

Agreement: Interim Public Access Management Plan Ackerberg Easement, Malibu, CA

This *Agreement: Interim Public Access Management Plan* (“Plan”), dated July 25, 2012, is entered into by and between the Mountains Recreation and Conservation Authority (“MRCA”), the State Coastal Conservancy (“Conservancy”) and the California Coastal Commission (“Commission”), and concerns the acceptance and management by MRCA of a vertical access easement (the “Easement”). The Plan shall become effective on the recordation by MRCA of a Certificate of Acceptance (“Acceptance”), in the form approved by all parties.

Background

The Easement was originally created by the recording of an acceptance, by a nonprofit organization, Access for All (“AFA”), of an Offer to Dedicate (“OTD”) required as a development permit condition by the Commission. Following a public hearing in 2011, pursuant to the terms of AFA’s acceptance of the Easement, the Conservancy authorized the divestment of all right, title and interest held by AFA in the Easement and the transfer of those rights to MRCA. In connection with MRCA’s acceptance of the Easement, the Conservancy has retained a future contingent interest in the Easement.

To date, the Easement has not been developed or opened to the public, nor are any public access improvements in place. At present, certain encroachments constructed by the property owner (“Ackerberg”) prevent the opening and development of the Easement. Various lawsuits (“Easement Litigation”) related to the Easement, the encroachments and the failure of Ackerberg to allow development and opening of the Easement are currently pending, including: *Lisette Ackerberg et al. v. California Coastal Commission et al.*, Court of Appeal, Second Appellate District, No. B235351 (appeal fully briefed, awaiting appellate court decision); and *Access for All v. Lisette Ackerberg Trust, et al.*, Los Angeles Superior Court No. BC405058 (on hold pending resolution of the Ackerberg v. Commission lawsuit.)

Description of the Easement

The Easement is ten feet in width, extends across the entire eastern boundary of the Ackerberg property at 22466-500 Pacific Coast Highway, Malibu and allows for public access from Pacific Coast Highway (“PCH”) to the mean high tide line of Carbon Beach.

The Easement directly connects to 280 linear feet of public beach easement. At the shoreline, the Easement adjoins a lateral public access easement extending the length of the Ackerberg property. This lateral beach easement is held by the State Lands Commission and is 148.30 feet in length. The State Lands Commission also holds an adjacent 61.76 foot long public access beach easement, located directly west of the easement on the Ackerberg property. In addition, on the 70-foot-long parcel immediately to the east of the Ackerberg property, there is a recorded deed restriction dedicating lateral public access along Carbon Beach.

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Purpose of the Plan

The purpose of the Interim Management Plan is to address the immediate obligations of MRCA in accepting the Easement and those obligations that MRCA will agree to take on after the Easement Litigation is resolved and all legal impediments to development and opening the of the Easement have been removed.

Obligations on Acceptance of the Easement

MRCA agrees to hold the Easement for the purpose of public access to and along Carbon Beach and to take no action that will impair or adversely affect this overriding purpose of the Easement. In particular, MRCA will hold the Easement subject to the terms and provisions of the Acceptance, the OTD and this Plan.

MRCA shall not abandon the Easement, although it may transfer the Easement to another public entity or nonprofit organization which is qualified to hold the Easement, subject to the prior written approval of the Conservancy and the Commission, which may be conditioned on execution of an approved management plan with the transferee. Any attempted transfer without the prior approval of the Commission and Conservancy is void and without effect.

MRCA shall obtain the advance written approval of the Conservancy, through its Executive Officer, and the Commission, through its Executive Director, before MRCA undertakes, authorizes or permits any action or enters into any agreement or voluntarily participates in any litigation that may materially affect, alter, impair or delay the future use of the Easement for public access or the use of the Easement by the public or that may be inconsistent with the material terms of this Plan, the OTD and the Acceptance. The Conservancy and the Commission shall not unreasonably delay or withhold approval.

In the event that MRCA is required, by law or by judicial decision, to participate or join in litigation specifically related to the Easement by reason of its acceptance of the Easement or as holder of the Easement, the parties, in good faith and to the extent permitted by law, shall negotiate and enter into a joint litigation agreement, the purposes of which are to protect the shared interests of the parties in the Easement and, to the extent feasible, to reduce, limit or avoid any costs to MRCA of participation or joinder in the litigation.

Obligations on Removal of Impediments to Development of the Easement

MRCA shall have no obligation to develop or improve the Easement for public access until the Easement Litigation is resolved by judicial decision or by agreement so that there remain no substantial legal impediments to development, improvement or opening of the Easement. At such time, the parties shall negotiate in good faith an amendment to this Plan that will address the respective obligations of the parties to undertake the following, as necessary, subject to availability of funding:

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1. Preparation of a plan and design for improvement of the Easement for public access
2. Application for all permits necessary for implementation of the improvement, including any required environmental documentation under CEQA
3. Implementation of the improvement.

The Plan amendment shall also detail the obligation of MRCA to open, maintain and manage the Easement for public access, upon completion of the improvement of the Easement for public access. The amendment shall address: rules for the public use of Easement, signage, access and parking, maintenance, enforcement, and such other topics as the parties deem relevant.

Retained Future Interest

Should MRCA cease to exist or fail to carry out its responsibilities pursuant to this Plan as determined by the Executive Director of the California Coastal Commission or the Executive Officer of the State Coastal Conservancy, then all right, title, and interest in the Easement shall be vested in the State of California, acting by and through the State Coastal Conservancy or its successor in interest, or in another public agency or nonprofit organization designated by the State Coastal Conservancy that has agreed to accept the Easement. This future contingent interest shall be set forth in the Acceptance.

Agreement

The foregoing is agreed to by and between MRCA, the Commission, and the Conservancy.

MOUNTAINS AND RECREATION CONSERVANCY AUTHORITY

By: _____
Its: _____

Date

CALIFORNIA COASTAL COMMISSION

By: Hope Smeltzer
Its: Chief Counsel

Date

STATE COASTAL CONSERVANCY

By: Sam Schuchat
Its: Executive Officer

Date