



**COUNTY OF SANTA BARBARA  
PLANNING AND DEVELOPMENT**

**MEMORANDUM**

TO: Santa Barbara County Board of Supervisors

FROM: Dianne Black, Director, Planning and Development  
(805) 568-2086

DATE: August 8, 2018

RE: Raemer Crest, LLC and Brilliant Projects, LLC, Appeal of Feldman Residence,  
Case No. 18APL-00000-00011

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The August 14, 2018 Board Letter and Findings for Case No. 18APL-00000-00011 make reference to an August 27, 2015 California Coastal Commission (CCC) letter to Santa Barbara County Public Works (attached) and characterizes the letter as a “Notice of Violation.” However, page four, paragraph three, of the letter indicates that the Executive Director of the CCC has the authority to record a Notice of Violation (NOV) and that a NOV has not yet been recorded. Public Works staff has confirmed that, to date, they have received no NOV from the CCC and have been in regular contact with CCC staff regarding resolution of the unpermitted work done to the revetment located on and along the southwest side of the properties on Sand Point Road. Therefore, no NOV currently exists. In light of this correction, staff recommends the following changes to Finding 2.2.1.B.3 of Attachment 1 (Findings) of the August 14, 2018 Board Letter:

As discussed in Sections 6.2 and 6.3 of the Planning Commission staff report dated March 14, 2018, and in the August 28, 2018 Board Agenda Letter, and incorporated herein by reference, the property would be in compliance with all laws, rules and regulations pertaining to zoning uses, subdivisions, setbacks and any other applicable provisions of the Article II Coastal Zoning Ordinance. On August 27, 2015, the California Coastal Commission (CCC) issued a ~~Notice of Violation~~ letter indicating that the existing rock revetment on and along the southwest side of the properties located on Sand Point Road was expanded and modified in 1983 without the benefit of permits. The letter was not a Notice of Violation and no Notice of Violation for the unpermitted changes to the rock revetment has been issued to date. Moreover, the violation letter was issued sent to the Sandyland Protective Association and the County of Santa Barbara Public Works Department. It was not issued sent to the individual property owner at 755 Sandpoint Road. This required finding for approval pertains to violations of the County’s Article II Coastal Zoning Ordinance. The property is not subject to a violation of the Article II Coastal Zoning Ordinance and therefore, the required finding for approval can be made. In addition, the Wave Study prepared for the proposed project demonstrates that the project can withstand sea level rise and wave uprush in the absence of the rock revetment and the home is

located approximately 45 feet away from the existing revetment. Consequently, the construction of the project would in no way impede potential future solutions to the violation such as revetment removal or relocation. Therefore this finding can be made.

P&D's recommendation for denial of the appeal and approval of the project remains unchanged. On August 28, 2018, staff recommends that your Board take the following actions:

- a) Deny the appeal, Case No. 18APL-00000-00011;
- b) Make the required findings for approval of the project, Case Nos. 13MOD-00000-00001 and 13CDH-00000-00001, included as Attachment 1, including CEQA findings, as modified by the August 8, 2018 P&D Memorandum;
- c) Adopt the MND (15NGD-00000-00006) included as Attachment 6 and adopt the mitigation monitoring program contained in the conditions of approval; and,
- d) Grant *de novo* approval of the project, Case Nos. 13MOD-00000-00001 and 13CDH-00000-00001, subject to the conditions included as Attachment 2.

Attachment 1: California Coastal Commission Letter dated August 27, 2015

**CALIFORNIA COASTAL COMMISSION**

South Coast Area Office  
200 Oceangate, Suite 1000  
Long Beach, CA 90802-4302  
(562) 590-5071



August 27, 2015

Sandyland Protective Association  
c/o Alan Fray  
1332 De La Vina Street  
Santa Barbara, CA 93101

Tom Fayram  
Deputy Director, Water Resources  
County of Santa Barbara  
Department of Public Works  
123 East Anapamu Street  
Santa Barbara, CA 93101

Violation File Number: V-4-15-0055

Property location: 501 to 845 Sand Point Road, Carpinteria  
Santa Barbara County Assessor's Parcel Numbers: 005-046-040, -041, -026, -025, -009, -027, -024, -042, -043, -016, -015, -045, -046, -019, -020, 004-098-001, -002, -003, -004, -005, -006, -007, -008, -009, -010, -011.

Alleged Unpermitted Development<sup>1</sup>: Unpermitted construction of a shoreline rock revetment in a location that impedes public coastal access.

Dear Mr. Fray and Mr. Fayram:

As you may know, the California Coastal Act<sup>2</sup> was enacted by the State Legislature in 1976 to provide long-term protection of California's 1,100-mile coastline through implementation of a comprehensive planning and regulatory program designed to manage conservation and development of coastal resources. The California Coastal Commission ("Commission") is the state agency created by, and charged with administering, the Coastal Act. In making its permit and land use planning decisions, the Commission carries out Coastal Act policies, which seek to, amongst other goals, provide maximum public access to the sea.

<sup>1</sup> Please note that the description herein of the violation at issue is not necessarily a complete list of all development on the subject properties that is in violation of the Coastal Act and/or that may be of concern to the Commission. Accordingly, you should not treat the Commission's silence regarding (or failure to address) other development on the subject property as indicative of Commission acceptance of, or acquiescence in, any such development.

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

It was with concern then that Commission staff learned that an approximately 3,600 linear foot shoreline rock revetment had been constructed without the required coastal development permit in and adjacent to state tidelands that abut the properties noted above, and has been in place without benefit of a coastal development permit for many years. Such development precludes public use of the state tidelands buried by the revetment, which certainly runs contrary to the goal of the Coastal Act to maximize public access to the sea.

Commission staff has communicated this concern to County staff, as well as the imminence of formal notification of the unpermitted development at issue through this letter. Commission staff is hopeful that this letter will initiate a process by which we can work with the parties to rectify this situation and restore maximum public access to the coastline, and we propose a meeting with the parties as soon as possible to discuss a resolution of the matter. Immediately below, though, I'll provide some brief background to the issue.

### Unpermitted Development

Our staff has confirmed that unpermitted development has occurred on properties at 501 to 845 Sand Point Road, Carpinteria, which are located within the Coastal Zone, and on adjacent state tidelands. The unpermitted development at issue here includes, but may not be limited to, construction of a 3,600 linear foot revetment on the coastline. Pursuant to Section 30600 (a) of the Coastal Act, any person wishing to perform or undertake development in the Coastal Zone must obtain a Coastal Development Permit (CDP), in addition to any other permit required by law. Since the revetment largely falls within the Commission's retained permitting jurisdiction, which includes, among other areas, areas at and below the mean high tide line, the revetment, at a minimum in part, requires authorization from the Commission.

"Development" is defined in Section 30106 of the Coastal Act as:

*"Development" means, on land, in or under water, the placement or erection of any solid material or structure; discharge or disposal of any dredged material or any gaseous, liquid, solid, or thermal waste; grading, removing, dredging, mining, or extraction of any materials; change in the density or intensity of the use of land, including, but not limited to, subdivision pursuant to the Subdivision Map Act (commencing with Section 66410 of the Government Code), and any other division of land, including lot splits, except where the land division is brought about in connection with the purchase of such land by a public agency for public recreational use; change in the intensity of use of water, or of access thereto; construction, reconstruction, demolition, or alteration of the size of any structure, including any facility of any private, public, or municipal utility; and the removal or harvest of major vegetation other than for agricultural purposes, kelp harvesting, and timber operations....* [underlining added for emphasis]

The above-mentioned unpermitted construction of the rock revetment constitutes development under the Coastal Act, and therefore requires a CDP. Any non-exempt development activity (which is the case here) conducted in the Coastal Zone without a valid CDP constitutes a violation of the Coastal Act. Additionally, the subject unpermitted development encroaches onto public beach area, located at and below the mean high tide line, thus preventing both public use

of this area and lateral access along the coast. Thus, the unpermitted rock revetment constitutes a violation of the Coastal Act's public access provisions.

### Revetment Background

#### *History*

A rock revetment on the coastline bordering the private residences at 539 to 845 Sandy Point Road was initially constructed in 1964 by the County of Santa Barbara to protect the private residences located behind the revetment. Assessment and maintenance districts were established to collect funds from the residents that benefited from the seawall for the construction and maintenance of the revetment. A new revetment, that extends approximately 18' seaward of the historic revetment, was constructed in 1983 to fortify and enlarge the historic revetment in order to further protect the private residences. Repair work to replace areas of the 1983 revetment with large armor stone to maintain the integrity of the wall was performed in 1994 and 1998, also without the necessary CDPs.

#### *Application in 2008 for Coastal Development Permit – 'incomplete' status*

On December 12, 2008, the Commission received an application from the Sandyland Protective Association and the County of Santa Barbara (CDP No. 4-08-098) to address the revetment constructed in 1983, and subsequent repairs.

On January 23, 2009 the Commission sent an incomplete notice to the applicants to identify items missing from the application that were required to be submitted to complete the application. Because of the location of the unpermitted revetment on and adjacent to state tidelands, and thus the apparent inconsistency of the revetment with the public access protection policies of the Coastal Act, we requested the submission of, amongst other things, alternatives to retaining the 1983 revetment in place. Specifically, staff wrote:

*Please provide an analysis of all feasible alternatives that would protect the development that is in danger and focus on the alternative that represents the minimum amount of development necessary. The siting alternatives should include but not be limited to an alternative configuration of the revetment to pull the revetment back as close as possible to the existing residences, an evaluation of whether the residences can be relocated. Please evaluate design alternatives such as reducing the footprint of the proposed revetment on the beach. Also, please evaluate the alternative of keeping the 1963 revetment design in place.*

Staff did not receive the requested information, and, consequently, on June 15, 2010, the Commission returned the file, notifying the applicants that any future submissions for the project would require a new application. As noted herein, and as our staff has conveyed to County planning staff, we have significant concerns with the revetment as constructed, and thus, as opposed to receiving a resubmittal of an application for the 1983 revetment, would prefer to meet with the parties to help identify a project that staff could support as consistent with the Coastal Act.

**Resolution**

While we are hopeful that we can resolve this matter amicably, please be advised that the Coastal Act has a number of potential remedies to address violations of the Coastal Act, including the following:

Section 30809 states that if the Executive Director of the Commission determines that any person has undertaken, or is threatening to undertake, any activity that may require a permit from the Coastal Commission without first securing a permit, the Executive Director may issue an order directing that person to cease and desist. Section 30810 states that the Coastal Commission may also issue a cease and desist order. A cease and desist order may be subject to terms and conditions that are necessary to avoid irreparable injury to the area or to ensure compliance with the Coastal Act. Section 30811 also provides the Coastal Commission the authority to issue a restoration order to address violations at a site,

Section 30812 authorizes the Executive Director to record a Notice of Violation against any property determined to have been developed in violation of the Coastal Act. If the Executive Director chooses to pursue that course, a property owner will first be given notice of the Executive Director's intent to record such a notice, and the property owner will have the opportunity to object and to provide evidence to the Commission at a public hearing as to why such a notice of violation should not be recorded. If a notice of violation is ultimately recorded against a property, it will serve as notice of the violation to all successors in interest in that property<sup>3</sup>.

*Administrative Resolution of Public Access Violation*

As you may know, recent legislative actions amended the Coastal Act to add Section 30821, which authorizes the Commission to administratively impose penalties for public access related violations of the Coastal Act. As noted above, provisions of the Coastal Act seek to maximize public access to the coast, including, for example, Sections 30210 and 30211. Section 30210 of the Coastal Act states that "maximum access... shall be provided for all the people..." and Section 30211 states that "Development shall not interfere with the public's right of access to the sea..." Preserving the public's right of access to the coast is a high priority for the Coastal Commission. In this case, as noted above, construction of the revetment encroaches onto public beach area located at and below the mean high tide line, thus preventing both public use of this area and lateral access along the coast.

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

Sandyland Protective Assn./Santa Barbara County

August 27, 2015

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Pursuant to that Section 30821, in cases involving violation(s) of the public access provisions of the Coastal Act, which is the case here, the Commission may impose administrative civil penalties in an amount of up to \$11,250 per day for each violation.

Our preference though is resolve this matter amicably in order to quickly fully restore public access to the coastline here. In order to resolve this matter in a timely manner and reduce the possibility of formal enforcement action, we request that you contact us to schedule a meeting with Commission staff to go over the necessary steps to resolve this matter in a manner that best removes obstacles to public access and mitigates for the long-term loss of public access that has occurred as a result of the unpermitted construction of the 1983 revetment in and adjacent to state tidelands.

Please call me by **September 14, 2015** to discuss scheduling of a meeting. If you have any questions regarding this letter or the pending enforcement case, please feel free to contact me at (562) 590-5071.

Sincerely,



Andrew Willis

Southern California Enforcement Supervisor, CCC

cc: **Nicole Lieu, County of Santa Barbara**  
**Lisa Haage, Chief of Enforcement, CCC**  
**Steve Hudson, Deputy Director, CCC**  
**Deanna Christensen, Coastal Program Analyst, CCC**