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June 15,2007

Client-Matter: 26897-030

VIA FACSIMILE

N. Patrick Veesart Enforcement
Supervisor California Coastal
Commission 89 S. California
Street, Suite 200 Ventura, CA
93001

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

Dear Mr. Veesart:

Our firm represents the Malibu Encinal Homeowners Association (MEHOA), and would like to respond to your letter dated April 23, 2007, on behalf of our client. We appreciate your prompt review of the Lechuza Beach Public Access Management Plan ("Management Plan") and the comments that you have provided to us regarding the Plan. We would like to take this opportunity to respond to your request to submit an application to implement the Plan, and to address the Coastal Commission's concerns regarding the gates at East and West Sea Level Drive and Bunnie Lane.

The Management Plan that was submitted to you reflects years of meetings and discussions to develop an access plan that addresses the numerous issues involving Lechuza Beach, including multiple landownerships, extensive history of development prior to enactment of the Coastal Act, State agency ownership and management issues, protection of sensitive beach resources, and reconciliation of a variety of public/private sector concerns. As you may recall, at the meeting you attended with MEHOA and the Conservancy representatives, Douglas Bosco, chairman of the Coastal Conservancy, discussed his role in developing the Management Plan that was submitted to the Coastal Commission and the effort put forth by the Conservancy to work with MEHOA and the Mountains Recreation and Conservation Authority (MRCA) to develop and finalize the Management Plan. You have made a number of comments regarding the plan to which we would like time to discuss with the Conservancy and to prepare a response.

1. The Management Plan Does Not Propose "Development."

First, Commission staff has detennined that implementation of the Management Plan constitutes "development" as that tenn is defined in Section 30106 of the Coastal Act, and therefore, Commission staff has requested that we file an application for the "development." Setting aside the fact that a number of modifications were suggested by Commission staff to which the Conservancy and MEHOA must still address and respond (see Section 3, below), we take issue with the staffs conclusion that the entire Management Plan is "development."

As defined under the Coastal Act, "development" means "on land, in or under water, the placement or erection of any solid material or structure; . .. 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. . ; construction, reconstruction, demolition, or alteration of the size of any structure, . . . ; and the removal or harvesting of major vegetation other than for agricultural purposes, ..." Upon further review of the Management Plan in light of this definition, we fail to see which actions described in the Management Plan fall within the type of activities described in Section 30106. With the exception of signage, which is discussed in Section 2, below, the Management Plan does not contemplate any new or increased structures or materials within the coastal zone. Set out below is a list of the various sections of the Management Plan, and why we do not believe the provisions of the Plan constitute development. We would, of course, be receptive to any additional infonnation you can provide regarding your interpretation of Section 30106, and what specific activities you see coming under the definition of "development" described above.

- Page 3: The Management Plan describes three pedestrian access ways that are currently open and will be managed per the Management Plan. All of these access ways are already in existence; no physical improvements to any of these structures or features are proposed under the Management Plan that would constitute "development."

- Page 4: The Management Plan reiterates provisions of the Malibu Code that will apply to management of Lechuza Beach, such as no fires or no overnight camping. Implementation of these Municipal Code provisions would not constitute development.

- Page 5: Parking is allowed within certain areas of existing roads. No improvements, such as widening the street or installing meters, are proposed.

We do not see how allowing cars to park along one side of Broad Beach Road constitutes "development."

- Page 5: The Management Plan also addresses maintenance of the beach. It was our impression that Section 30610 exempts regular maintenance activities from having to obtain a permit.

Of course, in the section titled, "Issues that Remain to be Resolved," on Page 6, there are references to the construction of additional access improvements and physical structures. If the Management Plan were to propose actual construction of these improvements, that would constitute development; however, identifying potential improvements requiring resolution does not equate to a proposal to develop.

In conclusion, we would greatly appreciate it if you could identify what types of activities you saw described in the Management Plan that fall within the definition of development so that if a permit were required, we could clearly describe the activities for which the application is being filed.

2. Signage Placement.

On Page 4, the Management Plan discusses the installation of signs describing the hours during which the beach is open. A proposed sign text was included in the Management Plan. If signs were to be placed along the roads and on the beach, we would agree that the placement and erection of signs could fall within the definition of development; however, it was our intent to hang the signs on existing structures, such as the entry gates, and therefore, since existing structures were being employed for signage, we did not believe that this resulted in "development." We, again, would welcome your input as to why posting signs on existing facilities would be considered "development."

3. Staff's Comments and Recommendations.

Staff has identified nine concerns. We have taken these concerns under consideration and will discuss possible modification of the Management Plan consistent with these recommendations with the Coastal Conservancy. As the parties have not had the opportunity to meet and discuss these recommendations, however, we would request that we be provided additional time to meet, discuss and prepare a response to the specific recommendations identified below. For the reasons discussed below, however, we hope that you would agree that it would be premature at this time to require MEHOA and the Conservancy to submit an application for the Management Plan (assuming that it constitutes "development") as Commission staff s comments raise a number of issues which the parties need to discuss and

consider and detennine how best to address in the Management Plan. Most of the issues raised deal with matters considered and agreed to by participants and agencies at the time of acquisition of the beach lots by the Conservancy.

- *Hours of operation:* Staffhas recommended changing the hours of operation. Our client's board needs to review this recommendation and then discuss it with the Coastal Conservancy before any revisions are made to the Management Plan.

- *Public access at the West Sea Level Gate, East Sea Level Gate and Bunnie Lane:* An application to pennit these three gates has been filed with the City of Malibu. MEHOA received a letter from the City requesting additional infonnation to complete our application and is in the process of responding to the City's letter. The gates were established long before the adoption of the Coastal Act, were specifically referred to as part of the grant of easements to public agencies at the time of the Conservancy acquisition and are an essential element of the Management Plan.

- *Broad Beach Road Parking:* Two action items are identified here. One is the completion of a survey to detennine whether a portion of the Road is privately-owned, and the second, is the recommendation to modify the Management Plan regarding the Broad Beach Road parking. With respect to the latter action item, MEHOA and the Conservancy need to discuss the staffs suggestion before it can modify the Management Plan.

- *Handicapped Parking:* Four spaces were to be provided and MEHOA will discuss this change with the Conservancy.

- *Sign age change:* .MEHOA and the Conservancy will need to review the suggested language change before any changes can be made to the Management Plan.

- *Enforcement:* Staff has made a number of excellent points regarding how the enforcement provisions could be interpreted and the confusion that could result. MEHOA and the Conservancy will need to meet to discuss staffs points and then modify the Management Plan in accordance with those discussions.

- *Sign age depicting public and private property:* MEHOA and the Conservancy will take the Commission staff s concerns under consideration. As noted in the Management Plan, all signage is proposed to be reviewed by the Coastal Commission to ensure that there are no signs that inadvertently discourage public

access. We understand the concerns raised here and would hope that Commission review ofthe proposed signage would provide the means to address those concerns at the appropriate time.

. *Finalization of the Management Plan:* Items 8 and 9 essentially address the same concern that a final plan be prepared. As noted above, the Management Plan that Commission staff reviewed was the result of years of negotiation and discussion. We believe we have worked together effectively to finally develop a Management Plan that the Conservancy and MEHOA could agree to. We would hope to be able to continue these productive discussions to prepare a final plan as soon as possible. As we have noted, we currently have pending an application with the City for the gates-resolution of which as Commission staff has noted must be done in concert with a final access and management plan.

In conclusion, we would request the following:

1. As an application for the gates has been filed with the City of Malibu, we would request that any enforcement actions on the violations be deferred until th~ City has had an opportunity to take action on the application.

2. In order to address the recommendations made by Commission staff, we would request additional time for the parties to review the recommendations and make any appropriate changes before submitting an application, should one be required.

3. We would appreciate staff s response to our question as to what elements and components of the Management Plan constitute "development" so that if an application were required, MEHOA and the Conservancy have specific direction as to what specific activities and structures should be included in the application.

We appreciate your consideration of our request. Please do not hesitate to contact me if you have any questions.

Very truly yours,

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