

CALIFORNIA COASTAL COMMISSION

South Coast Area Office
301 Ocean Blvd, Suite 300
Long Beach, CA 90802-4302
(562) 590-5071

**SENT BY EMAIL**

July 16, 2021

ITEM 9a

Christian B. Miller
35127 Beach Road
Capistrano Beach, CA 92624

Violation File Number: V-5-21-0038

Property location: 35127 Beach Road, Capistrano Bay, Dana Point, Orange County, CA 92624 (APN 691-142-02)

Dear Mr. Miller:

We hope this letter finds you well. Thank you for your response to our original mailed notice of violation. Commission staff is looking forward to working with you to find a mutually agreeable solution to the unpermitted placement of shoreline armoring that has occurred on your property.¹ First, you mentioned that you were unable to read the deed restriction, I was able to find a paper copy of the deed restriction in our files, which I have scanned and attached to the email along with this letter.

You also referred to the deed restriction as an easement. Please note that this property has a recorded deed restriction, not an easement. While they function in a similar way, in that they provide the public with access to a property, they are different. A deed restriction does not require a third party to accept an interest in the property, as would be the case with an offer to dedicate an easement; it only requires that a property owner record the restriction to be effective, which occurred on May 3rd, 1979.

Deed Restriction Conditions

Additionally, we understand that you have provided a survey to demonstrate, in your opinion, that the unpermitted shoreline armoring is not within the deed restricted area. Initially, we point out that the surveys were conducted on one day in the summertime, when the beach would be at its widest and the MHTL furthest seaward. In the winter, the MHTL would be expected to be located much closer to the home and potentially landward of the shoreline protection. Given the limitations of the survey, for instance, it reflects only one day of the year, it is not significantly relevant with respect to determining whether the shoreline armoring is within the deed restricted area. Moreover, regardless of whether the armoring is within the deed restricted area, it was constructed without the required CDP, in violation of the Coastal Act.

Resolution through Emergency Permit is not Possible

¹ As noted in our previous letter, unpermitted placement of sandbags, boulders, and a berm has occurred at your property. We intend to take up the issue of placement of a berm at the property, which has occurred in the past, with the Capistrano Bay District

We understand that property 35099 Beach Road has been issued an emergency permit for the use of sand cubes. Please note that the permit is an Emergency Permit, which is temporary, and, thus, by its nature, cannot affect a definitive resolution of the violations. This permit is not for the retention of any unpermitted development but rather for the use of sand cubes for shoreline protection. The emergency permit is also contingent on the removal of all unpermitted shoreline protective devices on the site, including, but not necessarily limited to, gravity blocks, prior to installation of the proposed sand cubes. Violations of the Coastal Act and Dana Point Local Coastal Program had occurred at 35099 Beach Road and although the emergency permit does require the removal of unpermitted development, as a condition of permit issuance, the permit does not result in the resolution of said Coastal Act violations. Thus, we note that a similar permit at your property would not result in resolution of the violations described in our letter to you, and, therefore, we request that you, in order to resolve the violations, remove all unpermitted development and work towards a phased protection plan.

Resolution

Our primary goal is to ensure that the unpermitted development occurring is resolved in a mutually acceptable manner and a resolution is reached that is consistent with the Coastal Act. We want to work with you and the community to find a solution that is functional for the homeowners, the public, and the environment. We understand that a short-term solution may be needed first, that is why we have provided and are willing to work on sand cubes or sandbags as a short term resolution. Please note that the Commission discussed a resolution of the violations at Capistrano Bay on a community-wide scale. A resolution on this scale would allow the community to explore options such as the installation of an offshore cobblestone reef with kelp beds, construction of a cobble stone core sand berm (planted with dune vegetation) in front of the homes, and beach nourishment in tandem with the installation of groins.

Another component of a longer term solution that we discussed with the Capistrano Bay District was the establishment of regional sediment management group, comprised of local stakeholders and adjacent property owners. This group would work to determine the feasibility of alternative measures, such as raising houses or sealing houses to withstand flooding, if the public beach is eventually lost. However, the District was not amenable to the Commission's suggestion to seek a comprehensive resolution that involved removing the existing devices, replacing them with an interim solution, and finally, a long-term solution. Such a comprehensive resolution remains the staff's preferred approach, and we encourage the homeowners to work collectively through the District to achieve such a resolution.

We strongly encourage a community solution, and we will be willing to work with you to connect with other members of the community. We are also willing to discuss other long term solutions, in addition to the idea of piles that we suggested in our previous letter.

As stated above, we request that you, in order to resolve the violations, remove all unpermitted development and work towards a phased protection plan. Please contact me by no later than July 30, 2021 regarding how you intend to resolve this violation.

Capistrano Bay District (V-5-21-0038)

July 16, 2021

Page 3 of 3

Thank you for your attention to this matter. We look forward to working with you to it. If you have any questions regarding this letter or the pending enforcement case, please feel free to contact me or Andrew Willis, Enforcement Supervisor, at lara.ibrahim@coastal.ca.gov or andrew.willis@coastal.ca.gov respectively.

Sincerely,

A handwritten signature in cursive script, appearing to read "Lara", written in black ink.

Lara Ibrahim

South Coast Enforcement