

September 7, 2005

Client-Matter: 26897-030

**VIA FACSIMILE & U.S. MAIL**

John Bowers  
California Coastal Commission  
45 Fremont Street, Suite 2000  
San Francisco, CA 94105-2219

**Re: Offer of Dedication; Coastal Development Permit No. 4-95-049**

Dear John:

Thank you very much for providing me with information regarding the offer of dedication that was made on what is known as the "Van Halen/Bertinelli" property in Malibu in connection with Coastal Development Permit No. 4-95-049.

As we discussed and as you have previously discussed with Cathleen Summers, the property over which the offer was made is located in a common interest subdivision that is subject to an extensive list of Covenants, Conditions and Restrictions ("CC&Rs"). By their terms, the CC&Rs create mutual servitudes on each lot in favor of each other lot. Those servitudes are enforceable either by the Malibu Encinal Homeowners Association ("MEHOA") or by other individual lot owners. Thus, all provisions of the CC&Rs exist as property interests that each lot owner in this tract (Tract No. 10630) owns in each other lot in the Tract. No owner – since the CC&Rs were created in 1932 and incorporated into each deed – has unrestricted title to his or her lot. For this reason, my client, the MEHOA, is very concerned that the Coastal Commission has approved and that the Coastal Conservancy has accepted an offer for which the consent to make the offer was never obtained from MEHOA.

MEHOA's Board of Directors has interpreted the complex of inter-locking servitudes as precluding any individual lot owner from granting any rights in his/her lot to any party for any purpose other than single family residential use without the agreement of all other lot owners. This clearly would preclude the grant of any rights to the public at large or for its use. As no lot owner owns free and unrestricted title to the lot, no lot owner has the right to offer to dedicate such an interest. One can only transfer what is actually owned. That is the only way to maintain the integrity of the servitudes that each lot owner owns throughout the Tract.

John Bowers  
September 7, 2005  
Page 2

We have been informed that some twenty-five years ago, the owner of part of what is now the Van Halen/Bertinelli property purported to offer to dedicate a public access easement from Broad Beach Road to Sea Level Drive. No permission for that offer was sought or obtained from either MEHOA or from other lot owners with servitudes on that property. Such an offer was plainly beyond the power of that owner to make, and is therefore of no force or effect.

It has now come to my client's attention that subsequent to the original offer, the Coastal Commission (as you have acknowledged) administratively approved the relocation of the offer ("relocated offer"), and that the Coastal Conservancy has accepted the relocated offer. For the reasons cited above, it is my client's position that the makers of the original offer and the relocated offer did not have authority to make a valid offer because consent from the MEHOA was never obtained as required by the applicable CC&Rs that govern the use and disposition of land within this subdivision.

Because the offers were made without appropriate landowner approval, we believe that the Coastal Commission's approval is subject to revocation because inaccurate, erroneous or incomplete information was provided to the Commission regarding the ownership of the lot and the ability to offer land for dedication. We would be happy to provide you with copies of the CC&Rs and review the common interest ownership of the lots with you and the Coastal Conservancy so that the concerns of my client can be addressed and this matter resolved. Please contact me at your earliest convenience.

Very truly yours,



Susan K. Hori  
Manatt, Phelps & Phillips, LLP

cc: ✓ Elena Eger, California Coastal Conservancy (via U.S. mail)  
Marcia Grimm, California Coastal Conservancy (via U.S. mail)  
Cathleen Summers, MEHOA (via email)  
George Soneff, Manatt Phelps & Phillips (via email)