



Staff Report to the Zoning Administrator

Application Number: **191006**

Applicant: Opal Cliffs Recreation District

Agenda Date: August 20, 2021

Owner: Opal Cliffs Recreation District

Agenda Item #: 3

APN: 033-151-12

Time: After 9:00 a.m.

Site Address: 4520 Opal Cliff Drive, Santa Cruz

Project Description: Proposal to replace the existing nine-foot-tall fence and gate with a six-foot-tall fence and gate, eliminate the use of keycards, eliminate the park aide program, replace the existing signage with new signage describing access hours from sunrise to sunset and free access, recognize landscaping and hardscaping improvements previously funded by a state grant, and allow up to 10 special events per year at Opal Cliffs Park (Park).

Location: Property located on the south side of Opal Cliff Drive about 320 feet east of its intersection with Court Drive (4520 Opal Cliff Drive).

Permits Required: Coastal Development Permit and Over-height Fence Certification

Supervisory District: First District (District Supervisor: Manu Koenig)

Staff Recommendation:

- Determine that the proposal is exempt from further Environmental Review under the California Environmental Quality Act.
- Approval of Application 191006, based on the attached findings and conditions.

Project Description & Setting

Opal Cliffs Recreation District (OCD) was established in 1949 by a resolution of the County Board of Supervisors. The OCD is a County agency—a special district—that owns and has operated the Park on the subject parcel. Due to the Park's location within the coastal zone, development on the parcel requires a Coastal Development Permit.

The subject application is to replace the existing nine-foot-tall fence / gate with a six-foot tall fence / gate, eliminate the use of keycards, eliminate the park aide program, add a new sign describing access hours from sunrise to sunset and free access, recognize minor landscaping and hardscaping improvements, and allow up to 10 special events per year at the Park.

The Park is located on a coastal bluff overlooking Monterey Bay. Single-family dwellings are located to the north, west and southwest, and Monterey Bay is to the southeast. The Park is

accessed via Opal Cliff Drive. Five parking spaces, which are perpendicular to the roadway, face the existing fence. The park-like area on the bluff top is approximately one-quarter acre in size. A path through this park area leads to a stairway that provides stairway access to the beach below. While open to the public, the Park is not currently operated by the County of Santa Cruz Department of Parks, Open Space and Cultural Services (County Parks).

Project Background

The subject parcel has provided coastal access since as early as the 1930's when the area was subdivided into residential lots, and the park was set aside to provide open space and access for residents of the subdivision. Opal Cliff Recreation District was established in 1949, and in 1981, the Coastal Commission approved a Coastal Permit (P-80-393) that included a six-foot high fence surrounding the property to provide security and control access. As required by the permit's condition of approval, a deed restriction describing the property's access program was recorded. That access program allowed for restricted access to the park, including a key-for-fee component. In approximately 2006, the OCRD replaced the existing six-foot tall fence with a nine-foot-tall fence to deter trespassing and vandalism.

In April 2006, the Coastal Commission opened a Coastal Act enforcement case (V-3-06-12) for the nine-foot-tall replacement fence and the use of gate attendants (park aides) because both were implemented without a Coastal Development Permit. The enforcement case prompted the OCRD to apply in 2007 to the County to recognize the fence. The County relied upon Permit P-80-393, which authorized the restricted access, to support Application 07-07639. The application was approved by the Zoning Administrator on July 11, 2008. However, Coastal Commission staff then notified the County that the OCRD had also applied directly to the Coastal Commission to amend the 1980 permit. Coastal staff believed that this obviated the need for a County-processed Coastal Permit. Coastal Commission staff took the OCRD's application to the Coastal Commission hearing in Oceanside on January 7, 2009. The hearing was opened, testimony was taken, and the item was continued. According to Coastal Commission staff, it was at this hearing that the validity of the 1981 permit was questioned.

Six years later, on June 18, 2015, Coastal Commission staff issued a letter to the OCRD restating the 2006 violation (V-3-06-12) and listing additional violations. On July 14, 2016, the OCRD applied again to the County to resolve the alleged violations. Coastal Permit 161195 was unanimously approved by the County Planning Commission on December 13, 2017 (see file on record with the Planning Department). Permit 161195 was then appealed by the Coastal Commission. At the July 12, 2018 Coastal Commission hearing, the OCRD withdrew its application.

Since then, the OCRD has worked with County Planning and County Parks. On November 8, 2018, the County of Santa Cruz Planning Director sent a letter to the OCRD memorializing the proposed path forward to resolving concerns (Exhibit G). Many of the operational changes detailed in the letter have already been made: the gate is left open between sunrise and sunset, no key is required for access, and park aides are no longer employed. The current application is intended to supersede the OCRD's existing Coastal Permit and includes a proposal to have the OCRD contract with County Parks for some of the day-to-day operation of the park. The Memorandum of Understanding (MOU) between County Parks and the OCRD is attached as Exhibit H.

Zoning & General Plan Consistency

The subject property is approximately 12,600 square feet, located in the PR (Parks, Recreation and Open Space) zone district, a designation which allows recreational uses such as the Opal Cliffs Recreation District (OCRD) park. The parcel's zoning implements the site's O-R (Existing Park, Recreation and Open Space) General Plan designation. The fence would be located within the parcel's required 30-foot front yard setback.

Physical Improvements

This application proposes to replace the existing nine-foot-tall fence with a six-foot-tall fence with retractable gate and a wave design (Exhibit D). The lower fence height and artistic design are anticipated to make the park entrance more inviting to the public. During the day, the gate would be open from sunrise to sunset, and then closed at night to secure the park. The fence would be equipped with a way to exit after hours when, for example, a surfer returns from the water after the gate is closed. County Code 13.10.525 regulates fence heights. With an administrative Over-height Fence Certification, fences located within a front yard setback may exceed the height limit of three feet to a maximum of six feet. The proposed fence is located within the 30-foot front yard setback and would be six feet in height.

A new sign, detailing the hours of operation and free access, would replace the existing sign. In the PR zone district, signs are limited to 12 square feet (County Code 13.10.582), not including four square feet of sign area that may be used to direct the public to parking or other facilities. A three-square foot sign is proposed. The sign size is intended to balance the need for sign legibility while minimizing the sign's impact on views through the fence (see Exhibit D). The conditions of approval include a requirement that the sign will include the Coastal Commission's standard access program "feet" logo and the California Coastal Trail emblem.

In addition, this permit would recognize existing landscaping and hardscaping improvements some of which were installed with funding from the state. Those improvements include the approximately 30-foot-long and six-foot-tall chain link fencing located along each of the park's side yards, the concrete paver pathway, six concrete benches, two approximately three-foot high retaining walls along either side of the pathway, and various landscaping/irrigation improvements. These improvements were all installed years ago and their visual impact, which is beneficial, can be readily evaluated.

Operational Changes

As noted above, Coastal Development Permit P-80-393 required the recordation of an access program. That access program allowed for the park gate to be locked with a key provided to park users for a fee. The current application proposes to eliminate the key-for-fee access, replacing it with free access throughout the year. In addition, the park aide program—a program where an OCRD employee assists park-goers with opening the gate and carrying gear—would be eliminated. These changes are intended to enhance public access to the park and address the Coastal Commission staff's concern that the park aides appear as guards to the public and thus deter public access. As noted above, the proposed hours of operation are sunrise to sunset. In addition, special events would be authorized as described in the next section.

Special Events

The OCRD's operational budget has been sustained primarily by the key-for-fee program. With the elimination of the key-for-fee program, the OCRD, with the support of County Parks, proposes to allow up to 10 special events per year to raise funds for County Park's operation of the Park. No more than six events would occur in any single month. Events, which would occur during normal park operating hours, would be developed with maintaining public access as a priority. Public access to and through the park, particularly the central walkway to the coastal staircase, would be maintained during events. County Parks routinely hosts special events and so has the institutional capacity, experience, and accountability to do so in a manner that will be compatible with maintaining public access and the surrounding residential neighborhoods. For instance, County Parks' staff will ensure event sponsors acknowledge the requirement to preserve public access through the park as well as keeping event hosts, guests, and delivery vehicles from obstructing locals streets for pedestrians, bicyclists, and motorists.

Design Review

The project is subject to the County's Design Review ordinance (County Code 13.11). The only physical improvements proposed, other than the landscaping and hardscaping that is already installed, are the new fence with a wave design (Exhibit D) and the proposed replacement signage. The proposed sign is three square feet in size which allows the sign to be legible while minimizing the impact of the sign blocking views through the fence.

Because of the proposed fence's lower six-foot height, it will have a reduced visual impact as compared to the existing nine-foot-tall fence, and with the incorporation of the wave design, is anticipated to be experienced by the public as being more welcoming than the existing fence. Overall, the project will enhance the streetscape and will improve the park's compatibility with the neighborhood.

Local Coastal Program Consistency

The project is in conformance with the County's certified Local Coastal Program, in that the proposed physical and operational changes will enhance coastal access for the public. General Plan and LCP Objective 7.7a (Coastal Recreation) is, "To maximize public use and enjoyment of coastal recreation resources for all people...." By eliminating the locked gate and key-for-fee access, as well as replacing the existing fence with a more welcoming design, the public's access to the park will be maximized while still maintaining park security at night. If approved, this permit would supersede all previous coastal permits issued for the subject parcel.

Conclusion

As proposed and conditioned, the project is consistent with all applicable codes and policies of the Zoning Ordinance and General Plan/LCP. Please see Exhibit "B" ("Findings") for a complete listing of findings and evidence related to the above discussion.

Staff Recommendation

- Determine that the proposal is exempt from further Environmental Review under the

California Environmental Quality Act.

- **APPROVAL** of Coastal Development Permit and Fence Permit of Application Number **191006**, based on the attached findings and conditions.

Supplementary reports and information referred to in this report are on file and available for viewing at the Santa Cruz County Planning Department, and are hereby made a part of the administrative record for the proposed project.

The County Code and General Plan, as well as hearing agendas and additional information are available online at: www.sccoplanning.com

Report Prepared By: Annette Olson
Santa Cruz County Planning Department
701 Ocean Street, 4th Floor
Santa Cruz CA 95060
Phone Number: (831) 454-3134
E-mail: annette.olson@santacruzcounty.us

Exhibits

- A. Categorical Exemption (CEQA determination)
- B. Findings
- C. Conditions
- D. Project plans, including Sign Plan
- E. Assessor's, Location, Zoning and General Plan Maps
- F. Parcel information
- G. Letter from Planning Director Kathy Molloy to the OCRD, dated November 8, 2018
- H. Memorandum of Understanding between the OCRD and County Parks, dated December 2, 2019

CALIFORNIA ENVIRONMENTAL QUALITY ACT

NOTICE OF EXEMPTION

The Santa Cruz County Planning Department has reviewed the project described below and has determined that it is exempt from the provisions of CEQA as specified in Sections 15061 - 15332 of CEQA for the reason(s) which have been specified in this document.

Application Number: 191006

Assessor Parcel Number: 033-151-12

Project Location: 4520 Opal Cliff Drive, Santa Cruz

Project Description: Proposed Coastal Development Permit and Over-height Fence Certification to replace an existing gate/fence with a new six-foot tall gate/fence, recognize landscaping and hardscaping improvements, change the program statement to enhance public access, and authorize special events.

Person or Agency Proposing Project: OCRD

Contact Phone Number: 831-479-5503

- A. ☐ The proposed activity is not a project under CEQA Guidelines Section 15378.
B. ☐ The proposed activity is not subject to CEQA as specified under CEQA Guidelines Section 15060 (c).
C. ☐ **Ministerial Project** involving only the use of fixed standards or objective measurements without personal judgment.
D. ☐ **Statutory Exemption** other than a Ministerial Project (CEQA Guidelines Section 15260 to 15285).
E. ☒ **Categorical Exemption**

Specify type: Class 3 – New Construction or Conversion of Small Structures (Section 15301)
Class 2 – Replacement or Reconstruction of existing facility

F. Reasons why the project is exempt:

Replacement of an existing gate/fence and sign which will have substantially the same purpose as the structure replaced. In addition, the project recognizes minor landscaping and hardscaping improvements and changes to the operations to allow enhanced public access and special events at an existing public recreational facility where these uses already occur.

In addition, none of the conditions described in Section 15300.2 apply to this project.

Annette Olson, Project Planner

Date: _____

EXHIBIT A

Coastal Development Permit Findings

1. That the project is a use allowed in one of the basic zone districts that are listed in LCP Section 13.10.170(D) as consistent with the LCP Land Use Plan designation of the site.

This finding can be made, in that the property is zoned PR (Parks, Recreation and Open Space), a designation which allows recreational uses. The proposed fence is to secure the park after park hours which is an allowed use within the zone district, and the zoning is consistent with the site's O-R (Existing Park, Recreation and Open Space) General Plan designation.

2. That the project does not conflict with any existing easement or development restrictions such as public access, utility, or open space easements.

This finding can be made, in that no such easements or restrictions are known to encumber the project site. The subject parcel itself provides public access, and, as proposed, public access will be maximized by eliminating the fee for access program, park aides program, and replacing the existing fence/gate with a more welcoming one.

3. That the project is consistent with the design criteria and special use standards and conditions of this chapter pursuant to SCCC 13.20.130 and 13.20.140 et seq.

This finding can be made, in that the proposed fence and gate were evaluated for conformance with County Code section 13.20.130 *et seq.* The proposed fence/gate was found to be compatible in that the reduced height (six feet instead of the existing fence's nine feet) and open design reduces its visual impact on the surrounding land uses. Further, its artistic wave design presents as more inviting to the public than the existing black, wrought iron fence.

Site disturbance on the subject parcel to install the improvements would be minimized since the fence is a minor improvement. The small retaining walls, hardscaping, landscaping and irrigation were previously installed and so their visual impact can be readily evaluated. The park is exceptionally well-maintained, and the retaining walls, hardscaping and landscaping complement the bluff-top setting, enhancing the visual resource. No trees are proposed for removal or were removed in the past. The subject parcel is not located on a ridgeline.

The fence and gate would not adversely impact the view or scenic character of the site. Views through the fence to the Monterey Bay would be readily available. When the park is open, the fence will be opened (with a minimum 12-foot-wide opening), allowing unobstructed views of the park and Monterey Bay.

The proposed sign complies with the County Code 13.10.582 (Signs in the PR District), which limits signs to 12 square feet. The intent of the sign is to publicize both the free access as well as to provide days/hours of operation. The visual impact of the sign will be minimal given its relatively small size. In the future, if County Parks becomes the sole operator of the park, a condition of approval is included allowing the installation of a standard park sign. The sign is proposed to be posted on the front fence high enough to be visible above parked cars.

County Code 13.20.130(D)1 requires that blufftop projects within the urban services line be subject to the rural scenic resources (13.20.130(C)) requirements. The subject project complies

with these requirements in that the fence, hardscaping and landscaping improvements were all designed to fit the physical setting so that their presence is subordinate to the natural character of the site. The primary natural characteristic of the site are the views to the Monterey Bay. A fence of an appropriate design and landscaping and hardscaping which complement the site were selected. Because of the fence's open design, the viewer's eye is drawn past the fence and trees to the blue of the Monterey Bay beyond.

4. That the project conforms with the public access, recreation, and visitor-serving policies, standards and maps of the LCP Land Use Plan, including Chapter 2: Section 2.5 and Chapter 7.

This finding can be made, in that the subject parcel has provided coastal access for about 80 years. By replacing the key-for-fee program with free access, eliminating the park aide program, and replacing the existing fence with a more welcoming design, public access will be enhanced. Public access is supported by multiple General Plan/LCP objectives and policies, including:

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.

Objective 7.7b (Shoreline Access) To provide a system of shoreline access to the coast with adequate improvements to serve the general public and 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....

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....

Policy 7.7.10 (Protecting Existing Beach Access) Protecting existing pedestrian, and, where appropriate, equestrian and bicycle access to all beaches to which the public has a right of access....

As a result of this application, public access will be enhanced while security will be maintained at night when the fence is closed and locked.

5. That the project conforms to all other applicable standards of the certified LCP.

The park use on the subject parcel is an allowed use in the PR (Parks, Recreation and Open Space) zone district, as well as the O-R (Existing Park, Recreation and Open Space) General Plan and Local Coastal Program land use designation. The new fence/gate and sign are ancillary to the park use and their visual impact was evaluated in finding three above. As noted in findings two and four above, this application will result in enhanced public access, a tenet of the LCP.

6. If the project is located between the nearest through public road and the sea or the shoreline of any body of water located within the Coastal Zone, that the project conforms to the public access and public recreation policies of Chapter 3 of the Coastal Act.

This finding can be made, in that, although the project site is located between the shoreline and the first public road, the project will result in greater public access to a public park. The proposed fence, which would be operated by County Parks, would be open between sunrise and sunset. For security purposes, the fence is needed at night. Consequently, the fence will not interfere with public access to the beach, ocean, or any nearby body of water between sunrise and sunset. Further, the project site is not identified as a priority acquisition site in the County Local Coastal Program.

Development Permit Findings

1. That the proposed location of the project and the conditions under which it would be operated or maintained will not be detrimental to the health, safety, or welfare of persons residing or working in the neighborhood or the general public, and will not result in inefficient or wasteful use of energy, and will not be materially injurious to properties or improvements in the vicinity.

This finding can be made, in that construction will comply with prevailing building technology, the California Building Code, and the County Building ordinance to ensure safety. The improvements included in this application are all relatively minor.

The location of the six-foot high fence along Opal Cliff Drive will pose no line of sight issue for vehicles entering and exiting the Opal Cliffs Recreation District parking area.

The fence and other physical improvements will not utilize an excessive quantity of materials or energy in its construction or maintenance, in that the fence is a relatively insignificant structure.

The design and location of the fence will not adversely impact the available light or the movement of air to properties or improvements in the vicinity, in that the fence will be of an open design which will allow the passage of light and air.

2. That the proposed location of the project and the conditions under which it would be operated or maintained will be consistent with all pertinent County ordinances and the purpose of the zone district in which the site is located.

This finding can be made, in that the location of the proposed fence and the conditions under which it would be operated or maintained will be consistent with the purpose of the PR (Parks, Recreation and Open Space) zone district in that the primary use of the property will continue to be recreational. The fence and the other hardscaping (e.g., retaining walls, seating, and path resurfacing) are supportive of the recreational use.

Within the Urban Services Line, fences located in the front yard setback are limited to three feet in height, and fences located within an interior side yard are limited to eight feet. With an Over-height Fence Certification, fences/gates located within the front yard setback may be constructed to six feet in height. Because the fence is set back approximately 30 feet from the travelled way (i.e., the vehicle lanes), the proposed six-foot-tall fence will pose no line of site issue for vehicles, nor will it have an impact on the available light and air on the street. The revised fence design will improve the compatibility of the fence over the existing one which is taller and more imposing.

3. That the proposed use is consistent with all elements of the County General Plan and with any specific plan which has been adopted for the area.

This finding can be made, in that the proposed recreational use is consistent with the requirements specified for the O-R (Existing Park, Recreation and Open Space) land use designation in the County General Plan.

The subject parcel is identified as a regional park in Figure 7-2 of the County's General Plan. General Plan Policy 7.5.7 (Beaches as Regional Parks) recognizes the use of beaches to satisfy regional recreational opportunities for County residents and calls for improving access where appropriate. The proposal to allow free access will improve public access to the OCRD park and its stairway to the beach.

4. That the proposed use will not overload utilities, and will not generate more than the acceptable level of traffic on the streets in the vicinity.

This finding can be made, in that the proposed fence and other improvements will not utilize a significant amount of electricity or utilities. The site has been in use for decades as a park and coastal access. As an interim measure, the gate has been left open during the day for over a year and use of the parking spaces does not appear to have changed. Although the new gate and signage may initially generate new trips, it is anticipated that the novelty of the changes will diminish over time and the limited on-site parking will accommodate ongoing/historical demand levels.

5. That the proposed project will complement and harmonize with the existing and proposed land uses in the vicinity and will be compatible with the physical design aspects, land use intensities, and dwelling unit densities of the neighborhood.

This finding can be made, in that the proposed fence/gate—which is the project component with the greatest potential for visual impact—will be compatible with the visual character of the neighborhood due to its design, and location. As required by General Plan Policy 8.1.2 (Design Review Ordinance), the project was subject to the design guidelines set forth in the zoning ordinance. The fence is proposed to be of an open design with a wave pattern. The open design allows views into the park and reduces the visual impact of the fence on surrounding properties and to traffic along Opal Cliff Drive. The subject parcel has been used for recreational purposes since the 1930's. As such, the use of the parcel complements and harmonizes with the land uses in the vicinity where the surrounding parcels are all residential.

6. The proposed development project is consistent with the Design Standards and Guidelines (sections 13.11.070 through 13.11.076), and any other applicable requirements of this chapter.

This finding can be made, in that the proposed improvements are compatible with the visual character of the neighborhood. The fence is of an open design which allows views into the park and reduces the visual impact of the fence when viewed from Opal Cliff Drive. The artistic wave design will be more inviting than is the current fence design. The proposed sign is three square feet in size. Given its relatively small size, it will have a negligible visual impact. As required by County Code Design Standards and Guidelines, the proposed sign complies with the requirements relating to signs set forth in County Code 13.10.581(D)-(F) and 13.10.582. The other improvements—hardscaping and landscaping—have beautified the park and are consistent with the Design Standards and Guidelines which call for landscaping to be maintained in good condition, and landscaping in sufficient size and quantity to adequately screen paving (13.11.075 *et seq.*).

Conditions of Approval

Exhibit D: Survey by Michael J Bridgette, Licensed Land Surveyor, dated 5/9/08
Conceptual fence elevation, no date.
Conceptual sign plan, no date

- I. This permit supersedes all previous permits and preexisting uses. It specifically authorizes the program changes memorialized by the permit's operational conditions and the replacement of the existing fence/gate with the fence/gate shown in Exhibit D and a new park sign to replace the existing signage. Prior to exercising any rights granted by this permit including, without limitation, any construction or site disturbance, the applicant/owner shall:
 - A. Sign, date, and return to the Planning Department one copy of the approval to indicate acceptance and agreement with the conditions thereof.
- II. Prior to construction, the applicant/owner shall:
 1. Provide a final fence and gate elevation of the fence for review and approval by the Planning Department.
 - a. The fence and gate shall be no higher than six feet.
 - b. The fence shall have a retractable gate that provides a minimum 12-foot wide opening.
 - c. Provision shall be made for after-hours exiting from the park.
 2. Provide a final sign plan to the Planning Department that shows an elevation of the proposed sign, The sign shall be in significant compliance with the sign shown in Exhibit D which is three square feet. The sign shall include: text stating that the park is public and free to access, the days and hours of operation, the Coastal Commission's standard access program "feet" logo, and the California Coastal Trail emblem.
- III. All construction shall be completed by April 1, 2022 and be performed in accordance with the following:
 - A. Accessibility requirements:
 1. Parking space identification signs shall include the International Symbol of Accessibility complying with Section 11B-703.7.2.1 International Symbol of Accessibility. [CBC 11B-502.6, Figure 11B-703.7.2.1]
 2. Signs identifying van parking spaces shall contain additional language or an additional sign with the designation "van accessible." Signs shall be 60 inches minimum above the finish floor or ground surface measured to the bottom of the sign. [CBC 11B-502.6]
 3. Parking identification signs shall be reflectorized with a minimum area of 70 square inches. [CBC 11B-502.6.1]

4. Additional language or an additional sign below the International Symbol of Accessibility shall state "Minimum Fine \$250." [CBC 11B-502.6.2]
 5. A parking space identification sign shall be visible from each parking space. Signs shall be permanently posted either immediately adjacent to the parking space or within the projected parking space width at the head end of the parking space. Signs may also be permanently posted on a wall at the interior end of the parking space. [CBC 11B-502.6.3].
 6. If a separate gate is provided for after-hours exiting, the gate shall comply with the following:
 - i. Minimum clearance is 32".
 - ii. Opening force shall not exceed 5 lbs.
 - iii. Hardware and operable parts shall not require tight grasping or twisting of the wrist, and shall be located between 34" to 44" above the finish floor or ground.
 - iv. At least a 10" smooth surface on the push side, measured from the ground or floor surface, shall be provided. [CBC 11B-404.2].
 - v. Minimum 18 inches strike side (pull side) clearance at the gate for a forward approach shall be provided. [CBC 11B-404.2.4.1].
 - vi. All accessible exterior routes details shall be provided to include slopes, widths, and surface materials.
- B. Meet all requirements of the Central Fire Protection District.
- C. Pursuant to Sections 16.40.040 and 16.42.080 of the County Code, if at any time during site preparation, excavation, or other ground disturbance associated with this development, any artifact or other evidence of an historic archaeological resource or a Native American cultural site is discovered, the responsible persons shall immediately cease and desist from all further site excavation and notify the Sheriff-Coroner if the discovery contains human remains, or the Planning Director if the discovery contains no human remains. The procedures established in Sections 16.40.040 and 16.42.080, shall be observed.
- IV. Operational Conditions
- A. The park shall comply with the following:
1. **Free Access:** No fee shall be charged to access the park.
 2. **Days and Hours of Operation:** Opal Cliff Park shall be open seven days a week from approximately sunrise to sunset.

3. **Fence:** The fence/gate shall be no higher than six feet and shall be retracted (i.e., fully opened) when the park is open to a minimum opening width of 12 feet. Accommodations shall be made that facilitate park users exiting the park after the park is closed.
4. **Sign:** The Park sign shall be posted on the front fence at a height above parked cars. The sign shall be three square feet in size and in substantial conformance with the sign exhibit (Exhibit D), including the inclusion of the Coastal Commission's standard access program "feet" logo and the California Coastal Trail emblem. In the future, should County Parks become the sole operator of Opal Cliffs Park, the Park sign may be replaced with a standard park sign. The sign must include language that the park is free and open to the public.
5. **Park Aides:** The "park aides" program of assisting visitors shall cease. The use of "guards" or similar is prohibited.
6. **Daily Operations:** Daily operations shall comply with the Memorandum of Understanding between County Parks and the OCRD as long as the MOU is in effect. Where conflicts between the MOU and this permit exist, the permit will prevail.
7. **Special Events:** Special events shall be coordinated and managed by County Parks in accordance with existing policies and procedures for events occurring in and around coastal access points.
 - a. Up to 10 special events are allowed per year, with no more than six events occurring in any single month.
 - b. All regular public access will be maintained during special events. The main pathway leading from the parking area to the beach access stairway shall remain unobstructed and open for the public's use.
 - c. Events will be developed with public access as a priority. Special event hosts shall acknowledge the requirement to maintain public access during the special event.
 - d. Special events will occur during regular park operating hours.
 - e. Vehicles associated with special events shall not be allowed to block Opal Cliff Drive or otherwise obstruct pedestrian, bicyclist or motorist access to the Park or travelled way.
8. **Park Improvements/Landscaping:** All Park improvements, including the fence and landscaping, shall be maintained in good condition. The fence shall be repainted and/or replaced as needed. Dead or diseased plant material shall be replaced. Landscaping along the fence shall be maintained such that it does not obstruct the view through the fence of the park and Monterey Bay.

- B. In the event that future County inspections of the subject property disclose noncompliance with any Conditions of this approval or any violation of the County Code, the owner shall pay to the County the full cost of such County inspections, including any follow-up inspections and/or necessary enforcement actions, up to and including permit revocation.
- V. As a condition of this development approval, the holder of this development approval ("Development Approval Holder"), is required to defend, indemnify, and hold harmless the COUNTY, its officers, employees, and agents, from and against any claim (including attorneys' fees), against the COUNTY, its officers, employees, and agents to attack, set aside, void, or annul this development approval of the COUNTY or any subsequent amendment of this development approval which is requested by the Development Approval Holder.
- A. COUNTY shall promptly notify the Development Approval Holder of any claim, action, or proceeding against which the COUNTY seeks to be defended, indemnified, or held harmless. COUNTY shall cooperate fully in such defense. If COUNTY fails to notify the Development Approval Holder within sixty (60) days of any such claim, action, or proceeding, or fails to cooperate fully in the defense thereof, the Development Approval Holder shall not thereafter be responsible to defend, indemnify, or hold harmless the COUNTY if such failure to notify or cooperate was significantly prejudicial to the Development Approval Holder.
- B. Nothing contained herein shall prohibit the COUNTY from participating in the defense of any claim, action, or proceeding if both of the following occur:
1. COUNTY bears its own attorney's fees and costs; and
 2. COUNTY defends the action in good faith.
- C. Settlement. The Development Approval Holder shall not be required to pay or perform any settlement unless such Development Approval Holder has approved the settlement. When representing the County, the Development Approval Holder shall not enter into any stipulation or settlement modifying or affecting the interpretation or validity of any of the terms or conditions of the development approval without the prior written consent of the County.
- D. Successors Bound. "Development Approval Holder" shall include the applicant and the successor(s) in interest, transferee(s), and assign(s) of the applicant.

Minor variations to this permit which do not affect the overall concept or density may be approved by the Planning Director at the request of the applicant or staff in accordance with Chapter 18.10 of the County Code.

Please note: This permit expires three years from the effective date listed below unless the conditions of approval are complied with and the use commences before the expiration date.

Application #: 191006
APN: 033-151-12
Owner: Opal Cliffs Recreation District

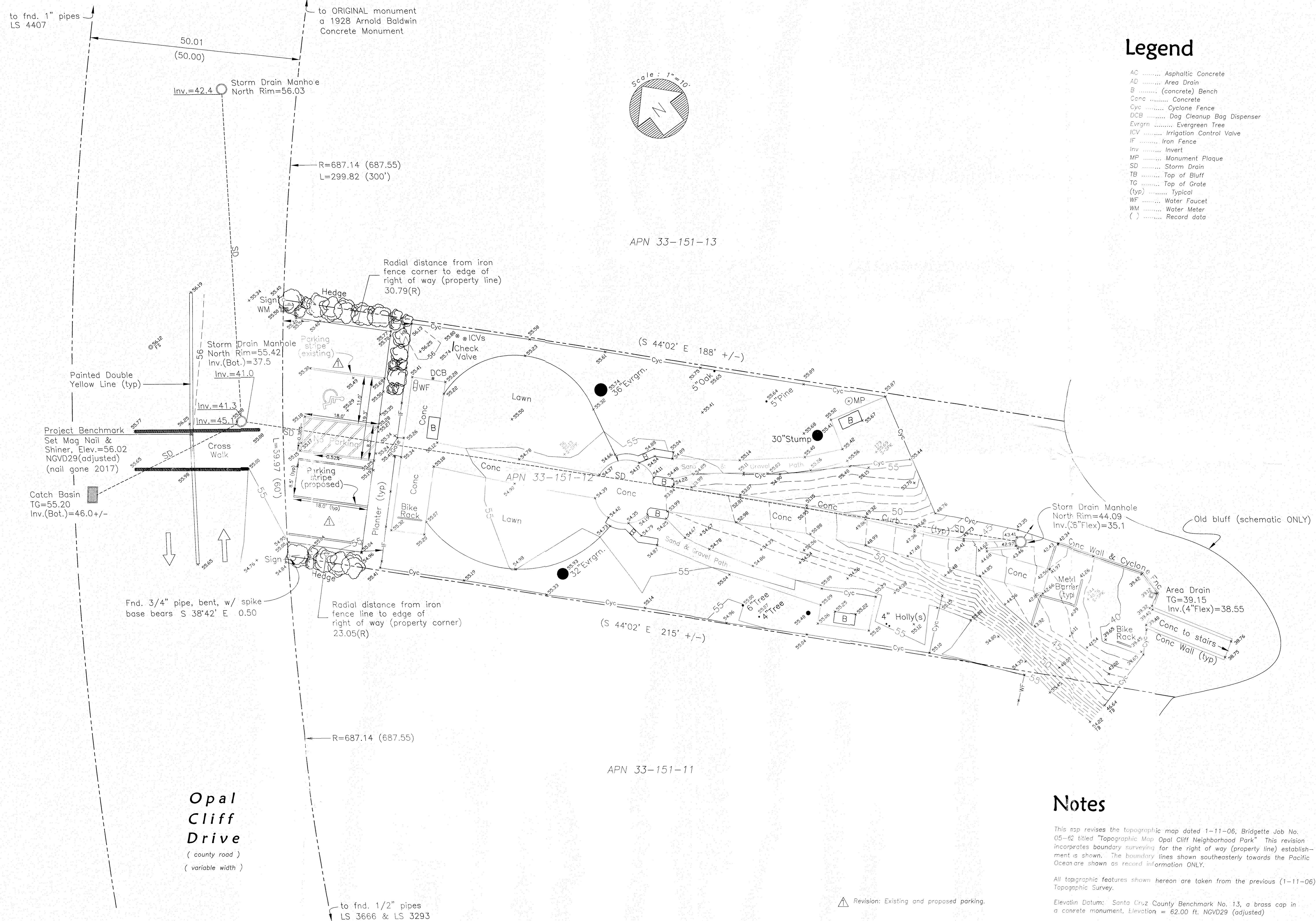
Approval Date: _____

Effective Date: _____

Expiration Date: _____

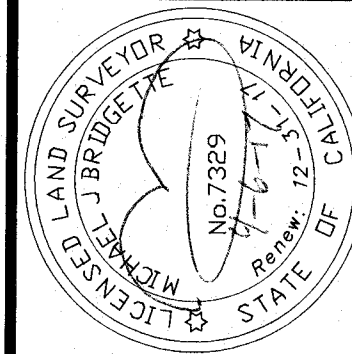
Jocelyn Drake
Deputy Zoning Administrator

Appeals: Any property owner, or other person aggrieved, or any other person whose interests are adversely affected by any act or determination of the Zoning Administrator, may appeal the act or determination to the Planning Commission in accordance with chapter 18.10 of the Santa Cruz County Code.



Legend

- | | |
|--------------|---------------------------|
| AC | Asphaltic Concrete |
| AD | Area Drain |
| S | (concrete) Bench |
| Conc | Concrete |
| Cyc | Cyclone Fence |
| DCB | Dog Cleanup Bag Dispenser |
| Evergr | Evergreen Tree |
| ICV | Irrigation Control Valve |
| IF | Iron Fence |
| Inv | Invert |
| MP | Monument Plaque |
| SD | Storm Drain |
| TB | Top of Bluff |
| TG | Top of Grate |
| (typ) | Typical |
| WF | Water Faucet |
| WM | Water Meter |
| () | Record data |



BRIDGETTE LAND SURVEYING
PROFESSIONAL LAND SURVEYORS
80 ASPEN WAY SUITE A WATSONVILLE, CA
95076 / 831-722-5800 / FAX: 831-722-8077


Opal Cliff Neighborhood Park


APN 033 - 151 - 12
Santa Cruz County, California

SCALE: 1" = 10'

DATE: 5-9-08

REVISIONS: 1 4-3-17

REVISIONS: 

REVISIONS: 

Sheet

1

08-22

Notes

This map revises the topographic map dated 1-11-06, Bridgette Job No. 05-62 titled "Topographic Map Opal Cliff Neighborhood Park" This revision incorporates boundary surveying for the right of way (property line) establishment is shown. The boundary lines shown southeasterly towards the Pacific Ocean are shown as record information ONLY.

All topographic features shown hereon are taken from the previous (1-11-06) Topographic Survey.

Elevation Datum: Santa Cruz County Benchmark No. 13, a brass cap in a concrete monument, Elevation = 62.00 ft. NGVD29 (adjusted)

Revision: Existing and proposed parking

Opal Cliffs Park

Free to the Public

**Hours:
Sunrise to Sunset**



EXHIBIT D

© COPYRIGHT SANTA CRUZ COUNTY ASSESSOR 1995

33-15

OF

MONTEREY

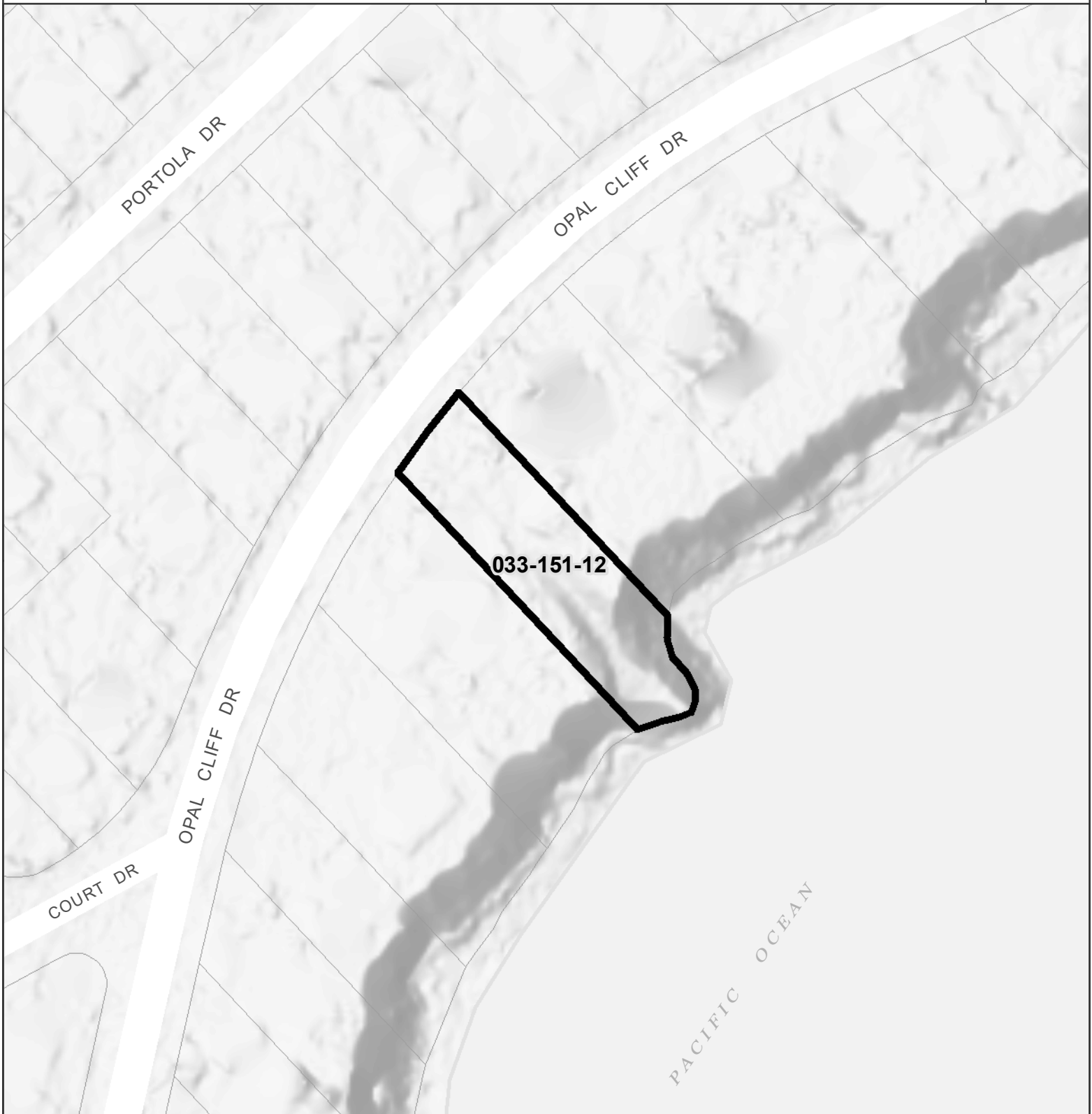
Note - Assessor's Parcel Block & Lot Numbers Shown in Circles.

Assessor's Map No. 33-15
County of Santa Cruz, Calif.
June 1995



EXHIBIT E



Parcel Location Map



Parcel: 03315112

-  Study Parcel
-  Assessor Parcel Boundary

Map printed: 12 Mar. 2021

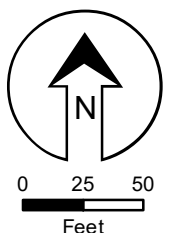


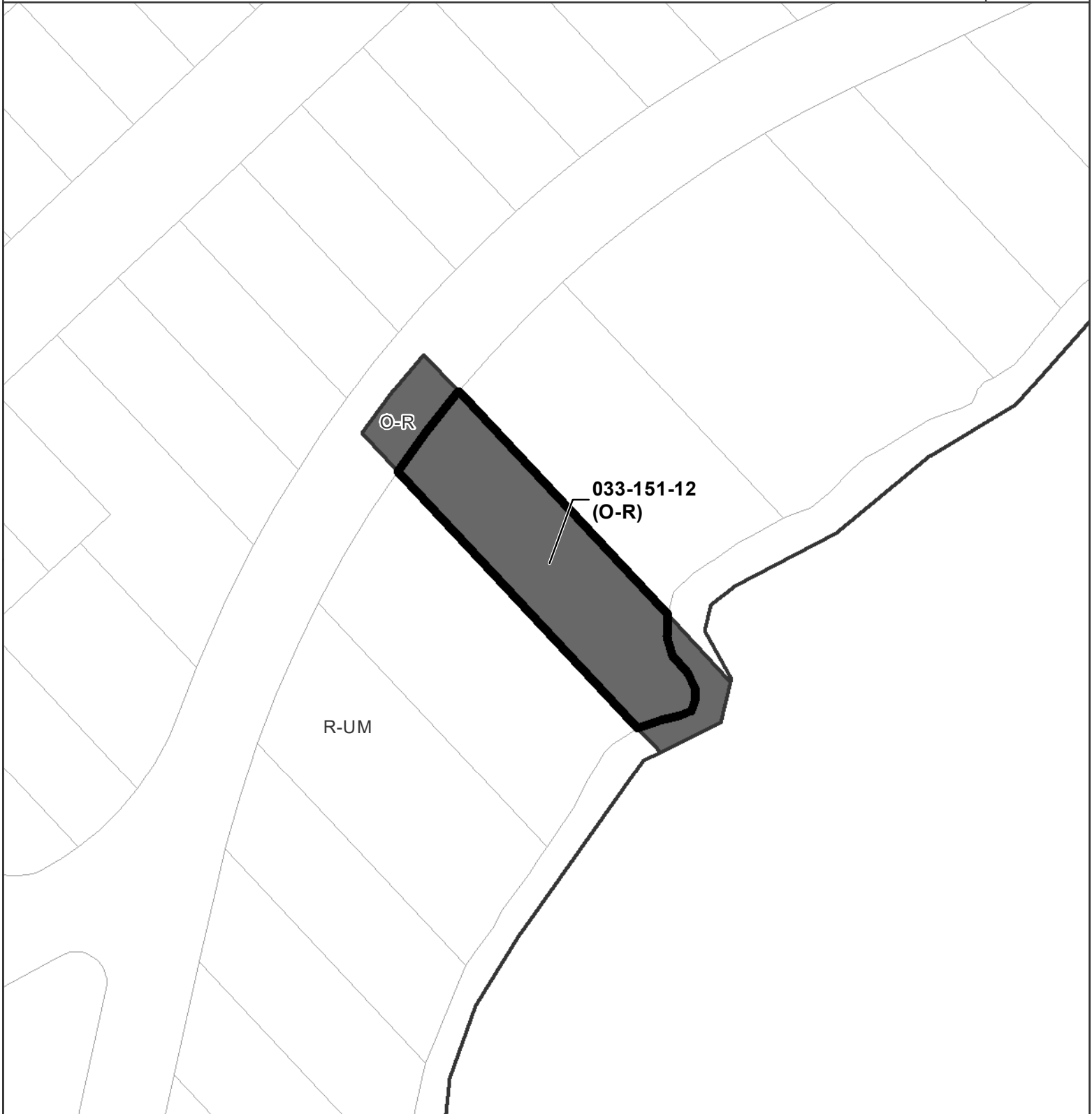
EXHIBIT E





Parcel General Plan Map



Mapped
Area



-  O-R *Parks, Recreation & Open Space*
-  R-UM *Res. Urban Medium Density*

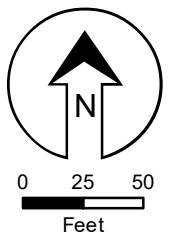
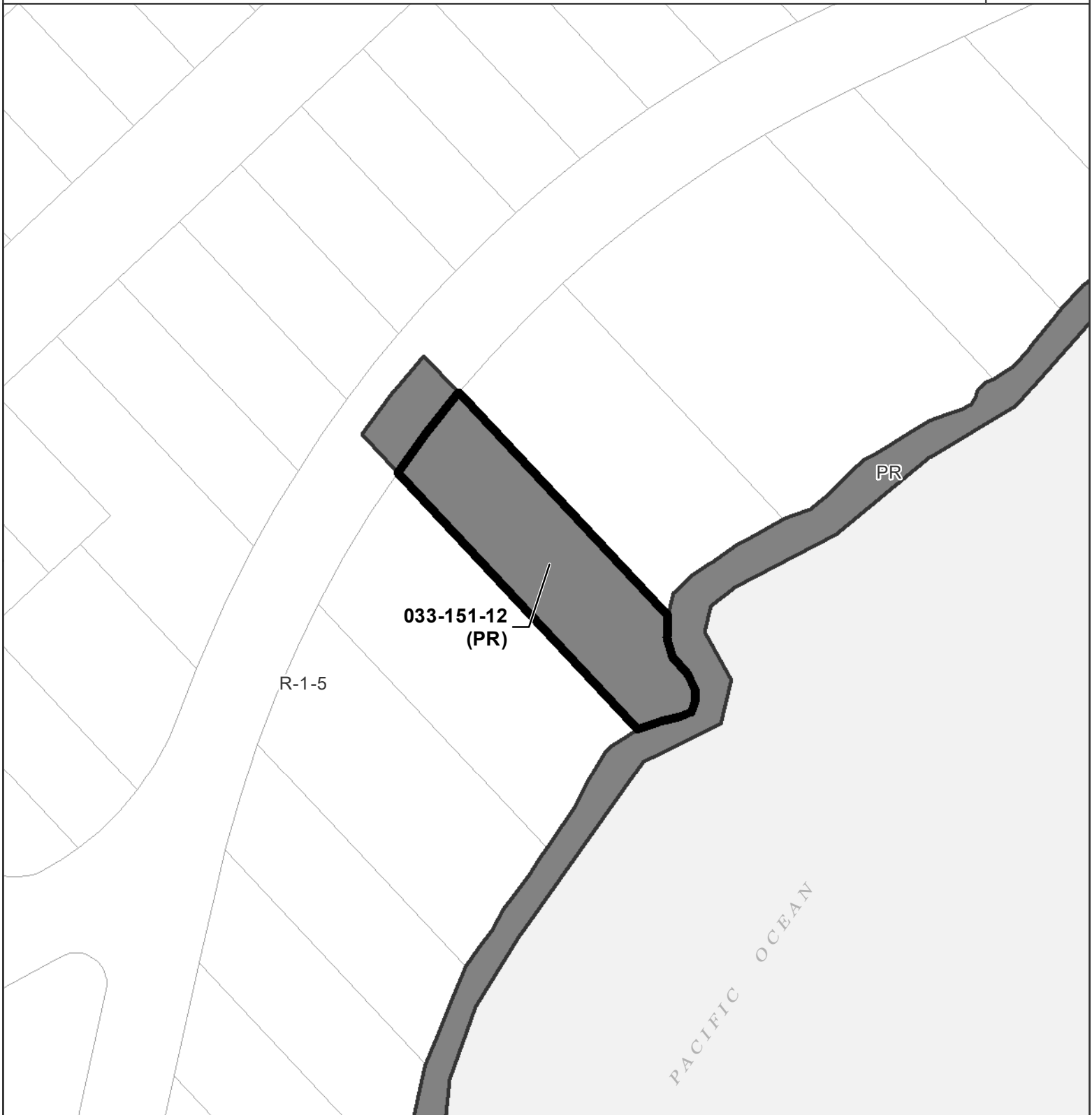




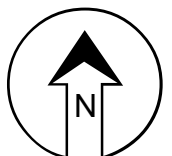
EXHIBIT E



Parcel Zoning Map



-  PR *Parks, Recreation, & Open Space*
-  R-1 *Single-Family Residential*



0 25 50
Feet

EXHIBIT E

Parcel Information

Services Information

Urban/Rural Services Line:	<u> X </u> Inside <u> </u> Outside
Water Supply:	City of Santa Cruz
Sewage Disposal:	County of Santa Cruz
Fire District:	Central Fire Protection District
Drainage District:	Zone 5

Parcel Information

Parcel Size:	12,632 square feet
Existing Land Use - Parcel:	Recreational
Existing Land Use - Surrounding:	Residential
Project Access:	Opal Cliff Drive
Planning Area:	Live Oak
Land Use Designation:	O-R (Existing Park, Recreation and Open Space)
Zone District:	PR (Parks, Recreation and Open Space)
Coastal Zone:	<u> X </u> Inside <u> </u> Outside
Appealable to Calif. Coastal Comm.	<u> X </u> Yes <u> </u> No

Environmental Information

Geologic Hazards:	Coastal bluff, but development sited away from bluff
Fire Hazard:	Not a mapped constraint
Slopes:	Level at top of bluff, very steep on bluff face
Env. Sen. Habitat:	Not mapped/no physical evidence on site
Grading:	No grading proposed
Tree Removal:	No trees proposed to be removed
Scenic:	Not a mapped resource, fence not visible from beach
Archeology:	Not mapped/no physical evidence on site



COUNTY OF SANTA CRUZ

PLANNING DEPARTMENT

701 OCEAN STREET, 4TH FLOOR, SANTA CRUZ, CA 95060
(831) 454-2580 FAX: (831) 454-2131 TDD: (831) 454-2123
KATHLEEN MOLLOY, PLANNING DIRECTOR

November 8, 2018

Via email and USPS

Opal Cliffs Recreation District (OCRD)
c/o Mark A. Massara, Attorney at Law
1642 Great Highway
San Francisco, CA 94122

RE: Letter Agreement re Coastal Development Permit for Opal Cliffs Park

Dear Mr. Massara:

Thank you for the dialogue over the last few months, subsequent to OCRD withdrawal in July 2018 of the coastal development permit (CDP) application that had been approved by the County but appealed by the Coastal Commission, regarding the status of Opal Cliffs Park (Park).

At this point, it is understood that it is the desire of the OCRD to file a different application with the County of Santa Cruz, and the OCRD Board of Directors has agreed to file a CDP application by January 15, 2019 for project that will incorporate the following proposed components:

1. A replacement retractable front entry gate or similar (and potentially new front fencing), with a design that will provide a minimum 6-foot wide open entry space into the Park (greater entry width is encouraged), with an interim agreement to pin the existing gate open to reasonable extent possible pending permit and funding for new components.
2. The gate and Park will be open during the daytime (sunrise to sundown) and free to the general public year around; with the retractable entry or gate closed in off hours to secure the Park and prevent public safety impacts.
3. There will be a way provided for egress from the ocean side during non-daylight hours, perhaps through reuse of the existing magnetized gate within the front fencing at one end.
4. There will be no paid keycard access component.
5. There will be no gate attendant / ambassador program.
6. The gate / front fencing will incorporate new informational signage on the street side to clearly identify that free access is available to the general public during daylight hours.

7. A proposed Special Events Program will be included within the CDP application, with appropriate temporary events to be allowed from time to time as a way to promote and sustain the OCRD and the Park. The CDP application will outline a Special Events and Access Plan which addresses the proposed number of temporary events per year, frequency per month or season, locations and sizes of gatherings, and protocols for managing the events so that general public access to the Park and beach is not adversely impacted or disrupted during the hours that the Park is open.

In order to address concerns of the County and Coastal Commission regarding alleged violations, and prevent alternative enforcement responses by either agency, the above-referenced CDP application will be submitted by January 15, 2019 and will be processed expeditiously by the County Planning Department, with the goal that the CDP is approved by the Planning Commission in early 2019 and the OCRD would thereafter use its best efforts to fundraise, with a goal of installation of a replacement gate by Memorial Day of 2019.

The County appreciates that OCRD has modified operations at the Park, in that there no longer is an ambassador program and currently the existing gate is unlocked and open to the general public during daylight hours. OCRD agrees that such modified operations will continue into the future. A further necessary immediate modification that will prevent alternate enforcement and maximize public knowledge of the available free public access, will be to manage the gate so that it is tied or propped in "open" position during daylight hours. Also, the existing signage needs to be removed so that outdated information is not conveyed to the public. It may be replaced as soon as feasible with new signage upon Planning Director review and approval of a sign change-out, and/or new signage can be pursued through the CDP.

It is understood that OCRD intends to propose to contract with the County Parks Department for services that may include opening and closing the gate so that it is open during daylight hours, trash management, and administration of the Special Events and Access Plan. Please contact Parks Director Jeff Gaffney regarding development of such a contract.

The County has determined that installation of a Donation Box and signage regarding donations may immediately be installed within the Park under an exemption (County Code Section 13.20.064), although the County requests an opportunity to review the planned siting and design of the Donation Box and signage prior to installation in order to ensure consistency with any Building Code requirements that may apply.

Finally, the County, Coastal Commission and OCRD have discussed sources of grant funding to pay costs associated with the replacement gate. Recently, the Coastal Commission took action to require in-lieu fees from a nearby development project, and these fees are being provided to the County for administration and award(s) to project(s) that enhance public access to the coast. The County encourages the OCRD to provide a preliminary design and cost estimate for the improvements to the County Parks Department, along with a request that grant funding be considered for implementation of the project based on the increased public access that will occur.

Again, thanks to you and the OCRD Board for the productive dialogue over the past few months about how to move forward in a manner that avoids litigation and enforcement activities, in favor of shifting operational aspects of the Park toward greater access by the general public. As long as OCRD undertakes activities as outlined above, alternative enforcement responses will not be pursued by the County, and it is our understanding that the Coastal Commission also supports the

above-described type of project and operations. The County looks forward to partnering with the OCRD in the future to assist as needed with the Park operations.

Please confirm OCRD's agreement with the foregoing by signing below to execute this letter agreement, and please return a copy to me at the County Planning Department, 701 Ocean Street, 4th Floor, Santa Cruz CA 95060.

Best Regards,



Kathleen Molloy
Planning Director
County of Santa Cruz

ACCEPTED

Mark Massara, District Counsel and Authorized Agent
OPAL CLIFFS RECREATION DISTRICT

CC:

John Griffiths, Chair OCRD
Carlos Palacios, County Administrative Officer
Jeff Gaffney, County Parks Director
Dan Carl, California Coastal Commission Central Coast District Director

MEMORANDUM OF UNDERSTANDING BETWEEN

OPAL CLIFFS RECREATION DISTRICT

AND

THE COUNTY OF SANTA CRUZ DEPARTMENT OF PARKS, OPEN SPACE, AND CULTURAL SERVICES

12/2/2019

This Memorandum of Understanding ("MOU") is entered into on _____, 2019 ("Effective Date") between Opal Cliffs Recreation District ("District"), and the County of Santa Cruz Department of Parks, Open Space, and Cultural Services, ("County Parks") (together the "Parties", individually a "Party").

I. PURPOSE & SCOPE

The purpose of this MOU is to clearly identify the roles and responsibilities of each Party as they relate to establishing a framework for a sustainable partnership between the Parties so mutual support may continue and prosper. This MOU will define and set out the general obligations of the Parties and other applicable provisions. This MOU is intended to outline the Parties' general understandings of how the MOU will proceed. This MOU is not an offer or agreement to perform or to provide services to any other party or third party and does not reflect an agreement or intention to form or operate as a partnership or joint venture or to bind any party or third party in any way.

II. BACKGROUND

- a. The District was established in 1949 and is a public agency. The District is a California special district in Santa Cruz County that owns and operates Opal Cliffs Park ("Park").
- b. The District mission is to maximize and provide public beach access to Opal Cliffs Park, a small neighborhood park located between Santa Cruz and Capitola CA., at 4524 Opal Cliff Drive in Santa Cruz.
- c. The County Parks mission is to provide safe, well-designed and maintained parks, and a wide variety of recreational and cultural opportunities for our diverse community.
- d. The collaboration between District and County Parks is an opportunity to maximize public beach access and recreational opportunities while responsibly managing and maintaining the Opal Cliff Park's blufftop and beach accessway and amenities.
- e. Both Parties agree that it would be beneficial to clarify roles and responsibilities, in protecting and maximizing the public's ability to safely access the coast.

III. TERM OF THE MOU

This MOU will be effective on the date above. Either party may terminate this MOU with a 90-day written notice to the other. If terminated, District will resume all responsibility for Opal Cliffs Park, District's administrative support and park programming. The District will reimburse County Parks for any outstanding amount owed at the time of termination.

IV. JOINT RESPONSIBILITIES UNDER THIS MOU

- a. Foster a strong and cooperative relationship between District and County Parks in support of each other's missions and in collaboration of efforts to leverage resources, meet community needs and maximize outcomes.
- b. Work cooperatively and strive to achieve shared goals and objectives as defined in the County Strategic Plan.
- d. Work cooperatively toward compliance with California Coastal Commission's requirements of the California Coastal Act and the County's Local Coastal Program.
- e. Partner on projects, specifically development, that is mandated and/or supportive of Coastal Commission objectives.
- f. Collaborate on planning for areas that are both coterminous and/or concurrent in jurisdiction.
- g. Work cooperatively to pursue potential funding through grants, bonds, i.e. Proposition 68, per capita programs, park district funding, impact fees, encroachment fees, etc.
- h. Work together to plan and promote special events, programs and services that provide a revenue stream to cover costs for both District and County Parks.

V. DISTRICT RESPONSIBILITIES UNDER THIS MOU

- a. District shall:
 - 1. Authorize County Parks' use of the District property for construction and installation of a new gate and associated infrastructure;
 - 2. Apply for grants or other financing options to update infrastructure / pay for maintenance of the park and other administrative expenses.
 - 3. Provide use of Opal Cliff Park for no more than 10 annual events at no cost; revenues received will go towards continued maintenance or capital improvements of the park.
 - 4. Agree to maintain free public beach access from dawn to dusk daily, maintaining open gates approximately one-half hour prior to sunrise and one-half hour after sunset.
 - 5. Continue to provide and incur all costs associated with basic operation of the blufftop park and beach accessway, i.e. maintenance, utilities and insurance.

VI. COUNTY PARKS RESPONSIBILITIES UNDER THIS MOU

- a. County Parks shall:
 - 1. Plan, construct and install gate and its associated infrastructure;
 - 2. Provide support to District for opening and closing of gate during seasonal open access hours;
 - 3. Provide administrative support for meetings and Brown Act compliance or other public meeting act requirements;
 - 4. Charge District for administrative support, i.e. staff time, supplies; and
 - 5. In cooperation with District, provide special events that comply with California Coastal Commission policies, do not prevent public access and promote increased use of Opal Cliff Park by all visitors.

VII. GOOD FAITH

- a. The Parties agree to work in good faith to fulfill the objectives of this MOU.

- b. The Parties agree to provide each other the opportunity to take corrective actions or to exercise the ability to resolve any matters that may arise during the term of this MOU.
- c. The Parties agree to have regular communications to ensure mutual success.

VIII. MISCELLANEOUS PROVISIONS

- a. Integration. This MOU represents the entire and integrated agreement between the Parties. It is expressly agreed that all the terms and conditions of this MOU are included herein, and no verbal agreements of any kind shall be binding upon the Parties. As used herein, MOU refers to and includes any documents incorporated herein by reference and any exhibits or attachments. This MOU supersedes any prior written or oral representations, discussions, understandings, and all other representations and agreements, written or oral, between the Parties and sets forth the entire understanding of the Parties regarding the subject matter thereof.
- b. Modifications. Any modifications or amendments to this MOU shall be in writing and signed by both Parties' authorized representatives. Said modifications or amendments become effective upon approval by the Board of Supervisors.
- c. No relationship of employer and employee is created by this MOU between the Parties, it being understood that the Parties shall act hereunder as independent agencies. This MOU is not intended to, nor shall be construed to create the relationship between the Parties of agent, servant, employee, partnership, joint venture, or association.
- d. Each of the Parties to this MOU shall immediately notify the other of any litigation of claim asserted by or against either Party regarding this MOU.
- e. All records and reports prepared in the performance of this MOU shall be maintained by each Party. The Parties agree to comply with all applicable laws concerning the maintenance and disclosure of records and reports prepared in the performance of this MOU.
- f. This MOU shall be subject to the laws of the State of California. The exclusive venue to enforce or resolve a dispute related to this MOU shall be the Superior Court, County of Santa Cruz.
- g. If a court of competent jurisdiction holds any provision of this MOU to be illegal, unenforceable, or invalid in whole or in part for any reason, the validity and enforceability of the remaining provisions, or portions of them, will not be affected, unless an essential purpose of this MOU would be defeated by the loss of the illegal, unenforceable, or invalid provision.
- h. Headings herein are for the convenience of reference only and shall in no way affect interpretation of the MOU.
- i. Both Parties shall maintain liability insurance coverage to cover any claim of liability arising out of the performance of any activity, responsibility, or duty pursuant to this MOU. The County shall maintain its own liability coverage through self-insurance. District shall maintain its own liability insurance coverage, which shall include Commercial General Liability and Workers' Compensation Insurance, as required by State of California, and shall have limits of no less than \$1,000,000.00 per occurrence.
- j. By signing this MOU, each signatory warrants and represents that they executed this MOU in their authorized capacity and that by their signature on this MOU, they or the entity upon behalf of which they acted, executed this MOU.

- k. Notices: All notices, requests, demands, or other communications under this MOU shall be in writing.
- l. Drug Free Workplace: District, its Board of Directors, employees, volunteers, affiliates, and agents shall comply with the County's policy of maintaining a drug-free workplace. Neither District, its Board of Directors, employees, volunteers, affiliates, and agents shall unlawfully manufacture, distribute, dispense, possess or use controlled substances, as defined in 21 U.S. Code § 812, at any County facility or work site.
- m. No waiver of a breach, failure of any condition, or any right or remedy contained in or granted by the provisions of this MOU shall be effective unless it is in writing and signed by the party waiving the breach, failure, right, or remedy. No waiver of any breach, failure, right or remedy shall be deemed a waiver of any other breach, failure, right or remedy, whether or not similar, nor shall any waiver constitute a continuing waiver unless the writing so specifies.
- n. The obligations of this MOU, which by their nature would continue beyond the termination on expiration of the MOU, including without limitation, the obligations regarding Indemnification (Section IV below), shall survive termination or expiration.

IV. INDEMNIFICATION

To the fullest extent permitted by law, District shall hold harmless, defend and indemnify the County of Santa Cruz, its Board of Supervisors, County Parks, and their employees, volunteers, affiliates, and agents from and against any and all claims, losses, damages, liabilities and expenses, including attorneys' fees, incurred as a result of District's performance of its responsibilities pursuant to this MOU.

Santa Cruz County Parks and Opal Cliffs Recreation District indicate agreement with this MOU by their signatures:

SANTA CRUZ COUNTY PARKS

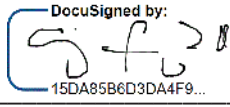
By:  3B992B3382B84E5...

Jeff Gaffney Parks Director

Printed Name & Title

12/2/2019 Date

OPAL CLIFFS RECREATION DISTRICT

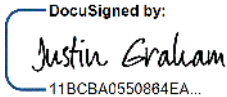
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Augie Dent Board Member

Printed Name & Title

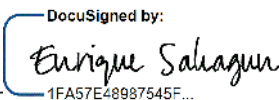
12/2/2019 Date

APPROVED AS TO FORM:

 11BCBA0550864EA...

Justin Graham
By: _____
County Counsel

APPROVED AS TO INSURANCE:

 1FA57E48987545F...

By: Enrique Sahagun
County Risk Management