

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 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.



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.

Report Contents

- A. Staff Recommendation.....1
 - 1. Summary of Staff Recommendation.....1
 - 2. Staff Recommendation on CDP Amendment3
- B. Findings and Declarations4
 - 1. Project Location and Description4
 - A. Project Location and Background.....4
 - B. Opal Cliffs Recreation District Background.....6
 - C. Project Description8
 - D. Standard of Review.....8
 - 2. Issue Analysis9
 - A. Public Access and Recreation.....9
 - B. Visual Resources.....18
 - 3. Conditions of Approval20
 - A. Standard Conditions.....20
 - B. Special Conditions21
- C. California Environmental Quality Act (CEQA).....23



Click on the links at left
to go to the exhibits.

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 project avoid significant adverse effects on the environment within the meaning of CEQA. No additional feasible alternatives nor feasible mitigation measures available which would substantially lessen any significant adverse environmental effects that approval of the proposed project would have on the environment within the meaning of CEQA. If so modified, the project will not result in any significant environmental effects for which feasible mitigation measures are employed consistent with CEQA Section 21080.5(d)(2)(A).

