



Planning Director Staff Report – Hearing on January 10, 2013

County of Ventura • Resource Management Agency • Planning Division
800 S. Victoria Avenue, Ventura, CA 93009-1740 • (805) 654-2478 • ventura.org/rma/planning

A. PROJECT INFORMATION

1. **Request:** The applicant requests approval of a Planned Development (PD) permit for minor development in a sensitive area and an Administrative Variance for a fence to exceed the height regulation by a maximum of one foot (PL12-0108).
2. **Applicant:** Chuck Menzel, 4285 Faria Road, Ventura, California, 93001
3. **Property Owner:** Faria Beach Home Owners Association, Care of Spectrum Property Management, 1259 Callens Road, Suite A, Ventura, California, 93003
4. **Decision-Making Authority:** Pursuant to the Ventura County Coastal Zoning Ordinance (CZO) § 8174-4 and § 8181-3 et seq. and § 8181-4.4, the Planning Director is the decision-maker for the requested PD and Administrative Variance.
5. **Project Site Size, Location, and Parcel Number:** The 1,800 square foot property is a common area located between 3912 West Pacific Coast Highway (APN 060-0-400-165) and 3902 West Pacific Coast Highway (APN 060-0-400-185), near the intersection of Hobson Road and West Pacific Coast Highway, in the community of Faria Beach, in the unincorporated area of Ventura County. The parcel that constitutes the project site does not have a Tax Assessor's parcel number, but was formerly known as APN 060-0-400-175 (Exhibit 2).
6. **Project Site Land Use and Zoning Designations:**
 - a. Countywide General Plan Land Use Map Designation: Existing Community (Exhibit 2)
 - b. Coastal Area Plan Land Use Map Designation: Residential High 6.1-36 DU/AC (Exhibit 2)
 - c. Zoning Designation: "RB-3,000 sq ft" (Residential Beach, 3,000 square feet minimum lot size) (Exhibit 2)

7. Adjacent Zoning and Land Uses/Development (Exhibit 2):

Location in Relation to the Project Site	Zoning	Land Uses/Development
North	"COS-10 ac-sdf" (Coastal Open Space, 10 acre minimum lot size, slope density formula)	Pacific Coast Highway, Southern Pacific Railroad, Rincon Gardens Nursery

Location in Relation to the Project Site	Zoning	Land Uses/Development
East	RB-3,000 sq ft	Single family dwelling
South	None	Pacific Ocean
West	RB-3,000 sq ft	Single family dwelling

- 8. History:** The subject property has been developed with only a fence with a locked gate. According to the applicant, the subject property has been fenced and locked since approximately the 1940s. The previous fence was a six-foot high chainlink fence with slats and topped with barbed wire, for a maximum height of seven feet. The previous fence was replaced with the current fence that is the subject of application PL12-0108.
- 9. Project Description:** The applicant request that a Planned Development permit and Administrative Variance be granted to authorize after-the-fact construction of a new access gate. The gate will allow private access to the beach for members of the Faria Beach Homeowners Association and access to emergency personnel. The gate will be located on a common area beachfront lot between Lot 49A and Lot 50. The gate will have a maximum height of seven feet and be supported by two 7-foot high concrete posts (Exhibit 3).

B. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) COMPLIANCE

Pursuant to CEQA Public Resources Code § 21000 et seq. and the CEQA Guidelines Title 14, California Code of Regulations, Division 6, Chapter 3, § 15000 et seq., the subject gate and support posts comprise a “project” that is subject to environmental review.

The State Legislature through the Secretary for Resources has found that certain classes of projects are exempt from CEQA environmental impact review because they do not have a significant effect on the environment. These projects are declared to be Categorical Exempt from the requirement for the preparation of environmental impact documents. The proposed project is the replacement of an access gate with a new access gate. The location and size of the gate will be substantially the same as the pre-existing gate.

Therefore, this project is eligible to be Categorical Exempt pursuant to Section 15302 of the CEQA Guidelines. This section of the CEQA Guidelines exempts the replacement or reconstruction of existing structures.

C. CONSISTENCY WITH THE GENERAL PLAN

The Ventura County General Plan *Goals, Policies and Programs* (2011, page 4) states:

...in the unincorporated area of Ventura County, zoning and any permits issued thereunder, any subdivision of land, any public works project, any public (County, Special District, or Local Government) land acquisition or disposition, and any specific plan, must be consistent with the Ventura County General Plan Goals, Policies and Programs, and where applicable, the adopted Area Plan.

Furthermore, the Ventura County CZO § 8181-3.5.a states that in order to be approved, a Coastal PD must be found consistent with all applicable policies of the Ventura County Coastal Area Plan.

Evaluated below is the consistency of the proposed project with the applicable policies of the General Plan Goals, *Policies and Programs* and *Coastal Area Plan*.

- 1. Water Quality Resources Policy 1.3.2-4:** *Discretionary development shall not significantly impact the quantity or quality of water resources within watersheds, groundwater recharge areas or groundwater basins.*

The proposed project is comprised of the construction of support posts and an access date. The structure does not require water, and does not have the potential to impact the quantity or quality of water resources.

Based on the above discussion, the proposed project will be consistent with Policy 1.3.2-4.

- 2. Resources Policy 1.5.2-1:** *Discretionary development which could potentially impact biological resources shall be evaluated by a qualified biologist to assess impacts and, if necessary, develop mitigation measures.*

Biological Resources Policy 1.5.2-4: *Discretionary development shall be sited a minimum of 100 feet from significant wetland habitats to mitigate the potential impacts on said habitats. Buffer areas may be increased or decreased upon evaluation and recommendation by a qualified biologist and approval by the decision-making body. Factors to be used in determining adjustment of the 100 foot buffer include soil type, slope stability, drainage patterns, presence or absence of endangered, threatened or rare plants or animals, and compatibility of the proposed development with the wildlife use of the wetland habitat area. The requirement of a buffer (setback) shall not preclude the use of replacement as mitigation when there is no other feasible alternative to allowing a permitted use, and if the replacement results in no net loss of wetland habitat. Such replacement shall be "in kind" (i.e. same type and acreage), and provide wetland habitat of comparable biological value. On-site replacement shall be preferred wherever possible. The replacement plan shall be developed in consultation with California Department of Fish and Game.*

The existing fence and gate structure is located on a beachfront lot and is approximately 57 feet from the Pacific Ocean. The proposed project has been

reviewed by the Planning Biologist to determine any impacts to biological resources. The Planning Biologist has determined that the replacement of the previous fence with a substantially similar fence will not result in any significant impacts on biological resources. Since the new fence will be located in the same location as the previous fence, the Planning Biologist has recommended that the existing 57 feet between the fence and the ocean be considered an adequate buffer to protect biological resources.

Based on the above discussion, the proposed project will be consistent with Policy 1.5.2-1 and Policy 1.5.2-4.

- 3. Resources Policy 1.7.2-1:** *Notwithstanding Policy 1.7.2-2, discretionary development which would significantly degrade visual resources or significantly alter or obscure public views of visual resources shall be prohibited unless no feasible mitigation measures are available and the decision-making body determines there are overriding considerations.*

The proposed project site is located adjacent to and is readily visible from public viewing locations along West Pacific Coast Highway. Although visible, the proposed gate and support posts would not be (are not) prominent because this structure is physically similar to the nearby fences along the highway. The previous fence was a chainlink fence with slats topped with barbed wire that had deteriorated since its construction. The proposed gate forms a solid wall that does not include barbed wire. The proposed project will enhance the appearance of the site. Therefore, the proposed project will not have any significant impacts on visual resources.

Based on the above discussion, the proposed project will be consistent with Policy 1.7.2-1.

- 4. Resources Policy 1.10.2-1:** *Discretionary development which would cause significant impacts to coastal beaches or sand dunes shall be prohibited unless the development is conditioned to mitigate the impacts to less than significant levels.*

The proposed project is located on a beachfront lot adjacent to West Pacific Coast Highway, approximately 57 feet from the Pacific Ocean. The gate structure is not located near any sand dunes. No impacts on the sand supply or coastal processes has been identified for the proposed gate structure. The Planning Biologist has reviewed the proposed project to evaluate the potential impacts on biological resources (see discussion above). The Planning Biologist has determined that the proposed project does not have the potential to impact coastal beaches or sand dunes.

Based on the above discussion, the proposed project will be consistent with Policy 1.10.2-1.

- 5. Fire Hazards Policy 2.13.2-1:** *All discretionary permits shall be required, as a condition of approval, to provide adequate water supply and access for fire protection and evacuation purposes.*

The proposed gate structure does not require any water. The project site can be accessed for fire protection from West Pacific Coast Highway. The gate structure would allow for beach access by the VCFPD and other emergency service providers. The proposed project has been reviewed by the Ventura County Fire Protection District ("VCFPD"). Pursuant to that review, no conditions of approval are required to ensure adequate water supply and access for fire protection and evacuation purposes.

Based on the above discussion, the proposed project will be consistent with Policy 2.13.2-1.

- 6. Noise Policy 2.16.2-1:** *All discretionary development shall be reviewed for noise compatibility with surrounding uses. Noise compatibility shall be determined from a consistent set of criteria based on the standards listed below. An acoustical analysis by a qualified acoustical engineer shall be required of discretionary developments involving noise exposure or noise generation in excess of the established standards. The analysis shall provide documentation of existing and projected noise levels at on-site and off-site receptors, and shall recommend noise control measures for mitigating adverse impacts...*

(4) *Noise generators, proposed to be located near any noise sensitive use, shall incorporate noise control measures so that ongoing outdoor noise levels received by the noise sensitive receptor, measured at the exterior wall of the building, does not exceed any of the following standards:*

- a. *Leq1H of 55dB(A) or ambient noise level plus 3dB(A), whichever is greater, during any hour from 6:00 a.m. to 7:00 p.m.*
- b. *Leq1H of 50dB(A) or ambient noise level plus 3dB(A), whichever is greater, during any hour from 7:00 p.m. to 10:00 p.m.*
- c. *Leq1H of 45dB(A) or ambient noise level plus 3dB(A), whichever is greater, during any hour from 10:00 p.m. to 6:00 a.m.*

Section 2.16.2(4) is not applicable to increased traffic noise along any of the roads identified within the 2020 Regional Roadway Network (Figure 4.2.3) Public Facilities Appendix of the Ventura County General Plan (see 2.16.2-1(1)). In addition, State and Federal highways, all railroad line operations, aircraft in flight, and public utility facilities are noise generators having Federal and State regulations that preempt local regulations...

The proposed gate structure will not generate any noise. Therefore, the proposed project will be consistent with Policy 2.16.2-1.

- 7. Public Facilities and Services Policy 4.1.2-2:** *Development shall only be permitted in those locations where adequate public services are available (functional), under physical construction or will be available in the near future.*

Adequate public services are already available to serve the project site and vicinity. The proposed gate structure will not require any new public services.

Based on the above discussion, the proposed project will be consistent with Policy 4.1.2-2.

- 8. Public Facilities and Services Policy 4.8.2-1:** *Discretionary development shall be permitted only if adequate water supply, access and response time for fire protection can be made available.*

The proposed gate structure does not require any water service and can be accessed for fire protection from West Pacific Coast Highway. The proposed project has been reviewed by the Ventura County Fire Protection District ("VCFPD") and does not require conditions of approval to ensure adequate water supply and access for fire protection and evacuation purposes.

Based on the above discussion, the proposed project will be consistent with Policy 2.13.2-1.

- 9. Coastal Area Plan Tidepools and Beaches Policy 5:** *An applicant for any coastal project, including shoreline protective devices, will show that their proposal will not cause long-term adverse impacts on beach or intertidal areas. Impacts include, but are not limited to, destruction of the rocky substrate, smothering of organisms, contamination from improperly treated waste water or oil, and runoff from streets and parking areas. Findings to be made will include, but not be limited to, proper waste water disposal.*

According to the Planning Biologist, the proposed gate structure will not cause destruction of the rocky substrate, smothering of organisms, contamination from improperly treated waste water or oil, or runoff from streets and parking areas. The applicant has shown that their proposal will not cause long-term adverse impacts on beach or intertidal areas.

Based on the discussion above, the proposed project is consistent with Coastal Area Plan Tidepools and Beaches Policy 5.

- 10. Coastal Area Plan Archaeology Policy 8:** *If previously unknown resources are discovered after construction starts, all work shall cease and the Public Works Agency shall be notified. After review of the site by the Agency, or other qualified personnel, additional reasonable mitigation measures may be required.*

The proposed gate structure will be (is) located within the same area that has been developed with the pre-existing gate. No known archaeological resources exist on-site.

Based on the above discussion, the proposed project is consistent with Coastal Area Plan Archaeology Policy 8.

- 11. Coastal Area Plan Paleontology Policy 6:** *If previously unknown resources are discovered after construction starts, all work shall cease and the Public Works Agency shall be notified. After review of the site by the Agency, or other qualified personnel, additional reasonable mitigation measures may be required.*

The proposed gate structure will be (is) located within the same area that has been developed with the existing fence. No known paleontological resources exist on-site.

Based on the above discussion, the proposed project is consistent with Coastal Area Plan Paleontology Policy 6.

- 12. Coastal Area Plan Access Policies 1 and 2:** *For all new development between the first public road and the ocean, granting of an easement to allow vertical access to the mean high tide line shall be mandatory unless:*
- a. Adequate public access is already available within a reasonable distance of the site measures along the shoreline, or*
 - b. Access at the site would result in unmitigable adverse impacts on areas designated as "sensitive habitats" or tidepools by the land use plan, or*
 - c. Findings are made, consistent with Section 30212 of the Act, that access is inconsistent with public safety, military security needs, or that agriculture would be adversely affected, or*
 - d. The parcel is too narrow to allow for an adequate vertical access corridor without adversely affecting the privacy of the property owner, or,*

Coastal Area Plan Access Policy 2: *For all new development between the first public road and the ocean, granting of lateral easements to allow for public access along the shoreline shall be mandatory unless subsection (a) below is found. In coastal areas, where the bluffs exceed five feet in height, all beach seaward of the base of the bluff shall be dedicated. In coastal areas where the bluffs are less than five feet, the area to be dedicated shall be determined by the County. At a minimum, the dedicated easement shall be adequate to allow for lateral access during periods of high tide. In no case shall the dedicated easement be required to be closer than 10 feet to a residential structure. In addition, all fences, no trespassing signs, and other obstructions that may limit public lateral access shall be removed as a condition of development approval.*

- a. *Findings are made, consistent with Section 30212 of the Act that access is inconsistent with public safety, military security needs, of that agriculture would be adversely affected.*

Vertical access to the mean high tide line is already available at Faria County Park and Rincon Parkway. Faria County Park is located approximately 2,000 feet north of the subject property and Rincon Parkway is located approximately 1,900 feet to the south of the subject property. These distances are considered reasonable. Therefore, granting of an easement to allow vertical access to the mean high tide line is not required.

Pursuant to the Act Section 30212(b), new development does not include replacement of any structure. The proposed gate will replace the previous gate. Therefore, granting of lateral easements to allow for public access along the shoreline is not mandatory.

Based on the discussion above, the proposed project is consistent with Coastal Area Plan Access Policies 1 and 2.

D. ZONING ORDINANCE COMPLIANCE

The proposed project is subject to the requirements of the CZO.

Pursuant to the Ventura County Ventura County CZO § 8174-4, the proposed use is allowed in the RB zone district with the granting of a PD. Upon the granting of the PD, the proposed project will comply with this requirement.

The proposed project includes the construction and use of buildings and structures that are subject to the development standards of the Ventura County CZO § 8175-2. Table 1 lists the applicable development standards and a description of whether the proposed project complies with the development standards.

Table 1 – Development Standards Consistency Analysis

Type of Requirement	Zoning Ordinance Requirement	Complies?
Minimum Lot Area (Gross)	3,000 square feet	Yes
Maximum Percentage of Building Coverage	65	Yes
Front Setback	10 feet	Yes
Side Setback	May be located anywhere on lot except in the traffic safety sight area or required setback adjacent to a street	Yes
Rear Setback	May be located anywhere on lot except in the traffic safety sight area or required setback	Yes

Table 1 – Development Standards Consistency Analysis

Type of Requirement	Zoning Ordinance Requirement	Complies?
	adjacent to a street	
Maximum Building Height	Seven feet	Yes

The proposed fence is subject to the special use standards of the Ventura County CZO § 8175-3.11. Table 2 lists the applicable special use standard and a description of whether the proposed project complies with the special use standards.

**Table 2 – Fences, Walls, and Hedges
 Special Use Standards Consistency Analysis**

Special Use Standard	Complies?
Not placed in the traffic safety sight area or required setback adjacent to a street	Yes
A maximum six foot high wall, fence, or hedge may be located anywhere on the lot except in the traffic safety sight area or required setback adjacent to a street	Yes, variance will allow fence to exceed the height limit regulations by a maximum of one foot.

E. PD FINDINGS AND SUPPORTING EVIDENCE

The Planning Director must make certain findings in order to determine that the proposed project is consistent with the permit approval standards of the Ventura County CZO § 8181-3.5 et seq. The proposed findings and supporting evidence, along with the applicant’s statements, are as follows:

1. The proposed development is consistent with the intent and provisions of the County’s Certified Local Coastal Program § 8181-3.5.a.

Based on the information and analysis presented in Sections C and D of this staff report, the finding that the proposed development is consistent with the intent and provisions of the County’s Certified Local Coastal Program can be made.

2. The proposed development is compatible with the character of surrounding development § 8181-3.5.b.

The location of the proposed gate structure is adjacent to single family dwellings. The gate will be solid and have a maximum height of seven feet. There are many solid gates and fences with a maximum height of six to seven feet throughout the community of Faria Beach. The proposed gate structure will be similar to other fences nearby, including the adjacent fence that is also a solid seven-foot tall fence. Since the gate structure will not be prominently distinguishable from the surrounding development, it will be compatible with the character of the surrounding development. Finally, the proposed gate structure

does not include any substantial changes to the existing gate and will not substantially alter the character of the area.

Based on the above discussion, this finding can be made.

- 3. The proposed development, if a conditionally permitted use, is compatible with planned land uses in the general area where the development is to be located § 8181-3.5.c.**

As discussed in Finding 2 above, the proposed project will be compatible with the surrounding residential uses. No change in these land uses is foreseeable at this time.

Based on the above discussion, this finding can be made.

- 4. The proposed development would not be obnoxious or harmful, or impair the utility of neighboring property or uses § 8181-3.5.d.**

The proposed gate structure will be (is) located adjacent to single family dwellings within the community of Faria Beach. The proposed project meets the 10-foot setback requirement and is sited in the same location as the pre-existing gate. The replacement of the gate will not create any substantial effects on the neighboring properties. The new gate structure will control access to a boat launching area for the Faria Beach Homeowners Association. The proposed project will be conditioned to establish a system for the reporting and resolution of complaints (Exhibit 5, Conditions No. 15). Therefore, the proposed project will not be obnoxious or harmful, or impair the utility of neighboring property or uses.

Based on the above discussion, this finding can be made.

- 5. The proposed development would not be detrimental to the public interest, health, safety, convenience, or welfare § 8181-3.5.e.**

The replacement of the existing gate with a new gate will not create any substantial new effects on the neighboring properties. The fence will continue to be unmanned, and will not generate significant noise. In addition, the gate will not create any new obstruction to public beach access. Therefore, the proposed project will not be detrimental to the public interest, health, safety, convenience, or welfare.

Based on the above discussion, this finding can be made.

F. VARIANCE FINDINGS AND SUPPORTING EVIDENCE

The Planning Director must make certain findings in order to grant a variance pursuant to Section 8181-4.2 et seq. of the Ventura County CZO. The ability to make the required findings is evaluated below.

- 1. There are special circumstances or exceptional characteristics applicable to the subject property with regard to size, shape, topography and location, which do not apply generally to comparable properties in the same vicinity and zone within the coastal zone § 8181-4.2.a.**

Applicant Response:

There are no comparable properties in the same vicinity in the R-B Zone. This privately-owned easement parcel is a boat launching/equipment access area for the Faria Beach Colony property owners and County emergency service personnel and vehicles. This permission-only access easement has been continuously fenced and lock-gated since approximately 1940 to prohibit trespassing and illegal access, and to provide a safety barrier against high tide storm surges onto the highway. The gated entrance is located adjacent to a busy commercial intersection and is within 100 yards of a railroad crossing. The seven-foot steel gate serves several necessary and unique functions:

- By discouraging unauthorized access to the beach from Pacific Coast Highway, it assists in elimination of traffic congestion, potential vehicular accidents and illegal parking.
- It prevents illegal access by improper equipment or unauthorized contractors.
- It helps ensure that the access is kept clear in case of emergency.
- It acts as a safety barrier in the event of storm-related high tide surges.

Staff Response:

The subject property is unique in shape and location. It is approximately 20 feet wide and provides direct access to the sandy beach and ocean. The property has been historically developed with the access gate. The seven foot high gate will help to deter unauthorized access to the property owners' easement. The seven foot height will eliminate the need for barbed wire atop the gate. The increased height of the subject gate will match the existing seven foot high gate located on the adjacent parcel.

In summary, the proposed gate will be located on an unusual property that qualifies as a special circumstance and will not create any new obstruction to public beach access. Therefore, this finding can be made.

- 2. Granting the requested variance will not confer a special privilege inconsistent with the limitations upon other properties in the same vicinity and zone within the coastal zone § 8181-4.2.b.**

Applicant Response:

Due to the nature, use and shape of this property, it is unique and different from all other properties in the vicinity and zone. The gate serves a purpose unlike any other within the Zone. All neighboring residences within one mile in both directions benefit from the secure, safe and well-maintained condition and purpose of the boat access gate.

Staff Response:

The subject property has been secured since approximately 1940 with a gate that was six feet high topped with barbed wire, for a total height of seven feet. There are numerous seven foot high fences throughout the community of Faria Beach. The increased height of the proposed gate structure, from six feet to seven feet, will result in a more aesthetically compatible fence that is located between two residences. Therefore, the increased height of the fence will not confer a special privilege inconsistent with the limitations upon other properties in the same vicinity and zone.

Based on the above discussion, this finding can be made.

- 3. Strict application of the zoning regulations as they apply to the subject property will result in practical difficulties or unnecessary hardships inconsistent with the general purpose of such regulations § 8181-4.2.c.**

Applicant Response:

The purpose of the gate is to prevent illegal access and promote public safety. Strict application of a lower height limit would render the gate less of a deterrent (i.e. easier to climb over) and less of a storm surge barrier. There is nothing in the purpose of the gate that is inconsistent with the general purpose of the zoning regulations.

Staff Response:

The strict application of the six-foot height limitation would reduce the level of security provided by the gated access. The subject fence is located adjacent to a seven-foot high fence. At six feet in height, the subject gate structure would be easier to climb over. The increase in height of one foot will not have any adverse impacts on the community of Faria Beach.

Based on the above discussion, this finding can be made.

- 4. The granting of such variance will not be detrimental to the public health, safety or general welfare, nor to the use, enjoyment or valuation of neighboring properties § 8181-4.2.d.**

Applicant Response:

As described above, the granting of the requested variance will in fact promote the public health, safety and general welfare and the use, enjoyment and valuation of neighboring properties.

Staff Response:

The subject property has been developed with a locked access gate since approximately 1940. The gate has served as a deterrent to prevent unauthorized access to the easement. The previous gate was a chainlink fence topped with barbed wire. Since the proposed gate will not have barbed wire, it will be safer than the previous gate. The proposed new gate structure will improve the aesthetic appearance of the site because it will be consistent with the existing seven-foot high fences in the community and not topped with barbed wire. It also will not create any new obstruction to public beach access. Granting of the requested variance will not be detrimental, to the public health, safety, general welfare, use, enjoyment, or valuation of neighboring properties.

Based on the above discussion, this finding can be made.

5. All development authorized by the variance is consistent with all applicable standards of the Local Coastal Program § 8181-4.2.e.

Based on the information and analysis presented in Sections C and D of this staff report, the finding that the proposed development is consistent with the intent and provisions of the County's Certified Local Coastal Program can be made.

Based on the above discussion, this finding can be made.

6. That the granting of a variance in conjunction with a hazardous waste facility will be consistent with the portions of the County's Hazardous Waste Management Plan (CHWMP) which identify specific sites or siting criteria for hazardous waste facilities § 8181-4.2.e.

The proposed project does not include a hazardous waste facility. Therefore, this finding does not apply.

G. PLANNING DIRECTOR HEARING NOTICE, PUBLIC COMMENTS, AND JURISDICTIONAL COMMENTS

The Planning Division provided public notice regarding the Planning Director hearing in accordance with the Government Code (§65091), and Ventura County CZO § 8181-6.2 et seq. The Planning Division mailed notice to owners of property within 300 feet and residents within 100 feet of the property on which the project site is located and placed a legal ad in the Ventura County Star. The Planning Division received one comment regarding the proposed project, and that is attached as Exhibit 6.

H. RECOMMENDED ACTIONS

Based upon the preceding analysis and information provided, Planning Division Staff recommends that the Planning Director take the following actions:

1. **CERTIFY** that the Director has reviewed and considered this staff report and all exhibits thereto, and has considered all comments received during the public comment process;
2. **FIND** that this project is Categorical Exempt from CEQA pursuant to Section 15302 of the CEQA Guidelines.
3. **MAKE** the required findings to grant a PD pursuant to Section 8181-3.5 of the Ventura County CZO, based on the substantial evidence presented in Section E of this staff report and the entire record;
4. **MAKE** the required findings to grant a Variance pursuant to Section 8181-4.2 of the Ventura County CZO, based on the substantial evidence presented in Section F of this staff report and the entire record;
5. **GRANT** PD PL12-0108, subject to the conditions of approval (Exhibit 5);
6. **GRANT** Variance PL12-0108; and,
7. **SPECIFY** that the Clerk of the Planning Division is the custodian, and 800 S. Victoria Avenue, Ventura, CA 93009 is the location, of the documents and materials that constitute the record of proceedings upon which this decision is based.

The decision of the Planning Director is final unless appealed to the Planning Commission within 10 calendar days after the permit and variance have been approved, conditionally approved, or denied (or on the following workday if the 10th day falls on a weekend or holiday). Any aggrieved person may file an appeal of the decision with the Planning Division. The Planning Division shall then set a hearing date before the Planning Commission to review the matter at the earliest convenient date.

If you have any questions concerning the information presented above, please contact Jay Dobrowalski at (805) 654-2498 or jay.dobrowalski@ventura.org.

Prepared by:



Jay Dobrowalski, Case Planner
Commercial and Industrial Permits Section

Reviewed by:



Brian R. Baca, Manager
Ventura County Planning Division

EXHIBITS

- Exhibit 2 – Location Map
- Exhibit 3 – Plans
- Exhibit 4 – Site Photographs
- Exhibit 5 – Conditions of Approval
- Exhibit 6 – Comment from Faria Beach HOA



Ventura County
Resource Management Agency
Information Systems

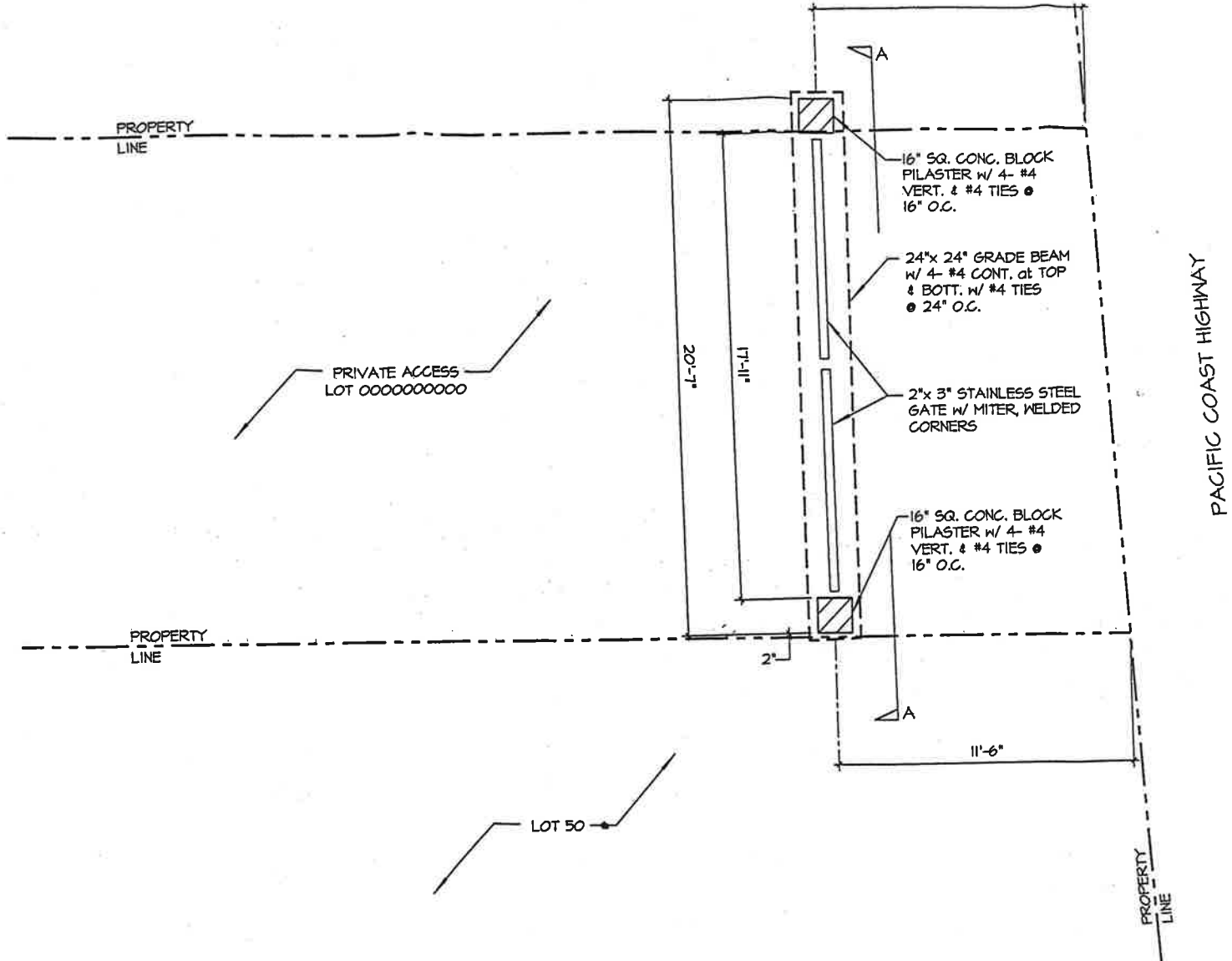
Date Printed: 12/12/2012

County of Ventura
Planning Director Hearing
PL12-0108
Exhibit 2 Location Map /
General Plan, Area Plan & Zoning

0 30 60 Feet

Disclaimer: this map was created by the Ventura County Resource Management Agency, Mapping Services - GIS, which is designed and operated solely for the convenience of the County and related public agencies. The County does not warrant the accuracy of this map and no decision involving a risk of economic loss or physical injury should be made in reliance therein





SITE PLAN

SCALE: 1/4" = 1'-0"

ITEM
ASTM
ED.

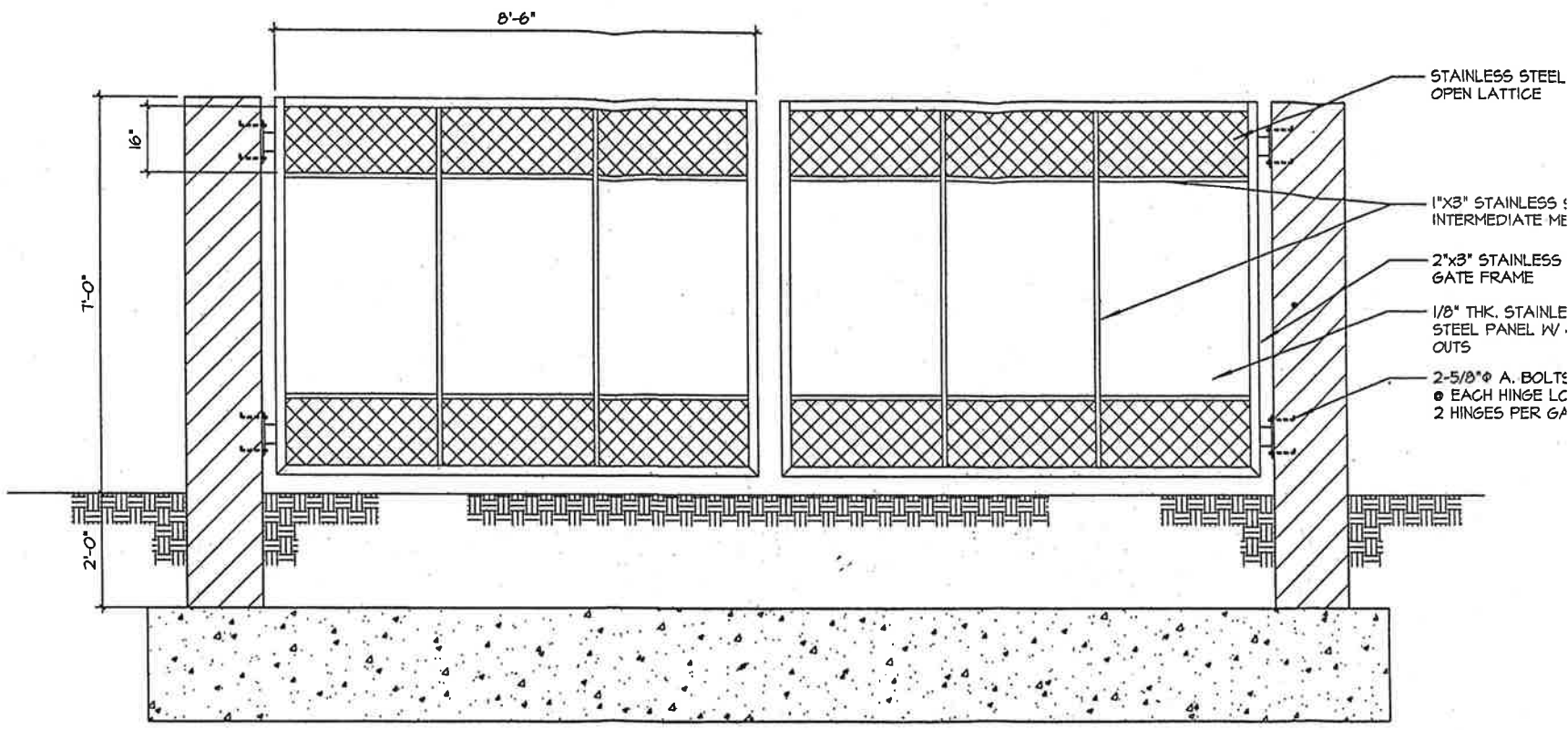
AN
CLASS
BE

SD
T. SOIL
SF

SLOPE
BE

SE
R SLAB

ON MUST
E CALIFORNIA
UILDING



ELEVATION A-A
SCALE: 1/2" = 1'-0"



EXHIBIT 5 – CONDITIONS OF APPROVAL FOR CONDITIONAL USE PERMIT (CUP) CASE NO. PL12-0108

RESOURCE MANAGEMENT AGENCY (RMA) CONDITIONS

I. Planning Division Conditions

1. Project Description

This Planned Development Permit (PD) is based on and limited to compliance with the project description found in this condition below, all County land use hearing exhibits in support of the project marked Exhibit 3, dated [fill in date], and conditions of approval set forth below. Together, these documents describe the Project. Any deviations from the Project must first be reviewed and approved by the County in order to determine if the Project deviations conform to the original approval. Project deviations may require Planning Director approval for changes to the permit or further CEQA environmental review, or both. Any Project deviation that is implemented without requisite County review and approval(s) constitutes a violation of the conditions of this permit.

The project description is as follows:

The applicant request that a Planned Development permit and Administrative Variance be granted to authorize after-the-fact construction of a new access gate. The gate will allow private access to the beach for members of the Faria Beach Homeowners Association and access to emergency personnel. The gate will be located on a common area beachfront lot between Lot 49A and Lot 50. The gate will have a maximum height of seven feet and be supported by two 8-foot high concrete posts (Exhibit 3).

The grading, development, use, and maintenance of the property, the size, shape, arrangement, and location of structures, parking areas and landscape areas, and the protection and preservation of resources shall conform to the project description above and all approved County land use hearing exhibits in support of the project and conditions of approval below.

2. Site Maintenance

Purpose: To ensure that the PD area is maintained in a neat and orderly manner so as not to create any hazardous conditions or unsightly conditions which are visible from outside the PD area.

Requirement: The Permittee shall maintain the project site in compliance with the described uses outlined in Condition No. 1 (Permitted Land Uses). Only equipment and/or materials which the Planning Director determines to substantially comply with Condition No. 1 (Permitted Land Uses), or which are authorized by any subsequent amendments to this PD, shall be stored on the property during the life of this PD.

Documentation: Pursuant to Condition No. 1 (Permitted Land Uses), the PD and any amendments thereto.

Timing: Prior to occupancy and for the life of the permit.

Monitoring and Reporting: The County Building Inspector, Public Works Grading Inspector, Fire Marshall, and/or Planning Division staff has the authority to conduct periodic site inspections to ensure the Permittee's ongoing compliance with this condition consistent with the requirements of § 8183-5 of the *Ventura County Coastal Zoning Ordinance*.

3. PD Modification

Prior to undertaking any operational or construction-related activity which is not expressly described in these conditions or Project Description, the Permittee shall first contact the Planning Director to determine if the proposed activity requires a modification of this PD. The Planning Director may, at the Planning Director's sole discretion, require the Permittee to file a written and/or mapped description of the proposed activity in order to determine if a PD modification is required. If a PD modification is required, the modification shall be subject to:

- i. The modification approval standards of the Ventura County Ordinance Code in effect at the time the modification application is acted on by the Planning Director; and,
- ii. Environmental review, as required pursuant to the California Environmental Quality Act (CEQA; California Public Resources Code, § 21000-21178) and the State CEQA Guidelines (California Code of Regulations, Title 14, Chapter 3, § 15000-15387), as amended from time to time.

4. Construction Activities

Prior to any construction, the Permittee shall obtain a Zoning Clearance for construction from the Planning Division, and a Building Permit from the Building and Safety Division. Prior to any grading, the Permittee shall obtain a Grading Permit from the Public Works Agency.

5. Acceptance of Conditions and Schedule of Enforcement Responses

The Permittee's acceptance of this PD and/or commencement of construction and/or operations under this PD shall constitute the Permittee's formal agreement to comply with all conditions of this PD. Failure to abide by and comply with any condition for the granting of this PD shall constitute grounds for enforcement action provided in the *Ventura County Coastal Zoning Ordinance* (2004, Article 13), which shall include, but is not limited to, the following:

- i. Public reporting of violations to the Planning Commission and/or Board of Supervisors;
- ii. Suspension of the permitted land uses (Condition No. 1);
- iii. Modification of the PD conditions listed herein;

- iv. Recordation of a "Notice of Noncompliance" on the deed to the subject property;
- v. The imposition of civil administrative penalties; and/or
- vi. Revocation of this PD.

The Permittee is responsible for being aware of and complying with the PD conditions and all applicable federal, state and local laws and regulations.

6. Time Limits

i. Use inauguration:

- (1) The approval decision for this PD becomes effective upon the expiration of the 10 day appeal period following the approval decision, or when any appeals of the decision are finally resolved. Once the approval decision becomes effective, the Permittee must obtain a Zoning Clearance for use inauguration in order to initiate the land uses provided in Condition No. 1 (Project Description).
- (2) This PD shall expire and become null and void if the Permittee fails to obtain a Zoning Clearance for use inauguration within one year (*Ventura County Coastal Zoning Ordinance 2004, § 8181-7.7*) from the granting or approval of this PD. The Planning Director may grant a one year extension of time to the Permittee in order to obtain the Zoning Clearance for use inauguration if the Permittee can demonstrate to the satisfaction of the Planning Director that the Permittee has made a diligent effort to inaugurate the permitted land use, and the Permittee has requested the time extension in writing at least 30 days prior to the one year expiration date.
- (3) Prior to the issuance of the Zoning Clearance for use inauguration, all fees and charges billed to that date by any County agency, as well as any fines, penalties, and sureties, must be paid in full. After issuance of the Zoning Clearance for use inauguration, any final billed processing fees must be paid within 30 days of the billing date or the County may revoke this PD.

7. Consolidation of All Approved Exhibits and Permits

Purpose: To ensure compliance with and notification of requirements of other federal, state or local government regulatory agencies.

Requirement: Upon the request of the Planning Director, the Permittee shall provide the Planning Division with documentation to verify that the Permittee has obtained or satisfied all applicable federal, state and local entitlements and conditions.

Documentation: The Permittee shall provide this documentation to the County Planning Division in the form that is acceptable to the agency issuing the entitlement or clearance for the project file.

Timing: The documentation shall be submitted to the Planning Division prior to the issuance of the Zoning Clearance for use inauguration or as dictated by the respective agency.

Monitoring and Reporting: The Planning Division maintains the documentation provided by the Permittee in the respective project file. In the event that the permit is modified or changes are made by any other respective agency, the Permittee shall submit any revised documentation within 30 days of the modification.

8. Notice of PD Requirements

Purpose: To ensure full and proper notice of permit requirements and conditions affecting the use of the subject property.

Requirement: Unless otherwise required by the Planning Director, the Permittee shall notify, in writing, the Property Owner(s) of record, contractors, and all other parties and vendors regularly dealing with the daily operation of the proposed activities, of the pertinent conditions of this PD.

Documentation: The Permittee shall present to the Planning Division copies of the conditions, upon the Planning Division's request.

Timing: Prior to issuance of a Zoning Clearance for use inauguration and until expiration of the PD.

Monitoring and Reporting: The Planning Division has the authority to conduct periodic site inspections to ensure ongoing compliance with this condition consistent with the requirements of § 8183-5 of the *Ventura County Coastal Zoning Ordinance*.

9. Condition Compliance, Enforcement, and Other Responsibilities

- i. **Cost Responsibilities:** The Permittee shall bear the full costs of all staff time, material costs, or consultant costs associated with the approval of studies, generation of studies or reports, on-going permit compliance, and monitoring programs as described below in Condition 9.ii. Specifically, the Permittee shall bear the full costs of the following:
 - (1) condition compliance costs which include, but are not limited to, staff time, material costs, or consultant costs associated with the approval of studies, generation of studies or reports, ongoing permit condition compliance review, and CEQA Mitigation Monitoring/other monitoring programs; and,
 - (2) monitoring and enforcement costs required by the *Ventura County Coastal Zoning Ordinance (2004, § 8183-5)*. The Permittee, or the Permittee's successors-in-interest, shall bear the full costs incurred by the County or its contractors for inspection and monitoring, and for enforcement activities related to the resolution of confirmed violations. Enforcement activities shall be in response to confirmed violations and may include such measures as inspections, public reports, penalty

- hearings, forfeiture of securities, and suspension of this PD. Costs will be billed at the contract rates in effect at the time enforcement actions are required. The Permittee shall be billed for said costs and penalties pursuant to the *Ventura County Coastal Zoning Ordinance § 8183-5.4*.
- ii. Establishment of Revolving Compliance Accounts: Within 10 calendar days of the effective date of the decision on this PD, the Permittee, or the Permittee's successors-in-interest, shall submit the following deposit and reimbursement agreement to the Planning Director:
 - (1) a payment of \$500.00 for deposit into a revolving condition compliance and enforcement account to be used by the Planning Division to cover costs incurred for Condition Compliance review (Condition 9.i, above), monitoring and enforcement (Condition 9.iii, below). The \$500.00 deposit may be modified to a higher amount by mutual agreement between the Permittee and the Planning Director; and,
 - (2) a signed and fully executed County RMA reimbursement agreement, which is subject to the Permittee's right to challenge any charges obligating the Permittee to pay all Condition Compliance review, monitoring, and enforcement costs.
 - iii. Monitoring and Enforcement Costs: The \$500.00 deposit and reimbursement agreement (Condition 9.ii, above) are required to ensure that funds are available for legitimate and anticipated costs incurred for Condition Compliance. All permits issued by the Planning Division may be reviewed and the sites inspected no less than once every three years, unless the terms of the permit require more frequent inspections. These funds shall cover costs for any regular compliance inspections or the resolution of confirmed violations of the conditions of this PD and/or the *Ventura County Coastal Zoning Ordinance* that may occur.
 - iv. Billing Process: The Permittee shall pay any written invoices from the Planning Division within 30 days of receipt of the request. Failure to pay the invoice shall be grounds for suspension, modification, or revocation of this PD. The Permittee shall have the right to challenge any charge prior to payment.

10. Defense and Indemnity

As a condition of PD issuance and use including adjustment, modification, or renewal thereof, the Permittee agrees to:

- i. Defend, at the Permittee's sole expense, any action brought against the County by a third party challenging either the County's decision to issue this PD, or the manner in which the County is interpreting or enforcing the conditions of this PD; and
- ii. Indemnify the County against any settlements, awards, or judgments, including attorney's fees, arising out of, or resulting from, any such legal action. Upon written demand from the County, the Permittee shall reimburse the County for any and all court costs and/or attorney's fees which the County may be required by a court to pay as a result of any such legal action the Permittee defended or controlled the defense thereof pursuant to

Section 13(a) above. The County may, at its sole discretion, participate in the defense of any such legal action, but such participation shall not relieve the Permittee of the Permittee's obligations under this condition.

Neither the issuance of this PD, nor compliance with the conditions thereof, shall relieve the Permittee from any responsibility otherwise imposed by law for damage to persons or property; nor shall the issuance of this PD serve to impose any liability upon the County of Ventura, its officers, or employees for injury or damage to persons or property.

Except with respect to the County's sole negligence or intentional misconduct, the Permittee shall indemnify, defend, and hold harmless the County, its officers, agents, and employees from any and all claims, demands, costs, and expenses, including attorney's fees, judgments, or liabilities arising out of the construction, maintenance, or operations described in Condition No. 1 (Permitted Land Uses), as it may be subsequently modified pursuant to the conditions of this PD.

11. Invalidation of Condition(s)

If any of the conditions or limitations of this PD are held to be invalid, that holding shall not invalidate any of the remaining PD conditions or limitations. In the event the Planning Director determines that any condition contained herein is in conflict with any other condition contained herein, then where principles of law do not provide to the contrary, the conditions most protective of public health and safety and natural environmental resources shall prevail to the extent feasible.

In the event that any condition imposing a fee, exaction, dedication, or other mitigation measure is challenged by the Permittee in an action filed in a court of law, or threatened to be filed therein, which action is brought in the time period provided for by the *Code of Civil Procedures § 1094.6*, or other applicable law, this PD shall be allowed to continue in force until the expiration of the limitation period applicable to such action, or until final resolution of such action, provided the Permittee has, in the interim, fully complied with the fee, exaction, dedication, or other mitigation measure being challenged.

If a court of law invalidates any condition, and the invalidation would change the findings and/or the mitigation measures associated with the approval of this PD, at the discretion of the Planning Director, the Planning Commission may review the project and impose substitute feasible conditions/mitigation measures to adequately address the subject matter of the invalidated condition. The Planning Commission shall make the determination of adequacy. If the Planning Commission cannot identify substitute feasible conditions/mitigation measures to replace the invalidated condition, and cannot identify overriding considerations for the significant impacts that are not mitigated to a level of insignificance as a result of the invalidation of the condition, then this PD may be revoked.

12. Consultant Review of Information and Consultant Work

The County and all other County permitting agencies for this land use have the option of referring any and all special studies that these conditions require to an independent and

qualified consultant for review and evaluation of issues beyond the expertise or manpower of County staff.

Prior to the County engaging any independent consultants or contractors pursuant to the conditions of this PD, the County shall confer in writing with the Permittee regarding the necessary work to be contracted, as well as the costs of such work. Whenever feasible, the County will use the lowest bidder. Any decisions made by County staff in reliance on consultant or contractor work may be appealed pursuant to the appeal procedures contained in the Ventura County Zoning Ordinance Code then in effect.

The Permittee may hire private consultants to conduct work required by the County, but only if the consultant and the consultant's proposed scope-of-work are first reviewed and approved by the County. The County retains the right to hire its own consultants to evaluate any work that the Permittee or a contractor of the Permittee undertakes. In accordance with Condition No. 9 above, if the County hires a consultant to review any work undertaken by the Permittee, or hires a consultant to review the work undertaken by a contractor of the Permittee, the hiring of the consultant will be at the Permittee's expense.

13. Relationship of PD Conditions, Laws and Other Permits

The Permittee shall design, maintain, and operate the PD area and any facilities thereon in compliance with all applicable requirements and enactments of Federal, State, and County authorities. In the event of conflict between various requirements, the more restrictive requirements shall apply. In the event the Planning Director determines that any PD condition contained herein is in conflict with any other PD condition contained herein, when principles of law do not provide to the contrary, the PD condition most protective of public health and safety and environmental resources shall prevail to the extent feasible.

No condition of this PD for uses allowed by the Ventura County Ordinance Code shall be interpreted as permitting or requiring any violation of law, lawful rules or regulations, or orders of an authorized governmental agency. Neither the issuance of this PD, nor compliance with the conditions of this PD, shall relieve the Permittee from any responsibility otherwise imposed by law for damage to persons or property.

14. Contact Person

Purpose: To designate a person responsible for responding to complaints.

Requirement: The Permittee shall designate a contact person(s) to respond to complaints from citizens and the County which are related to the permitted uses of this PD.

Documentation: The Permittee shall provide the Planning Director with the contact information (e.g., name and/or position title, address, business and cell phone numbers, and email addresses) of the Permittee's field agent who receives all orders, notices, and communications regarding matters of condition and code compliance at the PD site.

Timing: Prior to the issuance of a Zoning Clearance for use inauguration, the Permittee shall provide the Planning Division the contact information of the Permittee's field agent(s) for the project file. If the address or phone number of the Permittee's field agent(s) should change, or the responsibility is assigned to another person, the Permittee shall provide the Planning Division with the new information in writing within three calendar days of the change in the Permittee's field agent.

Monitoring and Reporting: The Planning Division maintains the contact information provided by the Permittee in the respective project file. The Planning Division has the authority to periodically confirm the contact information consistent with the requirements of § 8183-5 of the *Ventura County Coastal Zoning Ordinance*.

15. Change of Owner and/or Permittee

Purpose: To ensure that the Planning Division is properly and promptly notified of any change of ownership or change of Permittee affecting the PD site.

Requirement: The Permittee shall file, as an initial notice with the Planning Director, the new name(s), address(es), telephone/FAX number(s), and email addresses of the new owner(s), lessee(s), operator(s) of the permitted uses, and the company officer(s). The Permittee shall provide the Planning Director with a final notice once the transfer of ownership and/or operational control has occurred.

Documentation: The initial notice must be submitted with the new Property Owner's and/or Permittee's contact information. The final notice of transfer must include the effective date and time of the transfer and a letter signed by the new Property Owner(s), lessee(s), and/or operator(s) of the permitted uses acknowledging and agreeing to comply with all conditions of this PD.

Timing: The Permittee shall provide written notice to the Planning Director 10 calendar days prior to the change of ownership or change of Permittee. The Permittee shall provide the final notice to the Planning Director within 15 calendar days of the effective date of the transfer.

Monitoring and Reporting: The Planning Division maintains notices submitted by the Permittee in the project file and has the authority to periodically confirm the information consistent with the requirements of § 8183-5 of the *Ventura County Coastal Zoning Ordinance*.



COUNTY OF VENTURA
RESOURCE MANAGEMENT AGENCY

PLANNING DIVISION

DEC 21 2012

REQUEST FOR PROJECT REVIEW

To: Faria Beach MAC

Date: December 11, 2012

Subject: PL12-0108

Project Description: The applicant request that a Planned Development permit and Administrative Variance be granted to authorize after-the-fact construction of a new access gate. The gate will allow private access to the beach for members of the Faria Beach Homeowners Association and access to emergency personnel. The gate will be located on a common area beachfront lot between Lot 49A and Lot 50. The gate will have a maximum height of seven feet and be supported by two 7-foot high concrete posts.

Location: The 1,800 square foot property is a common area located between 3912 West Pacific Coast Highway (APN 060-0-400-165) and 3902 West Pacific Coast Highway (APN 060-0-400-185), near the intersection of Hobson Road and West Pacific Coast Highway, in the community of Faria Beach

APN No.: Located between 060-0-400-165 and 060-0-400-185

Area Plan: Coastal

Enclosed for your review are the following documents:

- | | | | |
|-------------------------------------|---------------|-------------------------------------|---------------------|
| <input checked="" type="checkbox"/> | Plot Plan | <input type="checkbox"/> | Site Zoning Map |
| <input type="checkbox"/> | Location Map | <input checked="" type="checkbox"/> | Building Elevations |
| <input type="checkbox"/> | Tentative Map | <input checked="" type="checkbox"/> | Project Description |

You are hereby requested to review the above-referenced project, and to indicate any environmental concerns you may have with respect to the project. Any comments or questions should be submitted to the case planner, no later than January 3, 2013. If you cannot meet the due date, please call the case planner, Jay Dobrowalski, as soon as possible at (805) 654-2498 or email him at jay.dobrowalski@ventura.org.

Environmental Concerns:

None, we support this project.