



MOUNTAINS RECREATION & CONSERVATION AUTHORITY

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MEMORANDUM

TO: The Governing Board

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

DATE: March 6, 2013

SUBJECT: **Agenda Item VIII: Consideration of resolution authorizing a comment letter to California Coastal Commission regarding Cease and Desist Order Amendment No. CCC-09-CD-01-A, Lisette Ackerberg Trust, including for beach access easements, 22466 and 22500 Pacific Coast Highway, Carbon Beach, City of Malibu.**

Staff Recommendation: That the Governing Board adopt the attached resolution authorizing a comment letter to California Coastal Commission regarding Cease and Desist Order Amendment No. CCC-09-CD-01-A, Lisette Ackerberg Trust, including for beach access easements, 22466 and 22500 Pacific Coast Highway, Carbon Beach, City of Malibu.

Background: The Mountains Recreation and Conservation Authority (MRCA) holds an easement for public pedestrian access to the shoreline along a 10-foot-wide stretch at the eastern boundary of property owned by Lisette Ackerberg and Ackerberg Trust, at Carbon Beach in the City of Malibu (Assessor's Parcel Number 4452-002-011). (The MRCA took a Board action on August 7, 2012 to accept this public access easement and to approve an interim access plan; the easement was recorded September 27, 2012.) This easement extends from the northerly property line (near Pacific Coast Highway [PCH]) to the mean high tide line. (There is also a lateral beach access easement on the property, held by California State Lands Commission.) Currently, there are several encroachments in the access easements, including a 9-foot-high block wall (by PCH), boulders, fence, and more. The vertical access easement is not currently usable.

The following item is on the agenda for the March 7, 2013 meeting of the California Coastal Commission meeting:

8. Commission Cease and Desist Order Amendment No. CCC-09-CD-01-A (Ackerberg – Malibu, Los Angeles Co.) Public hearing and Commission action on proposed amendment to a previously issued Cease and Desist Order to modify existing language of the Order to

address all Coastal Act related claims, including the removal of unpermitted development from vertical and lateral public access easements, opening up of the easements, and resolution of civil liabilities, among other things; directed to Lisette Ackerberg, in her individual capacity and as trustee of the Lisette Ackerberg Trust; for property located 22466 and 22500 Pacific Coast Highway, Malibu, Los Angeles County.

Today's action would authorize a support letter for the Commission's proposed action. The Commission staff report for this item can be found at: <http://www.coastal.ca.gov/mtgcurr.html>. If approved by the Coastal Commission, this action would amend the existing Cease and Desist Order, approved by the Coastal Commission at its July 8, 2009 meeting. That order addressed removing unpermitted development and complying with conditions of existing permits and vertical and lateral public access easements. (Further background can be found on the online staff reports at that July 8, 2009 meeting, agenda items 11 and 12 at: <http://www.coastal.ca.gov/meetings/mtg-mm9-7.html>.)

Information in this staff report was primarily based on the Commission's March 7, 2013 staff report and a press release issued by the Coastal Commission on August 29, 2012. A California Court of Appeals upheld an action by the California Coastal Commission to provide this new access at Carbon Beach. The 2nd District Court of Appeals affirmed a Superior Court decision that the Commission properly ordered the Lisette Ackerberg Trust to remove unpermitted development blocking a public access easement on Ackerberg's property. The Commission had originally issued two permits for development of two beach-front lots in the 1980s, and those permits required two public access easements (one vertical and one lateral) across the property. The Ackerbergs had sued the Commission in an attempt to avoid opening the easement. The litigation over the Commission's issuance of the Order is final, and the Order has been upheld. The upcoming Coastal Commission action follows this history.

According to the Commission's March 7, 2013 staff report, through signing of the Consent Agreement and Amended Order, the Respondent (Ackerberg) has agreed to the following:

- Perform no further unpermitted development or take actions that would interfere or prevent legal public use of the access easements.
- Remove, through an approved Removal Plan, all unpermitted development in the access easements.
- Develop and submit an Accessway Improvement Plan, submit a Coastal Development Permit (CDP) amendment application to authorize it under the Coastal Act, and construct, at Respondent's cost, the public accessway.
- Pay to MRCA \$35,000 a year for ten years to cover the costs of operating and maintaining the vertical accessway.

- Pay \$350,000 to the Violation Remediation Account to go toward the improvement, enhancement, and maintenance of public access elsewhere in the Malibu area.
- Pay \$160,000 for each year, or a proportional amount for any fraction of a year, from January 1, 2013 through the date on which the public access easements on the property are open and available to the public (an amount that may likely be in excess of \$290,000) (this amount will also go toward the improvement, enhancement, and maintenance of public access elsewhere in the Malibu area).
- Pay \$170,000 as a full, complete, and final reimbursement to the Commission for all attorney's fees and costs.
- Dismiss all litigation against the Commission.

In addition, according to the Consent Agreement and Order Amendment, the holder of the subject vertical public access easement (i.e., MRCA) would be involved in the following ways:

- The Respondent shall consult w/MRCA to ensure Access Improvement Plan will provide adequate public access and comply with applicable requirements. (The Respondent has already begun coordinating with MRCA staff.)
- The Respondent shall offer the easement holder the opportunity to be co-applicant in the CDP amendment application.
- If the Respondent fails to proceed w/CDP amendment application, she shall authorize the easement holder to assume the primary role to process the CDP amendment application. The Respondent agrees to pay the easement holder's costs of processing this application.
- If the Respondent is unable to construct the accessway, she shall authorize the easement holder to assume the primary role for construction. The Respondent shall pay those costs.
- There will be an automatic gate, that is unlocked from one hour before sunrise to one hour after sunset. The gate shall provide the ability to exit 24 hours a day.

As described above, the proposed amendment to this order includes numerous valuable terms to provide and enhance beach access in the Malibu area. The proposed action would authorize the MRCA Chairperson to send the attached draft letter to the Commission supporting the proposed Order Amendment. At its February 25, 2013 meeting, the Santa Monica Mountains Conservancy authorized a comment letter to California Coastal Commission, supporting the proposed Commission action.