

CALIFORNIA COASTAL COMMISSION

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VIA CERTIFIED AND REGULAR MAIL

June 14, 2019

Mr. Seán Carney, Managing Director
Rosewood Miramar Beach Hotel
1759 South Jameson Lane
Montecito, CA 93108

Subject: Notice of Violation¹ of the Coastal Act (file no. V-4-19-0078)

Location: Miramar Beach, Rosewood Miramar Hotel, Montecito, Santa Barbara County, California

Violation Description²: (1) Use of private security guards to obstruct public access to Miramar Beach below the Mean High Tide Line (“MHTL”) and within a lateral public access easement in front of the Rosewood Miramar Hotel property; (2) placement of ropes and stanchions on the beach that discourage and obstruct public access to public areas of Miramar Beach; all of which has occurred without the benefit of a coastal development permit (“CDP”).

Dear Mr. Carney:

It has come to the attention of California Coastal Commission (“Commission”) staff that the Rosewood Miramar Hotel (“Hotel”) has discouraged and prevented public access to public portions of Miramar Beach through the use of private security guards and the placement of a rope fence, consisting of ropes and stanchions, on the beach. The use of security guards on the beach effectively privatizes beach areas where the public has a right to be, including the beach below the MHTL and within the area covered by the lateral public access easement that extends landward of the high wash of the waves for twenty feet (20’) and runs the width of the property. Further, ropes and posts have been placed on the beach and have remained on the beach on a consistent basis, which give the appearance that the entire beach is private, and discourage or

¹ Note that the term “violation” as used throughout this letter refers to alleged violations of the Coastal Act/LCP as determined by Coastal Commission staff.

² Please note that the description herein of the violation at issue is not necessarily a complete list of all development on the subject property that is in violation of the Coastal Act and/or the County’s LCP that may be of concern to the Commission. Accordingly, you should not treat the Commission’s silence regarding (or failure to address) other development on the subject property as indicative of Commission acceptance of, or acquiescence in, any such development.

prevent public access. Public access is protected under the Coastal Act, and protecting such access is a high priority of the Commission.

The use of security guards and consistent placement of a rope fence are both development as defined in the Coastal Act, and also result in a change in access to the coast, which amounts to “development” that requires a CDP. To the knowledge of Commission staff, no CDP authorizing the use of security guards and consistent placement of a rope fence on the beach has been sought or obtained by the hotel, and thus the subject development appears to be unpermitted. Although a Santa Barbara County CDP allows for very limited use of rope barriers during special events, that is not the case here. Unpermitted development that is not otherwise exempt is a violation of the Coastal Act³ and the County of Santa Barbara (“County”) Local Coastal Program (“LCP”). Interfering with public access to coastal waters is also inconsistent with the public access provisions of the Coastal Act and the County’s LCP.

The purpose of this letter is to formally bring these matters to the attention of the Hotel and to request that the Hotel immediately discontinue the use of security guards for the purpose of directing the public off of, or away from, public areas of the beach, and to request that the Hotel immediately discontinue the consistent use of the rope fence, and any other unpermitted development that may discourage or prevent public access. In response to a recent incident involving the above-described actions and some families who were recreating on the beach, the Hotel has stated, in the *Santa Barbara Independent*, that it has “had productive conversations to ensure that [the group of local families] feels welcomed;” but even if that were to be accurate, that does not address the unpermitted activities or the need for Coastal Act review for any development on the beach, nor does it ensure legal compliance going forward. We would be happy to discuss this letter with you to help quickly facilitate a resolution of this matter that protects public access opportunities and is consistent with the Coastal Act, the LCP, and any other permits or licenses.

I. Development Has Occurred Without a Valid Coastal Development Permit

Regulatory Background

In 1972, voters approved Proposition 20, the California Coastal Zone Conservation Act of 1972, which created the California Coastal Commission’s predecessor agencies. The Coastal Act was enacted by the State Legislature in 1976 to replace Proposition 20 and provide long-term protection of California’s 1,100-mile coastline through implementation of a comprehensive planning and regulatory program designed to manage conservation and development of coastal resources. The California Coastal Commission is the state agency created by, and charged with administering, the Coastal Act. In making its permit and land use planning decisions, the Commission carries out Coastal Act policies, which, amongst other goals, seek to protect and restore sensitive habitats; protect natural landforms; protect scenic landscapes and views of the sea; protect against loss of life and property from coastal hazards; and provide maximum public

³ The Coastal Act is codified in sections 30000 to 30900 of the California Public Resources Code. All further section references are to that code, and thus, to the Coastal Act, unless otherwise indicated.

access to the coast. The County implements public access policies through its LCP, which was first certified by the Commission in 1982, within its LCP area. The Hotel is located within the Coastal Zone, and all development in the Coastal Zone requires a CDP unless otherwise exempt, which is not the case here, as explained below.

Factual Background

Commission staff received reports that private security guards at the Rosewood Miramar Hotel directed beachgoers to leave the public beach area in front of the Hotel on June 6, 2019. The incident was described in a news article in the *Santa Barbara Independent* on June 7, 2019. Seán Carney, Managing Director of the Hotel, replied to the allegations in a letter, which was also published in the *Santa Barbara Independent* on June 7, 2019. The Hotel's reply posited that security guards were not obstructing public access to the public area of the beach. However, contrary to the Hotel's stated position, the members of the public who were kicked off the beach stated that they were below the MHTL where the public has a right to be. Moreover, as explained below, there is a lateral public access easement in this location that allows public use of the beach above the MHTL.

Commission staff also received reports that certain areas of the beach are being consistently roped off to demarcate areas to be used solely by Hotel patrons. Commission staff visited the Hotel shortly after hearing about the above incident and noticed the placement of ropes and stanchions, which appear to exclude the public from a large portion of the beach. There is evidence that these rope fences are employed on a daily basis, which is supported by the Hotel's statements that the rope and stanchions are in place to define the area where food and beverage is being served to ensure that individuals do not take beverages outside the designated area.

Development

Development is broadly defined by Section 30106 of the Coastal Act and Section 35-58 of the Santa Barbara County Coastal Zoning Ordinance as follows:

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

[Underlining added for emphasis.]

Placement of Solid Material on Land

The consistent placement of ropes and stanchions, both of which are solid materials, on the beach constitutes development. Commission staff received reports of a roped-off area on the beach in front of the hotel, and upon visiting the site on June 10, 2019, staff confirmed the placement of ropes in front of the hotel. The ropes were placed perpendicular to the shoreline in at least three locations: at the east end of the property toward Posilipo Lane, at the west end of the property, toward Eucalyptus Lane, and in the middle of the property.

Change in Access to the Water

Under well-settled state law, the state of California owns the tidelands and submerged lands seaward of the MHTL, and these lands are held in trust for the public. Article X, Section 4 of the California State Constitution states:

No individual, partnership, or corporation, claiming or possessing the frontage of tidal lands of a harbor, bay, inlet, estuary, or other navigable water in this State, shall be permitted to exclude the right of way to such water whenever it is required for any public purpose, nor to destroy or obstruct free navigation of such water; and the Legislature shall enact such laws as will give the most liberal construction to this provision so that access to the navigable water of this State shall always be attainable for the people thereof. [Underlining added for emphasis.]

The public/private boundary is also referred to as the "ambulatory high tide line." Although it is difficult to ascertain the precise boundary between public and private lands, the ordinary high water mark in this location is the place where the mean high tide intersects with the beach. Therefore, regardless of whether or not a lateral public access easement exists on the site (and there is indeed an easement on this site), the public has the right to access and enjoy use of the area seaward of the MHTL (which is ambulatory and is commonly considered to be the area of beach at and below the predominant line of seaweed).

On July 21, 1975, in consideration of the issuance of Commission CDP No. 37-5, Instrument No. 38376 was recorded in the Santa Barbara County Recorder's Office. That document granted an easement to the public over a strip of land running the full width of the Rosewood Miramar Hotel Property and extending landward from the sea. The easement grants to the public:

“non-exclusive [right] to pass, repass, to walk, to stroll, to have access to the ocean, to sunbathe, to picnic, to gather shells, and to participate in lawful recreation and sports to the extent that such activity does not create a nuisance or unreasonably interfere with other persons' peaceful enjoyment of the beach. . . .”

“[within] a strip of land that shall always be at least twenty feet (20') in width measured northerly (landward) from the high wash of the waves of the Pacific Ocean at any given moment, and to the extent necessary to maintain said twenty feet (20') in width at any given moment, said northerly (landward) boundary of the dedicated strip shall encroach into the sixty feet (60') area seaward of said Boardwalk line. . . .”

A CDP⁴ obtained by the Hotel from Santa Barbara County in 2014 incorporates the previously recorded easement by reference, which states:

“A 20-foot lateral easement to the public is recorded over the hotel’s full beach frontage. The southern boundary of the public lateral easement is the water’s edge; as a result, the 20 foot lateral easement varies in location with the change in tide line. However, as a matter of State law, the public always maintains the right to access the beach below the mean high-tide line regardless of where the water’s edge is located at any moment in time.” [Emphasis added.]

The Hotel, through its consistent placement of ropes and stanchions, has changed access to the water by discouraging the public from accessing the beach area beyond the boundary of the ropes. The consistent presence of a rope fence on the beach gives the appearance that the entire coastline in this area is private, when in fact it is not. This dissuades approaching visitors from accessing coastal waters and tidelands and discourages visitors from recreating where a lateral easement for public access exists at Miramar Beach. Additionally, depending on the tide and wave height throughout each day, the end of the rope fence could encroach into the public access easement on the twenty feet of beach landward of the water. Thus, in addition to being the placement of solid material, the presence of the rope fence also constitutes development in that it discourages public access.

Further, in at least one reported instance, Hotel security guards asked members of the public who were on the beach below the MHTL in front of the hotel property to leave. The physical presence of security guards on the beach, and their actions discouraging the public’s use of the beach, also results in a change in access to the water, so it is also development.

A Coastal Development Permit is Required

Any activity on the beach that changes public access to the ocean is “development” as defined by the Coastal Act/LCP, as discussed above, and therefore may not be undertaken unless authorized by a CDP. Security guards and rope barriers that discourage or impede public access to areas below the MHTL or to areas where a lateral public access easement exists on the beach are activities that constitute “development” as that term is defined. Section 30600(a) of the Coastal Act states that, in addition to obtaining any other permit required by law, any person wishing to perform or undertake any development in the Coastal Zone must obtain a CDP.

To the knowledge of commission staff, no CDP was issued to authorize the use of private guards or the consistent placement of rope barriers on the beach. Thus, these activities constitute a violation of the Coastal Act/LCP. Moreover, it is also not likely that Commission staff could recommend approval of a request to authorize such use of guards and barriers since this practice is inconsistent with the public access protection policies of the Coastal Act and the LCP.

⁴ The Miramar Beach Resort and Bungalows Proposed Revised Project; Santa Barbara County Permit Numbers: 14RVP-00000-00063, 14AMD-00000-00010, 14AMD-00000-00011, 14CDP-00000-00086, 14CDP-00000-00090, 14CDP-00000-00091

Prior Coastal Development Permits do not Authorize the Hotel's Actions

The Rosewood Miramar Hotel obtained previous CDPs from the Commission and Santa Barbara County, but upon review of the CDPs, Commission staff confirmed that none of these permits authorizes use of security guards on the beach or placement of a rope fence on the beach on a consistent basis. In fact, the CDP obtained by the Hotel from the County specifically provides for public access, consistent with the County's LCP and the Coastal Act and the previously recorded public access easement. The County CDP states:

On a portion of the sandy beach section of the property ("hotel beach use area"), running along the entire width of the Miramar Hotel beach frontage and to a line approximately 60 feet seaward of the existing boardwalk, subject to adjustment in accordance with the public access agreement⁵, the hotel owner would provide a number of services to its hotel guests and visitors []. . . . The hotel may place non-permanent items such as chairs, umbrellas, and other non-motorized beach-related recreation items (inflatable rafts, boogie boards, etc.) out for hotel guests within the hotel beach use area, outside of the public's lateral access area. [Emphasis added.]

A rope fence is not one of the objects or structures allowed outside the public access easement pursuant to the CDP language above, and the language above does not allow placement of *anything* within the easement.

Additionally, the County CDP provides for the limited placement of non-permanent items for events only. The permit states in part:

Hotel events in the hotel beach use area would include, but would not be limited to, wedding ceremonies, commitment ceremonies, cocktail parties, or other small gatherings and would be limited to no more than 30 per year, for no more than 60 minutes per event, and with no more than 100 people. During hotel events on the beach, non-permanent items such as chairs, small tents, rope barriers, and small signs may be put up immediately before the event and removed promptly afterwards. Non-amplified music would be allowed on the beach during these events, (i.e., guitars, small string trios or quartets, etc.).

During a hotel event on the beach, part of the hotel beach use area would be limited to use by the hotel. However, hotel operations would at no time infringe on the lateral public easement as described in the dedication referenced above. [Emphasis added.]

The Hotel is not authorized to place rope barriers on the beach on a consistent basis. The CDP provides that rope barriers may be used in a limited area (outside the public access easement), during a limited number of events, for a limited amount of time, for a limited number of people. The Hotel stated, in a letter published in the *Santa Barbara Independent* on June 7, 2019, that the rope barriers were being used for reasons other than temporary events, i.e. to demarcate an area for alcohol service and consumption. The CDP does not allow for the use of rope barriers to

⁵ Described in a dedication by William P. Gawzner and June Outhwaite dated July 21st 1975 (Recorded October 28, 1975, Book 2591, Page 617).

demarcate an area for beverage service and requires that rope barriers, when authorized, shall “at no time infringe on the lateral public easement.”

Moreover, the use of guards to preclude access is directly inconsistent with terms and conditions of previously issued Commission CDP that established public rights of access on areas of the beach above the MHTL and placed restrictions on private use of the beach in order to implement California Coastal Zone Conservation Act policies supporting public access.

Alcoholic Beverage Compliance Must Also Comply With Other Laws

The Hotel, in its published letter on June 7, 2019, in the *Santa Barbara Independent*, stated that the rope barriers placed on the beach were in order to maintain compliance with government approvals. If the Hotel is required to ensure that alcoholic beverages are contained to certain areas, the Hotel must do so in a way that is consistent with other all other applicable laws and requirements as well, including the Coastal Act, LCP, and previously issued CDPs. All over the coast there are activities to which other legal restrictions or conditions may apply, but this in no way confers an exception from the requirements of the Coastal Act.

II. Development Has Occurred that is Inconsistent with Coastal Act and County LCP Public Access Provisions

The use of guards and placement of rope barriers that discourages and precludes public use of the public beach and public tidelands for the benefit of hotel guests who can afford to stay at the Rosewood Miramar Hotel effectively privatizes the public beach and tidelands and violates the terms of the recorded lateral public access easement. Thus, this unpermitted development is inconsistent with the public access and recreation policies of the Coastal Act, and public access and recreation policies of the LCP, including, but not limited to, the following sections:

Section 30210⁶ states:

In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse. [Underlining added for emphasis.]

Section 30211⁷ states:

Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.

⁶ Santa Barbara Co. Coastal LUP (2014), Sec. 3.7.1, Coastal Access and Recreation, Coastal Act Policies; Sec. 3.7.3, Planning Issues, Incompatible Recreational Uses.

⁷ *Id.* at Sec. 3.7.1. Coastal Access and Recreation, Coastal Act Policies.

Section 30220⁸ states:

Coastal areas suited for water-oriented recreational activities that cannot readily be provided at inland water areas shall be protected for such uses.

Section 30221⁹ states:

Oceanfront land suitable for recreational use shall be protected for recreational use and development unless present and foreseeable future demand for public or commercial recreational activities that could be accommodated on the property is already adequately provided for in the area. [Emphasis added.]

The subject development, including the use of security guards and the consistent placement of rope barriers, discourages, if not precludes, public use of public land and land designated for public access and effectively privatizes the public beach for the benefit of the Hotel and its patrons, thereby limiting the public's use and enjoyment of a protected public resource.

Imposition of Penalties for Public Access Violations

Section 30821 of the Coastal Act authorizes the Commission to impose administrative penalties on anyone who violates the Coastal Act's public access provisions, with exceptions not applicable here. The penalties imposed can be up to \$11,250 per day for each day that each violation persists, for up to five years.

Since we believe the violations at issue are both inconsistent with the public access provisions of the Coastal Act, and unpermitted, we believe that potential penalties would be accruing, by operation of law, from the date(s) of the violations. To avoid potential exposure to penalties in addition to those that have already potentially accrued, we are requesting that: 1) the Hotel immediately discontinue the use of guards and the consistent placement of rope barriers at the beach in front of Rosewood Miramar Hotel and provide Commission staff with written confirmation that this activity has been discontinued by **June 28, 2019**; and 2) immediately discontinue any other activity that would purport to identify the areas of public beach or discourage use of public beach.

Moreover, providing hotel guests who can afford to pay the \$700 + per night room rate exclusive use of the beach that legally may be used by the general public is inconsistent with the environmental justice provisions of the Coastal Act¹⁰ because many members of the public visit the beach as a low-cost recreational activity, but cannot afford to live at or near the coast, and these types of activities directly impact the ability of such members of the public to exercise their rights to use areas authorized to be used by the public.

⁸ *Id.* at Sec. 3.7.3. Planning Issues, Related Issues.

⁹ *Id.* at Sec. 3.7.1. Coastal Access and Recreation, Coastal Act Policies.

¹⁰ In 2016, the Legislature passed, and Governor Brown signed, Assembly Bill (AB) 2616 (Chapter 578, Statutes of 2016) amending the Coastal Act to, among other things, give the Commission explicit authority to consider environmental justice in its permitting and planning decisions.

III. Enforcement Remedies for Violations of the Coastal Act

The County's geographic permit jurisdiction under the certified LCP extends inland from the MHTL to the inland boundary of the statutorily defined Coastal Zone. Though the Hotel is, located within an area where there is a certified LCP, the Commission may still enforce its own CDP No. 37-5, as well as address any unpermitted development with its retained jurisdiction areas. Moreover, pursuant to Section 30810 of the Coastal Act, the Commission can enforce the requirements of a certified LCP under specified circumstances.

Please be aware that there are a number of remedies at the Commission's disposal to address violations of the Coastal Act, in addition to the ability to impose administrative fines pursuant to Coastal Act Section 30821, as described above.

Section 30809 states that if the Executive Director of the Commission determines that any person has undertaken, or is threatening to undertake, any activity that requires a permit from the Coastal Commission without first securing a permit, the Executive Director may issue an order directing that person to cease and desist. Section 30810 authorizes the Coastal Commission to also issue a cease and desist order. A cease and desist order may be subject to any terms and conditions that are necessary to ensure compliance with the Coastal Act. A violation of a cease and desist or restoration order can result in civil fines of up to \$6,000 for each day in which the violation persists.¹¹

Section 30820(a)(1) provides that any person who performs development in violation of any provision of the Coastal Act may be subject to a penalty amount that shall not exceed \$30,000 and shall not be less than \$500 per violation. Section 30820(b) states that, in addition to any other penalties, any person who "knowingly and intentionally" performs or undertakes any development in violation of the Coastal Act can be subject to a civil penalty of not less than \$1,000 nor more than \$15,000 per violation, for each day in which the violation persists.

In addition, we note that Sections 30803 and 30805 authorize the Commission to initiate litigation to seek injunctive relief and an award of civil fines in response to any violation of the Coastal Act.

An Amicable Resolution is Preferred

Here, as always, we would prefer to resolve this situation amicably. If you choose not to discontinue use of private guards and rope barriers, however, Commission staff will consider beginning formal proceedings (1) for issuance of a cease and desist order to compel the discontinuation of the use of security guards and (2) to assess administrative penalties pursuant to Section 30821 of the Coastal Act. However, we are happy to work cooperatively with the Hotel to resolve this matter. We look forward to receiving written confirmation from you that use of security guards and rope barriers on the beach has been discontinued. Please do not hesitate to

¹¹ Section 30821.6: Violation of orders; civil penalties; local government agency actions.

call me at (805)585-1800 if you have any questions about the pending enforcement action or this letter.

Sincerely,

A handwritten signature in black ink, appearing to read 'Tina Segura'. The signature is fluid and cursive, starting with a large 'T' and ending with a long horizontal stroke.

Tina Segura
Enforcement Officer

cc: Rick Caruso, Owner, Miramar Acquisition Co., LLC
Lisa Plowman, Planning & Development Director, Santa Barbara County
John Zorovich, Enforcement Manager, Santa Barbara County
John Ainsworth, Executive Director, CCC
Andrew Willis, Southern California Enforcement Supervisor, CCC
Lisa Haage, Chief of Enforcement, CCC
Steve Hudson, Deputy Director, CCC
Alex Helperin, Senior Staff Counsel, CCC
Linda Locklin, Public Access Manager, CCC