

DOCKETED

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TN #:	241958
Document Title:	Coastal Commission letter to Hydrostor re Notice of Violation
Description:	Letter from Coastal Commission's Enforcement Staff regarding Violation
Filer:	Thomas R Luster
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CALIFORNIA COASTAL COMMISSION

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**NOTICE OF VIOLATION**
By Electronic Mail and USPS**February 23, 2022**

Curt Hildebrand
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Violation¹ Description: The placement and operation of drilling (and other) equipment to bore up to 11 exploratory holes as part of the development of a major energy project that has yet to be approved. Current activities have also resulted in land disturbance (trenching) and other disturbances associated with the staging of equipment, job trailer, etc.

Violation File No.: V-9-22-008

Property Location: An approximately 300-acre agricultural property located in the Chorro Valley, approximately 1 mile east of the City of Morro Bay in unincorporated San Luis Obispo County

Dear Mr. Hildebrand and Mr. Jones:

¹ Please note that the description herein of the violations at issue is not necessarily a complete list of all development on the subject property that is in violation of the Coastal Act or the San Luis Obispo County LCP and 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. Please further note that the term "violation," as used throughout this letter, refers to alleged violations of the Coastal Act and/or the San Luis Obispo County LCP as determined by Commission staff.

We are writing regarding San Luis Obispo County Local Coastal Program (LCP) and Coastal Act² violations on the above-described property owned by Morro Bay Ranch LTD; described by San Luis Obispo County as APN 073-121-009. The violations include the placement and operation of drilling (and other) equipment to bore up to 11 exploratory holes as part of the development of a major energy project that has yet to be approved. Current activities have also resulted in land disturbance (trenching) and other disturbances associated with the staging of equipment, job trailer, etc. In addition, the subject development activity is taking place on prime agricultural soils, adjacent to Chorro Creek and Morro Bay State Park, in a “significantly unique viewshed corridor”,³ and within the view of a designated scenic highway. Finally, the unpermitted development taking place is inconsistent with the County’s LCP, and the Coastal Commission has previously identified this location as being unsuitable for a “thermal powerplant”⁴ which is what California Energy Commission (CEC) staff have determined this project to be.

As you may know, the California Coastal Act was enacted by the State Legislature in 1976 to provide long-term protection of California’s 1,250-mile coastline and its related inland areas 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 of 1976. In making its permit and land use planning decisions, the Commission is guided by the policies set forth in Chapter 3 of the Coastal Act, which, amongst other goals, are designed to protect and restore sensitive habitats, maintain natural landforms, preserve scenic landscapes and public views, protect the marine environment and its inhabitants, protect against loss of life and property from coastal hazards, and maximize public recreational access opportunities. The Commission plans for and regulates development and coastal resource protection in the Coastal Zone in keeping with the requirements of the Coastal Act, including as those requirements are embodied in LCPs - such as the San Luis Obispo County LCP.

Violation

Development is broadly defined by Coastal Act Section 30106 and LCP Section 23.03.040(a) as:

“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 of any gaseous, liquid, solid, or thermal waste; grading, removing, dredging, mining, or extraction of any materials; change in the density or intensity of use of

² The California Coastal Act of 1976 is codified in Sections 30000 to 30900 of the California Public Resources Code.

³ Coastal Commission’s 1978 Designation of Coastal Areas Where Construction of an Electric Power Plant Would Prevent Achievement of the Objectives of the California Coastal Act of 1976 (revised in 1984 and 1985).

⁴ *Ibid.*

land, including, but not limited to, subdivision pursuant to the Subdivision Map Act...change in the intensity of use of water, or of access thereto; construction, reconstruction, demolition, or alteration of the size of any structure,... and the removal or harvesting of major vegetation other than for agricultural purposes...

The above-described activities constitute “development” under the Coastal Act and the County’s LCP. Coastal Act Section 30600(a) and County LCP Section 23.03.040(c) require that, with limited exceptions not relevant here, any person wishing to perform or undertake development in the Coastal Zone must first obtain a CDP, in addition to any other permit required by law, before carrying out the proposed development. Any non-exempt development activity, such as the development at issue here, conducted in the Coastal Zone without a valid CDP constitutes a violation of the Coastal Act and the LCP.

We understand that you have obtained two well permits from the San Luis Obispo County Health Agency: WP 1027244 which purports to authorize 10 wells with 8-inch diameter holes of 30 to 80 feet deep; and WP 1027275 which purports to authorize a single 2,000-foot deep well with a 6.5-inch diameter hole. However, the holes you are drilling are not domestic water wells or agriculture wells, but rather geologic borings associated with a major energy project. In any event, a well permit from the County Health Agency is not a CDP and does not confer authorization under the Coastal Act.

Administrative Civil Penalties

In cases involving non-public access related Coastal Act violations⁵ such as this, Section 30821.3 authorizes the Commission to impose administrative civil penalties in an amount of up to \$11,250 per violation for each day that each violation persists. This includes, but is not limited to, violations involving damage to archaeological, biological, viewshed, and agricultural resources. The administrative civil penalty may be assessed for each day the violation persists, but for no more than five years.

We intend to pursue administrative penalties pursuant to Section 30821.3 if we cannot resolve this matter expeditiously. We believe this can be accomplished by the immediate cessation of work, the removal of all equipment, materials, structures, etc., “buttoning up” the site (including placement of appropriate BMPs to protect against ongoing resource damages), and restoration of any damaged resources.

Resolution

In order to begin resolution of the violation and reduce the possibility of penalties, you must do all of the following:

1. Immediately cease all unpermitted development activity on the subject property.

⁵ Public access violations are subject to administrative penalties pursuant to Section 30821.

2. Prepare and submit a plan, for review and approval of the Executive Director, to close the site in a way that ensures that resource damages from activities to date are halted, and existing resource damaged areas restored. This plan should include a detailed description of any work done before the work was stopped, as well as plans to restore the areas impacted to their pre-violation condition. The plan must be submitted no later than March 4, 2022.
3. After Executive Director review and approval of said plan, immediately implement the approved plan and provide photo documentation of same.

If you intend to apply to the County for an after-the-fact (ATF) CDP to retain any development already undertaken and to continue the exploratory boring, please be advised that a CDP issued by the County in this location would be appealable to the Coastal Commission. In addition, please be aware that the subject drilling project currently underway is part of a larger thermal power plant project that has a particular process for consideration under the Coastal Act and the Warren-Alquist Act. That process includes the Commission specifying areas in the Coastal Zone where such plants are not appropriate. As previously mentioned, the Commission has found this area to be unsuitable for such a project. For areas like this that are designated as unsuitable for power plants, an applicant may, nevertheless, apply to the Commission for a determination that: 1) the proposed use is not inconsistent with the primary uses of such land; 2) there will be no substantial adverse environmental effects; and 3) any public agency having ownership or control of such land approves of the project. The Commission must make those findings before the CEC can approve a thermal powerplant project at this location. With these procedures in mind, the current exploratory drilling project may be premature.

While the subject project is located within San Luis Obispo County's LCP jurisdiction, the Commission can assume primary responsibility for enforcement of the Coastal Act and LCP violations at issue in this case pursuant to Section 30810(a) of the Coastal Act, which provides that the Commission may issue an order to enforce the requirements of a certified LCP in the event that the local government requests the Commission to assist with or assume primary responsibility for issuing such order, or if the local government declines to act or fails to act in a timely manner to resolve the violation after receiving a request to act from the Commission. In this case, the County has requested our assistance.

While we are hopeful that we can resolve this matter quickly and informally, please be advised that, in addition to the administrative penalty authority described above, Chapter 9 of the Coastal Act has additional potential remedies to address violations of the Coastal Act, including the following:

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 may require a CDP from the Coastal Commission without first securing a CDP, the Executive Director may issue an order directing that person to cease and desist. Section 30810 states that the Coastal Commission may also issue a cease and desist order. A cease

and desist order may be subject to terms and conditions that are necessary to avoid irreparable injury to the area or to ensure compliance with the Coastal Act. Section 30811 also provides the Coastal Commission the authority to issue a restoration order to address violations at a site. A violation of a cease and desist order or restoration order can result in civil fines of up to \$6,000 for each day in which each violation persists.

Additionally, 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. Section 30820(a)(1) provides that any person who undertakes development in violation 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 each violation persists.

Finally, Section 30812 authorizes the Executive Director to record a Notice of Violation against any property determined to have been developed in violation of the Coastal Act. If the Executive Director chooses to pursue that course, you will first be given notice of the Executive Director's intent to record such a notice, and you will have the opportunity to object and to provide evidence to the Commission at a public hearing as to why such a notice of violation should not be recorded. If a notice of violation is ultimately recorded against your property, it will serve as notice of the violation to all successors in interest in that property.

Thank you for your prompt attention to this matter. If you have any questions concerning this letter, please contact me by email at pat.veesart@coastal.ca.gov or by telephone at 805.835.8732. Due to concerns about the Coronavirus and in compliance with public health orders, Commission offices remain closed to the public. Email correspondence is preferred.

Sincerely,

Pat Veesart

N. Patrick Veasart
Enforcement Supervisor

cc: Schani Siong, Supervising Planner, San Luis Obispo County
Jill Coomer, Code Enforcement Supervisor, San Luis Obispo County
Trevor Keith, Planning Director, San Luis Obispo County