

**CALIFORNIA COASTAL COMMISSION**

45 FREMONT STREET, SUITE 2000  
SAN FRANCISCO, CA 94105-2219  
VOICE AND TDD (415) 904-5200



**VIA CERTIFIED MAIL (#7005 0390 0002 8123 5072)  
and REGULAR MAIL**

May 23, 2007

Warren M. Lent  
150 N. Robertson Blvd, Suite 140  
Beverly Hills, CA 90211-2143

Subject: **Notice of Intent to Commence Cease and Desist Order and Restoration Order Proceedings and to Record a Notice of Violation of the Coastal Act**

Violation No.: V-4-02-058

Location: 20802 Pacific Coast Highway, Malibu, CA  
(APN 4450-007-027)

Dear Dr. Lent:

This letter is to formally follow-up recent discussions you have had with my staff regarding the easement on your property and to reiterate our interest in resolving this matter.

The purpose of this letter is to notify you of my intent, as the Executive Director of the California Coastal Commission ("Commission"), to record a Notice of Violation of the Coastal Act<sup>1</sup> against your property at 20802 Pacific Coast Highway in Malibu, Los Angeles County Assessor's Parcel No. APN 4450-007-027 ("your property" or the "subject property"), and to commence proceedings for issuance to you of a Cease and Desist Order and Restoration Order for unpermitted development on your property that is inconsistent with the terms and conditions of Coastal Development Permit (CDP) No. 421-78.

The unpermitted and inconsistent development consists of a fence and gate that blocks the vertical access easement across your property. This development is inconsistent with the terms of an easement that the State Coastal Conservancy ("Conservancy") holds over a strip of your property for the purpose of providing public access from Pacific Coast Highway to the mean high tide line. The easement was created through the recordation of an offer to dedicate (Los Angeles County Instrument No. 80-679384, recorded on July 16, 1980) recorded in satisfaction of the requirements of Special Condition 5 of CDP No. 421-78, and an acceptance thereof (Los Angeles County Instrument No. 82-1303557, recorded on December 29, 1982) recorded by the Conservancy. The terms of the original offer state that "...the owner(s) hereby offer to dedicate to the People of California an easement in perpetuity for the purposes of public access from

<sup>1</sup> The Coastal Act is codified in sections 30,000 to 30,900 of the California Public Resources Code. All further section references are to that code, and thus, to the Coastal Act, unless otherwise indicated.

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Pacific Coast Highway to the mean high tide line, including the privilege and right to pass and repass over a five (5) ft. wide strip of land located on the subject property along the eastern edge of the parcel..." A copy of the offer is attached for your review. Blocking the right to pass through the easement area is inconsistent with the permit condition and purpose of an easement for public access.

### **History of the Violation Investigation**

On November 17, 1982, the Conservancy accepted two Offers To Dedicate (OTDs) for a vertical access easement and a lateral access easement on your property. The Conservancy's acceptance of the easements, and any eventual improvements that the Conservancy (or other, future owners of the easement or their agents) may make to the easement area do not diminish your obligations, as owners of the property subject to the easements, to comply with requirements contained within the easement terms. The Conservancy's acceptance of the two OTDs was recorded by Los Angeles County Recorder's Office on December 29, 1982. Thus, the easement is recorded in the chain of title for your property, as are the original OTDs, and were so when you purchased the property. Since both the benefits and burdens of a permit run with the land, current owners of the property are bound by its terms and are responsible for resolving any outstanding violations of the Coastal Act that exist on the property.

The Conservancy notified owners of your property via a phone call and a letter dated September 15, 1993, that inspection by Conservancy staff determined that there is a gate across the vertical access easement and that this violates the Conservancy's vertical access easement by blocking it. The letter requested that the owner remove the gate or seek the Conservancy's permission to keep the gate in place temporarily. Neither action was taken by the previous owner. In 2002, when you purchased the property, the situation remained the same.

The Commission staff recently became aware of the continued blockage of the vertical access easement and notified you of the continuing violation on your property in a letter dated April 27, 2007. Commission staff requested that you respond by May 7, 2007 to attempt to resolve this violation informally. Staff has not yet received a response to this letter. As you know, staff also contacted you May 18, 2007 and May 21, 2007 regarding this issue and to discuss possible means to resolve the matter.

### **Cease and Desist Order**

The Commission's authority to issue Cease and Desist Orders is set forth in Section 30810(a) of the Coastal Act, which states the following, in part:

*If the commission, after public hearing, determines that any person or governmental agency has undertaken, or is threatening to undertake, any activity that (1) requires a permit from the commission without securing the permit or (2) is inconsistent with any permit previously issued by the commission, the commission may issue an order directing that person or governmental agency to cease and desist.*

As the Executive Director of the Commission, I am issuing this Notice of Intent to commence Cease and Desist Order proceedings since development that is both unpermitted and inconsistent

with a permit previously issued by the Commission has occurred at the subject property. The proposed order to be issued pursuant to Section 30810 would require that you remove the portion of fence and gate that is blocking the vertical easement, and it would require you to keep the easements open and free from impediments to pedestrian use at all times in the future.

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. "Development" is defined by Section 30106 of the Coastal Act 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 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 land...change in the intensity of use of water, or of access thereto...and the removal or harvesting of major vegetation other than for agricultural purposes...*

Fencing constitutes "development" and therefore requires a CDP. This matter involves development that is also inconsistent with the permit issued by the Commission.

For these reasons, the criteria of Section 30810(a) of the Coastal Act have been satisfied, and I am sending this letter to initiate proceedings for the Commission to issue a Cease and Desist Order.

Based on Section 30810(b) of the Coastal Act, the Cease and Desist Order may be subject to such terms and conditions as the Commission may determine are necessary to ensure compliance with the Coastal Act, including removal of any development or material or the setting of a schedule within which steps shall be taken to obtain a permit pursuant to the requirements of the Coastal Act.

### **Restoration Order**

Section 30811 of the Coastal Act authorizes the Commission to order restoration of a site as follows:

*In addition to any other authority to order restoration, the commission...may, after a public hearing, order restoration of a site if it finds that the development has occurred without a coastal development permit from the commission... the development is inconsistent with [the Coastal Act], and the development is causing continuing resource damage.*

I have determined that the specified activity meets the Coastal Act's Section 30811 criteria authorizing issuance of a restoration order based on the following:

- 1) Development consisting of fencing and a gate blocking the vertical easement on the subject property has occurred without a CDP;
- 2) This development is inconsistent with the resource protection policies of the Coastal Act, including, but not limited to, the following:

- a) Sections 30210 and 30213 (Public Access)
  - b) Section 30251 (Scenic and visual qualities)
  - c) Sections 30220 and 30221 (Recreation).
- 3) The unpermitted development is causing continuing resource damage, as defined by Section 13190 of the Commission's regulations<sup>2</sup> and is impacting the resources listed in the previous paragraph (item number two). Section 13190(a) of the Commission's regulations defines the term "resource," as that word is used in Section 30811 of the Coastal Act, to include public access and the visual quality of coastal areas, and Section 13190(b) of the Commission's regulations defines the term damage as: "any degradation or other reduction in quality, abundance, or other quantitative or qualitative characteristic of the resource as compared to the condition the resource was in before it was disturbed by unpermitted development." Finally, Commission regulation Section 13190(c) defines the word "continuing" as applying to any such resource damage that continues to occur as of the date of issuance of the restoration order. The unpermitted fencing and gate are an on-going impact that reduces public pedestrian access from Pacific Coast Highway to the mean high tide line. This is inconsistent with the original conditions of CDP No. 421-78, with the recorded easement, and with the public access and recreation policies cited above. They also constitute an ongoing degradation of the visual quality of this coastal area. The impacts from the unpermitted development continue to exist at the subject property; therefore, the damage to resources protected by the Coastal Act is continuing.

For the reasons stated above, I have decided to commence a Restoration Order proceeding before the Commission in order to secure restoration of the subject property to the condition it was in before the unpermitted development occurred.

The procedures for the issuance of Restoration Orders are described in Sections 13190 through 13197 of the Commission's regulations. Section 13196(e) of the Commission's regulations states, in part, the following:

*Any term or condition that the commission may impose which requires removal of any development or material shall be for the purpose of restoring the property affected by the violation to the condition it was in before the violation occurred.*

Accordingly, any Restoration Order that the Commission may issue will have as its purpose the restoration of the subject property to the conditions that existed prior to the occurrence of the unpermitted development described above.

#### **Notice of Violation**

The Commission's authority to record a Notice of Violation is set forth in Section 30812 of the Coastal Act, subdivision (a) of which states the following:

*Whenever the executive director of the Commission has determined, based on substantial evidence, that real property has been developed in violation of this division, the*

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<sup>2</sup> The Commission's regulations are codified in Division 5.5 of Title 14 of the California Code.

*executive director may cause a notification of intention to record a notice of violation to be mailed by regular and certified mail to the owner of the real property at issue, describing the real property, identifying the nature of the violation, naming the owners thereof, and stating that if the owner objects to the filing of a notice of violation, an opportunity will be given to the owner to present evidence on the issue of whether a violation has occurred.*

I am issuing this Notice of Intent to record a Notice of Violation because, as discussed above, unpermitted development has occurred at your property, in violation of the Coastal Act. **If you object to the recordation of a Notice of Violation in this matter and wish to present evidence on the issue of whether a violation has occurred, you must respond in writing, to the attention of Erin Haley, using the address provided on the letterhead, within twenty days of the postmarked mailing of this notice.** If you fail to object within that twenty-day period, we are authorized to record the Notice of Violation against your property in the Los Angeles County Recorders' office pursuant to Section 30812 of the Coastal Act. If you object to this recordation and believe that there has not been unpermitted development on your property, please provide us with any information you believe supports your contention along with your objection. For your information, under additional provisions of Section 30812, any such recordation of a Notice of Violation is to be removed after the final resolution of the violations, and you will be provided with a "clearance letter" confirming such action at that time.

#### **Civil Fines**

If the Commission issues a Cease and Desist Order and Restoration Order, Section 30805 of the Coastal Act authorizes the Commission to seek monetary daily penalties as laid out in section 30821.6(a) for any intentional or negligent violation of the order(s) for each day in which the violation persists. The penalty for intentionally or negligently violating a Cease and Desist Order and/or Restoration Order can be as much as \$6,000 per day for as long as the violation persists.

#### **Response Procedure**

In accordance with Sections 13181(a) and 13191(a) of the Commission's regulations, you have the opportunity to respond to the Commission staff's allegations as set forth in this Notice of Intent to commence Cease and Desist Order and Restoration Order proceedings by completing the enclosed Statement of Defense form. The Statement of Defense form must be returned to the Commission's San Francisco office, directed to the attention of Erin Haley, no later than Tuesday, June 12, 2007.

At this time, the Commission staff is tentatively planning to hold a hearing on the issuance of a Cease and Desist Order and Restoration Orders (and for the proposed recordation of a Notice of Violation, should you additionally request in writing a hearing on this issue) in this matter during the Commission meeting that is scheduled for July 11-13, 2007 in San Luis Obispo. We prefer to resolve violations amicably when possible. One option that you may consider is agreeing to a "consent order". A consent order is similar to a settlement agreement. A consent order would provide you with an opportunity to resolve this matter consensually, and to have input into the process and timing of removal of the unpermitted development and restoration of the subject property, and would allow you to negotiate a penalty amount with Commission staff. If you are interested in negotiating a consent order, please contact Erin Haley at (415) 904-5220 or send correspondence to her attention at the address listed on the letterhead when you receive this letter

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to discuss options to resolve this case. Again, we hope we can resolve this matter amicably and look forward to hearing from you.

Sincerely,

Peter Douglas  
Executive Director

Encl.: Offer to Dedicate recorded on July 16, 1980  
Statement of Defense form

cc (with enclosures): Dr. Warren Lent, 20802 Pacific Coast Highway, Malibu CA 90265-5216 - certified  
mail - # 7005 0390 0002 6839 4051

cc (without enclosures): Lisa Haage, Chief of Enforcement  
Linda Locklin, Coastal Access Program Manager  
Pat Veesart, Southern California Enforcement Supervisor  
Tom Sinclair, South Central Coast District Enforcement Officer  
Steve Hudson, South Central Coast District Supervisor, Planning & Regulation

**RECEIVED**  
MAY 25 2007  
COASTAL CONSERVANCY  
OAKLAND, CALIF.