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Public: (213) 897-2000
Telephone: (213) 897-2706
Facsimile: (213) 897-2706
E-Mail: Terry.Fujimoto@doj.ca.gov

March 1, 2010

RE: MEHOA v. MRCA et al.
Los Angeles County Superior Court , Case No. BS124911

Dear Mr. Abshez:

I've had a chance to review the proposed Standstill Stipulation and Order ("Stipulation") with my client, the Coastal Conservancy. Unfortunately, the Stipulation's proposed terms and conditions are incompatible with the Conservancy's rights and obligations under the existing grant agreement with the MRCA. Therefore, the Conservancy cannot execute the proposed Stipulation.

Under the Grant Agreement with the MRCA, the real property was acquired by the grantee (MRCA), not the Conservancy.¹ Similarly, it is the grantee, not the Conservancy, that is responsible for the use, management, operation and maintenance of the property. (Grant Agreement No. 00-17-0, p. 7.) In contrast, the Conservancy's role is limited to project compliance and oversight to ensure that the public access objectives are achieved. (See Pub. Resources Code, §§ 31400, 31400.1, 31400.2.) It is in this context that the Conservancy considered the proposed Stipulation.

Page 1 of the Stipulation (lines 23 to 27), provides that "the Conservancy and MRCA shall cause the replacement of the pedestrian access gate. . ." The Conservancy, however, has no authority or discretion to take such action. It is not the property owner, nor is there any provision in its grant agreement with the MRCA that would entitle the Conservancy to replace the pedestrian access gate on its own, or order the MRCA to do so, and certainly not without a coastal development permit. Page 2 (lines 1 to 5) states that "the Conservancy and the MRCA shall refrain from further actions in connection with Lechuza Beach, the Lechuza Beach Project and from the construction or alterations of improvements at Lechuza Beach." The Conservancy has no direct involvement in the day-to-day operations of the beach. Rather, that responsibility lies with the grantee. (See Grant Agreement, No. 00-170, p. 6.) Thus, the Conservancy cannot "refrain" from doing what it has no authority to do in the first place.

¹ All of the grant deeds are in the name of the MRCA.

Finally, MEHOA proposes (page 2, lines 4 to 14), that the Conservancy prepare and approve a preliminary management plan. (See Proposed Stipulation, p. 2, lines 6-14.) Although the Conservancy has, in the past, assisted the MRCA in preparing a draft management plan, the obligation to prepare the plan is the MRCA's not the Conservancy's. (See Grant Agreement, No. 00-170, p. 6.) The Conservancy will provide oversight and review of the plan, but it has ^{no} authority to usurp the MRCA's responsibilities particularly since there is no evidence that the MRCA is in breach of the grant agreement.²

The Stipulation appears to be based on the mistaken assumption that the MRCA is the Conservancy's agent. (See Stipulation, p.1, lines 23-27; p. 2. Lines 1-14; also see Petition/Complaint, ¶¶ 31,48, 102.) However, no agency relationship exists nor can one be implied. To the contrary, the grant agreement states that "the grantee and the agents and employees of the grantee, in the performance of this agreement, shall act in an independent capacity and not as officers or employees or *agents* of the State Coastal Conservancy." (See Grant Agreement, No. 00-170, p. 10; emphasis added.) Thus, under the express language of the grant agreement, the MRCA is not an agent of the Conservancy.

Finally, in our discussions it was apparent that MEHOA hoped that the Conservancy would agree to act as an informal mediator or an "honest broker" between the MRCA and MEHOA. The Conservancy has no desire to play such a role. The Conservancy has approved hundreds of grants over the years and could hardly perform its other functions if it were compelled to intercede in every dispute between a grantee and a third party. There is no evidence that the MRCA is in violation of the grant agreement or related approvals. In the absence thereof, the Conservancy declines to intervene.

² The Conservancy in January of this year, confirmed in writing that the MRCA, "is in compliance with the terms and conditions of the Conservancy authorization of October 26, 2000; the grants between the Conservancy and the MRCA; and the use restrictions in favor of the Conservancy contained in the deed transferring ownership of the Lechuza Beach property to the MRCA." (See letter dated January 20, 2010, from Sam Schuchat (Coastal Conservancy Executive Officer) to Joseph T. Edmiston (MRCA Executive Officer).)

In light of the clear evidence that the MRCA is not an agent of the Conservancy, we respectfully request that the Conservancy be dismissed from the lawsuit. The only allegations against it are that the MRCA "was acting for its own account and as the agent of the Conservancy under the Conservancy Grant Agreement." (Petition/Complaint, ¶48) However, as demonstrated above, the MRCA is expressly not an agent of the Conservancy. Frankly, there is no benefit to be gained by keeping the Conservancy as a party. The relief you seek can be obtained against the MRCA. Further, you do not allege any action taken by the Conservancy (other than as the MRCA's principal) that was detrimental to MEHOA's interest. In the absence of such allegations, the Conservancy ought to be dismissed from the litigation with prejudice.

To the extent you refuse to dismiss the Conservancy, we would ask for clarification regarding MEHOA's request for preparation of record of proceedings directed to the Conservancy. Specifically, MEHOA requests that the Conservancy "prepare the record of Respondents' proceedings relating to this action." However, you do not allege any relevant proceedings taken by the Conservancy except the 2000 action approving the grant to the MRCA. (See Petition/Complaint, ¶¶ 27-36.) That action, however, is not the basis of any of the claim against the Conservancy. If you could identify the Conservancy's proceedings "relating to this action," it would assist and expedite preparation of the administrative record. I look forward to your reply and discussing this matter with you further.

Sincerely,

TERRY T. FUJIMOTO
Deputy Attorney General

For EDMUND G. BROWN JR.
Attorney General

TTF: