MALIBU-ENCINAL HOMEOWNERS ASSOCIATION

October 1, 2009

FIRST-CLASS MAIL

Joseph T. Edmiston
Executive Officer
Mountains Recreation & Conservation Authority
Ramirez Canyon Park
1510 Ramirez Canyon Road
Malibu, CA 90265

Re: Next Steps: Beach Public Access Improvements Project (CDP App. No. 07-087) (the "MRCA Application")

Dear Joe:

I am writing to you as the new President of the Malibu Encinal Homeowners' Association ("MEHOA") in response to your letter to former President Tony Giordano dated September 1, 2009.

It has indeed been many years over which the residents of the private common-interest subdivision known as "Malibu Encinal" that includes Lechuza Beach (the "Community"), and its long-term custodian, MEHOA, have worked and struggled in good faith to develop in cooperation with the Mountains Recreation & Conservation Authority ("MRCA") and the state Coastal Conservancy ("Conservancy") a comprehensive beach management plan for Lechuza Beach.

Your letter of September 1, 2009 is another unfortunate incident in a long history of threatening and uncooperative conduct. The letter itself is strong evidence of the MRCA's lack of understanding of its rights at Lechuza Beach and of its blustery, wrongheaded approach to solving the problems and challenges that exist there.

In your preface, you allege that MEHOA has somehow been responsible for holding back the MRCA so it can be "faithful to our obligation to open this beach to an impatient public [emphasis added]." However, nowhere in your letter do you advise the many recipients that public access has never been an issue at Lechuza Beach. As you know, the Community and its residents, along with MEHOA, voluntarily opened Lechuza

Beach to public access in 1991, ten years before the MRCA's land acquisition.[1] This fact, and the circumstances under which such public access are to be preserved, were specifically addressed by the Conservancy as part of its mandate to the MRCA at the time of the acquisition, a mandate that we will need to remind you of in this reply.[2]

We can agree with one point in your letter, "enough is enough." As we will show in our comments below, there cannot be any "Lechuza Beach public access improvements project" without the participation and approval of MEHOA and its members. The MRCA Application is premature, incomplete, misleading, and inappropriate and we prevail on the City of Malibu ("City") to suspend further consideration of MRCA's coastal development permit application number 07-087 (the "MRCA Application") until and unless MEHOA and its members, as the owners of title and other significant interests in the property proposed to be improved and developed by the MRCA Application, consent to such proposals as part of a comprehensive beach management plan, resolving and reconciling all of the legitimate issues raised by the parties and consistent with the mandate imposed upon the MRCA by the Conservancy.[3] Until that happens, as the Conservancy has stated, public beach use at Lechuza Beach will continue in the same manner as has been permitted and assigned since 1991.[4]

1. Introduction

Because of the numerous errors, misstatements and misleading comments in your letter, particularly as it pertains to the activities of MEHOA in connection with Lechuza Beach, I feel compelled to include a "counterintroduction" to your introduction so at least the readers of this letter can understand how distorted your representation of the "record" really is.

You mentioned that the "impetus" for your letter was Tony Giordano's contact with the MRCA requesting a meeting, followed by his letter of July 8, 2009, reinforcing that request. A simple reading of that letter will demonstrate that MEHOA was, once again,

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[1] See State Coastal Conservancy, Project Summary for Lechuza Beach Acquisition dated October 26, 2000, p. XVII-1, and incorporated into the Grant Agreement between State Coastal Conservancy and Mountains Recreation and Conservation Authority Regarding Lechuza Beach Acquisition dated June 26, 2001, Contract Number No. 00-170 (the "Conservancy Grant Agreement").

[2] See State Coastal Conservancy, Staff Recommendation for Lechuza Beach Acquisition dated October 26, 2000, p. XVII-14, and incorporated into the Grant Agreement between State Coastal Conservancy and Mountains Recreation and Conservation Authority Regarding Lechuza Beach Acquisition dated June 26, 2001, Contract Number No. 00-170.

[3] Coastal Development Permit Application Number 07-087, submitted to the City of Malibu by the Mountains Recreation and Conservation Authority on July 16, 2007 (the "MRCA Application").

[4] State Coastal Conservancy, Project Summary, supra, at p. XI-2, providing, "Initially, and until a management plan is developed, no additional improvements [will] be installed. Public beach use [will] continue in the same manner as has been permitted and signed since 1991: during daylight hours, by pedestrian access from Broad Beach Road down either of the three improved routes of access, and with no support facilities such as restrooms or water service."

reaching out to the MRCA for lack of any communication or update from it in connection with the MRCA Application.

At the meeting on August 10, you appeared with "experts" to advise us that your proposal was necessary in order to meet the requirements of the Americans With Disabilities Act of 1990 (42 U.S.C. § 12101 et seq.) as cited in your letter ("ADA") and you provided us with the materials for the first time which you have attached to your letter showing yet a new concept for the location of disabled persons vehicle spaces and improvements for direct beach access for such persons from our land.[5] The fact that we expressed a desire to review the same and raised a number of questions about the new proposal seems to have shocked you. For us, your reaction and insistence on immediate agreement without thinking and deliberation is the same old thing we have experienced for years.

You say that you gave instructions to the MRCA attendees at that meeting to "lay out" for us the MRCA's proposed new parking program for persons with disabilities with the goal that we would "voluntarily" agree to this "modest proposal" implying that of we don't agree "voluntarily" you will go ahead without our agreement. The truth is we have the right to consider and deliberate over your proposals because that is the right of MEHOA as landowner under the specific terms of your easement and because the proposal to which you refer is hardly "modest" for reasons we will discuss in detail.

You say that an important part of the consideration for the purchase of private lots at Lechuza Beach was the grant of an exclusive easement for the purpose of providing parking spaces for vehicles exhibiting disabled persons parking placards or plates. You failed to mention that the easement, the validity of which is still in question, contains much more than that. It includes specific obligations with respect to hours, limitation on vehicle access and maintenance responsibilities that were undertaken by the MRCA as a material consideration for the easement, most of which the MRCA has failed to honor.[6] You say that "access for persons with a wide range of abilities is a persistent problem along the California coast," but you fail to recognize that your mandate from the Conservancy itself recognizes that in the particular case of Lechuza Beach, the conditions to the purchase grant specifically provided that "the acquired property cannot be used or allowed to be used to compensate for adverse changes to the environment elsewhere or to mitigate conditions elsewhere, such as the lack of other coastal resources. [emphasis added]"[7]

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[5] Proposed Project, Mountain Recreation and Conservation Authority, Lechuza Beach Public Access Improvements dated August 10, 2009; Some Parking Project Alternatives Considered, Mountain Recreation and Conservation Authority, Lechuza Beach Public Access Improvements dated August 10, 2009.

[6] See Grant of Easement, between Lechuza Villas West, L.P., and Mountains Recreation and Conservation Authority dated May 1, 2002, Document Number 02-1025266 (the "Access Easement").

[7] Grant Agreement between State Coastal Conservancy and Mountains Recreation and Conservation Authority Regarding Lechuza Beach Acquisition dated June 26, 2001, Contract Number No. 00-170, p. 7.

You state that the "State Coastal Conservancy saw the proximity of Sea Level Drive to the beach as an opportunity to vouchsafe . . . 'total access' in Malibu." Then you cite former Coastal Conservancy Chairperson Paul Moribito as the source of such a "mandate." You fail to fully disclose that the Conservancy specifically recognized at the time of acquisition of Lechuza Beach that it was a unique resource embedded within a private community which had already voluntarily provided public access to the beach and that the MRCA was required by its agreement with the Conservancy to limit the use and access to Lechuza Beach to its historical voluntary conditions or as set forth in a beach management plan to be agreed to by MEHOA and the Community owners.[8] Former Chairperson Moribito specifically confirmed this in a letter to MEHOA Director Bert Boechmann in 2005, a copy of which is attached hereto as Exhibit A. "Total access" and "maximum access" are relative, not absolute terms and require only what is reasonably possible and legal given the facts and circumstances of a particular location. "Total" and "maximum" access in the context of Lechuza Beach is, we submit, defined by the Conservancy's grant conditions, the legal rights of the private property owners including the MRCA, natural site constraints, and all relevant conclusions supported by expert evaluation about what reasonably can be done under these circumstances.

You refer to the "spirit of that mandate" when launching into a discussion of the disabled persons parking places plan. However, your reference is erroneously to the "total access" you claim is your mandate, which as we have shown it is not. In addition, the MRCA's rights to arrange for any parking spaces for disabled persons vehicles derive only from the questionable private easement granted by MEHOA's predecessor and is strictly limited to that. With respect to your reference to your "responsibility to provide for access to the beach consistent with the ADA," it is our view, as we have been advised by counsel and have advised you repeatedly, that the ADA has no application to the parking spaces or any improvements on or involving our land.

You say that the "record shows" that the MRCA has bent over backwards to involve MEHOA at every stage" of planning. Nothing could be further from the truth as evidenced by the very meeting of August 10 discussed in your letter which MEHOA had to beg for before an audience was granted. Neither MEHOA nor its members have been involved at most stages of MRCA's attempt to put forward plans far beyond its rights to do so and it has never "fully considered" MEHOA's views or the views of any of its members. There have been many meetings over the years, but those meetings have been marked by requests by MEHOA for cooperation and demands by you and the MRCA for obedience, by agreements breached and reneged upon by the MRCA at your instruction, by secret plans circulated by the MRCA to unrelated organizations, even members of the public, without providing the same to its supposed partner, MEHOA, and by unreasonable and outlandish proposals amounting to confiscation and effective condemnation that the MRCA knew full well MEHOA would have to resist. These proposals went so far as telling MEHOA and its members that "you have no rights" and

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[8] California Coastal Commission, Project Summary, supra, at p. XI-2

that insisting upon our deeded and titled private property rights that provide greater access than the public to Lechuza Beach amounts to "discrimination against the public!"

Among many, many other instances I want to remind you and the readers of this letter of three. In one of the most outrageous incidents, an "all hands" meeting of the parties was held on April 7, 2005, to continue early work on a comprehensive beach management plan as required by the Conservancy. You were not available so Steve Horn of the Conservancy attended along with the chief counsel to the MRCA, Laurie Collins. Mr. Horn's agenda acknowledged that no private rights were to be given up in any final plan, and set goals for reaching a plan. All present worked hard that day in good faith to reach an agreement. Many productive conclusions were reached and Ms. Collins agreed to have MEHOA draft the proposed beach management plan so that it could be presented to MEHOA members, the MRCA and the Conservancy within weeks. Within days, as MEHOA lawyers were preparing the final plan draft, you summarily dismissed all of the agreements reached between MEHOA, Steve Horn and your own trusted chief legal counsel. This last minute, inexcusable reversal was just another of MRCA's bad faith efforts to disturb the Community, to challenge the private rights of the residents, to needlessly waste the time and money invested by MEHOA and its members, the Conservancy and even the MRCA staff and to waste the resources of the public further delaying resolution of the important issues all participants had by then identified.

In another embarrassing event, during the many meetings and conversations with the MRCA, members of MEHOA and its counsel repeatedly requested any draft plan that the MRCA might have. At a meeting in July, 2005, you finally admitted that there existed a draft plan but that it had not been released to the public and was circulating for comment internally. MEHOA had not been consulted about this and requested a copy for review and comment. Your representative refused saying that you would prefer to wait since some provisions might "upset" MEHOA. Soon thereafter, a copy of the unseen plan was released to an environmental organization under a Freedom of Information Act ("FIA") request. Since MEHOA could obtain the plan in no other way, it was forced to file a FIA request and finally received the plan draft. What appeared in the plan draft reinforced every fear and bad experience inflicted on MEHOA and its members by the MRCA and demonstrated a clear intent to seize and take over the-entire Community as well as the main public street accessing it, Broad Beach Road. How does hiding a plan from the very party who is supposed to be a part of it foster any trust or good faith?

Finally, there was a welcome intervention of the Conservancy in 2007 as part of an attempt to assist MEHOA and the MRCA in the completion of a beach management plan as originally mandated by the Conservancy. MEHOA had drafted its own version of the plan following the MRCA's refusal to work cooperatively and, as mentioned previously, MEHOA had only been able to obtain the MRCA's version through a request under the FIA. While there were a number of points that were similar in both plans, there certainly were many differences in the parties' common goal at the time to create a joint

comprehensive beach management plan. The Chairperson of the Conservancy presided over several meetings attended by representatives of MEHOA and the MRCA in an attempt to reconcile their differences. MEHOA, throughout the entire process of its engagement with the MRCA, has always been willing to make reasonable compromises. The MRCA has remained firm in its tunnel view of the scope of rights and extent to which it desired to deal with Lechuza Beach. Out of this process, a proposal was made by the Conservancy to draft its own version of a beach management plan based upon the versions provided to it by MEHOA and the MRCA. Each party agreed to participate in that process. The staff of the Conservancy in fact drafted an interim beach management plan, taking from both plans what it thought was reasonable given its own mandate to the MRCA contained in the Conservancy Grant Conditions.[9] Upon publication of the Conservancy sponsored interim management plan in March 2007 MEHOA immediately agreed to abide by it. The MRCA first proposed unacceptable comments designed to return to its own version and then completely rejected it and has never attempted to revive it or any other version of a comprehensive management plan. Instead, without further discussion, it filed the MRCA Application, putting forth, as in the past, isolated proposals here and there, and never addressing the comprehensive issues that must be addressed in order to put the matter to bed forever.[10]

2. History and Factual Background

A. **Lechuza Beach**. Lechuza Beach is a sandy beach in Malibu, almost one quarter mile long, located approximately one mile southeast of El Matador State Beach and approximately three miles west of Zuma Beach between Broad Beach Road and the Pacific Ocean. It has eroded substantially over the years and continues to do so to the degree that the beach is often fully underwater, particularly at the points where the MRCA proposes to provide access to the sand for disabled persons.

The most recent (2008, 2009) imagery of the Lechuza Beach area indicates substantial persistent beach retreat (horizontal and vertical), displacement of rocks and potential episodic transgression (inundation, spray, etc.) by ocean waters. Experts also believe that Lechuza Beach is particularly susceptible to the know proven effects of global warming, and the resulting rising shoreline at Lechuza Beach (see photos attached as Exhibit B) will greatly accelerate the loss of any new improvements and, ultimately, the beach itself unless responsible coordinated management and mitigation efforts are undertaken now. Absent substantial coordinated, collaborative, and well-designed/implemented efforts, foreseeable trends in the near to mid-term (2-5 years) will reflect continued sand starvation, erosion by directed water discharge, and cumulative multi-variant beach profile degradation during both the local winter erosion and summer beach accretion periods. Moreover, the slope below the West Seal Level Drive ("WSLD") beach overlook and stairs as well as that immediately north of the beachside foot of Lot I appear to be unstable and may be affected

[9] State Coastal Conservancy, Proposed Interim Public Beach Access Management Plan, Lechuza Beach, CA dated March 15, 2007.
[10] Coastal Development Permit Application, supra.

by extensive upslope instability, as mapped by the State of California in 2002, as subsequently likely increased by additional intensive horticultural irrigation and wastewater loading of the shallow soil horizons.

At the east end of the beach adjacent to East Sea Level Drive ("ESLD") storm-season waves, episodic Southern Hemisphere swell, and dysfunctional storm drain pipe outfalls have further eroded the sand profile to substantially impair, if not outright preclude, lateral public access except at near zero or minus tides. At the west end of the beach, adjacent to the WSLD stairs/landing, seasonal swell erosion causes a descent to a cobble field; storm drain outfall erosional channels seasonally bisect the west beach, 15 feet lateral and 2-3.5 feet vertical, between the toe of the west bluff and the shoreline.

Three images attached as Exhibit B after the February, 1998 *El Niño* storm events suggest that even ten years ago any significant improvements would have been problematic from both environmental/access and public safety perspectives. (Clockwise, starting in the upper left, these February, 1998 photos show the condition of Lechuza Beach (a) looking west from lower Lot I, and b) looking east from the easterly end of WSLD pavement, and (c) the back beach erosional scarp (and associated local slope and drain pipe failure) in the area c. 200 feet west of Lot I.) These conditions are now common with the season and tidal fluctuations as the beach and bluffs continue to erode and disappear.

Simply stated, without sand on the beach, there is no effective beach access except at low or minus tides, and except for those who elect to walk the beach while the ebb tide sucks out the septic tank water, there is only the barest of recreational carrying capacities. With the fully developed and disabled persons access at much larger beaches at El Mirador and Zuma, immediately adjacent, it is hard to understand your almost irrational drive to turn the experience of shrinking Lechuza Beach into more than what it is — a tiny, confined, natural beach with successful public access historically planned to meet its unique conditions.

B. **Private Rights**. The private Community was created in September 1932 with the recordation of a Declaration of Covenants, Conditions and Restrictions (the "CC&Rs") by the original subdivider and creator of the subdivision Marblehead Land Company.[11] The CC&Rs contain substantial rules and limitations regarding land use within the Community, is part of the chain of title to every parcel within the Community, including the MRCA owned property, and by its terms is binding on all parcels and all successor parcel owners. The rights of all lot owners within the Community are shaped by the fact that the Community was designed to be a private community of residential homes, and under the CC&Rs use of all lots is limited to single-family residential use.[12] Consistent with the private, residential limitations of the Community, certain uses, including nighttime use of the gated streets and access ways and vehicular access, are limited to residents of

[11] Declaration As To Establishment of Conditions, Restrictions, Covenants, Reservations, Liens and Charges Affecting That Certain Real Property Known as Malibu Encinal made as of September 23, 1932 by Marblehead Land Company.
[12] Id at p. 6.

single-family homes and their known and personally invited guests.[13] There are also special privately owned lots within the Community called "covenant lots" the use of which is not shared with all other owners within the Community and are not part of the land over which the MRCA claims to have obtained rights.

None of these rights are properly noted or designated on the maps provided to the City by the MRCA as part of the MRCA Application and such rights have a very material effect on the scope of the rights claimed by the MRCA.[14] No analysis of the varied private rights within the Community has been included within the MRCA Application to support the alleged rights of the MRCA to proceed with its proposals free of the need to obtain consents or other cooperation. Indeed, as you have admitted in your letter, the MRCA has no rights to obtain access from Broad Beach Road to WSLD because of two privately owned parcels not subject to the easement you claim you hold.[15]

Notwithstanding the above, since 1991 MEHOA, and its members, have voluntarily permitted limited public access over certain of the access easements and private roads under posted and controlled circumstances to the public portion of Lechuza Beach located seaward of the mean high tide line. Because of the optimum management of public access and private ownership by MEHOA during the years in which voluntary public access has been permitted, Lechuza Beach has been a rare and very successful example of how responsible private management of precious coastal resources can be undertaken to balance public access and enjoyment with the exercise of private property rights.

C. **Public Rights**. Funds were authorized by the Conservancy to acquire property at Lechuza Beach in June 2001 and such funds were granted to the MRCA for that purpose subject to certain conditions of disbursement and subject to the inclusion of certain conditions mandated by the Conservancy.[16]

Recognizing the extensive private rights already existing within the Community and the history of MEHOA and its members in allowing public access to Lechuza Beach, the Conservancy specifically conditioned the grant of funds for the acquisition of land within the Community and the activities of the MRCA in a number of ways designed to protect the existing private rights and to develop a consensus management plan for the use of and access to Lechuza Beach.[17] A copy of the Conservancy Grant Agreement and incorporated Project Summary and Staff Report are attached hereto as Exhibit C. The grant conditions include, but are not limited to the following:

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[13] See Declaration, supra.
[14] See City of Malibu Local Coastal Program ("LCP"), Local Implementation Plan, Section 13.6.4(D).
[15] Letter from Joseph T. Edmiston of the Mountain Recreation and Conservation Authority to Anthony Giordano of the Malibu Encinal Homeowners Association dated September 1, 2009, p. 5.
[16] Grant Agreement, supra; Grant Deed between Lechuza Villas West, LLC, Lechuza Villas West L.P., and Mountain Recreation and Conservation Authority dated May 6, 2002, Document Number 02-1047549.
[17] See State Coastal Conservancy, Project Summary, supra, at p.2.

(A) The acquired property was to be acquired solely for the purpose of providing public access to Lechuza Beach for public recreation and no use inconsistent with that purpose is to be permitted; [emphasis added].[18]

(B) The acquired property cannot be used or allowed to be used to compensate for adverse changes to the environment elsewhere or to mitigate conditions elsewhere, such as the lack of other coastal resources; [emphasis added].[19]

(C) The use of the acquired property must follow the conditions of the Conservancy Grant Agreement, including and incorporating the Conservancy staff recommendations.[20]

Those recommendations specifically provide, in part, as follows:

> "the Conservancy will work with the MRCA, the State Lands Commission, the Coastal Commission, the local governments, the Malibu-Encinal Home Owners Association and other interested parties to develop agreements for management of the beach. Initially, and until a management plan is developed, no additional improvements would be installed. Pending completion of a management plan, public beach use would continue in the same manner as has been permitted and assigned since 1991; during daylight hours, by pedestrian access from Broad Beach Road or either of the three (3) improved routes of access, and with no support facilities such as restrooms or water service. The acquisition project will not be concluded until the Conservancy and/or the State Lands Commission have entered into agreements to ensure that the beach will be managed and available to the public in this manner" [emphasis added].[21]

Thus, at the time of the acquisition the Conservancy, the MRCA, the Coastal Commission and all other parties involved knew that public access at Lechuza Beach would be limited consistent with the limitations of the site, its historical use and private rights and that any intensity of use beyond historical use would depend on a comprehensive beach management plan.[22] Furthermore, MRCA's actions and failure to comply with the requirements of the Conservancy Grant Agreement we believe gives the Conservancy the right to invalidate and/or cancel the Conservancy Grant Agreement and reclaim the acquired land for management by others or, at least, to place management of the lands with another agency.

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[18] Grant Agreement, supra, at p. 6.
[19] Ibid.
[20] Id at p. 7.
[21] State Coastal Conservancy, Project Summary, supra, at p. 2.
[22] Ibid; Letter from Paul A. Morabito, former Chairman of the California State Coastal Conservancy to Ben Boeckmann, Malibu-Encinal Homeowners Association dated October 24, 2005 and attached hereto as Exhibit A.

The Conservancy and the MRCA have had since the acquisition of the Lechuza Beach lots an obligation to negotiate in good faith a management plan for the beach with MEHOA, its members and other owners within the Community as the primary parties concerned. As specifically provided under the Conservancy Grant Agreement, the California Coastal Act (Cal. Pub. Resource Code Section 30100 et seq.) (the "Coastal Act"), and under California and U.S. constitutional law, such a plan and any use of Lechuza Beach by the public must recognize, honor and protect the private property rights of the members of MEHOA and all other Community land owners. As such, MEHOA and its members must approve any plan affecting those rights.

Knowing that the nature of the property at Lechuza Beach which was the subject of the acquisition by the Conservancy and the MRCA constituted private residential lots within the existing private Community, all subject to the CC&Rs and other applicable subdivision rules, none of which permitted public access on the part of any private lot owner, the MRCA negotiated with the then-grantor of the property being acquired, Lechuza Villas West, L.P., a grant of easement along what is known as WSLD and ESLD, which is the easement referred to in your letter and which all parties agree is the sole basis for the MRCA's assertion of any rights for public access to the MRCA's beach lots on MEHOA owned land. A copy of the grant of easement above mentioned is attached hereto as Exhibit D.

The Access Easement provides for access during certain limited hours, parking spaces for four vehicles exhibiting disabled persons' parking placards or plates with the location of the same to be reasonably approved by the grantor (at that time Lechuza Villas West, L.P.), the obligation to maintain insurance and the obligation to construct and maintain in good working condition all existing and replacement pedestrian access gates on WSLD and ESLD (and Lot I).[23] Except for the pedestrian gates, nowhere in the Access Easement is there any mention of improvements of any type and nothing in the document even comes close to "consent" by MEHOA or its members to improvements beyond the clear provisions contained within it. Subsequently, the grantor, Lechuza Villas West, L.P., granted to MEHOA all of its alleged residual right, title and interest to WSLD and ESLD referred to in the Access Easement, making MEHOA the title owner of those parcels and locations described in the Access Easement.[24] Thus, the sole source of MRCA's rights to provide public access to its lots on Lechuza Beach is over property privately owned by MEHOA and its members by private grant of easement and no consent or other provision in the easement allows for the improvements or other proposals requested in the MRCA Application.

[23] Grant of Easement, supra.

[24] Grant Deed between Lechuza Villas West, L.P., Lechuza Villas West, LLC, and the Malibu-Encinal Homeowners Association dated August 28, 2002, Document Number 02-2075467; Quitclaim Deed between Lechuza Villas West, L.P., and Malibu-Encinal Homeowners Association dated August 29, 2002, Document Number 02-2075466.

MRCA acquired title to that part of Lot A which, following a collapse of part of the Lechuza Beach bluff, presumably merged with the beach lots located on the sand. MRCA also acquired title to Lot I subject to easements in favor of all of the private lot owners within the Community.[25] Finally, and as not accurately depicted on the maps and related materials submitted by the MRCA as part of its MRCA Application, the beach lots acquired by it are further subject to a 25 foot easement from the ocean front of the lots back and on the beach portion of Lot A in favor of all of the residential lot owners within the Community for recreational uses.[26]

When all of these interests are plotted onto the current condition and configuration of Lechuza Beach, it becomes clear that there is little left of the private residential lots acquired by the MRCA that is not either encumbered by the easements held by the MEHOA members and residents of the Community, or that is not now embedded in the eroded bluff or washed out to sea to become part of the state tidelands. It would thus appear that the land that was acquired at Lechuza Beach for the $9 million referred to by you for the purpose of providing for public access to the beach, which had already been provided by the private owners at Lechuza Beach since 1991, was paid for "lots" that barely existed and were unbuildable and often under water, and in any event already encumbered by the original private easements granted to all owners within the Community as part of their chain of title. Nowhere in the MRCA Application do we find the critical analysis of this cross-hatch of private rights to carry the MRCA's burden of demonstrating its right to request the development approvals it seeks.[27]

You also claim, mistakenly, that the MRCA is the successor to the original developer and holder of all "reserved" or "residual" rights to all land in the Community not owned by others. In fact, MRCA received, if anything, only those rights relating to the land conveyed to it and such rights do not extend to other property as specifically provided in the MRCA deed.[28] MEHOA, similarly, was granted rights as the successor to the original developer with respect to its land having acquired such rights form the same developer party who granted to the MRCA its claimed easement over WSLD and ESLD.[29] Thus, your implication that such reserved rights somehow give the MRCA greater rights over the MEHOA land is wrong. The MRCA has no rights over the MEHOA land other than the limited Access Easement.[30]

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[25] Grant Deed between Lechuza Villas West, L.P., and Mountains Recreation and Conservation Authority dated May 6, 2002, Document Number 02-1047551.
[26] Declaration, supra, p. 14-15.
[27] City of Malibu Local Coastal Program, Local Implementation Plan, supra, at Sections 13.6.2 (A), 13.6.2 (C) and 13.6.4 (D) (1); City of Malibu Municipal Code, Section 17.04.150.
[28] See Grant Deed between Lechuza Villas West, L.P., and Mountains Recreation and Conservation Authority, supra.
[29] See Grant Deed between Lechuza Villas West, L.P., and Malibu-Encinal Homeowners Association, supra; Quitclaim Deed between Lechuza Villas West, L.P., and Malibu-Encinal Homeowners Association, supra.
[30] Grant of Easement, supra.

In 2001, following the acquisition, and giving full credence to the mandate of the Conservancy and the conditions of its grant of funds, it seemed a relatively simple task to work cooperatively with the members of MEHOA, who had already provided public access for years, the terms of which were embedded in the acquisition conditions, to quickly work out a reasonable plan for management of Lechuza Beach, giving due respect to both the public and private rights. There was, in fact, a golden opportunity to create a model for public-private cooperation in achieving a workable plan for public access to a natural, tiny, pocket beach that could provide a unique experience to the public not available at any of the other state public access beaches nearby. Unfortunately, by ignoring its mandate from the Conservancy and the rights of the private owners pre-existing its acquisition, the MRCA has demonstrated that it does not have the desire, intent or ability to work with others to that end.

D. **Management**. The CC&Rs delegate to the MEHOA Board of Directors ("Board") the sole authority to interpret and enforce the CC&Rs, including matters assigned to the Architectural Committee of MEHOA (the "Architectural Committee"). The Board therefore provides general guidance regarding the CC&Rs and the uses of land within the Community that may be made under them. MEHOA has managed the Community since 1932 and successfully preserved the natural state of Lechuza Beach until the arrival of the MRCA. Since then, there has been much confusion about the responsibility to maintain the eroding cliffs and access points adjacent to the MRCA owned private lots with the MRCA largely failing to take any action to coordinate its ownership obligations with MEHOA. We note that up to the time of its acquisition of lots at Lechuza Beach, the MRCA had, and we believe still has, no experience in managing beach resources which is reflected in the attitudes and conduct of its officers and in the poor state of its own land in the Community. The MRCA's primary efforts at beach "management" have been to post threatening and erroneous signs and send rangers to the beach with no knowledge of any of the existing private rights to wrongfully cite residents' of the Community for exercising those rights.

E. **General Conflicts**. Since acquisition of the Lechuza Beach lots by the MRCA, many disputes have arisen between the MRCA and MEHOA and its members and other owners within the Community with respect to the ownership and use rights of the MRCA, proposals by the MRCA for vastly expanded public access and facilities inconsistent with the site restraints, private legal rights, and the responsibility for management of Lechuza Beach. Among other things, the MRCA claims that by virtue of its private purchase of the lots within the Community, it may subject the entire Community to public access with no limitations and regardless of the private rights, and, further to this asserted right, impose its authority to change and manage the entire Community as a "public park." To the contrary, the position of MEHOA, its members, and other owners of land within the Community is that the MRCA's private acquisition of lots within the Community does not convert the covenanted private use into public use or override the CC&Rs that bound all lots at the time of their formation and were in affect at the time of acquisition by the MRCA, that the claimed successor to the original developer and alleged owner of "residual rights" to the Community had no power or authority to grant the Access

Easement and that it is null and void, that even if the Access Easement is valid, the MRCA's sole source of rights to permit any public access to its beach lots over MEHOA owned land is the Access Easement, and that the MRCA has no authority to manage or otherwise impose its rules on the Community to the exclusion of MEHOA without its consent and the consent of its members.[31]

Furthermore, MEHOA asserts that any land owner who sold the lots to the MRCA did not possess any greater rights than any other lot owner and that any attempt by the MRCA to claim any such greater rights is unlawful. MEHOA's position regarding the beach lots and Lot 1 to which the MRCA holds title is that such titles are encumbered by the CC&R's and private easements in favor of MEHOA and its members that cannot be violated, compromised, interfered with or overburdened by public use, beyond the extent of such use and improvements existing prior to the acquisition of such property without the agreement of MEHOA and its members.[32] MEHOA is certainly willing and able to pursue an adjudication of these rights but prefers one last attempt; with the Conservancy's help, to reach agreement on a comprehensive solution. It is the position of MEHOA and its members that any proposals by the MRCA or any other public agency to subvert or ignore any of their private rights in the Community for public purposes is a physical taking of their property rights without due compensation in violation of the California and U.S. constitutions. Finally, the MRCA and MEHOA, its members and other owners within the Community disagree over the existence and location of certain of the claimed rights allegedly acquired by the MRCA within the Community.

While the ownership of the lands and related recorded land rights held by MEHOA and by the MRCA within the Community are easily determined from the title record, none of the above disputed issues has yet been adjudicated and fully and finally resolved by any court or other body with jurisdiction.

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[31] The MRCA claims that it is the beneficiary of litigation between MEHOA and the prior alleged owner of certain alleged "residual rights" to the Lechuza Beach lots purchased by the MRCA, which resulted in a procedural ruling by a trial court, affirmed by a court of appeals, that MEHOA was barred from raising certain issues about the lots owned by the MRCA being subject to certain parts of the CC&Rs because of the procedural failure to raise such issues in a prior case. No trial was or ever has been conducted and no adjudication has ever been made on the merits of the parties' claims. There is other unrelated court of appeal decisions in conflict with the decision in the cited case. The case is narrowly limited to the claims brought in the original case that resulted in the procedural ruling and MEHOA does not agree that it precludes application of the CC&Rs to the lots purchased by the MRCA. Notwithstanding, none of the issues litigated in the cited prior case have any bearing on the issues now pending before the City. The case cited certainly has no effect on any later conduct of the parties nor does it affect the private deeded rights of the landowners within the Community. As such, any actionable conduct by MRCA or any other agency exceeding the scope of the ruling in that case or occuring after the events that were the subject of that case may be the subject of additional future claims. These include, without limitation, claims related to the California Environmental Quality Act (Cal. Pub. Resources Code Sections 21000 et seq.) ("CEQA"), the Coastal Act, violations of the City of Malibu Municipal Code, and related environmental, land use and construction entitlement legislation and compliance, violation of private rights created by easements and contracts, trespass, overburdening of private rights, inverse condemnation, property damage, negligent maintenance and other claims potentially arising out of the conduct of the MRCA at Lechuza Beach.

[32] See State Coastal Conservancy, Project Summary, supra, at p. 2.

F. **The Joint Beach Management Plans.** After the acquisition of the Lechuza Beach lots, MEHOA and its members expected that the MRCA would work closely toward the development of a joint beach management plan which would reconcile the different views and legal rights of the parties in a manner which would provide an example of public-private cooperation for future generations. From the acquisition date, 2001, until 2005, no reasonable plan was discussed and no draft of the same was attempted by the MRCA. As a result of the long uncertainty and lack of responsiveness, MEHOA created its own draft of a proposed Lechuza Beach joint management plan ("MEHOA Beach Plan").[33] The MEHOA Beach Plan included those few reasonable proposals received from the MRCA over the years, along with the provisions to preserve pedestrian access to the beach long granted by the private owners at Lechuza Beach and embedded in the Conservancy Grant Agreement conditions in connection with the MRCA acquisition, and, of course, the Access Easement. The Comprehensive MEHOA plan addresses management, improvements, parking for disabled persons, insurance and indemnity, enforcement and dispute resolution. It was designed to be a final agreement and a framework for an ongoing working relationship. The MEHOA Beach Plan was provided to the MRCA and dismissed immediately without discussion. The secret MRCA plan that we had to obtain through FIA request was far beyond any reasonably acceptable proposal for Lechuza Beach and tantamount to expropriation. The MRCA has taken every action possible to avoid having to enter into a comprehensive plan and, instead, in pushing forward with the type of isolated actions represented by the MRCA Application.

The MRCA Application fails to address all of the issues which are required to be resolved in order to assure a fair and permanent outcome for all of the parties involved in accordance with the Conservancy's and MEHOA's original vision. As mentioned previously, in 2007, at the request of MEHOA, the Conservancy intervened in an attempt to mediate the two versions of a comprehensive and final joint beach management plan and issued its own version of in interim plan addressing most of the issues and leaving others for further mediation. The Conservancy's version of an interim joint management plan was effectively dismissed without reasonable discussion by the MRCA. In response to the MRCA's unilateral efforts to seek approval for the project described in the MRCA Application which does not address a comprehensive solution to the continuing issues, MEHOA has prepared a new version of a joint beach management plan which addresses all of the issues raised by the MRCA Application. MEHOA will be happy to share this with the MRCA and the Conservancy subject to MRCA's withdrawal of the MRCA Application with the City of Malibu or the City's rejection or suspension of the MRCA Application, with the goal that the Conservancy assist, as before, in facilitating a full and final solution to the issues that have been pending for so many years.

[33] Public Access Management Plan, Lechuza Beach, Malibu, CA dated August 5, 2009.

3. The MRCA Proposal

You say that "we've exhausted the parking options." We have shown that, far from exhausting the parking or other options, the MRCA has repeatedly failed to take into consideration or permit thoughtful constructive dialog over the parking and other proposals that it has made as part of the MRCA Application. You point to a single meeting, August 10, 2009, and your delivery of the materials mentioned for that meeting at the last minute to the MEHOA representatives, as your cause of concern. Neither the proposal, in any of its elements, or your threats to place the parking locations wherever you want, are constructive methods to achieve a comprehensive solution to the issues you raise. Discussions and proposals that MEHOA in good faith has put forward for solutions to the parking arrangements contemplated in the Access Easements over these many years have been repeatedly dismissed, as was the latest parking location proposal presented to you and reviewed by your "experts."

A. General Deficiencies.

The MRCA Application is fundamentally inadequate and will remain, without MEHOA consent, terminally incomplete, pursuant to the applicable legal standards.[34] The MRCA Application is further unsupported by the requisite threshold analyses that demonstrate the project component design/s or locations to be consistent with applicable LCP, Coastal Act, other environmental, health/safety, and other applicable laws and mandatory standards. In addition, parts of the MRCA's proposals appear (based on the poorly reproduced small graphics with no available acceptable survey) to unconstitutionally take private property for public use, without compensation, and are therefore untenable.

At a minimum, the MRCA Application must address with specificity, adequate expert analyses and established facts, the following issues and claims:

(1) Failure to comply with Malibu Municipal Code, Sec. 17.04.150 and LCP Local Implementation Plan Section 13.6.2, regarding evidence of consent by MEHOA and other land owners to any permit for work to be performed on their lands and failure to obtain required consents and approvals under the CC&Rs;

(2) Evidence of rights held by the MRCA and other owners in the lands covered by the MRCA Application in the form of surveys certified by licensed surveyors and including and mapping the location and description of all joint ownership or use interests in relation to the proposed work;[35]

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[34] See City of Malibu Local Coastal Program, Local Implementation Plan, supra, at Sections 13.6.2 (A) and 13.6.2 (C); City of Malibu Municipal Code, supra..

[35] See City of Malibu Local Coastal Program, Local Implementation Plan § 13.6.4 (D) (1).

(3) Ocean, geotechnical and tide studies addressing the fully utilizable safe area and times of use of the beach and beach sustainability given its past and present erosion and depth;

(4) Ecological, geotechnical and environmental impact on the beach of expanded public use, including the effect of the use of equipment used by disabled persons on the sand;

(5) Ecological, geotechnical, safety and environmental impact of construction of ramps, bluff platforms, and stairways where known flooding, water created sand and soils instability, and unstable bluff and hillside geology clearly exists;

(6) Safety of disabled persons on the sand given known beach flooding, geologic and structural instabilities;

(7) Failure to comply with CEQA. We understand that the MRCA Application will be referred for review to the City Environmental Review Board. There is absolutely no doubt that the improvements and development proposed in the MRCA Application will have a significant environmental impact and therefore require, in addition to other studies and analyses, an initial study and/or a full environmental impact report. Given the effect of global warming on Lechuza Beach, any such report must analyze and consider the effects of global warming in combination with the proposed improvements, increased use and rising shoreline. Such analysis is required to ensure that the proposals in the MRCA Application does not lead to or accelerate the loss of Lechuza Beach.

(8) Traffic and parking studies are required to analyze impacts on all beach access routes and on the Community that surrounds those routes of the proposed substantially increased public use without access to designated parking areas;

(9) Management, maintenance and preservation proposals - there are none in the MRCA Application to address how the increased beach access and improvements are to be sustained on a dying beach;

(10) Insurance and indemnity issues -- who is responsible and liable for property damage and injury resulting from the MRCA proposals, over capacity use of the small beach area and access ways, improvement failures, disabled and abled person use of the beach at hazardous times and under flooding and hazardous conditions?

(11) Failure to comply with LCP Land Use Plan Sections 2.23 and 4.29, regarding prohibited development of permanent structures on a bluff face.

B. **Parking Spaces**. Nothing in the Access Easement or any other evidence of rights held by the MRCA on the lands owned by MEHOA speaks to anything other than provision of parking spaces. The purpose of the parking spaces, as originally discussed, envisioned and negotiated, was for coastal viewing from WSLD and ESLD from existing

roadways under then existing conditions. All parties recognized from the beginning, as you have now recognized in your letter, the severe constraints of the site and, in addition, Lechuza Beach has long been recognized as one of the few remaining natural beaches with access along the Southern California coast and this must be recognized in any plan dealing with access and management of the beach resources.

We are sympathetic to challenges faced by the disabled. However, there is no law that we or our counsel know of that requires that disabled persons have access directly to the sand in all cases, and particularly in this case. In any event, that was not part of the rights granted to the MRCA and any proposal for any such access must provide the legal basis for it and address many related issues of consequence including but not limited to safety, insurance and indemnity for the private owners, regulation of vehicle traffic by disabled persons, including potentially trip and time-limits, seasonal restrictions, security (including methods of access and validating disabled persons parking placards), and rules of use to minimize disruption of resident traffic including loading, unloading. These issues and more must be addressed by an initial study and and environmental impact report pursuant to CEQA concerning the effect of equipment used by disabled persons on the natural beach ecology, geology and stability, beach capacity, and access traffic and ongoing beach sustainability. None of the above issues are to date adequately addressed in the MRCA Application.

Contrary to the comments of the "experts," the ADA does not apply to MEHOA owned lands and it is the view and position of MEHOA that it is not necessary to follow the very specific rules and restrictions of that law in determining the location and configuration of the parking spaces involved.[36] Building and safety rules regarding parking only apply to work requiring permits not to merely assigning parking places that already exist. Your comments about addressing the concerns of two residents belies the fact that many residents have commented and complained about proposed locations of the spaces. MEHOA has frequently proposed alternative spaces only to be ignored in favor of MRCA plans that appear suddenly, as on August 10, with new space designations that seem to purposefully interfere with the local residents' access to their homes and property. This is particularly the case with space Z in MRCA recently edited Option BCZ in which the space and any vehicle parked in it would be inches from the front entry door to a residence blocking all access except the driveway. The resident would need to climb over a vehicle parked in the

[36] Note that the MRCA's expert, APS MIG, is a planning, design, communications management and technology firm and does not claim to be practicing law. In the body of the letter from Laurel Kelley, landscape architect, dated August 14, 2009, attached to your letter, MIG refers to Lechuza Beach as "this new public beach" which, as a collection of private lots some of them owned by the MRCA, it is not. There has been no condemnation or dedication. MIG cites the Coastal Act of 1976 (Cal. Pub. Resource Code Section 30100 et seq.) to speak to "maximum public access" but ignores the constitutional principle embedded in the Coastal Act of acknowledging and protecting private property and fails to even mention the physical site constraints. Also, MIG reaches the conclusion that the ADA and other similar laws require an "equal experience for all visitors at the beach itself." Neither MEHOA nor its counsel agree with this statement and, in fact, such a proposal fails to even acknowledge the necessity for demonstrating, under other applicable laws, the safety and environmental risks associated with any such proposal at Lechuza Beach.

space to enter or exit the residence. Is this necessary? The other alternatives showing spaces at the west end of ESLD appear to be placed in locations likely to be underwater or eroding into the beach even under your own submitted study (there appears to be only one). MEHOA has developed alternate proposals that, contrary to the comments of the MRCA's consultants, are perfectly lawful to access a beach overlook, which in MEHOA's view, is all that is required by law and by the MRCA's entitlement.[8] MEHOA has retained a qualified architectural firm to prepare plans for its alternative proposals.

Consistent with the position of MEHOA in many prior discussions between the MRCA and MEHOA, some of which the MRCA agreed to sometimes, that all disabled vehicular parking be equitably minimized along the seaward side of ESLD, MEHOA has repeatedly proposed that the disabled parking spaces provided for in the Access Easement be rotated, at one week intervals, among all existing parking bays (spaces) along the southerly side of ESLD, commencing with Lot T. No meaningful consideration has been included in the MRCA Application of this proposal.

Finally, since the location of parking spaces is a matter of private agreement in this case and involves, in itself, no improvements, the City would not seem to be required to be involved.

Based on our prior experience with the MRCA, it is likely that you will claim that our comments about direct access to the beach by disabled persons is "insensitive" or "hostile" to those in that category. To the contrary, as we have demonstrated there are very real dangers at Lechuza Beach to everyone and particularly to those who, once on the sand and unable to avoid the other changes to beach and bluff conditions could be injured or face life threatening circumstances (See photos attached hereto as Exhibit B). Who is responsible in such cases? The Community includes a number of disabled persons who in this case agree that the nearby El Matador and Zuma Beach are far safer.

C. **Improvements**

As previously stated, the Access Easement does not provide, consent or authorize any improvements on, commencing from or supported by the lands owned by MEHOA and other landowners in the Community and thus any such improvements require their consent as a matter of law.[37] Furthermore, any improvements within the Community must comply with the requirements in the CC&Rs for architectural and land use approvals.[38]

The proposals in the MRCA Application for improvements on ESLD, WSLD and Lot I are fatally deficient and incomplete for the following reasons, among others, in addition to the general deficiencies set forth previously.

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[37] See City of Malibu Local Coastal Plan, Local Implementation Plan, supra, at Section 13.6.2; City of Malibu Municipal Code, supra, at Section 17.04.150.
[38] Declaration, supra, at p. 17.

1. **West Sea Level Drive Area.**

(a) In the absence of a legal basis for MRCA to utilize the connecting pavement on privately owned Lots 43 and 44, between Broad Beach Road and WSLD-Lot A (APN 4470-021-008), any plans for public access improvements at the southerly terminus of WSLD-Lot A (or adjacent publicly owned westerly BALD-Lot A, or Lots 155-156) are premature.

(b) Given the historic and recent/current shoreline erosion, bluff failure/landsliding, and ongoing discharge of concentrated water to the back beach, proposed reconstruction of the WSLD view platform, associated retaining wall, beach access stairs, path along top of low Encinal Point to beach, and location of disabled persons parking space immediately adjacent to fractured/eroding low point require (a) careful professional analysis to identify sustainable/safe project component locations and (b) a subareal-regional beach conservation strategy.

(c) Based on the 150-year environomic history of Encinal Point, west Lechuza Beach, and the Encinal Creek canyon/mouth-delta available from qualified professional consultants, absent a major capital outlay and ongoing beach conservation/water quality program, the failed WSLD beach stairs and vista point are unsustainable. Locating any public parking space, but especially one for use by disabled persons, within 5-10 feet of an actively eroding low bluff or in an area of unengineered revetment rocks, is imprudent.

(d) Until there is a sustainable comprehensive plan supported by all necessary studies not yet provided in the MRCA Application, support/funding for disabled access should be focused on maintaining open and accessible the existing westerly Lechuza Beach access and parking, including for disabled persons, at and from El Matador Beach.

2. **West-Central Beach/Malibu-Encinal Bluff Area**.

(a) Regarding the proposed improvements to the Lot I stairs, and the sandy West-Central Lechuza Beach they serve for vertical access, a professional geotechnical analysis must be performed of the identified subareal landslide/s at, or proximate to them, addressing, among other things loading of the top of bluff, bluff face, toe of bluff, and beach sand profile with irrigation, septic, and the effect of directed storm water on the bluff and sandy beach.

(b) The toe of bluff and beach area immediately to the south of the foot of the Lot I stairs has been subject to severe (to -7 feet) winter storm wave and spring-summer-fall Southern Hemisphere swell-caused erosion, with associated vertical and horizontal displacement of previously placed revetment rocks to protect the ESLD pavement (see comments in Part 3 below regarding ESLD). In addition, stormwater outfall pipes that appear to serve the Broad Beach Road right of way and adjacent and upslope improved residential and public uses, individually and cumulatively cut substantial cross-beach erosional channels, which in turn become pilot channels for superelevated water to attack

the back beach and toe of bluff, and also serve to provide localized freshwater that supports expansive flats of invasive and other non-native vegetation on the back beach and lower bluff face. Some of these pipes appear to also discharge residential effluent. None of the above is addressed in any of the MRCA reports and presents severe environmental issues and concerns for the survival of the beach itself given the known permanently eroding and diminishing dry sand resources as well as safety issues for public use of the beach especially by disabled persons who could be trapped on the beach or swept out to sea. The MRCA's own limited and, we submit deficient, "tide report" data supports these conclusions although seeming to minimize the potential hazard in its own summary. (See the photos in Exhibit B.) These are the conditions into which the MRCA wishes to "drive" unlimited public traffic, included disabled visitors, with no thought or support for how such access will be managed or risks mitigated.

(c) Experts have repeatedly advised all parties that no new revetment rock, concrete, drainage pipes, or any other structures that directly or cumulatively may contribute to beach sand scour should be installed, or permitted, and all existing such material or structures should be removed as part of the near- and mid-term implementation of any access, beach/dune restoration-conservation, and water quality enhancement programs. No study or supporting report in the MRCA Application addresses any of these issues.

3. **East Sea Level Drive Area**.

The end of the pavement of the MEHOA owned part of ESLD (Lot A) is repeatedly subject to severe (to -7 feet) winter storm wave and spring-summer-fall Southern Hemisphere swell-caused erosion, with associated vertical and horizontal displacement of previously placed revetment rocks to try to protect the ESLD pavement. The rock pavement support has been washed away many times over the years as the entire beach has been inundated (see the photos in Exhibit B). This is the very spot at which the MRCA Application proposes to locate one and sometimes two disabled persons parking places and a ramp or other unspecified device to lower or permit lowering of disabled persons onto the sand. Clearly, the proposed improvement must start with and involves the MEHOA land. As stated above, any proposal for improvements to this location raises severe environmental and safety issues not addressed in any reports submitted as part of the MRCA Application. Further, the location of such proposed improvements creates significant potential liability for MEHOA should a disabled person become stranded on the beach or harmed due to the known weather or volatile beach conditions.

(a) **New Gate and Signage**. MEHOA agrees that a new gate may be appropriate in accordance with the obligations of the MRCA under the Access Easement subject to its appearance, times of opening and closing, 24/7 access by residents in accordance with their easement rights and related issues. MEHOA does not agree with the form of signage proposed which must use the local and historical beach name, include notices designed to protect the private rights of the Community residents in the land and

accurately reflect the final rules agreed to by MEHOA and the MRCA as part of a joint beach management plan pursuant to the Conservancy's mandate.[39]

4. Next Steps

Your implication that MEHOA's objections and proposals have or, in the future, will "delay and obstruct our legitimate rights to perfect the access rights to Lechuza Beach bought and paid for by the people of the state of California" is both untrue, insulting and, once again, belies the lack of good faith which the MRCA has demonstrated in this case. What your legitimate rights are in the matter remain to be seen. As we have shown, MEHOA has gone to great lengths to work with you and the MRCA to arrive at a plan which not only carries out your mandate from the Conservancy but acknowledges the private rights that you have not acquired within the tract in a reasonable plan that will benefit us all. The problem is that you insist that the rights you bought are different from what they are and that the entire Community should be considered as if the State of California had condemned the rights of all of the private owners. Such, as you now know, is not the case.

You say that your ability to modify your proposals about the location of parking spaces and other elements is "directly proportional to the ability to achieve our objectives elsewhere with the cooperation of your association." Please be aware that MEHOA's ability to agree to your proposals is directly proportional to the ability of MEHOA to achieve its objectives of a comprehensive, once and for all, joint beach management plan which reasonably balances the rights of the private owners of the Community and the limited private access to which MRCA may be entitled under the Access Easement, with the site constraints, environmental impact, natural beach preservation, safety, security, and the public and private rights in the context of a joint beach management plan. Particularly, the physical connection between Broad Beach Road and WSLD over the two private properties mentioned by you can be resolved to the satisfaction of those owners in conjunction with the resolution of the other many issues pending between us.

We remain, as we always have been since 2001, ready, willing and able to engage with a reasonable and good-faith partner to develop the joint beach management plan that the Conservancy and we envisioned from the time of the MRCA's acquisition of its land at Lechuza Beach. The next steps, in the view of MEHOA, is for the City of Malibu to determine that your MRCA Application cannot be completed in accordance with applicable law, and therefore the MRCA Application should be withdrawn or be held by the City as terminally incomplete unless and until MRCA and MEHOA have agreed upon a joint beach management plan and have addressed all of issues necessary to the full and final resolution of this matter. At that time, both parties may apply as co-applicants to the City for the appropriate approvals and permits as necessary to implement the plan.

[39] See Grant of Easement, supra, number 1; State Coastal Conservancy, Project Summary, supra, at p. 2.

Pending a resolution of the issues discussed in this letter, MEHOA and its members must reserve any and all of their rights and nothing stated in this letter shall be considered a waiver, consent, agreement or other action limiting their full and complete rights in any way.

Sincerely,

Lisa Pallack

Lisa Pallack
President, Malibu Encinal Homeowners' Association

Enclosures
cc: Stephanie Danner, City of Malibu
Chairperson and members, State Coastal Conservancy
Sam Schuchat, Executive Officer
Joan Cardellino, State Coastal Conservancy
Mary Small, State Coastal Conservancy
Chairperson and members, California Coastal Commission
Peter Douglas, Executive Director, California Coastal Commission
John Ainsworth, Deputy Director, California Coastal Commission
Pat Veesart, California Coastal Commission