CALIFORNIA COASTAL COMMISSION
SOUTH CENTRAL COAST AREA
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23 April 2007

Joseph T. Edmiston
Executive Officer
Mountains Recreation and Conservation Authority
5750 Ramirez Canyon Road
Malibu, CA 90265

Shari Plummer
President
Malibu Encinal Homeowners Association
31725 Sea Level Drive
Malibu, CA 90265

Re: Violation File V-4-04-005 (Lechuza Beach) - Interim Public Access Management Plan

Dear Ms. Plummer and Mr. Edmiston:

The California State Coastal Conservancy provided us with a copy of the Lechuza Beach Interim Public Access Management Plan ("the interim plan"). While it appears that the MEHOA and the MRCA are making progress towards improving public access to Lechuza Beach, and that this interim plan is a step in the right direction, the Commission remains concerned about the unpermitted gates located at East and West Sea Level Drive and at Bunnie Lane. Public access to a publicly-owned beach has long been impeded by these unpermitted gates. We continue to believe that neither the vehicular nor the pedestrian gates are approvable under the applicable provisions and policies of the Coastal Act and Malibu's LCP, but we are especially concerned about the pedestrian gates as you have presented no good argument as to why there is a need to restrict public pedestrian access to a publicly-owned beach to which the public has legal pedestrian access. Therefore, we urge you to move forward as quickly as possible with the development of a final public access/management plan that resolves these violations and restores maximum public access.

You have submitted the interim plan to us in order to demonstrate your ongoing efforts to resolve the Coastal Act violations at Lechuza Beach and to get a sense of our reaction to the interim plan. We appreciate that, and, as indicated above, we agree that the interim plan is a step in the right direction. However, please understand that implementation of the interim plan would constitute "development" as defined by Section 30106 of the Coastal Act and Section 2.1 of the City of Malibu's Local Coastal Program (LCP) and, therefore, requires authorization by a coastal development permit (CDP), issued by the City of Malibu, before it can be implemented. Therefore, we would like to

see a complete CDP application for the interim plan, that the MRCA and the MEHOA agree to, submitted to the City of Malibu by **June 15, 2007**. If the interim plan is approved by the City, It should also include a sunset clause and expire by no later than **July 15, 2008**.

Additionally, we would like to see submittal of a complete CDP application for a final public access/management plan, that the MRCA and the MEHOA agree to, by no later than **June 15, 2008**.

Finally, please understand that final approval of the gates, if possible, can only happen in the context of a final public access/management plan approved by a CDP and that the interim plan is only a temporary agreement that does not resolve the violations on site. If the MRCA and the MEHOA are unable to come to agreement within the time frame suggested above and submit CDP applications for the interim plan and the final plan by the dates suggested, the Commission may be forced to take enforcement action to resolve the violations.

In the interest of maximizing public access pursuant to Coastal Act Section 30210, we have some comments and we recommend several changes to the interim plan. With these changes incorporated, the interim plan would better address issues of concern under Coastal Act resource protection policies and the LCP, in the interim, until a final management plan can be completed and approved under a coastal development permit. Additionally, incorporating the following changes would reduce the possibility of an appeal by the Commission if the City approves the interim plan.

The following are Commission staff's comments and recommendations:

1. The hours of operation are too limited. At a minimum, in the interim, the gates should be opened at sunrise and closed one hour after sunset (or at set times that approximate sunrise and one hour after sunset). Additionally, it should be understood that these are the hours of operation of the gates and the beach itself is open 24 hours and that that persons who are on the beach can remain on the beach until such time as they are ready to leave. Finally, the gates must be operable from the inside so that nobody is locked in and so people can leave the beach at their leisure.

2. Regarding public access at the West Sea Level Gate: It bears repeating that the gates at West Sea Level Drive, East Sea Level Drive, and at Bunnie Lane are unpermitted and not approvable as private gates under the applicable provisions of either the Malibu LCP or the Coastal Act. It remains to be seen if the gates are approvable in any context, but, as we have indicated, in Staff's opinion, the only possibility for approval under the applicable provisions and policies of the Coastal Act and LCP would be in the context of an overall public access/management plan. If at any time public access to the beach through these gates is blocked in the interim, or if the MRCA and the MEHOA are unable to move to final resolution of these violations in a timely manner (ie, by the dates suggested

above), the Commission may be forced to take enforcement action to order the gates removed.

3. While we understand that a survey may be underway, as of the date of this letter it has not been conclusively demonstrated that all (or any) of the shoulder on the south side of Broad Beach Road is privately owned. In any event, the public has been parking on the south side of Broad Beach Road for decades and may have established rights to do so. Accordingly, we are concerned with the portion of the plan that limits public parking on Broad Beach road to the north side. There is already limited parking in this area, exacerbated by private encroachments, and further limiting public parking is tantamount to limiting public beach access. Therefore, we recommend striking any reference to limiting public parking on Broad Beach Road from the plan.

4. Handicapped Parking: The plan indicates that "At least two spaces for handicapped parking shall be provided on East Sea Level Drive..." Our understanding is that there were to be four handicapped parking spaces. The plan needs to be changed to accommodate four handicapped parking spaces.

5. Regarding signage on the West Sea Level gate: Change "should" to "shall." The sentence should read: "Hours of operation and signage *shall* be similar (the same as) to that of other gates."

6. Enforcement: The plan says that "Enforcement of the rules set forth herein shall be the mutual responsibility of MRCA and MEHOA, each on its own property." We have a concern that this language is setting the stage for private security guards. We strongly discourage the use of private security guards as they can intimidate the public and, therefore, discourage public use of the public beach and may be inconsistent with the Coastal Act and LCP. In addition, as you are aware, enforcement of the provisions and policies of the Coastal Act and LCP remain with the City of Malibu and the CCC and we would not want to inadvertently create any confusion on this point. We presume this was not your intent, and we would suggest revising this provision to reflect that MRCA and MEHOA are committing, under the agreement, to ensure that they each conform to the provisions of the plan.

7. Signage depicting public and private property: The City of Malibu's LCP does not allow signs that "...restrict public access to state tidelands, public vertical or lateral access easement areas, or which purport to identify the boundary between State tidelands, and private property..." The Commission would be concerned about the placement of signage depicting public and private areas as they may be in conflict with the LCP and Coastal Act policies. In any event, the placement of any such signs would require authorization under a CDP and should not be placed absent a CDP.

8. The heading on the last paragraph should read: "Finalization of *Final* Management Plan," or just "Final Management Plan."

9. The Interim Management Plan should include a "sunset clause" to ensure that a Final Management Plan is completed in a timely manner.

We must again remind you that violations of the Coastal Act at Lechuza Beach will remain unresolved until such time as the gates, signs, and any other unpermitted physical development, or other type of unpermitted development that could affect public access, are either authorized by a coastal development permit (CDP), and all conditions met, or are denied in that process and removed. Please be advised that until these violations are completely resolved, the Commission retains the ability, at any time, to commence enforcement action against the appropriate parties.

Thank you again for providing us a copy of the Interim Public Access Management Plan and for this opportunity to comment. We note that the Enforcement section of the interim plan also states that the "Interim Management Plan is consistent with... the Coastal Act". Again, although we appreciate the purpose of the interim plan, until such time as a final public access/management plan is approved by the City of Malibu through the CDP process and the violations at Lechuza Beach are resolved, we cannot concur that this interim plan is consistent with the Coastal Act.

If you have any questions, please feel free to call me. We look forward to an incident free summer beach season at Lechuza Beach, improved public access, and rapid progress towards completion and approval of a final public access/management plan consistent with the requirements of Malibu's LCP and Coastal Act.

Sincerely,

N. Patrick Veesart
Enforcement Supervisor

cc: **John Ainsworth, Deputy Director, CCC**
Lisa Haage, Chief of Enforcement, CCC
Alex Helperin, Staff Counsel, CCC
Gail Sumpter, Public Services Manager, City of Malibu
Mary Small, State Coastal Conservancy