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February 19, 2013

VIA FIRST CLASS MAIL & EMAIL at [jcard@scc.ca.gov](mailto:jcard@scc.ca.gov)

Ms. Joan Cardellino  
Ms. Kara Kemmler  
State of California Coastal Conservancy  
1330 Broadway, 13<sup>th</sup> Fl.  
Oakland, California 94612-2530

**Re: Project Number 12-024-01**  
**Malibu Coastal Access Public Works Plan**  
**Item No.: 10 (D)**  
**21554 PCH; fee owner: Wayne deed restriction in favor of public access**  
**Approved: December 6, 2012**

Dear Mses. Cardellino and Kemmler:

As this office informed you in our correspondence dated December 5, 2012, we have been retained by property owners along La Costa Beach in the City of Malibu, including the current owner of the 21554 Pacific Coast Highway ("PCH") property, to represent their interests in the above referenced matter which was approved by the Coastal Conservancy ("Coastal Conservancy") as Project Number 12-024-01 at its public meeting on December 6, 2012.

We have had an opportunity to review the Exhibits attached to the Staff Recommendation for the Malibu Coastal Access Public Works Plan, dated December 6, 2012, and wish to comment with regard to the 21554 PCH property, referenced in said Staff Recommendation as Exhibit 4("D").

As stated on page 5 of the Staff Recommendation, the 21554 PCH property was subject to a deed restriction in favor of public access. The actual deed restriction, a copy of which is attached hereto as **Exhibit 1**, was recorded in the Office of the Los Angeles County Recorder on September 13, 1976, as document No. 3304. The deed restriction specifically provides on page 2 as follows:

"To grant to the public the privilege and right to pass and repass over a strip of Dedicator's said real property six (6) feet in width measured from the westerly property line and extending from the edge of the public right-of-way, Pacific Coast Highway, to the mean high tide line of the Pacific Ocean, subject to the following qualifications (see attached Exhibit 2)"

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Exhibit 2 to the recorded deed restrictions provides in relevant part as follows:

- “2. The access way shall not be opened to the public until the access way has been accepted by the Los Angeles Co. Dept. Of Beaches (acceptance document to be attached to this dedication), for maintenance and operation in the same manner as their existing access ways (i. e., gated and opened to the public from sunrise to sunset).”

As stated above, the deed restriction was specifically conditioned on the access way *not* being opened for public use until accepted by the County of Los Angeles Department of Beaches (presently entitled Department of Beaches & Harbors). It has never been accepted by the County, or for that matter, any other public agency or private association.

The website referenced in the Staff Recommendation for the Malibu Coastal Access Public Works Plan, <http://see.ca.gov/webmaster/ft/malibu>, includes the Staff Recommendation of California Coastal Commission Appeal No. 139-76 (which was the appeal for the underlying Coastal Development Permit (CDP) No. P-7255 which required the deed restriction). The Staff Recommendation for Appeal No. 139-76 provides further clarification of the Coastal Commission’s intent in conditioning it’s approval of a new residence proposed for 21554 PCH on the recorded deed restriction. The Staff Recommendation for Appeal No. 139-76 specifically provides on page 2, in relevant part, as follows:

“Prior to commencement of construction the applicant shall: (a) obtain the approval of the Executive Director of the Commission as to the form and content of the grant of easement and (b) record them as approved. If the County of Los Angeles does not immediately accept the dedication, the applicant shall record an irrevocable offer of dedication approved as provided above prior to the commencement of construction.

The vertical access easement shall not be open to the public unless it is improved and maintained, with a gate locked at night, by the County of Los Angeles or another government agency.

In the event that vertical access is made available to the public within .2 mile to the west or east of the project site, the vertical access easement required above shall revert to the owner of the subject lot.”

A copy the California Coastal Commission Staff Recommendation for Appeal No. 139-76 is attached hereto as **Exhibit 2**.

With regard to the application at hand, the County has never accepted any dedication, much less “immediately” accepted the dedication. Further the applicant was never “required to

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record an irrevocable offer of dedication” prior to the commencement of construction and/or at any other time.

In addition, the other proposed location for vertical access at La Costa Beach at 21664 PCH as referenced in the Malibu Coastal Access Public Works Plan as proposed site “E” is less than .2 miles from the subject 21554 PCH property. Pursuant to the Staff Recommendation on Appeal, if the proposed site “E” at 21664 PCH is open for public access the recorded vertical access way at 21554 PCH would revert to the current owner of the 21554 PCH. Exhibit 2 page 2.

In that the County of Los Angeles Department of Beaches did not immediately (or ever) accept the deed restriction as provided for in the Staff Recommendation on Appeal, the applicant should have been required to record an irrevocable offer of dedication prior to the commencement of construction. He did not. County of Los Angeles records indicate that a building permit for a residence at 21554 PCH was issued in or about July 1977 and completed in or about January 1979. A copy the County of Los Angeles Application for Building Permit and approved Site Plan are attached hereto as **Exhibit 3**. As such, if the former applicant owner had granted “an irrevocable offer of dedication” prior to the commencement of construction as provided for in the Staff Recommendation on Appeal the time to accept the “offer to dedicate” would have expired over 14 years ago. The Coastal Commission’s Public Access Action Plan, dated June 1999, clearly supports this proposition and provides in relevant part as follows:

“To ensure that the offer would actually become a public access way within a reasonable time frame, the Commission adopted a 21-year time limit for the offer. This meant that the Commission expected the offer would take no longer than 21 years to actually become mitigation for the project”.

A copy of the applicable pages of the California Coastal Commission Public Access Action Plan, dated June 1999, are attached hereto as **Exhibit 4**. See page 29.

In conclusion, my clients vigorously contend that the proposed vertical access way proposed for 21554 PCH, as referenced as location “D” in the Malibu Coastal Access Public Works Plan, be deleted from said plan.

- The recorded deed restriction pursuant to its own terms was to be accepted *only* by the County of Los Angeles Department of Beaches, not the Coastal Conservancy or Mountains Recreation and Conservation Authority;
- If the deed restriction was not immediately accepted by the County Department of Beaches, pursuant to the Coastal Commission’s Staff Recommendation of the underlying CDP on appeal, the applicant should have been required to record an

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offer to dedicate the access way prior to the commencement of construction. The former owner applicant, however, did not do so and was not required to do so by the Coastal Commission;

- If the former owner applicant had been required to record an offer to dedicate the proposed vertical access way at 21554 PCH pursuant to the specific language contained in the Staff Recommendation on Appeal for the underlying CDP, said offer to dedicate would have expired over 14 years ago pursuant to the Coastal Commission's own policy and Public Access Action Plan; and
- Pursuant to the specific terms of the Staff Recommendation on Appeal of the underlying CDP, the proposed vertical access way as provided for in the recorded deed restriction, would revert back to the owner of the 21554 PCH property if another access way was open within .2 miles of 21554 PCH. The access way proposed at 21664 PCH, and as referenced as proposed location "E" in the Malibu Coastal Access Public Works Plan, is within .2 miles of the 21554 PCH property, and, as such, if opened for public access would require that the proposed access way at 21554 PCH revert back to the current owner of said property.

It would be greatly appreciated if after your review of this correspondence you would discuss this issue with Linda Locklin, the Public Access Program Manager with the California Coastal Commission and advise this office whether you agree with our analysis and whether the 21554 PCH proposed access way will be deleted as proposed location "D" in the Malibu Coastal Access Public Works Plan, dated December 6, 2012.

Thank you for your anticipated courtesy and cooperation.

Very truly yours,

LAW OFFICES OF  
BLOCK & BLOCK  
A Professional Corporation

  
ALAN ROBERT BLOCK

ARB:sp  
enclosures

cc: Richard Dane  
Linda Locklin, California Coastal Commission

**RECEIVED**

FEB 21 2013

COASTAL CONSERVANCY  
OAKLAND, CALIF.