

January 15, 2015

VIA E-MAIL & FIRST CLASS MAIL

Peter Allen, Statewide Enforcement Analyst  
CALIFORNIA COASTAL COMMISSION  
45 Fremont Street, Suite 2000  
San Francisco, CA 94105-2219

**Re: Lent Residence -- 20802 Pacific Coast Highway, Malibu, CA 90265**  
**Notice of Intent to Commence Cease and Desist Order and**  
**Restoration Order Proceedings -- Violation No. V-4-02-058<sup>1/</sup>**

*This letter and enclosure(s) are submitted in furtherance of settlement negotiations protected by and subject to all of the evidentiary limitations imposed by California Evidence Code §1152, et. seq., and all other protections afforded settlement proposals under law. Neither this letter, nor its contents and/or enclosure(s), may be used as evidence in any proceedings.*

Dear Mr. Allen:

Your last letter to the undersigned, dated December 22, 2014, ostensibly addresses three (3) issues: (1) the "final working drawings" submitted by the project applicants (the Erpeldings) prior to the commencement of construction of their project; (2) whether feasibility has been conclusively determined vis-a-vis the improvements necessary to facilitate public use of the subject vertical easement; and (3) whether the Lents' easterly ingress/egress stairs must be removed because they prevent use of the public easement for pass and repass purposes between Pacific Coast Highway and the shoreline. Such issues are addressed more fully below.<sup>2/</sup>

**FINAL WORKING DRAWINGS SUBMITTED TO THE COMMISSION FOR APPROVAL**

In footnote 1 to your December 22, 2014 correspondence, you claimed that this office has been "shifting positions" vis-a-vis the plans at issue for the subject property. Nothing could be further from the truth. Although several concept designs were submitted to the Commission early in the permit application process, as outlined by you in the index to plans for CDP No. 421-78 (prepared February 20, 2014), 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. In addition, the Commission rejected a concept drawing dated October 16, 1979, which provided for a staircase along the westerly side of the subject property. At that point, the project architect (Michael Barsocchini) prepared and submitted new plans (dated December 3, 1979, with revisions received and approved by the

<sup>1/</sup>It is noted that the apparent typographical error in characterizing the Violation File No. has now been corrected.

<sup>2/</sup>Given the extensive thread of substantive writings (dating back to at least August 6, 1993) to/from the Commission and California State Coastal Conservancy (the "Conservancy") regarding this matter, including a number of letters submitted by the undersigned to date, it is prudent at this point to incorporate such writings by this reference for the benefit of the administrative record. A tentative recap of the writings that we presently know about will be submitted under separate cover in the next week or so, to be made a part hereof. However, we expressly reserve the right to augment such list as our discovery reveals additional writings germane to this dispute.

Commission through August 21, 1980) for what was essentially a 3-story residence. The first page of such plans constituted the sheet index of the "stapled plan set" provided for my inspection at the Commission's Ventura office, on February 24, 2014. That sheet index specifically identified twelve (12) pages of plan sheets, and same is and has always been the applicable set of plans that this office has been discussing in the context of this matter. Page 2 of that plan set depicts the exit doorway leading out from the residence along the easterly side of the property, and page S-2 (copy attached, dated December 3, 1979, never revised) of same clearly depicts the stairway from that doorway along the easterly side of the residence.

My earlier assertion regarding stapling and unstapling the final working drawings does not represent a "shifting" position. It is simply an incontrovertible salient fact that the four pages of the 12-page set of plans that the Commission furnished for my inspection last February clearly revealed that the plan set had been unstapled and taken apart by someone at the Commission before they were provided to me.<sup>2/</sup> My correspondence to you dated December 3, 2014 also pointed out another incontrovertible fact: it was the Commission's unambiguous and inflexible requirement back in 1980 that a set of "final working drawings" had to be approved by the Executive Director before a project applicant's construction could be commenced. This requirement of the Commission did not state that only some of the pages of the final working drawings had to be submitted; and that is why the issue of unstapling the set before they were furnished to me creates an evidentiary issue as to whether a complete set of plans had initially been submitted for approval. I am prepared to adduce competent admissible evidence from architects who were procuring Coastal Development Permits in the late 1970s/early 1980s that two (2) inflexible requirements had to be fulfilled by project applicants: (1) the applicant had to provide proof of "Coastal Review" approval from the County of Los Angeles prior to submittal of the working drawings to the Commission, and (2) that a complete set of working plans (i.e. all sheets listed on the sheet index) had to be submitted for approval not by the Commission itself but instead by the Executive Director.

Your letter of December 22 seemingly asserts that there was no requirement for submission of final working drawings to the Commission. Such assertion is curious. Let me direct your attention to the Deed Restriction recorded July 16, 1980 as Instrument No. 80-679382, which provides the following text (at page 9 of the recorded instrument):

"8. Overall Condition. Final working drawings shall be submitted to the Executive Director prior to the commencement of construction; these drawings shall be accompanied by an Architect's Certificate certifying that the final working drawings are in substantial conformance to the plans approved by the Executive Director pursuant to the above conditions. All development shall be in strict conformance with those drawings. No construction shall commence prior to the submission of evidence to the Executive Director that all conditions have been satisfied." [emphasis added]

See also page 16 of the Irrevocable Offer to Dedicate recorded as Instrument No. 82-480826 on May 10, 1982 and Instrument No. 82-480827 (likewise recorded May 10, 1982). Recordation of such instruments, which became part of the chain of title for all subsequent owners of the subject property, had to mean something; and it was certainly understood by the project applicants (the Erpeldings) that submittal of all of the final working drawings was a condition precedent to their being able to commence construction. Indeed, if there had been no such requirement for submission of working drawings, why would your office

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<sup>2/</sup>I personally took photographs of same to corroborate this fact, before the plans were thereafter copied per my request.

have any pages of same, including a sheet index identifying all of the pages of the plan sheets? The County of Los Angeles approved the 12 pages identified on the sheet index for this project, and it is our contention -- absent incontrovertible competent and contemporaneous evidence dating back nearly 35 years to the contrary -- 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, consistent with the Commission's then existing express requirement for same.

#### **FEASIBILITY OF IMPROVEMENTS**

While I certainly respect your opinion that "feasibility no longer appears to be an issue in this matter," the mere fact that the subject property was included in connection with MRCA's preparation of its Public Works Plan for Malibu Accessways is hardly dispositive. Such document expressly provided: "Determination of suitability of the public accessway over [our] client's property for public use will be made . . . through this study." Representatives of the MRCA conceded when they were visiting the property a month or so ago that they were still assessing the feasibility of this project, and we are advised that, as a part of this feasibility analysis, consideration will be made as to whether it is possible to incorporate the easterly stairway in the Conservancy's easement improvements. It is submitted that such an analysis is not only appropriate, it is compelled given the fact that the Conservancy only enjoys a *limited* right to enter and use our clients' land. While the Conservancy is certainly entitled to construct improvements within the easement area which are reasonably required to make use of the easement safe and convenient, the Conservancy is not entitled to increase the burden on, or unreasonably interfere with our clients' continued use of that portion of their property. To do so could trigger loss of the easement under the legal doctrine of overburdening.

In short, the feasibility of opening this vertical accessway to public use for the limited purpose of "pass and repass" activities has yet to be determined. The initial design submitted to our clients by the Conservancy involved a massive suspended structure that essentially cut the usable beach in half -- something never before constructed within the City of Malibu -- in order to address the CalTrans storm drain outfall pipe that shares the 5-foot wide easement area. It is our understanding that any such improvements would also require approval from the City of Malibu.

#### **REMOVAL OF EASTERLY EGRESS STAIRS**

We have at all times conceded that the temporary, removable fencing that was installed by the Erpeldings in 1980 to prevent passers by from falling into the 5-6 foot drop-off from Pacific Coast Highway to the deck below, will be removed when the Conservancy is ready and able to proceed with a viable project and open the subject easement for public use. However, for the reasons set forth above and in our previous communications to the Commission/its staff, our clients are not ready to concede that their easterly egress stairs must be removed, especially in light of the fact that feasibility of opening the subject easement has not yet been determined and there has certainly been no proof that the easement stairs cannot co-exist with the public's right of pass/re-pass along the easterly side of our clients' residence.

As I have indicated to you on many prior occasions, our clients would certainly like to resolve this dispute in an amicable and reasonable fashion. But they are not willing to concede removal of the secondary egress serving their residence, which would render their property to be nonconforming and in violation of applicable rules and regulations of the City of Malibu and the Los Angeles County Fire Code, as discussed with greater specificity in some of my earlier communications to your office. Once again, I must reiterate the point that until a feasible plan for opening this limited access easement area is submitted and approved

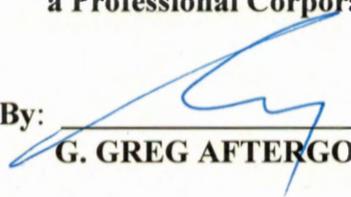
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by the Conservancy, it is impossible for our clients or the Commission to know whether this topographically and logistically challenged easement will ever be developed and opened for public use. At the end of the day, it would certainly be preferable for our clients and the Conservancy staff to sit down together and try to work hand in hand in reaching a mutually acceptable solution that would facilitate public access and at the same time preserve and protect the safety of occupants at the Lent property.

Nothing contained herein or omitted from this letter shall be construed as a waiver, relinquishment or abandonment of any rights, claims or remedies which our clients may have at law or in equity, all of which are hereby expressly reserved.

Sincerely

**LAW OFFICES OF G. GREG AFTERGOOD**  
**a Professional Corporation**

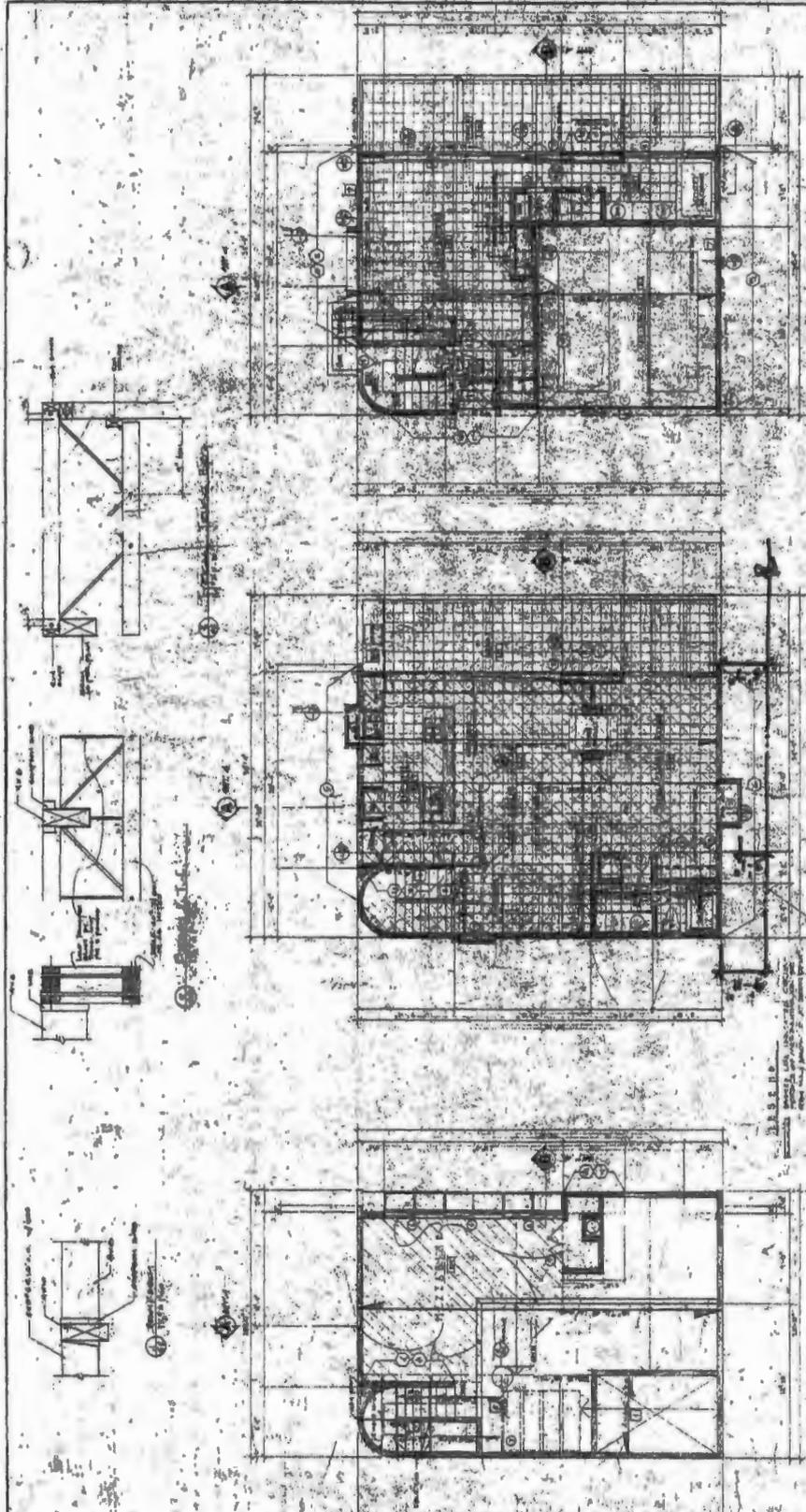
By:   
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**G. GREG AFTERGOOD**

GGA:gm

enclosure

cc: Client



**MECHANICAL ROOM SCHEDULE**

No.	Description	Quantity	Unit	Notes
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