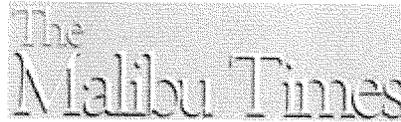


From: Dick Wayman [dwayman@scc.ca.gov]
Sent: Thursday, January 14, 2010 10:11 AM
To: AAARasa Gustaitis; Eger, Elena; Ann Notthoff; Bonnie Neely; 'Bosco, Douglas'; Bryan Cash; 'Hansch, Susan'; Jack Baylis; Karen Finn; Marisa Moret; Peterson, Pat; 'Scarborough, Karen'; 'Schuchat, Sam'; 'Bane, Karen'; 'Bob Thiel'; 'Brand, Peter'; 'Cardellino, Joan'; 'Greg Gauthier'; 'Hayes, David'; 'Kara Kemmler'; 'Kroll, Chris'; Megan Johnson; Rachel Couch; 'Ruddock, Debbie'; 'Small, Mary'; 'Williams, Prentiss'
Subject: Clip-Public access, homeowners' rights core of Lechuza battle
Attachments: image001.jpg



Public access, homeowners' rights core of Lechuza battle

The head of a state agency, which seeks to improve public access to Lechuza Beach, says a homeowners association wants to restrict such access. The issue may end up in Coastal Commission hands.

By Olivia Damavandi / Assistant Editor
January 14, 2010

The outcome of an eight-year war between a state agency and a local homeowners association over a public access enhancement project proposed for a state-owned piece of Lechuza Beach could end up in familiar hands: the California Coastal Commission.

The battle over the project has also become contentious, with references to “extortion” and “blackmail” regarding the removal of a gate on the state-owned part of the beach, and a state agency head saying the real issue is about residents wanting to restrict public access.

The project, proposed by the Mountains Recreation and Conservation Authority, comprises several additions intended to improve public access to Lechuza Beach through three gates, which are located at the entrances of East Sea Level and West Sea Level drives, and across the street from Bunny Lane off Broad Beach Road. The Malibu-Encinal Homeowners Association owns the first two gates, while the latter gate is the property of the MRCA.

Though the MRCA owns the undeveloped property on which it seeks to make the improvements, the Malibu-Encinal Homeowners Association says the state agency is not legally entitled to do so because the project interferes with easement rights (also known as covenants, conditions and restrictions) granted by the association to each homeowner in the neighborhood. The MRCA, however, argues that the easement rights only apply to those with homes on their property.

The MRCA sought to amend those easement rights at a special meeting last week Wednesday, but instead voted to finalize a beach management plan—a mandatory part of the project application that dictates the uses of the beach and whether it should be treated as public or private in circumstances such as hours of access.

The MRCA purchased the land from developer Norm Haynie for \$10 million in 2001 after receiving most of the purchase money from the State Coastal Conservancy. Since that time, the homeowners association and the state agency have failed to agree on a beach management plan, which since 2007 has been pending initial approval



from the city's Environmental Review Board. (The Planning Commission, whose decision can be appealed to the city council, must also hear the project. The council's decision can then be appealed to the Coastal Commission.)

MRCA Executive Officer Joe Edmiston, with whom the Coastal Commission has sided in numerous land-use disputes against the City of Malibu, on Monday said the homeowners association's rejection of the beach management plan stems from its opposition to public access.

“The homeowners association certainly has the right to go before the city council, which I'm sure will be a sympathetic entity to them,” Edmiston said Monday in a phone interview. “There's no way around the fact that ultimately the Coastal Commission is going to make the final decision. Most of this back and forth through the years with the HOA has been [to keep the] Coastal Commission from making the final decision. The HOA can sue [the commission], but on things like public access there's a pretty broad consensus. They're not likely to prevail.”

The homeowners association, however, states that it has voluntarily provided public access to Lechuza Beach for decades.

“The issue deals with management of public access and how it would be integrated in a private community,” Rick Davis, the homeowners association's attorney, said Monday in a phone interview. “The MRCA is proposing to make changes to the HOA's property without its consent, and has ignored the limits of the rights they have to utilize parts of a private community. The [beach management] plan is a way for Edmiston to try to authorize himself to go out and raise havoc in the community by attempting to exercise powers his agency doesn't have.”

An example of this, Davis said, occurred the night before the special meeting when Edmiston removed the gate of the MRCA's public beach access without the consent of the Coastal Conservancy, the homeowners association, Coastal Commission or City of Malibu.

Edmiston on Monday said he removed the gate because it was declared unpermitted by the Coastal Commission, and a coastal development permit was not required to remove it.

But in his Jan. 5 letter to the Coastal Commission, Edmiston wrote, “We hope that to the extent there is concern about the lack of a gate, such concern will translate into cooperation from MEHOA and the timely processing of our application by the City of Malibu.”

The incident has further outraged the homeowners association, whose attorneys, in written statement dated Jan. 6, said it “certainly has the ring of extortion and blackmail.”

“The MRCA acts through intimidation rather than deliberation and cooperation,” Davis said. “It certainly doesn't put the kind of public face on a public agency in the State of California that any of us as members of the public or agencies that have to function here want to be associated with.”

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