

## CALIFORNIA COASTAL COMMISSION

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



September 20, 2005

Susan Hori, Esq.  
Manatt, Phelps & Phillips  
695 Town Center Drive, 14<sup>th</sup> Floor  
Costa Mesa, CA 92626-

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

Dear Ms. Hori:

I am writing in response to your letter to John Bowers, dated September 7, 2005. In your letter, you assert that the offer to dedicate a public access easement on the "Van Halen/Bertinelli" property and relocation of the easement constitute use of property for a purpose other than single family residential use and that according to the applicable Covenants, Conditions and Restrictions ("CCRs") this cannot occur without approval of all property owners in the tract. However, you do not cite any specific provision in the CCRs.

By way of background, the offer to dedicate a public access easement that was relocated resulted per Coastal Development Permit ("CDP") Nos. A-77-171 and A-77-1466, approved on August 25, 1977, for a lot consolidation/resubdivision and construction of single family residences. One of the conditions of approval required that the property owner offer a public access easement across the property from Broad Beach Road to Sea Level Drive, 5 feet wide to the bluff edge and 10 feet wide down the bluff face. On January 18, 1978, the owner recorded a Deed Restriction granting the public accessway (Instrument No. 78-69946). An Irrevocable Offer to Dedicate an easement for the same area was recorded on July 25, 1980 (Instrument No. 80-709137). Despite the 28 years that have passed since the Commission hearing and subsequent recording of these two public access documents, there has been no legal challenge by your client or anyone else against these interests. At the present time any such challenge would be time-barred.

Subsequently, in May 1995, the Coastal Commission approved CDP No. 4-95-049 for additional development on the Van Halen/Bertinelli property. This permit authorized an addition to the residence approved under the permit cited above, an expanded septic system, new pool, and a lot line adjustment to combine 7 lots into 2 lots and relocate the offer to dedicate public access easement on the property (required by CDPs A-77-171 and A-77-1466) to the eastern edge of the new parcel boundary (City of Malibu, Lot Line Adjustment Map No. 93-03). Thus, the Commission authorized relocation of the offer to dedicate public access easement in the 1995 permit, although it was apparently overlooked and a separate

document (in addition to the Lot Line Adjustment Map) relocating the offer to dedicate public access easement was not recorded until this year. There was no challenge by your client or anyone else to approval of CDP No. 4-95-049 or Lot Line Adjustment Map No. 93-03, which have now become final and immune from any such challenge.

We are surprised by MEHOA's recent letter because it has known about the Van Halen/Bertinelli easement for years and also because quite a few other property owners in the tract have recorded offers to dedicate public access easements, without obtaining approval of the other property owners in the tract. See Instrument Nos. 91-206236 (Lot 27 of Tract No. 10630), 91-465213 (portion of Lot 130 of Tract 10630), 91-682870 (Lot 156 of Tract 10630) and 89-1922722 (Lot 125 of Tract 16030). As in the case of the Van Halen/Bertinelli easements, we are not aware of any legal challenge to the validity of these easements on the grounds stated in your letter or otherwise.

Even if MEHOA could raise any objections at this late date (which we do not believe it can), we do not believe there is any violation of the CCRs. We understand that all privately owned beachfront lots in the tract are encumbered by easements allowing the other property owners in the tract to use the southerly portion of the beachfront property for recreation. Thus, encumbering parcels in the tract with an easement for recreational use was not regarded as inconsistent with or different from the single family uses of the subdivision.

In this instance, relocation of the offer to dedicate public access easement is not creating any non-residential use of property. The easement is similar to a sidewalk or alley to be used by pedestrians, which are common in residential neighborhoods. The offer to dedicate public access easement was relocated to place it adjacent to an existing publicly owned parcel used as an access way in the tract from Broad Beach Road to Sea Level Drive, known as Lot I. All property owners in the tract have an easement to use Lot I for access to Sea Level Drive and the beach. As you know, the Mountains Recreation and Conservation Authority owns Lot I in fee and public use of the access way to get to Sea Level Drive and the beach is already occurring. Relocating the offer to dedicate a public access easement so it is adjacent to the existing access way simply increases the width of the area that can be used for walking from Broad Beach Road to Sea Level Drive. It does not have any impact on residential uses by other property owners in the subdivision or introduce a new use to the tract. Providing a wider access way simply may make it more scenic and pleasant for use by both the public and property owners in the subdivision.

As you know, in *Malibu-Encinal Homeowners Association, Inc. v. Lechuza Villas West* (Court of Appeal Case No. B150612, decision November 13, 2002), the court rejected MEHOA's attempt to establish a right to control use of the access

September 20, 2005

Page 3

ways in the tract, including Lot I, and the beachfront lots that are now publicly-owned. We are aware from previous communications that MEHOA's objections to relocation of the offer to dedicate public access easement on the Van Halen/Bertinelli property are based on its continued claim that it has the authority to prevent or control any action that would increase or facilitate public use of Lot I and/or the publicly-owned beachfront parcels in the tract. Again, the court of appeal determined that MEHOA has no such right of control, including under the CCRs.

For the reasons set forth, we do not agree with your assertion that the offer to dedicate the easement and/or relocation of the offered easement required approval of all other property owners in the tract, nor do we believe that any such claim may be brought at this time.

Sincerely,

*Sandra Goldberg*  
SANDRA GOLDBERG  
Staff Counsel

cc: Linda Locklin  
Jack Ainsworth  
John Bowers, Esq.  
Laurie Collins, Esq.  
Elena Eger, Esq. ✓

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SEP 21 2005

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