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Malibu Encinal Homeowners Association

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

MALIBU ENCINAL HOMEOWNERS ASSOCIATION,

Petitioner and Plaintiff,

vs.

MOUNTAINS RECREATION AND CONSERVATION AUTHORITY; GOVERNING BOARD OF THE MOUNTAINS RECREATION AND CONSERVATION AUTHORITY; CALIFORNIA COASTAL CONSERVANCY; BOARD OF DIRECTORS OF THE CALIFORNIA COASTAL CONSERVANCY; DOES 1 through 50, inclusive,

Respondents and Defendants.

CITY OF MALIBU,

Real Party in Interest

CASE NO. BS124911

FIRST AMENDED PETITION FOR PEREMPTORY WRIT OF MANDATE (CCP § 1085), OR ALTERNATIVELY ADMINISTRATIVE MANDAMUS (CCP § 1094.5), AND COMPLAINT FOR QUIET TITLE, DECLARATORY AND INJUNCTIVE RELIEF (CCP § 1060)

Dept.: 86
Judge: Hon. David Yaffe
Trial Date: None
Action Filed: February 11, 2010

THE HONORABLE JUDGE OF THE SUPERIOR COURT:

Petitioner/Plaintiff Malibu Encinal Homeowners Association ("MEHOA") petitions this Court for a writ of mandate under California Code of Civil Procedure sections 1085 and/or 1094.5 and seeks declaratory, injunctive and other relief by this verified First Amended Petition and Complaint ("Petition and Complaint"), and alleges as follows:

THE PARTIES

1. Petitioner/Plaintiff MEHOA is a California nonprofit mutual benefit corporation and is the homeowner association for the private common-interest subdivision known as "Malibu Encinal" that includes Lechuza Beach. MEHOA is the successor in interest to the original homeowner association established under the Declaration as to Establishment of Conditions, Restrictions, Covenants, reservations, Liens and Charges Affecting that Certain Real Property known as Malibu Encinal, recorded September 6, 1932 (the "CC&Rs"). MEHOA is authorized under the CC&R's to "provide for the upkeep, maintenance and purchase of all streets, walks, easements, reservations, community beach and/or community park areas" in the Malibu Encinal tract. MEHOA has the right and power to interpret and enforce the CC&R's pursuant to its articles and bylaws. MEHOA represents the interests of its members who own property in Malibu Encinal. MEHOA also owns fee title and other interests in real property located in the Malibu Encinal tract. MEHOA and its individual members have been and will be adversely affected by the acts and failures to act complained of herein.

2. MEHOA is informed and believes, and based upon such information and belief alleges, that Respondent/Defendant Mountains Recreation and Conservation Authority ("MRCA") is a joint exercise of powers authority established pursuant to Section 6500 of the Government Code and a joint exercise of powers agreement entered into by and between the Santa Monica Mountains Conservancy (the "SMMC"), a public agency of the State of California established pursuant to Division 23 of the Public Resources Code (Section 33000 et seq.), and the Conejo Recreation and Park District and the Rancho Simi Recreation and Park District, each a public agency duly constituted body corporate and politic of the State of California established pursuant to Chapter 4, Division 5, of the Public Resources Code.

3. MEHOA is informed and believes, and based upon such information and belief alleges, that Respondent/Defendant Governing Board of the Mountains Recreation and Conservation Authority ("MRCA Governing Board") is an entity authorized by the MRCA Joint Exercise of Powers Agreement to govern and act on behalf of the MRCA.

4. As a joint powers agency, the MRCA's jurisdiction is limited to that of its constituent members, and its powers are limited to those of its constituent members, as may be further restricted by the joint powers agreement among its members. Pursuant to Public Resources Code § 33008(c), the Santa Monica Mountains Conservancy is prohibited from regulating private property. None of the other constituent members of the MRCA have the authority to regulate private property.

5. Respondent/Defendant California Coastal Conservancy (the "Conservancy") is a state agency organized and existing pursuant to California Public Resources Code Section 31000 et seq.

6. MEHOA is informed and believes, and based upon such information and belief alleges, that Respondent/Defendant Board Of Directors of the California Coastal Conservancy ("Conservancy Board") is an entity authorized to govern and act on behalf of the Conservancy.

7. Real Party In Interest City of Malibu ("City") is a municipal corporation organized and existing under the laws of the State of California and situated in Los Angeles County. In the action complained of herein, all of Petitioner's/Plaintiff's property interests are located within the City. The City is responsible for issuing Coastal Development Permits under the Coastal Act and the City of Malibu Local Coastal Program and for completing environmental review for Coastal Development Permits in accordance with the requirements of the California Environmental Quality Act (Public Resources Code 21000 *et seq*; "CEQA").

8. The true names and capacities of DOES 1 through 50, inclusive, whether individual, corporate, associate, agency or otherwise, are unknown to MEHOA, who names these DOES by said fictitious names and who will seek leave of the court to amend this Petition and Complaint to show their true names and capacities when the same have been ascertained.

9. On February 9, 2010, Petitioner/Plaintiff mailed notice to the Respondents/Defendants

of the commencement of this action pursuant to California Public Resources Code section 21167.5. Attached hereto as Exhibit A are true and correct copies of the Notice of Commencement of Action, dated February 9, 2010.

FACTUAL ALLEGATIONS

General Background

10. In or about September, 1932, the Marblehead Land Company created a private common-interest subdivision known as "Malibu Encinal" pursuant to Tract No. 10630, recorded as numbers 841 to 846, September 23, 1932, Book 181 Pages 6 through 11 (the "Tract"). Malibu Encinal consists of approximately 170 lots located in the City of Malibu, seaward of Broad Beach Road.

11. The Marblehead Land Company recorded the CC&R's, which contain covenants, conditions, restrictions, rules and limitations regarding land use within Malibu Encinal. The CC&R's are recorded against every parcel within Malibu Encinal, and by its terms are binding on all owners of land or interests in any lot, or any part thereof, of the Tract. The CC&R's also create and govern certain private easements within the Tract.

12. The CC&R's provide that the lots in the Tract are to be used for family residences only.

13. The CC&R's prohibit the erection, alteration, or maintenance of any building, dwelling house, fence, wall, sidewalk, steps, beach awnings, beach tent, pole or structure on any part of the Tract until plans and specifications have been approved in writing by the MEHOA Architectural Committee.

14. The CC&R's prohibit the placement of signs on the lots unless permitted by the Architectural Committee as to form, content and appearance.

15. The CC&R's prohibit any outhouses on any lot.

16. The CC&R's provide for private easements over beach Lots 124 to 139 and Lots 141 to 159 in favor of the Grantor, its successors in interest and assigns, and each homeowner in the Tract. The easement may be used by each homeowner for pedestrian travel, bathing and recreational purposes and all purposes incidental thereto, but not for camping, erecting tents or buildings, landing or launching boats or lighting fires.

17. The covenants and restrictions of the CC&R's run with the land as to all owners of the lots, including all original grantors.

18. Malibu Encinal includes Lechuza Beach, a "pocket beach," approximately one quarter mile long, located in the City of Malibu between Broad Beach Road and the Pacific Ocean.

19. Most of the lots in Malibu Encinal are developed with residences.

20. The City of Malibu Local Coastal Program designates portions of Malibu Encinal as an Environmentally Sensitive Habitat Area.

21. Malibu Encinal contains environmental resources including sensitive species and habitat, watersheds and shoreline resources.

Public Access to Lechuza Beach through Malibu Encinal

22. Historically, Malibu Encinal was a private residential community.

23. As early as the 1950's, the individual owners of Malibu Encinal, together with MEHOA, voluntarily permitted members of the public permission to pass over private property in Malibu Encinal so as to permit public access to Lechuza Beach. This public access was limited to pedestrian access from Broad Beach road down one of three improved access routes: (1) West Sea Level Drive; (2) East Sea Level Drive; and (3) a pedestrian trail that commences at Broad Beach Road and Bunnie Lane (Lot I). Public access was limited to daylight hours only.

The California Conservancy's Efforts to Avoid Residential Development on Lechuza Beach

24. In or about 1990, Lechuza Villas West, a California limited partnership, ("LVW") purchased unimproved beach lots in Malibu Encinal with the intent of developing residential homes directly on Lechuza Beach.

25. LVW submitted several development proposals to the California Coastal Commission ("Coastal Commission") to obtain the necessary permits to develop the property. The Coastal Commission denied each of these permit applications. The Coastal Commission found, among other things, that the proposed development was inconsistent with the Coastal Act, could cause erosion on nearby beaches and would have severe impacts on coastal resources.

26. LVW subsequently commenced litigation challenging the Coastal Commission's denial of its applications and seeking to resolve a dispute with the State Lands Commission with respect to the permissibility of its proposed development on Lechuza Beach.

27. In or about 1999, the Conservancy undertook the Lechuza Beach Project (the "Lechuza Beach Project").

28. The Conservancy's objectives in undertaking the Lechuza Beach Project were to assist in settling the litigation between LVW, the Coastal Commission, and the State Lands Commission; to put an end to further development proposals at Lechuza Beach; and to ensure that public access to Lechuza Beach would continue to be provided.

29. As the initial step in implementing the Lechuza Beach Project, the Conservancy structured a proposed acquisition for fee title interests and/or access easement interests to lots 140-156, U, 76, I and A located within the Tract as further described in Paragraph 42 of this Petition and Complaint (the "Lechuza Beach Interests").

30. The staff report for the Lechuza Beach Project initially proposed that the Conservancy would allocate funding for the purchase and manage the Lechuza Beach Interests, while the State Lands Commission would hold title to the property interests. The staff report further provides that following the acquisition, public access would continue in the same manner as permitted by MEHOA since 1991 while the Conservancy developed and adopted a management plan for the Lechuza Beach Interests. Once the management plan was adopted, the Conservancy would contract with an agency or non-profit entity to manage the implementation and operation of the plan.

31. The Conservancy subsequently selected the MRCA as the entity to hold title to the Lechuza Beach Interests on its behalf and for the purpose of managing the Lechuza Beach Interests for the Conservancy. In or about June, 2001, the Conservancy approved a Grant Agreement between the Conservancy and MRCA (the "Conservancy Grant Agreement") for the acquisition.

32. Although the Conservancy selected the MRCA to hold title to the Lechuza Beach Interests, the Conservancy retains control and oversight over the Lechuza Beach Interests and the

Lechuza Beach Project through the incorporation of restrictions that were made part of the MRCA's deed pursuant to the Conservancy Grant Agreement. These restrictions include a right of reverter of the fee title to the Lechuza Beach Interests to the Conservancy in the event the restrictions are violated (Deed Restriction #6).

33. The Conservancy also retains control and oversight over the Lechuza Beach Project through the ongoing funding it provides to the MRCA for the Lechuza Beach Project pursuant to Grant Agreement 05-071.

34. Deed Restriction #5 of the Conservancy Grant Agreement maintains the Conservancy's control and oversight over the Lechuza Beach Interests and the Lechuza Beach Project by requiring the MRCA "to use, manage, operate and maintain the real property as described in the "USE, MANAGEMENT, OPERATION AND MAINTENANCE" section of California State Coastal Conservancy Grant Agreement No. 00-170, as it may be amended from time to time."

35. The section of the Conservancy Grant Agreement referenced by Deed Restriction #5 states that "[t]he grantee shall use, manage, operate and maintain the real property for public access to the beach and public recreation consistent with the provisions of Exhibit A." This requirement has been retained in all subsequent amendments of the Conservancy Grant Agreement and remains currently in effect.

36. Exhibit A to the Conservancy Grant Agreement describes the Lechuza Beach Project and the Conservancy's ongoing oversight and control (at p. XVII-2) of the Lechuza Beach Project as follows:

> "The [Coastal] Conservancy will work with the MRCA, the State Lands Commission, the Coastal Commission, local governments, the Malibu Encinal Homeowners Association, and other interested parties to develop agreements for the management of the beach."

37. Exhibit A further states (at p. XVII-2) that in the longer term the Conservancy will make an evaluation of:

> "what physical improvements would be desirable to support or increase public access to Lechuza Beach, and what agency would be best to develop and operate those facilities. Alternatives include management of the beach for public access by the MRCA. Other alternatives include

Los Angeles County, which also manages other beaches nearby, the City of Malibu, and a number of local nonprofit organizations."

38. Exhibit A (at p. XVII-2) further provides that notwithstanding the selection of a final agency to develop and operate the facilities at the beach: "The Conservancy would continue to be responsible for the development of this management planning."

39. In Exhibit A (at p. XVII-2), the Conservancy commits that until a management plan is developed no additional improvements would be installed and no change in public beach use would occur:

> "Initially, and until a management plan is developed, no additional improvements would be installed. Pending completion of a management plan, public beach use would continue in the same manner as has been permitted and signed since 1991; during daylight hours, by pedestrian access from Broad Beach Road down either of the three improved routes of access, and with no support facilities such as restrooms or water service."

40. At p. XVII-7 of Exhibit A, the Conservancy describes the status quo it will maintain until completion of a management plan as follows:

> "The public has had access to the beach since 1991 when permission was granted by the current landowners and by the local homeowners' association. The public is currently permitted to enter through either of three metal gates, located along Broad Beach Road at East Sea Level Drive, West Sea Level Drive and across from the Bunny Lane intersection, each of which bears a sign indicating that public access is permitted. No public vehicular access is permitted, and the conditions of use include a limit to daylight hours and restrictions on fires, dogs, and boat launching."

41. Based on its commitment to maintain the status quo pending the completion of a management plan, the Conservancy found that approval of the Conservancy Grant Agreement was exempt from review under the California Environmental Quality Act ("CEQA") and made the following findings of fact:

> "The project is limited to the acquisition of property as public parkland for the purpose of preserving natural open space and permitting access to the beach. No management plan has been prepared for the public park, and no development of additional facilities will take place until a management plan and environmental analysis has been approved. Until that occurs, public use will continue in the same manner as has been permitted by the private landowners since 1991. As a consequence, the proposed project will consist solely of the continued operation of trails, involving negligible or no expansion of use beyond that previously existing, and will not result in any physical effect on the environment."

NOE filed w/ministerial approvals SOL run

42. Subject to the requirements and restrictions of the Conservancy Grant Agreement, MRCA received:

(a) a grant deed conveying fee title to lots 140 - 156 and "Lot U" (located on the sand), lot 76 (located on the bluff face), "Lot I" (a pedestrian access trail commencing at the intersection of Broad Beach Road and Bunnie Lane), and a portion of Lot A located primarily on the beach and certain other parcels (the "MRCA Grant Deed"); and

(b) an access easement over portions of Lot A commonly known as West Sea Level Drive and East Sea Level Drive, fee title to which is now owned by MEHOA (the MRCA Access Easement").

43. The requirements and restrictions of the Conservancy Grant Agreement described in Paragraphs 32 through 40 above were incorporated into the MRCA Grant Deed as Restrictive Covenants.

44. The MRCA Grant Deed provides that if the requirements and restrictions of the Conservancy Grant Agreement described in Paragraphs 32 through 40 are violated, MRCA's right, title and interest "shall automatically vest in the State of California for the benefit of the Conservancy or its successor . . . ."

45. The MRCA Access Easement expressly limits public access to pedestrian ingress and egress over West Sea Level Drive and East Sea Level Drive during daylight hours to the properties owned by MRCA within the Tract.

46. The MRCA Access Easement requires the maintenance of pedestrian access gates on West Sea Level Drive at (1) the entrance from Broad Beach Road to West Sea Level Drive and (2) the termination of West Sea Level Drive on Lechuza Beach, and on East Sea Level Drive at the entrance from Broad Beach Road (the "Sea Level Drive Gates"), and requires that they be in good working order and closed and locked during non-daylight hours.

47. The MRCA Access Easement restricts vehicular access over West Sea Level Drive and East Sea Level Drive to ingress and egress for (1) emergency, maintenance and services access to the

properties owned by MRCA within the Tract; and (2) vehicles exhibiting Disabled Persons Parking placards or plates issued by the California Department of Motor Vehicles and occupied by persons with disabilities.

48. The MRCA Access Easement restricts parking on West Sea Level Drive and East Sea Level Drive to four spaces for vehicles exhibiting Disabled Persons Parking placards or plates issued by the California Department of Motor Vehicles, the specific locations of which have been approved by MEHOA.

49. Since the approval of the Conservancy Grant Agreement and acquisition of the Lechuza Beach Interests, the Conservancy has exercised regular and continuing oversight and control over the Project, provided funding for the Project, and actively participated in planning activities for the Project.

50. Using the funding provided by the Conservancy pursuant to the Grant Agreement 05-071, the MRCA has contracted for planning studies for the Lechuza Beach Project. The Conservancy is the third-party beneficiary of the contracts entered into by the MRCA using funds from this Grant Agreement, and the Conservancy owns the right to use all work produced under such contracts.

51. The Conservancy Board has from time to time amended the Conservancy Grant Agreement, which remains in effect, and reviewed the MRCA's compliance with the Conservancy Grant Agreement.

52. On occasion there has been conflict between the Conservancy and the MRCA over the Lechuza Beach Project. At a November 29, 2007 meeting between the Conservancy, the MRCA, and MEHOA representatives, the Chairman of the Coastal Conservancy stated that he was considering taking back the property (or management of the property, or the funding for the Lechuza Beach Project) from the MRCA and giving it to another entity.

53. In summary, the Lechuza Beach Project is a Conservancy project for which the MRCA acts as the Conservancy manager for some purposes subject to the Conservancy's ongoing oversight and control pursuant to the restrictions of the Conservancy Grant Agreement and Grant Agreement 05-071.

54. The Conservancy Board's most recent review of the Lechuza Beach Project took place at a public hearing on February 4, 2010. Not a "review" but an "update" re Lechuza

Applications for the Lechuza Beach Project

55. The Lechuza Beach Project requires a Coastal Development Permit from the City of Malibu.

56. The Lechuza Beach Project constitutes a "project" under CEQA.

57. In or about 2007, the MRCA filed an application with the City of Malibu for a Coastal Development Permit for the Lechuza Beach Project, including newly proposed improvements as part of the same (the "CDP Application").

58. Upon information and belief, since 2007 MRCA has repeatedly amended or modified the CDP Application.

59. Upon information and belief the CDP Application has been and remains deemed incomplete by the City of Malibu.

60. CEQA analysis for the Lechuza Beach Project has not been prepared or completed as required by CEQA.

Actions to Implement the Lechuza Beach Project in Advance of CEQA Review and the Issuance of a Costal Development Permit

61. On or about January 5, 2010 the MRCA caused the removal of the existing gate on Broad Beach Road at the intersection of Bunnie Lane, at the entrance to the pedestrian trail on Lot I (the "Bunnie Lane Gate").

62. No CEQA review was performed for the removal of the Bunnie Lane Gate.

63. In a February 1, 2010 letter the City notified the MRCA that the removal of the Bunnie Lane Gate created an "alarming safety hazard" and an "unsafe condition" and that "immediate attention is required to secure the area." The City stated that it was unaware of any review of the potential environmental impact of the MRCA's action removing the Bunnie Lane Gate and that the MRCA was improperly "proceeding piecemeal to obtain approval of a comprehensive plan."

64. On January 6, 2010 the MRCA Governing Board conducted a public hearing regarding, and approved, Resolution 10-13 (the "January 6 Resolution") adopting an "Initial Management Plan" for Lechuza Beach.

65. The MRCA did not provide MEHOA or the individual property owners of Malibu Encinal with mailed notice of the January 6th public hearing regarding, and the proposed adoption of, the January 6 Resolution.

66. Among other things, the Initial Management Plan sought to retroactively validate the removal of the Bunnie Lane Gate by authorizing the Executive Officer of the MRCA to cause the immediate removal of improvements deemed "unpermitted" by the MRCA without regard to the ownership or location of such improvements or the final determination, after due process, by an authority with jurisdiction that such improvements are "unpermitted."

67. Among other things, the Initial Management Plan purports to authorize the enforcement on private easements (held by individual MEHOA members) and on East and West Sea Level Drive (which is private property owned by MEHOA), of the Malibu Municipal Code's prohibition of:

(a) access to the beach between midnight and 6 a.m.

(b) dogs; and

(c) alcoholic beverages

68. The Initial Management Plan seeks to impose restrictions on the private property rights of MEHOA and its members. Specifically, Section 3.3 of the Initial Management Plan provides that:

> "The provisions of this plan shall apply equally to all persons, whether or not they are members of the Malibu Encinal Homeowners Association or are members of the general public using, or seeking to use, property of the Authority acquired by virtue of a grant from the State Coastal Conservancy using proceeds from General Obligation Bonds of the State of California. It shall not be a defense to a violation of this plan that a person is a member of the Malibu Encinal Homeowners Association, or a member of the family of such member, where such membership is asserted as a defense to what would otherwise be a violation of the provisions of this management plan."

69. In adopting the January 6 Resolution, the MRCA found that the January 6 Resolution was exempt from CEQA review because environmental review of the Lechuza Beach Project (including

the Initial Management Plan and newly proposed improvements) would be conducted at some time in the future.

70. MEHOA objected to the January 6, 2010 meeting and to the Governing Board's consideration and adoption of the January 6 Resolution in a letter dated January 6, 2010 and through oral testimony at the January 6, 2010 hearing. In the January 6, 2010 letter, MEHOA informed the MRCA that the actions contemplated by the agenda for the January 6 meeting would substantially affect the property rights of MEHOA and its individual members, yet the MRCA has not afforded MEHOA and its members reasonable notice and opportunity to be heard by MRCA. The January 6 letter further objected to the proposed actions on the grounds that they purported to impose regulations over privately owned property of MEHOA and its individual members, and in violation of the CC&R's. The January 6 letter objected on the grounds that the Initial Management Plan contemplates improvements and alterations to the physical environment that are one project under CEQA and that the Conservancy required that environmental analysis under CEQA take place before a management plan was approved or there was any change in the operation of the beach. MEHOA's January 6, 2010 letter requested that the MRCA take no action on the Lechuza Beach agenda items until MEHOA and its members were afforded proper notice and opportunity to be heard and until after environmental review had been completed in compliance with CEQA, including without limitation review of the ecological, aesthetic and geotechnical impacts of construction of ramps, bluff platforms and stairways on areas known to be subject to flooding and soil instability, as well as land use and compatibility, public safety, security and sanitation impacts.

71. On January 25, 2010 the MRCA Governing Board conducted a public hearing regarding, and adopted, Resolution 10-14 (the "January 25 Resolution").

72. The MRCA did not provide MEHOA or the individual property owners of Malibu Encinal with mailed notice of the January 25th public hearing regarding, and the proposed adoption of, the January 25 Resolution.

73. The January 25 Resolution changes and increases the scope of the Lechuza Beach Project

and by authorizing changes to the MRCA CDP Application. Specifically, the MRCA authorized the addition of proposals for:

(a) A restroom facility on Sea Level Drive.

(b) A ramp structure between the proposed viewing platform and beach adjacent to East Sea Level Drive.

(c) A twenty-four-foot-wide access road on land not owned by the MRCA, between Broad Beach Road and the terminus of West Sea Level Drive, to serve the Lechuza Beach Project as well as additional private development by a third-party private real estate developer. The scope of such additional private real estate development and the identity of the third-party private developer is not disclosed in the January 25 Resolution.

74. Although the January 25 Resolution changed and increased the scope of the Lechuza Beach Project, the MRCA found it was exempt from CEQA review because environmental review of the Lechuza Beach Project (including the new improvements added on January 25th and the unspecified private development) would be conducted at some time in the future.

75. MEHOA objected to the MRCA Governing Board's January 25, 2010 meeting and to its consideration and adoption of the January 25 Resolution in a letter dated January 25, 2010 and through oral testimony at the January 25, 2010 hearing. In the January 25, 2010 letter, MEHOA objected that the actions contemplated by the agenda for the January 25 meeting would substantially affect the property rights of MEHOA and its individual members, yet the MRCA has not afforded MEHOA and its members reasonable notice and opportunity to be heard by MRCA. The January 25 letter also incorporated the objections set forth in MEHOA's letter of January 6, 2010. MEHOA's January 25 letter requested that the MRCA take no action on the Lechuza Beach agenda items.

76. On February 4, 2010, the Conservancy Board conducted a public hearing regarding the MRCA's actions, including the removal of the Bunnie Lane Gate and the matters included in the January 6 Resolution and the January 25 Resolution.

No, the purpose of the 2/4/10 mtg was an update not a public hrg re MRCA's action.

77. MEHOA appeared and submitted written objections at the Conservancy's February 4, 2010 hearing.

78. After conducting its public hearing, the Conservancy Board took no action.

79. The removal of the Bunnie Lane Gate, adoption of the Initial Management Plan pursuant to the January 6 Resolution, and adoption of the January 25 Resolution constitutes the commencement of the Lechuza Beach Project in advance of the approval of a Coastal Development Permit and CEQA analysis, were in violation of the categorical exemption determination for the Conservancy Grant Agreement, the restrictions of the Conservancy Grant Agreement, the MRCA Grant Deed, and the MRCA Access Easement and is an unlawful attempt by the MRCA to regulate private property.

FIRST CAUSE OF ACTION - WRIT OF MANDATE

(Violation of Due Process)

(Against Respondent/Defendant MRCA)

(Cal. Code Civ. Proc. § 1085)

80. MEHOA realleges and incorporates herein by this reference as though the same were fully set forth herein each and every allegation and Exhibit set forth in Paragraphs 1 through 79, inclusive, of this Petition and Complaint.

81. The Conservancy and MRCA's actions and failures to act substantially affect the private property rights of MEHOA and its members, including without limitation their respective fee and easement rights, by:

(a) Removing the Bunnie Lane Gate which secures the private property of MEHOA and its members during non-daylight hours and protects against safety hazards and associated liability during non-daylight hours in violation of the categorical exemption determination for the Conservancy Grant Agreement, the restrictions of the Conservancy Grant Agreement, the Restrictive Covenants in the Grant Deed, and the MRCA Access Easement; and

(b) Adopting the Initial Management Plan pursuant to the January 6 Resolution

(c) which purports to curtail the private property rights of MEHOA and its members as well as allow public access during non-daylight hours.

82. These actions and failures to act as alleged above have resulted in public access during

non-daylight hours, increased traffic and pollution, nuisances to the privates property of MEHOA and its members and cause significant environmental impacts to Malibu Encinal, Lechuza Beach, and the fee and easement interests of MEHOA and its members.

83. The adoption of the January 6 Resolution by the MRCA Governing Board was an "adjudicatory" or "quasi-judicial" agency action in which the MRCA Governing Board was required to consider the issues of compliance with the Conservancy Grant Agreement, the Restrictive Covenants in the Grant Deed and the MRCA Access Easement, and the private property interests of MEHOA and its individual members.

84. The MRCA failed to provide MEHOA and its individual members reasonable notice and opportunity to be heard with regard to the January 6 Resolution in accordance with the procedural due process requirements set forth by the California Supreme Court in *Horn v. County of Ventura*, 24 Cal.3d 605 (1979), with respect to the MRCA's removal of the Bunnie Lane Gate or the MRCA Governing Board's public hearing regarding, and proposed adoption of, the January 6 Resolution.

85. Petitioner/Plaintiff has exhausted all administrative remedies available to it regarding the January 6 Resolution by, among other things, objecting in a January 6, 2010 letter to the MRCA, objecting at the MRCA Governing Board meeting on January 6, 2010, and objecting to the Conservancy Board at its February 4, 2010 hearing regarding these matters in person and in writing.

86. Petitioner/Plaintiff does not have any other speedy or adequate remedy in the ordinary course of law except to pursue the claims raised in this Petition and Complaint.

87. By failing to provide reasonable notice and an opportunity to be heard, the MRCA failed to proceed in a manner required by law. Code of Civil Procedure Section 1085 requires the issuance of a Writ of Mandate setting aside the January 6 Resolution and the adoption of the Initial Management Plan and compelling MRCA to restore the Bunnie Lane Gate.

SECOND CAUSE OF ACTION - WRIT OF ADMINISTRATIVE MANDAMUS

(Violation of Due Process)

(Against Respondent/Defendant MRCA)

(Cal. Code Civ. Proc. § 1094.5)

88. MEHOA realleges and incorporates herein by this reference as though the same were fully set forth herein each and every allegation and Exhibit set forth in Paragraphs 1 through 87, inclusive, of this Petition and Complaint.

89. Petitioner/Plaintiff has exhausted all administrative remedies available to it regarding the January 6 Resolution by, among other things, objecting in a January 6, 2010 letter to the MRCA, objecting at the MRCA Governing Board meeting on January 6, 2010. and objecting to the Conservancy Board at its February 4, 2010 hearing regarding these matters in person and in writing.

90. Petitioner/Plaintiff does not have any other speedy or adequate remedy in the ordinary course of law except to pursue the claims raised in this Petition and Complaint.

91. In the alternative, Petitioner/Plaintiff alleges that the MRCA's actions and failures to act as alleged in Paragraphs 81 and 84 above constitute a violation of its duties as imposed by California law, as well as prejudicial abuses of discretion, thereby entitling Petitioner/Plaintiff to relief through the issuance of a peremptory writ of mandate pursuant to California Code of Civil Procedure section 1094.5 setting aside the MRCA Governing Board's adoption of the Initial Management Plan and the adoption of the January 6 Resolution.

THIRD CAUSE OF ACTION - WRIT OF MANDATE

(Violation of Due Process)

(Against Respondent/Defendant MRCA)

(Cal. Code Civ. Proc. § 1085)

92. MEHOA realleges and incorporates herein by this reference as though the same were fully set forth herein each and every allegation and Exhibit set forth in Paragraphs 1 through, 91, inclusive, of this Petition and Complaint.

93. The MRCA's adoption of the January 25 Resolution substantially affect the private property rights of MEHOA and its members, including without limitation their respective fee and easement rights, as well as increases the scope of environmental impacts by changing and increasing the scope of the Lechuza Beach Project by adding proposals for:

(a) A restroom facility on Sea Level Drive;

(b) A ramp structure between the proposed viewing platform and beach adjacent to East Sea Level Drive; and

(c) A twenty-four-foot-wide access road on private land between Broad Beach Road and the terminus of West Sea Level Drive to serve the Lechuza Beach Project as well as additional private development by a third-party private developer. The scope of such additional private development and the identity of the third-party private developer is not disclosed in the January 25 Resolution.

94. The adoption of the January 25 Resolution by the MRCA Governing Board was an "adjudicatory" or "quasi-judicial" agency action in which the MRCA Governing Board was required to consider the issues of compliance with the Conservancy Grant Agreement, the Restrictive Covenants in the Grant Deed and the MRCA Access Easement, and the private property interests of MEHOA and its individual members.

95. The MRCA failed to provide MEHOA and its individual members reasonable notice and opportunity to be heard with regard to the January 25 Resolution in accordance with the procedural due process requirements set forth by the California Supreme Court in *Horn v. County of Ventura*, 24 Cal.3d 605 (1979), with respect to the MRCA Governing Board's public hearing regarding, and proposed adoption of, the January 25 Resolution.

96. Petitioner/Plaintiff has exhausted all administrative remedies available to it regarding the January 25 Resolution by, among other things objecting in a January 25, 2010 letter to the MRCA, objecting at the MRCA Governing Board meeting on January 25, 2010, and objecting to the Conservancy Board at its February 4, 2010 hearing regarding these matters in person and in writing.

97. Petitioner/Plaintiff does not have any other speedy or adequate remedy in the ordinary course of law except to pursue the claims raised in this Petition and Complaint.

98. Code of Civil Procedure Section 1085 requires the issuance of a Writ of Mandate setting aside the January 25 Resolution and the amendment of the Lechuza Beach Project because the MRCA and its Board failed to proceed in the manner required by law.

FOURTH CAUSE OF ACTION - WRIT OF ADMINISTRATIVE MANDAMUS

(Violation of Due Process)

(Against Respondent/Defendant MRCA)

(Cal. Code Civ. Proc. § 1094.5)

99. MEHOA realleges and incorporates herein by this reference as though the same were fully set forth herein each and every allegation and Exhibit set forth in Paragraphs 1 through 98, inclusive, of this Petition and Complaint.

100. Petitioner/Plaintiff has exhausted all administrative remedies available to it regarding the January 25 Resolution by, among other things, objecting in a January 25, 2010 letter to the MRCA, objecting at the MRCA Governing Board meeting on January 25, 2010, and objecting to the Conservancy Board at its February 4, 2010 hearing regarding these matters in person and in writing.

101. Petitioner/Plaintiff does not have any other speedy or adequate remedy in the ordinary course of law except to pursue the claims raised in this Petition and Complaint.

102. In the alternative, Petitioner/Plaintiff alleges that the MRCA's actions and failures to act as alleged in Paragraphs 93 and 95 above constitute a violation of its duties as imposed by California law, as well as prejudicial abuses of discretion, thereby entitling Petitioner/Plaintiff to relief through the issuance of a peremptory writ of mandate pursuant to California Code of Civil Procedure section 1094.5 setting aside the MRCA Governing Board's adoption of the January 25 Resolution.

FIFTH CAUSE OF ACTION - WRIT OF MANDATE

(Violation of the California Environmental Quality Act)

(Against All Respondents/Defendants)

(Cal. Code Civ. Proc. § 1085)

103. MEHOA realleges and incorporates herein by this reference as though the same were fully set forth herein each and every allegation and Exhibit set forth in Paragraphs 1 through 102, inclusive, of this Petition and Complaint.

104. As alleged in Paragraphs 39 through 41, when it authorized the acquisition of the Lechuza Beach Interests as an initial step in the Lechuza Beach Project, the Coastal Conservancy approved an exemption under CEQA based on its commitment that before there was any change in the physical improvements on or operation of the Lechuza Beach Interests, a management plan and CEQA analysis would be approved:

> "No management plan has been prepared for the public park, and no development of additional facilities will take place until a management plan and environmental analysis has been approved. Until that occurs, public use will continue in the same manner as has been permitted by the private landowners since 1991. As a consequence, the proposed project will consist solely of the continued operation of existing trails, involving negligible or no expansion of use beyond that previously existing, and will not result in any physical effect on the environment."

105. In describing the "public use" that would continue in the "same manner as has been permitted by the private landowners since 1991", the Conservancy's October 26, 2000 staff report, which is incorporated into the Conservancy Grant Agreement, provided the following description:

> "Initially, and until a management plan is developed, no additional improvements would be installed. Pending completion of a management plan, public beach use would continue in the same manner as has been permitted and signed since 1991; during daylight hours, by pedestrian access from Broad Beach Road down either of the three improved routes of access, and with no support facilities such as restrooms or water service…"

106. As alleged in Paragraphs 61 through 79, above, the Conservancy and the MRCA have proceeded to implement a project beyond the limitations of the categorical exemption determination for the Conservancy Grant Agreement.

107. Beyond maintenance of the status quo at the time of the acquisition of the Lechuza Beach

Interests, implementation of the Lechuza Beach Project requires a Coastal Development Permit and new CEQA review.

108. As alleged in Paragraphs 61 through 79, above, the proposed project description has been repeatedly modified, most recently by the January 25 Resolution, to now include (among other things) unspecified private real estate development in addition to a management plan and improvements related to public access.

109. As alleged in Paragraph 59, above, the City of Malibu, which is the lead agency for the Coastal Development Permit for the Lechuza Beach Project, has deemed the application for the Coastal Development Permit incomplete.

110. On February 1, 2010, the City of Malibu wrote to the MRCA objecting to the piecemealing of the Lechuza Beach Project and to the implementation of the Interim Management Plan and the removal of the Bunnie Lane Gate without the City's approval of a Coastal Development Permit and CEQA review.

111. The Conservancy and the MRCA have violated CEQA by:

(a) Proceeding with actions which violated the limitations of the categorical exemption determination for the Conservancy Grant Agreement for the Lechuza Beach Project without further compliance with CEQA;

(b) proceeding with actions which require a Coastal Development Permit and CEQA review by the City of Malibu without a Coastal Development Permit and CEQA review;

(c) proceeding with the "piecemeal" implementation of a project that also lacks a stable, accurate and finite project description.

112. The actions and failures to act of the Conservancy and the MRCA Lechuza Beach Project, including the most recent changes proposed by the January 25 Resolution, authorize improvements, changes in public use, and changes in improvements at Lechuza Beach -- as well as unspecified new private development -- that are resulting and have the potential to result in changes to

the physical environment; all without compliance with CEQA having occurred.

113. MEHOA has exhausted all administrative remedies available to it regarding the failure to comply with CEQA by objecting to the City of Malibu, objecting in a January 6, 2010 letter to the MRCA, objecting in a January 25, 2010 letter to the MRCA, testifying at the MRCA Governing Board meetings on January 6 and January 25, 2010, objecting in a February 1, 2010 letter to the Conservancy and testifying at the February 4, 2010 meeting of the Conservancy Board.

114. Because the Coastal Conservancy and the MRCA, failed to proceed in the manner required by CEQA, Code of Civil Procedure Section 1085 requires the issuance of a Writ of Mandate setting aside the categorical exemption determination for the Conservancy Grant Agreement, Initial Management Plan, the January 6 Resolution and the January 25 Resolution and to restore and maintain the physical environment until compliance with CEQA is achieved.

SIXTH CAUSE OF ACTION - ADMINISTRATIVE MANDAMUS

(Violation of the California Environmental Quality Act)

(Against All Respondents/Defendants)

(Cal. Code Civ. Proc. § 1094.5)

115. MEHOA realleges and incorporates herein by this reference as though the same were fully set forth herein each and every allegation and Exhibit set forth in Paragraphs 1 through 114, inclusive, of this Petition and Complaint.

116. MEHOA has exhausted all administrative remedies available to it regarding the failure to comply with CEQA by objecting to the City of Malibu, objecting in a January 6, 2010 letter to the MRCA, objecting in a January 25, 2010 letter to the MRCA, testifying at the MRCA Governing Board meetings on January 6 and January 25, 2010, objecting in a February 1, 2010 letter to the Conservancy and testifying at the February 4, 2010 meeting of the Conservancy Board.

117. Petitioner/Plaintiff does not have any other speedy or adequate remedy in the ordinary course of law except to pursue the claims raised in this Petition and Complaint.

118. In the alternative, Petitioner/Plaintiff alleges that the Conservancy's and the MRCA's

actions and failures to act as alleged in Paragraphs 104 through 112 above constitute a violation of its duties as imposed by California law, and its findings and decision are not supported by substantial evidence in the record, thereby entitling Petitioner/Plaintiff to relief through the issuance of a peremptory writ of mandate pursuant to California Code of Civil Procedure section 1094.5 setting aside the categorical exemption determination for the Conservancy Grant Agreement, the Initial Management Plan and the adoption of the January 6 Resolution and the January 25 Resolution and to restore and maintain the physical environment until compliance with CEQA is achieved.

SEVENTH CAUSE OF ACTION - DECLARATORY RELIEF

(Violation of Coastal Act)

(Against All Defendants)

(Cal. Code Civ. Proc. § 1060; Pub. Res. Code §30000 et seq.)

119. MEHOA realleges and incorporates herein by this reference as though the same were fully set forth herein each and every allegation and Exhibit set forth in Paragraphs 1 through 118, inclusive, of this Petition and Complaint.

120. An actual controversy has arisen and now exists between Petitioner/Plaintiff and Respondents/Defendants as to whether the removal of the Bunnie Lane Gate and adoption of the January 6 Resolution are invalid for failure to comply with the Coastal Act, Public Resources Code Section 30000, et seq. The general contentions and allegations of the parties with respect to this controversy are summarized as follows:

(a) Petitioner/Plaintiff contends and alleges that removing the Bunnie Lane Gate and adopting the Initial Management Plan violated the Coastal Act by commencing the implementation of the Lechuza Beach Project prior to CEQA review and prior to the approval of a Coastal Development Permit by the City of Malibu. Petitioner/Plaintiff is informed and believes, and on that basis alleges, that Respondents/Defendants contend to the contrary.

121. Petitioner/Plaintiff desires and requires a judicial determination of rights and duties in these circumstances and a declaration of the Court that the removal of the Bunnie Lane Gate and

adoption of the Initial Management Plan violated the Coastal Act and are invalid and an order enjoining all activities and expenditures to implement the Lechuza Beach Project or any portion thereof, including without limitation the Initial Management Plan, prior to CEQA review and prior to the final approval of a Coastal Development Permit.

122. Such declaration is necessary and appropriate at this time so that, among other things, the potential impacts of the Lechuza Beach Project upon environmental and coastal resources can be analyzed and addressed as required by the California Coastal Act and CEQA prior to the Lechuza Beach Project being implemented.

123. Such declaration is necessary and appropriate at this time so that, among other things, the removal of the Bunnie Lane Gate and the Initial Management Plan will no longer deprive MEHOA and its members of the use and enjoyment of their property interests.

124. Petitioner/Plaintiff has no adequate remedy at law for the redress of these continuing and irreparable injuries without a determination that the removal of the Bunnie Lane Gate and adopting the Initial Management Plan violated the Coastal Act and are invalid and an order enjoining all activities and expenditures to implement the Lechuza Beach Project of any portion thereof, including the Initial Management Plan, prior to CEQA review and prior to the final approval of a Coastal Development Permit.

EIGHTH CAUSE OF ACTION - DECLARATORY RELIEF

(Against All Respondents/Defendants)

(Cal. Code Civ. Proc. § 1060)

125. MEHOA realleges and incorporates herein by this reference as though the same were fully set forth herein each and every allegation and Exhibit set forth in Paragraphs 1 through 124, inclusive, of this Petition and Complaint.

126. An actual controversy has arisen and now exists between Petitioner/Plaintiff and the Respondents/Defendants as to whether the Initial Management Plan is invalid. The general contentions and allegations of the parties with respect to this controversy are summarized as follows:

(a) Petitioner/Plaintiff contends and alleges that the Respondents/Defendants do not have authority to regulate private property. Petitioner/Plaintiff is informed and believes, and on that basis alleges, that the Respondents/Defendants contend to the contrary.

(b) Petitioner/Plaintiff further contends and alleges that the adoption of the Initial Management Plan is an improper and ultra vires attempt to regulate private property and that the adoption of the Initial Management Plan is invalid. Petitioner/Plaintiff is informed and believes, and on that basis alleges, that Respondents/Defendants contend to the contrary.

127. Petitioner/Plaintiff desires and requires a judicial determination of its rights and duties in these circumstances and a declaration of the Court that the Initial Management Plan is invalid for all of the independent reasons set forth above and an order enjoining all activities to implement the Initial Management Plan, or any portion thereof.

128. Such declaration is necessary and appropriate at this time so that, among other things, the Initial Management Plan will no longer deprive MEHOA and its members of the use and enjoyment of their property interests.

129. Petitioner/Plaintiff has no adequate remedy at law for the redress of these continuing and irreparable injuries without a determination that the Initial Management Plan is invalid and an order enjoining all activities to implement the Initial Management Plan, or any portion thereof.

NINTH CAUSE OF ACTION - QUIET TITLE

(Against All Defendants)

130. MEHOA realleges and incorporates herein by this reference as though the same were fully set forth herein each and every allegation and Exhibit set forth in Paragraphs 1 through 129, inclusive, of this Petition and Complaint.

131. MEHOA is the transferee, grantee, and successor in interest in and to all of the right, title, and interest of Lechuza Villas West L.P. to that portion of Lot A of the Tract commonly known as East Sea Level Drive and West Sea Level Drive and to all of the restrictions, reservations, conditions, covenants, and interests appertaining to this real property, by virtue of a deed dated August 28, 2002

which was duly recorded in the office of the County Recorder of Los Angeles County as document 02 2075467 (the "Sea Level Drive Grant Deed"). The real property comprising East Sea Level Drive and West Sea Level Drive ("Sea Level Drive") are more specifically identified in the Sea Level Drive Grant Deed. The legal description of Sea Level Drive is attached hereto as Exhibit B and incorporated herein.

132. Prior to August 28, 2002, Lechuza Villas West L. P. was the owner in fee simple of Sea Level Drive.

133. On or about May 1, 2009, Lechuza Villas West L.P. executed and delivered a Grant of Easements to the MRCA. The Grant of Easements was recorded in the office of the County Recorder of Los Angeles County as document number 02 1025266.

134. The MRCA Access Easement requires that public access over Sea Level Drive granted therein be limited to daylight hours and the maintenance of pedestrian access gates on West Sea Level Drive at the entrance from Broad Beach Road to West Sea Level Drive, the termination of West Sea Level Drive on Lechuza Beach, and on East Sea Level Drive at the entrance from Broad Beach Road to control public access. The MRCA Access Easement requires that the gates be maintained in good working order and that they be closed and locked during non-daylight hours.

135. MRCA accepted the MRCA Access Easement on delivery of same and on the conditions described above.

136. In violation of the MRCA Access Easement, the MRCA caused the removal of the Bunnie Lane Gate, providing public access to Sea Level Drive during non-daylight hours. In violation of the MRCA Access Easement, the MRCA caused the removal of the gate on West Sea Level Drive at the termination of West Sea Level Drive (the "Seaward West Sea Level Drive Gate") on Lechuza Beach.

137. MRCA's actions constitute a material breach of the conditions of the MRCA Access Easement. By virtue of this material breach, the MRCA Access Easement has terminated and become void, and the real property interest that are the subject of the MRCA Access Easement have reverted to MEHOA in fee simple absolute, without any claim, right, title or interest therein or thereto in favor of MRCA.

138. MEHOA is seeking to quiet title against the claims of all defendants, including without limitation the MRCA, the Conservancy, and the unknown defendants described in Paragraph 8. Defendants' claims, and each of them, are without any right whatever and defendants, and each of them, have no right, title, estate, lien or interest whatever in Sea Level Drive, or any part of that property.

TENTH CAUSE OF ACTION - DECLARATORY RELIEF

(Violation of Easement)

(Against All Defendants)

(Cal. Code Civ. Proc. § 1060)

139. MEHOA realleges and incorporates herein by this reference as though the same were fully set forth herein each and every allegation and Exhibit set forth in Paragraphs 1 through 138, inclusive, of this Petition and Complaint.

140. In the alternative, an actual controversy has arisen and now exists between Petitioner/Plaintiff and the MRCA as to whether the MRCA's removal of the Bunnie Lane Gate and the Seaward West Sea Level Drive Gate violate and conflict with the conditions of the MRCA Access Easement. The general contentions and allegations of the parties with respect to this controversy are summarized as follows:

(a) As more particularly alleged in Paragraphs 131 to 137, Petitioner/Plaintiff contends and alleges that the MRCA's actions removing the Bunnie Lane Gate and the Seaward West Sea Level Drive Gate violate and conflict with the conditions of the MRCA Access Easement. Petitioner/Plaintiff is informed and believes, and on that basis alleges, that the MRCA contends to the contrary.

141. Petitioner/Plaintiff desires and requires a judicial determination of its rights and duties in these circumstances and a declaration of the Court that the MRCA's actions removing the Bunnie Lane Gate and the Seaward West Sea Level Drive Gate violate and conflict with the conditions of the MRCA Access Easement.

142. Such declaration is necessary and appropriate at this time so that, among other things, the

removal of the Bunnie Lane Gate and the Seaward West Sea Level Drive Gate will no longer deprive MEHOA and its members of the use and enjoyment of their property interests.

143. Petitioner/Plaintiff has no adequate remedy at law for the redress of these continuing and irreparable injuries without a determination that the MRCA's actions removing the Bunnie Lane Gate and the Seaward West Sea Level Drive Gate violate and conflict with the conditions of the MRCA Access Easement and an order compelling MRCA to restore the Bunnie Lane Gate and the Seaward West Sea Level Drive Gate and enjoining any further actions in violation of the MRCA Access Easement.

ELEVENTH CAUSE OF ACTION - VIOLATION OF DUE PROCESS

(Against all Respondents/Defendants)

144. MEHOA realleges and incorporates herein by this reference as though the same were fully set forth herein each and every allegation and Exhibit set forth in Paragraphs 1 through 143, inclusive, of this Complaint and Petition.

145. Principles of due process set forth in *Nightlife Partners v. City of Beverly Hills,* 108 Cal. App. 4th 81 (2003) required that MEHOA receive a fair hearing by unbiased decision-makers before the MRCA Board on January 6, 2010 with respect to its consideration of the January 6 Resolution adopting an Initial Management Plan for Lechuza Beach and the January 25 Resolution changing and expanding the scope of the Lechuza Beach Project.

146. On information and belief, MEHOA was deprived of a fair hearing before the MRCA Board regarding the January 6 Resolution by *ex parte* communications prior to the public hearing between the Executive Officer of the MRCA, Joe Edmiston ("Edmiston"), and members of the MRCA Board.

147. On information and belief, MEHOA was deprived of a fair hearing before the MRCA Board regarding the January 25 Resolution by *ex parte* communications prior to the public hearing between Edmiston and members of the MRCA Board.

148. Edmiston is adverse and hostile to MEHOA and to the interests of MEHOA and its

individual members. Prior to and during the hearing on the January 6 Resolution and the hearing on the January 25 Resolution, Edmiston assumed the role of and acted as a partisan advocate for the position that the MRCA is entitled to and should take actions to eliminate the private property rights of MEHOA and its members and construct improvements on MEHOA's property to which MEHOA objects.

149. MEHOA is informed and believes and on that basis alleges that Edmiston personally directed the removal of the Bunnie Lane Gate.

150. MEHOA was deprived of a fair hearing before the MRCA Board on January 6, 2010 by the participation of Edmiston in the deliberations of the MRCA Board after the close of the public hearing with respect to the January 6 Resolution.

151. MEHOA was deprived of a fair hearing before the MRCA Board on January 25, 2010 by the participation of Edmiston in the deliberations of the MRCA Board after the close of the public hearing with respect to the January 25 Resolution.

152. The participation of Edmiston in the MRCA Governing Board's consideration and weighing of adverse interests with respect to the January 6 Resolution and the January 25 Resolution improperly combined advocacy and adjudicatory functions and created an unacceptable risk of bias and actual bias, depriving MEHOA of a fair hearing.

153. The actions of the MRCA Governing Board approving the January 6 Resolution and the January 25 Resolutions were adverse and hostile to MEHOA, in that they ratified the removal of the Bunnie Lane Gate, and approved actions to eliminate the private property rights of the MEHOA and its members, and approved proceeding with improvements on MEHOA's property to which MEHOA objects.

TWELFTH CAUSE OF ACTION - PUBLIC NUISANCE

(Against All Respondents/Defendants)

154. MEHOA realleges and incorporates herein by this reference as though the same were fully set forth herein each and every allegation and Exhibit set forth in Paragraphs 1 through 153, inclusive, of this Petition and Complaint.

155. The Bunnie Lane Gate secures a pedestrian pathway leading to Lechuza Beach and to Sea Level Drive. Sea Level Drive and Lechuza Beach are not accessible except through the Sea Level Drive Gates and Bunnie Lane Gate. Sea Level Drive and Lechuza Beach are not regularly patrolled by law enforcement after dark.

156. The Sea Level Drive Gates and the Bunnie Lane Gate are necessary to regulate the hours of public access to Lechuza Beach.

157. The Lot I pedestrian pathway is not marked or lighted and follows a steep set of stairs along the bluff face. The pathway has no useable handrails or protective railings to guard against a fall from the bluffs. The pathway has a severely uneven walking surface and many twists, turns and dangers on the way to Lechuza Beach and Sea Level Drive. There are no warnings or disclaimers posted on the pedestrian pathway previously secured by the Bunnie Lane Gate after dark.

158. Lechuza Beach has experienced substantial erosion, resulting in frequent flooding of the entire beach during high tide, particularly at night in Winter. This creates a great risk to the public of drowning, being washed away or thrown against rocks by the tides and rough water.

159. Lechuza Beach is located in an area prone to high fire danger. Removal of the Bunnie Lane Gate has created an attractive nuisance by allowing members of the public to come to Lechuza Beach after dark and engage in activities, including without limitation starting illegal fires, that significantly threaten property and public safety.

160. The MRCA's removal of the Bunnie Lane Gate immediately created a highly hazardous public safety risk and liability.

161. Since removing the Bunnie Lane Gate, MRCA has not provided patrols or other security on Lechuza Beach after dark sufficient to ensure safety and protection of private property in Malibu Encinal.

162. The removal of the Bunnie Lane Gate and its resulting allowance of public access after dark creates actual and unnecessarily harmful and hazardous conditions that significantly threaten the health and safety of nearby residents and the general public who come to Lechuza Beach. The removal

of the Bunnie Lane Gate and its ensuing consequences create conditions that substantially and unreasonably interfere with the comfortable enjoyment of life and property and that would affect the sensibilities of a normal person.

163. An ordinary person would be reasonably annoyed or disturbed by the MRCA's conduct removing the Bunnie Lane Gate and by its lack of regard for the safety of the surrounding residents and the general public.

164. The seriousness of the harm to MEHOA and its members and to the general public and outweighs any public benefit to the MRCA's conduct.

165. The MRCA's action removing the Bunnie Lane Gate constitute a nuisance under Civil Code 3479. The MRCA's removal of the Bunnie Lane Gate constitutes a continuing nuisance and can be substantially abated in a reasonably feasible manner and at a reasonable cost.

THIRTEENTH CAUSE OF ACTION - PRIVATE NUISANCE

(Against all Respondents/Defendants)

166. MEHOA realleges and incorporates herein by this reference as though the same were fully set forth herein each and every allegation and Exhibit set forth in Paragraphs 1 through 165, inclusive, of this Petition and Complaint.

167. Closing and locking the Sea Level Drive Gates and the Bunnie Lane Gate after dark is critical to ensuring the security and safety of private property in Malibu Encinal, including private property located adjacent to Sea Level Drive and the Lot 1 pedestrian trail.

168. Neither MEHOA nor its individual members had prior notice of MRCA's removal of the Bunnie Lane Gate. Neither MEHOA nor its individual members consented to the removal of the Bunnie Lane Gate.

169. The removal of the Bunnie Lane Gate and its resulting allowance of public access after dark to MEHOA's private property and Lechuza Beach has (1) resulted in illegal fires, vandalism and trespassing to private property owned by MEHOA and its members, and increased liability for personal injury and property damage, and (2) creates actual and unnecessarily harmful conditions that

significantly threaten the private property and health and safety of MEHOA's individual members. The removal of the Bunnie Lane Gate and its ensuing consequences create conditions that substantially and unreasonably interfere with the comfortable enjoyment of life and property by MEHOA's members and that would affect the sensibilities of a normal person.

170. The MRCA's action removing the Bunnie Lane Gate constitute a nuisance under Civil Code 3479. The MRCA's removal of the Bunnie Lane Gate constitutes a continuing nuisance and can be substantially abated in a reasonably feasible manner and at a reasonable cost.

171. In addition to the harm to the general public, MEHOA and its members have been specifically harmed by the removal of the Bunnie Lane Gate and the MRCA's actions and omissions were a substantial factor in causing this harm. The harm to the safety of MEHOA's members and their private property outweighs any public benefit of the MRCA's conduct.

WHEREFORE, Petitioner/Plaintiff MEHOA prays for relief as follows:

A. On the First and Second Causes of Action, that a writ of mandate or administrative mandamus be issued under seal of this Court:

1. Setting aside and voiding the Initial Management Plan and the January 6 Resolution; and

2. Enjoining all activities and expenditures to implement the Initial Management Plan and the January 6 Resolution or any portion thereof;

B. On the Third and Fourth Causes of Action, that a writ of mandate or writ of administrative mandamus be issued under seal of this Court:

1. Setting aside and voiding the January 25 Resolution; and

2. Enjoining all activities and expenditures to implement the January 25 Resolution or any portion thereof;

C. On the Fifth and Sixth Causes of Action, that a writ of mandate or administrative mandamus be issued under seal of this Court ordering that the MRCA:

1. Void the categorical exemption determination for the Conservancy Grant Agreement,

the January 6 Resolution (including the Initial Management Plan) and the January 25 Resolution and suspend and enjoin all activities and expenditures to implement the Lechuza Beach Project, including without limitation, the Initial Management Plan, the January 6 Resolution or the January 25 Resolution, or any portion thereof, pursuant to Public Resources Code section 21168.9.

2. Take such specific actions, specifically including but not limited to, the preparation of an EIR as may be necessary to ensure that required CEQA review is conducted for the Lechuza Beach Project pursuant to Public Resources Code section 21168.9 before approvals are granted and the Project is implemented.

D. On the Seventh Cause of Action, that the Court declare that the removal of the Bunnie Lane Gate and the adoption of the Initial Management Plan violated the Coastal Act and are invalid and enjoining all activities and expenditures to implement the Initial Management Plan, prior to CEQA review and prior to the final approval of a Coastal Development Permit.

E. On the Eighth Cause of Action, that the Court declare the Initial Management Plan to be invalid and enjoin all activities and expenditures to implement the Initial Management Plan, or any portion thereof.

F. On the Ninth Cause of Action, to quiet title to Sea Level Drive in favor of MEHOA in fee simple absolute, without any claim, right, title or interest therein or thereto in favor of MRCA or any person claiming under them, and perpetually enjoining Respondents/Defendants from asserting any claim whatsoever against this real property.

G. In the alternative, on the Tenth Cause of Action, a declaration that the MRCA's removal of the Bunnie Lane Gate and the Seaward West Sea Level Drive Gate violates and conflicts with the conditions of the MRCA Access Easement, and an order compelling the restoration of the Bunnie Lane Gate and the Seaward West Sea Level Drive Gate and enjoining further violations of the MRCA Access Easement;

H. On the Eleventh Cause of Action, setting aside and voiding the Initial Management Plan, the January 6 Resolution and the January 25 Resolution, and enjoining all activities and expenditures to

implement the Initial Management Plan, the January 6 Resolution, the January 25 Resolution or any portion thereof;

I. On the Twelfth and Thirteenth Causes of Action, an order compelling the Conservancy and MRCA to restore the Bunnie Lane Gate;

J. That the Court award Petitioner/Plaintiff the costs of suit incurred herein;

K. That the Court award Petitioner/Plaintiff attorneys fees as permitted by law; and

L. That the Court award Petitioner/Plaintiff such other and further relief as the Court may deem just and proper.

DATED: April 26, 2010

GREENBERG TRAURIG, LLP

By _____
ALLAN J. ABSHEZ
Attorneys for Petitioner/Plaintiff
Malibu Encinal Homeowners Association

VERIFICATION

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I, Lisa Pallack, am President of Malibu-Encinal Homeowners Association, a party to this action, and am authorized to make this verification for and on its behalf, and I make this verification for that reason.

I have read the foregoing **FIRST AMENDED PETITION FOR PEREMPTORY WRIT OF MANDATE (CCP § 1085), OR ALTERNATIVELY ADMINISTRATIVE MANDAMUS (CCP § 1094.5), AND COMPLAINT FOR QUIET TITLE, DECLARATORY AND INJUNCTIVE RELIEF (CCP § 1060)**, and know its contents.

The matters stated in the foregoing document are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

Executed on April 24, 2010 at Malibu, California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Malibu-Encinal Homeowners Association

By: Lisa Pallack, President
Print Name of Signator

Signature

Exhibit A

NOTICE OF INTENT TO FILE CEQA PETITION

To: Mountains Recreation & Conservation Authority
570 West Avenue 26, Suite 100
Los Angeles, CA 90065

To: California Coastal Conservancy
1330 Broadway, 13th Floor
Oakland, CA 94612-2530

PLEASE TAKE NOTICE, that petitioner, Malibu-Encinal Homeowners Association, intends to commence an action against respondents Mountains Recreation & Conservation Authority ("MRCA") and the California Coastal Conservancy pursuant to Public Resources Code Section 21167 for non-compliance with the provisions of the California Environmental Quality Act with respect to the Lechuza Beach Public Access Improvements Project, including (1) the MRCA's removal of the gate on Lot I at the intersection of Broad Beach Road and Bunnie Lane; (2) the MRCA Governing Board's adoption of the Initial Management Plan and the January 6, 2010 Resolution 10-13; and (3) the MRCA Governing Board's adoption of the January 25, 2010 Resolution 10-14.

Date: February 9, 2010

Greenberg Traurig LLP

By: Allan J. Abshez

Allan J. Abshez, Esq.
Attorney for Petitioner
Malibu-Encinal Homeowners Association

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the aforesaid county, State of California; I am over the age of 18 years and not a party to the within action; my business address is **2450 Colorado Avenue, Suite 400E, Santa Monica, CA 90404.**

On February 9, 2010, I served the **NOTICE OF INTENT TO FILE CEQA PETITION** on the interested parties in this action by placing the true copy thereof, enclosed in a sealed envelope, postage prepaid, addressed as follows:

Mountains Recreation & Conservation Authority
570 West Avenue 26, Suite 100
Los Angeles, CA 90065

California Coastal Conservancy
1330 Broadway, 13th Floor
Oakland, CA 94612-2530

☒ **(BY MAIL)**

☐ I deposited such envelope in the mail at Santa Monica, California. The envelope was mailed with postage thereon fully prepaid.

☒ I am readily familiar with the business practice of my place of employment in respect to the collection and processing of correspondence, pleadings and notices for mailing with United States Postal Service. The foregoing sealed envelope was placed for collection and mailing this date consistent with the ordinary business practice of my place of employment, so that it will be picked up this date with postage thereon fully prepaid at Santa Monica, California, in the ordinary course of such business.

☒ **(STATE)** I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on February 10, 2010, at Santa Monica, California.

Christine Pesis

Exhibit B

EXHIBIT "A"

02 2075467

Parcel 1:

Lots M, N and T of Tract No. 10630, in the City of Malibu, County of Los Angeles, State of California, as per map recorded in Book 181 Pages 6 to 11 inclusive of Maps, in the office of the County Recorder of said County.

Parcel 2:

Lot "A" of Tract 10630, in the City of Malibu, County of Los Angeles, State of California, as per map recorded in Book 181 Pages 6 to 11 inclusive of Maps, in the office of the County Recorder of said County.

Beginning at the Northwest corner of Lot 159 of said Tract 10630; thence along the Westerly line of said Lot "A", North 13° 25' 06" East 45.91 feet to the Southwest corner of Lot 160 of said Tract 10630; thence Easterly along the Southeasterly boundaries of Lots 160 and 161 of said Tract 10630, following the arc of a circular curve concave Northwesterly, having a radius of 110 feet; through a central angle of 79° 28' 21" a distance of 152.58 feet to the Northwest corner of said Lot 161; thence South 87° 06' 42" East 4.61 feet along the Easterly prolongation of the Northerly line of said Lot 161 to a point in the arc of a circular curve, having a radius of 425 feet, and the center of which said curve bears North 76° 36' 50" East from the last said point; thence Southeasterly along the arc of the last said curve through a central angle of 3° 38' 06", 26.96 feet to a point of compound curve; thence Southeasterly along the arc of a tangent curve, having a radius of 291 feet, and concave Northeasterly, through a central angle of 41° 12' 51" 209.32 feet to the intersection of the last said arc and the Northerly prolongation of the Easterly line of Lot 156 of said Tract 10630; thence South 13° 25' 06" West along the Northerly prolongation of the Easterly line of said Lot 156, 14.37 feet to the Northeast corner of said Lot 156; thence North 76° 34' 54" West 250 feet along the Northerly lines of Lots 156, 157, "V", 158 and 159 to point of beginning.

Together with that portion of the 80 foot strip of land Condemned by Decree of Condemnation entered in Case No. 135650 Superior Court, (A Certified Copy of said Decree being recorded in Book 9434 Page 338 Official Records), lying Southerly of the 60 foot strip of land deed to the County of Los Angeles for road purposes by deed recorded in Book 21722 Page 190 Official Records adjoining said Lot A.

EXCEPT that portion of Lot A described in the deed recorded May 7, 2002 as Instrument No. 02-1047549 of Official Records.

ALSO EXCEPT that portion of said land lying outside of the Patent lines of the Rancho Topanga Malibu Sequit, as such lines existed at the time of the issuance of the Patent, which was not formed by the deposit of Alluvium from natural causes and by imperceptible degrees.

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Parcel 3:

Lot "B" of Tract No. 10630, in the City of Malibu, County of Los Angeles, State of California, as per map recorded in Book 181 Pages 6 to 11 inclusive of Maps, in the office of the County Recorder of said County.

EXCEPT therefrom that portion of Lot "B" of Tract No. 10630, in the City of Malibu, County of Los Angeles, State of California, as per map recorded in Book 181 Pages 6 to 11 inclusive of Maps, in the office of the County Recorder of said County, lying Easterly of a line which passes through the middle parts of the Northerly and Southerly lines of Lot 66 of said tract.

ALSO EXCEPT the Easterly 10 feet thereof.

Parcel 4:

That portion of Lot "K" of Tract No. 10630, in the City of Malibu, County of Los Angeles, State of California, as per map recorded in Book 181 Pages 6 to 11 inclusive of Maps, in the office of the County Recorder of said County, lying Easterly of the Northerly prolongation of the Easterly line of Lot 91 of said Tract 10630.

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the aforesaid county, State of California; I am over the age of 18 years and not a party to the within action; my business address is **2450 Colorado Avenue, Suite 400E, Santa Monica, CA 90404.**

On April 26, 2010, I served the **FIRST AMENDED PETITION FOR PEREMPTORY WRIT OF MANDATE (CCP § 1085), OR ALTERNATIVELY ADMINISTRATIVE MANDAMUS (CCP § 1094.5), AND COMPLAINT FOR QUIET TITLE, DECLARATORY AND INJUNCTIVE RELIEF (CCP § 1060)** on the interested parties in this action by placing the true copy thereof, enclosed in a sealed envelope, postage prepaid, addressed as follows:

Terry T. Fujimoto, Deputy Attorney General
300 South Spring Street, Suite 1702
Los Angeles, CA 90013
Attorneys for Defendants & Respondents
Mountains Recreation and Conservation Authority; Governing Board of the Mountains Recreation and Conservation Authority; California Coastal Conservancy; Board of Directors of the California Coastal Conservancy

Christi Hogin, Esq.
Jenkins & Hogin, LLP
1230 Rosecrans Avenue, Suite 110
Manhattan Beach, CA 90266
Attorneys for Real Party in Interest
City of Malibu

James L. Goldman
Pircher, Nichols & Meeks
1925 Century Park East, Suite 1700
Los Angeles, CA 90067
Attorneys for Defendants and Respondents
Mountains Recreation and Conservation Authority; Governing Board of the Mountains Recreation and Conservation Authority

☒ **(BY MAIL)**

☒ I am readily familiar with the business practice of my place of employment in respect to the collection and processing of correspondence, pleadings and notices for mailing with United States Postal Service. The foregoing sealed envelope was placed for collection and mailing this date consistent with the ordinary business practice of my place of employment, so that it will be picked up this date with postage thereon fully prepaid at Santa Monica, California, in the ordinary course of such business.

☒ **(STATE)** I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on April 26, 2010, at Santa Monica, California.

Christine Pesis