

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

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Applicant: Opal Cliffs Recreation District

APP. NO.:

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.)

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.

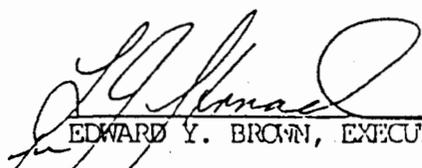
3. Safety Review

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.

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NB/deb
Staff

4/10/81
Date


EDWARD Y. BROWN, EXECUTIVE DIRECTOR

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 conduct 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:

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- 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

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* * 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

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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

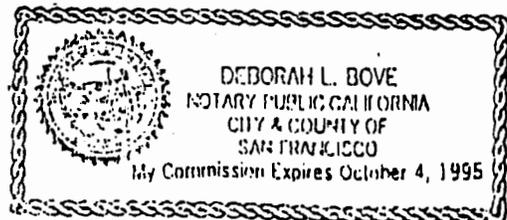


Figure 7-2 (page 3 of 6)
Santa Cruz County Public Parks and Recreation Facilities

| 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 | 6.0 | |
| | 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,-26 | 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

| Park Type | Status |
|------------------|--|
| C - Community | A - Acquired N/A - Not Available S - School Facility |
| L - Local Rural | B - Public & Private Beaches P - Proposed Acquisition |
| N - Neighborhood | E - Existing Developed Facility RD - Recreation District Facility |
| R - Regional | C - City Facility H - Historic Facility |