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SI Found (De Novo to Continue)

Appeal Filed: 1/17/2018
 49th Day: 3/27/2018
 Staff: Rainey Graeven - SC
 Staff Report: 2/23/2018
 Hearing Date: 3/8/2018

APPEAL STAFF REPORT: SUBSTANTIAL ISSUE DETERMINATION & DE NOVO HEARING

Appeal Number: A-3-SCO-18-0004

Applicant: Opal Cliffs Recreation District

Appellants: Commissioners Erik Howell and Dayna Bochco

Local Government: Santa Cruz County

Local Decision: Approved by Santa Cruz County Planning Commission on December 13, 2017 (Coastal Development Permit (CDP) Application Number 161195).

Project Location: On the seaward side Opal Cliff Drive at 4520 Opal Cliff Drive in Santa Cruz County.

Project Description: After-the-fact authorization of the following: 1) a nine-foot-tall wrought-iron fence and locked gate along Opal Cliff Drive; 2) an access fee program (requiring a \$100 keycard to open the gate, with free limited access limited to summertime daytime access only); 3) approximately 30-foot-long and nine-foot-tall chain link fencing on the side yards of the Park; 4) a gate attendant program; 5) various previously installed improvements including a concrete paver pathway, stone retaining walls, landscaping and irrigation; and 6) proposed parking improvements (not yet installed), including signs and striping of parking spaces.

Staff Recommendation: Substantial Issue Exists; Approval with Conditions

Important Hearing Procedure Note: The Commission will not take testimony on the “substantial issue” recommendation unless at least three Commissioners request it. The Commission may ask questions of the Applicant, any aggrieved person, the Attorney General or the Executive Director prior to determining whether or not to take testimony regarding whether the appeal raises a substantial issue. If the Commission takes testimony regarding whether the appeal raises a substantial issue, testimony is generally (and at the discretion of the Chair) limited to three minutes total per side. Only the Applicant, persons who opposed the application before the local government (or their representatives), and the local government shall be qualified to testify during this phase of the hearing. Others may submit comments in writing. If the Commission finds that the appeal raises a substantial issue, the de novo phase of the hearing will follow, unless it has been postponed, during which the Commission will take public testimony. (Title 14, California Code of Regulations (CCR) Sections 13115 and 13117.)

SUMMARY OF STAFF RECOMMENDATION

Santa Cruz County approved a coastal development permit (CDP) for the Opal Cliffs Recreation District (OCRD)¹, a public agency and special district of Santa Cruz County government, that recognizes after-the-fact (ATF) unpermitted development at Opal Cliffs Park (Park) including: 1) a nine-foot-tall wrought-iron fence and locked gate along Opal Cliff Drive; 2) a Park and beach access fee program (requiring an annual \$100 keycard to open the gate, with free Park and beach access limited to summertime daytime hours only); 3) a gate attendant program (i.e., OCRD staff that monitors the use of the gate and enforces fee requirements); and 4) various previously installed improvements (including a concrete paver pathway, stone retaining walls, landscaping and irrigation). The County’s approval also includes authorization of new parking improvements including striping and signage delineating ADA parking. The appeal contends that the County’s approval raises issues of consistency with County Local Coastal Program (LCP) provisions related to public recreational access and visual resources, and with the Coastal Act’s public access and recreation policies (which also apply given that the location of the approved development is seaward of the first through public road).

The County-approved project that is the subject of the appeal is the end result of a long and protracted enforcement case that was first opened by Commission enforcement staff in 2006 (V-3-06-012). At that time, staff became aware that the Applicant had installed the above-referenced fence and locking gate apparatus sometime in the late 1990s or early 2000s without the benefit of a CDP. That violation also applies to the fee and gate attendant program that were apparently instituted sometimes in the mid-1980s. Although it is undisputed that the fence, gate, and Park improvements approved by the County had not been previously authorized by a CDP, the Applicant argues that the fee and gate attendant program are simply a continuation of the manner in which OCRD has operated the Park prior to Coastal Act permitting requirements, and that the Commission approved these elements in 1981 by virtue of its approval of CDP P-80-393. In terms of the former, there is only limited information available, and the information that is

¹ The OCRD was established in 1949 and owns and operates Opal Cliffs Park (including its associated beach accessway) and nothing else. The District is made up of some 100 or so properties in the immediate Opal Cliffs area (i.e., all within several hundred feet of the Park, and these property owners are the voting constituency that elects the OCRD Board of Directors, who then make decisions regarding the Park.

available suggests that the Applicant may have employed a gate attendant at times prior to the Coastal Act, but there is no evidence to suggest that access fees were charged for general public access at this location, including to the beach.

With respect to CDP P-80-393, staff has determined that that CDP expired back in 1982, and thus is no longer valid. The Applicant disputes the expiration of CDP P-80-393, and suggests that CDP P-80-393 and its recorded access program (allowing a \$20 access fee that could be adjusted by OCRD) are still in effect. Staff disagrees. First, the Commission never discussed nor approved any access fees or any gate attendant for the Park in its approval of CDP P-80-393. Rather, that approval was based on providing a six-foot-tall chain link fence and gate to help provide some form of access control to address what OCRD had identified at the time as the “unstable, hazardous nature of the bluffs in the area.” The suggestion that the Commission approved a beach access fee program (whether \$20 or \$100) and a gate attendant is simply not supported by the CDP record. With respect to the recorded access program, even if the CDP were still valid, the access program itself terminated by its own terms when the Applicant took out the six-foot-tall chain link fence and gate and replaced it with the nine-foot-tall wrought-iron fence and gate in the late 1990s or early 2000s without benefit of a CDP.² In other words, no matter how one frames this past CDP history in terms of the expiration issue, none of the County-approved development at the site, including the gate/fence/guard and the overall Park and beach access fee program, is currently authorized by a CDP, and thus the current existing analytic baseline for considering the County-approved project is a public beach park with a roughly six-foot-tall chain link fence and gate without any fees for access – in other words, the same condition as when the Commission considered the Applicant’s CDP application (P-80-393) in 1981. The County, in its action that was appealed, approved the Applicant’s proposed development after-the-fact, including the fee program, as well as new parking improvements, and it is the after-the-fact approval of all of these elements (as well as the new parking improvements) that is before the Commission in this appeal.

Thus, while there is certainly a complicated and involved permit history, at a very basic level the County-approved project replaces free public beach access and use with a significant access fee program that requires access users to purchase a \$100 gate key for yearly access that is supported by a significant fence/gate structure staffed by a gate attendant who enforces the program’s terms. This construct raises significant and fundamental consistency issues with primary tenets of the Coastal Act and California’s coastal management program more broadly in terms of maximizing access for the broadest of the State’s economically and culturally diverse population to our public beach commons. The Applicant is proposing a fee to access and use a public Park and beach. While fees for parking at public beaches are relatively common, staff is not aware of any other similar fee to use a beach at any other publicly managed beach accessway in California. The County-approved and Applicant-proposed project reduces public recreational access opportunities when the LCP and the Coastal Act require that they be maximized. In

² As more fully explained in the staff report, the recorded access program included a duration clause that stated (in applicable part) that the access program would only remain in force and effect during the time that the development it authorized was present. Because the development that was authorized by P-80-393 was removed by the Applicant and replaced by the current nine-foot-tall fence/gate without the benefit of a CDP, the access program, to the extent it was ever applicable given the CDP expiration issue, terminated of its own terms and is of no force or effect.

addition, a \$100 access fee is a significant cost to many, if not most, potential public access users, particularly when one considers that this is a public Park and beach facility. Ultimately, unless members of the public who want to use this public Park and beach have the ability to pay a \$100 fee, the Applicant is effectively proposing to prohibit year-round public beach access at this location for those who cannot or may not wish to pay such a fee. In other words, because the beach accessway through the Park is essentially the only readily available access to the pocket beaches below, and it is the only vertical accessway at all to the beach and shoreline for a distance of just over a mile in this urbanized area of the Santa Cruz County coast, a \$100 annual fee serves to prohibit anyone who cannot afford to pay the fee, or may not wish to pay the fee, from accessing the beaches of this stretch of coastline. This fee-based beach access prohibition will fall disproportionately on the lower income and more disadvantaged among the beach-going public and on those who do not live near the Opal Cliffs area, and disproportionately benefits those who live in the immediate area and are more likely to be able to make more frequent use of the Park and beach.

Further, the proposed nine-foot tall wrought-iron fence and gate system present a rather imposing and exclusionary barrier to public access generally as compared to the baseline six-foot-tall chain link fence/gate. And this has the additional adverse impact of establishing more than a physical barrier to access, but a psychological barrier as well. In other words, potential access users who are not familiar with the setting, particularly visitors from inland locations who do not live in Opal Cliffs, may be intimidated by such an imposing edifice, and thus may not approach the accessway in the first place, whether fees are charged or not. This barrier to general access, especially to visitors from outside the area, is only further enforced by the presence of a gate attendant. Regardless of whether the attendant's role is to help all potential access users understand Park rules, etc., as the Applicant indicates, the presence of a person at the gate and the accessway will tend to only serve to further emphasize the feeling that non-local users are not generally welcome, and may intimidate users not familiar with or accustomed to gate attendants, further dissuading them from using the accessway, and further reducing public recreational access opportunities inconsistent with the Coastal Act and the LCP. Again, staff is not aware of any other similar "gate attendant" and/or beach access fee programs at any other publicly-managed beach accessway in California.

In short, the County-approved and Applicant-proposed project is antithetical to Coastal Act and LCP public access and recreation requirements that apply here, including fundamentally those that require that public recreational access opportunities be maximized. Most notably, the fee program (including the imposing fence, gate, and attendant) inflicts substantial limitations on general public access to the beach, and is not consistent with the requirements of the Coastal Act and the LCP. The proposed project also disproportionately adversely affects those potential beach goers of more limited incomes who cannot afford a \$100 beach access fee, as well as those who live some distance from the Opal Cliffs area and may not wish to pay a fee for sporadic use of the Park. Finally, the overall imposing fence and gate system raise a series of LCP issues related to protecting public views, especially when one considers that the Park provides the only public visual respite towards the ocean along all of Opal Cliff Drive because the public's view is otherwise blocked by a row of large blufftop houses and related residential development between the public street and the shoreline throughout all of Opal Cliff Drive.

As such, staff believes that the County-approved project raises critical and fundamental questions regarding its consistency with Coastal Act and LCP public access and recreation requirements, as well as with the LCP's public view provisions, and staff recommends that the Commission find substantial issue and take jurisdiction over the CDP application for this project. On de novo review, Opal Cliffs Park is a public beach access/park facility that is operated by a public agency, and for all the reasons articulated above, the Coastal Act and LCP do not support allowing public access to be provided for the exclusive benefit of those persons who can afford the \$100 per year fee to access the Park all year, as opposed to being generally available for free to the beach-going public in the manner that is the norm for coastal accessways, including all of the other coastal accessways in Santa Cruz County operated by the County Parks Department and State Parks. At its core, the Applicant's proposed project would set up what can best be described as a two-tiered access system, one where those who are able to pay the fee are afforded year-round beach and shoreline access, and those who cannot or do not wish to pay the \$100 access fee are limited to access during the summer months only. This two-tiered construct is unacceptable for California's most valuable public resources, and cannot be found consistent with fundamental Coastal Act and LCP requirements to maximize public recreational access opportunities *for all*. The State's beaches, including the pocket beaches at this location, are there for everyone, regardless of their ability to pay, including those not fortunate enough to live in coastal Opal Cliffs near this accessway, and staff cannot see how any outcome other than opening this beach accessway to free general public use could be found appropriate in this case.

Thus, for the reasons stated above, staff recommends that the Commission approve a conditioned CDP that requires free year-round *general* public access to the Park and the beaches at this location, and signage and other related development to reinforce such use parameters. While the fencing and gate attendant raise serious issues, with conditions requiring ample signage indicating free public coastal access, with conditions requiring the gate attendants to act solely as Park attendants facilitating public use (including carrying beachgoers' belongings down to the beach), and with conditions requiring the fence/gate to be replaced with ones that are less imposing and that blend in more seamlessly to the area's beach aesthetic upon their needed redevelopment, the proposed project as conditioned can be found consistent with the Coastal Act and LCP's access and visual protection policies.

The motion and resolution to affect staff's recommendation is found on page 7.

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Appendix A – Substantive File Documents

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EXHIBITS

Exhibit 1: Location Maps

Exhibit 2: Project Site Photos

Exhibit 3: Commission Staff’s Violation Letters, Memos, and Letter to the County’s Planning Commission dated 12/13/17

Exhibit 4: Santa Cruz County’s Final Local Action Notice

Exhibit 5: P-80-393 Staff Report and Notice of Permit Issuance

Exhibit 6: P-80-393 Access Program Deed Restriction

Exhibit 7: Appeal of Santa Cruz County CDP Approval

Exhibit 8: Applicable Coastal Act and LCP Policies and Standards

Exhibit 9: OCRD Budget Information

Exhibit 10: CDP P-80-393

Exhibit 11: Staff Report for CDP P-80-393-A1 (removed from Commission’s 1/7/2009 agenda)

I. MOTIONS AND RESOLUTIONS

A. Substantial Issue Determination

Staff recommends that the Commission determine that a **substantial issue** exists with respect to the grounds on which the appeal was filed. A finding of substantial issue would bring the CDP application for the proposed project under the jurisdiction of the Commission for a de novo hearing and action. To implement this recommendation, staff recommends a **NO** vote on the following motion. Failure of this motion will result in a de novo hearing on the CDP application, and adoption of the following resolution and findings. Passage of this motion will result in a finding of No Substantial Issue on the appeal and the local action will become final and effective. The motion passes only by affirmative vote of a majority of the Commissioners present.

***Substantial Issue Motion:** I move that the Commission determine that Appeal Number A-3-SCO-18-0004 raises no substantial issue with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act, and I recommend a no vote.*

***Resolution to Find Substantial Issue:** The Commission hereby finds that Appeal Number A-3-SCO-18-0004 presents a substantial issue with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act regarding consistency with the certified Local Coastal Program and/or the public access and recreation policies of the Coastal Act.*

B. CDP Determination

Staff recommends that the Commission, after public hearing, **approve** a coastal development permit for the proposed development. To implement this recommendation, staff recommends a **YES** vote on the following motion. Passage of this motion will result in approval of the CDP as conditioned and adoption of the following resolutions and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

***CDP Approval Motion:** I move that the Commission approve Coastal Development Permit Number A-3-SCO-18-0004 pursuant to the staff recommendation, and I recommend a yes vote.*

***Resolution to Approve CDP:** The Commission hereby approves Coastal Development Permit Number A-3-SCO-18-0004 and adopts the findings set forth below on grounds that the development as conditioned will be in conformity to the maximum extent possible with Santa Cruz County Local Coastal Program policies and Coastal Act access and recreation policies. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.*

II. STANDARD CONDITIONS

These permits are granted subject to the following standard conditions:

- 1. Notice of Receipt and Acknowledgment.** The permit is not valid and development shall not commence until a copy of the permit, signed by the Permittees or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
- 2. Expiration.** If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
- 3. Interpretation.** Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
- 4. Assignment.** The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
- 5. Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Commission and the Permittees to bind all future owners and possessors of the subject property to the terms and conditions.

III. SPECIAL CONDITIONS

This permit is granted subject to the following special conditions:

- 1. Approved Project, Physical Development.** This CDP authorizes the following development: a nine-foot-tall wrought iron fence with integral gate along Opal Cliff Drive and associated gate locking mechanism; the approximately 30-foot-long and nine-foot-tall chain link fencing located along each of the side yards of the Park extending seaward from the fence and gate; an ADA-compatible concrete paver pathway; six concrete benches; two approximately three-foot high retaining walls on either side of the pathway; striped parking (including one handicapped parking space) in the area between Opal Cliff Drive and the fence and gate; access information signage (including ADA parking signage); and landscaping/irrigation improvements, all as shown on the proposed project plans (dated April 4, 2017 and dated received in the Coastal Commission's Central Coast District Office on January 2, 2018), all as may be modified by **Special Condition 2** below. At the time the fence and gate require substantial repair/maintenance (i.e. to 50 percent or more of the fence/gate components) and/or replacement, the Permittee shall submit a CDP amendment application for a revised fence and gate design that provides a means of controlling nighttime access for public safety but which minimizes public access and visual impacts consistent with LCP and Coastal Act public access policies (e.g., an erectable nighttime closure that could be rolled across the street frontage each night and would leave the park entrance free and open during the hours of operation), and that is sited and designed to maximize through

public views and to enhance public views overall otherwise. Any other development than that identified as the Approved Project is not approved by this CDP.

2. **Public Access Management Plan.** WITHIN 90 DAYS OF CDP APPROVAL, the Permittee shall submit for Executive Director review and approval two sets of a Public Access Management Plan (Access Plan). The Access Plan shall clearly describe the manner in which general public access associated with the approved project is to be provided and managed, with the objective of maximizing general public access to Opal Cliffs Park facilities on the blufftop, the beach access stairway, the beaches at the base of the stairway, and the offshore surfing and ocean areas. The Access Plan shall at a minimum include the following:
 - a. **Clear Depiction of Public Access Areas and Amenities.** All public access areas and amenities, including all of the areas and amenities described in this condition above, shall be clearly identified as such on the Access Plan.
 - b. **Public Access Signage/Materials.** The Access Plan shall identify all signage, website information, and any other project elements that will be used to facilitate, manage, and provide information to the general public regarding public access to Opal Cliffs Park and all of the areas and amenities described in this condition above. Sign details showing the location, materials, design, and text of all signs shall be provided, and the Park shall include at least one sign providing Park use information (including access hours and information about the use of the overlook and the beaches located at the bottom of the stairway), and such sign shall include the Commission's standard access program "feet" logo and the California Coastal Trail emblem and be located facing Opal Cliff Drive so as to provide clear public access information without impacting public views and site character to the maximum extent feasible. All signs shall be sited and designed to blend into the site and setting aesthetics as much as possible.
 - c. **No Public Access Disruption.** Development and uses within the public access areas that disrupt and/or degrade general public access (including areas set aside for private uses, barriers to public access (furniture, planters, temporary structures, private use signs, ropes, etc.)) shall be prohibited. The public access areas and amenities shall be maintained in a manner that maximizes general public use and enjoyment.
 - d. **Public Access Use Hours.** All public access areas and amenities, including all of the areas and amenities described in this condition above, shall be available to the general public free of charge during at least daylight hours (i.e., one hour before sunrise to one hour after sunset) daily.
 - e. **Donation Program.** If the Permittee wishes to include a donation program to help fund Park operations, the Access Plan shall provide details on any such program, including any donation stations and related materials, all of which shall be sited and designed to have the least impact on public views.
 - f. **Park Attendant Program.** If the Permittee wishes to include a park attendant program, the Access Plan shall identify all parameters for such park attendants, where such parameters shall at the minimum include the following: the park attendant's role shall be to greet Park users, to provide Park users with information regarding the use parameters

of the Park, and to provide other general assistance as needed (including assisting Park users with the gate, providing assistance in carrying beachgoers' belongings down the stairway when requested, and answering any questions related to the Park's operations). In addition, any such park attendants shall be required to wear casual clothing (e.g., shorts, jeans, khakis, etc.), including a t-shirt and/or sweatshirt that clearly identify their role as a park attendant, where the design of the t-shirt/sweatshirt shall be identified in the Access Plan. Any use of a park attendant program shall prohibit the park attendant from discouraging free public use of the Park during public access use hours (see subsection (d) above).

- g. Public Access Areas and Amenities Maintained.** The public access components of the project, including signage, landscaping, hardscaping, irrigation, benches, the pathway to the beach stairway, the overlook area, and the beach stairway itself shall be maintained in their approved state for the duration of the this permit, including any future permit amendments.

The Permittee shall undertake development in accordance with the approved Public Access Management Plan, which shall govern all general public access to the site pursuant to this CDP.

IV. FINDINGS AND DECLARATIONS

The Commission finds and declares as follows:

A. PROJECT LOCATION

The proposed project is located at Opal Cliffs Park along Opal Cliff Drive, which extends from 41st Avenue in Pleasure Point to Cliff Drive downcoast in the City of Capitola. This area is generally referred to as Opal Cliffs, but it is technically part of the larger Live Oak Beach area of Santa Cruz County between the Cities of Santa Cruz and Capitola.

Santa Cruz County Regional Setting

Santa Cruz County is located on California's central coast and is bordered to the north and south by San Mateo and Monterey Counties (see **Exhibit 1**). The County's shoreline includes the northern half of the Monterey Bay and the rugged north coast extending to San Mateo County along the Pacific Ocean. The County's coastal zone resources are varied and oftentimes spectacular, including the Santa Cruz Mountains coastal range and its vast forests and streams; an eclectic collection of shoreline environments ranging from craggy outcrops to vast sandy beaches (in both urban and more rural locations); numerous coastal wetland, lagoon and slough systems; habitats for an amazing variety and number of endangered species; water and shore oriented recreational and commercial pursuits, including world class skimboarding, bodysurfing, and surfing areas; internationally renowned marine research facilities and programs; special coastal communities; vast State Park lands; and the Monterey Bay itself. The unique grandeur of the region and its national significance was formally recognized in 1992 when the area offshore of the County became part of the Monterey Bay National Marine Sanctuary (MBNMS), the largest of the thirteen such federally protected marine sanctuaries in the nation.

Santa Cruz County's rugged mountain and coastal setting, its generally mild climate, and its well-honed cultural identity combine to make the area a desirable place to both live and visit. As a result, the County has seen extensive development and regional growth over the years since the coastal permitting requirements of Proposition 20 and the Coastal Act were instituted in the early 1970s. In fact, Santa Cruz County's population has more than doubled since 1970 alone with current State estimates indicating that the County is home to over one-quarter of a million persons.³ This level of growth not only increases the regional need for housing, jobs, roads, urban services, infrastructure, and community services, but also the need for park areas, recreational facilities, and visitor serving amenities. For coastal counties such as Santa Cruz where the vast majority of residents live within a half-hour of the coast, and most significantly closer than that, coastal zone resources are a critical element in helping to meet these needs. Furthermore, with coastal parks and beaches themselves attracting visitors into the region, an even greater pressure is felt at coastal recreational systems and destinations like Live Oak, including the southern portion of Live Oak where Pleasure Point and Opal Cliffs are located. With the Santa Cruz County shoreline and beaches providing arguably the warmest and most accessible ocean waters in all of Northern California, and with the large population centers of the San Francisco Bay area, San Jose, and the Silicon Valley nearby, this type of resource pressure is particularly evident in coastal Santa Cruz County.

Live Oak is part of a larger area, including the Cities of Santa Cruz and Capitola, that is home to some of the best recreational beaches and shoreline areas in the Monterey Bay area. Not only are north Monterey Bay weather patterns more conducive to beach and shoreline recreation than the rest of the Monterey Bay area, but north bay beaches are generally the first beaches accessed by visitors coming from the north of Santa Cruz. With Highway 17 providing the primary access point from the north (including from the San Francisco Bay Area, San Jose and the Silicon Valley) into the Monterey Bay area, Santa Cruz, Live Oak, and Capitola are the first coastal areas that visitors encounter upon traversing the Santa Cruz Mountains. With an \$850 million tourist industry,⁴ the Santa Cruz area is also a prime visitor destination for other shoreline pursuits, including the very popular Santa Cruz Beach Boardwalk, the only major amusement park left along the coast of California, and the oldest amusement park in the State. The Boardwalk's some three million annual visitors also look to experience the rest of the area, including its beaches and shoreline. As such, the Live Oak beach area (including Pleasure Point/Opal Cliffs) is an important coastal access asset for not only Santa Cruz County, but also the entire central and northern California region, including inland population centers of the Central Valley.

Live Oak Beach Area

Live Oak is the name for the unincorporated segment of Santa Cruz County located between the City of Santa Cruz on the upcoast end and the City of Capitola on the downcoast end (see **Exhibit 1**). The Live Oak coastal area is well known for excellent public access opportunities for beach area residents, other Live Oak residents, other Santa Cruz County residents, and visitors to

³ Census data from 1970 shows Santa Cruz County with 123,790 persons; California Department of Finance estimates for 2017 indicate that over 276,603 persons reside in Santa Cruz County (*California Department of Finance Demographic Research Unit, Report E-1: Population Estimates for Cities, Counties, and the State January 1, 2016 and 2017*; Sacramento, California; May 1, 2017).

⁴ Visit California 2016 Economic Impact by State, Region, & County.

the area. Walking, biking, skating, viewing, ocean swimming, skimboarding, bodysurfing, surfing, fishing, sunbathing, and more are all among the range of recreational activities possible along the Live Oak shoreline. In addition, Live Oak also provides a number of different coastal environments including sandy beaches, rocky tidal areas, blufftop terraces, and coastal lagoons. Live Oak includes a number of defined neighborhood and special communities within it, including the larger Pleasure Point and Opal Cliffs areas where the proposed project is located. These varied coastal characteristics make the Live Oak shoreline unique in that a relatively small area provides different recreational users a diverse range of alternatives for enjoying the coast. By not being limited to one large, long beach, or solely an extended stretch of rocky shoreline, the Live Oak shoreline accommodates recreational users in a manner that is typical of a much larger access system.

Primarily residential with some concentrated commercial and industrial areas, Live Oak is a substantially urbanized area with few major undeveloped parcels remaining. Development pressure has been disproportionately intense for this section of Santa Cruz County. Because Live Oak is projected to absorb the majority of the unincorporated growth in Santa Cruz County, development pressure will likely continue to tax Live Oak's public infrastructure (e.g., streets, parks, beaches, etc.), including with respect to Live Oak beaches, which make up the majority of identified public park facilities.⁵ Given that the beaches are the largest public facility in Live Oak, and called out as such by the LCP, this pressure will be particularly evident in the immediate shoreline and beach area, and maximum access to these areas is thus critical to satisfy both resident and visitor recreational needs.

Pleasure Point/Opal Cliffs

Pleasure Point is the name of the predominantly residential area located roughly between upcoast Moran Lake and downcoast 41st Avenue (at the "Hook" where it transitions to the Opal Cliffs area). Pleasure Point is also the name of the offshore surfing area between Soquel Point (aka "Pleasure Point") and the Hook (see **Exhibit 1**). This area has an informal, beach community aesthetic and ambiance that clearly distinguishes it from inland commercial areas as well as the downcoast Opal Cliffs neighborhood towards Capitola. Housing stock is eclectic and densely crowded together. Though certainly in the midst of a gentrification that has intensified over the last decade or so, the Pleasure Point area retains its informal charm and appeal, much of it rooted in the intrinsic relationship between the built environment, its inhabitants, and the surfing area offshore.

Pleasure Point is an extremely popular recreational surfing destination that is well known around the world. It is not uncommon to see more than 100 surfers in the water, even more when prime surfing conditions are present, and to see small groups of people lining East Cliff Drive both enjoying the shoreline view and watching the surfing below.

The Opal Cliffs area is also part of this prime and popular visitor destination, especially for surfing, but its built environment characteristics are significantly different from adjacent Pleasure

⁵ The LCP identifies Live Oak at buildout with a population of approximately 29,850 persons; based on the County's recreational formulas, this corresponds to an LCP-identified need for corresponding park acreage of 150-180 acres. Though Live Oak accounts for less than 1% of Santa Cruz County's total acreage, this projected park acreage represents nearly 20% of the County's total projected park acreage.

Point. Perhaps most striking, whereas Pleasure Point is fronted atop the bluffs by a public linear park (with an almost 20-foot-wide recreational trail (part of the California Coastal Trail (CCT)), benches, picnic tables, showers, restrooms, interpretive materials, and other visitor amenities)⁶ with only three intervening private residential structures (including the iconic Jack O’Neill residence), Opal Cliffs is almost exclusively described by a row of private residential properties that are perched atop the bluffs located seaward Opal Cliff Drive. As a result, seaward public views and access to the beach from Opal Cliff Drive have been extremely curtailed. The only respite from the row of residences blocking off access to and views of the shoreline in all of Opal Cliffs is at Opal Cliffs Park, the site of the proposed project.

Opal Cliffs Park Project Location

The proposed project is located at Opal Cliffs Park (Park) at 4520 Opal Cliff Drive, on the seaward side of Opal Cliff Drive, approximately 100 yards downcoast of its intersection with Court Drive. Opal Cliff Drive is approximately two-thirds-of-a-mile long, beginning at its intersection with 41st Avenue and continuing downcoast to its intersection with Cliff Drive in Capitola, and the Park is roughly in the middle of its length. The Park is the only non-residential property along all of Opal Cliff Drive, and it is the only vertical accessway to the beach and shoreline for the stretch of coastline between public stairway beach accessways at 41st Avenue (upcoast) and Hooper Beach in Capitola (downcoast), a distance of over a mile. In addition, it is the only location along Opal Cliff Drive where the public is afforded a through blue-water view because the view from the street is otherwise blocked by houses and related residential development. And although Pleasure Point has the blufftop linear park with a major CCT recreational trail, the trail development does not continue through to the Opal Cliffs area. In fact, Opal Cliff Drive lacks sidewalks, and the CCT is forced into the area adjacent to the street’s travel lane, where it has to compete with parked cars and other obstacles.

The Park itself extends from Opal Cliff Drive to the blufftop edge, and a staircase continues down the bluff to the sandy beaches below. At Opal Cliff Drive, four to five parking spaces, which are perpendicular to the street, face an unpermitted⁷ wrought iron fence and associated locked gate. The locked gate is opened by use of a keycard that costs \$100 per year and is required to access the Park and the pocket beaches below, which are known locally as “Key Beach” or “Privates.” The park-like component of the project site located on the blufftop is approximately one-quarter acre in size and consists of a lawn as well as various unpermitted hardscape and landscaping improvements and benches. A path through this blufftop area leads to a wooden stairway that provides access to the beach and ocean below. The staircase itself extends down to a rock shelf at beach level, which in turn provides access to the two small pocket beaches on either side the staircase/rock shelf and the aptly named surf break located immediately offshore, which is known as “Privates.” Just upcoast is also the “Sharks” surf break, and just downcoast is the “Trees” surf break, and the Park provides ready access to these surfing areas as well. Although some lateral beach-level access to the pocket beaches at this location is also available from up- and downcoast, such access is generally limited to extremely low tides,

⁶ All required as part of the Coastal Commission’s approval of the County’s Pleasure Point seawall project in 2007 (CDP A-3-SCO-07-015/3-07-019).

⁷ See subsequent sections describing Park history, including its CDP history and ongoing CDP violations, and the Violation section.

due at least in part to the significant shoreline armoring present along much of Opal Cliffs, including at either end of the pocket beaches, which essentially “closes-off” these beaches from lateral access at most times due to shoreline armoring extending out into the water. In fact, the majority of the bluffs along these pocket beaches are themselves armored at their base by a patchwork mix of riprap, concrete cylinders, stepped concrete retaining walls, wooden walls, and a variety of vertical concrete seawalls. During times of good surf and/or good weather, the Park is staffed by a guard/gate attendant who monitors the accessway, including keyed gate access.

See **Exhibit 1** for project location maps and **Exhibit 2** for site photos.

B. PROJECT HISTORY AND BACKGROUND

Opal Cliffs Recreation District

The Applicant, the Opal Cliffs Recreation District (OCRD), was established in 1949 and is a public agency and special district of Santa Cruz County government that owns and operates Opal Cliffs Park (including its associated beach accessway) and nothing else. The District is made up of some 100 or so properties in the immediate Opal Cliffs area (i.e., all within several hundred feet of the Park, see **Exhibit 9** for an OCRD boundary map), and these property owners are the voting constituency that elects the OCRD Board of Directors, who then make decisions regarding the Park. Currently, each OCRD property owner is assessed about \$50 per year in their property tax bill, and this yearly assessment current nets roughly \$5,000 per year.⁸ OCRD charges a fee for both OCRD and non-OCRD members to access the Park and the beach access stairway. OCRD members (after providing proof of residency/ownership in the OCRD) can buy a reduced-rate keycard for \$50 to gain access through the gate to the beach. In other words, OCRD members pay \$50 through their property taxes, and this allows them to buy a key for about half what the general public is required to pay (see below), presumably based on the presumption that they have already paid \$50.

In order for non-OCRD members (i.e. the general public) to access the Park and the beaches, the general public has to purchase a keycard to open the locked gate. The keycards are sold at Freeline Surf Shop, which is located on 41st Avenue, approximately a third of a mile away from the Park. A sign posted on the fence adjacent to the locked gate informs the general public of the location and operating hours of the surf shop (see page 9 of **Exhibit 2**). The cost of a keycard for unlimited access to the park and beach is \$100 per year (starting June 1st of each year). There is some historical evidence that if a keycard was not purchased until the following January, the cost of the key card dropped to \$50; if not purchased until the following April, the key card cost was reduced to \$25.⁹

Pre-Coastal Operations of Opal Cliff Park

OCRD has managed the Park a variety of ways over the years, ranging from allowing general public access to only allowing access via the use of access fees, gates, and guards/gate

⁸ These assessed fees are not distributed directly to the OCRD, but instead are directed to the County’s general Parks and Recreation fund from which OCRD requests periodic disbursements.

⁹ This reduced payment option for only portions of the year does not appear to exist today.

attendants, as is the case currently. Although there is intermittent history¹⁰ of use of keys and guards at the Park before Coastal Act permitting requirements applied to new development at the Park, it is worth noting that any claim that access fees and a related fence/gate/guard program constitute a pre-Coastal Act vested right, as the Applicant claims, is untenable. First, there is no clear indication that use of such an access fee and related program was continuously applied at the Park by the time CDP requirements became applicable in order to constitute a vested right, and no clear indication that such a program was continuously applied after that time until the time the Commission first became involved via OCRD's 1980 CDP application (see below).

Second, the manner in which the fee and related program may have been applied before CDP requirements is not how the fee and related program are proposed to be used today. For example, by the terms of the 1967 Public Notice itself, there were no fees charged for access, rather the only identified "fee" was in terms of the cost of a key itself. When persons who did not have a key wanted to use the Park, they were allowed in with no fee when the "guard or caretaker employed by the District is on duty at the gate." In other words, at least in 1967, users who wanted the convenience of their own key could obtain one for the cost of the key, and other users were allowed in without a fee when the gate guard was on duty. This is in contrast to the fact that now OCRD wants to charge the general public a fee to access the Park during about nine months of the year (i.e., other than the daytime hours between Memorial Day and Labor Day), and the fee is not the "cost of the key" but rather a flat rate of \$100. Thus, any pre-Coastal program (at least from 1967) does not establish a pre-Coastal vested right for how OCRD wants to apply the fee requirement and related programmatic elements today, including because the current proposal would constitute an expansion and intensification of the program.

Third, by the terms of the 1967 Public Notice itself, the manner in which the "guard or caretaker" was intended to function was to screen people who did not have keys "who are not known to the caretaker." Furthermore, such people had to be over 21 years of age in order to access the Park. The practice of discriminating against people under 21 from accessing the Park appears prohibited by Government Code sections 54091 and 54092¹¹ to the extent OCRD argues its history of age-based discriminatory access to the Park establishes a pre-Coastal Act vested right to the guard or caretaker program. Similarly, by the terms of the 1967 Public Notice itself, application for keys is limited to persons over 21 years of age, and such age-based discriminatory access to the Park appears prohibited by these Government Code Sections as well to the extent OCRD argues its history of age-based discriminatory access to the Park establishes a pre-Coastal Act vested right to the access fee program.

Finally, the Commission's 1981 CDP (see below) legalized replacement of the then-in-place fence and gate, and required recordation of a public access program prior to issuance of the CDP. Neither the 1981 staff report nor that CDP's special conditions made any reference to an access fee or guard program at all; rather the findings indicate that OCRD represented that the

¹⁰ For example, a 1967 Public Notice placed in the local newspaper by OCRD describing use parameters at least at that time.

¹¹ These provisions could also arguably be directly relevant as part of this CDP appeal via Section 30211 ("Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization").

gate/fence “access control” in place at the time was needed to protect against dangers from the “unstable, hazardous nature of the bluffs in the area” and not for the purpose of prohibiting access to all but those who paid a fee for access (see **Exhibit 5**). The Commission noted at that time that providing some confirmation of how to obtain a key or “other means of assuring public access” was required to find consistency with Coastal Act Sections 30210 through 30212. In short, at least when the Applicant came to the Commission in 1980, the program they represented was *not* a fee program; rather it was represented as a need to have some control over access for safety purposes only. Thus, at that time, clearly the program was not a fee-for-access program, and there were no guards or related measures pursuant to the Applicant’s own representations at that time. In addition, considering that the special condition requiring an access program was intended to govern public access to the Park through the CDP, it is highly unlikely that OCRD has a basis to claim a vested right to the now-proposed fee-for-access program and its related elements, such as a gate attendant, if it did not claim vested rights to those at the time it accepted the terms and conditions of the 1981 CDP, because any information OCRD would have now regarding any vested rights claim it would have had in 1981 as well. As described above, it appears to the Commission that there is no such vested right to a fee-based access or gate attendant program such as the Applicant now appears to be claiming.

Coastal Commission Initial Involvement and CDP P-80-393

As alluded to above, the Commission first became involved in permitting with Opal Cliffs Park in 1980¹² when OCRD applied for replacement fencing and a gate at the Park.¹³ Pursuant to the Applicant, the existing fencing at that time consisted of a five- to six-foot-tall chain link fence with a gate on the street frontage with three- to five-foot-tall wooden fencing along each of the side yards, and OCRD applied for a uniform six-foot-tall chain link fence on all three sides with a gate in the fence on the street frontage.¹⁴ On April 13, 1981, the Commission approved CDP P-80-393 (see **Exhibit 5**), allowing for the proposed fencing and gate subject to certain conditions, including the requirement for the Applicant to submit an access program for the Executive Director’s review and approval, which needed to be recorded as a deed restriction on OCRD’s property title. Notably, the Commission’s findings for that approval identify the presence of an existing fence and gate, but did not recognize or approve any fees for access through it nor did the Commission recognize or approve any use of a guard/gate attendant for the Park. Rather, that approval noted that “keys are readily available,” and further noted that the purpose of the gate was not for collecting fees, but rather “that the reason for the access control is the unstable, hazardous nature of the bluffs in the area.” In other words, the gate’s purpose was to control access for safety purposes and not for revenue purposes. And the Commission noted that “confirmation of key availability and/or *some other means of assuring public access* (such as a sign directing potential users how to gain access) would be appropriate to ensure consistency with Section[s] 30210-12 of the Coastal Act if the fence is necessary” (emphasis added). Thus,

¹² CDPs for new development at this location were required starting on February 1, 1973 under 1972’s Proposition 20 (“The Coastal Initiative”), and then again starting on January 1, 1977 under the 1976 Coastal Act.

¹³ The County’s LCP had not yet been certified (it was certified in 1983), and thus the Commission had CDP jurisdiction over the entire Santa Cruz County coastal zone at that time.

¹⁴ OCRD had hoped to propose an eight-foot-tall fence, but on October 31, 1980, the County Zoning Administrator denied the District’s request locally for a variance to allow an eight-foot-tall fence at the Park, citing a lack of special circumstances justifying the increased height.

the Commission required OCRD to prepare an access program for the Executive Director's review and approval prior to CDP issuance (see Special Condition 1 in **Exhibit 5**), and also required, prior to commencement of construction, that OCRD provide evidence in writing that the development was acceptable to all local public safety agencies (see Special Condition 3 in **Exhibit 5**). Again, importantly, the Commission did not authorize any access fees or use of a guard/gate attendant in its 1981 action.

The Commission's 1981 fence and gate approval was valid for one year from the date of approval (i.e., until April 13, 1982) as identified in the Notice of Intent (NOI) to issue the CDP that allowed one year to commence development (see **Exhibit 5**).¹⁵ Relatedly, P-80-393 required the access program to be submitted prior-to-issuance of the CDP, which means that the permittee must complete the prior-to-issuance requirement, the CDP must be issued, the permittee must return the signed CDP agreeing to be bound by its terms and conditions, the permittee must complete the pre-construction safety review requirements, and then the approved project must be commenced in substantial reliance upon the CDP consistent with the CDP terms and conditions, all within the one-year timeframe identified by the NOI. In this case, none of the prerequisites to allow for the development to commence (and thus to exercise or "vest" the CDP) were achieved within the required one-year period. In fact, the only thing that occurred is that OCRD apparently prematurely installed the subject gate and fence without meeting any of the CDP's terms and conditions, which represents unpermitted development because the CDP was never issued within the required time frame and thus OCRD did not comply with the requirements of the Commission's CDP approval.¹⁶ OCRD never signed the NOI and thus never accepted the terms and conditions of the Commission's approval; thus, the CDP was not issued within the required time frame and no development was authorized to commence within one year of issuance of the NOI. Thus, as of April 13, 1982, the CDP had expired¹⁷ and OCRD had apparently installed a

¹⁵ In addition, Coastal Commission Regulations (CCR) Section 13156(g) states that a permit should include "the time for commencement of the approved development except that where the commission on original hearing or on appeal has not imposed any specific time for commencement of development pursuant to a permit, the time for commencement shall be two years from the date of the commission vote upon the application." In this case, the Commission imposed a one-year time frame, as indicated in the NOI. CCR Section 13156 goes on to state that "an extension of the time of commencement must be applied for prior to the expiration of the permit," and CCR Section 13169 then governs how potential extensions of the expiration date can be pursued. In short, however, CCR Section 13156 provides for a time within which development consistent with the terms and conditions of the CDP must commence, and after that time period has past the CDP is expired, unless extended per CCR Section 13169. No such extension was ever applied for in this case.

¹⁶ Unpermitted development and/or development inconsistent with the CDP's terms and conditions cannot constitute a valid exercise of a CDP. For example, any work done prior to a CDP being issued, and the permittee signing and agreeing to be bound by the conditions of the CDP, cannot validly exercise a CDP. Similarly, even when a CDP has been issued and signed, if "prior-to-construction" requirements are not met before construction commences, such construction is unpermitted and cannot validly exercise the CDP. In this case, the CDP included both "prior-to-issuance" and "prior-to-construction" requirements that were not met within the requisite one-year NOI time frame (see Special Conditions 1 and 3 in **Exhibit 5**), and thus any work done by OCRD did not validly exercise the CDP, and the CDP expired on April 13, 1982.

¹⁷ Note that OCRD does not agree with this conclusion, and suggests that the 1981 CDP is still valid based on certain staff-level (i.e., not Commission level) actions some ten-years after initial CDP approval by the Commission and nine years after CDP expiration per its own terms (see discussion that follows). However, it is worth noting that the NOI provided to the District in 1981 clearly identified that it would expire in one year. Even assuming that a longer expiration period applies here based on the default two-year period for commencement specified in CCR Section 13156(g), for the same reasons discussed above, OCRD cannot show that it signed the

new fence and a gate without the benefit of a CDP (see also “Violation” Section below). In addition, sometime in or around 1984-85, OCRD locked the gate and began charging a fee of \$20 for keys to the gate, notwithstanding the fact that the Commission’s approval, which had expired by this time, did not contemplate nor allow such fees, and thus this fee was also unpermitted.

In the early 1990s, and in recognition of the fact that many CDPs had by then been approved by the Commission but the Commission’s system for verifying compliance with their terms and conditions was limited, the Commission initiated a statewide project that reviewed overall CDP special condition compliance. As part of this effort, CDP P-80-393 was flagged as a CDP approval where special conditions had not been met by the applicant. For some reason, at that time, Commission staff did not realize that the CDP had expired by its own terms in 1982 and thus such condition compliance was mooted.¹⁸ In any case, in late 1991 OCRD was informed that it had not complied with the special conditions, and was directed to correct that violation by submitting the outstanding materials related to Special Conditions 1 and 3, including the required safety review and the required public access program. OCRD submitted these materials and they were signed-off by Commission staff, including an access program deed restriction that included allowing OCRD to charge a \$20 gate access fee (see **Exhibit 6**). Commission staff then issued the CDP to OCRD on January 9, 1992, i.e. nearly ten years after the CDP had expired (see **Exhibit 10**).

However, Commission staff did not (and does not) have the legal authority to resurrect an expired CDP and did not have the authority to issue the CDP in 1992. In other words, staff made a mistake. In addition, staff not only made a mistake in not recognizing that the Commission’s approval had expired in 1982, staff also went beyond what the Commission had approved in 1981 and allowed OCRD to implement a fee program when the Commission had not even contemplated nor allowed access fees as part of its approval of CDP P-80-393. In other words, Commission staff – not the Commission – agreed to public access fees when staff cannot legally do so because the CDP as approved by the Commission provided no basis for allowing public access fees, and staff did so anyway based on an expired CDP. Because staff does not have the authority to do either, those staff level actions cannot and do not govern in this case. The Applicant continues to point to the mistakenly issued CDP and the mistakenly-approved access

NOI, completed all prior-to-issuance and prior-to-construction conditions (specifically, compliance with prior-to-issuance Special Condition 1 of CDP P-80-393), and was validly authorized to commence development by April 13, 1983. Thus, under any best-case scenario for OCRD, CDP P-80-393 expired by April 13, 1982 without OCRD having validly exercised or vested the permit.

¹⁸ There are a number of possible explanations for this error, but it seems the most likely to have been related to the Commission’s lack of a thorough CDP management system, including at a time when the Commission’s technology was rudimentary at best and exclusively defined by paper-based systems and large file cabinets. CDP expiration information was not collectively maintained in any single location, but rather in individual CDP files, so there was not a systematic way of identifying the range of expired CDPs, particularly as related to a CDP from a decade prior where recollections may have dimmed. Also, the staff working on the statewide special condition compliance effort was working on that issue alone, and probably separate from those who were involved with the CDP P-80-393 action itself nearly a decade earlier, and this may have provided some disconnect as well. In any case, it is not clear whether expired CDPs were first eliminated from the statewide condition compliance project (which they should have been because in such cases condition compliance would be moot), but in at least this case it was not eliminated.

program that allows a fee for access as justification for the gate, fence, and fee program over three decades, and further claims that the Commission is estopped from concluding that the CDP expired and that no such fee program is authorized here.¹⁹

However, an essential element of estoppel is that the party asserting estoppel must be ignorant of the true state of facts (see *Strong v. County of Santa Cruz* (1975) 15 Cal.3d 720, 725). Even conceding that Commission staff erroneously sent letters to OCRD in the early 1990s providing OCRD an opportunity to receive a CDP and record an access program, which allowed for public access fees, these staff-level errors occurred over **10 years** after the CDP was originally approved, and it would be unreasonable to conclude that OCRD was “ignorant of the true state of facts” that the CDP had expired back in 1982. Specifically, Special Condition 1 of the CDP clearly required that prior to issuance of the CDP the access program had to be recorded. And as previously mentioned, the NOI clearly allowed only one year for OCRD to meet all of the CDP terms and conditions and to develop consistent with them.²⁰ And paragraph 1 of the NOI clearly stated that the CDP would be effective *only* after the acknowledgement was signed and sent back to the Commission within 10 working days of issuance, and paragraph 4 of the NOI specified that the development needed to have commenced within one year of issuance. Finally, neither the CDP nor the NOI are complex documents, and CCR Section 13156(g) was readily locatable within the Commission’s regulations at the time of CDP issuance in 1981; thus, OCRD should be charged with knowledge that the CDP had expired well before 1991. Given the facts above, it can reasonably be presumed that OCRD had *actual* knowledge of this true set of facts. And, as a practical matter, it is unreasonable for a permittee to assume that it has **over 10 years** to exercise and vest a CDP, notwithstanding any erroneous actions by staff at that time some 10 years after the Commission’s CDP approval.

Furthermore, another essential element of estoppel is that the party asserting estoppel must rely upon the other party’s conduct to their injury (again, see *Strong v. County of Santa Cruz* (1975)). Even assuming OCRD relied on the validity of the 1981 CDP for the last some 27 years, taking the position that the CDP is expired does not result in “injury” to OCRD. The Commission here is proposing to essentially allow retention of the existing physical development (see discussion below). Although Staff is also recommending denial of the access fee program, OCRD cannot point to any “harm” such as an expenditure or other “sunk cost” that it expended in reliance on the erroneously-issued CDP that it would lose with cessation of this program. In addition, the Commission’s approval here is not dissimilar to what the Commission approved in 1981 (albeit at a larger scale for the fence and gate), and will allow reasonable use restrictions based on safety/resource considerations. If anything, OCRD has received a “windfall” over the last approximately 27 years by charging for access to the Park when an access fee was not authorized by the Commission through a CDP approval and never has been. Denial of the access fee going forward therefore does not “injure” OCRD’s financial position.

¹⁹ Bracketing for a moment that the staff-level sign-off was for a six-foot-tall chain link fence and gate, and not the nine-foot-tall fence, gate, and gate attendant system in place today – see also discussion that follows.

²⁰ In addition to the plain language of the NOI itself specifying a one-year timeframe for commencement of development, the default regulatory provision regarding expiration of CDPs and time periods for commencement is set forth in CCR Section 13156(g), as discussed above, and was publicly available at the time of issuance of CDP P-80-393.

Considering the above, it is clear that the CDP was not properly exercised and it expired of its own accord in 1982, well before staff's mistake (and OCRD's mistake) in 1991, and that the fencing and gate that are currently legally authorized to be onsite now are the five- to six-foot-tall chain link fence and gate and the approximately three-foot-tall wooden side yard fencing that were present at the site when the Applicant applied for the 1981 CDP in 1980 (and when CDP requirements began in the early 1970s).

Violations in the 2000s

Subsequently, in approximately the mid-2000's OCRD apparently removed the unpermitted six-foot-tall chain link fence and gate and replaced it with a new nine-foot-tall, wrought iron fence and gate topped with razor wire, and apparently increased the annual fee charged to the general public from \$20 to \$100 and made use of a gate guard/attendant, all without benefit of a CDP. When this ultimately came to the Commission's attention in April of 2006, the Commission opened a violation investigation (V-3-06-012) for the above-described new wrought iron fence, as well as the overall fee program (including the gate keycard and the gate attendant elements),²¹ and alerted the OCRD that it was in violation of the Coastal Act's CDP requirements. Following initial discussions between enforcement staff and OCRD members, OCRD agreed to remove the razor wire,²² and to submit a CDP application to retain the fencing and gate after the fact (this application also proposed new hardscaping, landscaping and irrigation development). At that time, Commission staff was under the mistaken impression that the CDP had *not* expired and that a fee program had been approved by the Commission, and thus that an after-the-fact application could be considered as an amendment to the base CDP, including because OCRD represented that it had a valid CDP and recorded access program.

Ultimately, OCRD then applied to the Commission for an amendment to CDP P-80-393 for after-the-fact authorization of the unpermitted development,²³ and that application was scheduled

²¹ While a gate attendant was periodically present at the site prior to 2008, a gate attendant (or equivalent) has never technically been permitted. See discussion above regarding consideration of the gate attendant as a pre-Coastal Act "vested right."

²² Ultimately, after the razor wire was removed, black grease was applied to the ends of the top of the fence and gate at that time, apparently in an attempt to try to dissuade potential fence jumpers.

²³ OCRD initially applied to the County and the County approved a project, but that approval was mooted based on the then-mistaken understanding that the Commission's CDP (i.e. P-80-393) had not expired and was in effect. In other words, based on the mistaken understanding at the time that the Commission's CDP was still in effect, the Commission determined that the County did not have the legal authority to modify the Commission's CDP approval by issuing its own CDP, which would have "superseded" the Commission's CDP, and thus the County's action was deemed improper at that time. OCRD and the County were informed of this, and OCRD subsequently applied to the Commission for an amendment to CDP P-80-393. While acknowledging that the County's approval may not have been moot had Commission staff known at that time that the Commission's 1981 CDP was expired and of no effect, any resulting error is non-prejudicial and harmless for the following reasons: the development that was the subject of the County approval was already undertaken by OCRD without benefit of a required CDP, as evidenced by the fact that Commission staff opened violation case V-3-06-012, so OCRD cannot claim that the Commission's current stance that the Commission's 1981 CDP expired and lack of a County approval for the 2008 improvements resulted in OCRD's current position of having unpermitted development in place at the Park; (2) even assuming that the Commission had recognized the validity of the County's approval, Commission staff would have recommended Commissioner appeal of that decision, and given the significant public access issues raised by this unpermitted development, such an appeal would have been extremely likely, resulting in essentially the same position as OCRD finds itself now with the County's most recent CDP approval on appeal by Commissioners and in front of the Commission; and (3) as explained below, upon determining that the

for a Commission hearing in January of 2009. Staff explored at that time whether OCRD would be willing to modify the accessway to provide free beach access to all of the general public, not just those who could afford to pay the fee, but OCRD was not interested in such an outcome, and represented that it continued to want to charge the same fees and to implement the same related access control program as OCRD believed it was permitted to do through the 1981 CDP and the recorded access program. Based on the then-mistaken understanding that the CDP had not expired, and that the Commission had approved a fee program in 1981, Commission staff prepared a staff report and recommendation that these components were the existing baseline development at the site, and recommended a series of changes to that baseline to reduce public access impacts (as compared to the \$100 fee to gain gate access), including recommending a \$5 day use fee and other measures (see **Exhibit 11**). Although the Applicant continues to refer to that staff recommendation in an attempt to show that Commission staff supports access fees at this location, and to suggest that that recommendation was adopted by the Commission, neither of these claims are accurate. On the former, the 2009 staff recommendation was based on the mistaken presumption that the existing permitted baseline for considering the amendment was that the access fee program and related elements had been approved by the Commission and were operating by virtue of a valid CDP, including the \$100 gate key. On the latter, it is worth clarifying that the 2009 application was never actually heard before the Commission. Rather, the application was removed from the hearing calendar by Commission staff in early 2009 prior to the hearing because of concerns that had surfaced at that time that suggested that the original CDP may have actually expired and that an amendment was not properly before the Commission. After removing the item from the Commission's agenda before any hearing took place, Commission staff subsequently further researched its archived files and determined that the 1981 CDP had expired and was no longer valid and informed OCRD of this fact. At that juncture, the nine-foot-tall wrought iron fence and gate, the fee program, and the gate attendant remained unpermitted.

Ultimately, following OCRD lapses in terms of fulfilling requirements associated with a 2011 Coastal Commission emergency CDP that allowed OCRD to replace a portion of a piling supporting the beach access staircase (ECDP 3-11-018-G),²⁴ Commission staff again reengaged with OCRD staff in May of 2011. At that time OCRD had done nothing to resolve the outstanding violations at the site, including those related to V-3-06-012. Commission staff explained that the conditions of ECDP 3-11-018-G had not been fulfilled, that violations remained outstanding related to the unpermitted development at the site (i.e., fencing, gate, gate attendant, as well as the landscaping, hardscaping, and irrigation improvements that OCRD installed without a CDP approximately in 2009 or shortly thereafter), and that the 1981 CDP

Commission's 1981 CDP had expired, Commission staff directed OCRD to seek a local CDP from the County to authorize ATF the unpermitted development installed by the OCRD in 2008, which ORCD did and which is currently on appeal in front of the Commission. In other words, any attempt to legalize the 2008 unpermitted development through a locally-issued CDP is expected to have resulted in an appeal to the Commission, as evidenced by the current appeal. Thus, there is simply no evidence to demonstrate that OCRD relied upon its submittal of a CDP amendment application in 2008 to its injury.

²⁴ The ECDP was issued to OCRD on March 18, 2011. Conditions of approval of that ECDP required OCRD to sign and return the ECDP Acceptance Form within 15 days of ECDP issuance, and to apply for a follow-up regular CDP within 60 days of ECDP issuance to authorize the work completed under the ECDP. OCRD completed the emergency repair work on April 29, 2011. By mid-May of 2011, however, OCRD had not returned a signed copy of the ECDP Acceptance Form to Commission staff and had not applied for the required follow-up regular CDP.

approval had long since expired. Furthermore, because the CDP had expired and could no longer be amended (and thus the Commission had no direct permitting authority for the blufftop portion of the site), OCRD would need to apply to Santa Cruz County under the County's certified LCP for any of the unpermitted improvements it wanted to retain after the fact. OCRD was provided a memo summarizing these procedural issues and identifying the path forward to retain the unpermitted development at a May 18, 2011 meeting (see **Exhibit 3**), OCRD was further explicitly informed that Commission staff continued to not support the proposed access fees, and OCRD was encouraged to pursue a different path forward that would allow the accessway to be used by the general public without fees. At that time, OCRD indicated that the members of the Board would need to think about their options, and would get back to Commission staff regarding their proposed next steps. Following this meeting, OCRD did nothing in terms of resolving the outstanding violations, and did not contact Commission staff for nearly four years.

Ultimately, Commission staff began receiving complaints from the public about how the unpermitted fence, gate, fee, and gate attendant were precluding their ability to access the beach, and complaints about the lack of resolution of these decades' old issues. It became clear to Commission staff at that time that OCRD had not done anything in response to the May 18, 2011 meeting and memo. Staff contacted the OCRD, and in April of 2015, Commission staff again met with OCRD members and informed them that OCRD would need to remove the unpermitted gate and fence, and cease from charging fees and using gate attendants to enforce the fee requirement to access the Park and the beaches, absent a CDP that provided for same. In addition, OCRD was notified that it would have to secure the required follow-up regular CDP to authorize the work done under ECDP No. 3-11-018-G. OCRD indicated an interest in pursuing an after-the-fact CDP for the existing fence/gate and the fee program. Commission staff's response was the same as it had provided to OCRD for many years, namely that such fee-based access is antithetical to the LCP and the Coastal Act at this location, and that staff did not support such a fee access program at this location. Alternatives to fee-based access were discussed, including the possibility of the County Parks Department taking over management and opening the Park as a free Park and accessway comparable to its other publicly-funded parks and beach access stairways. OCRD was also reminded of the existing violation for the unpermitted development (V-3-06-012) on the subject property including the fence, gate, fee, guard, and now the hardscaping, landscaping, and irrigation development that was installed in 2009 or shortly thereafter without the necessary CDP.

Commission enforcement staff repeatedly directed OCRD to remove the unpermitted fence, gate, gate attendant, and to cease charging an unpermitted fee to gain public access to the beach through Opal Cliffs Park, but OCRD repeatedly refused to do so. OCRD continues to be in violation for all of such development, which remains in place in essentially the same form as when the nine-foot-tall wrought iron fence and gate were first installed some ten years ago. Finally, in 2016, after several violation letters sent to and meetings with OCRD and its representatives and the County directing OCRD to resolve the outstanding violations, OCRD submitted a regular application to the Commission to authorize the stair piling replacement done pursuant to ECDP 3-11-018-G,²⁵ and also applied to the County (County Application No. 161195) to authorize the unpermitted development after-the-fact including the nine-foot-tall

²⁵ CDP Waiver 3-16-0680-W (i.e., the required follow-up regular authorization for ECDP 3-11-018-G) authorized the emergency stair piling replacement work when it was authorized by the Commission in March of 2017.

wrought iron fence and gate, fee program changes, use of a gate attendant, and the landscaping, hardscaping and irrigation improvements installed sometime in 2009 or shortly thereafter.²⁶ The County's approval of that application in late 2017 is the subject of this appeal.

C. BASELINE FOR PROJECT EVALUATION

One of the critical analytic steps in evaluating proposed projects under the Coastal Act and the LCP is establishing the existing baseline in order to compare it against what is being proposed. Oftentimes that existing baseline is readily understood, such as a vacant property without any past permitting history or violations. Other times the analytic baseline can be more complicated, especially when violations are involved, as is the case here (including whether one takes the position that the Commission's 1981 CDP expired or not because it is undisputed that OCRD has constructed and implemented development past the 1981 CDP approval without the benefit of a CDP, and has implemented fees well in excess of even the staff-approved access program (i.e. \$100 versus \$20 for gate access)). In fact, the analytic baseline for considering a project on a site with violations is as if the violations do not exist (i.e., the site in its pre-violation state).²⁷

In this case, the Applicant believes that the analytic baseline for project evaluation should be as if the 1981 CDP (P-80-393) had not expired, and thus the development authorized by the 1981 CDP represents the "existing" baseline, including the access fee program that was not part of the Commission's CDP deliberations but that was mistakenly signed off by staff after the CDP had expired (as discussed above). The County also took this analytic tact in its proceedings. In contrast, and as has been communicated to the Applicant and the County on many occasions, Commission staff has determined that the analytic baseline is founded in the fact that the 1981 CDP expired, and thus the actual baseline for permitting considerations are the conditions that existed at the site when CDP's were first required in the early 1970's (because no other CDPs exist that authorize anything at the site). Under either "baseline" scenario, it is clear that OCRD's 1990's era construction (i.e., the nine-foot-tall wrought iron fence and gate) were put in place without the benefit of a CDP, which means that none of these components are included as a part of the analytic baseline. Furthermore, the hardscaping, landscaping, and irrigation improvements that were installed in 2009, or shortly thereafter, were also put in place without a CDP and thus none of these components are part of the analytic baseline either. Although it appears that the Applicant's position might differ significantly from Commission staff's, fortunately the parameters of these two positions for baseline analytic purposes (at least with respect to the extent of *physical development* for the Park in relation to the fence) are actually almost identical.

²⁶ OCRD applied to Santa Cruz County in an effort to resolve outstanding violations related to unpermitted development at the site, and the County subsequently approved the CDP, expressly stating that its approval was an effort to "clean up" the record given the complex history.

²⁷ When unpermitted development has altered the current situation, in order to fairly evaluate the impacts of proposed development, the Commission compares the proposed condition to the condition that would exist now were the unpermitted development not to have occurred (*LT-WR, LLC v. California Coastal Commission* (2007) 152 Cal.App.4th 770, 797 ("to enable the Commission to protect coastal resources, and to avoid condoning unpermitted development, the Commission properly reviewed the application as though the unpermitted development had not occurred"). Stated differently, unpermitted development does not form the baseline from which impacts are assessed.

First, in terms of Commission staff's position, because CDP P-80-393 expired in 1983, the analytic baseline at the site reverts back to what was present at the site prior to any CDP issued for the development and prior to the CDP requirements associated with 1972's Proposition 20 and 1976's Coastal Act. From the available records it appears that the development at that time consisted of an approximately five- to six-foot-tall chain link fence, and the intermittent presence of a gate attendant who permitted entrance to those with a key, and (free of charge) to those he/she recognized and to anyone from the general public over the age of 21 who provided their name, address, phone number, and license plate number to the attendant.²⁸ In short, the analytic baseline for considering the proposed project is the presence of a roughly six-foot-tall chain link fence and gate, where keys could be acquired and/or access gained, but no fees were charged for access.

In terms of the Applicant's position, even assuming that CDP P-80-393 did *not* expire in 1983, and even assuming that Commission staff had the legal authority to authorize fees when the Commission did not consider or authorize fees as part of the 1981 CDP approval, the access plan authorized by the deed restriction and required by the 1981 CDP approval is no longer in effect in any case because it has terminated by its own terms. This is important because, even using the Applicant's CDP rationale, the deed restriction is actually the only element associated with that CDP that purports to authorize fees, because the Commission itself did not authorize any fees in its 1981 action. The deed restriction mistakenly approved by Commission staff that memorialized the access plan states the following (see also **Exhibit 6** for the full deed restriction):

***DURATION.** Said Deed Restriction shall remain in full force and effect during the period that said permit, or any modification or amendment thereof remains effective, and during the period that **the development authorized by the Permit or any modification of said development**, remains in existence in or upon any part of, and thereby confers benefit upon, the Property described herein, and shall bind Owner and all his/her assigns or successors in interest (emphasis added).*

Thus, based on its own terms, the deed restriction remains in effect only during the period when "the development" specifically authorized by the CDP remains in existence. Because *all* of the development authorized by P-80-393 (i.e., the six-foot-tall chain link fence/gate along Opal Cliff Drive and the six-foot-tall chain link fence along the Park's two side yards) was replaced in the 1990s and in the early 2000s, respectively (and without the benefit of a CDP), the entire scope of development approved under CDP P-80-393 no longer exists, and thus the recorded access program was terminated by its own terms at that time. In addition, although the duration clause also states that the deed restriction remains in effect during the period where any modifications to the approved development are in place, such modifications do not extend to unpermitted modifications. In short, by its own terms, the deed restriction is no longer in full force and effect. As a result, and even assuming that CDP P-80-393 did *not* expire in 1983, and even assuming that Commission staff had the legal authority to authorize fees when the Commission did not consider nor authorize fees in the

²⁸ See discussion above explaining why intermittent use of the access fee and guard program prior to Coastal Act permitting requirements does not constitute a "vested right" to those elements for purposes of operation of the Park.

1981 CDP approval, *only* the physical development installed under CDP P-80-393 (i.e., a six-foot-tall chain link fence and gate, since removed) would still be authorized at the present time. The Applicant and the County were repeatedly informed of this information, including by enforcement staff in 2016, but have yet to provide any evidence to suggest that the deed restriction should still be valid when it includes a sunset clause that was long ago triggered. Thus, no matter which interpretation is used, the Applicant's/County's or Commission staff's, the analytic existing baseline is the same.

In sum, regardless of whether the CDP is considered expired or not, the baseline physical development at the site is essentially equivalent (either a five- to six-foot-tall chain link fence/gate or a six-foot-tall chain link fence/gate). With respect to the access fee program, because the deed restriction (which authorized the access program) terminated by its own terms, a fee program is therefore not authorized regardless. Therefore, to err on the conservative side, the Commission will consider the analytic baseline to be a six-foot-tall chain link fence/gate without any access fees.

D. PROJECT DESCRIPTION

The project includes after-the-fact authorization of the following: 1) removal of the existing six-foot-tall chain link fence and gate and replacement with a nine-foot-tall wrought iron fence and gate; 2) an access fee program (which requires a \$100 keycard fee for unlimited annual access (including nighttime access) and limits free general public access (with no fee) to between Memorial Day weekend and Labor Day weekend between the hours of 5:00am and 8:00pm daily); 3) a gate attendant to oversee the keycard access program, assist patrons with the gate door, and provide general assistance as needed (e.g., help carry gear/equipment down to the beach); 4) various improvements installed with funding from Proposition 40, including a colored-concrete paver pathway, concrete seating (i.e. six backless benches), approximately three-foot-high stone retaining walls located at various locations throughout the blufftop portion of the Park and along either side of the pathway that leads to the stairway to the beach, as well as landscaping and irrigation, including sprinklers, drip tape, and a valve box; and 5) associated signage and parking improvements.

See **Exhibit 2** for project photos of all the above-described physical development including the nine-foot-tall wrought iron fence and the improvements funded by Proposition 40.

E. SANTA CRUZ COUNTY APPROVAL

On December 13, 2017, the Santa Cruz County Planning Commission approved County Application 161195.²⁹ (See **Exhibit 3** for Commission staff's letter to the Planning Commission

²⁹ OCRD applied to the County to authorize the subject development, and the County subsequently processed the CDP for the subject development, expressly stating that it was doing so to "clean up" the record with respect to the complex history related to the Park. In other words, OCRD has elected to proceed with pursuing a CDP, which is intended to subsume the development authorization that was approved by the 1981 CDP, as well as to legalize the development as it exists on the ground today. Since the County's CDP action is now on appeal with the Commission, the Commission also has the discretion to make the determination, upon finding SI, that on de novo this CDP "supersedes" the 1981 CDP, under any interpretation of its validity. This outcome is consistent with Commission staff's position that the 1981 CDP is expired, but even assuming that the 1981 CDP was still valid (as OCRD argues), the Commission has the discretion to determine that this CDP supersedes the 1981 CDP

dated December 11, 2017). The County's final local action notice was received in the Coastal Commission's Central Coast District office on January 2, 2018 (**Exhibit 4**). The Coastal Commission's ten-working-day appeal period for this action began on January 3, 2018 and concluded at 5pm on January 17, 2018. One valid appeal of the County's CDP decision was received during the appeal period (see below and **Exhibit 7**).

F. APPEAL PROCEDURES

Coastal Act Section 30603(a) provides for the appeal to the Coastal Commission of certain CDP decisions in jurisdictions with certified LCPs. The following categories of local CDP decisions are appealable: (a) approval of CDPs for development that is located (1) between the sea and the first public road paralleling the sea or within 300 feet of the inland extent of any beach or of the mean high tide line of the sea where there is no beach, whichever is the greater distance, (2) on tidelands, submerged lands, public trust lands, within 100 feet of any wetland, estuary, or stream, or within 300 feet of the top of the seaward face of any coastal bluff, and (3) in a sensitive coastal resource area; or (b) for counties, approval of CDPs for development that is not designated as the principal permitted use under the LCP (Coastal Act Sections 30603(a)(1)-(4)). In addition, any local action (approval or denial) on a CDP for a major public works project (including a publicly financed recreational facility and/or a special district development) or an energy facility is appealable to the Commission (Coastal Act Section 30603(a)(5).) This project is appealable because it is located between the first public road and the sea, and within 300 feet of the beach and the bluff.

The grounds for appeal under Section 30603(b) are limited to allegations that the development does not conform to the certified LCP or to the public access policies of the Coastal Act. Section 30625(b) of the Coastal Act requires the Commission to conduct the de novo portion of the hearing on an appealed project unless a majority of the Commission finds that "no substantial issue" is raised by such allegations. Under Section 30604(b), if the Commission considers the CDP de novo (upon making a determination of "substantial issue") and finds that the proposed development is in conformity with the certified LCP, the Commission must approve a CDP for a project. If a CDP is approved for a project that is located between the nearest public road and the sea or the shoreline of any body of water located within the coastal zone, Section 30604(c) also requires an additional specific finding that the development is in conformity with the public access and recreation policies of Chapter 3 of the Coastal Act. This project is located between the nearest public road and the sea, and thus this additional finding would need to be made if the Commission approves the project following a de novo hearing.

The only persons qualified to testify before the Commission on the substantial issue question are the Applicant (or its representatives), persons who made their views known before the local government (or their representatives), and the local government. Testimony from other persons regarding substantial issue must be submitted in writing. (California Code of Regulations, Title 14, Section 13117.) Any person may testify during the de novo CDP determination stage of an appeal.

because the CDP on appeal covers essentially the same development which was approved by the 1981 CDP (as discussed above).

G. SUMMARY OF APPEAL CONTENTIONS

The appeal contends that the County's action raises questions of Coastal Act and LCP consistency related to public access and recreation, and related to the LCP's visual resource protection provisions. Specifically the appeal contends that the County-approved project authorizes significant impediments to public access and recreation that do not appear to meet LCP and Coastal Act requirements to protect and maximize public recreational access opportunities, including with respect to beach access. These impediments include a nine-foot-tall wrought iron fence and locked gate, a \$100/year access fee program (with limited general free public access only available during daytime in the summer months), and a Park gate attendant whose responsibilities include enforcing the access fee program. The appeal also contends that the nine-foot-tall wrought iron fence, gate, and related development appear to be inconsistent with the LCP's policies and standards related to the protection of visual resources including because it hinders views of the beach and ocean. See **Exhibit 7** for the full text of the appeal.

H. SUBSTANTIAL ISSUE DETERMINATION

Substantial Issue Background

The term substantial issue is not defined in the Coastal Act. The Commission's regulations simply indicate that the Commission will hear an appeal unless it "finds that the appeal raises no significant question" (California Code of Regulations, Title 14, Section 13115(b)). In previous decisions on appeals, the Commission has considered the following factors in making such determinations: (1) the degree of factual and legal support for the local government's decision that the development is consistent or inconsistent with the certified LCP and with the public access policies of the Coastal Act; (2) the extent and scope of the development as approved or denied by the local government; (3) the significance of the coastal resources affected by the decision; (4) the precedential value of the local government's decision for future interpretation of its LCP; and (5) whether the appeal raises only local issues, or those of regional or statewide significance. Even where the Commission chooses not to hear an appeal, Appellants nevertheless may obtain judicial review of the local government's coastal permit decision by filing a petition for a writ of mandate pursuant to Code of Civil Procedure, Section 1094.5.

In this case, for the reasons discussed further below, the Commission determines that the County's approval of the project presents a substantial issue.

Substantial Issue Analysis

1. Public Access and Recreation

Applicable Coastal Act and LCP Policies

The project site is located between the sea and the first public road (i.e., Opal Cliff Drive), and thus the Coastal Act's public access and recreation policies are applicable to the project, as well as the public access and recreation provisions of the LCP. The Coastal Act's access and recreation policies provide significant direction regarding not only protecting public recreational access, but also ensuring that access is provided and maximized. Specifically, Coastal Act Section 30210 requires that *maximum* public access and recreational opportunities be provided. This direction to maximize access and recreational opportunities represents a different threshold

than to simply provide or protect such access, and is fundamentally different from other like provisions in this respect. In other words, it is not enough to simply *provide* access to and along the coast, and not enough to simply *protect* such access; rather such access must also be *maximized*. This terminology distinguishes the Coastal Act in certain respects, and provides fundamental direction with respect to projects along the California coast that raise public access issues, such as this one.

Beyond that fundamental direction and requirement that public recreational access opportunities be maximized for all in the coastal zone, the Coastal Act provides a series of mechanisms designed to meet that objective and to ensure public access considering appropriate time, manner, and place considerations. For example, Section 30211 prohibits development from interfering with the public's right of access to the sea when acquired by legislative authorization or by use. In approving new development, Section 30212(a) requires new development to provide access from the nearest public roadway to the shoreline and along the coast, except in certain limited exceptions, such as when there is existing adequate access nearby. Section 30212.5 identifies that public facilities are to be appropriately distributed throughout an area so as to help mitigate against overcrowding and overuse at any single location. This section has been used in the past to ensure an adequate distribution of access points, especially vertical beach access points such as the case in this application, are provided at appropriate intervals. Importantly, Section 30213 requires that lower-cost visitor and recreational access facilities be protected, encouraged and provided, and gives a stated preference to development that provides public recreational access opportunities. And Coastal Act Section 30220 requires that areas that provide water-oriented recreational activities, such as the offshore areas in this case, be protected, while Section 30221 states that oceanfront land suitable for recreational use shall be protected for recreational use and development, and Section 30223 protects upland areas such as this one necessary to support coastal recreational uses. Applicable Coastal Act policies include:

Coastal Act Section 30210: *In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.*

Coastal Act Section 30211: *Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.*

Coastal Act Section 30212(a): *(a) Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects...*

Coastal Act Section 30212.5: *Public facilities; distribution Wherever appropriate and feasible, public facilities, including parking areas or facilities, shall be distributed throughout an area so as to mitigate against the impacts, social and otherwise, of overcrowding or overuse by the public of any single area.*

Coastal Act Section 30213: *Lower cost visitor and recreational facilities; encouragement and provision; overnight room rental. Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided...*

Coastal Act Section 30220 *Protection of certain water-oriented activities Coastal areas suited for water-oriented recreational activities that cannot readily be provided at inland water areas shall be protected for such uses.*

Coastal Act Section 30221: *Oceanfront land suitable for recreational use shall be protected for recreational use and development unless present and foreseeable future demand for public or commercial recreational activities that could be accommodated on the property is already adequately provided for in the area.*

Coastal Act Section 30223: *Upland areas necessary to support coastal recreational uses shall be reserved for such uses, where feasible.*

Similarly, the County's LCP reiterates and amplifies Coastal Act direction, including through requiring that coastal public access and recreational opportunities be maximized for everyone, regardless of one's income group, and further specifying that a full range of access opportunities needs to be provided for all users (including LCP Objectives 7.1a and 7.7a). The LCP also seeks to maximize the availability of parks facilities for general public use (including those owned and operated by recreation districts – see LCP Policy 7.1.8); requires that access be provided to every beach where the public has a right of access, including to provide at least one accessway to every pocket beach, such as the pocket beaches reached through Opal Cliffs Park (Objective 7.7c); requires beach access to be pursued/dedicated at least every 650 feet (LCP Policy 7.7.10); protects coastal blufftop areas and beaches from intrusion by non-recreational structures (LCP Policy 7.7.4); and provides that assisting other public agencies (such as OCRD) in opening and maintaining coastal accessways between the first public road and the shoreline is a stated public policy goal of the County (LCP Policy 7.7.13). The LCP also recognizes County beaches as regional park facilities meant for more than just neighborhood use (LCP Policy 7.5.7) Similarly, the Implementation Plan (IP) highlights the importance of maintaining access coastal beaches and bluff areas, and protecting existing accessways and trails that have been used by the public. Applicable LCP provisions include:

LCP Objective 7.1a Parks and Recreation Opportunities

To provide a full range of public and private opportunities for the access to, and enjoyment of, park, recreation, and scenic areas, including the use of active recreation areas and passive natural open spaces by all ages, income groups and people with disabilities with the primary emphasis on needed recreation facilities and programs for the citizens of Santa Cruz County.

LCP Objective 7.1b Park Distribution

To establish and maintain, within the economic capabilities of the County, a geographical distribution of neighborhood, community, rural, and regional park and recreational facilities throughout the County based on the standards for acreage and population ratios contained in this plan (see Figure 7-3); and to preserve unique features of the natural landscape for public use and enjoyment. [Note: pursuant to LCP Figure 7-2, Opal Cliffs Park is an LCP-designated Regional Park Facility]

LCP Policy 7.1.8 Sharing Parks and Recreation Facilities

*Recognize the use of existing recreational facilities owned and/or operated by other agencies, including the cities, **recreation districts** and the school districts as serving the recreational needs of the community and partially meeting standards for community park acreage. Cooperate in funding and sharing recreation facilities, and **seek to maximize the availability of all such facilities for general public use** commensurate with the needs and priorities of other agencies through joint powers agreements addressing development, maintenance and operating programs, as allowed by budget constraints. (emphasis added)*

LCP Policy 7.5.7 Beaches as Regional Parks

Recognize the use of beach areas to satisfy regional recreational opportunities for County residents and improve access where appropriate.

LCP Objective 7.7a Coastal Recreation

To maximize public use and enjoyment of coastal recreation resources for all people, including those with disabilities while protecting those resources from the adverse impacts of overuse.

LCP Objective 7.7b Shoreline Access

To provide a system of shoreline access to the coast with adequate improvements to serve the general public and the coastal neighborhoods which is consistent with the California Coastal Act...

LCP Objective 7.7c Beach Access

To maintain or provide access, including visual access, to every beach to which a granted access exists or to which the public has acquired a right of access through use... in order to ensure one access to every pocket beach...

LCP Policy 7.7.1 Coastal Vistas

Encourage pedestrian enjoyment of ocean areas and beaches by the development of vista points and overlooks with benches and railings, and facilities for pedestrian access to the beaches, subject to policy 7.6.2.³⁰

LCP Policy 7.7.4 Maintaining Recreation Oriented Uses

Protect the coastal blufftop areas and beaches from intrusion by nonrecreational structures and incompatible uses to the extent legally possible without impairing the constitutional rights of the property owners, subject to policy 7.6.2.

LCP Policy 7.7.10 Protecting Existing Beach Access

Protect existing pedestrian, and, where appropriate, equestrian and bicycle access to all beaches to which the public has a right of access, whether acquired by grant or through use, as established through judicial determination of prescriptive rights, and acquisition through appropriate legal proceedings. Protect such beach access through permit

³⁰ LCP Policy 7.6.2 speaks to obtaining easements and dedications to further the LCP's coastal public access objectives.

conditions such as easement dedication or continued maintenance as an accessway by a private group, subject to policy 7.6.2.

LCP Policy 7.7.11 Vertical Access

Determine whether new development may decrease or otherwise adversely affect the availability of public access, if any, to beaches and/or increases the recreational demand. If such impact will occur, the County will obtain, as a condition of new development approval, dedication of vertical access easements adequate to accommodate the intended use, as well as existing access patterns, if adverse environmental impacts and use conflicts can be mitigated, under the following conditions: ... (a) Within the Urban Services Line: from the first public roadway to the shoreline if there is not dedicated access within 650 feet...

LCP Policy 7.7.13 Access Maintenance Responsibility and Liability

Open accessways only after a public agency or private association agrees to accept responsibility for maintenance and liability of the accessway, including regular garbage collection and recycling at the trailhead, along the trail, and at the beach destination. Notwithstanding the foregoing, it is the policy of Santa Cruz County to accept offers to dedicate coastal access, to complete, open and maintain or assist other public agencies or private non-profit groups to complete, open, and maintain coastal accessways between the first public road and the shoreline as soon as it is feasible.

LCP Program 7.7 Coastal Recreation

- a. Improve existing parking areas through the use of fencing, striping, landscaping, bike racks, and safety improvement...*
- b. Increase parking opportunities to serve visitors to the Live Oak coastline in locations where such facilities are feasible and compatible with the neighborhood and the natural setting. Provide on-and-off-street parking improvements and facilities within walking distance of the beaches and bluffs...*
- d. Encourage the continued recreational use of Monterey Bay through the development of marine programs and facilities that may serve local residents.*

In short, the LCP echoes the Coastal Act with respect to public recreational access requirements, and provides some additional specificity, particularly in terms of beach accessways such as is the case at Opal Cliffs Park (e.g., requiring access to every pocket beach; provisions for ensuring vertical accessways at least every 650 feet; and recognizing County beaches as regional park facilities for more than just neighborhood use).

Analysis

The Coastal Act (Section 30210) and the LCP (Objectives 7.1.a and 7.7a and Policy 7.1.8) require that public access and recreational opportunities be maximized, including for all people, regardless of income group. As discussed in the preceding findings, the analytic existing baseline for considering the proposed project is a public park with a roughly six-foot-tall fence and gate without any fees for access that experienced alternating periods where the gate was either left unlocked 24 hours a day or periods where it was unlocked for daytime hours only. In place of such free access, the County-approved project recognizes after-the-fact (ATF) a nine-foot-tall

wrought-iron front gate and fence, six-foot-tall chain link fencing along the Park's side yards, the Applicant's proposed fee program, and limits free general public access to the Park during the summer months only (i.e., Memorial Day weekend through Labor Day weekend) and between the hours of 5:00 am and 8:00 pm only, and reserves year-round access (i.e., from 5:00 am to 8:00 pm daily and 365 days/year) exclusively for keycard holders (i.e., those who can afford an annual keycard at the cost of \$100/year). The County's action thus reduces public recreational access opportunities when the Coastal Act and the LCP require them to be maximized, and this represents a substantial Coastal Act and LCP consistency issue.

In addition, at \$100, the proposed fee itself to gain access during all daytime times of the year is significant, particularly for lower income users and non-local visitors. Ultimately, unless members of the public who want to use this public beach have the ability or are willing to pay a \$100 fee, the Applicant is effectively proposing to prohibit public beach access at this location during 75% of the year for those who cannot pay the fee, given the nature of beach access to these pocket beaches. This beach access prohibition will fall disproportionately on the lower income and more disadvantaged among the beach going public as well as non-local visitors who are just passing through or who many only have a reason or opportunity to visit the Park only once or intermittently during the year. Again, the \$100 fee certainly does not maximize public recreational access opportunities, but rather it significantly decreases them, especially for those least able to pay such a fee in the first place, and this too represents a substantial Coastal Act and LCP consistency issue.

The County's approval also includes a nine-foot-tall wrought iron fence (roughly one-inch-in-diameter iron poles spaced four inches apart with approximately one-inch-diameter crossbeams at top and bottom, and curved at the top – see photos in **Exhibit 2**) with an integral gate to replace the existing six-foot-tall chain link fence and gate along the Park's frontage. The County-approved fence and gate presents a rather imposing and exclusionary barrier to public access as generally compared to a six-foot-tall chain link fence, and this has the additional adverse impact of establishing more than a physical barrier to access, but a psychological barrier as well. This barrier to general access, especially to visitors from outside the area, is only further enforced by the presence of a proposed gate attendant. Regardless of whether the attendant's role is to help all potential access users understand Park rules, etc., as the Applicant indicates, the presence of a person guarding the gate and the accessway will tend to only serve to further emphasize the perception that non-local users are not welcome generally, and will certainly intimidate users not familiar with or accustomed to such attendants, further dissuading them from using the accessway and further reducing public recreational access opportunities, and this too represents a substantial Coastal Act and LCP consistency issue.

In short, the County-approved project does not meet the above-cited LCP and Coastal Act requirements to maximize public access and recreational opportunities. In fact, the fee for access program, fence, gate, attendant and signage program together create a two-tiered access program with maximized access (365 days/year) available only to select individuals who can afford the \$100 annual keycard³¹ and significantly restricted access (during the summer months only) to

³¹ It is worth noting that although OCRD suggests that the \$100 annual keycard requirement is an across-the-board requirement that applies to everyone equally – whether a nearby resident or not – practically speaking the amount of the fee clearly favors nearby residents who would be more willing to pay a \$100 annual fee to access the Park

everyone else, including persons who may not be able to afford a keycard to access this Park outside of the summer months. Finally, it is worth noting that this two-tiered access program applies not only to the upland portion of the Park and the overlook area (which Coastal Act Sections 30221 and 30223 protect for recreational use), but also the beaches on either side of the staircase (i.e., Key Beach/Private Beach (access to which is also protected by LCP Policy 7.7c)), and the offshore surf breaks given the extreme difficulty of reaching these beaches and surf breaks by lateral access as discussed above.

For the same reasons as articulated above, the County-approved project raises a series of substantial issues with other Coastal Act and LCP policies, namely because it interferes with the public's right to access the beach and the sea (Section 30211); it provides only limited public access as opposed to general public access from the nearest public roadway to the shoreline (Section 30212); it does not protect existing free access, let alone lower-cost access, and it does not encourage or provide lower-cost public access (Section 30213); it only protects water-oriented recreational areas and oceanfront land, and only reserves upland areas necessary for coastal recreational uses, for only a limited period of time and only for a limited number of users who can afford a \$100 fee (Sections 30220, 30221, and 30223); it does not improve beach access (LCP Policy 7.5.7); it reduces the utility of the overall shoreline access system (LCP Objective 7.7b); it does not maintain but instead only provides limited access to this pocket beach (LCP Objective 7.7c); it discourages pedestrian enjoyment of these pocket beaches and the surrounding ocean (LCP Policy 7.7.1); it allows barriers to recreational use (LCP Policy 7.7.4); it interferes with the public's right to access the beach and the sea (LCP Policy 7.7.10); it limits vertical accessways to roughly a mile apart (LCP Policy 7.7.11); it does not recognize this beach area a regional destination and not just a neighborhood facility (LCP Figure 7-2 and LCP Policy 7.5.7); it does not meet the County's stated policy goal of assisting other public agencies (such as OCRD) in maintaining existing public access (LCP Policy 7.7.13); and it does not encourage continued recreational use of Monterey Bay (LCP Program 7.7). All of these represent substantial Coastal Act and LCP consistency issues.

Finally, in terms of the remaining County-approved development (i.e., the aesthetic park improvements including various improvements installed with funding from Proposition 40 including a colored-concrete paver pathway, benches, retaining walls, and landscaping improvements, as well as the proposed parking improvements), these improvements align with both Coastal Act and LCP public access and recreation policies and objectives for improving coastal accessways, including LCP Policy 7.7.1, which encourages the development of overlook areas/vista points and the installation of benches, and the LCP's Chapter 7 Programs, which encourage new and improved parking near beach accessways. Thus, if the project did not already entail substantial Coastal Act and LCP issues for other reasons, these improvements alone do not

because they know they have easier access opportunities to recreate at the Park, whereas a visitor who does not live nearby is going to be less willing to pay a \$100 annual fee for a single or intermittent use of the Park. In addition, OCRD residents are actually charged \$50 by OCRD to obtain a key, and the other \$50 is actually a property tax assessment. Therefore, although *on its face* the \$100 annual fee may not appear to some to be discriminatory, in practice it clearly has the effect of prejudicing use of the Park by residence, which may be inconsistent with Government Code Sections 54091 and 54092 (both of which generally prohibit restriction of use and access to public beaches based on, among other things, residence) and thus may also be inconsistent with Coastal Act Section 30211 ("Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization").

raise substantial conformance issues with respect to the public access/recreation provisions of the Coastal Act or the certified LCP.

Conclusion

The County-approved project raises a series of Coastal Act and LCP public access and recreation consistency issues, including fundamentally with respect to policies that require that public recreational access opportunities be maximized. Most notably, the County-approved fee program (including the imposing fence, gate, and attendant) results in substantial limitations on general public access to the beach. The County-approved project also disproportionately adversely affects those potential beach goers of more limited incomes who cannot afford a \$100 beach access fee, particularly visitors from inland locations not fortunate to live near the Park. In fact, the County's approval limits free general public access to the Park and beach to just over three months a year (or about 25% of the year) and imposes a fee for general public Park and beach access for the remainder of the year. In short, the County's approval raises substantial LCP and Coastal Act issues with respect to public access and recreation.

2. Visual Resources

The Santa Cruz County LCP is very protective of coastal zone visual resources, particularly in regards to views from public roads, such as Opal Cliff Drive. LCP Objective 5.10a seeks to identify, protect and restore visual resource aesthetic values; meanwhile LCP Objective 5.10b seeks to ensure that new development does not adversely impact visual resources. In addition, LCP Policies 5.10.2, 5.10.3 and 5.10.6 recognize the importance of coastal zone visual resources, and require maximum protection and preservation of ocean vistas, LCP Policy 5.10.7 prohibits the placement of new permanent structures that would be visible from the beach, and LCP Policy 5.10.9 requires onsite restoration of any visually blighted conditions at the site as a condition of approval of any new development. Similarly, LCP Policy 7.7.1 encourages the development of vista points and facilities for pedestrian access to beaches, and LUP Objective 7.7c requires the provision of visual access to every publicly-used beach. Lastly, IP Section 13.20.130(B)(1) broadly instructs that all development within the coastal zone be sited, designed and landscaped to be visually compatible and integrated with the character of surrounding neighborhoods or areas, and to embody a community aesthetic, and IP Section 12.20.130(C) identifies that new development shall not block views of the ocean, and requires mitigation of any visually blighted conditions. Applicable LCP provisions include:

LCP Policy 7.7.1 Coastal Vistas

Encourage pedestrian enjoyment of ocean areas and beaches by the development of vista points and overlooks with benches and railings, and facilities for pedestrian access to the beaches, subject to policy 7.6.2.

LCP Objective 5.10a Protection of Visual Resources

To identify, protect and restore the aesthetic values of visual resources.

LCP Objective 5.10b New Development in Visual Resource Areas

To ensure that new development is appropriately designed and constructed to have minimal to no adverse impact upon identified visual resources.

LCP Policy 5.10.2 Development Within Visual Resource Areas

Recognize that visual resources of Santa Cruz County possess diverse characteristics and that the resources worthy of protection may include, but are not limited to, ocean views ... Require projects to be evaluated against the context of their unique environment and regulate structure height, setbacks and design to protect these resources consistent with the objectives and policies of this section. ...

LCP Policy 5.10.3 Protection of Public Vistas

Protect significant public vistas as described in policy 5.10.2 from all publicly used roads and vista points by minimizing disruption of landform and aesthetic character caused by grading operations, timber harvests, utility wires and poles, signs, inappropriate landscaping and structure design. ...

LCP Policy 5.10.6 Preserving Ocean Vistas

Where public ocean vistas exist, require that these vistas be retained to the maximum extent possible as a condition of approval for any new development.

LCP Policy 5.10.7 Open Beaches and Blufftops

Prohibit the placement of new permanent structures which would be visible from a public beach, except where allowed on existing parcels of record, or for shoreline protection and for public beach access. ...

LCP Policy 5.10.9 Restoration of Scenic Areas

Require on-site restoration of visually blighted conditions as a mitigating condition of permit approval for new development. ... Provide technical assistance for restoration of blighted areas.

LCP Objective 7.7a Coastal Recreation

To maximize public use and enjoyment of coastal recreation resources for all people, including those with disabilities while protecting those resources from the adverse impacts of overuse.

LCP Objective 7.7b Shoreline Access

To provide a system of shoreline access to the coast with adequate improvements to serve the general public and the coastal neighborhoods which is consistent with the California Coastal Act, meets public safety needs, protects natural resource areas from overuse, protects public rights and the rights of private property owners, minimizes conflicts with adjacent land uses, and does not adversely affect agriculture, subject to policy 7.6.2.

LCP Objective 7.7c Beach Access

To maintain or provide access, including visual access, to every beach to which a granted access exists or to which the public has acquired a right of access through use, as established through judicial determination of prescriptive rights, and acquisition through appropriate legal proceedings, in order to ensure one access to every pocket beach and convenient, well distributed access to long sandy beaches, subject to policy 7.6.2.

IP Section 13.20.130(B)(1): Design Criteria for Coastal Zone Developments

... Visual Compatibility. All development shall be sited, designed and landscaped to be visually compatible and integrated with the character of surrounding neighborhoods or areas. Structure design should emphasize a compatible community aesthetic...

IP Section 13.20.130(C) 1 & 5 Design Criteria for Coastal Zone developments.

1. Location of Development. Development shall be located, if possible, on parts of the site not visible or least visible from the public view. Development shall not block views of the shoreline and/or ocean from scenic roads, turnouts, rest stops, or vista points.

5. Restoration. Feasible elimination or mitigation of unsightly, visually disruptive or degrading elements such as junk heaps, unnatural obstructions, grading scars, or structures incompatible with the area shall be included in site development. The requirement for restoration of visually blighted areas shall be proportional to the size of the proposed project and its visual impacts.

See **Exhibit 8** for a complete text of the LCP’s visual resource protection provisions.

The County-approved project entails after-the-fact authorization of aesthetic park improvements (including a concrete paver pathway, stone retaining walls, benches, landscaping, irrigation), new parking improvements (including striped parking and new ADA parking signage) and a nine-foot-tall wrought iron fence/gate along the Opal Cliff Drive frontage of the Park. The various aesthetic improvements (i.e., the concrete paver pathway, stone retaining walls, landscaping, irrigation, and parking improvements) appear to meet the LCP’s objectives of protecting and restoring visual resources and embodying a community aesthetic. However, the nine-foot-tall wrought iron fence/gate offers a more negative, restrictive, and uninviting impression to the general public (see photos of the fence and gate in **Exhibit 2**). It also impedes the coastal view at the only location along Opal Cliff Drive that the public is afforded a public view, and limits unimpeded views to those who can afford to pay the access fee of \$100. In fact, the nine-foot-tall wrought-iron fence/gate fragments what view is available via a thick, black fence made of wrought-iron bars that are spaced every few inches. In addition, the fence/gate has a chilling/intimidating effect due to its significant height, and its general aesthetic, which includes thick, black bars, which are curved at the top and are intended as an anti-climb feature.

In short, the County-approved nine-foot-tall wrought iron fence/gate, which impedes views towards the beach and ocean and is generally intimidating, does not appear to meet the requirements of the LCP’s visual resource protection policies including protecting/restoring beach and ocean views, maximizing ocean vistas, and embodying a community aesthetic, and thus the approval raises substantial LCP issues with respect to protection of visual resources.

3. The “Five Substantial Issue” Factors and Conclusion

When considering a project that has been appealed to it, the Commission must first determine whether the project raises a substantial issue of LCP conformity, such that the Commission should assert jurisdiction over a de novo CDP for such development. At this stage, the Commission has the discretion to find that the project does or does not raise a substantial issue of LCP conformance. The Commission has in the past considered the following five factors in its decision of whether the issues raised in a given case are “substantial”: the degree of factual and

legal support for the local government’s decision; the extent and scope of the development as approved or denied by the County; the significance of the coastal resources affected by the decision; the precedential value of the County’s decision for future interpretations of its LCP; and, whether the appeal raises only local issues as opposed to those of regional or statewide significance.

The County-approved project raises substantial conformance issues for the reasons identified above.

First, in terms of the degree of factual and legal support for the County’s decision, the County’s analysis was based on an understanding that OCRD has existing valid CDPs, and the County’s decision was structured as approving merely minor modifications to existing permitted development, including in terms of the fee-based access program. Specifically, the County identified the approved project as an amendment to both CDP P-80-393 and County Permit 07-0639. As is explained in more detail above, CDP P-80-393 is expired, and the access plan otherwise required by CDP P-80-393 that purports to allow a fee-based access program is of no further force and effect by its own provisions. As for County Permit 07-0639, the notice of that action was rejected by Commission staff in 2008, and that approval is of no force or effect.

³²Neither the County, nor OCRD challenged that rejection at that time; rather, OCRD has pursued separate CDPs to legalize the unpermitted development, including the CDP application that is the subject of this appeal. In short, the County’s factual and legal basis for its CDP conclusions are premised on these fundamental erroneous baseline presumptions.

In any event, the County’s approval currently on appeal was based on an understanding that most of the existing development was in fact already permitted or vested as a pre-Coastal Act use and that the proposed modifications served as only minor modifications to existing and approved physical development and uses. None of that is accurate (see also discussion preceding the “Substantial Issue” findings above). Therefore, as a procedural matter the County’s approval is founded on a factually flawed narrative of the permitting history, and this factor supports a finding of substantial issue.

Regarding the substantive factual and legal basis for the County’s decision in relation to LCP and Coastal Act public access and recreation policies – even assuming the validity of CDP P-80-393 and a six-foot-tall chain link fence and gate as baseline conditions, the access fee and gate attendant program have no factual or legal basis for approval because the access program has expired by its own terms and CDP P-80-393 says nothing about allowance of an access fee or gate attendant program as part of the approval. Therefore, in terms of substantive factual and legal support, the County’s approval supports a finding of substantial issue.

Second, with respect to the extent and scope of the development approved by the County, the County-approved development includes limited free access to the general public to Opal Cliff Park and the beach, which is the only access point to the beach or ocean for a distance of over a mile along Opal Cliff Drive between public access stairways at Hooper Beach in Capitola and at

³² See footnote 22 for the explanation that Commission staff’s error in rejecting the validity of the 2008 County CDP due to an erroneous belief as to validity of CDP P-80-393 at that time, is harmless and non-prejudicial.

41st Avenue in Pleasure Point. The County-approved development also includes a gate attendant and signage that reinforce a restricted access program, and a new fence/gate that results in an approximately 50-80% height increase over the baseline condition, all of which are significant. Specifically, limiting free public access to this beach coastal access point, which is rare access relative to its vicinity, for only 25% of the year constitutes a significant change in use/scope of development relative to baseline conditions, which do not include authorization for fees. Likewise, limiting public access to this rare beach coastal access point for 75% of the year only to persons who are willing or able to pay the high cost of a \$100 annual fee also constitutes a significant change in use/scope of development relative to baseline conditions (i.e., no authorization for fees). Finally, use of a gate attendant to regulate and limit public access to this rare beach coastal access point also constitutes a significant change in use/scope of development relative to baseline conditions (i.e., no authorization for use of a gate attendant). Thus, this factor supports a finding of substantial issue.

Third, with respect to the significance of the coastal resources affected by the decision, the impacts to public access and recreation coastal resources are significant, particularly considering the paramount importance that the LCP and the Coastal Act place upon public coastal access, and because free public access is heavily restricted (i.e., limited to 5:00am to 8:00pm during the summer months only) by the County-approved project. Thus, this factor supports a finding of substantial issue.

Fourth, in terms of the precedential value of the County's decision for future interpretations of the LCP, the County's approval of a two-tiered access program is clearly contradictory to Coastal Act and LCP's directives to maximize public access and recreational opportunities for all people, regardless of income. Further, the County based its approval of the nine-foot-tall fence height and wrought-iron design on the fact that the height and design were comparable to the previously existing six-foot-tall chain link fence and gate. However, a three-foot height increase, i.e. 50% over the baseline condition, represents a significant height increase and should not be considered "comparable" including for future LCP findings and interpretations. Thus, this factor also supports a finding of substantial issue.

Finally, with respect to whether the appeal raises only local issues or issues of regional/statewide significance, considering that this Park is the only access point to the beach or ocean vista for a distance of over a mile along Opal Cliff Drive and further considering the regional/statewide effect of a high-cost access fee, which as a practical matter favors local residents and prejudices non-local visitors, the approved access program (including the associated signage and gate attendant) raises issues of regional and statewide significance. More generally, development that restricts free public access to specific times and months and provides for unlimited access at a premium rate raises significant regional and statewide concerns as this is inherently contradictory to the Coastal Act and LCP's requirements that public access and recreational opportunities be maximized for persons regardless of income. This factor supports a finding of substantial issue.

These five factors when taken together raise substantial conformance issues with respect to the LCP's protection of visual resources, as well as the LCP's and Coastal Act's protection of public access and recreation. Therefore, the Commission finds that **a substantial issue** exists with respect to the County-approved project's conformance with the provisions of the certified Santa

Cruz County LCP and the Coastal Act's access and recreation policies and the LCP's visual resource protection policies, and takes jurisdiction over the CDP application for the project.

I. COASTAL DEVELOPMENT PERMIT DETERMINATION

The standard of review for this CDP determination is the Santa Cruz County certified LCP and, because it is located between the first public road and the sea, the public access and recreation policies of the Coastal Act. All Substantial Issue Determination findings above are incorporated herein by reference.

1. Public Recreational Access

Applicable Policies

As detailed in the preceding findings, among other things the Coastal Act and the LCP require that public access and recreational opportunities be maximized to and along the coast, subject to certain exceptions, and the LCP explicitly requires that these opportunities be maximized for all people, regardless of income group (see applicable Coastal Act and LCP provisions listed above and in **Exhibit 8**). In addition, the LCP echoes the Coastal Act with respect to public recreational access requirements, and provides some additional specificity, particularly in terms of beach accessways such as the one that exists at Opal Cliffs Park (e.g., requiring access to every pocket beach; provisions for ensuring vertical accessways at least every 650 feet; and recognizing County beaches as regional park facilities for more than just neighborhood use). Coastal Act Section 30604(c) requires that every CDP issued for any development between the nearest public road and the sea “shall include a specific finding that the development is in conformity with the public access and public recreation policies of [Coastal Act] Chapter 3,” and thus because the proposed project is located in the seaward of the first public road and the sea, this additional finding must be made to approve a project in this case.

Consistency Analysis

As discussed in the preceding findings, the analytic existing baseline for considering the proposed project is a public park with a roughly six-foot-tall fence and gate without any fees for access, and for which there were intermittent periods over the years where the gate was either left unlocked 24 hours a day or left unlocked during daytime hours only. Thus, in place of such free access³³ the Applicant proposes to require users to pay a \$100 fee to gain daytime access to the Park and the beach during the majority of the year, and disallows any access between 8pm and 5am all year around. The only time that a fee would not be required to gain access would be between the hours of 5:00am and 8:00pm from Memorial Day weekend through Labor Day weekend only (roughly three months or only about 25 percent of the year). During the remaining

³³ As explained in the “Substantial Issue” portion of the Staff Report, regardless of whether the 1981 CDP is considered still valid or expired, the recorded public access program required by Special Condition 1 of that CDP (which is arguably the only permitted basis for charging an access fee) has terminated by its own terms because “the development” authorized by that CDP is not what is on the ground now, considering the unpermitted increase in height via replacement of the six-foot-tall chain link fence with the nine-foot-tall wrought iron fence, as well as the unpermitted replacement of the side fencing. As also explained in the “Substantial Issue” portion of the Staff Report, there is no vested right to charge an access fee either. Thus, there is no basis for charging an access fee at Opal Cliffs.

almost nine months (or almost 75 percent of the year), only keycard holders (i.e., those who purchase the \$100/year annual keycard) can access the Park and the beach. In other words, in place of the existing free access the Applicant proposes to charge a \$100 fee for access, and also proposes a two-tiered access program whereby those who cannot afford or are unwilling to pay a \$100/year keycard are only allowed reduced access that is for about 25 percent of the time that access is allowed to keycard holders. Nighttime beach and shoreline access would be prohibited altogether. Although there are a number of ways of trying to understand Coastal Act Section 30210 and LCP Objectives 7.1a and 7.7a requirements to maximize public recreational access opportunities, at a fundamental level the proposed project actually reduces public recreational access opportunities as related to the existing baseline by requiring a fee for access most of the year (i.e. almost 75 percent of the roughly daytime hours), and limiting access only to daylight hours.³⁴ This proposed reduction in public recreational access opportunities at this location is inconsistent with maximizing public recreational access opportunities, and cannot be found consistent with either the LCP's or the Coastal Act's requirements to maximize public access and recreational opportunities.

In addition, at \$100, the proposed fee itself to gain access during all daytime times of the year is significant, particularly for lower income and for non-local users. A \$100 access fee is a significant cost to many, if not most, potential public access users, particularly when one considers that this is a public park and beach facility. Ultimately, unless members of the public who want to use this public beach have the ability or are willing to pay a \$100 fee, the Applicant is effectively proposing to prohibit public beach access at this location during almost 75 percent of the year. This beach access prohibition will fall disproportionately on the lower income and more disadvantaged among the beach-going public, as well as intermittent, sporadic, or far-traveling visitors who do not live in the immediate vicinity of Opal Cliffs. The proposed access fee is not a parking fee, akin to what State Parks might charge for a yearly parking pass at certain State Park units, but rather it is a beach access fee. State Parks does not charge bike- and walk-in users beach access fees in such circumstances, and they are allowed in for free. In contrast, there is no other way to readily access the beach and shoreline at this location other than through the Park, and thus the fee is at its core a beach access fee, and an expensive one at that. Again, the \$100 fee does not maximize public recreational access opportunities, but rather it significantly *decreases* them, especially for those least able to pay such a fee in the first place and for those who may not use the Park on a regular-enough basis to justify paying such a high fee. At its heart, the proposed fee sets up what can best be described as a two-tiered access system, one where those able to pay the fee get year-round beach and shoreline access, but those who cannot or will not pay a \$100 access fee are only allowed a limited amount of access. None of this can be squared with the Coastal Act and LCP requirements to maximize opportunities for public recreational access activities either.

Similarly, the Applicant proposes to recognize after-the-fact a nine-foot-tall wrought iron fence (i.e., roughly one-inch-in-diameter iron poles spaced four inches apart with approximately one-inch-in-diameter crossbeams at top and bottom, and curved at the top) with an integral gate to

³⁴ And although the free access period is during the heart of the summer season, it does not correspond to the full time during the year when the weather is conducive to beach going in Santa Cruz, which often begins well before May and often extends well into October and further. In addition, as discussed above, this accessway also provides shoreline access to at least three popular surf breaks, and these are a visitor draws at all times of the year.

replace the baseline six-foot-tall chain link fence and gate along the Park frontage. The proposed ATF recognition of the fence and gate presents a rather imposing and exclusionary barrier to public access generally as compared to a six-foot-tall chain link fence and gate, and this has the additional adverse impact of establishing more than a physical barrier to access, but a psychological barrier as well. In other words, potential access users who are not familiar with the setting, particularly visitors from inland locations who do not live in Opal Cliffs, may be intimidated by such an imposing edifice and, as such, may tend to not approach the accessway in the first place, whether fees are charged or not. This barrier to general access, especially to visitors from outside the area, is only further enforced by the presence of a proposed gate attendant.³⁵ Regardless of whether the attendant's nominal role is to help all potential access users understand Park rules, etc., as the Applicant indicates, the presence of a person guarding the gate and the accessway will tend to only serve to further emphasize the perception that non-local users are not welcome as a general rule, and will most likely intimidate users not familiar with or accustomed to the proposed setup for Opal Cliffs Park, further pushing them away from using the accessway and further reducing public recreational access opportunities, inconsistent with the Coastal Act and the LCP. The Commission is not aware of any other similar "gate attendant" programs at any other public beach accessway in California.

For the same reasons as articulated above, the proposed project interferes with the public's right to access the beach and the sea, inconsistent with Coastal Act Section 30211; it provides only limited public access as opposed to general public access from the nearest public roadway to the shoreline, inconsistent with Coastal Act Section 30212; it does not protect existing free access, let alone lower cost access, and it does not encourage or provide lower cost public access, inconsistent with Section Coastal Act 30213; it only protects water-oriented recreational areas and oceanfront land, and only reserves upland areas necessary for coastal recreational uses, for only a limited period of time and only for a limited number of users who can afford a \$100 fee, inconsistent with Coastal Act Sections 30220, 30221, and 30223. In addition, and again for the same reasons, the proposed project does not improve beach access, inconsistent with LCP Policy 7.5.7; it reduces the utility of the overall shoreline access system, inconsistent with LCP Objective 7.7b; it does not maintain but instead only provides limited access to these pocket beaches, inconsistent with LCP Objective 7.7c; it discourages pedestrian enjoyment of the beach and the ocean, inconsistent with LCP Policy 7.7.1; it allows barriers to recreational use, inconsistent with LCP Policy 7.7.4; it interferes with the public's right to access the beach and the sea, inconsistent with LCP Policy 7.7.10; it limits vertical accessways to roughly a mile apart, inconsistent with LCP Policy 7.7.11; it does not recognize this beach area a regional destination and not just a neighborhood facility, inconsistent with LCP Figure 7-2 and Policy 7.5.7; it does not meet the County's stated policy goal of assisting other public agencies (such as OCRD) in maintaining existing public access, inconsistent with LCP Policy 7.7.13; and it does not encourage continued recreational use of Monterey Bay, inconsistent with LCP Program 7.7.

³⁵ Again, as explained in the "Substantial Issue" portion of the Staff Report, regardless of whether the 1981 CDP is considered still valid or expired, use of a gate attendant does not constitute part of the baseline conditions for Opal Cliffs Park as part of the consideration of the CDP at issue. The 1981 CDP says nothing about use of a gate attendant and, as explained earlier in this Staff Report, the gate attendant cannot be construed as a vested right. Thus, there is no basis for construing the gate attendant as part of the baseline conditions.

In short, the proposed project is antithetical to Coastal Act and LCP public access requirements that apply here, including fundamentally those that require that public recreational access opportunities be maximized. Most notably, the fee program (including the imposing fence, gate, and attendant) inflicts substantial limitations on general public access to the beach, and is not consistent with the requirements of the Coastal Act and the LCP. The proposed project also disproportionately adversely affects those potential beachgoers of more limited incomes who cannot afford a \$100 beach access fee, as well as visitors from inland locations who do not live near the Park. Given this is the only accessway to the beach and shoreline, including for surfing access, between the public stairway at the Hook at 41st Avenue and the public stairway near the Capitola Wharf at Hooper's Beach (a distance of a mile), this impact on the general beach-going public is particularly acute. The proposed project is not consistent with the Coastal Act or the LCP, and cannot be approved in its proposed form. As a public park providing the only readily available beach access for a mile of urban Santa Cruz shoreline, an access program can only be found consistent with the Coastal Act and LCP's requirements if it maximizes public access and recreational opportunities for all people regardless of ability to pay and if access is provided to the general public year-round (as opposed to only during select months of the year) and free of charge, consistent with other public parks and beach accessways found throughout the County and the Coastal Zone.

The Applicant maintains that the \$100 fee is the only way that OCRD can continue to operate the Park at all, and that OCRD will not be able to provide any access otherwise. However, there are a number of issues with this assertion. First and foremost, this is public property that provides the only readily available public access to popular public beaches, and it is not clear why it needs to be operated any differently than any other public beach accessway in the County, all of which are currently operated free of any charge. State Parks and the County Parks Department operate these other such accessways for the benefit of the public without fees. In fact, the Commission is unaware of any public agency charging a beach access fee (as distinct from parking access fees that apply in certain circumstances) anywhere else in California. And Commission staff have had recent discussions regarding various means that could result in increasing revenues for County Parks to better operate County coastal accessways countywide that might have a bearing on the Park (e.g., through use of coastal armoring mitigation fees, coastal public property encroachment fees, coastal parking fees, etc.).

In addition, the record indicates that almost none of the capital improvements undertaken at the Park in recent years have been paid for by keycard fees collected by OCRD. Rather, Federal and State public grants and other funds have been used to pay for capital improvements at the Park over the years. These publicly funded capital improvements include: the repair of the beach access staircase following the 1989 Loma Prieta earthquake; the 2011 emergency stairway repairs; and the upland Park improvements constructed in 2009 (or shortly after) and which are proposed to be authorized ATF under this CDP application (including the concrete paver pathway, the stone retaining walls, benches, landscaping, and irrigation).³⁶ Beyond these most

³⁶ Specifically, certain repairs to the stairway in 1989 were funded by the Federal Emergency Management Agency and its State counterpart (the State Natural Disaster Assistance Act Program); the 2011 stairway repairs were funded by a 2002 Resources Bond Act administered through California State Parks, and totaled \$95,621; and the 2009 improvements (proposed to be authorized ATF by this application) were funded via a separate grant from the 2002 Resources Bond Act, and totaled \$124,601.

recent improvements, other public grant funds have been used for construction of OCRD's capital improvements over the years, including distributions from California Bond Acts in 1974, 1986, and 1988.³⁷ In short, although OCRD argues that the funds generated from access fees are critical to support capital improvements at the Park, it appears that the major improvements over the last three decades have been paid for through other public funds. This is not atypical of other County and Statewide coastal accessways for which these types of public monies are used to make improvements to public parks. What is unusual in this case is that those public dollars, including from California taxpayers, are used for improvements at a Park that is currently only available for the exclusive benefit of those persons who can afford or are willing to pay the \$100 per year fee to access the Park, as opposed to being generally available to the beach-going public in the manner that is the norm for coastal accessways.³⁸

Furthermore, a transition away from the proposed \$100 fee program and toward a free public Park and public beach accessway is further supported by the fact that the bulk of OCRD's annual expenditures appear to be related to administration of the keycard and gate attendant program, and not basic Park or beach access needs. Indeed, even a cursory review of OCRD's finances demonstrates that OCRD's budget largely consists of expenditures that are unnecessary for providing basic Park and beach access at the site. For example, based on a 2017 budget review by the County over the preceding five-year period (see **Exhibit 9**), OCRD spent roughly \$52,000 annually. For the 2015-2016 year, OCRD spent approximately \$56,500, and of this \$56,500, approximately \$2,000 went to maintenance, \$1,000 for utilities, \$1,500 for insurance, and another \$500 for other undisclosed items (or a total of \$5,000). An additional roughly \$52,000 was used for the production of keycards/passes, security, and other professional services.³⁹ Thus, the cost for the basic operation of the accessway (i.e., maintenance, utilities and insurance) comes out to about \$5,000 per year (which is the same as OCRD already takes in through property taxes). The bulk of OCRD's annual expenditures during the budget analysis (over \$52,000) are unrelated to these basic public accessway operational needs, but rather are to pay for the fee program apparatus itself and the gate attendants. In addition, concerns have been raised in the past regarding OCRD's budgeting and expenditures,⁴⁰ including in a 2016 report by

³⁷ There is evidence in the record that OCRD received money from California Bond Acts in 1974, 1986, and 1988. Commission staff has requested that OCRD provide the amounts distributed to OCRD from these California Bond Acts and information on how these funds were used; however, OCRD had not provided this information to date.

³⁸ For example, the Coastal Conservancy, using State bond and grant funds, has funded the development of beach access stairways in other areas of coastal Live Oak at the ends of 12th, 13th, 20th, and 26th Avenues as well as along East Cliff Drive at 38th and 41st Avenues. In addition, the nearby Pleasure Point Parkway project includes three beach and surfing accessways that were all publicly funded and developed in the early 2000s. All of these beach and shoreline accessways are operated free of charge for the benefit of the general public by the Santa Cruz County Parks Department.

³⁹ Or roughly \$8,000 for the keycards/passes, \$26,000 to pay for the salaries of the gate attendants, and \$13,000 for other undisclosed professional services.

⁴⁰ Including Santa Cruz County 2009 Grand Jury investigations, which found that the larger non-County-operated recreation and park districts generally functioned well, but the small districts such as OCRD are more likely to fall into "gray areas of minimal compliance with guidelines and statutes in the operation of their districts." In addition, an audit of OCRD's budget from 2011 found that over approximately \$11,000 of OCRD's budget was unaccounted for, and that the budget was partially used to pay for bar tabs and food bills (totaling over \$1,000) for a "June 9th Freeline Party" (Freeline is the surf shop that is responsible for selling OCRD's \$100/year keycards to the public).

the Santa Cruz Local Agency Formation Commission (or LAFCO) that recommends that OCRD consider transitioning operation of the accessway to another entity, such as the Santa Cruz County Parks Department.⁴¹

In short, although OCRD argues that it needs the beach access fee revenues to be able to operate the Park at all, it appears clear that capital improvements (including stairway repairs and aesthetic improvements such as pathways, landscaping, seating, etc.) have been paid for in the past by State and Federal bonds and grants, much like other public accessways that provide free general public access without fees, and that the overwhelming bulk of OCRD's annual expenditure is used to pay for the overall gate and gate attendant program, including the gate and locks themselves. In addition, it is not clear why this accessway needs to function differently than others Countywide to which all members of the general public are provided free public beach and shoreline access, regardless of their ability to pay. OCRD is a special district, but it is still a part of Santa Cruz County government formed for the purpose of providing public park and beach access services, and it is not clear why OCRD (or Santa Cruz County Parks Department in a transfer scenario as recommended by LAFCO) cannot maintain and operate this public beach accessway at a comparable level to other beach accessways throughout the County without the "need" for keycard revenue.⁴²

Thus, the access fee program cannot be found consistent with the Coastal Act and LCP provisions described above, and cannot be approved as proposed. The Commission is sympathetic to OCRD's stated budget needs and goals, but also notes that to the extent that the Applicant wants to provide additional services that are not typically found at public beach accessways (such as a gate attendant program along with its associated costs), that is more appropriately something that OCRD through its members in the neighborhood can decide to fund or not. In other words, a gate attendant is not necessary for general public beach access, and it is very unusual to have such a gate attendant presence at coastal accessways, but if the property owners in the underlying OCRD neighborhood wants to assess for themselves this added service and function, then that is up to them and OCRD to decide (provided, of course, that the gate attendant is not used in a manner to *inhibit* public access). However, the provision of basic public beach access at this location to the general public, including the general public who cannot afford a \$100 access fee, does not need to be tied to such "value-added" desires of the neighborhood.

Consistent with Coastal Act and LCP requirements to maximize public recreational access opportunities, this approval is structured to require free year-round general public access (see **Special Condition 2**).

⁴¹ LAFCO's "Review of Recreation and Park Districts Services and Spheres of Influence" from March 2016 (see **Exhibit 9**). The 2016 LAFCO report identifies a series of OCRD operational issues, including substantially in relation to its financial accounting and responsibilities, and ultimately recommends that OCRD consider transitioning operation of the accessway to another entity, such as the Santa Cruz County Parks Department.

⁴² And it is not even clear if Government Code Sections 54090-54092 even allow for imposition of such beach access fees. Section 54092 states: "Any city, county, or other local agency that allows any property owned, operated, or controlled by it to be used as a means of access to any public beach shall allow free access over that property to all persons regardless of ancestry, residence, or any characteristic listed or defined in Section 11135."

With respect to hours of use, the Applicant proposes that Park use hours would be from 5:00 a.m. to 8:00 p.m. daily, but that there would be no access from 8:00 p.m. through 5:00 a.m. each night for anyone, whether they have purchased the \$100 key or not.⁴³ In past cases, the Coastal Commission has typically interpreted that maximized public recreational access opportunities means unlimited access 24 hours per day and 365 days a year, unless there is a clearly demonstrated need for some kind of reduced access. Access restrictions are often proposed because of some perceived problem with access users later at night and/or overnight in terms of noise, public nuisance, inappropriate camping, public safety, and other related issues. In such cases, it is important that the problem be clearly identified and substantiated, and that the response be as focused as possible to address the problem but avoid public access impacts to the maximum extent feasible. This is because there is legitimate public access use after dark (including for nighttime beach and surfing access, nighttime coastal viewing across the bay waters and the Pacific Ocean, nighttime star gazing, etc.). The important question is: at what point does legitimate and appropriate use of the public access resource need to be restricted so as to address the potential concerns related to unrestricted nighttime access? As a general rule, the demand for the former decreases as the night goes on, and the potential for the latter increases as the night goes on. The key is to ensure that the least number of legitimate users are impacted while still abating the potential access issues to the fullest extent possible.

In this case, OCRD has historically identified (including as the primary impetus for the fence and locked gate proposed under the 1981 CDP) that the bluff and beach accessway can be dangerous at night, including because there is no lighting along the paved accessway and the stairway leading to the beach, and the fact that there is little or no beach during times of high tides and large swells. In addition, the Commission has received comments from the Santa Cruz County Sheriff, Jim Hart, indicating that the Sheriff's office believes that nighttime use of the Park results in the potential for unlawful activities and potential public safety concerns, including because the beach cannot readily be seen even from the blufftop above the Park, especially at night. Although limited objective data have been presented to justify the need for a nighttime closure at this location, there is little doubt that the beaches at the base of the stairway are relatively secluded pocket beaches that are difficult to patrol from the Park above to ensure public safety. Thus, it seems that a nighttime closure is supportable provided it applies to all users of the Park. Importantly, though, nighttime varies throughout the year, and a static hourly "nighttime" closure does not necessarily reflect nighttime at all times of the year, (e.g., sunset at the summer solstice in June is 8:30 pm), including because there is still daylight before sunrise and after sunset. To address this issue, the Commission has typically required that public access amenities be open to general public use from one hour prior to sunrise to one hour after sunset year round. This timing makes park availability for all daylight hours, including the early morning and early evening hours when there is some light in the sky but the sun is not technically above the horizon and does not unduly penalize early morning and sunset users making use of such facilities. Therefore, **Special Condition 2** requires the Park to be open from

⁴³ In all cases, the locked gate would still allow exit from the Park for users leaving the beach later than 8pm; it just would not allow entry between 8pm and 5am.

one hour before sunrise to one hour after sunset daily, consistent with the Commission's past actions in this regard.⁴⁴

Regarding the nine-foot-tall wrought iron fence and gate⁴⁵, as articulated earlier, this fence and gate present a significant barrier, both physically and psychologically, to public access (as well as presenting public view concerns; see also public view findings below). In addition, IP Section 13.10.525 limits such fences and gates to six feet in height absent additional findings related to safety, community character/aesthetic, and that the project meets the LCP's requirements related to the protection of visual resources. There are a variety of ways of approaching this fence and gate in terms of LCP consistency. One is to recognize that the previously-permitted fence and gate (i.e. the six-foot-tall chain link fence and gate that is the existing baseline for analytic purposes) has a reduced impact in this regard, and to require the Applicant to take out the nine-foot-tall fence and gate and replace it with something less imposing, potentially going back to the six-foot-tall chain link fence and gate, or something smaller (and more aesthetically pleasing). However, to do so would require a significant expenditure of public funds that may be better put to other public access use in this case, and a lower-height fence would certainly make it easier for people to climb over the fence to get down to the beach at night, which could raise public safety concerns, as articulated above. Thus, in this case, although this fence and gate has historically served as barrier to public access, given OCRD's identified nighttime safety concerns, it is justifiable for the nine-foot-tall gate and fence to remain in place until its useful life comes to an end and it needs replacing. At that point it would be appropriate for OCRD to consider a less imposing means of controlling nighttime access, including such means as nighttime fencing that could be rolled across the street frontage each night, but would not need to be present at all times during the day. It is important to clarify that the nine-foot-tall fence/gate is only approvable in this particular case because **Special Condition 2** also requires free public access from one hour before sunrise to one hour after sunset, and clear signage and other information explicitly identifying that free access (see also below). In other words, as allowed per LCP Objective 7.7b (see **Exhibit 8**), the nine-foot-tall wrought iron fence and gate are permitted to remain in place to address legitimate public safety concerns, but only because of and on condition that the public access impacts of this type of fencing are mitigated by allowing free public access and requisite signage as set forth in Special Condition 2. The Commission fully expects OCRD to evaluate and implement a less imposing means of controlling nighttime access to address public safety concerns in the future when the fence and gate require upkeep and/or replacement that would result in redevelopment (see **Special Condition 1**).

As for the Park's signage, it is critical that the Park be appropriately signed to ensure that all public access users know they are welcome to use the Park, and to use it for free during daylight hours. This is particularly important given the presence of the imposing fence and gate, as well

⁴⁴ Given that the earliest sunrise is 5:47am for the bulk of June, and the latest sunset is 8:35pm in the latter part of June and in early July, that would mean maximum daylight hours applied to those static data points would be approximately 4:50am to 9:30pm.

⁴⁵ Again, as explained in the "Substantial Issue" portion of the Staff Report, regardless of whether the 1981 CDP is considered still valid or expired, the nine-foot-tall wrought iron fence and gate are clearly beyond the scope of development authorized by the 1981 CDP (which authorized a six-foot-tall chain link fence), and is wholly unpermitted. Thus, there is no basis for considering the nine-foot-tall wrought iron fence and gate as a baseline condition for purposes of consideration of the CDP on appeal.

as the gate attendant (should OCRD continue to employ same). It is also particularly important given that this accessway has been subject to exclusive use of keycard holders for many years without CDP authorization, and the general beach going public is going to need to be able to be made aware that the conditions for use of the accessway have changed so that they know they are welcome and can use it, particularly with respect to visitors from out of town. Thus, all signage needs to be updated to reflect the new access parameters and hours of use, and the same applies to all other OCRD information and materials (e.g., website, handouts, etc.) (see **Special Condition 2**).

Regarding the gate attendant program, as indicated above, the Commission does not believe that such a program is necessary for basic beach access purposes. In addition, the gate attendant can present a barrier to public access, especially for visitors from out of town not familiar with such a program, as discussed above. In that sense, the easiest and most straightforward manner of achieving Coastal Act and LCP consistency is to require elimination of the program altogether. However, it seems clear that OCRD wants to continue the gate attendant program, and the Commission is willing to acquiesce on this point provided any such program is paid for out of OCRD funds derived from the neighborhood and not general public access users (thereby allowing the neighborhood to assess themselves for this enhanced utility if they so desire), and provided that the gate attendant does not unduly present barriers to public access (e.g., the gate attendant must wear casual clothing including a tee-shirt that identifies their role as an OCRD Park Assistant, and must perform their duties in a manner that is consistent with the terms, conditions, and objectives of this approval to maximize general public access, where their duties include providing general assistance, responding to questions as needed, and assisting patrons, particularly the elderly and persons with disabilities with the large fence/gate as needed and/or requested) (see **Special Condition 2**).

Finally, as indicated above, the Applicant also requests after-the-fact approval of a series of previously completed improvements (including landscaping, hardscaping, and irrigation improvements) and newly proposed parking improvements (parking space striping and ADA parking signage). These Park improvements provide an enhanced park experience and can be found consistent with the Coastal Act and the LCP's public access and recreation policies as proposed.

Therefore, the approved project as conditioned can be found consistent with the above-cited Coastal Act and LCP provisions, including those that require that public recreational access opportunities be maximized for all, including nearby residents but also visitors from other parts of the County and elsewhere and of all economic groups.

2. Visual Resources

Applicable LCP Provisions

The Santa Cruz County LCP is highly protective of coastal zone visual resources, particularly in regards to views from public roads, such as Opal Cliff Drive. LCP Objective 5.10a seeks to identify, protect and restore the aesthetic values of visual resources, meanwhile LCP Objective 5.10b seeks to ensure that new development does not adversely impact visual resources. In addition, LCP Policies 5.10.2, 5.10.3 and 5.10.6 recognize the importance of coastal zone visual resources, and require maximized protection and preservation of ocean vistas. LCP Policy 5.10.7

prohibits the placement of new permanent structures that would be visible from the beach, and LCP Policy 5.10.9 requires onsite restoration of any visually blighted conditions at a site as a condition of approval of any new development. LCP Policy 7.7.1 encourages the development of vista points and facilities for pedestrian access to beaches, and LUP Objective 7.7c requires the provision of visual access to every beach to which the public has acquired a right of access through use. Lastly, IP Section 13.20.130(b)(1) broadly requires that all development within the coastal zone be sited, designed and landscaped to be visually compatible and integrated with the character of surrounding neighborhoods or areas, and to embody a community aesthetic, and IP Section 13.20.130(b)(7) identifies that new development shall not block views of the ocean, and requires mitigation of any visually blighted conditions. Applicable LCP policies and standards include:

7.7.1 Coastal Vistas

Encourage pedestrian enjoyment of ocean areas and beaches by the development of vista points and overlooks with benches and railings, and facilities for pedestrian access to the beaches, subject to policy 7.6.2.

Objective 5.10a Protection of Visual Resources

To identify, protect and restore the aesthetic values of visual resources.

Objective 5.10b New Development in Visual Resource Areas

To ensure that new development is appropriately designed and constructed to have minimal to no adverse impact upon identified visual resources.

5.10.2 Development within Visual Resource Areas

Recognize that visual resources of Santa Cruz County possess diverse characteristics and that the resources worthy of protection may include, but are not limited to, ocean views ... Require projects to be evaluated against the context of their unique environment and regulate structure height, setbacks and design to protect these resources consistent with the objectives and policies of this section. ...

5.10.3 Protection of Public Vistas

Protect significant public vistas as described in policy 5.10.2 from all publicly used roads and vista points by minimizing disruption of landform and aesthetic character caused by grading operations, timber harvests, utility wires and poles, signs, inappropriate landscaping and structure design. ...

5.10.6 Preserving Ocean Vistas

Where public ocean vistas exist, require that these vistas be retained to the maximum extent possible as a condition of approval for any new development.

5.10.7 Open Beaches and Blufftops

Prohibit the placement of new permanent structures which would be visible from a public beach, except where allowed on existing parcels of record, or for shoreline protection and for public beach access. ...

5.10.9 Restoration of Scenic Areas

Require on-site restoration of visually blighted conditions as a mitigating condition of permit approval for new development. ... Provide technical assistance for restoration of blighted areas.

IP Section 13.20.130(B)(1): Design Criteria for Coastal Zone Developments

... Visual Compatibility. All development shall be sited, designed and landscaped to be visually compatible and integrated with the character of surrounding neighborhoods or areas. Structure design should emphasize a compatible community aesthetic...

IP Section 13.20.130(B)(7): Design Criteria for Coastal Zone Developments

Development shall be sited and designed so that it does not block or significantly adversely impact significant public views and scenic character, including by situating lots, access roads, driveways, buildings, and other development (including fences, walls, hedges and other landscaping) to avoid view degradation and to maximize the effectiveness of topography and landscaping as a means to eliminate, if possible, and/or soften, if not possible, public view impacts.

Consistency Analysis

As detailed above, the Applicant proposes for after-the-fact approval of a nine-foot-tall wrought iron fence (roughly one-inch-in-diameter iron poles spaced approximately four inches apart with one-inch-in-diameter crossbeams at top and bottom, and curved at the top) with an integral gate to replace the formerly permitted six-foot-tall chain link fence and gate along the Park frontage. As discussed in the public access findings above, the proposed ATF fence and gate presents a rather imposing and exclusionary barrier to public access generally as compared to a six-foot-tall chain link fence, but it also presents visual concerns with respect to LCP consistency. This is especially the case as the Park provides the only public visual respite towards the ocean along all of Opal Cliff Drive, given that the public's view is otherwise blocked by a row of houses and related residential development located between the public street and the shoreline. For example, the ocean views from Opal Cliff Drive are impaired by the relatively thick and numerous wrought-iron bars, and the fence's nine-foot height makes it such that one cannot see over the fence (i.e., the fence impedes the entire ocean view from any viewpoint along Opal Cliff Drive). Moreover, because the fence exceeds the LCP's typical fence height maximum of six feet, an approval of the additional height requires special findings including that the fence will not adversely impact public views and scenic character; that the additional height will not be detrimental to the health safety, or welfare of persons residing or working in the neighborhood or the general public; and that the fence will complement and harmonize with the existing and proposed land uses in the vicinity and will be compatible with the physical design aspects, land use intensities, and dwelling unit densities of the neighborhood (see **Exhibit 8**; and also IP Sections 18.10.230(A) and IP Section 13.10.535). The fence will not be detrimental to health or safety of the public, neighbors, or those working in the neighborhood; however, the fence inevitably impairs views from the street. That being said, the extent to which views are impaired by the wrought iron design and the nine-foot height is debatable and subjective. When the County approved this fence and gate, it found that the black color of the vertical wrought-iron bars helped the fence recede into the background, and that the bar spacing helped create an open design compared to a solid fence that would offer no ocean views. While the fence does result in impaired views to the ocean, it nevertheless maintains some views to the ocean, and thus it could

deemed that the fence meets the LCP's directive to *minimize* adverse visual impacts (see Objective 5.10b and LUP Policy 5.10.3) relative to its purpose of providing a stable fence structure while preventing improper access at night. And with respect to the requirements that the additional height be consistent with the community character and aesthetic, while the fence is rather obtrusive, other park improvements just inside of the fence including benches, a water fountain, and landscaping improvements that help to somewhat minimize the intimidating nature of the nine-foot height by indicating the public access nature of the Park beyond the gate and fence. Therefore, it would appear that the additional findings to support to additional height and wrought-iron design could be made; however, this design is clearly not the most protective of visual resources, as is required by LCP Policy 5.10.6, and it is likely that a more LCP-consistent fence design and height exists.

Although the nine-foot tall wrought-iron fence presents certain LCP issues, it can be approved under the current circumstances, including if appropriately conditioned. Specifically, because **Special Condition 2** requires that the gate be unlocked from one hour before sunrise to one hour after sunset daily and requires that access be provided free of charge, the public will now be able to enjoy ocean vistas from the overlook area inside of the Park or by accessing the stairway to the beaches located below the Park, as is required by the LCP, including LUP Policies 5.10.6 and 7.7.1, and will not be forced to view the ocean through the fence unless they pay a fee. In other words, by opening the Park to general public daylight hours use, the general public is now afforded unimpeded views from the *ocean side* of the fence, thus improving the general public's view of the ocean in that sense. Conceptualized another way, the expanded coastal public access provided by this approval as conditioned renders the coastal visual impacts caused by the specific design and height of the fence and gate *de minimis*.

Such enhanced views, however, do not address the fence and gates' impact on the view from the street, where the wrought-iron design does intrude upon the public viewshed and impedes views from Opal Cliff Drive. As described in the access finding above, there are a variety of ways of approaching this fence and gate regarding LCP consistency. One is to recognize that the previous fence and gate (i.e. the six-foot-tall chain link fence and gate that is the existing baseline for analytic purposes) has a reduced visual impact in this regard, and to require the Applicant to take out the nine-foot-tall fence and gate and replace it with something less imposing, even going back to the six-foot-tall chain link fence and gate, or something even smaller (and more aesthetically pleasing). However, to do so would require a significant expenditure of public funds that may be better put to other public access use in this case. Thus, in this case, although this fence and gate has some public view impacts, the nine-foot tall gate and fence can justifiably remain in place until its useless life comes to an end and it needs replacing. At that point it would be appropriate for OCRD to consider a less imposing means of controlling nighttime access, including such means as a nighttime enclosure that could be rolled across the street frontage each night, but that did not need to be present at all times during the day to mitigate visual impacts associated with any fencing. It is important to clarify that allowing the fence and gate to remain in this case is in response to the circumstances of this case, including that the fence/gate because it has already been place for some 20 years. The Commission fully expects OCRD to evaluate and implement a less imposing means of controlling nighttime access in the future when the fence and gate requires upkeep and/or replacement that results in redevelopment (see **Special Condition 1**).

In short, LCP Policy 7.7.1, Objectives 5.10a and 5.10b, 5.10.2, 5.10.3, and 5.10.6 all serve to protect ocean and coastal vistas. While the nine-foot-tall fence and gate height is not ideal from a public view perspective, **Special Condition 2** lays the groundwork for the eventual replacement of the fence/gate with something shorter and more compatible with other public parks and beach accessways in the County. While eventual replacement of the fence/gate does not meet the explicit requirements of LUP Policy 5.10.9, which requires mitigation of visually blighted areas as a condition of the development's approval, given that the County-approved project also entails recognition of existing aesthetic improvements including benches and native landscaping, it could be argued that visual mitigation has already been incorporated into the project. The eventual replacement of the fence/gate coupled with the various existing aesthetic improvements therefore meets the intent of the visual mitigation requirements of LCP Policy 5.10.6. The project is consistent with LCP Policy 5.10.7 because all of the development that is the subject of this application is not visible from the beach due to the relatively narrow beach and the elevation of the upland areas compared to the beach. Finally, the project as conditioned is consistent with IP Section 13.20.130(B)(1) because it includes recognition of the existing installed aesthetic improvements including an ADA-compliant pathway, benches, and various landscaping improvements, which help create an inviting and visually pleasing park/overlook area for public/community enjoyment. Thus, as conditioned, the fence and gate and other improvements are consistent with the LCP's visual resource protection policies.

J. VIOLATION

As described in this staff report, there is an extensive violation history at Opal Cliffs Park. Violations of the Coastal Act and the Santa Cruz County LCP exist on the subject property including the following: Placement of an unpermitted nine-foot-tall wrought iron fence with locked gate and restrictive signage that blocks public park and beach access; implementation of an unpermitted fee program that includes a \$100 annual fee and the presence of a gate attendant to prevent members of the public from accessing the beach unless they have paid the fee and; unpermitted park-related improvements on the blufftop of the Park (as described in this staff report). See **Exhibit 3** for Commission enforcement staff's letters to OCRD regarding these violations.

Approval of this application pursuant to the staff recommendation and compliance with all of the terms and conditions of this permit will result in resolution of the aforementioned violations on the subject property.

Although development has taken place prior to Commission consideration of this CDP application, consideration of this application by the Commission has been based solely upon the public access policies of the Coastal Act and applicable provisions of the Santa Cruz County LCP. Commission review and action on this CDP application does not constitute a waiver of any legal action with regard to the alleged violations, nor does it constitute an implied statement of the Commission's position regarding the legality of development, other than the development addressed herein, undertaken on the subject site without a CDP. In fact, approval of this CDP is possible only because of the conditions included herein and failure to comply with these conditions would also constitute a violation of this CDP and of the Coastal Act and LCP. Accordingly, the Applicant remains subject to enforcement action just as it was prior to this

permit approval for engaging in unpermitted development, unless and until the conditions of approval included in this CDP are satisfied.

In order to ensure that the unpermitted development component of this application is resolved in a timely manner, the subject permit will issue upon Commission approval and **Special Condition 2** (Public Access Management Plan) is required to be fulfilled within 90 days of Commission action. Failure to comply with the terms and conditions of this permit may result in the institution of enforcement action under the provisions of Chapter 9 of the Coastal Act. Only as conditioned is the proposed development consistent with the Coastal Act and the Santa Cruz County LCP.

K. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

Section 13096 of the California Code of Regulations requires that a specific finding be made in conjunction with coastal development permit applications showing the application to be consistent with any applicable requirements of CEQA. Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect that the activity may have on the environment.

Santa Cruz County, acting as lead agency, found that the project was exempt from CEQA requirements and issued a Categorical Exemption for the project under Sections 15601(b)(3) and 15302.⁴⁶ The Coastal Commission's CDP program has been certified by the Secretary of the Natural Resources Agency as being the functional equivalent of environmental review under CEQA (pursuant to Section 15251(c)). The preceding substantial issue and CDP determination findings discuss the relevant coastal resource issues associated with the project, including with respect to the protection public access and recreation and public views. The CDP conditions identify appropriate modifications and mitigation measures to avoid and/or lessen any potential for adverse impacts to said resources as those terms are understood under CEQA.

The Commission finds that only as modified and conditioned by this CDP will the proposed project avoid significant adverse effects on the environment within the meaning of CEQA. As such, there are no additional feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse environmental effects which approval of the proposed project, as conditioned, would have on the environment within the meaning of CEQA. Thus, if so conditioned, the proposed project will not result in any significant environmental effects for which feasible mitigation measures have not been employed consistent with CEQA Section 21080.5(d)(2)(A).

⁴⁶ Section 15601(b)(3) applies to projects where there is no possibility that the activity in question will have significant effect on the environment, while Section 15302 applies to replacement or reconstruction of existing structures or facilities where the new structures will be located on the same site as the structure replaced and are substantially similar to the previous structures.

APPENDIX A – SUBSTANTIVE FILE DOCUMENTS

- CDP P-80-393
- CDP Amendment Application P-80-393-A1
- LAFCO Report – “Review of Recreation and Park Districts’ Services and Spheres of Influence,” March 2016

APPENDIX B – STAFF CONTACT WITH AGENCIES AND GROUPS

- Opal Cliffs Recreation District
- Santa Cruz County Administrative Officer
- Santa Cruz County Planning Department
- Santa Cruz County Parks Department
- Surfrider Foundation
- The Wahine Project
- Center for Race, Poverty, and the Environmental
- Environmental Justice Coalition for Water
- Azul
- Community Bridges
- Mi Casa at Hartnell College
- Unitarian Universalist Fellowship of Santa Cruz County
- Center for Community Action and Environmental Justice
- Homeless Garden Project
- UC Santa Cruz Center for Justice, Tolerance, and Community
- NAACP Santa Cruz Branch
- Santa Cruz Barrios Unidos
- CAUSE
- Fort Ord Environmental Justice Network
- Greenaction

CALIFORNIA COASTAL COMMISSION

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Th14a

A-3-SCO-18-0004 (OPAL CLIFFS RECREATION DISTRICT)

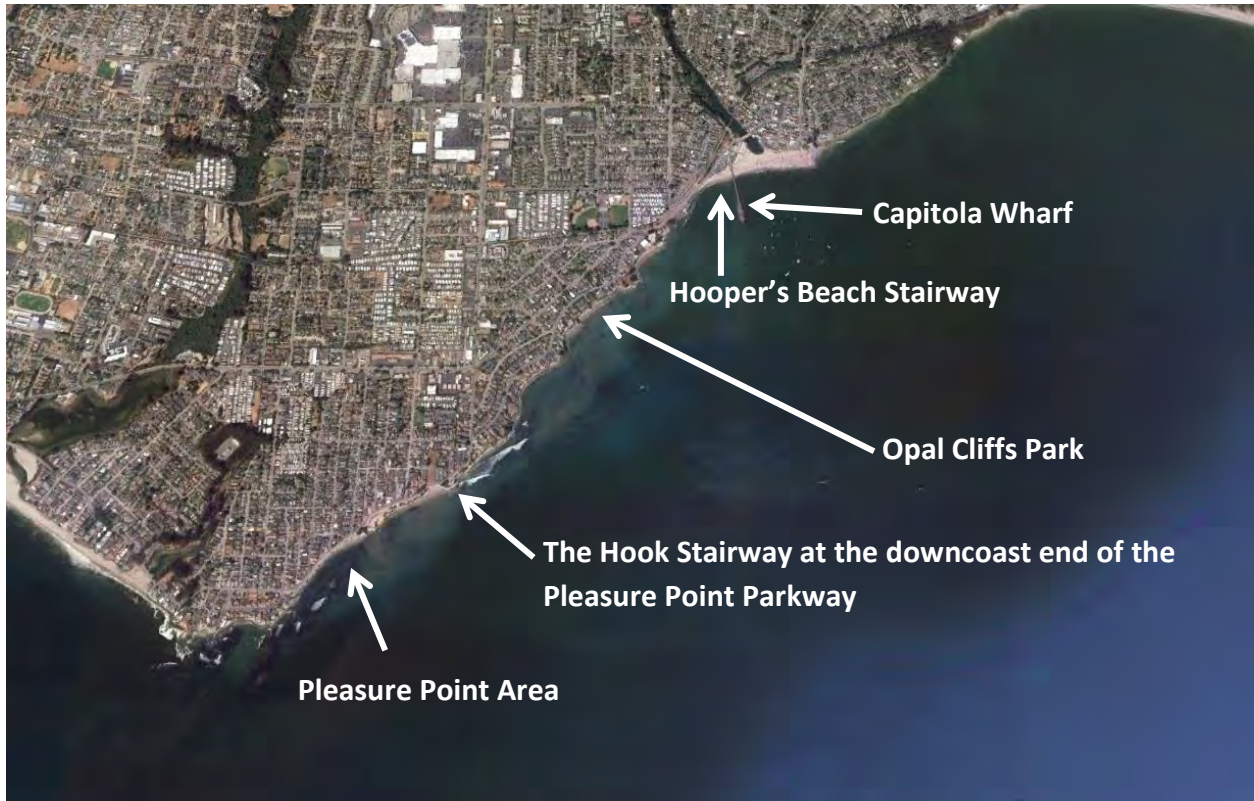
MARCH 8, 2018 HEARING

EXHIBITS

Table of Contents

- Exhibit 1: Location Map
- Exhibit 2: Project Site Photos
- Exhibit 3: Violation Letters, Memos, Letter to the Planning Commission dated 12/13/17
- Exhibit 4: Final Local Action Notice
- Exhibit 5: P-80-393 Staff Report and Notice of Permit Issuance
- Exhibit 6: P-80-393 Deed Restriction
- Exhibit 7: Appeal of Santa Cruz County CDP Approval
- Exhibit 8: Applicable Coastal Act and LCP Policies and Standards
- Exhibit 9: OCRD Budget Documents
- Exhibit 10: CDP P-80-393
- Exhibit 11: Staff Report for CDP P-80-393-A1 (removed from Commission's 1/9/2009 agenda)





Private's Beach Looking Upcoast (the Beach to be Accessed Through the Proposed Gate and Fee)
(Note the Shoreline Armoring and Natural Topography that Cuts off Beach Access on the Upcoast End):



Key Beach Looking Downcoast at Medium-High Tide

(Note extensive shoreline armoring that cuts off through beach access further downcoast):



Upper Park Area:



Stone Retaining Walls/Landscaping:



Landscaping, 3-foot fencing (not a part of the subject appeal/application) & 6-foot chain link side fencing covered in ivy



Overlook Area:



Coastal Records Project Photo:

(Note: Private's Beach on the left of the stairway and Key Beach on the right of the stairway)



9-foot tall Wrought-Iron Fence/Gate:



Fence/ Park Signage:



Fence/Parking Area in 2016:



Fence/ Parking Area in 2018 (Note: No ADA Parking Signage and ADA striping is faded):



9-foot tall Wrought-Iron Fence Zoomed In:



Top of Nine-Foot Tall Wrought-Iron Fence:



Upper Park Area in 2016:



Gate Attendant:



Concrete Benches/ Landscaping in 2016:



More Concrete Benches:



Six-Foot High Side Chain Link Fencing (Last replaced in the Mid-2000's):



Beach Access Stairway:



Beach Access Stairway:



Beach Access Stairway:



OCRD

Coastal development permit (CDP) application P-80-393 proposed a 6-foot high chain link fence (on frontage and side yards) and a locked gate to replace the then existing 5-to-6-foot tall chain link fence with gate on the street frontage, and 3-to-5-foot wooden fencing on the side yards of the project site (per P-80-393 staff report).

P-80-393 was approved in 1981, but that approval expired in 1983 (because the CDP conditions were not within two years). Thus, all development associated with application P-80-393 is considered unpermitted (6-foot fence, locked gate, access program and fee, etc.). In addition, all development since then (e.g., 9-foot tall wrought iron fencing and gate, etc.) is also considered unpermitted. Unpermitted development is a violation of the Coastal Act, and requires removal or CDP recognition to resolve.

The existing permitted baseline for review of any new CDP application is what was, as of February 1973 (i.e., when CDPs were first required pursuant to Proposition 20, "the Coastal Initiative"), legally in place (i.e., that portion of development in place in February 1973 that was covered by all necessary permits and authorizations required when it was first installed). (The 1981 P-80-393 application report says that in 1981 the site included a 5-to-6-foot chain link fence with a gate on the street frontage, and 3-to-5-foot wood fences on the side yards in 1981.)

New CDP application would be for: (1) going from existing permitted baseline to what is out there now; (2) any additional changes that OCRD may want to construct in near term; and (3) permanently recognizing development authorized temporarily by recent emergency CDP.

Consolidated CDP application requires OCRD, CCC, and SC County to agree to consolidate. Absent consolidation, would need CDP from County (everything related to blufftop development) and CDP from CCC (everything related to stairway). These are two separate processes, and County CDP is subject to appeal process to CCC.

To apply for consolidated CDP, need: (1) evidence of existing permitted baseline (the "existing" condition for CDP review); (2) inventory of all development (a) to be constructed in near term and (b) proposed to be recognized (the "proposed" condition for CDP analysis, consisting of everything that is different from the existing permitted baseline); and (3) consolidation agreement.

Complete CDP application also needs information documenting and explaining: (1) OCRD-County government relationship (structure, bylaws, etc.); (2) income and expenses by category/source associated with accessway; and (3) alternatives to fee-based access.

August CCC hearing is in Watsonville (currently scheduled for August 10-12). Complete application would need to be in by mid-June at latest (earlier preferred) to meet internal deadlines for August CCC hearing. Local CCC hearing fallback would be December (currently scheduled for December 7-9) in San Francisco, for which complete application deadline would be mid-October.

CALIFORNIA COASTAL COMMISSION

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SENT BY REGULAR AND CERTIFIED MAIL

June 18, 2015

John Griffith, General Manager
Opal Cliffs Recreation District
4525 Opal Cliffs Drive
Santa Cruz, CA 95062
Certified Mail No. 7013 2250 0000 3238 4536

Property Location: 4520 Opal Cliff Drive, Santa Cruz; APN 033-151-12 (Santa Cruz County)

Violation¹:

- 1) Use of security guard, charging a fee to gain access to the bluff-top park and Privates Beach, placement of a locked gate and 9-foot-tall wrought iron fence, placement of restrictive signage, installation of a shower, benches, landscaping, and other park improvements – all without required coastal development permits and;
- 2) Failure to submit a follow-up coastal development permit application for emergency repairs to stairway as required by Emergency Coastal Development Permit Number 3-11-018-G.

Violation File No.: V-3-06-012

Dear Mr. Griffith:

The California Coastal Act² was enacted by the State Legislature in 1976 as the successor to the California Coastal Zone Management Act of 1972 ("the Coastal Initiative") to provide long-term protection of California's 1,100-mile coastline through implementation of a comprehensive planning and regulatory program designed to manage conservation and development of coastal resources. The California Coastal Commission ("Commission") is the state agency created by

¹ Please note that the description herein of the violation at issue is not necessarily a complete list of all development on the subject property that is in violation of the Coastal Act/Santa Cruz County Local Coastal Program and/or that may be of concern to the Commission. Accordingly, you should not treat the Commission's silence regarding (or failure to address) other development on the subject property as indicative of Commission acceptance of, or acquiescence in, any such development.

² The California Coastal Act of 1976 is codified in Sections 30000 to 30900 of the California Public Resources Code. All further section references are to that code unless otherwise indicated.

and charged with administering the Coastal Act of 1976. In making its permit and land use planning decisions, the Commission carries out Coastal Act policies, which among other goals, seek to protect and restore sensitive habitats; protect natural landforms; protect scenic landscapes and views to the sea; and provide maximum public access to the sea.

Violation

Staff has confirmed that unpermitted development, including the use of a security guard, charging a fee to access the bluff-top park and Privates Beach, installation of a locked gate and associated wrought-iron fencing, restrictive use signs, a shower, benches, landscaping, and other park improvements, all located at 4520 Opal Cliff Drive in Santa Cruz County at APN 033-151-12 (subject property), has occurred without first obtaining a coastal development permit ("CDP"). We have searched our records and have not found any CDP issued by the Commission or Santa Cruz County ("County") that authorizes the above-described development.

Pursuant to Section 30600 of the Coastal Act and Section 13.20.050 of the County's Local Coastal Program ("LCP"), any person wishing to undertake development activities in the Coastal Zone must first obtain a CDP. Development is broadly defined by Section 30106 of the Coastal Act and Section 13.10.700-D of the County's LCP as:

"Development" means, on land, in or under water, the placement or erection of any solid material or structure; discharge or disposal of any dredged material or of any gaseous, liquid, solid, or thermal waste; grading, removing, dredging, mining, or extraction of any materials; change in the density or intensity of use of land, including, but not limited to, subdivision pursuant to the Subdivision Map Act (commencing with Section 66410 of the Government Code), and any other division of land, including lot splits, except where the land division is brought about in connection with the purchase of such land by a public agency for public recreational use; change in the intensity of use of water, or of access thereto; construction, reconstruction, demolition, or alteration of the size of any structure, including any facility of any private, public, or municipal utility; and the removal or harvesting of major vegetation other than for agricultural purposes, kelp harvesting, and timber operations which are in accordance with a timber harvesting plan submitted pursuant to the provisions of the Z'berg-Nejedly Forest Practice Act of 1973 (commencing with Section 4511). (emphasis added)

The above described structures and activities, located on a coastal bluff between the first public road and the sea, are a "change in the intensity of use of water, and access thereto" or "the placement or erection of any solid material or structure". Thus, they constitute "development" as defined by the Coastal Act and the County's LCP that requires a CDP. Since no CDP was issued that authorizes the above described development, it is in violation of the Coastal Act and the County's LCP.

In addition, the Commission issued, to the Opal Cliffs Recreation District ("OCRD"), Emergency CDP No. 3-11-018-G on March 18, 2011. Said ECDP authorized the OCRD to underpin and expand the foundation of the existing pier that supports the stairway that provides access from Opal Cliff Drive and the bluff-top park to Privates Beach and the offshore surfing area. The ECDP requires OCRD to submit a regular follow-up CDP application by May 17, 2011 to authorize the subject development, or else remove the subject development. As of the date of this letter, no such application has been submitted and the subject development is extant. Failure to comply with the terms and conditions of a CDP issued by the Commission is also a violation of the Coastal Act.

We previously informed OCRD about these violations, including providing a summary of the permit history and why development here is a violation, and have suggested remedies in the past. However, as of the date of this letter, OCRD has not pursued any of the suggested remedies. There has been a complete lack of OCRD effort or engagement from the time we last met with Dave King in May of 2011 to the time we met with you and Mr. Ted Donnelly on April 22, 2015. We have been patient with OCRD, but OCRD has chosen to ignore these violations and do nothing toward their resolution.

Resolution

We would still like to work with the OCRD to resolve this matter quickly and amicably. In order to do so, we request that you do the following:

1. Immediately remove the gate and fencing that runs parallel to Opal Cliffs Drive and all restrictive use signage; allow access to the blufftop park, the stairway, and the beach without collection of a fee (without the presence of a guard); and submit photographic evidence of same to me by no later than COB **July 3, 2015**;
2. Call me by **July 3, 2015** to discuss what, if any, development OCRD would like to pursue CDPs for on the subject property. Depending on the nature of OCRD's approach, you will then need to either submit complete CDP applications to both Santa Cruz County (for any development inland of the toe of the bluff) and the Commission (for the emergency repairs), or to the Commission alone (if the County, OCRD, and the Commission agree to a consolidated CDP process) to pursue approval of such development. Please be advised that both the Coastal Act and the County's LCP require that development be permitted *before* it is undertaken.

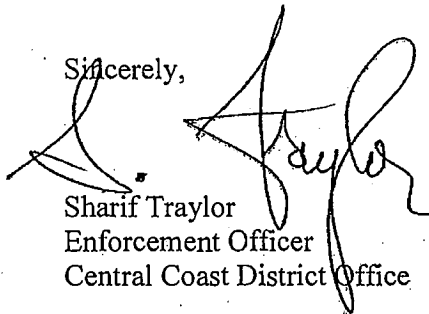
While we are hopeful that we can resolve this matter amicably, and we are willing to assist you to do so, please be advised that Chapter 9 of the Coastal Act has a number of potential remedies to address violations of the Coastal Act including the following:

Sections 30809(a) and 30810(a) of the Coastal Act provide that the Executive Director of the Coastal Commission and the Commission may issue an order to enforce the requirements of a certified LCP. Section 30811 authorizes the Commission to require restoration of a site if

unpermitted development inconsistent with the Coastal Act has occurred and is causing ongoing damage to coastal resources. Additionally, Sections 30803 and 30805 authorize the Commission to initiate litigation to seek injunctive relief and an award of civil fines in response to any violation of the Coastal Act. Section 30820(a) (1) provides that any entity who undertakes development in violation of the Coastal Act may be subject to a penalty amount that shall not exceed \$30,000 and shall not be less than \$500 per violation. Section 30820(b) provides that, in addition to any other penalties, any entity that "knowingly and intentionally" performs or undertakes any development in violation of the Coastal Act can be subject to a civil penalty of not less than \$1,000 nor more than \$15,000 per violation for each day in which the violation persists. Finally, since some of the development activities described herein directly affect public access to the sea, the OCRD could be subject to administrative penalties pursuant to Section 30821.

Thank you for your immediate attention to this matter. If you have any questions or concerns regarding this letter, or if I can be of any assistance, please feel free to contact me at (831) 427-4881.

Sincerely,



Sharif Traylor
Enforcement Officer
Central Coast District Office

Cc: Dan Carl, Deputy Director, Central Coast District Office, CCC
Susan Craig, District Manager, Central District Office, CCC
Lisa Haage, Chief of Enforcement, CCC
Patrick Veesart, Enforcement Supervisor, Northern Districts, CCC
Ryan Moroney, Planner, Central Coast District Office, CCC
Supervisor John Leopold, Santa Cruz County
Jeff Gaffney, Director, Santa Cruz County Parks

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June 7, 2016

Mark Massara, Attorney at Law
1642 Great Highway
San Francisco, CA 94122

Re: Violation File Number V-3-06-012 – Opal Cliffs Recreation District

Dear Mr. Massara:

Thank you for speaking with me on May 25, 2016 by telephone and for your email on May 26, 2016. Our apologies for taking a while to get back to you regarding the Opal Cliffs Recreation District (“OCRD”) since our meeting on June 30, 2015 and your follow-up letter to that meeting dated July 14, 2015. Since we spoke on June 30, 2015, we have had some internal discussions regarding this matter and we are writing to respond to your letter and our previous discussions regarding Coastal Act violations at the OCRD beach accessway.

As discussed in our letter to the OCRD dated June 18, 2015, and during our June 30, 2015 meeting, there are outstanding violations at the OCRD beach accessway including placement of an unpermitted nine-foot-high wrought iron fence with locked gate and restrictive signage that blocks public beach access; unpermitted fee increase which further restricts public access; presence of a security guard to prevent members of the public from accessing the beach unless they have paid the fee; parks-related development on the blufftop above the stairway; and failure to obtain a follow-up coastal development permit (“CDP”) as required by Emergency Permit No. 3-11-018-G.

Our primary concern here is the unpermitted fence, gate, security guard, and fee increase that restrict the public’s use of this public facility and access to the beach. The OCRD recorded an access program, with an annual fee of \$20, as a deed restriction on November 22, 1991 with the following clause:

2. DURATION Said Deed Restriction shall remain in full force and effect during the period that said permit, or any modification or amendment thereof remains effective, and during the period that the development authorized by the Permit or any modification of said development, remains in existence in or upon any part of, and thereby confers benefit upon, the Property described herein, and shall bind Owners and all his/her assigns or successors in interest.

Sometime in the late 1990s the OCRD removed the fence and gate that was the subject of CDP No. P-80-393 and replaced it with a nine-foot-high wrought iron fence and gate topped with razor wire. This was undertaken without a CDP. In addition, at some point, the OCRD raised the annual “key fee” from the \$20 indicated in the recorded deed restriction to \$100, also without CDP authorization.

Since the “development authorized by the permit” is no longer extant, the deed restriction is no longer in “full force and effect”. Thus, the access program and “key fee” that is the subject of that deed restriction is not authorized in any way.

Commission staff would not recommend approval of a CDP to authorize the unpermitted fence, gate, guard, and fee program at this time. Thus, the fence, gate, and guard must be removed and public access restored.

Background

As you know, there is extensive permitting and violation history related to the OCRD property. The following is a timeline of this history:

On April 13, 1981, the Commission approved CDP No. P-80-393, which authorized replacement of existing fences (of variable height) with a uniform six-foot-high chain-link fence around three sides of the property. The staff report acknowledges the existence of a locked gate restricting public access, but indicates that keys to the gate are readily available. The staff report goes on to state that, “*Some form of access control does appear desirable due to unstable bluffs and small pocket beaches with low capacity for public use, although access must be provided to maintain consistency with the Coastal Act.*” No discussion of fees for access is in the staff report and the Commission did not consider or authorize fees or security guards in its action. The Commission’s action recognized that the fence and gate provide a public safety function, in which the gate would provide access control but would not act as an access impediment, such as is the case with fee-based access.

CDP No. P-80-393 was approved with the following special conditions:

- 1. PRIOR TO ISSUANCE of this permit, permittee shall submit, for review and approval of the Executive Director, an access program which shall provide for public access and posting of the site as notification of such access. The program shall be recorded as a covenant running with the land, free of all encumbrances other than tax liens, or shall be guaranteed by such other means as may be acceptable to the Executive Director.*
- 2. Nothing in this condition shall be construed to constitute a waiver of any sort of a determination on any issue of prescriptive rights which may exist on the parcel itself or on the designated easement.*

3. Safety Review

Prior to commencement of construction, permittee shall present evidence in writing to the Executive Director that all public safety agencies with jurisdiction in the surrounding area (including the Capitola Fire Dept.) and the Santa Cruz Office of Emergency Services have been conferred with, and that the proposed development is acceptable to those agencies.

On April 28, 1981 the OCRD was sent notice that CDP No. P-80-393 had been approved, subject to the conditions and approved plans on file with the Regional Commission. There is no record in the file of the OCRD having acknowledged receipt this notice, of the "prior-to-issuance" conditions having been met, or of the permit having been issued at that time.

Despite not having a valid CDP, sometime in the 1980's the OCRD built the subject fence and gate and began restricting public access. Sometime in 1984/1985, the OCRD began selling keys (charging access fees).

On August 21, 1991 (more than 10 years after Commission approval of CDP No. P-80-393), the Commission sent the OCRD a violation letter referencing Violation File No. V-3-91-035. That letter indicates that the project approved pursuant to CDP No. P-80-393 (fence replacement) had been completed for several years and that the OCRD was in violation of the Coastal Act for failing to comply with the conditions of that permit. The letter goes on to suggest that the OCRD could correct the violations by complying with Conditions 1 and 3 of the permit. However, CDP No. P-80-393 had (1) never been issued and (2) had long since expired in the intervening years. Thus, the referenced conditions were not applicable and the fence and gate placed by the OCRD, and the collection of fees for access, was unpermitted development.

Nevertheless, on November 22, 1991, the OCRD recorded a deed restriction (Instrument No. 075069) to provide for an access program in order to comply with Special Condition 1 of CDP No. P-80-393. On January 6, 1991 the Commission sent a letter to the OCRD informing same that Special Condition 1 had been fulfilled, the then violation resolved, and that the permit would issue shortly. Said letter states (in relevant part):

"If, in the future, there is any non-conformance or non-compliance with any part of this permit or it's [sic] conditions, we will consider that action as an intentional and knowing violation of your permit and deed restriction and we will pursue penalties as per our policy."

On January 9, 1992, despite the CDP having long expired, Commission staff "issued" the CDP. Standard Condition 3 of CDP No. P-80-393 states:

Compliance. *All Development must occur in strict compliance with the proposal as set forth in the application for permit, subject to any special conditions set*

forth below. Any deviation from the approved plans must be reviewed and approved by the staff and may require Commission approval

The permit was signed, on behalf of the OCRD, by Rick Harron, on January 31, 1992, who acknowledged receipt of the permit and agreed to abide by the terms and conditions of same.

Sometime in the late 1990s, despite signed assurance that the OCRD would comply with the terms and conditions of CDP No. P-80-393, and despite notice given in our 1991 violation letter (above), the OCRD removed the fence and gate that was the subject of that permit and replaced it with a nine-foot-high wrought iron fence and gate topped with razor wire. This was undertaken without a CDP, in violation of the terms and conditions of CDP No. P-80-393, which the OCRD had agreed to comply with. In addition, at some point, the OCRD raised the annual "key fee" from the \$20 indicated in the recorded deed restriction to \$100. As stated above, the Commission's action on CDP No. P-80-393 did not include approval of a fee program to obtain access to the OCRD beach. In addition, the fee increase was implemented without a CDP or any discussion with Commission staff regarding why the fee increase was needed or how such a fee increase might affect the public's ability to access to the beach.

In April 2006, the Commission's enforcement staff opened Violation File No. V-3-06-012 for the nine-foot-tall fence with razor wire and gate, the placement of a security guard, and for the "key fee". Commission staff met with the OCRD in June 2006 to discuss the violations and, on October 4, 2006, Commission staff sent the OCRD an enforcement letter memorializing that meeting, further discussing the subject violations, asking the OCRD to cease from using a security guard, and asking OCRD to submit a CDP amendment application to request authorization for the new fence and other improvements contemplated by the OCRD at that time. In addition, the letter asked that the amendment application include a facilities plan to address security and the fee program and noted that the razor wire had been removed.

In 2007 the OCRD applied for an amendment to CDP No. P-80-393 (No. P-80-393-A1) to authorize, after-the-fact, the nine-foot-tall wrought iron fence and gate (and some new additional fencing), fee program changes, use of a security guard, and other development, including landscaping and irrigation, showers, water faucet upgrade, new stair railings, and a concrete pathway. The application was filed on August 2, 2008 and was set for a hearing on January 7, 2009. Prior to the commencement of the hearing, the Executive Director determined that the staff report analysis was missing important background and context regarding the nature of the violations and whether the original CDP was still valid (or if it had expired) and thus whether a CDP amendment was properly before the Commission. Commission staff subsequently began research on these issues, and staff's conclusions were ultimately shared with OCRD (see below).

On March 18, 2011, and in response to an emergency request by OCRD, Commission staff issued Emergency Permit No. 3-11-018-G authorizing the OCRD to perform

emergency work on the foundation of the beach access stairway. Condition 1 of Emergency Permit No. 3-11-018-G states:

The enclosed ECDP acceptance form must be signed by the Opal Cliffs Recreation District's designated representative and returned to the California Coastal Commission's Central Coast District Office within 15 days of the date of this permit (i.e., by April 2, 2011). This ECDP is not valid unless and until the acceptance form has been received in the Central Coast District office.

There is no record in the file of the required acceptance form having been signed and returned to the Central Coast District Office. Thus it appears that Emergency Permit No. 3-11-018-G was never validated. Either way, that work was never recognized by a regular CDP as required, and thus the emergency stairway foundation work is unpermitted development as well.

On May 18, 2011, Commission staff met with Dave King, representing the OCRD. At that meeting, Mr. King was presented with a memo entitled "OCRD accessway and CDP notes for Dave King 5/18/2011". At that meeting, the CDP history was discussed, including the expiration of CDP No. P-80-393. In addition, OCRD was advised to apply for a consolidated (Commission and Santa Cruz County) CDP for all development or changes from the baseline condition of the subject property (i.e., the state of the property as of February 1973), any additional development that the OCRD might want to undertake in the near term, and permanent authorization for the development undertaken pursuant to Emergency Permit No. 3-11-018-G. That memo made it clear that the fence, gate, fee, guard, and related development were all unpermitted, and that the OCRD was responsible for rectifying those violations as soon as possible. Despite Mr. King's assurances that OCRD would move to promptly resolve such issues, OCRD chose instead to do nothing, and we did not hear from OCRD for some years after that.

Ultimately, Commission staff began receiving complaints from the public about the unpermitted fence, gate, fee, and guard, and the lack of resolution. It became clear that OCRD had not done anything in response to the May 18, 2011 meeting and memo. Staff contacted the OCRD, and on April 22, 2015, Commission staff again met with the OCRD (represented by John Griffith and Ted Donnelly). The May 18, 2011 memo was again discussed. Mr. Griffith and Mr. Donnelly were informed that they would have to complete the acceptance form for Emergency Permit No. 3-11-018-G (and a copy was emailed to John Griffith on that day) and secure the required follow-up regular CDP to authorize the work done under the emergency permit. Again, there is no record in the file that the acceptance form was ever signed and returned. The OCRD indicated that they would like to obtain a CDP for the existing fence/gate and the fee program and staff's response was that fee-based access is antithetical to the Coastal Act at this location and that we did not support a fee access program at this location. Alternatives to fee-based access were discussed, including the possibility of the County Parks Department taking over management and opening the access as a free accessway comparable to its other publicly-funded beach access stairways. The OCRD was also

informed that a new violation file had been opened for the unpermitted development on the subject property including the fence, gate, fee, guard, and related development.

On June 18, 2015, Commission enforcement staff sent another letter to the OCRD (reference Violation File No. V-3-06-012) regarding violations on the subject property including: use of a security guard; charging a fee to gain access to the park and the beach; placement of a locked gate and nine-foot-tall wrought iron fence; placement of restrictive signage; installation of a shower, benches, landscaping, and other park improvements; and failure to submit a follow-up coastal development permit application for emergency work undertaken pursuant to Emergency Permit No. 3-11-018-G (for which Commission staff never received the required signed acceptance form). The OCRD was also informed that resolution of the violations would require: removal of the gate and fencing and all restrictive use signage; allowing access to the park, the stairway, and the beach without collection of a fee and without the presence of a guard and; a consolidated CDP to authorize all other development that had been undertaken on the subject property, including landscaping and other improvements, and upgrading of the beach stairway's foundation.

On June 30, 2015 Commission staff met with you, as the OCRD's representative, to discuss the June 18, 2015 letter, the OCRD's violation and permitting history, and resolution of outstanding Coastal Act issues related to the OCRD property.

On July 14, 2015 you sent Commission staff a letter referencing the above meeting and indicating that you had discussed the content of that meeting with OCRD officials. Your letter proposes a framework for resolution of outstanding issues including: filing for a follow-up CDP for Emergency Permit No. 3-11-018-G; restarting the process to bring CDP No. P-80-393-A1 back to hearing, including submittal of materials to include all physical development onsite and "standards" for the fee access program. Please note that we do not agree with your proposed resolution strategy, and continue to advise, as we have consistently done for the last decade, that, per the Coastal Act, the fence, gate, fee, and guard system are not appropriate for the public accessway at this location, and need to be eliminated. See also below.

Public Access Violation

Section 30210 of the Coastal Act requires that "maximum access... shall be provided for all the people..."; Section 30211 requires that "Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization..."; Section 30212 requires public access to be provided in new development projects; Section 30212.5 requires public access facilities such as these to be distributed in such a way as to address overcrowding and overuse at individual areas; Section 30213 protects, encourages, and provides for lower cost public recreational opportunities (such as surfing and beach-going); Section 30220 protects areas that provide water-oriented recreational activities; and Section 30223 requires protection of upland areas, such as the bluff-top portion of the site, that are necessary to

support recreational uses along the water. Maximizing public access to and along the coast and maximizing public recreational opportunities in the coastal zone are high priorities for the Coastal Commission, and are specifically protected in the Coastal Act and are stated as basic goals of the state for the Coastal Zone in Section 30001.5 of the Coastal Act.

The placement of the abovementioned unpermitted fence, gate, fee program, and guard directly interferes with the public's access to, and use of, the publicly funded accessway and public beach below. In addition, the OCRD accessway is a public accessway that has been publicly funded and is run by a public agency for the benefit of the public, and it is the only accessway to the beach between the free public stairway at 41st Avenue in Santa Cruz County and the free public stairway at Hooper Beach in Capitola, a distance of a mile. It provides access to the only substantive sandy beach area between those other two stairways in Opal Cliffs, and it provides access to a very popular surfing area offshore. Access to the sandy beach area at the OCRD accessway is only possible from up and downcoast during extreme low tides via a half-mile walk, and access to the surfing area offshore is made difficult by the sheer distance involved requiring a half-mile paddle. In short, not only is general public access precluded by OCRD's unpermitted development, but this blocked access is also critical to the public being able to access this mile-long stretch of coast at all.

In addition, the property owned by the OCRD is a bluff-top park that provides opportunities for the public to enjoy views of Monterey Bay, whale watch, and other recreation opportunities. The placement of the abovementioned unpermitted fence, gate, fee program, and guard directly interferes with the public's access to this public park and public recreation opportunities.

Thus the subject unpermitted development activities are inconsistent with the requirements of the Coastal Act, including but not limited to the Sections identified above. The unpermitted development blocks significant and important public access when there are no other alternatives for those who cannot or will not pay the unpermitted fee (or cannot pay the fee because it is unclear how a key may be obtained if at all). The unpermitted \$100 fee is also exorbitantly high, and is out of the reach for those of limited means, thus falling disproportionately on those least able to afford it. In other words, beach and surfing access, park access, and public view opportunities at this important location are essentially prohibited unless you are willing and able to pay a \$100 fee.

In cases involving violation(s) of the public access provisions of the Coastal Act, which is the case here, Section 30821 authorizes the Commission to impose administrative civil penalties in an amount of up to \$11,250 per day for each violation.

Section 30821(g) states the following:

“Person,” for the purposes of this section, does not include a local government, a special district, or an agency thereof, when acting in a legislative or adjudicative capacity.

While we recognize that the OCRD is a special district, it is not clear that the OCRD was acting in a legislative or adjudicative capacity when it repeatedly failed to comply with permit requirements or when it “knowingly and intentionally” placed unpermitted fences, a gate, and a guard, and charged fees reaching \$100 (and other development) on the subject property. Thus, the OCRD could be subject to administrative penalties pursuant to Section 30821 if we cannot resolve this matter expeditiously. Please consider this letter to be written notification of public access violations for the purposes of Section 30821.

Summary

During the course of our review of CDP No. P-80-393 and the proposed amendment application (No. P-80-393-A1) it came to our attention that the original CDP conditions were not met within the requisite timeframe and the permit expired long ago. As a result: (1) the development identified in CDP No. P-80-393 is not authorized; and (2) there is no CDP to amend. Thus, the OCRD's previous amendment application is moot.

As you know, CDP No. P-80-393 was originally approved by the Coastal Commission in 1981, and it authorized the OCRD to install a six-foot-tall chain-link fence with a gate fronting Opal Cliff Drive and fencing running perpendicular from Opal Cliff Drive toward the bluff edge. CDP No. P-80-393 was subject to a number of terms and conditions, including the requirement for a recorded public access program consistent with the Coastal Act. Although a public access program was recorded ten years later in 1991, the CDP had already expired by that time on its own terms two years following the date it was approved (i.e., it expired in 1983). The recordation of the access program after the CDP had expired did not and cannot retroactively resurrect an expired CDP. As a result, not only is the existing nine-foot tall wrought iron fence/gate system at the site not authorized by a valid CDP, but neither is the fence/gate development that was originally authorized by CDP No. P-80-393 nor is the recorded public access program and its associated access fee program.

Moreover, the OCRD removed the development that was the subject of CDP No. P-80-393 and replaced it with a completely different (unpermitted) gate, fence, fee program, and guard (see above). Since the development that was “authorized” by the permit is no longer extant the deed restriction is no longer in effect. Thus, the access program and “key fee” that was the subject of that deed restriction is not authorized in any way. As we previously noted, the fee program was never discussed nor approved by the Commission, staff did not have the authority to approve a deed restriction with a fee program absent Commission approval, and the OCRD did not obtain coastal authorization to raise the fee.

Furthermore, while the OCRD applied for, and Commission staff granted Emergency Permit No. 3-11-018-G for foundation work on the stairs, there is no record in the file of the required acceptance form having been signed and returned to the Central Coast District Office. Thus it appears that Emergency Permit No. 3-11-018-G was never validated and the work conducted pursuant to that permit is unpermitted after-the-fact development in need of authorization through the regular coastal permitting process.

Finally, other development has been placed on OCRD's property over the years, as noted above. As discussed above in the "OCRD accessway and CDP notes for Dave King 5/18/2011" memo, all development that has occurred, or development activities that have commenced, after February 1, 1973 must be authorized by a CDP. The OCRD has no CDPs authorizing any such development on the subject property.

Resolution

It is unfortunate that this matter has not been resolved to date, including in the last decade within which we have been discussing resolution with OCRD. In any case, the bottom line is that CDP No. P-80-393 was never validly exercised, and it therefore expired. The gate, fencing, fee and guard issues, as well as other related development issues have persisted for more than 30 years without a CDP, and we need to bring this matter to a close once and for all in a manner better reflective of Coastal Act and Santa Cruz County Local Coastal Program (LCP) objectives and priorities for public accessways such as this, including the mandate to maximize public recreational access opportunities.

From our perspective, including because the original CDP authorization expired long ago, the fence/gate/fee/guard at the site is not recognized by a valid CDP, and the deed restriction is no longer in effect, the appropriate course of action, consistent with the requirements of the Coastal Act and the LCP, is to remove the fence/gate/fee/guard and allow the accessway to be used by the general public, comparable to all other public coastal accessways in Santa Cruz County. In this respect, the County operates its public beach access stairways without fences, gates, fees, or guards, and we see little reason why this accessway should be any different, whether it continues to be operated by the OCRD as a special district of County government or whether responsibility for its operation within the County shifts to a different County agency (e.g., County Parks). In fact, it is unclear why a fee for access and locked gate and guard system would be required in this case, particularly when the accessway in question is public, it is run by a public agency, and it has been built with public funding.

Therefore, in order to resolve this matter, the OCRD must do all of the following:

1. Cease from engaging in unpermitted development activities on the subject property;

2. Remove the fence, gate, and guard and cease from charging access fees, and submit evidence demonstrating same to me by no later than **Thursday, June 30, 2016**;
3. Submit a complete CDP application(s) seeking authorization for any remaining development (e.g., the landscaping, irrigation, water faucet upgrade, new stair railings, concrete pathways, emergency work on the stairway, etc. that has occurred on the subject property since February 1, 1973 by **Friday, July 15, 2016**. Since much of the subject unpermitted development is located within the jurisdiction of the County of Santa Cruz, you will need CDPs from both the County and the Coastal Commission to retain same, unless the County and the OCRD agree to a consolidated permit pursuant to Section 30601.3 of the Coastal Act.

While we are hopeful that we can resolve this matter amicably, please be advised that the Coastal Act has a number of potential remedies to address violations of the Coastal Act including the following:

Section 30809 states that if the Executive Director of the Commission determines that any person has undertaken, or is threatening to undertake, any activity that may require a permit from the Coastal Commission without first securing a permit, the Executive Director may issue an order directing that person to cease and desist. Section 30810 states that the Coastal Commission may also issue a cease and desist order. A cease and desist order may be subject to terms and conditions that are necessary to avoid irreparable injury to the area or to ensure compliance with the Coastal Act. Section 30811 also provides the Coastal Commission the authority to issue a restoration order to address violations at a site. A violation of a cease and desist order or restoration order can result in civil fines of up to \$6,000 for each day in which each violation persists.

Additionally, Sections 30803 and 30805 authorize the Commission to initiate litigation to seek injunctive relief and an award of civil fines in response to any violation of the Coastal Act. Section 30820(a)(1) provides that any person who undertakes development in violation of the Coastal Act may be subject to a penalty amount that shall not exceed \$30,000 and shall not be less than \$500 per violation. Section 30820(b) states that, in addition to any other penalties, any person who "knowingly and intentionally" performs or undertakes any development in violation of the Coastal Act can be subject to a civil penalty of not less than \$1,000 nor more than \$15,000 per violation for each day in which each violation persists.

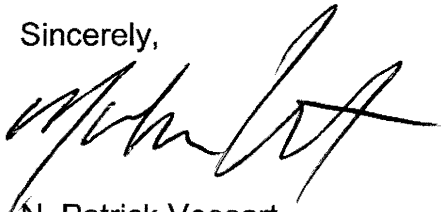
In cases involving violations of the public access provisions of the Coastal Act, Section 30821 also authorizes the Commission to impose administrative civil penalties in an amount of up to \$11,250 per day for each violation (as discussed above).

Finally, Section 30812 authorizes the Executive Director to record a Notice of Violation against any property determined to have been developed in violation of the Coastal Act. If the Executive Director chooses to pursue that course, you will first be given notice of

the Executive Director's intent to record such a notice, and you will have the opportunity to object and to provide evidence to the Commission at a public hearing as to why such a notice of violation should not be recorded. If a notice of violation is ultimately recorded against the property, it will serve as notice of the violation to all successors in interest in that property.

In closing, this matter requires OCRD's full attention. Resolution, that has proven elusive for so long, can no longer be allowed to be put off. The public access issues here are very clear, and our position regarding the fence, gate, guard, and fee program that are currently in place or operating at the site without authorization remains the same as we have long communicated to OCRD. We ask for OCRD's full cooperation in resolving this matter as directed above, and are available to talk with you or OCRD officials to discuss this matter further and to assist the OCRD with compliance, as well as the subsequent permitting process for the remaining public access features and amenities. We are also available to discuss potential alternative management scenarios with both the OCRD and the County Parks Department, who has expressed an interest in taking over management at this location. Please contact me at 831-427-4863 if you have any questions regarding this letter.

Sincerely,



N. Patrick Veersart
Enforcement Supervisor
Northern Districts

cc: Dan Carl, Deputy Director
Lisa Haage, Chief of Enforcement
Susan Craig, Central Coast District Manager
Ryan Moroney, Planning Supervisor
Sharif Traylor, Enforcement Analyst
Matt Christen, Staff Counsel
John Leopold, First District Supervisor, County of Santa Cruz
Jeff Gaffney, Director, Santa Cruz County Parks

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August 12, 2016

Mark Massara, Attorney at Law; OCRD representative
1642 Great Highway
San Francisco, CA 94122

**Re: Violation File Number V-3-06-012 – Opal Cliffs Recreation District
("OCRD"); Privates Beach**

Dear Mr. Massara:

When we met with OCRD (Ted Donnelly, Stuart Gasner, and Mark Massara) on July 7, 2016 regarding the above case, we again discussed past history and how best to resolve the outstanding Coastal Act/LCP violations that are the subject of this enforcement case. Obviously, the easiest and most direct way to resolve this matter is for OCRD to remove the fence, gate, and guards, cease charging illegal beach access fees, and apply for a coastal development permit ("CDP") to authorize the remaining development onsite. That was our initial enforcement direction to OCRD, which was required to be accomplished by June 30, 2016. OCRD did not do so, and thus missed the enforcement deadline. Since OCRD declined this path, and in the spirit of active problem-solving to open this public accessway to unencumbered public use, we also discussed an alternative resolution path.

That alternate path would be for OCRD to apply for an "after-the-fact" CDP seeking authorization for all development that has occurred on the subject property since CDP requirements commenced in 1973, including the fence/gate/guards/fees and authorization for repairs to the stairs, now unpermitted, that occurred pursuant to temporary emergency authorization. While we strongly suggested that OCRD apply for a consolidated CDP from the Commission in such scenario, OCRD made it clear that they prefer to seek separate CDPs from both the County and the Commission despite the additional staff time and expense that would be involved.

At the July 7, 2016 meeting, we indicated that if OCRD agreed to resolve this matter through such a CDP process, the unpermitted fence and gate could remain in place while that process plays out, but only if the gate was unlocked during daylight hours and the public were allowed access without paying a fee. We felt that this was a good faith gesture that would not require immediate removal of the unpermitted fence and gate that would be appropriate provided we were all working together on the CDP process. At that time, OCRD specifically asked about implementing a new \$5 daily fee program

and we responded, quite clearly, that such a fee program would itself constitute new development under the Coastal Act and the LCP and would require a CDP. Moreover, that absent that permit, this would be a new instance of unpermitted development which would be an additional violation under the Coastal Act and the LCP, and we did not support such option. While there was quite a bit of discussion about this issue and your disagreement was evident, our direction to OCRD was clear: we did not then, and do not now, support implementation of a fee program without coastal authorization – as required by both the Coastal Act and the LCP. Such a new unpermitted fee program is contrary to our attempts to resolve the violations at the site, and to reach a legal resolution.

You agreed to raise the matters discussed on July 7th at the next OCRD board meeting, and to get back to me regarding how the board intended to proceed. When I did not hear back from you I left you two phone messages (on July 12th and 13th) asking that you call me. Neither you nor OCRD returned my phone calls.

Instead we heard from the press and the public that the OCRD met on July 11, 2016 and decided, in closed session, to implement a new \$5 daily beach access fee without CDP authorization. We now understand that the new fee is being charged and that the \$100 annual fee program is also still in place. The unpermitted fence/gate/guard is still in place and the public is still being denied public access to a public park and a public beach by a public agency - unless they are willing to pay a fee. We were and are surprised and disappointed that OCRD dismissed our alternative resolution offer and instead unilaterally decided to actually commit *more* Coastal Act/LCP violations as opposed to resolving the core issues.

As you know, and particularly in light of our prior letters, conversations and meetings, this new unpermitted development constitutes a “knowing and intentional” violation of the Coastal Act and the County’s LCP. These violations are subject to enhanced penalties pursuant to Section 30820(b) and administrative penalties pursuant to Section 30821.

On July 22, 2016, at a time when neither you nor anyone from OCRD had yet returned my calls, you instead sent a letter to Rainey Graeven (Commission staff) with materials related to OCRD’s application to the County related to stair repairs, and followed up with an application to the Commission for the same thing. Not only does this not resolve the violations at the site, but it is a puzzling next step given the fact that OCRD missed the original removal deadline, did not talk to us at all following our July 7th meeting, and did not pursue any form of the alternative resolution path we had offered.

Despite OCRD’s troubling tactics, and again in an attempt to resolve this matter consensually, we met again on August 8, 2016 with the OCRD (Mark Massara and John Griffith) and the County (Susan Mauriello, Kathy Prevesich, Melodye Serino, and Jeff Gaffney). At that meeting we learned that OCRD still refuses to suspend its illegal fee program, and has apparently submitted an application to the County seeking to

authorize its new \$5 daily fee program. Surprisingly, this application does not include provisions to resolve the other violations at the site.

At the August 8th meeting, in order to try and resolve the violations on the site without more formal enforcement actions, we again suggested that OCRD pursue the alternative resolution path we had previously offered by suspending its fee program and applying for a consolidated permit seeking to authorize all of the unpermitted development on site including the fence/gate/guards/fees and other development that has occurred without benefit of a CDP. A consolidated permit application to the Commission would allow for faster resolution without permit application fees (i.e., public agencies are not charged for Commission CDP applications).

However, it is crystal clear that OCRD prefers instead to keep illegally charging the public to access the public beach and to apply to the County and pay an application fee (which OCRD indicated was \$10,000) even though any County action will almost certainly be appealed to the Commission and end up being resolved at the Commission level. OCRD also reiterated that it will apply directly to the Commission for the work on the stairs, as discussed above.

Since OCRD flatly declines to resolve the violations and to maximize public access as required by the Coastal Act and the LCP, and because OCRD also flatly declines to discontinue its newly minted and unpermitted daily fee collection program, we are weighing options as regards enforcement action, including administrative penalties. As we discussed at the August 8th meeting, we would very much like to work consensually towards resolution, but it is clear that OCRD has no intention of discontinuing the unpermitted fees voluntarily. As a result, the Commission's options become more limited, and are necessarily focused on formal enforcement proceedings and remedies as opposed to administrative resolution.

Misstatement of Facts

The unpermitted gate, guards, and beach access fees at Privates Beach have attracted a lot of media attention. Historical facts have continually been misstated by you and OCRD. This is confusing, misleading, and not very helpful in our efforts to resolve this matter. We would like to set the record straight:

The Coastal Commission has taken only one CDP action here: In 1981 the Commission approved a CDP authorizing a 6-foot high chain-link fence, with a gate, for public safety purposes. That action did not authorize fees. Fees were not discussed at the hearing or in the staff report.

That permit (CDP No. P-80-393) was conditioned to require an access program to be submitted for review and approval of the Executive Director prior to the permit being issued. The access program was then to be recorded as a covenant running with the land. OCRD did not submit the required access plan in a timely manner, the permit was not issued, and it subsequently expired.

If the OCRD had complied with the conditions of its permit in timely manner, as they agreed to do, the permit would have issued before it expired. Since they did not, the permit was not issued.

However, any issues regarding whether CDP No. P-80-393 authorized a fee program are irrelevant because sometime in the late 1990s OCRD removed the fence and gate that was the subject of that permit and replaced¹ it with a completely different nine-foot-high wrought iron fence and gate topped with razor wire. They also began hiring guards to turn the public away unless they had paid a fee – a new scheme undertaken without a CDP.

In addition, at some point, OCRD unilaterally raised the annual access fee they were collecting from \$20 to \$100 without a CDP. As noted above, OCRD has now implemented a new \$5 daily fee, again without coastal authorization.

Since the fence approved by the Commission in 1981 is no longer extant, CDP No. P-80-393 is no longer relevant to the development at the site. The deed restriction recorded under the auspices of that permit is no longer in effect. As we have repeatedly discussed with you and OCRD, there is a duration clause in the subject deed restriction that renders it moot of its own accord if the development it authorized is removed, as occurred (again, without permits). This is also explained in detail in our June 7, 2016 letter.

As you know, the OCRD applied for an amendment to CDP No. P-80-393 to authorize, after-the-fact, the 9-foot-high fence/gate and it was scheduled for hearing in 2009. In fact, the 2009 recommendation was pulled from the agenda because of questions raised at that time regarding the 1981 base permit's validity. Staff subsequently further investigated and found that the permit had expired and could not be amended. The OCRD was made aware of the status of the permit in a written memo provided to OCRD in 2011.

That 2011 memo laid out the options available to OCRD to resolve the violations; essentially the same options available to them today. Despite being notified in 2011, OCRD did not pursue any such options. In fact, OCRD's recent efforts have only served to add more violations to the ledger.

To be clear, the Coastal Commission has not ever approved a fee program at Privates Beach. The public has never had the opportunity to comment on a fee program at a public hearing. Since 2011 when it became evident that the CDP had expired, we have consistently communicated to OCRD that charging beach access fees is in violation of the Coastal Act and the LCP. In response, OCRD at first did nothing, then, upon being re-informed in 2015, pursued a resolution that relied on the expired CDP and the 2009

¹ Pursuant to Section 13252(b) of the Commission's regulations (California Code of Regulations, Title 14, Division 5.5) replacement of the 6-foot chain-link fence with a 9-foot wrought iron fence is not considered "repair and maintenance" but instead constitutes a replacement structure that requires a coastal development permit.

amendment hearing, then, when asked to remove the unpermitted development by June 30, 2016 did not do so, and instead unilaterally started charging additional fees without a CDP.

Public Access Violation

As we previously stated in our June 7, 2016 letter, the placement of the unpermitted fence/gate/fee/guard directly interferes with the public's access to, and use of, the publicly funded accessway and the public beach below. In addition, the property owned by OCRD is a public bluff-top park that provides opportunities for the public to enjoy views of Monterey Bay, whale watch, and other recreation opportunities.

The placement of the unpermitted fence/gate/fee/guard directly interferes with public access to a public park and public recreation opportunities, including the sandy beach. The unpermitted development blocks significant and important public access in an area where there are no other alternatives for those who cannot or will not pay the unpermitted fee. In short, the subject unpermitted development activities are leading directly to significant public access impacts inconsistent with the requirements of the public access requirements of the Coastal Act and the County's LCP.

As you were previously informed, in cases involving violation(s) of the public access provisions of the Coastal Act, which is the case here, Section 30821 authorizes the Commission to impose administrative civil penalties in an amount of up to \$11,250 per day for each violation.

In our June 7, 2016 letter, we raised concerns about access and asked that OCRD remove the fence/gate/guard, cease from charging access fees, and submit a complete CDP application to authorize remaining unpermitted development on the subject property (i.e., stair repairs and certain park improvements) by June 30, 2016. We offered to extend that deadline if OCRD would agree to open the gate during daylight hours and allow free public access. OCRD would not agree to those terms and the deadline for removal of the fence/gate/guard and fee has passed.

At our July 7, 2016 meeting, we suggested that we could work out an agreement that OCRD could keep the fence and gate in place while a CDP application is processed if the OCRD would agree to open the gate and allow free public access during daylight hours. OCRD again refused to agree to this compromise, and instead unilaterally implemented a new fee program with no permits, without even informing Commission staff of their intentions.

When we met on August 8, 2016, the OCRD again refused to open the gate and allow free public access.

Please be advised that we have determined that the administrative penalties provisions under Section 30821 are applicable in this case. We gave the OCRD notice of Section 30821 in our June 7, 2016 and the 30 day "cure period" has passed. We note that potential daily penalties are accruing.

Anti-Discrimination Laws

In addition to the Coastal Act provisions cited above, the following Government Code Sections appear to be applicable here:

54090. As used in this article "public beach" means any beach area used for recreational purposes which is owned, operated or controlled by the State, any state agency or any local agency.

54091. Any city, county, or other local agency that owns, operates, or controls any public beach shall allow the use of that public beach by all persons regardless of ancestry, residence, or any characteristic listed or defined in Section 11135. Nonresidents of the city, county, or other local agency shall be permitted to use that public beach upon the same terms and conditions as are residents of the city, county, or local agency.

54092. Any city, county, or other local agency that allows any property owned, operated, or controlled by it to be used as a means of access to any public beach shall allow free access over that property to all persons regardless of ancestry, residence, or any characteristic listed or defined in Section 11135.

OCRD is a public agency that controls a public park that is the means by which the public accesses a public beach. In addition, OCRD uses public funds for park improvements, including using some \$220,000 from the California Clean Water, Clean Air, Safe Neighborhood Parks, and Coastal Protection Act of 2002 - allocated in FY 2002/2003. The \$100 annual fee, and now the \$5 daily fee, at Privates Beach appear to discriminate against people of modest means who cannot afford such fees merely to access the public beach. Both the California Constitution and the California Coastal Act guarantee the public's (all of the public's) right to access the beach. As such, OCRD's fees appear to violate Government Code Section 54092. In addition, if residents living in the district are treated differently than people who live outside of the district, which appears to be the case here, that may also be a violation of Government Code Section 54091.

In closing, let me say that we are disappointed that OCRD continues to illegally restrict public access to the beach despite ample notice that they are doing so and despite our attempts to resolve this matter, including our offer to let the unpermitted gate and fence remain while we work together to bring a CDP application to hearing. We have tried repeatedly to work with the district to bring them into compliance with the Coastal Act and the LCP, but OCRD has declined to do so or to work with the Commission to find a solution that protects public access and complies with the Coastal Act and LCP.

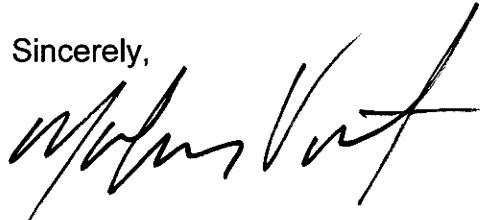
Instead, the long history of undertaking unpermitted development impacting public access has been supplemented by more recent actions and new unpermitted development that impacts public access. While we are sympathetic in general about

policing issues at public beaches and lack of revenue to maintain parks in California, those issues are statewide, and do not obviate the need to comply with the Coastal Act and LCP.

We urge OCRD to work with us to comply with the law and allow public access to this important public area.

If you have any questions, please feel free to call me at: 831.427.4863.

Sincerely,



N. Patrick Veesarth
Enforcement Supervisor
Northern Districts

cc: Dan Carl, Deputy Director
Lisa Haage, Chief of Enforcement
Susan Craig, Central Coast District Manager
Ryan Moroney, Central Coast District Supervisor
Sharif Traylor, Enforcement Analyst
Matt Christen, Staff Counsel
John Leopold, Santa Cruz County First District Supervisor
Susan Mauriello, Santa Cruz County Chief Administrative Officer
Jeff Gaffney, Santa Cruz County Parks Director

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December 11, 2017

Santa Cruz County Planning Commission
701 Ocean Street, 5th Floor
Santa Cruz, CA 95060

Subject: Opal Cliffs Recreation District's Proposed Fee Access Program at Opal Cliffs Park (County Coastal Permit Application Number 161195)

Dear Chair Guth and Planning Commissioners:

We understand that you will be considering the above matter at your December 13, 2017 meeting, and we provide these comments and recommendations to assist you in your deliberations. **Please note at the outset that we do not support the proposed project in its current form, and strongly recommend that this public beach accessway be opened to the public free of the proposed access fees.** We have been actively involved with the Opal Cliffs Recreation District (OCRD) and other County departments and staff for over a decade trying to find appropriate resolution for various OCRD violations of the Coastal Act and the County's Local Coastal Program (LCP), including the currently unpermitted gates, fencing, guards, and fees that OCRD has put in place for many years without required coastal permits and that preclude access to the beach to all but those able or willing to pay an access fee. The proposed project before you today simply does not adequately resolve these violations consistent with Coastal Act and LCP requirements.

OCRD's application now requests after-the-fact (ATF) authorization of a coastal permit¹ for the unpermitted development at the Opal Cliffs Park site, including: 1) the 9-foot tall wrought iron fence and locked gate along Opal Cliff Drive; 2) the access fee program (requiring an annual \$100 keycard to open the gate, with free access limited to summertime daytime access only); 3) the guard/"park ambassador" program (i.e., OCRD staff that monitors the use of the gate and enforces fee requirements); and 4) various previously installed improvements (including the concrete paver pathway, stone retaining walls, landscaping and irrigation).

As indicated, the proposed after-the-fact development at issue in this application has been the subject of significant controversy for over a decade, all the while the general public has borne the brunt of this public accessway being available for only a select few that can afford to pay for access. As the only accessway to the beach and shoreline, including for surfing access, between the public stairway at the Hook at 41st Avenue and the public stairway near the Capitola Wharf at Hooper's Beach (a distance of a mile), this impact on the general beach going public has only been exacerbated. Suffice it to say that we have – and have had for many years – serious concerns about the now ATF proposed gate, fence, guard, and beach access fee program because,

¹ Any County action on this coastal permit application would be appealable to the Coastal Commission.

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taken together, they present serious obstacles to the public's ability to use a public accessway, including to the beach and offshore surfing areas.

While we appreciate OCRD's efforts to attempt to finally resolve these issues through the current coastal permit application, we continue to believe that the project, as proposed, does not meet Coastal Act and LCP public access requirements that apply here, including those that require that such access be maximized.² Most notably, the fee program (including its fencing/gate and the guards/ambassadors) imposes substantial limitations on general public access to the beach, and is not consistent with the requirements of the Coastal Act and the LCP. Indeed, the Coastal Commission typically interprets maximized public access to be unfettered public access (i.e., unlimited access 24 hours per day 365 days a year) unless there is a clearly demonstrated need for some kind of reduced access. In this case, OCRD is proposing that type of unfettered access only to those willing and able to pay a \$100 annual fee, and to only allow general public access without a fee during summertime and only during the day, essentially setting up two tiers of access: unlimited for those with the means to pay for it, but severely restricted for those without the means. Such a two-tiered system at a publicly owned and publicly operated beach accessway is simply inappropriate, and we do not believe that it can be found Coastal Act and LCP consistent.

OCRD pitches the proposed fee program as necessary to support the upkeep of the accessway. However, we do not believe that the proposed public access limitations are justified in that respect either, including because not only do we think that this public accessway should be operated for free public beach access like all of the County's other public beach accessways, but also because we do not believe that revenues generated by the proposed fee program are necessary for ongoing maintenance and park upkeep. Indeed, even a cursory review of OCRD's finances demonstrates that OCRD's budget largely consists of expenditures that are unnecessary for providing basic beach access at the site. For example, based on a 2017 budget review conducted by Santa Cruz County, OCRD's revenue from 2015-2016 consisted of \$5,000 from property taxes, \$99,500 from the sale of key cards, and \$500 from "other," for a total revenue of \$105,000. OCRD's expenses for 2015-2016 include \$2,000 for maintenance, \$1,000 for utilities, \$1,500 for insurance, and \$500 for "other" (for a total of \$5,000). An additional \$51,500 was

² For example, the LCP's coastal recreation and beach access objectives include the goals "To maximize public use and enjoyment of coastal recreation resources for all people..." (LCP Land Use Plan (LUP) Objective 7.7a) and "To maintain or provide access, including visual access, to every beach...in order to ensure one access to every pocket beach and convenient, well distributed access to long sandy beaches..." (LUP Objective 7.7c). The LCP's related public recreational access policies and programs, including those that recognize beaches as park areas (LUP Policy 7.5.7), include requirements in furtherance of those objectives. In addition, all of these LCP policies need to be understood in terms of the Coastal Act, from which they draw their statutory authority and relevance in the coastal zone. On this point, Coastal Act Section 30210 requires, in relevant part, that "maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people...." This Section 30210 direction to maximize public access represents a different threshold than to simply provide or protect such access, and is fundamentally different from other like provisions in this respect. In other words, it is not enough to simply provide access to and along the coast, and not enough to simply protect access; rather such access must also be maximized. This terminology distinguishes the Coastal Act in certain respects, and provides fundamental direction with respect to projects along the California coast that raise public access issues, like this one.

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used for the production of keys/passes, security, and other professional services.³ Thus, the cost for the basic operation of the accessway (i.e., maintenance, utilities and insurance) comes out to about \$5,000 per year (which is the same as OCRD already takes in through property tax). The bulk of OCRD's expenditures (over \$50,000) are unrelated to these basic public accessway operational needs, but rather are to pay for the fee program apparatus itself and the gate guards/ambassadors. We do not believe that these things are even necessary or appropriate for a publicly owned and operated public accessway, as described above, and moreover it appears that they are the basis for OCRD's primary argument that asks you to support fees. We urge you to reject this claim, including because it appears clear that OCRD (or Santa Cruz County Parks in a transfer scenario) could maintain this public beach accessway at a comparable level to other beach accessways throughout the County without the 'need' for keycard revenue.⁴

Finally, with respect to the nighttime closure hours that would apply to the second tier of users during the time they would be allowed free access (i.e., such summertime access would be prohibited for these second tier users between 8pm and 5am under OCRD's proposal), even if such two-tiered approach were appropriate, such nighttime closure appears to lack justification, including because other shoreline parks and beach accessways in Santa Cruz County are not subject to the same curfew requirements (e.g., nearby facilities at Pleasure Point Park, the Hook, 38th Avenue, etc.). There are many legitimate nighttime public uses and users (as OCRD appears to recognize when it proposes to allow those who pay a fee to have year-round nighttime access), and we do not think it appropriate to limit such activities absent a clear and substantiated need for same (e.g., police reports, well documented public safety issues, etc.). Even in such cases, the response needs to be clearly tailored to the problem in a way that is designed to still provide maximum access as much as possible consistent with the aforementioned Coastal Act and LCP requirements. Thus, unless and until there is well documented evidence to suggest that a nighttime closure, for all users, is necessary, we recommend that the accessway be open similar to other County beach accessways in the area.

In conclusion, we believe that the proposed fee access program (including the fencing/gate and the guard/ambassador components) is not consistent with Coastal Act and LCP requirements to maximize public access. **We recommend that the Planning Commission approve a coastal permit that requires this public accessway to be open free of charge to all members of the**

³ We note that these figures are substantially different than those presented in the recent LAFCO report (and substantially different than those presented in the staff report to the Planning Commission for Application 161195) that, among other things, evaluated OCRD operations ("Review of Recreation and Park Districts Services and Spheres of Influence", March 2016, see page 20). The 2016 LAFCO report identifies a series of OCRD operational issues, including substantially in relation to its financial accounting and responsibilities, and ultimately recommends that OCRD consider transitioning operation of the accessway to another entity, such as the Santa Cruz County Parks department (see 2016 LAFCO report, pages 1 and 23).

⁴ And it is not even clear if Government Code Sections 54090-54092 even allow for imposition of such beach access fees; Section 54092 states: "Any city, county, or other local agency that allows any property owned, operated, or controlled by it to be used as a means of access to any public beach shall allow free access over that property to all persons regardless of ancestry, residence, or any characteristic listed or defined in Section 11135."

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general public at all times. Given the concerns that have been expressed regarding the appropriate hours of operation, we believe that the fencing and the gate could be allowed to remain to facilitate future potential nighttime closures, but only if the gate is required to remain open until such restriction may be applied, where such restriction would require an appealable coastal permit amendment as a condition of any approval now. Absent such an amendment within a year, we recommend a condition requiring removal of the fence and gate. We further recommend that the Planning Commission include conditions for clear signage that allows the public to know that they are able to use this public accessway without a fee, particularly given that the history of exclusive use here has made it so many do not understand that this is a publicly owned and publicly operated beach accessway. These recommendations reflect the same things we have been telling OCRD and the County repeatedly for over a decade, lest there is any question about this somehow being 'new' information. On the contrary, we have repeatedly made these same recommendations to OCRD and the County in countless forums over the years, but recognize this is the first time during that time frame that a County decision-making body has had the opportunity to weigh in.

We can appreciate that you have what some might consider a difficult decision before you. At the same time we urge you to recognize some very simple facts, including that this is a publicly owned and publicly operated beach accessway that should be available to all of the general public without fees and other encumbrances in the same way that other beach accessways in this area are. In addition, we urge you to reject the proposed two tiered system that has no place in a public access discussion, where access needs to be understood in terms of all of the public regardless of means, not just those that can afford to pay for it. In short, we ask that you make the right public policy and planning decision in a manner that is consistent with the requirements of the Coastal Act and the LCP. We appreciate your commitment to those principles, and to the public.

Thank you for considering our input, and please do not hesitate to contact me if you have any questions or would like to further discuss these important issues.

Sincerely,



Dan Carl
District Director
Central Coast District
California Coastal Commission

cc: John Leopold, Santa Cruz County First District Supervisor
Kathy Previsich, Santa Cruz County Planning Director
Jeff Gaffney, Santa Cruz County Parks Director
Mark Massara, Representative for Opal Cliffs Recreation District
Annette Olson, Santa Cruz County Planner for CDP Application Number 161195

NOTICE OF FINAL LOCAL ACTION ON COASTAL PERMIT

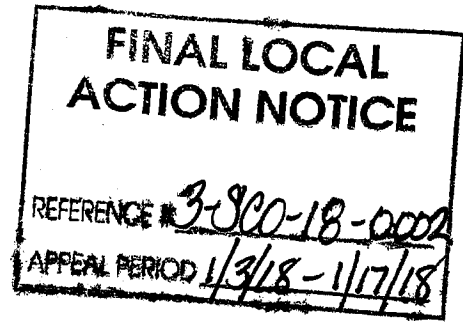
County of Santa Cruz RECEIVED

Date of Notice: 12/28/17

JAN 02 2018

Notice Sent (via certified mail) to:
 California Coastal Commission
 Central Coast Area Office
 725 Front Street, Ste. 300
 Santa Cruz, CA 95060

CALIFORNIA
 COASTAL COMMISSION
 CENTRAL COAST AREA



Please note the following **Final Santa Cruz County Action** on a coastal permit, coastal permit amendment or coastal permit extension application (all local appeals have been exhausted for this matter):

Project Information

Application No.: 161195
 Project Applicant: Opal Cliffs Recreation District
 Address: 4520 Opal Cliff Dr., Santa Cruz, CA 95062
 Phone/E-mail:
 Applicant's Representative: Mark Massara, Attorney at Law
 Address: 1642 Great Hwy, San Francisco, CA 94122
 Phone/E-mail: (805) 895-0963 / markmassara@coastaladvocates.com

Project Location: Property located on the bluff side of Opal Cliff Drive about 320 feet east of its intersection with Court Dr.

Project Description: Proposal to modify the public access program to include a free summer access program and to establish days and hours of operation; to modify the park aide program; to install a new sign; and to recognize a nine-foot tall wrought iron fence, gate and locking mechanism, concrete paver path, seating, and retaining walls.

Final Action Information

Final Local Action: Approved with Conditions

Final Action Body:

- Administrative Approval
- Zoning Administrator

- Planning Commission
- Board of Supervisors

Required Materials Supporting the Final Action	Enclosed	Previously sent (date)
Staff Report	XXX	
Adopted Findings	XXX	
Adopted Conditions	XXX	
Site Plans	XXX	
Elevations		

Additional Materials Supporting the Final Action	Enclosed	Previously sent (date)
CEQA Document	XXX	
Geotechnical Reports		
Biotic Reports		
Other:		
Other:		

Coastal Commission Appeal Information

- This Final Action is Not Appealable to the California Coastal Commission, the Final County of Santa Cruz Action is now effective.
- This Final Action is appealable to the California Coastal Commission. The Coastal Commission's 10-working day appeal period begins the first working day after the Coastal Commission receives adequate notice of this Final Action. The Final Action is not effective until after the Coastal Commission's appeal period has expired and no appeal has been filed. Any such appeal must be made directly to the California Coastal Commission Central Coast Area Office in Santa Cruz; there is no fee for such an appeal. Should you have any questions regarding the Coastal Commission appeal period or process, please contact the Central Coast Area Office at the address listed above, or by phone at (831) 427-4863.

Copies of this notice have also been sent via first-class mail to:

- Applicant
- Interested parties who requested mailing of notice



COUNTY OF SANTA CRUZ Planning Department

COASTAL DEVELOPMENT PERMIT; DEVELOPMENT PERMIT

Owner: Opal Cliffs Recreational District
Address: 4520 Opal Cliff Drive
Santa Cruz, CA 95062

Permit Number: 161195
Parcel Number(s): 033-151-22

PROJECT DESCRIPTION AND LOCATION

Proposal to modify the public access program to include a free summer access program and to establish days and hours of operation; to modify the park aide program; to install a new sign; and to recognize a nine-foot tall wrought iron fence, gate and locking mechanism, concrete paver path, seating, and retaining walls. Requires an Amendment to Coastal Development Permits P-80-393 and 07-0639, Development Permit.

Property located on the south side of Opal Cliff Dr. (4520 Opal Cliff Drive).

SUBJECT TO ATTACHED CONDITIONS

Approval Date: 12/13/2017

Effective Date: Call Coastal Commission

Exp. Date (if not exercised): see conditions

Coastal Appeal Exp. Date: Call Coastal Commission

Denial Date: _____

Denial Date: _____


_____ This project requires a Coastal Zone Permit, which is not appealable to the California Coastal Commission. It may be appealed to the Board of Supervisors. The appeal must be filed within 14 calendar days of action by the decision body.

This project requires a Coastal Zone Permit, the approval of which is appealable to the California Coastal Commission. (Grounds for appeal are listed in the County Code Section 13.20.110.) The appeal must be filed with the Coastal Commission within 10 business days of receipt by the Coastal Commission of notice of local action. Approval or denial of the Coastal Zone Permit is appealable. The appeal must be filed within 14 calendar days of action by the decision body.

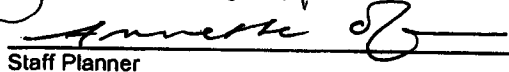
This permit cannot be exercised until after the Coastal Commission appeal period. That appeal period ends on the above indicated date. Permittee is to contact Coastal staff at the end of the above appeal period prior to commencing any work.

A Building Permit must be obtained (if required) and construction must be initiated prior to the expiration date in order to exercise this permit. **THIS PERMIT IS NOT A BUILDING PERMIT.**

By signing this permit below, the owner agrees to accept the terms and conditions of this permit and to accept responsibility for payment of the County's costs for inspections and all other actions related to noncompliance with the permit conditions. This permit shall be null and void in the absence of the owner's signature below.


Signature of Owner/Agent

12/14/17
Date


Staff Planner

12/13/17
Date

Distribution: Applicant File Clerical Coastal Commission



**Staff Report to the
Planning Commission**

Application Number: 161195

Applicant: Mark Massara
Owner: Opal Cliffs Recreation District
APN: 033-151-12

Agenda Date: December 13, 2017
Agenda Item #:
Time: After 9:00 a.m.

Project Description: Proposal to modify the public access program to include a free summer access program and to establish days and hours of operation; to modify the park aide program; to install a new sign; and to recognize a nine-foot tall wrought iron fence, gate and locking mechanism, concrete paver path, seating, and retaining walls.

Location: Property located on the south side of Opal Cliff Drive about 320 feet east of its intersection with Court Drive (4520 Opal Cliff Drive).

Supervisory District: First District (District Supervisor: John Leopold)

Permits Required: Amendment to Coastal Development Permits P-80-393 and 07-0639, Development Permit

Staff Recommendation:

- Determine that the proposal is exempt from further Environmental Review under the California Environmental Quality Act, 15061(6)(3) and 15302 (Class 2)
- Approval of Application 161195, based on the attached findings and conditions.

Exhibits

- | | |
|---|---|
| A. Categorical Exemption
(CEQA determination)
15061(6)(3) and 15302 (Class 2) | F. Zoning, and General Plan Maps
<i>Santa Cruz Sentinel</i> articles |
| B. Findings | G. Permit History |
| C. Conditions | H. Correspondence |
| D. Project plans | I. OCRD Budget information |
| E. Subdivision, Assessor's, Location, | |

RECEIVED

JAN 02 2018

**CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA**

Parcel Information

Parcel Size:	12,600 s.f. (estimate)
Existing Land Use - Parcel:	Recreational
Existing Land Use - Surrounding:	Residential and recreational
Project Access:	Opal Cliff Dr.

**County of Santa Cruz Planning Department
701 Ocean Street, 4th Floor, Santa Cruz CA 95060**

Planning Area: Live Oak
Land Use Designation: O-R (Existing Park, Recreation and Open Space)
Zone District: PR (Parks, Recreation and Open Space)
Coastal Zone: Inside Outside
Appealable to Calif. Coastal Comm. Yes No

Environmental Information

Geologic Hazards: Coastal bluff, but development sited away from bluff
Soils: Sandy loam
Fire Hazard: Not a mapped constraint
Slopes: Level at top of bluff, very steep on bluff face
Env. Sen. Habitat: Not mapped/no physical evidence on site
Grading: No grading proposed
Tree Removal: No trees proposed to be removed
Scenic: Not a mapped resource, improvements not visible from beach
Drainage: Existing drainage adequate
Archeology: Not mapped/no physical evidence on site

Services Information

Urban/Rural Services Line: Inside Outside
Water Supply: City of Santa Cruz
Sewage Disposal: County of Santa Cruz
Fire District: Central Fire Protection District
Drainage District: Zone 5

Zoning & General Plan Consistency

The subject property is approximately 12,600 square feet, located in the PR (Parks, Recreation and Open Space) zone district, a designation which allows recreational uses such as the Opal Cliffs Recreation District (OCRD) park. The parcel's zoning implements the site's O-R (Existing Park, Recreation and Open Space) General Plan designation. The park improvements include a small parking area, gated access, a quarter-acre park area on top of the coastal bluff, and a staircase down to a small beach.

History

The subject parcel, which is approximately the same size as the surrounding residential lots, is located in a neighborhood that was subdivided in 1928 (Exhibit E). Originally, the parcel was maintained as an open space/park area and beach access by the neighborhood's improvement association (Exhibit F). In 1949, the OCRD was established by a resolution of the County Board of Supervisors. The OCRD is a public agency—a special district—that operates the park. For a time, the park was left open to the public. In 1963, as a result of vandalism and other nuisances, the gates were closed and locked. Keys were issued for \$1 to residents of the District (Exhibit F). On April 26, 1963, the OCRD's "Rules and Regulations" were published in the *Santa Cruz*

Exhibit 4

A-3-SCO-18-0004

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Sentinel. The document details the use of keys, gate guard (attendant), and provides conduct expectations.

In February 1973, following the passage of Proposition 20 (“Coastal Zone Conservation Act”) and, later, the Coastal Act in 1976, development on the parcel required a Coastal Development Permit. Applying for development within the Coastal Zone before 1983 was a two-step process in which an applicant would first obtain any necessary County approvals, after which they would then apply to the Coastal Commission for a Coastal Development Permit. In 1983, the County’s Local Coastal Program was approved by the Coastal Commission and jurisdiction over coastal development permits for projects located above the mean high tide shifted from the Coastal Commission to the County.

The OCRD pursued the two-step process in 1980 in an application for an over-height fence to allow the replacement of an existing six-foot tall fence located at the front of the property (which had been installed prior to the Coastal Act) and the three-foot tall side yard fences with an eight-foot tall fence (Exhibit G). On October 31, 1980, the County Zoning Administrator denied a variance application for the eight-foot high fence because of the lack of special circumstances justifying the increased height. The County Code in effect at the time made no provision—as there is in the current County Code—for Zoning Administrator approvals of fences higher than six feet without a variance. As a result, a variance was required for which the finding of a special circumstance could not be made and the application was denied.

Five months later, on April 13, 1981, the Coastal Commission approved a Coastal Permit for a fence and gate (P-80-393). This permit included approval of a six-foot high chain link fence “along all boundaries of the site” to control access, with an access program required as a condition of approval (Exhibit G). A deed restriction containing the access program, signed by John Bowers, Staff Counsel to the California Coastal Commission, was recorded in November 1991 (Exhibit G). The access program included a fee-for-key component. The Coastal staff report indicates that the rationale for the restricted access was the unstable bluffs and “small, pocket beaches with low capacities for public use.”

At the request of the OCRD, in January of 2006, Glenda Hill, Principal Planner for the County, completed an application form for a 2-12 Resources Bond Act Per Capita Grant Program for a park renovation. Ms. Hill indicated that all of the proposed improvements, which included an outdoor shower, drinking fountain, and landscaping, were exempt from requiring a Coastal Permit except for the proposed nine-foot tall fence which required a Coastal Development Permit from the County of Santa Cruz. In approximately 2006, the six-foot tall fence at the front of the property was replaced with a nine-foot high wrought iron fence. According to an OCRD Board member, the fence was replaced to deter members of the public from climbing the fence.

In April 2006, the Coastal Commission opened a Coastal Act enforcement case (V-3-06-12) for the nine-foot tall replacement fence and the use of gate attendants because both were done without a Coastal Development Permit. The enforcement case prompted the OCRD to apply in 2007 to the County to recognize the fence, which was three feet taller than the height previously approved by the Coastal Commission. Application 07-07639 was approved by the Zoning Administrator on July 11, 2008. However, Coastal Commission staff then notified the County that the OCRD had also applied directly to the Coastal Commission to amend the 1980 permit.

Exhibit 4

A-3-SCO-18-0004

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Coastal staff believed that this obviated the need for a County-processed Coastal Permit. Coastal Commission staff took the OCRD's application to the Coastal Commission hearing in Oceanside on January 7, 2009. The hearing was opened, testimony was taken, and the item was continued, but no follow-up hearing ever occurred. According to Coastal Commission staff, it was at this hearing that the validity of the 1981 permit was questioned.

Six years later, on June 18, 2015, Coastal Commission staff issued a letter to the OCRD restating the 2006 violation (V-3-06-12) and listing additional violations. The listed violations include: the use of security guards, the fee-for-access program, the placement of a locked gate and nine-foot tall wrought iron fence, the placement of restrictive signage, various landscaping and hardscaping improvements, and the district's failure to submit a follow-up Coastal Development Permit for emergency repairs to the coastal access stairway. The stairway status has since been resolved by a Coastal Commission permit waiver (CDP Waiver 3-16-0680).

On July 14, 2016, the OCRD applied again to the County to resolve the alleged violations. On October 16, 2017, Coastal Commission staff requested that the County address the Code violations.

Validity of the April 1981 Coastal Development Permit

At the heart of the violations described by the Coastal Commission is the question of whether or not the 1981 Coastal Permit, which authorized the locked gate and access program, is still in effect. In a letter dated August 12, 2016 (Exhibit G) to the OCRD's attorney, Coastal Commission staff makes three arguments as to why that permit is no longer in effect. The first asserts that the 1981 permit expired before it was implemented because of the ten-year gap between the Coastal Permit's approval and recordation of the access program. This is at odds with the historic record, which contains evidence that Coastal Commission staff affirmed the validity of the 1981 permit multiple times in writing.

The first document is the access program itself. John Bowers, Staff Counsel for the Coastal Commission signed the deed restriction on November 5, 1991 under a block of text stating the following:

This is to certify that the deed restriction set forth above is hereby acknowledged by the undersigned officer on behalf of the California Coastal Commission pursuant to its authority conferred by the California Coastal Commission when it granted Coastal Development Permit No. P-80-393 on April 1, 1981 **and the California Coastal Commission consents to recordation thereof by its duly authorized officer [emphasis added]:**

The recordation was followed by a letter from Les Strnad, Coastal Commission Chief of Permits, who states in his January 6, 1991¹ letter that the OCRD has resolved a violation stemming from its failure to record the access program required by the 1981 permit. He notes that the access program was recorded on November 22, 1991, resolving the violation and placing the OCRD in good standing to receive the permit form. No mention is made of the permit expiring.

¹It appears that the letter was dated incorrectly as the year should have been shown as 1992.

The issuance of the permit form came three days later on January 9, 1992. The OCRD Treasurer signed the permit form and the date stamp on the letter (Exhibit G) indicates that the Coastal Commission received the fully executed permit on February 4, 1992. Given this, and the 28 years of OCRD operation without any notice of the permit's expiration, there appears to be no basis for determining that the 1981 permit is expired due to a failure to implement it. The access program was, in fact, implemented consistent with the approved, permitted aspects.

The second argument focuses on the replacement of the original fence and gate with the nine-foot tall fence and gate. Coastal Commission staff asserts that the 1981 permit became void with the removal of the chain link fence authorized by that permit. Implicit in this argument is acceptance that the 1981 permit was implemented since it is not possible to void a permit if the permit is not in effect. Regardless, the majority of the approved fence remained since only part of the fence was replaced. Further, the replacement of a portion of the fence authorized by the 1981 permit with the nine-foot tall wrought iron fence in about 2006 did not eliminate the use in the way that, for example, the removal of a dwelling would eliminate a residential use. The use in this case is public access for which there is no evidence that it ever ceased. The access program, which is at the heart of the 1981 permit and details the use of the accessway, remained in full effect.

Finally, the August 12, 2016 letter from the Coastal Commission suggests that the "duration clause" in the access program renders the access program "moot of its own accord if the development it authorized is removed." This misses the intent of the duration clause which is to ensure that the access program remains in "full force and effect" even if modifications to the approved development occurs. It states:

Said Deed Restriction shall remain in full force and effect during the period that said permit, or any modification or amendment thereof remains effective, and during the period that the development authorized by the Permit or any modification of said development, remains in existence in or upon any part of, and thereby confers benefit upon, the Property described herein and shall bind Owner and all his/her assigns or successors in interest (Exhibit G).

In this case, the approved "development" includes both the fence and the access program. There has been no claim made that the entire approved fence was removed. Further, the duration clause makes no distinction between permitted and unpermitted modifications of the development because, as already noted, the intent is to ensure the durability of the access program. Finally, no cessation of public access occurred during the fence replacement, i.e. the access program component of the "development" remained in effect.

In conclusion, and based upon the available record, the 1981 permit is valid as it was fully exercised with Coastal Commission approval and, despite installing the existing nine-foot tall fence and other improvements without the required Coastal and Development permits, the OCRD has taken no action that voided the original permit.

Validity of the July 2008 Coastal Development Permit

As noted above, the County's Zoning Administrator approved a Coastal Development Permit 07-0639 for the nine-foot tall fence in July 2008. The County's Final Local Action Notice was received by the Coastal Commission, but the County's permit was set aside by Coastal Commission staff because the OCRD applied directly to the Coastal Commission for the over-height fence. However, at the Coastal Commission hearing, the item was continued to a date uncertain and no final action was ever taken on the application (P-80-393-A1). Given this context, where the Coastal Commission staff did not appeal the County's Coastal Permit (07-0639) despite receiving the Final Local Action Notice, and took no action on its own to approve a permit, Permit 07-0639 is considered still valid and in effect.

Despite the fact that all of the current application's components have been previously permitted (either by P-80-393 or 07-0639), were a pre-existing use, or were exempt from requiring a Coastal Permit, the County is processing the current application due to a lack of consensus between the Coastal Commission, County and the OCRD. The intended outcome of this application is to reconcile the Coastal Commission, County and OCRD's understanding of the OCRD's permit status.

Local Coastal Program Consistency

As noted above, the subject parcel has had controlled access perhaps as early as 1936 (Exhibit F), and definitely in 1963, including a fee-for-key program and gate attendants, as documented by *Santa Cruz Sentinel* articles. This controlled access was in place in 1980 when the OCRD applied for the Coastal Development Permit (Exhibit G). Given this preexisting use, it appears likely that Coastal Commission staff in the 1980's saw the application for the expanded fencing along the property lines as an opportunity to require the OCRD to formalize public access by requiring an access program, to ensure that the park and access would not be an exclusive park only available to households within the District boundaries. As described above, the 1981 Coastal Permit was implemented and the OCRD took no action that voided the permit.

Given this context in which the OCRD has a valid Coastal Permit authorizing controlled access via six-foot tall fence and also a long history of gated access prior to the 1981 Coastal Permit, County staff evaluated the alleged violations and the subject application relative to the history of the pre-existing use and the 1981 permit and, for new aspects of the OCRD's improvements and operations, their conformance with County Code and General Plan/LCP, including an evaluation of the visual impact of the improvements. These are discussed below.

Nine-foot tall fence and locking gate The addition of three-feet in height over the six-foot tall fence approved with the 1981 Coastal Permit allows the fence and gate to function in the manner intended by the original Coastal Permit, i.e. to prevent members of the public from entering the park outside of the park operating hours and without a keycard. According to an OCRD Board member, members of the public were climbing the six-foot tall fence, and the nine-foot fence provides a greater deterrence. Given this, the nine-foot tall fence, gate and locking mechanism meet the intent of the 1981 Coastal Permit which was to restrict access, and is consistent with the height approved by the County under the July 2008 Coastal Development Permit. The nine-foot tall fence's visual impact is discussed further below.

Park Aides The application includes the recognition of the OCRD park aide program. As noted earlier, *Sentinel* articles document the use of “guards” at least as early as 1963. Although the access program recorded as a part of the 1981 permit makes no mention of guards, the current program is a continuation of that earlier guard program, with the role of park aides being to monitor and assist with gate operation, answer questions, assist park users with bulky items, and, if needed, call for law enforcement or medical help in an emergency.

Coastal Commission staff has previously identified the “guards” as likely having a chilling effect on park attendance². Prior to the free summer access program, this would have been implausible since park users would have had to have purchased a keycard, i.e. if you have paid for a keycard, park staff would not deter your use of the park. With the proposed free summer access program, however, the park aide could be perceived as a deterrent to access if he or she appears to be a guard. This concern is manageable by ensuring park staff are viewed as helpful and approachable. A condition of approval is included requiring a sign that clearly announces the free access as well as a requirement that attendants dress in a casual uniform consisting of pants or shorts and a shirt printed with “OCRD Park Aide” or similar.

Fee-for-key As noted above, a fee-for-key program is documented as being in place at least as early as 1963. The current access program, where keycards cost \$100 for a full year and a reduced amount for less than a year, funds the park’s operations in combination with a fee levied on the property tax bills of residents living within the OCRD’s district. The access program required by the 1981 Coastal Permit allows the OCRD to charge access fees in order to fund the park’s operations, and fee increases are allowed with the approval of a majority of the OCRD’s Board, i.e. no Coastal Permit is required to change the access fee. The proposed revisions to the access program would continue this “fee-for-key” policy, but would make public access free during the summer between Memorial Day and Labor Day.

Coastal Commission staff has identified the \$100 annual cost of the key as being prohibitively expensive. However, it is reasonable that the District must have sufficient funding sources for operation and maintenance of the park, and some type of user fee has existed since 1963. The OCRD has provided both a narrative and quantitative budget (Exhibit I). Extrapolating from the 2017-2018 budget approved by the OCRD Board, a likely budget for a normal year when there are no legal or planning expenses, and accounting for the lost revenue resulting from free summer access, revenue would be about \$56,300 with expenses being about \$42,150. Revenue exceeding expenses—in this scenario, \$14,150—would be designated for the OCRD’s reserves in anticipation of the need for future capital expenditures. For example, the stairway leading down the coastal bluff to the beach has required repair twice; the first repair followed the 1989 earthquake, and the second repair followed erosion damage to the stair’s footing. The \$100 cost of a keycard, is about .0018 of the total budget, which is reasonably similar to the relative cost in 1963 when a keycard cost \$1 with an overall budget of \$900, i.e. .0011 of the total budget (*Santa Cruz Sentinel*, June 19, 1963). Given this, the current keycard cost of \$100 is reasonable. The Coastal Commission’s October 16, 2017 letter references a \$5 daily access program. That program has been replaced with free summer access and so is not a part of this application.

² Source: Coastal Commission staff report for application P-80-393-A1 for the January 7, 2009 hearing

Free Summer Access. During the summer of 2017, the OCRD made access free between Memorial Day and Labor Day. The OCRD proposes to continue this program as a part of this application. The County supports this program since it balances enhanced public access without eliminating keycard sales which are necessary to fund the park's operations. The free summer access program appears to have cost the OCRD \$30,200 based on sales data from November 1, 2016 as compared to 2017. On November 1st of last year, 816 keycards had been sold; at the same time in 2017, 514 keycards have been sold.

Days and Hours of Operation The OCRD proposes to allow the park to be open seven days a week between the hours of 5 AM and 8 PM. The 5 AM opening is before a typical "sunrise" opening for parks due to the park's use by surfers. The Coastal Commission asks for the park to remain open until 9 PM. The OCRD has cited concerns about late night partying and public safety³ as the reason for an earlier closure.

The earliest sunrise in Santa Cruz is at 5:48 AM, while the latest sunset is at 8:31 PM, both in June/July. The latest sunrise is at 7:21 AM, while the earliest sunset is at 5:02 PM, both in December/January. County parks are typically open from sunrise to sunset, and staff would support these hours if the magnetic keycard mechanism could be programmed to account for shifting sunrise/sunset times. Since the mechanism cannot be programmed this way, staff supports a close time of 8 PM. ~~The original access program did not detail days and hours of operation, so this proposal is not in conflict with the access program.~~ *The original access program stated that the park would be open seven days a week from dawn to dusk. The proposed hours are in substantial conformance with the original access program. (Changes made by staff at hearing 12/13/17).*

Landscape and Hardscape Improvements Other than the six-foot tall fence and the requirement to post a sign, the 1981 permit made no mention and contained no restrictions relative to landscape and hardscape improvements. Therefore, these improvements were evaluated relative to their visual impact (see below).

Signage A 12 square foot sign is proposed to announce the access program, including the new free summer access. This sign complies with the intent of the access program recorded as a part of the 1981 Coastal Development Permit which required a sign describing how to acquire a key, cost of key, hours of operation and contact information for OCRD Board members.

Design Review

Because the OCRD is a public agency, all development on the subject parcel is subject to design review (County Code 13.11.040(H)). In addition, because it is within the coastal zone, it must comply with the design criteria for coastal zone development.

Although staff typically would not support a nine-foot tall fence and gate in a residential neighborhood, the fence is compatible for the following reasons. First, the fence is of an open

³ This concern about public safety is shared by Sheriff Jim Hart who provided a letter documenting his law enforcement concerns and strong preference for the locked gate to remain (Exhibit H). In addition, although 2017 summer access program was, overall, a success, there were instance of late night partying and at least one significant injury when a person fell from the coastal bluff after OCRD park hours.

design—wrought iron pickets spaced four inches on center—and painted black. The fence's dark color helps it to recede into the background, and the open design allows views into the park which would not be possible with a solid fence. Second, two mature cypress trees, which are approximately 60 feet high, establish a scale that makes the fence appear shorter than its nine-feet. The viewer's eye is drawn past the fence to these trees, the green open space of the well-maintained park, and to the blue of Monterey Bay beyond. Without the benefit of the trees and view (i.e. if a single-family dwelling were behind the fence instead of a recreation area), the fence would likely appear to be out of scale with the neighborhood. Finally, because the fence facing Opal Cliff Drive is setback about 16 feet from the traveled roadway, the apparent size is further reduced. Given these considerations, the fence's design is considered appropriate for this location. It is worth noting that, aesthetically, the fence is a significant improvement over the unpainted chain link fence that was approved as a part of the 1981 permit.

In addition to the fence and gate, this application also includes recognition of improvements that were originally installed with Proposition 40 funding. Proposition 40 paperwork (Exhibit G) indicates that the County determined that the proposed improvements, except for the over-height fence, were eligible for an exemption (13.20.064(B)). Coastal Commission staff, however, identified these improvements as violations so, in order to achieve abundant clarity, they are included in this application. The improvements are:

- replacement of a concrete pathway with colored concrete pavers;
- stone retaining walls that are about three feet in height;
- landscaping;
- concrete seating; and
- irrigation improvements.

Because these improvements have already been installed, their visual impact can be readily assessed. The park is exceptionally well-maintained, and the high quality and aesthetically-pleasing improvements have beautified the park.

In addition to these existing improvements, a new sign is proposed. The proposed sign would be attached the front fence. Given its relatively small size, no negative visual impact is anticipated to result from the sign. The sign's size complies with the County's sign ordinance.

California Environmental Quality Act

This application is categorically exempt from further review under the California Environmental Quality Act (CEQA). Two exemptions are applicable. The first is the "common sense" exemption, 15061(b)(3), which applies to projects where it can be seen that there is no possibility that the activity in question will have a significant effect on the environment. Because all of the physical improvements, except the proposed replacement sign, have been in place for about 10 years, and no significant effects on the environment have been identified, it is evident that no significant effect on the environment would result from recognizing these improvements as a part of this application. With paved paths and a staircase providing access to the beach below, the free summer access program would not result in a significant environmental impact, i.e. beach goers are not scrambling down a bluff path. It appears that many of the people who availed themselves of the free summer access purchased keycards in past years. This is evidenced by the

Exhibit 4

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approximately 300 fewer keycard sales that occurred as of November 1st as compared to the previous year.

The physical improvements, i.e. the fence/gate, walkways, retaining walls, sign and landscaping/irrigation, are also categorically exempt under Categorical Exemption 15302 Replacement or Reconstruction (Class 2). This exemption consists of replacement or reconstruction of existing structures and facilities where the new structure will be located on the same site as the structure replaced and will have substantially the same purpose and capacity as the structure replaced. In this case, the replacement fence has the identical purpose of the fence approved under Coastal Permit P-80-393 as well as by the permit approved by the County in July 2008. The replacement walkways, retaining walls, sign and landscaping/irrigation improvements also serve the same purpose as those that they replaced.

Conclusion

As proposed and conditioned, the project is consistent with all applicable codes and policies of the Zoning Ordinance and General Plan/LCP. Please see Exhibit "B" ("Findings") for a complete listing of findings and evidence related to the above discussion.

Staff Recommendation

- Determine that the proposal is exempt from further Environmental Review under the California Environmental Quality Act.
- **APPROVAL** of Application Number **161195**, based on the attached findings and conditions.

Supplementary reports and information referred to in this report are on file and available for viewing at the Santa Cruz County Planning Department, and are hereby made a part of the administrative record for the proposed project.

The County Code and General Plan, as well as hearing agendas and additional information are available online at: www.co.santa-cruz.ca.us

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CALIFORNIA ENVIRONMENTAL QUALITY ACT NOTICE OF EXEMPTION

The Santa Cruz County Planning Department has reviewed the project described below and has determined that it is exempt from the provisions of CEQA as specified in Sections 15061 - 15332 of CEQA for the reason(s) which have been specified in this document.

Application Number: 161195

Assessor Parcel Number: 033-151-12

Project Location: 4520 Opal Cliff Dr., Santa Cruz

Project Description: Proposal to recognize a nine-foot tall fence, locking gate, access program and other related park improvements

Person or Agency Proposing Project: Mark Massara

Contact Phone Number: 831-479-5503

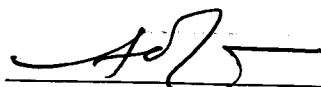
- A. The proposed activity is not a project under CEQA Guidelines Section 15378.
B. The proposed activity is not subject to CEQA as specified under CEQA Guidelines Section 15060 (c).
C. **Ministerial Project** involving only the use of fixed standards or objective measurements without personal judgment.
D. **Statutory Exemption** other than a Ministerial Project (CEQA Guidelines Section 15260 to 15285).
E. **Categorical Exemption**

Specify type: 15061(b)(3) and 15302 Replacement or Reconstruction (Class 2)

F. Reasons why the project is exempt:

The project is exempt under Categorical Exemption 15061(b)(3), which applies to projects where it can be seen that there is no possibility that the activity in question will have a significant effect on the environment. Because all of the physical improvements, except the proposed replacement sign, have existed for about 10 years it is evident that no significant effect on the environment would result from recognizing these improvements as a part of this application. Since paved paths and a staircase provide access to the beach below, the free summer access program would not result in a significant environmental impact, i.e. beach goers are not scrambling down a bluff path.

The physical improvements, i.e. the fence/gate, walkways, retaining walls, sign and landscaping/irrigation, are also categorically exempt under Categorical Exemption 15302 Replacement or Reconstruction (Class 2) since each of these improvements replaced an existing improvement. In addition, none of the conditions described in Section 15300.2 apply to this project.



Annette Olson, Project Planner

Date: 12/13/17

Coastal Development Permit Findings

1. That the project is a use allowed in one of the basic zone districts, listed in section 13.10.170(D) as consistent with the General Plan and Local Coastal Program LUP designation.

This finding can be made, in that the property is zoned PR (Parks, Recreation and Open Space), a designation which allows recreational uses. The park is an allowed use within the zone district, and the proposed improvements and modifications to the access program are ancillary to the park use. The zoning is consistent with the site's O-R (Existing Park, Recreation and Open Space) General Plan designation.

2. That the project does not conflict with any existing easement or development restrictions such as public access, utility, or open space easements.

This finding can be made, in that no easements are known to encumber the property and this application does not conflict the Coastal Development Permit P-80-393 which was approved by the Coastal Commission in 1981. That permit authorized a six-foot high fence to enclose the subject parcel. The improvements and fence/gate height are also consistent with the Coastal Permit approved by the County in July 2008. As a part of the 1981 Coastal Permit, an access program was required which was subsequently recorded as a deed restriction. The access program formalized the fee-for-key program and allowed for the District's Board, by majority vote, to raise the cost of the fee in order to fund the park's operating budget.

The current application proposes to recognize a number of minor hardscaping and landscaping improvements, a nine-foot tall fence that replaced a portion of the six-foot tall fence approved under Coastal Permit P-80-393, and modifications to the approved access program, including park hours, the provision of a free summer program, a new sign, and modification of the pre-existing guard program which is now called the "park aide program."

Nine-foot tall fence and locking gate The addition of three-feet in height over the six-foot tall fence approved with the 1981 Coastal Permit allows the fence and gate to function in the manner intended by the original permit, i.e. to prevent members of the public from entering the park outside of the park operating hours and without a keycard. According to an OCRD Board member, members of the public were climbing the six-foot tall fence and the nine-foot fence provides a greater deterrence. Given this, the nine-foot tall fence, gate and locking mechanism meet the intent of the 1981 Coastal Permit which was to restrict access and it was previously approved by the County in July 2008. The fence and gate's visual impact is discussed under finding three below.

Park Aide Program It is known from *Santa Cruz Sentinel* articles that "guards" or park aides were in use at least as early as 1963, a date that precedes the passage of Proposition 20 and the Coastal Act after which a Coastal Development Permit became required for development. Given that the use of park aides is a preexisting use and that the access program was silent on their use, the proposed park aide program is not in conflict with the 1981 Coastal Permit. A condition of approval is included requiring that the park aides be dressed so as not to appear as guards. The intent of this requirement is to ensure that the park aides are viewed by the public as

approachable and able to provide assistance.

Free Summer Access During the summer of 2017, the OCRD made access free between Memorial Day and Labor Day. The OCRD proposes to continue this program as a part of this application. The County supports this program since it balances enhanced public access without eliminating keycard sales which are necessary to fund the park's operations.

Days and Hours of Operation The 1981 Coastal Permit ~~did not specify hours or days of operation specified days and hours of operation of seven days a week from dawn to dusk.~~ The OCRD proposes to operate the park seven days a week with the proposed hours being 5 AM to 8 PM. These hours are reasonable as they mostly coincide with daylight hours and are substantially the same as parks operating in the vicinity. *They are also in substantial conformance with the original operating days/hours. (Changes made by staff at hearing 12/13/17).*

Landscape and Hardscape Improvements The 1981 permit made no mention and contained no restrictions relative to landscape and hardscape improvements other than the approved six-foot tall chain link fence and the requirement to post a sign. Therefore, they do not conflict with easement or development restrictions.

Signage The access program required as a part of the 1981 Coastal Permit required a sign to announce the access program. The current proposal to replace the existing sign with a 12 square foot sign to announce the public access program complies with the intent of that requirement.

3. That the project is consistent with the design criteria and special use standards and conditions of this chapter pursuant to Section 13.20.130 and Section 13.20.140 et seq.

This finding can be made, in that the fence and gate were evaluated for conformance with County Code section 13.20.130 et seq. The project was found to be compatible in that the open design of the fence significantly reduces its impact on the surrounding land uses and its black color makes the fence recede into the background. In addition, because open space rather than a single-family dwelling is located behind the fence, the viewer's eye is drawn to the view of the Monterey Bay beyond. The two mature cypress trees, which are approximately 60 feet in height, establish a scale in which the apparent size of the fence appears shorter than its nine feet. Finally, because the fence facing Opal Cliff Drive is set back from the roadway about 16 feet, its impact on pedestrians, bikers and motorists is reduced.

Site disturbance on the subject parcel to install the improvements was minimized since the fence, small retaining walls, hardscaping, landscaping and irrigation are all minor improvements. No trees are proposed for removal or were removed in the past. The subject parcel is not located on a ridgeline. The landscaping, which is proposed to be recognized, was previously installed so its visual impact can be readily evaluated. The park is exceptionally well-maintained and the landscaping complements the bluff-top setting and enhances the visual resource.

The fence and gate do not significantly adversely impact the view or scenic character of the site. The fence is constructed of wrought iron pickets and views through the park to the Monterey Bay are readily available. The wrought iron fence is a significant aesthetic improvement over the chain link fence previously approved under P-80-393.

The proposed sign complies with the County Code 13.10.582 (Signs in the PR District), which limits signs to 12 square feet. The intent of the sign is to announce both the free summer access program between Memorial and Labor Days, as well as to provide days/hours of operation and directions for access the rest of the year. The visual impact of the sign will be minimal given its relatively small size. The sign is proposed to be posted on the front fence high enough to be visible above the parked cars.

County Code 13.20.130(D)1 requires that blufftop projects within the urban services line be subject to the rural scenic resources (13.20.130(C)2) requirements. The subject project complies with these requirements in that the fence, hardscaping and landscaping improvements were all designed to fit the physical setting so that their presence is subordinate to the natural character of the site. The primary natural characteristic of the site are the views to the Monterey Bay. A fence of an open design and landscaping and hardscaping which complement the site were selected. Because of the fence's open design, the viewer's eye is drawn past the fence and trees to the blue of Monterey Bay beyond. The landscaping and hardscaping are evidence of the well-maintained park.

4. That the project conforms with the public access, recreation, and visitor-serving policies, standards and maps of the General Plan and Local Coastal Program land use plan, specifically Chapter 2: figure 2.5 and Chapter 7, and, as to any development between the nearest through public road and the sea or the shoreline of any body of water located within the coastal zone, such development is in conformity with the public access and public recreation policies of Chapter 3 of the Coastal Act commencing with section 30200.

As noted above, the subject parcel has had restricted access since as early as 1936 and definitely as early as 1963 when all of the components of the current operations were in place, i.e. a fence/gate and locking mechanism, guards (now called "park aides"), and fee-for-key access. As discussed in the body of the staff report, the Coastal Commission approved a Coastal Permit in 1981 which allowed for a six-foot tall fence with a special condition to record an access program. John Bowers, Staff Counsel to the Coastal Commission, signed the document under a block of text which references Coastal Development Permit P-80-393 (Exhibit G). Mark Estess, Chairman of the Board of the OCRD, signed the document and it was recorded on November 22, 1991. On January 6, 1992, Les Strnad, Chief of Permits for the Coastal Commission, acknowledged that the special condition of P-80-393, which required the access program, had been fulfilled and that the permit would be issued shortly. Three days later, the permit was issued. The OCRD Treasurer signed the permit and the Coastal Commission received the fully executed permit on February 4, 1992. Given this and the 28 years of OCRD operation without any notice of the permit's expiration, ~~there appears to be no basis for determining~~ *this Commission finds no basis* that the 1981 permit expired due to a failure to implement it (*Changed by Planning Commission at the hearing 12/13/17*). The access program was, in fact, implemented consistent with the approved, permitted aspects. The access program included a fee-for-key component and allowed for the OCRD Board to raise the cost of a key as needed to fund park operations, i.e. no Coastal Development Permit is required for the OCRD to take this action.

The OCRD took no action to void the permit. Furthermore, the County of Santa Cruz approved a

Coastal Permit in July 2008 for the taller fence, and determined other grant-funded park improvements were exempt from requiring a Coastal Permit. The OCRD replaced only a portion of the fence approved under Coastal Permit P-80-393, and there is no evidence that the public access use ever ceased. The access program, which is at the heart of the 1981 permit and details the use of the access way, remained in full effect.

The current application continues the preexisting use but proposes to modify it slightly. The most significant change is the proposal to allow free summer access. This free summer access program balances the goal of enhanced public access without eliminating keycard sales, the park's primary source of revenue. Public access is supported by multiple General Plan/LCP policies, including:

Objective 7.7a (Coastal Recreation) To maximize public use and enjoyment of coastal recreation resources for all people, including those with disabilities, while protecting those resources from the adverse impacts of overuse.

Objective 7.7b (Shoreline Access) To provide a system of shoreline access to the coast with adequate improvements to serve the general public and coastal neighborhoods which is consistent with the California Coastal Act, meets public safety needs, protects natural resource areas from overuse, protects public rights and the rights of private property owners, minimizes conflicts with adjacent land uses, and does not adversely affect agriculture....

Policy 7.7.1 (Coastal Vistas) Encourage pedestrian enjoyment of ocean areas and beaches by the development of vista points and overlooks with benches and railings, and facilities for pedestrian access to the beaches....

Also included in the application is the formal recognition of the park aides program, which is a continuation of the "guard" program that has been in place since at least 1963. This application provides the opportunity to condition that preexisting program by requiring that the park aides dress in a casual manner so as not to appear to be a guard or law enforcement. A condition of approval is included requiring the park aides to wear t-shirts with the phrase "OCRD Park Aide" or similar.

In addition, the application proposes to establish days and hours of operation which ~~were not previously formalized~~ *are in substantial conformance with the seven days a week, dawn to dusk hours of operation approved as a part of the original permit (Changed by staff at hearing 12/13/17)*. The proposed hours of operation from 5 AM to 8 PM are similar to the hours of County parks in the vicinity. For example, Floral Park is open sunrise to sunset.

In summary, the current Coastal Development Permit application, once approved, will resolve any outstanding allegations of violations or any deficiency of approved permit status.

5. That the proposed development is in conformity with the certified local coastal program.

The park use on the subject parcel is an allowed use in the PR (Parks, Recreation and Open Space) zone district, as well as the O-R (Existing Park, Recreation and Open Space) General Plan and Local Coastal Program land use designation. The improvements that are proposed to be recognized as a part of this application are ancillary to the park use and their visual impact was evaluated in finding

Application #: 161195
APN: 033-151-12
Owner: Opal Cliffs Recreation District

three above. As noted in findings two and four above, restricted access (including a fence/gate, fee-for-key and a park aide program) has been present on the subject parcel since at least 1963. The Coastal Commission recognized this restricted access with Coastal Development Permit P-80-393 in 1981 by authorizing a six-foot tall fence to enclose the property. The access program required as a part of the 1981 Coastal Development Permit codified the restricted access, and detailed the fee-for-key program. Given this, the current application's proposal to offer a free summer access program and formalize the days and hours of operation are in conformance with 1981 Coastal Permit and the access program recorded as a part of that permit. Based upon the available history, this application is in conformance with the certified local coastal program.

Development Permit Findings

1. That the proposed location of the project and the conditions under which it would be operated or maintained will not be detrimental to the health, safety, or welfare of persons residing or working in the neighborhood or the general public, and will not result in inefficient or wasteful use of energy, and will not be materially injurious to properties or improvements in the vicinity.

This finding can be made, in that construction will comply with prevailing building technology, the California Building Code, and the County Building ordinance to insure safety. The improvements which are proposed to be recognized by this application are all relatively minor, with only the fence requiring a building permit.

The location of the nine-foot high fence along Opal Cliff Drive will allow adequate sight distance for vehicles entering and exiting the Opal Cliffs Recreation District parking area in a safe manner, in that the fence is of an open design and will not obstruct the view of drivers.

The fence and other physical improvements will not utilize an excessive quantity of materials or energy in its construction or maintenance, in that the fence is a relatively insignificant structure.

The design and location of the fence will not adversely impact the available light or the movement of air to properties or improvements in the vicinity, in that the fence will be of an open design which will allow the passage of light and air.

2. That the proposed location of the project and the conditions under which it would be operated or maintained will be consistent with all pertinent County ordinances and the purpose of the zone district in which the site is located.

This finding can be made, in that the location of the proposed fence and the conditions under which it would be operated or maintained will be consistent with the purpose of the PR (Parks, Recreation and Open Space) zone district in that the primary use of the property will be recreational. The fence and the other hardscaping (e.g. retaining walls, seating, and path resurfacing) are ancillary to the recreational use. Within the Urban Services Line, fences located in the front yard setback are limited to three feet in height, and fences in the side yard are limited to six feet. Additional height can be allowed with a discretionary approval such as this one.

3. That the proposed use is consistent with all elements of the County General Plan and with any specific plan which has been adopted for the area.

This finding can be made, in that the proposed recreational use is consistent with the requirements specified for the O-R (Existing Park, Recreation and Open Space) land use designation in the County General Plan. As discussed in the Coastal Development Permit findings and the body of the staff report, the project conforms to the County's General Plan/LCP in that the fence, gate and locking mechanism, fee-for-key access, and park aides were all a part of the pre-existing use on the property. Coastal Development Permit P-80-393 authorized the construction of a six-foot tall fence to surround the property and required the recordation of an access program that included a fee-for-key program. The current application is to recognize the nine-foot tall fence and other

hardscaping/landscaping improvements (which the County had approved in July 2008), and modify the access program (to allow for a free summer access program and formally establish days/hours of operation and condition the long-standing park aide program).

The subject parcel is identified as a regional park in Figure 7-2 of the County's General Plan. General Plan Policy 7.5.7 (Beaches as Regional Parks) recognizes the use of beaches to satisfy regional recreational opportunities for County residents and calls for improving access where appropriate. The proposal to allow free summer access will improve access to the OCRD park by eliminating the fee to access while preserving the keycard revenue from the rest of the year which is needed to fund the park's operations.

No specific plan has been adopted for this portion of the County.

4. That the proposed use will not overload utilities and will not generate more than the acceptable level of traffic on the streets in the vicinity.

This finding can be made, in that the proposed fence and other improvements will not utilize a significant amount of electricity or utilities and will not generate a significant increase in additional traffic on the streets in the vicinity.

5. That the proposed project will complement and harmonize with the existing and proposed land uses in the vicinity and will be compatible with the physical design aspects, land use intensities, and dwelling unit densities of the neighborhood.

This finding can be made, in that the proposed fence—which is the project component with the greatest potential for visual impact—will be compatible with the visual character of the neighborhood due to its design, and location. As required by General Plan Policy 8.1.2 (Design Review Ordinance), the project was subject to the design guidelines set forth in the zoning ordinance. The fence is painted black and is of an open design which allows views into the OCRD and reduces the visual impact of the fence on surrounding properties and to traffic along Opal Cliff Drive. The subject parcel has been used for recreational since the 1930's. As such, the use of the parcel complements and harmonizes with the land uses in the vicinity where the surrounding parcels are all residential. The proposed fence does not alter or increase the density or intensity of residential use within the surrounding neighborhood.

6. The proposed development project is consistent with the Design Standards and Guidelines (sections 13.11.070 through 13.11.076), and any other applicable requirements of this chapter.

This finding can be made, in that the proposed improvements are compatible with the visual character of the neighborhood. The fence is painted black and is of an open design which allows views into the OCRD and reduces the visual impact of the fence when viewed from Opal Cliff Drive. The existing fence has been in place for approximately 10 years with no complaints from members of the public reported to the Planning Department. The proposed sign is 12 square feet in size. Given its relatively small size, it will have a negligible visual impact. As required by County Code Design Standards and Guidelines, the proposed 12 square foot sign complies with the requirements relating to signs set forth in County Code 13.10.580 and 13.10.587. The other

Application #: 161195
APN: 033-151-12
Owner: Opal Cliffs Recreation District

improvements—hardscaping and landscaping—have beautified the park, and are consistent with the Design Standards and Guidelines which call for landscaping to be maintained in good condition, and landscaping in sufficient size and quantity to adequately screen paving (13.11.075 *et seq.*).

Conditions of Approval

Exhibit D: Project plans, 3 sheets: Topographic Map prepared by Michael Bridgette, Licensed Land Surveyor, of Bridgette Land Surveying dated 1/11/06 amended with photos of improvements; Planting Plan prepared by Dreamscape Creative Landscape Solutions, Inc., dated April 4, 2017, amended with photos; and Irrigation Plan prepared by Dreamscape Creative Landscape Solutions, Inc., dated April 4, 2017, amended with photos

- I. This permit recognizes the construction of a nine-foot tall wrought iron fence, hardscaping and landscaping improvements, the installation of a sign, authorizes revisions to the access program, including hours of operation and free summer access; and authorizes modifications to the park aide program, as indicated on the approved Exhibit "D" for this permit and the Operational Conditions below. This approval does not confer legal status on any existing structure(s) or existing use(s) on the subject property that are not specifically authorized by this permit. Prior to exercising any rights granted by this permit including, without limitation, any construction or site disturbance, the applicant/owner shall:
 - A. Sign, date, and return to the Planning Department one copy of the approval to indicate acceptance and agreement with the conditions thereof.
 - B. Obtain a Building Permit from the Santa Cruz County Building Official for the nine-foot tall fence and gate.
 1. Any outstanding balance due to the Planning Department must be paid prior to making a Building Permit application. Applications for Building Permits will not be accepted or processed while there is an outstanding balance due.
 - C. Submit proof that these conditions have been recorded in the official records of the County of Santa Cruz (Office of the County Recorder) within 30 days from the effective date of this permit.
- II. Prior to issuance of a Building Permit the applicant/owner shall:
 - A. Submit a final fence and parking plan for review and approval by the Planning Department. The final plans shall be in substantial compliance with the plans marked Exhibit "D" on file with the Planning Department. Any changes from the approved Exhibit "D" for this development permit on the plans submitted for the Building Permit must be clearly called out and labeled by standard architectural methods to indicate such changes. Any changes that are not properly called out and labeled will not be authorized by any Building Permit that is issued for the proposed development. The final plans shall include the following additional information:
 1. A copy of the text of these conditions of approval incorporated into the full size sheets of the architectural plan set.
 2. Details showing compliance with fire department requirements. If the

proposed structure(s) are located within the State Responsibility Area (SRA) the requirements of the Wildland-Urban Interface code (WUI), California Building Code Chapter 7A, shall apply. Central Fire Protection District and the County Sheriff shall be given a keycard.

3. Details showing compliance with building code requirements, including:
 - a. Parking space identification signs shall include the International Symbol of Accessibility complying with Section 11B-703.7.2.1 International Symbol of Accessibility. [CBC 11B-502.6, Figure 11B-703.7.2.1]
 - b. Signs identifying van parking spaces shall contain additional language or an additional sign with the designation "van accessible." Signs shall be 60 inches minimum above the finish floor or ground surface measured to the bottom of the sign. [CBC 11B-502.6]
 - c. Parking identification signs shall be reflectorized with a minimum area of 70 square inches. [CBC 11B-502.6.1]
 - d. Additional language or an additional sign below the International Symbol of Accessibility shall state "Minimum Fine \$250." [CBC 11B-502.6.2]
 - e. A parking space identification sign shall be visible from each parking space. Signs shall be permanently posted either immediately adjacent to the parking space or within the projected parking space width at the head end of the parking space. Signs may also be permanently posted on a wall at the interior end of the parking space. [CBC 11B-502.6.3].
 - f. The gate shall comply with the following:
 - i. Minimum clearance is 32".
 - ii. Opening force shall not exceed 5 lbs.
 - iii. Hardware and operable parts shall not require tight grasping or twisting of the wrist, and shall be located between 34" to 44" above the finish floor or ground.
 - iv. At least a 10" smooth surface on the push side, measured from the ground or floor surface, shall be provided. [CBC 11B-404.2]
 - v. Minimum 18 inches strike side (pull side) clearance at the gate for a forward approach shall be provided. [CBC 11B-404.2.4.1].

- vi. All accessible exterior routes details shall be provided to include slopes, widths, and surface materials.
 4. Provide a final sign design and show its location on the front fence.
 5. Record ~~a revised~~ *an addendum to the* Access Program to include the Operational Conditions (below).
- III. All construction shall be performed according to the approved plans for the Building Permit. Prior to final building inspection, the applicant/owner must meet the following conditions:
- A. All site improvements shown on the final approved Building Permit plans shall be installed.
 - B. All inspections required by the building permit shall be completed to the satisfaction of the County Building Official.
- IV. Operational Conditions
- A. The following shall amend the Access Program recorded November 22, 1991:
 1. **Days and Hours of Operation:** The OCRD park shall be open seven days a week from 5 AM to 8 PM.
 2. **Free Summer Access:** Free summer access shall be provided Memorial Day through Labor Day inclusive.
 3. **Sign:** A sign, not to exceed 12 square feet, shall be posted on the front fence at a height above parked cars. The sign shall include text that is in substantial conformance with the following:
 - Opal Cliffs Park
 - Free Summer Access Program
 - Memorial Day through Labor Day
 - Opal Cliffs Park and Beach is Open Free to the Public
 - From 5 AM to 8 PM or sunset (whichever is later) daily
 - All other park rules and local ordinances shall remain in effect.

Between Labor Day and Memorial Day, Access to OCP requires a keycard, which provides for unlimited access to OCP from 5 AM to 8 PM. Keycards can be purchased at Freeline Surf Shop, located at 821 41st Ave, Santa Cruz. All proceeds go toward upkeep and maintenance of OCP. For more information, please visit www.OpalCliffsPark.org.
Thank you for your support!
 4. **Park Aides:** Park Aides shall be dressed casually and wear a t-shirt with the phrase "OCRD Park Aide" or similar. At no time will the park aides dress in

a way that suggests that they are guards.

5. **Park Improvements:** All park improvements, including the fence, shall be maintained in good condition. The fence shall be repainted and/or replaced as needed.
- B. In the event that future County inspections of the subject property disclose noncompliance with any Conditions of this approval or any violation of the County Code, the owner shall pay to the County the full cost of such County inspections, including any follow-up inspections and/or necessary enforcement actions, up to and including permit revocation.
- V. As a condition of this development approval, the holder of this development approval ("Development Approval Holder"), is required to defend, indemnify, and hold harmless the COUNTY, its officers, employees, and agents, from and against any claim (including attorneys' fees), against the COUNTY, its officers, employees, and agents to attack, set aside, void, or annul this development approval of the COUNTY or any subsequent amendment of this development approval which is requested by the Development Approval Holder.
- A. COUNTY shall promptly notify the Development Approval Holder of any claim, action, or proceeding against which the COUNTY seeks to be defended, indemnified, or held harmless. COUNTY shall cooperate fully in such defense. If COUNTY fails to notify the Development Approval Holder within sixty (60) days of any such claim, action, or proceeding, or fails to cooperate fully in the defense thereof, the Development Approval Holder shall not thereafter be responsible to defend, indemnify, or hold harmless the COUNTY if such failure to notify or cooperate was significantly prejudicial to the Development Approval Holder.
 - B. Nothing contained herein shall prohibit the COUNTY from participating in the defense of any claim, action, or proceeding if both of the following occur:
 1. COUNTY bears its own attorney's fees and costs; and
 2. COUNTY defends the action in good faith.
 - C. Settlement. The Development Approval Holder shall not be required to pay or perform any settlement unless such Development Approval Holder has approved the settlement. When representing the County, the Development Approval Holder shall not enter into any stipulation or settlement modifying or affecting the interpretation or validity of any of the terms or conditions of the development approval without the prior written consent of the County.
 - D. Successors Bound. "Development Approval Holder" shall include the applicant and the successor(s) in interest, transferee(s), and assign(s) of the applicant.

Application #: 161195
APN: 033-151-12
Owner: Opal Cliffs Recreation District

Minor variations to this permit which do not affect the overall concept or density may be approved by the Planning Director at the request of the applicant or staff in accordance with Chapter 18.10 of the County Code.

Please note: This permit expires three years from the effective date listed below unless the conditions of approval are complied with and the use commences before the expiration date.

Approval Date: December 13, 2017

Effective Date: Check with Coastal Commission

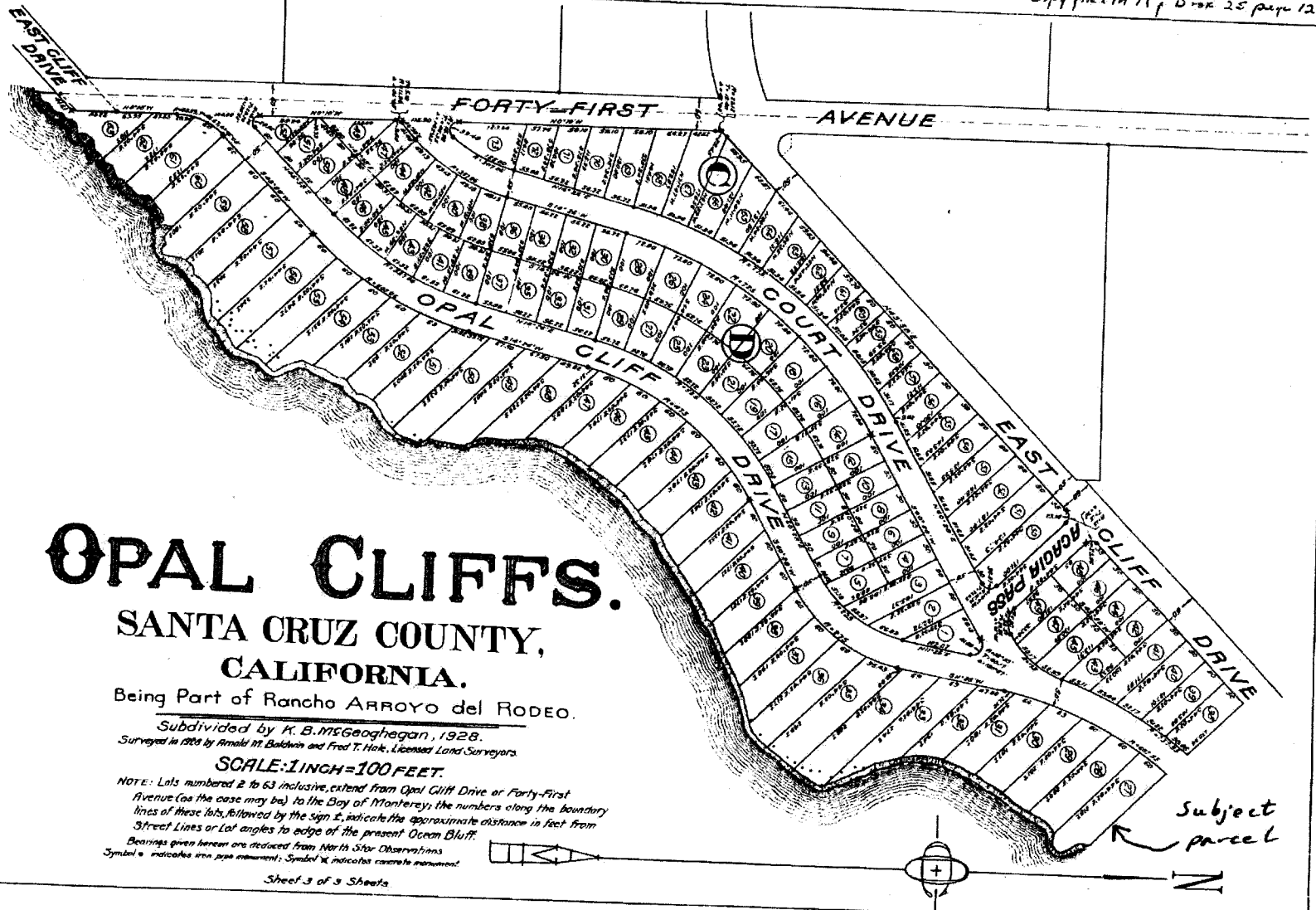
Expiration Date: Check with Coastal Commission

Appeals: Any property owner, or other person aggrieved, or any other person whose interests are adversely affected by any act or determination of the Zoning Administrator, may appeal the act or determination to the Planning Commission in accordance with chapter 18.10 of the Santa Cruz County Code.

Exhibits

025m12

Copy filed in Map Book 25 page 12



OPAL CLIFFS.

SANTA CRUZ COUNTY,
CALIFORNIA.

Being Part of Rancho Arroyo del Rodeo.

Subdivided by K. B. McGeoghegan, 1928.
Surveyed in 1924 by Amiel M. Baldwin and Fred T. Hok, Licensed Land Surveyors.

SCALE: 1 INCH = 100 FEET.

NOTE: Lots numbered 2 to 63 inclusive, extend from Opal Cliff Drive or Forty-First Avenue (as the case may be) to the Bay of Monterey; the numbers along the boundary lines of these lots, followed by the sign \pm , indicate the approximate distance in feet from Street Lines or Lot angles to edge of the present Ocean Bluff.
Bearings given herein are deduced from North Star Observations.
Symbol \bullet indicates iron pipe monument; Symbol \times indicates concrete monument.

Sheet 3 of 3 Sheets

25

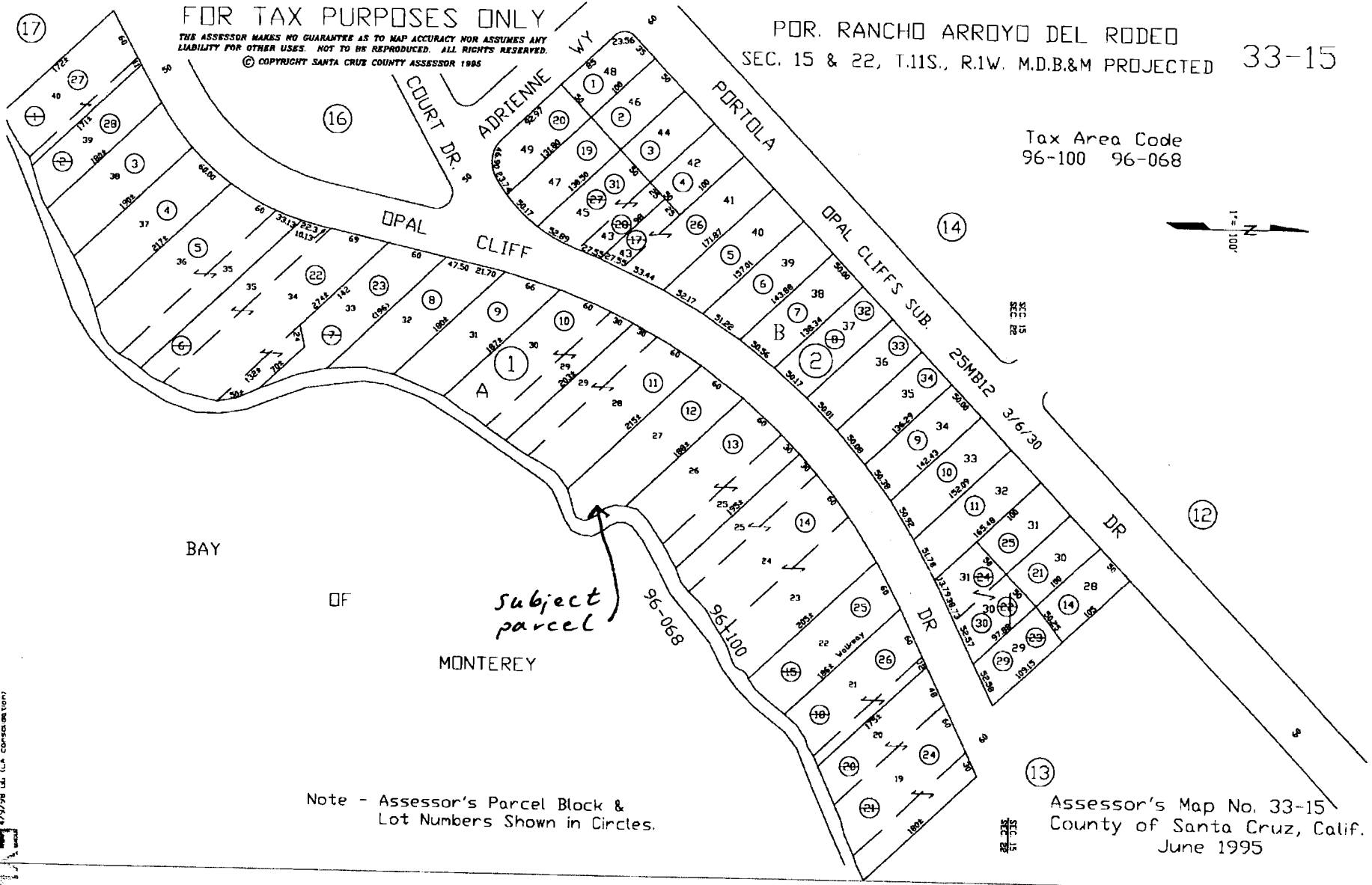
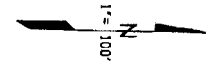
EXHIBIT B

FOR TAX PURPOSES ONLY

THE ASSESSOR MAKES NO GUARANTEE AS TO MAP ACCURACY NOR ASSUMES ANY LIABILITY FOR OTHER USES. NOT TO BE REPRODUCED. ALL RIGHTS RESERVED.
© COPYRIGHT SANTA CRUZ COUNTY ASSESSOR 1995

PDR. RANCHO ARROYO DEL RODEO
SEC. 15 & 22, T.11S., R.1W. M.D.B.&M PROJECTED 33-15

Tax Area Code
96-100 96-068



Note - Assessor's Parcel Block & Lot Numbers Shown in Circles.

Assessor's Map No. 33-15
County of Santa Cruz, Calif.
June 1995

26

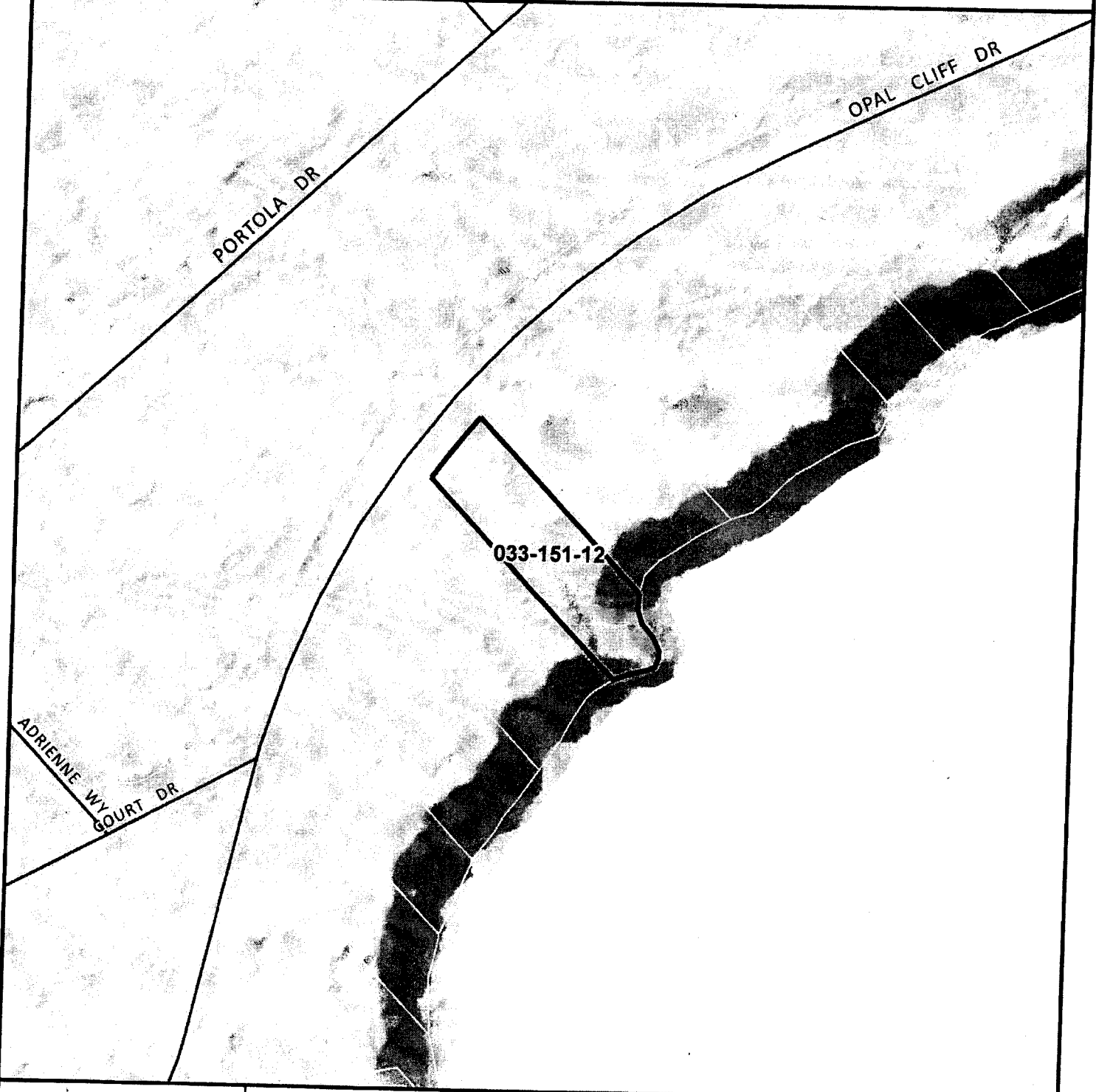
EXHIBIT 4



Parcel Location Map

Santa Cruz County Planning Department

Parcel Number
033-151-12
Nov. 20, 2017

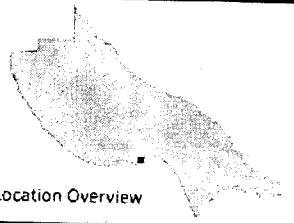


033-151-12

PORTOLA DR

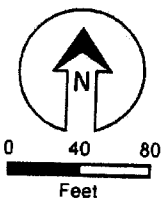
OPAL CLIFF DR

ADRIENNE WY
GOURT DR



Symbol Key

— Street





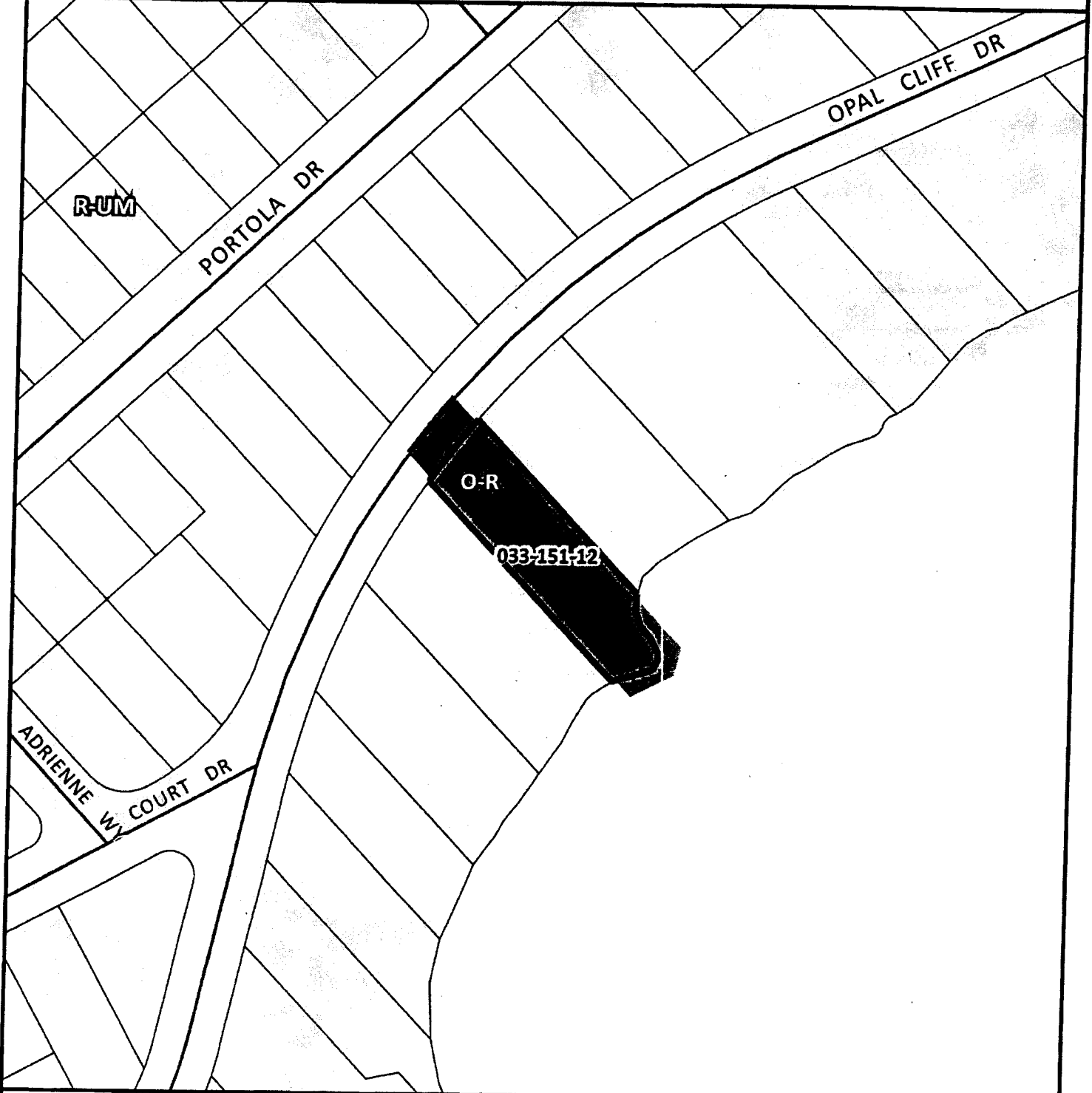
Parcel General Plan Map

Santa Cruz County Planning Department



Parcel Number

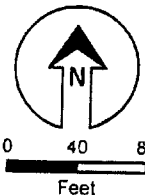
033-151-12

Nov. 20, 2017



General Plan

-  O-R - Parks and Recreation
-  R-UM - Residential - Urban Medium Density

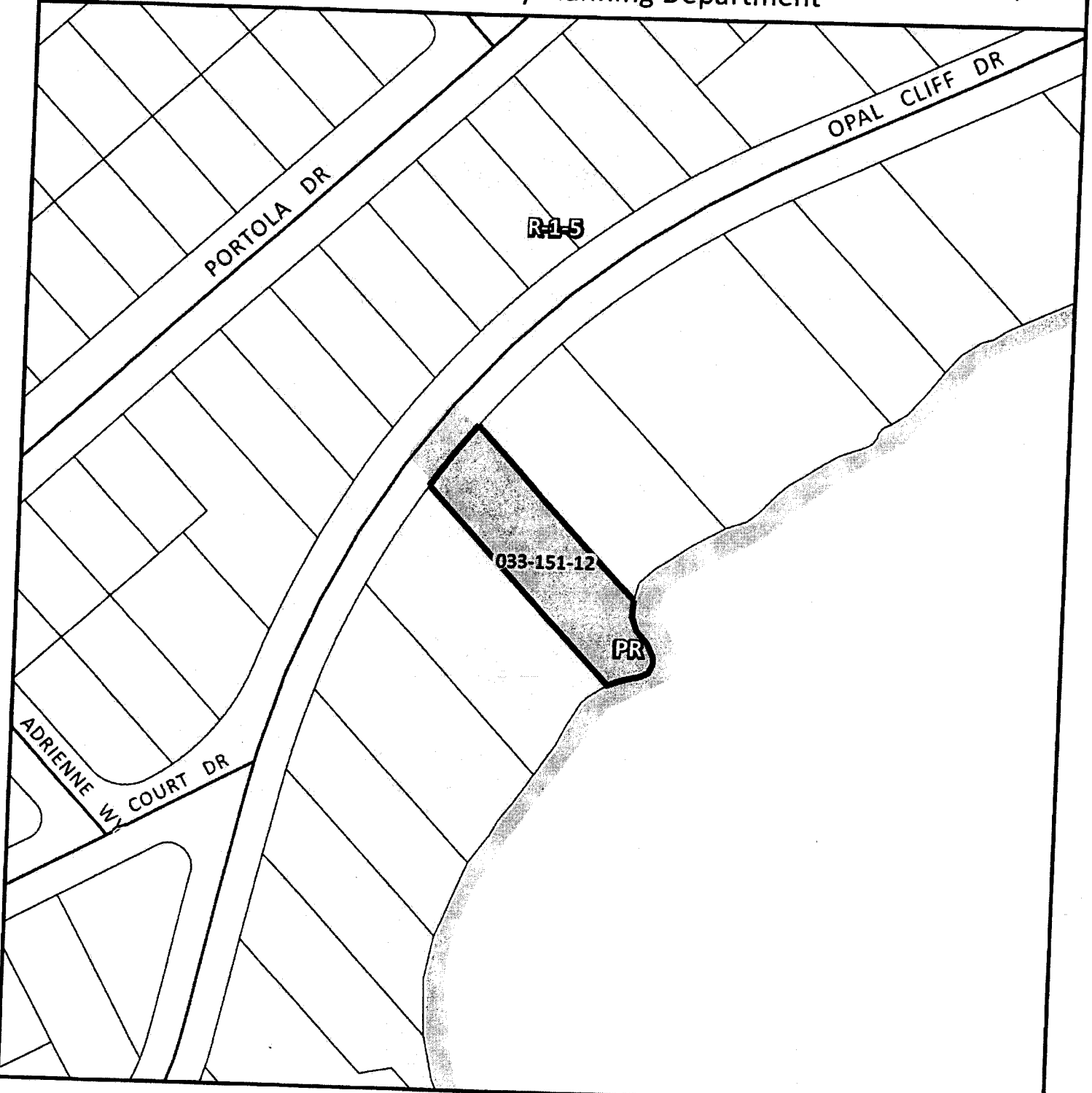






Parcel Zoning Map

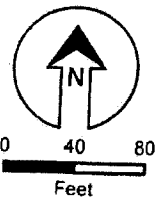
Santa Cruz County Planning Department

Parcel Number
033-151-12
Nov. 20, 2017



Zoning

-  (PR) Parks, Recreation, and Open Space
-  (R-1) Single-Family Residential



Vote On Opal Cliffs District Is Tomorrow

Opal Cliffs residents will go to the polls tomorrow between 7 a. m. and 7 p. m. to determine whether or not there shall be a recreation district formed in the area.

The territory to be included in the decision roughly is located between 41st and 49th avenues, bounded by the bay of Monterey and the Southern Pacific railroad tracks.

A petition to form the district was presented to the supervisors with the signatures of 15 per cent of the electors in the district April 7 and hearing on the matter, with no protests offered, was held May 7.

One Polling Place

Polling place for the election will be the store at 108 East Cliff drive, in the Opal Cliffs tract, and the polls will be open from 7 a. m. to 7 p. m.

Election officers approved by the supervisors May 24 were R. A. Shide, inspector; F. E. Rockwell, judge, and J. C. Phelan, clerk.

A majority of votes will determine the results of the election.

According to the sections of the Public Resources code under which the district may be formed, seven trustees will manage the affairs of the district. These managers will be appointed by the supervisors and shall consist of land owners, or voters, or both.

Two of the trustees will be appointed to hold office for two years each, three for three years each and two for four years each, with successors to be appointed by the supervisors.

Powers Are Broad

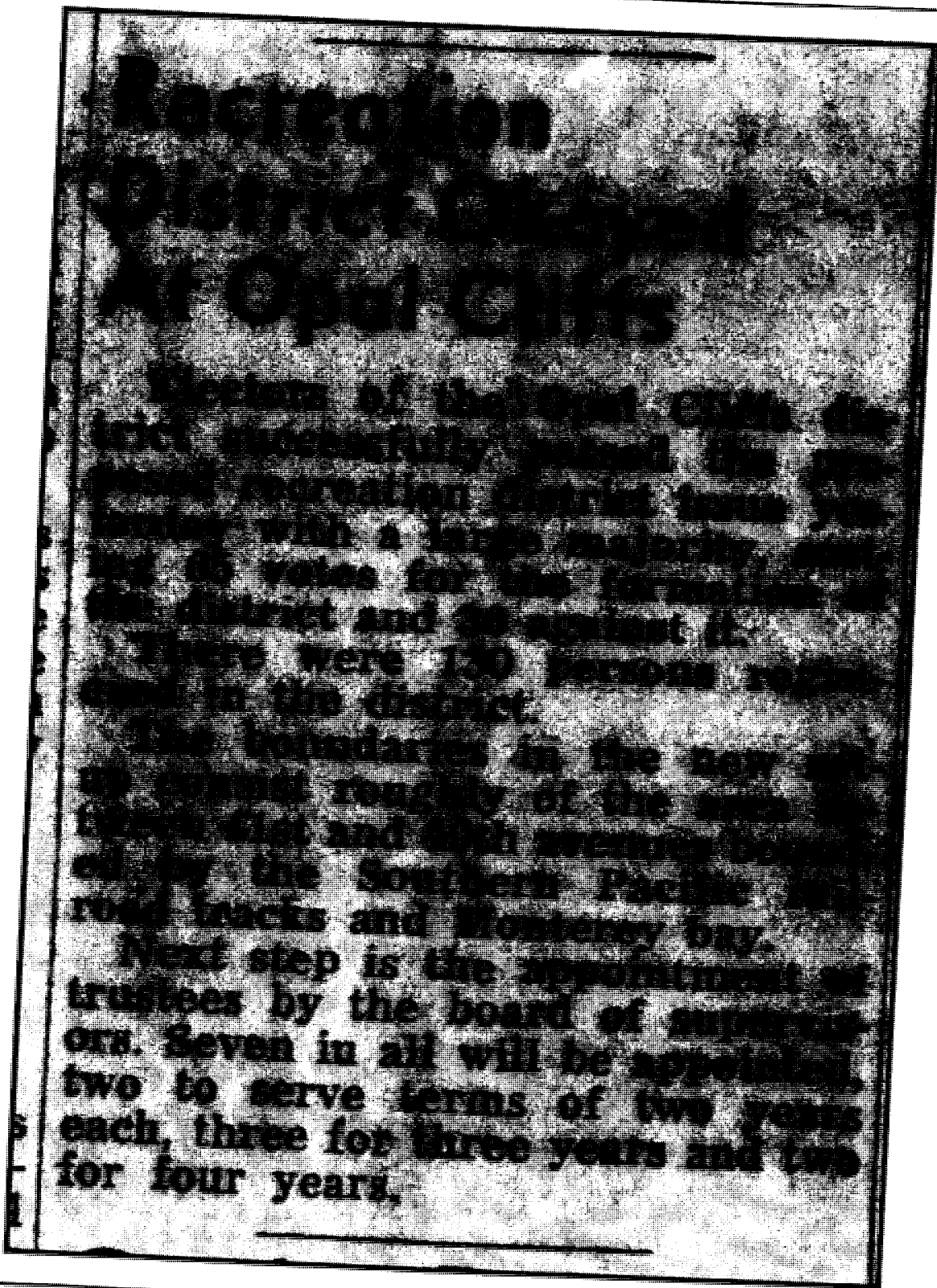
Powers of the trustees within the district are broad and allow for the erection of one or more dams for the purpose of constructing a swimming pool, maintenance of community parks, beaches, recreational grounds and community buildings within the district, including the construction, maintenance and operation of swimming pools and other amusement facilities in the district.

In addition to this, the trustees may contract for a system of improvements or works for sewage disposal and drainage, garbage disposal, fire protection, roads, bridges, road repair, bridge repair, trails, lights and playgrounds.

May Lease Land

They may also lease lands for recreational purposes, may regulate and manage them and also have the power to acquire by condemnation, gift, purchase or otherwise, lands deemed necessary for the needs of the district.

Elections must be called in the district for any bonds to be issued, either at the discretion of the trustees, or by a petition signed by at least 25 per cent of the electors in the district. Any bond issue will require a two-thirds vote to pass.



Opal Cliffs District Studying 'Key Club' For Beach Gate

Opal Cliffs Recreation district directors last night authorized a special lock on gates at the entrance to the Opal Cliffs beach with keys issued only to residents of the district.

The gate has been closed for approximately a month by action of the board.

This was done because of extensive vandalism to entrance facilities and resident complaints that the general public use of the entrance was causing traffic jams, littering problems, and general disturbance in the residential area.

John Melendy, board chairman, appointed James McLachlan, a board member, to investigate the situation and report at a later meeting on cost of the lock and keys.

Also at last night's meeting, Peter J. Pasotta volunteered to head a citizens' volunteer group to attempt to form an improvement association to take over and make the beach entrance private.

Although the beach itself is public, the entrance property is in hands of the current recreation district.

Under state law the district, which levies a property tax for maintenance of the entrance, must admit the general public.

This is similar to a city park, which is open to persons who live out of the city or county.

"Everybody has to be treated alike. If we keep anyone out, we have to keep everybody out," Melendy said.

The plan to install the lock and issue keys is only an "interim" measure, Melendy added.

At last night's meeting, a petition signed by approximately 135 Opal Cliffs residents was submitted, calling for immediate dissolution of the recreation district, formation of an improvement association, and taking over the gate property.

"It (the petition) is pretty representative of the over-all area," Melendy said. However, he urged caution in any immediate action.

"I think if we took immediate steps to dissolve the district, it (the entrance) would go to the county and I'm afraid of what would happen," Melendy said.

He indicated the county could either leave the gates closed or enter an agreement with the state division of beaches and parks which might make the area completely open to the public.

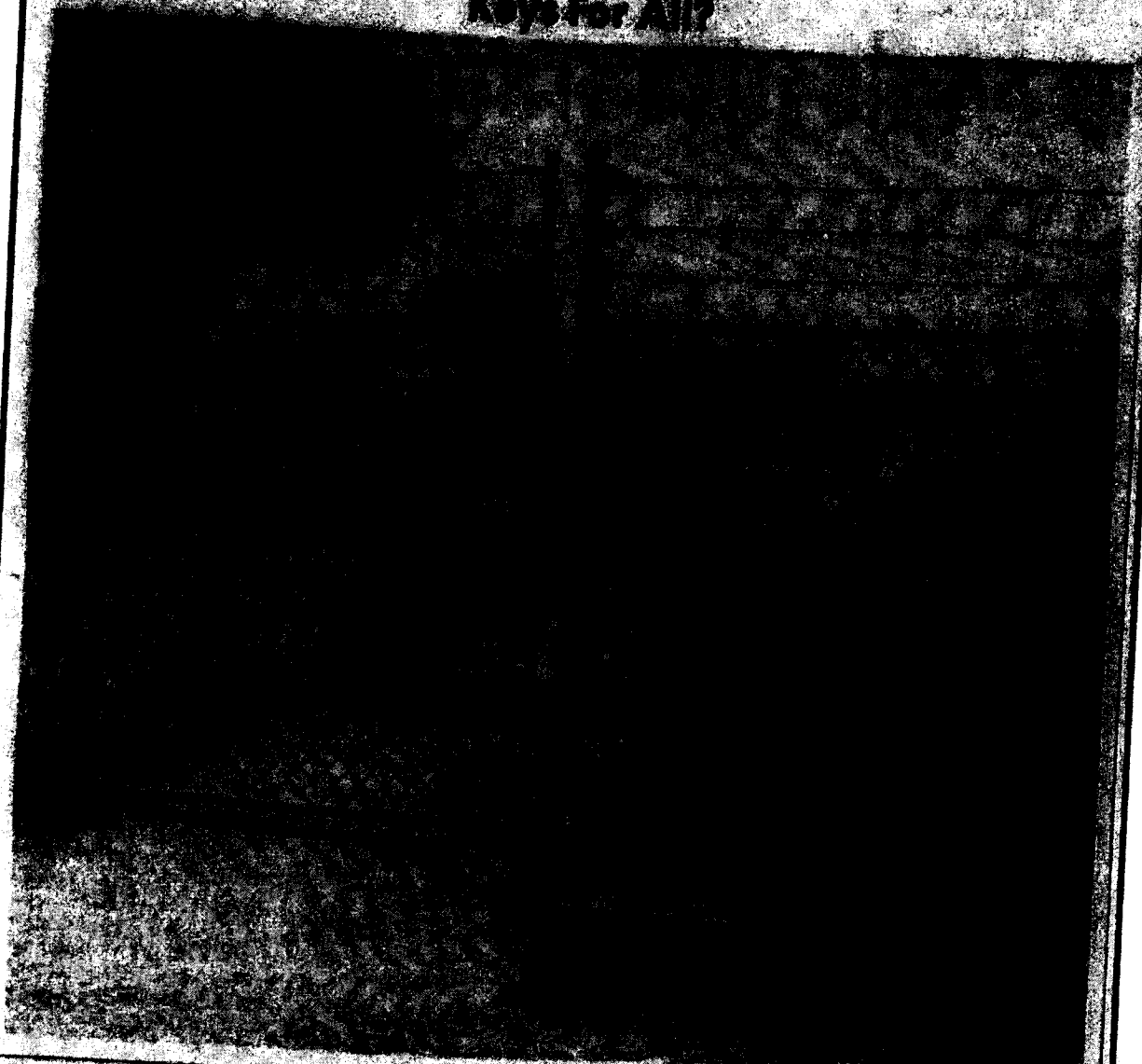
Board members said the beach entrance land was set aside by Harry Gordon McBain when the Opal Cliffs area was developed by the Monterey Bay Builders, Inc., in 1936. The entrance was maintained by an improvement association for use by its members only.

This key system was maintained until approximately 1949, when the gate facilities had fallen into disrepair. Then the entrance was left open to the general public. About 1959, gates again were erected and two years later the entrance was closed between 8 p.m. and 8 a.m. Late last year the entrance was left unlocked, which resulted in heavy use, particularly by surfers.

Inside Today

Amusements	11
Classified Section	13-14-15
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Editorial Features	17
Food Section	18-20
Junior Editor	22
Markets	23
Radio and TV Programs	25
Society, Club News	3
Sports	10-11
Vital Statistics	16

Keys For All?

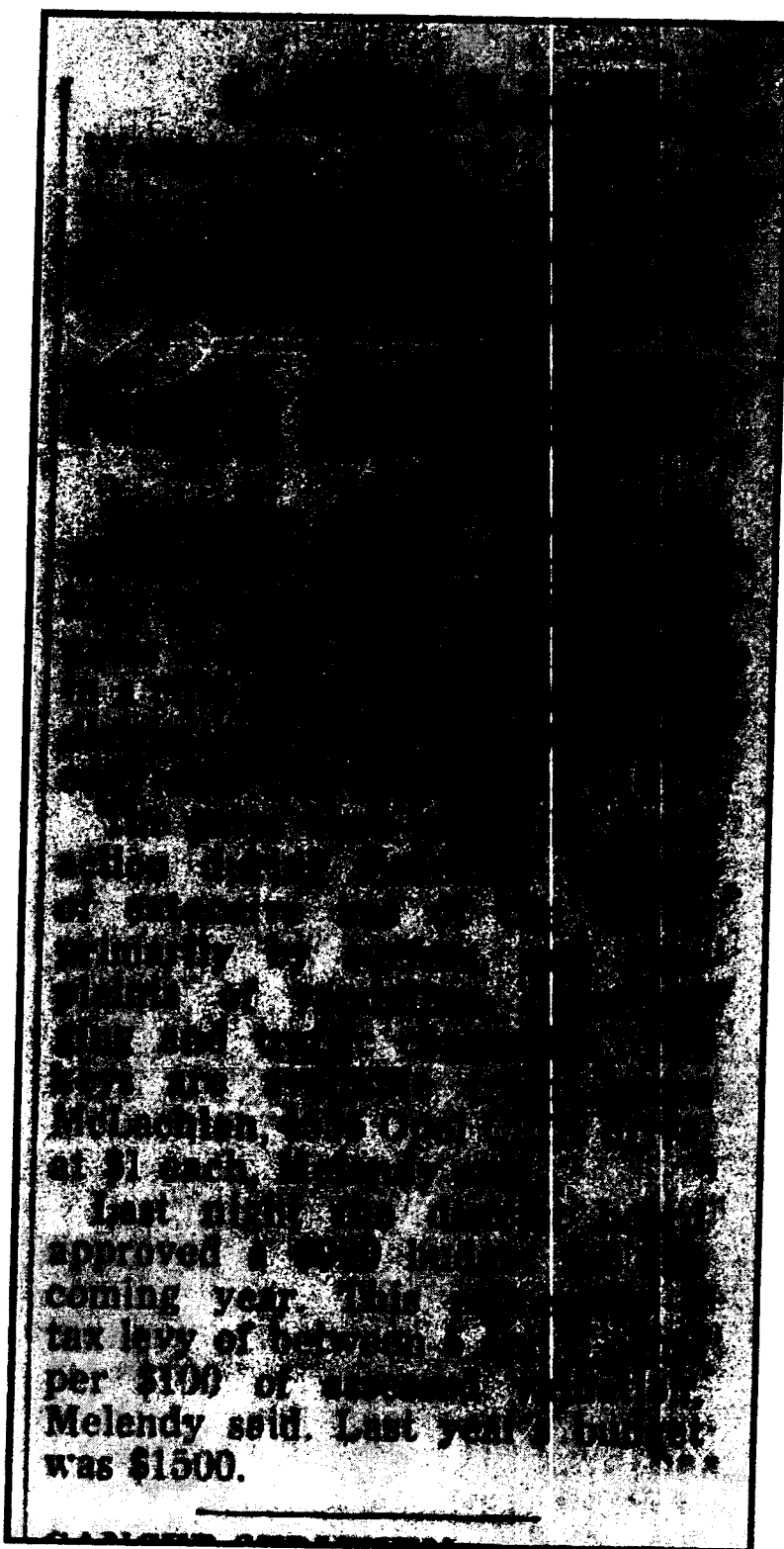


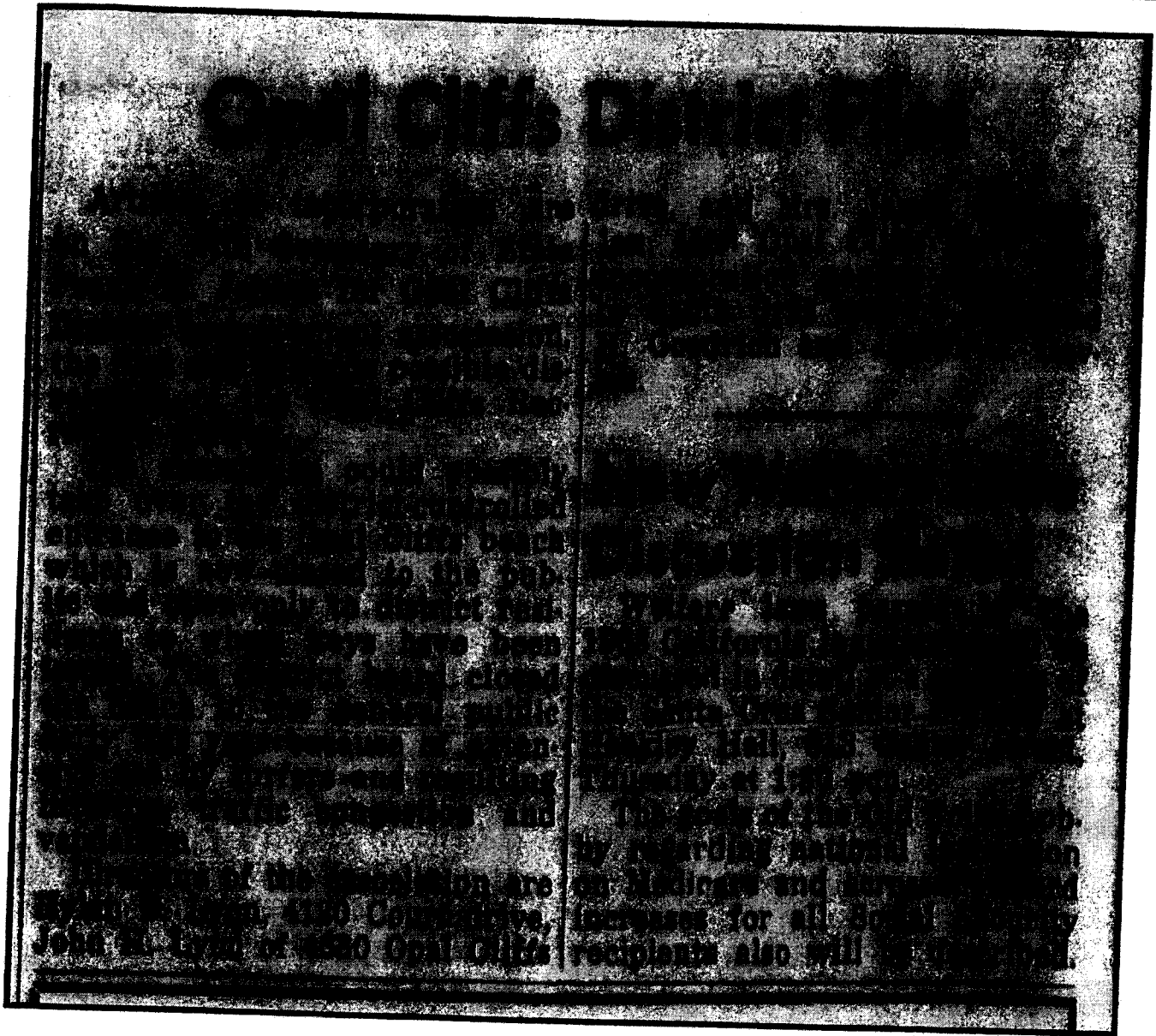
**TRADE
AND
SAVE**

This metal gate, topped by barbed wire and secured by chains and padlocks, has blocked the entrance to the beach at Opal Cliffs since February. Further study on ways to open the gate to residents of the Opal Cliffs Recreation district, which pays a tax levy to maintain the private entrance, will be made at a district board meeting to-

night at 8 o'clock in the residence of Mrs. William Benach, 4805 Opal Cliffs drive. The board closed the entrance after complaints of vandalism, litter-bugging, and traffic congestion by surfers who used the entrance. The district has control of the entrance. The beach below is public.







PUBLIC NOTICE

**RULES AND REGULATIONS
OPAL CLIFFS RECREATION DISTRICT**

In order to maintain the peace and protect the property of the Opal Cliffs Recreation District, thus carrying out the purposes for which the District was created, the Board of Trustees of the District, pursuant to the powers vested in it by sec. 3653 of the Public Resources Code of California, enacts the following rules and regulations for the administration, government and protection of the beach lot under its management.

I. Access to the Property

Access to the property shall be permitted only through the main front gate maintained by the District. Entering the property by any other means is prohibited.

II. Admission to the Property

Persons to whom a key to the front gate has not been issued as hereafter provided shall be admitted to the property only during the hours when a guard or caretaker employed by the District is on duty at the gate. Such persons who are not known to the caretaker shall be over the age of 21 years and as a prerequisite to admission register their name, address, telephone number and the license number of any motor vehicle used as a means of transportation to or from the beach lot.

Admission to the beach lot at times when a caretaker is not on duty shall be limited to persons to whom keys have been issued by a member of the District Board designated for that purpose. Applicants for keys shall be over the age of 21 years and be required to pay the cost of the key and shall when so requested register their name, address, telephone number and the motor vehicle license number when a motor vehicle is used as a means of transportation to or from the beach lot.

III. Conduct of Persons Using Beach Lot

The Opal Cliffs Recreation District was created for the sole purpose of providing peaceful and wholesome recreation for the persons using it. In order to fulfill these purposes, the following rules of conduct shall be observed by all persons using the facility.

(1) All trash or litter shall be deposited only in the receptacles provided for that purpose.

(2) The mutilation, defacement or destruction of trees, plants, seats, tables or any other improvements provided by the District is prohibited.

(3) Dogs brought to the beach shall be kept on leash so long as they are on the beach lot.

(4) Loud, boisterous or obscene language and conduct will not be tolerated, and persons behaving thus shall be denied the privileges of the facility.

(5) Refusal to obey the lawful request of the attendant on duty when such requests are made to preserve the peace or protect the property of the District shall be grounds for eviction from the property.

Violations of the foregoing rules and regulations are declared to be misdemeanors by sec. 5460 of the Public Resources Code of California, and violators will be prosecuted as provided by law.

By order of the Board of Trustees of the Opal Cliffs Recreation District
HAROLD SHEPHERD
Secretary

April 19, 1967
Apr. 26 (8866)

COASTAL COMMISSION COASTAL PERMIT
FOR FENCE & ACCESS PROGRAM
1981

STAFF REPORT (CONSENT AGENDA)

APP. NO. P-80-393

FILED: 11/24/80

49th DAY: 1/5/81

I. APPLICATION SUMMARY

DATES HEARD: 1/5, 1/26/81

REVISED: 4/8/81 SCHEDULED: 4/13/81

Applicant: Opal Cliffs Recreation District
4130 Opal Cliffs Drive, Santa Cruz

Work Proposed: Replace and raise fences around accessway.

ADOPTED

Location of Project: 4520 Opal Cliffs Drive
Live Oak area
Santa Cruz County, APN 33-151-27
Approvals Received (type/date): CCR-15-(11/12/80)

Project Data: +11,280 parcel size - proposed coverage 6' high fence height of structure
R-1-6 current zoning - proposed density

Other: Existing fences are 5-6' chain link with gate on street frontage and 3-5'
wood on sides.

Attachments: Location Map, Site Plan, _____

I. STAFF EVALUATION

Site Characteristics: Relatively level lot between existing SFDs, with several trees, providing access path to beach stairway. Existing fences in fair to poor condition; street frontage fencing is in especially poor condition.

Surrounding Land Use: SFD residential area.

POLICY CONFORMANCE NOTES

Public Access (30210-30213): Presently provides restricted public access; applicant is a public recreation district. See comments.

Recreation (30220-30224): See comments.

Marine Environment (30230-30236): See comments.

Land Resources (30240-30244): Not an agricultural area. Proposed development will not significantly affect sensitive habitat areas.

Development (30250-30254): Site is in developed urban area. Bluff development concern; see comments.

Industrial Development (30260-30264): N/A

CCC Exhibit D
(page 1 of 3 pages)

CCR-21
FN: 21

P -80-393

ENVIRONMENTAL IMPACT NOTES

Adverse Impacts/Significance: None noted.

Mitigation:

RELATIONSHIP OF PROPOSED DEVELOPMENT TO LOCAL COASTAL PROGRAM: As conditioned provision for and maintenance of public coastal access at this location will not prejudice the ability of Santa Cruz County to complete preparation of an LCP which is consistent with the Coastal Act.

OTHER COMMENTS:Public Access

The proposed site is presently developed as a beach accessway, with a path leading from a small (4-space) parking area to a wood stairway, which then leads to a small beach. The accessway is owned and operated by the Opal Cliffs Recreation District, a public recreation district. Accessway use is presently restricted by a fence and gate; the applicant indicates that keys are readily available, and that the reason for the access control is the unstable, hazardous nature of the bluffs in the area.

Confirmation of key availability and/or some other means of assuring public access (such as a sign directing potential users how to gain access) would be appropriate to ensure consistency with Section 30210-12 of the Coastal Act if the fence is necessary. Some form of access control does appear desirable at this point due to unstable bluffs and small, pocket beaches with low capacities for public use, although access must be provided to maintain consistency with the Coastal Act.

Recreation

The applicant is a "Recreation District"; its primary function is maintenance of the accessway on the proposed site. The proposed development would increase fence height to a uniform 6 feet along all boundaries of the site, using a chain link fence to replace existing wood fences of variable height along the parcel sides. The new side fences will reduce the feasibility of by-passing the fence and gate on the street frontage. As noted above the applicant indicates that keys to the (locked) gate are available, but no sign or other notification exists on the site to indicate such availability.

Marine Environment

The new and reconstructed fences will not result in significant impacts on marine resources; all work will be in upland areas. Minor repair work on the beach access stairway is also to be done at this time; based on the scope of work indicated in the application materials (no mechanized equipment will be used on the beach), this repair and maintenance work will not require a Coastal Permit.

CCC Exhibit D
(page 2 of 3 pages)

Bluff-Top Development

The project as applied for will result in development (fence construction) within the "area of demonstration" for geologic stability. The fence does not appear likely, however, to impair the stability of the cliff forming the seaward edge of the site, and no additional impervious surfaces are proposed. Existing paved areas are provided with drainage facilities intended to minimize erosion.

III. RECOMMENDATION

Approval: Find consistency with Chapter III, that the development will not prejudice an LCP, that the development has no significant adverse environmental effects as proposed or as conditioned: (Between shoreline and first public road, note comments on front page under Public Access and Recreation.)

CONDITIONSACCESS
PROGRAM

1. PRIOR TO ISSUANCE of this permit, permittee shall submit, for review and approval by the Executive Director, an access program which shall provide for public access and posting of the site as notification of such access. The program shall be recorded as a covenant running with the land, free of all encumbrances other than tax liens, or shall be guaranteed by such other means as may be acceptable to the Executive Director.

PRESCRIPTIVE
RIGHTS

2. Nothing in this condition shall be construed to constitute a waiver of any sort or a determination on any issue of prescriptive rights which may exist on the parcel itself or on the designated easement.

3. Safety Review

Prior to commencement of construction, permittee shall present evidence in writing to the Executive Director that all public safety agencies with jurisdiction in the surrounding area (including the Capitola Fire Dept.) and the Santa Cruz County Office of Emergency Services have been conferred with, and that the proposed development is acceptable to those agencies.

CCC Exhibit 2
(page 3 of 3 pages)

MB/cleb
Staff

4/10/81
Date


EDWARD Y. BROWN, EXECUTIVE DIRECTOR

ACCESS PROGRAM REQUIRED BY
1981 COASTAL PERMIT

RECORDED

91 NOV 22 PM 1 30

SANTA CRUZ
COUNTY RECORDER

RECORDING REQUESTED BY AND RETURN TO:
California Coastal Commission
45 Fremont St., Suite 2000
San Francisco, CA 94105-2219

NO FEE

DEED RESTRICTION

I. WHEREAS, Opal Cliff Recreation District, hereinafter referred to as the "Owner", is the record owner of the following real property:

BEING Lot 27, Block A, as the same is shown and designated on that certain map entitled, "Opal Cliffs". Santa Cruz County, California. Being Part of Rancho Arroyo del Rodeo, Subdivided by K. B. McGeoghegan, 1928. Surveyed in 1928 by Arnold M. Baldwin and Fred T. Hale, Licensed Land Surveyors," filed for record in the office of the County Recorder on March 6, 1930, in Map Book 25, page 12, Santa Cruz County Records.

hereinafter referred to as the "Property;" and

II. WHEREAS, the California Coastal Commission, hereinafter referred to as the "Commission," is acting on behalf of the People of the State of California; and

III. WHEREAS, the subject property is located within the coastal zone as defined in paragraph 30103 of Division 20 of the California Public Resources Code, hereinafter referred to as the "California Coastal Act of 1976," (the Act); and

IV. WHEREAS, pursuant to the Act, the Owner applied to the Commission for a coastal development permit on the Property described above; and

V. WHEREAS, COASTAL DEVELOPMENT PERMIT NUMBER #P-80-393, hereinafter referred to as the "Permit," was granted on April 13, 1981, by the Commission in accordance with the provision of the Staff Recommendation and Findings, attached hereto as EXHIBIT A and herein incorporated by reference; and

VI. WHEREAS, the Permit was subject to the terms and conditions including, but not limited to, the following condition:

PRIOR TO ISSUANCE of permit, permittee shall submit, for review and approval by the Executive Director, an access program which shall provide for public access and posting of the site as notification of such access. The program shall be recorded as a covenant running with the land, free of all encumbrances other than tax liens, or shall be guaranteed by such other means as may be acceptable to the Executive Director.

VII. WHEREAS, the Commission found that but for the imposition of the above condition the proposed development could not be found consistent with the provisions of the California Coastal Act of 1976 and that permit could therefore not have been granted; and

VIII. WHEREAS, Owner has elected to comply with the conditions imposed by the Permit and execute this Deed Restriction so as to enable Owner to carry out the development authorized by the Permit.

CCC Exhibit E
(page 1 of 4 pages)

EXHIBIT G

NOW, THEREFORE, in consideration of the granting of the Permit the Owner by the Commission, the Owner hereby irrevocably covenants with the Commission that there be and hereby is created the following restrictions on the use and enjoyment of said Property, to be attached to and become a part of the deed to the property.

1. COVENANT, CONDITION AND RESTRICTION. The undersigned Owner, for himself/herself and for his/her heirs, assigns, and successors in interest, covenants and agrees that;

STATEMENT OF INTENT:

Opal Cliff Recreation District will provide park and beach access to the public, at large, for recreational purposes.

✓ **ACCESS PROGRAM:**

A sign will be posted on the property indicating park hours, how and where to obtain access to the beach, the terms of access and how the board members can be contacted. The sign will be in conformance with the "Sign Handbook" published by the State of California - Resources Agency, Department of Parks and Recreation.

The park will be open daily from dawn to dusk.

~~Access to the park and beach will be provided for an annual fee by purchasing a key. The revenue generated from the key fees will be sufficient to pay for the annual budgeted operating costs of the district. Operating costs are defined as maintenance costs, insurance and any other expenses necessary to maintain the public areas, voted as appropriate by the district board members. The price of the keys are therefore dependent on the fluctuation of the district's operating costs.~~ ✓

Changes to the annual key purchase fee will require majority approval from the Opal Cliff Recreation District Board Members. ~~In 1992 our annual fee will be \$20.~~ ✓

The lock will be changed during the first week of January of each calendar year. The annual fee will stay constant all year long, except for the last four months of the calendar year. In September the key prices will be reduced by half of the annual fee. ✓

Currently and historically, Opal Cliff Recreation District has annually sold 7 to 8 hundred keys per year. The fees collected from these sales have generally been sufficient to cover the board approved operating costs of the district.

The keys will be available for sale at a local business seven days a week during normal business hours.

A permanently maintained sign (approx. 2 x 3 feet) will be posted on the gate to the property indicating the following:

CCC Exhibit E
(page 2 of 4 pages)

- a) That Opal Cliffs Recreation District maintains a public park and beach access.
- b) The Annual fee, to obtain a key for access, will be printed on the sign.
- c) Where the keys can be purchased, along with a map.
- d) Park hours of operations
- e) How the board members can be contacted.

2. DURATION. Said Deed Restriction shall remain in full force and effect during the period that said permit, or any modification or amendment thereof remains effective, and during the period that the development authorized by the Permit or any modification of said development, remains in existence in or upon any part of, and thereby confers benefit upon, the Property described herein, and shall bind Owner and all his/her assigns or successors in interest.

3. TAXES AND ASSESSMENTS. It is intended that this Deed Restriction is irrevocable and shall constitute an enforceable restriction within the meaning of a) Article XIII, paragraph 8, of the California Constitution; and b) paragraph 402.1 of the California Revenue and Taxation Code or successor statute. Furthermore, this Deed Restriction shall be deemed to constitute a servitude upon and burden to the Property within the meaning of paragraph 3712(d) of the California Revenue and taxation Code, or successor statute, which survives a sale of tax-deeded property.

4. RIGHT OF ENTRY. The commission or its agent may enter onto the Property at times reasonable acceptable to the Owner to ascertain whether the use restrictions set forth above are being observe.

5. REMEDIES. Any act, conveyance, contract, or authorization by the Owner whether written or oral which uses or would cause to be used or would permit use of the Property contrary to the terms of the Deed Restriction will be deemed a violation and breach hereof. The Commission and the Owner may pursue any and all available legal and/or equitable remedies to enforce the terms and conditions of this Deed Restriction. In the event of a breach, any forbearance on the part of either party to enforce the terms and provisions hereof shall not be deemed a waiver of enforcement rights regarding any subsequent breach.

6. SEVERABILITY. If any provision of these restrictions is held to be invalid, or for any reason becomes unenforceable, no other provision shall be thereby affected or impaired.

Date: 10/28/91, 1991

Signed: [Signature]

Mark Estess, Chairman of the Board
Opal Cliff Recreation District

CCC Exhibit **E**
(page 3 of 4 pages)

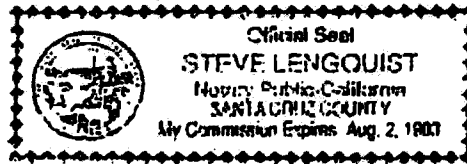
* * NOTARY ACKNOWLEDGEMENT ON THE NEXT PAGE * *

STATE OF CALIFORNIA
COUNTY OF SANTA CRUZ

On 10/28/91 before me, Steve Lengquist, A Notary Public personally appeared Mark Estess, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Signature Steve Lengquist



This is to certify that the deed restriction set forth above is hereby acknowledged by the undersigned officer on behalf of the California Coastal Commission pursuant to authority conferred by the California Coastal Commission when it granted Coastal Development Permit No. P-80-393 on April 1, 1981 and the California Coastal Commission consents to recordation thereof by its duly authorized officer.

Dated: November 5, 1991

John Bowers
John Bowers, Staff Counsel
California Coastal Commission

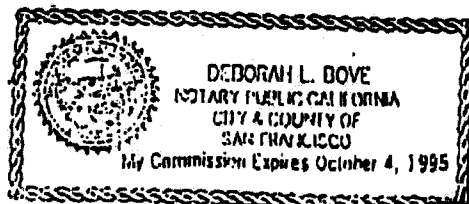
STATE OF CALIFORNIA
COUNTY OF San Francisco

CCC Exhibit E
(page 4 of 4 pages)

On November 5, 1991 before me, Deborah L. Bove, A Notary Public personally appeared John Bowers, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature Deborah L. Bove



-4-

FIRST LETTER FROM LES STRNAD

Dated January 6, 1991
(year should have been show as 1992)

CALIFORNIA COASTAL COMMISSION

CENTRAL COAST AREA OFFICE
640 CAPITOLA ROAD
SANTA CRUZ, CA 95062
(408) 479-3511



January 6, 1991

Rick Harron
Opal Cliffs Recreation District
4400 Portola Drive
Santa Cruz, CA. 95062

RE: Coastal Act Violation #V-3-91-35
Coastal Development Permit #P-80-393

Dear Mr. Harron,

This letter is to notify you that special condition #1 of Coastal Development Permit P-80-393 has been fulfilled as the deed restriction to provide for an access program has been recorded on November 22, 1991. The permit will therefore be issued and you should receive a copy of it within the next couple of weeks.

This letter also serves to notify you that the violation has been resolved and the matter is now considered closed. If, in the future, there is any non-conformance or non-compliance with any part of this permit or it's conditions, we will consider that action as an intentional and knowing violation of your permit and deed restriction and we will pursue penalties as per our policy.

Thank you very much for your cooperation in resolving this matter. If you have any questions or concerns, please feel to call us at any time.

Sincerely,

Handwritten signature of Les Strnad in cursive script.

Les Strnad
Chief of Permits

Handwritten signature of Audrey Blumeneau in cursive script.

Audrey Blumeneau
Enforcement Assistant

cc: Deborah Bove, Legal Assistant, S.F., CCC
Thelma Johnson, State Parks and Recreation

0418V

ISSUED COASTAL PERMIT
(SIGNED BY LES STRNAD)
Dated January 9, 1992

CALIFORNIA COASTAL COMMISSION

CENTRAL COAST AREA OFFICE
640 CAPITOLA ROAD
SANTA CRUZ, CA 95062
(408) 479-3511

RECEIVED
FEB 4 1992

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA



Page 1 of 2
Date: January 9, 1992
Permit No. P-80-393

COASTAL DEVELOPMENT PERMIT

On April 13, 1981, the California Coastal Commission granted to

the Opal Cliffs Recreation District

this permit subject to the attached Standard and Special conditions, for development consisting of:

Replace and raise fences around accessway.

more specifically described in the application file in the Commission offices.

The development is within the coastal zone in Santa Cruz County at 4520 Opal Cliffs Drive, Live Oak APN: 33-151-27.

Issued on behalf of the California Coastal Commission by

PETER DOUGLAS
Executive Director

By: Les Strnad

Title: Chief of Permits

ACKNOWLEDGMENT

The undersigned permittee acknowledges receipt of this permit and agrees to abide by all terms and conditions thereof.

The undersigned permittee acknowledges that Government Code Section 818.4 which states in pertinent part, that: "A public entity is not liable for injury caused by the issuance. . . of any permit. . ." applies to the issuance of this permit.

IMPORTANT: THIS PERMIT IS NOT VALID UNLESS AND UNTIL A COPY OF THE PERMIT WITH THE SIGNED ACKNOWLEDGEMENT HAS BEEN RETURNED TO THE COMMISSION OFFICE. 14 Cal. Admin. Code Section 13158(a).

1-31-92
Date

Paul Hano
Signature of Permittee

A6: 4/88

TREASURER

COASTAL DEVELOPMENT PERMIT

Page 2 of 2
Permit No. P-80-393

STANDARD CONDITIONS:

1. Notice of Receipt and Acknowledgment. The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. Expiration. If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. Compliance. All development must occur in strict compliance with the proposal as set forth in the application for permit, subject to any special conditions set forth below. Any deviation from the approved plans must be reviewed and approved by the staff and may require Commission approval.
4. Interpretation. Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
5. Inspections. The Commission staff shall be allowed to inspect the site and the project during its development, subject to 24-hour advance notice.
6. Assignment. The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
7. Terms and Conditions Run with the Land. These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

SPECIAL CONDITIONS: See page 3 of Staff Report.

PROP 40 APPLICATION
(2002 Resources Bond Act Per Capital Grant Program)

State of California - The Resources Agency
DEPARTMENT OF PARKS AND RECREATION

PROJECT APPLICATION
2002 Resources Bond Act

PER CAPITA GRANT PROGRAM

(Each Project must have its own Application)

PROJECT NAME

Park Renovation

Project Grant Amount

\$ 220,000.00

Estimated Total Project Cost

\$ 220,000.00

Grant Applicant (Agency, address, and zip code)

Opal Cliffs Rec. District
1840 41st Ave
Capitola, Ca.
95010

COUNTY

Santa Cruz

NEAREST CITY

Capitola

PROJECT ADDRESS (including zip code)

4520 Opal Cliffs Drive, Santa Cruz, Ca
95062

PROJECT LATITUDE AND LONGITUDE

WILL THE PROJECT AFFECT A HISTORICAL RESOURCE? YES NO

Grant Applicant's Representative Authorized in Resolution

David King General Manager

Name (typed or printed) and Title

bigdking@yahoo.com

E-mail Address

831-234-3280

Phone

Person with day-to-day responsibility for Project (if different from authorized representative)

same

Name (typed or printed) and Title

E-mail Address

Phone

Brief description of Project

Installing outdoor shower, water faucet, and upgrading water meter.
Reinforcing existing fence and extending fence along property line.
Reinforcing metal gate
Landscape upgrades
Developing picnic area, benches, and tables. *gh*
picnic table

Land Tenure for Dev. Projects - Project is: 03 acres

03 Acres owned in fee simple by Grant Applicant

_____ Acres available under a _____ year lease

_____ Acres other interest (explain) _____

For Acquisition Projects Project land will be _____ acres

_____ Acres to be acquired in fee simple by Grant Applicant

_____ Acres to be acquired in other than fee simple (explain)

I certify that the information contained in this Application, including required attachments, is accurate and that I have read and understand the important information and assurances on the reverse of this form.

Signed

David King
Grant Applicant's Authorized Representative as shown in Resolution

1/13/06
Date

I certify that this Project is consistent with the park and recreation element of the applicable city or county general plan, the district park and recreation plan, or appropriate planning document, as the case may be, and will satisfy a high priority need.

Signed

Glenn Hill
Grant Applicant's Planning Agency Representative

1-30-06
Date

DPR 832 (6/03) OK as per Section 13.20.064 (Parks exemption
~~for~~ For Coastal Permit). No modification to
drainage patterns.
maximum fence height
in sideyards is 6 feet.
Glenn Hill 1/30/06
Principal Planner

*Note: Please include and attach any documentation for local a Staff Reports, Permits (including Conditions) and any Discreti rovals (i.e. ary Approvals).

APPLICATION FOR COASTAL DEVELOPMENT PERMI

APPENDIX B

LOCAL AGENCY REVIEW FORM

SECTION A (TO BE COMPLETED BY APPLICANT)

Applicant Opal Cliffs Recreation District
Project Description " See Attached Address "
Location 4520 Opal Cliffs Dr., Santa Cruz Ca
Assessor's Parcel Number 033-151-12

SECTION B (TO BE COMPLETED BY LOCAL PLANNING OR BUILDING INSPECTION DEPARTMENT)

Zoning Designation PR (Parks Recreation and Open Space) du/ac
General or Community Plan Designation Existing Parks & Rec / Regional Park du/ac

Local Discretionary Approvals

- Proposed development meets all zoning requirements and needs no local permit other than building permits. only if 9' fence component is deleted from project.
- Proposed development needs local discretionary approvals noted below.

Needed Received

- Design/Architectural review
- Variance for _____
- Rezone from _____
- Tentative Subdivision/Parcel Map No. _____
- Grading/Land Development Permit No. _____
- Planned Residential/Commercial Development Approval _____
- Site Plan Review
- Condominium Conversion Permit
- Conditional, Special, or Major Use Permit No. _____
- Other _____

CEQA Status

- Categorically Exempt Class 15301 Item A & C
- Negative Declaration Granted (Date) _____
- Environmental Impact Report Required, Final Report Certified (Date) _____
- Other _____

Prepared for the City/County of Santa Cruz by Kelley Hill, AICP
Date 12/13/06 Title Principal Planner

Addendum to Coastal Development Permit

Appendix B

Project Description:

Install outdoor shower, upgrade existing water faucet and upgrading water meter.

~~Reinforcing and extending existing 9' fence along property lines no more than 50' from street set back into Park property.~~ *deleted. Kleru Hill 12/13/06*

Landscape upgrades

Replace existing wood railings with more permanent metal railings and install new metal railings for the handicap.

COUNTY COASTAL PERMIT 07-0639
and Final Local Action Notice



**Staff Report to the
Zoning Administrator**

Application Number: 07-0639

Applicant: Opal Cliffs Recreation District,
David King

Agenda Date: 7/11/08

Owner: Opal Cliffs Recreation District
APN: 033-151-12

Agenda Item #: 3
Time: After 10:00 a.m.

Project Description: This is a proposal to recognize an existing 9-foot high fence within the required front and side yard setback and to attach two new 30-foot long sections of 9-foot high fence along the side property boundaries.

Location: Property located on the south side of Opal Cliff Drive at about 320 feet east of Court Drive (4520 Opal Cliff Drive).

Supervisory District: First District (District Supervisor: Janet Beautz)

Permits Required: Coastal Development Permit, Development Permit

Staff Recommendation:

- Certification that the proposal is exempt from further Environmental Review under the California Environmental Quality Act.
- Approval of Application 07-0639, based on the attached findings and conditions.

Exhibits

- | | |
|---|-------------------------------------|
| A. Project plans | E. Assessor's parcel map |
| B. Findings | F. Zoning map |
| C. Conditions | G. Comments & Correspondence |
| D. Categorical Exemption (CEQA determination) | H. Coastal Permit, Deed Restriction |

Parcel Information

Parcel Size:	12,632.4 square feet (EMIS estimate)
Existing Land Use - Parcel:	Recreational
Existing Land Use - Surrounding:	Residential
Project Access:	Opal Cliff Drive
Planning Area:	Live Oak
Land Use Designation:	O-R (Existing Parks and Recreation)

**County of Santa Cruz Planning Department
701 Ocean Street, 4th Floor, Santa Cruz CA 95060**

Zone District: PR (Recreation and Open Space)
Coastal Zone: X Inside ___ Outside
Appealable to Calif. Coastal Comm. X Yes ___ No

Environmental Information

Geologic Hazards: Coastal bluff, but development sited away from bluff
Soils: N/A
Fire Hazard: Not a mapped constraint
Slopes: N/A
Env. Sen. Habitat: Not mapped/no physical evidence on site
Grading: No grading proposed
Tree Removal: No trees proposed to be removed
Scenic: Not a mapped resource
Drainage: Existing drainage adequate
Archeology: Not mapped/no physical evidence on site

Services Information

Urban/Rural Services Line: X Inside ___ Outside
Water Supply: XX
Sewage Disposal: N/A
Fire District: Central Fire Protection District
Drainage District: Zone 5

History

Opal Cliffs Recreation District (OCRD) was established in 1949 by a resolution of the County Board of Supervisors. The OCRD is a County agency that owns and operates the park. Due to the OCRD's location within the coastal zone, development on the parcel requires both a Development Permit and a Coastal Development Permit. Prior to 1983, the County did not have the authority to process Coastal Development Permits. Applying for development within the coastal zone before 1983 was a two-step process in which an applicant would first obtain any necessary County approvals, after which they would then apply to the Coastal Commission for a Coastal Development Permit.

The Opal Cliffs Recreation District pursued this two-step process in 1980 in an application for an overheight fence. On October 31, 1980, the Zoning Administrator denied a variance application for an eight-foot high fence because of the lack of special circumstances justifying the increased height. The County Code in effect at the time made no provision-- as there is in the current County Code-- for Zoning Administrator approvals of fences higher than six feet. As a result, a variance was required for which the finding of a special circumstance could not be found.

Despite the Zoning Administrator's denial, the OCRD applied for a Coastal Development Permit. The Coastal Commission approved the Coastal Permit on April 13, 1981. This approval included a six-foot high fence surrounding the property to control access (see Exhibit H). An "Access Program" was a condition of approval and a deed restriction containing the Access Program was

recorded in November 1991 (see Exhibit H). At some point, the six-foot fence at the front of the property was replaced with a nine-foot high wrought iron fence (see photo, Exhibit A).

Project Setting & Scope of Proposal

The OCRD is located in a residential neighborhood that abuts Monterey Bay. Single-family dwellings are located to the north, west and southwest, and Monterey Bay is to the southeast. The OCRD is accessed via Opal Cliff Drive. Five parking spaces, which are perpendicular to the roadway, face the wrought iron fence which controls access to the facility. The park-like area on the bluff top is approximately one-quarter acre in size. A path through this park area leads to a stairway that provides access to the beach below.

The current proposal is to recognize the existing nine-foot high fence and to add two new 30-foot lengths of nine-foot high fence along the side property lines. These side lengths will extend approximately six feet beyond the fence paralleling Opal Cliff Drive. Since the Coastal Commission previously approved the restricted access, the scope of the current application is limited to evaluating the appropriateness of the overheight fence in this location and not the controlled access the fence provides.

Zoning & General Plan Consistency

The subject property is an approximately 12,632.4 square feet (EMIS estimate), located in the PR (Recreation and Open Space) zone district, a designation which allows recreational uses. The proposed fence is an allowed use within the zone district and the project is consistent with the site's (O-R) Existing Parks and Recreation General Plan designation.

Overheight Fence and Gate

County Code 13.10.525 (Regulations for fences and retaining walls) requires a public hearing before the Zoning Administrator for fences exceeding six feet in height within the required setbacks. In the PR (Recreation and Open Space) zone district, all yards are 30 feet. Because the applicant is proposing to have the existing nine-foot high fence recognized and to extend it along the side yards, a public hearing before the Zoning Administrator is required.

According to David King, the General Manager of the OCRD, the purpose of the fence is two-fold. The first purpose is to control the access to the beach, which is accomplished with a gate requiring a key card for entrance. As noted above, the issue of controlled access was reviewed and approved by the Coastal Commission in 1981, therefore County staff has not evaluated the appropriateness of controlled access as a part of this application.

The second purpose of the fence is to deter trespassing and vandalism. Mr. King has indicated that a nine-foot tall fence, rather than a shorter fence, is necessary because even the six-foot tall fence approved by the Coastal Commission was too short to deter motivated trespassers and vandals (see letter from Mr. King, Exhibit G). The proposed additional three feet in height and the extensions of the fence along the side yards is intended to enhance the deterrent and to allow the fence to perform in the manner intended by the 1981 Coastal Permit (i.e. to control access to the OCRD). According to Mr. King, trespassers have used the adjacent property's side yard fence

as a step to bypass the OCRD fence. The extension of the side yard fence six feet beyond the existing fence will address this vulnerability in the fence's current design.

The fence poses no line of sight issue as it is sufficiently set back from the traveled roadway. It will not conceal persons with illegal intent as it is of an open design. As discussed below, the fence complies with the County design review ordinance.

Local Coastal Program Consistency

As discussed above, the Coastal Commission codified the concept of controlled access to the beach in this location with the Coastal Permit it approved on April 13, 1981. Since the Coastal Commission had permitting authority for Coastal Permits in 1981, it was the Commission's burden to determine whether or not the project was consistent with the Coastal Act. Given this context in which the OCRD has a coastal permit authorizing controlled access via a six-foot fence, County staff did not evaluate the current proposal for its consistency with the Local Coastal Program, finding that the proposed fence is consistent with the intent of the original approval. However, since this fence is different in design from the original approval, County staff did evaluate its consistency with the design criteria for coastal zone development.

Design Review

Because the OCRD is a County agency, all development on the subject parcel is subject to design review (County Code 13.11.(h)). In addition, because it is within the coastal zone, it must comply with the design criteria for coastal zone development. The existing nine-foot tall fence and the proposed additions were reviewed by the County's Urban Designer and found to be compatible with the neighborhood (see Exhibit G).

Although staff typically would not support a nine-foot tall fence in a residential neighborhood, the fence is compatible for the following reasons. First, the fence is of an open design—wrought iron pickets spaced four inches on center—and painted black. The fence's dark color helps it to recede into the background, and the open design allows views into the park which would not be possible with a solid fence. Second, two mature cypress trees, which are approximately 60 feet high, establish a scale that makes the fence appear shorter than its nine-feet (see photo Exhibit A). The viewer's eye is drawn past the fence to these trees, the green of the well-maintained park and to the Monterey Bay beyond. Without the benefit of the trees and view (i.e. if a single-family dwelling were behind the fence instead of a recreation area), the fence would likely appear to be out of scale with the neighborhood. Finally, because the fence facing Opal Cliff Drive is setback about 16 feet from the traveled roadway, the apparent size is further reduced. Given these considerations, the fence's design is considered appropriate for this location.

Conclusion

As proposed and conditioned, the project is consistent with all applicable codes and policies of the Zoning Ordinance and General Plan/LCP. Please see Exhibit "B" ("Findings") for a complete listing of findings and evidence related to the above discussion.

Staff Recommendation

- Certification that the proposal is exempt from further Environmental Review under the California Environmental Quality Act.
- **APPROVAL** of Application Number **07-0639**, based on the attached findings and conditions.

Supplementary reports and information referred to in this report are on file and available for viewing at the Santa Cruz County Planning Department, and are hereby made a part of the administrative record for the proposed project.

The County Code and General Plan, as well as hearing agendas and additional information are available online at: www.co.santa-cruz.ca.us

Report Prepared By: Annette Olson
Santa Cruz County Planning Department
701 Ocean Street, 4th Floor
Santa Cruz CA 95060
Phone Number: (831) 454-3134
E-mail: annette.olson@co.santa-cruz.ca.us

Development Permit Findings

1. That the proposed location of the project and the conditions under which it would be operated or maintained will not be detrimental to the health, safety, or welfare of persons residing or working in the neighborhood or the general public, and will not result in inefficient or wasteful use of energy, and will not be materially injurious to properties or improvements in the vicinity.

This finding can be made, in that the location of the nine-foot high fence along Opal Cliff Drive will allow adequate sight distance for vehicles entering and exiting the Opal Cliffs Recreation District parking area in a safe manner, in that the fence is of an open design and will not obstruct the view of drivers.

Given the location of the fence on the property and its open design, the fence will not conceal persons with criminal intent.

The design of the fence will not utilize an excessive quantity of materials or energy in its construction or maintenance, in that the fence is a relatively insignificant structure.

The design and location of the fence will not adversely impact the available light or the movement of air to properties or improvements in the vicinity, in that the fence will be of an open design which will allow the passage of light and air.

2. That the proposed location of the project and the conditions under which it would be operated or maintained will be consistent with all pertinent County ordinances and the purpose of the zone district in which the site is located.

This finding can be made, in that the location of the proposed fence and the conditions under which it would be operated or maintained will be consistent with the purpose of the PR (Recreation and Open Space) zone district in that the primary use of the property will be recreational. A fence is an ancillary use in the zone district. Specific regulations for fencing and walls are contained in section 13.10.525. This proposal complies with the requirements and intents of that section, in that:

- The fence will be situated on the property in a manner that allows adequate sight distance for vehicles traveling along the roadway as well as entering and exiting the property, in that the fence is set back from the traveled roadway.
- The fence will be set back from the street and allow adequate light and air to pass through to the street area.
- The location of the fence on the property and the design of the fence does not contain any corners or pockets that would conceal persons with criminal intent.
- The location and design of the fence is compatible with the surrounding

neighborhood for the following reasons. Its size is mitigated by the distance it is set back from the traveled roadway. In addition, the size of the mature cypress trees, which are approximately 60 feet in height, establishes a scale which reduces the apparent size of the fence. Finally, because the fence is of an open design and painted black, the viewer's eye is drawn to the cypress trees, the green park area and the Monterey Bay beyond. Therefore, the impact of the fence is mitigated by its design and setting, and it is compatible with the surrounding neighborhood.

3. That the proposed use is consistent with all elements of the County General Plan and with any specific plan which has been adopted for the area.

This finding can be made, in that the proposed fence is set back from the road and allows adequate sight distance consistent with road standards specified in the General Plan. The project is located in the O-R (Existing Parks and Recreation) land use designation.

4. That the proposed use will not overload utilities and will not generate more than the acceptable level of traffic on the streets in the vicinity.

This finding can be made, in that the proposed fence will not utilize a significant amount of electricity or utilities and will not generate any additional traffic on the streets in the vicinity, in that any associated electrical lights or gate motors do not create a significant draw on electrical utilities, and a fence is not a use that generates or intensifies traffic.

5. That the proposed project will complement and harmonize with the existing and proposed land uses in the vicinity and will be compatible with the physical design aspects, land use intensities, and dwelling unit densities of the neighborhood.

This finding can be made, in that the proposed fence will be compatible with the visual character of the neighborhood due to its design, and location. The fence is painted black and is of an open design which allows views into the OCRD and reduces the visual impact of the fence on surrounding properties and traffic along Opal Cliff Drive. The existing fence has been in place for approximately 20 years with no complaints reported to the Planning Department. The proposed fence does not alter or increase the density or intensity of residential use within the surrounding neighborhood.

Conditions of Approval

Exhibit A: 2 Sheets by Bridgette Land Surveying: Existing conditions dated 5/9/08 and proposed dated 1/11/06.

- I. This permit authorizes the recognition of the existing nine-foot high fence and gate and the construction of a nine-foot high fence along the side property lines as shown in Exhibit A. Prior to exercising any rights granted by this permit including, without limitation, any construction or site disturbance, the applicant/owner shall:
 - A. Sign, date, and return to the Planning Department one copy of the approval to indicate acceptance and agreement with the conditions thereof.
 - B. Obtain an Encroachment Permit from the Department of Public Works for all off-site work performed in the County road right-of-way.
 - C. Meet all requirements and pay any applicable plan check fee of the Central Fire Protection District.
- II. All construction shall be performed according to the approved plan.
 - A. No additions to the fence as shown in Exhibit A may be made, including razor or barbed wire.
 - B. The existing and proposed fence extensions must be constructed entirely on the Opal Cliffs Recreation District property. Should questions about the fence's location arise in the future, the OCRD will be responsible for providing a survey to document the fence's location. If the fence is found to be located on an adjacent property, it will be the OCRD's responsibility to remove the portion found to be on the adjacent property and mitigate any impacts of the fence removal.
 - C. Pursuant to Sections 16.40.040 and 16.42.100 of the County Code, if at any time during site preparation, excavation, or other ground disturbance associated with this development, any artifact or other evidence of an historic archaeological resource or a Native American cultural site is discovered, the responsible persons shall immediately cease and desist from all further site excavation and notify the Sheriff-Coroner if the discovery contains human remains, or the Planning Director if the discovery contains no human remains. The procedures established in Sections 16.40.040 and 16.42.100, shall be observed.
- III. Operational Conditions
 - A. No additions to the fence as shown in Exhibit A may be made, including razor or barbed wire.
 - B. In the event that future County inspections of the subject property disclose noncompliance with any Conditions of this approval or any violation of the

County Code, the owner shall pay to the County the full cost of such County inspections, including any follow-up inspections and/or necessary enforcement actions, up to and including permit revocation.

- IV. As a condition of this development approval, the holder of this development approval ("Development Approval Holder"), is required to defend, indemnify, and hold harmless the COUNTY, its officers, employees, and agents, from and against any claim (including attorneys' fees), against the COUNTY, its officers, employees, and agents to attack, set aside, void, or annul this development approval of the COUNTY or any subsequent amendment of this development approval which is requested by the Development Approval Holder.
- A. COUNTY shall promptly notify the Development Approval Holder of any claim, action, or proceeding against which the COUNTY seeks to be defended, indemnified, or held harmless. COUNTY shall cooperate fully in such defense. If COUNTY fails to notify the Development Approval Holder within sixty (60) days of any such claim, action, or proceeding, or fails to cooperate fully in the defense thereof, the Development Approval Holder shall not thereafter be responsible to defend, indemnify, or hold harmless the COUNTY if such failure to notify or cooperate was significantly prejudicial to the Development Approval Holder.
- B. Nothing contained herein shall prohibit the COUNTY from participating in the defense of any claim, action, or proceeding if both of the following occur:
1. COUNTY bears its own attorney's fees and costs; and
 2. COUNTY defends the action in good faith.
- C. Settlement. The Development Approval Holder shall not be required to pay or perform any settlement unless such Development Approval Holder has approved the settlement. When representing the County, the Development Approval Holder shall not enter into any stipulation or settlement modifying or affecting the interpretation or validity of any of the terms or conditions of the development approval without the prior written consent of the County.
- D. Successors Bound. "Development Approval Holder" shall include the applicant and the successor(s) in interest, transferee(s), and assign(s) of the applicant.

EXHIBIT G

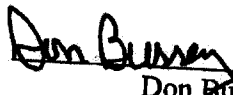
EXHIBIT C

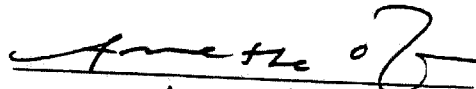
Application #: 07-0639
APN: 033-151-12
Owner: Opal Cliffs Recreation District

Minor variations to this permit which do not affect the overall concept or density may be approved by the Planning Director at the request of the applicant or staff in accordance with Chapter 18.10 of the County Code.

Please note: This permit expires two years from the effective date listed below unless the conditions of approval are complied with and the use commences before the expiration date.

Approval Date: 7/11/08
Effective Date: 7/25/08
Expiration Date: 7/25/10


Don Bussey
Deputy Zoning Administrator


Annette Olson
Project Planner

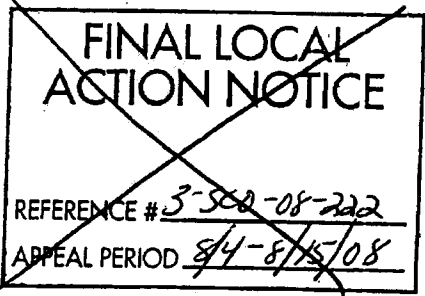
Appeals: Any property owner, or other person aggrieved, or any other person whose interests are adversely affected by any act or determination of the Zoning Administrator, may appeal the act or determination to the Planning Commission in accordance with chapter 18.10 of the Santa Cruz County Code.

NOTICE OF FINAL LOCAL ACTION ON COASTAL PERMIT

County of Santa Cruz

Date of Notice: July 30, 2008

Notice Sent to (via certified mail):
 California Coastal Commission
 Central Coast Area Office
 725 Front Street, Ste. 300
 Santa Cruz, CA 95060



record deleted from PTS 8/7/08 D. Chapman
RECEIVED
 AUG 01 2008
 CALIFORNIA COASTAL COMMISSION
 CENTRAL COAST AREA

Please note the following Final Santa Cruz County Action on a coastal permit, coastal permit amendment or coastal permit extension application (all local appeals have been exhausted for this matter):

Project Information

Application No.: 07-0639
 Project Applicant: Opal Cliffs Recreation District
 Applicant's Rep: David King
 Project Location: 4520 Opal Cliff Drive

not a PLAN - an amendment to CCC permit P-88-393

Project Description: Proposal to recognize an existing 9-foot high fence within the required front and side yard setback and to attach two new 30-foot long sections of 9-foot high fence along the side property boundaries.

Final Action Information

Final Local Action: Approved with Conditions

Final Action Body:

- Zoning Administrator
- Planning Commission
- Board of Supervisors

Required Materials Supporting the Final Action	Enclosed	Previously sent (date)
Staff Report	X	
Adopted Findings	X	
Adopted Conditions	X	
Site Plans	X	
Elevations		

Additional Materials Supporting the Final Action	Enclosed	Previously sent (date)
CEQA Document	X	
Geotechnical Reports		
Biotic Reports		
Other:		
Other:		

Coastal Commission Appeal Information

This Final Action is:

- NOT appealable to the California Coastal Commission. The Final County of Santa Cruz Action is now Effective.
- Appealable to the California Coastal Commission. The Coastal Commission's 10-working day appeal period begins the first working day after the Coastal Commission receives adequate notice of this Final Action. The Final Action is not effective until after the Coastal Commission's appeal period has expired and no appeal has been filed. Any such appeal must be made directly to the California Coastal Commission Central Coast Area Office in Santa Cruz; there is no fee for such an appeal. Should you have any questions regarding the Coastal Commission appeal period or process, please contact the Central Coast Area Office at the address listed above, or by phone at (831) 427-4863.

Copies of this notice have also been sent via first-class mail to:

- Applicant
- Interested parties who requested mailing of notice

COASTAL COMMISSION STAFF REPORT (P-80-393-A1)

For 1/7/2009 Coastal Commission Hearing

CALIFORNIA COASTAL COMMISSION

CENTRAL COAST DISTRICT OFFICE
725 FRONT STREET, SUITE 300
SANTA CRUZ, CA 95060
PHONE: (831) 427-4863
FAX: (831) 427-4877
WEB: WWW.COASTAL.CA.GOV

W13b

Filed:	8/2/2008
180 th day:	1/29/2009
Staff report prepared:	12/18/2008
Staff report prepared by:	Susan Craig
Staff report approved by:	Dan Carl
Hearing date:	1/7/2009

COASTAL DEVELOPMENT PERMIT AMENDMENT APPLICATION

Application numberP-80-393-A1, Privates Beach Accessway Improvements

Applicant.....Opal Cliffs Recreational District

Project locationPrivates Beach Accessway located at 4250^A Opal Cliff Drive in the unincorporated Live Oak area of Santa Cruz County.

Project description.....Installation of outdoor sand-rinse shower; upgrade of existing water faucet and water meter; landscaping and associated irrigation; replacement of existing wood stairway railings with metal railings; replacement of an existing concrete pathway with colored concrete; after-the-fact recognition of a 9-foot-tall fence and locked gate at the entrance and sides of the accessway; and installation of two new sections of 9-foot-tall wrought iron fencing that will extend for 30 additional feet along the side property boundaries.

File documents.....Coastal Commission Coastal Development Permit (CDP) File Number P-80-393; Santa Cruz County File Number 07-0639.

Staff recommendation ...Approve with Conditions

A. Staff Recommendation**1. Summary of Staff Recommendation**

The Opal Cliffs Recreation District (OCRD) is a special district that is a component of Santa Cruz County government, and whose members are the owners of the surrounding residential properties in the Opal Cliffs area (generally extending from 41st Avenue to the City of Capitola city limits) of Live Oak. OCRD owns and operates the Privates Beach Accessway (PBA). The PBA includes a one-quarter-acre park area located on the blufftop between Opal Cliff Drive and the blufftop edge. A path through this park area leads to a stairway that provides access to the beach (Privates Beach) below. The PBA is the only vertical accessway to the coast between 41st Avenue and Hooper Beach, a distance of over a mile marked by high bluffs and residential development for the majority of the seaward side of the road that together strictly limit access opportunities along this shoreline, including visual access. As a result, the PBA is an important and significant accessway for Opal Cliffs as well as for the overall Live Oak beach area.



California Coastal Commission
W13b-1-2009

CDP Application P-80-393-A1
Privates Beach Accessway Improvements
Page 2

In 1981, the Commission authorized a six-foot tall chain link fence with a gate fronting the accessway (CDP P-80-393). In 1991, a public access management program for the PBA was approved (as part of condition compliance for the Commission's base CDP action). The access program included provisions allowing an annual gate access fee (then \$20 for a key) to use the PBA. Thus, by virtue of the Commission's action and the subsequent access program, the existing permitted access setup is that the public is charged a fee to access the beach through the Privates Beach Accessway. Both OCRD members and non-OCRD members are required to pay the fee, although OCRD members pay a reduced rate that accounts for the OCRD assessment they pay on their property taxes.

OCRD proposes to undertake a variety of beneficial improvements to the PBA behind the gate including a new sand-rinse shower, water faucet upgrade, new metal stairway railings, and landscaping. These improvements would increase the utility of this accessway for users, and can be found consistent with the Coastal Act and the LCP.

OCRD also proposes to replace the previously authorized chain link fence and gate with a larger and more massive fence and gate that is wrought iron, 9-feet tall, and topped with curved and pointed tips extending toward Opal Cliff Drive. The larger gate was already installed without benefit of a CDP sometime in the late 1990s, and thus this component of the application is an after-the-fact request to authorize the increased scale, size, and configuration of the fence and the gate. OCRD also proposes two new 30-foot-long sections of similar style 9-foot-high fence along the side property boundaries. OCRD indicates that the new fences (including the unpermitted existing fence/gate) are necessary to stop people from climbing over/around the gate without paying a fee.

The proposed after-the-fact increased fence/gate fortifications and the new fence extensions present a barrier to public access use. This fencing change will have a chilling effect on all public access to this location because the proposed height, scale, and spiked configuration of the fence and locked gate tend to be perceived as unwelcoming, thus imposing both a physical and a psychological impediment to most beach goers as compared to the existing permitted baseline of a low-key, six-foot chain link fence. Such public recreational access impacts have been ongoing for a decade or more since the fence/gate was modified without a CDP. When combined with the fact that OCRD now charges a \$100 dollar fee for an annual access pass, public access has been severely curtailed at this important vertical access location.

This public access barrier cannot be found consistent with LCP and Coastal Act mandates requiring maximum public recreational access opportunities. The most appropriate way to offset such impacts, and to find LCP and Coastal Act consistency, is to make sure that if the public is going to be charged a fee to access this site, then the fee structure must be reasonable, revenues from it need to be directed to the accessway, and it must be implemented according to well-defined and understood parameters, including with respect to monitoring and reporting to ensure that to be the case over time. Staff therefore recommends that the Commission **approve** the proposed development subject to the submittal of an updated public access management plan that accounts for these provisions. As so conditioned, the Commission can find the project consistent with the public access and recreation policies of the Coastal Act and the LCP.

2. Staff Recommendation on CDP Amendment

Staff recommends that the Commission, after public hearing, **approve** a coastal development permit amendment for the proposed development subject to the standard and special conditions below.

Motion. I move that the Commission approve Coastal Development Permit Amendment Number P-80-393-A1 pursuant to the staff recommendation.

Staff Recommendation of Approval. Staff recommends a **YES** vote. Passage of this motion will result in approval of the coastal development permit amendment as conditioned and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

Resolution to Approve a Coastal Development Permit Amendment. The Commission hereby approves the coastal development permit amendment on the grounds that the development as conditioned, will be in conformity with the policies of Chapter 3 of the Coastal Act. Approval of the coastal development permit amendment complies with the California Environmental Quality Act because either: (1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the amended development on the environment; or (2) there are no feasible mitigation measures or alternatives that would substantially lessen any significant adverse effects of the amended development on the environment.

Report Contents

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D. Exhibits

Exhibit A: Location Maps

Exhibit B: Project Plans

Exhibit C: Photographs of the Project Site

Exhibit D: CDP P-80-393

Exhibit E: CDP P-80-393 Access Program

Exhibit F: LCP Figure 7-2 (Santa Cruz County Public Parks and Recreation Facilities)

B. Findings and Declarations

The Commission finds and declares as follows:

1. Project Location and Description

A. Project Location and Background

Santa Cruz County Regional Setting

Santa Cruz County is located on California's central coast and is bordered to the north and south by San Mateo and Monterey Counties (see Exhibit A). The County's shoreline includes the northern half of the Monterey Bay and the rugged north coast extending to San Mateo County along the Pacific Ocean. The County's coastal zone resources are varied and oftentimes spectacular, including the Santa Cruz Mountains coastal range and its vast forests and streams; an eclectic collection of shoreline environments ranging from craggy outcrops to vast sandy beaches (in both urban and more rural locations); numerous coastal wetland, lagoon and slough systems; habitats for an amazing variety and number of endangered species; water and shore oriented recreational and commercial pursuits, including world class skim-boarding, bodysurfing, and surfing areas; internationally renowned marine research facilities and programs; special coastal communities; vast State Park lands; and the Monterey Bay itself. The unique grandeur of the region and its national significance was formally recognized in 1992 when the area offshore of the County became part of the Monterey Bay National Marine Sanctuary (MBNMS), the largest of the thirteen such federally protected marine sanctuaries in the nation.

Santa Cruz County's rugged mountain and coastal setting, its generally mild climate, and its well-honed cultural identity combine to make the area a desirable place to both live and visit. As a result, the County has seen extensive development and regional growth over the years that the California Coastal Management Program has been in place. In fact, Santa Cruz County's population has more than doubled since 1970 alone with current State estimates indicating that the County is home to over one-quarter of a million persons.¹ This level of growth not only increases the regional need for housing, jobs, roads,

¹ Census data from 1970 show Santa Cruz County with 123,790 persons; California Department of Finance estimates for 2007 indicate that over 265,183 persons reside in Santa Cruz County (*State of California, Department of Finance, July 1, 2007 County Estimates Ranked by Size, Numeric and Percent Change since July 1, 2006*; Sacramento, California; July 2007).



urban services, infrastructure, and community services, but also the need for park areas, recreational facilities, and visitor serving amenities. For coastal counties such as Santa Cruz where the vast majority of residents live within a half-hour of the coast, and most significantly closer than that, coastal zone resources are a critical element in helping to meet these needs. Furthermore, with coastal parks and beaches themselves attracting visitors into the region, an even greater pressure is felt at coastal recreational systems. With the Santa Cruz County shoreline and beaches providing arguably the warmest and most accessible ocean waters in all of Northern California, and with the large population centers of the San Francisco Bay area, San Jose, and the Silicon Valley nearby, this type of resource pressure is particularly evident in coastal Santa Cruz County.

Live Oak Beach Area

Live Oak is the name for the unincorporated segment of Santa Cruz County located between the City of Santa Cruz (upcoast) and the City of Capitola (downcoast) (see Exhibit A). Live Oak is home to some of the best recreational beaches and ocean waters in the Monterey Bay area. Not only are north Monterey Bay weather patterns more conducive to beach and ocean recreation than the rest of the Monterey Bay area, and not only is it also home to multiple world class surfing areas, but north bay beaches are generally the first beaches accessed by visitors coming from the north of Santa Cruz. With Highway 17 providing the primary access point from the north (including from the San Francisco Bay Area, San Jose and the Silicon Valley) into the Monterey Bay area, Santa Cruz, Live Oak, and Capitola are the first coastal areas that visitors encounter upon traversing the Santa Cruz Mountains. As such, the Live Oak beach area is an important coastal access asset for not only Santa Cruz County, but also the entire central and northern California region.

Walking, biking, skating, viewing, skimboarding, bodysurfing, surfing, fishing, sunbathing, and more are all among the range of recreational activities possible along the Live Oak shoreline. In addition, Live Oak also provides a number of different coastal environments including sandy beaches, rocky tidal areas, blufftop terraces, and coastal lagoons. These varied coastal characteristics make the Live Oak shoreline unique in that a relatively small area (roughly three miles of shoreline) can provide different recreational users a diverse range of alternatives for enjoying the coast. By not being limited to one large, long beach, or solely an extended stretch of rocky shoreline, the Live Oak shoreline accommodates recreational users in a manner that is typical of a much larger access system.

Primarily residential with some concentrated commercial and industrial areas, Live Oak is now a substantially urbanized area with few major undeveloped parcels remaining. Development pressure has been disproportionately intense for this section of Santa Cruz County. Because Live Oak is projected to absorb the majority of the unincorporated growth in Santa Cruz County, development pressure will likely continue to tax Live Oak's public infrastructure (e.g., streets, parks, beaches, etc.) as the remaining vacant parcels are developed and developed residential lots are re-developed with larger homes.² Given that the beaches are the largest public facility in and out of the Live Oak coastal zone,

² Live Oak is currently home to some 20,000 residents, and the LCP indicates that build-out would add approximately 10,000 Live Oak residents, and would require 150 to 180 acres of park acreage. Although Live Oak accounts for less than 1% of Santa Cruz County's total land acreage, this projected park acreage represents nearly 20% of the County's total projected park acreage.

this pressure will be particularly evident along the shoreline.

Project Site

The Privates Beach Accessway (PBA) is located in the Opal Cliffs area of Live Oak. Opal Cliffs is the name for the area extending roughly from 41st Avenue to the City of Capitola city limits. This stretch of coastline is almost exclusively described by a row of private residential properties that are perched atop the bluffs located seaward of the first through public road (Opal Cliff Drive). As a result, seaward public views and access from Opal Cliff Drive have been extremely curtailed. The PBA is the only vertical accessway to the beach and shoreline for the roughly one-mile stretch of coastline between 41st Avenue (upcoast) and Hooper Beach in Capitola (downcoast). In addition, it is the only location along Opal Cliff Drive where the public is afforded a through blue-water view because the view from the street is otherwise blocked by houses. See Exhibit A for project location maps.

The PBA is accessed via Opal Cliff Drive. Five parking spaces, which are perpendicular to Opal Cliff Drive, face a wrought iron fence and locked gate (see discussion in "Opal Cliffs Recreation District Background" section below) that controls access to the PBA and the pocket beach below, which is known locally as "Key beach" or "Privates." The park-like component of the project site located on the bluff top is approximately one-quarter acre in size. A path through this park area leads to a stairway that provides access to the beach and ocean below. Some lateral beach-level access to the pocket beach at this location is also available from both up and down coast, but such access is generally limited to very low tides, due at least in part to the large piles of riprap and rubble that front much of the Opal Cliff bluffs. The majority of the bluffs along "Key Beach/Privates" are armored at their base by an eclectic mix of rip rap, concrete cylinders, stepped concrete retaining walls, wooden walls, and a variety of vertical concrete seawalls. See photographs of the PBA in Exhibit C.

During times of good surf and/or good weather, the PBA is staffed by an attendant who monitors the accessway, including keyed gate access.

B. Opal Cliffs Recreation District Background

The Opal Cliffs Recreational District (OCRD) was formed in 1949 by a resolution of the Santa Cruz County Board of Supervisors. OCRD is a special public district component of County government that owns and operates the PBA and nothing else. The members of OCRD are the owners of the surrounding residential properties in the Opal Cliffs area (see page 3 of Exhibit A). OCRD charges a fee for OCRD and non-OCRD members to accessway the PBA and use the beach access stairway. For those who live or own property within the OCRD's boundaries, the County assesses a \$50.00 fee on each residential parcel's yearly property taxes. These assessed fees, however, are not distributed directly to the OCRD but instead are directed to the County's general Parks and Recreation fund. In addition to this assessed fee, OCRD members (after providing proof of residency in the OCRD) pay \$50.00 per year to the OCRD to obtain a key card to gain access through the gate to the beach.

In order for non-OCRD members (i.e., the general public) to gain access to the OCRD's recreational facilities, including the beach, the general public must purchase a key to open the facility's locked gate.

The keys are sold at a nearby surf shop. A sign posted on the fence adjacent to the locked gate informs the general public of the location and operating hours of the surf shop. The cost of a key card to access the OCRD is \$100.00 per year (starting June 1st of each year). If a key card is not purchased until the following January, the cost of the key card drops to \$50.00; if not purchased until the following April, the key card costs \$25.00. The key revenue provides the budget for the operations of the PBA (including yearly maintenance, insurance, the salary for a gate attendant, and other incidental expenses). The key card fees do not, however, pay for capital improvements, such as those proposed by this project.

Federal and State public grants and entitlements have been used to pay for capital improvements in the District over the years. For example, significant damage to the stairway leading to the beach was caused by the October 17, 1989 earthquake. The Federal Emergency Management Agency and its State counterpart (the State Natural Disaster Assistance Act Program) granted public funds at that time to reconstruct the stairway access to the recreation area in conformity with public safety codes. Other public grant funds have been used for construction of capital improvements to the OCRD from California Bond Acts in 1974, 1986, and 1988. The improvements proposed under the current project will be paid for through grant money obtained from Proposition 40 (The California Clean Water, Clean Air, Safe Neighborhood Parks, and Coastal Protection Act of 2002).

Although OCRD is listed as a County Public Park in the County's LCP (see Exhibit F), it is an anomaly because it is not administered by the County Parks and Recreation Department and the County is not interested in taking over responsibility of the property from the OCRD due to liability, maintenance, and cost concerns, especially given the budget constraints under which the County is currently operating.

Permitting and Violation History

In 1981, prior to certification of Santa Cruz County's LCP, the Commission granted a permit to the OCRD for replacement of a 5-to-6-foot tall chain link fence with a gate on the street frontage, and 3-to-5-foot wooden fencing on the side yards of the project site, with a 6-foot high chain link fence around these three sides of the project site. Although the Commission's staff report acknowledged that some form of access control was appropriate here, it emphasized that there was no signage or other notification on the site to indicate that keys to locked gate were available, and that the application could not be found consistent with Sections 30210-12 of the Coastal Act without confirmation of the availability of keys or some other means of assuring public access (see Exhibit D for a copy of the CDP staff report).

The 1981 CDP was conditioned to require submission of a public access program for review and approval by the Executive Director. The submitted public access program was approved and a deed restriction containing the public access program was recorded against the property in November 1991 (see Exhibit E). Although the Commission's action did not identify nor directly authorize an access fee to use the PBA, the recorded access program includes this "pay to use" feature. The access program also requires signage to be posted on the property indicating park hours (dawn to dusk), the annual fee to obtain a key for access, the location where the keys can be purchased (including a map), and contact information for the OCRD. The access program describes that access to the park and associated beach will be provided for an annual fee by purchasing a key, and that the revenue generated from the key

purchases will be used to pay for the annual budgeted operating costs of the OCRD. The access program does not place a limit on the amount of fee that can be charged to enter the park,³ and allows changes to the annual key purchase fee at the discretion of the OCRD. The 1981 approval was silent on the use of an attendant at the gate leading to the beach.

Unpermitted development occurred at the proposed project site prior to submission of this permit amendment application. The unpermitted development included replacing the Commission-authorized six-foot-tall chain link fence fronting the accessway with a nine-foot-tall wrought iron fence with barbed and curved tips topped with razor wire, and the addition of an attendant at the gate access. OCRD has indicated that it is not sure when the nine-foot-tall fence and the razor wire were installed, but it appears clear from site photographs and anecdotal observations that it was sometime in the 1990s. According to OCRD, the gate attendant has been present since the early 1990s. Upon becoming aware of the lack of an appropriate permit for such development, Commission enforcement staff opened a Coastal Act enforcement case on April 21, 2006.⁴ In 2006, OCRD removed the razor wire at enforcement staff's request but did not stop using an attendant at the gate.

Through this amendment application OCRD is requesting an after-the-fact authorization for the unpermitted wrought iron fencing/gate that appears to have been in place for over a decade. The Commission notes that although it is willing to review this CDP amendment application request, such review does not constitute a waiver of any legal action that may independently be pursued with respect to the violation, nor does it constitute an admission as to the legality of any development undertaken on the site without a coastal development permit.

C. Project Description

The proposed project includes improvements to the park area located on the bluff top, as well as improvements to the stairway railings. Specifically, the proposed project includes: 1) installation of an outdoor "sand rinse" shower; 2) upgrade of an existing water faucet and water meter; 3) replacement of an existing concrete pathway with colored concrete; 4) new landscaping, including a mixture of drought-tolerant native and noninvasive exotic plants in the quarter-acre park area atop the bluff, and associated drip irrigation (the existing lawn area adjacent to the gate will remain); 5) replacement of existing wooden stairway railings with metal railings; 6) placement of fieldstone boulders to be used for seating areas; 7) after-the-fact approval of the unpermitted 9-foot-tall wrought iron fence within the front and side yard setbacks; and 8) installation of two new sections of 9-foot-tall wrought iron fencing that would extend for 30 additional feet along each of the side property boundaries. See Exhibit B for project plans and Exhibit C for photographs of the project site and the unpermitted fence.

D. Standard of Review

The proposed project is an amendment to the permit the Commission issued to the OCRD in 1981 prior to certification of the Santa Cruz County LCP. As a result, the permit falls under the Commission's

³ In 1992 the annual fee was \$20.00.

⁴ Case Number V-3-06-012.

coastal permitting jurisdiction. However, because there is now a certified LCP, the standard of review is the Santa Cruz County certified LCP and, because the project is located between the first public road and the sea, the public access and recreation policies of the Coastal Act.

2. Issue Analysis

A. Public Access and Recreation

Applicable Policies

Coastal Act Sections 30210 through 30214 and 30220 through 30224 specifically protect public access and recreation. In particular:

Section 30210. In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.

Section 30211. Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.

Section 30212(a). Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects...

Section 30213. Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Developments providing public recreational opportunities are preferred. ...

Section 30220. Coastal areas suited for water-oriented recreational activities that cannot readily be provided at inland water areas shall be protected for such uses.

Section 30221. Oceanfront land suitable for recreational use shall be protected for recreational use and development unless present and foreseeable future demand for public or commercial recreational activities that could be accommodated on the property is already adequately provided for in the area.

Section 30223. Upland areas necessary to support coastal recreational uses shall be reserved for such uses, where feasible.

Coastal Act Section 30240(b) also protects parks and recreation areas such as the Privates Beach Accessway and the beach below. Section 30240(b) states:

Section 30240(b). Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would

significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.

The Santa Cruz County LCP list the Privates Beach Accessway as a "Santa Cruz County Public Park and Recreation Facility" (see LCP Figure 7-2 in Exhibit F). The LCP also acknowledges the Opal Cliffs region of the County as a "high use beach access area."

LCP Parks, Recreation and Public Facilities Program q. Seek funding to develop beach operations and management plans for high use beach access areas such as Rio del Mar, Opal Cliffs, Sunny Cove, and Moran Lake and those beach access areas that have State Coastal Conservancy funded accesses. Incorporate the management plans into the LCP. (Responsibility: County Parks, Planning Department).

The LCP also requires that public access and recreation opportunities be maximized, and that shoreline land appropriate for coastal access and recreation uses and facilities be protected for that purpose. For example, applicable LCP objectives, programs, and policies include:

LUP Objective 2.22 Coastal Dependent Development. To ensure priority for coastal-dependent and coastal-related development over other development on the coast.

LUP Policy 2.22.1 Priority of Uses within the Coastal Zone. Maintain a hierarchy of land use priorities within the Coastal Zone:

First Priority: Agriculture and coastal-dependent industry.

Second Priority: Recreation, including public parks; visitor serving commercial uses; and coastal recreation facilities.

Third Priority: Private residential, general industrial, and general commercial uses.

LUP Policy 2.22.2 Maintaining Priority Uses. Prohibit the conversion of any existing priority use to another use, except for another use of equal or higher priority.

LUP Objective 7.1a Parks and Recreation Opportunities. To provide a full range of public and private opportunities for the access to, and enjoyment of, park, recreation, and scenic areas, including the use of active recreation areas and passive natural open spaces by all ages, income groups and people with disabilities with the primary emphasis on needed recreation facilities and programs for the citizens of Santa Cruz County.

LUP Objective 7.7a Coastal Recreation. To maximize public use and enjoyment of coastal recreation resources for all people, including those with disabilities, while protecting those resources from the adverse impacts of overuse.

LUP Objective 7.7b Shoreline Access. To provide a system of shoreline access to the coast with adequate improvements to serve the general public and the coastal neighborhoods which is consistent with the California Coastal Act, meets public safety needs, protects natural resource

areas from overuse, protects public rights and the rights of private property owners, minimizes conflicts with adjacent land uses, and does not adversely affect agriculture, subject to policy 7.6.2.

LUP Program 7.7f (Establish Access Signing). Establish an access signing program which: (1) Removes incorrect, misleading, and confusing signs. (2) Develops, installs, and maintains standard signs for primary destinations and neighborhood accessways and designates appropriate locations for these signs. (Responsibility: County Parks, Public Works).

LUP Policy 7.7.1 Coastal Vistas. Encourage pedestrian enjoyment of ocean areas and beaches by the development of vista points and overlooks with benches and railings, and facilities for pedestrian access to the beaches...

LUP Policy 7.7.4 Maintaining Recreation-Oriented Uses. Protect the coastal blufftop areas and beaches from intrusion by nonrecreational structures and incompatible uses to the extent legally possible without impairing the constitutional rights of the property owner, subject to policy 7.6.2.

LUP Policy 7.7.10 Protecting Existing Beach Access. Protect existing pedestrian...and bicycle access to all beaches to which the public has a right of access, whether acquired by grant or through use, as established through judicial determination of prescriptive rights.... Protect such beach access through permit conditions...

Analysis

In general, the proposed improvements inside of the gate will provide improved public access amenities for users of the Privates Beach Accessway, consistent with the public access and recreation requirements of the Coastal Act and the Santa Cruz County LCP. However, the proposed amendment brings to the forefront issues regarding maximizing public recreational opportunities.

One of the primary functions of the Coastal Act and the LCP is to protect and maximize the public's ability to access the coast. In this case the OCRD limits access to this stretch of coast by gating the accessway and by requiring that visitors pay a fee for access to this public park and to the stairs that lead down to the beach. The Commission authorized the gated access in 1981, with the understanding that public access would be readily available, and Commission staff signed off on an access program for the site in 1991 (see Exhibit E).⁵

Thus, by virtue of the Commission's action and that access program, the existing permitted gated access (bracketing for a moment the unpermitted 9-foot-tall fencing) is that the public is charged a fee to access the beach through the Privates Beach Accessway. This is not the most LCP and Coastal Act consistent public recreational access setup generally, and it is certainly not the most LCP and Coastal Act consistent setup for a public facility built and improved with public funds. Rather, as a publicly funded

⁵ The Commission's 1981 CDP action did not include an expiration date. As a result, the CDP approval remained valid ten years later in 1991 when the OCRD finalized condition compliance for the 1981 action.

and developed accessway, including through the use of State bond funds that would be used for the current proposed improvements, it would be most appropriate for the public to be able to access the Privates Beach Accessway for free, without fences, gates, fees, and related encumbrances, as is the standard protocol for all other County coastal recreational accessways. However, such an outcome is not proposed by the OCRD. On this point, the Commission concurred in 1981 based on an assessment that the unstable and hazardous nature of the bluffs in the area limited access, and that allowing some gated access was sufficient at this location (see Exhibit D). Since that time, however, not only have there been significant advances in terms of the siting, designing, and building of stairways and related access features in such a way as to ensure their continued stability and utility (including in relation to a dynamic and eroding coast), it is also apparent that this accessway is significant and important in that it provides the only direct access to over a mile of shoreline, including pocket beaches and significant surfing areas. In addition, it is now apparent that the public access program required by the original CDP does not ensure that access is readily available to the public. Were access readily available, members of the public would have obtained keys to access the beach, rather than scaling the 6-foot-tall fence to enter the beach area, precipitating OCRD's construction of the 9-foot-tall fence submitted for approval as part of this amendment.

The proposed after-the-fact increased fence/gate heights have a chilling effect on all public access to this location because the proposed height, scale, and spiked configuration of the fence and locked gate tend to be perceived as unwelcoming, thus imposing both a physical and a psychological impediment to most beach goers as compared to the existing permitted baseline of a low-key, six-foot-tall chain link fence. Such public recreational access impacts have been ongoing since the 1990s. Thus, this amendment, which would further restrict public access at this location, cannot be approved consistent with the above cited LCP and Coastal Act access and recreation policies absent mitigation. Although the improvements on the seaward side of the fence help to begin to offset these adverse impacts, such improvements alone cannot completely alleviate such impacts.

The most appropriate way to offset such impacts, and to find LCP and Coastal Act consistency, is to make sure that if the public is going to be charged a fee to access this site, then the fee structure needs to be kept reasonable, revenues from it need to be applied to the accessway, and it needs to be implemented according to well-defined and understood parameters, including with respect to monitoring and reporting over time.⁶ In other words, the Commission has learned much in terms of accessway management over the years, and it is clear that the parameters for the Privates Beach Accessway have not assured that public access to the area is readily available, as intended in the original CDP. Thus, under the existing situation, public access to the park amenities and the beach below the OCRD is not maximized and is not readily available, inconsistent with the requirements of the Coastal Act, the LCP, and the base CDP. The specific attributes of an approvable project are described in the sections that follow.

⁶ Historically, there have been some implementation problems at the Privates Beach Accessway with the current setup inasmuch as it was not clear how, where, and for how much keys were available, and sometimes they were not available, and the price increased substantially without CDP authorization (i.e., the gate fee has increased 500% since 1991). This, in turn, has made it even more difficult over time for the public to access the beach at this location.

Fee Structure and Day Use

Currently the yearly cost of a key card to access the Privates Beach Accessway is \$100.00 (starting June 1st of each year). If a key card is not purchased until the following January, the cost of the key card drops to \$50.00; if not purchased until the following April, the key card cost drops to \$25.00. Given the relatively high cost, the key card program is primarily geared toward members of the OCRD (i.e. those who own property within the OCRD's boundaries) and those nearby residents who have the ability and desire to access the park on a regular basis throughout the year, thus making the cost of the key card worthwhile. The high cost of a key card, however, is exclusionary to those who may wish to access the park once or a few times a year, such as visitors from out of the area or other nearby local residents who may only wish to access the park on a very limited basis. It is highly unlikely that these persons would pay \$100.00 (or even \$25.00 in April) to obtain a key card in order to enter the park and access the beach once or twice a year. And, if they did, the cost of such access would be extremely high, and certainly not the free/low-cost access envisioned by the Coastal Act and the LCP. Therefore, as currently implemented, the access program is discriminatory to those who wish to access the park and the stairway access to the beach on an infrequent basis. For this reason, the access program is inconsistent with the Coastal Act's requirements to maximize public recreational access opportunities, and to provide lower-cost visitor recreational facilities.

One way to resolve this issue would be to significantly reduce the cost of the gate fee so that infrequent visitors are not overly penalized. However, such a reduction could mean that the OCRD does not generate enough funds for upkeep. A more appropriate remedy for this problem is to determine and institute an appropriate day-use fee for those who wish to use the park's facilities and gain access to the stairway to the beach on an infrequent basis. Nearby state beaches, such as New Brighton State Beach in Capitola and Natural Bridges State Beach in Santa Cruz, charge \$8.00 for each vehicle entering the State Beach property. For this fee amount, however, the nearby State Beaches provide parking lots, restrooms, visitor centers, and a greater range of amenities than are found at the OCRD's park facilities. On the other hand, access to nearby beaches in Capitola is free to all members of the public, although it is usually necessary to pay for parking (either through street meters or in Capitola's public parking lot) to gain access to the beaches in Capitola. In other areas of the Live Oak beach area of Santa Cruz County, however, access to the beach is free, and although demand generally exceeds supply during peak summer periods, free parking can be found along the streets and in the limited number of public parking lots, such as the lot at the end of 41st Avenue. During summer weekends, there is a permit parking program that applies to some streets in the Live Oak beach area (not in Opal Cliffs), and the permit fee for parking during those times and on those streets is \$5.00. Given the range of costs (or no-cost) of all the above, a \$5.00 day-use fee for a group to enter the OCRD park facility to obtain access to the beach seems reasonable and appropriate.

In addition, the yearly pass amortization schedule is currently skewed toward the side of higher fees overall, especially during the high summer tourist use season (i.e., most of the year the pass costs \$100, and such fee amount starts at \$100 at the start of June). As a result, the effect of the high annual rate is intensified in relation to most users, and particularly in terms of visitors to the area from farther away. One way of addressing this would be to start the fee sales for any particular year at the end of summer so that summer users are afforded the least costs on an annual basis relative to an amortization schedule.

Another way of addressing this would be to include a reduced summer fee so that summer users are afforded the least costs on an annual basis relative to an amortization schedule. Either option would serve to ensure that transient visitors are not unfairly tapped for excessive payment (should they choose the annual fee system), and best addresses the LCP and Coastal Act lower cost requirements.

Gate Attendant and Access Rules

The OCRD board currently employs an attendant to monitor public access through the gate.⁷ The attendant sits in the grassy area just inside the gate that leads to the accessway to the beach. According to OCRD, the attendant is necessary to ensure that those entering the gate have paid for a key card. OCRD indicates that without an attendant at the gate, visitors wanting to access the OCRD recreational facility without purchasing a key card wait until a person leaving the OCRD opens the gate, and then these visitors enter the park without having paid for a key card. In some instances when an attendant has not been present, the gate has been left propped open or the gate mechanism has been jammed so that it does not function properly (i.e. will not lock). The Applicant's representative believes that the attendant is necessary to ensure that adequate revenue (i.e. from payments for key cards) is available to maintain the park.

An attendant can have a chilling effect on access in some circumstances, including by virtue of dress, demeanor, and the degree to which different rules are applied to different access users. Absent any structure or defined protocol, as is the case here, the possibilities for such access impacts are increased. For example, in the past, the OCRD has employed uniformed security guards to control access through the gate. Use of a uniformed "guard" at the gate is off-putting to visitors to the area who are unfamiliar with the OCRD and its amenities, where this type of "police" may discourage public access. Although OCRD indicates that uniformed security guards are no longer being used, there is currently no requirement to ensure that this continues, and there is currently no requirement against reinstating such guards. To avoid such issues, any attendant must be casually dressed and easily identifiable as an OCRD employee.

In addition, there is no written protocol regarding how many persons may enter the gate per key card. According to OCRD, one key card is required per each vehicle that parks in the spaces in front of the gate, no matter the number of occupants in the vehicle. For those arriving on foot, it appears that a group of people who say they are together require one key card for the entire group to access the park; in this regard, the attendant has some leeway to determine how many people may enter the park with one key card. Given that the OCRD employs different individuals as attendants, this leeway may lead to an inconsistent standard regarding the number of individuals that may access the park and the beach below with the use of one key card. To address this concern, it must be clear that a single key card or day-use pass allows admittance to the Privates Beach Accessway for all individuals who are with the person in possession of the key card or the day-use pass. To ensure that this "group" requirement is not abused, a group is considered to be a maximum of ten persons per key or pass. The attendant can have leeway to

⁷ According to OCRD the attendant is present during daylight hours when any two of the three following conditions exist: 1) adequate waves for surfing; 2) sunshine; 3) warm temperatures. OCRD indicates that the attendants are generally students from nearby Cabrillo Junior College.



allow larger groups through under one key (e.g., families accessing the site from an Opal Cliffs house), but not to disallow smaller groups.

Revenues

The original premise for allowing the OCRD to charge a fee for use of this public accessway was that revenues from the fee would be used for upkeep and maintenance of the accessway. Instead, OCRD indicates that 50% of the fees paid by OCRD members are currently going to the Santa Cruz County Parks and Recreation Department, and not necessarily to this accessway. As previously indicated, the fee concept is an anomaly for Santa Cruz County coastal accessways, and it is not the most Coastal Act and LCP consistent public access management strategy. If a fee is going to continue to be charged at this location, then it is critical that the fee is used per the original CDP premise. If revenues from the fees outpace upkeep/maintenance requirements, then a fee reduction is appropriate to better maximize public recreational access opportunities, including low cost opportunities.

Other

There are a series of related components/aspects of the accessway and its operation that must be clear if it is to function effectively to provide general public recreational access opportunities consistent with the Coastal Act and the LCP. For example, it has proven difficult over the years for potential accessway users to understand the gate pass system and gate pass sales generally, including with respect to who to contact for more information and in the case of inquiries or complaints. The accessway must clearly include such information, including in relation to appropriate Commission contacts, to ensure that any problems can be quickly and readily addressed.

With respect to annual gate pass purchases, it is not ideal to have to go to a local business to purchase a gate pass, particularly if an accessway user is in need of a gate pass at off hours. However, alternatives to this part of the system are few and costly (e.g., a gate pass machine at the accessway). If a local business is used as a proxy as it has been in the past by OCRD (most recently at Freeline Design Surf Shop on 41st Avenue), such a business must be able to sell gate passes during regular business hours (i.e., including hours consistent with the hours of operation of other business in the area), seven days a week.

In terms of signage, clear and directive signage is critical for ensuring that users understand how the accessway works, and how to gain access to it easily. These signs are also important for ensuring that visitors understand that they, too, are welcome at this public accessway.

Finally, monitoring of use, gate pass sales, expenses and other aspects of the accessway's operations are critical for ensuring continued compliance with the terms and conditions of the accessway operation, and important for making adjustments as necessary to ensure continued consistency.

Public Access and Recreation Conclusion

The Privates Beach Accessway is the only vertical accessway located between 41st Avenue and Hooper Beach, a shoreline distance of over a mile in an area of steep bluffs. As a result, it is a critical

component of the public recreational access system in the Live Oak beach area, and it is particularly important to the Opal Cliffs component of that system. The fence and gate and fee associated with the Privates Beach Accessway is an anomaly for publicly-funded and developed County public accessways in Santa Cruz County, and is particularly problematic in this case as it provides the only way of gaining vertical access for a mile of much-visited urban shoreline in the heart of a prime visitor destination. The public access improvements proposed would increase the utility of this accessway for visitors with the exception of the new fence height, scale, and configuration that present a barrier to public access use, including when understood in terms of ongoing problems associated with gate, fence, and fee implementation over time. Such a public access barrier cannot be found consistent with the LCP and Coastal Act mandates requiring maximum public recreational access opportunities, including low cost opportunities.

The most LCP and Coastal Act consistent outcome for this accessway would be for it to be open to the public free of charge like other County public accessways. However, the Commission determined when it first approved the CDP in 1981 that due to the unstable, hazardous nature of the bluffs some access controls were advisable, as long as public access to the beach was assured. It appears that such public access is not readily available (as seen in the findings above), as it was understood it would be in the 1981 CDP action, and that there are in fact public access impacts that are not resolved to the Coastal Act, LCP, and base CDP here. Through the Special Conditions of this permit amendment, the Commission means to ensure that, despite the increased height of the fence, public access will still be readily available here, consistent with the LCP, the public access and recreation policies of the Coastal Act, and the base CDP.

The most appropriate way to offset the public access and recreation impacts identified, and to find LCP and Coastal Act consistency, is to make sure that if the public is going to be charged a fee to access this site, then the fee structure needs to be kept reasonable, revenues from it need to be applied to the accessway, and it needs to be implemented according to well-defined and understood parameters, including with respect to monitoring and reporting to ensure that to be the case over time. Accordingly, this project is conditioned for the submittal of an updated public access management plan that provides for the following:

- The annual gate pass year will start on June 1st and the annual fee will be no more than \$100 if purchased between June 1st and December 31st, no more than \$50 if purchased between January 1st and March 31st, and no more than \$25 if purchased between April 1st and May 31st.
- A summer-only gate pass will be available from the Saturday of Memorial Day weekend through Labor Day, inclusive, and the fee for a summer gate pass will be no more than \$50.
- The daily fee for a gate pass is no more than \$5 per day.
- The annual gate pass fee, the summer gate pass fee, and the daily gate pass fee will not be increased without an amendment to this CDP.
- A single gate pass, whether annual, summer, or daily, will allow admittance to the accessway for up



to 10 persons, including the pass holder. At the discretion of the gate attendant, more than 10 persons may be admitted to the PBA with one pass.

- Any OCRD attendants will be casually dressed (i.e., not be dressed in police-type or security-type uniforms) in such a manner that they are easily identified as an OCRD attendant (e.g., a T-shirt or name tag with the OCRD logo and accessway name, etc.).
- Gate passes, whether annual, summer, or daily, will be available for purchase at a local business as close as possible to the accessway seven days a week during normal business hours. Daily gate passes will also be available for purchase at the accessway anytime that an attendant is present.
- OCRD shall identify a contact person responsible for fielding questions and complaints, and their contact information (including address and phone number) will be provided at the accessway and at the local business where gate passes are sold. The Commission's Central Coast District office will also be identified for the same purpose.
- The accessway will be open and available for use during daylight hours (i.e., from one hour before sunrise to one hour after sunset) 365 days per year.
- Accessway signs will include the California Coastal Commission coastal access logo and will be updated as necessary to ensure consistency with the above use parameters, including providing a map and hours of operation for gate pass sales, and will include all contact information for questions and complaints.
- All gate pass revenues shall be used strictly for maintenance and operation of the PBA.
- OCRD will submit a biannual report on accessway operations that describes the previous two years' access use (including fees, revenues, and expenses; inquiries/complaints and how resolved, etc.) and any changes proposed for the upcoming two years. Minor changes that do not significantly reduce public recreational access opportunities or that enhance them (e.g., adding new benches, improving signage, etc.) are allowed subject to Executive Director approval. Any other changes will require an amendment to this CDP.

As so conditioned, the Commission can find the project consistent with the LCP and Coastal Act policies cited above. Although not ideal for public recreational access, the accessway parameters will be clear, and will include enforceable mechanisms for ensuring continued consistency with them. In this way Coastal Act and LCP objectives will be best met in light of the underlying recorded public access program, which will be updated to better reflect the tensions inherent in such a fence, gate, and fee construct.

The Commission continues to believe that the accessway should be free and available to the general public like the other County coastal accessways, but also recognizes the Opal Cliffs Recreation District situation as unique. OCRD and the County are encouraged to pursue all available avenues that could allow this accessway to convert to a free general coastal accessway, including shifting responsibility for it from the OCRD to the County Parks Department, and this approval is conditioned to allow such a

changeover without the need for a further CDP.

B. Visual Resources

Applicable Policies

The LCP requires that new development be visually compatible with the character of the surrounding neighborhood, and requires protection of the public viewshed, particularly along the shoreline:

Zoning Regulation 13.20.130(b)(1). Visual Compatibility. All new development shall be sited, designed, and landscaped to be visually compatible and integrated with the character of surrounding neighborhoods or areas.

Objective 5.10.a Protection of Visual Resources. To identify, protect, and restore the aesthetic values of visual resources.

Objective 5.10.b New Development in Visual Resource Areas. To ensure that new development is appropriately designed and constructed to have minimal to no adverse impact upon identified visual resources.

LUP Policy 5.10.3 Protection of Public Vistas. Protect significant public vistas...from all publicly used roads and vistas points by minimizing disruption of landform and aesthetic character caused by grading operations, ... inappropriate landscaping and structure design.

LUP Policy 5.10.7 Open Beaches and Blufftops. Prohibit the placement of new permanent structures which would be visible from a public beach, except where allowed on existing parcels of record, or for shoreline protection and for public beach access. Use the following criteria for allowed structures: (a) allow infill structures (typically residences on existing lots of record) where compatible with the pattern of existing development. (b) Require shoreline protection and access structures to use natural materials and finishes to blend with the character of the area and integrate with the landform.

As stated above, the stretch of coastline along Opal Cliff Drive is almost exclusively described by a row of private residential properties that are perched atop the bluffs. The Privates Beach Accessway is the only location along Opal Cliff Drive where the public is afforded a through blue-water view.

The project site is located on the seaward side of Opal Cliff Drive, between existing residential development (see Exhibit C for photographs of the project site). The proposed project would approve an existing 9-foot-tall wrought iron fencing along the front and a portion of the sides of the accessway, and also would allow for installation of two new 30-foot-long sections of 9-foot-high fencing along the sides of the accessway. The 9-foot-high wrought iron fencing along the front portion of the project site faces Opal Cliff Drive. As indicated in the previous finding, such fencing adversely impacts public recreational use at this location, and conditions are necessary to mitigate such impacts. As so mitigated, the overall impact of the fencing on the public perception of the accessway is diffused, and its visual impact can be distilled to a question of view blockage/impact and consistency with community

character. Again, although the Commission would strongly prefer that there be no fencing at this public accessway, and such an outcome would be more consistent with the applicable LCP policies than a project with a fence, this project must be understood and harmonized with the Commission's original 1981 CDP action that allowed a fence at this accessway, as long as public access was readily provided.

In that context, although a 9-foot-tall fence in a front yard setback along Opal Cliff Drive typically would be visually out-of-scale with the surrounding residential development, in this case there are five parking spaces located between Opal Cliff Drive and the front yard fencing, meaning that the fencing is set back about 16 feet from Opal Cliff Drive, and further seaward than surrounding residential improvements generally. For this reason, the 9-foot-high fencing does not significantly intrude onto the Opal Cliff Drive viewshed. The fence's open design (wrought iron pickets spaced four inches on center) and black surface helps it to recede somewhat into the background, and the openings allow views into the park that would not be possible with a solid fence. The proposed 9-foot-high side yard fencing will not be highly visible from Opal Cliff Drive given that it will be located even further from Opal Cliff Drive than the front yard fencing and it will directly abut adjacent residential development, some of which is two stories tall. Neither the front yard fencing nor the side yard fencing will be visible from the beach.

The quarter-acre park area of the project site now includes a lawn area located near the front gate, a concrete pathway leading to the stairway to the beach, and a variety of shrubs and plants, including ice plant. The proposed project includes installation of an outdoor rinse-off shower near the gate and upgrading of an existing water faucet and water meter. A portion of the existing lawn will be removed (the portion that will remain will be located no closer than 45 feet from the bluff edge). The remainder of the existing vegetation, including ice plant, will be removed and the park will be re-landscaped with a mixture of native and nonnative, noninvasive drought tolerant plant species, and drip irrigation will be installed. To be consistent with other recent Commission actions that include a landscaping component along the bluff-top in the Live Oak/Opal Cliffs area, this approval is conditioned to require that only appropriate native vegetation be planted in the portions of the project site that are located within 5 feet of the bluff-top edge.

The existing concrete pathway leading to the stairs to the beach will be replaced with new colored concrete. The project also includes the installation of two paths of decomposed granite that will lead to overlook areas, as well as installation of some low (3-foot-high) fieldstone walls to create a terraced look and reduce erosion. Fieldstone boulders to be used for seating will be installed in several locations. The existing wooden railings along the stairway to the beach will be replaced with stainless steel railing.

Several drainage pipes extend down the bluff face (see page 8 of Exhibit C for a photograph of the bluff face). The larger pipe is a County-maintained pipe that collects drainage from Opal Cliff Drive and directs it to the beach below. The smaller pipe collects drainage from the park portion of the PBA and also directs it to the beach below (the drainage from the proposed sand rinse-off shower will be directed into this smaller pipe). In addition to these pipes, the remnants of an old stairway are also found on the bluff face. Typically, the Commission would require consolidation of these pipes into one pipe and removal of the stair remnants as part of a project approval in order to remove visual clutter and enhance

the visual resources of this beach. However, the larger drain pipe is maintained by County Public Works, and not OCRD. Also, the amount of funds available to the OCRD for the proposed project improvements is not sufficient to allow for these bluff-face improvements at this time. OCRD has indicated that the OCRD would be highly interested in including these bluff-face improvement project components in a future application expected to be submitted in the near future for proposed additional stairwell structural improvements.⁸ For these reasons, the Commission is not requiring consolidation of the existing drainage pipes and removal of the stair remnants as part of this approval, but instead notes that these will be necessary components of any future project proposal at the PBA.

The proposed project will upgrade and enhance the visual quality of the existing park, and will improve the existing overlook areas by removing invasive ice plant, providing new seating, and updating the stairwell railings. The only components of the proposed project that will be visible from the beach will be the new metal railings along the stairway, and perhaps a very small portion of the proposed landscaping. The new metal stairway railings will be similar in style to the existing wooden stairway railings, but will require less maintenance. Although the Commission would prefer that the fence and gate be removed at the accessway's frontage to provide through views of the park and the ocean beyond, such is not required because the public access impacts of the new fence are mitigated appropriately (see previous finding), and the remaining visual impacts from the fence once so mitigated are not significant. For these reasons, the proposed project is consistent with the visual resources policies of the Santa Cruz County LCP.

3. Conditions of Approval

A. Standard Conditions

1. **Notice of Receipt and Acknowledgment.** The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. **Expiration.** If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. **Interpretation.** Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
4. **Assignment.** The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.

⁸ The Proposition 40 funds for the stairwell structural improvements must be allocated by 2011.



5. **Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

B. Special Conditions

1. **Improvements Permitted.** This coastal development permit allows for the following development which must be constructed substantially in conformance with the plans submitted to the Coastal Commission (titled "Opal Cliff Neighborhood Park" and dated received in the Commission's Central Coast District Office on May 16, 2007) as modified by these standard and special conditions: installation of an outdoor shower; upgrade of a water faucet and water meter; replacement of wood stairway railings with metal railings; replacement of a concrete pathway with a colored concrete pathway; landscaping and associated irrigation; short fieldstone walls and seating; after-the-fact approval of a 9-foot-tall metal fence within the front and side yards; and installation of two new 30-foot-long sections of 9-foot-tall fencing along the side property boundaries.
2. **Annual Gate Pass Fees.** The annual gate pass year shall start on June 1st and the annual fee shall be no more than \$100 if purchased between June 1st and December 31st, no more than \$50 if purchased between January 1st and March 31st, and no more than \$25 if purchased between April 1st and May 31st.
3. **Summer Gate Pass Fee.** The summer gate pass period shall run from the Saturday of Memorial Day weekend through Labor Day, inclusive, and the fee for a summer gate pass shall be no more than \$50.
4. **Daily Gate Pass Fee.** The daily fee for a gate pass shall be no more than \$5 per day.
5. **General Admittance Rule.** A single gate pass, whether annual, summer or daily, shall allow admittance to the accessway for up to 10 persons, including the pass holder. The OCRD attendant may allow a greater number of individuals to enter with one pass at his/her discretion.
6. **Local Business Gate Pass Sales.** Gate passes shall be available for purchase seven days a week during normal business hours at a local business (or at multiple local businesses) located as close as possible to the accessway. Clear maps to direct users to such businesses shall be provided at the accessway.
7. **Attendant.** Any OCRD attendants shall be casually dressed (and shall not be dressed in police or security style uniforms or equivalent) in such a manner that they are easily identified as an OCRD attendant (e.g., a T-shirt or name tag with the OCRD logo and accessway name, etc.). Daily gate passes shall be available for purchase from the attendant at the accessway any time that an attendant is present.
8. **OCRD and CCC Contact Information.** OCRD shall identify a contact person responsible for fielding questions and complaints, and that person's contact information (including address and phone number), as well as the contact information for the Coastal Commission's Central Coast

District office, shall be clearly provided at the accessway and at all local businesses where gate passes are sold.

9. **Hours of Operation.** The accessway shall be open and available for use during daylight hours (i.e., from one-hour before sunrise to one-hour after sunset) 365 days per year.
10. **Signs.** Accessway signs shall be updated to include the Coastal Commission coastal access logo and to ensure that they provide information consistent with these special conditions, including providing all contact information for questions and complaints.
11. **Gate Pass Revenues.** All gate pass revenues shall be used strictly for maintenance and operation of the accessway.
12. **Reporting Requirements.** OCRD shall submit a report every two years that details accessway operations in relation to compliance with the terms and conditions of this approval and the approved Public Access Plan (see Special Condition 14) over the preceding two years (i.e., in the time since the previous such report). At a minimum, each such report shall describe the previous two years' access use (including in relation to fees, revenues, and expenses; inquiries/complaints and how resolved; etc.), and any changes proposed for the upcoming two years. Should gate pass revenues significantly exceed accessway upkeep and maintenance costs, then fees shall be reduced commensurately. This report shall be submitted no later than August 1st of every other year for review and approval of the Executive Director, with the first such report due August 1, 2010. Minor changes that do not significantly reduce public recreational access opportunities or that enhance them (e.g., adding new benches, improving signage, reducing access fees, etc.) shall be allowed through the report approval process.
13. **Amendment Required.** Any changes to the terms and conditions of this coastal development permit shall require an amendment from the Coastal Commission except for: (a) minor changes allowed through the annual report approval process (see Special Condition 12); and (b) changes necessary to convert the accessway to a free general public access coastal accessway which shall be allowed subject to the review and approval of the Executive Director.
14. **Public Access Plan.** PRIOR TO ISSUANCE OF THE AMENDED COASTAL DEVELOPMENT PERMIT, the Permittee shall submit two copies of a Public Access Plan to the Executive Director for review and approval. The Plan shall clearly describe the manner in which general public access to the accessway is to be managed and provided, including in terms of ensuring consistency with the terms and conditions (including these special conditions) of this coastal development permit, with the objective of maximizing public recreational access opportunities. The Permittee shall manage the accessway, including all associated development, in accordance with the approved Public Access Plan, which shall govern all general public access to the site pursuant to this coastal development permit.
15. **Landscaping Plan.** PRIOR TO THE COMMENCEMENT OF CONSTRUCTION, the Permittee shall submit two copies of a revised landscape plan to the Executive Director for review and

approval. The revised landscaping plan shall be in substantial conformance with the landscaping plan submitted with the application (see page 4 of Exhibit B) as modified to provide for only drought and salt tolerant native plants in the areas located on the project site that are within 5 feet of the bluff-top edge. The plan shall provide that all native plantings be maintained in good growing and coverage conditions, including replacement plantings as necessary, so as to maintain such plantings in their approved state for the life of the project.

- 16. Extinguish Deed Restriction.** PRIOR TO ISSUANCE OF THE AMENDED COASTAL DEVELOPMENT PERMIT, the Permittee shall submit to the Executive Director for review and approval documentation demonstrating that the applicant has extinguished Deed Restriction number 075069 recorded on November 22, 1991 in the Santa Cruz County Recorder's office.

C. California Environmental Quality Act (CEQA)

Section 13096 of the California Code of Regulations requires that a specific finding be made in conjunction with coastal development permit applications showing the application to be consistent with any applicable requirements of CEQA. Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment.

On June 4, 2008, Santa Cruz County, acting as the lead agency, determined that the project qualified for a categorical exemption from the requirements of CEQA.

The Coastal Commission's review and analysis of land use proposals has been certified by the Secretary of Resources as being the functional equivalent of environmental review under CEQA. The Commission has reviewed the relevant coastal resource issues with the proposed project, and has identified appropriate and necessary modifications to address adverse impacts to such coastal resources. All public comments received to date have been addressed in the findings above. All above findings are incorporated herein in their entirety by reference.

The Commission finds that only as modified and conditioned by this permit will the proposed project avoid significant adverse effects on the environment within the meaning of CEQA. As such, there are no additional feasible alternatives nor feasible mitigation measures available which would substantially lessen any significant adverse environmental effects that approval of the proposed project, as modified, would have on the environment within the meaning of CEQA. If so modified, the proposed project will not result in any significant environmental effects for which feasible mitigation measures have not been employed consistent with CEQA Section 21080.5(d)(2)(A).

**EMERGENCY COASTAL PERMIT FOR STAIRWAY
And WAIVER**



California Coastal Commission

EMERGENCY COASTAL DEVELOPMENT PERMIT

Emergency CDP 3-11-018-G (Opal Cliffs Recreation District Stairway Foundation Repair)

Issue Date: March 18, 2011

Page 1 of 3

This emergency coastal development permit (ECDP) authorizes the Opal Cliffs Recreation District to underpin and expand the foundation of the existing pier that supports the stairway which provides access from the bluff-top to the beach at 4520 Opal Cliff Drive (as more specifically described in the Commission's ECDP file).

Based on the materials presented by the Permittee's representatives, David King and John Kasunich, it appears that the foundation of the pier that supports the stairway to the beach is being undermined by erosion of the bedrock that surrounds the base of the pier. Thus, an emergency situation (representing a sudden unexpected occurrence demanding immediate action to prevent or mitigate loss or damage to life, health, and property) has been identified at the site, and that the proposed emergency development is necessary to prevent the imminent collapse of the stairway to the beach at this location. Therefore, the Executive Director of the California Coastal Commission hereby finds that:

- (a) An emergency exists that requires action more quickly than permitted by the procedures for administrative or ordinary coastal development permits (CDPs), and that the development can and will be completed within 30 days unless otherwise specified by the terms of this ECDP; and
- (b) Public comment on the proposed emergency development has been reviewed if time allows.

The emergency development is hereby approved, subject to the conditions listed on the attached pages.

 3/18/2011

Dan Carl, Central Coastal District Manager for Peter M. Douglas, Executive Director

Conditions of Approval

1. The enclosed ECDP acceptance form must be signed by the Opal Cliffs Recreation District's designated representative and returned to the California Coastal Commission's Central Coast District Office within 15 days of the date of this permit (i.e., by April 2, 2011). This ECDP is not valid unless and until the acceptance form has been received in the Central Coast District Office.

Enclosures: (1) Emergency Coastal Development Permit Acceptance Form; (2) Regular Permit Application Form

cc: Deirdre Whalen, Monterey Bay National Marine Sanctuary

**Emergency CDP 3-11-018-G (Opal Cliffs Recreation District
Stairway Foundation Pier Underpinning)**

Issue Date: March 18, 2011

Page 2 of 3

2. Only that emergency development specifically described in this ECDP is authorized. Any additional and/or different emergency and/or other development requires separate authorization from the Executive Director and/or the Coastal Commission.
3. The emergency development authorized by this ECDP must be completed by April 29, 2011 unless extended for good cause by the Executive Director.
4. In exercising this ECDP, the Permittee agrees to hold the California Coastal Commission harmless from any liabilities for damage to public or private properties or personal injury that may result from the project.
5. This ECDP does not obviate the need to obtain necessary authorizations and/or permits from other agencies (e.g., Santa Cruz County, Monterey Bay National Marine Sanctuary, California State Lands Commission, etc.). The Permittee shall submit to the Executive Director copies of all such authorizations and/or permits upon their issuance.
6. The emergency stairway foundation pier underpinning shall be limited in scale and scope to that described on the project plans entitled "*Emergency Stairway Foundation Repair, Opal Cliffs Recreation District Beach Access, County of Santa Cruz, California*" by Haro, Kasunich and Associates, Inc. dated March 7, 2011 and dated received in the Coastal Commission's Central Coast District Office on March 16, 2011.
7. A licensed civil engineer with experience in coastal structures and processes shall oversee all construction activities and shall ensure that all emergency development is limited to the least amount necessary to abate the emergency.
8. All emergency construction activities shall limit impacts to beach recreational access and to the Monterey Bay to the maximum extent feasible including by, at a minimum, adhering to the construction requirements described on page 7 of the project plans described in #6 above.
9. The Permittee shall notify planning staff of the Coastal Commission's Central Coast District Office immediately upon completion of the foundation repair project.
10. A copy of this ECDP shall be maintained in a conspicuous location at the project site at all times, and such copy shall be available for public review on request. All persons involved with the foundation repair project shall be briefed on the content and meaning of this ECDP, and the public review requirements applicable to it.
11. A construction coordinator shall be designated to be contacted during construction should questions arise regarding the construction (in case of both regular inquiries and emergencies), and his/her contact information (i.e., address, phone numbers, etc.) including, at a minimum, a telephone number that will be made available 24 hours a day for the duration of construction, shall be conspicuously posted at the job site where such contact information is readily visible from public viewing areas, along with indication that the construction coordinator should be contacted in the case of questions regarding the construction (in case of both regular inquiries and emergencies). The



California Coastal Commission

**Emergency CDP 3-11-018-G (Opal Cliffs Recreation District
Stairway Foundation Pier Underpinning)**

Issue Date: March 18, 2011

Page 3 of 3

construction coordinator shall record the name, phone number, and nature of all complaints received regarding the construction, and shall investigate complaints and take remedial action, if necessary, within 24 hours of receipt of the complaint or inquiry.

12. The emergency development authorized by this ECDP is only temporary, and shall be removed if it is not authorized by a regular CDP. Within 60 days of the date of this permit (i.e., by May 17, 2011), the Permittee shall submit a complete application for a regular CDP to have the emergency development be considered permanent. The emergency development shall be removed in its entirety within 150 days of the date of this permit (i.e., by August 15, 2011) unless before that time the California Coastal Commission has issued a regular CDP for the development authorized by this ECDP. The deadlines in this condition may be extended for good cause by the Executive Director.

13. Failure to comply with the conditions of this approval may result in enforcement action under the provisions of Chapter 9 of the Coastal Act.

If you have any questions about the provisions of this ECDP, please contact the Commission's Central Coast District Office at 725 Front Street, Suite 300, Santa Cruz, CA 95060, (831) 427-4863.



California Coastal Commission

California Coastal Commission – Notice of Permit Waiver Effectiveness



To: Opal Cliffs Recreation District
From: Susan Craig, District Manager

Subject: Coastal Development Permit (CDP) Waiver 3-16-0680-W

Please note that CDP Waiver 3-16-0680-W was reported to the California Coastal Commission on March 8, 2017 and became effective as of that date. CDP Waiver 3-16-0680-W allows:

Authorization of the emergency response and work completed in 2011 under ECDP 3-11-018-G to repair an existing public access stairway through the construction of a new pier attached to the existing seaward-most pier to support the stairway foundation that had been partially undermined from coastal erosion, at Opal Cliffs Park, 4520 Opal Cliff Drive in Santa Cruz County.

Please be advised that CDP Waiver 3-16-0680-W only authorizes the development described in the Commission's files; any changes to the described project may require a CDP to account for the changes or a CDP for the entire project. If you have any questions, please contact Rainey Graeven in the Central Coast District Office at the address and phone number above.

Sincerely,
John Ainsworth Executive Director
Susan Craig Central Coast District Manager

By admin | March 10th, 2017 | Uncategorized | Comments Off

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EXHIBIT G

CALIFORNIA COASTAL COMMISSION

725 FRONT STREET, SUITE 300
SANTA CRUZ, CA 95060
VOICE (831) 427-4863
FAX (831) 427-4877



SENT VIA REGULAR AND CERTIFIED MAIL (7000 1670 0007 7215 7444)

October 4, 2006

David L. King, Opal Cliffs Recreation District Board Member
1840 41st Avenue
Capitola, CA 95010

Subject: Opal Cliffs Park and Beach Accessway

Dear Mr. King,

This letter summarizes our meeting on June 6, 2006 concerning alleged unpermitted development, including the use of a security guard and placement of razor wire on top of the existing gated fence at the Opal Cliffs Park and Beach Accessway, and proposed future development, including but not limited to, reconstruction of an access stairway railing, concrete pathway and seating area, installation of outdoor showers, retaining walls, new irrigation system, drainage system and sod/lawn, removal and planting of vegetation, and construction of new fencing on the sides of the existing access way. I write this letter to also give the Opal Cliffs Recreation District ("District") direction with respect to the need to submit a Coastal Development Permit (CDP) Amendment application to the Coastal Commission's Central Coast Office for the proposed changes to the existing park and accessway. Since we met in June, I have reviewed the District's project plans dated January 12, 2006 along with the technical specifications, general and supplemental conditions and bid proposal documents dated August 15, 2006 on file at the County General Services Department.

The District has hired a security guard from First Alarm Security and the guard is located at the entrance gate to the park and beach accessway to monitor who comes in and out and to ensure those entering have a key to open the gate. Also, razor wire was placed on top of the existing metal gate at the park and beach accessway, and a recent site visit confirmed that the razor wire has been removed. Thank you for removing the unpermitted razor wire. The gated fence appear to be higher than the six-foot height approved by the Commission when it issued Coastal Development Permit (CDP) P-80-393, which authorized replacing the five to six feet chain link gate and three to five feet wooden fencing surrounding the accessway with a six feet high metal gated fence and required recordation of a public access program. The cited activities, placement of a guard and installation of a higher gated fence meet the definition of "development" pursuant to Section 30106 of the Act and require a Coastal Development Permit amendment from the Commission pursuant to Section 30600. Santa Cruz County's certified Local Coastal Program (LCP) and section 30106 of the Coastal Act states that:

Development means, on land, in, or under water, the placement or erection of any solid material or structure; discharge or disposal of any dredged

material or of any gaseous, liquid, solid, or thermal waste; grading, removing, dredging, mining, extraction of any materials; change in the density or intensity of use of land, including but not limited to, subdivision pursuant to the Subdivision Map Act (commencing with Section 66410 of the Government Code), and any other division of land, including lot splits, except where the land division is brought about in connection with the purchase of such land by a public agency for public recreational use; change in the intensity and use of water, or access thereto; construction, reconstruction, demolition, or alteration of the size of any structure, including any facility of any private, public, or municipal utility; and the removal or harvesting of major vegetation other than for agricultural purposes, kelp harvesting, and timber operations which are in accordance with a timber harvesting plan submitted pursuant to the provisions of the Z'berg-Nejedly Forest Practice Act of 1973 (commencing with Section 4511).

The installation of higher gated fencing is the placement of solid material, and use of a guard causes a change in the intensity and use of water, or access thereto, is defined as development by the LCP and Section 30106 of the Coastal Act. Section 30600 (a) of the Coastal Act states that:

Except as provided in subdivision (e), and in addition to obtaining any other permit required by law from any state, regional, or local agency, any person, as defined in Section 21066, wishing to perform or undertake any development in the coastal zone, other than a facility subject to Section 25500, shall obtain a coastal development permit.

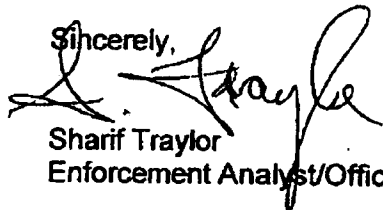
The decision to implement the cited activities without first obtaining a CDP amendment is a violation of the Coastal Act's permit requirements. Additionally, in 2005, the District increased the fee for a key to access the park and beach accessway from \$25 per person to \$100 per person annually for non-District members. It's Commission staff's position that raising the key fee by this amount may have a significant impact on restricting public access to the beach and ocean, and that the fee increase and structure should be further discussed with District staff and Commission staff. We are not supportive of barriers to maximizing public access, like use of security guards, placement of razor wire, or the installation of higher fencing. Yet, we understand the need for the District to have some type of oversight of the park, accessway and beach, which could possibly include installing better night lighting, having Park Ranger or County Sheriff patrol the area more often, etc.

At our June meeting, you stated that a majority of the District board members voted to increase the key fee as a means to generate revenue for the District to pay for the security guard. Please provide an explanation of the basis of the fee increase, as well as a long-term fee schedule, as part of the CDP amendment application. During our June meeting, I indicated that the placement of the guard and continued use of a guard would likely require an amendment of CDP P-80-393, as well as the cited proposed improvements and changes would also require a CDP amendment from the Commission. None of the proposed park and accessway improvements is authorized by CDP P-80-393 or any other CDP.

In order to address these permitting requirements, use of the guard should cease immediately, and the District should submit an amendment application (enclosed) requesting authorization to retain the existing fence, which does not conform to the fence height and design approved by CDP P-80-393. The amendment application should also request authorization for the full range of repairs and improvements currently planned by the District, and include a facilities plan that addresses security, user fee, and maintenance and management issues in a long-term, comprehensive manner. Please submit a complete CDP application to the Coastal Commission's Central Coast District Office no later than by November 3, 2006, in order to avoid possible legal enforcement action.

We look forward to working with the District to improve and develop the Park and Beach accessway for the benefit of the public using the amenities. If you have any questions concerning this letter, please contact me at the phone number or address above.

Sincerely,



Sharif Traylor
Enforcement Analyst/Officer

Enclosure

Cc:

Nancy Cave, Northern California Enforcement Supervisor
Steve Monowitz, Coastal Program Manager, Central Coast District Office
Linda Locklin, Public Access Program Manager, Central Coast District Office
Susan Craig, Coastal Planner, Central Coast District Office
Barry Samuel, Director, Santa Cruz County Parks Department

OCR D accessway and CDP notes for Dave King 5/18/2011

Coastal development permit (CDP) application P-80-393 proposed a 6-foot high chain link fence (on frontage and side yards) and a locked gate to replace the then-existing 5-to-6-foot tall chain link fence with gate on the street frontage, and 3-to-5-foot tall wooden fencing on the side yards of the project site (per P-80-393 staff report).

P-80-393 was approved in 1981, but that approval expired in 1983 (because the CDP conditions were not satisfied within two years). Thus, all development associated with application P-80-393 is considered unpermitted (6-foot-tall fence, locked gate, access program and fee, etc.). In addition, all development since then (e.g., 9-foot-tall wrought iron fencing and gate, etc.) is also considered unpermitted. Unpermitted development is a violation of the Coastal Act, and requires removal or CDP recognition to resolve.

The existing permitted baseline for review of any CDP application is what was legally in place as of February 1973 (i.e. when CDPs were first required pursuant to Proposition 20, the "Coastal Initiative"), or in other words that portion of development in place in February 1973 that was covered by all necessary permits and authorizations required when it was first installed. (The 1981 P-80-393 staff report says that in 1981 the site included a 5-to-6-foot high chain link fence with a gate on the street frontage, and 3-to-5-foot high wood fences on the side yards.)

New CDP application would be for: (1) going from existing permitted baseline to what is out there now; (2) any additional changes that OCRD may want to construct in the near term; and (3) permanently recognizing development authorized temporarily by recent emergency CDP.

Consolidated CDP application requires California Coastal Commission (CCC) and Santa Cruz County staff to agree to consolidate. Absent consolidation, OCRD would need a CDP from the County (for everything related to blufftop development) and a CDP from the CCC (everything related to the stairway). These are two separate processes, and the County CDP would be subject to appeal process to the CCC.

To apply for a consolidated CDP, need: (1) evidence of existing permitted baseline (the "existing" condition for CDP review); (2) inventory of all development (a) to be constructed in near term and (b) proposed to be recognized (the "proposed" condition for CDP analysis, consisting of everything that is different from the existing permitted baseline); and (3) a consolidation agreement.

Complete CDP application also needs information documenting and explaining: (1) OCRD-County government relationship (structure, bylaws, etc.); (2) income and expenses by category/source associated with accessway; and (3) alternatives to fee-based access.

August hearing is in Watsonville (currently schedule August 10th to 12th). Complete application would need to be in by mid-June at latest (earlier preferred) to meet internal deadlines for August CCC hearing. Local CCC hearing fallback would be December (currently scheduled for December 7th to 9th) in San Francisco, for which complete application deadline would be mid-October.

and charged with administering the Coastal Act of 1976. In making its permit and land use planning decisions, the Commission carries out Coastal Act policies, which among other goals, seek to protect and restore sensitive habitats; protect natural landforms; protect scenic landscapes and views to the sea; and provide maximum public access to the sea.

Violation

Staff has confirmed that unpermitted development, including the use of a security guard, charging a fee to access the bluff-top park and Privates Beach, installation of a locked gate and associated wrought-iron fencing, restrictive use signs, a shower, benches, landscaping, and other park improvements, all located at 4520 Opal Cliff Drive in Santa Cruz County at APN 033-151-12 (subject property), has occurred without first obtaining a coastal development permit ("CDP"). We have searched our records and have not found any CDP issued by the Commission or Santa Cruz County ("County") that authorizes the above-described development.

Pursuant to Section 30600 of the Coastal Act and Section 13.20.050 of the County's Local Coastal Program ("LCP"), any person wishing to undertake development activities in the Coastal Zone must first obtain a CDP. Development is broadly defined by Section 30106 of the Coastal Act and Section 13.10.700-D of the County's LCP as:

"Development" means, on land, in or under water, the placement or erection of any solid material or structure; discharge or disposal of any dredged material or of any gaseous, liquid, solid, or thermal waste; grading, removing, dredging, mining, or extraction of any materials; change in the density or intensity of use of land, including, but not limited to, subdivision pursuant to the Subdivision Map Act (commencing with Section 66410 of the Government Code), and any other division of land, including lot splits, except where the land division is brought about in connection with the purchase of such land by a public agency for public recreational use; change in the intensity of use of water, or of access thereto; construction, reconstruction, demolition, or alteration of the size of any structure, including any facility of any private, public, or municipal utility; and the removal or harvesting of major vegetation other than for agricultural purposes, kelp harvesting, and timber operations which are in accordance with a timber harvesting plan submitted pursuant to the provisions of the Z'berg-Nejedly Forest Practice Act of 1973 (commencing with Section 4511). (emphasis added)

The above described structures and activities, located on a coastal bluff between the first public road and the sea, are a "change in the intensity of use of water, and access thereto" or "the placement or erection of any solid material or structure". Thus, they constitute "development" as defined by the Coastal Act and the County's LCP that requires a CDP. Since no CDP was issued that authorizes the above described development, it is in violation of the Coastal Act and the County's LCP.

In addition, the Commission issued, to the Opal Cliffs Recreation District ("OCRD"), Emergency CDP No. 3-11-018-G on March 18, 2011. Said ECDP authorized the OCRD to underpin and expand the foundation of the existing pier that supports the stairway that provides access from Opal Cliff Drive and the bluff-top park to Privates Beach and the offshore surfing area. The ECDP requires OCRD to submit a regular follow-up CDP application by May 17, 2011 to authorize the subject development, or else remove the subject development. As of the date of this letter, no such application has been submitted and the subject development is extant. Failure to comply with the terms and conditions of a CDP issued by the Commission is also a violation of the Coastal Act.

We previously informed OCRD about these violations, including providing a summary of the permit history and why development here is a violation, and have suggested remedies in the past. However, as of the date of this letter, OCRD has not pursued any of the suggested remedies. There has been a complete lack of OCRD effort or engagement from the time we last met with Dave King in May of 2011 to the time we met with you and Mr. Ted Donnelly on April 22, 2015. We have been patient with OCRD, but OCRD has chosen to ignore these violations and do nothing toward their resolution.

Resolution

We would still like to work with the OCRD to resolve this matter quickly and amicably. In order to do so, we request that you do the following:

1. Immediately remove the gate and fencing that runs parallel to Opal Cliffs Drive and all restrictive use signage; allow access to the blufftop park, the stairway, and the beach without collection of a fee (without the presence of a guard); and submit photographic evidence of same to me by no later than COB July 3, 2015;
2. Call me by July 3, 2015 to discuss what, if any, development OCRD would like to pursue CDPs for on the subject property. Depending on the nature of OCRD's approach, you will then need to either submit complete CDP applications to both Santa Cruz County (for any development inland of the toe of the bluff) and the Commission (for the emergency repairs), or to the Commission alone (if the County, OCRD, and the Commission agree to a consolidated CDP process) to pursue approval of such development. Please be advised that both the Coastal Act and the County's LCP require that development be permitted *before* it is undertaken.

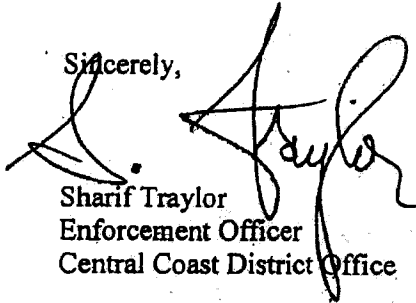
While we are hopeful that we can resolve this matter amicably, and we are willing to assist you to do so, please be advised that Chapter 9 of the Coastal Act has a number of potential remedies to address violations of the Coastal Act including the following:

Sections 30809(a) and 30810(a) of the Coastal Act provide that the Executive Director of the Coastal Commission and the Commission may issue an order to enforce the requirements of a certified LCP. Section 30811 authorizes the Commission to require restoration of a site if

unpermitted development inconsistent with the Coastal Act has occurred and is causing ongoing damage to coastal resources. Additionally, Sections 30803 and 30805 authorize the Commission to initiate litigation to seek injunctive relief and an award of civil fines in response to any violation of the Coastal Act. Section 30820(a) (1) provides that any entity who undertakes development in violation of the Coastal Act may be subject to a penalty amount that shall not exceed \$30,000 and shall not be less than \$500 per violation. Section 30820(b) provides that, in addition to any other penalties, any entity that "knowingly and intentionally" performs or undertakes any development in violation of the Coastal Act can be subject to a civil penalty of not less than \$1,000 nor more than \$15,000 per violation for each day in which the violation persists. Finally, since some of the a development activities described herein directly affect public access to the sea, the OCRD could be subject to administrative penalties pursuant to Section 30821.

Thank you for your immediate attention to this matter. If you have any questions or concerns regarding this letter, or if I can be of any assistance, please feel free to contact me at (831) 427-4881.

Sincerely,



Sharif Traylor
Enforcement Officer
Central Coast District Office

Cc: Dan Carl, Deputy Director, Central Coast District Office, CCC
Susan Craig, District Manager, Central District Office, CCC
Lisa Haage, Chief of Enforcement, CCC
Patrick Veesart, Enforcement Supervisor, Northern Districts, CCC
Ryan Moroney, Planner, Central Coast District Office, CCC
Supervisor John Leopold, Santa Cruz County
Jeff Gaffney, Director, Santa Cruz County Parks



**Jim Hart
Sheriff – Coroner
County of Santa Cruz**

June 17, 2016

N. Patrick Veasart
Enforcement Supervisor, Northern Districts
California Coastal Commission
Central Coast District Office, Ste. 300
Santa Cruz, CA 95060

RE: Opal Cliffs Recreation District
Violation File Number V-3-06-012

Dear Mr. Veasart:

The Santa Cruz County Sheriff's Office is responsible for providing public safety services in the unincorporated areas of Santa Cruz County, California. Our mission is accomplished through open communication and collaboration with community residents, governmental organizations and continuous professional development within the department.

My office has a long, well established working relationship with the Opal Cliffs Recreation District (OCRD) and is familiar with District's Opal Cliffs Park and their operations. Our relationship has evolved on the basis of our agreed goals of maximizing public beach access while ensuring the safety of the public and surrounding neighborhood and residents.

Based on our long history with the District and the park, I would like to offer the following observations regarding your letter to the District dated June 7, 2016.

I request you reconsider your demand that OCRD "...remove the fence, gate, and guard...no later than Thursday June 30, 2016." I have lived in this community my entire life and have been employed by the Sheriff's Office for 28 years and I cannot recall there ever not having been a fence and gate at the park.

Aside from the fact that I have never seen a security guard at the gate, removal of the physical fence and gate from the park will create an immediate and continuing dangerous nuisance that will facilitate increased criminal activity, parking and traffic control

5200 Soquel Avenue • Santa Cruz, California 95062 • 831-454-7618 • fax 831-454-7608

problems, reduce public safety in the adjacent neighborhood and increase calls for service requiring Sheriff Office resources to undertake supervision, enforcement and intervention of the inevitable nighttime use of the park by persons involved with illegal activity.

In considering Opal Cliffs Park, it is unlike the larger Pleasure Point / East Cliff Drive area for a number of reasons, not the least of which are the open undeveloped public street nature of East Cliff Drive which allows deputies to effectively patrol. Opal Cliffs Park, on the other hand, is located within a densely populated residential neighborhood without good sight lines for effective observation from patrol staff. Coupled with the cliffs, it is more akin to Sunny Cove Beach, which has become a high crime area which the County has been unable to dedicate sufficient resources for collection of trash and upkeep.

In the last 12 months (June 1, 2015 through May 31, 2016) my office managed 605 calls for service at Sunny Cove Beach for a wide variety of criminal activity including drug dealing, drug and alcohol use/abuse, fights, assault and battery, public urination and defecation, speeding, parking problems, sex crimes and fireworks. Much like the Opal Cliffs Park, Sunny Cove Beach is surrounded by a beautiful neighborhood and the beach itself is quite small. The crime occurring in the Sunny Cove Beach area is causing serious problems for homeowners, with many residents stating they have had enough and are considering selling their homes and moving from the beach area. In contrast, during the same time period my Deputy Sheriffs responded to nine calls for service at the Opal Cliffs Park and surrounding area.

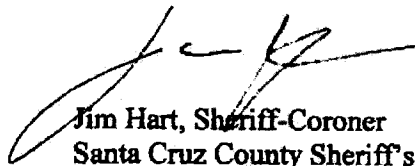
It is a matter of fact that OCRD and the Sheriff's Office have worked for years to provide services related to providing public access to the beach, which is accessed by a staircase adjacent to a steep cliff edge, while attempting to ensure that nighttime criminal activities are not allowed to be unintentionally facilitated. I believe that the fence and gate are critical to ensuring the future success of our efforts.

While there may be compelling Coastal Act reasons for updating permits related to OCRD, I don't believe there is a reasonable justification to remove existing facilities onsite without first ensuring that suitable public safety amenities are planned and approved for their place.

I urge you to withdraw your demand that OCRD remove vital public safety facilities, and ask that you collaborate with OCRD regarding your permit concerns. In that regard, the Sheriff's Office stands ready to assist your agency and OCRD to ensure your efforts proceed as quickly and efficiently as possible.

Please do not hesitate to contact me if you would like to discuss this matter further.

Sincerely,



Jim Hart, Sheriff-Coroner
Santa Cruz County Sheriff's Office

CALIFORNIA COASTAL COMMISSION

CENTRAL COAST DISTRICT OFFICE
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August 12, 2016

Mark Massara, Attorney at Law; OCRD representative
1642 Great Highway
San Francisco, CA 94122

**Re: Violation File Number V-3-06-012 – Opal Cliffs Recreation District
("OCRD"); Privates Beach**

Dear Mr. Massara:

When we met with OCRD (Ted Donnelly, Stuart Gasner, and Mark Massara) on July 7, 2016 regarding the above case, we again discussed past history and how best to resolve the outstanding Coastal Act/LCP violations that are the subject of this enforcement case. Obviously, the easiest and most direct way to resolve this matter is for OCRD to remove the fence, gate, and guards, cease charging illegal beach access fees, and apply for a coastal development permit ("CDP") to authorize the remaining development onsite. That was our initial enforcement direction to OCRD, which was required to be accomplished by June 30, 2016. OCRD did not do so, and thus missed the enforcement deadline. Since OCRD declined this path, and in the spirit of active problem-solving to open this public accessway to unencumbered public use, we also discussed an alternative resolution path.

That alternate path would be for OCRD to apply for an "after-the-fact" CDP seeking authorization for all development that has occurred on the subject property since CDP requirements commenced in 1973, including the fence/gate/guards/fees and authorization for repairs to the stairs, now unpermitted, that occurred pursuant to temporary emergency authorization. While we strongly suggested that OCRD apply for a consolidated CDP from the Commission in such scenario, OCRD made it clear that they prefer to seek separate CDPs from both the County and the Commission despite the additional staff time and expense that would be involved.

At the July 7, 2016 meeting, we indicated that if OCRD agreed to resolve this matter through such a CDP process, the unpermitted fence and gate could remain in place while that process plays out, but only if the gate was unlocked during daylight hours and the public were allowed access without paying a fee. We felt that this was a good faith gesture that would not require immediate removal of the unpermitted fence and gate that would be appropriate provided we were all working together on the CDP process. At that time, OCRD specifically asked about implementing a new \$5 daily fee program

EXHIBIT H

and we responded, quite clearly, that such a fee program would itself constitute new development under the Coastal Act and the LCP and would require a CDP. Moreover, that absent that permit, this would be a new instance of unpermitted development which would be an additional violation under the Coastal Act and the LCP, and we did not support such option. While there was quite a bit of discussion about this issue and your disagreement was evident, our direction to OCRD was clear: we did not then, and do not now, support implementation of a fee program without coastal authorization – as required by both the Coastal Act and the LCP. Such a new unpermitted fee program is contrary to our attempts to resolve the violations at the site, and to reach a legal resolution.

You agreed to raise the matters discussed on July 7th at the next OCRD board meeting, and to get back to me regarding how the board intended to proceed. When I did not hear back from you I left you two phone messages (on July 12th and 13th) asking that you call me. Neither you nor OCRD returned my phone calls.

Instead we heard from the press and the public that the OCRD met on July 11, 2016 and decided, in closed session, to implement a new \$5 daily beach access fee without CDP authorization. We now understand that the new fee is being charged and that the \$100 annual fee program is also still in place. The unpermitted fence/gate/guard is still in place and the public is still being denied public access to a public park and a public beach by a public agency - unless they are willing to pay a fee. We were and are surprised and disappointed that OCRD dismissed our alternative resolution offer and instead unilaterally decided to actually commit *more* Coastal Act/LCP violations as opposed to resolving the core issues.

As you know, and particularly in light of our prior letters, conversations and meetings, this new unpermitted development constitutes a "knowing and intentional" violation of the Coastal Act and the County's LCP. These violations are subject to enhanced penalties pursuant to Section 30820(b) and administrative penalties pursuant to Section 30821.

On July 22, 2016, at a time when neither you nor anyone from OCRD had yet returned my calls, you instead sent a letter to Rainey Graeven (Commission staff) with materials related to OCRD's application to the County related to stair repairs, and followed up with an application to the Commission for the same thing. Not only does this not resolve the violations at the site, but it is a puzzling next step given the fact that OCRD missed the original removal deadline, did not talk to us at all following our July 7th meeting, and did not pursue any form of the alternative resolution path we had offered.

Despite OCRD's troubling tactics, and again in an attempt to resolve this matter consensually, we met again on August 8, 2016 with the OCRD (Mark Massara and John Griffith) and the County (Susan Mauriello, Kathy Prevesich, Melodye Serino, and Jeff Gaffney). At that meeting we learned that OCRD still refuses to suspend its illegal fee program, and has apparently submitted an application to the County seeking to

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authorize its new \$5 daily fee program. Surprisingly, this application does not include provisions to resolve the other violations at the site.

At the August 8th meeting, in order to try and resolve the violations on the site without more formal enforcement actions, we again suggested that OCRD pursue the alternative resolution path we had previously offered by suspending its fee program and applying for a consolidated permit seeking to authorize all of the unpermitted development on site including the fence/gate/guards/fees and other development that has occurred without benefit of a CDP. A consolidated permit application to the Commission would allow for faster resolution without permit application fees (i.e., public agencies are not charged for Commission CDP applications).

However, it is crystal clear that OCRD prefers instead to keep illegally charging the public to access the public beach and to apply to the County and pay an application fee (which OCRD indicated was \$10,000) even though any County action will almost certainly be appealed to the Commission and end up being resolved at the Commission level. OCRD also reiterated that it will apply directly to the Commission for the work on the stairs, as discussed above.

Since OCRD flatly declines to resolve the violations and to maximize public access as required by the Coastal Act and the LCP, and because OCRD also flatly declines to discontinue its newly minted and unpermitted daily fee collection program, we are weighing options as regards enforcement action, including administrative penalties. As we discussed at the August 8th meeting, we would very much like to work consensually towards resolution, but it is clear that OCRD has no intention of discontinuing the unpermitted fees voluntarily. As a result, the Commission's options become more limited, and are necessarily focused on formal enforcement proceedings and remedies as opposed to administrative resolution.

Misstatement of Facts

The unpermitted gate, guards, and beach access fees at Privates Beach have attracted a lot of media attention. Historical facts have continually been misstated by you and OCRD. This is confusing, misleading, and not very helpful in our efforts to resolve this matter. We would like to set the record straight:

The Coastal Commission has taken only one CDP action here: In 1981 the Commission approved a CDP authorizing a 6-foot high chain-link fence, with a gate, for public safety purposes. That action did not authorize fees. Fees were not discussed at the hearing or in the staff report.

That permit (CDP No. P-80-393) was conditioned to require an access program to be submitted for review and approval of the Executive Director prior to the permit being issued. The access program was then to be recorded as a covenant running with the land. OCRD did not submit the required access plan in a timely manner, the permit was not issued, and it subsequently expired.

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If the OCRD had complied with the conditions of its permit in timely manner, as they agreed to do, the permit would have issued before it expired. Since they did not, the permit was not issued.

However, any issues regarding whether CDP No. P-80-393 authorized a fee program are irrelevant because sometime in the late 1990s OCRD removed the fence and gate that was the subject of that permit and replaced¹ it with a completely different nine-foot-high wrought iron fence and gate topped with razor wire. They also began hiring guards to turn the public away unless they had paid a fee – a new scheme undertaken without a CDP.

In addition, at some point, OCRD unilaterally raised the annual access fee they were collecting from \$20 to \$100 without a CDP. As noted above, OCRD has now implemented a new \$5 daily fee, again without coastal authorization.

Since the fence approved by the Commission in 1981 is no longer extant, CDP No. P-80-393 is no longer relevant to the development at the site. The deed restriction recorded under the auspices of that permit is no longer in effect. As we have repeatedly discussed with you and OCRD, there is a duration clause in the subject deed restriction that renders it moot of its own accord if the development it authorized is removed, as occurred (again, without permits). This is also explained in detail in our June 7, 2016 letter.

As you know, the OCRD applied for an amendment to CDP No. P-80-393 to authorize, after-the-fact, the 9-foot-high fence/gate and it was scheduled for hearing in 2009. In fact, the 2009 recommendation was pulled from the agenda because of questions raised at that time regarding the 1981 base permit's validity. Staff subsequently further investigated and found that the permit had expired and could not be amended. The OCRD was made aware of the status of the permit in a written memo provided to OCRD in 2011.

That 2011 memo laid out the options available to OCRD to resolve the violations; essentially the same options available to them today. Despite being notified in 2011, OCRD did not pursue any such options. In fact, OCRD's recent efforts have only served to add more violations to the ledger.

To be clear, the Coastal Commission has not ever approved a fee program at Privates Beach. The public has never had the opportunity to comment on a fee program at a public hearing. Since 2011 when it became evident that the CDP had expired, we have consistently communicated to OCRD that charging beach access fees is in violation of the Coastal Act and the LCP. In response, OCRD at first did nothing, then, upon being re-informed in 2015, pursued a resolution that relied on the expired CDP and the 2009

¹ Pursuant to Section 13252(b) of the Commission's regulations (California Code of Regulations, Title 14, Division 5.5) replacement of the 6-foot chain-link fence with a 9-foot wrought iron fence is not considered "repair and maintenance" but instead constitutes a replacement structure that requires a coastal development permit.

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amendment hearing, then, when asked to remove the unpermitted development by June 30, 2016 did not do so, and instead unilaterally started charging additional fees without a CDP.

Public Access Violation

As we previously stated in our June 7, 2016 letter, the placement of the unpermitted fence/gate/fee/guard directly interferes with the public's access to, and use of, the publicly funded accessway and the public beach below. In addition, the property owned by OCRD is a public bluff-top park that provides opportunities for the public to enjoy views of Monterey Bay, whale watch, and other recreation opportunities.

The placement of the unpermitted fence/gate/fee/guard directly interferes with public access to a public park and public recreation opportunities, including the sandy beach. The unpermitted development blocks significant and important public access in an area where there are no other alternatives for those who cannot or will not pay the unpermitted fee. In short, the subject unpermitted development activities are leading directly to significant public access impacts inconsistent with the requirements of the public access requirements of the Coastal Act and the County's LCP.

As you were previously informed, in cases involving violation(s) of the public access provisions of the Coastal Act, which is the case here, Section 30821 authorizes the Commission to impose administrative civil penalties in an amount of up to \$11,250 per day for each violation.

In our June 7, 2016 letter, we raised concerns about access and asked that OCRD remove the fence/gate/guard, cease from charging access fees, and submit a complete CDP application to authorize remaining unpermitted development on the subject property (i.e., stair repairs and certain park improvements) by June 30, 2016. We offered to extend that deadline if OCRD would agree to open the gate during daylight hours and allow free public access. OCRD would not agree to those terms and the deadline for removal of the fence/gate/guard and fee has passed.

At our July 7, 2016 meeting, we suggested that we could work out an agreement that OCRD could keep the fence and gate in place while a CDP application is processed if the OCRD would agree to open the gate and allow free public access during daylight hours. OCRD again refused to agree to this compromise, and instead unilaterally implemented a new fee program with no permits, without even informing Commission staff of their intentions.

When we met on August 8, 2016, the OCRD again refused to open the gate and allow free public access.

Please be advised that we have determined that the administrative penalties provisions under Section 30821 are applicable in this case. We gave the OCRD notice of Section 30821 in our June 7, 2016 and the 30 day "cure period" has passed. We note that potential daily penalties are accruing.

EXHIBIT II

Anti-Discrimination Laws

In addition to the Coastal Act provisions cited above, the following Government Code Sections appear to be applicable here:

54090. As used in this article "public beach" means any beach area used for recreational purposes which is owned, operated or controlled by the State, any state agency or any local agency.

54091. Any city, county, or other local agency that owns, operates, or controls any public beach shall allow the use of that public beach by all persons regardless of ancestry, residence, or any characteristic listed or defined in Section 11135. Nonresidents of the city, county, or other local agency shall be permitted to use that public beach upon the same terms and conditions as are residents of the city, county, or local agency.

54092. Any city, county, or other local agency that allows any property owned, operated, or controlled by it to be used as a means of access to any public beach shall allow free access over that property to all persons regardless of ancestry, residence, or any characteristic listed or defined in Section 11135.

OCRD is a public agency that controls a public park that is the means by which the public accesses a public beach. In addition, OCRD uses public funds for park improvements, including using some \$220,000 from the California Clean Water, Clean Air, Safe Neighborhood Parks, and Coastal Protection Act of 2002 - allocated in FY 2002/2003. The \$100 annual fee, and now the \$5 daily fee, at Privates Beach appear to discriminate against people of modest means who cannot afford such fees merely to access the public beach. Both the California Constitution and the California Coastal Act guarantee the public's (all of the public's) right to access the beach. As such, OCRD's fees appear to violate Government Code Section 54092. In addition, if residents living in the district are treated differently than people who live outside of the district, which appears to be the case here, that may also be a violation of Government Code Section 54091.

In closing, let me say that we are disappointed that OCRD continues to illegally restrict public access to the beach despite ample notice that they are doing so and despite our attempts to resolve this matter, including our offer to let the unpermitted gate and fence remain while we work together to bring a CDP application to hearing. We have tried repeatedly to work with the district to bring them into compliance with the Coastal Act and the LCP, but OCRD has declined to do so or to work with the Commission to find a solution that protects public access and complies with the Coastal Act and LCP.

Instead, the long history of undertaking unpermitted development impacting public access has been supplemented by more recent actions and new unpermitted development that impacts public access. While we are sympathetic in general about

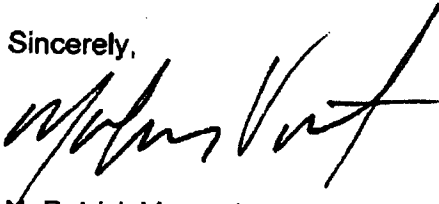
EXHIBIT II

policing issues at public beaches and lack of revenue to maintain parks in California, those issues are statewide, and do not obviate the need to comply with the Coastal Act and LCP.

We urge OCRD to work with us to comply with the law and allow public access to this important public area.

If you have any questions, please feel free to call me at: 831.427.4863.

Sincerely,



M. Patrick Veasart
Enforcement Supervisor
Northern Districts

cc: Dan Carl, Deputy Director
Lisa Haage, Chief of Enforcement
Susan Craig, Central Coast District Manager
Ryan Moroney, Central Coast District Supervisor
Sharif Traylor, Enforcement Analyst
Matt Christen, Staff Counsel
John Leopold, Santa Cruz County First District Supervisor
Susan Mauriello, Santa Cruz County Chief Administrative Officer
Jeff Gaffney, Santa Cruz County Parks Director

EXHIBIT H

CALIFORNIA COASTAL COMMISSION

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May 17, 2017

Mark Massara, Attorney at Law
1642 Great Highway
San Francisco, CA 94122

Re: Violation File Number V-3-06-012 – Opal Cliffs Recreation District

Dear Mr. Massara:

Thank you for your letter dated May 16, 2017. We appreciate the Opal Cliffs Recreation District's (your client's) willingness to resolve the above matter through the County's coastal development permitting process and we appreciate your client's proposal to open the gate at Opal Cliffs Park for free public access while the County's permitting process plays out. However, your client apparently proposes to open the gate at Opal Cliffs Park from 9:00 am until sunset. As you know, when access is limited to daylight hours, the Commission interprets that to be one hour before sunrise to one hour after sunset. Such hours allow for early risers and sunset seekers to be accommodated, including for surfing as is important at this accessway. Thus, we think it more appropriate that the gate be opened daily for these daylight hours until such time as permanent hours are established through the permitting process. Also, given the imposing nature of the unpermitted gate and fence, we believe that obvious signage will be necessary to inform the public about the daylight access.

In short, we support the gate being open during daylight hours with clear and visible signage while your client completes the coastal development permit process. We appreciate your client's willingness to open and sign the accessway in this way, and believe it is a good faith overture that is constructive at helping to resolve issues until such time as a permanent solution is approved.

Please confirm that the accessway opening will be modified in this way. Thank you and your client for your cooperation in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "N. Patrick Veasart".

N. Patrick Veasart
Enforcement Supervisor
Northern Districts

EXHIBIT H

cc: Dan Carl, Deputy Director
Lisa Haage, Chief of Enforcement
Susan Craig, Central Coast District Manager
Ryan Moroney, Planning Supervisor
Kevin Kahn, Planning Supervisor
Rainey Graeven, Coastal Analyst
Sharif Traylor, Enforcement Analyst
Alex Helperin, Senior Staff Counsel
Annette Olson, County of Santa Cruz

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**August 3, 2017**

Annette Olson
Santa Cruz County Planning
701 Ocean Street
Santa Cruz, CA 95060

Subject: Application No. 161195 (OCRD Public Accessway/ Park Improvements)

Dear Ms. Olson:

Thank you for the opportunity to comment on the above-referenced coastal development permit (CDP) application submitted by the Opal Cliffs Recreation District for public accessway/park improvements at Opal Cliffs Park. We appreciate the County's efforts to process the application, but we note it remains unclear exactly what is being proposed. Without a clear understanding of the proposed elements of the application, it is difficult to evaluate the project's consistency with the LCP and the Coastal Act's public access and recreation provisions, and it is difficult for the public to effectively participate. In addition, we have been under the impression that this application represented OCRD's effort to resolve past permitting issues at the site. The ambiguity of the current project description makes it difficult to discern whether or not the issues, including open violations, would be resolved if the subject application were approved. Thus, while we appreciate all that OCRD and the County are doing to move the subject application forward, we would suggest that the project description be further refined before the County proceeds with additional review, including before bringing this item to a hearing.

As identified in our previous comment letters, we continue to believe that the project description needs to include a request for after-the-fact approval of all unpermitted development installed to date in order to resolve the open violations, as well as a request for any new proposed development. OCRD's most recent submittal, however, does not include a project description, and the site plan does not distinguish between existing development at the site that has been previously authorized by a CDP and development that has not.¹ Regardless, we believe that there is existing development at the site that does not qualify for an exemption and that has not been authorized by a CDP to date including: 1) the nine foot-tall wrought iron fence, gate, and lock mechanism along the property's Opal Cliff Drive frontage; 2) the guard/ambassador program; 3) and the fee program. In addition, the recently installed parking/informational signs also need to

¹ You indicated that the County's administrative record shows that Glenda Hill, a former principal planner, decided that the Prop. 40 improvements (i.e., some of the development identified in this letter below) did not require a CDP because it fell under a "Park Exemption." However, we can find no evidence of any exemption, and it does not appear that the development involved would qualify for same.

Annette Olson
Application No. 161195 (OCRD Public Accessway/Park Improvements)
August 3, 2017
Page 2

be authorized by a CDP, and need to be part of the proposed project. It is also worth noting that all of the development highlighted below was part of OCRD's previous application to the Commission back in 2009, evincing a mutual understanding (i.e., among the Commission, OCRD, and the County) that such development needed to be recognized by a CDP. Please ask OCRD to refine their project description before proceeding. At a minimum, we believe that the application needs to include the following:

- After-the-fact authorization of the nine-foot-tall wrought iron fence, gate, and lock mechanism along the property's Opal Cliff Drive frontage
- After-the-fact authorization of all improvements installed with Proposition 40 funding, including: replacement of existing concrete pathway with new colored concrete pavers pathway, installation of stone retaining walls, and landscaping improvements (including installation of a mixture of drought-tolerant native and noninvasive exotic plants in the park area located on the blufftop portion of the property, along with associated irrigation)
- After-the-fact authorization of the guard/ambassador program
- After-the-fact authorization of the underlying fee program (\$100 keycard for annual unlimited access) and currently proposed free public access daily from Memorial Day through Labor Day
- Parking signs (both the ADA and standard parking signs), both after the fact as well as any additional signage proposed

Absent the above clarification, it will be unclear what project is being evaluated, and to what extent it is designed to resolve longstanding permitting and violation issues associated with Opal Cliffs Park. Please ask OCRD to refine its project description accordingly before the County proceeds with further review, including before bringing this item to a hearing. Again, we continue to appreciate OCRD's and the County's efforts throughout this application process. Please let me know if you have any questions regarding the above comments.

Sincerely,



Rainey Graeven
Coastal Planner
Central Coast District Office

cc: OCRD

CALIFORNIA COASTAL COMMISSION

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September 25, 2017

Opal Cliffs Recreation District
c/o Mark Massara, Attorney at Law
1642 Great Highway
San Francisco, CA 94122

Re: Violation File Number V-3-06-012 - Opal Cliffs Recreation District ("OCRD")

Dear Mr. Massara:

We understand that, as of Labor Day, the OCRD is again requiring the public to pay a fee to access the beach at Opal Cliffs Park. We also understand that the OCRD did not charge an access fee during the summer (as we discussed in the spring) and, as a result, public beach use greatly increased and there were very few problems associated with that use.

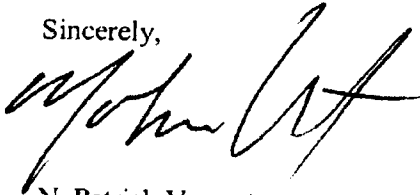
While we appreciate the OCRD not charging a fee during the summer months, we note that the fee program, guard, gate, and fence are still unpermitted and continue to restrict public access to the beach. The OCRD has, ostensibly, been engaged in Santa Cruz County's coastal development permitting ("CDP") process now for over a year, but the violations remain and they are daily adversely affecting public access. We have been patient while the OCRD seeks to correct these issues through the County's CDP process, but we are concerned that resolution of these violations through that process has not proven to be effective or timely. We are also concerned that the project, as proposed by the OCRD, suffers from what appear to be fatal inconsistencies with the public access and recreation policies of the Coastal Act and the LCP, and that there is no assurance that the violations identified above will be resolved at the end of this permitting process. We asked that the OCRD keep the gate unlocked and not charge a beach access fee while the permitting process plays out, but the district has apparently decided to relock the gate and to reinstate the unpermitted fee program.

I am, therefore, writing today to inform you of two things: The first is that your client continues to operate a public park with an unpermitted fee program that includes unpermitted guards, gate, and fence - as has been exhaustively discussed in previous correspondence. These knowing and intentional violations of the Coastal Act and the LCP are causing significant adverse public recreational access impacts. We have asked, repeatedly, that your client suspend the fee program until such time as it is properly authorized, but as of today OCRD continues to implement the fee program in defiance of this simple request. And second, given that the gate is again locked and the fee program is again being implemented, we feel that we have lost the flexibility to wait for the permitting process to play out while the public is being locked out of the beach at Opal Cliffs Park. Please be advised that unless the OCRD immediately unlocks the gate and suspends the fee

program, until such time as the violations are resolved, we cannot wait any longer for the County's permitting process to conclude and instead intend to move forward with formal enforcement action as described in Chapter 9 of the Coastal Act and our previous correspondence. Please contact me by **October 5, 2017** to let me know if the OCRD will agree to suspend the fee program until such time as the violations are resolved.

Thank you for your time and attention to this matter. If you have any questions, you are always welcome to call me at: (831) 427-4885.

Sincerely,



N. Patrick Veasart
Enforcement Supervisor
Northern Districts

cc: Dan Carl, Deputy Director
Lisa Haage, Chief of Enforcement
Susan Craig, Central Coast District Manager
Ryan Moroney, Planning Supervisor
Kevin Kahn, Planning Supervisor
Rainey Graeven, Coastal Analyst
Sharif Traylor, Enforcement Analyst
Alex Helperin, Senior Staff Counsel
Annette Olson, County of Santa Cruz

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October 16, 2017

Kathy Previsich, Planning Director
Santa Cruz County Planning Department
701 Ocean Street, 4th Floor
Santa Cruz, CA 95060

Re: CCC Violation File Number V-3-06-012 – Opal Cliffs Recreation District

Dear Ms. Previsich:

I am writing to the County of Santa Cruz ("County") in reference to unpermitted development occurring at Opal Cliffs Park, 4520 Opal Cliffs Drive (APN 033-151-12-000), owned by the Opal Cliffs Recreation District ("District" or "OCRD"). The subject unpermitted development includes, but is not limited to:

- nine-foot-tall wrought iron fence, locking gate, and restrictive signage;
- security guard/gate ambassador;
- beach access fee program (\$100 keycard for annual access; \$5 daily access);
- various other improvements including concrete and concrete paver pathway, stone retaining walls, and landscaping and irrigation improvements – some or all of which were paid for with Proposition 40 funding.

The subject unpermitted development has been placed in violation of the certified Santa Cruz County Local Coastal Program ("LCP") and the Coastal Act including the public access and recreation provisions of each for decades. The unpermitted fence, gate, guard, and fee program have been placed in order to restrict public access to a public park and beach to those who can pay a public access fee. We have been coordinating with you and your staff regarding these issues for many years. Since Opal Cliffs Park is located within the County's coastal development permit ("CDP") jurisdiction subject to the County's LCP, we are writing today to formally request that the County enforce its LCP. We request that the County direct the District to remove the fence, gate, guards, and fee program and restore free public access at Opal Cliffs Park. Alternatively, the County could request that the Commission assume primary responsibility for enforcement of this case.

Background

As you know, there is an extensive permitting and violation history related to the OCRD property. Some of that history is summarized here:

On April 13, 1981, the Commission approved CDP No. P-80-393, which authorized replacement of then existing fences (of variable height) with a uniform six-foot-high chain-link fence on three sides of the property. The Commission's staff report for the CDP acknowledges the existence of a locked gate restricting public access, but indicates that keys to the gate are readily available. The staff report goes on to state that, *"Some form of access control does appear desirable due to unstable bluffs and small pocket beaches with low capacity for public use, although access must be provided to maintain consistency with the Coastal Act."* No discussion of fees for access is in the staff report and the Commission did not consider or authorize fees or security guards in its action. The Commission's action recognized that the fence and gate provide a public safety function, in which the gate would provide access control but would not act as an access impediment, such as is the case with fee-based access.

Sometime in the 1980's the OCRD built the fence and gate that were the subject of CDP No. P-80-393, despite that CDP having not yet been issued, and began restricting public access. Sometime in or around 1984/1985, the OCRD began selling gate keys for \$20 (charging access fees).

In the late 1990s, the OCRD removed the fence and gate that were the subject of CDP No. P-80-393 and replaced it with a new nine-foot-high wrought iron fence and gate topped with razor wire; the same fence and gate that remains in place today (minus the razor wire – see below). This was undertaken without a CDP, in violation of the terms and conditions of CDP No. P-80-393, which the OCRD had agreed to comply with, and in violation of the Coastal Act and the LCP. In addition, at some point, the OCRD raised the annual "key fee" from \$20 to \$100. As stated above, the Commission's action on CDP No. P-80-393 did not include approval of a fee program to obtain access to Opal Cliffs Park or to the beach. In addition, the fee increase was implemented without a CDP or any discussion with Commission staff regarding requiring fees when the CDP had not authorized same, or even why the fees (including any increases) were needed or how such fees (and increases) affect the public's ability to access the beach.

In April 2006, Commission staff opened Violation File No. V-3-06-012 for the unpermitted nine-foot-tall fence with razor wire and gate, the placement of a security guard, and for the "key fee" program. Commission staff met with the OCRD in June 2006 to discuss these violations and, on October 4, 2006, Commission staff sent the OCRD an enforcement letter memorializing that meeting, asking the OCRD to cease from using a security guard, and asking OCRD to submit a CDP amendment application to request after-the-fact authorization for the new fence and other improvements contemplated by the OCRD at that time. In addition, the letter asked that the amendment application include a facilities plan to address security and the fee program and noted that the razor wire had been removed.

In 2007 the OCRD applied for an amendment to CDP No. P-80-393 (Amendment No. P-80-393-A1) to authorize, after-the-fact, the nine-foot-tall wrought iron fence and gate (and some new additional fencing), fee program changes, use of a security guard, and

other development, including landscaping and irrigation, showers, water faucet upgrade, new stair railings, and a concrete pathway. The application was filed on August 2, 2008 and was set for a hearing on January 7, 2009. Prior to the commencement of the hearing, the Executive Director determined that the staff report analysis was missing important background and context regarding the nature of the violations and whether the original CDP was still valid (or if it had expired) and thus whether a CDP amendment was properly before the Commission, and the Executive Director pulled the item from the agenda. Commission staff subsequently began research on these issues. During the course of staff's review of CDP No. P-80-393, and the proposed amendment application (No. P-80-393-A1), it became clear that the original CDP conditions were not met within the requisite timeframe and that the CDP had actually expired in 1983. As a result: (1) the development identified in CDP No. P-80-393 was (and is) not authorized; and (2) there was (and is) no CDP to amend. Thus, the OCRD's amendment application was (and is) moot.

On March 18, 2011, and in response to an emergency request by the OCRD, the Executive Director issued Emergency CDP ("ECDP") No. 3-11-018-G authorizing the OCRD to repair the existing public beach access stairway at Opal Cliffs Park through the construction of a new pier to support the stairway foundation. The ECDP required follow-up authorization by May 17, 2011, but the District did not pursue such authorization until over five years later in 2016. Finally, on March 8, 2017, a CDP waiver was approved by the Commission formally authorizing the work undertaken pursuant to ECDP No. 3-11-018-G.

On May 18, 2011, Commission staff met with Dave King, representing the OCRD. At that meeting, Mr. King was presented with a memo entitled "OCRD accessway and CDP notes for Dave King 5/18/2011". At that meeting, the CDP history was discussed, including the expiration of CDP No. P-80-393. In addition, the OCRD was advised to apply for a consolidated (Commission and Santa Cruz County) CDP for all development or changes from the baseline condition of the subject property (i.e., the state of the property as of February 1973), any additional development that the OCRD might want to undertake in the near term, and permanent authorization for the development undertaken pursuant to ECDP No. 3-11-018-G. That memo made it clear that the fence, gate, fee, guard, and related development were all unpermitted, and that the OCRD was responsible for rectifying those violations as soon as possible. Despite Mr. King's assurances that the OCRD would move to promptly resolve such issues, the OCRD chose instead to do nothing, and we did not hear from the District for some years after that.

Ultimately, Commission staff began receiving complaints from the public about how the unpermitted fence, gate, fee, and guard were precluding their ability to access the beach, and complaints about the lack of resolution of these decades' old issues. It became clear to Commission staff at that time that the District had not done anything in response to the May 18, 2011 meeting and memo. Staff contacted the OCRD, and on April 22, 2015, Commission staff again met with the District (represented this time by John Griffith and Ted Donnely). The May 18, 2011 memo was again discussed. Mr.

Griffith and Mr. Donnelly were informed that the OCRD would need to remove the unpermitted gate and fence, and cease from charging fees and using guards to enforce same for access to the Park and the beach, absent a CDP allowing all of that. In addition, they were notified that the OCRD would have to secure the required follow-up regular CDP to authorize the work done under ECDP No. 3-11-018-G. The OCRD indicated that they would again like to pursue an after-the-fact CDP for the existing fence/gate and the fee program and staff's response was that such fee-based access is antithetical to the LCP and the Coastal Act at this location, and that staff did not support such a fee access program at this location. Alternatives to fee-based access were discussed, including the possibility of the County Parks Department taking over management and opening the access as a free accessway comparable to its other publicly-funded beach access stairways. The District was also informed that a new violation file had been opened for the unpermitted development on the subject property including the fence, gate, fee, guard, and related development.

On June 18, 2015, Commission enforcement staff sent another letter to the OCRD regarding these longstanding violations on the subject property, again summarizing the violations at the site including: use of a security guard; charging a fee to gain access to the park and the beach; placement of a locked gate and nine-foot-tall wrought iron fence; placement of restrictive signage; installation of a shower, benches, landscaping, and other park improvements; and failure to submit a follow-up CDP application for emergency work undertaken pursuant to ECDP No. 3-11-018-G. The District was also informed that resolution of the violations would require: removal of the gate and fencing and all restrictive use signage; allowing free access to the park, the stairway, and the beach without collection of a fee and without the presence of a guard; and a CDP to authorize other public access development (i.e., separate from the fence, gate, fee program, guard, and signs that needed to be removed) that had been undertaken on the subject property, including landscaping and other improvements, and upgrading of the beach stairway's foundation.

On June 30, 2015 Commission staff met with Mark Massara, an attorney representing the District, to discuss the June 18, 2015 letter, the OCRD's violation and permitting history, and resolution of outstanding LCP and Coastal Act issues related to the OCRD property. All of the above history, issues and required resolution were discussed, but Mr. Massara continued to maintain that the District, though willing to consider a reduction in fees, was not willing to pursue anything other than approvals that would sanction the ongoing fee program, including via the fence, gate, and guards.

At the June 30, 2015 meeting, and subsequent to that meeting, Mr. Massara has repeatedly opined that the fee program was authorized by CDP No. P-80-393, including because the District had recorded an access program identifying fees (\$20 annually) in 1991; despite being informed that the CDP had expired in 1983 before said access program was recorded in 1991, some 8 years later, rendering the access program moot. Mr. Massara was also informed that the Commission's action in CDP No. P-80-393 never discussed nor contemplated beach access fees, so an access program with fees is inconsistent with the Commission's CDP action in that case. In other words, the

District's recorded access program was never valid, and the recordation of such a program after the CDP had expired did not and cannot retroactively resurrect an expired CDP. Even if the CDP were not expired (which it is), because the development that was authorized by the CDP at that time has long since been replaced and is no longer extant, the access program by its own terms is also no longer in effect (i.e., the recorded program includes sunset language to this effect).

Thus, in the recent past, including more actively since 2015, the Commission has had an ongoing dialogue with the District regarding these matters including through correspondence, telephone conversations and meetings with District representatives. This has prompted the District to implement a daily \$5 access fee (however, without CDP authorization) and to take formal steps to pursue after-the-fact authorization for some of the unpermitted development (reference County CDP Application No. 161195). The District also agreed to open the gate during daylight hours for free public access between Memorial Day and Labor Day. By all accounts, the lack of an access fee led to increased use of the park and beach by the public with relatively few problems associated with that increased use. However, the District again locked the gate to free public access following Labor Day in violation of the public access and recreation provisions of the Coastal Act and the LCP - notwithstanding Commission staff direction to the District keep the gate open and allow free public access while the permitting processes is completed.

After hearing that the District has again locked the gate and is again charging a public access fee, we wrote a letter to the OCRD (via Mr. Massara), dated September 25, 2017, in which we informed the District that, because of the ongoing public access impacts, unless they agree to suspend the fee program until such time as the violations are resolved, we cannot wait any longer for the County's permitting process to conclude and instead intend to move forward with formal enforcement action as described in Chapter 9 of the Coastal Act. We asked that the District get back to us by October 5, 2017.

On October 11, 2017, we received a letter from Mr. Massara indicating that the District does not intend to open the gate and instead intends to continue to only allow access to those who are able and willing to purchase the gate key cards or pay the daily access fee. Since the gate/fence/guard/fee program are unpermitted, and since they are causing ongoing impediments to public access, Commission staff feel that the time has now come to move forward with formal enforcement action in order to expedite removal of said impediments. Thus, we are asking the County to enforce its LCP.

Public Access Violation

Section 30604(c) of the Coastal Act requires that development between the nearest public road and the sea be in conformity with the public access and public recreation policies of Chapter 3 of the Coastal Act. Section 30210 of the Coastal Act requires that "maximum access... shall be provided for all the people..."; Section 30211 requires that "Development shall not interfere with the public's right of access to the sea where

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acquired through use or legislative authorization..."; Section 30212 requires public access to be provided in new development projects; Section 30212.5 requires public access facilities such as these to be distributed in such a way as to address overcrowding and overuse at individual areas; Section 30213 protects, encourages, and provides for lower cost public recreational opportunities (such as surfing and beach-going); Section 30220 protects areas that provide water-oriented recreational activities; and Section 30223 requires protection of upland areas, such as the blufftop portion of the site, that are necessary to support recreational uses along the water. Maximizing public access to and along the coast and maximizing public recreational opportunities in the coastal zone are high priorities for the Coastal Commission, are specifically protected in the Coastal Act and the LCP, and are stated as basic goals of the state for the Coastal Zone in Section 30001.5 of the Coastal Act.

The placement of the abovementioned unpermitted fence, gate, fee program, and guard directly interferes with the public's access to, and use of, the publicly funded accessway and public beach below. In addition, the OCRD accessway is a public accessway that has been publicly funded and is run by a public agency for the benefit of the public, and it is the only accessway to the beach between the free public stairway at 41st Avenue in Santa Cruz County and the free public stairway at Hooper Beach in Capitola, a distance of a mile. It provides access to the only substantive sandy beach area in Opal Cliffs between those other two stairways, and it provides access to a very popular surfing area offshore. Access to the sandy beach area at the OCRD accessway is only possible from up and downcoast during extreme low tides via a half-mile walk, and access to the surfing area offshore is made difficult by the sheer distance involved requiring a half-mile paddle. In short, not only is general public access precluded by OCRD's unpermitted development, but this blocked access is also critical to the public being able to access this mile-long stretch of coast at all.

In addition, the property owned by the OCRD is a blufftop park that provides opportunities for the public to enjoy views of Monterey Bay, whale watch, and pursue other such recreation activities in Opal Cliffs at the only location that is not blocked to the public along all of Opal Cliff Drive (i.e., the rest of the shoreline in this area is fronted by private residential development). The placement of the abovementioned unpermitted fence/gate/guard/fee program directly interferes with the public's access to this park, beach, and public recreation opportunities at the only location in Opal Cliffs where these opportunities even exist.

Thus the subject unpermitted development activities are inconsistent with the public access and recreation requirements of the LCP and the Coastal Act, including but not limited to the Coastal Act sections identified above and complementary sections of the LCP. The unpermitted development blocks significant and important public access when there are no other alternatives for those who cannot or will not pay the unpermitted fee.

In cases involving violations of the public access provisions of the Coastal Act, which is the case here, Coastal Act Section 30821 authorizes the Commission to impose administrative civil penalties in an amount of up to \$11,250 per day for each violation.

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Section 30821(g) states the following:

“Person,” for the purposes of this section, does not include a local government, a special district, or an agency thereof, when acting in a legislative or adjudicative capacity.

While we recognize that the OCRD is a special district of the County, it appears that the OCRD was acting in a proprietary capacity rather than a legislative or adjudicative capacity when it “knowingly and intentionally” placed unpermitted fences, a gate, a guard, and charged fees reaching \$100 (and other development) on the subject property, and when it has allowed same to persist for decades despite repeated attempts to allow the general public access to these public resources. Thus, the OCRD could be subject to administrative penalties pursuant to Section 30821 applied to the many years – not just days – that such unpermitted access restrictions have continued. If applicable, such civil penalties under Section 30821 could be significant.

Resolution

The OCRD has, ostensibly, been engaged in the County’s permitting process for over a year now. We wrote a letter to the County, dated August 23, 2017 (enclosed) in which we comment on the District’s CDP application and include a list of the elements that we believe need to be a part of that permit application. It is frustrating that a year into the County’s application process, the District still had not included what is necessary to resolve outstanding violations at Opal Cliffs Park. Furthermore, we are concerned that the project, as proposed by the OCRD, suffers from what appear to be fatal inconsistencies with the public access and recreation policies of the Coastal Act and the LCP, and that there is no assurance that the violations identified above will be resolved at the end of this permitting process. Finally, the District continues to operate the fence/gate/guard/fee program despite repeated direction to open the gate and stop charging fees during daylight hours while they pursue required permits. Because of the ongoing impacts that the unpermitted fence/gate/guard/fee program are having on public access, we find that we can no longer wait for the OCRD to complete the County’s permitting process – especially since we are unsure of if/how that process will resolve this matter, and when. Thus, we are writing to request that the County enforce its LCP and address this matter through its formal enforcement procedures.

We would like to coordinate with the County on enforcement regarding these violations, and we are offering to assist the County in the enforcement of the County’s LCP and the public access requirements of the Coastal Act. Please notify me by **October 31, 2017** whether the County intends to take enforcement action for the above-mentioned violations, or would prefer the Commission to address them. If the latter, or if the County simply declines to act or fails to take any action in a timely manner, the Commission may pursue enforcement action, which may include the issuance of a cease and desist and restoration order for all of the unpermitted development, including development within the County’s LCP jurisdiction. Section 30810(a) provides that the Commission

EXHIBIT II

may issue an order to enforce the requirements of a certified LCP in the event that the local government requests the Commission to assist with or assume primary responsibility for issuing such order, or if the local government declines to act or fails to act in a timely manner to resolve the violation after receiving a request to act from the Commission. The Commission may also seek administrative penalties pursuant to Section 30821 of the Coastal Act or other civil penalties as described below. Section 30821 authorizes the Commission to impose administrative penalties for violations of the public access provisions of Coastal Act, which both apply to this directly, via Section 30604(c), and are implemented through the County's LCP.

In addition to the administrative penalty authority described above, Chapter 9 of the Coastal Act has additional potential remedies to address violations of the Coastal Act, including the following:

Section 30809 states that if the Executive Director of the Commission determines that any person has undertaken, or is threatening to undertake, any activity that may require a permit from the Commission without first securing a permit, the Executive Director may issue an order directing that person to cease and desist. Section 30810 states that the Commission may also issue a cease and desist order. A cease and desist order may be subject to terms and conditions that are necessary to avoid irreparable injury to the area or to ensure compliance with the Coastal Act. Section 30811 also provides the Commission the authority to issue a restoration order to address violations at a site. A violation of a cease and desist order or restoration order can result in civil fines of up to \$6,000 for each day in which each violation persists.

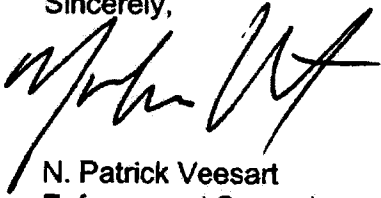
Additionally, Sections 30803 and 30805 authorize the Commission to initiate litigation to seek injunctive relief and an award of civil fines in response to any violation of the Coastal Act. Section 30820(a)(1) provides that any person who undertakes development in violation of the Coastal Act may be subject to a penalty amount that shall not exceed \$30,000 and shall not be less than \$500 per violation. Section 30820(b) states that, in addition to any other penalties, any person who "knowingly and intentionally" performs or undertakes any development in violation of the Coastal Act can be subject to a civil penalty of not less than \$1,000 nor more than \$15,000 per violation for each day in which each violation persists.

Thank you for your time and attention to this matter. We look forward working with you and your staff to timely resolve this significant public access violation in a manner that maximizes public access to the beach and shoreline as required by the Coastal Act and the LCP. As indicated above, we believe that this violation has simply gone on too long, has caused longstanding public access damage over decades, and the District's actions/inaction indicate that it could persist for an undetermined amount of time if left alone. We are not supportive of that outcome. If we do not hear back from you by October 31, 2017, we will assume that the County would prefer the Commission to take enforcement action to resolve this matter. We will continue to coordinate with you as we pursue such action, including to ensure consideration of County goals and objectives as

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they apply to Opal Cliffs Park. Should you have questions, please contact me at (831) 427-4885.

Sincerely,



N. Patrick Veasart
Enforcement Supervisor
Northern Districts

cc: Dan Carl, Deputy Director
Lisa Haage, Chief of Enforcement
Susan Craig, Central Coast District Manager
Ryan Moroney, Central Coast District Supervisor
Alex Helperin, Senior Staff Counsel
Jeff Gaffney, Santa Cruz County Parks Director
Annette Olson, Santa Cruz County Planner
Mark Massara, Opal Cliffs Recreation District

EXHIBIT II

**Opal Cliffs Recreation District (OCRD)
4250 Opal Cliff Drive
Santa Cruz CA
APN 033-151-12**

2017 – 2018 Budget

The OCRD 2017 – 2018 Budget addresses both operational and long-range goals, including creation of separate accounts for operation of Opal Cliffs Park (“OCP”) entitled Reserve for Economic Uncertainties and Reserve for Capital Expenditures.

This budget narrative will provide additional description, background and explanation regarding development of a budget designed to achieve the above referenced goals, and also addresses expectations regarding expenditures and the budget in future years following completion of the current regulatory compliance and permitting update process.

To guide ORCD, the District has used the 2017-18 State Budget for the California Coastal Commission (CCC) since the CCC has recently undergone a California Department of Finance Audit and is presumably compliant with the most recent and highest available standard of care ensuring the availability of sufficient resources will be available to meet its legal mandates and expected obligations.

As always, all revenues and expenses of OCRD are coordinated through the County of Santa Cruz Assessor’s Office. OCRD does not maintain separate cash reserves or bank accounts.

Below is a description and discussion of the main components of the OCRD budget.

CAPITAL RESERVE ACCOUNTS

As an example of how OCRD can improve its operations and best practices, OCRD has reviewed the financial audits and history of the California Coastal Commission. In response to criticism and recommendations from the California Department of Finance, California Coastal Commission has recently adopted a budget that includes a reserve for economic uncertainties. In the 2017 – 2018 fiscal year, that amount is equal to 122% of anticipated revenues (see exhibit below).

California Coastal Commission 2017 - 2018 Budget Information

2017 - 2018 Budget	Revenues	Expenditures	Reserve for Economic Uncertainties	Reserve % of Revenues
Fund 0371 California Beach and Coastal Enhancement Account	\$2,997,000	\$3,510,000	\$3,647,000	122%

Thus, in recognizing that it is prudent that OCRD be able to continue operations during any unforeseen interruption in business (such as a bluff collapse), OCRD has also created a Reserve for Economic Uncertainties ("REU"). Pursuant to the recommendation of OCRD's financial professionals, the REU shall be of sufficient size to ensure the District can maintain operations and the Park Aide Program during any time for which OCP infrastructure is damaged or disabled.

Additionally, and because OCRD faces the potential of not only 'economic uncertainties' but also costs of *repair* of infrastructure¹ the District has also sought to ensure adequate standards of care in other ways, including establishing sufficient funds for current permitting efforts and ensuring adequate reserves for future costs including maintenance and repair of park infrastructure.

With respect to those costs, the District is prudent in recognizing the inevitable likelihood of weather, ocean storms and/or natural disasters destroying all or parts of OCP infrastructure. Therefore, OCRD has created a Reserve for Capital Expenditures ("RCE"). The RCE, according to professional standards of care, must be sufficient to meet the costs for demolition of damaged structures, engagement of legal, financial, architectural and design professionals, community outreach, permitting, environmental studies, construction, construction impact mitigation, public safety and restoration of park infrastructure.

¹ By way of comparison, the CCC does not actually operate public park or beach access facilities as OCRD does. So in addition to ensuring that OCRD can operate for a reasonable period without revenue ("economic uncertainties"), OCRD has prudently determined that a reserve be established for repair and maintenance of existing infrastructure (i.e. park amenities and cliff stairs, "Reserve for Capital Expenditures" or "RCE") to ensure those are available for public enjoyment in future years.

OCRD's Board has analyzed the establishment of the reserve accounts and appreciates that it may take a period of years and continued and perhaps increased key card sales and alternative fundraising efforts to fully fund the RCE and the REU, but like any prudent public agency or entity, OCRD is committed to using every effort to attain best practices and the highest standards of operational care.

For example, very significant reserves are currently required for legal and permitting related expenses. These expenses are considered 'temporary' in that OCRD expects to successfully resolve updating permits for the park in the 2017-18 calendar year. In future years those funds are expected to be dedicated to the capital reserves accounts. Thus, for 2018-19 and beyond, all expenses currently allocated for legal and regulatory compliance, and any additional revenues raised by OCRD, will be dedicated to establishing the capital reserves accounts needed to fund future park operations and maintenance and repair of infrastructure.

PARK AIDE PROGRAM

The 2017-18 budget provides for continued funding of the Park Aide Program.² During the summer, and at other appropriate times, OCRD provides for Park Aide's to be present at Opal Cliffs Park to assist park visitors. Most commonly a single Park Aide is present, often a local student. Less frequently more than one Park Aide may be present (if holiday, events, weather conditions suggest), and/or Park Aides may be employed in the fall, winter or spring seasons.

Park Aides have never worn uniforms, are required to dress casually, and can most often be found near the entrance to the park.

Park Aides are the only staff for the park and provide critical interface for the public to ensure visitors have access to information and assistance to maximize enjoyment of the park.

OCRD's Park Aide Program also supports the District's mission and legal obligations regarding visitor safety, providing an educational program, and ensuring environmental sustainability.

² The OCP Aide program dates *at least* 1967, when a "caretaker employed by the District" was required to be onsite during hours of public access to the Park, per the "Rules and Regulations Opal Cliffs Recreation District." Published Santa Cruz Sentinel, Wednesday, April 26, 1967.

A goal of OCRD as funding becomes available is to expand the Park Aide Program to provide additional educational information related to the history of the park, the establishment of the Monterey Bay National Marine Sanctuary and the Monterey Bay ecosystem, the history of the California Coastal Act, human impacts on the coastal environment and the fragility of natural resources in the area. Additionally, Park Aides will be trained to be a primary resource regarding public safety, and can promote protection of the aesthetic values of the area by providing for additional alternatives of waste collection and recycling.

KEY CARD PROGRAM SALES

ORCD is a California Special District established in 1949 by the County of Santa Cruz under the laws of the State of California, and operating continuously since that time to promote enjoyment of Opal Cliffs Park and the Monterey Bay under the authority of an all-volunteer Board of Directors.

Over 25 years later, the California Coastal Commission was established in 1976 and thereafter approved a permit for OCRD to operate Opal Cliffs Park in 1981, which required a public access program via a recorded deed restriction. CDP #P-80-393.

That Deed Restriction was approved by the Coastal Commission and recorded by the Santa Cruz County Recorder on November 22, 1991, and provided in part that *"Access to the park and beach will be provided for an annual fee by purchasing a key. The revenue generated from the key fees will be sufficient to pay for the annual budgeted operating costs of the district."*

The decades old key card sales program has always been and remains today the sole and essential component for all costs associated with the operation of the park.³ The District's prudent efforts to comply with legal obligations, and to balance the annual budget, are entirely dependent upon the sale of keys. Without the keycard program the District would not be able to fund park operations, provide for vital services such as the Park Aide Program or respond to damage caused by vandalism or future failure of infrastructure of repair of improvements.

Since the 1980's OCRD has reliably sold approximately 600 to 800 keys per year. For the first time during the summer of 2017, OCRD worked with the California Coastal Commission on a pilot experimental program to provide for keyless free park access all

³The key access program at OCP is historically well documented throughout Santa Cruz County. Santa Cruz Sentinel, Sunday August 18, 1963.

summer, from Memorial Day through Labor Day. As a result, key sales plummeted to an all time low of approximately 400. As of November 1, 2017 key sales for the year was 514 (compared to 816 at the same time in 2016).

OCRD Board of Directors is actively engaged in both working with the Coastal Commission and the County, and also attempting to ensure OCP can be operated responsibly and sustainably in the future.

For more information regarding OCRD and Opal Cliffs Park, go to www.opalcliffspark.org

**Opal Cliffs Recreation District
2017 - 2018 Budget**

Fund 76535	Budget Amount
Revenue	
40100 Property Tax	2,800
40106 Property Tax	1,800
40110 Property Tax	55
40130 Property Tax	10
40150 Property Tax	200
40151 Property Tax	15
40160 Property Tax	10
40161 Property Tax	10
Total Property Tax	4,900
40430 Interest	750
Total Interest	750
42002 Park & Rec Fees	80,000
Total Park & Rec Fees	80,000
Total Revenue	85,650
Expenditures	
61535 OTHER INSURANCE	2,000
61845 MAINT-STRUCT/IMPS/GRDS-OTH-SRV	5,000
62223 SUPPLIES	500
62301 ACCOUNTING AND AUDITING FEES	1,150
62395 TEMPORARY CONTRACT SERVICES (Ambassadors)	33,000
62360 LEGAL SERVICES	
Legal pre-trial	30,000
Legal litigation	20,000
62376 PLANNING SERVICES	
County permits	10,000
63070 UTILITIES	500
Total Expenditures	102,150
Net Revenues of Expenditures	(16,500)
Designated Reserves	
34303 COMMITTED - ECONOMIC UNCERTNTY	
34381 DESIGNATED - CAPITAL IMPRVMENTS	
Total Designated Amounts	0
Net Revenues of Expenditures & Reserves	(16,500)

Opal Cliffs Recreation District 2017 - 2018 Budget Narrative

The Opal Cliffs Recreation District 2017 - 2018 budget reflects general ledger account changes that better reflect the true operational activities of the district. Every effort will be made to correctly indicate the posting account.

The District, recognizing the inevitable likelihood of a natural disaster destroying the OCRD park infrastructure, must create a reserve for emergency capital expenditures. The reserve must be sufficient to meet the costs for demolition of damaged structures, engagement of legal, financial, architectural and design professionals, community outreach, permitting, environmental studies, construction, construction impact mitigation, public safety and recommissioning.

The District recognizes that it is prudent to create a reserve for economic uncertainties. Such a reserve should be of sufficient size to allow the District to maintain operations and to operate the Ambassador Program for a period necessary to regenerate a sustainable revenue stream.

EXHIBIT I

OCRD BUDGET 2017 - 2018 DRAFT v2

STAFF REPORT (CONSENT AGENDA) APP. NO. P-80-393 FILED: 11/24/80 49th DAY: 1/5/81

I. APPLICATION SUMMARY

DATES HEARD: 1/5, 1/26/81
REVISED: 4/8/81 SCHEDULED: 4/13/81

Applicant: Opal Cliffs Recreation District
4130 Opal Cliffs Drive, Santa Cruz
Work Proposed: Replace and raise fences around accessway.

ADOPTED

Location of Project: 4520 Opal Cliffs Drive
Live Oak area
Santa Cruz County, APN 33-151-27
Approvals Received (type/date): CCR-15-(11/12/80)

Project Data:	<u>+11,280</u>	<u>-</u>	<u>6' high fence</u>
	parcel size	proposed coverage	height of structure
	<u>R-1-6</u>	<u>-</u>	
	current zoning	proposed density	

Other: Existing fences are 5-6' chain link with gate on street frontage and 3-5' wood on sides.

Attachments: Location Map, Site Plan,

I. STAFF EVALUATION

Site Characteristics: Relatively level lot between existing SFDs, with several trees, providing access path to beach stairway. Existing fences in fair to poor condition; street frontage fencing is in especially poor condition.

Surrounding Land Use: SFD residential area.

POLICY CONFORMANCE NOTES

Public Access (30210-30213): Presently provides restricted public access; applicant is a public recreation district. See comments.

Recreation (30220-30224): See comments.

Marine Environment (30230-30236): See comments.

Land Resources (30240-30244): Not an agricultural area. Proposed development will not significantly affect sensitive habitat areas.

Development (30250-30254): Site is in developed urban area. Bluff development concern; see comments.

Industrial Development (30260-30264): N/A

CCR-21
FN: 21

ENVIRONMENTAL IMPACT NOTES

Adverse Impacts/Significance: None noted.

Mitigation:

RELATIONSHIP OF PROPOSED DEVELOPMENT TO LOCAL COASTAL PROGRAM: As conditioned, provision for and maintenance of public coastal access at this location will not prejudice the ability of Santa Cruz County to complete preparation of an LCP which is consistent with the Coastal Act.

OTHER COMMENTS:**Public Access**

The proposed site is presently developed as a beach accessway, with a path leading from a small (4-space) parking area to a wood stairway, which then leads to a small beach. The accessway is owned and operated by the Opal Cliffs Recreation District, a public recreation district. Accessway use is presently restricted by a fence and gate; the applicant indicates that keys are readily available, and that the reason for the access control is the unstable, hazardous nature of the bluffs in the area.

Confirmation of key availability and/or some other means of assuring public access (such as a sign directing potential users how to gain access) would be appropriate to ensure consistency with Section 30210-12 of the Coastal Act if the fence is necessary. Some form of access control does appear desirable at this point due to unstable bluffs and small, pocket beaches with low capacities for public use, although access must be provided to maintain consistency with the Coastal Act.

Recreation

The applicant is a "Recreation District"; its primary function is maintenance of the accessway on the proposed site. The proposed development would increase fence height to a uniform 6 feet along all boundaries of the site, using a chain link fence to replace existing wood fences of variable height along the parcel sides. The new side fences will reduce the feasibility of by-passing the fence and gate on the street frontage. As noted above the applicant indicates that keys to the (locked) gate are available, but no sign or other notification exists on the site to indicate such availability.

Marine Environment

The new and reconstructed fences will not result in significant impacts on marine resources; all work will be in upland areas. Minor repair work on the beach access stairway is also to be done at this time; based on the scope of work indicated in the application materials (no mechanized equipment will be used on the beach), this repair and maintenance work will not require a Coastal Permit.

Bluff-Top Development

The project as applied for will result in development (fence construction) within the "area of demonstration" for geologic stability. The fence does not appear likely, however, to impair the stability of the cliff forming the seaward edge of the site, and no additional impervious surfaces are proposed. Existing paved areas are provided with drainage facilities intended to minimize erosion.

III. RECOMMENDATION

Approval: Find consistency with Chapter III, that the development will not prejudice an LCP, that the development has no significant adverse environmental effects as proposed or as conditioned: (Between shoreline and first public road, note comments on front page under Public Access and Recreation.)

CONDITIONS

ACCESS PROGRAM

1. PRIOR TO ISSUANCE of this permit, permittee shall submit, for review and approval by the Executive Director, an access program which shall provide for public access and posting of the site as notification of such access. The program shall be recorded as a covenant running with the land, free of all encumbrances other than tax liens, or shall be guaranteed by such other means as may be acceptable to the Executive Director.

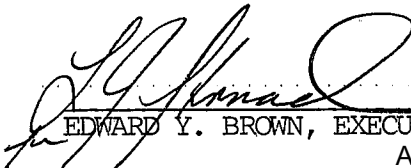
PRESCRIPTIVE RIGHTS

2. Nothing in this condition shall be construed to constitute a waiver of any sort or a determination on any issue of prescriptive rights which may exist on the parcel itself or on the designated easement.

3. Safety Review

Prior to commencement of construction, permittee shall present evidence in writing to the Executive Director that all public safety agencies with jurisdiction in the surrounding area (including the Capitola Fire Dept.) and the Santa Cruz County Office of Emergency Services have been conferred with, and that the proposed development is acceptable to those agencies.

MB/deb 4/10/81
Staff Date


EDWARD Y. BROWN, EXECUTIVE DIRECTOR



CENTRAL COAST REGIONAL COMMISSION
 701 OCEAN STREET, ROOM 310
 SANTA CRUZ, CALIFORNIA 95060
 PHONE: (408) 426-7390

PERMIT

April 28, 1981

Opal Cliffs Recreation District
 c/o Carol Arriola
 4130 Opal Cliffs Drive
 Santa Cruz, Ca. 95062

Dear Applicant:

Re: Regional Coastal Commission
 Permit Application No. P-80-393

Pursuant to Public Resources Code Section 30600, your application for a permit to perform the work described in the above numbered application has been granted by the Central Coast Regional Commission in accordance with Resolution No. 81-59, passed on April 13, 1981; a copy of the resolution is attached hereto and made a part of this permit.

Please note:

(1) That this permit will become effective only when you have returned to the Regional Commission the enclosed copy of this letter, within 10 working days signed by you acknowledging thereon that you have received a copy of this letter and that you accept its contents.

(2) That upon completion of the development authorized by this permit you are required to notify the Regional Commission of such completion on the enclosed form provided for that purpose.

(3) This permit is issued subject to the conditions stated in attached documents, and approved plans on file with the Regional Commission. Unless otherwise provided in the conditions, all proposed changes must be submitted to the Commission prior to construction thereof.

(4) Development under this permit must be commenced within one year of issuance.

Very truly yours,

Edward Y. Brown
 Executive Director

(I) (We) acknowledge receipt of the above captioned Regional Commission Permit and accept its contents.

Signed

Exhibit 5

A-3-SCO-18-0004

Attachment

Dated

Page 4 of 4

SANTA CRUZ
COUNTY RECORDER

91 NOV 22 PM 1 30

RECORDED

075069

RECORDING REQUESTED BY AND RETURN TO:
California Coastal Commission
45 Fremont St., Suite 2000
San Francisco, CA 94105-2219

NO FEE

DEED RESTRICTION

I. WHEREAS, Opal Cliff Recreation District, hereinafter referred to as the "Owner", is the record owner of the following real property:

BEING Lot 27, Block A, as the same is shown and designated on that certain map entitled, "Opal Cliffs". Santa Cruz County, California. Being Part of Rancho Arroyo del Rodeo, Subdivided by K. B. McGeoghegan, 1928. Surveyed in 1928 by Arnold M. Baldwin and Fred T. Hale, Licensed Land Surveyors," filed for record in the office of the County Recorder on March 6, 1930, in Map Book 25, page 12, Santa Cruz County Records.

hereinafter referred to as the "Property;" and

II. WHEREAS, the California Coastal Commission, hereinafter referred to as the "Commission," is acting on behalf of the People of the State of California; and

III. WHEREAS, the subject property is located within the coastal zone as defined in paragraph 30103 of Division 20 of the California Public Resources Code, hereinafter referred to as the "California Coastal Act of 1976," (the Act); and

IV. WHEREAS, pursuant to the Act, the Owner applied to the Commission for a coastal development permit on the Property described above; and

V. WHEREAS, COASTAL DEVELOPMENT PERMIT NUMBER #P-80-393, hereinafter referred to as the "Permit," was granted on April 13, 1981, by the Commission in accordance with the provision of the Staff Recommendation and Findings, attached hereto as EXHIBIT A and herein incorporated by reference; and

VI. WHEREAS, the Permit was subject to the terms and conditions including, but not limited to, the following condition:

PRIOR TO ISSUANCE of permit, permittee shall submit, for review and approval by the Executive Director, an access program which shall provide for public access and posting of the site as notification of such access. The program shall be recorded as a covenant running with the land, free of all encumbrances other than tax liens; or shall be guaranteed by such other means as may be acceptable to the Executive Director.

VII. WHEREAS, the Commission found that but for the imposition of the above condition the proposed development could not be found consistent with the provisions of the California Coastal Act of 1976 and that permit could therefore not have been granted; and

VIII. WHEREAS, Owner has elected to comply with the conditions imposed by the Permit and execute this Deed Restriction so as to enable Owner to undertake the development authorized by the Permit.

NOW, THEREFORE, in consideration of the granting of the Permit the Owner by the Commission, the Owner hereby irrevocably covenants with the Commission that there be and hereby is created the following restrictions on the use and enjoyment of said Property, to be attached to and become a part of the deed to the property.

1. COVENANT, CONDITION AND RESTRICTION. The undersigned Owner, for himself/herself and for his/her heirs, assigns, and successors in interest, covenants and agrees that;

STATEMENT OF INTENT:

Opal Cliff Recreation District will provide park and beach access to the public, at large, for recreational purposes.

✓ **ACCESS PROGRAM:**

A sign will be posted on the property indicating park hours, how and where to obtain access to the beach, the terms of access and how the board members can be contacted. The sign will be in conformance with the "Sign Handbook" published by the State of California - Resources Agency, Department of Parks and Recreation.

The park will be open daily from dawn to dusk.

Access to the park and beach will be provided for an annual fee by purchasing a key. The revenue generated from the key fees will be sufficient to pay for the annual budgeted operating costs of the district. Operating costs are defined as maintenance costs, insurance and any other expenses necessary to maintain the public areas, voted as appropriate by the district board members. The price of the keys are therefore dependent on the fluctuation of the district's operating costs. ✓

Changes to the annual key purchase fee will require majority approval from the Opal Cliff Recreation District Board Members. In 1992 our annual fee will be \$20. ✓

The lock will be changed during the first week of January of each calendar year. The annual fee will stay constant all year long, except for the last four months of the calendar year. In September the key prices will be reduced by half of the annual fee. ✓

Currently and historically, Opal Cliff Recreation District has annually sold 7 to 8 hundred keys per year. The fees collected from these sales have generally been sufficient to cover the board approved operating costs of the district.

The keys will be available for sale at a local business seven days a week during normal business hours.

A permanently maintained sign (approx. 2 x 3 feet) will be posted on the gate to the property indicating the following:

- a) That Opal Cliffs Recreation District maintains a public park and beach access.
- b) The Annual fee, to obtain a key for access, will be printed on the sign.
- c) Where the keys can be purchased, along with a map.
- d) Park hours of operations
- e) How the board members can be contacted.

2. DURATION. Said Deed Restriction shall remain in full force and effect during the period that said permit, or any modification or amendment thereof remains effective, and during the period that the development authorized by the Permit or any modification of said development, remains in existence in or upon any part of, and thereby confers benefit upon, the Property described herein, and shall bind Owner and all his/her assigns or successors in interest.

3. TAXES AND ASSESSMENTS. It is intended that this Deed Restriction is irrevocable and shall constitute an enforceable restriction within the meaning of a) Article XIII, paragraph 8, of the California Constitution; and b) paragraph 402.1 of the California Revenue and Taxation Code or successor statute. Furthermore, this Deed Restriction shall be deemed to constitute a servitude upon and burden to the Property within the meaning of paragraph 3712(d) of the California Revenue and taxation Code, or successor statute, which survives a sale of tax-deeded property.

4. RIGHT OF ENTRY. The commission or its agent may enter onto the Property at times reasonable acceptable to the Owner to ascertain whether the use restrictions set forth above are being observe.

5. REMEDIES. Any act, conveyance, contract, or authorization by the Owner whether written or oral which uses or would cause to be used or would permit use of the Property contrary to the terms of the Deed Restriction will be deemed a violation and breach hereof. The Commission and the Owner may pursue any and all available legal and/or equitable remedies to enforce the terms and conditions of this Deed Restriction. In the event of a breach, any forbearance on the part of either party to enforce the terms and provisions hereof shall not be deemed a waiver of enforcement rights regarding any subsequent breach.

6. SEVERABILITY. If any provision of these restrictions is held to be invalid, or for any reason becomes unenforceable, no other provision shall be thereby affected or impaired.

Date: 10/28/91, 1991

Signed: [Signature]

Mark Estess, Chairman of the Board
Opal Cliff Recreation District

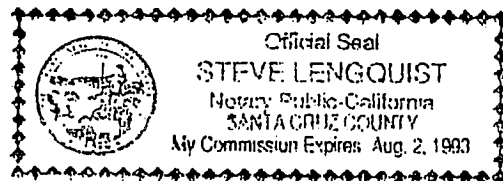
* * NOTARY ACKNOWLEDGEMENT ON THE NEXT PAGE * *

STATE OF CALIFORNIA
COUNTY OF SANTA CRUZ

On 10/28/91 before me, Steve Lengquist, A Notary Public personally appeared Mark Estess, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Signature Steve Lengquist



This is to certify that the deed restriction set forth above is hereby acknowledged by the undersigned officer on behalf of the California Coastal Commission pursuant to authority conferred by the California Coastal Commission when it granted Coastal Development Permit No. P-80-393 on April 1, 1981 and the California Coastal Commission consents to recordation thereof by its duly authorized officer.

Dated: November 5, 1991

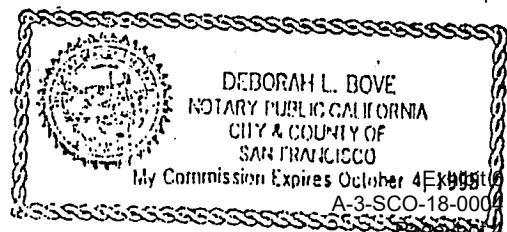
John Bowers
John Bowers, Staff Counsel
California Coastal Commission

STATE OF CALIFORNIA
COUNTY OF San Francisco

On November 5, 1991 before me, Deborah L. Bove, A Notary Public personally appeared John Bowers, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature Deborah L. Bove



CALIFORNIA COASTAL COMMISSION

CENTRAL COAST DISTRICT OFFICE
725 FRONT STREET, SUITE 300
SANTA CRUZ, CA 95060
PHONE: (831) 427-4863
FAX: (831) 427-4877
WEB: WWW.COASTAL.CA.GOV

JAN 17 2018

CALIFORNIA COASTAL COMMISSION CENTRAL COAST AREA



APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT

Please Review Attached Appeal Information Sheet Prior To Completing This Form.

SECTION I. Appellant(s)

Name: California Coastal Commission; Commissioners Erik Howell and Dayna Bochco
Mailing Address: 45 Fremont Street, Suite 2000
City: San Francisco, CA Zip Code: 94105 Phone: (415) 904-5200

SECTION II. Decision Being Appealed

1. Name of local/port government:

Santa Cruz County

2. Brief description of development being appealed:

Modify the public access program at Opal Cliff Recreation District to include a free summer program and to establish days and hours of operation; modify the park aid program; install a new sign; and recognize a nine-foot tall wrought iron fence, gate and locking mechanism, concrete paver path, seating and retaining walls.

3. Development's location (street address, assessor's parcel no., cross street, etc.):

Located on the bluff side of Opal Cliff Drive about 320 feet east of its intersection with

4. Description of decision being appealed (check one.):

- Approval; no special conditions
Approval with special conditions:
Denial

Note: For jurisdictions with a total LCP, denial decisions by a local government cannot be appealed unless the development is a major energy or public works project. Denial decisions by port governments are not appealable.

TO BE COMPLETED BY COMMISSION:
APPEAL NO: A-3-SCO-18-0004
DATE FILED: 1/17/2018
DISTRICT: Central Coast

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 2)

5. Decision being appealed was made by (check one):

- Planning Director/Zoning Administrator
- City Council/Board of Supervisors
- Planning Commission
- Other

6. Date of local government's decision: 12/13/2017

7. Local government's file number (if any): 161195

SECTION III. Identification of Other Interested Persons

Give the names and addresses of the following parties. (Use additional paper as necessary.)

a. Name and mailing address of permit applicant:

Opal Cliffs Recreational District
4520 Opal Cliff Drive
Santa Cruz, CA 95062

b. Names and mailing addresses as available of those who testified (either verbally or in writing) at the city/county/port hearing(s). Include other parties which you know to be interested and should receive notice of this appeal.

Mark Massara
1642 Great Hwy
San Francisco, CA 94122

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 3)

SECTION IV. Reasons Supporting This Appeal

PLEASE NOTE:

- Appeals of local government coastal permit decisions are limited by a variety of factors and requirements of the Coastal Act. Please review the appeal information sheet for assistance in completing this section.
- State briefly **your reasons for this appeal**. Include a summary description of Local Coastal Program, Land Use Plan, or Port Master Plan policies and requirements in which you believe the project is inconsistent and the reasons the decision warrants a new hearing. (Use additional paper as necessary.)
- This need not be a complete or exhaustive statement of your reasons of appeal; however, there must be sufficient discussion for staff to determine that the appeal is allowed by law. The appellant, subsequent to filing the appeal, may submit additional information to the staff and/or Commission to support the appeal request.

See Attached



Reasons for Appeal: Santa Cruz County CDP Application 161195 (OCRD ATF Fee Access Program)

Santa Cruz County approved a coastal development permit (CDP) for the Opal Cliffs Recreation District (OCRD) which recognizes after-the-fact unpermitted development at Opal Cliffs Park including: 1) a 9-foot-tall wrought-iron spiked fence and locked gate along Opal Cliff Drive; 2) an access fee program (requiring an annual \$100 keycard to open the gate, with free access limited to summertime daytime access only); 3) a guard/"park ambassador" program (i.e., OCRD staff that monitors the use of the gate and enforces fee requirements); and 4) various previously installed improvements (including a concrete paver pathway, stone retaining walls, landscaping and irrigation). The County's approval raises issues of consistency with the Santa Cruz County Local Coastal Program (LCP) policies and implementing standards related to public recreational access and visual resources, and with the Coastal Act's public access and recreation policies.

With regard to public access and recreation, both the LCP and the Coastal Act require that public recreational access opportunities be protected and maximized (including Coastal Act Sections 30210 and 30211, and LCP Objectives 7.7a and 7.7b). Because the County-approved CDP authorizes significant impediments to public access (including a 9-foot-tall wrought-iron spiked fence and locked gate, a \$100/year access program with limited free access during daytime hours in the summer months only, and a guard/park aide whose responsibilities include enforcing the access program), the County-approved CDP does not appear to meet either the Coastal Act's or the LCP's requirements to protect and maximize public recreational access, including beach access. Rather, the County-approved CDP authorizes significant barriers to public access at a publicly owned and managed beach accessway, including physical and psychological barriers (spiked fence/gate and guard/park aide) as well as financial barriers (\$100/year for access).

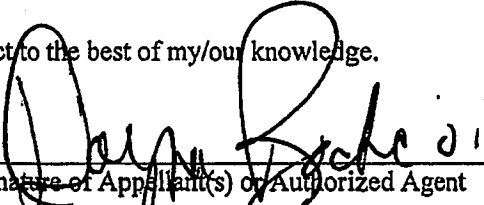
With regard to visual resources, the LCP requires that visual access opportunities be maximized, and that visual resources be both protected and restored (including LCP Objectives 5.10a and 5.10b). As identified above, the County's CDP approval includes authorization of a 9-foot-tall wrought-iron spiked fence and locking gate, which not only creates physical barriers to access but is also visually obtrusive in a way that blocks and impairs visual resources and visual access toward the ocean. Such visual impacts are exacerbated by the fact that visual access toward the ocean is blocked along almost all of Opal Cliffs, and Opal Cliffs Park provides the only visual respite from a row of residential development that otherwise precludes such views. The County-approved development appears to be inconsistent with the LCP's visual resources protection policies, including because it does not protect or restore visual resources, including public views from Opal Cliffs Drive.

In short, the County-approved project raises significant questions regarding its consistency with Coastal Act and LCP public recreational access requirements, as well as with the LCP's public view requirements, and the County-approved project warrants further Commission review and deliberations regarding these issues.

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 4)

SECTION V. Certification

The information and facts stated above are correct to the best of my/our knowledge.



Signature of Appellant(s) or Authorized Agent

Date: 1/17/18

Note: If signed by agent, appellant(s) must also sign below.

Section VI. Agent Authorization

I/We hereby authorize _____
to act as my/our representative and to bind me/us in all matters concerning this appeal.

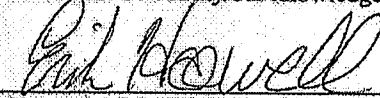
Signature of Appellant(s)

Date: _____

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 4)

SECTION V. Certification

The information and facts stated above are correct to the best of my/our knowledge.



Signature of Appellant(s) or Authorized Agent

Date: 1/11/18

Note: If signed by agent, appellant(s) must also sign below.

Section VI. Agent Authorization

I/We hereby
authorize

_____ to act as my/our representative and to bind me/us in all matters concerning this appeal.

Signature of Appellant(s)

Date: _____

Applicable Coastal Act Policies / Local Coastal Program Provisions

Public Access/Recreation Policies:

Coastal Act Section 30210: In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.

Coastal Act Section 30211: Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.

Coastal Act Section 30212(a): (a) Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where: (1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources, (2) adequate access exists nearby, or, (3) agriculture would be adversely affected. Dedicated accessway shall not be required to be opened to public use until a public agency or private association agrees to accept responsibility for maintenance and liability of the accessway.

Coastal Act Section 30212.5: Public facilities; distribution. Wherever appropriate and feasible, public facilities, including parking areas or facilities, shall be distributed throughout an area so as to mitigate against the impacts, social and otherwise, of overcrowding or overuse by the public of any single area.

Coastal Act Section 30213: Lower cost visitor and recreational facilities; encouragement and provision; overnight room rentals. Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Developments providing public recreational opportunities are preferred. The commission shall not: (1) require that overnight room rentals be fixed at an amount certain for any privately owned and operated hotel, motel, or other similar visitor-serving facility located on either public or private lands; or (2) establish or approve any method for the identification of low or moderate income persons for the purpose of determining eligibility for overnight room rentals in any such facilities.

Coastal Act Section 30214: Implementation of public access policies; legislative intent. (a) The public access policies of this article shall be implemented in a manner that takes into account the need to regulate the time, place, and manner of public access depending on the facts and circumstances in each case including, but not limited to, the following: (1) Topographic and geologic site characteristics. (2) The capacity of the site to sustain use and at what level of intensity. (3) The appropriateness of limiting public access to the right to pass and repass depending on such factors as the fragility of the natural resources in the area and the proximity of the access area to adjacent residential uses. (4) The need to provide for the management of access areas so as to protect the privacy of adjacent property owners and to protect the aesthetic values of the area by providing for the collection of litter. (b) It is the intent of the Legislature that the public access policies of this article be carried out in a reasonable manner that considers the equities and that balances the rights of the individual property owner with the public's

constitutional right of access pursuant to Section 4 of Article X of the California Constitution. Nothing in this section or any amendment thereto shall be construed as a limitation on the rights guaranteed to the public under Section 4 of Article X of the California Constitution. (c) In carrying out the public access policies of this article, the commission and any other responsible public agency shall consider and encourage the utilization of innovative access management techniques, including, but not limited to, agreements with private organizations which would minimize management costs and encourage the use of volunteer programs.

Coastal Act Section 30220: Protection of certain water-oriented activities. Coastal areas suited for water-oriented recreational activities that cannot readily be provided at inland water areas shall be protected for such uses.

Coastal Act Section 30221: Oceanfront land suitable for recreational use shall be protected for recreational use and development unless present and foreseeable future demand for public or commercial recreational activities that could be accommodated on the property is already adequately provided for in the area.

Coastal Act Section 30223: Upland areas. Upland areas necessary to support coastal recreational uses shall be reserved for such uses, where feasible.

LCP Objective 7.1a Parks and Recreation Opportunities.

To provide a full range of public and private opportunities for the access to, and enjoyment of, park, recreation, and scenic areas, including the use of active recreation areas and passive natural open spaces by all ages, income groups and people with disabilities with the primary emphasis on needed recreation facilities and programs for the citizens of Santa Cruz County.

LCP Objective 7.1b Park Distribution

To establish and maintain, within the economic capabilities of the County, a geographical distribution of neighborhood, community, rural, and regional park and recreational facilities throughout the County based on the standards for acreage and population ratios contained in this plan (see Figure 7-3); and to preserve unique features of the natural landscape for public use and enjoyment. [Note: pursuant to LCP Figure 7-2, Opal Cliffs Park is an LCP-designated Regional Park Facility]

LCP Policy 7.1.8 Sharing Parks and Recreation Facilities

Recognize the use of existing recreational facilities owned and/or operated by other agencies, including the cities, recreation districts and the school districts as serving the recreational needs of the community and partially meeting standards for community park acreage. Cooperate in funding and sharing recreation facilities, and seek to maximize the availability of all such facilities for general public use commensurate with the needs and priorities of other agencies through joint powers agreements addressing development, maintenance and operating programs, as allowed by budget constraints.

LCP Policy 7.5.7 Beaches as Regional Parks

Recognize the use of beach areas to satisfy regional recreational opportunities for County residents and improve access where appropriate.

LCP Objective 7.7a Coastal Recreation

To maximize public use and enjoyment of coastal recreation resources for all people, including those with disabilities while protecting those resources from the adverse impacts of overuse.

LCP Objective 7.7b Shoreline Access

To provide a system of shoreline access to the coast with adequate improvements to serve the general public and the coastal neighborhoods which is consistent with the California Coastal Act, meets public safety needs, protects natural resource areas from overuse, protects public rights and the rights of private property owners, minimizes conflicts with adjacent land uses, and does not adversely affect agriculture, subject to policy 7.6.2.

LCP Objective 7.7c Beach Access

To maintain or provide access, including visual access, to every beach to which a granted access exists or to which the public has acquired a right of access through use, as established through judicial determination of prescriptive rights, and acquisition through appropriate legal proceedings, in order to ensure one access to every pocket beach and convenient, well distributed access to long sandy beaches, subject to policy 7.6.2.

7.7.1 Coastal Vistas

Encourage pedestrian enjoyment of ocean areas and beaches by the development of vista points and overlooks with benches and railings, and facilities for pedestrian access to the beaches, subject to policy 7.6.2.

LCP Policy 7.7.4 Maintaining Recreation Oriented Uses

Protect the coastal blufftop areas and beaches from intrusion by nonrecreational structures and incompatible uses to the extent legally possible without impairing the constitutional rights of the property owners, subject to policy 7.6.2.

LCP Policy 7.7.10

Protect existing pedestrian, and, where appropriate, equestrian and bicycle access to all beaches to which the public has a right of access, whether acquired by grant or through use, as established through judicial determination of prescriptive rights, and acquisition through appropriate legal proceedings. Protect such beach access through permit conditions such as easement dedication or continued maintenance as an accessway by a private group, subject to policy 7.6.2.

LCP Policy 7.7.11

Determine whether new development may decrease or otherwise adversely affect the availability of public access, if any, to beaches and/or increases the recreational demand. If

such impact will occur, the County will obtain, as a condition of new development approval, dedication of vertical access easements adequate to accommodate the intended use, as well as existing access patterns, if adverse environmental impacts and use conflicts can be mitigated, under the following conditions: ... (a) Within the Urban Services Line: from the first public roadway to the shoreline if there is not dedicated access within 650 feet...

LCP Policy 7.7.13 Access Maintenance Responsibility and Liability

Open accessways only after a public agency or private association agrees to accept responsibility for maintenance and liability of the accessway, including regular garbage collection and recycling at the trailhead, along the trail, and at the beach destination. Notwithstanding the foregoing, it is the policy of Santa Cruz County to accept offers to dedicate coastal access, to complete, open and maintain or assist other public agencies or private non-profit groups to complete, open, and maintain coastal accessways between the first public road and the shoreline as soon as it is feasible.

LCP Program 7.7 Coastal Recreation

- a. Improve existing parking areas through the use of fencing, striping, landscaping, bike racks, and safety improvement...
- b. Increase parking opportunities to serve visitors to the Live Oak coastline in locations where such facilities are feasible and compatible with the neighborhood and the natural setting. Provide on-and-off-street parking improvements and facilities within walking distance of the beaches and bluffs...
- d. Encourage the continued recreational use of Monterey Bay through the development of marine programs and facilities that may serve local residents.

Visual Resource Protection Policies:

7.7.1 Coastal Vistas

Encourage pedestrian enjoyment of ocean areas and beaches by the development of vista points and overlooks with benches and railings, and facilities for pedestrian access to the beaches, subject to policy 7.6.2.

Objective 5.10a Protection of Visual Resources

To identify, protect and restore the aesthetic values of visual resources.

Objective 5.10b New Development in Visual Resource Areas

To ensure that new development is appropriately designed and constructed to have minimal to no adverse impact upon identified visual resources.

5.10.2 Development Within Visual Resource Areas

(LCP) Recognize that visual resources of Santa Cruz County possess diverse characteristics and that the resources worthy of protection may include, but are not limited to, ocean views, agricultural fields, wooded forests, open meadows, and mountain hillside views. Require projects to be evaluated against the context of their unique environment and regulate structure height, setbacks and design to protect these resources consistent with the objectives and policies of this section. Require discretionary review for all development within the visual resource area of Highway One, outside of the Urban/Rural boundary, as designated on the GP/LCP Visual Resources Map and apply the design criteria of Section 13.20.130 of the County's zoning ordinance to such development.

5.10.3 Protection of Public Vistas

(LCP) Protect significant public vistas as described in policy 5.10.2 from all publicly used roads and vista points by minimizing disruption of landform and aesthetic character caused by grading operations, timber harvests, utility wires and poles, signs, inappropriate landscaping and structure design. Provide necessary landscaping to screen development which is unavoidably sited within these vistas. (See policy 5.10.11.)

5.10.6 Preserving Ocean Vistas

Where public ocean vistas exist, require that these vistas be retained to the maximum extent possible as a condition of approval for any new development.

5.10.7 Open Beaches and Blufftops

Prohibit the placement of new permanent structures which would be visible from a public beach, except where allowed on existing parcels of record, or for shoreline protection and for public beach access. Use the following criteria for allowed structures:

- (a) Allow infill structures (typically residences on existing lots of record) where compatible with the pattern of existing development.
- (b) Require shoreline protection and access structures to use natural materials and finishes to blend with the character of the area and integrate with the landform.

5.10.9 Restoration of Scenic Areas

Require on-site restoration of visually blighted conditions as a mitigating condition of permit approval for new development. ... Provide technical assistance for restoration of blighted areas.

IP Section 13.20.130(B)(1): Design Criteria for Coastal Zone Developments

(B) Entire Coastal Zone. The following design criteria shall apply to projects located in the Coastal Zone:

(1) Visual Compatibility. All development shall be sited, designed and landscaped to be visually compatible and integrated with the character of surrounding neighborhoods or areas. Structure design should emphasize a compatible community aesthetic as opposed to maximum-sized and bulkier/boxy designs, and should apply tools to help provide an interesting and attractive built environment (including building facade articulation through measures such as breaking up the design with some areas of indent, varied rooflines, offsets, and projections that provide shadow patterns, smaller second story elements set back from the first, and appropriate surface treatments such as wood/wood-like siding or shingles, etc.).

(2) Minimum Site Disturbance. Grading, earth moving, and removal of major vegetation shall be minimized. Developers shall be encouraged to maintain all mature trees over six inches in diameter except where circumstances require their removal, such as obstruction of the building site, dead or diseased trees, or nuisance species. Special landscape features (rock outcroppings, prominent natural landforms, tree groupings) shall be retained.

(3) Ridgeline Development. Hilltop and hillside development shall be integrated into the silhouette of the existing backdrop such as the terrain, landscaping, natural vegetation, and other structures. Ridgeline protection shall be ensured by restricting the height and placement of buildings and landscape species and by providing landscape screening in order to prevent projections above the ridgeline that are visible from public roads or other public areas. If there is no other building location on a property except a ridgeline, this circumstance shall be verified by the Planning Department with appropriate findings and mitigation measures to ensure that the proposed structure is compatible with its environment, is low profile, and is visually screened. Land divisions which would create parcels whose only building site would lead to development that would be exposed on a ridgetop shall not be permitted and land divisions shall be appropriately conditioned to prohibit ridgeline development in all cases.

(4) Landscaping. Development shall include landscaping meant to provide visual interest and articulation, to complement surrounding landscaping (including landscaping in adjacent rights-of-way), to screen and/or soften the visual impact of development, and to help improve and enhance visual resources. When a landscaping plan is required, new or replacement vegetation shall be consistent with water-efficient landscape regulations, compatible with surrounding vegetation and shall be suitable to the climate, soil, and ecological characteristics of the area.

(5) All development that is more than one story, where allowed by the site regulations of the basic zone district, that is located in significant public viewsheds (including adjacent to shoreline fronting roads, public accessways, parks, beaches, trails, natural areas, etc.) shall be sited and designed so that upper stories do not cantilever toward, loom over, or otherwise adversely impact such significant public viewsheds and community character.

(6) Front yard averaging shall only be allowed where the front setback so established does not adversely impact significant public viewsheds (including those associated with shoreline fronting roads, public accessways, parks, beaches, trails, natural areas, etc.) and community character.

(7) Development shall be sited and designed so that it does not block or significantly adversely impact significant public views and scenic character, including by situating lots, access roads, driveways, buildings, and other development (including fences, walls, hedges and other landscaping) to avoid view degradation and to maximize the effectiveness of topography and landscaping as a means to eliminate, if possible, and/or soften, if not possible, public view impacts.

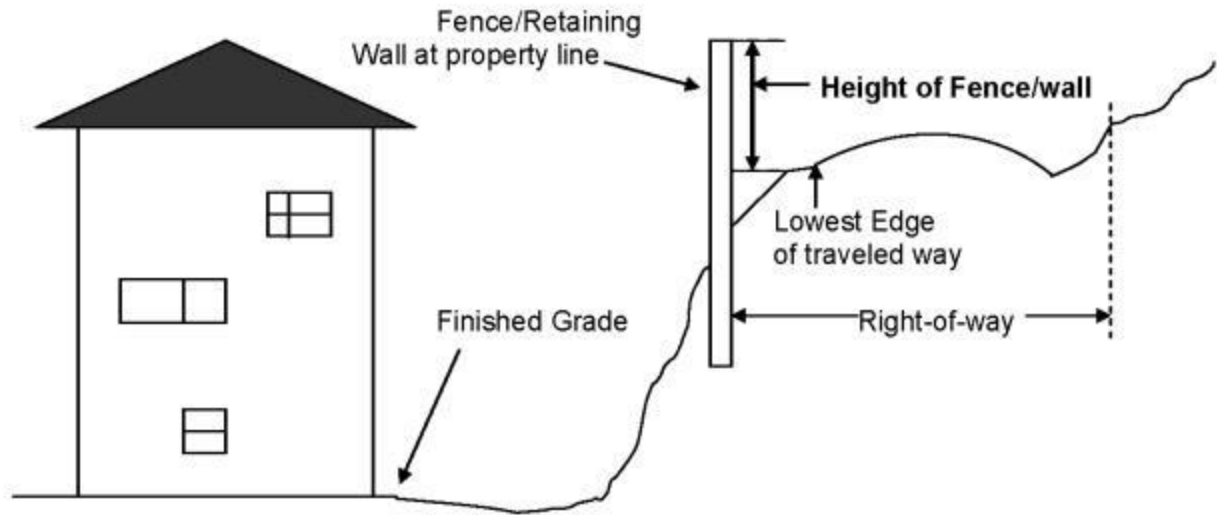
IP Section 12.20.130(C) 1 & 5 Design Criteria for Coastal Zone developments.

Location of Development. Development shall be located, if possible, on parts of the site not visible or least visible from the public view. Development shall not block views of the shoreline and/or ocean from scenic roads, turnouts, rest stops, or vista points.

Restoration. Feasible elimination or mitigation of unsightly, visually disruptive or degrading elements such as junk heaps, unnatural obstructions, grading scars, or structures incompatible with the area shall be included in site development. The requirement for restoration of visually blighted areas shall be proportional to the size of the proposed project and its visual impacts.

13.10.525 Regulations for fences and retaining walls within required yards.

- (A) The purposes of fence and/or retaining wall regulations for yards abutting on streets are:
- (1) To ensure adequate visibility of vehicles entering the street from driveways, adequate sight distance from such vehicles, and adequate sight distance at street corners.
 - (2) To ensure adequate light and air for the street area.
 - (3) To preserve a harmonious and compatible street front appearance.
- (B) The purposes of fence and/or retaining wall regulations for side and rear yards which do not abut on streets are:
- (1) To provide for privacy screening of these yard areas.
 - (2) To ensure that light and air of abutting properties are protected from excessively high manmade structures.
- (C) The height regulations for fences and/or retaining walls are:
- (1) The height of fences and/or retaining walls is determined as follows:
 - (a) By measuring the exposed face of the fence and/or wall at its tallest point, from finished grade at the base, to the top of the fence and/or wall, except as provided in subsections (C)(4) and (5) of this section.
 - (b) Where a parcel slopes down from a public or private right-of-way, the height of a fence or retaining wall shall be measured from the lowest elevation of the traveled portion of the right-of-way nearest the fence or retaining wall to the top of the fence and/or wall as shown in the diagram below, except as provided in subsections (C)(4) and (5) of this section.



Height of fence or wall on parcel sloping down from right-of-way

(2) Maximum Fence and Retaining Wall Heights.

(a) In agricultural zone districts, fencing for agricultural purposes may have heights up to six feet in all yards; provided, that such fencing, including gates, is: (i) six feet or less in height; and (ii) made of wire which is spaced a minimum of six inches apart (i.e., typical field fencing), or made of horizontally oriented wooden members which are spaced a minimum of one foot apart (i.e., typical wooden corral fencing). Such fencing meeting these criteria shall be exempt from development permit approval unless such fencing is located on property adjacent to Highway One, in which case a development permit is required. In the Coastal Zone, a coastal development permit will be required for all such fencing unless it is excluded from coastal development permit requirements pursuant to SCCC [13.20.060](#) or [13.20.070](#).

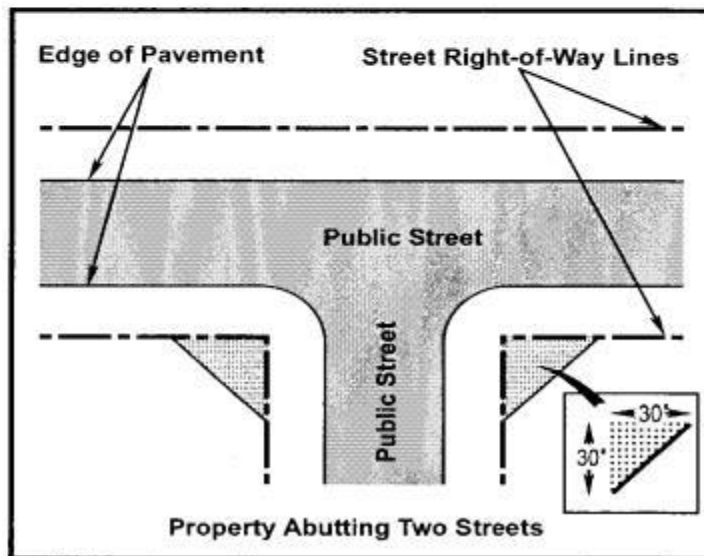
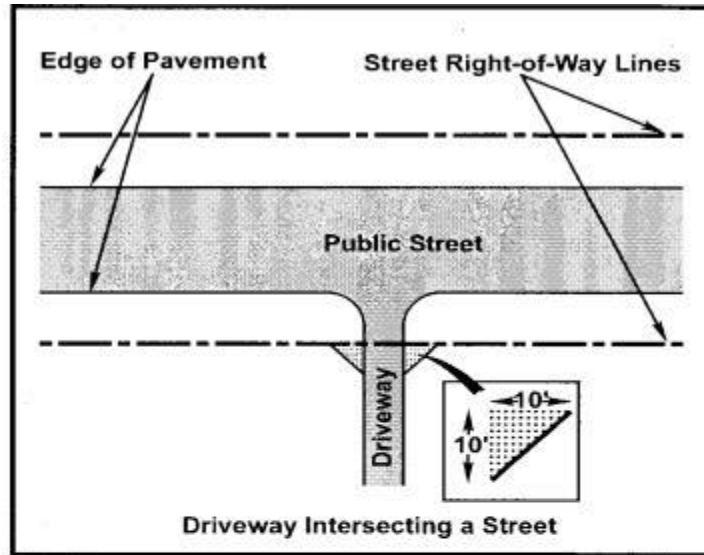
(b) Except as provided in SCCC [13.10.323\(D\)\(5\)\(a\)](#), maximum heights for fences and retaining walls not located in a corner sight clearance triangle are shown on the fence location and height table given in subsection (C)(3) of this section. Examples of corner sight clearance triangles are shown in the diagrams below.

(c) Except as provided in SCCC [13.10.323\(D\)\(5\)\(a\)](#), within corner sight clearance triangles no fence or retaining wall shall exceed three feet in height, if the fence or retaining wall is:

(i) Located in a corner sight clearance triangle on a parcel located at the intersection of two local neighborhood streets for a distance of 30 feet along each street right-of-way; or

(ii) Located in a residential driveway or alley corner sight clearance triangle for a distance of 10 feet along the street right-of-way on each side of the driveway or alley; or

(iii) Located in a corner sight clearance triangle determined to be applicable by the County based on professional standards established by the American Association of State Highway and Transportation Officials (AASHTO) or other applicable technical publications. Greater sight clearance triangles may be required for front and side yards adjacent to roads that allow vehicular travel speeds of more than 25 miles per hour.



Corner Sight Clearance Triangles for Local Residential Neighborhood Streets

(3) Fence Location and Height Table.

Property and Fence Location	Maximum Height without Permit Outside of Corner Sight Distance Triangles**, ***	Maximum Height with Over-Height Fence Certification outside of Corner Sight Distance Triangles**, ***	Maximum Height with a Level IV or above Permit ***
Front Yard inside Urban Services Line (USL) and Rural Services Line (RSL)	3 feet*	6 feet	As determined through permit process
Front Yard outside USL and RSL	3 feet*	8 feet	As determined through permit process
Side/Rear Yard Abutting on a Street	6 feet	8 feet if fence at least 5 feet back from property line	As determined through permit process
Side/Rear Yard Not Abutting on a Street	8 feet	N/A: already at 8 feet; would need Level IV to go higher	As determined through permit process
<p>The following would be allowed without any discretionary approval in all locations, except for corner sight clearance triangles:</p> <ol style="list-style-type: none"> 1. Archways/trellises/ pergolas up to 8 feet tall associated with a walkway through a fence and not making up more than 25% of the length of the fence along the applicable property line. 2. Open decorative features such as lattice that do not exceed the given maximum fence heights by more than 6 inches. 			
<p>*Except as allowed by SCCC 13.10.323(D)(5)(a)</p> <p>**County Public Works Department guidelines establish applicable corner sight clearance triangle requirements</p> <p>*** In the coastal zone, a coastal development permit will be required for all fence and retaining wall development unless it is exempt from coastal development permit requirements pursuant to SCCC 13.20.060 or 13.20.070.</p>			

(4) Walkway fence openings, with or without gates, may have associated archways/trellises/pergolas up to a maximum height of eight feet without a discretionary

approval, except in corner sight clearance triangles, where no fence or retaining wall shall exceed three feet in height. Archways/trellises/ pergolas may not make up more than 25 percent of the length of the fence along a given property line without a Level IV development permit. Notwithstanding the above exceptions for discretionary approval and development permits, in the coastal zone all such archways/trellises/ pergolas shall require a coastal development permit unless exempt from coastal development permit requirements pursuant to SCCC [13.20.060](#) or [13.20.070](#).

(5) Open architectural, decorative, and ornamental features such as lattice may exceed the given maximum fence heights by no more than six inches without a discretionary approval, except in corner sight clearance triangles, where no fence or retaining wall shall exceed three feet in height. Open means that no more than 50 percent of the feature may be opaque. Notwithstanding the above exceptions for discretionary approval and development permits, in the coastal zone all such archways/trellises/ pergolas shall require a coastal development permit unless exempt from coastal development permit requirements pursuant to SCCC [13.20.060](#) or [13.20.070](#).

(D) Over-Height Fence Certification. An over-height fence certification may be issued upon the Planning Director making the findings required by SCCC [18.10.230\(A\)](#) and, if in the Coastal Zone, the finding that the subject development will not adversely impact public views and scenic character.

18.10.230 Findings required.

The approving body may grant an approval for a project as the project was applied for or in modified form if, on the basis of the application and the evidence submitted, the approving body makes the findings listed below; no approval and no permit shall be issued unless the findings below can be made:

(A) Development Permits. A copy of the findings made by the Planning Director shall be provided upon request for all development permits issued or denied pursuant to Levels I (no plans) through IV (public notice). The findings shall be made in writing by the approving body and shall be provided to the applicant and be maintained for review by the public for all development permits issued or denied pursuant to Levels V (Zoning Administrator) through VII (Board of Supervisors). The findings are as follows:

(1) That the proposed location of the project and the conditions under which it would be operated or maintained will not be detrimental to the health, safety, or welfare of persons residing or working in the neighborhood or the general public, and will not result in inefficient or wasteful use of energy, and will not be materially injurious to properties or improvements in the vicinity.

(2) That the proposed location of the project and the conditions under which it would be operated or maintained will be consistent with all pertinent County ordinances and the purpose of the zone district in which the site is located.

(3) That the proposed use is consistent with all elements of the County General Plan and with any specific plan which has been adopted for the area.

(4) That the proposed use will not overload utilities, and will not generate more than the acceptable level of traffic on the streets in the vicinity.

(5) That the proposed project will complement and harmonize with the existing and proposed land uses in the vicinity and will be compatible with the physical design aspects, land use intensities, and dwelling unit densities of the neighborhood.

Opal Cliffs Recreation District – Privates Beach Access

Current Operation –

Formed in 1949, the Opal Cliffs Recreation District operates a .3 acre park at 4520 Opal Cliff Dr, Santa Cruz. The park contains several parking spots, an entrance gate, a coastal viewing area, a walkway down the cliff to Privates Beach. Electronic key cards to operate the gate are available from a local surf shop. The annual key rentals cost \$50 for district property owners and \$100 for others. A day access program provides that anyone may purchase a single day pass at \$5 at a nearby surf shop or by the gate attendant however, implementation of this component has been sporadic due to permit issues. District gate attendants (ambassadors) are available on site to assist visitors and sell the day passes between Memorial Day and Labor Day.

Budget Information –

Opal Cliff Recreation District

	5 Yr. Avg.	2015-16
Revenue		
Property Taxes	3500	5000
Key Cards/Day Passes	72000	99500
Other	500	500
Total	76000	105000
Expenses		
Maintenance	2000	2000
Utilities: Water/Garbage	1000	1000
Keys/Passes	7500	9000
Security	26000	32500
Other Professional Svcs	13000	10000
Insurance	2000	1500
Other	500	500
Total	52000	56500
Net Operations	24000	48500
Reserve for Park Improvements	24000	48500
Balance Available	0	0

Issue:

Operations of the beach access rely heavily on the sale of passes so if the gate is removed or opened during the day the District would not have enough funds to operate the beach access. What other revenue options does the district have available?

Hearing Draft

Review of Recreation and Park Districts Services and Spheres of Influence



March 2016



Local Agency Formation Commission
of Santa Cruz County
701 Ocean Street, Room 318D
Santa Cruz CA 95060

Exhibit B
A-3-SCO-18-0004

RECREATION AND PARK DISTRICTS 2016

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Document's Purpose, Format, and Executive Summary

LAFCO periodically performs municipal service reviews¹ and updates, as necessary, the sphere of influence of each agency subject to LAFCO's boundary regulation². A "sphere of influence" is defined as a plan for the probable physical boundaries and service area of a local agency. This report has been prepared to analyze the four recreation and park districts in Santa Cruz County:

- The Alba Park, Recreation and Parkway District
- The Boulder Creek Recreation and Park District
- The La Selva Beach Recreation and Park District
- The Opal Cliffs Recreation District.

The last service review for these four districts was the Countywide Service Review adopted in 2007, and the last Sphere of Influence Review occurred in 2008.

The main conclusions of this service and sphere review are:

- The four recreation and park districts are operating as small, independent local governmental agencies to provide important services that contribute to the unique quality of life in each of the communities.
- It is a challenge for the two smallest districts (Alba and Opal Cliffs) to function as governmental agencies. Despite the honorable efforts of the respective board members, the districts do not have the financial resources to comply with the myriad of state laws that apply to independent districts in California. Over the next five years, the two small districts should consider options to transition their services to other governmental or non-profit entities.

¹ Government Code §56430 (Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000). The last service review of the four recreation and park districts was prepared by LAFCO in 2005: <http://www.santacruzlafco.org/wp-content/uploads/2016/02/Whole-Public-Review-Draft.pdf>

² Government Code §56427

- The Boulder Creek Recreation and Park District has the highest budget, largest population, and only full-time staff of the four recreation districts. Collectively, these features foster the successful governance of the district as an independent local governmental agency.

Recreation and Park Districts in State Law

Recreation and Park Districts are authorized in the Recreation and Park District Law (Public Resources Code sections 5780 – 5791.7). They may provide any combination of recreation, park, and open-space services. They are independent of city and county governments, and are governed by a 5-person elected board of directors. Their formation, boundary changes, and dissolution is subject to LAFCO’s regulation under the Local Government Reorganization Act of 2000 (Government Code sections 56000 – 57550).

Recreation and Park Services in Santa Cruz County

In addition to the four Recreation and Park Districts, local recreational and park services are provided by five other agencies in the County:

- City of Capitola
- City of Santa Cruz
- City of Scotts Valley
- City of Watsonville
- County Service Area 11 (County Parks).

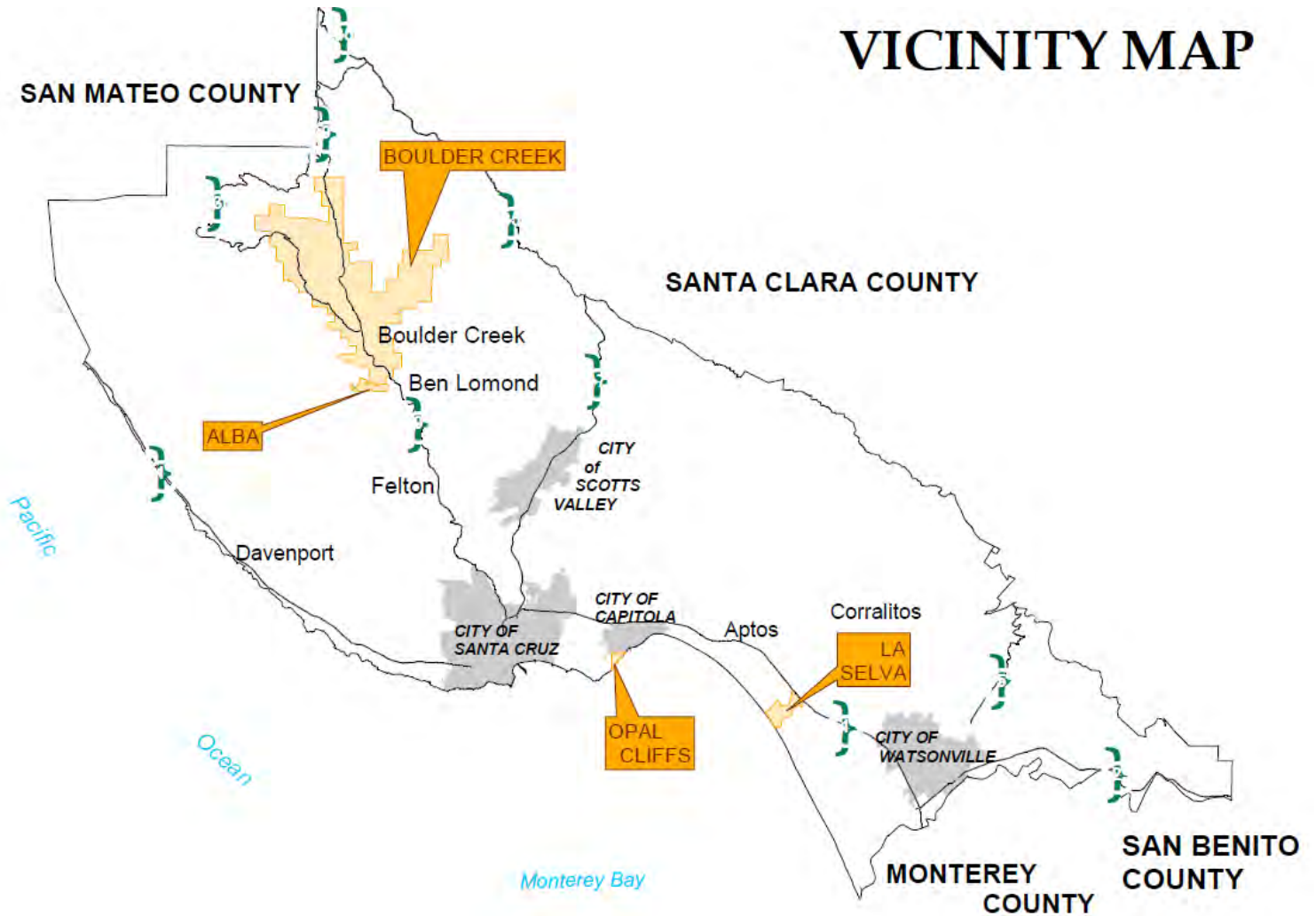
Table 1 – Recreation and Park Agencies

2016 Service Review of Recreation and Park Districts Functions Provided	Parks	Recreational Facilities	Public Open Space
Cities			
City of Capitola	•	•	
City of Santa Cruz	•	•	•
City of Scotts Valley	•	•	•
City of Watsonville	•	•	•
Special Districts			
CSA 11 – Recreation and Parks	•	•	•
Alba Park, Recreation and Parkway District	•	•	
Boulder Creek Recreation and Park District	•	•	
La Selva Beach Recreation and Park District	•	•	
Opal Cliffs Recreation and Park District	•	•	•

The four agencies addressed in this report are in **Bold Type**.

Every square inch of land in Santa Cruz County is located in one, and only one, of these nine recreation and park agencies. No boundaries overlap. A small area of the Skyline, northwest of Highway 9 is located within the Midpeninsula Regional Open Space District, which provides open space service to portions of Santa Clara, San Mateo, and Santa Cruz counties. That small area is also located within County Service Area 11, which provides minor financial support for the Santa Cruz County Department of Parks, Open Space, and Cultural Services.

VICINITY MAP



Opal Cliffs Recreation District

Formed in 1949, the Opal Cliffs Recreation District operates a 0.3 acre park at 4520 Opal Cliff Drive, Santa Cruz. The park contains several parking spots, an entrance gate, a coastal viewing area, a walkway down the cliff to Privates Beach. Electronic key cards to operate the gate are available from a local surf shop. The annual key rentals cost \$50 for district property owners and \$100 for others. A Coastal Commission permit provides that anyone may purchase a single day pass for \$5 at a nearby surf shop. The District is governed by a five-person board of directors:

Table 8 -- Board

Board of Directors:	Title	Term Expiration	Compensation
Michael Carlton	Director	Dec. 2017	None
David Cook	Director	Dec. 2019	None
Ted Donnelly	Director	Dec. 2017	None
John Griffith	Director	Dec. 2019	None
Craig Springbett	Director	Dec. 2019	None

Finance

Table 9-- Opal Cliffs Recreation District – Financial Summary

Finances	FY 02-03 Actual	FY 03-04 Actual	FY 12-13 Actual	FY 13-14 Actual	FY 14-15 Actual
Sources					
1% Property Tax	\$1,606	\$1,665	\$3,186	\$3,128	\$3,937
Service Charges	\$10,440	\$7,114	\$69,930	\$77,750	\$42,450
Park Dedication Fees from County	\$18,350	\$40			\$0
Interest	\$35	(\$29)	\$77	\$161	\$389
Other Revenue	(\$66)		\$33	\$128	\$167
Total Sources	\$30,365	\$8,750	\$73,226	\$81,157	\$46,943
Uses					
Services & Supplies	\$29,633	\$14,720	\$57,209	\$46,205	\$14,467
Fixed Assets	\$4,930	\$0	\$0	\$0	\$0
Total Uses	\$34,563	\$14,720	\$57,209	\$46,205	\$14,467
Net Surplus/(Deficit)	(\$4,198)	(\$5,970)	\$16,017	\$34,952	\$32,476
Fund Balance, end of year	\$256	(\$5,714)	\$15,459	\$31,476	\$66,428

Division 76535

Facilities of the Opal Cliffs Recreation District

Gate



Viewing Area at Top of Cliff



Stairs to Beach

Audits

As is typical with districts with very small budgets, the Opal Cliffs Recreation District has a hard time complying with audit recommendations. Since 2009, the County Auditor has performed three audits⁷ of the District in 2010, 2012, and 2014 and has issued a management letter⁸ with each audit. The 2014 management letter noted that of 15 recommendations:

- 2 recommendations had been partially implemented
- 11 recommendations had not been implemented
- progress on 2 recommendations could not be evaluated because the District did not keep records on ethics training, and the Auditor was unable to audit petty cash expenditures.

In the 2014 management letter, the County Auditor made 32 recommendations. Recommendations included:

- 1) Adopt a schedule of regular meeting and make it available to the public.
- 2) Post meeting agendas in compliance with the Brown Act.
- 3) Adopt preliminary and final budgets by the deadlines specified in State law.
- 4) Submit all expenditure documentation (invoices, receipts) to the County Auditor-Controller for their processing and payment.
- 5) Maintain records of certificates of insurance.
- 6) Continue working with the consultant the District Board hired to draft and adopt policies and procedures to process key card inventory, other revenues, expenditures, and petty cash.
- 7) Prepare and maintain minutes of Board meetings.
- 8) Hold meetings at least once every three months.
- 9) Require applications to be completed before key cards are issued.
- 10) Reconcile key card sales to revenues collected by surf shop.
- 11) Hire a bookkeeper.

Operations

In 2009, the OCRD obtained a Coastal Development Permit from the Coastal Commission for the current gate and other park improvements. A January 6, 2009 Sentinel article covering the permit is attached in the Appendix to this report. The Coastal Commission was concerned that a locked gate was not adequate public beach access under the Coastal Act. Since revenues from key sales are a significant source of funds to maintain the park, the Coastal Commission conditioned its authorization of the park improvements upon a park access management plan, which included a series of requirements. The rationale was that a modest maintenance fee was similar to the fee paid for day use parking at state parks.

⁷ Report on Audit of Opal Cliffs Recreation and Park District for the years ended June 30 2009 and 2008, County of Santa Cruz Auditor-Controller, June 2010.

Report on Audit of Opal Cliffs Recreation and Park District for the years ended June 30 2011 and 2010, County of Santa Cruz Auditor-Controller, September 2012.

Report on Audit of Opal Cliffs Recreation and Park District for the years ended June 30 2013 and 2012, County of Santa Cruz Auditor-Controller, November 2014.

⁸ Management Letters from County Auditor-Controller to Board of Directors of the Opal Cliffs Recreation and Park District dated June 14, 2010; September 24, 2012; and November 17, 2014.

Several of the Coastal Development Permit⁹ conditions are:

1. The \$100 annual gate pass would be available in lesser amounts prorated to half year and quarter year use.
2. A daily pass would be available for no more than \$5, good for a group of up to 10 people.
3. Passes would be available from a nearby business (currently Freeline Surf Shop, 821 41st Avenue) seven days a week, and from the gate attendant when the attendant was present.
4. Directions on how to obtain a gate pass would be posted on a sign near the access gate.
5. The OCRD would file an operations report every two years with the Coastal Commission.

Organizational Options

The Opal Cliffs Recreation District is wholly located within the City of Capitola's Sphere of Influence. If Opal Cliffs annexes to the City of Capitola, the Opal Cliffs Recreation District should dissolve and the City of Capitola should maintain the beach access.

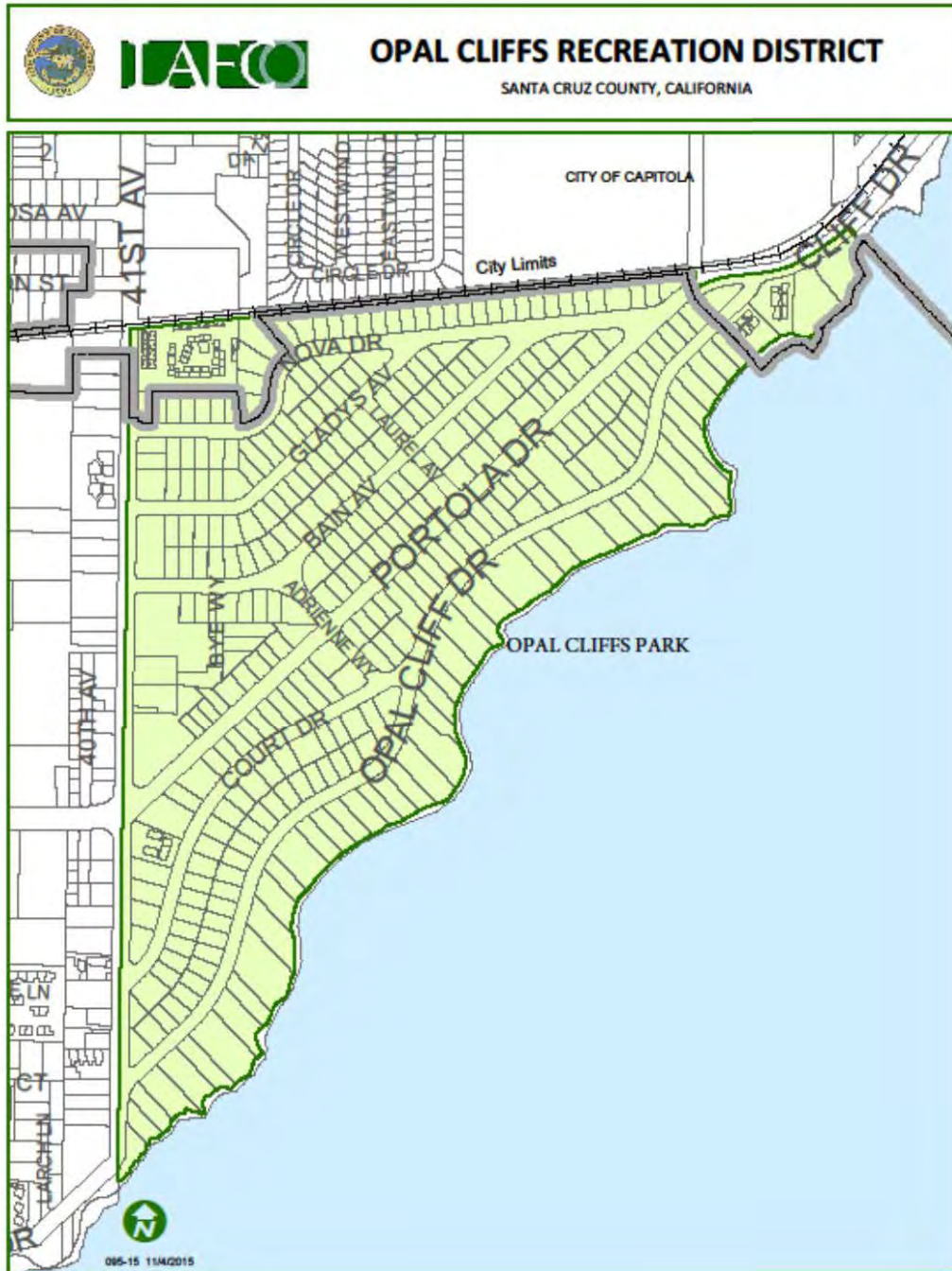
Another organizational option would be for the Opal Cliffs Recreational District to dissolve and for County Service Area 11 (County Parks) to annex Opal Cliffs and maintain the beach access. County Parks maintains other beach access facilities in nearby Live Oak. Alternately, the Opal Cliffs District could enter a JPA or contract with the County for County Parks to operate the park and beach access. Under a JPA, the Opal Cliffs Recreation District would continue to exist, and the District Board's main functions would be to assure that the County was meeting performance standards, and to re-negotiate the JPA agreement or contract as needed.



⁹ Staff Report for Coastal Development Permit Amendment Application, P-80-393-A1, Privates Beach Accessway Improvements, Prepared for 1/7/2009 Coastal Commission Hearing.

Sphere

Opal Cliffs Recreation District's Sphere of Influence, last reviewed by LAFCO in 2008, is a zero sphere of influence, meaning that LAFCO expects that the District will go out existence at some point in the future. LAFCO staff has identified no changes for the Commission to consider in the current review.



Opal Cliffs Park Aerial



Comments

At their March 3, 2016 meeting, the Opal Cliffs Recreation District Board of Directors provided oral comments on the Public Review Draft of this report. In summary, their principal comments were:

- The current gate and fence configuration was needed to control partying and vandalism.
- The District engaged a governmental consultant to prepare a procedures manual.
- The District is actively seeking accounting help.
- When the gate attendant is present, the attendant is instructed to act as a beach access ambassador, rather than as a guard.

Comparison of Districts

Table 10
Recreation Program Expenditures Per Capita

District	Population Estimate 2010	Number of Parcels	Assessed Tax Roll Value	Parcel Acres ⁱ	Expenditures in FY 14-15	Expenditures per Capita
Alba	220	48	\$16,455,550	205	\$1,598	\$7.26
Boulder Creek	7,748	6,714	\$1,250,642,405	10,785	\$297,139	\$38.35
La Selva	1,613	814	\$365,747,786	331	\$113,100	\$70.12
Opal Cliffs	690	438	\$267,660,427	66	\$14,467	\$20.97

i. Excludes roads.

Table 11
Recreation Program Expenditures Per Capita

District	Expenditures per Capita FY 04-05	Expenditures per Capita FY 14-15	% Change in 10 years
Alba	\$10.63	\$7.26	-32%
Boulder	\$13.75	\$38.35	179%
La Selva Beach	\$108.00	\$70.12	-35%
Opal Cliffs	Not Calculated	\$20.97	Not Calculated

The County of Santa Cruz collects park dedication fees¹⁰ upon the issuance of residential building permits. The purpose of fee is to develop or rehabilitate community parks and recreation facilities. The fees are collected in each recreation and park district are sequestered for use by the appropriate district. The County disburses the fees to a District upon request, and credits interest annually.

Table 12 -- Park Dedication Fees

District	Building Type	Fee Per Bedroom
Alba and Boulder Creek	Single-Family	\$800
	Multi-Family	\$600
Opal Cliffs and La Selva	Single-Family	\$1,000
	Multi-Family	\$750

Table 13 -- Park Dedication Fund (County Trust)

District	Fees Collected in FY 14-15	Balance 7/1/15
Alba Park, Recreation and Parkway District	\$0	\$481
Boulder Creek Recreation and Park District	\$6,400	\$7,410
La Selva Beach Recreation and Park District	\$0	\$61,838
Opal Cliffs Recreation District	\$0	\$6,645

¹⁰ Government Code 66477

Growth and Population

There are no growth projections available for the individual district. In general, the Santa Cruz County unincorporated area is projected to have slow to moderate growth over the next twenty years. The projections are as follows:

**Table 14
Population**

Public Agency	2010	2015	2020	2025	2030	2035	Annual Growth Rate
Santa Cruz County (unincorporated)	129,739 *	133,790 **	132,318 ***	134,879 ***	139,601 ***	144,227 ***	0.42% ***

Sources:

*2010 US Census

**State of California; Department of Finance E-5 Population Estimates for January 1, 2015

***AMBAG 2014 Regional Growth Forecast; June 11, 2014

Based upon the park dedication fees collected in the last two years, all of the districts are experiencing low or no growth.

Disadvantaged Communities

State law¹¹ requires that LAFCOs address disadvantaged unincorporated communities within or contiguous to the subject agency's sphere of influence. The purpose is to evaluate the feasibility of extending public services to poor communities. A community is defined¹² as disadvantaged if it has an annual median household income that is less than 80 percent of the statewide annual median household income. In 2013, the California statewide median household income was \$61,094¹³, and 80% of that was \$48,875. None of the four recreation and park districts contain or abut any of the disadvantaged census tracts in Santa Cruz County. In its planning activities the County of Santa Cruz has not identified any disadvantaged areas within these four districts or contiguous to their spheres of influence.

Santa Cruz LAFCO Policies

Santa Cruz LAFCO has a policy that it maintains a file of agency mission statements and meeting rules. These can be accessed by agency boards and community members when discussing agency goals and board meeting procedures.

¹¹ Government Code §56430 for service reviews, and Government Code section 56425(e) for sphere reviews.

¹² Water Code §79505.5.

¹³ U.S. Census Bureau, 2009-2013 American Community Survey 5-Year Estimates.

Opal Cliffs Recreation and Park District

Service Review Determinations

1) *Population and Growth*

The Opal Cliffs Recreation District has an estimated population of 690 people. The District is nearly built out under the County General Plan designations; however, the District is experiencing replacement of modest homes with larger homes.

2) *Disadvantaged Unincorporated Communities*

There are no disadvantaged unincorporated communities within or contiguous to the sphere of influence of the Opal Cliffs Recreation District.

3) *Capacity of Facilities*

The Opal Cliffs Recreation and Park District is maintaining a small park and a beach access. In the last ten years, the facilities have been upgraded and are being maintained well.

4) *Financial Ability of Agencies*

Opal Cliffs Recreation District is funded through property taxes and gate fee charges. In the last ten years, the District has maintained its facilities and has increased its year-end fund balance to \$66,428. The District continues to address accounting deficiencies identified in audit reports.

5) *Shared Facilities*

The Opal Cliffs Recreation and Park District does not share any facilities. Both the City of Capitola and Santa Cruz County Parks maintain coastal accesses downcoast and upcoast of Opal Cliffs.

6) *Accountability*

The Opal Cliffs Recreation District is governed by a five-person board of directors.

7) *Matters Required by Local LAFCO Policies*

Santa Cruz LAFCO has adopted a policy that it will inquire whether public agencies have adopted meeting rules and a mission statement. LAFCO maintains a file of meeting rules that is available for review by any local agency. LAFCO's records were used by the District's governmental consultant when the District's policies and procedures were recently updated.

Opal Cliffs Recreation District
Sphere of Influence Determinations

1) The present and planned land uses in the area, including agricultural and open-space lands.

The County General Plan applies to the Opal Cliffs area. The present and planned land uses in the District are mostly urban residential, with small amounts of commercial and public uses. There are no agricultural uses in or adjacent to the District. The District is within the City of Capitola's Sphere of Influence. The City's General Plan would maintain the land uses similar to the current land uses, and the land uses as planned by the County.

2) The present and probable need for public facilities and services in the area.

The probable need for public recreational facilities in the District is continuing to maintain the current park and beach access.

3) The present capacity of public facilities and adequacy of public services that the agency provides or is authorized to provide.

The Opal Cliffs Recreation District is providing a small park and beach access. The facilities are well maintained. The key-access system is unique for a public facility in Santa Cruz County.

4) The existence of any social or economic communities of interest in the area if the commission determines that they are relevant to the agency.

Opal Cliffs is an urban, beach neighborhood located between similar neighborhoods in the City of Capitola and unincorporated Live Oak. All these coastal neighborhoods are closely inter-related. Both the City and the County are maintaining nearby beach parks and accessways. Opal Cliffs is located within the adopted Sphere of Influence for the City of Capitola. The adopted Sphere of Influence for the Opal Cliffs Recreation District assumes that, if it annexes to Capitola, the District will go out of existence and that the City will take over the park and beach access.

PRIVATES BEACH PROBLEMS ON PUBLIC VIEW: SMALL OPAL CLIFFS RECREATION DISTRICT CITED FOR LAX BOOKKEEPING

By Jason Hoppin

Santa Cruz Sentinel

Posted: 07/10/13, 12:01 AM PDT

OPAL CLIFFS -- The public agency that oversees Privates Beach has a history of questionable finances and poor management, including not being able to locate its own bylaws, according to audits reviewed by the Sentinel.

The Opal Cliff Recreation District oversees access to the small, gated Pleasure Point beach, which is the only public access to the ocean between the Hook and Capitola Village. It is overseen by an elected board, but some are now raising questions about everything from sloppy record-keeping to a bash at a local Chinese restaurant.

"I don't want to ascribe a motive to it, but it clearly results in a lack of accountability to the public," Supervisor John Leopold said of the practices at Opal Cliffs.

Leopold, who represents the area, sent a stern letter June 26 to the district urging it to clean up its finances and management practices. But the county Board of Supervisors has no official authority over the district, and some local officials have spent years trying to get Opal Cliffs to shape up.

John Griffith, Opal Cliffs board president, said the district is taking the county's concerns seriously. The board met with county officials last week and is changing how it handles revenues and is in contact with a consultant about bringing the district into compliance with state rules.

"It feels like we're on the right track here," Griffith said.

The district generates revenue through neighborhood property taxes, state park bond revenues and the sale of beach access cards at Freeline Design Surf Shop. It is the latter, which are deposited in the county treasury, which Santa Cruz County Auditor-Controller Mary Jo Walker has raised the most questions about.

For fiscal year 2010-11, the county determined \$11,090 was unaccounted for. The district was able to document \$5,121 in spending, including \$1,000 held as petty cash. But that leaves nearly \$6,000 unaccounted for, and the county was not exactly pleased with receipts for the spending that was documented.

One board member apparently paid for the district's \$1,442 insurance bill out of the member's own pocket and was at least partially reimbursed. One \$650 bill went for "bluff protection" -- apparently for labor costs, which has potential income tax implications -- but no further explanation was noted.

And one receipt was for \$772.81 in food at Capitola's Canton restaurant. The receipt said \$337.90 was spent on alcohol, but did not explain the purpose of the spending. However, a handwritten note on a May 2011 district agenda reads "June 9th -- Freeline party," which coincides with the receipt.

Focused on issues

Griffith said the board previously was focused on fixing public safety issues at Privates, which included everything from discarded hypodermic needles to a reputation as a party spot. With that done, he said the board has implemented a tighter key card system, blaming financial discrepancies on bad bookkeeping rather than malfeasance.

"We believe the families that live around here or anywhere really do appreciate having a safe, family-oriented beach," Griffith said. "And so now it's a matter of tackling all the governance stuff and getting all the paperwork in order."

Griffith also said the board has dispatched what he described as an "independent contractor," who previously handled cash management duties. He said the board also holds an annual party for Freeline, which handles the key cards for no charge, and said the board would look to scale down the next event.

"It's just been a thank you party that we've done annually for them," Griffith said.

Griffith also said he is looking to bring on a new board member who has experience dealing with the county, and wants to come into compliance with governance rules, which he said can be hard to ascertain for a volunteer board.

"That's the hardest stuff for us. We all have real jobs and this is what we do in our free time," he said.

Lax oversight

There are more than 90 special self-governing districts throughout the county. They can oversee water, parks, firefighting, facilities and other services, and they are subject to the same open meeting laws and accounting standards as city councils and other government entities.

But it can be tough to attract leadership, and lax adherence to financial standards is not unusual. A 2009 Santa Cruz County Grand Jury report found larger districts functioned well, but that smaller ones "may fall into gray areas of minimal compliance with guidelines and statutes in the operation of their districts."

The problems at Opal Cliffs have been raised repeatedly, with county officials -- including the county's top lawyer -- meeting with the district and even offering the name of a bookkeeper to help keep things in order.

The Opal Cliff Recreation District dates to the post-World War II era, and its management of Privates Beach has been controversial. Prior to 2009, it allowed the public access to the stairway leading to beach for an annual membership of \$100.

The state Coastal Commission saw that as exclusionary, and in 2009 agreed to approve bluff-top improvements, including a shower, if the district sold daily passes to members of the public. Those passes cost \$5, with revenues kept separate from the register at Freeline, which has not been accused of wrongdoing.

It is the handling of those revenues that are raising the most questions. While the district is subject to county audits, it does not fall under the control of the county Board of Supervisors. Even if Opal Cliffs fails to clean up its books, the county has no power to act.

But the Local Area Formation Commission, or LAFCO, does oversee aspects of special districts, including their dissolution. That can occur through the district's own initiative, a petition, or a lengthy, LAFCO-initiated process.

If Opal Cliffs were dissolved, it appears Privates Beach would revert to county management and be subject to the same rules as other county parks. Leopold said he doesn't think the issue needs to go that far.

"I think there are qualified people who would be committed to running the district efficiently that live in the neighborhood," he said. "I've talked to many of them."

Two Opal Cliffs board members, famed surfer Robert "Wingnut" Weaver and Michael Carlton, are up for re-election in November.

When asked, Griffith said he did not think the county was targeting Opal Cliffs in order to take over Privates.

"Not at all, and they don't want to take it over either," Griffith said,

Follow Sentinel reporter Jason Hoppin at [Twitter.com/scnewsdude](https://twitter.com/scnewsdude)

**Opal Cliffs Recreation District
2017 - 2018 Budget**

Fund 76535	Budget Amount
Revenue	
40100 Property Tax	2,800
40106 Property Tax	1,800
40110 Property Tax	55
40130 Property Tax	10
40150 Property Tax	200
40151 Property Tax	15
40160 Property Tax	10
40161 Property Tax	10
Total Property Tax	4,900
40430 Interest	750
Total Interest	750
42002 Park & Rec Fees	80,000
Total Park & Rec Fees	80,000
Total Revenue	85,650
Expenditures	
61535 OTHER INSURANCE	2,000
61845 MAINT-STRUCT/IMPS/GRDS-OTH-SRV	5,000
62223 SUPPLIES	500
62301 ACCOUNTING AND AUDITING FEES	1,150
62395 TEMPORARY CONTRACT SERVICES (Ambassadors)	33,000
62360 LEGAL SERVICES	
Legal pre-trial	30,000
Legal litigation	20,000
62376 PLANNING SERVICES	
County permits	10,000
63070 UTILITIES	500
Total Expenditures	102,150
Net Revenues of Expenditures	(16,500)
Designated Reserves	
34303 COMMITTED - ECONOMIC UNCERTNTY	
34381 DESIGNATED - CAPITAL IMPRVMENTS	
Total Designated Amounts	0
Net Revenues of Expenditures & Reserves	(16,500)

Opal Cliffs Recreation District 2017 - 2018 Budget Narrative

The Opal Cliffs Recreation District 2017 - 2018 budget reflects general ledger account changes that better reflect the true operational activities of the district. Every effort will be made to correctly indicate the posting account.

The District, recognizing the inevitable likelihood of a natural disaster destroying the OCRD park infrastructure, must create a reserve for emergency capital expenditures. The reserve must be sufficient to meet the costs for demolition of damaged structures, engagement of legal, financial, architectural and design professionals, community outreach, permitting, environmental studies, construction, construction impact mitigation, public safety and recommissioning.

The District recognizes that it is prudent to create a reserve for economic uncertainties. Such a reserve should be of sufficient size to allow the District to maintain operations and to operate the Ambassador Program for a period necessary to regenerate a sustainable revenue stream.

CALIFORNIA COASTAL COMMISSION
CENTRAL COAST AREA OFFICE
640 CAPITOLA ROAD
SANTA CRUZ, CA 95062
(408) 479-3511

RECEIVED
FEB 4 1992



CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

Page 1 of 2
Date: January 9, 1992
Permit No. P-80-393

COASTAL DEVELOPMENT PERMIT

On April 13, 1981, the California Coastal Commission granted to

the Opal Cliffs Recreation District

this permit subject to the attached Standard and Special conditions, for development consisting of:

Replace and raise fences around accessway.

more specifically described in the application file in the Commission offices.

The development is within the coastal zone in Santa Cruz County at 4520 Opal Cliffs Drive, Live Oak APN: 33-151-27.

Issued on behalf of the California Coastal Commission by

PETER DOUGLAS
Executive Director

By: Les Strnad

Title: Chief of Permits

ACKNOWLEDGMENT

The undersigned permittee acknowledges receipt of this permit and agrees to abide by all terms and conditions thereof.

The undersigned permittee acknowledges that Government Code Section 818.4 which states in pertinent part, that: "A public entity is not liable for injury caused by the issuance. . . of any permit. . ." applies to the issuance of this permit.

IMPORTANT: THIS PERMIT IS NOT VALID UNLESS AND UNTIL A COPY OF THE PERMIT WITH THE SIGNED ACKNOWLEDGEMENT HAS BEEN RETURNED TO THE COMMISSION OFFICE. 14 Cal. Admin. Code Section 13158(a).

1-31-92
Date

Paul Hano
Signature of Permittee

TREASURER

A6: 4/88

COASTAL DEVELOPMENT PERMIT

Page 2 of 2
Permit No. P-80-393

STANDARD CONDITIONS:

1. Notice of Receipt and Acknowledgment. The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. Expiration. If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. Compliance. All development must occur in strict compliance with the proposal as set forth in the application for permit, subject to any special conditions set forth below. Any deviation from the approved plans must be reviewed and approved by the staff and may require Commission approval.
4. Interpretation. Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
5. Inspections. The Commission staff shall be allowed to inspect the site and the project during its development, subject to 24-hour advance notice.
6. Assignment. The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
7. Terms and Conditions Run with the Land. These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

SPECIAL CONDITIONS: See page 3 of Staff Report.

CALIFORNIA COASTAL COMMISSION

CENTRAL COAST AREA OFFICE
640 CAPITOLA ROAD
SANTA CRUZ, CA 95062
(408) 479-3511

NOTICE OF COMMENCEMENT OF CONSTRUCTION

I/We hereby notify the CALIFORNIA COASTAL COMMISSION that I/We began the development authorized by Permit Number P-80-393 on _____ and that the development will be Date Construction Began completed in accordance with any conditions imposed in the permit.

Paul Harmon
Signature of Applicant or
Representative
OPAL CLIFFS RECREATION DIST.

1-31-92
Date

CALIFORNIA COASTAL COMMISSION

CENTRAL COAST DISTRICT OFFICE
725 FRONT STREET, SUITE 300
SANTA CRUZ, CA 95060
PHONE: (831) 427-4863
FAX: (831) 427-4877
WEB: WWW.COASTAL.CA.GOV

W13b



CONTINUED

Filed: 8/2/2008
180th day: 1/29/2009
Staff report prepared: 12/18/2008
Staff report prepared by: Susan Craig *S. Craig*
Staff report approved by: ~~DC~~ Dan Carl
Hearing date: 1/7/2009

COASTAL DEVELOPMENT PERMIT AMENDMENT APPLICATION

Application numberP-80-393-A1, Privates Beach Accessway Improvements

Applicant.....Opal Cliffs Recreational District

Project location.....Privates Beach Accessway located at 4250 Opal Cliff Drive in the unincorporated Live Oak area of Santa Cruz County.

Project descriptionInstallation of outdoor sand-rinse shower; upgrade of existing water faucet and water meter; landscaping and associated irrigation; replacement of existing wood stairway railings with metal railings; replacement of an existing concrete pathway with colored concrete; after-the-fact recognition of a 9-foot-tall fence and locked gate at the entrance and sides of the accessway; and installation of two new sections of 9-foot-tall wrought iron fencing that will extend for 30 additional feet along the side property boundaries.

File documents.....Coastal Commission Coastal Development Permit (CDP) File Number P-80-393; Santa Cruz County File Number 07-0639.

Staff recommendationApprove with Conditions

A. Staff Recommendation

1. Summary of Staff Recommendation

The Opal Cliffs Recreation District (OCRD) is a special district that is a component of Santa Cruz County government, and whose members are the owners of the surrounding residential properties in the Opal Cliffs area (generally extending from 41st Avenue to the City of Capitola city limits) of Live Oak. OCRD owns and operates the Privates Beach Accessway (PBA). The PBA includes a one-quarter-acre park area located on the blufftop between Opal Cliff Drive and the blufftop edge. A path through this park area leads to a stairway that provides access to the beach (Privates Beach) below. The PBA is the only vertical accessway to the coast between 41st Avenue and Hooper Beach, a distance of over a mile marked by high bluffs and residential development for the majority of the seaward side of the road that together strictly limit access opportunities along this shoreline, including visual access. As a result, the PBA is an important and significant accessway for Opal Cliffs as well as for the overall Live Oak beach area.



In 1981, the Commission authorized a six-foot tall chain link fence with a gate fronting the accessway (CDP P-80-393). In 1991, a public access management program for the PBA was approved (as part of condition compliance for the Commission's base CDP action). The access program included provisions allowing an annual gate access fee (then \$20 for a key) to use the PBA. Thus, by virtue of the Commission's action and the subsequent access program, the existing permitted access setup is that the public is charged a fee to access the beach through the Privates Beach Accessway. Both OCRD members and non-OCRD members are required to pay the fee, although OCRD members pay a reduced rate that accounts for the OCRD assessment they pay on their property taxes.

OCRD proposes to undertake a variety of beneficial improvements to the PBA behind the gate including a new sand-rinse shower, water faucet upgrade, new metal stairway railings, and landscaping. These improvements would increase the utility of this accessway for users, and can be found consistent with the Coastal Act and the LCP.

OCRD also proposes to replace the previously authorized chain link fence and gate with a larger and more massive fence and gate that is wrought iron, 9-foot tall, and topped with curved and pointed tips extending toward Opal Cliff Drive. The larger gate was already installed without benefit of a CDP sometime in the late 1990s, and thus this component of the application is an after-the-fact request to authorize the increased scale, size, and configuration of the fence and the gate. OCRD also proposes two new 30-foot-long sections of similar style 9-foot-high fence along the side property boundaries. OCRD indicates that the new fences (including the unpermitted existing fence/gate) are necessary to stop people from climbing over/around the gate without paying a fee.

The proposed after-the-fact increased fence/gate fortifications and the new fence extensions present a barrier to public access use. This fencing change will have a chilling effect on all public access to this location because the proposed height, scale, and spiked configuration of the fence and locked gate tend to be perceived as unwelcoming, thus imposing both a physical and a psychological impediment to most beach goers as compared to the existing permitted baseline of a low-key, six-foot chain link fence. Such public recreational access impacts have been ongoing for a decade or more since the fence/gate was modified without a CDP. When combined with the fact that OCRD now charges a \$100 dollar fee for an annual access pass, public access has been severely curtailed at this important vertical access location.

This public access barrier cannot be found consistent with LCP and Coastal Act mandates requiring maximum public recreational access opportunities. The most appropriate way to offset such impacts, and to find LCP and Coastal Act consistency, is to make sure that if the public is going to be charged a fee to access this site, then the fee structure must be reasonable, revenues from it need to be directed to the accessway, and it must be implemented according to well-defined and understood parameters, including with respect to monitoring and reporting to ensure that to be the case over time. Staff therefore recommends that the Commission **approve** the proposed development subject to the submittal of an updated public access management plan that accounts for these provisions. As so conditioned, the Commission can find the project consistent with the public access and recreation policies of the Coastal Act and the LCP.



2. Staff Recommendation on CDP Amendment

Staff recommends that the Commission, after public hearing, **approve** a coastal development permit amendment for the proposed development subject to the standard and special conditions below.

Motion. I move that the Commission approve Coastal Development Permit Amendment Number P-80-393-A1 pursuant to the staff recommendation.

Staff Recommendation of Approval. Staff recommends a **YES** vote. Passage of this motion will result in approval of the coastal development permit amendment as conditioned and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

Resolution to Approve a Coastal Development Permit Amendment. The Commission hereby approves the coastal development permit amendment on the grounds that the development as conditioned, will be in conformity with the policies of Chapter 3 of the Coastal Act. Approval of the coastal development permit amendment complies with the California Environmental Quality Act because either: (1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the amended development on the environment; or (2) there are no feasible mitigation measures or alternatives that would substantially lessen any significant adverse effects of the amended development on the environment.

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D. Exhibits

Exhibit A: Location Maps

Exhibit B: Project Plans

Exhibit C: Photographs of the Project Site

Exhibit D: CDP P-80-393

Exhibit E: CDP P-80-393 Access Program

Exhibit F: LCP Figure 7-2 (Santa Cruz County Public Parks and Recreation Facilities)

B. Findings and Declarations

The Commission finds and declares as follows:

1. Project Location and Description

A. Project Location and Background

Santa Cruz County Regional Setting

Santa Cruz County is located on California's central coast and is bordered to the north and south by San Mateo and Monterey Counties (see Exhibit A). The County's shoreline includes the northern half of the Monterey Bay and the rugged north coast extending to San Mateo County along the Pacific Ocean. The County's coastal zone resources are varied and oftentimes spectacular, including the Santa Cruz Mountains coastal range and its vast forests and streams; an eclectic collection of shoreline environments ranging from craggy outcrops to vast sandy beaches (in both urban and more rural locations); numerous coastal wetland, lagoon and slough systems; habitats for an amazing variety and number of endangered species; water and shore oriented recreational and commercial pursuits, including world class skim-boarding, bodysurfing, and surfing areas; internationally renowned marine research facilities and programs; special coastal communities; vast State Park lands; and the Monterey Bay itself. The unique grandeur of the region and its national significance was formally recognized in 1992 when the area offshore of the County became part of the Monterey Bay National Marine Sanctuary (MBNMS), the largest of the thirteen such federally protected marine sanctuaries in the nation.

Santa Cruz County's rugged mountain and coastal setting, its generally mild climate, and its well-honed cultural identity combine to make the area a desirable place to both live and visit. As a result, the County has seen extensive development and regional growth over the years that the California Coastal Management Program has been in place. In fact, Santa Cruz County's population has more than doubled since 1970 alone with current State estimates indicating that the County is home to over one-quarter of a



million persons.¹ This level of growth not only increases the regional need for housing, jobs, roads, urban services, infrastructure, and community services, but also the need for park areas, recreational facilities, and visitor serving amenities. For coastal counties such as Santa Cruz where the vast majority of residents live within a half-hour of the coast, and most significantly closer than that, coastal zone resources are a critical element in helping to meet these needs. Furthermore, with coastal parks and beaches themselves attracting visitors into the region, an even greater pressure is felt at coastal recreational systems. With the Santa Cruz County shoreline and beaches providing arguably the warmest and most accessible ocean waters in all of Northern California, and with the large population centers of the San Francisco Bay area, San Jose, and the Silicon Valley nearby, this type of resource pressure is particularly evident in coastal Santa Cruz County.

Live Oak Beach Area

Live Oak is the name for the unincorporated segment of Santa Cruz County located between the City of Santa Cruz (upcoast) and the City of Capitola (downcoast) (see Exhibit A). Live Oak is home to some of the best recreational beaches and ocean waters in the Monterey Bay area. Not only are north Monterey Bay weather patterns more conducive to beach and ocean recreation than the rest of the Monterey Bay area, and not only is it also home to multiple world class surfing areas, but north bay beaches are generally the first beaches accessed by visitors coming from the north of Santa Cruz. With Highway 17 providing the primary access point from the north (including from the San Francisco Bay Area, San Jose and the Silicon Valley) into the Monterey Bay area, Santa Cruz, Live Oak, and Capitola are the first coastal areas that visitors encounter upon traversing the Santa Cruz Mountains. As such, the Live Oak beach area is an important coastal access asset for not only Santa Cruz County, but also the entire central and northern California region.

Walking, biking, skating, viewing, skimboarding, bodysurfing, surfing, fishing, sunbathing, and more are all among the range of recreational activities possible along the Live Oak shoreline. In addition, Live Oak also provides a number of different coastal environments including sandy beaches, rocky tidal areas, blufftop terraces, and coastal lagoons. These varied coastal characteristics make the Live Oak shoreline unique in that a relatively small area (roughly three miles of shoreline) can provide different recreational users a diverse range of alternatives for enjoying the coast. By not being limited to one large, long beach, or solely an extended stretch of rocky shoreline, the Live Oak shoreline accommodates recreational users in a manner that is typical of a much larger access system.

Primarily residential with some concentrated commercial and industrial areas, Live Oak is now a substantially urbanized area with few major undeveloped parcels remaining. Development pressure has been disproportionately intense for this section of Santa Cruz County. Because Live Oak is projected to absorb the majority of the unincorporated growth in Santa Cruz County, development pressure will likely continue to tax Live Oak's public infrastructure (e.g., streets, parks, beaches, etc.) as the remaining

¹ Census data from 1970 show Santa Cruz County with 123,790 persons; California Department of Finance estimates for 2007 indicate that over 265,183 persons reside in Santa Cruz County (*State of California, Department of Finance, July 1, 2007 County Estimates Ranked by Size, Numeric and Percent Change since July 1, 2006*; Sacramento, California; July 2007).



vacant parcels are developed and developed residential lots are re-developed with larger homes.² Given that the beaches are the largest public facility in and out of the Live Oak coastal zone, this pressure will be particularly evident along the shoreline.

Project Site

The Privates Beach Accessway (PBA) is located in the Opal Cliffs area of Live Oak. Opal Cliffs is the name for the area extending roughly from 41st Avenue to the City of Capitola city limits. This stretch of coastline is almost exclusively described by a row of private residential properties that are perched atop the bluffs located seaward of the first through public road (Opal Cliff Drive). As a result, seaward public views and access from Opal Cliff Drive have been extremely curtailed. The PBA is the only vertical accessway to the beach and shoreline for the roughly one-mile stretch of coastline between 41st Avenue (upcoast) and Hooper Beach in Capitola (downcoast). In addition, it is the only location along Opal Cliff Drive where the public is afforded a through blue-water view because the view from the street is otherwise blocked by houses. See Exhibit A for project location maps.

The PBA is accessed via Opal Cliff Drive. Five parking spaces, which are perpendicular to Opal Cliff Drive, face a wrought iron fence and locked gate (see discussion in "Opal Cliffs Recreation District Background" section below) that controls access to the PBA and the pocket beach below, which is known locally as "Key beach" or "Privates." The park-like component of the project site located on the bluff top is approximately one-quarter acre in size. A path through this park area leads to a stairway that provides access to the beach and ocean below. Some lateral beach-level access to the pocket beach at this location is also available from both up and down coast, but such access is generally limited to very low tides, due at least in part to the large piles of riprap and rubble that front much of the Opal Cliff bluffs. The majority of the bluffs along "Key Beach/Privates" are armored at their base by an eclectic mix of rip rap, concrete cylinders, stepped concrete retaining walls, wooden walls, and a variety of vertical concrete seawalls. See photographs of the PBA in Exhibit C.

During times of good surf and/or good weather, the PBA is staffed by an attendant who monitors the accessway, including keyed gate access.

B. Opal Cliffs Recreation District Background

The Opal Cliffs Recreational District (OCRD) was formed in 1949 by a resolution of the Santa Cruz County Board of Supervisors. OCRD is a special public district component of County government that owns and operates the PBA and nothing else. The members of OCRD are the owners of the surrounding residential properties in the Opal Cliffs area (see page 3 of Exhibit A). OCRD charges a fee for OCRD and non-OCRD members to accessway the PBA and use the beach access stairway. For those who live or own property within the OCRD's boundaries, the County assesses a \$50.00 fee on each residential parcel's yearly property taxes. These assessed fees, however, are not distributed directly to the OCRD

² Live Oak is currently home to some 20,000 residents, and the LCP indicates that build-out would add approximately 10,000 Live Oak residents, and would require 150 to 180 acres of park acreage. Although Live Oak accounts for less than 1% of Santa Cruz County's total land acreage, this projected park acreage represents nearly 20% of the County's total projected park acreage.



but instead are directed to the County's general Parks and Recreation fund. In addition to this assessed fee, OCRD members (after providing proof of residency in the OCRD) pay \$50.00 per year to the OCRD to obtain a key card to gain access through the gate to the beach.

In order for non-OCRD members (i.e., the general public) to gain access to the OCRD's recreational facilities, including the beach, the general public must purchase a key to open the facility's locked gate. The keys are sold at a nearby surf shop. A sign posted on the fence adjacent to the locked gate informs the general public of the location and operating hours of the surf shop. The cost of a key card to access the OCRD is \$100.00 per year (starting June 1st of each year). If a key card is not purchased until the following January, the cost of the key card drops to \$50.00; if not purchased until the following April, the key card costs \$25.00. The key revenue provides the budget for the operations of the PBA (including yearly maintenance, insurance, the salary for a gate attendant, and other incidental expenses). The key card fees do not, however, pay for capital improvements, such as those proposed by this project.

Federal and State public grants and entitlements have been used to pay for capital improvements in the District over the years. For example, significant damage to the stairway leading to the beach was caused by the October 17, 1989 earthquake. The Federal Emergency Management Agency and its State counterpart (the State Natural Disaster Assistance Act Program) granted public funds at that time to reconstruct the stairway access to the recreation area in conformity with public safety codes. Other public grant funds have been used for construction of capital improvements to the OCRD from California Bond Acts in 1974, 1986, and 1988. The improvements proposed under the current project will be paid for through grant money obtained from Proposition 40 (The California Clean Water, Clean Air, Safe Neighborhood Parks, and Coastal Protection Act of 2002).

Although OCRD is listed as a County Public Park in the County's LCP (see Exhibit F), it is an anomaly because it is not administered by the County Parks and Recreation Department and the County is not interested in taking over responsibility of the property from the OCRD due to liability, maintenance, and cost concerns, especially given the budget constraints under which the County is currently operating.

Permitting and Violation History

In 1981, prior to certification of Santa Cruz County's LCP, the Commission granted a permit to the OCRD for replacement of a 5-to-6-foot tall chain link fence with a gate on the street frontage, and 3-to-5-foot wooden fencing on the side yards of the project site, with a 6-foot high chain link fence around these three sides of the project site. Although the Commission's staff report acknowledged that some form of access control was appropriate here, it emphasized that there was no signage or other notification on the site to indicate that keys to locked gate were available, and that the application could not be found consistent with Sections 30210-12 of the Coastal Act without confirmation of the availability of keys or some other means of assuring public access (see Exhibit D for a copy of the CDP staff report).

The 1981 CDP was conditioned to require submission of a public access program for review and approval by the Executive Director. The submitted public access program was approved and a deed restriction containing the public access program was recorded against the property in November 1991



(see Exhibit E). Although the Commission's action did not identify nor directly authorize an access fee to use the PBA, the recorded access program includes this "pay to use" feature. The access program also requires signage to be posted on the property indicating park hours (dawn to dusk), the annual fee to obtain a key for access, the location where the keys can be purchased (including a map), and contact information for the OCRD. The access program describes that access to the park and associated beach will be provided for an annual fee by purchasing a key, and that the revenue generated from the key purchases will be used to pay for the annual budgeted operating costs of the OCRD. The access program does not place a limit on the amount of fee that can be charged to enter the park,³ and allows changes to the annual key purchase fee at the discretion of the OCRD. The 1981 approval was silent on the use of an attendant at the gate leading to the beach.

Unpermitted development occurred at the proposed project site prior to submission of this permit amendment application. The unpermitted development included replacing the Commission-authorized six-foot-tall chain link fence fronting the accessway with a nine-foot-tall wrought iron fence with barbed and curved tips topped with razor wire, and the addition of an attendant at the gate access. OCRD has indicated that it is not sure when the nine-foot-tall fence and the razor wire were installed, but it appears clear from site photographs and anecdotal observations that it was sometime in the 1990s. According to OCRD, the gate attendant has been present since the early 1990s. Upon becoming aware of the lack of an appropriate permit for such development, Commission enforcement staff opened a Coastal Act enforcement case on April 21, 2006.⁴ In 2006, OCRD removed the razor wire at enforcement staff's request but did not stop using an attendant at the gate.

Through this amendment application OCRD is requesting an after-the-fact authorization for the unpermitted wrought iron fencing/gate that appears to have been in place for over a decade. The Commission notes that although it is willing to review this CDP amendment application request, such review does not constitute a waiver of any legal action that may independently be pursued with respect to the violation, nor does it constitute an admission as to the legality of any development undertaken on the site without a coastal development permit.

C. Project Description

The proposed project includes improvements to the park area located on the bluff top, as well as improvements to the stairway railings. Specifically, the proposed project includes: 1) installation of an outdoor "sand rinse" shower; 2) upgrade of an existing water faucet and water meter; 3) replacement of an existing concrete pathway with colored concrete; 4) new landscaping, including a mixture of drought-tolerant native and noninvasive exotic plants in the quarter-acre park area atop the bluff, and associated drip irrigation (the existing lawn area adjacent to the gate will remain); 5) replacement of existing wooden stairway railings with metal railings; 6) placement of fieldstone boulders to be used for seating areas; 7) after-the-fact approval of the unpermitted 9-foot-tall wrought iron fence within the front and side yard setbacks; and 8) installation of two new sections of 9-foot-tall wrought iron fencing that would

³ In 1992 the annual fee was \$20.00.

⁴ Case Number V-3-06-012.



extend for 30 additional feet along each of the side property boundaries. See Exhibit B for project plans and Exhibit C for photographs of the project site and the unpermitted fence.

D. Standard of Review

The proposed project is an amendment to the permit the Commission issued to the OCRD in 1981 prior to certification of the Santa Cruz County LCP. As a result, the permit falls under the Commission's coastal permitting jurisdiction. However, because there is now a certified LCP, the standard of review is the Santa Cruz County certified LCP and, because the project is located between the first public road and the sea, the public access and recreation policies of the Coastal Act.

2. Issue Analysis

A. Public Access and Recreation

Applicable Policies

Coastal Act Sections 30210 through 30214 and 30220 through 30224 specifically protect public access and recreation. In particular:

Section 30210. In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.

Section 30211. Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.

Section 30212(a). Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects...

Section 30213. Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Developments providing public recreational opportunities are preferred. ...

Section 30220. Coastal areas suited for water-oriented recreational activities that cannot readily be provided at inland water areas shall be protected for such uses.

Section 30221. Oceanfront land suitable for recreational use shall be protected for recreational use and development unless present and foreseeable future demand for public or commercial recreational activities that could be accommodated on the property is already adequately provided for in the area.

Section 30223. Upland areas necessary to support coastal recreational uses shall be reserved



for such uses, where feasible.

Coastal Act Section 30240(b) also protects parks and recreation areas such as the Privates Beach Accessway and the beach below. Section 30240(b) states:

Section 30240(b). *Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.*

The Santa Cruz County LCP list the Privates Beach Accessway as a "Santa Cruz County Public Park and Recreation Facility" (see LCP Figure 7-2 in Exhibit F). The LCP also acknowledges the Opal Cliffs region of the County as a "high use beach access area."

LCP Parks, Recreation and Public Facilities Program q. *Seek funding to develop beach operations and management plans for high use beach access areas such as Rio del Mar, Opal Cliffs, Sunny Cove, and Moran Lake and those beach access areas that have State Coastal Conservancy funded accesses. Incorporate the management plans into the LCP. (Responsibility: County Parks, Planning Department).*

The LCP also requires that public access and recreation opportunities be maximized, and that shoreline land appropriate for coastal access and recreation uses and facilities be protected for that purpose. For example, applicable LCP objectives, programs, and policies include:

LUP Objective 2.22 Coastal Dependent Development. *To ensure priority for coastal-dependent and coastal-related development over other development on the coast.*

LUP Policy 2.22.1 Priority of Uses within the Coastal Zone. *Maintain a hierarchy of land use priorities within the Coastal Zone:*

First Priority: Agriculture and coastal-dependent industry.

Second Priority: Recreation, including public parks; visitor serving commercial uses; and coastal recreation facilities.

Third Priority: Private residential, general industrial, and general commercial uses.

LUP Policy 2.22.2 Maintaining Priority Uses. *Prohibit the conversion of any existing priority use to another use, except for another use of equal or higher priority.*

LUP Objective 7.1a Parks and Recreation Opportunities. *To provide a full range of public and private opportunities for the access to, and enjoyment of, park, recreation, and scenic areas, including the use of active recreation areas and passive natural open spaces by all ages, income groups and people with disabilities with the primary emphasis on needed recreation facilities and programs for the citizens of Santa Cruz County.*



LUP Objective 7.7a Coastal Recreation. *To maximize public use and enjoyment of coastal recreation resources for all people, including those with disabilities, while protecting those resources from the adverse impacts of overuse.*

LUP Objective 7.7b Shoreline Access. *To provide a system of shoreline access to the coast with adequate improvements to serve the general public and the coastal neighborhoods which is consistent with the California Coastal Act, meets public safety needs, protects natural resource areas from overuse, protects public rights and the rights of private property owners, minimizes conflicts with adjacent land uses, and does not adversely affect agriculture, subject to policy 7.6.2.*

LUP Program 7.7f (Establish Access Signing). *Establish an access signing program which: (1) Removes incorrect, misleading, and confusing signs. (2) Develops, installs, and maintains standard signs for primary destinations and neighborhood accessways and designates appropriate locations for these signs. (Responsibility: County Parks, Public Works).*

LUP Policy 7.7.1 Coastal Vistas. *Encourage pedestrian enjoyment of ocean areas and beaches by the development of vista points and overlooks with benches and railings, and facilities for pedestrian access to the beaches...*

LUP Policy 7.7.4 Maintaining Recreation-Oriented Uses. *Protect the coastal blufftop areas and beaches from intrusion by nonrecreational structures and incompatible uses to the extent legally possible without impairing the constitutional rights of the property owner, subject to policy 7.6.2.*

LUP Policy 7.7.10 Protecting Existing Beach Access. *Protect existing pedestrian...and bicycle access to all beaches to which the public has a right of access, whether acquired by grant or through use, as established through judicial determination of prescriptive rights.... Protect such beach access through permit conditions...*

Analysis

In general, the proposed improvements inside of the gate will provide improved public access amenities for users of the Privates Beach Accessway, consistent with the public access and recreation requirements of the Coastal Act and the Santa Cruz County LCP. However, the proposed amendment brings to the forefront issues regarding maximizing public recreational opportunities.

One of the primary functions of the Coastal Act and the LCP is to protect and maximize the public's ability to access the coast. In this case the OCRD limits access to this stretch of coast by gating the accessway and by requiring that visitors pay a fee for access to this public park and to the stairs that lead down to the beach. The Commission authorized the gated access in 1981, with the understanding that public access would be readily available, and Commission staff signed off on an access program for the



site in 1991 (see Exhibit E).⁵

Thus, by virtue of the Commission's action and that access program, the existing permitted gated access (bracketing for a moment the unpermitted 9-foot-tall fencing) is that the public is charged a fee to access the beach through the Privates Beach Accessway. This is not the most LCP and Coastal Act consistent public recreational access setup generally, and it is certainly not the most LCP and Coastal Act consistent setup for a public facility built and improved with public funds. Rather, as a publicly funded and developed accessway, including through the use of State bond funds that would be used for the current proposed improvements, it would be most appropriate for the public to be able to access the Privates Beach Accessway for free, without fences, gates, fees, and related encumbrances, as is the standard protocol for all other County coastal recreational accessways. However, such an outcome is not proposed by the OCRD. On this point, the Commission concurred in 1981 based on an assessment that the unstable and hazardous nature of the bluffs in the area limited access, and that allowing some gated access was sufficient at this location (see Exhibit D). Since that time, however, not only have there been significant advances in terms of the siting, designing, and building of stairways and related access features in such a way as to ensure their continued stability and utility (including in relation to a dynamic and eroding coast), it is also apparent that this accessway is significant and important in that it provides the only direct access to over a mile of shoreline, including pocket beaches and significant surfing areas. In addition, it is now apparent that the public access program required by the original CDP does not ensure that access is readily available to the public. Were access readily available, members of the public would have obtained keys to access the beach, rather than scaling the 6-foot-tall fence to enter the beach area, precipitating OCRD's construction of the 9-foot-tall fence submitted for approval as part of this amendment.

The proposed after-the-fact increased fence/gate heights have a chilling effect on all public access to this location because the proposed height, scale, and spiked configuration of the fence and locked gate tend to be perceived as unwelcoming, thus imposing both a physical and a psychological impediment to most beach goers as compared to the existing permitted baseline of a low-key, six-foot-tall chain link fence. Such public recreational access impacts have been ongoing since the 1990s. Thus, this amendment, which would further restrict public access at this location, cannot be approved consistent with the above cited LCP and Coastal Act access and recreation policies absent mitigation. Although the improvements on the seaward side of the fence help to begin to offset these adverse impacts, such improvements alone cannot completely alleviate such impacts.

The most appropriate way to offset such impacts, and to find LCP and Coastal Act consistency, is to make sure that if the public is going to be charged a fee to access this site, then the fee structure needs to be kept reasonable, revenues from it need to be applied to the accessway, and it needs to be implemented according to well-defined and understood parameters, including with respect to monitoring and reporting

⁵ The Commission's 1981 CDP action did not include an expiration date. As a result, the CDP approval remained valid ten years later in 1991 when the OCRD finalized condition compliance for the 1981 action.



over time.⁶ In other words, the Commission has learned much in terms of accessway management over the years, and it is clear that the parameters for the Privates Beach Accessway have not assured that public access to the area is readily available, as intended in the original CDP. Thus, under the existing situation, public access to the park amenities and the beach below the OCRD is not maximized and is not readily available, inconsistent with the requirements of the Coastal Act, the LCP, and the base CDP. The specific attributes of an approvable project are described in the sections that follow.

Fee Structure and Day Use

Currently the yearly cost of a key card to access the Privates Beach Accessway is \$100.00 (starting June 1st of each year). If a key card is not purchased until the following January, the cost of the key card drops to \$50.00; if not purchased until the following April, the key card cost drops to \$25.00. Given the relatively high cost, the key card program is primarily geared toward members of the OCRD (i.e. those who own property within the OCRD's boundaries) and those nearby residents who have the ability and desire to access the park on a regular basis throughout the year, thus making the cost of the key card worthwhile. The high cost of a key card, however, is exclusionary to those who may wish to access the park once or a few times a year, such as visitors from out of the area or other nearby local residents who may only wish to access the park on a very limited basis. It is highly unlikely that these persons would pay \$100.00 (or even \$25.00 in April) to obtain a key card in order to enter the park and access the beach once or twice a year. And, if they did, the cost of such access would be extremely high, and certainly not the free/low-cost access envisioned by the Coastal Act and the LCP. Therefore, as currently implemented, the access program is discriminatory to those who wish to access the park and the stairway access to the beach on an infrequent basis. For this reason, the access program is inconsistent with the Coastal Act's requirements to maximize public recreational access opportunities, and to provide lower-cost visitor recreational facilities.

One way to resolve this issue would be to significantly reduce the cost of the gate fee so that infrequent visitors are not overly penalized. However, such a reduction could mean that the OCRD does not generate enough funds for upkeep. A more appropriate remedy for this problem is to determine and institute an appropriate day-use fee for those who wish to use the park's facilities and gain access to the stairway to the beach on an infrequent basis. Nearby state beaches, such as New Brighton State Beach in Capitola and Natural Bridges State Beach in Santa Cruz, charge \$8.00 for each vehicle entering the State Beach property. For this fee amount, however, the nearby State Beaches provide parking lots, restrooms, visitor centers, and a greater range of amenities than are found at the OCRD's park facilities. On the other hand, access to nearby beaches in Capitola is free to all members of the public, although it is usually necessary to pay for parking (either through street meters or in Capitola's public parking lot) to gain access to the beaches in Capitola. In other areas of the Live Oak beach area of Santa Cruz County, however, access to the beach is free, and although demand generally exceeds supply during peak

⁶ Historically, there have been some implementation problems at the Privates Beach Accessway with the current setup inasmuch as it was not clear how, where, and for how much keys were available, and sometimes they were not available, and the price increased substantially without CDP authorization (i.e., the gate fee has increased 500% since 1991). This, in turn, has made it even more difficult over time for the public to access the beach at this location.



summer periods, free parking can be found along the streets and in the limited number of public parking lots, such as the lot at the end of 41st Avenue. During summer weekends, there is a permit parking program that applies to some streets in the Live Oak beach area (not in Opal Cliffs), and the permit fee for parking during those times and on those streets is \$5.00. Given the range of costs (or no-cost) of all the above, a \$5.00 day-use fee for a group to enter the OCRD park facility to obtain access to the beach seems reasonable and appropriate.

In addition, the yearly pass amortization schedule is currently skewed toward the side of higher fees overall, especially during the high summer tourist use season (i.e., most of the year the pass costs \$100, and such fee amount starts at \$100 at the start of June). As a result, the effect of the high annual rate is intensified in relation to most users, and particularly in terms of visitors to the area from farther away. One way of addressing this would be to start the fee sales for any particular year at the end of summer so that summer users are afforded the least costs on an annual basis relative to an amortization schedule. Another way of addressing this would be to include a reduced summer fee so that summer users are afforded the least costs on an annual basis relative to an amortization schedule. Either option would serve to ensure that transient visitors are not unfairly tapped for excessive payment (should they choose the annual fee system), and best addresses the LCP and Coastal Act lower cost requirements.

Gate Attendant and Access Rules

The OCRD board currently employs an attendant to monitor public access through the gate.⁷ The attendant sits in the grassy area just inside the gate that leads to the accessway to the beach. According to OCRD, the attendant is necessary to ensure that those entering the gate have paid for a key card. OCRD indicates that without an attendant at the gate, visitors wanting to access the OCRD recreational facility without purchasing a key card wait until a person leaving the OCRD opens the gate, and then these visitors enter the park without having paid for a key card. In some instances when an attendant has not been present, the gate has been left propped open or the gate mechanism has been jammed so that it does not function properly (i.e. will not lock). The Applicant's representative believes that the attendant is necessary to ensure that adequate revenue (i.e. from payments for key cards) is available to maintain the park.

An attendant can have a chilling effect on access in some circumstances, including by virtue of dress, demeanor, and the degree to which different rules are applied to different access users. Absent any structure or defined protocol, as is the case here, the possibilities for such access impacts are increased. For example, in the past, the OCRD has employed uniformed security guards to control access through the gate. Use of a uniformed "guard" at the gate is off-putting to visitors to the area who are unfamiliar with the OCRD and its amenities, where this type of "police" may discourage public access. Although OCRD indicates that uniformed security guards are no longer being used, there is currently no requirement to ensure that this continues, and there is currently no requirement against reinstating such

⁷ According to OCRD the attendant is present during daylight hours when any two of the three following conditions exist: 1) adequate waves for surfing; 2) sunshine; 3) warm temperatures. OCRD indicates that the attendants are generally students from nearby Cabrillo Junior College.



guards. To avoid such issues, any attendant must be casually dressed and easily identifiable as an OCRD employee.

In addition, there is no written protocol regarding how many persons may enter the gate per key card. According to OCRD, one key card is required per each vehicle that parks in the spaces in front of the gate, no matter the number of occupants in the vehicle. For those arriving on foot, it appears that a group of people who say they are together require one key card for the entire group to access the park; in this regard, the attendant has some leeway to determine how many people may enter the park with one key card. Given that the OCRD employs different individuals as attendants, this leeway may lead to an inconsistent standard regarding the number of individuals that may access the park and the beach below with the use of one key card. To address this concern, it must be clear that a single key card or day-use pass allows admittance to the Privates Beach Accessway for all individuals who are with the person in possession of the key card or the day-use pass. To ensure that this "group" requirement is not abused, a group is considered to be a maximum of ten persons per key or pass. The attendant can have leeway to allow larger groups through under one key (e.g., families accessing the site from an Opal Cliffs house), but not to disallow smaller groups.

Revenues

The original premise for allowing the OCRD to charge a fee for use of this public accessway was that revenues from the fee would be used for upkeep and maintenance of the accessway. Instead, OCRD indicates that 50% of the fees paid by OCRD members are currently going to the Santa Cruz County Parks and Recreation Department, and not necessarily to this accessway. As previously indicated, the fee concept is an anomaly for Santa Cruz County coastal accessways, and it is not the most Coastal Act and LCP consistent public access management strategy. If a fee is going to continue to be charged at this location, then it is critical that the fee is used per the original CDP premise. If revenues from the fees outpace upkeep/maintenance requirements, then a fee reduction is appropriate to better maximize public recreational access opportunities, including low cost opportunities.

Other

There are a series of related components/aspects of the accessway and its operation that must be clear if it is to function effectively to provide general public recreational access opportunities consistent with the Coastal Act and the LCP. For example, it has proven difficult over the years for potential accessway users to understand the gate pass system and gate pass sales generally, including with respect to who to contact for more information and in the case of inquiries or complaints. The accessway must clearly include such information, including in relation to appropriate Commission contacts, to ensure that any problems can be quickly and readily addressed.

With respect to annual gate pass purchases, it is not ideal to have to go to a local business to purchase a gate pass, particularly if an accessway user is in need of a gate pass at off hours. However, alternatives to this part of the system are few and costly (e.g., a gate pass machine at the accessway). If a local business is used as a proxy as it has been in the past by OCRD (most recently at Freeline Design Surf Shop on 41st Avenue), such a business must be able to sell gate passes during regular business hours (i.e.,



including hours consistent with the hours of operation of other business in the area), seven days a week.

In terms of signage, clear and directive signage is critical for ensuring that users understand how the accessway works, and how to gain access to it easily. These signs are also important for ensuring that visitors understand that they, too, are welcome at this public accessway.

Finally, monitoring of use, gate pass sales, expenses and other aspects of the accessway's operations are critical for ensuring continued compliance with the terms and conditions of the accessway operation, and important for making adjustments as necessary to ensure continued consistency.

Public Access and Recreation Conclusion

The Privates Beach Accessway is the only vertical accessway located between 41st Avenue and Hooper Beach, a shoreline distance of over a mile in an area of steep bluffs. As a result, it is a critical component of the public recreational access system in the Live Oak beach area, and it is particularly important to the Opal Cliffs component of that system. The fence and gate and fee associated with the Privates Beach Accessway is an anomaly for publicly-funded and developed County public accessways in Santa Cruz County, and is particularly problematic in this case as it provides the only way of gaining vertical access for a mile of much-visited urban shoreline in the heart of a prime visitor destination. The public access improvements proposed would increase the utility of this accessway for visitors with the exception of the new fence height, scale, and configuration that present a barrier to public access use, including when understood in terms of ongoing problems associated with gate, fence, and fee implementation over time. Such a public access barrier cannot be found consistent with the LCP and Coastal Act mandates requiring maximum public recreational access opportunities, including low cost opportunities.

The most LCP and Coastal Act consistent outcome for this accessway would be for it to be open to the public free of charge like other County public accessways. However, the Commission determined when it first approved the CDP in 1981 that due to the unstable, hazardous nature of the bluffs some access controls were advisable, as long as public access to the beach was assured. It appears that such public access is not readily available (as seen in the findings above), as it was understood it would be in the 1981 CDP action, and that there are in fact public access impacts that are not resolved to the Coastal Act, LCP, and base CDP here. Through the Special Conditions of this permit amendment, the Commission means to ensure that, despite the increased height of the fence, public access will still be readily available here, consistent with the LCP, the public access and recreation policies of the Coastal Act, and the base CDP.

The most appropriate way to offset the public access and recreation impacts identified, and to find LCP and Coastal Act consistency, is to make sure that if the public is going to be charged a fee to access this site, then the fee structure needs to be kept reasonable, revenues from it need to be applied to the accessway, and it needs to be implemented according to well-defined and understood parameters, including with respect to monitoring and reporting to ensure that to be the case over time. Accordingly, this project is conditioned for the submittal of an updated public access management plan that provides for the following:



- The annual gate pass year will start on June 1st and the annual fee will be no more than \$100 if purchased between June 1st and December 31st, no more than \$50 if purchased between January 1st and March 31st, and no more than \$25 if purchased between April 1st and May 31st.
- A summer-only gate pass will be available from the Saturday of Memorial Day weekend through Labor Day, inclusive, and the fee for a summer gate pass will be no more than \$50.
- The daily fee for a gate pass is no more than \$5 per day.
- The annual gate pass fee, the summer gate pass fee, and the daily gate pass fee will not be increased without an amendment to this CDP.
- A single gate pass, whether annual, summer, or daily, will allow admittance to the accessway for up to 10 persons, including the pass holder. At the discretion of the gate attendant, more than 10 persons may be admitted to the PBA with one pass.
- Any OCRD attendants will be casually dressed (i.e., not be dressed in police-type or security-type uniforms) in such a manner that they are easily identified as an OCRD attendant (e.g., a T-shirt or name tag with the OCRD logo and accessway name, etc.).
- Gate passes, whether annual, summer, or daily, will be available for purchase at a local business as close as possible to the accessway seven days a week during normal business hours. Daily gate passes will also be available for purchase at the accessway anytime that an attendant is present.
- OCRD shall identify a contact person responsible for fielding questions and complaints, and their contact information (including address and phone number) will be provided at the accessway and at the local business where gate passes are sold. The Commission's Central Coast District office will also be identified for the same purpose.
- The accessway will be open and available for use during daylight hours (i.e., from one hour before sunrise to one hour after sunset) 365 days per year.
- Accessway signs will include the California Coastal Commission coastal access logo and will be updated as necessary to ensure consistency with the above use parameters, including providing a map and hours of operation for gate pass sales, and will include all contact information for questions and complaints.
- All gate pass revenues shall be used strictly for maintenance and operation of the PBA.
- OCRD will submit a biannual report on accessway operations that describes the previous two years' access use (including fees, revenues, and expenses; inquiries/complaints and how resolved, etc.) and any changes proposed for the upcoming two years. Minor changes that do not significantly reduce public recreational access opportunities or that enhance them (e.g., adding new benches, improving signage, etc.) are allowed subject to Executive Director approval. Any other changes will require an amendment to this CDP.



As so conditioned, the Commission can find the project consistent with the LCP and Coastal Act policies cited above. Although not ideal for public recreational access, the accessway parameters will be clear, and will include enforceable mechanisms for ensuring continued consistency with them. In this way Coastal Act and LCP objectives will be best met in light of the underlying recorded public access program, which will be updated to better reflect the tensions inherent in such a fence, gate, and fee construct.

The Commission continues to believe that the accessway should be free and available to the general public like the other County coastal accessways, but also recognizes the Opal Cliffs Recreation District situation as unique. OCRD and the County are encouraged to pursue all available avenues that could allow this accessway to convert to a free general coastal accessway, including shifting responsibility for it from the OCRD to the County Parks Department, and this approval is conditioned to allow such a changeover without the need for a further CDP.

B. Visual Resources

Applicable Policies

The LCP requires that new development be visually compatible with the character of the surrounding neighborhood, and requires protection of the public viewshed, particularly along the shoreline:

Zoning Regulation 13.20.130(b)(1). Visual Compatibility. All new development shall be sited, designed, and landscaped to be visually compatible and integrated with the character of surrounding neighborhoods or areas.

Objective 5.10.a Protection of Visual Resources. To identify, protect, and restore the aesthetic values of visual resources.

Objective 5.10.b New Development in Visual Resource Areas. To ensure that new development is appropriately designed and constructed to have minimal to no adverse impact upon identified visual resources.

LUP Policy 5.10.3 Protection of Public Vistas. Protect significant public vistas...from all publicly used roads and vistas points by minimizing disruption of landform and aesthetic character caused by grading operations,... inappropriate landscaping and structure design.

LUP Policy 5.10.7 Open Beaches and Blufftops. Prohibit the placement of new permanent structures which would be visible from a public beach, except where allowed on existing parcels of record, or for shoreline protection and for public beach access. Use the following criteria for allowed structures: (a) allow infill structures (typically residences on existing lots of record) where compatible with the pattern of existing development. (b) Require shoreline protection and access structures to use natural materials and finishes to blend with the character of the area and integrate with the landform.

As stated above, the stretch of coastline along Opal Cliff Drive is almost exclusively described by a row



of private residential properties that are perched atop the bluffs. The Privates Beach Accessway is the only location along Opal Cliff Drive where the public is afforded a through blue-water view.

The project site is located on the seaward side of Opal Cliff Drive, between existing residential development (see Exhibit C for photographs of the project site). The proposed project would approve an existing 9-foot-tall wrought iron fencing along the front and a portion of the sides of the accessway, and also would allow for installation of two new 30-foot-long sections of 9-foot-high fencing along the sides of the accessway. The 9-foot-high wrought iron fencing along the front portion of the project site faces Opal Cliff Drive. As indicated in the previous finding, such fencing adversely impacts public recreational use at this location, and conditions are necessary to mitigate such impacts. As so mitigated, the overall impact of the fencing on the public perception of the accessway is diffused, and its visual impact can be distilled to a question of view blockage/impact and consistency with community character. Again, although the Commission would strongly prefer that there be no fencing at this public accessway, and such an outcome would be more consistent with the applicable LCP policies than a project with a fence, this project must be understood and harmonized with the Commission's original 1981 CDP action that allowed a fence at this accessway, as long as public access was readily provided.

In that context, although a 9-foot-tall fence in a front yard setback along Opal Cliff Drive typically would be visually out-of-scale with the surrounding residential development, in this case there are five parking spaces located between Opal Cliff Drive and the front yard fencing, meaning that the fencing is set back about 16 feet from Opal Cliff Drive, and further seaward than surrounding residential improvements generally. For this reason, the 9-foot-high fencing does not significantly intrude onto the Opal Cliff Drive viewshed. The fence's open design (wrought iron pickets spaced four inches on center) and black surface helps it to recede somewhat into the background, and the openings allow views into the park that would not be possible with a solid fence. The proposed 9-foot-high side yard fencing will not be highly visible from Opal Cliff Drive given that it will be located even further from Opal Cliff Drive than the front yard fencing and it will directly abut adjacent residential development, some of which is two stories tall. Neither the front yard fencing nor the side yard fencing will be visible from the beach.

The quarter-acre park area of the project site now includes a lawn area located near the front gate, a concrete pathway leading to the stairway to the beach, and a variety of shrubs and plants, including ice plant. The proposed project includes installation of an outdoor rinse-off shower near the gate and upgrading of an existing water faucet and water meter. A portion of the existing lawn will be removed (the portion that will remain will be located no closer than 45 feet from the bluff edge). The remainder of the existing vegetation, including ice plant, will be removed and the park will be re-landscaped with a mixture of native and nonnative, noninvasive drought tolerant plant species, and drip irrigation will be installed. To be consistent with other recent Commission actions that include a landscaping component along the bluff-top in the Live Oak/Opal Cliffs area, this approval is conditioned to require that only appropriate native vegetation be planted in the portions of the project site that are located within 5 feet of the bluff-top edge.

The existing concrete pathway leading to the stairs to the beach will be replaced with new colored



concrete. The project also includes the installation of two paths of decomposed granite that will lead to overlook areas, as well as installation of some low (3-foot-high) fieldstone walls to create a terraced look and reduce erosion. Fieldstone boulders to be used for seating will be installed in several locations. The existing wooden railings along the stairway to the beach will be replaced with stainless steel railing.

Several drainage pipes extend down the bluff face (see page 8 of Exhibit C for a photograph of the bluff face). The larger pipe is a County-maintained pipe that collects drainage from Opal Cliff Drive and directs it to the beach below. The smaller pipe collects drainage from the park portion of the PBA and also directs it to the beach below (the drainage from the proposed sand rinse-off shower will be directed into this smaller pipe). In addition to these pipes, the remnants of an old stairway are also found on the bluff face. Typically, the Commission would require consolidation of these pipes into one pipe and removal of the stair remnants as part of a project approval in order to remove visual clutter and enhance the visual resources of this beach. However, the larger drain pipe is maintained by County Public Works, and not OCRD. Also, the amount of funds available to the OCRD for the proposed project improvements is not sufficient to allow for these bluff-face improvements at this time. OCRD has indicated that the OCRD would be highly interested in including these bluff-face improvement project components in a future application expected to be submitted in the near future for proposed additional stairwell structural improvements.⁸ For these reasons, the Commission is not requiring consolidation of the existing drainage pipes and removal of the stair remnants as part of this approval, but instead notes that these will be necessary components of any future project proposal at the PBA.

The proposed project will upgrade and enhance the visual quality of the existing park, and will improve the existing overlook areas by removing invasive ice plant, providing new seating, and updating the stairwell railings. The only components of the proposed project that will be visible from the beach will be the new metal railings along the stairway, and perhaps a very small portion of the proposed landscaping. The new metal stairway railings will be similar in style to the existing wooden stairway railings, but will require less maintenance. Although the Commission would prefer that the fence and gate be removed at the accessway's frontage to provide through views of the park and the ocean beyond, such is not required because the public access impacts of the new fence are mitigated appropriately (see previous finding), and the remaining visual impacts from the fence once so mitigated are not significant. For these reasons, the proposed project is consistent with the visual resources policies of the Santa Cruz County LCP.

3. Conditions of Approval

A. Standard Conditions

- 1. Notice of Receipt and Acknowledgment.** The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission

⁸ The Proposition 40 funds for the stairwell structural improvements must be allocated by 2011.



office.

2. **Expiration.** If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. **Interpretation.** Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
4. **Assignment.** The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
5. **Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

B. Special Conditions

1. **Improvements Permitted.** This coastal development permit allows for the following development which must be constructed substantially in conformance with the plans submitted to the Coastal Commission (titled "Opal Cliff Neighborhood Park" and dated received in the Commission's Central Coast District Office on May 16, 2007) as modified by these standard and special conditions: installation of an outdoor shower; upgrade of a water faucet and water meter; replacement of wood stairway railings with metal railings; replacement of a concrete pathway with a colored concrete pathway; landscaping and associated irrigation; short fieldstone walls and seating; after-the-fact approval of a 9-foot-tall metal fence within the front and side yards; and installation of two new 30-foot-long sections of 9-foot-tall fencing along the side property boundaries.
2. **Annual Gate Pass Fees.** The annual gate pass year shall start on June 1st and the annual fee shall be no more than \$100 if purchased between June 1st and December 31st, no more than \$50 if purchased between January 1st and March 31st, and no more than \$25 if purchased between April 1st and May 31st.
3. **Summer Gate Pass Fee.** The summer gate pass period shall run from the Saturday of Memorial Day weekend through Labor Day, inclusive, and the fee for a summer gate pass shall be no more than \$50.
4. **Daily Gate Pass Fee.** The daily fee for a gate pass shall be no more than \$5 per day.
5. **General Admittance Rule.** A single gate pass, whether annual, summer or daily, shall allow admittance to the accessway for up to 10 persons, including the pass holder. The OCRD attendant may allow a greater number of individuals to enter with one pass at his/her discretion.
6. **Local Business Gate Pass Sales.** Gate passes shall be available for purchase seven days a week



during normal business hours at a local business (or at multiple local businesses) located as close as possible to the accessway. Clear maps to direct users to such businesses shall be provided at the accessway.

7. **Attendant.** Any OCRD attendants shall be casually dressed (and shall not be dressed in police or security style uniforms or equivalent) in such a manner that they are easily identified as an OCRD attendant (e.g., a T-shirt or name tag with the OCRD logo and accessway name, etc.). Daily gate passes shall be available for purchase from the attendant at the accessway any time that an attendant is present.
8. **OCRD and CCC Contact Information.** OCRD shall identify a contact person responsible for fielding questions and complaints, and that person's contact information (including address and phone number), as well as the contact information for the Coastal Commission's Central Coast District office, shall be clearly provided at the accessway and at all local businesses where gate passes are sold.
9. **Hours of Operation.** The accessway shall be open and available for use during daylight hours (i.e., from one-hour before sunrise to one-hour after sunset) 365 days per year.
10. **Signs.** Accessway signs shall be updated to include the Coastal Commission coastal access logo and to ensure that they provide information consistent with these special conditions, including providing all contact information for questions and complaints.
11. **Gate Pass Revenues.** All gate pass revenues shall be used strictly for maintenance and operation of the accessway.
12. **Reporting Requirements.** OCRD shall submit a report every two years that details accessway operations in relation to compliance with the terms and conditions of this approval and the approved Public Access Plan (see Special Condition 14) over the preceding two years (i.e., in the time since the previous such report). At a minimum, each such report shall describe the previous two years' access use (including in relation to fees, revenues, and expenses; inquiries/complaints and how resolved; etc.), and any changes proposed for the upcoming two years. Should gate pass revenues significantly exceed accessway upkeep and maintenance costs, then fees shall be reduced commensurately. This report shall be submitted no later than August 1st of every other year for review and approval of the Executive Director, with the first such report due August 1, 2010. Minor changes that do not significantly reduce public recreational access opportunities or that enhance them (e.g., adding new benches, improving signage, reducing access fees, etc.) shall be allowed through the report approval process.
13. **Amendment Required.** Any changes to the terms and conditions of this coastal development permit shall require an amendment from the Coastal Commission except for: (a) minor changes allowed through the annual report approval process (see Special Condition 12); and (b) changes necessary to convert the accessway to a free general public access coastal accessway which shall be allowed



subject to the review and approval of the Executive Director.

14. **Public Access Plan.** PRIOR TO ISSUANCE OF THE AMENDED COASTAL DEVELOPMENT PERMIT, the Permittee shall submit two copies of a Public Access Plan to the Executive Director for review and approval. The Plan shall clearly describe the manner in which general public access to the accessway is to be managed and provided, including in terms of ensuring consistency with the terms and conditions (including these special conditions) of this coastal development permit, with the objective of maximizing public recreational access opportunities. The Permittee shall manage the accessway, including all associated development, in accordance with the approved Public Access Plan, which shall govern all general public access to the site pursuant to this coastal development permit.
15. **Landscaping Plan.** PRIOR TO THE COMMENCEMENT OF CONSTRUCTION, the Permittee shall submit two copies of a revised landscape plan to the Executive Director for review and approval. The revised landscaping plan shall be in substantial conformance with the landscaping plan submitted with the application (see page 4 of Exhibit B) as modified to provide for only drought and salt tolerant native plants in the areas located on the project site that are within 5 feet of the bluff-top edge. The plan shall provide that all native plantings be maintained in good growing and coverage conditions, including replacement plantings as necessary, so as to maintain such plantings in their approved state for the life of the project.
16. **Extinguish Deed Restriction.** PRIOR TO ISSUANCE OF THE AMENDED COASTAL DEVELOPMENT PERMIT, the Permittee shall submit to the Executive Director for review and approval documentation demonstrating that the applicant has extinguished Deed Restriction number 075069 recorded on November 22, 1991 in the Santa Cruz County Recorder's office.

C. California Environmental Quality Act (CEQA)

Section 13096 of the California Code of Regulations requires that a specific finding be made in conjunction with coastal development permit applications showing the application to be consistent with any applicable requirements of CEQA. Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment.

On June 4, 2008, Santa Cruz County, acting as the lead agency, determined that the project qualified for a categorical exemption from the requirements of CEQA.

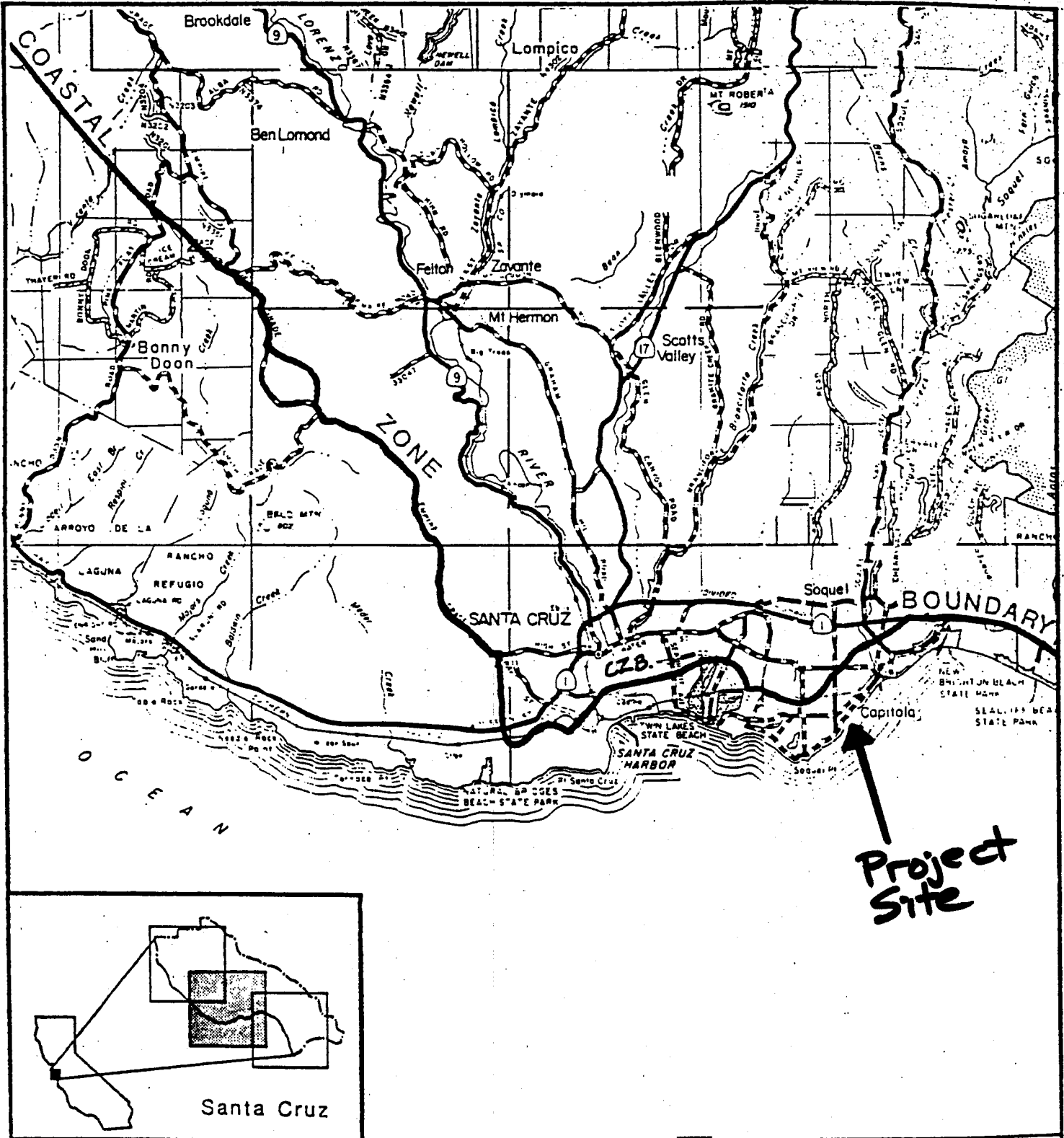
The Coastal Commission's review and analysis of land use proposals has been certified by the Secretary of Resources as being the functional equivalent of environmental review under CEQA. The Commission has reviewed the relevant coastal resource issues with the proposed project, and has identified appropriate and necessary modifications to address adverse impacts to such coastal resources. All public



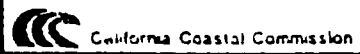
comments received to date have been addressed in the findings above. All above findings are incorporated herein in their entirety by reference.

The Commission finds that only as modified and conditioned by this permit will the proposed project avoid significant adverse effects on the environment within the meaning of CEQA. As such, there are no additional feasible alternatives nor feasible mitigation measures available which would substantially lessen any significant adverse environmental effects that approval of the proposed project, as modified, would have on the environment within the meaning of CEQA. If so modified, the proposed project will not result in any significant environmental effects for which feasible mitigation measures have not been employed consistent with CEQA Section 21080.5(d)(2)(A).





Project Site



LOCATION MAP



County of Santa Cruz

CCC Exhibit A Sheet 2 of 3
 (page 1 of 3 pages) 11
 A-3-SCO-18-0004
 Page 25 of 54

FOR TAX PURPOSES ONLY

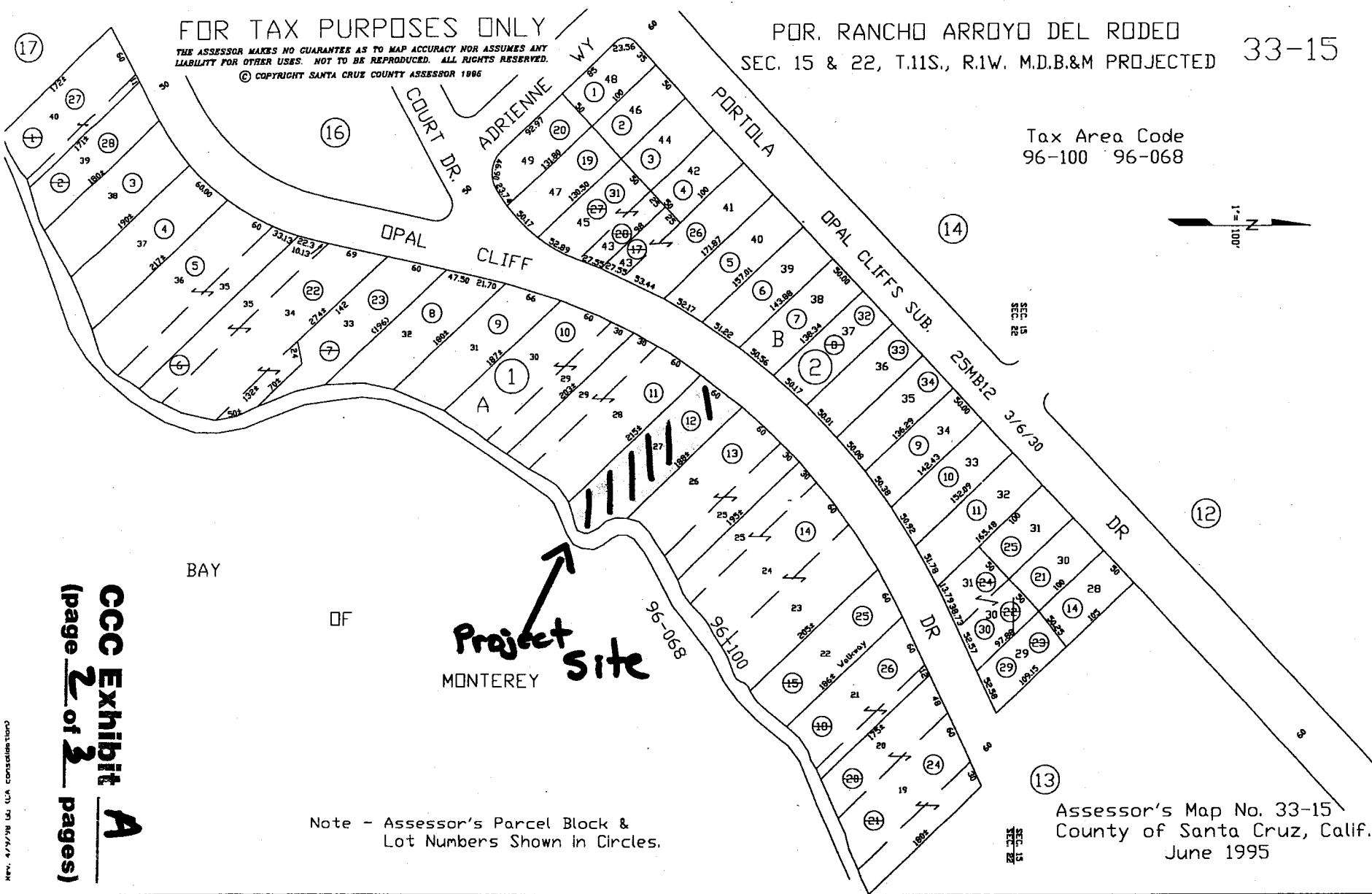
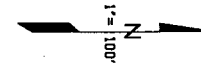
THE ASSESSOR MAKES NO GUARANTEE AS TO MAP ACCURACY NOR ASSUMES ANY LIABILITY FOR OTHER USES. NOT TO BE REPRODUCED. ALL RIGHTS RESERVED.

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POR. RANCHO ARROYO DEL RODEO
SEC. 15 & 22, T.11S., R.1W. M.D.B.&M PROJECTED

33-15

Tax Area Code
96-100 96-068



Project Site

Note - Assessor's Parcel Block & Lot Numbers Shown in Circles.

Assessor's Map No. 33-15
County of Santa Cruz, Calif.
June 1995

CCC Exhibit A
(page 2 of 3 pages)

COMMISSIONER OF THE COUNTY OF SANTA CRUZ

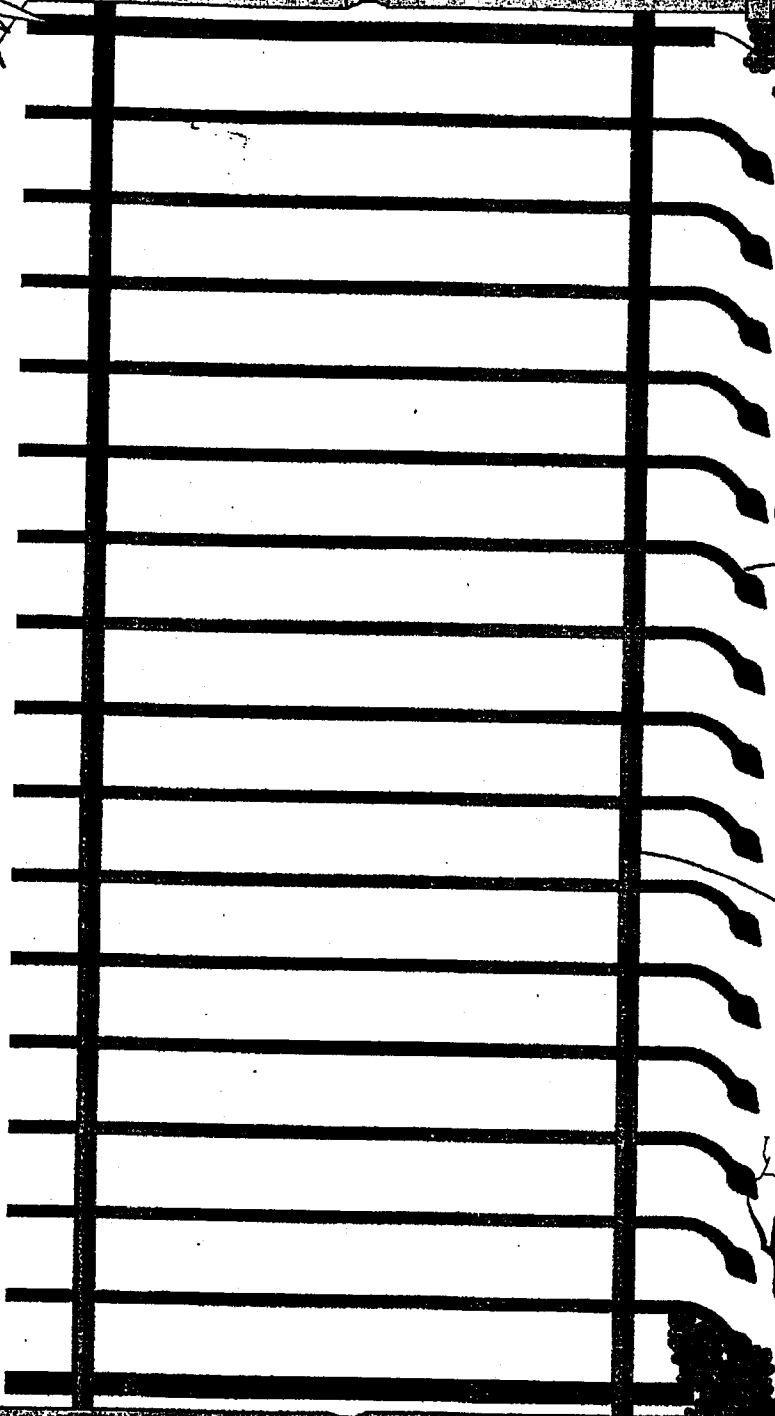


PARCELS LINED
IN THE PHOTO

See Exhibit A
Exhibit 11
(page 3 of 48 pages)

B

STEEL MASTER

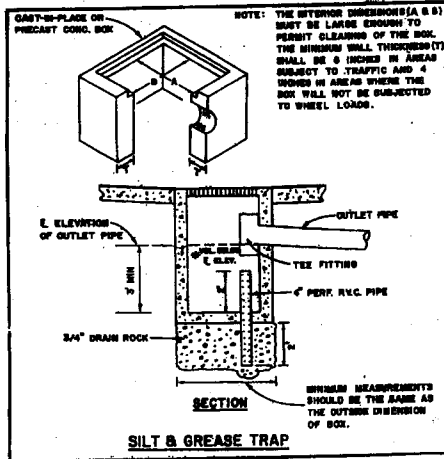


3" posts

CCC Exhibit B
(page 2 of 5 pages)

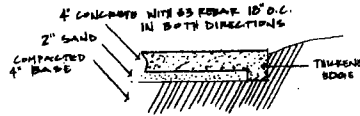
1" pickets
2" rail

SENTINRY
FLAT

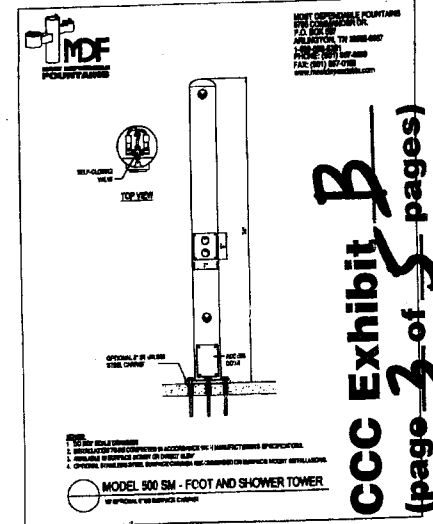


A SHOWER DRAIN DETAIL

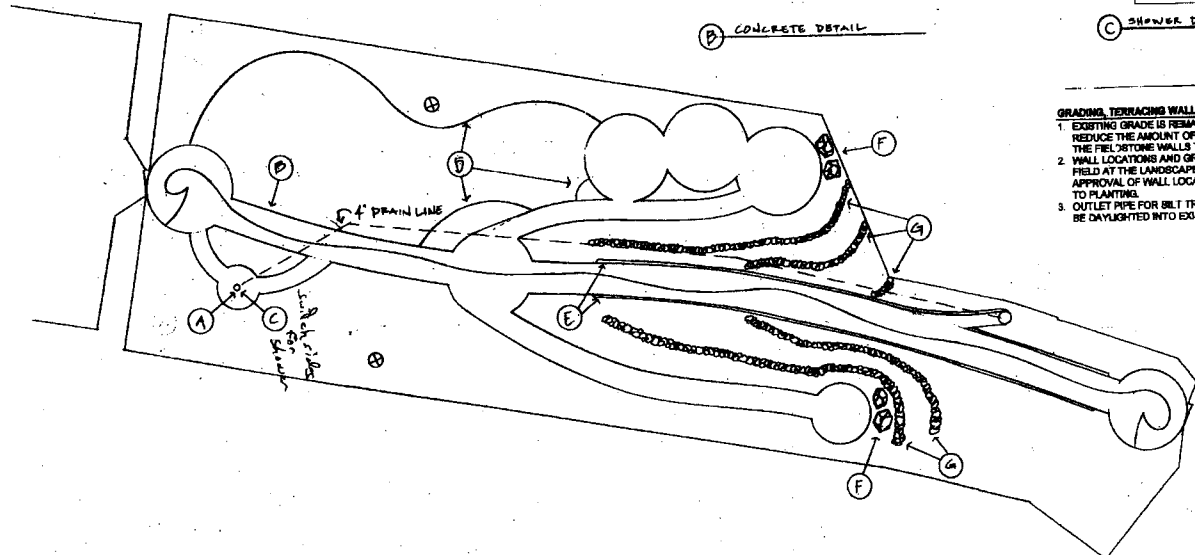
- SLOPE NOTES**
- CROSS SLOPE NOT TO EXCEED 2%
 - PATHWAYS ARE NOT TO EXCEED 5% SLOPE EXCEPT IN AREAS WHERE RAINING IS TO BE INSTALLED
- CONCRETE NOTES**
- CONCRETE WILL BE COLORED USING DAVID COLORA
 - NORTH SIDE - SILVERSHORE 8004
 - SOUTH SIDE - PEBBLE 641



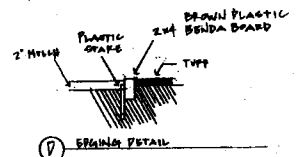
B CONCRETE DETAIL



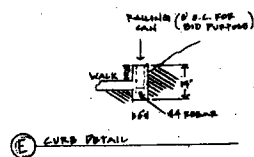
C SHOWER DETAIL



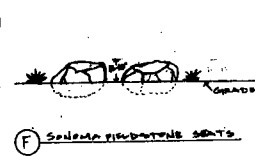
- GRADING, TERRACING WALLS, AND DRAINAGE NOTES:**
- EXISTING GRADE IS TO REMAIN AS IS WITH MINIMUM DISTURBANCE OF NATIVE SOIL TO REDUCE THE AMOUNT OF EROSION. WITH THE EXCEPTION OF THE INSTALLATION OF THE FIELDSTONE WALLS TO CREATE TERRACING AND REDUCE EROSION.
 - WALL LOCATIONS AND GRADES ARE DIAGRAMMATIC AND MAY BE ADJUSTED IN THE FIELD AT THE LANDSCAPE DESIGNER'S REQUEST PRIOR TO INSTALLATION. OBTAIN APPROVAL OF WALL LOCATIONS AND GRADES FROM LANDSCAPE DESIGNER PRIOR TO PLANTING.
 - OUTLET PIPE FOR SILT TRAP AND FRENCH DRAINS BEHIND FIELDSTONE WALLS WILL BE DAYLIGHTED INTO EXISTING STORM DRAIN SYSTEM.



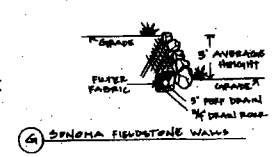
D SEWING DETAIL



E CURB DETAIL



F Sedona Fieldstone Sents



G Sedona Fieldstone Walls

Hardscape Plan

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MAY 18 2007
CALIFORNIA
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CENTRAL COAST AREA

OPAL CLIFF PARK
Santa Cruz, California

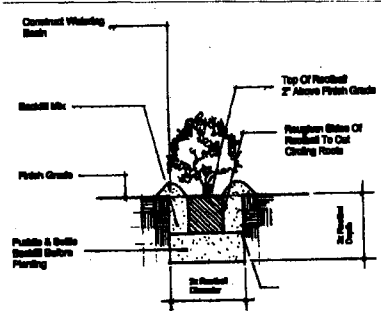
Issued: April 4, 2007
Scale: 1" = 10'-0"

Drawn By: Bryan Gledhill
Sheet: 2 of 4

DRAMA SCAPE
P.O. Box 5706, Santa Cruz, CA 95062-1062

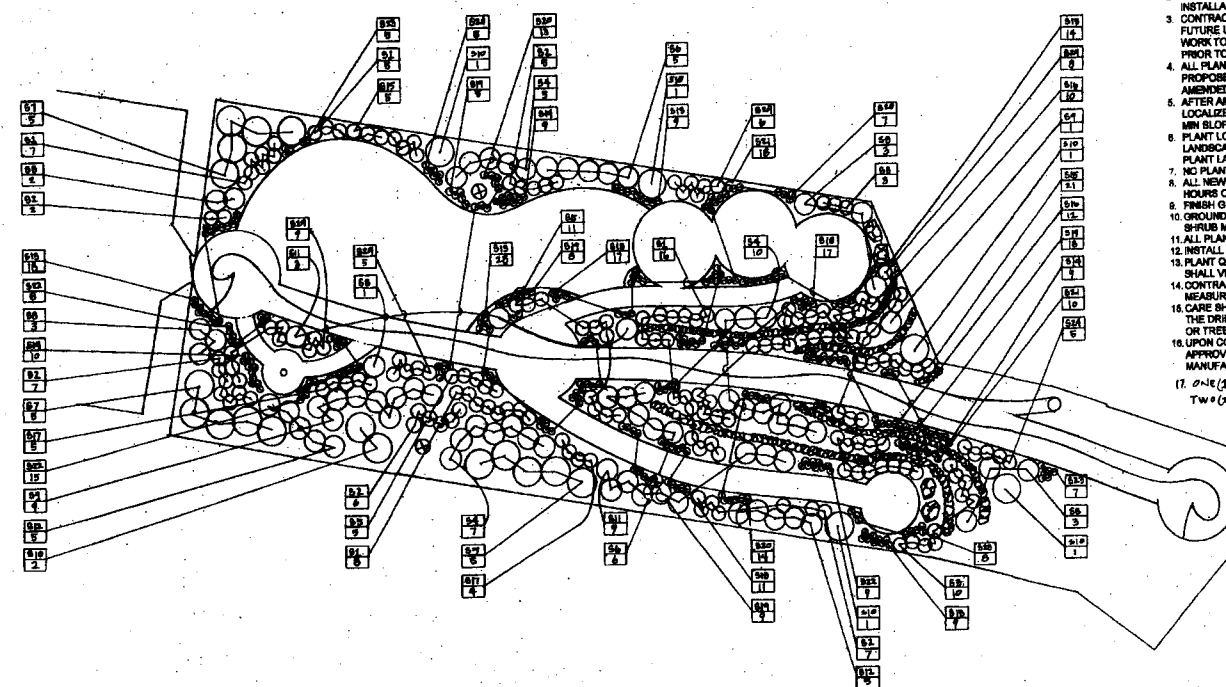
PLANT LEGEND

SYMBOL	QTY	BOTANICAL NAME	COMMON NAME	NOTES
511	20	Leucodermis	Lavender	
512	20	Correa	Antelope Plantain	
513	18	Phoradendron	Junco	
514	22	Conium	Columbine	
515	18	Manisotida	Yellow Eyeglass Daisies	
516	11	Origanum	Origanum	
517	10	Phoradendron	Junco	
518	12	Phoradendron	Purple Foothill Grass	
519	10	Phoradendron	Side of Medicine	
520	12	Phoradendron	Flax	
521	10	Phoradendron	Flax	
522	10	Phoradendron	Flax	
523	10	Phoradendron	Flax	
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Shrub Planting Detail

CCC Exhibit B
 (page 5 of 5 pages)



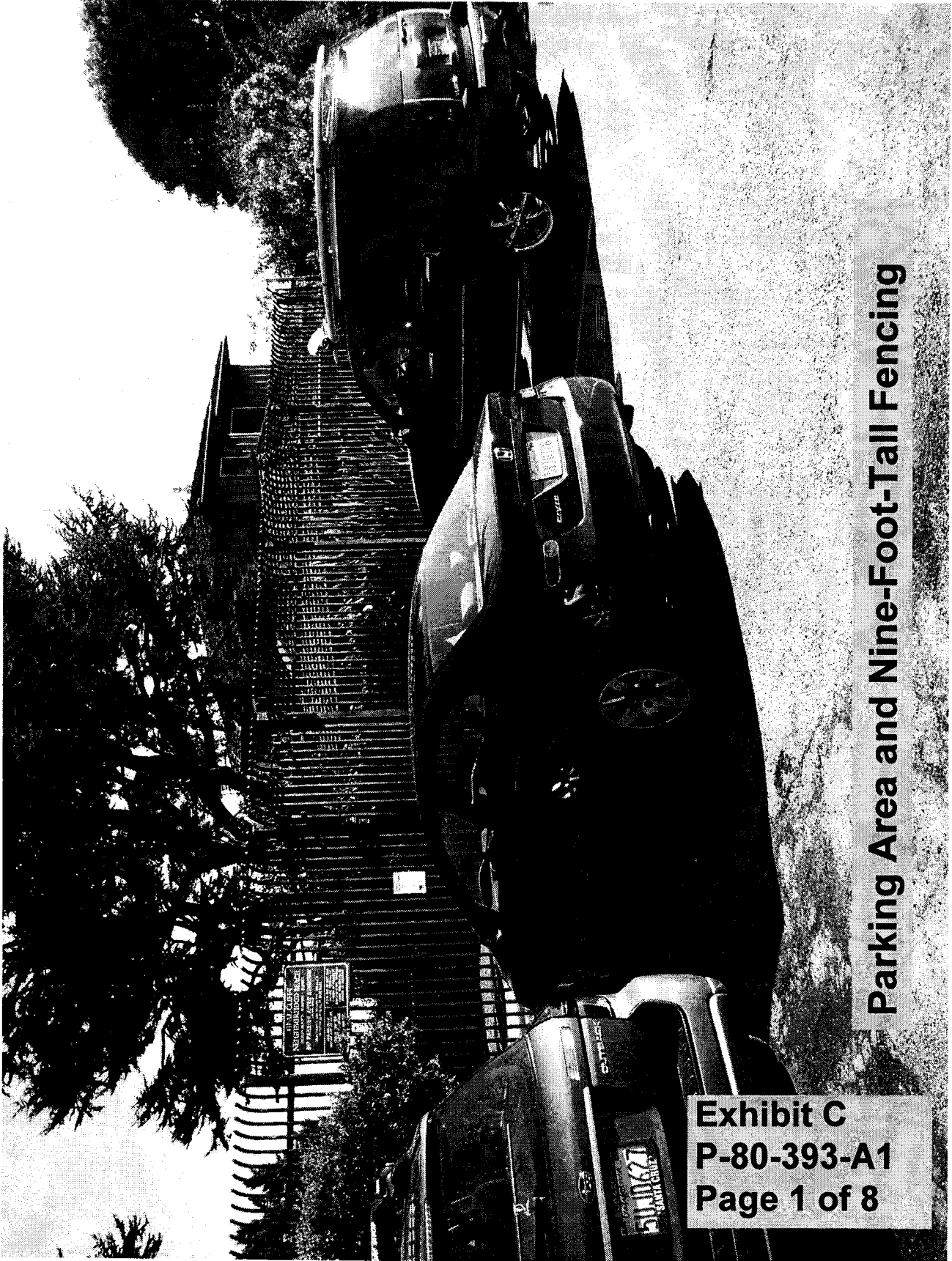
- PLANTING NOTES:**
- CONTRACTOR SHALL TEST SOIL FOR AMENDMENT RECOMMENDATIONS, FOR SIDING PURPOSES. CONTRACTOR SHALL AMEND SOIL TO DEPTH OF 6" BOTH WAYS WITH THE FOLLOWING AMENDMENTS PER 1000 S.F.: 8 C.Y. OF NITROGEN STABILIZED REDWOOD SAWDUST, 20 LBS. 9-20-20 COMMERCIAL FERTILIZER.
 - CONTRACTOR SHALL COORDINATE ALL WORK WITH OTHER TRADES PRIOR TO INSTALLATION.
 - CONTRACTOR SHALL BECOME FAMILIAR WITH THE LOCATION OF ALL EXISTING AND FUTURE UNDERGROUND SERVICES AND IMPROVEMENTS WHICH MAY CONFLICT WITH WORK TO BE DONE. CONTACT UNDERGROUND SERVICE ALERT (USA) AT (800) 642-2444 PRIOR TO DIGGING. NOTIFY OWNER IMMEDIATELY SHOULD CONFLICTS ARISE.
 - ALL PLANTING AREAS SHOULD BE BACKFILLED WITH TOPSOIL MIX, TO MEET PROPOSED GRADES. BACKFILL MIX SHALL CONSIST OF 2/3 NATIVE SOIL MIXED WITH 1/3 AMENDED SITE SOIL.
 - AFTER AMENDING SOIL TO A DEPTH OF 6", GRADE ALL AREAS SMOOTH WITH NO LOCALIZED DEPRESSION EXCEEDING 1/4". ALL AREAS SHALL SURFACE DRAIN WITH 2% MIN SLOPE AWAY FROM BUILDING, PAVING OR OTHER STRUCTURES.
 - PLANT LOCATIONS ARE DIAGRAMMATIC AND MAY BE ADJUSTED IN THE FIELD AT THE LANDSCAPE DESIGNER'S REQUEST PRIOR TO INSTALLATION. OBTAIN APPROVAL OF PLANT LAYOUT FROM LANDSCAPE DESIGNER PRIOR TO PLANTING.
 - NO PLANTS SHALL BE PLANTED WITH ROOTBALLS OR NEW PITS IN A DRY CONDITION.
 - ALL NEWLY PLANTED MATERIAL SHALL BE WATERED BY DEEP SOAKING WITHIN THREE HOURS OF PLANTING.
 - FINISH GRADE SHALL BE 2 1/2" BELOW TOP OF PAVING TO ALLOW FOR 2" OF MULCH.
 - GROUNDCOVERS SHALL BE PLANTED EVENLY AND CONTINUOUSLY UNDER TREE AND SHRUB MASSES.
 - ALL PLANTING AREAS SHALL RECEIVE 2" MIN DEPTH BARK MULCH TOP DRESSING.
 - INSTALL ALL SHRUBS PER PLANTING DETAILS, THIS SHEET.
 - PLANT QUANTITIES ARE PROVIDED AS AN AID TO THE CONTRACTOR. CONTRACTOR SHALL VERIFY ALL QUANTITIES IN THE FIELD.
 - CONTRACTOR SHALL BE RESPONSIBLE FOR ADEQUATE EROSION CONTROL MEASURES DURING CONSTRUCTION.
 - CARE SHALL BE TAKEN TO AVOID CONSTRUCTION ACTIVITY AND/OR STAGING UNDER THE DRIP LINE OF EXISTING TREES IN ORDER TO PREVENT SOIL COMPACTION, ROOT OR TREE DAMAGE. ALL WORK UNDER TREES SHALL BE BY HAND.
 - UPON COMPLETION OF PLANTING OPERATIONS, CONTRACTOR SHALL APPLY AN APPROVED PRE-EMERGENT HERBICIDE (IRONSTAR OR EQUAL) AS WEED CONTROL PER MANUFACTURER'S SPECIFICATIONS.
 - ONE (1) 3 GPH EMITTER PER ONE (1) GALLON PLANT.
TWO (2) 2 GPH EMITTER PER FIVE (5) GALLON PLANT.

RECEIVED
 MAY 16 2007
 CALIFORNIA
 COASTAL COMMISSION
 CENTRAL COAST AREA

OPAL CLIFF PARK
 Santa Cruz, California
 Drawing Title:
PLANTING PLAN
 Date: April 4, 2007 Sheet: 17 of 19-2"
 Drawn By: Bryan Quisenberry Checked: 4 of 4

DREAMSCAPE
 101 West Park Blvd, Santa Cruz, CA 95060

Planting Plan



Parking Area and Nine-Foot-Tall Fencing

**Exhibit C
P-80-393-A1
Page 1 of 8**

Existing Nine-Foot-Tall Fence and Informational Signage

OPAL CLIFFS
NEIGHBORHOOD BEACH
BEACH HOURS: SUNRISE - SUNSET
NO PARKING AFTER SUNDOWN!
OPR#P-80-393-A1
MAINTENANCE AND SECURITY OF THIS BEACH
IS PARTIALLY FUNDED BY GATE SALES.

PLEASE KEEP OUR BEACH CLEAN
AND SAFE. PLEASE CALL 911
TO REPORT ANY VANDALISM OR
SUSPICIOUS ACTIVITY. INDIVIDUALS
CAUGHT VANDALIZING WILL BE
ARRESTED AND PROSECUTED.

ADULT USE ONLY
ANNUAL USE FEE
SUBJECT TO CHANGE
JUNE 1 - MAY 30

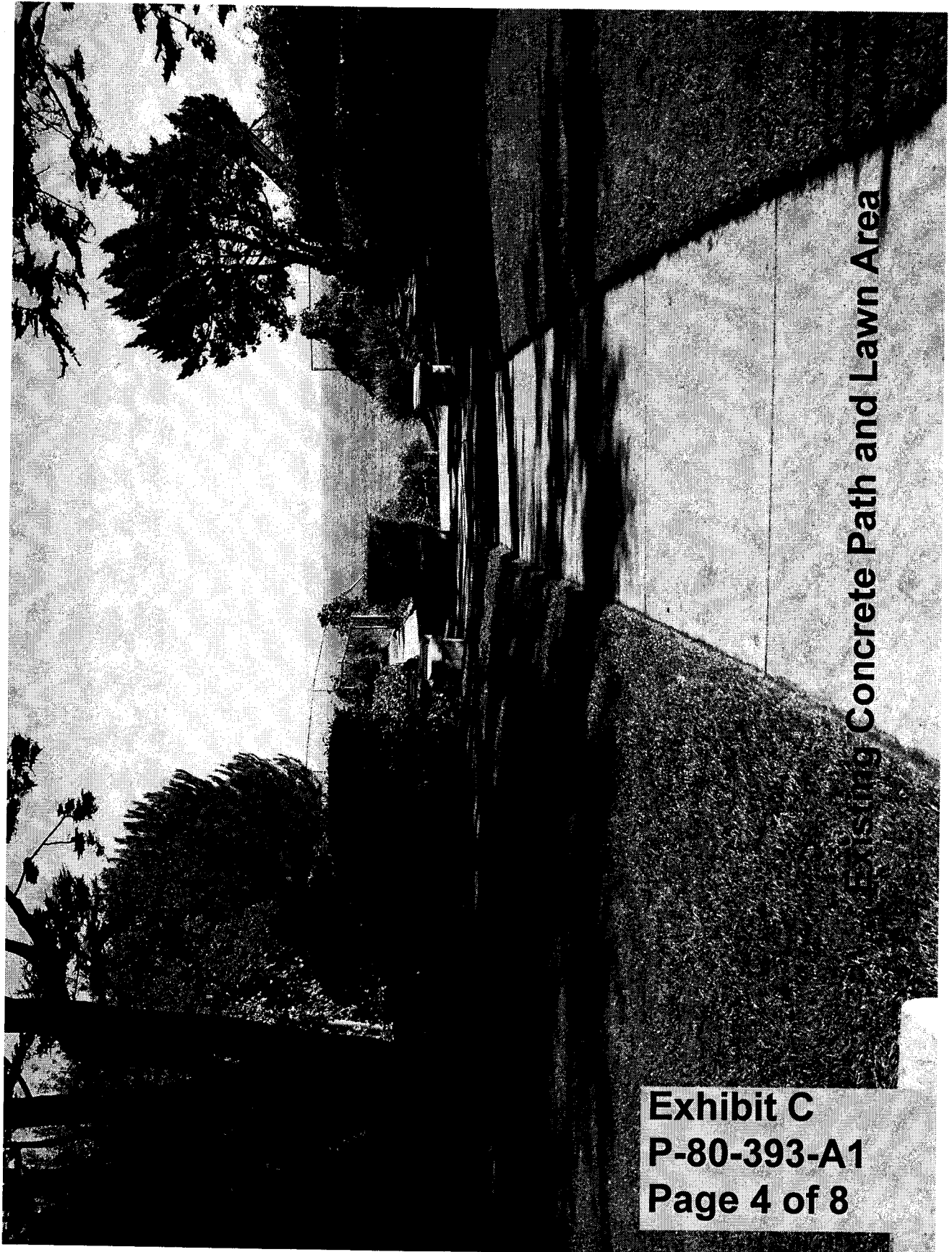
NOTICE OF
PENDING PERMIT

Exhibit C
P-80-393-A1
Page 2 of 8

Locked Gate and Nine-Foot-Tall Fence



**Exhibit C
P-80-393-A1
Page 3 of 8**

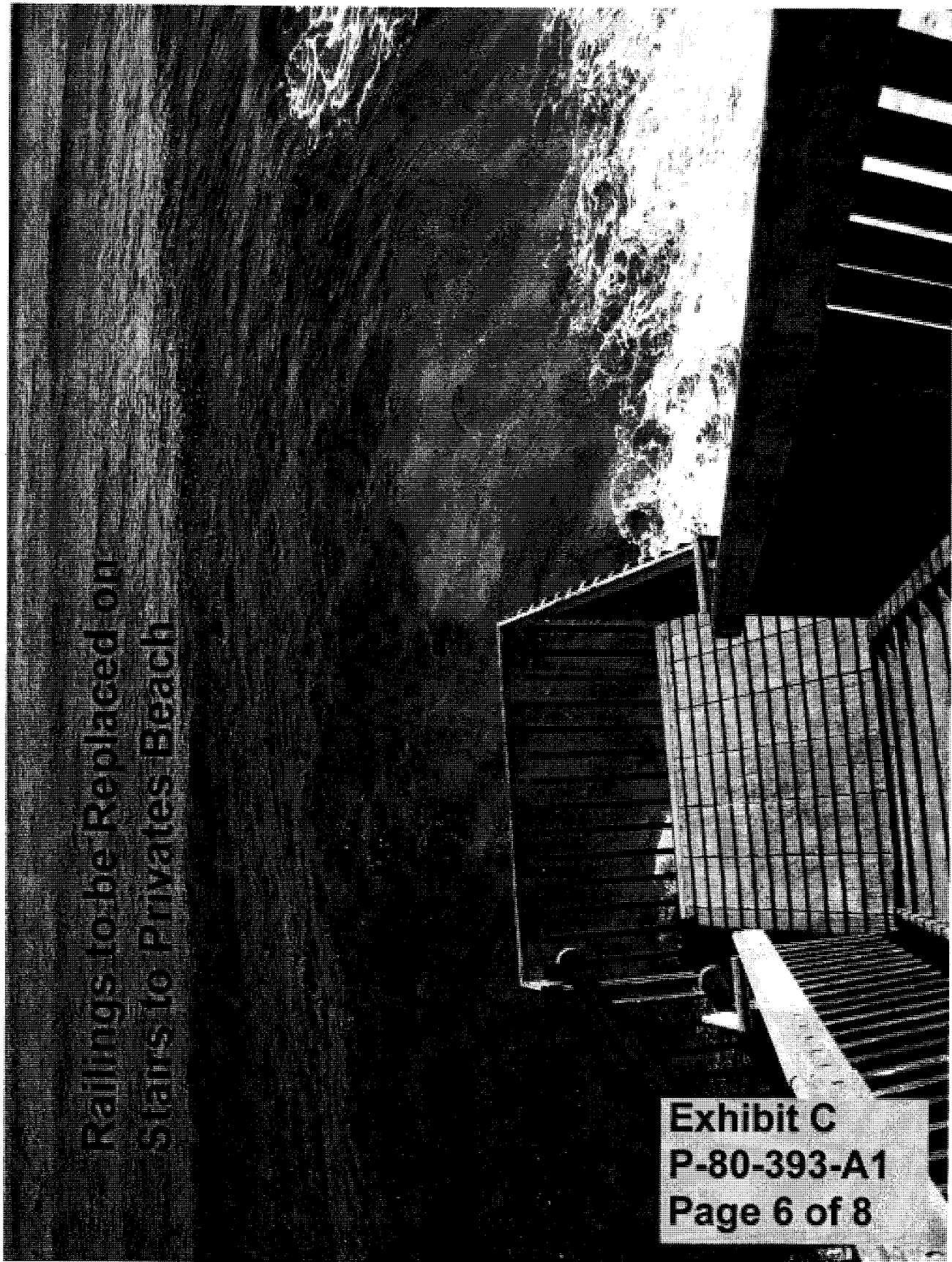


Existing Concrete Path and Lawn Area

Exhibit C
P-80-393-A1
Page 4 of 8

Existing Concrete Pathway and Bluff Overlook Area

Exhibit C
P-80-393-A1
Page 5 of 8

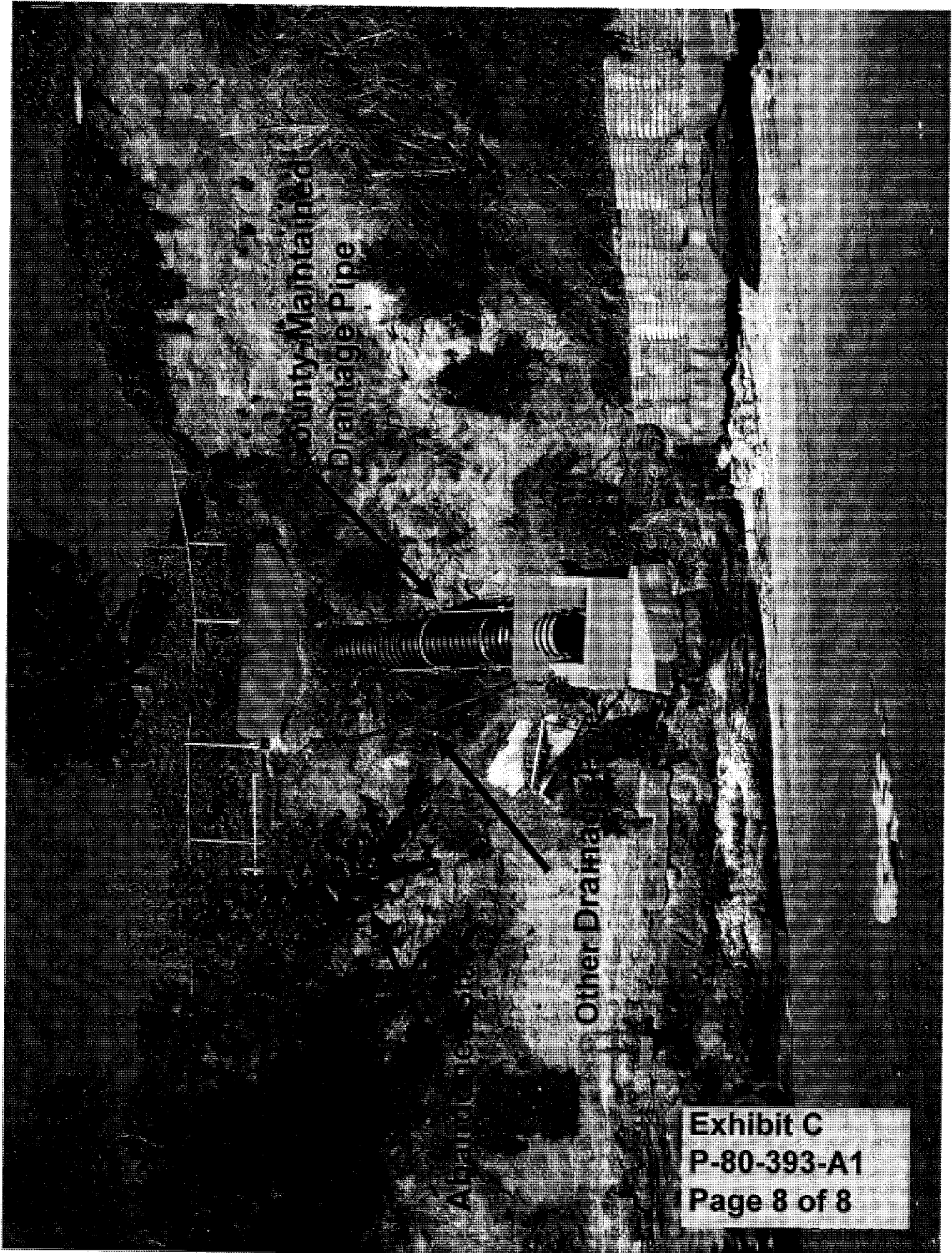


Railings to be Replaced on
Stairs to Privates Beach

Exhibit C
P-80-393-A1
Page 6 of 8

Handrails to be Replaced on
Stairs to Privates Beach

Exhibit C
P-80-393-A1
Page 7 of 8



County-Maintained
Drainage Pipe

Abandoned Pipe

Other Drainage

Exhibit C
P-80-393-A1
Page 8 of 8

STAFF REPORT (CONSENT AGENDA)

APP. NO. P-80-393

FILED: 11/24/80

49th DAY: 1/5/81

I. APPLICATION SUMMARY

Applicant: Opal Cliffs Recreation District
4130 Opal Cliffs Drive, Santa Cruz

Work Proposed: Replace and raise fences around accessway.

DATES HEARD: 1/5, 1/26/81

REVISED: 4/8/81 SCHEDULED: 4/13/81

Location of Project: 4520 Opal Cliffs Drive
Live Oak area
Santa Cruz County, APN 33-151-27

Approvals Received (type/date): CCR-15-(11/12/80)

Project Data:	<u>+11,280</u>	<u>-</u>	<u>6' high fence</u>
	parcel size	proposed coverage	height of structure
	<u>R-1-6</u>	<u>-</u>	
	current zoning	proposed density	

ADOPTED

Other: Existing fences are 5-6' chain link with gate on street frontage and 3-5' wood on sides.

Attachments: Location Map, Site Plan,

I. STAFF EVALUATION

Site Characteristics: Relatively level lot between existing SFDs, with several trees, providing access path to beach stairway. Existing fences in fair to poor condition; street frontage fencing is in especially poor condition.

Surrounding Land Use: SFD residential area.

POLICY CONFORMANCE NOTES

Public Access (30210-30213): Presently provides restricted public access; applicant is a public recreation district. See comments.

Recreation (30220-30224): See comments.

Marine Environment (30230-30236): See comments.

Land Resources (30240-30244): Not an agricultural area. Proposed development will not significantly affect sensitive habitat areas.

Development (30250-30254): Site is in developed urban area. Bluff development concern; see comments.

Industrial Development (30260-30264): N/A

CCC Exhibit D
(page 1 of 3 pages)

CCR-21

FN: 21

Exhibit 11

A-3-800318:0004

Page 43 of 54

ENVIRONMENTAL IMPACT NOTES

Adverse Impacts/Significance: None noted.

Mitigation:

RELATIONSHIP OF PROPOSED DEVELOPMENT TO LOCAL COASTAL PROGRAM: As conditioned provision for and maintenance of public coastal access at this location will not prejudice the ability of Santa Cruz County to complete preparation of an LCP which is consistent with the Coastal Act.

OTHER COMMENTS:Public Access

The proposed site is presently developed as a beach accessway, with a path leading from a small (4-space) parking area to a wood stairway, which then leads to a small beach. The accessway is owned and operated by the Opal Cliffs Recreation District, a public recreation district. Accessway use is presently restricted by a fence and gate; the applicant indicates that keys are readily available, and that the reason for the access control is the unstable, hazardous nature of the bluffs in the area.

Confirmation of key availability and/or some other means of assuring public access (such as a sign directing potential users how to gain access) would be appropriate to ensure consistency with Section 30210-12 of the Coastal Act if the fence is necessary. Some form of access control does appear desirable at this point due to unstable bluffs and small, pocket beaches with low capacities for public use, although access must be provided to maintain consistency with the Coastal Act.

Recreation

The applicant is a "Recreation District"; its primary function is maintenance of the accessway on the proposed site. The proposed development would increase fence height to a uniform 6 feet along all boundaries of the site, using a chain link fence to replace existing wood fences of variable height along the parcel sides. The new side fences will reduce the feasibility of by-passing the fence and gate on the street frontage. As noted above the applicant indicates that keys to the (locked) gate are available, but no sign or other notification exists on the site to indicate such availability.

Marine Environment

The new and reconstructed fences will not result in significant impacts on marine resources; all work will be in upland areas. Minor repair work on the beach access stairway is also to be done at this time; based on the scope of work indicated in the application materials (no mechanized equipment will be used on the beach), this repair and maintenance work will not require a Coastal Permit.

CCC Exhibit D
(page 2 of 3 pages)

Bluff-Top Development

The project as applied for will result in development (fence construction) within the "area of demonstration" for geologic stability. The fence does not appear likely, however, to impair the stability of the cliff forming the seaward edge of the site, and no additional impervious surfaces are proposed. Existing paved areas are provided with drainage facilities intended to minimize erosion.

III. RECOMMENDATION

Approval: Find consistency with Chapter III, that the development will not prejudice an LCP, that the development has no significant adverse environmental effects as proposed or as conditioned: (Between shoreline and first public road, note comments on front page under Public Access and Recreation.)

CONDITIONS

ACCESS PROGRAM

1. PRIOR TO ISSUANCE of this permit, permittee shall submit, for review and approval by the Executive Director, an access program which shall provide for public access and posting of the site as notification of such access. The program shall be recorded as a covenant running with the land, free of all encumbrances other than tax liens, or shall be guaranteed by such other means as may be acceptable to the Executive Director.

PRESCRIPTIVE RIGHTS

2. Nothing in this condition shall be construed to constitute a waiver of any sort or a determination on any issue of prescriptive rights which may exist on the parcel itself or on the designated easement.

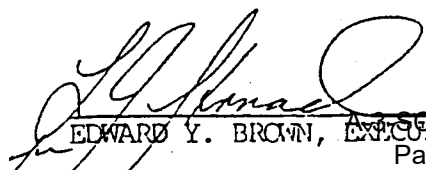
3. Safety Review

Prior to commencement of construction, permittee shall present evidence in writing to the Executive Director that all public safety agencies with jurisdiction in the surrounding area (including the Capitola Fire Dept.) and the Santa Cruz County Office of Emergency Services have been conferred with, and that the proposed development is acceptable to those agencies.

CCC Exhibit D
(page 3 of 3 pages)

MB/deb
Staff

4/10/81
Date


EDWARD Y. BROWN, EXECUTIVE DIRECTOR
Exhibit 11
Page 45 of 54

Susan Craig

From: Dan Carl
Sent: Wednesday, March 30, 2011 5:09 PM
To: Susan Craig
Subject: FW: Emergency Coastal Development Permit 3-11-018-G
FYI...

From: Dan Carl
Sent: Wednesday, March 30, 2011 5:09 PM
To: 'David King'
Subject: RE: Emergency Coastal Development Permit 3-11-018-G

Hi Dave,

Yes, I think consolidation will significantly streamline process. We should probably meet and discuss what would be a part of that. For sure the emergency repair work, but also the improvements you previously discussed with Susan. We also need to resolve outstanding issues from the old gate project and the associated issues that came up last time around, including because research since then shows that authorization expired (circa early 1980s). For me, dealing with each of those things separately does not make sense, and wrapping it all up into a consolidated application is easily the best way to go. That is an application through the Commission (that County consents to).

Why don't we try to set up a time to talk. I am booked through this week (including tomorrow is a State holiday), and am out next week. Could meet early the week of the 11th if that also worked for Susan. Any dates/times better or worse for you? We could meet at site, too, to assist us in discussion, if that made sense to you. Let me know....

Dan

From: David King [mailto:bigdking@yahoo.com]
Sent: Wednesday, March 30, 2011 2:01 PM
To: Dan Carl
Subject: Re: Emergency Coastal Development Permit 3-11-018-G

Thanks Dan,

I did get a Notice of Exemption from the Planning Department today. As far as the permanent permit goes, is that through the CCC or the Planning Department or both?
Regardless.... I am interested in a consolidated coastal permit, (now that I figured out how to spell Coastal!)
Is there a chance that you would be able to come down to the Park at take a look first hand?

Regards,
Dave

David King

4/4/2011

Thunderbird Real Estate

831.465.2115 direct

831.515.5800 fax

831.234.3280 cell

From: Dan Carl <dcarl@coastal.ca.gov>
To: David King <bigdking@yahoo.com>
Sent: Tue, March 29, 2011 4:39:09 PM
Subject: RE: Emergency Coastal Development Permit 3-11-018-G

Hi Dave,

I know this may sound funny, but SC County is lead CEQA agency for development in SC County, even this. So although it sure seems likely that something like this that qualifies for a CCC e-permit is probably exempt, you would have to ask the County for that determination if you wanted something official. One option may be to work through any of these CEQA issues when we do the regular coastal permit to make the repairs permanent (and deal with lingering other outstanding coastal permit matters for the site and related improvements). For me, that makes better sense, and I would advocate CCC does a consolidated coastal permit for everything that is outstanding as a means of bringing some closure to issues surrounding the accessway. (Consolidated coastal permit requires OCRD, us, and SC County to agree to consolidate.) Let me know if you would like to discuss...

Dan

From: David King [mailto:bigdking@yahoo.com]
Sent: Tuesday, March 29, 2011 4:04 PM
To: Dan Carl
Subject: Emergency Coastal Development Permit 3-11-018-G

Hi Dan,

We appreciate your help with the Stairway Foundation Renovation Project. The State Parks & Recreation Department needs to know if an Emergency Permit overrides the CEQA process or do we need a Notice of Exemption from the Coastal Commission?
 If we do need a Notice of Exemption I am happy to pick one up.

Best Regards,
 Dave King
 OCRD

David King

Thunderbird Real Estate

4/4/2011

Exhibit 11
 A-3-SCO-18-0004
 Page 48 of 54

831.465.2115 direct

831.515.5800 fax

831.234.3280 cell

RECORDED

91 NOV 22 PM 1 30

SANTA CRUZ
COUNTY RECORDER

RECORDING REQUESTED BY AND RETURN TO:
California Coastal Commission
45 Fremont St., Suite 2000
San Francisco, CA 94105-2219

NO FEE

DEED RESTRICTION

I. WHEREAS, Opal Cliff Recreation District, hereinafter referred to as the "Owner", is the record owner of the following real property:

BEING Lot 27, Block A, as the same is shown and designated on that certain map entitled, "Opal Cliffs". Santa Cruz County, California. Being Part of Rancho Arroyo del Rodeo, Subdivided by K. B. McGeoghegan, 1928. Surveyed in 1928 by Arnold M. Baldwin and Fred T. Hale, Licensed Land Surveyors," filed for record in the office of the County Recorder on March 6, 1930, in Map Book 25, page 12, Santa Cruz County Records.

hereinafter referred to as the "Property;" and

II. WHEREAS, the California Coastal Commission, hereinafter referred to as the "Commission," is acting on behalf of the People of the State of California; and

III. WHEREAS, the subject property is located within the coastal zone as defined in paragraph 30103 of Division 20 of the California Public Resources Code, hereinafter referred to as the "California Coastal Act of 1976," (the Act); and

IV. WHEREAS, pursuant to the Act, the Owner applied to the Commission for a coastal development permit on the Property described above; and

V. WHEREAS, COASTAL DEVELOPMENT PERMIT NUMBER #P-80-393, hereinafter referred to as the "Permit," was granted on April 13, 1981, by the Commission in accordance with the provision of the Staff Recommendation and Findings, attached hereto as EXHIBIT A and herein incorporated by reference; and

VI. WHEREAS, the Permit was subject to the terms and conditions including, but not limited to, the following condition:

PRIOR TO ISSUANCE of permit, permittee shall submit, for review and approval by the Executive Director, an access program which shall provide for public access and posting of the site as notification of such access. The program shall be recorded as a covenant running with the land, free of all encumbrances other than tax liens, or shall be guaranteed by such other means as may be acceptable to the Executive Director.

VII. WHEREAS, the Commission found that but for the imposition of the above condition the proposed development could not be found consistent with the provisions of the California Coastal Act of 1976 and that permit could therefore not have been granted; and

VIII. WHEREAS, Owner has elected to comply with the conditions imposed by the Permit and execute this Deed Restriction so as to enable Owner to develop the development authorized by the Permit.

NOW, THEREFORE, in consideration of the granting of the Permit the Owner by the Commission, the Owner hereby irrevocably covenants with the Commission that there be and hereby is created the following restrictions on the use and enjoyment of said Property, to be attached to and become a part of the deed to the property.

1. COVENANT, CONDITION AND RESTRICTION. The undersigned Owner, for himself/herself and for his/her heirs, assigns, and successors in interest, covenants and agrees that;

STATEMENT OF INTENT:

Opal Cliff Recreation District will provide park and beach access to the public, at large, for recreational purposes.

✓ ACCESS PROGRAM:

A sign will be posted on the property indicating park hours, how and where to obtain access to the beach, the terms of access and how the board members can be contacted. The sign will be in conformance with the "Sign Handbook" published by the State of California - Resources Agency, Department of Parks and Recreation.

The park will be open daily from dawn to dusk.

Access to the park and beach will be provided for an annual fee by purchasing a key. The revenue generated from the key fees will be sufficient to pay for the annual budgeted operating costs of the district. Operating costs are defined as maintenance costs, insurance and any other expenses necessary to maintain the public areas, voted as appropriate by the district board members. The price of the keys are therefore dependent on the fluctuation of the district's operating costs.

Changes to the annual key purchase fee will require majority approval from the Opal Cliff Recreation District Board Members. In 1992 our annual fee will be \$20.

The lock will be changed during the first week of January of each calendar year. The annual fee will stay constant all year long, except for the last four months of the calendar year. In September the key prices will be reduced by half of the annual fee.

Currently and historically, Opal Cliff Recreation District has annually sold 7 to 8 hundred keys per year. The fees collected from these sales have generally been sufficient to cover the board approved operating costs of the district.

The keys will be available for sale at a local business seven days a week during normal business hours.

A permanently maintained sign (approx. 2 x 3 feet) will be posted on the gate to the property indicating the following:

- a) That Opal Cliffs Recreation District maintains a public park and beach access.
- b) The Annual fee, to obtain a key for access, will be printed on the sign.
- c) Where the keys can be purchased, along with a map.
- d) Park hours of operations
- e) How the board members can be contacted.

2. DURATION. Said Deed Restriction shall remain in full force and effect during the period that said permit, or any modification or amendment thereof remains effective, and during the period that the development authorized by the Permit or any modification of said development, remains in existence in or upon any part of, and thereby confers benefit upon, the Property described herein, and shall bind Owner and all his/her assigns or successors in interest.

3. TAXES AND ASSESSMENTS. It is intended that this Deed Restriction is irrevocable and shall constitute an enforceable restriction within the meaning of a) Article XIII, paragraph 8, of the California Constitution; and b) paragraph 402.1 of the California Revenue and Taxation Code or successor statute. Furthermore, this Deed Restriction shall be deemed to constitute a servitude upon and burden to the Property within the meaning of paragraph 3712(d) of the California Revenue and taxation Code, or successor statute, which survives a sale of tax-deeded property.

4. RIGHT OF ENTRY. The commission or its agent may enter onto the Property at times reasonable acceptable to the Owner to ascertain whether the use restrictions set forth above are being observe.

5. REMEDIES. Any act, conveyance, contract, or authorization by the Owner whether written or oral which uses or would cause to be used or would permit use of the Property contrary to the terms of the Deed Restriction will be deemed a violation and breach hereof. The Commission and the Owner may pursue any and all available legal and/or equitable remedies to enforce the terms and conditions of this Deed Restriction. In the event of a breach, any forbearance on the part of either party to enforce the terms and provisions hereof shall not be deemed a waiver of enforcement rights regarding any subsequent breach.

6. SEVERABILITY. If any provision of these restrictions is held to be invalid, or for any reason becomes unenforceable, no other provision shall be thereby affected or impaired.

Date: 10/28/91, 1991

Signed: [Signature]

Mark Estess, Chairman of the Board
Opal Cliff Recreation District

* * NOTARY ACKNOWLEDGEMENT ON THE NEXT PAGE * *

CCC Exhibit E
(page 3 of 4 pages)

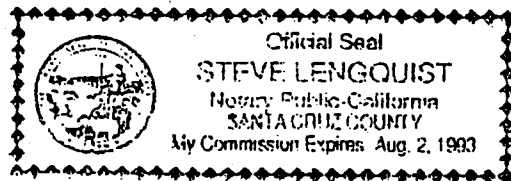
STATE OF CALIFORNIA

COUNTY OF SANTA CRUZ

On 10/28/91 before me, Steve Lengquist, A Notary Public personally appeared Mark Estess, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Signature Steve Lengquist



This is to certify that the deed restriction set forth above is hereby acknowledged by the undersigned officer on behalf of the California Coastal Commission pursuant to authority conferred by the California Coastal Commission when it granted Coastal Development Permit No. P-80-393 on April 1, 1981 and the California Coastal Commission consents to recordation thereof by its duly authorized officer.

Dated: November 5, 1991

John Bowers
John Bowers, Staff Counsel
California Coastal Commission

STATE OF CALIFORNIA

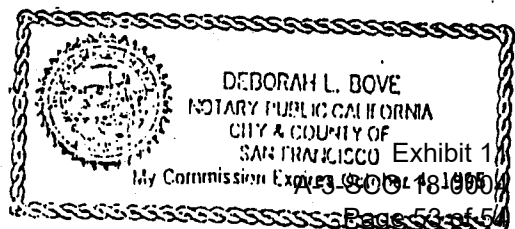
COUNTY OF San Francisco

CCC Exhibit E
(page 4 of 4 pages)

On November 5, 1991 before me, Deborah L. Bove, A Notary Public personally appeared John Bowers, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature Deborah L. Bove



**Figure 7-2 (page 3 of 6)
Santa Cruz County Public Parks and Recreation Facilities**

Planning Area	Park Site	APN	Park Type	Status	Gross Acreage*	
					Existing	Proposed
		028-231-01				
LIVE OAK (Continued)	Del Mar School	028-041-13,-14,-36,-39 028-052-60; 028-053-60	N	E/S	8.0	
	East Cliff Drive/37th Avenue Overlook	032-251-02,-06,-07,-10	R	P		1.5
	East Cliff Drive/Moran Lake	028-302-04	N	P		0.8
	Eddy Lane	026-181-36; 026-173-06	N	A	5.3	
	Felt Street	028-041-01,-02,-03	N	A/P	1.8	1.0
	Floral Park	032-091-53	N	E	0.9	
	Good Shepherd School	025-191-07	N	E/S	4.0	
	Green Acres Elementary School	026-062-46,-51,-61,87	N	E/S	4.5	
	Harbor High School	009-291-44	C	E/S	6.0	
	Harper Street (West)	026-201-04,-05,-06,-07	N	A/P	0.6	3.4
	Harper Street (East)	029-171-04,-05,-06,-09 029-201-04	N	P		8.1
	Johan's Beach	028-212-13	R	P/B		3.9
	Katherine Lane	102-362-10; 102-361-18,-28	N	E/P	1.8	0.3
	Live Oak Elementary School	029-131-02,-41,-42,-44	N	E/P/S	3.5	0.5
	Lode Street	028-202-18	N	P		2.1
	Mattison Lane	029-061-06,-12,-19,-20,-21 029-121-01	N	P		8.8
	Moran Lake and Beach	028-281-31,-32,-37,-23 028-291-49	N/R	E/P/B	9.0	0.3
	Opal Cliffs Coastal Access	033-151-12	R	E	0.3	
	Pinewood	026-111-03,-04,-07,-39,-40 026-121-13,-14,-15,-78	N	A/P	0.1	3.5
	Pleasure Point Overlook	032-242-10	R	P		0.2
Portola Drive/Rodeo Gulch	028-091-24,-25; 028-361-29	N	A/P	3.5	2.0	

* The acreages associated with school sites are expressed in net usable acreage. All other acreage is expressed as gross acres.

KEY

Plan Area	Status
C - Community	A - Acquired
L - Local Point	NA - Not Available
N - Neighborhood	N - School Facility
R - Regional	B - Public & Private Beaches
	P - Proposed Acquisition
	E - Existing Developed Facility
	RD - Recreation District Facility
	C - City Facility
	H - Historic Facility