

**CALIFORNIA COASTAL COMMISSION**

SOUTH CENTRAL COAST AREA  
89 SOUTH CALIFORNIA ST., SUITE 200  
VENTURA, CA 93001  
(805) 585-1800

**NOTICE OF VIOLATION OF THE CALIFORNIA COASTAL ACT**

15 January 2010

Lisa Tent  
Senior Code Enforcement Officer  
City of Malibu  
2385 Stuart Ranch Road  
Malibu, CA 90265

CCC Violation File Number: V-4-04-005 (Lechuza Beach)

Property location: Lechuza Beach; at the terminus of Lot A (APN 4470-021-009) at Broad Beach Road and separately at 31885 Sea Level Drive (APN 4470-026-003); City of Malibu; County of Los Angeles

Unpermitted Development: Placement of gates and signs at two locations (described above) blocking and/or restricting public access to a public beach; placement of private encroachments in the public ROW on Broad Beach Road in the vicinity of Lechuza Beach

Dear Ms Tent:

As previously discussed in multiple correspondence (detailed in the Background section of this letter), our staff has confirmed that development has taken place at and nearby Lechuza Beach without the necessary coastal development permits, in violation of the Coastal Act (Cal. Pub. Res. Code §§ 30000 *et seq.*) and the Malibu Local Coastal Program (LCP). This unpermitted development includes the placement of gates (2) and signs at Lechuza Beach, one gate being at the intersection of East Sea Level drive (Lot A) and Broad Beach Road, on Lot A, which is owned by the Malibu-Encinal Homeowners' Association (MEHOA), and one on property located at 31885 West Sea Level Drive (adjacent to Broad Beach Road), owned by William Kiefer. In addition, we have confirmed the unpermitted placement of materials and structures, including private encroachments (pavers, planters, landscaping, mail boxes, walls, rocks, light standards, etc.), in the public right-of-way (ROW) on Broad Beach Road in the vicinity of three vertical public accessways leading to Lechuza Beach, a public beach. The encroachments preclude public parking on Broad Beach Road, and public access to Lechuza Beach is (except for limited handicapped parking) limited to pedestrian access.

All of this development is located in the City of Malibu, which is located within the Coastal Zone.

Pursuant to Section 30600(a) of the Coastal Act and Section 13.3 of the City of Malibu (City) LCP Local Implementation Plan, with limited exceptions, any person wishing to perform or undertake development in the Coastal Zone must obtain a coastal development permit, in addition to any other permit required by law. Development is broadly defined by Section 30106 of the Coastal Act and Section 12.2.1 of the City's LCP Local Implementation Plan as follows:

***“Development” means, on land, in or under water, the placement or erection of any solid material or structure; discharge or disposal of any dredged material or any gaseous, liquid, solid, or thermal waste; grading, removing, dredging, mining, or extraction of any materials; change in the density or intensity of the use of land, including, but not limited to, subdivision pursuant to the Subdivision Map Act (commencing with Section 66410 of the Government Code), and any other division of land, including lot splits, except where the land division is brought about in connection with the purchase of such land by a public agency for public recreational use; change in the intensity of use of water, or of access thereto; construction, reconstruction, demolition, or alteration of the size of any structure, including any facility of any private, public, or municipal utility; and the removal or harvest of major vegetation other than for agricultural purposes, kelp harvesting, and timber operations....(emphasis added)***

The above-mentioned placement of gates and signs and encroachments constitutes development under the Coastal Act and the City's LCP and, therefore, requires a Coastal Development Permit. Any non-exempt development activity conducted in the Coastal Zone without a valid coastal development permit or waiver, or which does not substantially conform to a previously issued permit, constitutes a violation of the Coastal Act and the City of Malibu LCP.

### **Gates**

In addition to the fact that the gates are not permitted, and that they are therefore in violation of the Coastal Act and the City's LCP, we note that the gates probably could not be permitted, for the following reasons. The City of Malibu Local Coastal Program and the Coastal Act mandate the provision of maximum public access and recreational opportunities along the coast and contain several policies that address the issues of public access and recreation along the coast. The following Coastal Act Sections are incorporated as policies of Chapter 2 of the Malibu Land Use Plan:

Coastal Act Section 30210 states that:

**In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.**

Coastal Act Section 30211 states:

**Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.**

Coastal Act Section 30212(a) provides that in new shoreline development projects, access from the nearest public roadway to the shoreline and along the coast shall be provided except in specified circumstances, namely where:

**(1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources.**

**(2) adequate access exists nearby, or,**

**(3) agriculture would be adversely affected.**

**Dedicated access shall not be required to be opened to public use until a public agency or private association agrees to accept responsibility for maintenance and liability of the accessway.**

Coastal Act sections 30210 and 30211 mandate that maximum public access and recreational opportunities be provided, consistent with the need to protect public safety, public rights, private property rights, and natural resources, and that development not interfere with the public's right to access the coast if such rights were acquired in the specified manners. Likewise, section 30212 of the Coastal Act requires that in new shoreline development projects, adequate public access to the sea be provided to allow use of dry sand and rocky coastal beaches.

In addition, Section 2.28 of the City of Malibu Land Use Plan states:

**Gates, guardhouses, barriers or other structures designed to regulate or restrict access shall not be permitted within private street easements where they have the potential to limit, deter, or prevent public access to the shoreline, inland trails, or parklands where there is substantial evidence that prescriptive rights exist.**

In areas where a certified LCP is in effect, the LCP policies generally take the place of the policies in Chapter 3 of the Coastal Act as the standard of review for proposed projects, pursuant to Coastal Act section 30604(b). However, even where a certified LCP is in place, all projects requiring a coastal development permit for development between the sea and the first public road parallel to the sea must also be reviewed for compliance with the public access and recreation provisions of Chapter 3 of the Coastal Act, pursuant to section 30604(c). All of the development discussed in this letter occurred between the sea and the first public road parallel to the sea (as defined in California Code of Regulations, title 14, section 13577(i)) and, as discussed previously, without the benefit of a coastal development permit, and therefore, its impacts on public access and recreation were not evaluated in light of the protections in the Coastal Act and Malibu's LCP.

## **Encroachments**

Broad Beach Road is a public street located in the City of Malibu. The ROW (the area that the public has rights to use) is 60 feet wide, yet in some places, the ROW has been constricted to as narrow as 27 feet and travel lanes have been reduced to as narrow as 9 feet by private encroachments. Moreover, these encroachments have completely blocked areas that would be available for public parking along the verges of the road. The public ROW has been privatized via the installation of landscaping, masonry mailboxes, large rocks, front yards, walls, brick and concrete paving, etc. The resultant loss of public parking impacts the public's ability to access Lechuza Beach. Additionally, the narrow travel lanes, lack of shoulder and reduced visibility poses a hazard to motorists.

Section 2.31 of the City of Malibu LCP Land Use Plan states:

**“The City should complete an inventory of existing public parking along Pacific Coast Highway and public roads seaward of PCH to identify all unpermitted signage or physical barriers to public parking and to establish a database to aid in preventing future loss of legal public access and parking. All unpermitted signs and/or physical barriers which prevent public parking near the shoreline shall not be permitted.”**

Section 2.32 of the City of Malibu LCP Land Use Plan States:

**“Landscaping and any other barriers or obstructions placed by private landowners shall not be allowed within existing public road rights-of-way where such areas would otherwise be available for public parking.”**

In the recent past, several property owners posted illegal “no parking” signs to further deter the public from parking. Fortunately, the City of Malibu took enforcement action and the problematic signs were removed. However, many physical barriers to public parking remain. On September 12, 2007, the Commission received a survey of Broad Beach Road in the Lechuza Beach area, conducted by Land and Air Surveying, from the Mountains Recreation and Conservation Authority (“MRCA”), a public agency that manages the public beach at Lechuza. The survey clearly denotes the various private encroachments within the ROW.

These private encroachments are unpermitted development located in a public ROW resulting in the privatization of public property and the loss of public beach parking. They are a violation of both the Coastal Act and the City's LCP, both because they are unpermitted, and because they are inconsistent with the legal provisions noted above.

## **Background**

According to the MEHOA, the metal gates extant today were constructed by the MEHOA in 1977 to replace wooden gates. This was done without benefit of a coastal development permit. MEHOA was notified by the Commission in 1977 that the gates were unpermitted development and required a CDP. The Commission and the MEHOA exchanged a series of letters in 1977, but the matter was not resolved at that time.

In 1993, the MEHOA applied to the City of Malibu for authorization to replace the "...existing wrought iron entry gates located at East Sea Level Drive." Plans approved by the City were received by the Commission on June 7, 1993 and the Commission subsequently issued an exemption letter dated June 8, 1993. However, the MEHOA did not inform the Commission staff member that the gates that were proposed to be replaced were the unpermitted gates that were the subject of the 1977 letters.<sup>1</sup> The replacement therefore should have been treated as a proposed new structure that would restrict passage below the level allowed by any legal development at the site, and the exemption letter was, therefore, issued in error. It is of note that the exemption determination expressly states that it is based on information provided by the recipient and that if, "at a later date, this information is found to be incorrect or incomplete, this letter will become invalid. . ." There is nothing in the project description or the plans initially approved by the City that mentions the 1977 violation letters or explains the history/legality of the gates that were to be replaced. In addition, in a memo dated June 17, 1993, the City indicated that local "...planning approval has been revoked..." for the replacement gate and that "...building permits have been suspended until further notice." The City has not issued any approvals for the East Sea Level gate.<sup>2</sup> Finally, the gates that currently exist at the intersection of East Sea Level Drive and Broad Beach Road are not the same gates depicted on the City-approved plans to which the Exemption Letter was responding.

The MRCA acquired beach property and public access easements at Lechuza Beach in 2001 and 2002. Half the lots were acquired for public beach purposes for \$9,060,000 in public money, via a grant from the State Coastal Conservancy; the remainder of the lots were donated to the MRCA without conditions or restrictions by the donor.

In a letter dated August 21, 2006, the Commission notified the City of Malibu of the gate and encroachment violations, formally requested the City to take enforcement action, and offered to assist. The letter was copied to MEHOA and the MRCA.

In a letter dated September 18, 2006, City staff responded that there were many facts and statements that required verification, acknowledged our offer to assist, and indicated that they would wait until after a meeting that the MEHOA and Commission staff had scheduled had occurred before they would investigate. City staff also requested files and "evidence" from the Commission in support of their efforts.

Commission staff met with representatives of the MEHOA on September 20, 2006, informed them of the unpermitted gates and advised them as to options to resolve the violations. At that time, there was hope that a public access management plan would be developed and approved through the CDP process that would address the outstanding issues regarding the gates.

In a letter to the City dated October 3, 2006, the Commission summarized the meeting with MEHOA, provided more information, and attached "evidence" of the alleged

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<sup>1</sup> A reader unfamiliar with the history might interpret the Exemption Letter's description of the project as a replacement project to imply that the existing gate was legal, but, as this letter demonstrates, that was not the case, and that issue was not assessed in the issuing of the Exemption Letter.

<sup>2</sup> Note that none of this confusion applies to other gate that is the subject of this letter. No exemption from the Commission was ever sought or approved for the gate at that location.

violations (gates, signs, and encroachments) as City staff had requested in their September 18, 2006 letter. The Commission also requested that the City notify the MEHOA, the MRCA and Mr. Kiefer of the violations and set a deadline of January 1, 2007 for either approval of the gates through the CDP process or removal of the gates. The Commission reminded the City that Sections 30809 and 30810 of the Coastal Act provide for the Commission and/or Executive Director to issue orders to enforce the requirements of a certified LCP if local government fails to act in a timely manner to resolve the violation(s) after receiving a request to act from the Commission. The letter also indicated the Commission would consider commencing proceedings for issuance of a Cease and Desist Order and Restoration Order to require the respective property owners to remove the gates and signs and restore the site(s) to its pre-violation condition if the January 2007 deadline were not met. The MRCA, MEHOA, and Mr. Kiefer were copied.

On October 24, 2006, the MRCA sent a letter to the Commission responding to the October 3, 2006 letter. While the MRCA expressed a willingness to develop a management plan (including the gates) and seek approval, they also expressed skepticism about doing so by the January 2007 deadline and went into great detail as to why the deadline was unrealistic. The MRCA requested a six-month extension of time.

In another letter, also dated October 24, 2006, the MRCA requested that the City take enforcement action to address the private encroachments on Broad Beach Road and advised the City that without meaningful access improvements (resulting from removal of the private encroachments) the MRCA may be forced to remove the gate at Lot I (Bunnie Lane).

In a letter dated November 13, 2006, the Commission responded to the MRCA's October 24, 2006 letter. The Commission agreed that, in light of the information provided by the MRCA, the January 2007 deadline was unrealistic. However, the Commission again made it clear that public access is a high priority at Lechuza Beach and outlined steps the City could take to address the violations. Part of that response follows:

**If it is now the position of the MEHOA and/or the property owner upon whose property the gate is situated, that the gate at West Sea Level Drive is a private gate, and that there is no public access from Broad Beach Road to Lot A via the "driveway" that has been historically used by both the members of the MEHOA and the public, then the City of Malibu should take immediate action to enforce Coastal Act Section 30211 (which is incorporated into the City of Malibu's LCP Land Use Plan in Chapter 2), and Section 2.28 of the City's LCP Land Use Plan as there is no public benefit to be derived from a private, unpermitted, gate at this location. A private gate at this location would likely not be approvable under Malibu's LCP and it is unlikely that the Commission would approve such a gate if it came before them on appeal (which it almost certainly would)...**

**...For the time being, the ball is in the City's court. However, the subject violations continue to negatively affect public access to a publicly owned beach that was bought and paid for largely with public funding, and violations involving public access are a high priority for the Commission. The Commission has been patient while negotiations have gone on in the hope that the MRCA and the MEHOA would come to an agreement on a public access/management plan that would enable amicable resolution of the violations and result in increased public access. We appreciate the complexity of this site and the current situation, but nonetheless,**

the matter has yet to be resolved and access has not been fully provided. We are concerned that the process appears to be stalled. As you of course know, the public has a reasonable expectation to be able to enjoy Lechuza Beach without being harassed or intimidated, and the Commission has the responsibility to ensure that the public access provisions of the Coastal Act are enforced. We want to make it clear that this matter is important to us and that if progress towards resolving these issues is not demonstrated in a timely manner, the Commission will take the appropriate steps necessary to protect the public's interest.

In our letter to the City dated October 3, 2006, we set a January 1, 2007 "deadline" for either submittal of a complete CDP application to retain the gates, or removal of the gates by that date. In your letter, you request a six-month extension of that deadline. The January "deadline" in our letter was less a date cast in stone and more meant to convey a sense of urgency regarding this matter. Given the realistic, albeit disappointing, timeline and assessment of the current situation in your letter, we would agree that it is unlikely that the MRCA and the MEHOA will be coming, arm in arm, to the City by January with a CDP application. However, as detailed above, real progress towards the removal of obstacles to public access at Lechuza Beach can be made immediately.

In our October 3, 2006 letter (and in this letter), we have tried to detail what "progress" might look like: Notices of Violations (NOVs) could be sent to the owners of the gates; signage negatively affecting public access would be removed; a survey could be initiated (or an existing survey studied) on Broad Beach Road and property owners with encroachments could be sent NOVs. In our letter to the City, we asked to receive copies of NOVs and to be kept apprised of their progress in resolving these violations. If by January we do not see evidence of progress, we will be forced to consider enforcement action at the Commission. On the other hand, if real progress is being made and there appears to be an end in sight, we would be more willing to agree to the July 2007 date proposed in your letter for submittal of a complete CDP application for a public works project to the City that includes retention of the gates. In any event, all parties should be on notice that one more summer beach season with gates, signs, cones, guards, and parking limited by private encroachments is unacceptable and Commission staff plans to take all the enforcement steps prescribed by law and necessary to ensure that does not occur. We appreciate your efforts thus far, and urge you to do all you can to resolve this situation as quickly as possible...

The City and the MEHOA were copied.

On November 29, 2006 the City of Malibu hosted a meeting between the MEHOA, the MRCA, the Commission, and the State Coastal Conservancy (SCC) to discuss the ongoing violations and management issues at Lechuza Beach including the gates, signs and private encroachments on Broad Beach Road.

On December 12, 2006, the City sent a letter to MEHOA advising them of a complaint from the Commission regarding the gates and signs and attached the August 21, 2006 letter from the Commission. The City also asked that MEHOA be prepared to submit a coastal development permit application to the City of Malibu not later than January 31, 2007 or submit a temporary plan for alternate signage and beach management. Finally, the City indicated that Coastal Commission staff was willing to withhold formal enforcement action as long as there was significant progress being made toward developing a submittal package. The MRCA was copied.

After receiving a draft interim management plan from the SCC, the Commission sent the MEHOA and the MRCA a letter dated April 23, 2007 commenting upon said plan and

discussing our ongoing concerns about the above mentioned unpermitted gates and public access at Lechuza Beach. The letter set deadlines for submittal of both the interim and final public access/management plans to the City of Malibu for approval through the CDP process. The City and the SCC were copied.

On June 15, 2007, the Commission received a letter from Susan Hori representing the MEHOA. In that letter Ms. Hori disputed that the interim management plan was “development” requiring a CDP and argued that since the proposed signs were to be placed upon existing structures (the unpermitted gates), they also did not require a CDP. Ms. Hori went on to assert that the comments of Commission staff on the draft management plan required meetings and discussion among the parties before an application could be submitted and asked for additional time. Surprisingly, Ms. Hori informed the Commission that the MEHOA had already unilaterally submitted a CDP application to the City for retention of the gates and requested that enforcement action be deferred until the City had time to act upon that application. The City and the SCC were copied, MRCA was not.

On June 20, 2007, the MRCA sent a letter to the Commission informing us that in light of MEHOA’s June 15 letter, they would be unilaterally submitting a CDP application to the City for various public access improvements and removal or approval of unpermitted development in their control. Our understanding is that the MRCA did submit a CDP application to the City (CDP No. 07-087) but that the City has not yet filed said application.

During the next 2 1/2 years, the MRCA and the MEHOA attempted to work out their differences regarding a management plan and the physical improvements proposed by the MRCA that are the subject of their CDP application to the City. Said application was revised several times during this time period.

At the request of the MRCA, Commission staff met with MRCA staff on Dec. 29, 2009 to discuss progress in this matter and the status of the MRCA’s CDP application. At that meeting, Commission staff indicated that it appeared little progress was being made, that the unpermitted gates, signs, and encroachments remained, that a management plan had not been approved, that we intended to restart our enforcement efforts with respect to these issues, and that an enforcement letter from us was imminent. In response to a question from the MRCA, we informed them that they would not need a CDP to remove their gate from Lot I because, in this particular case, there were no resource impacts associated with removing the gate and the continued presence of the gate was restricting public access to the sea

On January 5, 2010, we received a letter (and photograph) from the MRCA indicating that they removed their gate on Lot I (at Bunnie Lane) in order to be in compliance with the Coastal Act. The letter also states that in 2007 the MRCA submitted an application to the City for a CDP for Lechuza Beach improvements, including a new gate at Lot I, but the MRCA claims it has been delayed in obtaining this permit by the refusal of the

MEHOA to concur with the application and by delays by the City of Malibu. The City, the MEHOA, and the SCC were copied.

### **Resolution**

It was hoped, at the time of our April 23, 2007 letter, that development and approval of an interim management plan would be a first step in a cooperative effort between the MEHOA and the MRCA to complete a final management plan that would lead to resolution of violations of the Coastal Act and the Malibu LCP at Lechuza Beach. Sadly, this has not come to pass. The interim plan was never agreed upon by the MEHOA, the MRCA, or the SCC, it was never formally adopted by their respective boards, it was not approved by a CDP, nor was it ever implemented. Deadlines for submittal of CDP applications to the City for the interim plan and a final plan, set by the Commission as “milestones” of progress, were missed. Instead of collaborating with the MRCA to develop and jointly apply for a management plan that includes a request for after-the-fact approval of the gates, the MEHOA unilaterally applied to the City on March 20, 2007, for a CDP (CDP No. 07-037) to authorize permanent retention of the gates. The application was filed and then subsequently “withdrawn” by the City on April 24, 2009. The MRCA subsequently followed with its own unilateral CDP application, which the City has not yet filed. Now, nearly three years later, there is no management plan, the unpermitted gates remain (with the exception of the gate at Bunnie Lane), and public access to a publicly owned beach continues to be restricted by the gates. The MEHOA and the MRCA appear to be unable to agree upon public access issues and the gates continue to restrict pedestrian access and block disabled access. In addition, enforcement by the City to address the private encroachments on Broad Beach Road and the unpermitted gates and signs has not occurred (though illegal signs placed by homeowners on Broad Beach Road have been dealt with by the City promptly). As of the date of this letter, the gates, signs, and encroachments remain, restricting public access to a public beach and limiting public parking opportunities in the Lechuza Beach area.

The Commission has informed all involved parties repeatedly and consistently that unless the MRCA and the MEHOA were able to come to agreement on a management plan that included the gates and a signage plan and receive approval for said plan through the CDP process in a timely manner, the Commission might be forced to take enforcement action to resolve the violations. The Commission asked the City of Malibu to take enforcement action to resolve the gate and sign violations and to remove unpermitted private encroachments on Broad Beach Road in a letter dated August 21, 2006. To date, other than sending one letter to the MEHOA on December 6, 2006, no such action has been taken and the unpermitted gates, signs, and encroachments remain.

The purpose of this letter is to again formally request the City of Malibu to enforce its LCP and take immediate steps to remove the unpermitted development that is the subject of this letter. Please be advised that unless appropriate action is taken by the City by **February 12, 2010**, the Commission will assume that the City declines to act to

resolve the violations after receiving a request to act from the Commission and the Commission will assume primary responsibility for issuing an order(s) pursuant to Section 30810(a) of the Coastal Act in this matter.

Sections 30809(a) and 30810(a) authorize the Executive Director and the Commission, respectively, to issue orders to enforce not only the Coastal Act, but also the requirements of certified local coastal programs in the event that the local government requests the Commission to assist with or assume primary responsibility for issuing such orders, if the local government declines to act or fails to act in a timely manner to resolve the violation after receiving a request to act from the Commission, or if the local government is a party to the violation. Additionally, Section 30811 authorizes the Commission to order restoration of a site if it finds that development inconsistent with the Coastal Act has occurred without a CDP and is causing continuing resource damage.

Thank you for your attention to this matter. If you have any questions regarding this letter or the pending enforcement case, please feel free to contact me.

Sincerely,



N. Patrick Veersart  
Enforcement Supervisor

cc: **John Ainsworth, Deputy Director, CCC**  
**Lisa Haage, Chief of Enforcement, CCC**  
**Alex Helperin, Staff Counsel, CCC**  
**Steve Hudson, South Central District Manager, CCC**  
**Barbara Carey, Supervisor, Planning and Regulation, CCC**  
**Tom Sinclair, South Central District Enforcement Officer, CCC**  
**Aaron McLendon, Statewide Enforcement Officer, CCC**  
**Linda Locklin, Public Access Manager, CCC**  
**Joe Edmisten, MRCA**  
**Laurie Collins, MRCA**  
**Judi Tamasi, MRCA**  
**Mary Small, State Coastal Conservancy**  
**Elena Eger, State Coastal Conservancy**  
**Stephanie Danner, City of Malibu**  
**Lisa Pallack, MEHOA**  
**William Kiefer**