

CALIFORNIA COASTAL COMMISSION

SOUTH CENTRAL COAST DISTRICT OFFICE
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F14a

ADDENDUM

September 11, 2024

TO: Coastal Commissioners and Interested Parties

FROM: South Central Coast District Staff

SUBJECT: **Addendum to Item F14a, Appeal No. A-4-MAL-24-0020 (Mountains Recreation and Conservation Authority) for the Commission Meeting of Friday, September 13, 2024**

The purpose of this addendum is to address correspondence received since the publication of the staff report and provide a response to certain correspondence. The Commission has received one letter in support of the staff recommendation and 3 letters in opposition of the staff recommendation since the publication of the staff report. The correspondence letters discussed herein are available in the Correspondence tab for the item on the Commission's website.

A letter from Benjamin Reznik, property owner of Lot 141 (APN No. 4470-028-001) within Tract 10630 or "Malibu Encinal," was received via email on September 9, 2024, and is included in the Correspondence tab for this item. Specifically, Mr. Reznik argues the physical improvements proposed by MRCA in Project Area III are located on Sea Level Drive, known as Lot A in Tract 10630, and that under the subdivision recorded as Tract 10630, Sea Level Drive (Lot A) is the only vehicular access for all homes in Lechuza Beach, including Lot 141, which has easement rights for ingress/egress over Lot A. Mr. Reznik claims that approving the physical improvements within Project Area III would render the lot unbuildable as vehicular access would be physically blocked, thus resulting in an unconstitutional taking of Mr. Reznik's development rights in Lot 141. Mr. Reznik further claims Exhibit No. 2 of the staff report, which portrays the properties held in fee title by MRCA, is misleading because it shows Lot 141 designated in a green outline together with the rest of the lots held in fee title by MRCA, thereby making it appear that MRCA owns all the lots on the undeveloped portion of Lechuza Beach.

In response, Commission staff would note that Mr. Reznik's assertions do not raise issues regarding whether the appeal raises a substantial issue with respect to the appellant's assertions or the project's consistency with the policies and provisions of the City's LCP and the public access and recreational policies of the Coastal Act. Nevertheless, staff provides the following response to address Mr. Reznik's assertions. Regarding the claim

that approving the physical improvements within Project Area III would render the lot unbuildable, as vehicular access would be physically blocked, staff would disagree. Lot A was acquired by MRCA in 2002, along with 22 other parcels, to provide public access to Lechuza Beach. It is an undeveloped “paper street,” and vehicular access does not currently exist. The proposed improvements are sited on a small portion of Lot A, which is currently unpaved and undeveloped beach and coastal bluff, and would not impede access to Lot 141 or preclude future development on Lot 141. Anyone, including the public, can traverse the sandy beach portion of Lot A to reach Lot 141. Furthermore, East Sea Level Drive terminates at the westernmost paved extent of the roadway, as shown on the figure below, so there is no westerly extension of East Sea Level Drive that currently reaches Lot 141. And there is at least 20 feet of undeveloped area seaward of the proposed access improvements and west of the terminus of East Sea Level Drive that would remain available for access.



Furthermore, it is unclear what, if any, development on Lot 141 could be found consistent with the Malibu LCP. Any future vehicular access to Lot 141 would require legal easements across two parcels not owned by Mr. Reznik. Mr. Reznik does not provide evidence of legal easements or other authorization from the adjacent property owners for such required vehicular access. In a previous coastal development permit application (CDP Application No. 4-09-077) submitted to this Commission requesting approval for geotechnical exploration on Lot 141, Commission staff requested information regarding access easement evidence, and none was ever provided. The application was never considered by the Commission because necessary information was not provided and the application was not filed as complete. Additionally, the California State Lands Commission (CSLC) provided a letter dated January 17, 2008 to Mr. Reznik regarding proposed geotechnical testing and construction of a new residence on the lot (attached to this addendum) which states that CSLC staff object to plans to construct a residence on the lot because it would be constructed on land that has been and will likely again involve State sovereign ownership and is subject to the public easement in navigable waters, and

additionally is within the Malibu LCP 10-foot setback requirement. Furthermore, staff would note that information provided by Mr. Reznik as part of CDP Application No. 4-09-077 indicated that the parcel is significantly constrained by the location of sovereign State lands as indicated by the most landward MHTL surveyed on the site (as of the submittal of that CDP application in 2007). Specifically, in the January 17, 2008 letter from CSCL, the California State Lands Commission staff stated that:

The most landward known Mean High Tide Line (MHTL) in this area is the February 10, 1998 (1998 MHTL) plotted on the map entitled '55 mean High Tide Lines surveyed Between September 1928 and September 30, 1998, prepared by Grimes Surveying and Mapping Inc (Grimes Map). Both proposed trench locations appear to lay seaward of the LCP 10-foot setback established by the 1998 MHTL when this line is plotted against the north property boundary of Lot 141. The majority of the proposed residence also appears to be located seaward of the LCP 10-foot setback and between as much as 33.5 and 36.5 feet seaward of the 1998 MHTL.

Additionally, staff disagrees with Mr. Reznik's assertion that Exhibit No. 2 is misleading. Specifically, Exhibit No. 2 depicts MRCA's fee and easement interests in green and purple boundaries respectively, including shared boundaries with multiple private lots. Lot 141 is surrounded by a green line because it shares all but its southern (ocean side) boundaries with the public property held by MRCA. The southern boundary depicting Lot 141 is shown in black; black correctly depicts private property within Tract 10630. Lastly, Exhibit No. 2 shows the dashed boundary of Project Area III as entering Lot 141; however, this dashed boundary is only for representational purposes and the project does not include any development within Lot 141.

A letter opposing the staff's recommendation was received from the Malibu City Manager, Steve McClary, via email on September 9, 2024, and is included in the Correspondence tab for this item. In response, Commission staff would like to provide the following clarification.

With regard to the restroom, Mr. McClary states that the Commission's staff report, dated August 29, 2024, "improperly suggests that the City's Planning Commission's decision [to exclude the restroom] was a simple action, and one based on a lack of visual analysis or measures to reduce the visual resource impacts." Following is the statement in question:

"Rather than providing an in-depth visual impact analysis relative to the siting of the restroom facility or providing measures to reduce the visual resource impacts, the City's action simply conditioned the removal of the restroom facility from the project, a much-needed beach amenity to beach visitors." (Commission staff report, pg. 4, as cited by Mr. McClary in his letter.)

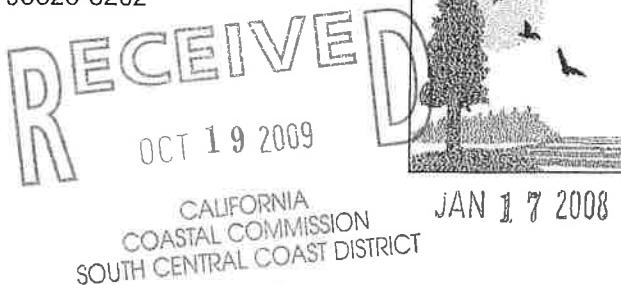
Commission staff would clarify that the statement above refers to findings in the City's Planning Commission Resolution No. 24-29, adopted April 1, 2024. The associated City agenda reports to approve the project did not include an in-depth visual impact analysis regarding the siting of the restroom, did not provide measures to reduce the visual resource impacts, and consist primarily of conclusions with minimal analysis to support the City's decision.

Furthermore, the City Manager mentions an alternative location for the restroom which appeared feasible and reasonable to the Planning Commission. This site alternative, as well as other alternatives and their feasibility, are already addressed in the Commission's staff report. Lastly, the City Manager raises concerns with the appellant's decision not to submit a local appeal of the subject project to the City's Council. However, under the Coastal Act, appellants are not required to exhaust all local appeals prior to submitting an appeal of a CDP to the Coastal Commission if the local government charges a fee to submit an appeal, which is the case here. Therefore, MRCA had standing to appeal its project to the Commission without having appealed to the City Council first.

Lastly, on September 3, 2024, the Commission received email correspondence from Judy Zierick, a member of the public, expressing opposition to the staff's recommendation. The correspondence is included in the Correspondence tab for this item. The correspondence does not raise any additional issues regarding the appeal that have not already been addressed in the staff report.

CALIFORNIA STATE LANDS COMMISSION

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File Ref: SD 2007-06-20.5

Naren Gunasekera
Associate Planner I
Schmitz & Associates Inc.
29350 Pacific Coast Highway, Suite 12
Malibu, CA 90265

Dear Mr. Gunasekera:

SUBJECT: Coastal Development Project Review for Proposed Geotechnical Exploration and Construction of a New Single Family Residence and Associated Structures at Lot 141 of Tract 10630, Adjacent to Sea Level Drive, Malibu, Los Angeles County

This letter is in response to your request on behalf of your client, Benjamin Reznik, for a determination by the California State Lands Commission (CSLC) whether it asserts a sovereign title interest in the property that the subject project will occupy and whether it asserts that the project will intrude into an area that is subject to the public easement in navigable waters or within the 10-foot setback set forth in Section 3.6 Residential Development Standards, Paragraph G, 3 (c), of the City of Malibu's LCP Local Implementation Plan (LCP 10-foot setback).

First, I would like to apologize for the delay in responding to your request. However, this area of Malibu has been the subject of litigation and the jurisdictional issues are complicated, which requires CSLC staff to thoroughly review these types of projects and our in-house records and information before a response can be provided.

The facts pertaining to your client's project, as we understand them, are these:

- Your client proposes to dig two backfill trenches to conduct geotechnical exploration in preparation for the construction of a new 2,800 square foot, two story, single family residence and associated structures on Lot 141 of Tract 10630, Los Angeles County Assessor's Parcel Number 4470-028-001, in the Lechuza Beach area of Malibu.
- Based on the submitted Conceptual Site Plan (Site Plan) dated June 8, 2007 and prepared by Edward A. D'Andrea, Architect, the proposed

trenches would be approximately two feet in width and 16 feet in length, and would be located on the approximate center line of the subject parcel, with one in the area of the proposed septic system, and the other at the seaward wall of the proposed residence.

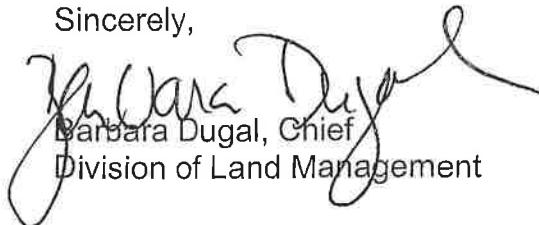
The most landward known Mean High Tide Line (MHTL) in this area is the February 10, 1998 line (1998 MHTL) plotted on the map entitled '*55 Mean High Tide Lines Surveyed Between September 1928 and September 30, 1998*' prepared by Grimes Surveying and Mapping Inc (Grimes Map). Both proposed trench locations appear to lay seaward of the LCP 10 foot setback established by the 1998 MHTL when this line is plotted against the north property boundary of Lot 141. The majority of the proposed residence also appears to be located seaward of the LCP 10-foot setback and between as much as 33.5 and 36.5 feet seaward of the 1998 MHTL. A draft copy of a compilation plat prepared by CSLC staff showing the relationship between the subject parcel, proposed construction, five surveyed MHTLs (comprised of the three most landward MHTLs from the Grimes Map, an October 2006 MHTL from the Site Plan, and a 1932 MHTL from Tract Map 10630), and the LCP 10-foot setback is attached for your reference.

With regard to the proposed geotechnical exploration, the CSLC does not object to your client's proposal to obtain a coastal development permit to dig two backfill trenches in the locations set forth on the submitted Conceptual Site Plan, as the trenches would be temporary in nature and the site would be returned to its pre-trench condition once the necessary geotechnical information is gathered.

However, with regard to the proposed construction, CSLC staff does object to your client's plan to construct a single family residence and related structures, as a significant portion of the improvements would be constructed on land that has been and will likely again involve State sovereign ownership and is subject to the public easement in navigable waters, and additionally is within the LCP 10-foot setback requirement. This assertion is without prejudice to any future assertion of state ownership or public rights, should circumstances change, or should additional information come to our attention.

If you have any questions, please contact Kenneth Foster, Public Land Management Specialist, at (916) 574-2555.

Sincerely,



Barbara Dugal, Chief
Division of Land Management

cc: City of Malibu – Planning Dept.
Barbara Carey - California Coastal Commission
Kenneth Foster – CSLC