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Santa Cruz County to miss deadline on Privates Beach access

Coastal commission hints at enforcement action against Opal Cliffs

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SANTA CRUZ >> Santa Cruz County acknowledged it will miss a deadline to respond to the California Coastal Commission regarding public access at Privates Beach, setting up what figures to be an intense and prolonged dispute between the state agency and the Opal Cliffs Recreation District.

The county is unable to meet a July 31 deadline to decide whether to pursue enforcement action against Opal Cliffs for the operation of a 9-foot locked gate, which the coastal commission claims is illegally preventing public access, according to a statement issued

by county spokesman Jason Hoppin.

“We previously recognized the construction of the gate, but understood all along that there was a pending coastal access issue with Privates,” Hoppin said.

The county was asked to respond after the Opal Cliffs Recreation District withdrew its application for permitting for the locked gate and several other structures, and its fee-for-access program at a small beach just down the coast from Pleasure Point.

[Opal Cliffs’ withdrawal meant Santa Cruz County must decide](#) whether to take code enforcement action against the district or defer the matter to the coastal commission.

If Santa Cruz County indeed takes no action in a timely manner, then the commission will “directly enforce the requirements” at Opal Cliffs, wrote Noaki Schwartz, a spokeswoman for the commission, in an email to the Sentinel.

Due to new authority conferred on the coastal commission by the California Legislature in 2014, the agency can fine violators of public access provisions up to \$11,250 per day, per violation.

With Opal Cliffs currently deemed to carry several public access violations, any potential fine could be substantial.

COUNTY APPROVAL

Last year, the county planning commission approved Opal Cliffs’ application to validate the 9-foot locked fence that cordons off a section of bluff, which features a staircase that descends down to Privates Beach.

After the county approval in 2017, coastal commissioners asserted jurisdiction in the matter and asserted that the [fence and restrictive signs violate the coastal access rights](#) of the public enshrined in the Coastal Act.

Additionally, the [\\$100 annual fee Opal Cliffs charges for access](#) and the use of a security guard at the entrance are illegal, according to coastal commission staff.

“It’s the only case in the state where a public agency is charging a fee to access a beach,” said Dan Carl, the coastal commission’s deputy director for the Central Coast. “If that sort of thing happens here, it can happen anywhere else.”

While many public agencies, both state and local, charge parking or camping fees at various beaches up and down the coast, the coastal commission maintains that Opal Cliffs insistence on charging for access by foot is both unique and illegal.

Carl said Santa Cruz County’s inability to move forward expeditiously was “unfortunate.”

“We have a certain urgency moving forward,” he said. “We already waited a long time to hold the hearing in July. Our preference would’ve been to move forward earlier as you have all these negative impacts to the public and we are smack dab in the middle of the summer season.”

The county was previously given a Friday deadline to respond, but the commission granted a July 31 extension at the request of the county.

The county maintains it’s bad timing, as several critical staff members take vacations after the budget process that accompanies the end of the fiscal year, which ends June 30.

While the coastal commission is procedurally bound to await the county and its decision, Carl affirmed the agency was prepared to move forward with enforcement actions against Opal Cliffs, should the district persist in maintaining the fence and the other programs and structures deemed illegal.

“There is a series of enforcement steps we could take depending on staff conclusion,” Carl said.

PRECEDENT

The coastal commission has not been shy about issuing fines in the name of public access.

In December 2017, the commission fined a Malibu property owner, Dr. Warren Lent and his wife Henny, about \$4.1 million for blocking a public access way to a beach in the wealthy Southern California enclave — an unprecedented amount. In the same meeting it fined another Malibu property owner a little more than \$1 million for similar violations.

This past April, the commission handed down another million-dollar fine to an apartment building owner in Pacifica for failing to maintain a stairway that afforded critical access to the coast.

Mark Massara, a lawyer representing Opal Cliffs, accused the Coastal Commission of government overreach and said the recreation district has a deed restriction and a series of permits dating back to the 1980s that afford it the right to maintain a locked gate and charge access fees.

“It says right on the deed restriction that the district can fund the maintenance of the park via entrance fees,” he said in an interview. “We’re not trying to keep people from going there. Anybody who pays the fee can

access it. It's been a public park since 1981."

While saying he preferred to work toward a resolution with both the county and commission staff, Massara did not rule out legal recourse if Opal Cliffs is slapped with fines.

"We are going to defend ourselves," Massara said.

The Opal Cliffs attorney said that not only the deed restriction, but a series of permits approved by the Coastal Commission and the county beginning in 1981, continuing in 1992 and through the early 2000s, gave legal rights to the recreation district to build and maintain gates.

"We relied on those permits and reliance creates rights," Massara said.

The attorney also criticized the Coastal Commission for what he deemed to be a "sea change in philosophy about how to properly manage the coast."

"There's this idea floating around that in order to create social justice, you have to maximize beach access by making it all free all of the time," Massara said. "If you are not careful and deliberate you could destroy important coastal resources."

But Carl said there is no sea change. Instead, the commission is enforcing public access the way it always has.

"There is no pivot," Carl said. "Beach access is critically important to everyone, including those that don't live next to the beach. You shouldn't have to pay \$100 to go to the beach."

While the coastal commission appears willing to take enforcement action, the county could still intercede, but has as yet been unwilling to stake out a firm position on the issue.

"There are many ways to assure coastal access and clean beaches," Hoppin said. "We believe those issues are resolvable."

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