and uses.

F. The proposed project or use will not generate a volume of traffic beyond the safe capacity of all roads providing access to the project, either existing or to be improved with the project because the project is located on Cave Landing Road, a local road constructed to a level able to allow the current informal passive recreation facilities to become formalized and remain under County maintenance and control.

Archeological Sensitive Area

G. The site design and development incorporate adequate measures to ensure that archeological resources will be acceptably and adequately protected because the project. The project has been sited and designed to minimize impacts to cultural resources, but full avoidance to cultural resources is not feasible. The project is conditioned to include a monitoring plan which will require a qualified professional approved by the county to monitoring any ground disturbing activities.

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Coastal Access

- H. The proposed use is in conformity with the public access and recreation policies of Chapter 3 of the California Coastal Act, because the purpose of the project is to provide for and formalize coastal access for the public on the subject properties.

Variance Findings

- I. The Variance authorized does not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and land use category in which it is situated.

This proposed project is requesting four variances from the strict interpretations of the Coastal Zone Land Use Ordinance. The variance requests are as follows:

1. Variance to allow development of the trail within the coastal bluff setback;
2. Variance to allow grading on slopes of 30% for portions of the newly re-aligned trail between Cave Landing and Pismo Beach because grading on steep slopes of 30% or more is not normally allowed (unless there is no possible way around the slopes);
3. Variance to allow development within the required 25 foot front setback area from Cave Landing Road;
4. Variance to allow parking within the front 25 foot setback area along Cave Landing Road.

This project with the requested variances does not grant special privileges inconsistent with the limitations upon other properties in the vicinity. Variance approvals for these items are common when there are no alternative designs for a proposed project, or where there are no alternative designs which comply with other portions of the Local Coastal Program such as protection of resources. Specifically, the location of the improvements are being limited to disturbed areas to the maximum amount feasible except for the re-alignment of the new trail in order to avoid landslides and cultural resources. These locations happen to be clustered very close to the road which are within the front setback areas (3 and 4 above). The trail improvements within the bluff setback are similar to other projects where coastal trails are on the edge of the bluff in order to maximize the public viewing experience being as close to the ocean as possible (1 above). Additionally, portions of the trail will be on slopes of 30%, and in this case there is no alternative location on the site to locate the trail off of these steep slopes. This is similar to other projects that are unable to be designed to avoid steep slopes due to site constraints and have received approval for a variance (2 above).

- J. There are special circumstances applicable to the property, including size, shape, topography, location, or surroundings, and because of these circumstances, the strict application of this Title would deprive the property of privileges enjoyed by other properties in the vicinity and in the same land use category.

This project is unique in that the purpose is to provide coastal access for the public. This is unlike private development projects where there is a principal use of the site and the property owner has a right to use the property for this principal use, and without granting a variance the property owner would be deprived of their privileges enjoyed by surrounding properties within the same zoning. This proposed project includes properties held by the County which will contain trails and parking areas for coastal access. The proposed project site does contain special circumstances relative to its location which include sensitive resources areas and proximity to the coastal bluff. Similar to other projects which receive variances for slope or setback, this proposed project includes similar site constraints which do not allow for a revised project design

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Planning Commission

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without granting of a variance, or further impacting sensitive coastal resources (such as landslide areas and cultural resources).

- K. The Variance does not authorize a use that is not otherwise authorized in the land use category.
The project includes passive recreation which is an allowed use within the Residential Rural Land Use Category.
- L. The Variance is consistent with the provisions of the Local Coastal Program (LCP).
The project complies with the requirements of the Local Coastal Program as the purpose of the project is to enhance coastal access consistent with the goals and policies of the LCP.
- M. The granting of such application does not, under the circumstances and conditions applied in the particular case, adversely affect public health or safety, is not materially detrimental to the public welfare, nor injurious to nearby property or improvements.
This project will include improvements to existing informal trails and parking areas which will increase the safety for the users of the property. Currently the site contains hazardous trails which are damaged due to landslides and these will be enhanced and re located in order to provide safe access. Hand rails and stairs are also being installed which will increase safety of the proposed site. The project is not injurious to neighboring properties as the use will remain unchanged, but will be formalized in order to enhance the safety of the site.

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EXHIBIT B CONDITIONS OF APPROVAL FOR DEVELOPMENT PLAN/COASTAL DEVELOPMENT PERMIT/VARIANCE DRC2011-00069

Approved Development

1. This approval authorizes a Development Plan/Coastal Development Permit/Variance to allow for the construction of the following:
 - a. Construction of a bike/pedestrian trail of approximately 1,800 linear feet long and approximately 12 feet wide. Approximately 800 feet of this proposed trail is located within the abandoned road segment of Cave Landing Road. This trail will be made of decomposed granite or similar permeable surface and will require removal of approximately 800 linear feet of existing abandoned road pavement. A 30 foot span bridge will cross a natural drainage way;
 - b. formalization of the Pirates' Cove parking lot by leveling, resurfacing with asphalt, landscaping, and providing 35 parking spaces;
 - c. installation of drainage improvements of vegetated bio-swales and two level spreaders in the parking lot area;
 - d. Improvement of the existing pedestrian trail from the parking lot to Pirates Cove beach including: a four foot wide trail; additional water bars for drainage; stairs to the beach; and rails or fencing as necessary;
 - e. construction of accessory facilities including a waterless vault restroom, picnic tables, benches, garbage cans, and interpretive signs, and
 - f. regular maintenance of these facilities.
 - g. Variance to allow construction on slopes of 30%
 - h. Variance to allow parking and fencing within a front setback along Cave Landing Road
 - i. Variance to allow construction within the coastal bluff setback area.

Conditions required to be completed prior to commencement of construction

Site Development

2. Construction plans submitted shall show all development consistent with the approved site plan, floor plans and elevations.
3. The project shall comply with the parking design standards of section 23.04.164 of the Coastal Zone Land Use Ordinance.

Lighting Plan

4. The applicant shall provide a Lighting Plan. The plan shall include the height, location and intensity of all exterior lighting. All light fixtures shall be shielded so that neither the lamp nor the reflective interior surface is visible from areas outside the project site. All light poles, fixtures and hoods shall be dark (non-reflective) colored. All exterior lighting sources shall be low-level and adjusted so that light is directed into the project site. Security lighting shall be shielded so as not to create glare when viewed outside the project boundaries.

Fire Safety

5. All construction plans shall meet the fire and life safety requirements of the California Fire Code. Requirements shall include, but not be limited to those outlined in the letter prepared by the CDF/County Fire Department for this proposed project and dated April 11, 2012.

Public Works

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Planning Commission

County Parks Development Plan/Variance/Coastal Development Permit DRC2011-00069

6. The applicant shall obtain all necessary approvals from County Public Works, and all recommendations from Public Works shall be incorporated in the project plans. A drainage plan and sedimentation and erosion control plan shall also be prepared for review and approval by County Public Works.

Vault Restroom

7. The applicant shall submit evidence that the vault restrooms are reviewed and approved by County Environmental Health Department.

Air Quality

8. AQ-1 Fugitive PM 10 **Mitigation measures (All required PM190 measures shall be shown on applicable grading or construction plans.** In addition, the County of San Luis General Service Agency/Parks shall designate personnel to insure compliance and monitor the effectiveness of the required dust control measures (as conditions dictate, monitor duties may be necessary in weekend and holidays to insure compliance); the name and telephone number of the designated monitors shall be provided to the APCD prior to construction/grading permit issuance:
 - Reduce the amount of disturbed area where possible;
 - Use water trucks or sprinklers systems in sufficient quantities to prevent airborne dust from leaving the site. Increased watering frequency would be required whenever wind speeds exceed 15 miles per hour. Reclaimed (nonpotable) water should be used whenever possible; Water all active construction areas at least twice daily. Frequency should be based on the type of operation, soil and wind exposure;
 - All dirt stock-pile areas should be sprayed daily as needed;
 - Permanent dust control measures identified in the approved project revegetation plan should be implemented as soon as possible following completion of disturbing activities;;
 - Exposed ground areas that are planned to be reworked at dates greater than one month after initial grading should be sown with fast germinating native grass seed and watered until vegetation is established;
 - All disturbed soil areas not subject to revegetation should be stabilized using approved chemical soil binders, jute netting, or other methods approved in advance by APCD;
 - All roadways driveways, sidewalks etc. to be paved should be completed as soon as possible. In additional, building pads should be aid as soon as possible after grading unless seeding or soil binders are used.
 - Vehicle speed for all construction vehicles shall not exceed 15 mph on any unpaved surface at the construction site;
 - All trucks hauling dirt, sand, soil, or other loose materials are to be covered or should maintain at least two feet freeboard (minimum vertical distance between top of load and top of trailer) in accordance with the CVC Section.
 - Install wheel washers where vehicles enter and exit unpaved roads onto streets, or wash off trucks and equipment leaving the site: and
 - Sweep streets at the end of each day if visible soil material is carried onto adjacent paved roads. Water sweepers with reclaimed water should be used where feasible.
9. AQ-2 Prior to construction the General Service Agency/Parks shall provide evidence they have contracted APCD on any proposed portable equipment requiring APCD or CARB registration such as: 50-hp portable generators, IC engines, unconfined abrasive blasting operations, concrete batch plants, rock and pavement crushing, tub grinder,

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County Parks Development Plan/Variance/Coastal Development Permit DRC2011-00069

trammel screens, etc. should any of these types of equipment be used during construction activities, Californian Statewide portable equipment registration (issued by the Californian Air Resources Board) or a APCD permit may be required.

Biological Resources

10. BIO-1 The Black-flowered figwort shall be flagged along the beach trail so construction activities avoid this area. If avoidance is not feasible; a mitigation plan would be developed and implemented by a qualified biologist/restoration specialist, and may include salvaging/transplanting plants and/or cuttings from impact areas and relocating to suitable habitat and/or collecting seeds for distribution in a designated mitigation/restoration area.
11. BIO-2 A qualified biologist shall conduct a pre-construction survey prior to the mobilization, operation, and demobilization of project equipment within work areas to determine presence/absence sensitive wildlife species. In the event that any special-status species are identified within the immediate project work area, work will not be initiated until the appropriate agencies have been contacted and appropriate measures for protection have been instituted. Project activities may commence only after pre-construction surveys have confirmed the absence of all special-status species
12. BIO-3 All applicable agency permits with jurisdiction over the project area (e.g. CCC, CDFW, Corps, Regional Water Quality Control Board [RWQCB]) should be obtained (as necessary) for proposed project improvements. All additional mitigation measures required by these agencies would be implemented as necessary throughout the project.
13. BIO-4 If feasible, construction activities shall take place between mid-August and mid-March to be outside of the nesting bird season. If construction activities occur within the nesting bird season, a qualified biologist shall perform pre-activity nesting bird surveys to determine if breeding/nesting birds are present within the project site. If an active bird nest, greater than 50% completed, is identified, then CDFW and/or USWFS shall be consulted to determine appropriate buffer during construction activities. Nests less than 50% completed or a non-active nest (i.e., last year's nest or an abandoned nest) shall be removed by a qualified biologist in accordance to the MBTA.

Cultural Resources

14. CR-1 The applicant shall submit to the Environmental Coordinator for review and approval, a detailed researched design for a Phase III data recovery archaeological investigation. The Phase III program shall be prepared by a subsurface qualified archaeologist, approved by the Environmental Coordinator. The consulting archaeologist responsible for the Phase III program shall be provided with a copy of the previous archaeological investigations. The Phase III program shall include at least the following:
 - a. standard archaeological data recovery practices;
 - b. recommendation of sample size adequate to mitigate for impacts to the archaeological site, including bases and justification of the recommended sample size;
 - c. identification of location of sample sites/test units;
 - d. detailed description of sampling techniques and material recovery procedures (e.g. how sample is to be excavated, how the material will be screened, screen size, how materials will be collected);
 - e. disposition of collected materials;
 - f. proposed analysis of results of data recovery and collected materials, including timeline of final analysis results; and
 - g. consultation with appropriate Chumash tribal representatives.

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Once approved these measures shall be shown on all applicable plans and implemented during construction.

15. CR-2 A monitoring plan, prepared by a subsurface-qualified archaeologist, approved by the Environmental Coordinator, to be reviewed and approved by the Environmental Coordinator. The monitoring plan shall include at a minimum:
 - a. List of personnel involved on the monitoring activities;
 - b. Description of how monitoring shall occur;
 - c. Description of frequency of monitoring (e.g. full-time, part time, Spot checking);
 - d. Description of what resources are expected to be encountered;
 - e. Description of circumstances that would result in the halting of work at the project site (e.g. what is considered significant archaeological resources?);
 - f. Description of procedures for halting work on the site and notification procedures;
 - g. Description of monitoring reporting procedures; and
 - h. Consultation with appropriate Chumash tribal representatives.
16. CR-3 A letter from the consulting archaeologist shall be submitted to the Environmental Coordinator indicating that all necessary field work, as identified in the Phase III, program, has been completed.

Geology and Soils

17. GS-1 General Service Agency/Parks shall prepare construction plans that show the Cave Landing Road trail head relocated away from the potential sinkhole area and tension crackling/scarps as shown on page 27 of this report.
18. GS-2 General Service Agency/Parks shall prepare construction/drainage plan(s) that show the level of water drained into the Pirates Cove Landslide Complex does not increase, drainage does not cause erosion or flow into the landslide areas and the grading does not affect the overall stability of the site.
19. GS-3 General Service Agency/Parks shall prepare construction plans that increase the span of the bridge to a length that will reduce foundation depths of the bridge footing to no more than two or three feet and reduce the potential to remove lateral support from an active landslide that is present in the area of the west abutment.
20. GS-4 General Service Agency/Parks shall prepare construction plans that include:
 - a. proper compaction and grading for fills placed on sloping ground;
 - b. fill slopes no steeper than 2h:1v; and
 - c. cut slopes no steeper than 1.5h:1v.
21. GS-5 General Service Agency/Parks shall prepare construction plans for the bridge that include:
 - a. fill placed on slopes steeper than 20 percent (at the bridge approaches) should be initiated from a toe key excavated into firm material, and be keyed and benched into the hillside in accordance with good construction practices;
 - b. The embankment should be founded on firm subgrade soil below any loose or fissured topsoil;
 - c. The toe embankment should be initiated from a tow key excavated to at least two feet below existing site grades and sloped at least two percent into the fill side. The tow key should be at least eight feet wide. The fill above the toe key should then be keyed and benched into the hillside such that at least the upper two feet of soil is removed by the grading.

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22. GS-6 General Service Agency/Parks shall prepare construction/drainage plans that:
 - a. improve cross drainage on trails and reduce concentrated flows of runoff;
 - b. do not increase erosion or flow of surface drainage water into landslide area; and
 - c. spreader trenches sized such that storm water runoff trenches allow no additional runoff than the natural surface runoff.
23. GS-7 General Service Agency/Parks shall prepare a complete erosion and sedimentation control plan in accordance with Title 23.05.
24. GS-8 The applicant shall provide verification that the plans and specification for the design of the trail, grading, bridge structures, utility trenches and appurtenant improvements have been prepared in accordance with the recommendations of the geotechnical report(s) prior to beginning construction. Structures shall be designed to at least the minimum requirements of the 2010 California Building Code and the recommendations of the geotechnical report(s).

Traffic and Circulation

25. TR-1 Prior to construction, General Service Agency/Parks shall secure an encroachment permit to allow the installation of the restroom, tables, benches, bike racks and the removal and restoration to native of a portion of the existing trails that lies within the County maintained road right-of-way.

Water

26. W-1 Prepare and implement an erosion, sedimentation and pollution prevention plan and SWPPP.
27. W-2 Submit a drainage plan showing the use of a filter device to prevent oils and fuel washing from the proposed parking area into the ocean at the parking lot inflow location

Conditions required to be completed during project construction

Biological Resources

28. BIO-5 An Environmental Sensitivity Training presentation shall be prepared and presented to all construction personnel at the beginning of the project. The program shall discuss sensitive species with potential to occur in the construction zone, with emphasis on special-status wildlife, plants, and sensitive marine resources. The program shall explain the importance of minimizing disturbance and adhering to all permit conditions and provide an overview of petroleum spill prevention and response actions.
29. BIO-6 The following measures shall be implemented to further mitigate impacts to sensitive wildlife that may occur within project area:
 - All vegetation removal and initial ground disturbing excavation activities shall be monitored by a qualified biologists, authorized to relocate native wildlife to adjacent suitable habitat;
 - A qualified biologist shall inspect the immediate work areas for any signs of nesting woodrats. In the event a woodrat nest is found within the immediate work area and project activities cannot avoid the nest, all activities within the vicinity of the nest shall stop and the CDFW shall be consulted. At no time shall a woodrat nest be removed until CDFW consultation;
 - All construction activities will be completed during daylight hours only;

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Planning Commission

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- All trash receptacles will be located away from the bluff face and will be covered; and all food-related trash shall be removed from the Project Site at the end of each working day;
 - Project-related equipment should be prohibited outside of designated work areas and delineated access routes;
 - No firearms should be allowed in the project area;
 - In the event a special status animal is observed within the Project Site, appropriate agencies will be notified immediately to determine further mitigation;
 - No project activities shall be conducted during rain events; and,
 - No rodenticides or herbicides should be applied within the project area.
30. BIO-7 The use of heavy equipment and vehicles shall be limited to the proposed project limits, existing roadways, and defined staging areas/access points. Impervious material will be placed under all containers with petroleum products, including machinery engines and fuel tanks, in the storage or refueling area. The boundaries of each work area shall be clearly defined and marked with visible flagging and/or fencing.
31. BIO-8 During construction, washing of concrete, paint, or equipment and refueling and maintenance of equipment shall occur only in designated areas. Straw bales, sandbags, and sorbent pads shall be available to prevent water and/or spilled fuel from entering adjacent waters. In addition, secondary containment should be installed around all locations where petroleum products are stored. Construction equipment shall be inspected by the operator on a daily basis to ensure that equipment is in good working order and no fuel or lubricant leaks are present.
32. BIO-9 Heavy equipment that creates noise levels above 85 dB shall not be used for project activities along the shoreline during installation of the storm drain culverts and/or during future improvements of the lower portion of Pirate's Cove trail down to the beach. Specifically, noise level measurements shall be taken during the first day that a piece of equipment that has no published noise level data is to be used at the site. Measurements shall be taken to determine the distance to the 85 dB noise level and adjustments to machinery operation (i.e., ramp up) shall be made if wildlife (i.e., harbor seal, sea otter, and sea lion) are observed to be negatively affected by the equipment noise.
33. BIO-10 Erosion control measures shall be implemented to prevent runoff into adjacent waters. Silt fencing, in conjunction with other methods, shall be used to prevent erosion and avoid and/or minimize excavated soil and sediments from entering adjacent waterways. Further, appropriate dust control measures, such as, daily watering of work areas, shall be implemented to minimize dust impacts to surrounding habitat areas.

Cultural Resources

34. CR-4 All ground disturbing construction activities, the applicant shall retain a qualified archaeologist (approved by the environmental coordinator) and Native America to monitor all earth disturbing activities, per the approved monitoring plan. If any significant archaeological resources or human remains are found during monitoring all work shall stop within the immediate vicinity (precise area to be determined by the archaeologist in the field) of the resource until such time as the resource can be evaluated by an archaeologist and any other appropriate individuals. The applicant shall implement the mitigation as required by the Environmental Coordinator.

Noise

35. N-1 Construction activities will be limited to the hours of 7:00 a.m. to 7:00 p.m.

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County Parks Development Plan/Variance/Coastal Development Permit DRC2011-00069

36. N-2 Heavy equipment that creates noise levels above 85 dB shall not be used for project activities along the shoreline during installation of the storm drain culverts and/or during future improvements of the lower portion of Pirate's Cove trail down to the beach. Specifically, noise level measurements shall be taken during the first day that a piece of equipment that has no published noise level data is to be used at the site. Measurements shall be taken to determine the distance to the 85 dB noise level and adjustments to machinery operation (i.e., ramp up) shall be made if wildlife (i.e., harbor seal, sea otter, and sea lion) are observed to be negatively affected by the equipment noise.

Conditions required to be completed prior to final inspection

Aesthetics

37. AES-1 The balance of any cuts into the hillside shall be replanted as soon as possible with erosion control planting.
38. AES-2 Stairs to the beach shall be painted or made of material that is a muted and natural color that match the surrounding natural environment.
39. AES-3 The vault restroom shall be painted or made of material that is a muted and natural color that match the surrounding natural environment.
40. Landscaping in accordance with the approved landscaping plan shall be installed before final inspection. All landscaping shall be maintained in a viable condition in perpetuity.
41. The applicant shall contact the Department of Planning and Building to have the site inspected for compliance with the conditions of this approval.

Cultural Resources

42. CR-5 Upon completion of all monitoring/data recovery activities, and prior to final inspection (whichever occurs first) the consulting archaeologist shall submit a report to the Environmental Coordinator summarizing all monitoring/data recovery activities and confirming that all mitigation measures have been met. If the analysis included in the Phase III program is not complete by the time of final inspection the applicant shall provide to the environmental coordinator, proof of obligation to complete the required analysis.
43. CR-6 Split rail fencing, or similar type fencing, a minimum of three feet high shall be installed along the bike/pedestrian trail. This fencing is to discourage people from meandering off the official trail.
44. CR-7 Interpretive panel(s) shall be installed to educate the public about the Chumash experience and cultural history of the area. The(se) interpretive panel(s) shall be approved by County Parks, and the content shall be developed in cooperation with appropriate Chumash tribal representatives

Geology and Soils

45. GS-9 The applicant shall provide verification that the earthwork, drainage, structures, and trail improvements were inspected, tested, and observed under the auspices of a California registered professional engineer and the geotechnical engineer for conformance with the plans, specifications, and any special inspection requirements of the 2010 California Building Code so as to have reasonable certainty that the work was constructed according to the approved plans and specifications.

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Planning Commission
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46. GS-10 If landslide potential is perceived (heavy rains, earthquakes) the bike/pedestrian trail will be closed to ensure public safety.
47. GS-11 A sign will be posted at either end of the trail with notice to contact County Parks if dangerous or unusual conditions are observed.

Traffic and Circulation

48. TR-2 After completion of the bike trail improvements and realignment, General Service Agency/Parks shall request vacation of the County maintained road right-of-way being superseded by the trail.

On-going conditions of approval (valid for the life of the project)

Air Quality

49. AQ-3 As of February, 2000, the APCD prohibits developmental burning of vegetative material with San Luis Obispo county. However, under certain circumstances where no technically feasible alternatives are available, limited developmental burning under restrictions may be allowed, any such exemption must complete the following prior to any burning: APCD approval; payment of fee to APCD based on the size of the project; and issuance of a burn permit by APCD and the local fire department authority. As part of APCD approval, the applicant shall furnish them with the study of technical feasibility (which includes cost and other constraints) at the time of application. For any questions regarding these requirements, Karen Brooks of APCD's Enforcement Division may be contacted.

Geology and Soils

50. GS-12 The trail should be inspected by the County following periods when landslide potential may increase (such as following periods of heavy rains, earthquakes, or high surf) or when there are reports of cracking, settlement, or erosion of within or adjacent to the bike/pedestrian and the trail will be closed to ensure public safety if conditions are deemed to make travel on the path unsafe.
51. GS-13 This project shall comply with the requirements of the National Pollutant Discharge Elimination System Phase I and/or Phase II storm water program and the county's Storm Water Pollution Control and Discharge Ordinance, Title 8, Section 8.68 et. sec.

Land Use

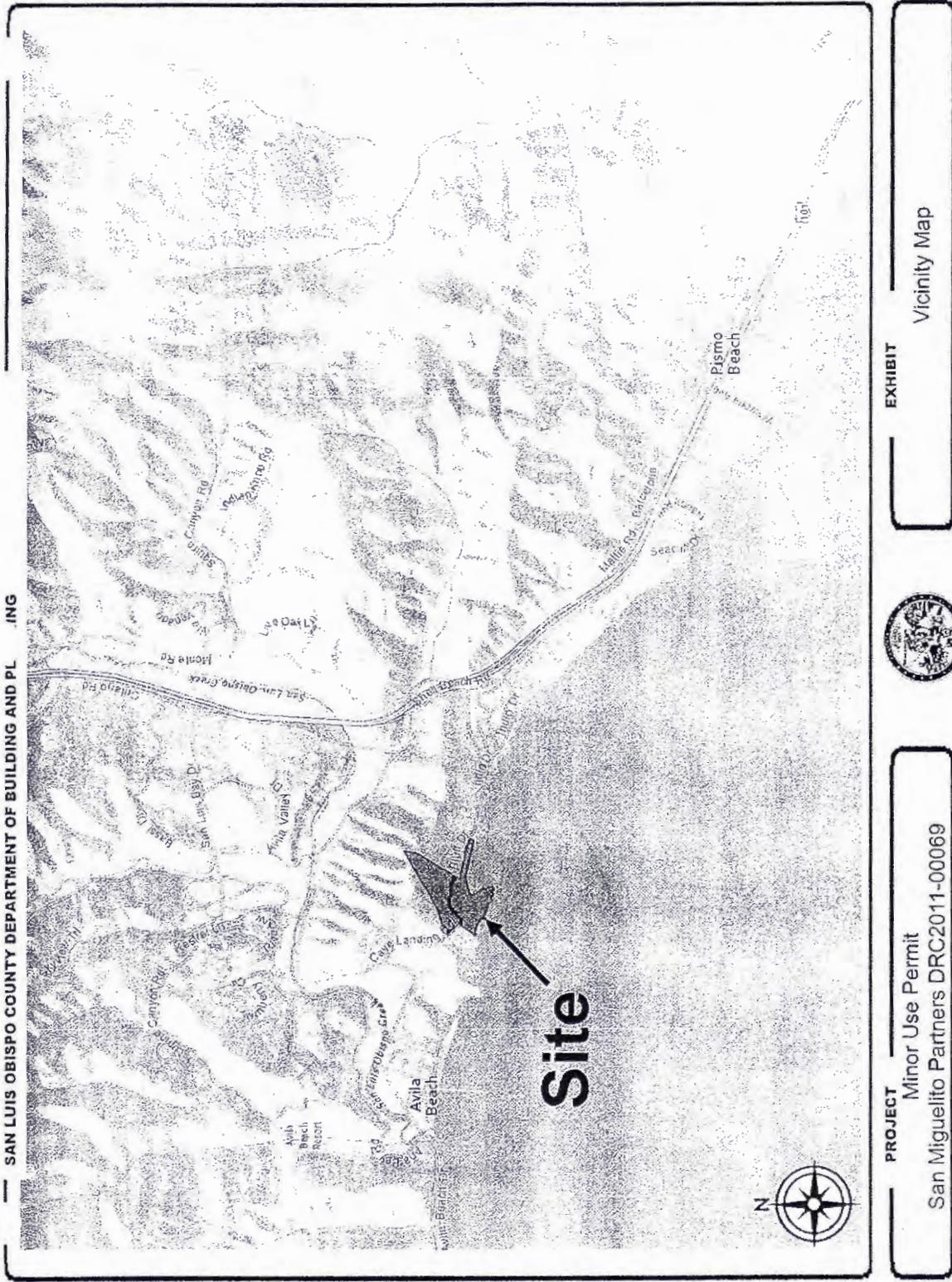
52. LU-1 The recreational area shall be closed down during significant rain storms or ground movement to ensure public safety.
53. This land use permit is valid for a period of 24 months from its effective date unless time extensions are granted pursuant to Land Use Ordinance Section 23.02.050 or the land use permit is considered vested. This land use permit is considered to be vested once a construction permit has been issued and substantial site work has been completed. Substantial site work is defined by Land Use Ordinance Section 23.02.042 as site work progressed beyond grading and completion of structural foundations; and construction is occurring above grade.
54. All conditions of this approval shall be strictly adhered to, within the time frames specified, and in an on-going manner for the life of the project. Failure to comply with these conditions of approval may result in an immediate enforcement action by the

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Planning Commission
County Parks Development Plan/Variance/Coastal Development Permit DRC2011-00069

Department of Planning and Building. If it is determined that violation(s) of these conditions of approval have occurred, or are occurring, this approval may be revoked pursuant to Section 23.10.160 of the Land Use Ordinance.

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EXHIBIT

Vicinity Map



PROJECT

Minor Use Permit
San Miguelito Partners DRC2011-00069

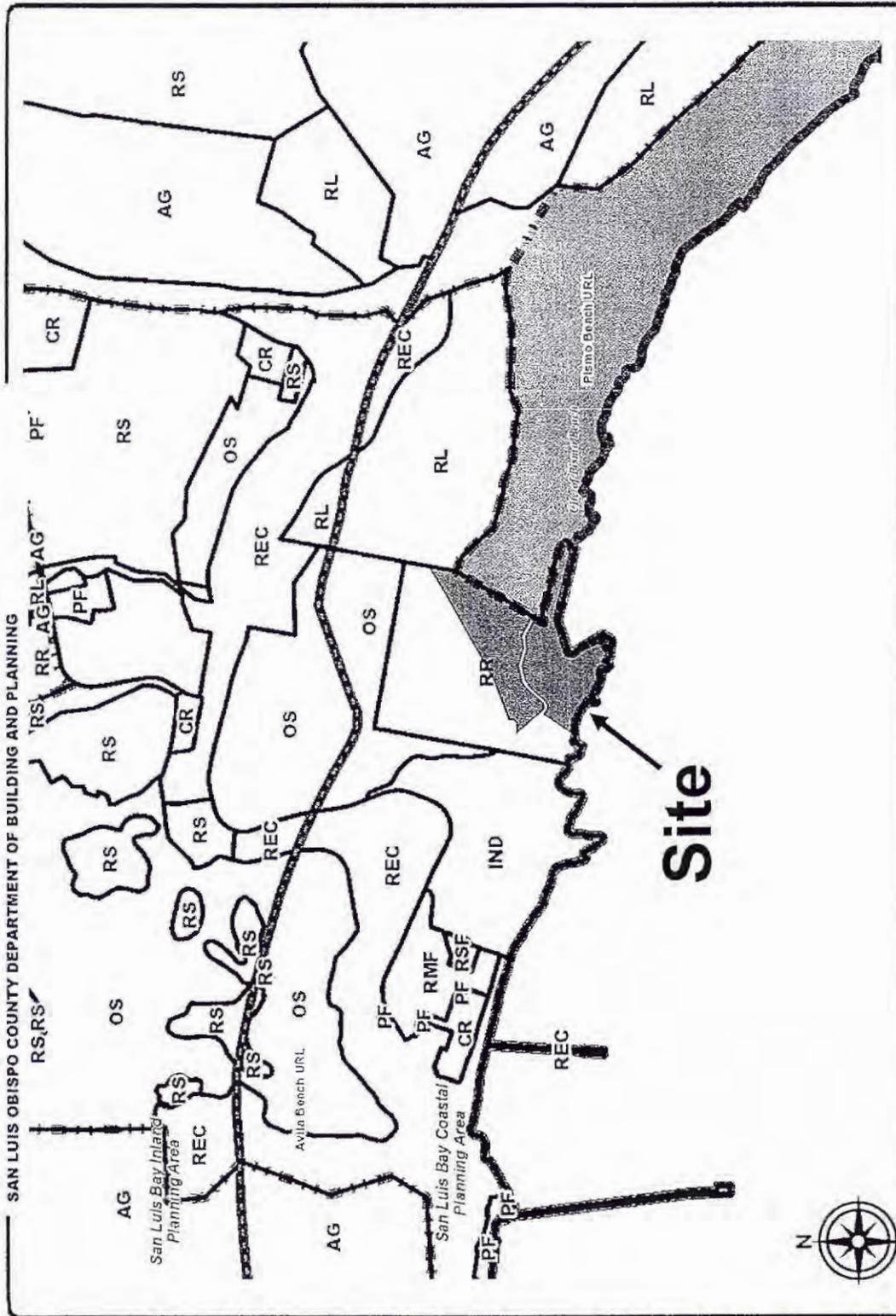


EXHIBIT
Land Use Category Map



PROJECT
Minor Use Permit
San Miguelito Partners DRC2011-00069

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SAN LUIS OBISPO COUNTY DEPARTMENT OF BUILDING AND PLANNING

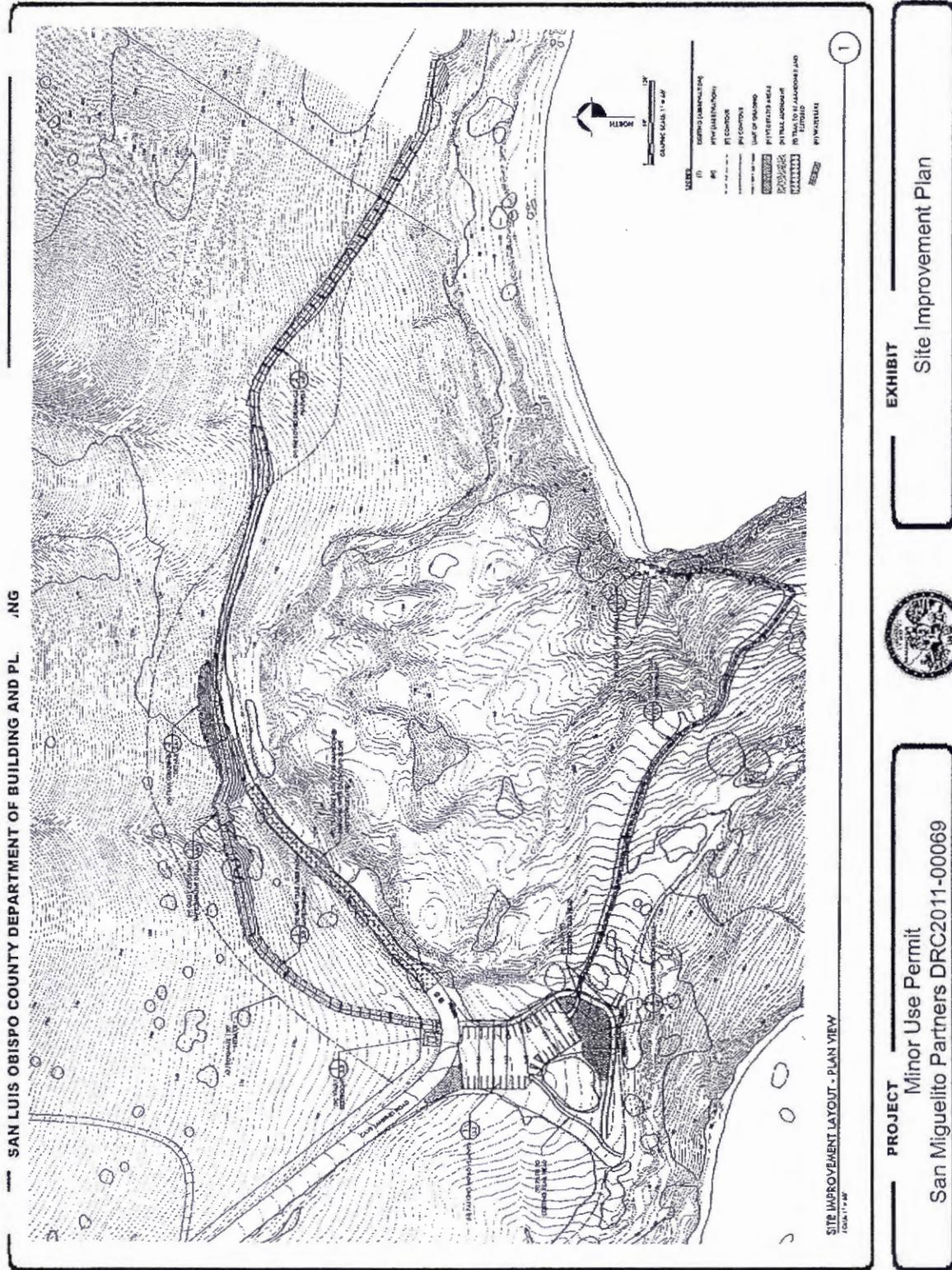
Cave Landing

Site

PROJECT
Minor Use Permit
San Miguelito Partners DRC2011-00069

EXHIBIT
Aerial Photograph

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SAN LUIS OBISPO COUNTY DEPARTMENT OF BUILDING AND PLANNING

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SAN LUIS OBISPO COUNTY DEPARTMENT OF BUILDING AND PLANNING

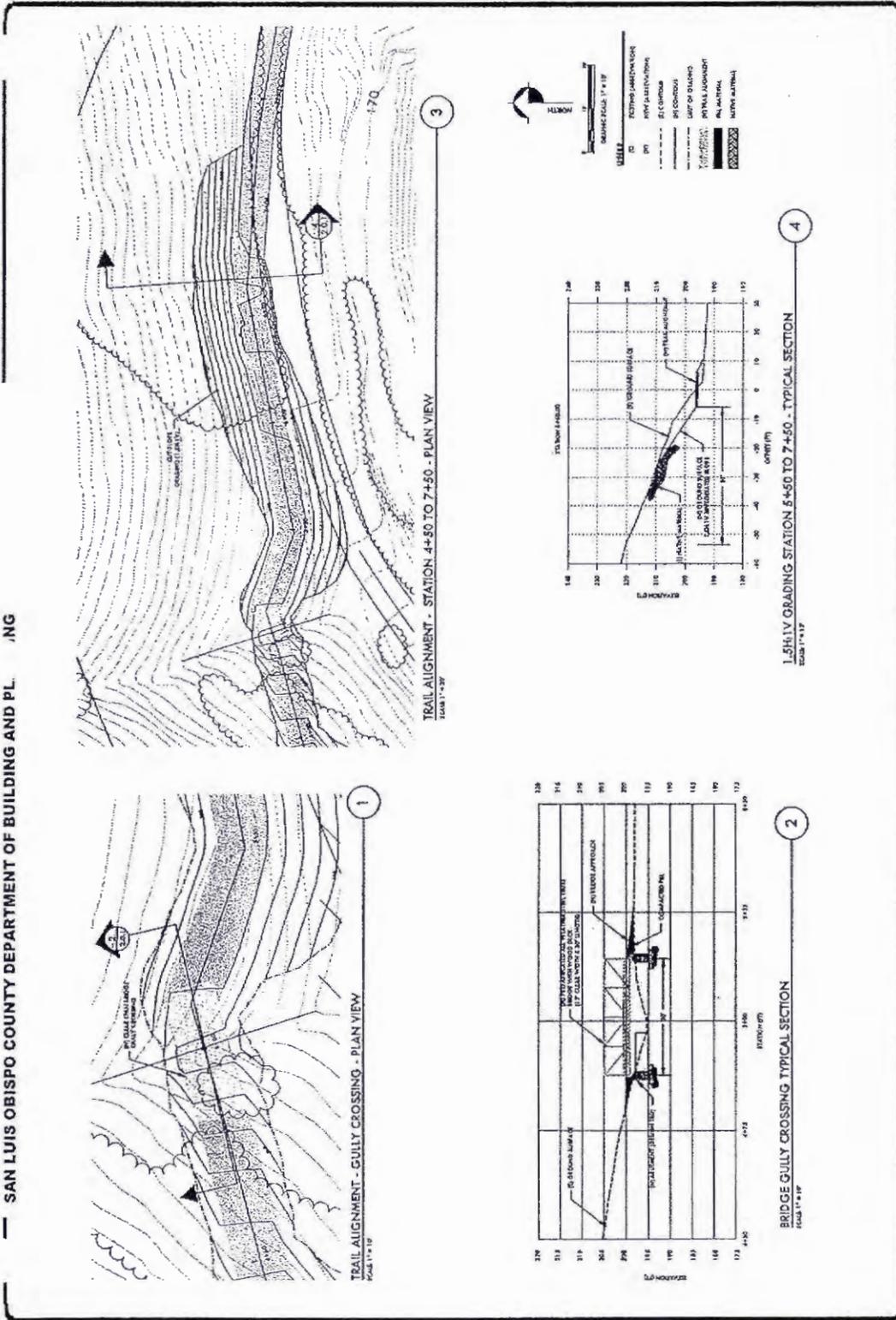


EXHIBIT
Grading Plan: Main Trail Alignment Details



PROJECT
Minor Use Permit
San Miguelito Partners DRC2011-00069

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SAN LUIS OBISPO COUNTY DEPARTMENT OF BUILDING AND PLANNING

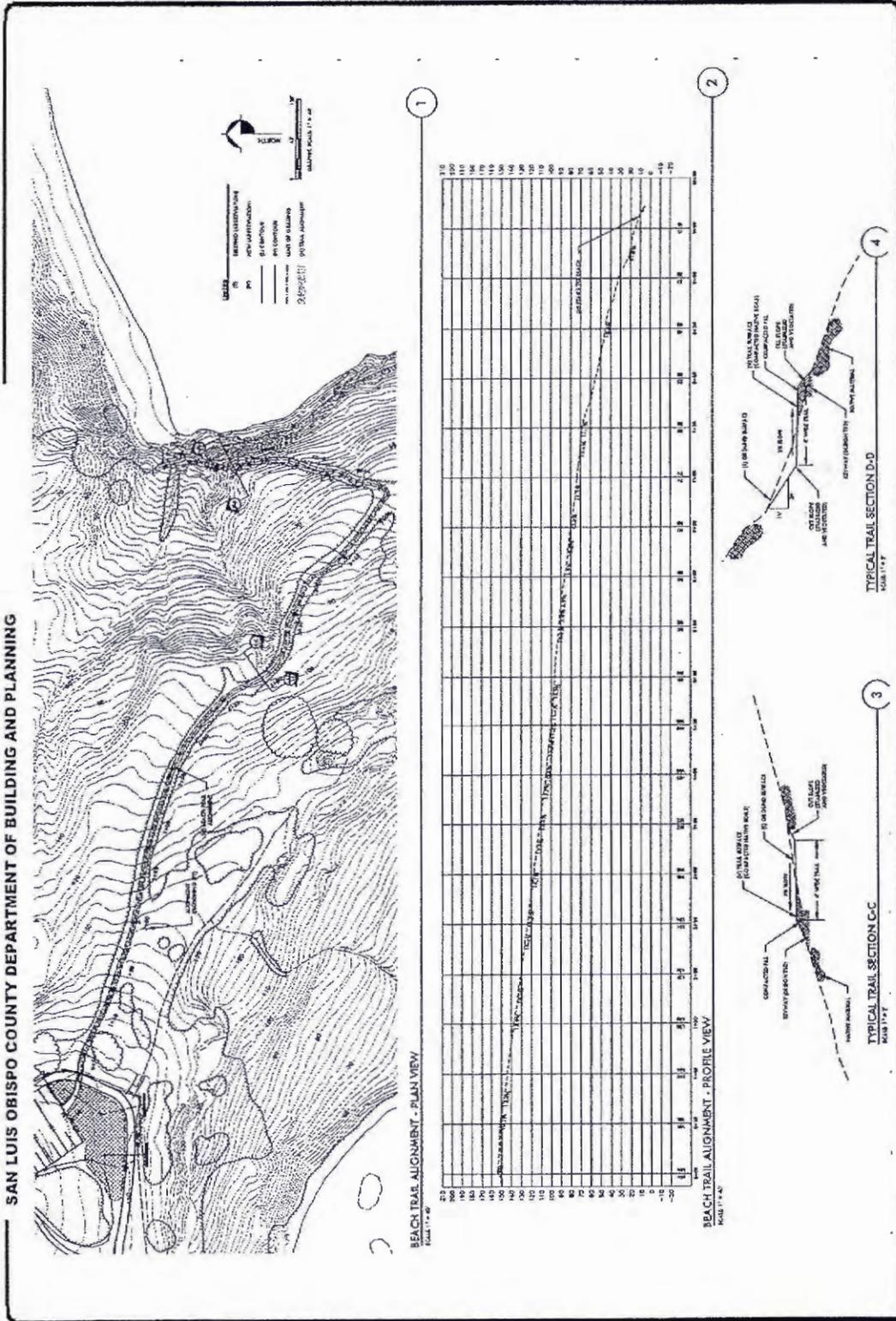
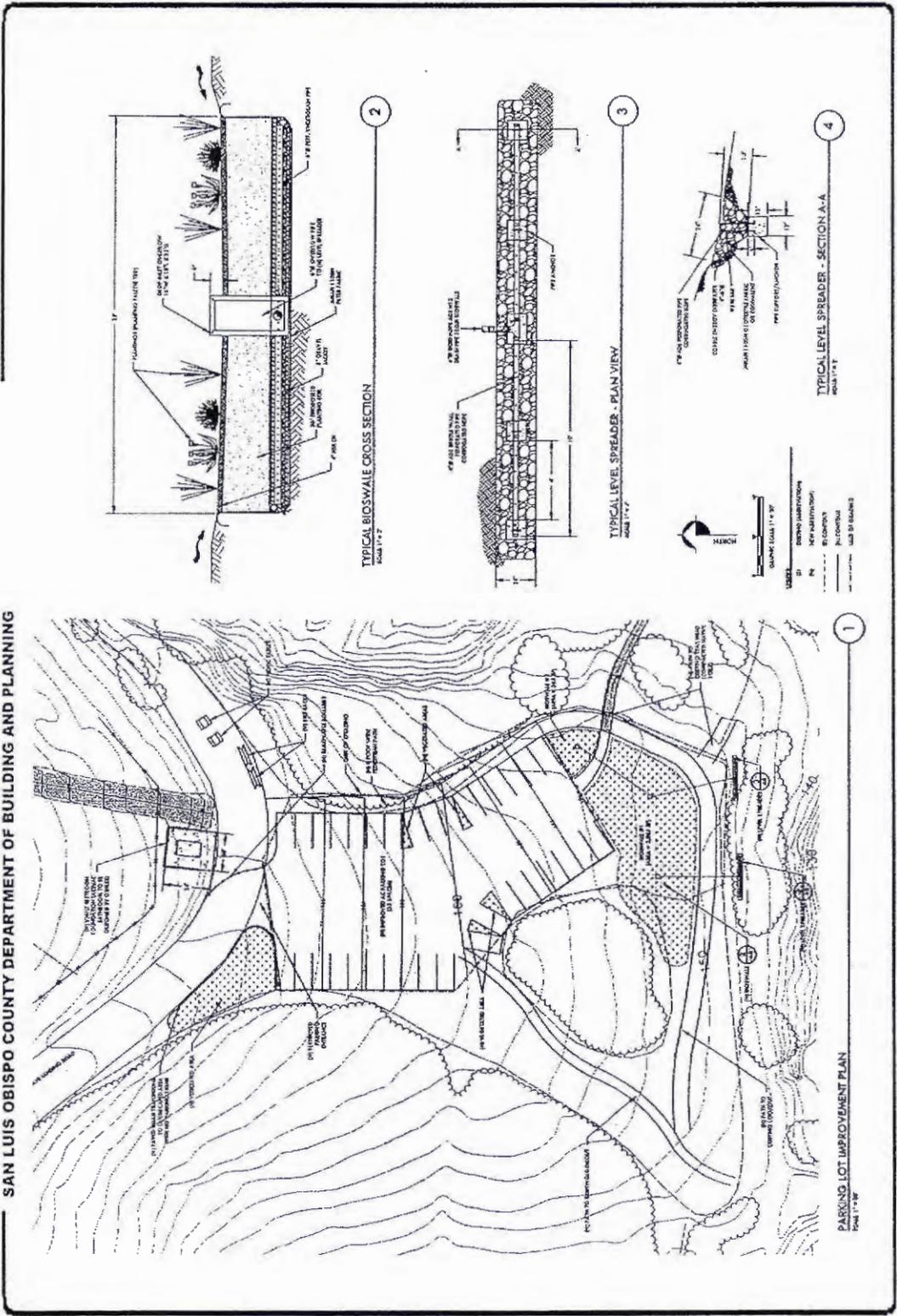


EXHIBIT
Grading Plan: Beach Trail Alignment
Plan and Profile



PROJECT
Minor Use Permit
San Miguelito Partners DRC2011-00069

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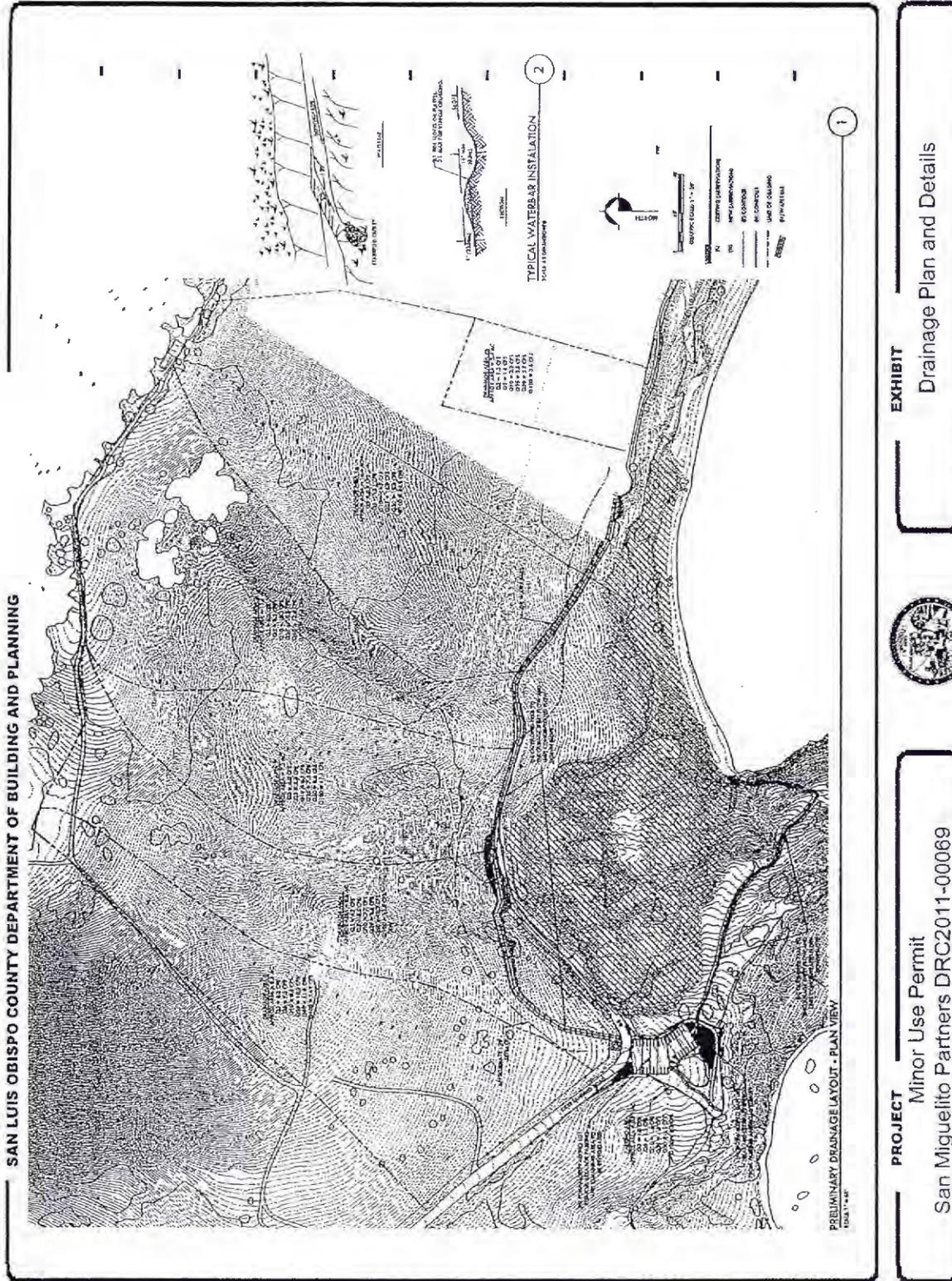


SAN LUIS OBISPO COUNTY DEPARTMENT OF BUILDING AND PLANNING

EXHIBIT
Grading Plan: Parking Area



PROJECT
Minor Use Permit
San Miguelito Partners DRC2011-00069



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COALITION PARTNERS:

- Arroyo Grande Community Hospital
- Boys and Girls Club – South County
- Cal Poly University
 - Art and Design Department
 - Center for Sustainability
 - Food Science & Nutrition Department
 - Kinesiology Department
 - Landscape Architecture Department
- STRIDE
- CenCal Health
- Central Coast Ag Network
- City of San Luis Obispo
 - Parks and Recreation Department
- Community Action Partnership of SLO County, Inc.
- Dairy Council of California
- Diringer Associates
- Equilibrium Fitness
- First 5 Commission of SLO
- French Hospital Medical Center
- Juicyful Creative Consulting
- Kennedy Club Fitness
- Lillian Larsen Elementary School of the Run
- Mar Unified School District
- Network for a Healthy California – Gold Coast Region
- North County Farmers Market Association
- Oceano Community Center
- Paso Robles Library & Recreation Services
- Rideshare – Safe Routes to School Program
- San Luis Sports Therapy
- San Miguel Joint Unified School District
- San Miguel Resource Connection
- SLO Bicycle Coalition
- SLO Council of Governments
- SLO County Board of Supervisors
- SLO County Community Foundation
- SLO County Health Commission
- SLO County Office of Education
- SLO County Parks
- SLO County Planning and Building
- SLO County Public Health
- SLO Food Bank Coalition
- UC Cooperative Extension
- YMCA of SLO County

April 6, 2012

TO: San Luis Obispo County Planning Commission

FROM: HEAL-SLO - Healthy Communities Work Group

RE: DRC2011-00069 – San Miguelito Partners
Cave Landing Trail and Parking Lot Improvements

HEAL-SLO is the SLO County obesity prevention coalition and its mission is to increase healthy eating and regular physical activity among County residents through policy, behavioral and environmental changes. In carrying out that mission, a subcommittee called the Healthy Communities Work Group provides responses to planning staff, from a healthy community’s perspective, on proposed land development projects, ordinance and general plan amendments, and special projects.

The Healthy Communities work group has reviewed the request by the San Luis Obispo County General Services Agency to construct a bike/pedestrian trail, improve the parking lot, and construct a restroom and other facilities including picnic tables, benches and interpretative signs on the 55 acre site at the end of Cave’s Landing Road in Avila Beach. We are fully supportive of this development for the following reasons:

- According to the Centers for Disease Control and Prevention (CDC), unintentional falls are one of the top 10 leading causes of injury deaths in all persons over the age of 25. The improvements to the trails will decrease the likelihood of falls and make them more user friendly.
- The improved trails will also make them a more likely destination for someone who wants to get outdoors and enjoy the magnificent beauty of the coastline. A strong body of psychological research, supported by widespread anecdotal evidence, confirms the hypothesis that direct contact with nature leads to increased mental health and psychological development. Howard Frumkin, director of the National Center for Environmental Health at the CDC, and Richard Louv, author of the book, Last Child in the Woods: Saving our Children from Nature-Deficit Disorder, conclude that “land conservation can now be viewed as a public health strategy” (Frumkin & Louv, 2007).
- Accessibility to the trails will improve for people who live in the area. The improvements will help motivate them to get out and exercise. The new paved parking lot will also be a benefit for other county residents who drive to the area to hike. According to the CDC, only 47% of adults 18 years of age and over met the Physical Activity Guidelines for aerobic physical activity in 2009.
- The parking lot is designed with a permeable material to decrease erosion, and natural vegetation will be planted, which is in keeping with sustainable principles.
- A new restroom will improve sanitation in the recreational area.

Thank you for the opportunity to provide input on this proposed development.

cc: San Luis Obispo County Health Commission



SAN LUIS OBISPO COUNTY
DEPARTMENT OF PLANNING AND BUILDING

THIS IS A NEW PROJECT REFERRAL

DATE: 3/14/2012

TO: Avila Beach CSD

FROM: Ryan Hostetter, Coastal Team

PROJECT DESCRIPTION: DRC2011-00069 SAN MIGUELITO PARTNERS- Conditional use permit for the Cave Landing Trail and parking lot improvements. (Development plan and variance) Site located at the end of Cave Landing Road in Avila Beach. APN: 076-231-062 and 064.

Return this letter with your comments attached no later than: 14 days from receipt of this referral. CACs please respond within 60 days. Thank you.

PART I - IS THE ATTACHED INFORMATION ADEQUATE TO COMPLETE YOUR REVIEW?

- YES (Please go on to PART II.)
- NO (Call me ASAP to discuss what else you need. We have only 10 days in which we must obtain comments from outside agencies.)

PART II - ARE THERE SIGNIFICANT CONCERNS, PROBLEMS OR IMPACTS IN YOUR AREA OF REVIEW?

- YES (Please describe impacts, along with recommended mitigation measures to reduce the impacts to less-than-significant levels, and attach to this letter)
- NO (Please go on to PART III)

PART III - INDICATE YOUR RECOMMENDATION FOR FINAL ACTION.

Please attach any conditions of approval you recommend to be incorporated into the project's approval, or state reasons for recommending denial.

IF YOU HAVE "NO COMMENT," PLEASE SO INDICATE, OR CALL.

No comment / outside our District (ABCSD)

Date 3/28/13

Name John Wallace

Phone 595-2664

2-43

Final

AVILA VALLEY ADVISORY COUNCIL
San Luis Obispo County, California
P.O. Box 65
Avila Beach, California 93424
www.AvilaValley.org

Minutes, Monday March 11, 2013

1. The meeting was called to order at 7:04 p.m. by Jim Hartig, Chair. Present were: Chair Hartig, Sherri Danoff, Anne M. Brown, Julia Hartzell, MaryEl Hansen, Jan Taylor, Ken Thompson, Bob Pusanik, Lynn Walter, Karla Bittner, Denise Allen, Bill Tickell. Excused were: Lisa Newton, Lynn Helenius, John Salisbury and Saul Goldberg. Absent was Karri Argano.

2. Minutes: The February minutes were approved (Sherri/Julia) as emailed , by voice vote.

3. Chair's comments: Attended the Parking Management meeting on February 28th. At his request, Steve McGrath will email the report to AVAC members. There is also a paper report available at Port.

4. Public Comment: None

5. Treasurer's Report: Julia reports receipt of \$500.00 from Supervisor Adam Hill's discretionary account. Thanks to him. The account now has \$1051.07 after paying \$18.96 for name plaques.

6. County Reports:

a. Sheriff: Cmdr. Nefores reports 92 calls (9 EMS, 11 crime (2 intoxication, 3 burglaries), 13 traffic, etc. No suspects in the burglaries where 2 homes were unlocked. The creek site mentioned previously has been cleaned up. Thanks from See Canyon AVAC member for covering their Canyon with increased patrols. The See Canyon/San Luis Bay Drive intersection continues to be a concern. Cmdr. Nefores will try to increase patrols at active school times.

b. Planning: Airlin Singlewald reported on the LUCE (Land Use and Circulation Elements) update and provided maps to show new areas and the re-organization. The plan will go to the Planning Commission in May. Concern was expressed by Sherri Danoff, chair of our AVAC LUC committee regarding including "old" data (1980) in the plan. This has been expressed previously to Planning by our Council. Suggestions included a disclaimer about outdated data on each sheet and the possibility of citizens providing "wikipedia-like" input to help with updating the data. Airlin will take these suggestions back to Planning. Supervisor Hill stated he would ask the "systems planning director" to come to the April meeting to discuss this matter. He requests a letter from AVAC asking for this information. Sherri will write the letter.

c. Public Works: Anne reports a request from Ryan Chapman for input of AVAC in the Avila Parking Plan. Because Steve McGrath from Port who is spearheading this Plan will report at the April AVAC meeting, Ryan's request will be considered after that presentation.

d. CalFire: Batt.Chief Paul Lee reports 19 calls only, due to the decrease in "flu" calls; he attended the Cal Poly Wildfire Protocol meeting which students have addressed; his agency attends the AMGEN tour meetings and plans 4x their usual staffing; During

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Spring Break there will be extra coverage in Pismo Beach and Avila. They have conducted a tsunami drill. An AVAC member requested another "chipping" project in See Canyon. Chief Lee will look for funding for this project. San Luis Bay Estates requests help with funding their weed abatement, since they have spent \$1000s on the state assessment. Chief Lee will look into the matter. The Davis Canyon fire break is waiting for funding to expand its perimeters.

e. Supervisor Adam Hill addressed the Events Ordinance question by saying that there are "more important" issues before the Board, even though it has been 18 months since referral to the EVC, a time-table of review which the Board might be able to shorten, the use of "non-profit" status to continue to allow events at the Golf Course, and the continuing lack of a permitting process for larger venues in the County. The Pirate's Cove property has been accepted by the County. (See 7b. for more info.) In response to a question about Wild Cherry Canyon, he states that it is still alive, and hopes for action at the State level soon.

7. Old Business:

a. Bird Sanctuary: Shirley Goetz provided printed material to support the request for this designation by the County. She wishes for AVAC to support the proposal to the Board of Supervisors. Active discussion with input from audience members cleared up many questions of Council members, i.e. boundaries of the designated area, signage, damage to croplands, etc. **Action: that AVAC recommend to the Board of Supervisors that the Avila Specific Plan area be designated as a bird sanctuary, with the following provisions: 1. that the above Plan area be the designated area; 2. that there be a requirement for signage proclaiming sanctuary status; 3. that there be no bird protection requirements beyond existing laws. Vote: 7 yes; 2 no; 2 abstain.** Sherri will draft the letter.

~~Support letter for Pirates Cove/Cave Landing Project:~~ Sherri reviewed a previous letter written in support with concerns expressed re: loss of parking spaces, and cataloging/placement of archeological artifacts found during construction. The letter will be modified by Sherri to reflect our support with the same concerns. **Action passed.**

c. AMGEN Tour Update: Greg Schulte reviewed current planning: meetings continue; parking plans coming together; the route established into Avila; times of closure of the route to cars, etc.; CHP to staff intersections closed. The contract will go to the BOS in April: many vendors are providing services "free" to the County; major costs to the County will be Sheriff and Public Works man-hours used. Shuttle vehicles will be needed at a cost of \$12,000.00 +/- . Volunteers are needed and can register at the AMGEN website. The bicycle community is very active in planning. The "Avila Alerts" website can be used to notify residents of any changes. Many questions were asked: access to residents' homes during the event; Bellevue-Santa Fe School access during afternoon let-out; traffic issues on Hwy 101, etc. It is not known at this time whether there will be a Concert at the Golf Course. Mr. Schulte will come to the April and May AVAC meetings with current planning information.

8. Community Liaisons:

a. Avila Beach Civic Association: Anne reports a "Spring Festival" on May 30th at the Community Building with support from the Yacht Club and Sea Life Center. All are invited 10:00 to 11:30 a.m.

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b. Avila Beach Community Foundation: Rick Cohen reminds that there is still time to register for the Health Symposium on April 6th at the Community Center. \$10.00 for all sessions and lunch. The new telescope at the Pier has been dedicated and is in active use.

c. Port San Luis: Steve McGrath says dredging continues. The water taxi is free. The February 28th Parking Management meeting provided updated information. It will be presented to the Port Commission on March 26th. Comments are actively solicited. Additional copies of the Plan are available at the Port office and can be sent on-line with a request to Steve. He will present the Plan at our April AVAC meeting.

d. PG&E/Diablo Canyon: Eric Daniels is a new Government Relations hire. He reports that the refueling/upgrades is almost complete and that workers will be leaving in the next two weeks.

9. New Business: None.

10. AVAC Committees:

a. Land Use: no report.

b. Diablo: Ken Thompson thanks Cal Poly Professor Richard Gearhart for help with making videos of NRC meetings available to the public. Contact Ken for more information. He announces an "Invitation Only" meeting at 6 p.m. before our regular AVAC meeting on April 8th. It will be a "meet and greet" session with Ed Halpin and Barry Allen of PG&E, and open ONLY to AVAC members. Food will be provided. An invitation will follow.

c. Port: See 8c. above.

d. Avila Beach: Anne says the main issue is the Tour impact in Avila.

e. San Luis Bay Estates: Bob Pusanik reports hiring more security for the race days.

f. Avila Valley: no report.

g. See Canyon: no report, but Denise brought oranges...thanks!!.

h. Squire Canyon: no report...no representative!!

i. Bob Jones Trail: Julia reports a meeting with Shaun Cooper (Parks) re: the draft EIR expected shortly (it is back for "tweaking" regarding farmland issues). The construction poles requested by AVAC are being sought. It will come to AVAC as part of the review process, which is 45 days. Council members want a 60-day review period and ask Supervisor Hill to intercede with Parks for this extension. **Action: AVAC requests that Supervisor Hill work with Parks to extend the comment period to 60 days, rather than 45 days. Passed unanimously.**

11. Next meeting: Monday, April 8, 2013 at 7:00 p.m.

12. The meeting was adjourned at 9:16 p.m.

Respectfully submitted,

Anne M. Brown, Secretary

Sent By: ABCSD;

5957623; **2-46**

Mar-27 8:44AM;

Page 1/1



SAN LUIS OBISPO COUNTY
DEPARTMENT OF PLANNING AND BUILDING

THIS IS A NEW PROJECT REFERRAL

DATE: 3/14/2012

TO: _____

FROM: Ryan Hostetter, Coastal Team

PROJECT DESCRIPTION: DRC2011-00069 SAN MIGUELITO PARTNERS- Conditional use permit for the Cave Landing Trail and parking lot improvements. (Development plan and variance) Site located at the end of Cave Landing Road in Avila Beach. APN: 076-231-062 and 064.

Return this letter with your comments attached no later than: 14 days from receipt of this referral. CACs please respond within 60 days. Thank you.

PART I - IS THE ATTACHED INFORMATION ADEQUATE TO COMPLETE YOUR REVIEW?

- YES (Please go on to PART II.)
- NO (Call me ASAP to discuss what else you need. We have only 10 days in which we must obtain comments from outside agencies.)

PART II - ARE THERE SIGNIFICANT CONCERNS, PROBLEMS OR IMPACTS IN YOUR AREA OF REVIEW?

- YES (Please describe impacts, along with recommended mitigation measures to reduce the impacts to less-than-significant levels, and attach to this letter)
- NO (Please go on to PART III)

PART III - INDICATE YOUR RECOMMENDATION FOR FINAL ACTION.

Please attach any conditions of approval you recommend to be incorporated into the project's approval, or state reasons for recommending denial.

IF YOU HAVE "NO COMMENT," PLEASE SO INDICATE, OR CALL

outside ABCSD - no comments applicable

Date 3/16/12

Name John Wallace

Phone 595-2664

COUNTY GOVERNMENT CENTER • SAN LUIS OBISPO • CALIFORNIA 93408 • (805)781-5600
EMAIL: planning@co.slo.ca.us • FAX: (805) 781-1242 • WEBSITE: <http://www.sloplanning.org>

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CAL FIRE
San Luis Obispo
County Fire Department

635 N. Santa Rosa • San Luis Obispo, CA 93405
Phone: 805-543-4244 • Fax: 805-543-4248
www.calfireslo.org

Robert Lewin, Fire Chief

Date: April 11, 2012

Subject: DRC2011-00069 – San Miguelito Partners

To Whom It May Concern: Ryan Hostetter, Coastal Team

CAL FIRE/San Luis Obispo County Fire Department has reviewed the referral information in regards to the proposed Conditional Use Permit for the Cave Landing Trailand parking lot improvements. The site is located at the end of Cave Landing Road in Avila Beach, CA. The project is located in State Responsibility Area within a "High" to "Very High" Fire Hazard Severity Zone for wildland fires. This project site has an approximate 5 to 10 minute response time from the nearest County Fire Station. The following requirements must be satisfied prior to project final.

- The roadway providing access from Road to the proposed project site must provide a minimum 20-foot edge to edge all-weather driving surface.
- Vertical clearance of 13'6" is required the entire length of the roadway.
- Roadways shall also provide for a 10 foot fuel modification zone on both sides.
- A fire engine turnaround is required at or near the gate
- A fuel reduction zone may be required around the project site. CAL FIRE/County Fire will work with the applicant and the San Luis Obispo County Department of Planning and Building to ensure adequate "defensible space" from wildland fire threat
- The existing and proposed gates must provide adequate means of emergency access. This department may require a "Knox" lock or keypad to ensure access during emergencies.

If I may provide additional assistance or information please do not hesitate to contact me at (805)543-4244.

Sincerely,

Anthony Ramirez
Lieutenant Chief/Fire Marshal

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August 15, 2012

File No.: 0916-01

SLO Co. File No. DRC2011-00069

County of San Luis Obispo
Parks Division
1087 Santa Rosa Street
San Luis Obispo, California 93408

Attention: Ms. Elizabeth Kavanaugh

Subject: Review of Engineering Geology Report

Project: Cave Landing Bike Path Improvements
End of Cave Landing Road (APN's 076-231-062 & 064)
San Luis Obispo County, California

- References:
1. Engineering Geology Report, Cave Landing Bike Path, Cave Landing Road – Bluff Drive, San Luis Obispo County, California, Project No. 04.6111.0038, prepared by Fugro Consultants, Inc., dated July 19, 2012.
 2. Geotechnical Report, Cave Landing Bike Path, Cave Landing Road – Bluff Drive, San Luis Obispo County, California, Project No. 3014.016, prepared by Fugro West, Inc., dated December 21, 2009.
 3. Project Improvement Plans Cave Landing Bike Path and Parking Lot Improvements (Preliminary Design Plans), Cave Landing Road, San Luis Obispo County, California, Sheets 0.0, 1.0, 2.0, 2.0.1, 2.1, 2.1.1, 2.2, 3.0 & 4.0 of Nine Sheets, Job No. 21107, prepared by Fall Creek Engineering, Inc., dated May 2011.

Dear Ms. Kavanaugh:

The purpose of this letter is to summarize our findings of a site reconnaissance performed on August 10, 2012; and review of the above referenced Engineering Geology Report (Reference 1).

The report was reviewed for conformance with section 23.07.084 of the San Luis Obispo County Coastal Land Use Ordinance (CZLUO) and the San Luis Obispo County Guidelines for Engineering Geology Reports. It is our opinion that the referenced report presents a comprehensive outline, modeling the site engineering geology and geologic constraints.

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August 15, 2012

File No.: 0916-01
SLO Co. File No. DRC 2010-00069

It is our opinion that the site geologic conditions are accurately modeled as represented. Our findings are congruent with the conclusions and recommendations of the engineering geology report prepared by Fugro Consultants, Inc., dated July 19, 2012.

It is our opinion that the project engineering geologic constraints have been adequately characterized and appropriate mitigative measures have been included for CEQA & CZLUO compliance. The recommended engineering geologic mitigations summarized in the Executive Summary (Section 1.0, pp. 1-3) of the project engineering geology report (Reference 1) should be included as conditions of approval prior to the issuance of building permits.

Please contact me at (831) 443-6970 or bpapurello@landseteng.com if you have questions regarding this matter.

Respectfully,
LandSet Engineers, Inc.



Brian Papurello, CEG 2226

Doc. No. 1208-112.REV

Copies: Addressee (2)
Ms. Ryan Hostetter, San Luis Obispo Co., Dept. of Planning & Building (1)
Ms. Lori E. Prentice, Fugro Consultants, Inc. (1)
SLO County Geology files

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August 15, 2012

File No.: 0916-01
SLO Co. File No. DRC 2010-00069**SAN LUIS OBISPO COUNTY ENGINEERING GEOLOGY REPORT REVIEW FORM**

The San Luis Obispo County Planning and Building Department uses the following checklist as part of reviewing engineering geology reports. Explanatory notes are appended and keyed to each numbered item.

Checklist item within consulting report	Adequately described: satisfactory	Additional data needed: unsatisfactory
1. Project Description	X	
2. SLO County Geological Study Area Map	X	
3. Site Location	X	
4. Regional Geologic Map	X	
5. Original engineering geologic map of site	X	
6. Aerial photograph interpretation	X	
7. Subsurface site geology	X	
8. Geologic cross sections	X	
9. Active faulting and coseismic deformation across the site	X	
10. Landslides	X	
11. Flooding, severe erosion, deposition	X	
12. On-site septic systems	N/A	
13. Hydrocollapse of alluvial fan soils	X	
14. Evaluation of historical seismicity and regional faults	X	
15. Characterize and classify geologic site class	X	
16. Probabilistic evaluation of earthquake ground motion	X	
17. Peak ground acceleration for MCE levels of ground motion	X	
18. Site coefficients F_a & F_v and spectral accelerations $S_1, S_1, S_{M5}, S_{M1}, S_{D5}$ & S_{D1}	X	
19. Geologic setting for liquefaction analysis	X	
20. Liquefaction methodology	N/A	
21. Bluff erosion	X	
22. Tsunami or seiche potential	X	
23. Expansive soil	X	
24. Naturally occurring asbestos	X	
25. Radon and other hazardous gasses	X	
26. Geologic constraints anticipated during grading operations	X	
27. Areas of cut and fill, preparation of the ground, and depth of removals	N/A	
28. Subdrainage plans for groundwater	N/A	
29. Final grading report and as-built map	N/A	
30. Summary sheet	X	
31. Age of report	X	
32. Engineering geology report signed by CEG	X	

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Northern Chumash Tribal Council

A Native American Corporation - NorthernChumash.org
67 South Street, San Luis Obispo, CA 93401 805-801-0347

Elizabeth Kavanaugh
Parks Planner,
San Luis Obispo County Parks
Ph. (805)781-4089

October 21, 2011

Re: Cave Landing Trail

Dear Elizabeth,

The Northern Chumash Tribal Council (NCTC) would like to take this opportunity to thank you personally for the efforts that you have given to Native American Meaningful Consultation, also we want to thank County Parks of San Luis Obispo for allowing you to work with NCTC through many meetings and emails to come to an agreement for the improvement of the trail from Sunset Palisades to Cave Landing, an Ancient Chumash Sacred Place located south of Avila Beach, California.

NCTC is in agreement with the Phase III data recovery for the portion of the Sacred Site that the new trail will impact, we are also in agreement with the placement of the trail, minimizing impact to the Sacred Site.

NCTC looks forward to continuing working with you and County Parks to see this project completed in a good way, for all to enjoy.

Be Well,

Fred Collins
Tribal Administrator
NCTC

ENVIRONMENTAL & LAND-USE CONSULTING
EDUCATIONAL SERVICES TEACHING NATURE, NATIVE CULTURES &
FARMING

2-52



SAN LUIS OBISPO COUNTY
DEPARTMENT OF PUBLIC WORKS

Paavo Ogren, Director

County Government Center, Room 207 • San Luis Obispo CA 93408 • (805) 781-5252

Fax (805) 781-1229

email address: pwd@co.slo.ca.us

MEMORANDUM

Date: March 23, 2012
To: Ryan Hostetter, Project Manager
From: Tim Tomlinson, Development Services

**Subject: Public Works Comments on the Cave Landing Trail and Parking Lot Plan
Conditional Use Permit DRC2011-00069**

Thank you for the opportunity to provide information on the proposed subject project. It has been reviewed by several divisions of Public Works, and this represents our consolidated response.

Public Works Comments:

1. The existing trail is within the County Maintained portion of the Cave Landing Road right of way which should be vacated.
2. The proposed restroom and tables will require an encroachment permit for them to be placed and remain within the County maintained road right-of-way.

Recommended Project Conditions of Approval:

Drainage

1. **At the time of application for construction permits**, the applicant shall submit a complete erosion and sedimentation control plan for review and approval in accordance with Title 23.05.
 - a. **On-going condition of approval (valid for the life of the project)**, the project shall comply with the requirements of the National Pollutant Discharge Elimination System Phase I and / or Phase II storm water program and the County's Storm Water Pollution Control and Discharge Ordinance, Title 8, Section 8.68 et sec.

Access

2. **At the time of application for construction permits**, the applicant shall secure an Encroachment Permit to allow the installation of the proposed restroom and tables and the removal and restoration to native of a portion of the existing trail that lies within the County maintained road right-of-way.
3. **After completion of the trail improvements and re-alignment**, the Applicant shall request vacation of the County maintained road right of way being superseded by the trail.

2-53



EDMUND G. BROWN JR.
GOVERNOR

STATE OF CALIFORNIA
GOVERNOR'S OFFICE of PLANNING AND RESEARCH
STATE CLEARINGHOUSE AND PLANNING UNIT



KEN ALEX
DIRECTOR

March 25, 2013

Elizabeth Kavanaugh
San Luis Obispo County
976 Osos Street, Rm 300
San Luis Obispo, CA 93408-2040

Subject: Cave Landing Trail
SCH#: 2013021043

Dear Elizabeth Kavanaugh:

The State Clearinghouse submitted the above named Mitigated Negative Declaration to selected state agencies for review. The review period closed on March 20, 2013, and no state agencies submitted comments by that date. This letter acknowledges that you have complied with the State Clearinghouse review requirements for draft environmental documents, pursuant to the California Environmental Quality Act.

Please call the State Clearinghouse at (916) 445-0613 if you have any questions regarding the environmental review process. If you have a question about the above-named project, please refer to the ten-digit State Clearinghouse number when contacting this office.

Sincerely,

Scott Morgan
Director, State Clearinghouse

2013 MAR 28 AM 9:48
GENERAL SERVICES

1400 10th Street P.O. Box 3044 Sacramento, California 95812-3044
(916) 445-0613 FAX (916) 323-3018 www.opr.ca.gov

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Document Details Report
State Clearinghouse Data Base

SCH# 2013021043
Project Title Cave Landing Trail
Lead Agency San Luis Obispo County

Type MND Mitigated Negative Declaration

Description A request by the County of San Luis Obispo General Services Agency-Parks for the: 1) construction of a bike/pedestrian trail of approximately 1,800 linear feet long and approximately 12 feet wide. Approximately 800 feet of this proposed trail is located within the abandoned road segment of Cave Landing Road. This trail will be made of decomposed granite or similar permeable surface and will require removal of approximately 800 linear feet of existing abandoned road pavement. A 30 foot span bridge will cross a natural drainage way; 2) formalization of the Pirates' Cove parking lot by leveling, resurfacing with asphalt, landscaping, and providing 35 parking spaces; 3) installation of drainage improvements of vegetated bio-swales and two level spreaders in the parking lot area; 4) Improvement of the existing pedestrian trail from the parking lot to Pirates Cove beach including: a four foot wide trail; additional water bars for drainage; stairs to the beach; and rails or fencing as necessary; 5) construction of accessory facilities including a waterless vault restroom, picnic tables, benches, garbage cans, and interpretive signs, and 6) regular maintenance of these facilities. This project will also require a variance of the Bluff Top Setback and Development on Slopes of 30 percent standards and a waiver of the fencing and screening standard for side and rear setbacks. This project will result in approximately 700 cubic yards of ground disturbance, on two parcels totaling approximately 53 acres.

Lead Agency Contact

Name	Elizabeth Kavanaugh		
Agency	San Luis Obispo County		
Phone	805 781 4809	Fax	
email			
Address	976 Osos Street, Rm 300		
City	San Luis Obispo	State CA	Zip 93400-2040

Project Location

County	San Luis Obispo		
City			
Region			
Lat / Long	35° 10' 31" N / 120° 43' 2" W		
Cross Streets	Dead end of Cave Landing Rd, 3,000 feet south of Avila Beach Drive		
Parcel No.	072-231-062, 064		
Township	Range	Section	Base

Proximity to:

Highways	
Airports	
Railways	
Waterways	San Luis Creek
Schools	
Land Use	Recreation

Project Issues Aesthetic/Visual; Air Quality; Archaeologic-Historic; Biological Resources; Coastal Zone; Drainage/Absorption; Flood Plain/Flooding; Forest Land/Fire Hazard; Geologic/Seismic; Noise; Population/Housing Balance; Public Services; Recreation/Parks; Traffic/Circulation; Water Quality; Wildlife; Landuse

Note: Blanks in data fields result from insufficient information provided by lead agency.

2-55

Document Details Report
State Clearinghouse Data Base

Reviewing Agencies Resources Agency; California Coastal Commission; Department of Fish and Wildlife, Region 4; Office of Historic Preservation; Department of Parks and Recreation; Department of Water Resources; Caltrans, District 5; Air Resources Board, Transportation Projects; Regional Water Quality Control Board, Region 3; Native American Heritage Commission; State Lands Commission

Date Received 02/15/2013 *Start of Review* 02/19/2013 *End of Review* 03/20/2013

Note: Blanks in data fields result from insufficient information provided by lead agency.

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NEGATIVE DECLARATION & NOTICE OF DETERMINATION

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

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

2013 FEB 20 PM 12:34

ENVIRONMENTAL DETERMINATION NO. ED10-016

DATE: February 21, 2013

PROJECT/ENTITLEMENT: Cave Landing

APPLICANT NAME: County of SLO General Services Agency - Parks
ADDRESS: 1087 Santa Rosa St., San Luis Obispo, CA 93408
CONTACT PERSON: Elizabeth Kavanaugh

Telephone: 805-781-4089

PROPOSED USES/INTENT: A request by the County of San Luis Obispo General Services Agency-Parks for the: 1) construction of a bike/pedestrian trail of approximately 1,800 linear feet long and approximately 12 feet wide. Approximately 800 feet of this proposed trail is located within the abandoned road segment of Cave Landing Road. This trail will be made of decomposed granite or similar permeable surface and will require removal of approximately 800 linear feet of existing abandoned road pavement. A 30 foot span bridge will cross a natural drainage way; 2) formalization of the Pirates' Cove parking lot by leveling, resurfacing with asphalt, landscaping, and providing 35 parking spaces; 3) installation of drainage improvements of vegetated bio-swales and two level spreaders in the parking lot area; 4) Improvement of the existing pedestrian trail from the parking lot to Pirates Cove beach including: a four foot wide trail; additional water bars for drainage; stairs to the beach; and rails or fencing as necessary; 5.) construction of accessory facilities including a waterless vault restroom, picnic tables, benches, garbage cans, and interpretive signs, and 6) regular maintenance of these facilities. This project will also require a variance of the Bluff Top Setback and Development on Slopes of 30 percent standards and a waiver of the fencing and screening standard for side and rear setbacks. This project will result in approximately 700 cubic yards of ground disturbance, on two parcels totaling approximately 53 acres.

LOCATION: The project is located at the south end of Cave Landing Road, approximately 3,000 feet south of the intersection of Cave Landing Road and Avila Beach Drive, within the community of Avila Beach, in the San Luis Bay (Coastal) planning area.

LEAD AGENCY: County of San Luis Obispo
Dept of Planning & Building
976 Osos Street, Rm. 200
San Luis Obispo, CA 93408-2040
Website: <http://www.sloplanning.org>

OTHER POTENTIAL PERMITTING AGENCIES: California Department of Fish and Game

STATE CLEARINGHOUSE REVIEW: YES NO

ADDITIONAL INFORMATION: Additional information pertaining to this environmental Determination may be obtained by contacting the above Lead Agency address of (805)781-5600.

COUNTY "REQUEST FOR REVIEW" PERIOD ENDS AT 4:30 p.m. (2 wks from above DATE)

30-DAY PUBLIC REVIEW PERIOD begins at the time of public notification

2-57



NEGATIVE DECLARATION & NOTICE OF DETERMINATION

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

Notice of Determination		State Clearinghouse No. _____	
This is to advise that the San Luis Obispo County _____ as <input type="checkbox"/> <i>Lead Agency</i>			
<input type="checkbox"/> <i>Responsible Agency</i> approved/denied the above described project on _____, and has made the following determinations regarding the above described project:			
The project will not have a significant effect on the environment. A Negative Declaration was prepared for this project pursuant to the provisions of CEQA. Mitigation measures and monitoring were made a condition of approval of the project. A Statement of Overriding Considerations was not adopted for this project. Findings were made pursuant to the provisions of CEQA.			
This is to certify that the Negative Declaration with comments and responses and record of project approval is available to the General Public at the 'Lead Agency' address above.			
Elizabeth Kavanaugh		County of San Luis Obispo	
Signature	Project Manager Name	Date	Public Agency

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Steven McMasters
Co. Department of Planning & Building
County Government Center, Room 310
San Luis Obispo, CA 93408
(805) 781-5096

Elizabeth Kavanaugh
Co. General Services Agency- Parks
County Government Center
San Luis Obispo, CA 93408
(805) 781-4809

This proposed Mitigated Negative Declaration has been issued by:

2.8.2013
Date

Ellen Carroll
Ellen Carroll, Environmental Coordinator
County of San Luis Obispo

The project proponent, who agrees to implement the mitigation measures for the project, is:

2-8-13
Date

Janette O. Pell
Janette Pell, General Services Agency Director
County of San Luis Obispo

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Initial Study Summary – Environmental Checklist

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

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Project Title & No. County Parks -Cave Landing Trail Project ED10-016

ENVIRONMENTAL FACTORS POTENTIALLY AFFECTED: The proposed project could have a "Potentially Significant Impact" for at least one of the environmental factors checked below. Please refer to the attached pages for discussion on mitigation measures or project revisions to either reduce these impacts to less than significant levels or require further study.

Table with 3 columns of environmental factors and checkboxes. Checked items include: Aesthetics, Air Quality, Biological Resources, Cultural Resources, Geology and Soils, Hazards/Hazardous Materials, Noise, Population/Housing, Public Services/Utilities, Land Use, and Transportation/Circulation.

DETERMINATION: (To be completed by the Lead Agency)

On the basis of this initial evaluation, the Environmental Coordinator finds that:

- Five options for environmental determination with checkboxes. The second option is checked: 'Although the proposed project could have a significant effect on the environment, there will not be a significant effect in this case because revisions in the project have been made by or agreed to by the project proponent. A MITIGATED NEGATIVE DECLARATION will be prepared.'

Elizabeth Kavanaugh Signature Date 2-8-13

Ellen Carroll, Environmental Coordinator 2/8/13

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Reviewed by (Print)	Signature	(for)	Date
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Project Environmental Analysis

The County's environmental review process incorporates all of the requirements for completing the Initial Study as required by the California Environmental Quality Act (CEQA) and the CEQA Guidelines. The Initial Study includes staff's on-site inspection of the project site and surroundings and a detailed review of the information in the file for the project. In addition, available background information is reviewed for each project. Relevant information regarding soil types and characteristics, geologic information, significant vegetation and/or wildlife resources, water availability, wastewater disposal services, existing land uses and surrounding land use categories and other information relevant to the environmental review process are evaluated for each project. Exhibit A includes the references used, as well as the agencies or groups that were contacted as a part of the Initial Study. The Environmental Division uses the checklist to summarize the results of the research accomplished during the initial environmental review of the project.

Persons, agencies or organizations interested in obtaining more information regarding the environmental review process for a project should contact the County of San Luis Obispo Environmental Division, Rm. 200, County Government Center, San Luis Obispo, CA, 93408-2040 or call (805) 781-5600.

A. PROJECT

DESCRIPTION: A request by the County of San Luis Obispo General Services Agency- Parks for the: 1) construction of a bike/pedestrian trail of approximately 1,800 linear feet long and approximately 12 feet wide. Approximately 800 feet of this proposed trail is located within the abandoned road segment of Cave Landing Road. This trail will be made of decomposed granite or similar permeable surface and will require removal of approximately 800 linear feet of existing abandoned road pavement. A 30 foot span bridge will cross a natural drainage way; 2) formalization of the Pirates' Cove parking lot by leveling, resurfacing with asphalt, landscaping, and providing 35 parking spaces; 3) installation of drainage improvements of vegetated bio-swales and two level spreaders in the parking lot area; 4) Improvement of the existing pedestrian trail from the parking lot to Pirates Cove beach including: a four foot wide trail; additional water bars for drainage; stairs to the beach; and rails or fencing as necessary; 5.) construction of accessory facilities including a waterless vault restroom, picnic tables, benches, garbage cans, and interpretive signs, and 6) regular maintenance of these facilities. This project will also require a variance of the Bluff Top Setback and Development on Slopes of 30 percent standards and a waiver of the fencing and screening standard for side and rear setbacks. This project will result in approximately 700 cubic yards or 1.84 acres of ground disturbance on in mostly disturbed areas on two parcels totaling approximately 53 acres. The project is located at the south end of Cave Landing Road, approximately 3,000 feet south of the intersection of Cave Landing Road and Avila Beach Drive, within the community of Avila Beach, in the San Luis Bay (Coastal) planning area.

The site has a history of informal recreational use including a parking lot, trails and coastal access. The proposed project will formalize this use and provide improvements that will provide necessary amenities (e.g. bathroom) and enhance current uses (e.g. trails). For decades there have been and still are several existing volunteer trails on this site, some that provide coastal access. The existing parking lot was created as a result of an oil spill clean-up effort in the 1970's. In addition to the recreational use of this site, Cave Landing Road was a through road that connected Avila Beach to Pismo Beach. This road was closed in the 1970's because a land slide made the road unsafe for vehicle traffic. This closed road has been used as an informal trail ever since. In acknowledgement of this use the County's Park and Recreation Element designated this as a proposed connector trail and part of the California Coastal Trail.

Development on this site presents many challenges to development and maintenance: an active land

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slide, subsurface resources, steep slopes that collect a substantial amount of the areas storm water runoff. Several designs were considered before the proposed project was selected because it was the most sensitive to these site specific features.

ASSESSOR PARCEL NUMBER(S): 076-231-062 and 064

Latitude: 35 degrees 10 ' 31 " N Longitude: 120 degrees 43 ' 2 " W SUPERVISORIAL DISTRICT # 3

B. EXISTING SETTING

PLANNING AREA: San Luis Bay(Coastal), Avila Beach

LAND USE CATEGORY: Residential Rural

COMBINING DESIGNATION(S): Coastal Appealable Zone , Geologic Study
, Archaeologically Sensitive

EXISTING USES: Undeveloped

TOPOGRAPHY: Steeply sloping

VEGETATION: Grasses

PARCEL SIZE: Two parcels totaling 53.4acres

SURROUNDING LAND USE CATEGORIES AND USES:

<i>North: Residential Rural, Open Space; undeveloped</i>	<i>East: Rural Lands, City of Pismo Beach; undeveloped, residential</i>
<i>South: ; Pacific Ocean</i>	<i>West: Open Space, Industrial; industrial uses (old Avila Tank Farm)</i>

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C. ENVIRONMENTAL ANALYSIS

During the Initial Study process, several issues were identified as having potentially significant environmental effects (see following Initial Study). Those potentially significant items associated with the proposed uses can be minimized to less than significant levels.

COUNTY OF SAN LUIS OBISPO
INITIAL STUDY CHECKLIST

1.	AESTHETICS - Will the project:	Potentially Significant	Impact can & will be mitigated	Insignificant Impact	Not Applicable
a)	Create an aesthetically incompatible site open to public view?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
b)	Introduce a use within a scenic view open to public view?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c)	Change the visual character of an area?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
d)	Create glare or night lighting, which may affect surrounding areas?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
e)	Impact unique geological or physical features?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
f)	Other: _____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Setting. This site is characterized as vacant land with steep slopes, a parking lot, and pedestrian trails along the bluffs. Large homes in the City of Pismo Beach are located directly to the south of the site. To the north is Ontario Ridge and open space. The Pacific Ocean is to the south, to the east the large homes of Pismo Beach and to the west the abandoned Avila Tank Farm (formerly Unocal Tank Farm) with Avila Golf course and the community of Avila Beach beyond. The visual character of the immediate area is varied with the existing Pirate's Cove parking lot, hillside homes of Pismo Beach and the abandon oil tank farm near or on the site. However views of the Pacific Ocean remain a prominent feature of the site.

Impact. Cave Landing Road, a public road, connects to the existing parking lot. The proposed recreation area (parking and trail) connects to this road. The newly constructed section of the bike/pedestrian trail, the associated three to four foot high wood split rail fencing, vault bathrooms, benches, trash cans and bollards will be visible from Cave Landing Road. The pedestrian trail to the beach will remain within the footprint of existing trails with the exception of the proposed stairs to the beach. No lighting is proposed. The project elements are considered consistent with the expectation of a recreational area and will likely reduce the volunteer trails and associated erosion and vegetation loss that currently occurs.

Much of this project will be visible from Cave Landing Road as it is today. The parking lot, the bike/pedestrian trail and the pedestrian trail to the beach, currently existing and will not change the visual character of the area. The bathroom and other amenities are expected at a recreational area. The bathroom may be seen from trails and Cave Landing Road and the stairs to the beach will be seen from Pirate's Cove beach area. Grading cuts associated with the bike trail will be visible. This project will not silhouette against any ridgelines as viewed from public roadways, parks, or the ocean.

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Mitigation/Conclusion. To mitigate the visual impact of the proposed trail's grading cuts County General Service Agency shall revegetate these cuts with erosion control plantings as soon as construction is complete. The vault restroom building and stairs to the beach shall be painted or made of materials that match the surrounding natural environment. Incorporation of these mitigations will bring the visual impact of this project to less than significant.

2. AGRICULTURAL RESOURCES

- Will the project:

	Potentially Significant	Impact can & will be mitigated	Insignificant Impact	Not Applicable
a) Convert prime agricultural land to non-agricultural use?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Impair agricultural use of other property or result in conversion to other uses?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
c) Conflict with existing zoning or Williamson Act program?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d) Other: _____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Setting. Project Elements. The following area-specific elements relate to the property's importance for agricultural production:

Land Use Category: Rural Residential

Historic/Existing Commercial Crops: None

State Classification: Not prime farmland

In Agricultural Preserve? No

Under Williamson Act contract? No

The soil type(s) and characteristics on the subject property include: *[list soil types]*

Diablo and Cibo clays (15 - 30 % slope).

Diablo. This moderately sloping clayey soil is considered very poorly drained. The soil has moderate erodibility and high shrink-swell characteristics, as well as having potential septic system constraints due to: steep slopes, slow percolation. The soil is considered Class IV without irrigation and Class is not rated when irrigated.

Cibo. This moderately sloping clayey soil is considered very poorly drained. The soil has moderate erodibility and high shrink-swell characteristics, as well as having potential septic system constraints due to: steep slopes, shallow depth to bedrock, slow percolation. The soil is considered Class IV without irrigation and Class is not rated when irrigated.

Lopez very shaly clay loam (30 - 75% slope). This steeply to very steeply sloping, shallow gravelly fine loamy soil is considered very poorly drained. The soil has low erodibility and low shrink-swell characteristics, as well as having potential septic system constraints due to: shallow depth to bedrock. The soil is considered Class VII without irrigation and Class is not rated when irrigated.

Nacimiento-silty clay loam (30 - 50 % slope). This steeply sloping fine loamy soil is considered not well drained. The soil has moderate erodibility and moderate shrink-swell characteristics, as well as having potential septic system constraints due to: steep slopes, shallow depth to bedrock, slow percolation. The soil is considered Class VI without irrigation and Class is not rated when irrigated.

Still gravelly sandy clay loam (15 - 25% slope). This moderately sloping, gravelly fine loamy soil is

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considered moderately drained. The soil has moderate erodibility and moderate shrink-swell characteristics, as well as having potential septic system constraints due to: steep slopes, slow percolation. The soil is considered Class IV without irrigation and Class is not rated when irrigated.

Impact/Conclusion. The project is located in a non-agricultural area with no agricultural activities occurring on the property or immediate vicinity. Before the town of Avila was developed this site was used for growing orchards and grazing cattle. A recent lease between the property owner and a neighbor was been granted in July 2012 for grazing over the parking lot parcel. No cattle are located on the parcel and grazing is not anticipated on this intensive informal recreational area that includes a parking lot, street, trails and coastal access. According to the County Agricultural Commissioner's office this site and area has no recent history of agricultural use. In addition, San Luis Obispo County is not a free range county, which means that this site would need to be fenced and water brought to the site before it would be suitable for grazing. Finally based on the historic trail, coastal access and recreation use of the site, the Agriculture Commissioners office stated that it is not advisable to combine cattle with the intensive level of cars and people who use this site (personal communication with Lynda Auchinachie; County Agricultural Dept. on September 13, 2012). Finally, there is a recorded irrevocable offer of dedication this site to County Parks. Prior to construction of this project, County Parks will accept this offer and the grazing lease will become invalid. No significant impacts to agricultural resources are anticipated.

3. AIR QUALITY - Will the project:	Potentially Significant	Impact can & will be mitigated	Insignificant Impact	Not Applicable
a) Violate any state or federal ambient air quality standard, or exceed air quality emission thresholds as established by County Air Pollution Control District?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Expose any sensitive receptor to substantial air pollutant concentrations?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c) Create or subject individuals to objectionable odors?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
d) Be inconsistent with the District's Clean Air Plan?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
e) Other: _____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Setting. The county's CZLUO (section 23.060.080) includes air quality provisions to include review by the Air Pollution Control district (APCS), as well as reduce odors. APCD had developed the 2009 CEQA Air Quality Handbook to evaluate project specific impacts and help determine if air quality mitigation measures are needed, or if potentially significant impacts could result. To evaluate long-term emissions, cumulative effects, and establish countywide programs to reach acceptable air quality levels, a Clean Air Plan has been adopted (prepared by APCD). The project is not within close proximity of the following facilities: heavy traveled freeways (greater than 100,000 vehicles), dry cleaners or gas stations.

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Wind Erodibility – The Natural Resources Conservation Service has rated most soils for potential loss due to wind erosion. Major factors affecting this erodibility potential included vegetation cover, climate, soil erodibility and certain soil characteristics (e.g. particle roughness). The rating system used by NRCS ranges between 1 and 8 where 1 is most erosive and 8 is least erosive. In some cases the soil is given an "unclassified rating". This project proposed to disturb soils that have been given a wind erodibility of 4 to 8, which is considered moderate to high.

Naturally Occurring Asbestos (NOA). Asbestos can occur naturally in certain rock formations, such as those that include serpentine or ultramafic rock. The State Air Resources Board considers asbestos a toxic contaminant. If asbestos is present within the soil underlying the project site, future grading and site disturbance activities would release the asbestos into the air, resulting in a potentially significant air quality impact.

This project site contains shallow bedrock, areas of fill, crushed siltstone and shallow siltstone with claystone bedrock. Based on the site specific geologic investigation of NOA, the potential for naturally occurring asbestos to be encountered at the project site is very low to nil. (Furgro 2009).

Impact.

As proposed the project will result in the disturbance of approximately 700 cubic yards of ground disturbance on an approximately 50 acre site. This will result in the creation of construction dust. Based on the Table 1-1 of the CEQA handbook, the project will result in less than 10 lbs./day of pollutants, which is below the thresholds warranting mitigation.

Greenhouse Gas Emissions

The California Air Resources Board (CARB), the Californian Environmental Protection Agency, and other governmental agencies with jurisdiction are in the process of developing guidelines and thresholds to address a project's cumulative contribution to greenhouse gas (GHG). Over the last few years, a series of related legislative acts have been made relating to this issue.

There are seven greenhouse gases, as follows, and are in order of their global warming potential: Carbon Dioxide, methane, Nitrous oxide, Chlorofluorocarbons, Hydrofluorocarbons, Perfluorocarbons, and sulfur hexafluoride.

Project GHG Impacts/Conclusion – As an interim effort until such time CARB formalizes a process for development to follow, the following is a qualitative discussion of the project's impacts, as well as measures to reduce the GHG production. The proposed project is generally limited to open space and recreational uses. The project ability to connect the city of Pismo Beach to the community of Avila Beach with a bicycle and pedestrian route could potentially reduce the number of vehicle trips between the two destinations that are currently made. Potential long term operation impacts related to the proposed project will be less than significant. Construction emissions would be relatively insignificant.

Mitigation/Conclusion. This project is consistent with the general level of development anticipated and projected by the clean air plan. Short term air quality impacts are expected to occur during project construction and grading. Mitigation measures are proposed to reduce those temporary impacts to a less than significant level. Those measures include but are not limited to testing and receiving an exemption from the Air Pollution Control District for naturally occurring asbestos, prohibition of developmental burning of material and dust mitigation during construction. For a full list of these measures see the mitigation summary tables at the end of this report.

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4. BIOLOGICAL RESOURCES - <i>Will the project:</i>	Potentially Significant	Impact can & will be mitigated	Insignificant Impact	Not Applicable
a) <i>Result in a loss of unique or special status species or their habitats?</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
b) <i>Reduce the extent, diversity or quality of native or other important vegetation?</i>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c) <i>Impact wetland or riparian habitat?</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d) <i>Introduce barriers to movement of resident or migratory fish or wildlife species, or factors, which could hinder the normal activities of wildlife?</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
e) <i>Other:</i> _____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Setting. The following are existing elements on or near the proposed project relating to potential biological concerns:

On-site Vegetation: non native grasses

Name and distance from blue line creek(s): Unnamed tributary to San Luis Obispo Creek runs at the edge of the property.

Habitat(s): Coast Live Oak forest

Site's tree canopy coverage: Approximately 0%.

The Natural Diversity Database (or other biological references) identified the following species potentially existing within approximately one mile of the proposed project:

Black-flowered figwort (*Scrophularia atrata*) List 1B

Black-flowered figwort (*Scrophularia atrata*) has been found on the property, 0.66 and 0.82 miles to the east and north east. This perennial herb is generally found growing on calcareous or diatomaceous soils in a closed-cone coniferous forest, chaparral, coastal dunes, coastal scrub, or riparian scrub areas at elevations between 10 and 500 meters (30 to 1,640 feet). It is a California endemic which has a blooming period of April-June. Black-flowered figwort is considered rare by the CNPS (List 1B, RED 2-2-3).

Hoover's bentgrass (*Agrostis hooveri*) List 1B

Hoover's bentgrass (*Agrostis hooveri*) has been found about 0.86 mile to the east. This perennial herb prefers sandy soils in open chaparral, cismontane woodland, and valley and foothill grassland area below the 600-meter (1,970-foot) elevation. The species blooming period is April-July. Hoover's bentgrass is considered rare by the California Native Plant Society (List 1B, RED 2-2-3).

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Pismo clarkia (*Clarkia speciosa* ssp. *immaculate*) FE, SR, List 1B

Pismo clarkia (*Clarkia speciosa* ssp. *immaculate*) has been found about 1, 1.3 and 1.5 mile to the east. This annual herb occurs on low, sandy hills (up to the 185 meter (600-foot) elevation) from Pismo to Edna Valley. Pismo clarkia populations are found in valley and foothill grasslands, and in the margins between chaparral and oak woodland communities near the coast. This species is listed as Federally endangered, State rare, and extremely rare by CNPS (List 1B, RED 3-3-3).

San Luis Obispo owl's-clover (*Castilleja densiflora* ssp. *obispoensis*) see Obispo Indian paintbrush.

Obispo indian paintbrush (*Castilleja densiflora* ssp. *obispoensis*) List 1B

Obispo Indian paintbrush (*Castilleja densiflora* ssp. *obispoensis*) has been found about 215 feet to the north. This annual herb is found in valley and foothill grasslands at elevations between 10 to 400 meters (30 to 1,315 feet). The blooming period is April. Obispo Indian paintbrush is considered rare by CNPS (List 1B, RED 2-2-3).

Wells's manzanita (*Arctostaphylos wellsii*) List 1B

Wells's manzanita (*Arctostaphylos wellsii*) has been found about 215 feet to the north. This evergreen shrub is found primarily on sandstone soils in closed cone coniferous forests and chaparral areas; in addition, individual shrubs have been observed growing in the shade of coast live oak trees on steep north-facing slopes. The typical flowering period is December through April. The species grows at elevations between 30 to 400 meters (100 to 1,315 feet). Wells's manzanita is considered rare by CNPS (List 1B, RED 2-3-3).

California red-legged frog (*Rana aurora draytonii*) FT

California red-legged frog (*Rana aurora draytonii*) has been found about 0.3 mile to the west. California red-legged frog is considered federally threatened. This species typically inhabits shorelines with extensive vegetation. The frog requires 11 to 20 weeks of permanent water for larval development.

Harbor Seal (*Phoca vitulina*) Sensitive data. Offshore rock or reef.

Found 300 feet to the south from project site.

Tidewater goby (*Eucyclogobius newberryi*) FE, CSC

Tidewater goby (*Eucyclogobius newberryi*) has been found about 0.42 mile to the north. They are considered federally endangered and a California Species of Special Concern. This species is found in brackish water habitats along the California coast. Microhabitats include shallow lagoons and lower stream reaches. The goby needs fairly still but not stagnant water with high oxygen levels. Suitable habitat within these streams range from the mouths to approximately 1.5 to 2.0 miles upstream. Tidewater goby is threatened by various factors including water quality degradation and low instream flows caused by water diversions and periodic drought.

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Western snowy plover (*Charadrius alexandrinus nivosus*) FT, CSC

Western snowy plover (*Charadrius alexandrinus nivosus*) has been found about 0.34 mile to the west. Western snowy plover is considered federally threatened and a California Species of Special Concern. The species inhabits sand beaches, salt pond levees, and shores of large alkali lakes. The plover needs sandy, gravelly, or friable soils for nesting.

Impact. A biological assessment (June 2010) and a spring botanical survey (May, 2012) was completed for this project by a qualified biologist at Padre Associates. The report concluded none of the plant species of concern were on the site except a small patch of Black-flowered figwort was found approximately 65 feet south of the pedestrian trail leading down to the beach. No evidence of special status fauna was found on the site, but the site and the immediate vicinity may provide habitat to six special-status wildlife species 1) San Diego dessert woodrat, 2) American badger, 3) Western snowy plover, 4) Southern sea otter, 5) Pacific harbor seal and the 6) California sea lion. In addition, birds of prey and other protected birds could occur on site.

San Diego dessert woodrat, American badger, Western snowy plover may forage or nest on the site. The Southern sea otter, Pacific harbor seal and the California sea lion are all found in the ocean near the project site. Birds and birds of prey may use the site for the purpose of foraging and nest building. The mobile nature of these animals makes their presence on a site are temporary and fleeting. However construction activities can destroy a nest if on-site. State and federal regulatory agencies protect bird nests within 250 to 500 feet around the nest and a nest could appear during any special status bird's nesting season.

It is likely that the improvements to the site will formalize and control public use and access and will help reduce the disturbance resulting of volunteer trails and unrestricted use.

Coast live oak woodland is present on the far northern section of one of the subject properties. This habitat is located approximately 1,000 feet from the trail alignment and at the top of, and on the north side of the ridge. The trail is located on the lower slope of the south facing ridge.

Mitigation/Conclusion. A pre-construction survey will be performed to ensure no special-status species or sensitive habitat is present at the time of construction. If a special status plant is found on site then avoidance of this plant is the preferred mitigation. The Black-flowered figwort shall be flagged prior to construction of the beach trail. If avoidance of special-status species or sensitive habitat is not possible restoration and/or relocation plan shall be implemented by a qualified biologist. These measures along with construction measures, monitoring and environmental sensitivity training for workers will reduce impacts to special-status species and sensitive habitat to a less than significant level.

5. CULTURAL RESOURCES - <i>Will the project:</i>	Potentially Significant	Impact can & will be mitigated	Insignificant Impact	Not Applicable
a) <i>Disturb pre-historic resources?</i>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b) <i>Disturb historic resources?</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
c) <i>Disturb paleontological resources?</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
d) <i>Other: _____</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Setting. The project is located in an area historically occupied by the Obispeno Chumash. No historic structures are present and no paleontological resources are known to exist in the area.

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Three cultural resource investigations have been conducted on this site (Gibson 1981, 2003 and SWCA 2010). These surveys identified cultural resources on the site including marine shell and lithic debris. In addition, it is known that the area has cultural importance to the Chumash people.

Impact. Construction activities including heavy construction will impact cultural resources of the site. In addition, a formalized trail may bring more people to this site. While the current unrestricted access to the area is extensive, new visitors could have an impact to cultural resources if they go off the formal trail.

Mitigation/Conclusion. CEQA requires that if cultural sites cannot be preserved in place, they shall be mitigated through excavation and analysis of the "scientifically consequential information from or about the resources" (Sec. 150026.4 C). Although cultural sites should first be avoided, or put into a conservation easement, they could also be capped to preserve the resource or go through a data recovery process as a final resort (if avoidance or capping is infeasible). This project has been redesigned to avoid much of the archeological site. The scale of the archeological site makes it so this project cannot avoid the entire site. Capping this site with fill will add additional weight to the sites landslide area, making this option infeasible. A Phase III data recovery with monitoring plan will be required. The Phase III study will include but not be limited to extracting the cultural remains (or a representative sampling depending on the significances and the number of different materials found), cataloging and dating the sample.

Fencing along the bike/pedestrian trail is required to discourage people from walking off the trail, while Interruptive panel(s) posted along the trail that describes the Chumash experience and/or history with the area will help educate the public. In addition, revegetation of areas exposed or disturbed during construction will limit visibility and public access to cultural resources. See the attached Mitigation Summary Table at the end of this report for specific mitigation measures that reduce impacts to cultural resources to a less than significant level.

6. GEOLOGY AND SOILS - <i>Will the project:</i>	Potentially Significant	Impact can & will be mitigated	Insignificant Impact	Not Applicable
a) <i>Result in exposure to or production of unstable earth conditions, such as landslides, earthquakes, liquefaction, ground failure, land subsidence or other similar hazards?</i>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b) <i>Be within a California Geological Survey "Alquist-Priolo" Earthquake Fault Zone"?</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
c) <i>Result in soil erosion, topographic changes, loss of topsoil or unstable soil conditions from project-related improvements, such as vegetation removal, grading, excavation, or fill?</i>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
d) <i>Change rates of soil absorption, or amount or direction of surface runoff?</i>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
e) <i>Include structures located on expansive soils?</i>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

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6. GEOLOGY AND SOILS - <i>Will the project:</i>	Potentially Significant	Impact can & will be mitigated	Insignificant Impact	Not Applicable
f) <i>Change the drainage patterns where substantial on- or off-site sedimentation/ erosion or flooding may occur?</i>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
g) <i>Involve activities within the 100-year flood zone?</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
h) <i>Be inconsistent with the goals and policies of the County's Safety Element relating to Geologic and Seismic Hazards?</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
i) <i>Preclude the future extraction of valuable mineral resources?</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
j) <i>Other: _____</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Setting

GEOLOGY - The following relates to the project's geologic aspects or conditions:

- Topography: to steeply sloping
- Within County's Geologic Study Area?: Yes
- Landslide Risk Potential: High
- Liquefaction Potential: Low
- Nearby potentially active faults?: Yes - Distance? runs through property
- Area known to contain serpentine or ultramafic rock or soils?: No
- Shrink/Swell potential of soil: Low to moderate
- Other notable geologic features? land slide on site

The project is within the Geologic Study area designation or within a high liquefaction area, and is subject to the preparation of a geological report per the County's Land Use Ordinance CZLUO section 23.07.084(c) to evaluate the area's geological stability. Geologic investigations have occurred on this property for the proposed project. Geological reports were conducted for the project (Fugro, 2009 and 2011 and 2012). These reports include review of geologic information by the contract County Geologist (Landset Engineers, Inc. Paparello)

DRAINAGE - The following relates to the project's drainage aspects:

- Within the 100-year Flood Hazard designation? No,
- Closest creek? unnamed tributary to San Luis Creek
- Distance? approximately 2000 feet north-west
- Soil drainage characteristics: Moderately drained to not well drained to poorly drained

For areas where drainage is identified as a potential issue, the Land Use Ordinance (LUO Sec. 22.52.080 or CZLUO Sec. 23.05.042) includes a provision to prepare a drainage plan to minimize potential drainage impacts. When required, this plan would need to address measures such as:

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constructing on-site retention or detention basins, or installing surface water flow dissipaters. This plan would also need to show that the increased surface runoff would have no more impacts than that caused by historic flows.

SEDIMENTATION AND EROSION – Soil type, amount of disturbance and slopes are key aspects to analyzing potential sedimentation and erosion issues. The project's soil types and descriptions are listed in the previous Agriculture section under "Setting". As described in the NRCS Soil Survey, the project's soil erodibility is as follows:

Soil erodibility: Low to moderate

When highly erosive conditions exist, a sedimentation and erosion control plan is required (LUO Sec. 22.52.090, CZLUO Sec. 23.05.036) to minimize these impacts. When required, the plan is prepared by a civil engineer to address both temporary and long-term sedimentation and erosion impacts. Projects involving more than one acre of disturbance are subject to the preparation of a Storm Water Pollution Prevention Plan (SWPPP), which focuses on controlling storm water runoff. The Regional Water Quality Control Board is the local extension who monitors this program.

LANDSLIDE HAZARDS – The project site contains known mapped landslides, however the design of the project has included avoidance and setbacks from these known landslides area. Slope instability may result from natural processes, such as erosion of the toe of slope or by ground shaking caused by earthquake. Slopes can also be modified artificially by grading or by addition of water or structures. Development on a slope can substantially increase the frequency and extent to potential slope failures. Steep unstable slopes in weak soil/bedrock typically characterize areas susceptible to landslides and record of slope failure. There are numerous factors that affect the stability of a slope: slope height and steepness, material composition, material strength, structural geologic relationships, ground water level and level of seismic shaking.

Landslides occur when a portion of a hillside becomes too weak to support its own weight. Some landslides move slowly and cause damage gradually, whereas other move so rapidly that they can destroy property and take lives suddenly and unrepentantly. Gravity is the force driving landslide movement, factors include: saturation by water, steepening, of slopes caused by erosion or construction, freeze/thaw cycles, earthquake shaking and volcanic eruptions,

Landslides are generally classified into slides, falls and flows. Slides move as large bodies by slipping along one or more failure surfaces. Falls of rock or soil originate on cliff faces or steep slopes. Flows are landslides that behave like fluids. Mudflows involve wet mud and debris and earthflows involve wet, claylike materials.

Area that are generally prone to landslide hazards include: previous landslide locations, the bases of steep slopes, the bases of drainage channels, and developed hillsides where leach-field septic systems are used. Areas that are typically considered safe from landslide include area that have not moved in the past; relatively flat-lying areas away from sudden changes in slope; and areas at the top of along ridges, setback from the tops of slopes.

Site characteristics as outlined in the Fugro's Geological and Geotechnical Engineering reports are suitable for the proposed project design. Items specifically discussed include land slide, faulting, bluff retreat, drainage, excavation and temporary slopes. This site contains areas of fill, clay and sandy silt and shallow bedrock made of soft siltstone. Faults do exist in the area (San Miguelito and Hogri), but they are not anticipated to negatively impact the project. The soils do not create liquefaction issues, and the site is not within tsunami inundation zone. No subsurface water was present during examination of test pits on site. The only structure proposed near the land slide area is a span bridge over a drainage gully approximately 500 feet from the parking lot.

Impact. As proposed, the project will result in the disturbance of approximately 700 cubic yards.

Landslide: Geologic investigations have been conducted to evaluate known on-site hazards such as: landslides, steep slopes. This project is outside of the active landslide, Pirates Cove Land Slide

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Complex, but the bike trail is within the 120 foot setback from this landslide. The presence of a landslide in the area along with the needed grading on slopes of 30% indicates a potential for slope instability if appropriate measures are not undertaken. In addition, a possible sinkhole may be located near the bike trailhead at Cave Landing Road.

Drainage: The project area collects runoff water from the surrounding steep slopes.

Mitigation.

Based on the conclusions and recommendations of the geologic investigations, the project is proposed to be mitigated for geologic impacts. Mitigation measures; include requirements for site preparation, grading, trenching, drainage and maintenance.

Landslide: To reduce impact of this project to the landslide potential of the site special attention shall be paid to the grading and minimize fill on the site. Specific measures are listed at the end of this report and include grading techniques and expanding the span of bridge.

Drainage: The use of bio-swales and level spreaders shall be sized as such that water flowing out of the spreaders discharges over an area that is similar to the natural flow of water on site and does not pond in localized areas. An erosion and sedimentation control plan that is in compliance with Title 23.05, on-going compliance with the requirement of the of the National Pollutant Discharge Elimination System and the County Storm Water Pollution Control and Drainage Ordinance , Title 8 Section 8.68 et sec is required.

This project does not include habitable structures the trail and bridge could be relocated in the event of a landslide or bluff erosion. To ensure public safety if landslide potential is perceived (heavy rains, wet winters and/or earthquakes) the recreation area will be closed. A list of specific measures are listed in Table A at the end of this report.

With implementation of these measures the project impacts to geology and soils is insignificant.

7. HAZARDS & HAZARDOUS MATERIALS - Will the project:	Potentially Significant	Impact can & will be mitigated	Insignificant Impact	Not Applicable
a) Result in a risk of explosion or release of hazardous substances (e.g. oil, pesticides, chemicals, radiation) or exposure of people to hazardous substances?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
b) Interfere with an emergency response or evacuation plan?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c) Expose people to safety risk associated with airport flight pattern?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d) Increase fire hazard risk or expose people or structures to high fire hazard conditions?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
e) Create any other health hazard or potential hazard?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

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7. HAZARDS & HAZARDOUS MATERIALS - Will the project:	Potentially Significant	Impact can & will be mitigated	Insignificant Impact	Not Applicable
f) Other: _____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Setting. The project is not located in an area of known hazardous material contamination. The project is within a high severity risk area for fire. The project is not within the Airport Review area. The southern edge of the subject project is within the 100-year Flood Hazard Combining Designation (FH).

With regards to potential fire hazards, this project is within the high Fire Hazard Severity Zone. Based on the County's fire response time map, it will take approximately 5 to 10 minutes to respond to a call regarding fire or life safety. Refer to the Public Services section for further discussion on Fire Safety impacts.

The project is located within the setback of an active landslide as discussed in the Geology and Soils section of this report.

Impact. The project does not propose the use of hazardous materials. The project does not present a significant fire safety risk because it does not include buildings or homes. The trails and parking lot can be closed if a wildfire were to occur here. The creation of the pedestrian/bicycle trail will provide a second exit from the area if a wildfire were to occur. The Flood Hazard from a stream that is 3,400 feet from the nearest project component will not affect this project. The project does present a significant land slide safety risk.

Mitigation/Conclusion. This project does not include habitable structures but to ensure public safety if landslide potential is perceived (heavy rains, wet winters and/or earthquakes) the recreation area will be closed as identified in the Geology and Soils section of this report. No other significant impacts to hazards or hazardous materials are anticipated, and no mitigation measures are necessary.

8. NOISE - Will the project:	Potentially Significant	Impact can & will be mitigated	Insignificant Impact	Not Applicable
a) Expose people to noise levels that exceed the County Noise Element thresholds?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
b) Generate increases in the ambient noise levels for adjoining areas?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c) Expose people to severe noise or vibration?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
d) Other: _____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Setting. The project is not within close proximity of loud noise sources, and will not conflict with any sensitive noise receptors (e.g., residences). Based on the Noise Element's projected future noise generation from known stationary and vehicle-generated noise sources, the project is within an

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acceptable threshold area.

Impact. The project is not expected to generate loud noises as pedestrian and bicycle riding are generally quiet activities. The parking lot and vehicles that park there already exist and resurfacing the parking lot and the trail to beach will not increase noise levels. The project will include construction equipments that could result in the temporary noise increases that may impact adjacent residences or animals on site and in the ocean.

Mitigation/Conclusion. To mitigate construction noise impacts, construction activities such that the noise or vibration creates a disturbance will be limited to the hours of 7:00 a.m. to 7:00 p.m. in accordance with the requirements of the CZLUO. In addition, Heavy equipment that creates noise levels above 85 dB shall not be used for project activities along the shoreline during installation

9. POPULATION/HOUSING - <i>Will the project:</i>	Potentially Significant	Impact can & will be mitigated	Insignificant Impact	Not Applicable
a) <i>Induce substantial growth in an area either directly or indirectly (e.g., through projects in an undeveloped area or extension of major infrastructure)?</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) <i>Displace existing housing or people, requiring construction of replacement housing elsewhere?</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c) <i>Create the need for substantial new housing in the area?</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d) <i>Use substantial amount of fuel or energy?</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
e) <i>Other:</i> _____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Setting In its efforts to provide for affordable housing, the county currently administers the Home Investment Partnerships (HOME) Program and the Community Development Block Grant (CDBG) program, which provides limited financing to projects relating to affordable housing throughout the county. The County's Inclusionary Housing Ordinance requires provision of new affordable housing in conjunction with both residential and nonresidential development and subdivisions.

Impact. The project will not result in a need for a significant amount of new housing, and will not displace existing housing. The trails and parking lot refurbishing does not have the potential to increase population.

Mitigation/Conclusion. No significant population and housing impacts are anticipated. No mitigation measures are necessary.

10. PUBLIC SERVICES/UTILITIES - <i>Will the project have an effect upon, or result in the need for new or altered public services in any of the following areas:</i>	Potentially Significant	Impact can & will be mitigated	Insignificant Impact	Not Applicable
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10. PUBLIC SERVICES/UTILITIES - <i>Will the project have an effect upon, or result in the need for new or altered public services in any of the following areas:</i>	Potentially Significant	Impact can & will be mitigated	Insignificant Impact	Not Applicable
a) <i>Fire protection?</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
b) <i>Police protection (e.g., Sheriff, CHP)?</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
c) <i>Schools?</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
d) <i>Roads?</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
e) <i>Solid Wastes?</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
f) <i>Other public facilities?</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
g) <i>Other:</i> _____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Setting. The project area is served by the following public services/facilities:

Police: City of Pismo Beach Location: City of Pismo Beach (Approximately 4.5 miles to the south east)

Fire: Cal Fire (formerly CDF) Hazard Severity: High to very high Response Time: 5-10 minutes
Location: Approximately 1 mile to the north

School District: San Luis Coastal Unified School District.

Impact. No significant project-specific impacts to utilities or public services were identified. The proposed project formalizes a bike and pedestrian trail that is currently being used and is located next to the Pirates' Cove beach where recreation activities already exist. The proposed project would provide safe bike and pedestrian trails. The proposed project does not create an increase need of public services or facilities. The County Sherriff Department determined these projects will likely decrease service calls from the site because it will bring additional people to the site which would provide more eyes in the area (personal conversation with Sergeant McDonald of the Sherriff Department on January 9, 2013). No significant project-specific impacts to utilities or public service were identified.

Conclusion. This project will not create and increase demand for public services or facilities. No mitigation measures are necessary.

11. RECREATION - <i>Will the project:</i>	Potentially Significant	Impact can & will be mitigated	Insignificant Impact	Not Applicable
a) <i>Increase the use or demand for parks or other recreation opportunities?</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) <i>Affect the access to trails, parks or other recreation opportunities?</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
c) <i>Other</i> _____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

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Setting. The County's Parks and Recreation Element shows the Cave Landing bike trail traversing through the proposed project. An easement for the trail to Pirate's Cove Beach and the Cave Landing parking lot have been offered to the county and will be accepted as a natural area that is operated and maintained by County Parks Department.

The area of the project has a history on intensive informal recreational use including trails and beach access. The proposed project will formalize this use and provide improvements that will provide necessary amenities (e.g. bathroom) and enhance current uses (e.g. trails).

Impact. The proposed project will not create a significant need for additional parks, natural areas, and/or recreational resources. It will provide a pedestrian/bike trails and improve the access and parking of a natural area.

Conclusion. This project will not create an increase demand for recreational facilities. No mitigation measures are necessary.

12. TRANSPORTATION/ CIRCULATION - Will the project:	Potentially Significant	Impact can & will be mitigated	Insignificant Impact	Not Applicable
a) Increase vehicle trips to local or areawide circulation system?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
b) Reduce existing "Levels of Service" on public roadway(s)?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
c) Create unsafe conditions on public roadways (e.g., limited access, design features, sight distance, slow vehicles)?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
d) Provide for adequate emergency access?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
e) Result in inadequate parking capacity?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
f) Result in inadequate internal traffic circulation?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
g) Conflict with adopted policies, plans, or programs supporting alternative transportation (e.g., pedestrian access, bus turnouts, bicycle racks, etc.)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
h) Result in a change in air traffic patterns that may result in substantial safety risks?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
i) Other: _____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Setting. The area is accessed by Cave Landing Road via Avila Beach Drive, which both are county maintained roads. The identified roadways are operating at acceptable levels. Based on existing road speeds and configuration (vertical and horizontal road curves) sight distance is considered acceptable. Cave Landing Road was once a through road that connected Avila Beach to the north to

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Shell Beach to the south. The Cave Landing Landslide Complex forced this road to be closed.

Impact. The proposed project is estimated to generate zero additional trips per day, based on a review by County Public Works. This trail project will provide a direct link between the communities of Avila Beach and Pismo Beach for bicycle users and pedestrians. This link will encourage non-vehicle transportation between these communities that may reduce area traffic trips. This project is considered "passive recreation" and is not subject to the Avila Road Impact Fee.

The southern half of the bicycle trail shares the alignment with previously closed Cave Landing Road and the bathroom, picnic bench area is located within the existing Cave Landing Road right-of-way. The northern terminus of this trail section connects to an existing trail in the city of Pismo Beach. A referral was sent to the city of Pismo Beach and the City is supportive of this project and did not raise any concerns with this project.

Mitigation/Conclusion. No significant traffic impacts were identified so no traffic mitigation measures are required. To address development within the Cave Landing Road right-of-way County Parks will need to apply to County Public Works for an encroachment permit and vacation of Cave Landing Road.

13. WASTEWATER - Will the project:	Potentially Significant	Impact can & will be mitigated	Insignificant Impact	Not Applicable
a) <i>Violate waste discharge requirements or Central Coast Basin Plan criteria for wastewater systems?</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
b) <i>Change the quality of surface or ground water (e.g., nitrogen-loading, day-lighting)?</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
c) <i>Adversely affect community wastewater service provider?</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d) <i>Other: _____</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Setting/Conclusion. The proposed project will not require the use of sewer service or a leachfield. The applicant is proposing to provide a pre-fabricated restroom facility. This restroom will have a sealed vault construction for temporary storage of domestic waste. The waste would be emptied and transported to a county-approved waste disposal facility. Based on the project's proposed design, no impacts resulting from wastewater would occur.

14. WATER - Will the project:	Potentially Significant	Impact can & will be mitigated	Insignificant Impact	Not Applicable
a) <i>Violate any water quality standards?</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
b) <i>Discharge into surface waters or otherwise alter surface water quality (e.g., turbidity, temperature, dissolved oxygen, etc.)?</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

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14. WATER - Will the project:	Potentially Significant	Impact can & will be mitigated	Insignificant Impact	Not Applicable
c) <i>Change the quality of groundwater (e.g., saltwater intrusion, nitrogen-loading, etc.)?</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
d) <i>Change the quantity or movement of available surface or ground water?</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
e) <i>Adversely affect community water service provider?</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
f) <i>Other:</i> _____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Setting.

Water Quality.

Water Quality. The topography of the project is nearly level to very steeply sloping. The closest creek from the proposed development is an unnamed blue line tributary of San Luis Creek over 3,000 feet away. As described in the NRCS Soil Survey, the soil surface is considered to have high to moderate erodibility.

Projects involving more than one acre of disturbance are subject to preparing a Storm Water Pollution Prevention Plan (SWPPP) to minimize on-site sedimentation and erosion. When work is done in the rainy season, the County Ordinance requires that temporary sedimentation and erosion control measures be installed during the rainy season.

Water Supply.

The applicant is not proposing to utilize an on-site well or community water service to supply water. There is no landscaping proposed and erosion control planting will be drought-tolerant native vegetation that will be either installed in the late fall and/or the applicant will utilize a water truck for irrigation if needed. No on-site irrigation system is proposed. Due to the applicant's proposal to minimize water usage, no water supply impacts would occur as a result of the proposed project.

Impact.

Regarding surface water quality, as proposed, the project will result in the disturbance of 700 cubic yards. The project is within close proximity to the Pacific Ocean and over 3,000 feet from San Luis creek, the nearest creek. Topography of the site is moderately sloping to steeply sloping. Standard drainage and erosion control measures will be required for the proposed project and will provide sufficient measures to adequately protect surface water quality. No additional measures are considered necessary and potential water quality impacts are either insignificant or will be reduced to less than significant levels through existing ordinance requirements.

Mitigation/Conclusion. Since no potentially significant water quality or quantity impacts were identified, no specific measures above standard requirements have been determined necessary. Standard drainage and erosion control measures will be required for the proposed project and will provide sufficient measures to adequately protect surface water quality.

15. LAND USE - Will the project:	Inconsistent	Potentially Inconsistent	Consistent	Not Applicable
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15. LAND USE - Will the project:	Inconsistent	Potentially Inconsistent	Consistent	Not Applicable
a) <i>Be potentially inconsistent with land use, policy/regulation (e.g., general plan [county land use element and ordinance], local coastal plan, specific plan, Clean Air Plan, etc.) adopted to avoid or mitigate for environmental effects?</i>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b) <i>Be potentially inconsistent with any habitat or community conservation plan?</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
c) <i>Be potentially inconsistent with adopted agency environmental plans or policies with jurisdiction over the project?</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
d) <i>Be potentially incompatible with surrounding land uses?</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
e) <i>Other:</i> _____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Setting/Impact. Surrounding uses are identified on Page 2 of the Initial Study. The proposed project will need a Coastal Development Permit which is appealable to the California Coastal Commission before construction can be started. The Coastal Development permit process will review for consistency policy and/or regulatory documents relating to the environment and appropriate land use (e.g., County Land Use Ordinance, Local Coastal Plan, etc.). A preliminary consistency review of this project against policy and/or regulatory documents is provided below and referred to in Exhibit A on reference documents. Used. Ultimately the County Planning Commission and California Coastal Commission will determine if this project is consistent with these documents. The project is not within or adjacent to a Habitat Conservation Plan area. The project is consistent or compatible with the surrounding uses as summarized on page 2 of this Initial Study.

In a preliminary review it appears the Local Coastal Plan (LCP) has many policies that align with this project. This project appears to meet all the Access and Visitor Servicing and Recreation policies because the project is a coastal access and recreation project that includes a segment of the California Coastal Trail. The site has none of the Environmental Sensitive Habitats discussed in the LCP (streams, riparian or wetlands) and most of the site is already in an open space easement, preserving the areas open space and is part of a green belt around Avila Beach as called out in the LCP. The proposed drainage features and erosion control measures at time of construction seem to meet the LCP's policies on Watershed Management. Finally the LCP requires studies and implementation of mitigation measures from these studies during construction to address geological and cultural resources. These studies have been completed and adoption of this Mitigated Negative Declaration with the mitigations proposed and if approved the subsequent coastal permit will ensure compliance with the geological and cultural policies of the LCP. This project appears to have one LCP inconsistency; the 75 foot bluff set back policy. However an adjustment to this policy and the similar Area Plan policy may be approved as part of the requested coastal permit process. The bike/pedestrian trail is located along the bluffs, squeezed between an active land slide and slopes over 30 percent (that are too steep for a bike trail). Therefore the bike/pedestrian trail cannot be set back to a location that would assure 75 years or potential erosion. The project does not involve

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structures that would require protection with a shoreline structure (e.g. seawall), and in the event of substantial erosion, the trail may need to be relocated.

This project appears to be mostly consistent with the San Luis Bay (Coastal) Area and the Coastal Zone Land Use Ordinance and Parks and Recreation Element. A variance is required to modify the Bluff Setback standard and development on 30 percent slope. These potential inconsistencies are based on the project site itself and are discussed in the previous paragraph.

Per the Coastal Zone Land Use Ordinance, a solid wall or fencing is to be located on side and rear property lines of any non-residential or non-agricultural use abutting a residential use or land use category, except for parks, golf course greens and fairways. It is presumed that a solid wall or fencing along the side and rear property lines of this site is not necessary to protect adjacent residential uses from the passive recreational use of this site. The site is 53 acres and has only one residence adjacent to the site. In addition, compliance with this standard will place fencing along the Ontario Ridge an important scenic backdrop for the coastal area of Avila Beach and Pismo Beach and block views of the ocean from a public recreation area. However this will be determined by the County Planning Commission and the California Coastal Commission at the time a Coastal Permit is processed.

Mitigation/Conclusion. The fencing waiver will not create a health and safety concern or environmental impacts therefore no additional measures will be required. To offset the policy inconsistency with the Bluff Erosion standard and development on slopes of over 30 percent, the recreational area shall be closed down in times of bad weather or ground movement to ensure public safety.

16. MANDATORY FINDINGS OF SIGNIFICANCE - Will the project:	Potentially Significant	Impact can & will be mitigated	Insignificant Impact	Not Applicable
a) <i>Have the potential to degrade the quality of the environment, substantially reduce the habitat of a fish or wildlife species, cause a fish or wildlife population to drop below self-sustaining levels, threaten to eliminate a plant or animal community, reduce the number or restrict the range of a rare or endangered plant or animal or eliminate important examples of the major periods of California history or prehistory?</i>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b) <i>Have impacts that are individually limited, but cumulatively considerable? ("Cumulatively considerable" means that the incremental effects of a project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects)</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
c) <i>Have environmental effects which will cause substantial adverse effects on human beings, either directly or indirectly?</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

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For further information on CEQA or the county's environmental review process, please visit the County's web site at "www.sloplanning.org" under "Environmental Information", or the California Environmental Resources Evaluation System at: http://www.ceres.ca.gov/topic/env_law/ceqa/guidelines for information about the California Environmental Quality Act.

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Exhibit A - Initial Study References and Agency Contacts

The County Planning or Environmental Divisions have contacted various agencies for their comments on the proposed project. With respect to the subject application, the following have been contacted (marked with an) and when a response was made, it is either attached or in the application file:

<u>Contacted</u>	<u>Agency</u>	<u>Response</u>
<input checked="" type="checkbox"/>	County Public Works Department	attached
<input type="checkbox"/>	County Environmental Health Division	
<input type="checkbox"/>	County Agricultural Commissioner's Office	
<input type="checkbox"/>	County Airport Manager	
<input type="checkbox"/>	Airport Land Use Commission	
<input type="checkbox"/>	Air Pollution Control District	
<input type="checkbox"/>	County Sheriff's Department	
<input type="checkbox"/>	Regional Water Quality Control Board	
<input type="checkbox"/>	CA Coastal Commission	
<input type="checkbox"/>	CA Department of Fish and Game	
<input checked="" type="checkbox"/>	CA Department of Forestry (Cal Fire)	attached
<input type="checkbox"/>	CA Department of Transportation	
<input type="checkbox"/>	Community Service District	
<input checked="" type="checkbox"/>	Other City of Pismo Beach	attached
<input type="checkbox"/>	Other AVAC & North Chumash Tribal Co.	attached

*** "No comment" or "No concerns"-type responses are usually not attached*

The following checked ("") reference materials have been used in the environmental review for the proposed project and are hereby incorporated by reference into the Initial Study. The following information is available at the County Planning and Building Department.

- | | |
|---|--|
| <ul style="list-style-type: none"> <input checked="" type="checkbox"/> Project File for the Subject Application <u>County documents</u> <input type="checkbox"/> Airport Land Use Plans <input checked="" type="checkbox"/> Annual Resource Summary Report <input type="checkbox"/> Building and Construction Ordinance <input checked="" type="checkbox"/> Coastal Policies <input checked="" type="checkbox"/> Framework for Planning (Coastal & Inland) <input checked="" type="checkbox"/> General Plan (Inland & Coastal), including all maps & elements; more pertinent elements considered include: <ul style="list-style-type: none"> <input checked="" type="checkbox"/> Agriculture & Open Space Element <input checked="" type="checkbox"/> Energy Element <input checked="" type="checkbox"/> Environment Plan (Conservation, Historic and Esthetic Elements) <input checked="" type="checkbox"/> Housing Element <input checked="" type="checkbox"/> Noise Element <input checked="" type="checkbox"/> Parks & Recreation Element <input checked="" type="checkbox"/> Safety Element <input checked="" type="checkbox"/> Land Use Ordinance <input type="checkbox"/> Real Property Division Ordinance <input checked="" type="checkbox"/> Trails Plan <input type="checkbox"/> Solid Waste Management Plan | <ul style="list-style-type: none"> <input checked="" type="checkbox"/> Area Plan and Update EIR <input checked="" type="checkbox"/> Circulation Study <u>Other documents</u> <input checked="" type="checkbox"/> Archaeological Resources Map <input checked="" type="checkbox"/> Area of Critical Concerns Map <input checked="" type="checkbox"/> Areas of Special Biological Importance Map <input checked="" type="checkbox"/> California Natural Species Diversity Database <input checked="" type="checkbox"/> Clean Air Plan <input checked="" type="checkbox"/> Fire Hazard Severity Map <input checked="" type="checkbox"/> Flood Hazard Maps <input checked="" type="checkbox"/> Natural Resources Conservation Service Soil Survey for SLO County <input checked="" type="checkbox"/> Regional Transportation Plan <input checked="" type="checkbox"/> Uniform Fire Code <input checked="" type="checkbox"/> Water Quality Control Plan (Central Coast Basin - Region 3) <input checked="" type="checkbox"/> GIS mapping layers (e.g., habitat, streams, contours, etc.) <input type="checkbox"/> Other _____ |
|---|--|

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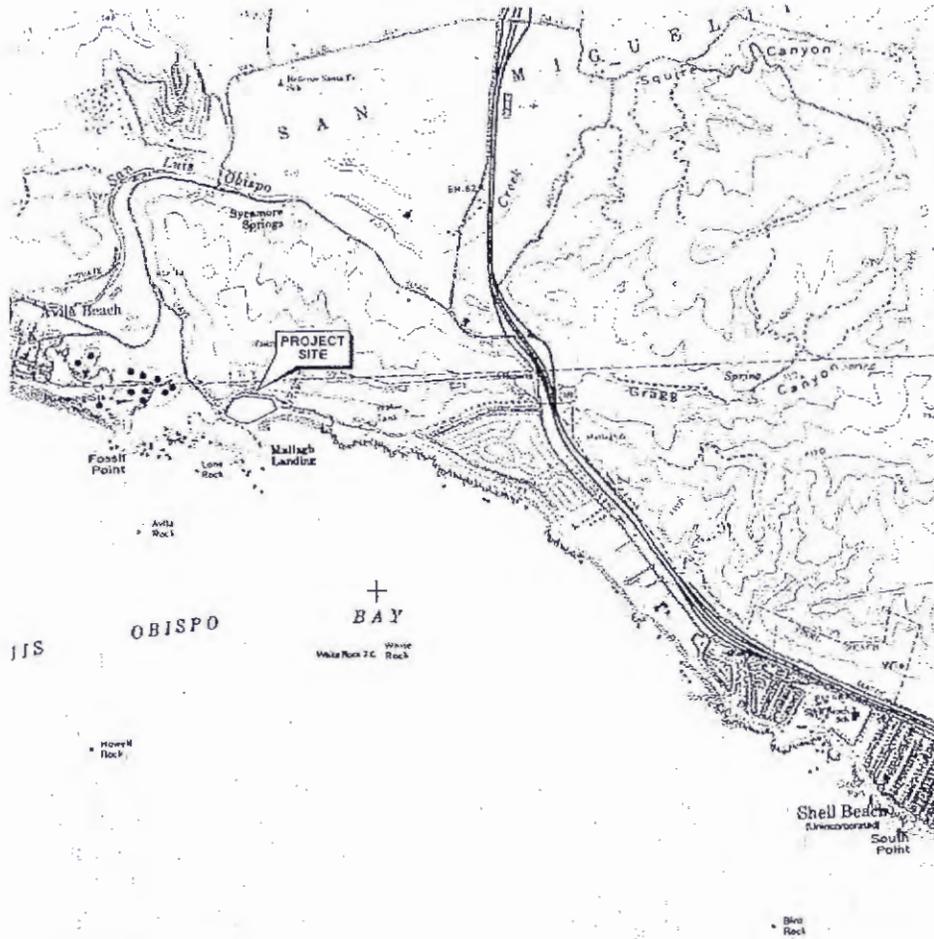
In addition, the following project specific information and/or reference materials have been considered as a part of the Initial Study:

Biological Assessment (Rincon 2010, 2012)

Cultural Resource Survey (SWCA 2010), (Gibson 2003, 1981)

Geological and geotechnical Reports Cave Landing Bike Path (Fugro West, 2009, 2011, 2012)

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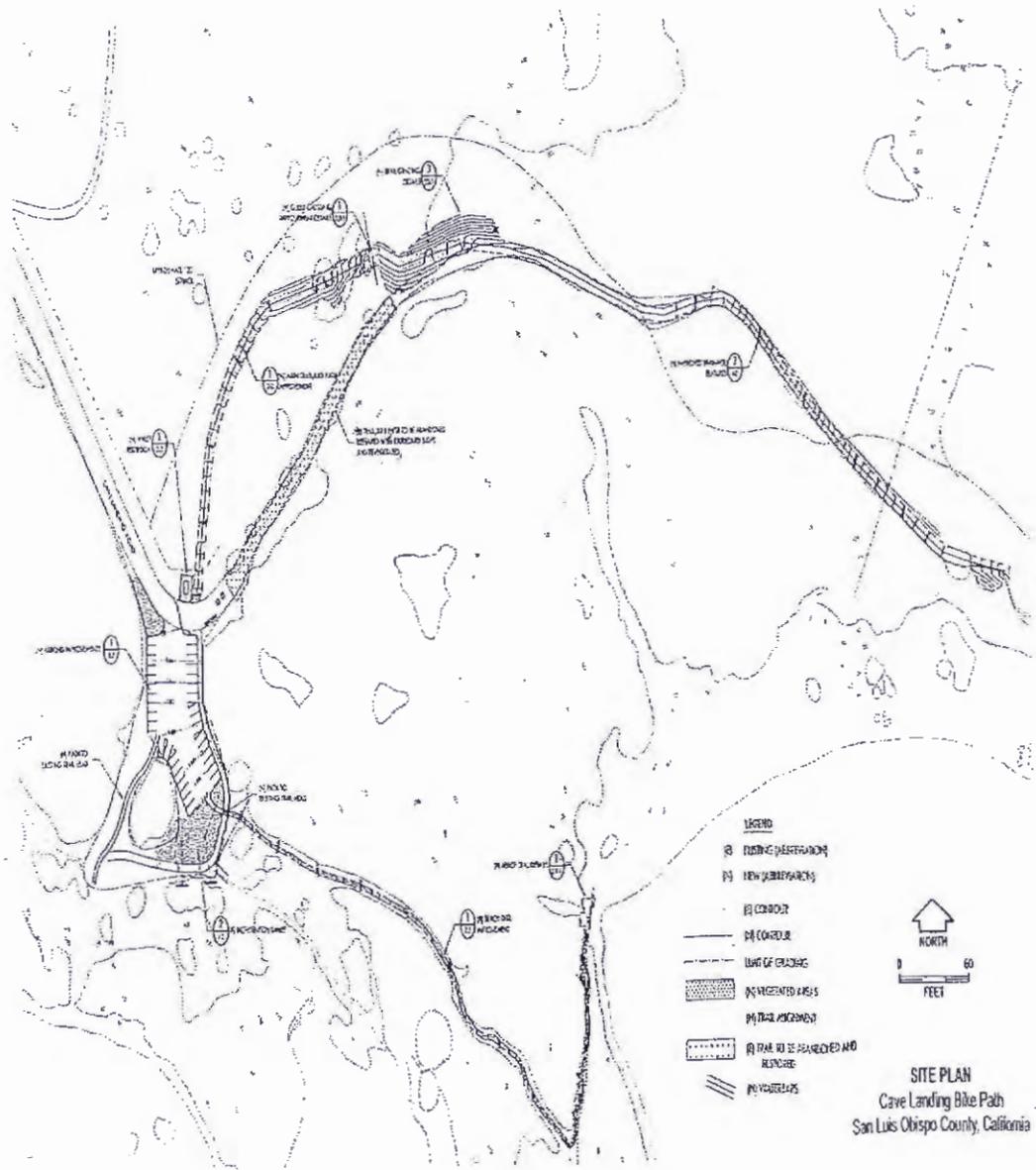


BASE MAP SOURCE: USGS San Luis Obispo County Pismo Beach 7.5' Quadrangle



VICINITY MAP
Cave Landing Bike Path
San Luis Obispo County, California

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Referrals

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Northern Chumash Tribal Council

*A Native American Corporation - NorthernChumash.org
67 South Street, San Luis Obispo, CA 93401 805-801-0347*

Elizabeth Kavanaugh
Parks Planner,
San Luis Obispo County Parks
Ph. (805)781-4089

October 21, 2011

Re: Cave Landing Trail

Dear Elizabeth,

The Northern Chumash Tribal Council (NCTC) would like to take this opportunity to thank you personally for the efforts that you have given to Native American Meaningful Consultation. Also we want to thank County Parks of San Luis Obispo for allowing you to work with NCTC through many meetings and emails to come to an agreement for the improvement of the trail from Sunset Palisades to Cave Landing, an Ancient Chumash Sacred Place located south of Avila Beach, California.

NCTC is in agreement with the Phase III data recovery for the portion of the Sacred Site that the new trail will impact. We are also in agreement with the placement of the trail, minimizing impact to the Sacred Site.

NCTC looks forward to continuing working with you and County Parks to see this project completed in a good way, for all to enjoy.

Be Well,

Fred Collins
Tribal Administrator
NCTC

*ENVIRONMENTAL & LAND-USE CONSULTING
EDUCATIONAL SERVICES TEACHING NATURE, NATIVE CULTURES &
FARMING*

2-89



August 15, 2012

File No.: 0916-01
SLO Co. File No. DRC2011-00069

County of San Luis Obispo
Parks Division
1087 Santa Rosa Street
San Luis Obispo, California 93408

Attention: Ms. Elizabeth Kavanaugh

Subject: Review of Engineering Geology Report

Project: Cave Landing Bike Path Improvements
End of Cave Landing Road (APN's 076-231-062 & 064)
San Luis Obispo County, California

- References:
1. Engineering Geology Report, Cave Landing Bike Path, Cave Landing Road – Bluff Drive, San Luis Obispo County, California, Project No. 04.6111.0038, prepared by Fugro Consultants, Inc., dated July 19, 2012.
 2. Geotechnical Report, Cave Landing Bike Path, Cave Landing Road – Bluff Drive, San Luis Obispo County, California, Project No. 3014.016, prepared by Fugro West, Inc., dated December 21, 2009.
 3. Project Improvement Plans Cave Landing Bike Path and Parking Lot Improvements (Preliminary Design Plans), Cave Landing Road, San Luis Obispo County, California, Sheets 0.0, 1.0, 2.0, 2.0.1, 2.1, 2.1.1, 2.2, 3.0 & 4.0 of Nine Sheets, Job No. 21107, prepared by Fall Creek Engineering, Inc., dated May 2011.

Dear Ms. Kavanaugh:

The purpose of this letter is to summarize our findings of a site reconnaissance performed on August 10, 2012; and review of the above referenced Engineering Geology Report (Reference 1).

The report was reviewed for conformance with section 23.07.084 of the San Luis Obispo County Coastal Land Use Ordinance (CZLLO) and the San Luis Obispo County Guidelines for Engineering Geology Reports. It is our opinion that the referenced report presents a comprehensive outline, modeling the site engineering geology and geologic constraints.

529-B Crazy Horse Canyon Road, San Luis Obispo, CA 93907 • (831) 442-6970 • Fax (831) 443-3801

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August 15, 2012

File No.: 0916-01
SLO Co. File No. DRC 2010-00069

It is our opinion that the site geologic conditions are accurately modeled as represented. Our findings are congruent with the conclusions and recommendations of the engineering geology report prepared by Fugro Consultants, Inc., dated July 19, 2012.

It is our opinion that the project engineering geologic constraints have been adequately characterized and appropriate mitigative measures have been included for CEQA & CZLUO compliance. The recommended engineering geologic mitigations summarized in the Executive Summary (Section 1.0, pp. 1-3) of the project engineering geology report (Reference 1) should be included as conditions of approval prior to the issuance of building permits.

Please contact me at (831) 443-6970 or bpapurello@landseteng.com if you have questions regarding this matter.

Respectfully,
LandSet Engineers, Inc.



Brian Papurello, CEG 2226

Doc. No. 1208-112.REV

Copies: Addressee (2)
Ms. Ryan Hostetter, San Luis Obispo Co., Dept. of Planning & Building (1)
Ms. Lori E. Prentice, Fugro Consultants, Inc. (1)
SLO County Geology files

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SAN LUIS OBISPO COUNTY
DEPARTMENT OF PUBLIC WORKS

Paavo Ogren, Director

County Government Center, Room 207 • San Luis Obispo CA 93408 • (805) 781-5252
Fax (805) 781-1229 email address: pwd@co.slo.ca.us

MEMORANDUM

Date: March 23, 2012
To: Ryan Hostetter, Project Manager
From: Tim Tomlinson, Development Services
Subject: Public Works Comments on the Cave Landing Trail and Parking Lot Plan
Conditional Use Permit DRC2011-00069

Thank you for the opportunity to provide information on the proposed subject project. It has been reviewed by several divisions of Public Works, and this represents our consolidated response.

Public Works Comments:

1. The existing trail is within the County Maintained portion of the Cave Landing Road right of way which should be vacated.
2. The proposed restroom and tables will require an encroachment permit for them to be placed and remain within the County maintained road right-of-way.

Recommended Project Conditions of Approval:

Drainage

1. At the time of application for construction permits, the applicant shall submit a complete erosion and sedimentation control plan for review and approval in accordance with Title 23.05.
 - a. On-going condition of approval (valid for the life of the project), the project shall comply with the requirements of the National Pollutant Discharge Elimination System Phase I and / or Phase II storm water program and the County's Storm Water Pollution Control and Discharge Ordinance, Title 8, Section 8.68 et sec.

Access

2. At the time of application for construction permits, the applicant shall secure an Encroachment Permit to allow the installation of the proposed restroom and tables and the removal and restoration to native of a portion of the existing trail that lies within the County maintained road right-of-way.
3. After completion of the trail improvements and re-alignment, the Applicant shall request vacation of the County maintained road right of way being superseded by the trail.

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635 N. Santa Rosa • San Luis Obispo, CA 93405
Phone: 805-543-4244 • Fax: 805-543-4248
www.calfireslo.org

Robert Lewin, Fire Chief

Date: April 11, 2012

Subject: DRC2011-00069 – San Miguelito Partners

To Whom It May Concern: Ryan Hostetter, Coastal Team

CAL FIRE/San Luis Obispo County Fire Department has reviewed the referral information in regards to the proposed Conditional Use Permit for the Cave Landing Trailand parking lot improvements. The site is located at the end of Cave Landing Road in Avila Beach, CA. The project is located in State Responsibility Area within a "High" to "Very High" Fire Hazard Severity Zone for wildland fires. This project site has an approximate 5 to 10 minute response time from the nearest County Fire Station. The following requirements must be satisfied prior to project final.

- The roadway providing access from Road to the proposed project site must provide a minimum 20-foot edge to edge all-weather driving surface.
- Vertical clearance of 13'6" is required the entire length of the roadway.
- Roadways shall also provide for a 10 foot fuel modification zone on both sides.
- A fire engine turnaround is required at or near the gate
- A fuel reduction zone may be required around the project site. CAL FIRE/County Fire will work with the applicant and the San Luis Obispo County Department of Planning and Building to ensure adequate "defensible space" from wildland fire threat
- The existing and proposed gates must provide adequate means of emergency access. This department may require a "Knox" lock or keypad to ensure access during emergencies.

If I may provide additional assistance or information please do not hesitate to contact me at (805)543-4244.

Sincerely,

Anthony Ramirez
Battalion Chief/Fire Marshal

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RE: Cave Landing Road Trail - City of Pismo Beach comments

Johnson, Carolyn
to:
'ekavanaugh@co.slo.ca.us'
10/05/2012 02:54 PM

Hello Elizabeth,

Thank you for the excellent presentation on the Cave Landing Road and Pirates Cove trail improvement project to the Pismo Beach Parks, Recreation and Beautification Commission last evening, Thursday, October 4. The Commission shared their support of the project with compliments on the County's efforts to connect trails between jurisdictions, in this case linking to the bluff top trail in Pismo Beach adjacent to Bluff drive.

The technical review of this proposal has also been completed with by Pismo Beach staff. All comments were favorable and supportive of the project.

Thank you,
Carolyn Johnson
Planning Manager
City of Pismo Beach
(805) 773-7043

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AVILA VALLEY ADVISORY COUNCIL

San Luis Obispo County, California

P.O. Box 65 Avila Beach, California 93424

www.AvilaValley.org

Monday, September 12, 2011

The meeting was called to order by Chair Anne Brown at 7:05 p.m. Present were: Anne M. Brown, Boyd Horne, Jayne Morton, Lisa Newton, Lynn Helenius, Julia Hartzell, Sherri Danoff, Ken Thompson, Bob Pusanik, Bill Tickell. The resignation of John Schug was announced. A quorum was established.

The minutes for the July 11th and Special meeting August 8th were approved as e.mailed. Chair Anne reviewed received mail.

There was no public comment.

Treasurer's Report: Jayne Morton reported \$842.80 in the treasury.

County Reports:

a. Sheriff's Office: Cmdr. Jason Nefores reports a light 2 months in Avila with 8 calls!! Undersheriff Basti reported on meetings with the Golf Course personnel regarding events there. Contracts are being developed and will be in place for future events to augment a law-enforcement presence at said events, the first being this weekend. The department hopes to report to AVAC on a quarterly basis on the successes/failures of this approach to cut down on impacts to residents in Avila and the area. Chair will write a letter thanking the Sheriff for proactive work.

b. Planning: no representative

c. Public Works: Ryan Chapman reported on the "2011 Update, Avila Circulation Plan (exhibit to members). He is working on solutions to: Avila Barn left-turn problems and Parking/vendors using the area at Shell Beach Road and Avila Beach Drive. He will report at subsequent AVAC meetings and will work with the Land Use Committee for input.

d. CALFIRE: Chief Rob Lewin reported for Station 62, because 200 of the firefighters are off fighting other peoples' fires!! One major EMS issue on the B.J. Trail: through efforts of off-duty fire personnel and trained by-standers, the person was revived and transported to the hospital. At last report, he is alive. It accents the need for Paramedic services at the local fire station. He reports a "hostile action" exercise ("table top") on next Wednesday, with a "boots on the ground" exercise on November 16th. The rural fire fee has been decreased to manageable #s. The state budget impacts are still unknown.

e. Supervisor: Adam Hill reports that the BOS will ask for a seismologist representing county interests be hired with PUC money to be appointed to the Committee reviewing PG&E's seismic studies.

f. Parks: Elizabeth Kavanaugh, planner presented the draft plan for the Cave Landing Trail (schematic for each member) and answered questions.

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Community Liaisons:

- a. Avila Business Association: no report.
- b. Avila Beach Civic Association: Anne Brown introduced Mary Foppiano the new Executive Director of the Association. She reported that tickets are available for the Albacore Feed on Saturday, October 8th and encouraged members and the public to purchase soon, as the event sells out!!
- c. Avila Beach Foundation: Rick Cohen mentioned the October 1st deadline for grant requests. The ABCF is sponsoring a 2nd Annual Town Hall Forum on February 24, 2012. They are developing a "History/Heritage" event for a future date.
- d. Port San Luis: Steve McGrath reports the retirement of 2 19-year employees. Canopy stabilization continues on the Pier. (It is "noticed" on the "avilaalerts" website.) He FINALLY has a meeting with the Coastal Commission staff in Santa Cruz on Sept. 20th regarding the umbrella coastal development permit. There are concerns among the fishermen about the seismic studies proposed by PG&E and what impact that will have on fishing in our area. There is great concern. The Port had its busiest summer!, with few problems. Jet skis have been seen, but no problems have been reported.
- e. Diablo/PG&E: no report.

New Business:

Pruett Residence in Avila: The Avila sub-committee recommends to AVAC and AVAC **"recommends to Planning that the Project be approved with the condition of conformance of the rear setback of the deck.** The applicants attended and concurred with this action. They are working with their architect on all compliance issues.

AVAC committees:

- a. Land Use: Sherri reports that the Events Ordinance will be heard by the BOS on Tuesday, October 4th. Motion proposed by Sherri, 2nd by Boyd that **AVAC write an e.mail letter to the BOS re: concerns in the ordinance which will reflect past letters.** Unanimously passed. A draft will be sent to council members by Sherri. (Necessary due to BOS meeting being before our next AVAC meeting.)
- b. Diablo: Ken Thompson reports that the NRC Task Force will be meeting again in SLO. The ocean-bottom seismometers are an issue in the area. The Independent Safety Committee will be meeting at the Embassy Suites on October 5th and 6th.
- c. Port: see above
- d. Avila: see above.
- e. SLBE: no report
- f. Avila Valley: Julia mentions entrance/road work on Ontario Road at the church.
- g. See Canyon: Bill cautions drivers on the road due to deer coming for water.
- h. Squire Canyon: no report. John Schug has retired. Chair will send a letter of thanks for his website service.

Next Meeting: Members voted to cancel the October 10th meeting since it is a County Holiday. (A meeting will be called on that date if circumstances require it.)
The meeting was adjourned at 8:30 p.m.

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Anne M. Brown, reluctant pro-tem secretary

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Exhibit B - Mitigation Summary Table

Aesthetics

- AES-1 The balance of any cuts into the hillside shall be replanted as soon as possible with erosion control planting.
- AES-2 Stairs to the beach shall be painted or made of material that is a muted and natural color that match the surrounding natural environment.
- AES-3 The vault restroom shall be painted or made of material that is a muted and natural color that match the surrounding natural environment.

Air Quality

- AQ-1 Fugitive PM 10 Mitigation measures (All required PM10 measures shall be shown on applicable grading or construction plans. In addition, the County of San Luis General Service Agency/Parks shall designate personnel to insure compliance and monitor the effectiveness of the required dust control measures (as conditions dictate, monitor duties may be necessary in weekend and holidays to insure compliance); the name and telephone number of the designated monitors shall be provided to the APCD prior to construction/grading permit issuance:
- Reduce the amount of disturbed area where possible;
 - Use water trucks or sprinklers systems in sufficient quantities to prevent airborne dust from leaving the site. Increased watering frequency would be required whenever wind speeds exceed 15 miles per hour. Reclaimed (nonpotable) water should be used whenever possible; Water all active construction areas at least twice daily. Frequency should be based on the type of operation, soil and wind exposure;
 - All dirt stock-pile areas should be sprayed daily as needed;
 - Permanent dust control measures identified in the approved project revegetation plan should be implemented as soon as possible following completion of disturbing activities.;
 - Exposed ground areas that are planned to be reworked at dates greater than one month after initial grading should be sown with fast germinating native grass seed and watered until vegetation is established;
 - All disturbed soil areas not subject to revegetation should be stabilized using approved chemical soil binders, jute netting, or other methods approved in advance by APCD;
 - All roadways driveways, sidewalks etc. to be paved should be completed as soon as possible. In additional, building pads should be aid as soon as possible after grading unless seeding or soil binders are used.
 - Vehicle speed for all construction vehicles shall not exceed 15 mph on any unpaved surface at the construction site;
 - All trucks hauling dirt, sand, soil, or other loose materials are to be covered or should maintain at least two feet freeboard (minimum vertical distance between top of load and top of trailer) in accordance with the CVC Section.
 - Install wheel washers where vehicles enter and exit unpaved roads onto streets, or wash off trucks and equipment leaving the site; and

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- Sweep streets at the end of each day if visible soil material is carried onto adjacent paved roads. Water sweepers with reclaimed water should be used where feasible.
- AQ-2 Prior to construction the General Service Agency/Parks shall provide evidence they have contracted APCD on any proposed portable equipment requiring APCD or CARB registration such as: 50-hp portable generators, IC engines, unconfined abrasive blasting operations, concrete batch plants, rock and pavement crushing, tub grinder, trammel screens, etc. should any of these types of equipment be used during construction activities, Californian Statewide portable equipment registration (issued by the Californian Air Resources Board) or a APCD permit may be required.
- AQ-3 As of February, 2000, the APCD prohibits developmental burning of vegetative material with San Luis Obispo county. However, under certain circumstances where no technically feasible alternatives are available, limited developmental burning under restrictions may be allowed, any such exemption must complete the following prior to any burning: APCD approval; payment of fee to APCD based on the size of the project; and issuance of a burn permit by APCD and the local fire department authority. As part of APCD approval, the applicant shall furnish them with the study of technical feasibility (which includes cost and other constraints) at the time of application. For any questions regarding these requirements, Karen Brooks of APCD's Enforcement Division may be contacted.

Biological Resources

Prior to construction:

- BIO-1 The Black-flowered figwort shall be flagged along the beach trail so construction activities avoid this area. If avoidance is not feasible; a mitigation plan would be developed and implemented by a qualified biologist/restoration specialist, and may include salvaging/transplanting plants and/or cuttings from impact areas and relocating to suitable habitat and/or collecting seeds for distribution in a designated mitigation/restoration area.
- BIO-2 A qualified biologist shall conduct a pre-construction survey prior to the mobilization, operation, and demobilization of project equipment within work areas to determine presence/absence sensitive wildlife species. In the event that any special-status species are identified within the immediate project work area, work will not be initiated until the appropriate agencies have been contacted and appropriate measures for protection have been instituted. Project activities may commence only after pre-construction surveys have confirmed the absence of all special-status species
- BIO-3 All applicable agency permits with jurisdiction over the project area (e.g. CCC, CDFG, Corps, Regional Water Quality Control Board [RWQCB]) should be obtained (as necessary) for proposed project improvements. All additional mitigation measures required by these agencies would be implemented as necessary throughout the project.
- BIO-4 If feasible, construction activities shall take place between mid-August and mid-March to be outside of the nesting bird season. If construction activities occur within the nesting bird season, a qualified biologist shall perform pre-activity nesting bird surveys to determine if breeding/nesting birds are present within the project site. If an active bird nest, greater than 50% completed, is

2-99

identified, then CDFG and/or USWFS shall be consulted to determine appropriate buffer during construction activities. Nests less than 50% completed or a non-active nest (i.e., last year's nest or an abandoned nest) shall be removed by a qualified biologist in accordance to the MBTA.

During Construction Activities:

BIO-5 An Environmental Sensitivity Training presentation shall be prepared and presented to all construction personnel at the beginning of the project. The program shall discuss sensitive species with potential to occur in the construction zone, with emphasis on special-status wildlife, plants, and sensitive marine resources. The program shall explain the importance of minimizing disturbance and adhering to all permit conditions and provide an overview of petroleum spill prevention and response actions.

BIO-6 The following measures shall be implemented to further mitigate impacts to sensitive wildlife that may occur within project area:

- All vegetation removal and initial ground disturbing excavation activities shall be monitored by a qualified biologist, authorized to relocate native wildlife to adjacent suitable habitat;
- A qualified biologist shall inspect the immediate work areas for any signs of nesting woodrats. In the event a woodrat nest is found within the immediate work area and project activities cannot avoid the nest, all activities within the vicinity of the nest shall stop and the CDFG shall be consulted. At no time shall a woodrat nest be removed until CDFG consultation;
- All construction activities will be completed during daylight hours only;
- All trash receptacles will be located away from the bluff face and will be covered; and all food-related trash shall be removed from the Project Site at the end of each working day;
- Project-related equipment should be prohibited outside of designated work areas and delineated access routes;
- No firearms should be allowed in the project area;
- In the event a special status animal is observed within the Project Site, appropriate agencies will be notified immediately to determine further mitigation;
- No project activities shall be conducted during rain events; and,
- No rodenticides or herbicides should be applied within the project area.

BIO-7 The use of heavy equipment and vehicles shall be limited to the proposed project limits, existing roadways, and defined staging areas/access points. Impervious material will be placed under all containers with petroleum products, including machinery engines and fuel tanks, in the storage or refueling area. The boundaries of each work area shall be clearly defined and marked with visible flagging and/or fencing.

BIO-8 During construction, washing of concrete, paint, or equipment and refueling and maintenance of equipment shall occur only in designated areas. Straw bales, sandbags, and sorbent pads shall be available to prevent water and/or spilled fuel from entering adjacent waters. In addition, secondary containment should be installed around all locations where petroleum products are stored.

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Construction equipment shall be inspected by the operator on a daily basis to ensure that equipment is in good working order and no fuel or lubricant leaks are present.

BIO-9 Heavy equipment that creates noise levels above 85 dB shall not be used for project activities along the shoreline during installation of the storm drain culverts and/or during future improvements of the lower portion of Pirate's Cove trail down to the beach. Specifically, noise level measurements shall be taken during the first day that a piece of equipment that has no published noise level data is to be used at the site. Measurements shall be taken to determine the distance to the 85 dB noise level and adjustments to machinery operation (i.e., ramp up) shall be made if wildlife (i.e., harbor seal, sea otter, and sea lion) are observed to be negatively affected by the equipment noise.

BIO-10 Erosion control measures shall be implemented to prevent runoff into adjacent waters. Silt fencing, in conjunction with other methods, shall be used to prevent erosion and avoid and/or minimize excavated soil and sediments from entering adjacent waterways. Further, appropriate dust control measures, such as, daily watering of work areas, shall be implemented to minimize dust impacts to surrounding habitat areas.

Cultural Resource

Prior to issuance of construction permit:

CR-1 The applicant shall submit to the Environmental Coordinator for review and approval, a detailed researched design for a Phase III data recovery archaeological investigation. The Phase III program shall be prepared by a subsurface qualified archaeologist, approved by the Environmental Coordinator. The consulting archaeologist responsible for the Phase III program shall be provided with a copy of the previous archaeological investigations. The Phase III program shall include at least the following:

- a. standard archaeological data recovery practices;
- b. recommendation of sample size adequate to mitigate for impacts to the archaeological site, including bases and justification of the recommended sample size;
- c. identification of location of sample sites/test units;
- d. detailed description of sampling techniques and material recovery procedures (e.g. how sample is to be excavated, how the material will be screened, screen size, how materials will be collected);
- e. disposition of collected materials;
- f. proposed analysis of results of data recovery and collected materials, including timeline of final analysis results; and
- g. consultation with appropriate Chumash tribal representatives.

Once approved these measures shall be shown on all applicable plans and implemented during construction.

CR-2 A monitoring plan, prepared by a subsurface-qualified archaeologist, approved by the Environmental Coordinator, to be reviewed and approved by the Environmental Coordinator. The monitoring plan shall include at a minimum:

2-101

- a. List of personnel involved on the monitoring activities;
 - b. Description of how monitoring shall occur;
 - c. Description of frequency of monitoring (e.g. full-time, part time, spot checking);
 - d. Description of what resources are expected to be encountered;
 - e. Description of circumstances that would result in the halting of work at the project site (e.g. what is considered significant archaeological resources?);
 - f. Description of procedures for halting work on the site and notification procedures;
 - g. Description of monitoring reporting procedures; and
 - h. Consultation with appropriate Chumash tribal representatives.
- CR-3 A letter from the consulting archaeologist shall be submitted to the Environmental Coordinator indicating that all necessary field work, as identified in the Phase III, program, has been completed.

During Construction

CR-4 All ground disturbing construction activities, the applicant shall retain a qualified archaeologist (approved by the environmental coordinator) and Native America to monitor all earth disturbing activities, per the approved monitoring plan. If any significant archaeological resources or human remains are found during monitoring all work shall stop within the immediate vicinity (precise area to be determined by the archaeologist in the field) of the resource until such time as the resource can be evaluated by an archaeologist and any other appropriate individuals. The applicant shall implement the mitigation as required by the Environmental Coordinator.

Prior to final inspection

- CR-5 Upon completion of all monitoring/data recovery activities, and prior to final inspection (whichever occurs first) the consulting archaeologist shall submit a report to the Environmental Coordinator summarizing all monitoring/data recovery activities and confirming that all mitigation measures have been met. If the analysis included in the Phase III program is not complete by the time of final inspection the applicant shall provide to the environmental coordinator, proof of obligation to complete the required analysis.
- CR-6 Spill rail fencing, or similar type fencing, a minimum of three feet high shall be installed along the bike/pedestrian trail. This fencing is to discourage people from meandering off the official trail.
- CR-7 Interpretive panel(s) shall be installed to educate the public about the Chumash experience and cultural history of the area. The(se) interpretive panel(s) shall be approved by County Parks, and the content shall be developed in cooperation with appropriate Chumash tribal representatives.

Geology and SoilsPrior to construction:

2-102

- GS-1 General Service Agency/Parks shall prepare construction plans that show the Cave Landing Road trail head relocated away from the potential sinkhole area and tension cracking/scarps as shown on page 27 of this report.
- GS-2 General Service Agency/Parks shall prepare construction/drainage plan(s) that show the level of water drained into the Pirates Cove Landslide Complex does not increase, drainage does not cause erosion or flow into the landslide areas and the grading does not affect the overall stability of the site.
- GS-3 General Service Agency/Parks shall prepare construction plans that increase the span of the bridge to a length that will reduce foundation depths of the bridge footing to no more than two or three feet and reduce the potential to remove lateral support from an active landslide that is present in the area of the west abutment.
- GS-4 General Service Agency/Parks shall prepare construction plans that include:
- proper compaction and grading for fills placed on sloping ground;
 - fill slopes no steeper than 2h:1v; and
 - cut slopes no steeper than 1.5h:1v.
- GS-5 General Service Agency/Parks shall prepare construction plans for the bridge that include:
- fill placed on slopes steeper than 20 percent (at the bridge approaches) should be initiated from a toe key excavated into firm material, and be keyed and benched into the hillside in accordance with good construction practices;
 - The embankment should be founded on firm subgrade soil below any loose or fissured topsoil;
 - The toe embankment should be initiated form a toe key excavated to at least two feet below existing site grades and sloped at least two percent into the fill side. The toe key should be at least eight feet wide. The fill above the toe key should then be keyed and benched into the hillside such that at least the upper two feet of soil is removed by the grading.
- GS-6 General Service Agency/Parks shall prepare construction/drainage plans that:
- improve cross drainage on trails and reduce concentrated flows of runoff;
 - does not increase erosion or flow of surface drainage water into landslide area; and
 - spreader trenches sized such that storm water runoff existing trenches is no more than the natural surface runoff.
- GS-7 General Service Agency/Parks shall prepare a complete erosion and sedimentation control plan in accordance with Title 23.05.
- GS-8 The applicant shall provide verification that the plans and specification for the design of the trail, grading, bridge structures, utility trenches and appurtenant improvements have been prepared in accordance with the recommendations of the geotechnical report(s) prior to beginning construction. Structures shall be designed to at least the minimum requirements of the 2010 California Building Code and the recommendations of the geotechnical report(s).

Prior to final inspection:

- GS-9 The applicant shall provide verification that the earthwork, drainage, structures, and trail improvements were inspected, testing, and observed under the auspices of a California registered professional engineer and the geotechnical engineer for conformance

2-103

with the plans, specifications, and any special inspection requirements of the 2010 California Building Code so as to have reasonable certainty that the work was constructed according to the approved plans and specifications.

GS-10 If landslide potential is perceived (heavy rains, earthquakes) the bike/pedestrian trail will be closed to ensure public safety.

GS-11 A sign will be posted at either end of the trail with notice to contact County Parks if dangerous or unusual conditions are observed.

For The Life of the Project

GS-12 The trail should be inspected by the County following periods when landslide potential may increase (such as following periods of heavy rains, earthquakes, or high surf) or when there are reports of cracking, settlement, or erosion of within or adjacent to the bike/pedestrian and the trail will be closed to ensure public safety if conditions are deemed to make travel on the path unsafe.

GS-13 This project shall comply with the requirements of the National Pollutant Discharge Elimination System Phase I and/or Phase II storm water program and the county's Storm Water Pollution Control and Discharge Ordinance, Title 8, Section 8.68 et. sec.

Traffic

Prior to Construction

TR-1 Prior to construction, General Service Agency/Parks shall secure an encroachment permit to allow the installation of the restroom, tables, benches, bike racks and the removal and restoration to native of a portion of the existing trails that lies within the County maintained road right-a-way.

Upon Completion of the Bike Trail

TR-2 After completion of the bike trail improvements and realignment, General Service Agency/Parks shall request vacation of the County maintained road right-of-way being superseded by the trail.

Noise

N-1 Construction activities will be limited to the hours of 7:00 a.m. to 7:00 p.m.

N-2

Heavy equipment that creates noise levels above 85 dB shall not be used for project activities along the shoreline during installation of the storm drain culverts and/or during future improvements of the lower portion of Pirate's Cove trail down to the beach. Specifically, noise level measurements shall be taken during the first day that a piece of equipment that has no published noise level data is to be used at the site. Measurements shall be taken to determine the distance to the 85 dB noise level and adjustments to machinery operation (i.e., ramp up) shall be made if wildlife (i.e., harbor seal, sea otter, and sea lion) are observed to be negatively affected by the equipment noise.

Water

W-1 Prepare and implement an erosion, sedimentation and pollution prevention plan and SWPPP.

2-102

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Water

W-1 Prepare and implement an erosion, sedimentation and pollution prevention plan and SWPPP.

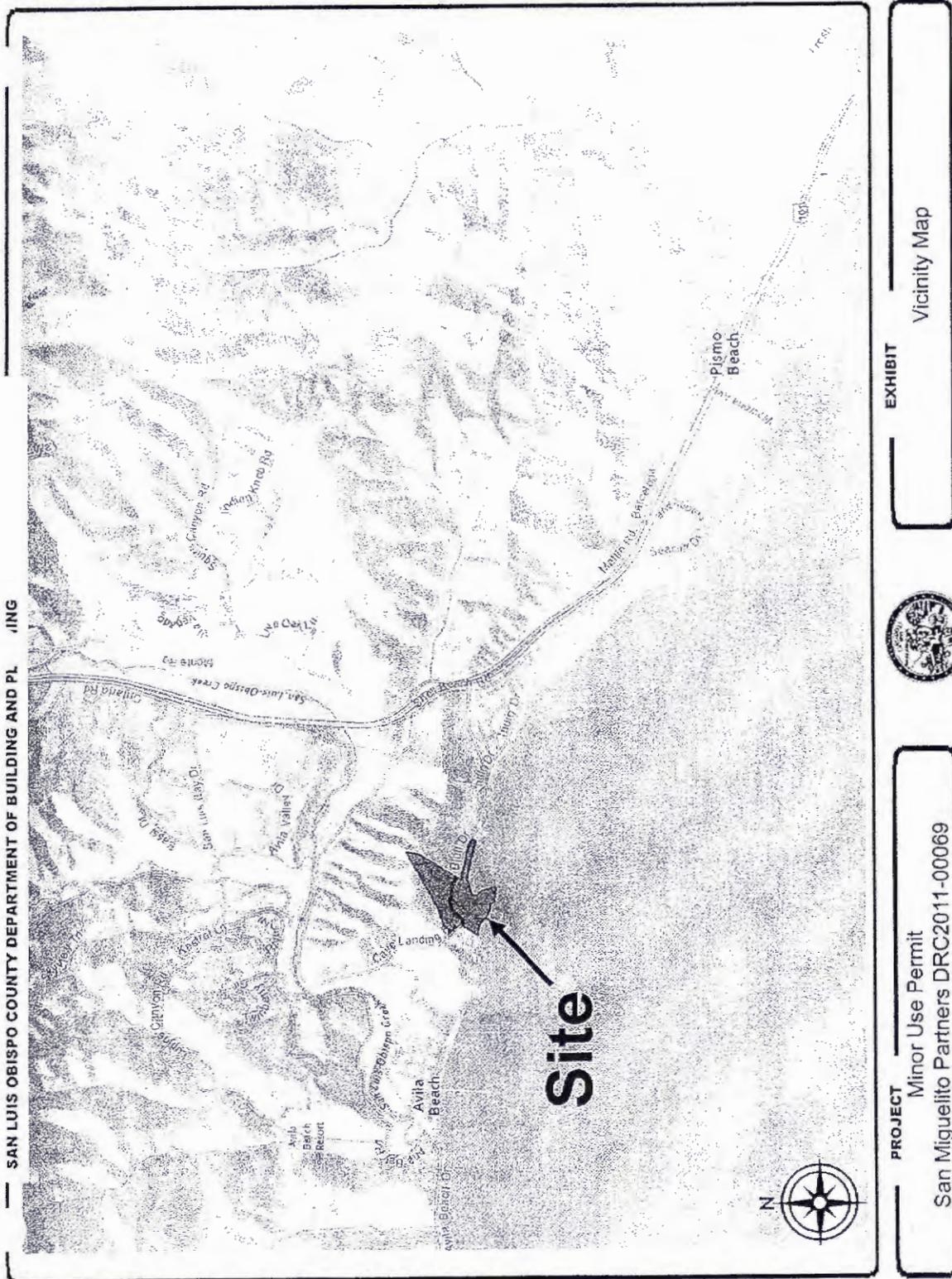
2-104

W-2 Submit a drainage plan showing the use of a filter device to prevent oils and fuel washing from the proposed parking area into the ocean at the parking lot inflow location.

Land Use

LU-1 The recreational area shall be closed down during significant rain storms or ground movement to ensure public safety.

2-105



SAN LUIS OBISPO COUNTY DEPARTMENT OF BUILDING AND PLANNING

EXHIBIT

Vicinity Map



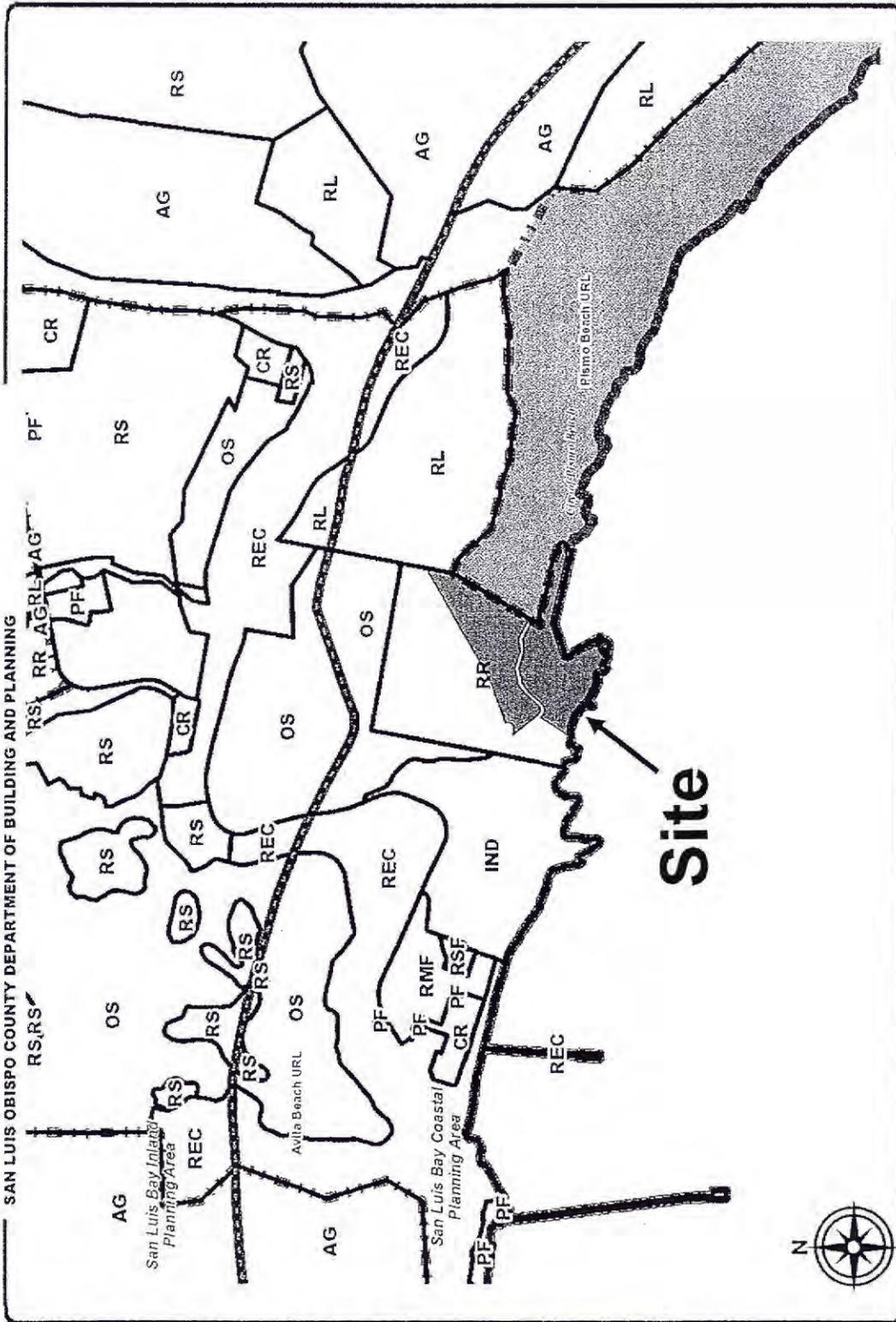
PROJECT

Minor Use Permit
San Miguelito Partners DRC2011-00069



Site

2-106



PROJECT Minor Use Permit
San Miguelito Partners DRC2011-00069

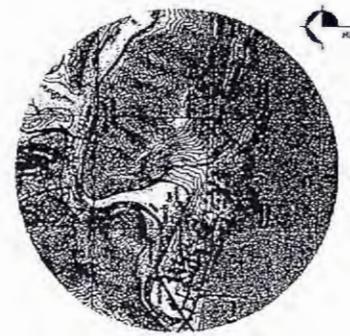
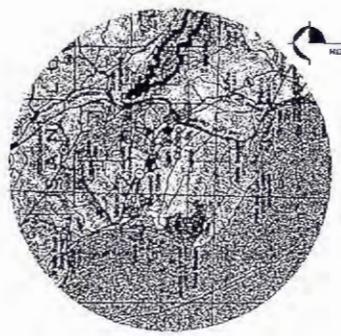
EXHIBIT Land Use Category Map

2-107



SAN LUIS OBISPO COUNTY DEPARTMENT OF BUILDING AND PLANNING

**CAVE LANDING
BIKE PATH AND PARKING LOT IMPROVEMENTS
(PRELIMINARY DESIGN PLANS)**



PROJECT CONTACTS
 CLIENT: CAVE LANDING PARTNERS, LLC
 PROJECT MANAGER: JAMES W. WILSON
 ARCHITECT: JAMES W. WILSON ARCHITECTS, INC.
 PROJECT ADDRESS: 10000 N. STATE ST., SUITE 100, SAN MIGUELITO, CA 95053
 PHONE: (408) 453-1000
 FAX: (408) 453-1001
 EMAIL: JAMES@JWWA.COM

PROJECT REFERENCES
 CITY OF SAN MIGUELITO: CAVE LANDING BUILDING PERMIT APPLICATION, PROJECT NO. 2011-00069
 PROJECT ADDRESS: 10000 N. STATE ST., SUITE 100, SAN MIGUELITO, CA 95053
 PROJECT NO. 2011-00069

PROJECT GRADING QUANTITIES

ITEM	AMOUNT
1. EXISTING GRADE TO FINISH GRADE	1,234.56
2. FINISH GRADE TO EXISTING GRADE	567.89
3. EXISTING GRADE TO PROPOSED GRADE	1,098.76
4. PROPOSED GRADE TO EXISTING GRADE	321.09
5. TOTAL	2,222.30

PROJECT REFERENCES

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 PROJECT ADDRESS: 10000 N. STATE ST., SUITE 100, SAN MIGUELITO, CA 95053
 PROJECT NO. 2011-00069

LEGEND

EXISTING IMPROVEMENTS
 NEW IMPROVEMENTS
 FINISH ELEVATION
 FINISH CONTOUR INTERVAL

PROJECT GRADING QUANTITIES

ITEM	AMOUNT
1. EXISTING GRADE TO FINISH GRADE	1,234.56
2. FINISH GRADE TO EXISTING GRADE	567.89
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PROJECT REFERENCES

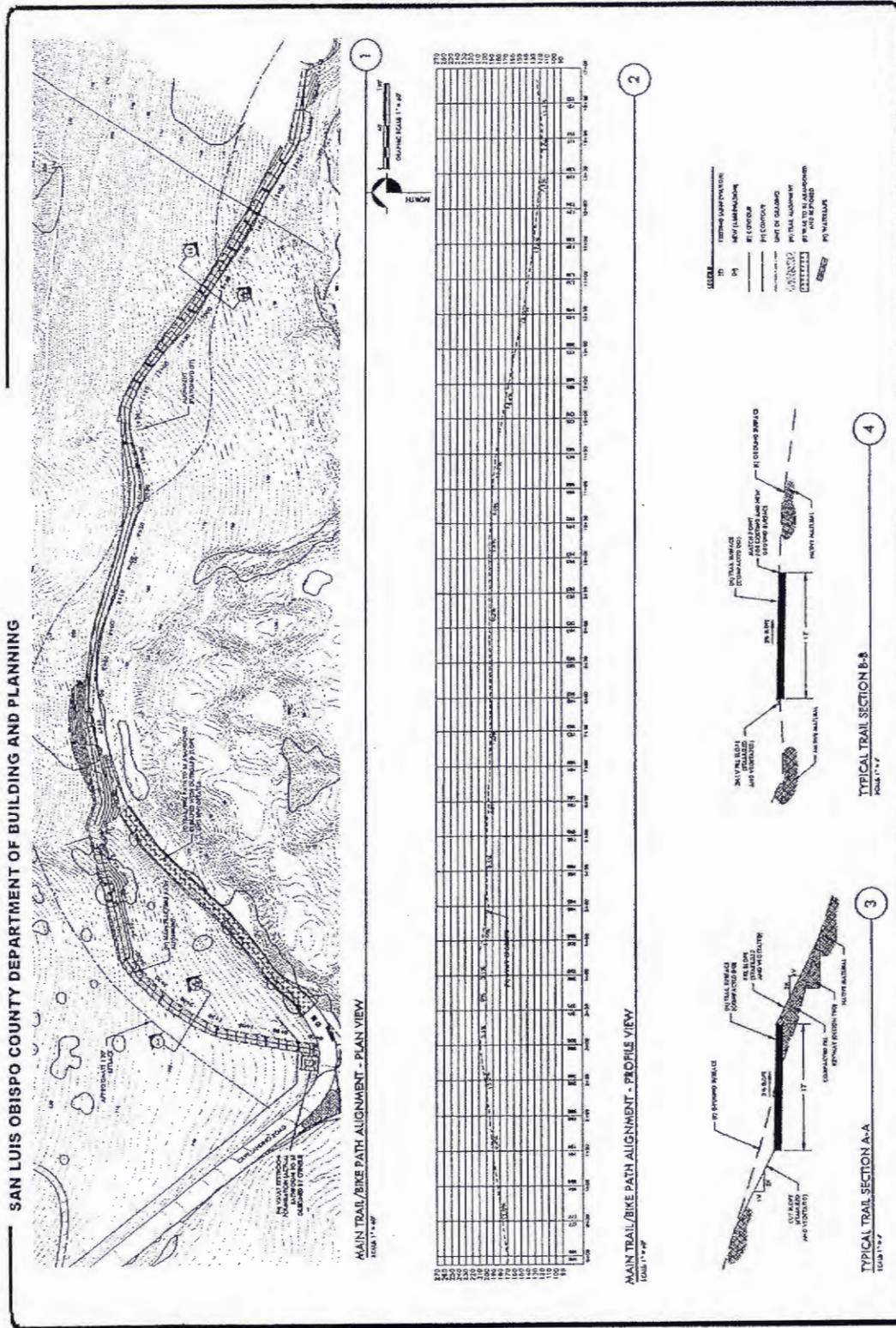
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 PROJECT ADDRESS: 10000 N. STATE ST., SUITE 100, SAN MIGUELITO, CA 95053
 PROJECT NO. 2011-00069



PROJECT Minor Use Permit
 San Miguelito Partners DRC2011-00069

EXHIBIT Cover Sheet

2-110



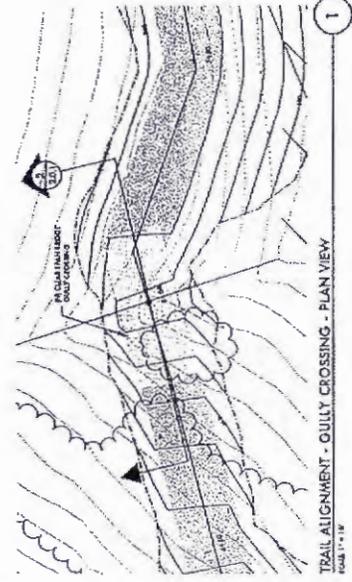
PROJECT
Minor Use Permit
San Miguelito Partners DRC2011-00069

EXHIBIT
Grading Plan: Main Trail Alignment
Plan and Profile

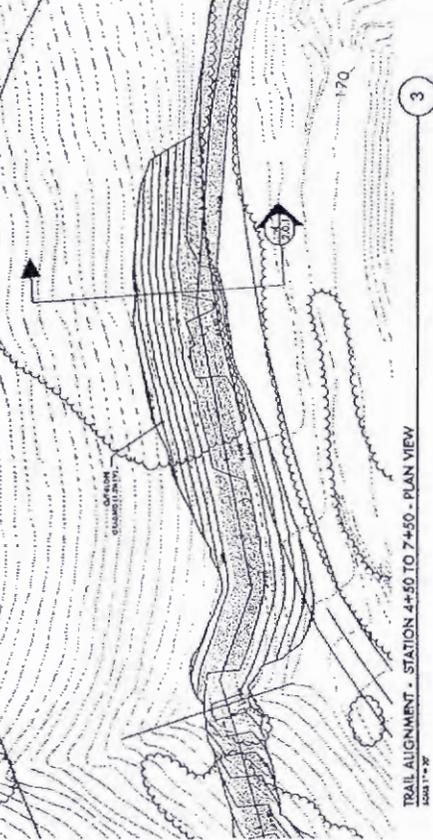


2-111

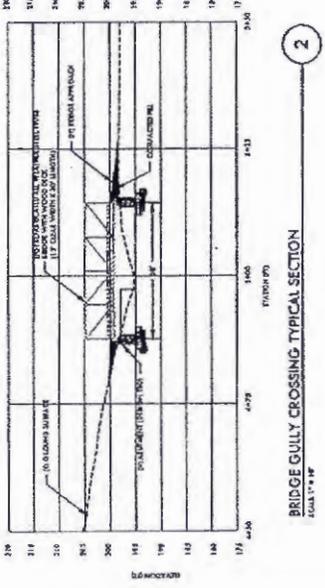
SAN LUIS OBISPO COUNTY DEPARTMENT OF BUILDING AND PLANNING



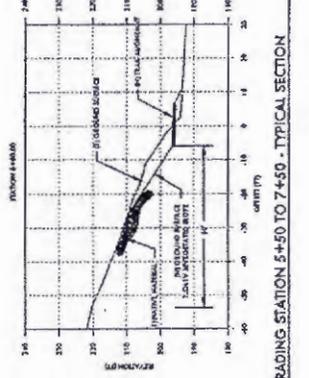
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3



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4



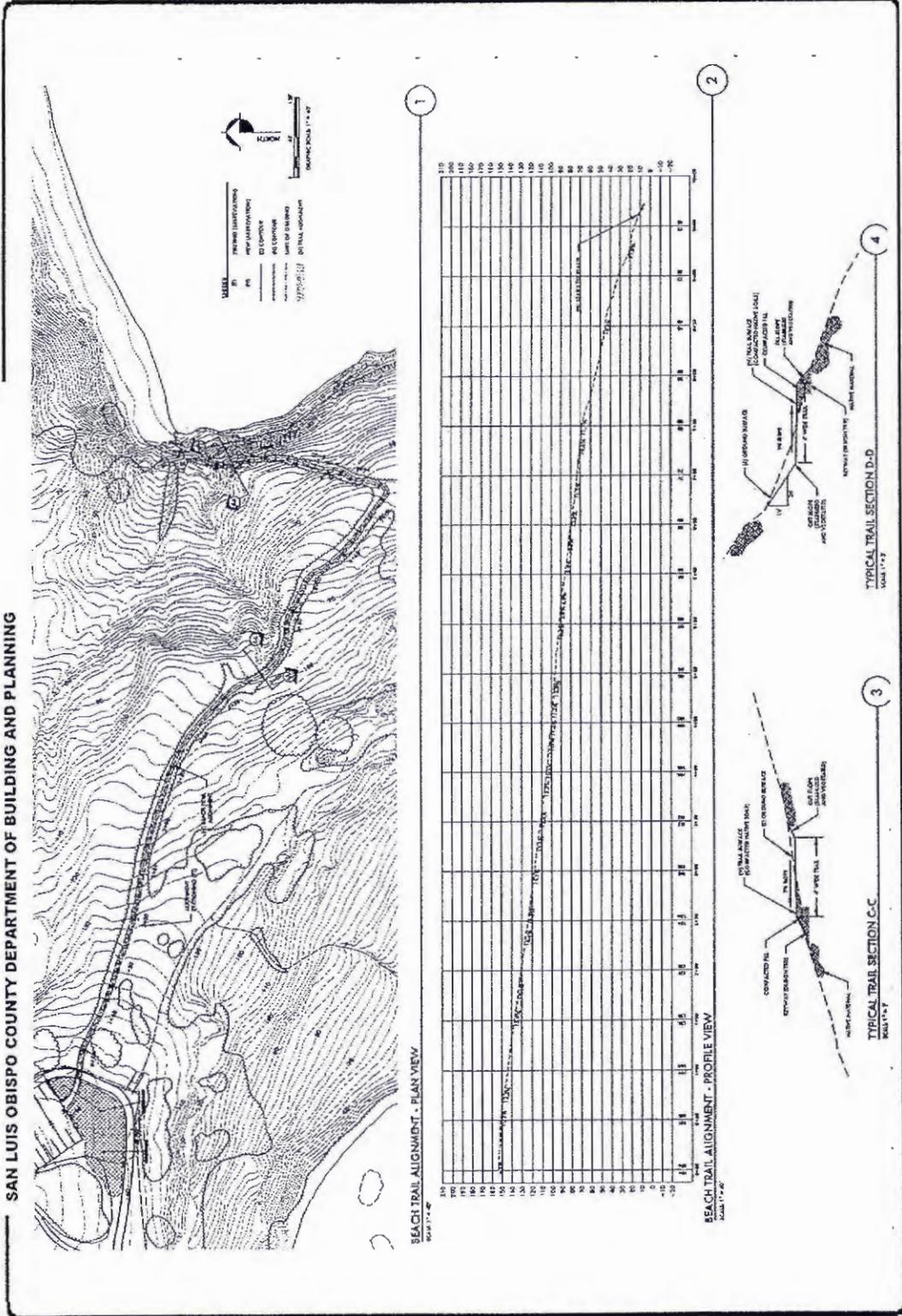
EXHIBIT
Grading Plan: Main Trail Alignment Details



PROJECT
Minor Use Permit
San Miguelito Partners DRC2011-00069

2-112

SAN LUIS OBISPO COUNTY DEPARTMENT OF BUILDING AND PLANNING



PROJECT
 Minor Use Permit
 San Miguelito Partners DRC2011-00069



EXHIBIT
 Grading Plan: Beach Trail Alignment
 Plan and Profile

2-115

SAN LUIS OBISPO COUNTY DEPARTMENT OF BUILDING AND PERMITTING

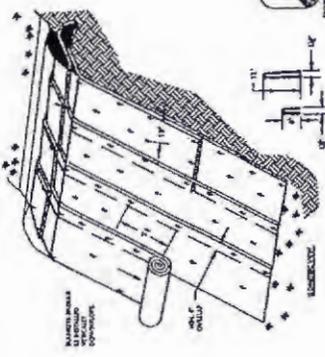


LEGEND

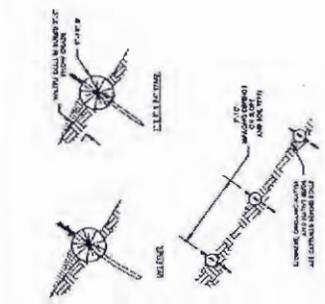
ST	STREET LIGHT POST MARK
HT	HYDROLOGICAL
PL	PLANTING
PC	PERMITS
LD	LAND USE DESIGN
SC	SHORELINE CONTROL
PL	PLANTING
HT	HYDROLOGICAL
ST	STREET LIGHT POST MARK

DATE: 11/11/11
DRAWN BY: J. J. J.

1



2



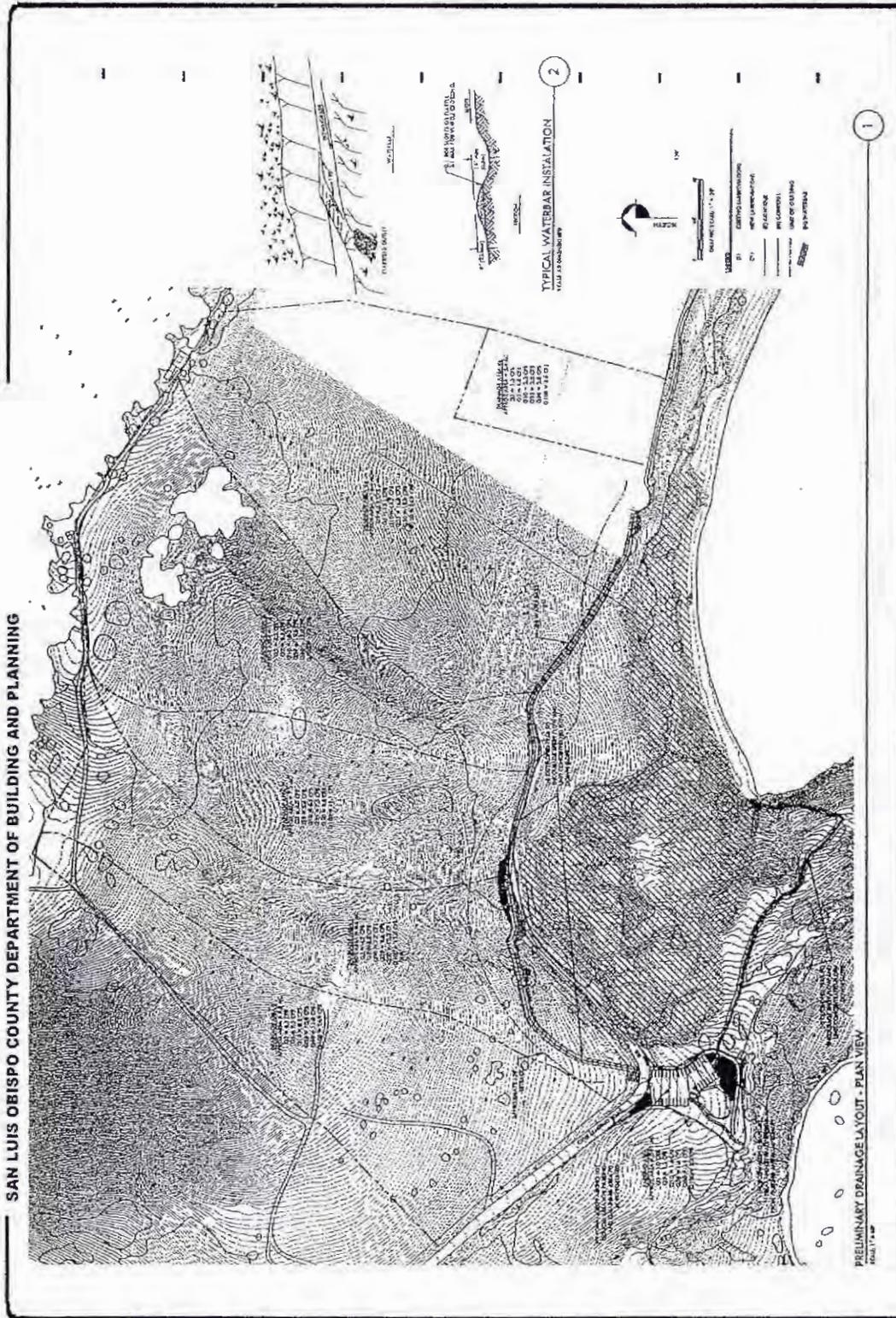
3

PROJECT
Minor Use Permit
San Miguelito Partners DRC2011-00069



EXHIBIT
Erosion Control Plan and Details

2-116

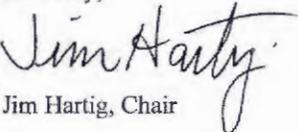


SAN LUIS OBISPO COUNTY DEPARTMENT OF BUILDING AND PLANNING

EXHIBIT
Drainage Plan and Details



PROJECT
Minor Use Permit
San Miguelito Partners DRC2011-00069

<p>AVILA VALLEY ADVISORY COUNCIL P.O. Box 65 Avila Beach CA 93424 www.avilavalley.org</p>	<p style="text-align: center;">AVAC</p> <p style="text-align: center;"><u>Our Mission Statement</u></p> <p>The Avila Valley Advisory Council's (AVAC) Mission is to represent the interests of valley residents and enterprises, to monitor and guide development and to promote the general welfare of the community. To these ends, AVAC works to assure that essential public services keep pace with change and promotes the conservation of the natural beauty and resources in the Avila Area.</p>
<p>Chair Jim Hartig Vice Chair Sherri Danoff Secretary Anne Brown Treasurer Julie Hartzell</p> <p><u>Members of Council</u></p> <p><u>Avila Beach:</u> Anne Brown Lynn Helenius Lisa Newton John Salisbury(alt)</p> <p><u>Avila Valley:</u> Julie Hartzell MaryEl Hansen Jan Taylor (alt)</p> <p><u>San Luis Bay Estates:</u> Sherri Danoff Saul Goldberg Jim Hartig Bob Pusanik Ken Thompson Lynn Walter Karla Bittner (alt) William Ziegler(alt)</p> <p><u>See Canyon:</u> Denise Allen Bill Tickell Karen Wickler (alt)</p> <p><u>Squire Canyon:</u> Open (2) Karin Argano (alt)</p>	<p>July 15, 2013</p> <p>San Luis Obispo County Planning Commission c/o rhedhes@co.slo.ca.us</p> <p>SUBJECT: PIRATES COVE PARKING</p> <p>Dear Commissioners:</p> <p>At AVAC's meeting on July 8, members expressed appreciation to your Commission for directing a revised parking lot plan with increased parking spaces. The revised plan presented by County Parks to AVAC shows a turn-around and 70 parking spaces, a few of these spaces on Cave Landing Road adjoining the parking lot.</p> <p>AVAC commends Parks for the revised parking lot plan and supports its approval by your Commission. In addition, AVAC recommends that your Commission support an in-depth study of diagonal spaces on the northeasterly side of Cave Landing Road. This is in consideration that the General Plan standard indicates 100 parking spaces for the Pirates Cove parking area and to accommodate peak visitor days and the expected increase in visitors.</p> <p>Thank you for your careful consideration of public access for Cave Landing.</p> <p>Sincerely,  Jim Hartig, Chair</p> <p>cc: AVAC Members Shaun Cooper, Parks Planner secooper@co.slo.ca.us Ryan Hostetter, County Planner rhostetter@co.slo.ca.us Adam Hill, Third District County Supervisor ahill@co.slo.ca.us; hmilller@co.slo.ca.us</p>

Whales Cave Conservancy

"Dedicated to the Preservation of the Cultural, Ecological, Scenic Resources and Historic Use, of Pirates Cove."

Date: April 29th 2013

RE: Pirates Cove parking concerns

Attn: Shaun Cooper, San Luis Obispo County Parks and Recreation
CC: Curtis Black, San Luis Obispo County Parks and Recreation
Adam Hill, San Luis Obispo County Supervisor District 3
Daniel Robinson, California Coastal Commission

Dear Mr. Cooper,

We, the members of the Whales Cave Conservancy are pleased that we have the opportunity to contribute to the long term stewardship of the area known as "Pirates Cove", historically known as Mallagh Landing and before that Whales Cave. As of this writing we have seventy people willing to volunteer various amounts of time to help maintain the area by picking up trash. Our members are excited and look forward to keeping the area the true gem that it is.

We have concerns regarding one particular issue that we feel cannot be ignored. The lack of adequate parking in the current improvement plans will impact the area in a negative way. The reduction of access to county residents, tourists and students will take what we feel to be the best beach of its kind in America and make it an exclusive destination only for those who are able to get an early parking spot. Please consider the following points and review our compromise plans before expending more resources in the reduction of access.

Historical Access

Cloth optional access has been verified for Pirates Cove as far back as the late 1930's. It wasn't until the 1960's that the beach use increased exponentially. By the late 1970's Cars were parked over the entire open space area including the length of Cave Landing road to Sunset Palisades (About 2.5x the area of the current parking lot) Estimates of the beach use back then were in the range of four hundred people and over 280 cars on a weekend day. On a good day we currently get about 50% of that amount at one time.

In the early 1990's, the County, working with the Chumash and the Whales Cave Conservancy reduced parking access and defined the parking lot by boulders placed along mapped boundaries. As part of the Bluffs development much of Cave Landing road was also closed to parking. These two changes resulted in the loss of approximately 120 total parking spaces, leaving 160 total parking spaces. Parking was still allowed on both sides of Cave Landing road up to the current barrier at the landside. In the early 2000's, the County further restricted parking on the North side of Cave Landing road. This reduced access to about 140 cars. While this was happening, alternate neighborhoods and access points developed which lessened impact. These alternate areas account for up to 34 cars. This brings the current total back into the 174 car range. This is approximately the peak usage on weekend, warm-sunny days and Holidays. Refer to Exhibit 'B' for a sampling of car counts logged as part of an ongoing volleyball email blog.

New Users

Recently, the Ontario Ridge Trail Loop developed. This was further enhanced by County adding the trails to their Park system. It is estimated that up to 20 cars on the Sunset Palisades' side and 12 cars on Cave Landing can be attributed to this use. Furthermore, due to news of the new park, visitors not intent on rigorous hiking now visit the area. They take a short walk to the

Whales Cave Conservancy, P.O. Box 479 Arroyo Grande, CA. 93421

Email: WhalesCC@Gmail.com

Whales Cave and surrounding vistas. These include older people and families with small children. This use is estimated at 6 to 10 additional cars at any one time. These users usually visit for a short time (perhaps one to two hours). With adequate parking, we expect the use by this demographic to increase, yet, the fact is, these families with small children and older users are likely to be the most affected by the lack of parking. They are not likely to ride a bike from miles away and transit systems to support all of the neighborhoods to this single location are also highly unlikely.

Current Beach Users

The Beach uses include: fishing, diving, skim boarding, swimming, sunbathing, volleyball, hooping, Frisbee and boating. These users account for the largest demographic. Of this group over half are locals that live in the area. The remainder of users includes:

1. Regular users that live throughout California.
2. Regular users from throughout the United States.
3. Tourists from California and the United States.
4. Tourists from other Countries that include Pirates Cove as part of their *destination* itinerary. We see many tourists from Europe, Scandinavia, and Eastern Europe throughout the year.

Economic Impact

Of particular note should be the economic impact that from non-local tourists. As many as 30% of daily users are from out of the area and they add tourism dollars into SLO County throughout the year. Even in winter months, Pirates Cove beach is used for sunbathing. There are many days when Avila beach, long considered to be the County's warmest beach will have little or no sunbathing activities, while the Cove will have 50 to 180 people. We believe that significant loss of parking may result in loss of this unique draw to San Luis Obispo County.

Impacts from loss of parking

1. Loss/reduction of coastal access. To the beach, hiking and all other activities.
2. Loss of Tourism Revenue to San Luis Obispo County.
3. Additional impacts to adjacent neighborhoods resulting in:
 - A. Additional trash generated in areas not covered by the WCC (Due to parking encroachment on other roads and neighborhoods)
 - B. Wear on roadsides due to vehicle parking. (Re-grading and paving at higher intervals)
 - C. Damage to environment and habitat due to vehicle parking.
 - D. Visual impingement on areas not intended for parking.
 - E. Safety; Additional users riding bikes or walking up Cave Landing Road.
 - F. Safety; The proposed parking lot creates hidden areas on the South side of the protected area.

Parking Lot Design; Specific Concerns Based on Parks and Rec drawings. (In addition to number of spaces)

1. The Bio Swale was indicated to be for runoff and not mitigation of paving runoff. (As indicated in meeting with Parks and Rec) We support this and agree a paved surface only creates the need for bio-remediation. Bio-swales take up critical parking space. Note the current material placed on the parking lot is currently over 20 years old. It has held up well considering there was no re-grading. We believe that this type of material periodically re-graded is well suited for the parking lot.
2. Funds available, pervious concrete would be the first choice both for permanence, parking space delineation and runoff mitigation.

3. The depth of the proposed Bio-swales and its proximity to the Archaeological site are of great concern.
4. The Westernmost, lower third of the currently designated parking lot seems to now be designed as open space with a single trail. (The note reads: "(N) path to existing trail head") It is our understanding that this path continues on to private property. Furthermore, allowing re-vegetation in this area which in close proximity to parking creates hidden areas which will fill up with trash and become a harbor for hidden activities. We are concerned that this is not a safe design feature for the area. We believe that it should remain parking as currently approved within the boundaries previously set. Connection to a future trail can just as well be created from the parking area. (See attached drawing)
5. The Easternmost corner of the designated parking lot shows a note that also reads: "(N) path to existing trail head" it points to two trails. We agree with the Northerly trail as it is the main trail that we use to get to the beach and cave. The trail to the South leads to an area which we were told P&R wanted to *discourage* access.
6. There are many existing natural vista areas throughout the site which this plan does not take advantage.
7. The "Dead end" parking configuration with the *end* at the bottom of the slope will result in an accelerated erosion of the parking lot surface and unnecessary congestion. We believe that retaining a "circle" type of parking arrangement will allow better traffic flow and less erosion to the parking surface. (See attached drawing, Exhibit 'A')

PARKING SUMMARY

Current capacity:

140 cars on the Cave Landing side (Based on recent counts and Photographic evidence)

Of which 75 are in the parking lot (Based on counts and Photographic evidence)

34 cars on the Sunset Palisades side (Based on recent counts not including Indio Drive)

SUBTOTAL MAXIMUM PARKING	174 Cars
Parks and Rec plans	
34 cars in the parking lot	<41 space loss>
Reduction due to trail at the end of Cave Landing road	<25 space loss>
Reduction if East end access closed	<34 spaces loss>
POTENTIAL TOTAL LOSS OF ACCESS	<100 parking spaces>
Percentage reduction	58% loss

In Conclusion

We, again thank you for this opportunity to add our suggestions into the mix. We hope our many years of experience in this area will be of benefit to the County and to the many new people that will "discover" Pirates Cove. Please look closely at our alternative design; we feel it contains improvements to the existing plan. Even if you disagree with the particular suggestions, we urge you to include additional parking to at least get *close* to existing use.

We ask that you also consider the historical loss of access to this area. Please consider our comments as an effort to enhance the effort undertaken by the County to diversify use.

Sincerely,
Christina Amber Ensminger, Secretary



For the Whales Cave Conservancy

Whales Cave Conservancy, P.O. Box 479 Arroyo Grande, CA. 93421

Email: WhalesCC@Gmail.com

Attachments: Exhibit A Excerpts of parking counts (From CoveVB Email)
Exhibit B Cave landing Road Parking Study

Attachment 'A'

Cave Landing Count Excerpts from CoveVB Email Blog

May 5, 2013

Stormy but relatively warm winds about 63 degrees. Diablo Buoy showing a 6.7ft south swell so I went to check the poles. We are losing sand due to the swell. Its setting up a sand "cliff" about a foot tall all the way down the beach. The lower pole removed. The swell peaks tonight but remains South through Wednesday and then turns North through the weekend. (Hopefully bringing back some sand)

34 cars parked and only four people on the beach... All locals and only two of them drive cars.

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Conditions: Hot, it hit 102 on the Ron-o-meter and stayed in the high 90's all afternoon but there was a breeze that had us feeling OK. Dry court with some water around 4:30PM but only one or two waves up 10% above the lower line. Big crowd, lots of young people on the East end. **106 cars at 1:30, 118 cars around 3PM and 127 cars at 5:20PM. over 75 cars in the official parking lot due to some unorthodox parking.**

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Conditions: Very good. Dry court but fairly sloped as we are losing sand at the lower level. Warm low 80's no wind. Moderate crowd. **104 cars at 1:45PM today and 101 at 1:30PM yesterday.**

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Conditions: It started out cold, (In the upper 50's) and continued to warm throughout the day, eventually reaching the high 70's and low 80's Ware off the court except for the occasional wave that would come 1/4 the way up the court. Sparse crowd for a Sunday. **71 cars at 1:30PM, 48 cars at 6:15PM**

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Conditions: Very nice, clear all day, breezy but not the "Gale Force Winds" Forecast, although I'll bet the west facing beaches felt it. Temperatures hit 82+ on the Ron-o-meter. water off the court though our last game which finished around 5PM Good crowd. **61 cars at 1PM** and from the looks if it more cars came later.

April 5, 2013

Conditions: Sunny with high clouds, warm, breezy but not as much as the rest of the county. Temperatures in the high 70's and dropping to the low 70's high 60's by 3:30PM. Good, dry court. Sparse crowd. **61 cars in the parking area.**

March 17, 2013

Conditions; Epic run of weather. Three days in a row of mid 90 temperatures. Today it hit 97 but for most of the day it was in the low 90's. Still in the upper 80's at 5:15 PM when I left. I cant remember ever having three days in a row like this especially in Winter. And to top it off this was the high tide week, but since the high tides were only in the 3ft range we had dry court all afternoon. Next weekend is the low tide week with tides near 0ft in the afternoon.
98 cars in the parking lot at 1:30PM and 93 cars at 5:30PM

March 15, 2013

Conditions: Way off, way off. When I arrived we checked the temperature on the Ron-o-meter (Manned by Brian) and it was 97? checked it several times and it stayed in the mid to upper 90's with the peak hitting 98. last check at 4:30PM it was still 89 degrees. Avila hit 83 so this was right where it should have been. There were some high, very thin clouds at times but they had no effect. There was a breeze and it made conditions almost perfect. **67 cars in the lot but I didn't get there until 2:30 so there were likely more.**

March 2, 2013

Conditions: Earlier arrivals had a nice warm day. By the time I got there ~2:30 a cloud had blocked some of the sun and while there were brief periods of sun and warmth, the Marine layer snuck in under the clouds and temperatures dropped to about 60 so 2:30PM was the transition to cloudy and cooler weather. The early warmth bought out a good group of people and **128 cars were counted in the parking area (No doubt there were more at peak hours)** Tide receded but the swell increase outran it so we had to wait out a few waves.

February 24, 2013

Side notes: **64 cars in the parking lot at one time and 48 still in the parking lot around 5PM.** Winter day with a high of 66 in Avila...
Very large swell running with harvest Buoy at point Conception running 16.9ft at noon but due to the unusually steep angle (330 to 350) degrees the Cove had a 3ft swell.

February 23, 2013

Conditions: Clear, sunny breezy for extended periods of time. Court dry all afternoon. Mid 70's near the cliff. decent beach crowd for a cool winter day. **(Note 52 cars counted at one time...**
More on this at the WCC email)

THE BLUFFS AT SAN LUIS BAY
HOMEOWNERS ASSOCIATION

3563 EMPLEO
SUITE B
SAN LUIS OBISPO, CALIFORNIA 93401

May 20, 2013

County of San Luis Obispo
Planning Commission
976 Osos Street, Room 300
San Luis Obispo, CA 93408

Re: County File Number: DRC2011-00069
Hearing Date: May 23, 2013
Pirates Cove Coastal Development Permit

Dear Planning Commission Members:

I am the President of the Bluffs at San Luis Bay Homeowners Association, which is an association that represents the owners of twenty three single family homes and yet to be built residential properties directly adjacent to the beach and parking lot commonly known as Pirates Cove. Our Board of Directors has reviewed the plans available in the Staff Report published on the Planning Department website.

In general, we support the plan and the improvements described. However, we feel it is imperative to make known our concerns regarding the use, or misuse, of Pirates Cove and the surrounding area.

Specifically, we want it known that people essentially LIVE on the beach at Pirates Cove. Early morning observation reveals tents and remains from bonfires. Moreover, the beach is frequented after dark and often into the early morning hours. Use of fireworks is not infrequent. Additionally, beachgoers often trample through our landscaped open space to access routes to the beach over and down the bluff side.

We believe that if the County intends to improve the site and operate the site as a County property, proper measures should be employed to treat the area as any other park property. We suggest a police presence to insure that proper hours of use are enforced and that appropriate behavior standards be enforced vis a vis alcohol and drug use.

Sincerely,

Laurence A. Rose

#2

County of San Luis Obispo
Planning & Building Dept.
976 Osos St. Room 300
San Luis Obispo, CA 93408

Attention: Ryan Hostetter

RE: DRC2011-00069

See attached mailer that I received and am addressing in this letter.

Ryan,

I am opposed to the bike trail being developed on Cave Rock and Pirate's Cove area. The bike trail is going to dump traffic on a road that is considered a private driveway for the home owners in The Bluffs. We have been dealing with foot traffic trespassing on our road and there is just no room for bikes and cars. It is posted "No Pedestrians" but no one obeys this law. I know it is considered to be a bike path, but it not feasible for any more than one or two bikes. The road is very narrow in several places and 178 to 154 Bluff drive considered to be shared driveway. We are dealing with people constantly trespassing on our bluff top and destroying the vegetation and ultimately the bluff top. We lose precious inches every year. Also there is a natural slide on the Pirates Cove and Bluff Drive Side. If disturbed could cause a major landslide.

However, I am in favor of development of the Parking area with bathrooms, trash cans and access to the beach. I am also in favor of no fires on the beach. We recently had a fire that burned land above my home and was started by a paper lantern on the beach. Please No Beach Fires. Curfews need to addressed. I do not see this on your list. Parks should be open at sunrise and close at dusk unless a time is stated and so posted. No overnight parties on the beach. No alcohol and no drugs. In the past there have been rapes reported in this area at night, so there should be a locked gate to make sure this kind of thing does not happen after hours.

I cannot attend this meeting because I am out town. Please feel free to express my thoughts at the meeting. Thank you for your time.

Judy Brown
66 Bluff Drive,
Shell Beach, California 93449
I also own the home at 178 Bluff Drive.

20 MAY 2013

Subject: CAVE LANDING AREA IMPROVEMENTS

Ms Carlyn Christianson, and
Members of the SLO Planning Commission,

The intended course of actions by SLO Parks & Recreations Department, in developing the area Cave Landing, historically also called Mallagh's Landing, has generated concern by current users of this area.

What little is known about the Parks' Dept's plans have been obtained via on-line searches, and via "word-of-mouth" communication from the limited number of persons that have been granted partial disclosure regarding the County's intentions. None of this was available via official means. As recently as 13 MAY 2013, the **Parks' Dept was planning a 35-40 vehicle parking area**, DESPITE knowing full well that current usage of that parking area is nominally in the 70-80 range and often in excess of 100 vehicles. And, per the item as listed in your agenda, still reflects a design for 35 vehicles.

Since the plans regarding parking are so fatally flawed, why would any reasonable person not conclude that other aspects of their intended actions won't be similarly flawed?

An entirely different issue has been linked to this effort, mitigation of a natural land-slide in the area. It should be recognized that ultimately, Mother Earth will do what she wants. All plans should proceed, accepting that eventual conclusion. Therefore, the desire to mitigate the land-slide is secondary to the primary goal of extending/improving the Cave Landing Trail and achieving increased public access. **There are MANY different Engineering solutions to ANY problem**, so the choices of those solutions need to reflect that prioritizing.

I request that SLO Parks' be required to submit a detailed report regarding the alternative Engineered mitigation means considered, prior to being allowed to proceed with their present course of actions.

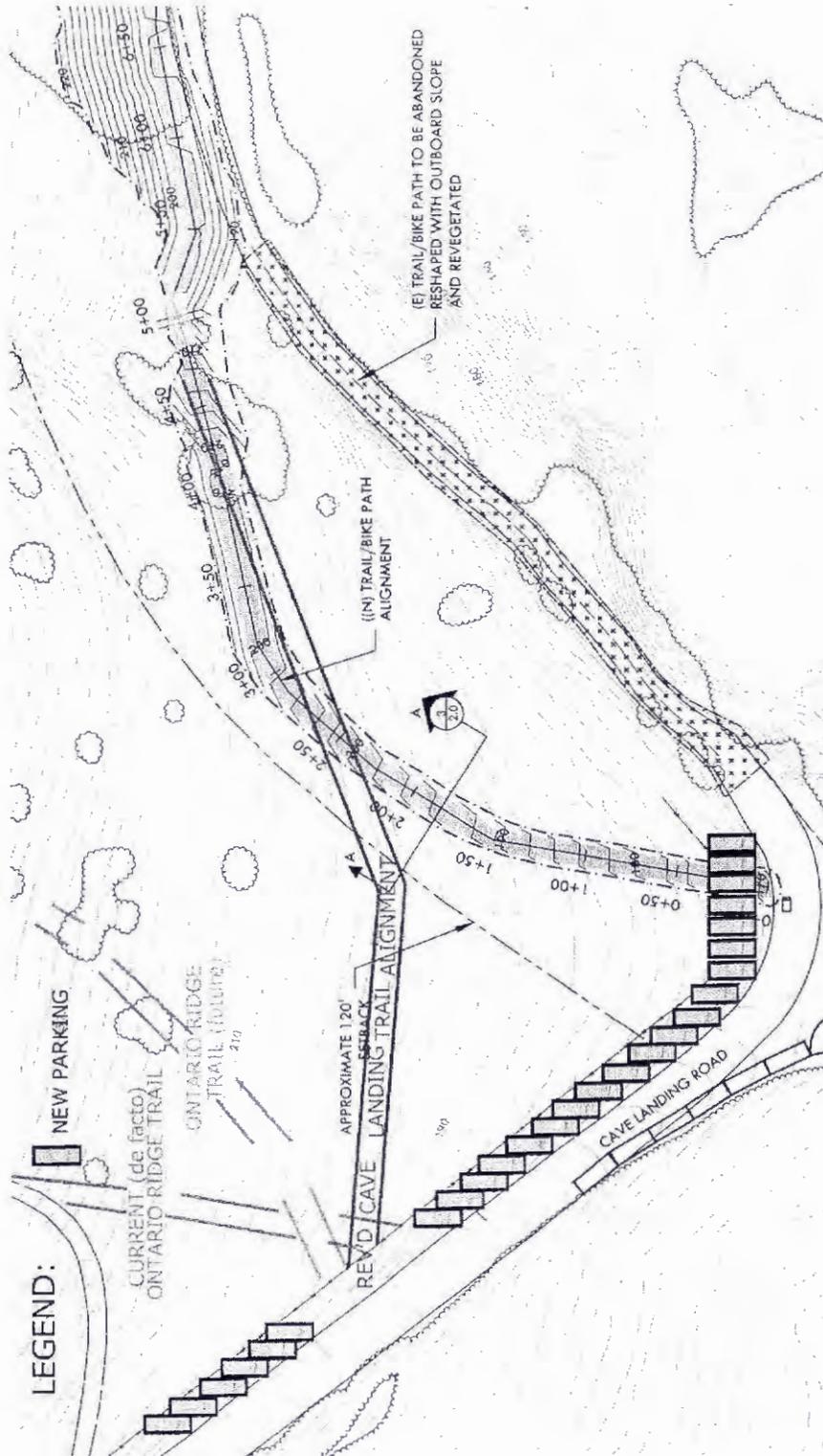
PROPOSAL FOR ADDITIONAL PARKING ALONG CAVE LANDING ROAD:

The Cave Landing parking area in its current form, has served the Public's need well for far longer than the three decades I have utilized the area. The circular traffic flow established by an island near its center allows easy ingress and egress within the parking area. The public is use to utilizing this area as a dirt parking lot, so there is no true need to pave it.

While there is some rutting that could be corrected, any further **"improvements" in the Cave Landing parking area are unnecessary**. **All funds ear-marked for such, should instead be redirected to expanding the available parking in this area**.

The following conceptual **DRAWING 1** is a mark-up based upon one of the sheets obtained in an internet search of available documentation regarding SLO Parks' Dept. plans for the Cave Landing parking area. The main concept is that angled parking in the down-hill direction of Cave Landing Rd be established on the South-West portion of Parcel 3 of 54PM36 owned by the County of San Luis Obispo. By converting the current parallel parking along Cave Landing Rd, to angled parking, better utilization of space is obtained with an increase in available parking while maintaining necessary fire lane consideration.

There is currently approximately 400 or more, linear feet along this SW portion. There is an existing 50' wide road easement (which is no longer a concern on SLO owned Parcel 3); the road is currently about 26' wide. There is more than adequate area to accommodate this proposal with very little grading requirements. The excavated material could be placed along the westward remaining 12' of easement and allowed to naturally compact, and potentially utilized in the future for further parking availability.



TRAIL ALIGNMENT - PLAN VIEW

SCALE: 1" = 60'

DRAWING 1 - CONCEPTUAL ILLUSTRATION FOR ADDITIONAL PARKING & TRAIL RE-ALIGNMENT

DISCUSSION REGARDING CAVE LANDING TRAIL RE-ALIGNMENT:

There has been previous discussions by both AVAC and the Board of Supervisors, in a desire to utilize this trail in some manner as a secondary evacuation route from the Avila Beach area, should the need arise. My suggested trail re-alignment is such that the natural traffic flow, in that event, is facilitated. In furtherance of that goal, consideration should also be given to if there is any need to increase the planned 12' wide path, to 16' to accommodate both vehicular and other modes of evacuation.

The de facto trail-head for the Ontario Ridge Trail is currently in the same location as my suggested re-alignment, clearly seen in the current Google Earth image. Presumably the trail-head for future upgrade of that trail would originate in its current location as well. The suggested re-alignment places the trail-head for both trails in the same spot. Coupled with the previously suggestion of angled parking along Cave Landing Rd on both sides of these trail-heads, it makes access to these trails very convenient.

If one studies the details of Parks' current plans, the new bridging structure is at 200' Elevation. The path then increases at a 19% slope, flattens out, and then successively descends at 13%, 10% and 13%. The suggested re-alignment follows closely along the 200' elev. topography, with a gradual decline to approximately 195' elev. By eliminating the rise and fall of the trail as designed, it will better enable the less physically incline, such as the elderly, to enjoy a portion of this trail during their sojourns to the Cave Landing Area. A review of their documents indicates this length to be 1100', or approximately 1/5th of a mile (start 195' elev, high point 200' elev, low point of 189' elev; as suggested); or 2/5^{ths} mile round-trip.

Summary: The proposed alternate re-alignment of the Cave Landing Trail as suggested:

- 1) Accomplishes the same goal that Parks' intends, by acting as a semi-passive means of redirecting water from the current landslide area, **with little to no** impact on current parking,
- 2) Facilitates traffic flow from the Avila Beach area along the Cave Landing Trail, should the need for a secondary emergency escape route arise.
- 3) Places the trail-head in the same vicinity of the Ontario Ridge Trail,
- 4) Fosters the partial use of the trail as more easily accessible by the elderly by eliminating the planned approx 15% rise and fall to and from the new bridging structure, creating an essentially flat trail. A review of their documents indicates this length to be approximately 1/5th of a mile.

DISSEMINATION OF INFORMATION TO THE PUBLIC:

At the 2013-02-26 Board of Supervisor's Meeting, it was suggested by myself, that the Board direct the Parks' Dept to obtain more input from the Public prior to continuation of their plans, and echoed by others. This was seemingly agreed to by the entire Board of Supervisors, and Park's was directed to obtain contact information to pursue that course of action.

To date, I have NEVER received ANY notification by Parks', nor the ability to provide direct input following that Board meeting. To the best of my knowledge, none of the other individuals were contacted either. It is **only** by "word-of-mouth" that it was made known to me that this topic would be included in the 23 MAY 2013 meeting, despite assurances by Parks' and the Board of Supervisors. Therefore, my personal perception is that Parks' Dept paid "lip-service" to the Board of Supervisors and has acted in a non-genuine manner regarding this issue.

None of the proposed Parks' plans were found on their website, or any County Governmental web-site. It was by happenstance while reading about an unrelated subject that they were found.

Parks' should create a link on their web-site for documents, plans, etc. regarding this area, so that they are readily available to the Public for comment. There is obvious interest by many SLO citizens.

Page 3 of 4

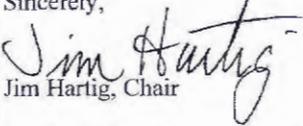
IN CONCLUSION:

- 1) The course of action proposed by SLO Parks' Dept, is insufficient to meet current usage needs, and will not accommodate any increased usage of the area.
- 2) The re-funding of monies ear-marked for parking lot "improvements" are best served by expenditures resulting in INCREASED parking, such as those proposed in this document.
- 3) The County, and Parks' need to prepare a detailed study of all alternate Engineering mitigation methods for the completely unrelated land-slide area so that the eventual remediation attempts do not result in decreased public access.
- 4) Due to the acute interest by many SLO Citizens, Parks needs to cease working in secret behind closed doors regarding this manner, and make their intent open and readily available for public comment. Hopefully via a web-site link to that information.

I appeal that you do not allow further progress on this ill-conceived project.

Thank-you for your consideration, sincerely,

Brian A. LoConte
Irish Hills Resident
SLO District #3

<p>AVILA VALLEY ADVISORY COUNCIL P.O. Box 65 Avila Beach CA 93424 www.avilavalley.org</p>	<p style="text-align: center;">AVAC</p> <p style="text-align: center;"><u>Our Mission Statement</u></p> <p>The Avila Valley Advisory Council's (AVAC) Mission is to represent the interests of valley residents and enterprises, to monitor and guide development and to promote the general welfare of the community. To these ends, AVAC works to assure that essential public services keep pace with change and promotes the conservation of the natural beauty and resources in the Avila Area.</p>
<p>Chair Jim Hartig Vice Chair Sherri Danoff Secretary Anne Brown Treasurer Julie Hartzell</p> <p><u>Members of Council</u></p> <p><u>Avila Beach:</u> Anne Brown Lynn Helenius Lisa Newton John Salisbury (alt)</p> <p><u>Avila Valley:</u> Julie Hartzell MaryEl Hansen Jan Taylor (alt)</p> <p><u>San Luis Bay Estates:</u> Sherri Danoff Saul Goldberg Jim Hartig Bob Pusanik Ken Thompson Lynn Walter Karla Bittner (alt) William Ziegler (alt)</p> <p><u>See Canyon:</u> Denise Allen Bill Tickell Karen Wickier (alt)</p> <p><u>Squire Canyon:</u> Open (2) Karin Argano (alt)</p>	<p>May 20, 2013</p> <p>SLO County Planning Commission c/o rhedges@co.slo.ca.us</p> <p>Dear Commissioners:</p> <p>At AVAC's regular meeting on May 13, members voted to communicate concerns about the proposed parking lot for Pirates Cove. Recognizing that funding for improvements could be jeopardized, members nonetheless passed, unanimously, the following motion:</p> <p style="text-align: center;"><i>Recommend postponement of the May 23 Planning Commission hearing for staff to work with the Whale Caves Conservancy and Mr. LoConte, and any others, to retain the existing number of parking spaces (70), at a minimum, and continue to provide a turn-around for circulation safety. A thorough study of engineering solutions for drainage should occur before a plan is approved.</i></p> <p>AVAC members considered the substantial public testimony provided at its May 13 meeting in opposition to the proposed plan. Included were suggestions for various alternatives. Also considered was a handout from an AVAC member containing Local Coastal Plan- County General Plan standards for Pirates Cove/Mallagh Landing. These include: "Parking area for 100 cars... The parking area is to be surfaced with a permeable material to control bluff erosion."</p> <p>AVAC will appreciate your considerations of a revised plan for public access to Pirate Cove's scenic amenities, for enjoyment of County residents and also visitors who benefit the County economically.</p> <p>Sincerely,  Jim Hartig, Chair</p> <p>C: AVAC members; Adam Hill, 3rd District Supervisor; Curtis Black & Shaun Cooper, Parks; Ryan Hostetter, Planning</p>

Whales Cave Conservancy

"Dedicated to the Preservation of the Cultural, Ecological, Scenic Resources and Historic Use, of Pirates Cove."

Date: May 22nd, 2013

RE: Pirates Cove parking concerns

Attn: San Luis Obispo County Planning Commission

Greetings, San Luis Obispo County Planning Commissioners,

We, the members of the Whales Cave Conservancy are pleased that we have the opportunity to contribute to the long term stewardship of the area known as "Pirates Cove", historically known as Mallagh Landing and before that Whales Cave. We worked with the County, and Chumash representatives in the early 1990's on the re-configuration of parking, for protection of Cultural resources. Included with this project was the closing of a large portion of Cave Landing Road for the Bluffs development. This ultimately led to the reduction of parking from an estimated 280 spaces to about 160 spaces. The amount of parking that remained was further reduced by County Public Works by the elimination of parking on the North side of Cave Landing Road. Currently, a maximum of 130 to 140 spaces are available.

Our concern with the Parks and Recreation Plans (As of May 21st) is that the available parking, already stressed, will be further reduced by 37 spaces or 29%. While this change is being proposed, the use of the area is showing significant increases. (See Exhibit "A", parking counts) We feel lack of adequate parking in the current improvement plans will impact the area in a negative way. The reduction of access to county residents, tourists and students will take what we feel to be the best beach of its kind in America and make it an exclusive destination only for those who are able to get an early parking spot. With the addition of hiking trails to the system, additional user groups are impacting the area. We feel this use along with the more typical sightseers, picnickers and tourists will increase the propensity of use.

AVAC Motion for Adequate Parking

On May 13th 2013, we presented our concerns to the Avila Valley Advisory Council. (Included was a design that placed 60 parking spaces within the easement) They (AVAC) concurred that such a drastic reduction would have long term impacts on the area. **They made a motion to postpone the Planning Commission Agenda item until parking equivalent to existing was provided.** We have been working with Parks and recreation in the time since. Some progress has been made. As of this writing the area within the parking lot easement contains 51 spaces. This is an increase of 16 spaces from their original design. It appears that some improvement can still come from the design to ultimately have about 54 parking spaces. With this in mind, we would still be severely deficient in total spaces. Currently the parking lot holds 70 to 75 cars. An additional eight to ten spaces are lost due to the "Park" created at the end of cave landing road where cars currently park.

(See Exhibit "B", Google Earth Photograph)

Parking Summary

Current capacity:

140 cars on the Cave Landing side. Based on recent counts and photographic interpolated evidence. (We reduced this amount to *128 cars based on our estimates of parking within proper tolerances) 70 to 75 spaces are in the parking lot.

Note: 34 additional cars park on the Sunset Palisades side (Based on recent counts not including Indio Drive)

Whales Cave Conservancy, P.O. Box 479 Arroyo Grande, CA. 93421

Email: WhalesCC@Gmail.com

ADJUSTED* MAXIMUM PARKING (Cave Landing Road Access) 128 Cars

Parks and Rec plans as of 5/21/13:

51 cars in the parking lot	<19 space loss>
37 cars on the South side of Cave Landing Road	< 3 space loss>
Reduction due to "Park" improvements and parking tolerances	<15 space loss>

CURRENT PARKING SHORTFALL	<37 parking spaces>
Percentage reduction	<29% loss>

In Conclusion

We hope our many years of experience in this area will be of benefit to the County and to the many new people that will "discover" Pirates Cove. With Parks and Rec revisions to date, we are still at 29% fewer "legal conforming" spaces (Even more if actual parking is considered). In our meetings with Parks and Rec, and San Luis Obispo Planning, we have come to the conclusion that the parking to make up for the loss is not possible within the confines of the parking easement. The most efficient of the options would be to re-establish parking on the North side of Cave Landing Road. While this will take some road widening it should get us close to the existing available parking. (See Exhibit "C" Schematic Offsite Parking Plan)

We therefore request that you uphold the AVAC position to provide parking comparable to existing use. We conservatively see this number to be 125 to 128 automobiles based on the factors given above.

Sincerely,
Christina Amber Ensminger, Secretary

For the Whales Cave Conservancy

Attachments: Exhibit A Excerpts of parking counts (From CoveVB Email)
Exhibit "B" Google earth photo of parking lot
Exhibit "C" Schematic Offsite Parking Plan

Attachment 'A'

Cave Landing Count Excerpts from CoveVB Email Blog

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Conditions: Sunny with high clouds, warm, breezy but not as much as the rest of the county. Temperatures in the high 70's and dropping to the low 70's high 60's by 3:30PM. Good, dry court. Sparse crowd. **61 cars in the parking area.**

March 17, 2013

Conditions; Epic run of weather. Three days in .a row of mid 90 temperatures. Today it hit 97 but for most of the day it was in the low 90's. Still in the upper 80's at 5:15 PM when I left. I cant remember ever having three days in a row like this especially in Winter. And to top it off this was the high tide week, but since the hight tides were only in the 3ft range we had dry court all afternoon. Next weekend is the low tide week with tides near 0ft in the afternoon.
98 cars in the parking lot at 1:30PM and 93 cars at 5:30PM

March 15, 2013

Conditions: Way off, way off. When I arrived we checked the temperature on the Ron-o-meter (Manned by Brian) and it was 97? checked it several times and it stayed in the mid to upper 90's with the peak hitting 98. last check at 4:30PM it was still 89 degrees. Avila hit 83 so this was right where it should have been. There were some high, very thin clouds at times but they had no effect. There was a breeze and it made conditions almost perfect. **67 cars in the lot but I didn't get there until 2:30 so there were likely more.**

March 2, 2013

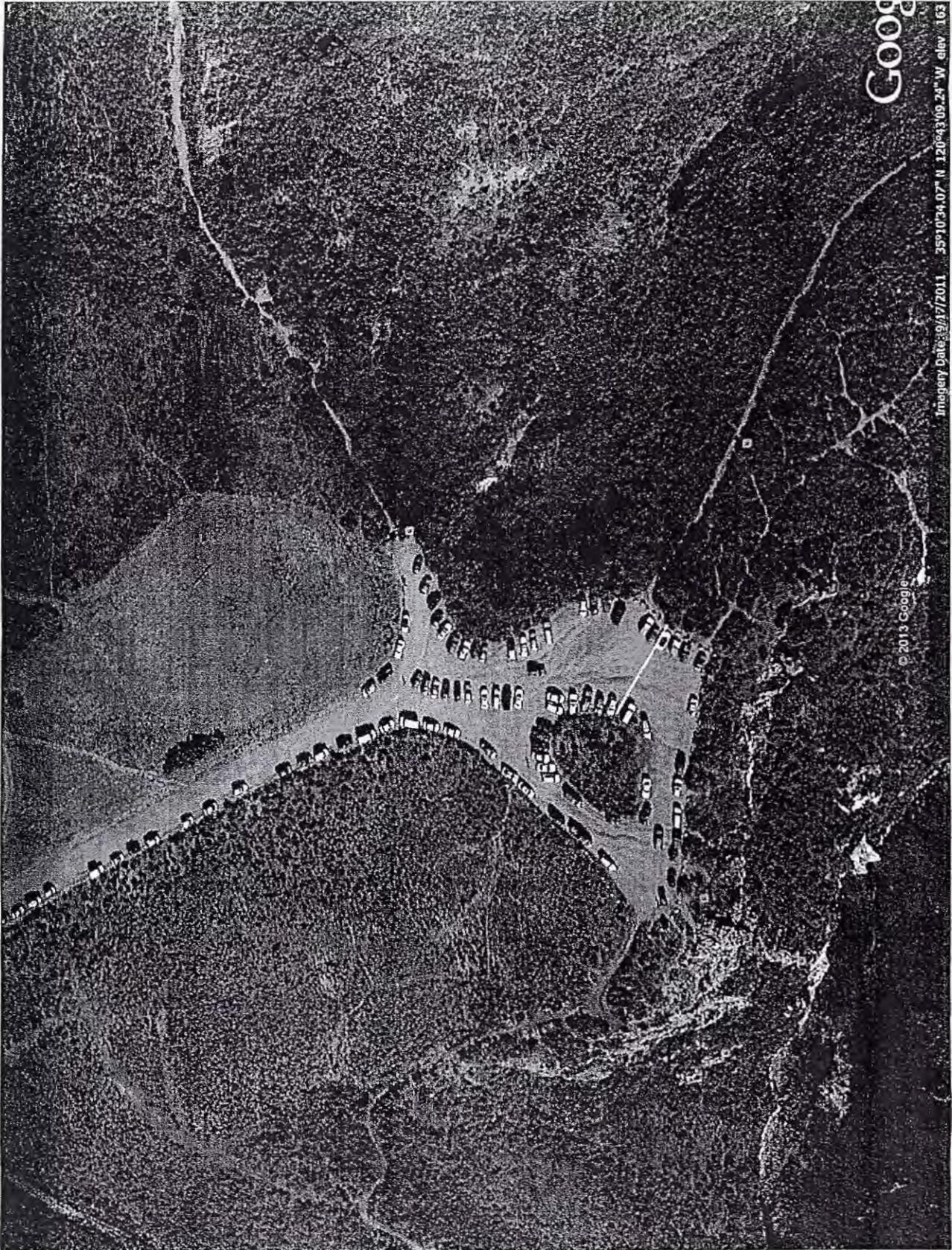
Conditions: Earlier arrivals had a nice warm day. By the time I got there ~2:30 a cloud had blocked some of the sun and while there were brief periods of sun and warmth, the Marine layer snuck in under the clouds and temperatures dropped to about 60 so 2:30PM was the transition to cloudy and cooler weather. The early warmth bought out a good group of people and **128 cars were counted in the parking area (No doubt there were more at peak hours)** Tide receded but the swell increase outran it so we had to wait out a few waves.

February 24, 2013

Side notes: **64 cars in the parking lot at one time and 48 still in the parking lot around 5PM.** Winter day with a high of 66 in Avila...
Very large swell running with harvest Buoy at point Conception running 16.9ft at noon but due to the unusually steep angle (330 to 350) degrees the Cove had a 3ft swell.

February 23, 3013

Conditions: Clear, sunny breezy for extended periods of time. Court dry all afternoon. Mid 70's near the cliff. decent beach crowd for a cool winter day. **(Note 52 cars counted at one time...**
More on this at the WCC email)





PC_ 5/23/13_Item #2 CO. of SLO - GENERAL SERVICES AGENCY, PARKS
DIVISION

Nicole Retana to: PL_PC_Commissioners_only, James Orton,
Ryan Hostetter
Bcc: Donna Hernandez

05/22/2013 03:04 PM

Commissioners,
please see correspondence attached below. Thank you!

Nicole Retana, Secretary
NRetana@co.slo.ca.us



----- Forwarded by Nicole Retana/Planning/COSLO on 05/22/2013 03:03 PM -----

From: Tom Whaley <tomeddie78@gmail.com>
To: nretana@co.slo.ca.us
Date: 05/22/2013 01:43 PM
Subject: Hearing to consider a request by the COUNTY OF SAN LUIS OBISPO GENERAL SERVICES
AGENCY, PARKS DIVISION for a Development Plan/Coastal Development Permit & Variance

Nicole Retana-

I would like the following to go the Planning Commissioners regarding "Hearing to consider a request by the COUNTY OF SAN LUIS OBISPO GENERAL SERVICES AGENCY, PARKS DIVISION for a Development Plan/Coastal Development Permit & Variance":

Commissioners-

I attended a meeting of Avila Valley Advisory Council (AVAC) on May 13, 2013 and publicly spoke before them concerning the planned request for a permit & variance in the area known as Cave Landing that you are considering at your meeting on May 23, 2013.

I ask that the Planning Commission deny the Permit and Variance and instead ask that a full EIR be conducted for the following reasons:

1. It is my opinion that the Park Division did not do their full homework considering the current usage of the parking lot and area. Has any study been done to see how many cars actually use the parking lot and area on any given day? Has a study that covered a months-worth of visitors actually been taken? I do not believe a study has been taken at this time.
2. There is an active landslide and the county wants to divert water away from the area using a trail and put the water in the parking lot area, yet at the same time the County will be placing a set of stairs at the bottom of the active landslide. How does it make any sense to worry about a landslide moving and diverting water and at the same time put stairs at the bottom at that same

landslide?

I again ask that the Planning Commission not approve the project at this time and instead ask that these serious concerns be addressed, and the correct way to address them it to deny the variance and ask for an EIR that includes alternative plans (including two that I saw at the AVAC meeting. One presented by Whales Cave Conerancy and another presented by a member of the public).

AVAC passed a motion to ask the Commission to delay the project and ask Parks Division to work with Whale's Cave Conservancy to address the issues related to parking. As one of them stated...the current plan is a disaster. Please consider their advise carefully knowing that the residents of the area know what is best for Cave Landing.

Sincerely,

Tom Whaley

Resident of San Luis Obispo, District 3



**Fw: Concerns Regarding the Pirate's Cove Parking Commission meeting
5/23/13**

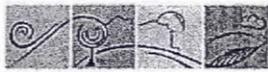
Nicole Retana ID: PL_PC_Commissioners_only, James Orton,
Ryan Hostetter

05/22/2013 03:05 PM

Bcc: Donna Hernandez

Commissioners,
please see correspondence attached below. Thank you!

Nicole Retana, Secretary
NRetana@co.slo.ca.us



PLANNING & BUILDING
COUNTY OF SAN LUIS OBISPO
976 Osos Street, Room 300
San Luis Obispo, Ca 93408
805-781-5718

----- Forwarded by Nicole Retana/Planning/COSLO on 05/22/2013 03:04 PM -----

From: "Ryan Evans" <revans@coastsatellite.com>
To: <nretana@co.slo.ca.us>
Date: 05/22/2013 02:41 PM
Subject: Concerns Regarding the Pirate's Cove Parking Commission meeting 5/23/13

Dear Nicole

I am writing in reference to the current issue at hand with the development plans for the Cave Landing Parking Lot and would like to express my concern as to the amount of parking spaces that are being discussed during the next Planning Commission meeting. Please forward this email to the Planning Commissioners regarding the item on tomorrow's agenda titled Hearing to consider a request by the COUNTY OF SAN LUIS OBISPO GENERAL SERVICES AGENCY, PARKS DIVISION for a Development Plan/Coastal Development Permit & Variance. I would like the Planning Commission to really consider, and I myself as a concerned citizen, agree with the Avila Valley Advisory Council. It seems to many of us that there is definitely a creative way to accommodate at least as much parking as is currently in use documented at 128 parking spaces. With the improvements to this area being considered including the trails and beach access, it would only seem logical to increase the available parking for all of the residents to enjoy rather than reduce it. Taxpayer money would be well spent in thoroughly exhausting all current ideas before proceeding with the construction phase only to find after completion that the project was inadequate. Please take the proper time in deciding on a parking plan that would at least meet current demand and future projections of use.

Thank you for your time in this matter.
Ryan Evans

Subject: CAVE LANDING AREA IMPROVEMENTS

22 JULY 2013

Members of the SLO PLANNING COMMISSION,

The intended course of actions by SLO Parks & Recreations Department, for development of the Cave Landing area, historically also called Mallagh's Landing, continues to generate concern by current users.

Previous public comments have primarily been regarding the proposed parking at this site. This was due to the severe impact it would have upon the large number of people who use and enjoy this area. As can be seen the current proposal is vastly better than the original 35 vehicle design. This was the result of Parks reassessing their plans based upon constructive public input. Parks should be commended for their efforts to date regarding this issue.

However, it is doubtful that this progress would have occurred had it not been for the Avila Valley Advisory Council's support in having them actually elicit input from the various end users.

This goes directly to the crux of the problem with the proposed development plans. **There has been NO MEANINGFUL public review and opportunity to comment on its details.** It has only been by public plea to the regulatory bodies when Parks has tried to gain approval as a *fait accompli*.

Other issues have previously been raised, and continue to need to be fully addressed prior to this project proceeding further.

As of this date, the item documents for the 25 JULY 2013 meeting of this commission are still not available. The website link results in a "404 Error". Even the Agenda item, as of this date, still reflects that a 35 vehicle parking design is being proposed. How can the Public provide any comment if the details are not made available?

Specific items that I strongly feel still need to be addressed are:

- 1) **The proposed concrete staircase to the beach at the base of the beach trail.**
- 2) **Additional parking.**
 - a. **Widening of Cave Landing Rd to allow angled parking.**
 - b. **More parking can be accommodated in parking lot by reduction/elimination of the current bio-swale design via permeable surfacing.**

The proposed concrete staircase will be destroyed within 3 years. It will require huge maintenance costs. Damage to it will most likely force its closure, thus **REDUCING** coastal access.

The benefit of angled parking speaks for itself. My main proposal is that the southern end of the parking lot be raised by addition of gravel, such that it acts as a bio-swale, yet still allows parking upon it. Line demarcations can also be avoided by a permeable surface such as gravel.

More details on the above subjects are attached.

There are other concerns raise by others, and I echo:

- 1) Placement of the proposed picnic tables
- 2) Closure at dusk, thus not allowing sunset observation, and some twilight star gazing.

I'll not address these issues in any detail; others should do so.

Sincerely,

Brian LoConte
Irish Hills Resident, District #3

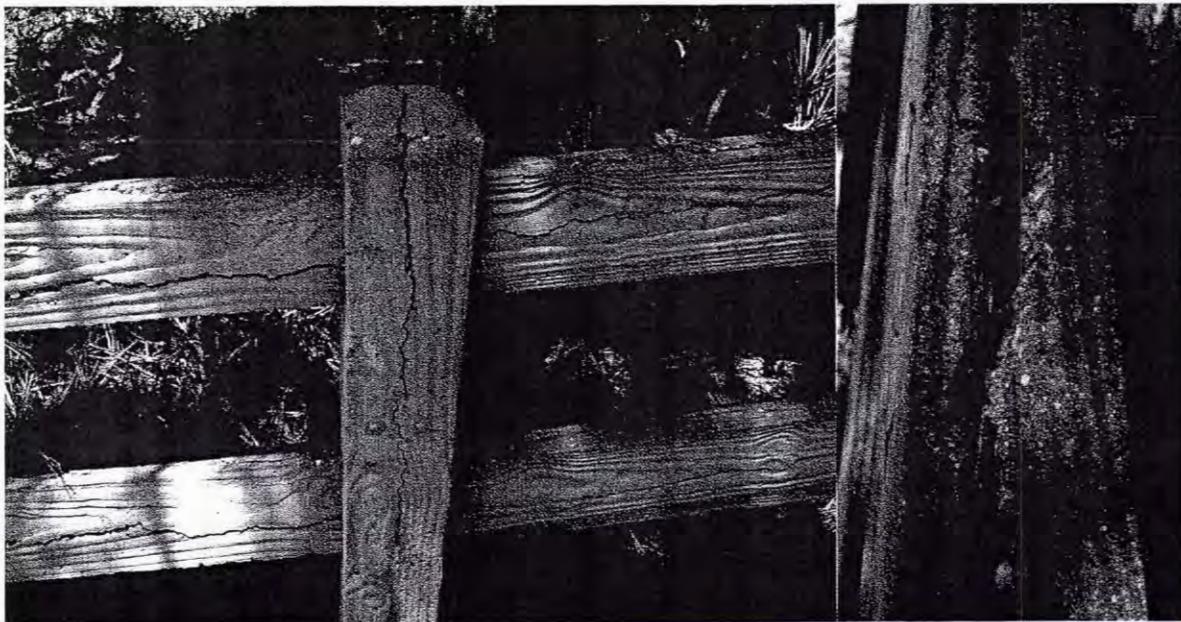
The next two pictures **SHOW THE MULTIPLE LOOSE ROCKS/BOULDERS** that are deposited in this section of the beach **EACH YEAR BY THE SEVERE WINTER STORMS**. These storms concentrate their energy in this corner of the beach due to the counter-clockwise circulatory water motion caused by the predominate southern swells and topography of the ocean floor slope. **THESE ROCKS ARE THROWN ABOUT LIKE GRAINS OF SAND DURING THESE STORMS**, smashing into the cliffs multiple times, all storm long.



Let me next explain the basic challenge with concrete structures in a marine environment.

Concrete naturally develops cracks. The saltine water interacts with the carbon steel rebar. The rebar rusts. The rust (ferric-oxide compounds) take up more space than the original steel bar, thus expands. This expansion exerts an outward force upon the surrounding concrete. Concrete handles downward forces (compressive forces) very well, however, it handles outward forces (tensile forces) very poorly, the very reason the rebar is used in concrete structures (steel can take large amounts of tensile stress/force). Thus the cracks in the concrete expand and grow in length, allowing more saltwater interaction with the rebar, causing further rusting, and more expansion forces upon the concrete. The cycle continues until some of the concrete falls off (called spalling). This exposes more rebar to the marine environment, and the cycle accelerates.

A prime example of this phenomenon occurred in the concrete faux wood fencing along Cave Landing Trail through the Bluff's development. After years of downed sections of fencing, the majorly damaged section was recently removed and replaced with pressure-treated wood. Pictures of still existing sections are shown below.



The above happens even in salt air exposure. I won't bore you with the details of galvanic corrosion, only that it takes place when metal is consistently exposed to saltwater. I'll simply state that the metal "desolves away" thus weakening the structure.

Because of all this, any concrete structure built in a marine environment, typically uses a coated rebar. It is intended to resist the saltwater degradation to the rebar. There are two problems with coatings. If not applied properly, it loses adherence to the steel thus exposing the under laying portion allowing corrosion, which causes continue peeling away and more corrosion, eventually rendering the coating completely useless. Also, if the coating gets scratch the same degradation to the coating eventually happens.

If we consider the fact of the multiple impacts upon this staircase from the rocks/boulders during the winter storms, along with the significant wave forces, it should now be apparent that a concrete staircase in this area would sustain damage EVERY winter, and most certainly be rendered into a crumbled mass of rusting rebar within 3 years.

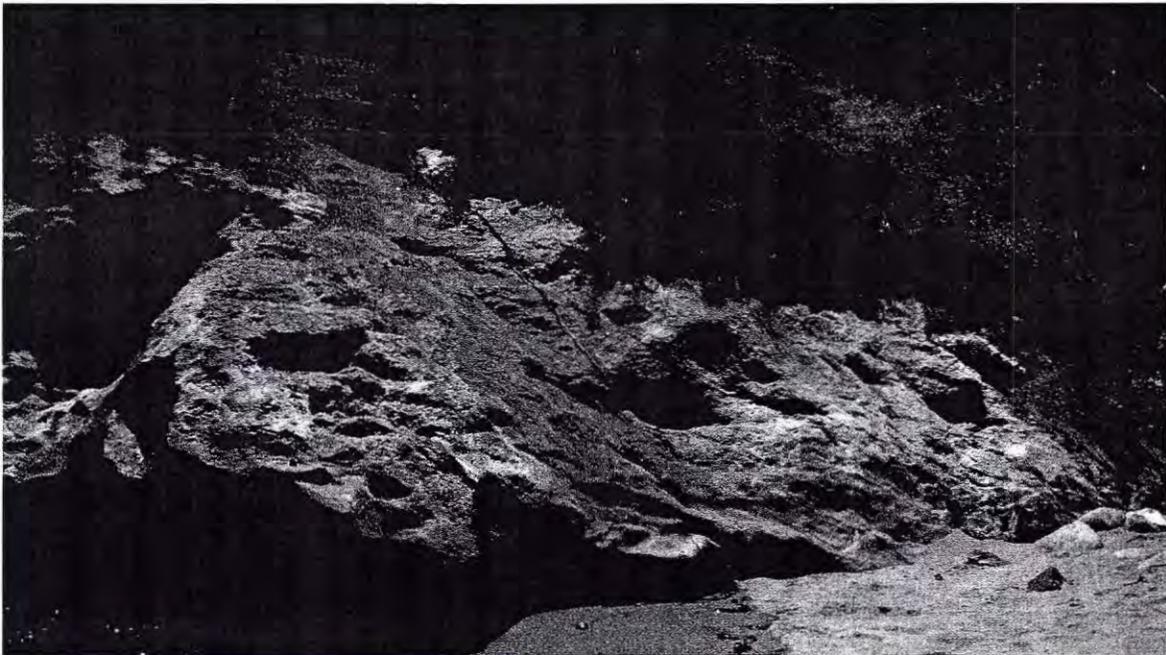
My fear and apprehension is that the County would be required by Cal-OSHA or some other ordinance / regulation to preclude use of the staircase, thus SEVELY limiting "Coastal Access".

Let me state a simple fact: Coastal Access to this beach currently exist, and has existed for decades, even centuries.

I truly believe the best course of action would be for the County to NOT do anything beyond providing an improved trail to the landslide area and providing a concrete cap/slab along the level ridge above the immediate beach area (to facilitate clearing debris from the landslide). I believe this fully meets the intent of providing improved coastal access of any grant monies. It would also absolve the County of legal requirements regarding safety standards past the improved trail. However, I anticipate that this common sense plea will fall on deaf ears. Therefore, an alternate proposal is given.

There are three basic concepts to my proposed alternative to the current plans for actual beach access:

- 1) Apply concrete only upon the upper level ledge area tied into the rock base below.
- 2) Minimize handrails in the land-slide area; make these detachable and easily replaceable.
- 3) Utilize the existing rock as the "steps" to the beach.



NOTE THE NATURAL "FALL LINE" DOWN AND ALONG THIS ROCK FACE

The main issue within this accesses point is the fact that during the winter months/storms the earthen material, along with the rain/water run-off from the land-slide, covers the upper level area, making a muddy, slippery mess. By placing a simple concrete cap along this level ledge, the mud could easily be scraped off to clear the debris and minimize slipping hazards. This slab would be tied into the rock below, and extend as far north as the rock will allow. The north end should remain open (un-railed) to allow make-shift non-winter access through the land-slide, as is currently utilized.

OK
Secondly, terminate the traditional hand railing just before the land-slide area. A single hand rail, similar to that used in most sports stadium's stairs, should then be placed along the center of the trail & beach access. This railing should be segmented, easily replaceable, for quick repairs upon damage [spare segments should be manufactured and stored by Parks] and of a non-corrosive material.

As can be seen above, there is a natural L-shaped "fall line" in the rock to sand level (follow rope then to the right). As stated before, this is the primary access to the beach during winter months, and secondary access

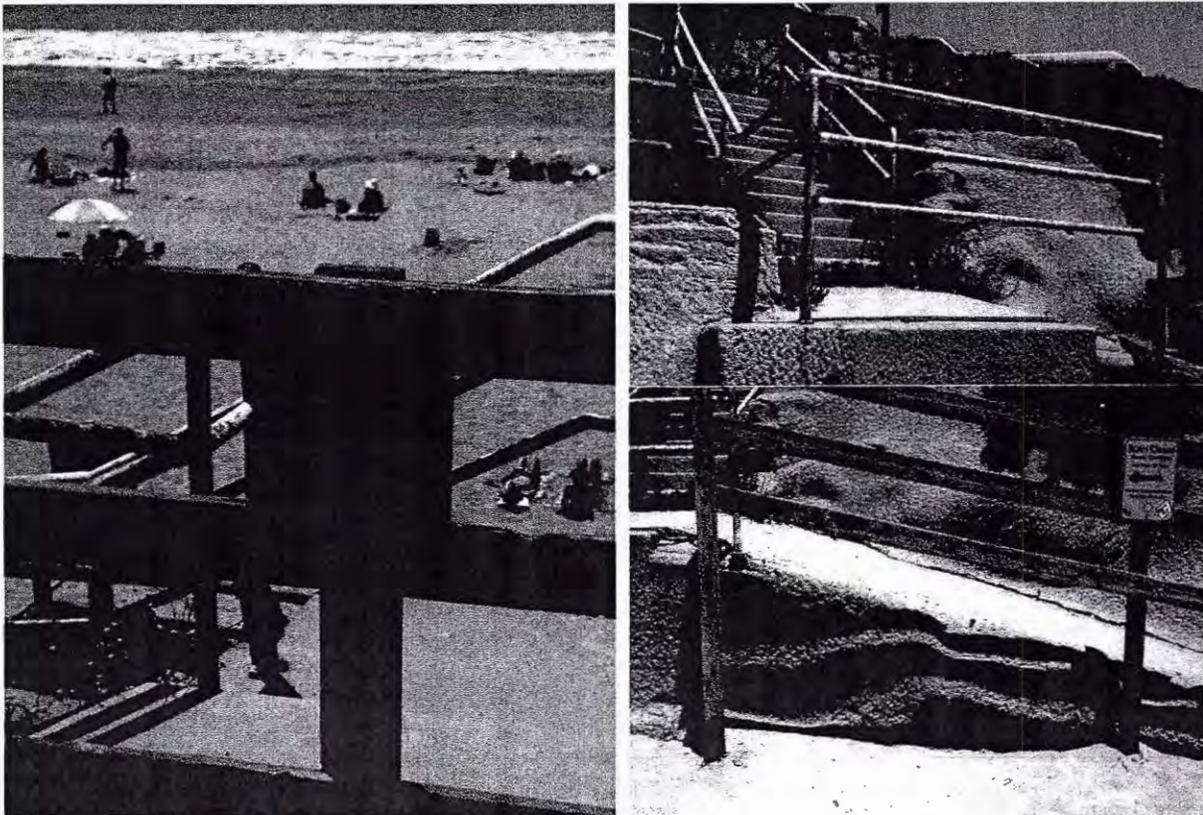
during non-winter. Improved rough-hewn steps could be carved into this rock, and serve as the improved beach access.

These "steps" would still be subjected to impacts by the multiple rocks/boulders, however, since it is already a "time tested" surface, it would have a much higher use life than the proposed concrete stairs, and would completely avoid the rust/spalding issues resulting from the concrete rebar.

These suggestions **will both "improve" coastal access, yet prevent "closure" of coastal access** due to safety ordinances. It will also **drastically reduce**, if not completely avoid, **maintenance and repair expenses** due to the inevitable annual storm damage to any man-made structure in this area.

The following is included to further emphasize my point regarding that the County would be required by Cal-OSHA or some other ordinance / regulation to preclude use of the intended concrete staircase, thus SEVELY limiting "Coastal Access":

There is a concrete staircase at the east end of Avila Beach that has been closed off for safety reasons. As can be seen, there is no obvious degradation to the concrete itself. **The most apparent damage is corrosion of the hand-rail and its detachment in spots.** At the 2013-02 AVAC meeting, the Harbor Patrol stated that it was going to cost hundreds of thousands of dollars to repair, and wasn't within their current budget.

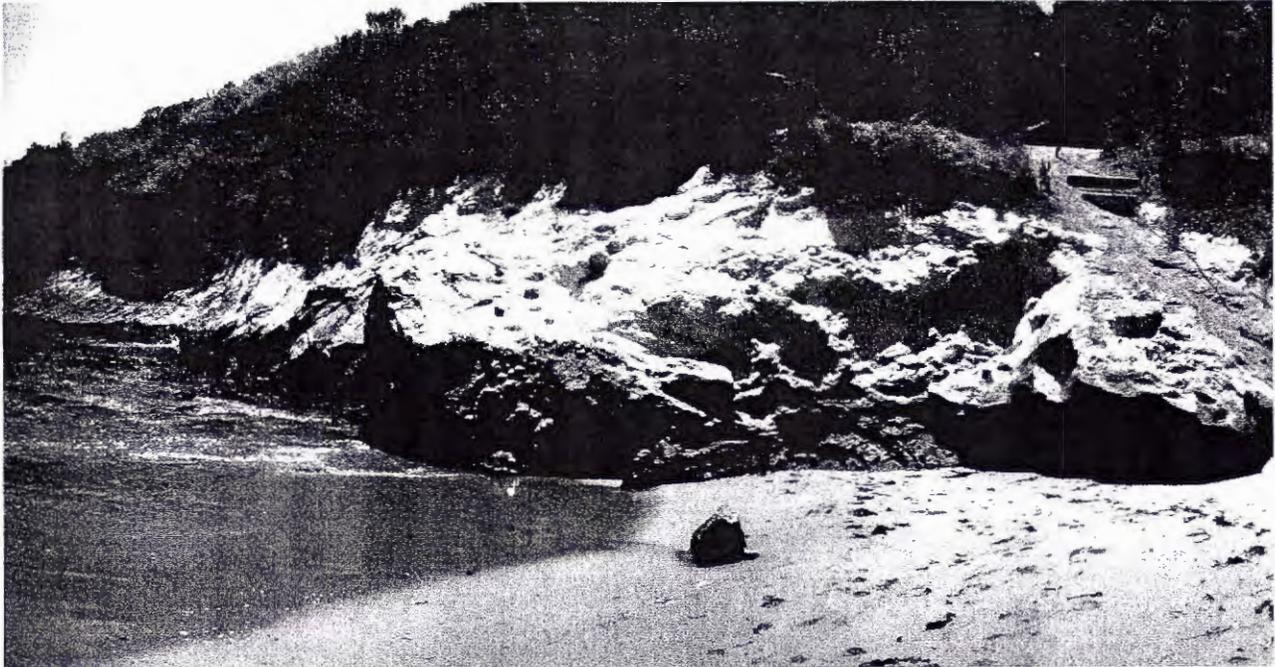


If a staircase of this **minor state of disrepair is declared unsafe**, is there now any doubt in your minds that due to the severity of damage that is certain for the proposed staircase to Pirates' Cove Beach, that a similar closure would not occur?

I strongly urge you NOT to allow this phase of the project proceed in the manner currently intended.

BEACH ACCESS DISCUSSION:

The following pictures are the base of the trail to Pirates' Cove Beach. They are sequenced from South (L) to North (R).



NOTE THE HAND CHISELED STEPS JUST LEFT OF CENTER, ALONG NATURAL ACCESS TO THE BEACH AREA. THIS WAS THE PRIMARY BEACH ACCESS PREVIOUS TO THE MID-1990'S, AND IS STILL OCCASIONALLY UTILIZED.



AGAIN, NOTE THE HAND CHISELED STEPS LEFT OF CENTER, AND "ROPE ASSIST" BEACH ACCESS. THIS WAS THE PRIMARY BEACH ACCESS PREVIOUS TO 2000'S DURING HIGH TIDE, AND IS A SECONDARY ACCESS TODAY. ALSO NOTE THE HAND CARVED STEPS IN MUD/CLAY AT RIGHT. THEY ARE THE PRIMARY POST-WINTER BEACH ACCESS. THE STEPS ARE LOCATED IN THE LAND-SLIDE AREA, AND ARE RE-CARVED **EVERY** YEAR.

To the best of my understanding, the proposed concrete staircase is to be located in the area of the mud/clay steps.

PARKING DISCUSSION:

The revised Parks plans for development of the Cave Landing parking area, is a tremendous improvement over the original 35 vehicle design. They should be recognized for their efforts.

The following is taken from the San Luis Obispo County, San Luis Bay Area Plan, Coastal, dated March 1, 1988, Certified by California Coastal Commission February 25, 1988, Revised August 2009, Page 8-6, item 7. Shoreline Access – Mallagh Landing:

- 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 improvements of the parking area is to be consistent with protection of the archaeological resources and geological conditions on the site.”*

The first sentence specifically states, “improved” parking for 100 cars.

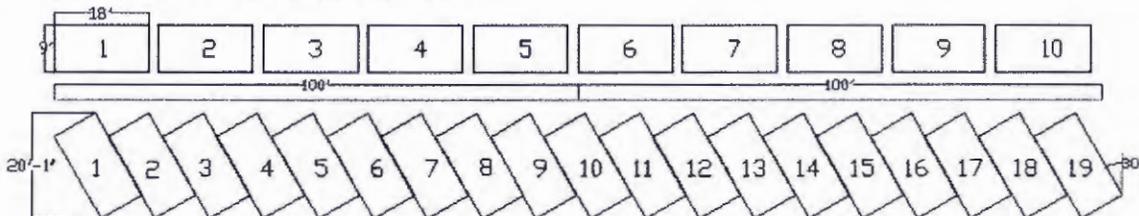
The second sentence specifically states that a “permeable material” be used for surfacing.

Therefore, further refinement of Parks plans is required to conform to the currently approved Coastal Development Plan for this area.

ADDITIONAL PARKING:

From recent car counts by others, 100 vehicles seems to be a good working design number. There are often many more vehicles in the area, so the ability to park along Cave Landing Road needs to be allowed to accommodate these peak numbers.

To address the 30 vehicle shortfall in the current design, the easiest and simplest means would be to widen a portion of Cave Landing Rd, to allow angled parking versus the current parallel parking. This allows between 3 to 4 vehicles to park in the linear space of two.



My previous 20 MAY 2013 letter to this commission suggested grading along the eastern side of the road into County owned parcel 3, to accommodate this additional angled parking. Since I wasn't getting any meaningful answers from the county, I contacted the Chumash directly. While very limited, this contact has led me to believe that there is a cultural issue with significant grading of this roadside area. I'd like to emphasize that Parks should continue dialogue with the Chumash to determine the extent of minor grading that could be performed to slightly widen the road on this side. Recent observation shows that 2' - 3' is easily possible.

Per 54PM36 there is an existing 50' wide road easement; the road is currently about 26' wide. This leaves approximately 12' that can be utilized on the West side of Cave Landing Rd. This would require a significant amount of fill and possibly a retaining system.

This NEEDS to be added into current scope of this project, NOT as a vague promise for future consideration.

I'd like to again stress that one of the major factors regarding the reduction of available parking is Parks' intent to pave the parking area, and install bio-swales to capture the rain run-off and limit erosion in the surrounding area.

All of this can be avoided simply by the addition of gravel upon the surface. A sufficient depth of gravel could be added to the Southern end with appropriate perforated piping, such that it acts as a bio-swale, in and of itself, yet still allows parking on top of it.

While the redesign by Parks has significantly increased the designated parking spots from the original 35 proposal, there is still space lost due to the physical locations of the proposed bio-swales. Additionally, paving requires larger volumetric retention capacity of the bio-swales. Further more, paving the parking lot will almost certainly require parking demarcation lines. Both factors contribute to loss of available parking as historically utilized.

I have heard one argument by Parks for paving is that the current soil is compacted and already impervious, and would require significant grating to make it pervious again, so there is no advantage to an impervious topping. While the "compacted" statement may be true, the "impervious" statement is misleading.

The material currently there is of a clay nature. Clay retains large amounts of water over other types of soils. This water retention reduces the water run-off, and would be fine as under-layment for a gravel surface.

I strongly urge that this concept be explored in more detail by Parks, prior to proceeding with the intended asphaltting of the parking lot.

Pirates Cove

Asphalt- Page1

- Water quality
- Wildlife

Composting Toilets- Page 2,3

- Fiscal Responsibility
- Public Preference

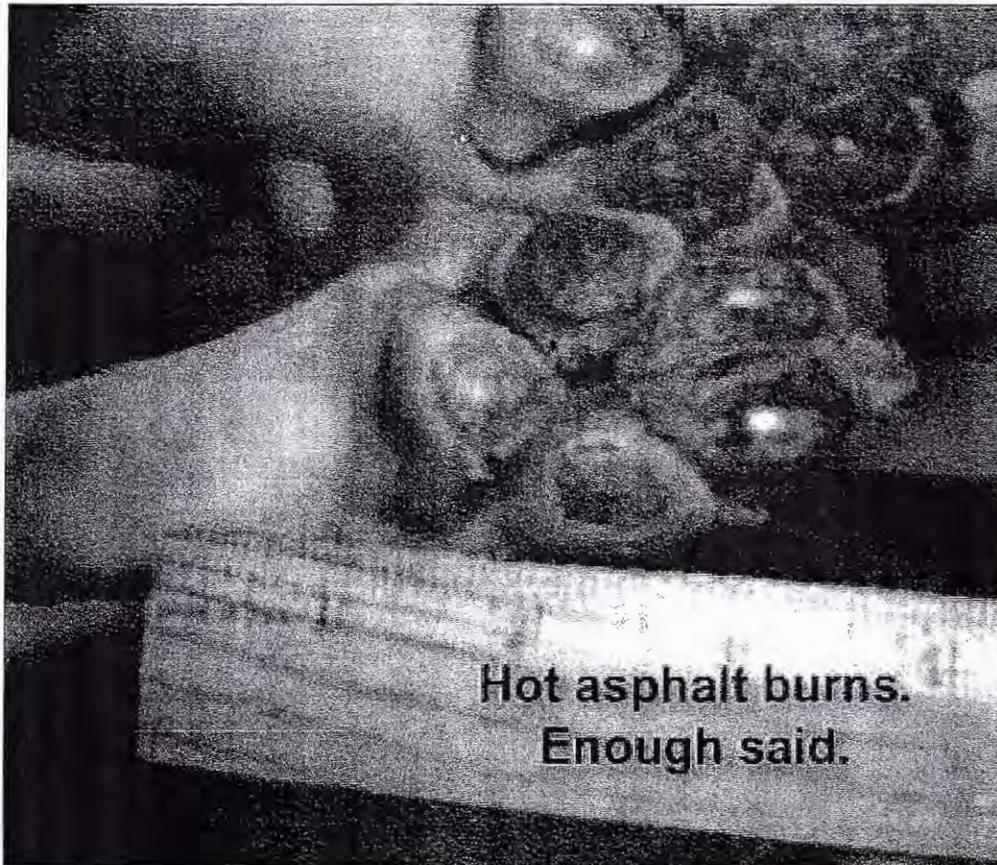
Stairs to Nowhere-Pages 4-8

- Installation Issues
- Fiscal Responsibility
- Maintenance
- Public Access

Asphalt

Asphalt is as un-natural as it gets.

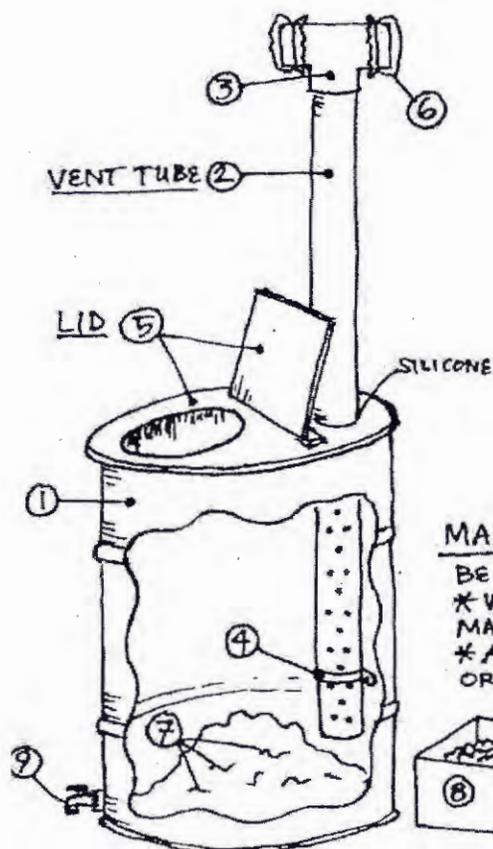
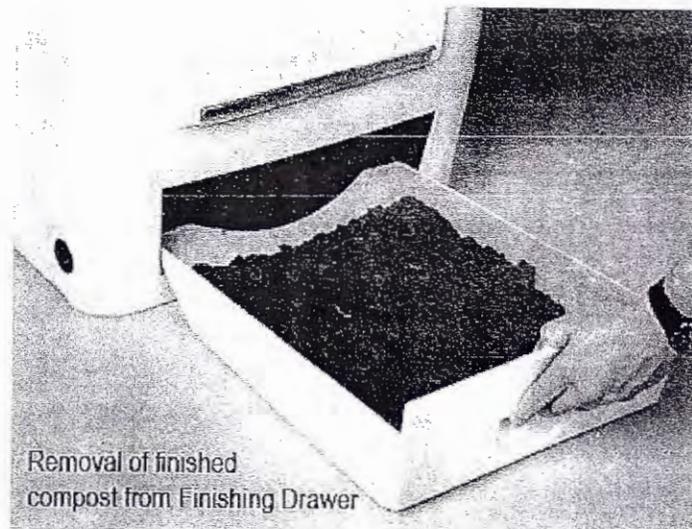
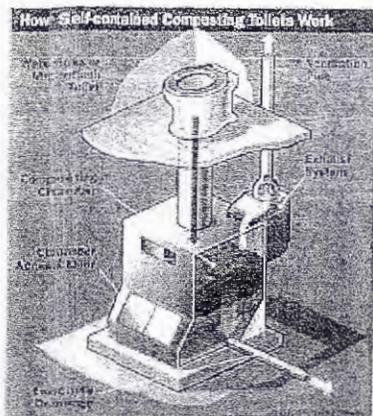
- Asphalt can be 40 to 60 degrees hotter than the air temperature.
- It absorbs 95% of the heat from the sunlight that hits it.
- Asphalt creates NO filtration process for: Fecal matter, Vomit, Blood, oil, gasoline, food...and any other substance that will be washed strait into the ocean.



- Animals cannot walk on hot asphalt without and neither can humans while barefoot at the beach.

If the point here is to have as little impact on nature as possible asphalt an unwise decision.

Composting Toilets



MATERIALS

- ① 50gal DRUM (PREF. PLASTIC)
 - ② VENT TUBE: 2"-3" DIA PLASTIC PIPE, 6'-8" LONG
 - ③ 2"-3" TEE
 - ④ 2"-3" PIPE BRACKET
 - ⑤ LID: 1/2"-3/4" PLYWOOD (2' x 4' TOTAL)
 - ⑥ FLY SCREEN (1' x 1') & NYLON TWINE
 - ⑦ 1 POUND COMPOSTING RED WORMS
 - ⑧ COVER MATERIAL: DRIED LEAVES, WEEDS, ASHES, SAWDUST, ETC... CONTINUOUS SUPPLY
 - ⑨ OPTIONAL DRAIN: BULKHEAD FITTING & VALVE
- NOT SHOWN: 8 X 2" #8 STAINLESS SCREWS
2 X 1/2" #10 STAINLESS SCREWS
2 X HINGES (FOR LID)

MAINTENANCE * ONLY BIODEGRADABLE MATERIALS SHOULD BE DEPOSITED IN TOILET → NO PLASTIC, GLASS, ETC...
 * WORMS TRANSFORM HUMAN WASTE INTO HUMANURE → MATERIAL IN TOILET SHOULD BE MOIST, NOT WET
 * AFTER EACH USE, COVER WASTE W/LAYER OF DRY ORGANIC MATERIAL LIKE LEAVES, ASHES, SAWDUST, ETC..
 * KEEP LID CLOSED AFTER USE TO PREVENT FLIES
 * ONE DRUM LASTS AROUND 6 MONTHS FOR 2 PEOPLE → WHEN FULL, EITHER EMPTY & HOT COMPOST MATERIAL IN TUMBLER
 → OR BUILD ANOTHER TOILET. WHEN SECOND TOILET IS FULL, HARVEST FIRST (ALLOW 4-6 MO'S COLD COMPOSTING)

* IF TOILET STINKS, ADD 2"-4" LAYER OF COVER MATERIAL. DRAIN IF NECESSARY
 * COMPOSTED HUMANURE CAN BE USED AS FERTILIZER FOR PLANTS

COMPOSTING TOILET
www.surferswithoutborders.org

Bronx Zoo Eco-Restroom

Bronx, New York

Conservation in the City

The Bronx Zoo has been educating and entertaining visitors since 1899. The Zoo's 256 acres makes it the largest urban zoo in the United States. It hosts two million visitors annually and is home to more than four thousand animals. Owned and operated by the Wildlife Conservation Society, the Zoo has a strong focus on environmental conservation. That focus has been applied to an interest in sustainable building practices at the Society's zoos.

The Best Solution

Restrooms near the Bronxdale entrance needed replacement due to a failing septic system. A new septic system at the site was rejected due to concern over the potential for pollution to the nearby Bronx River. A sewer connection was considered but was also abandoned due to the huge cost of tunneling under the Bronx River Parkway. Instead, the Zoo decided to install Clivus Multrum Composting Toilet Systems. In addition to saving money, the Clivus systems capture and recycle the nutrients in human waste and use only minimal water for flushing.

Eco Project of the Year

The Eco-Restroom accommodates more than ½ million visitors per year. Foam-flush toilets use only 6oz. of water per use, resulting in a savings of more than one million gallons of water each year, as compared to conventional low-flow (1.6gpf) toilets. Because the Eco-Restroom also includes a greywater irrigation system, the building manages all of its wastewater sustainably, onsite. The use of these technologies and others, including a rainwater harvesting system, maximized natural daylighting, and efficient radiant floor heating, contributed to the Eco-Restroom being named New York Construction's 2007 Eco Project of the Year.

United States
Environmental Protection
Agency
Office of Water
Washington, D.C.
EPA 832-F-99-066
September 1999
Water Efficiency
Technology Fact Sheet
Composting Toilets

DESCRIPTION

Originally commercialized in Sweden, composting toilets have been an established technology for more than 30 years, and perhaps longer in site-built forms. As they require little to no water, composting toilet systems can provide a solution to sanitation and environmental problems in unsewered, rural, and suburban areas and in both developed and underdeveloped countries.

A composting (or biological) toilet system contains and processes excrement, toilet paper, carbon additive, and sometimes, food waste. Unlike a septic system, a composting toilet system relies on unsaturated conditions where aerobic bacteria break down waste. This process is similar to a yard waste composter. If sized and maintained properly, a composting toilet breaks down waste 10 to 30% of its original volume. The resulting soil-like material called "humus," legally must be either buried or removed by a licensed septage hauler in accordance with state and local regulations.

Public health professionals are beginning to recognize the need for environmentally sound human waste treatment and recycling methods.

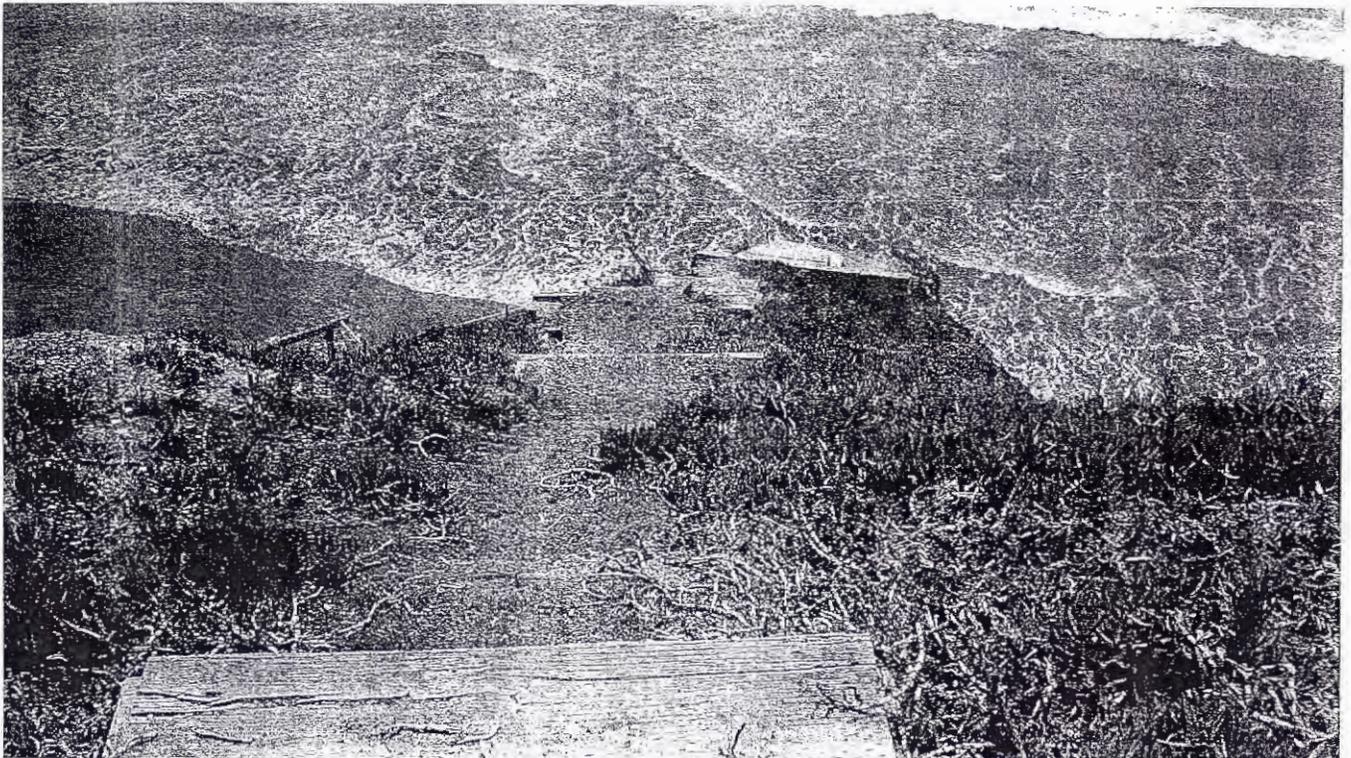
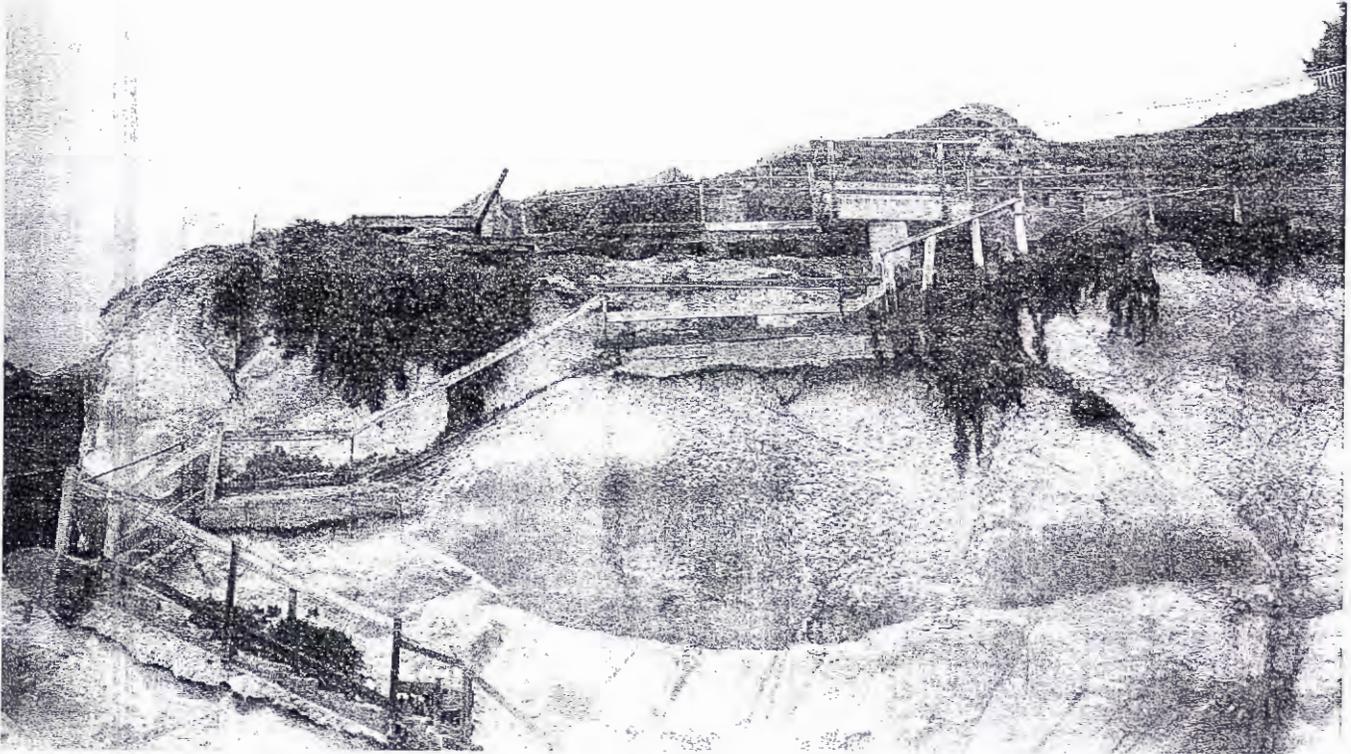
APPLICABILITY

Composting toilet systems can be used almost anywhere a flush toilet can be used. They are typically used for seasonal homes, homes in remote areas that cannot use flush toilets, or recreation areas, etc. Application advantages for composting toilet systems are listed below:

- It is more cost-effective to treat waste onsite than it is to build and maintain a central sewer system to which waste will need to be transported.
 - Water is not wasted as a transport medium to flush toilets.
 - Nutrients (nitrogen and phosphorus) are kept in tight biological cycles without causing problems to receiving waters.
- There have been many reports of successful use of waterless (composting, incinerator, chemical, and privy) toilets. Below are some examples of successful stories.

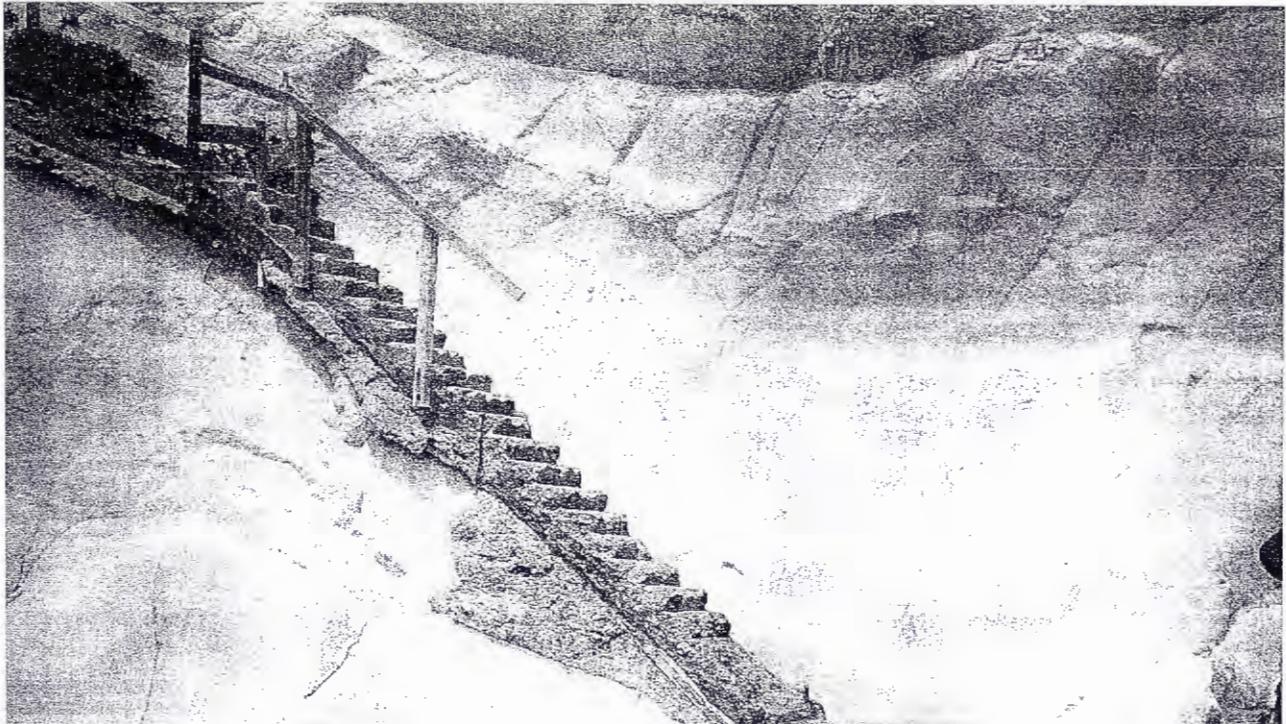
<http://water.epa.gov/abusew/comp/comp.pdf>

Pismo Beach

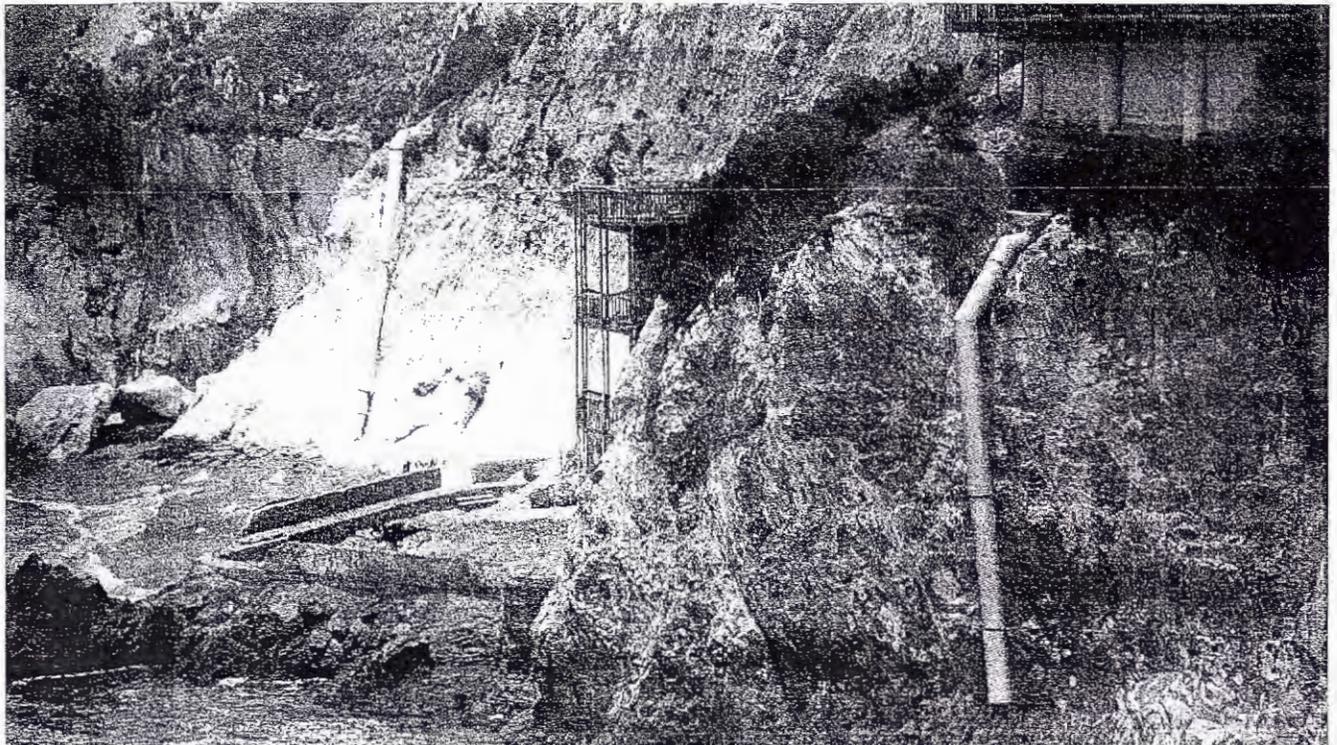
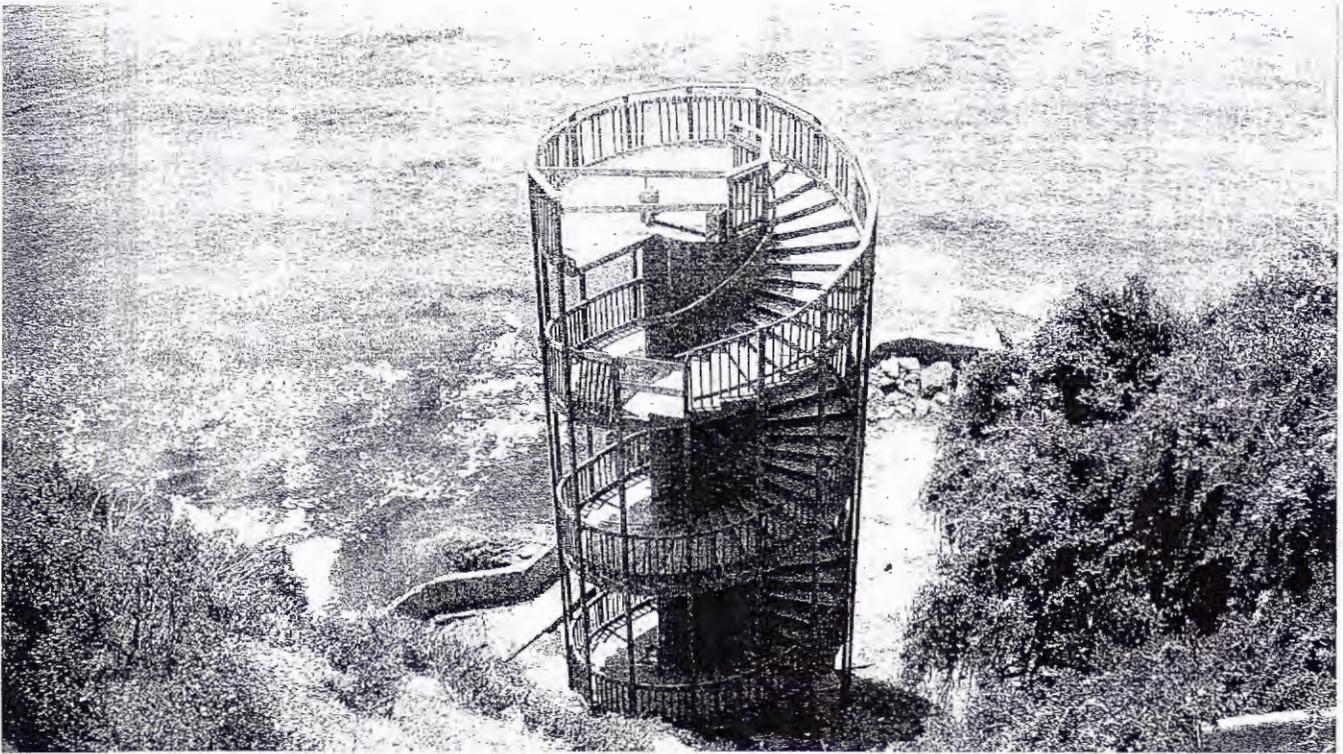


Pismo Beach

5

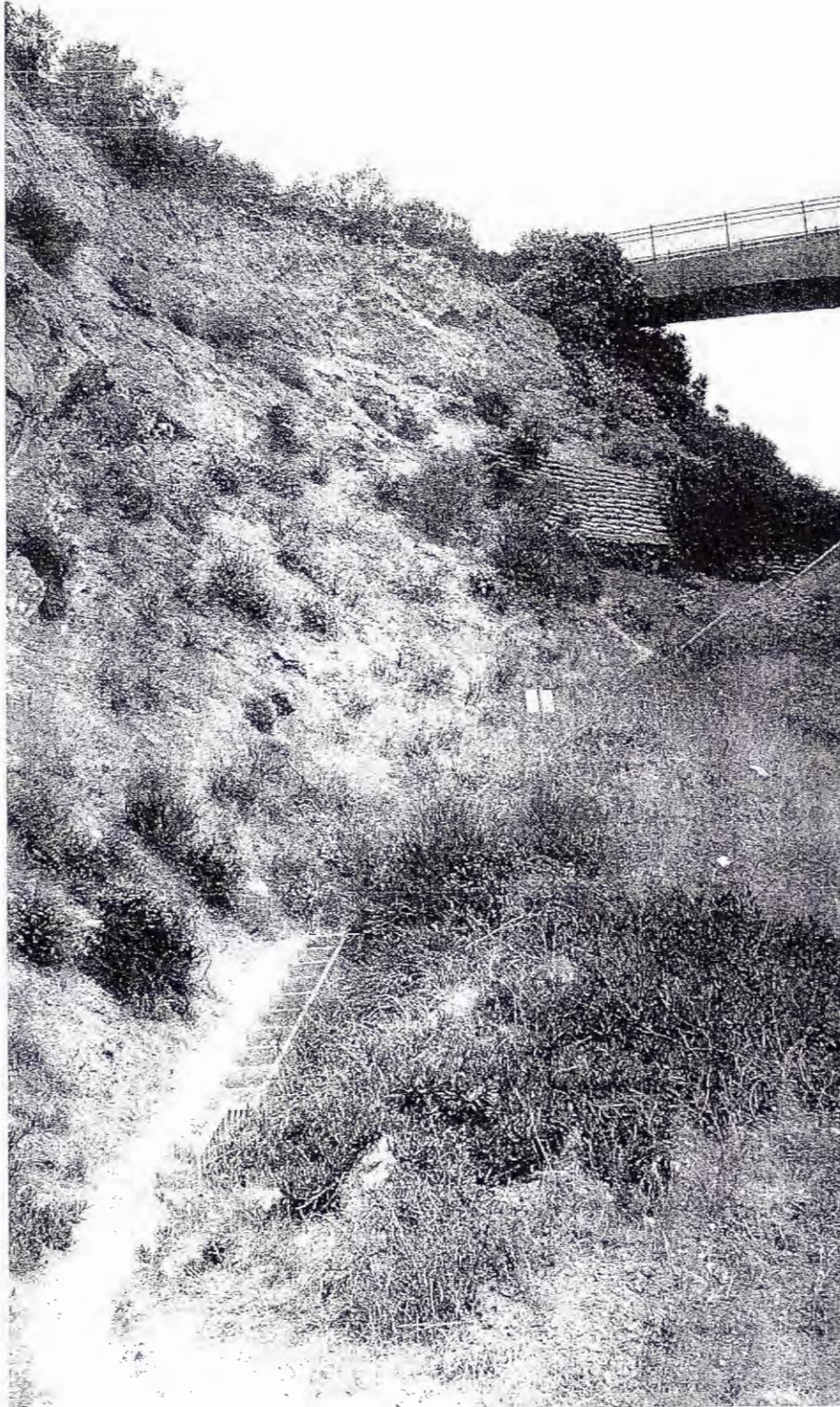


Ventana Grill



Shelter Cove

7



Shelter Cove



#7 Follow up to Public Comment

Regarding Dusk to Dawn closures at Pirate's Cove:

In the process of researching the topic of California beach curfews, I came across a column on the subject published in the LA Times in December 2010. It was written by then-acting California Coastal Commission Chairwomen Bonnie Neeley. What follows are the relevant excerpts. Neeley writes:

"For more than 30 years the commission has dealt with local governments seeking to control where, when and how the public can enjoy the beach, and access State waters. It has never found that nighttime public use problems warrant dusk-to-dawn closures.

Unfortunately, we often find that public access restrictions imposed by local government are motivated by political pressure from residents annoyed by the presence of outsiders. In those cases the commission stands firmly for protecting public access rights. Safeguarding public coastal access, after all, was a primary reason the Coastal Commission was created.

Public use and enjoyment of our beaches is not limited to daylight hours. For every troublemaker there are many more law-abiding citizens who come to the beach at night to walk in moonlight or under the stars seeking tranquility, relaxation, spiritual renewal or self-contemplation. Whether taking a stroll after the graveyard shift, hitting the waves in the dark before dawn, or watching the moon set with a lover, the public has a right to enjoy California's coast at all hours but within reason.

People fortunate enough to reside on or near a beach should realize they are privileged to live adjacent to public space and must accommodate the impacts associated with public use. Of course residents have a right to expect reasonable law enforcement when needed. If local government doesn't provide this essential service, residents can petition their elected officials for a reallocation of resources. (But) sweeping beach closures are not the answer.

What neither we, nor the public, want or need is wasteful litigation to confirm long-established public coastal access rights. If reason and common sense are brought to the table, we are confident a meaningful outcome can be achieved."

To Neeley's column, I want to add this quote from former Coastal Commission Executive Director Peter Douglas, who said: "There are a lot of people who want to use the beach, which they have a constitutional right to do, in the middle of the night...You don't preclude the public from that use ..."

In summary, SLO County is legally obligated in every possible way to keeping this beach open to the public without exception to time of day. To do otherwise invites costly litigation, and is a violation not only of the county's legal obligations, but of the public trust. I strongly encourage the board to adhere not merely to the letter of the law, but the spirit of the law: Access to the ocean and beaches is a fundamental, natural human right.

I want to conclude by saying that no one can be faulted for being overzealous in the desire to protect and preserve Pirate's Cove. I am grateful to have the opportunity to be a part of this process, and to represent Friends of Pirate's Cove as we work with the county on that shared objective, for the public good.

Thank you for your time.

Sean R. Shealy
Representing Friends of Pirate's Cove
July 25, 2012

The following article was posted on July 17th, 2013, in the *New Times* - Volume 27, Issue 52

Radical changes cloud Pirates Cove's future

We deserve access to nature, day and night

BY SEAN SHEALY

Throughout the acquisition of Pirate's Cove, the county has maintained a commitment to retaining the traditional public usage of the area, peppering legal documents with phrases such as "conserve for the public benefit the great natural scenic beauty and existing openness, natural condition and present state of use of said property"

Now, some have proposed hanging a CLOSED sign on Pirates Cove for 3,650 hours—or 152 cumulative days—of the year.

This is a radical departure from the policy of maintaining traditional usage.

Under the proposed dusk-to-dawn daily closure, moonlit strolls on one of California's most beautiful beaches would become illegal. Witnessing stars shining across the still water would be criminalized. Sitting on the sun-warmed sands and watching meteors fall into the sea, or the wonder of a lunar eclipse over the ocean, would be forever ended.

Nature doesn't stop being beautiful at 9 p.m.. For many, the hours when the moon illuminates the cresting waves are *the* most beautiful hours at seaside. For some, this is a matter of spirituality, and, for us, this is a deeply sacred place.

Personal solitude and peace would be the primary victims of this policy, because there is rarely anyone on the beach after dusk. It is a precious place where one can get away and just be alone.

The reason given for this closure, it is said, is to give the police power to prevent littering of the area, drug and alcohol use, and other similar activity.

But police *already* have the power to address those issues: Raging parties and bonfires are readily apparent to anyone, including police. Any concerned citizen with a cell phone can report any of this at will.

Should the cove remain free and open, as the county has previously committed, might the morning visitor encounter trash in the parking lot? Sure.

But let us weigh, on the scales of individual and equal liberty, the consequences of the two opposing policies:

The day visitor has a brief unpleasant experience: seeing trash.

The nighttime visitor, however, is *banned from experiencing nature altogether*.

This is a fundamental violation of the individual freedom of man and woman, each of whom has a natural, inherent right to enjoy the beauty of nature, of which they themselves are a part. This is exactly the type of ham-handed encroachment that many feared when the county acquired the cove.

In any case, have we ever simply *asked* people to clean up after themselves?

In one wild area I used to visit, I accomplished the same thing the county is seeking to accomplish simply by writing a message with a Sharpie on a flat piece of wood: "If you are too weak or disabled to pack out your own trash, please ask an able-bodied person to help you." Then I cleaned the place spotless.

I came back a month later, and the place was *still* spotless. It is amazing what can be accomplished just by challenging someone's masculinity, or by requesting, rather than forcing, responsibility and leadership. The county's present threat may even be helpful, because we can say "they are going to restrict access to this place if you don't change your behavior." That's a big stick to wield. It need not be swung to make the point.

Pirate's Cove is about to be forever altered. This is not in dispute. Once we begin building and paving and putting up signs and restrictions everywhere, it will never be the same. And the freedom and wildness of this place is why people come to it, including tourists. Many come here from far away, even from places with their own beautiful beaches and rocky shores, just to get to *this* place, because *this* place is unique. It is *free*. It is *wild*.

We owe it to every generation that comes after us, every soul who seeks the solitude and ruggedness of the wild, to think this very carefully through—and to ask the county to live up to their commitment to the "scenic beauty and existing openness, natural condition and present state of use" of Pirate's Cove.

Sean Shealy is an author, activist, and administrator of the Friends of Pirate's Cove Facebook page. Send comments to the executive editor at erin@newtimeslo.com.

Los Angeles Times

LOCAL U.S. WORLD BUSINESS SPORTS ENTERTAINMENT HEALTH LIVING TRAVEL **OPINION** SHOP

EDITORIALS OP-ED LETTERS OPINION L.A. READERS' REP

Preserving night-time beach access

The California Coastal Commission understands cities concerned about crime. But unilaterally imposing beach curfews is unacceptable.

December 09, 2010 | By Bonnie Neeley

Email Share +1 0 Tweet 0

The Times' Nov. 23 editorial on local municipalities imposing beach curfews was well intentioned but misinformed. While recognizing fundamental public beach access rights and acknowledging that allowing local governments unilateral discretion over beach closures – which the California Coastal Commission opposes -- is not a good idea, the editorial the commission's historic approach to dealing with this issue.

The Commission is always concerned about public safety issues and takes them into careful consideration when reviewing locally imposed access restrictions. Starting from a presumption in favor of expansive public access rights, that position is subject to application of facts and circumstances in each particular case.

For more than 30 years the commission has dealt with local governments seeking to control where, when and how the public can enjoy the beach and access State waters. It has never found that nighttime public use problems warrant dusk-to-dawn closures. Where legitimate public safety concerns are raised, we work with local law enforcement to craft customized solutions that avoid sweeping, unwarranted closures. In some places this may involve a shorter curfew to avoid overnight camping; in others it may mean closure of specific parking lots or removal of fire rings. This was our approach in Long Beach, Coronado and Laguna Beach, to name a few places.

Unfortunately, we often find that public access restrictions imposed by local government are motivated by political pressure from residents annoyed by the presence of outsiders. In those cases the commission stands firmly for protecting public access rights. Safeguarding public coastal access, after all, was a primary reason the Coastal Commission was created.

Public use and enjoyment of our beaches is not limited to daylight hours. For every troublemaker there are many more law-abiding citizens who come to the beach at night to walk in moonlight or under the stars seeking tranquility, relaxation, spiritual renewal or self-contemplation. Whether taking a stroll after the graveyard shift, hitting the waves in the dark before dawn or watching the moon set with a lover, the public has a right to enjoy California's coast at all hours but within reason.

People fortunate enough to reside on or near a beach should realize they are privileged to live adjacent to public space and must accommodate the impacts associated with public use. Of course residents have a right to expect reasonable law enforcement when needed. If local government doesn't provide this essential service, residents can petition their elected officials for a reallocation of resources. Sweeping beach closures are not the answer.

The Coastal Commission has a solid record of working with local governments to implement solutions that address legitimate public safety concerns while at the same time protecting public access rights. We will work with Los Angeles, as we have done statewide, to find mutually acceptable solutions.

What neither we nor the public want or need is wasteful litigation to confirm long-established public coastal access rights. If reason and common sense are brought to the table, we are confident a meaningful outcome can be achieved.

Bonnie Neeley is chairwoman of the California Coastal Commission.

* Reached end of page, continued from top

4. Public Access and Recreation

Applicable Policies

Coastal Act Section 30604(c) requires that every coastal development permit issued for any development between the nearest public road and the sea "shall include a specific finding that the development is in conformity with the public access and public recreation policies of [Coastal Act] Chapter 3." The proposed project is located seaward of the first through public road and thus such a finding is required. Coastal Act Sections 30210 through 30213 and 30221 specifically protect public access and recreation. In particular:

Section 30210. 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 30211. Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.

Section 30213. Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Developments providing public recreational opportunities are preferred. ...

Section 30220. Coastal areas suited for water-oriented recreational activities that cannot readily be provided at inland water areas shall be protected for such uses.

Section 30221. Oceanfront land suitable for recreational use shall be protected for recreational use and development unless present and foreseeable future demand for public or commercial recreational activities that could be accommodated on the property is already adequately provided for in the area.

Section 30222. The use of private lands suitable for visitor-serving commercial recreational facilities designed to enhance public opportunities for coastal recreation shall have priority over private residential, general industrial, or general commercial development, but not over agriculture or coastal-dependent industry.

LCP policies amplify such requirements, including:

Access Policy 2. Maximum public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development...

Recreation Policy 1. Coastal recreational and visitor-serving facilities, especially lower-cost facilities, shall be protected, encouraged and where feasible provided by both public and private means.

Recreation Policy 2. Recreational development and commercial visitor-serving facilities shall have priority over non-coastal dependent use, but not over agriculture or coastal dependent industry in accordance with PRC 30222.

In summary, the California Constitution⁴³ and the federal Coastal Zone Management Act⁴⁴ mandate the protection and enhancement of public access to and along California's coastline. The Coastal Act and the County's certified LCP refine these requirements, including prioritizing public recreational use and development in areas along the shoreline such as this one. Coastal Act Section 30210 requires that public recreational opportunities be maximized,⁴⁵ and Section 30211 further requires that development not interfere with existing public access. Section 30221 protects oceanfront land such as the area associated with this application for recreational use, Section 30222 prioritizes the use of lands suitable for visitor-serving commercial recreational facilities, and Section 30223 similarly reserves upland areas necessary to support public recreational uses for such uses. Coastal Act Section 30213 requires lower-cost visitor and recreation facilities to be protected, encouraged, and where feasible, provided. These overlapping policies protect the Pirates Cove accessway area, including access along Cave Landing Road, the parking lot, the trails and the scenic overlook, including in terms of lower-cost access and recreational opportunities.

From page 11, 12 of Cave Landing Trail Project Description and Regulatory Compliance Document:

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 bluff top area for parking. Other improvements which may be appropriate include:

COUNTY OF SAN LUIS OBISPO
LOCAL COASTAL PROGRAM POLICY DOCUMENT
A PORTION OF THE SAN LUIS OBISPO COUNTY LAND
USE ELEMENT
OF THE GENERAL PLAN

COASTAL PLAN POLICIES REVISED JUNE 2004 2-7
SHORELINE ACCESS

Issues Relating to Shoreline Access. The right of public access to all coastal tidelands is guaranteed by the California Constitution and has been detailed in the requirements of the California Coastal Act. The act requires acknowledgment of existing rights of access (including those acquired through historic use) and mandates that reasonable access be provided in new developments along the coast. The access component of the LCP assures opportunities for optimum public access within the county.

CALIFORNIA CONSTITUTION
ARTICLE 10: WATER

SEC. 4. No individual, partnership, or corporation claiming or possessing the frontage or tidal lands of a harbor, bay, inlet, estuary, or other navigable water in this State, shall be permitted to exclude the right of way to such water whenever it is required for any public purpose, nor to destroy or obstruct the free navigation of such water; and the Legislature shall enact such laws as will give the most liberal construction to this provision, so that access to the navigable waters of this State shall be always attainable for the people thereof.

THURSDAY, MAY 23, 2013

The following action minutes are listed as they were acted upon by the Planning Commission and as listed on the agenda for the Regular Meeting of May 23, 2013 together with the maps and staff reports attached thereto and incorporated therein by reference.

HEARINGS ARE ADVERTISED FOR 9:00 A.M. HEARINGS GENERALLY PROCEED IN THE ORDER LISTED, UNLESS CHANGED BY THE PLANNING COMMISSION AT THE MEETING.

ROLL CALL

PRESENT: Commissioner(s) Carlyn Christianson, Tim Murphy, Ken Topping, Don Campbell, and Jim Irving.

ABSENT:

FLAG SALUTE

PUBLIC COMMENT PERIOD

Jim Irving: opens Public Comment with no one coming forward.

PLANNING STAFF UPDATES (9:06 AM)

Nancy Orton, staff: updates Commissioners on their near term schedule.

CONSENT AGENDA: (9:06 AM)

a. April 25, 2013 Planning Commission cancelled minutes (9:06 AM)

Thereafter, on motion of Carlyn Christianson, seconded by Tim Murphy, and on the following vote:

AYES: Commissioner(s) Carlyn Christianson, Tim Murphy, Ken Topping, Don Campbell, Jim Irving.

NOES: None.

ABSENT: None.

The Commission approves Consent Item a.

HEARINGS:

1. Hearing to consider a request by VICK PACE CONSTRUCTION CO., INC. for a third time extension for a Development Plan/Coastal Development Permit to allow for the construction of a multi-tenant industrial/warehouse complex consisting of nine (9) separate structures, for a total of 31,400 square feet of new construction. The project will result in the disturbance of approximately 1.4 acres of a 2.2 acre parcel. The proposed project is within the Industrial land use category and is

A-3-SLO-12-1252

Exhibit 6

located at 753 Sheridan Road, in the community of Callendar-Garrett. This site is in the South County Coastal planning area. The Environmental Coordinator finds that the previously adopted Mitigated Negative Declaration is adequate for the purposes of compliance with CEQA because no substantial changes are proposed in the project which will require major revision of the previous Mitigated Negative Declaration, no substantial changes occur with respect to the circumstance under which the project is undertaken which will require major revision of the previous Mitigated Negative Declaration, and no new information of substantial importance has been identified which was not known at the time that the previous Mitigated Negative Declaration was adopted. County File No: DRC2007-00137 Assessor Parcel Number: 091-192-039 Supervisorial District: 4 Date Accepted: June 20, 2008 Cody Scheel, Project Manager Recommend: approval (9:07 AM)

Cody presents staff report.

Jim Irving: opens Public Comment with no one coming forward.

Commissioners: begin deliberations.

Thereafter, on motion of Tim Murphy, seconded by Ken Topping, and on the following vote:

AYES: Commissioner(s) Tim Murphy, Ken Topping, Carlyn Christianson, Don Campbell, Jim Irving.

NOES: None.

ABSENT: None.

The Commission approves the third time extension to be good until November 13, 2013 (pursuant to 23.02.050 of the coastal zone Land use Ordinance) for this Development Plan / Coastal Development Permit based on findings in Exhibit A that carry over the original findings and conditions; adopted.

2. Hearing to consider a request by the COUNTY OF SAN LUIS OBISPO GENERAL SERVICES AGENCY, PARKS DIVISION for a Development Plan/Coastal Development Permit & Variance to construct the following: 1) Bike/Pedestrian trail approx. 1,800 feet long by 12 feet wide constructed of decomposed granite; 2) A 30 foot bridge in the middle of the trail to span a natural drainage; 3) Resurface, stripe, and install drainage improvements at Pirates Cove parking area for 35 parking spaces; 4) Improvements to existing trail and stairs down to the beach at Pirates Cove; 5) Waterless vault restroom, picnic tables, benches, garbage cans and signage including regular maintenance of all facilities. This project will require a variance of the bluff top setback, development on slopes of 30 percent and a waiver of fencing and screening standard for side and rear setbacks. The project is located at the south end of Cave Landing Road (end of pavement at top of Cave Landing) in the San Luis Bay Coastal Planning Area. The Environmental Coordinator, after completion of the initial study, finds that there is no substantial evidence that the project may have a significant effect on the environment, and the preparation of an Environmental Impact Report is not necessary. Therefore, a Mitigated Negative Declaration (pursuant to Public Resources Code Section 21000 et seq., and CA Code of Regulations Section 15000 et seq.) has been issued on February 21, 2013 and is hereby adopted for

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Exhibit 6

this project. Mitigation measures are proposed to address aesthetics, air quality, biological resources, cultural resources, geology and soils, traffic, noise, and land use and are included as conditions of approval. County File Number: DRC2011-00069 Assessor Parcel Number: 076-231-062 & -064 Supervisorial District: 3 Date Accepted: April 22, 2013 Ryan Hostetter, Project Manager Recommend: approval (9:12 AM)

Ryan Hostetter, Project Manager: introduces team.

Elizabeth Kavanaugh, Project Manager: shows a Power point presentation.

Don Campbell: would like to know the status of Cave Landing Rd. in terms of parking with Ms. Hostetter responding.

Jim Irving: opens Public Comment.

Rob McCarthy, Sheree Danoff (AVAC), Brian LeConte, Tom Whaley, Michael Obayashi, Gene Quail, and David Watson: speak.

Ryan Hostetter, Project Manager: addresses Public Comment.

Elizabeth Kavanaugh, Project Manager: addresses Public Comment issues such as public access, stairs, and maintenance issues.

Commissioners: begin their deliberations.

Frank Honeycutt, Public Works: discusses parking on Cave Landing Rd.

Commissioners: resume deliberations.

John Blanchard, Fugro Consultants: discusses geology in terms of landslide conditions.

Commissioners: resume their deliberations.

Jim Irving: receives clarification about fencing.

Curtis Black, Parks and Recreation Department Director: explains the test the department uses to determine fencing options.

Thereafter, on motion of Carlyn Christianson, seconded by Don Campbell, and on the following vote:

AYES: Commissioner(s) Carlyn Christianson, Don Campbell, Tim Murphy, Ken Topping, Jim Irving.

NOES: None.

ABSENT: None.

The Commission continues this item to July 25, 2013 with direction to staff to analyze the pros and cons of creating an un-striped parking lot to maximize parking, and analyze other options and alternatives to maximize parking.

Thereafter, on motion of Carlyn Christianson, seconded by Tim Murphy, and on the following vote:

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AYES: Commissioner(s) Carlyn Christianson, Tim Murphy, Ken Topping, Don Campbell, Jim Irving.

NOES: None.

ABSENT: None.

The Commission accepts all correspondence entered into the record.

Thereafter, on motion of Carlyn Christianson, no second required, and on the following vote:

AYES: Commissioner(s) Carlyn Christianson, Tim Murphy, Ken Topping, Don Campbell, Jim Irving.

NOES: None.

ABSENT: None.

The Commission adjourns to the next regularly scheduled meeting of May 30, 2013.

ADJOURNMENT: 12:00 PM

Respectfully submitted,
Ramona Hedges, Secretary
SLO County Planning Commission
Minutes approved at the 6/13/13 PC.

THURSDAY, JULY 25, 2013

The following action minutes are listed as they were acted upon by the Planning Commission and as listed on the agenda for the Regular Meeting of July 25, 2013 together with the maps and staff reports attached thereto and incorporated therein by reference.

HEARINGS ARE ADVERTISED FOR 9:00 A.M. HEARINGS GENERALLY PROCEED IN THE ORDER LISTED, UNLESS CHANGED BY THE PLANNING COMMISSION AT THE MEETING. (9:04 AM)

ROLL CALL (9:05 AM)

PRESENT: Commissioner(s) Jim Irving, Tim Murphy, Don Campbell, and Eric Meyer.
 ABSENT: Commissioner(s) Ken Topping.

FLAG SALUTE (9:05 AM)

PUBLIC COMMENT PERIOD (9:05 AM)

Jim Irving: opens Public Comment with no one coming forward.

PLANNING STAFF UPDATES (9:05 AM)

Nancy Orton: updates Commissioners on their near term schedule. Reports Item 5 is recommended to be continued.

Jim Irving: calls for a motion to bring Item 5 forward.

Thereafter, on motion of Tim Murphy, seconded by Eric Meyer, and on the following vote:

AYES: Commissioner(s) Tim Murphy, Eric Meyer, Jim Irving, Don Campbell.
NOES: None.
ABSENT: Commissioner(s) Ken Topping.

The Commission agrees to take Item 5 out of order as the first item to be heard.

CONSENT AGENDA:

HEARINGS:

5. Continued hearing to consider a request by the County of San Luis Obispo to amend the inland Land Use and Circulation Elements of the County General Plan and the Land Use Ordinance, Title 22 of the County Code. The proposal is a reorganization only and does not involve changes or updates to general plan goals, policies, programs, data, or statistics or changes in the effect of standards for development (planning area standards). This project consists of the following

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Exhibit 6

major parts: 1) The 11 existing inland planning areas are consolidated and reorganized into four new inland planning areas, based largely on watershed boundaries. 2) The plans for the four new inland planning areas are combined into a single document called The Area Plans. 3) Community plans are proposed for urban areas and villages. 4) Planning area standards in the Land Use Ordinance (LUO) are reorganized into rural and urban/village standards according to the new planning areas. This project is not subject to the California Environmental Quality Act (CEQA) under Section 15061(b)(3), General Rule Exemption. CONTINUED FROM 5/30/13 County File Number: LRP2008-00002 Assessor Parcel Number: N/A Supervisorial Districts: 1, 2, 3, 4, & 5 Date Authorized: July 15, 2008, modified March 29, 2011 Karen Nall, Project Manager Recommend Board of Supervisors approval (9:08 AM)

Jim Irving: opens Public Comment with no one coming forward. Requests a motion to continue this item.

Thereafter, on motion of Don Campbell, seconded by Tim Murphy, and on the following vote:

AYES: Commissioner(s) Don Campbell, Tim Murphy, Jim Irving, Eric Meyer.

NOES: None.

ABSENT: Commissioner(s) Ken Topping.

The Commission continues this item to August 8, 2013.

- Continued hearing to consider a request by RICHARD PHILLIPS for a Third Time Extension of Minor Use Permit / Coastal Development Permit DRC2005-00142; a request to allow a new 3,500 square foot single family residence. The project will result in the disturbance of approximately 6,600 square feet of a one acre parcel. The proposed project is within the Residential Suburban land use category and is located at 2049 Andre Avenue, approximately 700 feet south of Nipomo Avenue, in the community of Los Osos. The site is in the Estero planning area. The Environmental Coordinator finds that the previously adopted Mitigated Negative Declaration is adequate for the purposes of compliance with CEQA because no substantial changes are proposed in the project which will require major revision of the previous Mitigated Negative Declaration, no substantial changes occur with respect to the circumstance under which the project is undertaken which will require major revision of the previous Mitigated Negative Declaration, and no new information of substantial importance has been identified which was not known at the time that the previous Mitigated Negative Declaration was adopted. CONTINUED FROM 5/9/13. County File No: DRC2005-00142 Assessor Parcel Numbers: 074-413-017 Supervisorial District 2 Date Accepted: October 13, 2006 Kerry Brown, Project Manager Recommend continue to October 24, 2013 (9:10 AM)

Nancy Orton: provides reasoning why this item is being recommended to be continued to October 24, 2013.

Thereafter, on motion of Tim Murphy, seconded by Don Campbell, and on the following vote:

AYES: Commissioner(s) Tim Murphy, Don Campbell, Jim Irving, Eric Meyer.

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NOES: None.

ABSENT: Commissioner(s) Ken Topping.

The Commission continues this item to October 24, 2013.

2. Continued hearing to consider a request by the COUNTY OF SAN LUIS OBISPO GENERAL SERVICES AGENCY, PARKS DIVISION for a Development Plan/Coastal Development Permit & Variance to construct the following: 1) Bike/Pedestrian trail approx. 1,800 feet long by 12 feet wide constructed of decomposed granite; 2) A 30 foot bridge in the middle of the trail to span a natural drainage; 3) Resurface, stripe, and install drainage improvements at Pirates Cove parking area for 35 parking spaces; 4) Improvements to existing trail and stairs down to the beach at Pirates Cove; 5) Waterless vault restroom, picnic tables, benches, garbage cans and signage including regular maintenance of all facilities. This project will require a variance of the bluff top setback, development on slopes of 30 percent and a waiver of fencing and screening standard for side and rear setbacks. The project is located at the south end of Cave Landing Road (end of pavement at top of Cave Landing) in the San Luis Bay Coastal Planning Area. The Environmental Coordinator, after completion of the initial study, finds that there is no substantial evidence that the project may have a significant effect on the environment, and the preparation of an Environmental Impact Report is not necessary. Therefore, a Mitigated Negative Declaration (pursuant to Public Resources Code Section 21000 et seq., and CA Code of Regulations Section 15000 et seq.) has been issued on February 21, 2013 and is hereby adopted for this project. Mitigation measures are proposed to address aesthetics, air quality, biological resources, cultural resources, geology and soils, traffic, noise, and land use and are included as conditions of approval. CONTINUED FROM 5/23/13. County File Number: DRC2011-00069 Assessor Parcel Number: 076-231-062 & -064 Supervisorial District: 3 Date Accepted: April 22, 2013 Ryan Hostetter, Project Manager Recommend approval (9:12 AM)

Ryan Hostetter: Project Manager: presents staff report.

Commissioners: ask questions before Public Comment.

Eric Meyer: reports he will be abstaining from this item.

Holly Hetherington, Ray Hetherington, Brian LoConte, Sean Shealy, Dave Watson, and Timothy Duff: speak.

Jim Orton, County Counsel: suggests the applicant address Public Comment.

Elizabeth Kavanaugh, County Parks and Recreation staff: addresses Public Comment issues.

Commissioners and staff: begin their deliberations focusing on noticing, access, and count liability issues.

Elizabeth Kavanaugh, staff: addresses access and hours of operation.

Frank Honeycutt, Public Works: addresses surface material issues.

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Exhibit 6

John Blanchard, Fugro: discusses impacts to the proposed stairway in terms of erosion methods, and design.

Eric Meyer: suggests a condition regarding access in terms of liability referencing potential failure to the staircase, to which Co. Counsel would like Parks and Recreation to respond.

Tim Murphy: asks about grant funds from San Luis Obispo Council of Governments (SLOCOG) and the Coastal Conservancy in terms of direction to construction and design of beach access.

Sean Cooper, Parks and Recreation: states the county submits plans and progress quarterly reports to granting agencies which allows those agencies (Fish and Game, the Coastal Conservancy and SLOCOG) to have input in the design process. Further states these agencies' goal is to provide safe access to the beach.

Commissioners and staff: discuss disclaimers regarding personal risk with County Counsel stating these type disclaimers are only available to private agencies and not public agencies.

Ryan Hostetter, Project Manager: reads new Condition 28, addressing access to the beach, into the record.

Thereafter, on motion of Tim Murphy, seconded by Don Campbell, and on the following vote:

AYES: Commissioner(s) Tim Murphy, Don Campbell, Jim Irving.

NOES: None.

ABSENT: Commissioner(s) Ken Topping.

The Commission approves the revised Development Plan/Coastal Development Permit/Variance DRC2011-00069 including parking for 70 cars in the existing parking area and around the proposed bathroom (which includes 3 ADA spaces) based on the revised findings listed in Exhibit A and revised Conditions listed in Exhibit B, changing Condition 25 to add the sentence "General services shall meet with Public Works and the Chumash representatives to determine the minimum disturbance necessary for the proposed parking area adjacent to the restroom." and adding Condition 28 to read "Access -At the time of construction document design for the beach access stairs, San Luis County Parks in consultation with Coastal Conservancy, shall take into consideration the location, dynamic environment and historic storm patterns for this site to allow for a design that will allow maximum public access throughout the year as to avoid any closures to the beach." and re-numbers conditions appropriately. The Commission also adopts the Mitigated Negative Declaration (pursuant to Public Resources Code Section 21000 et seq., and CA code of Regulations Section 15000 et seq.) -Adopted.

3. Continued hearing to consider a request by SRK INVESTMENTS, INC. and T-MOBILE for a Minor Use Permit/Coastal Development Permit to allow the construction and operation of an unmanned wireless communications facility consisting of increasing the height of an existing architectural cupola feature, installation of four (4) antennas within the architectural cupola feature, installation of equipment cabinets located within an existing 11'-3" x 8' storage room, and associated utility trenching. The project will result in the disturbance of

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approximately 200 linear feet of a 1.08-acre property. The proposed project is within the Commercial Retail land use category and is located at 9280 Castillo Drive (Days Inn hotel), approximately 200 feet east of Highway 1, in the community of San Simeon. The site is in the North Coast planning area. This project is exempt under CEQA. CONTINUED FROM 6/13/13 and re-noticed. County File No: DRC2012-00042 APN(s): 013-071-027, and -028 Supervisorial District: 2 Date: Accepted: June 14, 2013 Xzandrea Fowler, Project Manager Recommend approval (10:39 AM)

Xzandrea Fowler, Project Manager: presents staff report.

Jesse Gilholm, Agent: discusses previous iterations of project and design of project.

Commissioners: begin their deliberation

Eric Meyer: reports he will be abstaining from voting due to not having been a Commissioner at the time the item was originally heard.

Jim Irving: reports he viewed the live streaming of the original hearing and is familiar with the subject matter.

Thereafter, on motion of Don Campbell, seconded by Tim Murphy, and on the following vote:

AYES: Commissioner(s) Don Campbell, Tim Murphy, Jim Irving.

NOES: None.

ABSENT: Commissioner(s) Ken Topping.

The Commission approves Minor Use Permit/Coastal Development Permit DRC2012-00042 based on the findings listed in Exhibit A and the conditions listed in Exhibit B; Adopted.

4. Hearing to consider a request by CALIFORNIA STATE DEPARTMENT OF PARKS AND RECREATION for a Conditional Use Permit/Coastal Development Permit to allow modifications and upgrades to the Pismo State Beach Campground including a new visitor center and entry kiosk, and relocated entry, access road, parking lot and camp host site. The project will result in the disturbance of approximately 1.4 acres of a 107 acre site. The proposed project is within the Recreation land use category and is located 555 Pier Avenue, Oceano. The site is in the San Luis Bay Coastal planning area. The County, as a Responsible Agency, has reviewed the Negative Declaration and Addendum (April 2009 and July 2010) previously prepared by the CA Department of State Parks and finds that this determination is appropriate (pursuant to Public Resources Code Section 21000 et seq., and CA Code of Regulations Section 15000 et seq.). Anyone interested in commenting or receiving a copy of the proposed Environmental Determination should submit a written statement. Comments will be accepted up until completion of the public hearing(s). County File No: DRC2012-000061 APN(s): 061-101-10 & 061-031-001 Supervisorial District: 4 Date Accepted: April 21, 2013 Karen Nall, Project Manager Recommend approval (10:53 AM)

Karen Nall, Project Manager: presents staff report.

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Jim Irving: opens Public Comment with no one coming forward.

Commissioners: begin their deliberations.

Jim Irving: has concerns for tree removal mitigations in terms of the Monarch butterflies.

Deanna Vellman, State Parks staff: address mitigation measures for tree removal in terms of the Eucalyptus trees. Explains when the Eucalyptus trees have fallen the butterfly habitat go to the other types of trees such as the Cypress trees.

Thereafter, on motion of Tim Murphy, seconded by Don Campbell, and on the following vote:

AYES: Commissioner(s) Tim Murphy, Don Campbell, Jim Irving, Eric Meyer.

NOES: None.

ABSENT: Commissioner(s) Ken Topping.

The Commission considers and relies on the previously adopted Negative Declaration and Addendum (April 2009 and July 2010, and approves Development Plan/Coastal Development Permit DRC2012-00061 based on the findings listed in Exhibit A and the conditions listed in Exhibit B; Adopted.

Thereafter, on motion of Eric Meyer, seconded by Tim Murphy, and on the following vote:

AYES: Commissioner(s) Eric Meyer, Tim Murphy, Jim Irving, Don Campbell.

NOES: None.

ABSENT: Commissioner(s) Ken Topping.

The Commission accepts all correspondence entered into the record.

Thereafter, on motion of Don Campbell, seconded by Eric Meyer, and on the following vote:

AYES: Commissioner(s) Don Campbell, Eric Meyer, Jim Irving, Tim Murphy.

NOES: None.

ABSENT: Commissioner(s) Ken Topping.

The Commission adjourns to the next regularly scheduled Planning Commission on August 8, 2013.

ADJOURNMENT: 5:00 PM

Respectfully submitted,
 Ramona Hedges, Secretary
 SLO County Planning Commission
MINUTES APPROVED AT THE 9/26/13 PC

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Exhibit 6



San Luis Obispo County Sheriff's Office

1585 Kansas Avenue • San Luis Obispo • California • 93405
www.slosheriff.org

Ian S. Parkinson
Sheriff - Coroner

To: Board of Supervisors
From: Aaron Nix, Commander, Coast Patrol Division, San Luis Obispo County Sheriff's Office
Date: September 30, 2013
RE: County Sheriff's Statistics of Criminal Activity at Pirates' Cove/Cave Landing

San Luis Obispo County Sheriff's statistics compiled for the last 2 years 9 months as outlined below. As you can see, the call volume is steadily increasing and the nature of the calls is getting progressively worse; a large number of parties, fights, and sex crimes, with some transient issues and a considerable amount of vehicle burglaries and petty thefts.

Year 2011 - 55 incidents

Types of calls

- arrests for warrants
- PC 647 f drunk in public
- juveniles drinking
- large parties
- lewd acts
- complaint of 60year old male nude with an 8 year old female nude
- illegal camping in caves with abundance of human waste and trash

Year 2012 - 73 incidents

Types of calls

- complaints of subjects dealing drugs
- complaints of subjects having sex in public
- lewd acts
- drunk in public
- large parties
- subjects fighting
- suicidal subjects
- H&S 11377(A) possession of an illegal narcotic

Year 2013 to date - 74 Incidents

through September 2013

Types of calls

- PC 273(D)(A) felony child abuse
- drunk in public
- suspicious subjects
- juvenile parties
- possession of an illegal narcotic- sales & transportation
- warrant arrests
- vandalism
- subject in the bushes with binoculars
- subject recording people
- complaints of lewd acts
- unlawful dumping
- stealing personal property from vehicles
- recovered stolen car
- fireworks

Night time closure of this area is the best way to minimize the criminal activities that regularly happen at this site by giving law enforcement the authority to clear the parking lot in the evening hours.



Aaron Nix, Commander, Coast Patrol Division
San Luis Obispo County Sheriff's Office
2099 10th Street
Los Osos, CA 93402
(805) 781-4630

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Presented by: E. Kavanaugh
Received and posted to the web site: 10/13/13

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DISTRICT #3 REPRESENTATION IN THE 25 JULY 2013 PLANNING COMMISSION'S DECISION

Commissioner Meyer was nominated and appointed at the 23 JULY 2013 Board of Supervisors' meeting.

The proposed project is entirely within District #3. Due to unfamiliarity with previous discussions regarding the project he stated early in the discussion that he would be abstaining from voting on the issue. This amounts to each and every resident of District #3, including myself, not having a vote regarding a project within that district.

This is completely antithetic to the concept of governmental decision making based upon "representation". What should have occurred, was the entire discussion and decision regarding it, been continued to a future meeting to allow Commissioner Meyer time to familiarize himself with the details of the project such that he could participate in both.

I strongly urge you to nullify the 25 JULY 2013 decision by the Planning Commission based upon this fact.

SLO COUNTY, SAN LUIS BAY AREA PLAN

The following excerpt is taken from the San Luis Obispo County, San Luis Bay Area Plan, Coastal, dated March 1, 1988, Certified by California Coastal Commission February 25, 1988, Revised August 2009, Page 8-6, item 7. Shoreline Access – Mallagh Landing:

- 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 improvements of the parking area is to be consistent with protection of the archaeological resources and geological conditions on the site."*

It is undeniable that this site has cultural and archaeological aspects of great significance. It is also undeniable that there is an active landslide immediately to the East of the parking area. Each needs to be considered in the final designs of the project.

The current topography of the parking area causes the primary water flow to the South, with a portion of that southward flow directed to the East. Due to its slope and surface area, the volume of water flow into the landslide complex from the parking area is negligible when compared to the volume from the terrain immediately to the North of the complex. [See **FIGURES 1 & 2** on the following two pages.]

While the design needs to address this issue, it must also reflect the proportionally negligible impact upon the landslide complex by the parking area. The only true issue regarding this runoff is the potential for rutting (erosion) of the lot itself based upon use.

Per review of the proposed typical bio-swale [see **Figure 3**], the fundamental aspect is a layer of gravel in which perforated piping is embedded. There is next a layer of engineered soil, with a topping of mulch, in which plants are placed. The water collected by the bioswale is directed to a "level spreader", which again is an area of coarse gravel/stone in which perforated piping is embedded.

One must make the assumption that the engineered soil used in the bioswale is primarily of a clay and sand nature, as clay absorbs and retains the most amount of water in comparison to other soil types and sand allows porosity.

It is my understanding that there is significant, yet variable depth of non-native soil that has been placed above the native soil. By numerous personal observations, this added soil is of high clay composition.

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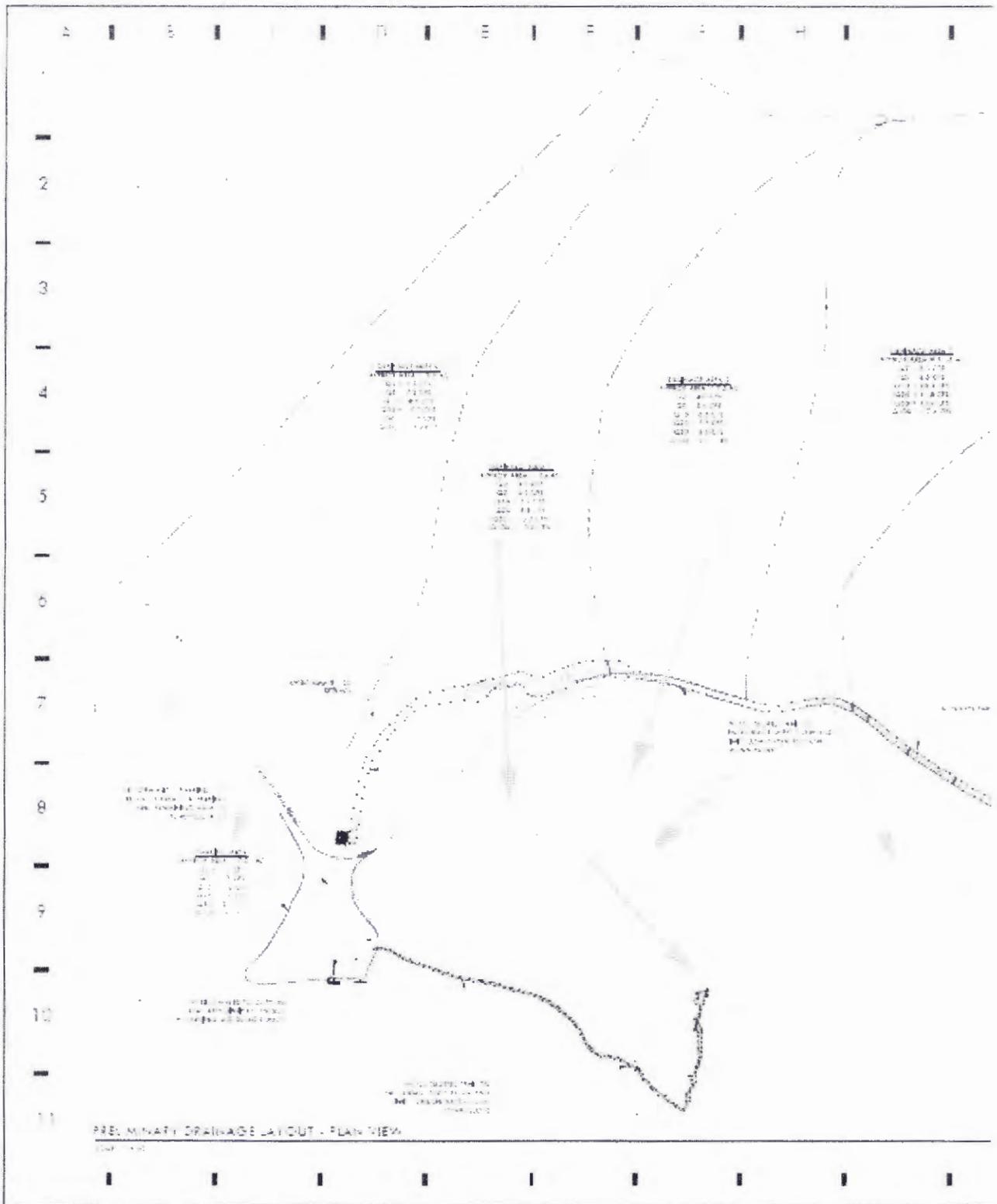


FIGURE 1: CONCEPTUAL REPRESENTATION OF MACRO WATER FLOW TO LANDSLIDE COMPLEX

The small GREEN arrow at grid 9-D represents the miniscule potential water input into the landslide complex from the parking area. The bulk water into the complex is from the large surface area.

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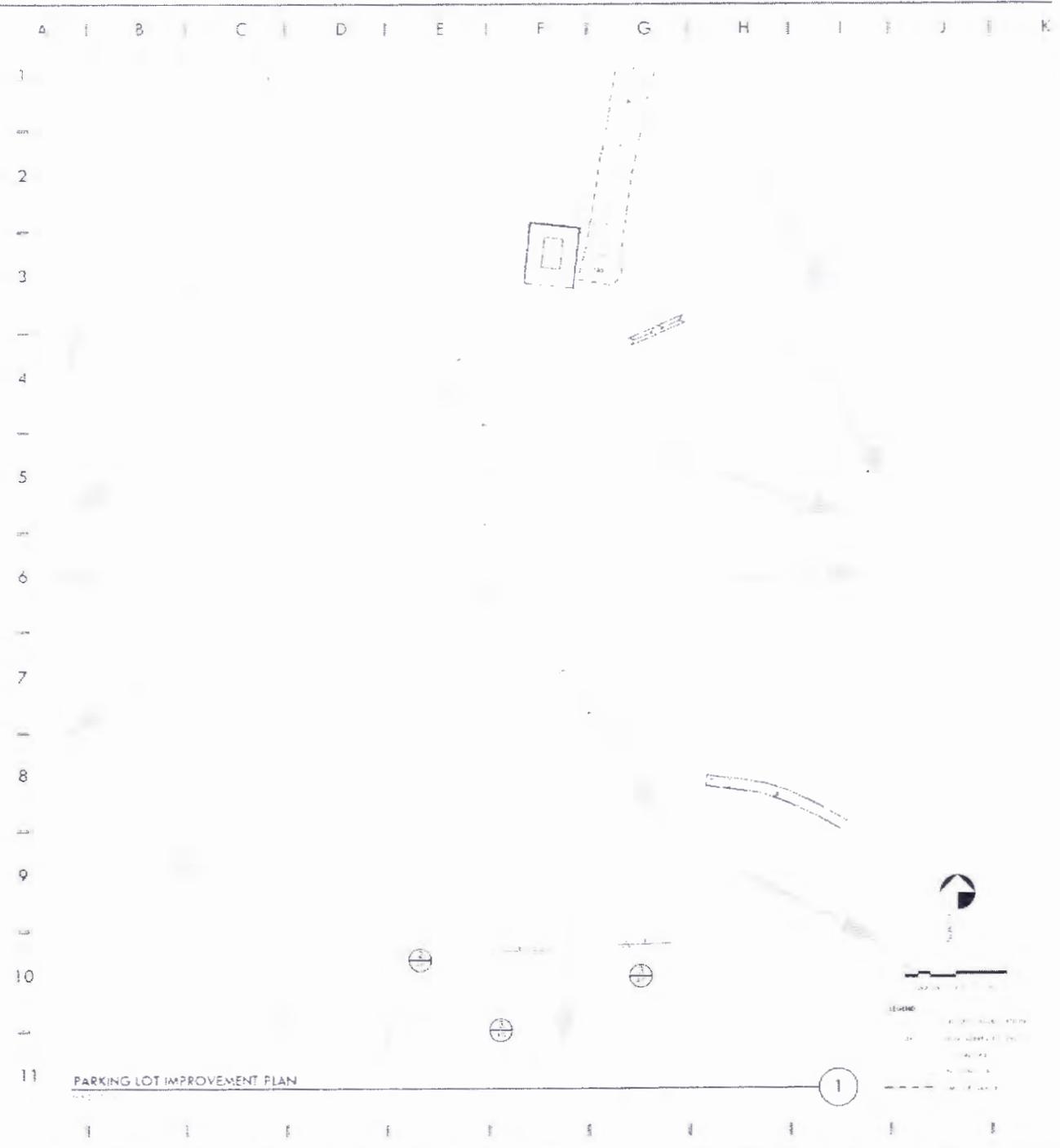


FIGURE 2: CONCEPTUAL REPRESENTATION OF MICRO WATER FLOW INTO LANDSLIDE COMPLEX

The BLUE arrows represent natural water flow from the surrounding hills, and upon the parking lot. As can be seen, most of the water that enters or falls upon the parking lot, generally travels to the South, spilling down the bluffs to the ocean. VERY little water enters from the parking area itself. The GREEN arrow at grid 7-H, again represents the parking area's generalized, if any, water contribution into the landslide complex.

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The county continually cites that this layer has compacted over time such that it is no longer pervious. I'll basically accept that statement as fact. They state that the level of disturbance to make this compacted layer completely pervious would impact the native soil below. I'll accept that statement generally as fact as well. Staff then extrapolate that those issues *necessitate* the current design of an asphalt pavement with bioswales to mitigate the runoff from the area. **I adamantly disagree** with that conclusion. In fact if that were completely true, why not simply grate the existing impervious soil to channel water flow away from the landslide area?

I believe it is readily apparent that the design elements of a bioswale and associated level spreaders can easily be incorporated into the parking surface itself [see **FIGURES 3 & 4**, following]. That is, the current layer of non-native clay soil be graded and leveled to the degree necessary to evenly spread an added layer of gravel with perforated piping as required to protect the landslide complex and ultimate runoff to the ocean. By raising the South end of the parking area, and graduating the gravel layer in depth, with the greatest depth at the South end, lowest depth at the North end, this will both decrease the slope of the parking area, further reducing runoff velocity and its eroding effects, and allow the largest volumetric water retention at the southern end where it would naturally want to flow.

Additional engineered soils would then be added above the gravel layer to obtain a permeable topping, such as pea gravel mixed with clay & sand or decomposed granite.

The above approach addresses all the stated limitations and goals of this project, yet still maintains the San Luis Bay Coastal Plan requirement that this be a permeable surface to control bluff erosion.

This is an incredibly beautiful section of the California Coastline. Its beauty is not only due to its scenic views, but also its essentially pristine undeveloped state; yet it provides Public access to and upon it for the Public's ability to appreciate that beauty. It is close to urbanized towns and cities, yet in its current condition retains a rural nature and the sense of tranquility associated with that type of setting. An asphalted parking area would indelibly negate the rural and pristine aspects of this area, and is inconsistent with the local Coastal Zone Ordinances regarding visual impact.

The most obvious of which is Ordinance:

23.04.210 - Visual Resources - ... New Development shall be designed (e.g., height, bulk, style, materials, color) to be subordinate to, and blend with, the character of the area. ...

Also, asphalt paving is NOT consistent with the following Policies:

- a) Visual and Scenic Resources: *Policy 4: New Development in Rural Areas. New development shall be sited to minimize its visibility from public view corridors.*
- b) Shoreline Access: *Policy 8: Minimizing conflicts with Adjacent Uses... Where a proposed project would increase the burdens on access to the shoreline at the present time or in the future, additional access areas may be required to balance the impact of heavier use resulting from the construction of the proposed project.*

The parking lot surfacing by asphaltting will have significant negative impact of the "public view corridors" from both the re-located Cave Landing Trail, and from the Ontario Ridge Trail, due to their elevation being above the elevation of the parking lot. It will not be "subordinate to, and blend with, the character of the area." especially with regard to "**materials**" and "**color**".

Furthermore, by reducing the number of available parking spots on the site in it's current condition, it will significantly affect current burdens to shoreline access. With completion of the Cave Landing Trail, it will only increase the number of vehicles utilizing the trail, thus causing inevitable burdens to shoreline access.

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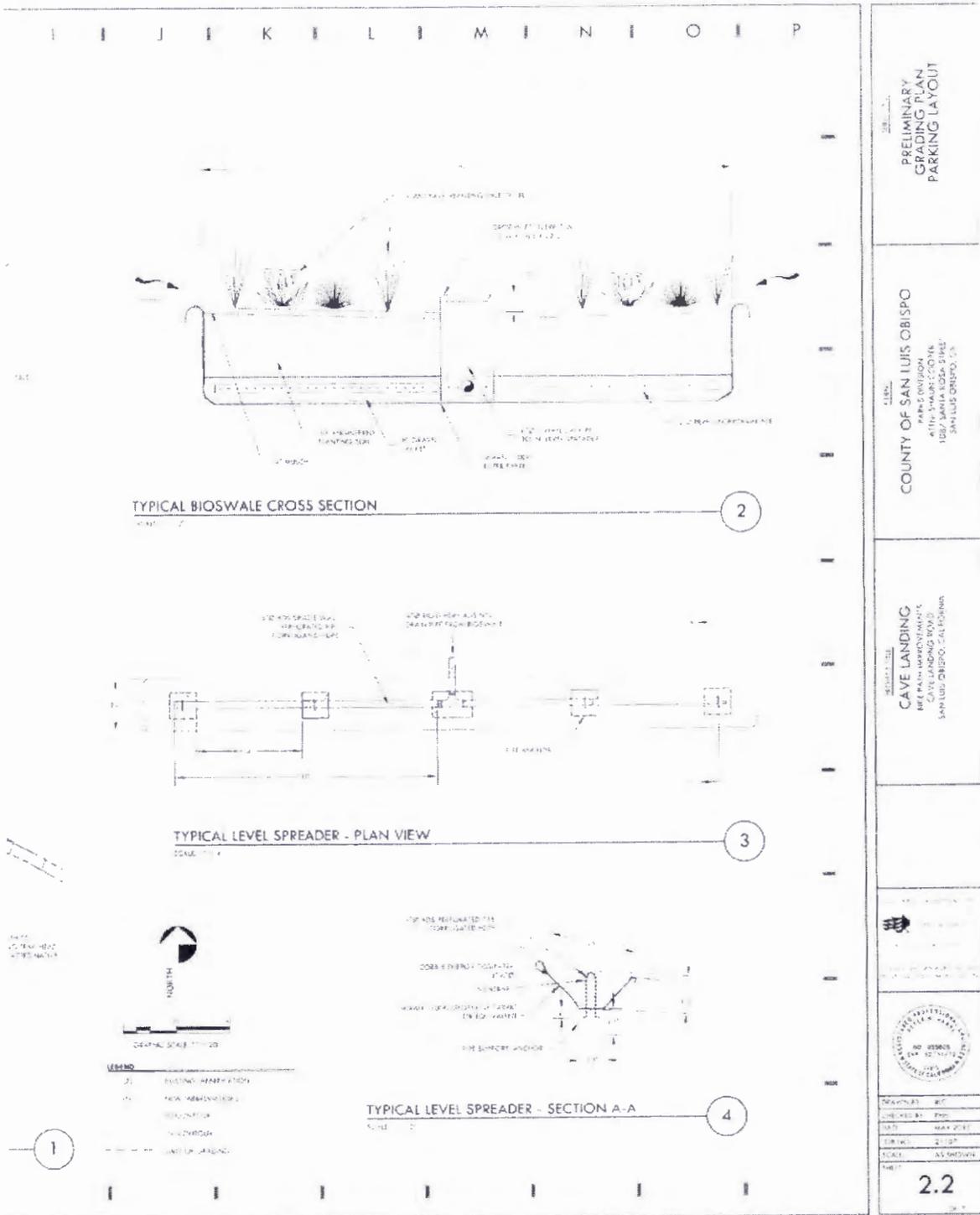


FIGURE 3: TYPICAL (per County Dwgs) BIO-SWALE AND LEVEL SPREADER DESIGN

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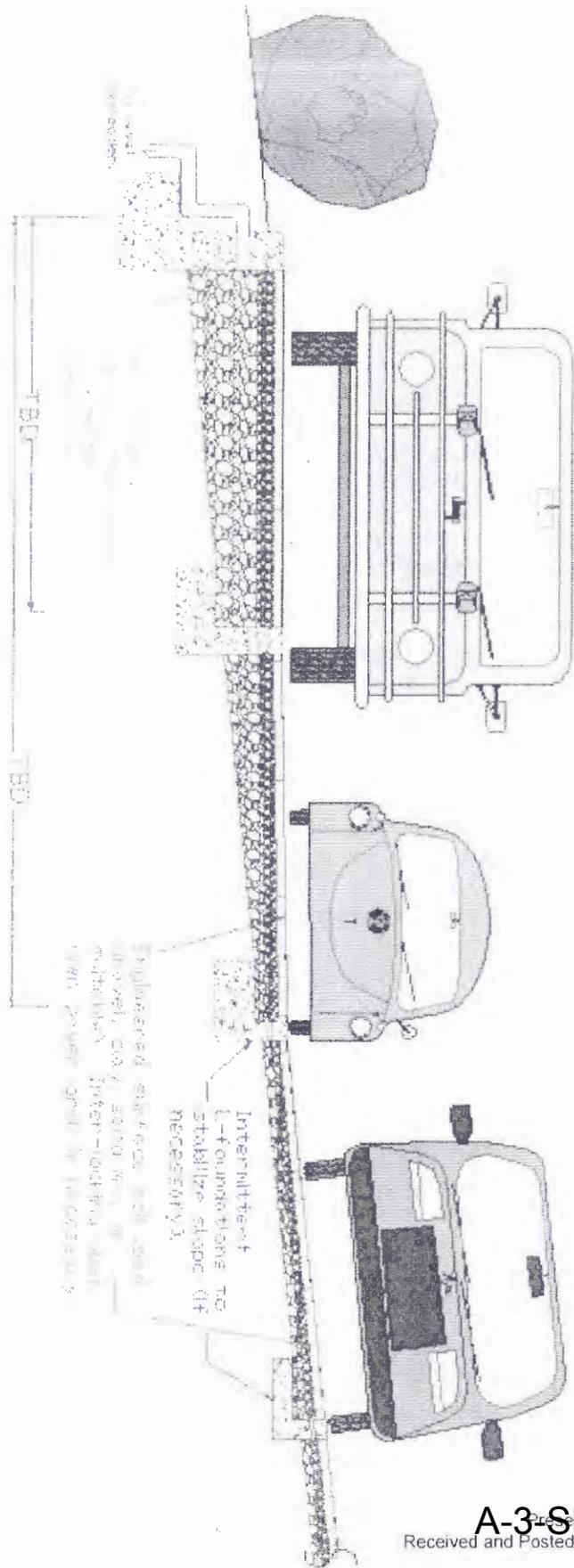


FIGURE 4: SOUTH END OF PARKING AREA (LOOKING WEST), SHOWING PARKING ON "BIO-SWALE"-STYLE DESIGN CONCEPT

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Additionally, by retaining the parking area in a similar rural nature within the same footprint that has existed for about two decades, it eliminates the need to invoke Ordinance "23.04.164 Parking Design Standards - Requirements for parking space size, isle width, and driveway standards"

Per current design, 65 of the 70 spaces per the revised plan are on the "footprint" of the current parking area south of Cave Landing Road. The remaining 5 spaces are along the north side of the road and are already utilized for parking, so they do not contribute to "new" parking. Per correspondence dated May 22nd, 2013 by Whales Cave Conservancy to the SLO Co. Planning Commission, the current footprint can and does accommodate 70-75 vehicles. A reduction from up to 75 vehicles to the new delineated parking of 65 vehicles, is a significant decrease [13.4%]. Thus it does not conform to either use burdens of the area per Shoreline Policy 8's, "burdens on access to the shoreline at the present time or in the future."

There also seems to be a misperception by many involved in this project that the Public is requesting a design that accommodates maximum capacity on particularly days which would occur seldom during the year [specifically refer to Parks' Director Mr. Black's comments at the Planning Commission's 23MAY2013 mtg and Mr. Duff's comment at the 25JULY2013 mtg.]. Recent car counts have revealed that parking of 100 plus vehicles in this area occur very often, and are NOT of an infrequent nature. I've attached a 3 month graphic provided by the Whales Cave Conservancy via correspondence dated July 10th, to the 25JULY2013 Planning Commissioner's Meeting [see Attachment 1].

This misperception also completely ignores the obvious facts that the proposed development of the well-used Ontario Ridge Trail and development of the Avila Point Area, WILL increase users of this area over and above its current users.

The above, non-paved approach leaves open the discussion regarding the Coastal Plan's nominal goal of 100 parking spots for current use, and even more, to these future development projects

As a final note: If one studies the details of the proposed bio-swale, shown in Figure 3, it has a depth of at least 42 inches. In the original plans, these bio-swales were to be constructed in the SAME area that I am proposing an alternative design [See **FIGURE 5** below]. Forty-two inches, FAR exceeds what is my understanding of depth of previously added material to the parking, and would have significantly impacted native soil during its construction.

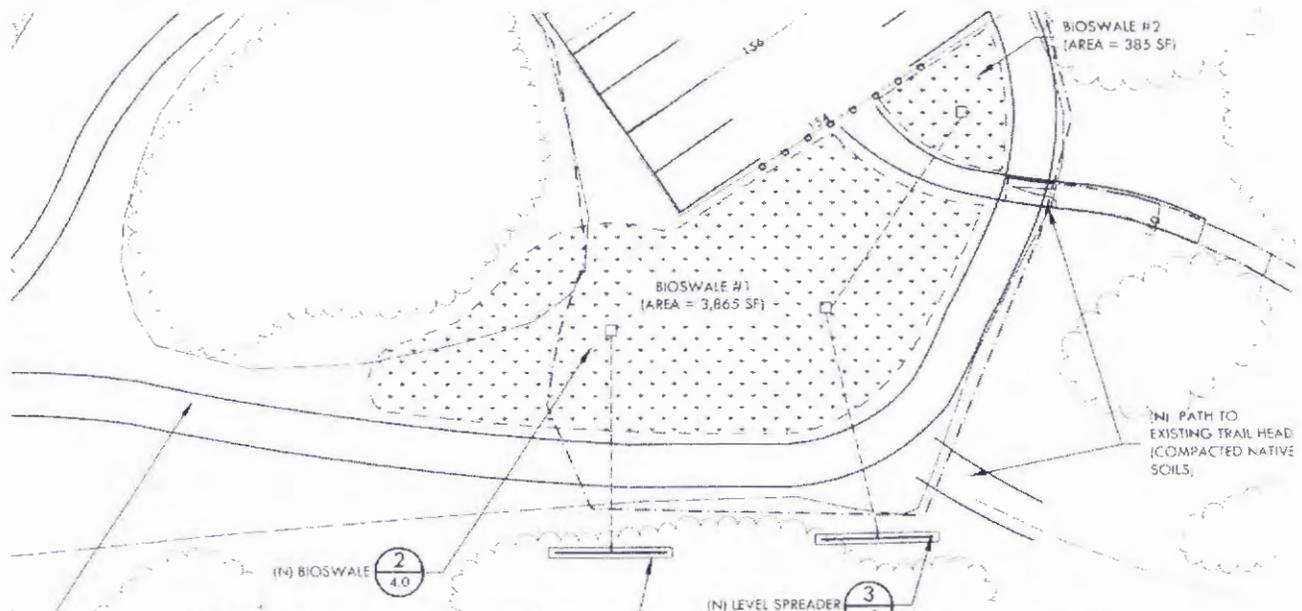


FIGURE 5: SOUTH END OF PARKING AREA PER COUNTY'S ORIGINAL DESIGN

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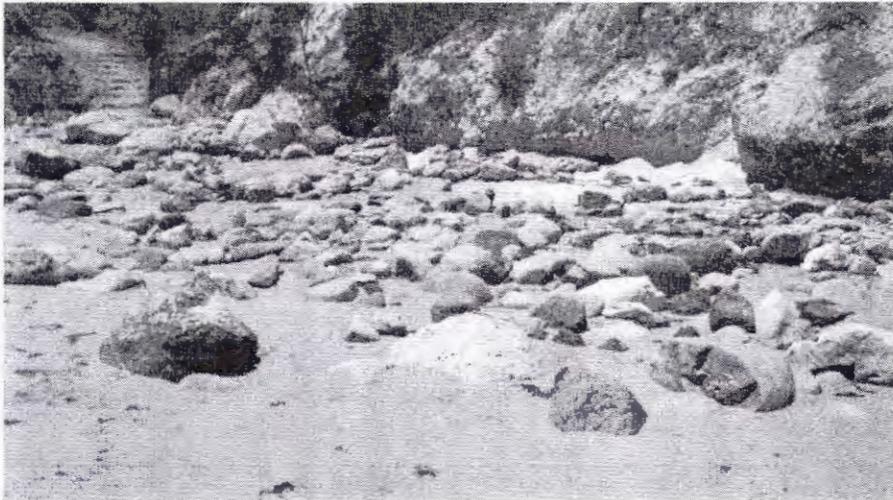
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COASTAL ACCESS CLOSURE DUE TO DAMAGE AND SAFETY CONCERNS

This issue was discussed in detail by Public correspondence provided to the Planning Commission 25JULY2013 meeting. I trust you will review those documents. To stress the main points of my correspondence to that meeting:

There are many rocks and boulders that have been deposited in the beach access area. Winter storms, due to their southern swell nature, along with the ocean topography concentrate the energy and force of those waves into this corner of the beach. Combined, ANY man-made structure will be damaged and ultimately destroyed. [Note: The closed staircase picture to the right immediately following, is at the East end of Avila Beach proper]



A minimalist approach for beach access "improvement" must be taken to avoid the codes, ordinances and regulations associated with man-made infrastructure which would cause a real and present danger of decreasing coastal accesses precisely because of these "improvements". There is an inherent issue with reinforced concrete structures in saltwater environments, called "spalding". Saltwater seeps through the inherent cracks in the concrete, rusting the rebar, which expands, placing pressure on the concrete which causes a widening of the cracks, exposing more rebar and the degradation cycle accelerates until it crumbles.



Recognition of this fact was evidenced by a last minute inclusion of Exhibit B, Revised Conditions of Approval, item 28. Access. I commend both Planning Staff and the Planning Commission's inclusion of this new Condition. Its inclusion should remain in some form in all current and future proposals to develop this area. However, the current designs have NOT incorporated that new design requirement. Item 35 - 11/5/2013

Nullification of the 25 JULY 2013 decision regarding this project will allow more time for Public input and a design that will best achieve this concept, prior to "Construction Phase".

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AMBIGUITY REGARDING COMMENTS TO THE PLANNING COMMISSION

I commend the Planning Commissioner's questioning of various County Staff Personnel regarding the concerns and comments made by the Public.

However, there are several items that were answered by staff personnel in an ambiguous manner. I'll cite and expound upon two items in the project discussion that I believe were key elements in the Commissioners' decision to cast YES votes to the project as presented, and if answered more definitively, it may have cause them to cast a NO vote.

QUESTION OF LIABILITY:

On several occasions, County Counsel was questioned regarding liability issues. Of particular note were questions re: the option of posting signage stating something to the effect of "Proceed at your own Risk".

While I'd intended to cite video time stamps, I'll simply paraphrase Counsel's statements: "I *think* that's not an option," "I *believe* that is an option only for private land-owners, not Public land-owners," "that's what I *believe*." [Please review video, on your own, for specifics.]

I was able to find the following legal references via the internet. All, on the surface, seem to completely contradict County Counsel's advice to the Planning Commission:

GOVERNMENT CODE
SECTION 815-818.9

815. Except as otherwise provided by statute:

(a) A public entity is not liable for an injury, whether such injury arises out of an act or omission of the public entity or a public employee or any other person.

(b) The liability of a public entity established by this part (commencing with Section 814) is subject to any immunity of the public entity provided by statute, including this part, and is subject to any defenses that would be available to the public entity if it were a private person.

[et. seq.]

California Recreational Use Statute
CIVIL CODE
DIVISION 2: Property
PART 2: Real or Immovable Property
TITLE 3: Rights and Obligations of Owners
CHAPTER 2: Obligations of Owners

§846. Duty of care or warning to persons entering property for recreation;
Effect of permission to enter

An owner of any estate or any other interest in real property, whether possessory or nonpossessory, owes no duty of care to keep the premises safe for entry or use by others for any recreational purpose or to give any warning of hazardous conditions, uses of, structures, or activities on such premises to persons entering for such purpose, except as provided in this section.

A "recreational purpose," as used in this section, includes such activities as fishing, hunting, camping, water sports, hiking, spelunking, sport parachuting, riding, including animal riding, snowmobiling, and all other types of vehicular riding, rock collecting, sightseeing, picnicking, nature study, nature contacting, recreational gardening, gleaning, hang gliding,

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winter sports, and viewing or enjoying historical, archaeological, scenic, natural, or scientific sites.

An owner of any estate or any other interest in real property, whether possessory or nonpossessory, who gives permission to another for entry or use for the above purpose upon the premises does not thereby (a) extend any assurance that the premises are safe for such purpose, or (b) constitute the person to whom permission has been granted the legal status of an invitee or licensee to whom a duty of care is owed, or (c) assume responsibility for or incur liability for any injury to person or property caused by any act of such person to whom permission has been granted except as provided in this section.

This section does not limit the liability which otherwise exists (a) for willful or malicious failure to guard or warn against a dangerous condition, use, structure or activity; or (b) for injury suffered in any case where permission to enter for the above purpose was granted for a consideration other than the consideration, if any, paid to said landowner by the state, or where consideration has been received from others for the same purpose; or (c) to any persons who are expressly invited rather than merely permitted to come upon the premises by the landowner.

Nothing in this section creates a duty of care or ground of liability for injury to person or property.

HISTORY: Added Stats 1963 ch 1759 s 1. Amended Stats 1970 ch 807 s 1; Stats 1971 ch 1028 s 1; Stats 1972 ch 1200 s 1; Stats 1976 ch 1303 s 1; Stats 1978 ch 86 s 1; Stats 1979 ch 150 s 1; Stats 1980 ch 408 s 1; Stats 1988 ch 129 sec 1.

Also.

~~California Government Code § 831.2 - Natural condition of unimproved public property.~~

Neither a public entity nor a public employee is liable for any injury caused by a natural condition of any unimproved public property, including but not limited to any natural condition of any lake, stream, bay, river or beach.

~~California Government Code § 831.4 - Unpaved access roads to recreational or scenic areas; trails; paved paths on easements of way granted to public entities.~~

A public entity, public employee, or a grantor of a public easement to a public entity for any of the following purposes, is not liable for an injury caused by a condition of:

- (a) Any unpaved road which provides access to fishing, hunting, camping, hiking, riding, including animal and all types of vehicular riding, water sports, recreational or scenic areas and which is not a (1) city street or highway or (2) county, state or federal highway or (3) public street or highway of a joint highway district, boulevard district, bridge and highway district or similar district formed for the improvement or building of public streets or highways.
- (b) Any trail used for the above purposes.
- (c) Any paved trail, walkway, path, or sidewalk on an easement of way which has been granted to a public entity, which easement provides access to any unimproved property, so long as such public entity shall reasonably attempt to provide adequate warnings of the existence of any condition.

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Item 85 - 11/5/2013
Presented by: [redacted]
Received and Posted on the web: 11/1/2013

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Per the documentation I have reviewed, the SEPT 2014 date is consistent. However, ...

I now refer to a letter dated March 2, 2012 from SLO Parks to the Calif. Dept. of Fish & Game, Re: Cave Landing Bike Path, (Agreement Number R-14 2002) Accounting of Expenditures & Quarterly Status Report through Dec 2011, citing specific entries made in Table I -- Status Report.

June 27, 2002 contract signed by all parties. Contract is complete.

March 16, 2005, received Grant Agreement Addendum from Department of Fish and Game (DFG) for signatures.

April 12, 2005, forwarded signed Grant Agreement Addendum to National Fish and wildlife Foundation for signatures.

April, 2008- discussed possibility of adding a liability section in the Agreement Addendum.

May 19, 2008- agreement Addendum draft submitted to CDFG for review.

July 30, 2008 Agreement Addendum signed

December 23, 2008- County closed escrow on the purchase of property adjacent to path.

January 21, 2009 – on site meeting with County staff, CDFG staff, and Coastal Commission staff to discuss the status of the project and the possibility of additional funding.

January 30, 2009 – requested an additional \$353,745 from CDFG to complete the construction of the project.

February 11, 2009 – County received approval from CDFG for additional \$353,745.

February 24, 2009 – Amendment to grant agreement executed, increasing funding for the project by \$353,745.

Notes:

- 1) there was no associated entries in the above letter for the April-June 2011 period re: Agreement Addendum.
- 2) I have a note to myself in the documentation I obtained during my review of documents granted to me by my May 2013 request per the California equivalent to the Federal Freedom of Information Act, that states, "Q: What extends F&G past June 24, 2011?" This implies I read something that indicated the Grant needed to be extended.

I was explicitly searching for documents associated with details regarding conditions & terms associated with the Grant funding, see **Attachment 2**, Item 4 *[only the letter to Planning is attached, since the letters I submitted to Parks and the Clerk Recorder are substantially the same except for the Addressee].*

Since I have no copy of the original 2002 Agreement, the 2005 Agreement Addendum, the 2008 Agreement Addendum, nor the presumed 2011 Agreement Addendum [to have NONE implies that these documents were not made available to me], I can not specifically confirm the following, but based upon the 3 year periodicity of the Agreement Addendum, and the known fact that the Grant funding expires during the same period in 2014, I can logically conclude that this Grant funding has been extended three times.

Therefore, it is also logical, that should the need arise, there is every expectation that a similar extension via an Agreement Addendum would be obtained.

Since neither the California Coastal Conservancy nor SLOCOG yet actually granted their funding, the **presumptive notion by the Planning Commission that the Grant funding was in jeopardy, was unfounded**, as should be yours.

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Item 35 - 11/5/2013
Presented by: [unclear]
Received and Posted on the web: 11/17/2013

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CONCLUDING SUMMARY:

The CAVE LANDING AREA IMPROVEMENTS (DRC 2011-00069) project, as approved by the SLO Planning Commissions, warrants nullification by this Board of Supervisors for the following reasons, all or in part:

- 1) This project will occur, en total, within District #3. The District #3 Commissioner abstained from a vote in the decision. **The decision to continue proceedings is completely antithetic to the concept of governmental decision making based upon "representation"**. What should have occurred, the entire discussion and decision to have been continued to a future meeting to allow Commissioner Meyer time to become familiarized with the details of the project such that he could have participated in the vote.
- 2) The Commission made its decision, in part, based upon Staff's and County Counsel's input that were most likely misconstrued by the Commission, and were key in their final vote regarding approval
 - a) County Counsel was NOT definitive in his response to Commissioners when asked if the option of posting a "Proceed at your own Risk" sign was available to County owned properties. He offered his "belief" that it was not, and Commissioners accepted it as "fact". **ALL laws that I have found, indicate that the option to "leave things as they are" with appropriate warning signs, was indeed a viable option** to the Planning Commission, yet since they believed it was not an option did not pursue it.
 - b) Documentation suggests that original Grant funding allocated in 2002, was renewed in 2005, 2008 & 2011. Therefore, every expectation exists, that should the need arise, the current expiration date of AUG/SEPT 2014 will be extended again. Thus, **the false the perception that the grants associated this project are in jeopardy** if not used in the very near future, **was fundamental in the Planning Commission's approval.**
- 3) Addition of a concrete staircase at the base of the beach access trail will be damaged, and **will ultimately decrease coastal access** due to its inevitable closure due to safety standard.
- 4) **This project is NOT in conformance with the SLO Co., San Luis Bay Area Plan, Coastal Plan** (dated March 1, 1988, Certified by California Coastal Commission February 25, 1988, Revised August 2009, Page 8-6, item 7. Shoreline Access – Mallagh Landing). Two items in particular:
 - a. "Parking area for 100 cars is to be improved."
 - b. *The parking area is to be surfaced with a permeable material to control bluff erosion."*
- 5) **This project is also NOT in conformance with the Coastal Zone Ordinances (CZLUO).** A specific item of which is **part 23.04.210 – Visual Resources.** *a) Location of Development – ... New development shall be designed (e.g., height, bulk, style, materials, color) to be subordinated to, and blend with, the character of the area. ..."*

Additionally, **asphalt paving is NOT consistent with the following Policies** in this setting:

- a) **Visual and Scenic Resources: Policy 4: New Development in Rural Areas.** *New development shall be sited to minimize its visibility from public view corridors.*
- b) **Shoreline Access: Policy 8: Minimizing conflicts with Adjacent Uses...** *Where a proposed project would increase the burdens on access to the shoreline at the present time or in the future, additional access areas may be required to balance the impact of heavier use resulting from the construction of the proposed project.*

I strongly urge you to nullify the Planning Commission's decision of 2013-07-25 and refer the project back to Staff to resolve design issues that do NOT conform with the Local Coastal Development Plan & Ordinances.

Brian A LoConte
Irish Hills Resident [District #3]

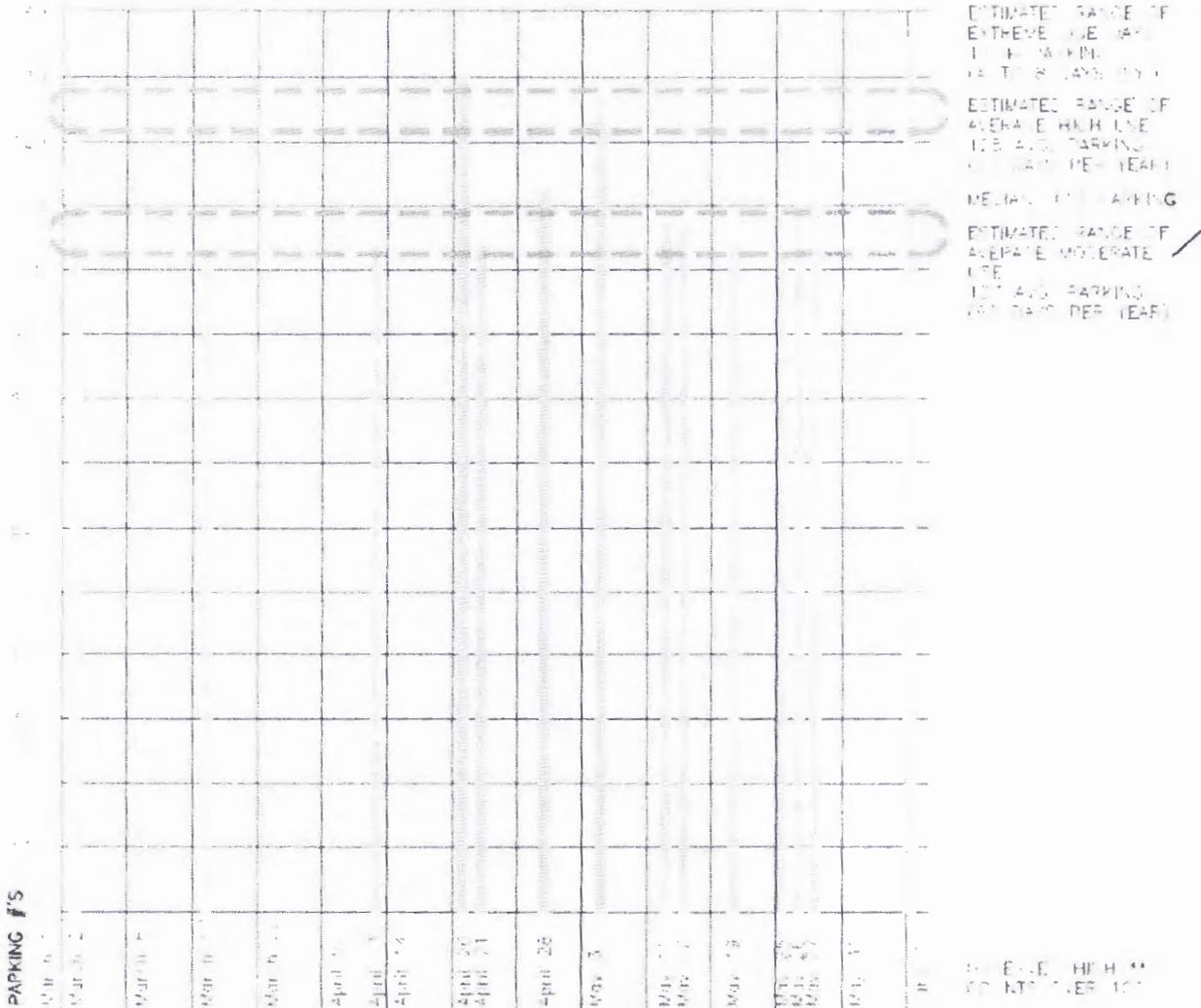
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ATTACHMENT I - FROM WCC PUBLIC CORRESPONDENCE

THREE MONTH PARKING COUNTS

WCC PROJECT # 11-11-2011



BASIS OF ANALYSIS:

The data collected for this analysis is ten of years parking counts taken at the new dining repurposed booth... (text is very faint and partially obscured)

Note: Even with the parking at 100 spaces and an additional 100 spaces at the new dining repurposed booth, there will already be twenty days with at inadequate parking.

Note: Additional impacts from the development of the former NICAL Tank Farm property (WCC Item 361-11/5/2013) will also impact parking requirements for this park.

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ATTACHMENT 2 - BA LoCONTE' REQUEST FOR PUBLIC DOCUMENTS

To: *wam* Griffin
SLO Co. Planning Dept. Assistant Director
1701 Legas St.
San Luis Obispo, CA 93408

SUBJECT: REQUEST FOR PUBLIC RECORDS

20 MAY 2013

Dear Ms Griffin

While this letter should be unnecessary, since I previously submitted an essentially identical letter to the County Clerk-Recorder, which should have been sufficient to require this request be honored by ALL involved SLO Co. departments, I am also submitting this request directly to your department and to Parks & Recreation.

Under the **California Public Records Act § 6250 et seq.** I am requesting an opportunity to obtain copies of (preferred) or inspect public records that pertain to:

1. Acquisition by the County of San Luis Obispo of the lands in the area known as Cave Landing / Mallagh's Landing / Pirates Cove and upon the area known as Ontario Ridge. Both past acquisitions and intended future acquisitions.
2. All public records regarding development of those lands, including all past and present revisions and future intent.
3. This includes all correspondence, both written and electronic to/from private individuals, other governmental agencies, quasi-governmental agencies (such as Avila Valley Advisory Council) and intra-agencies to the extent allowed by law as well as any documented summaries of meetings associated with the above requested information.
4. Additionally, all internal budgetary documents associated with past, present and future funding, including the amount, terms, conditions and stipulations of any grants, deeds, etc. associated with external funding regarding those lands and their development.

I request any document or drawing that was intended to be larger than 8.5"x11", be provided in the intended size.

I am open to proposals of receiving the requested documents via electronic storage, as long as the contents are able to be stored, reproduced and distributed as individual documents in readily available formats, such as Microsoft Office and Adobe, contact me if that is desired/preferred.

This information is not being sought for commercial purposes.

If there are any fees for copying these records, please inform me if the cost will exceed \$100. However, I would also like to request a waiver of all fees in that the disclosure of the requested information is in the public interest and will contribute significantly to the public's understanding of the San Luis Obispo County's intent and details of planned development of these areas, which hereto, has not been forthcoming.

The California Public Records Act requires a response within ten business days. If access to the records I am requesting will take longer, please contact me with information about when I might expect copies (preferred) or the ability to inspect the requested records.

If you deny any or all of this request, please cite each specific exemption you feel justifies the refusal to release the information and notify me of the appeal procedures available to me under the law.

Sincerely,

Brian A LoConte
[Address & phone # redacted]

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ATTACHMENT 3 - BA LOCONTE'S CORRESPONDENCE TO 2013-07-25 PLANNING COMMISSION MTG.

My main letter to the 25 JULY 2013 Planning Commission was dated, 22 JULY 2013 and is included in the official correspondence for this BOS Mtg. However, I submitted a second letter at the meeting itself. For unknown reasons, it is not included in the County's package of Public Correspondence, so I have attached it to this letter for your review.

PLANNING COMMISSION

Subject: CAVE LANDING AREA IMPROVEMENTS

AGENDA ITEM: 2
DATE: 7/25/13 25 JULY 2013

Members of the SLO PLANNING COMMISSION,

DO NOT REMOVE FROM FILE

This is a supplemental letter to my original letter dated 22 JULY 2013.

As mentioned in my previous letter, the documents associated with agenda item 2, were not available via the county website. I had assumed the problem was temporary and would be corrected. However, since they had not as of 24 JULY, I called the Planning Commission secretary and found that the provided link was in transition and not functioning. She walked me through an alternate means of obtaining the source document. Thus, I have had only approximately half a day to read, digest, and comment on the details contained in those documents. [My comments are given at the end of this letter].

Overall, this is a prime example of my previous contention in the 22 July letter, and in my comments to the Planning Commission during their 23 MAY 2013 meeting that **the crux of the problem is that the Public review and comment process regarding this issue (and most like all projects) is that the process is FUNDAMENTALLY FLAWED with no meaningful "Public Input"**.

This project has been in the developmental stage since 2002. Significant progress was realized in 2007-2008, and draft finalized plans were prepared in 2011. Yet, the first time I became aware of the extent of the project, without any meaningful details, was in Jan/Feb of 2013.

It was at that time, I was made aware by others that County would make a presentation to the Avila Valley Advisory Council (AVAC) regarding a proposal to accept previous offers-to-dedicate the Cave Landing / Mallagh's Landing / Pirates' Cove Beach (Parcel 5, 54PM36), which I attended but did not speak.

Next was the 26 FEB 2013 Board of Supervisor's (BoS) Meeting. I attended, and provided public comment re: my support of the conceptual aspect, but my concerns and apprehensions of it and future development. At that point the BoS directed Parks to get contact information from the concern citizens present, and to make them aware of future public comment opportunities.

I was NEVER contacted, nor were others who provided contact info. It was by word-of-mouth that I became aware that Parks would make a presentation to AVAC at their MAY 2013 meeting. I spoke at that AVAC Mtg, and I believe, helped them understand the over-riding issues re: this project.

Subsequent to that meeting, and just prior to the Planning Commission 23 MAY 2013 Mtg, I was invited to discuss my concerns with Parks. ALL of the issues I have raised to date were discussed in conceptual form at that time. Parks provided me some bases for their plans, but NOT in the detail that was necessary for me to provide any significant Public Input.

I attended and am on public record with both a submitted letter and public comment at the 23 MAY 2013 Planning Commission Mtg.

Subsequent to that meeting, I submitted the California version of the Freedom of Information Act request for information regarding this project. Monetary costs of that request are approx. \$120. Essentially all the detailed information I have regarding this project stems from that request. Even so, since this project is in a highly sensitive Cultural area, and the Freedom of Information Act specifically prohibits the release of details of this subject available to the general public, there is still MUCH I don't know.

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There is something FUNDAMENTALLY WRONG with the public review and comment process when an individual has to resort to a Freedom of Information request and associated monetary expense to gain enough detailed information to draw evidentiary conclusions regarding the project.

I did receive notification of the proposed discussion/proposal for furtherance of this project at both the JULY 2013 AVAC Mtg, and this 25 JULY 2013 Planning Commission Mtg. In the interest of civility, I will refrain from comment my feeling re: the "tone" of this notification.

I did attend the AVAC Mtg, and was able to get a copy of the 70 vehicle parking lot updated.

After MUCH effort, I was finally able to gain the minimal details made available to the public regarding this project as it relates to this agenda item.

If one objectively reflects upon my experiences regarding "public input" for this project, the overall process boils down to this:

- 1) The project is developed with input mostly from internal departments, with limited input from regulatory required organizations.
- 2) Presentation to the area's Advisory Council. [Basically lip-service to "public comment/input"]
- 3) Presentation to the Planning Commission. ["Public comment" is reactionary; either by letter or 3 min oral comment.]
- 4) Presentation to the Board of Supervisors. ["Public comment" is reactionary; either by letter or 3 min oral comment.]

Therefore, there is no meaningful "Public Input" in the process, simply reactionary input by plea to the regulatory bodies by the Public. **THE PROCESS IS FUNDAMENTALLY FLAWED!!**

Now that I have the agenda document, I'd like to make a few brief comments:

Please note on Pg. 4, the comments by County Public Works. In part, "Concerns about parallel parking next to the retention basin (parking spaces 25-31). ... Angled parking would put the doors farther from the 'cliff edge'." Upon review of the 70 car design, I estimate that angled parking in the area of spaces 25-33 would result in approx 12 spaces vs the current 9.

Additionally, angled parking at spaces 53, 63, & 64, would result in approx. 5 spaces vs. 3.

I have fundamental concerns re: picnic tables in the area show in the vicinity of spaces 1-7. However, I now understand this is intended for ADA access, and accept it to a degree. Can this space be minimized, both to accommodate only two picnic tables, and increase the distance between spaces 1-5 and 50-53?

I have always visualized this area as a 3-point turn area for fire vehicles. [I also now notice the proposed traffic barrier posts, which should be relocated eastward to facilitate a 3-point turn.]

In my opinion, picnic tables are best located at the south-west end of the parking area. This is where I have observed the most people eating lunch and enjoying the ocean view.

Brian LoConte
Irish Hills, District #3

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APPEAL TO THE COASTAL COMMISSION

To halt the development of Pirate's Cove

One community's struggle to preserve the last
1,998 feet of open coastal wilderness in a
20 mile-long wall of continuous development

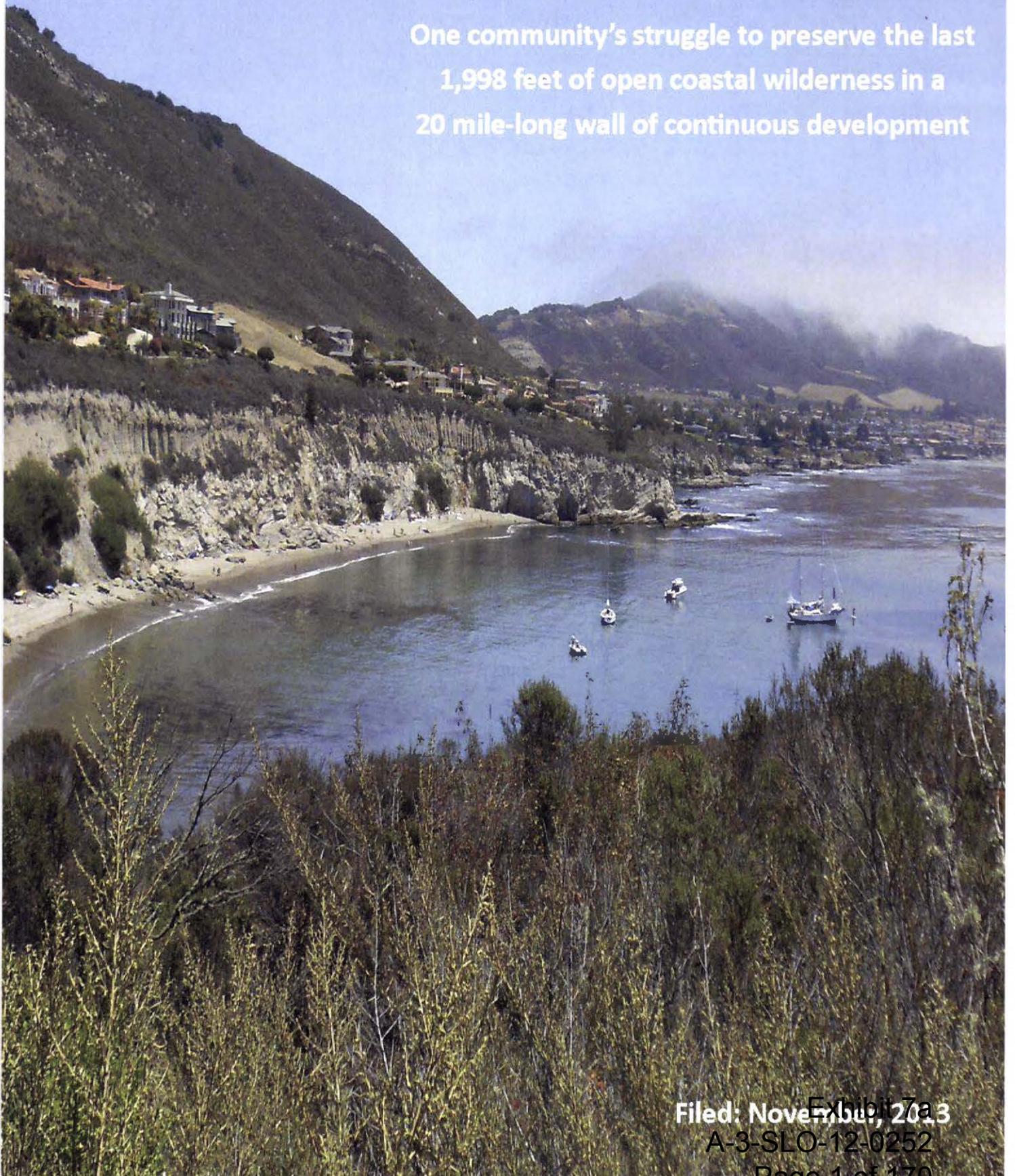


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I. INTRODUCTION

5,000 years ago, the roughly 20-mile-long portion of the Central Coast between what is now Oceano, and what is today the Diablo Canyon Nuclear Station was rugged, natural wilderness, untarnished by the hand of man.

Today, less than 2,000 feet of that coastline remains undeveloped and open to the public. Every inch otherwise has been developed either by private parties, or government, or access is restricted by the nuclear plant.

In the following pages, we will demonstrate that the plans of the county to develop Pirate's Cove — this last remaining 2,000 feet of pristine wilderness — violate the Coastal Act, CEQA guidelines, the SLO county Local Coastal Plan, and the California Constitution. We will make the case that the citizens of San Luis Obispo county, the Northern Chumash Indian Tribe, along with visitors from all over the world, have firmly established prescriptive rights in this area that would be violated by this development. We will ask the Coastal Commission to deny this development.

II. THE RICH HISTORY OF PIRATE'S COVE

For many thousands of years — at least as far back as 2,500 BC, but likely much farther — the area now known as Pirate's Cove was inhabited by the Northern Chumash Indian Tribe. The entire bluff top area was a Chumash village. The native tribe launched canoes from the beach below.

Some local historians believe that Sir Francis Drake landed here in 1579, and there is some archeological evidence to support this claim; however, most historians discount the idea. Whatever the truth, a number of archeological discoveries here have yet to be understood or explained.

In 1860 a ship's captain named David Mallagh built a wharf just below the Whale's Cave, and operated it for a number of years as Mallagh's Landing.

During Prohibition, the area was referred to as Smuggler's Cove, as the secluded nature of the cove made it an ideal place to offload illegal whiskey. This, in addition to the Drake speculation — and speculation by real estate brokers, who fed rumors of Drake's treasure to push up land values — eventually led to the moniker of Pirate's Cove.

The first official mention of Pirate's Cove as a clothing-optional beach was in a *Telegraph-Tribune* article dated July 26, 1973. It remains so today.

Over the intervening years, as Pismo and Shell Beach developed, closing in on Pirate's from the south, and Avila and the Unocal Tank Farm pushed in from the north, Pirate's Cove

remained undeveloped. Today, an entire stretch of coastline, from Oceano in the south to Avila Beach in the north, has been developed, either by private parties, or by government installation of picnic tables, sidewalks, boardwalks, barbeque grills, parking lots benches, and interpretative signs. This stretch measures approximately nine miles of total coastline. An additional eleven miles is closed to the public due the nuclear plant.



Of the approximately 9 miles of coastline seen in the large satellite image, all has been developed, either by private entities, or by government. Pirate's Cove, indicated here inside the red square, is the only remaining spot where **no permanent trace of man exists**. It is approximately 1,998 feet of coastline.

III. SUMMARY OF ARGUMENT

The bluff atop Pirate's Cove is the last undeveloped area in a twenty-mile long wall of coastal development (or restriction), and is the veritable poster child for why the Coastal Act was created in the first place.

In dedicating Pirate's as a park, the county planners determined that they would close the beach at night, and also issued a Mitigated Negative Declaration, asserting that the alterations of the land and disruption of the cultural and environmental resources, as well as the curtailing of existing prescriptive rights, would be so minor as to be irrelevant. These actions violated numerous provisions of the Coastal Act, the Local Coastal Plan, and CEQA.

Pirate's Cove is a known archeological site with a history spanning more than 5,000 years. The site remains a sacred place of the Chumash tribe, who continue to practice tribal ceremonies at the location slated to be excavated and paved.

A planned resort immediately adjacent (and connected to the bluff) could potentially bring a thousand new visitors to Pirate's daily. CEQA requires that cumulative impacts of development be considered. These requirements were ignored. Pirate's Cove is the only clothing-optional beach in SLO county. The impact of thousands of new visitors on the existing culture of the beach was never evaluated.

The paving and striping of the bluff top would reduce current parking significantly, reducing public access. The usage of black asphalt will create a massive heat sink, raising the temperature of the bluff top by as much as 30 degrees, and also leave a permanent black scar in the center of the bluff, incongruent with natural surroundings.

At least two endangered plant species exist on this bluff. The absence of an EIR necessarily means that we do not know what effect the development will have upon these plants, or what effect rerouting rainwater from the bluff, via impermeable asphalt, will have on flora and fauna dependent upon those existing flows.

The introduction of signs, picnic tables, benches, and other modern intrusions will detract from the natural setting and wildness of the area, and will disrupt the existing prescriptive rights of the people to use very limited bluff top space as they currently do.

At the heart of this issue is a fundamental question: Can we protect and preserve *any* wild and natural place along the California coast, or is it all destined to be paved and signed and restricted either by private parties, or by government? Is there any legal option for saying, 'no, this place is simply natural, wild, open space, and we're going to leave it in its natural condition'?

This is exactly the question answered by the Coastal Act, and we hope that those tasked to uphold the intent of the law will assist us in protecting the last tiny sliver of wild coastline in this area.

IV. ARGUMENT

1. Failure of the County to Submit an Environmental Impact Review

The county contends that grading, excavating, and pouring tons of hot asphalt onto a known archaeological site, to create a 70-space parking lot, will have "no significant impact" on archeological, environmental and cultural resources of the area.

Archeological Impacts: The bluff at Cave Landing was the sacred home of the Chumash Indians for thousands of years. An article in *New Times SLO* detailing a previous

Coastal Commission public hearing from January 16, 2013, says this: "*Northern Chumash Tribal Administrator Fred Collins said the area was once a large complex of tribal villages and burial sites. To this day, Chumash descendants perform ceremonies there, harnessing good energy from certain outcroppings of rock visible from the proposed construction site.*" At issue was the construction of a private residence on the adjacent bluff. The Coastal Commission denied the project. The county's new project literally paves the entire bluff around a Chumash sacred space, leaving it surrounded entirely by a sea of asphalt.

Regarding the development at Pirate's, in a memo dated July 25, 2013, from Senior Planner Ryan Hostetter to the Planning Commission, Northern Chumash (yak tityu tityu) Tribal Chair Mona Tucker's comments on the paving of the bluff were summarized as follows:

"Dismayed that native soil will have to be excavated. Whales' Cave is a very important site to the Northern Chumash and once a site is destroyed it can never be replaced or repaired. The new excavation for 70 parking spaces will be in an area that is a known cultural site and every precaution is needed to insure protection of important cultural resources."

Environmental Impacts: Scarce rainwater has drained from the bluff in the current configuration for millennia. The proposed parking lot will significantly divert that flow, leading to unknown and potentially catastrophic effects on native flora. The endangered black figwort is known to exist in the area, as is Hoover's bentgrass, as acknowledged by the county.

Friends of Pirate's Cove is also concerned that the mitigation measures contained in the negative declaration are not fully enforceable. The black flowered figwort has been located at the site (R 112). Instead of providing for fully enforceable, the plan states "a mitigation plan would be developed...and may include salvaging/transplanting plants...and relocating to suitable habitat..." (R 121). The negative declaration acknowledges that the paving of the parking lot with non-permeable surface will displace 700 cubic yards of water (R 114), but the impact of this runoff upon the black flowered figwort is not discussed. The project also contemplates the destruction of "nests less than 50% completed" for endangered birds known to frequent the site, such as the Snowy Plover. (R 121).

Asphalt parking lots are known to raise the surface temperature of an area by as much as thirty degrees. The potentially damaging effects on plants and wildlife has not been studied. It is known that the feet of dogs are often badly burned by asphalt on a hot summer day.

Cultural Impacts: At the final appeal hearing, County Supervisor Adam Hill stated that Whale's Cave/Pirate's Cove is "a special place that people are passionate about." He is correct, as evidenced by the nearly 1000 signatures on Friends of Pirate's Coves petition asking that the site be left undeveloped. It is therefore unfathomable that the county would conclude that impacts to the culture of this place — loved by so many — would not possibly be harmed by development.

a. Bluff Development Will Interfere With Prescriptive Rights By Mandating Certain Uses and Effectively Prohibiting Others

To erect signs and benches and tables on these bluffs would deny freedom to visitors — the freedom to decide how to experience this area on their own, as they choose. That freedom, which has been practiced for decades, and which the population clearly cherishes, is also a prescriptive right.

This site has extremely rugged terrain, with very little (almost nonexistent) flat ground outside of the parking lot. If the county were to install benches and picnic tables, it would deny the visitor the freedom of choosing his or her own activities in these very limited spaces. Drum circle? Not here. Lay down on a blanket? Nope. Set up an easel to paint this particular view? Hope you don't mind standing on a bench!

If you were to put a flower pot on the edge of the bluff, take a photograph, and then asked someone, "what do you see here?", they would say "I see a flower pot sitting on a bluff overlooking the sea." Remove the flower pot, and they will say "I see a beautiful view of the ocean." The flower pot would detract from your photograph. How much more would benches and tables and interpretive signs detract from this view?

These things would necessarily alter the culture and the aesthetic beauty of this area — the very reasons why people have been coming here for decades, and hence violate prescriptive uses.

2. County Failed To Consider Required 'No Project' Alternative

(CEQA Guidelines §15126.6(e)): 'The specific alternative of "no project" shall also be evaluated along with its impact. The "no project" analysis shall discuss the existing conditions, as well as what would be reasonably expected to occur in the foreseeable future if the project is not approved, based on current plans and consistency with available infrastructure and community services. If the environmentally superior alternative is the "no project" alternative, the EIR shall also identify an environmentally superior alternative among the other alternatives.'

The County never performed this core requirement of CEQA. If they had, they might have concluded the following: That by approving no project at all, prescriptive rights in the area would have been fully protected; the black figwort, snowy plover, and perhaps other endangered species as well would continue to thrive as they have continuously without intervention; that law enforcement already has the power to enforce every law on the book in the area; that archeology in the area is not known to be in any danger of being dug up with heavy machinery or paved over with asphalt, absent the county's own actions.

'No project' is clearly the environmentally superior alternative.

3. County Failed To Include Cumulative Impact In Public Discussions

CEQA guideline at CCR 15064 (h1) reads as follows: "When assessing whether a cumulative effect requires an EIR, the lead agency shall consider whether the cumulative impact is significant and whether the effects of the project are cumulatively considerable. An EIR must be prepared if the cumulative impact may be significant and the project's incremental effect, though individually limited, is cumulatively considerable. "Cumulatively considerable" means that the incremental effects of an individual project are significant when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects."

The county's failure to perform an Environmental Impact Review in light of the proposed development of a resort on adjacent land is a violation of CEQA, which requires that an EIR not only consider a project's singular effects, but the cumulative effects based upon plans for adjacent development. [CEQA guidelines at 14 CCR 15064(h)(1) (see Exhibit E, APPEAL 26)].

The graphic that follows was taken from the promotional website of the Avila Point project, planned for the land adjacent (and connected to) Pirate's Cove. The proposed resort, a 100-room hotel, 95 guest cottages, and 300-400 space parking lot, would bring as many as a thousand people per day to the area. The ominous orange arrow on the right points directly at Pirate's Cove. The addition of pavement, interpretive signs, picnic tables, etc. at Pirate's, would make the park appear to be a natural extension of the resort. In spite of the incredible impact this project is likely to have on Pirate's Cove, it was never discussed in context with the development of Pirate's at any of the public hearings, and the county failed to consider this impact by issuing a Negative Mitigated Declaration.

There is no graphic demonstrating what this area would look like after full development of both the resort, and Pirate's Cove. But it can be seen with a little imagination: streaks of black asphalt across the bluff, leading to a black pond of unnaturally lined asphalt in the center of it; fencing where there once was natural open space; the squared, unnatural shapes of tables and benches and signs littered across the landscape.

Pirate's Cove, as it has been experienced by the Chumash for thousands of years, and cherished by the public at large for generations, would cease to exist, replaced by the relentless sprawl of development.



4. Night Closure Is Illegal And Violates Prescriptive Rights

Although this issue has arisen again and again before the Coastal Commission over the decades, and again and again been ruled an illegal practice, we will nonetheless lay out the full case before the Commission. Night closures clearly violate the Article Ten, Section Four of California Constitution, as well as numerous provisions of the Coastal Act and the Local Coastal Plan.

It is our fervent hope, that this portion of the county's plans will be easily overturned.

The county's plan would close the bluff top parking area from 10PM to 6AM, violating existing prescriptive rights to the bluff, as well as prohibiting access to the beach. The county Parks Department contended at the final appeal hearing that their decision does not technically violate the law, as the beach itself would not be closed, because it can be "safely accessed from nearby county property, such as from Avila Beach, and perhaps by kayak." There is no available route between Avila Beach and Cave Landing, as the area is fenced private property. We believe that it is absurd to suggest that the beach can be "safely" accessed by kayaking around a rocky point on the Pacific Ocean at night.

The county contends that "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 present situation is this: The Sheriff's Department is not hindered from accessing the place in any way at present. Closing the area in order to allow police to "be able to remove visitors that conduct illegal activities" is unnecessary. There is clearly nothing *presently* hindering law enforcement from arresting or citing people who commit crimes, at any time of day.

Closing the area at night would simply make *being there* a crime.



If the bluff top is closed to parking, there would be only one route to Pirate's by foot: Along the dangerously narrow, heavily trafficked, sidewalk-free Avila Beach Drive. **In the dark.** And then up the incredibly steep, incredibly narrow, Cave Landing Rd. **In the dark.**



"You could still access the beach at night, perhaps by kayak."

— SLO County Parks Department

The California Coastal Commission Has Already Weighed In On Night Closures

Regarding Dusk to Dawn California beach closures, the following was written by then-acting California Coastal Commission Chairwomen Bonnie Neeley, and published in the *Los Angeles Times* in December 2010:

"For more than 30 years the commission has dealt with local governments seeking to control where, when and how the public can enjoy the beach, and access State waters. It has never found that nighttime public use problems warrant dusk-to-dawn closures.

Unfortunately, we often find that public access restrictions imposed by local government are motivated by political pressure from residents annoyed by the presence of outsiders. In those cases the commission stands firmly for protecting public access rights. Safeguarding public coastal access, after all, was a primary reason the Coastal Commission was created.

Public use and enjoyment of our beaches is not limited to daylight hours. For every troublemaker there are many more law-abiding citizens who come to the beach at night to walk in moonlight or under the stars seeking tranquility, relaxation, spiritual renewal or self-contemplation. Whether taking a stroll after the graveyard shift, hitting the waves in the dark before dawn, or watching the moon set with a lover, the public has a right to enjoy California's coast at all hours but within reason.

People fortunate enough to reside on or near a beach should realize they are privileged to live adjacent to public space and must accommodate the impacts associated with public use. Of course residents have a right to expect reasonable law enforcement when needed. If local government doesn't provide this essential service, residents can petition their elected officials for a reallocation of resources. (But) sweeping beach closures are not the answer.

What neither we, nor the public, want or need is wasteful litigation to confirm long-established public coastal access rights. If reason and common sense are brought to the table, we are confident a meaningful outcome can be achieved."

[SNIP]

To Neeley's column, the following comment should also be considered from former Coastal Commission Executive Director Peter Douglas, who said: "There are a lot of people who want to use the beach, which they have a constitutional right to do, in the middle of the night... You don't preclude the public from that use ..."

We would also reference a memo from current Coastal Commission member Daniel Robinson, written to the SLO county Park's Department on September 11, 2013. It reads, in part, as follows:

"In general, and as you know, the beach is always open 24/7 and thus so should beach access including some nearby parking. Instead of a beach/recreation/park closure sign, we would be supportive of some type of "No Lifeguard On Duty" signage like "Park Not Patrolled Midnight-5am," which also could inform users of the trail ruggedness, other dangers, and places them on notice that they are responsible for their actions.

In addition, signage should also indicate that while the County Park facilities are closed at night, the public retains the right to walk from the public road, down the stairway to and along the entire beach 24/7 (at their own risk). The county could certainly put up No Fires, No Camping, No Alcohol, etc. signs so that if people on the beach are doing illegal things they could be cited. But if you are on the beach at 2am watching the stars, that would NOT be considered an illegal activity."

Legal provisions protecting night access

In legal documents ranging from the California Constitution, to the Coastal Act, to the Local Coastal Plan, all the way through every legal document agreed to by the county during the acquisition of Cave Landing/Pirate's Cove, there are guarantees of open public access to coastal lands. Indeed, all of these documents call again and again for *maximizing* public access. Closing the beach for 157 days of the year — all of the cumulative hours of proposed night closure — would have the exact *opposite* effect.

What follows are excerpts from those documents.

CALIFORNIA CONSTITUTION ARTICLE 10: WATER

'SEC. 4. No individual, partnership, or corporation claiming or possessing the frontage or tidal lands of a harbor, bay, inlet, estuary, or other navigable water in this State, shall be permitted to exclude the right of way to such water whenever it is required for any public purpose, nor to destroy or obstruct the free navigation of such water; and the Legislature shall enact such laws as will give the most liberal construction to this provision, so that access to the navigable waters of this State shall be always attainable for the people thereof.'

SLO COUNTY LOCAL COASTAL PROGRAM POLICY DOCUMENT
SAN LUIS OBISPO COUNTY LAND USE ELEMENT OF THE GENERAL PLAN
COASTAL PLAN POLICIES REVISED JUNE 2004 2-7 SHORELINE ACCESS

Issues Relating to Shoreline Access. The right of public access to all coastal tidelands is guaranteed by the California Constitution and has been detailed in the requirements of the California Coastal Act. **The act requires acknowledgment of existing rights of access (including those acquired through historic use)** and mandates that reasonable access be provided in new developments along the coast. The access component of the LCP assures opportunities for optimum public access within the county.

From the Pirate's Cove Acceptance Resolution:

"WHEREAS, there is a public need and it is in the best interest of the County and the general public to accept certain offers to dedicate allowing public pedestrian access to and from the shoreline, public pedestrian access and passive recreational use along the shoreline, parking and other public trails and recreational uses."

Cave Landing Trail Project Description and Regulatory Compliance Document:

"New development shall be required to incorporate means to ensure that public access will be permitted on a permanent basis ... 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 bluff top area for parking."

From The Coastal Act:

4. Public Access and Recreation

Applicable Policies

Coastal Act Section 30604(c) requires that every coastal development permit issued for any development between the nearest public road and the sea "shall include a specific finding that the development is in conformity with the public access and public recreation policies of [Coastal Act] Chapter 3." The proposed project is located seaward of the first through public road and thus such a finding is required. Coastal Act Sections 30210 through 30213 and 30221 specifically protect public access and recreation. In particular:

From the County's own final analysis of the acquisition of Pirate's Cove:

LCP policies amplify such requirements, including:

Access Policy 2. Maximum public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development...

Recreation Policy 1. Coastal recreational and visitor-serving facilities, especially lower-cost facilities, shall be protected, encouraged and where feasible provided by both public and private means.

Recreation Policy 2. Recreational development and commercial visitor-serving facilities shall have priority over non-coastal dependent use, but not over agriculture or coastal dependent industry in accordance with PRC 30222.

In summary, the California Constitution⁴³ and the federal Coastal Zone Management Act⁴⁴ mandate the protection and enhancement of public access to and along California's coastline. The Coastal Act and the County's certified LCP refine these requirements, including prioritizing public recreational use and development in areas along the shoreline such as this one. Coastal Act Section 30210 requires that public recreational opportunities be maximized,⁴⁵ and Section 30211 further requires that development not interfere with existing public access. Section 30221 protects oceanfront land such as the area associated with this application for recreational use, Section 30222 prioritizes the use of lands suitable for visitor-serving commercial recreational facilities, and Section 30223 similarly reserves upland areas necessary to support public recreational uses for such uses. Coastal Act Section 30213 requires lower-cost visitor and recreation facilities to be protected, encouraged, and where feasible, provided. These overlapping policies protect the Pirates Cove accessway area, including access along Cave Landing Road, the parking lot, the trails and the scenic overlook, including in terms of lower-cost access and recreational opportunities.

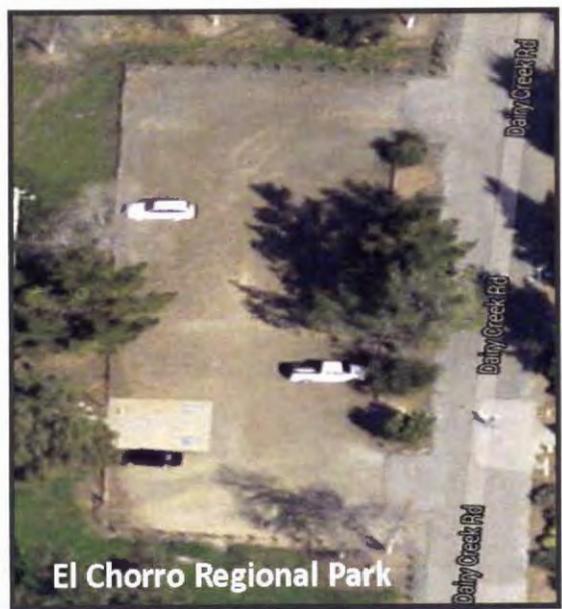
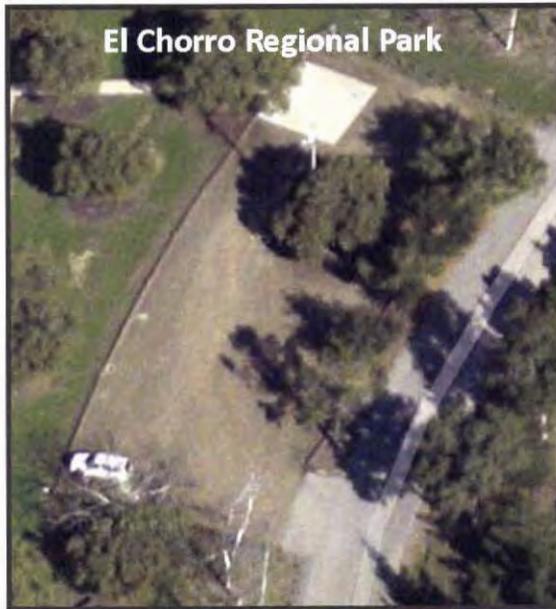
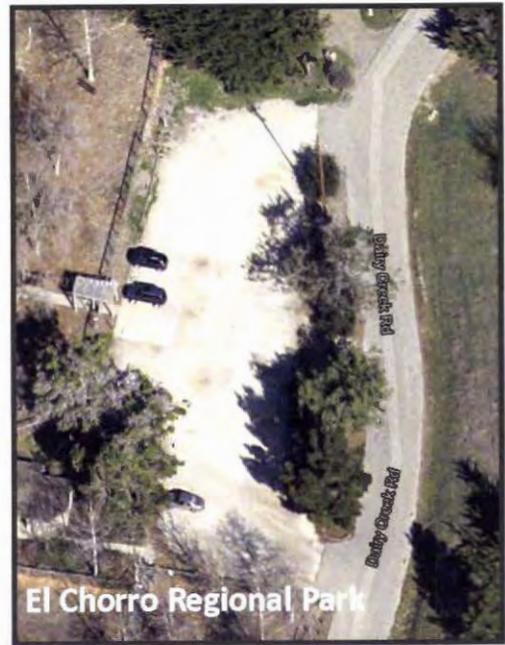
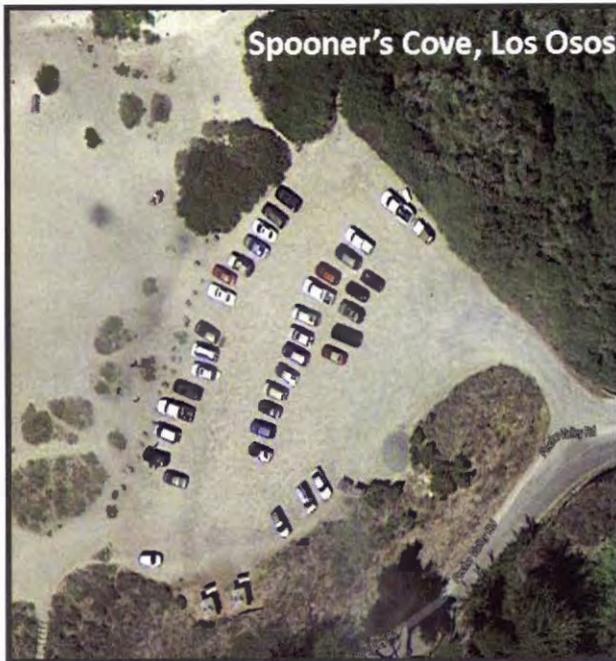
This could literally go on for more pages than anyone needs to read to make a proper judgment on this matter. Please see the attached exhibits if you need more.

In conclusion, it is apparent that 'closing' nature at night is not only unethical, and illegal, but against the spirit of every law intended to thwart this kind of action. SLO County is legally obligated in every possible way to keeping this beach open to the public without exception to time of day. To do otherwise invites costly litigation, and is a violation not only of the county's legal obligations, but of the public trust. Access to the ocean and beaches is a fundamental, natural human right. We ask the Coastal Commission to overturn the county's plan and restore these prescriptive rights to the people.

5. The County Dubiously Claims Lot Must Be Paved To Mitigate Liability



SLO County has claimed that the bluff at Pirate's must be paved so that it may be striped in order to mitigate liability, and to comply with the ADA. Pictured here and on the following page are just a few of the county-owned parking lots that have remained unpaved for years. There are many more state-owned lots that are also unpaved.



All of these lots receive heavy traffic. Yet the county has not paved these, and doesn't seem particularly concerned with the 'liability' of leaving them unpaved.



The parking lot at Pirate's Cove has been functioning perfectly fine for fifty years. There is no record of lawsuits related to unlined parking or anything else. It can be easily accessed by any type of vehicle.



The parking lot at Pirate's Cove is mostly flat, and hard-packed. The areas of natural drainage running through the lower part of the lot act as inverted speed bumps, but not barriers; the Appellant's Hyundai Accent navigates them easily.

a. Adhering To The Americans With Disabilities Act By Choosing A "No Project Alternative":

The ADA prevents a public accommodation from discriminating against people with disabilities. Inclusive within the meaning of discrimination is **developing or altering** a site in a manner that restricts access to disabled people, including people with wheelchairs. If we choose the "no project alternative" we wouldn't be altering the site, and there wouldn't be any altered region of the site that had to be modified in a manner consistent with ADA requirements. We actually open up the county to liability under the ADA by altering the site. If we don't, the ADA allows us to grandfather in the parking lot, which has existed since at least 1972.

In addition, a letter from Senior Planner Ryan Hostetter to the Planning Commission, dated July 25, 2013, reads in part as follows: "A sign at this area will inform people of ADA accessible beaches that are close by, making this recreation area ADA compliant. ...Fortunately the ADA law has an exemption for ADA accessible trails on sites with steep slopes, biological resources and cultural resources. This project qualifies for this exemption."

ADA accessible parking could be striped at the end of the existing road, as well, or signs denoting ADA parking, rather than stripes, could be posted at the seaside end of the lot, which is flat.

It should be noted that no one is denying anyone access in making these proposals. The appellant, formerly a residential counselor to the disabled (who sometimes took them white water rafting) simply believes that the disabled need wild places just as much as anyone else.

b. Decreasing Parking Will Limit Access

All parties agree that there are frequently 110+ vehicles in the parking lot. The county's plan to limit parking to 70 lined spaces will inherently limit public access, counter to the goals of the LCP, the Coastal Act, and the legal commitments the county made when acquiring Pirate's Cove.

6. Public Safety & County Liability Concerns Should be Considered Proportionally To Other Recreational Activities, and In Context of Prescriptive Rights

a. Visit To Pirate's Far Less Risky Than Other Approved Activities

Over many decades of intensive public visitation to Pirate's Cove, history records not a single case of anyone stumbling off the trail to his death. In spite of hosting thousands of visitors, no one has filed a single lawsuit against anybody for anything.

Danger of death and serious injury do exist. They exist on the county high school football fields, where children are instructed to run at maximum speed and crash into one another. They

exist on the baseball diamonds, where children face high-speed projectiles thrown inches from the head.

There is a mountain of blood and broken limbs connected to these activities. Yet we as a society approve, sponsor and even pay for these activities. How do these differ from a visit to Pirate's Cove?

There is an answer to that question: They differ substantially because a visit to Pirate's is substantially less risky than these other 'approved' activities. One cannot avoid a baseball hurtling towards you while playing baseball — catching the baseball is the point.

One can, however, choose to avoid the risks associated with a visit to Pirate's Cove. The path to the beach is clear and not particularly challenging. If one stays upon the path, the danger of toppling off the cliffs is absolutely zero.

b. Mitigating County Liability By Not Developing

The risks that do exist at Pirate's Cove have been mitigated thus far by the fact that they have not been mitigated. People do not have any expectation of hand-holding in this area.

If, on the other hand, we place benches by the sheer cliffs, and picnic tables upon the bluffs, we invite people to those places nearest the greatest dangers, and we give them a sense of security and civilization that is altogether false.

By not deliberately attracting visitation through development, and, indeed, by placing a sign at the entrance to Cave Landing Road reading '**NOTICE: This area is wild and undeveloped. Entry indicates assumption of all risk upon those who choose to visit**', we will likely deflect liability altogether.

Such signs have been posted by California government agencies in places as diverse as the geologically unstable seaside town of La Conchita, to a municipal dog park in the city of Lathrop.

Let the public approach this place as they would any other wild place — with uncertainty and awe, hesitation and respect. Those natural instincts, reinforced by a noticeable lack of development, will do a great deal to advance public safety — as it has for decades.

c. County Hand-Holding Violates Prescriptive Rights

People who visit the area *do not expect* all of the risks to be mitigated. They are specifically seeking the opposite: The views from the bluff are breathtaking not only because they are beautiful, but because the sheer force and power and scale of nature is awesome, to the

point of being frightening at times. The grade of the trail is difficult — people specifically *seek* this trail because it *is* difficult. People have been aware for decades that this area is not heavily patrolled and monitored and directed — and they go there specifically for that reason. Our lives are controlled and directed by myriad factors and authorities, from family structures to business requirements to traffic rules and cultural norms. People come here specifically to escape all of that, if only for a few hours.

"That is why I come here, why I love this place," one middle-aged, female attorney recently told the appellant. "I *need* this place. All day long, I move through the paces of a very busy, stressful life. There are endless rules to follow as I navigate from one structured compartment of society to the next, and the next, and the next. I come here for the *dirt*. I *need* the dirt. I need the wildness, the ruggedness of this place, to reconnect with the basic essence of life. I don't want signs and pavement and manmade structures. I come here to *get away* from all of those things."

d. Development Violates Prescriptive Rights

Nothing is being denied any visitor should the site be left natural and undeveloped. A visitor who wishes a table or chairs may bring a table and chairs. A visitor who wishes to learn about the history, flora, fauna or geology of the area has endless resources available at public libraries, or via the internet.

To erect signs and benches and tables on these bluffs, and intrusive, unsightly metal railings all the way down to the beach, would deny freedom to visitors — the freedom to decide how to experience this area on their own. That freedom, which has been practiced for decades, and which the population clearly cherishes, might also be called a prescriptive right.

A. LEGAL STANDARD

7. Local Coastal Plan

a. Prescriptive Rights Shall Be Protected, Development Shall Not Interfere with the Public's Right of Access Where Acquired Through Historical Use

The Local Coastal Plan ("LCP") provides that "[d]evelopment shall not interfere with the public's right of access...where acquired through use." (R 1). "The Mallagh Landing area (Pirate's Cove)...has experienced intensive recreational use. Prescriptive rights may exist within this area." (R 2). "The Coastal Act requires that prescriptive rights be protected." (R 3). "A determination of the...type of access...is particularly important in areas where prescriptive rights exist." (R 4). "Development shall not interfere with the public's right of access to the sea where acquired through historic use." (R 5). "The Local Coastal Plan identifies areas where

prescriptive rights may exist, and sets standards and programs...for new development regarding these potential public access rights. Development which incorporates these standards would not interfere with the possible existence of prescriptive rights.” (R 5). “Permit review procedures...include consideration of...Evidence of existing use and possible existence of prescriptive rights.” (R 6). “The countrywide policy for the protection of existing access, especially where public prescriptive rights may exist, ensures the provision of maximum public access to the shoreline as prescribed in Section 30210.” (R 8).

8. Coastal Zone Land Use Ordinance

a. Development Shall Not Interfere With Public Rights Acquired Through Historical Use

“Development shall not interfere with public rights of access to the sea where such rights were acquired through use.” (R 11). “An accessway shall be provided on any site where prescriptive rights of public access have been determined by a court to exist.” (R 12).

9. Coastal Act

a. Development Shall Not Interfere With Recreational Activities Established By Historical Use, Especially Where Such Recreational Activities Cannot be Provided At Alternate Inland Sites

Public Resources Code § 30210 provides, in relevant part, that “recreational opportunities shall be provided for all people consistent with the need to...protect public rights.” (R 14). § 30211 further provides that “Development shall not interfere with the public’s right of access...where acquired through use.” (R 15).

b. Reasonable Mitigation Measures Shall Prevent Adverse Impacts to Archeological Resources

“Where development would adversely impact archeological or paleontological resources...reasonable mitigation measures shall be required.” (R 18).

c. New Development Shall Protect Special Communities with Unique Characteristics Formed Around Recreational Activities That Cannot Be Readily Provided at Inland Water Areas

§ 30220 states that “recreational activities that cannot be readily provided at inland water areas shall be protected for such uses.” (R 16). § 30253 also states that “New Development shall...protect special communities and neighborhoods that, because of their unique characteristics, are popular visitor destination points for recreational uses.” (R 19).

For generations, Pirate’s Cove has been San Luis Obispo County’s only clothing-optional beach. This historical fact is recognized in the LCP, which acknowledges the intensive recreational uses and likely existence of prescriptive rights. The scope of the initial study upon which the negative declaration was based did not investigate any of the existing recreational

uses, or account for prescriptive rights at Pirate's Cove. The project is inconsistent with numerous provisions of the LCP, including those provisions which prevent development that interferes with prescriptive rights.

10. CEQA Guidelines

a. A Mitigated Negative Declaration Must be Set Aside if a Fair Argument Can Be Made That the Project May Have a Significant Environmental Impact

"If there is substantial evidence, in light of the whole record...that the project may have a significant effect on the environment, an environmental impact report must be prepared." Pub. Resources Code, § 21080, subd (d) (R 93). "A mitigated negative declaration may be set aside if...there is substantial evidence that there is a fair argument that the project may have a significant environmental impact." (R 94). Any mitigation measures to mitigate or avoid significant effects on the environment must be "fully enforceable." (R 94). "Pursuant to Pub. Resource Code, §§ 21100 or 21151, agencies must prepare an environmental impact report, rather than a negative declaration, if it can be fairly argued on the basis of substantial evidence that the project may have significant environmental impact. Evidence to the contrary is not sufficient to support a decision to adopt a negative declaration. There is a low threshold requirement for preparation of an environmental impact report... An agency decision not to require an environmental impact report may be upheld only when there is no credible evidence to the contrary." (R 98).

b. The Negative Declaration Must Be Based Upon the Project's Impact to the Environmental Baseline, Which Must Reflect the Physical Conditions Existing At the Time of the Analysis

"Initially a baseline must be established from which to measure potential impacts of a proposed project. This baseline must consist of the physical conditions actually existing at the time of the analysis." (R 98)

B. THE NEGATIVE DECLARATION IS INADEQUATE AND MUST BE SET ASIDE

The Mitigated Negative Declaration ("*Negative Declaration*") adopted by the Planning Commission is marked by grave deficiencies in its characterization of the environmental baseline. Instead of performing an accurate, meaningful analysis of the existing environmental conditions, the *Negative Declaration* analyzes a hypothetical environmental baseline that, among other things, fails to account for existing historic and cultural resources as well as existing recreational opportunities affecting existing uses of the site which the public has acquired a right to by prescription¹. The *Negative Declaration's* failure to account for the

“existing environmental settings” renders it inadequate under section 15125 of the CEQA guidelines², which require that the baseline must include existing conditions.

11. Omitted Discussion of the Project’s Cumulative Impact In Context of Probable Future Developments

On May 24, 2013, Ryan Hostetter received a proposal to prepare an environmental impact report and to provide consultant services for Avila Point Project from Aaron P. Goldschmidt, which can be found at the following link:

<http://www.slocounty.ca.gov/Assets/PL/EIR/2013/Avila+Point+Project/Proposals+from+Consultants/AMEC.pdf>

The 86-page proposal details plans to make significant changes to the entire region surrounding Pirate's Cove. According to page 20 of the proposal, the project would require, among other things:

- * Local Coastal Program/General Plan Amendments to change the site’s land use designation to Recreation from Industrial;
- * Amendments to the Avila Beach Specific Plan;
- * Rezoning of the site from Industrial to Recreation;
- * Approval of a Development Plan;
- * Approval of a Vesting Tentative Tract Map;
- * Approval of a Remedial Action Plan Permit; and,
- * Issuance of a Coastal Development Permits (CDP) for the Project site

All of these changes to the region surrounding Pirate's cove were not discussed or noted for discussion during the meeting on July 25, 2013 where Ryan Hostetter recommended to the planning commission to proceed with the Cave Landing Trail.

² “To decide whether a given project's environmental effects are likely to be significant, the agency must use some measure of the environment's state absent the project, a measure sometimes referred to as the ‘baseline’ for environmental analysis. Thus, an inappropriate baseline may skew the environmental analysis flowing from it, resulting in an EIR that fails to comply with CEQA.” *Citizens for E. Shore Parks v. California State Lands Com.*, 202 Cal. App. 4th 549, 557, 136 Cal. Rptr. 3d 162, 171 (2011), review denied (Mar. 14, 2012), as modified on denial of reh'g (Jan. 27, 2012)

The failure to disclose the pending proposed modifications to the landscape resulted in a misleading discussion of the project that occurred out of context. This compounded the problems that occurred as a result of the usage of a hypothetical environmental baseline that did not accurately reflect the existing environmental and cultural conditions.

The people are entitled to an honest discussion of the fate of their beaches, as well as transparency, full disclosure, the right to understand how their cultural resources would be altered in context of the two projects, and the right to understand how their recreational opportunities may likely be impacted as a result.

12. Does Not Discuss The Intensive Recreational Use Identified in the Local Coastal Plan

a. Omits Discussion of Potential Interference With Historical Uses and Activities Which Have Given Rise to Prescriptive Rights

A standard for development, as identified in "Policy 1: Protection of existing access" within the "shoreline access" section of the Coastal Plan Policies³ ("CPP"), on page 2-11, requires that "[d]evelopment shall not interfere with the public's right of access to the sea where acquired through historic use." The project, at its inception, involves closure of the beach during night hours which will immediately and significantly impact the historic use of the site. The site, "the Mallagh Landing area (Pirate's Cove)" is the last piece of undeveloped beach wilderness between Port San Luis and Oceano, which, according to page 2-5 of the CPP, "has experienced intensive recreational use." The public's intensive recreational use is completely ignored in the *Negative Declaration* adopted by the planning commission, which devotes all of one paragraph to addressing all of the project's impacts to recreation opportunities prior to concluding that the impact will be "insignificant." (See *Negative Declaration*, p. 2-75 through 2-76). The CPP, discussing Pirate's Cove on p. 2-5 acknowledges that "[p]rescriptive rights may exist within the area." The mitigated negative declaration is flawed because it fails to address the potentially significant impacts that the project will have upon the existing environmental conditions regarding the recreational uses and the prescriptive rights that have arisen as a result of such uses, in a manner inconsistent with the provisions of the CPP that implement § 30211 of the Coastal Act⁴.

Policy 1 of the CPP requires that "where prescriptive rights exist...the appropriate amount of public use should be established through the review process at the time of

³ Available at

<http://www.slocounty.ca.gov/Assets/PL/Elements/Coastal+Plan+Policies.pdf>

⁴ "Development shall not interfere with the public's right of access to the sea where acquired through use...including, but not limited to, the use of dry sand and rocky coastal beaches..."

development.” In addition to the interference with the public’s prescriptive right to use Pirate’s Cove at night, the project will potentially impact the character of the prescriptive sunbathing rights that have arisen through historical use at Pirate’s Cove. As a preliminary matter, sunbathing is a “Coastal Dependent Recreation” and the Coastal act gives priority to coastal dependent recreational activities (CPP, p. 3-2). More significantly, it is important for the County to recognize that “the allowable usage of the prescriptive easement is defined by its historical usage.” *Twin Peaks Land Co. v. Briggs*, 130 Cal. App. 3d 587, 594, 181 Cal. Rptr. 25, 28 (Ct. App. 1982). See also Cal. Civ. Code § 806, which in relevant part states that “the extent of a servitude is determined by...the nature of the enjoyment by which it was acquired.”

The Planning Commission does not have the right to, by issuing the *Negative Declaration*, 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. This exact issue was considered in the case of *Burch v. Gombos*, 82 Cal. App. 4th 352, 362, 98 Cal. Rptr. 2d 119, 126 (2000) (“*Burch*”), where the Court determined that the “the scope of a prescriptive easement is determined by the use through which it is acquired. A person using the land of another for the prescriptive period may acquire the right to continue such use, but does not acquire the right to make other uses of it... We see no reason the same rule should not apply to a public easement that has arisen through...dedication⁵.” By approving a project that impacts the historical uses which gave rise to the prescriptive rights on the project site, such that the project may ultimately lead to extinguishment of the prescriptive rights, without any discussion of the project’s impact upon those uses or rights, the planning commission has failed to comply with the policies and standards in the CPP, the CEQA guidelines, the provisions of the Coastal Act, and Article 10, Section 4 of the California Constitution⁶.

C. THE PROJECT VIOLATES CEQA

The CEQA process was undermined by nondisclosure of information material to the determination of the project’s cumulatively significant impact on the environment. Evidence in the record shows that the failures to disclose were not inadvertent or the result of errors made in good faith. On the contrary, it appears that the project was referred to the lead agency by Ryan Hostetter (R 122⁷), who is at the top of the organizational chart for the Avila Point project (R

⁵ See also *Jones v. Deeter*, 152 Cal. App. 3d 798, 802, 199 Cal. Rptr. 825, 827 (Ct. App. 1984), holding that “[a] dedication is legally equivalent to the granting of an easement.”

⁶ “No individual, partnership, or corporation, claiming or possessing the frontage or tidal lands of a harbor, bay, inlet, estuary, or other navigable water in this State, shall be permitted to exclude the right of way to such water whenever it is required for any public purpose...”

⁷ Citations to R ___ refer to pages of the Appendix of Exhibits

123), which is a likely future development that was not discussed in the administrative record leading up to the project's approval. The Avila Point project would be located to the immediate west of this project, and includes a coastal trail that directly connects with the trail contemplated by the instant project. (R 105-106). The Avila Point Project is a huge project involving a resort, hotel, cottages, restaurants—the cost for preparation of its EIR is already estimated at \$930,627 (R 133). The timeline for the Avila Point project shows that its Applicant has already finished the Pre-EIR scoping and project description, and plans to begin putting together its EIR as soon as the instant project's approval is finalized. (R 128-129).

The scoping and description for the Avila Point project indicate an awareness that from a local and regional perspective, the project will potentially have a cumulatively significant effect (R 136-139). Indeed, in the "key project issues" portion of the Avila Point project's description, its authors state "...key issues relate to the site's location on the coast adjacent to the community of Avila Beach (to the west) and recreational areas such as Pirate's Cove beach and path use area to the east...A key component of the analysis will be the cumulative change in regional public access in the area related to this project, Pirate's Cove improvements..." (R 139). The disingenuous practices of the planning commission staff, in omitting all discussion of the probable future projects that, if approved, will undoubtedly cause cumulatively significant environmental impacts, has interfered with the mandates of CEQA. (R 45-46).

The failure of the initial study and negative declaration to discuss the project in light of the contemplated adjacent development has prevented an informed discussion of the potentially significant impacts that the cumulative physical changes will have on the historical uses of the site.

V. RECOMMENDATIONS, OTHER PRESCRIPTIVE RIGHTS

1. Pirate's Cove Is Not Screaming For Government Interventionio0

The County has presented a letter from the San Luis Obispo County Sheriff's Department stating that there were 73 'incidents' at Pirate's Cove in 2012. This is 1.4 'incidents' per week. The most serious of these is 'fighting'. Every other 'incident' listed are non-violent, victimless crimes: suicidal behavior, sex in public, drug possession.

By contrast, the SLO County Sheriff's Department, according to their own annual report, fielded 33,426 9/11 calls in 2012. The Sexual Assault Unit alone processes 200 cases per year. According to the city of Pismo Beach, very near Pirate's Cove, there were 1,965 reported crimes in 2012, including 81 assaults, 8 rapes, and 7 robberies. Pismo's *nonviolent* crime statistics show that there were 1,548 incidents in 2012.

In short, Pirate's Cove is a tranquil, crime-free oasis when compared with all of the developed areas of the county.

The Sheriff's letter concludes, "Night time closure of the area is the best way to minimize the criminal activities ... by giving law enforcement the authority to clear the parking lot."

Closing the town of San Luis Obispo at 10PM would also be the best way to reduce crime *there*. But we're supposed to be trying to maintain a free society.

2. The Real Problem Is Quite Simple: Litter

Whales Cave Conservancy and Friends of Pirate's Cove have both made efforts at volunteer trash pick-up, but what would *really* work is to pay someone a *wage* to do it. That would be fantastic. And a couple of garbage cans would be great, too. These would be great things the county could do.

3. FOPC Concedes The Need For A Restroom

We would prefer to explore options other than a pit toilet, which tend to stink.

4. Prescriptive Rights To The Parking Lot

People have parked in that parking lot all night long *forever*.

However, we suspect, given the Coastal Commission's letter to SLO County suggesting that parking could be restricted to Cave Landing Road during the wee hours while still maintaining beach access, that this may end up being the compromise. If so, we request that the Commission please specify that people may enjoy the bluff top at night on foot. Again, we fully support law enforcement's efforts at mitigating crime; however, nothing ruins star gazing or Native ceremonies like police flashlights blazing into one's eyes. 'Probable cause' should be the standard, and should **not** include 'you *exist* so you're *probably* committing a crime'.

5. Additional Prescriptive Rights On The Beach

On a recent night, the appellant was walking down this beach and passed by a couple embracing upon a blanket, enjoying nature and the warmth of light being thrown by a nearby Tiki torch. The appellant very much suspects that this couple may have been enjoying a cup of wine or some other libation. They weren't bothering anybody, and to have police rousting them from this natural and beautiful experience — one that thousands of couples have had in this place over the decades — would be unjust.

Alcohol has been imbibed upon this beach for decades. We would encourage that the same rules apply here as apply anywhere else in public: If someone is drunk and disorderly, they should be cited. Otherwise they should be left alone. This standard has been applied in the

developed areas forever; we allow people to drink bars. Should 'it makes money for someone' be our only guide? Is freedom less valuable than money?

Likewise, while the building of fires on the beach, for both warmth and ambiance, are not particularly common here, they have happened from time to time for many decades. The length and gradient of the trail discourages beach goers from carrying wood to the beach, and the ardent climb back to the parking lot discourages more than a single armload of wood, in any case.

In spite of decades of fires upon this beach, none has ever started a wildfire here. The cliff front to the bluff is sheer stone hundreds of feet high (see cover photo). A simple fire on the beach would be much, much less likely to cause a wildfire on top of the bluff than would a spark from the chimney of one of the bluff-top homes.

The county has banned the use of sky lanterns and fireworks in the area. This is perfectly reasonable.

The appellant has hesitations about broaching these subjects. The appellant could probably live with all of these rules, as he is very rarely on the beach at night, and doesn't build fires down there. However, he is moved to include these objections because he is appealing not merely for himself, but for thousands and thousands of other people, and he is certain that they would want these objections raised, and these prescriptive rights protected.

Just to reiterate: All of this has been going on at Pirate's Cove for many, many decades. Historic and police records do not indicate that any of this is causing any significant problem for law enforcement or anyone else.

The police have existing powers to deal with illegal behavior. We feel that criminalizing otherwise normal human behavior and subverting existing prescriptive uses is inappropriate.

6. Historic Signs Can Be Easily Replaced By Low-Powered AM Radio

If we the county wishes to provide onsite historical information, low power AM broadcast would be an easy solution that doesn't require blighting the landscape with signs. A Traveler Information Station can be solar powered.

This is a solution that is frequently used in scenic areas, to give people interpretive and regulatory information without despoiling the landscape with signs. Frequently you WILL see a sign, on the roadside, far back from the pristine views, and it will say something like 'scenic area ahead: tune to 790am for wildlife and historical information.' That method serves the purpose, and is inexpensive.

We would also be enthused about a kiosk or museum or something down on Avila Drive for Chumash and other history.

VI. CONCLUSION

As a beloved regular to Pirate's Cove often says, "There is no place like this place anywhere near this place. This must be the place!"

It is an entirely appropriate motto for Pirate's Cove.

Our world is over-developed, and too few free, pristine places still exist.

Henry David Thoreau extolled the virtues of living life in nature, "close to the bone", with all of the attendant hardship and beauty. There is a human need to look at nature and create (or research) a story for oneself, absent signs. There is a primal connection with nature that can only come from interacting with nature on your own terms, through your own free interpretation of your relationship to it.

Once we have paved paradise, and the landscape is dotted with benches and barbeque grills and "interpretive signs", we lose the inherent 'wild' so important to those human-nature interactions.

You may have heard the saying, 'nature doesn't do straight lines'. The tendency of man, however, is to straighten and landscape and comfortably pave until all of the nature is completely removed from it.

We see this writ large in the Southern California coastline. From Santa Monica to Tijuana there's barely a square inch that doesn't reek with the stench of man. Every sign that modern man has encroached upon a place is simply graffiti to me, and to many others. We go to nature looking for nature. Once something has been signed and gated and paved, it ceases to be nature, and becomes then just another extension of civilization.

There are few wild places left along the Central Coast. We owe it to every generation that comes after us to think very carefully through how we manage these places. The guiding philosophy should be 'leave well enough alone', and to enact any alteration with great caution and a solemn sense responsibility, if at all.

This last 1,998 feet is worth saving. We can always pave it later. Once it is altered, it is altered *forever*.

On behalf of the thousands of people who love the Cove just as it is, and the children we'd love to have experience it just as we did, we thank you for your consideration of our cause, and for the work you do to preserve California's coast.

Sean Shealy

Friends of Pirate's Cove

CHAPTER 2: SHORELINE ACCESS

INTRODUCTION

The right of public access to all coastal tidelands is guaranteed by the Public Resources Code (Section 30210) and has been upheld by court decisions. The California Coastal Act of 1976 contains policies which require that existing legal rights of public access to the coast be protected, and that reasonable requirements for public access be established in new developments along the coast.

The Coastal Act requires each local government to prepare a shoreline access component as part of its Local Coastal Program. This access component includes the policies by which access requirements will be established and identifies: 1) actions that public agencies should take to provide and protect existing and future access, and 2) standards for access that should be incorporated in future development.

Relationship to Coastal Act Policies

The Coastal Act provides specific direction in the following provisions. These policies constitute the legislative basis for the county to make policy recommendations through the Local Coastal Program.

30210. In carrying out the requirement of Section 4 of Article X, 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.

30211. Development shall not interfere with the public's right of access to the sea where acquired through use, or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation. Section 30106 defines development as follows:

"Development means, on land, in or under water, the placement or erection of any solid material or structure; discharge or disposal of any dredged material or of any gaseous, liquid, solid, or thermal waste; grading, removing, dredging, mining, or extraction of any materials; change in the density or intensity of use of land, including, but not limited to, subdivision pursuant to the Subdivision Map Act (commencing with Section 66410 of the Government Code) and any other division of land, including lot splits, except where the land division is brought about in connection with the purchase of such land by a public agency for public recreational use; change in the intensity of use of water, or of access thereto; construction, reconstruction, demolition, or alteration of the size of any structure, including any facility of any private, public, or municipal utility; and the removal or harvesting of major vegetation other than for agricultural purposes, kelp harvesting, and timber operations which are in accordance with a timber harvesting plan submitted pursuant to the provisions of the Z'berg-Nejedly Forest Practice Act of 1973 commencing with Section 4511).

As used in this section, "structure" includes, but is not limited to, any building, road, pipe, flume, conduit, siphon, aqueduct, telephone line, and electrical power transmission and distribution line."

Lampton and Sherwood Drives in the West Lodge Hill area. Low intensity improvement will ensure public access to the shoreline in this area of Cambria.

ESTERO PLANNING AREA

Rural Area of Estero. Access within Estero Bay is characterized by sizable state park holdings, including Cayucos State Beach, Morro Strand State Beach, Atascadero State Beach and Montana de Oro State Park. Shoreline activities here range from active to passive recreational uses. The terrace north of Cayucos extending to Villa Creek and the terrace south of Cayucos extending to Morro Bay are the primary areas where additional access should be addressed.

Cayucos. The shoreline within the community of Cayucos is highly accessible to the public as a result of a series of beachwalks and stairways leading to Cayucos and Morro Strand state beaches. Vertical access to the shore is obtained through 22 access lanes and 13 stairways maintained by the county. Further improvement at the state park holdings is needed to improve public access.

South Bay. Access within the community of South Bay is characterized by a wide variety of uses, topography and intensity. Few facilities or improvements exist. Primary shoreline use is by local residents due to the proximity of the shoreline to residential neighborhoods. Prescriptive rights may exist around much of the bayfront. Within the community of Baywood Park there are existing street easements around the bay which would offer ample vertical bluff-top access if improved. In addition, several areas around the bay have been earmarked for public acquisition by state agencies. The Sweet Springs area has been used by local residents and visitors for passive recreational activities. The area provides unique vistas of Morro Bay and Morro Rock. Informal trails extend through the groves of trees to the springs. The area is presently under private ownership. The lack of improvements and proper facilities for the level of access needs to be addressed to prevent further degradation of the wetlands. Cuesta-by-the-Sea Inlet is also currently in private ownership except where state tidelands may extend. The historic location of the mean high tide is unknown at this time, and would require detailed studies of previous dredging. The area is used by the public for boat launching and storage. No facilities or formal parking have been provided. These factors in conjunction with the proposed access standards will provide for adequate public access.

SAN LUIS BAY PLANNING AREA

Rural Area. In general, adequate shoreline access has been obtained within the San Luis Bay planning area through the public holdings of Avila and Pismo State Beaches and access areas at Mallagh's Landing and within the city of Pismo Beach. Two areas within the rural portion need consideration for access. The first is the stretch of coast between Point San Luis and Point Buchon, presently inaccessible to the public. This is the location of the Diablo Canyon Nuclear Power Plant and surrounding property is in agricultural use. No new access to this area other than for scientific research and study is recommended due to safety concerns, high bluffs and the condition of the access roads used to reach the area; however, lateral access should be secured for the area extending from mean high tide to the bluff.

The Mallagh Landing area (Pirate's Cove) between Avila and Shell Beach is privately owned but has experienced intensive recreational use. Prescriptive rights may exist within this area. Currently facilities and improvements are inadequate to accommodate the existing level of use and impacts of this use include destruction of archaeological resources and contribution to erosion of the bluff-top. As a condition of development, access along the sandy beach and upland area shall be secured along with a long-term maintenance program. A management plan should

2. Private Sector

The private sector can play a major role in assuring maximum public access. This is particularly important due to the lack of public acquisition funds. Through the development permit process the county can require various levels and types of access conditions, thereby achieving public access without the high cost of initial acquisition and improvement costs.

- a. **Prescriptive Rights.** A public prescriptive right is a right of access over real property which comes into being as the public crosses land to gain access to the beach. Over time, the public gains rights through use. By law, the public must use the property for five years before a prescriptive right may exist. The establishment of prescriptive rights can be resolved between the property owners and interested individuals or groups. However, where this cannot be resolved, the government or an individual or group may bring suit on behalf of the public to confirm the public easement (prescriptive right) to such land for the public. Some areas present evidence that prescriptive rights may exist because they have been kept open through use during past years. However, there are several problems with prescriptive rights. The following basic findings must be made:

- The public must produce evidence that persons have used the land for the prescriptive five-year period, without permission and without effective interference, as they would have used public land.
- The use must be substantial.
- The public must show that the land has been used by members of the general public, not only neighbors or friends of the fee owner.
- The use of the area has been with the actual or presumed knowledge of the owner and without significant objection of attempts by the owner to prevent or halt such use.

In many areas where demand is regional in nature, more land than just the accessway gained through implied dedication is needed. Land is needed for parking, restroom facilities and other improvements associated with public access. These lands must be acquired through public purchase or through a condition of a permit for development. This is especially true when the land is being used for non-priority uses and there is a need to offset the public loss.

The Coastal Act requires that prescriptive rights be protected, which can be done through regulating development and acquisition. Pursuing establishment of such rights through the courts may only be advantageous in cases where access cannot be acquired by purchase or permit conditioning.

- b. **Permit Conditioning.** Access can be achieved through conditions on permits for new development located along the shoreline. Cities and counties may require dedication of public access (or deed restrictions allowing for access) when approving subdivisions and development applications. More importantly, the Coastal Act (Section 30212) requires that public access be provided from the nearest public roadway to and along the coast in new development projects. Under the Coastal Act definition of development (Section 30106), structures including a road, building, pipe, telephone line or fence which affects access are considered development. However, there is a concern for making the requirements for access reasonable and commensurate with the development, though in some cases this may not result in the desired level of improvement.

Of additional concern is how to deal equitably with development along the shoreline where access is unsuitable because of a threat to public safety, natural resources or adjacent land use. In such instances, local governments could require payment of a fee in-lieu-of the dedication of access. Based on legal precedent (Quimby Act, Government Code, Section 66477) fees could be charged and deposited in a local fund for securing public access in nearby areas more suitable for use.

3. Local Versus Out-of-County Demand

An important aspect of shoreline use is the distinction between local demand versus out-of-county demand. Out-of-county demand generally may include a need for overnight facilities. Private commercial enterprises provide lodging accommodations such as hotels, motels, lodges, RV parks and campgrounds. In addition, the State Department of Parks & Recreation provides a variety of shoreline use opportunities for local and out-of-county visitors. Many of the state parks along the coast provide picnic areas and other recreational opportunities which are used by county residents as well as out-of-county visitors local day-use demand and the provision of overnight accommodations. This is particularly important in urban areas where shoreline use is primarily by local residents, in contrast to the effect of visitor-serving demand for support services.

4. Protection of Environmentally Sensitive Habitat Areas

Frequently, existing access patterns and intensities have damaged and degraded the value of sensitive habitats and natural resources. Such areas may need to be protected through provision of fences and signs indicating the sensitivity of the area. A determination of the level and type of access (foot trails, restricted vehicular, etc.) which an environmentally sensitive habitat can tolerate is an essential element in planning access. This is particularly important in areas where prescriptive rights may exist.

5. Restoration and Enhancement of Shoreline Access and Recreational Areas

The lack of a public jurisdiction or non-profit organization which would assume responsibility for the improvement, maintenance and liability of accessways has contributed to overuse, trespassing and vandalism. Littering, trampling of vegetation and bluff faces, off-road vehicle trespass, overnight camping and parking have occurred in areas adjacent to state or county property, as well as on private property isolated from public access. Some of these areas need improvements (such as revegetation, stairway construction, development of foot trails, trash receptacles, restricted parking areas). Dedication of easements, purchase, or fencing and posting of private property are possible actions to correct such concerns.

6. Need For Access Corridors to Beach

There are presently a few areas of the county where public access does not exist. Some level of access would be desirable in such areas as Dune Lakes, the Point Buchon to Point San Luis area, the Fiscalini Ranch area and Villa Creek. Some of these areas, such as Dunes Lake, may be appropriate for only limited access for scientific and educational study at the discretion, and with the permission, of the property owner.

Other areas, such as Pirate's Cove at Mallagh Landing, are private property currently used for public recreation. Access corridors in these areas need to be established in order to guarantee continued accessibility to these beaches for the future. Generally, where ownership is private and anticipated to remain so, proposals for future development could provide public access as a permit condition unless access is available within a close proximity.

7. Protection of Public Safety

Portions of the county coastline are steep bluff and rocky areas with safety hazards, but design solutions can overcome many of such problems. Fences along bluff edges, stairways down steep bluffs, signs and handrails can be built where problems are identified. However, where severe hazards exist, physical access may not be prudent and the area may most appropriately be restricted to use as a vista point.

8. Agriculture

The Coastal Act policies to protect agricultural land affect access locations, types and intensities. While actual beach use does not have a negative impact on agriculture, the conflict between agriculture and access is related to trails through agricultural land. Public use of such trails often results in problems related to trash, crop theft, trespassing and vandalism of agricultural property or equipment. Fenced trails or natural physical features which confine both vehicle and pedestrian/equestrian access are necessary. The large agricultural areas of the county include the Oso Flaco Lakes area, the area between Cambria and Cayucos and the Hearst Ranch. New public access in some of the agricultural areas of the county may be inappropriate.

POLICIES FOR SHORELINE ACCESS

To implement the provisions of the Coastal Act, the following policies represent the commitment of San Luis Obispo County to preserving, protecting and providing access to the coast.

Policy 1: Protection of Existing Access

Public prescriptive rights may exist in certain areas of the county. Development shall not interfere with the public's right of access to the sea where acquired through historic use or legislative authorization. These rights shall be protected through public acquisition measures or through permit conditions which incorporate access measures into new development. [THIS POLICY SHALL BE IMPLEMENTED AS A STANDARD AND PURSUANT TO SECTION 23.04.420 OF THE COASTAL ZONE LAND USE ORDINANCE (CZLUO).]

This policy provides protection for the possible existence of public prescriptive rights as required by Coastal Act Policies 30211 and 30000.5. The establishment of prescriptive rights can be resolved between the property owners and interested individuals or groups. However, where this cannot be resolved, the government or an individual or group may bring suit on behalf of the public to confirm that the prescriptive rights of use exist. The Local Coastal Plan identifies areas where prescriptive rights may exist, and sets standards and programs (such as public acquisition) for new development regarding these potential public access rights. Development which incorporates these standards would not interfere with the possible existence of prescriptive rights and thus would be permitted. However, the Local Coastal Plan may not have identified all areas where prescriptive rights exist and for such areas the appropriate amount of public use should be established through the review process at the time of development.

Procedures for ensuring public input on existing prescriptive rights that may exist on projects between the first public road and the shoreline are included in the Coastal Zone Land Use Ordinance.

- b. Access Inventory. A comprehensive inventory of existing and potential public shoreline access, including a map or maps indicating the specific locations of such access resources.
2. **California Coastal Trail.** The Access Component shall include a Public Trails Plan to facilitate future implementation of the California Coastal Trail. Development of the Trails Plan should consider guidance outlined in the 2002 Periodic Review for development of:
 - a. Planning objectives;
 - b. Siting and Design policies and standards, subject to thorough and specific environmental review; and
 - c. Acquisition and management policies and standards.
3. **Protection of Access Opportunities during Road Realignment.** The Access Component shall consider realignment alternatives for Highway One and other roads critical to coastal access, and ensure that any impacts to access from highway/road realignment are mitigated such that no public access is lost and new access opportunities are maximized. Further, consider alternatives for the realignment of Highway One to avoid further placement of shoreline protection while protecting the public access and scenic and visual resources of the highway.

[THIS POLICY SHALL BE IMPLEMENTED AS A PROGRAM]

[Added 2004, Ord. 3006]

Relationship to Land Use Element/Coastal Zone Land Use Ordinance

Based on the county's LUE/LUO system, shoreline access requirements are identified through the above basic policies as implemented in Land Use Element programs and standards, and Coastal Access Section of the Coastal Zone Land Use Ordinance. The purposes of such requirements will be to:

1. Provide maximum public access between the first public road and mean high tide.
2. Relate the intensity and location of new development to the existing extent of access where possible prescriptive rights may exist.
3. Identify areas where public actions are necessary to provide public access or the necessary improvements.

Development Review Process for Establishing Access. New development between the first public road and the shoreline will be required to provide maximum public access in accordance with policies of the LCP. The Coastal Zone Land Use Ordinance has been amended to establish both the procedure and the requirements for types and scale of development. Notification of interested persons is established to allow for public input on proposed access. This procedure will include a means of providing public hearing where substantial concern is raised regarding a project as provided for in the Coastal Zone Land Use Ordinance.

The permit review procedures on projects located between the first road and the shoreline are found in the CZLUO and include consideration of:

1. Presence of public safety hazards or military security considerations.
2. Proximity of sensitive habitats and agriculture as designated by the LUE (possible mitigation techniques should be outlined).
3. Adequacy of public access areas nearby.
4. Privacy of adjacent residents (landscaping and buffering techniques should be utilized).
5. Adequacy of improvements or facilities at the access point.
6. Evidence of existing use and possible existence of prescriptive rights.

In the future the county may consider an LCP amendment enabling use of in-lieu fees. New development proposals could be approved without provisions for vertical access where a finding can be made that adequate public access exists nearby but where it is determined that adequate public access exists nearby, an in-lieu fee may be approved where the project would significantly impact available public access areas. In-lieu fees should be used to provide or improve public access within the general area in which fees were collected. In-lieu fees would be accumulated in a special coastal access fund, which could be used to fund access where there is not presently access or where facility improvements are necessary for public safety or desirable to provide for the existing carrying capacity, or to provide for on-going maintenance and operations costs.

Recommendations for Public Access by Planning Area. The San Luis Obispo County coastline presents varying degrees of accessibility to the public. For example, in the South County Planning Area, a substantial portion of the shoreline is within state park holdings. The community of Cayucos has a series of accessways which can provide ample opportunities for local residents as well as visitors to get to the shoreline. However, other areas of the county coastline do not presently have formal public access, including the Hearst Ranch holdings in the North County and the South Bay shoreline which is subdivided primarily for single-family residential development.

The Land Use Element indicates the location and intensity of access appropriate to a particular area. This includes programs and standards necessary to protect and provide public access. Specific development standards are included in this report to address special problems and conditions of individual communities. They will be part of the basis for approval or disapproval of a project application. Proposed programs are also noted. The programs are recommended actions to be initiated by the county or other specified public agency to address identified local problems or conditions, and are designed to achieve community objectives.

The arrows on the LCP combining designation maps schematically indicate where public access currently exists and where public access should be provided in the future through public acquisition and improvement or through conditions for new development. Additional access may be required for new development on a case-by-case basis as specified by the Coastal Access Section of the Coastal Zone Land Use Ordinance.

Findings

The countywide policy for the protection of existing access, especially where public prescriptive rights may exist, ensures the provision of maximum public access to the shoreline as prescribed in Section 30210. The detailed community-by-community recommendations for the location of proposed new accessways, and the Coastal Access Section of the Coastal Zone Land Use Ordinance, fulfills the Coastal Act Policy Section 30211. The standards and policies for new development which require a minimum offer of dedication of a 25-foot lateral accessway fulfills the mandate of Section 30212. All public access recommendations are consistent with the protection of sensitive habitats. The LUE/LCP represents the county's intent to fulfill Coastal Act requirements for public access and as such fulfill the Coastal Act Section 30530 that requires each local coastal program prepare a specific public access component.

The Coastal Act gives priority to coastal dependent activities. To distinguish between coastal-dependent and coastal-related recreational activities, the following definition will be used:

Coastal-Dependent Recreation: Ocean swimming, ocean and pier fishing, boating, surfing, sunbathing, beach activities, clamming, nature study, and scuba diving.

Coastal-Related Recreation: Picnicking, bicycling, beach volleyball, camping, jogging, walking, driving, and horseback riding.

Non-coastal Dependent Recreation: Recreational activity such as baseball, basketball, bowling, golf, swimming (pool), tennis, and roller skating.

Background Report

The background report entitled Recreation and Visitor-Serving Facilities provides an inventory of public recreational areas within the coastal zone. In addition, existing and potential areas for private visitor-serving facilities were discussed. A summary of the information concerning public recreation areas and private visitor-serving opportunities is discussed by planning area.

NORTH COAST PLANNING AREA

One of the most popular recreational areas in the county, this planning area has three units of the State Park System: Hearst San Simeon State Historical Monument, William Randolph Hearst Memorial State Beach, and San Simeon State Beach. Two of these units (the State Historical Monument and San Simeon State Beach) have adopted general development plans.

Hearst San Simeon State Historical Monument. The monument often receives over 2,000 paid visitors a day. The existing facilities (always considered temporary) are extremely inadequate for this level of use. The general development plan identifies a new visitor staging area containing a small auditorium, interpretive displays, concessions, restrooms and ticket offices. While the number of existing parking spaces (600) will not be increased because it is felt that the monument is at capacity, the lot will be landscaped and general circulation improved. Due to the large attendance at the castle, demand for tourist serving facilities and camping spaces in the North Coast Planning Area during peak use periods often exceeds supply. Development of the visitor staging area will help meet some of the immediate day use demands of castle visitors. An additional area reserved for private development adjacent to the staging area has been proposed.

William Randolph Hearst Memorial State Beach. This eight-acre state beach provides day use only. Visitor-serving facilities will be provided in the proposed San Simeon Village development and staging area.

San Simeon State Beach. The park unit serves as an important en route camping and day use facility for those traveling along Highway 1, especially visitors to Hearst Castle. Existing facilities include 25 picnic sites and 134 campsites, in addition to several vehicle turnouts and a boat launch. Additionally, an overflow overnight parking area is available to the public during the peak visitor use season on a one-night only basis. These facilities are inadequate to handle the over one million visitors annually using the park.

APPENDIX B

SHORELINE ACCESS TERMS

Prescriptive Rights - Also referred to as implied dedication. Basically, prescriptive rights are those rights acquired by the public where the public has used the land for the prescriptive period of five years as if it were public land, without asking or receiving permission from the fee owner, with the actual or presumed knowledge of the owner and without significant objection or bona fide attempts by the fee owner to prevent or halt such use. The finding of prescriptive rights is a complicated legal principle which must be determined by a court of law. A more detailed discussion of prescriptive rights may be found in the Manual on Prescriptive Rights which was prepared by the State Attorney General's Office (November 28, 1977).

Easement - To obtain public access in new development, the county may require applicants to offer to dedicate an access easement as a condition of development. The size of these easements are based on the size and location of the accessway.

Pass-and-Repas - Due to the adjacent residential uses or location of sensitive habitats, the use of an accessway may be limited to the public's right of pass-and-repass. This allows for walking and running along the shoreline. It permits the public the right to "pass" over a part of property to get to the shore. It is the most minimal level of use allowed.

Sensitive Habitats - Sensitive habitats referred to in this component refers to those environmentally sensitive habitats identified in the LCP both in the text and in maps.

Accessway - General term to define where public access occurs. It may be lateral or vertical access.

In-lieu Fees - New development proposals which are approved without provisions for public access could be required to pay a fee to the county, which would be used to fund acquisition and development of accessways.

23.04.420 - Coastal Access Required.

Development within the Coastal Zone between the first public road and the tidelands shall protect and/or provide coastal access as required by this section. The intent of these standards is to assure public rights of access to the coast are protected as guaranteed by the California Constitution. Coastal access standards are also established by this section to satisfy the intent of the California Coastal Act.

a. Access defined:

- (1) **Lateral access:** Provides for public access and use along the shoreline.
- (2) **Vertical access:** Provides access from the first public road to the shore, or perpendicular to the shore.
- (3) **Pass and repass:** The right of the public to move on foot along the shoreline.

b. Protection of existing coastal access. Development shall not interfere with public rights of access to the sea where such rights were acquired through use or legislative authorization. Public access rights may include but are not limited to the use of dry sand and rocky beaches to the first line of terrestrial vegetation.

c. When new access is required. Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where:

- (1) Access would be inconsistent with public safety, military security needs or the protection of fragile coastal resources; or
- (2) The site already satisfies the provisions of subsection d of this section; or
- (3) Agriculture would be adversely affected; or
- (4) The proposed new development is any of the following:
 - (i) Replacement of any structure pursuant to the provisions of Section 30610(g) of the California Coastal Act.
 - (ii) The demolition and reconstruction of a single-family residence; provided that the reconstructed residence shall not exceed either the floor area, height or bulk of the former structure by more than 10 percent, and that the reconstructed residence shall be sited in the same location on the affected property as the former structure. As used in this subsection, "bulk" means total interior cubic volume as measured from the exterior surface of the structure.
 - (iii) Improvements to any structure that do not change the intensity of its use, or increase either the floor area, height or bulk of the structure by more than 10 percent, which do not block or impede public access and do not result in additional seaward

23.04.420

encroachment by the structure. As used in this subsection, "bulk" means total interior cubic volume as measured from the exterior surface of the structure.

- (iv) The reconstruction or repair of any seawall; provided that the reconstructed or repaired seawall is not seaward of the location of the former structure.
- (v) Any repair or maintenance activity excluded from obtaining a land use permit by this title, except where the Planning Director determines that the use or activity will have an adverse effect on lateral public access along the beach.
- (vi) Nothing in this subsection shall restrict public access nor shall it excuse the performance of duties and responsibilities of public agencies which are required by Sections 66478.1 to 66478.14, inclusive, of the Government Code and by Section 4 of Article X of the California Constitution.

d. **Type of access required:**

(1) **Vertical Access:**

- (i) **Within urban and village areas:** Within an urban or village area where no dedicated or public access exists within one-quarter mile of the site, or if the site has more than one-quarter mile of coastal frontage, an accessway shall be provided for each quarter mile of frontage.
- (ii) **In rural areas:** In rural areas where no dedicated or public access exists within one mile, or if the site has more than one mile of coastal frontage, an accessway shall be provided for each mile of frontage.
- (iii) **Prescriptive rights:** An accessway shall be provided on any site where prescriptive rights of public access have been determined by a court to exist.
- (iv) **Additional accessways:** The applicable approval body may require accessways in addition to those required by this section where the approval body finds that a proposed development would, at the time of approval or at a future date, increase pedestrian use of any adjacent accessway beyond its capacity.

(2) **Vertical access dedication.** Accessways shall be a minimum width of five feet in urban areas and 10 feet in rural areas.

(3) **Lateral access dedication:** All new development shall provide a lateral access dedication of 25 feet of dry sandy beach available at all times during the year. Where topography limits the dry sandy beach to less than 25 feet, lateral access shall extend from the mean high tide to the toe of the bluff. Where the area between the mean high tide line (MHTL) and the toe of the bluff is constrained by rocky shoreline or other limitations, the County shall evaluate the safety and other constraints and whether alternative siting of accessways is appropriate. This consideration would help maximize public access consistent with the LCP and the California Coastal Act.

West's Annotated California Codes

Public Resources Code (Refs & Annos)

Division 20. California Coastal Act (Refs & Annos)

Chapter 3. Coastal Resources Planning and Management Policies (Refs & Annos)

Article 1. General (Refs & Annos)

West's Ann.Cal.Pub.Res.Code § 30200

§ 30200. Policies as standards; resolution of policy conflicts

Currentness

(a) Consistent with the coastal zone values cited in [Section 30001](#) and the basic goals set forth in [Section 30001.5](#), and except as may be otherwise specifically provided in this division, the policies of this chapter shall constitute the standards by which the adequacy of local coastal programs, as provided in Chapter 6 (commencing with [Section 30500](#)), and the permissibility of proposed developments subject to the provisions of this division are determined. **All public agencies carrying out or supporting activities outside the coastal zone that could have a direct impact on resources within the coastal zone shall consider the effect of such actions on coastal zone resources** in order to assure that these policies are achieved.

(b) Where the commission or any local government in implementing the provisions of this division identifies a conflict between the policies of this chapter, [Section 30007.5](#) shall be utilized to resolve the conflict and the resolution of such conflicts shall be supported by appropriate findings setting forth the basis for the resolution of identified policy conflicts.

Credits

(Added by Stats.1976, c. 1330, p. 5957, § 1. Amended by Stats.1982, c. 43, p. 114, § 8, eff. Feb. 17, 1982.)

[Notes of Decisions \(4\)](#)

West's Ann. Cal. Pub. Res. Code § 30200, CA PUB RES § 30200

Current with urgency legislation through Ch. 800 of 2013 Reg.Sess., all 2013-2014 1st Ex.Sess. laws, and Res. Ch. 123

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West's Annotated California Codes

Public Resources Code (Refs & Annos)

Division 20. California Coastal Act (Refs & Annos)

Chapter 3. Coastal Resources Planning and Management Policies (Refs & Annos)

Article 2. Public Access (Refs & Annos)

West's Ann.Cal.Pub.Res.Code § 30210

§ 30210. Access; recreational opportunities; posting

Currentness

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.

Credits

(Added by Stats.1976, c. 1330, § 1. Amended by Stats.1978, c. 1075, p. 3297, § 4, eff. Sept. 26, 1978.)

Notes of Decisions (3)

West's Ann. Cal. Pub. Res. Code § 30210, CA PUB RES § 30210

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West's Annotated California Codes

Public Resources Code (Refs & Annos)

Division 20. California Coastal Act (Refs & Annos)

Chapter 3. Coastal Resources Planning and Management Policies (Refs & Annos)

Article 2. Public Access (Refs & Annos)

West's Ann.Cal.Pub.Res.Code § 30211

§ 30211. Development not to interfere with access

Currentness

Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.

Credits

(Added by Stats.1976, c. 1330, § 1. Amended by Stats.1976, c. 1331, § 6.)

West's Ann. Cal. Pub. Res. Code § 30211, CA PUB RES § 30211

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West's Annotated California Codes

Public Resources Code (Refs & Annos)

Division 20. California Coastal Act (Refs & Annos)

Chapter 3. Coastal Resources Planning and Management Policies (Refs & Annos)

Article 3. Recreation (Refs & Annos)

West's Ann.Cal.Pub.Res.Code § 30220

§ 30220. Protection of certain water-oriented activities

Currentness

Coastal areas suited for water-oriented recreational activities that cannot readily be provided at inland water areas shall be protected for such uses.

Credits

(Added by Stats.1976, c. 1330, § 1.)

West's Ann. Cal. Pub. Res. Code § 30220, CA PUB RES § 30220

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West's Annotated California Codes

Public Resources Code (Refs & Annos)

Division 20. California Coastal Act (Refs & Annos)

Chapter 3. Coastal Resources Planning and Management Policies (Refs & Annos)

Article 5. Land Resources (Refs & Annos)

West's Ann.Cal.Pub.Res.Code § 30240

§ 30240. Environmentally sensitive habitat areas; adjacent developments

Currentness

(a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas.

(b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.

Credits

(Added by Stats.1976, c. 1330, § 1. Amended by Stats.1991, c. 285 (A.B.1270), § 4.)

Notes of Decisions (24)

West's Ann. Cal. Pub. Res. Code § 30240, CA PUB RES § 30240

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West's Annotated California Codes

Public Resources Code (Refs & Annos)

Division 20. California Coastal Act (Refs & Annos)

Chapter 3. Coastal Resources Planning and Management Policies (Refs & Annos)

Article 5. Land Resources (Refs & Annos)

West's Ann.Cal.Pub.Res.Code § 30244

§ 30244. Archaeological or paleontological resources

Currentness

Where development would adversely impact archaeological or paleontological resources as identified by the State Historic Preservation Officer, reasonable mitigation measures shall be required.

Credits

(Added by Stats.1976, c. 1330, § 1.)

West's Ann. Cal. Pub. Res. Code § 30244, CA PUB RES § 30244

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West's Annotated California Codes

Public Resources Code (Refs & Annos)

Division 20. California Coastal Act (Refs & Annos)

Chapter 3. Coastal Resources Planning and Management Policies (Refs & Annos)

Article 6. Development (Refs & Annos)

West's Ann.Cal.Pub.Res.Code § 30253

§ 30253. Minimization of adverse impacts

Effective: January 1, 2009

[Currentness](#)

New development shall do all of the following:

- (a) Minimize risks to life and property in areas of high geologic, flood, and fire hazard.
- (b) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.
- (c) Be consistent with requirements imposed by an air pollution control district or the State Air Resources Board as to each particular development.
- (d) Minimize energy consumption and vehicle miles traveled.
- (e) Where appropriate, protect special communities and neighborhoods that, because of their unique characteristics, are popular visitor destination points for recreational uses.

Credits

(Added by Stats.1976, c. 1330, § 1. Amended by Stats.2008, c. 179 (S.B.1498), § 187.)

Notes of Decisions (2)

West's Ann. Cal. Pub. Res. Code § 30253, CA PUB RES § 30253

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West's Annotated California Codes
Constitution of the State of California 1879 (Refs & Annos)
Article X. Water (Refs & Annos)

West's Ann.Cal.Const. Art. 10, § 4

§ 4. Access to navigable waters

[Currentness](#)

Sec. 4. No individual, partnership, or corporation, claiming or possessing the frontage or tidal lands of a harbor, bay, inlet, estuary, or other navigable water in this State, shall be permitted to exclude the right of way to such water whenever it is required for any public purpose, nor to destroy or obstruct the free navigation of such water; and the Legislature shall enact such laws as will give the most liberal construction to this provision, so that access to the navigable waters of this State shall be always attainable for the people thereof.

Credits

(Adopted June 8, 1976.)

[Notes of Decisions \(76\)](#)

West's Ann. Cal. Const. Art. 10, § 4, CA CONST Art. 10, § 4

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Barclays Official California Code of Regulations Currentness
Title 14. Natural Resources
Division 6. Resources Agency
Chapter 3. Guidelines for Implementation of the California Environmental Quality Act
Article 1. General

14 CCR § 15003

§ 15003. Policies.

In addition to the policies declared by the Legislature concerning environmental protection and administration of CEQA in Sections 21000, 21001, 21002, and 21002.1 of the Public Resources Code, the courts of this state have declared the following policies to be implicit in CEQA:

- (a) The EIR requirement is the heart of CEQA. (County of Inyo v. Yorty, 32 Cal. App. 3d 795.)
- (b) The EIR serves not only to protect the environment but also to demonstrate to the public that it is being protected. (County of Inyo v. Yorty, 32 Cal. App. 3d 795.)
- (c) The EIR is to inform other governmental agencies and the public generally of the environmental impact of a proposed project. (No Oil, Inc. v. City of Los Angeles, 13 C. 3d 68.)
- (d) The EIR is to demonstrate to an apprehensive citizenry that the agency has, in fact, analyzed and considered the ecological implications of its action. (People ex rel. Department of Public Works v. Bosio, 47 Cal. App. 3d 495.)
- (e) The EIR process will enable the public to determine the environmental and economic values of their elected and appointed officials thus allowing for appropriate action come election day should a majority of the voters disagree. (People v. County of Kern, 39 Cal. App. 3d 830.)
- (f) CEQA was intended to be interpreted in such a manner as to afford the fullest possible protection to the environment within the reasonable scope of the statutory language. (Friends of Mammoth v. Board of Supervisors, 8 Cal. 3d 247.)
- (g) The purpose of CEQA is not to generate paper, but to compel government at all levels to make decisions with environmental consequences in mind. (Bozung v. LAFCO(1975) 13 Cal.3d 263)
- (h) The lead agency must consider the whole of an action, not simply its constituent parts, when determining whether it will have a significant environmental effect. (Citizens Assoc. For Sensible Development of Bishop Area v. County of Inyo(1985) 172 Cal.App.3d 151)

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(i) CEQA does not require technical perfection in an EIR, but rather adequacy, completeness, and a good-faith effort at full disclosure. A court does not pass upon the correctness of an EIR's environmental conclusions, but only determines if the EIR is sufficient as an informational document. ([Kings County Farm Bureau v. City of Hanford\(1990\) 221 Cal.App.3d 692](#))

(j) CEQA requires that decisions be informed and balanced. It must not be subverted into an instrument for the oppression and delay of social, economic, or recreational development or advancement. ([Laurel Heights Improvement Assoc. v. Regents of U.C.\(1993\) 6 Cal.4th 1112](#) and [Citizens of Goleta Valley v. Board of Supervisors\(1990\) 52 Cal.3d 553](#))

Note: Authority cited: [Section 21083, Public Resources Code](#). Reference: [Sections 21000-21176, Public Resources Code](#).

HISTORY

1. New section filed 7-13-83; effective thirtieth day thereafter (Register 83, No. 29).
2. Editorial correction of 7-13-83 order redesignating effective date to 8-1-83 filed 7-14-83 (Register 83, No. 29).
3. Editorial correction of 7-13-83 order filed 7-26-83 (Register 83, No. 33).
4. New subsections (g)-(j) filed 10-26-98; operative 10-26-98 pursuant to [Public Resources Code section 21087](#) (Register 98, No. 44).
5. Change without regulatory effect amending Note filed 10-6-2005 pursuant to [section 100, title 1, California Code of Regulations](#) (Register 2005, No. 40).

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14 CCR § 15003, 14 CA ADC § 15003

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Barclays Official California Code of Regulations Currentness

Title 14. Natural Resources

Division 6. Resources Agency

Chapter 3. Guidelines for Implementation of the California Environmental Quality Act

Article 2. General Responsibilities

14 CCR § 15021

§ 15021. Duty to Minimize Environmental Damage and Balance Competing Public Objectives.

(a) CEQA establishes a duty for public agencies to avoid or minimize environmental damage where feasible.

(1) In regulating public or private activities, agencies are required to give major consideration to preventing environmental damage.

(2) A public agency should not approve a project as proposed if there are feasible alternatives or mitigation measures available that would substantially lessen any significant effects that the project would have on the environment.

(b) In deciding whether changes in a project are feasible, an agency may consider specific economic, environmental, legal, social, and technological factors.

(c) The duty to prevent or minimize environmental damage is implemented through the findings required by Section 15091.

(d) CEQA recognizes that in determining whether and how a project should be approved, a public agency has an obligation to balance a variety of public objectives, including economic, environmental, and social factors and in particular the goal of providing a decent home and satisfying living environment for every Californian. An agency shall prepare a statement of overriding considerations as described in Section 15093 to reflect the ultimate balancing of competing public objectives when the agency decides to approve a project that will cause one or more significant effects on the environment.

Note: Authority cited: Section 21083, Public Resources Code. Reference: Sections 21000, 21001, 21002, 21002.1 and 21081, Public Resources Code; San Francisco Ecology Center v. City and County of San Francisco, (1975) 48 Cal. App. 3d 584; Laurel Hills Homeowners Association v. City Council, (1978) 83 Cal. App. 3d 515.

HISTORY

1. Change without regulatory effect amending Note filed 10-6-2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

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14 CCR § 15021, 14 CA ADC § 15021

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Title 14. Natural Resources

Division 6. Resources Agency

Chapter 3. Guidelines for Implementation of the California Environmental Quality Act

Article 5. Preliminary Review of Projects and Conduct of Initial Study

14 CCR § 15064

§ 15064. Determining the Significance of the Environmental Effects Caused by a Project.

(a) Determining whether a project may have a significant effect plays a critical role in the CEQA process.

(1) If there is substantial evidence, in light of the whole record before a lead agency, that a project may have a significant effect on the environment, the agency shall prepare a draft EIR.

(2) When a final EIR identifies one or more significant effects, the lead agency and each responsible agency shall make a finding under Section 15091 for each significant effect and may need to make a statement of overriding considerations under Section 15093 for the project.

(b) The determination of whether a project may have a significant effect on the environment calls for careful judgment on the part of the public agency involved, based to the extent possible on scientific and factual data. An ironclad definition of significant effect is not always possible because the significance of an activity may vary with the setting. For example, an activity which may not be significant in an urban area may be significant in a rural area.

(c) In determining whether an effect will be adverse or beneficial, the lead agency shall consider the views held by members of the public in all areas affected as expressed in the whole record before the lead agency. Before requiring the preparation of an EIR, the lead agency must still determine whether environmental change itself might be substantial.

(d) In evaluating the significance of the environmental effect of a project, the lead agency shall consider direct physical changes in the environment which may be caused by the project and reasonably foreseeable indirect physical changes in the environment which may be caused by the project.

(1) A direct physical change in the environment is a physical change in the environment which is caused by and immediately related to the project. Examples of direct physical changes in the environment are the dust, noise, and traffic of heavy equipment that would result from construction of a sewage treatment plant and possible odors from operation of the plant.

(2) An indirect physical change in the environment is a physical change in the environment which is not immediately related to the project, but which is caused indirectly by the project. If a direct physical change in the environment in turn causes another change in the environment, then the other change is an indirect physical change in the environment. For example, the construction of a new sewage treatment plant may facilitate population growth in the service area due to the increase in sewage treatment capacity and may lead to an increase in air pollution.

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(3) An indirect physical change is to be considered only if that change is a reasonably foreseeable impact which may be caused by the project. A change which is speculative or unlikely to occur is not reasonably foreseeable.

(e) Economic and social changes resulting from a project shall not be treated as significant effects on the environment. Economic or social changes may be used, however, to determine that a physical change shall be regarded as a significant effect on the environment. Where a physical change is caused by economic or social effects of a project, the physical change may be regarded as a significant effect in the same manner as any other physical change resulting from the project. Alternatively, economic and social effects of a physical change may be used to determine that the physical change is a significant effect on the environment. If the physical change causes adverse economic or social effects on people, those adverse effects may be used as a factor in determining whether the physical change is significant. For example, if a project would cause overcrowding of a public facility and the overcrowding causes an adverse effect on people, the overcrowding would be regarded as a significant effect.

(f) The decision as to whether a project may have one or more significant effects shall be based on substantial evidence in the record of the lead agency.

(1) If the lead agency determines there is substantial evidence in the record that the project may have a significant effect on the environment, the lead agency shall prepare an EIR (*Friends of B Street v. City of Hayward* (1980) 106 Cal. App. 3d 988). Said another way, if a lead agency is presented with a fair argument that a project may have a significant effect on the environment, the lead agency shall prepare an EIR even though it may also be presented with other substantial evidence that the project will not have a significant effect (*No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal. 3d 68).

(2) If the lead agency determines there is substantial evidence in the record that the project may have a significant effect on the environment but the lead agency determines that revisions in the project plans or proposals made by, or agreed to by, the applicant would avoid the effects or mitigate the effects to a point where clearly no significant effect on the environment would occur and there is no substantial evidence in light of the whole record before the public agency that the project, as revised, may have a significant effect on the environment then a mitigated negative declaration shall be prepared.

(3) If the lead agency determines there is no substantial evidence that the project may have a significant effect on the environment, the lead agency shall prepare a negative declaration (*Friends of B Street v. City of Hayward* (1980) 106 Cal. App. 3d 988).

(4) The existence of public controversy over the environment effects of a project will not require preparation of an EIR if there is no substantial evidence before the agency that the project may have a significant effect on the environment.

(5) Argument, speculation, unsubstantiated opinion or narrative, or evidence that is clearly inaccurate or erroneous, or evidence that is not credible, shall not constitute substantial evidence. Substantial evidence shall include facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts.

(6) Evidence of economic and social impacts that do not contribute to or are not caused by physical changes in the environment is not substantial evidence that the project may have a significant effect on the environment.

(7) The provisions of sections 15162, 15163, and 15164 apply when the project being analyzed is a change to, or further approval for, a project for which an EIR or negative declaration was previously certified or adopted (e.g. a tentative subdivision, conditional use permit). Under case law, the fair argument standard does not apply to determinations of significance pursuant to sections 15162, 15163, and 15164.

(g) After application of the principles set forth above in Section 15064(f), and in marginal cases where it is not clear whether there is substantial evidence that a project may have a significant effect on the environment, the lead agency shall be guided by the following principle: **If there is disagreement among expert opinion supported by facts over the significance of an effect on the environment, the Lead Agency shall treat the effect as significant and shall prepare an EIR.**

(h)(1) **When assessing whether a cumulative effect requires an EIR, the lead agency shall consider whether the cumulative impact is significant and whether the effects of the project are cumulatively considerable. An EIR must be prepared if the cumulative impact may be significant and the project's incremental effect, though individually limited, is cumulatively considerable. "Cumulatively considerable" means that the incremental effects of an individual project are significant when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects.**

(2) A lead agency may determine in an initial study that a project's contribution to a significant cumulative impact will be rendered less than cumulatively considerable and thus is not significant. When a project might contribute to a significant cumulative impact, but the contribution will be rendered less than cumulatively considerable through mitigation measures set forth in a mitigated negative declaration, the initial study shall briefly indicate and explain how the contribution has been rendered less than cumulatively considerable.

(3) A lead agency may determine that a project's incremental contribution to a cumulative effect is not cumulatively considerable if the project will comply with the requirements in a previously approved plan or mitigation program (including, but not limited to, water quality control plan, air quality attainment or maintenance plan, integrated waste management plan, habitat conservation plan, natural community conservation plan, plans or regulations for the reduction of greenhouse gas emissions) that provides specific requirements that will avoid or substantially lessen the cumulative problem within the geographic area in which the project is located. Such plans or programs must be specified in law or adopted by the public agency with jurisdiction over the affected resources through a public review process to implement, interpret, or make specific the law enforced or administered by the public agency. When relying on a plan, regulation or program, the lead agency should explain how implementing the particular requirements in the plan, regulation or program ensure that the project's incremental contribution to the cumulative effect is not cumulatively considerable. **If there is substantial evidence that the possible effects of a particular project are still cumulatively considerable notwithstanding that the project complies with the specified plan or mitigation program addressing the cumulative problem, an EIR must be prepared for the project.**

(4) The mere existence of significant cumulative impacts caused by other projects alone shall not constitute substantial evidence that the proposed project's incremental effects are cumulatively considerable.

Note: Authority cited: [Sections 21083 and 21083.05, Public Resources Code](#). Reference: [Sections 21003, 21065, 21068, 21080, 21082, 21082.1, 21082.2, 21083, 21083.05 and 21100, Public Resources Code](#); [No Oil, Inc. v. City of Los Angeles \(1974\) 13 Cal.3d 68](#); [San Joaquin Raptor/Wildlife Center v. County of Stanislaus \(1996\) 42 Cal.App.4th 608](#); [Gentry v. City of Murrieta \(1995\) 36 Cal.App.4th 1359](#); [Laurel Heights Improvement Assn. v. Regents of the University of California \(1993\) 6 Cal.4th 1112](#); and [Communities for a Better Environment v. California Resources Agency \(2002\) 103 Cal.App.4th 98](#).

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HISTORY

1. Amendment of section heading, section and Note filed 5-27-97; operative 5-27-97 pursuant to [Government Code section 11343.4\(d\)](#) (Register 97, No. 22).
2. Repealer of subsection (i) and new subsections (i)(1)(A)-(i)(4) filed 8-24-98; operative 8-24-98 pursuant to [Government Code section 11343.4\(d\)](#) (Register 98, No. 35).
3. Repealer of subsection (e), subsection relettering, new subsections (f)(7) and (i)(1)-(i)(5) and amendment of Note filed 10-26-98; operative 10-26-98 pursuant to [Public Resources Code section 21087](#) (Register 98, No. 44).
4. Change without regulatory effect amending subsections (g), (h)(1)(A), (h)(1)(C) and (h)(2) filed 2-1-2001 pursuant to [section 100, title 1, California Code of Regulations](#) (Register 2001, No. 5).
5. Change without regulatory effect repealing subsections (h)-(h)(4) and (i)(4), relettering and renumbering subsections, amending newly designated subsection (h)(1) and amending Note filed 7-22-2003 pursuant to [section 100, title 1, California Code of Regulations](#) (Register 2003, No. 30).
6. Amendment of subsections (h)(1) and (h)(3) filed 9-7-2004; operative 9-7-2004 pursuant to [Public Resources Code section 21083\(e\)](#) (Register 2004, No. 37).
7. Change without regulatory effect amending Note filed 10-6-2005 pursuant to [section 100, title 1, California Code of Regulations](#) (Register 2005, No. 40).
8. Amendment of subsections (f)(5) and (h)(3) and Note filed 2-16-2010; operative 3-18-2010 (Register 2010, No. 8).

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14 CCR § 15064, 14 CA ADC § 15064

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Title 14. Natural Resources

Division 6. Resources Agency

Chapter 3. Guidelines for Implementation of the California Environmental Quality Act

Article 5. Preliminary Review of Projects and Conduct of Initial Study

14 CCR § 15065

§ 15065. Mandatory Findings of Significance.

(a) A lead agency shall find that a project may have a significant effect on the environment and thereby require an EIR to be prepared for the project where there is substantial evidence, in light of the whole record, that any of the following conditions may occur:

(1) The project has the potential to substantially degrade the quality of the environment; substantially reduce the habitat of a fish or wildlife species; cause a fish or wildlife population to drop below self-sustaining levels; threaten to eliminate a plant or animal community; substantially reduce the number or restrict the range of an endangered, rare or threatened species; or eliminate important examples of the major periods of California history or prehistory.

(2) The project has the potential to achieve short-term environmental goals to the disadvantage of long-term environmental goals.

(3) The project has possible environmental effects that are individually limited but cumulatively considerable. "Cumulatively considerable" means that the incremental effects of an individual project are significant when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects.

(4) The environmental effects of a project will cause substantial adverse effects on human beings, either directly or indirectly.

(b)(1) Where, prior to the commencement of public review of an environmental document, a project proponent agrees to mitigation measures or project modifications that would avoid any significant effect on the environment specified by subdivision (a) or would mitigate the significant effect to a point where clearly no significant effect on the environment would occur, a lead agency need not prepare an environmental impact report solely because, without mitigation, the environmental effects at issue would have been significant.

(2) Furthermore, where a proposed project has the potential to substantially reduce the number or restrict the range of an endangered, rare or threatened species, the lead agency need not prepare an EIR solely because of such an effect, if:

(A) the project proponent is bound to implement mitigation requirements relating to such species and habitat pursuant to an approved habitat conservation plan or natural community conservation plan;

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(B) the state or federal agency approved the habitat conservation plan or natural community conservation plan in reliance on an environmental impact report or environmental impact statement; and

(C)1. such requirements avoid any net loss of habitat and net reduction in number of the affected species, or

2. such requirements preserve, restore, or enhance sufficient habitat to mitigate the reduction in habitat and number of the affected species to below a level of significance.

(c) Following the decision to prepare an EIR, if a lead agency determines that any of the conditions specified by subdivision (a) will occur, such a determination shall apply to:

(1) the identification of effects to be analyzed in depth in the environmental impact report or the functional equivalent thereof,

(2) the requirement to make detailed findings on the feasibility of alternatives or mitigation measures to substantially lessen or avoid the significant effects on the environment,

(3) when found to be feasible, the making of changes in the project to substantially lessen or avoid the significant effects on the environment, and

(4) where necessary, the requirement to adopt a statement of overriding considerations.

Note: Authority cited: [Section 21083, Public Resources Code](#). Reference: [Sections 21001\(c\) and 21083, Public Resources Code](#); [San Joaquin Raptor/Wildlife Center v. County of Stanislaus \(1996\) 42 Cal.App.4th 608](#); [Los Angeles Unified School District v. City of Los Angeles \(1997\) 58 Cal.App.4th 1019, 1024](#); and [Communities for a Better Environment v. California Resources Agency \(2002\) 103 Cal.App.4th 98](#).

HISTORY

1. Amendment of subsection (a) and Note filed 5-27-97; operative 5-27-97 pursuant to [Government Code section 11343.4\(d\)](#) (Register 97, No. 22).

2. Amendment of subsection (c) and Note filed 10-26-98; operative 10-26-98 pursuant to [Public Resources Code section 21087](#) (Register 98, No. 44).

3. Amendment of section and Note filed 9-7-2004; operative 9-7-2004 pursuant to [Public Resources Code section 21083\(e\)](#) (Register 2004, No. 37).

4. Change without regulatory effect amending subsections (b)(1) and (c) and amending Note filed 10-6-2005 pursuant to [section 100, title 1, California Code of Regulations](#) (Register 2005, No. 40).

5. Amendment of subsection (b)(1) filed 2-16-2010; operative 3-18-2010 (Register 2010, No. 8).

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14 CCR § 15065, 14 CA ADC § 15065

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Chapter 3. Guidelines for Implementation of the California Environmental Quality Act

Article 6. Negative Declaration Process

14 CCR § 15070

§ 15070. Decision to Prepare a Negative or Mitigated Negative Declaration.

A public agency shall prepare or have prepared a proposed negative declaration or mitigated negative declaration for a project subject to CEQA when:

(a) The initial study shows that there is **no substantial evidence, in light of the whole record before the agency, that the project may have a significant effect on the environment,** or

(b) The initial study identifies potentially significant effects, but:

(1) Revisions in the project plans or proposals made by or agreed to by the applicant before a proposed mitigated negative declaration and initial study are released for public review **would avoid the effects or mitigate the effects to a point where clearly no significant effects would occur,** and

(2) There is **no substantial evidence,** in light of the whole record before the agency, that **the project as revised may have a significant effect on the environment.**

Note: Authority cited: [Section 21083, Public Resources Code](#). Reference: [Sections 21064, 21064.5, 21080\(c\) and 21082.1, Public Resources Code](#); [Friends of B Street v. City of Hayward, \(1980\) 106 Cal. App. 3d 988](#); [Running Fence Corp. v. Superior Court, \(1975\) 51 Cal. App. 3d 400](#).

HISTORY

1. Repealer of Article 6 (Sections 15060-15069.8) and new Article 6 (Sections 15070-15075) filed 7-13-83; designated effective 8-1-83 (Register 83, No. 29). For prior history, see Registers 80, No. 19; 78, No. 5; 76, No. 41; 75, No. 1; and 73, No. 50).
2. Editorial correction of 7-13-83 order redesignating effective date to 8-1-83 filed 7-14-83 (Register 83, No. 29).
3. Amendment of section heading, section and Note filed 5-27-97; operative 5-27-97 pursuant to [Government Code section 11343.4\(d\)](#) (Register 97, No. 22).
4. Change without regulatory effect amending Note filed 10-6-2005 pursuant to [section 100, title 1, California Code of Regulations](#) (Register 2005, No. 40).
5. Editorial correction of first paragraph (Register 2009, No. 17).

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14 CCR § 15072

§ 15072. Notice of Intent to Adopt a Negative Declaration or Mitigated Negative Declaration.

(a) A lead agency shall provide a notice of intent to adopt a negative declaration or mitigated negative declaration to the public, responsible agencies, trustee agencies, and the county clerk of each county within which the proposed project is located, sufficiently prior to adoption by the lead agency of the negative declaration or mitigated negative declaration to allow the public and agencies the review period provided under Section 15105.

(b) The lead agency shall mail a notice of intent to adopt a negative declaration or mitigated negative declaration to the last known name and address of all organizations and individuals who have previously requested such notice in writing and shall also give notice of intent to adopt a negative declaration or mitigated negative declaration by at least one of the following procedures to allow the public the review period provided under Section 15105:

(1) Publication at least one time by the lead agency in a **newspaper of general circulation** in the area affected by the proposed project. If more than one area is affected, the notice shall be published in the newspaper of largest circulation from among the newspapers of general circulation in those areas.

(2) Posting of notice by the lead agency **on and off site in the area where the project is to be located.**

(3) Direct mailing to the owners and occupants of property contiguous to the project. Owners of such property shall be identified as shown on the latest equalized assessment roll.

(c) The alternatives for providing notice specified in subdivision (b) shall not preclude a lead agency from providing additional notice by other means if the agency so desires, nor shall the requirements of this section preclude a lead agency from providing the public notice at the same time and in the same manner as public notice required by any other laws for the project.

(d) The county clerk of each county within which the proposed project is located shall post such notices in the office of the county clerk within 24 hours of receipt for a period of at least 20 days.

(e) For a project of **statewide, regional, or areawide significance, the lead agency shall also provide notice to transportation planning agencies** and public agencies which have transportation facilities within their jurisdictions which could be affected by the project as specified in **Section 21092.4(a) of the Public Resources Code**. "Transportation facilities" includes: major local arterials and public transit within five miles of the project site and freeways, highways and rail transit service within 10 miles of the project site.

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(f) If the United States Department of Defense or any branch of the United States Armed Forces has given a lead agency written notification of the specific boundaries of a low-level flight path, military impact zone, or special use airspace and provided the lead agency with written notification of the military contact office and address for the military service pursuant to subdivision (b) of Section 15190.5, then the lead agency shall include the specified military contact office in the list of organizations and individuals receiving a notice of intent to adopt a negative declaration or a mitigated negative declaration pursuant to this section for projects that meet the criteria set forth in subdivision (c) of Section 15190.5. The lead agency shall send the specified military contact office such notice of intent sufficiently prior to adoption by the lead agency of the negative declaration or mitigated negative declaration to allow the military service the review period provided under Section 15105.

(g) A notice of intent to adopt a negative declaration or mitigated negative declaration shall specify the following:

(1) A brief description of the proposed project and its location.

(2) The starting and ending dates for the review period during which the lead agency will receive comments on the proposed negative declaration or mitigated negative declaration. This shall include starting and ending dates for the review period. If the review period has been shortened pursuant to Section 15105, the notice shall include a statement to that effect.

(3) The date, time, and place of any scheduled public meetings or hearings to be held by the lead agency on the proposed project, when known to the lead agency at the time of notice.

(4) The address or addresses where copies of the proposed negative declaration or mitigated negative declaration including the revisions developed under Section 15070(b) and all documents referenced in the proposed negative declaration or mitigated negative declaration are available for review. This location or locations shall be readily accessible to the public during the lead agency's normal working hours.

(5) The presence of the site on any of the lists enumerated under [Section 65962.5 of the Government Code](#) including, but not limited to lists of hazardous waste facilities, land designated as hazardous waste property, and hazardous waste disposal sites, and the information in the Hazardous Waste and Substances Statement required under subdivision (f) of that section.

(6) Other information specifically required by statute or regulation for a particular project or type of project.

Note: Authority cited: [Section 21083, Public Resources Code](#). Reference: [Sections 21091, 21092, 21092.2, 21092.4, 21092.3, 21092.6, 21098 and 21151.8, Public Resources Code](#).

HISTORY

1. Amendment of subsections (a), (a)(3) and Note filed 8-19-94; operative 9-19-94 (Register 94, No. 33).
2. Amendment of section heading, section and Note filed 5-27-97; operative 5-27-97 pursuant to [Government Code section 11343.4\(d\)](#) (Register 97, No. 22).
3. Change without regulatory effect amending subsections (c) and (f)(5) and amending Note filed 10-6-2005 pursuant to [section 100, title 1, California Code of Regulations](#) (Register 2005, No. 40).

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4. New subsection (f), subsection relettering and amendment of Note filed 7-27-2007; operative 7-27-2007 pursuant to [Public Resources Code section 21083\(f\)](#) (Register 2007, No. 30).

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14 CCR § 15072, 14 CA ADC § 15072

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Article 6. Negative Declaration Process

14 CCR § 15074

§ 15074. Consideration and Adoption of a Negative Declaration or Mitigated Negative Declaration.

(a) Any advisory body of a public agency making a recommendation to the decisionmaking body shall consider the proposed negative declaration or mitigated negative declaration before making its recommendation.

(b) Prior to approving a project, the decisionmaking body of the lead agency shall consider the proposed negative declaration or mitigated negative declaration together with any comments received during the public review process. The decisionmaking body shall adopt the proposed negative declaration or mitigated negative declaration only if it finds on the basis of the whole record before it (including the initial study and any comments received), that there is no substantial evidence that the project will have a significant effect on the environment and that the negative declaration or mitigated negative declaration reflects the lead agency's independent judgment and analysis.

(c) When adopting a negative declaration or mitigated negative declaration, the lead agency shall specify the location and custodian of the documents or other material which constitute the record of proceedings upon which its decision is based.

(d) When adopting a mitigated negative declaration, the lead agency shall also adopt a program for reporting on or monitoring the changes which it has either required in the project or made a condition of approval to mitigate or avoid significant environmental effects.

(e) A lead agency shall not adopt a negative declaration or mitigated negative declaration for a project within the boundaries of a comprehensive airport land use plan or, if a comprehensive airport land use plan has not been adopted, for a project within two nautical miles of a public airport or public use airport, without first considering whether the project will result in a safety hazard or noise problem for persons using the airport or for persons residing or working in the project area.

(f) When a non-elected official or decisionmaking body of a local lead agency adopts a negative declaration or mitigated negative declaration, that adoption may be appealed to the agency's elected decisionmaking body, if one exists. For example, adoption of a negative declaration for a project by a city's planning commission may be appealed to the city council. A local lead agency may establish procedures governing such appeals.

Note: Authority cited: [Section 21083, Public Resources Code](#). Reference: [Sections 21080\(c\), 21081.6, 21082.1, 21096 and 21151, Public Resources Code](#); [Friends of B Street v. City of Hayward, \(1980\) 106 Cal. App. 3d 988](#).

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1. Amendment of section heading, section and Note filed 5-27-97; operative 5-27-97 pursuant to [Government Code section 11343.4\(d\)](#) (Register 97, No. 22).
2. Change without regulatory effect amending Note filed 10-6-2005 pursuant to [section 100, title 1, California Code of Regulations](#) (Register 2005, No. 40).
3. New subsection (f) and amendment of Note filed 7-27-2007; operative 7-27-2007 pursuant to [Public Resources Code section 21083\(f\)](#) (Register 2007, No. 30).

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14 CCR § 15074, 14 CA ADC § 15074

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Article 6. Negative Declaration Process

14 CCR § 15075

§ 15075. Notice of Determination on a Project for Which a Proposed
Negative or Mitigated Negative Declaration Has Been Approved.

(a) The lead agency shall file a notice of determination within five working days after deciding to carry out or approve the project. For projects with more than one phase, the lead agency shall file a notice of determination for each phase requiring a discretionary approval.

(b) The notice of determination shall include:

(1) An identification of the project including the project title as identified on the proposed negative declaration, its location, and the State Clearinghouse identification number for the proposed negative declaration if the notice of determination is filed with the State Clearinghouse.

(2) A brief description of the project.

(3) The agency's name, the applicant's name, if any, and the date on which the agency approved the project.

(4) The determination of the agency that the project will not have a significant effect on the environment.

(5) A statement that a negative declaration or a mitigated negative declaration was adopted pursuant to the provisions of CEQA.

(6) A statement indicating whether mitigation measures were made a condition of the approval of the project, and whether a mitigation monitoring plan/program was adopted.

(7) The address where a copy of the negative declaration or mitigated negative declaration may be examined.

(c) If the lead agency is a state agency, the lead agency shall file the notice of determination with the Office of Planning and Research within five working days after approval of the project by the lead agency.

(d) If the lead agency is a local agency, the local agency shall file the notice of determination with the county clerk of the county or counties in which the project will be located within five working days after approval of the project by the lead agency. If the

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project requires discretionary approval from any state agency, the local lead agency shall also, within five working days of this approval, file a copy of the notice of determination with the Office of Planning and Research.

(e) A notice of determination filed with the county clerk shall be available for public inspection and shall be posted by the county clerk within 24 hours of receipt for a period of at least 30 days. Thereafter, the clerk shall return the notice to the local lead agency with a notation of the period during which it was posted. The local lead agency shall retain the notice for not less than 12 months.

(f) A notice of determination filed with the Office of Planning and Research shall be available for public inspection and shall be posted for a period of at least 30 days. The Office of Planning and Research shall retain each notice for not less than 12 months.

(g) The filing of the notice of determination pursuant to subdivision (c) above for state agencies and the filing and posting of the notice of determination pursuant to subdivisions (d) and (e) above for local agencies, start a 30-day statute of limitations on court challenges to the approval under CEQA.

(h) A sample Notice of Determination (Rev. 2011) is provided in Appendix D. Each public agency may devise its own form, but the minimum content requirements of subdivision (b) above shall be met.

Public agencies are encouraged to make copies of all notices filed pursuant to this section available in electronic format on the Internet. Such electronic notices are in addition to the posting requirements of these guidelines and the Public Resources Code.

Note: Authority cited: [Sections 21083 and 21152, Public Resources Code](#). Reference: [Sections 21080\(c\), 21108\(a\), 21108\(c\), 21152 and 21167\(b\), Public Resources Code](#); [Citizens of Lake Murray Area Association v. City Council, \(1982\) 129 Cal. App. 3d 436](#).

HISTORY

1. Amendment of subsections (c) and (d) filed 1-30-86; effective thirtieth day thereafter (Register 86, No. 5).
2. Amendment of section heading and section filed 5-27-97; operative 5-27-97 pursuant to [Government Code section 11343.4\(d\)](#) (Register 97, No. 22).
3. New subsection (f) filed 10-26-98; operative 10-26-98 pursuant to [Public Resources Code section 21087](#) (Register 98, No. 44).
4. Amendment filed 9-7-2004; operative 9-7-2004 pursuant to [Public Resources Code section 21083\(e\)](#) (Register 2004, No. 37).
5. Change without regulatory effect amending subsections (c)-(h) and amending Note filed 10-6-2005 pursuant to [section 100, title 1, California Code of Regulations](#) (Register 2005, No. 40).
6. Change without regulatory effect amending subsections (b)(3) and (h) and amending Note filed 12-9-2011 pursuant to [section 100, title 1, California Code of Regulations](#); operative 1-1-2012 pursuant to AB 320, Hill (signed 10-10-2011, effective 1-1-2012) (Register 2011, No. 49).

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Article 7. Eir Process

14 CCR § 15091

§ 15091. Findings.

(a) No public agency shall approve or carry out a project for which an EIR has been certified which identifies one or more significant environmental effects of the project unless the public agency makes one or more written findings for each of those significant effects, accompanied by a brief explanation of the rationale for each finding. The possible findings are:

(1) Changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect as identified in the final EIR.

(2) Such changes or alterations are within the responsibility and jurisdiction of another public agency and not the agency making the finding. Such changes have been adopted by such other agency or can and should be adopted by such other agency.

(3) Specific economic, legal, social, technological, or other considerations, including provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or project alternatives identified in the final EIR.

(b) The findings required by subdivision (a) shall be supported by substantial evidence in the record.

(c) The finding in subdivision (a)(2) shall not be made if the agency making the finding has concurrent jurisdiction with another agency to deal with identified feasible mitigation measures or alternatives. The finding in subdivision (a)(3) shall describe the specific reasons for rejecting identified mitigation measures and project alternatives.

(d) When making the findings required in subdivision (a)(1), the agency shall also adopt a program for reporting on or monitoring the changes which it has either required in the project or made a condition of approval to avoid or substantially lessen significant environmental effects. These measures must be fully enforceable through permit conditions, agreements, or other measures.

(e) The public agency shall specify the location and custodian of the documents or other material which constitute the record of the proceedings upon which its decision is based.

(f) A statement made pursuant to Section 15093 does not substitute for the findings required by this section.

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Note: Authority cited: [Section 21083, Public Resources Code](#). Reference: [Sections 21002, 21002.1, 21081 and 21081.6, Public Resources Code](#); [Laurel Hills Homeowners Association v. City Council \(1978\) 83 Cal. App. 3d 515](#); [Cleary v. County of Stanislaus \(1981\) 118 Cal. App. 3d 348](#); [Sierra Club v. Contra Costa County \(1992\) 10 Cal.App.4th 1212](#); [Citizens for Quality Growth v. City of Mount Shasta \(1988\) 198 Cal.App.3d 433](#).

HISTORY

1. Amendment of subsections (a) and (a)(3), new subsections (d) and (e), and amendment of Note filed 5-27-97; operative 5-27-97 pursuant to [Government Code section 11343.4\(d\)](#) (Register 97, No. 22).
2. Amendment of subsection (c), new subsection (f) and amendment of Note filed 10-26-98; operative 10-26-98 pursuant to [Public Resources Code section 21087](#) (Register 98, No. 44).
3. Change without regulatory effect amending subsections (b)-(d) and amending Note filed 10-6-2005 pursuant to [section 100, title 1, California Code of Regulations](#) (Register 2005, No. 40).

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Article 9. Contents of Environmental Impact Reports

14 CCR § 15125

§ 15125. Environmental Setting.

(a) An EIR must include a description of the physical environmental conditions in the vicinity of the project, as they exist at the time the notice of preparation is published, or if no notice of preparation is published, at the time environmental analysis is commenced, from both a local and regional perspective. This environmental setting will normally constitute the baseline physical conditions by which a lead agency determines whether an impact is significant. The description of the environmental setting shall be no longer than is necessary to an understanding of the significant effects of the proposed project and its alternatives.

(b) When preparing an EIR for a plan for the reuse of a military base, lead agencies should refer to the special application of the principle of baseline conditions for determining significant impacts contained in Section 15229.

(c) Knowledge of the regional setting is critical to the assessment of environmental impacts. Special emphasis should be placed on environmental resources that are rare or unique to that region and would be affected by the project. The EIR must demonstrate that the significant environmental impacts of the proposed project were adequately investigated and discussed and it must permit the significant effects of the project to be considered in the full environmental context.

(d) The EIR shall discuss any inconsistencies between the proposed project and applicable general plans, specific plans and regional plans. Such regional plans include, but are not limited to, the applicable air quality attainment or maintenance plan or State Implementation Plan, area-wide waste treatment and water quality control plans, regional transportation plans, regional housing allocation plans, regional blueprint plans, plans for the reduction of greenhouse gas emissions, habitat conservation plans, natural community conservation plans and regional land use plans for the protection of the coastal zone, Lake Tahoe Basin, San Francisco Bay, and Santa Monica Mountains.

(e) Where a proposed project is compared with an adopted plan, the analysis shall examine the existing physical conditions at the time the notice of preparation is published, or if no notice of preparation is published, at the time environmental analysis is commenced as well as the potential future conditions discussed in the plan.

Note: Authority cited: Sections 21083 and 21083.05, Public Resources Code. Reference: Sections 21060.5, 21061 and 21100, Public Resources Code; E.P.I.C. v. County of El Dorado (1982) 131 Cal.App.3d 350; San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus (1994) 27 Cal.App.4th 713; Bloom v. McGurk (1994) 26 Cal.App.4th 1307.

HISTORY

1. Amendment of section and Note filed 10-26-98; operative 10-26-98 pursuant to Public Resources Code section 21087 (Register 98, No. 44).

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2. Change without regulatory effect amending Note filed 10-6-2005 pursuant to [section 100, title 1, California Code of Regulations](#) (Register 2005, No. 40).
3. Amendment of subsection (d) and Note filed 2-16-2010; operative 3-18-2010 (Register 2010, No. 8).

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14 CCR § 15125, 14 CA ADC § 15125

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14 CCR § 15130

§ 15130. Discussion of Cumulative Impacts.

(a) An EIR shall discuss cumulative impacts of a project when the project's incremental effect is cumulatively considerable, as defined in section 15065(a)(3). Where a lead agency is examining a project with an incremental effect that is not "cumulatively considerable," a lead agency need not consider that effect significant, but shall briefly describe its basis for concluding that the incremental effect is not cumulatively considerable.

(1) As defined in Section 15355, a cumulative impact consists of an impact which is created as a result of the combination of the project evaluated in the EIR together with other projects causing related impacts. An EIR should not discuss impacts which do not result in part from the project evaluated in the EIR.

(2) When the combined cumulative impact associated with the project's incremental effect and the effects of other projects is not significant, the EIR shall briefly indicate why the cumulative impact is not significant and is not discussed in further detail in the EIR. A lead agency shall identify facts and analysis supporting the lead agency's conclusion that the cumulative impact is less than significant.

(3) An EIR may determine that a project's contribution to a significant cumulative impact will be rendered less than cumulatively considerable and thus is not significant. A project's contribution is less than cumulatively considerable if the project is required to implement or fund its fair share of a mitigation measure or measures designed to alleviate the cumulative impact. The lead agency shall identify facts and analysis supporting its conclusion that the contribution will be rendered less than cumulatively considerable.

(b) The discussion of cumulative impacts shall reflect the severity of the impacts and their likelihood of occurrence, but the discussion need not provide as great detail as is provided for the effects attributable to the project alone. The discussion should be guided by the standards of practicality and reasonableness, and should focus on the cumulative impact to which the identified other projects contribute rather than the attributes of other projects which do not contribute to the cumulative impact. The following elements are necessary to an adequate discussion of significant cumulative impacts:

(1) Either:

(A) A list of past, present, and probable future projects producing related or cumulative impacts, including, if necessary, those projects outside the control of the agency, or

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(B) A summary of projections contained in an adopted local, regional or statewide plan, or related planning document, that describes or evaluates conditions contributing to the cumulative effect. Such plans may include: a general plan, regional transportation plan, or plans for the reduction of greenhouse gas emissions. A summary of projections may also be contained in an adopted or certified prior environmental document for such a plan. Such projections may be supplemented with additional information such as a regional modeling program. Any such document shall be referenced and made available to the public at a location specified by the lead agency.

(2) When utilizing a list, as suggested in paragraph (1) of subdivision (b), factors to consider when determining whether to include a related project should include the nature of each environmental resource being examined, the location of the project and its type. Location may be important, for example, when water quality impacts are at issue since projects outside the watershed would probably not contribute to a cumulative effect. Project type may be important, for example, when the impact is specialized, such as a particular air pollutant or mode of traffic.

(3) Lead agencies should define the geographic scope of the area affected by the cumulative effect and provide a reasonable explanation for the geographic limitation used.

(4) A summary of the expected environmental effects to be produced by those projects with specific reference to additional information stating where that information is available, and

(5) A reasonable analysis of the cumulative impacts of the relevant projects. An EIR shall examine reasonable, feasible options for mitigating or avoiding the project's contribution to any significant cumulative effects.

(c) With some projects, the only feasible mitigation for cumulative impacts may involve the adoption of ordinances or regulations rather than the imposition of conditions on a project-by-project basis.

(d) Previously approved land use documents, including, but not limited to, general plans, specific plans, regional transportation plans, plans for the reduction of greenhouse gas emissions, and local coastal plans may be used in cumulative impact analysis. A pertinent discussion of cumulative impacts contained in one or more previously certified EIRs may be incorporated by reference pursuant to the provisions for tiering and program EIRs. No further cumulative impacts analysis is required when a project is consistent with a general, specific, master or comparable programmatic plan where the lead agency determines that the regional or areawide cumulative impacts of the proposed project have already been adequately addressed, as defined in section 15152(f), in a certified EIR for that plan.

(e) If a cumulative impact was adequately addressed in a prior EIR for a community plan, zoning action, or general plan, and the project is consistent with that plan or action, then an EIR for such a project should not further analyze that cumulative impact, as provided in Section 15183(j).

Note: Authority cited: Sections 21083 and 21083.05, Public Resources Code. Reference: Sections 21003(d), 21083(b), 21093, 21094 and 21100, Public Resources Code; *Whitman v. Board of Supervisors*, (1979) 88 Cal.App.3d 397; *San Franciscans for Reasonable Growth v. City and County of San Francisco* (1984) 151 Cal.App.3d 61; *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692; *Laurel Heights Homeowners Association v. Regents of the University of California* (1988) 47 Cal.3d 376; *Sierra Club v. Gilroy* (1990) 220 Cal.App.3d 30; *Citizens to Preserve the Ojai v. County of Ventura* (1985) 176 Cal.App.3d 421; *Concerned Citizens of South Cent. Los Angeles v. Los Angeles Unified Sch. Dist.* (1994) 24 Cal.App.4th 826;

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Las Virgenes Homeowners Fed'n v. County of Los Angeles (1986) 177 Cal.App.3d 300; San Joaquin Raptor/Wildlife Rescue Ctr v. County of Stanislaus (1994) 27 Cal.App.4th 713; Fort Mojave Indian Tribe v. Cal. Dept. Of Health Services (1995) 38 Cal.App.4th 1574; Santa Monica Chamber of Commerce v. City of Santa Monica (2002) 101 Cal.App.4th 786; Communities for a Better Environment v. California Resources Agency (2002) 103 Cal.App.4th 98; and Ass'n of Irrigated Residents v. County of Madera (2003) 107 Cal.App.4th 1383.

HISTORY

1. Amendment of section heading, new subsection (d) and amendment of Note filed 5-27-97; operative 5-27-97 pursuant to [Government Code section 11343.4\(d\)](#) (Register 97, No. 22).
2. Amendment of section and Note filed 10-26-98; operative 10-26-98 pursuant to [Public Resources Code section 21087](#) (Register 98, No. 44).
3. Change without regulatory effect amending subsection (d) filed 2-1-2001 pursuant to [section 100, title 1, California Code of Regulations](#) (Register 2001, No. 5).
4. Change without regulatory effect repealing subsection (a)(4), amending subsection (b)(1)(B), redesignating former subsection (b)(1)(B)1. as subsection (b)(2), repealing former subsection (b)(1)(B)2., renumbering subsections and amending Note filed 7-22-2003 pursuant to [section 100, title 1, California Code of Regulations](#) (Register 2003, No. 30).
5. Change without regulatory effect amending Note filed 10-6-2005 pursuant to [section 100, title 1, California Code of Regulations](#) (Register 2005, No. 40).
6. Amendment of subsections (a), (b)(1)(B) and (d) and Note filed 2-16-2010; operative 3-18-2010 (Register 2010, No. 8).

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14 CCR § 15130, 14 CA ADC § 15130

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Article 10. Considerations in Preparing Eirs and Negative Declarations

14 CCR § 15144

§ 15144. Forecasting.

Drafting an EIR or preparing a negative declaration necessarily involves some degree of forecasting. While foreseeing the unforeseeable is not possible, **an agency must use its best efforts to find out and disclose all that it reasonably can.**

Note: Authority cited: [Section 21083, Public Resources Code](#). Reference: [Sections 21003, 21061 and 21100, Public Resources Code](#).

HISTORY

1. Change without regulatory effect amending Note filed 10-6-2005 pursuant to [section 100, title 1, California Code of Regulations](#) (Register 2005, No. 40).

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14 CCR § 15144, 14 CA ADC § 15144

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14 CCR § 15146

§ 15146. Degree of Specificity.

The degree of specificity required in an EIR will correspond to the degree of specificity involved in the underlying activity which is described in the EIR.

(a) An EIR on a construction project will necessarily be more detailed in the specific effects of the project than will be an EIR on the adoption of a local general plan or comprehensive zoning ordinance because the effects of the construction can be predicted with greater accuracy.

(b) An EIR on a project such as the adoption or amendment of a comprehensive zoning ordinance or a local general plan should focus on the secondary effects that can be expected to follow from the adoption, or amendment, but the EIR need not be as detailed as an EIR on the specific construction projects that might follow.

Note: Authority cited: [Section 21083, Public Resources Code](#). Reference: [Sections 21003, 21061 and 21100, Public Resources Code](#).

HISTORY

1. Change without regulatory effect amending Note filed 10-6-2005 pursuant to [section 100, title 1, California Code of Regulations](#) (Register 2005, No. 40).

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14 CCR § 15146, 14 CA ADC § 15146

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14 CCR § 15151

§ 15151. Standards for Adequacy of an EIR.

An EIR should be prepared with a sufficient degree of analysis to provide decisionmakers with information which enables them to make a decision which intelligently takes account of environmental consequences. An evaluation of the environmental effects of a proposed project need not be exhaustive, but the sufficiency of an EIR is to be reviewed in the light of what is reasonably feasible. Disagreement among experts does not make an EIR inadequate, but the EIR should summarize the main points of disagreement among the experts. The courts have looked not for perfection but for adequacy, completeness, and a good faith effort at full disclosure.

Note: Authority cited: [Section 21083, Public Resources Code](#). Reference: [Sections 21061 and 21100, Public Resources Code](#); [San Francisco Ecology Center v. City and County of San Francisco, 48 Cal. App. 3d 584 \(1975\)](#).

HISTORY

1. Change without regulatory effect amending Note filed 10-6-2005 pursuant to [section 100, title 1, California Code of Regulations](#) (Register 2005, No. 40).

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14 CCR § 15151, 14 CA ADC § 15151

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Article 11. Types of Eirs

14 CCR § 15162

§ 15162. Subsequent EIRs and Negative Declarations.

(a) When an EIR has been certified or a negative declaration adopted for a project, no subsequent EIR shall be prepared for that project unless the lead agency determines, on the basis of substantial evidence in the light of the whole record, one or more of the following:

(1) Substantial changes are proposed in the project which will require major revisions of the previous EIR or negative declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects;

(2) Substantial changes occur with respect to the circumstances under which the project is undertaken which will require major revisions of the previous EIR or negative declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; or

(3) **New information of substantial importance**, which was not known and could not have been known with the exercise of reasonable diligence at the time the previous EIR was certified as complete or the negative declaration was adopted, shows any of the following:

(A) The project will have one or more **significant effects not discussed in the previous EIR or negative declaration;**

(B) Significant effects previously examined will be substantially more severe than shown in the previous EIR;

(C) Mitigation measures or alternatives previously found not to be feasible **would in fact be feasible and would substantially reduce one or more significant effects of the project, but the project proponents decline to adopt the mitigation measure or alternative;** or

(D) Mitigation measures or alternatives which are considerably different from those analyzed in the previous EIR would substantially reduce one or more significant effects on the environment, but the project proponents decline to adopt the mitigation measure or alternative.

(b) If changes to a project or its circumstances occur or new information becomes available after adoption of a negative declaration, the lead agency shall prepare a subsequent EIR if required under subdivision (a). Otherwise the lead agency shall determine whether to prepare a subsequent negative declaration, an addendum, or no further documentation.

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(c) Once a project has been approved, the lead agency's role in project approval is completed, unless further discretionary approval on that project is required. Information appearing after an approval does not require reopening of that approval. If after the project is approved, any of the conditions described in subdivision (a) occurs, a subsequent EIR or negative declaration shall only be prepared by the public agency which grants the next discretionary approval for the project, if any. In this situation no other responsible agency shall grant an approval for the project until the subsequent EIR has been certified or subsequent negative declaration adopted.

(d) A subsequent EIR or subsequent negative declaration shall be given the same notice and public review as required under Section 15087 or Section 15072. A subsequent EIR or negative declaration shall state where the previous document is available and can be reviewed.

Note: Authority cited: [Section 21083, Public Resources Code](#). Reference: [Section 21166, Public Resources Code](#); [Bowman v. City of Petaluma \(1986\) 185 Cal.App.3d 1065](#); [Benton v. Board of Supervisors \(1991\) 226 Cal.App.3d 1467](#); and [Fort Mojave Indian Tribe v. California Department of Health Services et al. \(1995\) 38 Cal.App.4th 1574](#).

HISTORY

1. Amendment of section heading, text and Note filed 8-19-94; operative 9-19-94 (Register 94, No. 33).
2. Amendment of subsection (c) and Note filed 10-26-98; operative 10-26-98 pursuant to [Public Resources Code section 21087](#) (Register 98, No. 44).
3. Change without regulatory effect amending subsections (b)-(c) and Note filed 10-6-2005 pursuant to [section 100, title 1, California Code of Regulations](#) (Register 2005, No. 40).

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14 CCR § 15162, 14 CA ADC § 15162

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14 CCR § 15165

§ 15165. Multiple and Phased Projects.

Where individual projects are, or a phased project is, to be undertaken and where the total undertaking comprises a project with significant environmental effect, the lead agency shall prepare a single program EIR for the ultimate project as described in Section 15168. Where an individual project is a necessary precedent for action on a larger project, or commits the lead agency to a larger project, with significant environmental effect, an EIR must address itself to the scope of the larger project. Where one project is one of several similar projects of a public agency, but is not deemed a part of a larger undertaking or a larger project, the agency may prepare one EIR for all projects, or one for each project, but shall in either case comment upon the cumulative effect.

Note: Authority cited: [Section 21083, Public Resources Code](#). Reference: [Sections 21061, 21100 and 21151, Public Resources Code](#); [Whitman v. Board of Supervisors, 88 Cal. App. 3d 397 \(1979\)](#).

HISTORY

1. Change without regulatory effect amending Note filed 10-6-2005 pursuant to [section 100, title 1, California Code of Regulations](#) (Register 2005, No. 40).

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14 CCR § 15165, 14 CA ADC § 15165

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14 CCR § 15200

§ 15200. Purposes of Review.

The purposes of review of EIRs and negative declarations include:

- (a) Sharing expertise,
- (b) Disclosing agency analyses,
- (c) Checking for accuracy,
- (d) Detecting omissions,
- (e) Discovering public concerns, and
- (f) Soliciting counter proposals.

Note: Authority cited: [Section 21083, Public Resources Code](#). Reference: [Section 21000, 21108 and 21152, Public Resources Code](#); [Environmental Defense Fund v. Coastside County Water District \(1972\) 27 Cal. App. 3d 695](#); [County of Inyo v. City of Los Angeles \(1977\) 71 Cal. App. 3d 185](#).

HISTORY

1. New Article 13 (Sections 15201-15203) filed 2-2-78; effective thirtieth day thereafter (Register 78, No. 5).
2. Repealer of Article 13 (Sections 15201-15203) and new Article 13 (Sections 15200-15209) filed 7-13-83; effective thirtieth day thereafter (Register 83, No. 29).
3. Editorial correction of 7-13-83 order redesignating effective date to 8-1-83 filed 7-14-83 (Register 83, No. 29).
4. Change without regulatory effect amending Note filed 10-6-2005 pursuant to [section 100, title 1, California Code of Regulations](#) (Register 2005, No. 40).

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14 CCR § 15201

§ 15201. Public Participation.

Public participation is an essential part of the CEQA process. Each public agency should include provisions in its CEQA procedures for wide public involvement, formal and informal, consistent with its existing activities and procedures, in order to receive and evaluate public reactions to environmental issues related to the agency's activities. Such procedures should include, whenever possible, making environmental information available in electronic format on the Internet, on a web site maintained or utilized by the public agency.

Note: Authority cited: Section 21083, Public Resources Code. Reference: Sections 21000, 21082, 21108 and 21152, Public Resources Code; Environmental Defense Fund v. Coastside County Water District (1972) 27 Cal. App. 3d 695; People v. County of Kern (1974) 39 Cal. App. 3d 830; County of Inyo v. City of Los Angeles (1977) 71 Cal. App. 3d 185.

HISTORY

1. Amendment filed 10-26-98; operative 10-26-98 pursuant to Public Resources Code section 21087 (Register 98, No. 44).
2. Change without regulatory effect amending Note filed 10-6-2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

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14 CCR § 15203

§ 15203. Adequate Time for Review and Comment.

The lead agency shall provide adequate time for other public agencies and members of the public to review and comment on a draft EIR or negative declaration that it has prepared.

(a) Public agencies may establish time periods for review in their implementing procedures and shall notify the public and reviewing agencies of the time for receipt of comments on EIRs. These time periods shall be consistent with applicable statutes, the State CEQA Guidelines, and applicable clearinghouse review periods.

(b) A review period for an EIR does not require a halt in other planning or evaluation activities related to a project. Planning should continue in conjunction with environmental evaluation.

Note: Authority cited: [Section 21083, Public Resources Code](#). Reference: [Sections 21082, 21108 and 21152, Public Resources Code](#). Formerly Sections 15160(a) and (e).

HISTORY

1. Change without regulatory effect amending Note filed 10-6-2005 pursuant to [section 100, title 1, California Code of Regulations](#) (Register 2005, No. 40).

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14 CCR § 15203, 14 CA ADC § 15203

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14 CCR § 15204

§ 15204. Focus of Review.

(a) In reviewing draft EIRs, persons and public agencies should focus on the sufficiency of the document in identifying and analyzing the possible impacts on the environment and ways in which the significant effects of the project might be avoided or mitigated. Comments are most helpful when they suggest additional specific alternatives or mitigation measures that would provide better ways to avoid or mitigate the significant environmental effects. At the same time, reviewers should be aware that the adequacy of an EIR is determined in terms of what is reasonably feasible, in light of factors such as the magnitude of the project at issue, the severity of its likely environmental impacts, and the geographic scope of the project. CEQA does not require a lead agency to conduct every test or perform all research, study, and experimentation recommended or demanded by commentors. When responding to comments, lead agencies need only respond to significant environmental issues and do not need to provide all information requested by reviewers, as long as a good faith effort at full disclosure is made in the EIR.

(b) In reviewing negative declarations, persons and public agencies should focus on the proposed finding that the project will not have a significant effect on the environment. If persons and public agencies believe that the project may have a significant effect, they should:

- (1) Identify the specific effect,
- (2) Explain why they believe the effect would occur, and
- (3) Explain why they believe the effect would be significant.

(c) Reviewers should explain the basis for their comments, and should submit data or references offering facts, reasonable assumptions based on facts, or expert opinion supported by facts in support of the comments. Pursuant to Section 15064, an effect shall not be considered significant in the absence of substantial evidence.

(d) Reviewing agencies or organizations should include with their comments the name of a contact person who would be available for later consultation if necessary. Each responsible agency and trustee agency shall focus its comments on environmental information germane to that agency's statutory responsibility.

(e) This section shall not be used to restrict the ability of reviewers to comment on the general adequacy of a document or of the lead agency to reject comments not focused as recommended by this section.

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(f) Prior to the close of the public review period for an EIR or mitigated negative declaration, a responsible or trustee agency which has identified significant effects on the environment may submit to the lead agency proposed mitigation measures which would address those significant effects. Any such measures shall be limited to impacts affecting those resources which are subject to the statutory authority of that agency. If mitigation measures are submitted, the responsible or trustee agency shall either submit to the lead agency complete and detailed performance objectives for the mitigation measures, or shall refer the lead agency to appropriate, readily available guidelines or reference documents which meet the same purpose.

Note: Authority cited: [Section 21083, Public Resources Code](#). Reference: [Sections 21080, 21081.6, 21080.4, 21104 and 21153, Public Resources Code](#), Formerly Section 15161; [San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus \(1996\) 42 Cal.App.4th 608](#); and [Leonoff v. Monterey County Board of Supervisors \(1990\) 222 Cal.App.3d 1337](#).

HISTORY

1. Amendment of section and Note filed 10-26-98; operative 10-26-98 pursuant to [Public Resources Code section 21087](#) (Register 98, No. 44).
2. Change without regulatory effect amending Note filed 10-6-2005 pursuant to [section 100, title 1, California Code of Regulations](#) (Register 2005, No. 40).

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14 CCR § 15205

§ 15205. Review by State Agencies.

(a) Draft EIRs and negative declarations to be reviewed by state agencies shall be submitted to the State Clearinghouse, 1400 Tenth Street, Sacramento, California 95814. For U.S. Mail, submit to P.O. Box 3044, Sacramento, California 95812-3044. When submitting such documents to the State Clearinghouse, the public agency shall include, in addition to the printed copy, a copy of the document in electronic form on a diskette or by electronic mail transmission, if available.

(b) The following environmental documents shall be submitted to the State Clearinghouse for review by state agencies:

(1) Draft EIRs and negative declarations prepared by a state agency where such agency is a lead agency.

(2) Draft EIRs and negative declarations prepared by a public agency where a state agency is a responsible agency, trustee agency, or otherwise has jurisdiction by law with respect to the project.

(3) Draft EIRs and negative declarations on projects identified in Section 15206 as being of statewide, regional, or areawide significance.

(4) Draft EIRs, environmental assessments, and findings of no significant impact prepared pursuant to NEPA, the Federal Guidelines (Title 40 CFR, Part 1500, commencing with Section 1500.1).

(c) Public agencies may send environmental documents to the State Clearinghouse for review where a state agency has special expertise with regard to the environmental impacts involved. The areas of statutory authorities of state agencies are identified in Appendix B. Any such environmental documents submitted to the State Clearinghouse shall include, in addition to the printed copy, a copy of the document in electronic format, on a diskette or by electronic mail transmission, if available.

(d) When an EIR or negative declaration is submitted to the State Clearinghouse for review, the review period set by the lead agency shall be at least as long as the period provided in the state review system operated by the State Clearinghouse. In the state review system, the normal review period is 45 days for EIRs and 30 days for negative declarations. In exceptional circumstances, the State Clearinghouse may set shorter review periods when requested by the lead agency.

(e) A sufficient number of copies of an EIR, negative declaration, or mitigated negative declaration, shall be submitted to the State Clearinghouse for review and comment by state agencies. The notice of completion form required by the State Clearinghouse must be submitted together with the copies of the EIR and may be submitted together with the copies of the

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negative declaration or mitigated negative declaration. The notice of completion form required by the State Clearinghouse is included in Appendix C. If the lead agency uses the on-line process for submittal of the notice of completion form to the State Clearinghouse, the form generated from the Internet shall satisfy this requirement (refer to www.ceqanet.ca.gov).

(f) While the lead agency is encouraged to contact the regional and district offices of state responsible agencies, the lead agency must, in all cases, submit documents to the State Clearinghouse for distribution in order to comply with the review requirements of this section.

Note: Authority cited: [Section 21083, Public Resources Code](#). Reference: [Sections 21083, 21091, 21104 and 21153, Public Resources Code](#).

HISTORY

1. Amendment of subsections (a) and (c) filed 10-26-98; operative 10-26-98 pursuant to [Public Resources Code section 21087](#) (Register 98, No. 44).
2. Change without regulatory effect amending subsection (a) and Note filed 2-1-2001 pursuant to [section 100, title 1, California Code of Regulations](#) (Register 2001, No. 5).
3. Amendment of subsection (e) and amendment of Note filed 9-7-2004; operative 9-7-2004 pursuant to [Public Resources Code section 21083\(e\)](#) (Register 2004, No. 37).
4. Change without regulatory effect amending Note filed 10-6-2005 pursuant to [section 100, title 1, California Code of Regulations](#) (Register 2005, No. 40).

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14 CCR § 15205, 14 CA ADC § 15205

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14 CCR § 15206

§ 15206. Projects of Statewide, Regional, or Areawide Significance.

(a) Projects meeting the criteria in this section shall be deemed to be of statewide, regional, or areawide significance.

(1) A draft EIR or negative declaration prepared by any public agency on a project described in this section shall be submitted to the State Clearinghouse and should be submitted also to the appropriate metropolitan area council of governments for review and comment. The notice of completion form required by the State Clearinghouse must be submitted together with the copies of the EIR and may be submitted together with the copies of the negative declaration. The notice of completion form required by the State Clearinghouse is included in Appendix C. If the lead agency uses the on-line process for submittal of the notice of completion form to the State Clearinghouse, the form generated from the Internet shall satisfy this requirement (refer to www.ceqanet.ca.gov).

(2) When such documents are submitted to the State Clearinghouse, the public agency shall include, in addition to the printed copy, a copy of the document in electronic format on a diskette or by electronic mail transmission, if available.

(b) The lead agency shall determine that a proposed project is of statewide, regional, or areawide significance if the project meets any of the following criteria:

(1) A proposed local general plan, element, or amendment thereof for which an EIR was prepared. If a negative declaration was prepared for the plan, element, or amendment, the document need not be submitted for review.

(2) A project has the potential for causing significant effects on the environment extending beyond the city or county in which the project would be located. Examples of the effects include generating significant amounts of traffic or interfering with the attainment or maintenance of state or national air quality standards. Projects subject to this subdivision include:

(A) A proposed residential development of more than 500 dwelling units.

(B) A proposed shopping center or business establishment employing more than 1,000 persons or encompassing more than 500,000 square feet of floor space.

(C) A proposed commercial office building employing more than 1,000 persons or encompassing more than 250,000 square feet of floor space.

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- (D) A proposed hotel/motel development of more than 500 rooms.
- (E) A proposed industrial, manufacturing, or processing plant, or industrial park planned to house more than 1,000 persons, occupying more than 40 acres of land, or encompassing more than 650,000 square feet of floor area.
- (3) A project which would result in the cancellation of an open space contract made pursuant to the California Land Conservation Act of 1965 (Williamson Act) for any parcel of 100 or more acres.
- (4) A project for which an EIR and not a negative declaration was prepared which would be located in and would substantially impact the following areas of critical environmental sensitivity:
- (A) The Lake Tahoe Basin.
- (B) The Santa Monica Mountains Zone as defined by [Section 33105 of the Public Resources Code](#).
- (C) The [California Coastal Zone](#) as defined in, and mapped pursuant to, [Section 30103 of the Public Resources Code](#).
- (D) An area within 1/4 mile of a wild and scenic river as defined by Section 5093.5 of the Public Resources Code.
- (E) The Sacramento-San Joaquin Delta, as defined in [Water Code Section 12220](#).
- (F) The Suisun Marsh as defined in [Public Resources Code Section 29101](#).
- (G) The jurisdiction of the San Francisco Bay Conservation and Development Commission as defined in [Government Code Section 66610](#).
- (5) [A project which would substantially affect sensitive wildlife habitats](#) including but not limited to riparian lands, wetlands, bays, estuaries, marshes, and [habitats for](#) endangered, [rare](#) and threatened species as defined by Section 15380 of this Chapter.
- (6) A project which would interfere with attainment of regional water quality standards as stated in the approved areawide waste treatment management plan.
- (7) A project which would provide housing, jobs, or occupancy for 500 or more people within 10 miles of a nuclear power plant.

Note: Authority cited: [Section 21083, Public Resources Code](#). Reference. [Section 21083, Public Resources Code](#).

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HISTORY

1. Amendment of subsection (b)(5) filed 5-27-97; operative 5-27-97 pursuant to [Government Code section 11343.4\(d\)](#) (Register 97, No. 22).
2. New subsection (a)(1) designator and new subsection (a)(2) filed 10-26-98; operative 10-26-98 pursuant to [Public Resources Code section 21087](#) (Register 98, No. 44).
3. Change without regulatory effect amending subsection (b)(4)(B) filed 2-1-2001 pursuant to [section 100, title 1, California Code of Regulations](#) (Register 2001, No. 5).
4. Amendment of subsection (a)(1) and amendment of Note filed 9-7-2004; operative 9-7-2004 pursuant to [Public Resources Code section 21083\(e\)](#) (Register 2004, No. 37).
5. Change without regulatory effect amending subsection (b)(2) and Note filed 10-6-2005 pursuant to [section 100, title 1, California Code of Regulations](#) (Register 2005, No. 40).

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14 CCR § 15206, 14 CA ADC § 15206

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Article 20. Definitions

14 CCR § 15371

§ 15371. Negative Declaration.

“Negative declaration” means a written statement by the lead agency briefly describing the reasons that a proposed project, not exempt from CEQA, will not have a significant effect on the environment and therefore does not require the preparation of an EIR. The contents of a negative declaration are described in Section 15071.

Note: Authority cited: [Section 21083, Public Resources Code](#). Reference: [Section 21080\(c\), Public Resources Code](#).

HISTORY

1. Change without regulatory effect amending Note filed 10-6-2005 pursuant to [section 100, title 1, California Code of Regulations](#) (Register 2005, No. 40).

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14 CCR § 15371, 14 CA ADC § 15371

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Article 20. Definitions

14 CCR § 15382

§ 15382. Significant Effect on the Environment.

“Significant effect on the environment” means a substantial, or potentially substantial, adverse change in any of the physical conditions within the area affected by the project including land, air, water, minerals, flora, fauna, ambient noise, and objects of historic or aesthetic significance. An economic or social change by itself shall not be considered a significant effect on the environment. A social or economic change related to a physical change may be considered in determining whether the physical change is significant.

Note: Authority cited: [Section 21083, Public Resources Code](#). Reference: [Sections 21068, 21083, 21100 and 21151, Public Resources Code](#); [Hecton v. People of the State of California, 58 Cal. App. 3d 653](#).

HISTORY

1. On November 23, 1986 the regulation (Title 14, § 895.1) became effective which clarifies the Board's regulatory interpretation of “effect” and “impact” as specified in CEQA ([Public Resources Code § 21068](#) and [§ 21080.5\(d\)\(2\) and \(3\)](#)) (Register 86, No. 4).
2. Change without regulatory effect amending Note filed 10-6-2005 pursuant to [section 100, title 1, California Code of Regulations](#) (Register 2005, No. 40).

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14 CCR § 15382, 14 CA ADC § 15382

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14 CCR § 15369.5

§ 15369.5. Mitigated Negative Declaration.

“Mitigated negative declaration” means a negative declaration prepared for a project when the initial study has identified potentially significant effects on the environment, but (1) revisions in the project plans or proposals made by, or agreed to by, the applicant before the proposed negative declaration and initial study are released for public review would avoid the effects or mitigate the effects to a point where clearly no significant effect on the environment would occur, and (2) there is no substantial evidence in light of the whole record before the public agency that the project, as revised, may have a significant effect on the environment.

Note: Authority cited: [Section 21083, Public Resources Code](#). Reference: [Section 21064.5, Public Resources Code](#).

HISTORY

1. New section filed 5-27-97; operative 5-27-97 pursuant to [Government Code section 11343.4\(d\)](#) (Register 97, No. 22).
2. Change without regulatory effect amending Note filed 10-6-2005 pursuant to [section 100, title 1, California Code of Regulations](#) (Register 2005, No. 40).

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14 CCR § 15369.5, 14 CA ADC § 15369.5

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Title 14. Natural Resources

Division 6. Resources Agency

Chapter 3. Guidelines for Implementation of the California Environmental Quality Act

Article 9. Contents of Environmental Impact Reports

14 CCR § 15126.6

§ 15126.6. Consideration and Discussion of Alternatives to the Proposed Project.

(a) Alternatives to the Proposed Project. An EIR shall describe a range of reasonable alternatives to the project, or to the location of the project, which would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project, and evaluate the comparative merits of the alternatives. An EIR need not consider every conceivable alternative to a project. Rather it **must consider a reasonable range of potentially feasible alternatives that will foster informed decisionmaking and public participation**. An EIR is not required to consider alternatives which are infeasible. The lead agency is responsible for selecting a range of project alternatives for examination and must publicly disclose its reasoning for selecting those alternatives. There is no ironclad rule governing the nature or scope of the alternatives to be discussed other than the rule of reason. (*Citizens of Goleta Valley v. Board of Supervisors*(1990) 52 Cal.3d 553 and *Laurel Heights Improvement Association v. Regents of the University of California*(1988) 47 Cal.3d 376).

(b) Purpose. Because an EIR **must identify ways to mitigate or avoid the significant effects that a project may have on the environment** (*Public Resources Code Section 21002.1*), the **discussion of alternatives shall focus on alternatives to the project or its location which are capable of avoiding or substantially lessening any significant effects of the project**, even if these alternatives would impede to some degree the attainment of the project objectives, or would be more costly.

(c) Selection of a range of reasonable alternatives. The range of potential alternatives to the proposed project shall include those that could feasibly accomplish most of the basic objectives of the project and could avoid or substantially lessen one or more of the significant effects. The EIR should briefly **describe the rationale for selecting the alternatives to be discussed**. The EIR should also identify any alternatives that were considered by the lead agency but were rejected as infeasible during the scoping process and briefly explain the reasons underlying the lead agency's determination. Additional information explaining the choice of alternatives may be included in the administrative record. Among the factors that may be used to eliminate alternatives from detailed consideration in an EIR are:(i) failure to meet most of the basic project objectives, (ii) infeasibility, or (iii) inability to avoid significant environmental impacts.

(d) Evaluation of alternatives. The EIR shall include sufficient information about each alternative to allow meaningful evaluation, analysis, and comparison with the proposed project. A matrix displaying the major characteristics and significant environmental effects of each alternative may be used to summarize the comparison. If an alternative would cause one or more significant effects in addition to those that would be caused by the project as proposed, the significant effects of the alternative shall be discussed, but in less detail than the significant effects of the project as proposed. (*County of Inyo v. City of Los Angeles*(1981) 124 Cal.App.3d 1).

(e) "No project" alternative.

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(1) The specific alternative of “no project” shall also be evaluated along with its impact. The purpose of describing and analyzing a no project alternative is to allow decisionmakers to compare the impacts of approving the proposed project with the impacts of not approving the proposed project. The no project alternative analysis is not the baseline for determining whether the proposed project's environmental impacts may be significant, unless it is identical to the existing environmental setting analysis which does establish that baseline (see Section 15125).

(2) The “no project” analysis shall discuss the existing conditions at the time the notice of preparation is published, or if no notice of preparation is published, at the time environmental analysis is commenced, as well as what would be reasonably expected to occur in the foreseeable future if the project were not approved, based on current plans and consistent with available infrastructure and community services. If the environmentally superior alternative is the “no project” alternative, the EIR shall also identify an environmentally superior alternative among the other alternatives.

(3) A discussion of the “no project” alternative will usually proceed along one of two lines:

(A) When the project is the revision of an existing land use or regulatory plan, policy or ongoing operation, the “no project” alternative will be the continuation of the existing plan, policy or operation into the future. Typically this is a situation where other projects initiated under the existing plan will continue while the new plan is developed. Thus, the projected impacts of the proposed plan or alternative plans would be compared to the impacts that would occur under the existing plan.

(B) If the project is other than a land use or regulatory plan, for example a development project on identifiable property, the “no project” alternative is the circumstance under which the project does not proceed. Here the discussion would compare the environmental effects of the property remaining in its existing state against environmental effects which would occur if the project is approved. If disapproval of the project under consideration would result in predictable actions by others, such as the proposal of some other project, this “no project” consequence should be discussed. In certain instances, the no project alternative means “no build” wherein the existing environmental setting is maintained. However, where failure to proceed with the project will not result in preservation of existing environmental conditions, the analysis should identify the practical result of the project's non-approval and not create and analyze a set of artificial assumptions that would be required to preserve the existing physical environment.

(C) After defining the no project alternative using one of these approaches, the lead agency should proceed to analyze the impacts of the no project alternative by projecting what would reasonably be expected to occur in the foreseeable future if the project were not approved, based on current plans and consistent with available infrastructure and community services.

(f) Rule of reason. The range of alternatives required in an EIR is governed by a “rule of reason” that requires the EIR to set forth only those alternatives necessary to permit a reasoned choice. The alternatives shall be limited to ones that would avoid or substantially lessen any of the significant effects of the project. Of those alternatives, the EIR need examine in detail only the ones that the lead agency determines could feasibly attain most of the basic objectives of the project. The range of feasible alternatives shall be selected and discussed in a manner to foster meaningful public participation and informed decision making.

(1) Feasibility. Among the factors that may be taken into account when addressing the feasibility of alternatives are site suitability, economic viability, availability of infrastructure, general plan consistency, other plans or regulatory limitations, jurisdictional boundaries (projects with a regionally significant impact should consider the regional context), and whether the proponent can reasonably acquire, control or otherwise have access to the alternative site (or the site is already owned

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by the proponent). No one of these factors establishes a fixed limit on the scope of reasonable alternatives. ([Citizens of Goleta Valley v. Board of Supervisors](#)(1990) 52 Cal.3d 553; see [Save Our Residential Environment v. City of West Hollywood](#)(1992) 9 Cal.App.4th 1745, 1753, fn. 1).

(2) Alternative locations.

(A) Key question. The key question and first step in analysis is whether any of the significant effects of the project would be avoided or substantially lessened by putting the project in another location. Only locations that would avoid or substantially lessen any of the significant effects of the project need be considered for inclusion in the EIR.

(B) None feasible. If the lead agency concludes that no feasible alternative locations exist, it must disclose the reasons for this conclusion, and should include the reasons in the EIR. For example, in some cases there may be no feasible alternative locations for a geothermal plant or mining project which must be in close proximity to natural resources at a given location.

(C) Limited new analysis required. Where a previous document has sufficiently analyzed a range of reasonable alternative locations and environmental impacts for projects with the same basic purpose, the lead agency should review the previous document. The EIR may rely on the previous document to help it assess the feasibility of potential project alternatives to the extent the circumstances remain substantially the same as they relate to the alternative. ([Citizens of Goleta Valley v. Board of Supervisors](#) (1990) 52 Cal.3d 553, 573).

(3) An EIR need not consider an alternative whose effect cannot be reasonably ascertained and whose implementation is remote and speculative. ([Residents Ad Hoc Stadium Committee v. Board of Trustees](#)(1979) 89 Cal. App.3d 274).

Note: Authority cited: [Section 21083, Public Resources Code](#). Reference: [Sections 21002, 21002.1, 21003 and 21100, Public Resources Code](#); [Citizens of Goleta Valley v. Board of Supervisors](#), (1990) 52 Cal.3d 553; [Laurel Heights Improvement Association v. Regents of the University of California](#),(1988) 47 Cal.3d 376; [Gentry v. City of Murrieta](#)(1995) 36 Cal.App.4th 1359; and [Laurel Heights Improvement Association v. Regents of the University of California](#)(1993) 6 Cal.4th 1112.

HISTORY

1. New section filed 10-26-98; operative 10-26-98 pursuant to [Public Resources Code section 21087](#) (Register 98, No. 44).
2. Change without regulatory effect amending Note filed 10-6-2005 pursuant to [section 100, title 1, California Code of Regulations](#) (Register 2005, No. 40).

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14 CCR § 15126.6, 14 CA ADC § 15126.6

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Chapter 3. Guidelines for Implementation of the California Environmental Quality Act

Article 9. Contents of Environmental Impact Reports

14 CCR § 15126.4

§ 15126.4. Consideration and Discussion of Mitigation Measures Proposed to Minimize Significant Effects.

(a) Mitigation Measures in General.

(1) An EIR shall describe feasible measures which could minimize significant adverse impacts, including where relevant, inefficient and unnecessary consumption of energy.

(A) The discussion of mitigation measures shall distinguish between the measures which are proposed by project proponents to be included in the project and other measures proposed by the lead, responsible or trustee agency or other persons which are not included but the lead agency determines could reasonably be expected to reduce adverse impacts if required as conditions of approving the project. This discussion shall identify mitigation measures for each significant environmental effect identified in the EIR.

(B) Where several measures are available to mitigate an impact, each should be discussed and the basis for selecting a particular measure should be identified. Formulation of mitigation measures should not be deferred until some future time. However, measures may specify performance standards which would mitigate the significant effect of the project and which may be accomplished in more than one specified way.

(C) Energy conservation measures, as well as other appropriate mitigation measures, shall be discussed when relevant. Examples of energy conservation measures are provided in Appendix F.

(D) If a mitigation measure would cause one or more significant effects in addition to those that would be caused by the project as proposed, the effects of the mitigation measure shall be discussed but in less detail than the significant effects of the project as proposed. (*Stevens v. City of Glendale* (1981) 125 Cal.App.3d 986.)

(2) Mitigation measures must be fully enforceable through permit conditions, agreements, or other legally-binding instruments. In the case of the adoption of a plan, policy, regulation, or other public project, mitigation measures can be incorporated into the plan, policy, regulation, or project design.

(3) Mitigation measures are not required for effects which are not found to be significant.

(4) Mitigation measures must be consistent with all applicable constitutional requirements, including the following:

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(A) There must be an essential nexus (i.e. connection) between the mitigation measure and a legitimate governmental interest. *Nollan v. California Coastal Commission*, 483 U.S. 825 (1987); and

(B) The mitigation measure must be “roughly proportional” to the impacts of the project. *Dolan v. City of Tigard*, 512 U.S. 374 (1994). Where the mitigation measure is an ad hoc exaction, it must be “roughly proportional” to the impacts of the project. *Ehrlich v. City of Culver City* (1996) 12 Cal.4th 854.

(5) If the lead agency determines that a mitigation measure cannot be legally imposed, the measure need not be proposed or analyzed. Instead, the EIR may simply reference that fact and briefly explain the reasons underlying the lead agency's determination.

(b) Mitigation Measures Related to Impacts on Historical Resources.

(1) Where maintenance, repair, stabilization, rehabilitation, restoration, preservation, conservation or reconstruction of the historical resource will be conducted in a manner consistent with the Secretary of the Interior's Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring, and Reconstructing Historic Buildings (1995), Weeks and Grimmer, the project's impact on the historical resource shall generally be considered mitigated below a level of significance and thus is not significant.

(2) In some circumstances, documentation of an historical resource, by way of historic narrative, photographs or architectural drawings, as mitigation for the effects of demolition of the resource will not mitigate the effects to a point where clearly no significant effect on the environment would occur.

(3) Public agencies should, whenever feasible, seek to avoid damaging effects on any historical resource of an archaeological nature. The following factors shall be considered and discussed in an EIR for a project involving such an archaeological site:

(A) Preservation in place is the preferred manner of mitigating impacts to archaeological sites. Preservation in place maintains the relationship between artifacts and the archaeological context. Preservation may also avoid conflict with religious or cultural values of groups associated with the site.

(B) Preservation in place may be accomplished by, but is not limited to, the following:

1. Planning construction to avoid archaeological sites;
2. Incorporation of sites within parks, greenspace, or other open space;
3. Covering the archaeological sites with a layer of chemically stable soil before building tennis courts, parking lots, or similar facilities on the site.

4. Deeding the site into a permanent conservation easement.

(C) When data recovery through excavation is the only feasible mitigation, a data recovery plan, which makes provision for adequately recovering the scientifically consequential information from and about the historical resource, shall be prepared and adopted prior to any excavation being undertaken. Such studies shall be deposited with the California Historical Resources Regional Information Center. Archaeological sites known to contain human remains shall be treated in accordance with the provisions of [Section 7050.5 Health and Safety Code](#). If an artifact must be removed during project excavation or testing, curation may be an appropriate mitigation.

(D) Data recovery shall not be required for an historical resource if the lead agency determines that testing or studies already completed have adequately recovered the scientifically consequential information from and about the archaeological or historical resource, provided that the determination is documented in the EIR and that the studies are deposited with the California Historical Resources Regional Information Center.

(c) Mitigation Measures Related to Greenhouse Gas Emissions.

Consistent with section 15126.4(a), lead agencies shall consider feasible means, supported by substantial evidence and subject to monitoring or reporting, of mitigating the significant effects of greenhouse gas emissions. Measures to mitigate the significant effects of greenhouse gas emissions may include, among others:

- (1) Measures in an existing plan or mitigation program for the reduction of emissions that are required as part of the lead agency's decision;
- (2) Reductions in emissions resulting from a project through implementation of project features, project design, or other measures, such as those described in Appendix F;
- (3) Off-site measures, including offsets that are not otherwise required, to mitigate a project's emissions;
- (4) Measures that sequester greenhouse gases;
- (5) In the case of the adoption of a plan, such as a general plan, long range development plan, or plans for the reduction of greenhouse gas emissions, mitigation may include the identification of specific measures that may be implemented on a project-by-project basis. Mitigation may also include the incorporation of specific measures or policies found in an adopted ordinance or regulation that reduces the cumulative effect of emissions.

Note: Authority: [Sections 21083 and 21083.05, Public Resources Code](#). Reference: [Sections 5020.5, 21002, 21003, 21083.05, 21084.1 and 21100, Public Resources Code](#); [Citizens of Goleta Valley v. Board of Supervisors, \(1990\) 52 Cal.3d 553](#); [Laurel Heights Improvement Association v. Regents of the University of California, \(1988\) 47 Cal.3d 376](#); [Gentry v. City of Murrieta \(1995\) 36 Cal.App.4th 1359](#); [Laurel Heights Improvement Association v. Regents of the University of California \(1993\) 6 Cal.4th 1112](#); [Sacramento Old City Assn. v. City Council of Sacramento \(1991\) 229 Cal.App.3d 1011](#); [San Franciscans Upholding the Downtown Plan v. City & Co. of San Francisco \(2002\) 102 Cal.App.4th 656](#); [Ass'n of Irrigated Residents v.](#)

County of Madera (2003) 107 Cal.App.4th 1383; and *Environmental Council of Sacramento v. City of Sacramento* (2006) 142 Cal.App.4th 1018.

HISTORY

1. New section filed 10-26-98; operative 10-26-98 pursuant to [Public Resources Code section 21087](#) (Register 98, No. 44).
2. Amendment of subsection (b)(3)(C) and amendment of Note filed 9-7-2004; operative 9-7-2004 pursuant to [Public Resources Code section 21083\(e\)](#) (Register 2004, No. 37).
3. Change without regulatory effect amending Note filed 10-6-2005 pursuant to [section 100, title 1, California Code of Regulations](#) (Register 2005, No. 40).
4. New subsections (c)-(c)(5) and amendment of Note filed 2-16-2010; operative 3-18-2010 (Register 2010, No. 8).

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14 CCR § 15126.4, 14 CA ADC § 15126.4

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Title 14. Natural Resources

Division 6. Resources Agency

Chapter 3. Guidelines for Implementation of the California Environmental Quality Act

Article 5. Preliminary Review of Projects and Conduct of Initial Study

14 CCR § 15064.5

§ 15064.5. Determining the Significance of Impacts to Archaeological and Historical Resources.

(a) For purposes of this section, the term “historical resources” shall include the following:

(1) A resource listed in, or determined to be eligible by the State Historical Resources Commission, for listing in the California Register of Historical Resources ([Pub. Res. Code §5024.1](#), [Title 14 CCR, Section 4850 et seq.](#)).

(2) A resource included in a local register of historical resources, as defined in [section 5020.1\(k\) of the Public Resources Code](#) or identified as significant in an historical resource survey meeting the requirements [section 5024.1\(g\) of the Public Resources Code](#), shall be presumed to be historically or culturally significant. Public agencies must treat any such resource as significant unless the preponderance of evidence demonstrates that it is not historically or culturally significant.

(3) Any object, building, structure, site, area, place, record, or manuscript which a lead agency determines to be historically significant or significant in the architectural, engineering, scientific, economic, agricultural, educational, social, political, military, or cultural annals of California may be considered to be an historical resource, provided the lead agency's determination is supported by substantial evidence in light of the whole record. Generally, a resource shall be considered by the lead agency to be “historically significant” if the resource meets the criteria for listing on the California Register of Historical Resources ([Pub. Res. Code, § 5024.1, Title 14 CCR, Section 4852](#)) including the following:

(A) Is associated with events that have made a significant contribution to the broad patterns of California's history and cultural heritage;

(B) Is associated with the lives of persons important in our past;

(C) Embodies the distinctive characteristics of a type, period, region, or method of construction, or represents the work of an important creative individual, or possesses high artistic values; or

(D) Has yielded, or may be likely to yield, information important in prehistory or history.

(4) The fact that a resource is not listed in, or determined to be eligible for listing in the California Register of Historical Resources, not included in a local register of historical resources (pursuant to [section 5020.1\(k\) of the Public Resources Code](#)), or identified in an historical resources survey (meeting the criteria in [section 5024.1\(g\) of the Public Resources](#)

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Code) does not preclude a lead agency from determining that the resource may be an historical resource as defined in Public Resources Code sections 5020.1(j) or 5024.1.

(b) A project with an effect that may cause a substantial adverse change in the significance of an historical resource is a project that may have a significant effect on the environment.

(1) Substantial adverse change in the significance of an historical resource means physical demolition, destruction, relocation, or alteration of the resource or its immediate surroundings such that the significance of an historical resource would be materially impaired.

(2) The significance of an historical resource is materially impaired when a project:

(A) Demolishes or materially alters in an adverse manner those physical characteristics of an historical resource that convey its historical significance and that justify its inclusion in, or eligibility for, inclusion in the California Register of Historical Resources; or

(B) Demolishes or materially alters in an adverse manner those physical characteristics that account for its inclusion in a local register of historical resources pursuant to section 5020.1(k) of the Public Resources Code or its identification in an historical resources survey meeting the requirements of section 5024.1(g) of the Public Resources Code, unless the public agency reviewing the effects of the project establishes by a preponderance of evidence that the resource is not historically or culturally significant; or

(C) Demolishes or materially alters in an adverse manner those physical characteristics of a historical resource that convey its historical significance and that justify its eligibility for inclusion in the California Register of Historical Resources as determined by a lead agency for purposes of CEQA.

(3) Generally, a project that follows the Secretary of the Interior's Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring, and Reconstructing Historic Buildings or the Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings (1995), Weeks and Grimmer, shall be considered as mitigated to a level of less than a significant impact on the historical resource.

(4) A lead agency shall identify potentially feasible measures to mitigate significant adverse changes in the significance of an historical resource. The lead agency shall ensure that any adopted measures to mitigate or avoid significant adverse changes are fully enforceable through permit conditions, agreements, or other measures.

(5) When a project will affect state-owned historical resources, as described in Public Resources Code Section 5024, and the lead agency is a state agency, the lead agency shall consult with the State Historic Preservation Officer as provided in Public Resources Code Section 5024.5. Consultation should be coordinated in a timely fashion with the preparation of environmental documents.

(c) CEQA applies to effects on archaeological sites.

(1) When a project will impact an archaeological site, a lead agency shall first determine whether the site is an historical resource, as defined in subdivision (a).

(2) If a lead agency determines that the archaeological site is an historical resource, it shall refer to the provisions of [Section 21084.1 of the Public Resources Code](#), and this section, Section 15126.4 of the Guidelines, and the limits contained in [Section 21083.2 of the Public Resources Code](#) do not apply.

(3) If an archaeological site does not meet the criteria defined in subdivision (a), but does meet the definition of a unique archeological resource in [Section 21083.2 of the Public Resources Code](#), the site shall be treated in accordance with the provisions of [section 21083.2](#). The time and cost limitations described in [Public Resources Code Section 21083.2 \(c-f\)](#) do not apply to surveys and site evaluation activities intended to determine whether the project location contains unique archaeological resources.

(4) If an archaeological resource is neither a unique archaeological nor an historical resource, the effects of the project on those resources shall not be considered a significant effect on the environment. It shall be sufficient that both the resource and the effect on it are noted in the Initial Study or EIR, if one is prepared to address impacts on other resources, but they need not be considered further in the CEQA process.

(d) When an initial study identifies the existence of, or the probable likelihood, of Native American human remains within the project, a lead agency shall work with the appropriate Native Americans as identified by the Native American Heritage Commission as provided in [Public Resources Code section 5097.98](#). The applicant may develop an agreement for treating or disposing of, with appropriate dignity, the human remains and any items associated with Native American burials with the appropriate Native Americans as identified by the Native American Heritage Commission.” Action implementing such an agreement is exempt from:

(1) The general prohibition on disinterring, disturbing, or removing human remains from any location other than a dedicated cemetery ([Health and Safety Code Section 7050.5](#)).

(2) The requirements of CEQA and the Coastal Act.

(e) In the event of the accidental discovery or recognition of any human remains in any location other than a dedicated cemetery, the following steps should be taken:

(1) There shall be no further excavation or disturbance of the site or any nearby area reasonably suspected to overlie adjacent human remains until:

(A) The coroner of the county in which the remains are discovered must be contacted to determine that no investigation of the cause of death is required, and

(B) If the coroner determines the remains to be Native American:

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1. The coroner shall contact the Native American Heritage Commission within 24 hours.
2. The Native American Heritage Commission shall identify the person or persons it believes to be the most likely descended from the deceased Native American.
3. The most likely descendent may make recommendations to the landowner or the person responsible for the excavation work, for means of treating or disposing of, with appropriate dignity, the human remains and any associated grave goods as provided in [Public Resources Code section 5097.98](#), or

(2) Where the following conditions occur, the landowner or his authorized representative shall rebury the Native American human remains and associated grave goods with appropriate dignity on the property in a location not subject to further subsurface disturbance.

(A) The Native American Heritage Commission is unable to identify a most likely descendent or the most likely descendent failed to make a recommendation within 24 hours after being notified by the commission.

(B) The descendant identified fails to make a recommendation; or

(C) The landowner or his authorized representative rejects the recommendation of the descendant, and the mediation by the Native American Heritage Commission fails to provide measures acceptable to the landowner.

(f) As part of the objectives, criteria, and procedures required by [Section 21082 of the Public Resources Code](#), a lead agency should make provisions for historical or unique archaeological resources accidentally discovered during construction. These provisions should include an immediate evaluation of the find by a qualified archaeologist. If the find is determined to be an historical or unique archaeological resource, contingency funding and a time allotment sufficient to allow for implementation of avoidance measures or appropriate mitigation should be available. Work could continue on other parts of the building site while historical or unique archaeological resource mitigation takes place.

Note: Authority cited: [Section 21083, Public Resources Code](#). Reference: [Sections 21083.2, 21084 and 21084.1, Public Resources Code](#); and [Citizens for Responsible Development in West Hollywood v. City of West Hollywood \(1995\) 39 Cal.App.4th 490](#).

HISTORY

1. New section filed 10-26-98; operative 10-26-98 pursuant to [Public Resources Code section 21087](#) (Register 98, No. 44).
2. Change without regulatory effect amending subsections (c)(1), (c)(3), (d) and (e)(1)(B)2.-3. and amending Note filed 10-6-2005 pursuant to [section 100, title 1, California Code of Regulations](#) (Register 2005, No. 40).

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14 CCR § 15064.5, 14 CA ADC § 15064.5

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West's Annotated California Codes
Public Resources Code (Refs & Annos)
Division 13. Environmental Quality (Refs & Annos)
Chapter 2.6. General (Refs & Annos)

West's Ann.Cal.Pub.Res.Code § 21091

§ 21091. Draft environmental impact reports, proposed negative declarations, and proposed mitigated negative declarations; review periods

Effective: January 1, 2013

[Currentness](#)

(a) The public review period for a draft environmental impact report may not be less than 30 days. If the draft environmental impact report is submitted to the State Clearinghouse for review, the review period shall be at least 45 days, and the lead agency shall provide a sufficient number of copies of the document to the State Clearinghouse for review and comment by state agencies.

(b) The public review period for a proposed negative declaration or proposed mitigated negative declaration may not be less than 20 days. If the proposed negative declaration or proposed mitigated negative declaration is submitted to the State Clearinghouse for review, the review period shall be at least 30 days, and the lead agency shall provide a sufficient number of copies of the document to the State Clearinghouse for review and comment by state agencies.

(c)(1) Notwithstanding subdivisions (a) and (b), if a draft environmental impact report, proposed negative declaration, or proposed mitigated negative declaration is submitted to the State Clearinghouse for review and the period of review by the State Clearinghouse is longer than the public review period established pursuant to subdivision (a) or (b), whichever is applicable, the public review period shall be at least as long as the period of review and comment by state agencies as established by the State Clearinghouse.

(2) The public review period and the state agency review period may, but are not required to, begin and end at the same time. Day one of the state agency review period shall be the date that the State Clearinghouse distributes the CEQA document to state agencies.

(3) If the submittal of a CEQA document is determined by the State Clearinghouse to be complete, the State Clearinghouse shall distribute the document within three working days from the date of receipt. The State Clearinghouse shall specify the information that will be required in order to determine the completeness of the submittal of a CEQA document.

(d)(1) The lead agency shall consider comments it receives on a draft environmental impact report, proposed negative declaration, or proposed mitigated negative declaration if those comments are received within the public review period.

(2)(A) With respect to the consideration of comments received on a draft environmental impact report, the lead agency shall evaluate comments on environmental issues that are received from persons who have reviewed the draft and shall prepare a written response pursuant to subparagraph (B). The lead agency may also respond to comments that are received after the close of the public review period.

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(B) The written response shall describe the disposition of each significant environmental issue that is raised by commenters. The responses shall be prepared consistent with [Section 15088 of Title 14 of the California Code of Regulations](#).

(3)(A) With respect to the consideration of comments received on a draft environmental impact report, proposed negative declaration, proposed mitigated negative declaration, or notice pursuant to [Section 21080.4](#), the lead agency shall accept comments via email and shall treat email comments as equivalent to written comments.

(B) Any law or regulation relating to written comments received on a draft environmental impact report, proposed negative declaration, proposed mitigated negative declaration, or notice received pursuant to [Section 21080.4](#), shall also apply to email comments received for those reasons.

(e)(1) Criteria for shorter review periods by the State Clearinghouse for documents that must be submitted to the State Clearinghouse shall be set forth in the written guidelines issued by the Office of Planning and Research and made available to the public.

(2) Those shortened review periods may not be less than 30 days for a draft environmental impact report and 20 days for a negative declaration.

(3) A request for a shortened review period shall only be made in writing by the decisionmaking body of the lead agency to the Office of Planning and Research. The decisionmaking body may designate by resolution or ordinance a person authorized to request a shortened review period. A designated person shall notify the decisionmaking body of this request.

(4) A request approved by the State Clearinghouse shall be consistent with the criteria set forth in the written guidelines of the Office of Planning and Research.

(5) A shortened review period may not be approved by the Office of Planning and Research for a proposed project of statewide, regional, or areawide environmental significance as determined pursuant to [Section 21083](#).

(6) An approval of a shortened review period shall be given prior to, and reflected in, the public notice required pursuant to [Section 21092](#).

(f) Prior to carrying out or approving a project for which a negative declaration has been adopted, the lead agency shall consider the negative declaration together with comments that were received and considered pursuant to paragraph (1) of subdivision (d).

Credits

(Added by [Stats.1989, c. 907, § 2](#). Amended by [Stats.1993, c. 1130 \(A.B.1888\), § 11](#); [Stats.2002, c. 1052 \(A.B.3041\), § 3](#); [Stats.2003, c. 695 \(A.B.1545\), § 1](#); [Stats.2005, c. 267 \(S.B.648\), § 1](#); [Stats.2012, c. 548 \(A.B.2669\), § 7](#).)

[Notes of Decisions \(18\)](#)

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West's Ann. Cal. Pub. Res. Code § 21091, CA PUB RES § 21091

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West's Annotated California Codes
Public Resources Code (Refs & Annos)
Division 13. Environmental Quality (Refs & Annos)
Chapter 2.6. General (Refs & Annos)

West's Ann.Cal.Pub.Res.Code § 21092

§ 21092. Public notice of preparation of environmental impact report,
negative declaration, or determination of no additional significant effect

Effective: January 1, 2013

Currentness

(a) A lead agency that is preparing an environmental impact report or a negative declaration or making a determination pursuant to subdivision (c) of Section 21157.1 shall provide public notice of that fact within a reasonable period of time prior to certification of the environmental impact report, adoption of the negative declaration, or making the determination pursuant to subdivision (c) of Section 21157.1.

(b)(1) The notice shall specify the period during which comments will be received on the draft environmental impact report or negative declaration, and shall include the date, time, and place of any public meetings or hearings on the proposed project, a brief description of the proposed project and its location, the significant effects on the environment, if any, anticipated as a result of the project, the address where copies of the draft environmental impact report or negative declaration, and all documents referenced in the draft environmental impact report or negative declaration, are available for review, and a description of how the draft environmental impact report or negative declaration can be provided in an electronic format.

(2) This section shall not be construed in any manner that results in the invalidation of an action because of the alleged inadequacy of the notice content if there has been substantial compliance with the notice content requirements of this section.

(3) The notice required by this section shall be given to the last known name and address of all organizations and individuals who have previously requested notice, and shall also be given by at least one of the following procedures:

(A) Publication, no fewer times than required by Section 6061 of the Government Code, by the public agency in a newspaper of general circulation in the area affected by the proposed project. If more than one area will be affected, the notice shall be published in the newspaper of largest circulation from among the newspapers of general circulation in those areas.

(B) Posting of notice by the lead agency on- and off-site in the area where the project is to be located.

(C) Direct mailing to the owners and occupants of contiguous property shown on the latest equalized assessment roll.

(c) For a project involving the burning of municipal wastes, hazardous waste, or refuse-derived fuel, including, but not limited to, tires, meeting the qualifications of subdivision (d), notice shall be given to all organizations and individuals who have previously requested notice and shall also be given by at least the procedures specified in subparagraphs (A), (B), and (C)

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of paragraph (3) of subdivision (b). In addition, notification shall be given by direct mailing to the owners and occupants of property within one-fourth of a mile of any parcel or parcels on which is located a project subject to this subdivision.

(d) The notice requirements of subdivision (c) apply to both of the following:

(1) The construction of a new facility.

(2) The expansion of an existing facility that burns hazardous waste which would increase its permitted capacity by more than 10 percent. For purposes of this paragraph, the amount of expansion of an existing facility shall be calculated by comparing the proposed facility capacity with whichever of the following is applicable:

(A) The facility capacity approved in the facility's hazardous waste facilities permit pursuant to [Section 25200 of the Health and Safety Code](#) or its grant of interim status pursuant to [Section 25200.5 of the Health and Safety Code](#), or the facility capacity authorized in any state or local agency permit allowing the construction or operation of a facility for the burning of hazardous waste, granted before January 1, 1990.

(B) The facility capacity authorized in the facility's original hazardous waste facilities permit, grant of interim status, or any state or local agency permit allowing the construction or operation of a facility for the burning of hazardous waste, granted on or after January 1, 1990.

(e) The notice requirements specified in subdivision (b) or (c) shall not preclude a public agency from providing additional notice by other means if the agency so desires, or from providing the public notice required by this section at the same time and in the same manner as public notice otherwise required by law for the project.

Credits

(Added by Stats.1976, c. 1312, § 15. Amended by Stats.1980, c. 131, p. 303, § 1, eff. May 28, 1980; Stats.1989, c. 141, § 1, eff. July 14, 1989; Stats.1989, c. 907, § 3; Stats.1993, c. 1130 (A.B.1888), § 12; Stats.2003, c. 742 (S.B.1074), § 6; Stats.2011, c. 171 (A.B.209), § 1; Stats.2012, c. 162 (S.B.1171), § 148.)

[Notes of Decisions \(27\)](#)

West's Ann. Cal. Pub. Res. Code § 21092, CA PUB RES § 21092

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Public Resources Code (Refs & Annos)
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Chapter 3. State Agencies, Boards and Commissions (Refs & Annos)

West's Ann.Cal.Pub.Res.Code § 21100

§ 21100. Environmental impact report on proposed state projects; significant effect; cumulative impact analysis

Currentness

(a) All lead agencies shall prepare, or cause to be prepared by contract, and certify the completion of, an environmental impact report on any project which they propose to carry out or approve that may have a significant effect on the environment. Whenever feasible, a standard format shall be used for environmental impact reports.

(b) The environmental impact report shall include a detailed statement setting forth all of the following:

(1) All significant effects on the environment of the proposed project.

(2) In a separate section:

(A) Any significant effect on the environment that cannot be avoided if the project is implemented.

(B) Any significant effect on the environment that would be irreversible if the project is implemented.

(3) Mitigation measures proposed to minimize significant effects on the environment, including, but not limited to, measures to reduce the wasteful, inefficient, and unnecessary consumption of energy.

(4) Alternatives to the proposed project.

(5) The growth-inducing impact of the proposed project.

(c) The report shall also contain a statement briefly indicating the reasons for determining that various effects on the environment of a project are not significant and consequently have not been discussed in detail in the environmental impact report.

(d) For purposes of this section, any significant effect on the environment shall be limited to substantial, or potentially substantial, adverse changes in physical conditions which exist within the area as defined in [Section 21060.5](#).

(e) Previously approved land use documents, including, but not limited to, general plans, specific plans, and local coastal plans, may be used in cumulative impact analysis.

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Credits

(Added by Stats.1970, c. 1433, p. 2781, § 1. Amended by Stats.1972, c. 1154, p. 2274, § 2.5, eff. Dec. 5, 1972; Stats.1974, c. 276, p. 501, § 1, operative Jan. 7, 1975; Stats.1976, c. 1312, § 16; Stats.1981, c. 264, p. 1351, § 1; [Stats.1993, c. 1130 \(A.B.1888\)](#), § 14; [Stats.1994, c. 1294 \(A.B.314\)](#), § 7, eff. Oct. 4, 1994; [Stats.1994, c. 1230 \(S.B.749\)](#), § 9, eff. Sept. 30, 1994.)

[Notes of Decisions \(469\)](#)

West's Ann. Cal. Pub. Res. Code § 21100, CA PUB RES § 21100

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West's Annotated California Codes

Public Resources Code (Refs & Annos)

Division 13. Environmental Quality (Refs & Annos)

Chapter 3. State Agencies, Boards and Commissions (Refs & Annos)

West's Ann.Cal.Pub.Res.Code § 21108

§ 21108. Approval of determination to carry out project; notice; contents; public inspection; posting

Effective: January 1, 2013

[Currentness](#)

(a) If a state agency approves or determines to carry out a project that is subject to this division, the state agency shall file notice of that approval or that determination with the Office of Planning and Research. The notice shall identify the person or persons in [subdivision \(b\) or \(c\) of Section 21065](#), as reflected in the agency's record of proceedings, and indicate the determination of the state agency whether the project will, or will not, have a significant effect on the environment and shall indicate whether an environmental impact report has been prepared pursuant to this division.

(b) If a state agency determines that a project is not subject to this division pursuant to [subdivision \(b\) of Section 21080](#) or [Section 21172](#), and the state agency approves or determines to carry out the project, the state agency or the person specified in [subdivision \(b\) or \(c\) of Section 21065](#) may file notice of the determination with the Office of Planning and Research. A notice filed pursuant to this subdivision shall identify the person or persons in [subdivision \(b\) or \(c\) of Section 21065](#), as reflected in the agency's record of proceedings. A notice filed pursuant to this subdivision by a person specified in [subdivision \(b\) or \(c\) of Section 21065](#) shall have a certificate of determination attached to it issued by the state agency responsible for making the determination that the project is not subject to this division pursuant to [subdivision \(b\) of Section 21080](#) or pursuant to [Section 21172](#). The certificate of determination may be in the form of a certified copy of an existing document or record of the state agency.

(c) A notice filed pursuant to this section shall be available for public inspection, and a list of these notices shall be posted on a weekly basis in the Office of Planning and Research. Each list shall remain posted for a period of 30 days. The Office of Planning and Research shall retain each notice for not less than 12 months.

Credits

(Added by Stats.1972, c. 1154, p. 2275, § 9, eff. Dec. 5, 1972. Amended by Stats.1974, c. 56, p. 124, § 1, eff. March 4, 1974; Stats.1984, c. 571, § 1; [Stats.2004, c. 525 \(S.B.647\), § 2](#); [Stats.2011, c. 570 \(A.B.320\), § 1](#); [Stats.2012, c. 162 \(S.B.1171\), § 149](#).)

[Notes of Decisions \(8\)](#)

West's Ann. Cal. Pub. Res. Code § 21108, CA PUB RES § 21108

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West's Annotated California Codes
Public Resources Code (Refs & Annos)
Division 13. Environmental Quality (Refs & Annos)
Chapter 4. Local Agencies (Refs & Annos)

West's Ann.Cal.Pub.Res.Code § 21151

§ 21151. Local agencies; preparation and completion of impact report; submission as part of general plan report; significant effect; appeal to elected decision-making body

Effective: January 1, 2003

[Currentness](#)

(a) All local agencies shall prepare, or cause to be prepared by contract, and certify the completion of, an environmental impact report on any project that they intend to carry out or approve which may have a significant effect on the environment. When a report is required by [Section 65402 of the Government Code](#), the environmental impact report may be submitted as a part of that report.

(b) For purposes of this section, any significant effect on the environment shall be limited to substantial, or potentially substantial, adverse changes in physical conditions which exist within the area as defined in [Section 21060.5](#).

(c) If a nonelected decisionmaking body of a local lead agency certifies an environmental impact report, approves a negative declaration or mitigated negative declaration, or determines that a project is not subject to this division, that certification, approval, or determination may be appealed to the agency's elected decisionmaking body, if any.

Credits

(Added by Stats.1970, c. 1433, p. 2783, § 1. Amended by Stats.1972, c. 971, p. 1754, § 1; Stats.1972, c. 1154, p. 2276, § 11, eff. Dec. 5, 1972; Stats.1981, c. 264, p. 1352, § 2; [Stats.1993, c. 1070 \(S.B.722\)](#), § 3; [Stats.2002, c. 1121 \(S.B.1393\)](#), § 2.)

[Notes of Decisions \(342\)](#)

West's Ann. Cal. Pub. Res. Code § 21151, CA PUB RES § 21151

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West's Annotated California Codes
Public Resources Code (Refs & Annos)
Division 13. Environmental Quality (Refs & Annos)
Chapter 2.6. General (Refs & Annos)

West's Ann.Cal.Pub.Res.Code § 21083.9

§ 21083.9. Scoping meetings

Effective: January 1, 2013

Currentness

(a) Notwithstanding [Section 21080.4](#), [21104](#), or [21153](#), a lead agency shall call at least one scoping meeting for either of the following:

(1) A proposed project that may affect highways or other facilities under the jurisdiction of the Department of Transportation if the meeting is requested by the department. The lead agency shall call the scoping meeting as soon as possible, but not later than 30 days after receiving the request from the Department of Transportation.

(2) A project of statewide, regional, or areawide significance.

(b) The lead agency shall provide notice of at least one scoping meeting held pursuant to paragraph (2) of subdivision (a) to all of the following:

(1) A county or city that borders on a county or city within which the project is located, unless otherwise designated annually by agreement between the lead agency and the county or city.

(2) A responsible agency.

(3) A public agency that has jurisdiction by law with respect to the project.

(4) A transportation planning agency or public agency required to be consulted pursuant to [Section 21092.4](#).

(5) A public agency, organization, or individual who has filed a written request for the notice.

(c) For a public agency, organization, or individual that is required to be provided notice of a lead agency public meeting, the requirement for notice of a scoping meeting pursuant to subdivision (b) may be met by including the notice of a scoping meeting in the public meeting notice.

(d) A scoping meeting that is held in the city or county within which the project is located pursuant to the federal National Environmental Policy Act of 1969 ([42 U.S.C. Sec. 4321 et seq.](#)) and the regulations adopted pursuant to that act shall be deemed

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to satisfy the requirement that a scoping meeting be held for a project subject to paragraph (2) of subdivision (a) if the lead agency meets the notice requirements of subdivision (b) or subdivision (c).

(e) The referral of a proposed action to adopt or substantially amend a general plan to a city or county pursuant to [paragraph \(1\) of subdivision \(a\) of Section 65352 of the Government Code](#) may be conducted concurrently with the scoping meeting required pursuant to this section, and the city or county may submit its comments as provided pursuant to subdivision (b) of that section at the scoping meeting.

Credits

(Added by [Stats.1988, c. 532, § 1](#). Amended by [Stats.2001, c. 867 \(A.B.1532\), § 2](#); [Stats.2002, c. 638 \(A.B.1108\), § 1](#); [Stats.2008, c. 707 \(S.B.947\), § 1](#); [Stats.2011, c. 469 \(S.B.226\), § 4](#); [Stats.2012, c. 218 \(S.B.972\), § 1](#).)

West's Ann. Cal. Pub. Res. Code § 21083.9, CA PUB RES § 21083.9

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Barclays Official California Code of Regulations Currentness

Title 14. Natural Resources

Division 6. Resources Agency

Chapter 3. Guidelines for Implementation of the California Environmental Quality Act

Article 20. Definitions

14 CCR § 15369.5

§ 15369.5. Mitigated Negative Declaration.

“Mitigated negative declaration” means a negative declaration prepared for a project when the initial study has identified potentially significant effects on the environment, but (1) revisions in the project plans or proposals made by, or agreed to by, the applicant before the proposed negative declaration and initial study are released for public review would avoid the effects or mitigate the effects to a point where clearly no significant effect on the environment would occur, and (2) there is no substantial evidence in light of the whole record before the public agency that the project, as revised, may have a significant effect on the environment.

Note: Authority cited: [Section 21083, Public Resources Code](#). Reference: [Section 21064.5, Public Resources Code](#).

HISTORY

1. New section filed 5-27-97; operative 5-27-97 pursuant to [Government Code section 11343.4\(d\)](#) (Register 97, No. 22).
2. Change without regulatory effect amending Note filed 10-6-2005 pursuant to [section 100, title 1, California Code of Regulations](#) (Register 2005, No. 40).

This database is current through 11/1/13 Register 2013, No. 44

14 CCR § 15369.5, 14 CA ADC § 15369.5

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Chapter 2.6. General (Refs & Annos)

West's Ann.Cal.Pub.Res.Code § 21092.3

§ 21092.3. Posting of certain notices

Currentness

The notices required pursuant to Sections 21080.4 and 21092 for an environmental impact report shall be posted in the office of the county clerk of each county in which the project will be located and shall remain posted for a period of 30 days. The notice required pursuant to Section 21092 for a negative declaration shall be so posted for a period of 20 days, unless otherwise required by law to be posted for 30 days. The county clerk shall post the notices within 24 hours of receipt.

Credits

(Added by Stats.1989, c. 907, § 5. Amended by Stats.1993, c. 1130 (A.B.1888), § 13.)

Notes of Decisions (3)

West's Ann. Cal. Pub. Res. Code § 21092.3, CA PUB RES § 21092.3

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Cal. Civ. Prac. Environmental Litigation § 8:13

California Civil Practice Environmental Litigation
Database updated October 2013

Justice Ronald B. Robie, John F. Barg, Robert J. Gibson, Diane R. Smith

Chapter 8. Litigation Pursuant to the California Environmental Quality Act and Other Land Use Statutes

I. Litigation Pursuant to the California Environmental Quality Act

A. Legal Principles

3. Actions Involving Applicability of Environmental Impact Report Requirement

a. Negative Declarations

Summary

§ 8:13. Initial study as basis

West's Key Number Digest

West's Key Number Digest, **Environmental Law** 594

If there is a possibility that a project that is not exempt from CEQA may have a significant effect on the environment, the agency considering the project must undertake an initial threshold study to determine whether to prepare a negative declaration or an environmental impact report. [No Oil, Inc. v. City of Los Angeles, 13 Cal. 3d 68, 118 Cal. Rptr. 34, 529 P.2d 66, 7 Env 1257, 5 Env'tl. L. Rep. 20166 (1974), supplemented, 13 Cal. 3d 486, 119 Cal. Rptr. 216, 531 P.2d 784 (1975); Miller v. City of Hermosa Beach, 13 Cal. App. 4th 1118, 17 Cal. Rptr. 2d 408 (2d Dist. 1993), as modified, (Mar. 24, 1993)] A "negative declaration" is a written statement briefly describing the reasons that a proposed project will not have a significant effect on the environment and does not require the preparation of an environmental impact report. [Pub. Resources Code, § 21064.5] Prior to its adoption of a proposed mitigated negative declaration the lead agency must provide a notice of intent (NOI) to the public, responsible agencies, trustee agencies, and county clerks of affected counties. [Cal. Code Reg., tit. 14, § 15072, subd. (a)] Failure to send the proposed declaration to a trustee agency may be a basis for setting aside the adoption of the declaration in view of the importance of the information disclosure provisions of CEQA. [Fall River Wild Trout Foundation v. County of Shasta, 70 Cal. App. 4th 482, 82 Cal. Rptr. 2d 705 (3d Dist. 1999)] Also, failure to deliver the NOI to the county clerk for posting has been held to be a basis for invalidating a mitigated negative declaration. [Burrtec Waste Industries, Inc. v. City of Colton, 97 Cal. App. 4th 1133 (4th Dist 2002)]

If a lead agency determines that a proposed project, not otherwise exempt from CEQA, does not have a significant effect on the environment, the lead agency must adopt a negative declaration to that effect. [Pub. Resources Code, § 21080, subd. (c)] The negative declaration must be prepared for the proposed project in either of the following circumstances [Pub. Resources Code, § 21080, subd. (c)]:

- (1) there is no substantial evidence in light of the whole record before the agency that the project may have a significant effect on the environment.
- (2) an initial study identifies potentially significant effects on the environment, but:
 - (a) revisions in the project plans or proposals made by or agreed to by the applicant before the proposed negative declaration is released for public review would avoid the effects or mitigate the effects to a point where clearly no significant effects would occur; and
 - (b) there is no substantial evidence in light of the whole record before the agency that the project, as revised, may have a significant effect on the environment.

If there is substantial evidence, in light of the whole record, before the lead agency that the project may have a significant effect on the environment, an environmental impact report must be prepared. [Pub. Resources Code, § 21080, subd. (d)] For

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purposes of [Pub. Resources Code §§ 21080, and 21000 et seq.](#), substantial evidence includes facts, reasonable assumptions predicated on fact, or expert opinion supported by fact. [[Pub. Resources Code, § 21080, subd. \(e\)\(1\)](#)] Argument, speculation, unsubstantiated opinion or narrative, evidence that is clearly inaccurate or erroneous, or evidence of social or economic impacts that do not contribute to, or are not caused by, physical impacts on the environment, is not substantial evidence. [[Pub. Resources Code, § 21080, subd. \(e\)\(2\)](#)]

A "mitigated negative declaration" is one that is prepared for a project when the initial study has identified potentially significant effects on the environment, but the project applicant has agreed to revise the project so as to avoid or mitigate those effects. Specifically, to qualify for a "mitigated negative declaration," the following must occur [[Pub. Resources Code, § 21064.5](#)]:

(1) revisions in the project plans or proposals made by, or agreed to by, the applicant before the proposed negative declaration is released for public review would avoid the effects or mitigate the effects **to a point at which clearly no significant effect on the environment would occur;** and

(2) there is **no substantial evidence** in light of the whole record before the public agency that **the project, as revised, may have a significant effect on the environment.** The mitigation measures included in the "mitigated negative declaration" must be **fully enforceable** through permit conditions, agreements, or other measures. [[Pub. Resources Code, § 21081.6, subd. \(b\)](#)] **A mitigated negative declaration may be set aside if,** taking into consideration the mitigation measures, **there is substantial evidence that there is a fair argument that the project may have a significant environmental impact.** [[Taxpayers for Accountable School Bond Spending v. San Diego Unified School District, 215 Cal. App. 4th 1013, 156 Cal. Rptr. 3d 449, 293 Ed. Law Rep. 404 \(4th Dist. 2013\)](#) Installation of lighting at high school football field would have significant effect on traffic and parking. [Citizens for Responsible and Open Government v. City of Grand Terrace, 160 Cal. App. 4th 1323, 73 Cal. Rptr. 3d 202 \(4th Dist. 2008\)](#), as modified, (Mar. 13, 2008)]

A public agency must, under CEQA, provide that measures to mitigate or avoid significant effects on the environment are **fully enforceable** through permit conditions, agreements, or other measures. [[Pub. Resources Code § 21081.6, subd. \(b\)](#)] Mitigation includes avoiding the impact, minimizing impacts, rectifying impacts, reducing or eliminating the impact over time or compensating for the impact by providing substitute resources. [[Cal. Code Reg., tit. 14, § 15070](#)] In determining the adequacy of mitigation measures, the environmental record of the project proponent can be a significant factor in determining whether the measures are likely to be adequate. [[Maintain Our Desert Environment v. Town of Apple Valley, 124 Cal. App. 4th 430, 15 Cal. Rptr. 3d 322 \(4th Dist. 2004\)](#), as modified, (July 2, 2004)] Although an in-lieu fee program may be provided for mitigation, there must first be a CEQA analysis of the effectiveness of the fee. [[California Native Plant Society v. County of El Dorado, 170 Cal. App. 4th 1026, 88 Cal. Rptr. 3d 530 \(3d Dist. 2009\)](#)] Any mitigation measures imposed by the lead agency or changes in any or all activities involved in the project must be feasible and enforceable. [[Lincoln Place Tenants Ass'n v. City of Los Angeles, 155 Cal. App. 4th 425, 66 Cal. Rptr. 3d 120 \(2d Dist. 2007\)](#), as modified on denial of reh'g, (Oct. 10, 2007). Action can be brought to enforce such measures and there is no time limit on such actions, which may also be brought when imposed mitigation does not work out] Mitigation measures must also and meet the Constitutional "nexus" and "rough proportionality" requirements of [Nollan, Dolan, and Erlich](#). [[Cal. Code Reg., tit. 14, §§ 15126.4, 15041](#); [Nollan v. California Coastal Com'n, 483 U.S. 825, 107 S. Ct. 3141, 97 L. Ed. 2d 677, 1073, 26 Env't. Rep. Cas. \(BNA\) 1073, 17 Env't. L. Rep. 20918 \(1987\)](#); [Dolan v. City of Tigard, 512 U.S. 374, 114 S. Ct. 2309, 129 L. Ed. 2d 304, 1769, 38 Env't. Rep. Cas. \(BNA\) 1769, 24 Env't. L. Rep. 21083 \(1994\)](#); [Ehrlich v. City of Culver City, 12 Cal. 4th 854, 50 Cal. Rptr. 2d 242, 911 P.2d 429 \(1996\)](#); for additional discussion of these requirements, see § 8:37]

The process, contents, and use of the initial study are detailed in [Cal. Code Reg., tit. 14, § 15063](#). In order to be adequate, an initial study does not need to amount to a full-blown environmental impact report based on expert studies of all potential environmental impacts. For example, an initial study need not consider or discuss alternatives to the project. [[Lighthouse Field Beach Rescue v. City of Santa Cruz, 131 Cal. App. 4th 1170, 31 Cal. Rptr. 3d 901, 35 Env't. L. Rep. 20165 \(6th Dist. 2005\)](#)] Further, a negative declaration is not necessarily invalid if based on a defective initial study. [[Leonoff v. Monterey County Bd. of Supervisors, 222 Cal. App. 3d 1337, 272 Cal. Rptr. 372 \(6th Dist. 1990\)](#) (initial study conducted in connection with county's granting of use permit for contractor's service center was adequate and justified negative declaration, despite identification of several significant environmental effects, since study found that effects could be mitigated)]

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When a potential project involves the issuance of a lease, permit, license, or entitlement for use, on request of the applicant prior to the filing of a formal application, the lead agency shall provide for "preapplication consultation." The purpose of this consultation is to explore various issues that may arise in the CEQA process, including consultation with other public agencies. [Cal. Code Reg., tit. 14, § 15060.5]

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Cal. Civ. Prac. Environmental Litigation § 8:14

California Civil Practice Environmental Litigation

Database updated October 2013

Justice Ronald B. Robie, John F. Barg, Robert J. Gibson, Diane R. Smith

Chapter 8. Litigation Pursuant to the California Environmental Quality Act and Other Land Use Statutes

I. Litigation Pursuant to the California Environmental Quality Act

A. Legal Principles

3. Actions Involving Applicability of Environmental Impact Report Requirement

a. Negative Declarations

Summary

§ 8:14. Preparation and contents of declaration

A negative declaration must include [Cal. Code Reg., tit. 14, § 15071]:

- (1) a brief description of the project;
- (2) the location of the project and the name of the project proponent;
- (3) a proposed finding that the project will not have a significant effect on the environment;
- (4) an attached copy of the initial study documenting reasons to support the finding;
- (5) mitigation measures, if any, included in the project to avoid potentially significant effects.

An agency that is preparing a negative declaration must notify the public that the declaration is being prepared, through publication, posting, or direct mailing. [Pub. Resources Code, § 21092; for detailed discussion of notification requirements, which are same for preparation of environmental impact report, see § 8:18] The notice required by Public Resources Code section 21092 must be posted for at least 20 days. [Pub. Resources Code, § 21092.3] The agency must provide a public review period of at least 20 days for a proposed negative declaration or mitigated negative declaration [Pub. Resources Code, § 21091, subd. (b)], allowing sufficient time for members of the public to respond to the proposed finding before the negative declaration is approved. If the proposed negative declaration or mitigated negative declaration is submitted to the State Clearinghouse for review, the review period shall be at least 30 days. [Pub. Resources Code, § 21091, subd. (b)] Prior to approving the project, the lead agency must consider the proposed negative declaration together with any comments received during the public review process. It must approve the project if it finds, based on the initial study and the comments, that there is no substantial evidence that the project will have a significant effect on the environment. [Pub. Resources Code, § 21091, subd. (d)(1); Cal. Code Reg., tit. 14, § 15074, subd. (b)]

If a nonelected decisionmaking body of a local agency certifies a negative declaration, that certification may be appealed to the agency's elected decisionmaking body. [Pub. Resources Code, § 21151]

Practice Note:

The material submitted for review should be well organized. A county's failure to set forth an adequate, organized, and complete administrative record for appellate review demonstrating that it fully complied with the California Environmental Quality Act (CEQA) prior to approving mining company's conditional use permit and certifying final environmental impact report (EIR) required reversal of project approval. The administrative record spanned 14 volumes. A majority of documents were neither properly indexed nor coherently organized, two volumes contained no index of any kind, many documents were not labeled, and some appeared incomplete. [Cal. Code Reg., tit. 14, §§ 15000 et seq.; Pub. Res. Code §§ 21081, subd. (a)(3), 21168.9; *Protect Our Water v. County of Merced*, 110 Cal. App. 4th 362, 1 Cal. Rptr. 3d 726 (5th Dist. 2003)] Effective January 1, 2010, provisions in the California rules of court provide statewide standards for organizing the record and authorizing an electronic version of the record. [Cal. Rules of Court, rule 3.3165 et seq.] When a public agency shares

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confidential attorney-client memoranda with a project applicant, the attorney-client privilege is not waived and the material need not be in the administrative record. [[California Oak Foundation v. County of Tehama](#), 174 Cal. App. 4th 1217, 94 Cal. Rptr. 3d 902 (3d Dist. 2009), review denied, (Sept. 30, 2009)].

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Cal. Civ. Prac. Environmental Litigation § 8:17

California Civil Practice Environmental Litigation
Database updated October 2013

Justice Ronald B. Robie, John F. Barg, Robert J. Gibson, Diane R. Smith

Chapter 8. Litigation Pursuant to the California Environmental Quality Act and Other Land Use Statutes

I. Litigation Pursuant to the California Environmental Quality Act

A. Legal Principles

3. Actions Involving Applicability of Environmental Impact Report Requirement

b. Environmental Impact Reports

Summary

§ 8:17. Determination regarding significance of project's environmental effect

West's Key Number Digest

West's Key Number Digest, **Environmental Law** 579

Pursuant to Pub. Resources Code, §§ 21100 or 21151, agencies must prepare an environmental impact report, rather than a negative declaration, if it can be fairly argued on the basis of substantial evidence that the project may have significant environmental impact. Evidence to the contrary is not sufficient to support a decision to adopt a negative declaration. There is a low threshold requirement for preparation of an environmental impact report. [*Oro Fino Gold Mining Corp. v. County of El Dorado*, 225 Cal. App. 3d 872, 274 Cal. Rptr. 720 (3d Dist. 1990)] In making this determination, doubts should be resolved in favor of environmental review. [*County Sanitation Dist. No. 2 of Los Angeles County v. County of Kern*, 127 Cal. App. 4th 1544, 27 Cal. Rptr. 3d 28, 35 *Envtl. L. Rep.* 20070 (5th Dist. 2005)] An agency decision not to require an environmental impact report may be upheld only when there is no credible evidence to the contrary. [*Sierra Club v. County of Sonoma*, 6 Cal. App. 4th 1307, 8 Cal. Rptr. 2d 473 (1st Dist. 1992); see also, *Riverwatch v. County of San Diego*, 76 Cal. App. 4th 1428, 91 Cal. Rptr. 2d 322 (4th Dist. 1999), as modified, (Jan. 12, 2000) (prior illegal activity on the site of a rock quarry is the responsibility of the enforcing agencies and does not require analysis in the EIR)]

Initially a baseline must be established from which to measure potential impacts of a proposed project. This baseline must consist of the physical conditions actually existing at the time of the analysis. [Cal. Code Reg., tit 14, § 15125, subd. (a); *Communities For A Better Environment v. South Coast Air Quality Management Dist.*, 48 Cal. 4th 310, 106 Cal. Rptr. 3d 502, 226 P.3d 985 (2010); Baseline for addition to a refinery must be based on actual air emissions existing not the maximum authorized emissions under previously issued permits.] [*Sunnyvale West Neighborhood Assn. v. City of Sunnyvale City Council (Sunnyvale)*, 190 Cal. App. 4th 1351, 119 Cal. Rptr. 3d 481 (6th Dist. 2010).] Improper to use 2020 traffic conditions as baseline. The baseline with respect to available water supply can be based on adjudicated water rights which are higher than actual use at the time of the EIR preparation. [*Cherry Valley Pass Acres and Neighbors v. City of Beaumont*, 190 Cal. App. 4th 316, 118 Cal. Rptr. 3d 182 (4th Dist. 2010), review denied, (Feb. 16, 2011)]

For purposes of determining whether the preparation of an environmental impact report is necessary, any significant effect on the environment must be limited to substantial, or potentially substantial, adverse changes in physical conditions which exist within the area that will be affected by a proposed project, including land, air, water, minerals, flora, fauna, noise, and objects of historic or aesthetic significance. [Pub. Resources Code, §§ 21100, 21151, 21060.5] Impacts may be direct or indirect. [*Anderson First Coalition v. City of Anderson*, 130 Cal. App. 4th 1173, 30 Cal. Rptr. 3d 738, 35 *Envtl. L. Rep.* 20139 (3d Dist. 2005) (economic or social impacts of a shopping center which could result in urban decay are examples of indirect impacts that must be evaluated); *Bakersfield Citizens for Local Control v. City of Bakersfield*, 124 Cal. App. 4th 1184, 22 Cal. Rptr. 3d 203, 34 *Envtl. L. Rep.* 20153 (5th Dist. 2004) (potential "urban decay" from construction of Wal-Mart Store is indirect impact)] Consideration of indirect impacts on school facilities from a project are subject to provisions of Gov. Code, § 65996, subd. (a) which limits the means of mitigation of school impacts and consequently CEQA review.

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[Chawanakee Unified School Dist. v. County of Madera, 196 Cal. App. 4th 1016, 126 Cal. Rptr. 3d 859, 268 Ed. Law Rep. 466 (5th Dist. 2011), as modified on denial of reh'g, (July 19, 2011)]

Significant environmental impact may include an aesthetic impact, such as the impairment of views of the ocean, birds, and wildlife or the disturbance of one's tranquility. [Quail Botanical Gardens Foundation, Inc. v. City of Encinitas, 29 Cal. App. 4th 1597, 35 Cal. Rptr. 2d 470 (4th Dist. 1994), as modified on denial of reh'g, (Nov. 29, 1994) (proposed subdivision impaired view of adjacent botanical garden); Ocean View Estates Homeowners Ass'n, Inc. v. Montecito Water Dist., 116 Cal. App. 4th 396, 10 Cal. Rptr. 3d 451 (2d Dist. 2004) (residents' subjective opinions regarding aesthetic impact of a reservoir); Pocket Protectors v. City Of Sacramento, 124 Cal. App. 4th 903, 21 Cal. Rptr. 3d 791, 34 Env'tl. L. Rep. 20150 (3d Dist. 2004), review denied, (Mar. 30, 2005) (residents' personal opinions based on observation as to aesthetic impact of subdivision); North Coast Rivers Alliance v. Marin Municipal Water District Board of Directors, 216 Cal. App. 4th 614, 157 Cal. Rptr. 3d 240 (1st Dist. 2013) Water storage tanks to store desalted water either had an insignificant impact on scenic vistas or could be mitigated] Because CEQA concerns itself with physical changes to the physical environment, an economic or social change by itself is not considered a significant impact on the environment. [Citizen Action To Serve All Students v. Thornley, 222 Cal. App. 3d 748, 272 Cal. Rptr. 83, 61 Ed. Law Rep. 1016 (1st Dist. 1990)] A social or economic change related to a physical change may be considered in determining whether the physical change is significant. [Cal. Code Reg., tit. 14, § 15382; classroom crowding in local schools resulting from a proposed expansion of a university campus did not constitute a significant environmental impact and the university did not have to mitigate the problem. Goleta Union School Dist. v. Regents of University of California, 37 Cal. App. 4th 1025, 44 Cal. Rptr. 2d 110, 102 Ed. Law Rep. 688 (2d Dist. 1995)] The existence of public controversy over the environmental effects of a project does not require preparation of an environmental impact report if there is no substantial evidence before the agency that the project may have a significant effect on the environment. [Pub. Resources Code, § 21082.2 subd. (a)] The question is whether the project will affect the environment in general, not whether the project will affect particular persons [Mira Mar Mobile Community v. City of Oceanside, 119 Cal. App. 4th 477, 14 Cal. Rptr. 3d 308 (4th Dist. 2004), as modified, (July 13, 2004)]

A lead agency must find that a project may have a significant effect on the environment, thereby requiring preparation of an environmental impact report, if any of the following conditions exist [Pub. Resources Code, § 21083; Cal. Code Reg., tit. 14, § 15065]:

- (1) the project has the potential to:
 - (a) substantially degrade the quality of the environment;
 - (b) substantially reduce the habitat of fish or wildlife species or cause such populations to fall below self sustaining levels;
 - (c) threaten to eliminate a plant or animal community or restrict the range of endangered, rare, or threatened species; or
 - (d) eliminate important examples of the major periods of California history;
- (2) the project has the potential to achieve short term environmental goals to the disadvantage of long term goals;
- (3) the project has possible environmental effects that are individually limited but cumulatively considerable, meaning that, when viewed in connection with the effects of past, other current, or probable future projects, the incremental effects of the proposed project are considerable; or
- (4) the project's environmental effects will cause substantial adverse effects on human beings, either directly or indirectly.

The significant effect must be caused by the proposed project. Even if the site of a project has preexisting environmental problems, there is no significant impact if the project is not responsible for the problem. [Baird v. County of Contra Costa, 32 Cal. App. 4th 1464, 38 Cal. Rptr. 2d 93 (1st Dist. 1995), as modified, (Feb. 23, 1995) (site of proposed residential drug

treatment facility was contaminated by oil and other waste, but proposed facility did not in any way cause contamination; therefore, negative declaration was proper)]

The significant effect must be caused by the proposed project. Even if the site of a project has preexisting environmental problems, there is no significant impact if the project is not responsible for the problem. [*Baird v. County of Contra Costa*, 32 Cal. App. 4th 1464, 38 Cal. Rptr. 2d 93 (1st Dist. 1995), as modified, (Feb. 23, 1995) (site of proposed residential drug treatment facility was contaminated by oil and other waste, but proposed facility did not in any way cause contamination; therefore, negative declaration was proper)]

Similarly, the purchase of vacant land by a sanitary district adjacent to its sewage treatment plant to provide an odor "buffer zone" to disperse odor and permit the district to continue to emit odors does not change the use of the land and, therefore, has no significant adverse impact on the environment. [*Silveira v. Las Gallinas Valley Sanitary Dist.*, 54 Cal. App. 4th 980, 63 Cal. Rptr. 2d 244 (1st Dist. 1997)]

An agency must explain its reason for deciding whether or not a project's various environmental impacts are significant. [*Protect The Historic Amador Waterways v. Amador Water Agency*, 116 Cal. App. 4th 1099, 11 Cal. Rptr. 3d 104 (3d Dist. 2004), as modified, (Apr. 9, 2004) (Conclusion that drying up streams during part of the year was not significant without explanation)]

The cumulative impact analysis has been particularly controversial. A lead agency may determine that an incremental effect of a project is not cumulatively considerable where the project complies with a previously approved plan or mitigation program which includes specific requirements that will avoid or substantially lessen the cumulative problem. [*Cal. Code Reg.*, tit. 14, § 15064, subd. (h)(3) effective September 7, 2004] A previous version of this guideline was upheld by the court provided it was read to incorporate the "fair argument" standard for EIR preparation. [*Communities for a Better Environment v. California Resources Agency*, 103 Cal. App. 4th 98, 126 Cal. Rptr. 2d 441 (3d Dist. 2002), as modified, (Nov. 21, 2002)] As amended in 2004 the guideline refers to compliance with "approved plans" (such as water quality control plans, air quality plans, waste management plans, etc.) as a basis for the lead agency to conclude that the project's incremental contribution to cumulative effect is not significant. Although the guideline does not specifically refer to the "fair argument" standard, it would still apply. The analysis in an EIR of whether a project has "significant cumulative effects," means whether any additional amount of effect should be considered significant in the context of the existing cumulative effect. As the court noted, "... the greater the existing environmental problems are, the lower the threshold should be for treating a project's contribution to cumulative impacts as significant." [*Communities for a Better Environment v. California Resources Agency*, 103 Cal. App. 4th 98, 126 Cal. Rptr. 2d 441 (3d Dist. 2002), as modified, (Nov. 21, 2002)]; *Cal. Code Reg.*, tit. 14, §§ 15130, 15064, subd. (i)(1) (Renumbered § 15064, subd. (h)(1) effective July 22, 2003), 15065, 15355]

Communities for a Better Environment v. California Resources Agency, 103 Cal. App. 4th 98, 126 Cal. Rptr. 2d 441 (3d Dist. 2002), as modified, (Nov. 21, 2002) invalidated a guideline which permitted agencies to rely on regulatory standards to establish levels at which impacts to a particular resource are substantial or potentially substantially adverse to determine significant impact. [*Cal. Code Reg.*, tit. 14, § 15064, subd. (h)] since the guideline was inconsistent with the requirement that the "fair argument" standard must be utilized in determining significant impact. In response to the decision this guideline was repealed, effective July 22, 2003.

Caution:

It is unclear whether there is a substantive difference between "regulatory standards," which were held to be an unlawful basis of determining significant impacts, and "approved plans" referred to in the current regulation regarding determination of cumulative impacts.

The court, however, recognized as useful and upheld a guideline which encourages lead agencies to develop and publish the thresholds that the agency considers in determining the significance of environmental effects caused by projects under its review. [*Cal. Code Reg.*, tit. 14, § 15064.7] A threshold of significance does not have to be formally adopted by a lead agency unless it is to be used for evaluating significance in all future projects, as distinguished from a threshold for a specific project. [*Save Cuyama Valley v. County of Santa Barbara*, 213 Cal. App. 4th 1059, 153 Cal. Rptr. 3d 534 (2d Dist. 2013), as modified, (Feb. 8, 2013) County threshold for "adverse hydraulic impacts" of a gravel mine project was supported by substantial evidence] Many agencies have already adopted such thresholds. The Bay Area Air Quality Management District, for example, has adopted such thresholds of significance for facilities emitting greenhouse gasses. [Resolution No. 2010-06 (June 2, 2010)] Also, § 15081.5 of the CEQA guidelines lists subject areas for which preparation of an EIR is required

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by statute. However, "such thresholds cannot be used to determine automatically whether a certain environmental effect 'will normally be determined to be significant' or 'normally less significant' by the agency." [*Protect The Historic Amador Waterways v. Amador Water Agency*, 116 Cal. App. 4th 1099, 11 Cal. Rptr. 3d 104 (3d Dist. 2004), as modified, (Apr. 9, 2004)] Similarly, an agency cannot rely on a threshold when the record shows that substantial evidence supported a fair argument that the project would have significant, unmitigated environmental impacts. [*Mejia v. City of Los Angeles*, 130 Cal. App. 4th 322, 29 Cal. Rptr. 3d 788 (2d Dist. 2005)]

Practice Note:

The legislature initially provided that failure to analyze the effects of greenhouse gas emissions otherwise required to be reduced under the California Global Warming Solutions Act of 2006 [*Health & Saf. Code, §§ 35800 et seq.*, Division 25.5. See Environmental Litigation, *Chapter 7, § 7:55*] is not a violation of CEQA. Effective January 1, 2008, this exemption applies retroactively to any CEQA document not yet final. [*Pub. Resources Code, § 21097*, effective until January 1, 2010] On December 30, 2009, the Natural Resources Agency filed amendments to the guidelines required by the Act for the mitigation of greenhouse gas emissions. [*Pub. Resources Code, § 21083.05*; the new guidelines may be found at <http://ceres.ca.gov/ceqa/guidelines/>.]

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Cal. Civ. Prac. Environmental Litigation § 8:18

California Civil Practice Environmental Litigation
Database updated October 2013

Justice Ronald B. Robie, John F. Barg, Robert J. Gibson, Diane R. Smith

Chapter 8. Litigation Pursuant to the California Environmental Quality Act and Other Land Use Statutes

I. Litigation Pursuant to the California Environmental Quality Act

A. Legal Principles

3. Actions Involving Applicability of Environmental Impact Report Requirement

b. Environmental Impact Reports

Summary

§ 8:18. Preparation process

West's Key Number Digest

West's Key Number Digest, **Environmental Law** 580 to 584

The environmental impact report is the "heart" of CEQA. [Cal. Code Reg., tit. 14, § 15003, subd. (a); *Citizens of Goleta Valley v. Board of Supervisors*, 52 Cal. 3d 553, 276 Cal. Rptr. 410, 801 P.2d 1161 (1990)] The environmental impact report must be prepared directly by, or under contract to, a public agency. [Pub. Resources Code, § 21082.1] An agency may comply with this provision by adopting environmental impact report materials drafted by an applicant's consultant, as long as the agency independently reviews, evaluates, and exercises judgment over the documentation and the issues it raises and addresses. **These provisions regarding the preparation process apply to negative declarations as well as environmental impact reports.** [Pub. Resources Code, § 21082.1] [*Friends of La Vina v. County of Los Angeles*, 232 Cal. App. 3d 1446, 284 Cal. Rptr. 171 (2d Dist. 1991) (disapproved of by, *Western States Petroleum Assn. v. Superior Court*, 9 Cal. 4th 559, 38 Cal. Rptr. 2d 139, 888 P.2d 1268 (1995))] The applicant for a permit for which an EIR is prepared by a consultant under contract with the lead agency, has no cause of action against the lead agency or the consultant as to the adequacy of the EIR if the lead agency declares the report adequate. [*Mission Oaks Ranch, Ltd. v. County of Santa Barbara*, 65 Cal. App. 4th 713, 77 Cal. Rptr. 2d 1 (2d Dist. 1998) (disapproved of on other grounds by, *Briggs v. Eden Council for Hope & Opportunity*, 19 Cal. 4th 1106, 81 Cal. Rptr. 2d 471, 969 P.2d 564 (1999)) (EIR found unmitigable impacts and agency denied permit on that basis. Developer applicant prepared own analysis and sued agency and consultant. Suit was barred on basis of Civ. Code, § 47 (privilege) and Code Civ. Proc., § 425.16 (SLAPP (Strategic Litigation Against Public Participation) statutes)]

Practice Note:

Under certain circumstances a draft environmental impact report or proposed negative declaration must be submitted to the state clearinghouse in electronic form. [Pub. Resources Code, § 21082.1]

If a lead agency determines that an environmental impact report is required for a project, the lead agency must immediately send notice of that determination, called a notice of preparation, by certified mail or an equivalent procedure or e-mail to each responsible agency **and to those public agencies having jurisdiction by law over natural resources affected by the project** which are held in trust for the people of California. [Pub. Resources Code § 21091, subd. (d)] On receipt of the notice, each receiving agency must specify to the lead agency the scope and content of the environmental information which is germane to the statutory responsibilities of that responsible agency or public agency in connection with the proposed project and which, pursuant to CEQA, must be included in a draft environmental impact report. The information must be in writing and must be communicated to the lead agency by certified mail or equivalent procedure not later than 30 days after receipt of the notice of the lead agency's determination. The lead agency must request similar guidance from appropriate federal agencies. [Pub. Resources Code § 21080.4, subd. (a); Cal. Code Reg., tit. 14, § 15082] The notice of preparation required by Pub. Resources Code § 21080.4 must be posted in the office of the county clerk of the county or counties in which the project will be located and must remain posted for 30 days. [Pub. Resources Code § 21092.3] However, it has been held that failure to include the name of the end-user (Wal-Mart) of a warehouse project was permissible. [*Maintain Our Desert Environment*

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v. *Town of Apple Valley*, 124 Cal. App. 4th 430, 15 Cal. Rptr. 3d 322 (4th Dist. 2004), as modified, (July 2, 2004) and review denied, (Oct. 27, 2004)]

A "scoping meeting" must now be held on projects that meet certain criteria, including projects of statewide, regional or area-wide significance. Notice of this meeting may be included in the notice of a lead agency public meeting. [Pub. Resources Code, § 21083.9]

The procedures for preparing a draft environmental impact report are detailed in Cal. Code Reg., tit. 14, §§ 15084 and 15120 et seq. In projects described in Pub. Resources Code § 21065 [see § 8:7 for description of Pub. Resources Code, § 21065 projects], the lead agency must provide for early consultation to identify the range of actions, alternatives, mitigation measures, and significant effects to be analyzed in depth in the environmental impact report. At the lead agency's request, the Office of Planning and Research must ensure that each responsible agency, and any public agency that has jurisdiction with respect to the project, is notified regarding the early consultation. [Pub. Resources Code, § 21153] After a draft environmental impact report is completed, the lead agency files a notice of completion with the OPR. [Pub. Resources Code, § 21161; Cal. Code Reg., tit. 14, § 15085] The lead agency then must consult with and request comments on the draft environmental impact report from responsible agencies, trustee agencies, and other state, federal, and local agencies that exercise authority over resources that may be affected by the project. It may consult with any person who has special expertise with respect to any environmental impact involved in the project. [Pub. Resources Code, §§ 21104, subd. (a) and 21153; Cal. Code Reg., tit. 14, § 15086; see Pub. Resources Code, §§ 21092.4 (consultation with transportation planning agencies and public agencies that have transportation facilities) and 21104.2 (consultation with Department of Fish and Wildlife as to impact on continued existence of endangered species or threatened species)] It is an abuse of discretion if trustee agencies are not provided with a copy of the proposed negative declaration. [*Gentry v. City of Murrieta*, 36 Cal. App. 4th 1359, 43 Cal. Rptr. 2d 170 (4th Dist. 1995), as modified on denial of reh'g, (Aug. 17, 1995). The project affected wildlife. Although comments were solicited from the State Department of Fish and Wildlife during the initial study period, the draft negative declaration was not sent to the Department as a trustee agency. The court did not rule if this ground alone would be sufficient to reverse a trial court which upheld the declaration.]

In addition to consulting with other agencies, an agency that is preparing an environmental impact report must provide public notice of that fact within a reasonable period of time prior to final adoption by the public agency of the report. [Pub. Resources Code, § 21092] The Guidelines state that public notice should be given when the notice of completion of the draft environmental impact report is sent to the OPR. [Cal. Code Reg., tit. 14, § 15087, subd. (a)] Notice must be given to all organizations and individuals who have previously requested notice. [Pub. Resources Code, § 21092; for definition of who "requests" notice, see Pub. Resources Code, § 21092.2] The notice must be given by at least one of the following procedures [Pub. Resources Code, § 21092]:

- (1) publication at least one time, as required by Gov. Code § 6061, in a newspaper of general circulation in the area affected by the proposed project.
- (2) posting of notice on and off site in the area where the project is to be located.
- (3) direct mailing to the owners of contiguous property as such owners are shown on the latest equalized assessment roll. In the absence of evidence to the contrary, the presumption in Evidence Code, 664 that official duties have been regularly performed may be sufficient to prove such notice was given. [*Gilroy Citizens for Responsible Planning v. City of Gilroy*, 140 Cal. App. 4th 911, 45 Cal. Rptr. 3d 102, 36 Env'tl. L. Rep. 20119 (6th Dist. 2006)]

The agency may provide additional notice by other means if it so desires. In addition, if the agency is otherwise required by law to provide public notice for the project, the agency may provide the notice required by Pub. Resources Code § 21092 at the same time and in the same manner as the otherwise required notice. [Pub. Resources Code, § 21092, subd. (d); for special notice requirements for specified projects involving burning of waste, see Pub. Resources Code, § 21092, subs. (b) and (c)] The public notice required by Pub. Resources Code § 21092 must be posted in the office of the county clerk of the county or counties in which the project will be located and must remain posted for 30 days. [Pub. Resources Code, § 21092.3]

The public review period for a draft environmental impact report must be at least 30 days. [Pub. Resources Code, § 21091, subd. (a)] The Guidelines suggest that the review period for a draft environmental impact report should be not less than 30 days, and not more than 90 days, from the date of the public notice except in unusual circumstances. [Cal. Code Reg.,

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tit. 14, § 15087, subd. (c)] If the draft environmental impact report is submitted to the State Clearinghouse for review, the review period shall be at least 45 days. [Pub. Resources Code § 21091, subd. (a)] Failure to provide the full notice is not necessarily fatal [Gilroy Citizens for Responsible Planning v. City of Gilroy, 140 Cal. App. 4th 911, 45 Cal. Rptr. 3d 102, 36 Env'tl. L. Rep. 20119 (6th Dist. 2006)] The City made a good faith effort to follow CEQA requirements. Forty-two days from the date of publication of notice was sufficient. The public review period is important and one court has set aside a local agency decision following inadequate public review although the court also found the environmental documentation deficient. [Ultramar, Inc. v. South Coast Air Quality Management Dist., 17 Cal. App. 4th 689, 21 Cal. Rptr. 2d 608 (2d Dist. 1993)] The lead agency must evaluate the comments it receives and must prepare a written response describing the disposition of significant environmental issues raised. [Pub. Resources Code, § 21091, subd. (d)(2); Cal. Code Reg., tit. 14, § 15088] The lead agency then prepares and certifies a final environmental impact report. [Cal. Code Reg., tit. 14, §§ 15089, 15090] When significant new information that the project will have new or more severe adverse effects on the environment than previously disclosed is added to an environmental impact report after public notice has been given pursuant to Pub. Resources Code § 21092 and consultation has occurred pursuant to Pub. Resources Code §§ 21104 and 21153, but prior to certification, the public agency must give additional notice and must engage in additional consultation. [Pub. Resources Code, § 21092.1] New information added "is not 'significant' unless the EIR is changed in a way that deprives the public of a meaningful opportunity to comment upon a *substantial* adverse environmental effect of the project or a feasible way to mitigate or avoid such an effect (including a feasible project alternative) that the project's proponents have declined to implement." Recirculation is intended to be the exception rather than the general rule. [Laurel Heights Improvement Assn. v. Regents of University of California, 6 Cal. 4th 1112, 26 Cal. Rptr. 2d 231, 864 P.2d 502, 88 Ed. Law Rep. 264 (1993), as modified on denial of reh'g, (Feb. 24, 1994); Cal. Code Reg., tit. 14, § 15073.5]

A person's comments on a proposed environmental impact report may be immune from tort liability regardless of the motives for the statements or comments made in the CEQA proceeding. [Dixon v. Superior Court, 30 Cal. App. 4th 733, 36 Cal. Rptr. 2d 687, 23 Media L. Rep. (BNA) 1663 (4th Dist. 1994) (petitioner objected to project and conducted letter writing campaign against consultant on project; petitioner made allegedly defamatory statements and allegedly interfered with consultant's prospective advantage)] The court in *Dixon* relied on the "SLAPP suit" provisions of Code Civ. Proc. § 425.16 as the basis of the immunity.

Practice Note:

Comments on a draft EIR, proposed negative declaration or mitigated negative declaration may be made by e-mail. Also, notices the lead agency has determined an EIR will be required may be sent by e-mail. [Pub. Resources Code, § 21091, subd. (d)] If an agency offers to provide other notices by e-mail, one may request in writing that the notices be sent by e-mail. [Pub. Resources Code, § 21092.2]

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DEPARTMENT OF PLANNING AND BUILDING

Planning for and use of land - helping build a better community

Aerial Photo





AVILA POINT COASTAL TRAIL CONNECTION

*Aerial by Microsoft Corp. Sept. 17, 2012

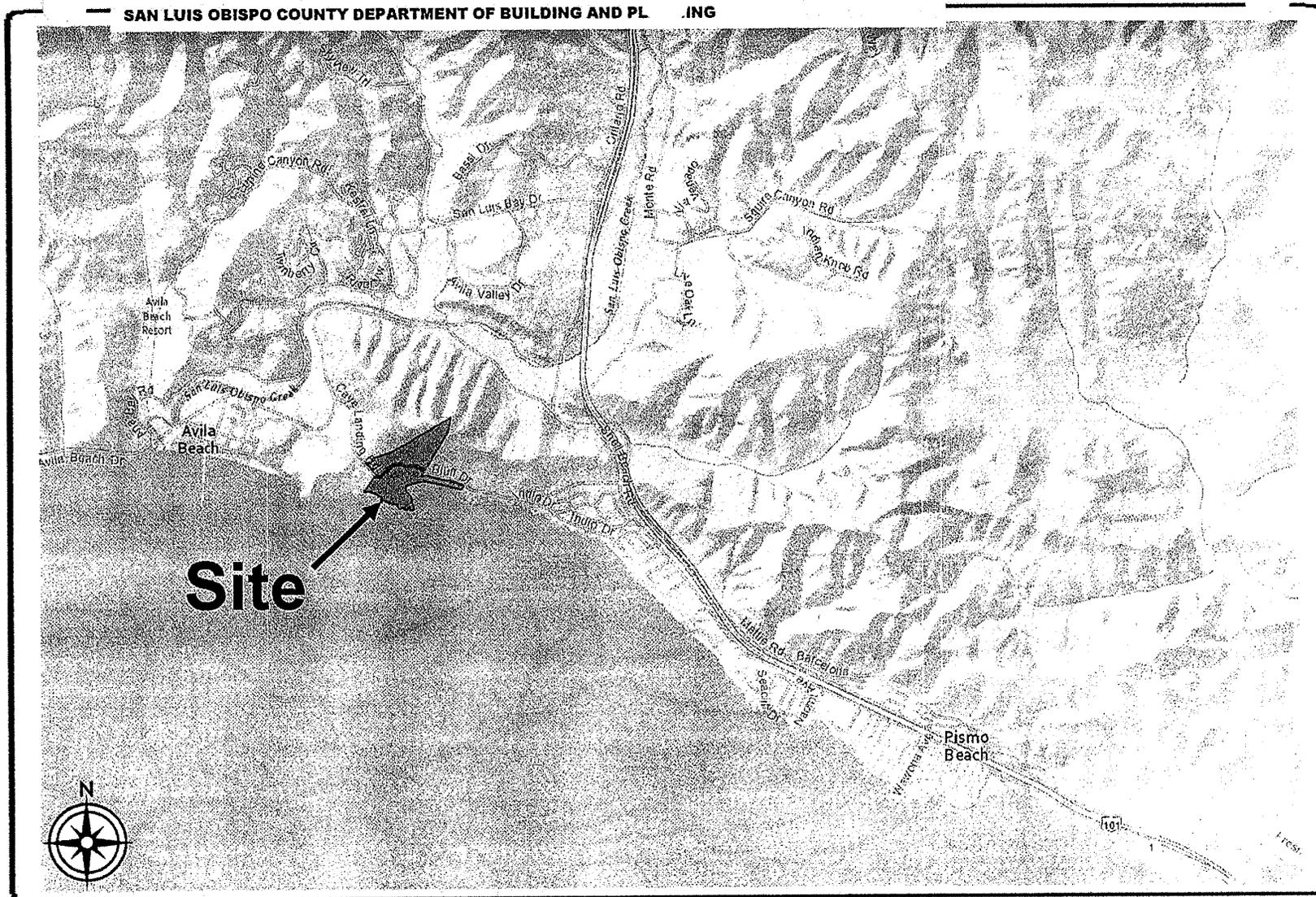


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SAN LUIS OBISPO COUNTY DEPARTMENT OF BUILDING AND PLANNING



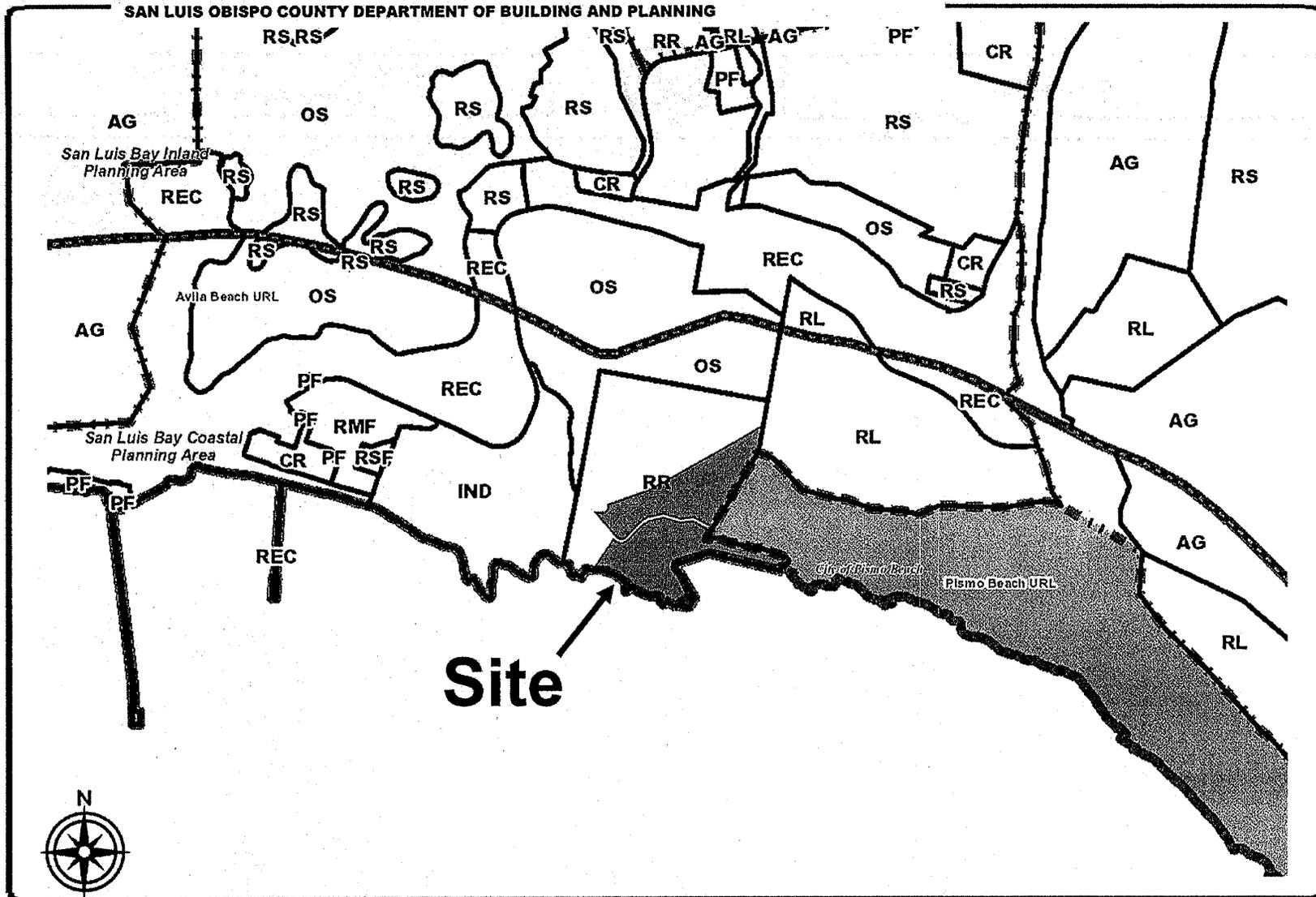
Site



PROJECT
 Minor Use Permit
 San Miguelito Partners DRC2011-00069



EXHIBIT
 Vicinity Map



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Attachment 6



PROJECT
 Minor Use Permit
 San Miguelito Partners DRC2011-00069



EXHIBIT
 Land Use Category Map

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Exhibit A - Initial Study References and Agency Contacts

The County Planning or Environmental Divisions have contacted various agencies for their comments on the proposed project. With respect to the subject application, the following have been contacted (marked with an) and when a response was made, it is either attached or in the application file:

<u>Contacted</u>	<u>Agency</u>	<u>Response</u>
<input checked="" type="checkbox"/>	County Public Works Department	attached
<input type="checkbox"/>	County Environmental Health Division	
<input type="checkbox"/>	County Agricultural Commissioner's Office	
<input type="checkbox"/>	County Airport Manager	
<input type="checkbox"/>	Airport Land Use Commission	
<input type="checkbox"/>	Air Pollution Control District	
<input type="checkbox"/>	County Sheriff's Department	
<input type="checkbox"/>	Regional Water Quality Control Board	
<input type="checkbox"/>	CA Coastal Commission	
<input type="checkbox"/>	CA Department of Fish and Game	
<input checked="" type="checkbox"/>	CA Department of Forestry (Cal Fire)	attached
<input type="checkbox"/>	CA Department of Transportation	
<input type="checkbox"/>	Community Service District	
<input checked="" type="checkbox"/>	Other City of Pismo Beach	attached
<input type="checkbox"/>	Other AVAC & North Chumash Tribal Co.	attached

*** "No comment" or "No concerns"-type responses are usually not attached*

The following checked ("") reference materials have been used in the environmental review for the proposed project and are hereby incorporated by reference into the Initial Study. The following information is available at the County Planning and Building Department.

- | | |
|---|--|
| <ul style="list-style-type: none"> <input checked="" type="checkbox"/> Project File for the Subject Application <u>County documents</u> <input type="checkbox"/> Airport Land Use Plans <input checked="" type="checkbox"/> Annual Resource Summary Report <input type="checkbox"/> Building and Construction Ordinance <input checked="" type="checkbox"/> Coastal Policies <input checked="" type="checkbox"/> Framework for Planning (Coastal & Inland) <input checked="" type="checkbox"/> General Plan (Inland & Coastal), including all maps & elements; more pertinent elements considered include: <ul style="list-style-type: none"> <input checked="" type="checkbox"/> Agriculture & Open Space Element <input checked="" type="checkbox"/> Energy Element <input checked="" type="checkbox"/> Environment Plan (Conservation, Historic and Esthetic Elements) <input checked="" type="checkbox"/> Housing Element <input checked="" type="checkbox"/> Noise Element <input checked="" type="checkbox"/> Parks & Recreation Element <input checked="" type="checkbox"/> Safety Element <input checked="" type="checkbox"/> Land Use Ordinance <input type="checkbox"/> Real Property Division Ordinance <input checked="" type="checkbox"/> Trails Plan <input type="checkbox"/> Solid Waste Management Plan | <ul style="list-style-type: none"> <input checked="" type="checkbox"/> Area Plan and Update EIR <input checked="" type="checkbox"/> Circulation Study <u>Other documents</u> <input checked="" type="checkbox"/> Archaeological Resources Map <input checked="" type="checkbox"/> Area of Critical Concerns Map <input checked="" type="checkbox"/> Areas of Special Biological Importance Map <input checked="" type="checkbox"/> California Natural Species Diversity Database <input checked="" type="checkbox"/> Clean Air Plan <input checked="" type="checkbox"/> Fire Hazard Severity Map <input checked="" type="checkbox"/> Flood Hazard Maps <input checked="" type="checkbox"/> Natural Resources Conservation Service Soil Survey for SLO County <input checked="" type="checkbox"/> Regional Transportation Plan <input checked="" type="checkbox"/> Uniform Fire Code <input checked="" type="checkbox"/> Water Quality Control Plan (Central Coast Basin - Region 3) <input checked="" type="checkbox"/> GIS mapping layers (e.g., habitat, streams, contours, etc.) <input type="checkbox"/> Other _____ |
|---|--|

2-80

structures that would require protection with a shoreline structure (e.g. seawall), and in the event of substantial erosion, the trail may need to be relocated..

This project appears to be mostly consistent with the San Luis Bay (Coastal) Area and the Coastal Zone Land Use Ordinance and Parks and Recreation Element. A variance is required to modify the Bluff Setback standard and development on 30 percent slope. These potential inconsistencies are based on the project site itself and are discussed in the previous paragraph.

Per the Coastal Zone Land Use Ordinance, a solid wall or fencing is to be located on side and rear property lines of any non-residential or non-agricultural use abutting a residential use or land use category, except for parks, golf course greens and fairways. It is presumed that a solid wall or fencing along the side and rear property lines of this site is not necessary to protect adjacent residential uses from the passive recreational use of this site. The site is 53 acres and has only one residence adjacent to the site. In addition, compliance with this standard will place fencing along the Ontario Ridge an important scenic backdrop for the coastal area of Avila Beach and Pismo Beach and block views of the ocean from a public recreation area. However this will be determined by the County Planning Commission and the California Coastal Commission at the time a Coastal Permit is processed.

Mitigation/Conclusion. The fencing waiver will not create a health and safety concern or environmental impacts therefore no additional measures will be required. To offset the policy inconsistency with the Bluff Erosion standard and development on slopes of over 30 percent, the recreational area shall be closed down in times of bad weather or ground movement to ensure public safety.

16. MANDATORY FINDINGS OF SIGNIFICANCE - Will the project:	Potentially Significant	Impact can & will be mitigated	Insignificant Impact	Not Applicable
a) Have the potential to degrade the quality of the environment, substantially reduce the habitat of a fish or wildlife species, cause a fish or wildlife population to drop below self-sustaining levels, threaten to eliminate a plant or animal community, reduce the number or restrict the range of a rare or endangered plant or animal or eliminate important examples of the major periods of California history or prehistory?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b) Have impacts that are individually limited, but cumulatively considerable? ("Cumulatively considerable" means that the incremental effects of a project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects)	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
c) Have environmental effects which will cause substantial adverse effects on human beings, either directly or indirectly?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

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acceptable threshold area.

Impact. The project is not expected to generate loud noises as pedestrian and bicycle riding are generally quiet activities. The parking lot and vehicles that park there already exist and resurfacing the parking lot and the trail to beach will not increase noise levels. The project will include construction equipments that could result in the temporary noise increases that may impact adjacent residences or animals on site and in the ocean.

Mitigation/Conclusion. To mitigate construction noise impacts, construction activities such that the noise or vibration creates a disturbance will be limited to the hours of 7:00 a.m. to 7:00 p.m. in accordance with the requirements of the CZLUO. In addition, Heavy equipment that creates noise levels above 85 dB shall not be used for project activities along the shoreline during installation

9. POPULATION/HOUSING - <i>Will the project:</i>	Potentially Significant	Impact can & will be mitigated	Insignificant Impact	Not Applicable
a) <i>Induce substantial growth in an area either directly or indirectly (e.g., through projects in an undeveloped area or extension of major infrastructure)?</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) <i>Displace existing housing or people, requiring construction of replacement housing elsewhere?</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c) <i>Create the need for substantial new housing in the area?</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d) <i>Use substantial amount of fuel or energy?</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
e) <i>Other:</i> _____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Setting In its efforts to provide for affordable housing, the county currently administers the Home Investment Partnerships (HOME) Program and the Community Development Block Grant (CDBG) program, which provides limited financing to projects relating to affordable housing throughout the county. The County's Inclusionary Housing Ordinance requires provision of new affordable housing in conjunction with both residential and nonresidential development and subdivisions.

Impact. The project will not result in a need for a significant amount of new housing, and will not displace existing housing. The trails and parking lot refurbishing does not have the potential to increase population.

Mitigation/Conclusion. No significant population and housing impacts are anticipated. No mitigation measures are necessary.

10. PUBLIC SERVICES/UTILITIES - <i>Will the project have an effect upon, or result in the need for new or altered public services in any of the following areas:</i>	Potentially Significant	Impact can & will be mitigated	Insignificant Impact	Not Applicable
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4. BIOLOGICAL RESOURCES - Will the project:	Potentially Significant	Impact can & will be mitigated	Insignificant Impact	Not Applicable
a) Result in a loss of unique or special status species or their habitats?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
b) Reduce the extent, diversity or quality of native or other important vegetation?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c) Impact wetland or riparian habitat?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d) Introduce barriers to movement of resident or migratory fish or wildlife species, or factors, which could hinder the normal activities of wildlife?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
e) Other: _____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Setting. The following are existing elements on or near the proposed project relating to potential biological concerns:

On-site Vegetation: non native grasses

Name and distance from blue line creek(s): Unnamed tributary to San Luis Obispo Creek runs at the edge of the property.

Habitat(s): Coast Live Oak forest

Site's tree canopy coverage: Approximately 0%.

The Natural Diversity Database (or other biological references) identified the following species potentially existing within approximately one mile of the proposed project:

Black-flowered figwort (Scrophularia atrata) List 1B

Black-flowered figwort (*Scrophularia atrata*) has been found on the property, 0.66 and 0.82 miles to the east and north east. This perennial herb is generally found growing on calcareous or diatomaceous soils in a closed-cone coniferous forest, chaparral, coastal dunes, coastal scrub, or riparian scrub areas at elevations between 10 and 500 meters (30 to 1,640 feet). It is a California endemic which has a blooming period of April-June. Black-flowered figwort is considered rare by the CNPS (List 1B, RED 2-2-3).

Hoover's bentgrass (Agrostis hooveri) List 1B

Hoover's bentgrass (*Agrostis hooveri*) has been found about 0.86 mile to the east. This perennial herb prefers sandy soils in open chaparral, cismontane woodland, and valley and foothill grassland area below the 600-meter (1,970-foot) elevation. The species blooming period is April-July. Hoover's bentgrass is considered rare by the California Native Plant Society (List 1B, RED 2-2-3).

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6. GEOLOGY AND SOILS - <i>Will the project:</i>	Potentially Significant	Impact can & will be mitigated	Insignificant Impact	Not Applicable
f) Change the drainage patterns where substantial on- or off-site sedimentation/ erosion or flooding may occur?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
g) <i>Involve activities within the 100-year flood zone?</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
h) <i>Be inconsistent with the goals and policies of the County's Safety Element relating to Geologic and Seismic Hazards?</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
i) <i>Preclude the future extraction of valuable mineral resources?</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
j) <i>Other: _____</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Setting

GEOLOGY - The following relates to the project's geologic aspects or conditions:

- Topography: to steeply sloping
- Within County's Geologic Study Area?: Yes
- Landslide Risk Potential: High
- Liquefaction Potential: Low
- Nearby potentially active faults?: Yes Distance? runs through property
- Area known to contain serpentine or ultramafic rock or soils?: No
- Shrink/Swell potential of soil: Low to moderate
- Other notable geologic features? land slide on site

The project is within the Geologic Study area designation or within a high liquefaction area, and is subject to the preparation of a geological report per the County's Land Use Ordinance CZLUO section 23.07.084(c)) to evaluate the area's geological stability. Geologic investigations have occurred on this property for the proposed project. Geological reports were conducted for the project (Fugro, 2009 and 2011 and 2012). These reports include review of geologic information by the contract County Geologist (Landset Engineers, Inc. Paparello)

DRAINAGE – The following relates to the project's drainage aspects:

- Within the 100-year Flood Hazard designation? No,
- Closest creek? unnamed tributary to San Luis Creek
- Distance? approximately 2000 feet north-west
- Soil drainage characteristics: Moderately drained to not well drained to poorly drained

For areas where drainage is identified as a potential issue, the Land Use Ordinance (LUO Sec. 22.52.080 or CZLUO Sec. 23.05.042) includes a provision to prepare a drainage plan to minimize potential drainage impacts. When required, this plan would need to address measures such as:

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constructing on-site retention or detention basins, or installing surface water flow dissipaters. This plan would also need to show that the increased surface runoff would have no more impacts than that caused by historic flows.

SEDIMENTATION AND EROSION – Soil type, amount of disturbance and slopes are key aspects to analyzing potential sedimentation and erosion issues. The project's soil types and descriptions are listed in the previous Agriculture section under "Setting". As described in the NRCS Soil Survey, the project's soil erodibility is as follows:

Soil erodibility: Low to moderate

When highly erosive conditions exist, a sedimentation and erosion control plan is required (LUO Sec. 22.52.090, CZLUO Sec. 23.05.036) to minimize these impacts. When required, the plan is prepared by a civil engineer to address both temporary and long-term sedimentation and erosion impacts. Projects involving more than one acre of disturbance are subject to the preparation of a Storm Water Pollution Prevention Plan (SWPPP), which focuses on controlling storm water runoff. The Regional Water Quality Control Board is the local extension who monitors this program.

LANDSLIDE HAZARDS – The project site contains known mapped landslides, however the design of the project has included avoidance and setbacks from these known landslides area. Slope instability may result from natural processes, such as erosion of the toe of slope or by ground shaking caused by earthquake. Slopes can also be modified artificially by grading or by addition of water or structures. Development on a slope can substantially increase the frequency and extent to potential slope failures. Steep unstable slopes in weak soil/bedrock typically characterize areas susceptible to landslides and record of slope failure. There are numerous factors that affect the stability of a slope: slope height and steepness, material composition, material strength, structural geologic relationships, ground water level and level of seismic shaking.

Landslides occur when a portion of a hillside becomes too weak to support its own weight. Some landslides move slowly and cause damage gradually, whereas other move so rapidly that they can destroy property and take lives suddenly and unrepentantly. Gravity is the force driving landslide movement, factors include: saturation by water, steepening, of slopes caused by erosion or construction, freeze/thaw cycles, earthquake shaking and volcanic eruptions,

Landslides are generally classified into slides, falls and flows. Slides move as large bodies by slipping along one or more failure surfaces. Falls of rock or soil originate on cliff faces or steep slopes. Flows are landslides that behave like fluids. Mudflows involve wet mud and debris and earthflows involve wet, claylike materials.

Area that are generally prone to landslide hazards include: previous landslide locations, the bases of steep slopes, the bases of drainage channels, and developed hillsides where leach-field septic systems are used. Areas that are typically considered safe from landslide include area that have not moved in the past; relatively flat-lying areas away from sudden changes in slope; and areas at the top of along ridges, setback from the tops of slopes.

Site characteristics as outlined in the Fugro's Geological and Geotechnical Engineering reports are suitable for the proposed project design. Items specifically discussed include land slide, faulting, bluff retreat, drainage, excavation and temporary slopes. This site contains areas of fill, clay and sandy silt and shallow bedrock made of soft siltstone. Faults do exist in the area (San Miguelito and Hogri), but they are not anticipated to negatively impact the project. The soils do not create liquefaction issues, and the site is not within tsunami inundation zone. No subsurface water was present during examination of test pits on site. The only structure proposed near the land slide area is a span bridge over a drainage gully approximately 500 feet from the parking lot.

Impact. As proposed, the project will result in the disturbance of approximately 700 cubic yards.

Landslide: Geologic investigations have been conducted to evaluate known on-site hazards such as: landslides, steep slopes. This project is outside of the active landslide, Pirates Cove Land Slide

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Complex, but the bike trail is within the 120 foot setback from this landslide. The presence of a landslide in the area along with the needed grading on slopes of 30% indicates a potential for slope instability if appropriate measures are not undertaken. In addition, a possible sinkhole may be located near the bike trailhead at Cave Landing Road.

Drainage: The project area collects runoff water from the surrounding steep slopes.

Mitigation.

Based on the conclusions and recommendations of the geologic investigations, the project is proposed to be mitigated for geologic impacts. Mitigation measures; include requirements for site preparation, grading, trenching, drainage and maintenance.

Landslide: To reduce impact of this project to the landslide potential of the site special attention shall be paid to the grading and minimize fill on the site. Specific measures are listed at the end of this report and include grading techniques and expanding the span of bridge.

Drainage: The use of bio-swales and level spreaders shall be sized as such that water flowing out of the spreaders discharges over an area that is similar to the natural flow of water on site and does not pond in localized areas. An erosion and sedimentation control plan that is in compliance with Title 23.05, on-going compliance with the requirement of the of the National Pollutant Discharge Elimination System and the County Storm Water Pollution Control and Drainage Ordinance , Title 8 Section 8.68 et sec is required.

This project does not include habitable structures the trail and bridge could be relocated in the event of a landslide or bluff erosion. To ensure public safety if landslide potential is perceived (heavy rains, wet winters and/or earthquakes) the recreation area will be closed. A list of specific measures are listed in Table A at the end of this report.

With implementation of these measures the project impacts to geology and soils is insignificant.

7. HAZARDS & HAZARDOUS MATERIALS - Will the project:	Potentially Significant	Impact can & will be mitigated	Insignificant Impact	Not Applicable
a) Result in a risk of explosion or release of hazardous substances (e.g. oil, pesticides, chemicals, radiation) or exposure of people to hazardous substances?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
b) Interfere with an emergency response or evacuation plan?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c) Expose people to safety risk associated with airport flight pattern?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d) Increase fire hazard risk or expose people or structures to high fire hazard conditions?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
e) Create any other health hazard or potential hazard?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

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C. ENVIRONMENTAL ANALYSIS

During the Initial Study process, several issues were identified as having potentially significant environmental effects (see following Initial Study). Those potentially significant items associated with the proposed uses can be minimized to less than significant levels.

COUNTY OF SAN LUIS OBISPO
INITIAL STUDY CHECKLIST

1.	AESTHETICS - Will the project:	Potentially Significant	Impact can & will be mitigated	Insignificant Impact	Not Applicable
a)	Create an aesthetically incompatible site open to public view?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
b)	Introduce a use within a scenic view open to public view?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c)	Change the visual character of an area?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
d)	Create glare or night lighting, which may affect surrounding areas?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
e)	Impact unique geological or physical features?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
f)	Other: _____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Setting. This site is characterized as vacant land with steep slopes, a parking lot, and pedestrian trails along the bluffs. Large homes in the City of Pismo Beach are located directly to the south of the site. To the north is Ontario Ridge and open space. The Pacific Ocean is to the south, to the east the large homes of Pismo Beach and to the west the abandoned Avila Tank Farm (formerly Unocal Tank Farm) with Avila Golf course and the community of Avila Beach beyond. The visual character of the immediate area is varied with the existing Pirate's Cove parking lot, hillside homes of Pismo Beach and the abandon oil tank farm near or on the site. However views of the Pacific Ocean remain a prominent feature of the site.

Impact. Cave Landing Road, a public road, connects to the existing parking lot. The proposed recreation area (parking and trail) connects to this road. The newly constructed section of the bike/pedestrian trail, the associated three to four foot high wood split rail fencing, vault bathrooms, benches, trash cans and bollards will be visible from Cave Landing Road. The pedestrian trail to the beach will remain within the footprint of existing trails with the exception of the proposed stairs to the beach. No lighting is proposed. The project elements are considered consistent with the expectation of a recreational area and will likely reduce the volunteer trails and associated erosion and vegetation loss that currently occurs.

Much of this project will be visible from Cave Landing Road as it is today. The parking lot, the bike/pedestrian trail and the pedestrian trail to the beach, currently existing and will not change the visual character of the area. The bathroom and other amenities are expected at a recreational area. The bathroom may be seen from trails and Cave Landing Road and the stairs to the beach will be seen from Pirate's Cove beach area. Grading cuts associated with the bike trail will be visible. This project will not silhouette against any ridgelines as viewed from public roadways, parks, or the ocean.

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Mitigation/Conclusion. To mitigate the visual impact of the proposed trail's grading cuts County General Service Agency shall revegetate these cuts with erosion control plantings as soon as construction is complete. The vault restroom building and stairs to the beach shall be painted or made of materials that match the surrounding natural environment. Incorporation of these mitigations will bring the visual impact of this project to less than significant.

2. AGRICULTURAL RESOURCES

- Will the project:

	Potentially Significant	Impact can & will be mitigated	Insignificant Impact	Not Applicable
a) Convert prime agricultural land to non-agricultural use?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Impair agricultural use of other property or result in conversion to other uses?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
c) Conflict with existing zoning or Williamson Act program?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d) Other: _____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Setting. Project Elements. The following area-specific elements relate to the property's importance for agricultural production:

Land Use Category: Rural Residential

Historic/Existing Commercial Crops: None

State Classification: Not prime farmland

In Agricultural Preserve? No

Under Williamson Act contract? No

The soil type(s) and characteristics on the subject property include: *[list soil types]*

Diablo and Cibo clays (15 - 30 % slope).

Diablo. This moderately sloping clayey soil is considered very poorly drained. The soil has moderate erodibility and high shrink-swell characteristics, as well as having potential septic system constraints due to: steep slopes, slow percolation. The soil is considered Class IV without irrigation and Class is not rated when irrigated.

Cibo. This moderately sloping clayey soil is considered very poorly drained. The soil has moderate erodibility and high shrink-swell characteristics, as well as having potential septic system constraints due to: steep slopes, shallow depth to bedrock, slow percolation. The soil is considered Class IV without irrigation and Class is not rated when irrigated.

Lopez very shaly clay loam (30 - 75% slope). This steeply to very steeply sloping, shallow gravelly fine loamy soil is considered very poorly drained. The soil has low erodibility and low shrink-swell characteristics, as well as having potential septic system constraints due to: shallow depth to bedrock. The soil is considered Class VII without irrigation and Class is not rated when irrigated.

Nacimienta- silty clay loam (30 - 50 % slope). This steeply sloping fine loamy soil is considered not well drained. The soil has moderate erodibility and moderate shrink-swell characteristics, as well as having potential septic system constraints due to: steep slopes, shallow depth to bedrock, slow percolation. The soil is considered Class VI without irrigation and Class is not rated when irrigated.

Still gravelly sandy clay loam (15 - 25% slope). This moderately sloping, gravelly fine loamy soil is

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slide, subsurface resources, steep slopes that collect a substantial amount of the areas storm water runoff. Several designs were considered before the proposed project was selected because it was the most sensitive to these site specific features.

ASSESSOR PARCEL NUMBER(S): 076-231-062 and 064

Latitude: 35 degrees 10 ' 31 " N Longitude: 120 degrees 43 ' 2 " W SUPERVISORIAL DISTRICT # 3

B. EXISTING SETTING

PLANNING AREA: San Luis Bay(Coastal), Avila Beach

LAND USE CATEGORY: Residential Rural

COMBINING DESIGNATION(S): Coastal Appealable Zone , Geologic Study
Archaeologically Sensitive

EXISTING USES: Undeveloped

TOPOGRAPHY: Steeply sloping

VEGETATION: Grasses

PARCEL SIZE: Two parcels totaling 53.4acres

SURROUNDING LAND USE CATEGORIES AND USES:

North: Residential Rural, Open Space; undeveloped	East: Rural Lands, City of Pismo Beach; undeveloped, residential
South: ; Pacific Ocean	West: Open Space, Industrial; industrial uses (old Avila Tank Farm)

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Initial Study Summary – Environmental Checklist

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

Project Title & No. County Parks -Cave Landing Trail Project ED10-016

(ver 3.3) jms/ten

ENVIRONMENTAL FACTORS POTENTIALLY AFFECTED: The proposed project could have a "Potentially Significant Impact" for at least one of the environmental factors checked below. Please refer to the attached pages for discussion on mitigation measures or project revisions to either reduce these impacts to less than significant levels or require further study.

Table with 3 columns of environmental factors and checkboxes. Checked items include: Aesthetics, Agricultural Resources, Air Quality, Biological Resources, Cultural Resources, Geology and Soils, Hazards/Hazardous Materials, Noise, Population/Housing, Public Services/Utilities, Land Use, Transportation/Circulation, Water, and Land Use. Unchecked items include: Recreation and Wastewater.

DETERMINATION: (To be completed by the Lead Agency)

On the basis of this initial evaluation, the Environmental Coordinator finds that:

- Five options for determination with checkboxes. The second option is checked: 'Although the proposed project could have a significant effect on the environment, there will not be a significant effect in this case because revisions in the project have been made by or agreed to by the project proponent. A MITIGATED NEGATIVE DECLARATION will be prepared.'

Elizabeth Kavanaugh (Print) Elizabeth Kavanaugh (Signature) 2-8-13 (Date)

Ellen Carroll, Environmental Coordinator (Signature) 2/8/13 (Date)

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Planning Commission

County Parks Development Plan/Variance/Coastal Development Permit DRC2011-00069

**EXHIBIT A
FINDINGS DEVELOPMENT PLAN/COASTAL DEVELOPMENT PERMIT***Environmental Determination*

- A. The Environmental Coordinator, after completion of the initial study, finds that there is no substantial evidence that the project may have a significant effect on the environment, and the preparation of an Environmental Impact Report is not necessary. Therefore, a Mitigated Negative Declaration (pursuant to Public Resources Code Section 21000 et seq., and CA Code of Regulations Section 15000 et seq.) has been issued on February 21, 2013 and is hereby adopted for this project. Mitigation measures are proposed to address aesthetics, air quality, biological resources, cultural resources, geology and soils, traffic, noise, and land use and are included as conditions of approval.

Development Plan

- B. The proposed project or use is consistent with the San Luis Obispo County General Plan because the use is an allowed use and as conditioned is consistent with all of the General Plan policies. The County's Park and Recreation Element identifies the Cave Landing Trail as a proposed project. This project will not only fulfill the County's Park and Recreation Element, but serve as part of the statewide California Coastal Trail which will provide coastal access, further achieving the goals of the County's Parks and Recreation Element for coastal access.
- C. As conditioned, the proposed project or use satisfies all applicable provisions of Title 23 of the County Code.
- D. The establishment and subsequent operation or conduct of the use will not, because of the circumstances and conditions applied in the particular case, be detrimental to the health, safety or welfare of the general public or persons residing or working in the neighborhood of the use, or be detrimental or injurious to property or improvements in the vicinity of the use because the project which includes improvements to existing trails and parking areas does not generate activity that presents a potential threat to the surrounding properties. This project is subject to Ordinance and Building Code requirements designed to address health, safety and welfare concerns.
- E. The proposed project or use will not be inconsistent with the character of the immediate neighborhood or contrary to its orderly development because the trail, parking area and passive recreation facilities (picnic tables, restrooms and trash receptacles) will not conflict with the surrounding lands and uses.
- F. The proposed project or use will not generate a volume of traffic beyond the safe capacity of all roads providing access to the project, either existing or to be improved with the project because the project is located on Cave Landing Road, a local road constructed to a level able to allow the current informal passive recreation facilities to become formalized and remain under County maintenance and control.

Archeological Sensitive Area

- G. The site design and development incorporate adequate measures to ensure that archeological resources will be acceptably and adequately protected because the project. The project has been sited and designed to minimize impacts to cultural resources, but full avoidance to cultural resources is not feasible. The project is conditioned to include a monitoring plan which will require a qualified professional approved by the county to monitoring any ground disturbing activities.

Exhibit 7a

A-3-SLO-12-0252

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Planning Commission

County Parks Development Plan/Variance/Coastal Development Permit DRC2011-00069

trammel screens, etc. should any of these types of equipment be used during construction activities, Californian Statewide portable equipment registration (issued by the Californian Air Resources Board) or a APCD permit may be required.

Biological Resources

10. BIO-1 The Black-flowered figwort shall be flagged along the beach trail so construction activities avoid this area. If avoidance is not feasible; a mitigation plan would be developed and implemented by a qualified biologist/restoration specialist, and may include salvaging/transplanting plants and/or cuttings from impact areas and relocating to suitable habitat and/or collecting seeds for distribution in a designated mitigation/restoration area.
11. BIO-2 A qualified biologist shall conduct a pre-construction survey prior to the mobilization, operation, and demobilization of project equipment within work areas to determine presence/absence sensitive wildlife species. In the event that any special-status species are identified within the immediate project work area, work will not be initiated until the appropriate agencies have been contacted and appropriate measures for protection have been instituted. Project activities may commence only after pre-construction surveys have confirmed the absence of all special-status species
12. BIO-3 All applicable agency permits with jurisdiction over the project area (e.g. CCC, CDFW, Corps, Regional Water Quality Control Board [RWQCB]) should be obtained (as necessary) for proposed project improvements. All additional mitigation measures required by these agencies would be implemented as necessary throughout the project.
13. BIO-4 If feasible, construction activities shall take place between mid-August and mid-March to be outside of the nesting bird season. If construction activities occur within the nesting bird season, a qualified biologist shall perform pre-activity nesting bird surveys to determine if breeding/nesting birds are present within the project site. If an active bird nest, greater than 50% completed, is identified, then CDFW and/or USWFS shall be consulted to determine appropriate buffer during construction activities. Nests less than 50% completed or a non-active nest (i.e., last year's nest or an abandoned nest) shall be removed by a qualified biologist in accordance to the MBTA.

Cultural Resources

14. CR-1 The applicant shall submit to the Environmental Coordinator for review and approval, a detailed researched design for a Phase III data recovery archaeological investigation. The Phase III program shall be prepared by a subsurface qualified archaeologist, approved by the Environmental Coordinator. The consulting archaeologist responsible for the Phase III program shall be provided with a copy of the previous archaeological investigations. The Phase III program shall include at least the following:
 - a. standard archaeological data recovery practices;
 - b. recommendation of sample size adequate to mitigate for impacts to the archaeological site, including bases and justification of the recommended sample size;
 - c. identification of location of sample sites/test units;
 - d. detailed description of sampling techniques and material recovery procedures (e.g. how sample is to be excavated, how the material will be screened, screen size, how materials will be collected;.
 - e. disposition of collected materials;
 - f. proposed analysis of results of data recovery and collected materials, including timeline of final analysis results; and
 - g. consultation with appropriate Chumash tribal representatives.

Exhibit 7a

A-3-SLO-12-0252

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MAR-29-2013 14:50 From:

2-42

To:7811242

Page:1



SAN LUIS OBISPO COUNTY
DEPARTMENT OF PLANNING AND BUILDING

THIS IS A **NEW PROJECT REFERRAL**

DATE: 3/14/2012

TO: Avila Beach CSD

FROM: **Ryan Hostetter**, Coastal Team

PROJECT DESCRIPTION: DRC2011-00069 SAN MIGUELITO PARTNERS- Conditional use permit for the Cave Landing Trail and parking lot improvements. (Development plan and variance) Site located at the end of Cave Landing Road in Avila Beach. APN: 076-231-062 and 064.

Return this letter with your comments attached no later than: 14 days from receipt of this referral. CACs please respond within 60 days. Thank you.

PART 1 - IS THE ATTACHED INFORMATION ADEQUATE TO COMPLETE YOUR REVIEW?

- YES (Please go on to PART II.)
- NO (Call me ASAP to discuss what else you need. We have only 10 days in which we must obtain comments from outside agencies.)

PART II - ARE THERE SIGNIFICANT CONCERNS, PROBLEMS OR IMPACTS IN YOUR AREA OF REVIEW?

- YES (Please describe impacts, along with recommended mitigation measures to reduce the impacts to less-than-significant levels, and attach to this letter)
- NO (Please go on to PART III)

PART III - INDICATE YOUR RECOMMENDATION FOR FINAL ACTION.

Please attach any conditions of approval you recommend to be incorporated into the project's approval, or state reasons for recommending denial.

IF YOU HAVE "NO COMMENT," PLEASE SO INDICATE, OR CALL.

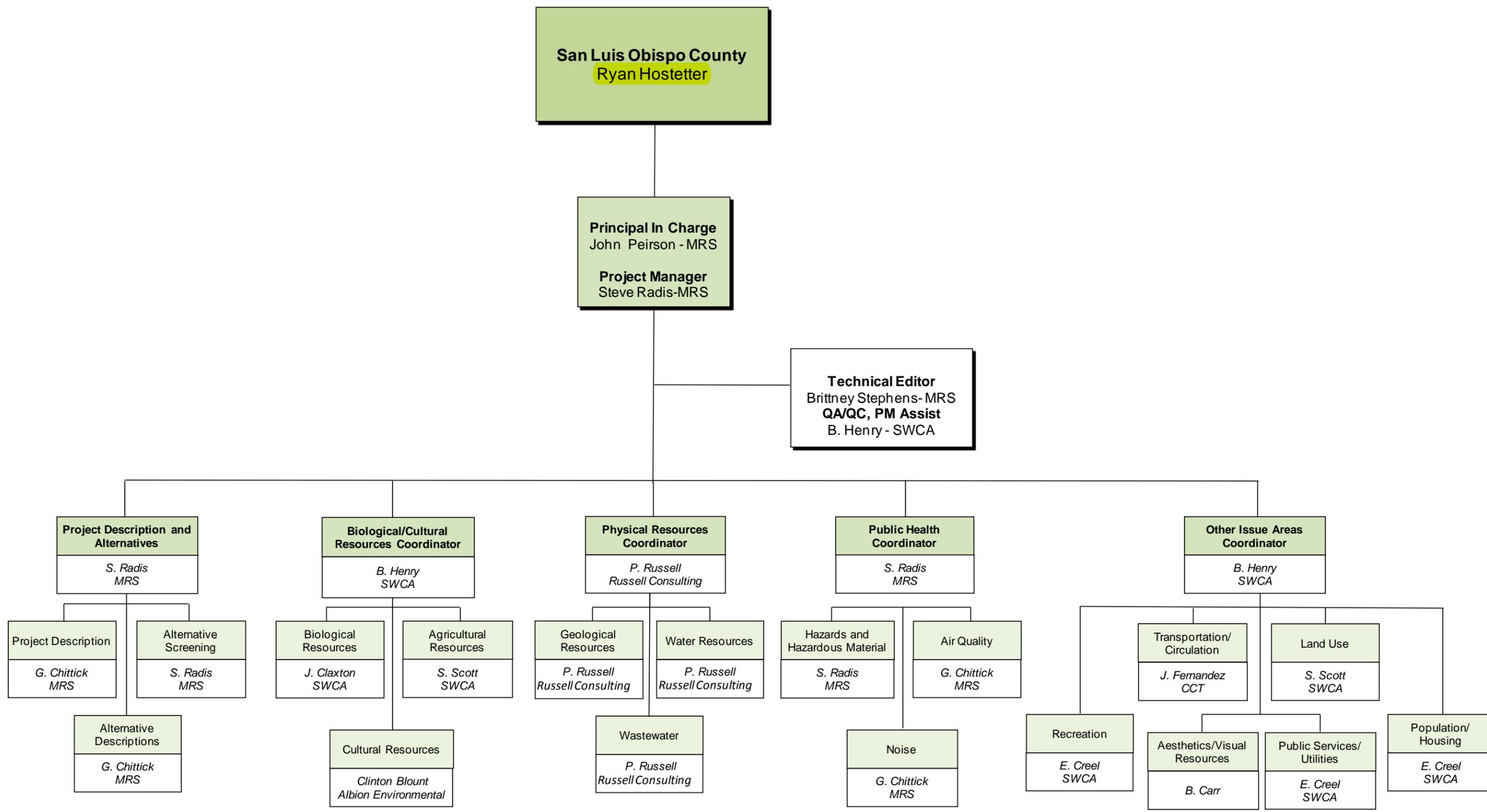
No comment / outside our District (ABCSD)

Date 3/27/13

Name John Wallace

Phone 595-2664

Figure 3-1 Proposed Organizational Chart



- Restaurants – casual & fine dining
- Wellness center – day spa, pool, and fitness
- Gathering & meeting facilities

PUBLIC AMENITIES WITHIN THE RESORT

- Coastal trail
- Amphitheater/gathering area
- Interpretive program
- Overlooks
- Open space preservation
- Wellness center and day spa
- Public restaurants
- Meeting facilities

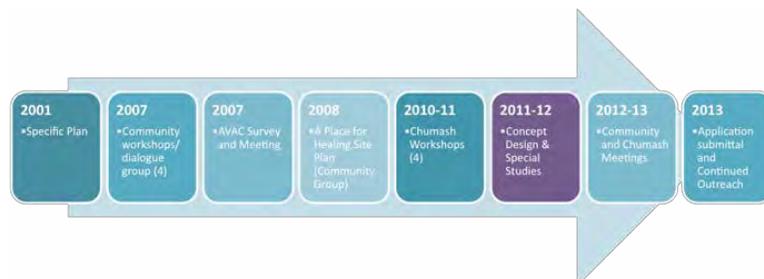


Click image to enlarge.

Community Benefits

- Public access to the property for the first time in over a century
- Long-term maintenance and stewardship of the land
- Economic benefits to businesses in Avila
- Enhanced regional infrastructure
- Estimated annual TOT (Transit Occupancy Tax) revenues: \$1,300,000 to \$1,500,000
- Environmental restoration
- New coastal trail connection
- Accessible to Avila community
- Restaurant and spa
- Small-scale amphitheater for group talks, education and cultural events
- Overlooks and view areas
- Opportunities for honoring Chumash heritage, activities and celebrations
- Open space preservation
- Interpretive signage program

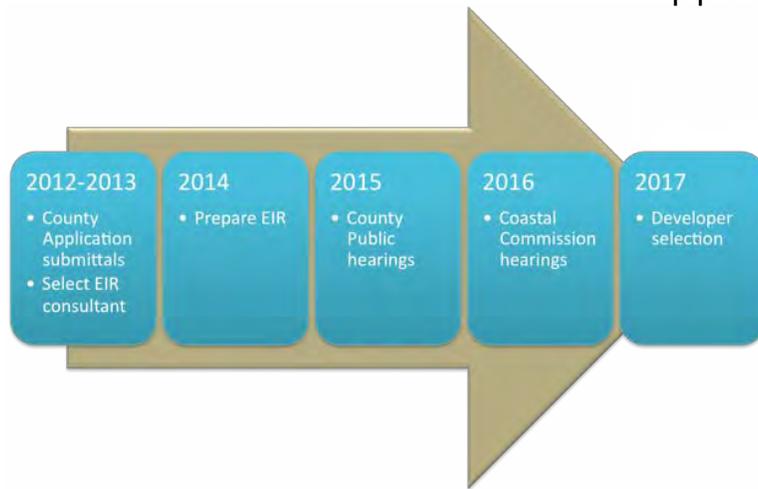
Stakeholder Input



Click image to enlarge.

Expected Process Timeline

Exhibit 7a
A-3-SLO-12-0252
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Click image to enlarge.

6.0 Project Schedule

This section of the proposal provides a schedule for the project and lists the proposed deliverables to the County. It presents a detailed project schedule, along with a discussion of the basis for the proposed time frame. The schedule shows all the proposed deliverables for the project.

6.1 Proposed Schedule

The project schedule in Figure 6-1 provides a comprehensive indication of the organization and preparation that has been given to the management plan. All relevant project milestones and deadlines are identified, allotting time for fieldwork and analysis, document writing, and County review of draft documents. Table 6-1 lists the key milestone dates from the proposed schedule.

Table 6-1 Key Milestone Dates

Milestone	Week of EIR Contract
Planning Commission Scoping Hearing	-
Draft EIR Style Guide to County	3
Draft Project Description to County	5
Draft Cumulative Project Descriptions to County	9
Draft Environmental Setting Sections to County	15
Administrative Draft EIR to County	27
Release of Public Draft EIR (45-day public comment period)	40
Public Workshop on EIR	43
Public Comment Meeting on EIR	46
Administrative Final EIR and Response to Comments to County	55
Final EIR to County	60

1. The schedule assumes that a Remedial Action Plan has been developed and clearly defines the remediation component of the EIR Project Description.

A critical item in the project’s success is management and control, assuring that tasks are completed on time and that the appropriate information is transferred to the dependent tasks. The management tools described in Section 3.0, Key Personnel and Project Management will ensure that work tasks are accomplished in the appropriate order and that critical information is effectively transferred to any dependent tasks.

The schedule in Table 6-1 estimates various lengths of time for County reviews of the deliverables. These review periods are based on experience with similar projects. However, if the County’s review cycles vary, the schedule will be necessarily updated to reflect those variations accordingly.

The proposed project schedule forecasts releasing the Public Draft EIR approximately seven months after award of the contract. Assuming a 45-day public comment period, the Final EIR would be released approximately 11 months after the award of the contract.

6.2 Project Deliverables

In developing the proposed schedule, considerable thought was given to providing the County with draft work products for review throughout the course of the project. This approach serves a number of useful purposes. First, the County has an early opportunity to review work products and to comment on format and structure; those comments will then be incorporated into future deliverables. Second, this approach allows the County to actively participate in the development of the project documents. Third, it assures that the final work product is a collaboration between MRS and the County. Table 6-2 lists key deliverables, proposed due dates, and the duration of the County review period.

Table 6-2 List of Deliverables, Proposed Due Dates, and Duration of County Review Period

Milestone	Week of Contract	Estimated County Review Period (work days)
Draft EIR Style Guide	3	10
Draft Project Description	3	10
Draft Cumulative Project Descriptions	9	10
Draft Environmental Setting Sections	15	20
Administrative Draft EIR	27	15
Camera Ready Public Draft EIR	36	5
Administrative Final EIR and Response to Comments	55	15
Camera Ready Final EIR	60	4

Figure 6-1 Estimated Avila Point EIR Schedule

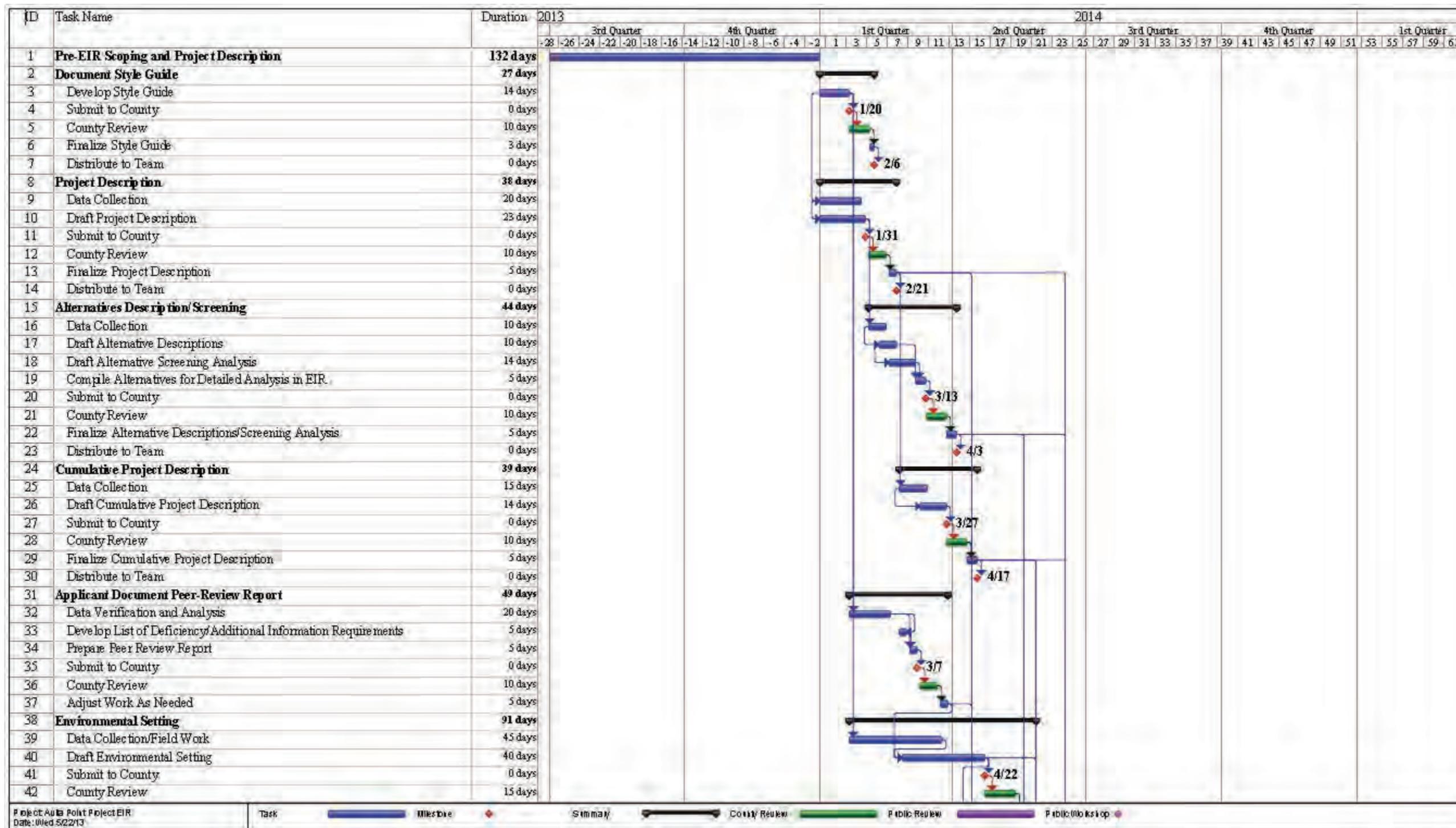


Table 7.1 Cost Summary

Issue Area	Hours	Costs
Direct Labor		
A. Project Description/Alternative Screening	376	\$73,280
B. Aesthetics	144	\$12,681
C. Agricultural Resources	80	\$8,738
D. Air Quality/Greenhouse Gases	324	\$59,840
E. Biological Resources	438	\$56,349
F. Cultural Resources	266	\$32,632
G. Geological Resources	211	\$23,210
H. Hazards and Hazardous Materials	398	\$77,360
I. Noise and Vibration	270	\$45,600
J. Population and Housing	32	\$3,498
K. Public Services and Utilities	61	\$6,603
L. Land Use	166	\$19,433
M. Transportation and Circulation	212	\$30,030
N. Wastewater	76	\$8,360
O. Water Resources	211	\$23,210
P. Recreation	56	\$5,980
Q. Document Preparation and QA/QC	1,064	\$150,227
R. Project Management	<u>1,268</u>	<u>\$251,128</u>
Total Direct Labor	5,653	\$888,158
Other Direct Costs		\$42,469
Total Costs		\$930,627

Table 7.2 Detailed Cost Estimate for the Avila Point Project EIR

Key Staff	Rate (\$/hr)	Pre-EIR Tasks		Biological Technical Studies		Project Description Alternatives Analysis		Administrative Draft EIR		Public Draft EIR		Administrative Final EIR Response to Comments		Final EIR		Public/ County Meetings		Hearings		CEQA Findings		Total	
		Hours	Cost	Hours	Cost	Hours	Cost	Hours	Cost	Hours	Cost	Hours	Cost	Hours	Cost	Hours	Cost	Hours	Cost	Hours	Cost	Hours	Cost
Direct Labor																							
A. Project Description/Alternative Screening																							
John Peirson	\$220.00	40	\$8,800	0	\$0	40	\$8,800	0	\$0	4	\$880	4	\$880	0	\$0	0	\$0	0	\$0	0	\$0	88	\$19,360
Steve Radis	\$200.00	40	\$8,000	0	\$0	48	\$9,600	0	\$0	8	\$1,600	8	\$1,600	0	\$0	0	\$0	0	\$0	0	\$0	104	\$20,800
Greg Chittick	\$180.00	24	\$4,320	0	\$0	120	\$21,600	0	\$0	24	\$4,320	16	\$2,880	0	\$0	0	\$0	0	\$0	0	\$0	184	\$33,120
Total Issue Area		104	\$21,120	0	\$0	208	\$40,000	0	\$0	36	\$6,800	28	\$5,360	0	\$0	0	\$0	0	\$0	0	\$0	376	\$73,280
B. Aesthetics																							
Bill Henry	\$182.60	0	\$0	0	\$0	4	\$730	4	\$730	0	\$0	0	\$0	0	\$0	0	\$0	0	\$0	0	\$0	8	\$1,461
Robert Carr	\$82.50	0	\$0	0	\$0	20	\$1,650	80	\$6,600	5	\$413	10	\$825	5	\$413	8	\$660	8	\$660	0	\$0	136	\$11,220
Total Issue Area		0	\$0	0	\$0	24	\$2,380	84	\$7,330	5	\$413	10	\$825	5	\$413	8	\$660	8	\$660	0	\$0	144	\$12,681
C. Agricultural Resources																							
Shawna Scott	\$139.70	0	\$0	0	\$0	2	\$279	4	\$559	2	\$279	2	\$279	2	\$279	0	\$0	0	\$0	0	\$0	12	\$1,676
Emily Creel	\$102.30	0	\$0	0	\$0	12	\$1,228	32	\$3,274	8	\$818	6	\$614	2	\$205	0	\$0	0	\$0	0	\$0	60	\$6,138
Adriana Neal	\$115.50	0	\$0	0	\$0	2	\$231	4	\$462	2	\$231	0	\$0	0	\$0	0	\$0	0	\$0	0	\$0	8	\$924
Total Issue Area		0	\$0	0	\$0	16	\$1,738	40	\$4,294	12	\$1,329	8	\$893	4	\$484	0	\$0	0	\$0	0	\$0	80	\$8,738
D. Air Quality/Greenhouse Gases																							
Greg Chittick	\$180.00	0	\$0	0	\$0	32	\$5,760	160	\$28,800	8	\$1,440	24	\$4,320	12	\$2,160	12	\$2,160	0	\$0	0	\$0	248	\$44,640
Steve Radis	\$200.00	0	\$0	0	\$0	2	\$400	48	\$9,600	8	\$1,600	10	\$2,000	8	\$1,600	0	\$0	0	\$0	0	\$0	76	\$15,200
Total Issue Area		0	\$0	0	\$0	34	\$6,160	208	\$38,400	16	\$3,040	34	\$6,320	20	\$3,760	12	\$2,160	0	\$0	0	\$0	324	\$59,840
E. Biological Resources																							
Jon Claxton / Paul Andreano	\$139.70	0	\$0	64	\$8,941	0	\$0	58	\$8,103	20	\$2,794	20	\$2,794	0	\$0	16	\$2,235	8	\$1,118	0	\$0	186	\$25,984
Travis Belt	\$127.60	0	\$0	104	\$13,270	0	\$0	16	\$2,042	4	\$510	4	\$510	0	\$0	0	\$0	0	\$0	0	\$0	128	\$16,333
Barrett Holland / Adriana Neal	\$115.50	0	\$0	104	\$12,012	0	\$0	8	\$924	0	\$0	0	\$0	0	\$0	0	\$0	0	\$0	0	\$0	112	\$12,936
Jaimie Jones	\$91.30	0	\$0	12	\$1,096	0	\$0	0	\$0	0	\$0	0	\$0	0	\$0	0	\$0	0	\$0	0	\$0	12	\$1,096
Total Issue Area		0	\$0	284	\$35,319	0	\$0	82	\$11,068	24	\$3,304	24	\$3,304	0	\$0	16	\$2,235	8	\$1,118	0	\$0	438	\$56,349
F. Cultural Resources																							
Blount	\$143.00	0	\$0	0	\$0	0	\$0	96	\$13,728	0	\$0	0	\$0	0	\$0	0	\$0	0	\$0	0	\$0	96	\$13,728
Brady	\$86.58	0	\$0	0	\$0	0	\$0	16	\$1,385	0	\$0	0	\$0	0	\$0	0	\$0	0	\$0	0	\$0	16	\$1,385
D'Oro	\$76.96	0	\$0	0	\$0	0	\$0	14	\$1,077	0	\$0	0	\$0	0	\$0	0	\$0	0	\$0	0	\$0	14	\$1,077
Farquhar	\$105.82	0	\$0	0	\$0	0	\$0	92	\$9,735	0	\$0	0	\$0	0	\$0	0	\$0	0	\$0	0	\$0	92	\$9,735
Shawna Scott	\$139.70	0	\$0	0	\$0	0	\$0	32	\$4,470	0	\$0	16	\$2,235	0	\$0	0	\$0	0	\$0	0	\$0	48	\$6,706
Total Issue Area		0	\$0	0	\$0	0	\$0	250	\$30,397	0	\$0	16	\$2,235	0	\$0	0	\$0	0	\$0	0	\$0	266	\$32,632

Table 7.2 Detailed Cost Estimate for the Avila Point Project EIR (con't)

Key Staff	Rate (\$/hr)	Pre-EIR Tasks		Biological Technical Studies		Project Description Alternatives Analysis		Administrative Draft EIR		Public Draft EIR		Administrative Final EIR Response to Comments		Final EIR		Public/ County Meetings		Hearings		CEQA Findings		Total	
		Hours	Cost	Hours	Cost	Hours	Cost	Hours	Cost	Hours	Cost	Hours	Cost	Hours	Cost	Hours	Cost	Hours	Cost	Hours	Cost	Hours	Cost
G. Geological Resources																							
Perry Russell	\$110.00	40	\$4,400	0	\$0	0	\$0	60	\$6,600	15	\$1,650	80	\$8,800	8	\$880	8	\$880	0	\$0	0	\$0	211	\$23,210
Total Issue Area		40	\$4,400	0	\$0	0	\$0	60	\$6,600	15	\$1,650	80	\$8,800	8	\$880	8	\$880	0	\$0	0	\$0	211	\$23,210
H. Hazards and Hazardous Materials																							
John Peirson	\$220.00	16	\$3,520	0	\$0	8	\$1,760	8	\$1,760	4	\$880	8	\$1,760	0	\$0	0	\$0	0	\$0	0	\$0	44	\$9,680
Steve Radis	\$200.00	80	\$16,000	0	\$0	8	\$1,600	60	\$12,000	10	\$2,000	8	\$1,600	8	\$1,600	24	\$4,800	0	\$0	0	\$0	198	\$39,600
Greg Chittick	\$180.00	0	\$0	0	\$0	16	\$2,880	80	\$14,400	20	\$3,600	24	\$4,320	8	\$1,440	8	\$1,440	0	\$0	0	\$0	156	\$28,080
Total Issue Area		96	\$19,520	0	\$0	32	\$6,240	148	\$28,160	34	\$6,480	40	\$7,680	16	\$3,040	32	\$6,240	0	\$0	0	\$0	398	\$77,360
I. Noise and Vibration																							
Greg Chittick	\$180.00	0	\$0	0	\$0	32	\$5,760	90	\$16,200	16	\$2,880	20	\$3,600	4	\$720	8	\$1,440	0	\$0	0	\$0	170	\$30,600
Michael Cassata	\$150.00	0	\$0	0	\$0	0	\$0	80	\$12,000	4	\$600	16	\$2,400	0	\$0	0	\$0	0	\$0	0	\$0	100	\$15,000
Total Issue Area		0	\$0	0	\$0	32	\$5,760	170	\$28,200	20	\$3,480	36	\$6,000	4	\$720	8	\$1,440	0	\$0	0	\$0	270	\$45,600
J. Population and Housing																							
Shawna Scott	\$139.70	0	\$0	0	\$0	2	\$279	1	\$140	1	\$140	1	\$140	1	\$140	0	\$0	0	\$0	0	\$0	6	\$838
Emily Creel	\$102.30	0	\$0	0	\$0	4	\$409	16	\$1,637	2	\$205	2	\$205	2	\$205	0	\$0	0	\$0	0	\$0	26	\$2,660
Total Issue Area		0	\$0	0	\$0	6	\$689	17	\$1,777	3	\$344	3	\$344	3	\$344	0	\$0	0	\$0	0	\$0	32	\$3,498
K. Public Services and Utilities																							
Shawna Scott	\$139.70	0	\$0	0	\$0	2	\$279	2	\$279	2	\$279	2	\$279	1	\$140	0	\$0	0	\$0	0	\$0	9	\$1,257
Emily Creel	\$102.30	0	\$0	0	\$0	8	\$818	26	\$2,660	6	\$614	8	\$818	2	\$205	0	\$0	0	\$0	0	\$0	50	\$5,115
Adriana Neal	\$115.50	0	\$0	0	\$0	2	\$231	0	\$0	0	\$0	0	\$0	0	\$0	0	\$0	0	\$0	0	\$0	2	\$231
Total Issue Area		0	\$0	0	\$0	12	\$1,329	28	\$2,939	8	\$893	10	\$1,098	3	\$344	0	\$0	0	\$0	0	\$0	61	\$6,603
L. Land Use																							
Shawna Scott	\$139.70	0	\$0	0	\$0	6	\$838	2	\$279	2	\$279	2	\$279	2	\$279	24	\$3,353	24	\$3,353	0	\$0	62	\$8,661
Emily Creel	\$102.30	0	\$0	0	\$0	24	\$2,455	40	\$4,092	16	\$1,637	8	\$818	6	\$614	0	\$0	0	\$0	0	\$0	94	\$9,616
Adriana Neal	\$115.50	0	\$0	0	\$0	4	\$462	4	\$462	2	\$231	0	\$0	0	\$0	0	\$0	0	\$0	0	\$0	10	\$1,155
Total Issue Area		0	\$0	0	\$0	34	\$3,755	46	\$4,833	20	\$2,147	10	\$1,098	8	\$893	24	\$3,353	24	\$3,353	0	\$0	166	\$19,433
M. Transportation and Circulation																							
Joe Fernandez	\$137.50	0	\$0	0	\$0	16	\$2,200	144	\$19,800	12	\$1,650	4	\$550	2	\$275	18	\$2,475	0	\$0	0	\$0	196	\$26,950
Ron Marquez	\$192.50	0	\$0	0	\$0	2	\$385	12	\$2,310	2	\$385	0	\$0	0	\$0	0	\$0	0	\$0	0	\$0	16	\$3,080
Total Issue Area		0	\$0	0	\$0	18	\$2,585	156	\$22,110	14	\$2,035	4	\$550	2	\$275	18	\$2,475	0	\$0	0	\$0	212	\$30,030
N. Wastewater																							
Perry Russell	\$110.00	24	\$2,640	0	\$0	0	\$0	16	\$1,760	10	\$1,100	16	\$1,760	4	\$440	6	\$660	0	\$0	0	\$0	76	\$8,360
Total Issue Area		24	\$2,640	0	\$0	0	\$0	16	\$1,760	10	\$1,100	16	\$1,760	4	\$440	6	\$660	0	\$0	0	\$0	76	\$8,360

Table 7.2 Detailed Cost Estimate for the Avila Point Project EIR (con't)

Key Staff	Rate (\$/hr)	Pre-EIR Tasks		Biological Technical Studies		Project Description Alternatives Analysis		Administrative Draft EIR		Public Draft EIR		Administrative Final EIR Response to Comments		Final EIR		Public/ County Meetings		Hearings		CEQA Findings		Total	
		Hours	Cost	Hours	Cost	Hours	Cost	Hours	Cost	Hours	Cost	Hours	Cost	Hours	Cost	Hours	Cost	Hours	Cost	Hours	Cost	Hours	Cost
O. Water Resources																							
Perry Russell	\$110.00	40	\$4,400	0	\$0	0	\$0	60	\$6,600	15	\$1,650	80	\$8,800	8	\$880	8	\$880	0	\$0	0	\$0	211	\$23,210
Total Issue Area		40	\$4,400	0	\$0	0	\$0	60	\$6,600	15	\$1,650	80	\$8,800	8	\$880	8	\$880	0	\$0	0	\$0	211	\$23,210
P. Recreation																							
Shawna Scott	\$139.70	0	\$0	0	\$0	2	\$279	1	\$140	1	\$140	1	\$140	1	\$140	0	\$0	0	\$0	0	\$0	6	\$838
Emily Creel	\$102.30	0	\$0	0	\$0	8	\$818	26	\$2,660	6	\$614	6	\$614	2	\$205	0	\$0	0	\$0	0	\$0	48	\$4,910
Adriana Neal	\$115.50	0	\$0	0	\$0	2	\$231	0	\$0	0	\$0	0	\$0	0	\$0	0	\$0	0	\$0	0	\$0	2	\$231
Total Issue Area		0	\$0	0	\$0	12	\$1,329	27	\$2,800	7	\$754	7	\$754	3	\$344	0	\$0	0	\$0	0	\$0	56	\$5,980
Q. Document Preparation and QA/QC																							
John Peirson	\$220.00	0	\$0	0	\$0	0	\$0	32	\$7,040	24	\$5,280	32	\$7,040	16	\$3,520	0	\$0	0	\$0	0	\$0	104	\$22,880
Steve Radis	\$200.00	0	\$0	0	\$0	0	\$0	32	\$6,400	24	\$4,800	32	\$6,400	24	\$4,800	0	\$0	0	\$0	0	\$0	112	\$22,400
Bill Henry	\$182.60	0	\$0	0	\$0	0	\$0	24	\$4,382	12	\$2,191	24	\$4,382	12	\$2,191	0	\$0	0	\$0	0	\$0	72	\$13,147
Michael Cassata	\$150.00	0	\$0	0	\$0	0	\$0	100	\$15,000	60	\$9,000	60	\$9,000	16	\$2,400	0	\$0	0	\$0	0	\$0	236	\$35,400
Bonnie Luke	\$140.00	0	\$0	0	\$0	0	\$0	60	\$8,400	40	\$5,600	40	\$5,600	16	\$2,240	0	\$0	0	\$0	0	\$0	156	\$21,840
Brittney Stephens	\$90.00	0	\$0	0	\$0	0	\$0	180	\$16,200	80	\$7,200	100	\$9,000	24	\$2,160	0	\$0	0	\$0	0	\$0	384	\$34,560
Total Document Preparation and QA/QC		0	\$0	0	\$0	0	\$0	428	\$57,422	240	\$34,071	288	\$41,422	108	\$17,311	0	\$0	0	\$0	0	\$0	1,064	\$150,227
R. Project Management																							
John Peirson	\$220.00	24	\$5,280	0	\$0	4	\$880	80	\$17,600	32	\$7,040	32	\$7,040	16	\$3,520	200	\$44,000	48	\$10,560	60	\$13,200	496	\$109,120
Steve Radis	\$200.00	120	\$24,000	0	\$0	4	\$800	80	\$16,000	32	\$6,400	32	\$6,400	16	\$3,200	200	\$40,000	48	\$9,600	60	\$12,000	592	\$118,400
Brittney Stephens	\$90.00	16	\$1,440	0	\$0	0	\$0	40	\$3,600	0	\$0	20	\$1,800	0	\$0	0	\$0	8	\$720	16	\$1,440	100	\$9,000
Bill Henry	\$182.60	80	\$14,608	0	\$0	0	\$0	0	\$0	0	\$0	0	\$0	0	\$0	0	\$0	0	\$0	0	\$0	80	\$14,608
Total Program Management		240	\$45,328	0	\$0	8	\$1,680	200	\$37,200	64	\$13,440	84	\$15,240	32	\$6,720	400	\$84,000	104	\$20,880	136	\$26,640	1,268	\$251,128
Total Direct Labor		544	\$ 97,408	284	\$ 35,319	436	\$ 73,645	2,020	\$ 291,891	543	\$ 82,930	778	\$ 112,484	228	\$ 36,849	540	\$ 104,983	144	\$ 26,010	136	\$ 26,640	5,653	\$ 888,158
Other Direct Costs																							
Travel			\$0		\$210		\$550		\$3,279		\$950		\$840		\$225		\$4,575		\$120		\$0		\$10,749
Mailing			\$0		\$0		\$100		\$180		\$160		\$180		\$120		\$0		\$0		\$0		\$740
Printing and Binding			\$0		\$0		\$125		\$2,100		\$8,520		\$2,200		\$9,850		\$725		\$0		\$0		\$23,520
Communication			\$0		\$0		\$330		\$750		\$50		\$250		\$125		\$50		\$0		\$0		\$1,555
Other Direct Costs Subs			\$0		\$0		\$0		\$1,500		\$0		\$0		\$0		\$0		\$0		\$0		\$1,500
Miscellaneous			\$0		\$0		\$0		\$180		\$375		\$0		\$0		\$0		\$0		\$0		\$555
G&A on Other Direct Costs			\$0		\$21		\$111		\$799		\$1,006		\$347		\$1,032		\$535		\$0		\$0		\$3,850
Total Other Direct Costs			\$0		\$231		\$1,216		\$8,788		\$11,061		\$3,817		\$11,352		\$5,885		\$120		\$0		\$42,469
Total EIR		544	\$97,408	284	\$35,550	436	\$74,861	2,020	\$300,679	543	\$93,991	778	\$116,301	228	\$48,201	540	\$110,868	144	\$26,130	136	\$26,640	5,653	\$930,627

Table 7.3 Detailed Cost Estimate for Biological Technical Studies

Key Staff	Rate (\$/hr)	Botanical Survey		Jurisdictional Waters Determination		CA Red-Legged Frog Habitat Assessment		Oak Tree Inventory and Mapping		Wildlife Reconnaissance Surveys		Raptor Survey		Total	
		Hours	Cost	Hours	Cost	Hours	Cost	Hours	Cost	Hours	Cost	Hours	Cost	Hours	Cost
Direct Labor															
Jon Claxton	\$139.70	0	\$0	0	\$0	16	\$2,235	0	\$0	16	\$2,235	0	\$0	32	\$4,470
Paul Andreano	\$139.70	0	\$0	0	\$0	0	\$0	0	\$0	0	\$0	32	\$4,470	32	\$4,470
Travis Belt	\$127.60	32	\$4,083	32	\$4,083	0	\$0	24	\$3,062	16	\$2,042	0	\$0	104	\$13,270
Barrett Holland	\$115.50	36	\$4,158	0	\$0	0	\$0	24	\$2,772	0	\$0	0	\$0	60	\$6,930
Adriana Neal	\$115.50	8	\$924	8	\$924	4	\$462	16	\$1,848	4	\$462	4	\$462	44	\$5,082
Jaimie Jones	\$91.30	2	\$183	2	\$183	2	\$183	2	\$183	2	\$183	2	\$183	12	\$1,096
Total Direct Labor		78	\$ 9,348	42	\$ 5,190	22	\$ 2,880	66	\$ 7,865	38	\$ 4,921	38	\$ 5,115	284	\$ 35,319
Other Direct Costs															
Travel			\$35		\$35		\$35		\$35		\$35		\$35		\$210
Mailing			\$0		\$0		\$0		\$0		\$0		\$0		\$0
Printing and Binding			\$0		\$0		\$0		\$0		\$0		\$0		\$0
Communication			\$0		\$0		\$0		\$0		\$0		\$0		\$0
Records Search			\$0		\$0		\$0		\$0		\$0		\$0		\$0
Other Direct Costs Subs			\$0		\$0		\$0		\$0		\$0		\$0		\$0
Miscellaneous			\$0		\$0		\$0		\$0		\$0		\$0		\$0
G&A on Other Direct Costs			\$4		\$4		\$4		\$4		\$4		\$4		\$21
Total Other Direct Costs			\$39		\$39		\$39		\$39		\$39		\$39		\$231
Total Technical Studies & Opt Task			\$9,386		\$5,228		\$2,918		\$7,904		\$4,960		\$5,154		\$35,550

Table 7.4 Detailed Cost Estimate for Optional Tasks

Key Staff	Rate (\$/hr)	Pre-EIR Tasks		Biological Technical Studies		Project Description Alternatives Analysis		Administrative Draft EIR		Public Draft EIR		Administrative Final EIR Response to Comments		Final EIR		Public/ County Meetings		Hearings		CEQA Findings		Total	
		Hours	Cost	Hours	Cost	Hours	Cost	Hours	Cost	Hours	Cost	Hours	Cost	Hours	Cost	Hours	Cost	Hours	Cost	Hours	Cost	Hours	Cost
Optional Tasks																							
<i>1. Additional Photo Simulations</i>																							
Bill Henry	\$182.60	0	\$0	0	\$0	0	\$0	4	\$730	0	\$0	0	\$0	0	\$0	0	\$0	0	\$0	0	\$0	4	\$730
Bob Carr	\$82.50	0	\$0	0	\$0	0	\$0	56	\$4,620	0	\$0	0	\$0	0	\$0	0	\$0	0	\$0	0	\$0	56	\$4,620
Total		0	\$0	0	\$0	0	\$0	60	\$5,350	0	\$0	0	\$0	0	\$0	0	\$0	0	\$0	0	\$0	60	\$5,350
<i>2. Additional Cultural Survey</i>																							
D'Oro	\$69.96	0	\$0	0	\$0	0	\$0	15	\$1,049	0	\$0	0	\$0	0	\$0	0	\$0	0	\$0	0	\$0	15	\$1,049
Farquhar	\$96.20	0	\$0	0	\$0	0	\$0	24	\$2,309	0	\$0	0	\$0	0	\$0	0	\$0	0	\$0	0	\$0	24	\$2,309
Total		0	\$0	0	\$0	0	\$0	39	\$3,358	0	\$0	0	\$0	0	\$0	0	\$0	0	\$0	0	\$0	39	\$3,358
<i>3. Land Use Amendment Policies</i>																							
Shawna Scott	\$139.70	0	\$0	0	\$0	0	\$0	40	\$5,588	0	\$0	0	\$0	0	\$0	0	\$0	0	\$0	0	\$0	40	\$5,588
Total Optional Tasks		0	\$0	0	\$0	0	\$0	139	\$14,297	0	\$0	0	\$0	0	\$0	0	\$0	0	\$0	0	\$0	139	\$14,297

to avoid or reduce potential impacts. A discussion of residual impacts of the proposed project that are expected to remain after implementation of recommended mitigation measures, if any, will be included.

Cumulative impacts will be evaluated from local and regional perspectives, and will consider recent projects such as the County's purchase of the Pirate's Cove property and plans for trail improvements (currently pending approval). The County Department of Planning and Building and the City of Pismo Beach Community Development will be contacted regarding upcoming or proposed projects in the vicinity, and all such projects will be included in the cumulative analysis.

Project alternatives will be individually evaluated and compared in terms of their relative impacts, both adverse and beneficial, to cultural resources. A discussion of the disadvantages and merits of each alternative will be provided. A discussion of residual impacts of the proposed project that are expected to remain after implementation of recommended mitigation measures will be included.

4.2.6 Geological Resources

This section presents the scope and approach for assessing the project and alternative impacts for geological resources.

General Approach and Methodology

The project site is located on a prominent topographic headland (Fossil Point), immediately southeast of flat-lying Avila Beach. The topography across the headland consists of relatively flat graded tank pads, generally separated by moderate to steep slopes. The property contains a steep north facing slope, slopes and coastal bluffs to the south, and relatively level coastal terraces in the center and northeastern portions of the site. The coastal bluffs are generally steep to near-vertical. Most of the site is underlain by the Pliocene Squire Sandstone, which is a member of the Pismo Formation. This fine- to medium-grained sandstone overlies volcanic tuff and tuff breccia of the Miocene Obispo Formation. Portions of the site are directly underlain by the Obispo Formation (i.e., the Squire Sandstone is absent). Much of the surficial soils and near surface bedrock has been modified/graded into artificial fill deposits. The seismically active Hosgri Fault and associated Shoreline Fault are located off the coast of the project site.

An abundance of environmental site assessments and other technical studies have been prepared for the project site in relation to subsurface contamination. Many of these reports would include onsite geologic information that would be useful in establishing baseline information. MRS would peer review these technical documents and subsequently incorporate the findings into the Initial Study and EIR. MRS will also review regional geologic reports and maps to assess the regional geologic conditions. In addition, MRS will perform a detailed site reconnaissance to assess existing conditions.

Mitigation measures to address long-term human health and environmental risk could include additional remediation activities, physical barriers (e.g., containment caps, vapor barriers under buildings) and deed/land use restrictions to prevent certain development activities.

4.2.8 Land Use

This section outlines the scope and approach for the Land Use section of the EIR.

General Approach and Methodology

The proposed project consists of a variety of actions, including a Specific Plan Update, Local Coastal Plan (LCP) Amendment, Development Plan, and Remediation Plan, which will require comprehensive review of Coastal Policies and the Coastal Act. As an **optional task**, SWCA will provide support to MRS and the County during development of the project description, including Specific Plan language related to land use. The project will be evaluated for consistency with these documents and other applicable plans and policies, specifically for physical environmental impacts resulting from inconsistencies, if identified. The focus of the Land Use section will be to provide a project-specific analysis of the project's land use conformity, compatibility, and context in a manner both clear to the reader and useful for project reviewers and decision makers.

A substantial record exists regarding present and historic use of the site. Pertinent documents include the Avila Beach Specific Plan and Environmental Impact Report, San Luis Bay Area Plan (Coastal), and information provided by the applicant related to other permits for the project site. In addition SWCA has a substantial library of source material for the immediate area, including the Pirate's Cove Administrative Draft EIR, San Luis Bay Estates Subsequent EIR, Bob Jones Bikepath (various segments and documents), and Sycamore Mineral Springs EIR. SWCA will conduct a thorough review of all pertinent documentation and will provide a complete background section detailing the site's land use history. The background description will include information regarding past land use issues and the remedies applied.

To maximize clarity, the impact analysis section will be presented in tabular format, focusing on any land use issue that may present a significant impact on the physical environment. SWCA will compile pertinent policies and programs into one or more tables, providing a detailed analysis of the project's consistency and potential effect on the environment. To avoid repetition, topical consistency analyses, such as Air Quality, will be addressed in each specific section, and will be referenced in the Land Use section. The tables will be designed to be excerpted for future use by project reviewers and decision makers.

Analysis will include direct, indirect and **cumulative impacts**. The EIR will identify policies and planning area standards to mitigate potential land use impacts and ensure consistency with the Coastal Act.

Key Project Issues

In order for the project to be developed, the County Board of Supervisors must approve a Specific Plan Amendment and LCP Amendment, which will include a land use designation change and identification of policies and planning area standards specific to the project site. The current land use designation is Industrial, and applicable combining designations include Archaeological Sensitive Area (ASA) and Flood Hazard (FH). This process will include a comprehensive analysis of consistency with Coastal Policies, which will be directly tied to the EIR analysis and identification of coastal resources such as sensitive habitats, visual resources, water quality, coastal access, and provision of visitor serving facilities. This process will include extensive coordination with the County and Coastal Commission staff regarding the potential identification of mapped combining designations, overlays, and related policies and standards.

Impact Assessment of the Project and Alternatives

The EIR will include a thorough discussion of potential impacts related to planning and land use compatibilities that could result from the proposed actions. Direct, indirect, and cumulative impacts will be analyzed consistent with criteria set forth by CEQA. Both short- and long-term impacts will be considered. A discussion of residual impacts of the proposed project that are expected to remain after implementation of recommended mitigation measures will be included.

Project alternatives will be individually evaluated and compared in terms of their relative impacts, both deleterious and beneficial, to land use resources. A discussion of the disadvantages and merits of each alternative will be provided.

Any significant impacts will be reduced to a level of insignificance, where possible, by the application of specific mitigation measures. Mitigation measures to address land use impacts may include equally effective options to amend or modify site-specific policies and planning area standards, or the development project, to attain conformity. The provision of options will allow decision makers and project proponents to tailor the response to consistency impacts. The section will state the residual level of significance resulting after application of the specified measure(s).

Cumulative impacts will be evaluated from local and regional perspectives. Development projects approved, pending, or planned for the project area will be considered in the cumulative impact analysis, including the County's purchase of the Pirate's Cove property and future access and parking improvements (as approved during the currently pending Planning Commission hearing). The County Department of Planning and Building, San Luis Obispo Local Agency Formation Commission (LAFCO), and the City of Pismo Beach Department of Community Development will be contacted regarding upcoming or proposed projects in the vicinity, and all such projects will be included in the cumulative analysis. The Land Use section will specifically address planned annexations or expansions of Spheres of Influence for local jurisdictions.

will consider the cumulative effects of growth on public service and utility providers. Project alternatives will be individually evaluated and compared in terms of their relative impacts, both adverse and beneficial, to public services. A discussion of the disadvantages and merits of each alternative will be provided.

4.2.12 Recreation

This section outlines the scope and approach for the recreation section of the EIR.

General Approach and Methodology

The Recreation section will provide detailed information regarding plans and policies that address recreational resources, coastal access, and visitor serving facilities, including the Coastal Act, County Local Coastal Program, Parks and Recreation Element, and Conservation and Open Space Element. The section will address impacts to recreational resources, specifically, impacts associated with the coastal access, existing and proposed trails (including the connection between Shell Beach and Avila Beach), open space management, bike paths, and private/public recreational opportunities proposed as part of the project.

SWCA will consult with County Parks regarding potential trail easements, private and public trail and open space access, and connection to the Pirate's Cove parking area and associated trail improvements. Potential impacts and compatibility issues with existing beach areas, such as Avila Beach and Pirate's Cove, will be addressed.

Key Project Issues

As noted above, key issues relate to the site's location on the coast adjacent to the community of Avila Beach (to the west) and recreational areas such as Pirate's Cove beach and path use area to the east. The Avila Beach community and surrounding area is rich in ocean- and land-based recreational opportunities (beach use, kayaking, fishing, surfing, golfing, hiking, birding, etc.). The project presents an opportunity for new coastal access and a long-term trail connection along the coastline, which is likely to be seen as a beneficial effect. The site is also proximate to the Bob Jones Bikepath, which extends from Avila Beach to the City of San Luis Obispo, currently in formal and informal segments. Long-term plans for these projects will be considered. A key component of the analysis will be the cumulative change in regional public access in the area related to this project, Pirate's Cove improvements, and the Bob Jones Bikepath. This section will also cross-reference detailed analysis presented in the Land Use and Transportation and Circulation (e.g., relating to parking and internal circulation on the project site) sections of the EIR, including parking capacity, trip generation related to proposed recreational facilities and open space/coastal access, and alternative transportation measures.

Impact Assessment of the Project and Alternatives

The EIR will include a thorough discussion of potential adverse and beneficial impacts related to recreational resources that could result from the proposed actions. The project would result in the addition of an additional 95 acres of Recreation-designated land within the San Luis Bay

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EDMUND G. BROWN JR., Governor

STATE OF CALIFORNIA - THE RESOURCES AGENCY

CALIFORNIA COASTAL COMMISSION

NOV 27 2013

CENTRAL COAST DISTRICT OFFICE
725 FRONT STREET, SUITE 300
SANTA CRUZ, CA 95060-4508
VOICE (831) 427-4863 FAX (831) 427-4877

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA



APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT

Please Review Attached Appeal Information Sheet Prior To Completing This Form.

SECTION I. Appellant(s)

Name: BRIAN LoCONTE
Mailing Address: RR 1 Box 245
City: SAN LUIS OBISPO Zip Code: 93409 Phone: (805) 599-2038

SECTION II. Decision Being Appealed

- Name of local/port government: COUNTY OF SAN LUIS OBISPO
- Brief description of development being appealed:
SLO DRC 2011-00069
CAVE LANDING AREA IMPROVEMENTS
- Development's location (street address, assessor's parcel no., cross street, etc.):
ALONG CAVE LANDING RD. SLO APN 076-231-064 +
076-231-062 [SLO SHPM 36 PARCEL 3 + PARCEL 5]
- Description of decision being appealed (check one.):
 Approval; no special conditions
 Approval with special conditions:
 Denial

Note: For jurisdictions with a total LCP, denial decisions by a local government cannot be appealed unless the development is a major energy or public works project. Denial decisions by port governments are not appealable.

TO BE COMPLETED BY COMMISSION:

APPEAL NO: _____
DATE FILED: _____
DISTRICT: _____

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 2)

5. Decision being appealed was made by (check one):

- Planning Director/Zoning Administrator
- ~~City Council~~/Board of Supervisors
- Planning Commission
- Other

6. Date of local government's decision:

09 NOV 2013

7. Local government's file number (if any):

BO5 RESOLUTION 2013-277

SECTION III. Identification of Other Interested Persons

Give the names and addresses of the following parties. (Use additional paper as necessary.)

a. Name and mailing address of permit applicant:

COUNTY OF SAN LUIS OBISPO
GENERAL SERVICES AGENCY - PARKS
1087 SANTA ROSA ST.
SAN LUIS OBISPO, CA 93408

b. Names and mailing addresses as available of those who testified (either verbally or in writing) at the city/county/port hearing(s). Include other parties which you know to be interested and should receive notice of this appeal.

- (1) 1) AVILA VALLEY ADVISORY COUNCIL
P.O. Box 65
AVILA BEACH, CA 93424
- (2) 2) FRIENDS OF PIRATE'S COVE
c/o 522 CORRALITOS RD.
ARROYO GRANDE, CA 93420
- (3) 3) NORTHERN CHUMASH TRIBAL COUNCIL
67 SOUTH ST.
SAN LUIS OBISPO, CA 93401
- (3) 4) WHALES CAVE CONSERVANCY
P.O. Box 479
ARROYO GRANDE, CA 93421

4) There are numerous other individuals known by me as to have spoken at the 23 MAY 2013 SLO Planning Commission Mtg., 25 JULY 2013 SLO Planning Commission Mtg., and the 01 NOV 2013 SLO Board of Supervisors Mtg. However, I do not have addresses for them. All individuals that have spoken or submitted written correspondence is within the SLO Co. records, so SLO Co. should be contacted to obtain a complete listing, and any addresses available.

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 3)

SECTION IV. Reasons Supporting This Appeal

PLEASE NOTE:

- Appeals of local government coastal permit decisions are limited by a variety of factors and requirements of the Coastal Act. Please review the appeal information sheet for assistance in completing this section.
- State briefly **your reasons for this appeal**. Include a summary description of Local Coastal Program, Land Use Plan, or Port Master Plan policies and requirements in which you believe the project is inconsistent and the reasons the decision warrants a new hearing. (Use additional paper as necessary.)
- This need not be a complete or exhaustive statement of your reasons of appeal; however, there must be sufficient discussion for staff to determine that the appeal is allowed by law. The appellant, subsequent to filing the appeal, may submit additional information to the staff and/or Commission to support the appeal request.

The approved project SLO DRC 2011-00069, Cave Landing Area Improvements does not conform to the requirements of the San Luis Obispo Coastal Plans, Ordinances and Policies regarding:

- 1) SLO San Luis Bay Area Plan, Chapter 8, Section A(7)(a) Shoreline Access – Mallagh Landing, [on or about Pg. 8-6] re: “Parking area for 100 cars to be improved. The parking area is to be surfaced with a permeable material ...”
- 2) SLO Coastal Plan Policies, Chapter 2, Shoreline Access Policy 2 – New Development [on or about Pg. 2-12] re: “The size and location of vertical access ways should be based upon the level and intensity of proposed or existing access. Site review shall consider: safety hazards; adequate parking provisions; privacy needs of adjacent residential property owner; provisions for requiring adequate public notification of accessway; and levels of improvements for facilities necessary to provide for existing level of access.”
- 3) SLO Coastal Plan Policies, Chapter 2, Shoreline Access Policy 8 – Minimizing Conflicts with Adjacent Uses [on or about Pg. 2-15] re: “Maximum access shall be provided in a manner which minimizes conflicts with adjacent uses. Where a proposed project would increase the burdens on access to the shoreline at the present time or in the future, additional access areas may be required to balance the impact of heavier use resulting from the construction of the proposed project.”
- 4) SLO Coastal Zone Land Use Ordinance 23.04.420(k)(3) Sighting Criteria for Coastal Accessway [on or about Pg. 4-132] re: “Review of the accessway shall consider: safety hazards, adequate parking provisions ... ;”
- 5) SLO Coastal Zone Land Use Ordinance 23.04.210(c)(1) Visual Resources [on or about Pg. 4-110] re: “... New development shall be designed (e.g., height, bulk, style, materials, color) to be subordinated to, and blend with, the character of the area. ...”
- 6) SLO Coastal Plan Policies, Chapter 10, Visual and Scenic Resources, [on or about Pg. 10-2] re: “A background report ... provides a detailed description of the scenic qualities of county coastal areas. Visual resources in the coastal zone have been inventoried and evaluated for: 1) the rural concern or protection of visual corridors from public roads including offshore viewing; and 2) protection of community character (which contributes to a unique beach related experience for visitors or residents)...” Mallagh Landing and ‘Pirate’s Cove’ are recognized as “Special Com **Exhibit 7b** on or about Pg. 10-6].

7) California Coastal Act §30251, "The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas such as those designated in the California Coastline Preservation and Recreation Plan prepared by the Department of Parks and recreation and by local government shall be subordinate to the character of its setting."

Detailed discussion for all of the above is either included with this form, or will be submitted by 04 DEC 2013.

BAL

PAGE 3A

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Page 4 of 63

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 4)

SECTION V. Certification

The information and facts stated above are correct to the best of my/our knowledge.

Brian A Lo Conte

Signature of Appellant(s) or Authorized Agent

Date: 25 NOV 2013

Note: If signed by agent, appellant(s) must also sign below.

Section VI. Agent Authorization

I/We hereby authorize - NA -
to act as my/our representative and to bind me/us in all matters concerning this appeal.

Signature of Appellant(s)

Date: _____

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Subject: CAVE LANDING AREA IMPROVEMENTS (DRC 2011-00069)
BA LOCONTE APPEAL

Let's start by making it clear what the Cave Landing Area looks like today. Shell Beach / Pismo Beach are to the east and Avila Beach is to the west. The Cave Landing area is nestled between those communities, below the Ontario Ridge immediately to the north and the Pacific Ocean to the south. As can be seen, this area has a distinct rural, obviously undeveloped, atmosphere.

Due to its southern exposure, and the hilly topography to its north and northwest, it like Avila Beach proper, the summer/fall fog dissipates much, much sooner than the surrounding areas, and is typically warmer than other coastal areas. The distinct rural character sets the Cave Landing area apart from its immediate and more accessible neighboring communities. ALL enjoy this area's uniqueness, even in a rural County such as San Luis Obispo, and they treasure its preservation.



FIGURE 0-1: PANORAMIC VIEW TO THE SOUTH-EAST FROM BORDER OF PARCELS 2 & 3

One of the certainties in life is: **Change**. Therefore, it comes down to *how much change*, and *how quickly*? It is a constant battle to weigh, define & constrain both aspects, and often not within our control.

Even more so in the constant tug-and-war regarding development along the scenic California Coast. This Commission knows that all too well. That is the context of this appeal. NOTHING MORE; NOTHING LESS.



FIGURE 0-2: PANORAMIC VIEW TO THE SOUTH FROM BORDER OF PARCELS 2 & 3

The Cave Landing area can and will undergo change. Yet that change can be limited such that its rural character is maintained. Some of those changes are well received and long over due; others are **Exhibit 7b**, and have detrimental impacts upon this area's rural nature. That is the content of this appeal. **A-3-SLO-13-0252** NOTHING MORE; NOTHING LESS.

While many San Luis Obispo residents will resist development upon the old UniCal/Standard Oil Tank Farm (including myself), “New” Avila, in some form/fashion is inevitable. It’s simply “change”. Due to the extremely close proximity of that inevitability to the Cave Landing area, the battle-lines must be drawn now, even though this battle is being fought years in advance of those battles, to retain the rural nature of this unique environs against the developments of the nearby beach communities.



FIGURE 0-3: PANORAMIC VIEW TO THE SOUTH-WEST FROM BORDER OF PARCELS 2 & 3

I am but a Lieutenant, stepping into a Commander’s role, trying to convey the correct course to the Admiral. Therefore, I unfortunately must resort to “codes of conduct” and “rules of order” when “common sense” should be sufficient.

The Coastal Plans, Ordinances and Polices arguments will follow. However, the “common sense” will be stated now, because THAT is the most import aspect of this, or any coastal development:

The Cave Landing area is worthy on multiple levels to remain as close to its current undeveloped condition as it can be when considering improvements upon it, to retain its unique rural characteristics.

While “good intentions” are involved, unintended detrimental consequences are contained within the current plans.

The root of the evil is asphalt.

It is hoped that the Admirals recognize the “common sense”. NOTHING MORE; NOTHING LESS.

Subject: CAVE LANDING AREA IMPROVEMENTS (DRC 2011-00069)
BA LOCONTE APPEAL

SUMMARY OF APPEAL ISSUES:

SLO Project DRC 2011-00069, as approved by the San Luis Obispo Board of Supervisors on 05 NOV 2013, does not conform to the San Luis Obispo Coastal Plans, Ordinances and Policies, for the following reasons:

- 1) The scope of the project does not address and correct for the added burdens upon coastal access due to the completion of the Cave Landing Trail re-alignment and improvement, in that it creates additional use of the area adding to the already inadequate parking for the area.
- 2) The expansion of the original scope of the project to improve the Cave Landing Trail, to also include subsequent development for improvements to the beach access creates many more non-conforming conditions, including increased burdens to shoreline access. Thus, linking what should have been two separate projects, has only unnecessarily delayed the completion of a segment of the California Coastal Trail system.
- 3) Asphaltting of the current Cave Landing parking area's current "foot-print":
 - a) Does not conform with the requirement that the surface be permeable.
 - b) Reduces the number of vehicles that can currently park on the existing "foot-print" thus adding to the shoreline access parking burdens.
 - c) Does not conform with the requirements to "blend in" and be "subordinate to the surrounding area", in both material and color.
- 4) The available parking for the Cave Landing Area is functional for current general use but is burdened by many high demand days. The current plan does not conform with the requirement that there be developed parking for 100 vehicles. The added burdens due to improvement of the Cave Landing Trail and the intended improved beach access trail are not accounted for. In fact those burdens are increased due to the over-all reduction of available parking in the area as created by the approved plans.

Specific details follow in the body of this appeal.

It is hoped that this Commission rejects the approved San Luis Obispo Project DRC 2011-00069, based upon all of these aspects.

Additionally, it is hoped & desired that this Commission recognize the unique rural setting of this area, Cave Landing (aka, Mallagh Landing and Pirate's Cove) as identified by the San Luis Coastal Plan Polices on pages 10-2 & 10-4:

Visual resources in the coastal zone have been inventoried and evaluated for: 1) the rural concern or protection of visual corridors from public roads including offshore viewing; and 2) protection of community character (which contributes to a unique beach related experience for visitors or residents).

Subject: CAVE LANDING AREA IMPROVEMENTS (DRC 2011-00069)

APPEAL #1: The topic of this appeal is "PROJECT SCOPE."

NON-CONFORMANCE RE: SLO CO. COASTAL AREA PLAN, ORDINANCES AND POLICIES

Pertinent sections of the San Luis Obispo County, Coastal Plan, Policies, and Ordinances follow.

Actual text is *italicized*; all **bolding** of that text is mine.

The San Luis Obispo County, Coastal Plan Policies, dated March 1, 1988, Certified by California Coastal Commission February 25, 1988, Revised April 2007, Chapter 2, San Luis Bay Planning Area [on or about Pgs. 2-5 & 2-6] states, in part:

The Mallagh Landing Area (Pirate's Cove) between Avila and Shell Beach is privately owned but has experienced intensive recreational use. Prescriptive rights may exist within this area. Currently facilities and improvements are inadequate to accommodate the existing level of use and impacts of this use include destruction of archaeological resources and contribution to erosion of the bluff-top.

The San Luis Obispo County, Coastal Plan Policies, dated March 1, 1988, Certified by California Coastal Commission February 25, 1988, Revised April 2007, Chapter 2 Shoreline Access Policy⁸ – Minimizing Conflicts with Adjacent Uses [on or about Pg. 2-15] states:

Maximum access shall be provided in a manner which minimizes conflicts with adjacent uses. Where a proposed project would increase the burdens on access to the shoreline at the present time or in the future, additional access areas may be required to balance the impact of heavier use resulting from the construction of the proposed project. [THIS POLICY SHALL BE IMPLEMENTED PURSUANT TO SECTION 23.04.420k OF THE CZLUO]

DISCUSSION:

The original scope of this project was the improvement and re-alignment of the Cave Landing Trail. Funding from the California Dept. of Fish and Game, via the National Fish and Wildlife Foundation was obtained in 2002 [Agreement R-14-2002]. Additional funding was granted from the same in 2009. This funding has been extended multiple times.

Cave Landing Trail is a segment of California Coastal Trail, which is a primary goal for the State and this Commission.

The County of San Luis Obispo purchased Parcel 3, [SLO COAL 96-036, recorded in SLO 54PM36 (see **FIGURE 1-1** on next page)] and took possession in NOV/DEC of 2008. [per SLO Official Document Number 2008062596]

The primary development plans for this project were either completed or near completion by early 2009. Preliminary finalized design drawings were completed as of 2011.

It should have been obvious to the County that the completion of Cave Landing Trail would increase the parking demands on the area. It was already known that the existing parking in the area was inadequate. Therefore, the proper scoping of the project even in its initial form should have been to evaluate additional parking along Cave Landing Rd.

The EIR/CEQA for this project did not evaluate this development. All the same issues that were addressed in the EIR apply to development along Cave Landing Rd. However, these issues are easily addressed, by minor adjustment of the current EIR evaluation to specifically include the impacted portions of Cave Landing Rd. within the scope of that evaluation.

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Actual solutions to parking will be discussed in Appeal #3. However, at this time, it only needs to be noted that the north-east (uphill side, along Parcel 3) could be widened by about 3 to 4 feet with minimal grading. That limited amount of area has most likely already been disturbed in the past due to original construction of Cave Landing Rd, so there should be minimal additional impact upon any cultural resources and the EIR conclusions.

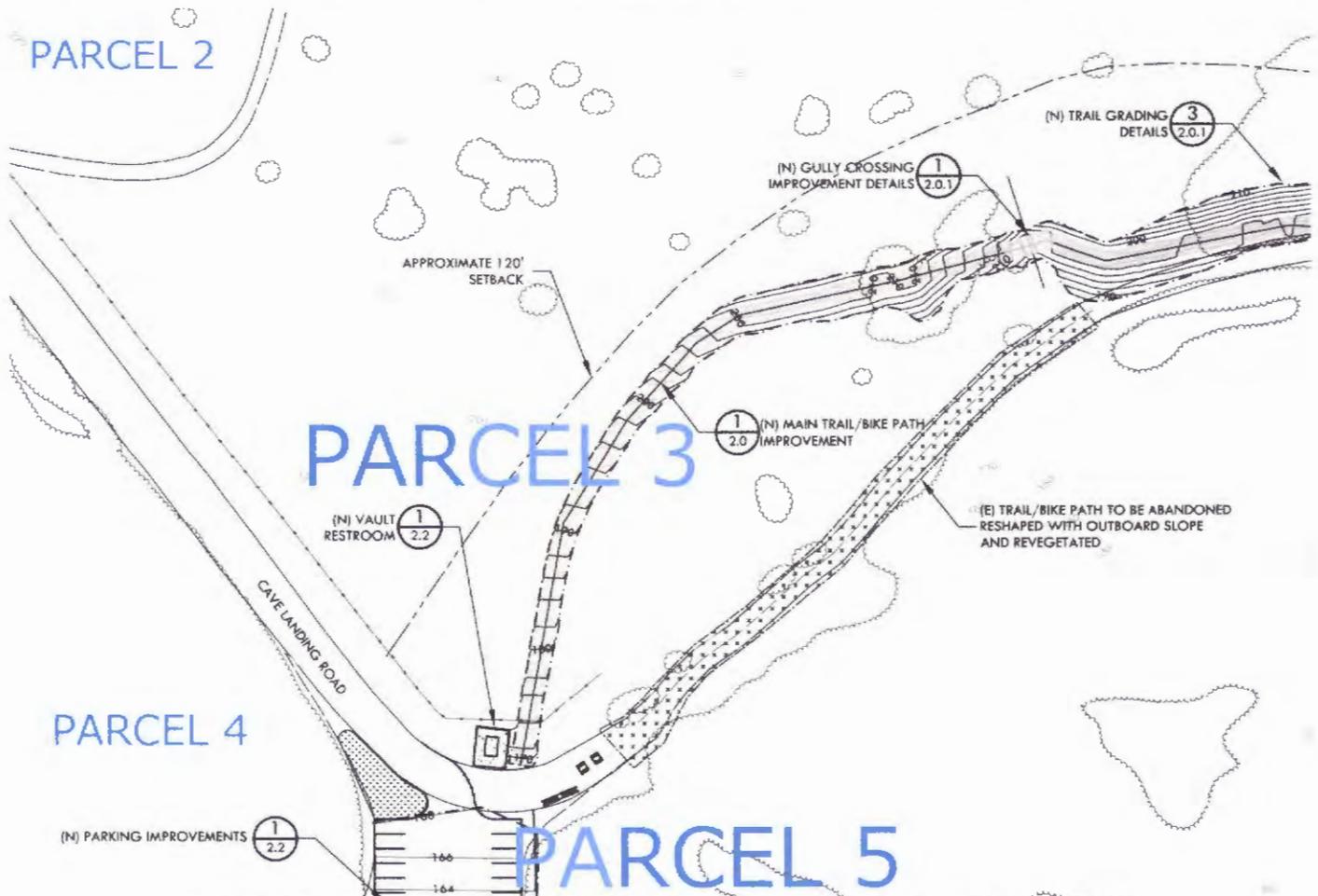


FIGURE 1-1: CAVE LANDING AREA SHOWING PARCEL NUMBERS PER SLO 54PM36

Had the project been properly scoped, the original goal of the project could have gained approval and been completed in the 2009-2011 timeframe. Specifically, **the California Coastal Trail extension via Cave Landing Trail would be in-use today.**

Additionally, the Western trail-head for the Ontario Ridge Trail is in the same immediate area of Cave Landing Rd. Development of additional parking along Cave Landing Rd for the Cave Landing Trail improvements will be a spring board for further additional parking via the Ontario Ridge Trail improvements, as necessary.

In late 2008, there was a renewed offer to dedicate to SLO Co. the entire Parcel 5, for Public Use (actually, simply formalizing the obvious Public proscriptive easements that were already established by use). The SLO Board of Supervisors [Resolution 2008-354] in the same time-frame authorized purchase of Parcel 3, so that the original project scope could begin approval and construction. They based it in part due to the offer to dedicate Parcel 5.

It wasn't until February 2013 that the Board of Supervisors actually accepted this offer to dedicate [Resolution 2013-030].

Thus, instead of treating the new development upon Parcel 5 as the separate project it should have been, SLO Co. inexcusably delayed the original project scope, and a goal of this Commission, to extend the California Coastal Trail.

CONCLUDING SUMMARY:

CAVE LANDING AREA IMPROVEMENTS (DRC 2011-00069), as presently approved by the County of San Luis Obispo is substantially not in conformance with the SLO Co. Coastal Plans, Policies and Ordinances, most originating from development upon Parcel 5.

The best approach would be for this project to be separated into the two projects that it truly is:

Project 1: Improvement and Re-alignment of the Cave Landing Trail, in furtherance of the California Coastal Trail [Parcel 3] along with some additional parking along Cave Landing Rd. This would most certainly obtain swift approval, and allow near-term construction and its timely completion.

Project 2: Development of the Cave Landing Parking and Coastal Beach Access Trail [Parcel 5], which is the primary source of Public consternation and non-conforming aspects. This will allow further refinements to bring it into conforming condition, and obtain any additional funding for the project if needed.

It is hoped, that this Commission REJECTS SLO project DRC 2011-00069, and directs San Luis Obispo County to re-gain approval as two separate projects.

Subject: CAVE LANDING AREA IMPROVEMENTS (DRC 2011-00069)
APPEAL #2: The topic of this appeal is "ASPHALT."

NON-CONFORMANCE RE: SLO CO. COASTAL AREA PLAN, ORDINANCES AND POLICIES

Pertinent sections of the San Luis Obispo County, Coastal Plan, Policies, and Ordinances follow.
Actual text is *italicized*; all **bolding** of that text is mine.

The San Luis Obispo County, San Luis Bay Area Plan, Coastal, dated March 1, 1988, Certified by California Coastal Commission February 25, 1988, Revised August 2009, Section A(7)(a) Shoreline Access – Mallagh Landing, [on or about Pg. 8-6] states, in part:

- 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 improvements of the parking area is to be consistent with protection of the archaeological resources and geological conditions on the site."*

The San Luis Obispo County, Coastal Plan Policies, dated March 1, 1988, Certified by California Coastal Commission February 25, 1988, Revised April 2007, Chapter 2, San Luis Bay Planning Area [on or about Pgs. 2-5 & 2-6] states, in part:

*The Mallagh Landing Area (Pirate's Cove) between Avila and Shell Beach is privately owned but has experienced intensive recreational use. Prescriptive rights may exist within this area. Currently facilities and improvements **are inadequate to accommodate the existing level of use and impacts of this use include destruction of archaeological resources and contribution to erosion of the bluff-top.** As a condition of development, access along the sandy beach and upland area shall be secured along with a long-term maintenance program. A management plan should be developed jointly by the county and the developer to assure restoration and adequate support facilities for the area.*

The San Luis Obispo County, Coastal Plan Policies, dated March 1, 1988, Certified by California Coastal Commission February 25, 1988, Revised April 2007, Chapter 2, Shoreline Access Policy 2 – New Development [on or about Pg. 2-12] states, in part:

*The size and location of vertical access ways should be based upon the level and intensity of proposed or existing access. Site review shall consider: safety hazards; **adequate parking provisions**; privacy needs of adjacent residential property owner; provisions for requiring adequate public notification of accessway; and levels of improvements for facilities necessary to provide for existing level of access.*

The San Luis Obispo County, Coastal Plan Policies, dated March 1, 1988, Certified by California Coastal Commission February 25, 1988, Revised April 2007, Chapter 2 Shoreline Access Policy8 – Minimizing Conflicts with Adjacent Uses [on or about Pg. 2-15] states:

*Maximum access shall be provided in a manner which minimizes conflicts with adjacent uses. Where a proposed project would increase the burdens on access to the shoreline at the present time or in the future, **additional access areas may be required to balance the impact of heavier use resulting from the construction of the proposed project.** [THIS POLICY SHALL BE IMPLEMENTED PURSUANT TO SECTION 23.04.420k OF THE CZLUO]*

The San Luis Obispo County, Coastal Zone Land Use Ordinance, dated March 1, 1988, Certified by California Coastal Commission October 7, 1986, Revised November 2011, Section 23.04.420k(3) [on or about Pg. 4-131] states:

*Review of the accessway shall consider: safety hazards, **adequate parking provisions**, privacy needs of adjacent residences, adequate signing, and levels of improvement necessary to provide for access*

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The San Luis Obispo County, Coastal Zone Land Use Ordinance, dated March 1, 1988, Certified by California Coastal Commission October 7, 1986, Revised November 2011, Section 23.04.210c(1), Visual Resources [on or about Pg. 4-110] states, in part:

*... New development shall be designed (e.g., height, bulk, style, **materials, color**) to be subordinated to, and blend with, the character of the area. ... ”*

The San Luis Obispo County, Coastal Plan Policies, dated March 1, 1988, Certified by California Coastal Commission February 25, 1988, Revised April 2007, Chapter 10, Visual and Scenic Resources [on or about Pg. 10-2] states, in part:

*A background report (Visual and Scenic Resources Study, January, 1980) provides a detailed description of the scenic qualities of county coastal areas. Visual resources in the coastal zone have been inventoried and evaluated for: 1) the rural concern or protection of visual corridors from public roads including offshore viewing; and 2) **protection of community character (which contributes to a unique beach related experience for visitors or residents)**. The latter resources are discussed in Chapters 3 and 4 of the background report.*

Mallagh Landing and ‘Pirate’s Cove’ are recognized under “Special Communities” [on or about Pg. 10-6].

Additionally, California Coastal Act §30251, states: *“The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas and, where feasible, to restore and enhance visual quality in visually degraded areas. **New development in highly scenic areas** such as those designated in the California Coastline Preservation and Recreation Plan prepared by the Department of Parks and recreation and by local government shall be subordinate to the character of its setting.”*

It should also be noted that per San Luis Obispo County, Coastal Plan Policies, dated March 1, 1988, Certified by California Coastal Commission February 25, 1988, Revised April 2007, Chapter 12 - Archaeology, Policy 5, Mitigation Techniques for Preliminary Site Survey before Construction [on or about Pg. 12-3] states, in part:

Where substantial archaeological resources are found as a result of a preliminary site survey before construction, the county shall require a mitigation plan to protect the site. Some examples of specific mitigation techniques include:

*b. Preservation of an archaeological site can sometimes be accomplished by **covering the site with a layer of fill sufficiently thick to insulate it from impact**. This surface can then be used for building that does not require extensive foundations or removal of all topsoil.*

DISCUSSION:

It is undeniable that this site has cultural and archaeological aspects of great significance. It is also undeniable that there is an active landslide immediately to the East of the parking area. Each needs to be considered in the final designs of the project.

The protection of cultural resources is very well the primary driver of certain elements of the proposed parking area plan. However, alternatives were not well thought out (primarily due to lack of adequate public input), resulting in a decision to asphalt the area, causing the project to be non-conforming in multiple aspects.

To understand the context of the following discussion, please first review the current rain/storm run-off from the surrounding hillside into/onto this area as shown in **FIGURE 2-1** and **FIGURE 2-2** which immediately follow.

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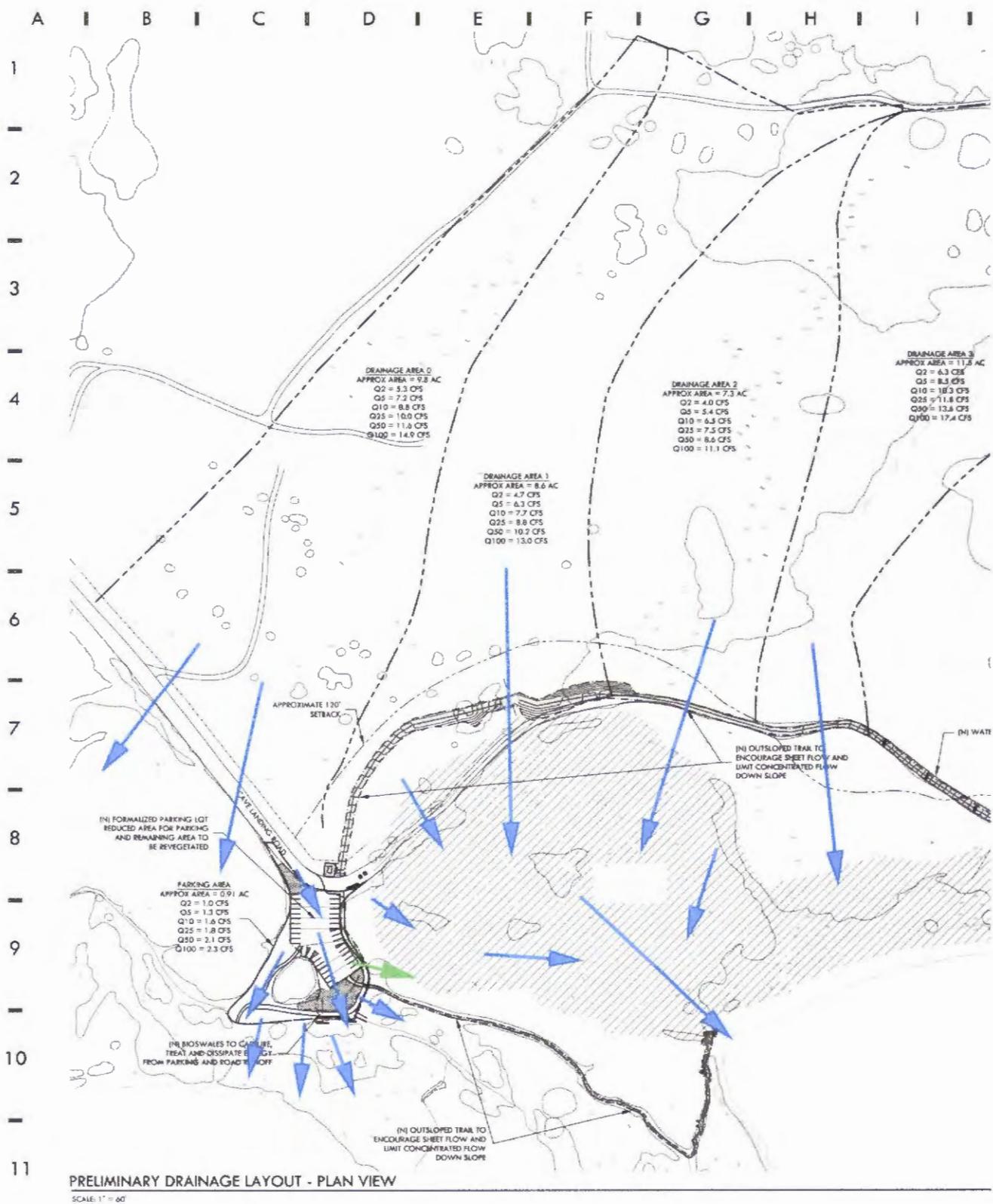


FIGURE 2-1: CONCEPTUAL REPRESENTATION OF MACRO WATER FLOW TO LANDSLIDE COMPLEX

Utilizing the topographic projection, indication of representative water run-off has been added. The bulk water into the complex is from the large surface area of the surrounding hills. The small GREEN arrow represents the miniscule potential water input into the landslide complex from the parking area.

Exhibit 7bD

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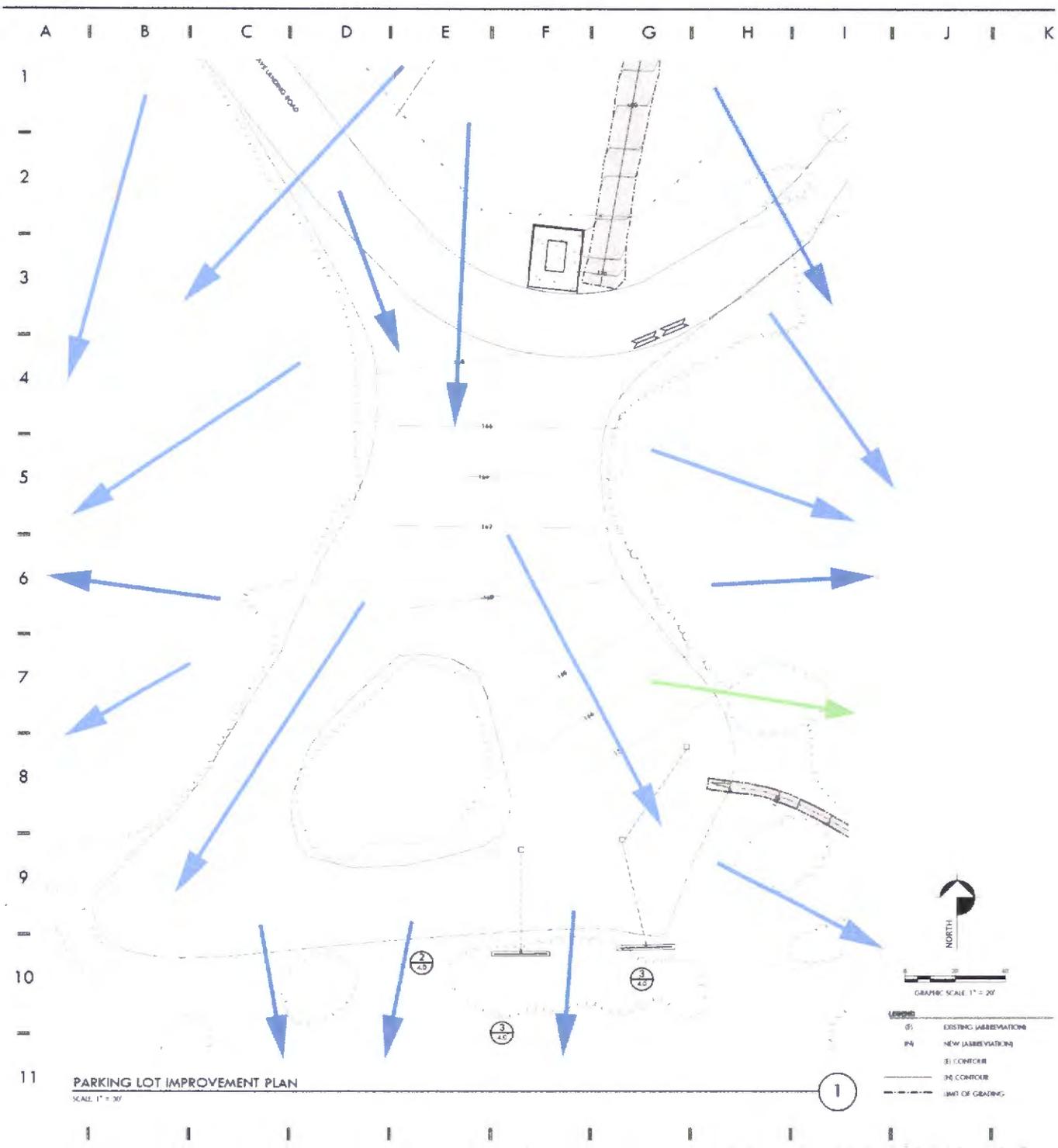


FIGURE 2-2: CONCEPTUAL REPRESENTATION OF MICRO WATER FLOW INTO LANDSLIDE COMPLEX

Again, the BLUE arrows represent natural water flow from the surrounding hills, and upon the parking lot based upon the topographic projection. As can be seen, most of the water that enters or falls upon the parking lot generally travels to the South, spilling down the bluffs to the ocean. VERY little water enters from the parking area itself. The GREEN arrow at grid 7-H, again represents the parking area's generalized, if any, water contribution into the landslide complex.

Exhibit 7b

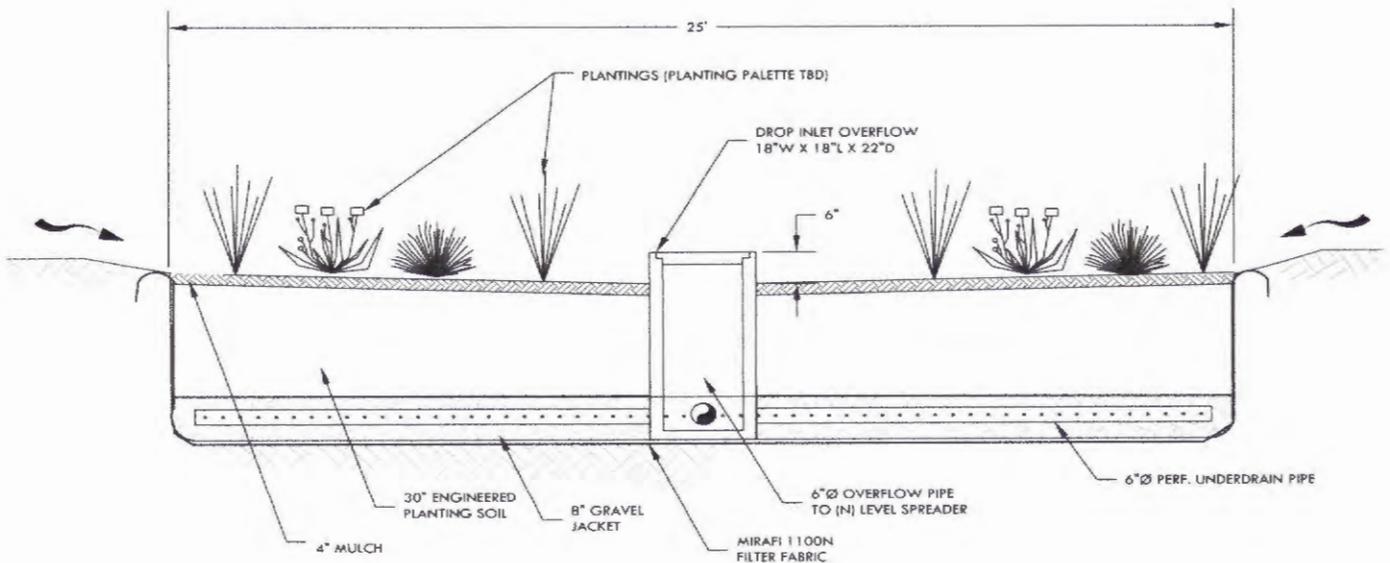
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The County states a number of reasons why asphalt is necessary for this project, none of which hold water upon close scrutiny. To summarize those reasons:

- The current layer of non-native fill is compacted. To make the non-native fill permeable, the fill layer would need to be graded to an extent that it would impact native soil.
- Current run-off is causing rutting. The asphalt both prevents this and is necessary to direct water to the planned bio-swales.
- The new path alignment will add run-off volume to the parking area. The combined run-off needs to be contained to prevent entering landslide complex.

Addressing the first point: If the fill is fully compacted, then simply grating the existing impervious soil to channel water flow away from the landslide area would be a viable option. This is planned anyway in preparation for paving. Let's also recognize that the proposed bio-swales are being placed on that same "impervious" [or is it?] fill. If one studies the details of the planned bio-swale, it is between 42-48 inches below grade (see **FIGURE 2-3**). **FIGURE 2-4** shows the originally proposed location of the bio-swales, which are on the existing parking "foot-print". Thus, they would have greatly impacted native soil.



TYPICAL BIOSWALE CROSS SECTION

SCALE: 1" = 2'

2

FIGURE 2-3: TYPICAL BIO-SWALE AS PER SLO COUNTY'S CURRENT DESIGN

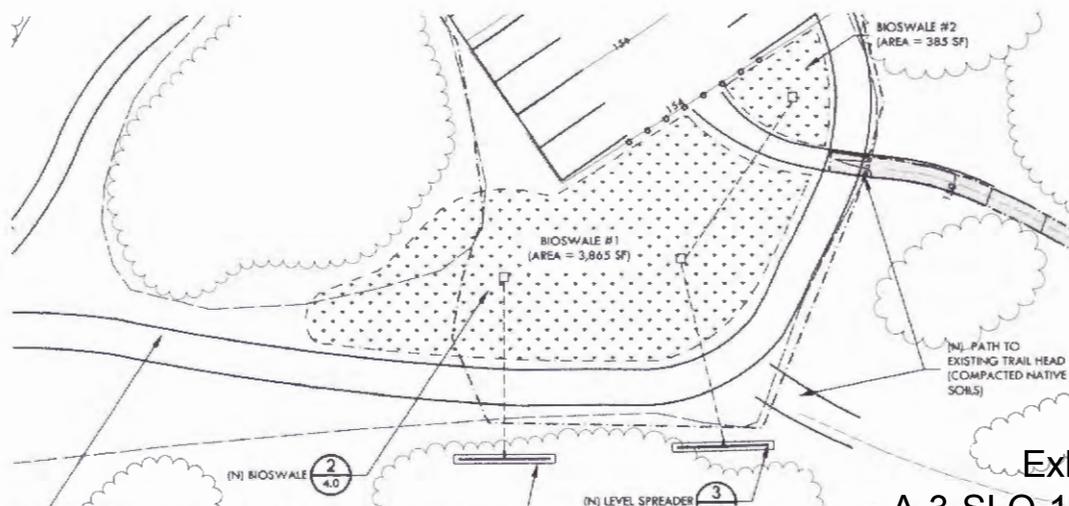


FIGURE 2-4: SOUTH END OF PARKING AREA AS PER SLO COUNTY'S ORIGINAL DESIGN

Exhibit 7b

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Re: the second point: The existing fill was added in the early 1990's. Its condition is simply 20 plus years of benign neglect. Under the circumstances it has held up quite well, and belies the notion that current run-off upon this area is a significant factor to localized surface erosion. The current rutted condition of the parking area most certainly requires remediation, but it does not necessitate the use of asphalt.

Finally, let's discuss the 3rd point: Please refer to **FIGURE 2-5** for reference.

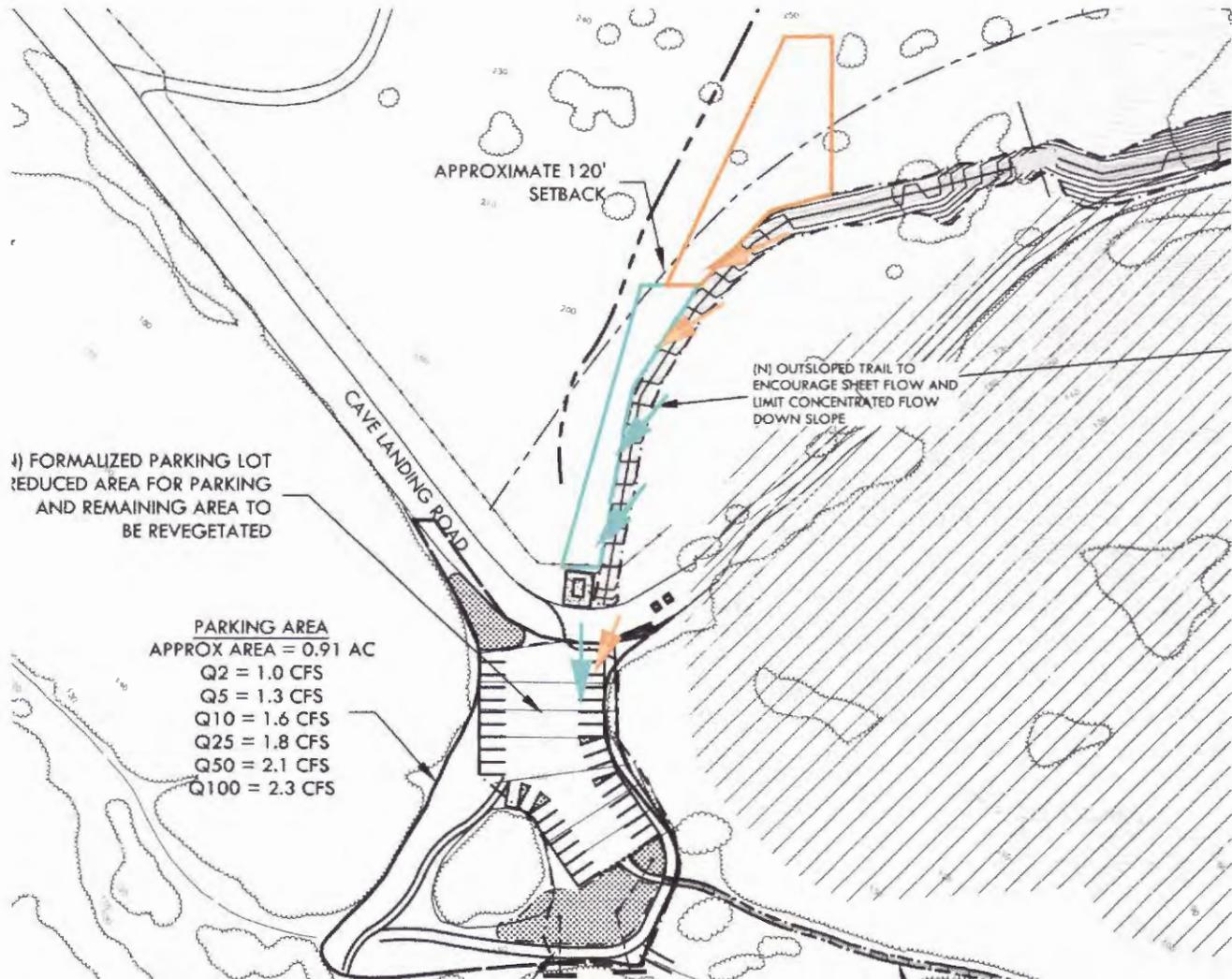


FIGURE 2-5: *HYPOTHETICAL RE-ROUTING OF HILLSIDE RUN-OFF AWAY FROM LANDSLIDE COMPLEX*

From an engineering perspective, using the passive techniques that are being employed for this project, the maximum potential to re-route the surrounding hillside run-off away from the landslide complex is conceptually illustrated by the ORANGE outlined area in the above figure. The run-off from the BLUE-GREEN outlined area most likely would naturally flow onto the parking area regardless. The volume will be considered later.

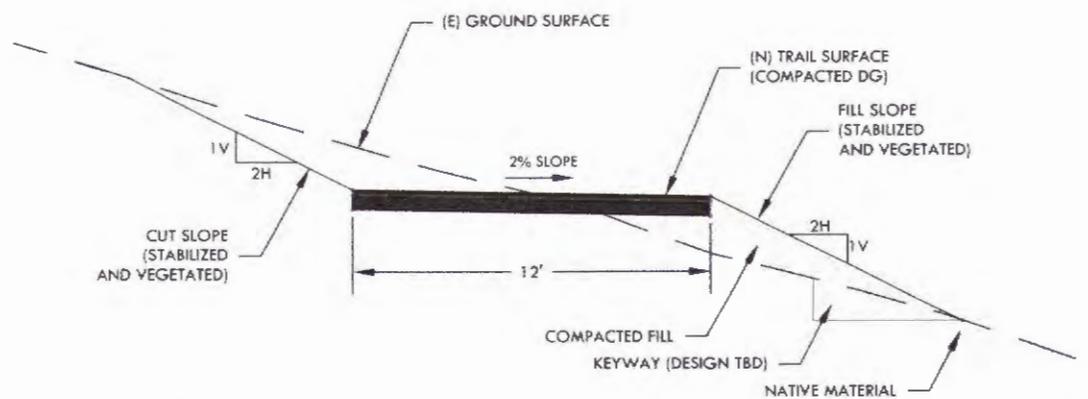
While not obvious from available Public documents for the design drawing of this project, this doesn't actually seem to be design elements [see **FIGURES 2-6A & 2-6B**], even though SLO Co. staff contends that it is. The "sheet flow" referred to is with regard to a "down-slope" [down-hill] to slow-down the velocity of run-off into the landslide complex. In any event it would not be 100% effective.

The only conceivable means to accomplish this diversion is to reverse the direction of the planned water bars. This is somewhat problematic as the water bars main intent was to decrease the velocity of the up-hill side water flow upon the path, to help sustain the path condition. This approach will cause the "diverted" water to cross the path multiple times with volume increasing incrementally as it flows southward.

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TYPICAL TRAIL SECTION A-A

SCALE: 1" = 4'

3

FIGURE 2-6A: COUNTY'S TRAIL RUN-OFF DESIGN DETAILS

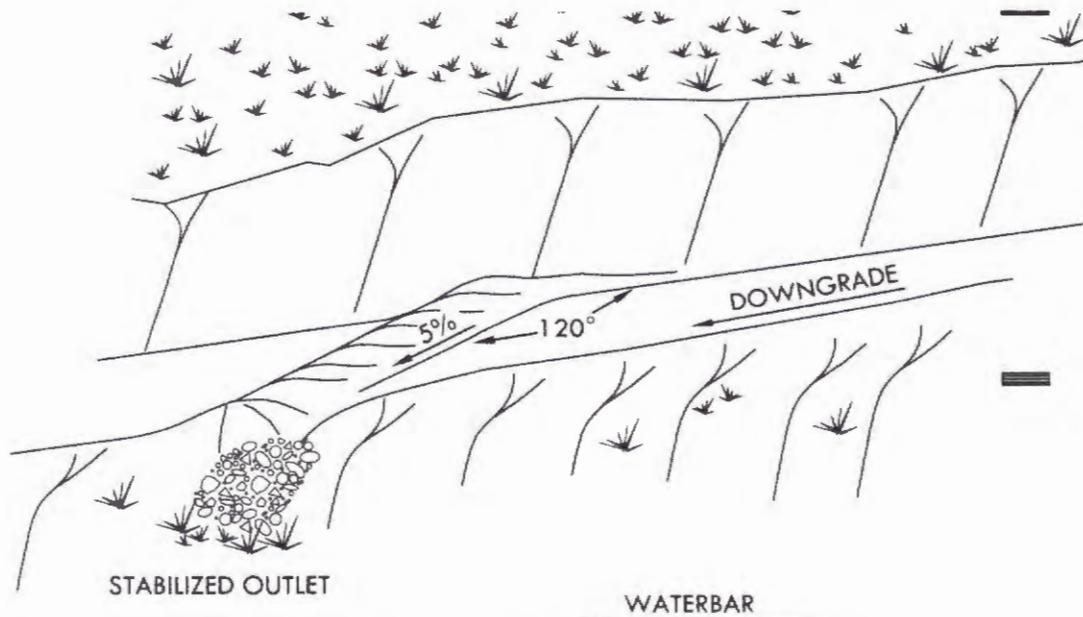


FIGURE 2-6B: COUNTY'S TRAIL RUN-OFF DESIGN DETAILS

A "back-of-the-envelope" calculation was done to assess the level-of-magnitude that this hypothetical condition may actually have over-and-above the existing conditions upon the volume of water that would then flow from the parking area. From the relative areas outlined in **FIGURE 2-5**, this calc was done assuming the affected area of the diverted run-off was approximately 1/2 the area of the existing parking, or 1/2 acre. The result was that this would add less than 4% of the existing run-off from the parking area [see Attachment 1 for details]. This is a **less than significant** amount of added run-off volume.

ALTERNATIVE DESIGN FOR CONSIDERATION:

It is readily apparent that the design elements of a bio-swale and associated level spreaders can easily be incorporated into the parking surface itself [FIGURE 2-7]. That is, the current layer of non-native clay soil be graded and sloped to the degree necessary to divert the flow of water away from the land-slide area. Additional layers of gravel with embedded perforated piping as required, to the “level spreaders” and ultimate runoff to the ocean. By raising the South end of the parking area, and graduating the gravel layer to a lesser depth as the terrain elevates northward, it will decrease the slope of the parking area, further reducing runoff velocity and any eroding effects, and allow the largest volumetric water retention at the southern end where it naturally wants to flow.

A type of pea gravel mixed with other engineering beneficial material can be added as the final layer and stabilized, with earth-toned colored interlocking open lawn pavers made of permeable concrete. The pea gravel does not need to be of the traditional type; it should be of natural earth-tone colors, such as crushed serpentine (locally available) of a green-ish tint mixed, as necessary/desired with a tan-ish crushed rock. This would mitigate the visual impacts due to past over use. It would “blend in with” the area’s “material and color” thus visually conforming.

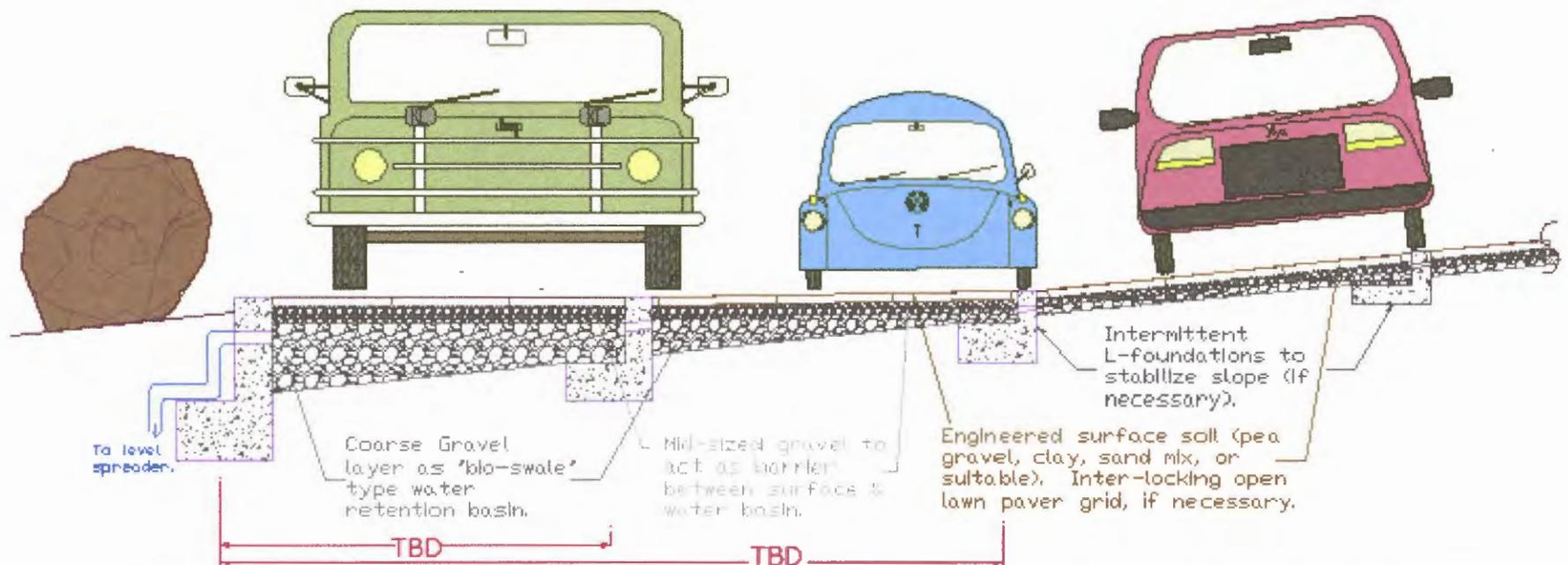


FIGURE 2-7: SOUTH END OF PARKING AREA (LOOKING WEST), SHOWING PARKING ON “BIO-SWALE”-STYLE DESIGN CONCEPT

The above approach addresses all the stated limitations and goals of this project. It protects the cultural resources of the area, mitigates the minor natural flow of water into the landslide complex from the parking area, yet it still conforms to the San Luis Obispo Coastal Plan, Ordinances and Policies. Of which is an over-riding concern regarding the visual characteristics of the surface material, such that it contributes to the “protection of community character”. Additionally, maintaining it as a non-paved area, any required striping would be avoided, not resulting in 10 or more available parking spots to be lost from the existing “foot-print” which would increase the already burdened available parking in this area.

Exhibit 7b

A-3-SLO-13-0252

ADDITIONAL DISCUSSION:

While there are still vast miles of undeveloped coastline between Northern San Luis Obispo County and the San Francisco Bay, and also North of the Bay Area to the Oregon border, many are not only rural, they are remote. There is less threat of urbanized development of those rural coastal accesses.

However, there are multiple rural beach/coastal access areas in proximity to partially urbanized areas, very similar to the Cave Landing area and the neighboring Pismo Beach and Avila Beach communities

What makes this area's "community character" unique? THE most import aspect is the rural characteristic of the Cave Landing Area. However, it is also the relatively undeveloped nature of the rural site. This is a very evident contrast from the nearby Avila Beach and Pismo Beach which are developed on a small, but increasing scale. These communities are distant enough from the Cave Landing area to only be viewed from afar. This allows a unique rural experience of coastal and beach access without the hustle and bustle of those types of communities. The non-asphalted, non-urbanized parking area is a primary contributor to that character.

What better epitomizes the sense of "rural-ness" than the sound of crunching dirt and gravel beneath the wheels of a vehicle?

I know of what I speak. I have lived in a rural area for more than thirty years. I hear the sound of gravel and dirt beneath vehicle tires daily. One of my few near-by neighbors once told me that he wishes his driveway was still gravel; he is envious every time he hears me and my other neighbors drive by and hears that same sound. THE sound of rural-ness.

CONCLUDING SUMMARY:

Of utmost importance is the preservation of the rural aspects of the Cave Landing Area. **This Commission has the opportunity to establish a precedent for California Counties and Local Governments to follow** when contemplating development of rural beach areas and coastal access.

The Cave Landing Area epitomizes the intent of California Coastal Act §30251: *"The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas such as those designated in the California Coastline Preservation and Recreation Plan prepared by the Department of Parks and recreation and by local government shall be subordinate to the character of its setting."*

It is sincerely hoped that this Commission votes unanimously to NOT allow asphalt paving of this area and its indelible negative visual impacts for decades to come, upon this scenic treasure of the California Coastline.

This Commission should REJECT SLO project DRC 2011-00069, and direct San Luis Obispo County to re-gain approval once the project conforms with SLO Coastal Plan, Ordinances and Policies regarding visual aesthetics.

Subject: CAVE LANDING AREA IMPROVEMENTS (DRC 2011-00069)
APPEAL #3: The topic of this appeal is "PARKING."

NON-CONFORMANCE RE: SLO CO. COASTAL AREA PLAN, ORDINANCES AND POLICIES

Pertinent sections of the San Luis Obispo County, Coastal Plan, Policies, and Ordinances follow.
Actual text is *italicized*; all **bolding** of that text is mine.

The San Luis Obispo County, San Luis Bay Area Plan, Coastal, dated March 1, 1988, Certified by California Coastal Commission February 25, 1988, Revised August 2009, Section A(7)(a) Shoreline Access – Mallagh Landing, [on or about Pg. 8-6] states, in part:

- 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 improvements of the parking area is to be consistent with protection of the archaeological resources and geological conditions on the site."*

The San Luis Obispo County, Coastal Plan Policies, dated March 1, 1988, Certified by California Coastal Commission February 25, 1988, Revised April 2007, Chapter 2, San Luis Bay Planning Area [on or about Pgs. 2-5 & 2-6] states, in part:

The Mallagh Landing Area (Pirate's Cove) between Avila and Shell Beach is privately owned but has experienced intensive recreational use. Prescriptive rights may exist within this area. Currently facilities and improvements are inadequate to accommodate the existing level of use and impacts of this use include destruction of archaeological resources and contribution to erosion of the bluff-top. As a condition of development, access along the sandy beach and upland area shall be secured along with a long-term maintenance program. A management plan should be developed jointly by the county and the developer to assure restoration and adequate support facilities for the area.

The San Luis Obispo County, Coastal Plan Policies, dated March 1, 1988, Certified by California Coastal Commission February 25, 1988, Revised April 2007, Chapter 2, Shoreline Access Policy 2 – New Development [on or about Pg. 2-12] states, in part:

The size and location of vertical access ways should be based upon the level and intensity of proposed or existing access. Site review shall consider: safety hazards; adequate parking provisions; privacy needs of adjacent residential property owner; provisions for requiring adequate public notification of accessway; and levels of improvements for facilities necessary to provide for existing level of access.

The San Luis Obispo County, Coastal Plan Policies, dated March 1, 1988, Certified by California Coastal Commission February 25, 1988, Revised April 2007, Chapter 2 Shoreline Access Policy 8 – Minimizing Conflicts with Adjacent Uses [on or about Pg. 2-15] states:

Maximum access shall be provided in a manner which minimizes conflicts with adjacent uses. Where a proposed project would increase the burdens on access to the shoreline at the present time or in the future, additional access areas may be required to balance the impact of heavier use resulting from the construction of the proposed project. [THIS POLICY SHALL BE IMPLEMENTED PURSUANT TO SECTION 23.04.420k OF THE CZLUO]

The San Luis Obispo County, Coastal Zone Land Use Ordinance, dated March 1, 1988, Certified by California Coastal Commission October 7, 1986, Revised November 2011, Section 23.04.420k(3) [on or about Pg. 4-131] states:

Review of the accessway shall consider: safety hazards, adequate parking provisions, privacy needs of adjacent residences, adequate signing, and levels of improvement necessary to provide for a

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DISCUSSION:

The current footprint can and does accommodate 70-75 vehicles and sometimes more. Per the current approved project design, 65 of its 70 spaces are on the "footprint" of the current parking area south of Cave Landing Road. The other 5 spaces are along the north side of the road and are already utilized for parking, so they do not contribute to "new" parking.

The plans also causes an additional loss of approximately 5 to 7 vehicles parking along Cave Landing Rd at the furthest East end due to closure and due to the proposed toilet, trailhead and bike-racks.

The result of both design elements is a reduction of at least 15 vehicles as currently approved. This is a significant decrease [19%]. Thus it does not conform to use burdens of the area per Shoreline Policy 8's requirement to account for, "*burdens on access to the shoreline at the present time ...*," and obviously completely ignores future burdens.

In public correspondence dated July 10th, to the 25JULY2013 SLO Planning Commission's Meeting, the Whales Cave Conservancy (WCC) provided a 3 month graphic showing observances when the number of vehicles exceeded 100 [see **FIGURE 3-2**]. Using the numbers provided, this indicates current parking in the Cave Landing area as being >100 vehicles 16% of the time, and >120 for 6%.

Planning Commissioner Jim Irving noted in its 23 MAY 2013 meeting, his observance the prior Sunday he counted that there were 77 cars in the graveled parking area, and 34 cars along Cave Landing Rd. This totals 111 vehicles.

As noted in the WCC graph, the counts were probably less than of actual peak usage. The Sunday to which the Commissioner referred, would have been 19 MAY. By chance, the WCC graph also includes a data point for this day, at approximately 104 cars. Therefore, it is possible that the true peak that day may have been in excess of 111 vehicles.

Additionally, in a letter dated May 20, 2013, the Avila Valley Advisory Council (AVAC) made the following recommendation (in part):

"... to retain the existing number of parking spaces (70), at a minimum, and continue to provide a turn-around for circulation safety."

It is clear that asphaltting the existing "foot-print" results in the greatest amount of available parking. This is the result of adding line demarcation as per SLO Ordinance "23.04.164 Parking Design Standards – Requirements for parking space size, isle width, and driveway standards" Retaining the existing "foot-print" in an unpaved condition will prevent this reduction.

SUGGESTED REMEDIATION:

The only alternative to address the vehicle shortfall in the current design and for the area overall, would be to widen a portion of Cave Landing, as should have been considered within the original scope of this project.

There is a requirement by Cal Fire that there be a minimum of 20' of unobstructed road for ingress/egress. Therefore, parking is currently allowed only on one side of Cave Landing Rd, the "western" (ocean) side. So the intent on widening Cave Landing Rd is to allow parking on both sides, such that the area accommodates more vehicles. The length of widening is dependant upon the number of vehicles required.

Per measurements, the existing pavement is 25 feet wide. There is currently between 5'-6' along the west side (along parcel 4) which allows for parallel parking. There is a 50' road easement for Cave Landing Rd. Indicating approximately 12½ feet additional width is available on each side.

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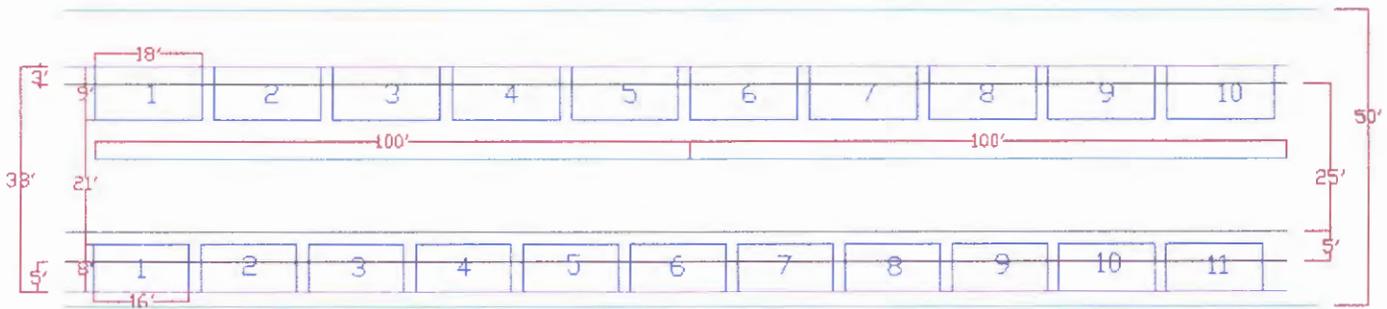


FIGURE 3-1: CONCEPTUAL PARKING DESIGN ALONG CAVE LANDING ROAD

Due to the cultural restrictions for extensive grading, in this area, approximately 3 to 4 feet would easily be utilized along parcel 3 with minimal grading, in an area that has most likely been previously disturbed during initial construction of Cave Landing Rd. Widening along parcel 4 would be by fill, and therefore not impact cultural resources.

When considering both a) parallel parking along both sides, and b) angled parking on one side, the necessary width is approximately a) 38' and b) 41'. Considering this, Cave Landing Rd would need to be widened by 8' to 11'. As can be seen in **FIGURE 3-1**, this is within the current road easement.

It is not suggested that line demarcations be employed; the dimensioned spaces are shown simply for visualization.

Of course the number of required development along Cave Landing Road decreases significantly if the parking area "foot-print" remains un-paved and un-striped.

CONCLUDING SUMMARY:

CAVE LANDING AREA IMPROVEMENTS (DRC 2011-00069), as presently approved by the County of San Luis Obispo is substantially not in conformance with the SLO Co. Coastal Plans, Policies and Ordinances.

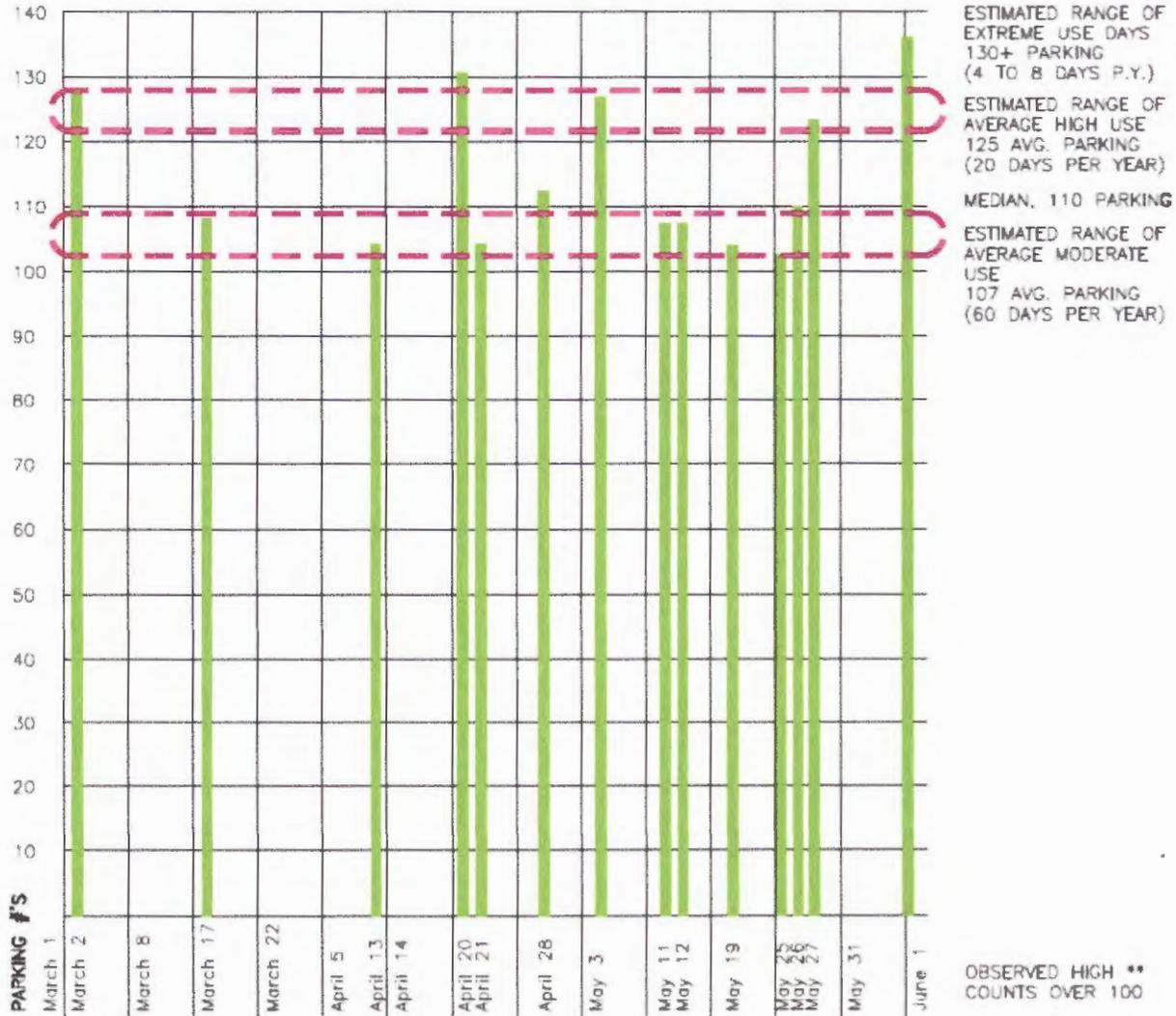
The approved plan does not:

- 1) Resolve the previously identified condition, that current parking is insufficient to accommodate current area usage.
- 2) Exacerbates the current insufficient condition of available parking.
- 3) Does not adequately address future needs for available parking of the Cave Landing Trail (part of the California Coastal Trail) improvements.

This Commission should REJECT SLO project DRC 2011-00069, and direct San Luis Obispo County to re-gain approval once the project conforms with SLO Coastal Plan, Ordinances and Policies regarding available parking.

THREE MONTH PARKING COUNTS

MARCH 1ST TO JUNE 1ST 2013



BASIS OF ANALYSIS:

The data collected for this analysis is derived from parking counts taken at one time during popular beach days. Usually Friday Saturday and Sunday. These are recorded as part of a separate Blog "CoveVB". Observation has revealed that these counts may be short of peak as some counts taken later in the afternoon (2 to 2:30PM) show more use. As a result of this sampling, we believe that the Estimated "Average High Use" is closer to the "Average Moderate Use". We therefore feel that the intent of both AVAC and San Luis Obispo County Planning Commission can be minimally met with a set goal of 120 to 125 parking spaces as representative of "Existing Use"

Note: Even with the parking at 125 spaces and no additional interest in the New Park, there will already be twenty days without adequate parking.

Note: Additional impacts from the development of the (Former) UNOCAL Tank Farm property should be included in the long range parking requirements for this park.

FIGURE 3-2: WHALES CAVE CONSERVANCY'S 3 MONTH CAR COUNT

Subject: CAVE LANDING AREA IMPROVEMENTS (DRC 2011-00069)
BA LOCONTE APPEAL



FIGURE 4-1: PANORAMIC VIEW TO THE SOUTH-EAST FROM SW CORNER OF CAVE LANDING PARKING AREA

FINAL SUMMARY:

CAVE LANDING AREA IMPROVEMENTS (DRC 2011-00069), as presently approved by the County of San Luis Obispo is substantially not in conformance with the SLO Co. Coastal Plans, Policies and Ordinances as discussed above.

In summary:

- 1) The project did not adequately address the required project area in its EIR/CEQA boundary to accommodate additional parking along Cave Landing Road.
- 2) The project does not conform with requirements regarding the impacts of visual view corridors and associated aesthetics, particularly regarding: ... *“New development shall be designed (e.g., height, bulk, style, materials, color) to be subordinated to, and blend with, the character of the area. ...”*
- 3) The project does not conform with parking requirements, primarily regarding *“Maximum access shall be provided in a manner which minimizes conflicts with adjacent uses. Where a proposed project would increase the burdens on access to the shoreline at the present time or in the future, additional access areas may be required to balance the impact of heavier use resulting from the construction of the proposed project.”*

This Commission should REJECT SLO project DRC 2011-00069, and direct San Luis Obispo County to re-gain approval as two separate projects. The projects then need to conform with SLO Coastal Plan, Ordinances and Policies regarding available parking. In particular:

The Cave Landing area is worthy on multiple levels to remain as close to its current undeveloped condition as it can be when considering improvements upon it, to retain its unique rural characteristics.

While “good intentions” are involved, unintended detrimental consequences are contained within the currently approved plans. Primarily regarding its rural character and available access.

The root of the evil is asphalt. Please do not allow this area’s Special Community Characteristics to be lost and forever marred by allowing it to be paved.

It is hoped that the Admirals instruct the Helmsman to alter course to the correct heading.
NOTHING MORE; NOTHING LESS.



FIGURE 4-2: PANORAMIC VIEW TO THE SOUTH-WEST FROM SW CORNER OF CAVE LANDING PARKING AREA

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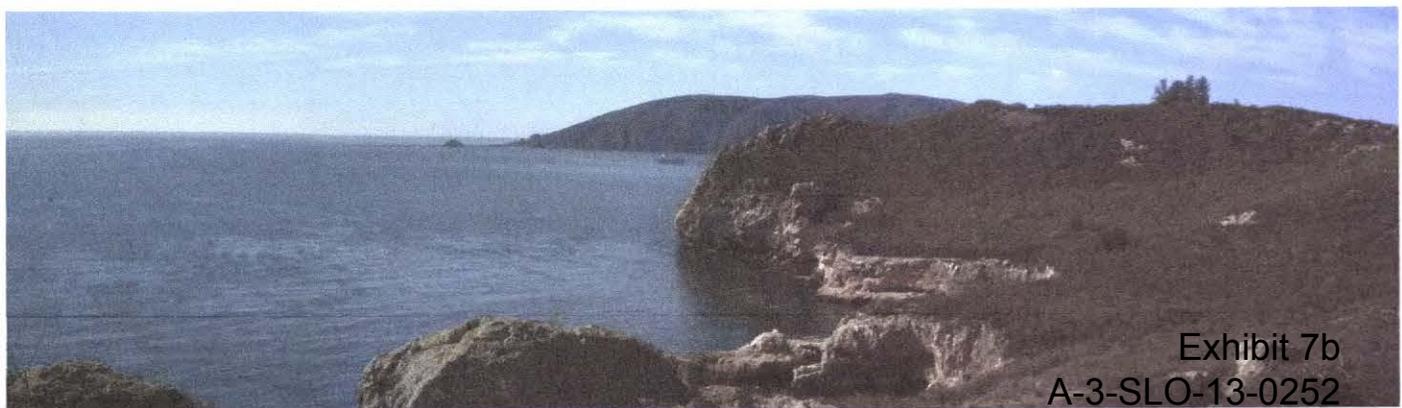


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ATTACHMENT 1

QUICK CALCULATION OF POTENTIAL DIVERSION OF RUN-OFF ONTO PARKING



CONSOLIDATED ELECTRICAL DISTRIBUTORS, INC.

2520 VICTORIA AVENUE, SAN LUIS OBISPO, CA 93401
805/543-4700 • FAX 805/543-2357

<u>DRAIN AREA 1</u>	<u>DRAIN PARKING</u>
$A_1 = 8.6 \text{ AC}$	$A_p = 0.9 \text{ AC}$
$QZ_1 = 4.7 \text{ F}^{3/4}$	$QZ_p = 1.0 \text{ F}^{3/4}$
$Q_{100} = 13.0 \text{ F}^{3/4}$	$Q_{100p} = 2.3 \text{ F}^{3/4}$
ASSUME AREA OF DRAIN / DIVERTED TO PARKING	
$A_x \approx 1/2 A_p \approx 0.5 \text{ AC}$	
THEREFORE $Q_x = Q_1 \left[\frac{A_x}{A_1} \right]$	
$QZ_x = QZ_1 \left[\frac{A_x}{A_1} \right]$	$Q_{100x} = Q_{100} \left[\frac{A_x}{A_1} \right]$
$QZ_x = (4.7 \text{ F}^{3/4}) \left[\frac{0.5 \text{ AC}}{8.6 \text{ AC}} \right]$	$Q_{100x} = (13.0 \text{ F}^{3/4}) \left[\frac{0.5 \text{ AC}}{8.6 \text{ AC}} \right]$
$QZ_x = 0.027 \text{ F}^{3/4}$	$Q_{100x} = 0.076 \text{ F}^{3/4}$
$\Rightarrow Q_{P_u} = Q_{P_i} + Q_{P_x}$	
$QZ_{P_u} = (1.0 \text{ F}^{3/4}) + (0.03 \text{ F}^{3/4})$	$Q_{100P_u} = (2.3 \text{ F}^{3/4}) + (0.08 \text{ F}^{3/4})$
$QZ_{P_u} = 1.03 \text{ F}^{3/4}$	$Q_{100P_u} = 2.38 \text{ F}^{3/4}$
$\frac{QZ_{P_u}}{QZ_{P_i}} = \frac{1.03 \text{ F}^{3/4}}{1.0 \text{ F}^{3/4}}$	$\frac{Q_{100P_u}}{Q_{100P_i}} = \frac{2.38 \text{ F}^{3/4}}{2.3 \text{ F}^{3/4}}$
$= 1.03$	$= 1.035$
OR 3% INCREASE	OR <u>< 4% INCREASE</u>



TAN

ATTACHMENT 2

BA LoCONTE'S CORRESPONDENCE TO SLO PLANNING COMMISSION dated 20 MAY 2013

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20 MAY 2013

Subject: CAVE LANDING AREA IMPROVEMENTS

Ms Carlyn Christianson, and
Members of the SLO Planning Commission,

The intended course of actions by SLO Parks & Recreations Department, in developing the area Cave Landing, historically also called Mallagh's Landing, has generated concern by current users of this area.

What little is known about the Parks' Dept's plans have been obtained via on-line searches, and via "word-of-mouth" communication from the limited number of persons that have been granted partial disclosure regarding the County's intentions. None of this was available via official means. As recently as 13 MAY 2013, the **Parks' Dept was planning a 35-40 vehicle parking area**, DESPITE knowing full well that current usage of that parking area is nominally in the 70-80 range and often in excess of 100 vehicles. And, per the item as listed in your agenda, still reflects a design for 35 vehicles.

Since the plans regarding parking are so fatally flawed, why would any reasonable person not conclude that other aspects of their intended actions won't be similarly flawed?

An entirely different issue has been linked to this effort, mitigation of a natural land-slide in the area. It should be recognized that ultimately, Mother Earth will do what she wants. All plans should proceed, accepting that eventual conclusion. Therefore, the desire to mitigate the land-slide is secondary to the primary goal of extending/improving the Cave Landing Trail and achieving *increased public access*. **There are MANY different Engineering solutions to ANY problem**, so the choices of those solutions need to reflect that prioritizing.

I request that SLO Parks' be *required* to submit a detailed report regarding the alternative Engineered mitigation means considered, prior to being allowed to proceed with their present course of actions.

PROPOSAL FOR ADDITIONAL PARKING ALONG CAVE LANDING ROAD:

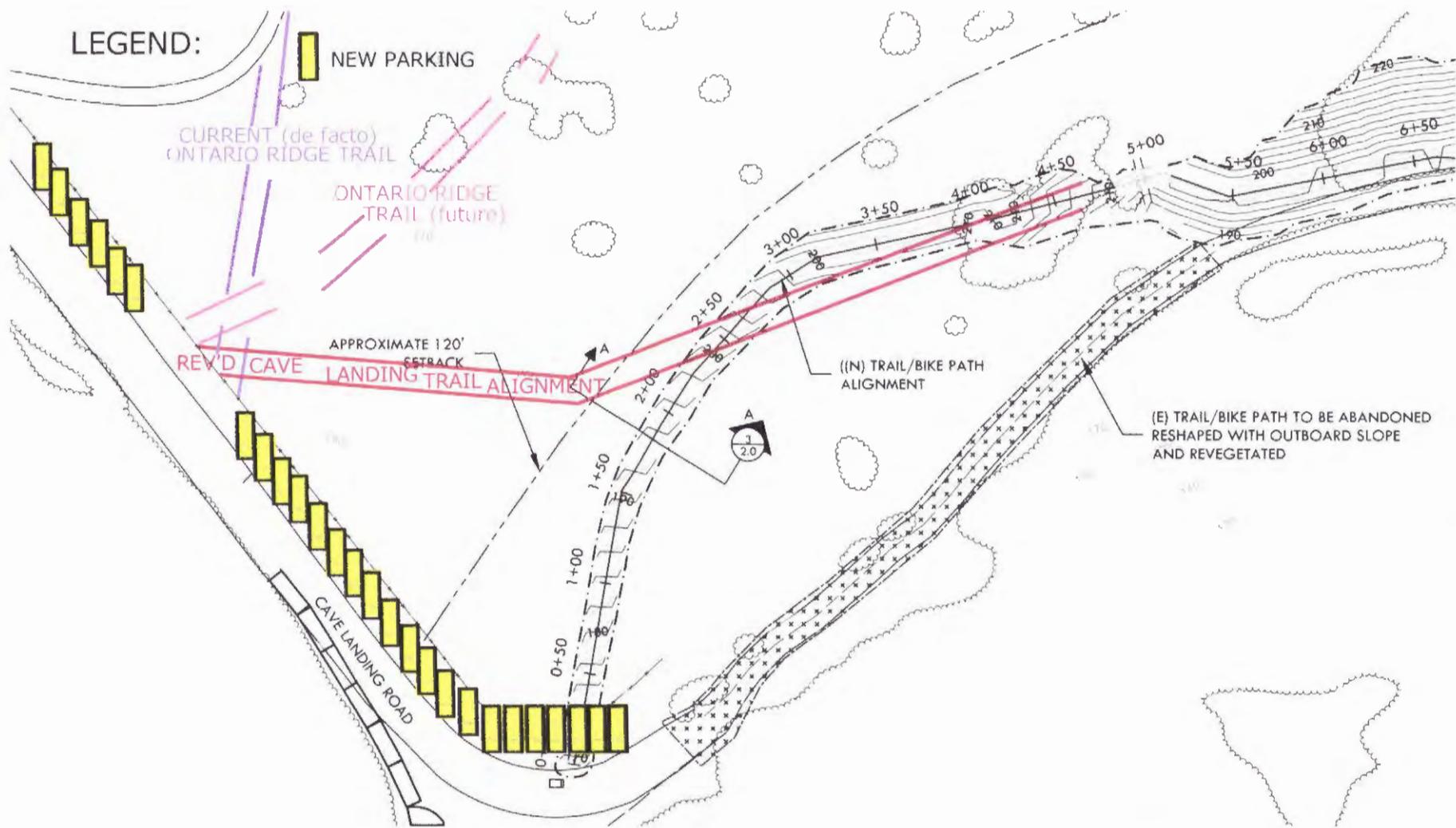
The Cave Landing parking area in its current form, has served the Public's need well for far longer than the three decades I have utilized the area. The circular traffic flow established by an island near its center allows easy ingress and egress within the parking area. The public is use to utilizing this area as a dirt parking lot, so there is no true need to pave it.

While there is some rutting that could be corrected, any further "**improvements**" in the **Cave Landing parking area are unnecessary**. **All funds ear-marked for such, should instead be redirected to expanding the available parking in this area**.

The following conceptual **DRAWING 1** is a mark-up based upon one of the sheets obtained in an internet search of available documentation regarding SLO Parks' Dept. plans for the Cave Landing parking area. The main concept is that angled parking in the down-hill direction of Cave Landing Rd be established on the South-West portion of Parcel 3 of 54PM36 owned by the County of San Luis Obispo. By converting the current parallel parking along Cave Landing Rd, to angled parking, better utilization of space is obtained with an increase in available parking while maintaining necessary fire lane consideration.

There is currently approximately 400 or more, linear feet along this SW portion. There is an existing 50' wide road easement (which is no longer a concern on SLO owned Parcel 3); the road is currently about 26' wide. There is more than adequate area to accommodate this proposal with very little grading requirements. The excavated material could be placed along the westward remaining 12' of easement and allowed to **Exhibit 7b** compact, and potentially utilized in the future for further parking availability.

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TRAIL ALIGNMENT - PLAN VIEW

SCALE: 1" = 60'

DRAWING 1 - CONCEPTUAL ILLUSTRATION FOR ADDITIONAL PARKING & TRAIL RE-ALIGNMENT

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DISCUSSION REGARDING CAVE LANDING TRAIL RE-ALIGNMENT:

There has been previous discussions by both AVAC and the Board of Supervisors, in a desire to utilize this trail in some manner as a secondary evacuation route from the Avila Beach area, should the need arise. My suggested trail re-alignment is such that the natural traffic flow, in that event, is facilitated. In furtherance of that goal, consideration should also be given to if there is any need to increase the planned 12' wide path, to 16' to accommodate both vehicular and other modes of evacuation.

The *de facto* trail-head for the Ontario Ridge Trail is currently in the same location as my suggested re-alignment, clearly seen in the current Google Earth image. Presumably the trail-head for future upgrade of that trail would originate in its current location as well. The suggested re-alignment places the trail-head for both trails in the same spot. Coupled with the previously suggestion of angled parking along Cave Landing Rd on both sides of these trail-heads, it makes access to these trails very convenient.

If one studies the details of Parks' current plans, the new bridging structure is at 200' Elevation. The path then increases at a 19% slope, flattens out, and then successively descends at 13%, 10% and 13%. The suggested re-alignment follows closely along the 200' elev. topography, with a gradual decline to approximately 195' elev. By eliminating the rise and fall of the trail as designed, it will better enable the less physically incline, such as the elderly, to enjoy a portion of this trail during their sojourns to the Cave Landing Area. A review of their documents indicates this length to be 1100', or approximately 1/5th of a mile (start 195' elev, high point 200' elev, low point of 189' elev; as suggested); or 2/5th mile round-trip.

Summary: The proposed alternate re-alignment of the Cave Landing Trail as suggested:

- 1) Accomplishes the same goal that Parks' intends, by acting as a semi-passive means of redirecting water from the current landslide area, **with little to no** impact on current parking,
- 2) Facilitates traffic flow from the Avila Beach area along the Cave Landing Trail, should the need for a secondary emergency escape route arise.
- 3) Places the trail-head in the same vicinity of the Ontario Ridge Trail,
- 4) Fosters the partial use of the trail as more easily accessible by the elderly by eliminating the planned approx 15% rise and fall to and from the new bridging structure, creating an essentially flat trail. A review of their documents indicates this length to be approximately 1/5th of a mile.

DISSEMINATION OF INFORMATION TO THE PUBLIC:

At the 2013-02-26 Board of Supervisor's Meeting, it was suggested by myself, that the Board direct the Parks' Dept to obtain more input from the Public prior to continuation of their plans, and echoed by others. This was seemingly agreed to by the entire Board of Supervisors, and Park's was directed to obtain contact information to pursue that course of action.

To date, I have NEVER received ANY notification by Parks', nor the ability to provide direct input following that Board meeting. To the best of my knowledge, none of the other individuals were contacted either. It is **only** by "word-of-mouth" that it was made known to me that this topic would be included in the 23 MAY 2013 meeting, despite assurances by Parks' and the Board of Supervisors. Therefore, my personal perception is that Parks' Dept paid "lip-service" to the Board of Supervisors and has acted in a non-genuine manner regarding this issue.

None of the proposed Parks' plans were found on their website, or any County Governmental web-site. It was by happenstance while reading about an unrelated subject that they were found.

Parks' should create a link on their web-site for documents, plans, etc. regarding this area so that they are readily available to the Public for comment. There is obvious interest by many SLO citizens.

IN CONCLUSION:

- 1) The course of action proposed by SLO Parks' Dept, is insufficient to meet current usage needs, and will not accommodate any *increased* usage of the area.
- 2) The re-funding of monies ear-marked for parking lot "improvements" are best served by expenditures resulting in INCREASED parking, such as those proposed in this document.
- 3) The County, and Parks' need to prepare a detailed study of all alternate Engineering mitigation methods for the completely unrelated land-slide area so that the eventual remediation attempts do not result in *decreased* public access.
- 4) Due to the acute interest by many SLO Citizens, Parks needs to cease working in secret behind closed doors regarding this manner, and make their intent open and readily available for public comment. Hopefully via a web-site link to that information.

I appeal that you do not allow further progress on this ill-conceived project.

Thank-you for your consideration, sincerely,

Brian A. LoConte
Irish Hills Resident
SLO District #3

ATTACHMENT 3

BA LoCONTE'S CORRESPONDENCE TO SLO PLANNING COMMISSION dated 22 JULY 2013

Subject: CAVE LANDING AREA IMPROVEMENTS

22 JULY 2013

Members of the SLO PLANNING COMMISSION,

The intended course of actions by SLO Parks & Recreations Department, for development of the Cave Landing area, historically also called Mallagh's Landing, continues to generate concern by current users.

Previous public comments have primarily been regarding the proposed parking at this site. This was due to the severe impact it would have upon the large number of people who use and enjoy this area. As can be seen the current proposal is vastly better than the original 35 vehicle design. This was the result of Parks reassessing their plans based upon constructive public input. Parks should be commended for their efforts to date regarding this issue.

However, it is doubtful that this progress would have occurred had it not been for the Avila Valley Advisory Council's support in having them actually elicit input from the various end users.

This goes directly to the crux of the problem with the proposed development plans. **There has been NO MEANINGFUL public review and opportunity to comment on its details.** It has only been by public plea to the regulatory bodies when Parks has tried to gain approval as a *fait accompli*.

Other issues have previously been raised, and continue to need to be fully addressed prior to this project proceeding further.

As of this date, the item documents for the 25 JULY 2013 meeting of this commission are still not available. The website link results in a "404 Error". Even the Agenda item, as of this date, still reflects that a 35 vehicle parking design is being proposed. How can the Public provide any comment if the details are not made available?

Specific items that I strongly feel still need to be addressed are:

- 1) **The proposed concrete staircase to the beach at the base of the beach trail.**
- 2) **Additional parking.**
 - a. **Widening of Cave Landing Rd to allow angled parking.**
 - b. **More parking can be accommodated in parking lot by reduction/elimination of the current bio-swale design via permeable surfacing.**

The proposed concrete staircase will be destroyed within 3 years. It will require huge maintenance costs. Damage to it will most likely force its closure, thus REDUCING coastal access.

The benefit of angled parking speaks for itself. My main proposal is that the southern end of the parking lot be raised by addition of gravel, such that it acts as a bio-swale, yet still allows parking upon it. Line demarcations can also be avoided by a permeable surface such as gravel.

More details on the above subjects are attached.

There are other concerns raise by others, and I echo:

- 1) Placement of the proposed picnic tables
- 2) Closure at dusk, thus not allowing sunset observation, and some twilight star gazing.

I'll not address these issues in any detail; others should do so.

Sincerely,

Brian LoConte
Irish Hills Resident, District #3

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BEACH ACCESS DISCUSSION:

The following pictures are the base of the trail to Pirates' Cove Beach. They are sequenced from South (L) to North (R).



NOTE THE HAND CHISELED STEPS JUST LEFT OF CENTER, ALONG NATURAL ACCESS TO THE BEACH AREA. THIS WAS THE PRIMARY BEACH ACCESS PREVIOUS TO THE MID-1990'S, AND IS STILL OCCASIONALLY UTILIZED.



AGAIN, NOTE THE HAND CHISELED STEPS LEFT OF CENTER, AND "ROPE ASSIST" BEACH ACCESS. THIS WAS THE PRIMARY BEACH ACCESS PREVIOUS TO 2000'S DURING HIGH TIDE, AND IS A SECONDARY ACCESS TODAY. ALSO NOTE THE HAND CARVED STEPS IMMEDIATELY ABOVE. THEY ARE THE PRIMARY POST-WINTER BEACH ACCESS. THE STEPS ARE LOCATED IN THE LAND-SLIDE AREA, AND ARE RE-CARVED EVERY YEAR.

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To the best of my understanding, the proposed concrete staircase is to be located in the area of the mud/clay steps.

The next two pictures **SHOW THE MULTIPLE LOOSE ROCKS/BOULDERS** that are deposited in this section of the beach **EACH YEAR BY THE SEVERE WINTER STORMS**. These storms concentrate their energy in this corner of the beach due to the counter-clockwise circulatory water motion caused by the predominate southern swells and topography of the ocean floor slope. **THESE ROCKS ARE THROWN ABOUT LIKE GRAINS OF SAND DURING THESE STORMS**, smashing into the cliffs multiple times, all storm long.



Let me next explain the basic challenge with concrete structures in a marine environment.

Concrete naturally develops cracks. The saltine water interacts with the carbon steel rebar. The rebar rusts. The rust (ferric-oxide compounds) take up more space than the original steel bar, thus expands. This expansion exerts an outward force upon the surrounding concrete. Concrete handles downward forces (compressive forces) very well, however, it handles outward forces (tensile forces) very poorly, the very reason the rebar is used in concrete structures (steel can take large amounts of tensile stress/force). Thus the cracks in the concrete expand and grow in length, allowing more saltwater interaction with the rebar, causing further rusting, and more expansion forces upon the concrete. The cycle continues until some of the concrete falls off (called spalling). This exposes more rebar to the marine environment, and the cycle accelerates.

A prime example of this phenomenon occurred in the concrete faux wood fencing along Cave Landing Trail through the Bluff's development. After years of downed sections of fencing, the majorly damaged section was recently removed and replaced with pressure-treated wood. Pictures of still existing sections are shown below.



The above happens even in salt air exposure. I won't bore you with the details of galvanic corrosion, only that it takes place when metal is consistently exposed to saltwater. I'll simply state that the metal "desolves away" thus weakening the structure.

Because of all this, any concrete structure built in a marine environment, typically uses a coated rebar. It is intended to resist the saltwater degradation to the rebar. There are two problems with coatings. If not applied properly, it loses adherence to the steel thus exposing the under laying portion allowing corrosion, which causes continue peeling away and more corrosion, eventually rendering the coating completely useless. Also, if the coating gets scratch the same degradation to the coating eventually happens.

If we consider the fact of the multiple impacts upon this staircase from the rocks/boulders during the winter storms, along with the significant wave forces, it should now be apparent that a concrete staircase in this area would sustain damage EVERY winter, and most certainly be rendered into a crumbled mass of rusting rebar within 3 years.

Exhibit 7b

My fear and apprehension is that the County would be required by Cal-OSHA or some other body to regulation to preclude use of the staircase, thus SEVELY limiting "Coastal Access". Page 39 of 63

Let me state a simple fact: Coastal Access to this beach currently exist, and has existed for decades, even centuries.

I truly believe the best course of action would be for the County to NOT do anything beyond providing an improved trail to the landslide area and providing a concrete cap/slab along the level ridge above the immediate beach area (to facilitate clearing debris from the landslide). I believe this fully meets the intent of providing improved coastal access of any grant monies. It would also absolve the County of legal requirements regarding safety standards past the improved trail. However, I anticipate that this common sense plea will fall on deaf ears. Therefore, an alternate proposal is given.

There are three basic concepts to my proposed alternative to the current plans for actual beach access:

- 1) Apply concrete only upon the upper level ledge area tied into the rock base below.**
- 2) Minimize handrails in the land-slide area; make these detachable and easily replaceable.**
- 3) Utilize the existing rock as the “steps” to the beach.**



NOTE THE NATURAL “FALL LINE” DOWN AND ALONG THIS ROCK FACE

The main issue within this accesses point is the fact that during the winter months/storms the earthen material, along with the rain/water run-off from the land-slide, covers the upper level area, making a muddy, slippery mess. By placing a simple concrete cap along this level ledge, the mud could easily be scraped off to clear the debris and minimize slipping hazards. This slab would be tied into the rock below, and extend as far north as the rock will allow. The north end should remain open (un-railed) to allow make-shift non-winter access through the land-slide, as is currently utilized.

Secondly, terminate the traditional hand railing just before the land-slide area. A single hand rail, similar to that used in most sports stadium’s stairs, should then be placed along the center of the trail & beach access. This railing should be segmented, easily replaceable, for quick repairs upon damage [spare segments should be manufactured and stored by Parks] and of a non-corrosive material.

As can be seen above, there is a natural L-shaped “fall line” in the rock to sand level (follow from the top of right).

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during non-winter. Improved rough-hewn steps could be carved into this rock, and serve as the improved beach access.

These “steps” would still be subjected to impacts by the multiple rocks/boulders, however, since it is already a “time tested” surface, it would have a much higher use life than the proposed concrete stairs, and would completely avoid the rust/spalding issues resulting from the concrete rebar.

These suggestions **will both “improve” coastal access, yet prevent “closure” of coastal access** due to safety ordinances. It will also **drastically reduce**, if not completely avoid, **maintenance and repair expenses** due to the inevitable annual storm damage to any man-made structure in this area.

The following is included to further emphasize my point regarding that the County would be required by Cal-OSHA or some other ordinance / regulation to preclude use of the intended concrete staircase, thus SEVELY limiting “Coastal Access”:

There is a concrete staircase at the east end of Avila Beach that has been closed off for safety reasons. As can be seen, there is no obvious degradation to the concrete itself. **The most apparent damage is corrosion of the hand-rail and its detachment in spots.** At the 2013-02 AVAC meeting, the Harbor Patrol stated that it was going to cost hundreds of thousands of dollars to repair, and wasn’t within their current budget.



If a staircase of this **minor state of disrepair is declared unsafe**, is there now any doubt in your minds that due to the severity of damage that is certain for the proposed staircase to Pirates’ Cove Beach, that a similar closure would not occur?

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I strongly urge you NOT to allow this phase of the project proceed in the manner currently intended.

PARKING DISCUSSION:

The revised Parks plans for development of the Cave Landing parking area, is a tremendous improvement over the original 35 vehicle design. They should be recognized for their efforts.

The following is taken from the San Luis Obispo County, San Luis Bay Area Plan, Coastal, dated March 1, 1988, Certified by California Coastal Commission February 25, 1988, Revised August 2009, Page 8-6, item 7. Shoreline Access – Mallagh Landing:

- 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 improvements of the parking area is to be consistent with protection of the archaeological resources and geological conditions on the site.”*

The first sentence specifically states, “improved” parking for 100 cars.

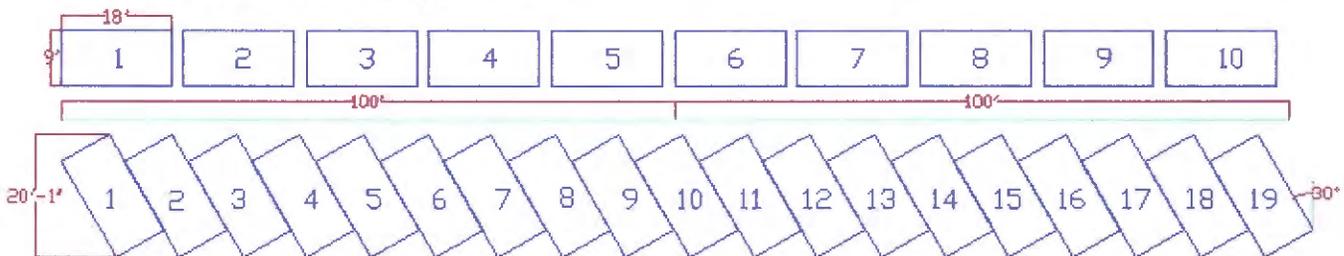
The second sentence specifically states that a “permeable material” be used for surfacing.

Therefore, further refinement of Parks plans is required to conform to the currently approved Coastal Development Plan for this area.

ADDITIONAL PARKING:

From recent car counts by others, 100 vehicles seems to be a good working design number. There are often many more vehicles in the area, so the ability to park along Cave Landing Road needs to be allowed to accommodate these peak numbers.

To address the 30 vehicle shortfall in the current design, the easiest and simplest means would be to widen a portion of Cave Landing Rd, to allow angled parking versus the current parallel parking. This allows between 3 to 4 vehicles to park in the linear space of two.



My previous 20 MAY 2013 letter to this commission suggested grading along the eastern side of the road into County owned parcel 3, to accommodate this additional angled parking. Since I wasn't getting any meaningful answers from the county, I contacted the Chumash directly. While very limited, this contact has led me to believe that there is a cultural issue with significant grading of this roadside area. I'd like to emphasize that Parks should continue dialogue with the Chumash to determine the extent of minor grading that could be performed to slightly widen the road on this side. Recent observation shows that 2'- 3' is easily possible.

Per 54PM36 there is an existing 50' wide road easement; the road is currently about 26' wide. This leaves approximately 12' that can be utilized on the West side of Cave Landing Rd. This would require a significant amount of fill and possibly a retaining system.

This NEEDS to be added into current scope of this project, NOT as a vague promise for future consideration.

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I'd like to again stress that one of the major factors regarding the reduction of available parking is Parks' intent to pave the parking area, and install bio-swales to capture the rain run-off and limit erosion in the surrounding area.

All of this can be avoided simply by the addition of gravel upon the surface. A sufficient depth of gravel could be added to the Southern end with appropriate perforated piping, such that it acts as a bio-swale, in and of itself, yet still allows parking on top of it.

While the redesign by Parks has significantly increased the designated parking spots from the original 35 proposal, there is still space lost due to the physical locations of the proposed bio-swales. Additionally, paving requires larger volumetric retention capacity of the bio-swales. Further more, paving the parking lot will almost certainly require parking demarcation lines. Both factors contribute to loss of available parking as historically utilized.

I have heard one argument by Parks for paving is that the current soil is compacted and already impervious, and would require significant grating to make it pervious again, so there is no advantage to an impervious toping. While the "compacted" statement may be true, the "impervious" statement is misleading.

The material currently there is of a clay nature. Clay retains large amounts of water over other types of soils. This water retention reduces the water run-off, and would be fine as under-layment for a gravel surface.

I strongly urge that this concept be explored in more detail by Parks, prior to proceeding with the intended asphaltting of the parking lot.

ATTACHMENT 4

BA LoCONTE'S CORRESPONDENCE TO SLO PLANNING COMMISSION dated 25 JULY 2013

Subject: CAVE LANDING AREA IMPROVEMENTS

25JULY 2013

Members of the SLO PLANNING COMMISSION,

This is a supplemental letter to my original letter dated 22 JULY 2013.

As mentioned in my previous letter, the documents associated with agenda item 2, were not available via the county website. I had assumed the problem was temporary and would be corrected. However, since they had not as of 24 JULY, I called the Planning Commission secretary and found that the provided link was in transition and not functioning. She walked me through an alternate means of obtaining the source document. Thus, I have had only approximately half a day to read, digest, and comment on the details contained in those documents. [My comments are given at the end of this letter].

Overall, this is a prime example of my previous contention in the 22 July letter, and in my comments to the Planning Commission during their 23 MAY 2013 meeting that **the crux of the problem is that the Public review and comment process regarding this issue** (and most like all projects) **is that the process is FUNDAMENTALLY FLAWED with no meaningful "Public Input"**.

This project has been in the developmental stage since 2002. Significant progress was realized in 2007-2008, and draft finalized plans were prepared in 2011. Yet, the first time I became aware of the extent of the project, without any meaningful details, was in Jan/Feb of 2013.

It was at that time, I was made aware by others that County would make a presentation to the Avila Valley Advisory Council (AVAC) regarding a proposal to accept previous offers-to-dedicate the Cave Landing / Mallagh's Landing / Pirates' Cove Beach (Parcel 5, 54PM36), which I attended but did not speak.

Next was the 26 FEB 2013 Board of Supervisor's (BoS) Meeting. I attended, and provided public comment re: my support of the conceptual aspect, but my concerns and apprehensions of it and future development. At that point the BoS directed Parks to get contact information from the concern citizens present, and to make them aware of future public comment opportunities.

I was NEVER contacted, nor were others who provided contact info. It was by word-of-mouth that I became aware that Parks would make a presentation to AVAC at their MAY 2013 meeting. I spoke at that AVAC Mtg, and I believe, helped them understand the over-riding issues re: this project.

Subsequent to that meeting, and just prior to the Planning Commission 23 MAY 2013 Mtg, I was invited to discuss my concerns with Parks. ALL of the issues I have raised to date were discussed in conceptual form at that time. Parks provided me some bases for their plans, but NOT in the detail that was necessary for me to provide any significant Public Input.

I attended and am on public record with both a submitted letter and public comment at the 23 MAY 2013 Planning Commission Mtg.

Subsequent to that meeting, I submitted the California version of the Freedom of Information Act request for information regarding this project. Monetary costs of that request are approx. \$120. Essentially all the detailed information I have regarding this project stems from that request. Even so, since this project is in a highly sensitive Cultural area, and the Freedom of Information Act specifically precludes making details of this subject available to the general public, there is still MUCH more that I do not, and can not, know.

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There is something **FUNDAMENTALLY WRONG** with the public review and comment process when an individual has to resort to a Freedom of Information request and associated monetary expense to gain enough detailed information to draw evidentiary conclusions regarding the project.

I did receive notification of the proposed discussion/proposal for furtherance of this project at both the JULY 2013 AVAC Mtg, and this 25 JULY 2013 Planning Commission Mtg. In the interest of civility, I will refrain from comment my feeling re: the "tone" of this notification.

I did attend the AVAC Mtg, and was able to get a copy of the 70 vehicle parking lot updated.

After MUCH effort, I was finally able to gain the minimal details made available to the public regarding this project as it relates to this agenda item.

If one objectively reflects upon my experiences regarding "public input" for this project, the overall process boils down to this:

- 1) The project is developed with input mostly from internal departments, with limited input from regulatory required organizations.
- 2) Presentation to the area's Advisory Council. [Basically lip-service to "public comment/input"]
- 3) Presentation to the Planning Commission. ["Public comment" is reactionary; either by letter or 3 min oral comment.]
- 4) Presentation to the Board of Supervisors. ["Public comment" is reactionary; either by letter or 3 min oral comment.]

Therefore, there is no **meaningful** "Public Input" in the process, simply **reactionary** input by plea to the regulatory bodies by the Public. **THE PROCESS IS FUNDAMENTALLY FLAWED!!**

Now that I have the agenda document, I'd like to make a few brief comments:

Please note on Pg. 4, the comments by County Public Works. In part, "Concerns about parallel parking next to the retention basin (parking spaces 25-31). ... Angled parking would put the doors farther from the 'cliff edge'." Upon review of the 70 car design, I estimate that angled parking in the area of spaces 25-33 would result in approx 12 spaces vs the current 9.

Additionally, angled parking at spaces 53, 63, & 64, would result in approx. 5 spaces vs. 3.

I have fundamental concerns re: picnic tables in the area show in the vicinity of spaces 1-7. However, I now understand this is intended for ADA access, and accept it to a degree. Can this space be minimized, both to accommodate only two picnic tables, and increase the distance between spaces 1-5 and 50-53?

I have always visualized this area as a 3-point turn area for fire vehicles. [I also now notice the proposed traffic barrier posts, which should be relocated eastward to facilitate a 3-point turn.]

In my opinion, picnic tables are best located at the south-west end of the parking area. This is where I have observed the most people eating lunch and enjoying the ocean view.

ATTACHMENT 5

BA LoCONTE'S CORRESPONDENCE TO SLO PLANNING COMMISSION dated 01 NOV 2013

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To: BOARD OF SUPERVISORS

Subject: CAVE LANDING AREA IMPROVEMENTS (DRC 2011-00069)

As previously stated in my 2013-08-06 appeal letter, this letter is intended to augment my Appeal, as submitted, of the SLO Planning Commissions approval [2013-05-27, Agenda Item 2] to proceed with the current development plans for the Cave Landing Parking & Beach Access, as additional project scope from originally proposed Cave Landing Trail Extension Project (a portion of the Calif. Coastal Trail).

The intended course of actions by SLO Parks & Recreations Department, for development of the Cave Landing area, historically also called Mallagh's Landing, as approved by the Planning Commission (25JULY2013) **should be nullified and returned to Staff & the Planning Commission.** The project, as it stands, has major design problems that make it NONCONFORMING to approved Coastal Development Plans and Ordinances. There are also several procedural issues that warrant it being rejected and referred back to the Planning Commission.

Specific Items that warrant nullification of this project:

- 1) This project is occurring en total, within District #3. The District #3 Commissioner had been appointed two days prior to the Planning Commission Meeting. He therefore reclused himself since he hadn't been party to previous discussions, and abstained from a vote in the decision. Further discussion and subsequent decision should have ceased and been continued to a future Planning Commission Meeting at which time he could adequately represent District #3's residents by casting a vote in that decision.
- 2) This project is NOT in conformance with the SLO Co., San Luis Bay Area Plan, Coastal Plan (dated March 1, 1988, Certified by California Coastal Commission February 25, 1988, Revised August 2009, Page 8-6, item 7. Shoreline Access – Mallagh Landing). Two items in particular:
 - a. *"Parking area for 100 cars is to be improved."*
 - b. *"The parking area is to be surfaced with a permeable material to control bluff erosion."*
- 3) This project is also NOT in conformance with the Coastal Zone Ordinances (CZLUO). A specific item of which is part 23.04.210 – Visual Resources. *a) Location of Development – ... New development shall be designed (e.g., height, bulk, style, materials, color) to be subordinated to, and blend with, the character of the area. ..."*
- 4) Any infrastructure installed at the base of the beach access trail WILL be damaged. While its installation will temporarily *"improve"* coastal access, it also has the real and eminent potential to cause *"closure"* due to safety requirements, resulting in an unintended *"decrease"* in coastal access.
- 5) The Commission made its decision, in part, based upon Staff's and County Counsel's input and response to Commissioners' questions. There were a few responses by staff personnel that were ambiguous in nature. I believe those comments were misconstrued by the Commission, and were key in their final vote regarding approval. Therefore, this decision should be revoked such that clarification and definitive answers regarding those elements can be made known to them. Two of note:
 - a. County Counsel was NOT definitive in his response to Commissioners when asked if the option of posting a "Proceed at your own Risk" sign was available to County owned properties. He offered his "belief" that it was not, and Commissioners accepted it as "fact".
 - b. Grant funding is paramount to completion of this project. There is the perception that the grants associated with this project are in jeopardy if not used in the very near future. This is not true.

Each item is appealable in its own right; however, when taken in whole, they essentially compel revocation of the Planning Commission's 25JULY2013 decision to allow this project to proceed in its current form.

Expanded discussions for each item follows

DISTRICT #3 REPRESENTATION IN THE 25 JULY 2013 PLANNING COMMISSION'S DECISION

Commissioner Meyer was nominated and appointed at the 23 JULY 2013 Board of Supervisors' meeting.

The proposed project is entirely within District #3. Due to unfamiliarity with previous discussions regarding the project he stated early in the discussion that he would be abstaining from voting on the issue. This amounts to each and every resident of District #3, including myself, not having a vote regarding a project within that district.

This is completely antithetic to the concept of governmental decision making based upon "representation". What should have occurred, was the entire discussion and decision regarding it, been continued to a future meeting to allow Commissioner Meyer time to familiarize himself with the details of the project such that he could participate in both.

I strongly urge you to nullify the 25 JULY 2013 decision by the Planning Commission based upon this fact.

SLO COUNTY, SAN LUIS BAY AREA PLAN

The following excerpt is taken from the San Luis Obispo County, San Luis Bay Area Plan, Coastal, dated March 1, 1988, Certified by California Coastal Commission February 25, 1988, Revised August 2009, Page 8-6, item 7. Shoreline Access – Mallagh Landing:

- 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 improvements of the parking area is to be consistent with protection of the archaeological resources and geological conditions on the site."*

It is undeniable that this site has cultural and archaeological aspects of great significance. It is also undeniable that there is an active landslide immediately to the East of the parking area. Each needs to be considered in the final designs of the project.

The current topography of the parking area causes the primary water flow to the South, with a portion of that southward flow directed to the East. Due to its slope and surface area, the volume of water flow into the landslide complex from the parking area is negligible when compared to the volume from the terrain immediately to the North of the complex. [See **FIGURES 1 & 2** on the following two pages.]

While the design needs to address this issue, it must also reflect the proportionally negligible impact upon the landslide complex by the parking area. The only true issue regarding this runoff is the potential for rutting (erosion) of the lot itself based upon use.

Per review of the proposed typical bio-swale [see **Figure 3**], the fundamental aspect is a layer of gravel in which perforated piping is embedded. There is next a layer of engineered soil, with a topping of mulch, in which plants are placed. The water collected by the bioswale is directed to a "level spreader", which again is an area of coarse gravel/stone in which perforated piping is embedded.

One must make the assumption that the engineered soil used in the bioswale is primarily of a clay and sand nature, as clay absorbs and retains the most amount of water in comparison to other soil types and sand allows porosity.

It is my understanding that there is significant, yet variable depth of non-native soil that has been placed above the native soil. By numerous personal observations, this added soil is of high clay composition.

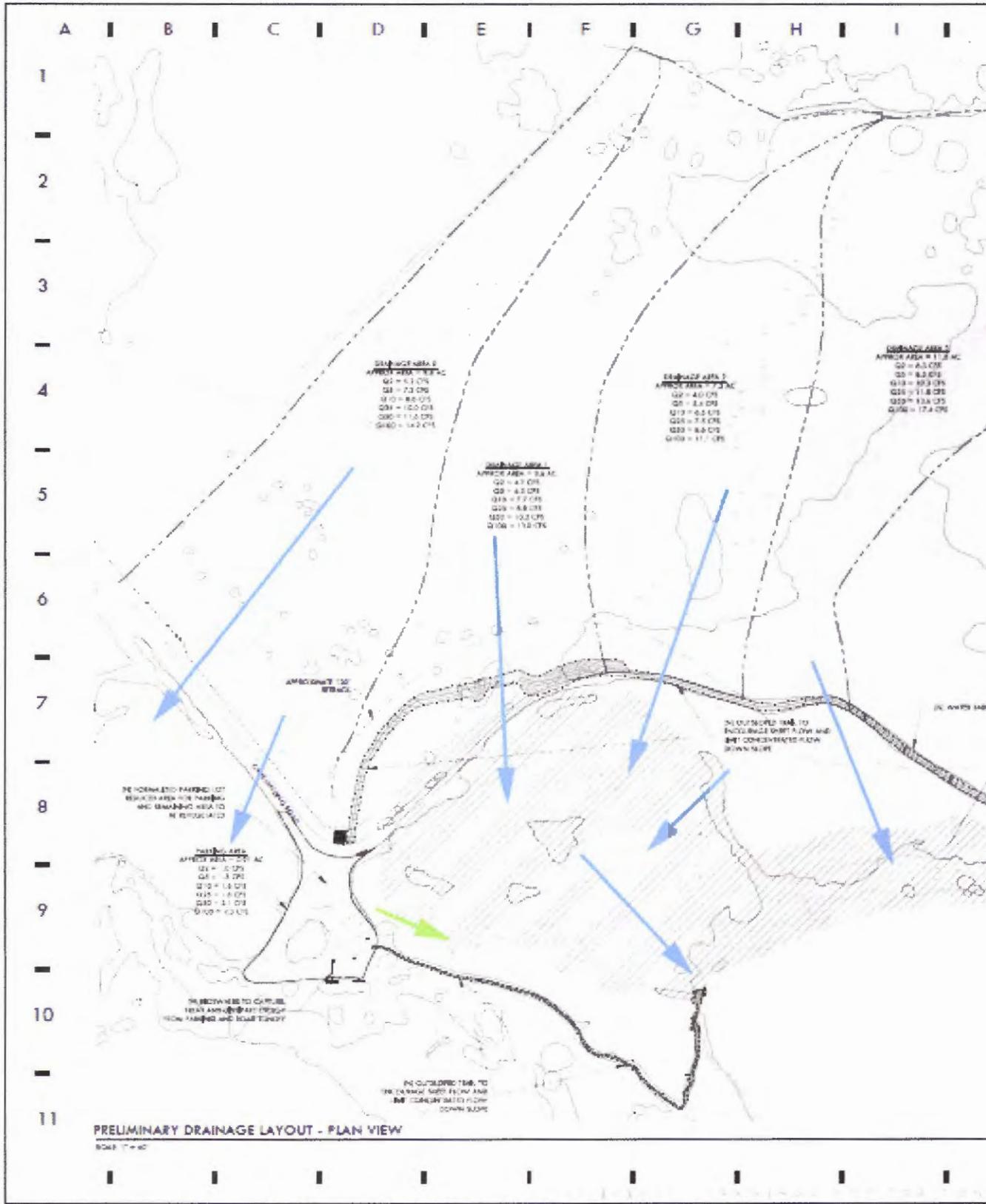


FIGURE 1: CONCEPTUAL REPRESENTATION OF MACRO WATER FLOW TO LANDSLIDE COMPLEX

The small GREEN arrow at grid 9-D represents the miniscule potential water input into the landslide complex from the parking area. The bulk water into the complex is from the large surface area of the surrounding hills.

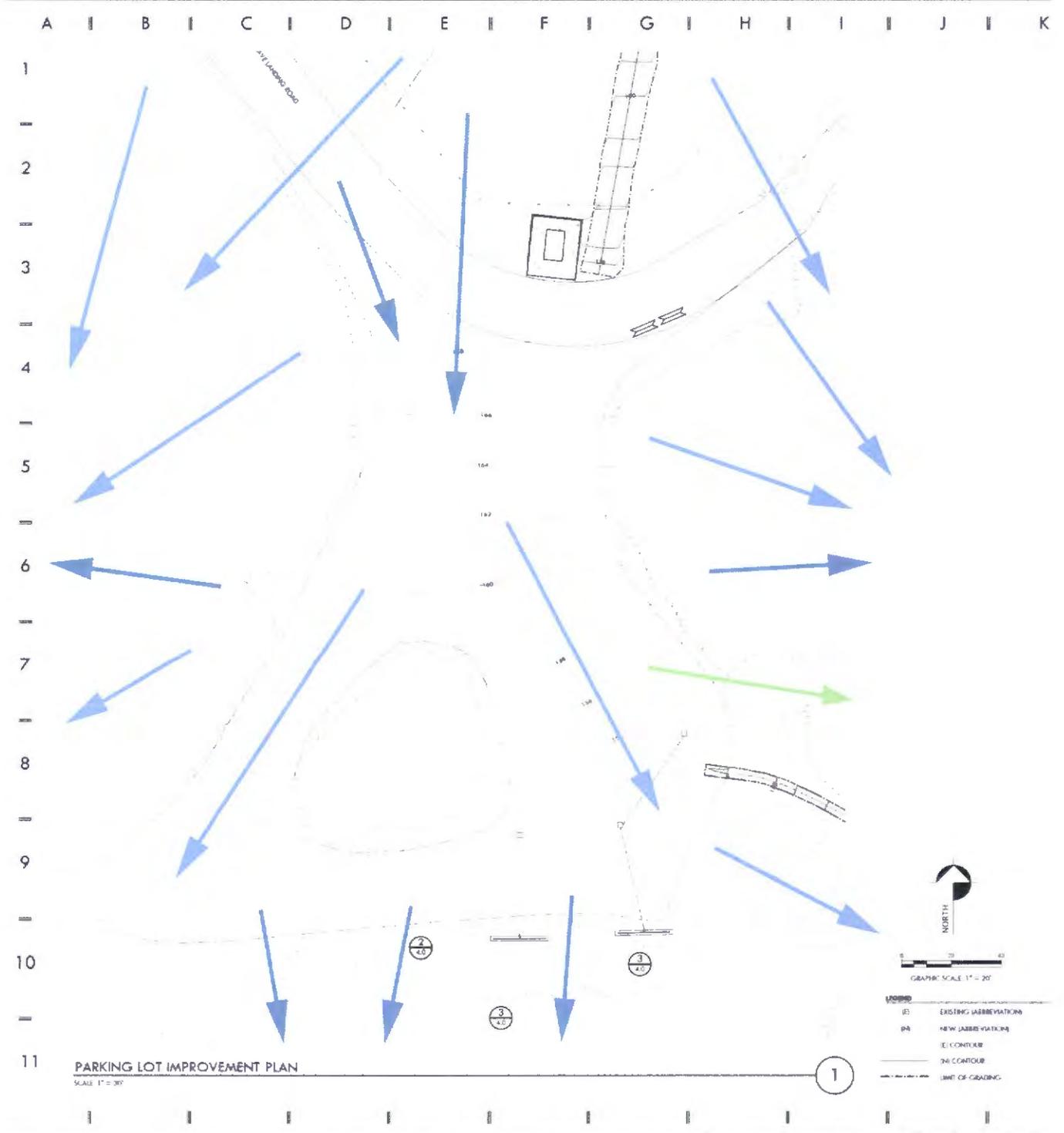


FIGURE 2: CONCEPTUAL REPRESENTATION OF MICRO WATER FLOW INTO LANDSLIDE COMPLEX

The BLUE arrows represent natural water flow from the surrounding hills, and upon the parking lot. As can be seen, most of the water that enters or falls upon the parking lot, generally travels to the South, spilling down the bluffs to the ocean. VERY little water, enters from the parking area itself. The GREEN arrow at grid 7-H, again represents the parking area's generalized, if any, water contribution into the landslide complex.

The county continually cites that this layer has compacted over time such that it is no longer pervious. I'll basically accept that statement as fact. They state that the level of disturbance to make this compacted layer completely pervious would impact the native soil below. I'll accept that statement generally as fact as well. Staff then extrapolate that those issues *necessitate* the current design of an asphalt pavement with bioswales to mitigate the runoff from the area. **I adamantly disagree** with that conclusion. In fact if that were completely true, why not simply grate the existing impervious soil to channel water flow away from the landslide area?

I believe it is readily apparent that the design elements of a bioswale and associated level spreaders can easily be incorporated into the parking surface itself [see **FIGURES 3 & 4**, following]. That is, the current layer of non-native clay soil be graded and leveled to the degree necessary to evenly spread an added layer of gravel with perforated piping as required to protect the landslide complex and ultimate runoff to the ocean. By raising the South end of the parking area, and graduating the gravel layer in depth, with the greatest depth at the South end, lowest depth at the North end, this will both decrease the slope of the parking area, further reducing runoff velocity and its eroding effects, and allow the largest volumetric water retention at the southern end where it would naturally want to flow.

Additional engineered soils would then be added above the gravel layer to obtain a permeable topping, such as pea gravel mixed with clay & sand or decomposed granite.

The above approach addresses all the stated limitations and goals of this project, yet still maintains the San Luis Bay Coastal Plan requirement that this be a permeable surface to control bluff erosion.

This is an incredibly beautiful section of the California Coastline. Its beauty is not only due to its scenic views, but also its essentially pristine undeveloped state; yet it provides Public access to and upon it for the Public's ability to appreciate that beauty. It is close to urbanized towns and cities, yet in its current condition retains a rural nature and the sense of tranquility associated with that type of setting. An asphalted parking area would indelibly negate the rural and pristine aspects of this area, and is inconsistent with the local Coastal Zone Ordinances regarding visual impact.

The most obvious of which is Ordinance:

23.04.210 – Visual Resources - ... New Development shall be designed (e.g., height, bulk, style, materials, color) to be subordinate to, and blend with, the character of the area. ...

Also, asphalt paving is NOT consistent with the following Policies:

- a) Visual and Scenic Resources: *Policy 4: New Development in Rural Areas. New development shall be sited to minimize its visibility from public view corridors.*
- b) Shoreline Access: *Policy 8: Minimizing conflicts with Adjacent Uses...Where a proposed project would increase the burdens on access to the shoreline at the present time or in the future, additional access areas may be required to balance the impact of heavier use resulting from the construction of the proposed project.*

The parking lot surfacing by asphaltting will have significant negative impact of the "*public view corridors*" from both the re-located Cave Landing Trail, and from the Ontario Ridge Trail, due to their elevation being above the elevation of the parking lot. It will not be "*subordinate to, and blend with, the character of the area,*" especially with regard to "*materials*" and "*color*".

Furthermore, by reducing the number of available parking spots on the site in it's current condition, it will significantly affect current burdens to shoreline access. With completion of the Cave Landing Trail, it will only increase the number of vehicles utilizing the trail, thus causing inevitable burdens to future shoreline access.

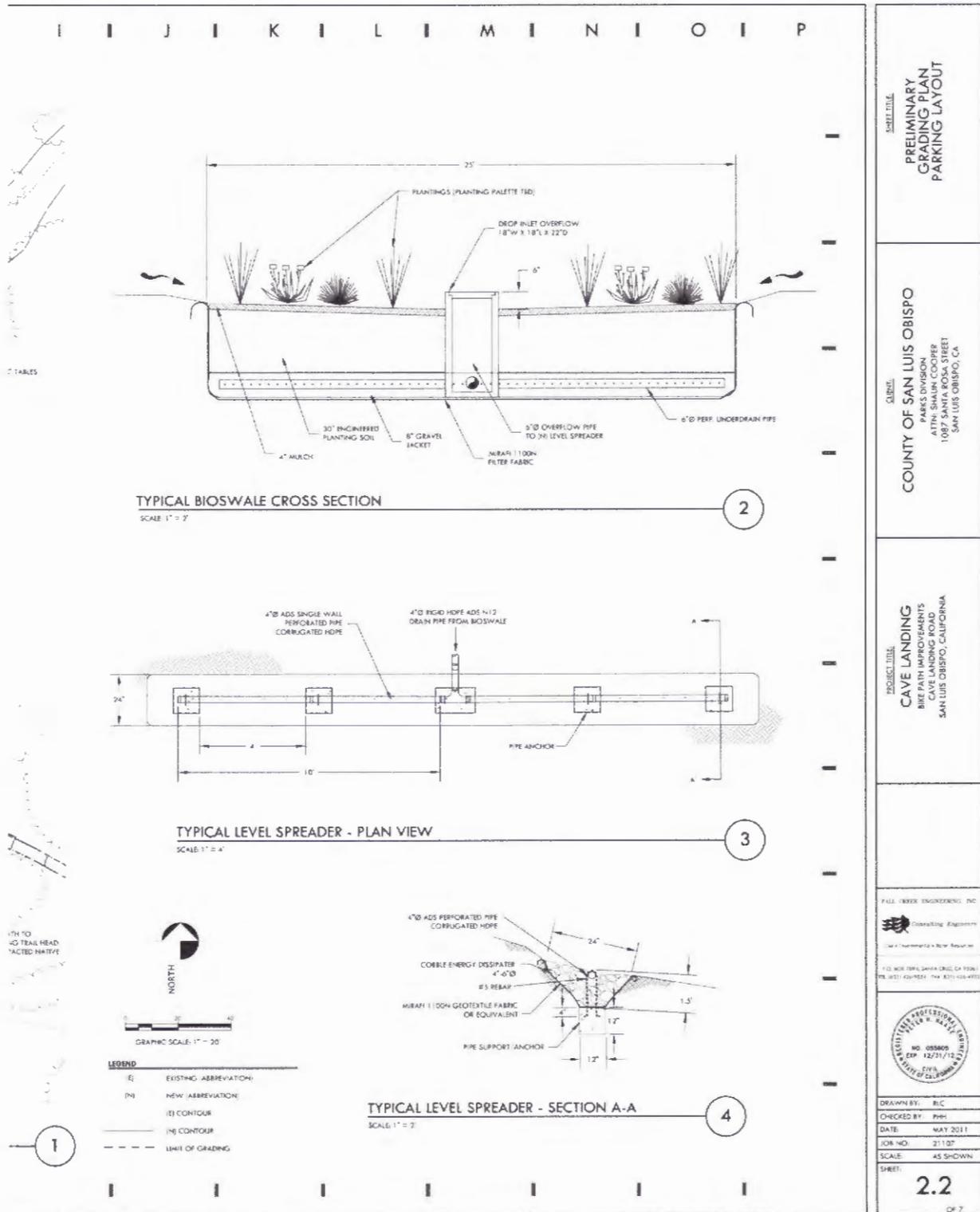


FIGURE 3 : TYPICAL (per Country Dwg) BIO-SWALE AND LEVEL SPREADER DESIGN

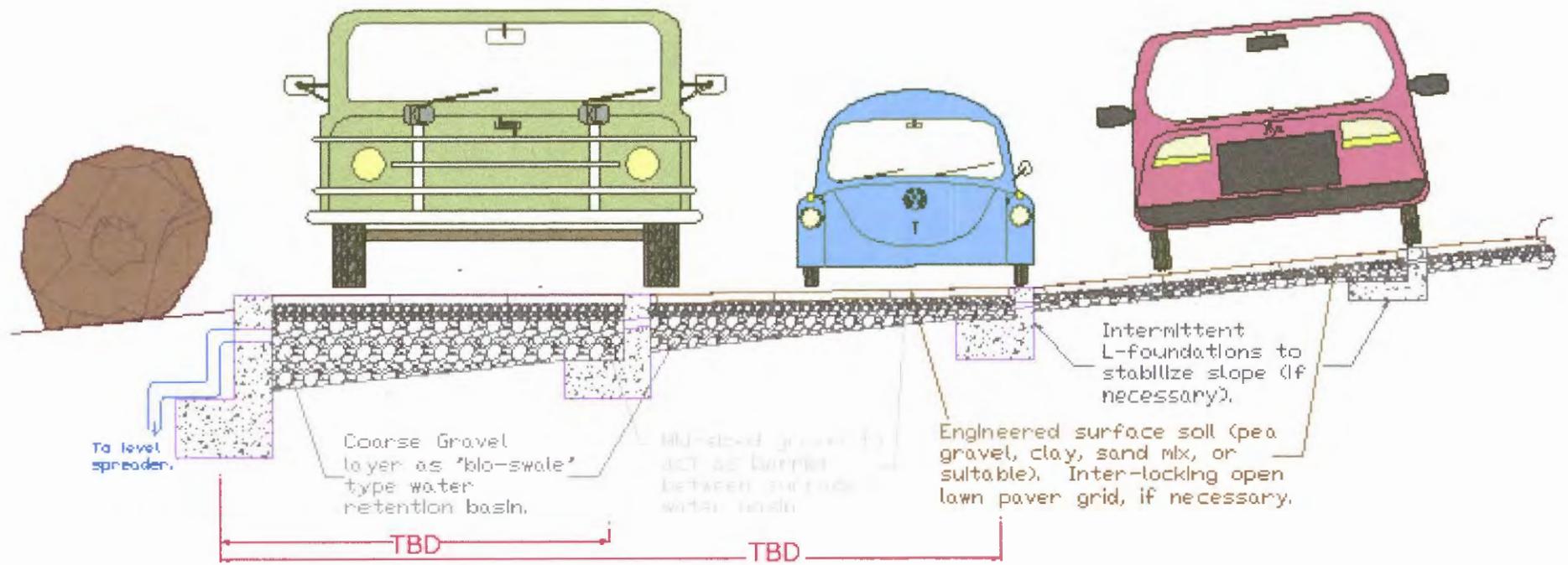


FIGURE 4: SOUTH END OF PARKING AREA (LOOKING WEST), SHOWING PARKING ON "BIO-SWALE"-STYLE DESIGN CONCEPT

Additionally, by retaining the parking area in a similar rural nature within the same footprint that has existed for about two decades, it eliminates the need to invoke Ordinance "23.04.164 Parking Design Standards – Requirements for parking space size, isle width, and driveway standards"

Per current design, 65 of the 70 spaces per the revised plan are on the "footprint" of the current parking area south of Cave Landing Road. The remaining 5 spaces are along the north side of the road and are already utilized for parking, so they do not contribute to "new" parking. Per correspondence dated May 22nd, 2013 by Whales Cave Conservancy to the SLO Co. Planning Commission, the current footprint can and does accommodate 70-75 vehicles. A reduction from up to 75 vehicles to the new delineated parking of 65 vehicles, is a significant decrease [13.4%]. Thus it does not conform to either use burdens of the area per Shoreline Policy 8's, "burdens on access to the shoreline at the present time or in the future."

There also seems to be a misperception by many involved in this project that the Public is requesting a design that accommodates maximum capacity on particularly days which would occur seldom during the year [specifically refer to Parks' Director Mr. Black's comments at the Planning Commission's 23MAY2013 mtg and Mr. Duff's comment at the 25JULY2013 mtg.]. Recent car counts have revealed that parking of 100 plus vehicles in this area occur very often, and are NOT of an infrequent nature. I've attached a 3 month graphic provided by the Whales Cave Conservancy via correspondence dated July 10th, to the 25JULY2013 Planning Commissioner's Meeting [see Attachment 1].

This misperception also completely ignores the obvious facts that the proposed development of the well-used Ontario Ridge Trail and development of the Avila Point Area, WILL increase users of this area over and above its current users.

The above, non-paved approach leaves open the discussion regarding the Coastal Plan's nominal goal of 100 parking spots for current use, and even more, to these future development projects

As a final note: If one studies the details of the proposed bio-swale, shown in Figure 3, it has a depth of at least 42 inches. In the original plans, these bio-swales were to be constructed in the SAME area that I am proposing an alternative design [See FIGURE 5 below]. Forty-two inches, FAR exceeds what is my understanding of depth of previously added material to the parking, and would have significantly impacted native soil during its construction.

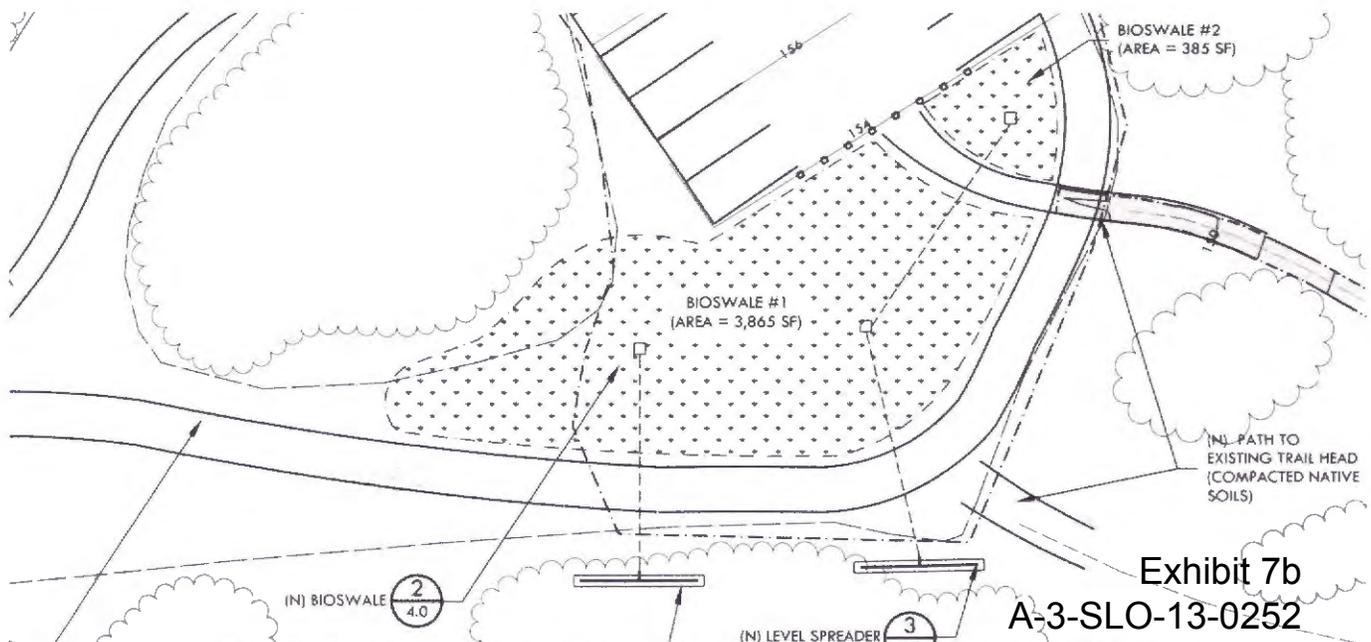


FIGURE 5: SOUTH END OF PARKING AREA PER COUNTY'S ORIGINAL

COASTAL ACCESS CLOSURE DUE TO DAMAGE AND SAFETY CONCERNS

This issue was discussed in detail by Public correspondence provided to the Planning Commission 25JULY2013 meeting. I trust you will review those documents. To stress the main points of my correspondence to that meeting:

There are many rocks and boulders that have been deposited in the beach access area. Winter storms, due to their southern swell nature, along with the ocean topography concentrate the energy and force of those waves into this corner of the beach. Combined, ANY man-made structure will be damaged and ultimately destroyed. [Note: The closed staircase picture to the right immediately following, is at the East end of Avila Beach proper]



A minimalist approach for beach access “improvement” must be taken to avoid the codes, ordinances and regulations associated with man-made infrastructure which would cause a real and present danger of *decreasing* coastal accesses precisely because of these “improvements”. There is an inherent issue with re-enforced concrete structures in saltwater environments, called “spalding”. Saltwater seeps through the inherent cracks in the concrete, rusting the rebar, which expands, placing pressure on the concrete which causes a widening of the cracks, exposing more rebar and the degradation cycle accelerates until it crumbles.



Recognition of this fact was evidenced by a last minute inclusion of Exhibit B, Revised Conditions of Approval, item 28, Access. I commend both Planning Staff and the Planning Commission’s inclusion of this new Condition. Its inclusion should remain in some form in all current and future proposals developed in this area. However, the current designs have NOT incorporated that new design requirement.

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Nullification of the 25 JULY 2013 decision regarding this project will allow more time for public comment, and a design that will best achieve this concept, prior to “Construction Phase”.

AMBIGUITY REGARDING COMMENTS TO THE PLANNING COMMISSION

I commend the Planning Commissioner's questioning of various County Staff Personnel regarding the concerns and comments made by the Public.

However, there are several items that were answered by staff personnel in an ambiguous manner. I'll cite and expound upon two items in the project discussion that I believe were key elements in the Commissioners' decision to cast YES votes to the project as presented, and if answered more definitively, it may have cause them to cast a NO vote.

QUESTION OF LIABILITY:

On several occasions, County Counsel was questioned regarding liability issues. Of particular note were questions re: the option of posting signage stating something to the effect of "Proceed at your own Risk".

While I'd intended to cite video time stamps, I'll simply paraphrase Counsel's statements: "I *think* that's not an option," "I *believe* that is an option only for private land-owners, not Public land-owners," "that's what I *believe*." [Please review video, on your own, for specifics.]

I was able to find the following legal references via the internet. All, on the surface, seem to completely contradict County Counsel's advice to the Planning Commission:

**GOVERNMENT CODE
SECTION 815-818.9**

815. Except as otherwise provided by statute:

(a) A public entity is not liable for an injury, whether such injury arises out of an act or omission of the public entity or a public employee or any other person.

(b) The liability of a public entity established by this part (commencing with Section 814) is subject to any immunity of the public entity provided by statute, including this part, and is subject to any defenses that would be available to the public entity if it were a private person.

[et. Seq.]

**California Recreational Use Statute
CIVIL CODE
DIVISION 2: Property
PART 2: Real or Immovable Property
TITLE 3: Rights and Obligations of Owners
CHAPTER 2: Obligations of Owners**

**§846. Duty of care or warning to persons entering property for recreation;
Effect of permission to enter**

An owner of any estate or any other interest in real property, whether possessory or nonpossessory, owes no duty of care to keep the premises safe for entry or use by others for any recreational purpose or to give any warning of hazardous conditions, uses of, structures, or activities on such premises to persons entering for such purpose, except as provided in this section.

A "recreational purpose," as used in this section, includes such activities as fishing, hunting, camping, water sports, hiking, spelunking, sport parachuting, riding, including animal riding, snowmobiling, and all other types of vehicular riding, rock collecting, sightseeing, picnicking, nature study, nature contacting, recreational gardening, gleaning, hang gliding,

winter sports, and viewing or enjoying historical, archaeological, scenic, natural, or scientific sites.

An owner of any estate or any other interest in real property, whether possessory or nonpossessory, who gives permission to another for entry or use for the above purpose upon the premises does not thereby (a) extend any assurance that the premises are safe for such purpose, or (b) constitute the person to whom permission has been granted the legal status of an invitee or licensee to whom a duty of care is owed, or (c) assume responsibility for or incur liability for any injury to person or property caused by any act of such person to whom permission has been granted except as provided in this section.

This section does not limit the liability which otherwise exists (a) for willful or malicious failure to guard or warn against a dangerous condition, use, structure or activity; or (b) for injury suffered in any case where permission to enter for the above purpose was granted for a consideration other than the consideration, if any, paid to said landowner by the state, or where consideration has been received from others for the same purpose; or (c) to any persons who are expressly invited rather than merely permitted to come upon the premises by the landowner.

Nothing in this section creates a duty of care or ground of liability for injury to person or property.

HISTORY: Added Stats 1963 ch 1759 s 1. Amended Stats 1970 ch 807 s 1; Stats 1971 ch 1028 s 1; Stats 1972 ch 1200 s 1; Stats 1976 ch 1303 s 1; Stats 1978 ch 86 s 1; Stats 1979 ch 150 s 1; Stats 1980 ch 408 s 1; Stats 1988 ch 129 sec 1.

Also,

California Government Code § 831.2 - Natural condition of unimproved public property.

Neither a public entity nor a public employee is liable for any injury caused by a natural condition of any unimproved public property, including but not limited to any natural condition of any lake, stream, bay, river or beach.

California Government Code § 831.4 - Unpaved access roads to recreational or scenic areas; trails; paved paths on easements of way granted to public entities.

A public entity, public employee, or a grantor of a public easement to a public entity for any of the following purposes, is not liable for an injury caused by a condition of:

- (a) Any unpaved road which provides access to fishing, hunting, camping, hiking, riding, including animal and all types of vehicular riding, water sports, recreational or scenic areas and which is not a (1) city street or highway or (2) county, state or federal highway or (3) public street or highway of a joint highway district, boulevard district, bridge and highway district or similar district formed for the improvement or building of public streets or highways.
- (b) Any trail used for the above purposes.
- (c) Any paved trail, walkway, path, or sidewalk on an easement of way which has been granted to a public entity, which easement provides access to any unimproved property, so long as such public entity shall reasonably attempt to provide adequate warnings of the existence of any condition.

of the paved trail, walkway, path, or sidewalk which constitutes a hazard to health or safety. Warnings required by this subdivision shall only be required where pathways are paved, and such requirement shall not be construed to be a standard of care for any unpaved pathways or roads.

Just such a clause was inserted by Monterey County:

http://scc.ca.gov/webmaster/ftp/victorine/gd_ex_c_pubtraileasmnt_apn243-211-026.pdf

PUBLIC ACCESS TRAIL EASEMENT
EXCEPTED AND RESERVED TO THE STATE OF CALIFORNIA

APN No. **243-211-026-000**, Monterey County

The State of California ("State") expressly excepts and reserves to itself, through the State Coastal Conservancy ("Conservancy"), the following Public Access Trail Easement, from the grant of real property to [GRANTEE] ("Grantee" or "Property Owner"): ...

9. Liability.

- a) Immunity under Applicable Law. Nothing in this Agreement limits the ability of Property Owner and the State to avail themselves of the protections offered by any applicable law affording immunity to Property Owner and the State.
- b) Public Enters at Own Risk. Use of any portion of the Easement by members of the general public is at their own risk. Neither Conservancy, nor its successors or assigns by retaining this Easement assume any duty to or for the benefit of the general public for defects in the location, design, installation, maintenance or repair of the Trail Facilities; for any unsafe conditions within the Easement; or for the failure to inspect for or warn against possibly unsafe conditions; or to close the Trail Facilities to public access when unsafe conditions may be present. The Conservancy or its successors or assigns will endeavor to repair damaged Trail Facilities but has no duty to do so unless and until the Conservancy receives actual notice of the need to repair an unreasonably dangerous condition.

The option to "leave things as they are" with appropriate warning signs, was therefore indeed a viable option to the Planning Commission, yet since they believed it was not an option did not pursue it.

AVAILABILITY AND LIMITATIONS RE: FUNDING:

At the 25 JULY 2013 Planning Commission Mtg., the issue of Grant Funding was questioned, and Parks responded with the following:

- 1) There are three sources of Grant funding
 - a. Approximately \$750,000 has already been obtained from the California Dept. of Fish and Game (CDFG) and was funded via the Avila Beach Oil Spill Settlement with Unical.
 - b. California Coastal Conservancy is prepared to grant \$350,000 to the project, when there is an approved project.
 - c. The San Luis Obispo Council of Governments (SLOCOG) is prepared to provide matching funds of \$350,000.
- 2) When questioned regarding expiration date for the CDFG funds, Parks stated that the funds must be "used by" September 2014.

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It is unquestionable that this caused the Committee Members to presume potential loss of that funding if the project was not approved as was currently proposed.

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Per the documentation I have reviewed, the SEPT 2014 date is consistent. However, ...

I now refer to a letter dated March 2, 2012 from SLO Parks to the Calif. Dept. of Fish & Game, Re: Cave Landing Bike Path, (Agreement Number R-14 2002) Accounting of Expenditures & Quarterly Status Report through Dec 2011, citing specific entries made in Table 1 – Status Report.

- June 27, 2002 contract signed by all parties. Contract is complete.
- March 16, 2005, received Grant Agreement Addendum from Department of Fish and Game (DFG) for signatures.
- April 12, 2005, forwarded signed Grant Agreement Addendum to National Fish and wildlife Foundation for signatures.
- April, 2008- discussed possibility of adding a liability section in the Agreement Addendum.
- May 19, 2008- agreement Addendum draft submitted to CDFG for review.
- July 30, 2008 Agreement Addendum signed
- December 23, 2008- County closed escrow on the purchase of property adjacent to path.
- January 21, 2009 – on site meeting with County staff, CDFG staff, and Coastal Commission staff to discuss the status of the project and the possibility of additional funding.
- January 30, 2009 – requested an additional \$353,745 from CDFG to complete the construction of the project.
- February 11, 2009 – County received approval from CDFG for additional \$353,745.
- February 24, 2009 – Amendment to grant agreement executed, increasing funding for the project by \$353,745.

Notes:

- 1) there was no associated entries in the above letter for the April-June 2011 period re: Agreement Addendum.
- 2) I have a note to myself in the documentation I obtained during my review of documents granted to me by my May 2013 request per the California equivalent to the Federal Freedom of Information Act, that states, “Q: What extends F&G past June 24, 2011?” This implies I read something that indicated the Grant needed to be extended.

I was explicitly searching for documents associated with details regarding conditions & terms associated with the Grant funding, see **Attachment 2**, Item 4 [*only the letter to Planning is attached, since the letters I submitted to Parks and the Clerk Recorder are substantially the same except for the Addressee*].

Since I have no copy of the original 2002 Agreement, the 2005 Agreement Addendum, the 2008 Agreement Addendum, nor the presumed 2011 Agreement Addendum [to have NONE implies that these documents were not made available to me], I can not specifically confirm the following, but based upon the 3 year periodicity of the Agreement Addendum, and the known fact that the Grant funding expires during the same period in 2014, I can logically conclude that this Grant funding has been extended three times.

Therefore, it is also logical, that should the need arise, there is every expectation that a similar extension via an Agreement Addendum would be obtained.

Since neither the California Coastal Conservancy nor SLOCOG yet actually granted their funding, **the presumptive notion by the Planning Commission that the Grant funding was in jeopardy, was unfounded**, as should be yours.

CONCLUDING SUMMARY:

The CAVE LANDING AREA IMPROVEMENTS (DRC 2011-00069) project, as approved by the SLO Planning Commissions, warrants nullification by this Board of Supervisors for the following reasons, all or in part:

- 1) This project will occur, en total, within District #3. The District #3 Commissioner abstained from a vote in the decision. **The decision to continue proceedings is completely antithetic to the concept of governmental decision making based upon "representation"**. What should have occurred, the entire discussion and decision to have been continued to a future meeting to allow Commissioner Meyer time to become familiarized with the details of the project such that he could have participated in the vote.
- 2) The Commission made its decision, in part, based upon Staff's and County Counsel's input that were most likely misconstrued by the Commission, and were key in their final vote regarding approval
 - a) County Counsel was NOT definitive in his response to Commissioners when asked if the option of posting a "Proceed at your own Risk" sign was available to County owned properties. He offered his "belief" that it was not, and Commissioners accepted it as "fact". **ALL laws** that I have found, **indicate that the option to "leave things as they are" with appropriate warning signs, was indeed a viable option** to the Planning Commission, yet since they believed it was not an option did not pursue it.
 - b) Documentation suggests that original Grant funding allocated in 2002, was renewed in 2005, 2008 & 2011. Therefore, every expectation exists, that should the need arise, the current expiration date of AUG/SEPT 2014 will be extended again. Thus, **the false the perception that the grants associated this project are in jeopardy** if not used in the very near future, **was fundamental in the Planning Commission's approval.**
- 3) Addition of a concrete staircase at the base of the beach access trail will be damaged, and **will ultimately decrease coastal access** due to its inevitable closure due to safety standard.
- 4) **This project is NOT in conformance with the SLO Co., San Luis Bay Area Plan, Coastal Plan** (dated March 1, 1988, Certified by California Coastal Commission February 25, 1988, Revised August 2009, Page 8-6, item 7. Shoreline Access – Mallagh Landing). Two items in particular:
 - a. *"Parking area for 100 cars is to be improved."*
 - b. *The parking area is to be surfaced with a permeable material to control bluff erosion."*
- 5) **This project is also NOT in conformance with the Coastal Zone Ordinances (CZLUO).** A specific item of which is **part 23.04.210 – Visual Resources.** *a) Location of Development – ... New development shall be designed (e.g., height, bulk, style, materials, color) to be subordinated to, and blend with, the character of the area. ... "*

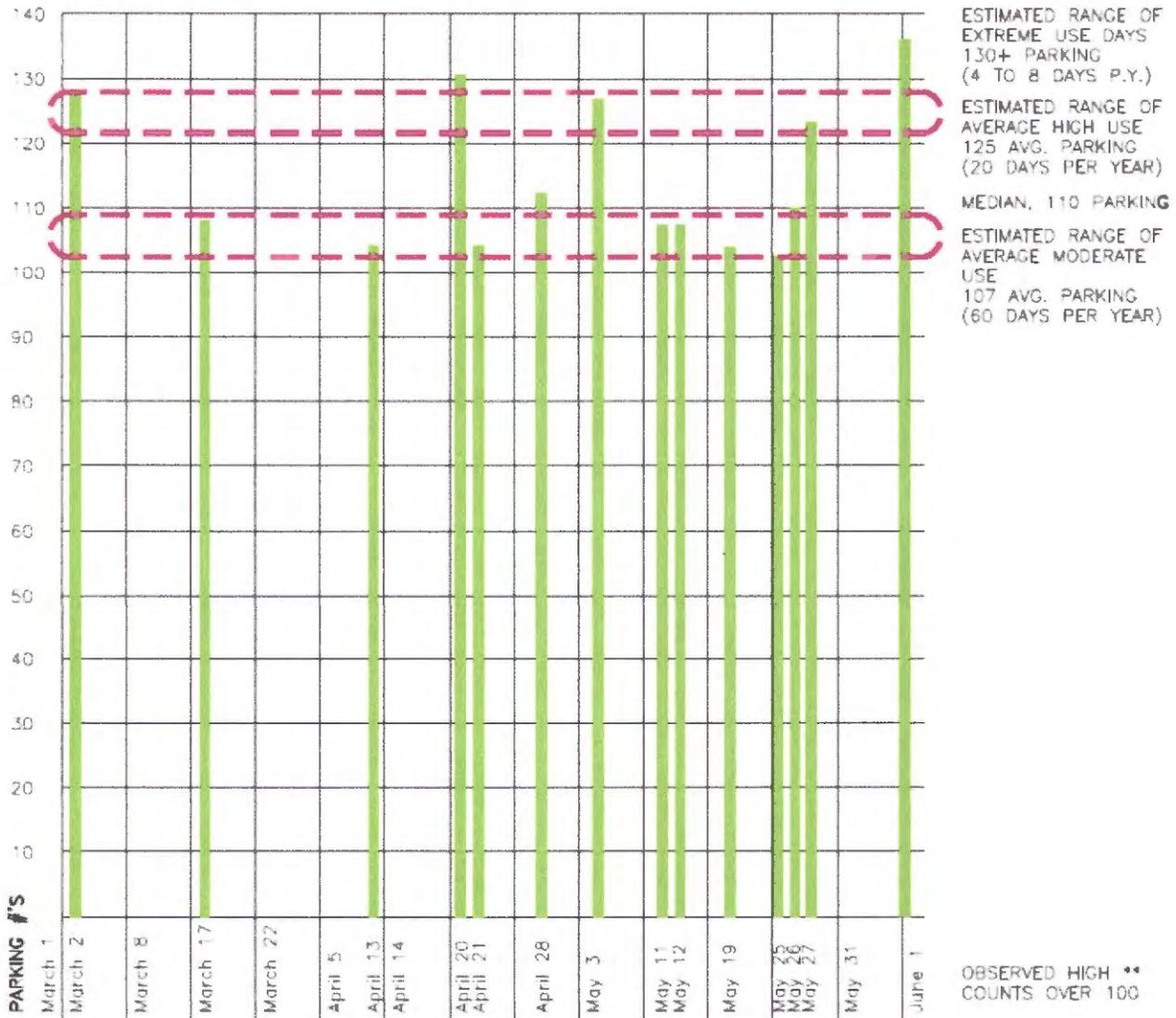
Additionally, **asphalt paving is NOT consistent with the following Policies** in this setting:

- a) **Visual and Scenic Resources: Policy 4: New Development in Rural Areas.** *New development shall be sited to minimize its visibility from public view corridors.*
- b) **Shoreline Access: Policy 8: Minimizing conflicts with Adjacent Uses.** *...Where a proposed project would increase the burdens on access to the shoreline at the present time or in the future, additional access areas may be required to balance the impact of heavier use resulting from the construction of the proposed project.*

I strongly urge you to nullify the Planning Commission's decision of 2013-07-25 and refer the project back to Staff to resolve design issues that do NOT conform with the Local Coastal Development Plan & Ordinances.

THREE MONTH PARKING COUNTS

MARCH 1ST TO JUNE 1ST 2013



BASIS OF ANALYSIS:

The data collected for this analysis is derived from parking counts taken at one time during popular beach days. Usually Friday Saturday and Sunday. These are recorded as part of a separate Blog "CoveVB". Observation has revealed that these counts may be short of peak as some counts taken later in the afternoon (2 to 2:30PM) show more use. As a result of this sampling, we believe that the Estimated "Average High Use" is closer to the "Average Moderate Use". We therefore feel that the intent of both AVAC and San Luis Obispo County Planning Commission can be minimally met with a set goal of 120 to 125 parking spaces as representative of "Existing Use"

Note: Even with the parking at 125 spaces and no additional interest in the New Park, there will already be twenty days without adequate parking.

Note: Additional impacts from the development of the (Former) UNOCAL Tank Farm property should be considered in the long range parking requirements for this park.

ATTACHMENT 2 - BA LoCONTE' REQUEST FOR PUBLIC DOCUMENTS

To: Kami Griffin
SLO Co. Planning Dept. Assistant Director
976 Osos St
San Luis Obispo, CA 93408

SUBJECT: REQUEST FOR PUBLIC RECORDS

20 MAY 2013

Dear Ms Griffin:

While this letter should be unnecessary, since I previously submitted an essentially identical letter to the County Clerk-Recorder, which should have been sufficient to require this request be honored by ALL involved SLO Co. departments, I am also submitting this request directly to your department and to Parks & Recreation.

Under the **California Public Records Act § 6250 et seq.**, I am requesting an opportunity to obtain copies of (preferred) or inspect public records that pertain to:

1. Acquisition by the County of San Luis Obispo of the lands in the area known as Cave Landing / Mallagh's Landing / Pirates Cove and upon the area known as Ontario Ridge. Both past acquisitions and intended future acquisitions.
2. All public records regarding development of those lands, including all past and present revisions and future intent.
3. This includes all correspondence, both written and electronic to/from private individuals, other governmental agencies, quasi-governmental agencies (such as Avila Valley Advisory Council) and intra-agencies to the extent allowed by law as well as any documented summaries of meetings associated with the above requested information.
4. Additionally, all internal budgetary documents associated with past, present and future funding, including the amount, terms, conditions and stipulations of any grants, deeds, etc associated with external funding regarding those lands and their development.

I request any document or drawing that was intended to be larger than 8.5"x11", be provided in the intended size.

I am open to proposals of receiving the requested documents via electronic storage, as long as the contents are able to be stored, reproduced and distributed as individual documents in readily available formats, such as Microsoft Office and Adobe; contact me if that is desired/preferred.

This information is not being sought for commercial purposes.

If there are any fees for copying these records, please inform me if the cost will exceed \$100. However, I would also like to request a waiver of all fees in that the disclosure of the requested information is in the public interest and will contribute significantly to the public's understanding of the San Luis Obispo County's intent and details of planned development of these areas, which hereto, has not been forthcoming.

The California Public Records Act requires a response within ten business days. If access to the records I am requesting will take longer, please contact me with information about when I might expect copies (preferred) or the ability to inspect the requested records.

If you deny any or all of this request, please cite each specific exemption you feel justifies the refusal to release the information and notify me of the appeal procedures available to me under the law.

Sincerely,

Brian A LoConte
[Address & phone # redacted]

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Exhibit 8 – Applicable Coastal Act and LCP Policies

Public Access and Recreation

Coastal Act Section 30210. *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.*

Coastal Act Section 30211. *Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.*

Coastal Act Section 30213. *Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Developments providing public recreational opportunities are preferred. ...*

Coastal Act Section 30214. *Implementation of public access policies; legislative intent (in part)...*

(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.

Coastal Act Section 30220. *Coastal areas suited for water-oriented recreational activities that cannot readily be provided at inland water areas shall be protected for such uses.*

Coastal Act Section 30221. *Oceanfront land suitable for recreational use shall be protected for recreational use and development unless present and foreseeable future demand for public or commercial recreational activities that could be accommodated on the property is already adequately provided for in the area.*

Coastal Act Section 30222. *The use of private lands suitable for visitor-serving commercial recreational facilities designed to enhance public opportunities for coastal recreation shall have priority over private residential, general industrial, or general commercial development, but not over agriculture or coastal-dependent industry.*

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Coastal Act Section 30223. Upland areas necessary to support coastal recreational uses shall be reserved for such uses, where feasible.

Shoreline Access Policy 2. Maximum public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development...

Shoreline Access Policy 8. Maximum access shall be provided in a manner which minimizes conflicts with adjacent uses. Where a proposed project would increase the burdens on access to the shoreline at the present time or in the future, additional access areas may be required to balance the impact of heavier use resulting from the construction of the proposed project.

Recreation Policy 1. Coastal recreational and visitor-serving facilities, especially lower-cost facilities, shall be protected, encouraged and where feasible provided by both public and private means.

Recreation Policy 2. Recreational development and commercial visitor-serving facilities shall have priority over non-coastal dependent use, but not over agriculture or coastal dependent industry in accordance with PRC 30222.

San Luis Bay Area Plan Chapter 8 Local Coastal Plan 7. 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.

Coastal Zone Land Use Ordinance (CZLUO) Section 23.04.420(k)(3). Sighting criteria for coastal accessway. In reviewing a proposed accessway, the applicable review body shall consider the effects that a public accessway may have on adjoining land uses in the location and design of the accessway. When new development is proposed, it shall be located so as not to restrict access or to create possible privacy problems. Where feasible, the following general criteria shall be used in reviewing new access locations, or the location of new development where coastal access considerations are involved:

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- (1) Accessway locations and routes should avoid agricultural areas, sensitive habitats and existing or proposed residential areas by locating near the edge of project sites;
- (2) The size and location of vertical accessways should be based upon the level and intensity of existing and proposed access;
- (3) Review of the accessway shall consider: safety hazards, adequate parking provisions, privacy needs of adjacent residences, adequate signing, and levels of improvements necessary to provide for access;
- (4) Limiting access to pass and repass should be considered where there are nearby residences, where topographic constraints make the use of the beach dangerous, where there are habitat values that can be disturbed by active use.

Visual and Scenic Resources

Visual and Scenic Resources Policy 1 - Protection of Visual and Scenic Resources. Unique and attractive features of the landscape, including, but not limited to unusual landforms, scenic vistas and sensitive habitats are to be preserved and protected.

Visual and Scenic Resources Policy 2 - Site Selection for New Development. Permitted development shall be sited so as to protect views to and along the ocean and scenic coastal areas. Wherever possible, site selection for new development is to emphasize locations not visible from major public view corridors. In particular, new development should utilize slope created "pockets" to shield development and minimize visual intrusion.

Visual and Scenic Resources Policy 4 - New Development in Rural Areas. New development shall be sited to minimize its visibility from public view corridors. Structures shall be designed (height bulk style) to be subordinate to, and blend with, the rural character of the area. New development which cannot be sited outside of public view corridors is to be screened utilizing native vegetation; however, such vegetation, when mature, must also be selected and sited in such a manner as to not obstruct major public views. New land divisions whose only building site would be on a highly visible slope or ridgetop shall be prohibited.

Visual and Scenic Resources Policy 5 - Landform Alterations. Grading, earthmoving, major vegetation removal and other landform alterations within public view corridors are to be minimized. Where feasible, contours of the finished surface are to blend with adjacent natural terrain to achieve a consistent grade and natural appearance.

CZLUO 23.04.210(c) - Standards for Critical Viewsheds and SRAs for protection of visual resources. The following standards apply within areas identified as Critical Viewsheds or SRAs in the area plans for protection of visual resources:

- (1) ***Location of Development.*** Locate development, including, but not limited to primary and secondary structures, accessory structures, fences, utilities, water tanks, and access roads, in the least visible portion of the site, consistent with protection of other resources. *Emphasis*

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shall be given to locations not visible from major public view corridors. Visible Emphasis shall be given to locations not visible from major public view corridors. Visible or partially visible development locations shall only be considered if no feasible non-visible development locations are identified, or if such locations would be more environmentally damaging. New development shall be designed (e.g., height, bulk, style, materials, color) to be subordinate to, and blend with, the character of the area. Use naturally occurring topographic features and slope-created “pockets” first and native vegetation and berming second, to screen development from public view and minimize visual intrusion.

- (2) Structure visibility.** *Minimize structural height and mass by using low-profile design where feasible, including sinking structures below grade. Minimize the visibility of structures by using design techniques to harmonize with the surrounding environment.*
- (3) Ridgetop development.** *Locate structures so that they are not silhouetted against the skyline or ridgeline as viewed from the shoreline, public beaches, the Morro Bay estuary, and applicable roads or highways described in the applicable planning area standards in the area plans, unless compliance with this standard is infeasible or results in more environmental damage than an alternative.*
- (4) Landscaping for hillside and ridgetop development.** *Provide screening of development at plant maturity using native vegetation of local stock, non-invasive, or drought-tolerant vegetation without obstructing major public views (e.g., screening should occur at the building site rather than along a public road). The use of vegetation appropriate to the site shall be similar to existing native vegetation. Alternatives to such screening may be approved if visual impacts are avoided through use of natural topographic features and the design of structures. Provisions shall be made to maintain visual screening for the life of the development.*
- (5) Land divisions and lot-line adjustments - cluster requirement.** *New land divisions and lot-line adjustments where the only building site would be on a highly visible slope or ridgetop shall be prohibited. Land divisions and their building sites that are found consistent with this provision shall be clustered in accordance with Chapter 23.04 or otherwise concentrated in order to protect the visual resources.*
- (6) Open space preservation.** *Pursuant to the purpose of the Critical Viewshed or SRA to protect significant visual resources, sensitive habitat or watershed, open space preservation is a compatible measure. Approval of an application for new development in these scenic coastal areas is contingent upon the applicant executing an agreement with the county to maintain in open space use appropriate portions of the site within the Critical Viewshed or SRA (for visual protection). Guarantee of open space preservation may be in the form of public purchase, agreements, easement controls or other appropriate instrument approved by the Planning Director, provided that such guarantee agreements are not to provide for public access unless acceptable to the property owner or unless required to provide public access in accordance with the LCP.*

Section 23.07.164(e). *Any land use permit application within a Sensitive Resource Area shall be approved only where the Review Authority can make the following required findings:*

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- 1) *The development will not create significant effects on the natural features of the site or vicinity that were the basis for the Sensitive Resource Area designation, and will preserve and protect such features through the site design.*
- 2) *Natural features and topography have been considered in the design and siting of all proposed physical improvements.*
- 3) *Any proposed clearing of topsoil, trees, or other features is the minimum necessary to achieve safe and convenient access and siting of proposed structures and will not create significant adverse effects on the identified sensitive resource.*
- 4) *The soil and subsoil conditions are suitable for any proposed excavation; site preparation and drainage improvements have been designed to prevent soil erosion, and sedimentation of streams through undue surface runoff.*

Archaeology

Archaeology Policy 1 - Protection of Archeological Resources. *The county shall provide for the protection of both known and potential archeological resources. All available measures, including purchase, tax relief, purchase of development rights, etc., shall be explored at the time of a development proposal to avoid development on important archeological sites. Where these measures are not feasible and development will adversely affect identified archeological or paleontological resources, adequate mitigation shall be required.*

Archaeology Policy 4 - Preliminary Site Survey for Development within Archeologically Sensitive Areas. *Development shall require a preliminary site survey by a qualified archeologist knowledgeable in Chumash culture prior to a determination of the potential environmental impacts of the project.*

Archaeology Policy 5 - Mitigation Techniques for Preliminary Site Survey before Construction. *Where substantial archeological resources are found as a result of a preliminary site survey before construction, the county shall require a mitigation plan to protect the site. Some examples of specific mitigation techniques include:*

- (a) *Project redesign could reduce adverse impacts of the project through relocation of open space, landscaping or parking facilities.*
- (b) *Preservation of an archeological site can sometimes be accomplished by covering the site with a layer of fill sufficiently thick to insulate it from impact. This surface can then be used for building that does not require extensive foundations or removal of all topsoil.*
- (c) *When a project impact cannot be avoided, it may be necessary to conduct a salvage operation. This is usually a last resort alternative because excavation, even under the best conditions, is limited by time, costs and technology. Where the chosen mitigation measure necessitates removal of archeological resources, the county shall require the evaluation and proper deposition of the findings based on consultation with a qualified archeologist knowledgeable in the Chumash culture.*

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(d) *A qualified archeologist knowledgeable in the Chumash culture may need to be on-site during initial grading and utility trenching for projects within sensitive areas.*

CZLUO 23.07.104 - Archaeologically Sensitive Areas. *To protect and preserve archaeological resources, the following procedures and requirements apply to development within areas of the coastal zone identified as archaeologically sensitive.*

(a) *Archaeologically sensitive areas. The following areas are defined as archaeologically sensitive:*

(1) *Any parcel within a rural area which is identified on the rural parcel number list prepared by the California Archaeological Site Survey Office on file with the county Planning Department.*

(2) *Any parcel within an urban or village area which is located within an archaeologically sensitive area as delineated by the official maps (Part III) of the Land Use Element.*

(3) *Any other parcel containing a known archaeological site recorded by the California Archaeological Site Survey Office.*

(b) *Preliminary site survey required. Before issuance of a land use or construction permit for development within an archaeologically sensitive area, a preliminary site survey shall be required. The survey shall be conducted by a qualified archaeologist knowledgeable in local Native American culture and approved by the Environmental Coordinator. The County will provide pertinent project information to the Native American tribe(s).*

(c) *When a mitigation plan is required. If the preliminary site survey determines that proposed development may have significant effects on existing, known or suspected archaeological resources, a plan for mitigation shall be prepared by a qualified archaeologist. The County will provide pertinent project information to the Native American tribe(s) as appropriate. The purpose of the plan is to protect the resource. The plan may recommend the need for further study, subsurface testing, monitoring during construction activities, project redesign, or other actions to mitigate the impacts on the resource. Highest priority shall be given to avoiding disturbance of sensitive resources. Lower priority mitigation measures may include use of fill to cap the sensitive resources. As a last resort, the review authority may permit excavation and recovery of those resources. The mitigation plan shall be submitted to and approved by the Environmental Coordinator, and considered in the evaluation of the development request by the Review Authority.*

(d) *Archeological resources discovery. In the event archeological resources are unearthed or discovered during any construction activities, the standards of Section 23.05.140 of this title shall apply. Construction activities shall not commence until a mitigation plan, prepared by a qualified professional archaeologist reviewed and approved by the Environmental Coordinator, is completed and implemented. The County will provide pertinent project information to the affected Native American tribe(s) and consider comments prior to approval of the mitigation plan. The mitigation plan shall include*

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measures to avoid the resources to the maximum degree feasible and shall provide mitigation for unavoidable impacts. A report verifying that the approved mitigation plan has been completed shall be submitted to the Environmental Coordinator prior to occupancy or final inspection, whichever occurs first.

Environmentally Sensitive Habitat Areas

Policy 1: Land Uses Within or Adjacent to Environmentally Sensitive Habitats. *New development within or adjacent to locations of environmentally sensitive habitats (within 100 feet unless sites further removed would significantly disrupt the habitat) shall not significantly disrupt the resource. Within an existing resource, only those uses dependent on such resources shall be allowed within the area. [THIS POLICY SHALL BE IMPLEMENTED PURSUANT TO SECTIONS 23.07.170-178 OF THE COASTAL ZONE LAND USE ORDINANCE (CZLUO).]*

Policy 2: Permit Requirement. *As a condition of permit approval, the applicant is required to demonstrate that there will be no significant impact on sensitive habitats and that proposed development or activities will be consistent with the biological continuance of the habitat. This shall include an evaluation of the site prepared by a qualified professional which provides: a) the maximum feasible mitigation measures (where appropriate), and b) a program for monitoring and evaluating the effectiveness of mitigation measures where appropriate. [THIS POLICY SHALL BE IMPLEMENTED PURSUANT TO SECTIONS 23.07.170-178 OF THE CZLUO.]*

Policy 29: Protection of Terrestrial Habitats. *Designated plant and wildlife habitats are environmentally sensitive habitat areas and emphasis for protection should be placed on the entire ecological community. Only uses dependent on the resource shall be permitted within the identified sensitive habitat portion of the site. Development adjacent to environmentally sensitive habitat areas and holdings of the State Department of Parks and Recreation shall be sited and designed to prevent impacts that would significantly degrade such areas and shall be compatible with the continuance of such habitat areas. [THIS POLICY SHALL BE IMPLEMENTED PURSUANT TO SECTION 23.07.176 OF THE CZLUO.]*

Policy 30: Protection of Native Vegetation. *Native trees and plant cover shall be protected wherever possible. Native plants shall be used where vegetation is removed. [THIS POLICY SHALL BE IMPLEMENTED PURSUANT TO SECTION 23.07.176 OF THE CZLUO.]*

Policy 35: Protection of Vegetation. *Vegetation which is rare or endangered or serves as cover for endangered wildlife shall be protected against any significant disruption of habitat value. All development shall be designed to disturb the minimum amount possible of wildlife or plant habitat. [THIS POLICY SHALL BE IMPLEMENTED PURSUANT TO SECTION 23.07.176 OF THE CZLUO.]*

CZLUO Section 23.07.176: Terrestrial Habitat Protection. *The provisions of this section are intended to preserve and protect rare and endangered species of terrestrial plants and animals by preserving their habitats. Emphasis for protection is on the entire ecological community rather than only the identified plant or animal.*

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- a. *Protection of vegetation. Vegetation that is rare or endangered, or that serves as habitat for rare or endangered species shall be protected. Development shall be sited to minimize disruption of habitat.*
- b. *Terrestrial habitat development standards:*
 - (1) *Revegetation. Native plants shall be used where vegetation is removed.*
 - (2) *Area of disturbance: The area to be disturbed by development shall be shown on a site plan. The area in which grading is to occur shall be defined on site by readily-identifiable barriers that will protect the surrounding native habitat areas.*
 - (3) *Trails. Any pedestrian or equestrian trails through the habitat shall be shown on the site plan and marked on the site. The biologist's evaluation required by Section 23.07.170a shall also include a review of impacts on the habitat that may be associated with trails.*

Hazards

Policy 1: New Development. *All new development proposed within areas subject to natural hazards from geologic or flood conditions (including beach erosion) shall be located and designed to minimize risks to human life and property. Along the shoreline new development (with the exception of coastal-dependent uses or public recreation facilities) shall be designed so that shoreline protective devices (such as seawalls, cliff retaining walls, revetments, breakwaters, groins) that would substantially alter landforms or natural shoreline processes, will not be needed for the life of the structure. Construction of permanent structures on the beach shall be prohibited except for facilities necessary for public health and safety such as lifeguard towers. [THIS POLICY SHALL BE IMPLEMENTED AS A STANDARD.]*

CZLUO Section 23.07.086(c): *New development shall insure structural stability while not creating or contributing to erosion, sedimentation, or geologic instability.*

CZLUO Section 23.070.080: *A Geologic Study Area combining designation is applied by the Official Maps (Part III) of the LUE, to areas where geologic and soil conditions could present new developments and their users with potential hazards to life and property. These standards are applied where the following conditions exist:*

(d): *Areas along the coast with coastal bluffs and cliffs greater than 10 feet in vertical relief that are identified in the Coastal Erosion Atlas, prepared by the California State Department of Navigation and Ocean Development (1977), in accordance with Hazards Policy 7 of the LCP.*

CZLUO Section 23.07.084c-2. Application Content – Geologic and Soils Report Required. *All land use permit applications for projects located within a GSA shall be accompanied by a report prepared by a certified engineering geologist and/or registered civil engineer (as to soils engineering).... Conclusions and recommendations regarding the potential for active land sliding or slope failure.*

CZLUO Section 23.07.084c-3. Application Content – Geologic and Soils Report Required.

AS 8-810-10-0252

Exhibit 8

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All land use permit applications for projects located within a GSA shall be accompanied by a report prepared by a certified engineering geologist and/or registered civil engineer (as to soils engineering).... Conclusions and recommendations regarding the potential for adverse groundwater conditions.

Hazard Policy 6: Bluff Setbacks. New development or expansion of existing uses on blufftops shall be designed and set back adequately to assure stability and structural integrity and to withstand bluff erosion and wave action for a period of 75 years without construction of shoreline protection structures which would require substantial alterations to the natural landforms along bluffs and cliffs. A site stability evaluation report shall be prepared and submitted by a certified engineering geologist based upon an on-site evaluation that indicates that the bluff setback is adequate to allow for bluff erosion over the 75 year period. Specific standards for the content of geologic reports are contained in the Coastal Zone Land Use Ordinance. [THIS POLICY SHALL BE IMPLEMENTED PURSUANT TO SECTION 23.04.118 OF THE CZLUO.]

Hazard Policy 7: Geologic Study Area Combining Designation. The GSA combining designation in coastal areas of the county is amended to include all coastal bluffs and cliffs greater than 10 feet in vertical relief and that are identified in the Assessment and Atlas of Shoreline Erosion (DNOD, 1977) as being critical to future or present development... These hazards shall include steep slopes, unstable slopes, expansive soils, costal cliff and bluff instability, active faults, liquefaction and tsunami. [THIS POLICY SHALL BE IMPLEMENTED BY DESIGNATING GSA AREAS ON THE COMBINING DESIGNATION MAPS AND PURSUANT TO SECTION 23.07.080 OC THE CZLUO]

CZLUO Section 23.04.118(a). Bluff Retreat Setback Method. New development or expansion of existing uses on blufftops shall be designed and set back from the bluff edge a distance sufficient to assure stability and structural integrity and to withstand bluff erosion and wave action for a period of 75 years without construction of shoreline protection structures...

CZLUO Section 23.07.066 (a). Construction, general. On the basis of structural plans and the depth analysis, the ground floor of all structures is to be constructed at a minimum of one-foot above the 100-year storm flood profile level.

Water Quality

Policy 8: Timing of Construction and Grading. Land clearing and grading shall be avoided during the rainy season if there is a potential for serious erosion and sedimentation problems. All slope and erosion control measures should be in place before the start of the rainy season. Soil exposure should be kept to the smallest area and the shortest feasible period. [THIS POLICY SHALL BE IMPLEMENTED AS A STANDARD AND PURSUANT TO SECTION 23.05.036 OF THE CZLUO.]

Policy 9: Techniques for Minimizing Sedimentation. Appropriate control measures (such as sediment basins, terracing, hydro-mulching, etc.) shall be used to minimize erosion and sedimentation. Measures should be utilized from the start of site preparation. Selection of appropriate control measures shall be based on evaluation of the development's design...

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Exhibit 8

9 of 10

conditions, predevelopment erosion rates, environmental sensitivity of the adjacent areas and also consider costs of on-going maintenance. A site specific erosion control plan shall be prepared by a qualified soil scientist or other qualified professional. To the extent feasible, non-structural erosion techniques, including the use of native species of plants, shall be preferred to control run-off and reduce increased sedimentation. [THIS POLICY SHALL BE IMPLEMENTED AS A STANDARD AND PURSUANT TO SECTION 23.05.036 OF THE CZLUO.]

Policy 10: Drainage Provisions. *Site design shall ensure THAT drainage does not increase erosion. This may be achieved either through on-site drainage retention, or conveyance to storm drains or suitable watercourses. [THIS POLICY SHALL BE IMPLEMENTED AS A STANDARD AND PURSUANT TO SECTION 23.05.034 OF THE CZLUO.]*



San Luis Obispo County Sheriff's Office

1585 Kansas Avenue • San Luis Obispo, California 93405
www.slosheriff.org

2014 MAY 16 PM 12:52

Ian S. Parkinson
Sheriff - Coroner

To: California Coastal Commission
From: Aaron Nix, Commander, Coast Patrol Division, San Luis Obispo County Sheriff's Office
Date: May 5, 2014
RE: County Sheriff's Statistics of Criminal Activity at Pirates' Cove/Cave Landing

San Luis Obispo County Sheriff's statistics compiled for the last 3 years 4 months as outlined below. As you can see, the call volume is steadily increasing and the nature of the calls is getting progressively worse; a large number of parties, fights, and sex crimes, with some transient issues and a considerable amount of vehicle burglaries and petty thefts. The majority of these incidents happen at night, and at an exponentially faster pace than the criminal activity at any other County Parks' facility or beach in San Luis Obispo County. The remote location of the site and decades of private ownership has fostered the development of a pronounced criminal culture, and it is becoming more entrenched with each passing year. Now that County Parks owns the site, the Sheriff's Office is working with them to change the criminal element and illicit atmosphere that currently dominates the Cave Landing area. Enforceable night closure hours is the most effective tool we have to have to make this location a safe place for citizens and visitors to recreate, as it gives our deputies the ability to clear the parking lot early before problems typically develop in the late evening.

Year 2011 - 55 incidents

Types of calls

- arrests for warrants
- PC 647 f drunk in public
- juveniles drinking
- large parties
- lewd acts
- complaint of 60year old male nude with an 8 year old female nude
- illegal camping in caves with abundance of human waste and trash

Year 2012 - 73 incidents

Types of calls

- complaints of subjects dealing drugs
- complaints of subjects having sex in public



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Ian S. Parkinson
Sheriff - Coroner

- lewd acts
- drunk in public
- large parties
- subjects fighting
- suicidal subjects
- H&S 11377(A) possession of an illegal narcotic
- indecent exposure

Year 2013 - 121 incidents

Types of calls

- PC 273(D)(A) felony child abuse
- drunk in public
- suspicious subjects
- juvenile parties
- possession of an illegal narcotic- sales & transportation, multiple arrests and citations
- warrant arrests
- vandalism
- subject in the bushes with binoculars
- subject recording people
- complaints of lewd acts
- unlawful dumping
- stealing personal property from vehicles
- recovered stolen car
- fireworks
- armed robbery
- sexual battery
- indecent exposure
- suspicious subject reports
- registered sex offenders contacted by law enforcement

Year 2014 – January through April – 38 incidents

Exhibit 9

Administration (805) 781-4540 • 24-hour Dispatch (805) 781-4520

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Ian S. Parkinson
Sheriff - Coroner

Types of calls

- suicidal subjects
- burglary
- drunk in public
- possession of drug paraphernalia
- multiple indecent exposure reports
- multiple incomplete 911 calls
- registered sex offender contacted by law enforcement
- large party
- unconscious intoxicated subject in parking lot
- subjects arrested for having sexual intercourse in the public parking lot

The Pirate's Cove/Cave Landing area is on pace in 2014 to match or exceed calls for service in 2013. When keeping in mind the reporting statistics are for the winter and early spring, it is reasonable to assume 2014 will be the busiest year on record. Of particular note for 2014 was the call that resulted in two arrests for committing a lewd act in public. A uniformed deputy in a marked patrol vehicle witnessed an adult male and female engaged in sexual intercourse on the hood of a car during the early evening hours. The vehicle was parked in such a manner that it was partially blocking the roadway that granted access to and from the parking lot, and the subjects were clearly visible to everyone in the area due to their location and the lighting conditions. Upon contact the subjects had to be repeatedly ordered to cease their activity and clothe themselves. Neither subject was intoxicated at the time of contact.

The Pirate's Cove/Cave Landing area has proven to be a haven for illegal and illicit behavior, particularly during the evening hours. Night time closure of this area is the best way to minimize the criminal activities that regularly happen at this site by giving law enforcement the authority to clear the parking lot in the evening hours.

A handwritten signature in black ink, appearing to read "A. Nix", followed by the title "CMDE" in a smaller, less legible script.

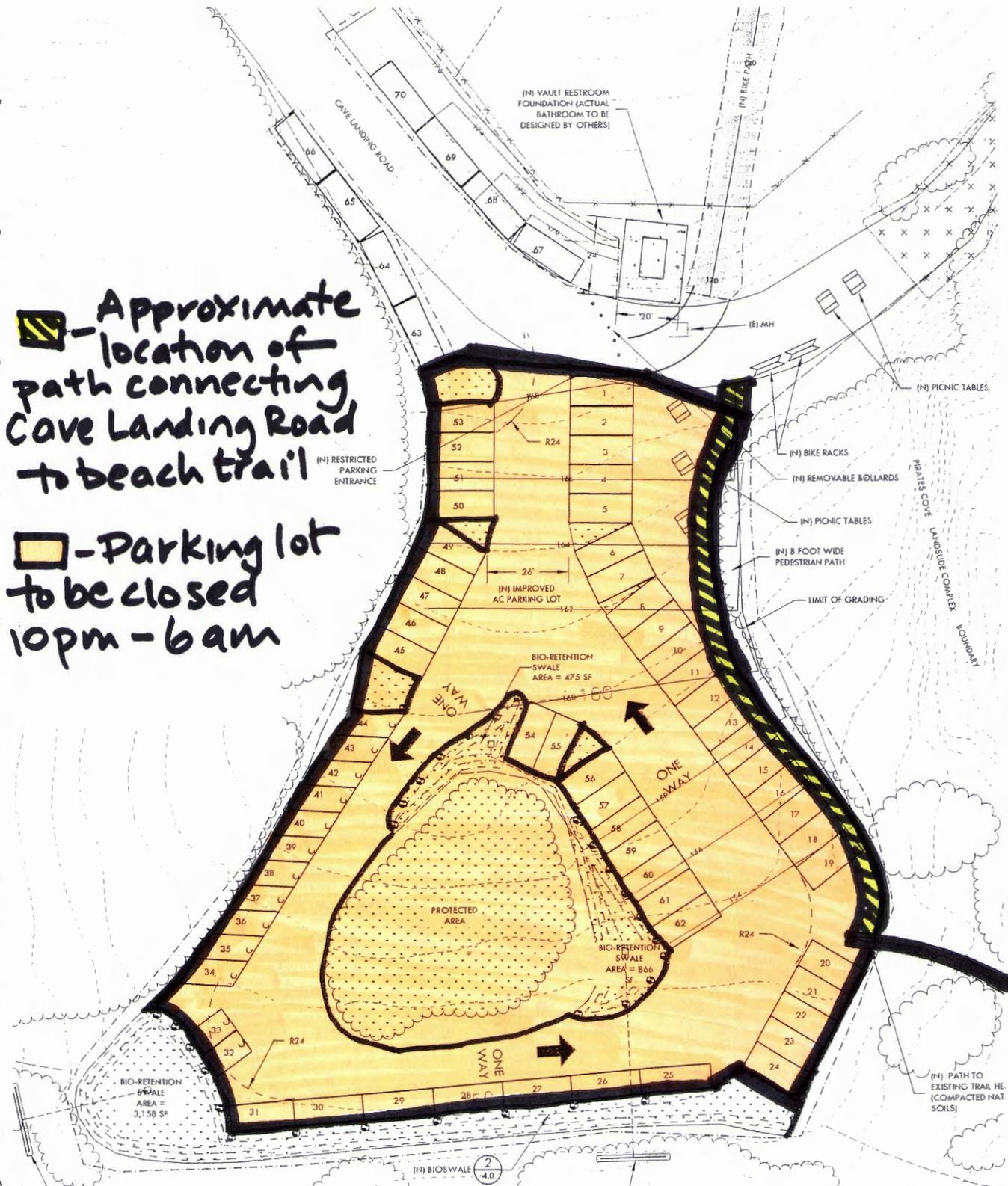
Aaron Nix, Commander, Coast Patrol Division
San Luis Obispo County Sheriff's Office
2099 10th Street
Los Osos, CA 93402
(805) 781-4630

A I B I C I D I E I F I G I H I

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 - Approximate location of path connecting Cave Landing Road to beach trail

 - Parking lot to be closed 10pm - 6am



PARKING LOT IMPROVEMENT PLAN
SCALE 1" = 20'

Pirate's Cove
Exhibit 10
A-3-SLO-13-0252

Cave Landing/ Pirate's Cove Parking Lot – Car Counts

Friday June 13, 2014 at noon, 75 degrees

6 cars in parking lot, 10 cars total in area

No picture

Monday May 26, 2014 (Memorial Day) 1:30 pm, 83 degrees

45 cars in parking lot, 73 cars total in area



Wednesday May 21, 2014 at 11:00 am, 60 degrees

7 cars in parking lot (2 or 3 of them are camping on site), 9 cars total in area



Saturday May 3 2014 at 12:45pm, 77 degrees

62 cars in parking lot, 77 cars total including parking along the street.



Friday May 2, 2014 at 2pm, 97 degrees

69 cars in parking lot, 84 cars total including parking along street.

No picture

Saturday April 19, 2014 at 1 pm, 70 degrees 24 cars parked in the parking lot 32 car total including parking along street.



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Exhibit 11

2 of 3

Saturday April 12, 2014 at 1pm. 69 degrees
23 cars in parking lot.
No picture

Thursday April 3, at 3:30pm. 70 degrees
11 cars in the parking lot





Legend	
●	Black-flowered figwort
▨	Needlegrass Grassland
- - -	Proposed Bike Trail Route
—	Existing Paved Road
- - -	Pirate's Cove Beach Trail



PROJECT SITE MAP

FIGURE 1

Whales Cave Conservancy

"Dedicated to the Preservation of the Cultural, Ecological, Scenic Resources and Historic Use,
of Pirates Cove."

Date: May 22nd 2014

RE: Pirates Cove Park Development

Attn: Daniel Robinson, California Coastal Commission

CC: Adam Hill, San Luis Obispo County Supervisor District 3

Ryan Hostetter, San Luis Obispo County Planning

Elizabeth Kavanaugh, San Luis Obispo County Parks and Recreation

Dear Mr. Robinson,

Please consider the following as representative of Pirates Cove beach users that are *actively involved* in the physical maintenance of the area defined as "Pirates Cove Park". We are a nonprofit 501c3 group, formed in the early 1990's. Spurred by the then pending Bluffs development, we formed with the purpose of adopting the original "Offer to Dedicate". We worked with San Luis Obispo County and Chumash representatives in re-defining the parking lot to its current boundaries. For over twenty three years since then, we have continually worked on keeping the beach accessible and clean. Our efforts include maintaining trails and parking areas to our best ability. Because it is an unregulated area, it receives an inordinate amount of waste. We remove everything from individual food wrappers to and large appliances and construction waste. With the more recent changes in user demographics we are seeing an increase in trash.

Our group is made up primarily of *frequent* beach users. The term "frequent" is not meant to alienate others as our group includes many people that are only able to visit Pirates Cove a couple times a year. But the frequent users in our case represent those that understand the dynamics of the area. We would like to provide input based on this continual use and knowledge derived from it. We think this symbiosis of "ownership" is important here and somewhat unique because we believe our continued historical use of the beach is tied to our ability to steward the area.

As of this writing, we have over one hundred-four active volunteers (75% of our group) that volunteer various amounts of time to help maintain the area by picking up litter, reconstructing trail, steps and actively encouraging environmental sensitivity to flora and fauna. We are able to do this because our members represent a continuous daytime presence on Pirates Cove Beach. We have members that can account for use of the area in the currently accepted manner since the early 1970's. We have other members that can through association account for this use as far back as the 1950s.

The Whales Cave Conservancy adopted the park in September 2013. We, the members of the Whales Cave Conservancy offer the following comments in reference to "Pirates Cove Park":

Vehicular Access

Immediately after Pirates Cove Park plans became available, we recognized a potential problem with the amount of available parking. We were able to prove that the shortage would be a problem. Working with AVAC and County planning we reached a compromise of seventy parking spaces within the defined off street areas and an undefined amount on the West side of

Exhibit 13

Of particular concern are the fires that were found on the beach. In all cases the trash was left. In four cases broken bottles and nails mixed in with the sand made it difficult to clean. We believe that with rights come responsibility.

Long Range Planning

Of particular interest is the potential development of the former Union Oil tank farm. It is our position that as a Public park the area will have the most protection from encroaching development. If possible, acquiring additional private lands between the tank farm and Pirates Cove Park will have the best positive affect on preserving natural state of the area.

In Conclusion

Through this process we have evolved our vision and would like to summarize:

We see Pirates Cove Beach as a wild area with inherent hazards. While our primary concerns are the beach and it's continued "Historic Use", we recognize that is a wild area that cannot feasibly be tamed. Furthermore it should not be tamed as it is this wild nature that makes it so beautiful. An additional concern revealed through this process is the proposed stair at the last ~20 feet to the beach. We question constructing an accessible stairway at the bottom of a somewhat hazardous open sided trail to a sometimes hazardous beach. Pirates Cove beach is already heavily used in its "Wild" state. We believe that from the turn off trail it should remain so with signage indicating it as a hazardous area with limited access. We believe this would also serve to protect "Historic Use"

Regarding nighttime use, we reiterate that we have no objection to the proposed hours but add that as a legal entity with a board of directors, we will not *endorse* any use of the area that compounds the many hazards described.

With Regards,



Christina Amber Ensminger, Secretary

For the Whales Cave Conservancy



Northern Chumash Tribal Council

A Native American Corporation - NorthernChumash.org
67 South Street, San Luis Obispo, CA 93401 805-801-0347

Daniel Robinson
Coastal Commission

May 21, 2014

Sent via email only: drobenson@coastal.ca.gov
Re: Prorates Cove Assess

Dear Daniel,

The Northern Chumash Tribal Council (NCTC) is a 501c3 non-profit, federally and state tax exempt, dedicated to the preservation of the Chumash Culture. NCTC corporate offices are located in San Luis Obispo California at 67 South Street. NCTC was formed under the guidelines of California Senate Bill 18 April 26, 2006 as a California State Recognized Tribal Government by the California Native American Heritage Commission, organized and dedicated to preservation of the California Native American Chumash Culture, and Sacred Sites. NCTC is dedicated to meaningful consulting with Federal, State, local governments, agencies, corporations, consulting with the development community, and supporting tribal community well-being. In San Luis Obispo County the UN Declaration of the Rights of Indigenous Peoples has been passed by resolution of the County Board of Supervisors.

The Pirates Cove area, located between Pismo Beach and Avila Beach in San Luis Obispo County CA, is a major Californian Native American Chumash Sacred Landscape, with many villages, and rock art in the area. Over the years much of our Sacred Landscape has been tampered with and looted in many incidents, most of which happens at night, when no one is around, or, watching.

NCTC is in favor of public assess, but, when it in accord with the enforcement arm of protection for our Sacred Sites, the only enforcement we have is the Sheriff's Office, concerned citizens and our neighborhood watch. All of these protection arms require light to see. Most all of our parks in the County close at 10:00pm and reopen at 6:00am, we find that this is inclusive of all peoples, and protects our Sheriff's Office already stranded budget and man power, and lets our concerned citizens and neighborhood watch folks help in the protection for everyone.

NCTC is recommending that the Sacred Chumash Landscape at Pirates Cove be protected by this evening, across the county closures, at 10:00pm and reopening at 6:00am. NCTC is in support of the County Parks and Recreations findings, which also agree with ours.

Thank you very much for your consideration.

Fred Collins
Tribal Administrator
Northern Chumash Tribal Council

Robinson, Daniel@Coastal

From: Robinson, Daniel@Coastal
Sent: Thursday, May 29, 2014 11:49 AM
To: Robinson, Daniel@Coastal
Subject: Pirates Cove Comments

From: Fred Collins [<mailto:fcollins@northernchumash.org>]
Sent: Wednesday, May 28, 2014 7:43 AM
To: Robinson, Daniel@Coastal
Subject: RE: Pirates Cove Comments

Hello Daniel,

Hope you had a great weekend, it was beautiful along the coast. I spoke to County about all the issues we have been talking about for the last several years, and, they assured me that all of the remediation's and conditions of approval have been met, they have sent me some updated wording from our conversations, and we are in agreement with it. There is no special access for Chumash, if someone wants to have a special event, a special event permit will need to be fill out and approved. We have worked on the parking lots remediation, most of the parking area which is on our site has been there for some time, and has been cap over for some time, the improvements will stop the erosion of the site on the slopes toward the beach, the run off has always been a challenge, as it keep eroding the site, so, our plan is to control the erosion and stop the site erosion. We do hope to avoid as much as possible any new disturbance to the site, we will need to do some phase I, II and III data recovery along the foot trail.

Hope this help, thank you for your time and consideration.

We are still working on the marine sanctuary, see our web page chumashsanctuary.com.

fc

Fred Collins
Tribal Administrator
NCTC Northern Chumash Tribal Council
67 South Street, San Luis Obispo, CA 93401
(805) 801-0347 www.NorthernChumash.org
Educational Services & Environmental Consulting

Exhibit 13
A-3-SLO-13-0252
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County of San Luis Obispo
County Parks & Recreation Commission
Pandora Nash-Karner, Chair

Curtis Black, Deputy Director - Parks

May 22, 2014

California Coastal Commission
Central Coast District Office
Attn: Daniel Robinson
725 Front Street, Suite 300
Santa Cruz, CA 95060-4508

Re: Appeal of Pirates' Cove /Cave Landing project in San Luis Obispo County

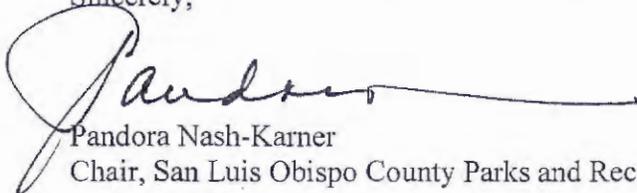
Dear California Coastal Commissioners,

It is the duty of the County of San Luis Obispo Park and Recreation Commission to advise the board of Supervisors and staff in the policy, planning and development of the County's park system. As such, we support the County Board of Supervisors' approval of this project including the proposed improvements and most importantly the hours of operation of 6am to 10pm.

The proposed hours of operation are standard procedure at County Parks' facilities consistent with the San Luis Obispo County Parks Ordinance and are particularly important at this site. This site has a long history of criminal activities at night and overnight camping in the parking lot. These illegal activities, along with the physical limitations of the site: the steep cliffs, erosion and an active land slide make public safety at night a significant concern. In addition, resource protection of this Chumash sacred site is of great concern and a goal of County Parks. The proposed hours of operation are the best tool in the County's tool box to protect the safety of the public who use the site along with the resources and the long term recreational use of the site.

The County is responsible for maintenance and policing the site. It is the County's goal to change the culture of this site from an area that is dangerous at night to a County Park where citizens and visitors can safely recreate and access the coast. We urge your Commission to be practical and support the unified position of San Luis Obispo County: Parks, Sheriff, Planning Commission, Park and Recreation Commission and Board of Supervisors and approve hours of operation of 6am to 10pm for this site.

Sincerely,


Pandora Nash-Karner
Chair, San Luis Obispo County Parks and Recreation Commission