

CALIFORNIA COASTAL COMMISSION

NORTH CENTRAL COAST DISTRICT
455 MARKET STREET, SUITE 300
SAN FRANCISCO, CA 94105
PHONE: (415) 904-5260
FAX: (415) 904-5400
WEB: WWW.COASTAL.CA.GOV



F13b

A-2-HMB-20-0048 (BEACH PARKING FEES)

OCTOBER 9, 2020

CORRESPONDENCE

SHUTE MIHALY
& WEINBERGER LLP

396 HAYES STREET, SAN FRANCISCO, CA 94102
T: (415) 552-7272 F: (415) 552-5816
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CATHERINE C. ENGBERG
Attorney
Engberg@smwlaw.com

August 28, 2020

Via Electronic Mail Only

Jessica Reed
California Coastal Commission
455 Market Street, Suite 228
San Francisco, CA 94105
E-Mail: jessica.reed@coastal.ca.gov

Re: Poplar Beach parking fees CDP (PDP 20-040)

Dear Jessica:

My firm serves as City Attorney for the City of Half Moon Bay. City Manager Bob Nisbet and I appreciate you taking the time on Thursday, August 27 to discuss the coastal development permit for the Poplar Beach parking fees.

As we discussed, the City considers the CDP to be final as of August 17, 2020, which was 10 working days after the Notice of Final Action was received via certified mail at Coastal Commission offices. We understand that the Commission has received an appeal dated August 25, 2020. Because the appeal was filed after August 17, it is untimely and must be rejected.

The Coastal Act provides that CDPs are deemed final if not timely appealed:

(c) Any action described in subdivision (a) shall become final at the close of business on the 10th working day from the date of receipt by the commission of the notice of the local government's final action, unless an appeal is submitted within that time. Regardless of whether an appeal is submitted, the local government's action shall become final if an appeal fee is imposed pursuant to subdivision (d) of Section 30620 and is not deposited with the commission within the time prescribed.

Pub. Res. Code section 30603(c); *see also* 14 Cal. Code Regs. 13111(c). The Commission's Appeal Information Sheet¹ explains that late filed appeals "will be rejected."

The Coastal Act further provides how to determine when an appeal is received. The local government must send the NOFA via certified mail. See Pub. Res. Code section 30603(d) ("A local government taking an action on a coastal development permit shall send notification of its final action to the commission by certified mail within seven calendar days from the date of taking the action.")

Here, City of Half Moon Bay staff took all required steps to ensure that the CDP would be "received" on August 3 and become final on August 17, 2020. The timeline is as follows:

Early July: Collaboration between Coastal Commission staff and City staff via email and telephone on the substance of the CDP

July 14: Planning Commission Public Hearing – approved CDP

July 28: End 10 working day City appeal period – no appeal received

July 30: Sent NOFA via certified mail to Coastal Commission during seven calendar day window (July 29 – August 4)

As shown in the attached certified mail receipt, the Commission received the NOFA on August 3, 2020. The 10 working day appeal period expired on August 17, 2020.

We understand that the Commission moved offices around or before this time period, and that you do not know the person who signed the certified mail receipt. However, the Coastal Commission's website states that "Beginning July 24, 2020, our new address will be . . . 455 Market Street, Suite 228, San Francisco, CA 94105." Per the certified mail receipt, the City sent the NOFA to the correct address.

Furthermore, City staff emailed a courtesy electronic copy of the NOFA and all record materials for the CDP to Commission staff on July 30, 2020. Commission staff confirmed receipt.

¹ Available: <https://documents.coastal.ca.gov/assets/cdp/Appeal-Information-Sheet.pdf> (last visited Aug. 28, 2020)

Jessica Reed
August 28, 2020
Page 3

Based on the above, the City considers the CDP to be final.

Very truly yours,

SHUTE, MIHALY & WEINBERGER LLP



Catherine C. Engberg

CCE:CE

cc: Bob Nisbet, City Manager

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Brittney Cozzolina
City of Half Moon Bay
501 Main Street
Half Moon Bay, CA 94019

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California Coastal Commission
455 Market St., Suite 228
San Francisco, CA 94105

2. Article Number (Transfer from service label)

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PS Form 3811, July 2015 PSN 7530-02-000-9053

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 Addressee

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8-3-20

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| <input type="checkbox"/> Insured Mail Restricted Delivery (over \$500) | |

Domestic Return Receipt

1282406.1



October 2, 2020

Via E-mail Delivery

California Coastal Commission
Central Coast District
455 Market Street, Suite 300
San Francisco, CA 94105
c/o NorthCentralCoast@coastal.ca.gov

Re: Appeal No. A-2-HMB-20-0048 (Coastal Commission appeal of CDP to align City user fees with State Parks for the Poplar Beach parking lot)

October 9, 2020 Substantial Issue Hearing

Honorable Commissioners:

This matter involves an appeal by two Commissioners of the City of Half Moon Bay's coastal development permit (CDP) to align City user fees with State Parks for the Poplar Beach parking lot. The Commissioners' appeal was filed on August 25, 2020.

On behalf of the City of Half Moon Bay, please consider the attached letter dated August 28, 2020 from the City Attorney to Coastal Commission staff. The letter attaches the Certified Mail Receipt of the notice of final action (NOFA) signed on August 3, 2020. It was alluded to in the staff report, but not attached. The letter explains that the 10 working day appeal period expired on August 17, 2020, and the CDP is therefore final.

The City intends to submit additional materials that are not currently available prior to the Substantial Issue hearing. First, the City has requested relevant public records from the Commission regarding this appeal and anticipates receipt of those records prior to the hearing. Second, on Tuesday, October 6, 2020, the Half Moon Bay City Council will be considering an action to rescind a 2011 resolution establishing a "locals only" annual parking pass, thereby offering annual passes to all individuals regardless of residency.



If you have any questions, please do not hesitate to contact Bob Nisbet, City Manager (bnisbet@hmbcity.com) or Catherine Engberg, City Attorney (cengberg@hmbcity.com) for additional information.

Sincerely,

Catherine C. Engberg, City Attorney

Attachment:

Letter from City Attorney Catherine Engberg to Jessica Reed dated August 28, 2020

1295925.1

ATTACHMENT

SHUTE MIHALY
& WEINBERGER LLP

396 HAYES STREET, SAN FRANCISCO, CA 94102
T: (415) 552-7272 F: (415) 552-5816
www.smwlaw.com

CATHERINE C. ENGBERG
Attorney
Engberg@smwlaw.com

August 28, 2020

Via Electronic Mail Only

Jessica Reed
California Coastal Commission
455 Market Street, Suite 228
San Francisco, CA 94105
E-Mail: jessica.reed@coastal.ca.gov

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Jessica Reed
August 28, 2020
Page 3

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SHUTE, MIHALY & WEINBERGER LLP



Catherine C. Engberg

CCE:CE

cc: Bob Nisbet, City Manager

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City of Half Moon Bay
501 Main Street
Half Moon Bay, CA 94019

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| <input type="checkbox"/> Collect on Delivery Restricted Delivery | <input type="checkbox"/> Signature Confirmation Restricted Delivery |
| <input type="checkbox"/> Insured Mail | |
| <input type="checkbox"/> Insured Mail Restricted Delivery (over \$500) | |

PS Form 3811, July 2015 PSN 7530-02-000-9053

Domestic Return Receipt

1282406.1

Subject: Poplar Beach / Neighborhood Parking Restrictions
Date: Saturday, October 3, 2020 at 2:25:24 PM Pacific Daylight Time
From: Mark Massara
To: KoppmanNorton, Julia@Coastal
Attachments: 5f42d2ff9fd81.image.png

Hi Julia,

Thank you for your report and analysis re: the proposed City of HMB parking restrictions, fees, permitting and neighborhood signage related to the Poplar Beach area.

It is clear that the proposed restrictions, as well as the long history of street signage, fees and other controls used by the City relate not to funding reasonable expenses but instead to a history of attempting to discourage visitors from “their” beaches and neighborhoods.

I also urge you carefully scrutinize the proposal to “use” the Golden Bear pass as a lower cost amenity. If you research the CA State “Golden Bear” pass program and application, you’ll learn that it involves a complicated application and declaration process via Sacramento, and that an individual making over \$12,000/yr. is not eligible in 2020. Thus, the vast majority of lower class working individuals would not be able to obtain the pass, making it virtually useless for ensuring fair and equitable access to Poplar Beach. More important, given the rigors, declarations and proof required to simply apply for the pass, it goes without saying that most people who would otherwise qualify will choose not to apply and/or be intimidated into not fulfilling all the regulatory requirements to obtain a pass.

When reviewing the exhausting hurdles associated with the Golden Bear pass one might easily associate trying to obtain the pass with those states enacting severe voter identification rules solely designed to discourage actual voting.

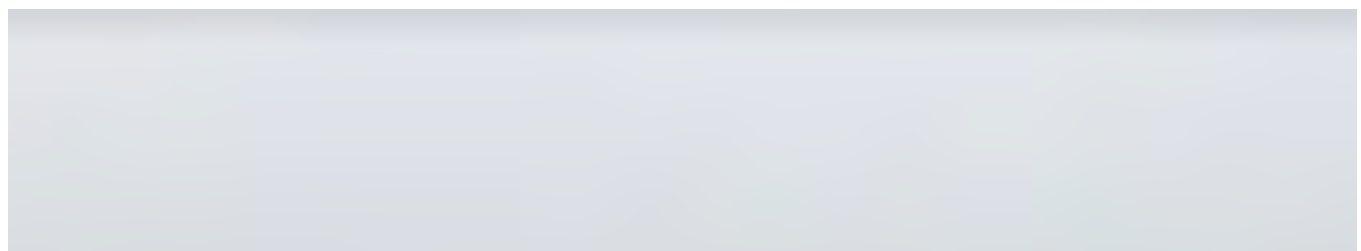
Regarding the “resident only” permits, I refer you to CCC staff in Santa Cruz and their years long public adamant opposition to the decades old (and permitted) annual fee program at Opal Cliffs Park, whereupon threat of significant fines and penalties the Park District was forced to capitulate to providing no fee free public access to all persons, residents and visitors alike. What’s good for Santa Cruz should be good for Half Moon Bay.

Other examples are Ocean Beach in San Francisco, where the City operates the public parking areas for free, and Goleta Beach in Santa Barbara County, where all parking is free.

Hopefully, before this matter comes back to the CCC on the merits the Commission can encourage HMB to adopt LCP policies that encourage visitor serving coastal recreation, and not engage in faux access exercises that are actually thinly veiled attempts to discourage visitors.

<https://documents.coastal.ca.gov/reports/2020/10/F13b/F13b-10-2020-report.pdf>

From the Half Moon Bay Review, August 23, 2020 (Poplar Beach):





Mark Massara
Attorney at Law
1642 Great Hwy
SF CA 94122

Ph: 805 895 0963

markmassara@coastaladvocates.com

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