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December 16, 2014

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Via Regular Mail and Facsimile 415-904-5400

Peter Allen
Statewide Enforcement Analyst
California Coastal Commission
45 Fremont Street, Suite 200
San Francisco, CA 94105-2219

***Re: Martins Beach Coastal Act Violations
Violation File Number: V-2-009-007
Property: 22325 Cabrillo Highway (Highway One), San Mateo County, CA;
APNs 066-330-230 & 066-330-240***

Dear Mr. Allen:

I am writing in response to your letter dated December 8, 2014, in which the Coastal Commission takes the position that certain activities at the Martins Beach property constitute "development" under the Coastal Act and require a Coastal Development Permit ("CDP").¹ As you know, since early 2009, the ownership of Martins Beach 1, LLC and Martins Beach 2, LLC ("Martins") has turned to the Courts, seeking to obtain clarification of their legal rights in connection with the property. It has always been the intent of the owners of Martins Beach to determine, and comply with the law on the issues surrounding the Property, including the issue of public access. The San Mateo County Superior Court addressed the issue of public access in the *Friends of Martins Beach* case, where in its final Judgment dated April 30, 2014, the Court ruled that there is no "...right of public access or easement for the public to use or access the Property for any purpose whatsoever." A copy of Judge Buchwald's Judgment, which is currently on appeal, is attached for your convenience.

Subsequently, on December 1, 2014, Judge Mallach issued her final judgment in the *Surfrider* case, stating, in part "[t]he gate across Martins Beach Road must be unlocked and open to the same extent that it was unlocked and open at the time Defendants purchased the property." The Judgment also requires Martins to "obtain a Coastal Development Permit to change the public's access to and use of the water, beach and/or coast at Martins Beach." A copy of Judge Mallach's Judgment is also attached for your convenience. As we have stated throughout this process, Martins intends to comply with the Court's orders.

¹ In footnote 4, the Coastal Commission lists a number of activities that it alleges constitute violation(s) of the Coastal Act, separate and apart from those related to access. Martins will not respond substantively to the alleged additional violations in this letter, and does not waive its right to address such allegations in future correspondence.

Peter Allen
December 16, 2014
Page 2

The terms on which the gate across Martins Beach Road was unlocked and open at the time Defendants purchased the property was the subject of sworn testimony at trial. The sworn testimony at trial established that access was always permissive, and allowed upon payment of a fee. The testimony further established that neither the Deeney family, or the Watt family ever permitted individuals to walk-in, but rather, only allowed access to vehicles. At the time the property was purchased, the Deeney's were charging \$10 per car when the property was open. Finally, sworn trial testimony established that the property was closed "any time [the Deeney's] didn't have somebody there to watch the property", when "there [were] bad weather conditions", any time there was a "private party", and during "any period [the Deeney's] felt like closing."

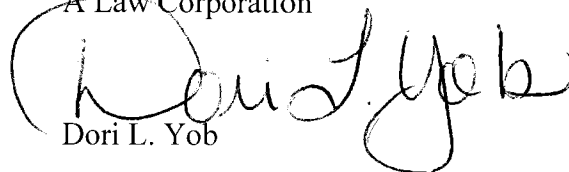
As you know, we have experienced rainy and inclement weather in the Bay Area over the past month which has led to muddy and slippery conditions, and strong and unsafe surf at Martins Beach. Therefore, consistent with Judge Mallach's Judgment, and for safety reasons, the property is currently closed due to the bad weather. We do intend, however, to comply with Judge Mallach's Judgment, and when conditions permit, we will open the gate, consistent with the standards in existence when the property was purchased. In the meantime, we are willing to meet with you to discuss an interim understanding of how the property will be operated while the cases proceed through the Courts.

Your letter also discusses the applicability of fines and penalties under the Coastal Act. As you know, that issue was litigated in the *Surfrider* case, under a private attorney general theory. In the recent Judgment, Judge Mallach made an express finding on the issue of fines and penalties, stating "the Court finds Defendants' conduct was in good faith, and that penalties and fines are not justified." It is inconsistent for you to urge compliance with some portions of Judge Mallach's Judgment, and at the same time, choose to ignore others. The issue of fines and penalties has been decided by the trial Court.

Please let us know when you are available for a meeting and we will work with you to make appropriate arrangements.

Sincerely,

HOPKINS & CARLEY
A Law Corporation



Dori L. Yob

Enclosures

cc: Joan Gallo
Jeffrey E. Essner

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CLERK OF SUPERIOR COURT
SAN MATEO COUNTY

APR 30 2014

Clerk of the Superior Court
By Beth Ann Deane
BETH ANN DEANE

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN MATEO

FRIENDS OF MARTIN'S BEACH, a
California unincorporated association
organized and existing under Corporation
Code sections 21000 et seq.,

Plaintiff,

v.

MARTINS BEACH 1, LLC; MARTINS
BEACH 2, LLC; 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.

CASE NO. CIV 517634

**SUMMARY JUDGMENT, SUMMARY
ADJUDICATION, and JUDGMENT
QUIETING TITLE**

AND RELATED CROSS-ACTION.

This Court having now confirmed by Memorandum Decision and Order, also filed this date, its earlier rulings herein made on October 24, 2013, by which this Court:

Granted Defendants Martins Beach 1, LLC and Martins Beach 2, LLC's ("Defendants") motion for summary judgment (and alternate motion for summary adjudication) made under Code of Civil Procedure Section 437c on the grounds that, based on the undisputed facts, the first

1 through seventh causes of action in Plaintiffs First Amended Verified Complaint have no merit as
2 a matter of law for the reasons stated in the Court's Memorandum of Decision and Order;

3 Granted said Defendants' motion for summary adjudication made under Code of Civil
4 Procedure Section 437c on the grounds that, based on the undisputed facts, there is no defense to
5 the first and second causes of action in Defendants' Verified First Amended Cross-Complaint as a
6 matter of law, for the reasons stated in the Court's Memorandum of Decision and Order; and

7 Denied Plaintiff's cross-motion for summary adjudication on the second cause of action in
8 Plaintiffs First Amended Verified Complaint on the grounds that, based on the undisputed facts,
9 the second cause of action has no merit as a matter of law for the reasons stated in the
10 Memorandum of Decision and Order;

11 And said Defendants having voluntarily dismissed, without prejudice, the third cause of
12 action for injunctive relief in their Verified First Amended Cross-Complaint, rendering all causes
13 of action alleged in both Plaintiff's First Amended Verified Complaint and Defendants' Verified
14 First Amended Cross-Complaint fully resolved,

15 **IT IS HEREBY ORDERED ADJUDGED AND DECREED that:**

16 1. The Plaintiff Friends of Martins Beach's First Amended Verified Complaint is hereby
17 Dismissed With Prejudice, Plaintiff to take nothing and have no recovery against the Defendants
18 Martins Beach 1, LLC and Martins Beach 2, LLC on the seven causes of action therein;

19 2. Summary Adjudication is hereby entered in favor of Defendants Martins Beach 1,
20 LLC and Martins Beach 2, LLC and against Plaintiff Friends of Martins Beach on the first and
21 second causes of action in Defendants' Verified First Amended Cross-Complaint, as follows:

22 On the First Cause of Action for Quiet Title and the Second Cause of Action for
23 Declaratory Relief the Court finds and declares that (a) said Defendants are the fee owners of the
24 Property located at 22325 Cabrillo Highway, including off-shore submerged tidelands, more
25 particularly described in **Exhibit A** (hereinafter the "Property") and that (b) Plaintiff and its
26 successors, assigns, tenants, or agents, and all persons unknown, claiming any legal or equitable
27 right, title, estate, lien, or interest in the Property adverse to Defendants' title, or any cloud on
28 Defendants' title have no interest in the Property, including but not limited to, any right of public

1 access or easement for the public to use or access the Property for any purpose whatsoever. This
2 Summary Adjudication shall run with the land.

3 3. As above-stated, Plaintiff Friends of Martin's Beach's second cause of action in its
4 First Amended Verified Complaint is hereby Dismissed With Prejudice, Plaintiff's cross-motion
5 for Summary Adjudication on that second cause of action having been Denied.

6 4. Defendants Martins Beach 1, LLC and Martins Beach 2, LLC to have and recover
7 their costs of suit herein subject to Application by filing of a Memorandum of Costs .

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9 **IT IS SO ORDERED.**

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11 Dated: APR 30 2014

12 /s/ GERALD J. BUCHWALD
13 JUDGE OF THE SUPERIOR COURT

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PARCEL NO. 1:

Beginning at a point on the edge of the Coast or Ocean Bank, said point of beginning being the Southwest corner of the N.H. Martin tract of land and also being the Northwest corner of the lands of M. Gargan as described in that certain deed recorded on December 17, 1896 in Book 73 of Deeds at Page 480; thence from said point of beginning North 72° 30' East 11.13 chains along the Southerly line of said Martin tract to a point 15 feet Easterly from the fence that bounds the Westerly side of the public road that leads to Spanishtown or Half Moon Bay; thence along said road 15 feet Easterly from said fence as follows, to-wit:

North 25° East 4.74 chains;

North 32° East 1.53 chains;

North 44° 30' East 2.88 chains;

North 11° 30' East 0.47 chains;

North 30° West 7.42 chains;

North 8° East 3.44 chains;

North 10° 30' West 1.18 chains;

North 29° 30' West 2.74 chains;

North 13° 30' West 1.06 chains;

North 4° West 4.24 chains;

Thence South 88° 30' West 10.52 chains to fence; thence North 3° 15' West 6.27 chains along said fence to a station; thence North 69° West 2.75 chains to the Center of the Lobitos Creek; thence down said creek 11.84 chains to its mouth; thence along the high water mark of the ocean Southerly 27.75 chains; thence South 37° East 3.50 chains to the point of beginning, and being the same real property formerly owned by L.M. Benjamin and Mary Benjamin described in Book 42 of Deeds Page 568 as recorded on October 1, 1887.

Excepting therefrom any portion that lies within the lands conveyed to the State of California in the Deed recorded on March 25, 1942, in Book 1013 of Official Records at Page 185, San Mateo County Records.

Further excepting therefrom any portion that lies within the lands described in paragraph 3 of that certain Deed from Angelina Brazil Azevedo, et al, to Edward M. Deeney, et al, as recorded on May 14, 1954 in Book 2583 of Official Records at Page 243, San Mateo County Records.

Also Excepting therefrom any portion that may lie within Parcel "A" as said parcel is shown on that certain Map entitled "Parcel Map for the Merging of Lands Described in Deeds, et al" being recorded on July 26, 1980 in Book 49 of Parcel Maps at Pages 84 to 95.

EXHIBIT

A

PENNSA 800-631-6989

Also excepting therefrom any portion that may lie within the lands of Double K Corporation (7822 P.R. 407) as said lands are shown on that certain Map entitled "Parcel Map for the Merging of lands described in Deeds," being recorded on July 16, 1980 in Volume 49 of Parcel Maps at Pages 94 to 95. As shown on the Plat attached hereto and made a part hereof.

APN: 066-330-170 (Ptn.)

PARCEL NO. 2:

A portion of the 175.8-acre tract as described in that certain deed dated November 27, 1896 from Murry Gargan to Catherine Gargan recorded on December 17, 1896 in Book 73 of Deeds Page 480 being more particularly described as follows:

Beginning on the bank of the Pacific Ocean at the Northwest corner of the land now or formerly owned by Calvin Putnam; thence from said point of beginning along said ocean bank North 30°30' West 3.90 chains; thence North 45°30' West 5.62 chains; thence North 27°30' East 5 chains; thence North 21°30' West 1.89 chains; thence North 3° East 15.77 chains to the Southerly line of the lands of Benjamin, being a 53-acre tract as described in the Deed recorded on October 1, 1887 in Book 42 of Deeds at Page 588; thence along said Southerly line and projection thereof North 72°30' East 41.54 chains; thence North 53° East 16.34 chains; thence South 16°30' East 17.92 chains; thence South 22°30' East to Putnam's Corner; thence South 72°30' West 53.50 chains along the Northerly line of said lands of Putnam, said Northerly line also being the Northerly line of the lands described in that certain Deed from Peery Morrison to California Investment and Novaky Company as recorded on June 28, 1912 in Book 210 of Deeds at Page 425, to the point of beginning.

EXCEPTING THEREFROM all that portion Easterly of the Westerly line of the lands of the State of California as described in that Deed recorded on March 25, 1942, in Book 1013 of Official Records Page 185.

ALSO EXCEPTING THEREFROM any portion that may lie within the old County Road leading from Half Moon Bay to San Gregorio.

APN: 066-330-170 (Ptn.)

PENGAD 800-631-6989

EXHIBIT

A

ENDORSED FILED
SAN MATEO COUNTY

DEC 11 2014
Clerk of the Superior Court
CLERK

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**IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN MATEO**

SURFRIDER FOUNDATION, a non-profit organization,

Plaintiff,

v.

MARTINS BEACH 1, LLC, a California corporation; **MARTINS BEACH 2, LLC**, a California corporation; and **DOES 1 through 20**, inclusive,

Defendants.

Case No. CIV520336

JUDGMENT

AND RELATED CROSS-ACTION.

JUDGMENT

Plaintiff SURFRIDER FOUNDATION (“Plaintiff”) filed a citizen enforcement lawsuit under the California Coastal Act against Defendants MARTINS BEACH 1, LLC and MARTINS BEACH 2, LLC (“Defendants”) for alleged unpermitted development of their property. The matter came on for a bench trial on May 8, 12-15, 19, and on July 16, 2014 in Department 22, the Honorable Barbara J. Mallach presiding. The appearances of counsel for each trial day are as noted in the record. On June 30, 2014, the parties submitted closing trial briefs. On July 16, 2014 Plaintiff and Defendants presented their closing arguments, and the Court took the matter under submission. The Court issued its Tentative Statement of Decision on September 24, 2014.

JUDGMENT

Case No. CIV520336

1 On October 9, 2014, Defendants filed objections to the Court's Tentative Statement of
2 Decision titled "Objections to Court's Tentative Statement of Decision" which contained thirty-
3 three objections. On October 9, 2014, Plaintiff filed a "Request for Modification of Limited
4 Portions of the Tentative Statement of Decision."

5 The Court, having read and considered the oral and written evidence, having observed the
6 witnesses testifying in court, having considered the supporting and opposing memoranda and
7 briefs of all parties, having heard and considered the arguments of counsel and responses to the
8 Tentative Statement of Decision and good cause appearing therefore, issued a Final Statement of
9 Decision on November 12, 2014, which is incorporated by reference into this Judgment.

10 By reason of the Final Statement of Decision, Judgment shall be entered in this matter as
11 follows:

12 **NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that**

13 **I. PLAINTIFF'S COMPLAINT**

14 **A. First Cause of Action for Declaratory Relief**

15 1. Judgment is entered in favor of Plaintiff.

16 2. Defendants' desire to change the public's access to and use of the water, beach and
17 coast at Martins Beach constitutes development under the California Coastal Act. *See*
18 Pub. Res. Code § 30106. Consequently, if Defendants wish to change the public's access
19 to and use of the water, beach and/or coast at Martins Beach, they are required to obtain a
20 Coastal Development Permit prior to doing so.

21 3. Defendants' conduct in changing the public's access to and use of the water, beach
22 and coast at Martins Beach, specifically by permanently closing and locking a gate to the
23 public across Martins Beach Road, adding signs to the gate, changing the messages on the
24 billboard on the property and hiring security guards to deter the public from crossing or
25 using the Property to access the water, beach and coast at Martins Beach without a Coastal
26 Development Permit(s) constitutes a violation of the California Coastal Act.

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JUDGMENT

Case No. CIV520336

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B. Second Cause of Action for Injunctive Relief

1. Judgment is entered in favor of Plaintiff.
2. Defendants are hereby ordered to cease preventing the public from accessing and using the water, beach and coast at Martins Beach until resolution of Defendants' Coastal Development Permit application has been reached by San Mateo County and/or the Coastal Commission. The gate across Martins Beach Road must be unlocked and open to the same extent that it was unlocked and open at the time Defendants purchased the property.

C. Third Cause of Action for Fines and Penalties

1. Judgment is entered in favor of Defendants.
2. The Court finds Defendants' conduct was in good faith, and that penalties and fines are not justified.

II. DEFENDANTS' CROSS-COMPLAINT

A. First Cause of Action for Declaratory Relief

1. Judgment is entered in favor of Plaintiff.
2. For the reasons stated in issuing Judgment for Plaintiff on claim for Declaratory Relief, and the reasons in the Court's Final Statement of Decision, Defendants' claim for Declaratory Relief is rejected. Defendants engaged in development under the Coastal Act without a permit.

B. Second Cause of Action for Injunctive Relief

1. Judgment is entered in favor of Plaintiff.
2. There is no evidence to support Defendants' contention that Plaintiff itself engaged in any unauthorized entry onto the property. Further, there is no evidence that Plaintiff "directed or authorized" any individual to enter Defendants' property. Finally there is no

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evidence that Plaintiff ratified the conduct of any individual who entered the property without permission. The evidence in the record shows that each individual who testified they entered the property after Defendants ceased allowing the public to do so, did so of their own volition.

DEC 01 2014

BARBARA J. MALLACH

Dated: _____

Hon. Barbara J. Mallach
Judge of the Superior Court

ENDORSED FILED
SAN MATEO COUNTY

DEC 05 2014

Clerk of the Superior Court
By S. BUCHANAN
DEPUTY CLERK

AFFIDAVIT OF MAILING

CASE NUMBER: CIV 520336

Surfrider Foundation vs Martins Beach LLC, et.al.

DOCUMENT: Judgment

I declare, under penalty of perjury, that on the following date I deposited in the United State Post Office Mail Box at Redwood City, California a true copy of the foregoing document, enclosed in an envelope, with the proper and necessary postage pre-paid thereon, and addressed to the following:

Cotchett, Pitre & McCarthy, LLP
Eric Buescher / Joseph Cotchett
840 Malcom Road
Burlingame, CA 94010

Hopkins & Carley
Jeffrey Essner / Dori Yob
P.O. Box 1469
San Jose, CA 95109-1469

Executed on December 5, 2014 at Redwood City, California

By:



Deputy Clerk of the Superior Court