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January 22, 2010

**VIA FEDEX**

Ms. Lisa Tent  
Senior Code Enforcement Officer  
City of Malibu  
2385 Stuart Ranch Road  
Malibu, California 90265

Mr. N. Patrick Veersart  
Enforcement Supervisor  
California Coastal Commission  
South Central Coast Area  
89 South California Street, Suite 200  
Ventura, California 93001

Re: CCC Violation File V-4-04-005 (Lechuza Beach);  
Placement of certain improvements in "Malibu Encinal"  
and Lechuza Beach, Malibu, California (the "Property")

Dear Ms. Tent and Mr. Veersart:

We are writing on behalf of our client, the Malibu Encinal Homeowners Association ("MEHOA"), to respond to the Notice of Violation of the California Coastal Act dated January 15, 2010 (the "Notice of Violation") from the California Coastal Commission (the "CCC") to the City of Malibu (the "City"). As discussed below in detail, the Notice of Violation is based on erroneous assertions of fact and law. Contrary to its claims, MEHOA has a right to maintain the security gates in question under applicable principles of California law and the express provisions of the California Coastal Act (the "Coastal Act"). Accordingly, the Notice of Violation should be withdrawn by the CCC and the City should not take any action with respect to it.

The security gates in question are (i) one gate owned by MEHOA and located at the intersection of East Sea Level Drive (Lot A) and Broad Beach Road (the "East Sea Level Gate") and (ii) one gate on the property owned by William Kiefer and located at 31885 West Sea Level Drive (the "West Sea Level Gate"). The current gates in these locations are replacements of the original East Sea Level Gate (which was a wooden gate existing on the Property as of the early 1960's) and the original West Sea Level Gate (which was a chain-link metal gate existing on the Property as of the late 1960's) (collectively, the "Original Gates"). The purpose of the gates has been, and remains, to secure private property. The Original

Gates predated the enactment of the Coastal Act (which was adopted in 1976), and accordingly under the common-law principles of California law there is a vested right to maintain the gates. In addition, Section 30608 of the Coastal Act expressly recognizes that a property owner which has a vested right in a development prior to the effective date of the applicable Coastal Act section does not need to obtain approval for such development provided that “no substantial change” is made. As discussed below, replacement of an improvement for maintenance, modernization and repair purposes does not amount to a “substantial change” requiring prior approval and permits under the Coastal Act. Therefore, the vested right to maintain the gates is expressly recognized by the Coastal Act.

Furthermore, Section 30610(d) of the Coastal Act and Section 13.2.2(A) of the City of Malibu Local Coastal Program (the “LCP”) both expressly authorize certain repair or maintenance activities without obtaining a coastal development permit when such activities “do not result in an addition to, or enlargement or expansion of, the object of those repair or maintenance activities...” The replacement of the outdated Original Gates with new gates having the same function falls within the express exemption provisions of Section 30610(d) of the Coastal Act and the LCP. Indeed, the CCC issued an “Exemption Letter” on June 8, 1993 recognizing that the replacement of the East Sea Level Gate is exempt from the coastal development permit requirements in accordance with the foregoing principles. We note that the exemptions provided under Section 30610(d) and Section 13.2.2(A) would have been applicable even if an Exemption Letter had not been issued.

The CCC’s Notice of Violation erroneously argues that the gates are ‘new development’ requiring coastal development permits. However, the CCC’s discussion ignores the facts and authority discussed in the preceding paragraphs, as well as the fact that replacement and maintenance of the gates falls within one of the express exclusions to the definition of new development contained in Section 30212(b)(3) of the Coastal Act, which provides that “new development” does not include “improvements to any structure which do not change the intensity of its use, which do not increase either the floor area, height or bulk of the structure by more than 10 percent, which do not block or impede public access, and which do not result in a seaward encroachment by the structure.” The replacement of the gates using more modern materials in the same location that does not change its use should not constitute a new development project requiring a coastal development permit under the Coastal Act. The gates continue in their historic and continuous function of securing private property.<sup>1</sup>

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<sup>1</sup> The MRCA’s acquisition of public access easements to Lechuza Beach is subject to all of the vested rights of the gate owners and to the maintenance of the gates under the restrictive covenants and easements encumbering the MRCA’s interests.

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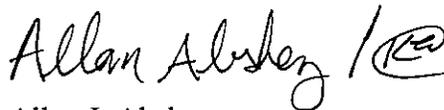
The CCC's claims that certain materials and structures encroach upon the public right-of-way on Broad Beach Road and cause a loss of public beach parking are vague and lack specificity. However, to our knowledge they are also incorrect. Currently, no private encroachments exist on Broad Beach Road that interfere with public parking or public access to Lechuza Beach.

Finally, the Notice of Violation refers to certain "unpermitted signs at Lechuza Beach" without any specific details. We are unclear which signs are in question and request additional information from the CCC so that we may more fully respond. However, the existing signs maintained by MEHOA within the Lechuza Beach community are the same that have existed for years (pre-dating the Coastal Act), which do nothing other than accurately advise passers-by of the private property rights with respect to the property so posted.

For the foregoing reasons, the Notice of Violation has been erroneously issued, should be withdrawn by the CCC, and should be disregarded by the City. Please feel free to call me or have your respective legal counsel call me if you have any comments or questions.

Thank you for your cooperation.

Very truly yours,



Allan J. Abshez

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cc: Mr. John Ainsworth, Deputy Director, CCC  
Ms. Lisa Haage, Chief of Enforcement, CCC  
Alex Helperin, Esq., Staff Counsel, CCC  
Mr. Steve Hudson, South Central District Manager, CCC  
Ms. Barbara Carey, Supervisor, Planning and Regulation, CCC  
Mr. Tom Sinclair, South Central District Enforcement Officer, CCC  
Mr. Aaron McLendon, Statewide Enforcement Officer, CCC  
Ms. Linda Locklin, Public Access Manager, CCC  
Mr. Joe Edmiston, MRCA  
Ms. Laurie Collins, MRCA  
Ms. Judi Tamasi, MRCA  
Ms. Mary Small, State Coastal Conservancy  
Ms. Elena Eger, State Coastal Conservancy  
Ms. Stephanie Danner, City of Malibu  
Christi Hugin, Esq., City Attorney, City of Malibu  
Ms. Lisa Pallack, MEHOA  
Mr. William Kiefer