



MOUNTAINS RECREATION & CONSERVATION AUTHORITY
Ramirez Canyon Park
5810 Ramirez Canyon Road
Malibu, California 90265
Phone (310) 589-3230 Fax (310) 589-3237

VIA ELECTRONIC MAIL AND U.S. POSTAL SERVICE

June 20, 2007

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

**Letter from Counsel for MEHOA dated June 15, 2007
(Violation File V-4-04-005; Lechuza Beach Interim Management Plan)**

Dear Mr. Veesart:

The letter from Susan Hori of Manatt, Phelps & Phillips, LLP, which was not copied to us but we received from a third party, comes as quite a surprise.

Just last Wednesday James Goldman of Pircher, Nichols & Meeks, the outside firm the Mountains Recreation & Conservation Authority (MRCA) retained to negotiate a legal settlement of MRCA/MEHOA rights on this beach, had a meeting with Michael Berger of Manatt. Mr. Goldman reported a generally favorable meeting, and I directed him to pursue documentation of the substantial areas of agreement.

But now, just two days after the meeting with Mr. Berger, this letter was sent, without even a copy to MRCA.

We have remained "officially" quiet these past months as the chairperson of the Coastal Conservancy submitted a Lechuza Beach Interim Management Plan to the city of Malibu that has not be the subject of any public hearing by the land owning entity involved, nor has it been approved by either the Coastal Conservancy governing board or that of the MRCA.

We were stoic when, without our assent, the Malibu Encinal Homeowner's Association (MEHOA) submitted a Coastal Development Permit for the Lechuza gates, including the pedestrian gates and the Lot I (Bunnie Lane) gate, over which the MRCA has deeded rights and, in the case of Lot I, has fee title.

This latest position staked out by MEHOA compels a break from the official silence that we have observed out of comity with our grantor agency's chairperson.

Considering that the substantial rights of MRCA, and those of the public, will be compromised if we continue to maintain a silence in the face of MEHOA's actions, this letter is compelled by circumstances not of our making, indeed, not of our intention nor desire.

In the order of Ms. Hori's letter:

Is the Management Plan "development" within the meaning of the Coastal Act:

We agree with and defer to the Coastal Commission interpretation. While the MRCA has disagreed with Coastal Commission staff interpretation of the Coastal Act with respect to what is "development" in previous cases (e.g., our reliance on the advice of the Attorney General's office that occupancy of Ramirez Canyon Park did not require a CDP), notwithstanding these sincerely held views, the MRCA has always accepted the Commission staff's interpretation of their statute as authoritative.

In this case, not only do we defer to the Coastal Commission staff's views, but we see merit in them.

- The Commission staff has constantly asserted that its interpretation of the Malibu LCP is that the Lechuza gates are not approvable as things stand. But, if there were significant public access improvements, then the Commission would consider the gates in the context of such access improvements. This position strongly suggests to us that better than the *status quo* is required from MEHOA in order to permit the gates. The Interim Management Plan submitted to Malibu does not do this.
- Absent a Coastal Development Permit application and hearing by Malibu and by the Commission (if appealed), there would never be a public hearing on the Lechuza Beach Management Plan submitted by the Coastal Conservancy chairperson, even though the public has a \$10,000,000 investment therein.
- The "Interim Plan" submitted by the Coastal Conservancy chairperson calls for provisions at variance with the Malibu Municipal Code and the Mountains Recreation and Conservation Authority Park Ordinance. Such Interim Plan provisions call for differential enforcement at Lechuza as between members of the public and members of MEHOA. Such differential enforcement can certainly affect the "intensity of use" of the beach, *i.e.*, less intense use of the beach by members of the public.
- The status of the West Sea Level Drive access gate is ambiguous. While MRCA has a plot of the West Sea Level gate that shows it within Lot "A," over which MRCA has deeded easement rights, which plot was attached as an exhibit to its deed from Lechuza Villas West, LLP, subsequent survey work has brought the location of the West Sea Level gate into question. The Interim Management Plan states that, "[a]ccess through the West Sea Level gate will be dependent on determining the

ownership of the underlying property” (p. 5). This provision has huge implications and allows the possibility of restricted public access through the West Sea Level gate because a private owner may very well own the underlying fee beneath the gate. (The current owner has been very cooperative, and we appreciate that, but the issue has to do with the inherent rights associated with his deed, and successors in interest, not just himself.)

Signage Placement:

Just hanging a sign, although arguably “placement . . . of any solid material,” so as to be within the ambit of the Coastal Act, is not so much the issue here as the *content* of the sign. If the content acts to restrict access, and so much more so if there are legal consequences flowing from violation thereof, such as, in this case, misdemeanor arrest and prosecution, then there are big-time California Coastal Act issues at stake.

If the sign said:

“Welcome to the Public. Enjoy the Beach.
You paid \$10,000,000 for it.
Have a Nice Day”

that would be one thing, but that is not what the Interim Plan proposes. Rather the signs contemplated by the plan are a set of restrictions that confront members of the public, some of them quite reasonable, others of them less so. The point is not the merit of individual restrictions, but the fact that such restrictions do constitute “development” within the meaning of the Coastal Act.

MEHOA counsel’s Rejoinder to Coastal Staff Comments and Recommendations:

Hello. MEHOA counsel’s shift in reference point here must be noted. It is now “MEHOA and the Conservancy” this, and “MEHOA and the Conservancy” that. Where be the Mountains Recreation & Conservation Authority?

The Coastal Conservancy is entitled to great weight and respect in this matter, they were the funding agency for the acquisition, but they own exactly one five to ten foot easement along side of Lot “1”, which easement MEHOA objects to, and which MEHOA asserts can only be used for landscaping, not public access. All other property rights at stake here are either owned in fee by MRCA, or are asserted by MEHOA.

The grant documents provide that Coastal Conservancy is not obligated to fund improvements not contained in a management plan that they have not approved, but beyond this provision, the State Coastal Conservancy does not have supervening authority over the fee simple estate owned by the Mountains Recreation & Conservation Authority,

nor over its management hereof, except as to ensure the objectives of the grant are met. The objectives of the grant were to acquire the private property of Lechuza Villas West, LLP, in order to provide beach access. The MRCA is doing exactly that.

So when MEHOA's counsel refers to "MEHOA and the Conservancy" dealing with hours of operation, public access at West Sea Level, Broad Beach Road parking, handicapped parking; signage, both public and private, and enforcement, with respect to everything other than the 5-10' Lot I easement, it is the MRCA that MEHOA must be dealing with. And it is the MRCA that asserts its full legal rights with respect to what is applied for over property that it owns or has controlling easements thereon.

The Mountains Recreation & Conservation Authority has fiduciary duties that it cannot abdicate. Therefore, we suggest that the more appropriate wording of MEHOA counsel's letter would be to replace "MRCA" for "Coastal Conservancy" everywhere except with reference to the 5'-10' easement adjacent to Lot I in pages 4 through 5 of the June 15th letter.

The Way Forward:

The MRCA will be filing a comprehensive application for the development of Lechuza Beach consistent with the California Coastal Act, and over property that MRCA has deeded easement rights and holds deeded fee title.

That means the following:

- (1) Pedestrian gate at East Sea Level, including signage thereon that is consistent with the recommendations made in your letter dated April 23, 2007.
- (2) Handicapped access through the gate at East Sea Level, and the MRCA's deeded rights to four (4) handicapped parking spaces on East Sea Level (Lot A).
- (3) Development of a handicapped access platform at the terminus of the paved portion of East Sea Level Drive so as to accommodate wheelchair viewing of the beach.
- (4) Improvement of Lot I (Bunnie Lane) access that is deeded to MRCA. This will involve a wider and more visible gate, bringing the stairway up to code, and providing signage that is consistent with the recommendations made in your letter of April 23, 2007. Because MEHOA has asserted that the Coastal Commission dedication requirement adjacent to Lot I, that was accepted by the Coastal Conservancy, cannot be used for public access, but only for landscaping, we will not include any part of the Coastal Conservancy easement in this application.
- (5) Removal of non-conforming and unpermitted structures (private stairways) within Lot

A between East and West Sea Level Drive.

- (6) Removal of private property (boats) from Lot A unless the same have been permitted (with appropriate liability insurance) by the Mountains Recreation & Conservation Authority.
- (7) Improvement of the West Sea Level Drive stairway so as to bring it up to code.
- (8) Providing handicapped access to a viewing platform at West Sea Level Drive overlooking Lechuza Beach within the MRCA's fee and deeded easement.
- (9) Improving a new access way from Broad Beach Road (the old Roosevelt Highway–PCH) to Lot A (West Sea Level Drive). This is over the “gore” created by the realignment of the Roosevelt Highway into what is now PCH, and the subsequent reversion of the “old” PCH to the County of Los Angeles, and thence to the City of Malibu. Cal-Trans and the city of Malibu have interests here that need to be settled, but it is clear that a public easement, that does not obtrude on what Mr. Keefer has asserted is his private property, is the better solution to the West Sea Level Drive access problem.
- (10) Enforcement of uniform conditions of use on the MRCA owned portions of Lechuza Beach that apply equally to those who have MEHOA membership cards and those members of the public who do not have such membership cards.
- (11) Differential enforcement with respect to dogs, if and only if, the Malibu City Council amends the Malibu Municipal Code to allow MEHOA sanctioned dogs on Lechuza Beach and an equal number of non-Malibu dogs on the beach. Alternatively, if the Malibu City Council passes a resolution acknowledging that the Mountains Recreation and Conservation Authority Park Ordinance applies to the MRCA owned lots at Lechuza, and then the MRCA Park Ordinance is amended to provide for this special dog provision.

MRCA will meet and confer with MEHOA and other stakeholders:

Before submitting its application, MRCA will meet and confer with the following stakeholders:

- MEHOA Board of Directors, as represented by its President and such other persons as designated by the President.
- State Coastal Conservancy, as represented by its Chairperson, or such other

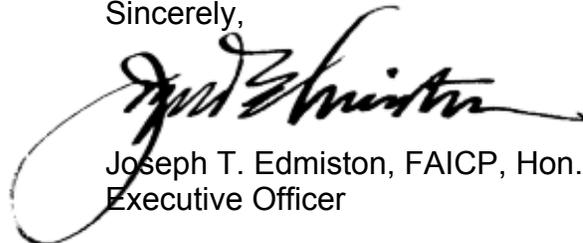
person as designed thereby.

- City of Malibu, as represented by its Mayor or such other city officer as designed thereby
- Representatives of Malibu public access groups, such as Access for All, that have been recognized by the Coastal Commission.
- Representatives of broader public access coalitions, including those that represent handicapped access, that have a demonstrated commitment to public access to public resources.

We hope the meet and confer process will produce consensus, but if not, then the MRCA reserves the right to proceed to file the necessary applications with the city of Malibu and/or the California Coastal Commission upon its own determination of the public interest.

This is far from an ultimatum; I am happy to discuss this with any and all serious interlocutors. Call me at (310) 589-3200 x 110.

Sincerely,

A handwritten signature in black ink, appearing to read "Joe Edmiston", written in a cursive style.

Joseph T. Edmiston, FAICP, Hon. ASLA
Executive Officer

cc: Interested parties