MOUNTAINS RECREATION & CONSERVATION AUTHORITY
Los Angeles River Center and Gardens
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VIA ELECTRONIC MAIL
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January 13, 2010

Richard F. Davis, Esq.
Greenberg Traurig, LLP
2450 Colorado Avenue
Suite 400 East
Santa Monica, California 90404

**Lechuza Beach Access Improvements Project**
**(CDP App. No. 07-087)**

Dear Mr. Davis:

By letter dated September 1, 2009 addressed to Anthony Giordano the Mountains Recreation and Conservation Authority (MRCA) requested from the Malibu-Encinal Homeowners Association (MEHOA) "feasible and professionally-prepared plans for the parking spaces for persons with disabilities along Sea Level Drive, meeting ADA requirements, within 30 days of receipt" of the letter.

That letter (copy attached) documented the our attempts to get MEHOA's approval of disabled parking sites along East Sea Level Drive. Also attached is a memorandum from our accessability consultant addressing the fact that MEHOA's proposed location as described at the August 10, 2009 meeting does not meet the accessability requirements.

MEHOA has not provided any plans in response to this request. In fact, instead of plans that could be validated by professional engineers and vetted for Americans With Disabilities Act compliance, we received a purported "Notice of Default."

In a conversation with Mr. Edmiston on December 30, 2009 you repeated the assertion that "ADA doesn't apply" because Lot "A" is private property. Whatever is the merit of that argument, ADA and the analog California statutes[1] do apply to expenditure of public funds, and the improvements proposed for Lechuza in CDP No. 07-087 will be constructed with public funds.

You are reminded that the May 1, 2002 Grant of Easements from MEHOA's predecessor-in-interest to the MRCA provides the MRCA and the public with:

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[1]See, *e.g.*, Government Code § 4450 *et seq*, and Civil Code § 54(c).

> an exclusive easement for the purposes of providing parking spaces for four (4) vehicles exhibiting Disabled Persons Parking placards or plates as provided by the Department of Motor Vehicles, or any alternative method approved by the State of California currently, or in the future, of designating cars which are driven by or occupied by Disabled Persons (on and over East and West Sea Level). The specific location of the four(4) Disabled Parking spaces shall be approved by the Grantor; however said approval shall not be unreasonably withheld.

We now reiterate the request to provide the MRCA with feasible and professionally-prepared plans for the parking spaces for persons with disabilities along Sea Level Drive meeting ADA requirements within 15 days of receipt of this letter, which is over three months from the date of our request.

The MRCA is being substantially prejudiced by this delay. Failure to send the plans will be deemed a breach of MEHOA's obligation to act in good faith.

Please note that the MRCA reserves its right to proceed with the application pursuant to the October 31, 2002 Grant of Real Property Interests which include the right to construct recreational structures and access to those structures over any and all private streets, walks and paths. The MRCA considers the accessible coastal viewing platforms at East and West Sea Level Drives included in our application to be to recreational structures.

Sincerely,

Laurie C. Collins
Chief Staff Counsel

Attachments (1) Edmiston to Giordano 9-1-09
(2) MIG consultants to Edmiston 8-14-09

cc: Joseph T. Edmiston, Exec. Officer, MRCA
John Ainsworth, Deputy Director, CCC
Steve Hudson, District Manager, CCC
Elena Eger, Senior Staff Counsel, SCC
Mary Small, South Coast Manager, SCC
Joyce Parker-Bozylinski, Planning Manager, Malibu
Stephannie Danner, Senior Planner, Malibu

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

**Via Electronic and Certified Mail**

September 1, 2009

Mr. Anthony Giordano, President
Malibu Encinal Homeowners Association
31579 Sea Level Drive
Malibu, California 90265

**Next Steps: Lechuza Beach Public Access Improvements Project (CDP App. No. 07-087)**

Dear Tony:

It has been almost seven years now since the taxpayers of California paid over $9,000,000 to acquire Lechuza Beach. After hemming and hawing back and forth for the better part of five years trying to hammer out some management framework, in 2007 the Mountains Recreation and Conservation Authority (Authority) in an effort to sever the Gordian knot, submitted a coastal development permit (CDP) application to the City of Malibu for the Lechuza Beach Public Access Improvements Project. Since then we have been struggling to answer all questions, consider all impacts, and still be faithful to our obligation to open this beach to an impatient public.

Introduction

The immediate impetus for this letter was your contact with Judi Tamasi requesting a meeting and your subsequent letter of July 8th instant. On August 10th you and Lisa Pallack met on-site with Ms. Tamasi and Paul Edelman, whom you know is the Authority's Chief of Natural Resources and Planning. Prior to this meeting I gave Judi and Paul the charge to lay out for you the proposed parking program for persons with disabilities along Sea Level Drive with a goal that the Malibu Encinal Homeowner's Association (MEHOA) voluntarily agree to this modest proposal.

You are certainly aware, but for the benefit of others copied of this letter I will repeat, that an important part of the consideration for the purchase from Lechuza Villas West LP was the grant of an exclusive easement along Sea Level Drive for purposes of providing parking spaces for four (4) vehicles exhibiting Disabled Persons Parking placards or plates. Access for persons with a wide range of abilities is a persistent problem along the California coast.

The State Coastal Conservancy saw the proximity of Sea Level Drive to the beach as an opportunity to vouchsafe such "total access" in Malibu. I vividly remember the meeting held in your living room, just after the transaction was consummated: Coastal Conservancy Chairperson Paul Morabito made it unmistakably clear the importance the Conservancy placed on such "total access."

In the spirit of that mandate, I want to give you a detailed explanation for the approach we have taken toward implementing our responsibility to provide for access to the beach consistent with the Americans with Disabilities Act of 1990 as amended, 42 U.S.C. § 12101 *et seq.* (hereafter cited as ADA).

The record shows, and I've attached evidence to prove it, that the Authority has over these past seven years considered many options for disabled person's parking along East Sea Level Drive and West Sea Level Drive. Numerous meetings, memoranda, letters, and phone calls prove that the Authority has involved MEHOA at every stage of this planning process. We haven't always agreed with your position, but at every juncture your organization's views have been fully considered.

The Authority's current proposal for parking spaces for persons with disabilities is a reasonable compromise given the constraints of the site, the requirements of ADA, the building codes, our mandate to provide maximum public access, and MEHOA's concerns on behalf of its homeowner members.

Tony, I've got to say, even with all these meetings and the intellectual energy that has been expended, MEHOA has not put forward any *feasible* alternative ADA parking proposals. It is now time to move forward with implementation of this project and we need a decision from the City. This letter provides an overview of the history of the Authority's project, MEHOA's proposal, and the next steps that need to be taken.

Brief History Leading to the Current Proposal

We have had many meetings with MEHOA regarding Lechuza Beach over the years. Meetings were held on July 7, 2005, April 26, 2006, November 29, 2006, March 9, 2007, July 10, 2007, August 9, 2007, and August 10, 2009. Proposed parking spaces along Sea Level Drive were discussed at the last four meetings. As stated above, the Grant of Easements from Lechuza Villas West, L.P. to the Mountains Recreation & Conservation Authority (recorded as document 02-1025266) includes an exclusive easement along Sea Level Drive for purposes of providing parking spaces for four (4) vehicles exhibiting Disabled Persons Parking placards or plates. We have considered many parking alternatives over the years (see attached). There are many constraints affecting the project. Some of these are:

- Private encroachments (e.g., stone walls, planters, mailboxes, gates, landscaping, timbers) constructed within the Sea Level Drive easement (40-feet-wide or wider);

- The parking spaces cannot be located within the fire lane (typically 20-feet-wide), nor within the Fire Department turnarounds;

- There are specific requirements per ADA and associated regulations and policies for the location and size of parking spaces for persons with disabilities, and requirements for the location and size of access aisles;

- The parking spaces are required to be located as close as possible to the destination.

We have specifically responded to residents' concerns by modifying the project. For example:

- The private property owner of the unbuilt beach lot (Lot 141, APN 4470-028-001) west of the physical terminus of East Sea Level Drive wrote to us regarding concerns over the previously-proposed parking spaces A and AA at East Sea Level Drive. He claimed that the proposed parking spaces would make it infeasible for him to access his parcel or make any economically viable use of his land. We are no longer proposing those parking spaces as part of the proposed project.

- Along West Sea Level Drive, the owner of 13833 West Sea Level Drive (Lot 59, APN 4470-026-021) wrote to us indicating that our previously proposed parking space C would make his property uninhabitable because implementation of the proposed parking space C would require abandonment the existing seepage pit. We are no longer proposing this parking space as part of the proposed project.

Please note that we continue to ask the City to retain these parking alternatives for consideration if we cannot otherwise obtain the necessary disabled persons parking capacity. Our ability to modify our proposal to accommodate these members of MEHOA is directly proportional to the ability to achieve our objectives elsewhere with the cooperation of your association.

Current Proposal for Parking Spaces for Persons With Disabilities

We've exhausted the parking options. I invite one last dialogue opportunity, but the Authority's current proposal seems the best option given the constraints of the site, the requirements of ADA, the building codes, our mandates and goals to provide maximum public access, and MEHOA's previous comments.

The Authority's proposal consists of the following elements (see the"Proposed Project" attachment for a complete project description and figures):

- Three parking spaces (B, C, and Z) and access aisles for persons with disabilities at East Sea Level Drive;
- One parking space (D) and access aisle for persons with disabilities at West Sea Level Drive;
- Code access system at vehicle gates at East Sea Level Drive and West Sea Level Drive for vehicles with disabled placards or plates to utilize parking spaces;
- A new coastal viewing area at West Sea Level Drive;
- Reconstruction of the existing view platform and stairs to the beach at West Sea Level Drive;
- New view platform at East Sea Level Drive;
- Reconstruction of the existing stairs along Lot I (across from Bunnie Lane);
- New gate and signage at the entrance to Lot I (off of Broad Beach Road across Bunnie Lane).

We have retained perhaps the premier accessibility consulting firm of Moore Iacofano Goltsman, Inc. (MIG). Based on their guidance we are proposing mechanisms for direct beach access for persons with disabilities. Additional information will be forthcoming to the City shortly regarding this proposal for a temporary ramp to the sand from the new view platform at East Sea Level Drive.

Superiority of the Authority's Proposal

(1) *Our project provides accessible parking spaces and access to the beach, as well as accessible facilities, and the project meets building codes*. As required, the parking spaces for persons with disabilities are located as close as possible to the beach.

(2) *Our project does not interfere with any property rights*. This project is located on the Authority's fee estate, or on the Authority's easement interests. The first parking space on (at the western terminus of) East Sea Level Drive maintains 20 feet, so that a driveway could be extended if the private beach lot (Lot 141) is ever built.

The proposed view platform at the terminus of Lot I/East Sea Level Drive, on

Authority-owned land, does not impede any vehicle or pedestrian access across Lot A. On the other hand, the Authority notes that there are numerous existing private improvements (*e.g.*, stone walls) constructed (presumably unpermitted) within the Sea Level Drive easement that impede everyone's rights to use the road.

(3) *The Authority's project will comply with Fire Department standards.* We have received Fire Department approval for a previous version of the project from Captain Jordan. The Authority's staff has been communicating with his replacement in Los Angeles County Fire Department. We have received preliminary input and anticipate receiving the approval from, and any associated new requirements of, the Fire Department soon.

(4) *This project has the least impact on the neighbors, with respect to removing encroachments in Lot A, compared with other parking alternatives considered.* Although some alternatives considered involving removing private decorative/stone walls in Lot A, the current proposal only involves the removal of planters, landscaping, and timbers. (Note that Lot A encompasses West Sea Level Drive and East Sea Level Drive.)

You will also note that we have photographs and aerial photos showing cars parked in front of the same lots where the Authority's parking spaces are proposed along East Sea Level Drive.

There are substantiative differences between East Sea Level Drive and West Sea Level Drive, and for this reason we have proposed more parking spaces at East Sea Level Drive (three spaces), than at West Sea Level Drive (one space). East Sea Level Drive provides a unique experience that cannot be duplicated at West Sea Level. The beach can be accessed relatively easily from East Sea Level Drive, *i.e.*, there is significantly less elevational difference from the road as compared to West Sea Level Drive. East Sea Level Drive is also relatively flat thereby making it easier than at West Sea Level Drive to meet the slope requirements for accessible aisles.

Moreover, at the present time some issues at West Sea Level Drive have not been resolved and these put into question whether a parking space for persons with disabilities can be implemented. The current paved road physically connecting Broad Beach Road to West Sea Level Drive passes over two private properties owned by members of your Association. This fact poses some legal questions regarding public and private access along this stretch of road, and while the Authority asserts its full rights of access thereto, perfecting these rights may require protracted litigation that we are perfectly willing to undertake, but which will take more time to resolve. Opening up Lechuza Beach should not take even more years of lawsuits. So in this sense, we have proposed the most "litigation adverse" alternative.

Furthermore, this stretch of road currently does not meet Fire Department standards (*i.e.*,

it is less than 20-feet-wide and the vegetation may obstruct clear passage by Fire Department apparatus). The Fire Department may require that this stretch of road be improved to higher standards, or an alternate entrance road be constructed, prior to implementation of the Authority's proposed parking space at West Sea Level Drive. Any modifications to this existing stretch of the road, or any new stretch of the road, in order to meet these fire standards are complicated by the potential need for litigation to prove-up the Authority's rights, topographic issues, and concerns from members of MEHOA who assert ownership of the land over which this stretch of road passes.

(As an aside, please note that nothing herein may be construed as in any way diminishing the Authority's assertion of its full and complete legal rights, both as a public agency and as the owner of property rights purchased from Lechuza Villas West, L.P., and as successor to the Marblehead Land Company that originally subdivided this land.)

We also note that West Sea Level Drive provides different views from those from East Sea Level Drive. We have attempted to spread out the parking spaces by locating at least one space at West Sea Level Drive.

Analysis of MEHOA's Proposal for Parking Spaces for Persons With Disabilities

As described above, we have met with MEHOA many times and we presented and discussed parking options. We have not received any written alternative parking proposals until our August 10, 2009 onsite meeting with MEHOA representatives (see attached proposal by MEHOA). In addition, MEHOA has not submitted anything that says how the current Authority plans for parking are infeasible.

On the other hand, MEHOA's proposal we received on August 10, 2009 does not comply with ADA. The MIG firm is our ADA specialist and their response to MEHOA's proposal is attached. In short, MEHOA's proposal relies on two separated parking spaces along East Sea Level Drive and an observation bench and it does not provide any access aisles to reach the Authority-owned public beach. The Lechuza Beach Public Access Improvements Project is for beach access–not merely to provide parking spaces and a beach overlook. The parking spaces are for all persons with vehicles with disabled placards, not just wheelchair-dependent persons.

Next Steps

After all these years: enough is enough. Unless MEHOA provides feasible and professionally-prepared plans for the parking spaces for persons with disabilities along Sea Level Drive, meeting ADA requirements, within 30 days of receipt of this letter, it is incumbent upon the City to complete the review of the Authority's application and set a hearing date. Hand drawn sketches and a succession of "what if's" just won't cut it anymore. Any alternative parking plans that MEHOA may provide should not include a proposal to remove fixed objects that encroach into the Sea Level Drive easement (*e.g.,*

stone walls), other than encroachments that are easier to remove (such as planters, timbers, and landscaping), unless such proposal is accompanied by a written, legally-binding consent by the subject property owner to allow removal of the fixed objects. We can envision a 'round-robin game of MEHOA proposals and parcel-owner objections that will only serve to 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.

Tony, I'm happy to talk to you in person about this (you can reach me at the above telephone number, ext. 110), but as you can surmise from the tone of this letter, after seven years, the time for jawboning has elapsed.

Sincerely,

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

cc: Stephanie Danner, City of Malibu
Douglas Bosco, Chairperson, State Coastal Conservancy (SCC)
Sam Schuchat, Executive Officer, SCC
Joan Cardellino, SCC
Mary Small, SCC
Chairperson and Members, California Coastal Commission (CCC)
Peter Douglas, Executive Director, CCC
John Ainsworth, Deputy Director, CCC
Pat Veesart, CCC

Enclosures provided to Mr. Giordano and Ms. Danner only:

- August 14, 2009 Letter from Laurel Kelly of MIG, to Joseph T. Edmiston, Executive Officer of Authority, regarding parking on East Sea Level Drive
- July 8, 2009 letter from Mr. Anthony Giordano, MEHOA, to Stephanie Danner, City of Malibu Re: Revised Lechuza Beach Improvements Project, Coastal Development Permit Application 07-087
- December 1, 2008 letter from Laurie Collins, Chief Staff Counsel of Authority to Ms. Stephanie Danner, Senior Planner, City of Malibu, Re: Response to MEHOA Letter Regarding Authority Lechuza Beach Public Access Improvements Project, Coastal Development Permit Application No. 07-087

- December 1, 2008 letter from Rorie Skei, Chief Deputy Executive Officer of Authority to Mr. Anthony Giordano, Malibu Encinal Homeowners Association, Re: Response to your October 21, 2008 Letter on the Lechuza Beach Public Access Improvements Project (Coastal Development Permit Application No. 07-087)

- October 21, 2008 Letter from Anthony Giordano, MEHOA, to Paul Edelman, Authority, and Stephanie Danner, City of Malibu, Re: Revised Lechuza Beach Improvement Project, Coastal Development Permit Application 07-087

- Materials provided by Authority staff to Anthony Giordano and Lisa Pallack at August 10, 2009 meeting onsite:

  (1) August 7, 2009 Memorandum from Timothy Gilbert, MIG, to Judi Tamasi, Authority Re: Accessible Parking

  (2) "Lechuza Beach Accessible Parking at East Sea Level Drive" parking requirements handout by MIG, August 9, 2007

  (3) Proposed Project, August 10, 2009, Lechuza Beach Public Access Improvements Project (CDP No. 07-087), Authority

  (4) Some Parking Project Alternatives Considered (Does not include currently proposed project) August 10, 2009, Lechuza Beach Public Access Improvements Project (CDP No. 07-087), Authority

- Handout received by Authority staff at August 10, 2009 site visit from Anthony Giordano, MEHOA showing proposed parking space and observation bench

- September 19, 2007 Memorandum from Laurel Kelly of MIG to Joseph Edmiston Re: ADA Requirements

Joseph T. Edmiston, FAICP
Executive Officer
Mountains Recreation and Conservation Authority
5810 Ramirez Canyon Road
Malibu, CA 90265

August 14, 2009

Dear Mr. Edmiston:

On Monday, August 10, 2009, I reviewed an alternative to the Lechuza Beach Public Access Improvement Plan for public parking on East Sea Level Drive, which was presented by representatives of the Malibu Encinal Homeowners Association (MEHOA).

According to the Coastal Act of 1976, the Mountains Recreation and Conservation Authority (MRCA) – the public agency responsible for the management and maintenance of Lechuza Beach – is charged with providing "maximum public access and recreational opportunities …for all the people" at this new public beach. Both federal law (Title II, 28 CFR 35, *Nondiscrimination on the Basis of Disability in State and Local Government Services*, of the Americans with Disabilities Act - ADA) and statewide code (Title 24 of the California Building Code - CBC) also require MRCA to provide access and facilities that are usable by people with disabilities.

Improved public access at Lechuza Beach has two components:

- improvements to the routes available to park visitors from public transit and parking opportunities **to the beach** (public access) and
- providing an equal experience for all visitors **at the beach** itself (beach access).

The MEHOA parking alternative addresses the provision of two separate, new public parking spaces with an adjacent observation bench on East Sea Level Drive that would be reserved for use by vehicles displaying a disabled person placard or license plate. Beach-level access from East Sea Level Drive to Lechuza Beach is a major component of providing an integrated, meaningful and equivalent beach experience for users of all ages and abilities. Currently, only residents and their guests have access to parking or drop-off spaces on East Sea Level Drive that are close enough to reach the public beach without the use of the Lot I stairs from Broad Beach Road.

The MEHOA parking alternative is unacceptable from an accessibility standpoint and with respect to the ADA and Title 24 of the CBC because the design specifically **restricts access** for persons with mobility disabilities to the area immediately adjacent to on-street

parking spaces disconnected from Lechuza Beach and makes **no provision for an accessible path of travel** from any parking space on East Sea Level Drive to the entrance of publicly owned Lechuza Beach.

Sincerely,
Laurel Kelly, ASLA

Laurel Kelly

Landscape Architect CA 4304
Project Manager, MIG