

Late Comments & Correspondence

Application Number 201302

EXHIBIT H

Nathan MacBeth

From: Thomas Mader <twiggins1939@gmail.com>
Sent: Friday, October 14, 2022 8:54 AM
To: Nathan MacBeth
Cc: Dan.Carl@coastal.ca.gov; Bill Parkin; Tisa Murdock
Subject: Restoration of Public Access Between Black's Beach and Sunny Cove

****CAUTION:This is an EXTERNAL email. Exercise caution. DO NOT open attachments or click links from unknown senders or unexpected email.****

Dear Mr Mac Beth...This letter is in support of removing the barriers blocking the historic coastal trail between Sunny Cove and Black's Beach.

I am petitioning not only for myself, but also for the 200+ local members of the Santa Cruz Bodysurfing Association which I confounded in 1984, and which last month, held our 38th annual Santa Cruz Championships Contest in partnership with the Santa Cruz County Lifeguards who have jurisdiction over our most recent contest sites at Blacks Beach and Lagunas Creek eight miles north of town.

Commencing In the late 1970's, various Geoffrey Drive property owners began erecting barriers to the trail that had allowed us easy access to and from both Sunny Cove and Blacks. This was/is particularly unfortunate on those days when waves would only be "working" at just one of the locations. In surfing terminology, as one is riding down a wave at Blacks Point, you are headed left...conversely at Sunny Cove the wave rides are to the right off the point. This is an important distinction because, pending the direction of the swell...the wave riding at one location, by definition, will always be better than the other. A south swell favors Sunny Cove, a northwest swell favors Blacks.

This may seem like an arcane distinction to non surfers...but to wave riders, there is an almost heavenly delight in sliding down a fast moving glassy wave shoulder.. with the possibility of the crest pouring over you into a "tube".

With the path open it is possible to move from one location to the other in less than five minutes....versus a 25 minute walk all the way out to East Cliff Drive and around to the desired alternative location....This process can take much longer if one is driving a car on a crowded weekend seeking a very limited number of authorized public parking spaces.

When we became of the illegal closures in the late 70's and 80's some of our colleagues began using wire cutters to maintain access to the trail. This process continued off and on into the late 1990's through at least three ownership changes at the hillside site of the trail path.

I recall one of our members, James Geoffrey, being particularly incensed over this illegal practice...since the road was, in fact, named after his grandfather....Jim, at the time, lived in his family home at the end of the street overlooking Sunny Cove.

Like many other older residents, I have enjoyed many wonderful days at both beaches for over 40 years with my friends, wife, children, and now grandchildren....and have a host of fond memories....some of which were occasionally spoiled by the selfishness of self entitled property owners adjacent to the public path....who have now created a "gated community"...off limits to the public.

My family owns and lives in two small houses on and adjacent to public paths that we share with the public in Capitola. One house is on the lagoon near the trestle, and has a back yard bisected by a public path that is a well used, well maintained, walkway.

Our other home is on the edge of the cliff in Depot Hill on what used to be Grand Avenue, but with erosion has been closed to traffic, and is now also a public path... with daily use by neighbors and visitors.

The point here is that my family chooses to be good community citizens...and to share the abundant ocean and lagoon views with others rather than resorting to illegal actions to enhance privacy and self entitlement.

I urge you and your staff to consider the public good and to recommend reopening the path...in the same unpretentious unpaved manner in which it heretofore existed.

.....for the benefit of not only body surfers, but the entire beach going community.

Most sincerely and with Aloha....Tom Wiggins Mader...101 Saxon Ave and 415 Riverview Avenue, Capitola.

Sent from my iPad

Nathan MacBeth

From: Ira Harris <irajamesharris@gmail.com>
Sent: Tuesday, October 18, 2022 9:24 AM
To: Nathan MacBeth
Subject: Application 201302 70 Geoffroy
Attachments: 1142.1.Notice.Judgment.pdf; 1142.1.SCPlanning.102820.pdf

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Dear Mr. MacBeth: I have had the opportunity to review your Staff Report for this Friday's hearing. Thank you for recommending approval of the emergency repair and recognizing that no beach access condition can be imposed on this project.

While the report refers to the Coastal Commission's commentary, it fails to reference or include my response or the fact that a Writ of Mandate was entered against the County and Coastal Commission on August 10, 2020 nor that title has been quieted in each of the property owner's favor as of September 30, 2022. See attached Notice of Entry of Judgment and another copy of my October 29, 2020 response.

--

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Law Offices of
IRA JAMES HARRIS

October 29, 2020

Via E-mail: Nathan.MacBeth@santacruzcounty.us

Nathan MacBeth
Santa Cruz County Planning Department
701 Ocean Street, 4th Floor
Santa Cruz, CA 95060

Re: Response to Rainey Graeven's October 23, 2020 Commentary
Application 201302 – 70 Geoffroy Drive
Emergency Bluff Restoration
Our File No. 1142.1

Dear Mr. MacBeth:

Please be advised that this office represents the applicants, Mark and Suzanne Cauwels, the owners of 70 Geoffroy Drive, Santa Cruz, California APN 028-143-35. Please direct all further communication regarding the processing of this application to my attention.

As you no doubt know, this application follows a permitted emergency like-kind repair, which was completed in early August 2020. I am in receipt of a copy of Rainey Graeven's October 23, 2020 letter purporting to belatedly "comment" on the above referenced application. I presume from her introductory paragraph that the County solicited input from the California Coastal Commission (hereinafter as the "COMMISSION"). When was this input solicited? Was that done pursuant to Santa Cruz Municipal Code 13.20.080 (B)?

Ms. Graeven disingenuously claims that "open" enforcement actions exist as it relates to this property and that those purported violations involve a purported "historic prescriptive right of public access" between Blacks Beach and the end of Geoffroy Drive through 70 Geoffroy Drive. That is not only blatantly false it is clearly undermined by the COUNTY'S and COMMISSION'S own records!

THE ALLEGED EXISTING BASELINE LACKS FACTUAL OR LEGAL SUPPORT:

Development of the lots and the private drive on Geoffroy all pre-date the California Coastal Act. The Cauwels have written and photographic evidence supporting the fact that a (keyed and private) gated fence existed at the top of the bluff barring access down the northeastern slope for well over 50 years. [See, Exhibit 1 RFJN A - 000013-14 and Exhibits 3 and 4].

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1. Alleged Violation No. V-3-01-055:

Despite the above, since at least 1986 the COUNTY through the County of Santa Cruz Planning Department (hereinafter as "Local Agency") and the COMMISSION have received periodic unsupported complaints by certain members of the public about a "blocked access" down some unspecified section of the bluff at the end of Geoffroy Drive. [See, **Exhibit 2 RFJN B - 000001-3 and 000007**]. On each occasion the Local Agency and/or COMMISSION failed to identify the exact location or require any specific access other than a dedication of the sandy beach portion below the bluff and seawall from 60 Geoffroy as part of V-3-01-055 as identified in **Exhibit 1 RFJN A - 000002-3**: choosing instead to refer members of the public to their right to bring a lawsuit to perfect any prescriptive easement claimed. [See, **Exhibit 2 RFJN B - 000004 and Exhibit 5 RFJN E - 000011-12 and 000023, Findings 2 and 4**]. It did so because of (amongst other things) the long history of the lack of public access along that slope. See, **Exhibits 3, 4 and 9**. The V-3-01-055 violation related to 60 Geoffroy Drive (not 70 Geoffroy Drive) and was clearly resolved through the required dedication in **Exhibit 1 RFJN A - 000003 and 000014**. I personally subpoenaed the COMMISSION's files on this 1986 Violation in 2010 and it was completely empty!

When complaints arose, once again, in 1997 and 2009-2010, the Local Agency investigations reconfirmed that no public access existed along the northeastern slope or if it had existed at all, it had been closed for decades, and the complaint files were closed (and once again resolved)! [See, **Exhibit 2 RFJN B - 000001-3 and 000007 and Exhibit 5 RFJN E - 000011-12**].

No prescriptive easement action has ever been instituted and no one has responded to the Cauwels' Quiet Title claims herein. See, the Complaint to Quiet Title and for a Writ of Mandamus attached as **Exhibit 6 RFJN G** and the Entry of Default on any and all members of the Public as **Exhibit 7 RFJN F**.

Further, any action on said "alleged" violation (which pre-dated the Coastal Act) would be time barred. Such statutory violations have a one (1) year statute of limitations for any assessment of a penalty or forfeiture [*Code of Civil Procedure Section 340*] or a three (3) year statute for any other liability created by statute [*Code of Civil Procedure Section 338*]. Without any specific guidance by the Coastal Act such general statutes of limitation control. *G.H.I.I. v. MTS, Inc.* (1983) 147 Cal.App.3rd 256, 276. The COMMISSION has no authority to expand the limitation periods set by the legislature. *Hittle v. Santa Barbara County Employees Retirement Ass'n* (1985) 39 Cal.3d 374, 387. As a result, if not resolved by **Exhibit 1**, the statute of limitations has long since lapsed on any such enforcement action.

2. Alleged Violation No. V-3-18-0018:

The Cauwels are one of the five property owners involved in the above-mentioned lawsuit [**Exhibit 6 RFJN G**] which Ms. Graeven conveniently fails to mention in her letter. The five properties extend down a paved 15-foot wide private driveway at the end of Geoffroy Drive. The right to access the private driveway that lies within the "EASEMENT" which is legally described in each of the title reports for the five properties as being Twenty Five (25) feet in width, is granted to each of the five properties.

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From the end of Geoffroy Drive northwest of the private drive lie 90 Geoffroy (APN 028-143-29), 80 Geoffroy (APN 028-143-37), the applicant's lot at 70 Geoffroy, which then terminates at 60 Geoffroy (APN 028-143-34). To the east and down the bluff from the end of Geoffroy all the way to Blacks Beach at the end of 60 Geoffroy lies 63 Geoffroy (APN 028-143-44). One would have to trespass over 63 Geoffroy's rear acreage to get to the bluff leading up to 70 Geoffroy, then trespass across the easement serving all properties as well as the lots at 70, 80 and 90 Geoffroy to reach the public roadway.

After trespassers had broken into and burglarized 60 Geoffroy Drive in 2014, and in the process started a fire that gutted the house, Fowler Packing Company and the other four property owners inquired of the Local Agency regarding the possibility of installing an electric gate and other landscape improvements across the private driveway that serves their properties. The Local Agency was then imbued with authority to determine whether such projects were appealable, non-appealable or exempt as the Local Coastal Plan (hereinafter as "LCP") had been certified by the Commission. See, *Cal. Pub. Res. Code Sections 30519 (a), 30500, 30600 (d)* and *Hagopian v. State of California* (2014) 223 Cal.App.4th 349, 362-363.

Given preliminary comments from the County Planner, the homeowners proceeded to file an application [No. 151297] for a Coastal Development Permit and Over-Height Fence Certification as of October 20, 2015. The application included a detailed set of plans and specifications as well as a survey map. The Santa Cruz County Code (hereinafter as "SCCC") required the Planning Director to determine the project's status at the time of submittal or as soon thereafter as possible, and certainly before the permit was considered complete. See, *SCCC Sections 13.10.525, 13.20.080 and 18.10.230*. Here, the Local Agency properly processed the application: it requested additional information, posted the plans on the County Website, required the applicants to post the property with Notice of their development permit application, and solicited comments from any and all agencies involved.

After completing the above, the Local Agency approved the Development Permit and Over-Height Fence Certification on January 22, 2016, which approval was a necessary precursor to any application for a building permit. The Local Agency, exercising its discretion and delegated authority under the certified LCP, found the application exempt under Sections 13.20.060 and 13.20.061 which was posted on its website and later confirmed by their internal log.

In reliance on that determination, the applicants filed a Building Permit Application [No. B-161575] as of February 24, 2016 which was approved as of April 4, 2016 and proceeded to install an electric gate, fencing and landscape improvements at a cost in excess of \$175,000. All such improvements were inspected and finally accepted by the Local Agency in 2016.

The COMMISSION purportedly received a complaint from a member of the public in late 2017, inquired regarding the absence of a FLAN and were told that the County had found the application exempt. Despite that the COMMISSION threatened the County as well as each of the applicants with civil administrative penalties should they not remove the "unpermitted" improvements (including the fence at the blufftop that had existed since the late 1950's or early 1960's) or reapply for a Coastal

Development Permit through which the COMMISSION indicated a public access condition would be imposed!

While the Cauwels along with the other applicants on this gate project, obviously concerned about their exposure to civil administrative penalties, opted to remove the gate pending resolution of the dispute, they nonetheless proceeded with the above-mentioned complaint. **Exhibit 6.** The writ of mandamus sought against BOTH the County and the COMMISSION was granted by the Santa Cruz Superior Court on August 10, 2020. See, **Exhibit 8 RFJN H.** This decision disposed of Violation No. V-3-18-0018 and with it any right by the COMMISSION or the COUNTY to claim that said improvement violated the Coastal Act or needed to provide for public access through to or from Black's Beach.

As a result, there are no "existing" unresolved enforcement actions against this property! Ms. Graeven's claim that 13.20.170 requires resolution of these violation notices is patently false on its face.

3. The Alleged Baseline Lacks Factual Or Legal Support:

Given the above, there is no legal basis for Ms. Graeven's claims. The fence and locked gate at the blufftop predated the Coastal Act and has prevented public access for decades. This was known and resolved in 1986 as it relates to 60 Geoffroy Drive. While the COMMISSION and COUNTY have addressed vague claims from specific individuals to blockage of a trail somewhere along the end of Geoffroy for decades, they have never presented any evidence supportive of such a public prescriptive right. The barbed wire on top of the fence and restrictive signage has also existed for decades. These issues were all resolved in the complaint and Order granting the Writ Of Mandamus!

Ms. Graeven unbelievably claims that the applicant (or possibly one of the 5 property owners along this private driveway) had a security guard blocking or deterring public access. This is also patently false: all she had to do was check with the Chief of Police or Fire Chief as she would have found out that a Mark Woodward hired the security forces to protect his property against vandalism by gangs of teenagers who were regularly trespassing and vandalizing his properties. It had nothing whatsoever to do with the applicants or any alleged public access through the Geoffroy private driveway to Blacks Beach, which coincidentally was then hazardous as the slide had taken out the driveway and much of the bluff face.

THERE ARE NO PUBLIC RECREATIONAL ACCESS ISSUES.

Ms. Graeven proceeds to bootstrap the hearsay apparently contained in unsupported online questionnaires regarding vague public "memories" of periodic access somewhere along the slope at the end of Geoffroy Drive, into a conclusion that such rights not only existed and continue to exist, but that the bluff Restoration somehow adversely impacts these rights. Ms. Graeven cites to *LT-WR, LLC v. California Coastal Commission* (2007) 152 Cal.App.4th 770 but apparently failed to appreciate the holding in that case that indicated that public prescriptive rights do not exist until the Court finds sufficient evidence of such (neither the COMMISSION nor COUNTY have any right to unilaterally determine that such rights exist). See, *LT-WR, LLC* at pp. 805-806.

THE BLUFF RESTORATION REPRESENTS A LIKE-KIND EMERGENCY REPAIR.

While Ms. Graeven appears to recognize that the bluff restoration stems from a storm drain inlet (that became blocked as a result of leaves and debris from a nearby tree on County property) as a result of five (5) days of heavy wind and rains over the Thanksgiving Holiday weekend in 2019; she fails to recognize that such falls within the definitions of "disaster" "emergency" and "structure" in SCCC 13.20.040. A "disaster" applies to "any situation in which the force or forces which destroyed a structure to be replaced were beyond the control of its owner." An "emergency" is defined as "a sudden, unexpected occurrence demanding immediate action to prevent or mitigate loss or damage to life, health, property, or essential public services." Finally, contrary to Ms. Graeven's opinion, the storm drainage devices and adjacent driveway and curb clearly constitute structures as Chapter 13 expansively identifies a "structure" as "anything constructed or erected."

As no right of public access has been established across the private driveway and down the bluff slope off 70 Geoffroy, and none can be imposed by any condition on this Applicant (as such would have to involve all five properties), the like-kind repair or restoration of the slope cannot be said to adversely affect public access or public recreation.

CONCLUSION

The like-kind emergency repair or restoration of the private driveway atop the bluff [which presented an undeniable health and safety issue as it severely restricted the use and access to 70 and 60 Geoffroy and risked further personal injuries and property damage if not repaired] the repair was clearly within *Public Resources Code Section 30610 (d)*. In addition, it represents a repair and/or maintenance activity that has "not resulted in the addition to, or enlargement or expansion of, the object of the repair..." within *Section 30610 (g)* as it is solely the replacement of a "structure ...destroyed by a disaster." Accordingly, the emergency authorization of this like-kind repair of the damage caused by a disaster is and was authorized without a Permit pursuant to Public Resources Code Section 30610!

In closing, as the applicant has no ability to provide public access or public recreational benefits, without securing such rights from the other four adjacent property owners across their respective properties, there is no reasonable nexus for any public access conditions on this application as suggested by Ms. Graeven.

Very truly yours,

Law Offices of
IRA JAMES HARRIS

Ira James Harris

Ira James Harris

Attachments: Exhibits 1 to 9

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Nathan MacBeth
Santa Cruz County Planning Department
October 29, 2020
Page: 6

cc Rainey Graeven – Rainey.Graeven@coastal.ca.gov
 John Leopold – John.Leopold@santacruzcounty.us
 Kathy Molloy – Kathy.Molloy@santacruzcounty.us
 Matt Johnston – Matt.Johnston@santacruzcounty.us
 Jeff Gaffney – Jeff.Gaffney@santacruzcounty.us
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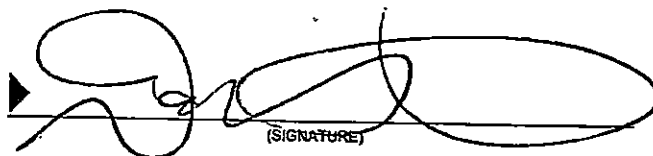
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|---|---|---|--|--|---|
| ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Ira James Harris, Esq. SB 99760 Law Office of Ira James Harris P.O. 1478, Orinda, CA 94563 TELEPHONE NO.: 9252585100 FAX NO. (Optional): 9252814977 E-MAIL ADDRESS (Optional): irajamesharris@gmail.com ATTORNEY FOR (Name): Plaintiffs | FOR COURT USE ONLY | | | | |
| SUPERIOR COURT OF CALIFORNIA, COUNTY OF SANTA CRUZ STREET ADDRESS: 701 Ocean Street, Room 120 MAILING ADDRESS: CITY AND ZIP CODE: Santa Cruz, CA 95060 BRANCH NAME: Santa Cruz Branch | | | | | |
| PLAINTIFF/PETITIONER: FOWLER PACKING COMPANY, et. al. DEFENDANT/RESPONDENT: COUNTY OF SANTA CRUZ, et.al. | | | | | |
| <table border="0"> <tr> <td colspan="2" style="text-align: center;"> NOTICE OF ENTRY OF JUDGMENT OR ORDER </td> </tr> <tr> <td> (Check one): <input checked="" type="checkbox"/> UNLIMITED CASE (Amount demanded exceeded \$25,000) </td> <td> <input type="checkbox"/> LIMITED CASE (Amount demanded was \$25,000 or less) </td> </tr> </table> | | NOTICE OF ENTRY OF JUDGMENT OR ORDER | | (Check one): <input checked="" type="checkbox"/> UNLIMITED CASE (Amount demanded exceeded \$25,000) | <input type="checkbox"/> LIMITED CASE (Amount demanded was \$25,000 or less) |
| NOTICE OF ENTRY OF JUDGMENT OR ORDER | | | | | |
| (Check one): <input checked="" type="checkbox"/> UNLIMITED CASE (Amount demanded exceeded \$25,000) | <input type="checkbox"/> LIMITED CASE (Amount demanded was \$25,000 or less) | | | | |
| CASE NUMBER: 19CV00673 | | | | | |

TO ALL PARTIES :

1. A judgment, decree, or order was entered in this action on (date): August 10, 2020 and September 30, 2022.
2. A copy of the judgment, decree, or order is attached to this notice.

Date: October 17, 2022

Ira James Harris

(TYPE OR PRINT NAME OF ☒ ATTORNEY ☐ PARTY WITHOUT ATTORNEY)


(SIGNATURE)

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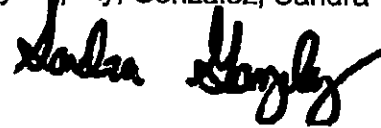
Attorney for Plaintiffs/Petitioners

Electronically Filed
Superior Court of California
County of Santa Cruz

August 10, 2020

Alex Calvo, Clerk

By Deputy, Gonzalez, Sandra



SUPERIOR COURT OF CALIFORNIA

COUNTY OF SANTA CRUZ

FOWLER PACKING COMPANY, a California Corporation, WILLIAM P. AND LINDA L. SULLIVAN, TRUSTEES OF THE SULLIVAN FAMILY REVOCABLE LIVING TRUST DATED MAY 2, 1996; MARK A. AND SUZANNE J. CAUWELS, TRUSTEES OF THE MARK AND SUZANNE CAUWELS FAMILY TRUST INITIALLY CREATED ON JULY 30, 1992; NORMAN L. CHAPMAN AND CAROL S. CHAPMAN, TRUSTEES OF THE 2000 NORMAN L. CHAPMAN & CAROL S. CHAPMAN REVOCABLE TRUST UNDER INSTRUMENT DATED JUNE 6, 2000; DAWNA SUTTON, TRUSTEE OF THE SUTTON FAMILY REVOCABLE TRUST DATED OCTOBER 6, 1997

Plaintiffs,

vs.

COUNTY OF SANTA CRUZ, a Public Entity; CALIFORNIA COASTAL COMMISSION, a Public Agency; ALL PERSONS UNKNOWN CLAIMING ANY LEGAL OR EQUITABLE RIGHT, TITLE, ESTATE, LIEN OR INTEREST IN THE PROPERTY DESCRIBED IN THE COMPLAINT ADVERSE TO PLAINTIFFS' TITLE OR ANY CLOUD ON PLAINTIFFS' TITLE THERETO; and DOES 1 to 100, inclusive.

Defendants.

No.: 19CV00673

ORDER GRANTING PETITIONERS WRIT OF MANDAMUS PURSUANT TO C.C.P. SECTION 1085

Complaint Filed: February 27, 2019

ORDER GRANTING WRIT OF MANDAMUS

1 Petitioners are five property owners with a private driveway easement on Geoffrey Drive, Santa
2 Cruz, located on a bluff above Twin Lakes State Beach. Petitioners challenge the Coastal Commission's
3 jurisdiction to (1) reverse the County's exemption determination on their application for a Development
4 Permit to install a gate and fence on their easement; (2) require Petitioners to either remove the gate
5 and fence or apply for a Coastal Development Permit (CDP); and (3) impose civil penalties if Plaintiffs
6 refuse to remove the gate and fence to allow public access to Twin Lakes State Beach. Petitioners seek
7 a writ of mandate directing the County and the Coastal Commission to (1) withdraw demands for the
8 retraction of their Development Permit; (2) withdraw demands for another CDP for the gate and
9 improvements; and (3) withdraw a threat of civil administrative penalties under Pub. Resources Code
10 §30821 in the event that Plaintiffs do not remove the gate and fence to allow public access to the beach.

11 The Commission asserts that Petitioners' requests for relief are not ripe for adjudication, because
12 neither the County or the Commission has pursued any "formal" enforcement efforts; that Petitioners'
13 failure to exhaust their administrative remedies by applying for a CDP bars their claim; and that the
14 petition fails on the merits, because Petitioners did not apply for a Coastal Development Permit, they did
15 not qualify for an exemption under the County's Local Coastal Plan (LCP), and there was no formal
16 exemption determination or final agency action triggering the deadlines for Commission action. The
17 Commission concedes that it does not have appellate jurisdiction but asserts that it may exercise its
18 independent enforcement powers over the subject gate and fence.

19 **I. The Regulatory Scheme For Exemption Determinations Under The LCP**

20 The County has a certified Local Coastal Plan. Therefore, development review authority over
21 any new development is "delegated to the local government that is implementing the local coastal
22 program", and "shall not longer be exercised by the commission..". *Public Resources Code §30600(d)*
23 *SCCC §13.20.080* provides the regulatory framework for the determination of exemptions from the
24 requirement of a CDP, and the notice and hearing procedures thereafter. The exemption determination is
25 to be made "by the local government at the time the application for development within the Coastal
26 Zone is submitted or as soon thereafter as possible, and in all cases prior to the application being
27 complete for processing"; and "may be made by any designated local government employee".
28

1 If the exemption determination is challenged by the applicant or an interested person, or if the
2 County wishes to have a Commission determination as to the appropriate designation, the County is to
3 notify the Commission by telephone and request the Executive Director's opinion. (SCCC §13.20.080
4 (B)) The Executive Director then has two working days to transmit his or her determination. (SCCC
5 §13.20.080 (C)) If the Executive director's determination differs from the County's determination the
6 Commission is to hold a hearing to determine the appropriate determination. (SCCC §13.20.080(D))

7 The information on development permits within the Coastal Zone which are exempt are to be
8 maintained on the County's computer system. "Upon request a list of the exempt applications will be
9 generated"; and "upon a request from the Coastal Commission Executive Director for any particular
10 case" the County is to provide the same information that is required for permit exclusions, as set forth in
11 subsection (F). (SCCC §13.20.080 (E))

12 **II. Petitioners' Application For A Development Permit**

13 On October 20, 2016 Petitioners submitted an application to the County for a Development
14 Permit and Over-Height Fence Certification for the installation of a gate and fence across the easement.
15 [AR 15-18] The application identifies the project as being in the Coastal Zone [AR 15]. The
16 application was "reviewed in light of 13.20.062" by County Planner Jerry Busch, the designated County
17 employee authorized under the County's Local Costal Plan (LCP) to determine if the project was
18 exempt from the requirement of a coastal development permit; and Mr. Busch determined that the
19 project was exempt [AR 86]. On January 22, 2016 the County approved and issued the Development
20 Permit. [AR 24]. In February 2016 Petitioners were issued a building permit [AR 31-33] and proceeded
21 to install the fence and gate at a cost of \$175,000.

22 There were no challenges to the County's exemption determination on Petitioners' application,
23 the County did not request an opinion from the Commission on the determination, and the Commission
24 did not request a list of exempt applications or information on Petitioners' application. A June 6, 2018
25 entry in the County's computer system identifies Petitioner's application as exempt.

26 //

27 //

28 //

1 **III. The Commission's Actions**

2 In November 2017, the Commission began to make inquiries of County staff as to whether
3 Petitioners' gate was permitted. [AR 87- 88]. In January 2018 the County advised the Commission that
4 the gate and fence were permitted and had been deemed exempt from a CDP [AR 86]. In a letter dated
5 April 11, 2018 an Enforcement Supervisor for the Commission "formally" brought the County's
6 attention to the Commission's position that a CDP was required for the "unpermitted" gate . The letter
7 advised that the gate requires a CDP and "needs to be removed, or if not removed authorized by a CDP"
8 and that any CDP would require provisions for public access to Twin Lakes State Beach. The
9 Commission offered to "coordinate with County regarding resolution of the violations," and advised that
10 if the County did not act to resolve the matter and restore public access, the Commission "may impose
11 enforcement action". [AR 36-37]

12 On May 4, 2018, the Commission sent a letter to Petitioners' titled "Notice of Violation," and
13 references "the above referenced violation- file". The letter states that the County requested the
14 Commission to take the "enforcement lead", and recites the basis for the Commission's conclusion that
15 a CDP was required; states that "In cases involving violations of the public access provisions of the
16 Coastal Act, as appears to be the case here" civil penalties of up to \$11,250 per day may be imposed
17 under §30821(h) if the property owner does not correct the violations within 30 days of receiving written
18 notification from the Commission regarding the violation; and further states "please consider this letter
19 to be 'written notification' for purposes of §30821(h)". The letter concludes by demanding that
20 Petitioners submit "by June 8, 2018 a complete CDP application to authorize the subject gate and signs
21 in a manner that respects historic public access and use or remove the gate and signs". [AR 44-45]

22 On June 1, 2018, in response to Petitioner's offer to meet and confer, the Enforcement supervisor
23 for the Commission sent a letter to Petitioners' counsel asserting the Commission's authority to
24 challenge the County's exemption determination, that a CDP was required which would be conditioned
25 on public access, and demanding that that Petitioners submit a complete CDP application "by July 2,
26 2018 or remove the gate/fence" [AR 51-55].

27 On June 29, 2018, The Commission's Enforcement Supervisor again wrote to Petitioners'
28 counsel, asking if Petitioners intended to apply for a CDP or if "we will need to address this matter

1 through other means including formal enforcement action as detailed in our previous letters. " [AR 66]

2 On August 2, 2018 Petitioners agreed to temporarily remove the gate, under protest, in order to
3 avoid the threatened civil penalties. [AR 83]

4 **IV. Petitioners' Claims Are Ripe For Adjudication**

5 The Commission contends that Petitioners' claims are not ripe, because the Commission merely
6 expressed an opinion that a CDP was required for the gate, and it has never demanded that Petitioners
7 apply for a CDP, has not pursued an enforcement action, and has not demanded a retraction of
8 Petitioners' development permit. The letters from the Commission's Enforcement Supervisor titled
9 Notice of Violation, referencing a violation file, and demanding that Petitioners apply for a CDP or
10 remove the gate by specific deadlines demonstrates that the Commission has initiated an enforcement
11 action. Petitioners' claims are ripe.

12 **V. There Are No Administrative Remedies Available To Petitioners**

13 The Commission essentially argues that Petitioners must accept the Commission's authority to
14 challenge the County's exemption determination by submitting a new CDP application in order to
15 exhaust their administrative remedies. However, Petitioners are without an available administrative
16 remedy as to their present challenge to the Commission's authority and jurisdiction.

17 The Commission's reliance on *South Coast Regional Commission v. Gordon* (1977) 18 Cal. 3d
18 832, as authority for its argument that Petitioners are required "to raise their arguments to the
19 Commission before seeking relief in the courts, even if they "did not apply for a permit because of the
20 view that one was not required", is misplaced. In that case the court reasoned that the defendant was
21 attempting "to raise by way of defense a matter which is initially committed to the Commission's
22 determination, and which he has not presented to that agency". Here, however, Petitioners did apply to
23 the County for a development permit under the County's certified LCP.

24 **VI. The Exemption Determination Was Made In Full Compliance With The County's**
25 **Procedures Under The LCP**

26 The Commission argues that Petitioners never applied for a CDP, and that there was only an
27 "informal" belief by a County employee that the project was exempt—not a formal exemption
28 determination. As authorized under SCCC §13.20.080 the County employee designated to make

1 exemption determinations under the County's LCP reviewed Petitioners' development permit
2 application, which indicated that the project was in the Coastal Zone and determined that it was exempt
3 from the CDP requirement.

4 **VII. Commission Does Not Have Authority To Challenge The County's 2016 Exemption**
5 **Determination.**

6 The Commission admits that it does not have appellate jurisdiction over the exemption
7 determination and asserts instead that it has broad independent enforcement authority as to the subject
8 gate and fence. The Commission cites no authority for this position. Moreover, Petitioners properly
9 applied for a development permit, and the gate and fence were permitted under the County's LCP
10 authority. Therefore, there is no violation to enforce.

11 The time frames for the County's exemption determination ("as soon as possible" after the
12 application is submitted and in all cases prior to the application being deemed complete), and for the
13 Commission's transmittal of a contrary determination (two working days after a local government's
14 request for review) suggest that the County's exemption determinations are to be considered final
15 within a short time frame, and do not remain open to challenges by the Commission many years later.
16 The County's certified LCP does not require notice to the Commission when exemption determinations
17 are made, and instead puts the Commission on inquiry notice as to these determinations. Not having
18 made any inquiry or utilized the available procedures under SCCC §13.20.080 to review the County's
19 exemption determination for error, the Commission no longer has authority to challenge the County's
20 exemption determination, which is now final.

21 **VIII. The County Has Authority To Perform The Acts The Petition Seeks To Compel**

22 In light of the foregoing, the County's position that the writ is not properly directed at the
23 County, because the Commission retains authority to challenge the County's exemption determination
24 and enforce compliance with State law, is incorrect.

25 Petitioner's First Cause of Action for a Writ of Mandamus directing the County and the Coastal
26 Commission to (1) withdraw demands for the retraction of their Development Permit; (2) withdraw
27 demands for another CDP for the gate and improvements; and (3) withdraw any threat of civil
28

1 administrative penalties under Pub. Resources Code §30821 in the event that Plaintiffs do not remove
2 the gate and fence to allow public access to the beach is HEREBY GRANTED.

3 APPROVAL AS TO FORM:

4 Dated: July 30, 2020

Law Office of Ira James Harris

By 

Ira James Harris, Esq.
Counsel for Plaintiffs/Petitioners
Fowler Packing Company et. al.

9 Dated: July 31, 2020

Santa Cruz County Counsel

By 

Daniel Zazueta, Esq.
Counsel for County of Santa Cruz

14 August 5, 2020
Dated: July ___, 2020

Attorney General of California

By 

Joel Jacobs

Original / unredacted / unaltered
Dkt. no. 1001 Jacobs, et al.
Case 1:20-cv-00101-JCS Document 1-1 Filed 08/04/20 Page 1 of 1
Date: 2020/08/04 17:28:32 -0700

Joel S. Jacobs, Esq.
Counsel for the California Coastal
Commission

19 IT IS SO ORDERED:

20 Dated: August ___, 2020

21 Signed: 8/10/2020 02:18 PM

SANTA CRUZ SUPERIOR COURT

By 

Hon. Judge Timothy R. Volkmann

28 ORDER GRANTING WRIT OF MANDAMUS

1 IRA JAMES HARRIS, SB #99760
2 LAW OFFICES OF IRA JAMES HARRIS
3 One Camino Sobrante, Suite 208
P.O. Box 1478
Orinda, CA 94563
4 Telephone: (925) 258-5100
5 Facsimile: (925) 281-4977
6 Attorney for Plaintiffs

Electronically Filed
Superior Court of California
County of Santa Cruz
September 30, 2022
Alex Calvo, Clerk
By Deputy, Salsedo, Declan
9/30/2022 8:31:12 AM

8 SUPERIOR COURT OF CALIFORNIA
9 COUNTY OF SANTA CRUZ

11 FOWLER PACKING COMPANY, a California
12 Corporation, WILLIAM P. AND LINDA L.
13 SULLIVAN, TRUSTEES OF THE SULLIVAN
FAMILY REVOCABLE LIVING TRUST DATED
MAY 2, 1996; MARK A. AND SUZANNE J.
14 CAUWELS, TRUSTEES OF THE MARK AND
SUZANNE CAUWELS FAMILY TRUST
INITIALLY CREATED ON JULY 30, 1992;
15 NORMAN L. CHAPMAN AND CAROL S.
16 CHAPMAN, TRUSTEES OF THE 2000
NORMAN L. CHAPMAN & CAROL S.
17 CHAPMAN REVOCABLE TRUST UNDER
INSTRUMENT DATED JUNE 6, 2000; DAWNA
18 SUTTON, TRUSTEE OF THE SUTTON FAMILY
REVOCABLE TRUST DATED OCTOBER 6,
1997

20 Plaintiffs,

21 vs.

22 COUNTY OF SANTA CRUZ, a Public Entity;
23 CALIFORNIA COASTAL COMMISSION, a
Public Agency; ALL PERSONS UNKNOWN
24 CLAIMING ANY LEGAL OR EQUITABLE
RIGHT, TITLE, ESTATE, LIEN OR INTEREST
25 IN THE PROPERTY DESCRIBED IN THE
COMPLAINT ADVERSE TO PLAINTIFFS'
26 TITLE OR ANY CLOUD ON PLAINTIFFS'
TITLE THERETO; and DOES 1 to 100, inclusive,

27 Defendants.
28

No.: 19CV00673

[PROPOSED] JUDGMENT ON THE
SECOND AND THIRD CAUSES OF
ACTION QUIETING TITLE.

[Code of Civil Procedure §§ 764.010 to
764.080]

Complaint Filed: February 27, 2019
Writ of Mandamus GRANTED: 08/10/2020

1 This matter came on regularly before Honorable Judge John Gallagher in Department 10 through
2 a application for a Default Judgment on the following documentation: (1) a dismissal without prejudice
3 of all Doe Defendants named on the First and Second Causes of Action; (2) a dismissal without
4 prejudice of the California Coastal Commission on the First Cause of Action; (3) a Memorandum of
5 Points & Authorities and a Declaration from Plaintiff's counsel Ira James Harris in support of the
6 application evidencing a petition for service by publication, proof of service by publication and entry of
7 a default by the Clerk as against ALL PERSONS UNKNOWN CLAIMING ANY LEGAL OR
8 EQUITABLE RIGHT, TITLE, ESTATE, LIEN OR INTEREST IN THE PROPERTY DESCRIBED IN
9 THE COMPLAINT ADVERSE TO PLAINTIFFS' TITLE OR ANY CLOUD ON PLAINTIFFS'
10 TITLE THERETO, and photographic evidence of the long period of blockage of the northeastern bluff
11 edge leading down off the private driveway from Plaintiffs' residence to Twin Lakes State Beach; and
12 (4) Declarations from each of the property owners with title records and other evidence of the blockage
13 of said slope. The matter has been submitted to the Court for decision, and the Court having made its
14 Findings of Fact and Conclusions of Law states:

15 IT IS ORDERED, ADJUDGED AND DECREED that Plaintiffs FOWLER PACKING
16 COMPANY, a California Corporation, WILLIAM P. AND LINDA L. SULLIVAN, TRUSTEES OF
17 THE SULLIVAN FAMILY REVOCABLE LIVING TRUST DATED MAY 2, 1996; MARK A. AND
18 SUZANNE J. CAUWELS, TRUSTEES OF THE MARK AND SUZANNE CAUWELS FAMILY
19 TRUST INITIALLY CREATED ON JULY 30, 1992; NORMAN L. CHAPMAN AND CAROL S.
20 CHAPMAN, TRUSTEES OF THE 2000 NORMAN L. CHAPMAN & CAROL S. CHAPMAN
21 REVOCABLE TRUST UNDER INSTRUMENT DATED JUNE 6, 2000; DAWNA SUTTON,
22 TRUSTEE OF THE SUTTON FAMILY REVOCABLE TRUST DATED OCTOBER 6, 1997 as of
23 February 27, 2019, the date upon which they commenced the above-entitled action, were and are (with
24 the exception of those interests then recorded on the title to their properties that are not involved in any
25 issue of public access through the properties to Twin Lakes State Beach) the owners of fee simple title
26 absolute holding all right, title, estate and interest in the entirety of their individual residential properties,
27 in actual and peaceable possession of the private driveway easement that extends through their
28 properties more particularly described as follows:

JUDGMENT QUIETING PLAINTIFFS TITLE

1 Twenty Five (25) feet in width, measured at right angles, twelve and one-half (12.5) Feet on each
2 side of the following described centerline:

3 *Beginning at the 3/8 inch iron pipe on the western boundary of the map entitled*
4 *"Tract Number 57, Santa Maria Cliffs," being a part of Section 20, Township 11*
5 *South, Range 2 West, Mount Diablo Meridian, Santa Cruz County, California,"*
6 *filed for record in the office of the County Recorder of Santa Cruz County on March*
7 *11, 1947 in Map Book 28 at Page 48, Santa Cruz County Records, from which the*
8 *most northern corner of Lot 22 as shown on said Map bears South 25° 10' West*
9 *12.50 Feet distant;*

10 *Thence from said Point of Beginning North 64° 50' West 98.18 Feet;*

11 *Thence South 81° 52' West 25 Feet to a Point on the Southeastern Boundary of the*
12 *land conveyed by Joe L. Mello et. ux. to Vincent J. Coates et. ux. recorded May 4,*
13 *1972 in Volume 2197 Page 259, official records of Santa Cruz County;*

14 *Thence North 80° 12' West 58.02 Feet to the Northwester Boundary of said land of*
15 *Coates.*

16 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that no person other than each
17 Plaintiff named above, including the MEMBERS OF THE PUBLIC named as ALL PERSONS
18 UNKNOWN CLAIMING ANY LEGAL OR EQUITABLE RIGHT, TITLE, ESTATE, LIEN OR
19 INTEREST IN THE PROPERTY DESCRIBED IN THE COMPLAINT ADVERSE TO PLAINTIFFS'
20 TITLE OR ANY CLOUD ON PLAINTIFFS' TITLE THERETO Defendants, now have any estate,
21 right, title, interest, or claim in or to the real property, or any part of the real property, either legal or
22 equitable, present or future, vested or contingent, prescriptive or otherwise other than those appearing of
23 record on the title reports for the respective properties presented to the Court as part of this proceeding
24 which do not concern "public access through the properties to view or access Twin Lakes State Beach."

25 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that no person other than each
26 respective Plaintiff has any mortgage or other lien of any description on the real properties or any part of
27 the real properties involved, either legal or equitable, present or future, vested or contingent, prescriptive
28 or otherwise other than those appearing of record on the title reports for the respective properties

JUDGMENT QUIETING PLAINTIFFS TITLE

1 presented to the Court as part of this proceeding which do not concern "public access through the
2 properties to view or access Twin Lakes State Beach."

3 IT IS FURTHER ORDERED ADJUDGED AND DECREED that the title to each Plaintiff's real
4 property is established and quieted as against all the world.

5 Dated: 9/28/2022 2:08:44 PM, 2020 . SANTA CRUZ COUNTY SUPERIOR COURT

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8 Hon. Judge Timothy Volkmann
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PROOF OF SERVICE
[C.C.P. Section 1013, 2015.5]

In re Fowler Packing Company v. County of Santa Cruz
 Santa Cruz Superior Court Action No. 19CV00673
 Our File No. 1142.1

I am a citizen of the United States, a resident of the State of California, and am employed in the County of Contra Costa, State of California. I am over eighteen (18) years of age and am not a party to the above-entitled action. My business address is the law Offices of Ira James Harris, One Camino Sobrante, Suite 208, P.O. Box 1478, Orinda, California 94563. On the date referenced below, I served the following document(s) in the manner indicated below on the person(s) listed on the attached Service List:

Plaintiff's Application for Court Default Judgment on 1st and 2nd Causes of Action for Quiet Title Pursuant to CCP Section 579; Memo of Points & Authorities and Request For Judicial Notice with the declarations of Cauwels, Chapman, Harris, Parnagian, Sklar, Sullivan and Sutton with Exhibits A through K and the prior dismissal without prejudice along with a Proposed Judgment.

☐ **U.S MAIL [CCP §§ 1013(a) & 2015.5]:** by placing the document(s) listed above in a sealed envelope, with First Class postage thereon fully prepaid, and deposited the same in the United States mail at Orinda, California, addressed as set forth on the attached Service List. I am readily familiar with the firm's practice of collection and processing of correspondence for mailing, which deposits mail to the US Postal Service on the same day, with postage fully prepaid in the ordinary course of business.

☒ **E-MAIL OR FACSIMILE TRANSMISSION [CCP §§ 1010.6, 1013(e), 2015.5 & CRC 2008]:** Based on court order or per agreement of the parties to accept service, I caused the documents to be sent to the listed persons at the e-mail or facsimile numbers listed on the attached Service List. I did not receive any error message or other indication that the transmission was unsuccessful. I am familiar with the firm's practices in this regard and the documents were transmitted in the regular course of business.

☐ **PERSONAL DELIVERY:** by personally delivering the document(s) listed above to the person(s) at the address(es) set forth on the Service List.

☐ **OVERNIGHT DELIVERY [CCP §§ 1013(c) & 2015.5]:** by placing the document(s) listed above in a sealed envelope marked next-day delivery by _____

☒ **(State) I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on September 22, 2022 at Orinda, California.**

By 
IRA JAMES HARRIS

SERVICE LIST

In re Fowler Packing Company v. County of Santa Cruz
 Santa Cruz Superior Court Action No.19CV00673
 Our File No. 1142.1

| | | |
|--------------------------------------|---|--|
| County of Santa Cruz | Daniel Zazueta Santa Cruz County Counsel 701 Ocean Street, Room 505 Santa Cruz, CA 95060 | TC: (831) 454-2040 Fax: (831) 454-2115 E: daniel.zazueta@santacruzcounty.us |
| California Coastal Commission | Xavier Becerra David G. Alderson Joel S. Jacobs Attorney General of California 1515 Clay Street, 20 th Floor P.O. Box 70550 Oakland, CA 94612-0550 | TC: (510) 879-0279 Fax: (510) 622-2270 E: Joel.Jacobs@doj.ca.gov |

PROOF OF SERVICE
[C.C.P. Section 1013, 2015.5]

In re Fowler Packing Company v. County of Santa Cruz
 Santa Cruz Superior Court Action No. 19CV00673
 Our File No. 1142.1

I am a citizen of the United States, a resident of the State of California, and am employed in the County of Contra Costa, State of California. I am over eighteen (18) years of age and am not a party to the above-entitled action. My business address is the law Offices of Ira James Harris, One Camino Sobrante, Suite 208, P.O. Box 1478, Orinda, California 94563. On the date referenced below, I served the following document(s) in the manner indicated below on the person(s) listed on the attached Service List:

Plaintiff's NOTICE OF ENTRY OF JUDGMENT with the August 10, 2020 Writ of Mandamus and the September 30, 2022 Default Judgment on the 2nd and 3rd Causes of Action Quieting Title (14 pages not including this proof).

☐ **U.S MAIL [CCP §§ 1013(a) & 2015.5]:** by placing the document(s) listed above in a sealed envelope, with First Class postage thereon fully prepaid, and deposited the same in the United States mail at Orinda, California, addressed as set forth on the attached Service List. I am readily familiar with the firm's practice of collection and processing of correspondence for mailing, which deposits mail to the US Postal Service on the same day, with postage fully prepaid in the ordinary course of business.

☒ **E-MAIL OR FACSIMILE TRANSMISSION [CCP §§ 1010.6, 1013(e), 2015.5 & CRC 2008]:** Based on court order or per agreement of the parties to accept service, I caused the documents to be sent to the listed persons at the e-mail or facsimile numbers listed on the attached Service List. I did not receive any error message or other indication that the transmission was unsuccessful. I am familiar with the firm's practices in this regard and the documents were transmitted in the regular course of business.

☐ **PERSONAL DELIVERY:** by personally delivering the document(s) listed above to the person(s) at the address(es) set forth on the Service List.

☐ **OVERNIGHT DELIVERY [CCP §§ 1013(c) & 2015.5]:** by placing the document(s) listed above in a sealed envelope marked next-day delivery by _____

☒ **(State)** I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on October 18, 2022 at Orinda, California.

By 
IRA JAMES HARRIS

SERVICE LIST

In re Fowler Packing Company v. County of Santa Cruz
 Santa Cruz Superior Court Action No.19CV00673
 Our File No. 1142.1

| | | |
|--------------------------------------|---|--|
| County of Santa Cruz | Daniel Zazueta Santa Cruz County Counsel 701 Ocean Street, Room 505 Santa Cruz, CA 95060 | TC: (831) 454-2040 Fax: (831) 454-2115 E: daniel.zazueta@santacruzcounty.us |
| California Coastal Commission | Xavier Becerra David G. Alderson Joel S. Jacobs Attorney General of California 1515 Clay Street, 20 th Floor P.O. Box 70550 Oakland, CA 94612-0550 | TC: (510) 879-0279 Fax: (510) 622-2270 E: Joel.Jacobs@doj.ca.gov |