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COASTAL CONSERVANCY
OAKLAND, CALIF.

Joan Cardellino, Project Manager/Deputy Manager, South Coast Region
CALIFORNIA STATE COASTAL CONSERVANCY
1330 Broadway, 13th Floor
Oakland, CA 94612-2530

Re: Malibu Coastal Access Public Works Plan (Project No. 12-024-01)
Lent Property -- 20802 Pacific Coast Highway, Malibu, CA 90265

Dear Ms. Cardellino:

As you may recall from our earlier communications (dating back to 2008), this office represents the owners (Dr. and Mrs. Warren Lent) of the residence located at 20802 Pacific Coast Highway, Malibu (occasionally referred to below as the "20802 Property") which is identified at Exhibit 4(C) as being one of the twelve (12) parcels discussed in the December 6, 2012 staff recommendation for the Malibu Coastal Access Public Works Plan (the "Public Works Plan" or "PWP") proposed by the California State Coastal Conservancy (the "Conservancy"). For the reasons discussed more fully below, it is submitted that the scope of the environmental degradation and adverse health and safety consequences associated with the improvements necessary to implement such access -- and profound inconsistency with the Conservancy's "Standards and Recommendations for Accessway Location and Development" (the Conservancy "Guidelines," a copy of which is attached hereto as Exhibit "1") -- render the 20802 Property uniquely *unsuitable* for such public use.

NECESSITY OF PROJECT-BY-PROJECT REVIEW AND EVALUATION/NONDISCLOSURE OF VIABLE VERTICAL ACCESSWAYS

The stated goal of the PWP is to explore the feasibility of developing each parcel as a vertical accessway, and to prioritize each site on the basis of its viability, consistent with the policies of the Coastal Act and other provisions of state law as well as the Conservancy's Guidelines. The staff report also asserts: "[a]s with any development along the coast, each of the proposed accessway development projects under the Public Works Plan is subject to review for consistency with the policies of the Coastal Act . . .[which] would usually take the form of a project-by-project review by the local government for consistency with its Coastal Commission - Certified Local Coastal Program [emphasis added]." The ostensible rationale for a programmatic environmental document such as the PWP is to expedite the approval process by undertaking the requisite assessments through a single administrative action rather than piecemeal individual proceedings. While conserving staff and financial resources is a laudable goal, this "streamlined" process cannot serve as a pretext for less stringent examination of site related adverse consequences/LCP inconsistencies/health and safety risks posed by the improvements associated with each individual access project.

The Conservancy staff report asserts (at page 3) that there are a total of twenty (20) "vertical" accessways between Las Tunas State Beach and Nicholas Canyon County Beach, identifying (at Exhibit 2 thereof) eight (8) such accessways as being developed and currently in use, with the remaining vertical accessways to be ostensibly evaluated by the PWP. Unfortunately, the Conservancy's Public Works Plan fails to disclose additional vertical accessways, three (3) of which are in proximity to the 20802 Property, thus subverting the efficacy of any evaluation of feasibility and/or the prioritization of available sites in accordance with

policies of the Coastal Act. Such non-disclosed vertical accessways include: (1) the accessway(s) adjacent to Duke's Restaurant [1/] (21202 Pacific Coast Highway), located one-half mile to the west of the 20802 Property (this is also the location of the crosswalk nearest to the 20802 Property); (2) the Moonshadows property (located at 20340 Pacific Coast Highway) roughly one-half mile east of the 20802 Property; and (3) an additional vertical accessway at 19900 Pacific Coast Highway.[2/]

BACKGROUND FACTS

1. *Current Development of 20802 Property*

The property commonly known as 20802 Pacific Coast Highway was once developed with two (2) residential units, which were destroyed by winter storms in 1977. The easterly contiguous property located at 20766 Pacific Coast Highway concurrently suffered extensive damage. It is noted in the staff summary and recommendations issued by the Commission for redevelopment of the 20802 property in 1978, that "[t]his entire stretch of beach is subject to damage from high tide and high surf, especially in combination, as was demonstrated last winter." [emphasis added]. Indeed, it is commonplace for the beach of the 20802 Property to be totally devoid of sand, as shown in the photo attached hereto as Exhibit "3."

In early 1979, the Commission granted permit A-421-78, authorizing construction of a new single family residence at the 20802 Property conditioned upon receipt of an offer to dedicate a vertical access easement for public pass/repass purposes along the easterly property line, above a massive storm drain outfall pipe serving Pacific Coast Highway and adjacent northerly areas. Such vertical easement included the right to construct stairs down to the beach seaward of the proposed new residence. The permit also included the Coastal Commission's "standard lateral access conditions" allowing the public to "walk, sit, swim, or participate in any normal beach activities," as long as such use did not occur within five (5) feet of the landowner's structure. It is noteworthy that the entitlement issued for redevelopment of the easterly adjacent parcel (the duplex located at 20766 Pacific Coast Highway, Application No. P-79-5866) likewise required dedication of a lateral access easement, but in that case (which was being processed contemporaneous to the development proposal for the 20802 Property), the privacy buffer was double (10 feet) the privacy buffer allowed in favor of the 20802 Property.

In 1980/1981, an amendment was sought and received for the 20802 Property which conformed with the string line approved for the duplex to the east, and also approved construction of a loft/mezzanine area. The diagram approved by the Commission in connection with such amended entitlement clearly depicts (at Exhibit 2 of the Commission staff recommendation [Exhibit "4" attached hereto]) a secondary egress doorway out of the easterly side of the residence by which access was provided to stairs along that side of the property. The plans approved by the County of Los Angeles in 1980 for the 20802 Property clearly depict the stairs along the easterly side of the residence (see Exhibit "5" attached hereto).

2. *Coastal Conservancy Inspection/Knowledge of Structures in Access Easement Area*

In August of 1993, the Conservancy sent a letter to the then owner of the 20802 Property notifying him that the Conservancy staff would be conducting a site visit during the week of August 30, 1993

[1/]Such accessway(s) are designated as LA # 24 and #25 in chapter 3 of the Commission materials entitled "Vertical Accessways Acquired by California Coastal Commission Actions 1973-2011," pages 58-60, inclusive, attached as Exhibit "2A" and made a part hereof.

[2/]This parcel is identified as LA#27 on the Coastal Commission's "Vertical Accessways" materials, see Exhibit "2B" attached hereto and made a part hereof.

"to view the easement." Thereafter, on September 15, 1993, the Conservancy sent a letter to the owner's attorney stating that the Conservancy staff had conducted an inspection of the property and determined that the "gate across the vertical access easement" violated "Conservancy's access easement by blocking it." While the staff field report expressly noted the clearly visible stairs and landing in such access easement area, they were not included as a component of the accusations/allegations asserted against the owner.

The 20802 Property was sold to a new owner in 2000, and then resold to our clients in November of 2002. Shortly thereafter, the Commission sent Dr. Lent a fax (dated January 8, 2003) advising him about the offer to dedicate the access easement.

In April and May of 2007, Dr. and Mrs. Lent received further written communications from the Commission ("Notice of Coastal Act Violation No. V-4-02-058; Failure to Comply with Permit Conditions") relating to the "presence of a white metal fence and gate, vegetation, planters, a mailbox, and a deck area, all of which appear to be inconsistent with the Permit Condition and purpose of an easement for public access." Such notification from the Commission made no mention of and did not allege any Coastal Act violation relating to the easterly stairs/landing which provided egress from the Lent residence.

On July 26, 2010, a meeting was conducted at the Subject Property which was attended by you, the undersigned, Dr. Lent, the Commission's enforcement agent (Aaron McLendon), and the designer who was developing the beach access plan for the Conservancy's agent, Bionics (Kelly Schoonmaker). At such meeting, Mr. McLendon made the affirmative and unequivocal statement that until such time as the easements were "actually assumed by the Conservancy or management entity," it was permissible for the property owner to keep a fence in place to prevent harm to members of the public and minimize the risk of liability to the property owner.

THE IMPROVEMENTS PROPOSED BY THE CONSERVANCY TO PROVIDE VERTICAL BEACH ACCESS AT THE 20802 PROPERTY ARE: (A) LOGISTICALLY INFEASIBLE AND (B) PROFOUNDLY INCONSISTENT WITH GOALS AND POLICIES OF THE COASTAL ACT, THE CONSERVANCY'S GUIDELINES, AND LOCAL HEALTH AND SAFETY REQUIREMENTS.

(A) *Lack of Feasibility of Proposed Improvements*. In the summer of 2010, the Conservancy presented our clients with conceptual materials relating to proposed accessway improvements contemplated for the 20802 Property. Such materials included diagrams depicting stairs and a proposed 40-foot cantilevered structure to be constructed in the vertical access area, and a 60-inch wide set of stairs down from the cantilevered structure to the beach below (a drop in excess of 13 feet) to be constructed in the lateral access easement area, inconsistent with the fact that such easement only allowed for public walking, sitting and other such recreational use and did not include any right to construct improvements therein [see attached Exhibit "6A"]. The Conservancy's proposed stairway also partially encroached into the 5-foot wide privacy buffer where no public use was to be allowed. Another page of the Conservancy proposal (Exhibit "6B") identified as alleged "encroachments" the stairs/landing constructed some 30 years earlier along the easterly side of the dwelling to provide required secondary access to/from the residence. See analysis from our clients' consulting architect, attached hereto as Exhibit "7," which concludes that two (2) means of egress from the residence are required under applicable local codes, and that removal of such stairway/landing would create serious life safety risks. The Conservancy's expert/agent acknowledges such egress requirement in the upper right hand corner of Exhibit "6B" attached hereto.

There are a myriad of seemingly insurmountable problems associated with the access structure proposed by the Conservancy, as discussed more fully in the draft analysis by our clients' structural engineer, David C. Weiss, attached hereto as Exhibit "8." First and foremost are the constraints presented by the

Caltrans storm drain. After taking into consideration the concrete sleeve around the pipe, there does not appear to be sufficient space between such structure and the easterly property line to construct the requisite improvements necessary to support the walkway above such storm drain, which cannot itself provide the requisite structural support. There are also logistical problems associated with prospective support of the northerly terminus of the cantilevered walkway given the presence of multiple underground drainage lines that converge in the same area and discharge into the outfall device. Mr. Weiss also points out that the proposed stairway to the beach presents another problem given the hundreds of pounds per square foot of lateral wave force that would strike the stairs and the requisite supporting piles, as well as the bulkhead of adjacent structures. Abrasion and corrosion would be another problem which Mr. Weiss likens to the maintenance required for a battleship at sea. It is noteworthy that the Commission, in approving development of the 20802 Property, concluded that the storm drain outfall pipe could not extend beyond the bulkhead so the public would not be put at risk by the presence of such manmade structure where public recreational use would occur. It is submitted that comparable risks to public safety are posed by the improvements proposed by the Conservancy, which would nearly sever the beach and irreparably degrade the viewshed of the public and nearby landowners in an unprecedented fashion.

(B) *Lack of Consistency with Goals and Policies of the Coastal Act and the Guidelines*. The Conservancy's Guidelines were adopted by that agency and the California Coastal Commission "to ensure a consistent approach is used for access construction . . . these standards apply to all new and existing developments." It is submitted that the improvements necessary to furnish viable access from Pacific Coast Highway to the beach at the 20802 Property are wholly inconsistent with the following provisions of the Coastal Act:

> Section 30251, which states: "The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas . . ."
>
> Section 30253, which states that new development shall: ". . . (2) neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area. . . ."

The proposed Conservancy improvements are also inconsistent with the following provisions of the Guidelines:

> Standard No. 1, which states: ". . . accessway design and location should: a) minimize alteration of natural land forms and be subordinate to the setting's character; b) prevent unwarranted hazards to the land and public safety. . ."
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> Standard No. 6 (Lateral Accessways), which states: "Lateral accessways should include a minimum of 25 feet of dry sand at all times of the year or the entire sandy area if the beach is less than 25 feet. They should not extend further inland than any shoreline protective structures; nor should they come closer than 10 feet to an existing single-family home." [Emphasis added].
>
> Standard No. 7 (Vertical Accessways), which states that: "Vertical accessways should be a minimum 10 feet wide. . . Stairways, ramps, trails, over- or underpasses are some of the facilities that can be built on vertical accessways. Drainage systems to prevent erosion may also be necessary."

The 20802 Property presents a wholly unique set of facts and constraints militating against development of the vertical access improvements proposed by the Conservancy. No other property in Malibu involves stairs or other structures extending seaward of adjacent residential development, and the easements granted for public use of

the 20802 Property do not include any right to construct stairs or other such improvements in the lateral easement area. Constructing stairs down to the beach in the vertical access easement area seaward of and in the line of discharge of the massive Caltrans storm drain outfall pipe is not feasible. In addition, removal of the secondary ingress/egress stairway along the east side of the residence would render it noncompliant with applicable codes, and pose unreasonable health and safety risks of harm to occupants of the dwelling.

This letter does not purport to set forth all of the facts surrounding the instant matter, and nothing contained herein or omitted from this letter shall be construed as a waiver, relinquishment or abandonment of any rights, claims or remedies which our clients may have at law or in equity, all of which are hereby expressly reserved.

Very truly yours,

LAW OFFICES OF G. GREG AFTERGOOD
a Professional Corporation

By: _____
G. GREG AFTERGOOD

GGA:gm
enclosures
cc: Sam Schuchat, Executive Officer
Glenn Alex, Legal Counsel
Moira McEnespy, Deputy Program Manager, South Coast Regional Conservancy
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Clients