

## **CALIFORNIA COASTAL COMMISSION**

SOUTH CENTRAL COAST DISTRICT  
89 SOUTH CALIFORNIA ST., SUITE 200  
VENTURA, CA 93001  
(805) 585-1800



# **W13a**

**4-21-0132-EDD (Sycamore Tennis Court Association)**

**April 14, 2021**

**Correspondence**

Indian Wells  
(760) 568-2611

Irvine  
(949) 263-2600

Los Angeles  
(213) 617-8100

Manhattan Beach  
(310) 643-8448

Ontario  
(909) 989-8584



**BEST BEST & KRIEGER**  
ATTORNEYS AT LAW

1230 Rosecrans Avenue, Suite 110, Manhattan Beach, CA 90266  
Phone: (310) 643-8448 | Fax: (310) 643-8441 | www.bbklaw.com

Riverside  
(951) 686-1450

Sacramento  
(916) 325-4000

San Diego  
(619) 525-1300

Walnut Creek  
(925) 977-3300

Washington, DC  
(202) 785-0600

**Trevor L. Rusin**  
(310) 220-2177  
Trevor.Rusin@bbklaw.com

March 30, 2021

**VIA E-MAIL**

Coastal Commissioners  
California Coastal Commission  
455 Market Street, Suite 300  
San Francisco, CA 94105

*Re: Hearing on Jurisdictional Determination - April 14, 2020, Item 13a*

Dear Coastal Commissioners:

The Malibu LCP — drafted and certified by the Commission in 2002 — makes it very simple to determine whether an appeal to the Commission is available for a CDP application. This simplicity is necessary because that determination is made at an early stage in the processing an application.<sup>1</sup> The notice of the public hearing must include this information, and the notice is issued before the application has been reviewed by the public, analyzed, or acted on. Importantly, this notice is published before the public has an opportunity to show impacts of the proposed development.

So the Malibu LCP wisely designates four distinct, objective categories of actions on CDP applications that are subject to appeal to the Commission and all other actions are subject to local appeal.

These four categories, of course, exactly track Coastal Act §30603, which is the exclusive source of the Commission’s appellate jurisdiction. The Coastal Act designates the four circumstances under which the Commission has appellate jurisdiction following LCP certification and the Malibu LCP includes those four circumstances as the definition of “appealable coastal development permit.”

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<sup>1</sup> The simplicity is also reflected in the fact that, when there is a dispute about appealability, the Executive Director is only given two working days to provide the City with his determination as to whether a project is appealable to the CCC. LIP § 3.10.1.

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**As Commission Staff concedes, the subject CDP application does not meet the LCP/Coastal Act criteria to be an “appealable” CDP.**

The question before the Commission is factual. Do the facts establish that the proposed project is within any of the four categories for Commission-appeal? If not, the Commission does not have appellate jurisdiction. Any appeal would be to the City Council, subject to judicial review, as is the case with most CDPs in Malibu.

In the Jurisdictional Determination letter, the Coastal Program Analyst concedes that for the subject application none of the criteria are met for a CDP that is subject to appeal to the Commission. It concludes the expert evidence establishes that the proposed project is “outside the Commission’s geographic appeals jurisdiction area.”

The Malibu Local Coastal Program defines an “Appealable Coastal Development Permit” and limits appeals to the Coastal Commission “for only the following types of developments:”

1. Developments approved by the City between the sea and the first public road paralleling the sea or within three hundred feet (300’) of the inland extent of any beach or of the mean high tideline of the sea where there is no beach, whichever is the greater distance.
2. Developments approved by the City not included within paragraph 1 **that are located** on tidelands, submerged lands, public trust lands, within one hundred feet (100’) of any wetland, estuary, or stream, or within three hundred feet (300’) of the top of the seaward face of any coastal bluff.
3. Developments approved by the City not included within paragraph (1) or (2) that **are located** in a sensitive coastal resource area.
4. Any development which constitutes a major public works project or a major energy facility as defined in this Chapter. The phrase “major public works” or a “major energy facility” as used in Public Resources Code Sec. 30603(a)(5) and in these regulations shall mean: any proposed public works project or energy facility, as defined by Section 13012 of the Coastal Commission Regulations and the Coastal Act.

Malibu LIP 2.1; *see also* Public Resources Code §30603 (emphasis added).

The proposed project is not located in a sensitive coastal resource area and it is not a public works project or energy facility. The proposed project is not within 100 feet from a stream top of bank or within 300 feet of the inland extend of any beach. *See* Jurisdictional Determination Letter, dated February 25, 2021. These facts are not disputed.



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The LCP and the Coastal Act intend the determination to stop here, with the non-political application of objective criteria.

**Commission staff applies the definition of “development” to property not owned by the applicant but which staff believes will likely be impacted by the proposed project, which is how the staff reached its conclusion**

The Jurisdictional Determination letter finds that the proposed project is not within the Commission’s geographic appeal jurisdiction but nonetheless concludes it would be subject to appeal to the Commission. This conclusion is the apparent product of confusing potential project impacts with proposed development.

Commission staff’s sole basis for determining that the proposed development is subject to Commission appeal (should the City approve the application, which, by the way, the City has not even heard yet) is that the proposed project would restrict access to other areas “that appear to be located within the Commission’s geographic appeals jurisdiction.”

The City agrees that the impact of any development on access to public land must be analyzed. If the impact is adverse, it must be mitigated. If it cannot be mitigated, the CDP may be denied.

The City obviously agrees that “development” requiring a permit is not limited to the placement physical structures and includes activities that might change the intensity of the use of property.

Anyone who develops property within the Coastal Zone requires a coastal development permit. The purpose of the Coastal Act’s broad definition of “development” is to determine when a property owner’s proposed activity requires a CDP. Where such activity is proposed a CDP is required.

But the “development” occurs on the property of the applicant. Indeed, Section 13.6.2 of the Malibu LCP requires proof that the proposed development is on property owned by the applicant or that the owner has given written consent “for the proposed development.” To the extent that development may impact neighboring properties, including impacting the intensity of use of land, those secondary effects are *impacts* of a project, not the project itself.

Development is what a property owner proposes to do on property the person owns or controls. If the definition of “development” were to be applied to properties potentially impacted by a proposed development, it would require that the impacted property owners be co-applicants for the CDP. This leads to absurd results. Here are some examples

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- It is not always clear at the noticing stage what impacts a project may produce. If a project “outside the Commission’s geographic appeals jurisdiction area” is found during a public hearing to have impacts on property within the Commission’s jurisdiction, the hearing would have been improperly noticed and could not go forward.
- Neighbors could effectively veto CDP applications before they are ever heard by refusing to join the application. This would result in the illegal delegation of government authority to those neighbors. The Commission and the City grant or deny CDPs and impose conditions pursuant to legal authority that must be exercised for valid reasons. A neighbor’s refusal to allow consideration of CDP applications that may impact their property could be for any reason, even unconstitutional ones.
- New parks and accessways that arguably increase the intensity of use in a neighborhood would be subject to neighbors claiming that the activity constituted “development” on their property and thus could refuse to join the application and prevent its approval.

We hope you can see the interpretation of the Coastal Act and the Malibu LCP that underlies the Jurisdictional Determination is untenable. “Development” (that is not exempt) requires a CDP. Applicants can only propose development on property that they own or where they have the permission of the property owner.

Thus, proposed activities that have the intention of changing the intensity of use of property that is the subject of a CDP application is “development” for the purposes of the Coastal Act.

The unintentional or secondary effect that proposed development on a property has on surrounding properties, including changes in their intensity of use, are the *impacts* of a project.

Simply put, “development” is what applicants intend to do on their properties; “impacts” are the effect that development may have on other people’s property.

The purpose of the definition of “development” is to determine if a CDP is required for activities proposed on the applicant’s property. The purpose of the definition of “appealable coastal development permit” is to determine whether action on the CDP may be appealed to the Coastal Commission. The analytical misstep in the Jurisdictional Determination letter is that it purports to use the definition of “development” to determine “appealability.”

Appeals jurisdiction is determined by the subject property of an application. That is how the Coastal Act is written, how the LCP followed the Coastal Act, and the only tenable way to fairly implement the appeal determination.

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For these reasons, the Jurisdictional Determination signed by the Coastal Program Analyst misapplies the Coastal Act and the conclusion exceeds the Commission's jurisdiction.

Sincerely,



Trevor L. Rusin  
of BEST BEST & KRIEGER LLP  
Assistant City Attorney, City of Malibu

cc: Jack Ainsworth, Executive Director  
Steve Hudson, District Director, South Central Coast and South Coast, Los Angeles County  
Denise Venegas, Coastal Program Analyst

**From:** [Trevor Rusin](#)  
**To:** [SouthCentralCoast@Coastal](mailto:SouthCentralCoast@Coastal)  
**Subject:** Public Comment on April 2021 Agenda Item Wednesday 13a - Dispute Resolution No. 4-21-0132-EDD (Sycamore Tennis Court Association, Malibu)  
**Date:** Friday, April 9, 2021 4:58:38 PM

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Commissioners-

In addition to the City of Malibu's prior correspondence on the substantive problems with California Coastal Commission (CCC) Staff's recommendation to expand the CCC appeal jurisdiction beyond the limits included in the City's local implementation plan, I wanted to also raise the issue that CCC staff has not complied with the procedural requirements of LIP section 13.10.1. Under Section 13.10.1, if the City's Planning Director determines that a project is not appealable to the CCC and that determination is challenged, the Executive Director of the Coastal Commission must "within two (2) working days of the local government request...transmit his or her determination as to whether the development is...appealable" [LIP section 13.10.1(C)].

The City submitted its request in compliance with LIP section 13.10.1(B) on October 12, 2020. While Ms. Deanna Christensen, District Supervisor for the South Central Coast District, responded in a letter dated October 14, 2020, this letter (1) does not include a determination made by the Executive Director, and the Executive Director is not copied on the letter, and (2) states that CCC staff requires more information and their October 14, 2020, dated letter does not constitute a "final jurisdictional determination." The City renewed its request on December 23, 2020, and February 23, 2021, but never received a determination from the Executive Director, nor was the Executive Director copied on any correspondence on this issue. CCC staff's final response to the City, dated February 25, 2021, states that "the Executive Director does not agree with the City Planning Director's determination that the proposed project is not appealable to the Coastal Commission", but this letter is again not signed by the Executive Director nor is the Executive Director copied on the letter. Instead it is signed by Denise Venegas, Coastal Program Analyst for the South Central Coast District.

As a result CCC staff have not complied with the procedures required by Malibu LIP section 13.10.1 and have waived their opportunity to bring this matter before the Coastal Commission for resolution. The City's determination that the project does not lie within the CCC's appeal jurisdiction should thus be final. Best regards-

Trevor Rusin  
Assistant City Attorney, City of Malibu



[Trevor Rusin](#)  
Partner  
[trevor.rusin@bbklaw.com](mailto:trevor.rusin@bbklaw.com)  
T: (310) 220-2177  
[www.BBKlaw.com](http://www.BBKlaw.com)

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Nancy Goldstein  
LAW OFFICE OF NANCY B GOLDSTEIN  
2277 Caldwell Avenue  
Simi Valley CA 93065

(805) 496-6565  
[nancy@gr8calilawyer.com](mailto:nancy@gr8calilawyer.com)

Coastal Commissioners  
California Coastal Commission  
455 Market Street, Suite 300  
San Francisco, CA 94105

*Re: Hearing on Jurisdictional Determination*  
*April 14, 2020, Item 13a*  
OPPOSITION TO STAFF RECOMMENDATION

Dear Coastal Commissioners:

This office represents the Plaintiffs, homeowners in Sycamore Park, in Los Angeles Superior Court, Case No. SC126502 (“LA Superior Court Action”). The owners in Sycamore Park, including the Sycamore Park Tennis Court Association (Applicant) are unable to have the Application for a CDP heard by the Malibu Planning Commission until the appeal jurisdiction issue is resolved. MRCA, a defendant in the LA Superior Court Action, has delayed the process by objecting to the City’s finding regarding appealability. MRCA is seeking a tactical advantage by providing inaccurate facts to Commission staff and encouraging staff to apply law that does not apply to the true facts or law that does not exist. They can do this in front of their colleagues at the Coastal Commission whereas these tactics would not pass muster at trial.

### **LA Superior Court Action**

Sycamore Park homeowners brought the LA Superior Court Action in 2016 to determine the access rights in Sycamore Park. This occurred shortly after a representative from MRCA announced at a Malibu City Council meeting that MRCA had an easement for public access through Sycamore Park to get to properties outside the community and the agency intended to invite the public to use the agency’s access.

Review of the easement documents related to Sycamore Park revealed that the streets in Sycamore Park are private streets and that the easements granted contain no language permitting public access. This is not contested. There also is no law to support MRCA’s position that an agency can invite the public to use easements granted for single-family residential use.

In 2017, MRCA applied for a grant of \$1Million to purchase raw land, zoned rural residential, within Sycamore Park, to bolster the agency's position that it had access rights. The Grant Application states that the property was being acquired to protect the watershed by preventing the construction of the single-family dwelling planned for that land. Mr. Edmiston testified at his deposition in the LA Superior Court Action that possible public access was a "collateral consequence" of the acquisition but that the agency would have acquired the property for conservation purposes even if no public access was provided.

After the land was acquired, MRCA began advertising the property as a trailhead which would connect to trails outside Sycamore Park and the agency installed signage, picnic tables and trash cans next to the creek they were supposedly protecting. These improvements were built without compliance with the Malibu LCP and without any of the permits or approvals required by the Malibu LCP.

## **DELAYS**

The LA Superior Court Action, filed to quiet title to the access rights, was scheduled to go to trial in December 2018. However, MRCA filed a cross-complaint in June 2018 for alleged Coastal Act violations which forced the trial date to be taken off calendar.

By 2020, the cross-complaint had been narrowed down, through motion practice. In the motion for summary judgment, the court held that the individual owners could not be held responsible for Coastal Act violations and summary adjudication was granted dismissing those claims.

Triable issues of material fact remained as to the Plaintiffs' quiet title claims and the court ruled that those claims would have to go to trial<sup>1</sup>. There is no ruling, yet, on whether the public may be invited to the property owned by MRCA. A trial date is set for September 20, 2021.

## **MRCA AND COASTAL COMMISSION COLLUDE TO SANCTION HOMEOWNERS**

The Coastal Commission works closely with other agencies, including Santa Monica Mountains Conservancy (SMMC) and Mountains Recreation and Conservation Authority (MRCA). Both of these agencies are defendants in the case waiting for trial. Both agencies are controlled by Joe Edmiston.

Rather than allow the Court in the LA Superior Court Action to rule on whether there are any public access rights in Sycamore Park, Mr. Edmiston has utilized his

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<sup>1</sup> Contrary to the assertion by the Coastal Commission staff, based on documents provided by MRCA, the court did not rule on whether the agency had a right to invite anyone, especially not the public, to utilize the streets and trail in Sycamore Park. The court found that there was an issue of material fact as to who could use the streets and trails and reserved that issue for trial.

connections to other agencies, including the Coastal Commission, to block all attempts to proceed. Even though his agencies had already sued on behalf of the Commission to find the community had violated the Coastal Act by having a guard at the Sycamore Park community's entrance, he also urged the Commission to send violation letters to the City of Malibu contending that no CDP had been obtained for the guard. All attempts to obtain a CDP have been blocked by Mr. Edmiston and his agency. Please note, unlike the situation in the Surfrider case, the community has NO GATE and there is no evidence that the public have ever utilized the streets in the Sycamore Park community.

The Sycamore Park community has done everything requested of them by the City of Malibu. When they were instructed that a CDP was required, they put in an application. When they were told there was a violation, they immediately made the corrections requested. Since 2018, all corrections have been performed and there are no outstanding violations. The Commissioners have stated that their role is to obtain compliance, not to dole out punishment. Sycamore Park is in compliance.

## **ATTEMPT TO HAVE APPLICATION HEARD**

### **Notice**

A Notice of Public Hearing was sent out by the City of Malibu for the Planning Commission hearing on October 19, 2020. As required, the Notice specified that Coastal Development Permit No. 20-018 is appealable to the Malibu City Council. The Notice was published by the Planning Director on October 8, 2020. An immediate objection was filed by MRCA.

### **Objections**

MRCA, as "an interested party", filed its objection to the appeal jurisdiction on October 8, 2020. The initial hearing on the application has been delayed from October 19, 2020 to the present. If there are objections to the substance of the application, those can be made at the hearing. However, to date, the community has been denied the hearing to which it is entitled.

By flooding the Commission with false and misleading information, the MRCA is directing the attention of the Commissioners to the content of the application – when that is not yet before them. This is highly irregular and prejudicial.

MRCA is attempting to trick the Commissioners into pre-judging the Application which is not yet before them. This has been accomplished by supplying false information about the status of the LA Superior Court Action and by carefully slanting the information to imply they have already established rights of public access when there are no established rights by deed or dedication or judgment of the court. Further, bold statements are made by MRCA referencing public access through Sycamore Park when evidence of historic use does not support public entry.

## COASTAL COMMISSION ATTEMPTING TO CHANGE LCP

The last time the Coastal Commission attempted to pressure the City of Malibu to change the LCP and approve a procedure contrary to the LIP, the Commission lost. In 2012, **City of Malibu v. California Coastal Com.**, 206 Cal.App.4th 549 the court found that:

*“In this case, we decide the California Coastal Commission (Coastal Commission) acted in excess of its jurisdiction when it approved amendments to a city’s certified local coastal program at the request of state agencies, over the objections of the city, where the amendments were not requested to undertake a public works project or energy facility development, but instead changed the city’s land use policies and development standards as they would apply to future plans for development within the city.”*

In the current matter before the Commission, the City of Malibu, following the applicable LCP provisions, found that the development subject to the application is not within the appeal jurisdiction of the Commission. The Commission staff, on behalf of the director, relying on a provision NOT found in the Malibu LCP, found to the contrary. This is another attempt by the Commission to change and expand its jurisdiction by inserting new provisions into the LCP requirements. That is not permitted.

The owners in Sycamore Park are unable to have their Application for a CDP heard by the Malibu Planning Commission until the appeal jurisdiction issue is resolved. So the application process has stalled. The issues raised in the objections go to the issuance of the CDP, but not to the appeal jurisdiction. We ask that this matter be allowed to proceed according to the clear, objective criteria approved in the LCP.

Thank you.

LAW OFFICE OF NANCY B GOLDSTEIN

*Nancy Goldstein*

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Nancy B Goldstein



April 9, 2021

Chair Steve Padilla  
California Coastal Commission  
455 Market Street, Suite 300  
San Francisco, CA 94105

Cc: Executive Director Jack Ainsworth

**RE: W13a Dispute Resolution No. 4-21-0132-EDD (Sycamore Tennis Court Association, Malibu) – Support for Executive Director Determination**

Dear Chair Padilla and Commissioners,

The Surfrider Foundation is a non-profit, environmental organization dedicated to the protection and enjoyment of the world's oceans, waves and beaches *for all people*. Surfrider supports the recommendation to uphold Executive Director Jack Ainsworth's appealability determination regarding the proposal to install a vehicular and pedestrian gate at 6480 Via Escondido Drive, Malibu. This proposed gate would deliberately limit public access to public land and public trails within the Commission's geographic appeals jurisdiction.

The applicant has already denied and attempted to deny public access at this location by, among other actions, illegally stationing a guard to turn people away and posting signs falsely claiming "private access, residents only." In response to Coastal Commission enforcement requests, the City, instead of upholding the Coastal Act, has allowed this illegal interference with public access to continue unabated. The idea that installing a gate to prevent non-residents from entering the neighborhood and partaking of public accessways and trails would somehow be a solution to these violations lacks both legality and logic.

Public access exists to and along Via Escondido Drive to public land and coastal trails accessible from Via Escondido Drive:

- Via Escondido Drive connects Pacific Coast Highway to public property and trails, including a Commission-required trail easement at 6100 Via Escondido Drive, which is located at the northern terminus of Via Escondido Drive;
- The public may hike down from Escondido Canyon Park (or other surrounding public trails such as the Coastal Slope Trail and Escondido Falls Trails) down Via Escondido Drive to reach Escondido Beach;
- An existing Los Angeles County-owned beach accessway is located at the intersection of Via Escondido Drive and Pacific Coast Highway.



Therefore, the public's *right* to coastal access also exists to and along Via Escondido Drive.

As explained in the staff report, both the City of Malibu's Local Implementation Plan and the Coastal Act's provisions regarding which CDP actions may be appealed to the Coastal Commission are defined in such a way as to make this project clearly appealable as the "development" proposed in this case would create a change in intensity by restricting access to areas within the Commission's geographic appeals jurisdiction. **We therefore urge you to concur with the Executive Director's determination that the City of Malibu's pending CDP Application No. 20-018 is directly appealable to the Coastal Commission.**

Sincerely,

A handwritten signature in black ink, appearing to read "Jennifer Savage".

Jennifer Savage  
Surfrider Foundation  
California Policy Manager

A handwritten signature in black ink, appearing to read "Graham Hamilton".

Graham Hamilton  
Surfrider Foundation  
Los Angeles Manager

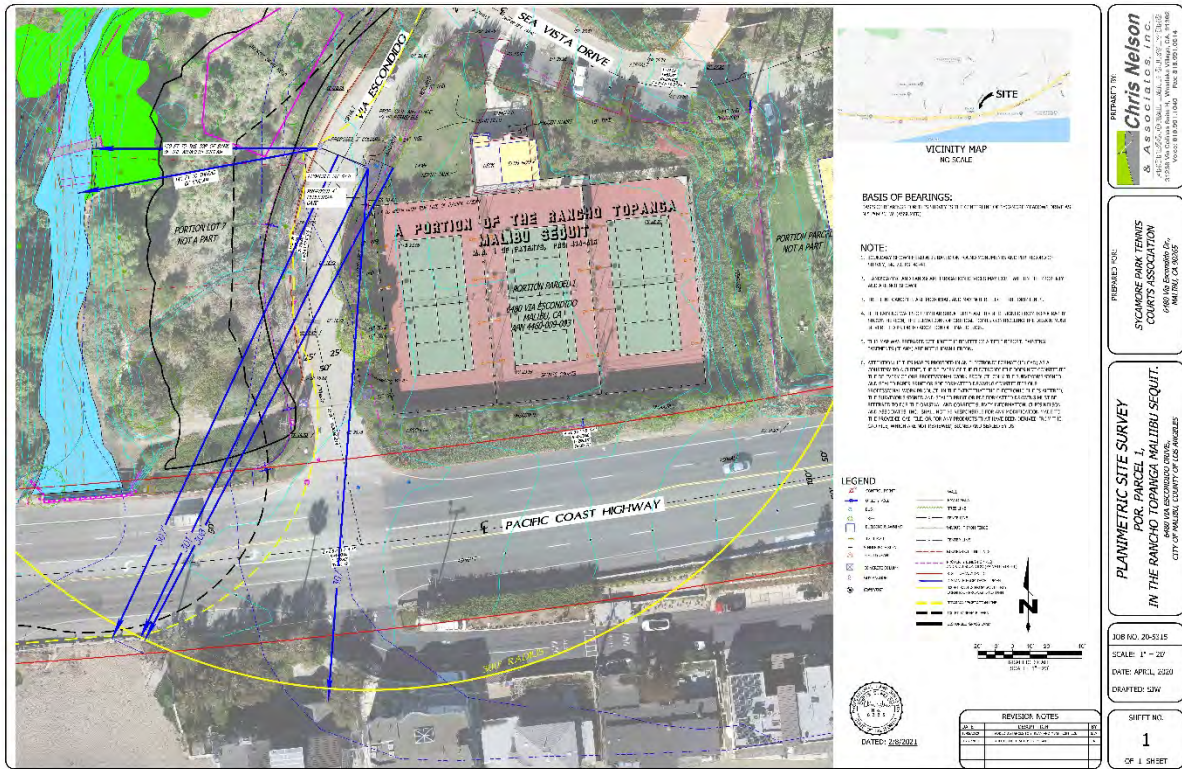
Elizabeth Robinson  
 Lrobinson6154@gmail.com  
 6154 Via Escondido  
 Malibu, CA 90265  
 (310) 383-3537

Coastal Commissioners  
 California Coastal Commission  
 455 Market Street,  
 Suite 300  
 San Francisco, CA 94105

*Re: April 14, 2020, Item 13a  
 Hearing on Jurisdiction Determination*

Dear Commissioners:

I am a resident of Sycamore Park in Malibu and there is an item (#13a to be exact) on the upcoming April 14 Agenda that I feel is a bit muddled. It appears there has been a misunderstanding that we have already had a hearing on the development question for our neighborhood. We have not had any hearings yet. MRCA has objected to our Notice of Hearing.



This map is Exhibit 2 in your package. It establishes that no LCP geographic requirement for appeal jurisdiction to the Coastal Commission is met. Staff has admitted that is correct.

The item on the Agenda speaks only to this appeal jurisdiction. We are confused because we followed all the rules in the LCP and they say there is no appeal jurisdiction. Yet the Commission staff agrees with MRCA that there is jurisdiction based on something that is not in the LCP.

I do not understand how that is possible.

Therefore, I find that I must oppose the staff recommendation. And I ask you to enforce the certified LCP. Please vote against finding appeal jurisdiction to the Coastal Commission. My neighbors and I would like to have a hearing on the Application. Please let us move forward. Rest assured that any concerns regarding the Application can be dealt with under the rules that govern the City of Malibu's process.

Thank you.

Elizabeth Robinson