



## Legislation Details (With Text)

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**Title:** Staff Report for Resolution Approving a Modification of Planned Development to construct a new kiosk for an attendant near the Lewelling Boulevard entry circle of the Heron Bay residential development. The kiosk comprises a floor area of 183 square feet which includes a rest room and small storage closet. RS(PD) Residential Single-Family, Planned Development Overlay District. Assessor's Parcel Numbers 80G-1325-5-1, 80G-1406-26, and 80G-1406-29. J. Tepper (applicant); Heron Bay Homeowners Association c/o B. Ritter, HSS Inc. and F. Simon, Association President, (property owner). PLN16-0009

### Indexes:

### Code sections:

**Attachments:** 1. Applicant's Supporting Statement.pdf, 2. Heron Bay Letter from Heron Bay HOA J Tepper 11-3-2016.pdf, 3. Heron Bay Letter to City Council A Berger 11-4-16.pdf, 4. Administrative Code 7.1.305 of sign posting for City Shoreline Park Area.pdf, 5. PLN16-0009 Vicinity Map.pdf, 6. PC Staff Report 10-20-2016.pdf, 7. Planning Commission Resolution No. 2016-007 and Findings of Fact 10-20-2016.pdf, 8. PLN16-0009 Recommended COA PC-CC.pdf, 9. Exhibit A - Site Plan.pdf, 10. Exhibits B-D Partial Site Plan Floor Plan Colors Materials Elevations .pdf, 11. Exhibit E - Anchorage Drive Improvements.pdf, 12. Tract Map 6810 Sheets 1 through 5.pdf, 13. Vesting Tentative Map 6665 Conditions of Approval .pdf, 14. Excerpt of San Francisco Bay Trail Map.pdf, 15. Existing Conditions Google street view April 2016.pdf, 16. Heron Bay City Council Mtg 12-19-2016 (2)

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Staff Report for Resolution Approving a Modification of Planned Development to construct a new kiosk for an attendant near the Lewelling Boulevard entry circle of the Heron Bay residential development. The kiosk comprises a floor area of 183 square feet which includes a rest room and small storage closet. RS(PD) Residential Single-Family, Planned Development Overlay District. Assessor's Parcel Numbers 80G-1325-5-1, 80G-1406-26, and 80G-1406-29. J. Tepper (applicant); Heron Bay Homeowners Association c/o B. Ritter, HSS Inc. and F. Simon, Association President, (property owner). PLN16-0009

## SUMMARY AND RECOMMENDATION

The Heron Bay Homeowners Association proposes to construct a new kiosk for an attendant on HOA property near the Lewelling Boulevard entry circle of the Heron Bay residential neighborhood. The kiosk would include floor space of 183 square feet. Its purpose is to provide shelter and a restroom for an attendant that would provide surveillance at the entry into Heron Bay.

The Planning Commission and staff recommend approval of the attached Resolution that approves the request to modify Planned Development, PD-91-3, for the Heron Bay residential community to construct a kiosk for an attendant near the entrance to the Heron Bay development, on the Heron Bay Park property, subject to the attached Recommended Findings of Fact for Approval and

## Recommended Conditions of Approval.

### BACKGROUND

The Heron Bay Planned Development was approved and constructed from 1997 to 2001. It was entitled as an open residential community without gates at the Lewelling Boulevard Circle or Bayfront Drive. Bayfront Drive serves as access between the San Francisco Bay Trail in the City's Shoreline Recreation Area and Lewelling Boulevard.

In 2014, the Heron Bay Homeowners Association submitted an application proposing to construct access gates for vehicles, bicyclists and pedestrians at the entrance of the development to control traffic into Heron Bay. The proposal was a major modification of the Planned Development (PLN2014-00007), reviewed by the Planning Commission and City Council. At the time, staff recommended against the project because it would establish an undesirable precedent in the City's efforts to plan residential neighborhoods and that it countered the City's General Plan policy discouraging the development of "gated" communities or the gating of already developed subdivisions. In addition, the proposal was found to impede or obstruct public access to and from the Bay Trail and the City's shoreline area.

On June 19, 2014, the Planning Commission heard and denied the original proposal to install an access gate, which was appealed to the City Council. The City Council later denied the appeal on September 2, 2014. The Planning Commission, City Council and staff all recommended the applicant incorporate other effective and less exclusive safety and security measures such as installation of security cameras, maintenance and improvement of outdoor lighting, continuing the Neighborhood Watch efforts, working with the City's Police Department, and/or hiring private security to patrol the neighborhood.

In March 2016, the Association submitted a proposal for an attended kiosk on the Heron Bay Park site facing the Lewelling Boulevard circle and Bayfront Drive entry; Anchorage Drive was proposed as an egress only. The Planning Commission heard the Heron Bay Homeowners Association proposal at its October 20, 2016 meeting. At that meeting, the Planning Commission reviewed the proposal, listened to public comments, and recommended a revised project for City Council consideration. The Planning Commission, in its motion, recommended approval of the kiosk, however the Commissioners recommended removal of the Applicant's proposed Anchorage Drive reconfiguration to an egress-only gate arm and raised barrier. The majority of the Commissioners felt that the gate arm negatively impacted vehicular ingress/egress and was counter to the General Plan policy discouraging gated communities. The Planning Commission's final vote was: 5-Ayes, 1-Nay, and 1- Absent.

The Planning Commission audio for the October 20, 2016 meeting audio is available online at:

[http://sanleandro.granicus.com/MediaPlayer.php?view\\_id=2&clip\\_id=857](http://sanleandro.granicus.com/MediaPlayer.php?view_id=2&clip_id=857)

The Planning Commission's recommendation includes conditions of approval that protect the public's right of access to the Bay Trail and Public Shoreline. The Planning Commission recommended that the attendant at the kiosk not stop pedestrian, bicycle or vehicular traffic, and that the kiosk include appropriate directional signage to identify the location of the Bay Trail, public shoreline access and/or parking.

Following the Planning Commission's recommendation, Mr. Jeff Tepper, on behalf of the Heron Bay Homeowners Association (HOA), and Mr. A. Alan Berger, attorney for the HOA, submitted letters accepting the Planning Commission's recommendation to remove the gate and barrier from Anchorage Drive, but disagreed with the condition prohibiting the attendant from stopping passing traffic (attached). The letters requested that the City Council remove or modify the conditions of approval and allow the attendant to stop non-resident cars and to remove the requirement for the placement of directional signs identifying public access.

## **Project Proposal**

### Project Setting

Surrounding the subject property are various land uses including open space, wetlands, the City of San Leandro Shoreline Area and the San Francisco Bay Trail to the west and north; Southern Pacific Railroad right-of-way along the east and the Mission Bay Mobile Home Park, Sandev Mobile Home Park, and Washington Manor neighborhood beyond the railroad line; and San Lorenzo Creek and San Leandro and San Lorenzo industrial neighborhood to the south.

### Prior Entitlements

Per Planned Development PD-91-3 and various subdivision maps, Heron Bay was constructed as an open and non-gated neighborhood at the west terminus of Lewelling Boulevard. The neighborhood comprises 629 residential units (451 detached single-family units and 178 motor court units) on approximately 70 acres. The remaining 400-plus acres are restored marshland between the new housing and the Bay. Portions of the San Francisco Bay Trail in San Leandro extend from San Lorenzo Creek to Marina Park, which runs through this restored marsh next to Heron Bay. The Bay Trail follows a path along the edge of the Bay, crossing a flood control channel next to Marina Park, and continuing north to the Oyster Bay Regional Shoreline. Access to the Public Shoreline was established with the original entitlement.

The proposal to construct a kiosk for an attendant and reconfiguring Anchorage Drive to egress only is considered a major modification to the originally approved Planned Development. Thus, the request to modify the property development regulations was processed as a new application for Planned Development approval, which requires City Council approval.

The Applicants propose to construct a new entry kiosk for an attendant near the Lewelling Boulevard entry circle of the Heron Bay residential development. The kiosk comprises a floor area of 183 square feet, including a restroom and small storage closet.

The purpose of the kiosk for an attendant is to discourage crime in the subdivision. Following the denial of the gates in 2014, the Association hired a firm for staffed presence during select day and night time hours to monitor vehicles coming into the community. The Association states that the presence of an attendant monitoring vehicles has had a positive impact on reduced criminal activity within the neighborhood since February 2015.

### Kiosk

The kiosk would be situated on the Heron Bay Park property north of the Bayfront Drive sidewalk (see Exhibit A - Site Plan and Exhibit B - Enlarged Partial Site Plan and Floor Plan). It would have a setback of five feet from the covered canopy to the Bayfront Drive property line and three feet from the covered canopy to the Lewelling Boulevard right-of way line (property line). To accommodate the building, one tree from the Lewelling Boulevard circle parkway strip and at least two of the existing

poplar trees on the park property would be removed as well as approximately 15 lineal feet of the box hedge along the park frontage.

The kiosk comprises a floor area of 183 square feet which includes the attendant's desk/office space, a rest room and small storage closet. The kiosk has heights ranging from 10 feet, four inches to the ridge line and 13 feet, six inches to a faux-chimney. Its exterior materials include painted stucco and wood, cultured stone, and aluminum framed windows (see Exhibits C - Perspectives, Colors and Materials and Exhibit D - Elevations).

#### Anchorage Drive

The Planning Commission, through its recommendation, removes the proposed Anchorage Drive improvements. Thus the components shown in Exhibit A and E to reconfigure Anchorage Drive to egress only should be disregarded. Specifically, the egress gate (barrier arm) on the eastern half of the street and a drivable raised barrier with fold-over bollards and interlocking pavers on the western half of the street would not be constructed or installed.

#### Security Cameras and License Plate Readers/Cameras

The Association proposes to install security cameras with license plate readers on the proposed kiosk and stone columns. While the inclusion of the cameras are not part of the Planned Development approval, the proposed location and design of the cameras on the proposed kiosk and columns were evaluated by staff. The cameras would be placed beneath the patio cover of the kiosk parallel to Bayfront Drive (see Exhibit C). In addition, there would be two license plate reader/cameras on stone veneer columns. One would be located on Bayfront Drive, 15-20 feet from the Lewelling Boulevard circle and the other would be located on Anchorage Drive, south of the post for the egress gate (see Exhibit A). The columns would be approximately four feet tall, have a square column design of two- by two-feet, and finished with a decorative cap. The placement of the license plate readers/cameras are appropriately placed on Heron Bay development's private streets and proposed kiosk.

#### Operations

The applicant stated that cyclists and pedestrians entering or leaving from Lewelling Boulevard would not be monitored, to address prior concerns related to Bay Trail Public Access. The purpose of the attendant at the kiosk is to observe motor vehicles. The kiosk provides necessities of shelter and restroom facility for the attendant, which the Applicants feel has been an effective program in deterring criminal activity.

### **ANALYSIS**

Per the applicant's statement, the HOA has hired a firm to staff the development's entrance with an attendant and reported positive results in reducing incidents of crime to the neighborhood. The HOA proposes the kiosk as a permanent shelter and office for the attendant. This would be an improvement to the current practice where an attendant is seated and/or standing on the Bayfront Drive sidewalk or Lewelling Boulevard circle. On occasion there has been a portable (temporary) umbrella for shade or shelter.

The City recommends that the kiosk should be placed outside of the public right-of-way, at a location on private property where public access would not be encumbered. Staff further recommends that the kiosk not be placed in the path of pedestrians accessing the Bay Trail and Public Shoreline, in

accord with the San Francisco Bay Conservation Development Commission's (BCDC) requirements for public access. The proposed security kiosk would be placed on Heron Bay Park property outside of the Lewelling Boulevard right-of-way and north of the Bayfront Drive sidewalk.

The kiosk exterior design is a low-profile single story structure articulated with materials (i.e. cultured stone, stucco walls, wood posts and roof trim, and flat concrete tile for the roof) and design elements (i.e., covered front porch area, wainscot, gabled roof, faux- chimney) that fit in a residential neighborhood context. The City Engineering and Transportation Department identified a sanitary sewer line near the proposed kiosk for its restroom.

#### Planning Commission Removal of Proposed Anchorage Drive Improvements

The Planning Commission recommended removal of the proposed Anchorage Drive improvements (i.e., gate arm and raised barrier) in its motion to approve. In their discussion, the Planning Commission found that restricting all ingress to Bayfront Drive and taking away vehicle ingress via Anchorage Drive at the Lewelling Boulevard Circle would create traffic impacts (increased traffic) to the various streets that flow west to east and south to east (i.e., Harbor Way, Oceanside Way, Cruiser Drive, Charter Way, Mariner Way, Regatta Way, Atlantus Avenue, and the south end Anchorage Drive). The Planning Commission determined that the Heron Bay community should have two ways in and out of the existing neighborhood. In addition, the Commission stated that there was no overriding safety or security data provided to support a need for the installation of a gate, even though the design functioned as a partial gate with a raised landscaped barrier. The Commission felt strongly that the proposed Anchorage Drive improvements would be contrary to existing General Plan Policy against gating a community. The Applicant had no objection to the Planning Commission's recommendation on this matter.

#### Prohibition to Stop Vehicles and Bay Trail / Public Access Directional Signage

With the appropriate recommended conditions of approval, both the Planning Commission and staff are able to make findings to recommend approval of the proposed modifications to the Heron Bay Planned Development to accommodate a kiosk and attendant.

Below are the two recommended conditions to which the Applicant disagrees:

- The attendant/security personnel shall not stop pedestrian, bicycle or vehicular traffic. In addition, the attendant/security personnel should not conduct any business in the street or sidewalk. At all times the operation of the kiosk shall be in compliance with BCDC and City of San Leandro requirements in maintaining public access to and from the Bay Trail and Shoreline Area. Any incidents of public detainment or impeding public access to the shoreline shall be immediate grounds for the revocation of this Planned Development Modification. (Condition II. C.).
- The kiosk's Front Elevation (south facing Bayfront Drive) and the Right Elevation (east facing the Lewelling Boulevard circle), should include BCDC directional signage identifying the Bay Trail, Public Shore and/or Parking (<http://www.bcdc.ca.gov/pdf/planning/SSSG.pdf>). Furthermore, as part of the Building Permit application submittal, a plan shall be provided showing additional Public Access signs installed along Bayfront Drive clearly informing and directing public access to the City's Shoreline area and the Bay Trail to the satisfaction of the Community Development Director. The removal or relocation of any required BCDC public access signage shall be prohibited without prior written approval from the Community Development Director. (Condition II. E.).

### Stopping Vehicles

The HOA disagrees with the Planning Commission and staff recommendations preventing the attendant at the kiosk from stopping non-resident cars entering Bayfront Drive and questioning non-resident visitors as to the purpose of their visit. Although their request is for permission to stop non-resident cars (all resident cars will have identifying stickers or similar) and to direct them to the open space area, the HOA indicated that they have no interest in or plans to alter, modify or change public access to the shoreline or trail. Staff is unable to support the removal or modification of the condition that prevents the attendant/security personnel from stopping vehicular traffic based on the following reasons:

1. There should be no perceived interference with access to the Bay Trail and the City's public shoreline access. Any stoppage of a vehicle can appear to be a discouragement or impediment to the use of the Bay Trail and public shoreline access. Persons accessing the Bay Trail and public shoreline from a public access easement are not legally required to stop and identify themselves.
2. There is a liability to the City and to the attendant when endorsing this procedure. To stop vehicular traffic, the attendant must walk out of the kiosk and onto the street. Logistically and operationally, the attendant walking on to the sidewalk or street to stop vehicles would be an inappropriate and unsafe action to the attendant and would functionally privatize a public access area.
3. Stopping traffic on Bayfront Drive would be a liability to other drivers queuing onto Lewelling Boulevard. The attendant cannot stop traffic in the Lewelling Boulevard circle, as it is a public right-of-way. In addition, stopping a vehicle on Bayfront Drive would have a similar effect when a vehicle is stopped and additional vehicles would queue and obstruct other vehicles in the Lewelling Boulevard circle.
4. Even without intent, the stopping of a person(s) in a vehicle could be perceived as profiling of individuals. This concern was stated by one of the speakers at the Planning Commission public hearing. A resident felt that the kiosk was not necessary, since the stopping by the attendant of their friends or visitors coming to their home could be subject to profiling.

The condition prohibiting the attendant from stopping vehicles would prevent the perception, concerns, conflicts and liabilities to the attendant and the general public. As it is stated in the applicant's supporting statement, the monitoring program is to provide an effective pair of eyes observing motor vehicles. It was inferred by the City at the time of application that the attendant would only use the kiosk as an office and to observe but not interact with vehicles. The recommended conditions of approval do not prohibit the use of the kiosk as a visitor's center where guests can obtain information such as asking the attendant questions about access, directions, parking, etc.

### Signage

The HOA disagrees with the Planning Commission and staff recommendation to place public access signage on the kiosk. However, the City of San Leandro's Administrative Code provides rules and regulations for park operating procedures (see attached). Section 7.1.305 (f) provides that signs stating the closing hours and exceptions thereto shall be conspicuously posted at all entrances to the San Leandro Shoreline Recreation Area. Thus, it is in the City's purview to require a condition of

approval for signage, since the project is an entryway to the City's Shoreline Area. The recommendation is to use standardized BCDC Bay Trail access signs in an unobtrusive manner on the side elevations of the kiosk facing Lewelling Boulevard and Bayfront Drive.

As the condition is currently worded, staff believes it provides the HOA an opportunity and flexibility to install BCDC standard signage and/or the installation of a sign on the building or on a column or post on Bayfront Drive to comply with the City's Administrative Code Section 7.1.305 with the details and specifications accepted by the City. Either or both would be helpful and informative. In fact, a sign containing the City's detailed sign criteria would include more information than the BCDC standard, such as the hours during the dates of the year that the San Leandro Shoreline Recreation Area is open to the public. As a result, the signage would be helpful in assisting the attendant in providing necessary information to general public and visitors, and this would allow more uninterrupted time to the attendant to observe the immediate adjacent area.

With the recommended conditions of approval, staff finds the proposal conforms to the City's adopted General Plan policies and serves as a fair compromise that provides the HOA with desired surveillance and security measures while continuing to maintain public shoreline access. The placement of the kiosk on private property and its recommended operation will maintain the citywide bike system connectivity between Lewelling Boulevard and the San Francisco Bay Trails, and permit unfettered access to the San Leandro shoreline for continued public use and enjoyment.

### **Applicable General Plan Policies**

Policy 2.10 Gated Communities. Unless overriding public safety considerations exist, discourage the development of "gated" communities or the gating of already developed neighborhoods or subdivisions.

Policy 14.01 Citywide Bikeway System. Develop and maintain a Citywide bikeway system which effectively serves residential areas, employment centers, schools, parks, and multi-modal terminals.

Policy 21.02 Park Maintenance. Provide for the regular, systematic maintenance of San Leandro's parks and recreational facilities to prevent deterioration, ensure public safety, and permit continued public use and enjoyment.

### **Environmental Review**

This project, to construct new gates and fences, is categorically exempt from the California Environmental Quality Act (CEQA) per CEQA Guideline Article 19, Categorical Exemption, Section 15303 (e), New Construction of Small Structures.

### **Summary of Public Outreach Efforts**

For the City Council meeting, notices for the public hearing were mailed to all of the Heron Bay homeowners, property owners and business owners within 500 feet of the Heron Bay neighborhood, the Washington Manor Homeowners Association and the Golden State Mobilehome Owners League (Mission Bay). In addition, notices were mailed to BCDC staff and the Association of Bay Area Government (ABAG) Bay Trail staff. Placards were posted on utility boxes and poles at the Heron Bay entrance and at the corner of Lewelling and Wicks Boulevards. A legal advertisement was published in the East Bay Times newspaper. This is similar to the notification for the October 20, 2016 Planning Commission meeting.

## **ATTACHMENTS**

### **Attachments to Staff Report**

- Applicant's Supporting Statement
- Letter from Jeff Tepper on behalf of Heron Bay HOA, dated November 3, 2016
- Letter from A. Alan Berger, Attorney for Heron Bay HOA, dated November 4, 2016
- City of San Leandro Administrative Code Title 7, Chapter 1, Article 3 (Excerpt, Section 7.1.305)
- Vicinity Map (from Planning Commission meeting)
- Planning Commission Staff Report
- Planning Commission Resolution and Findings of Fact (revised per Planning Commission motion)
- Recommended Conditions of Approval (revised per Planning Commission motion)
- Exhibit A - Site Map
- Exhibit B - Enlarged Partial Site Plan and Floor Plan
- Exhibit C - Perspectives, Colors and Materials
- Exhibit D - Elevations
- Exhibit E - Anchorage Drive Improvements
- For Information Only - Tract Map 6810
- For Information Only - City Engineer's Report and Conditions of Approval for Vesting Tentative Map Tract 6665
- For Information Only - San Francisco Bay Trail Map (excerpt from <http://www.baytrail.org/baytrailmap.html>)
- For Information Only - Photographs of Existing Site Conditions

### **Attachment to Related Legislative File**

- Exhibit 1 - Recommended Conditions of Approval

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