

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.

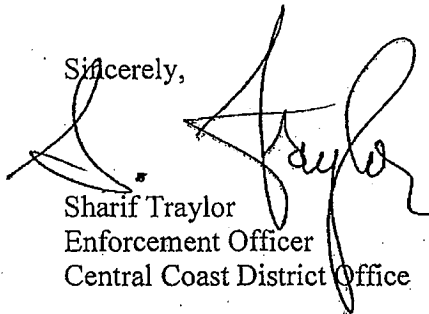
While we are hopeful that we can resolve this matter amicably, and we are willing to assist you to do so, please be advised that Chapter 9 of the Coastal Act has a number of potential remedies to address violations of the Coastal Act including the following:

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 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