

CALIFORNIA COASTAL COMMISSION

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**NOTICE OF VIOLATION OF THE CALIFORNIA COASTAL ACT
VIA ELECTRONIC MAIL**

Orange County Parks
Attn: Tom Starnes, Orange County Parks Director
13042 Old Myford Road
Irvine, CA 92602

Subject: Protection of Public Access along the Bayview Trail adjacent to 2600 Mesa Drive

Dear Mr. Starnes:

Thank you for your continued attention to the issues surrounding public access at the Bayview Trail section abutting the County Lot (APN: 439-051-14). The Commission has been following the long and complex history surrounding this property, specifically, the installation of the chain link fence by a private party that effectively privatizes public land. Given the State's prioritization of lands held in the public trust, it is important that this lot remains available to the public. The Commission and County staff have worked on other enforcement issues previously and we look forward to partnering with you on this issue as well. Through use of the City of Newport's Local Coastal Program (LCP) policies and Coastal Act provisions, this letter aims to inform the County of a particular Coastal Act violation on the Lot abutting the Bayview Trail that consists of unpermitted installation of a chain link fence.

A 2021-2022 County of Orange Grand Jury Report was released outlining the history of this property, the need for it to remain in the public trust and open for public use, and the inconsistency of the fence at issue with the public trust. The report recommends removal of the fence surrounding APN 439-051-14. Commission staff agree with this recommendation, and we would like to assist the County with resolving this matter.

We are hopeful that this encroachment on public land can be removed quickly, in accordance with Coastal Act and LCP policies in the area. Section 30210 of the Coastal Act requires maximum access to be provided for all of the people. This would include removal of the fence from the property, both due to the property's dedication to the public trust, but also its location, relative to the coast.

This area is made up of publicly owned open space in the Upper Newport Bay Ecological Reserve within the City of Newport Beach located between Mesa Drive to the north, and Bayview Trail (an improved asphalt paved pedestrian and vehicle access way around the bay) to the south. The land is owned by the County of Orange. Admitted to the public trust in August of 2004, this lot is meant to be available to the public.¹ Privatization of the property violates both Coastal Act policies and Newport Beach LCP policies.

¹ Assembly Bill 425; Available at: [Bill Text - AB-425 City of Newport Beach: public trust lands. \(ca.gov\)](#)

Specifically, policies of the Coastal Act protect public resources such as parkland, including the following sections, 30213 and 30223, respectively:

“Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Developments providing public recreational opportunities are preferred...”

“Upland areas necessary to support coastal recreational uses shall be reserved for such uses, where feasible.”

In addition, Newport LCP policy 21.30A.030 and Section 30211 of the Coastal Act states that:

“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.”²

In this case, the chain link fence installed on the property has been placed by a private party in an undeveloped, open space area that is dedicated to the public, resulting in a violation of the Coastal Act, including the public’s right to visual resources.³

Preserving public land is a high priority for the Commission. Section 30210 of the Coastal Act requires that “maximum access...and recreational opportunities shall be provided for all the people.” Since the subject development is located on a publicly owned lot, the development also conflicts with the Coastal Act policies that ensure maximum public access.

A County of Orange Grand Jury made similar findings that the presence of the fence around APN 439-051-14 is inconsistent with preservation of public land. Specifically, finding F5 states:

By allowing the owner-installed fence surrounding APN 439-051-14 to remain in place, the County has permitted the homeowner to inappropriately privatize this parcel at no cost to the homeowner and in a manner inconsistent with the well-established public trust designation.

For this reason, in part, the Grand Jury made the following recommendation:

The Orange County Board of Supervisors should order the removal of the chain link fence surrounding APN 439-051-14 along with any other encroachments on that parcel to return the land to its natural (original) state. F5 Timeline: Removal to occur on or before December 31, 2022.

We support this recommendation, and ultimate removal from the County property, because this activity is considered development that is both inconsistent with public access policies of the Coastal Act and a violation of the Coastal Act and LCP’s permitting requirements. In that regard, the

² Section 30211 of the California Coastal Act.

³ Section 30251 of the California Coastal Act (“The Scenic and visual qualities of coastal areas shall be considered and protected as a resources of public importance.”).

Mr. Tom Starnes

August 17, 2022

3 of 4

Coastal Act requires the portions of the fence added to the property after 1976 to have a Coastal Development Permit (CDP). Any project or activity that meets the definition of “development” under the Coastal Act, must obtain a CDP. Section 30600(a) of the Coastal Act states that any person seeking to perform or undertake development⁴ within the state’s Coastal Zone is required to obtain a CDP (in addition to any other permit required by law). Commission staff researched current permit files for the fencing added post-1976, and have found no CDPs issued for the installation of a chain link fence blocking the public’s access to the property. Further, any sale of this public land would qualify as a change of the intensity of use, for purposes of the Coastal Act. This is one of the many definitions for development, and equally requires the property owner to obtain a CDP for the change in use of property.

Although the purpose of this letter is just to reach out and offer assistance and coordination, we should also point out that there are legal provisions that apply to this case. The encroachment of unpermitted development on public land creates a potential liability under the Coastal Act for the County, even for actions it may not actually perform. Regardless of who performs the unpermitted development, such as installation of a chain-link fence, it is considered a violation of the Coastal Act and a continuing violation that the property owner is liable for correcting.

Since a property owner is responsible, along with the party that undertook unpermitted development, for unpermitted development that has occurred on the property owner’s property, it is in the interest of the property owner to implement measures to prevent and address such unpermitted development. For that reason, we recommend, as the Grand Jury did as well, that the County remove the fencing from the lot immediately to ensure that the property is in conformance with the Coastal Act and City LCP policies. In addition, the removal of the fence will reduce the County’s potential liability for inconsistencies with the Coastal Act and City LCP policies that are presented by installation of a fence on County property by an adjacent private property owner.

In the County’s draft response to the Grand Jury Report, the County states the following reasons for not removing the chain-link fence surrounding the land held in the public trust:

“The property at issue is a slope that has no public recreational amenities located on the fenced-in real property, and provides no public park benefit. In addition, the relocation of the fence may result in the loss of a portion of an adjacent equestrian trail that meanders onto private property from County property.”⁵

Neither the Coastal Act or the City of Newport’s LCP policies allow for removing property held in the public trust simply because there are no public active recreational amenities there. The property is held in the public trust for perpetuity, and therefore must be available to the public for use and as open space. Accordingly, Commission staff is open to discussing any slight realignment of the adjacent equestrian trail mentioned by the County that might be necessary to avoid relocated fence lines in the future.

⁴ See also Section 30106 of the California Coastal Act (“Development” means, on land, in or under water, the placement or erection of any solid material or structure...”).

⁵ Orange County’s Draft Responses to Findings and Recommendations of the 2021-22 Grand Jury Report (Aug. 2022); Available at:

http://cams.ocgov.com/Web_Publisher/mainlist.asp?docid=00000028&docname=Agenda08_09_2022.htm&meetdate=08_09_2022&pagendatypeid=1&pisagenda=1.

Mr. Tom Starnes

August 17, 2022

4 of 4

We would be happy to meet with County staff to discuss the best strategy to remove this fencing from the property; please respond to this letter to indicate how you will proceed with this issue. Due to the unpredictability of this pandemic, our staff has been continuing to work remotely, to the greatest extent feasible. If you have any questions regarding this letter or the pending enforcement case, please feel free to leave me a message at (562) 590-5071. However, at this time, given that the public counter hours for all Commission offices are currently suspended in light of the Coronavirus, we request that you respond to this letter by email to nicholas.tealer@coastal.ca.gov.

Sincerely,

Nicholas Tealer

Nicholas Tealer

District Enforcement Officer

cc:

Robert Stein, Assistant City Engineer, City of Newport

Johns Living Trust LLC

Andrew Willis, Enforcement Manager, California Coastal Commission