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3 ELIZABETH A. CAMACHO (SBN 171997)
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5 Santa Monica, California 90404
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8 Attorneys for Petitioner/Plaintiff
9 Malibu-Encinal Homeowners Association

ORIGINAL FILED

DEC - 9 2010

LOS ANGELES
SUPERIOR COURT

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA

11 FOR THE COUNTY OF LOS ANGELES

12 MALIBU-ENCINAL HOMEOWNERS
13 ASSOCIATION,

14 Petitioner and Plaintiff,

15 vs.

16 MOUNTAINS RECREATION AND
17 CONSERVATION AUTHORITY;
18 GOVERNING BOARD OF THE
19 MOUNTAINS RECREATION AND
20 CONSERVATION AUTHORITY;
21 CALIFORNIA COASTAL
22 CONSERVANCY; BOARD OF
23 DIRECTORS OF THE CALIFORNIA
24 COASTAL CONSERVANCY; DOES 1
25 through 50, inclusive,

26 Respondents and Defendants.

27 CITY OF MALIBU ,

28 Real Party in Interest

CASE NO. BS124911

**STIPULATION AND ~~PROPOSED~~ ORDER
RE TOLLING OF TIME DEFENSES AND
DISMISSAL WITHOUT PREJUDICE**

Dept. 86
Judge: Hon. Ann I. Jones
Trial Date: None
Action Filed: February 11, 2010

STIPULATION AND PROPOSED ORDER

1 WHEREAS, on February 11, 2010, Petitioner/Plaintiff Malibu Encinal Homeowners Association
2 (“MEHOA”) filed the above entitled action (the “**Litigation**”) naming the California Coastal
3 Conservancy and its board (collectively the “**Conservancy**”) and the Mountains Recreation and
4 Conservation Authority and its board (collectively the “**MRCA**”) as Respondents and Defendants and
5 the City of Malibu as a Real Party in Interest, alleging among other claims, causes of action under the
6 California Environmental Quality Act (CEQA) and the California Coastal Act;

7 WHEREAS, on April 26, 2010, MEHOA filed a First Amended Petition and Complaint (the
8 “**Petition and Complaint**”) in the Litigation;

9 WHEREAS, within ninety (90) days of filing the Litigation, MEHOA requested a hearing on its
10 writ of mandate claims in accordance with Public Resources Code Section 21167.4 and California
11 Environmental Quality Act Guideline 15232;

12 WHEREAS, in response to MEHOA’s request for a hearing, the Court adopted briefing
13 schedules for the lodging of the administrative record, briefing of MEHOA’s writ claims, the hearing of
14 a demurrer filed by the Conservancy, and the hearing of MEHOA’s writ claims, which schedules are set
15 forth in the Court’s orders of August 27, 2010 and October 29, 2010;

16 WHEREAS, the motion to grant the writ and the demurrer are both currently scheduled for
17 hearing on February 10, 2011;

18 WHEREAS, no trial date has been set for the non-writ causes of action;

19 WHEREAS, since the filing of the Litigation the parties have been engaged in regular and
20 productive discussions regarding potential settlement and have previously stipulated to several
21 continuances of the hearings on Petitioner’s Motion to Grant the Writ and the Conservancy’s demurrer
22 to facilitate such discussions;

23 WHEREAS the parties have made substantial and bona fide progress towards a comprehensive
24 settlement of this long-running dispute, which will hopefully make litigation of the issues unnecessary, but
25 achieving final resolution of the issues and proposed final documents, including anticipated escrow agreements,
26 will require additional time for intensive negotiations to which the parties desire to devote their full time
27 attention;

1 Litigation provides written notice to all other parties of its intent to terminate the tolling period
2 provided for herein; or (2) the City of Malibu issues a Notice of Final Local Government Action on the
3 MRCA Amended CDP Application pursuant to Malibu Local Coastal Plan Section 13.16. The period
4 during which the Time Defenses are tolled shall be referred to as the "Tolling Period." The Tolling
5 Period shall not be added to any time calculation in determining whether a Time Defense has run. Any
6 notice of termination of the Tolling Period shall be in writing and shall be deemed to have been duly
7 given if mailed by certified or registered mail, return receipt requested, by personal delivery, by
8 overnight delivery service (e.g. Federal Express), or by fax addressed as follows:

9

10 (a) If to MEHOA	with a copy to:
11 Lisa Pallack	Allan Abshez, Esq.
12 31824 Sea Field Drive	2450 Colorado Ave., Suite 400 East
13 Malibu, CA 90265	Santa Monica, CA 90404
14 Fax No. (310) 587-1988	Fax No. (310) 586-0555
15 Email: lisap0305@verizon.net	Email: absheza@gtlaw.com

16 (b) If to the MRCA:	with a copy to:
17 MRCA	EDMUND G. BROWN JR.
18 Attn: Laurie Collins, Staff	Attorney General of California
19 Counsel	Attn: Deputy Attorney General Terry T. Fujimoto
20 570 West Avenue 26, Suite 100	300 South Spring Street, Suite 1702
21 Los Angeles, CA 90065	Los Angeles, CA 90013
22 Fax No. 323.221.9944	Fax. No. 213.897.2801
23 Email: collins@smmc.ca.gov	Email: Terry.Fujimoto@doj.ca.gov

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(c) If to the Conservancy:
California Coastal Conservancy
Attn: Elena Eger
1330 Broadway, 13th Floor
Oakland, CA 94612
Fax No. 510.286.0470
Email: Eeger@scc.ca.gov

with a copy to:
EDMUND G. BROWN JR.
Attorney General of California
Attn: Deputy Attorney General Terry T. Fujimoto
300 South Spring Street, Suite 1702
Los Angeles, CA 90013
Fax. No. 213.897.2801
Email: Terry.Fujimoto@doj.ca.gov

(d) If to the City of Malibu:
Jim Thorsen, City Manager
City of Malibu
23815 Stuart Ranch Road
Malibu, CA 90265

with a copy to:
Christi Hogin, Esq.
Jenkins & Hogin, LLP
1230 Rosecrans Avenue, Suite 110
Manhattan Beach, CA 90266
Fax No. 310.643.8441
Email: CHogin@localgovlaw.com

Notices, demands, consents, approvals, and other communications which are mailed by certified or registered mail shall be given when delivered; provided, however, that if any such notice or other communication shall also be sent by facsimile machine, such notice shall be deemed given at the time and on the date of machine transmittal if the sending party receives a written send verification on its machines and forwards a copy thereof with its mailed or courier delivered notice or communication.

2. In reliance on the parties' agreement in paragraph 1 of this stipulation, the parties agree that the Litigation shall be dismissed without prejudice, subject to the agreement in paragraph 1 above. MEHOA may refile the Litigation, or any claims or causes of action asserted therein or related thereto, at its sole discretion, together with any other related claims or causes of action that may be asserted by MEHOA.

3. Within fourteen (14) days of any refile of the Litigation, MEHOA shall request an early status conference at which the Court shall determine the schedule for completion and lodging of the administrative record, the schedule for briefing of any writ of mandate claims that have been refiled, and the date of hearing for any writ of mandate claims.

1 4. The parties hereby request that the Court order the tolling of the Time Defenses and the
2 dismissal without prejudice of the Litigation on the terms agreed to herein, as set forth in the proposed
3 order below.

4
5 DATED: December 8, 2010

GREENBERG TRAURIG, LLP

6
7 By Allan J. Abshez
8 ALLAN J. ABSHEZ
9 Attorneys for Petitioner/Plaintiff
Malibu-Encinal Homeowners Association

10 DATED: December __, 2010

EDMUND G. BROWN, JR.
Attorney General of California

11
12
13 By _____

14 Terry T. Fujimoto
15 Deputy Attorney General
16 Attorneys for Respondents
California Coastal Conservancy, Coastal Conservancy
Board, Mountain Recreation and Conservation Authority
and Mountain Recreation and Conservation Authority
Board

17
18 DATED: December __, 2010

JENKINS & HOGIN, LLP

19
20 By _____
21 CHRISTI HOGIN
22 Attorneys for Real Party
23 City of Malibu
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27

1 4. The parties hereby request that the Court order the tolling of the Time Defenses and the
2 dismissal without prejudice of the Litigation on the terms agreed to herein, as set forth in the proposed
3 order below.

4
5 DATED: December __, 2010 GREENBERG TRAURIG, LLP

6
7 By _____
8 ALLAN J. ABSHEZ
9 Attorneys for Petitioner/Plaintiff
10 Malibu-Encinal Homeowners Association

11
12 DATED: December __, 2010 EDMUND G. BROWN, JR.
13 Attorney General of California

14 By _____
15 Terry T. Fujimoto
16 Deputy Attorney General
17 Attorneys for Respondents
18 California Coastal Conservancy, Coastal Conservancy
19 Board, Mountain Recreation and Conservation Authority
20 and Mountain Recreation and Conservation Authority
21 Board

22 DATED: December __, 2010 JENKINS & HOGIN, LLP

23
24 By _____
25 CHRISTI HOGIN
26 Attorneys for Real Party
27 City of Malibu

ORDER

GOOD CAUSE APPEARING, IT IS HEREBY ORDERED AS FOLLOWS:

1. Any and all time limitations, contractual time limitations, statutes of limitation (including without limitation under California Public Resources Code section 21167, Code of Civil Procedure Sections 338, 583.310 et seq., 583.410 et seq., 1094.6), and any other time-related bar, including, without limitation, the equitable defense of laches, applicable to any claim, counterclaim, defense or other proceeding that was or could have been alleged in the above entitled litigation (the "**Litigation**"), or that otherwise might arise from the facts underlying and surrounding the Litigation, which exists and is not time-barred as of the date of the filing of the Litigation (collectively, the "**Time Defenses**") are hereby tolled from the date of the parties stipulation, above, until the date thirty (30) calendar days after either of the following, whichever occurs first: (1) any party to the Litigation provides written notice to all other parties of its intent to terminate the tolling period provided for herein; or (2) the City of Malibu issues a Notice of Final Local Government Action on the MRCA Amended CDP Application pursuant to Malibu Local Coastal Plan Section 13.16. The period during which the Time Defenses are tolled shall be referred to as the "**Tolling Period.**" The Tolling Period shall not be added to any time calculation in determining whether a Time Defense has run. Any notice of termination of the Tolling Period shall be in writing and shall be deemed to have been duly given if mailed by certified or registered mail, return receipt requested, by personal delivery, by overnight delivery service (e.g. Federal Express), or by fax addressed as follows:

(a) If to MEHOA

Lisa Pallack
31824 Sea Field Drive
Malibu, CA 90265
Fax No. (310) 587-1988
Email: lisap0305@verizon.net

with a copy to:

Allan Abshez, Esq.
2450 Colorado Ave., Suite 400 East
Santa Monica, CA 90404
Fax No. (310) 586-0555
Email: absheza@gtlaw.com

1 (b) If to the MRCA:

2 MRCA
3 Attn: Laurie Collins, Staff
4 Counsel
5 570 West Avenue 26, Suite 100
6 Los Angeles, CA 90065
7 Fax No. 323.221.9944
8 Email: collins@smmc.ca.gov

with a copy to:

EDMUND G. BROWN JR.
Attorney General of California
Attn: Deputy Attorney General Terry T. Fujimoto
300 South Spring Street, Suite 1702
Los Angeles, CA 90013
Fax. No. 213.897.2801
Email: Terry.Fujimoto@doj.ca.gov

7 (c) If to the Conservancy:

8 California Coastal Conservancy
9 Attn: Elena Eger
10 1330 Broadway, 13th Floor
11 Oakland, CA 94612
12 Fax No. 510.286.0470
13 Email: Eger@scc.ca.gov

with a copy to:

EDMUND G. BROWN JR.
Attorney General of California
Attn: Deputy Attorney General Terry T. Fujimoto
300 South Spring Street, Suite 1702
Los Angeles, CA 90013
Fax. No. 213.897.2801
Email: Terry.Fujimoto@doj.ca.gov

13 (d) If to the City of Malibu:

14 Jim Thorsen, City Manager
15 City of Malibu
16 23815 Stuart Ranch Road
17 Malibu, CA 90265

with a copy to:

Christi Hogin, Esq.
Jenkins & Hogin, LLP
1230 Rosecrans Avenue, Suite 110
Manhattan Beach, CA 90266
Fax No. 310.643.8441
Email: CHogin@localgovlaw.com

18 Notices, demands, consents, approvals, and other communications which are mailed by certified or
19 registered mail shall be given when delivered; provided, however, that if any such notice or other
20 communication shall also be sent by facsimile machine, such notice shall be deemed given at the time
21 and on the date of machine transmittal if the sending party receives a written send verification on its
22 machines and forwards a copy thereof with its mailed or courier delivered notice or communication.

23 2. The Litigation is hereby dismissed without prejudice, subject to the provisions of paragraph 1
24 of this Order. MEHOA may refile the Litigation, or any claims or causes of action asserted therein or
25 related thereto, at its sole discretion, together with any other related claims or causes of action that may
26 be asserted by MEHOA.

1 3. Within fourteen (14) days of any refile of the Litigation, MEHOA shall request an early
2 status conference at which the Court shall determine the schedule for completion and lodging of the
3 administrative record, the schedule for briefing of any writ of mandate claims that have been refiled, and
4 the date of hearing for any writ of mandate claims.

5 IT IS SO ORDERED.

6 *4. Pursuant to further stipulation of the parties, this order shall terminate on 12-31-2014*

7 DATED: DEC - 9 2010

ANN I. JONES

Judge of the Superior Court

8
9
10 *4. Pur. add. stip. of parties*
11 *this order shall terminate on*
12 *12/31/2014.*
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16

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 December 8, 2010, I served the JOINT STIPULATION OF ALL PARTIES AND EX PARTE APPLICATION FOR ORDER TOLLING TIME DEFENSES AND DISMISSING ACTION WITHOUT PREJUDICE PER STIPULATION; MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATION OF ELIZABETH A. CAMACHO 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
Fax: (213) 897-2801
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
Fax: (310) 643-8441
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
Fax: (310) 201-8922
Attorneys for Defendants and Respondents
Mountains Recreation and Conservation Authority; Governing Board of the Mountains Recreation and Conservation Authority

[X] (BY FACSIMILE)
On August 26, 2010, I transmitted the foregoing document(s) by facsimile sending number. Pursuant to rule 2009(i)(4), I caused the machine to print a transmission record of the transmission, a true and correct copy of which is attached to this declaration.

[X] (BY MAIL)
[X] 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.

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

Executed on December 8, 2010, at Santa Monica, California.

Handwritten signature of Christine Pesis

Christine Pesis