



## Council Agenda Report

Item 7a

**Department:** Administration  
**Cost Center:** 1005  
**For Agenda of:** 10/19/2021  
**Placement:** Public Hearing  
**Estimated Time:** 120 minutes

**FROM:** Greg Hermann, Deputy City Manager

**Prepared By:** Robert Hill, Sustainability & Natural Resources Official

**SUBJECT:** OPEN SPACE WINTER EVENING HOURS OF USE AT CERRO SAN LUIS NATURAL RESERVE

### RECOMMENDATION

1. Introduce an Ordinance entitled, "An Ordinance of the City Council of the City of San Luis Obispo, California, amending Title 12, Streets Sidewalks and Public Places, Municipal Code Chapter 12.22, Open Space Regulations, to add additional language to 12.22.050(B) to allow a special program for winter evening hours of use at Cerro San Luis Natural Reserve" and,
2. Approve a Resolution entitled, "A Resolution of the City Council of the City of San Luis Obispo, California, adopting a Negative Declaration for Winter Evening Hours of Use at Cerro San Luis Natural Reserve."

### DISCUSSION

#### Background

The City of San Luis Obispo owns and manages over 4,000 acres of open space lands that feature a trail network totaling over 55 miles for passive recreation purposes, and also administers open space easements and conservation easements that permanently protect over 3,500 acres of land within the City's Greenbelt for a total of approximately 7,500 acres. The City's current Open Space Regulations allow for passive recreational use of the City's open space properties from one hour before sunrise until one hour after sunset, unless otherwise approved by the Parks and Recreation Director (SLO Muni Code 12.22; 1998).

Between August 2016 and January 2018, the City Council considered testimony from members of the public, a "Project Plan", and a staff-prepared public policy "white paper" and study session, leading to the authorization of a Pilot Program and adoption of a Mitigated Negative Declaration to extend winter evening hours of use at the 118-acre Cerro San Luis Natural Reserve. These actions were responsive to the issue and request for extended evening hours of use during winter months that arose following increased enforcement of the City's Open Space Regulations, including allowable hours of use, following concerns expressed from residents and surrounding neighbors.

On the basis of public testimony received in the timeframe leading up to the Pilot Program, it is acknowledged that individuals and informal groups have been accessing Cerro San Luis Natural Reserve during winter evening hours for many years.

In 2015, the City's Natural Resources Program partnered with faculty in the City and Regional Planning Department at California Polytechnic State University, San Luis Obispo, to conduct a wide-ranging survey of open space trends and levels of use, as well as a needs assessment.

This study utilized an EcoCounter™ device to track frequency of human use and hours of use at Cerro San Luis Natural Reserve, among several locations, including the timeframe between December 2014 and March 2015 and during evening hours between 6:00 PM and 9:00 PM (City of San Luis Obispo, Open Space Survey. Riggs et. al. 2015). It is through this study that the existing average daily baseline use of 65 individuals was established.

Between November 2018 and March 2021, City staff administered the Pilot Program, to include oversight and additional patrol during the published timeframes of the winter evening hours, deployment of an EcoCounter™ device to track frequency of human use and hours of use at Cerro San Luis Natural Reserve, as well as a new reservation permitting system "app" in order to ensure that use during expanded hours remained commensurate with existing average daily baseline use of 65 individuals.

At the conclusion of the Pilot Program, staff scheduled a study session with City Council that took place on March 16, 2021, at which time Council voted to receive and file the final summary report for the Pilot Program and to update the City's Open Space Regulations (SLO Muni Code chapter 12.22) to allow for the program to continue on an ongoing basis only at Cerro San Luis Natural Reserve, with the requirement to use the permitting system in the month of December only.

### **Previous Council Action**

On January 16, 2018, the City Council approved Resolution 10858, which authorized a two-year pilot program and adopted a Mitigated Negative Declaration (MND) to expand the hours of use at the Reserve until 8:30 PM during the winter when daylight savings is in effect.<sup>1,2</sup> The pilot program allowed the City to issue up to 65 permits daily for access to approximately 4.9 miles of trails within City property at the 118-acre Cerro San Luis Natural Reserve from one hour after sunset until 8:30 PM when daylight savings time is not in effect.

On November 17, 2020, the City approved a one-year extension of the pilot program and adopted an Addendum to the 2018 MND.<sup>3</sup> The pilot program took place during the winter seasons of 2018-2019 (November 4 to March 10), 2019-2020 (November 3 to March 8), and 2020-2021 (November 1 to March 14). The pilot program ended on March 14, 2021.

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<sup>1</sup> The City Council agenda and minutes for January 16, 2018, are available on-line at: <http://opengov.slocity.org/WebLink/DocView.aspx?id=70272&dbid=0&repo=CityClerk>

<sup>2</sup> The MND is available online at: <https://ceqanet.opr.ca.gov/Project/2017091049>

<sup>3</sup> The City Council agenda, which includes the Addendum, and minutes for November 17, 2020, are available on-line at: <http://opengov.slocity.org/WebLink/DocView.aspx?id=131233&dbid=0&repo=CityClerk>

On March 16, 2021, the majority of City Council voted to direct staff to implement a permanent program for winter hours of use at Cerro San Luis Natural Reserve, and also received and filed the Final Summary Report of findings from the Pilot Program.<sup>4</sup>

### Policy Context

The City's policy framework for open space management pertinent to this matter includes the following:

1. General Plan, Conservation and Open Space Element (2006)
2. Conservation Guidelines for Open Space Lands of the City of San Luis Obispo (2002)
3. Cerro San Luis Natural Reserve Conservation Plan (2005)
4. Open Space Regulations, San Luis Obispo Municipal Code, Chapter 12.22. (Ord. 1332 § 1 (part), 1998)

In order to carry out Open Space Winter Evening Hours of Use at Cerro San Luis Natural Reserve, the City Council has directed staff to revise the City's existing Open Space Regulations (San Luis Obispo Municipal Code, Chapter 12.22) to extend the public use hours on the existing Cerro San Luis Natural Reserve trail system within City property. The hours of use would be extended to between one hour before sunrise until 8:30 PM when daylight savings time is not in effect. Public use hours when daylight savings is not in effect would remain from one hour before sunrise until one hour after sunset. The Open Space Regulations are proposed to be revised as follows (proposed changes are shown in underline text):

**12.22.050(B): Presence in Open Space Lands Restricted to Certain Hours – No Overnight Usage.** Open space lands where public access is permitted shall be open to the public from dawn to dusk. It shall be unlawful to enter or remain within such lands between one hour after sunset and one hour before sunrise of the following day without approval from the director. Notwithstanding the foregoing, the City may implement a special program at Cerro San Luis Natural Reserve only that allows for extended hours of use until 8:30 PM, Pacific Standard Time, when daylight savings time is not in effect, in accordance with City Council Resolution R-[XXXXX] (2021 Series) adopted on October 19, 2021, or as such Resolution may be subsequently amended by the Council consistent with the purpose of this ordinance and the environmental review document supporting this provision. All other provisions of the Open Space Regulations contained in this Chapter 12.22 shall remain in effect

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<sup>4</sup> The City Council Agenda Report and presentation for March 16, 2021, are available on-line at: <http://opengov.slocity.org/WebLink/DocView.aspx?id=139031&dbid=0&repo=CityClerk>  
The Final Summary Report attachment is available on-line at:  
<http://opengov.slocity.org/WebLink/DocView.aspx?id=139011&dbid=0&repo=CityClerk>

**Project Implementation**

The project is proposed to be carried out in substantially the same manner as the Pilot Program that took place during the winter seasons of 2018-19, 2019-2020, and 2020-21. During the Pilot Program, a total of 3,160 permits were issued during the 2018-19 season, 2,747 permits were issued during the 2019-20 season, and 2,702 permits were issued during the 2020-21 season. In total, 7,783 permits were issued, of which 826 were bikers and 6,957 were hikers based on self-designation at the time of permit reservation. During all three seasons, in general, less than the full amount of permits available were reserved during the months of November and January through March. During the holiday season in December, however, permits were typically fully subscribed, and Ranger Service had to turn away numerous parties interested in accessing the Reserve at the trailhead and instances of non-compliance were tracked.

For ongoing implementation as contemplate herein, the City's Parks and Recreation Department Ranger Service personnel would continue provide oversight and additional patrol of the Reserve during the extended hours of use. In accordance with City Council direction, the project description has been written such that a permit program would be permanently implemented to limit access to the Cerro San Luis Natural Reserve trail system to 65 individuals during the extended hours during December, which had the highest demand for night hiking during the pilot program, and a permit would not be needed for access from one hour after sunset until 8:30 PM during the months of November and January through March. However, Ranger Service and Natural Resources Program staff would deploy an EcoCounter™ device to track frequency of human use and hours of use at the Reserve.

The EcoCounter™ device utilizes sensors to track pedestrians and cyclists accessing the Reserve at the trailhead. If it is determined that use during the extended hours exceeds the existing average daily baseline use of 65 individuals during the months of November and January through March that was established prior to the Pilot Program, the permitting system would be re-instated the day after the exceedance occurs for all program months in order to ensure that use does not exceed 65 individuals; this would require daily retrieval of data from the device itself where it is located in the field. Re-instatement of the permitting system would be communicated to the public via social media, the City website, and rangers stationed at the trailhead. For purposes of operational and public communication efficiency, however, staff strongly recommends that the City Council elect to require permits for all program months at the time of adoption (see Alternative 1, below).

The City's Parks and Recreation Department has developed information and educational materials for the public that is specific to nighttime use and wildlife at the Reserve. These materials will re-iterate the City's rules and regulations in effect, as well as highlight the sensitivity of evening use, potential for wildlife interactions and impacts, and methods to avoid or reduce impacts, including requiring visitors to stay on established trails during nighttime use. These informational materials will be available on the City's website (with potential to access on-site via a QR code), at the trailhead entrance of the Reserve, and on pamphlets that can be handed out or placed in a rack on the kiosk at the entrance of the Reserve. Permit applicants will be provided with the information and educational

materials during the application process and be required to acknowledge receipt and confirm understanding prior to receiving the permit.

Should the City Council choose to introduce the Ordinance and approve the Resolution described in the recommendation, staff will schedule the second reading and final adoption of the Ordinance for the City Council meeting on November 2, 2021. In accordance with the City of San Luis Obispo's authority to enact local ordinances, under Government Code section 36937 an additional 30-day period is required after final passage until an adopted ordinance can go into effect; accordingly, the soonest that the ongoing Winter Evening Hours of Use at Cerro San Luis Natural Reserve program could begin is December 3, 2021. While this is nearly a month after daylight savings time ends, it would still be timely in terms of when the program was most active during the Pilot Program in the month of December.

### **Public Engagement**

Staff conducted public engagement activities in accordance with the approved project plan and the City's Public Engagement and Noticing Manual throughout the process of preparing, designing, and implementing the Pilot Program. To better understand stakeholder concerns and preferences, informal interviews and communications were conducted in February 2017 with the Environmental Center of San Luis Obispo (ECOSLO), the Santa Lucia Chapter of the Sierra Club, the Land Conservancy of San Luis Obispo County, Central Coast Concerned Mountain Bikers, SLO Trail Runners, as well as various individuals.

This topic generated considerable public interest during the course of the Pilot Program process as demonstrated by significant levels of written and verbal comments at the City Council meetings, in print and social media outlets, and with an online petition that was submitted to the City Council. Staff have also been in contact with neighboring property owners. The stakeholder groups identified above were also notified and informed again of the City Council agenda item.

### **CONCURRENCE**

The Parks and Recreation Department, whose Ranger Service staff would administer the project, concur with the content contained herein.

### **ENVIRONMENTAL REVIEW**

An Initial Study and Environmental Review has been prepared for the project with assistance from the firm Rincon Consultants that concludes "there is no substantial evidence, in light of the whole of the record before the agency, that the project may have a significant effect on the environment" and therefore a Negative Declaration is the appropriate environmental determination in accordance with the California Environmental Quality Act (CEQA Guidelines Section 15070 and 15075).

Less than significant impacts were identified in the areas of Aesthetics, Agriculture and Forestry Resources, Air Quality, Biological Resources, Cultural Resources, Geology and Soils, Greenhouse Gas Emissions, Hazards and Hazardous Materials, Land Use and

Planning, Noise, Public Services, Recreation, Transportation, Tribal and Cultural Resources, Utilities/Service Systems, and Wildfire. Impacts that are individually limited, but could be “cumulatively considerable,” were also found to be less than significant.

Prior to the Pilot Program, the average daily use at Cerro San Luis Natural Reserve between the hours of 6:00 PM and 9:00 PM was recorded as 65 individuals, despite the City’s existing Open Space Regulations provision that open space is closed one hour after sunset. Therefore, the existing average baseline use that will be adhered to during the ongoing Winter Evening Hours of Use at Cerro San Luis Natural Reserve program is 65 individuals. Existing case law supports the establishment of existing, average baseline conditions that are occurring in the environment as a basis for environmental review [see *Fat v. County of Sacramento* (2002) 97 Cal.App.4th 1270; *Communities for a Better Environment v. South Coast Air Quality Management District, et al.* (2010) 48 Cal.4th 310 (“*Communities for a Better Environment*”); *Communities for a Better Environment v. South Coast Air Quality Management District (Tesoro Refining and Marketing Company, LLC, Real Party in Interest)* (2nd Dist. 2020) 47 Cal.App.5th 588].

As required by Assembly Bill 52 of 2014 and Senate Bill 18 of 2004, the Tribal Consultation Notification period began on August 2, 2021, prior to completion of the Initial Study. Tribal Consultation Notifications were sent to historically and culturally affiliated tribes on the Native American Heritage Commission list for San Luis Obispo County dated as of August 2, 2021. While there are no tribes that have indicated that they would like to initiate the consultation process, the City did receive a request from Mona Tucker-Olivas on behalf of the *yak tityu tityu yak tilhini* – Northern Chumash Tribe to include signs that encourage visitors to not disturb wildlife (which has been incorporated into the project description). The Northern Chumash Tribal Council also responded that they are opposed to the project; on August 18, 2021, Fred Collins wrote in an email, “NCTC is opposed to any nighttime hiking with bright lights and noise of human voices.”

On September 9, 2021, the Notice of Intent to Adopt a Negative Declaration was filed with the San Luis Obispo County-Clerk Recorder’s Office, the State Clearing House, and was published in the *New Times* as a newspaper of general circulation in the area effected by the proposed project. The Notice of Intent sets forth a 30-day public comment period that concluded on October 11, 2021.

## **FISCAL IMPACT**

Budgeted: Yes

Budget Year: 2021-22

Funding Identified: Yes

**Fiscal Analysis:**

<b>Funding Sources</b>	<b>Total Budget Available</b>	<b>Current Funding Request</b>	<b>Remaining Balance</b>	<b>Annual Ongoing Cost</b>
General Fund				
State				
Federal				
Fees				
Other:				
<b>Total</b>	<b>N/A</b>	<b>N/A</b>	<b>N/A</b>	<b>N/A</b>

Direct fiscal impacts associated with the Project consist of staffing and minor expenditures and occasional purchasing for field equipment, printing costs for educational materials and signs, and ongoing implementation of the reservation-based permit system. Both staffing costs and direct costs are supported by the operating budgets for Ranger Service and the Natural Resources Program.

**ALTERNATIVES**

1. For purposes of operational and public communications efficiency, require permits for all program months.
2. Request that staff provide additional information or analysis prior to taking further action.
3. Provide direction to staff to make changes to the draft Resolution or draft Ordinance and return to Council for adoption.
4. Deny the project and direct staff to take no further action on Open Space Winter Hours of Use programming and discontinue future work efforts.

**ATTACHMENTS**

- A – Draft Ordinance to amend Municipal Code Chapter 12.22
- B – Draft Resolution adopting a Negative Declaration of environmental impact for Open Space Winter Evening Hours of Use at Cerro San Luis Natural Reserve
- C – Initial Study and Negative Declaration