

CALIFORNIA COASTAL COMMISSION

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**Via Regular and Electronic Mail**

July 22, 2015

G. Greg Aftergood
Law Offices of G. Greg Aftergood
21700 Oxnard Street, Suite 1170
Woodland Hills, California 91367

Subject: 20802 Pacific Coast Highway, Malibu (Violation File No. V-4-02-058; Lent)

Dear Mr. Aftergood:

It has been some months since we exchanged correspondence earlier this year, and Commission staff wanted to take the opportunity to once again express our desire to find a workable solution to the ongoing Coastal Act violations on property owned by your clients, Dr. and Mrs. Lent. These violations primarily include, but are not limited to, the placement of an unpermitted external staircase, landings or decks, fencing, and other associated development in the area of an easement dedicated to the public for public access. Commission staff continues to believe that a mutually agreeable solution exists based on the framework previously proposed, which would involve: your clients committing to remove the unpermitted development, but only at such time as the easement holder is prepared to construct an authorized public accessway; both parties working collaboratively to address your clients' desire for a second egress that does not involve impeding the public's use of a public accessway; and addressing the civil liabilities associated with the Coastal Act violations that continue to accrue.

With that as background, Commission staff also wanted to take an opportunity to respond to a few points raised in your previous letters, many of which we have already provided to you in prior letters. Most of the points discussed here relate to your contention that there is an "evidentiary issue" as to whether Los Angeles County permit plans for the construction of the residence show a staircase in the area of the public easement and whether any similar plans were approved in some manner by the Commission's Executive Director. Additionally, we would like to return, in part, to your ongoing contention that the existing unpermitted development provides a necessary second egress.

What the Commission Approved

To start, before getting to your claim of an evidentiary issue, it may be helpful to review what we know that the Commission did approve. What the Commission actually approved is evident in the Coastal Development Permit (CDP) and its two amendments for the residence at 20802 Pacific Coast Highway, approved by the Commission at public hearings and in public documents, including adopted Staff Reports.

The relevant CDP in this matter, CDP A-421-78, was approved as an appeal from the South Coast Regional Commission, by the Statewide Commission on January 17, 1979, with seaward stringline conditions. In approving the CDP, the Commission adopted the findings in the staff report that in order for the project to comply with sections 30211 and 30212 of the Coastal Act, conditions for vertical and lateral public access easement were required. Special Condition 5 required an offer to dedicate a vertical easement “that will allow for pedestrian access to and from the shoreline.”

As required by the CDP, the original applicant recorded an Offer To Dedicate an easement (Instrument No. 82-480826) on the property’s title, offering a public access easement in perpetuity for 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, extending from the edge of the public right of way of Pacific Coast Highway to the mean high tide line of the Pacific Ocean.” That offer was accepted in December of 1982, effectuating the creation of the easement.

CDP A-421-78 included plans attached as Exhibits 2 and 3, consistent with plans in our permit file dated “9/22/1977” and revised through “3/17/1978.” These plans show no development in the area along the eastern property edge offered as a public access easement.

Soon after the CDP was approved, the house east of the proposed residence was condemned and scheduled for demolition, ultimately allowing the 20802 Pacific Coast Highway residence to expand its stringline seaward. The applicant, therefore, applied for a permit amendment to move the stringline seaward. In the permit amendment, the applicant also added a new 317 square foot loft to the top floor. The new plans also include a beach access stairway on the western edge of the property, extending over and out past the residential bulkhead. On February 20, 1980, the Commission approved the permit amendment CDP A-421-78-A1, with the condition that the western stairway not “extend further seaward than the approved bulkhead line.”¹ The adopted staff report also reaffirmed again the original CDP findings that the vertical and lateral access easements were required for the project to be in compliance with the Coastal Act.

Like the original CDP, CDP amendment A-421-78-A1 also attached development plans as exhibits, including a site plan (Exhibit 1), an elevation (Exhibit 2), floor plans and a section plan (Exhibit 3). These plans show no development in the area along the eastern property edge offered as a public access easement. Exhibit 2 here provided a western elevation showing the beach staircase approved and conditioned as above. These exhibit plans match a plan set in our file dated 10/16/1979 (and stamped with the approval in concept of the County on 10/25/1979).

The Commission’s final approval of the residence occurred on June 16, 1981, when it approved the second amendment A-421-78-A2 after construction of the house had already apparently begun.² This amendment specifically only approved an accidental 18-inch encroachment on the

¹ As discussed further below, this condition in CDP A-421-78-A1 did *not* reject the idea of stairway on the western side, as you suggest at page 2 of your letter of December 3, 2014.

² The adopted findings for this amendment, dated June 4, 1981, state, “[i]n laying out the foundation according to the approved plans the applicant discovered that due to an error. . . the western corner of the structure extended . . . beyond the stringline.” The building permit application to LA County is dated February 17, 1981. According to a later LA County Building permit, caisson pouring began in January 11, 1982 and was finished by May 18, 1982.

western, seaward corner of the residence, resulting from a slight discrepancy between the field and plan stringlines. A-421-78-A2 adopted all conditions of original permit and A-421-78-A1.

A-421-78-A2 also included plans, specifying in Special Condition 1 that “Construction of the house and deck shall occur in accord with the plans approved by this Commission except as modified on the plans shown in Exhibit 2; this modification shall only allow on [sic] 18” encroachment at the western corner of the house.” Exhibit 2 provided a plan documenting the stringline discrepancy, which also showed no development in the area of the public easement and showed beach stairs on the opposite western side. At that time the Commission approved A-421-78-A2, none of the development that appears to be in violation of the permit and the Coastal Act had occurred and none of the CDPs or amendments authorized any such development.

Finally, there is a last plan set in the Commission’s permit file, which is dated 12/3/79, with revisions through 8/21/80 (the “79/80 Plan Set”). The 79/80 Plans in the Commission’s permit file includes four pages – the site plan, the floor plans, the elevations, and the sections. As discussed more fully below, each of these pages clearly show no development along the eastern property border, which is labelled for a public access easement. These pages also show a western set of stairs labelled for “beach” access. The Sheet Index for this plan set does reference some eight other supplemental pages of structural details and schedules, which are not included.

Thus, the available evidence in the Commission’s permit file shows that no development was ever approved by the Commission in the public access easement area. It also shows that permit conditions requiring the dedication of an easement for public access were required for the residence to be compliant with the Coastal Act. The public access easement across the property was recorded and accepted by the state and remains in effect. As we discuss below, it is also evident that no development could have ever legally been approved in that easement area.

“Final Working Drawings” as an Evidentiary Issue

Your assertion that there is an evidentiary issue around possible approval of the existing stairs on the eastern side of the Lents’ property in the area of the public easement is based on a scan you have provided of a single plan page labelled S-2. This page, you state, is part of a plan set approved by Los Angeles County with the original county building permit in the 1980s. You argue that this S-2 page depicts an exit stairway on the eastern edge of the residence.

You also argue that this page S-2 was part of a plan set somehow reviewed by Commission staff. In your letter of January 15, 2015, you state that the Commission had an “inflexible requirement back in 1980 that a set of ‘final working drawings’ had to be approved by the Executive Director before . . . construction could be commenced.” Your letter of January 15th also asserts that “absent incontrovertible” evidence, we should assume that “the entire set of the ‘final working drawings’ approved by the County of Los Angeles had to have been and were in fact provided to the Commission.”³ Your inference—as I understand it—is that because we should assume such

³ In making this argument, you also allege that our final plan set was unstapled and restapled, and during that process some pages were lost, including perhaps the page S-2: “the issue of unstapling . . . creates an evidentiary issue as to whether a complete set of plans had initially been submitted for approval.” Staff finds nothing suspicious that the plan set was apparently at one point unstapled. Plans might be unstapled for any number of reasons, including copying, or copying to be attached as exhibits as they were in this case for the June 4, 1981 staff report for

plans were to be submitted to the Executive Director, we should also assume that all such pages (including the page S-2) were submitted, and we should also assume that they were approved in some way by the Executive Director. For a number of reasons, Commission staff are unpersuaded that we should make such an evidentiary leap based on hypothetical final working drawings and conjectural submissions.

Approval of Any Such Final Working Drawings Would Have Violated Commission Regulations and Been Void

First, the undocumented and non-public approval by the Executive Director of development in contradiction to plans approved by the Commission at a public hearing would not only be contrary to good public policy but would also be specifically inconsistent with the conditions of the permit, the regulations of the Commission, and the Coastal Act.⁴

Plan revisions and final drawings may be required for Executive Director review when the Commission imposes a specific condition on a CDP requiring such a process, in those cases, such plans/drawings are intended to verify that the plans for construction comply with the changes that the Commission required through its conditions. They do not provide an opportunity to amend a CDP, especially, as would be the case here, in a way that contradicts the Commission's action.

In my letter of December 22, 2014, I explained that the original permit in this matter, CDP A-421-78, did include a condition requiring the applicant to submit final drawings (Special Condition No. 8). It also included a condition requiring revised plans (Special Condition No. 2). These conditions were intended to assure that the construction of the residence would comply with the CDP's conditions and the seaward stringline imposed by the Commission.⁵ However, as stated in our previous letter, subsequent amendments did not include such a condition, as the original CDP plans were superseded by the plans submitted for the CDP.

In no case, however, could the condition for final working drawings in CDP A-421-78 be used to fundamentally alter what the Commission approved. This is evident in the actual CDP itself. For instance, Standard Condition 4 of the CDP A-421-78, which is specifically repeated in the two amendments (A-421-78-A1 and A-421-78-A2), required that: "All construction must occur in accord with the proposal as set forth in the application for permit, subject to any special conditions set forth below."⁶ Along with Standard Condition 4, the 1980 A-421-78-A1 imposed

CDP Amendment A-421-78-A2. Thus, nothing about a possible unstapling raises an implication that pages were somehow removed from the Commission permit file.

⁴ It would be against good public policy for the Commission to approve one proposed development at a public hearing through public documents, and then have the Executive Director approve significantly fundamentally different plans on his or her own and outside of the public record.

⁵ Special Condition 8 required the final working drawings to be "in substantial conformance to the plans approved by the Executive Director pursuant to the above conditions." Special Condition 2 required revised plans to "indicate that no part of the enclosed living space of the structure shall be built seaward of a [particular] line . . . , and no part of the deck shall be built seaward of [another] line." Thus both conditions for later plans or drawings were intended to show compliance with the CDP, and could not have added an entire staircase that directly contradicted that CDP.

⁶ In the amendments it is: "All construction must occur in accord with the proposal as set forth in the application for permit, subject to any special conditions imposed on the permit except as modified by this amendment."

Special Condition 1, stating that: “Construction of the house and deck shall occur in accord with the revised plans submitted by the applicant (Exhibit 1, 2, 3)” The subsequent A-421-78-A2 again included the same Standard Condition 4 and also included a Special Condition 1, which states that: “Construction of the house and deck shall occur in accord with the plans approved by this Commission except as modified on the plans shown in Exhibit 2; this modification shall only allow on [sic] 18” encroachment at the western corner of the house.”

Under specific conditions of the applicable CDPs, therefore, construction had to occur in accordance with the plans submitted with the CDP application or the amendment applications, which were also attached as exhibits to the CDP approvals. Neither the CDP nor its amendments approved, in any way, development in the vertical access easement along the eastern side of the residence. Therefore, no final working drawings could authorize construction in a way that so fundamentally altered the plans approved by the Commission.

Standard Condition 4 of CDP A-421-78 and the amendments also cite the relevant Commission regulations in this matter: “Any further deviations from the approved plans must be reviewed by the Commission pursuant to California Administrative Code, Title 14, Sections 13164-13168.” Thus, any deviation from the plans, such as a new staircase development in the public’s right of way, would require explicit review by the Commission. Furthermore, as described to you in our letter of February 7, 2014, the cited Commission Regulations Section 13166(a) specifies that the “Executive Director shall reject an application for an amendment to an approved permit if he or she determines that the proposed amendment would lessen or avoid the intended effect of an approved or conditionally approved permit”

Indeed, the Commission found in the CDP (and its amendments) that in order for the residence to be consistent with the Coastal Act, special conditions providing for public access easements were required, including the vertical public access easement. Because the CDP required the dedication of an area for a future accessway for public use, a new design with development in the public access easement that lessens the ability of the public to use or precludes the public from using that vertical easement would clearly lessen the intended effect of that CDP. And, because the Commission had found that without the public easements the development of the residence would violate the Coastal Act, the approval of development in the vertical public easement would violate the Coastal Act. It is therefore elemental that the Executive Director could not, on his or her own, approve any plans that amended the permit so significantly. And clearly, the Executive Director would have no reason to do so here. Therefore, it is logical that the permit record does not include such an amendment.

In this regard, we should also briefly note that your January 15th letter misleadingly quotes language from the Deed Restriction and recorded OTDs required by the CDP in this matter as evidence that final working drawings were required.⁷ You assert, as if the purpose of these

⁷ The language you quote is plainly not part of the Deed Restriction, but is language in an attached exhibit to the Deed Restriction. In fact, that exhibit is the staff report for the original CDP A-421-78 from 1979, which, as explained above, was superseded by later CDP amendments (which were also included as exhibits to that Deed Restriction). See Page 2 of your letter: “Let me direct your attention to the Deed Restriction . . . which provides the following text (at page 9 of the recorded instrument)” Page 9 of the document is page 3 of the Staff Report to

documents were to require final working drawings, that the “[r]ecordation of such instruments . . . had to mean something.” It certainly did mean something – it meant that your clients’ predecessor was irrevocably offering to the public an easement in perpetuity for lateral and vertical public access and the right for the public to pass and repass over the eastern edge of the parcel from Pacific Coast Highway to the mean high tide line. And it meant that without those provisions for public access, the Commission found that the residence would not be – as it is not now – consistent with the requirements of the California Coastal Act.

There is No Evidence of Commission Review

As stated to you in our letter of February 7, 2014, under section 30600(a) of the Coastal Act, a CDP is a separate and distinct requirement from other permits which may be required by other agencies. If such plans were approved by L.A. County as part of its building permit process, that is irrelevant to the question of Commission approval.⁸

Commission staff have found no evidence in our permit files of any such final working drawings, no version of your scanned S-2 page, no letters regarding the submittal of such drawings, and no letters from the Executive Director acknowledging the receipt of or approving any revised plans or “final working drawings.” Such a letter would surely exist and would seem to be a pre-condition for any assertion that the Executive Director had approved something.

Nor have you provided any such materials or any evidence we received the page S-2, much less that any such receipt amounted to an approval in any sense.⁹ In an email of February 10, 2015, I requested more information about this scanned page, including that you provide the full set or original materials. On February 12, 2015, in an email, you stated that you would duplicate the county’s plan set and send it to us. We never received any plans or other original materials. Earlier Commission staff attempts to obtain plans from the City of Malibu or Los Angeles County have failed to find any similar such plans. I also note that in your clients’ recent litigation with their neighbors to the east, Jeffery and Nancy Paul, you were required by subpoena to produce all building plans, permit applications, permits issued, and other such documents in your possession. In the deposition of Warren Lent in this litigation, you reviewed the plans you submitted under this subpoena, and Mr. Lent agreed that there were no stairs or deck depicted in the area of the public easement in those building plans.¹⁰

CDP A-421-78. It is misleading to quote a CDP condition from an exhibit as if it were part of the text of the Deed Restriction and imply it was a specific requirement of that Deed Restriction.

⁸ Indeed, the implication of a submittal of one set of plans to the Commission and very different plans to the county would be a deliberate attempt to mislead Commission staff and circumvent CDP condition requirements.

⁹ You assert that it was the Commission’s “inflexible requirement” that a complete set of final working drawings be submitted to the Executive Director. Yet, you have not identified any documentation of this “inflexible requirement” in Commission regulations or elsewhere. In fact, it appears to have been common practice at the time that when Commission staff would accept a standard set of final plans, but that plan set did not necessarily include all the subordinate pages of structural building details and schedules. In this case, the four pages of the 79/80 Plans include the site plan, the elevations, the floor plans, and the sections, which are the most important and relevant plans needed for Commission staff to determine compliance with Commission approval. Page S-2 was apparently a structural framing page, and was likely not necessary for Commission staff to review and approve.

¹⁰ Deposition of Warren Lent, 28-30, Oct 1, 2014, *Lent v. Paul*, Sup. Ct. County of Los Angeles, No. SC121734 (Nov. 7, 2014).

There is No Evidentiary Issue

There is simply no evidentiary question here – what the Commission approved is clear on the face of the relevant CDP and amendments and their attached exhibits with plans, all of which clearly show no development along the eastern property edge and clearly document the existence of a recorded five-foot wide public easement there.

Rather than work by implication from assumed submissions, what the Commission approved is directly evidenced in the plans attached as exhibits to the permit, its amendments, and the adopted staff findings. As discussed above, the first CDP A-421-78 included plans as exhibits and those plans show no development in the area of the public access easement. The first permit amendment CDP A-421-78-A1 of 1980 included plans as referenced in Exhibits 1, 2, and 3. These plans provide a site plan, an elevation, a cross section, and floor plans. These plans are clear – there is simply no external staircase, or any other development, in the public access easement on the eastern side of the property. At the same time, the attached floor plan and elevation plans do clearly show in floor plan and elevation a set of beach stairs on the western property edge. The second permit amendment A-421-78-A1, which only authorized the aforementioned minor 18-inch encroachment, also included an Exhibit 2 intended to show the original and amended stringlines. Exhibit 2 is a floor plan, and again shows no development in the easement area, and again shows a set of “beach” stairs on the western corner.

Finally, we can review the final plan set in the Commission file (the 1979/1980 Plan Set), which you assert we should assume at some point included the page S-2 as you have presented it. Although the plan set does include a reference to a supplement S-2 page, this Commission plan set explicitly and strongly evidences the undisturbed existence of the public easement on the eastern side, as well as the allowance for a second egress on the western side. As referenced in our letter of February 7, 2014, the front page Site Plan specifically shows a delineated area for a five-foot wide “public access easement” along the eastern property edge. Page 2, the Floor Plans, clearly shows the beach stairs on the western side (the side opposite the location of the vertical public access easement), consistent with the permit as amended by the Commission, and shows no staircase, or other development, on the eastern side, which is consistent with the site plan showing a public easement there. Page 3 depicts the elevations, where a staircase is shown in the western elevation and neither a staircase nor a door is shown on the eastern side-elevation. In addition, the south elevation shows stairs on the west side of the property and no stairs or other development on the east side where the vertical public access easement is located. These plans are all consistent with and supportive of each other.

To read the S-2 as approving an eastern staircase, however, requires one to imply Commission approval on an unclear detail of a supplemental page that contradicts multiple aspects of the existing plans themselves, including the four pages of more fundamental plans including the site plan, the floor plans, and the elevations;¹¹ as well as imply Commission approval on a supplemental page that is not in the Commission’s files and is in contradiction to the CDP, its

¹¹ Indeed, the only curious evidentiary issue is why there would ever be a set of plans where a structural page shows a structure that conflicts with all the primary pages of the plans and all the other plans in the Commission’s file, as well as inconsistent with the CDP and its conditions.

various conditions, Commission regulations, and the Coastal Act. Thus, all of the evidence before us demonstrates that no stairs were ever approved by the Commission within the vertical public access easement along the eastern side of your clients' property.

The Lents Egress Concerns

Finally, in your January 15th letter you write that it would be preferable for your clients to sit down with the Coastal Conservancy staff (not the Commission) and reach a mutual acceptable solution to facilitate public access and protect the safety of the occupants at the Lent property; while at the same time you state that your clients cannot agree to remove the unpermitted staircase located within the vertical public access easement. You also reference again that the staircase is needed as a second egress for the occupants.

As we have explained to you before, Commission staff do not agree that the stairs were or currently are required under regulations of Malibu or Los Angeles County as a second egress. We have also, on multiple occasions, offered to work with your clients to develop alternative forms of egress, of which there are multiple potential solutions.

Included among these solutions we suggested are building the staircase on the western property border as originally approved. In this regard you misleadingly write (page 2) that "the Commission rejected a concept drawing dated October 16, 1979, which provided for a staircase along the westerly side of the subject property."¹² As mentioned before, the Commission approved the plans for a staircase on the western property border in the permit amendment of February 13, 1980, with the requirement that it be set back from the bulkhead stringline. Thus, revised stairs on that western side were proposed and approved, labelled "Beach" stairs in the plans, and had they been built as approved, they could have addressed future potential egress concerns, even with the seaward limit.

If, as you have argued in your letter of December 3, 2014, the original applicants considered the western staircase as unfeasible because of the limit on its seaward extent, that presented a dispute over a permit condition. If the original applicants wished to challenge the imposition of a CDP condition because they believed it was infeasible, the time to do that was decades ago at the time of the permit. The applicant could have applied to amend the CDP, as they had done two times before. The solution was not, as was done here, to undertake development on their own, completely without a permit, in direct violation of permit conditions, and directly in the area of a public access easement. Likewise, current safety concerns, if they exist, can be ensured through the multiple other aforementioned opportunities to build an exit (as well as other options including retractable beach stairs) that do not impede the public's right of access. The current

¹² Your last letter also mischaracterized Commission permitting action when you wrote (page 1), "all of the initial preliminary design concepts submitted in 1977 and 1978 were rendered moot by the string line limitations imposed by Coastal staff, which essentially cut the planned 1,877 square foot two-story house in half." While in the January 1979 CDP, the Commission did set a tighter string line than that proposed by the applicants, as noted in the Staff Report at the time, the Commission string line was consistent with that used by Los Angeles County and the Regional Water Control Board, and it is an exaggeration to state that the house was cut "in half." Moreover, you fail to acknowledge that Commission expanded the string line seaward in the two subsequent amendments. The final, approved residence was approximately 1,800 square feet, only 77 square feet less than originally proposed.

solution then, is to seek a legally acceptable solution, not to maintain ongoing development in violation of the Coastal Act that impedes the development of access for the larger public and keeps that access in private ownership.

In this regard, staff would also like to note that while the stairs function as a private, personal beach access, it appears that the Lents are not the primary residents at the address, but instead the house is used primarily as a commercial property to rent to visitors. Thus, it appears the stairs are used in large part by those who rent the Lents' residence at a sizeable weekly rental rate and use the stairs for private beach access. Indeed, claiming the stairs are needed for safety concerns of the residents, seems to cloud one of the factors most important in this case – the utilization of a public access easement for private personal financial gain.

Finally, you imply that your clients are willing to cooperate; yet their ongoing refusal to agree to remove the development in the public easement continues to hamper the ability of the Coastal Conservancy and the Mountains Recreation and Conservation Authority to move forward with plans to develop the public accessway. Your letter also appears to ignore potential solutions Commission staff offered to you in several previous communications, such as our "settlement" offer letter of November 7, 2014, which have been highlighted again above. It should be reiterated, therefore, that while your clients continue to refuse to agree to remove the unpermitted development from the public access easement, administrative penalties under Section 30821, in addition to other penalties under Chapter 9 of the Coastal Act, continue to accrue each day and for each violation and will continue to do so.

At this point, further letters restating arguments that we have discussed in our previous letters are unwarranted. There will be an opportunity provided as part of the Commission hearing procedures to renew these points and to present further arguments.

For now, once again, we ask you to consider seriously an agreement that resolves the Coastal Act violations, allows the Lents to avoid the continued accrual of administrative penalties, enables the Conservancy and MRCA to properly move forward with developing the public access design, and addresses your clients concern of a second egress in a way that does not affect the public's established access rights. As always, I am available for any discussion at (415) 904-5236.

Sincerely,

Peter Allen
Statewide Enforcement Analyst

cc: Lisa Haage, Chief of Enforcement
Aaron McLendon, Deputy Chief of Enforcement
Alex Helperin, Senior Staff Counsel

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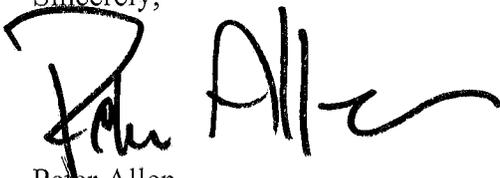
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Sincerely,

A handwritten signature in black ink, appearing to read "Peter Allen". The signature is stylized and written in a cursive-like font.

Peter Allen
Statewide Enforcement Analyst

cc: Lisa Haage, Chief of Enforcement
Aaron McLendon, Deputy Chief of Enforcement
Alex Helperin, Senior Staff Counsel