

STAFF REPORT ON THE SALE OF OCEANO DUNES PARCELS: ERRORS OR DECEPTION?

INTRODUCTION

This investigation originated from a formal citizen complaint concerned that a report to the San Luis Obispo County Planning Commission prepared by Planning and Building Department staff omitted significant information and misrepresented county land use policy. The result of these omissions had the potential to influence a significant Planning Commission decision in direct conflict with county land use policy.

METHOD

In conducting the investigation that resulted in this report, the Grand Jury did the following:

- Interviewed the complainant
- Interviewed the concerned planning staff
- Reviewed the planning file including the final report and supporting documents
- Reviewed related documentation (such as newspaper coverage)

NARRATIVE

The following timetable is intended to clarify the events concerning this report.

Date	County Agency	Incident
December 4, 2006	San Luis Obispo County Department of Building and Planning	Determined the proposed sale of the 584 acres in the La Grande tract was in conformity with the County General Plan
December 14, 2006	County Planning Commission	Appeal made to Planning Commission that the sale was not in conformity
January 25, 2007	County Planning Commission	At appeal hearing, public input showed that the staff report omitted significant information
April 17, 2007	County Board of Supervisors	Appeal upheld and the sale was found to not be in conformity with General Plan

The San Luis Obispo County Department of Planning and Building determined on December 4, 2006 that the proposed sale of approximately 584 acres in the La Grande Beach Tract in the Oceano Dunes by San Luis Obispo County to the California State Parks system was in conformity with the County General Plan (DTM 2006-00003). On December 14, 2006, a citizen

appeal was made to the San Luis Obispo County Planning Commission arguing that the proposed sale was **not** in conformity with the General Plan based on environmental impacts.

At a January 25, 2007 public appeal hearing, Planning and Building Department staff presented a report supporting the determination that the sale of County land to the California State Parks system would be in conformance with the San Luis Obispo County General Plan and Local Coastal Plan. One of the documents cited in the report was the South County Coastal Planning Area Standard 9, regulating use of vehicles in the dunes.

During public input at this hearing, two members of the public pointed out that the report prepared by Planning and Building Department staff omitted a “Figure 4 map” thus suggesting that the report was in compliance with the county’s land use policy. The omitted map designates a vehicle free buffer zone, effectively banning vehicles from a large portion of the proposed land for sale. The vehicle ban would conflict with State Parks intended use for the parcel.

In addition to the omitted “Figure 4 map,” two sentences referring to the “Figure 4 map” were removed from the report. The omitted sentences were: “These areas are identified in Figure 4,” and “The map of (off road vehicle) use areas indicates a buffer area along these critical interface areas.” Removal of these two sentences eliminated all references in the report to the “Figure 4 map” in the South Coast Planning Area Standard 9 document.

In testimony to the Grand Jury, one planning staffer said the omissions were just an accident, an oversight. Another staffer testified that the County official with most knowledge of the La Grande Beach Tract’s complicated history (which includes the Oceano Dunes parcels for sale) had recently retired and staffers writing the report did not recognize the importance of the “Figure 4 map.” However, the precision with which the words referring to the map were omitted gives the appearance that the editing was **intentional**, not an accidental omission.

Three months later on April 17, 2007, the appeal was upheld by the Board of Supervisors and a determination was made that the proposed sale was **not** in conformance with the County General Plan. The “buffer zone” indicated in the “Figure 4 map” was key to this determination.

Examination of the South County Coastal Planning Area Standard 9 revealed that the “Figure 4 map” was included in the Coastal Commission approved Local Coastal Plan as were text references to it. The fact that the final Planning staff report omitted the “Figure 4 map” and references to it gives either the appearance of intentional misrepresentation or substandard staff performance.

A planning staffer at the January 25, 2007 Planning Commission meeting said, “Ever since the Coastal Commission issued a permit allowing use of that area and the fact that we have a certified (Local Coastal Plan) map that shows it’s a buffer area, we’ve been intending to change that map.” This statement appears to be inconsistent with testimony to the Grand Jury that omission of the map was simply an accident.

In response to a May 22, 2008 newspaper article including the above quotation, one of the two citizens that brought the “Figure 4 map” and references to it to the attention of the Planning Commission wrote:

“The Planning Commission staff report, which is intended to inform the planning commissioners (and the public) in making their determination on the proposed sale, was an ostensible verbatim reprinting of applicable planning standards from our Local Coastal Plan (LCP). Two sentences, not one, were excised from the most relevant policy. Both sentences referenced the map in the LCP, which depicts the county land in the Dunes as a buffer area – no vehicles allowed. References to the map of the buffer area appear only in those two sentences. No other relevant text from the LCP was missing from the staff report. These were not ‘omissions’ or . . . an ‘anomaly.’ This was surgery. It abetted the silence of the report and the planning staff on the existence of the buffer map and its glaringly obvious land-use conflict. Clearly, if this policy were implemented, the state OHV (Off Highway Vehicle) Division would have no interest in buying the land . . .”

CONCLUSIONS

The omissions of the map and related language made possible the erroneous conclusion that the sale would be in compliance with County land use policy. This error was not corrected until the omitted map and text references to it were revealed during the public input session before the Planning Commission. This report was designed to inform important environmental and financial decisions. The appearance of deliberately changing approved policy documents to indicate the

opposite of their intent is disturbing. Planning staff are not policy makers and misrepresenting approved policy cannot be tolerated.

FINDINGS

1. The failure to include the “Figure 4 map” and references to it in the staff report was at best inept staff performance or at worst deliberate deception.
2. The staff report was a crucial element in an important decision by the Planning Commission and it was only public testimony at the Commission hearing that prevented a decision counter to approved land use policy.
3. The staff report concluded that the sale of County land to State Parks was in compliance with County land use policy, a conclusion consistent with the report only because of the omission of the “Figure 4 map” and related text.

RECOMMENDATIONS

1. The Planning Commission should require relevant source documents accompany reports from the Planning and Building Department.
2. The Planning Commission should direct Planning and Building Department staff to indicate to the Planning Commission if any source documentations were altered in preparing reports and provide reasons for such alterations.
3. Training procedures for staff charged with report development should be reviewed and changed so as to prevent the omission or misrepresentation of significant documentary evidence.

REQUIRED RESPONSES

The Director of Planning and Building is required to respond to findings 1, 2, and 3 and to recommendations 1, 2, and 3. The responses shall be submitted to the Presiding Judge at the San Luis Obispo Superior Court by August 2, 2009.

The Board of Supervisors is required to respond to findings 1, 2, and 3 and to recommendations 1, 2, and 3. The responses shall be submitted to the Presiding Judge at the San Luis Obispo Superior Court by September 1, 2009.

Please provide a copy of all responses to the Grand Jury as well. The mailing addresses for delivery are:

Presiding Judge	Grand Jury
Presiding Judge Martin Tangeman Superior Court of California 1035 Palm, Room 385 San Luis Obispo, CA 93408	San Luis Obispo County Grand Jury P.O. Box 4910 San Luis Obispo, CA 93403

Responses are required from the Director of Planning and Building to the three recommendation and to the three finding findings and the three recommendations are required from the Director of Planning and Building, the Planning Commission and the Board of Supervisors.

APPENDIX A

Copy of page showing staff report reference to
South County Coastal Planning Area Standard 9 (highlighting added)

(Note: if the County sells to the State, the HCP would cover the subject property. If county does not sell the subject property, the county will be responsible to manage area and perhaps prepare a separate HCP for the county land.

A conservation chronology of Nipomo Dunes Complex is attached to this staff report.

APPLICABLE GENERAL PLAN POLICIES

South County Coastal Area Plan Planning Area Standards

The land use category for the subject parcels is Recreation. The uses and management of the area is identified in the 1975 General Development Plan. Standards are contained in the South County Coastal Area Plan as follows:

Pismo State Beach and State Vehicular Recreation Area - Standards 4 through 13 apply to the development of the Pismo State Beach and State Vehicular Recreation Areas.

4. General Development Plan shall be revised in accordance with the Local Coastal Plan. The plan should identify a variety of recreational opportunities with use areas separated where possible to minimize conflicts. Approval of the General Development Plan for inclusion into the County's LCP, or approval of a coastal development permit for the Pismo Dunes State Vehicular Recreation area includes resource protection, enforcement and access control in conformance with the conditions of CDP No. 4-82-30A. Passive recreational uses and nature study uses should be provided for the sensitive vegetated areas restricted from OHV use.
5. Access Control -- all access points to the park facility will be controlled with primary access for off-road vehicles into the dunes as indicated in CDP No. 4-82-30A.
6. Noise Control. Noise control measures shall be required for ORV use in proximity to natural preserve areas.
7. Camping Areas are subject to CDP 4-82-30A and are dependent on providing adequate environmental protection throughout the dunes.
8. Habitat Protection. Natural buffer areas for sensitive habitat areas shall be identified and fenced, consistent with the provisions of Coastal Development Permit No. 4-82-30A and the stabilized dune areas. Habitat enhancement programs shall be undertaken for areas (Dune Lakes, Coreopsis Hill, Oso Flaco Lake, Little Oso Flaco Lake) including programs such as stabilization of the dunes with appropriate native vegetation to protect encroachment on wetlands and surrounding agricultural land. Fences or other techniques shall be maintained where needed to preclude vehicular access in such areas as Dune Lakes, Oso Flaco Lake and natural areas in the eastern portion of the park.
9. ORV Use shall be permitted only in identified unfenced vehicular use area. No recreational ORV use will be allowed in the designated natural areas. These buffer areas reflect areas required for habitat protection. ORV is prohibited in vegetated areas. ORV use of the county held portion (generally lying between the sandy beach and Dune Lakes) shall be limited to the Sand Highway west to the sandy beach. This will minimize conflicts with the Dune Lake Properties to the east and the State Department of Parks and Recreation Dune Preserve to the north.

APPENDIX B

Relevant section of South Coastal Plan showing Standard 9.

Note sentences missing from staff report. (highlighting added)

9. **ORV Use Area.** ORV use shall be permitted only in identified unfenced vehicular use area. These areas are identified in Figure 4. No recreational ORV use will be allowed in the designated natural areas. These buffer areas reflect areas required for habitat protection and generally recognize the established lease agreement with Union Oil for the areas adjacent to the eastern portion of the park. ORV is prohibited in all vegetated areas. (I.C.P.)

ORV use of the county held portion (generally lying between the sandy beach and Dune Lakes) shall be limited to the Sand Highway west to the sandy beach. This will minimize conflicts with the Dune Lake Properties to the east and the State Department of Parks and Recreation Dune Preserve to the north. The map of ORV use areas indicates a buffer area along these critical interface areas. (I.C.P.)

10. **Administration of County Holdings.** The county-owned land south of the dune preserve shall be administered through a memorandum of understanding between the county and the State Department of Parks and Recreation. Management of the facility has been assigned to the State. This shall be reexamined periodically to establish the most appropriate management capability. (I.C.P.)
11. **Cooperative Education Programs with ORV User Groups.** The Department of Parks and Recreation shall continue and where needed expand the dune users education program. This may include distribution of maps at major access points, identifying user areas and natural buffer areas. Involvement by local and state ORV groups are essential supplements to ensuring proper dune use. (I.C.P.)
12. **Archaeological Resource Preservation.** To ensure archaeological resource protection, the State Department of Parks and Recreation should provide the fullest protection by fencing all known sites. (I.C.P.)
13. **Other Recreation Users.** Non-ORV-dependent uses such as camping, hiking trails, and passive use areas shall be identified and developed. Equestrian centers shall be identified. Parking areas for this day use shall be incorporated. (I.C.P.)

APPENDIX C

Figure 4 from the South County Coastal Plan

