



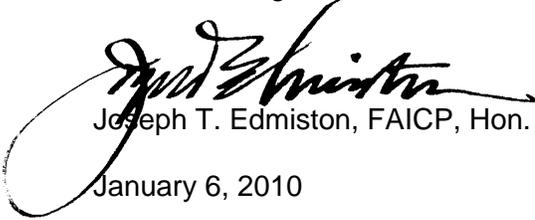
MOUNTAINS RECREATION & CONSERVATION AUTHORITY

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MEMORANDUM

(Corrected)

TO: The Governing Board

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

DATE: January 6, 2010

SUBJECT: **Agenda Item XV: Public hearing on, and consideration of, Initial Management Plan for Lechuza Beach which shall consist of the applicable provisions of the Malibu Municipal Code and compliance with the provisions of the California Coastal Act of 1976.**

Staff Recommendation: That the Governing Board adopt the attached resolution approving an Initial Management Plan for Lechuza Beach.

Background: Beach access issues are always controversial in Malibu and Lechuza Beach has proven no exception, perhaps even reaching the high water mark of such controversies. In 2002, pursuant to a grant from the State Coastal Conservancy, the Mountains Recreation and Conservation Authority (MRCA) acquired just under a quarter mile of beach west of Lechuza Point in Malibu for \$9,000,000.

The history of Lechuza Beach is well summarized by the California Court of Appeal in *Malibu-Encinal Homeowner's Association v. Lechuza Villas West, LLC*, Case No. B150612 [filed November 13, 2002]. (See attached.) In that case the Malibu-Encinal HOA (hereafter MEHOA) sought to prevent the sale to MRCA. The court rejected MEHOA's arguments and in so doing characterized the transaction as follows: "MRCA's purchase would ensure the beachfront lots would be permanently used as public beaches." [Emphasis added.]

In the almost eight years since purchase of Lechuza Beach the we have held literally dozens of meetings with MEHOA, the Coastal Conservancy staff and Chairperson, the California Coastal Commission staff, and the city of Malibu staff. The MRCA Board even held on on-site public hearing. All to no conclusion. The Homeowner's Association maintains a view of its rights that is incompatible with the rights that MRCA acquired by deed; incompatible with the court decisions, and with the California Coastal Act.

Early-on the Authority's staff was relatively malleable in the hope that a quick resolution with

MEHOA would lead to opening up more public access and the construction of much needed improvements. Such a hope has been dashed because the concessions by MRCA staff have not been met with equal concessions (or really any concessions) on the part of MEHOA, and both parties are subject to the California Coastal Commission that has been specific and insistent with respect to what is required to comply with the Coastal Act.

So ninety-one months later the situation for public access is pretty dismal: (1) the homeowner's association still does not recognize that MRCA has rights to open this beach to the public; (2) the city of Malibu has delayed ruling on our Coastal Development Permit (instead they keep sending it back to us as "incomplete"), and (3) all this made worse by the fact that MEHOA insists (as against MRCA's counsel's opinion) that the homeowners must approve any Coastal Development Permit application.

Attached is a representative sampling of documents that trace the background and history of attempts at a management plan (the full Lechuza file, recently the subject of a Public Records Act request, goes over 8,000 pages).

Precipitating factors militating in favor of the proposed action: A host of events have joined to make it necessary for the Authority to take action:

- The MRCA staff met with the California Coastal Commission enforcement staff and the project manager and staff counsel of the State Coastal Conservancy in order to consider yet another extension of the deadline, initially set in 2006, for removal or Coastal Development Permit (CDP) for the unpermitted gates, one of which (Lot I at Bunnie Lane) is on MRCA deeded property and another is on MRCA easement property. The Commission staff reminded MRCA that almost four years have gone by without action by MRCA and that a strong enforcement letter would be forthcoming, if not a request for Cease and Desist Order.
- The Malibu-Encinal HOA served MRCA on November 2, 2009 with notices of default (copies attached) that purport to allow MEHOA to take action for "the termination of the MRCA's property interests within the Tract [i.e., Lechuza Beach]." From discussions with MEHOA's attorney they appear serious. The Authority needs to respond with a specific plan of action.
- Under the grant agreement with the State Coastal Conservancy prior to making new improvements a management plan must be adopted by MRCA. While not an ideal situation, it appears that a lowest common denominator plan will satisfy the minimum requirements of the Coastal Conservancy grant. The plan endorsed by MEHOA, although suggested by the Coastal Conservancy chairperson, was never adopted by the Coastal Conservancy Board nor has it been adopted by the Authority board, and the Coastal

Commission has expressed serious reservations about it with respect to the hours of beach accessibility.

Current informal management/enforcement policy: Following the letter of April 23, 2007 from the Coastal Commission's Enforcement Supervisor (copy attached) the Authority staff realized that some portions of the then existing signage would not pass California Coastal Act muster, particularly those limiting the hours of beach access and those limiting beach use itself. In order to avoid a possible Coastal Act violation the Executive Officer directed that the signs at East Sea Level Drive pedestrian access, the Bunnie Lane (Lot I) access, and West Sea Level Drive pedestrian access should be changed so as to only enforce the Malibu Municipal Code.<sup>1</sup> (Attached is a copy of the current rules sign.)

Content of proposed "Initial Management Plan": The plan proposes only to enforce the Malibu Municipal Code and the California Coastal Act of 1976. This is admittedly a "minimalist" approach, but it seems to be the only one that can be implemented without protracted controversy. And even this will, no doubt, be challenged because MEHOA steadfastly asserts that the only governing document is the Malibu-Encinal Homeowners Association CC&R's.

Attachments may be viewed and downloaded at [www.drop.io/1-6-10attachments/media](http://www.drop.io/1-6-10attachments/media)

List of Attachments:

- (1) Proposed Initial Lechuza Beach Management Plan
- (2) Copy of existing sign at Bunnie Lane access way entrance
- (3) Court of Appeal opinion in *Malibu-Encinal Homeowners Association v. Lechuza Villas West, LLC*, Case No. B150612 [November 13, 2002].
- (4) Letter to City of Malibu from Coastal Commission Enforcement Supervisor, August 21, 2006.
- (5) MRCA staff comments on Douglas Bosco proposed Interim Management Plan.

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<sup>1</sup> MEHOA has asserted that the MRCA Park Ordinance does not apply. MRCA staff disagrees with this assertion, but because what the Authority is seeking to enforce is within the provisions of the Malibu Municipal Code, and there can't be any reasonable argument that the Municipal Code is inapplicable, the Authority's rangers have been instructed to enforce using the Malibu Code.

(6) Letter to Joseph Edmiston from Coastal Commission Enforcement Supervisor, April 23, 2007.

(7) MRCA letter to Coastal Commission Enforcement Supervisor, June 20, 2007, responding to MEHOA.

(8) MEHOA letter to MRCA, October 20, 2008, purportedly disapproving CDP application for Lechuza improvements.

(9) MRCA letter to MEHOA, September 1, 2009, re: Coastal Development Permit application

(10) MEHOA Notice of Default (CC&R's), November 2, 2009.

(11) MEHOA Notice of Default (Grant of Easements), November 2, 2009.