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August 17, 2010

Terry Fujimoto, Esq.
Deputy Attorney General
300 South Spring Street, Suite 1702
Los Angeles, California 90013

Re: July 15, 2010 Letter from Joseph Edmiston to Lisa Pallack

Dear Mr. Fujimoto:

We are writing on behalf of our client, the Malibu-Encinal Homeowners Association ("MEHOA") in response to the above-referenced letter from Mr. Edmiston, the MRCA's Executive Director, to MEHOA's President, Lisa Pallack.¹ My apologies for this belated response. As you know, we have been focusing on preparation of the settlement package (which we transmitted to you earlier today). We hope the package will furnish the basis for a productive dialogue between our respective clients -- and more importantly -- that it will provide the foundation for a comprehensive, balanced and lasting resolution of the conflicts that unfortunately emerged between them and frustrated all concerned.

As to the particulars of MEHOA's plans regarding the 4th now past, MEHOA, as you are aware, attempted to consult with you and your clients in advance to acquaint them with its plans and to obtain your input. Prior to the weekend, MEHOA's President, Lisa Pallack, met in person with Ranger Johnson of the MRCA, and was given the impression that Ranger Johnson was generally satisfied with the flyers and MEHOA's plans. We should note that MEHOA was gratified by the MRCA's enhanced presence in response to its request, and agrees with Mr. Edmiston that there are lessons to be learned jointly by MEHOA and the MRCA from the July 4th experience. We believe that these lessons should be incorporated in a final beach management plan that addresses peak visitation periods, such as summer weekends and holidays, and we have tried to reflect that in the draft plan forwarded to you today. Hopefully, such a plan would make it unnecessary for MEHOA to have its own private security and items such as flyers, etc.

¹ This letter constitutes a settlement communication in connection with Malibu Encinal Homeowners Association v. Mountains Recreation and Conservation Authority, et al. (Los Angeles Superior Court Case No. BS124911), and is privileged and confidential pursuant to California Evidence Code Section 1152 and other applicable law.

We do not believe that it is necessary or that it would be productive (in terms of our efforts to build a relationship of trust and confidence between the parties) to respond to all of Mr. Edmiston's comments; particularly those regarding Mr. Edmiston's unfortunate interaction with the young man hired by MEHOA to distribute MEHOA's flyers, who was simply rather flustered in attempting to explain himself to Mr. Edmiston and who, as I believe Mr. Edmiston acknowledges, was actually doing nothing at all wrong.

We will therefore focus on a few important matters that we hope will help you to advise your client, help to clarify the parties' respective legal rights and responsibilities, and further our dialogue and understanding.

As an initial matter, MEHOA's distribution of flyers over the very busy July 4th weekend was intended to welcome and educate visitors, and avoid the types of conflicts and problems that have occurred regularly on peak visitation days in the past (such as the recent Memorial Day weekend, as I corresponded about in my email of June 7, 2010). Arrows were used on the flyers to generally depict the location of the MRCA's lots and to identify MEHOA's private beach lot area. The flyer correctly noted that MEHOA's lots were located landward of the mean high-tide line. However, we agree that the diagrams depicting the MRCA's and MEHOA's respective ownership interests can be better clarified, and believe that it would be productive to have permanent signage located at the three entrances and elsewhere that would make the distribution of such flyers unnecessary.

Second, as I know you will agree, MEHOA has the right to prevent trespass on its property, which includes East and West Sea Level Drive. Of course, MEHOA does not consider use of East and West Sea Level Drive during daylight hours by pedestrians who are members of the public and by disabled-placard vehicles and MRCA service as permitted by the MRCA access easement to be trespassing. But, MEHOA has a right to exclude and remove from its property bicyclists, skateboarders, dogs, vehicles that are not permitted by the MRCA access easement, and to prohibit any use or activity not permitted by the easement.² Naturally, MEHOA reserves all such rights, and we are confident that you will advise the Conservancy and the MRCA that such actions by MEHOA are appropriate and lawful.³

Third, as I believe you will agree, the MRCA's access easements over East and West Sea Level Drive are just that -- easements by the MRCA in the private property of another (specifically, MEHOA). An easement provides a right for the grantee to use property in accordance with the terms of a grant without possession of the property -- but

² In his July 2, 2010 email to me, Mr. Edmiston queried about a photograph showing a person unloading scuba and other gear on East Sea Level from a white truck and asked what was the problem with the activity depicted. As perhaps I could have explained more clearly in my June 7, 2010 email which originally accompanied the photograph, the problem depicted was the unauthorized entry and parking of the white truck on East Sea Level Drive.

³ Of course, MEHOA asserts no such rights on Lot I or any other lots owned by the MRCA in fee.

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no more. We also note that the MRCA's access easements over East and West Sea Level Drive are non-exclusive and are for limited and specific purposes, and that Mr. Kiefer has been permitting pedestrians to pass over a portion of his private lot to reach the MRCA pedestrian easement on West Sea Level Drive. While, as the owner of the lots it owns in fee, the MRCA may 'enforce' rules on its fee ownership, it has no right of 'enforcement' on any property owned by MEHOA. As noted by the Court of Appeal in Malibu v. Santa Monica Mountains Conservancy,⁴ and as expressly set forth in Public Resource Code Section 33008, "[t]his division does not authorize the conservancy to *regulate private property*, nor does it supersede or limit a local government's exercise of the police power, over private property, derived from any other provision of existing law or any law hereafter enacted." (emphasis added) For all these reasons, the MRCA has no right to 'regulate' or 'enforce' parking or any other rules on MEHOA's property.⁵

Finally, Mr. Edmiston's letter again makes assertions about purported public "recreational" easements over private lots on the beach owned by MEHOA as well as a purported public pedestrian easement over Lot T. As I wrote in my July 1, 2010 email to you, heretofore it was our understanding that the only real property interests asserted by the State Coastal Conservancy and the MRCA were those in the lots acquired pursuant to the Conservancy Grant and the limited associated access easements acquired by written grant over East and West Sea Level Drives. In addition, no easement granted by the Tract 10630 CC&R's of which we are aware allows any lot owner or homeowner to open the easements it may hold thereunder to the general public. We hope that the Conservancy and the MRCA will accordingly reconsider these assertions so as to avoid what would be an unnecessary, unproductive and entirely new dispute between the parties.

We look forward to meeting with you and your clients to discuss the settlement package we transmitted to you today, and welcome the opportunity to discuss the matters raised in Mr. Edmiston's July 15th letter (or this response) further if necessary.

Thank you for your cooperation and assistance.

Very truly yours,



Allan J. Abshez

cc: Ms. Lisa Pallack

⁴ 98 Cal. App. 4th 1379 (2002).

⁵ It is acknowledged that as parks rangers, certain MRCA employees are also peace officers. But their functions and authority as park ranger peace officers are limited to their ownership by the California Public Resources and Penal Codes.

