

December 3, 2014

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^{1/}

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:

This shall acknowledge my receipt of your letters dated November 7 and November 24, 2014. With respect to the former, let me apologize for not getting back to you earlier. That being said, demanding responses within a few days, when this matter has been pending since before 2003, seems rather arbitrary and capricious. More to the point, this office had been preparing for a 5-7 day trial over the past month in a complex real estate case that was scheduled to commence December 7. Fortunately, we prevailed on a Motion for Summary Judgment, negating the need for a trial.

Turning now to the substance of your November 7 correspondence, the Lents (and the undersigned) are profoundly disappointed. Your expressions of an interest in reaching a mutually acceptable disposition of this matter notwithstanding, it appears that nothing short of absolute capitulation by our clients -- including removal of the secondary egress improvements built by the permit applicants (the Erpeldings) more than 30 years ago -- is seemingly acceptable to the Commission.

As discussed more fully in my earlier correspondence dated April 30, 2014, the subject stairs along the easterly side of the Lent Property, and the doorway accessing same, were depicted in the final working drawings (originally dated December 3, 1979) that had to have been and were in fact submitted to the Commission's Executive Director for his approval prior to the commencement of construction. The entitlement documents authorizing the Erpelding work of improvement expressly provided: "Final working drawings shall be submitted to the Executive Director prior to the commencement of construction; those drawings shall be accompanied by the 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" In short, the Executive Director was given the authority and discretion to review and approve the "final working drawings" as being in

^{1/}This is the Violation No. set out in the letters to our client from the Commission dated April 27, 2007 and May 23, 2007. We are assuming that your characterization of the Violation File No. as being V-4-02-098 is simply a typographical error.

“substantial conformance” to the conditions imposed by the Commission. The house was built in conformance with those drawings.

Our clients have *never* disputed the fact that their predecessors granted an easement for pedestrian pass/re-pass purposes along the easterly five feet of their property for access between Pacific Coast Highway and the shoreline. But as I have also repeatedly indicated to you and others, the scope of such easement is *not exclusive*. Our clients still have the absolute right to make reasonable use of the portion of their property burdened by such easement, an incontrovertible legal principle that the Commission is now ostensibly ignoring or rejecting. The Conservancy is presently evaluating its options regarding the viability of the various Malibu vertical accessways – including the Lent Property – as public easements. Such analysis is supposed to be completed by the end of the year. Waiting a few more weeks until the Conservancy has completed such assessment is both reasonable and appropriate, given the fact that 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.” (Public Resources Code §31404).

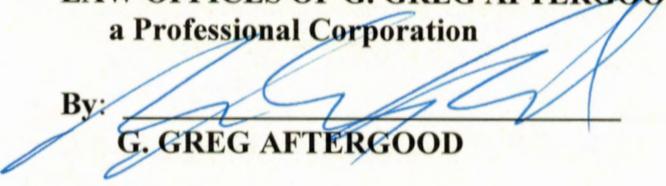
The Lents have at all times made it clear to the Commission that when the Conservancy has its permits in place, and is ready and able to proceed with a viable project, the temporary barrier erected by the Erpeldings to prevent passers by from falling into the 5-6 foot drop-down from Pacific Coast Highway to the deck below will be removed. It was specifically designed to be taken out at any time, when the Conservancy was ready to open the subject easement for public use.

Our clients have already incurred considerable expense hiring consultants to evaluate feasibility of a different secondary egress arrangement at the property. All have reached the same conclusion: there is no viable option short of essentially gutting the house and starting from scratch in developing its interior improvements in compliance with current code standards, a wholly unacceptable proposition. Let me also point out to you that the Erpeldings abandoned the idea of having beach access stairs along the westerly side of the residence (per early concept drawings dated October 16, 1979) given the conditions that had been imposed by the Commission, which rendered the concept unviable because of the location and design of the continuous sea wall that serves to protect our clients’ property and the properties of the adjacent neighbors.

No one knows if the Conservancy will *ever* open the subject easement, given the obvious topographical, engineering and other constraints posed by the presence of the massive storm drain outfall pipe that is likewise located in the same 5-foot wide vertical easement area. Our clients remain hopeful that an amicable and mutually acceptable resolution of this dispute can be crafted.

Let’s calendar a mutually acceptable time to telephonically discuss the foregoing in greater detail.

LAW OFFICES OF G. GREG AFTERGOOD
a Professional Corporation

By: 
G. GREG AFTERGOOD

GGA:gm
cc: Clients