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January 23, 2015

VIA E-MAIL & FIRST CLASS MAIL

Elena Eger, Senior Attorney
California Coastal Conservancy
1330 Broadway, Suite 1300
Oakland, California 94612

Re: Lent Residence -- 20802 Pacific Coast Highway, Malibu, CA 90265

Dear Ms. Eger:

Thank you for your e-mail of January 15, 2015, which reiterates your prior invitation "to provide any information Mr. Lent would like to provide to the MRCA for its consideration in its preparation of the plan currently in development." As you might recall, I submitted correspondence to Joan Cardellino (dated March 7, 2013) relating to this matter; and you acknowledged receipt of same via your e-mail of April 17, 2013, which also memorialized the fact that you had forwarded my correspondence to the Mountains Recreation and Conservation Authority (MRCA) for inclusion in the feasibility study the MRCA was undertaking. I subsequently sent you an e-mail dated April 18, 2013, which raised issues of concern regarding the scope of the Conservancy's evaluation of vertical accessways in the vicinity of our client's property. Unfortunately, no substantive answers were furnished to the questions/issues we raised in that communication (and in our subsequent e-mail to you dated June 13, 2013, copy attached). We hope and expect that the forthcoming MRCA analysis will address those unresolved matters.

Our clients, Dr. and Mrs. Lent, do not challenge the existence of the easement allowing the public "to pass and re-pass" over a 5-foot wide section along the easterly side of their property for "access to and from the shoreline." That being said, the Conservancy only enjoys a *limited* right to enter and use our clients' land. The Lents are absolutely entitled to concurrently utilize the portion of their property that is burdened by the Conservancy's easement, as discussed more fully below. Thank you in advance for adding this correspondence to the administrative record vis-a-vis the MRCA's preparation of the subject Malibu Coastal Access Public Works Plan.

SCOPE/LIMITATIONS OF THE CONSERVANCY'S EASEMENT

1. *Statutory Scheme Re: Access Easements*. The California legislature implemented the goals of the Federal Coastal Zone Management Act (16 U.S.C. §§1451-1466) by enacting the Coastal Act in 1976, which codified the policy of maintaining public access to the ocean under the California Constitution. Consistent with the principle that regulatory and enforcement powers be separated, the legislature divided authority under the Coastal Act between two State agencies: the California Coastal Commission ("Commission") established under the Coastal Act, and the State Coastal Conservancy ("Conservancy"), established under Division 21 of the Public Resources Code. The Commission cannot hold title to property, and permit applicants cannot transfer public accessway easements to the Commission (§§30330-30344[1/]). That is why the Conservancy became the owner of the instant public access easement burdening our clients' property.

[1/]All undesignated Section references are to the Public Resources Code.

The Coastal Act "provides for two kinds of access [easements]: 'vertical' access, that is, access from the nearest public roadway to the sea; and 'lateral' access, that is, access along the coast. [citations omitted]" (*Grupe vs. California Coastal Com.* (1985) 166 Cal.App.3d 148, 161). The Conservancy must accept all easements to prevent expiration of an offer to dedicate; but it has discretion in opening and managing easements (§30214). The Conservancy is not required to "open any area for public use when, in its estimation, the benefits of public use would be outweighed by the cost of development and maintenance." (§31404).

2. *Fundamental Principles Regarding Easements*. "An easement is a restricted right to specific, limited, definable use or activity upon another's property, which right must be *less* than the right of ownership." (*Mesnick v. Caton* (1986) 183 Cal.App.3d 1248, 1261). Every incident of ownership not inconsistent with the easement and the enjoyment of same is reserved to the grantor. *(Pasadena v. California-Michigan Land & Water Co.* (1941) 17 Cal.2d 576, 579 ("*Pasadena*")). Thus, an easement holder must exercise his or her right so as not to impose an unnecessary burden on the servient tenement, and the owner of the servient tenement may make any use of the property that does not unduly interfere with the easement. (*Atchison, Topeka & Santa Fe Ry Co. vs. Abar* (1969) 275 Cal.App.2d 456, 464). Under California law, if the owner of an easement undertakes permanent acts that result in a physical change of existing conditions to such an extent that the easement cannot be enjoyed without imposing a severe burden on the servient tenement, the easement can be extinguished. (*McCarty v. Walton* (1963) 212 Cal.App.2d 39, 45).

The subject easement from the Lents' predecessors simply provides for "pedestrian access to and from the shoreline."[2] Nothing more. It is not an exclusive easement. "No intention to convey such a complete interest can be imputed to the owner of the servient tenement in the absence of a clear indication of such an intention." (*Pasadena*, *supra.*, 17 Cal.2d at pp. 578-579).

The Conservancy's *limited* right to utilize a portion of the Lent property allows for the construction of improvements within the easement area which are reasonably required to make use of the easement safe and convenient. However, the Conservancy is not entitled to increase the burden on, or unreasonably interfere with our clients' continued use of that portion of their property. For this reason, it is submitted that every effort *must* be made to incorporate the stairs along the easterly side of the residence which provide the only viable means of fulfilling the requirement of secondary egress from the dwelling. This point was expressly conceded in the Conservancy's Las Flores Beach Access Proposal dated July 26, 2010, prepared by Bionic (hereinafter the "Bionic Plan"), at page 5 (attached), which indicates "door to residence egress required by City of Malibu." Elimination of such stairway would absolutely trigger life safety risks for occupants of the residence.

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[2] The Irrevocable Offer to Dedicate, recorded as Instrument No. 80-679384, provided specific language of the vertical accessway as follows: "An easement for public access to the shoreline. . . the easement shall allow for pedestrian access to and from the shoreline . . . the accessway shall be located along the easterly property line giving the public the right to pass and re-pass from the road to the mean high tide line. . ." The terms of the original Deed Restriction (recorded as Instrument No. 80-879381) state that the ". . . [o]wners hereby offer to dedicate to the People of California an easement in perpetuity for the purpose of public access from Pacific Coast Highway to the mean high tide line, including the privilege and right to pass and re-pass over a five (5) foot wide strip of land located on the subject property along the eastern edge of the parcel. . ."

It must also be noted for the record that the Bionic Plan, in describing the improvements contemplated for the Lent property (copy attached), included stairs down from the floating overlook that encroached into the 5-foot wide privacy buffer which prohibits public use within five (5) feet of the structure (except in the vertical easement area). Needless to say, shifting the stairs further seaward will create an even greater degradation of the beach viewshed and usable lateral easement area -- conditions that exist nowhere else in the City of Malibu -- which would be wholly inconsistent with the goals and policies of the Coastal Act and the Conservancy's guidelines (likewise discussed in my earlier correspondence to Joan Cardellino dated March 7, 2013).

The Lents were certainly taken aback by the concept improvements described in the Bionic Plan, which approached the Conservancy's rights in this matter as being akin to ownership of an exclusive easement. As discussed above, it is not. For this reason, our clients maintain that they should have an opportunity to be involved in the design process given the fact that they have an absolute right to continue to utilize the portion of their property burdened by the easement. The Lents seek only to attain a mutually acceptable solution that facilitates public access while at the same time preserving and protecting their vested property rights and the safety of occupants enjoying the beachfront residence.

Sincerely,

LAW OFFICES OF G. GREG AFTERGOOD
a Professional Corporation

By: _____
G. GREG AFTERGOOD

GGA:gm
enclosures
cc via e-mail only: Laura Ratcliffe, Staff Counsel, Mountains Recreation and Conservation Authority (laura.ratcliffe@mrca.ca.gov)
Paul Edelman, Chief of Natural Resources and Planning (paul.edelman@mrca.ca.gov)

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June 13, 2013

VIA E-MAIL TRANSMISSION ONLY

Elena Eger, Senior Attorney
California Coastal Conservancy
1330 Broadway, Suite 1300
Oakland, California 94612

Re: Malibu Coastal Access Public Works Plan (Project No. 12-024-01)
Lent Property -- 20802 Pacific Coast Highway, Malibu, CA 90265

Dear Ms. Eger:

Roughly seven (7) weeks have elapsed since I sent you an e-mail (dated April 18, 2013, duplicate attached) which responded to your e-mail of April 17. It is disappointing that we never received your reply to our inquires regarding the vertical accessways adjacent to Duke's Restaurant (such accessways having been previously designated as L.A. No. 24 and No. 25 in chapter 3 of the Commission materials entitled "Vertical Accessways Acquired by California Costal Commission Actions 1973-2011"). Your e-mail of April 17 asserts that "all currently unopened accessways in Malibu are described in the Conservancy's staff recommendation of December 6, 2012, with none being "excluded." But this begs the question regarding the past/present existence of the vertical accessway at Duke's, which was never mentioned in the Conservancy staff analysis. We continue to request an answer relating to this anomaly. Ignoring inconvenient facts will not make them go away. The sites adjacent to Duke's Restaurant are especially important because -- unlike the Lent property -- substantial/costly improvements would not be necessary, off-street parking is available, and there is a traffic light and crosswalk to facilitate safe crossing of Pacific Coast Highway.

Needless to say, feel free to call if me if you would like to discuss this matter further. Please also furnish the name/contact information for the MRCA representative in charge of the feasibility study.

Sincerely,

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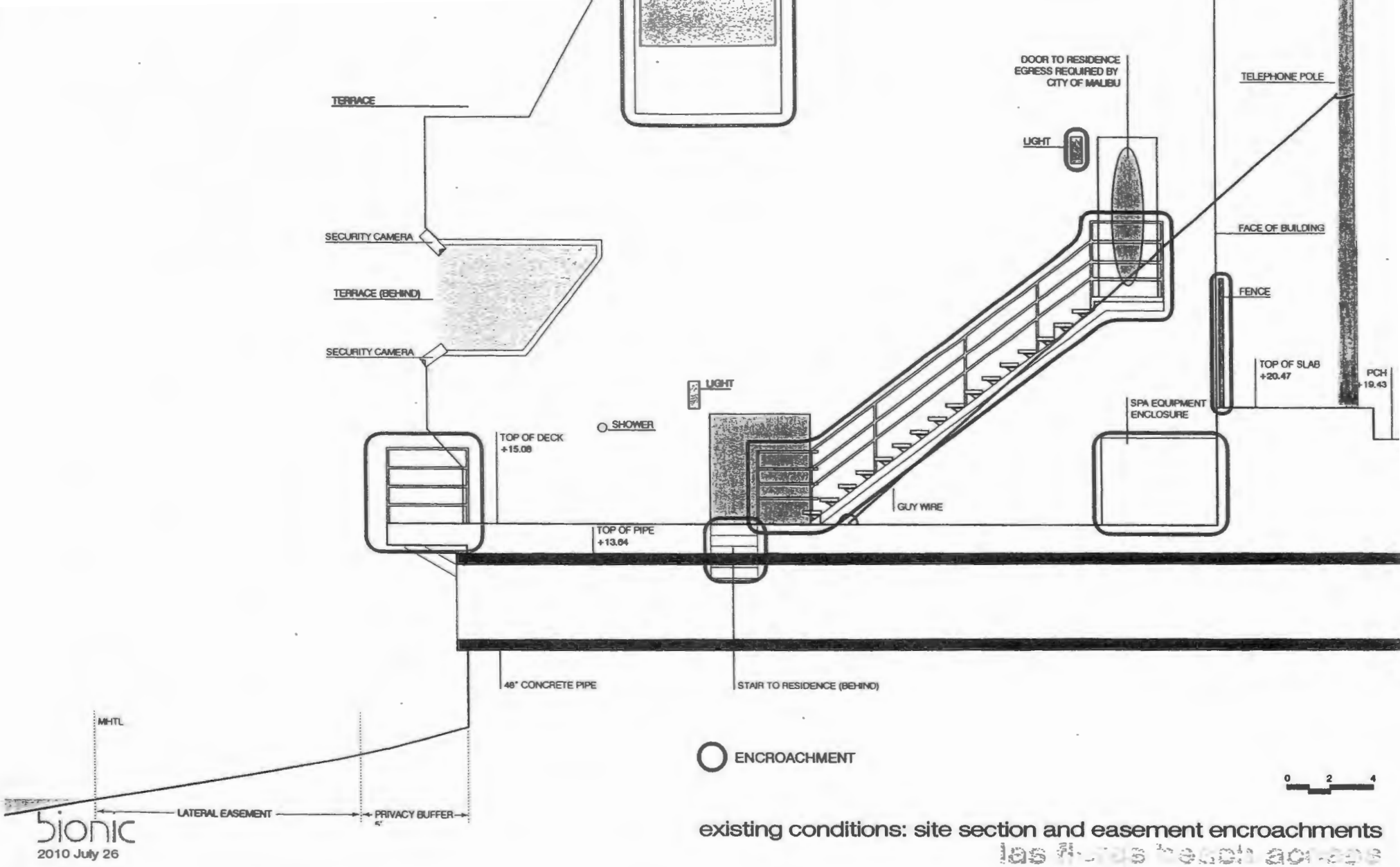
a Professional Corporation

By: _____
G. GREG AFTERGOOD

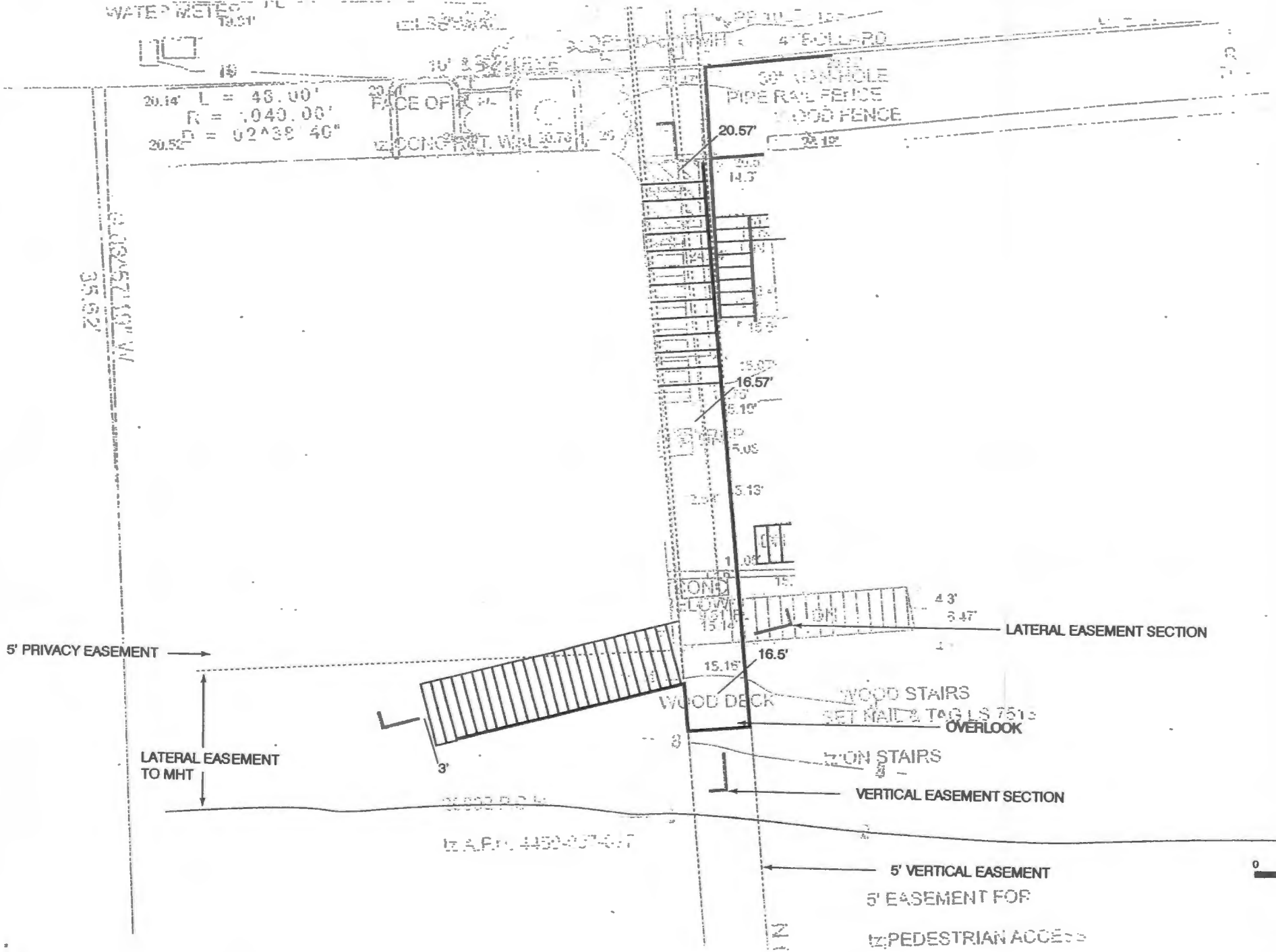
GGA:gm
enclosures
cc: Sam Schuchat, Executive Officer
Glenn Alex, Legal Counsel
Moira McEnespy, Deputy Program Manager, South Coast Regional Conservancy
Kara Kemmler, Project Manager
Joan Cardellino
Joseph Smith, Associate Planner, City of Malibu
Christi Hogin, City Attorney, City of Malibu
Clients



bionic
2010 July 26

existing conditions: site section and easement encroachments

Las Flores Beach access



bionic
2010 July 26