

Avila Valley Advisory Council

San Luis Obispo County, California

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December 11, 2018

Re: APPLICATION FOR TEMPORARY COMMERCIAL OUTDOOR ENTERTAINMENT LICENSE – AVILA BEACH RESORT

To: Justin Cooley, Division Manager Auditor-Controller-Treasurer-Tax Collector, San Luis Obispo Tax Collector's Office

Mr. Cooley

The Avila Valley Advisory Council strenuously objects to this application. Our numerous reasons are listed on the following pages with a few concerns listed previous to those (Below):

AMBIGUITIES of the proposal are highly concerning: "...on-going Non-Profit events over 3,000 attendees to include up to eight (8) For-Profit, Ticketed events over 3,000 and up to 5,000 attendees" (Application page 1).

This means an **unknown number of unpermitted "Non-Profit" (undefined) events and no upper limit on numbers of attendees.**

In addition, an unknown number of *unpermitted* events of up to 3,000 attendees is stated to be intended.

Three-day For-Profit festivals implies overnight camping.

A detailed parking scheme and/or alternate transportation are necessary.

UNALLOWED is the application for augmenting the 2004 license for the Pops Concert. There is no open license to augment since the 2004 license was for one day. Further, the 2004 license was inappropriately granted under an ordinance regulating events of at least 3,000 attendees when it was known that Symphony tickets, as before, would be capped at hundreds fewer. In addition, the hearing was noticed only for the one-time Pops Concert and directive about other events was not in accordance with law.

The Ordinance under which this application falls clearly is intended for a single event of 3,000 or greater. This application trivializes impacts of huge events, each with potentially significant impacts, by applying for multiple huge events with a single application.

ENVIRONMENTAL REVIEW under the CA Environmental Quality Act (CEQA) must be undertaken for an event center. Events (unpermitted) appear to have become the dominant use of the golf course property as increasingly golfers are disenchanted with course upkeep and events interfering with golfing.

SAFETY is our primary concern--of event participants, visitors to the beach and harbor, area employees and residents--would be jeopardized by even greater traffic congestion associated with huge events, in addition to an unregulated number of large events for up to 3,000 attendees. Avila has a unique complex of hazards--one-way-in-and-out: narrow, curvy access road; high fire hazard; earthquake faults; tsunami potential; numerous years of nuclear facility operation, decommissioning and radioactive fuel storage.

We object to another layer of ignoring requirements by this improper application, in addition to those of already holding unpermitted events of up to 3,000 attendees and events for more than 3,000 attendees, plus of already holding event components on open space easements to the County/public which expressly prohibit such activities, even temporarily.

RECOMMENDATIONS

The Board of Supervisors should

- advise the Applicant to apply (and pay fees) for amending Chapter 6.56 of the County Code to allow multiple events, subject to all requirements of the existing code pertaining to each event, and to also update the 1977 fees,
- advise the Applicant that all events must cease until permitted, and
- advise the applicant that any future events must avoid components on the open space easements to the County."

Sincerely,

Jim Hartig

Jim Hartig, AVAC Chairperson

CC: James Erb, Tax Collector; Rita Neal, County Counsel; Tim McNulty, Deputy County Counsel; Adam Hill, 3rd District Supervisor; Nicole Nix, Legislative Assistant District 3; Trevor Keith, Director Planning Department; Matt Janssen, Planning Department

ASSESSMENT OF APPLICATION FROM GOLF COURSE IN AVILA TO TAX COLLECTOR FOR A TEMPORARY COMMERCIAL OUTDOOR ENTERTAINMENT LICENSE

SUMMARY OF GREATEST OBJECTIONS

1. Clearly, Chapter 6.56 of the County Code, under which the applicant seeks multiple events, applies to a single one-time event of 3,000 or more attendees. Approval of this application would entirely erode public confidence in County governance and governing documents.
2. No legitimacy compels acceptance of the golf course application by the Tax Collector. Normally, any application for multiple events under 6.56 would be rejected outright as inconsistent; processing such an application would not ensue.
3. There are adequate options for seeking approval of multiple events, *legitimately*:
 - Individual License applications to the Tax Collector for each one-time temporary event of 3,000 or more attendees, requiring Board of Supervisors approval (not appealable),
 - Individual Minor Use Permit applications to the Department of Planning & Building for each one-time temporary event of up to 3,000 attendees, requiring Director approval (appealable to Board of Supervisors and Coastal Commission),or, instead,

- One Conditional Use Permit application to the Planning & Building Department for golf course facilities which include an events venue and events of up to 3,000 attendees, requiring Planning Commission approval (appealable to Board of Supervisors and Coastal Commission).
- 4. The proposed development on the golf course and the proposed events should be under the same application to the Department of Planning and Building, as for other applicants whose projects have multiple components.
- 5. *Legitimately*, approval of the application to the Tax Collector for multiple events of 3,000 and more attendees necessitates amendments to Chapter 6.56 of the County Code. Amendments should be proposed by the applicant and accomplished prior to Tax Collector acceptance for processing of the proposed mega-event project application.
- 6. The proposed annual 12 for-profit event days of 3,000 to 5,000 attendees is stated by the applicant to be in addition to an untold number of unpermitted non-profit events for over 3,000 attendees with no upper limit. This is in addition to the untold number of events that the applicant states to continue, *unpermitted*. It is outrageous to seek approval for mega-events while ignoring the permit requirement for events of under 3,000 attendees that have resulted in decades of community complaints.
- 7. Avila's unique hazards (one-way-in-and-out, high fire hazard, multiple earthquake faults, nuclear facility and tsunami potential) are trivialized by this application for multiple mega-events. Each mega-event is major, and different, which is why Chapter 6.56 requires a separate application for each.
- 8. As required for other land use projects, the applicant should pay a traffic generation impact fee toward mitigating existing and future event impacts, plus should provide parking outside Avila. Over \$4 million, from the public, is estimated by Public Works for a partially sufficient length additional lane on Avila Beach Drive to address *existing* golf course event traffic—which would provide the applicant another free ride.
- 9. Chapter 6.56 requires that each proposed event be evaluated well before the event is to be held, which is essential because area conditions change over time. As example, development of the Visitor Serving project already approved for Harbor Terrace at the Port appears imminent, along with significant additional traffic.
- 10. Mega-events at the golf course would result in nightmarish congestion. Avila already experiences unsafe traffic-circulation during warm weather, particularly during holidays and weekends from April to November, plus during (unpermitted) golf course events that have been simultaneous with the popular (permitted) Friday Farmers Market.
- 11. Traffic congestion related to pricy golf course events has dissuaded the general public, including those of lower income, from accessing coastal resources and free events on the plaza.
- 12. Hazards of Avila traffic congestion jeopardize visitors (including event attendees), employees and residents.
- 13. Impacts of each proposed event need to be evaluated as to time of year, day of week, and time of day. Although the application is required to contain such specific details for an event, only generalized information is provided for events as a group.
- 14. The parking scheme shows general areas for parking. A plan showing individual parking spaces and aisles is necessary to verify the numbers of spaces claimed.
- 15. A separate parking exhibit is necessary to show the proposed event parking areas in conjunction with components of the also proposed mammoth golf course development project, to assure actual parking availability.
- 16. Unacceptably, a proposed parking location for 400 spaces is shown to have access from the highly popular public Bob Jones Trail.
- 17. A traffic report, not submitted, is essential for evaluating and mitigating impacts the proposed annual 12 for-profit event days of 3,000 to 5,000 attendees, plus an untold number of *unpermitted* events of up to 3,000 without specified upper limit of attendees in addition to the untold number of for-profit events that the applicant proclaims will be held, *unpermitted*. Compliance with the CA Environmental Quality Act (CEQA) necessitates traffic evaluation, and other.

18. The application ignores explicit preclusion of temporary parking lots on the Open Space easements to the County over much of the Golf Course. The easements preclude, including temporarily, anything unrelated to golf course operation and maintenance and anything not “natural” and “indigenous.”
19. The proposal for only the non-profit events would result in an unspecified number of events with no upper limit. Clearly this represents a major event venue rather than a temporary use. Ignored is that a General Plan Amendment is necessary, per the Coastal Zone Land Use Element, under Planning Area Standards for San Luis Bay Estates. A General Plan Amendment application for the San Luis Bay Estates Master Plan should be processed in conjunction with an Amendment to the Golf Course Development Plan, not an application for multiple mega-events under Chapter 6.56.
20. In that no application includes requested permitting for an untold number of *unpermitted* golf course events of under 3,000 attendees that the applicant proclaims are intended, enforcement to uphold Title 23 permit requirements for existing golf course events needs to proceed immediately.

COUNTY CODE CHAPTER 6.56 LICENSE REQUIREMENTS (PARTIAL)

Although the golf course proposes numerous events under a single license, 6.56 applies to a single one-time event / activity:

- 6.56.030(a), License required--Fee. A specified fee of \$100 is required at the time of application for an event, with an additional \$250 for each day the proposed activity is to be conducted. There is no provision for multiple fees for multiple events. The fee is grossly insufficient for processing costs, of several departments, for just one event.
- 6.56.040, License application--Contents. Required are 13 categories of event details. Detailed information varies by event and generally is unknown until soon before an event is to be held. Instead of details for each event proposed, the application provides generalized information for multiple events. The application needs to be for a single event as Chapter 6.56 intends.
- 6.56.070, Fixing time for hearing, investigation and report. The short time frame for processing an event license precludes environmental review as is required by the California Environmental Quality Act (CEQA) for this major, impactful project.
- 6.56.080, Granting license. License approval involves findings that “the activity” licensed “will not be unduly detrimental to the health and safety of persons attending the activity or residing or working in the neighborhood and/or vicinity of the activity.”

Regarding “safety”, this finding cannot be made for this project for an unknown number of non-profit event days for an unknown number of attendees due to Avila’s unique hazards cluster of one-way-in-and-out, narrow and winding road, high fire hazard, earthquake faults, nuclear facility and tsunami potential. Safe ingress and egress have been severely compromised by events of under 3,000 attendees. Blanket approval of multiple events of with an unknown number of attendees would be unsafe.

A purpose of Chapter 6.56 is to carefully consider impacts of a specific event proposed for a specified time since conditions change as General Plan buildout occurs. As example, Harbor Terrace, for which development is considered imminent, would generate significant traffic during visitor times of the year when golf course events occur. (Note: Harbor Terrace traffic was evaluated based on a second Tuesday in May instead of when impacts actually will occur, resulting in useless impact assessment.)

Instead of the proposed application, a properly proposed land use permit under Title 23 for an event venue that enables multiple events, *of up to 3,000 attendees*, would entail a traffic report to evaluate and mitigate traffic-circulation safety. Approval of an event venue could require that events be held only at those times when other traffic is expected to be light, and/or that event parking be located outside of Avila with stand-by buses for transportation. Most important is that emergency evacuation must be evaluated.

A properly proposed land use permit under Title 23 for an event venue that enables multiple events, *of up to 3,000 attendees*, also would entail a noise study. Noise nuisance complaints about golf course events of under 3,000 attendees have been received from Avila Beach, San Luis Bay Estates, See Canyon and across Highway 101 in Squire Canyon. Areawide, virtually all have been bothered by concert sound reverberations.

A properly proposed land use permit under Title 23 for an event venue that enables multiple events, *of up to 3,000 attendees*, additionally would involve a public safety component that addresses the rowdy spillover into the beach town following events.

- 6.56.110, Dates and hours. A license must state the event dates and hours. This specific information is not proposed for each of the multiple events for up to 6,000 attendees. Without specified dates and hours the events would be held at the whim of the golf course owner, as has occurred for the unpermitted events held of under 3,000 attendees which have interfered with traffic and parking for the popular, permitted, Avila Farmers Market. Any event of double the number of attendees of past golf course events must not be held when beach traffic is likely or when another event is scheduled. Resultant traffic congestion is unfathomable. Dates and hours for an event must be specified as required by Chapter 6.56.
- 6.56.150, Parking. A license requirement is one parking space per four attendees. However, instead of the 1/4 ratio of parking spaces to attendees, a realistic ratio of 1/3 would less likely result in spillover offsite. Unfortunately, license requirements include no provision for a ratio greater than 1/4. Therefore, parking always would be deficient, with spillover continuing to result in parked vehicles blocking crosswalks, in addition to aggravating the existing fruitless parking searches contributing to hazardous traffic congestion.

No graphic parking plan showing spaces and aisles is included with the application to verify the number of parking spaces claimed. The submitted Parking Layout Typical Schematic simply claims numbers of spaces for various locations.

Unacceptably, an area claimed to have 400 spaces would have access from the highly popular public Bob Jones Trail.

An additional parking exhibit is needed to show proposed parking for both this events application to the Tax Collector and the application submitted to Planning for extensive development. It is unknown whether parking area proposed for events would occupy proposed area for golf course development. *Important Note: Proposed development and proposed events should be under the same application to the Department of Planning and Building, as for other applicants whose projects have multiple components.*

Parking would involve Open Space Easements to the County which prohibit parking, including temporary parking. (Please see the Open Space Easement document and the map showing locations of Open Space Easements on the golf course, attached to this document and the map showing Easement locations. Also see the section below, "Open Space Easements.")

- 6.56.280, Nontransferability of license. No license is allowed to be transferable to "... another set of dates." This precludes the proposed multiple and reoccurring events.

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) EXEMPTION CLAIMED

The facility, a golf course, was designed for and permitted as a golf course and, therefore, the proposed project is not exempt from CEQA under Exemption 23.

Following is substantiation that the golf course was designed only for golf related uses:

The 1981 San Luis Bay Estates Master Plan, of which the golf course is a part, states under C.4: Golf course, Clubhouse and Golf Course Maintenance: *"It is proposed that the golf course will continue to be used and operated in its present form: a privately owned 18-hole public fee golf course."* A clubhouse where shown on the Master Plan Map was anticipated, as were golf course redesign for better usability and the upgrading of infrastructure.

Required by C.4 is: *"Areas within the golf course not specifically used for golf course play or support will remain as passive open space and uses will be limited to: a. Walking and bike trails and maintenance roads b. Revegetation, erosion control and maintenance practices c. Underground utility systems."* Additionally stated also under C.4 is: *"The golf course as it presently exists and with future modifications, as noted above, is considered a part of the project open space and given full credit."* (Please see 1981 San Luis Bay Estates Master Development Plan, sections C.4 & J., attached to this document.)

Under J. Open Space and Conservation, the Master Plan requires one acre of open space per residential unit and 50 hotel cottage units. Stated is: *"Existing open space uses (i.e. golf course) and the open space lot south of east of Avila Road may be used as credit if dedicated. The required reservation shall be made by recordation of a perpetual open space easement in favor of the County."*

The County's Open Space Easement Agreement over much of the golf course, recorded April 14, 1988, as Document 21051 of Official Records, specifies on page 6 under 2. (h); *"Owner shall not use the Subject Property or any portion thereof as a parking lot, storage area, or dump site or otherwise deposit or allow to be deposited on the Subject Property or any portion thereof, temporarily or otherwise, anything whatsoever which is not indigenous or natural to the Subject Property or consistent with the operation and maintenance of the Golf Course."* Parking, temporary or otherwise, explicitly is prohibited within the open space easement.

Proposed golf course event facilities, which include parking, would occupy open space that is protected from such uses, in violation of the San Luis Bay Estates Master Plan and the Open Space Easements to the County. (Please see Open Space Easement Agreement attached to this document and the map showing location of the Open Space Easements on the golf course.)

There is additional demonstration that events held at the golf course are on property not designed for events. Events at the golf course have been presumed to have been for under 3,000 attendees, except for the 2004 Pops Concert (actually for 2,400 attendees) which was approved by the Board of Supervisors for a License from the Tax Collector. This License approved no permanent event installation. As well, under 23.08.241, Temporary Uses, General Standards, temporary uses only are allowed permanent installations "in conjunction with a construction project authorized by an approved land use or grading permit." As the temporary events have operated unpermitted, no permanent land alterations have been approved.

Furthermore, because existing event installations such as the tent are viewed as impermanent, the County Assessor taxes them as personal property, not as property improvements.

Most important: The proposed event venue land use for 12 for-profit event days of 3,000 to 5,000 attendees is stated by the applicant to be in addition to an untold number of unpermitted non-

profit events for over 3,000 attendees with no upper limit. This is in addition to the untold number of events that the applicant states to continue, *unpermitted*, constitutes a project for which CEQA review is required by California law. Even without the proposed project, the number of events that have been held requires CEQA review. Public safety and other considerations demand that impacts be evaluated and mitigated through the CEQA process. The County must respect public protection laws.

OPEN SPACE EASEMENTS

As explained above (under “CEQA EXEMPTION CLAIMED”) the Open Space Easements to the County, on behalf of the County’s general public, preclude event components on the Easements. The Open Space Easement Agreement guarantees preserved natural, indigenous open space for the general public’s benefit. Instead, the Open Space Easements have been and are intended by the applicant to be used for events, in violation of the legally binding Easement Agreement. Further, the applicant has charged parking fees on the public’s Open Space Easement. As there has not been, and could not legally be, payment to the County for use of its Open Space Easement, the applicant appears to have taken public property for private gain. That the County has not prevented event components on the public’s Open Space Easements or received parking fee proceeds could be considered gifting of a public asset. (Please see Open Space Easement Agreement attached to this document and the map showing location of the Open Space Easements on the golf course.)

GENERAL PLAN AMENDMENT

Rationally, given numbers and sizes of events with associated impacts, neither the continually increasing untold number of *unpermitted* events that have been held at the golf course for up to 3,000 attendees, and those for over 3,000 attendees, plus the 12 for-profit event days proposed should be considered “temporary” events. This is ignored by the License application to the Tax Collector.

Of interest is that See Canyon Fruit Ranch has a venue permit for just a few annual events, which it obtained years ago in response to complaints from area residents about unsafe event traffic. Vina Robles, a permitted venue, has seating for 3,000 and capacity for another 300, provides for all parking onsite, and has fewer concerts scheduled than the golf course in Avila. Other permitted event venues also hold fewer events than have been held at the golf course.

A General Plan Amendment (GPA) is required for an event venue at the golf course. Per the 1981 San Luis Bay Estates Master Development Plan, of which the golf course is a part, golf course uses are limited to those specified in the Master Plan. Events are not included. (Please see the 1981 San Luis Bay Estates Master Plan, sections C.4 and J. attached to this document.)

Since 1988 the Coastal Zone Land Use Element (CZLUE), under Planning Area Standards for San Luis Bay Estates, B. 1., has stated: “An amendment to the approved Master Development Plan for the entire property is to be prepared for the portions of the site within the coastal zone, for county review and approval prior to further development within the Coastal Zone.”

An application for a General Plan Amendment to the Planning & Building Department should be submitted, as well as an including an event venue, with details for all wanted events, as a component of the recently submitted Conditional Use Permit application for golf course development.

EVENTS NOT LEGALLY ESTABLISHED

While the application claims vested rights to continue events, obvious administrative negligence is not a basis. Also, there are not permanent site improvements that in different circumstance might infer vesting.

The application states that while Visitor Serving Commercial is a preferred CA Coastal Act land use and that events are therefore allowed, events are allowed, only if under permit, per Title 23.

Inferred has been that existing events were legally established and can rightfully continue without approval. This is incorrect. It has been stated that "public events" have operated since 1967 under a Use Permit existing at that time. However, the 1967 permit, CUP U670018, San Luis Bay Club, allowed a club complex exclusively for members, not the general public. Had there been public events, these would not have been legally established and could not serve as basis for continuing events.

Furthermore, events from 1967 until the superseding (presently operative) 1981 San Luis Bay Estates Master Plan became effective would have to have been documented to continue. (Tequila Festival?) Events were not legally established and have not been not been "grandfathered" as such by the County. Unlawfully established events cannot be grandfathered and, therefore, cannot continue without receiving a permit. (Please see the Department of Planning & Building letter dated June 25, 2004, attached to this document.)

The application fails to acknowledge many years of complaints from individual community members, groups of community members and the Avila Valley Advisory Council about traffic congestion, and also noise, from unpermitted events at the golf course, presumed for under 3,000 attendees. Note: As a result of complaints and County pressure, an event application was filed in 2004 for the then popular Pops Concert. Although the golf course owner chose that the event application to be for a Board of Supervisors approved license from the Tax Collector, for 3,000 attendees, the maximum number of tickets the Symphony allowed for this previous annual event was 2,400; the application should have been to the Department of Planning & Building for a temporary event permit or event venue.

MONETARY IMPLICATIONS OF EVENTS

Contributions associated with events are greatly exceeded by the \$4 million estimated by Public Works in the draft Avila Circulation Study to widen Avila Beach Drive for an egress lane. Public Works proposed this lane to somewhat address existing unsafe traffic congestion. Unsafe congestion is caused by traffic added from the continually increasing number of unpermitted golf course events of under 3,000 attendees. The already unsafe access congestion would drastically worsen with additional events having attendees.

PREVIOUS APPLICANT CLAIMS

Asserted has been that Board of Supervisors (BOS) adoption of the 2006 Parks and Recreation Element, which includes a golf course description "provides concerts," means unpermitted events were intended to continue unpermitted. However, by Board of Supervisors direction to staff on August 17, 2004, only such events as the Pops Concert. operated by non-profits, could remain unpermitted, temporarily, until an events ordinance revision. (Please see BOS Minutes for August 17, 2004, attached to this document)

Asserted has been that the Coastal Commission, which in 1998 established financial mitigation for Unocal oil contamination cleanup that benefitted golf course events, did so because events were consistent with the recreation priority of the Local Coastal Program. However, the Coastal

Commission was unlikely to have known that events that had been held were unpermitted since the County was silent about the matter.

Asserted has been that "accessory Uses" allowed by the 1967 permit for a residential club complex included events. If there were events, and if they were held at the golf course, legally they only could have been for the San Luis Bay Club residents and their guests. Furthermore, any events for the general public would have been subject to the temporary events permit requirement in effect countywide at the time. Clearly, public events were not legally established by the 1967 permit.

Stated has been that the EIR for the 1981 SLBE Master Plan includes temporary events as an allowed use for the Recreation area. Then, as now, allowed/allowable events were required to be permitted. Although the 1981 Master Plan could have included events at the golf course, it did not. Also, in event of conflict between uses allowed for the Recreation Land Use Category and uses allowed in Area Standards, the Area Standards prevail. The EIR did not legalize events.

Stated has been that the Coastal Zone Land Use Ordinance requirements under Temporary Events, 23.08.248, do not apply to the golf course because the events are Public Assembly and Entertainment in existing facilities. However, existing facilities means facilities permitted for events. No temporary event permit is needed for events held at facilities permitted for events.

At present, the golf course is not an existing facility permitted for events. The applicant can, and should, submit an application for a Conditional Use Permit for the golf course which includes an events venue for the events being proposed. Intended events for up to 3,000 should be included in the application.

Relevant is that the golf course has not been altered for permanent event facilities. Golf course approvals, such as for storage, offices and hospitality accommodations, were specified for golf-related activities.

attendees that are required to operate under permit--but are stated by the applicant already to be already allowed and intended to continue and increase, unpermitted.

ATTACHED:

- 1981 San Luis Bay Estates Master Plan: sections C.4 and J.; Master Plan Map
- Open Space Easement Agreement
- Map showing Open Space Easement locations
- Department of Planning & Building letter dated November 3, 2006
- Department of Planning and Building letter dated June 25, 2004
- Board of Supervisors Minutes for August 17, 2004