

**CALIFORNIA COASTAL COMMISSION**

SOUTH CENTRAL COAST AREA  
89 SOUTH CALIFORNIA ST., SUITE 200  
VENTURA, CA 93001  
(805) 585-1800

**NOTICE OF VIOLATION OF THE CALIFORNIA COASTAL ACT  
REGULAR AND CERTIFIED MAIL**

October 31, 2014

Steven F. Dahlberg  
Paradise Cove Land Company  
28128 Pacific Coast Highway  
Malibu, CA 90265

Violation File Number: V-4-14-0139

Property location: 28128 Pacific Coast Highway; Los Angeles County  
Assessor's Parcel Number ("APN") 4466-001-005.

Violation<sup>1</sup>:

- 1) Unpermitted restriction of public access to, and charging a fee to access, the Paradise Cove pier and surrounding leased area inconsistent with the requirements of State Lands Commission Lease No. PRC 391.1
- 2) Unpermitted construction of a gate on, and blocking access to, the Paradise Cove Pier.

Dear Mr. Dahlberg:

The California Coastal Act<sup>2</sup> was enacted by the State Legislature in 1976 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, 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, amongst other goals, seek to protect and restore sensitive habitats, such as native chaparral; protect natural landforms; protect scenic landscapes and views of the sea; protect against loss of life and property from coastal hazards; and provide maximum public access to the sea.

<sup>1</sup> 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 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.

<sup>2</sup> The Coastal Act is codified in sections 30,000 to 30,900 of the California Public Resources Code. All further section references are to that code, and thus, to the Coastal Act, unless otherwise indicated.

## Violation

Our staff has received reports and complaints from the public that employees of the Paradise Cove Land Company (“Paradise Cove”) are routinely charging a walk-in fee and parking fee at 28128 Pacific Coast Highway, described by Los Angeles County as APN 4466-001-005, which is located within the Coastal Zone (“subject property”). Commission staff confirmed this on October 30, 2014. These fees restrict public access to the Paradise Cove Pier and leased area (required to be available for free public use) which is located on state tidelands, seaward of the subject property, and in the Coastal Commission’s original (retained) jurisdiction. Additionally, we have received numerous complaints from the public that Paradise Cove prohibits the public from carrying surfboards to the public beach for recreational use in public waters and on state tidelands. Finally, Paradise Cove has placed a gate across the end of the pier that further restricts public access to the pier.

Pursuant to Section 30600 (a) of the Coastal Act, any person wishing to perform or undertake development in the Coastal Zone must obtain a coastal development permit (“CDP”), in addition to any other permit required by law. “Development” is defined by Section 30106 of the Coastal Act 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 any gaseous, liquid, solid, or thermal waste; grading, removing, dredging, mining, or extraction of any materials; change in the density or intensity of the 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 harvest of major vegetation other than for agricultural purposes, kelp harvesting, and timber operations....(emphasis added)*

Restricting access, and charging a fee to access, the Paradise Cove Pier and surrounding lease area violates the terms of California State Lands Commission Lease No. 391.1 (“SLC Lease”) entered into between Paradise Cove and the State of California and is unpermitted development. Further, pursuant to the terms of the SLC Lease, Paradise Cove is prohibited from taking actions to limit reasonable use of the access by the public. Access for the purposes of surfing is certainly a reasonable use of the access and surfboards are, as you know, necessary to pursue recreational surfing. Finally, placement of a gate across the end of the pier further restricts public access to the pier.

Restricting access, charging access/parking fees, placing gates, and prohibiting surfboards are activities that constitute “development” under the Coastal Act because they change the intensity of use of water, or of access thereto available to the public. Any non-exempt development

activity (which is the case here) conducted in the Coastal Zone without a valid CDP constitutes a violation of the Coastal Act.

### **Background**

Recent aerial photographs indicate that a gate was constructed at the entrance to the Paradise Cove Pier. Commission staff has searched through permit records and has not found evidence that the gate received the required CDP.

On June 28, 2010, the California State Lands Commission granted Lease No. PRC 391.1 to the Kissel Company dba Paradise Cove Land Company (“Lessee”) for the operation and maintenance of the Paradise Cove Pier for private parties, commercial events, commercial film set location, fishing, and recreational use for 10 years, beginning February 25, 2009 and ending February 24, 2019. Special Provision 7, “Public Access,” of Lease No. PRC 391.1 states the following:

*Access shall be provided to and through the leased area for the general public, including non-paying visitors. This access shall be across the Lessee’s upland. The purpose of this requirement is to assure public access from the first public road to the pier and from the pier to the first public road. The Lessee shall take no action to discourage reasonable use by the general public of this access. Special exception to public access may be made when the pier is closed for scheduled private and commercial events and for repairs.*

Additionally, Section 5(a)(3) of the General Provisions of the lease states:

*Lessor expressly reserves to the public an easement for convenient access across the Lease Premises to other State-owned lands located near or adjacent to the Lease Premises and a right of reasonable passage across and along any right-of-way granted by this Lease; however, such easement or right-of-way shall be neither inconsistent nor incompatible with the rights or privileges of Lessee under this Lease.*

The footprint of the leased area is greater than that of the pier and the SLC Lease expressly provides for public access across the Lessee’s upland “to and through” the leased area under and surrounding the pier; including through access to State tidelands and the sea.

Commission staff has received multiple reports of Paradise Cove employees charging walk-in visitors a fee to cross the subject property (the Lessee’s upland) in order to access the leased area for the Paradise Cove Pier and State-owned tidelands located contiguous with the leased area. Additionally, the Commission has received many public complaints about “exorbitant” parking fees at Paradise Cove and of being harassed and threatened by Paradise Cove employees about surfboards.

Since Lease No. PRC 391.1 was approved by the State Lands Commission in 2010, Coastal Commission staff has received, at minimum, three specific reports of Paradise Cove employees charging a fee for the public to cross the subject property and preventing access if this fee was not paid. In one reported incident, members of the public who attempted to cross the subject

property to walk to the beach (with surfboards) were threatened with arrest for trespass by LA County Sheriff's deputies, who were called to the subject site by employees of Paradise Cove, and only released after paying an access fee to Paradise Cove. Moreover, signage on the subject property, and information on the Paradise Cove website, states that a fee is charged to park on (\$40) or walk across (\$20 per person) the subject property in order to access the pier and beach and explicitly forbid surfboards.

On October 30, 2014, Commission staff walked from Pacific Coast Highway in order to access the leased area for the Paradise Cove Pier. Staff observed signage along the access road that stated a parking fee of \$40 and walk-in fee of \$20 would be charged. At the kiosk located at the entrance to Paradise Cove, staff was greeted by an employee who asked if they had walked down from Pacific Coast Highway and then stated that Paradise Cove imposes a walk-in access fee of \$20. When Commission staff stated they would like to access the pier, the employee stated that it had been closed for two years. Commission staff then asked if they could take a look at the pier and the employee agreed to allow ten minutes before he would assess the \$20 per person walk-in fees.

Actions taken by Paradise Cove's private security guards/employees include: 1) charging a walk-in fee in order for the general public to access the pier and beach; 2) charging a parking fee to the public for accessing the leased area and pier; 3) discouraging reasonable use (e.g. surfing, fishing, etc.) of the required access; and 4) closing the pier and placing a gate across the entrance to the pier that restricts the public's use of and access to the pier. These actions constitute a violation of the Coastal Act because they are unpermitted and they change the intensity of use of the water and access thereto from what is legally available to the public. Further, this unpermitted development constitutes a violation of the public access policies of the Coastal Act which, among other things, require maximum public access to the sea.

On October 31, 2014, the State Lands Commission sent you a letter regarding compliance with the terms of the SLC Lease. The SLC letter states that charging the public a fee to access the pier and ocean is in conflict with the terms of the SLC Lease. As you know, Coastal Commission staff was copied on that letter.

### **Administrative Resolution of Public Access Violation**

Section 30210 of the Coastal Act states that "maximum access... shall be provided for all the people..." and Section 30211 states that "Development shall not interfere with the public's right of access to the sea..." Preserving the public's right of access is a high priority for the Coastal Commission. In this case, the SLC Lease confers to the public a right of free access to the Paradise Cove Pier and the leased area in addition to State-owned lands located near or adjacent to the Lease Premises, as described above. The above described unpermitted development activities, including the charging of parking/access fees and unreasonably limiting the public's use of the access, directly interfere with the public's right to access the sea as required by Sections 30210 and 30211.

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. Further, Section 30821(h) states the following:

*(h) Administrative penalties pursuant to subdivision (a) shall not be assessed if the property owner corrects the violation consistent with this division within 30 days of receiving written notification from the commission regarding the violation, and if the alleged violator can correct the violation without undertaking additional development that requires a permit under this division. This 30-day timeframe for corrective action does not apply to previous violations of permit conditions incurred by a property owner.*

We would like to resolve these issues and open this access way for public use. We believe that this can be accomplished quickly, without the need for additional permits, by ceasing the above described actions and removing the gate. Please consider this letter to be “written notification” of our intent to pursue administrative penalties pursuant to Section 30821 if we cannot resolve this matter quickly. In order to resolve this matter, please immediately contact our office to discuss resolution, which, at minimum, will require that you notify our office (within 30 days of receiving this written notice), in writing, confirmation that you have: 1) removed signage referring to fees and prohibiting surfboards and; 2) ceased the above described restrictions of public access including charging a fee for the general public to park or walk in to access the pier from the first public road and prohibiting the public from carrying surfboards, fishing equipment, or any other legal items normally associated with reasonable use of the public beach or pier. Additionally, you will need to provide photographic evidence that you have removed the above described gate. Finally, Commission staff will need to conduct a site inspection to verify the above.

While we are hopeful that we can resolve this matter amicably, please be advised that, in addition to the administrative penalty authority described above, the Coastal Act has a number of 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 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.

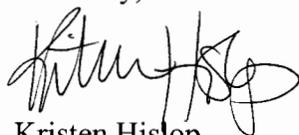
Additionally, Sections 30803 and 30805 authorize the Commission to initiate litigation to seek injunctive relief and an award of civil fines in response to any violation of the Coastal Act. Section 30820(a)(1) provides that any person who undertakes development in violation of the Coastal Act may be 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.

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 your property, it will serve as notice of the violation to all successors in interest in that property<sup>3</sup>.

Thank you for your attention to this matter. If you have any questions regarding this letter or the pending enforcement case, please feel free to contact me at (805) 585-1800.

Sincerely,



Kristen Hislop  
Enforcement Officer

cc: **Lisa Haage, Chief of Enforcement, CCC**  
**N. Patrick Veesart, Enforcement Supervisor, CCC**  
**Steve Hudson, District Manager, CCC**  
**Barbara Carey, Supervisor, Planning and Regulation, CCC**  
**Alex Helperin, Senior Staff Counsel, CCC**  
**Matt Christen, Staff Counsel, CCC**  
**Linda Locklin, CCC Public Access**  
**Drew Simpkins, State Lands Commission**  
**Lisa Tent, City of Malibu Code Enforcement**  
**Captain Patrick Davoren, Los Angeles County Sheriff's Department**

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<sup>3</sup> Even without such notice, by law, while liability for Coastal Act violations attaches to the person or persons originally responsible for said violations (and continues to do so even if they no longer own the property), liability additionally attaches to whomsoever owns the property upon which a Coastal Act violation persists (see *Leslie Salt Co. v. San Francisco Bay Conservation and Development Com.* [1984], 153 Cal. App.3d 605, 622). Therefore, any new owner(s) of the subject property will assume liability for, and the duty to correct, any remaining violations. Under California Real Estate law, if you plan to sell the subject property, it is incumbent upon you to inform any potential new owner(s) of same.