

CALIFORNIA COASTAL COMMISSION

SOUTH CENTRAL COAST AREA
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21 August 2006

Gail Sumpter, Public Services Manager
Environmental and Community Development, Permit Services
City of Malibu
23815 Stuart Ranch Road
Malibu CA 90265

Re: CCC Violation File No. V-4-04-005 (MEHOA)

Violation: Unpermitted gates and signs at East and West Sea Level Drive that interfere with public beach access; placement of traffic cones on Broad Beach Road in a public ROW to discourage public parking; and multiple private encroachments into a public ROW on Broad Beach Road that interfere with public parking

Location: West Broad Beach Road, City of Malibu, Los Angeles County

Dear Ms. Sumpter:

As we have discussed previously, there is an ongoing problem in the Lechuza Beach area of Broad Beach Road regarding public parking and public access to Lechuza Beach via public access ways located at East and West Sea Level Drives and at Bunnic Lane. I am writing to formally bring this matter to the attention of the City of Malibu, to provide background information, and to request that the City take enforcement action against individual property owners and/or the Malibu Encinal Homeowners Association (MEHOA) to address the above-mentioned violations.

Development is broadly defined by Section 30106 of the Coastal Act and Section 12.2.1 of the City of Malibu Local Coastal Program (LCP) 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 of any gaseous, liquid, solid, or thermal waste; grading, removing, dredging, mining, or extraction of any materials; change in the density or intensity of 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 harvesting of major vegetation other than for agricultural purposes, kelp harvesting, and timber operations....

The placement of gates, signs, traffic cones, and encroachments in a public right-of-way is the "placement of solid material" and a "change in the intensity of use of water" (as well as land), both of which meet the definition of "development" quoted immediately above. The western end of Broad Beach Road (where the violations occur) is located in the City of Malibu and within the Coastal Zone. As you know, with minor exceptions not relevant here, all development in the Coastal Zone requires a coastal development permit (CDP). Thus, all of the development described in the first sentence of this paragraph required a permit. We have searched our records and see no evidence that a CDP application has been submitted for any of the above-referenced development, much less has the City or the Commission issued a CDP for the above-mentioned development. Moreover, even if a permit had been sought, it appears that the above-referenced development would not be permissible, as it is inconsistent with the provisions of the Coastal Act and Malibu's LCP.

Background

Lechuza Beach is a sandy beach in Malibu located three miles west of Zuma Beach between Broad Beach Road and the Pacific Ocean. The beach is a combination of private and public ownership. The public owns over 100,000 square feet of beach area, with over 1,000 feet of linear beach frontage as a result of a land acquisition made pursuant to a \$9,000,000 grant from the State Coastal Conservancy to the Mountains Recreation and Conservation Authority (MRCA) and additional funding from private donations. The MRCA is a joint powers local government park agency that manages many thousands of acres in the Santa Monica Mountains and adjacent areas.

At present there are three public access points to Lechuza Beach: 1) A stairway marked by a brown park sign that says "Lechuza Beach Access." This vertical access way goes from Broad Beach Road down to Lechuza Beach and is located opposite Bunnie Lane; 2) a pedestrian access gate is also located at East Sea Level Drive. The public has the right to use East Sea Level Drive to walk down to the beach; 3) the public also enjoys pedestrian access to the beach on West Sea Level Drive. The gate for this last access is located near the western end of Broad Beach Road at PCH. The public's right to walk along East and West Sea Level Drive and to use the vertical access stairs at Bunnie Lane is controlled by the MRCA. Access ways are opened at 8:00 a.m. and close at sundown.

Public access to Lechuza Beach is limited to pedestrians only at this time¹. The nearest legal public parking, from which the public can easily walk to the beach, is on Broad Beach Road. However, parking is limited on Broad Beach Road because of local use, because homeowners have built numerous encroachments (landscaping, walls, mailboxes, masonry structures, brick and concrete paving, etc) in the public ROW, and because the homeowners and/or the Malibu Encinal Homeowners Association (MEHOA) regularly place orange traffic cones in the public ROW and station private security guards on Broad Beach Road on busy weekends during the beach season to

¹ There are plans for limited vehicular access and parking for the handicapped in the future.

prevent the public from parking. Additionally, the MEHOA has erected gates at East and West Sea Level Drive and has placed signage on the gates that discourage public access. The MRCA has tried repeatedly to work with the MEHOA to remove the offending signs and replace them with signs that are more welcoming to the public, but the MEHOA has not cooperated to date.

The unpermitted gates and signs send a strong visual and semantic message that the public is not allowed past the gates and that access to the beach is private. The presence of private security guards can intimidate the public, and the unpermitted placement of cones in the public ROW directly limits public parking and beach access. The placement of unpermitted private encroachments in the public ROW further limits public parking and obscures public access ways. The end result of the above is that the public is both discouraged and physically deterred from accessing the public beach at Lechuza, via these various measures of unpermitted development, despite having expended substantial public funds to acquire ownership and access. The homeowners enjoy the use of the public's beach and the benefit of having the beach in public ownership (preventing future development) while deterring public access.

Gates

There are currently three security gates across public access easements leading to Lechuza Beach - two across East and West Sea Level Drive (Lot A) and one across the public access path/stairway located opposite Bunnie Lane (Lot I). Lot I, which is currently owned by the MRCA, is a 10 ft. wide strip of land descending from Broad Beach Road to the western (beach) terminus of East Sea Level Drive and includes a pedestrian stairway. Additionally, the State Coastal Conservancy owns an Offer to Dedicate (OTD) adjacent to Lot I, which will eventually widen the public access way by 5 feet at the top, and 10 feet at the bottom. The security gates at East and West Sea Level Drive (owned by the MEHOA) include automated iron gates, which prohibit public vehicular access, and manually operated pedestrian gates, which are unlocked and locked at posted hours by the MRCA. The gate opposite Bunnie Lane (owned by the MRCA) is a manually operated pedestrian gate, which is unlocked and locked at posted hours by the MRCA.

The existing security gates were constructed by the MEHOA in 1977 without the benefit of a coastal development permit. MEHOA's members are owners of lots in the subdivision where East and West Sea Level Drives are located.

- In a letter dated February 11, 1977, the president of the MEHOA explains to a member about the installation of the "new improved gate" which is "now nearly complete."
- In a letter dated March 24, 1977, Commission staff notified the MEHOA that the new metal gate at the entrance from Broad Beach Road onto East Sea Level Drive was constructed without a coastal development permit, in violation of the Coastal Act.

- In a letter dated April 1, 1977, MEHOA asserts that the "new gate," which was built to replace an "old, out of date" gate, is "repair and maintenance," and is exempt from permit requirements under Section 30610c.
- In a letter dated April 14, 1977, Commission staff responded that replacement of the old gate with a "new and different type of gate" is not considered to be repair and maintenance and that the new gate requires a CDP.
- In a letter dated April 22, 1977, the MEHOA again asserts that "modernization and replacement of the gate" is exempt.
- In a letter dated April 28, 1977, Commission staff again informs the MEHOA "that the installation of a new and different type of gate is not classified as repair and maintenance."
- In a letter dated May 5, 1977, the MEHOA sent a more detailed letter about the gate replacement and requested a "copy of the sections of the Coastal Act which apply to the gate."
- In a letter dated May 11, 1977, staff again responded, "we consider the new gate to be new construction, thus a permit is required. Staff enclosed a portion of the Coastal Act with Section 30106 highlighted.

On March 5, 2001, Burt Boeckman, on behalf of the MEHOA, made a sworn declaration that he was a board member of MEHOA in 1976 when the MEHOA Board decided to replace existing wooden gates at both East and West Sea Level Drives with metal gates, and that the metal gates were "installed in early 1977."

On April 12, 2001, the Commission approved Coastal Development Permit No. 4-01-012, which authorized, among other things, the removal of five access gates and associated signage along Sea Level Drive and Broad Beach Road. The permit was never issued, but subsequently, two of the gates were removed – one at the beach end of West Sea Level Drive and one in the middle of Lot I. The three remaining unpermitted gates, which are the subject of this letter, cross all three of the public access ways to Lechuza Beach. In its deliberations on CDP No. 4-01-012, the Commission specifically found that the gates "pose a psychological barrier to beachgoers" and that removing the gates will "enhance access."

The MEHOA has notified staff that it objects to the removal of the gates. The MEHOA owns Lot A, claims that it installed and maintains the gates, and that it is responsible for maintenance of Lot A where two of the gates are located. East and West Sea Level Drives (Lot A) are private roads within the tract and upon which the home owners (and the public) possess ingress and egress easement rights.

In addition to the fact that the gates are not permitted, making them violations of the Coastal Act, 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 to the shoreline and along the coast shall be provided except in specified circumstances, 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, private property 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.

All projects requiring a coastal development permit for development between the sea and the first public road parallel to the sea must be reviewed for compliance with the public access and recreation provisions of Chapter 3 of the Coastal Act (and, for projects in areas with certified LCPs, compliance with LCP policies). As discussed previously, the existing security gates were constructed without the benefit of a coastal development permit, and therefore, their impacts on public access and recreation were not evaluated in light of the protections in the Coastal Act and Malibu's LCP.

Signs

On two of the above-mentioned unpermitted gates (East and West Sea Level Drives), the MEHOA has posted signs that read (in part):

"Right to pass by permission and subject to control of owner"

"Tow away – parking for residents and their guests only - violators will be towed away at their own expense – to reclaim towed vehicles call Lost Hills Sheriff's station 310-456-6652"

"Private property – No dogs allowed – leashed or unleashed – dogs will be impounded and or their owners cited"

The signs are red and white and/or black and white, quite visible from Broad Beach Road (at East Sea Level Drive) or to approaching pedestrians (at West Sea Level Drive), and they send a strong visual and semantic message that the MEHOA controls all public access and the public is not welcome. By contrast, the single public access sign placed at each pedestrian gate by the MRCA is brown with white letters, off to the side, and less visible than MEHOA's signs.

Both the gates and signs are unpermitted development that constitutes a "change in the intensity of use of water, or of access thereto," and interferes with public access to a public beach. The gates and signs clearly delineate a boundary between public and private property, foster a sense of privatization, and physically and psychologically deter entry by members of the public who wish to access Lechuza Beach (portions of which are public property) via dedicated public access easements. As a result, the unpermitted gates and signs greatly decrease the public's perception that they may pass to access the public beach via public access easements. The signs are misleading given the clear legal right for the public to use the public access areas.

Accordingly, Commission staff has determined that the above-mentioned gates and signs are unpermitted development, and therefore constitute violations of both the Coastal Act and the City of Malibu's Certified Local Coastal Program.

Traffic Cones

On May 28, 2005 (Memorial Day weekend), Commission staff observed orange traffic cones and private security guards on West Broad Beach Road placed to restrict public parking. Apparently, MRCA law enforcement personnel also observed the cones on this date, and on other occasions as well. Our understanding is that this issue was raised with MEHOA by the MRCA.

On July 3, 2006 (4th of July weekend), Commission staff observed that several properties had again placed cones on Broad Beach Road to restrict public parking on a

busy beach weekend. Additionally, there were several private security guards, hired by the homeowners, present. The guards confirmed that, by direction of the homeowners, the cones had been in place along the entire section of Broad Beach Road from approximately East Sea Level Drive to Pacific Coast Highway the day before (July 2, 2006) and that the Mayor of Malibu had personally requested that the cones be removed.

On August 5, 2006, Commission staff observed that property owners on Broad Beach Road near the County's vertical public access ways to Broad Beach had placed cones to restrict public parking. Apparently, the placement of cones by private homeowners to restrict public parking has now become a "copy-cat" activity along the entire length of Broad Beach Road.

The unpermitted placement of traffic cones in a public ROW to restrict public parking is a violation of the Coastal Act and of the City of Malibu Land Use Plan Sections 2.31 and 2.32 (see below).

Encroachments

Broad Beach Road is a public street located in the City of Malibu. The ROW (an area with public 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. 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 Lechuzza Beach. Additionally, the narrow travel lanes, lack of shoulder, and reduced visibility poses a hazard to motorists. Finally, landscaping in the public ROW all but obscures the public access way at Bunnie Lane.

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."

As you know, up until recently several property owners had posted illegal "no parking" signs to deter the public from parking and going to the beach. Fortunately, the City of Malibu took enforcement action and the problematic signs were removed. However, many physical barriers to public parking remain. These private encroachments are

unpermitted development, located in a public ROW, and result in the privatization of public property. They are a violation of both the Coastal Act and the City's LCP.

We would like to coordinate with you on enforcement regarding this violation and we are offering to assist the City of Malibu in the enforcement of the City's LCP and the Coastal Act. Please notify me, by no later than close of business on **September 15, 2006**, regarding whether the City intends to take enforcement action for the above-mentioned violations, or would prefer the Commission to address them. If the latter, the Commission will pursue enforcement action, which may include the issuance of a cease and desist and restoration order for all of the unpermitted development, including development within the City's LCP jurisdiction.

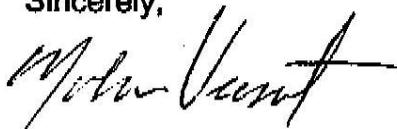
While enforcement action by the Commission does not preclude the City of Malibu from pursuing resolution of violations of LCP policies, the Commission may assume primary responsibility for enforcement of Coastal Act violations pursuant to Sections 30809(a) and 30810(a) of the Act. Section 30809(a) provides that the Executive Director may issue an order to enforce the requirements of a certified local coastal program, and Section 30810(a) provides that the Commission may issue an order to enforce the requirements of a certified local coastal program in the event that the local government requests the Commission to assist with or assume primary responsibility for issuing such order, 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.

If we do not receive a response from you by September 15, 2006, we will assume that the City declines to take enforcement action on the above referenced violations at this time and that the Commission can assume primary responsibility to resolve all violations on the above-mentioned properties.

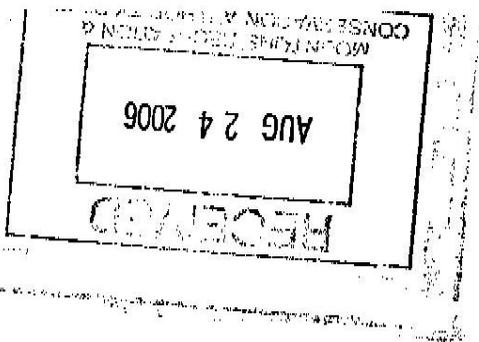
Thank you in advance for your time and attention to this matter. We look forward to working with your staff to resolve these violations. Should you have questions, please contact me at (805) 585-1800.

Sincerely,



N. Patrick Veasart
Southern California Enforcement Supervisor

cc: Lisa Haage, Chief of Enforcement, CCC
Alex Helperin, Staff Counsel, CCC
Tom Sinclair, District Enforcement Officer, CCC



Barbara Carey, Supervisor, Permitting and Regulation, CCC
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